

DAVIES

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DAVIES

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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In this issue of *Insolvency Now*, we report on the data trends we are seeing at this point in 2024 in comparison with when we first started tracking data in 2019. Overall, we are seeing a marked increase in filings. However, we are not seeing the level of sector-specific distress that might have been expected in these filings. For example, we have not yet seen an impact on commercial real estate filings resulting from rising interest rates and changing work patterns that have affected commercial real estate values and occupancy rates. This effect will likely take time to be reflected in the data, with delayed response times to interest rate increases and cuts. In addition, we aren't seeing a clear-cut pattern in retail and hospitality – sectors that continue to face significant challenges resulting from increased online competition and the lingering effects of the pandemic.

While we do not report on personal insolvencies in *Insolvency Now*, we do note that personal insolvency rates have risen faster than corporate rates, and this too will have an impact on various corporate sectors. The inflationary pressures combined with debt accumulation during the pandemic and repayment terms coming due are likely significant contributors to the increase in filings. In particular, mortgage renewals at higher rates were prior to the Bank of Canada's recent rate cuts.

We note that Q1 and Q2 of 2024 operated quite differently: Q1 experienced most of the increases in filings, whereas Q2 had returns to similar levels in the same quarter in 2023.

In this issue of *Insolvency Now*, we also report on business openings and closings in the current period and compare this data with earlier data. Although Q1 2024 appeared to suggest an increase in insolvency filings across the board, we also saw an increase in net business openings in that quarter. In contrast, Q2 2024 experienced a drop in insolvency filings and a net decrease in business openings. This trend leads us to question whether there are, in fact, enough filings and it illustrates the importance of corporate insolvency and restructuring procedures for encouraging entrepreneurial risk-taking.

Related to this observation, in this issue of *Insolvency Now*, we discuss the role and impact of stigma associated with corporate restructuring. The stigma associated with bankruptcy has been much explored in the context of consumer bankruptcy – that is, whether it still exists and how it affects individual debtor decisions to file. Much less has been written in the corporate restructuring context. Yet in our practice we are often confronted with this issue in the form of reluctance by a corporate debtor to initiate restructuring proceedings or denial that it is necessary.

In this issue, we highlight the key points that are often raised in relation to corporate bankruptcy stigma and the associated reluctance to use restructuring procedures, despite the benefits and, particularly, the potential downside of not filing. Our commentary underscores the importance of addressing stigma to increase the effectiveness of reorganization legislation in the Canadian context and to improve outcomes across the board. In advising clients, our goal is to offer a set of restructuring options that can be understood as strategic tools for proactive recovery rather than as a mark of failure.

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.

Misplaced Restructuring Stigma

Before considering the data on insolvencies and openings and closings, we open this issue of *Insolvency Now* by considering the key aspects of misplaced stigma related to restructuring that could be feeding into a debtor's hesitation to initiate reorganization proceedings.

KEY ASPECTS OF STIGMA OR HESITATION TO FILE

We have seen stigma explained and manifested both in academic studies and in our experience advising corporate debtors as follows:

- **Perception of Filing as a Last Resort.** Reorganization is often viewed as a last resort.
- **Moral and Emotional Dimensions.** This stigma is not just about financial failure but also about a perceived loss of integrity and responsibility.
- **Misinformation and Lack of Information.** Some debtors avoid filing owing to a lack of understanding or misinformation about its benefits and processes. This includes the misconception that initiating a filing, in particular filing under the *Companies' Creditors Arrangement Act*, is solely for liquidation, not reorganization.
- **Impact on Relationships.** There is often a fear that initiating proceedings can lead to the loss of relationships with creditors, suppliers and even customers, which further discourages businesses from considering this as an option.
- **Cultural Perceptions.** There is a broader cultural perception that reorganization can be seen as synonymous with failure. This perception needs to be addressed for reorganization to be a more viable option for struggling businesses.

DETRIMENTAL IMPACTS OF STIGMA

The perceptions of stigma associated with reorganization can significantly neuter the ability of reorganization tools to preserve value as intended. The following are some examples:

- **Delayed Filing**
 - > **Timing Issues.** Corporate debtors may delay filing until they are in dire financial straits. This delay can result in the depletion of valuable assets and resources that could have been preserved if reorganization options had been considered earlier. Even in the context of a liquidation, delayed filings often result in chaotic asset liquidation, reducing overall value.
 - > **Reduced Options.** By the time businesses consider filing, their financial situation may have deteriorated to a point at which reorganization is no longer viable, leaving liquidation as the only option.

— Stigma and Moral Dimensions

- > **Failure.** Some debtors associate the need to reorganize with failure, which discourages them from considering it as a strategic option. This stigma affects their decision-making process.
- > **Emotional Toll.** The emotional burden of perceiving the initiation of a filing as a failure can lead to stress and poor decision-making, further exacerbating financial difficulties.

