When Receiverships Collide with Bankruptcy: Practical Lessons from the U.S. and Canada

By Ashley Jericho, John Leslie, Blair McRadu and David Seifer

Ashley Jericho is Of Counsel in Dickinson Wright's Troy, Mich. Office. Blair McRadu is Of Counsel, and David Seifer and John Leslie are partners, in Dickinson Wright's Toronto office.

Receiverships and bankruptcy proceedings often share objectives, including preserving value, centralizing control and maximizing recoveries, but involve different decision-makers and different statutory frameworks. Those differences matter, particularly when a distressed business has assets, creditors or legal proceedings on both sides of the U.S./Canada border.

Ashley Jericho
Dickinson Wright PLLC; Troy, Mich.

In Canada, court-appointed receiverships have emerged as a common enforcement tool used by secured creditors to manage collateral assets pending a court-supervised sale and vesting order. In the U.S., receiverships are also used by secured creditors to control collateral assets, but a later bankruptcy filing can presumptively displace the receiver unless the bankruptcy court excuses turnover under § 543 of the Bankruptcy Code. This article highlights practical points for cross-border practitioners when receivership proceedings collide with bankruptcy relief.

Canadian Receiverships Generally

In Canada, receiverships are among the most frequently used insolvency remedies. Canadian secured lenders typically hold security over substantially all of a debtor's assets through general security agreements and debentures registered under provincial personal property security legislation. This security structure makes receivership an attractive enforcement tool: Once a default occurs, a secured creditor can move quickly to appoint a receiver, take control of the debtor's assets, and realize on its collateral without requiring creditor votes, court-approved plans or the debtor's cooperation. For a first-ranking secured creditor, receivership is often the most direct path to recovery.

Receiverships in Canada are governed primarily by the Bankruptcy and Insolvency Act (BIA).[1] Section 243 of the BIA grants provincial superior courts broad authority to appoint a receiver whenever it is "just or convenient" to do so. A creditor must give a debtor notice before it applies to appoint a receiver. Section 244 of the BIA requires the appointing creditor to give 10 days' advance notice to the debtor that the creditor intends to enforce its security, subject to exceptions for fraud or dissipation of assets.

Court-appointed receivers act as officers of the court and owe duties to all stakeholders, not only the appointing creditor. Their powers are defined by the order appointing the receiver, which in most Canadian jurisdictions follows a standard precedent form developed by the insolvency profession. This appointment order typically includes, among other things, a stay of all proceedings against the debtor, its property and the receiver, and grants the receiver the power to deal with the debtor and its property, to the exclusion of management.

John Leslie
Dickinson Wright LLP; Toronto

Where a receiver is concurrently appointed as manager (a "receiver-manager"), it can operate and manage the business of the debtor until it can be sold as a going concern. Sales conducted by a court-appointed receiver generally require court approval. The leading authority on the applicable criteria is *Royal Bank of Canada v. Soundair Corp.*,[2] in which the Ontario Court of Appeal identified the following core considerations: whether the receiver made sufficient efforts to obtain the best price, whether the receiver acted properly, whether the interests of all parties were considered and whether there is any unfairness in the sale process that would justify withholding approval. These principles remain the standard framework applied by courts across Canada when reviewing contested receivership sales.

A significant advantage of court-approved receivership sales is the availability of a vesting order. Upon approving a sale, the court will typically grant a vesting order that transfers title to the purchased assets to the buyer free and clear of all liens, claims and encumbrances. The vesting order provides clean title regardless of the complexity of the debtor's security register or the number of competing claims. Any such liens, claims and encumbrances are made as against the net proceeds of the sale of the assets in receivership. The receivership proceeding creates a forum for the final determination of the nature and priority of claims against the assets in receivership.

Vesting orders are particularly valuable in transactions involving real property, intellectual property or assets subject to multiple layers of secured and unsecured claims,

1 R.S.C., 1985, c. B-3.

2 [1991] OJ No 1137 (Ont CA).

David Seifer
Dickinson Wright LLP; Toronto

as they eliminate the need for individual discharges and provide the purchaser with certainty of title from the moment the order is granted. The availability of this remedy is one of the features that makes a court-supervised receivership sale attractive to prospective purchasers and, by extension, tends to generate stronger bids and better recoveries for creditors.

Receivers owe statutory duties under sections 247 to 252 of the BIA, including duties to act honestly and in good faith, to deal with the property of the debtor in a commercially reasonable manner, and to prepare and file prescribed reports. A receiver who fails to meet these obligations may be found liable to affected parties and may be removed by the court. The court retains ongoing supervisory jurisdiction throughout the receivership and may issue directions, approve or vary the receiver's conduct and discharge the receiver upon completion of its mandate.

