

Summary of Case Law for the Period July 2017 to July 2, 2018

Date	Case (Name)	Sections	Summary
3-Jul-17	[A.C. Waring & Associates Inc. v. Institute of Chartered Accountants of Alberta]	215	<ul style="list-style-type: none"> • The Alberta Court of Appeal upheld the decision of the chambers judge who had concluded that the <i>Regulated Accounting Profession Act</i> (RAPA) and its disciplinary proceedings applied to their actions in relation to BIA proceedings and leave under s. 215 of the BIA was not required for commencement of disciplinary proceedings under RAPA. See <i>Case Updates</i>
3-Jul-17	[Re Essar Steel Algoma Inc.]	CCAA	<ul style="list-style-type: none"> • The Ontario Superior Court of Justice dismissed a motion brought by the City of Sault Ste. Marie for an order requiring the immediate payment of all of Algoma's post-filing property tax obligations currently outstanding. The Court was concerned that too many uncertainties were present to order otherwise. See <i>Case Updates</i>
3-Jul-17	[Re Innovative Coating Systems Inc.]	Div I	<ul style="list-style-type: none"> • The Ontario Superior Court of Justice refused to approve a BIA proposal. The Court was of the opinion that the terms of the proposal were not calculated to benefit the general body of creditors. Two secured creditors opposed the proposal because it contained a release of the guarantors.
10-Jul-17	[Trade Capital Finance Corp. v Cook]	Mareva	<ul style="list-style-type: none"> • The Ontario Superior Court of Justice held that a <i>Mareva</i> injunction over the assets of a named defendant did not prevent the seizure of those assets by another creditor under writs of seizure and sale. See <i>Case Updates</i>
10-Jul-17	[Re Pigeat]	Proofs of claim	<ul style="list-style-type: none"> • The Quebec Superior Court determined that a claim filed in Nevada requesting declaratory and injunctive relief was a claim provable in bankruptcy and therefore stayed by the BIA. Further, the applicant, in these circumstances, was not entitled to an order lifting the stay of proceedings. See <i>Case Updates</i>
17-Jul-17	[Airex Inc. v. Ben Air System Inc.]	CLA	<ul style="list-style-type: none"> • The Court of Appeal for Ontario dismissed the appeal of the defendants from summary judgment declaring the defendants in breach of the trust provisions of the <i>Construction Lien Act</i>. See <i>Case Updates</i>
17-Jul-17	[(Re) Essar Steel Algoma Inc.]	CCAA	<ul style="list-style-type: none"> • The Court of Appeal for Ontario dismissed a motion brought by a creditor for leave to appeal the decision of the CCAA judge. The Court of Appeal stated that the parties had joined issue on the same legal question three times. All of the relevant factors for the application of issue estoppel were present. See <i>Case Updates</i>
17-Jul-17	[(Re) Essar Steel Algoma Inc.]	CCAA	<ul style="list-style-type: none"> • The Ontario Superior Court of Justice dismissed Algoma's motion for approval of a DIP extension agreement with the current DIP lenders. The Court also dismissed Algoma's motion for the appointment of a restructuring committee. See <i>Case Updates</i>
24-Jul-17	[Scicluna v. Solstice]	67 and 71	<ul style="list-style-type: none"> • The Ontario Superior Court of Justice declined to issue a declaration that the applicant was entitled to the return of monies she had advanced for the purchase of a condominium. The applicant had made an assignment in bankruptcy and the asset had vested in the trustee. See <i>Case Updates</i>
24-Jul-17	[Wilfert v. McCallum]	38, 91	<ul style="list-style-type: none"> • The Ontario Superior Court of Justice dismissed a fraudulent conveyance action which had been assigned to the plaintiff under section 38 of the BIA. The conveyance predated by several years the time when the plaintiff became a creditor of the defendant. See <i>Case Updates</i>
24-Jul-17	[Attorney General of Quebec v Laforest]	178	<ul style="list-style-type: none"> • The Court of Quebec declared that in accordance with section 178 of the BIA, all amounts to be paid by the defendant were deemed to debts or liabilities resulting from obtaining property by false pretences or fraudulent misrepresentation. The defendant had pleaded guilty to fraud in connection with a student loan. See <i>Case Updates</i>
31-Jul-17	[Eaglewood Specialty Products et al v. Royal Bank et al]	Petition	<ul style="list-style-type: none"> • The New Brunswick Court of Queen's Bench dismissed a motion for injunctive relief. The intended plaintiffs sought to enjoin the receiver from selling certain property. The intended plaintiffs alleged that the secured creditor had acted precipitously in appointing a receiver as none of the companies were insolvent. See <i>Case Updates</i>