— Underutilization of Legal Tools

- > This lack of understanding prevents businesses from taking advantage of a wide range of constantly evolving reorganization tools, including reverse vesting transactions and CBCA plans of arrangement, designed to help businesses maximize value that can be preserved. Various aspects of insolvency legislation are specifically designed to facilitate reorganization rather than liquidation. However, the “last-resort” mentality leads to missed opportunities for viable businesses to reorganize and continue operating.

Rebranding Corporate Reorganization

Strategic Approach. A strategic-focused rather than a stigma-focused approach to corporate reorganization would help avoid a business descending into crisis mode and would enable proactive management of financial distress. Corporate debtors can address issues before they become insurmountable, leading to better outcomes. Early filing can prevent the need for rushed asset sales at depressed prices, which often occur when businesses wait until they are in dire straits. Rebranding reorganization procedures from a last resort option to a strategic option can significantly enhance the effectiveness of insolvency legislation. This shift in perception can lead to earlier intervention, better asset preservation and more successful reorganizations, ultimately benefiting both debtors and creditors.

Preservation of Assets. Reorganization legislation is designed to provide a framework for early intervention, which can help preserve assets and maximize their value for both debtors and creditors.

Economic Stability. Effective use of reorganization laws can contribute to broader economic stability by allowing businesses to restructure and remain operational, thereby preserving jobs and economic activity.

Negotiation Framework. Shifting the focus away from stigma also provides a more effective negotiation framework through which debtors can compel concessions from creditors, potentially leading to more favourable terms and a path to recovery. Viewing reorganization as a last resort means this strategic tool is underutilized.

Fresh Start. One of the goals of laws in this area is to provide a fresh start for some businesses, enabling them to overcome short-term challenges and return to profitability. Stigma can work to prevent businesses from achieving this fresh start where that is, or was, a possibility.

KEY TAKEAWAYS

As restructuring lawyers, we have a key role to play in reducing stigma and emotional barriers. By rebranding reorganization as a strategic tool to help normalize its use we can help reduce the stigma and emotional burden associated with it. This can make more debtors willing to consider it as a viable option. By emphasizing the strategic benefits, such as preserving jobs and maintaining economic stability, the moral and emotional dimensions can be reframed in a more positive light. Reducing the stigma associated with reorganization allows corporate debtors to make more rational decisions based on financial realities rather than emotional fears. This can lead to better outcomes for all stakeholders.

PROMOTING EFFECTIVE COUNSEL

Many of us regularly speak to the media and, to this end, should consider promoting success stories – for example, highlighting successful reorganizations to demonstrate the positive outcomes of using insolvency legislation strategically. We can also continue to provide the public and the media with accurate information about the benefits and range of restructuring options available, correcting any misconceptions.

We would be happy to assist you or your clients in better understanding the way that reorganization can serve as strategic option rather than a last resort and provide a supportive legal environment to better utilize the appropriate regulatory framework to preserve value and achieve successful outcomes.

In the following section, we move on to consider the insolvency data trends for the first half of 2024.

Insolvency Data for First Half of 2024: Highlights

As shown in Figure 1, in 2023 we saw a total of 4,810 filings. In the first five months of 2024, we have already seen 3,084 filings. With June and July included, there have been 3,998 filings so far in 2024. January had 759 filings, the highest of any month since tracking started in 2019. As shown in Figure 2, in 2023, the average monthly number of bankruptcy filings was 309, whereas in 2024, the average monthly bankruptcies through July totalled 448.

