

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *8640025 Canada Inc. (Re)*,
2025 BCSC 1268

Date: 20250703
Docket: S1610905
Registry: Vancouver

**In the Matter of the *Companies Creditors Arrangement Act*,
R.S.C. 1985, c. C-36, as Amended**

And

**In the Matter of the *Canada Business Corporations Act*,
R.S.C. 1985, c. C-44, as Amended**

And

**In the Matter of a Plan of Compromise and Arrangement of
8640025 Canada Inc. and Telephone Data Centres Inc.**

Before: The Honourable Mr. Justice Coval

Oral Reasons for Judgment

Benoît Laliberté appearing in person and
as Representative for the Petitioners,
8640025 Canada Inc. and Telephone Data
Centres Inc.:

B. Laliberté

Counsel for the Attendee, The Québec
Revenue Agency:

S.D. Pinsonnault
E. Leung, Articled Student

Place and Dates of Hearing:

Vancouver, B.C.
June 13, 18 and 25, 2025

Place and Date of Judgment:

Vancouver, B.C.
July 3, 2025

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Introduction

[1] Mr. Laliberté applies to set aside his penal conviction, under the Québec *Tax Administration Act*, for failure to report and remit approximately \$1.6 million in employee source deductions.

[2] He argues that his prosecution was contrary to a 2016 stay order of this court granted under the *Companies' Creditors Arrangement Act*.

[3] The Québec Revenue Agency opposes the application. It argues, among other things, that the CCAA stay never extended to him as the directing mind of the companies that were the subject matter of the prosecution, and, in any event, the stay expired long before his trial.

[4] For the reasons that follow, I accept QRA's submissions and Mr. Laliberté's application is dismissed.

The Parties

[5] The applicant companies are part of what is called the TNW Group. At the material times, TNW sold telephone and other telecommunications services in various provinces of Canada, including British Columbia. Mr. Laliberté was the operating mind of the TNW Group.

[6] For purposes of this application, it is important to differentiate between the various companies that were: (a) the four companies subject to the CCAA proceedings, and (b) the four companies that failed to remit and report the source deductions that were the subject matter of Mr. Laliberté's penal proceedings. Although all eight were affiliated as part of TNW Group, there is no overlap between the specific corporate parties in those two proceedings.

[7] The three CCAA petitioners were 8640025 Canada Inc. (also known as Telephone Navigata-Westel Communication Inc., or TNW), Telephone Data Centres

Inc., and Telephone Canada Corp. TNW Network Corp. was also made subject to the CCAA proceedings but was not added as a petitioner. (Collectively, the “CCAA Parties”.)

[8] The four companies subject to the penal proceedings were 9064-6043 Québec Inc., carrying on business as Information Technology and Telecommunications Canada (“ITTC”), Telephone Inc., Telephone Corp., and 0865944 BC Ltd. (collectively the “Penal Parties”).

[9] The CCAA Parties did not employ any staff directly. They obtained their staffing services from ITTC. ITTC was the party to the national bargaining agreement with UNIFOR, the union for employees of the TNW Group, and ITTC and Telephone Corp. were their employers.

CCAA Proceedings

[10] On November 25, 2016, 8640025 Canada Inc. and Telephone Data Centres Inc. filed their CCAA petition, seeking to file a plan of compromise or arrangement.

[11] On November 30, 2016, an amended and restated initial order (“ARIO”) provided for (among other things) the appointment of a monitor and a stay of proceedings under CCAA s. 11.02.

[12] Ultimately, no plan of arrangement was presented to the creditors for approval. Instead, the CCAA proceedings culminated in liquidation of the CCAA Parties’ assets. On February 1, 2021, the stay of proceedings expired. On August 18, 2022, the monitor was discharged in relation to the assets, undertakings, and property of the CCAA Parties.

Terms of the ARIO

[13] Mr. Laliberté relies on two stay provisions in the ARIO.

[14] Under CCAA s. 11.02, the first provision stayed actions etc. in respect of the “Petitioner” or its “Business” or “Property”:

19. Until and including December 21st, 2016, or such later date as this Court may order (the “Stay Period”), no action, suit or proceeding in any court or tribunal [...] against or in respect of the Petitioner [...], or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioner and the Monitor or with leave of this Court [...]

20. During the Stay Period, all rights and remedies of any [...] governmental body or agency [...] against or in respect of the Petitioner [...] affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioner and the Monitor or leave of this Court.

21. Nothing in this Order, including paragraphs 19 and 20, shall: (i) empower the Petitioner to carry on any business which the Petitioner is not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by s. 11.1 of the CCAA [...]”

(“Stay of Proceedings”)

[Emphasis added.]

