

**Beyond the Balance Sheet: Reframing Canadian Bankruptcy and Insolvency Law Through
a Relational Theory of Justice**

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Introduction

Canadian bankruptcy and insolvency law is generally framed in technical and economic terms, emphasizing collective proceedings, restructuring or liquidation, and the orderly distribution of assets to creditors in accordance with statutory priority rules.¹ However, insolvency is not merely a financial event. It is also a rupture in social and economic relationships.² Bankruptcy may follow illness, unemployment, family breakdown, failed entrepreneurship, or broader economic precarity, and those events often leave behind shame, instability, distrust, and fractured networks of reliance.³ Corporate insolvency can also destabilize employees, suppliers, pensioners, local communities, and the public interest in economic continuity.⁴ Insolvency law, therefore, governs more than property and priority; it governs the legal response to relational breakdown within economic life.⁵

This paper contends that Canadian insolvency law already incorporates underlying restorative justice principles, including collectivity, accountability, and reintegration. However, these principles remain underdeveloped because the regime neither explicitly recognizes nor structures relational repair.⁶ The law collectivizes claims but does not create genuine spaces for voice; it demands disclosure but does not require acknowledgment of harm; and it offers discharge or compromise, but largely as economic release rather than as a broader project of

¹ *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 at paras 12–15, 22 [*Century Services*].

² Jennifer J Llewellyn et al, “Imagining Success for a Restorative Approach to Justice: Implications for Measurement and Evaluation” (2013) 36:2 *Dal LJ* 281 at 282–285 [Llewellyn et al].

³ Pamela Foohey, “A New Deal for Debtors: Providing Procedural Justice in Consumer Bankruptcy” (2019) 60:5 *BC L Rev* 2297 at 2298, 2301–03 [Foohey].

⁴ *Century Services*, *supra* note 1 at paras 15, 17–18, 60.

⁵ Llewellyn et al, *supra* note 2 at 282–85.

⁶ *Century Services*, *supra* note 1 at paras 12–15, 22; *Bankruptcy and Insolvency Act*, RSC 1985, c B–3, ss 69–71, 157.1, 158, 161, 168.1 [*BIA*]; *Companies’ Creditors Arrangement Act*, RSC 1985, c C–36, ss 11, 11.02, 18.6, 23–25 [*CCAA*].

social reintegration.⁷ The result is a regime that is normatively richer than it appears, but still too thin to explicitly address the interpersonal and systemic harms of insolvency.⁸

Canada's federal insolvency regime is principally structured around two complementary statutes. The *Bankruptcy and Insolvency Act* ("BIA") establishes a comprehensive statutory regime governing bankruptcy, proposals, the vesting and administration of property, proof and ranking of claims, and discharge.⁹ The *Companies' Creditors Arrangement Act* ("CCAA") complements that framework by providing a flexible, court-supervised restructuring process for insolvent debtor companies with total claims exceeding \$5 million.¹⁰ The Supreme Court of Canada ("SCC") has described Canadian insolvency law as a collective remedial system that replaces the ordinary civil process with a single-proceeding model to prevent a "free-for-all" of individual creditor enforcement.¹¹

This paper's main argument is that Canadian insolvency law functions as an unacknowledged system of relational governance, and that a restorative justice lens exposes both its latent elements and its normative gaps. That transformation has two dimensions. First, restorative justice can operate interpretively, shaping how courts, trustees, and monitors understand the purposes of insolvency law and exercise discretion within the existing statutory framework.¹² Second, restorative justice can operate structurally by introducing carefully designed procedural mechanisms that create more meaningful opportunities for participation, accountability, and reintegration in selected insolvency contexts.¹³ The stronger and more

⁷ BIA, ss 157.1, 158, 161, 168.1; Foohey, *supra* note 3 at 2299–2300, 2345.

⁸ Llewellyn et al, *supra* note 2 at 283–85.

⁹ BIA, ss 2, 42–50, 69–71, 121, 124, 135–36, 157.1, 158, 161, 168.1.

¹⁰ CCAA, ss 2 "debtor company", 3, 4–6, 11, 11.02, 22–25.

¹¹ *Century Services*, *supra* note 1 at para 22.

¹² *Century Services*, *supra* note 1 at paras 14–15, 59–70.

