

CANADA / JUDGMENT

## Nishiyama (Re)

2020 BCSC 224

### COURT

Supreme Court of British Columbia

### DECIDED

13 January 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 224 Nishiyama (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Nishiyama (Re),

2020 BCSC 224

Date: 20200113

Docket: S1813807

Registry: Vancouver

In the Matter of Part XIII of the

Bankruptcy and Insolvency Act, R.S.C. 1985, C. B-3,

As Amended

And

In the Matter of Masahiko Nishiyama,

Bankrupt Under the Laws of Japan

- and -

Docket: S162298

Registry: Vancouver

Between:

The Resolution and Collection Corporation

(formerly known as Housing Loan Administration Corporation)

Plaintiff

And

Masahiko Nishiyama

Defendant

Before: The Honourable Mr. Justice Voith

Oral Reasons for Judgment

Counsel for the Plaintiff, The Resolution and Collection Corporation:

R. Richardson

G. Plottel

Counsel for the Defendant, Masahiko Nishiyama:

C. Reedman

Counsel for Hatsuni Kinoshita:

T. Brayer

Counsel for the Trustee and Receiver, Alvarez & Marsal Canada Inc.:

C. Brousseau

J. Bradshaw

Place and Date of Hearing:

Vancouver, B.C.

November 7 and 20 and

December 16, 2019

Place and Date of Judgment:

Vancouver, B.C.

**January 13, 2020**

- [1] THE COURT: Alvarez & Marsal Canada, in its capacity as the court-appointed receiver over all the assets, undertakings and property owned, and beneficially owned by Masahiko Nishiyama in Canada (the "Receiver") and Hiroshi Morimoto, trustee for the bankruptcy estate of Masahiko Nishiyama (the "Trustee"), seek various orders against Masahiko Nishiyama and his common-law wife, Hatsumi Kinoshita (collectively, the "Application Respondents").

- [2] In the main, these orders pertain to the disclosure of various documents and records the Application Respondents possess or control, and to the requirement that each of the Application Respondents attend at an examination under oath before the Trustee in Japan.

## BACKGROUND

- [3] Two separate chronologies provide context and backdrop for this application. The first chronology is longer and broader in scope and it involves an entity known as The Resolution and Collection Corporation ("RCC"). RCC was established in Japan in July 1996. It was formerly known as the Housing Loan Administration Corporation. RCC is a wholly owned subsidiary of the Deposit Insurance Corporation of Japan.
- [4] Commencing in the early 2000s, RCC obtained various judgments against Mr. Nishiyama and other associated individuals and companies. Those judgments, which total approximately \$475 million CAD, remained unpaid. A subsequent investigation indicated that Mr. Nishiyama had dissipated his assets on a massive global scale through numerous persons and corporations.
- [5] Criminal proceedings were commenced against Mr. Nishiyama in Japan in November 2015. That prosecution was based on various charges that alleged Mr. Nishiyama had dissipated and concealed assets to prevent execution on two earlier civil judgments.
- [6] On June 26, 2016, Mr. Nishiyama was found guilty on the charges he faced. Specifically, it was determined that he had purposefully concealed assets and that he had conspired with others to move assets out of Japan and into other jurisdictions, including Canada. He was sentenced to three years in prison. On July 26, 2018, he was granted parole.
- [7] The matter first made its way to British Columbia in March 2016 when RCC applied for, and I granted, a Mareva injunction on an interim basis preventing Mr. Nishiyama from dealing with or further dissipating any assets he might have in British Columbia. That order was made in an action between RCC and Mr. Nishiyama that bears Action Number S162298 in the Vancouver Registry (the "RCC Action"). The Mareva injunction was then confirmed in a separate ex parte hearing in April 2016.
- [8] It is relevant that in RCC's application for a Mareva injunction, it argued, and I accepted, that Mr. Nishiyama owned or controlled two entities known as Rainbow One Investments Ltd. and Sun Moon Management, respectively. The orders I made on that application extended to these two entities.
- [9] It is also relevant that RCC pursued parallel proceedings in each of Hong Kong and Singapore, where, as of March 2016, various accounts and assets of Mr. Nishiyama, worth approximately \$90 million US, were affected by the orders that were made in those jurisdictions. Since March 2016, I have overseen most, but not all, of the proceedings in both the RCC Action and in this proceeding bearing Action Number S1813807 in the Vancouver Registry (the "Bankruptcy Action").