Figure 1: Total Business Insolvencies in Canada

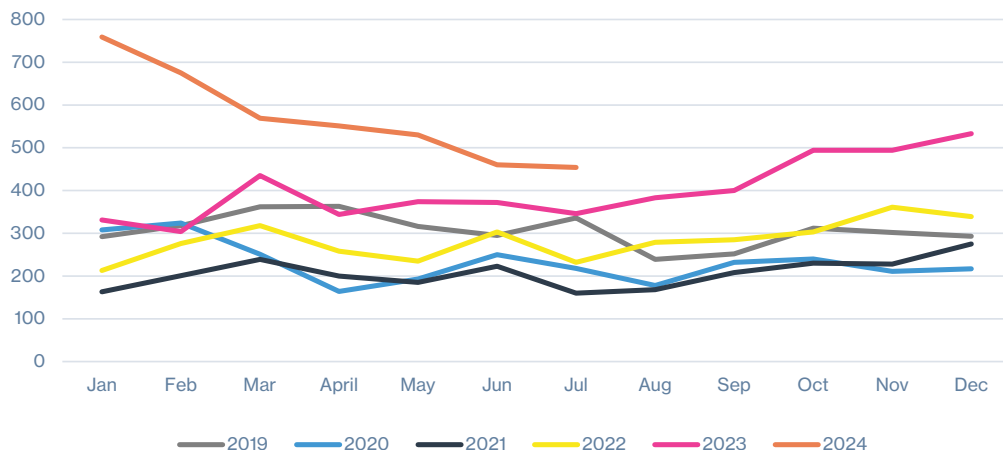




Figure 2: Total Business Bankruptcies in Canada

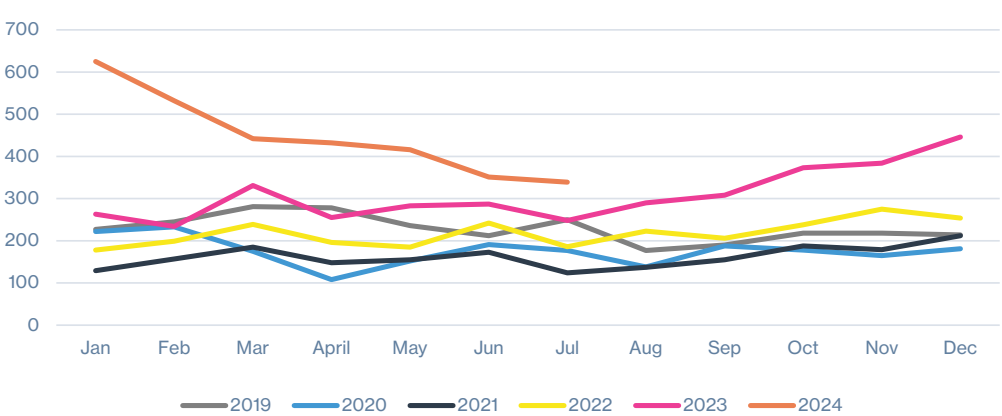
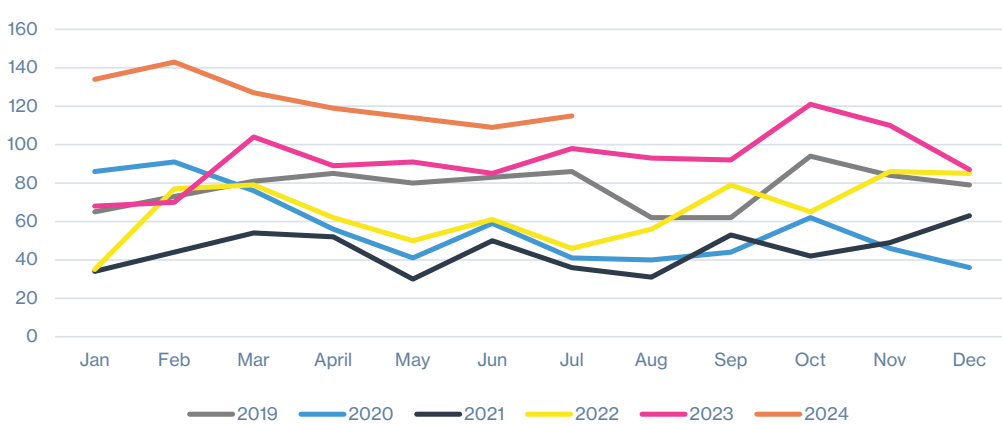


