

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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 ARRANGMENT OF SEARS
CANADA INC., CORBEIL ELECRTIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,
SEARS CONTACT SERVICES INC., INTIUM LOGISTICS SERVICES INC., INTIUM
COMMERCE LABS INC., INTIUM TRADING AND SOURCING CORP., SEARS FLOOR
COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO Inc., 6988741
CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041
ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC.,
AND 3339611 CANADA INC.

APPLICANTS

FACTUM OF THE MOVING PARTY
(Returnable: Wednesday, July 18, 2018)

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CV-14-501041

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AND TO: SERVICE LIST

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1. *Companies Creditors Arrangement Act* R.S.C. 1985 c.C-36,
2. *Algoma Steel Corp. v. Royal Bank* [1992] O.J. No. 889 [Algoma Steel]

PART I — OVERVIEW

1. The moving party brings this motion for an Order lifting the stay imposed by the Order of Justice Hainey, to allow civil action CV-14-501041 to continue.

PART II — BACKGROUND

2. The moving party, Maria Williams (“Ms. Williams”), was injured in a motor vehicle accident that occurred on May 15, 2012, involving a vehicle driven by Nimalendra Selvarajah, and owned by Sears Canada Inc.

**Reference: Affidavit of Savannah V. Chorney, at paras. 1-4, sworn February 28, 2018.
Exhibit “A” to the Affidavit of Savannah V. Chorney, Motor Vehicle Accident Report, dated May 15, 2012
Exhibit “B” to the Affidavit of Savannah V. Chorney, Ministry of Transportation Plate Search Results**

3. Ms. Williams commenced the civil action bearing Court File Number CV-14-501041 as against the Defendants Nimalendra Selvarajah and Sears Canada Inc. by way of Statement of Claim issued March 28, 2014. By way of response, the Defendants delivered a joint Statement of Defence dated September 24, 2014.

Reference: Affidavit of Savannah V. Chorney, at paras. 6-7, sworn February 28, 2018.

4. At all material times, the Defendant, Sears Canada Inc., (“Sears Canada”), had valid automobile insurance provided by ACE INA Insurance with \$1,000,000.00 third party liability limits.

Reference: Affidavit of Savannah V. Chorney, at para. 5, sworn February 28, 2018.

**Exhibit “C” to the Affidavit of Savannah V. Chorney,
Certificate of Automobile Insurance and Endorsement for
Policy Number CAC 305044.**

5. A settlement of \$63,000.00 all inclusive was reached at a private mediation that took place on June 13, 2017. Minutes of Settlement were executed at the mediation, and a full and final release was executed.

**Reference: Affidavit of Savannah V. Chorney, at para. 8, sworn February 28, 2018
Exhibit “F” to the Affidavit of Savannah V. Chorney, Minutes of Settlement and full and final release**

6. On June 22, 2017, Sears Canada Inc. obtained protection under the *Companies Creditors Arrangements Act* (“CCAA”), pursuant to the Order of the Honourable Justice Hailey (“Initial Order”). As a result of the CCAA proceeding, as set out at paragraph 14 of the Initial Order, the civil action commenced by Williams has been stayed.

**Reference: Affidavit of Savannah V. Chorney, at paras. 9-10, sworn February 28, 2018.
Exhibit “G” to the Affidavit of Savannah V. Chorney, Order of Justice Hailey, dated June 22, 2017**

7. The amount of settlement proceeds, being \$63,000.00, is well below the \$1,000,000.00 third party liability limits of the policy.

PART III —ISSUES:

8. The issue to be decided is whether the stay imposed by the Order of Justice Hailey dated June 22, 2017, should be lifted to allow the moving party Maria Williams, an unsecured creditor, to continue the civil action bearing Court File Number CV-14-501041, subject to the

stipulation that any recovery against Sears Canada Inc. be limited to insurance proceeds and not the assets of Sears Canada Inc.

