Index

ACCOUNT, see also REPORTS

Bankruptcy and Insolvency Act, Part XI, effect of, 799-803 common law notice and reports, 697-706 reports, particulars of, 706-708 statutory notice and reports, 693-697

ACCOUNTANT

appointment as receiver, 261-263, 265-266

ACCOUNTS. See PASSING ACCOUNTS

ACTIONS

against interim receiver, 376-377, 1136-1147 against receiver, 359-376 against security holder by debtor, 886-894 by receiver, 327-337 by trustees in bankruptcy. See BANKRUPTCY court appointment, 359-369 generally, 359-369 interested persons, 369-370 leave for, 359-376 leave granted, when, 370-374 leave refused, when, 374-376 security holder not proceeding, when trustee in bankruptcy, 376-377 stay of proceedings, 359-377 when granted, 370-374 when refused, 374-376 who is affected by the order, 369-370 whose name, 328-337

ADVICE AND DIRECTIONS

interim receiver, 1044, 1078, 1091 interested persons, by, 369-370 power of receiver to apply to court *Bankruptcy and Insolvency Act*, under, 345-347 generally, 339-345 types of motions, 377-381

AFTER-ACQUIRED PROPERTY

after-acquired clause, 72-73 chattel mortgage, 528-529 crystallization, 81-82, 91 fixed charge, 75, 77-78 floating charge, 77-78, 80

AGENCY

deemed agency, 26-27 effect on business, 58-59 effect on contracts, 59-60, 313 effect on employees, 59 generally, 21-22, 26-27 protection of security holder, 26-27 termination of agency, 292, 785-789

APPOINTMENT

appeal from initial order appointing receiver, 182-183, 246-248 appeal from interim receivership order, 1089 court appointment. See COURT APPOINTMENT invalid court appointment, 248-254 methods and purposes of, generally, 6-10

Bankruptcy and Insolvency Act, 7, 9

Canada Business Corporations Act, 7

Courts of Justice Act, 9

equitable execution, 9

interim receiver, 5, 7

pending an appeal from a bankruptcy order, 1088

private appointments. See PRIVATELY APPOINTED RECEIVER situations where appointment made, 8-10, 199-209

situations where appointment refused, 210 - 216

BANK ACT, s. 427 SECURITY

advances, 108, 128-129, 491
appointment of agent, 32
generally, 108-110
notice of intention, 128-129
Personal Property Security Act agreements and, 539-541
review prior to enforcement, 128-129, 132
sale under
generally, 491-494
standard of care, 494-498
validity, 129

BANKRUPTCY AND INSOLVENCY ACT

```
accountability by receiver, 29-30
actions against debtor or its property, 1147-1148
actions against receiver, 1136-1147
appeals under s. 193, 422-424
application by receiver for advice and directions under, 345-347
application under Part II for appointment of receiver, 243-244
application under s. 243 for appointment of receiver, 244-246
bankruptcy and receivership, dual role, 263-266
bankruptcy order, application for, 173-174
causes of action available only to trustee in bankruptcy
  creditors' remedies, s. 38 proceedings, 820-823
  examinations, 812-814
  forced sale, 814
  fraudulent preferences, 806-812
  redemption, 814-815
  remedies under legislation governing security, 816-820
  stay of proceedings, 815-816
  transfers at undervalue, 812
conflict of interest
  administering estate and duplication, 839-840
  constitutional problem, 842
  joint appointments, 832-836
  negligence of one in joint appointments, 836-839
  receiver as creditor and trustee of account debtor, 841
creation of a bankruptcy
  court-appointed receiver, 824-830
  generally, 823
  privately appointed receiver, 830-832
debtor's right to protection under, 858-867
  appointment of a receiver, 1067-1091, 1108-1117, 1132-1135
  contracts. See CONTRACTS
  employees. See EMPLOYEES
  floating charge, 85, 97-99, 101-102, 655
  landlord, 790-796
  receiver, 785-789
  statutory liens and trusts, 796-798
enforcement of security
  notice, 154-167, 313
  statutory condition 140
examinations, 812-814
  by creditors, 812
  by Official Receiver, 813-814
```

```
BANKRUPTCY AND INSOLVENCY ACT — Continued
examinations — Continued
  by trustee in bankruptcy, 813
forms/precedents
  affidavit in support, 1290
  final report and statement of accounts of the receiver, 1289
  interim report of the receiver, 1288
  notice and statement of the receiver, 1287
  notice of intention to enforce security, 1286
  order appointing interim receiver, 1291, 1292
proceedings against interim receiver, 376-377
reasons for bankruptcy — security holder's point of view
  effect on landlords, 790-796
  effect on security holders, 798
  effect on statutory tax liens and trusts, 796-798
  generally, 790
reasons for bankruptcy — unsecured creditor's point of view
  duties of trustee in bankruptcy, 803-805
  information, 799-800
  investigation, 800-803
receivership, generally, 1059-1063
receiverships under Part II, interim receivership 1064-1108
  discharge
     fees, 1104-1105
     generally, 1103
     taxation of accounts, 1105-1108
  grounds for appointment
     appeal from interim receivership order, 1089-1091
     appointment of interim receiver pending appeal from bankruptcy or-
      der, 1088
     s. 46 — appointment after application for bankruptcy order, 1067-1072
     s. 47 — appointment after s. 24 notice, 1073-1082
     s. 47.1 — appointment under proposal, 1082-1088
  jurisdiction, 1064-1066
  powers and duties of interim receiver
     generally, 1091-1092
     s. 46 — appointment after application for bankruptcy order, 1092-1096
     s. 47 — appointment after s. 24 notice, 1097-1101
     s. 47.1 — appointment under proposal, 1101-1103
receiverships under Part XI, 1108 - 1131
  duties and reports of receiver, 1123-1126
  jurisdiction
     generally, 1108-1111
     just or convenient, 1112-1113
```

