

**SUPREME COURT OF CANADA**

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| **Citation:** Callidus Capital Corp. *v.* Canada, 2018 SCC 47, [2018] 3 S.C.R. 186 | **Appeal heard:** November 8, 2018  **Judgment rendered:** November 8, 2018  **Docket:** 37768 |

Between:

**Callidus Capital Corporation**

Appellant

and

Her Majesty The Queen

Respondent

- and -

Insolvency Institute of Canada,

Canadian Association of Insolvency and

Restructuring Professionals and

**Canadian Bankers’ Association**

Interveners

**Coram:** Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ.

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| **Reasons for Judgment:**  (paras. 1 to 3) | Gascon J. (Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Brown, Rowe and Martin JJ. concurring) |

Callidus Capital Corp. *v.* Canada, 2018 SCC 47, [2018] 2 S.C.R. 186

Callidus Capital Corporation Appellant

v.

Her Majesty The Queen Respondent

and

Insolvency Institute of Canada,

Canadian Association of Insolvency and

Restructuring Professionals and

Canadian Bankers’ Association Interveners

**Indexed as:** Callidus Capital Corp. ***v.* Canada**

2018 SCC 47

File No.: 37768.

2018: November 8.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ.

on appeal from the federal court of appeal

*Taxation — Goods and services tax — Collection and remittance — Trust for amounts collected — Effect of bankruptcy — Statute creating deemed trust on property of tax debtor in favour of Crown for payment of all amounts of tax collected by tax debtor but not remitted to Crown — Statute also providing that after tax debtor becomes bankrupt, deemed trust does not apply to amounts that were collected or became collectible by tax debtor prior to bankruptcy — Tax debtor failing to remit collected harmonized sales tax and goods and services tax — Crown seeking payment of unremitted tax from tax debtor’s secured creditor on basis of statutory deemed trust mechanism — Tax debtor making assignment in bankruptcy — Crown commencing action against creditor for recovery of unremitted tax — Creditor bringing motion on consent for determination of question of law — Federal Court holding that bankruptcy of tax debtor and application of statute render deemed trust ineffective as against secured creditor who received, prior to the bankruptcy, proceeds from the assets of the tax debtor that were deemed to be held in trust for the Crown — Majority of Court of Appeal setting aside determination — Federal Court order reinstated — Excise Tax Act, R.S.C. 1985, c. E-15, s. 222.*

**Statutes and Regulations Cited**

*Excise Tax Act*, R.S.C. 1985, c. E-15, s. 222.

APPEAL from a judgment of the Federal Court of Appeal (Pelletier, Near and Rennie JJ.A.), 2017 FCA 162, 414 D.L.R. (4th) 132, 51 C.B.R. (6th) 15, 37 E.T.R. (4th) 177, [2017] G.S.T.C. 60, 8 P.P.S.A.C. (4th) 1, [2017] F.C.J. No. 767 (QL), 2017 CarswellNat 3599 (WL Can.), setting aside a decision of McVeigh J., 2015 FC 977, 28 C.B.R. (6th) 209, 13 E.T.R. (4th) 43, [2015] G.S.T.C. 105, 5 P.P.S.A.C. (4th) 29, [2015] F.C.J. No. 1111 (QL), 2015 CarswellNat 4410 (WL Can.). Appeal allowed.

Harvey G. Chaiton and Sam Rappos, for the appellant.

Michael Taylor and Louis L’Heureux, for the respondent.

Grant B. Moffat and D. J. Miller, for the intervener the Insolvency Institute of Canada.

Éric Vallières and Michael J. Hanlon, for the intervener the Canadian Association of Insolvency and Restructuring Professionals.

Philippe H. Bélanger, Jocelyn Perreault and Pascale Klees-Themens, for the intervener the Canadian Bankers’ Association.

The judgment of the Court was delivered orally by

1. Gascon J. — We would allow the appeal for the reasons of the dissenting judge in the Federal Court of Appeal, and reinstate the order of Justice McVeigh of the Federal Court that answered in the affirmative the question of law submitted by the parties, with costs throughout in favour of Callidus Capital Corporation.
2. The question of law at issue was formulated as follows and assumed the existence of a pre-bankruptcy liability under s. 222 of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (“*ETA*”):

Does the bankruptcy of a tax debtor and subs. 222(1.1) of the [*ETA*] render the deemed trust under s. 222 of the *ETA* ineffective as against a secured creditor who received, prior to the bankruptcy, proceeds from the assets of the tax debtor that were deemed to be held in trust for the Plaintiff?

1. As a result, as it is not necessary to do so to resolve this appeal, this Court is not commenting, one way or the other, on the scope of the deemed trust or any liability under s. 222 of the *ETA* prior to bankruptcy.

Judgment accordingly.

Solicitors for the appellant: Chaitons, Toronto.

Solicitor for the respondent: Attorney General of Canada, Vancouver.

Solicitors for the intervener the Insolvency Institute of Canada: Thornton Grout Finnigan, Toronto.

Solicitors for the intervener the Canadian Association of Insolvency and Restructuring Professionals: McMillan, Montréal.

Solicitors for the intervener the Canadian Bankers’ Association: McCarthy Tétrault, Montréal.