

DAVIES

Issue 10

Insolvency Now

Business Insolvencies in Canada Hit a Record
Post-Pandemic High in 2023

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The information in this publication should not be relied upon as legal advice. We encourage you to contact us directly with any specific questions.

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As we predicted in earlier issues of *Insolvency Now*, the year 2023 reflected the expected increase in business insolvency activity.

In this issue of *Insolvency Now* we detail the following findings from our data:

- Business insolvencies reached the highest volume in 2023 since 2019, with a 41.4% increase over insolvencies in 2020 and a 30.7% increase over those in 2019. While detailed data is not available on the total assets, debt or number of employees of businesses that file, our analysis of business openings and closings and the requirement for repayment of government subsidized loans suggests that smaller businesses are driving the increasing filing rates.
- Business insolvencies spiked in Q4 2023, especially in Québec and Ontario. However, the proportion of commercial proposals versus bankruptcies decreased, suggesting potentially fewer refinancing options for businesses and that an increasing number of smaller businesses versus larger businesses are filing.
- Construction, accommodation and food services, and retail were the sectors with the greatest business insolvency activity in 2023, while professional, scientific and technical services also experienced a significant rise in filings.
- Receiverships returned to the elevated levels of 2019 and 2020 in terms of volume, but the value of declared assets was significantly lower in 2023.
- CCAA proceedings also increased substantially in 2023, with the highest activity in the manufacturing and retail sectors and in Québec, Ontario, Alberta and British Columbia.

Next, we consider the outsized role of small businesses in Canada and the data on openings and closings. We conclude by reviewing the high level of insolvency-related leave applications to the Supreme Court of Canada and note the potential case law implications that we are watching and will report on in future *Insolvency Now* issues.

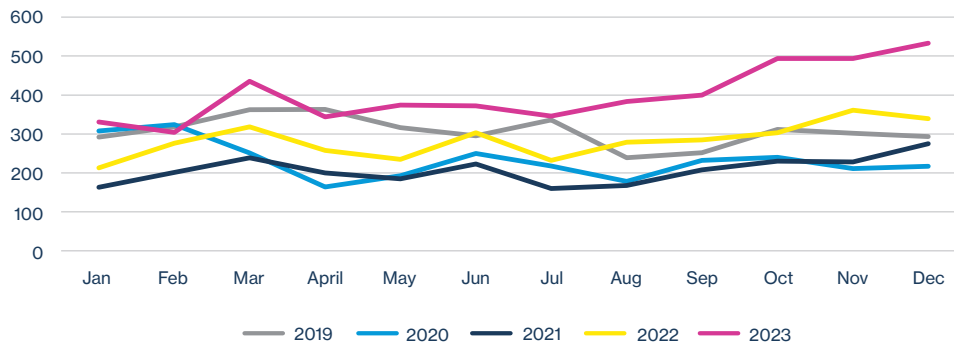
Davies Insolvency Now is a publication authored by [Natasha MacParland](#), [Robin B. Schwill](#) and [Stephanie Ben-Ishai](#) that analyzes key trends and developments in the insolvency and restructuring community.

Business Insolvencies in 2023: A Comparative Overview

The year 2023 saw a total of 4,810 businesses file for insolvency in Canada, which marked the largest annual volume since we began tracking insolvency data in 2019. This total annual volume is a 41.4% increase since the previous year. It is also a 30.7% increase compared with the second-highest annual volume tracked, which was the total number of business insolvencies in 2019. It appears that businesses continue to struggle with managing higher input costs as well as costs to service or refinance accumulated debts through 2023.

As shown in Figure 1, total business insolvencies rose 34.7% over Q3 2023 levels, from a total of 1,129 filings to 1,521 filings. Specifically, recently released data from the Office of the Superintendent of Bankruptcy indicate that business insolvencies rapidly picked up in Q4 2023. Compared with the Q4 data from previous years, total business insolvencies rose 67.7% from 2019 levels, 127.7% from 2020 levels, 107.5% from 2021 levels and 51.6% from 2022 levels.

Figure 1: Total Business Insolvencies in Canada



Over 2023, a total of 1,108 business proposals and 3,702 business bankruptcies were recorded. This meant that, overall, business proposals made up about 23% of all filings, and business bankruptcies made up the remaining 77%. The proportion of business proposals notably decreased in November and December 2023. From January to September 2023, on average, business proposals made up 24.1% of total insolvencies. However, this proportion decreased to 22.2% in November and reached a low of 16.3% in December. As shown in Figures 2 and 3, a decrease of business proposals corresponds to a hike in business bankruptcies, which could indicate fewer viable refinancing options available to businesses.

