

## **DEVELOPMENT OF A MODEL TO TRACK FILINGS AND COLLECT DATA FOR PROCEEDINGS UNDER THE CCAA**

### **Final Report To the Office of the Superintendent of Bankruptcy**

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March 2006

I respectfully submit the final report on the research project titled *Development of a Model to Track Filings and Collect Data for Proceedings under the Companies' Creditors Arrangement Act (CCAA)*, the funding for which was granted by the Office of the Superintendent of Bankruptcy (OSB). The aim of the project was to develop a methodology for collecting and analyzing data from CCAA restructuring proceedings in an electronic database.

This project is part of a larger project that has as its main objective to conduct a qualitative and quantitative study of corporate restructurings under the CCAA over a fifteen-year period.<sup>2</sup> A key longer term goal is to develop an understanding of how one measures success in a CCAA proceeding, both on a temporal basis, and in regard to the economic security of those whose interests are affected by the corporation's financial distress. The objective will be to identify which factors or combination of factors create the conditions for a successful restructuring and to assess how proposed legislative changes will increase the potential for an effective, transparent and efficient process to deal with financially distressed companies.

The factors that will be examined during this longer term project include (1) the cost of credit for companies in Canadian and global capital markets; (2) the treatment of executory contracts in restructuring proceedings, particularly intellectual property, collective bargaining agreements and pension funds; (3) recent changes to the nature of debtor in possession financing and their impact on control of CCAA proceedings; (4) the role of court-appointed officers in meeting the statutory objectives of the CCAA; (5) the role of the judiciary under the CCAA; and (6) the impact of recent cross-border insolvency proceedings on notions of sovereignty and the potential impact of adoption of the UNCITRAL Model Law. The overall project objective is two-fold: to enhance our understanding of the inherent tradeoffs between private and public policy goals that may be necessary to maintain an effective commercial insolvency system; and to broaden the base of

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<sup>1</sup> Associate Dean and Associate Professor, UBC Faculty of Law. My sincere thanks to Kelly Macauley, Jill Corraini, Jen Jackson, Bettina Ruhstein, Shauna Towriss and Caley Howard, UBC Law Students for their assistance in collecting the data and to Hayley Laker for creating the tables. Thanks also to Professor Lynn LoPucki's for sharing the intellectual property underlying the UCLA Chapter 11 database and his advice on technical design of the database.

<sup>2</sup> This report includes some of the data collected and generated under a research grant from SSHRC.

information regarding CCAA proceedings across Canada in order to better inform public policy debate. The OSB project has allowed for the development of the tool that will facilitate this research.

### **Methodological Approach:**

The first few months of the OSB project were aimed at working with statisticians to design a protocol for collection of data. This process was undertaken in part with the assistance of the U.S. Bankruptcy Research Database housed at UCLA Law School, created by Professor Lynn LoPucki, which is collecting data on large U.S. Chapter 11 proceedings.

The purpose of the protocol is to ensure systematic collection and reporting of data. The initial draft protocol contained 125 discreet fields of data that we would have sought to collect. Once developed, the draft was sent to 20 practitioners and judges for their comments, as well as staff members at the OSB and Professor LoPucki. Feedback included a number of suggestions, most notably that there were too many factors to collect and that if the database were eventually enshrined in legislation, it would pose too great a burden for business.

The protocol was then revised based on this advice and reduced to 70 data fields. We then proceeded to develop a methodology for analyzing the data, coding variables within cases on a consistent basis so that comparisons can be generated and generalizations made. We undertook test runs of data, identified areas lacking in information or difficult to code and revised the data collection tool. Further revisions were made to ensure comparability across types of files. The final Protocol is attached as Appendix A to this report. After some initial testing, it was also determined that Access was the most appropriate data collection system, as we found that Excel was an awkward tool to handle the amount of data being inputted. This mirrored the experience of the U.S. database.

The fourth step was to begin to input data into the system based on the protocol. Under a separate research grant, information had been collected over the summer and fall of 2005. Data was collected manually from CCAA cases, court records, electronic case-citing databases, SEDAR filings, and websites of monitors and debtor corporations. The courts in Alberta, British Columbia, Québec, New Brunswick and Ontario were particularly helpful in terms of access to files. From August to December 2005, data collected from cases was entered into the system, and further data was collected. Some preliminary runs of data were undertaken to compile aggregate information and to undertake comparisons across cases.

One positive benefit of collaboration with the U.S. UCLA database is that we were able to develop a table of concordance with the U.S. database for comparative research purposes. A principal difference is that the LoPucki database captures Chapter 11 filings with assets worth \$100 million or more at filing (measured in 1980 dollars), all issuing corporations, solvent or insolvent; whereas under the CCAA, which requires debt over \$5 million, the corporation must be insolvent and the database includes the entire universe of cases, including privately held companies.

70 fields of data are being collected, as set out fully in the Protocol in Appendix A, including:

- Assets at time of filing and in current dollars based on Canadian CPI
- Other Financials (sales, liabilities) – at filing, exit and 1 & 5 years out
- Pension deficit/surplus
- Debtor headquarters/jurisdiction of filing
- Cross-border proceedings (concurrent, main interest or ancillary)
- Employees – at filing and exit and 1 & 5 years out
- Governance
- S & P TSX composite index identifier

Industry Canada had previously estimated 175 cases as the entire universe; the study located 219 cases, however, complete information on all files is very difficult to obtain. Most challenging is finding financial information for the privately held companies. There is also difficulty in locating accurate pension deficit information, even though unfunded pension liabilities have been the driver of a significant number of recent CCAA filings. Given that there is currently no requirement of debtor corporations in CCAA proceedings to report data or to publicly disclose it in a consistent way, the work was extremely labour intensive and could not have been accomplished without the assistance of five UBC law students.

Charts 1 to 10 and Tables A to D in this report contain some summary data of the data fields that are most complete to date. While the OSB project is completed, further funding has been granted by the Social Sciences and Humanities Research Council of Canada to continue collecting the data, primarily from the court-appointed officers in the particular files where there are not easily accessible public records. This further research is aimed at meeting the overall research objectives as described above.

What is significant from a public policy perspective in terms of outcomes of the OSB project is that there is a need to carefully design the data collection tool once c. 47, amending the *Bankruptcy and Insolvency Act*, is in force and the OSB acquires a mandate to collect data. The project discovered that particular fields of information that should have been quite accessible

given the public nature of a CCAA proceeding, were in fact not. If the legislation is to serve the interests of all stakeholders with an interest or claim in the restructuring, then the OSB would be fulfilling an important public policy role in requiring the reporting of data in a systematic manner and creating a database that allows for cross-company and cross-sector comparisons. In this way, the process will become more accessible to greater numbers of claimants and the OSB will have met the challenge posed by the Senate Committee Report that there is insufficient empirical research to inform public policy choices on insolvency legislation.

Chart 1 illustrates province of filing. It confirms that Ontario has had the largest number of filings, although British Columbia has had surprisingly more proceedings than originally predicted. Québec and Alberta have comparable numbers, but both have had two thirds fewer proceedings than in Ontario.

**Chart 1: Province of Filing**

Province	Cases
AB	24
BC	53
MB	1
NB	11
ND	3
NS	5
NU	0
NWT	2
ON	84
PEI	3
QC	23
SK	9
YK	0

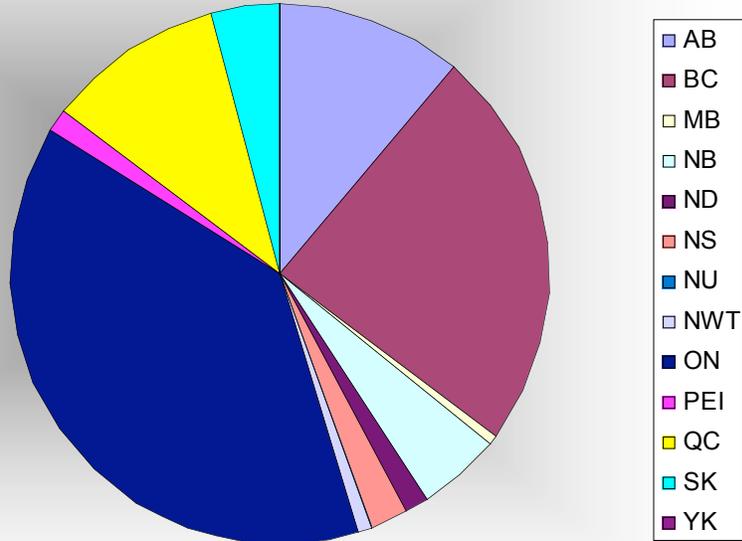


Chart 2 indicates the number of CCAA cases that were publicly traded or privately held. The data produced the most surprising results of the study to date. A majority of CCAA proceedings filed were by companies that were not publicly traded, 85 compared with 65. In part, it is significant because the number of shareholders affected by CCAA proceedings in terms of loss of equity investments, where equity interests may be little or no value, is fewer than would have occurred with a greater number of publicly traded companies. It also raises the question of whether there have been governance issues in respect of privately held companies, such that CCAA proceedings are necessary, as opposed to market conditions that created the financial distress. While the data collected under this project will not be able to make that determination, it does assist in framing future research questions. The more difficult information to collect has been the percentage of these companies that are publicly traded shortly after emerging from the CCAA proceeding.

