Court of Appeal File No. M52471
Superior Court File No.: CV-21-656040-00CL

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 LAURENTIAN UNIVERSITY OF SUDBURY

REPLY BOOK OF AUTHORITIES OF THE MOVING PARTY

(Motion by Thorneloe University for Leave to Appeal)

June 8, 2021

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TO: SERVICE LIST

TABLE OF CONTENTS

TAB 1

CITATION: 1298781 Ontario Inc. et al. v. Levine et al., 2013 ONSC 2894
COURT FILE NO.: CV-09-00374814
MOTION HEARD: 20130501

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 1298781 Ontario Inc. and Enzo Barrasso, Plaintiffs

AND:

Larry J. Levine and Levin, Sherkin, Boussidan, Defendants

BEFORE: Master B. McAfee

COUNSEL: Demetrios Yiokaris and Kalev Annico, articling student, for the Moving Parties, the Defendants

Leroy A. Bleta, for the Responding Parties, the Plaintiffs

HEARD: May 1, 2013

REASONS FOR DECISION

Nature of the Motion

[1] This is a motion brought by the defendants for an order removing Leroy A. Bleta as lawyer of record for the plaintiffs.

[2] The plaintiffs oppose the motion.

[3] For the reasons that follow, the motion is granted.

Preliminary Issue

[4] The plaintiffs raised a preliminary issue. The plaintiffs sought an order striking exhibit 1 from the brief of exhibits to the cross-examination of Roslyn Brown. Without admitting that the exhibit is in any way improper, the defendants did not oppose the request. Accordingly, exhibit 1 is struck.

The Action and Underlying Action

[5] In this action the plaintiffs seek $525,000.00 in damages for alleged professional negligence against their former lawyer, Larry Levine regarding his role as counsel in Jelco Construction Ltd. v. 1298781 Ontario Inc. et al., court file no. CV-05-CV291311-0000 (the underlying action).

[6] In the underlying action, Jelco Construction Ltd. (Jelco) claimed against 1298781 Ontario Inc. (129 Inc.) for the balance owing in relation to a contract for a parking garage restoration. 129 Inc. counterclaimed for various deficiencies, delay and damages resulting from Jelco's work.

[7] Mr. Levine was the second of three lawyers of record in the underlying action. By order dated May 22, 2007, Mr. Levine's request for leave to withdraw as lawyer of record in the underlying action was granted.

[8] Mr. Bleta was the third lawyer of record in the underlying action. Mr. Bleta conducted the trial of the underlying action. Mr. Bleta also acted for 129 Inc. in 129 Inc.'s appeal from the trial decision.

[9] The plaintiffs bring the within action alleging negligence against Mr. Levine in the underlying action. The plaintiffs allege that their ability to properly defend the underlying action and prosecute the counterclaim in the underlying action was prejudiced as a result of Mr. Levine's alleged negligence.

The Issue

[10] Should Mr. Bleta be removed as lawyer of record for the plaintiffs?

Summary of the Positions of the Parties

[11] The moving parties, the defendants argue that Mr. Bleta ought to be removed from the record on the basis of a conflict of interest. The defendants argue that Mr. Bleta is a necessary and material witness at the trial of this action.

[12] The responding parties, the plaintiffs argue that the motion is brought in bad faith, that Mr. Bleta is not a necessary or material witness and that it would be unfair, costly and prejudicial for the plaintiffs to retain a new lawyer.

The Law and Analysis

[13] The principal issue on these types of motions is the balancing of three competing values. As stated by Sopinka J. in *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235 (S.C.C.) at para. 13, the competing values are: 1) the maintenance of high standards of the legal profession and the integrity of our system of justice; 2) the right of a litigant to its choice of counsel, which he or she should not be deprived of without good cause; and, 3) the desirability to permit mobility in the legal profession (see also *Puhl v. Katz Group Canada Ltd.*, [2006] O.J. No. 4596 (S.C.J.) at para. 17).

[14] The third competing value is not an issue in this case.

[15] The most important and compelling value is the integrity of our system of justice (see *MacDonald Estate* at para. 58 and *Puhl* at para. 19).

[16] It is extremely undesirable for a litigant's lawyer to appear as a witness. In *Urquhart v. Allen Estate*, [1999] O.J. No. 4816 (S.C.J.) Justice Gillese states as follows:

> "When counsel appears as a witness on a contentious matter, it causes two problems. First, it may result in a conflict of interest between counsel and his client. That conflict may be waived by the client, as indeed, was done in this case. The second problem relates to the administration of justice. The dual roles serve to create a conflict between counsel's obligations of objectivity and detachment, which are owed to the court, and his obligations to his client to present evidence in as favourable a light as possible. This is a conflict that cannot be waived by the client as the conflict is between counsel and the court/justice system" (see *Urquhart* at paras. 27 and 28 and see Karas v. Ontario, [2011] O.J. No. 3932 (Master) at para. 27).

[17] The Law Society of Upper Canada and the Canadian Bar Association have addressed the issue of a lawyer appearing as a witness. "The lawyer who is a necessary witness should testify and entrust the conduct of the case to another lawyer" (see Law Society of Upper Canada Rules of Professional Conduct, Rule 4.02(1) and (2), Commentary and see Canadian Bar Association Code of Professional Conduct, Chapter IX, Commentary 5 and see *Puhl* at paras. 24-26 and *Karas* at paras. 28, 29).

[18] When considering the removal of a lawyer from the record on the basis that the lawyer will also be a witness, the court adopts a flexible approach and considers each case on its merits. In *Essa (Township) v. Guergis*, [1993] O.J. No. 2581 (Div.Ct.) at para. 48, the Divisional Court set out a number of factors to be considered on a motion to remove a lawyer from the record on the ground that the lawyer will also be a witness at trial. I will now address these factors.

Stage of the proceedings

[19] This action has not proceeded beyond the delivery of pleadings and the exchange of productions. Examinations for discovery have not taken place. An action need not proceed beyond the pleadings stage before it may be appropriate to grant an order removing a lawyer from the record on the basis that there is more than a real likelihood that the lawyer will be a witness (see *Karas* at para. 32, *George S. Szeto Investments Ltd. (c.o.b. Ruby King) v. Ott*, [2006] O.J. No. 1174 (Master) at paras. 11-14).