BANKRUPTCY AND INSOLVENCY ACT — Continued

receiverships under Part XI — Continued jurisdiction — *Continued* national receiver, 4, 410, 1114-1116 protection of receiver, 1117 receiver priority for fees, 1116-1117 receiver must be licensed trustee, 1114 national receiver, 1114-1116 powers of court, 1126-1128 protection of receiver, 1128-1131 reports, preliminary, interim and final, 1125 receiverships under Part XIII recognition of foreign receiver, 1132-1135 s. 244 notice, 154-157, 454-456, 1065-1066 s. 244 — notice of intention to enforce security generally, 1117-1121 notice, 1122 when to send, 1121-1122 secured creditors only, 105-106 trustee in bankruptcy, duties of 803-805 determine priority, 817-818 review conduct and actions of receiver, 804-805 review security to determine validity and enforceability 804 undertaking as to damages, 1103 vesting of property and termination of deemed agency, 785-789

BOOKS DEBTS, ASSIGNMENT OF

contractual priority, 527-529 fixed charge, 75-77 floating charge, 83-85, 104-105 trust claims, 654-656

BORROWINGS

authority, 22, 321-322, 544-545, 904 borrowing in excess of authorized amount, 545, 904 liability of receiver, 545, 904 power to borrow money to preserve assets and carry on business, 321-322, 544 priority, 544-545, 728

BUSINESS CORPORATIONS ACTS, RECEIVERSHIPS OF CORPORATIONS UNDER

duties 351-352, 1035-1039 grounds for appointment, 1034-1035

BUSINESS CORPORATIONS ACTS, RECEIVERSHIPS OF

CORPORATIONS UNDER - Continued

jurisdiction, 1032-1034

powers and duties of receiver and manager, 351-352, 1035-1039

BUSINESS TAXES, PRIORITIES, 626-628

CANADA PENSION PLAN, PRIORITIES. See SOURCE DEDUCTIONS, PRIORITIES

CANADIAN ASSOCIATION OF INSOLVENCY AND RESTRUCTURING PROFESSIONALS, RULES OF PROFESSIONAL CONDUCT AND INTERPRETATION, 265

acting as a receiver, 264-265, 840, 962-963, 967, 972, 1028, 1136 acting as a trustee in bankruptcy, 803-805, 813, 1268

CHARGE

after-acquired clause, 72 assets not covered, 74 Bank Act, s. 427 security, 108-110 collateral secured, 71-75 crystallization, see also CRYSTALLIZATION automatic and partial, 93-96 effects, 102-108 events of default, 100-102 generally, 91-93 intervention by security holder, 97-100 debt, 69-71 fixed limited receivership appointment, 79 type of property, 75-79 floating definition and history, 80-81 property excluded, 85-91 property under, 83-85 use in debentures, 81-83 good will, extending to personal property security act legislation, 111-113 intangible property, 71-72 invalid charge, 248-249

CHARTERED PROFESSIONAL ACCOUNTANTS, RULES OF PROFESSIONAL CONDUCT, 265

COLLATERAL SECURED. See CHARGE

COMPANIES' CREDITORS ARRANGEMENT ACT, RECEIVERSHIPS UNDER

appointment of receiver in addition to monitor, 1042-1045 initial order and role of monitor, 1039-1042 timing of application in CCAA proceeding, 1045-1050

CONFLICT OF INTEREST

administering estate and duplication, 839-840 constitutional problem, 842 duplication between receiver and trustee, 839-840 joint appointments, 832-836 negligence of one in joint appointments, 836-839 receiver as creditor and as trustee of account debtor, 841

CONSTRUCTION LIENS, PRIORITIES

appointment of trustee in Ontario, 679-681 other provinces, 681-685

CONSTRUCTION ACT, APPOINTMENT OF TRUSTEE UNDER

distribution of sale proceeds, priorities, 1029-1031 forms/precedents
 affidavit in support, 1280
 notice of application, 1278
 order appointing trustee, 1282
grounds for appointment, 1026
history of legislation, 1022-1023
jurisdiction, 1023-1025
powers and duties of trustee, 1027
realization, 1027-1029

CONSULTANT

appointment, 10 conflict of interest and duty, 12-15 form/precedent appointment of consultant, 1153 function, 10-11 possible problems relating to appointment, 12-14 purpose, 10

CONTRACTS

effect of receivership on employees, 600-601 existing contracts with debtor adopt contract, 561-565 generally, 557-558 repudiate contract, 558-560

CONTRACTS — Continued new contracts with receiver and manager, 565-567 set-off by agreement, 569 equitable set-off, 569-576 legal set-off, 568-569 terminating existing contracts, 562-565 CONTRACTUAL PRIORITIES AND LIABILITIES borrowings, 544-545 contracts existing contracts with debtor, 557-565 new contracts with receiver and manager, 565-567 set-off, 568-576 conditional sales agreements, 529-530 contractual priorities debentures, between, 524-527 debentures and chattel mortgages or assignments of book debts, 527-529 debentures and conditional sales agreements, 529-530 generally, 523-524 Personal Property Security Act agreements, 530-538 Personal Property Security Act agreements and security under Bank Act, 539-541 third party property claims, 541-543 creditors and garnishors of debtor execution creditors, 579-584 garnishors, 584-586 unsecured trade creditors, 576-579 landlord landlord in receivership, 554-557 tenant in receivership, 546-553 liabilities generally, 521-523 liabilities for expenses incurred by debtor, business taxes, 626-628 environmental expenses, 229, 280-281, 617, 353-359, 1131 goods and service tax or Harmonized sales tax, 639-640, public utilities, 672-679 real property taxes, 624-626 source deductions, 646-665 liabilities for expenses incurred by receiver borrowings, 22, 321 contracts, assumption of existing contracts and new contracts, 282-283, 327, 557-565, 1093-1094 environmental damages, 229, 280-281, 352-359, 790, 1130-1131

