

**Court of Appeal File No.: C60799/M45387**

Superior Court File No.: CV-14-507120

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**THE CATALYST CAPITAL GROUP INC.**

Plaintiff  
(Appellant/Responding Party)

- and -

**BRANDON MOYSE and WEST FACE CAPITAL INC.**

Defendants  
(Respondents/Moving Parties)

**FACTUM OF THE MOVING PARTY DEFENDANT (RESPONDENT)  
WEST FACE CAPITAL INC.  
(MOTION TO QUASH APPEAL)**

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## PART I - OVERVIEW

1. A motion for an interlocutory injunction is by definition interlocutory and not final. To prevent unnecessary appeals from grinding actions to a halt, leave to appeal to the Divisional Court is required. The Plaintiff, however, has tried to leapfrog directly to the Court of Appeal without seeking or obtaining leave. This Court should quash the Plaintiff's Notice of Appeal for want of jurisdiction.

2. Catalyst's Notice of Appeal explicitly concedes that Justice Glustein's dismissal of the relief Catalyst sought against West Face (the "**West Face Order**") is an interlocutory order, not a final one. Catalyst claims jurisdiction in this Court solely by "piggybacking" the West Face appeal on to the appeal of its dismissed contempt motion against Mr. Moyse (the "**Moyse Order**"), which Catalyst claims lies to this Court. As a result, if the Moyse Order is also interlocutory, Catalyst has implicitly conceded that this Court has no jurisdiction over the appeal of the West Face Order.

3. West Face adopts and relies upon the submissions of Mr. Moyse that the Moyse Order is interlocutory. If those submissions are accepted, then West Face's additional submissions need not be considered.

4. Moreover, even if the Moyse Order were final (which is denied), Catalyst's reliance on section 6(2) of the *Courts of Justice Act* is misplaced and the appeal of the West Face Order must be quashed in any event. Section 6(2) only allows appeals of interlocutory orders to be taken to this Court once leave to appeal to the Divisional Court has been granted. Catalyst has neither sought nor obtained leave to appeal.

5. Furthermore, and in the alternative, section 6(2) is discretionary, and this Court should exercise its discretion to not hear the appeal of the West Face Order.

6. In sum, Catalyst's appeal of the West Face Order lies to the Divisional Court, with leave, pursuant to section 19(1)(b) of the *Courts of Justice Act* and Rule 62.02 of the *Rules of Civil Procedure*. The purported appeal to this Court should be quashed.

## **PART II - THE FACTS**

7. The Plaintiff, The Catalyst Capital Group Inc., brought a motion in the Superior Court of Justice (Court File No.: CV-14-507120) for three exceptional remedies against the Defendants:<sup>1</sup>

(a) first, an *interlocutory* injunction prohibiting the Defendant West Face Capital Inc. from voting its 35% share interest in WIND Mobile pending a determination of the issues raised in the action (the "**Voting Injunction**");

(b) second, an *interlocutory* order authorizing an Independent Supervising Solicitor (an "**ISS**") to create and review forensic images of West Face's servers and the electronic devices used by five individuals at West Face, at the expense of Mr. Moyse and West Face, to take place before discovery (the "**Imaging Order**"; the West Face Order dismissed Catalyst's motion for the Voting Injunction and the Imaging Order); and

(c) third, an Order that Mr. Moyse was in contempt of the interim consent Order of Justice Firestone dated July 16, 2014 (the "**Contempt Order**").<sup>2</sup>

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<sup>1</sup> See paragraph 1 of the Endorsement of Justice Glustein dated July 7, 2015 (the "**Endorsement**"), Brandon Moyse's Motion Record, Tab 3.

<sup>2</sup> In fact, the relief sought by Catalyst against both West Face and Mr. Moyse in its Amended Notice of Motion was even more expansive. Catalyst narrowed its requests for relief to the Orders set out above only in its factum, after extensive affidavit evidence and cross-examination. See Catalyst's Amended Notice of Motion dated February 6, 2015, Brandon Moyse's Motion Record, Tab 5.