Figure 2: Business Bankruptcies in Canada

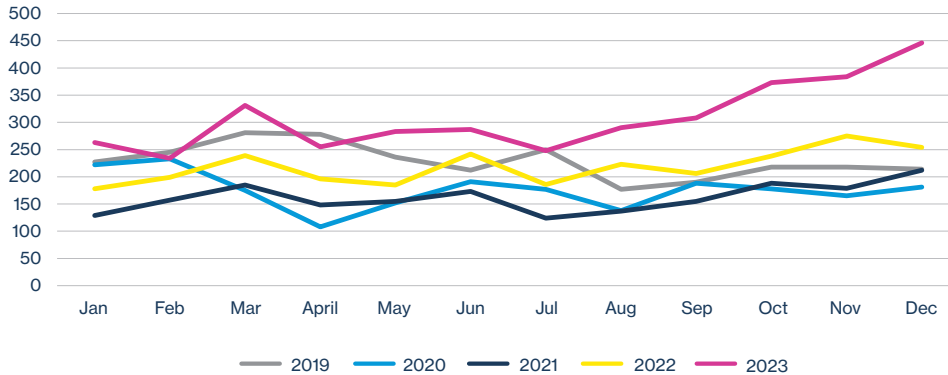
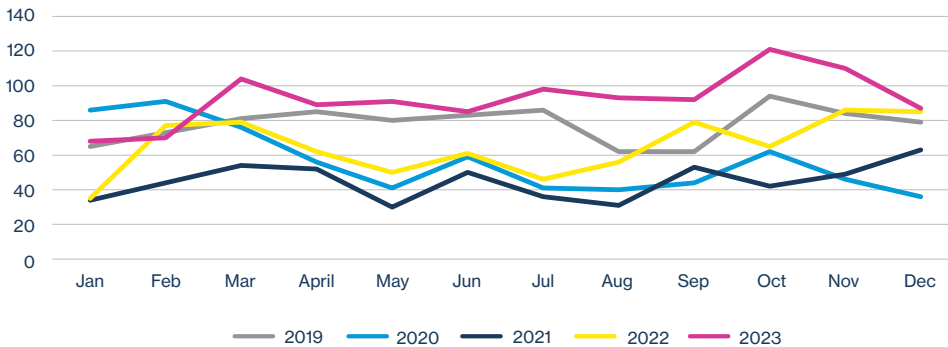


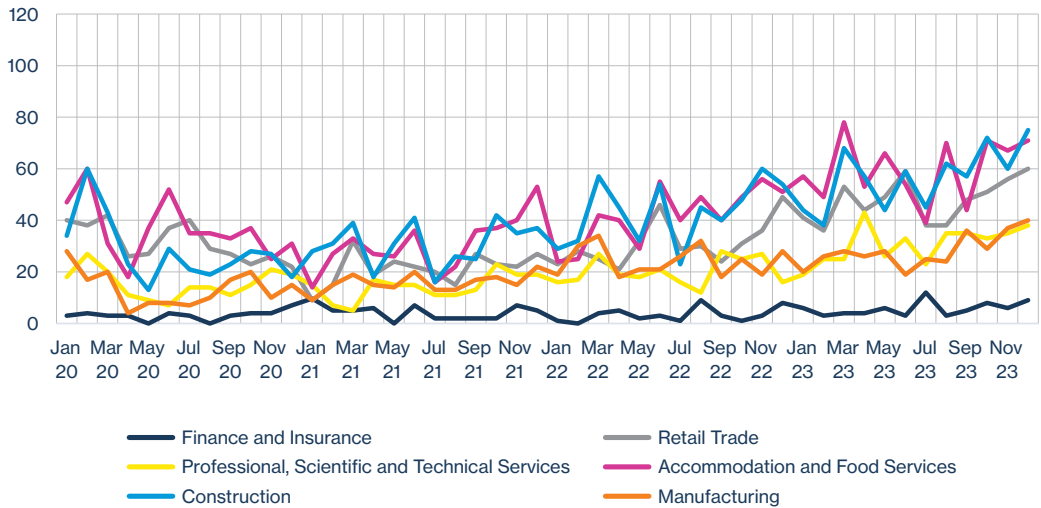
Figure 3: Business Proposals in Canada



From a geographical perspective, almost all of the Q4 2023 spike results from an increase in business insolvencies in Québec and Ontario. As mentioned above, the total number of business insolvencies grew by 392 filings between Q3 and Q4 2023; 99% of this growth—that is, 388 out of 392 filings—can be accounted for by filing increases in Québec and Ontario. From Q1 to Q3 2023, the total number of business insolvencies averaged 642 per quarter in Québec and 282 per quarter in Ontario. In Q4, business insolvencies rose significantly to 886 incidences in Québec and 435 filings in Ontario.

