

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF SEARS CANADA INC., 9370-2751 QUÉBEC INC., 191020 CANADA INC.,  
THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS  
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING  
AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC.,  
173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC.,  
10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA  
LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611  
CANADA INC.

Applicants

**FACTUM OF THE MOVING PARTY, THE CHILDREN'S PLACE (CANADA), LP**  
(Motion Returnable October 16, 2018)

October 5, 2018

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TO: **SERVICE LIST**

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## PART 1 – OVERVIEW

1. This is a motion brought by The Children’s Place (Canada), LP (“TCP”) for an Order declaring that the stay of proceedings (the “Co-Tenancy Stay”) provided in paragraph 15 of the Initial Order of the Honourable Mr. Justice Hainey dated June 22, 2017, as amended and restated on July 13, 2017 (the “Initial Order”), and as extended by subsequent orders made in this proceeding, is no longer of any force or effect in accordance with its terms, or alternatively, is permanently vacated and/or lifted, as against TCP. Such an Order would entitle TCP, as a co-tenant of the Applicants in a number of commercial shopping centres and other commercial properties (a “Co-Tenant”), to exercise any rights *nunc pro tunc* that it may have against its landlords arising from the cessation of any of the Applicants to operate in such commercial shopping centres or other commercial properties (the “Co-Tenant Rights”). In addition, TCP seeks a declaration that the Co-Tenancy Stay did not suspend or otherwise delay the running of any waiting period with respect to the exercise of Co-Tenant Rights.

2. The Co-Tenancy Stay is an extraordinary form of relief that was granted in the context of the Applicants’ *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“CCAA”) proceedings. The purpose of the Co-Tenancy Stay was to assist the Applicants with the orderly wind-down of their business by postponing the contractual rights of Co-Tenants for a finite period.

3. The circumstances which led to the imposition of the Co-Tenancy Stay no longer exist. In particular, the liquidation of assets at the Applicants’ retail locations is complete, all of the Applicants’ retail locations are closed, all leases in respect of the Applicants’ retail locations have been disclaimed or surrendered back to the landlord, and any premises previously owned by the Applicants in locations where TCP is a Co-Tenant have been sold. Further, the Co-Tenancy Stay

no longer provides any justifiable benefit to any of the stakeholders of the Applicants, and the continuation of the Co-Tenancy Stay significantly prejudices TCP in its ability to enforce its contractual rights.

4. The issues on this motion have not been decided before by our courts. While co-tenants of Target Canada Co. ("**Target**") brought a motion seeking the same relief in the Target CCAA proceedings, that motion was settled and the co-tenancy stay was lifted on consent. In the present motion, only the landlord group of Bentall Kennedy (Canada) LP, QuadReal Property Group, Primaris Management Inc., Westcliff Management Ltd., Tanurb (Festival Marketplace) Inc., and Cogir Real Estate, represented by Blaney McMurtry, oppose the relief sought. No other landlords oppose TCP's motion.

## **PART II – FACTS**

### **TCP is affected by the Co-Tenancy Stay**

5. In Canada, TCP operates 126 retail locations. Its stores are most commonly found in commercial shopping centres. While TCP is not a creditor of the Applicants, it has been affected by the Co-Tenancy Stay.

Affidavit of Ketul Patel sworn September 6, 2018 ("**Patel Affidavit**"), paras. 6-7.

6. Pursuant to the Initial Order at paragraph 15, the Court imposed the Co-Tenancy Stay on the following terms:

15. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the owners, operators, managers or landlords of commercial shopping centres or other commercial properties (including retail, office and industrial (warehouse) properties) in which there is located a store, office or warehouse owned or operated by the

Sears Canada Entities shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

Patel Affidavit, para. 8, Exhibits "A" and "B".

7. The terms of TCP's leases with its landlords typically grant TCP certain rights, including, without limitation, the right to a reduction or the restructuring of rent in the event that specifically-named or unnamed anchor tenants such as the Applicants cease to operate within the retail complex, or if the amount of occupied retail space in the complex falls below a specified percentage of total available space.

Patel Affidavit, para. 9.

8. Typically, in the event such circumstances occur, TCP's leases allow TCP, as Co-Tenant, to reduce or withhold certain monthly fees payable to the landlord or pay a percentage of gross sales for the month in lieu of rent. In certain leases, TCP also has the right to terminate its lease without penalty in those circumstances.

Patel Affidavit, para. 10.

