

## **MEMORANDUM OF UNDERSTANDING (MOU)**

**made this 8<sup>th</sup> day of October, 2009**

**BETWEEN:**

**THE SUPERINTENDENT OF BANKRUPTCY  
LE SURINTENDANT DES FAILLITES**  
(hereinafter referred to as the “**Superintendent**”)

**AND:**

**CANADIAN ASSOCIATION OF INSOLVENCY AND RESTRUCTURING  
PROFESSIONALS /  
ASSOCIATION CANADIENNE DES PROFESSIONNELS DE  
L’INSOLVABILITÉ ET DE LA RÉORGANISATION**  
(Hereinafter referred to as “**CAIRP**”)

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### **OBJECTIVES OF MOU**

- The MOU details the roles, responsibilities and interests of the parties with respect to the delivery of a competent professional qualification program for insolvency and restructuring professionals including applicants seeking qualification as a Trustee;
- The parties will work together to ensure the existence of competent and cost effective professional qualification programs, including the CQP, a post-graduate program, and the ICQC, collectively referred to as “The Program”. The Program will support the required professional development of individuals who intend to achieve certification as a CIRP, counsel individuals suffering financial distress and apply for a licence as a Trustee. The program is designed to compete with other professions to attract talented individuals and to develop those individuals into qualified professionals in sufficient number to meet marketplace demands;
- The parties recognize that the Program will strengthen the insolvency and restructuring system in Canada by increasing the level of expertise and competency of insolvency and restructuring professionals; and
- The parties agree that it is desirable to maintain an education program and process whereby all providers of insolvency and business recovery services in Canada receive consistent, standardized, quality and appropriate training.

## **DEFINITIONS**

- **CAIRP** means the Canadian Association of Insolvency and Restructuring Professionals.
- **CAIRP Board of Directors** means the Board of Directors created under the CAIRP by-laws that is responsible for governance matters pertaining to CAIRP.
- **CAIRP Communications Committee** means a committee of CAIRP responsible for reviewing internal and external communications to ensure consistency with the CAIRP brand.
- **CAIRP Executive Committee** means the committee created under the CAIRP by-laws, comprised of the CAIRP Chair, Vice Chair, Secretary-Treasurer, President and CICA representative.
- **CIRP** means a Chartered Insolvency and Restructuring Professional or the acronym for the certification mark identifying such person.
- **CQP** means the Chartered Insolvency and Restructuring Professional Qualification Program.
- **CQP Committee** means a committee of no more than five individuals appointed by CAIRP and the Ex-Officio Member appointed by the Superintendent.
- **Ex-Officio Member** means a representative of the Superintendent participating as a non-voting member in respect of CQP committees. Given the role of the Superintendent in the professional development of applicants for a licence as a trustee, it is provided a position as an ex-officio member of certain CQP committees. The ex-officio member will have access to any documents or information relevant to matters under consideration and will participate in all related discussions and activities as an expert advisor. It is noted by the parties that the opinions expressed by the ex-officio member are not necessarily the views of the Superintendent and will not bind the Superintendent.
- **ICQC** means the Insolvency Counsellor's Qualification Course.
- **MOU** means Memorandum of Understanding and this agreement.
- **NIE** means the National Insolvency Examination.
- **NIQP** means the National Insolvency Qualification Program.

- **NIQP Board of Directors** means six individuals (three appointed by each of CAIRP and the Superintendent) that maintain responsibility for administration of the NIQP.
- **Objection** means a notification by the Superintendent to CAIRP that the actions of the CQP Committee, or any of its sub-committees, are inconsistent with the objectives of the Superintendent, contrary to the intent of the MOU or otherwise objectionable to the Superintendent.
- **Program** means the CQP and ICQC.
- **Program Commencement Date** means September 1 of each calendar year.
- **Registrar** means an individual that has overall management responsibility for the day-to-day administration of the Program, including serving as admissions officer.
- **Sponsor** means an individual that agrees to assist candidates in their performance of the Program, including the achievement of their educational objectives, directing their studies, marking their assignments, acting as a mentor, and attesting to the candidates' readiness to be examined.
- **Superintendent** means the Superintendent of Bankruptcy.
- **Trustee** means a licensed trustee in bankruptcy.

