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## BANKRUPTCY AND INSOLVENCY LAW OF CANADA

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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 2 (*BIA* — Part I Administrative Officials), 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**

- **§ 7:185—Debts not Released by an Order of Discharge— Generally—**The Supreme Court of Canada (SCC) held that the administrative penalties imposed by the British Columbia Securities Commission (BCSC) arising from a fraudulent scheme do not come within the exception in s. 178(1)(e) of the BIA; however, disgorgement orders do. Between 2007 and 2009, the bankrupts engaged in market manipulation that caused vulnerable investors to lose millions of dollars. The BCSC found that the bankrupts had contravened the province's *Securities Act* and ordered the bankrupts to pay $13.5 million in administrative penalties and to disgorge approximately $5.6 million that they obtained as a result of the market manipulation scheme. These sanctions were registered with the Supreme Court of British Columbia pursuant to the *Securities Act*. The BCSC applied for a declaration that the amounts owed to it by the bankrupts, who remain undischarged, not be released by any order of discharge. The chambers judge allowed the application (*Poonian (Re)*, 2021 CarswellBC 888, 2021 BCSC 555 (B.C. S.C.)), and the Court of Appeal dismissed an appeal (*Poonian v. British Columbia (Securities Commission)*, 2022 CarswellBC 2124, 100 C.B.R. (6th) 182, 2022 BCCA 274 (B.C. C.A.)). The SCC held that the words "imposed by a court" in s. 178(1)(a) do not capture orders made by administrative tribunals or regulatory agencies that are subsequently registered as judgments of a court. The disgorgement orders, however, are captured by the s. 178(1)(e) exception because there is a direct link between them and the bankrupts' fraudulent conduct. Therefore, they will not be released by any possible future order of discharge: *Poonian v. British Columbia (Securities Commission)*, 2024 CarswellBC 2171, 14 C.B.R. (7th) 1, 2024 SCC 28 (S.C.C.).
- **§ 12:20—Sale of Assets by a Receiver and Manager—**The OSB issued a statement on the treatment of fines, penalties, restitution orders and other similar orders imposed by a court in respect of an offence not released in bankruptcy under s. 178(1)(a) of the *BIA*. Absent creditor consent on adequate notice, it is unlikely that offence penalties may be transferred to another person by way of a reverse vesting order (RVO). Instead, they will remain with the debtor at the end of the proceeding. Such unreleasable debts are the kind of debts that society considers to be of a quality that outweighs any possible benefit to society in the debtor being released from them and provided a fresh start. As a stakeholder, the creditor for the offence penalties will typically be worse off if its debt is vested in "ResidualCo", as in an RVO scenario it would lose the key feature of an unreleasable debt, namely, the ability to collect against the debtor in the future: OSB, "Treatment of Fines, Penalties, and Restitution Orders in an Insolvency", (22 August 2024), Treatment of Fines, Penalties, and Restitution Orders in an Insolvency (canada.ca).