National Insolvency Review

VOLUME 33, NUMBER 5 Cited as (2016), Nat. Insol. Review OCTOBER 2016

• *WOLFRIDGE FARMS LTD.*: FARMS AND FIGHTS OVER COMI •

Jeremy Opolsky, Associate and Lara Guest, Associate, Torys LLP

Jeremy Opolsky

Lara Guest

A. INTRODUCTION

In *Wolfridge Farms Ltd.*, the Nova Scotia Supreme Court considered a contested application for recognition of a foreign insolvency proceeding. While perhaps unremarkable on its face, such contested applications have been rare in Canada. The Court sheds some necessary light on the determination of a debtor's centre of main interest, a key factor in the recognition of foreign proceedings. *Wolfridge Farms Ltd.* brings to the fore the relevance of the creditors' objective expectations of the debtor's centre of main interests.

B. COMI AND THE MODEL LAW

Canada adopted the *UNCITRAL Model Law on Cross-Border Insolvency*[1] through Part IV of the *CCAA* and Part XIII of the *BIA*, which came effective in 2009.[2] The Model Law establishes a framework to centralize proceedings for a debtor in a single, primary jurisdiction, while maintaining secondary proceedings in other jurisdictions to address local issues. Under this framework the domestic court will, under appropriate circumstances, recognize foreign insolvency proceedings.[3] The type of relief that flows from the recognition of the foreign proceeding depends on whether the proceeding is recognized as the primary jurisdiction (a foreign main proceeding) or as a secondary proceeding (a foreign non-main proceeding).[4] For example, recognition of a foreign main proceeding entitles the debtor to certain automatic relief, including the imposition of a broad stay of proceedings against it.[5]

• In This Issue •

NATIONAL INSOLVENCY REVIEW

National Insolvency Review is published six times per year by LexisNexis Canada Inc., 111 Gordon Baker Road, Suite 900, Toronto ON M2H 3R1 by subscription only.

ISBN 0-409-91078-3 (print) **ISSN 0822-2584**
ISBN 0-433-44694-3 (PDF)
ISBN 0-433-44393-6 (print & PDF)

Subscription rates: $495.00 per year (print or PDF)
$595.00 per year (print & PDF)

General Editor
Adam M. Slavens, B.A., LL.B.
Firm: Torys LLP

Please address all editorial inquiries to:

LexisNexis Canada Inc.
Tel. (905) 479-2665
Fax (905) 479-2826
E-mail: nir@lexisnexis.ca
Web site: www.lexisnexis.ca

Printed in the United States of America.

Key to the determination of whether a proceeding is a foreign main proceeding, is the location of the debtor's "centre of its main interests" or COMI. Despite the centrality of this term, there is no definitive meaning ascribed to it, either in the statutes or in the case law. Like the Model Law, neither the *CCAA* or *BIA* provides a definition of COMI.[6] The only guiding statutory provision creates a presumption that "in the absence of proof to the contrary, a debtor company's registered office is deemed to be the centre of its main interests."[7]

Case law has provided more guidance on this rebuttable presumption. In the leading case on the issue, *Lightsquared LP*, Morawetz J. set out three principal factors, considered as a whole, that indicate whether the foreign proceeding was brought in the jurisdiction of the debtor's COMI:

1. the location is readily ascertainable by creditors;
2. the location is one in which the debtor's principal assets or operations are found; and,
3. the locations where the management of the debtor takes place.[8]

An earlier case, *Probe Resources Ltd.*, had cited four slightly different factors for a court to consider in determining a debtor's COMI:

1. the location of assets;
2. the location of the creditors;
3. where the business operates from, the location of bank accounts; and,
4. the residence of the principals of the corporation, such as the directors and officers.[9]

However, the case law has not provided significant guidance as to the application of these factors. The cases to date have largely focused on smaller, Canadian subsidiaries of larger, globally-integrated corporate groups.[10] In such cases, the debtor has requested that the court recognize the seat of the corporate group as the Canadian subsidiary's COMI.[11] Subject to the exception below, it does not appear that any case has refused the debtor's request for recognition of a foreign COMI — indeed few of the cases have been contested at all.[12] In this context, no case has yet addressed how to balance the different COMI factors when they conflict.

