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• WHAT YOU DON'T SAY BINDS YOU — THE LATEST CHAPTER IN THE ONGOING CLASH BETWEEN THE CCAA AND THE ALBERTA ENERGY REGULATOR •

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I INTRODUCTION

Alberta’s oil and gas regulatory regime has once again clashed with the *Companies’ Creditors Arrangement Act* (“CCAA”).¹ In *CCAA* proceedings initiated by Verity Energy Ltd. (“Verity”), the Alberta Court of Queen’s Bench held that the Alberta Energy

Regulator (“AER”) was estopped from refusing to transfer licenses for certain oil and gas assets, notwithstanding the fact that the AER has a statutory discretion to approve the transfer of such licenses. The Court held that the estoppel arose from the AER’s counsel’s comments to the Court at Verity’s application for a Sale Approval and Vesting Order when counsel indicated he was supporting the application for the transfer of assets without also disclosing either to Verity or the Court that the AER intended to impose additional conditions on the license transfers.

The decision underscores the primacy Courts place on counsel’s representations, and the tension Courts are confronted with between successfully advancing an insolvent company through the *CCAA* process and the satisfaction of regulatory requirements.

II BACKGROUND

The AER oversees the transfer of oil and gas well licenses in Alberta. Various licenses, permits and approvals (collectively, “Licenses”) issued by the AER are required in order to operate oil and gas wells and other assets in compliance with the *Oil*

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and *Gas Conservation Act*² and the *Pipeline Act*³ and the regulations thereunder. Accordingly, when parties transfer oil and gas assets it is necessary to have the Licenses associated with those assets transferred as well. Such transfers require AER approval. The AER has broad discretion under both the *Oil and Gas Conservation Act*⁴ and *Pipeline Act*⁵ with respect to whether or not to approve such transfers, and with respect to the matters which the AER may consider before approving the transfers of Licenses. It is not uncommon for the AER to impose various conditions on a proposed transfer of Licenses — conditions which often require a significant capital outlay prior to the transfer of such Licenses being approved.

This framework gives rise to obvious and often conflicting difficulties in the context of formal insolvency proceedings. If an insolvent company seeks to sell its oil and gas assets to repay its creditors from the proceeds of such sale, the debtor may face insurmountable hurdles in the form of costs to meet the conditions imposed by the AER that could forestall or even frustrate any planned (and otherwise Court-approved) asset sale. The larger questions (including the constitutional questions) concerning the interaction between the provincial regulatory framework and the federal insolvency regime are set to be addressed in the case of *In the Matter of Redwater Energy Corp.*, which will be argued before the Alberta Court of Queen's Bench in the near future. In the meantime, Verity faced the immediate quandary of a Court-approved sale under the *CCAA* which it was unable to close because the AER was refusing to transfer the Licenses associated with the assets proposed to be sold (and approved for sale by the Court) unless Verity first met certain conditions which it was unable to meet due to its financial circumstances.

III FACTS

In May 2015, Verity applied for and obtained from the Alberta Court of Queen's Bench an Initial Order under the *CCAA*. Shortly thereafter, Verity engaged a sales

agent to market certain of Verity's oil and gas assets, and obtained an Order approving a sales process, all in order to maximize realization for creditors.

Over the following weeks, the Monitor reviewed the offers received through the Sales Process with Verity's first position secured lender, and the sales agent. The Monitor recommended proceeding with the offer submitted by the ultimate purchaser (the "Purchaser"). The offer from the Purchaser was for some of Verity's assets (the "Sale Assets"), with the result that the remainder of the Assets (the "Non-Sale Assets") would remain in Verity.

On October 15, 2015, the Court of Queen's Bench granted a Sale Approval and Vesting Order ("SAVO") approving the sale of the Sale Assets to the Purchaser. At the October 15, 2015 application for the SAVO, counsel for the AER advised the Court that:

- a) the transfer of the Sale Assets to the Purchaser resulted in an improvement in Verity's Licensee Liability Rating;
- b) accordingly the AER supported the sale of the Sale Assets to the Purchaser;
- c) the sale of the Sale Assets to the Purchaser was in the public interest and in the interest of all stakeholders, including the industry;
- d) accordingly, the AER was supporting the SAVO application in order to ensure that the Sale Assets were transferred to a new entity.