Likelihood that the witness will be called

[20] Although the plaintiffs undertake not to call Mr. Bleta as a witness and intend to resist any attempt by the defendants to call Mr. Bleta as a witness (see affidavit of Roslyn Brown at para. 51), this does not end the matter. The defendants intend to call Mr. Bleta as a witness at trial and will seek to examine Mr. Bleta for discovery as a non-party (see affidavit of Mr. Levine sworn September 27, 2012 (Levine affidavit) at paras. 42, 43b, 43c). Certainty that Mr. Bleta will be called as a witness at trial is not required (see *Karas* at para. 34).

Good faith of party bringing the motion

[21] I am satisfied that this motion is brought in good faith. The evidence before me does not support a finding that there is any bad faith on the part of the defendants. This motion is brought at the earliest opportunity.

[22] The plaintiffs argue that 129 Inc. has brought other actions against the defendants and that motions to remove Mr. Bleta as lawyer of record in those actions may be brought. No motion(s) to remove Mr. Bleta from the record in those actions have been brought. If brought, the motion(s) would have to be considered on the basis of the facts of the particular case. The fact that other motions in other actions may be brought does not, in my view, affect the just result in this matter.

Significance of the evidence to be led

[23] Mr. Bleta's evidence is relevant with respect to mitigation and what damages flow from the alleged acts of negligence. In particular, as set out in the Levine affidavit at para. 43b and affidavit of Mr. Levine sworn December 14, 2012 (Levine reply affidavit) at paras. 62, 76 and 80, Mr. Bleta's evidence is relevant to:

-how the alleged poor drafting of the statement of defence and counterclaim affected Mr. Bleta's ability to conduct the trial (see statement of claim at last line of para. 18);

-which of the allegations in the request to admit are untrue and how the alleged failure to respond to the request to admit or failure to seek to set aside the deemed admissions caused any damage or affected Mr. Bleta's conduct of the trial (see statement of claim at paras. 23, 26);

-how the alleged allowance of an unauthorized examination for discovery in substance resulted in damages (see statement of claim at para. 20);

-how the alleged failure to produce any exhibits to establish and support the plaintiff's defence and counterclaim resulted in any damages, including which documents were not produced and how this affected the conduct of the trial and the outcome (see statement of claim at paras. 24-26);

-how the alleged failure to require an affidavit of documents/productions by Jelco to support the work performed by Jelco, including Jelco's time sheets and other payroll records resulted in any damages or affected the trial and outcome (see statement of claim at para. 24);

-how the alleged failure to address Jelco's March 21, 2007 correspondence, which allegedly expressed that there was a pre-trial order precluding any plaintiff documents from being produced subsequent to March 13, 2007 and why Mr. Bleta did not discover that there was no such order (see statement of claim at paras. 25, 26);

-if and why Mr. Bleta believes that the plaintiffs did not receive the entire file from Mr. Levine and why the plaintiffs believe there was documentary support for the lost rental income and why if such documentation existed Mr. Bleta did not tender such evidence

including calling two individuals responsible for leasing the apartments (see statement of claim at para. 29);

-if the plaintiffs believe that Mr. Levine acted negligently by failing to prepare the file for trial, or prepare a trial factum or book of authorities, why Mr. Bleta could not have prepared same (see statement of claim at para. 30).

[24] In addition, Mr. Bleta will be able to provide evidence concerning tactical decisions at trial in the underlying action including the following:

- why no evidence was called to establish Jelco's liability (see Levine affidavit at para. 43b);

-why a motion to set aside the request to admit was not brought although Mr. Bleta indicated prior to trial that he would do so and had instructions to do so (see Levine affidavit at para. 43b and Levine reply affidavit at paras. 79, 80);

-why Mr. Bleta failed to obtain the documentation that Mr. Levine allegedly failed to obtain (see Levine reply affidavit at para. 62);

-regarding allegations that Mr. Levine inappropriately waived mandatory mediation and prepared a deficient pre-trial memo, what efforts were taken by Mr. Bleta to explore settlement (see Levine reply affidavit at paras. 81, 86);

-regarding allegations that Mr. Levine failed to prepare the payment certifier as a trial witness, what efforts were made by Mr. Bleta to do so (see Levine reply affidavit at para. 82);

-regarding allegations that Mr. Levine did not prepare 129 Inc.'s representative, Enzo Barrasso as a witness what efforts were made by Mr. Bleta to do so (see Levine reply affidavit at paras. 83-85);

-why two full time rental agents were not called to testify (see Levine affidavit at para. 43b, Levine reply affidavit at para. 61a and Reasons for Judgment at para. 25);

-why Mr. Bleta did not call any evidence to establish liability on the delay counterclaim (see Levine affidavit at para. 43b, Levine reply affidavit at para. 61b and Reasons for Judgment at paras. 25, 26);

-why Mr. Bleta did not call any evidence to establish 129 Inc.'s quantum of damages on the delay counterclaim (see Levine affidavit at para. 43b, Levine reply affidavit at para. 61c, 62 and Reasons for Judgment at para. 29);

-why Mr. Bleta did not seek leave to produce or introduce documentary evidence in support of the counterclaim for lost rental income or seek an adjournment (see Levine reply affidavit at para. 62, Judgment of Divisional Court at para. 6);

-why Mr. Bleta did not call evidence showing condition of the stand pipe prior to work done by Jelco (see Levine affidavit at para. 43b and Reasons for Judgment at para. 38);

-why Mr. Bleta did not produce logs showing maintenance of the sprinkler system prior to the commencement of work done pursuant to the contract (see Levine affidavit at para. 43b and Reasons for Judgment at para. 35);

-why Mr. Bleta did not substantiate the Hart Pump Service Invoice (see Levine affidavit at para. 43b and Reasons for Judgment at para. 40).

[25] I am satisfied that the Mr. Bleta has significant first-hand knowledge regarding the alleged issues in dispute (see paras. 23, 24 above and see also Brown transcript at questions 165-168, 265, 271-278, 388, 390-393, 395, 397, 421-428).

Impact of removing counsel on the party's right to be represented by counsel of choice

[26] The plaintiffs argue that it would be unfair, costly and prejudicial if Mr. Bleta is removed from the record in part because he has been their lawyer for the past five years in these matters and he has insight, familiarity and appreciation of the matters previously handled by Mr. Levine (see Brown affidavit at para. 19). In my view this is part of the concern with Mr. Bleta remaining on the record. He has relevant and material evidence as a result of his involvement in the underlying action. Removing Mr. Bleta at an early stage in the proceedings will minimize any financial impact.

