DAVIES

Issue 3

Insolvency Now

Q2 2021 Insolvencies: Crunching the Numbers and Keeping Good Faith

Contents

Living in a COVID-19 World

Most of us have stopped asking, "When will it be over?" and have started wondering how we can live with COVID-19 – and how it will change our behaviour from now on. In the context of restructuring, as we saw during the recent Canadian federal election, bankruptcy and insolvency have become topics of increased interest in political and wider circles. This might mean we can expect a greater focus on regulatory reform in this area. We anticipate that changes to the Canadian system will evolve incrementally through judicial interpretation of pre-existing concepts or minor changes to existing legislation. In this issue of *Davies Insolvency Now*, we turn our focus to one such legislative reform: the good faith amendment.

We analyze current insolvency statistics and note that the Canadian insolvency landscape remained quiet in the second quarter of 2021 compared to both 2019 and 2020. While the insolvency numbers continue to remain steady or drop, the state of business stability is worth a closer look. In the first part, we examine the second quarter of 2021 and conduct a checkup on how businesses managed as Canada ended most of its lockdowns and vaccines were shipped across the country. In the second part, we take a deep dive into the good faith doctrine.

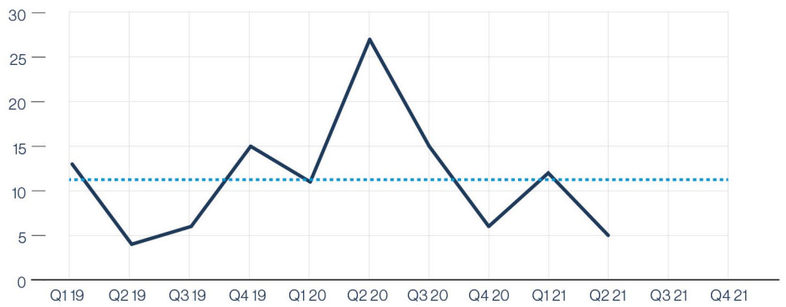
Davies Insolvency Now *is a quarterly publication authored by Natasha MacParland, Robin Schwill and Stephanie Ben-Ishai that analyzes key trends and developments in the insolvency and restructuring community. We also acknowledge, with gratitude, the contributions of Patrick White and Victoria Li.*

Part A: Q2 2021 Observations

CCAA FILINGS

At the national level, the quarterly numbers of filings under the *Companies' Creditors Arrangement Act* (CCAA) significantly decreased from a peak of more than 25 during Q2 2020. Despite a slight uptick to an average of 12 in Q1 2021, proceedings have decreased to their second-lowest number, five, since Q1 2019 (see Figure 1).

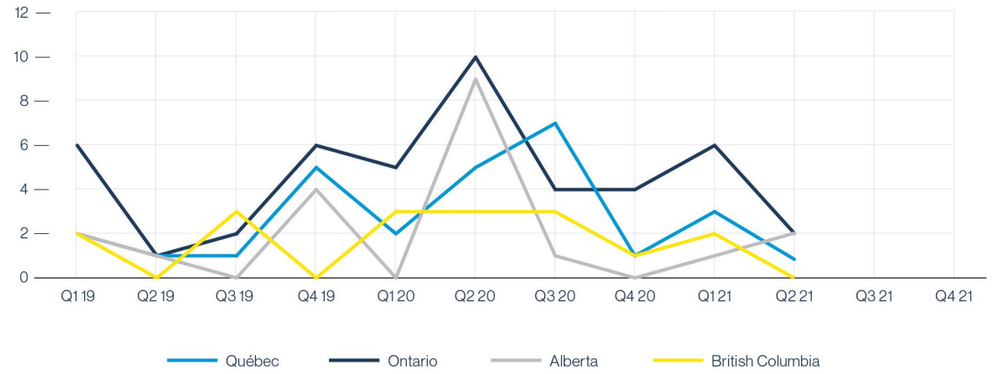
Figure 1: CCAA Restructurings in Canada



As we noted in our previous issue, many businesses re-evaluated their financial viability as the pandemic's second wave dragged on and lockdowns were re-introduced, with a noticeable increase in the overall number of CCAA filings in Q1 2021. However, entering the second quarter, Canada's vaccine rollout picked up speed and the economic outlook improved, despite a third wave of cases. Creditors and businesses were likely willing to hold out a bit longer as a "vaccinated summer" became a reality and cash-flush consumers appeared keen to spend their savings on things other than houses. According to the recent *Canadian Economic Recovery Tracker* developed by Export Development Canada, the second quarter of 2021 saw solid growth of business and consumer sentiment. In particular, the *Bloomberg/ Nanos Canadian Confidence Index* reached 66.4 by the end of June 2021, the highest record since 2008, compared to an average of 56.5 in January 2021.