Shortly following the granting of the SAVO, and notwithstanding its representations to the Court at the October 15, 2015 application, the AER advised Verity — for the first time — that the AER would approve the transfers of the Licences associated with the Sale Assets only if Verity first rectified various deficiencies in certain Non-Sale Assets. Verity was unable to fund the rectification of the Non-Sale Assets as required by the AER as a condition of the transfer of Licences. Verity pointed out that this condition had not been disclosed either to Verity or to the Court before the SAVO was granted, and that unless the AER withdrew this condition the sale of the Sale Assets to the Purchaser would not be able to close, with the likely result that all of Verity's

assets (including the Sale Assets) would fall to the orphan well fund (a public fund charged with the responsibility to rectify abandoned wells). The AER refused to withdraw this condition.

IV THE HEARING

As a result of this impasse, Verity brought an application to compel the transfer of the Licences by the AER from Verity to the Purchaser. The AER opposed the application. Counsel for Verity argued that:

- a) the AER had exhausted its discretion in respect of the license transfers when it imposed two conditions on the license transfers prior to the granting of the SAVO, and accordingly it no longer has discretion to impose additional conditions after the granting of the SAVO; and
- b) when the AER's counsel made the representations to the Court at the SAVO application set out above, without advising the Court (or Verity) that the transaction was subject to an outstanding condition, the AER then became estopped from refusing to transfer the licenses once the originally required conditions had been met (as they were).

The evidence showed that if the AER insisted upon the rectification of the deficiencies on the Non-Sale Assets before approving the transfer of the Licences in question, the transaction with the Purchaser would not proceed, and the benefits flowing from the transaction of which the AER advised the Court of at the SAVO application would not be realized. The transcript of the AER's representations at the SAVO application hearing was also tendered as evidence at the hearing.

Mr. Justice Jeffrey agreed with Verity's arguments. Justice Jeffrey held that the AER was estopped from refusing to issue the transfer of the Licences by reason of any non-compliance which had not disclosed to the Court at the SAVO application. The basis for this reasoning lay in counsel's obligation to disclose all material facts to the Court, and the fact that the Court hearing the SAVO application may have come to a

different result if the additional condition had been disclosed. Justice Jeffrey noted:

In my view, at the October 15 hearing before this Court, the AER's counsel failed to disclose material facts. The material facts he failed to disclose were, first, that the AER was aware of outstanding Verity non-compliances and, second, that Verity had to remedy them all before the AER would transfer any licences.

I find that those facts were material because, had they been known to the member of this Court hearing the SAVO application, they would likely have resulted in different terms of the SAVO or in even an entirely different outcome of that application [...].

By omitting mention of those material facts when supporting the granting of the SAVO [...] counsel for the AER implied to the Court that the licence transfers were a *fait accompli*. However, that appears not to have been an accurate representation of the prospects of the licences being transferred.

A party on an application to the Court, such as the one resulting in the SAVO, has an obligation to disclose all material factors. Justice Veit of this court in *Berube v. Wingrowich*, [1999] A.J. No. 1057, 1999 ABQB 698, wrote at paragraph 28: (as read)

A court can be misled either by a deliberate mis-statement or, as in this case, by the omission to state a material fact.

That was cited with approval by a single member of the Court of Appeal in *Alberta (Child, Youth and Family Enhancement, Director) v. B.M.*, [2009] A.J. No. 773, 2009 ABCA 258, 460 A.R. 37 188, 9 Alta. L.R. (5th) 225.

[...]The AER may have justifiably believed that Verity knew those facts, but it had no basis to

assume the Court knew those facts. By participating actively on the application, its obligation was one of full disclosure to the Court.

Justice Jeffrey then considered the appropriate remedy to impose in the circumstances:

In my view, in all of the circumstances here, the appropriate and equitable remedy is to declare that the AER is estopped from refusing or declining to issue the transfer of licences by reason of any outstanding non-compliances on the part of Verity or the posting of funds therefor. The facts omitted from the court cannot now be relied upon by AER. In its processing of the licence transfers, the AER cannot proceed to tie the transfers to the prior remediation of any outstanding non-compliances, other than as represented to the court.

The decision reflects the importance placed on ensuring that all facts relevant to a Court-approved sale are before the Court at the approval stage. Of equal importance, the decision highlights the fact that information withheld may essentially constitute a representation by omission.

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¹ R.S.C. 1985, c. C-36.

² RSA 2000, c. O-6.

³ RSA 2000, c. P-15.

⁴ *Supra* note 2.

⁵ *Supra* note 3.

