



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 4C

CANADA

This is the **summative (formal) assessment** for Module 4C of this course and must be submitted by all candidates who selected this module as one of their elective modules.

The mark awarded for this assessment will determine your final mark for Module 4C. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

48.5 / 50

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.
2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial or Avenir Next font. This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
4. You must save this document using the following format: **[studentID.assessment4C]**. An example would be something along the following lines: 202223-336.assessment4C. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
6. The final submission date for this assessment is **31 July 2023**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2023**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
7. Prior to being populated with your answers, this assessment consists of **8 pages**.

ANSWER ALL THE QUESTIONS

QUESTION 1 (multiple-choice questions) [10 marks in total]

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and mark your selection on the answer sheet by highlighting the relevant paragraph in yellow. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

Which branch of the Canadian government has the exclusive power to make laws in relation to bankruptcy and insolvency? Indicate the **correct answer** from the options below:

- (a) Federal.
- (b) Provincial.
- (c) Municipal.
- (d) The power is shared between the three levels of government.

Question 1.2

Which federal statute governs the bankruptcy regime in relation to an individual bankruptcy? Select the **correct answer** from the options below:

- (a) The Bankruptcy and Insolvency Act (BIA).
- (b) The Companies' Creditors Arrangement Act (CCAA).
- (c) The Winding-up and Restructuring Act.
- (d) The Canada Business Corporations Act (CBCA).

Question 1.3

Which of the following is **incorrect** with respect to proceedings under the CCAA:

- (a) The CCAA is a debtor-in-possession restructuring statute.
- (b) The CCAA is available to companies with debts of less than CAD 5 million.
- (c) The CCAA is a federal statute.
- (d) The CCAA sets out a relatively skeletal framework, and affords broad discretion to a judge as compared to a restructuring under the BIA.

Question 1.4

Select the **most correct** answer from the options below:

The purpose(s) and objective(s) of the BIA is / are to –

- (a) provide for the financial rehabilitation of insolvent persons.
- (b) allow for an investigation to be made into the affairs of a bankrupt.
- (c) provide a collective proceeding for orderly and fair distribution of property of a bankrupt among unsecured creditors on a *pari passu* basis.
- (d) all of the above statements are correct.

Question 1.5

Which of the following is **not** included in the definition of an “insolvent person” under section 2 of the BIA:

- (a) A person who is not bankrupt.
- (b) A person who resides or carries on business or has property in Canada.
- (c) A person whose liabilities to creditors provable as claims under the BIA amount to at least CAD 10,000.
- (d) A person (i) who is unable to meet obligations as they generally become due, (ii) who has ceased paying current obligations in the ordinary course of business as they generally become due, or (iii) the aggregate of whose property is not, at fair valuation, sufficient to enable payment of all his obligations due and accruing due.

Question 1.6

Indicate the **correct** answer:

Under Canadian law, when a company enters the “zone of insolvency”, the directors of a company –

- (a) continue to have a fiduciary duty to act honestly and in good faith with a view to the best interests of the company.
- (b) no longer have a fiduciary duty to act honestly and in good faith with a view to the best interests of the company.
- (c) cannot be held personally liable for any of the company’s debts.
- (d) cannot consider, under any circumstances, the interests of creditors, consumers, governments, employees, or any other stakeholder in discharging their duties.

Question 1.7

Indicate whether the statement below is **true or false**:

Insolvency proceedings in Canada are governed primarily by federal statutes.

(a) True.

(b) False.

X

Question 1.8

Indicate whether the statement below is **true or false**:

The CCAA is a debtor-in-possession restructuring statute designed for the reorganisation of insolvent companies with debts under CAD 5 million.

(a) True.

(b) False.

Question 1.9

Indicate whether the statement below is **true or false**:

In Canada, both natural persons and legal entities may be subject to bankruptcy proceedings under the BIA.

(a) True.

(b) False.

Question 1.10

Indicate whether the statement below is **true or false**:

Foreign creditors and Canadian creditors participate equally in a bankruptcy and no distinction is made between them.

(a) True.

(b) False.