- [10] On September 29, 2016, RCC applied in British Columbia to enforce various judgments of the Japanese courts in the amounts of \$477,071,714.63 CAD plus interest and costs. I granted various orders that were sought on that application (the "Recognition Order"). Thereafter, RCC undertook extensive efforts to locate various assets that Mr. Nishiyama owned or held either directly or indirectly in British Columbia.
- [11] The second chronology that I have referred to is more focussed in nature. By order of the Kyoto District Court in Japan on March 15, 2016, the Trustee was appointed the trustee over the bankruptcy estate of Mr. Nishiyama. By order of Madam Justice Maisonville, of this Court, made on December 21, 2018, the Trustee was recognized by this Court as the foreign representative in these proceedings.
- [12] By virtue of an order I made on February 14, 2019 in the Bankruptcy Action (the "Receivership Order"), Alvarez & Marsal Canada Inc. was appointed Receiver over all of the assets, undertakings, and properties of Mr. Nishiyama under s. 272(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 [BIA]. Portions of the Receivership Order provided:
4. Each of (i) the Debtor; (ii) all of the Debtor's current and former agents, accountants, legal counsel, and other persons acting on its instructions or behalf; and (iii) all other individuals, firms, corporations, government bodies or agencies, or other entities having notice of this Order, (collectively "Persons" and each "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property of the Receiver, and should deliver all such Property (excluding Property subject to liens the validity of which has been dependent on maintaining possession) to the Receiver upon the Receiver's request.
  5. All Persons, other than government authorities, shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, corporate and accounting records, and any other papers, records or information of any kind related to the Property or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (collectively, the "Records") in that Person's possession or control. The Records shall include all of the contents of the SDB [which for present purposes is not important]. Upon request, government authorities shall advise the Receiver of the existence of any Records in that Person's possession or control.
- [13] On application for directions by the Receiver, I granted a further order on July 19, 2019, that, inter alia, declared all of the assets of Sun Moon Management Ltd., including a condominium on Barclay Street in Vancouver (the "Barclay Condominium") and a vehicle of the property of Mr. Nishiyama, and therefore subject to the Receivership Order (the "Property Declaration Order").

- [14] The Property Declaration Order set out terms for a property claims process for personal property located at the Barclay Condominium. On August 13, 2019, Ms. Kinoshita filed a proof of claim with the Receiver relating to personal property located in the Barclay Condominium.
- [15] On September 9, 2019, the Receiver issued and delivered a notice of revision or disallowance that both accepted and rejected parts of Ms. Kinoshita's claim.
- [16] The Receiver was then contacted by counsel for Mr. Nishiyama and Ms. Kinoshita and advised that Ms. Kinoshita was asserting a claim over the Barclay Condominium and that she would be bringing an application to court to, inter alia, assert that the Barclay Condominium was the property of Ms. Kinoshita under the terms of a family law agreement between Mr. Nishiyama and Ms. Kinoshita (the "Family Law Agreement"). In support of her application, Ms. Kinoshita swore an affidavit on October 3, 2019, and she disclosed a redacted copy of the Family Law Agreement.
- [17] Counsel for Mr. Nishiyama also gave notice that Mr. Nishiyama would be applying to set aside both the civil judgments that were originally made in Japan as well as the subsequent appointment of the Trustee. It is noteworthy that as early as March 2019, Mr. Nishiyama indicated an intention to advance these and other claims in Japan. I was advised by British Columbia counsel for Mr. Nishiyama, at this application, that no such appeals, claims, or challenges, had yet been filed by Mr. Nishiyama in Japan.
- [18] Still further, counsel for Mr. Nishiyama indicated an intention to set aside the various orders that had been made in this Court in both the RCC Action and in the Bankruptcy Action. I understand those applications have been set down for the end of February 2020.
- [19] Two further facts are relevant. First, as noted earlier in these reasons, Ms. Kinoshita is apparently the common-law wife of Mr. Nishiyama. Though this matter has an extended history, Ms. Kinoshita's existence and her involvement in some of the events I have described was apparently unknown to RCC, the Trustee or the Receiver until she filed her proof of claim with the Receiver. Second, the legal positions and status of Ms. Kinoshita and Mr. Nishiyama are, for various reasons, at times different, and each was separately represented in the application before me.

