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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 2 *BIA* — Part I Administrative Officials), 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) 8 (*BIA* — Part VII Courts and Procedure), 10 (*BIA* — Part IX Miscellaneous Provisions), 20 (*CCAA* — Interpretation, 21 (*CCAA* — Part I: Compromises and Arrangements), 22 (*CCAA* — Part II: Jurisdiction of Courts), 23 (*CCAA* — Part III: General) and 24 (*BIA* — Part IV: Cross-Border Insolvencies).

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Case Law Highlights

- The Newfoundland and Labrador Supreme Court held that a claim for indemnification was not barred by the doctrines of *res judicata* and issue estoppel. For a cause of action to be properly advanced, the elements of the cause of action must be set out, the material facts that ground those various elements must be concisely stated, and the relief sought must be available for the specific cause of action advanced. Here, the pleadings met these criteria. The wording of the approval and vesting order did not intend to extend to personal contractual obligations that could not be released under s. 5.1(2) of the *CCAA*: *Intact Insurance Company v. Edward Collins Contracting Limited*, 2026 CarswellNfld 100, 2026 NLSC 49 (N.L. S.C.).
- The Court of Appeal for Ontario dismissed an appeal of a judgment that dismissed the appellant's action against two respondents on the basis that he was an undischarged bankrupt at the relevant time. Notwithstanding the bankruptcy, the trustee permitted the appellant to remain in possession of a combined commercial and residential property, and during that period, it was damaged in a fire. Without informing the trustee, the appellant commenced an action. The motion judge held that there had been no assignment of the right to commence legal proceedings. The Court of Appeal held that all property of the bankrupt vests in the trustee. A trustee may assign a bankrupt the authority to commence legal proceedings, but it has been done through an express assignment. Justice Monahan found that the motion judge did not err in finding no assignment was made: *Phillips v. Kheil*, 2026 CarswellOnt 4476, 2026 ONCA 215 (Ont. C.A.).
- The Manitoba Court of Appeal held that s. 178(1)(e) of the *BIA* applies only to debts or liabilities that have arisen from one or more deceitful statements by the debtor, or for which the debtor is responsible, on the basis of which the debtor obtained services or property. The Court of Appeal was satisfied that when the entire context was considered, it was reasonably open to the application judge to conclude that the findings made in a civil action were sufficient to characterize the judgment debt as falling within the ambit of s. 178(1)(e) of the *BIA*. The Court found no palpable and overriding error by the application judge. The appeal was dismissed: *Stewart v. Auch*, 2026 CarswellMan 67, 2026 MBCA 21 (Man. C.A.).
- The Alberta Court of Appeal held that, in certain circumstances, "equity investors" can commence *CCAA* proceedings if they are "persons interested" under s. 11 of the *CCAA*; for example, when there is a reasonable possibility at the time of the initial order that the debtor company is "cash flow" insolvent and has greater total assets than liabilities. The Court of Appeal considered whether the *CCAA* proceedings were bound to fail or lacked a "germ of a plan", finding that the applicant must at least identify the aims of the *CCAA* proceedings and provide some sense of what they intend to do, so the court can assess whether there is a reasonable possibility of success. The Court further held that s. 11 is broad enough to authorize orders binding non-debtor companies: *Angus A2A GP Inc v. Alvarez & Marsal Canada Inc*, 2026 CarswellAlta 1258, 2026 ABCA 156 (Alta. C.A.).