The decrease in the number of filings in Q2 2021 compared to Q1 2021 was recorded in all provinces. In particular, as shown in Figure 2, the number of filings in Ontario dropped from six in the previous quarter to only two in the most recent quarter. British Columbia, for the first time since the beginning of the COVID-19 pandemic, recorded no CCAA proceedings in Q2.

Figure 2: CCAA Proceedings by Province

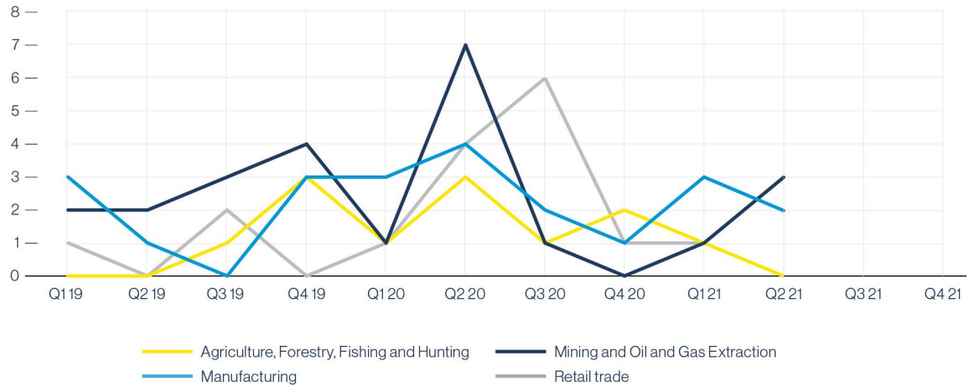


The pandemic continues to have a concentrated impact on certain industries in Canada. The mining and oil & gas extraction sectors recorded the most filings in the second quarter of 2021, constituting three of the five total filings (see Figure 3). Manufacturing was the other sector in which CCAA proceedings were commenced; however, Q2 filing numbers were lower than in the previous quarter.

The retail sector appears to have adjusted to the COVID-19 environment and reported only one CCAA proceeding in Q1 2021 and zero in Q2 2021. Similarly, agriculture, forestry, fishing and hunting experienced decreases for two quarters in a row, with no filings in the most recent quarter and only one in Q1 2021.

All these vulnerable industries are still showing CCAA proceedings at levels below their Q2/Q3 2020 peaks, and the numbers are very much in line with their 2019 levels.

