

# New Judgment Clarifies When Bankruptcy Debt May Be Declared Non-Releaseable

August 10, 2018

BLG represented the applicant, Adobe Systems Incorporated, in this filing.

The Québec Superior Court recently rendered a judgment ([\*Francis v. Adobe 2018 QCCS 2547\*](#)) confirming that a bankrupt's debt may be declared non-releaseable by a discharge order pursuant to section 178 of the *Bankruptcy and Insolvency Act* (the "Act"), even when said discharge order has not yet been rendered or when the bankrupt's discharge has been suspended or granted conditionally pursuant to section 173 of the Act. BLG represented the applicant, Adobe Systems Incorporated ("Adobe" or the "Creditor"), in this filing.

## The Facts

Adobe, one of Pierre Francis' unsecured creditors (the "Bankrupt"), had previously contested the Bankrupt's motion to be released from his bankruptcy. As a result, judgment was rendered by the registrar in bankruptcy staying the Bankrupt's discharge for a period of five years as well as making it conditional to a payment of \$85,000 to the trustee for the benefit of the Bankrupt's creditors. Therefore, at the time of the presentation of the application to have a debt declared non-releaseable by an order of discharge pursuant to section 178 (1) e) of the Act (the "Non-release Application"), the Bankrupt had not yet been discharged from his bankruptcy.

The Court found that no rules have been set out in the law to determine when the Non-release Application should be made. Therefore, the Court concluded that such application may be presented at any time before or following the Bankrupt's discharge and consequently, Justice Pinsonnault ruled that the Non-release Application was neither precipitous nor premature.

Adobe's claim against the Bankrupt arose from several final and in force judgments rendered by California and Québec courts against the Bankrupt, which established his fraudulent liability towards Adobe in the amount of \$6,783,810.00 (the "Fraud Judgments"). It was also confirmed in the Fraud Judgments that the Bankrupt's debt towards Adobe was the result of elaborate schemes either put in place or known by the Bankrupt in order to defraud Adobe by profiting from the sale of counterfeited Adobe products.

## The Decision

In his judgment, which included an analysis of sections 173 (1) k) and 178 (1) e) of the Act that deal with the Bankrupt's fraudulent actions, Justice Pinsonnault underlined several differences between the remedies available to Adobe under said sections. For the Court, it is clear that section 173 (1) k) of the Act is only to be applied with regards to the Bankrupt's discharge from his bankruptcy, whereas section 178 (1) e) of the Act is an exception to the general concept of the release of a bankrupt's debts when discharged from bankruptcy and which only applies to cases where the preponderant evidence supports the fact that such specific debt arises from obtaining property or services through false representation or fraudulent conduct.

In order for section 178 (1) e) of the Act to apply, the Creditor has to demonstrate that there is a causal link between the bankrupt's fraudulent actions and the creation of the debt. The mere presence of fraudulent behaviour is therefore not enough for the debt to be declared non-releasable. In this particular case, the Court recognized that the Fraud Judgments constitute *prima facie* evidence that the Bankrupt's debt towards Adobe arose from obtaining property through false representation or fraudulent conduct and therefore ruled that said debt is declared non-releasable by an order of discharge pursuant to section 178 (1) e) of the Act.

By

[Ouassim Tadlaoui](#)

Expertise

[Insolvency & Restructuring](#), [Securities Disputes](#)

---

## BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### BLG Offices

#### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

**Montréal**

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

**Toronto**

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.