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BANKING

Chartered Banks

Canada's banking system has consistently been ranked in the top ten globally for soundness by the World Economic Forum. The private sector financing industry in Canada is dominated by six banks, all of which are federally regulated. These banks (The Toronto-Dominion Bank, Royal Bank of Canada, The Bank of Nova Scotia, Bank of Montreal, Canadian Imperial Bank of Commerce and National Bank) are, by Canadian standards, large, well-capitalized and have significant international interests. Canada was a signatory to the Basel Accord and the major banks have all exceeded the minimum capital and liquidity requirements established under Basel III.

In addition to the six banks noted above, there are approximately 29 other domestic banks (collectively referred to as "**Schedule I Banks**"). There are also approximately 14 subsidiaries of large international banks operating in Canada (referred to as "**Schedule II Banks**"). As well, large international banks may also operate in Canada through branches rather than solely through their subsidiaries. These branches (referred to as "**Schedule III Banks**") will consist of either full-service branches, which may engage in consumer and commercial financing and other financial services activities permitted to Schedule I and II Banks (subject to certain exceptions), or lending branches, which have more limited powers and are more suited to cater to the borrowing needs of small and medium-sized businesses, credit card and consumer loan markets and commercial lending.

As in a number of other countries, the four pillars of finance in Canada (banks, securities dealers, insurance companies and trust companies) have largely been dismantled. Canadian banks now have significant ownership stakes in the brokerage industry, the insurance industry and the trust industry. More recently, Canadian banks have also been allowed to invest in the financial technology sector.

Other Financial Institutions and Alternate Forms of Financing

Almost one in four Canadians use credit unions. Although Canada implemented a federal credit union regulatory regime in 2012 for those institutions that choose it, nearly all credit unions remain provincially regulated.

A large number of non-bank lenders also operate in Canada to provide asset-based lending, mezzanine debt, capital asset financing and/or accounts receivable factoring. A number of Schedule I Banks also have divisions focused on asset-based financing.

Other financial institutions in Canada, such as insurance companies and pension funds, provide long-term funding and portfolio financing. As a result of the size of certain life insurance companies in Canada and the dismantling of the four pillars of finance, insurance companies, such as Manulife, Sun Life and Canada Life, provide some banking services to both businesses and consumers.

Security for Borrowing in Canada

Lenders will generally require security over some or all of the borrower's personal property and real estate. Working capital loans from Canadian banks are typically secured by margined accounts receivable and inventory and term loans are typically secured by all assets of a borrower. In the absence of (and often in addition to) security, the lender will usually require guarantees from principals or shareholders. In addition, lenders will frequently restrict borrowers from incurring additional debt, paying dividends, encumbering assets, reorganizing their business, providing financial assistance and other such matters in connection with the granting of significant term loans. Intercreditor arrangements may also be required where appropriate.

Personal property security regimes are provincially legislated, with all provinces and territories other than Quebec having (largely similar) personal property security acts modeled on Article 9 of the U.S. *Uniform Commercial Code*. The provinces and territories also have separate regimes for real property security. Several provinces have enacted legislation modeled on Article 8 of the U.S. *Uniform Commercial Code* which governs, among other things, the perfection of security interests in investment property such as securities. Personal property security registry systems in Canada are notice-based, designed to disclose the existence of a security interest in collateral. Although registration protects the priority of a secured creditor's claim (on a first-in-time basis subject to certain exceptions such as purchase money security interests), registration is not necessary for the security interest to be valid and enforceable against the debtor, though it is the most common means of perfection of a security interest.

BANKRUPTCY, INSOLVENCY AND REORGANIZATION

Introduction

In Canada, legislative jurisdiction over matters involving debtors and creditors is shared among the federal government and the provincial and territorial governments. The federal government has jurisdiction over "bankruptcy and insolvency," while each provincial government has jurisdiction over "property and civil rights in the province," which includes jurisdiction over real property and personal property security regimes. The federal government has, by statute, given the territorial governments powers similar to those of provincial governments.

There are three common types of insolvency or restructuring proceedings in Canada: (a) bankruptcy; (b) receivership; and (c) reorganization. Receivership and reorganization are the most common scenarios for insolvent companies. A bankruptcy proceeding can also run in parallel with a receivership.

The initiation of any one of these proceedings will stay the rights of creditors other than, in certain circumstances, those creditors holding security over personal property or charges against real property. The exceptions are reorganization proceedings pursuant to the federal *Companies' Creditors Arrangement Act* ("**CCAA**"), wherein even secured creditors will usually be stayed by the initial filing. International creditors will generally have the same rights as Canadian creditors in all insolvency and restructuring proceedings.