Other Canadian Insolvency Proceedings

In Canada, receiverships are typically an alternative to other insolvency proceedings, such as bankruptcy under the BIA (a formal liquidation process roughly equivalent to chapter 7 bankruptcy) or debtor-in-possession proceedings under the Companies' Creditors Arrangement Act[3] (CCAA) (roughly equivalent to chapter 11 bankruptcy). It is not unusual for a court to be faced with competing applications from the creditor for a receivership and from the debtor for CCAA protection. Once a receiver is appointed, the debtor cannot be assigned or petitioned into bankruptcy without lifting the stay of proceedings, whether through consent of the receiver or court order.

However, Canadian receiverships can, and do, transition into other insolvency proceedings. For example, following a sale of all or substantially all of the assets of the debtor, a receiver may obtain court approval to assign the debtor into bankruptcy to "reverse" the statutory priorities of certain governmental claims, so that the secured creditors have a priority to the proceeds of sale, resulting in the governmental claims ranking as unsecured.

Canada has seen cases where a receiver or secured creditor has applied to convert a receivership into a CCAA proceeding to take advantage of the greater flexibility and broader powers of court under that statute. Courts have also terminated CCAA proceedings and appointed receivers where restructuring is unlikely to benefit the debtor and creditors, or creditors have lost confidence in management.

U.S. Receiverships Generally

In the U.S., a receivership is an equitable remedy through which a court-appointed fiduciary takes possession of, manages, preserves and, when appropriate, liquidates a business or specific assets to protect creditor interests and prevent mismanagement, waste or misappropriation. The receivership order and applicable state or federal law define the receiver's powers. State and federal receiverships share bankruptcy-adjacent features, including centralized control, injunctive relief resembling a stay and court-approved sale processes, but they are generally less comprehensive than proceedings under the Code and vary significantly by jurisdiction.

State court receiverships are generally limited to property located within the state and are more common, particularly for entities ineligible for bankruptcy or in scenarios involving distressed real estate. Federal receiverships, by contrast, are often used when assets span multiple states and are more predictable, since they proceed under Rule 66 of the Federal Rules of Civil Procedure.

In federal receiverships, sales of assets are conducted under specific statutory procedures for real and personal property, and courts may stay litigation to protect the receivership estate. Because state court receiverships are jurisdiction-specific and driven largely by the appointment order, cross-border practitioners should focus on the scope of that order, the court's injunctive powers, the applicable sale procedures and how those features interact with any potential or parallel bankruptcy filing.

Receivership Orders Limiting or Prohibiting Bankruptcy Filings

Some receivership orders grant the receiver exclusive authority to file a bankruptcy petition, divest former management of that authority or purport to bar bankruptcy filings. As a general matter, a pending receivership does not itself prevent the filing of a voluntary or involuntary bankruptcy case. Where a bankruptcy case is filed during the pendency of a receivership, the bankruptcy court will examine whether the petition was properly authorized and what effect the filing has on receivership property. Courts are divided on whether a receivership order may strip former management of filing authority, with outcomes often turning on state corporate law, the order's language and whether the receiver was appointed over the entity or only its property.[4]

Receiver's Turnover Obligation Under § 543 of the Code

Assuming chapter 11 bankruptcy is duly filed by an entity whose property is subject to a receivership order, an immediate question is whether the debtor or the receiver is entitled to continued possession of and decision-making authority for the property. Section 543(a) of the Code provides the initial answer. Upon learning of the bankruptcy filing, the receiver, as a "custodian," must deliver to the debtor any property of the debtor that is in the receiver's possession, custody or control.

That turnover obligation, however, may be excused on motion "if the interests of creditors and, if the debtor is not

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3 RSC 1985, c C-36.

4 *See In re 530 Donelson LLC*, 660 B.R. 887 (Bankr. M.D. Tenn. 2024) (discussing distinction between receiverships over entities versus property).

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insolvent, of equity security holders would be better served by permitting a custodian to continue in possession, custody, or control of such property[.]"[5] The moving party bears the burden of proof by a preponderance of the evidence, subject to rebuttal by the debtor.[6]

Bankruptcy courts have significant discretion under § 543(a).[7] Most courts apply judicially created factors, including the likelihood of a successful chapter 11 case, the potential for creditor recovery and the severity of any debtor mismanagement.

In re Speyside Holdings LLC provides a recent example of a bankruptcy court denying a secured lender's motion to excuse turnover.[8] There, a receiver had been appointed over a 200-acre stone quarry in 2023, and the receiver's powers were expanded in 2024, apparently in response to ownership's engaging in transactions without court approval. The debtor filed chapter 11 in 2026 to sell the business, and the secured lender moved under § 543(d) to allow the receiver to remain in control.

