The Treatment of Third Party Indemnity Claims in Canadian Restructurings

Insolvency Institute of Canada

Law Student Writing Award 2013

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May 7, 2013
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INTRODUCTION

After the financial collapse of a public company equity holders will frequently seek to recover their losses through lawsuits against the company’s auditors, underwriters, directors and officers\(^1\) as well as against the issuing company itself.\(^2\) The law is settled regarding the treatment of shareholder claims for rescission or for damages directly against the debtor company.\(^3\) Such claims are subordinated too all other creditors of the debtor company. However, where the shareholders also sue third parties such as the auditors and underwriters, these third parties will often seek indemnification from the debtor company. Indemnification clauses are a standard feature of underwriting agreements,\(^4\) and in recent years have become prevalent in auditing agreements.\(^5\) Allowing these third party indemnity claimants to rank pari passu with other unsecured creditors permits for partial recovery of losses stemming from shareholder equity claims, whereas subordination of these claims leaves the third parties to bear the entire cost of the shareholder claims.

In 2009, amendments to the *Companies’ Creditors Arrangement Act*\(^6\) ("CCAA") codified the treatment of equity claims against the debtor company and defined an equity claim to include any “contribution or indemnity” in respect of other types of equity

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\(^1\) Collectively referred to as “third parties” or “gatekeepers”.

\(^2\) Liability for auditors and underwriters is contained within provincial securities statutes. Part XXIII of the Ontario *Securities Act*, RSO 1990, c S-5 contains a regime imposing civil liability for violations of securities law resulting in the diminution of a company’s equity. Civil liability may be imposed on the company, its auditors, underwriters and directors for misrepresentations in a prospectus and for misrepresentations in secondary market disclosures. In contrast to the common law cause of action for misrepresentation, which requires the claimant to prove detrimental reliance, a plaintiff under Part XXIII is presumed to have relied on the misrepresentation. However, these third parties may defend a civil claim by demonstrating that they conducted a reasonable investigation that provided no reasonable grounds for a belief that there had been a misrepresentation (commonly referred to as the “due diligence defence”).

\(^3\) See *Re Blue Range Resources* (2000), 15 CBR (4th) 169.


\(^6\) RSC 1985, c C-36 [*CCAA*].
The interpretation of these amendments remained hotly contested until the recent decision of the Ontario Court of Appeal in *Re Sino-Forest*. In its decision the Court of Appeal subordinated a $9.2 billion indemnification claim advanced by auditors and underwriters in Sino-Forest’s CCAA proceedings.

The Court of Appeal’s decision to subordinate third party indemnity claims should be regarded a positive development in Canadian insolvency law. Subordination aligns Canadian law with US law and, as this paper discusses, shifts the risks associated with securities law violations from the general creditors to those in the best position to assess the risks and prevent misrepresentations.

### I. PRE-AMENDMENT CASE LAW

Canadian pre-amendment case law related to indemnity claims is scarce. However, a distinction had been made on the basis of who brought the claim for indemnity. If shareholders sought an indemnity it was to be considered a return of an investment *qua* shareholder and therefore subordinated. Alternatively, if a third party brought an indemnity claim against the debtor it would rank as an unsecured claim with other creditors. As opposed to shareholder indemnities, third parties were not seen as improving their priority position vis-a-vis the indemnity agreement. Without any statutory authority suggesting an alternative conclusion, the courts largely ignored many of the broader policy ramifications and allowed third party indemnities to rank *pari passu* with creditors, focusing instead on the contractual nature of the relationship.

*National Bank of Canada v Merit Energy* is the only case prior to the 2009 amendments directly addressing gatekeeper indemnity claims. In *Merit* the Alberta Court

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7 *Ibid* at s 2. See definitions of “equity claim” and “equity interest”.
8 2012 ONCA 816 [*Sino Appeal*].
9 For example see *Re Earthfirst Canada*, 2009 ABQB 316, where flow-through shareholders indemnification claims for certain tax-savings were subordinated. The Court held that the indemnity was an equity claim because it was “characterized as incidental or secondary to the equity features of the investment.” The indemnity was a “sweetener” for shareholders at the time of investment and therefore it should be classified as equity.
10 2001 ABQB 583 [*Merit*]. In *Menegon v Philip Service Corp* (1999), 11 CBR (4th) 262 [*Menegon*], a cross-border insolvency case, the issue was dealt with indirectly but illustrates the
of Queen’s Bench held that indemnity claims of directors, officers, auditors and underwriters arising from a shareholder lawsuit were unsecured claims. The trustee argued that the claims of indemnified parties were “no more than an indirect passing-on” to the shareholders; however, Justice LoVecchio rejected the argument and held the indemnity claims were rightly classified as unsecured because they were “based on contractual, legal and equitable duties owed directly by Merit to the Underwriters.”

