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Supreme Court of Canada Grants Leave to Appeal in “Canada North” CCAA Priming Charges vs. Payroll Deductions Case

On March 26, 2020, the Supreme Court of Canada granted the application brought by the Federal Crown seeking leave to appeal the decision of the Alberta Court of Appeal in *Canada v Canada North Group Inc.*, 2017 ABCA 314 (“*Canada North*”).

In *Canada North*, the Alberta Court of Appeal held that super-priority charges ordered by the court in *Companies’ Creditors Arrangement Act* (“CCAA”) proceedings may take priority over statutory deemed trust claims advanced by the Crown for unremitted payroll deductions. The deemed trust priority arises under the *Income Tax Act* (“ITA”), the *Canada Pension Plan*, and the *Employment Insurance Act*. Among other reasons, the Court held that granting priority to the Crown’s deemed trusts would produce absurd consequences by deterring necessary parties to a CCAA restructuring from getting involved due to the uncertainty of being paid. In a lengthy dissent, Justice Wakeling held that a plain interpretation of section 227(4.1) of the *ITA* entitles the Crown to priority over the debtor’s assets over any other creditor, including the beneficiaries of a court-ordered priming charge.

The outcome of the Supreme Court of Canada appeal in *Canada North* is of significant importance to those involved in commercial

restructurings, including creditors, DIP lenders, court-appointed monitors, lawyers, and directors of debtor companies in CCAA proceedings. We will be watching this decision closely and will provide updates as soon as they are available.

For further background on the Canada North decision please see McMillan's Bulletin entitled [Alberta Court of Appeal Ranks CCAA Super-priority Charges Ahead of CRA's Deemed Trust, but Uncertainty Remains](#).

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[a cautionary note](#)

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