

# Table of Contents

<i>Annual Review of Insolvency Law: Editorial Advisory Board</i> .....	iii
<i>Annual Review of Insolvency Law: ARIL Society Inc Board of Directors</i> .....	v
<i>Acknowledgements</i> .....	vii
<i>About the Editors</i> .....	ix
<i>Preface</i> .....	xi
<i>Summary Table of Contents</i> .....	xiii

## **The Final Countdown: Sufficient Certainty and the Scope of**

<b>Provable Contingent Claims</b> .....	1
I. Introduction.....	1
II. Contingent Claims.....	2
1. Evaluating Contingent Claims: Arriving at Sufficient Certainty.....	2
2. Defining Provable Claims: <i>AbitibiBowater's</i> Tripartite Test.....	4
3. The Principles of CCAA Restructuring and the Treatment of Contingent Claims.....	6
<i>i. Foundational objectives of the claims process under the CCAA</i> .....	6
<i>ii. Central role of the sufficient certainty test in the evaluation of contingent claims and the equitable treatment of creditors</i> .....	8
4. Principles Governing Provable Claims and Claims Based on the Exercise of Discretion by a Public Body.....	9
III. Contingent Claims and the Discretionary Decisions of Administrative Bodies.....	11
1. No Provable Claim until Discretion is Exercised: <i>Re Air Canada</i> and <i>Re Thow</i> .....	11
<i>i. Re Air Canada</i> .....	11
<i>ii. Re Thow</i> .....	13
2. Admissibility of “Sufficiently Certain” Discretionary Claims.....	15
<i>i. Re Lemare Holdings Ltd</i> .....	15
<i>ii. Chambre de la sécurité financière c Thibault</i> .....	17

iii. <i>Interpreting Thibault</i> .....	19
3. <i>AbitibiBowater</i> Redux: The Peculiar Case of Pension Plan Wind-ups After Approval of a Plan of Arrangement.....	22
IV. Conclusion .....	26
<b>Canada’s Insolvency Crisis Point: Consumer Vulnerability and Reform in New Brunswick</b> .....	29
I. Introduction.....	29
1. Consumer Insolvency Rates in Canada .....	32
2. Consumer Insolvency Rates in New Brunswick .....	37
3. Methodology and Objective .....	41
i. <i>Limitations</i> .....	46
II. Socio-Economic Trends in Atlantic Canada .....	47
1. Elevated Poverty Rates and Financial Vulnerability .....	48
2. Lower Income Levels and Economic Disparities.....	52
3. High Levels of Household Debt and Limited Financial Resilience .....	60
4. Demographic Challenges and an Aging Population .....	66
5. Low Financial Literacy Levels and Financial Mismanagement .....	70
III. Socio-Economic and Financial Profile of Insolvent Consumers in New Brunswick .....	75
1. Insolvency Filing Patterns .....	75
2. Demographic Characteristics .....	78
3. Income and Expenditure Patterns.....	90
i. <i>Income patterns</i> .....	90
ii. <i>Expenditure patterns</i> .....	94
4. Asset and Liability Profiles.....	101
i. <i>Asset profiles</i> .....	101
ii. <i>Liability profiles</i> .....	111
5. Financial-Ratio Analysis.....	121
6. Reported Reasons for Insolvency .....	126
IV. Key Drivers and Recommendations .....	129
1. Key Drivers of Insolvency in New Brunswick: Summary .....	129
i. <i>Structural drivers (macro-level pressures)</i> .....	130