The Court dismissed the proposition that an indemnity was an indirect passing on to the shareholders reasoning that the indemnification needed to be evaluated independently of the obligations that the underwriters owed to the shareholders. The indemnity was contractual and distinct from a claim for a return of equity. The decision relied heavily on the expectations of the parties rather than the apportioning risk to the parties involved. Subordination would result in a reversal of the expectations of the parties that bargained for the indemnity.

As can be seen, the analysis in *Merit* focused on the difference in position between gatekeepers and shareholders. The important factors were the stability of indemnity contracts and expectations of the parties to the indemnity rather than all stakeholders. The Court stated “[s]ubordinating the Underwriters would fundamentally change the underlying business relationship between underwriters and issuers, and would be unexpected in the industry.” Additionally Justice LoVecchio suggested, “that the underwriters would not have participated in Merit's offering without the indemnity.”

This seems to be recognition of the fact that subordinating indemnities may cause the same result that was reached in *Merit*. In the case Justice Blair refused to sanction a US plan of arrangement that subordinated the contribution and indemnity claims of underwriters, auditors, directors and officers for Canadian securities law violations. The plan attempted to compromise these Canadian claims in the US plan because under s. 510(b) of the US Bankruptcy Code all claims for contribution or indemnity that relate to securities fraud are subordinated to the level of the underlying security. Justice Blair found that the plan inconsistent with the substantive rights of the claimants as under Canadian law the indemnities would be treated as unsecured debt claims. He was persuaded that the plan as presented would improperly exclude the indemnity claimants from voting on any plan.

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11 Ibid at para 64.
12 Ibid at para 67.
13 Ibid at para 67.
gatekeepers to refuse to work with certain companies.\textsuperscript{14}

\section*{II. THE AMERICAN EXPERIENCE}

The United States Bankruptcy Code\textsuperscript{15} (the \textit{US Code}) heavily influenced Canada’s codification of the treatment of equity claims.\textsuperscript{16} Section 510(b) of the US Code subordinates any claim for rescission or damages arising from the purchase of a security. In 1982 the provision was amended to include subordination of any similar claim based on “reimbursement or contribution.”\textsuperscript{17} As with the Canadian amendments, the primary legislative intent of the provision was to ensure shareholders could not shift their priority position.\textsuperscript{18} The inclusion of “reimbursement and contribution” certainly brought

\textsuperscript{14} Commentators have suggested that if auditors and underwriters are unable to mitigate the risk of liability by seeking indemnification their services will have to be priced at a premium. Additionally, these firms may refuse to deal with high-risk clients, hampering legitimate but risky companies from raising capital. See Reinier H. Kraakman, “The Anatomy of a Third-Party Enforcement Strategy” (1986) 2:1 JL Econ & Org 53 at 75, 77.

\textsuperscript{15} 11 USC [\textit{US Code}].

\textsuperscript{16} John Slain & Homer Kripke’s article “The interface between securities regulation and bankruptcy – Allocating the risk of illegal securities issuance between securityholders and the issuer’s creditors”, (1973) 48 NYUL Rev 261, provided the basis for the adoption of s. 510(b) of the Code. Prior to the amendments claims for rescission of shares ranked equally with unsecured creditors. For examples of this result see \textit{Oppenheimer v Harriman National Bank & Trust Co}, 301 US 206 (1937) and \textit{In re Los Angeles Land & Investments Ltd}, 282 F Supp 448 (D Haw 1968). The authors of the article argued that creditors should not share the risk of securities fraud or misrepresentation with the shareholders. The ability to bootstrap up the priority rankings using securities law remedies is a windfall that was not bargained for. The result ran contrary to the expectations of the parties and the principle that equity ranks behind debt. Further, stockholders should absorb the first losses occurred in a business as they also get to participate in the upside of a firm.