A notable observation that may persist into 2024 is the increase in business insolvency filings in Saskatchewan. The monthly average of filings from Saskatchewan has been 4.5 filings per month from Q1 to Q3 of 2023. In Q4 2023, however, the monthly average of filings hiked to 6.7 filings, indicating a spike of almost 50%.

Figure 4: Total Insolvencies in Most Affected Sectors, 2019-2023



When analyzed by sector, construction, manufacturing, retail trade, finance and insurance, professional, scientific and technical services and accommodation and food services all saw significant increases in business insolvencies from 2022 to 2023. In total, these sectors had reported 1,942 insolvencies in 2022, which grew to 2,762 reported insolvencies in 2023, a growth of 42.2%.

As shown in Figure 4, of these notable sectors, construction and accommodation and food services continue to experience the highest volume of insolvencies. Over 2023, the construction sector had 681 business proposals and bankruptcies, a rise of 19.1% from 519 proposals and bankruptcies in 2022. For accommodation and food services, the increase was 43.8%, from 500 business proposals and bankruptcies in 2022 to 719 in 2023.

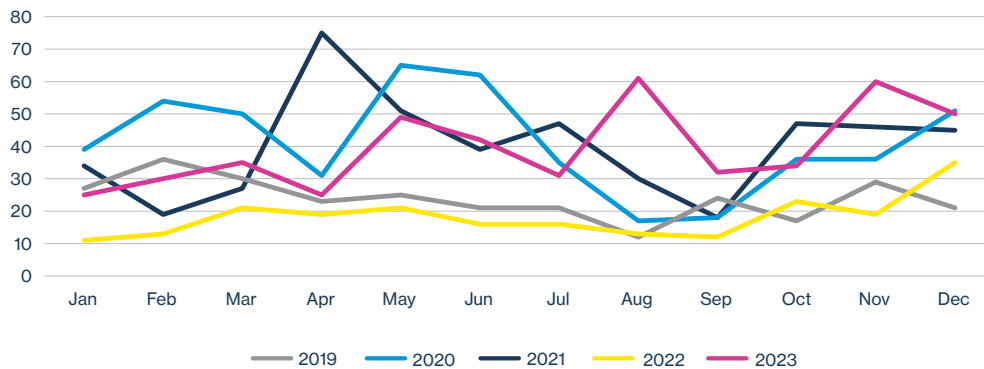
The retail trade sector experienced a relatively lower volume of insolvencies than the construction and accommodation and food services sectors. Insolvencies in retail trade continued to be volatile in 2023, averaging 47.8 filings per month with a low of 36 filings in February and the highest volume of 60 filings in December. Compared with the 2022 data for the retail trade sector, there was an increase in business insolvencies in 2023. The average monthly filing volume was 31.2 in 2022—that is, 34.7% lower than 2023 levels.

Since our previous discussion of the professional, scientific and technical services sector in [Issue 9](#), business insolvencies in this sector have continued to grow. After its peak of 43 filings in April 2023, monthly filings averaged 32.3 filings for the rest of the year and ended 2023 with 38 filings in December 2023. By comparison, average monthly filings for this sector was 20.2 filings in 2022 and only 14.2 filings in 2021. It remains to be seen whether business conditions for the professional, scientific and technical services sector will stabilize or continue to worsen in 2024.

Receiverships: Fluctuating Volume and Decreasing Asset Values

As Figure 5 reveals, 2023 started off with a comparatively lower volume of receiverships, but saw spiked volumes in May, August and November as the year went on. Annual receivership volume in 2023 totalled 474, which is 116.4% higher than the total of 219 receiverships in 2022 and 65.7% higher than a total of 286 receiverships in 2021. In fact, 2023 saw a return to the elevated 2019 and 2020 levels of receiverships, which were at 478 and 494 cases, respectively.

Figure 5: Receiverships in Canada by Volume



This general observation continues to hold true when the aggregate number of receiverships is broken down into court-appointed and privately appointed receiverships, as shown in Figures 6 and 7, below.