The court denied the motion, finding that debtor mismanagement or misconduct, if any, was in the past, that chapter 11 provided sufficient safeguards to monitor future conduct, and that a receiver was not necessary to oversee the bankruptcy sale process. *Speyside* appears to be consistent with other bankruptcy court decisions denying turnover relief where gross mismanagement or self-dealing is absent.[9]

In re 1600 Western Venture L.L.C. illustrates the opposite result.[10] There, the court granted the secured lender's motion to excuse turnover after hearing evidence that ownership had siphoned off more than $1 million from a real estate project valued at roughly $10-12 million and had used those funds for personal expenses rather than LLC obligations. Although the court applied the same general factors used in other § 543(d) cases, the analysis was heavily influenced by the principals' extensive self-dealing and the resulting harm to creditors. The result in *1600 Western* is therefore unsurprising, and it also serves as a reminder that even less extreme instances of self-dealing or mismanagement can materially increase the risk that a bankruptcy court will leave the receiver in place.

Cross-Border Distinctions and Considerations

One practical distinction between Canadian and U.S. receiverships is that a Canadian receivership often functions as the primary insolvency process, while a U.S. receivership can function as a primary insolvency process, but may be more vulnerable to displacement by a debtor-in-possession in a subsequently filed bankruptcy case. Canadian courts routinely supervise receivership sales, approve distributions and use vesting orders. In the U.S., receivers can be authorized to take similar actions, but, by contrast, may find some operating businesses challenging to sell if counterparties to executory contracts are not willing to consent.

These distinctions affect strategy. A Canadian secured creditor might expect the receiver to remain the central actor through sale and distribution, with little or no likelihood of contentious displacement. A U.S. debtor, equity sponsor or junior creditor may view chapter 11 as an opportunity to wrestle control of assets from the receiver, to test the sale process and invoke the other protections under the Code. Conversely, a secured lender that is successful in having a U.S. receiver appointed should be prepared for a potential bankruptcy filing and to show why the receiver's continued control over the debtor's management and/or property better serves creditors, particularly where there is evidence of self-dealing, dissipation of assets, poor recordkeeping or other conduct that makes control by the debtor-in-possession risky.

Cross-border cases also require early consideration of recognition of decisions made by and comity between the foreign courts. A Canadian receivership with U.S. assets may require chapter 15 recognition before U.S. courts so that counterparties in the U.S. will be compelled to give full effect to the Canadian stay, sale process or vesting order. Similarly, a U.S. bankruptcy court may need Canadian court assistance to protect assets held or stay litigation pending in Canada. Practitioners should identify the debtor's center of main interests, identify where the key assets and creditors are located, determine whether provisional relief will be needed during any recognition gap, and determine whether the chosen forum can deliver the relief needed to complete a sale or restructuring.

Unlike most Canadian receiverships, one should not assume the first-filed proceeding in the U.S. will control all later events. Counsel should review the receivership order for scope, bankruptcy-filing authority, sale powers, stay language and reporting obligations, and evaluate any anticipated chapter 11 or chapter 15 filing before the receiver's sale process reaches a critical stage. Where proceedings may overlap, counsel should build a record showing why the selected forum and fiduciary best preserve value, protect creditors and avoid duplicative costs.

Conclusion

Receiverships can be efficient remedies, but they operate differently in Canada and in the U.S. Canadian receiverships often function as the principal insolvency forum, while U.S. receivers are presumptively required to yield to a bankruptcy case unless the court excuses turnover.

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5 11 U.S.C. § 543(d)(1).

6 *See, e.g., In re Franklin*, 476 B.R. 545, 551 (Bankr. N.D. Ill. 2012).

7 *See In re Packard Square LLC*, 575 B.R. 768, 778 (Bankr. E.D. Mich. 2017), *aff'd, In re Packard Square LLC*, 586 B.R. 853 (E.D. Mich. 2018).

8 No. 26-70730-SPG, 2026 WL 1436894 (Bankr. E.D.N.Y. May 21, 2026).

9 *See, e.g., In re Novus Structures Inc.*, 653 B.R. 429, 443 (Bankr. N.D. Ill. 2023) (denying motion despite debtor's failure to pay taxes where movant did not show that chapter 11 was likely to fail).

10 677 B.R. 438 (Bankr. N.D. Ill. 2026).

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In cross-border matters, the best results usually come from anticipating the collision before it occurs by selecting the right forum, preserving evidence supporting the chosen fiduciary, and obtaining recognition or provisional relief where assets and creditors span both countries. For secured creditors, debtors and purchasers alike, the key is not merely knowing that receiverships and bankruptcy can coexist, but understanding when one process may overtake the other. abi