# Petrowest, Paramountcy, and the Single Proceeding Model

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## Introduction

The Single Proceeding Model (the "SPM") is a crucial component of Canadian insolvency law. It centralizes legal actions related to an insolvency into a *Bankruptcy and Insolvency Act* (*BIA*) or *Companies' Creditors Arrangement Act* (*CCAA*) proceeding.[1] This allows for more efficient insolvency proceedings as it prevents each individual stakeholder from starting a separate action against the debtor to realize their claim.[2] Traditionally, the SPM was seen as being a "shield" to protect a debtor from creditors; however, recently it has also acted as a "sword" allowing debtors to initiate claims within the insolvency proceedings against third parties as long as that third party is not a "stranger" to the insolvency proceedings.[3]

Despite the SPM's importance in Canadian insolvency law, it is not expressly included in any provision of the *BIA* or the *CCAA*; instead, it is a "judicial construct."[4] This lack of explicit inclusion means judges must rely on various discretionary provisions to provide statutory backing to their decisions related to the SPM. Sections 183(1) and 243 of the *BIA* and s.11 of the *CCAA* have all been used to provide backing to the SPM.[5] These sections are discretionary relief provisions that allow courts to provide relief that is not explicitly considered in the statutes.[6]

Recently, the SPM has been invoked in three *BIA* decisions to override provincial statutes and bring legal actions into the insolvency proceedings. The most prominent of these decisions is the Supreme Court of Canada's ("SCC") decision in *Peace River Hydro Partners v Petrowest Corp* ("*Petrowest*") where the SPM prevailed over a provincial arbitration act.[7] *Re Mundo Media Ltd* ("*Mundo*") is an Ontario Court of Appeal decision which mirrors *Petrowest* as it also has the SPM prevailing over a provincial arbitration act.[8] Finally, there is the Saskatchewan Court of King's Bench decision in *Re Tron Construction* ("*Tron*") where the SPM overrode provincial lien legislation.[9]

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[1] *Sam Lévy & Associés Inc v Azco Mining Inc*, 2001 SCC 92 at paras 26-27; *Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41 at paras 54-55 [*Petrowest*]; *Bankruptcy and Insolvency Act*, RSC, 1985 c B-3 [*BIA*]; *Companies' Creditors Arrangement Act*, RSC, 1985, c C-36 [*CCAA*].

[2] *Petrowest*, *supra* note 1 at para 55.

[3] *Mundo Media Ltd (Re)*, 2022 ONCA 607 at para 52 [*Mundo*]; *Petrowest supra* note 1 at paras 34-35, *Tron Construction (Re)*, 2022 SKKB 203 at para 53 [*Tron*].

[4] *Mundo*, *supra* note 3 at para 40. The stay provisions found in *BIA, supra* note 1, s 69(1) and *CCAA*, *supra* note 1, s 11.02 do provide statutory support for the "shield" view of the SPM as they explicitly prevent creditors from commencing actions against the debtor outside the insolvency proceedings if a stay is in place. However, these provisions only relate to creditors claiming against the debtor and provide no statutory support for allowing the debtor to centralize other types of legal proceedings, like claims against third parties, within insolvency proceedings.

[5] *BIA, supra* note 1, ss 183(1), 243; *CCAA*, *supra* note 1, s 11.

[6] Eamonn Watson, Gray Monczka & Jordan Schultz, "Anything You Can Do, I Can Do Better: Does the CCAA Provide Broader Discretionary Relief than the BIA?" (2022), Annual Rev Insolvency L at 12-13, 41-43 [Watson, Monczka & Schultz]. (CanLII PDF) (Note: For secondary sources, I will indicate which platform I sourced them from so page numbers can be looked up in a consistent fashion).

[7] *Petrowest*, *supra* note 1.

[8] *Mundo*, *supra* note 3.

[9] *Tron*, *supra* note 3.

