SUPREME COURT OF CANADA

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Case in Brief: *Canada v. Canada North Group Inc.*

Judgment of July 28, 2021 | On appeal from the Court of Appeal of Alberta
Neutral citation: 2021 SCC 30

The Supreme Court decides Canada North Group can pay expenses necessary to its restructuring process before money owed to the Canada Revenue Agency.

The *Companies' Creditors Arrangement Act* is a law to help businesses avoid bankruptcy when a company has more than $5 million in debt that it cannot afford to repay. The process is called restructuring. This could include giving a company more time to pay its debt, reducing its interest costs or permitting it to borrow money to repay the debt. Companies that restructure must hire experts such as interim lenders, monitors and lawyers. If there is not enough money to pay everyone, a court will decide who gets paid first.

On July 5, 2017, an Alberta court ordered Canada North Group, an Alberta company that provides remote workforce accommodations, to pay its restructuring experts first. As a result, those expenses became "super priority" charges. This meant the experts would be paid before all other debts, including payroll deductions and GST owed to the federal government (Crown).

However, the Crown objected, asking that it be paid before everyone else.

When the court refused to change the order, the Crown turned to the Alberta Court of Appeal, which dismissed its appeal. The federal government asked the Supreme Court of Canada to consider the issue. Even though there was enough money to pay everyone in this case, the Court decided to hear it to determine the law.

"Super priority" for restructuring-related expenses

A majority of the judges dismissed the Crown's appeal. They said a court supervising a restructuring process has the authority to order that "super priority" charges be paid first, even before paying the Crown the money it is owed. This is because the *Companies' Creditors Arrangement Act* gives the court a broad discretionary power to make any order that it considers appropriate in the circumstances. For experts to put themselves at financial risk in order to restructure a company, only to discover later that other creditors must be paid first, would not be fair.

Four judges disagreed, saying that the money owed to the Crown takes priority over all other debt or expenses, including the money owed to the restructuring experts.

Breakdown of the decision: ***Reasons by:*** Justice Suzanne Côté dismissed the appeal. She noted that the *Companies' Creditors Arrangement Act* (*CCAA*) allows a court to order that restructuring expenses be paid before employee source deductions owed to the Crown. She said it was not necessary to decide whether the *Income Tax Act* gives the Crown a "security interest" because the *CCAA* allowed the court to give "super priority" status to the restructuring expenses, and this status is of higher rank than "security interests" (Chief Justice Wagner and Justice Kasirer agreed) | ***Concurring:*** Justice Andromache Karakatsanis agreed that the appeal should be dismissed. She concluded that the *CCAA* allowed the court to rank restructuring debts higher in any event, but also said that the Crown's "deemed trust' was a "security interest" (Justice Martin agreed) | ***Dissenting:*** Justice Russell Brown and Justice Malcolm Rowe would have allowed the appeal. They concluded that the *Income Tax Act* gives the Crown's "deemed trust" in employee source deductions absolute priority over any other debt. They also said that the *CCAA* itself preserves the priority of the "deemed trust" in favour of the Crown (Justice Abella agreed) | ***Dissenting:*** Michael J. Moldaver would have allowed the appeal. He substantially agreed with the reasoning of Justices Brown and Rowe, but addressed two matters.

More information (case # 38871): Decision | Case information | Webcast of hearing

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Lower court rulings: judgment (Court of Queen's Bench of Alberta) | appeal (Court of Appeal of Alberta)