31-Jul-17	[2403177 Ontario Inc. v. Bending Lake Iron Group Limited]	173	<ul style="list-style-type: none"> • The Ontario Superior Court of Justice awarded costs in favour of the applicant, the receiver, and the trustee against the Director and officers of the bankrupt entity. Costs were also awarded against counsel personally. The issues that has been raised by the bankrupt were found to be frivolous and were res judicata and constituted an abuse of the court's process. See <i>Case Updates</i>

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31-Jul-17 [ROTENBERG(RE)]		173	• A Master of the Ontario Superior Court of Justice refused the discharge application of the third time bankrupt. There was little evidence that the bankrupt had learned any sense of responsibility to his creditors through multiple bankruptcies. The bankrupt was granted leave to re-apply after 48 months. <i>See Case Updates</i>
7-Aug-17 [R e WF Canada]		96	• The Ontario Superior Court of Justice granted the application of the trustee against one of two respondents in a s. 96 BIA proceeding concerning transfers at undervalue. The application was dismissed against the second respondent on the basis that she was neither a party nor privy to the transfers. <i>See Case Updates</i>
15-Aug-17 [Royal Bank of Canadav. Casselman PHBC Ltd.]		244	• The Ontario Superior Court of Justice directed the court appointed receiver, having been appointed prior to the trustee in bankruptcy, to evaluate the priority, quantum, and quality of the claims of the secured creditors and report to the Court with a proposed distribution of the proceeds arising from the sale of the assets of the debtor. The trustee had wanted to take over the process. <i>See Case Updates</i>
21-Aug-17 [Canada v. Callidus Capital Corporation]		ITA	• The Federal Court of Appeal allowed the appeal of the Crown from the decision of the Federal Court. The Federal Court of Appeal held, in a 2-1 decision, that s. 222(1.1) of the <i>Excise Tax Act</i> ("ETA") did not render a deemed trust under s. 222 of the ETA ineffective as against a secured creditor who had received, prior to bankruptcy, proceeds from the assets of the tax debtor that were deemed to be held in trust for the crown. <i>See Case Updates</i>
28-Aug-17 [Statham v. 1414695 Alberta Ltd.]		41	• The Saskatchewan Court of Queen's Bench dismissed four bankruptcy applications. They were dismissed on the basis that the act of bankruptcy had not been proven. The fourth was dismissed on the basis that the application should have been commenced in Alberta. Leave was given to the applicants to file the application in Calgary. <i>See Case Updates</i>
4-Sep-17 [Arrangement relatif à Bloom Lake]		CCAA	• The Superior Court of Quebec approved the allocation method developed by the Monitor to allocate proceeds of realization from asset sale transactions and the costs of the CCAA proceedings. One secured creditor opposed the allocation methodology because it argued that the result was inequitable when applied to the assets over which it claimed priority. <i>See Case Updates</i>
11-Sep-17 [8640025 Canada Inc. (Re)]		CCAA	• The British Columbia Court of Appeal allowed the appeal from a decision of the chambers judge and set aside an order approving an agreement of purchase and sale of assets. The Court of Appeal held that assets of the applicants' subsidiaries could not be available for disposition in the CCAA process unless the subsidiaries had been brought within the process as debtor companies. The Court also expressed the view that in complex CCAA proceedings, it is desirable to have a single judge supervise the proceedings. In this case, three judges had been involved. <i>See Case Updates</i>
18-Sep-17 [Affinity Credit Union 2013 v. Vortex Drilling Ltd.]		244	• The Saskatchewan Court of Queen's Bench considered competing applications, one for the appointment of a receiver under the BIA and the PPSA and the other for an initial order and a stay of proceedings under the CCAA. The Court granted the receivership application. <i>See Case Updates</i>
25-Sep-17 [Canadian Imperial Bank of Commerce v. Deloitte & Touche]		CCAA	• The Ontario Superior Court of Justice approved a settlement of a class action. The action had been started in 2000 by creditors of Philip Services Corp. against Philip's auditors. Philip had previously filed under the CCAA. <i>See Case Updates</i>