**Chart 2: Privately Held / Issuing Ratio**

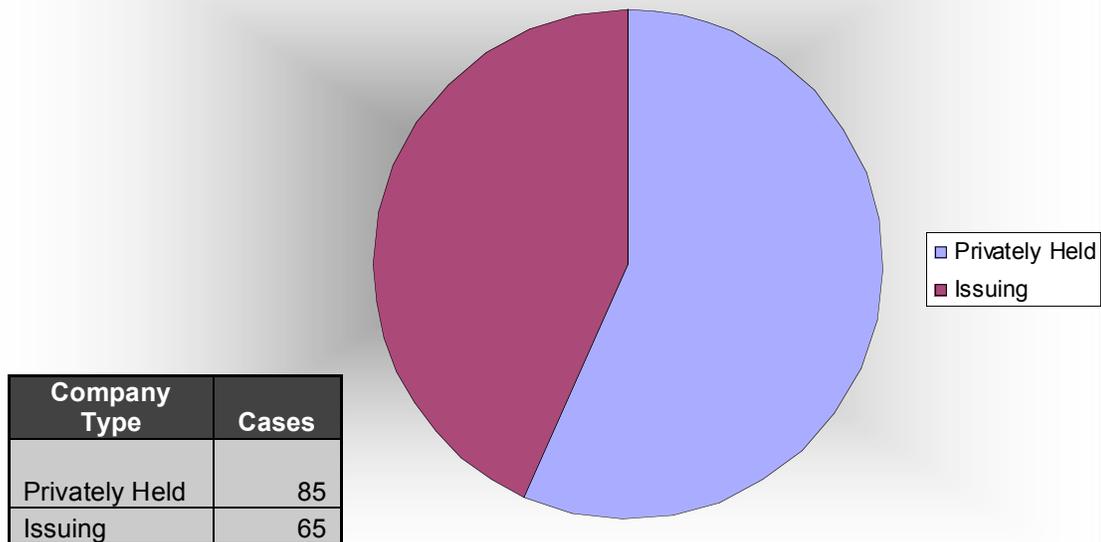


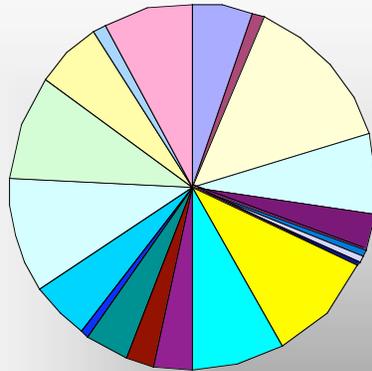
Table A reveals the number of CCAA cases that were publicly traded or privately held, broken down by province. Some interesting patterns emerge. British Columbia and each of the other provinces with reported data had more privately held companies filing proceedings. In Ontario,

on the other hand, issuing companies outnumbered the privately held companies amongst those filing CCAA proceedings.

**Table A**

<b>Province</b>	<b>Privately Held</b>	<b>Issuing</b>
<b>AB</b>	2	6
<b>BC</b>	28	18
<b>MB</b>	0	0
<b>NB</b>	0	0
<b>ND</b>	0	0
<b>NS</b>	0	0
<b>NU</b>	0	0
<b>NWT</b>	0	0
<b>ON</b>	28	36
<b>PEI</b>	1	0
<b>QC</b>	18	4
<b>SK</b>	8	1
<b>YK</b>	0	0
<b>Total</b>	<b>85</b>	<b>65</b>

Chart 3 below indicates filings by sector. The highest number of cases has been in the resources sector, including mining. These filings are in part due to market pressure, but do raise some important public policy questions for future research. There have also been a considerable number of proceedings in the manufacturing, telecommunications and retail sectors. Other sectors, such as utilities, finance and insurance and health care have had a negligible number of CCAA filings. A future research question is how this sectoral breakdown compares with the U.S. database in terms of industries that face financial distress.

**Chart 3: Industry**

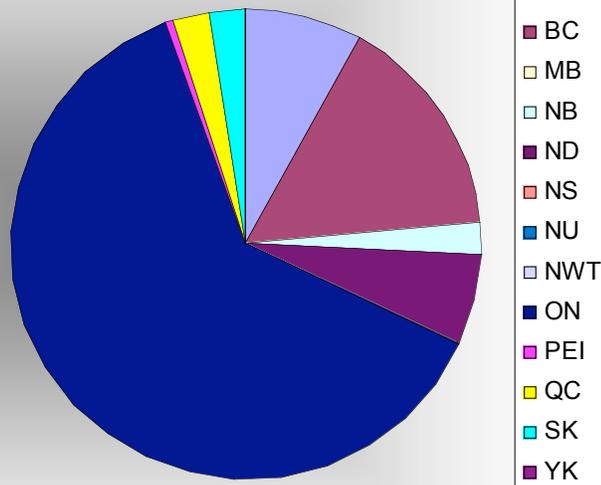
Accommodation and Food Services
Admin & Support and Waste Mgt & Remediation Svcs
Agriculture, Forestry, Fishing and Hunting
Arts, Entertainment, and Recreation
Construction
Education Services
Finance and Insurance
Health Care and Social Assistance
Information
Management of Companies and Enterprises
Manufacturing
Mining
Oil and Gas
Other Services (except Public Administration)
Professional, Scientific and Technical Services
Public Administration
Real Estate and Rental and Leasing
Retail Trade
Telecommunications
Transportation and Warehousing
Utilities
Wholesale Trade

Industry	Cases
Accommodation and Food Services	9
Admin & Support and Waste Mgt & Remediation Svcs	2
Agriculture, Forestry, Fishing and Hunting	25
Arts, Entertainment, and Recreation	12
Construction	5
Education Services	0
Finance and Insurance	1
Health Care and Social Assistance	1
Information	1
Management of Companies and Enterprises	0
Manufacturing	17
Mining	14
Oil and Gas	6
Other Services (except Public Administration)	4
Professional, Scientific and Technical Services	7
Public Administration	1
Real Estate and Rental and Leasing	9
Retail Trade	18
Telecommunications	16
Transportation and Warehousing	10
Utilities	2
Wholesale Trade	14

Chart 4(a) indicates the amount of average liabilities by province for CCAA proceedings. Here, Ontario proceedings clearly involve a greater average amount of debt than all other provinces combined. This is the case even with the removal of an outlier, the Air Canada restructuring case. The next largest is British Columbia, with just over a quarter of the average liabilities of Ontario. The third largest is Alberta. Newfoundland had \$106,265,625 in average liabilities, yet as Chart 1 illustrated, Newfoundland has only had three proceedings. Figures are not yet available for Manitoba and Nova Scotia, and there have been no proceedings in the Yukon and Nunuvut.

**Chart 4(a): Adjusted Average Liability at Filing by Province**

Province	Liability on Filing
AB	\$ 141,222,333.33
BC	\$ 274,725,857.29
MB	\$ -
NB	\$ 41,000,000.00
ND	\$ 106,265,625.00
NS	\$ -
NU	\$ .00
NWT	\$ 1,500,000.00
ON	\$ 1,107,534,045.03
PEI	\$ 10,500,000.00
QC	\$ 45,012,600.00
SK	\$ 42,585,839.75
YK	\$ .00

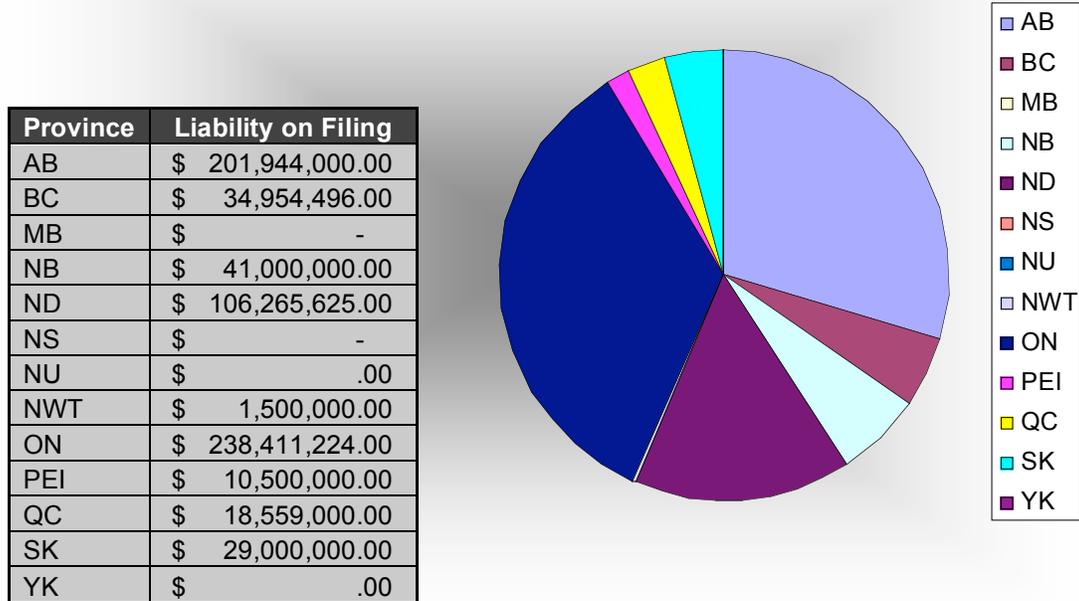


Outlier Removed: \$9.7 Billion Liability for Air Canada (Ontario)

Given the appearance of multiple upward biasing outliers (beyond that removed), the median liability at filing by province was examined. These results are reported in Chart 4(b). As predicted, the relationships changed significantly. Most of the provinces had substantially lower numbers (revealing the upward bias reflected in the mean). Ontario continued to involve the highest median amount of debt, however the next largest median debt was no longer held by

British Columbia. Alberta's adjusted median liability was considerably more than its average liability of companies filing, much closer to Ontario.