## ANALYSIS

- [20] Counsel for the Application Respondents accept that their clients have sworn and filed materials that pertain to the affairs, debts, liabilities, and obligations of Mr. Nishiyama. Counsel further accept that the Application Respondents have, accordingly, submitted to the jurisdiction of this Court sitting in bankruptcy and that they are subject to the BIA and the Bankruptcy and Insolvency General Rules, C.R.C., c. 368 [BIA General Rules]. This pertains both to their obligation to produce relevant records or documents in their possession and to the right of the Trustee, as foreign representative, to examine them under oath.

## THE RELEVANT STATUTORY FRAMEWORK

[21] The following provisions of the BIA are relevant:

### Orders

272 (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

- (b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's property, affairs, debts, liabilities and obligations;

### Restriction

- (2) If any proceedings under this Act have been commenced in respect of the debtor at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

[22] Section 272(2) of the BIA does not appear to have been judicially considered. In Houlden, Morawetz and Sarra, *The 2018-2019 Annotated Bankruptcy and Insolvency Act* (Toronto: Thomson Reuters, 2018), the only mention of s. 272, found at 1208, states:

Section 272(2) provides that any relief ordered under subsection (1) must be consistent with any order that may be made in proceedings under the BIA.

[23] Section 48(2) of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 [CCAA], contains similar wording to s. 272 of the BIA. Specifically, s. 48(1) of the CCAA provides:

48 (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the debtor company;
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and
- (d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

(2) The order made under subsection (1) must be consistent with any order that may be made under this Act.

[24] In *Probe Resources Ltd. (Re)*, 2011 BCSC 552, a CCAA case, Madam Justice Fitzpatrick noted:

[30] The terms of the order proposed by Probe Canada are consistent with these provisions. I note that the proposed order is also consistent with the same type of terms contained in British Columbia's model CCAA initial order and therefore it complies with s. 48(2).

[25] If this were not a foreign recognition proceeding, ss. 163(1) and 164(1) of the BIA would pertain. Those provisions, which deal with both examinations under oath of the bankrupt and others who might reasonably be thought to have knowledge of the affairs of the bankrupt, and with the production of relevant records, provide:

163 (1) The trustee, on ordinary resolution passed by the creditors or on the written request or resolution of a majority of the inspectors, may, without an order, examine under oath before the registrar of the court or other authorized person, the bankrupt, any person reasonably thought to have knowledge of the affairs of the bankrupt or any person who is or has been an agent or a mandatary, or a clerk, a servant, an officer, a director or an employee of the bankrupt, respecting the bankrupt or the bankrupt's dealings or property and may order any person liable to be so examined to produce any books, documents, correspondence or papers in that person's possession or power relating in all or in part to the bankrupt or the bankrupt's dealings or property.

164 (1) Where a person has, or is believed or suspected to have, in his possession or power any of the property of the bankrupt, or any book, document or paper of any kind relating in whole or in part to the bankrupt, his dealings or property, or showing that he is indebted to the bankrupt, he may be required by the trustee to produce the book, document or paper for the information of the trustee, or to deliver to him any property of the bankrupt in his possession.

## ORDERS PERTAINING TO THE PRODUCTION OF DOCUMENTS

[26] Counsel for the Application Respondents raised various matters in relation to the part of this application that requires them to produce all relevant documents and records in their possession that relate to Mr. Nishiyama's dealings or property. The first such issue is that Mr. Nishiyama intends to make the various applications I have described both in Japan and in Canada. It is argued that the Receiver's present application seeking production should be subject to Mr. Nishiyama's intended applications to set aside various orders made earlier in Japan and in Canada. Specifically, it is argued that if Mr. Nishiyama is successful, the current orders being sought by the Receiver would give rise to unnecessary cost and expense.

[27] I do not agree for several reasons. First, the Receiver has already obtained the Receivership Order. That Order, portions of which I have earlier referred to, already require Mr. Nishiyama to produce records in his possession or control. Whether the Receivership Order will be set aside is a matter for another day.

