

CCAA Judges Have Close Relationships with the Insolvency Institute of Canada Members

It is difficult to have faith in the impartiality of CCAA judges and their ability to exercise independent judgement to control the fees of insolvency practitioners, given their close relationship with members of the Insolvency Institute of Canada (IIC) engendered while attending many closed meetings and conferences. For example, Justice Morawetz was a member of the IIC while practising at Goodmans LLP before being appointed a judge in 2005. Goodmans LLP is the legal counsel for the Nortel Canadian Court Monitor, Ernst and Young. Justice Morawetz has attended several Institute of Canada (IIC) and National Center of Business Law Conferences at posh resorts and hotels, while being the judge assigned to the Nortel insolvency. The consequences of the close relationship achieved from these conferences and their social events are that Justice Morawetz has approved \$758 million of professional fees for the Nortel CCAA proceeding without what would appear to be any financial control. There does not appear to be any control of the Court Monitor.

The Insolvency Institute of Canada (IIC) is an exclusive club of 135 insolvency practitioners who must apply and be approved for membership. Each year the IIC holds an Annual Conference and Annual Meeting in a luxury resort hotel, where the members invite special guests, such as the bankruptcy judges and the Federal Superintendent of Bankruptcy. The members and guests at these conferences are pre-assigned to dine at the best restaurants in each city.

“Membership Process”

1. The membership policy provides for a limit of 135 Insolvency Practitioner Members (i.e. lawyers, trustees/financial advisors) excluding Financial Institution Members, Academic/Governmental Members, Regulatory/Compensation Members, Fellow and Emeritus Members.
2. Formal applications will be required. An applicant will have to be sponsored or nominated by two existing members.”

The IIC go on to say:

“Our Contribution”

Maintains links with Canada's leading bankruptcy and insolvency judges”

It is interesting to note that there is a Judicial Forum for invited judicial guests only at each of the IIC Annual Conferences:

[Insolvency Institute of Canada, Annual Conference and Annual Meeting, Palm Springs, California Nov. 14-17, 2013](#)

[Insolvency Institute of Canada, Annual Conference and Annual Meeting, Whistler, B.C., Sept. 20-23, 2012](#)

[Insolvency Institute of Canada, Annual Conference and Annual Meeting, St. John's, Nfld., Sept. 8-11, 2011](#)

[Insolvency Institute of Canada, Annual Conference and Annual Meeting, Scottsdale, Arizona, Nov. 4-7, 2010](#)

Insolvency Institute of Canada members have an additional opportunity to network with the bankruptcy judges at the National Center for Business Law (NCBL), Annual Review of Insolvency Law Conferences. Surprisingly, live CCAA court proceedings and open class action litigation cases are the subjects of Plenary Panels and Break-up Panels at these National Center for Business Law, Annual Review of Insolvency Law Conferences.

For example, the [NCBL 7th Annual Review of Insolvency Law Conference, Kelowna, B.C., Feb. 5, 2010](#) had a Plenary Panel on - The Restructuring of Nortel Globally. The Nortel Canadian, U.S. and U.K. Estate bankruptcy lawyers and the Ernst & Young Nortel Court Monitor were speakers on this panel. Justice Geoffrey Morawetz attended this event. Indeed, Nortel U.S. Estate bankruptcy lawyer James Bromley, of Cleary Gottlieb Steen & Hamilton LLP, New York was able to bill \$3,483 to the Nortel US Estate for a 3.5 hour meeting at this Kelowna Conference with Nortel Canada legal counsel Derek Tay now of Gowlings LLP, Ernst

& Young Nortel CCAA Court Monitor Murray MacDonald and CCAA Court Monitor legal counsel Jay Carfagnini of Goodmans LLP.

The involvement of CCAA judges at the NCBL conferences is evidenced by their multiple roles on the agendas for these conferences.

[NCBL 1st Annual Review of Insolvency Law Conference Feb. 6, 2004](#)

[NCBL 5th Annual Review of Insolvency Law Conference Feb. 22, 2008](#)

[NCBL 6th Annual Review of Insolvency Law Conference Feb. 13, 2009](#)

[NCBL 7th Annual Review of Insolvency Law Conference, Kelowna, B.C., Feb. 5, 2010](#)

[NCBL 8th Annual Review of Insolvency Law Conference, Toronto, Ontario, Feb. 4, 2011](#)

[NCBL 9th Annual Review of Insolvency Law Conference, Vancouver, B.C., Feb. 10, 2012](#)

[NCBL 10th Annual Review of Insolvency Law Conference, Montreal, Quebec, Feb. 8, 2013](#)

What is a reasonable fair minded and informed person to think?