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Virginia Torrie, Reninventing Bankruptcy Law, A History of the Companies' Creditors Arrangement Act (Toronto: University of Toronto Press, 2020) 312 pp., CAD75 (hardback) ISBN 978-1-4875-0642-1

Review by Rebecca Parry

Recent scholarship has identified a clear need to understand the workings of restructuring law in the light of its operation in practice and how actors, in particular secured creditors, have used legislative tools in imaginative and effective ways.[1] One of the most notable examples is Virginia Torrie's work on the cumbersomely named Canadian Companies' Creditors Arrangement Act, or CCAA, and the remarkable role of the courts in its development. This is an impressive piece of scholarship, bringing together insightful historical analysis with socio-legal approaches and other interdisciplinary methods. It brings out interesting complexities in various historical periods and tells how the CCAA was initially a skeletal bondholder remedy, enacted to protect financial institutions, rather to facilitate restructuring more generally. It then fell into limited use and was later seized upon as a debtor in possession restructuring regime, filling a gap in the law. Meticulous analysis demonstrates the initial limited purpose of the law and notes that wider public interest considerations, beyond the protection of financial institutions, were far from the minds of the legislature who enacted the CCAA, even if they grew in importance in its interpretation subsequently. The book engagingly details how the CCAA filled a gap in the law at a time when an effective restructuring regime was otherwise lacking and how its importance grew over time. An additional thread of analysis identifies an influential role for large secured creditors throughout the stages of

[1] See e.g. Sarah Paterson, *Corporate Reorganization Law and Forces of Change* (Oxford University Press, 2020).

the Act's history and this factor is identified as giving some explanation for the Act's longevity.

The book sets out the development of the Act chronologically, building a persuasive case. Central to this case is the legislative intention in enacting the CCAA. A meticulous early chapter clearly identifies the limitations of this intention. The purpose of the Act was for bond restructuring and the protection of financial institutions which have invested in bonds and this important analysis provides a foundation for insights in later chapters. Ideas that wider social considerations, such as employment preservation, might have been influential in the legislative process are refuted. The controversies at the time of the CCAA's enactment are also engagingly discussed. The book nicely brings out the nuances of one major controversy, which related to the competence of the Federal government to legislate in this area, since company law was a matter for provincial law. It identifies how the enactment of the CCAA, in enabling the adjustment of secured creditor claims, represented an expansion of Federal jurisdiction. It also highlights objections in the use of the CCAA to go beyond its use in relation to bonds and also to restructure unsecured debts. The objection to this usage in facilitating debt restructuring was that the Act enabled restructuring by a debtor in possession, a form of control that was not available under insolvency restructuring laws. Again, the findings from this section raise important and clearly established details that are built on later. A fairly turbulent history for the CCAA is also detailed and various thwarted reform efforts are discussed. Disputes as to the law in this early stage are examined from the perspectives of various interested parties.

The next major stage discussed in the book is the relatively dormant period for the Act, roughly from the 1940s to the start of the 1980s. The book discusses how, for the majority of this time, relatively stable economic conditions led to underuse of the Act, as clearly illustrated in a diagram in an Appendix. The book then turns to discussions of general insolvency reforms and the endurance of the CCAA through this.

With important historical details regarding the intended role of the law having been established there is then a particularly interesting chapter which identifies how judicial reasoning came to shape the role of the CCAA. An analytical framework of recursivity of law is persuasively used, building on earlier work by Halliday and Carruthers,[2] to identify a tension between relatively infrequently changing statute law and the CCAA in practice. The relatively short Act is seen as having offered considerable scope for judicial law making and there are examples of how the courts have driven the development of the CCAA as a restructuring device. A well-developed aspect of this analysis considers how a potentially troublesome section limiting the Act to companies which had issued outstanding debentures under a trust deed was addressed by companies which were not in this position. It describes how a tactical device of including a trust deed solely to comply with a requirement of the CCAA came to be endorsed by the courts and the chapter discusses and critiques well how the approach of the courts in this development can be regarded as controversial. This chapter contains a well-articulated discussion of how the approaches fitted in with theories of common law interpretation but a remarkable role for the courts in developing the law is set out. There are several examples of how restructuring guidelines issued by courts on a case by case basis have come to form enduring precedents. Therefore the transformation of the CCAA from a bondholder remedy to a sophisticated restructuring tool is identified as having been done through various ad hoc judicial decisions which proved to be enduring. It is these cases that have enabled new ideas to take hold and influence the development of the law, rather than relatively infrequent legislative reforms. The role of secured creditors, as large and sophisticated repeat players, in shaping legal developments to address restructuring crises is also clearly identified.

Meticulously researched and referenced this book is a major contribution to insolvency scholarship. It is also a well-presented book, which would hold interest also for those with more general interest in the roles of the courts in legal development as well as in

[2] Terrence C Halliday and Bruce G Carruthers, 'The Recursivity of Law: Global Norm Making and National Lawmaking in the Globalization of Corporate Insolvency Regimes' (2007) 112 American Journal of Sociology 1135.

Canadian financial history. The methodology would be of interest to socio-legal scholars, not only those with interests in insolvency law. A small point is that the reader would have preferred footnotes rather than endnotes, given the richness of the literature that is cited.