8. The Honourable Justice Glustein heard Catalyst's motion on July 2, 2015, and on July 7, 2015 His Honour released reasons dismissing Catalyst's motion in its entirety (the "**Endorsement**").<sup>3</sup>

9. Catalyst served its Notice of Appeal on July 22, 2015,<sup>4</sup> purporting to appeal the West Face Order directly to the Court of Appeal, on the basis of sections 6(1)(b) and 6(2) of the *Courts of Justice Act*.<sup>5</sup> Catalyst is not appealing Justice Glustein's dismissal of the Voting Injunction, but only the Imaging Order. However, Catalyst has never sought leave to appeal the dismissal of the Imaging Order.

10. Subsequently, on August 26, 2015, Justice Glustein released his Costs Endorsement, pursuant to which he ordered Catalyst to pay West Face and Mr. Moyse costs of \$90,000 and \$70,000, respectively, within 30 days.

### **PART III - ISSUES AND THE LAW**

11. There are three issues on this motion:

- (a) first, whether the Moyse Order is interlocutory, in which case the entire appeal must be quashed and the next two questions need not be considered;
- (b) second, does this Court lack jurisdiction to hear Catalyst's appeal of the West Face Order<sup>6</sup> pursuant to section 6(2) of the *Courts of Justice Act*;
- (c) third, even if this Court could assume jurisdiction to hear the appeal, whether it should exercise its discretion not to do so.

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<sup>3</sup> Endorsement, Brandon Moyse's Motion Record, Tab 3. See also the Order of Justice Glustein dated July 7, 2015 (the "**Order**"), Brandon Moyse's Motion Record, Tab 2.

<sup>4</sup> Notice of Appeal of Catalyst dated July 22, 2015 Brandon Moyse's Motion Record, Tab 7.

<sup>5</sup> Notice of Appeal of Catalyst, at pp. 8-9, Brandon Moyse's Motion Record, Tab 7.

<sup>6</sup> Recognizing in this context that Catalyst purports to appeal only the dismissal of the Imaging Order, not the Voting Injunction.

12. For the reasons set out below, West Face respectfully submits that the answer to these questions is “yes”. West Face adopts and relies on Mr. Moyse’s submissions on the first issue.

**A. This Court Does Not Have Jurisdiction to Hear the Appeal**

13. Even if the Moyse Order were interlocutory, this Court does not have jurisdiction to hear Catalyst’s appeal of the West Face Order under section 6(2) of the *Courts of Justice Act*. An appeal of the West Face Order only “lies to the Divisional Court” within the meaning of section 6(2) once leave to appeal that Order has been granted, and Catalyst has not been granted leave to appeal the West Face Order.

14. Generally, appeals of interlocutory orders of judges lie to the Divisional Court, with leave, pursuant to section 19(1)(b) of the *Courts of Justice Act*. This section provides:<sup>7</sup>

**Divisional Court jurisdiction**

19. (1) An appeal lies to the Divisional Court from,  
  
(b) an interlocutory order of a judge of the Superior Court of Justice, with leave as provided in the rules of court;

15. In order to avoid section 19(1)(b), Catalyst purports to appeal both the Moyse Order and the West Face Order to the Court of Appeal, on the basis of sections 6(1)(b) and 6(2) of the *Courts of Justice Act*. Those sections provide:<sup>8</sup>

**Court of Appeal jurisdiction**

6. (1) An appeal lies to the Court of Appeal from,

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<sup>7</sup> *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 19(1)(b).

<sup>8</sup> *Courts of Justice Act*, R.S.O. 1990, c. C.43, ss. 6(1)(b) and 6(2).

(b) a final order of a judge of the Superior Court of Justice, except an order referred to in clause 19(1)(a) or an order from which an appeal lies to the Divisional Court under another Act;

### **Combining of appeals from other courts**

(2) The Court of Appeal has jurisdiction to hear and determine an appeal that lies to the Divisional Court or the Superior Court of Justice if an appeal in the same proceeding lies to and is taken to the Court of Appeal.