9. Some of the Co-Tenant Rights are subject to waiting periods before TCP can exercise its rights (collectively, "**Waiting Periods**"). There is often a Waiting Period (for example, 6 months) during which the retail complex is not occupied by an anchor tenant like the Applicants before any adjustment can be made to TCP's rent. Similarly, there is often a longer Waiting Period, such as 24 months, before TCP is entitled to exercise its right to terminate its lease.

Patel Affidavit, para. 11.

10. Co-Tenant Rights are exceedingly important to TCP and it is typical for TCP to negotiate to have Co-Tenant Rights in most of its leases. However, the specific nature of the Co-Tenant Rights and the Waiting Periods varies from location to location and lease to lease and results from extensive negotiations and compromise between TCP and its landlords.

Patel Affidavit, para. 12.

11. By January 28, 2018, the Applicants ceased to operate in all of the commercial shopping centres and other commercial properties where TCP is a Co-Tenant. However, to the extent that the Co-Tenancy Stay remains in effect in accordance with its terms, TCP is prohibited from taking any proceedings or exercising Co-Tenant Rights.

Patel Affidavit, paras. 15 and Exhibits "C" and "D".

12. To TCP's knowledge, a total of 18 TCP locations are affected by the Co-Tenancy Stay.

Patel Affidavit, paras. 13-14, Exhibits "C" and "D".

### **PART III – ISSUES**

13. There are three issues requiring determination on this motion:
- a. Whether the Co-Tenancy Stay still applies;
  - b. If so, whether the Co-Tenancy Stay should be lifted on the basis that it is no longer serving its CCAA purposes; and
  - c. Whether the Co-Tenancy Stay postponed any applicable Waiting Period.

## PART IV - ARGUMENT

### A. The Co-Tenancy Stay No Longer Applies

14. The present motion raises an issue of interpretation of the Co-Tenancy Stay. When faced with an issue of interpretation of a court order, the meaning of the order must be determined by the court. The court should interpret the order in accordance with the approach set out by the British Columbia Court of Appeal in *Yu v. Jordan*:

In my view, the interpretation of a court order is not governed by the subjective views of one or more of the parties as to its meaning after the order is made. Rather an order, whether by consent or awarded in an adjudicated disposition, is a decision of the court. As such, it is the court, not the parties, that determines the meaning of its order. In my view, the correct approach to interpreting the provisions of a court order is to examine the pleadings of the action in which it is made, the language of the order itself, and the circumstances in which the order was granted.

*Yu v. Jordan*, 2012 BCCA 367, at para. 53; Brief of Authorities of TCP (“TCP BOA”), Tab 1.

15. The above approach has been followed in the context of CCAA proceedings in the interpretation of provisions of a stay.

*Credit Suisse AG v. Great Basin Gold Ltd.*, 2015 BCSC 1199, at paras. 26-27; TCP BOA, Tab 2.

16. In the present matter, the purpose of the CCAA, the language of the Co-Tenancy Stay, and the circumstances in which the Co-Tenancy Stay were granted all favour a determination that the Co-Tenancy Stay no longer applies.

17. In the Applicants’ factum in support of the Initial Order, they requested the Co-Tenancy Stay to postpone the contractual rights of Co-Tenants such as TCP for a finite period, in order to mitigate the effect of Sears Canada’s insolvency on its landlords and to maintain the status quo while the restructuring was underway.

Patel Affidavit, para. 26.

18. The Co-Tenancy Stay at issue appears to state on its face that it ceases to stay a Co-Tenant such as TCP as soon as the Applicants cease to own or operate in a given retail complex. In particular, paragraph 15 of the Initial Order states that the Co-Tenancy Stay applies to persons having agreements with landlords of, “commercial shopping centres...in which there is located a store, office, or warehouse owned or operated by the Sears Canada Entities.” Accordingly, pursuant to the literal meaning of the Co-Tenancy Stay, it no longer applies to TCP.

19. As stated in the Twelfth Report of the Monitor dated February 13, 2018, as of the date of that report, the liquidation of assets at the Applicants’ retail locations was complete and all of the Applicants’ retail locations had closed.

Patel Affidavit, para. 18, Exhibit “E”.

20. As stated in the Fourteenth Report of the Monitor dated March 1, 2018, as of the date of that report, all retail store lease had been disclaimed by the Applicants and the Applicants no longer occupied any such retail store locations.

Patel Affidavit, para. 19, Exhibit “F”.