QUESTION 2 (direct questions) [10 marks in total]

Question 2.1 [maximum 3 marks]

Identify three of the recognised purposes of the BIA.

Three of the recognized purposes of the BIA are:

- (1) To provide for the financial rehabilitation of insolvent persons;
- (2) To provide a collective proceeding for the orderly and fair distribution of property of a bankrupt among unsecured creditors on a pari passu basis; and

(3) To allow for an investigation to be made into the affairs of a bankrupt.

3

Question 2.2 [maximum 2 marks]

Generally, in the context of an individual bankruptcy, what type of assets can a debtor keep in a bankruptcy?

Generally, on the bankruptcy of a debtor, the debtor ceases to have the legal right to deal with his property, which, subject to exception, vests in the trustee in bankruptcy. However, in the context of an individual bankruptcy, there are classes of assets that are considered "exempt property", and which an individual debtor can keep in a bankruptcy. While how much of each exempt asset class a debtor can retain will depend on the province or territory in which they live, generally, the types of assets that a debtor can keep include personal items and clothing, household furniture, food and utensils in the debtor's permanent home, tools necessary to the debtor's work, a motor vehicle with a value up to a certain limit and certain farm property.

2

Question 2.3 [maximum 3 marks]

Name three types of court-officers that may be appointed in insolvency proceedings.

Trustees in bankruptcy (appointed in a liquidating bankruptcy); monitors (appointed in CCAA proceedings); and receivers (appointed in receiverships).

3

Question 2.4 [maximum 2 marks]

What is the definition of a "person" in section 2 of the BIA?

A "person" is defined by section 2 of the BIA to include a partnership, an unincorporated association, a corporation, a cooperative society or cooperative organization, as well as the successors, heirs, executors, liquidators of the succession, administrators or other legal representatives of a person. A "corporation" (as included in the definition of person) includes a company or legal person incorporated under an Act of Parliament or legislature, an incorporated company (wherever incorporated) that is authorized to carry on business in, or has an office or property in, Canada or an income trust.

2

QUESTION 3 (essay-type question) [15 marks]

Question 3.1 [maximum 8 marks]

Write an essay on the difference between a private receiver and a court-appointed receiver.

In your essay you should refer to at least the following: (i) how each type of receiver is appointed, (ii) the duties of each type of receiver, and (iii) the circumstances in which each type of receiver is generally used.

A receiver is a licensed professional who is granted the authority to deal with a debtor's company's assets, which includes the authority to operate and manage or to shut down the business of the company. Unlike in a bankruptcy, the debtor company's assets do not vest in the receiver; but the receiver is empowered by the appointing instrument to take possession and liquidate the same, applying the proceeds to satisfy his fees and expenses and then towards the claims of creditors on a priority basis.

There are two types of receivers: privately-appointed receivers ("PARs") and court-appointed receivers ("CARs"), with key differences between them.

One primary distinction is the manner in which the receiver is appointed. PARs are appointed out of court, by instrument. Their appointment arises in a context where the security agreement between the debtor and a secured creditor contains provisions for the appointment of a receiver in the event of the debtor's default, which grants the secured creditor the right to appoint a receiver where the debtor has failed to meet its obligations. A PAR will, therefore, be appointed by the secured creditor pursuant to the powers vested in him under the security agreement, generally by private treaty between the secured creditor and the receiver, without recourse to the court. On the other hand, as the name suggests, CARs are appointed by order of the Court. Section 243 of the BIA authorizes a secured creditor to apply to the court for the appointment of a receiver to take control of the business when the debtor is unable to meet its obligations under the security agreement. Provincial legislation (the Courts of Justice Acts) also allows the court to appoint a receiver on application by "Any interested party", which includes shareholders or unsecured creditors, where it is "just and convenient" to do so. As such, a CAR will be appointed by the court, on the application of an unsecured or secured creditor, shareholder of the debtor or any other interested person.

