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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 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), 12 (*BIA* — Part XI Secured Creditors and Receivers), 22 (*CCAA* — Part II Jurisdiction of Courts), and 24 (*CCAA* — Part IV: Cross-Border Insolvencies)

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## Case Law Highlights

- **§ 4:18—Statutory Terms that May be Included in a Proposal—Claims Against Directors**—The Ontario Superior Court of Justice declined to grant summary judgment where a plaintiff sought an order declaring that the plaintiff’s claim for breach of trust under the *Construction Act* should not be compromised pursuant to the proposal provisions of s. 50(15) of the *BIA*. The wording of the *BIA* and the *Construction Act*, coupled with the circumstances surrounding the consumer proposal, means the court should undertake an assessment of the credibility of the actors involved, best done at a trial. The Court held that there are genuine issues requiring a trial: the reasonable expectation of the parties in making and accepting the proposal; (ii) whether the defendants knew or ought to have known that their conduct amounted to a breach of trust under the *Construction Act*; (iii) whether the defendants engaged in wrongful or oppressive conduct; iv) whether it is just and equitable that the compromise of the claims against the defendant directors should be set aside; and (iv) whether the plaintiff’s rights under the trust provisions of the *Construction Act* should survive its acceptance of the consumer proposal and compromise: *Atlas DeWatering Corporation v. Blanchard et al.*, 2024 CarswellOnt 11644, 2024 ONSC 4217 (Ont. S.C.J.).
- **§ 7:192—Debts not Released by an Order of Discharge—Debt or Liability Arising out of Fraud, Embezzlement, Misappropriation or Defalcation While Acting in a Fiduciary Capacity—While Acting in a Fiduciary Capacity**—The Ontario Superior Court of Justice granted a declaration, pursuant to s. 178(1)(d), that the debt owed to the plaintiffs was not released in the debtor’s *BIA* proposal. Justice Penny held that the judgment is a debt resulting from misappropriation or defalcation within the meaning of s. 178(1)(d). Justice Penny held that “misappropriation” focuses on the use of the funds, for example, “turning [funds] to a wrong purpose”, citing *Re Ieluzzi* (#2), 2012 CarswellOnt 2534, 88 C.B.R. (5th) 215, 2012 ONSC 1474, [2012] O.J. No. 1036 (Ont. S.C.J.), appeal dismissed *Re Ieluzzi*, 2012 CarswellOnt 7608, 2012 ONSC 3447, [2012] O.J. No. 2763 (Ont. S.C.J.), and “defalcation” generally focuses on breach of trust, for example, “a monetary deficiency through breach of trust by one who has management or charge of funds” or a “failure to properly account for such funds”, citing *Garofalo v. All Type Financial Services Ltd.*, 2008 CarswellOnt 3990, [2008] O.J. No. 2698 (Ont. S.C.J.), affirmed 2009 CarswellOnt 599, 50 C.B.R. (5th) 186, 2009 ONCA 120, [2009] O.J. No. 480 (Ont. C.A.). Misappropriation or defalcation while acting in a fiduciary capacity requires wrongdoing that rises above inadvertence, negligence or incompetence. The facts of this case fell well within the terms “misappropriation or defalcation”. Justice Penny found it absolutely clear on the evidence that the plaintiffs did *not* vote in favour of the proposal. Thus, the conditions required for the application of the exception in s. 62(2.1) have not been met and it was appropriate to lift the statutory stay to permit the plaintiffs to pursue their remedies: *Pallotta v. Cengarle*, 2024 CarswellOnt 11092, 2024 ONSC 3911 (Ont. S.C.J. [Commercial List]).