21. Based on the foregoing, there are no longer any stores, offices, or warehouses owned or operated by the Sears Canada Entities in commercial shopping centres where tenants such as TCP might have agreements with landlords. The Applicants’ retail locations are no longer in operation. There is no longer any risk of detrimental impact on the restructuring efforts of the debtor. TCP submits that the court should adhere to the precise language of the Co-Tenancy Stay, resulting in



a declaration that the Co-Tenancy Stay is no longer of any force or effect in accordance with its terms as against TCP.

**B. The Co-Tenancy Stay Should Be Lifted**

22. If the Co-Tenancy Stay is still in effect in accordance with its terms, it should be permanently vacated and lifted as against TCP on the basis that the underlying purpose for such stay no longer exists.

23. As with the imposition of a stay, the lifting of a stay is discretionary. There are no statutory guidelines contained in the CCAA. In determining whether to lift a stay, the court should consider whether there are sound reasons for doing so consistent with the objectives of the CCAA, including a consideration of the balance of convenience, the relative prejudice to parties, and where relevant, the merits of the proposed action.

*Re Canwest Global Communications Corp.*, [2009] O.J. No. 5379 (OSCJ) [Commercial List] [*“Canwest”*], at para. 32; TCP BOA, Tab 3.

24. In *Canwest*, Pepall J. enumerated nine situations in which courts will lift a stay order. They are:

1. When the plan is likely to fail.
2. The applicant shows hardship (the hardship must be caused by the stay itself and be independent of any pre-existing condition of the applicant creditor).
3. The applicant shows necessity for payment (where the creditors' financial problems are created by the order or where the failure to pay the creditor would cause it to close and thus jeopardize the debtor's company's existence).
4. The applicant would be significantly prejudiced by refusal to lift the stay and there would be no resulting prejudice to the debtor company or the positions of creditors.

5. It is necessary to permit the applicant to take steps to protect a right which could be lost by the passing of time.
6. After the lapse of a significant time period, the insolvent is no closer to a proposal than at the commencement of the stay period.
7. There is a real risk that a creditor's loan will become unsecured during the stay period.
8. It is necessary to allow the applicant to perfect a right that existed prior to the commencement of the stay period.
9. It is in the interests of justice to do so.

*Canwest*, at para. 33; TCP BOA, Tab 3.

25. The CCAA is remedial legislation intended to permit the court to make orders which will effectively maintain the status quo for a period while a struggling company attempts to develop a plan to compromise its debts and ultimately continue operations. The purpose of the CCAA is facilitated by the power to stay proceedings provided by Section 11 of the *Act*.

*Canadian Airlines Corp., Re*, [2000] A.J. No. 1692 (ABQB) [*"Canadian Airlines"*] at paras. 12-13; TCP BOA, Tab 4.

26. The first time a co-tenancy stay was granted by the courts in Canada was in the T. Eaton Co. ("**Eaton's**") CCAA proceedings. The court invoked the jurisdiction of the CCAA to implement a co-tenancy stay where the tenants' actions would potentially jeopardize the success of a plan. The court noted that if tenants were permitted to exercise their co-tenancy rights during the stay period, the claims of landlords against the debtor company could greatly increase, with a potentially detrimental impact on the restructuring efforts of the debtor. It is important to note that the Eaton's CCAA proceeding was a restructuring.

*Re T. Eaton Co.*, [1997] O.J. No. 6411 [*"Eaton's"*], at para. 6; TCP BOA, Tab 5.

27. In the Target CCAA proceedings, the court similarly imposed a co-tenancy stay to “preserve the status quo” and postpone the contractual rights of tenants for a finite period while the orderly wind-down of the business was underway. In granting the co-tenancy stay, Regional Senior Justice Morawetz stated as follows:

The Applicants contend that the authority to grant the Co-Tenancy Stay derives from the broad jurisdiction under sections 11 and 11.02(1) of the CCAA to make an initial order on any terms that the court may impose. Counsel references *Re T. Eaton Co.*, 1997 CarswellOnt 1914 (Gen. Div.) as a precedent where a stay of proceedings of the same nature as the Co-Tenancy Stay was granted by the court in Eaton’s second CCAA proceeding. The Court noted that, if tenants were permitted to exercise these “co-tenancy” rights during the stay, the claims of the landlord against the debtor company would greatly increase, with a potentially detrimental impact on the restructuring efforts of the debtor company.