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• WHEN LANDLORDS ACT UNREASONABLY: THE EFFECT OF HUDSON'S BAY CO. V. OMERS REALTY CORP. ON LEASE ASSIGNMENTS •

Marco P. Falco, Partner, Torkin Manes LLP.
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INTRODUCTION

Under a commercial lease, the landlord may have the option to withhold consent to an assignment by the tenant. Whether the landlord has this option depends on the language of the lease agreement itself. If the landlord has the right to withhold consent to a lease assignment, the landlord may then have a duty to exercise its discretion reasonably. That is, absent express language in the lease to the contrary, the landlord will not be able to withhold its consent to an assignment unless there are reasonable grounds for doing so.

The issues of whether a commercial landlord has the right to refuse to consent to an assignment and, if so, whether that right is exercised reasonably, recently came to the fore in the Ontario Superior Court decision, *Hudson's Bay Co. v. Omers Realty Corp.* (“*Hudson's Bay*”).¹

Specifically, *Hudson's Bay* clarifies that, in evaluating a commercial lease assignment, the Court will not look beyond the legal title of the leases to determine who has beneficial ownership of the leases; so long as the party who has ultimate liability under the lease remains the tenant, the landlord will not be allowed to arbitrarily refuse to consent to an assignment. This is so even where the tenant intends to assign the lease to an entity which is operated, at least in part, by a commercial competitor of the landlord.

Although *Hudson's Bay* did not involve an insolvency, the decision could have significant implications for lease assignments in the context of a bankruptcy or CCAA² proceeding. With the rise of retail insolvencies in the past year,³ creditors, debtors and receivers need to understand the two lessons of *Hudson's Bay*, namely: (i) the circumstances in which a retail landlord has the right to refuse consent to

a lease assignment in a shopping mall; and (ii) the landlord's duty to exercise that right reasonably.

THE FACTS

The Applicants, Hudson's Bay Company (“HBC”) and HBC CAN Real Property LP (“HBC CAN LP”), were tenants in three shopping malls in Ontario. They were parties to three different leases with the respondent landlords (the “Landlords”), who were represented on the application by Oxford Properties Group (“Oxford”).

HBC entered into a real estate joint venture (the “Joint Venture”) with RioCan Real Estate Investment Trust (“RioCan”), who was a competitor of the Landlords. Under the Joint Venture, HBC was contributing ten properties, including the leases at the three shopping malls (the “Leases”).

HBC gave Oxford notice of its intention to enter into the Joint Venture in January, 2015. At meetings with HBC, Oxford expressed concern over the fact that HBC's assignment of the Leases would have the effect of giving RioCan, a competitor of Oxford, control over the Leases.

To address these concerns, HBC restructured the Joint Venture so that the Leases would be assigned to HBC as a general partner, thereby ensuring that HBC would retain control over the Leases.

In particular, the proposed Joint Venture would be structured as follows:

- (i) HBC and RioCan would be the two limited partners in RioCan-HBC LLP (the “First LP”). HBC would hold 90% of the partnership units, and RioCan the remaining 10%. A company jointly controlled by HBC and RioCan, namely 245504 Ontario Inc. (“245”) would be the sole general partner of the First LP;

- (ii) The assets contributed by both HBC and RioCan to the Joint Venture would be transferred to 245;
- (iii) The Leases would be held in a second limited partnership (the “Second LP”). HBC would be the general partner of the Second LP and would hold an interest of 99.9999% in the Second LP; and
- (iv) The Leases would be assigned to HBC as the general partner of the Second LP.⁴

Despite HBC’s efforts to restructure the Joint Venture to address Oxford’s concerns, Oxford, as landlord, ultimately refused to consent to the assignment of the Leases at the three shopping malls. According to Oxford, the proposed Joint Venture simply made “superficial” changes and failed to address Oxford’s primary concern that RioCan maintained control over the Leases.⁵

Accordingly, HBC commenced an application under section 23(2) of the Ontario *Commercial Tenancies Act*⁶ (the “Application”). HBC sought a declaration that it did not require Oxford’s consent to assign and sublease the Leases; in the alternative, HBC sought a declaration that if such consent was required, Oxford was withholding it unreasonably.

Ultimately, Justice Conway of the Ontario Superior Court granted HBC’s application. First, the Court held that Oxford’s consent to the assignment and sublease of the Leases was not required. Second, the Court held that even if it were wrong in this conclusion, the Landlords unreasonably withheld their consent to the assignment of two of the three Leases.⁷

LANDLORD’S CONSENT NOT REQUIRED TO ASSIGN LEASES

Under the Yorkdale Shopping Mall Lease (the “Yorkdale Lease”), the Tenant could assign or sublet the entirety of the leased premises without consent, but with notice, to an “Affiliated Corporation”. An “Affiliated Corporation” was defined in the Yorkdale Lease as a “holding corporation, subsidiary corporation or affiliate of Tenant, as each of these terms is defined in the *Canada Business Corporations Act*”. Under the proposed Joint Venture, HBC, as

tenant, was assigning the lease to itself as a general partner of the Second LP.