The categories of receivers also differ in their duties, and to whom those duties are owed. The duties of a PAR will be largely set out, and determined by, the instrument under which they were appointed (as supplemented by applicable legislation). In that regard, a PAR's duties are primarily owed to the secured creditor that appointed it. However, that does not detract from a PAR's general duty to act honestly, in good faith and in a commercially reasonable manner, including in maximizing recoveries and obtaining the best price available for debtor's assets (as per *Rogers and Huff*). A CAR, on the other hand, is an officer of the court and owes its duties to *all* creditors of the debtor, regardless of the creditor who applied for his appointment. A CAR derives its powers and duties from the court order appointing it and legislation.

A notable, practicable difference between PARs and CARs is the level involvement of the court. Private receiverships will generally not involve the court or court attendances at all, while court-ordered receiverships may require or rely upon extensive court involvement – not only for the appointment of the CAR, but also in the CAR's continued reporting obligations, in seeking and obtaining directions and for the approval of major asset sales. The practical effect is that a PAR, unburdened by court obligations, may be more time and cost-effective.

A final key distinction is the circumstances in which the two types of receivers are generally used. A PAR is most often used for the receivership of a small business, or a corporation with a discrete pool of assets, where there will not be competing or complex creditor claims or disputes with the debtor. On the other hand, a CAR will generally be appointed in more complex cases where there is a likelihood of competing claims or disputes between creditors or creditors and the debtor or where it appears that the assistance of the court will likely be required throughout the receivership. This is partly because CARS will provide a greater degree of comfort for creditors and professionals from a liability standpoint, as the court will approve many of the large decisions of the receiver arising during his appointment.

good.

In conclusion, although they share the function of receiving the profits and proceeds of the debtor's assets, there are core distinctions between the two types of receivers indigenous to Canada's insolvency landscape.

8

Question 3.2 [maximum 7 marks]

Write a short essay that identifies the three methods for entering into bankruptcy. In your essay, explain the meaning of an "act of bankruptcy".

In Canada, there are three main methods for entering into bankruptcy: involuntary, voluntary and on the failure of, or failure to perform the terms of, a BIA proposal.

Involuntary

A debtor can enter into bankruptcy involuntarily by order of the court, on the application of a creditor. To successfully obtain an involuntary bankruptcy order, the applying creditor must demonstrate that (a) they are owed more than CAD\$1,000 of unsecured debt; and (b) the debtor has committed an "act of bankruptcy" within 6 months of the date of the filing of the application (s.43, BIA). An "act of bankruptcy" is a term defined under the BIA, and may involve one of two different types of conduct – either conduct that shows that the debtor has violated certain norms of commercial morality, or conduct that shows the debtor is insolvent. The acts are listed in section 42 of the BIA, and include where the debtor:

- (a) makes an assignment of property to a trustee for the benefit of creditors, in Canada or elsewhere;
- (b) makes a fraudulent gift, delivery or transfer of the debtor's property or any part of it, in Canada or elsewhere;
- (c) makes any transfer of the debtor's property or any part of it, or creates a charge on it, that is a fraudulent preference, in Canada or elsewhere;
- (d) with the intent to defeat or delay his creditors, departs out of Canada or remains out of Canada or departs from his dwelling or otherwise absents himself;
- (e) permits for specified period of time any execution or other process issued against the debtor under which any of the debtor's property is seized, levied on or taken
- (f) exhibits to any meeting of his creditors any statement of his assets and liabilities that shows that he is insolvent, or presents or causes to be presented to any such meeting a written admission of his inability to pay his debts;
- (g) assigns, removes, secretes or disposes of or attempts or is about to assign, remove, secrete or dispose of any of his property with intent to defraud, defeat or delay his creditors or any of them;

good.

- (h) gives notice to any of his creditors that he has suspended or that he is about to suspend payment of his debts;
- (i) defaults in any proposal made under this Act; or
- (j) ceases to meet his liabilities generally as they become due.

That the debtor has ceased to meet its liabilities generally as they become due is the most common act of bankruptcy used on an involuntary bankruptcy application. "Generally", in this sense, means that it will ordinarily be insufficient to show that the debtor has failed to pay only one (the applicant) creditor, unless the applicant creditor is owed a relatively significant debt or is the only claimant.