\textsuperscript{17} \textit{US Code}, supra note 15 at s 510(b) reads “[f]or the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock. [emphasis added]”

\textsuperscript{18} See \textit{Re Telegraph}, 281 F 3d 133; 2002 U.S. App. LEXIS Z415 (3rd Cir, 2002) at 141, where the United States Court of Appeal, Third Circuit stated that s. 510(b) was “intended to prevent disappointed shareholders from recovering the value of their investment by filing bankruptcy claims predicated on the issuer’s unlawful conduct at the time of issuance, when the shareholders assumed the risk of business failure by investing in equity rather than debt instrument.” Also see \textit{American Broadcasting Systems Inc v Nugent}, 240 F 3d 823 (9th Cir, 2001), where the Ninth Circuit stated that “[t]here are two main rationales for mandatory subordination: 1) the dissimilar
shareholder indemnities within the scope of s. 510(b). However, it took a series of judicial considerations to decide that s. 510(b) applied to gatekeeper indemnity claims as well. Courts have relied on the plain language of s. 510(b) to reach this result as well as the underlying policy considerations. The provision was not only intended to prevent recovery of shareholders before creditors but also to shift the risk of securities law claims to the parties most closely associated and informed about the claims.

*Re Mid-American Waste Systems*19 provides an example of the US case law. In this case the Delaware Bankruptcy Court relied on the risk allocation rationale behind s. 510(b) to subordinate underwriter indemnity claims. The Court stated that the main policy rationale for absolute subordination was that parties should not be able to improve their priority vis-à-vis general creditors with claims of tainted security issuances. Further, this policy should extend past shareholder claimants to anyone involved with the security issuance.20 The Court rejected an argument by the underwriter that the purpose of including “reimbursement or contribution” was to prevent bootstrapping by shareholders using an indemnification contract.21 Referring to an earlier case, *Re De Laurentiis Entertainment Group, Inc*, the Court stated that allowing underwriters to recover as general creditors would shift the risk of a tainted stock issuance from the party that was in the best position to evaluate such risks.22

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19 228 BR 816; 1999 Bankr LEXIS 27 (Bankr D Del 1999) [*Mid-American*].
20 *Ibid* at 826.
21 *Ibid* at 825.
22 In *Re De Laurentiis Entertainment Group, Inc*, 124 BR 305, 1991 US Dist LEXIS 2173 (CD Cal 1991), underwriters sought reimbursement for litigation costs incurred defending shareholder suits based on an indemnity they had with the debtor company. The underwriters commenced a motion arguing that their indemnification claims should rank as unsecured claims in the proceedings. The United States District Court for the Central District of California found that the plain language of s. 510(b) called for the subordination of the claimant’s indemnities, finding that claims for “reimbursement or contribution” naturally included claims for indemnification of litigation expenses. The Court also rejected the underwriters argument that indemnity claim for litigation costs is inherently different from a claim for damages since the reimbursements are not passed on to equity holders. All claims associated with stock issuances were to be subordinated, not just claims that would be past to shareholders. The Court concluded that reimbursement of litigation costs would unfairly shift the risk of unlawfulness in the issuance of securities from those involved to other creditors. Subordinating all underwriter claims was consistent with the
US courts have consistently applied the interpretation decided upon in *Mid-American*.

The provision now has the widest possible interpretation applying to any claims associated with tainted stock issuances, including third party litigation expenses. In contrast to pre-amendment Canadian law, the provision caused the US courts to focus on the risk allocation between all parties involved rather than the position of the claimant with the indemnity. The only material difference between the US and Canadian pre-amendment case law was the treatment of gatekeeper indemnity claims. Both regimes subordinated the shareholder claims but differing analysis led to opposite conclusions about the treatment of third party indemnity claims. The difference was brought into question with the 2009 amendments.

### III. THE 2009 AMENDMENTS AND POST-AMENDMENT CASE LAW

#### (i) The 2009 CCAA Amendments

Bill C-12, presented in 2007, provided for amendments to the CCAA coming into force September 18, 2009. After the amendments, for the first time the CCAA explicitly called for the subordination of equity claims by prohibiting a distribution to equity claimants unless all non-equity claims had been satisfied in full. As mentioned earlier, the amendments added a definition of “equity claim” which included claims for “contribution and indemnity in respect of” other equity claims. The inclusion of goals of s. 510(b) as underwriters were in a better position to evaluate and mitigate the risks associated with a stock issuance than the general creditors.