**Chart 4(b): Adjusted Median Liability at Filing by Province**



In order to further investigate the impacts of the presence of various possible outliers, the minimum, maximum, average and median liability on filing is reported for each province in Table B. The average liability for Ontario is larger than that reported in the Chart due to the inclusion of the previously removed outlier.

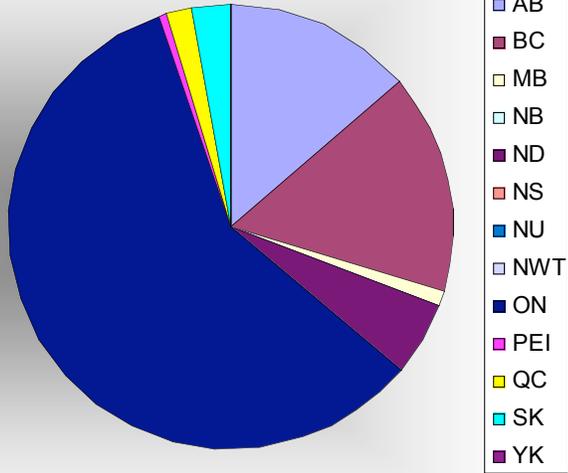
**Table B**

Province	Min	Max	Average	Median
AB	\$ 19,779,000.00	\$ 201,944,000.00	\$ 141,222,333.33	\$ 201,944,000.00
BC	\$ 1,490,000.00	\$ 2,666,840,000.00	\$ 274,725,857.29	\$ 34,954,496.00
MB	\$ -	\$ -	\$ -	\$ -
NB	\$ 41,000,000.00	\$ 41,000,000.00	\$ 41,000,000.00	\$ 41,000,000.00
ND	\$ 106,265,625.00	\$ 106,265,625.00	\$ 106,265,625.00	\$ 106,265,625.00
NS	\$ -	\$ -	\$ -	\$ -
NU	\$ -	\$ -	\$ -	\$ -
NWT	\$ 1,500,000.00	\$ 1,500,000.00	\$ 1,500,000.00	\$ 1,500,000.00
ON	\$ 114,563.00	\$ 9,700,000,000.00	\$ 1,317,106,385.39	\$ 238,411,224.00
PEI	\$ 10,500,000.00	\$ 10,500,000.00	\$ 10,500,000.00	\$ 10,500,000.00
QC	\$ 8,724,000.00	\$ 105,900,000.00	\$ 45,012,600.00	\$ 18,559,000.00
SK	\$ 14,703,315.00	\$ 97,640,032.00	\$ 42,585,839.75	\$ 29,000,000.00
YK	\$ -	\$ -	\$ -	\$ -

Charts 5(a) and (b) record the average and median assets on filing, respectively. Again, the relationships amongst the provinces change when medians are consider as opposed to the upward biased averages.

**Chart 5(a): Average Assets at Filing by Province**

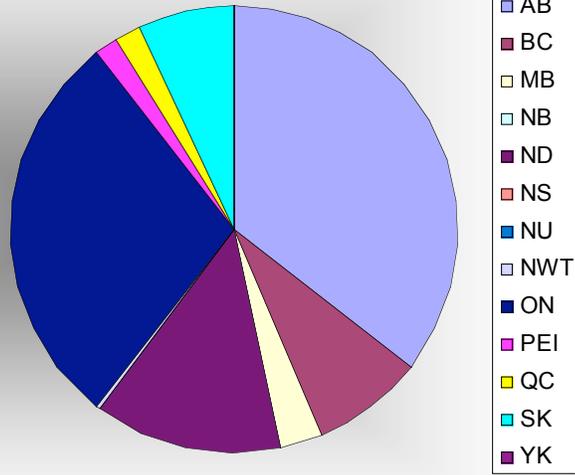
Province	Assets on Filing
AB	\$ 172,779,000.00
BC	\$ 206,654,170.76
MB	\$ 15,800,000.00
NB	\$ -
ND	\$ 66,434,194.96
NS	\$ -
NU	\$ -
NWT	\$ 700,000.00
ON	\$ 748,696,890.64
PEI	\$ 9,166,050.00
QC	\$ 25,267,000.00
SK	\$ 34,273,332.00
YK	\$ -



Upward biasing outliers for both Ontario and British Columbia have been removed.

**Chart 5(b): Median Assets at Filing  
by Province**

Province	Assets on Filing
AB	\$ 173,316,000.00
BC	\$ 39,327,983.42
MB	\$ 15,800,000.00
NB	\$ -
ND	\$ 66,434,194.96
NS	\$ -
NU	\$ -
NWT	\$ 700,000.00
ON	\$ 141,002,000.00
PEI	\$ 9,166,050.00
QC	\$ 8,724,000.00
SK	\$ 34,273,332.00
YK	\$ -



Upward biasing outliers for both Ontario and British Columbia have been removed.

Again, in order to further investigate the impacts of the presence of various possible outliers, the minimum, maximum, average and median assets on filing is reported for each province in Table C. As with the previous table, some values differ from those reported because all outliers have been included in the data reported in the table.

**Table C**

Province	Minimum	Maximum	Average	Median
AB	\$ 7,267,000.00	\$ 337,205,000.00	\$ 172,776,000.00	\$ 173,316,000.00
BC	\$ 677,561.00	\$ 10,071,100,000.00	\$ 473,260,814.79	\$ 39,327,983.42
MB	\$ 15,800,000.00	\$ 15,800,000.00	\$ 15,800,000.00	\$ 15,800,000.00
NB	\$ -	\$ -	\$ -	\$ -
ND	\$ 66,434,194.96	\$ 66,434,194.96	\$ 66,434,194.96	\$ 66,434,194.96
NS	\$ -	\$ -	\$ -	\$ -
NU	\$ -	\$ -	\$ -	\$ -
NWT	\$ 700,000.00	\$ 700,000.00	\$ 700,000.00	\$ 700,000.00
ON	\$ 188,036.00	\$ 13,490,000,000.00	\$ 1,205,858,505.73	\$ 141,002,000.00
PEI	\$ 9,166,050.00	\$ 9,166,050.00	\$ 9,166,050.00	\$ 9,166,050.00
QC	\$ 3,048,000.00	\$ 81,000,000.00	\$ 25,267,000.00	\$ 8,724,000.00
SK	\$ 6,397,587.00	\$ 62,149,077.00	\$ 34,273,332.00	\$ 34,273,332.00
YK	\$ -	\$ -	\$ -	\$ -

Chart 6 indicates the average number of employees affected by CCAA proceedings by province. Here Ontario's numbers far exceed all other provinces. However, it is important to remember that many Ontario CCAA filings represent national corporations, such as Red Cross and Air Canada, and the employees affected are located throughout the country, not solely in Ontario. A future inquiry may be to discern what number of corporations filed had primarily a regional effect on employment.

Also significant in these figures is that the average number of employees affected in New Brunswick is considerably higher in terms of a debt to employee ratio than other provinces, indicating perhaps that the insolvent firms in that province are highly labour intensive firms. This figure requires further analysis. These numbers will also be compared by sector. Alberta, which had the third highest average assets on filing, had the second lowest average number of employees affected by the CCAA proceeding.

**Chart 6: Pre-Filing Average Total Employees by Province**

Province	Employees
AB	130
BC	701
MB	-
NB	403
ND	137
NS	113
NU	-
NWT	-
ON	6,848
PEI	-
QC	1,171
SK	310
YK	-

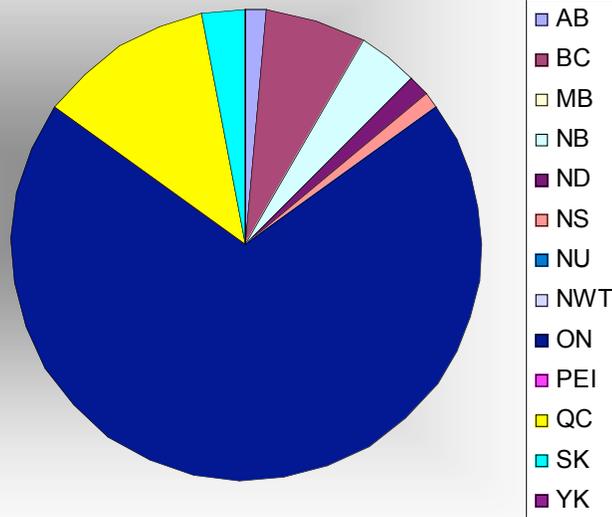


Chart 7 below examines the number of affiliates of corporations that filed under the CCAA, indicating a high number in Ontario and Saskatchewan. All other jurisdictions were considerably less.

