

Caught in the Middle – Court of Appeal affirms low threshold to interplead funds (Tacora Resources Inc. v 1128349 B.C. Ltd.)

Funds | Litigation & Dispute Resolution

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Lawyers, brokerages, trustees, and other parties may sometimes find themselves holding funds that they do not want while others fight over who is entitled to them. Interpleader applications are a long-standing mechanism that may be used to obtain an order to pay the disputed funds into court.

In *Tacora Resources Inc. v. 1128349 B.C. Ltd.*, 2026 ONCA 306, the Court of Appeal for Ontario addressed a dispute over whether an interpleader order could be obtained.

The respondent, Tacora, operated a mine pursuant to a lease under which it was required to pay quarterly royalties of about \$5.5 million to the appellant, 1128349 B.C. Ltd. (“112”).

Uncertainty over the process arose due to a bitter governance fight between two rival factions who claimed to control the affairs of 112. Each faction sent conflicting payment instructions to Tacora. One group demanded immediate payment to a newly designated bank account and threatened default and lease termination if payment was withheld; the other group insisted that those instructions were unauthorized and warned Tacora not to pay anyone pending resolution of ongoing litigation in the Cayman Islands.

As a result, Tacora was caught in a difficult position of either paying the wrong person and facing a substantial claim or paying no one and risking default.

Given this dilemma, Tacora reasonably applied under [Rule 43](#) of the *Rules of Civil Procedure* for interpleader relief seeking permission to pay the funds into court and a declaration that its liability would be extinguished once it did so.

[Rule 43.02\(1\)](#) provides that a person may seek an interpleader order in respect of property if “two or more other persons have made adverse claims in respect of the property”. “Property” under the rule includes a debt.

The application judge concluded, however, that [Rule 43](#) was not available because there was only a single creditor (112) rather than competing claims by two or more persons to the funds and the real dispute was about corporate authority, which was a dispute to be adjudicated by another court, not an Ontario interpleader judge.

Despite dismissing the application, the application judge nevertheless fashioned his own interim solution, ordering Tacora to pay the royalty into the trust account of counsel for one of the factions. No party had requested such an Order.

The Court of Appeal unanimously [overturned](#) the decision, clarifying that adverse claims are not confined to situations in which formally articulated competing demands have been made. Rather, [Rule 43](#) may be engaged whenever an applicant faces a real, non-frivolous risk of competing claims in respect of the same property or debt. The applicant does not have to prove that multiple claims have already been sued upon, nor that they are valid, only that there is a real

foundation for them.

Here, Tacora had two groups, each purporting to speak for the same corporate creditor, 112, giving incompatible instructions and threatening consequences if ignored. Such a situation was precisely the dilemma that an interpleader application was meant to resolve.

The Court of Appeal expressly endorsed earlier authorities recognizing that disputes over who has authority to act for a corporation can amount to adverse claims, even where the corporation itself is singular. The key question is not how many creditors exist in theory, but whether the applicant faces genuine exposure to double claims or inconsistent liability in practice.

The application judge's second error was treating the proceeding as an attempt to litigate who was right in the Cayman Islands dispute. The Court of Appeal rejected that approach, as an interpleader application does not require the court to decide who ultimately gets the property in issue. Its purpose is procedural and protective, namely: to preserve the property and allow the interpleader applicant to exit the battlefield.

Further, [Rule 43](#) expressly contemplates that an interpleader order can be sought even when no proceeding has yet been commenced in respect of the property, and nothing in the rule requires that the ultimate dispute be resolved in Ontario.

As the Court of Appeal emphasized, a standard interpleader order does not trench on the merits of the underlying dispute, wherever it may be litigated. The court's role is limited to safeguarding the funds and ensuring the innocent party can discharge its obligation without incurring risk.

These comments will be of importance for parties doing business across borders. The existence of parallel proceedings in another jurisdiction does not deprive Ontario courts of jurisdiction to grant interpleader relief when Ontario has a real connection to the stakeholder and the funds. The Court of Appeal had little difficulty finding jurisdiction. Tacora was an Ontario company headquartered in Toronto. The debt was situated in Ontario. No party argued that Ontario was an inconvenient forum, and by litigating the application on its merits, the respondents attorned to the court's jurisdiction.

Lastly, the Court of Appeal noted the most important aspect of an interpleader order under [Rule 43.04\(1\)\(b\)](#): once the applicant pays the funds into court, its liability in respect of those funds is "extinguished".

For parties holding disputed funds, this is crucial. It confirms that an interpleader order under [Rule 43](#) can be deployed in governance disputes, shareholder fights, receivership transitions, contested estates, or perhaps any situation where authority is unclear, even if the underlying obligation is owed to only one legal entity.

In Tacora's case, the Court of Appeal [ordered](#) not only that the disputed royalty be paid into court, but that future quarterly royalties also be paid in the same way pending resolution of the ongoing litigation or further order of the Ontario Superior Court. Upon doing so, Tacora's contractual liability under the lease was extinguished.

The Court's costs award reinforced this policy rationale. Tacora, described as the "prototypical innocent third party," received full indemnity costs of the application (\$173,917.95) and of the appeal (\$57,089.60), deducted from the royalty funds to be paid into court.

For parties "stuck in the middle," the Court of Appeal's decision offers a clean exit strategy and illustrates that an interpleader order is available even where there is only one nominal creditor and disputes over authority, control, or entitlement can constitute adverse claims. Paying funds into court can fully extinguish future liability and does not require the court to engage in a determination of who will prevail in the underlying fight. Innocent parties should not be required to act as a *de facto* bank holding unwanted funds for other litigants. A PDF version is available for download [here](#).

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