

**Office of the Superintendent of Bankruptcy  
National Officers' Training Conference  
February 2, 2005**

**Expert Panel – Max Mendelsohn & Bob Thornton**

**1. INTRODUCTION**

- Thanks to David Stewart for invitation
- Pleasure to sit on panel with Bob Thornton

**2. STORIES**

- Chapter 11 story
  - Bible has no Chapter C-36
- Substitute / pain
- Vatican / Wonder Bread

**3. GENERAL COMMENTS RELATING TO RE-ORGANIZATIONS**

- *Bankruptcy Act* (enacted 1949)
  - Limited scope
  - Compromise debts
  - Since 1993 – renunciation of commercial leases
  - BIA much too narrow
- CCAA re-discovered in 1980s
- No rules
  - Impression of sole usages; stay proceedings and compromise debt
  - Re-discovered in Ski Morin Heights case – Late 70s, early 80s
    - Role of coordinator invented
    - Torontonians ran with it to create “elitist cottage industry”

- Expansion through inherent jurisdiction of Courts
- C/F supremacy of British parliament
- How wide is it?
  - Affect third parties – e.g., Eatons landlords and fellow tenants
  - Directors and Directors' charges
  - Dip lending
- Problems with the current regime
  - Lack of predictability
  - Lack of coherent philosophy (e.g., adequate protection or balance of prejudice?)
  - Inconsistency across country and between the two (2) statutes
  - *Important Companies Act*
  - Some conclusions
    - Broaden BIA; have more guidelines in Companies' Creditors Arrangement Act
    - More coherent philosophy – how much social engineering is appropriate?
      - Balance between protection and balance of prejudice
      - Example of admittedly detrimental dip financing

#### **4. GENERAL ISSUES FOR DISCUSSION**

- Controversy concerning collective agreements, etc.
- A renunciation of contracts under the BIA
- Corporate shell
- Dip financing
- Subordination of equity claims
- RRSPs