Form 49
Alberta Rules of Court
Rule 13.19

COURT FILE NO. 1703 12327

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

Clerk's Stamp
JUDICIAL CENTRE OF EDMONTON
FILED
JUN 18 2018
Clerk of the Court

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 ARRANGEMENT OF CANADA NORTH GROUP INC., CANADA NORTH CAMPS INC., CAMPCORP STRUCTURES LTD., D.J. CATERING LTD., 816956 ALBERTA LTD. and 1371047 ALBERTA LTD.

DOCUMENT **AFFIDAVIT #5 OF JESSIE TAHA**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McLENNAN ROSS LLP #600 McLennan Ross Building 12220 Stony Plain Road Edmonton, AB T5N 3Y4	Lawyer: Charles P. Russell, Q.C. Telephone: (780) 482-9115 Fax: (780) 733-9757 Email: crussell@mross.com File No.: 165813

AFFIDAVIT OF JESSIE TAHA SWORN ON THE 13TH DAY OF JUNE, 2018

I, JESSIE TAHA, of the City of Edmonton, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a Senior Assistant Vice President working in the Credit Risk Management area of Canadian Western Bank ("**CWB**"). I have been informed by my review of the CWB files prepared in the ordinary course of business in connection with the loans to the Defendants, and also have personal knowledge of the matters described herein. I am authorized by CWB to make this Affidavit.

2. I make this Affidavit in opposition to the application by Business Development Bank of Canada ("**BDC**") for an order requiring the estate of the Canada North Group, to bear the cost of BDC continuing to participate in the appeal by Canada Revenue Agency ("**CRA**").

3. Attached hereto and marked as **Exhibit "A"** is a true copy of the decision rendered by the Honourable Justice F. Slatter on November 3, 2017 (the "**Decision**"). In the Decision, counsel for Canada North Camps was directed to lead the defence of the appeal, not BDC.

4. In paragraph 11 of Mr. French's Affidavit, he advises that "by agreement of the parties", BDC was appointed as the lead respondent in defending the appeal. At no time was CWB consulted on this decision, and to the best of my knowledge neither were other creditors of the Canada North Group.

5. I am informed by reference to an email string as between the Monitor's counsel and CWB's counsel, that in addition to BDC, the Monitor, the Insolvency Institute of Canada, and the Canadian Association of Insolvency and Restructuring Professionals are all filing factums in response to the appeal, and attached hereto and marked as **Exhibit "B"** is a true copy of such email string.

6. I make this Affidavit in opposition to BDC's application to continue to participate in the CRA appeal at the expense of the Canada North Group estate and for costs of this application.

SWORN BEFORE ME at the City of Edmonton, in the Province of Alberta the 13th of June, 2018	)	
A Commissioner for Oaths in and for the Province of Alberta	)	**JESSIE TAHA**

ARVINDPAUL SAMRA
BARRISTER & SOLICITOR
3000, 10303 JASPER AVENUE
EDMONTON, AB T5J 3X6

This is **Exhibit "A"** referred to in the Affidavit of Jessie Taha sworn before me on the 13th of June, 2018.

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A Commissioner for Oaths in and)
for the Province of Alberta)

ARVINDPAUL SAMRA
BARRISTER & SOLICITOR
3000, 10303 JASPER AVENUE
EDMONTON, AB T5J 3X6

In the Court of Appeal of Alberta

Citation: Canada v Canada North Group Inc., 2017 ABCA 363

Date: 20171103
Docket: 1703-0237-AC
Registry: Edmonton

Between:

Her Majesty the Queen in Right of Canada

Applicant
(Appellant)

\- and -

Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., DJ Catering Ltd., 816956 Alberta Ltd., 1371047 Alberta Ltd., and 1919209 Alberta Ltd.

Respondents
(Respondents)

\- and -

Ernst & Young Inc. (in its capacity as Monitor, and not in its personal capacity)

Respondent
(Respondent)

\- and -

Business Development Bank Canada

Respondent
(Respondent)

Reasons for Decision of
The Honourable Mr. Justice Frans Slatter

Application for Permission to Appeal

Reasons for Decision of
The Honourable Mr. Justice Frans Slatter

[1] The Minister of National Revenue has applied, in accordance with s. 13 of the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, for leave to appeal the decision reported as *Canada North Group Inc. (Re)*, 2017 ABQB 550. The case management judge described the issue as follows:

> 1 This case is about whether Court ordered "super-priority" security interests granted in a *Companies' Creditor Arrangement Act* (*CCAA*) proceeding can take priority over statutory deemed trusts in favour of Her Majesty the Queen in Right of Canada, as represented by the Minister of National Revenue (CRA) for unremitted source deductions.

The test for leave to appeal is well established: Is there a substantive ground justifying an appeal, considering a) whether the point on appeal is of significance to the practice; b) whether the point raised is of significance to the parties and the action; c) whether the appeal is reasonably arguable (or conversely frivolous); and d) whether the appeal will unduly hinder the progress of the insolvency proceedings. See ***Wells Fargo Securities Canada Ltd. v Sanjel Corp.***, 2017 ABCA 120 at para. 6, 47 CBR (6th) 289 and ***Canadian Imperial Bank of Commerce v Endurance Energy Ltd.***, 2016 ABCA 217 at para. 9.

