CBCA section 192:

Canada's Next Insolvency Regime

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Introduction

With thousands of corporations incorporated under the *Canadian Business Corporations Act*[1] (*CBCA*), it is inevitable that some will experience financial difficulties. Currently, the *Bankruptcy and Insolvency Act*[2] (*BIA*) and the *Companies' Creditors Arrangement Act*[3] (*CCAA*) are the only two official statutes under which an insolvent corporation can apply to the court to restructure. In the 1980s and 1990s the *CCAA* became the dominant statute for insolvent corporations to restructure as it provided flexibility for insolvent corporations to implement restructuring plans.[4] At the same time, insolvent corporations started attempting to utilize *CBCA* section 192 to restructure. Due to several amendments, the *CCAA* has lost some of the flexibility it once provided to insolvent corporations, making section 192 more attractive for corporations seeking to restructure.[5]

The *CBCA* ensures uniformity of business corporation law in Canada and provides for the federal incorporation of companies.[6] Section 192 of the *CBCA* allows corporations to apply to the court for an "arrangement."[7] Arrangements can include a variety of changes to a corporation including amending the articles of a corporation, exchanging the securities of a corporation for property, money etc., and, amalgamating two corporations into one.[8] Although restructuring by arrangement under *CBCA* section 192 is statutorily barred[9] from use in situations of insolvency, judicial interpretations of this provision are changing. This paper tracks the changes in courts' interpretation of the section 192 "solvency requirement" and describes how these changes are paving the way for insolvent restructurings under the *CBCA*.

I. Theoretical Approach:

'Recursivity of law'[10] is a theory that legal changes and reforms occur in cycles.[11] Each cycle is usually followed by a period of stability as the change is embraced by the legal profession.[12]

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[1] *Canada Business Corporations Act*, RSC 1985, c C-44 [*CBCA*].
[2] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [*BIA*].
[3] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 [*CCAA*].
[4] Virginia Torrie, Book Review of *Schemes of Arrangement* by Jennifer Payne, (2016) 58:3 Can Bus LJ 345 at 351.
[5] *Ibid*.
[6] *CBCA*, *supra* note 1, s 4.
[7] *CBCA*, *supra* note 1, s 192(1).
[8] *Ibid*.
[9] *CBCA*, *supra* note 1, s 192(3) as per the definition found in s 192(2).
[10] 'Recursivity of law' is a socio-legal analytical framework devised by Halliday and Carruthers to study developments in bankruptcy and insolvency law. See e.g. Bruce G. Carruthers and Terence C. Halliday, *Rescuing Business* (Oxford: Clarendon Press, 1998) [Carruthers and Halliday 1998]; Terence C. Halliday and Bruce G. Carruthers, "The Recursivity of Law: Global Norm Making and National Lawmaking in the Globalization of Corporate Insolvency Regimes" (2007) 112:4 Am J of Sociology 1135 [Halliday and Carruthers 2007]. See also Virginia Torrie, *Protagonists of company reorganisation: A history of the Companies' Creditors Arrangement Act (Canada) and the role of large secured creditors*, (Canterbury: Kent Law School: University of Kent, 2015) at 34 [Torrie, *Protagonists of company reorganisation*].
[11] Halliday and Carruthers 2007, *supra* note 10 at 1146. See also Torrie, *Protagonists of company reorganisation*, *supra* note 10 at 36.

This theory also identifies two types of law. 'Formal law' which refers to statutes, cases, and regulations[13] and 'Law in practice' which refers to the "behavior and institutions that constitute and enact law as it is actually experienced by those it regulates."[14] The formal law, *CBCA* section 192(3), states that corporations seeking an arrangement under section 192 must be solvent.[15] However, legal changes to the law in practice can occur even though formal law remains the same.[16] This phenomenon can be seen in the developments of courts' interpretation of section 192 over the past few decades. By allowing the courts to "make any interim or final order [they] see fit",[17] section 192(4) gives Canadian courts a significant amount of judicial discretion and authority to interpret section 192. Utilizing this discretion, Canadian courts have overridden the section 192 statutory bar on insolvent corporate restructuring arrangements. This legal change has come about in practice, on a case-by-case basis, despite the fact that the actual text of section 192 has remained the same.