¹³ Lode Walgrave, "Concerns about the Meaning of 'Restorative Justice'. Reflections of a Veteran" (2023) 6:3 Int J Restorative Justice at 353–55, 363–64 [Walgrave]; Llewellyn et al, *supra* note 2 at 282–85.

defensible argument is that a restorative approach must do both: it must inform the interpretation and application of the *BIA* and *CCAA*, and justify modest but concrete procedural redesign.¹⁴

The paper proceeds in five parts. Part I outlines the theoretical framework, considering restorative justice as a relational theory of justice while preserving conceptual discipline.¹⁵ Part II argues that the *BIA* and *CCAA* already include latent restorative elements.¹⁶ Part III identifies the structural and systemic limitations of the current regime.¹⁷ Part IV proposes three restorative improvements that are institutionally anchored within the existing insolvency framework.¹⁸ Part V addresses objections to these proposals.¹⁹

I. Restorative Justice as a Relational Framework for Insolvency Law

A. A Relational Approach to Justice

Restorative justice is often described in procedural terms through mediation, conferencing, circles, and other facilitated encounters. While procedural emphasis is important, it is incomplete. Llewellyn and her co-authors argue that restorative justice is better understood as a relational approach to justice, one concerned with repairing harms to the networks of relationships that make social life possible.²⁰ Accordingly, justice extends beyond punishment, the application of rules, or distribution, but also encompasses whether the legal response to harm restores the conditions under which individuals and communities can continue in more just and secure relations.²¹ This relational account is particularly relevant in insolvency because

¹⁴ Walgrave, *supra* note 13 at 355–57, 363–64.

¹⁵ Llewellyn et al, *supra* note 2 at 281–85; Walgrave, *supra* note 13 at 355–57.

¹⁶ *Century Services*, *supra* note 1 at para 22; *BIA*, ss 69–71, 157.1, 158, 161, 168.1; *CCAA*, ss 11, 11.02, 18.6, 23–25.

¹⁷ Foohey, *supra* note 3 at 2299–2300, 2345; Walgrave, *supra* note 13 at 353–57.

¹⁸ *BIA*, ss 157.1, 158, 161, 183, 187; *CCAA*, ss 11, 11.02, 22–25.

¹⁹ Walgrave, *supra* note 13 at 353–57, 363–64.

²⁰ Llewellyn et al, *supra* note 2 at 281–85.

²¹ Llewellyn et al, *supra* note 2 at 282–85.

insolvency law already governs the consequences of broken relationships between debtor and creditor, employer and employee, borrower and lender, and company and community.²²

B. Guarding Against Conceptual Dilution

Applying restorative justice to insolvency law encounters a significant conceptual problem. Walgrave warns that if restorative justice expands too broadly, it risks becoming vague, normatively unstable, and analytically un-researchable.²³ Walgrave emphasizes that clarity is essential because poorly defined concepts lead to flawed research and diminish restorative justice's capacity to function as a meaningful framework rather than a diffuse aspiration.²⁴ That caution is particularly important here. It would be too easy, and not very useful, to say that restorative justice in insolvency means "better relationships" or a "more humane process." Such framing would collapse restorative justice into a generalized appeal to fairness or compassion and would not explain what should change in bankruptcy practice or why.²⁵ This paper, therefore, adopts a narrower, more disciplined conception of restorative justice.

C. Defining Restorative Justice within the Bankruptcy and Insolvency Context

In the bankruptcy and insolvency context, restorative justice refers to legal and procedural responses to financial harm that accomplish three things: first, they recognize the relational dimensions of insolvency rather than reducing it to debt accounting; second, they structure meaningful accountability beyond bare disclosure and technical compliance; and third, they support reintegration after insolvency rather than treating discharge or compromise as a purely technical endpoint.²⁶ The restorative justice perspective also avoids a fundamental

²² *Century Services*, *supra* note 1 at paras 12–15, 22.

²³ Walgrave, *supra* note 13 at 355.

²⁴ *Ibid* at 355–57.

²⁵ *Ibid* at 355–57.

²⁶ Llewellyn et al, *supra* note 2 at 282–85; Walgrave, *supra* note 13 at 363–64.

mischaracterization: insolvency does not constitute criminality, and debtors are not offenders. Many bankruptcies stem from illness, structural vulnerability, market instability, caregiving burdens, or mere misfortune.²⁷ A restorative approach in insolvency must therefore avoid adopting a punitive or moralistic perspective. The argument is not that bankruptcy should become a forum for confession, but that insolvency law should more seriously engage with the relational harms within its existing framework.²⁸