ii.	<i>Household-level drivers (micro-level pressures)</i> .....	132
2.	Recommendations .....	134
i.	<i>Public-policy recommendations</i> .....	134
ii.	<i>Strengthening consumer protection and legal reform measures</i> .....	136
iii.	<i>Reinvesting in financial consumer protection</i> .....	140
iv.	<i>Preventive approaches to debt management</i> .....	142
V.	Conclusion .....	144
<b>Recharacterization in Canadian Insolvency Proceedings:</b>		
<b>Recent Trends and Practical Considerations</b> .....		
I.	Introduction .....	147
II.	Subordination of Equity Interests in Insolvency .....	148
1.	Common Law Origins .....	149
2.	Codification .....	150
3.	Consequences of Equity Characterization .....	154
III.	Recharacterization .....	156
1.	Recharacterization as a Judicial Remedy .....	156
i.	<i>Recharacterization claimants</i> .....	157
ii.	<i>Burden of proof</i> .....	158
iii.	<i>Claims susceptible to be recharacterized</i> .....	159
2.	The Contextual Recharacterization Test .....	162
i.	<i>Distinction between debt and equity</i> .....	162
ii.	<i>The main objective: Determining the “true substance” of the transaction</i> .....	163
3.	Factors to Consider .....	165
i.	<i>Expressed intention of the parties</i> .....	165
ii.	<i>Economic reality surrounding the transaction and the parties</i> .....	166
iii.	<i>Formal agreements and repayment terms</i> .....	168
iv.	<i>Fixed or variable rates of return</i> .....	169
v.	<i>Treatment in financial statements and corporate records</i> .....	171
vi.	<i>Security for the advances</i> .....	172
vii.	<i>Reasonable expectations of repayment</i> .....	173
viii.	<i>Rejection of the US “multi-factor” scorecard approach</i> .....	174
ix.	<i>Conclusion: The contextual nature of the recharacterization test</i> .....	175

IV.	Practical Guidance.....	175
1.	Considerations for Recharacterization Participants .....	175
2.	Best Practices to Avoid Recharacterization.....	178
IV.	Conclusion .....	179
<b>Good Faith Under the BIA and CCAA: It Depends on Who You Are and Who You Ask .....</b>		
I.	Overview .....	181
II.	The Duty of Good Faith Before 2019: For Debtors, Receivers, Trustees and Monitors.....	182
III.	Post-2019 Good Faith: For Everyone? .....	189
1.	The Duty of Good Faith: Content .....	191
2.	Good Faith for Creditors .....	195
3.	Good Faith for Bidders .....	197
IV.	Remedies for Breaching the Duty of Good Faith.....	200
V.	Conclusion .....	203
<b>Property of the Bankrupt, Income or Something Else?</b>		
<b>Characterizing Disability Tax Credits in Bankruptcy .....</b>		
I.	Introduction.....	205
II.	The Disability Tax Credit.....	209
III.	The Disability Tax Credit in Bankruptcy.....	216
1.	The Legislative Framework.....	216
2.	The Case Law: Divergent Approaches.....	218
3.	Reasoning Behind the Divergent Approaches .....	223
IV.	Charting a Path Forward .....	227
1.	Statutory Interpretation and the Disability Tax Credit .....	228
i.	<i>Shared meaning of the French and English text ..</i>	228
ii.	<i>Legislative History and Evolution .....</i>	229
iii.	<i>Purposive Analysis.....</i>	239
iv.	<i>Presumption of Compliance with Constitutional and International Law .....</i>	246
v.	<i>Legislative Framework .....</i>	251
2.	Three Possible Answers .....	253
i.	<i>The Nova Scotia/Saskatchewan approach, slightly modified .....</i>	253
ii.	<i>The judicial gloss approach.....</i>	255
iii.	<i>The contingent property approach .....</i>	258
V.	Implications .....	260

