Court of Appeal File No. COA-24-OM-0342
Superior Court File No. CV-21-00658423-00CL

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C 1985, c. C-36, as amended.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 14487893 CANADA INC.

Responding Party/
Proposed Respondent

FACTUM OF THE PROPOSED RESPONDENTS
(Motion for Leave to Appeal, Returnable in Writing before a Panel)

Date: December 12, 2024

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TABLE OF CONTENTS

PART I – OVERVIEW

1. To efficiently comply with certain terms in a *CCAA* Vesting Order, the Insurers and Haidar Omarali agreed to argue a motion before Justice Cavanagh focused on the scope of executive liability coverage for his pre-Filing claim on behalf of class Plaintiffs, [1] which would in turn determine if he could pursue this Claim in the *CCAA* process.

2. The Reverse Approval and Vesting Order limited Mr. Omarali's remedies to the proceeds of such coverage, if any, otherwise barring any uninsured claims against the Just Energy estate or the former and current Directors and Officers (**"D&Os**").

3. On September 9, 2024, the parties argued and Justice Cavanagh considered all relevant evidence and law on the motion, including the agreed upon assumption that coverage grants were triggered in the primary layer XL Specialty Insurance Company D&O liability policy ("**XL**" and **"XL policy"**) and follow form excess layer D&O liability policies of the other two insurers (collectively with XL policy, "**the Policies**" and with XL, "**the Insurers**"), to determine if Mr. Omarali's Claim fell within the scope of Endorsement No. 6 in the XL policy, which set out the Prior Acts Exclusion (**"PAE**").

4. On September 20, 2024, Justice Cavanagh released detailed reasons for the Order granting the Insurers' motion ("**the Reasons"**) wherein he reviewed the PAE in the context of both (a) the whole policy and (b) the commercial circumstances preceding and following the March 9, 2021 *CCAA* filing date (**"Filing Date**"), applying the relevant

[1] Moving Party's Motion Record (**"MR"**), **TAB 7**, pg. 1437 – Amended Statement of Claim in Toronto Court File No. CV-15-52749300 CP, a proceeding under the *Class Proceedings Act, 1992*, between Haidar Omarali v. Just Energy Group Inc., Just Energy Corp., and Just Energy Ontario L.P.

interpretive and legal principles to conclude the PAE applied to Mr. Omarali's Claim.

5. Justice Cavanagh made no error in fact or in law when he found the PAE barred D&O coverage for Mr. Omarali's Claim against the D&Os.

6. Justice Cavanagh also fairly considered and rejected Mr. Omarali's alternative argument to apply the nullification of coverage doctrine, finding Just Energy D&Os who (a) continued acting or (b) were first appointed *after* the Filing Date had prospective coverage under the Policies so that the commercial context was clear – the XL policy was not drafted or intended to cover the prior acts which underpin Mr. Omarali's Claim.

7. Justice Cavanagh's *CCAA* order is entitled to deference and Mr. Omarali has not met the stringent four-factor test, including the most important *prima facie* meritoriousness element, which this Court has confirmed is required to successfully seek leave to appeal.

PART II – FACTS

Background

8. Just Energy Group Inc. and Just Energy Corp. (collectively, "**Just Energy**"), operated in Ontario as federally and provincially incorporated entities respectively.

9. Mr. Omarali alleges that from 2012 to November 28, 2016, Just Energy misclassified employees as independent contractors, who as a result, did not receive minimum wage, overtime, public holiday and vacation pay protections under Ontario's *Employment Standards Act*.

10. On May 4, 2015, Mr. Omarali's Statement of Claim in the Class Action was issued

and on November 17, 2015 it was amended.[2] He sought a certification order, declaratory relief, and damages in the amount of $100M on behalf of the Class.

11. On November 28, 2016, Just Energy ended its independent contractor program and all sales agents were re-classified as "employees", marking the end date for the period during which these acts were allegedly committed.

