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CANADIAN COMMERCIAL REORGANIZATION

Richard H. McLaren
Release No. 4, June 2025

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 Chapter 2—Statutory Requirements for Eligibility to Reorganize, Chapter 4—Creation of a Reorganization Plan, Chapter 6—Court Approval and Supervision of a Reorganization Plan and Chapter 7—Receivership under the Bankruptcy and Insolvency Act.

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Highlights:

● **Statutory Requirements for Eligibility to Reorganize—Jurisdiction of Courts Under the Bankruptcy and Insolvency Act—Generally**—The Ontario Court of Appeal considered whether to approve a stay pending leave of appeal. The Court found that none of the three steps of the RJR-MacDonald test favoured a stay and the action was dismissed. The Court cited *Urbancorp* for the principle that irreparable harm is harm that cannot be quantified in monetary terms. The Court concluded that there was insufficient evidence that irreparable harm would be caused by the staying pending leave of appeal: *U.S. Steel Canada Inc. (Re)*, 2023 ONCA 569, 9 C.B.R. (7th) 40 (Ont. C.A.).

● **Court of Approval and Supervision of a Reorganization Plan—Arrangements Under the Companies’ Creditors Arrangement Act—Court Sanction of an Arrangement—Factors Consider—Plan to be Fair and Reasonable**—The Ontario Superior Court of Justice expanded on the “fair and reasonable” standard set out in *Nortel Networks Corp., Re*. In the fairness and reasonability analysis of a monitor, the nature, extent and value of the assets being handled, the time spent, and the complications and difficulties encountered may be considered. On the facts of the case, the Court found that the fees and disbursements of the monitor and its counsel were fair and reasonable and they were approved: *Nordstrom Canada Retail, Inc.*, 2023 ONSC 4199 (Ont. S.C.J.).

● **Receivership under the Bankruptcy and Insolvency Act—Duties of Receiver; Enforcement of Obligation and Duties—Duties of Receiver**—The British Columbia Supreme Court considered the receiver of a bankrupt debtor’s application for approval of sale of assets. The Court approved an RVO offer on the basis that there were no competing offers of sufficient value, and the offer enabled the equipment to be utilized for its designated purpose: *Royal Bank of Canada v. MBA Asset Management Inc.*, 2024 BCSC 546, 12 C.B.R. (7th) 169 (B.C. S.C.).