**Chart 7: Average Corporations in Affiliated Group of Debtor Cos.**

Province	Corporations
AB	3
BC	3
MB	1
NB	2
ND	1
NS	2
NU	-
NWT	1
ON	9
PEI	2
QC	3
SK	9
YK	-

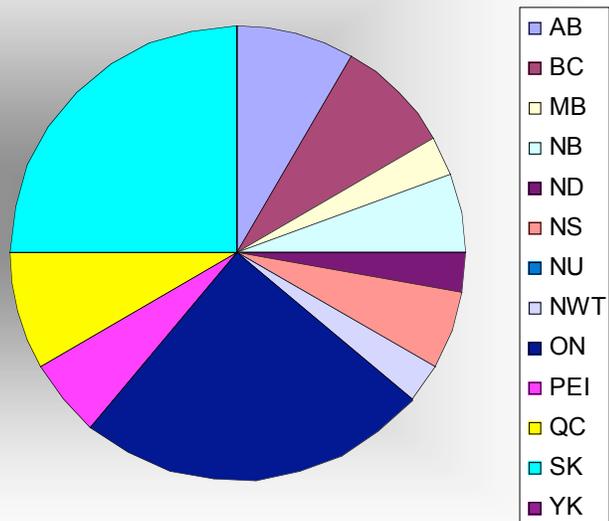
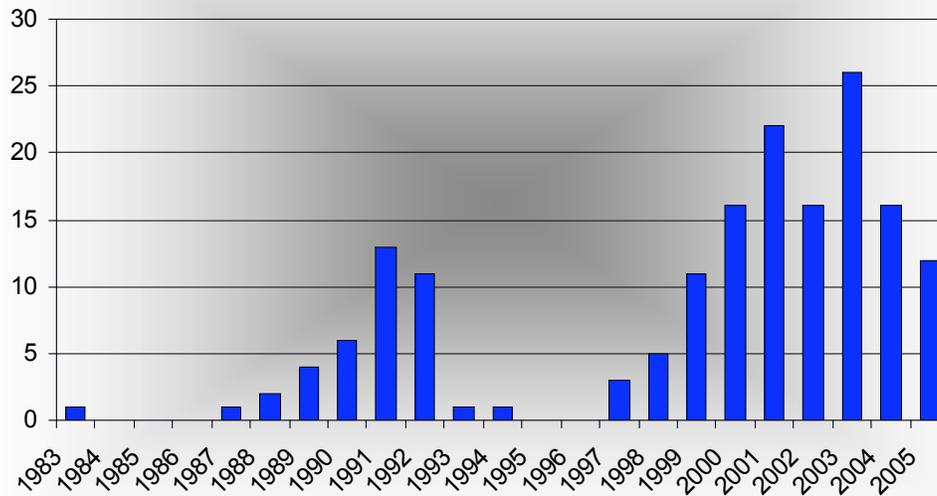
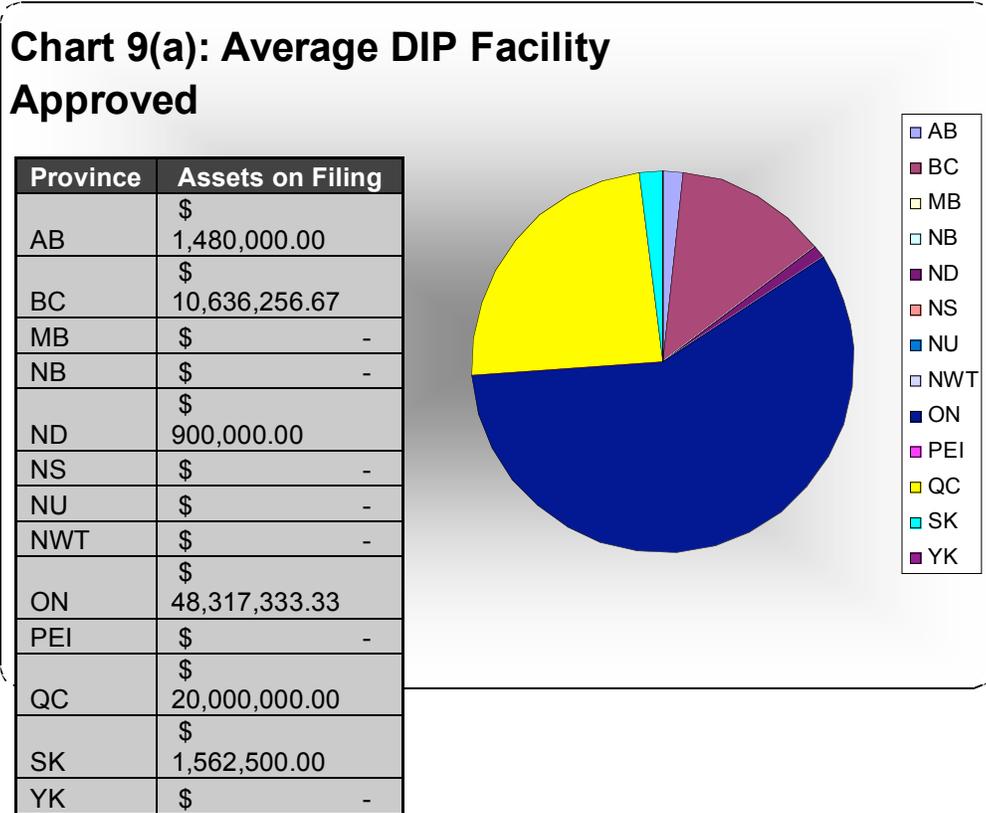


Chart 8 illustrates the peaks and valleys in CCAA filings along a time-line. The use of the CCAA as a restructuring tool is cyclical in nature and Canada is currently on a downswing in the number of filings after a record high in 2003. A table breaking the cases down by province over time follows.

**Chart 8: Number of Cases Over Time**

Province	AB	BC	MB	NB	ND	NS	NU	NWT	ON	PEI	QC	SK	YK
1983		1											
1984													
1985													
1986													
1987				1									
1988		2											
1989						1					1	1	
1990		5				3					1		
1991		3		3	1	1				1	2		
1992		4		1	1			1		2	1		
1993		1											
1994		1											
1995													
1996													
1997		3											
1998		1							4				
1999	3	4							4				
2000	4	5		2					4			1	
2001		7							11		3	1	
2002	2	3	1	1					6		2		
2003	5	5		1					8		5	2	
2004	1	3							7		3	2	
2005		1							7		2	2	

Chart 9(a) attempts to capture average amount of DIP facility approved. However, in a number of cases, this information was not disclosed in public documents, and further data collection is required before this summary data is complete. Moreover, Ontario's Air Canada file was an outlier in terms of the size of the DIP facility and it will be important to examine for additional outliers in further analysis of the data, in order to discover truly reliable average figures. Chart 9(b) shows the relationship with this outlier removed.



**Chart 9(b): Adjusted Average DIP Facility Approved**

Province	Assets on Filing
AB	\$ 1,480,000.00
BC	\$ 10,636,256.67
MB	\$ -
NB	\$ -
ND	\$ 900,000.00
NS	\$ -
NU	\$ -
NWT	\$ -
ON	\$ 25,845,517.24
PEI	\$ -
QC	\$ 20,000,000.00
SK	\$ 1,562,500.00
YK	\$ -

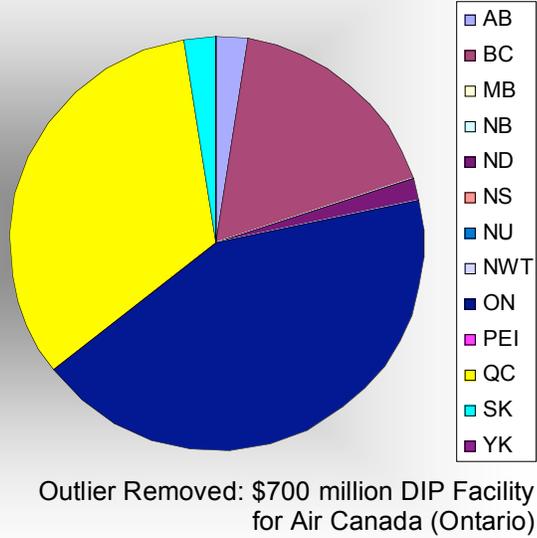
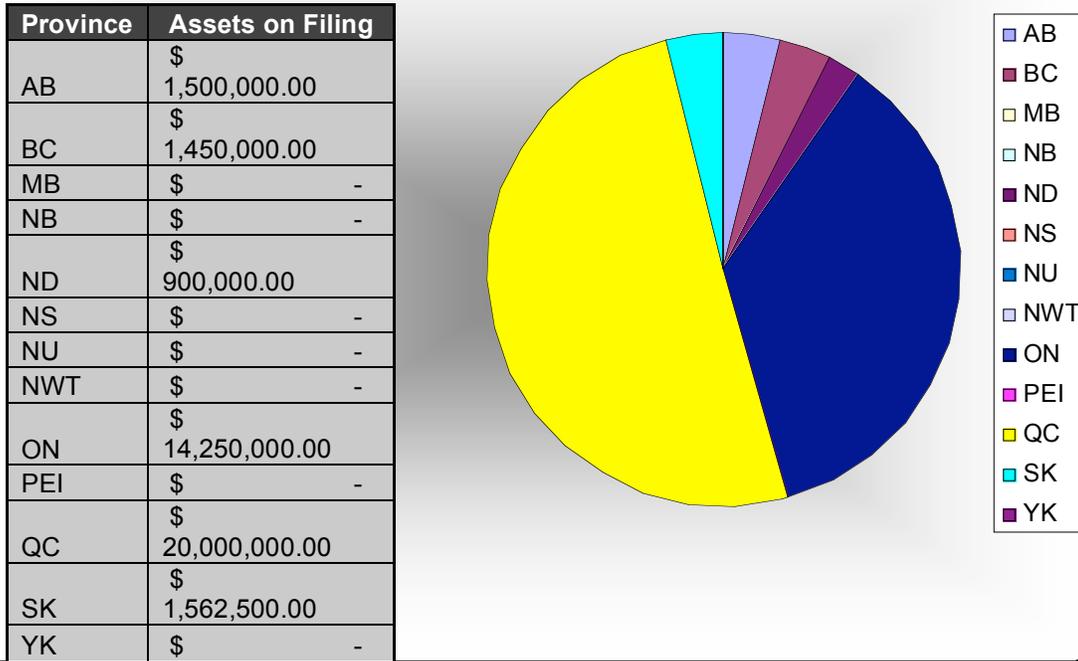


