

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

Estate/Court File No. 31-2363758

Estate/Court File No. 31-2363759

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

Applicants

**FACTUM OF THE APPLICANTS
(Extension of Proposal Period)**

June 14, 2018

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Applicants

PART I - INTRODUCTION

1. The Applicants bring this motion seeking order (the “**Extension Order**”), substantially in the form of the draft order located at tab 3 of the Motion Record, among other things, extending the time for each of the Applicants to file a proposal (the “**Proposal Period**”) under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) to August 3, 2018.

PART II - THE FACTS¹

A. Background

2. Nine West Canada LP (“**NW Canada LP**”) and Jones Canada, Inc. (“**Jones Canada**”, and together with NW Canada LP, the “**NW Canada Entities**”) are wholesalers and retailers of Nine West brand footwear and accessories in Canada. The NW Canada Entities are also the exclusive wholesalers of various brands of women’s apparel, jewellery, handbags and women’s footwear in Canada. The NW Canada Entities are indirect wholly-owned subsidiaries of U.S. parent companies whose ultimate parent is Jasper Parent LLC (the “**NW U.S. Entities**”, and, collectively with the NW Canada Entities, the “**NW Entities**”).

¹ All capitalized terms not otherwise defined herein are defined in the Affidavit of Ralph Schipani sworn June 12, 2018.

Affidavit of Ralph Schipani sworn June 12, 2018 (the "Schipani Affidavit") at para. 4; Motion Record of the Applicants, Tab 2.

3. On April 6, 2018, restructuring proceedings were commenced in respect of the NW Canada Entities and the Nine West U.S. Entities. Each of the NW Canada Entities filed a Notice of Intention to File a Proposal ("**NOI**") under the BIA (the "**Proposal Proceedings**"). The NOI filings were necessary to provide stability to the NW Canada Entities and permit the implementation of the proposed liquidation, which is now being implemented and which is further described below. The NW U.S. Entities filed for protection under Chapter 11 of the U.S. Bankruptcy Code (the "**Chapter 11 Proceedings**"). As part of the filing of the NOIs, Richter was named as the Proposal Trustee in the Proposal Proceedings.

4. The Proposal Proceedings and the Chapter 11 Proceedings are independent processes. The NW Canada Entities are neither borrowers nor guarantors of the debt of the NW U.S. Entities, and are not borrowers under the U.S. debtor-in-possession facility in the Chapter 11 Proceedings. The NW Canada Entities are not applicants in the Chapter 11 Proceedings, and no recognition orders are being sought in Canada with respect to the Chapter 11 Proceedings. Similarly, no relief was sought in respect of the NW Canada Entities in the U.S.

Schipani Affidavit at paras. 7- 8; Motion Record of the Applicants, Tab 2.

5. Prior to the commencement of the Chapter 11 Proceedings, the NW U.S. Entities undertook a comprehensive marketing process of their Nine West and Bandolino brands to potential strategic and financial buyers. These efforts ultimately resulted in an asset purchase agreement dated April 5, 2018 between certain of the NW U.S. Entities and certain entities affiliated with Authentic Brands Group LLC ("**ABG**") and Marc Fisher as operating partner (the "**Stalking Horse APA**") which commits those entities to pay USD\$123 million for the intellectual property associated with the Nine West and Bandolino brands and USD \$77 million for inventory. The Stalking Horse APA set a minimum price for the sale of the purchased assets, ensured the continued viability of the Nine West brand to consumers, and allowed the NW U.S. Entities to leave the footwear business.

6. On May 5, 2018, the United States Bankruptcy Court for the District of Delaware (the "**US Court**") approved bidding procedures in the Chapter 11 Proceedings with respect to the

assets of the West, Bandolino, and associated brands. The bidding procedures set a bid deadline of June 4, 2018, provided for an auction, if necessary, to be conducted on June 8, 2018, and contemplate a sale hearing on June 18, 2018. The NW U.S. Entities received one bid prior to the bid deadline, which was submitted by shoe retailer DSW Inc. As described in more detail below, following an auction, ABG was determined to be the successful bidder.

Schipani Affidavit at paras. 10-11; Motion Record of the Applicants, Tab 2.