PART IV—STATEMENT OF LAW & AUTHORITIES:

9. The *Companies Creditors Arrangement Act* R.S.C. 1985 c.C-36 (“*CCAA*”) sets out the general power of the Court to make orders on application by any person interested in a matter:

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Reference: *Companies Creditors Arrangement Act* R.S.C. 1985 c.C-36, at section 11.01, **Moving Party’s Book of Authorities, at Tab 1.**

10. In *Algoma Steel Corp. v. Royal Bank* [1992] O.J. No. 889, the Court of Appeal allowed an amendment to the plan of arrangement in place under the *CCAA* to allow an unsecured creditor to bring proceedings against the debtor company in a products liability claim, securing the integrity of the plan by providing that any recovery could come only from insurance proceeds and not the assets of the debtor company.

Reference: *Algoma Steel Corp. v. Royal Bank* [1992] O.J. No. 889 [**Algoma Steel**] at paras 11-13, **Moving Party’s Book of Authorities, at Tab 2.**

11. The Court of Appeal no prejudice would arise to the other creditors, or to any other party, as a result of an order allowing the moving party to commence proceedings against the debtor company, provided that only the insurance proceeds, and not any assets over and above the

policy limits, were to be made potentially available to satisfy any judgment obtained by the moving party.

Reference: *Algoma Steel*, at para. 9, Moving Party's Book of Authorities, at Tab 2.

12. In Algoma, the Court of Appeal provided an example which indicates that it is in the interests of justice for the Court to exercise its powers under section 11.01 of the CCAA to lift the stay should to allow injured persons to commence or continue proceedings arising from personal injuries in order to pursue the proceeds of an insurance policy. The Court stated as follows:

The justice of permitting an amendment to the plan as inconsequential as the one we permit in these exceptional circumstances is illustrated by the hypothetical case put in argument. Suppose a visitor has become quadriplegic as a result of an injury on the premises of Algoma under circumstances in which Algoma as occupier might be liable and suppose Algoma's potential liability was insured against by an appropriate insurance policy. To restrict the injured person, a known designated unsecured creditor under the terms of the plan of arrangement, to his or her compromised claim valued, without a trial, in a summary proceeding, would, in our view, be unacceptable. The actual situation before the court is analogous.

Reference: *Algoma Steel*, at para. 14, Moving Party's Book of Authorities, at Tab 2.

13. The interests of the other creditors were safeguarded by the Court of Appeal, by inserting a provision in the resultant Order that neither the assets of the debtor company (other than the insurance proceeds) shall be available to satisfy any judgment obtained as a result of the proceedings of the moving party against the debtor company.

Reference: *Algoma Steel*, at para. 13, Moving Party's Book of Authorities, at Tab 2.

PART V—ORDER REQUESTED

14. The moving party respectfully requests an Order lifting the stay imposed by the Order of Justice Hainey dated June 22, 2017, to allow the moving party Maria Williams to continue the civil action being Court File Number CV-14-501041 as against Sears Canada Inc., subject to the stipulation that any recovery against Sears Canada Inc. be limited to insurance proceeds and not the assets of Sears Canada Inc.

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Algoma Steel Corp. v. Royal Bank

1992 CarswellOnt 163, [1992] O.J. No. 889, 11 C.B.R. (3d) 11, 34 A.C.W.S. (3d) 1109, 3 W.D.C.P. (2d) 397, 55 O.A.C. 303, 8 O.R. (3d) 449, 93 D.L.R. (4th) 98

ALGOMA STEEL CORPORATION, LIMITED v. ROYAL BANK OF CANADA, MONTREAL TRUST COMPANY (Trustee of certain debentures issued by Algoma Steel Corporation, Limited under a certain trust indenture) and ROYAL BANK OF CANADA, CANADIAN IMPERIAL BANK OF COMMERCE, HONGKONG BANK OF CANADA, and TORONTO DOMINION BANK (in their capacity as holders of certain of the debentures issued pursuant to said trust indenture)

Krever, McKinlay and Labrosse JJ.A.

Heard: April 21-23, 1992

Judgment: April 30, 1992

Docket: Doc. CA C11707

Counsel: *D.J.T. Mungovan* and *Debbie A. Campbell*, for Kelsey-Hayes Canada Limited and Kelsey-Hayes Company.