16. In relying on these provisions, Catalyst explicitly recognized that the West Face Order is an *interlocutory* order for the purposes of determining appeal routes. Indeed, in its Notice of Appeal, Catalyst stated:

The Order of Justice Glustein dismissing the Plaintiff's motion for an ISS **is an interlocutory order** in the same proceeding as the contempt motion, which lies to and is taken to the Court of Appeal;<sup>9</sup> [emphasis added]

17. For the reasons set out in Mr. Moyse's factum, the appeal of the Moyse Order does not lie to the Court of Appeal. However, even if it did, this Court would still have no jurisdiction under section 6(2) of the *Courts of Justice Act* to hear the appeal of the interlocutory West Face Order, because Catalyst has not obtained leave to appeal.

18. As very recently confirmed by this Court in the 2015 decision of *Waldman v. Thomson Reuters Canada Ltd.*:

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<sup>9</sup> Notice of Appeal of Catalyst, Brandon Moyse's Motion Record, Tab 7. As an aside, we note that even if Catalyst had not conceded this point, there is no doubt that the West Face Order is interlocutory. Catalyst's motion for the Imaging Order was in the nature of an *Anton Piller* injunction or a premature motion under Rule 30.06 (Justice Glustein made no finding as to whether the onerous test for an *Anton Piller* order applied because he agreed with West Face that even under the lower Rule 30.06 threshold, Catalyst's motion failed: See paragraph 43 of the Endorsement). *Anton Piller* motions and motions under Rule 30.06 are interlocutory. See, for example, *Ontario Realty Corp. v. P. Gabriele & Sons Ltd.*, [2001] O.J. No. 477 (Div. Ct.), West Face's Book of Authorities, Tab 8, in which the defendants properly sought leave to appeal to the Divisional Court from a decision granting an *Anton Piller* Order (pursuant to Rule 19(1)(b) of the *Courts of Justice Act*), and *Leduc v. Roman*, [2009] O.J. No. 681 (S.C.J.), West Face's Book of Authorities, Tab 6, in which a master's order dismissing a Rule 30.06 motion was appealed to a single judge of the Superior Court (pursuant to section 17(a) of the *Courts of Justice Act*, which provides that an appeal lies to the Superior Court of Justice from an interlocutory order of a master).

**An appeal from an interlocutory order only "lies to the Divisional Court" within the meaning of s. 6(2) once leave to appeal that order has been granted:** ... If the motion judge's order refusing to approve the settlement agreement was interlocutory, then this court still would not have jurisdiction to hear the appeal from that order under s. 6(2) of the *CJA* unless and until the appellant obtained leave to appeal to the Divisional Court. Only then could the appellant bring a motion, under s. 6(3) of the *CJA* to transfer that appeal to this court. Section 6(3) of the *CJA* provides that:

The Court of Appeal may, on motion, transfer an appeal that has already been commenced in the Divisional Court or the Superior Court of Justice to the Court of Appeal for the purpose of subsection (2).<sup>10</sup> [emphasis added]

19. In other words, Catalyst was required to first seek and obtain leave to appeal the West Face Order before it could then invoke section 6(2).

20. This Court has applied the foregoing principle repeatedly dating back to the 1993 decision of *Albert v. Spiegel*.<sup>11</sup> As explained in *Albert*, under section 19(1)(b) of the *Courts of Justice Act* and Rule 62.02(1), appeals of interlocutory orders can only be made with leave from a judge of the Superior Court of Justice other than a judge who made the interlocutory order.<sup>12</sup> Section 6(2) of the *Courts of Justice Act* does not give the Court of Appeal the jurisdiction or authority to either grant such leave or otherwise

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<sup>10</sup> *Waldman v. Thomson Reuters Canada Ltd.*, [2015] O.J. No. 395 at para. 17 (C.A.) [*Waldman*], *West Face's Book of Authorities*, Tab 9.