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23 For another example see *Re Jacom Computer Services* 280 BR 570, 2002 Bankr LEXIS 758 (Bankr SDNY). In a short decision the New York District Court adopted the reasoning in *Mid-American*, effectively settling whether s. 510(b) applied to indemnification of third parties. *Jacom* also dealt with subordination of underwriter indemnity claims. Shareholders had begun a class action lawsuit against the underwriters based on misrepresentations during the debtor’s initial public offering. The Court stated “[t]his Court agrees with [Mid-American] that the underwriters are in a better position to allocate risks associated with the issuance of securities and that it is inconsistent with the policies articulated in the legislative history of s. 510(b) to force unsecured creditors to subsidize the underwriters litigation costs.”

24 *CCAA, supra* note 6 at s 6(8).

25 *Ibid* at s 2. The definition reads as follows “‘equity claim’ means a claim that is in respect of an equity interest, including a claim for, among others, (a) a dividend or similar payment; (b) a return of capital; (c) a redemption or retraction obligation, (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the
“contribution and indemnity” brought the pre-amendment case law position in respect of third parties indemnity claims into doubt. The Senate Committee on Banking, Trade and Commerce speculated that the inconsistency between the treatment of equity claims in Canada and the US might lead insolvent companies to forum shop the jurisdiction in which they reorganize. The Committee further suggested that there was a need for consistency between Canada and the US in both securities and insolvency systems due to the highly integrated nature of our capital markets.

(ii) Post-Amendment Case Law

(a) Return on Innovation Capital Ltd v Gandi Innovations Ltd

Return on Innovation Capital Ltd v Gandi Innovations Ltd was the first case addressing the amendments as they applied to third party indemnity claims. In the case, the Monitor sought a preliminary determination as to whether indemnifications of directors for damages owed to shareholders were equity claims under the CCAA. Although Innovation Capital is actually a pre-amendment decision since the debtor company obtained CCAA protection prior to the enactment of the amendments, Justice Newbould’s reasons engaged in a discussion of the amendments. Justice Newbould held that the 2009 amendments and the s. 2 definition of equity claim codified existing law relating to the treatment of equity claims under the CCAA.

28 2011 ONSC 5018 [Innovation Capital].
29 Ibid at para 17.
30 Ibid at para 55. The proposition that the amendments codified the common law is problematic. The existing case law had not established that third party claims for contribution or indemnity were to be subordinated. Justice Newbould relied on Nelson Financial Group, 2010 ONSC 6229, for the proposition that the amendments were a codification, however, that case only dealt with claims brought forward by shareholders. Subordination of third party indemnity claims runs
The indemnity claimants in *Innovation Capital* asserted that the claims against them could not be equity claims because they were based in breach of contract, tort and equity. Justice Newbould dismissed this argument, finding that cause of action does not make it less an equity claim. The important inquiry is whether it is being used to recover an equity investment.

The indemnity claims were treated as equity claims and subordinated in the CCAA proceedings. The Ontario Court of Appeal refused leave to appeal of the Superior Court’s decision providing brief written reasons agreeing that “equity claim” as defined in s. 2(1) of the CCAA appears to encompass the indemnity claims asserted by the claimants in this case. This decision served as a building block for the Ontario Superior Court and Ontario Court of Appeal decision in the *Sino-Forest*.

(b) *Sino-Forest Corporation – Ontario Superior Court of Justice Decision*

The decision of the Ontario Superior Court in *Re Sino-Forest* was the first to apply the amended provisions relating to claims for “contribution or indemnity” in respect of an equity claim. Justice Morawetz established that third party indemnity claims should be treated as equity claims and subordinated where the underlying primary claim is an equity claim.