Chart 9(c) examines the median amount of DIP facility approved. This is reported to reveal the upward bias caused by outliers in data.

**Chart 9(c): Median DIP Facility Approved**



British Columbia and Ontario are then broken down by quartile to further examine the influence of outliers in the data set (other provinces are not treated similarly due to insufficient data).

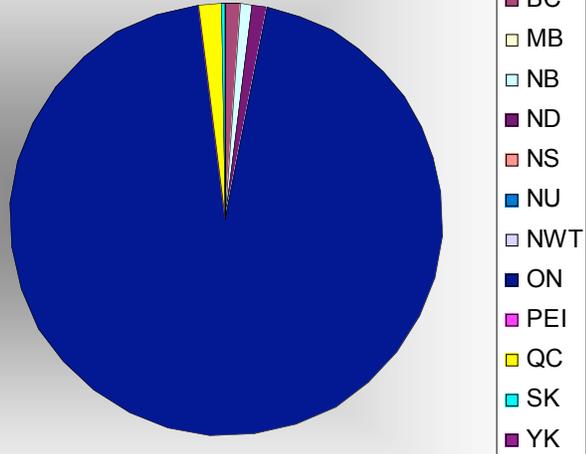
BC	
Minimum	\$ 100,000.00
1st Quartile Average	\$ 187,500.00
2nd Quartile Average	\$ 810,962.50
Median	\$ 1,450,000.00
3rd Quartile Average	\$ 4,637,500.00
4th Quartile Average	\$ 45,666,666.67
Maximum	\$ 110,000,000.00

ON	
Minimum	\$ 500,000.00
1st Quartile Average	\$ 1,468,750.00
2nd Quartile Average	\$ 7,414,285.71
Median	\$ 14,250,000.00
3rd Quartile Average	\$ 27,608,750.00
4th Quartile Average	\$ 166,428,571.43
Maximum	\$ 700,000,000.00

Chart 10 below sets out the average prior sales for the year preceding the initial CCAA order. Given that this data indicates that active sales activities overwhelmingly predominated in Ontario, further analysis needs to be undertaken to compare these figures with CCAA proceedings by sector.

**Chart 10: Average Prior Sales for Year Preceding Initial CCAA Order**

Province	Prior Year Sales
AB	\$ -
BC	\$ 133,302,184.27
MB	\$ -
NB	\$ 106,000,000.00
ND	\$ 147,401,546.39
NS	\$ -
NU	\$ -
NWT	\$ -
ON	\$ 11,914,426,359.82
PEI	\$ -
QC	\$ 203,411,650.00
SK	\$ 28,079,628.00
YK	\$ -



### Future Research and Public Policy Implications

The creation of this database is a starting place for empirical research on CCAA proceedings and the OSB is to be commended for providing the initial research funding that enabled the development of a methodology for collecting and analyzing the data.

Once all data is collected as part of the larger research project, it will allow research queries on particular combinations of factors, e.g. liquidating CCAA and employees at entrance/exit, public/private capital structure and governance change. It should facilitate assessment of outcomes five years after exit and may assist public policy formation based on fact rather than myth. If the present discretion-based design of the law in restructuring continues, as indicated by c. 47, the data collected under this project may provide a data source for use in the courts.

The Standing Senate Committee on Banking Trade and Commerce in November 2003 in its report titled *Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act* observed that the OSB plays no supervisory role with respect to the CCAA, and that this is likely the reason that limited data exists about activities under the statute. It identified the importance of data collection and research

analysis for both policy makers and stakeholders in the process. Hopefully, with the enactment of c. 47, the OSB will begin to collect data in a systematic way. The research conducted in this project highlights some areas in which there is currently a lack of public accessibility of data, a factor that will hopefully be remedied when the OSB begins its collection function. The project also reveals the labour-intensive nature of data collection for the often complex CCAA proceedings and it is very important that appropriate resources be given to the OSB to properly fulfill this function.

The short-term benefit of this project is that it sets the stage for designing and testing a methodology for tracking CCAA cases and measuring outcomes in a meaningful way. The long term benefits of this project will be that there is greater information in the public domain in respect of CCAA restructuring proceedings. This will allow for better analysis and policy advice by academics, practitioners, policy makers and by participants in the system. In turn, this will enhance the integrity of the Canadian insolvency system.

**APPENDIX A  
PROTOCOLS DEVELOPED UNDER THE OSB PROJECT**

**UBC Law Protocols  
for the Canadian *Companies' Creditors Arrangement Act* (CCAA) Insolvency Research  
Database<sup>3</sup>**

For further information contact Dr. Janis Sarra  
UBC Faculty of Law ([sarra@law.ubc.ca](mailto:sarra@law.ubc.ca))

**September 19, 2005**

**Scope/universe of the database:** All cases filed under the Canadian *Companies' Creditors Arrangement Act* (CCAA).

**Defining a “case” for purposes of this database:**

In Canada, there are two principal restructuring statutes, the *Bankruptcy and Insolvency Act* (BIA) and the CCAA. This database addresses only CCAA cases, which requires that a debtor company is insolvent and that there are total claims that exceed five million dollars against the debtor company or affiliated debtor companies.<sup>4</sup>

**“Cases” for the purposes of this database:**

- I. A case where an initial order under the CCAA is granted by the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated;<sup>5</sup> and/or
- II. a cross-border insolvency restructuring proceeding that is filed concurrently under the CCAA and Chapter 11 of the U.S. *Bankruptcy Code*, or which is subject to either a s.18.6 CCAA Ancillary Order or a s. 304 U.S. *Bankruptcy Code* Ancillary Order. Please note that it is not necessary for the debtor to be

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<sup>3</sup> *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended, s.3 [CCAA]. The UBC Law CCAA Insolvency Research Database is developed for Canadian insolvency restructurings under the CCAA, aimed at collecting a range of information particularly important to the Canadian context. UBC Law acknowledges financial support for the development of the UBC Law Draft Protocol and CCAA database from the Office of the Superintendent of Bankruptcy and SSHRC. UBC Faculty of Law appreciates the assistance of Professor LoPucki and his U.S. Bankruptcy Research Database housed at UCLA Law School in the design of this database. Where possible, the terms of the two databases are aligned in order to allow for international comparative research (see Table of Concordance).

<sup>4</sup> CCAA, s. 3.

<sup>5</sup> CCAA s. 9. Section 9 also specifies that where the company has no place of business in Canada, the company can file in any province within which the assets of the company are situated.

insolvent under U.S. bankruptcy law and hence a Chapter 11 proceeding with a s. 18.6 CCAA order may include a debtor company that is not insolvent.

#### **Affiliated Companies:**

Debtor companies are “affiliated debtor companies” if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person. Two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

#### **Dates:**

All dates listed in fields are recorded as day, month and year e.g. 05/07/2005.

#### **Assets and liabilities in current dollars:**

Assets and liabilities of companies in CCAA proceedings are listed as a value at both the time of filing and then in current dollars, the current update is to May 2005 (**FilingAssetCurrValue** and **FilingLiabCurrValue**). The Canadian Consumer Price Index-All Items annual average index is used for this calculation, found at <http://www40.statcan.ca/I01/cst01/econ46.htm>.