#### **PREVIOUS AGREEMENTS AND MOU REVIEW**

1. This MOU replaces the Memorandum of Understanding dated September 24, 2004.
2. This MOU may be amended by addendum on the mutual agreement of the parties. The amendments shall not take effect until the addendum is fully executed and delivered to the parties in accordance with the provisions of this agreement.
3. This MOU shall continue from year to year until cancelled, and either party hereto may cancel this MOU by the delivery of a written notice to the other party. Such cancellation shall take effect one hundred and twenty (120) days after the delivery of such notice.
4. This MOU will be reviewed at least once every five (5) years to ensure that its objectives remain relevant and that it continues to meet those objectives in a satisfactory manner.

## **MANDATE AND OBJECTIVES OF THE PROGRAM**

### **CIRP Certification and licensing as a Trustee in Bankruptcy**

5. The certification of individuals as a CIRP is the exclusive jurisdiction of CAIRP and governed by the by-laws of CAIRP, as may be amended or supplemented, without notice, from time to time.
6. The Program is an initiative of CAIRP; however, CAIRP recognizes the important advisory and consultative role of the Superintendent in the development and maintenance of the Program.
7. The Program will provide an educational and qualification framework for providers of insolvency and restructuring services in Canada. The CQP and ICQC will be maintained, marketed and delivered by CAIRP as distinct programs; however, for all other purposes, will be consolidated to enhance cost and administrative efficiencies. Hereafter, reference to the Program shall mean the CQP and/or the ICQC, either distinctly for education purposes or collectively for administrative and other purposes.
8. The Program will provide reasonable access through the establishment of entrance eligibility criteria as defined in paragraph 37.
9. The Program will maintain consistent and high standards for the qualification of candidates seeking certification as a CIRP and seeking to be licensed as a Trustee.
10. The Program will provide standards of qualification that are fair and transparent to persons that wish to qualify as providers of insolvency and restructuring services.
11. The Program will develop efficient, cost-effective methods of program delivery and testing.
12. The Program will be offered in both English and French.
13. The Program will include provisions for both Common Law and Civil Law systems.