Procedural justice scholarship explains why this is important. Foohey argues that people care not only about legal outcomes but also about being treated with voice, dignity, neutrality, and respect.²⁹ Foohey emphasizes the expressive significance of legal proceedings, arguing that people use the legal process to evaluate their social status and understand the emotions associated with financial distress.³⁰ A bankruptcy process may be formally lawful and economically efficient while still reducing lived financial rupture to administrative formality. A debtor may obtain discharge and nevertheless feel unseen, shamed, or reduced to paperwork; a creditor may participate in a claims process and yet experience the proceeding as remote and alienating.³¹

Collectively, Llewellyn's relational account, Walgrave's insistence on conceptual discipline, and Foohey's emphasis on voice and legitimacy form the theoretical foundation for this paper. Applying restorative justice to bankruptcy and insolvency should not be understood as adding a vague moral veneer, but as a disciplined relational approach that questions whether

²⁷ Foohey, *supra* note 3 at 2301–2304.

²⁸ *Ibid*; Walgrave, *supra* note 13 at 356–57, 363.

²⁹ Foohey, *supra* note 3 at 2299–2300.

³⁰ *Ibid*.

³¹ *Ibid* at 2298–2300, 2345.

insolvency law, in its design and operation, creates conditions for collective participation, meaningful accountability, and reintegration.³²

II. Latent Restorative Elements in Canada's Current Insolvency Regime

Although Canadian insolvency law is not explicitly restorative, it already includes several elements aligned with restorative values. These elements do not constitute a comprehensive account of restorative justice, but they demonstrate that the regime is not merely a neutral machinery of liquidation. The most prominent latent restorative elements are collectivity, accountability, and reintegration.³³

A. Collectivity

In *Century Services*, the SCC described the single-proceeding model as a defining feature of insolvency law and explained that insolvency statutes provide a collective process that supersedes creditors' usual civil remedies.³⁴ The purpose of this model is not only to ensure efficiency, but also to prevent the destructive consequences of each creditor racing to enforce their claims against a limited pool of assets.³⁵ The *BIA*'s stay provisions restrain creditors from proceeding outside the statutory process once bankruptcy or proposal proceedings are underway.³⁶ In *Vachon*, the SCC interpreted the stay broadly enough to encompass governmental withholding of benefits, confirming that bankruptcy's collective logic extends beyond formal lawsuits to include other forms of unilateral recovery.³⁷ Similarly, the vesting of property in the

³² Llewellyn et al, *supra* note 2 at 282–85; Walgrave, *supra* note 13 at 355–57; Foohey, *supra* note 3 at 2299–2300.

³³ *Century Services*, *supra* note 1 at paras 12–15, 22; *BIA*, ss 69–71, 157.1, 158, 161, 168.1; *CCAA*, ss 11, 11.02, 18.6, 23–25.

³⁴ *Century Services*, *supra* note 1 at para 22.

³⁵ *Ibid.*

³⁶ *BIA*, ss 69–69.6.

³⁷ *Vachon v Canada Employment and Immigration Commission*, [1985] 2 SCR 417 at para 31 [*Vachon*].

trustee-in-bankruptcy consolidates the estate for collective administration.³⁸ The trustee assumes control of the estate for the benefit of creditors collectively, not for any single claimant.

Even pre-bankruptcy transactions are scrutinized under avoidance provisions designed to protect the collective estate. The *BIA* authorizes trustees to challenge any suspicious private dealings made by the debtor that threaten to undermine equal treatment among creditors.³⁹ In *Logistec*, the New Brunswick Court of Appeal confirmed that a payment constitutes a fraudulent preference if it was made within three months of bankruptcy while the debtor was insolvent and resulted in the creditor receiving a preference over others, subject only to rebuttal if the creditor can establish that the debtor's dominant intent was not to prefer.⁴⁰ Similarly, section 96 expands this collective approach by scrutinizing transfers at undervalue, particularly between non-arm's length parties, to prevent insiders or closely connected parties from extracting value in ways that undermine the integrity of the creditor body as a whole.⁴¹ Accordingly, collectivity is not simply a procedural convenience, but a normative commitment to treating insolvency as a shared legal problem rather than a series of isolated bilateral disputes.

B. Accountability

The second latent restorative element is accountability. The *BIA* imposes detailed duties on bankrupts. Section 158 requires a bankrupt to disclose and deliver property, produce books and records, attend for examination, prepare and submit a statement of affairs, disclose relevant dispositions, and assist in the administration of the estate.⁴² Section 161 authorizes examination under oath into the bankrupt's conduct, the causes of the bankruptcy, and the disposition of

³⁸ *BIA*, s 71; *CCAA*, s 11.7(1).

