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Bankruptcies and insolvencies: Considerations for Canadian companies in uncertain times

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Law360 Canada (July 11, 2025, 2:30 PM EDT) -- The current tariffs being levied on Canada by the United States have caused significant commercial and legal issues, along with general uncertainty, for Canadian businesses and employees.

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The Bank of Canada has indicated that the tariffs are making it difficult for the central bank to grasp what to do with interest rates, which also impacts the housing market and consumer confidence in general. Furthermore, according to Statistics Canada, the unemployment rate in Canada rose to seven per cent in May 2025, the highest it has been in a non-pandemic year since September 2016. Canada's announced digital tax on technology companies led to a further fallout in the late June 2025 Canada-U.S. trade talks — as of June 30, 2025, such digital tax has been paused by Canada.

These on-again, off-again announcements exacerbate concerns for Canadian businesses and employees, including how they may impact Canadian interest rates, housing and the overall economy.

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In the worst case, such concerns may include slowdowns in business, which potentially may cause bankruptcies and insolvencies, and cause related layoffs and terminations. The recent closure of the Hudson's Bay Company's stores across Canada highlights this issue at the national level, as Canada's oldest retailer was recently forced to terminate thousands of employees.

Depending on the specific scenario, there are a number of factors that should be considered by employers in such a situation, including, but not limited to:

Personal liability for directors and officers

The board of directors can be held liable for certain items, including employee wages, generally, not exceeding six months to the date of bankruptcy or insolvency, along with certain payroll deductions

and certain taxes. There are a number of items that a board should consider having in place to mitigate such liability and risk, including insurance.

Bankruptcy and Insolvency Act

Generally, if the company is considered bankrupt under the *Bankruptcy and Insolvency Act* (BIA), it may file for protection under the BIA. According to the BIA, the "date of the bankruptcy" occurs when there is one of:

a) the granting of a bankruptcy order against the person;
b) the filing of an assignment in respect of the person; or
c) the event that causes an assignment by the person to be deemed.

The BIA considers a company to be bankrupt in Canada if a bankruptcy order has been made against it or if it has made an assignment into bankruptcy. Generally, to be considered insolvent in Canada under the BIA, you must meet all of these requirements:

a) the company must have ceased paying its current obligations as they become due;
b) the company cannot pay its debts/meet its obligations when they become due; and
c) the company must have a debt that is greater than the sale value of its assets.

Companies' Creditors Arrangement Act

Similarly, in circumstances where a company owes creditors more than $5 million, it may file for protection under the *Companies' Creditors Arrangement Act* (CCAA). This allows the insolvent company to put a plan or proposal in place towards payments of its debts. The CCAA allows a company to continue operating and providing services to its customers and paying its employees, with the aim of sustaining the business.

The BIA and CCAA do not allow employees to pursue litigation for severance or wages and vacation pay, once a company has filed for bankruptcy or creditor protection. Their rights are limited to those of other unsecured creditors.

Wage earner protection program

To assist its employees in the event of an insolvency or bankruptcy, companies should be aware of a federal initiative known as the *Wage Earner Protection Program* (WEPP) that may allow employees to obtain certain limited payments. WEPP provides certain employees the ability to obtain a one-time payment of up to an amount equivalent to seven times the maximum weekly insurable earnings pursuant to the federal *Employment Insurance Act*. The maximum payment under WEPP for 2025 is $8,844.22. WEPP pays employees who have lost their jobs in the circumstances where their employer owes them wages, vacation pay, and/or termination and severance pay.

Ontario pension benefits guarantee fund

Ontario-based companies should also be aware that the provincial government's Pension Benefits Guarantee Fund may provide some relief to employees. Generally, the criteria for receiving pension benefits in the event of an insolvency or bankruptcy are as follows:

a) The employee must be employed in Ontario;
b) The employee must have had benefits under a defined benefit pension plan; and
c) The pension plan does not have sufficient monies to pay the benefits.

In cases where the employer's assets are separate and the pension plan is fully funded, the employee's pension rights are often protected.

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