In these proceedings, the Target Canada Entities propose, as part of the orderly wind-down of their businesses, to engage a financial advisor and a real estate advisor with a view to implementing a sales process for some or all of its real estate portfolio. The Applicants submit that it is premature to determine whether this process will be successful, whether any leases will be conveyed to third party purchasers for value and whether the Target Canada Entities can successfully develop and implement a plan that their stakeholders, including their landlords, will accept. The Applicants further contend that while this process is being resolved and the orderly wind-down is underway, the Co-Tenancy Stay is required to postpone the contractual rights of these tenants for a finite period. The Applicants contend that any prejudice to the third party tenants’ clients is significantly outweighed by the benefits of the Co-Tenancy Stay to all of the stakeholders of the Target Canada Entities during the wind-down period.

The Applicants therefore submit that it is both necessary and appropriate to grant the Co-Tenancy Stay in these circumstances.

I am satisfied the Court has the jurisdiction to grant such a stay. In my view, it is appropriate to preserve the status quo at this time. To the extent that the affected parties wish to challenge the broad nature of this stay, the same can be addressed at the “comeback hearing”.

*Re Target Canada Co.*, 2015 ONSC 303 [*“Target”*] at paras. 45-48; TCP BOA, Tab 6.

28. In *Eatons*, the court refused to lift the co-tenancy stay where the evidence indicated that allowing the co-tenants to exercise their co-tenancy rights would “seriously jeopardize” Eaton’s restructuring plan and “greatly increase” the claims of the landlords. However, Eaton’s had not yet closed any retail locations at the time of the lift stay motion, such that the co-tenants had not yet suffered any prejudice. The court held that the benefits of maintaining the status quo at that point outweighed the prejudice to the co-tenants.

*Eaton’s*, at para. 7; TCP BOA, Tab 5.

29. As part of the Applicants’ request for relief under the CCAA, they requested the Co-Tenancy Stay to postpone the contractual rights of third party Co-Tenants such as TCP for a finite period, in order to mitigate the effect of Sears Canada’s insolvency on its landlords and to maintain the status quo while the restructuring was underway. TCP was not served with and did not receive the material filed by the Applicants in respect of the Initial Order. The Co-Tenancy Stay was granted without notice to TCP.

Patel Affidavit, paras. 26 and 28.

30. The circumstances which led to the imposition of the Co-Tenancy Stay at the time of the Initial Order no longer exist. The orderly wind-down of the Applicants’ business is complete. The liquidation of assets at the Applicants’ retail locations is complete, all retail locations are closed, and leases in respect of such locations have been disclaimed or surrendered back to the landlord. Any premises previously owned by the Applicants in locations where TCP is a Co-Tenant have been sold.

Patel Affidavit, paras. 18, 19, 27, Exhibits “E” and “F”.

31. The present motion has been brought at a similar stage as the same motion in the Target CCAA proceedings. In Target, on consent of the parties involved, Regional Senior Justice Morawetz ordered a permanent lift of the co-tenancy stay at a stage in the CCAA proceedings when all Target stores in Canada had ceased operations. In his Endorsement, he stated as follows in relation to the lift stay:

TJX brought a motion requesting certain relief relating to the Co-Tenancy Stay. The parties have reached an agreement on wording that permits the lifting of the Co-Tenancy Stay on terms that are acceptable to the court and are memorialized in paragraph 3 of the draft order presented.

*Re Target Canada Co.*, 2016 ONSC 1821 at para. 5; TCP BOA, Tab 7.

32. TCP submits that the Co-Tenancy Stay no longer provides any further benefits to the stakeholders of the Applicants. Further, unlike in *Eaton's*, should the Co-Tenancy Stay be lifted and TCP be able to exercise its rights against its landlords, there is no risk of negative effect on the Applicants' CCAA proceedings. The Co-Tenancy Stay merely delays the inevitable date on which TCP may exercise its Co-Tenant Rights.<sup>1</sup>

33. The Co-Tenant Rights are purely a matter of contract between TCP and its landlords. The landlords agreed to grant the Co-Tenancy Rights to TCP as a commercial term of the leases and voluntarily assumed the risk that the Applicants might cease operations at some point during the term of the leases. To the extent that the landlords have suffered any loss as a result of the insolvency of the Applicants, none results from any act or omission of TCP.

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<sup>1</sup> It is evident from the Moving Landlords' material on their motion to vary the Claims Procedure Order that they recognize that the Applicants' Co-Tenants have rights to claim against them pursuant to the terms of their lease agreements and that they seek to make claims in these proceedings in respect of the value of the Co-Tenants' claims.