³⁹ *BIA*, ss 95–96.

⁴⁰ *Logistec Stevedoring (Atlantic) Inc. v. A.C. Poirier & Associates Inc.*, 2005 NBCA 55 at paras 4–5 [*Logistec*].

⁴¹ *BIA*, s 96.

⁴² *BIA*, s 158.

property.⁴³ These duties are administrative, but they are not normatively empty. They reflect the idea that insolvency relief depends on candour, cooperation, and an accounting of what has happened. That accountability becomes most evident during the discharge stage. Discharge under the *BIA* is not automatic; it is conditional upon compliance and subject to judicial oversight. Sections 168.1 to 173 permit opposition to discharge and empower courts to refuse, suspend, or impose conditions where the bankrupt has failed to meet statutory obligations or engaged in misconduct.⁴⁴ Relief is therefore structured around scrutiny of conduct. The debtor's "fresh start" is earned through participation, disclosure, and compliance rather than granted as an unconditional entitlement.

The statutory duty of good faith reinforces this framework. Section 4.2 of the *BIA* requires every interested person in insolvency proceedings to act in good faith and authorizes the court to address breaches of that duty.⁴⁵ The *CCAA* contains a parallel duty in section 18.6, which mandates that the court-appointed monitor act honestly and in good faith in performing their duties.⁴⁶ Under sections 11.7 and 23-24 of the *CCAA*, the monitor supervises the debtor's affairs, reports to the court, and ensures transparency throughout the restructuring process.⁴⁷ Corporate debtors, like individual bankrupts, are therefore subject to structured disclosure and oversight as a condition of relief.

Collectively, these features demonstrate that Canadian insolvency law is not indifferent to responsibility. It requires explanation, supervision, and good-faith participation before relief is granted. However, the limitation is that this accountability primarily remains procedural and

⁴³ *BIA*, s 161(1).

⁴⁴ *BIA*, ss 168.1–173.

⁴⁵ *BIA*, s 4.2.

⁴⁶ *CCAA*, ss 18.6, 25.

⁴⁷ *CCAA*, ss 11.7, 23–24.

informational. A debtor may satisfy every statutory requirement and yet never meaningfully address the human consequences of insolvency for workers, suppliers, or communities. The regime thus offers a limited form of accountability, regulating behaviour without fully embracing the relational aspect of responsibility envisioned by restorative justice.⁴⁸

C. Reintegration

The third latent restorative element is reintegration. The *BIA* does not treat insolvency as a permanent legal stigma. Instead, it provides counselling and discharge after the statutory process is completed.⁴⁹ Discharge serves as a formal release from established claims, restoring the debtor's full legal capacity and allowing re-entry into economic life. In *Saulnier*, the SCC recognized that the *BIA* balances "the rights of creditors and the desirability of giving the bankrupt a clean break."⁵⁰ That objective reflects a legislative judgment that insolvency should not condemn an individual to indefinite financial marginalization.

The structure of the *BIA* reinforces this rehabilitative approach. Section 67(1) excludes certain property from the bankrupt's estate, and the *BIA* defers to provincial exemption regimes, thereby preserving the debtor's ability to maintain basic subsistence and rebuild after bankruptcy.⁵¹ Discharge is therefore neither accidental nor purely technical. It is a deliberate legislative mechanism for enabling legal and economic reintegration.

However, the regime's reintegrative content remains limited. Counselling under section 157.1 is primarily focused on financial management and future credit behaviour.⁵² The process focuses on economic rehabilitation rather than relational repair. As Foohey argues, if debtors

⁴⁸ *BIA*, ss 4.2, 158, 161, 168.1–173; *CCAA*, ss 11.7, 18.6, 23–25.

⁴⁹ *BIA*, ss 157.1, 168.1.

⁵⁰ *Saulnier v Royal Bank of Canada*, 2008 SCC 58 at para 17.

⁵¹ *BIA*, s 67(1).