M.E. Royce and *M.E. Barrack*, for Algoma Steel Corporation, Limited.

W.L.N. Somerville, Q.C., and *B.H. Bresner*, for Royal Insurance Company of Canada.

R.N. Robertson, Q.C., and *W.A. Apps*, for Dofasco Inc.

Subject: Corporate and Commercial; Insolvency

Headnote

Corporations --- Arrangements and compromises — Under Companies' Creditors Arrangements Act

Corporations — Arrangements and compromises — Companies' Creditors Arrangement Act — Claims — Determination of claims of creditors — Power of court to amend plan — Creditor claiming contribution or indemnity from debtor in order to pursue proceeds of product liability insurance policy — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36.

One of the creditors of the debtor company subject to a plan of arrangement under the *Companies' Creditors Arrangement Act* ("CCAA"), was involved in product liability litigation in the U.S. The creditor, the defendant in the U.S. litigation, alleged that the steel used in the defective part was a defective product manufactured by the debtor company. The creditor sought to claim contribution or indemnity from the debtor company in order to be able to pursue, under s. 132 of the *Insurance Act* (Ont.), the proceeds of the debtor company's product liability insurance policy.

After the creditor notified the debtor company of its claim, the debtor company responded by valuing the claim at one dollar. The creditor applied to the court, under s. 12(2)(iii) of the CCAA, for a determination of the amount of its claim. The value of the claim was confirmed.

In the CCAA proceedings, an order was made prohibiting the commencement or proceeding with any action or proceeding against the debtor company without leave of the court. The creditor brought a motion for leave to appeal and, if granted, an appeal from the order dismissing its motion for the valuation of its claim and for leave to bring proceedings against the debtor company.

Held:

Leave to appeal was granted and the appeal was allowed; leave to proceed granted.

Generally, a plan of arrangement is consensual and the result of agreement. If it is fair and reasonable, according to the court, it is not to be interfered with by the court unless (a) the CCAA authorizes the court to affect the plan and (b) there are compelling reasons justifying the court's action. The court should not interfere where to do so would prejudice the interests of the company or the creditors. Where no prejudice would result and the needs of justice are to be met, the court may act if the CCAA authorizes intervention. Section 11(c), depending on the language of the plan itself, enables the court, in an appropriate case, to amend the plan.

In this case, the necessary amendment to the plan would be minor. Further, to secure the integrity of the plan, only insurance proceeds that might become available to the debtor company were to be the subject of any recovery against the company to which the creditor might prove entitlement. To accomplish this, the order provided that neither the assets of the debtor

company (other than the insurance proceeds), nor the assets of any other company that might become responsible for the liabilities of the debtor under the plan would be available to satisfy any judgment obtained by the creditor against the debtor company.

Table of Authorities

Statutes considered:

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

s. 11(c)

s. 12(2)(a)(iii)

Insurance Act, R.S.O. 1990, c. I.8 —

s. 132

s. 132(1)

Motion for leave to appeal and an appeal under the *Companies' Creditors Arrangement Act*.

Per curiam:

1 This is a motion for leave to appeal and, if leave is granted, an appeal, under the provisions of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "C.C.A.A."), from the order of Farley J. dismissing a motion for the valuation of the claim of Kelsey-Hayes Canada Limited ("Kelsey-Hayes") and for leave to bring proceedings against The Algoma Steel Corporation Limited ("Algoma"), the subject of a plan of arrangement under the C.C.A.A.

2 Kelsey-Hayes is involved in product-liability litigation in Missouri as a result of serious personal injuries suffered by a child when a wheel broke away from a Dodge truck and struck him. The wheel was manufactured by Kelsey-Hayes, against whom a Missouri jury awarded a verdict in excess of \$4 million U.S. That verdict was set aside by the trial judge on the basis that Chrysler Corporation, the truck's manufacturer, had been improperly dismissed from the action at an earlier stage. The setting aside of the verdict was appealed to the Missouri Court of Appeals, but judgment on the appeal has been reserved. Kelsey-Hayes, the defendant in the Missouri litigation, alleges that the steel used for the manufacture of the errant wheel was a defective product of Algoma and seeks to claim contribution or indemnity from Algoma in order

to be able to pursue, under s. 132 of the *Insurance Act*, R.S.O. 1990, c. I.8, the proceeds of a product-liability insurance policy by which Algoma is insured by the Royal Insurance Company of Canada ("Royal"). It also seeks relief under the plan of arrangement in respect of the amount of any liability Algoma may have to it in excess of the policy limits.