7. The extensive marketing process undertaken by the NW U.S. Entities did not generate any interest in the NW Canada Entities' assets. In the circumstances, the NW Canada Entities, together with Richter as Financial Advisor and anticipating Richter's role as Proposal Trustee, determined that the manner in which to maximize the recovery from the NW Canada Entities' existing retail operations was through the engagement of a liquidator to assist with the orderly wind down of the retail operations.

8. A final decision relating to the Canadian wholesale operations is not known but will become definitive upon the completion of the U.S. sales process to be completed within the Chapter 11 Proceedings. In the interim, in order to monetize the current value of the NW Canada Entities for existing creditors, it was decided that the inventory previously purchased for wholesale distribution should be monetized either through Canadian wholesale channels or through liquidation via retail distribution channels with the assistance of the Consultant (as described below).

Schipani Affidavit at paras. 11-13; Motion Record of the Applicants, Tab 2.

B. The NW Canada Entities' Activities since the Commencement of the Proposal Proceedings

9. Since the commencement of the Proposal Proceedings, the NW Canada Entities have diligently worked with the Proposal Trustee to preserve and maximize value for their stakeholders.

The Liquidation Process Order and Administration Order

10. On April 11, 2018, Justice Hainey granted an order (the "Liquidation Process Order"), among other things:

- (a) approving the consulting agreement (the "**Consulting Agreement**") between the NW Canada Entities and SB360 Capital Partners LLC (the "**Consultant**"), and the transactions contemplated thereunder (the "**Liquidation Sales**");
- (b) approving the sale guidelines with respect to the Liquidation Sales (the "**Sale Guidelines**"); and
- (c) authorizing NW Canada LP, with the assistance of the Consultant, to conduct the Liquidation Sales in accordance with the Consulting Agreement, the Liquidation Process Order, and the Sale Guidelines.

Schipani Affidavit at paras. 15, Motion Record of the Applicants, Tab 2; Liquidation Process Order, Motion Record of the Applicants, Tab 2C.

11. The same day, Justice Hainey also granted an order (the "**Administration Order**"), among other things:

- (a) extending the Proposal Period to June 20, 2018;
- (b) approving the substantive consolidation of the Proposal Proceedings and authorizing the Proposal Trustee to administer the consolidated Proposal Proceedings as if they were a single proceeding for the purpose of carrying out its duties and responsibilities as a proposal trustee under the BIA with respect to the administration of proposal proceedings generally;
- (c) approving certain court-ordered charges, including the D&O Charge and the Administration Charge (as defined in the Administration Order); and
- (d) approving the key employee retention agreement (the "**KERA**"), a copy of which was attached as a confidential appendix to the first report of the Proposal Trustee dated April 9, 2018 (the "**First Report**"), and approving the KERA Charge (as defined in the Administration Order).

Schipani Affidavit at paras. 15- 16, Motion Record of the Applicants, Tab 2; Liquidation Process Order, Motion Record of the Applicants, Tab 2C; Administration Order, Motion Record of the Applicants, Tab 2D.

Status of the Liquidation Sales

12. Liquidation Sales commenced on April 14, 2018, and it is anticipated that they will be completed by June 30, 2018. The majority of the NW Canada Entities' wholesale inventory was sold through the NW Canada Entities' customary wholesale channels, and the remainder has been included in the Liquidation Sales at the retail locations.

13. To date, net recoveries from the Liquidation Sales have exceeded projections. Additional information regarding the Liquidation Sales will be provided in the second report of the Proposal Trustee to be filed in connection with the within motion (the "**Second Report**").

Schipani Affidavit at paras. 17 - 19; Motion Record of the Applicants, Tab 2.

14. The Consulting Agreement contemplates a final settlement with respect to the reimbursable costs and fees of the Consultant, which fees represent a percentage of the gross proceeds from the sale of inventory and the gross receipts from all sales or other dispositions of fixtures, furniture and equipment. It is expected that the final settlement will be completed as soon as possible, and within 30 days following the end of the Liquidation Sales.

Schipani Affidavit at para. 20; Motion Record of the Applicants, Tab 2.

Store Closures and Lease Disclaimers

15. At the commencement of the Proposal Proceedings, the NW Canada Entities operated 35 retail locations across Canada, of which 22 were located in Ontario. Since the commencement of the Liquidation Sales at the NW Canada Entities' retail locations, lease disclaimer notices have been delivered (as necessary) with respect to all 35 retail locations, effective on or before June 30, 2018. The NW Canada Entities expect to calculate and make any remaining payments in respect of post-filing store lease obligations in July 2018.