⁵² *BIA*, s 157.1.

experience bankruptcy proceedings as alienating, bureaucratic, or degrading, the promise of a “fresh start” may ring hollow.⁵³ Reintegration in a broader restorative sense requires more than the extinguishment of debt. It requires a process that restores dignity, affirms legitimacy, and facilitates meaningful re-entry into the social and economic community.⁵⁴

III. Structural Gaps and Systemic Limits

If the current regime already includes restorative fragments, why is that not enough? The answer is that the dominant orientation of Canadian insolvency law remains economic, managerial, and highly formalized. Three deficits are particularly significant: the absence of meaningful voice, the invisibility of emotional and relational harm, and the system’s uneasy relationship with structural inequality.⁵⁵

A. Absence of Voice

The first deficit is the absence of a structured voice. Procedural justice theory holds that people care deeply about being heard and about appearing before an authority that treats them with dignity and even-handedness.⁵⁶ Canadian insolvency law provides limited opportunities for such participation. Debtors complete forms, submit records, attend required steps, and may be examined under oath, but none of this constitutes a process centred around voice in the richer sense that Foohey describes.⁵⁷ Creditors prove claims, vote when relevant, object when permitted, and receive distributions, but their participation is similarly technical and role-specific.⁵⁸ Formal participation exists, but it is not designed to allow debtors, small creditors, employees, or communities to articulate the causes and effects of insolvency in their own terms.

⁵³ Foohey, *supra* note 3 at 2298, 2302, 2345.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*; Walgrave, *supra* note 13 at 353–57.

⁵⁶ Foohey, *supra* note 3 at 2299–2300.

⁵⁷ *BIA*, ss 158, 161.

⁵⁸ *BIA*, ss 121, 124, 135–136; *CCAA*, ss 4–6, 22.

This lack of voice matters because legal legitimacy is shaped not only by formal fairness, but also by whether people feel that the process has recognized them as participants with standing.⁵⁹

B. Invisible Harm

The second deficit is that the law largely overlooks emotional and relational harms. Foohey's work is especially valuable here because she argues that individuals rely on legal procedures and outcomes to assess their worth and manage the emotions caused by serious financial distress.⁶⁰ She also demonstrates that consumer debtors often struggle with debt for years before filing and frequently experience shame in relation to bankruptcy.⁶¹ Financial collapse often impacts dignity, identity, family ties, and social inclusion. However, the Canadian statutory regime seldom explicitly recognizes that aspect. A bankrupt may be examined about the "causes" of bankruptcy, but the purpose of that examination is administrative oversight, not relational understanding.⁶² A small-business insolvency can destroy employment, trust, reputation, and community confidence, but the legal process only recognizes harms that can be converted into provable claims or formal stakeholder positions. Emotional and relational harms, therefore, largely remain invisible within the doctrinal framework.

C. Structural Inequality

The third deficit is systemic. Insolvency law operates within, and often stabilizes, a capitalist political economy characterized by unequal bargaining power, unequal access to credit, and disparate risk exposure. The dual policy goals of bankruptcy and insolvency law of fair and efficient resolution of creditor claims and a fresh start for the debtor often come into tension when priority rules and procedural choices are used strategically. In *Bank of Montreal*, the court

⁵⁹ Foohey, *supra* note 3 at 2299–2300.

⁶⁰ *Ibid* at 2345.

⁶¹ *Ibid* at 2301–02.

⁶² *BIA*, s 161(1).

acknowledged that secured creditors could strategically invoke bankruptcy to activate the federal priority scheme and override competing provincial priorities, even where the outcome appeared troubling.⁶³

Similarly, the treatment of Crown claims reveals that insolvency law is not just a neutral background mechanism but a site of active public choice about hierarchy and loss allocation. Section 86(1) of the *BIA* generally classifies Crown claims as unsecured, subject to carefully defined exceptions.⁶⁴ In *Century Services*, the SCC emphasized the shift away from Crown priorities and rejected an interpretation that would have preserved GST's deemed-trust priority under the *CCAA*.⁶⁵ The Court's analysis confirms that insolvency law allocates losses in ways that reflect legislative choices about whose claims deserve priority and why.⁶⁶ A restorative approach cannot disregard the political economy. If it is reduced to a superficial layer imposed on a system that perpetuates harm through inequality, it risks co-optation rather than meaningful transformation.⁶⁷ This does not suggest that insolvency law can resolve structural features of capitalism; it cannot. However, it demands that restorative reform in insolvency be genuinely institutional, with the ability for meaningful evaluation and implementation.⁶⁸ It must consider power, role, and design. It must explain not only why certain restorative mechanisms might help, but also when they should be used and what they are supposed to accomplish.⁶⁹ Otherwise, the language of restoration risks masking rather than illuminating the actual distribution of economic power.

⁶³ *Bank of Montreal v. Scott Road Ent. Ltd.*, 1989 CanLII 2726 (BCCA) at paras 19–20, 27 [*Bank of Montreal*].

⁶⁴ *BIA*, s 86(1), 86(3).

⁶⁵ *Century Services*, *supra* note 1 at paras 23–24, 44–55.