CONTRACTUAL PRIORITIES AND LIABILITIES — Continued

liabilities for expenses incurred by receiver — *Continued* goods and services tax or harmonized sales tax, 635-641 income tax, 349-351 indemnity, 302, 322, 777, 958 misconduct, 229, 281, 287, 358 negligence, 566, 837-838 occupation rent, 550-553 personal liability, 21-22, 287-293, 302, 320, 326-327, 522, 566-567, 720, 1093-1094 public utilities, 672-679 realty taxes, 624-626 source deductions, 646-665 personal property security agreements 125-128 third party property claims, 541-543

COSTS

accounts. See PASSING ACCOUNTS
added to security agreement, 70-71
court appointment, 47-49, 63
indemnity for, 330-331
party who is responsible, 330-331
private appointment, 63-64
realization, of. See REALIZATION
security for, 894
substantial indemnity, 778-779
full indemnity, 217, 284, 516, 544, 728, 735, 777-778, 1142
partial indemnity, 333

CORPORATIONS TAXES, PRIORITIES, 641-645

COURT-APPOINTED RECEIVER

abuse of appointment, 35-36 appeal from, 183, 239-242 application under *Bankruptcy and Insolvency Act*, Part II, 243-244 application under *Bankruptcy and Insolvency Act*, Part XI, s. 243, 244-246 application under *Bankruptcy and Insolvency Act*, Part XIII, 1132-1135 application under *Rules of Civil Procedure*, 243 bankruptcy application for bankruptcy order, 824-825 assignment, 825-830 case list, satisfying just and convenient rule, 255-257 commencement of action, 217-219 comparison with private appointment, 66-67

```
COURT-APPOINTED RECEIVER — Continued
considerations, whether court or private appointment, 66-67
costs, 63
court approval of sale of assets, 406-410
debtor defending action from security holder, 871-879
differences between receiver and manager, 267-269
discharge
  generally, 64, 774-779
  grounds, 769-774
  generally, 52-54, 298-304
  statutory, 347-359
effect on
  contracts. 56, 282-283
  debtor's property and operations, 56-57, 279-280
  directors and officers, 276-279
  employees, 56, 282
  environmental liabilities, 280-281, 353
  garnishors, 584-586
  legal proceedings, 283-284
  third parties, 57, 285
  title, 273
examination of, 29-39
form of order, 225-242
forms/precedents
  affidavit in support, 1203, 1234
  affidavit in support, appointment after judgment, 1271
  application for interim receiver, 1196
  application for receiver and manager, 1199
  consent by the debtor to the appointment, 1205
  consent of proposed receiver and manager, 1205
  discharge order, 1248
  endorsement on statement of claim, 1194
  explanatory notes, 1222
  initial order — alternative provisions, 1216
  model discharge order, 1246
  model template approval and vesting order, 1238
  model template receivership order, 1206
  notice of motion for appointment after judgment, 1270
  notice of motion for appointment of receiver and manager, 1202
  notice of motion for approval of sale, 1236
  notice of motion for order granting leave to continue, 1233
  order appointing receiver, appointment after judgment, 1273, 1274
  order approving sale, 1243
```

COURT-APPOINTED RECEIVER — Continued forms/precedents — Continued

order granting leave to continue, 1235 order granting vesting order, 1244

receiver's report no. [3], 1237

receiver's report no. [5] on passing its accounts, 1245

schedule referred to in annexed order, 1221

generally, 177

good will of business, preserving, 317-320

grounds, 187-216

"just or convenient" test, 187-196

situations where court will appoint, 8-10, 199-209

situations where court will refuse, 210-216

who may apply, 187-216

invalid appointment

damages, 252-254

generally, 248-251

jurisdiction, 178-187

Bankruptcy and Insolvency Act, 180

Business Corporations Act, 186-187

Courts of Justice Act, Ontario, 178-179

Personal Property Security Act, 187

Rules of Civil Procedure, 184-187

Securities Act, Ontario, 185-187

liability, 29-30

method of appointment, 46-50

model template receivership order, 225-226

motion or application, 219-224

motion under s. 101 Courts of Justice Act, 242-243

other provincial, territorial and federal legislation, 246-248 powers

apply for advice and directions, 339-347

borrow money to preserve assets, carry on business, 321-322

do any deed necessary in realization of security, 347

execute deeds, enter contracts, 326-327

generally, 52-54, 293-295

institute, defence or continue proceedings, 327-337

manage, carry on business, 315-320

power to sell, 25-26

recover property, 337

sell, lease or dispose of assets, 323-326

settle or compromise indebtedness, 337-339

take possession of debtor's property, 307-315

qualifications, 30-31

protection of, 28

COURT-APPOINTED RECEIVER — Continued realization generally, 60-61 standard of care, 31-32 remuneration generally, 727-728, 741-752 quantum, 754-768 reports 693-704 situations where appointment made, 8-10, 199-209 situations where appointment refused, 210 - 216 status consolidation, 273-276 employees, 282 environmental concerns, 280-281 generally, 56-57 interference with, 284-285 new contracts, 282-283 power to manager debtor's business, 279-280 powers of directors and officers, 276-279 receiver as principal, 269-273 stay of proceedings, 283-284 title, 273 who may apply, 187-216 **COURTS OF JUSTICE ACT** appointment of receiver by way of equitable execution under conditions precedent, 217 jurisdiction, nature of relief, 992-994 powers, 53-54, 228 restrictions on relief, 994-998 special circumstances, 1004-1007 where relief granted, 998-1000 where relief refused, 1001-1003 appointment of receiver/manager under mortgage or pursuant to grounds for court appointment, 1009-1011 jurisdiction, 1007-1009 liabilities, general, 1017-1022 possession, 1012-1017 powers and duties while in possession, 1011-1012 jurisdiction under section 101, 199-200 CREDITORS, see also GARNISHORS; LANDLORD AND TENANT execution creditors, 579-584