The most interesting aspect of these cases is their avoidance of paramountcy.[10] As a federal statute, the *BIA* can override provincial statutes that come into meaningful conflict with it, but in all three cases the judges avoided invoking paramountcy.[11] In *Petrowest* and *Mundo*, the judges avoided the use of paramountcy through clever interpretation of the provincial arbitration acts. In *Tron*, the judge did not conduct a paramountcy analysis as it seems that no party seriously contested their jurisdiction to override the provincial act.[12]

The objective of this paper is to demonstrate that courts will, at some point, have to turn to paramountcy to give effect to the SPM in the *BIA* context, and there will be significant issues in using s.183(1) as the statutory backing for the SPM. I will conclude by proposing that the SPM be codified into the *BIA* to provide greater certainty and enforceability to an important insolvency law concept. First, I will provide brief summaries of *Petrowest, Mundo,* and *Tron*.

**Recent Developments in the Use of the SPM**

*Petrowest*

In *Petrowest,* a receiver brought a claim within *BIA* proceedings against the debtor's former clients for amounts owing for previously completed work.[13] However, the debtor and their client had an arbitration agreement specifying that all disputes must be settled through arbitration.[14] Under s.15(1) of the BC *Arbitration Act* (*BCAA*), if an arbitration agreement applies to a claim a court must stay the claim so arbitration can occur.[15] There is an carveout in s.15(2) that states a court does not have to order a stay if the arbitration agreement is "void, inoperative or incapable of being performed."[16] The debtor's client applied to stay the proceedings to allow arbitration to occur, and thus put the SPM into conflict with the *BCAA*.

To resolve this conflict between a federal and provincial statute, the SCC did not employ paramountcy. Instead, the Court stated that ss.243(1)(c) and 183(1) of the *BIA* provide statutory jurisdiction for a court to find an arbitration agreement "inoperative" thereby allowing the application of the stay exception in s.15(2) of the *BCAA*.[17] They specified that this is a discretionary power that a judge should only invoke when the arbitration would "compromise the orderly and efficient resolution of insolvency proceedings".[18] In this case, the Court concluded it

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[10] It is also somewhat concerning as it circumvents the requirement that notice be given to the Federal and Provincial Attorney Generals before a provincial act is made inapplicable by a federal act, for examples see *Constitutional Question Act*, RSBC 1996, c 68, s 8(2); *Courts of Justice Act*, RSO 1990, c C.43, s 109(1); *The Constitutional Questions Act*, 2012, SS 2012, c C-29.01, s 13.
[11] *Alberta (AG) v Moloney*, 2015 SCC 51 at para 90 [*Moloney*].
[12] *Tron*, *supra* note 3 at para 15.
[13] *Petrowest*, *supra* note 1 at para 3.
[14] *Ibid.*
[15] *Arbitration Act*, RSBC 1996, c 55, s 15(1) [*BCAA*]. In 2020, BC adopted a new Arbitration Act, *Arbitration Act*, SBC 2020, c 2. *Petrowest* was litigated under the previous act, but s.15 of the old act remains substantially unchanged in s.7 of the new act.
[16] *Ibid*, s 15(2).
[17] *Petrowest*, *supra* note 1 at para 149.
[18] *Ibid* at para 155.

was appropriate to exercise that discretion to enforce the SPM as it would increase the efficiency and lower the cost of the insolvency process.[19]

*Mundo*

As *Petrowest* was being decided by the SCC, *Mundo* was undergoing its own proceedings. The situation mirrored *Petrowest*: a receiver was claiming against a third party to collect funds owed and that party sought to rely on an arbitration agreement to move the proceedings from *BIA* proceedings into arbitration.[20] Instead of the *BCAA*, the Ontario *International Commercial Arbitration Act* (*ICAA*) was the relevant statute as it was an Ontario proceeding dealing with an international arbitration agreement.[21]

The *ICAA* has nearly identical wording to the *BCAA* in that it requires a court to order a stay if an arbitration agreement applies unless the agreement "is null and void, inoperative or incapable of being performed."[22] Using nearly the exact same logic as *Petrowest,* the Court concluded that *BIA* s.243 could be utilized to render an arbitration agreement inoperative to advance the objectives of the SPM.[23]

*Tron*

*Tron* differs in that it was a *BIA* proposal proceeding and involved a provincial statute unrelated to arbitration. In this case, a party applied to the judge overseeing the proceedings to replace the lien claims process prescribed by the Ontario *Construction Act* (*OCA*) with an alternative process to be administered by the overseeing judge.[24] To support their application, the applicant cited the SPM as a justification for overriding the *OCA*.[25]

