

Expanding Protection of IP Licensees: Changes to the BIA and CCAA via the Budget Implementation Act, 2018, No. 2

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On November 1, 2019, amendments to the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (BIA) and the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (CCAA) came into force. Among other changes described in our previous publication, these amendments expand the protection offered to intellectual property (IP) licensees in the event that the licensor enters insolvency.

Previously, both the BIA and the CCAA provided certain protection to an IP licensee from the disclaimer or resiliation of the license agreement. Sections 65.11(7) of the BIA and S. 32(6) of the CCAA allow the continued use of the IP as permitted under the license, so long as the licensee fulfils its obligations in relation to the IP use under the agreement.

This protection was expanded by amendments to the BIA and CCAA that received royal assent on Dec. 13, 2018 as part of the Budget Implementation Act, 2018, No. 2, S.C. 2018, c. 27 (the Act). Sections 266-269 of the Act offer the same protection currently afforded to IP licensees in the event the license is disclaimed to situations where the IP is sold by the licensor, or where a trustee or receiver disclaims the license or sells the IP. The proclamation of these amendments was deferred, but by Order in Council, P.C. 2019-1226, sections 266-269 of the Act came into force on Nov. 1, 2019.

Changes to the BIA:

- Section 266 of the Act introduces the new subsection 65.13(9), allowing an IP licensee to continue to use the IP if it is sold in a restructuring;
- Section 267 of the Act introduces the new section 72.1, allowing an IP licensee to continue to use the IP if it is sold or the license is disclaimed by the trustee in a liquidation;
- Section 268 of the Act introduces the new section 246.1, allowing an IP licensee to continue to use the IP if it is sold or the license is disclaimed by the receiver in a receivership.

Change to the CCAA

Section 269 of the Act introduces the new subsection 36(8), allowing an IP licensee to continue to use the IP if it is sold in a CCAA restructuring.

By

[Beverley Moore](#), [Lisa Hiebert](#), [David Chapman](#)

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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