

March 10, 2016

CCAA -- Powerful Private Interests Manipulate the Court
Don't Let U.S. Steel Abscond with Billions! Keep Stelco Producing!



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- **Don't Let U.S. Steel Abscond with Billions! Keep Stelco Producing!**

Coming Event

- **Hamilton Town Hall Meeting Against Hospital Cuts, March 29**

CCAA -- Powerful Private Interests Manipulate the Court

Don't Let U.S. Steel Abscond with Billions!
Keep Stelco Producing!

People are amazed that a judge can rule so one-sidedly in favour of a company. CCAA Justice Wilton-Siegel decreed that U.S. Steel's equity interest in the former Stelco steelworks, gained through an ownership purchase in 2007 and increased with added injections of cash, is a debt to itself. This is significant, as Wilton-Siegel's decree under the authority of the *Companies' Creditors Arrangement Act* (CCAA) puts U.S. Steel in line to seize all of the money received when the Stelco steelworks are sold.

The people's amazement is well founded, as the decree makes no sense. But upon reflection, this is not the first time such an absurd ruling under CCAA has astounded almost everyone. In 2004, those who controlled Stelco at the time declared a "liquidity crisis" and a certain Justice Farley agreed to put the company under CCAA bankruptcy protection. The "liquidity crisis" soon proved to be a total farce, for immediately upon entering CCAA, Stelco managed two of its most profitable quarters. Of course, this did not stop Justice Farley from pursuing the CCAA fraud until 2006, when everything fell into place for a big score by a handful of parasites, including the debtor-in-possession Brookfield who had gained control of Stelco while under bankruptcy protection. The CCAA farce played out at the expense of steelworkers, retirees, salaried employees, shareholders, other creditors, the economy and surrounding community. The CCAA fraud did not solve any problems economic or otherwise but instead weakened Stelco allowing U.S. Steel to move in for a takeover one year later.

The Companies' Creditors Arrangement Act



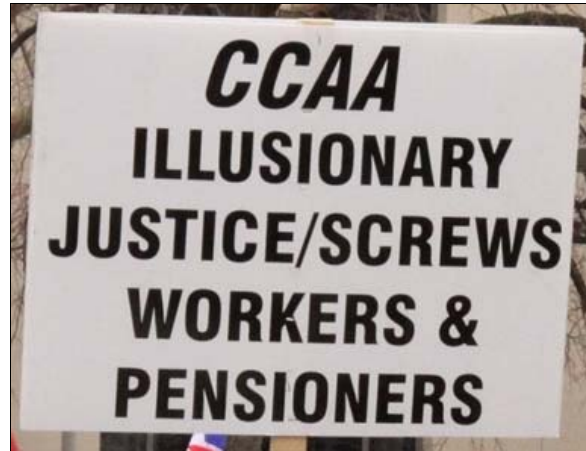
The federal government introduced the CCAA during the economic crisis of the 1930s but it did not take off as a tool of powerful private interests until the 1980s, when the ruling imperialist elite unleashed the anti-social offensive to smash up all the arrangements from the post war period.

The CCAA court gained momentum allowing the powerful private interests controlling monopolies to liquidate their holdings with either minimal damage to themselves or even making big scores while attacking the interests of their workers, retirees, creditors, the community and economy. Monopolies that have used CCAA to further their private interests in opposition to the public interest include AbitibiBowater, Air Canada, CanWest, Kitco, Nortel Networks, Quebecor World, Sino-Forest Corporation, Stelco, and Target Canada amongst others.

In explanation of the CCAA, legal opinion suggests that its approach is not "rules based" but rather pragmatic, which according to the Supreme Court of Canada "provides a more discretionary approach that is remedial in nature, which therefore must be broadly construed."

The CCAA stated goal is "to facilitate compromises and arrangements between companies and their creditors." People note that the goal is not to solve the economic problems plaguing the company and sector and guarantee the rights and well-being of the workers and others involved. The aim opens up all previous arrangements to possible attack or "compromise" including even the rule of law governing pensions etc, and long-held and negotiated collective agreements. The stated CCAA goal is meant to negate any solutions to problems that may lead to a new pro-social direction for the company or sector and serve the public interest.

In most instances, the workers and retirees who through their work have produced all the value connected with the company under CCAA and whose lives depend on that work and value are reduced to "creditors" who may or may not be secured and compensated. The "creditors" are subject to the CCAA court's "broad discretionary approach and powers" to arrive at the declared goal. As U.S. pragmatism says, "Whatever works to meet the goal must be good or at least permissible."



Once the pragmatic approach is accepted, the rule of law, objectivity of consideration, a "rules based approach" along with modern principles and rights are thrown out the window. *Whatever works* means in practice that the most powerful private interests prevail as they set the goal. Needless to say, this takes Canada back to the medieval period when the ruling aristocracy simply declared what was in their private interests to be the accepted outcome of any dispute. During the depths of medieval depravity, one example of justice to terrorize the people and force them to obey the autocrats was to throw an accused in the river: if they drowned they were judged innocent; if they survived and made it to shore, they were judged guilty and executed.