An involuntary bankruptcy petition must be brought to the bankruptcy court in the location where the debtor ordinarily resides, does business, has assets or property or, in the case where the debtor has no assets currently in Canada, where it did business within the previous year. A debtor has the right to object to the application. Even if the applicant proves the existence of debt and an act of bankruptcy, the court may still dismiss the application if the debtor can prove that it has the ability to pay its debt. Once satisfied on all the circumstances, the court will make a bankruptcy order – resulting in the property of the debtor automatically vesting in a licensed trustee, appointed by the court (but subject to the confirmation of creditors at the first creditor meeting).

Voluntary

A voluntary bankruptcy, on the other hand, is commenced by the debtor of his own will. It occurs when the debtor makes a voluntary assignment into bankruptcy proceedings, assigning his assets to a trustee. No court order or application is needed. Once the debtor falls within the BIA definition of an "insolvent person" (that is, a person who is not bankrupt, resides or carries on business or has property in Canada and whose liabilities to creditors that are provable under the BIA amount to CAD\$1,000 or more), the debtor will execute an "assignment" of its property for the benefit of its creditors, accompanied by a sworn statement disclosing the debtor's property, the names and addresses of its creditors and the amount due to them, which are filed with the Official Receiver. Once the documents are accepted, the bankruptcy proceedings officially commence. Unlike in an involuntary bankruptcy, the trustee is selected by the debtor, although his appointment is subject to the confirmation of unsecured creditors at the first meeting. A voluntary bankruptcy may be commenced for a number of reasons, including a debtor's desire to stay legal actions by creditors or to obtain a fresh start at the conclusion of the bankruptcy.

Resulting from a BIA proposal

Finally, the third method of entering into bankruptcy is on the failure of a BIA proposal. The BIA contains processes for both corporate and consumer proposals, which allow debtors to reach compromises with their creditors. However, to be effective and binding, proposals must be accepted by a requisite majority of creditors and approved by the court. For a corporate proposal to be binding on each class of creditors it purports to affect, a majority of the proven creditors in that class by number and a two-third majority of the proven creditors in that class by dollar value must approve the proposal. Once a class so approves, then it is binding on all creditors in that class, subject to the court's approval.

However, if a corporate proposal is rejected prior to its entering into force, whether by creditors or the court, the debtor is automatically deemed to have made an assignment in bankruptcy. That is, if the proposal is rejected by a class of creditors voting on the proposal, the debtor is automatically deemed to have made an assignment in bankruptcy. Similarly, if the proposal is approved by the

creditors, but is then not approved by the court, the debtor will be deemed to have made an assignment in bankruptcy.

If a corporate proposal is approved, and goes into effect, but a debtor then defaults under the terms of the proposal, and that default isn't waived by the inspectors or the creditors, then the proposal trustee must inform the creditors and Official Receiver of the default. A motion can then be brought to the court to annul the proposal and, if the motion is granted, the debtor will be assigned into bankruptcy. Note that, unlike where a proposal is rejected by creditors or the court, a default under a proposal does not automatically result in bankruptcy – but requires a motion to first be made.

As such, on the failure of a proposal or a failure to comply with a proposal, a debtor may enter into bankruptcy.

Conclusion

These three routes represent three different means and modes by which a debtor may end in the same place: bankruptcy under the BIA. (7)

QUESTION 4 (fact-based application-type question) [15 marks]

You are a lawyer in Canada. You are consulted by counsel in a foreign jurisdiction who is representing an agent operating under the law of that foreign jurisdiction and who is empowered by the legislation and courts of that foreign jurisdiction to deal with the assets of insolvent companies. An online seller has a fulfilment office and warehouse in Canada. The foreign agent has taken control of the assets of an online seller of clothing with a head office that is registered in the foreign jurisdiction where senior management of the company have their offices. The business sells clothing around the world, including to customers in Canada. Due to currency exchange- and supply-related issues, the company has been unable to maintain liquidity and has defaulted on various loans to its foreign-based secured lenders who are owed in excess of CAD 200 million and, as a result, has stopped fulfilling orders in process, including to Canadian customers. As a result, a class action lawsuit has been filed by a Canadian law firm seeking damages on behalf of customers for monies paid in respect of unfulfilled orders in the amount of CAD 2 million. This lawsuit in Canada is still in the pleadings phase. It also appears that the Canadian resident in charge of the fulfilment office and warehouse in Canada may have been diverting funds improperly. The foreign agent wants to further investigate. The foreign agent consults you about seeking recognition of the foreign proceeding in Canada in order to maximise recoveries and provide for an equitable distribution of value among all creditors.

