

**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

B E T W E E N :

CHRISTINE DEJONG MEDICINE PROFESSIONAL CORPORATION

Appellant

- and-

DBDC SPADINA LTD. and THOSE CORPORATIONS LISTED ON  
SCHEDULE A HERETO

Respondent

-and-

SCHONFIELD INC., IN ITS CAPACITY AS THE COURT-APPOINTED MANAGER OF  
THOSE COMPANIES LISTED IN SCHEDULE B AND THOSE PROPERTIES LISTED IN  
SCHEDULE C HERETO

Intervener

-and-

CANADIAN CHAMBER OF COMMERCE

Intervener

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**REPLY FACTUM OF THE RESPONDENTS, DBDC SPADINA LTD. and THOSE  
CORPORATIONS LISTED ON SCHEDULE A HERETO, TO INTERVENTION OF  
THE CANADIAN CHAMBER OF COMMERCE**

(Delivered pursuant to Order of this Court dated April 10, 2019)

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## TABLE OF CONTENTS

Part I: OVERVIEW AND FACTS .....	1
Part II: STATEMENT OF ARGUMENT .....	2
The <i>Canadian Dredge</i> test should be applied contextually .....	2
The <i>Canadian Dredge</i> test should not be made more demanding.....	5
In any event, Norma Walton intended to and did benefit the WSC Companies .....	8
Part III: SUBMISSIONS ON COSTS .....	10
Part VII: TABLE OF AUTHORITIES AND STATUTORY PROVISIONS .....	11

## **PART I: OVERVIEW AND FACTS**

1. There is no basis for this Court to depart from the well-established test for corporate identification set out in *Canadian Dredge*.<sup>1</sup> The heightened test proposed by the Chamber of Commerce is unnecessary and bad policy. It:

- (a) fails to recognize that corporate identification is a core tenet of company law, not an exception;
- (b) makes the test for corporate civil liability virtually impossible to meet, and more stringent than the test articulated for corporate criminal liability;
- (c) elevates the interests of equity holders in a way inconsistent with insolvency law; and
- (d) is out of step with the trend in Canadian and international jurisprudence.

2. The Chamber of Commerce urges a substantial amendment to *Canadian Dredge*, by suggesting that the impugned conduct of a directing mind must substantially benefit the corporation and that the fraud requirement be relaxed. This creates an impermissible presumption against corporate civil liability for wrongful conduct perpetrated using the very tools of the corporation.

3. It also shifts the risk associated with corporate conduct away from equity holders and onto creditors. The Canadian Chamber of Commerce cites no high court jurisprudence to support its position.

4. Justice Blair's context-sensitive application of the *Canadian Dredge* test in the civil context at the Court of Appeal for Ontario<sup>2</sup> follows the common law as developed in Canada and the United Kingdom, is sound public policy, and is consistent with this Court's articulation in *Livent*.<sup>3</sup>

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<sup>1</sup> *Canadian Dredge & Dock Co v The Queen*, [1985] 1 SCR 662 [*Canadian Dredge*] at 713-714.

<sup>2</sup> *DBDC Spadina Ltd. v Walton*, 2018 ONCA 60 ("Reasons of the Court of Appeal") at paras 70-73, Appellant's Record ("AR"), Vol II, Tab 7 at pp 33-35.

<sup>3</sup> *Deloitte & Touche v Livent Inc. (Receiver of)*, 2017 SCC 63 [*Livent*] at paras 102-104.

## **PART II: STATEMENT OF ARGUMENT**

5. The Bernstein Companies respond to the Chamber of Commerce as follows:
- (a) The *Canadian Dredge* test must be applied contextually, not rigidly as the Chamber of Commerce suggests. The standard for corporate attribution should be lower in a civil context than in a criminal context. It should be applied in a less demanding fashion when a third-party is advancing claims against the corporation;
  - (b) Under the test articulated by the Canadian Chamber of Commerce, corporate attribution would be so infrequent as to be meaningless. Sound principles of law and policy favour corporate attribution, rather than insulation; and
  - (c) Irrespective of the standard applied, Justice Blair appropriately attributed Norma Walton's conduct to the WSC Companies, given her complete control over them and their necessary participation in the fraud. She exercised complete and unfettered control over the WSC Companies.<sup>4</sup> She was the directing mind, "the very ego and centre of the personality of the corporations."<sup>5</sup> Norma Walton's knowledge is the knowledge of the WSC Companies, and her intention, their intention.<sup>6</sup>