[15] The “Petitioners” were not defined in the ARIO, but are identified in the style of cause as 8640025 Canada Inc. and Telephone Data Centres Inc.

[16] “Property” and “Business” were defined as the Petitioners’:

... current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “Property”), and continue to carry on its business (the “Business”) in the ordinary course and in a manner consistent with the preservation of the Business and the Property.

[17] The second provision stayed proceedings against directors of the Petitioner for any obligation of the Petitioner, under s. 11.03 of the CCAA:

25. During the Stay Period, and except as permitted by subs. 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioner with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioner whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioner, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioner or this Court ...

[Emphasis added.]

Québec Penal Proceedings

[18] On May 8, 2018, the Direction Principale des Poursuites Pénales (“DPPP”) of the QRA brought penal proceedings against Mr. Laliberté by way of a statement of offence alleging eight violations of ss. 62 and 62.01 of the Québec *Tax Administration Act*, CQLR, c. A-6.002 (“Penal Proceedings”).

[19] The charges against Mr. Laliberté were for causing the Penal Parties to fail to report or remit any of the source deductions collected from approximately 125 employees from 2011-2017, totalling \$1,621,263.04.

[20] Mr. Laliberté's 16-day trial began in February 2024. He was convicted on all counts on December 3, 2024. On May 30, 2025, he was sentenced to 48 months in prison and personally fined \$2,042,578.79 payable within 12 months. He has appealed his conviction and sentence to the Superior Court of Québec, Criminal and Penal Division.

[21] In its Judgment, the Court concluded, beyond a reasonable doubt, that Mr. Laliberté [translation]:

[I]mplemented a scheme to allow the Corporations to evade their obligation to report and remit the amounts deducted at source from their employees' remuneration; this scheme included the transfer of employees between Corporations over the years.

The Court adds that this scheme also included the continuation of the business's activities through the various corporations over the years.

Lastly, the Court adds that this scheme also involved creating confusion around the Corporations and their officers and directors ...

[22] As of part his defence in the Penal Proceedings, Mr. Laliberté argued that the proceedings were illegal because they violated the CCAA stays. The Court rejected this defence as follows [translation]:

[223] ... [T]he stay of proceedings provided for in the Order applies only to civil suits. Penal proceedings, i.e. those taken by an agency responsible for the application of a federal or provincial law, such as the Plaintiff, are not covered by the stay of proceedings provided for in the Order. Thus, the stay of proceedings provided for in the Order does not prevent the Plaintiff from issuing a statement of offence to Laliberté.

...

[236] In this case, Laliberté alleges that paragraph 25 of the Order staying proceedings against the directors of 8640025 and Telephone Data prevents the Plaintiff from instituting the present penal proceedings against him. This argument does not stand up to analysis. First, to give such a scope to paragraph 25 of the Order contravenes the jurisprudential principle that criminal courts are not subject to the control of civil courts, as well as the provisions of the CCAA codifying this principle. A stay of proceedings order issued under s. 11.02 or 11.03 of the CCAA does not de facto stay criminal proceedings, as provided for in subs. 11.1(2) of the CCAA.

[237] Second, in his argument, Laliberté omitted any reference to paragraph 21 of the Order, which clearly states that actions, suits or other

proceedings taken by a regulatory body are not stayed, as provided for in s. 11.1 of the CCAA.

[238] Thus, a reading of paragraph 25 of the Order, in conjunction with the other paragraphs of the Order and the provisions of the CCAA, makes it clear that the stay of proceedings provided for in that paragraph does not include penal proceedings and, consequently, did not prevent the Plaintiff from issuing a statement of offence to Laliberté in May 2018.

Analysis

[23] In my view, Mr. Laliberté's application fails because the Penal Proceedings in Québec were not subject to the CCAA stay. I do not accept his argument that the QRA has circumvented the CCAA process and the ARIO. I come to that conclusion for the following reasons.

[24] First, the stay had long expired before Mr. Laliberté's trial in 2024. As mentioned above, the CCAA stay expired on February 1, 2021, and the monitor was discharged on August 18, 2022, after liquidation of the CCAA Parties' assets. No release of claims against the directors and officers of the CCAA Parties was granted.

[25] Second, even while in effect, the stay did not extend to proceedings against Mr. Laliberté as the directing mind of the Penal Parties.

[26] The ARIO stayed proceedings against the CCAA Parties or proceedings that affected their Business or Property (para. 19). It also stayed proceedings against directors and officers of the CCAA Parties with respect to any claim against them that related to any obligations of the CCAA Parties for which their directors/officers were alleged under any law to be liable (para. 25). Thus, the stay did not protect Mr. Laliberté for liabilities as the directing mind of the Penal Parties.