[27] In any event, the freedom to choose a lawyer "…is not an absolute right. The right to be represented by counsel of choice can be outweighed when the administration of justice would be detrimentally affected" (see *Karas* at para. 45 and *George S. Szeto Investments Ltd.* at para. 21).

Whether trial is by judge and jury

[28] A jury notice has not been served in this action.

Likelihood of real conflict arising or that evidence will be tainted

[29] Mr. Bleta's role as advocate cannot be reconciled with his role as witness. His dual roles will give rise to a conflict and taint his evidence (see *George S. Szeto Investments Ltd.* at para. 23). Given Mr. Bleta's involvement in the underlying action, any question posed by him is unfair to a witness and carries with it the appearance of an unsworn offer of the lawyer's version of the facts. Questions put in cross-examination by Mr. Bleta would create the uneasy feeling that the measure of credibility could be based not on the evidence but the unsworn declaration of Mr. Bleta. Mr. Bleta will be left in a difficult position if his memory of the events differs from the evidence in chief of the plaintiffs' witnesses (see *Karas* at para. 48 and *George S. Szeto Investments Ltd.* at para. 24)

Connection or relationship between counsel, the prospective witness and the parties involved in the litigation

[30] As Mr. Bleta is the lawyer for the plaintiffs and a witness for the defendants, it is in the interest of justice to prevent this conflict from arising (see *George S. Szeto Investments Ltd.* at para. 25 and *Karas* at para. 49).

[31] Having regard to the factors set forth in *Essa*, I am satisfied that they weigh in favour of removing Mr. Bleta as lawyer of record for the plaintiffs.

[32] In opposition to the motion the plaintiffs rely in part on a number of decisions concerning the quashing of a subpoena/summons served on an opposite party's lawyer (see *R. v. 1504413 Ontario Ltd.*, 2008 CarswellOnt 1883 (C.A.), *Ocean v. Economical Mutual Insurance Co.*, 2010 CarswellNS 16 (N.S.S.C.) and *Maesbury Homes Inc. v. 1539006 Ontario Inc.*, 2011 CarswellOnt 3057 (S.C.J.)). In my view these authorities are not applicable in the circumstances of this motion. They do not concern a motion to remove a lawyer from the record due to a conflict of interest. In addition, these authorities address an attempt to procure evidence from the lawyer of record regarding the same action as the one to which the subpoena relates. In this case the defendants intend to examine Mr. Bleta with respect to the underlying action and the factual circumstances therein.

[33] If I am wrong and the authorities concerning the quashing of a subpoena/summons are applicable, then the threshold test as set forth in these authorities has been met. Solicitor and client privilege with respect to the underlying action has been waived (see *Froates v. Spears*, [1999] O.J. No. 77 (Gen.Div.) and *Bank Leu AG v. Gaming Lottery Corp.*, [1999] O.J. No. 3949 (S.C.J.), affirmed [2000] O.J. No. 1137 (Div.Ct.), *Norhal Quarries & Holidings Ltd. v. Ross & McBride*, [2000] O.J. NO. 1082 (S.C.J.) and *Gowlings Lafleur Henderson LLP v. Meredith*, 2011 ONSC 2686 (Master)). Mr. Bleta's evidence is highly material and necessary and much of Mr. Bleta's evidence cannot be obtained from other witnesses (see paras. 23-25 above).

[34] For the above reasons, the motion is granted. Mr. Bleta is removed as lawyer of record for the plaintiffs.

[35] Any formal order taken out shall comply with the provisions of Rule 15.04(4).

Costs

[36] If any party seeks costs and if the parties are unable to agree on costs any party seeking costs shall serve and file brief written submissions on costs of 3 pages or less in length together with a costs outline on or before June 18, 2013. Any responding submissions shall also be 3 pages or less in length and served and filed on or before July 2, 2013. Any reply submissions shall be 1 page or less in length and served and filed on or before July 9, 2013. The submissions shall be filed in accordance with these deadlines directly with assistant trial coordinator Conrad Diamante, 6th floor, 393 University Avenue and shall be accompanied by an affidavit of service.

Master Barbara McAfee

Date: May 21, 2013

TAB 2

CITATION: Canwest Publishing Inc., 2010 ONSC 1328
COURT FILE NO.: CV-10-8533-00CL
DATE: 20100305

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C-36, AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST PUBLISHING INC./PUBLICATIONS CANWEST INC., CANWEST BOOKS INC. AND CANWEST (CANADA) INC.

COUNSEL: *Lyndon Barnes and Alex Cobb* for the Canwest LP Entities
Maria Konyukhova for the Monitor, FTI Consulting Canada Inc.
Hilary Clarke for the Bank of Nova Scotia, Administrative Agent for the Senior Secured Lenders' Syndicate
Janice Payne and Thomas McRae for the Canwest Salaried Employees and Retirees (CSER) Group
M. A. Church for the Communications, Energy and Paperworkers' Union
Anthony F. Dale for CAW-Canada
Deborah McPhail for the Financial Services Commission of Ontario

PEPALL J.

REASONS FOR DECISION

Relief Requested

[1] Russell Mills, Blair MacKenzie, Rejean Saumure and Les Bale (the "Representatives") seek to be appointed as representatives on behalf of former salaried employees and retirees of Canwest Publishing Inc./Publications Canwest Inc., Canwest Books Inc., Canwest (Canada) and Canwest Limited Partnership and the Canwest Global Canadian Newspaper Entities (collectively the "LP Entities") or any person claiming an interest under or on behalf of such salaried

employees or retirees including beneficiaries and surviving spouses (“the Salaried Employees and Retirees”). They also seek an order that Nelligan O’Brien Payne LLP and Shibley Righton LLP be appointed in these proceedings to represent the Salaried Employees and Retirees for all matters relating to claims against the LP Entities and any issues affecting them in the proceedings. Amongst other things, it is proposed that all reasonable legal, actuarial and financial expert and advisory fees be paid by the LP Entities.