### **THE CANADIAN DREDGE TEST SHOULD BE APPLIED CONTEXTUALLY**

6. The Chamber of Commerce contends that the *Canadian Dredge* criteria are the minimum criteria needed to identify a corporation with its directing mind, and should be applied rigidly. This view should be rejected.

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<sup>4</sup> *DBDC Spadina v Walton*, 2014 ONSC 4644 ("Reasons of Justice Brown") at paras 262-264, AR, Vol IV, Tab 32 at p 160; *DBDC Spadina v Walton*, 2016 ONSC 6018 ("Reasons of Justice Newbould dated September 23, 2016) at para 71, AR, Vol I, Tab 4 at p 90; Reasons of the Court of Appeal at paras 63, 66(a), AR Vol II, Tab 7 at pp 29-20; Affidavit of Christine DeJong sworn October 7, 2015 ("DeJong Reply Affidavit") at para 23, AR, Vol VIII, Tab 49 at p 190; DeJong Factum at para 119.

<sup>5</sup> *Lennards Carrying Co Ltd. v Asiatic Petroleum Co Ltd.*, [1915] AC 705 at 713 *per* Viscount Haldane.

<sup>6</sup> Reasons of the Court of Appeal at para 68, AR, Vol II, Tab 7 at pp 32-33.

7. In *Deloitte & Touche v Livent*, this Court affirmed the *Canadian Dredge* test for corporate attribution, and that it is a sufficient test, not a necessary one.<sup>7</sup> This Court's articulation of that test is consistent with the oft-cited reasons in *Standard Investments Ltd v CIBC* that "the onus on the plaintiff [in a civil case] can be no higher than that placed on the Crown in a case of alleged corporate criminal responsibility."<sup>8</sup> Notably, the "not totally in fraud" requirement has been excised from the criminal law test in Canada, providing for liability even in those circumstances.<sup>9</sup> A flexible approach to *Canadian Dredge* is necessary to ensure that the test for corporate civil liability is not higher and certainly not markedly higher, than the test for corporate criminal liability.

8. Justice Blair in the Court of Appeal held that the "fraud" and "benefit" criteria of *Canadian Dredge* should be considered together and applied in a "less demanding fashion" in the civil context.<sup>10</sup> This was the proper approach.<sup>11</sup> Rather than apply the test mechanically, courts must ask "[w]hose act (or knowledge, or state of mind) was *for this purpose* intended to count as the act of the company?"<sup>12</sup> This requires an appreciation of the legal context and the relationship between the parties.<sup>13</sup> In appropriate circumstances, an individual's conduct can be attributed to the corporation even where the strict requirements of *Canadian Dredge* are not met.

9. In *Moore v I Bresler Ltd.*, a corporation was found liable for a tax violation although the directing minds were engaged in a sales fraud whereby they sold the company's stock and kept

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<sup>7</sup> *Livent* at para 104.

<sup>8</sup> *Standard Investments Ltd. et al v Canadian Imperial Bank of Commerce*, (1985) 52 OR (2d) 473, [1985] OJ No 2668 (CA) [*Standard Investments*] at para 55.

<sup>9</sup> Criminal Code, RSC 1985, c C-46 [*Criminal Code*] at s 22.2.

<sup>10</sup> Reasons of the Court of Appeal at para 70, AR, Vol II, Tab 7 at pp 33-34. See also Joachim Dietrich, "Liability of Accessories under Statutes, in Equity, and in Criminal Law: Some Common Problems and (Perhaps) Common Solutions" (2010) 34 Melbourne UL Rev 106 at 116-118, Bernstein Companies' Book of Authorities ("RBOA"), Tab 3.