Figure 3: CCAA Proceedings by Sector



BUSINESS BANKRUPTCIES AND PROPOSALS

Figure 4: Total Business Bankruptcies and Proposals

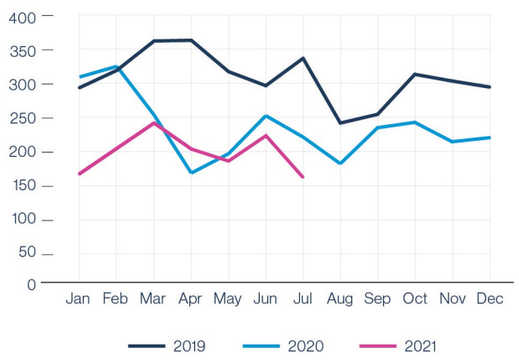


Figure 5: Business Proposals

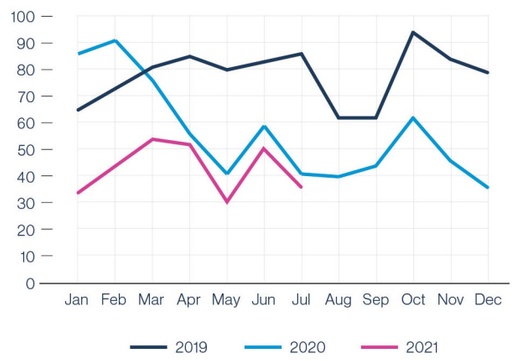
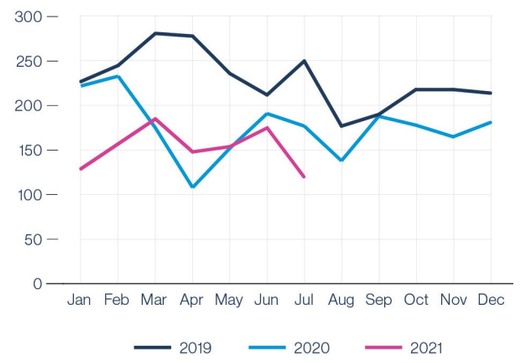
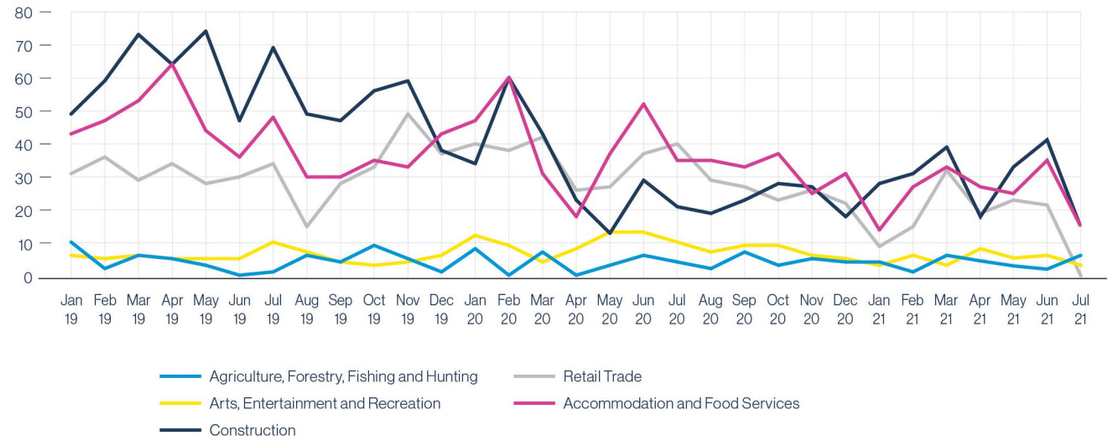


Figure 6: Business Bankruptcies



As shown in Figure 4, the overall number of business bankruptcies and proposals remains below 2020 levels and well below 2019 levels. The number of business proposals in every month of 2021 has been consistently below the corresponding 2020 figures (see Figure 5). While the number of business bankruptcies experienced a brief uptick in June 2021, it quickly dropped in July to its lowest level in the past 14 months (see Figure 6). With low interest rates, government stimulus flowing and provinces emerging from the third wave of the pandemic, it appears that businesses are positioned to recover.

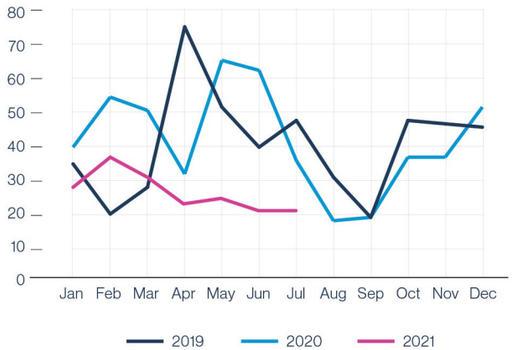
Figure 7: Total Bankruptcies and Proposals in Most Affected Sectors



At the industry level, the performance of the most affected sectors continued to follow pre-pandemic trends. As shown in Figure 7, bankruptcies and proposals in the construction and the accommodation and food services sectors are below their 2019 levels. Bankruptcies and proposals in the retail trade sector have returned to a level similar to that in the first half of 2019, before a Q4 2019 rise. Bankruptcies and proposals in the agriculture, forestry, fishing and hunting sector and the arts, entertainment and recreation sector remain within their observed ranges throughout both 2019 and 2020.