CREDITORS — *Continued* secured creditors, 104, 106 unsecured trade creditors, 576-579

CRYSTALLIZATION

automatic and partial, 93-96
effects
employees, 107
execution creditors and garnishors, 107
extent of property, 105
generally, 102-104
property acquired after crystallization, 107-108
secured creditors, 105-106
set-off, 106
title to assets, 104-105
trade creditors, 106
events of default, 100-102
generally, 91-93
intervention by security holder, 97-100

DEBENTURE

fraudulent preference 335-336 power of sale, 324, 462-491 priorities within personal property security legislation, 978 registration, 120-129 validity of, 120-125, 129-131

DEBT GENERALLY, 69-71

DEBTOR, RIGHTS AND REMEDIES

action for accounting, 906-909
advance of funds to defend receivership, 277-278, 286, 882-884, 889-890
breach of duties
borrowings, 904
carrying on debtor's business, 903
disposition, 904
generally, 901-902
lawsuits, 905
possession, 902-903
defending action by security holder
application for bankruptcy order, 884-886
court appointment following private appointment, 874-875
defence, 879-884
motion for court-appointed receiver and manager, 871-874

DEBTOR, RIGHTS AND REMEDIES — Continued defending action by security holder — Continued motion for injunction to restrain receiver and manager from selling, 875-978 directors, rights of defences, 923-924 generally, 919-921 protection, 922-923 early warning signs, 848-853 generally, 844-847 guarantors, rights of action for damages and discharge, 918-919 discharge, 911-918 generally, 909-911 leave to proceed, 890-893 re-organization assets, 853 capital — equity financing, 854-855 generally, 847-853 liabilities, 853-854 right to commence action or counterclaim cause of action, 886-888 forum to sue, 888-890 leave to proceed, 890-893 security for costs, 894 right to protection under Bankruptcy and Insolvency Act, 858-867 right to realize on assets not charged and those disclaimed by receiver, 899-901 right to relief from forfeiture, 867-871 right to require judicial enforcement, 895-897 right to tender after receiver appointed — redemption, 897-898 right to tender prior to appointment of receiver — time to pay, 855-858 **DEEMED AGENCY** clause, 26-27, 58-59, 288, 290, 606 termination on bankruptcy, 292, 511, 785-789 Torrens System, and, 476 **DEEMED TRUSTS** bankruptcy, and, 657-659

bankruptcy, and, 657-659 generally, 27-28, 588, 590-592 priorities, 592-593, 596-600 source deductions, and, 648-650

DEFAULT

conditions precedent, calling the loan

Bankruptcy and Insolvency Act, s. 244 notice, 154-157
demand, 142-144
demand loan, 135-137
Farm Debt Mediation Act, s. 21 notice, 157-158
notice of default, 138
period between demand and enforcement, 159-160
pledge and debenture, 160-162
statutory conditions, 138-142
term loan, 137
time to pay or to rectify, 144-154
events of, 133-135
generally, 132-133

DIRECTIONS. See ADVICE AND DIRECTIONS; RECEIVER/ RECEIVER AND MANAGER

DIRECTORS, RIGHTS OF, see also DEBTOR, RIGHTS AND REMEDIES

defences, 923-924

Farm Debt Mediation Act, power to initiate mediation, 287, 1036 generally, 919-921 protection, 922-923

DISCHARGE OF RECEIVER

accounts. See PASSING ACCOUNTS court appointed receiver, 774-779 grounds, 769-774 administration completed, 769 bias or partiality, 771 breach of duties, 771 conflict of interest, 770-771 conflicts with debtor, 773 court appointment, 772 death of receiver, 771 dishonesty or fraud, 771 mortgagees, 773 negligence, 771 no reason to continue, 771-772 validity challenged, 772-773 privately appointed receiver, 780-782 refloating the charge, 782-784 remedies after discharge, 773

DISCRETION AND INHERENT JURISDICTION, 38-40

DISTRESS. See LANDLORD AND TENANT

DISTRIBUTION OF PROCEEDS

allocation of costs, 710-712
assets under fixed charge, 720-725
assets under floating charge
costs of realization, 727
deemed trusts, 726
new creditors and borrowings, 728
remuneration of receiver and manager, 727-728
security holder, 728
surplus, 728
assets under trust, 728-730
claims bar procedure, 713-720
generally, 708

DUTIES OF RECEIVER. See COURT APPOINTMENT; PRIVATE APPOINTMENT

EFFECTS OF APPOINTMENT. See COURT-APPOINTED RECEIVER; PRIVATELY APPOINTED RECEIVER

EMPLOYEES

effect of crystallization on, 107
priorities
benefits, 623-624
employees of receiver, 605-618
rights on receivership, 600-601
vacation pay, 618-623
wages and wage earner protection program, 602-605
status of receiver, 282

EMPLOYMENT INSURANCE, PRIORITIES. See SOURCE DEDUCTIONS PRIORITIES

ENFORCEMENT, PRELIMINARY STEPS, see also DEFAULT; REMEDIES

amount of time given to debtor, 163- 167 default conditions precedent, calling the loan, 135-163 demand, 142-144 demand loan, 135-137 events of, 133-135

ENFORCEMENT, PRELIMINARY STEPS — Continued

default — Continued forbearance agreement, 1157 generally, 132-133 notice requirements, 154-158 statutory conditions, 138-140 section 244 notice, Bankruptcy and Insolvency Act, 154 review of security forbearance agreement, 117-118 form/precedent, 1157 generally, 115-117 guidelines, 118-120 validity, advances, 129-132 validity, execution and registration, 120-129 time to pay or time to rectify, 144-154 cases reviewing time to pay, 152-154 criteria in Mister Broadloom, 149-152 factors to consider 152 no time, 153-154 reasonable time to pay, 144-154