2-Oct-17 [Alberta Energy Regulator v. Grant Thornton Limited].		69	• The Alberta Energy Regulator and the Orphan Well Association sought a stay of the decision of the Alberta Court of Appeal pending appeal to the Supreme Court of Canada. A single judge of the Court of Appeal declined to grant the stay. <i>See Case Updates</i>
9-Oct-17 [Re Canada North Group Inc.].		CCAA	• The Alberta Court of Queen's Bench granted a CCAA stay extension over the objection of the secured creditor who had applied for the appointment of a receiver. Concerns were raised with respect to the accounting treatment of certain receivables and whether this had amounted to bad faith. The Court concluded that bad faith had not been demonstrated. However, the Court extended the stay for two months as opposed to the requested three and a half months. <i>See Case Updates</i>

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16-Oct-17	[Canada North Group Inc. (Companies Creditors Arrangement Act)]	CCAA	• The Alberta Court of Queens Bench held, in a CCAA proceeding, that court ordered "super priority" security interests take priority over statutory deemed trusts in favour of CRA for unremitted source deductions. The Court also commented on recourse through a comeback clause. <i>See Case Updates</i>
23-Oct-17	[Arrangement Relatif à Bloom Lake General Partner Limited]	CCAA	• The Québec Superior Court held that the trusts created under the <i>Supplemental Pension Plans Act</i> (Québec), the <i>Pension Benefit Standards Act</i> (Canada) and the <i>Pension Benefits Act</i> (Newfoundland and Labrador) are not enforceable in CCAA proceedings. However, employee contributions and the normal cost payments are protected to the extent provided for by ss. 6(6) and 37(6) of the CCAA. <i>See Case Updates</i>
30-Oct-17	[Re Tri-State Signature Homes Ltd].	69	• The Alberta Court of Queens Bench held that the stay of the proceedings imposed by s.69.1 of the BIA did not prevent a creditor of the insolvent person from demanding payment under stand-by letters of credit. <i>See Case Updates</i>
6-Nov-17	[Re TOYS "R" US (CANADA) LTD.]	CCAA	• The Ontario Superior Court of Justice granted the debtor protection under the CCAA. A DIP facility was approved but the DIP lenders were not granted enhanced enforcement rights. A directors' and officers' charge was also granted. <i>See Case Updates</i>
13-Nov-17	[Pocklington (Re)]	2	• The Alberta Court of Queens Bench held that a proposal made by a former Albertan who had lived in California for more than twenty years was a nullity because the debtor had not satisfied the BIA definition of an "Insolvent person" entitled to make a proposal. <i>See Case Updates</i>
20-Nov-17	[Jethwani v. Damji]	246	• The Ontario Superior Court of Justice approved the fees of a receiver and its counsel in a receivership proceeding that started in 2002. The plaintiff opposed the requested relief. There was no distribution to creditors. <i>See Case Updates</i>
27-Nov-17	[Boale, Wood & Company Ltd. V. Whitmore]	91,95	• The British Columbia Supreme Court granted judgement in favour of the trustee against the defendant for a fraudulent conveyance arising out of a Ponzi scheme. It was conceded by the trustee that the defendant had not been a party to and had had no knowledge of the fraudulent scheme. The trustee also made a claim for unjust enrichment and had a cause of action for money had and received. <i>See Case Updates</i>
4-Dec-17	[Walter Energy Canada Holdings, Inc. (Re)]	CCAA	• The British Columbia Supreme Court approved a settlement of certain claims in a CCAA proceeding prior to the consideration of a plan of Arrangement. <i>See Case Updates</i>
11-Dec-17	[E Construction Ltd. V. Sprague-Rosser Contracting Co Ltd.]	244	• The Alberta Court of Queen's Bench issued a declaration that certain funds held by solicitors for the receiver were held in trust for subcontractors of the debtor company in receivership. The trust had arisen pursuant to the provisions of the <i>Builders Lien Act</i> . <i>See Case Updates</i>
18-Dec-17	[ITB Marine Group Ltd. V. Northern Transportation Company Limited]	CCAA	• The British Columbia Supreme Court held that the claim by the administrator of a pension plan to a deemed trust did not attach to the asset in question. The relevant date for the purposes of calculation was the date of bankruptcy. The secured party had properly registered under the CCAA and no funds were available for unsecured creditors. <i>See Case Updates</i>
8-Jan-18	[Anstead (Re)]	178	• The Alberta Court of Queens Bench dismissed the appeal from the decision of the Registrar in Bankruptcy. The registrar had dismissed the application of the Bank of Montreal for leave, on a <i>Nunc pro tunc</i> basis, to issue a statement of claim against the discharged bankrupt. <i>See Case Updates</i>
