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CANADIAN COMMERCIAL REORGANIZATION

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This publication is designed to help practitioners manage or avoid bankruptcy by keeping up to date on legislative and judicial changes. Updated regularly, with the Companies' Creditors Arrangement Act (CCAA) provisions and the parallel Bankruptcy and Insolvency Act (BIA) provisions for each stage of reorganization set out, this title helps practitioners understand both the BIA and the CCAA. Up-to-date information includes key decisions relevant to insolvency practice and substantial BIA and CCAA amendments now in force.

What's New in this Update:

This release features updates to Chapters 2 (Statutory Requirements for Eligibility to Reorganize), 4 (Creation of a Reorganization Plan), 5 (Creditor's Voting Procedures), and 6 (Court Approval and Supervision of a Reorganization Plan).

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Highlights:

• **Court Approval and Supervision of a Reorganization Plan—Arrangements Under the *Companies' Creditors Arrangement Act*— Effect of Court Sanction; Effect of Refusal to Sanction; Appeal from Refusal to Sanction—Appeal from Refusal to Sanction—**The Alberta Court of Appeal granted leave to appeal a King's Bench decision that declined to apply the equitable doctrine of marshalling in an insolvency context. The Court confirmed that leave was required under s. 13 of the *CCAA* and that the issue—whether marshalling could benefit a junior secured creditor—was significant to the action. It noted the chambers judge was not exercising a supervisory role, distinguishing the case from typical *CCAA* management decisions. Recognizing that marshalling is rarely considered in this context, the Court held that allowing the appeal would clarify an underdeveloped area of law. As in *Kenroc Building Materials Co. v. Kerr Interior Systems Ltd*., the decision reflects a willingness to grant leave where an arguable question may advance *CCAA* jurisprudence: *Griffon Partners Operation Corporation (Re)*, 2024 ABCA 279 (Alta. C.A.).

• **Arrangements Under the *Companies' Creditors Arrangement Act*—Contents of the Arrangement—Appointment of a Monitor or Admistrator—**The Alberta Court of King's Bench considered whether the Alberta Petroleum Marketing Commission could compel delivery of missed crude oil royalties during *CCAA* proceedings despite the stay order. After the debtor entered *CCAA*, APMC issued a direction requiring delivery of equivalent oil volumes. The Monitor argued this breached the stay, while the Crown claimed its royalty interest was a proprietary right exempt from it. The court held that although the Crown's royalty was a true proprietary interest, APMC's enforcement right under the Petroleum Marketing Regulation was stayed, as the direction sought to enforce a pre-filing obligation: *Razor Energy Corp. v. Companies' Creditors Arrangement Act*, 2024 ABKB 534 (Alta. K.B.).

• **Court Approval and Supervision of a Reorganization Plan—Proposals Under the*Bankruptcy and Insolvency Act*—Court Amendment of Proposal—When Approving a Proposal—**The British Columbia Supreme Court considered approving a reverse vesting order (RVO) in a receivership under the *BIA*. The receiver had first obtained an asset vesting order but restructured the deal as an RVO to preserve permits and agreements and avoid property transfer tax, with the purchaser increasing its price to benefit a junior creditor. Emphasizing that RVOs are exceptional and require scrutiny, the Court applied *Harte Gold (Re)* and sought more evidence on fairness and asset value. The receiver later showed that most intangibles had little value but that the RVO improved creditor

recovery and expedited the project. The Court approved the RVO, finding the terms reasonable, uncontested, and the releases appropriately narrow: *MCAP Financial Corp. v. QRD (Willoughby) Holdings Inc.* 2024 BCSC 1654 (B.C. S.C.).