[2] On February 22, 2010, I granted an order on consent of the LP Entities authorizing the Communications, Energy and Paperworker’s Union of Canada (“CEP”) to continue to represent its current members and to represent former members of bargaining units represented by the union including pensioners, retirees, deferred vested participants and surviving spouses and dependants employed or formerly employed by the LP Entities. That order only extended to unionized members or former members. The within motion focused on non-unionized former employees and retirees although Ms. Payne for the moving parties indicated that the moving parties would be content to include other non-unionized employees as well. There is no overlap between the order granted to CEP and the order requested by the Salaried Employees and Retirees.

Facts

[3] On January 8, 2010 the LP Entities obtained an order pursuant to the *Companies’ Creditors Arrangement Act* (“CCAA”) staying all proceedings and claims against the LP Entities. The order permits but does not require the LP Entities to make payments to employee and retirement benefit plans.

[4] There are approximately 66 employees, 45 of whom were non-unionized, whose employment with the LP Entities terminated prior to the Initial Order but who were still owed termination and severance payments. As of the date of the Initial Order, the LP Entities ceased making those payments to those former employees. As many of these former employees were owed termination payments as part of a salary continuance scheme whereby they would continue to accrue pensionable service during a notice period, after the Initial Order, those former

employees stopped accruing pensionable service. The Representatives seek an order authorizing them to act for the 45 individuals and for the aforementioned law firms to be appointed as representative counsel.

[5] Additionally, seven retirees and two current employees are (or would be) eligible for a pension benefit from Southam Executive Retirement Arrangements ("SERA"). SERA is a non-registered pension plan used to provide supplemental pension benefits to former executives of the LP Entities and their predecessors. These benefits are in excess of those earned under the Canwest Southam Publications Inc. Retirement Plan which benefits are capped as a result of certain provisions of the *Income Tax Act*. As of the date of the Initial Order, the SERA payments ceased also. This impacts beneficiaries and spouses who are eligible for a joint survivorship option. The aggregate benefit obligation related to SERA is approximately $14.4 million. The Representatives also seek to act for these seven retirees and for the aforementioned law firms to be appointed as representative counsel.

[6] Since January 8, 2010, the LP Entities have being pursuing the sale and investor solicitation process ("SISP") contemplated by the Initial Order. Throughout the course of the CCAA proceedings, the LP Entities have continued to pay:

(a) salaries, commissions, bonuses and outstanding employee expenses;

(b) current services and special payments in respect of the active registered pension plan; and

(c) post-employment and post-retirement benefits to former employees who were represented by a union when they were employed by the LP Entities.

[7] The LP Entities intend to continue to pay these employee related obligations throughout the course of the CCAA proceedings. Pursuant to the Support Agreement with the LP Secured Lenders, AcquireCo. will assume all of the employee related obligations including existing pension plans (other than supplemental pension plans such as SERA), existing post-retirement and post-employment benefit plans and unpaid severance obligations stayed during the CCAA

proceeding. This assumption by AcquireCo. is subject to the LP Secured Lenders' right, acting commercially reasonably and after consultation with the operational management of the LP Entities, to exclude certain specified liabilities.

[8] All four proposed Representatives have claims against the LP Entities that are representative of the claims that would be advanced by former employees, namely pension benefits and compensation for involuntary terminations. In addition to the claims against the LP Entities, the proposed Representatives may have claims against the directors of the LP Entities that are currently impacted by the CCAA proceedings.

[9] No issue is taken with the proposed Representatives nor with the experience and competence of the proposed law firms, namely Nelligan O'Brien Payne LLP and Shibley Righton LLP, both of whom have jointly acted as court appointed representatives for continuing employees in the Nortel Networks Limited case.

[10] Funding by the LP Entities in respect of the representation requested would violate the Support Agreement dated January 8, 2010 between the LP Entities and the LP Administrative Agent. Specifically, section 5.1(j) of the Support Agreement states:

> "The LP Entities shall not pay any of the legal, financial or other advisors to any other Person, except as expressly contemplated by the Initial Order or with the consent in writing from the Administrative Agent acting in consultation with the Steering Committee."

[11] The LP Administrative Agent does not consent to the funding request at this time.

[12] On October 6, 2009, the CMI Entities applied for protection pursuant to the provisions of the CCAA. In that restructuring, the CMI Entities themselves moved to appoint and fund a law firm as representative counsel for former employees and retirees. That order was granted.

[13] Counsel were urged by me to ascertain whether there was any possibility of resolving this issue. Some time was spent attempting to do so, however, I was subsequently advised that those efforts were unsuccessful.

Issues

[14] The issues on this motion are as follows:

(1) Should the Representatives be appointed?

(2) Should Nelligan O'Brien Payne LLP and Shibley Righton LLP be appointed as representative counsel?

(3) If so, should the request for funding be granted?

Positions of Parties

[15] In brief, the moving parties submit that representative counsel should be appointed where vulnerable creditors have little means to pursue a claim in a complex CCAA proceeding; there is a social benefit to be derived from assisting vulnerable creditors; and a benefit would be provided to the overall CCAA process by introducing efficiency for all parties involved. The moving parties submit that all of these principles have been met in this case.

[16] The LP Entities oppose the relief requested on the grounds that it is premature. The amounts outstanding to the representative group are prefiling unsecured obligations. Unless a superior offer is received in the SISP that is currently underway, the LP Entities will implement a support transaction with the LP Secured Lenders that does not contemplate any recoveries for unsecured creditors. As such, there is no current need to carry out a claims process. Although a superior offer may materialize in the SISP, the outcome of the SISP is currently unknown.

[17] Furthermore, the LP Entities oppose the funding request. The fees will deplete the resources of the Estate without any possible corresponding benefit and the Support Agreement with the LP Secured Lenders does not authorize any such payment.

[18] The LP Senior Lenders support the position of the LP Entities.

[19] In its third report, the Monitor noted that pursuant to the Support Agreement, the LP Entities are not permitted to pay any of the legal, financial or other advisors absent consent in writing from the LP Administrative Agent which has not been forthcoming. Accordingly, funding of the fees requested would be in contravention of the Support Agreement with the LP Secured Lenders. For those reasons, the Monitor supported the LP Entities refusal to fund.

