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Chapter 18: Receiverships

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Chapter 19: International insolvencies
Preface

This book had its genesis in Part II of the third edition of Jacob S. Ziegel and Ronald C.C. Cuming, *Secured Transactions in Personal Property, Surety and Insolvency*, published in 1995. In 2003, Professor Ziegel joined with Professors Anthony Duggan and Thomas Telfer to publish a separate volume dedicated to bankruptcy and insolvency law and this book is the second edition of that work. For this second edition, Professors Duggan (University of Toronto), Telfer (University of Western Ontario) and Ziegel (University of Toronto) have been joined on the editorial team by Professors Stephanie Ben-Ishai (Osgoode Hall Law School) and Roderick Wood (University of Alberta).

There have been major statutory and case law developments in the six years since the previous edition. Most significant, of course, are the enactment of the *Wage Earner Protection Program Act* and the substantial reforms to the *Bankruptcy and Insolvency Act RSC 1985, c.B-3* and the *Companies’ Creditors Arrangement Act* RSC 1985, c.C-36 by Bill C-55, enacted as Statute c.47 in November 2005 and subsequently amended by Bill C-12, enacted as Statute c.36, in June 2007. The new laws deal with a wide range of matters including preferences and transfers at undervalue, the disclaimer of executory contracts, employee protection, the provision of debtor-in-possession financing in restructuring proceedings and cross-border insolvencies. We discuss all these new provisions in depth, comparing them with the previous law and exploring the underlying policy implications. Among the most important case law developments are the Supreme Court of Canada’s decisions in *Peoples Department Stores Inc. (Trustee of) v. Wise* [2004] 3 SCR 461 (whether directors owe duties to creditors where the company is close to insolvency) and *Saulnier v. Royal Bank of Canada* 2008 SCC 58 (whether a fishing licence is “property” in the BIA sense) and the Ontario Court of Appeal’s decision in *Metcalfe & Mansfield Alternative Investments II Corp. (Re)* (2008) 296 DLR (4th) 135 (the CCAA asset-backed commercial paper case). These, along with numerous other cases, are extracted and discussed in the pages following.

The book is in five parts: Part I (Chapters 1 and 2) deals with the history and policy of the bankruptcy laws and also with constitutional aspects; Part 2 (Chapters 3-11) is devoted to formal (or “straight”) bankruptcy proceedings; Part 3 (Chapters 12-15), which is new, provides a comprehensive coverage of CCAA proceedings; Part 4 (Chapters 16 and 17) deals with BIA commercial and consumer proposals; Part 5 (Chapter 18), which is new, covers receiverships; and Part 6 (Chapter 19), deals with international insolvencies. We divided the labour as follows: Professor Duggan was responsible for Chapters 4 (Property of the Estate), 5 (Review of Pre-Bankruptcy Transactions), 12 (CCAA: Introduction) and 13 (Carrying on Business During CCAA Proceedings) (with Professors Ben-Ishai and Telfer); Professor Ben-Ishai was responsible for Chapters 7 (Claims against the Estate), 11 (Individual Bankruptcies and Consumer Issues) (with Professor Telfer), 13 (Carrying on Business During CCAA Proceedings) (with Professors Duggan and Telfer) and 17 (Consumer Proposals); Professor Telfer was responsible for Chapters 1 (Introduction) (with Professor Ziegel), 3 (Initiation of Proceedings and the Stay), 10 (Liability of Corporate Directors), 11 (Individual Bankruptcies and Consumer Issues (with Professor Ben-Ishai) and 13 (Carrying on Business During CCAA Proceedings (with Professors Duggan and Ben-Ishai); Professor Wood was responsible for Chapters 8 (Secured Creditors), 9 (Ranking of Creditors and Distribution of
Proceeds), 14 (CCAA: Claims), 15 (Approval of CCAA Plans) and 18 (Receiverships); and Professor Ziegel was responsible for Chapters 1 (Introduction) (with Professor Telfer), 2 (Constitutional Aspects), 16 (BIA Commercial Proposals) and 19 (International Insolvencies). Professor Duggan co-ordinated the project.

We had anticipated, when we started work on the project that the 2005-2007 amendments would be in force by the time we went to press. As it happens, though, most of the new provisions are still unproclaimed. The delay has been due partly to the time it has taken to draft supporting regulations and partly to political events, including the October 2008 General Election and the proroguing of the new Parliament in December, 2008, which have significantly interrupted government business. We are confident that the amendments will be in force by our publication date, but we have addressed the possibility that they might not be by providing as detailed an account as space allows not only of the amendments themselves but also, as mentioned above, of the law they (will) replace.

In chapter 1 of the previous edition of the Casebook, we pointed out how Canadian bankruptcy law has evolved from being the preserve of a small number of boutique law firms to the current position where no large law firm can afford to be without its own team of insolvency specialists. This transformation is no doubt due to the several severe recessions Canada has suffered over the past twenty five years, not to mention the current financial crisis which has gripped much of the industrialized world. It would be nice to think that Canadian law schools have also come to appreciate the intellectual, as well as practical, importance of bankruptcy law as part of a balanced curriculum. An increasing number of law schools have no doubt become converted to this view and we hope this new edition of the Casebook will help to attract even more converts.

We owe many debts: to our conscientious research assistants, to our law schools for funding assistance, to the Office of the Superintendent of Bankruptcy for providing us with statistical information which we have included in the Case Book and, not least, to Emond Montgomery and its fine editorial staff for encouraging us to persevere and to complete the manuscript by the agreed date.

AJD
SB-I
TGWT
RJW
JSZ