



# Trending Decisions

## Cases we are Following

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The following is a table of current cases of interest to the Canadian insolvency community as of June 21, 2019, as prepared by Natalie Renner and Natasha MacParland of Davies.

INSOLVENCY CASES UNDER APPEAL		
CASE	SUMMARY OF SIGNIFICANT ISSUES	STATUS OF APPEAL
<i>Canada v. Canada North Group Inc.</i> (Alberta)	Do “super priority” charges granted in a <i>Companies’ Creditors Arrangement Act</i> initial order (including debtor in possession and administrative charges) have priority over a statutory deemed trust for unremitted source deductions?	Appeal to the Alberta Court of Appeal heard in September 2018. Awaiting reasons.
<i>Orphan Well Assn. v. Grant Thornton Ltd.</i> (Alberta)	In an insolvency, do environmental claims relating to oil and gas wells that are abandoned and, subject to remediation, have priority over the rights of secured creditors? Can the Alberta Energy Regulator prevent the abandonment or disclaimer of, or require the remediation of, a debtor’s assets by a receiver or bankruptcy trustee?	The Supreme Court of Canada released its decision on January 31, 2019, ruling that the environmental remediation obligations of bankrupt oil and gas companies must be fulfilled in priority over all other claims, including secured claims. Section 14.06(4) of the <i>BIA</i> does not prevent the receiver or trustee from having to comply with the remediation orders.
<i>Callidus Capital Corporation v. 9354-9186 Quebec Inc.</i> [ <i>Bluberi Gaming Technologies Inc.</i> ] (Quebec)	Can a debtor whose sole remaining asset is a litigation claim seek court approval to obtain litigation financing to pursue the litigation, or does such course of action itself constitute a plan which should be submitted to and subject to the vote of creditors?	In a unanimous decision released on February 4, 2019, the Court of Appeal reversed the lower court’s decision. The Court of Appeal ruled that: <ul style="list-style-type: none"> <li>• Litigation financing cannot be authorized to pursue a debtor’s litigious claim, in the absence of an approved CCAA plan, where creditor rights are affected and where there are viable alternatives for creditor recovery.</li> <li>• Litigation funding forming the basis of a plan of arrangement must be disclosed in full to creditors in the context of CCAA proceedings, subject only to litigation privilege.</li> </ul> An application for leave to appeal to the Supreme Court of Canada was filed on April 5, 2019.

CASE	SUMMARY OF SIGNIFICANT ISSUES	STATUS OF APPEAL
<i>Third Eye Capital Corporation v. Ressources Dianor Inc. / Dianor Resources Inc.</i> (Ontario)	Two issues: 1. Whether gross overriding royalties attached to mining claims are interests in land? 2. Whether, and under what circumstances, a judge has the jurisdiction to extinguish a third party's interest in land using a vesting order?	The Ontario Court of Appeal addressed the two issues in two separate decisions: • In the decision released March 15, 2018, the Court of Appeal reversed the lower court's decision and held that GORs do constitute interests in land. • In the decision released June 19, 2019, the Court of Appeal confirmed the lower court's jurisdiction to grant vesting orders, generally. But ruled that certain interests should not be vested out. The Court of Appeal laid out a "rigorous cascade analysis" to determine whether a third party's interest should be extinguished.
<i>Solar Power Network Inc. v. ClearFlow Energy Finance Corp.</i> (Ontario)	Does the <i>Interest Act</i> require an express statement of an annual rate of interest or, in the alternative, an effective annual rate which takes into account compounding interest?	The Ontario Court of Appeal reversed the decision of the lower court on September 4, 2018. Leave to appeal to the Supreme Court of Canada was filed on November 5, 2018. The Supreme Court dismissed the leave to appeal application on March 28, 2019.
<i>Urbancorp Toronto Management Inc. (Re)</i> (Ontario)	Whether the principal of a group of companies can use corporate entities to pay his debts and the debts of other companies he controls, or whether such payments are transactions at undervalue and/or fraudulent conveyances.	Leave to appeal to the Ontario Court of Appeal granted on August 31, 2018. The appeal was heard by the Ontario Court of Appeal on March 28, 2019. The appeal judgment is under reserve.
<i>Canada v. Toronto-Dominion Bank</i> (Federal/Quebec)	Is a secured creditor required to reimburse payments made to it by a borrower who failed to remit GST source deductions, or do the deemed trust provisions require a "triggering event"; i.e. bankruptcy of the debtor, realization of security or requirement to pay?	Application for leave to appeal to the Federal Court of Appeal filed June 22, 2018. Parties have filed their written submissions. The CBA has been granted status as an intervenor. The appeal will likely be heard by the Federal Court of Appeal in the fall of 2019.
<i>Callidus Capital Corp. v. Canada</i> (Federal/Ontario)	Does the insolvency of a tax debtor render the deemed trust under the <i>Excise Tax Act</i> ineffective against a secured creditor who received, prior to bankruptcy, assets of the tax debtor that were deemed to be held in trust for the Crown?	The Supreme Court overturned the decision of the Federal Court of Appeal and held that the bankruptcy of a debtor rendered the deemed trust under the <i>Excise Tax Act</i> ineffective against a secured creditor who received, prior to the bankruptcy, proceeds from the assets of the debtor that were deemed to be held in trust for the benefit of the Crown.
<i>United Food and Commercial Workers International Union, Local 175 v. Rose of Sharon (Ontario) Community</i> (Ontario)	Is a receiver a successor employer and required to respond to a notice to bargain?	An application for judicial review has been filed with the Divisional Court.
Sam Caetano, as representative of, et al. v. Quality Meat Packers Holdings Limited (Ontario)	1. Does the Ontario Labour Relations Board have exclusive jurisdiction over claims for wrongful dismissal and unpaid severance when a collective agreement is silent on severance pay and the employer is bankrupt. 2. Can a representation order be made under Rule 10.01 in respect of underlying claims that are statute-barred by the limitation period.	The Supreme Court of Canada dismissed the leave to appeal application on February 14, 2019.