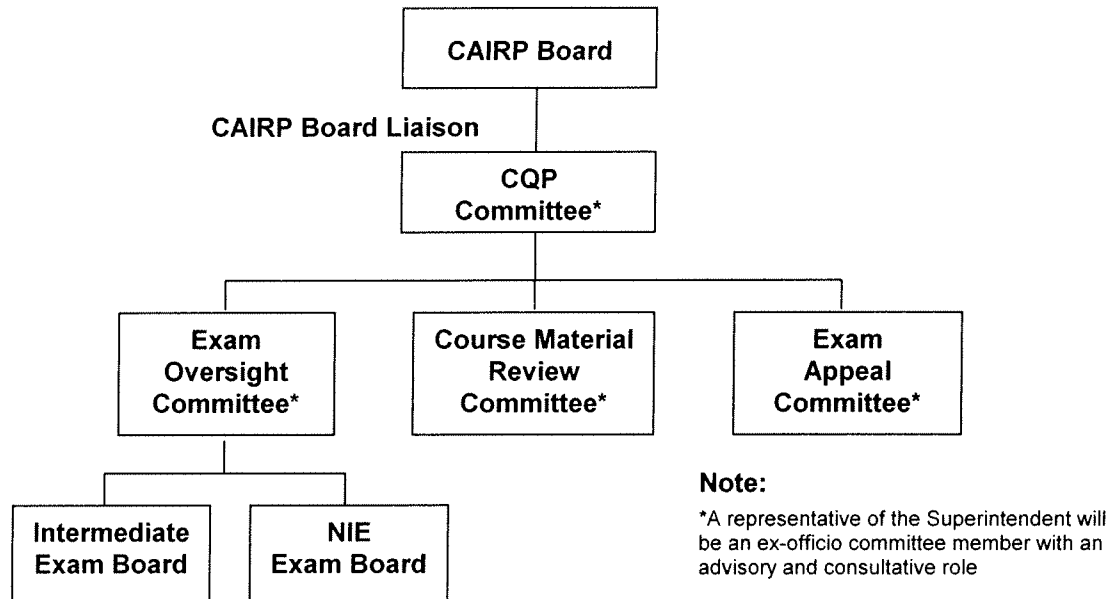
### **GOVERNANCE**

14. Governance of the Program is subject to oversight and review by the CAIRP Board of Directors. In recognition of the continuing role of the Superintendent, the governance structure and protocol of the Program are detailed herein.

15. The Program will be governed by the following mission statement:

*“To maintain an adaptable and relevant education and qualification program that affords a flexible learning structure to talented individuals seeking to provide professional insolvency and restructuring services.”*

16. The Program will be organizationally structured as follows:



Note: The organizational structure, detailed above, is for illustrative purposes and may be amended at the sole discretion of CAIRP to promote enhanced organizational efficiencies and effectiveness, ensuring an adequacy of oversight and control. Any such amendments will continue to respect the role of the Superintendent as noted in this agreement.

### CQP Committee

17. The CQP Committee is appointed by CAIRP, and will consist of no more than five (5) individuals, excluding a representative assigned by the Superintendent as an Ex-Officio Member.

18. On an annual basis the CQP Committee will develop or amend for approval at the February meeting of the CAIRP Board, the following:

a) Terms of reference of the committee that include, *inter alia*:

- i. The structure and current membership;
- ii. The objectives for the coming year (prioritized);

- iii. A progression scorecard highlighting status of prior established objectives;
  - iv. The names of or proposed names of individuals to occupy the Chair position of the sub-committees as highlighted above; and
  - v. Such other information as the committee may in its discretion deem appropriate.
- b) an annual budget and program, examination and other fees and proposed special levies;
  - c) admission requirements to the programs and any proposed amendments thereto;
  - d) a syllabus and any proposed changes thereto; and
  - e) course content and proposed curriculum changes.
19. The CQP Committee is empowered, without the approval of the CAIRP Board to:
- a) provide for delivery of courses;
  - b) appoint individual general members to occupy the positions of the sub-committees as highlighted above, except the individual to occupy the position of Chair of such sub-committees;
  - c) set written examinations for all programs at the intermediate and final level;
  - d) determine exemptions to permit a one-time challenge of the NIE under paragraph 41;
  - e) approve the results of the intermediate course exam and the NIE;
  - f) publish and maintain rules for all of the programs under its administration;
  - g) create and appoint task forces as required; and
  - h) send communications to candidates in the various programs (such to be prior reviewed by the CAIRP Communications Committee).
20. The CQP Committee is required to report to the CAIRP President for dissemination to the CAIRP Executive Committee:
- a) the results of examinations a minimum of 48 hours prior to the release to the writers; and
  - b) annually on admissions under paragraph 39.
21. The CQP Committee shall carry out such other tasks and duties as reasonably requested by CAIRP.
22. As part of the expansion of CAIRP's educational role, and to draw on the viewpoints and expertise of other stakeholders, the CQP Committee may include lay members who are neither CIRPs nor staff of the Superintendent. Any costs to be incurred with such lay members' participation in the CQP Committee shall be approved by the CAIRP Executive Committee, except where such cost was provided for in the annual budget.
23. The term for CQP Committee members is two years and may be renewed without limitation.
24. The Chair of the CQP Committee will be appointed by CAIRP for a two-year term and may be renewed for a second two-year term.

25. A quorum for purpose of a meeting of the CQP Committee is constituted by having present, either personally present or participating by electronic means, a majority of the members.
26. Decisions of the CQP Committee require a simple majority of those voting.