Discussion

[20] No one challenged the court's jurisdiction to make a representation order and such orders have been granted in large CCAA proceedings. Examples include Nortel Networks Corp., Fraser Papers Inc., and Canwest Global Communications Corp. (with respect to the television side of the enterprise). Indeed, a human resources manager at the Ottawa Citizen advised one of the Representatives, Mr. Saumure, that as part of the CCAA process, it was normal practice for the court to appoint a law firm to represent former employees as a group.

[21] Factors that have been considered by courts in granting these orders include:

- the vulnerability and resources of the group sought to be represented;

- any benefit to the companies under CCAA protection;

- any social benefit to be derived from representation of the group;

- the facilitation of the administration of the proceedings and efficiency;

- the avoidance of a multiplicity of legal retainers;

- the balance of convenience and whether it is fair and just including to the creditors of the Estate;

- whether representative counsel has already been appointed for those who have similar interests to the group seeking representation and who is also prepared to act for the group seeking the order; and

- the position of other stakeholders and the Monitor.

[22] The evidence before me consists of affidavits from three of the four proposed Representatives and a partner with the Nelligan O'Brien Payne LLP law firm, the Monitor's Third Report, and a compendium containing an affidavit of an investment manager for noteholders filed on an earlier occasion in these CCAA proceedings. This evidence addresses most of the aforementioned factors.

[23] The primary objection to the relief requested is prematurity. This is reflected in correspondence sent by counsel for the LP Entities to counsel for the Senior Lenders' Administrative Agent. Those opposing the relief requested submit that the moving parties can keep an eye on the Monitor's website and depend on notice to be given by the Monitor in the event that unsecured creditors have any entitlement. Counsel for the LP Entities submitted that counsel for the proposed representatives should reapply to court at the appropriate time and that I should dismiss the motion without prejudice to the moving parties to bring it back on.

[24] In my view, this watch and wait suggestion is unhelpful to the needs of the Salaried Employees and Retirees and to the interests of the Applicants. I accept that the individuals in issue may be unsecured creditors whose recovery expectation may prove to be non-existent and that ultimately there may be no claims process for them. I also accept that some of them were in the executive ranks of the LP Entities and continue to benefit from payment of some pension benefits. That said, these are all individuals who find themselves in uncertain times facing legal proceedings of significant complexity. The evidence is also to the effect that members of the group have little means to pursue representation and are unable to afford proper legal representation at this time. The Monitor already has very extensive responsibilities as reflected in paragraph 30 and following of the Initial Order and the CCAA itself and it is unrealistic to expect that it can be fully responsive to the needs and demands of all of these many individuals and do so in an efficient and timely manner. Desirably in my view, Canadian courts have not typically appointed an Unsecured Creditors Committee to address the needs of unsecured creditors in large restructurings. It would be of considerable benefit to both the Applicants and

the Salaried Employees and Retirees to have Representatives and representative counsel who could interact with the Applicants and represent the interests of the Salaried Employees and Retirees. In that regard, I accept their evidence that they are a vulnerable group and there is no other counsel available to represent their interests. Furthermore, a multiplicity of legal retainers is to be discouraged. In my view, it is a false economy to watch and wait. Indeed the time taken by counsel preparing for and arguing this motion is just one such example. The appointment of the Representatives and representative counsel would facilitate the administration of the proceedings and information flow and provide for efficiency.

[25] The second basis for objection is that the LP Entities are not permitted to pay any of the legal, financial or other advisors to any other person except as expressly contemplated by the Initial Order or with consent in writing from the LP Administrative Agent acting in consultation with the Steering Committee. Funding by the LP Entities would be in contravention of the Support Agreement entered into by the LP Entities and the LP Senior Secured Lenders. It was for this reason that the Monitor stated in its Report that it supported the LP Entities' refusal to fund.

[26] I accept the evidence before me on the inability of the Salaried Employees and Retirees to afford legal counsel at this time. There are in these circumstances three possible sources of funding: the LP Entities; the Monitor pursuant to paragraph 31 (i) of the Initial Order although quere whether this is in keeping with the intention underlying that provision; or the LP Senior Secured Lenders. It seems to me that having exercised the degree of control that they have, it is certainly arguable that relying on inherent jurisdiction, the court has the power to compel the Senior Secured Lenders to fund or alternatively compel the LP Administrative Agent to consent to funding. By executing agreements such as the Support Agreement, parties cannot oust the jurisdiction of the court.

[27] In my view, a source of funding other than the Salaried Employees and Retirees themselves should be identified now. In the CMI Entities' CCAA proceeding, funding was made available for Representative Counsel although I acknowledge that the circumstances here

are somewhat different. Staged payments commencing with the sum of $25,000 may be more appropriate. Funding would be prospective in nature and would not extend to investigation of or claims against directors.

[28] Counsel are to communicate with one another to ascertain how best to structure the funding and report to me if necessary at a 9:30 appointment on March 22, 2010. If everything is resolved, only the Monitor need report at that time and may do so by e-mail. If not resolved, I propose to make the structuring order on March 22, 2010 on a nunc pro tunc basis. Ottawa counsel may participate by telephone but should alert the Commercial List Office of their proposed mode of participation.

Pepall J.

Released: March 5, 2010

CITATION: Canwest Publishing Inc., 2010 ONSC 1328
COURT FILE NO.: CV-10-8533-00CL
DATE: 20100305

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C-36, AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT OF CANWEST PUBLISHING INC./ PUBLICATIONS CANWEST INC., CANWEST BOOKS INC., AND CANWEST (CANADA) INC.

REASONS FOR DECISION

Pepall J.

Released: March 5, 2010

TAB 3

Urquhart v. Allen Estate

Ontario Judgments

Ontario Superior Court of Justice

Gillese J.

Heard: October 25, 1999.

Judgment: November 9, 1999.

Court File No. 14880/93

[1999] O.J. No. 4816 | 93 A.C.W.S. (3d) 753 | 1999 CarswellOnt 4126

Between Carolyn Dawn Urquhart, Shanna Lane New, Shawna Lee Urquhart, Cynthia Gertrude Nairn and Marilyn Joyce Carpenter, plaintiffs, and David Jacklin, the personal representative of Dr. Patrick J. Allen, deceased, Public General Hospital, Dr. Myles R. MacLennan, and Gary Wilson, Drew Alaster MacKenzie, and Christina Alexandra MacKenzie, personal representatives of the Estate of Dr. Harriet E. Stewart, deceased, defendants

(30 paras.)