II. Cycle 1 (1988-2010)

Early in the 1980s, courts employed a strict, literal interpretation of section 192's[18] solvency requirement – effectively prohibiting use of this section for restructuring insolvent corporations.[19] Then in 1988, the Alberta Court of Appeal (ABCA) ruled on *Savage v Amoco Acquisition Company Ltd.*[20] ("*Amoco*"). Amoco Canada Petroleum Ltd. ("APL") was specifically created to be the solvent applicant for the section 192 application.[21] The arrangement was for Dome Petroleum Limited ("DPL") to become a subsidiary of APL to alleviate its debt.[22] Some shareholders of DPL opposed this arrangement, as it forced them to exchange shares for debentures.[23] They argued the proposed plan should not be approved because DPL did not satisfy the solvency requirement. The ABCA rejected this argument, taking advantage of its broad powers provided for in section 192(4), and allowed the arrangement on the basis that APL, the applicant, was solvent. By ruling that solvent corporations can apply for arrangements on behalf of insolvent corporations, the court eroded the scope of the solvency requirement. Leave for appeal to the Supreme Court of Canada (SCC) was denied, leaving the decision of the ABCA

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[12] Halliday and Carruthers 2007, *supra* note 10 at 1148. See also Torrie, *Protagonists of company reorganisation*, *supra* note 10 at 37.
[13] Halliday and Carruthers 2007, *supra* note 10 at 1146.
[14] *Ibid*.
[15] *CBCA*, *supra* note 1, s 192(3) as per the definition found in s 192(2).
[16] Halliday and Carruthers 2007, *supra* note 10 at 1146. See also Torrie, *Protagonists of company reorganisation*, *supra* note 10 at 36.
[17] *CBCA*, *supra* note 1, s 192(4).
[18] Prior to 1985 s 192 was s 185.1.
[19] See e.g. *Bell Canada Inc. v Canada (Director, Business Corporations Act)*, (1982) 69 CPR (2d) 188, 1982 Carswell-Que 359 (WL Can).
[20] *Savage v Amoco Acquisition Company Ltd.*, 40 BLR 188, Alta LR (2d) 260 [*Amoco*]. While decided in 1988, the initial application for arrangement was made prior to the switch to section 192 thus, in the decision the court still refers to section 185.1.
[21] Marc-André Morin, "CBCA Plans of Arrangement and Insolvent Corporations" 3-6 IIC Articles at 2.
[22] *Ibid*.
[23] *Ibid*.

undisturbed.[24] The ABCA's 'reinterpretation' of the solvency requirement changed the law in practice while the formal law remained the same.

From 1990 to 1994 the solvency of applicants for section 192 arrangements was not an issue.[25] Then in 1994 the court, in *Re Trizec Corp.*[26] addressed a co-application from Horsham Acquisition Corp. ("Horsham") and Trizec Corporation Ltd. ("Trizec") for an arrangement under section 192. Trizec was insolvent and sought to restructure "for an infusion of capital" to pay it's shareholders and emerge a "debt free company".[27] Horsham, a separate solvent corporation, was to provide the infusion of capital in exchange for an equity position in Trizec and control of the board of directors.[28] Following *Amoco* (1988), the court found that as Horsham, a solvent corporation, brought the application with Trizec the solvency requirement of section 192 had been met.[29] It is important to note that Trizec was an insolvent applicant for the section 192 arrangement, while in *Amoco* APL was the sole solvent applicant. Thus, *Re Trizec*, established that the court would likely approve the section 192 arrangement of an insolvent applicant, provided it applied with a solvent co-applicant.

In 1998, the Ontario Superior Court was faced with insolvent corporations attempting to restructure under section 192 in *Re St. Lawrence & Hudson Railway Co*.[30] ("*St. Lawrence*"). The proposed plan of arrangement was for the amalgamation of three applicants: two railway corporations with a third solvent corporation.[31] Both railway corporations were experiencing financial difficulty and likely insolvent.[32] In its decision, the court followed *Re Trizec* and held that the solvency requirement of section 192 was met if at least one applicant was a solvent corporation.[33]

In 2000, the Yukon Territory Supreme Court confirmed in obiter the precedent that section 192 arrangements are available to insolvent corporations in *Re Ultra Petroleum Corp.*:[34] "arrangements are utilized as a method of reorganizing the affairs of a corporation in financial difficulty."[35]