Figure 6: Court-Appointed Receiverships in Canada by Volume

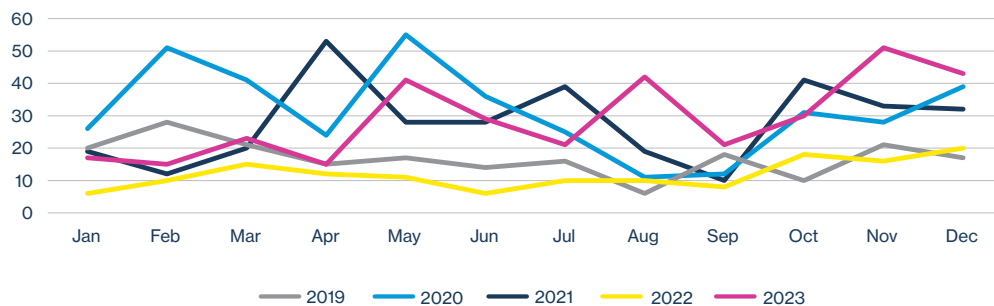
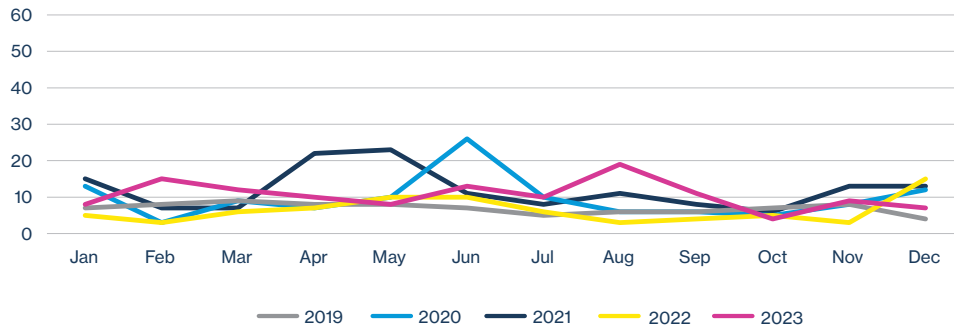
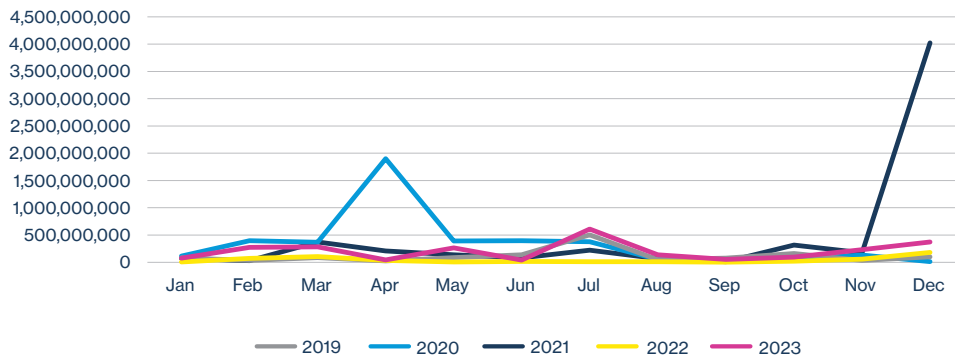


Figure 7: Privately Appointed Receiverships in Canada by Volume



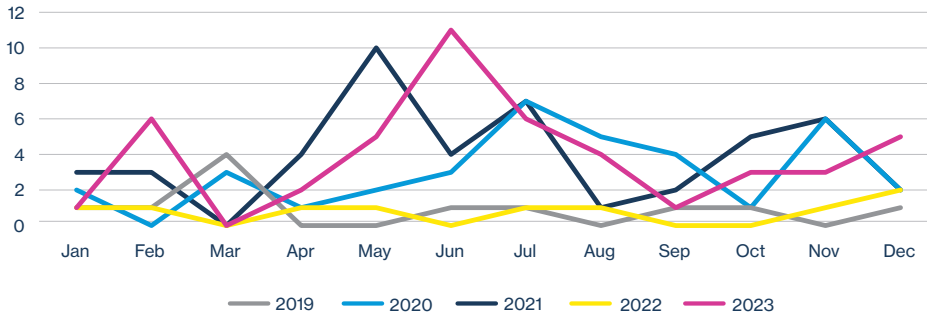
Even though the number of receiverships is comparable to 2019 and 2020 levels, the total dollar value of declared assets in receiverships in 2023 is well below 2019 and 2020 levels. Specifically, \$2.48 billion assets were declared in 2023, but \$5.73 billion and \$4.23 billion assets were declared in 2019 and 2020 respectively. This data indicates a 56.7% decrease from 2019 and a 41.4% decrease from 2020.