Of the two most recent cases to consider COMI, one squarely follows this mould. In *Ceasars Entertainment Operating Co.* the Court granted the debtor's uncontested application to recognize its COMI as the United States.[13] The debtor had its registered office in Ontario and operated a casino in Windsor, employing its approximately 2,800 employees. The debtor was the only Canadian entity in a group of 172 entities; the remaining 171 debtors had also filed for bankruptcy protection in the United States. Applying the *Lightsquared* test, Morawetz J. granted recognition as a foreign main insolvency proceeding on the basis that the debtor and its affiliates operated as a functionally integrated group, in which each entity had their head office or headquarters in the United States.[14]

The other recent case, *Wolfridge Farms Ltd.*, is the rare Canadian example of a contested COMI application and is the focus of the discussion below.

C. WOLFRIDGE

Facts and Background

Wolfridge Farm Limited ("WFL") was a Nova Scotia corporation that incurred significant secured debt through the purchase of two properties. It shifted its registered office to Connecticut shortly before filing for bankruptcy in the United States under Chapter 11 of the United States Bankruptcy Code (the "Chapter 11 Proceeding").[15] Its Canadian secured creditors contested the recognition of the U.S. Proceeding as a foreign main insolvency proceeding.

WFL was originally incorporated in Nova Scotia in 2001. The head office (and registered office) was located in Bedford Nova Scotia. Lydia Early was the president and sole director. Her husband, Mr. Early was the vice president and sole shareholder. Both Mr. and Mrs. Early are U.S. citizens. They received status as Canadian permanent residents in 2009.

In January 2015, WFL was reorganized into a Delaware corporation. Its name was changed from Wolfridge Farm Limited to Wolfridge Farm Ltd. ("Wolfridge"). The registered office was listed as New Haven, Connecticut but its mailing address remained in Bedford, Nova Scotia. The Early's continued to live in Mahone Bay, Nova Scotia.

Bedford Property. In 2003, WFL purchased a property in Bedford, Nova Scotia from Mr. and Mrs. Bonang, who took a vendor takeback mortgage. As a result of non-payment, the Bonang's initiated foreclosure proceedings in July 2011. The trial judge ultimately ordered the foreclosure and sale of the property. In two successive sales of the Bedford Property, companies owned by the Early's made the highest bid with a 10 per cent deposit, but were unable to pay the balance of the proceeds. The property was ultimately sold to the Bonang's on April 8, 2015.

Wolfville Property. In 2001, WFL acquired a property in Wolfville, Nova Scotia. WFL obtained a secured loan from Farm Credit Canada, with personal guarantees provided by Mr. and Mrs. Early. The mortgage fell into arrears, and Farm Credit Canada (the "FCC", together with the Bonang's, the "Secured Creditors") initiated a procedure for foreclosure, sale and possession. A sale was held in March 2015. Like the Bedford Property, the bidding was won by the Early's who paid a 10 per cent deposit, but the Early's were unable to pay the balance of the purchase price.

Wolfridge's Chapter 11 Proceedings and Attempted Recognition

On March 3, 2015, Wolfridge filed an application with the U.S. Bankruptcy Court for the District of Connecticut to commence the Chapter 11 Proceedings. Wolfridge reported that its principal assets were in Nova Scotia and Florida. The creditors holding the 20 largest unsecured claims were located in Nova Scotia. Creditors holding secured claims were divided between Canada and the U.S.

Wolfridge then applied to the Supreme Court of Nova Scotia for recognition of the Chapter 11 Proceedings as a foreign main insolvency proceeding under the *BIA*.[16] Both of the Secured Creditors opposed Wolfridge's application for recognition of the U.S. proceeding. The Secured Creditors held mortgages on separate properties granted while WFL was a Nova Scotia company.

The Secured Creditors alleged that the recognition proceeding constituted an abuse of process. They noted that Mr. Early had, on multiple occasions, failed to notify the court and counsel for the Secured Creditors that WFL had been continued as a Delaware corporate. As late as February 9, 2015, a month after the continuance, and four days before the commencement of the Chapter 11 Proceedings, Mr. Early had corresponded with the Secured Creditors in the context of WFL with its corporate offices in Bedford, Nova Scotia. No mention was made of the continuance into Wolfridge or the registered office moving to Connecticut.