In the lease for Square One Shopping Mall (the “Square One Lease”), the Tenant had the right to, without consent, “assign this Bay Lease or sublet the Leased Premises to [...] the Hudson’s Bay Company”. The assignment of the Square One Lease to HBC was expressly allowed under the terms of the lease.

Under the lease for the Scarborough Shopping Mall (the “Scarborough Lease”), the consent of the Landlord was not required for “assignments of this Lease [...] made between any of Simpsons Limited and other companies which are or are about to become AFFILIATES of Simpsons, Limited”. The term “Affiliates” was defined as “any corporation which CONTROLS, is CONTROLLED by, or is under common CONTROL with, such corporation”. Simpsons Limited no longer held the Lease. It was instead held by HBC CAN REAL Property, as a general partner of HBC CAN LP. HBC owned all of the shares in HBC CAN REAL Property and was therefore an affiliate of the existing tenant.⁸

HBC advanced two arguments in support of its position that the Landlords’ consent was not required to assign the Leases. First, HBC argued that each of the Leases would be assigned to HBC in its capacity as a general partner of the Second LP. A limited partnership is not able hold partnership property, which includes the Leases. Thus, HBC will be the assignee under the Leases. Second, HBC argued that since HBC is either the same company or an “affiliate” of the existing tenant under each of the Leases, no consent was required since the Leases permitted assignments to corporate affiliates, as set out above.

Oxford opposed the application on the basis that the Court had to “look beyond who was holding legal title to the Leases (HBC, the general partner) and must look at who will become the beneficial owner of the Leases (the Second LP)”.⁹ According to Oxford, the Second LP was not an affiliate of any of the existing tenants under the Leases and thus its consent to the assignment to a non-affiliate was required.

The Court accepted HBC's position on both arguments.

The Court held that the assignee of the Leases would be the general partner, HBC, and not the Second LP as a limited partner. At common law, a limited partnership is not a legal entity and is required to act through a general partner. This means that the limited partnership is unable to hold title to real property and can only do so through its general partner. The Court held:

[...]First, any property in which the limited partnership [...] may have an interest can only be held by the general partner. In the case of a lease, there can be no assignment of the lease to the limited partnership [...]

Second [...] [t]he general partner has control over the property and is solely responsible for the operations of the limited partnership. The limited partner, as a passive investor, is restricted from taking part in the control or management of the business [...]

Third [...] the general partner is solely liable for all payments under the contract and performance of all obligations thereunder. The limited partners have no such liability [...] once the Leases are assigned, the legal relationship under the Leases will continue to be between the Landlords and HBC [...] HBC alone will be liable for rent and all amounts owing under the Leases[...]¹⁰

Accordingly, under the Joint Venture, HBC would be the assignee of the Leases as general partner. The Court held that there was no need to look beyond the fact that the Leases were being assigned to the general partner. HBC would be exclusively liable for the operations of the Second LP.

In any event, the Court held that consent was not required under the Leases as each of the Leases permitted an assignment to an "affiliate" of the existing tenant. Under the Yorkdale Lease, HBC was assigning the lease to itself as the general partner of the Second LP. Under the Square One Lease, the assignment to HBC was expressly permitted. Under the Scarborough Lease, HBC owned all the shares of HBC CAN Real Property, which was an existing tenant under the Lease. HBC was therefore an affiliate of the existing tenant.

The Court therefore concluded that the Landlords' consent to an assignment or sublease of the Leases was not required. The assignment would not be to a limited partnership, but instead to HBC, as a general partner of the Second LP. In any event, the Leases allowed for an assignment of the Lease to "affiliates" of the existing tenants, which included HBC.

LANDLORD UNREASONABLY WITHHELD ITS CONSENT

In the event that the Court erred in holding that consent was not required under the Leases, it decided the issue of whether the Landlord improperly withheld its consent in each case. Justice Conway ultimately held that consent to the assignments was unreasonably withheld with respect to the Yorkdale and Scarborough Leases, but not with respect to the Square One Lease.