For the sake of costs, efficiency and adherence to the SPM, the Court utilized *BIA* s.183(1) to supplant the *OCA* process and order an alternative process.[26] In taking this action, the Court overrode a provincial statute, yet surprisingly, paramountcy was not discussed at all. It appears that no party made any forceful arguments on this point, which might explain why paramountcy was not discussed.[27] Nevertheless, it is surprising that the Court would be willing to override a provincial statue without even a cursory paramountcy analysis.[28]

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[19] *Ibid* at para 173-180.
[20] *Mundo*, *supra* note 3 at paras 3-4.
[21] *International Commercial Arbitration Act,* 2017, S.O. 2017, c. 2, Sched. 5 [*ICAA*].
[22] *Ibid*, art 8.
[23] *Mundo*, *supra* note 3 at para 37.
[24] *Tron*, *supra* note 3 at paras 1-11; *Construction Act*, R.S.O. 1990, c. C.30.
[25] *Tron*, *supra* note 3 at para 22.
[26] *Ibid* at paras 11, 18, 47-55, 68.
[27] *Ibid* at para 14.
[28] For another example of where a court overrode provincial lien legislation in insolvency proceedings without providing a paramountcy analysis see *Royal Bank of Canada v M&L General Contracting Ltd* (17 March 2015), Winnipeg CI14-01-90850 (MBQB). This case was also discussed in *Tron*, *supra* note 3 at para 75. No reasons were provided, but in this case, the Court granted an order creating a procedure for determining claims against trusts created under Manitoba's Builder's Liens Act even though the Builder's Liens Act did not contemplate such a procedure.

**Discussion**

As we can see from these decisions, courts have used *BIA* ss.183(1) and 243 to give effect to the SPM when confronted with provincial statutes that would impede its application. So far, they have managed to do this without conducting a paramountcy analysis. However, the current avoidance of paramountcy is likely not sustainable in the long term.

*Other Provincial Arbitration Acts*

In both *Petrowest* and *Mundo*, the Courts preserved the SPM despite conflicts with provincial arbitration acts by leveraging an exception contained in the acts that allow a judge to not order an arbitration stay if the arbitration agreement is "void, inoperative or incapable of being performed."[29] In both cases, the Courts relied on the term "inoperative" to exercise their statutory discretion to render the arbitration agreements inoperative.[30] This method enabled them to enforce the SPM while avoiding a direct conflict between the *BIA* and the arbitration acts. By avoiding a conflict, the Courts were able to avoid the paramountcy analysis that would normally have to be conducted for the *BIA* to prevail over the provincial arbitration acts.[31]

However, this approach is likely not replicable nationwide because other provincial arbitration acts have a stricter standard for when a judge can decline to order an arbitration stay than the *BCAA* and *ICAA*.[32] Instead of "void, inoperative or incapable of being performed", the Alberta and Ontario arbitration acts only allow a judge to decline to order an arbitration stay if the arbitration agreement is "invalid".[33] This is a stricter standard and likely means that the same approach taken in *Petrowest* and *Mundo* cannot be applied to situations involving the Alberta and Ontario arbitration acts.[34]

This is supported by the definition of "invalid" and the SCC's statements in *Petrowest*. Black's Law Dictionary defines "invalid agreement" as being synonymous with "void or voidable" agreement.[35] In *Petrowest*, the SCC stated that an arbitration agreement will only be found void if it was "'intrinsically defective' (and therefore void *ab initio*) according to the usual rules of contract law".[36] Section 183(1) or 243 would not be able to make the agreements void at conception, and therefore, under the Alberta or Ontario arbitration acts, judges seem to be mandated to provide the arbitration stay regardless of ongoing insolvency proceedings.