12. The Class Action was scheduled for trial in late 2021, but on March 9, 2021, Just Energy filed for protection under the *Companies' Creditors' Arrangement Act*[3] *("CCAA")* resulting in a stay of the Class Action, which remains in effect.

13. On the Filing Date, the Insurers issued the three Policies to cover the Just Energy D&Os, with the excess Policies issued to "follow form" to the XL policy. The resulting tower of Policies is summarized below:

Insurer	**Layer**	**Policy No.**	**Limits of Liability**
Hiscox[4]	2nd Excess	B0146ERINT2100865	US$5M for each claim & Aggregate excess of US$10M
Tokio Marine HCC[5]	1st Excess	Agreement No. B602121HCCGFM	US$5M excess of US$5M
XL[6]	Primary	ELU173707-21	US$5M Maximum Aggregate
Total Tower Limit of Liability: US$15M			

[2] **MR, TAB 7, Tab 2, at pg. 1437** – Omarali Amended Statement of Claim
[3] **Factum Schedule B** – *Companies' Creditors Arrangement Act,* R.S.C. 1985, c.C-36, as amended.
[4] **MR, TAB 6 (Vol. 3) at p. 1339 -** Certain Underwriters at Lloyd's London Subscribing to Policy No. B0146ERINT2100865 by their coverholder Hiscox
[5] **MR. TAB 6 (Vol. 3) at p. 1312 -**Tokio Marine HCC - D&O Group, the Coverholder by HCC Underwriting Agency Ltd, HCC Syndicate 4141 trading as Tokio HCC International via Agreement No. B602121HCCGFM
[6] **MR, TAB 6 (Vol. 3) at p. 1286 -** XL Specialty Insurance Company, policy no. ELU173707-21.

14. The time on risk for the Policies commenced on, and the anchor date for "prior acts" in the PAE is the Filing Date, March 9, 2021.

15. Endorsement No. 3 in XL's Policy, as modified by Endorsement No. 7, contains the PAE, which states that there is no coverage for "any Claim based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any act, error, omission, misstatement, misleading statement, neglect, breach of duty or Wrongful Act committed or allegedly committed prior to March 9, 2021."

16. On October 29, 2021, Mr. Omarali submitted Pre-Filing Proofs of Claim in the *CCAA* proceedings, seeking $105,854,794.52 against each of the D&Os[7] ("**D&O Proof of Claim**") and Just Energy [8] (the "**Proof of Claim**").

17. On February 2, 2022, Just Energy issued a Notice of Revision/Disallowance for both the D&O Proof of Claim[9] and the Proof of Claim.[10]

18. On November 3, 2022, Mr. Justice McEwen issued a Reverse Approval and Vesting Order (the "**Vesting Order**") which included, amongst others, orders:

a. allowing claims in the D&O Proof of Claim against Just Energy's "current or former directors or officers" only to the extent of any available insurance;

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[7] **MR, TAB 7**, Tab 3, at p. 1457 – D&O Proof of Claim.
[8] **MR, TAB 7**, Tab 4, at p. 1470 – Proof of Claim against Just Energy Entities.
[9] **MR, TAB 7**, Tab 5, at p. 1477 – Notice of Revision of Disallowance for Persons Asserting D&O Claims
[10] **MR, TAB 7**, Tab 6, at p. 1485 – Notice of Revision or Disallowance for Claims against Just Energy

b. otherwise limiting a Class Action Claimant's entitlement to recovery "from proceeds under the Insurance Policies" excluding rights of enforcement or recovery as against Just Energy's "current and former directors, officers…"

c. and limiting "forever" such claims "solely to recovery from the proceeds of the Insurance Policies payable" to Just Energy or its D&Os;

d. while preserving "any right, defence or obligation of any insurer in respect of an Insurance Policy";

e. and providing that "Any recovery sought by the Class Action Claimants as against the Insurance Policies may continue in these *CCAA* proceedings…"

f. with approval granted to give effect to these terms.[11]

The Insurers' Prior Acts Exclusion Interpretation Motion

19. On April 4, 2024, in response to Justice Cavanagh's invitation to provide a cost- and time-efficient path to resolving Mr. Omarali's Claim under the Vesting Order, the parties agreed the Insurers would bring a motion to determine if the PAE applies to bar coverage.