The Square One Lease provided that the Landlord's consent to the Lease's assignment could be withheld arbitrarily. The Court therefore held that the Landlord could withhold its consent under the Square One Lease.

However, the same reasoning did not apply to the other two leases.

Section 23(2) of the Ontario *Commercial Tenancies Act*¹¹ creates a presumption that a landlord may not withhold its consent unreasonably, unless so provided in the contract:

23(2) Where the landlord refuses or neglects to give a licence or consent to an assignment or sub-lease, a judge of the Superior Court of Justice, upon the application of the tenant or of the assignee or sub-tenant, made according to the rules of court, may make an order determining whether or not the licence or consent is unreasonably withheld and, where the judge is of opinion that the licence or consent is unreasonably withheld, permitting the assignment or sub-lease to be made, and such order is the equivalent of the licence or consent of the landlord within the meaning of any covenant or condition requiring the same and such assignment or sub-lease is not a breach thereof.¹²

In determining whether or not the Landlord withheld its consent unreasonably, the Court considers the information available to and the reasons given by the landlord at the time of the refusal to consent. The issue is considered “in the light of the existing lease that defines and delimits the subject matter of the assignment as well as the right of the tenant to assign and that of the Landlord to withhold consent”.¹³ Some of the relevant factors in determining if there were reasonable grounds for withholding consent include: (i) the probability that the proposed assignee will default on its obligations under the lease; (ii) the financial position of the assignee; and (iii) the commercial realities of the marketplace and the economic impact of an assignment on the landlord.¹⁴ Moreover, a landlord cannot refuse consent for collateral purposes.¹⁵

Based on these legal principles, Oxford disputed the allegation that it withheld its consent to assignment unreasonably under the Yorkdale and the Scarborough Leases. Amongst other things, Oxford argued that the Joint Venture creates a new legal entity that will “operate under different legal control, divergent business interests, and with real-estate objectives”,¹⁶ as opposed to operating as a department store. In Oxford’s view, the Joint Venture fundamentally changed its relationship with HBC, such that it reasonably withheld its consent to an assignment.

The Court rejected Oxford’s position on a number of grounds. Specifically:

- i. With respect to Oxford’s concern that its tenant would be transformed from a retail operation to a real-estate venture, the Court held that such concerns were unfounded. HBC would continue to operate the stores as a retail enterprise. HBC always operated as both a real estate operator and retail business; it always made decisions based on these dual aspects of its business. Moreover, Oxford’s concerns were speculative. There was no concern that HBC would, for example, conduct itself under the Lease in a way that would favour its Joint Venture interests over those of Oxford. Also, the Lease did not impose any restrictions on

a change of control of HBC. RioCan could very well have purchased shares in HBC and indirectly acquired an interest in the Leases;

- ii. There was little concern that the First LP, as a limited partner, had certain veto rights if HBC proposed to assign or sublet the Leases under the Joint Venture. Oxford’s argument that these veto rights allowed the limited partner (and therefore RioCan) from exerting control over the Leases was unfounded. The limited partner remained a passive investor and HBC was the general partner which controlled the Second LP’s business. Oxford overestimated the limited partner’s and RioCan’s power based on its veto rights; and
- iii. There was little risk that HBC’s assumption of higher rent payments as a subtenant exposed Oxford to greater financial risk. The evidence proved that HBC had significant free cash flow such that the probability of default under the Leases caused little financial prejudice to Oxford.¹⁷

In view of the foregoing, the Court concluded that if consent was required under the Yorkdale and Scarborough Leases, it was unreasonably withheld by Oxford. HBC would continue to be liable under the Leases and in control of the Leases as a general partner of the Second LP. There was no reason to believe HBC’s interests would diverge from those of Oxford. Moreover, there was “no probability” that HBC would default under the Leases. Accordingly, the Landlord’s refusal to consent to the assignment of the Yorkdale and Scarborough Leases was unreasonable.¹⁸

CONCLUSION

The decision in *Hudson’s Bay* sets out important lessons for retail landlords who choose to exercise their discretion under a commercial lease unreasonably, where the lease specifically requires that such discretion not be exercised arbitrarily. Concerns that a retail tenant may be assigning its lease to an entity that is at least partially controlled by a commercial

competitor of the landlord must be founded on clear and cogent evidence. A landlord is not entitled to withhold its consent to a lease assignment on the basis of speculation and conjecture.