<sup>11</sup> See *Albert v. Spiegel*, [1993] O.J. No. 1562 (C.A.) [*Albert*], *West Face's Book of Authorities*, Tab 2; *Merling v. Southam Inc.*, [2000] O.J. No. 123 (C.A.), *West Face's Book of Authorities*, Tab 7; *Cole v. Hamilton (City)*, [2002] O.J. No. 4688 (C.A.), *West Face's Book of Authorities*, Tab 4; and *Diversitel Communications Inc. v. Glacier Bay Inc.*, [2004] O.J. No. 10 (C.A.) [*Diversitel*], *West Face's Book of Authorities*, Tab 5. See also *813302 Ontario Ltd. v. 815970 Ontario Inc.*, [1996] O.J. No. 4531 (C.A.), *West Face's Book of Authorities*, Tab 1.

<sup>12</sup> Pursuant to Rule 62.02(1.1), in Toronto, motions for leave to appeal are heard by a judge of the Divisional Court sitting as a judge of the Superior Court of Justice. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, R. 62.02(1) & (1.1).



ignore that essential pre-requisite.<sup>13</sup> In short, this Court cannot grant Catalyst the leave it requires.

21. This Court's decision in *Diversitel Communications Inc. v. Glacier Bay Inc.* is particularly relevant to this motion. In *Diversitel*, the appellant, Glacier Bay, brought a motion for the production of documents by the respondent, Diversitel. Diversitel brought a cross-motion for summary judgment. The motions judge dismissed Glacier Bay's motion for the production of documents and, at the same time, allowed Diversitel's cross-motion (thereby rendering judgment in favour of Diversitel and dismissing Glacier Bay's counterclaim). Glacier Bay then sought to appeal, to the Court of Appeal, both the final order granting judgment against it and dismissing its counterclaim, and the interlocutory order of the motions judge dismissing its motion for the production of documents, without having obtained leave to appeal the interlocutory order. Diversitel brought a motion for an order quashing that part of the appeal which related to the motions judge's refusal to order the production of documents. In allowing Diversitel's motion, this Court stated:

The decision of the motions judge refusing to order the production of documents is clearly interlocutory and leave to appeal must be obtained from a judge of the Divisional Court pursuant to s. 19(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 even though the appellant has a right of appeal to this court on the judgment and the dismissal of the counterclaim. If the Divisional Court grants leave then the appellant may bring a motion pursuant to s. 6(2) of the *Courts of Justice Act* for an order directing that the productions issue be heard with the appeal related to the judgment in the action and the dismissal of the counter-claim... I would therefore quash that part of the appeal which relates to the productions issue.<sup>14</sup>

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<sup>13</sup> *Albert*, *supra* note 11 at para. 5, West Face's Book of Authorities, Tab 2.

<sup>14</sup> *Diversitel*, *supra* note 11 at para. 6, West Face's Book of Authorities, Tab 5.

22. The strictness of the rule that leave must have been previously obtained before section 6(2) can apply is intentional and important. If this rule did not exist, a litigant could obtain an unfair advantage by effectively bypassing the important threshold test necessary for obtaining leave to appeal. The rule's importance is evident from *Waldman* itself, in which this Court quashed the appeal despite the fact that both the appellant and the respondent were allied in interest and argued in favour of this Court's jurisdiction.<sup>15</sup>

23. In sum, even if Catalyst could satisfy the first requirement of section 6(2) – that “an appeal in the same proceeding” as the West Face Order “lies to and is taken to the Court of Appeal” (which is denied for the reasons set out above) – Catalyst has not satisfied the second requirement of section 6(2). It must first obtain leave to appeal pursuant to section 19(1)(b) of the *Courts of Justice Act* and Rule 62.02 of the *Rules of Civil Procedure*.