3 In the C.C.A.A. proceedings, an order was made by Montgomery J. in the terms of s. 11(c) of the C.C.A.A. that no action or other proceeding may be proceeded with or commenced against Algoma except with the leave of the court. It is common ground that Kelsey-Hayes, by reason of its claim against Algoma, is a known designated unsecured creditor of Algoma, as defined in the plan of arrangement. The plan of arrangement, which has been voted on by all classes of affected creditors, and sanctioned, subject to the outcome of this appeal, by an order of Farley J. dated April 26, 1992, provides that upon payment by Algoma to a trustee of a certain sum in payment of the claims of the specified unsecured creditors, "all Claims of Specified Unsecured Creditors will be released, discharged and cancelled."

4 After Kelsey-Hayes notified Algoma of the litigation in Missouri, of its allegation of defective steel against Algoma, and of its claim in the amount of the Missouri verdict, Algoma responded by valuing the claim at the sum of \$1. Kelsey-Hayes thereupon applied to the court, under the provisions of s. 12(2)(a)(iii) of the C.C.A.A., for the determination of the amount of its claim. Before the application was heard, Kelsey-Hayes enlarged the relief sought to include that described above and Royal was brought into the proceedings. Mr. Justice Farley held that he had no authority to permit Kelsey-Hayes to proceed against Algoma and went on to confirm the valuation of the claim at \$1. The essential issue in this appeal is whether, under the C.C.A.A., the fact that the plan of arrangement now exists prevents the court from permitting Algoma from being proceeded against by Kelsey-Hayes even to the limited extent of the insurance proceeds.

5 We are of the view that, however weak the evidence available on the application may have been with respect to the origin of the steel used in the manufacture of the wheel, and thus the case against Algoma, it cannot be said that the case is without any foundation or is frivolous. The fact that s. 12(2)(iii) provides that the amount of a creditor's claim, if not admitted by the company, "shall be determined by the court on summary application by the company or by the creditor," does not compel the court to determine the valuation summarily. The provision simply authorizes the proceedings to be brought summarily, that is, by way of originating notice of motion or application rather than by the lengthier, and more complicated, procedure of an action. In an appropriate case, therefore, there is no reason why the determination cannot be made after a trial either of an issue or an action, in the course of which production and discovery would be available. In the absence of such a trial, it cannot be said, in our view, that the valuation of the claim of Kelsey-Hayes against Algoma in the sum of \$1 is correct.

6 The more difficult question is whether the court has jurisdiction to authorize proceedings now that the plan of arrangement is in place. It is submitted that it does not, because of the need for commercial certainty and because to do so would be to amend the plan of arrangement

(which extinguishes the claims of all designated unsecured creditors, of which Kelsey-Hayes is certainly one). The plan of arrangement is a matter of contract, it is argued, and the court's jurisdiction is limited to sanctioning or refusing to sanction the arrangement arrived at contractually. There is much merit in this argument, but, in our view, it is not a complete answer.