ENVIRONMENTAL LIABILITY

court-appointed receiver, 227, 353 generally, 20, 229, 280-281, 352-353 privately appointed receiver, 353-359 receivership order, stay of proceedings, 361

EQUITABLE EXECUTION. See COURTS OF JUSTICE ACT

FARM DEBT MEDIATION ACT

power of directors to initiate mediation, 287, 1036 s. 21 notice, 157-158

FIXED CHARGE

after-acquired clause, 72 definition, 75 distribution of proceeds, 720-725 limited receivership appointment, 79 priority, 76 type of property, 75-79

FLOATING CHARGE

crystallization automatic and partial, 93-96 effects, 102-108

FLOATING CHARGE — Continued

crystallization — Continued
events of default, 100-102
generally, 91-93
intervention by security holder, 97-100
definition and history, 80-81
distribution of proceeds, 726-728
property excluded
constructive trust, 88-90
reservation of title, 90-91
trust property, 85-88
property under charge, 83-85
refloating a charge, 31, 782-784
use in debentures, 81-83

FORECLOSURE, 171-172, 224

FORMS/PRECEDENTS, GENERAL

advertisement, 1172
appointment of consultant, 1153
appointment of monitor, 1155
assignment of security/debt, 1178
conditions of sale, 1163
confidentiality agreement, 1173
consolidated practice direction concerning the Commercial List effective
July 1, 2014, 1181
consolidated statement of receipts and disbursements, 1176
demand for payment, 1152
forbearance agreement, 1157
indemnity, 1162
summary statement of affairs on date of appointment, 1175
statement of remuneration, 1177

FRAUDULENT PREFERENCES, 806-812

GARNISHORS

crystallization, and, 107 priorities, 584-586

GOODS AND SERVICES TAX. See SALES TAXES, PRIORITIES GUARANTORS, RIGHTS OF

action for damages and discharge, 918-919 challenge receiver's remuneration, 756 discharge, 911-918 material variation, 911-912

GOODS AND SERVICES TAX — Continued

discharge — *Continued* negligence of receiver, 914-918 generally, 909-911

HOUSING SERVICES ACT, 2011, RECEIVERSHIPS UNDER

conditions precedent, 1051-1052 generally, 1050-1051 judicial review, 1053-1054 purpose, 1056-1057 receiver and manager appointment, 1054 powers, 1055-1056

INCOME TAX ACT

receiver's duties under, 348, 349-351 receiver's liability under, 605 source deductions, deemed trusts, 647-650

INJUNCTION

grounds, 223-224 *Mareva* injunction, 183-184, 186, 197, 201, 207-208, 1034, 1068, 1132, restrain receiver from selling, 875-879

INTERFERENCE WITH COURT-APPOINTED RECEIVER, 284-285

INTERIM RECEIVER

powers and duties of interim receiver

generally, 1091-1092

advice, 1079 appeal from interim receivership order, 1089-1091 appointment under Part II of the Bankruptcy and Insolvency Act, 17 appointment following bankruptcy order, 1088 discharge fees, 1104-1105 generally, 1103 taxation of accounts, 1105-1108 forms/precedents application for interim receiver, 1196 order appointing interim receiver, 1291, 1292 grounds for appointment s. 46 — appointment after application for bankruptcy order, 1067-1072 s. 47 — appointment after s. 244 notice, 1073-1082 s. 47.1 — appointment under proposal, 1082-1088 jurisdiction, 1064-1066

INTERIM RECEIVER — Continued

powers and duties of interim receiver — Continued

- s. 46 appointment after application for bankruptcy order, 1092-1096
- s. 47 appointment after s. 244 notice, 1097-1101
- s. 47.1 appointment under proposal, 1101-1103

proceedings under *Bankruptcy and Insolvency Act* against, 376-377 role, 18

undertaking as to damages, 1103

INVESTIGATIVE RECEIVER, 37-38, 186, 188, 1035

LANDLORD AND TENANT

effect of tenant's bankruptcy on landlord co-operation between receiver and trustee, 792-795 distress and termination against receiver, 795-796 generally, 790 right of distress, 791-792 right of termination, 792 landlord in receivership leases, 554-555 prior security, 554 renewal of lease and new leases, 556-557 rent, 555-556 tenant in receivership court-appointed receiver, 548-549 generally, 546-547 occupation rent, 550-553 privately appointed receiver, 547-548

LIABILITY, 21-22, 29-30, see also CONTRACTUAL PRIORITIES AND LIABILITIES

LIENS, STATUTORY

defeating, 347 fixed charge, and, 76 generally, 27-28, 588-590 priorities, 592-593, 594-596

LIMITED RECEIVERSHIP APPOINTMENT, FIXED CHARGE, AND, 79

LIQUIDATION

generally, 173, 316, 317 informal, 11

MANAGER, see also COURT-APPOINTED RECEIVER; PRIVATELY APPOINTED RECEIVER

differences between receiver and manager, 267-269 status of receiver, 282

MODEL TEMPLATE RECEIVERSHIP ORDER

form/precedent, 1206 generally, 225-228

MONITOR

appointment
court appointment under Companies Creditors Arrangement Act, 15-16,
1039-1040
form/precedent, 1155
generally, 11, 15
duties and powers, 16-17, 18-19, 1040-1042
function and role, 11-12, 14-15, 17, 18-19
possible problems relating to appointment, 12-14
reports, 19

NATIONAL RECEIVER, 1114-1116

OFFICERS, see also DIRECTORS, RIGHTS OF

powers, 276-279

PASSING ACCOUNTS

duty to pass generally, 731-733 purpose, 734-736 reference to registrar/master or judge, 733 procedure, 736-741 receipts and disbursements 736-738 timing of passing 731