**B. In the Alternative, this Court Should Exercise its Discretion Not to Hear the Appeal**

24. Even if this Honourable Court could assume jurisdiction to hear the appeal of the West Face Order on the basis that the order with respect to Mr. Moyse is final, and not interlocutory (which is denied for the reasons set out above), it should exercise its discretion not to do so.

25. In the 2013 decision of *Cavanaugh v. Grenville Christian College*, this Court confirmed that the jurisdiction to combine appeals under section 6(2) of the *Courts of Justice Act* is discretionary, not mandatory. The Court noted that while the purposes of

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<sup>15</sup> *Waldman*, *supra* note 10 at paras. 1-3 and 25, West Face's Book of Authorities, Tab 10.

section 6(2) include to promote consistent results, decrease costs, and use judicial resources efficiently, there will be cases when “factors relevant to the administration of justice” override the efficiencies achieved by combining appeals.<sup>16</sup>

26. Indeed, the Court held that *Cavanaugh* was one such case, and refused to hear the appeal of an interlocutory order even though it had jurisdiction to hear the appeal of a final order made in the same proceeding. The Court reasoned that, in the circumstances of that case, there was “little to be gained by joinder”, because there was “no risk of inconsistent results and very little overlap in the matters to be addressed on the two appeals”.<sup>17</sup>

27. The Court’s reasoning in *Cavanaugh* applies to Catalyst’s dual appeals of the Moyse Order and the West Face Order. The motion for (and the appeal of) the Moyse Order depends solely on whether Mr. Moyse acted in contempt of the previous interim Order of Justice Firestone by: (i) deleting his personal web browsing history; and (ii) buying and allegedly using “scrubbing” software. As is apparent from Justice Glustein’s Endorsement, West Face had no involvement in Mr. Moyse’s browsing or scrubbing history.

28. Conversely, the West Face Order turned on whether there was any evidence that West Face attempted to destroy evidence or otherwise evade its discovery obligations. The determination of Catalyst’s motion for the West Face Order had nothing to do with whether Mr. Moyse acted in contempt of the previous Order of Justice Firestone.

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<sup>16</sup> *Cavanaugh v. Grenville Christian College*, [2013] O.J. No. 1007 at paras. 86-87 (C.A.) [*Cavanaugh*], *West Face’s Book of Authorities*, Tab 3.

<sup>17</sup> *Cavanaugh*, *supra* note 16 at para. 88, *West Face’s Book of Authorities*, Tab 3.

29. Catalyst's argument that the two orders are linked is further undermined by its own conduct. When Catalyst initially launched its motion in January 2015, it sought relief against West Face only, and the grounds for such relief (as stated in Catalyst's original Notice of Motion) did not include any allegation of contempt by Mr. Moyse. In other words, Catalyst itself believed that it had grounds to seek the West Face Order independent of any alleged contempt by Mr. Moyse. Catalyst only amended its Notice of Motion in February 2015 to add the allegations of contempt against Mr. Moyse.<sup>18</sup>

30. In short, Catalyst's appeals of the orders sought against the two Respondents are completely distinct. They are based on different facts and different law. There would be little to nothing gained by hearing the two appeals together.

31. On the other hand, scarce judicial resources will be wasted if Catalyst is permitted to circumvent the important step of obtaining leave. Catalyst has not proven: (a) that there is a conflicting decision and that it is desirable that leave to appeal be granted; nor (b) that there is good reason to doubt the correctness of Justice Glustein's decision and that the proposed appeal involves matters of importance that transcend the interests of the parties such that leave to appeal should be granted.<sup>19</sup> Until Catalyst can prove that it can meet this conjunctive test, then by definition Catalyst's motion is not worthy of consideration on appeal.

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<sup>18</sup> See Catalyst's Notice of Motion dated January 13, 2015, Brandon Moyse's Motion Record, Tab 4; and Catalyst's Amended Notice of Motion dated February 6, 2015, Brandon Moyse's Motion Record, Tab 5.