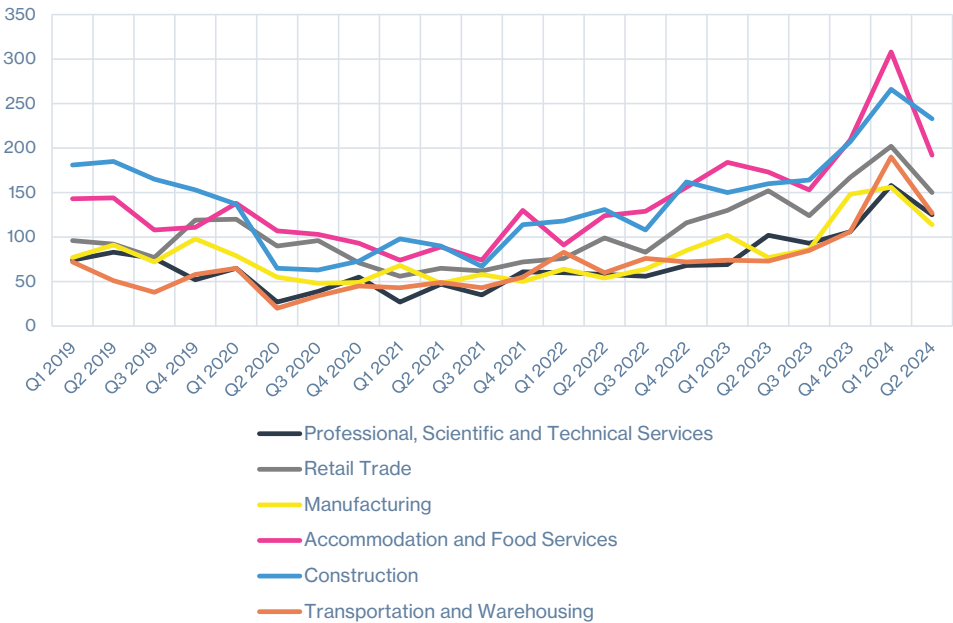
Figure 3: Business Proposals in Canada



BUSINESS INSOLVENCIES BY SECTOR

Business proposals in the retail sector continued at a similar pattern to the first half of 2023. The Arts/ Entertainment and retail sectors experienced a spike in bankruptcies in January (outliers to previous January numbers), but the numbers started declining significantly in February, bringing them closer to historical patterns. As shown in Figure 4, January 2024 had the highest total insolvencies in the accommodation and food services sector, but this was followed by a significant drop in March. In the construction sector, the total insolvencies have been steadily climbing over the past few years, hitting 92 in both March and May. Real estate bankruptcies were similar year over year, though proposals in June 2024 were up by eight filings year over year.

Figure 4: Total Insolvencies in Most Affected Sectors



RECEIVERSHIPS IN CANADA OVERALL

As shown in Figure 5, all months had the highest volume of total receiverships since 2019 or 2020. Court-appointed receiverships in 2024 were much higher than comparable months in 2023 (except February and May) at two to three times the previous year’s monthly numbers (see Figure 6). January had highest value of declared assets under receivership in one month, with five to six times the January 2022 and 2023 numbers.

Figure 5: Receiverships in Canada by Volume

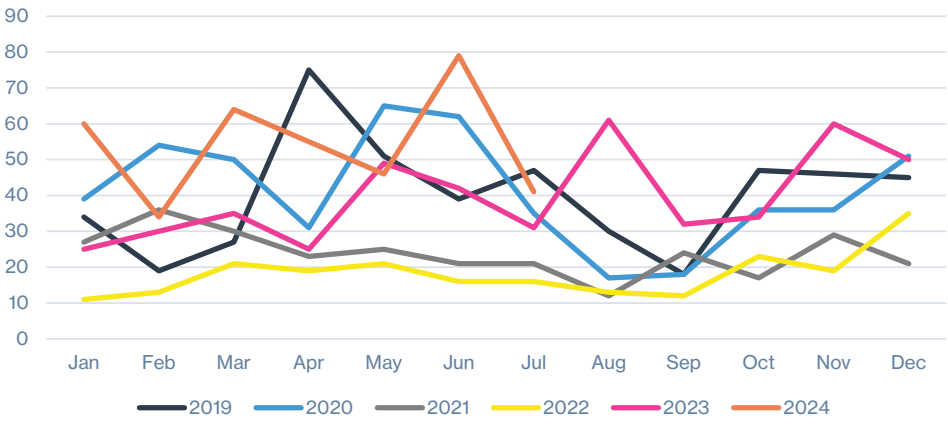
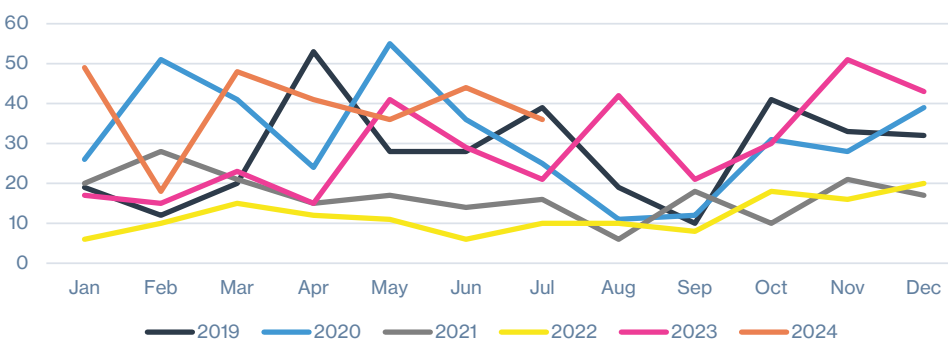