- [28] Second, the submissions of counsel for Mr. Nishiyama, though not formally expressed as an application for a stay, seek to achieve that object. Mr. Nishiyama wishes to suspend the activities of the Receiver pending his intended applications. The applications that counsel for Mr. Nishiyama intend to bring in British Columbia, that being the application to set aside the Recognition Order and the Receivership Order, appear at this point to be contingent on Mr. Nishiyama's ability to set aside either or both of the civil judgments that were made against Mr. Nishiyama in Japan and the appointment of the Trustee in Japan.
- [29] Mr. Nishiyama's application will apparently be based, *inter alia*, on his not having received notice of various applications that were brought, and decisions that were made, in Japan and in British Columbia. Again, Mr. Nishiyama's intended applications are for another day. For present purposes, however, the following sworn and uncontested evidence of the Trustee, found in his affidavit dated December 20, 2018, is relevant:
26. On July 21, 2018 (while he was still in prison), I served Nishiyama by registered mail with a copy of the application materials filed in the RCC Action that sought a declaration that certain assets situated in Canada alleged to be under Nishiyama's beneficial ownership and control be declared Nishiyama's property and exigible by his creditors and/or myself. He received the registered mail the next day.

Accordingly, Mr. Nishiyama has apparently been aware of the RCC Action for at least 18 months.

- [30] Similarly, in the nine months since Mr. Nishiyama has talked about advancing various applications or challenges in Japan, he has not so much as begun the formal process that would achieve those objectives.
- [31] A further point is relevant. Mr. Nishiyama has clearly been aware of the Receivership Order for many months. To date, he has done nothing to comply with its terms. The Trustee in his affidavit has deposed:

Nishiyama has been hostile and uncooperative with me, both in failing to disclose information related to his worldwide assets and in responding to my communications.

- [32] The Trustee has further deposed that Mr. Nishiyama has failed to report his address to the Trustee, though he has been asked to do so and he is formally required to do so. Other evidence in the record before me, in the form of transcripts that record exchanges between the Trustee and Mr. Nishiyama, reflect a lack of candour and evasiveness on the part of Mr. Nishiyama.
- [33] In *LLS America LLC (Trustee of) v. Dill*, 2018 BCSC 2316, Madam Justice Horsman addressed, *inter alia*, an application for a stay by a bankrupt pending the hearing of an appeal in circumstances where it had been determined that the bankrupt was in contempt. That finding was based on a failure by the bankrupt to comply with an earlier order of the Court requiring the bankrupt to produce various categories of documents. Horsman J. concluded:

- [72] In the present case, I am of the view that it would bring the court into disrepute to lend its assistance to a person who has stated his willingness to go to jail rather than comply with a court order. The issuance of a stay would not only assist the defendant, it would condone his past failure to comply with Master Tokarek's order by relieving him of the obligation to do so on a go-forward basis.
- [34] Though the present application does not formally seek a stay, and though there is no finding of contempt against Mr. Nishiyama, I, nevertheless, consider that Dill is helpful. Specifically, I do not consider that the Court should condone or indirectly further Mr. Nishiyama's noncompliance with existing orders. If Mr. Nishiyama seeks to challenge various determinations and orders that have been made in Japan and in Canada, he should do so with dispatch.
- [35] The second distinct position advanced on behalf of Mr. Nishiyama, and, as I understand it by Ms. Kinoshita, is that the Receivership Order already deals with document disclosure and that there is no need to make a further order that achieves that same purpose. Normally I might agree. In this case, however, I do think that the further orders the Receiver seeks serve a purpose. First, paragraph 4 of the Receivership Order, which I referred to earlier, is not as clear as it might be. The definition of "persons" does not clearly extend to Ms. Kinoshita. The ambit of paragraph 4 of the Receivership Order, though in some respects more specific, is arguably not as broad. The language of the present order being sought expressly extends to Ms. Kinoshita.
- [36] Next, counsel for Mr. Nishiyama and Ms. Kinoshita seek to argue that portions of the Family Law Agreement that are presently redacted ought to remain redacted because Mr. Nishiyama "wishes to keep certain friends and acquaintances anonymous and put in one portion of the Family Law Agreement, his testamentary wishes, including the names of friends and acquaintances". There is no basis for this submission. It is not open to Mr. Nishiyama to disclose documents when he considers it useful to do so and to redact portions of documents that he considers private or personal. His obligation is to produce all non-privileged records or documents in his possession that fall within 272(1)(b) of the BIA and that are further informed by s. 164 of that Act. Accordingly, each of Mr. Nishiyama and Ms. Kinoshita are to produce unredacted copies of the Family Law Agreement that they have in their possession.
- [37] The last position advanced on behalf of Mr. Nishiyama is related. It is argued that the terms of the Order being sought by the Receiver and Trustee are too broad and that the Receiver should identify the documents or categories of documents that he seeks with greater specificity.
- [38] This submission is similar in nature to the type of sparring that Mr. Nishiyama engaged in with the Trustee in the transcript I referred to earlier. Mr. Nishiyama sought to ascertain what assets the Trustee had already uncovered before he was prepared to make disclosure of any documents. On this application, Mr. Nishiyama apparently seeks to limit his disclosure