[27] Third, throughout the CCAA proceedings Mr. Laliberté successfully drew a clear line between the CCAA Parties and the rest of the TNW Group, including the Penal Parties. This separation was accepted by this Court and the Court of Appeal. It was relied on and upheld as follows:

- i. In 2017, the secured creditors of the CCAA Parties applied to add the Penal Party Telephone Corp. (among others) as petitioners in the CCAA proceedings, on the basis that they were integrated in the CCAA Parties' business and had the same controlling mind in Mr. Laliberté.

Telephone Corp. and the CCAA Parties successfully opposed this by arguing that Telephone Corp. was a separate company from the CCAA Parties, and not itself insolvent, and so the CCAA did not apply to it under s. 3(1).

They further argued that to join them to the sales process would require their assets to be used to pay debts which were not theirs and might prevent them from paying their own creditors, and the court accepted that the CCAA did not apply to companies that objected to coming under its constraints. (See CCAA proceedings, 2017 BCSC 303, paras. 37, 52.)

- ii. On appeal, Telephone Corp. also overturned an order that authorized the sale in the CCAA proceedings of any assets owned by that company (2017 BCCA 303). The Court of Appeal said this:

[54] ... The Petitioners and its subsidiaries are separate legal entities. Assets belonging to the subsidiaries of the Petitioners cannot be available for disposition as part of the CCAA process unless the subsidiaries have been brought within that process as debtor companies, which they have not.

[55] [...] Telephone Corp. is not part of the CCAA proceedings and there is no basis on which its assets could be sold in that process.

- iii. On June 23, 2017, Mr. Laliberté signed a Proof of Claim on behalf of Telephone Corp. for \$45 million against the CCAA petitioners, thereby confirming its position as an outsider to the CCAA proceedings.
- iv. On August 25, 2017, Telephone Corp. filed a notice of application, signed by its lawyer, seeking an order directing the CCAA monitor to relinquish any and all of its property or assets on the basis that the monitor “was not given any powers at all over the assets of third parties, the Applicants”. The “Applicants” were listed in a Schedule and included Telephone Corp. and Mr. Laliberté personally.

[28] Fourth, I respectfully agree with the Court of Québec that the stay of proceedings did not extend to penal and criminal proceedings, as these proceedings were exempted from the stay under CCAA s. 11.03(2).

[29] Under CCAA s. 11.1(2), a stay under s. 11.02 does not stay criminal proceedings.

[30] Section 11.02(1)(c) says:

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the

period that the court considers necessary, which period may not be more than 10 days,

...

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

[31] Section 11.1(2) says:

11.1 (1) In this section, **regulatory body** means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

Regulatory bodies — order under section 11.02

(2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

[32] As held in *Milner Greenhouses Ltd. v. Saskatchewan*, 2004 SKQB 160, paras. 24-29, a CCAA stay does not apply to legal sanctions against alleged wrongdoers so long as the sanctions are penal rather than commercial in nature.

[33] The fines and penalties imposed by the Court of Québec relate to tax offences but are not a mechanism for recovering tax debts. As evidenced by the decisions of the Québec Court, they are punitive in nature and serve, among other things, to deter. QRA's evidence is that their payment will be treated, not as a private debt remitted to the QRA, but as a public law penalty paid into the public treasury managed by the Receiver General for Québec.

[34] For these reasons, I do not accept Mr. Laliberté's arguments that the QRA is attempting to recover debts that should have been sought in the CCAA proceedings or that it is trying to enforce a "super priority". Enforcement of the fines and penalties ordered by the Court of Québec will be from Mr. Laliberté as offender. Even if the CCAA proceedings were ongoing, it would give the QRA no priority over other creditors with respect to the CCAA Parties' assets.

[35] Finally, Mr. Laliberté argued there was an illegitimate double recovery because his fine reflected the non-remission of \$151,072.12 in source deductions,

despite this amount having been paid to QRA by the monitor as part of the CCAA proceedings.

[36] I do not see this issue as assisting Mr. Laliberté in this application. The Québec Court rejected the monitor's payment as a mitigating factor in Mr. Laliberté's sentencing because the payment did not reflect acknowledgement or remorse from Mr. Laliberté himself.

[37] The QRA properly applied the monitor's payment to ITTC's QRA account. Following the decision in the CCAA proceedings referred to above, QRA treated the CCAA Parties as separate legal entities from ITTC, and so the payment was not attributable to any debts owed by the CCAA Parties.

Conclusion

[38] Mr. Laliberté's application to set aside the decisions of the Court of Québec is dismissed.

"Coval J."