Insolvency & Restructuring

"Courts are committed to equitable creditor recovery while protecting contractual rights."

What was the most interesting development of 2025, and why?

Courts clarified important insolvency issues in 2025, including when courts will order contractual relationships between insolvent parties and third parties to continue, and when a bankrupt will or will not be released from student loan debts.

The Ontario Superior Court's decision in *Hudson's Bay Company ULC* (in which Lenczner Slaght represented ReStore Capital LLC, the FILO agent) provides clarity on key considerations and criteria for forced contractual assignments under section 11 of the *Companies' Creditors Arrangement Act* (CCAA) and the interpretation of *ipso facto* clauses (contractual provisions that allow a party to terminate or modify an agreement solely because the counterparty has entered insolvency or restructuring proceedings) and other similar clauses. Various landlords successfully opposed Hudson Bay Company's proposed sale of certain leases to a new tenant, finding that the contract counterparty to an insolvent company is not compelled to continue the contractual relationship with a new company to maximize recovery for creditors.

In *Piekut v Canada (National Revenue)*, the Supreme Court of Canada clarified an issue that had split courts in different provinces for over a decade: will the seven-year period after which a bankrupt is released from their student loan debts run from a single date on which they were last enrolled as a student, or from multiple dates on which their different programs of study ended? The court clarified that the seven-year period in section 178(1)(g)(ii) of the *Bankruptcy and Insolvency Act* (BIA) runs from the single last date the bankrupt was enrolled as a student. In reaching this decision, the Supreme Court referenced the statutory purposes of the provision to reduce government losses on student loan defaults, ensure sustainability of the student loan program, and deter opportunistic bankruptcies. The "multiple date" approach would have released bankrupts from more student debt than the "single date" approach.

What's the primary takeaway for businesses from the past year?

2025 was a busy year for insolvency litigation in Canadian courts, with a high volume of cases in the real estate, construction, and retail trade sectors, all of which were heavily impacted by high interest rates, inflation, debt maturities, and international tariffs. Generally, courts appear committed to balancing creditor recovery with affected parties' contractual rights. Businesses facing financial distress or those in contractual relationships with distressed parties should stay informed of their rights and act proactively to protect their interests.

Moving forward, we expect regulatory amendments to the bankruptcy regime in 2026. In November 2025, the Office of the Superintendent of Bankruptcy (OSB) published proposed regulations amending the BIA General Rules and the CCAA Regulations for the purpose of modernizing the bankruptcy system. The proposed changes include: increased digitalization and accessibility, greater consistency between regulatory measures, higher asset-value thresholds for summary administration bankruptcies and consumer proposals, and revised fees under the BIA Rules. While we expect these changes to have a greater impact on consumer proposals than corporate restructurings, they will affect the broader regime.

What's one trend you are expecting in 2026?

As economic uncertainty continues, lenders are increasingly turning to litigation to recover debts. In 2026, we anticipate a steady flow of business insolvency filings in Ontario and a continued increase in bankruptcy and insolvency litigation, particularly in the real estate and construction sectors.

We expect Canadian courts to continue the 2025 trend of balancing equitable recovery for creditors with prioritizing contractual certainty. For example:

- Finding pre-filing payments to be preferences under section 95(1) of the BIA where payment is made to one major supplier without evidence that it would assist in generating future revenue to allow the company to stay in business (see *RPG Receivables Purchase Group Inc v American Pacific Corporation*).
- Expanding the purposes for which courts may grant reverse vesting orders in the context of receivership proceedings (see *Peakhill Capital Inc v Southview Gardens Limited Partnership*, in which the Supreme Court of Canada denied leave to appeal a decision of the British Columbia Court of Appeal granting a reverse vesting order where the main benefit was avoiding tax liability).
- Interpreting properly drafted *ipso facto* and similar clauses in a manner that prevents insolvency proceedings by a contractual counterparty from rendering pre-insolvency contractual agreements and amendments unenforceable (see *Hudson's Bay Company ULC*).

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