Independent obligations endure: CCAA releases don’t extinguish surety indemnity claims

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In *Intact Insurance Company v. Edward Collins Contracting Limited, 2026 NLSC 49*, the Supreme Court of Newfoundland and Labrador dismissed an application to strike a surety’s claim under an indemnity agreement, confirming that releases granted in *Companies’ Creditors Arrangement Act* (CCAA) proceedings do not automatically extinguish independent contractual obligations of indemnitors.

Case summary: *Intact v. Collins Contracting* (2026 NLSC 49)

Background: surety claim and CCAA release defence

The plaintiff (Intact) commenced an action seeking payment under an Indemnity Agreement executed in connection with losses it suffered as surety under various Performance Bonds and Labour and Material Payment Bonds. The defendant (an individual Indemnitor) applied to strike the claim, arguing that releases granted under an Approval and Vesting Order (AVO) in prior CCAA proceedings barred the claim.

The Indemnitor relied on the AVO, asserting that the release provisions had discharged him from personal liability to the surety as he was a director and officer of the insolvent Principal. He also advanced arguments grounded in *res judicata*, issue estoppel, and abuse of process.

Court decision: motion to strike dismissed

Justice Browne dismissed the application to strike. The Court held that, on the face of the pleadings, it was not “plain and obvious” that the surety’s claim disclosed no reasonable cause of action.

The Court emphasized that an indemnity agreement creates a primary and independent contractual obligation, distinct from liabilities arising solely by reason of a person’s status as a director or officer. As pleaded, the surety’s claim properly set out the

existence of the Indemnity Agreement, the losses incurred, and the Indemnitor's obligation to reimburse those losses.

CCAA release scope: limits on director and indemnity claims

A central issue was whether the AVO releases extended to the defendant's personal indemnity obligations. The Court found that they did not.

When the AVO and the earlier oral reasons were read together, the releases were intended to protect parties in their representative capacities, not to extinguish personal contractual obligations caught by section 5.1(2) of the CCAA.

Section 5.1(2) of the CCAA expressly limits the compromise of director claims in plans of arrangement where they relate to contractual rights of creditors or involve allegations of wrongdoing. Courts have held that this limitation also applies to releases granted upon sale approvals in CCAA proceedings, outside of plans of arrangement. The Court noted that jurisprudence consistently treats personal guarantees and indemnities as independent contractual undertakings relating to the contractual rights of creditors and thus not releasable. While the AVO release language contained a general release of indemnities, it also concluded with the qualifier that no claim was released that was not permitted to be released by section 5.1(2) of the CCAA.

In the oral reasons accompanying the AVO, the Court confirmed that it was not releasing directors in their personal capacities and was not releasing any claim that section 5.1(2) barred it from releasing.

Res judicata and abuse of process: not applicable

The Court rejected the argument that the claim was barred by *res judicata* or issue estoppel. The earlier CCAA proceedings addressed the approval of a sale transaction and related releases – not the enforceability of the personal indemnity.

Because the merits of the indemnity claim were not adjudicated in the CCAA proceeding, the essential elements of *res judicata* were not met. Similarly, advancing the indemnity claim did not constitute an abuse of process, as it concerned rights that the CCAA process had not conclusively addressed.

Key takeaways for sureties and creditors

This decision provides important guidance for sureties and other creditors:

- **CCAA releases are not all-encompassing**: They will not extend to independent contractual obligations such as personal indemnities or guarantees.
- **Personal indemnities remain enforceable**: Courts will treat indemnity agreements as primary obligations that survive insolvency restructurings.
- **Procedural defences have limits**: *Res judicata* and abuse of process arguments will not succeed where the underlying issue has not been previously adjudicated.

For sureties, the case reinforces the continued reliability of Indemnity Agreements and personal Indemnitors as a key risk mitigation tool, even in the context of complex insolvency restructurings.

Intact was represented in this motion by Borden Ladner Gervais LLP.

Note: The Indemnitor has filed a notice of appeal, which might be heard. BLG will provide supplemental updates on this matter.

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