Mr. Early denied this allegation, explaining that WFL had moved to Connecticut to take advantage of new business opportunities. Wolfridge's new direction was to develop property in Florida and it owned real property there.

Wolfridge's COMI was in Nova Scotia, not Connecticut

It was not disputed that Wolfridge's presumptive COMI was in Connecticut, because it was now registered in Delaware, with its registered office in New Haven, Connecticut. However, LeBlanc J. held that, in these circumstances, the presumption was rebutted; Wolfridge's COMI was properly in Nova Scotia.

LeBlanc J. cited both the factors set out in *Probe* and *Lightsquared* for the determination of COMI. However, it is unclear which test he followed, if any. LeBlanc's conclusion seemed to rest on consideration of only two factors: the location of the corporation's assets and unsecured creditors.

First, LeBlanc J. rejected the Early's valuation of their Florida property, concluding that Wolfridge's personal property and real property in Nova Scotia was of greater value than property held in the United States.

Second, LeBlanc J. focused on the location of the creditors of Wolfridge. The largest unsecured creditors, holding 70 per cent of unsecured claims, were located in Canada. These creditors could not have objectively known that Wolfridge's COMI would be in the United States. They had lent to Wolfridge (as "WFL") as a Nova Scotia corporation. As late as four days before the Chapter 11 Proceedings were commenced, Mr. Early had corresponded with the Secured Creditors and had omitted details regarding the move into Connecticut.

There was no express consideration of the other *Lightsquared* or *Probe* factors, including the location of the operations of Wolfridge (presumably the United States, given the future focus of Wolfridge) or where the management decisions took place (again, presumably in the United States, where the Early's now spent the majority of their time). Nonetheless, based on the location of assets and creditors, LeBlanc J. concluded that Wolfridge's COMI was in Nova Scotia.

D. CONCLUSION: A LITTLE ILLUMINATION OF COMI REVEALS ONLY MORE QUESTIONS

The contested nature of the recognition proceeding in *Wolfridge* provides a measure of insight into the application of the COMI standard in Canada, but in doing so raises additional questions for future cases to address.

Wolfridge's most critical insight may be the emphasis that it places on the objective expectations of creditors regarding the debtor's COMI. While LeBlanc J. did not expressly address the relative balancing between the different COMI factors, it appears that in determining COMI he prioritized the objective expectations of Wolfridge's creditors over considerations of the management and operations of Wolfridge. This prioritization is consistent with the European conceptions of COMI.[17] While the *Lightsquared LP* test considers whether the proposed COMI "is readily ascertainable by creditors," Canadian case law before *Wolfridge* has failed to provide any real analysis of these expectations.[18] Following *Wolfridge*, courts may look more closely at the number and location of a debtor's creditors (and the value of their debts), in addition to whether those creditors should have objectively ascertained, based on information available to them, that the debtor's COMI was located in the jurisdiction of the foreign proceeding.

This insight about creditor expectations leads to a related question about the timing of such an analysis. When should the expectations of creditors (or indeed any of the COMI factors) be considered: the time that a debt is incurred, the time of the commencement of the foreign proceeding or the time that recognition has been sought? This issue is particularly relevant where an individual debtor has changed his residence during the pendency of his or her insolvency proceedings[19] or where, as in *Wolfridge*, a company changes its registered office (and/or its head office) shortly before the commencement of proceedings. In such cases there are often concerns regarding forum-shopping.

The issue of timing was raised, peripherally, in *Wolfridge* by the Early's argument that their prospective operations (real estate development in Florida) should be considered predominantly over their retrospective activities (real estate in Nova Scotia). While LeBlanc J. gave this issue no consideration, the issue has been actively considered in other jurisdictions, including the United States.[20] In future contested cases, Canadian courts will have to engage with the appropriate time period for the analysis of COMI.

[***Jeremy Opolsky*** *and* ***Lara Guest*** *are members of Torys LLP's Litigation Group in Toronto.*]

---

1 Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law, UN GAOR, 52nd Sess., annex, Agenda Item 148, UN Doc.A/RES/52/158 (1998) [Model Law]. The Model Law was drafted by the UN Commission on International Trade Law ("UNCITRAL").

