Cassels

Free from Excise Tax Liability: Court Rules to Permit Director Releases Despite Objection from the CRA

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Further to our previous insight on the decision of *Delta 9 Cannabis Inc (Re),* 2025 ABKB 52 (*Delta 9*), the Court of King's Bench of Alberta (the Court) approved on May 5, 2025, an application made by Freedom Cannabis Inc. (Freedom) for, among other things, transaction approval and a reverse vesting order in the matter of *Freedom Cannabis Inc (Re),* 2025 ABKB 272.

In this decision, the Court approved the release of directors in a reverse vesting order despite the objections of the Canada Revenue Agency (CRA), just as it did in *Delta 9.* As a result, the directors were released from potential personal liability for $4.7 million in certified outstanding excise tax.

Background

Freedom is a privately owned licensed producer of cannabis products and carries on a multi-faceted business in the Canadian cannabis industry, which includes cultivating, processing, and selling cannabis products. Following cash flow problems in 2024, Freedom obtained relief under the *Companies' Creditors Arrangement Act* (CCAA) on August 8, 2024.

On February 26, 2025, the Court approved a sale and investment solicitation process (SISP) and stalking horse agreement for the acquisition of the shares of Freedom. The stalking horse agreement contemplated that the shares of Freedom would be sold to a nominee of the DIP lender, enabling Freedom to continue its business under new ownership. After marketing efforts, no additional bids emerged. Accordingly, Freedom sought approval of the stalking horse transaction by way of a reverse vesting order (RVO). Included in the RVO were releases in favour of the current directors and officers of Freedom (Director Releases).

The CRA did not object to the transaction but took exception to the granting of the Director Releases. Accordingly, the Director Releases would extinguish the CRA's claim for personal liability against Freedom's directors.

Decision

Freedom suggested that the CRA was simply relitigating the *Delta 9* decision. However, the Court found that

the CRA was “advancing an important public interest, which is the collection of taxes to fund the business of government.”[1] Accordingly, it was appropriate for the Court to revisit the issue of granting releases from personal liability of excise tax arrears as the CRA presented an entirely new argument that was not previously considered by the Court. In *Delta 9,* the CRA argued that the test for director releases was not met. However, in this case, the Court was asked to consider whether section 11 of the CCAA gives the Court jurisdiction to grant a release which extinguishes excise tax liability. In particular, the CRA argued that the opening words of section 11 of the CCAA only permit the Court to override conflicting provisions of the *Bankruptcy and Insolvency Act* and the *Winding-up and Restructuring Act*, not any other federal statute.

The Court disagreed with this argument for the following reasons, among others, to find that it does have the authority to grant the Director Releases:

- the Supreme Court of Canada has expressed that a right conferred under federal legislation can be affected by a CCAA order;
- the CCAA and *Excise Act* cannot be interpreted to create an unfair situation where some companies may use an RVO, and others must undergo bankruptcies because they have excise tax liability; and
- no provision of the *Excise Act* prohibits the release of a director’s statutory liability.

Further, the Court also found that the legal test for granting the Director Releases was met. The Court considered various factors when granting the Director Releases, emphasizing that the releases were necessary for Freedom’s restructuring and beneficial to both the debtor and creditors.

In addition to the above, the Court also considered equitable factors and the importance of the competing *Excise Act*. The CRA suggested that Freedom was a bad corporate actor, taking advantage of the CCAA and avoiding the responsibilities inflicted on it under the *Excise Act*. However, the Court found this was not the case for two reasons. First, the Directors did not deliberately evade payment of excise tax. Rather, the Court found the Directors engaged with the CRA throughout the period of debt accrual in a genuine effort to manage the indebtedness, but ultimately did not succeed. Second, the Court found that Freedom did not intend to misuse the RVO remedy. Since the SISP failed to produce any other offer, the stalking horse transaction was Freedom’s best option to maximize value for stakeholders.

Conclusion

This decision demonstrates the Court’s continued willingness to grant director releases in the context of a CCAA proceeding. It recognizes that the Court has the jurisdiction to grant director releases which extinguish personal liability of excise tax arrears. The decision also emphasizes the significance of a director’s conduct in determining whether the company acted in good faith to manage debts or, contrarily, take advantage of the CCAA. The Freedom decision reiterates the Court’s assertation in *Delta 9* that director releases necessary to the success of a going concern transaction should be granted, provided the

applicant has acted in good faith.

For more information on how this decision may affect you or your organization, we welcome you to contact our Restructuring & Insolvency or Cannabis Groups to assist you further.

[1] *Freedom Cannabis Inc (Re),* 2025 ABKB 272 at para 10.

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