



Trending Decisions

Cases we are Following

By Natasha MacParland and Natalie Renner

The following is a table of current cases of interest to the Canadian insolvency community as of November 29, 2018, 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?	Appeal to the Supreme Court of Canada heard on February 15, 2018. Awaiting Reasons
<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?	Leave to appeal to the Court of Appeal of Quebec granted on April 20, 2018.
<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?	1. Motion to extend time to file leave to appeal to Supreme Court of Canada until determination by the Ontario Court of Appeal on the second issue granted on June 21, 2018. Written updates on status of Ontario Court of Appeal hearing submitted on October 19, 2018. 2. Written submissions on the second issue due to the Ontario Court of Appeal in August 2018.
<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?	Scheduled to be heard by the Ontario Court of Appeal on March 28, 2019.
<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.

CASE	SUMMARY OF SIGNIFICANT ISSUES	STATUS OF APPEAL
<i>Canada v. Callidus Capital Corporation</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 Community</i> (Ontario)	Is a receiver a successor employer and required to respond to a notice to bargain?	An application for judicial review will come on for a hearing before the Divisional Court on a date to be fixed.
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?	Application for leave to appeal to Supreme Court of Canada filed October 1, 2018.
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>Pricewaterhouse Coopers 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 of Alberta adjourned until November 30, 2018.
<i>Weyerhaeuser Company Limited v. Ontario (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?	Leave to appeal to the Supreme Court of Canada granted on October 18, 2018.

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