obligations by having the Receiver identify what documents or records he seeks. The Family Law Agreement is a good example of the mischief that is inherent in this submission. The Trustee and Receiver had no information that would have enabled them to identify the existence of that document, and yet it is patent that Mr. Nishiyama had an obligation to disclose that document to the Receiver and Trustee.

- [39] I am satisfied that the terms of the Receivership Order that relate to the production of "records" as defined in that Order and the document production order being sought on this application against the Application Respondents are both clear and appropriate.

## THE EXAMINATION OF THE APPLICATION RESPONDENTS

- [40] The Receiver seeks to have each of Mr. Nishiyama and Ms. Kinoshita examined, under oath, before the Trustee under ss. 163(1) and 272(1)(b) of the BIA and s. 14 of the BIA General Rules. The Application Respondents do not object to such an examination, but both argued that the examination should take place in Vancouver rather than in Japan.
- [41] This submission, as it pertains to Mr. Nishiyama, is not forthright. Various orders have been made in Japan that prevent Mr. Nishiyama from leaving the country. Mr. Nishiyama has sought, unsuccessfully, to appeal those orders. He is apparently now seeking to further appeal the rulings that have been made. At present, however, those prohibitions remain in force, and there is no principled basis on which this Court could direct that Mr. Nishiyama attend at an examination in British Columbia.
- [42] Counsel for the Application Respondents also object to the respective examinations being held in Japan on the basis of the language of s. 116(1) of the BIA General Rules. That provision states:

116 (1) An examination shall be held

(a) in the bankruptcy district or division in which the person to be examined

(i) resides,

(ii) was served with the appointment for examination, or

(iii) resided or carried on business on the day of the bankruptcy; or

(b) at any place that the court may, on ex parte application, order.

- [43] To be specific, counsel argued that the language of s. 116(1)(a) mandates that an examination be held in a "bankruptcy district or division," which necessarily, it is argued, means that this cannot occur outside of British Columbia. I was provided with no authority to support this proposition, and I do not accept that this is so for several reasons. First, s. 116(1)(a) and (b) are separated by the disjunctive word "or." Section 116(1)(b), in turn, allows an examination to take place "at any place that the court may order". This language is broad and necessarily enables the court to order that an examination take place in a location that

is independent and outside of the specific circumstances prescribed by s. 116(1)(a).

- [44] Second, this conclusion is consistent with the jurisdiction of the court in circumstances where the court is acting under s. 163(1) of the BIA and ss. 115 and 116 of the BIA General Rules. I have earlier referred to each of s. 163(1) of the BIA and s. 116 of the BIA General Rules. Section 115 of the BIA General Rules provides:

115 Examinations, other than those under section 159 or 161 of the Act, shall be held before a registrar, before a person who is qualified to hold examinations for discovery, examinations of judgment debtors or examinations of debtors after judgment or before any other person that the court may, on ex parte application, order, and shall be conducted in accordance with the rules of court in civil cases.

