

An Overview of CCAA Proceedings

Prepared For: Legal Education Society of Alberta
Bankruptcy

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For Presentation In:

Edmonton – January 15, 2014

Calgary – January 23, 2014

AN OVERVIEW OF CCAA PROCEEDINGS

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INTRODUCTION

You read the newspaper one morning, only to discover that your favourite clothing retailer has become an insolvent, and filed for protection from its creditors. You assume that there will be a liquidation of its inventory, after which its doors will close forever. However, six months later, on a trip to your local mall you discover that the retailer is still operating in the same store, with the same staff, operating under the same name, and even selling the same clothes.

How can this be, you ask yourself?

This paper will attempt to shed light on proceedings pursuant to the *Companies Creditors Arrangement Act*¹, in the intent of providing the reader with the tools necessary to answer that question. This paper will also address the role of a “*Monitor*” in such proceedings, and will consider how that role may evolve depending upon the facts of a particular case. It will also consider the more common forms of the CCAA restructurings, and will review some of the tools available to companies in CCAA protection in order to restructure their affairs.

CCAA – OVERVIEW

The CCAA is a federal statute, with applicability in all provinces and territories of Canada. It is generally considered by practitioners to be most appropriate for large companies, not only because the CCAA requires the debtor company have indebtedness of more than \$5 million², but also because the professional costs associated with such a restructuring are typically only justifiable for larger enterprises.

The primary theory of the CCAA is that the value available to creditors and stakeholders of that company will be maximized through permitting management of the company to stay in occupation and control of the business and its assets. However, management is subject to the oversight of the court-appointed *Monitor* (as described below), which is designed to provide transparency to the proceeding and to limit abuse of the system by debtors.

¹ R.S.C. 1985, c. C-36 as am. (“CCAA”)

² CCAA, *supra*, Note 1, s. 2.

In order to provide the debtor company with the breathing room it needs in order to restructure, central to CCAA proceedings is the imposition of a stay of proceedings. The stay of proceedings ensures that a debtor company is not required to respond in multiple forums to multiple actions brought by multiple creditors. It forces the dispute of virtually all claims into one forum in order to permit their collective resolution.

The CCAA may be utilized by a debtor in order to either restructure its balance sheet through compromising the claims of creditors, or for a liquidation. In order to compromise the claims of creditors, the CCAA requires that creditors whose claims are subject to compromise vote upon a “Plan of Compromise or Arrangement” at a duly convened meeting of creditors. If the requisite majorities of each class of creditor vote to approve the Plan, and the court subsequently approves the same, it will be binding on all creditors of each class, whether each individual creditor voted for or against that Plan. The form of restructuring that may be undertaken in a Plan is often limited only by the imagination of the author, and the willingness of creditors to accept such consideration.

THRESHOLD FOR CCAA RELIEF

In order to obtain protection under the CCAA, a petitioning company must satisfy a statutory and discretionary threshold.

Statutory Threshold

The CCAA requires that an applicant for relief:

- have indebtedness of at least \$5 million³;
- meet the definition of “company” under the legislation, requiring the applicant to either be incorporated in Canada, or have assets in or do business in Canada. The applicant may be a company, corporation, legal person or income trust, but may not be a bank, railway company, insurance company, “telegraph” company or certain prescribed forms of trust companies ;⁴ and
- meet the definition of “debtor company” under the legislation, meaning a “company” that is bankrupt or insolvent, or is otherwise eligible for certain other forms of insolvency relief;⁵

³ CCAA, *supra*, Note 1, s. 3(1).

⁴ CCAA, *supra*, Note 1, s. 2(1).

⁵ CCAA, *supra*, Note 1, s. 2(1). The definition of “debtor company” also includes companies in the midst of bankruptcy