YEAR	PRICE INDEX	NECESSARY VALUE OF ASSETS
1975	34.5	\$27,165,354
1976	37.1	\$29,212,598
1977	40	\$31,496,063
1978	43.6	\$34,330,709
1979	47.6	\$37,480,315
1980	52.4	\$41,259,843
1981	58.9	\$46,377,953
1982	65.3	\$51,417,323
1983	69.1	\$54,409,449
1984	72.1	\$56,771,654
1985	75	\$59,055,118
1986	78.1	\$61,496,063
1987	81.5	\$64,173,228
1988	84.8	\$66,771,654
1989	89	\$70,078,740
1990	93.3	\$73,464,567
1991	98.5	\$77,559,055
1992	100	\$78,740,157
1993	101.8	\$80,157,480
1994	102	\$80,314,961
1995	104.2	\$82,047,244
1996	105.9	\$83,385,827
1997	107.6	\$84,724,409
1998	108.6	\$85,511,811
1999	110.5	\$87,007,874

2000	113.5	\$89,370,079
2001	116.4	\$91,653,543
2002	119	\$93,700,787
2003	122.3	\$96,299,213
2004	124.6	\$98,110,236
May 2005	127.0	\$100,000,000

**Searching for cases. The following sources are examined:**

- I. Court Files, Canadian and U.S. judgments and endorsements
- II. Westlaw/E-Carswell Insolvency Source  
<http://www.westlawecarswell.com/insolvencysource/>
- III. Quicklaw: [http://ql.quicklaw.com/LNC\\_login\\_en.html](http://ql.quicklaw.com/LNC_login_en.html)
- IV. Canadian Bankruptcy Reporter
- V. Web-Sites of Debtor Companies, Monitors and Monitor Counsel and
- VI. other sources.

**PROTOCOLS FOR DATA COLLECTION**

ADMINISTRATIVE

**DatabaseID.** A unique number, assigned automatically at the time the company is added to the database. These numbers are sequential by date the case was added to the database.

THE DEBTOR COMPANY

**FilingCompanyName.** The name of the company under CCAA protection, taken from the initial CCAA order. If more than one company is listed in the proceeding, list all companies in the corporate group that filed, as defined by the CCAA order, separated by “ / ”. If the company has been through the CCAA process before, add the year that the prior Plan was sanctioned by the court in parentheses.<sup>6</sup>

**PrivHeld/Issuing.** This designates whether the company was privately held within the meaning of Canadian corporate law, or whether it was an issuing/distributing corporation within the meaning of Canadian securities law (publicly traded on a stock exchange or ATS). 1 = privately held; 2 = issuing corporation.

**IndustrySector:** Based on the categories below, indicates the number of the industry sector that best corresponds with or explains the debtor’s business.

- 1 Agriculture, Forestry, Fishing and Hunting
- 2 Mining
- 3 Utilities
- 4 Construction
- 5 Manufacturing
- 6 Wholesale Trade
- 7 Retail Trade
- 8 Transportation and Warehousing

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<sup>6</sup> There have only been a few proceedings where the company has refiled, e.g. Algoma Steel.

9	Information
10	Finance and Insurance
11	Real Estate and Rental and Leasing
12	Professional, Scientific, and Technical Services
13	Management of Companies and Enterprises
14	Administrative and Support and Waste Management and Remediation Services
15	Education Services
16	Health Care and Social Assistance
17	Arts, Entertainment, and Recreation
18	Accommodation and Food Services
19	Telecommunications
20	Other Services (except Public Administration)
21	Oil and Gas
22	Public Administration

**Logos/Trademarks.** Well known trademarks, products or other identifiers owned by the debtor company or group. For example, for a retail chain in CCAA proceedings, where particular store names are well known.

**NumApplication.** Where a consolidated application is made under the CCAA, indicates the number of corporations in the affiliated group of debtor companies. Sources for this information are the style of cause, Monitor's Report, reported judgments and court records.

**FileNumber.** The number assigned to the case by the court hearing the CCAA application. If there are several numbers because there are several debtors in the case, record all the numbers.

**XTortClaim.** If tort claims caused the insolvency of the company (in the sense that, had the tort debt not existed, the CCAA proceedings would not have been commenced) or are a major claim in the insolvency proceeding, list the type of tort debt. Leave blank if insolvency not caused principally by tort claims.<sup>7</sup> Number indicates type of tort.

- 1 *Products:* insolvency caused principally by products liability claims against the debtor.
- 2 *Fraud:* insolvency caused principally by fraud claims (include securities fraud claims) against the company. These cases often began with financial difficulties from other causes, which were concealed from the investors until they were severe enough to cause the insolvency.
- 3 *Environmental:* insolvency caused principally by environmental claims (other than products liability claims) against the debtor.
- 4 *Patent:* insolvency caused principally by patent infringement claims against the debtor.
- 5 *Other tort:* insolvency caused principally by tort claims against the debtor that do not fall into any of the categories above.

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<sup>7</sup> The vast majority of CCAA cases do not involve tort claims. For pension claims, see pension fields under Liabilities.

**CompanyEmerge.** Did at least one operating company emerge from CCAA proceedings under the confirmed plan? 1 = yes; 2 = no. A company acquired by another at the time the Plan is sanctioned is included if it is maintained as a separate business/subsidiary, even if the acquiror contributes capital or credit enhancements. The reasoning is that the emerging company is as much a “stand alone” company as one that received an infusion of capital from a new investor – at the time of Plan approval or immediately after. But no company emerges if the assets are integrated into an existing business of the acquiror or merger partner, during insolvency or pursuant to the plan, unless the merger partner is small in relation to the company. A sale of all or substantially all assets is likely a liquidating CCAA.

**CompanyResult.** If the filing company continued to operate when it emerged from CCAA protection (date set in plan), as a stand alone company or a subsidiary of an acquirer, indicate “Continuing.” If the filing company was acquired and assimilated into the acquirer, indicate “Merged” If the filing company ceased business and its assets were liquidated, indicate “Liquidated.” Where business is sold intact, whether or not the original entity emerged as a viable business, indicate “Business Sold Intact”. Indicate “Change control” if there has been a complete change in the beneficial ownership. Companies are continuing unless they fit one of the other categories. When more than one company emerges, e.g. Doman Forest Products, note with number of companies, e.g. Continuing2.

**Company5Result.** Same as **CompanyResult**, but include only mergers, liquidations and control changes that occurred in the first five years after the sanctioning of the plan. “Continuing” in this field means continuing at the end of five years after the sanction of the plan. If a case is still ongoing, please note that as “ongoing” and include date last updated, e.g. “Last update 10/07/05”.

**WhenEffective.** The effective date of the sanctioned/approved plan of compromise or arrangement. Usually found in the final court order in the proceeding or the Plan itself.

**CompanyEmergeName.** The names of the company/companies emerging from the reorganization. If there is no emerging company, or if the company is broken up into a number of companies, none of which is a clear successor to the debtor, indicate "liquidated".

## DATES

**DateInitialOrder.** The date of the CCAA Initial Order. Where initial order was refused by the court, specify “No Order”, and date of refusal (where the initial order was refused, complete only debtor information, jurisdiction, assets and liabilities at filing, and ignore other fields).

**PlanSanctioned.** Was a plan sanctioned under s. 6 of the CCAA? 1 = yes; 2 = no. If the case remains pending under the CCAA (i.e. the stay is still in effect and no Plan has been approved) enter “pending” and include date last updated, e.g. Pending as of 10/07/05. Other possible dispositions are “dismissed,” “*Bulk Sales Act* sale” of all or substantially all assets, or “converted from CCAA to *BIA*.” If other than plan sanction, indicate the date. In determining whether a sale was “all or substantially all” of the company’s assets, follow the characterization in court documents; if they say it is “all or substantially all,” it is.

**DateSanctioned.** The date the court sanctioned the plan of compromise or arrangement.

**DateASAASale.** Where a sale of all or substantially all of the assets occurs, the date on which the court approved sale of all or substantially all of the assets of the debtor.<sup>8</sup> Do not use the date of the order fixing sale procedures; use the date of the later order approving the sale to a specific

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<sup>8</sup> In some cases, this will be under provincial *Bulk Sales Act*, see for example, Ontario judgments.

buyer. If two or more sales combine to constitute “all or substantially all” of the business and one of the sales is a sale of more than half the business, use the date of that sale.

**ProtectAgain.** Has the emerging company sought insolvency protection more than once? 1 = refiled under CCAA; 2 = filed under BIA proposal provisions; 3 = filed BIA bankruptcy proceedings. If not, leave blank.

**ProtectAgainDate.** If the emerging company did seek CCAA protection more than once, indicate the date of the previous or subsequent Initial Order and the date that the company emerged from that CCAA protection.

FINANCIALS<sup>9</sup> [in millions of dollars]

**AIFFollowing.** For issuing corporations, the ending date of the period covered by the first AIF and audited financial statements with an ending date after CCAA proceedings, found on SEDAR, ([http://www.sedar.com/homepage\\_en.htm](http://www.sedar.com/homepage_en.htm)). If cannot locate AIF or audited financial statements, specify “NF” for not found.

**AIFPrior.** For issuing corporations, the ending date of the period covered by the most recent AIF and audited financial statements filed in the 1-3 year period prior to the CCAA filing date, if any.

**10kFollowing.** For issuing corporations, the ending date of the period covered by the first 10-K with an ending date after the CCAA filing. If cannot locate 10-K, specify “NF” for not found.

**10kPrior.** For issuing corporations, the ending date of the period covered by the 10-K filed in the 1-3 year period prior to the CCAA filing, if any (“document date” not “filing date”).

**FilingAssets.** The value of the assets of the debtor company or affiliated companies, as listed in the Monitor’s Report, in millions of dollars.<sup>10</sup> This report is required under s.11.7(3)(b) of the CCAA.

**FilingAssetsFootnote.** This is a narrative field: indicate if the information in **FilingAssets.** is obtained somewhere other than the Monitor’s Report.