Hudson's Bay illustrates that Canadian Courts do not fear interrogating a landlord's discretion under a lease. The case therefore has implications not only for retail landlords themselves, but for those who may be required to step into the shoes of the landlord during insolvency proceedings. In such cases, where the consent to a lease assignment may not be held arbitrarily, the Courts have made it abundantly clear that the principle of commercial reasonableness governs.

[**Marco P. Falco** is a partner in the Litigation Department at *Torkin Manes LLP* who provides written advocacy in commercial and insolvency matters.]

¹ [2015] O.J. No. 4098, 2015 ONSC 4671 (Ont. Sup. Ct.), per B.A. Conway J.

² *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA").

³ "Insolvency Up 10% in Canada in June, 2015", CBC News, August 31, 2015, online: www.cbcnews.ca.

⁴ *Hudson's Bay Co. v. Omers Realty Corp.*, *supra* at para. 10.

⁵ *Hudson's Bay Co. v. Omers Realty Corp.*, *supra* at para. 11.

⁶ R.S.O. 1990, c. L.7.

⁷ *Hudson's Bay Co. v. Omers Realty Corp.*, *supra* at para. 4.

⁸ *Hudson's Bay Co. v. Omers Realty Corp.*, *supra* at paras. 25-27.

⁹ *Hudson's Bay Co. v. Omers Realty Corp.*, *supra* at para. 16.

¹⁰ *Hudson's Bay Co. v. Omers Realty Corp.*, *supra* at paras. 20-22.

¹¹ R.S.O. 1990, c. L.7.

¹² R.S.O. 1990, c. L.7 at s. 23(2).

¹³ *Hudson's Bay Co. v. Omers Realty Corp.*, *supra* at para. 35.

¹⁴ *Hudson's Bay Co. v. Omers Realty Corp.*, *supra* at para. 35.

¹⁵ *Hudson's Bay Co. v. Omers Realty Corp.*, *supra* at para. 35.

¹⁶ *Hudson's Bay Co. v. Omers Realty Corp.*, *supra* at para. 39.

¹⁷ *Hudson's Bay Co. v. Omers Realty Corp.*, *supra* at para. 53.

¹⁸ *Hudson's Bay Co. v. Omers Realty Corp.*, *supra* at para. 56.

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Kevin P. McElcheran, LL.B.

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DIRECTOR AND OFFICER LIABILITY IN CORPORATE INSOLVENCY: A COMPREHENSIVE GUIDE TO RIGHTS & OBLIGATIONS, 3RD EDITION

Janis P. Sarra, B.A., M.A., LL.B., LL.M., S.J.D. & Ronald B. Davis, LL.B., S.J.D.

This 3rd edition covers the various sources of personal liability faced by company directors and officers during corporate insolvencies, and identifies the pitfalls to avoid and best practices to adopt. Authors Janis Sarra and Ronald Davis address the latest and most significant legislative amendments, and provide an in-depth analysis of current case law. This comprehensive text will help you advise clients about their scope of liability, and offer suggestions to mitigate risk.

Features and Benefits

- An analysis of relevant cases, as well as the underlying public policies implicated in the choice of liability regime
- Cutting-edge insight into the latest legislative amendments
- Readers will learn about conflicting provincial and federal legislation relating to officer and director liability during insolvency
- Comprehensive coverage of the amendments to the Bankruptcy and Insolvency Act, Companies' Creditors Arrangement Act, and discussion of the Wage Earner Protection Program Act, along with provincial legislative changes

New in This Edition

- Discussion about the Supreme Court of Canada's recent decision in *Bhasin v. Hrynew* and why directors and officers need to be aware of the good faith obligation in commercial dealings
- Expanded discussion of director and officer liability in employment law matters, including content relating to directors' personal liability for unpaid wage claims in Canada Labour Code proceedings as well as amendments to the Saskatchewan Employment Act and Ontario Employment Standards Act
- New common law developments with regard to potential liability arising from pension legislation
- Discussion about the Supreme Court of Canada's 2012 decision in *Newfoundland and Labrador v. AbitibiBowater Inc.* and the interplay between environmental remediation orders and insolvency restructuring or liquidation proceedings

An Ideal Resource For

- **Bankruptcy and insolvency lawyers, and corporate counsel** – advise your clients about costly civil and criminal liability, and assist them in developing creative solutions to mitigate risk
- **Corporate officers and directors** – learn about your scope of liability, and how you can mitigate your personal risks. Identify situations that may expose you to unnecessary risk
- **Securities regulators** – learn to identify potentially liable conduct, and create standards of corporate management conduct
- **Business and law schools** – stay updated on this growing area of law

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