In *Sino* the debtor company, Sino Forest Corporation (“SFC”), brought a motion seeking guidance on the treatment of various claims against it. Shareholders of SFC had commenced class proceedings against SFC, and its auditors and underwriters (the contrary to at least two pre-amendment cases. First, in the Ontario Superior Court decision, *Menegon*, supra note 10, Justice Blair implied that indemnity claims rank would as unsecured claims in Canada when he found that the US plan’s treatment of the indemnity claimants as equity claimants was inconsistent with Canadian law. Second, as discussed above, in *Merit*, supra note 10, the Alberta Court of Queen’s Bench held that auditor and underwriter indemnity claims should rank with other unsecured claims.

33 *Ibid* at para 61.
34 *Ibid* at para 11.
35 2012 ONSC 4377 [*Sino*].
36 *Ibid* at para 97.
“Shareholder Claims”). The Shareholder Claims sought damages of approximately $9.2 billion, largely on the basis that shareholders had purchased securities at inflated prices as a result of the misconduct of the defendants.\(^{37}\) The causes of action against the defendants were both statutory and at common law.\(^{38}\) The auditors and underwriters in turn sought indemnification from SFC for any losses stemming from the class actions based on indemnity provisions contained in their service agreements (“Related Indemnity Claims”).

The auditors and underwriters argued that the Related Indemnity Claims were not equity claims but rather were independent causes of action against SFC arising from a direct contractual relationship.\(^{39}\) SFC and the Ad Hoc Committee of Noteholders argued that the Related Indemnity Claims clearly fell within definition of “equity claims” introduced in the 2009 amendments.\(^{40}\)

Justice Morawetz found that s. 2(1) broadened the scope of equity claims from the pre-amendment case law.\(^{41}\) He adopted a plain reading interpretation of the provisions, finding the words of s. 2(1)(e) to be “clear and specific” in the direction of the treatment of indemnity claims.\(^{42}\) Justice Morawetz provided that ranking the indemnity claims equally with unsecured claims would allow the shareholders to do indirectly what they cannot do directly – that is achieve unsecured creditor status through their claims against the auditors and underwriters.\(^{43}\) If the auditors and underwriters were compensated for losses arising from shareholder suits, the proceeds would flow-through to satisfy the claims of the equity holders. The creditors would be in substance paying to satisfy the claims of shareholders. Such a conclusion would undermine any equity cushion that creditors relied upon when advancing money to the debtor. Subordinating the equity

\(^{37}\) Ibid at paras 14-22.

\(^{38}\) The central claim is based on an alleged series of misrepresentations in respect of SFC’s timber assets. The claims against the auditors and underwriters were based on their failure to detect these misrepresentations and in particular the non-compliance of the audits with Canadian accounting standards.

\(^{39}\) Sino, supra note 35 at paras 35-53.

\(^{40}\) Ibid at paras 54-70.

\(^{41}\) Ibid at para 78.

\(^{42}\) Ibid para 87.

\(^{43}\) Ibid at paras 82, 84.
claims appropriately deals with the expectations of all stakeholders, opposed to the expectations of the claimant.

Justice Morawetz’s concern that indemnification provides shareholders with an indirect remedy led him to draw a distinction between indemnification for damages and indemnification for litigation costs. The issue was not before the Court, however Justice Morawetz provided in obiter that gatekeepers may be able to recover the litigation costs of defending the shareholder class action claims as such costs would not arise as a result of “contribution or indemnity in respect of an equity claim.”

(c) Sino-Forest Corporation – Ontario Court of Appeal Decision

Justice Morawetz’s decision was affirmed by the Court of Appeal. The Court of Appeal’s analysis focused almost entirely on the statutory interpretation of the 2009 amendments. It was noted that the amended definition of equity claim used expansive language, and it did not qualify the identity of the claimant. Ultimately the Court of Appeal found that a logical reading of the s. 2(1) definition of equity claim led to the conclusion that paragraphs (a)–(d) addressed all claims that may be put forward by shareholders, therefore logically paragraph (e) must refer to claims not by shareholders, but by others such as the underwriters and auditors. The Court of Appeal also recognized that legislators desired greater conformity with US insolvency law.