<sup>11</sup> Ernest Lim "Attribution in Company Law" (2014) 77(5) MLR 780-807 ("Lim"), RBOA, Tab 2; Darcy MacPherson, "Emaciating the Statutory Audit – A Comment on Hart Building Supplies Limited v. Deloitte & Touche", (2005) 41 Can Bus LJ 471 ("MacPherson") at 479-484, Bernstein Companies' Supplemental Book of Authorities ("R Supp BOA") at Tab 1.

<sup>12</sup> *Meridian Global Funds Management Asia Ltd v Securities Commission*, [1995] 3 All ER 918 (Privy Council) at 924 (per Lord Hoffmann).

<sup>13</sup> *Bilta (UK) Ltd (in liq) v Nazir*, [2015] UKSC 23 [*Bilta*] at para 9 (per Lord Neuberger) and para 41 (per Lord Mance); Sarah Worthington "Corporate attribution and agency: back to basics" (2017) 133 LQR 118 ("Worthington") at 124, R Supp BOA at Tab 2.

all the proceeds for their own benefit.<sup>14</sup> The company was properly attributed with the conduct of the dishonest directors, even though it was actually exposed to higher taxation because of their misconduct.<sup>15</sup>

10. Similarly, in *373409 Alberta Ltd (Receiver of) v Bank of Montreal*, the conduct of a directing mind was attributed to the company from which he diverted funds, for the purpose of determining whether the third-party bank was liable to the company in conversion. In that case, this Court concluded that the *Canadian Dredge* test required no identifiable benefit to the company. The directing mind's conduct could be harmful to the company's financial position vis-à-vis its stakeholders, yet still be attributed to the company.<sup>16</sup> This makes good sense: where an individual is obviously the directing mind of a company, it strains credulity to deny that fact merely because the individual acts in a way that is detrimental to the company.

11. Courts in other common law jurisdictions have explicitly held that the "fraud exception" to corporate identification of the directing mind is inapplicable where a third-party has been harmed by corporate misconduct.<sup>17</sup>

12. In *Moulin Global Eyecare Trading Ltd. (in liq) v Commissioner of Inland Revenue*, Lord Walker (sitting as a non-permanent judge of the Hong Kong Court of Final Appeal) summarized the state of the law in the U.K. and concluded that "the exception does not apply to protect a company where the issue is whether the company is liable to a third party for the dishonest conduct of a director or employee."<sup>18</sup>

13. In *Bilta (UK) Limited v Nazir*, the Supreme Court of the United Kingdom held that while the "fraud exception" might invalidate the attribution of a dishonest director to the company

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<sup>14</sup> *Moore v I. Bresler Ltd.*, [1944] 2 All ER 515 (Div Ct).

<sup>15</sup> *Canadian Dredge* at 708.

<sup>16</sup> *373409 Alberta Ltd. v Bank of Montreal*, 2002 SCC 81 at para 22.

<sup>17</sup> Joachim Dietrich and Pauline Ridge, *Accessories in Private Law* (Cambridge: Cambridge University Press, 2015) ("Dietrich and Ridge") at pp 380-381, R Supp BOA at Tab 3.

<sup>18</sup> *Moulin Global Eyecare Trading Ltd. (in liq) v Commissioner of Inland Revenue*, [2014] HKCFA 22, [2014] 3 HKC 323 [*Moulin*] at para 106(6). At para 101 of *Moulin*, Lord Walker disclaimed his decision in *Stone & Rolls*, [2009] 1 AC 1391, as follows: "I should state clearly that I now see that I was wrong, in para 145 [of *Stone & Rolls*], to regard the fraud exception as being of general application, regardless of the nature of the proceedings. The recent *Bilta* decision, and the fuller citation and exposition of academic material put before this Court, demonstrate the limited scope of the exception."



where the company claims against that director for breach of duty, it does not apply where a third-party has been harmed and claims against the corporation:

... attribution of the conduct of an agent so as to create a personal liability on the part of the company depends very much on the context in which the issue arises. In what I propose to refer to as the liability cases like *El Ajou v Dollar Land Holdings plc* ([1994] 2 All ER 685), *Royal Brunei Airlines Sdn Bhd v Tan* ([1995] 3 All ER 97, [1995] 2 AC 378), *McNicholas Construction Co Ltd v Customs and Excise Comrs* ([2000] STC 553) and *Morris v Bank of India Re Bank of Credit and Commerce International SA (in liq) (No 15)* [2005] 2 BCLC 328), reliance on the consequences to the company of attributing to it the conduct of its managers or directors is not enough to prevent attribution because, as Mummery LJ pointed out, it would prevent liability ever being imposed. As between the company and the defrauded third party, the former is not to be treated as a victim of the wrongdoing on which the third party sues but one of the perpetrators. The consequences of liability are therefore insufficient to prevent the actions of the agent being treated as those of the company. The interests of the third party who is the intended victim of the unlawful conduct take priority over the loss which the company will suffer through the actions of its own directors.<sup>19</sup>

14. The Chamber of Commerce has not identified a single case where the *Canadian Dredge* test was applied to defeat the claims of a third party against a corporate wrongdoer. Courts faced with claims like this one uniformly apply the knowledge and intention of the fraudster to the corporate defendant.<sup>20</sup>

### **THE CANADIAN DREDGE TEST SHOULD NOT BE MADE MORE DEMANDING**

15. The Chamber of Commerce contends that the *Canadian Dredge* standard should be made more demanding, such that the doctrine only applies where the actions of an individual are (i) within his or her field of operation; (ii) not substantially (as opposed to not “totally”) in fraud of the corporation; and (iii) the corporation substantially (as opposed to “partly”) benefits from the wrongdoing. This is contrary to settled law and is bad policy.

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<sup>19</sup> *Bilta v Nazir*, [2014] 1 All ER 168 (CA) at para 34 (*per* Patten LJ), *aff'd* [2015] 2 All ER 1083. This passage was cited with approval in the Supreme Court by Lord Sumption at paras 86-88 and Lord Toulson and Hodge at paras 208-209.

<sup>20</sup> See e.g. *0738827 BC Ltd v CPI Crown Properties International Corp.*, 2013 ABQB 499 at para 69; *AI Enterprises v Bram*, 2014 SCC 12 at para 105; *El Ajou v Dollar Land Holdings plc*, [1994] 2 All ER 685 (CA) [*El Ajou*] at 696-698; *Morris v Bank of India*, [2005] EWCA Civ 693 [*Morris*] at paras 114-128; Worthington at p 126, R Supp BOA at Tab 2: “It is impossible to think of a case where an outsider has sued a company and the company has escaped liability by asserting it is not infected with the acts, knowledge or intentions of its fraudulent directors or employees operating in their assigned corporate roles.”

16. **Canadian Dredge is well-reasoned:** The language of the test in *Canadian Dredge* is deliberate and well-established: the conduct must not be “totally in fraud of the corporation”, and must be “by design or result partly for the benefit of the company.”<sup>21</sup> This leaves only a narrow scope not to attribute the conduct of the directing mind to the corporation: the director must be shown to have entirely turned on the corporation in an attempt to destroy it.<sup>22</sup> In applying this test to the circumstances, Justice Estey attributed a company with the conduct and knowledge of their directing minds although “the directing minds who committed the wrongful conduct benefited themselves in a variety of ways.”<sup>23</sup>

17. **Consistency across jurisdictions and disciplines does not favour a stricter test:** There is no Canadian or international case law that favours making the *Canadian Dredge* test more demanding, particularly in a civil context. The jurisprudential trend is towards a less demanding test for corporate identification so that third-party victims of corporate misconduct may recover.<sup>24</sup> If this Court were to depart from *Canadian Dredge* and *Livent*, it should only do so in a manner supported by both the jurisprudential trend and sound policy: in favour of greater corporate attribution to the benefit of third-parties wronged by corporate misconduct.

18. **Policy considerations similarly do not favour a more demanding test:** A context-sensitive approach which allows for a “less demanding” approach where the corporation is alleged to have harmed a third-party furthers the goals of deterrence and corporate governance. Professor MacPherson has championed the move towards “an explicitly policy-based application of the identification theory” where it would “promote the idea of corporate responsibility” and have a “specific or general deterrence value.”<sup>25</sup>

19. The policy reasons set out to support the Chamber of Commerce’s rigid test at paragraphs 13-17 of its factum are misguided:

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<sup>21</sup> *Canadian Dredge* at 714.