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Manitok Energy Inc. (Alberta)	Is the intention of parties for a producing royalty in certain oil and gas properties to be in interest in land sufficient to create such an interest in circumstances, where, among other things, there is a fixed quantity of production and in the absence of a right of entry on the land.	Discontinuance of appeal filed with Alberta Court of Appeal dated July 30, 2018.
<i>PricewaterhouseCoopers Inc., as trustee in bankruptcy of Sequoia Resources Corp. v. Perpetual Energy Inc., et al.</i> (Alberta)	Can a trustee in bankruptcy, in reliance on the transfer at undervalue provisions of the BIA unwind an oil and gas transfer between related companies. Can a bankruptcy trustee void a transaction on grounds of public policy and statutory illegality.	Proceedings in the Court of Queen's Bench concluded December 17, 2018. Judgment under reserve.
<i>Resolute FP Canada Inc., et al. v. Her Majesty the Queen as represented by the Ministry of the Attorney General</i> (Ontario)	Does a vendor, or any of its corporate successors, lose the benefit of a previously held indemnity (specifically an indemnity relating to environmental liabilities) once it transfers the indemnity to a purchaser in a sale transaction?	The appeal was heard by the Supreme Court of Canada on March 28, 2019.
<i>Northern Sunrise County v. Virginia Hills Oil Corp.</i> (Alberta)	Are municipalities' claims for linear property taxes considered to be unsecured claims under the BIA?	The Court of Appeal dismissed the appeal, confirming that claims by municipalities for linear property taxes are considered to be unsecured claims under the BIA.
<i>Royal Bank of Canada v. Reid-Built Homes Ltd.</i> (Alberta)	Whether a court-appointed receiver's charge securing fees and approved borrowings is discretionary and whether such charge is subordinate to a municipality's claim for property taxes.	On March 25, 2019, the Court of Appeal reversed the lower court's decision, ruling that although the court has discretion under s. 243(6) of the BIA with respect to the priority of a receiver's charge, this discretion must be exercised on a principled basis. The Court of Appeal ruled that, in this instance, the receiver has priority for its fees and disbursements.
<i>Leatherman v 0969708 BC Ltd</i> (British Columbia)	On a secured loan, when does the two year limitation period to enforce security begin?	The Court of Appeal overturned the lower court decision and held that the two year limitation period to enforce security starts from the day the security becomes enforceable, even if demand has not been made. On October 4, 2018, the Supreme Court of Canada dismissed the leave to appeal application.
<i>The Guarantee Company of North of America v. Royal Bank of Canada</i> (Ontario)	Are provincially created statutory trusts, specifically trusts created under section 8 of the <i>Construction Lien Act</i> (Ontario), considered to be a valid trusts for the purposes of section 67 of the BIA	On January 14, 2019, the Court of Appeal reversed the lower court decision and affirmed that provincially created statutory trusts do qualify as trusts under section 67 of the BIA. More specifically, the Court of Appeal held that section 8 of the <i>Construction Lien Act</i> (Ontario) creates a valid trust that survives bankruptcy. The Court of Appeal decision is not being appealed to the Supreme Court of Canada.