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[29] *BCAA*, *supra* note 15, s 15; *ICAA*, *supra* note 21, art 8.
[30] *Mundo*, *supra* note 3 at para 37; *Petrowest*, *supra* note 1 at para 152.
[31] *Petrowest*, *supra* note 1 at para 129.
[32] Virginia Torrie & Laurent Crépeau, "Peace River Hydro Partners V. Petrowest: Arbitration and Insolvency – Two Solitudes?" (2023) 67:2 Can Bus LJ, 213 at 227-228 [Torrie & Crépeau] (Physical Copy); Ari Y Sorek & Benjamin Dionne, "Peace River Hydro Partners v Petrowest Corp: Opening the Floodgates for Forum Selection Clauses, or a Meandering Return to the Headwaters of the 'Single-Control Doctrine'?" (2023), Annual Rev Insolvency L at 13-14 [Sorek & Dionne] (CanLII PDF).
[33] Arbitration Act, RSA 2000, c A-43, s 7(2); Arbitration Act, 1991, S.O. 1991, c. 17, s 7(2).
[34] Torrie & Crépeau, *supra* note 32 at 227-228; Sorek & Dionne, *supra* note 32 at 13-14.
[35] Bryan A Garner, *Black's Law Dictionary*, (St. Paul, Minn: Thomson West, 2019) sub verbo "invalid agreement".
[36] *Petrowest*, *supra* note 1 at para 136.

*Paramountcy*

This opens the door for paramountcy to play a role in resolving SPM conflicts between the *BIA* and provincial arbitration acts. Paramountcy will also have to be invoked if someone challenges a judge's jurisdiction to issue an order overriding a provincial statute similar to what happened in *Tron*. Paramountcy comes into effect when either "(1) there is an operational conflict because it is impossible to comply with both laws, or (2) although it is possible to comply with both laws, the operation of the provincial law frustrates the purpose of the federal enactment."[37]

The SPM is a "judicial construct," meaning it needs statutory backing to be successful in a paramountcy analysis as a judge's inherent jurisdiction cannot override provincial statues.[38] There is no explicit *BIA* section that codifies the SPM, so judges will have to rely on discretionary sections of the *BIA* to give effect to the SPM.[39]

The primary source of discretionary power in the *BIA* is s.183(1).[40] Section 183(1) invests in the superior courts of each province with "such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction".[41] The courts have interpreted this provision as constituting a broad grant of powers that allows them to make various types of orders that further the objectives of the *BIA* that are not explicitly contemplated within the *BIA*, such as reverse vesting orders ("RVOs").[42] However, the exact scope of the powers that Parliament intended to grant through s.183(1) remain unclear and s.183(1) has not been previously considered in a paramountcy analysis.[43] This vagueness of purpose and lack of precedent makes it difficult to imagine how a court would conduct a paramountcy analysis using s.183(1).

Fortunately, an alternative source of discretion within the *BIA,* s.243, has been considered by the SCC in a paramountcy analysis. Section 243 provides courts the discretion to appoint a receiver over the debtor and order the receiver to, among other things, "take any other action that the

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[37] *Maloney*, *supra* note 11 at para 18.
[38] *Baxter Student Housing Ltd. et al v College Housing Co-operative Ltd. et al*, 1975 CanLII 164 (SCC), [1976] 2 SCR 475 at 480-481; Sam Babe, "Recent Use of Statutory Discretion and Inherent Jurisdiction in Insolvency and Restructuring", (2020) Annual Rev Insolvency L at 25-26 (CanLII PDF); *Mundo*, *supra* note 3 at para 40; *Alderbridge Way GP Ltd (Re)*, 2023 BCSC 1718 at para 46, *Alderbridge* is in the *CCAA* context but it confirms that the SPM itself is not a jurisdictional basis to issue an order.
[39] See *Tron, supra* note 3 at para 15 where the judge states "[a]bsent s. 183(1), it is doubtful that this Court would have jurisdiction" to issue an order circumventing the *OCA*." It can be argued that the *BIA* stay sections are a codification of the SPM. However, that only applies to creditor claims against the debtor and not the expanded "sword" basis the SPM is now understood as encompassing.
[40] Watson, Monczka & Schultz, *supra* note 6 at 25.
[41] *BIA, supra* note 1, s 183.
[42] *PaySlate Inc (Re)*, 2023 BCSC 608 at paras 82-85 [*PaySlate*]; *Peakhill Capital Inc v Southview Gardens Limited Partnership*, 2023 BCSC 1476 at paras 24-25, currently under appeal; *KW Capital Partners Limited v Vert Infrastructure Ltd.* (8 June 2021), Toronto CV-20-00642256-00CL (O.N.S.C. (C.L.)).
[43] Thomas GW Telfer, "Equitable subordination redux? Section 183 of the *Bankruptcy and Insolvency Act* and respecting the 'legislative will' of Parliament", (2021) 64:3 Can Bus LJ 316 at 325 [Telfer]. (Physical Copy).