RECEIVERSHIPS

Figure 8: Receiverships in Canada by Volume

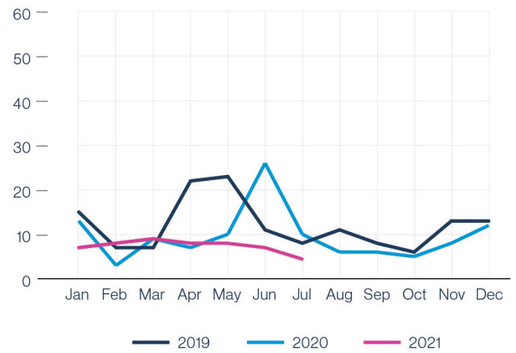


The number of receiverships in the second quarter of 2021 saw a slow but steady downward trend from the previous quarter and remained well below 2020 and 2019 levels (see Figure 8). Most significantly, there were 41 fewer receiverships in June 2021 than in June 2020. Unlike the significant fluctuations in the number of receiverships on a monthly level in 2019 and 2020, the 2021 numbers started the first half of the year relatively low and flat. When compared to the rapid increases in the second half of 2020, the trend in the first half of 2021 suggests that businesses are adjusting to the pandemic era and that stakeholders are continuing to be flexible.

The number of receiverships in the second quarter of 2021 saw a slow but steady downward trend from the previous quarter and remained well below 2020 and 2019 levels.

Figure 9: Court-Appointed Receiverships in Canada by Volume

Figure 10: Privately Appointed Receiverships in Canada by Volume



The general observation of low receivership numbers continues to hold true when we break down the aggregate number into court-appointed and privately appointed receiverships (see Figures 9 and 10). The number of court-appointed receiverships in each month of Q2 2021 is consistently lower than the number in Q2 2020. The number of privately appointed receiverships in each month of Q2 2021 is also consistently lower than the number in Q2 2020.

A LOOK AHEAD

At the time of writing, Canada boasted very high vaccination rates in most provinces. Yet it is expected that some variants of COVID-19 will persist during the next few years. Consumers and businesses hoping to return to an identical, pre-COVID-19 “normal” are realizing that some form of public health measures will likely remain in place for the foreseeable future. As governments trial and implement vaccine passport systems in an effort to avoid restrictive shutdowns during the pandemic’s fourth wave, many employers are keen to get their staff back into offices. Observers and businesses will be looking for both consumer and government reactions to rising and falling case numbers. We will also continue to watch the implications of a number of global companies with a large Canadian presence that are switching employees to a fully remote work environment.

Hello Inflation, My Old Friend

With the Bank of Canada expected to stay the course on low interest rates, at least for now, and governments expected to renew pandemic stimulus supports, businesses face a new – yet familiar – concern: inflation. Global supply chain challenges and the increasing cost of commodities and inputs are squeezing cash-strapped businesses, even if interest rates are not. Statistics Canada reported a 4.1% surge in the Consumer Price Index in August, the highest year-over-year increase since 2003, following a 3.7% increase in July (see Figure 11). With both July and August numbers well above the Bank of Canada's 2% inflation target, we will be watching to see if this trend holds and the Bank of Canada faces increased pressure to take action. If runaway inflation takes hold, businesses that have been staying afloat through agreements with creditors amid periods of reduced consumer demand might soon find themselves dragged underwater and unable to resurface.

Figure 11: 12-Month Change in the Consumer Price Index

Source: Statistics Canada, Table 18-10-0004-01

Part B: The Good Faith Doctrine: Practical Implications

While statistically speaking, insolvency activity has been relatively slow, the development of insolvency-related case law has been moving at a much faster pace. For instance, there were six insolvency-related leave applications to the Supreme Court of Canada (SCC) in Q2 2021, representing a 200% increase over those in Q2 2020 and a 50% increase over those in Q2 2019. As this case law is rapidly developing, we are seeing the good faith doctrine presented in a range of our insolvency files.

TWO YEARS OF EXPERIENCE IN A NUTSHELL

In 2019, Parliament enacted changes to Canada's two main restructuring statutes – the *Bankruptcy and Insolvency Act* (BIA) and the *Companies' Creditors Arrangement Act* (CCAA) – for the stated purpose of making insolvency proceedings fairer, more transparent, and more accessible for pensioners and workers. The new amendments require all participants in insolvency proceedings to act in good faith, and they give courts broad power to determine the appropriate relief where that duty is breached.

In this section, we draw on two years of deep experience to offer clarity on the new provisions, the case law and the circumstances in Québec with previously codified good faith provisions. As has always been the case, Canadian courts continue to require that parties seeking the benefit of the courts' assistance in insolvency-related matters act honestly and fairly; the courts have never tolerated a literal or technical approach to fairness.

