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The Ins and Outs of Court-Appointed Officers : Navigating through the Mine Field

1. INTRODUCTION

- Court officers / insolvency practitioners; extremely important in Canadian system – more so in U.S.
- In U.S. economists are more important
 - Greenspan – 3 types of economists
 - Einstein – sharing with others
- Tremendous evolution of what used to be called Trustee practice over 40 years
 - Trustee profession used to be considered sleazy
 - Steaming open bid envelopes
 - Friends got all the assets
 - Reorganization seldom came up
- Insolvency practitioners have tremendous credibility before the Courts
 - Accompanied by tremendous responsibility
- Practical intermediaries – not conduits for clients
- Ringmasters – they make the deals happen
- Not hung up on the emotional issues, and shouldn't be
- Frequently play the go between among different interests
- Present the “win/win” scenario
 - Find ways to allow people to escape the dominance of their egos
- Requirements to do the job

- 3 As – availability, amiability and ability
- People skills are the most important
- Consider ear enhancement surgery

2. **GENERAL APPROACHES OF A COURT OFFICER**

- Objectivity and not partisanship in favour of 1 party does not prevent partisanship for an appropriate solution

3. **ENSURING YOU CAN FULFILL A ROLE**

- Conflicts
 - Not quite as hung up as in U.S. – Canada too small
 - Appropriate waivers on first appointment
 - Think the unthinkable – sometimes you shouldn't take the job
 - Provisions in Court Order
 - Tendency to seek everything under the sun
 - Sometimes it's important what you do not see – possession, control, etc.
- When to say “no”
 - When sought to be used as a dummy under inappropriate circumstances

4. **ROLES AND RESPONSIBILITIES**

- Do the job professionally and dispassionately
- Remember that everyone, on all sides, is a potential client

5. **RELATIONSHIP WITH STAKEHOLDERS**

- Is Monitor/Proposal Trustee's first responsibility to the Debtor?

6. **KEY CONSIDERATIONS IN EXECUTING THE MANDATE**

- Difference between large companies and small companies
- In owner-operated companies, shareholders can remain important even when no apparent economic value for them
- “It's good to *‘take no position’*”. This is seldom the case.