⁶⁶ *Century Services*, *supra* note 1 at paras 23–24, 44–55.

⁶⁷ Walgrave, *supra* note 13 at 353–54.

⁶⁸ Llewellyn et al, *supra* note 2.

⁶⁹ Walgrave, *supra* note 13 at 355–57, 363–64.

IV. Restorative Enhancements Within the *BIA* and *CCAA* Framework

A compelling restorative proposal for insolvency law must be anchored in institutional design, rather than mere aspiration. Canadian experience also illustrates that restorative approaches can be institutionalized within formal systems. The response to the Dalhousie Dentistry Facebook scandal demonstrates that restorative processes can be designed to operate alongside formal disciplinary mechanisms, provided they are structured and supported by appropriate safeguards.⁷⁰ The following three enhancements are therefore intentionally modest, selective, and aligned with the existing insolvency framework: restorative conferencing, narrative accountability statements, and reintegration-oriented discharge accompanied by post-proceeding support. These measures are not proposed for universal application; they are intended for contexts in which the relational aspects of insolvency are particularly significant and where meaningful participation is feasible.⁷¹

A. Restorative Conferencing

The first enhancement proposal is restorative conferencing in select consumer bankruptcies and smaller business insolvencies. The goal is not to make conferencing universal or to replace statutory rights with dialogue. Instead, it aims to establish a supplementary process with a manageable group of affected parties, in which communication can clarify harms, expectations, and future relationships. The current statutory framework already establishes collective moments that could serve as the foundation for such a process. In bankruptcy, meetings, examinations, and claim administration already proceed within a common statutory forum.⁷² In the *CCAA*, the stay

⁷⁰ See Jennifer J Llewellyn, “Responding Restoratively to Student Misconduct and Professional Regulation: The Case of Dalhousie Dentistry” in Gale Burford, John Braithwaite & Valerie Braithwaite, eds, *Restorative and Responsive Human Services* (Abingdon, UK: Routledge, 2019), at ch 9 [Llewellyn 2019].

⁷¹ Walgrave, *supra* note 13 at 355–57, 363–64.

⁷² *BIA*, ss 102–105, 158, 161.

under section 11.02 creates breathing space for negotiation, while class formation under section 22 and plan approval under sections 4-6 formalize collective decision-making.⁷³ A restorative conference could therefore be incorporated into specific case categories: for example, a consumer bankruptcy involving a small group of personally connected creditors, or a small-business insolvency involving employees, local suppliers, and owners who anticipate ongoing interaction after the proceeding.

The conference would not adjudicate claims or alter priorities. Instead, it would provide a structured forum for the debtor and selected stakeholders to discuss the causes of the insolvency, the damages it has caused, and realistic possibilities for accountability, communication, and future repair.⁷⁴ Therefore, conferencing would strengthen the collective nature of insolvency proceedings by shifting focus from merely aggregating claims to encouraging participatory engagement.

B. Narrative Accountability Statements

The second enhancement proposal is to adopt narrative accountability statements. The *BIA* already requires significant disclosure and examination.⁷⁵ However, financial disclosure and relational accountability are conceptually distinct. A debtor can file a complete statement of affairs and still never explain, in plain terms, how the insolvency arose, who was affected, and what responsibilities the debtor recognizes going forward. A narrative accountability statement would build on existing obligations rather than replace them. In consumer bankruptcy, the debtor may be required, or at least encouraged, to prepare a concise statement explaining the circumstances that led to insolvency, the impacts the debtor acknowledges on others, the steps

⁷³ *CCAA*, ss 4–6, 11.02, 22.

⁷⁴ Llewellyn et al, *supra* note 2 at 282–85.

⁷⁵ *BIA*, ss 158, 161.

the debtor has taken or will take to cooperate and reduce further harm, and what reintegration tools will be needed after discharge. In a small-business insolvency, directors or principals could prepare a parallel statement that focuses on operational causes, stakeholder impacts, and commitments during restructuring or liquidation.

This proposal does not require confession or self-abasement. Its strength lies in establishing accountability beyond mere forms and schedules. It also addresses the procedural justice concerns raised by Foohey by providing space for voice and explanation within the legal process itself.⁷⁶ Equally important, it is doctrinally conservative. It does not alter ranking rules, voting rules, or judicial supervision. Instead, it supplements them.