PERSONAL PROPERTY SECURITY LEGISLATION

charges, and, 111-113
contractual priorities

Personal Property Security Act agreements, 530-538

Personal Property Security Act agreements and security under Bank Act, 539-541

debtor's rights under Personal Property Security Act generally, 941-942

right to challenge disposition of collateral, 949-950

right to challenge use of collateral by secured party in possession, 942-943

right to object to notice of retention, 945-946

```
PERSONAL PROPERTY SECURITY LEGISLATION — Continued
debtor's rights under Personal Property Security Act — Continued
  right to receive notice of sale, 943-944
  right to recover loss or damage, 947-948
  right to redeem, 947
  right to require statement of account, 942
  right to surplus, 944-945
  right to waive or vary security agreement, 948
priorities
  corporate debentures, 978
  exclusions
     consignments, 981-982
     express exclusions, 983-986
     generally, 978-979
     implied exclusions, 979-981
     principal and agency, 983
     purchase-money security interest, 986-987
     transfers of interest, 987-988
     trust property, 982
  generally, 976-978
receivership under
  Alberta, 952-956
  British Columbia, 956-964
  generally, 926-930
  Manitoba, 964-965
  New Brunswick, 965-969
  Newfoundland & Labrador
  Nova Scotia, 965-969
  position of receiver, 930-934
  Prince Edward Island, 965-969
  Saskatchewan, 970-975
  specific rights and duties of receiver/manager
     disposition of collateral, 939-941
     receiver in possession, 935-938
     taking possession, 935
  summary application to court, 950-952
sale of personal property
  generally, 451-452
  mechanics of sale 456-458
  notices, 452-456
  sale, 456-462
  standard of care 458-460
     on disposition 458-460
```

while in possession, 315, 938, 947-950

PERSONAL PROPERTY SECURITY LEGISLATION — Continued

validity of advances, 132 bankruptcy, upon, 803-804 execution and registration, 125-128

PLEDGE AND DEBENTURE, 160-162

POWER OF SALE

Bank Act security, 491-498 contractual, 384 debenture, under, 462-491 generally, 383-389 mortgage, under, 473-491 power of sale, 324, 462-491 standard of care under

Bank Act security, 494-498 court approval, 426-441 debenture, 467-491 mortgage, 479-491 personal property security, 458-462

POWERS OF RECEIVER. See COURT-APPOINTED RECEIVER; PRIVATELY APPOINTED RECEIVER

PRESENTMENT, 141-142

PRIORITIES, see also CONTRACTUAL PRIORITIES AND LIABILITIES

borrowings, receiver, 544-545
business taxes, 626-628
construction liens, 679-685
corporations taxes, 641-645
deemed trusts, 590-592
employees
benefits, 623-624
employees of receiver, 605-618
rights on receivership, 600-601
vacation pay, 618-623
wages and wage earner protection program, 602-605
realty taxes, 624-626
sales taxes
excise tax/GST/HST, 635-641
retail sales tax, 628-635

```
PRIORITIES — Continued
source deductions
  deemed trusts in bankruptcy, 657-659
  generally, 646-650
  history, 651-656
  third party demands and enhanced garnishment, 659-665
statutory liens and deemed trusts
  deemed trusts, 590-592, 596-600
  generally, 588
  liens, 588-590, 594-596
  priorities, 592-593
unpaid suppliers
  bankruptcy or receivership, 689
  demand, 688-689
  generally, 685-688
  identifiable goods, 689-692
utilities
  hydro and gas, 672-678
  telephone service, 678-679
workers' compensation, 665-672
PRIVATELY APPOINTED RECEIVER
advantages, 50
agency, 58-59, 287-293
access to court, debtor or third parties, 24
appointment of, 174-177
bankruptcy
  assignment, 830-832
  petition for bankruptcy order, 830
comparison with court appointment, 66-67
considerations, whether court or private appointment, 66-67
costs, 63-64
court approval of sale of assets, 404-405
deemed agency clause, 26-27
discharge
  generally, 64-65, 780-782
  grounds, 769-774
duties
  generally, 54-55, 304-307
  standard of care, 306-307
  statutory, 347-359
forms/precedents
  acknowledgement and consent by debtor, 1251
  bill of sale, 1264
```

PRIVATELY APPOINTED RECEIVER — Continued forms/precedents — Continued consent by debtor to sale, 1253 deed from security holder and/or receiver under Registry Act, 1260 discharge of receiver and manager, 1267 indemnity from trustee in bankruptcy, 1268 notice of appointment to debtor, 1251 notice of intention to sell, 1252 private appointment, 1250 transfer of land under Land Titles Act, 1254 indemnity, 58 invalid appointment damages, 252-254 generally, 248-251 liability, 29-30 method of appointment, 50-51 powers apply for advice and directions, 339-347 borrow money to preserve assets, carry on business, 321-322 do any deed necessary in realization of security, 347 execute deeds, enter contracts, 326-327 generally, 54-55, 296 institute, defence or continue proceedings, 327-337 manage, carry on business, 315-320 recover property, 337 sell, lease or dispose of assets, 323-326 settle or compromise indebtedness, 337-339 take possession of debtor's property, 307-315 realization generally, 61-62 standard of care, 32 reports, 704-706 remuneration generally, 727-728, 752-753 quantum, 754-768 status agency, 287-292 generally, 58-60, 286-287 termination of agency, 292-293 **PROPERTY** abroad, 75

cases in which receiver will not be appointed, 74

collateral, 71-75, 931

PROPERTY — Continued conversion on sale, 84-85 determination of ownership, 85-88 leasehold interest, 463-464, 502 moneys paid into court, 105 perishable, 187 third party property, 541 trust property, 85-90 unrealizable, 64, 778-781 vesting of, 439-440, 472-473