Question 4.1 [maximum 5 marks]

The foreign agent wants to understand the process to commence a recognition application and obtain recognition of the foreign proceeding in Canada. What is your advice in this regard?

Canada has adopted a modified version of the UNCITRAL Model Law, found in Part XIII of the Bankruptcy and Insolvency Act (BIA) and Part IV of the Companies' Creditors Arrangement Act (CCAA), which provide a framework for recognition of foreign insolvency proceedings and acceptance of jurisdiction and will, therefore, be relevant here. To commence a recognition application, the foreign agent must file an application with the Canadian court supported by sufficient evidence of the foreign law applicable in his jurisdiction to satisfy the court that:

(a) the proceeding is a "foreign proceeding" in accordance with the statutory definition; and

↳ "formal proof"

(b) the applicant (the foreign agent) is a "foreign representative" in accordance with the statutory definition.
(s. 269-272 of the BIA, s. 46-49 of the CCAA)

The BIA defines "foreign proceeding" as 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's property and affairs are subject to control or supervision by a foreign court for the purpose of reorganisation or liquidation. A "foreign representative" is defined as a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding in respect of a debtor, to (a) administer the debtor's property or affairs for the purpose of reorganization or liquidation; or (b) act as a representative in respect of the foreign proceeding. In this case, we have been instructed that the foreign agent is empowered by the legislation and courts of the foreign jurisdiction to deal with the assets of insolvent companies, which suggests that he is likely to fall within the definition. As both these definitions include the defined term "debtor", it is also essential that the insolvent company in question meet the definition of a "debtor" under the Canadian legislation before the Canadian court will have jurisdiction to treat with the application. Indeed, the definition of "debtor" under the BIA and "company" under the CCAA are broad enough to encompass foreign registered corporations who do business or have property or assets in Canada, which means that the foreign agent should have little difficulty satisfying this initial hurdle. Similarly, the case law demonstrates that the terms "foreign proceedings" and "foreign representatives" are to be given broad and purposive interpretations, which will generally allow an applicant to meet the requirements for recognition without much difficulty (*Centaur Litigation SPC, Re*).

good reference. ✓

Once these requirements for recognition have been met, the recognition is automatic and compulsory, and the court must make an order recognizing the foreign proceeding. Notably, both the BIA and the CCAA contain a public policy exception which allows the court to refuse to recognize a foreign proceeding even if it meets all the recognition requirements of the statute. However, the Canadian courts are generally inclined to recognize foreign insolvency proceedings (especially those originating from common law jurisdictions) and are reluctant to employ the public policy exemption absent clear circumstances that offend Canadian public policy (*Re Hartford Computer Hardware Inc.*)

↳ i.e. asymmetrical treatment of Canadian creditors

* The foreign agent must also prove, in the application for recognition, whether the foreign proceeding is a "foreign main proceeding" or a "foreign non-main proceeding", which will involve presenting evidence and analysis on the entity's centre of main interests. The classification of the proceedings as either main or non-main, once recognised, will determine the level of control that the foreign court may assert over the administration of the insolvency proceedings, as well as the nature of relief that will be obtained from the Canadian courts in respect of the recognition.

→ This is (c) in above analysis.

4.5

Question 4.2 [maximum 5 marks]

The foreign agent wants to understand the factors considered by a court in determining whether a jurisdiction is a "centre of main interest" in respect of a foreign proceeding. What would you inform the foreign agent in this regard?