20. On September 9, 2024, Justice Cavanagh heard argument from the Insurers and Mr. Omarali on the Insurers' motion.

21. On September 10, 2024, Justice Cavanagh granted an extension of the stay order in the *CCAA* proceeding to January 31, 2025.[12]

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[11] **MR TAB 4 –** Reverse Approval and Vesting Order of McEwen J., dated November 3, 2022.

[12] **MR, TAB 5** – Issued September 10, 2024 Order of Justice Cavanagh re: Stay Extension

22. On September 20, 2024, Justice Cavanagh released the Reasons,[13] finding:

a. Mr. Omarali's Claim is based upon, arises out of, directly or indirectly results from, is in consequence of, and/or involves an act, error, omission misstatement, misleading statement, neglect, breach of duty or Wrongful Act that was committed or allegedly committed prior to March 9, 2021; and

b. The PAE thus applies to bar coverage for Mr. Omarali's Claim.

23. Accordingly, he signed an Order dismissing Mr. Omarali's Claim in the *CCAA* proceeding, with costs payable to the Insurers in an amount to be agreed upon or determined by further court order.[14]

PART III – ISSUES, LAW & ARGUMENT

ISSUES

24. The sole issue relevant to this motion for leave to appeal is whether Mr. Omarali as the moving party has failed to meet the four factor test for granting such leave.

25. The Insurers contend the answer is firmly "yes", and since Mr. Omarali cannot meet his onus, his leave motion must be dismissed.

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[13] **MR, TAB 3** –Corrected Endorsement of Justice Cavanagh re: Prior Acts Exclusion Motion

[14] **MR, TAB 2** – Issued and entered Order of Justice Cavanagh dated September 20, 2024

The CCAA Context and Four-Factor Test in Considering Leave to Appeal Motions

26. To appeal a *CCAA* motion judge's order, a party must seek leave. [15]

27. In the context of *CCAA* proceedings, this Court has held that such leave is required because the legislative and judicial intent is that appeals should be *limited*.[16]

28. Here, Mr. Omarali seeks leave from a three-judge panel of the Court, but this Court has made clear that in *CCAA* proceedings leave should only "be granted sparingly" and with restrictions such as "only where there are serious and arguable grounds that are of real and significant interest to the parties".[17][18][19]

29. Mr. Omarali's Factum at paragraph 43 sets out the well-settled, four-factor test he must meet, [20] but then his materials filed offer insufficient proof to do so.

30. Repeated for ease of reference, to obtain leave, Mr. Omarali must show*:*

i. the proposed appeal is *prima facie* meritorious;

ii. the points on the proposed appeal are of significance to the practice;

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[15] **Schedule "B"**, *Company Creditors' Arrangement Act*, RSC 1985, c C-36, as amended, ss 13 –14.

[16] **Responding Party's Book of Authorities ("RespBOA"), TAB 1 -** *Algoma Steel Inc. (Re)*, 2001 CanLII 5433 (ONCA) at para. 8**.**

[17] **RespBOA, TAB 2 -** *Labourers' Pension Fund of Central and Eastern Canada (Trustees of) v. Sino-Forest Corp.*, 2013 ONCA 456 (CanLII) at para 2 [*Sino-Forest]*]

[18] **RespBOA, TAB 3 -** *Nortel Networks Corporation (Re),* 2013 ONCA 518 (CanLII), at para. 5.*[Nortel]*