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[24] Leave to appeal to SCC refused: 70 CBR (NS) xxxii, 88 AR 319n.
[25] See e.g. *Re Canadian Pacific Ltd.*, (1990) 73 OR (2d) 212, 70 DLR (4th) 349; *Gestion Nalcap Inc./Nalcap Holdings Inc. c Sparling*, [1990] RJQ 2831, JE 90-1582; *Gentra Inc., Re*, (1993) 42 ACWS (3d) 828, 1993 Carswell-Ont 3628 (WL Can).
[26] *Trizec Corp (Re)*, [1994] 10 WWR 127, 21 Alta LR (3d) 435 [*Trizec*].
[27] *Ibid*.
[28] *Ibid*.
[29] *Trizec, supra* note 26 at para 17. See also *Mega Brands, Re*, 2010 QCCS 646 at para 33, 191 ACWS (3d) 1035 [*Mega*].
[30] *St. Lawrence & Hudson Railway Co., Re*, [1998] OJ No 3934 (QL), 82 ACWS (3d) 895 [*St. Lawrence*].
[31] Morin, Plans of Arrangement, *supra* note 21 at 3.
[32] *Ibid*.
[33] *St. Lawrence*, supra note 30 at para 15.
[34] *Ultra Petroleum Corp Re*, 2000 Carswell-Yukon 61 (WL Can), [2000] YJ No 86 (QL) [*Ultra*]. The applicants in *Ultra* were solvent.
[35] *Ibid* at para 10.

In *Re Stelco Inc.*[36] (2006), Stelco Inc. ("Stelco") was insolvent[37] and had been allowed to restructure under the *CCAA.* Stelco and nine solvent general partners applied together for a section 192 arrangement to transfer Stelco's business to the nine general partners, following the *CCAA* restructuring plan.[38] In contrast with *Re Trizec* (1994) and *St. Lawrence* (1998), the court held that all applicants requesting the arrangement must be solvent. The court interpreted the phrasing from *Amoco* (1988), "Dome may, indeed, be insolvent; but the applicant and others involved are not"[39] to mean that all applicants must be solvent, but not all corporations involved need to be solvent.[40] Instead of dismissing the case, the court temporarily lifted Stelco's *CCAA* stay of proceedings in order for Stelco to switch from applicant to respondent in the CBCA arrangement proceedings. That left nine solvent applicants and the court allowed the section 192 arrangement to proceed. Therefore, *Re Stelco* reverted to the interpretation of section 192(3) provided for in *Amoco*.

The decision in *Re Stelco* (2006) was challenged in 2009 by Masonite International Inc. ("Masonite") in *Re Masonite International Inc*.[41] Masonite was insolvent and granted an order to restructure under the *CCAA.* The reorganization plan was for 7158084 Canada Limited ("715"), a new corporation, to apply for a section 192 arrangement where "several of the Applicants together with Masonite Canada were to be amalgamated with the shares of the amalgamated entity acquired by 715 and the Senior debt exchanged for shares in 715."[42] The court approved this arrangement, comparing the *CCAA* to the *CBCA*:

> 20 Like the CCAA itself, which has been held to be broadly interpreted, the CBCA section on arrangements has been held to be capable of "flexibility incorporating whatever tools and mechanisms of corporate law the ingenuity of their creators bring to the particular problem at hand."
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> 21 […] 715, being a newly capitalized entity, is not insolvent.
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> 22 The decision of Blair J. (as he then was) of this Court in *St. Lawrence & Hudson Railway, Re* is oft cited for the proposition that where there is more than one corporate applicant, only one needs to meet the s. 192(3) test.

Thus, the Ontario Superior Court, which in *Re Stelco* had held that all applicants must be solvent, returned to the interpretation that only one solvent application is necessary to satisfy the section 192 solvency requirement.

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[36] *Stelco Inc., Re*, (2006) 18 CBR (5th) 173, 145 ACWS (3d) 975 [*Stelco*].
[37] The Ontario Superior Court decided, on a balance of probabilities, that Stelco Inc. was insolvent and therefore could be considered a debtor company under the *CCAA* in *Re Stelco Inc.* (2004), 48 CBR (4th) 299 (Ont SCJ). Leave to appeal to Ontario Court of Appeal was refused, [2004] OJ No 1903 (Lexis); leave to appeal to SCC refused [2004] SCCA No. 336 (Lexis).
[38] Morin, Plans of Arrangement, *supra* note 21 at 3.
[39] *Amoco*, *supra* note 20 at para 5.
[40] Morin, Plans of Arrangement, *supra* note 21 at 3.
[41] *Masonite International Inc., Re*, (2009) 56 CBR. (5th) 42, 179 ACWS (3d) 512 [*Masonite*].
[42] *Ibid* at para 8.