The determination of a foreign debtor's "centre of main interests" (COMI) will establish whether the foreign proceedings in respect of which an application for recognition have been made is a foreign main proceeding or a foreign non-main proceeding. Neither the CCAA nor the BIA contain a definition of COMI. Instead, the statutes contain a rebuttable presumption. In the case of a company, the COMI, in absence of proof to the contrary, is the place of the company's registered office (s. 268 of the BIA,

s. 45 of the CCAA). Using this general proposition, it appears that the COMI of the debtor in this instance would be the foreign jurisdiction, as we know that its head office "is registered in the foreign jurisdiction" (although we would need instructions confirming that, by this statement, the foreign agent means that this is the site of the company's registered office, and not just the location of its head place of business, noting that we have received no express instructions on the place of incorporation/registered office).

However, three considerations have been identified by the Canadian courts that, when considered as a whole, are of primary importance for determining a debtor's COMI and may result in rebutting the presumption. These are:

- (1) the location that significant creditors recognize as being the centre of the company's operations;
- (2) the location in which the debtor's principal assets or operations are found; and
- (3) the location of the debtor's headquarters, head office or "nerve centre".

These factors are, therefore, essential in a court's determination of a debtor's COMI.

As an online retailer, it may be more difficult to establish the site of this debtor's main operations, as its physical presence may be more limited or discrete than would be the case with an entity with physical storefronts. With its head office and senior management all located in the foreign jurisdiction, that jurisdiction may be seen as its "nerve centre" where its management is found, supporting a conclusion that the debtor's COMI may be the foreign jurisdiction (and, therefore, that the foreign proceedings should be classified as foreign main proceedings). However, the Canadian court will also consider that the debtor has a fulfilment office and warehouse in Canada, evidencing that it has assets and operations there. Further, the debtor clearly has a significant number and value of creditors in Canada – with sufficient disgruntled customers to commence a class action suit there, comprised of creditors claiming to be owed CAD \$2,000,000.00. The fact that these creditors have commenced a lawsuit *in Canada* in respect of the unfulfilled orders against the debtor may be indicative that these significant creditors consider Canada to be the location they recognize as the centre of the debtor's operations. These factors may be considered by the Court in favour of rebutting the presumption, and in support of a conclusion that the debtor's COMI is Canada. *good analysis*

5 This case carries some familiarities with the case of *Re MtGox Co.*, in which the Canadian court recognized "foreign proceedings" in Japan as foreign main proceedings. Some other factors that the Canadian court considered, in that case, in reaching that conclusion included that MtGox's books and records were in Japan, its bank accounts were in Japan, its parent company supplied services to it in Japan, its website clearly disclosed that it was a Japanese corporation located in Japan and it was investigating a hacking that occurred against it under the oversight of the Tokyo District Court. These are all factors that the foreign agent should consider. Notably, in respect of the last factor mentioned, it may be, in this instance, that the debtor may be investigating the diversion of funds by the head of its fulfilment office and warehouse in Canada under the oversight of the Canadian court (in addition to the ongoing class action suit) by the time of the application, and this will likely be considered.

Question 4.3 [maximum 5 marks]

The foreign agent wants to know whether the Canadian court is limited to Canadian entitlements and remedies in the relief that they can provide. Advise the foreign agent in this respect.

The Canadian court is not limited to Canadian entitlements and remedies in the relief that they can provide. Once proceedings have been recognized as foreign proceedings by the Canadian court, the scope and nature of the relief and remedies that the Canadian court can provide to foreign agents are

broad and wholly discretionary. Under both the BIA and the CCAA, the Court is granted broadly worded powers that, once an order has been made recognizing a foreign proceeding, allow it, on the application of a foreign representative and once satisfied that it is necessary for the protection of the debtor's property or the interest of creditors, to make "any order that it considers appropriate" (s. 272(1) of the BIA, s. 49(1) of the CCAA). Subject to the public policy exception and ensuring that its order is consistent with any concurrent proceedings under the BIA or CCAA, the Canadian court is not limited or restricted in exercising this discretion and, indeed, is by no means limited to only providing Canadian entitlements or remedies otherwise available under Canadian law. In that regard, the Canadian court has, in fact, ordered relief in foreign main proceedings where there are ancillary Canadian proceedings that would not ordinarily be available in Canadian proceedings (*Re Hartford Computer Hardware Inc.*).

*** End of Assessment ***

5