16. As of June 12, 2018, no counterparty to a disclaimed lease or a terminated lease has disputed the NW Canada Entities' disclaimer or termination of the relevant agreement. As of June 12, 2018, Liquidation Sales are ongoing at 33 stores.

Schipani Affidavit at para. 25; Motion Record of the Applicants, Tab 2.

Employee Terminations

17. At the commencement of the Proposal Proceedings, NW Canada LP employed approximately 330 people, of which 225 were employed on a part-time basis, and all of whom were non-unionized. Of NW Canada LP's employees, approximately 35 made up senior management and administrative office positions and 295 were retail sales staff.

18. As the Liquidation Sales have progressed, the NW Canada Entities have sent notices of termination to 77 retail and head office employees. With the exception of 7 head office employees who are necessary to assist in concluding the orderly wind down of operations, it is expected that the employment of all remaining employees will be terminated by June 30, 2018.² In accordance with the requirements of the *Employment Standards Act* (Ontario), on June 6, 2018 NW Canada LP filed a Notice of Termination of Employment with the Ministry of Labour notifying the Ministry that it was terminating more than 50 employees in the same four-week period.

Schipani Affidavit at paras. 27- 28; Motion Record of the Applicants, Tab 2.

Contract Disclaimers

19. The NW Canada Entities have taken steps to disclaim the majority of contracts to which they were a party (the "**Disclaimed Contracts**"). To date, notices to disclaim agreements with approximately 20 counterparties pursuant to the BIA were sent to the counterparties of the Disclaimed Contracts between the end of April and the end of May 2018. The Proposal Trustee approved the disclaimer of the Disclaimed Contracts. As of June 12, 2018, no counterparty to a Disclaimed Contract has disputed the NW Canada Entities' disclaimers.

20. The NW Canada Entities anticipate delivering more disclaimers as they continue to wind down their operations.

Schipani Affidavit at paras. 34 - 36; Motion Record of the Applicants, Tab 2.

² In addition to the 7 head office employees, there is one employee of Jasper Apparel Group Canada, LP, who is currently on NW Canada LP's payroll and is currently being moved to an alternate employer.

C. Updated Cashflows

21. The initial cash flow forecast prepared by the Proposal Trustee and appended to First Report was for the 11-week period from April 8, 2018 to June 23, 2018. In connection with the within motion, the Proposal Trustee has assisted the NW Canada Entities in preparing (i) a report on actual versus forecast results for the 8 weeks ended June 2, 2018, and (ii) an extended cash flow forecast (the "Extended Cash Flow Forecast") for the 9 week period from June 3, 2018 to August 4, 2018 (the "Extended Cash Flow Period"). As set out in the Extended Cash Flow Forecast, the NW Canada Entities are expected to have sufficient liquidity to operate to the end of the Extended Cash Flow Period, which coincides with the extension of the Proposal Proceedings to August 3, 2018. The NW Canada Entities' principal use of cash following the commencement of the Proposal Proceedings to the completion of the Liquidation Sales consists of regular course operating expenditures, including amounts paid or to be paid to employees and landlords. These expenditures are expected to decrease over time as store closures are effected.

Schipani Affidavit at para. 37; Motion Record of the Applicants, Tab 2; Extended Cash Flow Forecast, Second Report of the Proposal Trustee dated June 12, 2018, Appendix D.

PART III - ISSUES

22. The issues on this motion are whether Court should extend the Proposal Period to August 3, 2018.

PART IV - LAW AND ARGUMENT

The Extension of the Proposal Proceedings should be Approved

23. The Proposal Period currently expires on June 20, 2018. Since April 14, 2018, the NW Canada Entities, the Consultant, the Proposal Trustee and their advisors have been working together to carry out the Liquidation Sales, address employee, supplier, customer and other stakeholder issues, and otherwise advance the Proposal Proceedings. The Consulting Agreement contemplates that the Liquidation Sales will be completed by June 30, 2018 and the NW Canada Entities are on track to meet that deadline

24. The NW Canada Entities have started drafting a form of proposal to their creditors, subject to further drafting and advancement as available proceeds and asset monetizations are further quantified. The proposal will likely include a quantification of the claims of various creditors, including landlords and employees.

Schipani Affidavit at paras. 40 - 41, Motion Record of the Applicants, Tab 2.