It is not uncommon for insolvency proceedings in Canadian courts to run parallel with proceedings in the United States or other jurisdictions. Canadian courts may recognize a foreign proceeding where there is a "real and substantial connection" with a proceeding before the Canadian court, and/or may request a foreign court to initiate a parallel proceeding if significant assets of the debtor are located in that foreign jurisdiction. Common examples would be proceedings commenced under Chapter 11 or Chapter 15 of the United States Bankruptcy Code, recognized by a Canadian court as foreign main or foreign non-main proceedings, respectively.

BANKRUPTCY

The federal *Bankruptcy and Insolvency Act* ("**BIA**") governs the bankruptcies of most individuals, estates of deceased individuals, corporations, partnerships and other entities. In addition to bankruptcy, the BIA deals with enforcement of security (and receiverships in particular) and reorganization of insolvent debtors.

There are several ways in which a debtor may become bankrupt, the principal ones being: (a) the making by the debtor of an assignment for the general benefit of creditors; and (b) the making of a bankruptcy order by the court on the application of a creditor. The legal effect is the same – the vesting in a trustee of all the bankrupt's non-exempt property, but subject to the rights of secured creditors (creditors which hold security interests in the debtor's personal property and/or charges against its real property).

Bankruptcy Administration

Bankruptcy trustees in Canada are considered officers of the court and are required to treat the interests of all stakeholders fairly and as such interests may appear. Trustees are generally not adversarial to secured creditors and typically do not seek to recover ordinary course payments made prior to bankruptcy.

Secured creditors will sometimes support or initiate a bankruptcy to run in parallel with a receivership, going-concern sale or liquidation. The bankruptcy will relegate to unsecured status certain statutory liens and deemed trusts which might otherwise supersede a creditor's security.

ENFORCEMENT OF SECURITY/ RECEIVERSHIP

A receiver can be appointed either privately pursuant to contractual rights set out in a security agreement or by order of the court on application of a secured creditor. In exceptional circumstances, unsecured creditors may also have a receiver appointed on equitable grounds under provincial law. Provincial securities regulators may also have statutory powers to appoint receivers over publicly traded debtors.

A general secured creditor can, under provincial law, sell its collateral, but, if it is enforcing against substantially all of the assets of a business, the BIA will deem the secured creditor to be a receiver with a range of onerous reporting obligations to creditors and regulators. It is therefore not recommended that such action be taken without a licensed trustee to act as receiver.

Whether appointed by a secured creditor or by the court, the receiver's main purpose will be to market and sell the assets and, if possible, the going-concern business of the debtor to satisfy the claims of secured creditors. A receiver may also manage the business of the debtor in order to preserve value and the business as a going concern until a sale or sales can be completed. In that case the receiver would likely retain former employees of the debtor on a contract basis to assist with the business.

If there are surplus proceeds after the claims of secured creditors are paid out, a receiver will normally turn those over to a trustee in bankruptcy.

Notice of Intention

Secured creditors are generally free to enforce their security without interference from any trustee in bankruptcy. The BIA does, however, require that before enforcing security on all or substantially all of the inventory, accounts receivable or other property of an insolvent debtor used in relation to the debtor's business, the secured creditor must first give the debtor 10 days' notice of its intention to do so.

Private Appointment of Receiver

A security agreement will normally contain a provision authorizing the secured creditor to appoint a receiver upon the occurrence of a default in payment by the debtor or other specified events of default. If the agreement does not do so, the secured creditor will have no alternative but to seek a court appointment.

A private receiver will take direction from the secured creditor. A private receiver is not subject to general fiduciary duties to other interested parties, but is subject to certain standards set out in the BIA (for receivers) and in the provincial *Personal Property Security Act* (for enforcement of security), namely to act honestly and in good faith and to deal with the debtor's property in a commercially reasonable manner.

The BIA also imposes duties on a receiver to deliver to the debtor, certain creditors and the official receiver's office notice of its appointment, a statement of its intended plan of action, interim reports and a final report and statement of accounts. Because the BIA deems any secured creditor who enforces against substantially all of the assets of a debtor's business to be a receiver (with the foregoing duties), a secured creditor should generally retain a licensed trustee to handle the enforcement and realization.