2 *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 s. 45, Part IV, ss. 44-61 [*CCAA*]; *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, Part XIII, ss. 267-284 [*BIA*].

3 For a proceeding to be recognized before a Canadian court, an application must be made by a foreign representative and the proceeding must qualify as a foreign proceeding. Section 45(1) of the CCAA defines a foreign representative to be "a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect [*sic*] of a debtor company, to (a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or (b) act as a representative in respect of the foreign proceeding." A foreign proceeding is a "judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company's business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization."

4 In a deviation from the Model Law, the CCAA defines a foreign non-main proceeding as a binary alternative: it is any foreign proceeding "other than a foreign main proceeding." *CCAA*, s. 45(1) "Foreign non-main proceeding".

5 *CCAA*, s. 48(1). For an individual, the presumption is that the debtor's ordinary place of residence is the debtor's COMI. *BIA*, s. 268(2).

6 Likewise the term is not defined in the Model Law nor in Chapter 15, although both contain similar presumptions.

7 *CCAA*, s. 45(2).

8 *Lightsquared LP (Re)*, [2012] O.J. No. 3184, 2012 ONSC 2994 at para. 33.

9 *Probe Resources Ltd.(Re)*, [2011] B.C.J. No. 802, 2011 BCSC 552 at para. 22 (citing Kevin P. McElcheran,

Commercial Insolvency in Canada, 2nd ed., (Markham, Ont.: LexisNexis Inc., 2011) at 376).

[10] For a fuller exploration of Canadian COMI and COMI in the context of corporate groups see Jeremy Opolsky, "COMI's Fifth Year in Canada: Centre of Main Interest and the Inescapable Corporate Group," *Annual Review of Insolvency Law*, 2013, ed. Janis P. Sarra.

[11] See e.g. *Massachusetts Elephant & Castle Group, Inc*. (*Re*), [2011] O.J. No. 3280, 2011 ONSC 4201; *Lightsquared LP (Re)*, [2012] O.J. No. 3184, 2012 ONSC 2994; *Digital Domain Media Group, Inc*., [2012] B.C.J. No. 2187, 2012 BCSC 1565.

[12] The most notable contested case is *Re Gyro-Trac (USA) Inc. et Raymond Chabot inc*., [2010] J.Q. no 2858, 2010 QCCS 1311, leave to appeal refused, [2010] J.Q. no 3547, 2010 QCCA 800, which was actively contested.

[13] *Caesars Entertainment Operating Co. Re*, [2015] O.J. No. 1201, 2015 ONSC 712.

[14] *Ibid*. at para. 35.

[15] 11 U.S.C. ss. 1101 *et sesqui*.

[16] *BIA*, s. 270.

[17] See *e.g. Eurofood IFSC Ltd*., [2006] Ch. 508, [2006] All E.R. (E.C.) 1078 at para. 33.

[18] *Lightsquared LP (Re)*, [2012] O.J. No. 3184, 2012 ONSC 2994 at para. 33. See also *Digital Domain Media Group, Inc. (Re)*, [2012] B.C.J. No. 2187, 2012 BCSC 1565 at para. 28; *Probe Resources Ltd.(Re)*, [2011] B.C.J. No. 802, 2011 BCSC 552 at para. 28.

[19] See *e.g. In re Ran*, (2010) 607 F.3d 1017 (5th Cir).

[20] *Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127 (2d Cir.2013); In re Ran, (2010) 607 F.3d 1017 (5th Cir). See also Mark Lightner, "Determining the Center of Main Interest Under Chapter 15," (2009) 18 J. Bankr. L. & Prac. 5.

• TAKING POSSESSION OF A MEDICAL PRACTICE: THE HIDDEN DANGERS •

Emma Kenley, Partner, Gowling WLG and Rob Stelzer, CPA, CA, CIRP, Farber Financial Group

Emma Kenley

Rob Stelzer

Congratulations! You or your client has just been appointed as trustee in bankruptcy or receiver of a medical practice. There are no unpaid source deductions, no unpaid wage or vacation claims, and no environmental hazards that could be subject to priorities under the *Environmental Protection Act*. In short, there appear to be no priorities that could erode recoveries to secured and unsecured creditors. It seems like a fairly straightforward mandate — liquidate the assets, get approval for professional fees and distribute the realizations to creditors. It might even be the sort of mandate done on a fixed-fee basis. But beware of what may be lurking in the practice's filing cabinets if you or your client is deemed to be a "health information custodian."