court considers advisable."[44] Section 243 has been interpreted to give judges the jurisdiction to make orders not explicitly contemplated within the *BIA*, such as granting a vesting order that transfers property free and clear of encumbrances.[45]

In *Saskatchewan (Attorney General) v Lemare Lake Logging Ltd* (*Lemare*), the SCC considered s.243 in the context of a paramountcy analysis.[46] As we will see, the SCC's decision in *Lemare* precludes using s.243 to enforce the SPM in a conflict with provincial legislation. However, the SCC's consideration of s.243 in a paramountcy analysis can provide insight into how courts would consider a similar contest using s.183(1).

In *Lemare*, the SCC considered paramountcy in a conflict between s.243 and the *Saskatchewan Farm Security Act (SFSA)*.[47] The *SFSA* stipulated that a receiver could not be appointed over a farmer's land until the expiry of a 150-day grace period. As s.243 provides that a receiver can be appointed after a ten-day waiting period, this discrepancy created a potential conflict between the *BIA* and *SFSA*.

The SCC determined that there was no operational conflict between the laws that would require paramountcy because creditors could choose not to appoint a receiver until the conditions in the *SFSA* were met.[48] Additionally, the SCC concluded that the *SFSA* did not conflict with the purpose of s.243 because the SCC narrowly defined s.243's purpose as allowing for the appointment of a national receiver.[49] This narrow interpretation of s.243's purpose means that it would not be able to serve as statutory backing for the SPM in a paramountcy analysis.

In making their decisions, the majority stated that "[v]ague and imprecise notions like timeliness or effectiveness cannot amount to an overarching federal purpose that would prevent coexistence with provincial laws like the *SFSA*."[50] Another relevant statement is "[a] judicially coined expression, however magnetically phrased, that describes judicial practices in the context of restructurings, can hardly be said to be evidence of the legislative purpose of a national receivership regime."[51]

Applying *Lemare* to a potential paramountcy conflict between the SPM effected through s.183(1) and a provincial act leads to the conclusion that the provincial act is likely to prevail. The SCC's

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[44] *BIA, supra* note 1, s 243.
[45] *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 at paras 76, 84, 87.
[46] *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53.
[47] *Ibid* at paras 1-4.
[48] *Ibid* at para 25. This statement is consistent with previous SCC jurisprudence that when there is a provincial act that is stricter than a federal act no operational conflict will be found unless the provincial act frustrates the federal act's purpose. See *Rothmans, Benson & Hedges Inc v Saskatchewan*, 2005 SCC 13 at paras 22-24.
[49] *Ibid* at para 68; Kevin P. McElcheran, *Commercial Insolvency in Canada*, 4th ed (Toronto: LexisNexis, 2019) at ¶4.185-4.186, the enactment of s.243 in 2009 seems to have been an institutionalization of the prior practice of using s.47 to create a national receivership. Therefore, it makes sense why the SCC interpreted the purpose narrowly in *Lemare*.
[50] *Lemare*, *supra* note 46 at para 68
[51] *Ibid* at para 41, here the Court was making specific reference to the phrases "real-time litigation" and the "hothouse of real-time litigation" that are often used to explain why judges are given such discretionary power in insolvency proceedings.

statement that an operational conflict between a discretionary *BIA* section and a provincial statute can be resolved by a party refraining from applying for the discretionary remedy appears to preclude any success for s.183(1) under the operational conflict branch of paramountcy.[52] For example applying this principle to *Tron*, there would be no operational conflict as the applicant could have avoided the conflict by not applying to the court for an order under s.183(1) to override the *OCA*.