GOOD FAITH PROVISIONS IN THE BIA AND CCAA

Section 4.2 of the BIA and section 18.6 of the CCAA both include the following provisions:

1. Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.

2. If the court is satisfied that an interested person fails to act in good faith, on application by any interested person, the court may make any order that it considers appropriate in the circumstances.

The duty to act in good faith is not a novel concept in Canadian insolvency and restructuring contexts. However, the 2019 statutory provisions mandating that all interested persons act in accordance with the duty are new. Both the BIA and CCAA include good faith provisions as part of other specific provisions that impose a good faith duty upon insolvent parties, debtors, trustees, receivers and monitors. Notably, sections 4.2 of the BIA and 18.6 of the CCAA impose a new duty on all participants in insolvency proceedings. The duty of good faith is undefined in the statutes, and its application is not limited to particular parties or circumstances.

Interestingly, it was the long-standing general good faith requirement, rather than the newly codified provisions, that the SCC referenced in its recent decision on a priority dispute under the CCAA. In *Canada v Canada North Group Inc.*, the majority of the judges dismissed the Crown's appeal, holding that the court supervising a restructuring process has the authority to order that "super-priority" charges for insolvency practitioners are paid first, even before paying the Crown the money it is owed. Both of the majority reasons referred to the baseline requirement of good faith as needing to be met before a court could make any order it considered appropriate in the circumstances under the CCAA.

THE ACADEMICS CAN'T AGREE

The duty of good faith in Canadian insolvency legislation has been the subject of a number of recent articles criticizing and questioning Canadian courts' interpretations that were based on previous decisions involving similar good faith duties. While the provisions were still working their way through Parliament, the Canadian Association of Insolvency and Restructuring Professionals (CAIRP) raised concerns to the Senate Committee that studied Bill C-97. CAIRP's concerns related to the practical implications of delay, potential for forum shopping and increased litigation costs as a few of the problems that could arise from the new amendments. At least one Canadian academic criticized the new amendments for their vagueness and undefined application as well as for not providing any guidance to parties and the courts regarding how this duty may be discharged.

Commentators involved at the intersection of insolvency and employment law have turned to the notice requirements, suggesting labour legislation that includes employers' duties to bargain in good faith should inform the new provisions and require debtor employers to give unions timely notice of impending insolvency proceedings before seeking an initial order.[1] Foreign academics have considered a number of good faith decisions from case law and examples from the contexts of commercial contracts, insurance law, patent law and the positions of other jurisdictions' insolvency law regimes (including the United States and New Zealand) in determining the likely benefits of the new amendments in ensuring fairness and avoiding problematic scenarios (such as the "late entrant" problem).[2]

Others have raised the possibility that the inclusion of a general duty of good faith may result in cases being decided on subjective standards of morality and fairness, causing much uncertainty. Furthermore, at least one academic argues that this vague, undefined addition without any context or limiting features will undermine the processes of insolvency and restructuring while opening the floodgates to bad faith complaints, delaying the insolvency process and increasing costs. On the other hand, a leading Canadian academic has argued that express provisions requiring good faith are easily incorporated into Canada's insolvency legislation and that this conduct should be met in order for interested persons to expect the benefit of remedies under insolvency and contract law.[3]

With this debate in mind, we turn to our analysis of the way the courts have interpreted the scope of the 2019 provisions and the implications of those decisions on Canadian insolvency proceedings. Our analysis and experience suggest that while the new good faith provisions are raised frequently by a range of stakeholders in BIA and CCAA proceedings, the law has ultimately not changed since their enactment. Rather, the new provisions track the pre-existing good faith requirements in the Canadian insolvency regime, which well equips us for the post-pandemic recovery period.

CASE LAW

The good faith amendment came into effect on November 1, 2019. This relatively new amendment has already featured prominently in at least 10 Canadian judicial decisions, affecting every aspect of the insolvency process. Before we turn to those cases, a brief analysis of the case law on the good faith doctrine more generally is warranted.