#### **LEGAL AND ADMINISTRATIVE**

27. CAIRP has sole and exclusive ownership of the Program, including, without limitation, the syllabus, the prescribed course of study, course materials, the question depository and all cash and cash equivalents derived from annual fees and levies, except as provided for in the Transitional Matters section in paragraph 51.
28. **Finance:** The CQP Committee will recommend fees annually, and seek and recommend alternative sources of funding, in accordance with paragraph 18 hereof. The recommendations shall have regards to:
  - a) maintenance and revision of all course material;
  - b) marking and appeal centre costs, including room rental, travel and other costs of attendees;
  - c) organizational and operational costs of the CQP Committee and its sub-committees;
  - d) the undertakings of task forces convened by the CQP Committee;
  - e) legal and academic per diems associated with examination reviews;
  - f) professional services and office administrative costs;
  - g) future strategic reviews of the Program associated with the five year review of the MOU; and
  - h) all other costs directly attributable to the Program, including all other necessary costs incurred under this MOU.
29. A special surcharge on program fees may be recommended by the CQP Committee, in accordance with paragraph 18 hereof, to cover major course revisions, and, if levied, should be amortized over a reasonable period.
30. CAIRP will indemnify the appointees to the CQP Committee for any liability incurred in the course of their responsibilities as members of the CQP Committee. Any contracts signed in regard to the Program must be signed by CAIRP or indicate that the CQP Committee appointee has been authorized by CAIRP and is executing the contract as agent on behalf of CAIRP.
31. **Accounting:** CAIRP will account for the operations of the Program distinctly within its existing accounts: for greater certainty, the Program will not be subject to separate audit, but will be subject to audit within the CAIRP financial statements. CAIRP will provide an accounting to the CQP Committee on a quarterly basis; such accounting will include a comparison of the actual results against budget.

32. CAIRP will provide to the Superintendent on an annual basis, or as requested, a summary of the financial results of the Program, which summary will detail the cost per enrolled candidate in the Program or such other detail as requested by the Superintendent.
33. The CQP Committee will provide CAIRP with an explanation of all financial variances, on a line item basis, that are greater than:
  - a) 20% of the budgeted amounts; or
  - b) \$20,000.
34. The CQP Committee will establish a protocol to review financial results and re-align operations on a quarterly basis to mitigate negative budgetary variances.
35. **Professional services:** CAIRP will provide the CQP Committee with a Registrar and administrative support as required by the CQP Committee. CAIRP will request feedback and input from the CQP Committee regarding the hiring and evaluation of such employees.

### **PROGRAM REQUIREMENTS**

36. All individuals wishing to become a CIRP must enrol in and complete the Program. The Superintendent will expect applicants for a Trustee licence to have successfully completed the Program, except in extraordinary circumstances as determined in the sole discretion of the Superintendent.
37. **Entrance requirements:** applicants to the Program must either:
  - a) hold a Canadian university degree or equivalent;
  - b) hold a relevant professional designation recognized in Canada, being a CA, CMA, CGA (or as such designation may be known from time to time) or LL.B (or similar law degree);
  - c) be in the final level of a program leading to such a designation, or
  - d) have a minimum of five years relevant experience AND have successfully completed a minimum of one accredited course in each of accounting and business law at a post-secondary education level.
38. All Program candidates (except Superintendent staff) must enrol as articling members of CAIRP.
  - a) Considering that Superintendent staff cannot become members of CAIRP, they shall be exempt from this specific entrance requirement. Superintendent staff will be charged an administration fee equivalent to CAIRP's articling membership fee and will receive CAIRP mailings;
  - b) The CQP Committee is responsible for establishing prior to the Program Commencement Date guidelines for the exercise of discretion in admitting applicants who do not meet the entrance requirements; and



