

ARIL Conference Session Descriptions

Dr Janis Sarra Opening Plenary: Cross-Border Consequences: The Impact of the Purdue Pharma Ruling in Canada

This panel will explore the landmark Supreme Court of the United States decision in *Harrington v. Purdue Pharma, LP*, which reshapes Chapter 11 bankruptcy by prohibiting nonconsensual third-party releases. Our experts will discuss its implications in Canada, including in mass tort cases and complex litigation settled through CCAA plans.

Panel A: RVOs: The Journey from “Extraordinary” to Ordinary

Reverse vesting orders have become increasingly used by Canadian insolvency practitioners as an effective tool to restructure financially distressed companies while attempting to preserve the business and maximize the value for stakeholders. Has this extraordinary measure become a more common path to restructuring which should be imbedded in the CCAA and the BIA? This panel will share views as to whether or not RVOs should be codified within the insolvency laws in Canada.

Panel B: Peoples Department Stores Inc. (Trustee of) v. Wise: 20 years later, where do we stand?

After two decades of application and evolution of case law, how can we balance a director's right to resign with their fiduciary duty to the debtor corporation? On a practical level, what strategies have been implemented to safeguard the interests of directors, creditors and other stakeholders?

Panel C: Secured Creditors' Rights to Asset Value Post-Discharge: Revisiting the Boundaries

This panel will dive into the evolving rights of secured creditors to asset value post-discharge, examining key debates on the scope of secured claims, valuation timing, and the treatment of increases in asset value after proceedings conclude. Panelists will analyze frameworks and discuss recent case law challenging traditional boundaries of secured interests, attachment, and realization rights. Through a close look at conflicting academic and judicial perspectives, this session will explore how these issues shape secured creditor strategies and the implications for consistency and predictability in insolvency law.

Panel D: Calming Troubled Waters

The Redwater decision continues to shape Canadian environmental law, frequently cited in cases related to environmental obligations, even outside the scope of the Bankruptcy and Insolvency Act (BIA). In the Qualex case, a private party invoked the principles of Redwater to seek to obtain a super-priority charge to secure obligations stemming from environmental damage, which would override secured creditors. This panel will examine the Alberta Court of Appeal's ruling, along with other recent decisions relating to Redwater, exploring how its principles are applied and where the boundaries lie in terms of environmental liability, secured lending, and insolvency.

Panel E: When Bankruptcy Does Not Forgive: Lessons from the Poonian Case

In the early 2007s, the Poonians manipulated the market, resulting in investors losing millions of dollars. The British Columbia Securities Commission concluded that the Poonians (who went bankrupt) violated the province's Securities Act and ordered them to pay \$13.5 million in administrative penalties and to return \$5.6 million, which corresponds to the profit they made from their market manipulation scheme. The Supreme Court of Canada in the case *Poonian v. British Columbia (Securities Commission)*, 2024 SCC 28, examined whether administrative sanctions, penalties, or fines imposed by regulators survive bankruptcy. In a majority judgment, the SCC ruled that these sanctions, unlike restitution or disgorgement orders resulting from fraudulent maneuvers, do not survive bankruptcy. This panel will look at the implications of this decision, particularly for regulators, and will explore the causal link between debt and fraud.

Panel F: Balancing Act: Evaluating Interim Financing Terms in Insolvency Proceedings

This panel will delve into the complexities of interim financing during insolvency proceedings, focusing on the fine line between necessary protections for lenders and excessive terms that may hinder a debtor's restructuring efforts. Drawing insights from recent case law and legislative amendments, the discussion will explore how courts assess the reasonableness of interim financing terms, including interest rates, control over debtor decisions, and the impact on other stakeholders. Panelists will provide practical guidance for navigating these challenges, ensuring that interim financing supports equitable and sustainable restructuring outcomes.

Panel G: Creating a Baseline: The Role of Stalking Horse Bids and Break Fees in Asset Maximization

This session will examine how stalking horse bids in CCAA proceedings can create stability and set a baseline for competitive bids, while also exploring the complex role of break fees. Panelists will discuss the impact of break fees on maximizing debtor assets, comparing Canadian and U.S. perspectives on fee standards and the unique challenges presented by credit bids. Gain insights from recent case studies and discover practical approaches to ensuring that stalking-horse protections are consistent with the fair and efficient administration of insolvency cases.

Panel H: Blurring the Lines for Creditors, Investors and Equityholders: Allocation and Consolidation Issues in Complex Corporate Structures

Corporate structures are becoming increasingly complex, for reasons which range from liability management and tax optimization to international operations. In parallel, the vehicles offered to investors now go beyond the traditional equity or loan options: limited partnership units, convertible shares, loan-backed securities, etc. The unravelling of some of these structures in recent years has frayed the nerves of both creditors and insolvency professionals. Drawing strict lines between corporate entities operating together in reality, or limiting different categories of investors to strict legal entitlements when their business positioning was similar, runs the risk of leading to unfair and sometimes absurd results. The panel will consider when it may be appropriate for courts

to consolidate legal entities, change asset allocations after the fact or otherwise blur strict legal lines, and how court-appointed officers should approach these issues.

Panel I: Statute Barred Claims: Implications and Consequences

This panel will focus on the practical implications and challenges posed by limitation period issues in insolvency proceedings stemming from a 2021 Ontario decision that addressed statute barred claims against debtors and their provability in insolvency files.

Panel J: Judicial Discretion: Balancing COMI, Mandamus Relief, and Autonomous Relief under Part IV of the CCAA

This panel will explore judicial discretion in insolvency proceedings, focusing on the determination of the centre of main interests (COMI), the application of mandamus relief, and the use of autonomous relief under Part IV of the CCAA. Experts will discuss how courts balance the objectives of Canadian insolvency legislation, international cooperation and domestic legal frameworks, examining recent case studies that highlight the challenges and opportunities in exercising discretion in insolvency proceedings.

Panel K: Do Equitable Remedies Have a Place in Canadian Insolvency Law?

The panel discusses what role, if any, certain equitable remedies have in Canadian insolvency law, focusing primarily on the doctrine of marshalling and the right of redemption. The panelists will outline the scope of the current application of these principles in Canadian insolvency law, and debate whether they can and should be applied more broadly, namely through the principles of good faith recently enshrined in the BIA and CCAA. While there is an argument to suggest that each of these rights/doctrine could further enhance remedial objectives and fairness in insolvency proceedings, their application in fact may still be limited, particularly when not explicitly

Panel L: Navigating the Complexities of Fraudulent Preferences

Join us for an insightful panel discussion on the evolving landscape of fraudulent preference law in Canada. The discussion will explore the recent decisions and the implications of these decisions to the insolvency practitioner. Panelists will provide insights into how these changes impact the practice of insolvency law and the equitable treatment of creditors.