

# Bota McNamara

Partner

## Toronto

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## Practice Areas

Caribbean & Offshore

Commercial Litigation

Litigation & Dispute

Resolution

International/Cross Border

Insolvency & Restructuring

Bota McNamara is a Partner in the Caribbean & Offshore Practice Group and Commercial Litigation Practice Group at WeirFoulds LLP.

Bota's practice traverses between Ontario and the Eastern Caribbean and encompasses two core areas: insolvency and restructuring with an emphasis on asset recovery and sophisticated commercial transactions, and litigation in complex multi-jurisdictional commercial proceedings.

Bota has acted for several major international banks, international hotel chains, regional insurance companies, international airlines, foreign governments, utility companies, oil companies, local businesses and individuals with business interests in the Caribbean providing counsel and assisting on matters throughout the Eastern Caribbean.

Bota's practice benefits from the synergies that exist between the Caribbean, Canada and the United Kingdom in both the practice of law and business. Having been called to the bar in these three regions allows him to effectively advise clients and assist them with the resolution of their disputes.

Bota has appeared as counsel before the Ontario Superior Court of Justice, the High Court and Court of Appeal of the Eastern Caribbean Supreme Court, and Judicial Committee of the Privy Council.

## WeirFoulds LLP

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Called to the Bar	Education	Affiliations
<ul style="list-style-type: none"> <li>• Saint Vincent and the Grenadines (2016)</li> <li>• Ontario (2015)</li> <li>• Saint Lucia (2003)</li> <li>• England &amp; Wales (2002)</li> </ul>	<ul style="list-style-type: none"> <li>• Chartered Institute of Arbitrators, Advanced Certificate in Arbitration, 2011</li> <li>• Inns of Court School of Law, Postgraduate Diploma, 2002</li> <li>• University of the West of England, Bachelor of Laws, 2001</li> </ul>	<ul style="list-style-type: none"> <li>• Law Society of Ontario</li> <li>• The OECS Bar Association</li> <li>• Saint Lucia Bar Association</li> <li>• Chartered Institute of Arbitrators</li> <li>• The Honourable Society of Lincoln's Inn</li> <li>• Canadian Association of Black Lawyers</li> </ul>

## Significant Transactions

Acted as counsel to an American receiver appointed over the assets of a group of companies spanning the BVI to Saint Lucia. The primary assets were a hotel and marina complex in Marigot Bay. The three-year-long receivership required advice on all aspects of law in relation to the operation of a hotel and marina including obtaining operational financing of US \$3M and settling of homeowner claims. After ensuring the collection of all the assets of the receivership and the negotiations for the sale of assets were entered into leading to the eventual realization for the benefit of the creditors in the amount of US \$14M.

Acted as counsel to the court-appointed receiver over the Caribbean-based assets of a Liechtenstein Establishment and a Delaware LLC valued at US \$6M as part of the asset recovery process of an offshore bank put into liquidation by the Government of Dominica. Despite challenges to the appointment and rights over assets raised by the Chicago based receiver appointed by the U.S. Securities and Exchange Commission. All assets were sold for the benefit of the creditors.

Acted as counsel for the receiver and subsequent liquidator of a failed 150-unit luxury resort, with spa complex and restaurants owing debts in excess of US\$10M with funds diverted to England and the U.S. Advised on the use of liquidation and the successful implementation thereof to protect the assets of the company from creditors, enable a cross-border liquidation and permit the company to realize the greatest return on the assets.

Acted as counsel for the American receiver of a 500-key resort in Cap Estate. Advised on all aspects of the receivership of Smugglers Cove Resort & Spa, including the obtaining of a protection order from the court to ensure the continued operation of the hotel despite execution proceedings brought by creditors. Negotiated the government's concessions to ensure purchase of the resort and recovering US \$16M ensuring that all creditors were paid.

Completed a short-term consultancy for the World Bank undertaking an assessment of the effectiveness and addressing the legal aspects of Saint Lucia's insolvency and workout system including providing recommendations for the improvement of same. Thereafter working with the Government of Saint Lucia to bring into being a new insolvency statute, modeled on the Canadian Bankruptcy and Insolvency Act, which is to act as a model for other islands in the Eastern Caribbean.