In contrast to the decision in Merit, the Court of Appeal stated that the subordination of these indemnity claims would not have dramatic practical effects on the provision of auditing and underwriting services since the operations of many auditors and underwriters extend to the US where the law already called for subordination of such claims. Arguments suggesting a dramatic effect on professional services are probably overstated when considering that in the case of insolvency the gatekeepers such as

44 Ibid at para 92.
45 Sino Appeal, supra note 8 at para 61.
46 Ibid at paras 40–46.
47 Ibid at para 50.
48 Ibid at para 51.
49 Ibid at para 54.
underwriters and auditors are unlikely to be made whole even if their indemnity claim is regarded as unsecured debt. Indemnity claimants always assume some credit risk of the debtor and the effect of preventing recovery upon insolvency is likely marginal. Additionally, these parties still have the defences provided under applicable securities law to prevent liability when their indemnity is rendered worthless. Since underwriters and auditors are typically sophisticated entities with established practices to ensure compliance with securities laws these defenses will often prove sufficient.50

The Court of Appeal did not engage in any discussion of the risk allocation similar to the US courts, providing only in a footnote that the provisions subordinating indemnity claims in the US reflect the policy rationale that gatekeepers such as auditors and underwriters “are in a better position to evaluate the risks associated with the issuance of stock than are general creditors.”51 The Court of Appeal’s decision is nonetheless supported by a number of policy considerations. The decision to subordinate the indemnity claims provides gatekeepers with strong incentives to be diligent in the provision of their services, shaping their behavior to minimize the risk of unlawful debtor conduct. Auditor and underwriter liability is an essential compliment to direct liability in regulating the conduct of public companies. In the context of insolvency, direct liability on the company is often ineffective since the company may be more apt to engage in risky or fraudulent behavior in an effort to preserve its existence. At the same time, the threat of civil liability is less of a deterrent to a company that, if caught, will likely face bankruptcy anyway. By subordinating the gatekeeper indemnity claims the Court of Appeal ensures that companies in the vicinity of insolvency are effectively monitored, ensuring investor protection and reducing the risk of financial collapse.

The Court of Appeal departed slightly from the holding of Justice Morawetz. The Court found that allowing the indemnity claims to rank pari passu with unsecured

50 Kraakman, supra note 14 at 83.
51 Sino Appeal, supra note 8 at FN 7. Curiously, the Court referenced Mid-American, supra note 19, for a policy analysis of s. 502(e)(1)(B) of the US Code which disallows contingent reimbursement or contribution claims. However, in Mid-American s. 510(b) was the sole provision analyzed by the Court, though the debtor company did raise s. 502(e)(1)(B) in argument.
creditors is inconsistent with the purpose of the CCAA not because it allowed an indirect remedy to shareholders as Justice Morawetz posits, but because it allows a claim in respect of an equity interest to diminish the assets of the debtor available to general creditors.\footnote{Ibid at paras 55-56.} While this may seem an insignificant difference, it appropriately focuses on the effects to the creditors rather than the shareholders. This view is more consistent with the purpose of the CCAA of maximizing the debtor’s assets available to creditors and promoting a successful restructuring. This change in analysis also may alter Justice Morawetz’s conclusion with respect to litigation expenses. His decision speculated that these claims may not be subordinated, as the claim would not be passed on to shareholders. However, there is no doubt that such claims diminish the assets available to general creditors. Such a conclusion is more consistent with language of paragraph (e) of the definition of “equity claim.” Certainly the costs of defending a shareholder lawsuit are “in respect of” that underlying suit, whether or not it is successful. Further, as discussed in \textit{Mid-American}, although the shareholders may not benefit from the reimbursement of litigation costs, allowing claims for these costs to rank \textit{pari passu} would still unfairly shift the risk of unlawfulness in the issuance of securities from the shareholders and gatekeepers to the creditors.

\textbf{IV. CONCLUSION}

The 2009 CCAA amendments have moved courts away from the pre-amendment analysis involving an examination of the specific claimant, thereby drawing a distinction between shareholders and third parties. The Court of Appeal’s decision in \textit{Sino} will likely settle the law on this point. This result better reflects the policy considerations related to indemnity claims. Subordination will encourage gatekeepers to maintain best practices and defend shareholder suits based on the merits rather than shifting the cost onto the debtor company. Additionally subordination of indemnity claims allows creditors to consistently rely on an equity cushion when advancing money to debtors by preventing shareholders from indirectly doing what they cannot do directly. For these reasons, the amendments and \textit{Sino} decision are welcome changes to Canadian insolvency law.