1.	For Trustees .....	260
2.	For the OSB .....	263
VI.	Conclusion .....	267
	<b>We Don't Need No Education: The Case for Reform and Dark Sarcasm in Post-Secondary Classrooms .....</b>	<b>271</b>
I.	Introduction.....	271
II.	Core Challenges Facing the Post-Secondary Education Sector .....	273
1.	Restricted Revenue in Recent Years .....	273
2.	Institutions' Resistance to Change.....	278
i.	<i>Governance/financial oversight challenges of the statutory framework .....</i>	<i>280</i>
ii.	<i>Labour relations legislation and collective bargaining.....</i>	<i>283</i>
3.	Significant Impact from Government Regulation of International Students.....	285
i.	<i>Study permits.....</i>	<i>286</i>
ii.	<i>Post-graduation work permits .....</i>	<i>288</i>
iii.	<i>Open work permits.....</i>	<i>289</i>
iv.	<i>Impact of policy changes.....</i>	<i>289</i>
4.	Post-Secondary Institutions Unable to Use Insolvency Legislation .....	291
III.	What Have We Learned from Recent Cases? .....	292
1.	Quest University .....	292
2.	Laurentian University .....	294
3.	Were the <i>BIA</i> and <i>CCAA</i> Useful Tools? .....	297
IV.	Solutions: What Do We Do if We Can't File? .....	299
1.	Government Bailouts .....	300
2.	Government Loans.....	301
3.	Withholding Funds to Force a Restructuring.....	302
4.	Government Intervention.....	304
5.	Alternative Revenue Generation and Cost Savings .....	305
6.	Mergers with Other Institutions.....	307
7.	Sale to a Private Buyer.....	308
8.	Private Finance .....	310
9.	"Creative" Insolvency Filing Solutions.....	313
10.	A Full Wind-Down or Closure.....	317
V.	Conclusion .....	318

<b>Stand By Me: The Evolution of Third-Party Stays in Canadian Corporate Restructuring Proceedings</b> .....	321
I.    The Evolution of Third-Party Stays in Canadian Case Law.....	324
1.  A Review of the Case Law Prior to the Gage and Curtis Article .....	325
i. <i>Laying the groundwork: The origins of third-party stays</i> .....	326
ii. <i>Expanding the reach: Stays in favour of related entities</i> .....	328
iii. <i>Shielding key individuals: Stays for directors and officers</i> .....	330
iv. <i>Expanding the circle: Stays in favour of other types of third parties</i> .....	332
v. <i>Unsettled grounds: Inconsistencies in early third-party stays of proceedings</i> .....	335
2.  A Review of Case Law Since the Gage and Curtis Article .....	336
i. <i>Provisional guidance: Chief Justice Morawetz weighs in on third-party stays without finality</i> ....	338
ii. <i>Section 11 of the CCAA as a standalone authority: A narrow interpretation confirmed</i> ....	342
iii. <i>From doubt to certainty: Third-party stays under section 11 of the CCAA</i> .....	344
iv. <i>Consolidating principles: Affirming the CCAA court’s power to stay guarantee claims</i> .....	347
v. <i>Pushing the boundaries: Tailoring third-party stays</i> .....	349
vi. <i>Innovative protections: Third-party stays in the construction Industry</i> .....	353
vii. <i>Key takeaways from the recent case law</i> .....	355
II.   Where We Stand: The State of the Law in Canada.....	358
1.  Current State of the Law in Canada.....	358
2.  Where the Trend is Going: Challenges and Opportunities.....	363
III.  From Canada to the United States: Divergent Approaches to Third-Party Stays.....	365

IV.	Conclusion .....	369
<b>Enough is Enough: Dealing with Bad-Faith Stakeholders</b>		
<b>in Insolvency Proceedings .....</b>		
I.	Introduction.....	371
II.	A Brief History of Good and Bad Faith .....	374
	1. The Common Law Duty of Good Faith.....	374
	<i>i. Bhasin</i> .....	374
	<i>ii. CM Callow Inc v Zollinger</i> .....	375
	2. Addition of Good Faith into the <i>BIA</i> .....	376
	3. Broad Discretion of the Courts .....	377
III.	Extreme Behaviour: <i>Re Gregoriou</i> .....	377
	1. Associate Justice Rappos' Decision .....	377
	<i>i. Facts of the case</i> .....	377
	<i>ii. Reasons</i> .....	379
	2. Appeal before Madam Justice Kimmel.....	380
IV.	Determining Whether a Party Is Acting in Bad Faith ...	381
	1. Step One: First Principles .....	382
	2. Step Two: Motive .....	383
	3. Step Three: Behaviour and Actions.....	385
V.	Options Under the <i>BIA</i> .....	386
	1. Debtor Intervention.....	387
	2. Request an Examination by the Official Receiver ...	387
	3. Disallowance of the Proof of Claim .....	388
	4. Case Conference or Scheduling Appointment .....	388
	5. Advice and Directions from the Court.....	389
	6. Discharge Hearing.....	389
VI.	Conclusion .....	390
<b>Catch Me if You Can: An Examination of Good Faith and</b>		
<b>Bad Behaviour in Insolvency Proceedings.....</b>		
I.	Introduction.....	391
II.	Good Faith in Insolvency Proceedings .....	393
III.	Failure of Parties to Act in Good Faith .....	395
	1. Lack of Good Faith Prior to an Insolvency	
	Proceeding.....	396
	<i>i. Appointment of investigative interim</i>	
	<i>receivers</i> .....	396
	<i>ii. Impact on the ability to obtain relief under</i>	
	<i>insolvency statutes</i> .....	401
	2. Lack of Good Faith in an Insolvency Proceeding ...	405