REALIZATION, see also **COURT-APPOINTED RECEIVER**; **PRIVATELY APPOINTED RECEIVER**

```
auction sales, 397
costs
  allocation, 517-518
  types of costs and expenses, 515-517
court approval
  appeal from, 425-426
  court-appointed receiver, 406-409
  privately appointed receiver, 404-405
  receiver's recommendations, 409-411
  standard of care, 426-428
court-appointed receiver, and, 60-61
hearing
  appeal from sale approval order and vesting order, 421
  Bankruptcy and Insolvency Act
     receivership not under, 425-426
     receivership under, 422-424
  generally, 411-415
  sealing of information, 421
  unsuccessful purchasers, 415-419
  vesting order, 419-420
private sales
  appraisals, 398
  generally, 397-398
privately appointed receiver, and, 61-62
receiver's conduct, 383-389
sale en bloc
  agreement of purchase and sale, 498-502
  employees — unions, 503-513
sale of personal property under PPSA
  generally, 451-452
  notices, 452-456
```

```
sale of personal property under PPSA — Continued
  sale, 456-462
sale under mortgages and debentures
  personal property, 462-464
  real property, 464-478
  standard of care, 478-491
sale under s. 427 Bank Act security
  generally, 491-494
  standard of care, 494-498
sales, types
  auction, 397
  generally, 389-390
  stalking horse bids, 390-395
  tender, 395-397
standard of care
  appeals, 441
  completing the sale, 439
  generally, 31-32, 426-428
  quick sales and flips or pre-packaged sales, 437-438
  sale under mortgages and debentures, 478-491
  Soundair test, 428-436
  Soundair, cases considering or following, 442-449
  vesting order, 439-440
statement of receipts and disbursements, 513-515
tender sales, 395-397
who may purchase assets
  generally, 399-401
  sale to related persons, 401-404
REALTY TAXES, PRIORITIES, 624-626
RECEIVER/RECEIVER AND MANAGER, see also INTERIM
 RECEIVER
advance of funds to debtor to defend proceedings, 277-278, 286, 882-884,
 889-890
advice and directions, types of motions, 377-381
appointment
  method and purpose, 7-10
  security agreement, under, 174-177
  who may not act, Rules of Professional Conduct, 265
```

REALIZATION — Continued

contempt proceedings against, 295

considerations, whether court or private appointment, 66-67

${\bf RECEIVER/RECEIVER~AND~MANAGER}-Continued$

contractual priorities and liabilities. See CONTRACTUAL PRIORITIES AND LIABILITIES

```
court appointment
  application under Bankruptcy and Insolvency Act, Part II, 243-244
  application under Bankruptcy and Insolvency Act, s. 243, 244-246
  application under Rules of Civil Procedure, 243
  commencement of action, 217-219
  form of order, 225-242
  generally, 177
  jurisdiction, 178-187
  motion or application, 219-224
  motion under s. 101 Courts of Justice Act, 242-243
  other provincial, territorial and federal legislation, 246-248
  who may apply, 187-216
definition
  difference between receiver and manager, 267-269
  interim receiver, 5
  investigative receiver, 37-38
  national receiver, 4
  official receiver, 5
  soft receivership, 11
  trustee as receiver, 1133-1135
discharge
  court appointed receiver, 774-779
  grounds, 769-774
  privately appointed receiver, 780-782
  refloating the charge, 782-784
history, 1-6
invalid appointment
  damages, 252-254
  generally, 248-251
lawyer for, 117-120, 367, 767
legal proceedings against, other than by debtor
  Bankruptcy and Insolvency Act proceedings against interim receiver, 376-
  generally, 359-360
  no exercise of rights or remedies, 362-369
  proceedings against debtor, 360-361
  proceedings against interim receiver, 376-377
  proceedings against receiver, 361-362
  who is affected by order, 369-376
methods of appointment. See APPOINTMENT
model template receivership order, 50, 180, 225-226
```

```
RECEIVER/RECEIVER AND MANAGER — Continued
national receiver, 4, 8-10, 410, 1114-1116
neutrality, 40-41
office of
  differences between receiver and manager, 267-269
  who may be receiver, 259-267
passing accounts
  duty to pass, 731-736
  procedure, 736-741
personal liability, 21-22
power to sell restricted, 24
powers and duties, see also COURT-APPOINTED RECEIVER;
 PRIVATELY APPOINTED RECEIVER
  duties, 296-307
  powers, 293-296
  statutory duties, 347-359
  types of powers and corresponding duties, 307-347
qualifications of, 30-31
remuneration
  court appointed receiver, 741-752
  generally, 727-728
  privately appointed receiver, 752-753
  quantum, 754-768
reports, 51
sale of assets
  auctions, 397
  marketing, 386, 390
  order of the court, 406-412
  quick sales and flips or pre-packaged sales, 437-438
  tender package, 395-397
  vesting order, 439-440
standard of care on realization
  appeals, 441
  completing the sale, 439
  generally, 31-32, 426-428
  court appointment, 269-285
  private appointment, 286-293
RECEIVERSHIP, GENERALLY
appealing orders, 42-43
bankruptcy and receivership, dual role, 263-266
consultant. See CONSULTANT
final remedy, as, 23
```

RECEIVERSHIP, GENERALLY — Continued generally, 19-21, 22-23 inter-provincial, need for rules governing, 36-37 licensing receivers, 4 requirement to be licensed, 4 supervision under Superintendent of Bankruptcy, 4 model template receivership order, 225-228 overlapping jurisdiction, paramountcy, powers and terminology, 33-35 personal property security legislation, under. See PERSONAL PROPERTY SECURITY LEGISLATION problems associated with accessibility to court, 24 accountability of monitor and of receiver, 29-30 abuses of, 35-36 deemed agency clauses, 26-27 effect on third parties examination of, 813-814, 1098, final remedy, receivership as, 23 harmonization of rules, need for, 36-37 jurisdiction, overlapping, 33-35 powers of sale, restricting receivers, 24-26 standard of care when in possession and on sale, 31-32 third parties, 26 RECEIVERSHIP, SPECIFIC TYPES Bankruptcy and Insolvency Act. See BANKRUPTCY AND INSOLVENCY ACT Business Corporations Act, receiverships of corporations governed by grounds for appointment, 1034-1035 jurisdiction, 1032-1034 powers and duties of receiver and manager, 1035-1039 Companies' Creditors Arrangement Act, receiverships under appointment of receiver, 1042-1045 initial order and role of monitor, 1039-1042 timing of application in CCAA proceeding, 1045-1050 Construction Act, appointment of trustee under distribution of sale proceeds, priorities, 1029-1031 grounds for appointment, 1026 history of legislation, 1022-1023 jurisdiction, 1023-1025 powers and duties of trustee, 1027 realization, 1027-1029