[19] **RespBOA, TABS 4 and 5-** More recently, this was affirmed in *Urbancorp Inc. v. 994697 Ontario Inc.*, 2024 ONCA 26 (CanLII) at para 15, and **TAB 5 -** *U.S. Steel Canada Inc. (Re)*, 2024 ONCA 363 at para. 6 [*US Steel*]

[20] **RespBOA, TABS 2 and 6 -** *Sino-Forest Corp.*, supra, at para. 2., confirmed at **TAB 6** in *Laurentian University of Sudbury (Re),* 2021 ONCA 199 at para. 23.

iii. the points on the proposed appeal are significant to the action; and

iv. the proposed appeal will not unduly hinder the progress of the action.[21][22]

31. This Court considers these factors to be a stringent test, [23] with appellate courts taking a deferential, cautious approach to intervening in a *CCAA* motion judge's decisions,[24] evidenced by refused leave motions in such cases as *Sino-Forest, Nortel Networks*, *Laurentian University*, *Urbancorp, a*nd *US Steel.*

32. A *CCAA* motion judge's discretionary order attracts appellate intervention *only if* the judge (a) errs in principle or (b) exercises discretion unreasonably.[25]

33. This tracks in part the general appellate standard of review for questions of mixed fact and law. As additional context, significantly for Mr. Omarali's leave motion, this Court denied leave in *Nortel Networks*, where the *CCAA* motion judge's order was likewise based in part on how a D&O liability policy applied to a pre-Filing claim.

(a) 1st Factor: Failure to Prove a Prima Facie Meritorous Claim is Fatal

34. Mr. Omarali does not meet this threshold test.

35. The case law is unclear on whether the four test factors are conjunctive, but according to this Court, *prima facie* meritoriousness is the most important test factor and

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[21] **RespBOA, TAB 5 -** *US Steel*, *supra,* at para 6.
[22] **RespBOA, TAB 4 -** *Urbancorp, supra.* at para. 13.
[23] **RespBOA, TAB 2 -** *Sino-Forest Corp.*, *supra* at paras 2–3 and *Nortel Networks*, supra, at para. 5.
[24] **RespBOA, TAB 1 -** *Algoma Steel*, *supra* at paras 8 and 9.
[25] **RespBOA, TAB 7 -** *Grant Forest Products Inc. v. The Toronto-Dominion Bank*, 2015 ONCA 570 (CanLII) at para 98.

a failure to show this weighs heavily against granting leave, to the point of being fatal. [26] [27] [28]

36. Here, Mr. Omarali's appeal is not *prima facie* meritorious as

a. On the record, Justice Cavanagh was entitled to, and did, make a clear fact finding that cannot reasonably be overcome on appeal: temporally, Mr. Omarali's is a "pre-Filing" and demonstrably not a "post-Filing" Claim;

b. Mr. Omarali has not otherwise shown Justice Cavanagh's fact finding and legal interpretation in this factual context raises novelty; and

c. Nor has he shown that Justice Cavanagh's ruling is controversially offside established insurance coverage precedent or contract interpretation jurisprudence generally.

37. Justice Cavanagh's interpretation of the Policies, and specifically the PAE is a question of mixed fact and law, entitled to deference. That Mr. Omarali has not shown any extricable error of law, is not surprising as our highest court cautions this is rare.[29]

38. In *Nortel*, this Court denied an insurer's motion for leave to appeal a *CCAA* motion judge's order based in part on an interpretation of a D&O liability policy in the context of a more conventional policyholder-insurer D&O coverage dispute. There, Nortel had filed

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[26] **RespBOA, TAB 6 -** *Laurentian University,* 2021 ONCA 199 (CanLII) at para. 38.
[27] **RespBOA, TAB 4 -** *Urbancorp Inc. v. 994697 Ontario Inc.*, 2024 ONCA 26 (CanLII) at para 14, citing *Timminco Ltd. (Re)*, 2012 ONCA 552 at para. 3. *Nortel Networks, supra,* at para. 4.
[28] **RespBOA, TAB 3 -** *Nortel Networks, supra,* at para. 4.
[29] **RespBOA, TAB 8 -** *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at para 55.

