

## Publisher's Note

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### **CANADIAN COMMERCIAL REORGANIZATION**

**Richard H. McLaren**  
**Release 2022-4, June 2022**

#### **Publisher's Special Release Note 2021**

The pages in this work were reissued in December 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the December 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This publication is designed to help practitioners manage or avoid bankruptcy by keeping up to date on legislative and judicial changes. Updated regularly, with the Companies' Creditors Arrangement Act (CCAA) provisions and the parallel Bankruptcy and Insolvency Act (BIA) provisions for each stage of reorganization set out, this title helps practitioners understand both the BIA and the CCAA. Up-to-date information includes key decisions relevant to insolvency practice and substantial BIA and CCAA amendments now in force.

### **What's New in this Update:**

This release features updates to Chapters 2 (Statutory Requirements for Eligibility to Reorganize), 3 (The Application Process), and 7 (Receivership under the Bankruptcy and Insolvency Act).

### **Highlights**

**Statutory Requirements For Eligibility To Reorganize — Jurisdiction Of Courts Under The Bankruptcy and Insolvency Act — Generally** — The Ontario Court of Appeal considered whether the appellant had a right of appeal pursuant to s. 193(a) of the BIA as the matter involved the appellant's future rights in relation to procedural fairness. The court found that the appellant's request did not fall within the scope of s. 193(a) because the appellant's right to procedural fairness was not a future right but a present one that existed at the time of the trial: *Ting (Re)*, 2021 ONCA 425 (Ont. C.A.), leave to appeal refused (2022), 97 C.B.R. (6th) 1 (S.C.C.).

**Statutory Requirements for Eligibility to Reorganize — Jurisdiction of Courts Under the Bankruptcy and Insolvency Act — Generally** — The Ontario Court of Appeal considered whether the chambers judge erred in applying an overly restrictive and narrow interpretation of s. 193(c) of the BIA. In its decision, the court noted that case law advocating for a broader approach came from appellate decisions in other provinces and the panel decisions made within Ontario took a narrower interpretation. Further, the court found that the practical differences between the narrow and broad approach were overstated and, upon analysis, there appeared to be consensus among the case law presented. The court held that in applying s. 193(c), one must ask whether the order would result in a loss or gain or jeopardize the property value in surplus of \$10,000. The court held that the chambers judge had correctly identified the legal principles: *Hillmount Capital Inc. v. Pizale*, 2021 ONCA 364 (Ont. C.A.).

**Statutory Requirements for Eligibility to Reorganize — Jurisdiction of Courts Under the Bankruptcy and Insolvency Act —**

**Generally** — The Ontario Superior Court stated that not every action arising out of the administration of an estate is captured by s. 215 of the BIA. The court held that the plaintiff did not require leave under s. 215 because their action was made against the defendant in its personal capacity and the allegations made against the defendant were not with respect to any action taken pursuant to the BIA and, as a result, the plaintiff did not require leave under s. 215 to commence their action: *Flight v. Adamson*, 2021 ONSC 4278 (Ont. S.C.J.).

### **ProView Developments**

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages