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CANADIAN COMMERCIAL REORGANIZATION

Richard H. McLaren

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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), 3 (The Application Process), 4 (Creation of a Reorganization Plan), and 7 (Receivership under the Bankruptcy and Insolvency Act).

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Highlights:

• **Creation of a Reorganization Plan—Arrangements Under the *Companies' Creditors Arrangement Act*—Asset Sales—*CCAA* Asset Sales—Post 2009 Amendments—**The Alberta Court of Appeal dismissed an application for appeal on the interpretation of s. 36(6) of the *CCAA* in a credit bid sale with no cash proceeds. BP, a secured creditor of COPL, argued that s. 36(6) applied because Summit, an equal creditor, acquired all of COPL's assets and BP lost its security. BP claimed the assumption of debt should count as "proceeds" to be shared. The Court rejected this, holding that treating assumed liabilities as proceeds would undermine the *CCAA* by making going-concern sales unworkable, as purchasers would effectively have to pay all creditors in full. With no supporting authority, the appeal was dismissed: *Canadian Overseas Petroleum Limited (Re),* 2024 ABCA 190 (Alta. C.A.).

• **The Application Process—Stay of Proceedings under the *Companies' Creditors Arrangement Act*—General—Introduction and the Initial Order—**The Ontario Superior Court of Justice granted Hudson's Bay Company an Initial Order under s. 11.02 of the *CCAA* after it became insolvent and faced a severe liquidity crisis. The Court imposed a ten-day stay and extended it to certain affiliated and joint-venture entities under its broad jurisdiction in ss. 11 and 11.01(2). It also approved DIP financing and a DIP charge under s. 11.2, finding the statutory criteria met and the financing reasonably necessary. The decision confirms that s. 11.02 provides immediate protections to stabilize a debtor at the outset of *CCAA* proceedings: *Re Hudson's Bay Company*, 2025 ONSC 1530 (Ont. S.C.J. [Commercial List]).

• **Receivership under the *Bankruptcy and Insolvency Act*—Scope of Part Xi of the *Bankruptcy and Insolvency Act*—Notice of Intention to Enforce Security—**The Supreme Court of British Columbia considered the interaction between the *BIA* and the *Farm Debt Mediation Act* (FDMA) in a receivership application. CIBC sought to appoint PwC as an interim receiver under s. 47(3) of the *BIA,* with plans to later seek a full receivership under s. 243. The Court held that appointing an interim receiver is a "remedy against property" under the *FDMA*, triggering its notice and standstill requirements. Adopting a broad, remedial interpretation of the *FDMA*, the Court found it took precedence over CIBC's immediate enforcement rights under the *BIA*. The Court also reaffirmed that interim receivership is an extraordinary remedy, and since no strict necessity was shown, the application was denied: *Canadian Imperial Bank of Commerce v. Foxtrot Farms ULC,* 2024 BCSC 1019 (B.C. S.C.).