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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), 8 (*BIA* — Part VII Courts and Procedure), 22 (*CCAA* — Part II: Jurisdiction of Courts) and 23 (*CCAA* — Part III: General).

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Case Law Highlights

- The Manitoba Court of Appeal dismissed an appeal of a bankruptcy order and dismissed the applicant's appeal from an order failing to award elevated costs against the president of the debtor personally. Edmond J.A. held that an order of costs is a highly discretionary decision and cost awards are not lightly interfered with by the appellate court unless the judge made an error in principle and the award is plainly wrong. Awarding costs against directing minds of a corporation should be used sparingly: it must be shown that the directing mind or non-party had status to bring the action themselves; that the corporation was not the true litigant; and the corporation was a "person of straw" put forward to protect the true litigant from liability for costs: *Sensible Capital Corp v. Galton Corporation*, 2025 CarswellMan 429, 2025 MBCA 107 (Man. C.A.).
- The Ontario Superior Court of Justice approved a CCAA plan administrator's report after considering statutory restrictions in s. 11.7 of the CCAA. The plan provided that the monitor would assume the role of the CCAA plan administrator as an independent court officer to facilitate coordinated administration of the plans. However, the CCAA plan administrator did not disclose to the court for almost a year that it had engaged the firm's own audit arm. Chief Justice Morawetz held that in CCAA proceedings, the court must be satisfied that the appointment of a monitor not only satisfies the statutory requirements, but also reflects that the monitor be independent and not be in a position of real or perceived conflict. By analogy, appointment of a CCAA plan administrator should reflect the same standard. Chief Justice Morawetz concluded that the sequencing of the engagement of the auditor did not give rise to a violation of s. 11.7 of the CCAA as at the time of its appointment as monitor, it was not the auditor of the debtor company. At this point in time, the plan administrator sought the court's approval of its activities, including its implementation of safeguards to preserve independence between the administrator and audit team members. Chief Justice Morawetz noted that the timing of the request was regrettable as the issues before the court should have been brought forward a year prior; however, he was satisfied that the safeguards in place, together with further conditions, were sufficient to preserve the integrity of the process: *Imperial Tobacco Companies Limited*, 2026 CarswellOnt 347, 2026 ONSC 143 (Ont. S.C.J.).
- The Ontario Superior Court of Justice held that the s. 69(1) BIA stay in notice of intention proceedings ("NOI") did not apply to a secured creditor that had fully exercised its contractual right of termination before the time the BIA stay was first initiated. Kimmel J. held that the creditor exercised and relied on its contractual remedy of termination and its absolute right to the use and possession of the leased equipment as its legal owner once the lease agreements were terminated. Also, s. 69(2)(b) BIA renders the BIA stay inapplicable to a secured creditor seeking to enforce security who gave notice of intention under s. 244(1) to enforce that creditor's security against the insolvent person more than 10 days before an NOI notice was filed: *Re Walgre Transport Inc.*, 2025 CarswellOnt 21577, 2025 ONSC 7143 (Ont. S.C.J. [Commercial List]).