25. A 45-day extension of the Proposal Period would give the NW Canada Entities the time needed to complete the Liquidation Sales and finalize a proposal for consideration of the NW Canada Entities' creditors.

26. This Court has authority to grant the requested extension under section 50.4(9) of the BIA, which states that such an extension may be granted where the Court is satisfied that:

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (a) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (b) no creditor would be materially prejudiced if the extension being applied for were granted.

BIA, s. 50.4(9).

Colossus at paras. 38-43, BOA, Tab 1.

Karrys at paras. 26-28, BOA, Tab 2.

27. In this instance, each of these factors has been met: the Applicants have acted, and continue to act in good faith in pursuing the liquidation and wind-down of their operations, the extension will permit the Applicants to complete the Liquidation Sales and put together a proposal to present to their creditors, and no creditors will be prejudiced by the requested extension.

Schipani Affidavit at paras. 40-43, Motion Record of the Applicants, Tab 2.

Second Report, at paras. 36-37.

28. Further, the Extended Cash Flow Forecast prepared by the Applicants with the assistance of the Proposal Trustee indicates that the Applicants have sufficient cash flow to fund their post-filing obligations while the liquidation and wind-down of operations concludes during the Extended Cash Flow Period.

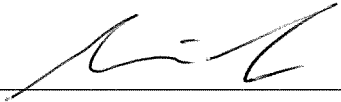
29. The Proposal Trustee supports the extension of the Proposal Period.

Second Report, at para. 37.

PART V - ORDER REQUESTED

30. The Applicants request that the Court grant the Extension Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of June, 2018.



Lawyers for the Applicants

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Colossus Minerals Inc. (Re)*, 2014 ONSC 514
2. *In the Matter of the Notice of Intention to Make a Proposal of Karrys Bros. Limited, Karrys Software Limited and Karbro Transport Inc.*, Court File No. 32-1942339/1942340/194234, Order and Endorsement of Justice Penny, dated December 24, 2014

SCHEDULE "B"
RELEVANT STATUTES

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Extension of time for filing proposal

50.4 (9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

Stay of proceedings – Division I proposals

69.1 (1) Subject to subsections (2) to (6) and sections 69.4, 69.5 and 69.6, on the filing of a proposal under subsection 62(1) in respect of an insolvent person,

- (a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy, until the trustee has been discharged or the insolvent person becomes bankrupt;
- (b) no provision of a security agreement between the insolvent person and a secured creditor that provides, in substance, that on
 - (i) the insolvent person's insolvency,
 - (ii) the default by the insolvent person of an obligation under the security agreement, or
 - (iii) the filing of a notice of intention under section 50.4 or of a proposal under subsection 62(1) in respect of the insolvent person, the insolvent person ceases to have such rights to use or deal with assets secured under the agreement as the insolvent person would otherwise have, has any force or effect until the trustee has been discharged or the insolvent person becomes bankrupt;
- (c) Her Majesty in right of Canada may not exercise Her rights under subsection 224(1.2) of the *Income Tax Act* or any provision of the *Canada*

Pension Plan or of the Employment Insurance Act that refers to subsection 224(1.2) of the Income Tax Act and provides for the collection of a contribution, as defined in the Canada Pension Plan, an employee's premium, or employer's premium, as defined in the Employment Insurance Act, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts, in respect of the insolvent person where the insolvent person is a tax debtor under that subsection or provision, until

- (i) the trustee has been discharged,
- (ii) six months have elapsed following court approval of the proposal, or
- (iii) the insolvent person becomes bankrupt; and

(d) Her Majesty in right of a province may not exercise Her rights under any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the Income Tax Act, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

- (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Income Tax Act, or
- (ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a *province providing a comprehensive pension plan* as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a *provincial pension plan* as defined in that subsection,

in respect of the insolvent person where the insolvent person is a debtor under the provincial legislation, until

- (iii) the trustee has been discharged,
- (iv) six months have elapsed following court approval of the proposal, or
- (v) the insolvent person becomes bankrupt.