The Good Faith Concept

The SCC first addressed the issue of good faith in contractual relations in its 1962 decision in *Cosmo Underwear Company Ltd. v Valleyfield Silk Mills Ltd.* The Court recognized that good faith is the essence of contracts and governs both their formation and execution. The next major decision in which the SCC considered good faith in the same context was *National Bank v Soucisse* in 1981. In National Bank, the SCC recognized a positive duty to inform which stemmed from the contract law principle to perform obligations in good faith. The SCC in *Bhasin v Hrynew* in 2014 extended this obligation from applying to specific obligations in contracts (including employment termination and insurers dealing with insured claims) to contractual relationships as a whole. *Bhasin* imposed the good faith principle to ensure that in carrying out contractual performance, a contracting party should have appropriate regard to the legitimate contractual interests of the contracting partner. Similarly, in *Century Services v Canada (Attorney General)* in 2010, the SCC held that the requirements of appropriateness, good faith and due diligence are baseline considerations that a court should always bear in mind when exercising CCAA authority.

More recently, the SCC issued its decisions in *Wastech Services Ltd. v Greater Vancouver Sewerage and Drainage District*, *C.M. Callow Inc. v Zollinger*, and *Matthews v Ocean Nutrition Canada Ltd*. In *Wastech Services*, the Court stated that in contracts that give rise to some amount of choice, the duty of good faith requires that discretion is exercised "in the manner consistent with the

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purposes for which it was granted in the contract" or, more simply put, to "exercise discretion reasonably." In *C.M. Callow*, the Court held that parties to a contract have a duty of honest performance and must not lie or mislead each other regarding matters directly linked to contractual performance. Notably, this includes expressing half-truths, omitting details and even keeping silent in some circumstances.

Given the inclusion of good faith in certain provisions of both the BIA and the CCAA, and the SCC decisions regarding good faith more generally, the 2019 amendments are not a novel concept in insolvency proceedings. With this backdrop, the following discussion analyzes the leading recent case law regarding disputes in which the new provisions have been considered in relation to specific aspects of the insolvency process.

The Applicant in a CCAA Proceeding

In *9354-9186 Québec inc. v Callidus Capital Corp.*, a case in which Davies played a significant part, the SCC focused on the application of the good faith requirement to the debtor applicant and held that the debtor bears the burden of demonstrating that it has acted in good faith according to the well-established requirement that all parties must act in good faith in insolvency proceedings as "has recently been made express in s.18.6 of the CCAA." As has been discussed extensively elsewhere, the SCC held that an improper purpose was present whereby Callidus aimed to subvert the will of other creditors that had already rejected the first proposed plan and attempted to manipulate the vote on a second, nearly identical, plan.

Creditors in a Receivership

In *CWB Maxium Financial Inc v 2026998 Alberta Ltd.*, the defendants claimed that the plaintiff failed to act in good faith through actions amounting to misrepresentation, mistruth or omission. In determining what was meant by good faith, the Alberta Court of Queen's Bench (ABQB) first turned to *Century Services* for guidance then considered the more recent *Callidus* decision. The ABQB found that, given the decision in *Callidus*, the intent and policy objectives of the BIA should inform the court's consideration of the propriety of creditor behaviour in bringing a receivership application and during the receivership proceedings. The Court noted that bringing an insolvency proceeding for an improper purpose and misleading another party as to the status of a loan could be examples of conduct that may constitute a failure to act in good faith. After determining that good faith applied to previous conduct (to the insolvency proceeding) when it involves events precipitating court involvement, the Court assessed the content of the good faith requirement. To do so, the Court turned to *Bhasin*, in which the SCC held that a duty of good faith does not require one party to serve the interests of the other but rather not to undermine the other's interest in bad faith, without creating a fiduciary duty; it also imposes a duty of honesty in contractual performance. Following an analysis of the latter duty of honesty and citing *C.M. Callow*, the Court found no breach of the good faith requirement because the creditor, Maxium, did not engage in dishonesty in its dealings either at the time of initiating the loan in 2017 or during the restructuring.