Case Summary

Barristers and solicitors — Duty to client — Conflict of interest — Where lawyer potential witness — Waiver.

This was an application by the defendant Stewart for disqualification of the plaintiff Urquhart's solicitor disqualified. In 1993, Urquhart brought an action against Allen, alleging that his negligence caused a delayed diagnosis of her breast cancer. A medical report received by Urquhart in 1993 raised the issue of negligence on the part of Stewart, a radiologist. A 1994 expert's report did not indicate any negligence on Stewart's part. Another report in 1995 once again raised the issue. Stewart was added as a defendant to the action in September 1995. Two days before trial, counsel for Stewart made it clear that Stewart would raise a limitation defence. A summary judgment motion was heard and the action was dismissed as against Stewart. The Court of Appeal overturned that decision and held that the issue to be determined at trial was whether, with the exercise of due diligence, information implicating Stewart could have been obtained before the limitation period expired. Stewart argued that counsel for Urquhart would have to give evidence on the issue of due diligence. Urquhart consented to counsel acting on her behalf regardless of any perceived conflict of interest.

HELD: Application allowed.

Given the Court of Appeal's opinion of the issue to be determined, counsel for Urquhart would be required to give evidence on a contentious matter. If counsel appeared as a witness, there would be a conflict between his duty to the court to present evidence objectively and his duty to his client to present evidence as favourably to the client as possible. Concerns for the proper administration of justice demanded that counsel be removed from the record. It was not possible to separate the issue of due diligence from the rest of the testimony at trial and thereby allow independent counsel to argue that single issue.

Statutes, Regulations and Rules Cited:

Health Disciplines' Act, R.S.O. 1990, c. H-4, s. 17.

Health Professions' Procedural Code, s. 89.

Regulation Health Professions Act, S.O. 1991, c. 18.

Counsel

C.S. Ritchie, for the plaintiffs. D.I. Hamer and J.K. Downing, for the defendants.

GILLESE J.

1 The defendants move to have Lerner & Associates disqualified from continuing to act as counsel for the plaintiffs. For the purposes of deciding this motion, counsel for both parties agreed that I was to assume that the counsel from Lerner & Associates who will conduct the trial on behalf of the plaintiffs will be required to testify as a witness in the trial.

THE FACTS

2 The plaintiff, Carolyn Dawn Urquhart, alleges that the diagnosis of her breast cancer was delayed through medical negligence. The defendant, the late Dr. Patrick J. Allen, was the treating general surgeon responsible for the plaintiff's breast concerns for the relevant period. The defendant, Dr. Stewart, was the radiologist who conducted and interpreted the plaintiff's initial mammogram in March of 1991. Cancer was diagnosed in May of 1992. The plaintiff sued Dr. Allen in April of 1993, less than one year after the diagnosis of breast cancer had been made.

3 In July of 1993, the plaintiffs had an expert medical report that raised the issue of possible negligence on the part of the radiologist (i.e. Dr. Stewart). A plaintiffs' expert report in January 1994 did not indicate there had been negligence by Dr. Stewart. In June of 1995, the plaintiffs received an expert's report that included a statement that the mammogram seen by Dr. Stewart showed evidence of abnormal pathology. Dr. Stewart was added as a defendant in the action September of 1995, approximately four and a half years after she had interpreted the mammogram of the patient's breast. The plaintiff's September 1995 motion to add Dr. Stewart was unopposed on the express condition that it was without prejudice to the defendant's right to raise a limitation period defence. This condition is reflected in the order that added Dr. Stewart as a defendant. A limitation period defence was advanced on behalf of Dr. Stewart from the outset.

4 The trial was scheduled to commence on Monday, November 2, 1998. Two days before trial, counsel for Dr. Stewart advised counsel for the plaintiff that the limitation defence would be pursued on the basis that the claim against Dr. Stewart was commenced after the expiration of the limitation period provided for under the Health Disciplines' Act, R.S.O. 1990, C.H.-4, sec. 17, as amended or the Health Professions' Procedural Code, s. 89 being Schedule 2 to the Regulation Health Professions Act, S.O. 1991, C. 18.

5 Counsel for the plaintiffs moved for an adjournment of the trial, submitting that proceeding with the limitation defence put him in a potential conflict of interest with his client. The trial was adjourned to permit the plaintiff to obtain independent legal advice as to whether there was a conflict between the plaintiff and her counsel with respect to the limitation defence. After receiving independent legal advice, the plaintiff waived any conflict based upon the limitation defence. The plaintiff instructed Lerner & Associates to proceed to trial forthwith.

6 At the outset of trial in February of 1999, counsel for Dr. Stewart moved to have the action against her dismissed on the basis of the limitation period. The Honourable Mr. Justice Haines heard submissions as to whether the issue of the limitation defence should be dealt with before the trial, as part of the trial, or after the trial. He ruled that a

motion before trial would be appropriate. He then heard the defendants' motion for summary judgment and dismissed the action as against Dr. Stewart. His reasons for judgment were issued February 26, 1999.

7 The Court of Appeal heard an appeal from Justice Haines decision on August 5, 1999. In a judgment released on August 17, 1999, it overturned the decision of the trial judge. The Court of Appeal held that this was a case where the plaintiff was entitled to the benefit of a medical opinion before the limitation period was triggered. At page 5 of its decision, the Court noted that the issue of due diligence had not been argued:

> The case was not presented and argued in this court on the issue of due diligence in obtaining the ultimate expert medical report which suggested negligence by Dr. Stewart. Therefore, the matter must be decided by a trial judge, whether on the record that was before Haines J. or based on any other evidence, as determined by the parties.

8 The Court of Appeal directed that "the action is ordered to proceed to trial, including the issue of whether the action against Dr. Stewart is statute-barred".

9 The Court of Appeal framed the issue to be determined as follows:

> In this case the appellant [Carolyn Urquhart] ultimately obtained the opinion which led her to institute the action against Dr. Stewart. The issue to be determined was whether, with the exercise of due diligence and acting reasonably, the appellant [Carolyn Urquhart] ought to have obtained that opinion by September 1994, one year prior to the institution of the action against Dr. Stewart.

THE ISSUE

10 Ought the court to permit counsel to continue to represent the plaintiffs when he will be called as a witness on a contentious matter?