Limitation

(2) The stays provided by subsection (1) do not apply

- (a) to prevent a secured creditor who took possession of secured assets of the insolvent person for the purpose of realization before the proposal was filed from dealing with those assets;
- (b) unless the secured creditor otherwise agrees, to prevent a secured creditor who gave notice of intention under subsection 244(1) to enforce that creditor's security against the insolvent person more than ten days before

(i) a notice of intention was filed in respect of the insolvent person under section 50.4, or

(ii) the proposal was filed, if no notice of intention under section 50.4 was filed

from enforcing that security;

(c) to prevent a secured creditor who gave notice of intention under subsection 244(1) to enforce that creditor's security from enforcing the security if the insolvent person has, under subsection 244(2), consented to the enforcement action; or

(d) [Repealed, 2012, c. 31, s. 417]

Limitation

(3) A stay provided by paragraph (1)(c) or (d) does not apply, or terminates, in respect of Her Majesty in right of Canada and every province if

(a) the insolvent person defaults on payment of any amount that becomes due to Her Majesty after the filing of the proposal and could be subject to a demand under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a *province providing a comprehensive pension plan* as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a *provincial pension plan* as defined in that subsection; or

(b) any other creditor is or becomes entitled to realize a security on any property that could be claimed by Her Majesty in exercising Her rights under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a *province providing a comprehensive pension plan* as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a *provincial pension plan* as defined in that subsection.

Limitation

(4) If, by virtue of subsection 69(3), the stay provided by paragraph 69(1)(c) or (d) does not apply or terminates, the stay provided by paragraph (1)(c) or (d) of this section does not apply.

Secured creditors to whom proposal not made

(5) Subject to sections 79 and 127 to 135 and subsection 248(1), the filing of a proposal under subsection 62(1) does not prevent a secured creditor to whom the proposal has not been made in respect of a particular security from realizing or otherwise dealing with that security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

Where secured creditors vote against proposal

(6) Subject to sections 79 and 127 to 135 and subsection 248(1), where secured creditors holding a particular class of secured claim vote for the refusal of a proposal, a secured creditor holding a secured claim of that class may henceforth realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

Courts vested with jurisdiction

183 (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy

and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

- (a) in the Province of Ontario, the Superior Court of Justice;
- (b) [Repealed, 2001, c. 4, s. 33]
- (c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;
- (d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;
- (e) in the Province of Prince Edward Island, the Supreme Court of the Province;
- (f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;
- (g) in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and
- (h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

Superior Court jurisdiction in the Province of Quebec

(1.1) In the Province of Quebec, the Superior Court is invested with the jurisdiction that will enable it to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during its term, as it is now, or may be hereafter, held, and in vacation and in chambers.

Courts of appeal – common law provinces

(2) Subject to subsection (2.1), the courts of appeal throughout Canada, within their respective jurisdictions, are invested with power and jurisdiction at law and in equity, according to their ordinary procedures, except as varied by this Act or the General Rules, to hear and determine appeals from the courts vested with original jurisdiction under this Act.

Court of Appeal of the Province of Quebec

(2.1) In the Province of Quebec, the Court of Appeal, within its jurisdiction, is invested with power and jurisdiction, according to its ordinary procedures, except as varied by this Act or the General Rules, to hear and determine appeals from the Superior Court.

Supreme Court of Canada

(3) The Supreme Court of Canada has jurisdiction to hear and to decide according to its ordinary procedure any appeal so permitted and to award costs.

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

General Principle

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

Proportionality

(1.1) In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding.

Matters Not Provided For

(2) Where matters are not provided for in these rules, the practice shall be determined by analogy to them.

(3) REVOKED: O. Reg. 231/13, s. 2.

"Party and Party" Costs

(4) If a statute, regulation or other document refers to party and party costs, these rules apply as if the reference were to partial indemnity costs. O. Reg. 284/01, s. 3.

"Solicitor and Client" Costs

(5) If a statute, regulation or other document refers to solicitor and client costs, these rules apply as if the reference were to substantial indemnity costs. O. Reg. 284/01, s. 3.

ORDERS ON TERMS

1.05 When making an order under these rules the court may impose such terms and give such directions as are just. R.R.O. 1990, Reg. 194, r. 1.05.

COURT MAY DISPENSE WITH COMPLIANCE

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

General Powers of Court

3.02 (1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

Times in Appeals

(3) An order under subrule (1) extending or abridging a time prescribed by these rules and relating to an appeal to an appellate court may be made only by a judge of the appellate court.

Consent in Writing

(4) A time prescribed by these rules for serving, filing or delivering a document may be extended or abridged by filing a consent.

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

FACTUM OF THE APPLICANTS
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