SCC decision opens doors to litigation funding in insolvency proceedings

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On January 23, 2020, the Supreme Court of Canada unanimously allowed the appeal from the Québec Court of Appeal's decision in *9354-9186 Québec Inc. et al. v. Callidus Capital Corporation, et al.*, opening the doors to third-party litigation funding in insolvency proceedings in Canada.

Background

The appeal concerned insolvent entity Bluberi's attempt to fund a $200-million lawsuit against its secured creditor, Callidus Capital Corporation (Callidus), in a *Companies' Creditors Arrangement Act* (CCAA) proceeding. At issue was whether a CCAA debtor, whose only asset was a litigation claim against Callidus, was required to obtain creditor approval for the litigation funding as part of a plan of arrangement to be filed in Bluberi's CCAA proceedings.

The CCAA judge held that such approval was not necessary and approved Bluberi's request for interim financing under the CCAA pursuant to a litigation funding agreement. The Québec Court of Appeal, in a unanimous decision, disagreed. The litigation funding agreement, the court stated, could not be approved as interim financing, instead requiring approval in the context of a plan of arrangement that required a vote of Bluberi's creditors.

Decision significance

The Supreme Court's decision restored the CCAA decision and approved the litigation funding agreement without needing to file a plan of arrangement. This decision brings clarity to the application of litigation funding for insolvency proceedings in Canada. In light of this new acceptable form of litigation funding, it is expected that debtors and creditor groups will more frequently turn to litigation funding.

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