This suggests that the only path for s.183(1) to prevail in a paramountcy analysis would be through the frustration of federal purpose branch. The issue here is that the legislative purpose of s.183(1) is unclear. When s.183(1) was originally enacted its purpose was to empower the newly created and short-lived Bankruptcy Courts.[53] Parliament kept the provision after the demise of the Bankruptcy Courts suggesting that s.183(1) represents some grant of jurisdiction, but the scope of that grant is unclear.[54] There is no evidence that Parliament's purpose in enacting s.183(1) was to provide statutory backing for the SPM.

In *Lemare,* the SCC stated that phrases like "timeliness or effectiveness" are too vague to serve as federal purpose for a paramountcy analysis.[55] Previously, the SCC has identified the SPM's purpose as providing efficiency and orderliness to the insolvency system.[56] This suggests that using the SPM's purpose as the federal purpose of s.183(1) would not help in a paramountcy analysis as the SPM's purpose is too broad to be used as a federal purpose. Also in *Lemare*, the SCC stated that a "judicially coined expression" cannot substitute for evidence of the legislative purpose of a provision.[57] The SPM itself is a judicially coined expression and as such would not be able to act as a federal purpose for s.183(1).[58] Therefore, there likely would be significant difficulties in using s.183(1) to uphold the SPM in a scenario where paramountcy is required.

*Discretion in the CCAA and Paramountcy*

In comparison to the *BIA*, the *CCAA* jurisprudence is very clear that orders made under s.11 of the *CCAA* will have paramountcy over provincial legislation, including provincial arbitration

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[52] *Ibid* at paras 25, 47, 48. There is a potential alternative argument that the paramountcy issue could be solved by preventing a party from applying for a stay order under an arbitration act similarly to how the SCC prevented a party from applying under the *BIA* to appoint a receiver in *Lemare*. However, this would be a misunderstanding of the nature of the stay provisions contained in arbitration acts. Stay provisions in arbitration acts are mandatory provisions that judges must follow unless a statutory exception applies, see *TELUS Communications Inc v Wellman*, 2019 SCC 19 at para 63-65. Therefore, the approach taken in *Lemare* could not be applied to arbitration stay applications as arbitration stay provisions are not discretionary provisions in contrast to *BIA* receivership applications which are discretionary.
[53] Telfer, *supra* note 43 at 321-325.
[54] *Ibid* at 325.
[55] *Lemare*, *supra* note 46 at para 68.
[56] *Century Services Inc. v. Canada (AG)*, 2010 SCC 60 at para 22 [*Century Services*].
[57] *Lemare*, *supra* note 46 at para 41.
[58] *Tron, supra* note 3 at para 15.

acts.[59] This is because courts have identified s.11's federal purpose as granting courts "broad and liberal powers" to preserve and enhance an insolvent corporation's value.[60]

The courts' treatment of *CCAA* s.11 is important to understanding how a court may interpret *BIA* s.183(1) as there is currently a strong trend of harmonization between the *BIA* and the *CCAA*, particularly in regards to the discretionary powers available under each statute.[61] This follows from the SCC's statement in *Century Services* that the two statutes should be considered in a harmonious fashion.[62] In *Tron*, the judge pointed to harmonization when using s.183(1) to override the *OCA* because in *Re Comstock* a *CCAA* court had used its discretion to override provincial lien legislation.[63] This suggests that a paramountcy analysis could be dealt with by arguing that the goal of consistent application requires s.183(1) to be able to override provincial statutes. Similar logic has led to RVOs being ordered under s.183(1).[64]

However, this harmonization argument has two weaknesses. Firstly, it can be argued that the two statutes can be distinguished by the greater extrinsic evidence of Parliament's intention in enacting the *CCAA* then *BIA* s.183(1).[65] Therefore, it may be justified to say that Parliament's purpose in s.11 was to grant the courts broad discretionary power with no limitations vis-à-vis provincial statutes.[66] However, as previously discussed s.183(1)'s legislative purpose is unclear. The SCC has stated, "absent clear evidence that Parliament intended a broader statutory purpose, courts should avoid an expansive interpretation of the purpose of federal legislation which will bring it into conflict with provincial legislation."[67] The lack of clear evidence on what jurisdiction Parliament meant to grant courts through s.183(1) precludes s.183(1) being applied in the same way as *CCAA* s.11. The SCC's statements about harmonization are not enough to substitute for this lack of clear evidence as "judicially coined" expressions cannot substitute for evidence of the legislative purpose of a provision.[68]

Secondly, the SCC has repeatedly identified the *CCAA* as offering greater greater judicial discretion than the *BIA*.[69] Logically, this means that harmonization has limits, and that there are orders that can be ordered under s.11 that cannot be ordered under s.183(1). This could include orders that override provincial statutes.