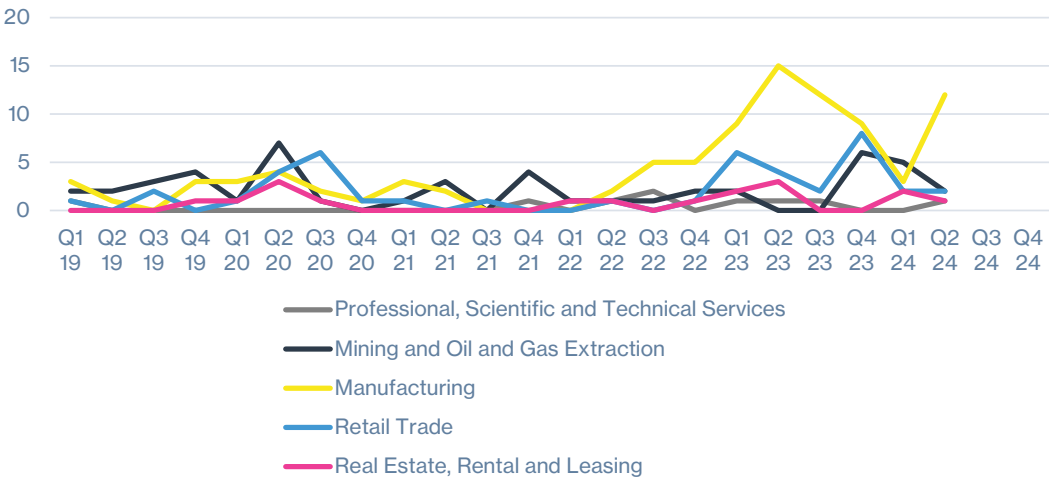
Figure 6: Court-Appointed Receiverships in Canada by Volume



CCAA BY SECTOR

The total number of CCAA filings in Q1 2024 is comparable to the total number in Q1 2023, but the sector mix changed significantly. There was a spike in agriculture, forestry, fishing and hunting filings in Q1 with the highest number recorded in one quarter since tracking began in 2019. As shown in Figure 7, in 2024, manufacturing filings dropped from 2023 results, with 27% of the quarterly average in 2023, or one-third of Q1 2023; however, we saw the strongest uptick in filings in this sector in Q2 2024. The Q2 2024 filings are similar in total and sector mix to those in Q2 2023. The number of CCAA filings in the retail trade sector was down 60% in the first half of 2024 compared with 2023. Q1 2024 had only two filings in this sector (compared with six in Q1 2023), and Q2 2024 had another two filings (down from four in Q2 2023). In the mining sector, CCAA filings rose in Q1 2024, with five filings (up from two filings in Q1 2023) and Q2 2024 had another two filings (there were no filings in Q2 2023).

Figure 7: CCAA Restructuring in Canada



BUSINESS OPENINGS AND CLOSINGS

Although Q1 2024 appeared to suggest an increase in filings across the board, that quarter also had an increase in net business openings. In contrast, Q2 2024, saw a drop in insolvency filings and a net decrease in business openings (see Figure 8). As shown in Figure 9, net business openings in Q1 2024 totalled 1,095 (131,318 openings and 130,223 closings), which is far different from Q1 2023 (-2,239). The net business openings in Q2 2024 were -978 (86,526 openings and 87,504 closings), also drastically different from in Q2 2023 (9,061). In the mining sector, there were 610 openings in Q1 2024, down

slightly from the 660 openings in Q1 2023; there were 640 closings in Q1 2024, down from 703 in Q1 2023. Through the first five months of 2024, openings and closings were similar to those in 2023: 1,038 openings and 1,081 closings in 2024 compared with 1,116 openings and 1,166 closings in 2023. In the retail sector, there were 14,309 openings and 14,422 closings through the first five months of 2024, with negative net business openings in each month since January. For the first five months of 2023, there were 483 net business openings, with only one month in the negative.

Figure 8: Business Openings and Closures in Canada

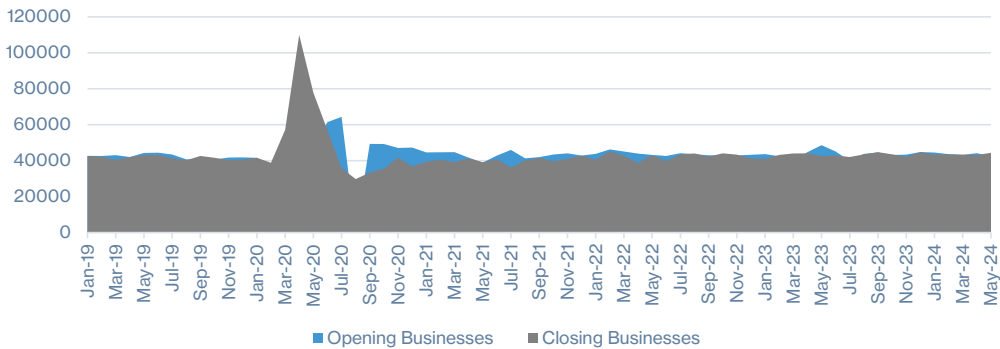
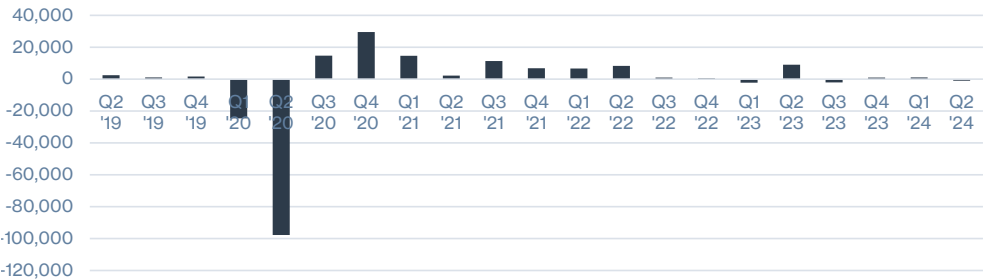