- c) Applicants to the ICQC must hold a high school diploma and have five (5) years of related work experience or have successfully completed two (2) years of post-secondary education.
39. **Registrar:** The Registrar will act as the admissions officer and receive the applications for the Program. At least quarterly, the Registrar will provide the CQP Committee with a report regarding accepted and rejected applications, and in the case of rejected applications, the reasons for the rejection of the applicants. At least once a year, the CQP Committee will provide CAIRP and the Superintendent with a report regarding accepted and rejected applications, and, in the case of rejected applications, the reasons for the rejection of the applicants. The CQP Committee will decide all appeals filed by rejected applicants.
40. The Registrar will report at the meetings of the CQP Committee on all candidate matters.
41. **Exemptions:** An applicant who possesses relevant experience and knowledge may, on the recommendation of the CQP Committee, be exempted from the program of study and examinations that are prerequisites to writing the NIE, and be allowed one attempt at the NIE. Such applicants who fail the NIE will be required to complete the aforementioned prerequisites prior to any subsequent attempt to pass the NIE.
42. **Sponsorship:** All Program candidates may complete the 201 course of study (or the basic courses as determined by the CQP Committee) before they must have a Sponsor. At all times during the remainder of the Program, candidates shall have a Sponsor to direct their studies, mark assignments, act as mentor and attest to their readiness to be examined. In order to be eligible to sponsor candidates seeking certification, the individual must be a CIRP. For candidates seeking licensing as a Trustee, the Sponsor must be a Trustee in good standing.
- a) Ideally, Sponsors will employ their candidates;
  - b) The CQP Committee will endeavour to do its best to help candidates find Sponsors. However, the ultimate responsibility lies with the candidate to find a Sponsor;
  - c) If a Sponsor ceases to be in good standing, the candidate is suspended thirty (30) days after this event and remains suspended until the Sponsor regains his or her good standing or the candidate obtains another qualified Sponsor;
  - d) The Sponsor must immediately inform the CQP Registrar upon becoming ineligible to sponsor candidates. Grounds for not being in good standing include but are not limited to resigning as a member of CAIRP, other than in good standing, suspension or revocation of one's licence as a Trustee, being placed under conservatory measures as a licensed Trustee, failing to maintain the privilege to display the CIRP certification mark, for whatever reason, being sanctioned or accepting a sanction by any professional body, or becoming insolvent;
  - e) A candidate who becomes aware that his or her Sponsor has ceased to be in good standing, or has been sanctioned by any professional body, must immediately inform the CQP Registrar of this fact; and

- f) The CQP Committee has the discretion to allow candidates, suspended as a result of their Sponsor's ineligibility, to continue in the program, subject to any conditions the CQP Committee sees fit to impose.
43. **Limitation period:** No time limitation will exist for candidates to complete the Program; however:
- a) Candidates that remain inactive for three (3) or more successive education program years (commencing on the Program Commencement Date) will be required to reapply in accordance with the program rules as if they were new applicants;
  - b) A candidate may request, for a valid reason, an annual deferral (on payment of the deferral fee) from the CQP Committee and the CQP Committee, in its sole discretion, may grant such request; and
  - c) Candidates that are inactive and fail to request a deferral or fail to pay the annual deferral fee shall be struck from the candidate list of the Program six months following the Program Commencement Date. In such instance, the individual will be required to reapply in accordance with the program rules as if they were new applicants. The CQP Committee may, in its sole discretion, grant relief from such application requirement if the candidate can demonstrate reasonable circumstances that prevented compliance with the program requirements. In such circumstances the deferral fee is immediately due and payable.

#### **ROLE OF THE SUPERINTENDENT**

44. The Superintendent will maintain an Ex-Officio Member of the CQP Committee and any of the sub-committees highlighted in paragraph 16. The member(s) will be appointed by the Superintendent to undertake such duties and for such term as the Superintendent may in its sole discretion determine appropriate. The primary functions of those individuals holding member position will be to:
- a) apprise the Superintendent as to the undertakings of the CQP Committee and the sub-committees, including the issues under consideration and decisions and resolutions made;
  - b) participate as a member in the discussions with the CAIRP members on each committee, as to the potential views of the Superintendent, including the alignment with priorities and educational goals of candidates. It is noted by the parties that the opinions expressed by the member are not necessarily the views of the Superintendent and will not bind the Superintendent;
  - c) identify issues to which the Superintendent may raise an Objection; and
  - d) perform such other functions as the Superintendent may reasonably request.
45. The Superintendent will indemnify the appointee(s) for any liability incurred in the course of his/her responsibilities as a member of the CQP Committee and the sub-committees.