Court Appointment of Receiver

The BIA (as well as the statute in each province, other than Quebec, governing the rules of the provincial court) authorizes the court to appoint a receiver or receiver and manager where it is "just or convenient to do so." Even though a secured creditor may have a contractual right to appoint a receiver, it may have no choice but to seek a court appointment (e.g., where the debtor or a third party will not give access to the charged property), or it may wish to do so (e.g., where it wishes to prevent a subsequent challenge that it acted negligently or improvidently in disposing of the debtor's property, by having the court establish the terms and conditions of sale and oversee the sale process, or where it expects to face intercreditor priority disputes).

A court-appointed receiver is an independent officer of the court and is subject to the direction of the court, not of the secured creditor. A court-appointed receiver will serve the interests of all creditors and other stakeholders, as such interests may appear, and does not, for example, prefer the interests of unsecured creditors. Like a trustee in bankruptcy, a court-appointed receiver will generally not be adversarial to secured creditors. A court-appointed receiver will normally be cooperative and collaborative with the secured creditor that brought the court application for its appointment, while still maintaining the impartiality of an officer of the court.

Effect of Appointment of Receiver

The appointment of a receiver, whether privately or by the court, does not end a corporate debtor's existence. However, the appointment does normally suspend the powers of the debtor's management to carry on the debtor's business or to deal with its property. A receiver will usually be empowered – a private receiver by the security agreement and a court-appointed receiver by the court's order – to carry on the debtor's business (and in doing so, to continue the employment of employees, to perform contracts, etc.) and also to dispose of the debtor's property.

Because the BIA is a federal statute with effect throughout Canada, an order under the BIA appointing a receiver (or an interim receiver, as discussed below) in one province can be enforced in other provinces.

A court-appointed receiver (and sometimes a privately-appointed receiver) will normally obtain an approval and vesting order in respect of a sale transaction of any material size. In exceptional circumstances where the value of the debtor's business is dependent on not-easily-transferable regulatory licences or permits, Canadian courts have granted reverse vesting orders. A reverse vesting order is a recent Canadian innovation, originally used in CCAA proceedings, where instead of the valuable assets being vested out of the debtor to a purchaser, the valuable assets are left in the purchaser and the unwanted liabilities are vested out into a newly incorporated "residualco." The receiver then sells the purchaser the equity in the debtor, which has been effectively cleansed of its liabilities.

REORGANIZATION

Canada has four federal statutes that provide for formal reorganizations (sometimes called restructurings) between insolvent debtors and their creditors. The principal statutes are the BIA (Part III) and the CCAA. The additional statutes are the *Farm Debt Mediation Act*, which permits insolvent farmers to make arrangements with their creditors, and the *Winding-up and Restructuring Act*, which is dedicated to insolvencies of (a) corporations formed by federal parliament (or certain provincial parliaments) and subject to the authority of federal parliament, and (b) most financial institutions, including banks, trust companies and insurance companies. There recently has also been some use of the restructuring provisions of federal and provincial corporations' statutes to restructure bond debt of corporate families wherein some, but not all, members are insolvent.

As discussed below, asset sales in reorganization proceedings are permissible. Because a reorganization is a debtor-in-possession proceeding that could preserve more value and goodwill, and because a business might be too large, risky or complicated for a receiver to operate (even with the assistance of former employees), in some circumstances a secured lender might view a reorganization proceeding as more attractive than a receivership.

Proposals Under the *Bankruptcy and Insolvency Act*

Under Part III of the BIA, insolvent individuals, corporations, partnerships and other entities may make "proposals" to their creditors. There are separate schemes for consumer proposals and commercial proposals. We focus here on commercial proposals.

A proposal is a written document that sets out the terms on which the debtor proposes to settle or compromise the claims of unsecured creditors. A proposal may, but usually does not, deal with the claims of secured creditors. A proposal will often provide for one or more of the following elements: a percentage reduction of each creditor's claim; an extension of time for payment of claims; for corporate debtors, a conversion of claims or a portion of them into shares; and a release of claims against directors. A licensed trustee in bankruptcy, named in the proposal, assists the debtor in preparing and, if approved, performing the proposal.

Upon the filing of a proposal through a licensed trustee with the federal regulator, the debtor obtains a number of benefits, including: (a) a stay of proceedings by creditors, including certain secured creditors and the federal and provincial/territorial governments; (b) a prohibition against enforcement of "insolvency" clauses in agreements under which the other party might terminate the agreement or accelerate payment of indebtedness; (c) the ability to obtain a super-priority charge for debtor-in-possession ("**DIP**") financing; and (d) a right in certain situations to disclaim commercial leases and other contracts. The BIA allows secured creditors stayed in a BIA proposal proceeding to seek to have an interim receiver appointed by the court to protect their interests and collateral, although usually with powers limited so as to allow the debtor to remain in possession and control of most of its business and assets.