Figure 9: Net Business Openings in Canada by Quarter



Geographic Data Breakdown

The next section of this issue of *Insolvency Now* offers a geographic breakdown of the data by highlighting the provinces that are displaying key trends in bankruptcies and receiverships, as well as providing the overall breakdown for CCAA proceedings.

BUSINESS INSOLVENCIES BY PROVINCE

Filings spiked in January in Ontario (Figure 10) and Québec (Figure 11), up 163% and 130% respectively, with both hitting their highest monthly filing number (since tracking started in 2019) at 275 in January in Ontario and 410 in February in Québec. Newfoundland and Labrador filings (Figure 12) in the first five months were 60% of what they were in the last five months of 2023.

Figure 10: Bankruptcies and Proposals in Ontario

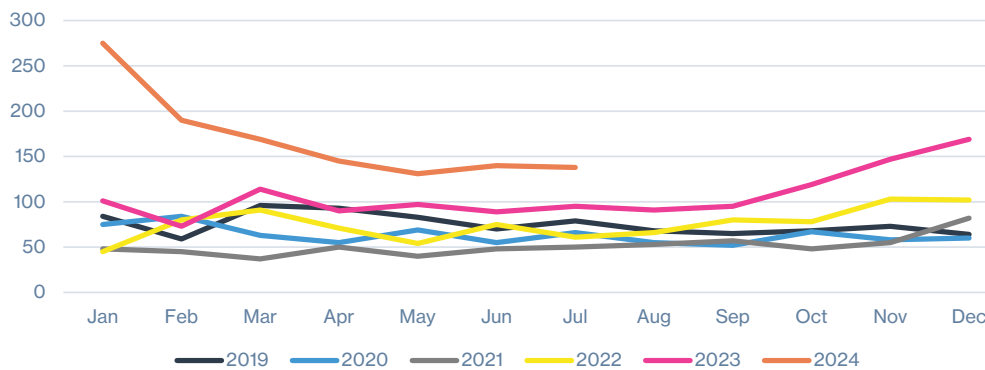


Figure 11: Bankruptcies and Proposals in Québec

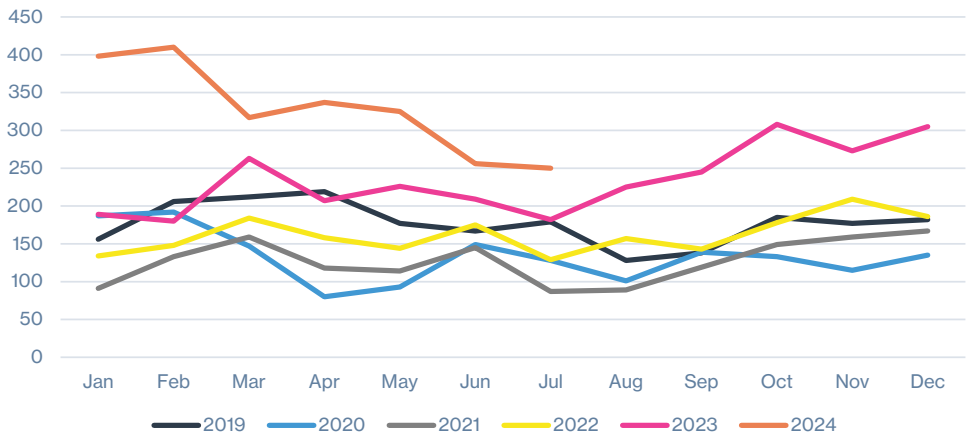
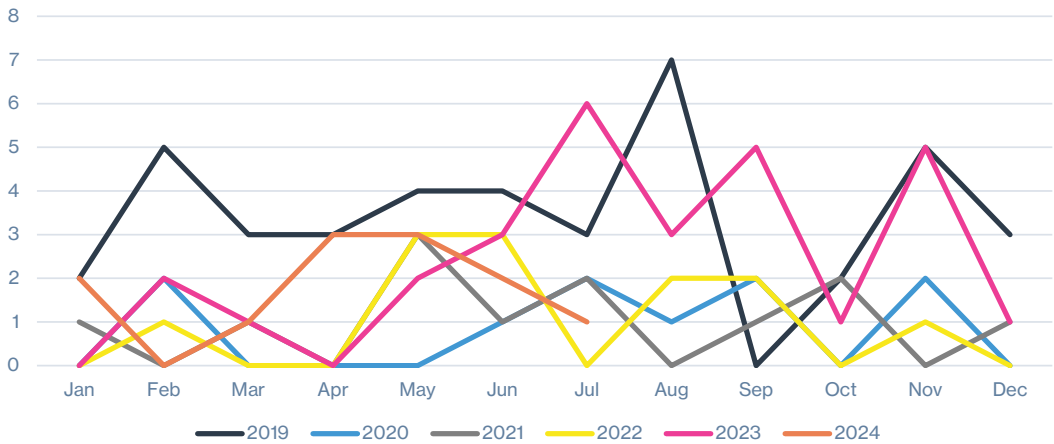