It is common for conflicting interpretations to arise in the early stages of case-driven legal changes, with one ultimately becoming the predominant interpretation. As more cases cite back to a given interpretation, it amplifies the influence of that interpretation and a consensus starts to develop. The interpretation that only one applicant must be solvent to satisfy the section 192 solvency requirement was first affirmed by the court in *Re Trizec* (1994). *St. Lawrence* (1998) is the most recent case to apply this interpretation and is thus cited often by later cases. Following *Re Masonite International Inc*. (2009), a period of stability occurred as the legal profession embraced this interpretation of section 192 via formalization by the Director of Corporations Canada.

A. Formalizing Case-Driven Legal Changes

In 2010, the Director of Corporations Canada published *The Policy on arrangements – Canada Business Corporations Act, section 192*[43] ("*The Policy*"). *The Policy* affirmed the case-driven changes that occurred in the statutory interpretation of section 192 from 1988 to 2009. The purpose of *The Policy* is to set out "the permissible use of and appropriate procedural safeguards and substantive requirements applicable to arrangements under section 192 of the Act."[44] *The Policy* states that only corporations qualify as applicants under section 192.[45] Next, *The Policy* sets out the ways to meet the solvency requirement of section 192(2). *The Policy* accepts "that the arrangement provisions of the Act have been utilized in circumstances where the total business enterprise affected by the arrangement was not solvent."[46] Specifically, *The Policy* identifies two ways in which insolvent corporations have satisfied the solvency requirement:

i. Solo Insolvent Applicant Requirement

A solo insolvent applicant can meet the solvency requirement if, although insolvent at the interim hearing date, it is solvent at the date of the final order.[47] In such cases, insolvent solo applicants usually pass a special resolution reducing their stated capital to satisfy the solvency requirement, which rendered them solvent on the date of the final order hearing.[48] *The Policy* notes a court has never held the solvency requirement must be met only at the final order.[49] Thus, *The Policy* formalizes the test for a solo insolvent applicant.

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[43] Corporations Canada, *Policy on arrangements – Canada Business Corporations Act, section 192*, (Ottawa: Corporations Canada, 2010), online: <http://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs01073.html>.
[44] *Ibid*, s 1.01.
[45] *Policy on arrangements*, *supra* note 43, s 2.02.
[46] *Policy on arrangements*, *supra* note 43, s 2.03.
[47] *Ibid.*
[48] See e.g. *Re Computel Systems Ltd* as cited in the *Policy on arrangements*, *supra* note 43, s 2.03.
[49] *Policy on arrangements*, *supra* note 43, s 2.03.

ii. Multiple Applicants Solvency Requirement

Several insolvent applicants can meet the solvency requirement provided they apply with at least one solvent applicant.[50] *The Policy* expressly recognizes *Amoco* (1988) and *St. Lawrence* (1998) as the cases that set this precedent, thereby endorsing the case law test for multiple applicant insolvent restructuring.

The two ways to satisfy the solvency requirement, as set out in *The Policy*, are ground-breaking for two reasons:

1) Implementation of the law in practice to formal law:

Re Masonite,[51] the last case in the first recursive cycle, upheld the change to the law in practice for section 192 while the formal law remained the same. *The Policy* reflects the acceptance of the change by the institution that enforces the formal law, Corporations Canada. While the *CBCA* itself has not changed, *The Policy* gives clear direction as to the scope of the solvency requirement, adopting the judicial interpretations of this requirement developed by case law over the previous two decades.

2) Confirmation *Re Stelco*`s decision is not the correct interpretation:

The *Re Stelco* decision that all applicants must be solvent contradicted several cases decided previously. This aspect of the *Re Stelco* decision was never applied again by the court. *The Policy* specifically adopts the interpretation originating from *Re Trizec*, echoed in *St. Lawrence*, that only one applicant must be solvent in order for a court to approve a section 192 arrangement.

III. Cycle 2 (2011-Present):

The changes to the law in practice seen in the second recursive cycle stem from courts' broad authority under section 192(4) in terms of how they choose to apply *The Policy*. Some courts have added to the solvency requirement analysis set out in *The Policy*, leading to a 'blended solvency test' and the 'emerging entity assessment'.