C. Reintegration-Oriented Discharge and Post-Proceeding Support

The third enhancement proposal focuses on reintegration-oriented discharge and post-proceeding support. The *BIA*'s discharge provisions already serve an important role in facilitating reintegration by allowing debtors to move beyond insolvency once the statutory process has been completed.⁷⁷ However, discharge is too often regarded as the endpoint of the law's interest. From a restorative perspective, that view is too limited. If insolvency is a relational rupture, then legal closure does not necessarily equate to reintegration. A restorative approach would therefore enhance the reintegrative aspects of insolvency law.

In consumer bankruptcy, this would involve expanding the counselling approach under section 157.1 to address not only budgeting and financial literacy but also the relational dimensions of financial collapse: communication within families, rebuilding trust, restoring social confidence, and navigating the shame and identity disruption that often accompany

⁷⁶ Foohey, *supra* note 3 at 2299–2300, 2337, 2345.

⁷⁷ *BIA*, s 168.1.

bankruptcy.⁷⁸ In small-business contexts, reintegration support could include structured post-proceeding communication when future relationships remain possible; otherwise, silence would foster mistrust. The objective would not be to compel reconciliation, but to recognize that the conclusion of legal proceedings does not, in itself, restore social trust. This proposal aligns with the broader logic of the *BIA*, which already balances orderly administration with the debtor's fresh start. A reintegration-oriented supplement would better serve that purpose.

V. Risks, Objections, and Boundaries

Several objections arise at the outset and warrant careful consideration: the distinctiveness of insolvency, concerns about coercion, the demands of legal certainty, risks of co-optation, and issues of structural inequality.

A. Distinctiveness of Insolvency

The first is that insolvency does not constitute a justice problem in the same sense as crime or civil wrongs and therefore should not be moralized through restorative language. This objection is partly correct. Insolvency is often rooted in structural vulnerability or economic misfortune rather than blameworthy conduct. Minow's work on debt and forgiveness highlights that practices of discharge and release are not just technical tools, but carry moral and social importance in enabling renewed participation.⁷⁹ Properly understood, forgiveness in law is not absolution without accountability, but a structured response to harm that allows continued social and economic engagement.⁸⁰ A restorative approach must therefore avoid transforming financial distress into a spectacle of forced remorse. However, that does not undermine the argument.

⁷⁸ *BIA*, s 157.1; Foohey, *supra* note 3 at 2301–02, 2345.

⁷⁹ See generally Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998); Martha Minow, *When Should Law Forgive?* (Cambridge, UK: Polity Press, 2019) [Minow].

⁸⁰ *Ibid.*

Restorative justice, in this context, is not about assigning blame, but about how legal institutions respond to harms that disrupt relationships and social participation. Insolvency clearly gives rise to such harms and therefore warrants a restorative approach.

B. Coercion

The second objection is coercion. Debtors are often vulnerable in insolvency proceedings, and small creditors, employees, tenants, and family members may also occupy weaker positions. Any process that invites dialogue can become coercive if one party feels pressure to participate or to perform an apology, forgiveness, or agreement. The response to the Dalhousie Dentistry Facebook scandal illustrates that even formally voluntary restorative processes may raise concerns about pressure, legitimacy, and power imbalances, reinforcing the need for careful institutional safeguards.⁸¹ Therefore, the objection of coercion imposes strict limits on design. Restorative mechanisms in insolvency should therefore be voluntary, except perhaps in the most minimal sense, the requirement to attend an informational session. Facilitators must be independent, and there must be screening for power imbalances and the risk of strategic misuse. No participant should forfeit statutory rights by declining to participate. These safeguards are consistent with restorative justice scholarship, which emphasizes that such processes depend on voluntariness and may be undermined if participants experience pressure or strategic use within institutional settings.⁸² Accordingly, the proposals advanced here are supplemental and bounded, not substitutes for adjudication or statutory entitlement.

⁸¹ Llewellyn 2019, *supra* note 70.

⁸² John Braithwaite, “Does Restorative Justice Work?” in *Restorative Justice and Responsive Regulation* (Oxford: Oxford University Press, 2002) ch 3.

C. Legal Certainty

The third objection is legal certainty. Insolvency law is valued precisely because it provides a structured framework for addressing collective financial distress. Priority rules, stays, provable-claim rules, and discharge rules are essential because they reduce uncertainty and constrain opportunism.⁸³ That value should not be sacrificed to an open-ended ethic of dialogue. This objection is valid but not decisive. The reforms proposed here do not alter the ranking of claims under section 136, the vesting of property under section 71, the broad definition of provable claims under section 121, or the binding structure of *CCAA* arrangements under section 6.⁸⁴ They aim only to include mechanisms that enhance the system's relational responsiveness when possible and beneficial.