for *CCAA* protection and a Proof of Claim was filed against the D&Os. The corporate policyholder Nortel moved for directions as to whether retention provisions in the D&O Policy applied to a pre-Filing indemnification obligation. The lower court found that the Retention Amount did not apply to claims made by the Executives against the D&O policy. In denying Chartis' motion for leave to appeal, this Court specifically deferred to the Commercial List motion judge's findings on pre-Filing claims, noting in part that this was "squarely within his expertise and entitled to deference".[30]

39. Absent showing any *prima facie* errors in Justice Cavanagh's legal analysis and interpretation of the policy, like the result in *Nortel*, here a deferential context should apply equally to Mr. Omarali's proposed appeal.[31]

40. In *US Steel,* this Court again found the proposed appeal was not *prima facie* meritorious, finding the CCAA motion judge's contract interpretation was entitled to deference, absent a showing of any arguable errors of interpretation.[32]

41. Mr. Omarali has not met his most important onus in an already stringent four-factor test, which failure is fatal to his leave motion.[33]

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[30] **RespBOA, TAB 3 -** *Nortel Networks, supra*, at para. 4.
[31] **RespBOA, TAB 3 -** *Nortel Networks, supra,* at para 6.
[32] **RespBOA, TAB 5 -** *US Steel, supra*, at para. 9.
[33] **RespBOA, TAB 4 -** *Urbancorp Inc. v. 994697 Ontario Inc.*, 2024 ONCA 26 (CanLII) at para 14.

42. Mr. Omarali offers sympathetic context, but crucially does not credibly show how Justice Cavanagh erred in principle, or that he unreasonably exercised his discretion. Mr. Omarali's Factum repeats the figure "7,723" (former employees) eight times in an apparent attempt to attract this Court's sympathy about the number of people allegedly impacted by Just Energy's alleged misclassification of sales people.

43. Justice Cavanagh had this number before him, considered the size of the Class, and still found that the PAE barred coverage for Omarali's Claim, which effectively dismissed the Class Action.

44. This sympathetic context did not persuade Justice Cavanagh who properly and plainly noted that on the facts "[t]he claim by Mr. Omarali in the Class action was known when Just Energy filed for *CCAA* protection."[34]

45. Justice Cavanagh's factual and legal conclusion that the PAE, drafted to be anchored on the Filing Date, clearly and unambiguously applied to oust coverage for Mr. Omarali's pre-Filing claim[35], was based in part on "the surrounding circumstances of the issuance of the Policies at the time of Just Energy's *CCAA* Filing."[36]

46. Mr. Omarali suggests Justice Cavanagh, an experienced Commercial List judge, has committed an extricable error of law by failing to read the PAE with the Policies in proper commercial context. That the learned judge's detailed analysis of these issues

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[34] **MR, TAB 3 –** Corrected Endorsement of Justice Cavanagh dated September 20, 2024, p. 24.
[35] **MR, TAB 3 –** *Ibid* at p. 15.
[36] **MR, TAB 3 -** *Ibid*.

spans roughly 9 of the 12 pages in the Reasons shows this is categorically untrue. His findings fall squarely within his expertise and, as in *Nortel*, should be given deference.

47. Justice Cavanagh engaged in a principled and analytical approach to interpreting the PAE within the framework of the Policies, adhering to established doctrines of contractual interpretation and grounding his analysis in authoritative case law from both this Court and the Supreme Court of Canada, as follows:

a. His Honour first assumed the Claim fell within the Policies' insuring agreements, subject to the application of exclusions, doing so not arbitrarily, but by using a thorough rationale, carefully analyzing the scope of coverage, the definitions of "insured persons", and "loss";
b. He then considered the Exclusion, reading the Policies as a whole, to assess if the Exclusion precluded coverage for the Claim; and
c. Finally, he considered the commercial context and the important public policy reasons for applying the Exclusion to the Claim.