i.	<i>Voting for an improper purpose</i> .....	405
ii.	<i>Lying in the weeds, or 180° turns in position</i> .....	408
iii.	<i>Misrepresentation or lack of disclosure</i> .....	411
3.	Consequences for Bad Behaviour .....	415
i.	<i>1548199 Alberta Ltd v My Mortgage Auction Corp (Shop Your Own Mortgage)</i> .....	416
ii.	<i>Canadian Western Bank v Canadian Motor Freight Ltd</i> .....	417
iii.	<i>Castillo v Xela Enterprises Ltd</i> .....	418
IV.	The Role of Licensed Insolvency Trustees in Considering Good Faith and Bad Behaviour .....	420
1.	A Practical Example .....	422
V.	Conclusion .....	425
	<b>Other People’s Property: Involuntary Bailments in CCAA Liquidations</b> .....	427
I.	Introduction .....	427
II.	Common Law and Statutory Remedies .....	430
1.	Common Law Remedies .....	430
i.	<i>Abandonment</i> .....	430
ii.	<i>Estoppel</i> .....	431
iii.	<i>Counterclaim for trespass</i> .....	432
iv.	<i>Distress damage feasant</i> .....	432
v.	<i>The “general” self-help remedy</i> .....	433
2.	Provincial Lien Legislation .....	435
III.	Involuntary Bailments and the <i>BIA</i> .....	437
1.	The Section 81 Framework .....	438
2.	Section 81 and Private Law Rights .....	442
3.	“No Strings Attached”: The Limits of Section 81 ...	447
IV.	Involuntary Bailments and the <i>CCAA</i> .....	450
1.	“Everything Must Go”: The Aftermath of Liquidation Sales .....	452
2.	Ending the Standoff: The Remedy in <i>Re Pride Group Holdings Inc</i> .....	456
V.	The Jurisdictional Question .....	463
1.	<i>Re 8640025 Canada Inc</i> : Third-Party Assets, Inside and Out .....	463
2.	<i>Re Quicksilver Resources Canada Inc</i> : The Return of <i>Nemo Dat</i> .....	465
VI.	Conclusion .....	468

<b>Revisiting Constructive Trusts in Canadian Commercial Insolvency Proceedings</b> .....	471
I. Introduction.....	471
II. Origins of Constructive Trusts in Canada .....	472
III. Constructive Trusts in Canadian Insolvency Proceedings .....	475
1. Constructive Trusts in Insolvency Cases.....	475
2. Recent Canadian Cases .....	477
IV. Applicable Principles .....	487
1. Temporal Proximity .....	487
2. Tracing.....	488
3. Priorities.....	489
4. The Nature of the Underlying Claim Does Not Change .....	489
5. Contractual Terms and Capacity Remain Important.....	490
6. Derailing Restructuring Attempts.....	490
V. Further Considerations and Suggestions .....	491
1. Expedited Preliminary Assessment .....	494
2. Preliminary Assessment Standards .....	495
3. Consequences of Unsuccessful Constructive Trust Claims .....	495
4. Preservation of Estate Assets.....	496
VI. Conclusion .....	497
<b>Balancing the Scales: How the Increased Use of Court-Appointed Receivers Promotes Fairness and Flexibility in Commercial Mortgage Enforcement</b> .....	499
I. Introduction.....	499
II. Historical and Legal Framework .....	501
1. Judicial Listing Proceedings .....	502
2. Receivership.....	503
III. Recent Case Law Regarding the Appointment of Receivers for Mortgage Enforcement .....	507
1. British Columbia.....	507
2. Alberta .....	517
3. Ontario.....	521
IV. Factors that Favour Receivership Over a Judicial Sale and Enable Flexibility and Fairness.....	529

