

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
MONTREAL SEAT

No: 500-09-031506-256
(500-11-063041-236)

DATE: June 26, 2025

BEFORE THE HONOURABLE LORI RENÉE WEITZMAN, J.A.

YA JING DONG
APPLICANT – Impleaded Party
v.

HORATIU ALEXANDRU
9268-6195 QUEBEC INC.
RESPONDENTS – Debtors
and
FLYING FALCON HOLDINGS LIMITED
RESPONDENT – Impleaded Party

and
ALLARD BISSON
IMPLEADED PARTY – Trustee / Applicant

and
INDUSTRIE CANADA
NICOLAE MIRCEA
IMPLEADED PARTIES – Impleaded Parties

JUDGMENT

[1] The applicant seeks a revision of a decision the Court clerk (art. 74 *C.C.P.*), rendered on May 26, 2025, refusing to allow him to file his notice of appeal and his *de bene esse* application for leave to appeal, on the grounds that they had not been served

on the parties by bailiff, in accordance with the requirements of the *Code of Civil Procedure* (art. 139 par. 2(5), 352 and 358 *C.C.P.*).

[2] The proposed appeal is from a Superior Court judgment (the honourable Janet Michelin) rendered May 14, 2025,¹ on an application for directions by the Trustee pursuant to ss. 4 and 34 of the *Bankruptcy and Insolvency Act* (“the Act”).²

[3] The applicant argues that the *Bankruptcy and Insolvency General Rules* (the “Rules”)³ govern the matter here and that he complied with them by electronically serving the proceedings on the respondents and the impleaded parties as opposed to serving by bailiff as required by the *C.C.P.* Thus, he asks me to review the clerk’s refusal.

[4] According to section 3 of the Rules, the dispositions of the Act and the Rules take precedence over provincial legislation.⁴ The section reads as follows:

3 In cases not provided for in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules.

3 Dans les cas non prévus par la Loi ou les présentes règles, les tribunaux appliquent, dans les limites de leur compétence respective, leur procédure ordinaire dans la mesure où elle est compatible avec la Loi et les présentes règles.

[Emphasis added]

[5] The question is whether the filing of the proceedings at issue here (i.e. the notice of appeal and the *de bene esse* application for leave to appeal) are “cases [...] provided for in the Act or these Rules” within the meaning of section 3, and thus whether they are subject to the Rules.

[6] I conclude that they are.

¹ *Proposition d’Alexandru*, 2025 QCCS 1805.

² R.S.C., 1985, c. B-3.

³ C.R.C., c. 368.

⁴ See: *Bryant c. Benjamin*, 2023 QCCA 1021, para. 26; *Syndic de Haddad*, 2019 QCCA 1499, para. 6 (motions judge); *Gestion J.F. Bouchard c. Brazeau*, 2019 QCCA 291, para. 2-3 (motions judge).

[7] Section 31(1) of the Rules provides that an appeal to a court of appeal requires that a “notice of appeal” be filed at the office of the registrar of the court appealed from.⁵

31(1) An appeal to a court of appeal referred to in subsection 183(2) of the Act must be made by filing a notice of appeal at the office of the registrar of the court appealed from, within 10 days after the day of the order or decision appealed from, or within such further time as a judge of the court of appeal stipulates.

31(1) Un appel est formé devant une cour d’appel visée au paragraphe 183(2) de la Loi par le dépôt d’un avis d’appel au bureau du registraire du tribunal ayant rendu l’ordonnance ou la décision portée en appel, dans les 10 jours qui suivent le jour de l’ordonnance ou de la décision, ou dans tel autre délai fixé par un juge de la cour d’appel.

[Emphasis added]

[8] While the Rules deal with the filing of the notice of appeal, they do not set out any procedure regarding its service or notification. It is thus the procedure set out in the *C.C.P.* that will apply but only to the extent that it is not inconsistent with the Act or the Rules (as per s. 3 of the Rules). According to art. 139 para. 2(5) *C.C.P.*, notices of appeal and applications for leave to appeal must be served, and service must be by bailiff. This last condition is, however, incompatible with section 6(1) of the Rules which provides for alternative modes of service, including electronic transmission:

6(1) Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.

6(1) Sauf disposition contraire de la Loi ou des présentes règles, les avis et autres documents à remettre ou à envoyer sous le régime de la Loi ou des présentes règles sont signifiés, remis en mains propres ou envoyés par courrier, par service de messagerie, par télécopieur ou par transmission électronique.

[Emphasis added]

⁵ As is the practice in Quebec, in order to comply with section 31(1) of the Act, the proceedings are filed in the Superior Court of Quebec, as well as deposited at the clerk’s office in the Court of Appeal where a Court record number is provided.

[9] Since the notice of appeal is “a notice [...] sent pursuant to the Act or these Rules”, it can be served by electronic transmission.

[10] Additional support for this position is found in section 70(3) of the Rules⁶, which requires personal service on the debtor of a notice of a bankruptcy application hearing. From this it can be concluded that where an exception to the general rule allowing for alternative modes of service applies, it is explicitly set out in the Rules. Since no such exception is provided for in regard to the notice of appeal, service by electronic transmission is permitted.

[11] Finally, although neither the Act nor the Rules specifically address the application for leave to appeal, it would be illogical – not to mention impractical – to conclude that it must be served by bailiff when the notice of appeal itself can be served electronically.

[12] Given that this is a new question of statutory interpretation, no costs will be awarded.

FOR THESE REASONS, THE UNDERSIGNED :

[13] **GRANTS** the applicant’s Motion for Revision of a Decision of the Court Clerk;

[14] **DECLARES** that the Notice of Appeal and the *de bene esse* Application for Leave to Appeal, both dated May 26, 2025, were properly filed within the delays provided for in Rule 31(1) of the *Bankruptcy and Insolvency General Rules*;

[15] **SETS ASIDE** the decision the Court clerk rendered on May 26, 2025;

[16] **RENDERS** the decision that should have been rendered by the Court clerk;

[17] **AUTHORISES** the filing of the applicant’s Notice of Appeal and the *de bene esse* Application for Leave to Appeal, with effect as of May 26, 2025;

[18] **ORDERS** the applicant to file two additional copies of the Notice of Appeal and the *de bene esse* Application for Leave to Appeal at the Court office;

⁶ The section provides: “70(1) A notice indicating the time and place of the hearing of the bankruptcy application, together with a certified copy of the application and of the affidavit referred to in subsection 43(3) of the Act, must be served on the debtor, on the trustee named in the application and on the Division Office at least 10 days, or any shorter period that the court may order, before the hearing.

[...]

(3) Subject to section 71, service on the debtor under subsection (1) must be effected by personal service.

[19] **ORDERS** the applicant to send to the Court office an electronic version of its proceedings in accordance with art. 13 of the *Regulation of the Court of Appeal of Quebec in Civil Matters* and with the *Clerk's Practice Direction No. 7*;

[20] **ORDERS** the applicant to notify and file a new notice of presentation for the *de bene esse Application for Leave to Appeal*.

[21] **THE WHOLE**, without costs.

LORI RENÉE WEITZMAN, J.A.

Mtre Nicholas Chine
STEIN & STEIN
Mtre Benliang Ye
BROOK LEGAL
For Ya Jing Dong

Mtre Ioana Alexandra Tivis
CHOUKE HOLLANDER
For Horatiu Alexandru and 9268-6195 Quebec Inc.

Mtre Danielle Oiknine
OIKNINE & ASSOCIÉS
For Flying Falcon Holdings Limited

Date of hearing: June 5, 2025