The Applicant in a Reverse Vesting Order

In *Nemaska Lithium Inc.*, the Québec Superior Court held that section 18.6 of the CCAA makes clear that good faith is required during the course of the proceedings, and, in contrast to the ABQB's decision, that conduct of the parties pre-filing cannot be used to inform a court's examination of the good faith obligation. Nemaska, a mining company, sought protection of the CCAA in 2019. The Court approved a sale or investment solicitation process (SISP), which led to the purchase of the company by Nemaska's largest creditors (which created a consortium). This bid required that the sale transaction be effected via a reverse vesting order (RVO). A creditor and a shareholder filed motions opposing the issuance of the RVO, thereby instigating a review of the SISP and the potential ramifications of putting the proceeding on hold in an uncertain market. This led to the approval of the RVO in 2020. The Court concluded that Nemaska had acted in good faith and with the required diligence, and that the RVO was the best option available. Commentators have noted that this ruling was rendered in a rather peculiar context: a previously passive creditor sought to be labelled as a critical supplier and invoked bad faith by the debtor, who had already obtained a stay that had been renewed several times.

Good Faith and Costs

In *Purcell Basin Minerals Inc. (Re)*, the British Columbia Supreme Court was tasked with determining costs following a settlement prior to the hearing. In its decision, the Court, citing section 18.6 of the CCAA, awarded special damages in favour of the creditor, Mr. Moretti, and dismissed the application for costs by the Alberta numbered company. The Court held that the smear campaign that was initiated and continued, along with the lack of due diligence conducted and the vendetta pursued against Mr. Moretti, amounted to conduct that breached the new duty of good faith imposed on all parties.

Good Faith and Reviewable Transactions

In *Accel Canada Holdings Limited (Re)*, the ABQB was called upon to determine whether a transaction arising from a set of agreements was a voidable transaction under section 95 or 96 of the BIA. The Court held that it should first apply the specific relevant statutory principles and then turn to the discretionary good faith provisions. In this case, the Court was able to find a breach of the reviewable transaction provisions so a full application of the good faith provisions was not required. However, in constructing an appropriate remedy, the Court turned to the objectives of the CCAA, citing *Century Services*, "appropriateness, good faith, and maintaining the *status quo* in order to be fair to all stakeholders."

Good Faith and Disclaimers

In *Laurentian University v Sudbury University*, the Ontario Superior Court was tasked with deciding whether to disallow a notice of disclaimer under the CCAA. In assessing whether the good faith provisions of the CCAA were breached, the Court considered the evidence from negotiations between the debtor and its creditors before agreeing with counsel for Laurentian that the failure to achieve a resolution was not evidence that the debtor had breached its duty of good faith.

THE QUÉBEC EXPERIENCE

Québec is the only Canadian province with a civil code that includes a codified duty to act in good faith in court-supervised proceedings under Québec civil law.[4] It has long been held that the duty to act in good faith incumbent on all persons (in both contractual and extra-contractual contexts) constitutes a baseline, overarching obligation in Québec.

In *Receiver of Media5 Corporation*, a recent Québec Court of Appeal decision referencing section 4.2 of the BIA, the Court held that the judge must be satisfied that the person requesting the appointment of the receiver is acting in good faith and without any indirect purpose. The Court importantly drew a parallel between the civil law and the 2019 amendments to the BIA and the CCAA, stating "this requirement of good faith is moreover similar to the similar requirements set out in articles 6 and 7 CCQ which are imposed on the hypothecary creditor under civil law."

We next turn briefly to these requirements under civil law.

In *Houle v Canadian National Bank*, the SCC re-examined the duty of good faith in contractual relationships to determine whether the criterion for the abuse of a contractual right is exclusively based on bad faith or malice, or whether it can also be based on an unreasonable use of a contractual right. The Court held that the bank in this case had a duty to act in a prudent and diligent manner in order to avoid prejudice to the shareholders. The SCC further said that the duty of good faith in Québec was derived from a long civil law tradition, which mandates that rights be exercised in a spirit of fair play. In order to demonstrate an abuse of rights, the complaining party must demonstrate that the conduct was exercised for the purposes of circumventing the aims and purpose of the contract, and that conduct was not in line with the expectations placed on a reasonable person.

The good faith principle in Québec can be further broken down into a number of components, which include the duty of loyalty, duty of cooperation, duty to inform and be informed, and the duty of consistency. The duty of loyalty is intended to safeguard against a party placing a counterpart in a bad situation or engaging in unreasonable conduct.[5] The duty of cooperation is intended to facilitate the performance of the contract's terms and obligations and to mind the interests of the counterparty, by providing either information or advice.[6] The duty to inform and duty to be informed obligate parties to be diligent in the manner they convey intentions regarding the future or demise of contractual performance. This duty stands for the proposition that when a party has information that would be determinative for the other party, it is bound to reveal it as soon as it becomes aware of the information. The duty of consistency refers to parties conducting themselves in accordance with what is set out in the contract along with what is incidental to the contract and in conformity with usage, equity and law.