THE LAW

11 A motion to remove opposing solicitors is not brought pursuant to any statute or rule. The jurisdiction to make such an order is found in the inherent right of the court to determine, in a judicial manner, to whom it will give audience. Newmarch Mechanical Constructors Ltd. v. Hyundai Auto Canada Inc. (1992), 13 C.P.C. (3d) 349 (Ont. Ct. Gen. Div.).

12 In the recent case of Caputo v. Imperial Tobacco Ltd. (1999), 44 O.R. (3d) 554 (S.C.J.), at page 556-7, Winkler J. stated, albeit in obiter:

> It is contended that it is fundamental that counsel ought not to appear as counsel on a matter in which they are a witness. This proposition cannot be challenged: see Imperial Oil Ltd. v. Grabarchuk (1974), 3 O.R. (2d) 783 (C.A.).

13 In the case upon which Winkler J. relied, Imperial Oil Ltd. v. Grabarchuk (1974), 3 O.R. (2d) 783 (C.A.), the Court of Appeal did not permit counsel to appear on an appeal because they had made affidavits that had been submitted to the court of first instance. The Court of Appeal said this:

> Both counsel for the appellant and the respondent who appeared before this Court had made affidavits which had been submitted to the Court of first instance in support of and in opposition to the appellant's application. It was not until the question was raised by the Court that either counsel appreciated the impropriety of counsel who had been a witness in the proceedings appearing as counsel on the appeal. This is a well-settled rule that the Court has strictly enforced over the years. In the circumstances we felt it necessary to adjourn the hearing of this appeal to the May sittings in order to facilitate the appointment of other counsel for both parties.

14 In Heck v. Royal Bank of Canada (1993), 12 O.R. (3d) 675 (Ont. Ct. (G.D.)), further reasons 15 O.R. (3d) 127, the court ruled that a lawyer acting as counsel at trial should not be a witness with the possible exceptions of situations where the giving of evidence could not have reasonably been anticipated or the proposed evidence is not controversial. It was said that:

> I conclude that this practice should generally not be permitted because it may create an impression of impropriety and unfairness in the mind of the public and because it places counsel in an unacceptable conflict of interest where counsel's duty to the court conflicts with counsel's duty of loyalty and protection to the witness who is a business associate and counsel's duty to provide objective advice and representation to the client ...
>
> This is not an issue that should turn on the wishes of the client or the witness because their acceptance of the practice could not eliminate the conflict with the duty of counsel to the court and could not eliminate any appearance of impropriety in the eyes of the public.

15 Juxtaposed against these judicial statements, which appear to be an absolute bar to counsel serving as counsel when he or she will appear at a witness in a proceeding on a contentious matter, is the approach in Essa (Township) v. Guergis; Membery v. Hill (1993), 15 O.R. (3d) 573 (Ont. Ct. Gen. Div.). Essa stands for the proposition that whether counsel should be disqualified from giving evidence is a matter to be determined on a case by case basis. Mr. Justice O'Brien held that a variety of factors should be considered:

> I accept submissions made by counsel for the Advocates Society that in these applications a court should approach the matter by following a flexible approach and consider each case on its own merits. A variety of factors should be considered. These will include:
>
> - the stage of the proceedings;
> - the likelihood that the witness will be called;
> - the good faith (or otherwise) of the party making the application;
> - the significance of the evidence to be led;
> - the impact of removing counsel on the party's right to be represented by counsel of choice;
> - whether trial is by judge or jury;
> - the likelihood of a real conflict arising or that the evidence will be "tainted";
> - who will call the witness if, for example, there is a probability counsel will be in a position to cross-examine a favourable witness, a trial judge may rule to prevent that unfair advantage arising;
> - the connection or relationship between counsel, the prospective witness and the parties involved in the litigation.

16 The Law Society of Upper Canada and the Canadian Bar Association each have commented on the propriety of counsel appearing as a witness. While codes of professional conduct represent the standards to which the profession should adhere, they are merely persuasive. They are not binding on the court. However, their importance has been recognized by the Supreme Court of Canada. See McDonald Estate v. Martin [1990] 3 S.C.R. 1235.

17 The Law Society of Upper Canada Professional Conduct Handbook Rule 10, Commentary 16(b) states:

> The lawyer who appears as advocate should not testify before the tribunal save as may be permitted by the Rules of Civil Procedure or as to purely formal or uncontroverted matters. Nor should the lawyer express personal opinions or beliefs, or assert as a fact anything that is properly subject to legal proof, cross-examination or challenge. The lawyer must not in effect appear as an unsworn witness or put the lawyer's

> own credibility in issue. The lawyer who is a necessary witness should testify and entrust the conduct of the case to another lawyer. The lawyer who was a witness in the proceedings should not appear as advocate in any appeal from the decision in those proceedings. There are no restrictions on the advocate's right to cross-examine another lawyer, however, and the lawyer who does appear as a witness should not expect to receive special treatment because of professional status.

18 The Canadian Bar Association Code of Professional Conduct, Chapter IX, Commentary 5 provides:

> The lawyer who appears as an advocate should not submit the lawyer's own affidavit to or testify before a tribunal save as permitted by local rule or practice, or as to purely formal or uncontroverted matters. This also applies to the lawyer's partners and associates; generally speaking, they should not testify in such proceedings except as to merely formal matters. The lawyer should not express personal opinions or belief, or assert as fact anything that is properly subject to legal proof, cross-examination or challenge. The lawyer must not in effect become an unsworn witness or put the lawyer's own credibility in issue. The lawyer who is a necessary witness should testify and entrust the conduct of the case to someone else. Similarly, the lawyer who was a witness in the proceedings should not appear as advocate in any appeal from the decision in those proceedings. There are no restrictions upon the advocate's right to cross-examine another lawyer, and the lawyer who does appear as a witness should not expect to receive special treatment by reason of professional status.

19 On the other hand, it is clear and very important that a court should be slow to interfere with the litigant's right to choose his or her own counsel. Fraresso v. Wanczyk, [1995] B.C.J. No. 1046 (B.C.S.C). When a litigant is deprived of the services of a lawyer whom she has chosen, there will be some hardship imposed on her. The imposition of such hardship can only be justified if it is done to prevent the imposition of a more serious injustice. It follows that the removal of counsel should be only to relieve the risk of real mischief and not a mere perception of mischief. Chapman et al. v. 3M Canada Inc. et al. (1995), 25 O.R. (3d) 658 (Ont. Ct. Gen. Div.).