Introduced in November of 2004, the *Personal Health Information Protection Act* (PHIPA) was established to safeguard the personal health information of patients in Ontario. The PHIPA places responsibilities on "health information custodians" (HIC) — who have custody or control over the personal health information of patients of "registered health professionals" (such as doctors, physiotherapists, chiropractors, massage therapists, acupuncturists, pharmacies, medical laboratories, etc.) — to, among other things, retain, transfer or dispose of health records in a secure manner. The definition of an HIC in the PHIPA is broad and includes not only individual practitioners but also group practices, such as medical clinics.

But what happens when the clinic becomes insolvent and a trustee in bankruptcy or receiver is appointed? Does the trustee or receiver become an HIC and, therefore, responsible for complying with the duties prescribed by the PHIPA?

This is precisely the issue that arose for A. Farber & Partners Inc. (Farber or the Trustee) last year when it was appointed as trustee in bankruptcy of 2081467 Ontario Inc., Vicpark Health Clinic Inc. and Viterna Health Centre Inc., three medical clinics operating out of four clinic locations in the Toronto area (collectively, the V Group). Following its appointment, Farber visited each of the four clinic locations. A desktop appraisal disclosed that there were a few thousand dollars of assets on the premises. Since all arrears had been paid, the obvious strategy would have been to take possession and sell the assets. However, during its review, Farber noted that there were dozens of filing cabinets of patient records for chiropractic, chiropody, naturopathy, acupuncture, physiotherapy and massage therapy services.

Recognizing that the costs of taking possession and dealing with the records would likely exceed any realization, Farber elected not to change the locks or otherwise take possession of any of the clinic locations, instead leaving the assets and the records in the possession of the landlords. In an effort to assist the landlords and deliver the records to the appropriate parties, Farber provided the landlords with contact information for the various registered health professionals. After the first meeting of creditors, the Trustee issued disclaimer of lease notices to the landlords.

One of the landlords contacted the Information and Privacy Commissioner of Ontario (IPC) asking for assistance in dealing with the records. The landlord specifically asserted that the costs to store and protect the records were prohibitive and retaining them could impact its ability to re-let the premises. The landlord's concerns prompted the IPC to issue a notice of review (Notice), in which the IPC determined that there were reasonable grounds to believe that V Group, the Trustee, the landlords or directors and/or officers of V Group were HICs and either may have failed or be about to fail in ensuring that the records were (or are) retained, transferred, or disposed of in a secure manner, and protected against theft, loss and unauthorized use or disclosure in contravention of the PHIPA. In the Notice, the IPC asked that the respondents, including the Trustee, provide it with written submissions setting forth the steps each had taken to secure and protect the records.

In attempting to fix responsibility for the records on the Trustee, the IPC relied on Ontario Regulation 329/04, section 3(7)[1], which provides:

> "Every person who, as a result of the bankruptcy or insolvency of a health information custodian, obtains complete custody or control of records of personal health held by the health information custodian, is prescribed as the health information custodian with respect to those records." (emphasis added)

In other words, Farber was in jeopardy of being deemed an HIC simply by virtue of its position as trustee of V Group's estate if the IPC determined that it had complete custody and control of the records.

In its submissions to the IPC, Gowling WLG (Gowling), as counsel to Farber, took the following position:

1. There is no basis in law upon which to foist care and control of the records upon the Trustee since the records were in the possession of the respective landlord of each premises. Farber did not occupy any of the premises nor did it take custody, possession or control of the records and accordingly, any responsibility for the records did not vest in the Trustee;
2. the Notice is, in effect, an "action" within the meaning of section 215 of the *Bankruptcy and Insolvency Act* (BIA) and, as such, the IPC requires leave of the bankruptcy court (Court) in order to proceed against it outside the Court;[2]
3. in the alternative, since the issues to be determined relate to, or arise from, the administration of the bankrupts' estate, the IPC must bring an application in the Court pursuant to section 37 of the BIA;[3] and,

4. the BIA is federally enacted whereas the powers of the Commissioner are prescribed under the PHIPA, a provincially enacted statute. Accordingly, the Commissioner and the IPC are bound by the BIA.