D. Co-Optation

The fourth objection is co-optation, a concern Walgrave emphasizes. If restorative justice is inserted into existing systems as merely a technique, it may become a legitimizing device rather than a transformative force.⁸⁵ In insolvency, one can easily imagine a superficial version of restorative reform: a brief meeting, a symbolic statement, some rhetoric about healing, and then a return to business as usual. That would be unsatisfactory. The answer, however, is not to abandon reform. It is to be explicit about the purpose. The purpose of conferencing is to provide voice, acknowledgment, and, where possible, practical repair. The purpose of narrative statements is to ensure accountability beyond just forms. The purpose of reintegration support is to enhance the fresh start beyond just technical discharge. As Minow notes, practices of forgiveness in law serve not as erasure but as mechanisms for reintegration and the restoration of

⁸³ *Century Services*, *supra* note 1 at paras 12–15, 22; *BIA*, ss 71, 121, 136.

⁸⁴ *BIA*, ss 71, 121, 136; *CCAA*, s 6.

⁸⁵ Walgrave, *supra* note 13 at 353–54.

social participation.⁸⁶ If those aims are not being met, the reforms should be criticized as insufficient rather than defended simply because they use the language of restoration.⁸⁷

E. Structural Inequality

Finally, the fifth objection is structural. A serious restorative lens reveals that insolvency law operates against a backdrop of inequality: some debtors enter insolvency when social supports fail; some creditors are better positioned to absorb losses than others; and some restructurings preserve enterprise value while shifting burdens onto those with the least bargaining power. The *CCAA* itself reflects this tension. On the one hand, the SCC has emphasized its remedial, public-interest purpose to avoid the social and economic losses associated with liquidation.⁸⁸ On the other hand, its flexibility can render the *CCAA* attractive precisely because it enables sophisticated stakeholders to pursue outcomes not otherwise available under the *BIA*'s more rules-based structure.⁸⁹ A limited set of restorative mechanisms cannot, on its own, address these underlying structural conditions. That is true. However, that limitation does not render them useless. The most defensible position is to acknowledge both levels: restorative justice in insolvency cannot abolish structural inequality, but it can insist that insolvency law stop pretending that those inequalities are irrelevant to how harm is experienced, narrated, and distributed.

Conclusion

Canadian insolvency law already includes the outline of a restorative approach; it rejects atomistic self-help in favour of collective proceedings, imposes duties of candour, cooperation, and good faith, and permits discharge and compromise as mechanisms of legal closure and

⁸⁶ Minow, *supra* note 79.

⁸⁷ Walgrave, *supra* note 13 at 355–57; Llewellyn et al, *supra* note 2 at 282–85.

⁸⁸ *Century Services*, *supra* note 1 at paras 15, 17–18, 59–70.

⁸⁹ *Ibid* at paras 14, 21, 57–70.

continued participation in economic life.⁹⁰ These are significant features. They demonstrate that insolvency law is more than just a liquidation process. However, these commitments remain limited because the law still mainly views insolvency as a matter of financial management. Canadian insolvency law fails to adequately acknowledge voice, emotional harm, dignity, relationship breakdown, or the social significance of financial collapse. It also does not sufficiently address how insolvency proceedings can perpetuate broader structural inequalities, while claiming to be neutral processes.

A restorative approach does not require replacing insolvency law with therapeutic discourse, nor does it require collapsing bankruptcy into a generalized project of social transformation. Instead, it advances the more modest but more concrete requirement that insolvency law should be interpreted and developed as a relational field of justice, with collectivity, accountability, and reintegration treated as fundamental normative commitments rather than merely technical features. It also involves designing specific mechanisms, such as restorative conferencing, narrative accountability statements, and reintegration-oriented supports, that can give those commitments a more meaningful institutional form without displacing the statutory frameworks of the *BIA* and *CCAA*.

Essentially, the argument is straightforward. Insolvency is never solely about finances; it concerns what happens when the economic system collapses, and the law intervenes to address the consequences. If that is true, then the central question for insolvency law cannot be confined to how accounts are settled. It must also ask how to respond justly to the relationships those accounts reflect. A restorative lens does not fully answer that question, but it compels the law to confront it, an essential step toward a more humane and honest insolvency system.

⁹⁰ *Ibid* at paras 12–15, 22; *BIA*, ss 4.2, 69–71, 158, 161, 168.1; *CCAA*, ss 11, 11.02, 18.6, 23–25.

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