A. Blended Solvency Test

Re Mega Brands[52] (2010) was the first section 192 case decided after the release of *The Policy*. Mega Brand Inc. applied for a section 192 arrangement to reorganize with two solvent applicants. Rather than assessing which solvency requirement applied, based on the number of applicants, the court adopted a blended approach where a proposed arrangement must meet at least one of the two *Policy* solvency requirements. Thus, Mega met the 'blended solvency test' as it satisfied both of *The Policy*'s tests for solvency.[53] The 'blended solvency test' was adopted

[50] *Ibid*.
[51] *Masonite*, supra note 41.
[52] *Mega*, *supra* note 29.
[53] *Ibid* at para 34.

by the Ontario Superior Court in *Re Essar Steel Canada Inc*[54] (2014) and the Alberta Court of Queen's Bench in *Re Tervita Corp.*[55] (2016).

B. Emerging Entity Assessment

Re Essar Steel Canada Inc.[56] (2014), was the first indication that courts would start to ensure all corporations emerging from a section 192 arrangement are solvent. Specifically, the Ontario Superior Court noted "the Applicants …will be solvent after the Arrangement is implemented."[57] Following this decision, the Alberta Court of Queen's Bench completed an in-depth analysis to determine whether a corporation must emerge solvent from a section 192 arrangement in *Re 9171665 Canada Ltd.*[58] (2015). Two factors led the court to conclude that in order to grant a final order, under the *CBCA*, the court must be satisfied that the emerging entity will not be insolvent. The first factor was that insolvency legislation, not the *CBCA*, should be used when the restructuring may compromise debtholder claims against the insolvent corporation.[59] Second, unlike insolvency legislation, section 192 allows the restructuring process to remain under the control of the corporation's board instead of the court. The board should not remain in control if the corporation remains insolvent after restructuring.[60] The Ontario Superior Court confirmed this precedent by ensuring all corporations would emerge solvent in *Re RGL Reservoir Management Inc.*[61] (2017).

C. Preliminary Analysis

As the second recursive cycle is relatively new, courts have not yet reached a consensus on how to apply *The Policy*. Therefore, this paper undertakes a preliminary analysis of the decisions on the solvency requirement for each province which has rendered a post-*Policy* decision.

Alberta:

Based on *Re Tervita*[62] and *Re 9171665 Canada Ltd.*,[63] it is likely that a section 192 insolvent arrangement heard in Alberta will result in the Court of Queen's Bench assessing the applicants' solvency with the blended solvency test[64] and ensuring the emerging corporation will be solvent.[65]

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[54] *Essar Steel Canada Inc., Re*, 2014 CanLii 4285 (ONSC), 243 ACWS (3d) 604 [*Essar*].
[55] *Tervita Corp., Re*, 2016 CanLii 662 (ABQB), 2016 Carswell-Alta 2296 (WL Can) [*Tervita*].
[56] *Essar*, supra note 54.
[57] *Ibid* at paras 37-39.
[58] *9171665 Canada Ltd., Re*, 2015 CanLii 633 (ABQB), 2015 Carswell-Alta 2004 (WL Can) [*9171665*].
[59] *Ibid* at para 27.
[60] *Ibid*.
[61] *RGL Reservoir Management Inc. (Re)*, 2017 CanLii 7302 (ONSC), 286 ACWS (3d) 469 [*RGL*].
[62] *Tervita*, *supra* note 55.
[63] *9171665*, *supra* note 58.
[64] See *Tervita*, *supra* note 55.
[65] See *9171665*, *supra* note 58.

Ontario:

In *Re GT Canada Medical Properties Inc.*[66] (2010), the Ontario Superior Court confirmed it would follow *The Policy* and allow solo insolvent applicants to restructure.

The Ontario Superior Court has been inconsistent with whether it will apply the 'blended solvency test.' Initially, in *Re 8440522 Canada Inc.*[67] (2013) Mobilicity Group submitted it satisfied the solvency requirement under both the solo applicant test and the multiple applicants test.[68] However, the Ontario Superior Court only relied on the 'multiple applicants solvency test' – at least one applicant must be solvent – to find that Mobilicity Group satisfied the solvency requirement.[69] The next year in *Re Essar Steel Canada Inc*[70] (2014) the court applied the 'blended solvency test.' However, in its two most recent decisions, *Re Concordia*[71] (2017) and *Re RGL Reservoir Management Inc.*[72] (2017), the court used the appropriate solvency test from *The Policy* based on the number of applicants.[73]

Furthermore, Ontario courts continue to allow section 192 to slowly become an insolvency restructuring provision. For example, in *Re Banro Corp.*[74] (2017) the court expressed some reluctance to approve a proposed order because it included provisions which were effectively a stay of proceedings.[75] However, as the court was satisfied that the emerging entity would be solvent, the restructuring was fair and reasonable, and it would be inconvenient for the parties to use a different statute to effect the proposed changes, it approved the order. Court approval included the stay of proceedings as the court felt it "should be willing to make orders to protect the sanctity of the arrangement that it approves and s. 192 of the *CBCA* is certainly wide enough to allow for this."[76]