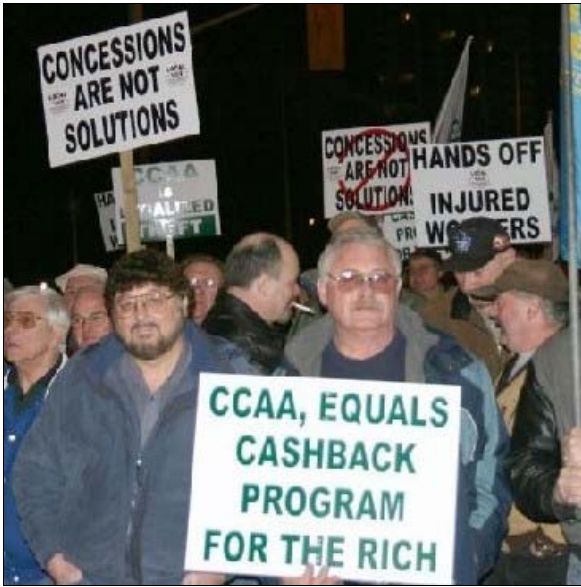
Of course with the CCAA, more appropriate language is employed that softens the approach but the result is the same as in medieval times. The CCAA states in s. 11 that a court may "make any order that it considers appropriate in the circumstances" to meet the goal.

This was glaringly obvious during the 2004-06 Stelco CCAA case under Justice Farley when people noted that he seemed to be ruling by the seat of his pants, just making things up as he went along and decreeing any order he considered appropriate to meet the private interests of those in control and the goal they had set.

Wilton-Siegel is following Farley's notorious example. His decree declaring as *debt to itself* the money U.S. Steel used to purchase Stelco and any additional amounts disguised as loans is right up there with anything Farley ever did. Many have noted that a number of U.S. Steel's so-called loans to its wholly-owned subsidiary in Canada were made after CCAA bankruptcy protection had already been decided as the way to go. They suggest that the existence of these fairly recent so-called "revolver loans" to itself is proof of a criminal conspiracy well thought out in advance in preparation to enter CCAA. A conspiracy would involve using CCAA to avoid making the pension plans whole, absconding with the best customers, not repaying the loan to Ontario and not paying post-retirement benefits and municipal taxes, aside from the big bonus of having the \$2.2 billion equity investment returned to the conspirators' coffers.

People realize that CCAA is not like a court of law either a criminal or commercial court. In a criminal case for example, someone is accused of murder and the prosecutor presents evidence to prove the accused is guilty beyond a reasonable doubt. The defence presents evidence to refute the prosecutor's case and prove the accused is innocent. The judgement rests on the evidence presented.

That is not the scenario with the CCAA. The outcome has already been decided according to the broad aim of the CCAA and the narrow goal of the applicant's private interests as set out in their factum. The court process is merely to justify arriving at the goal. The powerful private interests that bring their case before the CCAA court have already decided the goal in advance, which is



Hamilton Demonstration during first round of Stelco CCAA, February 27, 2004

found in their presentation of a position within a court factum.

You can argue all you want and spend millions on lawyers but that will not change the outcome because essentially the CCAA process is merely to justify an outcome that has already been decided. Only broad exposure of the fraud in the court of public opinion will influence the outcome. Local 1005 found in the 2004-06 Stelco CCAA fraud that the best way to defend their pensions and their collective agreements was to refuse to participate. The steelworkers went to the court of public opinion and found broad support in the community for their position that the CCAA was a fraud and the CCAA court had no business tampering or interfering with their pensions and collective agreements that existed in law.

Local 1005 and others pointed out forcefully that the CCAA fraud would not lead to solving any problems at Stelco and would not assist in finding a direction for the Canadian steel sector that would put it on its feet. Stelco was badly wounded by the CCAA when assets were stripped and hundreds of millions of dollars were taken from the company by the parasites who had seized control. They sold the "new" Stelco to U.S. Steel for a big score of which none went into the pension plans or towards any renewal of the steelworks. U.S. Steel handed the parasites the money so that it could eventually eliminate a competing Canadian steel company especially given the economic crisis that erupted soon after in 2008.

Now U.S. Steel is using CCAA to declare its purchase and destruction of Stelco as a debt to itself so that it can scurry back to the U.S. with its most lucrative customers in tow and \$2.2 billion in its pocket, all the while hoping that it has injured Stelco to the point it can no longer produce and compete.

The people led by steelworkers are determined not to allow this to happen and vow to defeat this CCAA fraud and keep Stelco producing with a new direction that addresses its problems and those of Canada's steel sector.