**FilingAssetCurrValue.** The value of assets at filing updated to current value in dollars using the Canadian Consumer Price Index, in millions of dollars; e.g. 1980 value updated to 2005 dollar value.

**AssetsAtExit.** Total assets shown on the Monitor’s Report at exit, after Plan approval, in millions of dollars.<sup>11</sup>

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<sup>9</sup> Canada has a continuous disclosure regime, and does not require periodic disclosure in the same manner as the U.S., although there are overlaps in the timing and type of disclosure. The closest documentation is the Annual Information Form (AIF) required by National Instrument 51-102 and Audited Annual Financial Statements for issuing corporations. Please Note: Any references to 10K’s in this FINANCIALS section **only** apply to cross-border insolvency cases under the CCAA, and/or where a Canadian issuer trades on a U.S. exchange and is therefore subject to U.S. securities law requirements. In some instances, the Form 10-K satisfies Canadian securities disclosure requirements.

<sup>10</sup> If the information is not available from the Monitor’s report and unaudited financial statements are used, please note in footnote, as this information can be dated and unreliable.

<sup>11</sup> If the proceeding went into receivership instead of a successful plan being approved, the information may be part of the Receiver’s valuation.

**Assets1Following.** Total assets for the end of the fiscal year during which the Plan was approved by the court. Most can be found in the first AIF and audited financial statements on SEDAR, ([http://www.sedar.com/homepage\\_en.htm](http://www.sedar.com/homepage_en.htm)).<sup>12</sup>

**Assets5Following.** Total assets shown on AIF or audited financial statements for the end of the fiscal year 5 years after the Plan was approved by the court, in millions of dollars. If the company merged with another company, indicate “Merged” and do not put in numeric data.

**FilingLiab.** Total liabilities (assets minus equity) at the time of filing, from first Monitor’s Report or if not available, from the financial statements required to be filed at the time of the Initial Order [do not use unaudited financial statements, unless in court judgment].

**FilingLiabFootnote.** This is a narrative field: indicate if the information in **FilingLiab.** is obtained somewhere other than the Monitor’s Report.

**FilingLiabCurrValue** The value of liabilities at filing updated to current value in dollars using the Canadian Consumer Price Index for comparative research purposes, in millions of dollars; e.g. 1980 value updated to 2005 dollar value.

**LiabAtExit.** Total liabilities shown on the Monitor’s Report at exit, after Plan approval, in millions of dollars.

**Liab1Following.** Total liabilities for the end of the fiscal year during which the Plan was approved by the court. Most can be found in the first AIF and audited financial statements on SEDAR, ([http://www.sedar.com/homepage\\_en.htm](http://www.sedar.com/homepage_en.htm)).

**Liab5Following.** Total liabilities shown on AIF or audited financial statements for the end of the fiscal year 5 years after the Plan was approved by the court, in millions of dollars. If the company merged with another company, indicate “Merged” and do not put in numeric data.

**DIPFacility.** The court approved a debtor in possession financing agreement during the CCAA proceeding. 1 = yes; 2 = no.

**AmtDIPFacility.** The total amount of the DIP facility approved. If the DIP facility is increased to a larger amount later in the CCAA proceedings, please just indicate the total, maximum amount that was given.

**DrawnDIPFacility.** The total amount of DIP facility drawn. Often only part of the total facility is used by the debtor company.

**DrawnDIPDate.** Indicate the date **DrawnDIPFacility** was last updated.

**DIPPrimed.** Did the DIP facility receive a priority charge over assets of the estate?<sup>13</sup> 1 = yes; 2 = no.

**DirCharge.** Court order granting a priority charge on assets to indemnify directors? 1 = yes; 2 = no.

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<sup>12</sup> Note that a number of companies in CCAA proceedings are privately held and there may be limited financial information after exit from the CCAA.

<sup>13</sup> Almost all cases outside of Québec are likely to have a priority charge; in Québec, the courts have only recently agreed to prime DIP charges where there is not full consent of the creditors.

**AmtDirCharge.** Amount of director charge (cap set on amount),

**DirChargeCond.** Was the director's charge given priority over secured claims? Was indemnification for the period during or prior to CCAA proceeding? Were there conditions attached to the charge, e.g. Air Canada. Source will be the court order.

**PensionReg.** Did the company sponsor a registered pension plan? If yes, list the province, territory or federal jurisdiction under which the plan was registered. Use: BC = 1, Alta = 2, Sask = 3, Man = 4, Ont = 5, Que = 6, Nfld = 7, PEI = 8, NS = 9, NB = 10, NWT = 11, YK = 12, NU = 13. Source will be the Monitor's Report or AIF. If no, remaining pension questions are to be skipped.

**PensionType.** Was the registered plan a defined contribution plan (1 = DC) or a defined benefit plan (2 = DB)?

**PensionDC.** If a defined contribution plan, was there a compromise of contributions owing? If yes, what amount.

**PensionDB.** If a defined benefit plan, was there a surplus at the time of filing?<sup>14</sup> 1 = yes; 2 = no.

**PenPlanOutcome.** Was the pension plan terminated during the CCAA proceeding? 1 = yes; 2 = no.

**ValFundAssets.** The value of the assets of the pension plan at time of filing. Source will be Monitor's Report.

**ValFundLiab.** The value of the liabilities of the pension plan at the time of filing. Source will be Monitor's Report.

**PenDBSurp.** If there was a surplus at the time of filing and the plan was terminated, was there a compromise on ownership of the surplus? If yes, record value of compromise.

**PenDBDefic.** Was there a pension solvency deficit at the time of CCAA filing? If yes, give principal reason cited for the deficit.

**AmtPenDefic.** If there was a pension solvency deficit at the time of CCAA filing, what was the estimated amount. Most often found in Monitor's Report or from Actuary's report.

**ContTermsPenDefic.** If the pension plan continued after the CCAA proceeding, was the time for payment of pension solvency deficit extended beyond the 5 years required under pension legislation? If yes, by how many years?

**ValFundAssetsPrior.** The value of the assets of the pension plan 1-2 years prior to filing. Sources are company's audited financial statements, or the tri-annual actuarial report that includes a valuation of the pension fund's assets and liabilities, found on company website or from pension regulator.

**ValFundLiabPrior.** The value of the liabilities of the pension plan 1-2 years prior to filing. Sources are company's audited financial statements, or the tri-annual actuarial report that includes a valuation of the pension fund's assets and liabilities, found on company website or from pension regulator.

**ValPenDBSurpPrior.** The value of any surplus assets of the pension plan 1-2 years prior to filing. Sources are company's audited financial statements, or the tri-annual actuarial report that

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<sup>14</sup>This is likely applicable only to early CCAA cases, e.g. Red Cross.

includes a valuation of the pension fund's assets and liabilities, found on company website or from pension regulator.

**ValPenDBDeficPrior.** The value of a deficit in the pension plan 1-2 years prior to filing. Sources are company's audited financial statements, or the tri-annual actuarial report that includes a valuation of the pension fund's assets and liabilities, found on company website or from pension regulator.

**PriorSales.\*\*** Sales for the quarter preceding filing of Initial CCAA Order. See Monitor's Report (or, for US/cross-border, the last 10-K before Initial Order).

**PriorSalesUnaudited.\*\*** Unaudited sales information for the quarter preceding filing of Initial CCAA Order, if audited not available.

**PriorSalesYearEnd.\*\*** Audited year end sales information, if information required for **PriorSales** unavailable (i.e., if audited sales information for the quarter preceding filing of the initial CCAA Order not available).

**PriorSalesYEUnaudited.\*\*** Unaudited year end sales information, if audited quarter preceding filing of the initial CCAA order and audited year end sales information not available

**SalesExit.** The dollar amount of the debtor's sales or gross revenues on the Monitor's Report for the quarter preceding exit from CCAA proceedings.

**\*\* Please Note:** The goal with these 4 fields is to obtain the best available data, so if the sales information for the last quarter preceding filing of Initial CCAA Order as required by **PriorSales** is available, that is ideal. However, the other fields are also acceptable if the data required in **PriorSales** is unavailable. If you have the information for all 4 fields, include it all because that will assist in painting a comprehensive picture.

#### INCORPORATION AND HEADQUARTERS

**JurisInc.** The jurisdiction of incorporation given for the debtor company, according to the Monitor's Report or court order. List country and state if outside the Canada.

**CorpGroup.** Were there material subsidiaries that did not file? 1 = yes; 2 = no.

**ProvIncAll.** The provinces/federal in which companies in the corporate group are incorporated. Usual source is the Monitor's Report. A company is a subsidiary only if the parent owns at least 50% of the voting stock. Assume the parent owns at least 50% if the company appears in the list of subsidiaries and we have no information to the contrary. Include American states if the companies in the corporate group are incorporated in the U.S.. Use: BC = 1, Alta = 2, Sask = 3, Man = 4, Ont = 5, Que = 6, Nfld = 7, PEI = 8, NS = 9, NB = 10, NWT = 11, YK = 12, NU = 13, Federal = 14, U.S. = 15 (plus name states), Other = 16 (plus specify). If more than one, list, e.g. 1, 4, 7.