<sup>19</sup> Rule 62.02(4) provides that leave to appeal "shall not be granted" unless these grounds are met. See *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, R. 62.02(4).

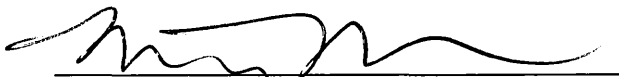
**C. Conclusion**

32. The Court of Appeal has no jurisdiction to hear the appeal of the West Face Order. Because the Moyse Order and the West Face Order are both interlocutory, any appeal of either or both of them lies to the Divisional Court, with leave, pursuant to section 19(1)(b) of the *Courts of Justice Act* and Rule 62.02 of the *Rules of Civil Procedure*.

**PART IV - ORDER REQUESTED**

33. West Face respectfully requests that Catalyst's Notice of Appeal be quashed, with costs on a substantial indemnity basis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of September, 2015.



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**TAB A**

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *813302 Ontario Ltd. v. 815970 Ontario Inc.*, [1996] O.J. No. 4531 (C.A.)
2. *Albert v. Spiegel*, [1993] O.J. No. 1562 (C.A.)
3. *Cavanaugh v. Grenville Christian College*, [2013] O.J. No. 1007 (C.A.)
4. *Cole v. Hamilton (City)*, [2002] O.J. No. 4688 (C.A.)
5. *Diversitel Communications Inc. v. Glacier Bay Inc.*, [2004] O.J. No. 10 (C.A.)
6. *Leduc v. Roman*, [2009] O.J. No. 681 (S.C.J.)
7. *Merling v. Southam Inc.*, [2000] O.J. No. 123 (C.A.)
8. *Ontario Realty Corp. v. P. Gabriele & Sons Ltd.*, [2001] O.J. No. 477 (Div. Ct.)
9. *Waldman v. Thomson Reuters Canada Ltd.*, [2015] O.J. No. 395 (C.A.).

**TAB B**



## **SCHEDULE "B"**

### **RELEVANT STATUTES**

#### ***Courts of Justice Act, R.S.O. 1990, Ch. C.43.***

##### **Court of Appeal jurisdiction**

6. (1) An appeal lies to the Court of Appeal from,
- (a) an order of the Divisional Court, on a question that is not a question of fact alone, with leave of the Court of Appeal as provided in the rules of court;
  - (b) a final order of a judge of the Superior Court of Justice, except an order referred to in clause 19 (1) (a) or an order from which an appeal lies to the Divisional Court under another Act;
  - (c) a certificate of assessment of costs issued in a proceeding in the Court of Appeal, on an issue in respect of which an objection was served under the rules of court. R.S.O. 1990, c. C.43, s. 6 (1); 1994, c. 12, s. 1; 1996, c. 25, s. 9 (17).

##### **Combining of appeals from other courts**

(2) The Court of Appeal has jurisdiction to hear and determine an appeal that lies to the Divisional Court or the Superior Court of Justice if an appeal in the same proceeding lies to and is taken to the Court of Appeal. R.S.O. 1990, c. C.43, s. 6 (2); 1996, c. 25, s. 9 (17).

##### **Idem**

(3) The Court of Appeal may, on motion, transfer an appeal that has already been commenced in the Divisional Court or the Superior Court of Justice to the Court of Appeal for the purpose of subsection (2). R.S.O. 1990, c. C.43, s. 6 (3); 1996, c. 25, s. 9 (17).

##### **Appeals to Superior Court of Justice**

17. An appeal lies to the Superior Court of Justice from,
- (a) an interlocutory order of a master or case management master;
  - (b) a certificate of assessment of costs issued in a proceeding in the Superior Court of Justice, on an issue in respect of which an objection was served under the rules of court. R.S.O. 1990, c. C.43, s. 17; 1996, c. 25, ss. 1 (1), 9 (17).