As a result of these submissions, the IPC conducted its own due diligence, which included an inspection of certain clinics and the state of the records on site. Some weeks later, the IPC issued an interim order requiring one of the landlords to take specific steps to secure the records pending completion of the IPC's review. In its decision, the IPC stated that Gowling's submissions raise a constitutional question, which triggers section 109 of the *Courts of Justice Act*.[4] The IPC made no determination as to the issuance of an order against the Trustee but rather stated that Farber may raise the issue with proper notice.[5]

Ultimately, the personal health information was either retrieved by the registered health professionals who had provided the services (*i.e.* the individual chiropractors, etc.), returned to the various colleges (Colleges) that regulate the registered health professionals (*i.e.* the College of Chiropractors, etc.) or, in the case of one location, retained by the landlord who agreed to comply with the responsibilities related to the records as an HIC. The IPC was satisfied that the records were secure, that individuals had been notified of the location of their records and that individuals were able to exercise their right of access. Accordingly, the IPC concluded its review and did not make any order against the landlords, Farber or the other parties.

Given that no final order was issued, the responsibilities of a trustee in bankruptcy of a medical practice remain unclear. We expect that had Farber taken possession of the premises of the four locations, the outcome would have been very different. If deemed an HIC, Farber could have attempted to provide the records to the appropriate registered health professionals or Colleges, or it could have incurred the costs to store the records itself. Returning the health-care records would have entailed sorting through them, contacting the various registered health professionals or Colleges and liaising with them to ensure the records were retrieved. This task would have been complicated by the fact that some patients had seen more than one type of practitioner, requiring certain records to be copied. On the other hand, keeping the records would have included paying for storage for the time period prescribed by each College, notifying patients as to where their records were stored and providing patients with continued access to their records. In either case, the costs would have been significant.

It should be noted that the PHIPA is not the only source to consider when assessing a trustee's or receiver's responsibilities with respect to the retention of records. The individual Colleges, which regulate registered health professionals, prescribe many of the responsibilities related to record retention, such as the period of time records must be retained. The practical implication of this is that an HIC responsible for chiropractic records, for example, must also be aware of the Standards of Professional Practice for Chiropractors in order to comply with the storage requirements for chiropractic records. If a clinic has chiropractic, massage therapist and acupuncturist patients, then the HIC for those records must comply not only with the PHIPA, but also the record requirements for all three Colleges.

In summary, there are inherent risks, which may not be readily apparent, that could result in substantial and unexpected costs to the bankrupt estate or to the receiver where health-care records are involved. Trustees, receivers and their counsel should take special care and consider the dangers associated with being deemed an HIC under the PHIPA before taking possession of a clinic or other health practice where medical records remain on-site.

[***Emma Kenley*** *is a partner at Gowling WLG specializing in commercial law, restructuring, insolvency and business banking matters. She also acts for chartered banks, financial institutions, lenders, receivers and trustees in commercial law*

disputes involving the interpretation and enforcement of commercial paper and security.

***Rob Stelzer** is a vice president with the Insolvency & Restructuring practice of Farber Financial Group. A Chartered Professional Accountant and Licensed Insolvency Trustee, Rob has acted as Proposal Trustee, Receiver and Trustee for distressed business undertaking a restructuring or an insolvency proceeding pursuant to the Bankruptcy and Insolvency Act or the Companies' Creditors Arrangement Act.*]

Post-Script:

For those who practice outside Ontario, reference should be made to the following:

Alberta:	*Health Information Act*
British Columbia:	*E-Health (Personal Health Information Access and Protection of Privacy) Act*[6] *Personal Information Protection Act* [7] *Freedom of Information and Protection of Privacy Act* [8]
Manitoba:	*Personal Health Information Act*
New Brunswick:	*Personal Health Information Privacy and Access Act*
Newfoundland and Labrador:	*Personal Health Information Act*
Northwest Territories:	*Health Information Act*
Nova Scotia:	*Personal Health Information Act*
Prince Edward Island:	*Health Information Act*[9]
Saskatchewan:	*The Health Information Protection Act*
Yukon:	*Health Information Privacy and Management Act*[10]

---

1 See also subsections 3(1) and 3(12) of the PHIPA.

2 Section 215 of the BIA provides that no action lies against the trustee with respect to any action taken pursuant to the BIA without leave of the Court; Gowling further submitted that, should the IPC seek such leave, it would be required to demonstrate that the issue can be dealt with more efficiently under the provisions of the BIA and without disadvantage to the Estate.