Based on these decisions, how the solvency requirement will be applied for a section 192 insolvent arrangement heard in Ontario is hard to predict. The court will likely ensure the emerging entity is solvent.[77] Initially, the court adopted the 'blended solvency test'[78] but recently returned to applying the separate tests for solvency.[79] Finally, Ontario has made section 192

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[66] *GT Canada Medical Properties Inc., Re*, 2010 CanLii 6760 (ONSC), 2010 Carswell-Ont 9780 (WL Can).
[67] *8440522 Canada Inc. (Re)*, 2013 ONSC 2509, 16 BLR (5th) 33 [*Mobilicity*].
[68] It is reasonable to assume Mobilicity Group submitted it passed both solvency tests found in the policy because the court in *Re Mega Brands* (2010) had considered both tests in a multiple applicant restructuring.
[69] Martin McGregor & Paul Casey "CBCA Section 192 Restructurings: A Streamlined Restructuring Tool or a Statutory Loophole?" (2013) 20 Annual Review of Insolvency L at 10.
[70] *Essar*, supra note 54.
[71] *Concordia (Re)*, 2017 ONSC 6357, 285 ACWS (3d) 78.
[72] *RGL*, *supra* note 61.
[73] See *Concordia (Re)*, *supra* note 71 at para 35; *RGL*, supra note 61 at para 33.
[74] *Banro Corp., Re*, 2017 CanLii 2176 (ONSC), 2017 Carswell-Ont 5100 (WL Can) [*Banro*].
[75] *Ibid* at para 2. Specifically, provisions 10 and 11 would "prevent third parties from enforcing rights based on events of default cured by the arrangement
[76] *Banro, supra* note 74 at para 3.
[77] See *RGL*, *supra* note 61.
[78] See *Essar*, supra note 54.
[79] *Concordia (Re)*, *supra* note 71; *RGL*, *supra* note 61.

more attractive to insolvent applicants by using its broad powers to issue insolvency remedies, such as a stay of proceedings.[80]

Quebec:

In *Arrangement relatif à Pétrolia inc.*[81] [*Pétrolia*] (2017), Pétrolia Inc. and Pieridae applied together for a section 192 arrangement to amalgamate. At the interim order, Pieridae was unable to show it was solvent and Pétrolia was insolvent.[82] Surprisingly, the court granted the interim order as it found that both corporations provided convincing guarantees they would not be insolvent at the final order.[83]

Based on *Re Mega Brands*[84] and *Pétrolia*,[85] a section 192 insolvent arrangement heard in Quebec at the interim stage would likely result in the court being satisfied with a guarantee that the applicants would be solvent for the final order.[86] At the final order, the Quebec Superior Court will likely apply the blended solvency test.[87]

Conclusion

Over the past three decades, the solvency requirement of *CBCA* section 192 has undergone notable changes in terms of how it is applied in practice. Most significantly, changes to the law in practice have allowed courts to approve arrangements brought forward by insolvent corporations under section 192. These changes make section 192 an attractive mechanism for insolvent corporations to restructure. Since the implementation of *The Policy*, courts have not come to a consensus on how to apply the solvency requirement. Regardless of this uncertainty, insolvent corporations continue to utilize section 192 to restructure because each decision slowly erodes the scope of the solvency requirement.[88] As the relevance of the solvency requirement weakens, section 192 is on the way to becoming Canada's next insolvency regime.

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[80] See *Banro, supra* note 74.
[81] *Arrangement relatif à Pétrolia inc.*, 2017 CanLii 2785 (QCCS), 2017 Carswell-Que 5404 (WL Can).
[82] *Ibid* at para 29.
[83] The court justified this decision via the Ontario precedent *Re GT Canada Medical Properties Inc.* (2010), *supra* note 66, where the interim order of an insolvent corporation was approved as there where mechanisms in place such that it would be solvent for the final order.
[84] *Mega*, *supra* note 29.
[85] *Arrangement relatif à Pétrolia inc.*, *supra* note 81.
[86] See *Arrangement relatif à Pétrolia inc.*, *supra* note 81.
[87] See *Mega*, supra note 29.
[88] See e.g. *Banro, supra* note 74; *Arrangement relatif à Pétrolia inc.*, *supra* note 81.