Figure 8: Receiverships in Canada by Value of Declared Assets (\$)



The provinces that experienced the highest number of receiverships in 2023 were Ontario, Alberta, British Columbia and Québec. The top three jurisdictions for the number of receiverships were Ontario, Alberta and British Columbia—this is consistent with historical trends, though Québec saw a much higher number of receiverships in 2023. Québec’s annual total was 47 receiverships, when its annual totals for 2022 and 2021 were 9 and 11 respectively.

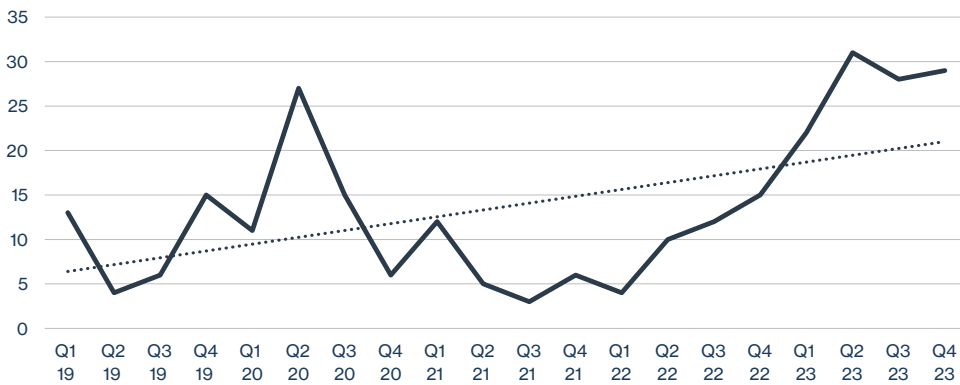
Figure 9: Québec Receiverships



CCAA Activity Surged in 2023: Four Provinces Dominated

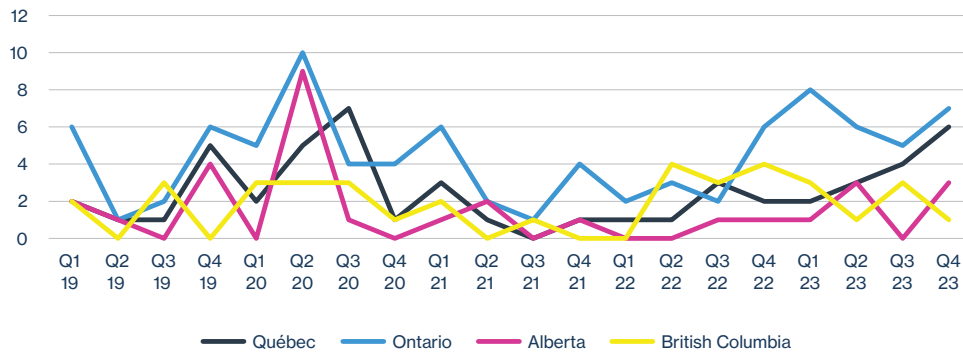
The number of CCAA proceedings in 2023 totaled 110 proceedings, as compared to 41 proceedings in 2022 and 26 proceedings in 2021. Following a significant hike in activity between Q1 and Q2 2023, there has been a stable and high level of CCAA activity from Q2 2023 onwards. 39 cases, or 35.5% of all 2023 proceedings were relevant to the manufacturing sector, with the second highest CCAA activity observed in the retail trade sector at 17 cases or 15.5% of all proceedings.

Figure 10: CCAA Proceedings in Canada



As shown in Figure 11, four provinces—Québec, Ontario, Alberta and British Columbia—reported the highest number of CCAA proceedings in 2023. This is consistent with historical trends.

