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PRIORITY OF CROWN CLAIMS IN INSOLVENCY

Lamer

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Introduction

This text is designed to aid the practitioner in remaining current with the nature of the law of Crown Claims in the various processes of insolvency. Resolving priorities between contractual personal property security transactions and statutory Crown security interests means navigating numerous legislative provisions, wrestling with conflicting case law, and balancing bankruptcy and insolvency law, *Bank Act* security, the *Income Tax Act*, the *Excise Tax Act* and federal/provincial jurisdictions. This text provides: a thorough overview of the general principles applicable to the priority of statutory Crown claims; the constantly evolving rules governing statutory priorities including those resulting from interplay of the *Bankruptcy and Insolvency Act*, the *Bank Act*, the *Income Tax Act* and the *Excise Tax Act*; an in-depth analysis of Crown security interests, such as deemed statutory trusts, statutory liens, super priority and enhanced garnishment orders and an examination of the impact of the *Companies' Creditors Arrangement Act* (CCAA) on the other legislative regimes.

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Highlights

Appendix A, D-E, G-K – The legislation has been updated in this release for the following jurisdictions:

- Federal
- Saskatchewan
- Manitoba
- Quebec
- New Brunswick
- Nova Scotia
- Prince Edward Island
- Newfoundland

Appendix IF Issues in Focus – The following legal memos have been updated:

- **§ IF:5. What liabilities do corporate directors face with respect to taxes?**

"Corporate directors are liable under a myriad of statutes, such as the *Canada Business Corporations Act* [generally], the *Business Corporations Act* [generally], (Ontario), and the *Bankruptcy and Insolvency Act* [generally]. Additionally, directors may also be held liable for certain tax liabilities of the corporations they serve. Specifically, corporate directors can be held personally liable under the *Income Tax Act* [generally], the *Excise Tax Act* [generally], the *Employment Insurance Act* [generally], the *Employer Health Tax Act* [generally], the *Corporations Tax Act* [generally], and the *Retail Sales Tax Act* [generally], as well as under the *Canada Pension Plan* [generally].

It is worth noting that although the term "director" is not defined in these statutes, there is a general consensus in Canadian case law that "an individual, who has been properly elected and constituted as a director of the corporation, sufficiently falls within the scope of the director liability provisions of the Tax Statutes." However, even if an individual has not been properly elected or constituted as a director, it is nevertheless still possible to be considered a "director in fact" and be held liable for some corporate tax debts."

- **§ IF:18. Are teachers' pensions exempt from seizure?**

"It appears that the exemption of pensions, and in particular teacher's pensions, from attachment and seizure discussed above has only very limited exceptions. These exceptions would not likely apply in the instant matter. They concern the situation where CCRA is the creditor and that where the teacher has committed a gross breach of trust, such as a sexual assault, and the judgment creditor has been awarded punitive damages.

Wainio v. Ontario Teachers' Pension Plan Board, 2000 CarswellOnt 1135, [2000] O.J. No. 1175 (Ont. S.C.J.) was an Ontario case considering the attachability of a teacher's pension. In this case, it was held that the general exemption of pension funds from execution, seizure and attachment set out in s. 66(1) of Ontario's *Pension Benefits Act* did not bind the CCRA pursuing unpaid taxes under the *Income Tax Act* [generally]. In that case, the Court held that, although the provincial pension legislation stated it was binding on the Crown, the federal *Income Tax Act* overrode that provision."

Appendix WP Words and Phrases – New entries have been added, including the following excerpts:

§ WP:151 Future Right

Ontario

[The claimant] interprets "future" rights to include rights a litigant may but will not necessarily obtain in future litigation. That is not a correct definition of a future right as it would mean that any claim advanced includes a future right to a judgment. Rather, a s. 193(a) future right is one that will come into existence at a future time.

Proex Logistics Inc (Re), 2025 ONCA 832 at para 43.

§ WP:96 Defalcation

Alberta

Defalcation as used in *[Bankruptcy and Insolvency Act]*; s 178(1)(d) means wrongful conduct by a fiduciary in relation to money or property that is akin to money under the fiduciary's management or control.

Wild Rose Meats Inc v Andres, 2025 ABKB 487 at para 22.