A proposal must be approved by unsecured creditors and by the court. Non-approval at either stage results in automatic bankruptcy. For creditor approval, all classes of unsecured creditors must accept the proposal by a majority in number and two-thirds in value of the unsecured creditors of each class present at the meeting and voting on the proposal. For court approval, the court must be satisfied that the terms of the proposal are reasonable and calculated to benefit the general body of creditors. Once approved by the unsecured creditors and the court, the proposal is binding on all unsecured creditors and on any secured creditors to whom it was made and who have approved the proposal (by the same requisite majorities).

A debtor may initiate the process by filing a notice of intention to make a proposal, giving it the same benefits in terms of protection from creditors as a DIP financing and as a disclaimer of agreements. The ability to obtain an immediate stay of proceedings through a simple paper filing without any need for a court order can make this an attractive option. The debtor will then have 30 days within which to file a proposal, subject to extension or abridgement by the court. In total, the process, including all court-ordered extensions (of up to 45 days each), cannot take more than six months. Failure to file a proposal within the required time results in automatic bankruptcy. The debtor also is required to file, within 10 days of filing a notice of intention, cash flows showing an ability to bring a viable proposal and any failure to do so also results in automatic bankruptcy.

When a proposal has been fully performed, the trustee gives a certificate to that effect to the debtor and the official receiver. Where there is default under a proposal, which is not remedied by the debtor or waived by the creditors, the creditors or the trustee may apply to the court for an order annulling the proposal. When a proposal is annulled, there is a deemed assignment in bankruptcy by the debtor.

The BIA also allows for an out-of-the-ordinary-course sale of the debtor's business and assets without shareholder approval, but subject to approval of the court. This may occur where a proposal does not appear possible, or only possible with the proceeds of such sale. Vesting orders are regularly granted in conjunction with sale approvals and reverse vesting orders may be granted in exceptional circumstances.

Arrangements Under the *Companies' Creditors Arrangement Act*

Because the CCAA is a more flexible statute than the proposal provisions of the BIA, CCAA reorganization is suitable for large, more complex businesses. Under the CCAA, an insolvent corporation may seek the court's assistance in making a compromise or an arrangement with its creditors, where the total of claims against the corporation or affiliated corporations exceeds $5 million. The debtor applies to the court, generally on notice to the significant creditors, for an order (called the initial order) that will normally impose a stay of proceedings by creditors (secured and unsecured), and also by the federal and provincial/territorial governments, for up to 10 days, prohibit termination of contracts with the debtor by other parties to those contracts and appoint a monitor (normally a licensed trustee in bankruptcy) to assist the debtor with its arrangement. Under the CCAA, the relief available during the initial 10-day stay period is limited to those measures reasonably necessary for the debtor to operate in the ordinary course during the initial stay period.

The debtor may apply for an extension of the stay period and must satisfy the court that it has acted, and is acting, in good faith and with due diligence. Unlike in a BIA proposal proceeding, there is no set limit to the number or duration (particular or cumulative) of stay extensions that can be granted to a CCAA company.

The initial CCAA order will often authorize DIP financing (and create a super-priority charge in respect thereof) and permit preferential payments to critical suppliers. Initial relief in respect of DIP financing is limited to that which is reasonably necessary for the debtor to operate in the normal course during the initial stay period. The CCAA also gives the debtor the right to disclaim commercial leases and other contracts.

The court will normally, in either the initial order or any subsequent order or orders that it makes, require the debtor to present a plan of arrangement to its creditors to be voted on at a meeting of creditors to be held within a specified period of time after the date of the order. If a majority in number representing two-thirds in value of the claims of creditors or of creditors of each class present and voting at the meeting accepts the compromise or arrangement, and the court sanctions it, the compromise or arrangement becomes binding on the debtor and all the creditors to which it was made.

A compromise or arrangement under the CCAA may include provision for the compromise of claims against directors, on the same basis as set out above with regard to proposals under the BIA. Recent decisions have also allowed the compromise of claims against third parties where it is deemed necessary to ensure the success of the reorganization. A CCAA plan may also involve reorganization or conversion of share capital pursuant to the *Canada Business Corporations Act* or the applicable provincial corporate statute.