Figure 12: Bankruptcies and Proposals in Newfoundland and Labrador





RECEIVERSHIPS BY PROVINCE

The declared asset value entering receivership in Ontario in 2024 passed the totals from 2023 within the first five months (see Figure 13). However, the volume of receiverships is similar to the number in 2023 over the same time period. Saskatchewan had an unusual May in 2024, with four receiverships with a combined declared asset value of \$4,096,429 (that province had not had more than two receiverships since 2021); and in the first four months had no receiverships (see Figure 14). Manitoba had six receiverships totalling \$6,422,600 in April; five in June totalling \$30,307,195; but zero in every other month so far this year (see Figure 15).

As shown in Figure 16, in 2024, British Columbia had a total number of receiverships representing 60% of the number from 2023 within the same time frame for the first five months but has since had 15 across June (three) and July (12), ending up with 32 for the year so far (only three less within the same period for the entire year in 2023).

Figure 13: Ontario Receiverships

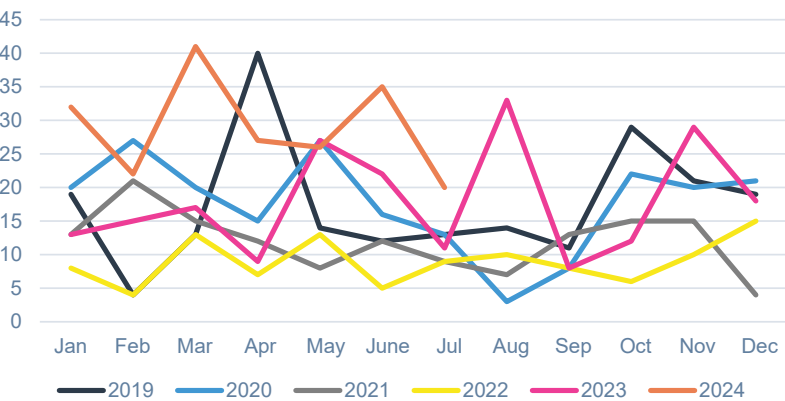




Figure 14: Saskatchewan Receiverships

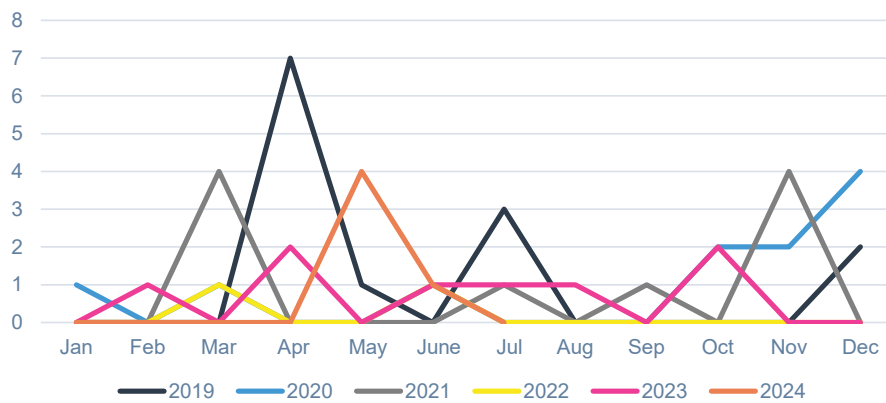


Figure 15: Manitoba Receiverships

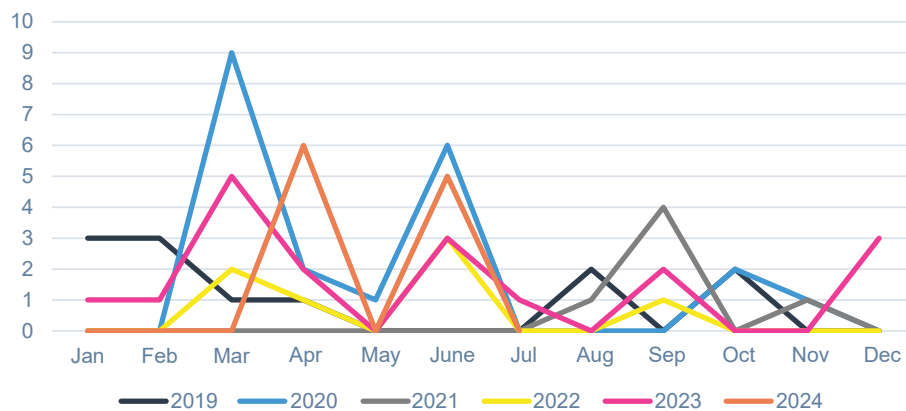
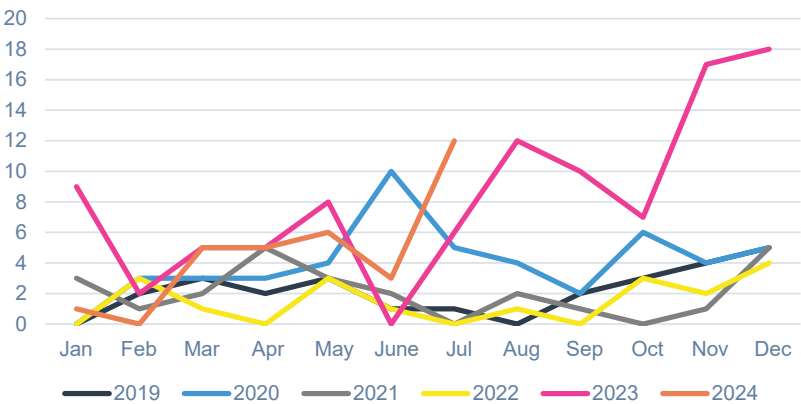


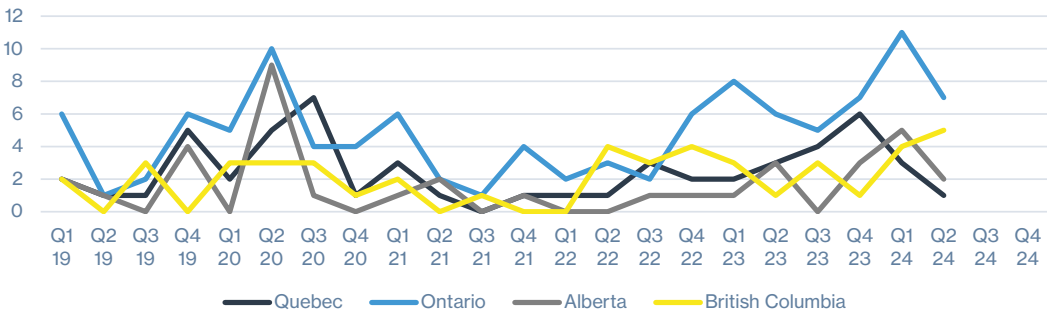
Figure 16: British Columbia Receiverships



CCAA BY PROVINCE

Ontario had 11 filings in Q1 2024. This was the highest number since tracking began in 2019 and 38% more than Q1 2023. PEI had its first CCAA filing since tracking began in 2019 [not shown on the graph]. Both British Columbia and Alberta had higher Q1 filings than their respective quarterly averages in 2023. The total number of CCAA filings in all provinces for Q1 2024 is 50% higher than in Q1 2023; however, the total for Q2 2024 is equal to the total in Q2 2023.

Figure 17: CCAA Proceedings by Province in Highest Volume Provinces



