

**VANCOUVER**

Court of Appeal File No. CA45325

**JUL 05 2018**

**COURT OF APPEAL**

**COURT OF APPEAL  
REGISTRY**

BETWEEN:

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.**

**RESPONDENT  
(PLAINTIFF)**

AND:

**WEDGEMOUNT POWER LIMITED PARTNERSHIP,  
WEDGEMOUNT POWER (GP) INC.  
and WEDGEMOUNT POWER INC**

**RESPONDENTS  
(DEFENDANT)**

AND:

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**

**APPELLANT  
(APPLICANT)**

**WRITTEN RESPONSE OF THE RESPONDENT,  
INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.**

**GOWLING WLG (CANADA) LLP  
2300 – 550 Burrard Street  
Vancouver, BC V6C 2B5  
Tel: 604-891-2286**

**Colin D. Brousson / Jeffrey D. Bradshaw**  
Lawyer for the Respondent, Industrial Alliance  
Insurance and Financial Services Inc.

**BORDEN LADNER GERVAIS LLP  
1200 – 200 Burrard Street  
Vancouver, BC V7X 1T2  
Tel: 604-640-4198**

**Magnus Verbrugge / Lisa Hiebert**  
Lawyers for the Appellant, British Columbia  
Hydro and Power Authority

**MCMILLAN LLP  
1500- 1055 W. Georgia Street  
Vancouver, BC V6E 4N7  
Tel: 236.826.3022**

**Vicki Tickle**  
Lawyer for Deloitte Restructuring Inc.,  
Court-appointed Receiver of Wedgemount  
Power Limited Partnership et al

1. The applications of British Columbia Hydro and Power Authority (“BC Hydro”) are based on the following propositions:
  - a. The court below was not sitting “in bankruptcy”
  - b. The Court of Appeal Rules apply to these proceedings
  - c. The appeals of BC Hydro have merit
  - d. The time should, and can be extended
  - e. BC Hydro evidenced a bona fide intention to appeal during the appeal period and communicated that to counsel for the Receiver
  - f. There is no prejudice to permitting BC Hydro to pursue its appeals

In answer to each of these assertions, Industrial Alliance respectfully submits the following:

**THE COURT BELOW WAS EXERCISING JURISDICTION CONFERRED BY THE *BANKRUPTCY AND INSOLVENCY ACT* (the “*BIA*”) AND THE *BIA GENERAL RULES* APPLY**

2. The Receivership Order was made pursuant to the *BIA* and the *Law and Equity Act*, R.S.B.C. 1996, c. 253.

Leduc Affidavit, Tab A, at paras. 1, 8, 12, 16, 19

3. The Receiver complied with the requirements of Part XI of the *BIA*, namely, delivering copies of the Receiver’s Reports and necessary Notices to the Office of the Superintendent of Bankruptcy and posting the Receiver’s Reports on the Receiver’s website.

McKie Affidavit #3 at para. 4.

4. Justice Butler Expressly granted the May 4<sup>th</sup> Order on the Receiver’s pursuant to the provisions of s. 243(1) (a) and (b) of the *BIA* and the terms of the Receivership Order.

May 4<sup>th</sup> Reasons at para. 38

5. Justice Bulter also relied on the inherent jurisdiction conferred on the court under the *BIA*.

May 4<sup>th</sup> Reasons at para. 48;

See also: *2003945 Alberta Ltd. v. 1951584 Ontario Inc.*, 2018 ABCA 48

6. The same reasoning applied to the May 18<sup>th</sup> Decision of Butler J. The Receiver sought directions of the court pursuant to s. 243 (1) (a) and (b) of the *BIA*.

**THE APPEALS HAVE NO MERIT**

7. The appeal of the May 4<sup>th</sup> Decision is moot. The event that BC Hydro sought to stay has occurred.

8. The May 18<sup>th</sup> Decision is entirely based on factual findings of the trial judge.

May 18<sup>th</sup> Reasons at para. 62

9. No error of law or fact has been identified in respect of the May 18<sup>th</sup> decision.

## **THE TIME SHOULD NOT BE EXTENDED**

10. In this case, it is not in the interest of justice that time should be extended.
11. The one appeal is moot, the other would require this Honourable Court to set aside findings of fact of the trial judge.
12. The appeals have no merit.
13. This is "real time" insolvency litigation.
14. The most important factor on an application to appeal in such a case is the effect on the process.
15. These appeals will frustrate the process and make a successful restructuring or sale impossible. These appeals put the entire process in peril.

## **BC HYDRO DID NOT COMMUNICATE AN INTENTION TO APPEAL**

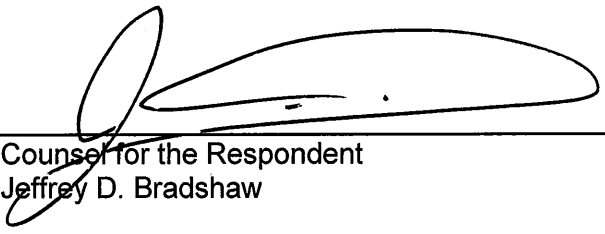
16. BC Hydro has sat on its rights.
17. There is no evidence that BC Hydro had an intention to appeal prior to May 30, 2018.
18. There is no evidence that BC Hydro or its counsel misapprehended the relevant appeal periods.

## **THERE IS SIGNIFICANT PREJUDICE TO PERMIT BC HYDRO TO ADVANCE THESE APPEALS**

19. The significant prejudice is outlined in a confidential affidavit of the Receiver, but in short, these appeals have delayed negotiations with key stakeholders, caused a reduction in price of millions of dollars, and have resulted in a number of buyers simply walking away from their bids. This is anathema to the policy objectives of the insolvency regime, *B/A* and receiverships.
20. Both Butler J. and Fitzpatrick J. identified urgency as a significant factor in these proceedings. The Respondents have pursued determinations of the conflicts in these proceedings on their merits with alacrity.
21. The procedural steps taken or not taken by BC Hydro have had, and risk having, the effect of eliminating any prospect of a successful restructuring or sale of the insolvent assets.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Dated: JULY 5, 2018

  
\_\_\_\_\_  
Counsel for the Respondent  
Jeffrey D. Bradshaw