Served as Legal Consultant to the International Finance Corporation in its role as advisor to the Saint

Lucia Air and Sea Ports Authority regarding the Public Private Partnership (PPP) of the Hewanorra International Airport. This PPP will involve the financing, construction and operation of the island's international airport, and will see over US \$250M spent by the concessionaire over the life of the concession.

Acted as counsel for the financiers to the Government of Saint Lucia on a US \$35M lease-backed syndicated credit facility for the purchase and development of a business centre for the Government of Saint Lucia.

## Reported Cases

### Canada

- [\*Uap Inc. v. Yako Hirmiz \(Jacob\) Yako et al.\*, 2021 ONSC 7121](#)
- [\*Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.\*, 2023 ONSC 5911](#)
- [\*UAP Inc. v. Yako\*, 2021 ONSC 5065](#)
- [\*2495940 Ontario Inc. v. 2633346 Ontario Inc.\*, 2021 ONSC 1421](#)

### United Kingdom

- *Plummer (Estate of James) and Anor v Conway Bay Limited (Saint Lucia)* [2008] UKPC 3. Appeared in before the Privy Council (as Co-counsel) to successfully dismiss an appeal with respect to a multitude of issues that surrounded the award of damages given by the Judge at First Instance.
- *First Caribbean International Bank (Barbados) Ltd and another (Respondents) v Interested Creditors (Appellants)* JCPC 2019/0075: appeared as counsel for the Respondent Liquidator defending the rank and distribution of the proceeds of sale of Sunset Village's estate as between the company's creditors.

### Caribbean

Many of Bota's decisions in the Caribbean are in jurisdictions without formal legal reports. Several are listed below and are also available at: [www.eccourts.org](http://www.eccourts.org).

- *Caribbean Ventures International Ltd and Anor v Carosello Establishment and Ors* Claim No. SLUHCV2006/0293. Appeared to obtain judgment in the amount of US\$3.4 million on the basis of unjust enrichment. When on further to obtain the appointment of a receiver over all the assets of the judgement debtors in Saint Lucia.
- *Carosello Establishment and Ors v Caribbean Ventures International Ltd and Anr* Civil Appeal No. HCVAP2007/035. Appeared in the Court of Appeal to successfully dismiss the appeals launched against the judgment and appointment of receiver.
- *Jairo Holdings Limited/Sandals v Development Control Authority* Physical Planning Appeals Tribunal No. 1400/07. Appeared to successfully appeal against the decision of the Development Control Authority that turned on whether or not the parcel of land in question was owned by the Appellant or was Queen's Chain.
- *International Hotels (St. Lucia) Limited v The Attorney General Board of Assessment* pursuant to the Land Acquisition Act. Appeared to successfully argue for the increase in the compensation due to the Claimant by virtue of lands that were compulsorily acquired.

## Professional Activities

- Past Chair, Insurance Appeal Tribunal (Saint Lucia)

## Speaking Engagements

- Speaker, "Challenges for Insolvency Matters in the Caribbean", INSOL International Bahamas Seminar, INSOL International/World Bank Group, Nassau, The Bahamas, December 9, 2024
- Speaker, "Enforcing Ontario Judgments in the Caribbean", The Six-Minute Debtor-Creditor and Insolvency Lawyer 2024, Law Society of Ontario, Toronto, ON, October 16, 2024
- Presenter, Caribbean Round Table on Insolvency, Insol International and the World Bank Group, Online, March 9 and 10, 2022
- Speaker, Crisis Management: How to Utilize the Bankruptcy and Insolvency Act, WeirFoulds, St Michael, Barbados, March 17, 2017
- Speaker, Bankruptcy and Insolvency Act Workshop, St Michael, Barbados, October 3, 2016

## Media Mentions:

- "[SMEs will soon have greater access to finance](#)", Government of Saint Lucia – Department of Finance, March 23, 2021
- "[Cannabis company executives point finger at founders over alleged missing \\$14 million](#)", Financial Post, February 19, 2020

## Publications

- Commercial Litigation Insights: Navigating the Caribbean Waters: Enforcing Canadian Judgments and Arbitral Awards in the Caribbean, September 03, 2024