The Legal Eye:

Technical Update

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Thomson Reuters, Practical Law: Insolvency and Restructuring

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2025 ONSC 3501

Saskin, Re

No absolute discharge when morally blameworthy for assets <50% of debts: asset protection schemes, tax shelters and guarantees qualify.

Facts:

- Mr. Saskin, principal of UrbanCorp (under *CCAA*), owed >$15M and declared $0 assets / $0 income. Age: 68. Evidence of lavish post-bankruptcy life.
- Registrar: Discharge conditional on payment of $960,000 and providing additional disclosure. Upheld on appeal to Justice.

Law:

s. 172(2), BIA: if a s. 173 fact is proven, court can only refuse, suspend or grant conditional discharge.

s. **173(1)(a), BIA**: if bankrupt can "justly be held responsible" for assets <50%

- Saskin guaranteed $6M in UrbanCorp investments, knowing he had $0 and had employed long term asset protection strategy.
- >$2M CRA: assumed tax debt from LP as GP, knowing he couldn't pay.

WEPPA in CCAA and Division I Proposal Proceedings

s. 5(1)(b)(iv) and (5), WEPPA and **s. 3.2, WEPPR** (in force since November 2021)

WEPPA applies in CCAA and Div. I Proposals if court determines employer has terminated all of its employees in Canada, other than any retained to wind down the business

1. **Court declares if WEPPA is triggered in general;** Service Canada determines individual eligibility (*In the Matter of The Body Shop Canda Limited, 2024* ONSC 7052 at para. 40-43.

2. **Court can also provide statutory interpretation under WEPPA without intruding on Service Canada's role:** *Re Lynx Air Holdings Corporation and 1263343 Alberta Inc. Dba Lynx Air, 2025 ABKB 182*

WEPPA con't

s. 5(1)(b)(iv) and (5), WEPPA and **s. 3.2, WEPPR** (in force since November 2021)

WEPPA applies in CCAA and Div. I Proposals if court determines employer has terminated all of its employees in Canada, other than any retained to wind down the business

WEPPA can be triggered even if employees are rehired as part of a restructuring transaction:

- *Body Shop* – assets sold and purchaser "preserved" 400 store level and head office jobs and 100 seasonal jobs.
- *Attorney General of Canada c. Former Gestion Inc.*, 2024 QCCA 1441 – Just for Laughs Group, partly an RVO transaction. 100 employees terminated. 13 rehired by purchaser.

2024 ABKB 450

Nsair (Re)

Duty of bankrupt to aid in realization of property is limited to assisting the Trustee or creditors with reasonable, ascertainable requests.

Facts:	• Bankrupt dentist owned 3 commercial condos in Lebanon. Paid $USD1.372M in 2014. Structural damage from 2020 Beruit port explosion. ATB owed about $1.9M after receivership of related dental clinics. • ATB expert assessed at $875k ($3.5k psm). Trustee realtor $1-2k psm. • Trustee circulated s. 38 offer. No takers. • (*de minimus* breach of 158(b) and (o) for failing to disclose condos in bankruptcy, but disclosing in receivership, 10 day suspended absolute discharge)
Law:	**s. 158(k), BIA** "aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors" • Bankrupt has no capacity to realize on assets. • Registrar's decision upheld, left open to ATB to apply under 40(2)

Appeals as of Right of SAVOs under the BIA expanding?

s. 193, BIA

Appeals of orders and decisions under the BIA require leave unless one of (a) – (d) apply. 193(c) appeal as of right if property involved in the appeal exceeds in value $10,000.

Sale Approval and Vesting Orders

Commonly opposed by the debtor.

Historically, no right to appeal as sale orders are "procedural".

- *2403177 Ontario Inc. v. Bending Lake Iron Group Ltd.*, 2016 ONCA 225.
- Cases continue to follow *Bending Lake: AFC Mortgage Administration Inc. v. Sunrise Acquisitions (Elmvale) Inc.*, 2024 ONCA 764;

Now, authority is splitting.

2024 BCCA 318

QRD (Willoughby) Holdings Inc. v. MCAP Financial Corporation

Appeal of a Sale Approval and Vesting Order as of Right when evidence of potentially better offer.

Facts:	• Land in Langley for 87 townhouses. Receiver appointed. • Burn rate about $400k a month (interest / costs). • $35M pseudo stalking horse offer. Other bids $34M and $37M. • Debtor had a proposal from FRS / BC Builds for $64M with $21M VTB • $35M sale approved July 9, 2024.
Law:	**s. 193, BIA** Authority is split. "Certainly if one were describing in normal conversation the appeal sought to be brought by QRD, one would say that it "involves" more than $10,000."
Appeal dismissed: On August 14 at Court of Appeal, no evidence FRS bid was realistic.	

2024 ONCA 584

Peakhill Capital Inc. v. 1000093910 Ontario Inc.

Stalking horse bidder allowed automatic appeal when Debtor's redemption approved over sale approval sought by receiver.

Facts:	• Stalking horse bidder appealed when order granted to allow debtor to redeem mortgage. • Redemption approval order provided for provisional execution, which avoids automatic stay.
Law:	• Two clear values, apart by more than $10k (refinancing $23.788M and sale proceeds $24.255M) = automatic right of appeal. • Provisional enforcement clause inappropriate – nothing extraordinary or exceptional about the circumstances. • Successful bidder has standing to appeal.
Throw away costs granted to the bidder but redemption order not overturned.	

2024 ONCA 639

Downing Street Financial Inc. v. 1000162497 Ontario Inc

To trigger the automatic right of appeal under s. 193(c) of the BIA, the appeal must relate to a clear difference in value between the order under appeal and evidence in the record that a debtor could have obtained a higher value.