The CCAA also allows for an out-of-the-ordinary-course sale of the debtor's business and assets without shareholder approval, but subject to approval of the court. This might occur where a plan does not appear possible, or possible only with the proceeds of such sale. As in BIA proposal sales, vesting orders are regularly granted in conjunction with sale approvals in CCAA proceedings and reverse vesting orders may be granted in exceptional circumstances.

SUPER PRIORITIES AND OTHER CREDITOR PROTECTIONS

Bankruptcy and Receivership

The BIA provides for certain super-priority charges and other protections that will have priority over the claims of a secured creditor in bankruptcy or receivership. The main ones are:

- unpaid suppliers can repossess goods delivered within 30 days prior to the date of the bankruptcy or receivership, provided the goods are still in the receiver's or trustee's possession, identifiable, in their original state and have not been sold or contracted for sale;
- non-management employees have a super-priority charge over current assets for unpaid wages and vacation pay accrued in the six months prior to the bankruptcy or receivership. This charge does not cover termination or severance pay; and
- pension beneficiaries have a super-priority charge over all the debtor's assets for: (i) employee pension contributions deducted at source; (ii) any defined benefits accruing in the current plan year, determined on the basis of a going concern valuation; (iii) any defined employer contributions; and (iv) special payments and actuarial wind-up deficiencies.

In a receivership (without a bankruptcy), certain statutory deemed trusts and related charges for unremitted source deductions and federal or HST will continue to apply, as will certain provincial statutory deemed trusts. The federal statutory deemed trusts for source deductions are preserved by the BIA in bankruptcy, but not the statutory deemed trust for HST or most provincial statutory trusts. For that reason, a secured creditor will sometimes apply for both a receivership and the bankruptcy of its debtor, with the two proceedings to run in parallel, in order to reverse the priority of the HST deemed trust and certain provincial deemed trusts. In that situation, the trustee appointed in the bankruptcy would generally be the same entity as that acting as receiver, and the receivership would be unimpeded by the bankruptcy.

The standard receivership order will create super-priority charges for the fees of the receiver and its counsel and for any borrowings the receiver might make in order to fund the receivership and any operations.

Reorganization

Suppliers do not have 30-day goods rights in BIA proposals or CCAA proceedings.

The same wage and pension amounts that benefit from super-priority charges in bankruptcy and receivership are given effectively equivalent protection under the CCAA and the BIA proposal regimes.

A court cannot sanction a CCAA plan or BIA proposal unless it provides for immediate payment of the wage and pension amounts that benefit from charges in bankruptcy and receivership. Likewise, a court cannot approve an out-of-the-ordinary-course sale in a CCAA or BIA proposal proceeding unless it is satisfied that those same wage and pension amounts will be paid. The aforementioned protections for defined benefit pension plan special payments and actuarial wind-up deficiencies in receiverships also applies in CCAA and BIA restructurings.

As in bankruptcy, the federal deemed trust for HST loses its priority in a CCAA or BIA proposal proceeding. The situation is more complicated when it comes to provincial statutory trusts; in a BIA proposal proceeding they are generally overturned, but they may remain operational in a CCAA proceeding. The case law is not settled on the point.

The standard CCAA order will create super-priority charges for:

- the fees and expenses of the debtor's counsel and of the monitor and its counsel (the "**Admin Charge**");
- any DIP financing; and
- officer liabilities accrued during the CCAA proceedings.

A CCAA order may also create other charges, such as for employees benefitting from a Key Employee Retention Plan in the CCAA proceedings. While the priority of all the charges relative to each other and to existing secured claims varies from proceeding to proceeding, a DIP charge usually is subordinate only to the Admin Charge and a secured lender's pre-filing debt is usually subordinate to any court-ordered charges. The exception would be where continued cash management effects a "creeping roll-up," which the courts have found to be permissible. A full roll up, where DIP advances pay off pre-filing debt, is generally not permitted, though some courts have approved it.

SALE PROCESSES

Generally speaking, a receiver or a company in BIA proposal or CCAA proceedings seeking to sell its business will first seek the court's approval of a marketing and sale process. Often these processes will involve two rounds, and last at least two months. While stalking horse bids are not the norm, they are not uncommon. Live auctions are a relative rarity in Canada.

Any selected transaction will require further court approval. The court will heavily weigh the views of secured creditors, but will also take into consideration other factors, such as job preservation. A sale in a BIA proposal or CCAA proceeding does not require a formal vote of creditors and unsecured creditors or equity holders will, as classes, have little influence on the court's decision.

