

INTERNATIONAL INSOLVENCY INSTITUTE
INTERNATIONAL INSOLVENCY CONFERENCE
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**EXAMINERS AND INSOLVENCY ADMINISTRATORS:
Developing Issues and Responsibilities**

1. INTRODUCTION

- Grateful for the opportunity to participate
- I am serving as substitute for absent panellist (substitute / replacement story?)
- Difficult to compare roles, in different jurisdictions, of insolvency officials on an issue-by-issue basis
 - The whole structure and dynamics of the system different
- Focus of the system different – Canadian system not judicially-driven
- Litigation plays much less prominent role
- Expressions are different
 - “in bankruptcy” means in Chapter 7-type liquidation
 - in CCAA proceedings, the reference to “bankruptcy” doesn’t exist
 - in reorganization under BIA, again debtor is not “in bankruptcy”

2. VARIOUS COURT OFFICIALS

- Official receiver – federal administrative official – does not resemble a “receiver”
- Trustee:
 - Federally licensed practitioner, usually CA (CPA)
 - Trustee is the party in whom assets are vested in Chapter 7- type bankruptcy
 - Appointed to perform monitoring role in BIA reorganization
- Monitor:

- Appointed to perform monitoring role under CCAA reorganization
- Usually, but not necessarily, licensed Trustee
- Very similar role to that of Trustee in BIA reorganization
- In CCAA reorganizations, relatively small number of highly respected practitioners serve role
- Considered officer of the Court, given expanded role, and have huge credibility before the Court
- Interim Receiver:
 - Licensed Trustee appointed in the interim while proceedings are pending
 - Supposed to be limited time appointment
 - Judicially expanded to serve as receiver – still on an interim basis
 - Interim period ends when the file is completed
- Receiver: federal insolvency statutes
 - Do not, in substance, deal with receivers
 - Governed by provincial statutes – wide variances
- Inspectors:
 - Committee appointed by creditors – they don't inspect
- Examiners: NO SUCH THING

3. **EXAMINATIONS**

- BIA provides for a regime of subpoenas for investigatory purposes
 - Provision for referral to RCMP
- Examinations conducted under the auspices of Trustee, with authorization of inspectors
- Trustee with inspectors can retain third parties to investigate, perform examination
 - Often done by the Trustee

4. **PRIVILEGE AND WAIVER**

- In bankruptcy (Chapter 7 –type) corporate existence continues
- Assets vested in Trustee
- Unsettled question as to whether Trustee can waive privilege or whether the entity (through directors) controls

5. **VARIOUS ISSUES**

- Final report – no rules; does not necessarily find its way to court
- Trustee and inspectors determine what action is to be taken
- Remuneration of attorneys and trustee subject to approval of inspectors and Court
- No rules concerning the giving of testimony in other litigious proceedings