Directors' Liability and Corporate Revival: Are Directors of Dissolved Corporations Restored to Office Upon Revival

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DIRECTORS' LIABILITY AND CORPORATE REVIVAL: ARE DIRECTORS OF DISSOLVED CORPORATIONS RESTORED TO OFFICE UPON REVIVAL?

The recent decision of the TCC in *Maragos v. The King* (2026 TCC 4) dealt with the question of when a person ceases to be a director of a corporation for the purposes of subsection 323(5) of the ETA. That subsection provides that a person cannot be assessed for liability as a director more than two years after the person last ceased to be a director of the corporation. A similar limitation on assessing a director is found in subsection 227.1(4) of the ITA.

This case will be of interest to tax practitioners because it clarifies the effect of the dissolution and subsequent revival of a corporation incorporated under the Canada Business Corporations Act (CBCA) on the directorships held at the time of dissolution. Specifically, the TCC held in *Maragos* that a directorship held at the time of dissolution is not restored at the time of the corporation's revival.

The facts of the case are relatively straightforward. The appellant, Anastase Maragos, was a director of a corporation (Salmon's Linen Supply Inc. ["SLS"]) incorporated under the CBCA. In 2018, SLS was dissolved by the CBCA director under section 212 of the CBCA for failing to file the required annual returns. The minister applied to have SLS restored and then tried to collect certain outstanding GST debts from the corporation. When those collection efforts failed, the minister assessed the appellant for director's liability under section 323 of the ETA. The appellant had signed a formal resignation after the revival of the corporation.

The appellant applied to the TCC, under section 58 of the Tax Court of Canada Rules, to have the following question determined: "When did the Appellant last cease to be a director (either a *de jure* director or a *de facto* director) of [the corporation] for the purposes of subsection 323(5) of the *Excise Tax Act*?"

The appellant's position was that he legally ceased to be a director of the corporation upon its dissolution and was not restored as a director when the corporation was revived. Therefore, the director's liability assessment under section 323 of the ETA was out of time, because that provision provides for a two-year limitation period, which had expired by the time the assessment was issued.

The minister's position was that the appellant ceased to be a director when the corporation was dissolved but he was restored to office upon the corporation's revival and remained in that position until his formal resignation after the

vival. Because that formal written resignation occurred less than two years before the assessment, the assessment was not out of time.

The TCC first addressed the question of when the appellant ceased to be a de jure director.

The court considered the case of *Aujla v. Canada (FCA)* (2008 FCA 304), in which the FCA had held that the directors of a corporation involuntarily dissolved under the Company Act (British Columbia) ceased to be directors upon dissolution. The Crown accepted that, as a consequence of the holding in *Aujla,* the appellant had ceased to be a director of SLS upon its dissolution and that the restoration of SLS did not retroactively reinstate the appellant as a director on the date of dissolution. The question that remained was whether the effect of the revival was to prospectively reinstate the appellant as a director. The TCC held that *Aujla* had not definitively ruled on that point.

To decide the issue, the court proceeded to apply a comprehensive textual, contextual, and purposive (TCP) analysis of the relevant CBCA provision, namely, section 209(4).

With respect to the textual analysis, Graham J held (in paragraph 18) that section 209(4) restores a dissolved corporation "'in the same manner and to the same extent as if it had not been dissolved' subject to three things: (1) any reasonable terms imposed by the CBCA Director; (2) any rights acquired by any person after the corporation was dissolved; and (3) any changes to the internal affairs of the corporation after its dissolution."

Both sides made arguments as to why those conditions favoured one interpretation over another. The TCC noted that section 209(4) of the CBCA does not directly address the status of directors following revival. The court ultimately concluded that, although the textual analysis slightly favoured Mr. Maragos's interpretation, it was largely unclear how directors should be treated. This conclusion was based in part on the court's rejection of the Crown's position that the phrase "changes to the internal affairs of the corporation after its dissolution" could include the resignation of a director while the corporation was dissolved. The court rejected this assertion on the basis that a director cannot resign from a position they no longer hold, and that such a resignation could not be delivered in writing (as required under the CBCA) because the corporation to which the resignation would be delivered no longer existed.

With respect to contextual analysis, Graham J noted that the CBCA requires a corporation to have at least one director and that a corporation lacking at least one director would be in breach of section 102(2) of the CBCA. However, the court held that the CBCA addresses this issue by allowing shareholders to elect new directors. When shareholders fail to elect directors as required, the CBCA provides for de facto directors under section 109(4), which deems a person who manages or supervises the business and affairs of the corporation to be a director in certain circumstances. The court held that treating directors as automatically reinstated upon a corporation's revival could conflict with CBCA rules requiring directors to execute consents to act (section 106(9)) and rules regarding director residence requirements. Accordingly, the court held that the contextual analysis favoured the appellant.

With respect to the purposive analysis of section 209(4) of the CBCA, Graham J noted that he had to consider the purposes of corporate continuity and limitation periods. He held that the interpretations advanced by both the appellant and the Crown could be reconciled with the purpose of preserving corporate continuity. In the court's view, the Crown's position favoured, among other things, certainty as to who the directors are, while the appellant's position favoured preserving shareholders' rights to determine the membership of the board of directors.

The court then considered the purpose of limitation periods in the CBCA and ETA and held that the purpose of such periods is to provide "certainty, evidentiary integrity and diligence." The court also held that adopting the Crown's position would significantly undermine the purpose of limitation periods. The court referred to section 119 of the CBCA, which provides for director's liability for certain unpaid wages. It noted that a director is not liable under section 119 unless sued "while a director or within two years after ceasing to be a director." Adopting the Crown's position would allow a former employee of a dissolved CBCA corporation, long after its dissolution, to apply to have the corporation revived and then immediately sue the director for the unpaid wages. The court noted that this treatment would differ from that of a corporation that ceased operations and whose directors simply resigned. In the latter scenario, liability would run for only two years. The court saw no reason for this difference in treatment.

The court rejected the Crown's assertion that the appellant's interpretation would put directors of "negligent corporations" in a better position than directors of corporations that comply with their filing obligations and whose directors take the formal step of resigning. The court concluded that corporations in both categories would be in an identical position and subject to the same limitation period (that is, a director of a dissolved corporation would be liable from the date of dissolution until the expiry of the relevant limitation period, while a director who formally resigned would be liable from the date of resignation).

On the basis of this TCP analysis, the court adopted the appellant's interpretation and held that the appellant ceased to be a de jure director upon dissolution and was not reinstated on the revival of SLS. In addition, the court rejected the minister's assertion that the appellant was a de facto director, holding that the minister had not met his burden of demonstrating this.

This decision will be welcomed by practitioners because it clarifies a point of corporate law relevant to directors' liability assessments under both the ETA and the ITA. However, it is important to note that the result might have been different if the revival had occurred pursuant to a different corporate statute. For example, section 241(9) of the Business Corporations Act (Ontario) provides that (subject to certain conditions), "upon revival, the corporation shall be deemed for all purposes never to have been dissolved." This language is not present in the CBCA and could have led the court to reach a different conclusion.

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