1.	Enforcing the Parties' Bargain for the Appointment of a Receiver.....	529
2.	Nature and Preservation of the Property .....	531
3.	Conduct of the Borrower.....	535
4.	Comparative Costs .....	537
5.	Redemption and Equity .....	538
6.	Impact of Claims by Other Creditors.....	540
V.	Recommendations for Advancing Law and Practice ....	541
VI.	Conclusion .....	546
	<b>When the House of Cards Falls: Unravelling Ponzi Schemes .....</b>	<b>549</b>
I.	Introduction.....	549
II.	The Rise and Inevitable Fall of the Martel Ponzi Scheme .....	551
1.	The Genesis and Mechanics of the Martel Scheme..	551
i.	<i>Charles Ponzi</i> .....	551
2.	Engendering a Sense of Trust in MMAC's Investors.....	552
3.	Exclusivity for MMAC Investors.....	553
4.	A Perception of Legitimacy.....	554
5.	The Inevitable Collapse .....	555
III.	Overview of the Pre- <i>Martel</i> Legal Landscape.....	559
1.	<i>Re Titan Investments Limited Partnership</i> .....	559
2.	<i>Haag Capital, LLC v Correia</i> .....	563
3.	<i>Boale, Wood &amp; Company Ltd v Whitmore</i> .....	566
4.	<i>Doyle Salewski Inc v Scott</i> .....	571
5.	<i>Jastram Properties Ltd v Tan</i> .....	574
IV.	The Challenges and the Promise of the <i>Martel</i> Experience.....	576
1.	Establishing a Centralized Forum for Investigating Mr Martel's Scheme .....	576
2.	The Trustee's Investigation .....	578
i.	<i>The challenges of taking possession in a digital world</i> .....	578
ii.	<i>Casting a wide net: Locating and preserving assets</i> .....	581
iii.	<i>Grappling with a lack of funding</i> .....	585
iv.	<i>Unravelling the financial trail: Funds-flow analysis</i> .....	587

3.	Implementing a Single-Proceeding Model for the Trustee’s “Clawback” Application .....	590
i.	<i>The need for a unique clawback process</i> .....	590
ii.	<i>The structure of the clawback process order</i> .....	591
iii.	<i>Animating principles behind the clawback process order</i> .....	594
iv.	<i>Adjudication of objections to step 1 of the clawback process order</i> .....	600
4.	Continuing Efforts to Enhance Recoveries for the Investors.....	604
i.	<i>Income tax impacts for investors</i> .....	604
ii.	<i>Potential alternate paths for recovery by net losers</i> .....	606
V.	Conclusion .....	607
	<b>When the Market Speaks and the Court Says No: Lessons from Recent Judicial Refusals to Approve Insolvency Sales</b> .....	609
I.	Introduction.....	609
II.	The Law of a Sale Process .....	610
1.	Sale Approvals in Receiverships.....	610
2.	Sale Approvals in Proposals and Restructurings.....	611
3.	Approval of the Sale Process .....	613
III.	The Cases .....	615
1.	<i>Re PaySlate Inc</i> .....	615
2.	<i>Re Bron Media Corp</i> .....	619
3.	<i>Re CannaPiece Group Inc</i> .....	624
IV.	Connecting Themes .....	626
1.	The Limits of “The Market has Spoken” .....	627
2.	Parties “Wearing Multiple Hats” .....	629
3.	The Identity of the Opposing Party.....	630
4.	Valuation Evidence.....	632
V.	Objecting Effectively.....	633
1.	Participate in the Process—Early, Often and Relentlessly .....	633
2.	Manage Client Expectations .....	634
3.	Declining a Vesting Order Is Not the End .....	635
VI.	Conclusion .....	637
	<b>The Companies’ Creditors Arrangement Act: To Whom Does (and Should) It Apply?</b> .....	639
I.	Introduction.....	639