***Down with the CCAA Fraud!
Keep Stelco Producing!***

Note

The CCAA is not unique within the U.S.-led imperialist system of states. The global monopolies use a similar system to serve their narrow private interests in the U.S. and UK. The CCAA clone in the U.S. is called Chapter 11, and in the UK, Company Voluntary Arrangements (CVAs).



Coming Event

Hamilton Town Hall Meeting Against Hospital Cuts, March 29

Tuesday, March 29 -- 7:00 pm
City Hall Council Chambers, 71 Main St. W.
Organized by Hamilton Health Coalition

Our Hospitals are Facing Serious Cuts

March 2016

If we don't stop them

On the Chopping Block:

Hamilton Health Sciences

- Entire hospital site threatened with closure.
- Nearly 100 full-time jobs to be cut as HHS cuts \$30 million from its budget.

St. Joseph's Healthcare Hamilton

- Community day therapy services to be closed.
- 3 maternity beds slated to be cut.
- 6 respiratory rehab beds removed to become an outpatient service.
- More than 136 jobs to be cut as St. Joe's cuts \$26 million from its budget.
- Widespread nursing care cuts in units that include: recovery room, neo-natal intensive care, operating room, nephrology, cardiology, acute mental health, complex care, respirology, pre-surgery assessment, dialysis, day surgery, medicine, medical rehab and geriatric outreach.
- At least 2 clinics face closure including the east-end general psychiatry clinic.



What do the cuts mean for our community?

As staff and beds are cut, our hospital is less able to meet our community's needs.

The cuts mean:

- Longer waits for care as all beds are full.
- Poorer patient care, increased risks to patients as a result of less staff on duty.
- Too few health professionals and vital support staff to meet the needs of patients.
- Ongoing shrinking of hospital and workforce.

 **Ontario Health Coalition** 15 Gervais Drive, Suite 604
Toronto ON, M3C 1Y8
Protecting public healthcare for all.

Town Hall Meeting

HAMILTON CITY HALL

(Council Chambers)
71 Main St. W., Hamilton
Tuesday March 29, 7 p.m.

What We Can Do to Save Our Services

- ✓ Sign the petition, take copies and collect signatures in your neighbourhood.
- ✓ Send an email or call Andrea Horwath, Paul Miller and Monique Taylor, our Members of Provincial Parliament (MPPs) and ask them to put pressure on the Liberal government to stop the hospital cuts in Hamilton.

Andrea Horwath (Hamilton Centre)
Email: ahorwath-co@ndp.on.ca
Phone: 905-544-9644

Paul Miller (Hamilton East - Stoney Creek)
Email: pmiller-co@ndp.on.ca
Phone: 905-545-0014

Monique Taylor (Hamilton Mountain)
Email: mtaylor-co@ndp.on.ca
Phone: 905-388-9734
- ✓ Join the Hamilton Health Coalition and help plan the campaign to save our local hospital services.

Hamilton Health Coalition
Contact: Rolf Gerstenberger 289-260-9547

Did You Know?

Ontario's government has been pursuing the most aggressive hospital cuts plan of anywhere in Canada, and anywhere in the developed world. Ontario is currently in the ninth straight year of hospital cuts by our provincial government. This is the longest period of hospital cuts in Ontario's history and there is no end in sight.

As a result of the funding cuts by our provincial government, Ontario's hospitals have cut more hospital beds than any other province in Canada. In fact, we have dropped far below the rest of Canada. Among all developed countries, only Mexico and Chile have fewer hospital beds than Ontario.

| Public Hospital Funding Per Person, 2015 Current \$ | |
|---|--|
| Newfoundland & Labrador | \$2,406 |
| Alberta | \$2,245 |
| Prince Edward Island | \$1,995 |
| New Brunswick | \$1,971 |
| Nova Scotia | \$1,907 |
| Manitoba | \$1,818 |
| British Columbia | \$1,797 |
| Saskatchewan | \$1,761 |
| Ontario | \$1,419 |
| Quebec | \$1,382 |
| Average of the other provinces | \$1,920 |
| Difference between Ontario and the average of the other provinces | Ontario funds hospitals at \$501 per person less |

Source:
Calculations from
CIHI, *National
Health
Expenditures
Database 2015*

| Hospital Beds Per 1000 (population) By Province 2013-14 | |
|---|-----|
| Newfoundland & Labrador | 4.6 |
| New Brunswick | 3.8 |
| Saskatchewan | 3.6 |
| Nova Scotia | 3.4 |
| Manitoba | 3.3 |
| PEI | 3.3 |
| British Columbia | 3 |
| Alberta | 2.8 |
| Ontario | 2.3 |
| Average other provinces | 3.5 |

Demand that Ontario's government stop the cuts

Our health care dollars should be going to providing direct, front-line patient care. We are calling on the provincial government to:

- ✓ Stop the devastating hospital cuts.
- ✓ Improve hospital funding to at least the average of the other provinces.



Due to funding cuts, Ontario now has the most overcrowded hospitals in the country with patients left on stretchers in hallways for days waiting for beds.

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