

# THE DARK SIDE OF INSOLVENCY

## When Good Faith Breaks Down

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# When Good Faith is Non Existent

A Tale of a Creditor

*Once upon a time...*



# What Does the Act Say?

Like all interested parties in a proceeding under the BIA, creditors have a duty of good faith.



## **BANKRUPTCY AND INSOLVENCY ACT — SECTION 4.2**

- (1)** Any interested person in any proceedings under this Act shall act in good faith with respect to proceedings.
- (2)** If the court is satisfied that an interested person fails to act in good faith, on application by any interested person, the court may make any order that it considers appropriate in the circumstances.

# What Does Good Faith Mean?

- The Bankruptcy and Insolvency Act doesn't say, so we must look to Common Law
- Good faith in bankruptcy proceedings = good faith in contractual proceedings.

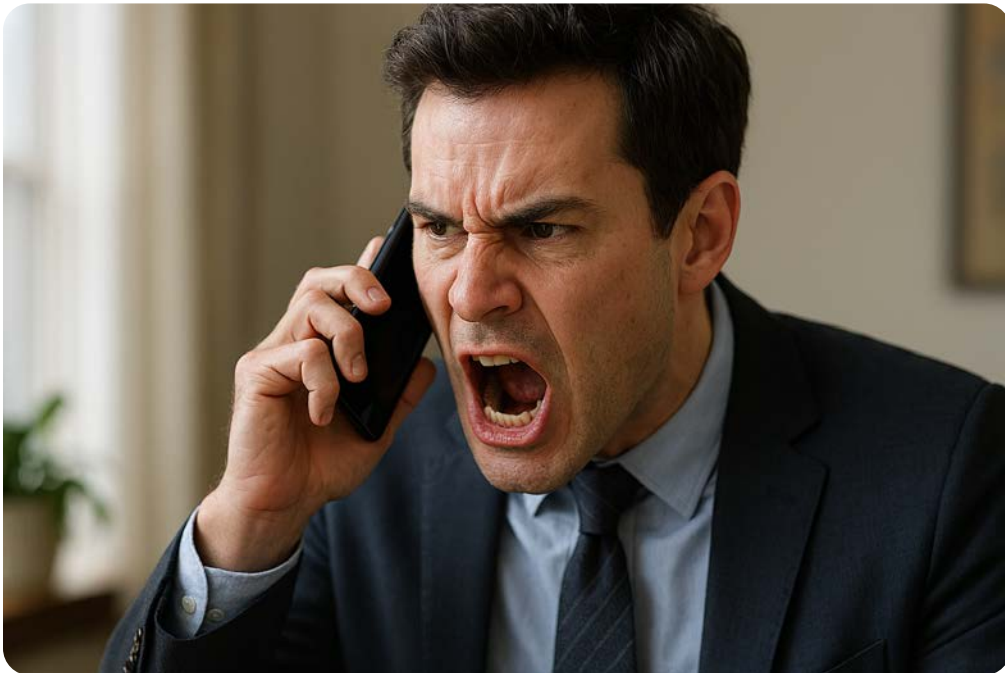
CWB Maxium Financial Inc. v. 2026998 Alberta Ltd., 2021 ABQB 137

Bhasin v. Hrynew, [2014] S.C.J. No. 71 and C.M. Callow Inc. v. Zollinger, [2020] S.C.J. No. 45

McInnes (re) 2025 N.S. J. 147

# Re: Gregoriou – The Cost of Going too Far

- This case is rife with egregious creditor conduct



**Remedy:** Creditor's entire claim expunged as well as his opposition to the discharge.

# Discussion

When, if ever, should a LIT bring an application under S.4.2?



# When Strategy Becomes Bad Faith: Lessons from Re Khoshnik

- Case Analysis
  - Misuse of the court system
  
- Remedy: Costs
  
  
- 2026 ONSC 1581 (CanLII) Re Reza Khoshnik

## Emerging Local Issue – Is it Bad Faith?

- Debtor borrows funds days before filing
- Creditor uses multiple avenues to try to recover the debt despite the proposal filing

**At what point does actively trying to recover money owed to you turn into abusive conduct?**



# Practical Tips

- Motivation
- Creditors with a vexatious or disruptive history
- Document, document, document
- Use tools available



# Limitations

- What constitutes a lack of good faith?
- LIT neutrality
- Cost/benefit
- Risks

# Creditor conduct – Is it Bad Faith?

Coercion

Threats

Filing improper claims (claims they know or ought to know are stat barred)

Interference

Strategic voting on a proposal

# Which parties sometimes act in Bad Faith?

Creditors

Debtors

LIT's

Lawyers

Debt Consultants

Family members

Employees

Disallowed creditors

Others

# Discussion

- What role should cost awards play in deterring abusive conduct?
- Have you ever had a situation or a war story at any point over the years where you felt S.4.2 would have been useful?