46. The financial responsibilities of the Superintendent will be limited to any direct costs incurred by the Superintendent's appointee(s) in fulfilling his/her duties as member. For greater certainty, the Superintendent will have no financial responsibility or liability with respect to the Program or any other costs associated with the Program.
47. Should the Superintendent determine that the actions of the CQP Committee, or any of its sub-committees, are inconsistent with the objectives of the Superintendent, contrary to the intent of the MOU or otherwise objectionable to the Superintendent, the Superintendent shall within thirty (30) days of identification of such issue file an Objection with CAIRP, whereupon within ten (10) days CAIRP will:
  - a) Seek to remedy the Objection to the satisfaction of the Superintendent; or
  - b) Advise the Superintendent that it disputes the Objection.
48. In the event that CAIRP disputes the Objection, representatives of the Superintendent and the CAIRP Executive will meet, either personally or by electronic means, to attempt to resolve the Objection. Failing such resolution the Superintendent and CAIRP will agree to other appropriate alternative forms of dispute resolution, such as mediation.
49. Should resolution of the Objection require amendment to the MOU, such amendment will be undertaken in accordance with the provisions of the MOU.
50. CAIRP will provide to the Superintendent:
  - a) the results of all examinations commensurate with the release of same to candidates ;
  - b) the names of all successful candidates on the NIE ;
  - c) an annual report of admissions as set out in paragraph 39; and
  - d) any information necessary and related to carrying out its work as an Ex-Officio Member of the CQP committees, including copies of the curriculum, exams, curriculum evaluation reports, enrolment data, and such other data as the Ex-Officio Member may reasonably request from time to time.

#### **TRANSITIONAL MATTERS**

51. It is agreed between the parties hereto that on the coming into force of the MOU, that:
  - a) any funds in the current deposit account of the NIQP, net of outstanding cheques and inclusive of deposits in transit, interest and bank charges (currently held separate and apart from the funding of CAIRP) will be re-invested in the future development of the Program;
  - b) current staff members of the Superintendent that occupy a position of the NIQP Board of Directors will, to the extent the individuals agree, work with the members of the CQP Committee to transition the duties and functions they served on the NIQP Board of Directors;

- c) the NIQP Board of Directors shall remain constituted with full power and authority to discharge the administration of the NIQP in accordance with its governing documents and protocols, including, *inter alia*, in regards to all administrative practices, financial oversight and supervision and control of the education processes, including in respect to the seminars, course materials and examination processes (the boards and/or committees convened in respect of examinations, marking of examinations and appeals). The NIQP Board of Directors shall discharge its duties and responsibilities until a date agreeable amongst the parties for the cessation of such activities, which date shall not be later than August 31, 2010.
- d) the Superintendent (subject to Treasury Board Policies) and CAIRP will each indemnify their respective appointees to the NIQP Board of Directors for any liability incurred in the course of their responsibilities as members of the NIQP Board of Directors. Any contracts signed on behalf of the NIQP should either be signed by CAIRP or the Superintendent or indicate that the NIQP Board of Directors appointee has been authorized by the CAIRP or the Superintendent and is doing so as agent on behalf of one of the sponsoring parties.
- e) the NIQP, including the policies, procedures, rules, interpretations, syllabus, course materials, assignments and examinations shall remain the prescribed candidate program, until substituted, amended or otherwise altered in accordance with the provisions of the Program and/or MOU; and
- f) candidates currently enrolled in the NIQP that will become subject to suspension as a result of the time limitation period of ten (10) years imposed thereunder (from commencement of the program to completion of the oral board examination process), shall immediately become subject to the program amendment detailed in paragraph 43.