48. Mr. Omarali also mischaracterizes Justice Cavanagh's reasoning as leaving two other exclusion clauses in the Policies having "little work to do", asserting the result "cuts vast swathes of redundancy through the policy" which "categorically changed both the scope and effect of several other terms, effectively rendering those terms meaningless".

49. This mischaracterization is evident from reviewing paragraph 48 of the Reasons, where Justice Cavanagh carefully explains how the Policies, read as a whole and in full

context, achieve the intended purpose. That Mr. Omarali disagrees with this interpretation does not render it an error of law.

50. Mr. Omarali offers no indicia of error here, let alone any *prima facie* argument that justifies granting leave to appeal.

(b) 2nd Factor: The Proposed Appeal is Not Significant to the Practice

51. Given the similarity to *Nortel*, Mr. Omarali also cannot meet this second element of the four-factor test – context is driven by the limitations on Omarali's Claim as set forth in the Vesting Order, and this is not a conventional insurer-policyholder coverage dispute with any real precedential value.

52. Mr. Omarali's Factum at paragraph 88 suggests his proposed appeal raises interesting questions about unpaid wage remedies made against a protected debtor's D&Os in the context of *CCAA* proceedings. This may be so, but it is of no moment for the coverage issue, which as in *Nortel*, is of no interest beyond the parties.

53. Moreover, in light of the factually unique chronology, litigation and procedural history of Mr. Omarali's Claim, combined with a deferential standard, this factual matrix is not an appropriate case in which to explore these issues.

54. Finally, relitigating coverage disputes in a *CCAA* proceeding would also undermine the certainty of these established principles, unrelated to the broader purpose of the *CCAA* process. Any outcome would only affect Mr. Omarali's specific Claim, and would

otherwise not alter the broader insolvency framework, making such disputes of limited relevance to the practice.

55. Thus, if *Nortel*, which dealt with issues "specific to [that] case and not of broader interest to the practice or the public"[37] is any guide, Mr. Omarali does not meet the threshold for this element of the test for leave.

(c) 3rd Factor: The Issue in the Proposed Appeal is Not Significant to the Action

56. Since proposed appeals are typically significant to an action, this Court has not placed great weight on this third factor.[38]

57. Here, Mr. Omarali simply disagrees with the lower court's interpretation. There is no clear legal error or misapplication of the existing law, and his Factum amounts to a reiteration of his original (and unsuccessful) argument for a different interpretation.

(d) 4th Factor: The Proposed Appeal Unduly Hinders the Progress of the Action

58. This Court has held that even when there is no ongoing restructuring, this fourth factor is still one which weighs against granting leave.[39]

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[37] **RespBOA, TAB 3 -** *Nortel Networks, supra,* at para 4.
[38] **RespBOA, TAB 5 -** *US Steel*, *supra,* at para 13.
[39] **RespBOA, TAB 5 -** *US Steel*, *supra,* at para 14.

59. Just Energy's restructuring has concluded, but for Mr. Omarali's leave application, and any potential appeal. A refusal to accept the lower court's interpretation of the Policies and the PAE in their commercial context should not cause any further delay.

60. Thus, Mr. Omarali also does not meet this element of the four-factor test.

PART IV – CONCLUSIONS & ORDER SOUGHT

61. Mr. Omarali has failed to meet his onus to show that Justice Cavanagh's Order issued in his discretion as a *CCAA* motion judge should be subject to appellate review.

62. Mr. Omarali's arguments misrepresent Justice Cavanagh's well-reasoned decision, employing selective and convoluted language to align with his position and create ambiguity where there is none. Mr. Omarali identifies no clear or extricable error of law and instead mounts an improper attack on a meticulously analyzed and carefully reasoned decision. He does not meet the test for leave to appeal.