3 Section 37 of the BIA provides that any person aggrieved by any decision of the trustee may apply to the Court and the Court may confirm, reverse or modify the decision complained of. Gowling further submitted that since Farber is an officer of the Court, any proceedings against it should be heard by a judge of the Court.

4 This section provides as follows:
"Notice of constitutional question
109. (1) Notice of a constitutional question shall be served on the Attorney General of Canada and the Attorney General of Ontario in the following circumstances:
1. The constitutional validity or constitutional applicability of an Act of the Parliament of Canada or the Legislature, of a regulation or by-law made under such an Act or of a rule of common law is in question.
2. A remedy is claimed under subsection 24 (1) of the Canadian Charter of Rights and Freedoms in relation to an act or omission of the Government of Canada or the Government of Ontario."

5 As required by s.109(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

6 Applies to certain designated databases only.

7 Applies to the private health care sector.

8 Applies to health authorities and hospitals.

9 Passed, but not yet in force.

10 Passed, but not yet in force.

INVITATION TO OUR READERS

Have you written an article that you think would be appropriate for *National Insolvency Review*?

Do you have any ideas or suggestions for topics you would like to see featured in future issues of *National Insolvency Review*?

Please feel free to submit your articles, ideas, and suggestions to nir@lexisnexis.ca

We look forward to hearing from you.

Commercial Insolvency in Canada, 3rd Edition

Kevin P. McElcheran, LL.B.

Creditors and landlords. Employees and suppliers. Shareholders. The list of stakeholders affected by the insolvency of a business is long and varied, and applying the patchwork of insolvency-related legislation and case law to advance their often-competing – but occasionally aligned – interests can be challenging. This new edition of Commercial Insolvency in Canada provides a comprehensive examination of Canada's insolvency laws and related jurisprudence to help lawyers navigate the evolving legal landscape.

The latest information

In addition to a detailed index and a practical table of cases, Commercial Insolvency in Canada, 3rd Edition offers a renewed, in-depth look at insolvency law as well as a discussion of the most recent developments in the relevant case law. This volume also includes a chapter on cross-border insolvencies, which is particularly useful for U.S. practitioners and cross-border corporations.

In this latest edition, readers will find updated information and analyses, including:

- A brand new chapter that includes a consolidated discussion of priorities of contractual and statutory claims. This chapter will integrate analysis of the Supreme Court of Canada's decision in Sun Indalex Finance, LLC v. United Steelworkers, which dealt with provincially enacted deemed trusts for pension shortfalls, with the more general discussion of statutory claims. The chapter also considers the implications of the Supreme Court of Canada's decision in Newfoundland and Labrador v. AbitibiBowater Inc., which limits a debtor company's ability to walk away from environmental liabilities as it reduces the footprint or relocates the restructured business.
- Updates on the judicial use of the new powers of the courts that were created by the 2009 amendments to the Companies' Creditors Arrangement Act, which included the transition from the CCAA to the BIA to distribute proceeds realized after a court supervised sale of a going concern business owned by debtor companies as now expressly permitted by the CCAA.
- An examination of recently-released decision in insolvency cases and proceedings.

An essential resource

Commercial Insolvency in Canada, 3rd Edition will be especially useful for:

- In-house counsel, especially those who work for financial institutions or professional organizations
- Corporate and business lawyers who need to advise businesses or creditors facing insolvency issues
- Lenders, insolvency, restructuring and turnaround professionals, and distressed debt investors, who could refer to it as a resource for insight into their daily work and particular issues
- Law schools and other academic programs who can use it as a textbook and reference book

For further details of the publication or to subscribe,
go to *www.lexisnexis.ca/store*.