The super-priority amounts that need to be satisfied in order to obtain court approval of an out-of-the-ordinary-course sale in CCAA or BIA proposal proceedings are discussed above.

Court approval of a sale transaction in a BIA or CCAA proceeding will be accompanied by an order vesting the assets free and clear in the purchaser. Increasingly, Canadian courts are also making reverse vesting orders, pursuant to which bad assets and liabilities are vested out of the debtor company which then continues on as a solvent entity.

It will usually take about four to six months from commencement of a proceeding to the point where a secured creditor can expect distribution of substantially all the proceeds of its collateral.

In a CCAA or BIA proposal proceeding, a sale transaction does not require a proposal or plan, and therefore is not subject to a vote of creditors. Parties who have an interest in the assets being sold, and certain other stakeholders, would be given notice of the motion to the court for approval of the sale and would have the opportunity to respond to that motion.

TERMINATION AND ASSIGNMENT OF CONTRACTS

Termination or Assignment by Debtor in Possession

A company in a CCAA or BIA proposal proceeding can terminate unwanted contracts other than: (a) certain types of financial contracts, security agreements and guarantees; (b) collective agreements; (c) financing agreements if the debtor is the borrower; and (d) real property leases where the debtor is the lessor. In the case of intellectual property licences where the debtor is the licensor, the licensee is allowed continued use of the intellectual property, a protection for the licensee falling somewhere short of a full prohibition on termination.

The CCAA and BIA also allow the forced assignment of contracts by order of the court, whether or not permitted under such contracts. The court will consider a number of factors, including the proposed assignee's ability to perform under the contract. As well, all monetary defaults have to be cured before such forced assignment. For that reason, forced assignment is often used as a last resort. Certain types of financial contracts, security agreements and guarantees cannot be assigned in this manner.

In a bankruptcy, the trustee will have the same powers as above to terminate or assign contracts. In a receivership, a bankruptcy would have to be run in parallel in order for the receiver to rely on the trustee's power to force assignment of contracts.

Termination by Third Party

In any proceeding under the CCAA or BIA (including a court-ordered receivership), third parties are stayed from terminating contracts merely because of the insolvency or restructuring proceeding. The third parties will also be required to continue any contracted supply of goods or services, though they can alter the payment terms, including by requiring prepayment or cash on delivery. Lenders who are caught by a stay of proceedings may also be barred from terminating their credit facilities and so will have to rely on the terms of those facilities to minimize their continuing obligations to provide credit.

COMPARISON TO U.S. PROCEEDINGS

The following are some distinguishing features of Canadian insolvency and restructuring proceedings:

> **Receivership**: Other than under the laws of certain states, U.S. insolvency law has no close analogue to receivership.
>
> **Court Officers:** Any court-appointed receiver or CCAA monitor, and any trustee in bankruptcy or proposal trustee, will be an officer of the court and strive to maintain impartiality. A court officer will not attempt to alter the priorities among creditor classes set down by the BIA, CCAA and provincial law. Even a trustee in bankruptcy should stand aside to allow a secured creditor to enforce without interference.

Sale Processes: Stalking horse bids are not the norm, but are not unusual. Live auctions are rare.

Reverse vesting orders: Reverse vesting orders are available in exceptional circumstances, but are not unusual.

Committees and Representative Counsel: Committees and representative counsel are usually only seen in CCAA proceedings.

Stakeholder committees are not the norm, unless there are unsecured and/or subordinate bondholders involved. Bondholder committees will usually pay their own expenses.

If there is a significant and disparate stakeholder group that is not expected to be effectively represented in a CCAA proceeding, the court may appoint representative counsel. A common example would be representative counsel for otherwise unrepresented employees or retirees/pensioners with priority claims that need defending. Representative counsel will usually benefit from a court-ordered charge on the company's assets in the same way as the company's counsel and the monitor and its counsel.

Court Procedures: Canadian filings are largely paper-based, but the notice requirements are far less onerous than in the United States; only parties with an economic interest that may be affected (or who have otherwise requested service) need be served.

Court orders are, generally, far shorter and fewer in number than in U.S. proceedings. For example, a CCAA proceeding will usually start with a single order, less than 30 pages in length.

Other than the fees and expenses of the court officer and its counsel, professional fees of other parties are not reviewed or approved by the court or any fees officer.

On the whole, the procedural expenses of a Canadian proceeding are less than those of a U.S. proceeding.

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