##### **Divisional Court jurisdiction**

19. (1) An appeal lies to the Divisional Court from,
- (a) a final order of a judge of the Superior Court of Justice, as described in subsections (1.1) and (1.2);
  - (b) an interlocutory order of a judge of the Superior Court of Justice, with leave as provided in the rules of court;
  - (c) a final order of a master or case management master. 2006, c. 21, Sched. A, s. 3.

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

**WHERE AFFIDAVIT INCOMPLETE OR PRIVILEGE IMPROPERLY CLAIMED**

30.06 Where the court is satisfied by any evidence that a relevant document in a party's possession, control or power may have been omitted from the party's affidavit of documents, or that a claim of privilege may have been improperly made, the court may,

- (a) order cross-examination on the affidavit of documents;
- (b) order service of a further and better affidavit of documents;
- (c) order the disclosure or production for inspection of the document, or a part of the document, if it is not privileged; and
- (d) inspect the document for the purpose of determining its relevance or the validity of a claim of privilege. R.R.O. 1990, Reg. 194, r. 30.06.

**MOTION FOR LEAVE TO APPEAL**

***Leave to Appeal from Interlocutory Order of a Judge***

62.02 (1) Leave to appeal to the Divisional Court under clause 19 (1) (b) of the *Courts of Justice Act* shall be obtained from a judge other than the judge who made the interlocutory order. O. Reg. 171/98, s. 23 (1); O. Reg. 170/14, s. 22 (1).

(1.1) If the motion for leave to appeal is properly made in Toronto, the judge shall be a judge of the Divisional Court sitting as a Superior Court of Justice judge. O. Reg. 171/98, s. 23 (1); O. Reg. 292/99, s. 2 (2).

***Motion in Writing***

(2) The motion for leave to appeal shall be heard in writing, without the attendance of parties or lawyers. O. Reg. 170/14, s. 22 (2).

***Notice of Motion***

(3) Subrules 61.03.1 (2) and (3) apply, with necessary modifications, to the notice of motion for leave. O. Reg. 170/14, s. 22 (2).

***Grounds on Which Leave May Be Granted***

- (4) Leave to appeal shall not be granted unless,
  - (a) there is a conflicting decision by another judge or court in Ontario or elsewhere on the matter involved in the proposed appeal and it is, in the opinion of the judge hearing the motion, desirable that leave to appeal be granted; or
  - (b) there appears to the judge hearing the motion good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance that, in his or her opinion, leave to appeal should be granted. R.R.O. 1990, Reg. 194, r. 62.02 (4).

***Procedures***

(5) Subrules 61.03.1 (4) to (19) (procedure on motion for leave to appeal) apply, with the following and any other necessary modifications, to the motion for leave to appeal:

1. References in the subrules to the Court of Appeal shall be read as references to the Divisional Court.
2. For the purposes of subrule 61.03.1 (6), only one copy of each of the motion record, factum, any transcripts and any book of authorities is required to be filed.

3. For the purposes of subrule 61.03.1 (10), only one copy of each of the factum, any motion record and any book of authorities is required to be filed. O. Reg. 170/14, s. 22 (3).

(6), (6.1), (6.2) REVOKED: O. Reg. 170/14, s. 22 (3).

(6.3) REVOKED: O. Reg. 394/09, s. 30 (3).

***Reasons for Granting Leave***

(7) The judge granting leave shall give brief reasons in writing. R.R.O. 1990, Reg. 194, r. 62.02 (7).

***Subsequent Procedure Where Leave Granted***

(8) Where leave is granted, the notice of appeal required by rule 61.04, together with the appellant's certificate respecting evidence required by subrule 61.05 (1), shall be delivered within seven days after the granting of leave, and thereafter Rule 61 applies to the appeal. R.R.O. 1990, Reg. 194, r. 62.02 (8).

THE CATALYST CAPITAL GROUP INC.  
Plaintiff and

BRANDON MOYSE and WEST FACE  
CAPITAL INC.  
Defendants

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**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

**FACTUM OF THE MOVING PARTY,  
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