In the 1992 decision in *Bank of Montreal v Bail Ltée*, the SCC further expanded the doctrine of good faith to hold that a party could be liable if it failed to act reasonably – even in the absence of a contractual fault. In that case, Hydro Québec had a construction contract with Bail, which was outsourced to Laprise. During construction, problems arose because of the soil conditions, and inspectors from Hydro Québec recommended a costly procedure without disclosing the report. Laprise completed the construction but shortly thereafter filed for bankruptcy. The Bank of Montreal took over the business and the project, and subsequently brought an action in contractual liability against Bail, as Laprise would not have agreed to carry out the difficult excavation work at the amount previously agreed upon had it foreseen the difficulty and seen the report. Following a brief discussion of the duty of good faith in contractual relationships, the SCC held that the duty of good faith is owed to third parties in the same way as to other contracting parties. The SCC also held that the obligation to inform is required where one party is in a vulnerable position with respect to information (where the non-communication of such information could result in damage). Thus the SCC concluded that the failure to disclose the report and inform Laprise of the major costs associated with the soil problems gave rise to a breached duty.

In a decision relying on the civil law good faith doctrine in the insolvency context, in 2002, the Québec Court of Appeal in *Uniforêt* upheld the lower court's decision denying a debenture holder group's motion to vote in a separate class on the basis that it was found to be acting in self-interest.[7] In an effort to save the company and ensure that creditors were able to benefit from the future success of the enterprise, as well as earn more than if the company were liquidated, the debtor filed a restructuring plan, which the group rejected. In concluding that parties may not act in a solely self-interested fashion, the Court rejected the group's approach, which involved obstructing a plan in order to achieve its own ends to maximize its own return without regard to the implications for other stakeholders and showing no interest in facilitating a reorganization.

Applying the Good Faith Doctrine: A Concluding Note

A recent Ontario decision in *Bank of Montreal v 592931 Ontario Inc.* applying the good faith amendments confirms what is expected of lenders and other interested parties under the newly codified good faith doctrine. Ultimately, acting reasonably and professionally, even in the face of disappointment, will protect parties in an insolvency proceeding from a finding of breach of good faith.

Our review of the good faith case law and experience with its application suggests that all parties in an insolvency proceeding need to hold themselves to an even higher standard of professionalism and reasonableness to avoid any potential good faith breaches, especially in the current pandemic recovery period.

Notes

1 Tracey Henry, Danielle Stampley & Alex St. John, "CCAA Duty of Good Faith: Notice Obligations to Union Stakeholders," *2019 Annual Review of Insolvency Law,* 17th ed.

2 Jules Monteyne, "The New Duty of Good Faith and How It Applies in Insolvency Proceedings," *2019 Annual Review of Insolvency Law*, 17th ed.

3 Janis Sarra, "La bonne foi est un consideration de base – Requiring nothing less than good faith in insolvency law proceedings," *2014 Annual Review of Insolvency Law,* 12th ed. at 2.

4 See Art 1375 CCQ; see also, Arts 6-7 CCQ constituting the explicit sources of the universal character of the duty of good faith and its corollary, the notion of abuse of rights; Arts 19-20, 51, 341, 683 CCP.

5 Ari Sorek and Charlotte Dion, "Good Faith in Insolvency and Restructuring: At the Intersection of Civilian and Common Law Paradigms, at a Fork in the Road or in a Merging Lane?" *2020 Annual Review of Insolvency Law*, 18th ed. at 7; Didier Lluelles and Benoît Moore, "Droit des obligations," 3rd ed. (Montréal: Themis, 2018) at para 1980.

6 Sorek and Dion, *ibid* at 8; Lluelles and Moore, *ibid* at para 1980.

7 *Uniforêt inc., Re*, (2002) 119 ACWS (3d) 185, 40 CBR (4th) 281.

Key Contacts

With extensive experience in identifying and avoiding any potential good faith breaches, Davies draws on the strategic and innovative skills of our team to help you navigate the complexities of a restructuring or insolvency. We would be happy to discuss your specific circumstances and answer any questions you may have. Please contact any of the individuals listed below or visit our website at www.dwpv.com.

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