Figure 11: CCAA Proceedings by Highest Volume Provinces

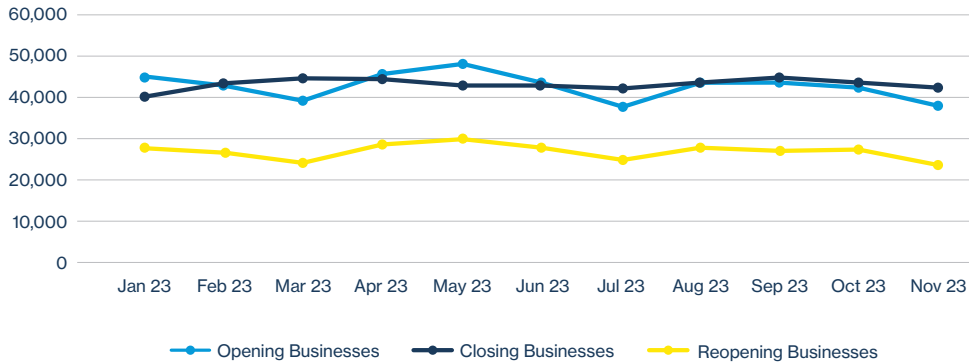


The Outsized Role of Small Business in Canada

According to Innovation, Science and Economic Development Canada, there were about 1.22 million small businesses with employees in Canada at the start of 2023. These small businesses employ 5.7 million individuals in Canada, which accounts for 46.8% of the total private labour force. Approximately 900,000 small businesses faced a deadline on January 18, 2024 to repay interest-free Canada Emergency Business Account (CEBA) loans of CAD\$60,000 made available to them during the pandemic. Any business that repays the bulk of the loan by January 18th can see up to \$20,000 of the loan forgiven (Source: CEBA Program). By February 2024, the Minister of Finance estimated that 25%, or 180,000 of these businesses, have not yet repaid their CEBA loans. These businesses must now make monthly payments for two years at 5% annual interest. Of the estimated 720,000 businesses that have repaid the CEBA loan, the Canadian Federation of Independent Businesses estimates that 31%, or 225,000 small businesses, took out a bank loan, at prevalent high interest rates, to repay its CEBA loan (source: Reuters).

Statistics Canada estimates the number of businesses that open, close or continue operations across Canada on a monthly basis. Between January and June 2023, the number of businesses that closed per month averaged 42,825 enterprises. For the second half of year, excluding December 2023, the average monthly rate of business closures has grown to 43,168 closures. This difference can indicate increased pressure faced by businesses due to prolonged periods of economic uncertainty and inflationary pressures.

Figure 12: Experimental Estimates for Business Openings and Closures in Canada



The decrease in business openings in November 2023 was widespread across sectors. Professional, scientific and technical services (a decrease of 817 openings compared with October 2023) led the decline, followed by construction (a decrease of 687) and transportation and warehousing (a decrease of 382). The largest declines in active businesses were in other services (except public administration, which saw a -0.5% growth rate, a decrease of 390 active businesses compared with October 2023), construction (-0.3%; -337) and professional, scientific and technical services (-0.2%; -288). We are continuing to monitor the impact of the combination of economic uncertainty and the CEBA loan repayment requirements on business opening and closing activity going forward.



A Snapshot of Leave Applications to the Supreme Court of Canada

The active and increased business insolvency in 2023 was matched by the insolvency activity in the form of leave applications to the Supreme Court of Canada. In the period between April 2021 and December 2023, 11 insolvency-related applications for leave were filed before the Supreme Court of Canada. Out of these 11 cases, four were granted leave and five were dismissed, while two are still pending.

The leave applications cover a range of legal issues that intersect with insolvency, including the corporate attribution doctrine, “template” initial orders, tolling orders, duties and liabilities of bankruptcy trustees, the types of debts not included in a bankruptcy discharge, reverse vesting orders and third-party releases, limitations of the *Indian Act* on receiverships over on-reserve property, the relationship between a pre-filing and a post-filing claim under tax legislation, the treatment of student loan debt and the super-priority status of environmental claims.

The average time between filing a leave application and a decision on the leave application was approximately eight months where the leave was granted and seven months where the application was dismissed. We will report further on notable developments in these decisions in a future issue.

As we move into 2024, with global economic uncertainty persisting, we will continue to provide data-driven insolvency insights based on our deep analysis of current and historical data. We also look forward to continuing to give meaning to notable case law developments in the context of our detailed data analysis.

Key Contacts

Across novel sectors, Davies has deep expertise in applying our data-driven approach to provide the most appropriate tools for recovery and resolution. Whether providing an early-stage overview or advising on a range of remedial options, we work with you to navigate your unique circumstances and reach your business goals. Please contact any of the individuals listed below or visit our website at www.dwpv.com.



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