II.	The CCAA Framework and the Definition of “Company” .....	640
III.	Inherent Jurisdiction and the <i>Lehndorff</i> Principle .....	642
IV.	Stays of Proceedings Post- <i>Lehndorff</i> .....	645
V.	The Increased Use of “Involuntary” CCAA Proceedings .....	651
VI.	The Case for Legislative Reform.....	654
VII.	Conclusion .....	656
<b>Restructuring Support Agreements in Canada and the United States: A Comparative Analysis .....</b>		
I.	Overview .....	657
II.	What Is an RSA? .....	658
1.	Common Terms in Canadian RSAs.....	659
i.	<i>Covenants, commitments and support</i> .....	659
ii.	<i>Treatment of claims</i> .....	660
iii.	<i>Termination</i> .....	660
iv.	<i>Fiduciary out</i> .....	661
v.	<i>Milestones</i> .....	662
vi.	<i>Negotiation and good faith</i> .....	663
vii.	<i>Remedies for breach</i> .....	663
viii.	<i>No solicitation</i> .....	663
III.	RSAs Facilitate Pre- and Post-CCAA Proceedings and Proceedings Under the US <i>Bankruptcy Code</i> .....	664
1.	CCAA.....	664
i.	<i>RSAs entered into to avoid CCAA proceedings</i> ..	664
ii.	<i>RSAs entered into pre-CCAA proceedings</i> .....	665
iii.	<i>Authority of courts to authorize RSAs in CCAA proceedings</i> .....	665
iv.	<i>Restructuring support agreements in CCAA proceedings</i> .....	668
2.	US <i>Bankruptcy Code</i> .....	671
i.	<i>Pre-filing RSAs</i> .....	671
ii.	<i>Post-filing RSAs</i> .....	671
IV.	Advantages and Risks of RSAs.....	672
1.	Advantages .....	672
i.	<i>Support</i> .....	673
ii.	<i>Reduced uncertainty</i> .....	673
iii.	<i>Efficient and less adversarial</i> .....	674
iv.	<i>Lowered cost of formal proceedings</i> .....	674

v.	<i>Settlement of claims</i> .....	675
2.	Risks.....	676
i.	<i>Superior proposals or other transactions</i> .....	676
ii.	<i>Lengthy negotiations and strain on the company and management</i> .....	676
iii.	<i>Unwilling creditors</i> .....	676
iv.	<i>Creditor control</i> .....	676
v.	<i>Solicitation</i> .....	677
3.	Court Approval .....	678
i.	<i>Accounting for superior proposals</i> .....	679
ii.	<i>Avoiding uncertainty</i> .....	679
iii.	<i>Conduct of the negotiations</i> .....	680
V.	Adequate Protection and Control Over Asset Sales .....	682
VI.	Case Law.....	684
1.	Canada.....	684
i.	<i>Re Hudson’s Bay Company</i> .....	684
ii.	<i>Canwest Publishing Inc</i> .....	688
iii.	<i>Re Stelco</i> .....	689
iv.	<i>Re US Steel Canada Inc</i> .....	691
2.	United States.....	693
i.	<i>In re AeroCision</i> .....	693
ii.	<i>Century Glove</i> .....	694
iii.	<i>In Re Kellogg Square P’ship</i> .....	695
iv.	<i>In Re Indianapolis Downs, LLC</i> .....	696
VII.	Conclusion .....	697
	<b>Maintenance and Champerty: Still Relevant in Modern</b>	
	<b>Insolvency Litigation Funding</b> .....	699
I.	Introduction.....	699
II.	<i>Bluberi</i> : How Insolvent Litigation Funding Came to Be Approved in Canada .....	703
III.	Maintenance and Champerty: Then and Now .....	706
IV.	Bringing Maintenance and Champerty into the 21st Century .....	709
V.	Factors Indicating Assessment of Maintenance and Champerty: Summary of Findings.....	711
VI.	Factors Indicating Assessment of Maintenance and Champerty: The Analyses .....	712
1.	Insolvency Litigation Funding: <i>CCAA</i> Factors.....	712