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[59] See *Hy Bloom inc v Banque Nationale du Canada*, 2010 QCCS 737 at paras 116-117; *Chef Ready Foods Ltd v Hongkong Bank of Canada*, 1990 CanLII 529 (BC CA), 4 CBR (3d) 311; *Pacific National Lease Holding Corp v Sun Life Trust Co*, 1995 CanLII 2575 (BC CA), 10 BCLR (3d) 62 at paras 40-43; for arbitration acts see *Luscar Ltd v Smoky River Coal Limited*, 1999 ABCA 179 at paras 73-75.
[60] *Sulphur Corporation of Canada Ltd*, 2002 ABQB 682 at paras 25-33 [*Sulphur*].
[61] Watson, Monczka & Schultz, *supra* note 6 at 38-40; Roderick J Wood, "'Come a Little Bit Closer': Convergence and its Limits in Canadian Restructuring Law", (2021) J Insolvency Institute Can at 1. (Westlaw PDF).
[62] *Century Services*, *supra* note 56 at para 24.
[63] *Tron*, *supra* note 3 at para 22; John Margie, "Comstock Canada Ltd. (Re), A Model of Efficiency", (2015) 63 J Can College Construction Lawyers at 13-16. (Westlaw PDF).
[64] *PaySlate*, *supra* note 42 at paras 81-85.
[65] Roderick J Wood, "The Incremental Evolution of National Receivership Law and the Elusive Search for Federal Purpose" (2017) 26:1 Constitutional Forum at 5. (CanLII PDF).
[66] *Sulphur*, *supra* note 60 at paras 35-37.
[67] *Lemare*, *supra* note 46 at para 23.
[68] *Ibid* at para 41.
[69] *Century Services*, *supra* note 56 at para 14; *9354-9186 Québec inc. v. Callidus Capital Corp*, 2020 SCC 10 at para 73.

**Conclusion: Need for Codification**

I have shown that implementing the SPM through s.183(1) is not sustainable long-term. The unclear legislative purpose of s.183(1) and the ability of judges to avoid operational conflict with provincial statutes by not exercising their discretion all complicate the paramountcy analysis of s.183(1). As well, harmonization of the *BIA* and the *CCAA* will likely not be sufficient to justify s.183(1) prevailing over provincial statutes.

Even if the SPM could be enforced through s.183(1) through judicial pragmatism, this is undesirable. The SPM is a crucial part of insolvency law and should be enforced through a straightforward mechanism approved by Parliament that provides clarity on when and where the SPM will take effect. I would propose codifying the SPM into the *BIA* to provide certainty. This provision should give judges the discretion to stay the enforcement of any provincial statute if that statute creates a parallel proceeding that would interfere with the orderly and efficient resolution of the insolvency matter.[70] This would centralize all appropriate legal actions into the insolvency proceedings therefore achieving the goal of the SPM. There is precedent for codifying concepts that developed in the jurisprudence into the *BIA* to provide greater certainty, and the SPM would benefit from this approach as well.[71]

[70] This is more or less an adoption of the SCC's test in *Petrowest* for where it is appropriate to make an arbitration agreement inoperative, see *Petrowest*, *supra* note 1 at para 155. Parliament could also consider whether to provide powers related to federal statutes, which would not be subject to the paramountcy issue but still require clear guidance from Parliament regarding which statute is to take precedence and in what circumstances.

[71] For example, see the development of interim financing in the case law and later its explicit amendment into the *BIA* in Bill C-12, *An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act, the Wage Earner Protection Program Act and chapter 47 of the Statutes of Canada*, 2nd Sess, 39th Parl, 2007 2005, SC 2007, c 36 cl 18 (assented to 14 December 2007).