34. The continuation of the Co-Tenancy Stay significantly prejudices TCP as Co-Tenants because of the continuing postponement of its ability to enforce its respective contractual rights. Through July 2018, the direct financial impact of the Co-Tenancy Stay on TCP has been calculated to be approximately C\$193,483.00 per month, exclusive of the value of any termination rights that may be part of TCP's Co-Tenant Rights.

Patel Affidavit, para. 31.

35. The evidence clearly demonstrates that the underlying purpose of the Co-Tenancy Stay no longer exists, and further, that TCP is significantly prejudiced by its inability to exercise its contractual rights. TCP submits that these are appropriate circumstances for the court to grant an order permanently vacating and/or lifting the Co-Tenancy Stay.

**C. The Co-Tenancy Stay Did Not Postpone any Waiting Periods**

36. TCP also seeks a declaration that the Co-Tenancy Stay did not suspend or otherwise delay the running of any Waiting Period with respect to the exercise of its Co-Tenant Rights. Such a declaration would allow TCP to seek from its landlords rent relief and other contractual benefits, retroactive to the date that TCP became entitled to the Co-Tenant Rights.

37. In the materials filed by the Applicants in respect of the Initial Order, they did not ask the court to affect any substantive rights of the Co-Tenants or to delay the running of any Waiting Period.

38. The Initial Order and Co-Tenancy Stay in particular make no reference to the staying or delaying of any Waiting Period, nor do any subsequent Orders in these proceedings appear to affect Waiting Periods.

39. A declaration that the Co-Tenancy Stay did not suspend or otherwise delay the running of any Waiting Period with respect to the exercise of its Co-Tenant Rights is akin to the legal principle that a stay in bankruptcy does not affect the running of a limitation period. This principle was confirmed in *Re Dilollo*, where the Ontario Court of Appeal held that a stay of proceedings pursuant to s. 195 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, which stays all proceedings under an order or judgment until the disposition of an appeal, did not have the effect of suspending a limitation period, noting that such a suspension would have to be expressly authorized by statute.

*Re Dilollo*, 2013 ONCA 550, at paras. 56-61; TCP BOA, Tab 8.

40. In the present matter, there is no statutory authority nor any Order in the within proceedings that has the effect of staying or delaying any Waiting Period. Accordingly, TCP asks the court to confirm and declare that the Co-Tenancy Stay did not delay or otherwise affect the running of any Waiting Period and, as a result, that any applicable Waiting Period ran during the period of the Co-Tenancy Stay.

#### **PART V – ORDER SOUGHT**

41. For the reasons discussed above, TCP seeks an Order declaring the Co-Tenancy Stay no longer of any force or effect in accordance with its terms as against TCP, or alternatively, an Order permanently vacating and/or lifting the Co-Tenancy Stay as against TCP, with the result being that TCP is entitled to exercise any Co-Tenant Rights *nunc pro tunc* that it may have against its landlords.

42. TCP further seeks an Order that the Co-Tenancy Stay did not suspend or otherwise delay the running of any Waiting Period with respect to the exercise of the Co-Tenant Rights by TCP.

October 5, 2018

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**



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**SCHEDULE "A" – AUTHORITIES**

1. *Yu v. Jordan*, 2012 BCCA 367.
2. *Credit Suisse AG v. Great Basin Gold Ltd.*, 2015 BCSC 1199.
3. *Re Canwest Global Communications Corp.*, [2009] O.J. No. 5379.
4. *Canadian Airlines Corp., Re*, [2000] A.J. No. 1692.
5. *Re T. Eaton Co.*, [1997] O.J. No. 6411.
6. *Re Target Canada Co.*, 2015 ONSC 303.
7. *Re Target Canada Co.*, 2016 ONSC 1821.
8. *Re Dilollo*, 2013 ONCA 550.

## SCHEDULE "B" – STATUTES CITED

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

#### **11. General power of court**

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

#### **11.02(1) Stays, etc. — initial application**

A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

#### **11.02(2) Stays, etc. — other than initial application**

A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

#### **11.02(3) Burden of proof on application**

The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

**11.02(4) Restriction**

Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

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

**195. Stay of proceedings on filing of appeal**

Except to the extent that an order or judgment appealed from is subject to provisional execution notwithstanding any appeal therefrom, all proceedings under an order or judgment appealed from shall be stayed until the appeal is disposed of, but the Court of Appeal or a judge thereof may vary or cancel the stay or the order for provisional execution if it appears that the appeal is not being prosecuted diligently, or for such other reason as the Court of Appeal or a judge thereof may deem proper.

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(CANADA), LP**  
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