

INSOLVENCY LAW JOURNAL

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Canadian bankruptcy law reform: A selective research agenda – *Anthony Duggan*

This article was written for an Insolvency Law Teaching and Research Workshop run by the University of Southern Queensland in Brisbane earlier this year. It gives an account of the commercial bankruptcy law reform process in Canada with particular reference to three issues: (1) the disclaimer, assignment and assumption of executory contracts (including collective bargaining agreements) in insolvency proceedings; (2) the review of pre-bankruptcy transactions (transfers at under value and preferences); and (3) the subordination of claims (subordination agreements, subordination of equity claims and equitable subordination). The discussion of each issue starts with a short account of the current Canadian law, before moving on to deal with the reform proposals and the debate surrounding them. In line with the nature of the workshop, the article incorporates questions for further research, some of which are already under active consideration in Canada. Insolvency law reform is also on the agenda in Australia and New Zealand. Local law reformers may find there are lessons to learn from the Canadian experience. Likewise, there are lessons Canada may learn from law reform experiences in Australia and New Zealand and elsewhere.....67

Insolvency practitioners' costs: A tough new world? – *David Thompson*

Complex external administrations tend to generate large claims for administrators' remuneration. The law gives creditors and/or the court the power to determine the amount of remuneration to which an administrator is entitled. The courts have often held that they, and creditors, need sufficient information regarding the work the administrators have performed before they can exercise these powers properly, but have given little concrete guidance on the amount and quality of information that is actually required. *Korda; Re Stockford Ltd* (subject to deed of company arrangement) (2004) 52 ACSR 279 addresses this issue and appears to raise the standards that administrators must meet in order to justify their remuneration. This article situates the *Stockford* decision in the context of previous decisions on remuneration in an attempt to isolate those aspects of the decision that are truly novel and assess its impact on external administrators84

Lost in transition: Section 447A and the question of members' rights when a company transitions from voluntary administration to a creditors' voluntary liquidation – Jason Harris and Bruce Gordon

One of the benefits of voluntary administration under Pt 5.3A of the *Corporations Act 2001* (Cth) is that it allows for a smooth transition from administration to a creditors' voluntary liquidation, particularly when the company cannot be returned to profitability by either the period of voluntary administration or under a subsequent deed of company arrangement. However, recent cases have posed the question as to the nature of the creditors' voluntary winding up into which insolvent companies transfer. This article examines these cases and argues that the transitional provisions in Pt 5.3A do not alter the substance of the subsequent creditors' voluntary liquidation, but rather merely provide an efficient gateway into a separate form of external administration. The scope and effect of the transitional arrangements between voluntary administration and creditors' voluntary liquidation is important because it frames the court's power to grant orders under s 447A. The authors argue that whilst s 447A orders may properly be made to give effect to the purposes of Pt 5.3A, they should not be made where the order dispenses with membership rights ordinarily accruing under voluntary liquidation 96

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