## **MEDIATION**

52. Any controversy or dispute arising out of or relating to the interpretation of the MOU, including the role of the parties, not resolved by negotiation, shall be referred to mediation or an alternative and acceptable form of dispute resolution. The mediation shall be held in Ottawa, Ontario, with the onus being on the parties to work cooperatively to achieve a resolution of the matter. All costs and expenses of such mediation shall be borne by the respective parties.

## **REPRESENTATIONS AND WARRANTIES**

53. CAIRP represents and warrants that it has full right, power and authority to enter into this Agreement and perform its obligations hereunder.
54. The Superintendent represents and warrants that it has full right, power and authority to enter into this Agreement and perform its obligations hereunder.

## **NOTICES**

55. All notices or documents required or which may be given under the MOU, shall be in writing, duly signed by the party giving such notice and either personally delivered on a business day, or transmitted by telecopy or electronically by e-mail, to the other party as follows:

### **To CAIRP:**

**Canadian Association of Insolvency and Restructuring Professionals**  
277 Wellington Street West  
Toronto, Ontario  
M5V 3H2

Attention: Norman Kondo, President (or his successor)  
Fax No.: (416) 204-3410  
E-mail: norm.kondo@cairp.ca

### **To Superintendent:**

**Office of the Superintendent of Bankruptcy**  
155 Queen Street, 4<sup>th</sup> Floor  
Ottawa, Ontario  
K1A 0H5

Attention: James Callon, Superintendent of Bankruptcy (or his successor)  
Fax No.: (613) 946-9205  
E-mail : james.callon@ic.gc.ca

## **MISCELLANEOUS**

56. The parties acknowledge that the MOU contains the entirety of the understanding between the parties.
57. The MOU shall not be assigned by either party without the prior written consent of the other.

58. This MOU shall enure to the benefit of and shall be binding upon the parties hereto and their respective administrators, successors and permitted assigns.
59. This MOU shall be construed and interpreted in accordance with the laws of the Province of Ontario, Canada.

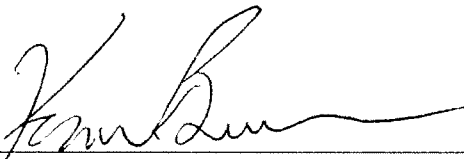
**COMING INTO FORCE**

60. This MOU will come into full force on the date of its signing.

**SIGNED THIS 8<sup>th</sup> DAY OF OCTOBER, 2009.**

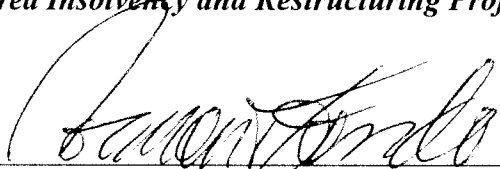
**CANADIAN ASSOCIATION OF INSOLVENCY AND RESTRUCTURING  
PROFESSIONALS / ASSOCIATION CANADIENNE DES PROFESSIONNELS DE  
L'INSOLVABILITÉ ET DE LA RÉORGANISATION**

per:



**Kevin B. Brennan, CA•CIRP, CIRP Chair**  
*Chartered Insolvency and Restructuring Professional*

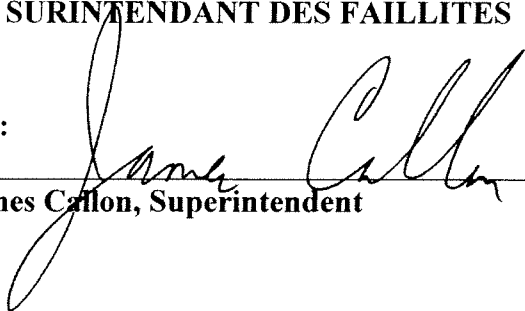
per:



**Norman H. Kondo, BA, LL.B., CIRP (Hon.)**  
*President*

**THE SUPERINTENDENT OF BANKRUPTCY  
LE SURINTENDANT DES FAILLITES**

per:



**James Callon, Superintendent**