IN THE MATTER OF: ITI EDUCATION CORPORATION

- and -

IN THE MATTER OF: The Application of TORSTAR CORPORATION to appoint

ERNST & YOUNG INC. as Receiver and Manager pursuant to

Civil Procedure Rule 46

- and further -

IN THE MATTER OF: The Application of ROSWELL COMPUTER BOOKS HALIFAX,

LTD. for an Order granting leave to ROSWELL COMPUTER BOOKS, HALIFAX, LTD. to commence proceedings against Ernst & Young Inc., for an Order requiring ERNST & YOUNG INC. to comply with provisions of Section 81.1 of the *Bankruptcy*

and Insolvency Act (1985) R.S.C., c. B-3; (1992) c. 27

CA 179966 Halifax, N.S. CROMWELL, J.A.

(Orally)

[Cite as: ITI Education Corporation (Re), 2002 NSCA 152]

APPEAL HEARD: November 29, 2002

JUDGMENT DELIVERED: November 29, 2002

WRITTEN RELEASE OF ORAL: December 3, 2002

SUBJECT: Bankruptcy and Insolvency Act s. 81.1 - whether goods supplied were

subject to any agreement for sale at arms' length

SUMMARY: The appellant, a supplier, delivered computer books to ITI, an educational

institution, prior to the appointment of the respondent receiver.

Immediately after appointment of the receiver, the supplier presented a written demand pursuant to s. 81.1 of the **Bankruptcy and Insolvency Act**, R.S.C. 1985, c. B-3, as amended for repossession of the books. The receiver refused claiming that the books were subject to agreement for sale to ITI student and, therefore, exempted under s. 81.1(1)(c)(v). A judge of the Supreme Court agreed and the supplier appealed to the Court of

Appeal.

RESULT: Appeal allowed. The goods were supplied as course materials. In the

contract between ITI and its students, ITI was obliged "... to provide, in its

discretion, textbooks and courseware needed for the program" and the students acknowledged that "... it is necessary for ITI to change ... materials ... from time to time" and that such changes "... may be made during the course of the students' program." While ITI intended to use the books for a module of instruction, the books had not been distributed to the students and remained on the shelves at ITI as of the date of the supplier's written demand. ITI retained a discretion under its contract with its students as to what course materials it would supply. The fact that it intended to supply certain materials did not give rise to a contractual obligation to provide these particular materials. It follows that these books were not "subject to any agreement for resale" within the meaning of s. 81.1(1)(c)(v) and that the judge erred in finding otherwise.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 3 pages.