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Diane Urquhart adds her view on high fees and closed shop CCAA protection



BARRY CRITCHLEY | November 16, 2015 5:09 PM ET
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Brent Lewin/Bloomberg

Diane Urquhart is a former Bay Street research analyst – she ran the research department at two bank-owned firms – who, over the

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In that role, she has seen first-hand the way that third-party lenders to Cash Store Financial have a lack of overview or the high fees charged for

Urquhart was involved with the CCAA protection for seven years. During that time, the various court groups approved US\$7.3 billion in assets – in court approval groups that thought they were better protected

As part of that work her group asked for court approval would better help the group assess their risk

Instead the group was told the monitor exercises its “discretion on issues of disclosure in light of a number of competing considerations, including some that are not always readily apparent.”

Urquhart took that as a no.

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..., just like first timers Kurt Soost and Murray McCann – she is not a fan of the process, the

which is still working its way through the system after almost US\$1.5 billion – or more than one-fifth of the estimated value of the Rights for Canadian Nortel Disabled Employees, a

groups of the Nortel Health & Welfare Trust – information that they sought – but was denied.

So the group wrote to the federal Office of the Superintendent of Bankruptcy whose mandate is to “supervise the administration of all estates and matters under insolvency legislation... [and which helps] ensure that bankruptcies and insolvencies are conducted in a fair and orderly manner.” Its request for that body to intervene was denied.

We called the office requesting information on the number of times it has intervened in CCAA proceedings but a response hadn't been received by press time.

Soost and McCann, both of whom were deemed to be creditors at Cash Store, have written to the monitor in the Cash Store Financial case, requesting details on fees paid, a request that has not been met. They then wrote to the federal superintendent only to be told that the monitor is the entity to provide such information.

“That’s how it all works,” said Urquhart on Monday. “Nobody claims responsibility” even though the judge on the file is the person who “executes the process and is the ultimate supervisor.”

Disappointed with the response at Nortel, Urquhart’s group ultimately wrote to the Canadian Judicial Council – a federal body created “to promote efficiency, uniformity, and accountability.” But buck didn’t stop there. “They were told it ‘was a legal matter, not an ethical matter, so go to court,’” she said, a daunting financial challenge for the group.

Urquhart’s other observation is that the bulk of the CCAA work seems to flow to members of the Insolvency Institute of Canada, a group whose mission “is to promote excellence and thought leadership in commercial insolvency and restructuring policy and practice.”

Indeed she noted CCAA proceedings have become a lucrative “club benefit” for the invited members of the Insolvency Institute. She regards the Institute, which has a fixed number of members and which are selected by the board, as a “closed shop.”

Calls to the Institute seeking a comment weren’t returned.

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