15-Jan-18	[Wilfert v. McCallum]	69	• A single judge of the Court of Appeal for Ontario denied a motion brought by the plaintiffs for a stay pending appeal. The plaintiffs' action had been dismissed by the lower court. The Court of Appeal reviewed the test on a motion for a stay pending appeal. <i>See Case Updates</i>
22-Jan-18	[Urbancorp Cumberland 2 GP Inc., (Re)]	CCAA	• The Ontario Superior Court of Justice commented on the appropriateness of a CCAA monitor bringing proceedings as a complainant under the oppression remedy provisions of the <i>Ontario Business Corporations Act</i> . <i>See Case Updates</i>

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29-Jan-18	[Southern Cone Capital Ltd. V. EmVest Food Products (Mauritius) Ltd.]	244	•The British Columbia Supreme Court declined to appoint a receiver. The existence of the debt was at issue. The Court directed that the matter proceed to the trial list. The Court reviewed the factors to be taken into account on an application to appoint a receiver. <i>See Case Updates</i>
5-Feb-18	[Ernst & Young Inc. v. Essar Global Fund Limited].	CCAA	•The Court of Appeal for Ontario dismissed an appeal from a successful oppression action brought pursuant to the CBCA. The appellants' two principal legal submissions were first, that the CCAA Monitor lacked standing to bring an oppression claim and second, that the alleged harm was to Algoma and therefore the appropriate redress was a derivative action. <i>See Case Updates</i>
12-Feb-18	[Imor Capital Corp v. Horizon Commercial Development Corp].	67	•The Alberta Court of Queen's Bench considered whether the co-mingling of trust funds with its own by a debtor was fatal to the trust. At issue was whether the security deposits of a tenants fell within s.67(1)(a) of the BIA and were therefore exempt from the secured creditor's claim. <i>See Case Updates</i>
19-Feb-18	[Re: Wolf Rubin, Bankrupt]	173	•The registrar in Bankruptcy of the Ontario Superior Court of Justice refused the discharge application of a bankrupt. The Registrar found that multiple factors referenced in s. 173 of the BIA had been proven. <i>See Case Updates</i>
26-Feb-18	[2003945 Alberta Ltd. V. 1951584 Ontario Inc.].	244	•A purchaser of assets in a receivership proceeding brought an application for a direction that the receiver had breached a provision of the assets purchase agreement. The purchaser wanted to appeal a procedural decision. A single judge of the Alberta Court of Appeal held that the decision was made in the receivership proceedings and BIA Rules and procedures governing appeals applied. <i>See Case Updates</i>
5-Mar-18	[Sydco Energy Inc (Re)]	CCAA	•The Court of Queen's Bench in Alberta approved the sale of assets of an oil and gas company and allowed the approval and vesting order to include certain declarations relating to the Alberta Energy Regulator on issues arising from the decision in Re Redwater Energy Corporation. <i>See Case Updates</i>
12-Mar-18	[Nortel Networks Corporation (Re)].	CCAA	•The Ontario Superior Court of Justice allowed, in part, the appeal of the Monitor and dismissed the appeal of creditor from the decision of the Claims Officer arising in the CCAA proceedings of Nortel Networks. In doing so, the Court commented on CCAA claims process and upheld the finding of the Claims Officer that there is a duty to be forthright in the claims process and that the creditor had breached this duty. <i>See Case Updates</i>
19-Mar-18	[Luckevich v. Ivany]	67	•The Court of Appeal for Ontario held that a third party claim for contribution and indemnity is properly considered property as that term is defined in the BIA with the result that it is a claim that vests in the trustee in bankruptcy. <i>See Case Updates</i>
26-Mar-18	[Lawyers' Professional Indemnity Co. v. Rodriguez]	178	•The Court of Appeal for Ontario held that considering an application to determine whether a debt survives a discharge from bankruptcy under s.178 of the BIA, it is the nature of that debt that the application judge should have determined on the application, not whether, in addition to the wrong that led to that judgement debt, the bankrupt had engaged in other conduct that would qualify under s. 178(1) of the BIA. <i>See Case Updates</i>
2-Apr-18	[Douglas v. Stan Fergusson Fuels Ltd.].	Proofs of claim	•The Court of Appeal for Ontario held that an insurer could not bring a claim on behalf of a bankrupt insured. The decision addressed the intersection of bankruptcy law and the doctrine of subrogation. <i>See Case Updates</i>