20 It is important to keep in mind the law governing limitation period defences in medical malpractice cases when deciding this motion. Soper v. Southcott (1998), 39 O.R. (3d) 737 (C.A.) establishes that where a defendant pleads the statutory limitation defence, the plaintiff bears the onus of proof that the cause of action arose within the limitation period. In a medical malpractice case, this means the plaintiff must demonstrate that she did not know, and that it cannot be said that she ought to have known, the facts upon which her claim is based more than one year before the action was commenced. The relevant actual knowledge and deemed knowledge includes knowledge on the part of the plaintiff herself and of her professional advisers.

ANALYSIS

21 Lerner & Associates has acted as counsel for the plaintiff in this matter for seven years. If plaintiff counsel is removed from the record, the impact on the plaintiff will be very significant and deleterious in terms of expense and delay. I was advised, although no evidence was presented to substantiate this, that there is a possibility that the plaintiff would not be alive to participate at her own trial. To require the plaintiff to obtain new counsel at this late stage of the action would be prejudicial to her. In the circumstances, counsel should not be removed from the record unless his presence compromises the integrity of the system and there is no other way to deal with the problems presented by his serving both as counsel and a witness in the trial.

22 This motion was predicated on the assumption that plaintiffs' counsel will testify at trial. The plaintiffs have not conceded that they will call counsel as a witness. I am satisfied, however, that it is extremely likely that he will be called to testify by one side or the other. How could he not be a witness given the Court of Appeal's direction that the issue of the limitation period must proceed to trial along with the main action and in light of the state of the law on limitation period defences set out above? At least one of the questions to be determined when deciding the issue of due diligence will be what Lerner & Associates did between July 1993 and July 1994. Did its activities constitute due diligence? How could Mr. Gilby, as counsel during that period, not give evidence? How could a court decide the matter without such evidence? Even if the plaintiff elected not to call Mr. Gilby, there is the very distinct possibility

that the defence would. That would place counsel for the plaintiff in the invidious position of having to cross-examine the counsel who is making the plaintiffs' primary case. Unlike so many of the cases that were cited to me, it cannot be said that this motion is premature by virtue of the fact that it is not clear that counsel will be called to give evidence.

23 The issue of the limitation defence is not a purely formal or uncontroverted matter. The issue is plaintiffs' counsel's due diligence. Plaintiffs' counsel will have to testify as to facts and about his management of the case. His evidence in relation to due diligence is central to a determination of that issue and is likely to be contentious. It will include evidence as to what the plaintiff herself knew at the relevant times and what steps her counsel took to obtain expert advice on her behalf. It is more than possible that the testimonial credibility of plaintiffs' counsel will be in issue. His evidence will be very significant on the question of due diligence.

24 The plaintiffs suggest a lack of good faith on the part of the defendants in bringing this motion. This contention can be shortly dealt with. The limitation defence was not concocted shortly before the commencement of the trial nor were the concerns about the role of plaintiffs' counsel raised late in the day. I see nothing to suggest a lack of good faith.

25 The plaintiff urges that the issue be dealt with through the court's control of its own process. The suggestion was made that the limitation period issue could be dealt with on the basis of the record before the motions court judge. Counsel for Dr. Stewart does not agree that it could be properly argued and heard in that manner given the issue of due diligence. Due diligence will raise credibility matters so the position of defence counsel cannot be seen to be unreasonable. It would not be proper to force the matter to be heard on the basis of a paper record.

26 Alternatively, it has been suggested that evidence on the issue of due diligence could be led and argued upon by independent counsel after the evidence has gone in on the main matter. I do not see how that is an option. The testimony of the plaintiff is a whole. Her evidence cannot be severed with some portions of it going in on the main trial and some segments of it being entered later after the evidence of her other witnesses. Her credibility is a function of her whole testimony. The problems associated with case splitting are obvious. It would not be possible to make the usual exclusion of witnesses order because counsel for the plaintiffs would have to remain in the courtroom to conduct the case. He would hear the evidence of the plaintiff on her understanding of what took place in respect of due diligence and that of the others involved, including the medical experts, and then give his own evidence on the matter. The inquiry into due diligence cannot be hived off and dealt with separately at the beginning of the trial, as the court will need to hear the plaintiff's full testimony in order to understand the state of her knowledge over the period relevant to the limitation period.

27 When counsel appears as a witness on a contentious matter, it causes two problems. First, it may result in a conflict of interest between counsel and his client. That conflict may be waived by the client, as indeed, was done in this case. The second problem relates to the administration of justice. The dual roles serve to create a conflict between counsel's obligations of objectivity and detachment, which are owed to the court, and his obligations to his client to present evidence in as favourable a light as possible. This is a conflict that cannot be waived by the client as the conflict is between counsel and the court/justice system.

28 Counsel are independent officers of the court. The trial judge must be able to rely upon plaintiffs' counsel for a high degree of objectivity. The overriding value, in these circumstances, is concern for the proper administration of justice. A distinction must be drawn between the role of counsel as an independent officer of the court and the role of a witness whose objectivity and credibility are subject to challenge. The dual roles that Mr. Gilby intends to fulfill compromises the integrity of the system. As I can see no way to alter the process that respects the rights of both parties, fulfills the needs for due process and maintains regard for the dictates of the proper administration of justice, in these circumstances plaintiffs' counsel cannot be permitted to continue. I note that even if I were to exercise my discretion and permit him to continue, procedural problems may very well arise. If they did so, it is likely that it would require me to abort the trial at that time. Such a course of events would result in more prejudice to the plaintiff than does dealing with the issue now.

ORDER

29 An order shall go directing that Lerner & Associates are disqualified from acting further as counsel for the plaintiffs. I will make myself available to the parties to do whatever is possible to expedite the hearing of the trial of this matter.

30 The parties may make written submissions as to costs of this motion, both quantum and disposition, within 30 days of the release of these reasons.

GILLESE J.

End of Document

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 LAURENTIAN UNIVERSITY OF SUDBURY

Applicant

Court of Appeal File No. M52471
Superior Court File No.: CV-21-656040-00CL

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

REPLY BOOK OF AUTHORITIES OF THE MOVING PARTY (Motion by Thorneloe University for Leave to Appeal Motion)

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