7 Kelsey-Hayes does not deny that if the language of the plan of arrangement quoted above, extinguishing the claims of designated unsecured creditors, is unambiguous, as we believe it is, to grant the relief which it seeks would require an amendment by the court of the plan of arrangement. We accept the submission that, generally speaking, the plan of arrangement is consensual and the result of agreement and that if it is fair and reasonable (an issue for the court to decide) it is not to be interfered with by the court unless (a) the Act authorizes the court to affect the plan and (b) there are compelling reasons justifying the court's action. Generally speaking again, the court ought not to interfere where to do so would prejudice the interests of the company or the creditors. But where no prejudice would result and the needs of justice are to be met, the court may act if the C.C.A.A., properly interpreted, authorizes intervention. In this connection, it may be relevant that, although it is hardly conclusive, Algoma's management information circular to creditors, shareholders and employees, which accompanied the proposed plan of arrangement, advised those persons, under the heading "Court Approval of the Plan" as follows:

The authority of the Court is very broad under both the CCAA and the OBCA — Algoma has been advised by counsel that the Court will consider, among other things, the fairness and reasonableness of the Plan. The Court may approve the Plan as proposed *or as amended in any manner that the Court may direct* and subject to compliance with such terms and conditions, if any, as the Court thinks fit.

[Emphasis added.] We agree that the circular's statement that the court may direct an amendment of the plan does not, as a matter of law, make it so. The C.C.A.A. must be the authority for the jurisdiction and the critical issue is whether there is any provision in the Act that fairly gives rise to a power in the court to amend. In our view, there is such a provision and that provision, s. 11(c), depending on the language of the plan itself, may by necessary inference, in an appropriate case, enable the court to make an order, the technical effect of which is that the plan is amended. The relevant portion of the section reads as follows:

whenever an application has been made under this Act in respect of any company, the court, on the application of any person interested in the matter, may, on notice to any other person or without notice as it may see fit,

.....

(c) make an order that no suit, action or other proceeding shall be proceeded with or

commenced against the company *except with the leave of the court* and subject to such terms as the court imposes.

[Emphasis added.]

8 As we have already pointed out, an order in the terms of this provision was made early in the proceedings by Montgomery J. The effect of the enactment and the order is to empower the court to grant leave to take proceedings against Algoma in appropriate circumstances. It was submitted that this power, having regard to the commercial realities reflected by the C.C.A.A., is one that may be exercised only before the creditors have voted to accept the plan of arrangement. No authority could be cited to support such a circumscription of the court's jurisdiction, unqualifiedly conferred by the statute. Nor, as a matter of principle, is there any reason to suggest that the scheme created by the C.C.A.A. contemplates a role for the court as a mere rubber stamp or one that is simply administrative rather than judicial. On the other hand, we have no doubt that, given the primacy accorded by the Act to agreement among the affected actors, the jurisdiction of the court is to be exercised sparingly and in exceptional circumstances only, if the result of the exercise is to amend the plan, even in merely a technical way. In this case, for example, it would be an unacceptable exercise of jurisdiction if the effect of granting leave to Kelsey-Hayes to proceed against Algoma would be to render vulnerable to possible execution any assets other than insurance proceeds, if any, that may be available under the policy by which Royal insured Algoma against product liability. If the leave granted could be so limited, and that is the difficulty that must be addressed, the plan of arrangement which, in its terms, extinguishes the claims of designated unsecured creditors, would undergo amendment in an insignificant and technical way only, as far as the other creditors are concerned.

9 The concern of prejudice must now be considered and the question asked whether any interests would be affected detrimentally if Kelsey-Hayes were permitted to claim against Algoma to the extent only of recourse to the insurance proceeds. If to give leave had the effect of giving potential access to assets over and above the policy limits, there would indeed be prejudice to several interests and, moreover, the plan of arrangement would be significantly amended. On the premise that only the insurance proceeds were to be made potentially available to satisfy any judgment that Kelsey-Hayes may be awarded in its claim over against Algoma, it cannot be said that any interest is affected adversely except possibly that of Royal and that of Dofasco Inc. ("Dofasco"). It is to that issue that we now turn.

10 The potential liability of Royal to Kelsey-Hayes as insurer of Algoma arises out of the provisions of s.132(1) of the *Insurance Act*, which read as follows:

Where a person incurs a liability for injury or damage to the person or property of another, and is insured against such liability, and fails to satisfy a judgment awarding damages against the person in respect of the person's liability, and an execution against the person in

respect thereof is returned unsatisfied, the person entitled to the damages may recover by action against the insurer the amount of the judgment up to the face value of the policy, but subject to the same equities as the insurer would have if the judgment had been satisfied.