9-Apr-18	[Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.]	67 and 71	•The Court of Appeal for Ontario reversed the decision of the motion judge and held that "Gross Operating Royalties" ("GORs") constituted an interest in land. The Court required additional submissions on whether the motion judge had jurisdiction to vest out the GORs in a sale by a court-appointed receiver. <i>See Case Updates</i>
16-Apr-18	[Scicluna v. Solstice Two Limited]	67	•The Court of Appeal for Ontario affirmed the decision of the application judge. The Bankrupt had been granted relief from forfeiture resulting in a return of deposit monies. However, the monies were vested in the trustee and formed part of the estate available to creditors. <i>See case updates.</i>

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23-Apr-18	[Randen v. HPCB-Online Ltd.]	100	•The British Columbia Court of Appeal provided guidance as to the proper interpretation and application of s. 100 of the BIA. Notwithstanding that the section was repealed in 2009, it continues to apply to transactions occurring before that date. The primary purpose was the reverse the effects of non-arm's length transactions that adversely affected the value of the estate of a bankrupt person. <i>See case updates.</i>
30-Apr-18	[Bouygues Building Canada inc. v. Iannitello et Associés inc.]	135	•The Court of Appeal for Quebec upheld the decision of the Superior Court which had dismissed a motion to contest the trustee's disallowance of claims. The appellants unsuccessfully argued that it was necessary to have a full-blown trial and that the forum best suited was the Ontario Court. <i>See Case Updates.</i>
7-May-18	[Arrangement relatif à 9354-9186 Québec inc. (Bluberi Gaming Technologies Inc.).]	Proofs of claim	•The Quebec Superior Court dismissed the application of the secured creditor to submit its plan to a creditors vote. Rather, the Court granted the debtors' application for litigation funding and a litigation financing charge in order to file a lawsuit against the secured creditor due to its alleged involvement in the debtors financial affairs. <i>See Case Updates.</i>
14-May-18	[PricewaterhouseCoopers Inc. v. Ramdath]	193	•The Manitoba Court of Queen's Bench had approved the proposal of the debtor company. An individual who was neither a creditor nor a shareholder, without seeking leave, filed a notice of appeal. A single judge of the Manitoba Court of Appeal held that there was no appeal as of right under s. 193 (a) of the BIA, but permitted a leave to appeal motion to proceed at a later date. <i>See Case Updates.</i>
21-May-18	[Arrangement relatif à Bloom Lake]	CCAA	•The Court of Appeal of Quebec dismissed an appeal from the supervising judge of CCAA proceedings. The Court reaffirmed that the exercise of judicial discretion in CCAA matters is accorded a high degree of deference and the role of an appellate court is largely supervisory. <i>See Case Updates.</i>
28-May-18	[Callidus Capital Corporation v. 9354-9186 Québec inc.]	CCAA	•A single judge of the Quebec Court of Appeal granted the CCAA leave to appeal application of the applicant. The issues raised on appeal were (I) the right of the applicant to vote on a plan sponsored by it; and (ii) the authorization of financing and a secured charge to enable the debtor to continue litigation against the applicant. <i>See Case Updates.</i>
4-Jun-18	[Paragon Capital Corporation Ltd. V. Starke Dominion Ltd].	Proofs of claim	•The Alberta Court of Queens Bench reviewed the law with respect to charging orders and the circumstances in which such an order could have priority over existing security interests. <i>See Case Updates.</i>
18-Jun-18	[Re Topsyn Flexible Packaging Ltd.].	147	•The Manitoba Court of Queen's Bench determined, on the facts of this case, that the levy under s. 147 of the BIA was not applicable on payments of net sale proceeds made by the trustee to secured creditors. The Court reviewed a number of cases involving the levy. <i>See Case Updates.</i>
25-Jun-18	[Arrangement relatif à Bloom Lake].	CCAA	•The Quebec Court of Appeal dismissed an application for leave to appeal a decision made in CCAA proceedings. In addition to discussing the criteria for leave of appeal, the Court also considered a preliminary issue related to service. <i>See Case Updates.</i>
2-Jul-18	[Industrial Properties Regina Limited v. Copper Sands Land Corp.].	CCAA	•The Saskatchewan Court of Appeal dismissed the appeal from the granting of an initial CCAA order, but allowed the appeal from the order granting interim financing for ongoing costs, costs of CCAA proceedings, and completion of commissioning of a water treatment facility. <i>See Case Updates.</i>