[2] There is no appellate authority directly on point, although the respondents argue that the weight of authority is supportive of the case management judge's conclusions.

[3] The respondents also argue that the issue is moot on this record, because there are sufficient assets in this estate to satisfy both the "super-priority" security interests and the claim of the Minister. They argue that the second component of the test is not satisfied, because the outcome is not of significance to this action. The mootness issue was not raised before the case management judge because the valuation of the assets was not finalized at that time. On the other hand, the cases demonstrate that this issue is resistant to review, because the "super-priority" funding is often advanced before the priority claim can be adjudicated. This leads to the problem that the court cannot fairly "unscramble the egg" after the fact: ***Canada North Group*** at paras. 56, 68, 70; ***Canada (Deputy Attorney General) v Temple City Housing Inc.***, 2008 ABCA 1 at para. 14, 422 AR 4, 43 CBR (5th) 35. In this appeal there is no need to unscramble the egg, because there are lots of eggs. This may present the occasion where the Court should adjudicate even if the issue is potentially moot.

[4] The respondents also argue that it is unfair to have the insolvent companies bear the expense of what is essentially a "test case", and that the Minister should be required to pay the costs of any appeal. The panel that hears the appeal is, however, in the best position to deal with any issues respecting the incremental costs generated by an appeal.

[5] I am satisfied that the applicant has identified a substantive issue justifying a further appeal, and leave to appeal is granted on the following issue:

> Did the case management judge err in law in determining that the "super-priority" charges made in favour of the interim financier, the directors of the debtor companies, and the Monitor and its counsel have priority over the claim of the Minister of National Revenue for unremitted source deductions?

As in all appeals, the costs of the appeal will be in the hands of the panel.

[6] In order to circumscribe the costs of this appeal, the debtor Canada North Group will (subject to any contrary agreement by counsel) be the lead respondent, and will be entitled to file a full factum as provided for in the *Rules of Court*. Other interested parties may file respondents' factums, but they will not be due until 10 days after Canada North's factum is filed, they are not to be repetitive of arguments made by Canada North, and unless permitted by the Case Management Officer they are to be limited to 8 pages. No party will receive costs of this application.

Application heard on November 1, 2017

Reasons filed at Edmonton, Alberta
this 3rd day of November, 2017

Slatter J.A.

Appearances:

G.F. Body
for the Applicant

S.A. Wanke
for the Respondents Canada North Group Inc.. Canada North Camps Inc., Campcorp Structures Ltd., DJ Catering Ltd., 816956 Alberta Ltd., 1371047 Alberta Ltd., and 1919209 Alberta Ltd.

D.R. Bieganek, Q.C.
for the Respondent Ernst & Young Inc.

J.L. Oliver
for the Respondent Business Development Bank Canada

This is **Exhibit "B"** referred to in the Affidavit of Jessie Taha sworn before me on the 13th of June, 2018.

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)
A Commissioner for Oaths in and)
for the Province of Alberta)

ARVINDPAUL SAMRA
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EDMONTON, AB T5J 3X6

Chuck Russell

From: Darren Bieganek <dbieganek@dcllp.com>
Sent: Tuesday, June 12, 2018 9:35 AM
To: Chuck Russell
Subject: RE: CRA appeal

BDC, Monitor, IIC and CAIRP. Monitor, IIC and CAIRP are limited to 8 pages and may not address items addressed by BDC (as per the leave and intervention orders). BDC file first, then Monitor, then IIC and CAIRP

From: Chuck Russell <crussell@mross.com>
Sent: June-12-18 9:28 AM
To: Darren Bieganek <dbieganek@dcllp.com>
Subject: RE: CRA appeal

Is BDC filing a factum, and is anyone else?

From: Darren Bieganek [mailto:dbieganek@dcllp.com]
Sent: Tuesday, June 12, 2018 9:16 AM
To: Chuck Russell <crussell@mross.com>
Subject: RE: CRA appeal

CAIRP and IIC are the intervenors. My factum is due at the beginning of July. I am gone next week but will be back in the office for the week of the 25th to get it done.

Darren Bieganek, LLB, QC
Partner, Insolvency, Restructuring and Commercial Litigation
Duncan Craig LLP
2800 Scotia Place, 10060 Jasper Ave
Edmonton, Alberta, T5J 3V9

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Toll-free: 1.800.782.9409
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Email: dbieganek@dcllp.com
Web: dcllp.com

From: Chuck Russell <crussell@mross.com>
Sent: June-12-18 9:11 AM
To: Darren Bieganek <dbieganek@dcllp.com>
Subject: CRA appeal

Darren, who are the intervenors in this now, I know the IIC is, and you have filed a factum, who else has or will?

chuck

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