**PropProvs.** The provinces and territories in which the debtor had property or operations according to Monitor's report. Use: BC = 1, Alta = 2, Sask = 3, Man = 4, Ont = 5, Que = 6, Nfld = 7, PEI = 8, NS = 9, NB = 10, NWT = 11, YK = 12, NU = 13.

**CountryIncAll.** The countries outside Canada and its territories in which companies in the corporate group are incorporated. Usual source is Monitor's Report. A company is a subsidiary only if the parent owns at least 50% of the voting stock. Assume the parent owns at least 50% if the company appears in the list of subsidiaries and we have no information to the contrary.

**HeadOCPrior** The city in which the head office of the debtor company was located at the time of granting the Initial Order according to the Court Order or the Monitor's Report.

**HeadOProvPrior.** The province in which the head office was located at the time of the initial CCAA order. Use: BC = 1, Alta = 2, Sask = 3, Man = 4, Ont = 5, Que = 6, Nfld = 7, PEI = 8, NS = 9, NB = 10, NWT = 11, YK = 12, NU = 13.

**HeadOMovePrior.** Did the company move its head office in the year before filing? If so, from where to where? We are not systematically collecting this data, include it only if you happen to run across it.

#### CASE LOCATION

**ProvFiled.** This indicates the province or territory in which the CCAA proceeding was filed: BC = 1, Alta = 2, Sask = 3, Man = 4, Ont = 5, Que = 6, Nfld = 7, PEI = 8, NS = 9, NB = 10, NWT = 11, YK = 12, NU = 13.

**CityInitialOrder.** The city in which the CCAA Application was filed.

**DifferJurisFiling.** Specify "1" if CCAA proceeding filed in a jurisdiction other than where the debtor was headquartered (leave blank if in same jurisdiction).

**OtherRelated.** Bankruptcy/insolvency cases involving other members of the debtor's corporate group that are not jointly administered with the debtor. (Give name and place of filing.)

#### JUDGE AND COURT

**JudgeInitialOrder.** The full name of the judge to whom the case was initially assigned and the court.

**JudgeSanction.** The full name of the judge who presided over the fairness hearing and sanctioned the Plan. In most cases the same judge supervises the entire proceeding.

**JudgeMediation.** Did a judge (or former judge) other than the supervising judge conduct a mediation of labour relations, pensions or other issues? Use narrative here to describe the issues mediated and name of judge or former judge, e.g. Air Canada, Algoma Steel proceedings.

**NameAllJudges.** The names of the judges to whom the case was assigned from filing to sanction, separated by "/". Includes appeal judges, and includes US judges in concurrent and ancillary proceedings. Indicate in brackets behind the name where the judge is from, what level of court etc.

#### PLANS OF ARRANGEMENT AND COMPROMISE

**PrepackPlan.** Was the plan prepackaged in the sense that the debtor company reached agreement on the terms of the proposed plan with major creditors prior to filing a CCAA application? Please note, this definition differs from the use of the term "prepack" in United States reorganization proceedings. Source usually sanctioning judgment. 1 = yes; 2 = no.

**SupSecCred.** The percentage of support by secured creditors, e.g. 95% of the plan. Will be in the sanctioning judgment or in a Monitor's report or in affidavit material.

**SupUnsecCred.** The percentage of support by unsecured creditors, e.g. 95%. Will be in the sanctioning judgment or in a Monitor's report or in affidavit material.

**Unopposed.** Was confirmation of the plan without opposition by major constituencies? 1 = yes; 2 = no. If it was opposed by major constituencies, make a notation as to who opposed.

### STAYS

**StayLiftedLtd.** Did the court lift the stay for a limited purpose, such as allowing a claimant to file a claim where there was an issue of prejudice to that claim? 1 = yes; 2 = no.

**StayLiftWhy.** If the stay was lifted, why was it lifted?

**StayContested.** Did parties contest the lifting of the stay? 1 = yes; 2 = no.

**StayExtended.** Dates the Initial Stay Order was extended past the initial 30 day period and length of extended stay(s). This is available through Monitor's reports and court endorsements.

**StayExpire.** Did the stay expire without a plan? 1 = yes; 2 = no. If yes, did the company go into receivership or bankruptcy?

**OtherPlans.** Were competing proposed plans filed with the court? 1 = yes; 2 = no. If yes, who filed?

This includes other plans submitted by any party. Indicate whether a number of plans have been put forth but not approved. This was the case in the B.C. case of *Doman*, where the debtor company put forth a number of plans that were not approved. Indicate as much info as necessary in this field.

### EMPLOYEES AND PENSIONERS

**EmployPrior.** The number of persons employed by the debtor at the time of the Initial CCAA Order. Combine part time and full time employees; combine figures for various parts of the debtors' business. If employment is seasonal, use maximum number. Include breakdown of FT, PT and seasonal if available.

**TotalNumEmployPrior.** Total *EmployPrior* in numeric form.

**EmployFollowing.** The number of persons employed by the debtor as of the Monitor's Report at exit from CCAA proceedings. See *EmployPrior* for description of how to calculate.

**UnionRep.** If employees were represented by unions, name unions.

United Steelworkers of America, use USWA  
 Canadian Automobile Workers, use CAW  
 Communications, Energy Workers, use CEP  
 Canadian Union of Public Employees, use CUPE  
 Ontario Public Employees Union, use OPSEU  
 (we will add others to protocol as needed)

**Pensioners.** Number of pensioners affected by the CCAA proceeding.

**PenRep.** Were the pensioners represented in the CCAA proceeding? If so, name of counsel or representative pensioner.

CONTACT

**CourtContact.** Contact information for the relevant courthouse where we can obtain any information unavailable from our other sources.

**Monitor.** Name and e-mail of monitor, if available.

GOVERNANCE

**CRO.** Was a Chief Restructuring Officer hired during the CCAA proceeding? 1= yes; 2 = no.

**CeoOut.** Did the pre-filing CEO leave before, during, or after the CCAA proceedings. 1= yes; 2 = no.

**DirectorsOut.** Did pre-filing board members leave before during or after the CCAA proceedings? 1= yes; 2 = no.

**DirectorClaims.** Were claims against directors of the company compromised as per s. 5.1 of the CCAA? 1= yes; 2 = no. Give narrative on types of claims, e.g. pension claims.

CROSS BORDER ISSUES

**CrossBorderProtocol.** Is there a cross-border protocol? 1 = yes, 2 = no.

**CBNature.** What is the nature of the cross-border proceeding?

1 = Concurrent CCAA and Chapter 11 U.S. *Bankruptcy Code* proceeding

2 = CCAA proceeding with s. 304 U.S. *Bankruptcy Code* Ancillary proceeding.

3 = Section 18.6 CCAA Ancillary Proceeding with Chapter 11 U.S. *Bankruptcy Code*

Please note, effective October 1, 2005, the new Chapter 15 of the U.S. *Bankruptcy Code* will come into effect, incorporating the Model Law on Cross-Border Insolvencies and replacing the s. 304 scheme. The terminology on a going forward basis will include:

4 = Concurrent CCAA Main Proceeding and Chapter 11 Concurrent Proceeding

5 = CCAA proceeding (Foreign Main Proceeding, Canada) and U.S. non-main proceeding under Chapter 15.

6 = U.S. Main Proceeding (Chapter 11 or other chapter U.S. *Code*) and s. 18.6 CCAA ancillary proceeding (foreign non-main proceeding)

There is also draft legislation pending in Canada, introduced in June 2005, which, if enacted, would adopt portions of the Model Law on Cross-Boarder Insolvencies (2<sup>nd</sup> reading expected in Parliament in September 2005).

**CrossBCaseNamePet.** This is a narrative field and is meant to facilitate the recording of the petitioners in a cross-border concurrent case. Other information to include in this field (where

available): information about the US DIP financing and extra employee information regarding cross-border cases that does not fit into another variable in the Protocol and database.

**CBSanctionDate.** If applicable, indicate the date that the court sanctioned the cross-border plan. We are not specifically searching for this information but are only including this data when we find it during our research for the other fields.

**SupUSCred.** Indicate the percentage of US creditors that supported the plan. We are not specifically searching for this information but are only including this data when we find it during our research for the other fields.

## APPEALS

**Appeal.** Was there an appeal with respect to the case? 1= yes; 2 = no.

**JudgeAppeal.** What is the name of the court/judges who decided the appeal(s) and number of appeals? Separate judges names with a "/". If there is a dissent, indicate this by putting "(diss)" behind the name of the dissenting judge.

**NarrativeWhatAppeal.** Indicate the nature/subject of the appeal.

**LeaveGranted.** Was leave to appeal granted? 1 = yes; 2 = no.

**LeaveWhy.** Give a narrative description regarding why leave to appeal was or was not granted.

**OutcomeAppeal.** What was the outcome of the appeal? 1 = affirmed; 2 = dismissed; 3 = varied.

## IDENTIFIER

**CompIndexIdentifier.** This is the Standard & Poor/TSX Composite Index (S&P/TSX) identifier for the debtor firm's corporate group where the debtor is an issuing corporation. The identifier is obtained from <http://www.tsx.com> and allows for comparison of listed information during and after CCAA proceedings, including, under "Company Snapshot", annual financial projections, revenue and losses, return on equity, number of employees e.g. TSX:AGA is the identifier for Algoma Steel. Please note we are recording this information is for the **emerging company**.