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BANKRUPTCY AND INSOLVENCY LAW OF CANADA

L. W. Houlden, G. B. Morawetz, Janis Sarra

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This resource contains the complete text of the *Bankruptcy and Insolvency Act* and Rules, the *Companies' Creditors Arrangement Act*, the *Farm Debt Mediation Act*, the *Wage Earner Protection Program Act* and the *Winding-Up and Restructuring Act*. The section-by-section and rule-by-rule case annotations and commentary provide an extensive and detailed resource tool for insolvency lawyers, trustees, receivers and liquidators. The collection of Policy Documents, Model Orders, Forms and Precedents provide additional practice guides to make it the most complete resource for the professional.

What's New in this Update:

This release features updates to the commentary in Chapters 1 ((*BIA* — General; Short Title), 2 ((*BIA* — Part I Administrative Officials), 3 (*BIA* — Part II Bankruptcy Orders and Assignments), 4 (*BIA* — Part III Proposals), 5 (*BIA* — Part IV Property of the Bankrupt), 6 (*BIA* — Part V Administration of Estates), 7 (*BIA* — Part VI Bankrupts), 8 (*BIA* — Part VII Courts and Procedure), 12 (*BIA* — Part XI Secured Creditors and Receivers), 22 (*CCAA* — Part II Jurisdiction of Courts), and 23 (*CCAA* — Part III: General)

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Case Law Highlights

- The Supreme Court of Canada (SCC) held that a court may find that a debtor intended to defraud, defeat, or delay a creditor under s. 96(1)(b)(ii)(B) of the *BIA* even if the debtor was not insolvent at the time of the transfer at undervalue. There was no basis to interfere with the judge’s conclusion that “A” intended to defraud, defeat, or delay a creditor under a false invoicing scheme. Furthermore, A’s fraudulent intent should be attributed to the debtor companies because he was their directing mind and acted in the sector of corporate responsibility assigned to him. The test for corporate attribution under s. 96 is whether the person was the directing mind and whether their actions were performed within the sector or corporate responsibility assigned to them. Section 96(1)(b)(ii)(B) requires the party seeking to reverse a transfer at undervalue to prove, among other things, the debtor’s intent to defraud, defeat, or delay a creditor. This requirement is a question of fact to be decided based on all the circumstances that existed at the time of the transfer, often proved through the badges of fraud: *Aquino v. Bondfield Construction Co.*, 2024 CarswellOnt 15328, 2024 SCC 31 (S.C.C.).
- The Superior Court of Québec issued a declaration that a portion of a creditor’s claim was a debt not discharged within the meaning of s. 178 of the *BIA*. A judgment of the North Carolina Superior Court was recognized in Québec. The doctrine of *res judicata* applies to a foreign judgment that has been recognized in Québec and that may be enforced under the Civil Code of Québec. Where a judgment finds that a debt is the result of fraud or misrepresentation, either explicitly in its reasons and conclusions, or implicitly in light of the reasons or proceedings and the evidence that led to the judgment, it is binding on the court hearing the characterization of the same debt under s. 178(1)(e). With rare exceptions, where the debt is evidenced by a judgment, only that judgment, the proceedings and the evidence that led to it are relevant for the purposes of the qualification exercise to be conducted by a court under s. 178(1)(e): *Proposition de Benjamin*, 2024 CarswellQue 9290, 2024 QCCS 2319 (C.S. Que.).