2.	What Courts Say About Maintenance and Champerty and Related Factors .....	716
i.	<i>Funder control</i> .....	716
ii.	<i>Compensation to funder</i> .....	719
iii.	<i>Procedural issues</i> .....	721
iv.	<i>Solicitor–client relationship</i> .....	723
v.	<i>Defendants’ interests</i> .....	723
VII.	Do Courts Engage with the Doctrines of Maintenance and Champerty? Findings, Inferences and Questions ...	725
1.	Creditor Returns .....	727
2.	Funder Control Through Termination Clauses .....	730
VIII.	Conclusion .....	732
	<b>Whose Privilege Is It, Anyway? A Review of Solicitor–Client Privilege in the Context of Insolvency Proceedings</b> .....	733
I.	What Is Solicitor–Client Privilege? .....	733
II.	Can a Trustee Waive Solicitor–Client Privilege? .....	736
III.	Template Orders on Waiver of Solicitor–Client Privilege .....	739
IV.	Solicitor–Client Privilege in the Context of Receivership Proceedings .....	742
V.	When Can a Receiver Waive Solicitor–Client Privilege? .....	744
VI.	Residual Powers of Directors .....	754
VII.	Considerations for Practitioners for Modifications to the Template Order .....	756
VIII.	Conclusion .....	758
	<b>Beyond <i>Elizabeth</i>: The Current State of Fraudulent Conveyance and Fraudulent Preference Law in Canada</b> .....	761
I.	Introduction .....	761
II.	Legislative History .....	764
1.	The <i>Statute of Elizabeth</i> and Provincial Legislation .....	764
2.	Federal Legislation .....	768
3.	Interplay between Provincial and Federal Legislation .....	771
III.	Law-Reform Initiatives .....	772
1.	Federal Legislative Reform .....	773
2.	Provincial Legislative Reform .....	774
i.	<i>Highlights of the Model Law</i> .....	775

ii. Provincial reform-implementation efforts .....	777
IV. Jurisprudence .....	777
1. <i>Chandos</i> .....	778
2. <i>Aquino</i> .....	780
V. Commentary .....	783
VI. Conclusion .....	787
<b>If You Could Read My Mind: The New Purposive, Contextual and Pragmatic Approach to Corporate Attribution ....</b>	<b>789</b>
I. Introduction .....	789
II. Canada’s New Corporate Attribution Doctrine: What Has Changed? .....	790
1. Background: <i>Dredge, Livent</i> and <i>DeJong</i> .....	790
2. Applying the Corporate Attribution Doctrine in Bankruptcy and Insolvency: <i>Aquino SCC</i> and <i>Golden Oaks</i> .....	801
3. The Evolution of the Corporate Attribution Doctrine in Canada .....	809
III. Conclusion .....	812
<b>WEPPA Woes with RVOs: Employees Facing Uncertainty Under the “Remedial” Legislation .....</b>	<b>815</b>
I. Introduction .....	815
II. The Statutory Framework for Issuing a WEPP Order ..	820
III. <i>WEPPA</i> and RVOs Collide .....	822
1. <i>Just For Laughs</i> (Québec) .....	824
i. <i>Just For Laughs, Québec Court of Appeal:                 ESDC’s leave to appeal motion dismissed</i> .....	828
2. <i>Valeo Pharma (Québec)</i> .....	830
i. <i>Valeo Pharma, Québec Court of Appeal:                 Leave to appeal granted</i> .....	832
IV. Repercussions of <i>Just For Laughs</i> and <i>Valeo Pharma</i> ...	833
V. Analysis .....	837
VI. Conclusion .....	840
Table of Cases .....	843
Subject Index .....	855

