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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), 5 (Creditors' Voting Procedures), and 7 (Receivership under the Bankruptcy and Insolvency Act).

- **Statutory Requirements for Eligibility to Reorganize — Scope of the Bankruptcy and Insolvency Act — Property of the Bankrupt under the**

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BIA — Trustees' rights and obligations — The Supreme Court of British Columbia awarded special costs against a trustee in its personal capacity on the basis that the trustee did not sufficiently perform its obligations under the BIA. The court held that the trustee abdicated its duties under the BIA by failing to properly assess another creditor's claim. In addition, the court held that the trustee abandoned its neutral role within the proceedings. Rather than explaining the process by which the trustee assessed the other creditor's claims, the trustee took an adversarial approach: *Asian Concepts Franchising Corporation (Re)* (2018), 2018 BCSC 1464, 2018 CarswellBC 2279.

- **Statutory Requirements for Eligibility to Reorganize — Jurisdiction of Courts under the Companies' Creditors Arrangement Act** — The court exercised its authority under section 11 of the CCAA to appoint the current Claims Officer in the CCAA proceedings as the arbitrator to determine the current value of a property. The property was previously operated by Sears and physically connected to a property owned by Oxford Properties Group. The Option Agreement between the parties stipulated that the current value of the property was to be determined by a single arbitrator, and if the parties could not agree on an arbitrator within fifteen days then a judge would make the appointment. Oxford brought a motion for an order appointing an arbitrator unconnected with the proceedings, while Sears brought a cross-motion for an order appointing the current Claims Officer in the CCA proceedings as the arbitrator. The court held that dual-track proceedings involving both individuals would result in additional cost and delay, and concluded that the most appropriate solution would be to appoint the current Claims Officer as arbitrator: *Sears Canada Inc., et al.* (Re) (2018), 2018 ONSC 5852, 2018 CarswellOnt 16569.

- **Creditors' Voting Procedures — Voting Procedures Under the Bankruptcy and Insolvency Act — Voting on Plans of Reorganization — Proof of Claim — What Constitutes a Debt?** — The Alberta Court of Queen's Bench addressed whether funds advanced to a partnership by one of the partner's subsidiaries, and subsequently transferred to other non-arm's length entities, should be characterized as equity or debt. The party that advanced the funds put forward a claim in the receivership against the partnership. The Receiver argued that the loan was an "equity claim" under the BIA and should thus be subordinated to the claims of all other creditors pursuant to s. 140.1 of the BIA. The two part-test from U.S. Steel Canada Inc., Re. was applied. First, the court must determine subjectively whether the lender expected the principle to be repaid with interest and if so,

objectively, whether that expectation was reasonable under the circumstances. The court held that the second step had not been met, as the party advancing the secured claim could not demonstrate that there was an objectively reasonable expectation that the advance would be repaid by the borrower. The court focused on the surrounding economic circumstances,and the knowledge that the parent company had concerning the viability of the borrower at the time of the advances: *Alberta Energy Regulator v. Lexin Resources Ltd.* (2018), 2018 ABQB 590, 2018 CarswellAlta 1905.

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