RECEIVERSHIP, SPECIFIC TYPES — Continued Courts of Justice Act, appointment of receiver by way of equitable execution under jurisdiction, nature of relief, 992-994 restrictions on relief, 994-998 special circumstances, 1004-1007 where relief granted, 998-1000 where relief refused, 1001-1003 Courts of Justice Act, appointment of receiver/manager under mortgage or pursuant to grounds for court appointment, 1009-1011 jurisdiction, 1007-1009 liabilities, general, 1017-1022 leases, 554-555 possession, 1012-1017 powers and duties while in possession, 1011-1012 generally, 990-991 Housing Services Act, 2011, receiverships under conditions precedent, 1051-1052 generally, 1050-1051 judicial review, 1053-1054 purpose, 1056-1057 receiver and manager appointment, 1054 powers, 1055-1056 REMEDIES bankruptcy order, application for, 173-174 court appointment of receiver and manager application under Bankruptcy and Insolvency Act, Part II, 243-244 application under Bankruptcy and Insolvency Act, s. 243, 244-246 application under Rules of Civil Procedure, 243 case list, satisfying just and convenient rule, 255-257 commencement of action, 217-219 form of order, 225-242 generally, 177

jurisdiction, 178-187

foreclosure, 171-172 generally, 169-171

who may apply, 187-216

motion or application, 219-224

motion under s. 101 Courts of Justice Act, 242-243

other provincial, territorial and federal legislation, 246-248

REMEDIES — Continued invalid appointment damages, 252-254 generally, 248-251 legal proceedings for arrears of payments, 171 private receiver and manager, appointment of, 174-177 winding-up or liquidation, 173

REMUNERATION

court appointed receiver, 741-752 draw, 738-739 legal accounts, 767 privately appointed receiver, 752-753 quantum, 754-768 bonus fees 767 standard, 754-758 percentage, 758-759 quantum meruit approach, 756 receiver and manager, 727-728 statement of remuneration, 1177

RENT

landlord in receivership, 555-556 tenant in receivership, occupation rent, 550-553

REPORTS, see also **ACCOUNT**

common law notice and reports
court appointed receiver
cross-examination of, 700-704
generally, 697-698
financial information, 700
narrative, 698-800
privately appointed receiver, 704-706
particulars of report, 706-708
statutory notice and reports
content of report, 695-697
format of report, 694-695
generally, 693-694

REVIEW OF SECURITY PRIOR TO ENFORCEMENT

forbearance agreement, 117-118 form/precedent, 1157 generally, 115-117 guidelines, 118-120

REVIEW OF SECURITY PRIOR TO ENFORCEMENT — Continued

validity, advances

Bank Act, s. 427 security, 132
debentures, 129-131
personal property security agreements, 132
validity, execution and registration
Bank Act, s. 427 security, 128-129
debentures, 120-125
personal property security agreements, 125-128

SALE OF ASSETS. See REALIZATION

SALE UNDER BANK ACT. See BANK ACT, s. 427 SECURITY

SALE UNDER PPSA. See PERSONAL PROPERTY SECURITY LEGISLATION

SALES TAXES, PRIORITIES

excise tax/GST/HST, 635-641 retail sales tax, 628-635

SECURITIES ACT

appointment of receiver under, 34, 46, 185-186, 206, 991

SET-OFF. See CONTRACTS

SOFT RECEIVERSHIP, 11

SOUNDAIR TEST

cases considering or following, 442-449 generally, 428-430 elements of test best price, was sufficient effort made to obtain, 430-433 efficacy and integrity of process considered, 434-435 interest of parties considered, 433-434 unfairness in process considered, 435-436

SOURCE DEDUCTIONS, PRIORITIES

Canada Pension Plan, 646
deemed trusts in bankruptcy, 657-659
Employment Insurance Act, 646-647
generally, 646-650
history, 651-656
Income Tax Act, 647-649
third party demands and enhanced garnishment, 659-665

STALKING HORSE BIDS, 390-395

STANDARD OF CARE, COURT APPROVAL OF SALE

appeals, 441
completing the sale, 439
generally, 426-428
quick sales and flips or pre-packaged sales, 437-438
Soundair test, 428-436, 442-449
vesting order, 439-440
Wood v. Bank of Nova Scotia et al.
cases considering or following, 519-520
generally, 483-485

TENANT. See LANDLORD AND TENANT

TORRENS SYSTEM, 464, 476-477

TRUSTEES IN BANKRUPTCY. See BANKRUPTCY

UNPAID SUPPLIERS, PRIORITIES

bankruptcy or receivership, 689 demand, 688-689 generally, 685-688 identifiable goods, 689-692

UTILITIES, PRIORITIES

hydro and gas, 672-678 telephone service, 678-679

VACATION PAY. See EMPLOYEES

VESTING ORDER

appeal from approval order and, 421, 441 forms/precedents model approval and vesting order, 1238 order granting vesting order, 1244 generally, 419-420, 439-440 sales under legislation, 471-473

WAGE. See EMPLOYEES

WINDING-UP, 173

WOOD v. BANK OF NOVA SCOTIA ET AL.

cases considering or following, 519-520

WOOD v. BANK OF NOVA SCOTIA ET AL. — *Continued* generally, 483-485

WORKERS' COMPENSATION, PRIORITIES, 665-672