Royal is potentially answerable to Kelsey-Hayes, a third party with respect to Algoma's policy of insurance only by virtue of this statutory provision but, in any third party claim against it, its liability is "subject to the same equities as the insurer would have if the judgment had been satisfied." Prejudice, in a legal sense, as far as Royal is concerned is non-existent.

11 The question of prejudice to Dofasco is more difficult. Its interest arises in this way. As part of the comprehensive restructuring scheme, of which the plan of arrangement is the central part, Algoma's assets are to be transferred to a new corporate entity, referred to in argument as New Algoma, in which Algoma's shareholders and creditors (whose claims are being compromised and otherwise discharged) are to receive shares. The funds to make this possible are to be supplied by Dofasco in the sum of \$30 million. In return, Dofasco is to obtain Algoma's tax loss in the sum of \$150 million. The result of these transactions as contemplated by the comprehensive scheme is that Algoma is to become devoid of assets and creditors, in short, that Algoma is to be made a "clean corporation," or a mere shell with a tax loss carryforward. Dofasco filed no material, and on the appeal filed no factum, showing any prejudice which it might suffer if leave to proceed is granted. Instead, in oral argument, it submitted that any such order would impair the integrity of the plan of arrangement and reduce the certainty that was necessary for the plan's success. In our view, no impairment will occur if an order is made subject to sufficient safeguards to limit any possible recovery to the insurance proceeds. We think a safeguard can be provided. The difficulty is in the language of s. 132 of the *Insurance Act*, which requires, as a condition precedent to a direct action against the insurer, that an execution against the insured be returned unsatisfied.

12 This very requirement makes the purpose of the section clear. It is to provide direct access to an insurer, by a person incurring the liability referred to in the section, in a situation where the insured is judgment proof, thus circumventing the normal operation of insurance contracts, which is solely to indemnify the insured against loss. To interpret the section in such a way as to apply only in the narrow situation where the insured is judgment proof (and therefore almost certainly insolvent), but not in situations where either the insured or its creditors have taken proceedings pursuant to federal insolvency statutes, would be to frustrate its objectives in a large percentage of situations where it would otherwise apply.

13 If the plaintiff in this case were successful in the Missouri action against Kelsey-Hayes and Kelsey-Hayes were successful in a permitted claim over for indemnity or contribution from Algoma, there could be no question that, notionally, the condition precedent of an unsatisfied judgment would be met because, prior to the plan, Algoma was insolvent and the commencement of proceedings under the C.C.A.A. rendered it judgment proof. To secure the certainty of the integrity of the plan, which Dofasco argues it needs in order to discharge its role

in the scheme, we make clear our intention that only any insurance proceeds that may become available to Algoma are to be the subject of any recovery against Algoma that Kelsey-Hayes may prove that it is entitled to. That is to be accomplished by providing in our order that neither the assets of Algoma (other than the insurance proceeds) nor the assets of any other corporation which may become responsible in any way for any liabilities of Algoma by virtue of the operation of the plan of arrangement or the more comprehensive scheme of restructuring, or any condition precedent thereto, shall be available to satisfy any judgment obtained as a result of any proceedings by Kelsey-Hayes against Algoma.

14 The justice of permitting an amendment to the plan as inconsequential as the one we permit in these exceptional circumstances is illustrated by the hypothetical case put in argument. Suppose a visitor had become quadriplegic as a result of an injury on the premises of Algoma under circumstances in which Algoma as occupier might be liable and suppose Algoma's potential liability was insured against by an appropriate insurance policy. To restrict the injured person, a known designated unsecured creditor under the terms of the plan of arrangement, to his or her compromised claim valued, without a trial, in a summary proceeding, would, in our view, be unacceptable. The actual situation before the court is analogous.

15 For these reasons, we grant leave to appeal, allow the appeal, set aside the order of Farley J. dated April 9, 1992, and grant leave to Kelsey-Hayes to proceed as it may be advised in the terms set out above.

Leave to appeal granted; appeal allowed; leave to proceed granted.

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.