63. Mr. Omarali's motion for leave should therefore be dismissed, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED on this 12th day of December, 2024

MARCUS B. SNOWDEN

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SCHEDULE A – LIST OF AUTHORITIES

Tab No.	Name of Decision & Citation
1	*Algoma Steel Inc. (Re)*, 2001 CanLII 5433 (ONCA).
2	*Labourers' Pension Fund of Central and Eastern Canada (Trustees of) v. Sino-Forest Corp.*, 2013 ONCA 456 (CanLII).
3	*Nortel Networks Corporation (Re),* 2013 ONCA 518 (CanLii)
4	*Urbancorp Inc. v. 994697 Ontario Inc.*, 2024 ONCA 26 (CanLII)
5	*U.S. Steel Canada Inc. (Re)*, 2024 ONCA 363
6	*Laurentian University of Sudbury (Re),* 2021 ONCA 199
7	*Grant Forest Products Inc. v. The Toronto-Dominion Bank*, 2015 ONCA 570 (CanLII)
8	*Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at para 55

SCHEDULE B – RELEVANT STATUTES & REGULATIONS

A – Companies' Creditors Arrangement Act, R.S.C. 1985, c.C-36.

Leave to appeal
13 Except in Yukon, any person dissatisfied with an order or a decision made under this Act may appeal from the order or decision on obtaining leave of the judge appealed from or of the court or a judge of the court to which the appeal lies and on such terms as to security and in other respects as the judge or court directs. R.S., 1985, c. C-36, s. 13; 2002, c. 7, s. 134

Court of appeal
14 (1) An appeal under section 13 lies to the highest court of final resort in or for the province in which the proceeding originated.

Practice
(2) All appeals under section 13 shall be regulated as far as possible according to the practice in other cases of the court appealed to, but no appeal shall be entertained unless, within twenty-one days after the rendering of the order or decision being appealed, or within such further time as the court appealed from, or, in Yukon, a judge of the Supreme Court of Canada, allows, the appellant has taken proceedings therein to perfect his or her appeal, and within that time he or she has made a deposit or given sufficient security according to the practice of the court appealed to that he or she will duly prosecute the appeal and pay such costs as may be awarded to the respondent and comply with any terms as to security or otherwise imposed by the judge giving leave to appeal. R.S., 1985, c. C-36, s. 14; 2002, c. 7, s. 135.

** ** **

B - Rules of Civil Procedure, R.R.O. 1990, Reg. 194

RULE 57 - COSTS OF PROCEEDINGS

GENERAL PRINCIPLES

Factors in Discretion

57.01 (1) In exercising its discretion under section 131 of the *Courts of Justice Act* to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle or to contribute made in writing,

(0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;

(0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;

(a) the amount claimed and the amount recovered in the proceeding;

(b) the apportionment of liability;

(c) the complexity of the proceeding;

(d) the importance of the issues;

(e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;

(f) whether any step in the proceeding was,

(i) improper, vexatious or unnecessary, or

(ii) taken through negligence, mistake or excessive caution;

(g) a party's denial of or refusal to admit anything that should have been admitted;

(h) whether it is appropriate to award any costs or more than one set of costs where a party,

(i) commenced separate proceedings for claims that should have been made in one proceeding, or

(ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer;

(h.1) whether a party unreasonably objected to proceeding by telephone conference or video conference under rule 1.08; and

(i) any other matter relevant to the question of costs. R.R.O. 1990, Reg. 194, r. 57.01 (1); O. Reg. 627/98, s. 6; O. Reg. 42/05, s. 4 (1); O. Reg. 575/07, s. 1; O. Reg. 689/20, s. 37.

COSTS OF A MOTION

Contested Motion

57.03 (1) On the hearing of a contested motion, unless the court is satisfied that a different order would be more just, the court shall,

(a) fix the costs of the motion and order them to be paid within 30 days;…"

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 14487893 CANADA INC.

Court of Appeal No. COA-24-OM-0342
Court File No. CV-21-00658423-00CL

ONTARIO
COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT TORONTO

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