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Top 10 business decisions of 2019: From bankruptcy to beer

The Guarantee Company of North America v Royal Bank of Canada is named in the Lawyers' Daily's article *Top 10 Business Decisions in Canada for 2019*. Matthew B. Lerner and Scott Rollwagen are mentioned as counsel to the successful appellant, The Guarantee Company of North America. Matt is also quoted in the article.

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The federal *Bankruptcy and Insolvency Act* (BIA) specifically preserves trust assets from distribution to secured and unsecured creditors in bankruptcy proceedings. Conventional wisdom had held that this provision applied only to common law trusts. The decision by the Ontario Court of Appeal in *Guarantee Company*, however, turns this wisdom on its head by deciding that statutorily created trusts can also qualify as trusts under the BIA.

“This case is very important in the bankruptcy context because it puts trust claimants ahead of secured lenders,” said Matthew Lerner of Lenczner Slaght Royce Smith Griffin LLP in Toronto, who with colleague Scott Rollwagen represented Guarantee. “So, there’s probably a whole host of litigation brewing that will force secured lenders to take a very close look at their general security agreements.”

And although the decision deals specifically with the provisions of Ontario’s *Construction Lien Act*, it cuts a much wider swath.

“There are other contexts in which the issue arises, such as provincial sales tax trusts in favour of provincial governments,” Lerner said.

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