Final Thoughts

In summary, the first half of 2024 has been characterized by increased insolvency activity across various sectors and provinces. The data underscores the ongoing economic challenges and uncertainties facing Canadian businesses. As interest rate changes continue to take effect, ongoing monitoring and analysis of the data will be crucial in understanding the long-term impact on various sectors, in particular real estate, and overall business health in Canada.

The dynamics of business openings and closures further illustrate the economic challenges facing Canadian businesses. While Q1 2024 saw a net increase in business openings, Q2 2024 experienced a net decrease. The retail sector has faced negative net business openings each month since January 2024.

As we continue to track the evolving data on insolvencies and business openings and closings, we are mindful of how the stigma associated with insolvency remains a significant barrier for businesses facing financial distress. Despite evolving attitudes and increased awareness, the negative perceptions surrounding restructuring can deter entities from seeking timely assistance, exacerbating their financial difficulties. For businesses, the stigma of reorganization proceedings can lead to a range of adverse outcomes. Companies may delay filing due to fears of reputational damage, loss of customer trust and potential difficulties in securing future financing. This hesitation can result in a deterioration of the business's financial position, reducing the likelihood of successful restructuring or recovery. Addressing stigma is essential for fostering a more supportive environment for those facing financial distress. By shifting attitudes and providing clear information about the benefits of early intervention, corporate debtors can be better equipped to navigate their financial challenges and work towards recovery.

Key Contacts

Across 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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