Reinventing Bankruptcy Law: A History of the Companies' Creditors Arrangement Act BY VIRGINIA **TORRIE** [Toronto: University of Toronto Press, 2020. xiv + 317 pp. Hardcover: C$56.25]

Originating from Professor Torrie's doctoral dissertation, this monograph presents a thorough and comprehensive inquiry into the genesis and transformation of the Companies' Creditors Arrangement Act ("CCAA"), the premier bankruptcy law in Canada. Its central research questions are twofold. Firstly, what accounts for the historical ascendancy of the CCAA from its initial modest to its contemporary status as representing the major corporate restructuring regime in Canada? Secondly, how

might this historical account of the CCAA contribute to broader understandings of corporate bankruptcy law and cycles of legal change at large?

To address these research questions, a broad view of historical institutionalism is adopted to account for the political-economic and social-legal contexts of corporate reorganisation in Canada; meanwhile, the recursivity of law analysis is deployed to illustrate how courts and professionals have shaped the developments and practices of formal law. An analytical approach as such enables the monograph to establish the thesis that the ascendancy of the CCAA within the Canadian corporate reorganisation regime can best be attributed to the enduring changes of financing practices and the profound impacts made by the key interest groups, especially the large secured creditors.

The historical evolution of Canadian corporate reorganisation features two critical junctures of development. The main inquiry of the book, supported by extensive endnote references to the primary and secondary academic materials, is hence structured into two parts. Part One, which comprises chapters 2–5, examines the initial conditions and early practices of the CCAA from the 1920s–1950s; part Two, which comprises chapters 6–9, examines the transformation and rejuvenation of the CCAA from the 1970s–2000s.

Chapters 2 and 3 examine the initial conditions for the enactment of the CCAA in 1933. Professor Torrie's analysis establishes the historical continuation of corporate restructuring practices under lending agreements (trust deeds) and the transposition of the creditor enforcement remedy of receivership from England into Canada at the turn of the 20^{th} century. The CCAA was also based on one single provision of the *English Companies Act* concerning reorganisations. It was proposed as a secured creditor remedy to prevent financial institution failures, against the backdrop of the Great Depression. Its enactment represents a continuation and elevation of longstanding receivership reorganisation practices from provincial law to a federal statutory scheme.

Elevating receivership remedies up to the federal sphere, however, sparked controversies in both legal and industrial communities. Chapter 4 critically analyses the constitutional reference decisions that upheld the CCAA during 1934–1937. Resolution of constitutional challenge revamped the dividing line between provincial and federal jurisdiction over secured creditor rights, which facilitated the addition of corporate reorganisation to federal bankruptcy and insolvency law. Chapter 5 investigates the rise and fall of several parliamentarian efforts to repeal the CCAA during 1938–1953. It shows how secured credit representatives argued successfully against the repeal bills and proposed, instead, a restrictive amendment to address trade creditor concerns in 1953.

From the 1950s to the 1970s, the CCAA restructuring scheme became "a dead letter", largely thanks to the solid economic growth in Canada. The onset of recessions in the early 1980s, however, rejuvenated the CCAA and its embedded Canadian corporate restructuring regime. Chapter 6 tracks the conflicts between the changing corporate lending landscape and the stalled bankruptcy reforms in the 1970s–1980s. Canada's bankruptcy law was behind the times in the era of new lenders and new forms of lending, which presaged the "restructuring crisis" with the onset of 1980s economic recession.

Chapters 7 and 8 inspect how courts, instead of the federal parliament, resolved the "restructuring crisis" by innovative judicial application of the CCAA in the 1980s–1990s. Chapter 7 highlights how policy-conscious judges proactively reinvented the anaemic CCAA as an effective debtor remedy via purposive statutory interpretations and creative treatment of historical sources. Chapter 8 recounts how, through the judicial sanction of instant trust deeds, judges effectively repealed the prior restrictive amendment imposed in 1953. These judicial developments marked a pivotal point in the CCAA's outward transformation into a debtor remedy friendly regime.

Chapter 9 synthesises the preceding analysis on the CCAA's rejuvenation to a theorised interpretation. This theorised interpretation draws together the historical institutionalism and the recursivity of law to interpret the second phase of Canadian corporate reorganisation law development. It offers insights into the factors contributing to the statis and transformation in restructuring laws and practices. As such, this chapter accentuates the instrumental roles of law courts, insolvency professionals, large creditors, and American conceptions of bankruptcy in transforming the CCAA into a modern debtor-in-possession restructuring regime.

Chapter 10 concludes the monograph. It masterfully pulls together the answers to the two research questions. In brief, this monograph delineates the origins of the CCAA as a remedy for large secured creditors. The large secured creditors, in tandem with proactive judges, constituted the dominant force driving the corporative restructuring development in Canada. Such delineation brings to light several long-term trends in insolvency law, which confirms the explanatory power of an interdisciplinary look at commercial law history.

Indeed, with the enlightening account of the longevity and success of the CCAA, Professor Torrie's book offers an invaluable reference for Singapore, which resembles Canada in historical, political and legal contexts of corporate reorganisation. Once colonies of the British Empire, Canada and Singapore share English law as their insolvency law origin. Meanwhile, both jurisdictions have been subject to the influence of an American institution, *ie*, the Chapter 11, for Canada since 1980s and for Singapore since 2018. More importantly, elements of Canadian insolvency law have directly inspired recent Singapore law reforms, *eg*, the treatment of *ipso facto* clauses under the CCAA has been adapted into Singapore's new *Insolvency, Restructuring and Dissolution Act 2018* ("*IRDA*"), effective from July 2020.

The long-awaited *IRDA* manifests Singaporean policymakers' aspiration to transform the city-state into an international centre for debt restructuring. To achieve this objective, the *IRDA* modernises the country's pre-existing rules on insolvency and restructuring, and consolidates these rules into an omnibus legislative instrument aligned with international practices. As a result, a hybrid system is yielded by, *inter alia*, blending United States Chapter 11 elements into the English scheme of arrangement. This hybrid system resembles the evolution of the CCAA which, as elaborated in Professor Torrie's book, draws on historical English law and contemporary American approaches.

The *IRDA* also enhances the judicial enforcement of the modernised insolvency principles and provisions. There appears high-level judicial flexibility to develop case law to protect creditors against insolvent companies. The roles of the Singapore judiciary seem to extend beyond hearing cases in the law courts to promoting

transnational judicial cooperation in the global arena. The Supreme Court of Singapore has led, for example, the establishment of the Judicial Insolvency Network for communication and cooperation among national courts and insolvency judges across the globe. Again, such judiciary dynamism in Singapore is similar to the proactive judicial innovation in developing the CCAA in Canada, as accounted in Professor Torrie's book.

Suffice to say that the *IRDA* has commenced a new era of insolvency and restructuring industry in Singapore. It has largely demonstrated its robustness in addressing the unprecedented economic disruption from the COVID-19 pandemic. Yet, it is too early to formulate a conclusive assessment on the impact of this milestone legislative development and the enhanced judicial engagement. Professor Torrie's book offers an invaluable comparative reference and an insightful theoretical framework to approach future refinements to insolvency law and practice in Singapore. Her book is a must read for scholars, jurists, policymakers, and industrial practitioners.

CHUANMAN **YOU**
Research Fellow
EW Barker Centre for Law & Business
Faculty of Law, National University of Singapore