- [45] In *Re Quinn* (1986), 61 C.B.R. (N.S.) 284 (Ont. H.C.J.), at para. 6, the Court ordered that an examination take place in Portland, Oregon. In *Fanta-Sea Swim Centre Inc.* (1976), 23 C.B.R. (N.S.) 12 (Ont. H.C.J.), at para. 5, the Court ordered that an examination take place in Buffalo, New York. In *Re Canadian Triton International Ltd.* (1988), 3 C.B.R. 4th 231 (Ont. C.J.), the Court, at para. 14, ordered that an examination take place in New York City. Each of these cases is an Ontario decision, and it appears from *Re Quinn*, at para. 4, that the Ontario Rules of Civil Procedure expressly provide the Court with the discretion to permit examinations outside of Ontario.
- [46] Rule 13-4 of the British Columbia Supreme Court Civil Rules [SCCR] deals with examinations in aid of execution. Rule 13-4(7) provide that R. 7-2(11) of the SCCR applies to an examination under R. 13-4. Rule 7-2(11), in turn, provides this Court with jurisdiction to direct where an examination for discovery take place, including that the examination take place outside of the province: *Huang v. Silvercorp Metals Inc.*, 2016 BCSC 778 at para. 15.
- [47] When the hearing before me concluded, I asked counsel to further examine or consider two questions. First, whether there was any authority that prevented me from ordering that an examination of either or both of the Application Respondents take place in Japan. Second, if I ordered an examination in the jurisdiction of the main foreign proceeding, here Japan, what rules of procedure would govern that examination? In relation to the first question I asked, I was advised that counsel were unable to find any reported cases where, in the context of a recognition proceeding, an examination was ordered in the jurisdiction of the foreign main proceeding.
- [48] Given that this Court sitting in bankruptcy has such jurisdiction under ss. 115 and 116 of the BIA General Rules, and given the direction for consistency in s. 272(2) of the BIA, I consider that this jurisdiction exists. To be specific, I am satisfied that this Court, sitting in bankruptcy and in the context of recognition proceedings, has the jurisdiction to order an examination in the jurisdiction of the foreign main proceeding where it is satisfied that it is necessary and appropriate to do so.

- [49] In relation to the second question I asked, counsel for the Trustee and Receiver responded that if an examination were to take place in Japan, that examination would be subject to the SCCR. This is on account of the language of s. 115 of the BIA General Rules, which, again, states that examinations other than under ss. 159 or 161 of the BIA shall be conducted in accordance with the Rules of Court in civil cases.
- [50] I agree with this conclusion. I also observe that counsel for the Application Respondents did not reply or object to the submissions of counsel for the Receiver and Trustee on either of the two questions I asked.

#### THE CIRCUMSTANCES OF EACH OF THE APPLICATION RESPONDENTS

- [51] Because Mr. Nishiyama cannot leave Japan, I am satisfied that his examination must necessarily take place in that jurisdiction.
- [52] The primary reason that counsel for Ms. Kinoshita argued that her examination should take place in Canada was because the Receiver would have to pay her conduct money to come to Canada. Conversely, if the examination took place in Japan, Ms. Kinoshita would have to pay for her counsel to travel to Japan. It was argued by the Receiver that Ms. Kinoshita's examination could take place by video, with Ms. Kinoshita being in Japan and her counsel being in British Columbia.
- [53] I do not consider that this would be appropriate. Ms. Kinoshita's examination will necessarily be alien to her and the source of some anxiety. She ought to have the benefit of her counsel beside her. She ought to, if appropriate, be able to confer with her counsel. She ought to be able to prepare for her examination with her counsel. The process will necessarily be more productive and efficient if Ms. Kinoshita and her counsel are together. Accordingly, I am satisfied that Ms. Kinoshita's examination should take place in Vancouver, British Columbia at a time and place that is agreed to by counsel.
- [54] I make the following specific orders. Following proper disclosure by Mr. Nishiyama and Ms. Kinoshita of all relevant records to the Trustee:
- 1) The examination of Mr. Nishiyama and Ms. Kinoshita be subject to the BIA and the SCCR;
  - 2) The examination of Mr. Nishiyama take place at the Canadian consulate in Japan nearest to where Mr. Nishiyama resides or another location in Japan agreed to by counsel;
  - 3) Ms. Kinoshita is to be examined in Vancouver, British Columbia at a time and place agreed to by counsel; and
  - 4) Ms. Kinoshita and Mr. Nishiyama be examined by the Trustee separately either in Japanese or by a properly certified interpreter if examined in English.

"Voith J."

**Source & reproduction note**

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

**ORIGINAL SOURCE**        <https://www.bccourts.ca/jdb-txt/sc/20/02/2020BCSC0224.htm>

**CASE PAGE**                <https://chat.esheria.ai/case-law/canada/nishiyama-re-2020>

Prepared on 25 October 2026 · Esheria