Facts:	• Receiver had a $16M stalking horse offer. Marketed for >2 months. No other offers. • Debtor swore an Affidavit that a numbered company had provided a $17M refinancing commitment.
Law:	Party seeking automatic appeal must have clear evidence that there is a loss of more than $10,000 at stake. Appraisals are insufficient. Alleged commitment letter was insufficient. No automatic right of appeal.

2025 SKCA 24

BTA Real Estate Group Inc. v. Kaiss

Deference to Registrar's conditional discharge order. Secured creditor had avenues to pursue recovery if it disagreed with Trustee's valuation.

Facts:

- Bankrupt transferred shares to his father while insolvent and sold other shares to family while bankrupt.
- Trustee originally valued shares at $257k but revised to $0k
- Creditor appealed 60 day suspended discharge.

Law:

s. 173(1)(c) continuing to trade after aware of being insolvent.

- Secured creditor had recourse to pursue shares during bankruptcy or to apply for a s. 38.
- Appeal of a Registrar's decision is a true appeal – defer to Registrar's discretion.

2025 FPCA 14

FP Canada Standards Council v Buxton

Bankruptcy and proposal proceedings presumptively bar continued certification as a Financial Planner but can be set aside if caused by "factors beyond control".

Facts:	• Ms. Buxton's financial planning business filed for bankruptcy; she filed a consumer proposal. $296k of HST, CEBA repayments and other tax debt; $24k credit card debt. • Fee only planner, insolvencies caused by pandemic, health issues for her and her child. Factors unlikely to recur.
Law:	Personal or business bankruptcy or consumer proposals are presumptive bars to new or continued certification by Financial Planning Canada. • Joint submission asking for conditions without loss of certification granted. • Conditions: additional continuining education; BIA counselling; completion of consumer proposal; $2000 in costs.

2025 ABKB 175

National Bank of Canada v. Precision Livestock Diagnostics Ltd.

Part 1: Interim receiver powers under the BIA do not extend to investigatory receiverships.

Facts:	• Bank sought interim receiver (under BIA and *Judicature Act*) to preserve bank accounts, money, books and records and investigate suspected cheque kiting among group (had led to $43M overdraft (repaid), $17M outstanding). • No evidence that: (1) investigation would reduce Bank's exposure; (2) receiver better than litigation (3) debtor likely to dissipate assets generally.
Law:	**s. 47(2), BIA** limited to "hold-the-line powers", not conducting investigations without connection to preservation.. No preservation receivership warranted on the facts. No investigative receivership warranted under *Judicature Act.*

2025 ABKB 175

National Bank of Canada con't

Part 2: Interim receivers cannot be appointed when FDMA stay is in place (*caution*).

Facts:	• The Sunterra / Sunwold corporate defendants are farmers. • *Farm Debt Mediation Notice* issued less than 15 days before hearing.
Law:	**s. 21(1) FDMA** secured creditor must issue notice at least 15 business days before enforcing any remedy against the property of a farmer. (Farmer can apply for further stay of 30 days up to 120 in total). • "Any remedy" is broadly interpreted in cases looking at stays of proceeding. An interim receivership qualifies, and the application is stayed.
Caution	Not considered: • s. 48, BIA (interim receiver provisions excluded for individual farmers only) • *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd., 2015 SCC 53* at para. 50

2025 NSSC 119

McInnis (Re)

Good faith requirements are a positive obligation. Trustee shopping, amount of proposal and lack of disclosure sufficient to refuse a proposal approved by creditors.

Facts:

- Second time bankrupt. Bankrupt failed to disclose income, CRA records suggested $38k. Discharge was refused, calling for payment of at least $24,563.55 in 2021
- In 2023, bankrupt reaches out and former Trustee advised of option to make a reasonable proposal, paying at least the $24,563.
- Bankrupt finds second trustee, makes proposal for $2500. Four creditors voted (about 10% of claims register), all in support.
- Proposal refused by Court for lack of good faith.

Law:

s. 4.2, BIA lack of good faith sufficient to refuse proposal.

Bankrupt lacked candor by not disclosing former order and in his disclosure.

2025 ABCA 25

Export Development Corporation v MNP Ltd

Courts can assign the rights and obligations of a party in a receivership under a contract to an assignee approved by the court, despite opposition and contractual language to the contrary.

Facts:	Debtor in receivership. Primary asset appeal of rejected EDC insurance claims. Creditor wanted to buy insurance claims, but the policies prohibited assignment of the policies without EDCs consent.
Law:	In bankruptcy, proposal and CCAA proceedings, "forced" assignment of contracts is provided for. No express provision for receiverships. **s. 243, BIA** (inherent jurisdiction) used by the court to permit the forced assignment of a contract in a receivership in a manner that was analogous to the statutory regime in a bankruptcy (Followed *Urbancorp*, 2020 ONSC 7920

2025 SCC 13

Piekut v. Canada (National Revenue)

A bankrupt ceases to be a student only at the end of their last study period. Loans not discharged.

Facts:	• Ms. Piekut: 1987 – 1994, B.A.; 1994 – 1995, teaching diploma; 2002 – 2003 B.Ed; 2006 – 2009, M.Ed. • No loans for last degree (self-funded). • October 2013, consumer proposal, completed December 2017.
Law:	**s. 178(1)(g), BIA**: order of discharge does not release any government student loan made within seven years of the date the bankrupt ceased to be a full or part-time student. • SCC adopted "single date" approach over "multiple dates" trigger by study breaks

Questions:

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