<sup>22</sup> The Hon Todd L Archibald, Kenneth E Jull and Kent W Roach, “Rogue Managers and Directors” in *Regulatory and Corporate Liability: From Due Diligence to Risk Management [Regulatory and Corporate Liability]* at 5:20:30 (Proview, accessed on May 30, 2019), R Supp BOA at Tab 4.

<sup>23</sup> *Canadian Dredge* at 715 and 717.

<sup>24</sup> See e.g. *El Ajou* at 696-698; *Morris* at paras 114-128; *Moulin* at paras 80-106; *Bilta* at paras 86-88 and 208-209; *Dietrich and Ridge* at pp 380-381, R Supp BOA at Tab 3; Peter Watts, “Imputed knowledge in agency law – excising the fraud exception” (2001) 117 Law Q Rev 300, RBOA at Tab 8.

<sup>25</sup> MacPherson at pp 479-482, R Supp BOA at Tab 1.

- (a) First, the Chamber of Commerce asserts that a relaxed application of the *Canadian Dredge* criteria would lead to uncertainty. This is incorrect:
- (i) The position articulated by Justice Blair below and by the Respondents in this appeal is clear and certain. Courts can more easily and predictably determine whether misconduct by a directing mind, in intention or effect, benefits a corporation (as is the case under the *Canadian Dredge* test) than whether it *substantially* benefits the corporation. This substantiality requirement results in greater uncertainty and invites the court to improperly enter into value judgments about business decisions; and
  - (ii) Upholding Justice Estey's approach that the conduct of the directing mind not be totally in fraud of the corporation is again more certain than the proposed test that it not be *substantially* in fraud of the corporation, for the same reasons; and
- (b) Second, the Chamber of Commerce argues that its position follows the separate legal personality of corporations generally. This position undermines, rather than supports, the core principle of separate corporate legal personality. The principle of separate corporate legal personality is about recognizing the distinction between the corporation and its shareholders; the Chamber of Commerce reverses this distinction by focusing on the harm to corporate stakeholders from holding the corporation liable.

20. This Court should re-affirm the flexible, policy-based approach adopted in *Livent*, the decision of the majority of the Court of Appeal for Ontario, and the international case law.

21. The corporate attribution test comes down to this simple policy question: where a wrongdoer uses the corporate form to defraud or otherwise harm third-parties, should that loss be borne by the third-parties who were harmed, or by the stakeholders of that corporation?

22. It is fair and reasonable for the corporation's stakeholders to bear the loss caused by the misuse of the corporate form, rather than innocent third-parties:

- (a) The corporation's stakeholders, having chosen to obtain the benefits of corporate investment, including limited liability, bear the losses caused by corporate misconduct. This also accords with insolvency principles as enshrined in the *BIA* and the *CCAA*;<sup>26</sup>
- (b) The corporation's stakeholders are best placed to ensure that the corporation does not engage in misconduct. Stakeholders can refuse to invest where corporate governance controls are insufficient. In smaller corporations with a few stakeholders (as in this appeal), stakeholders can exercise their statutory rights to prevent corporate misconduct. This applies with even greater force where, as is the case here, the stakeholders are also directors;<sup>27</sup> and
- (c) A broad scope for corporate liability deters corporate stakeholders from using their positions of control for wrongdoing, and fraudsters, such as Norma Walton, from using the corporate form as an instrument of fraud.

23. The corporate attribution doctrine does not preclude the innocent shareholders from protecting their investments. They have remedies open to them as shareholders against the directing mind to ensure good governance—such as oppression remedy claims, derivative actions, and informational and voting rights that attach to their shares—and the ability to sue the directing mind for breach of fiduciary duty if a loss occurs. It is noteworthy that DeJong exercised none of these rights.

**IN ANY EVENT, NORMA WALTON INTENDED TO AND DID BENEFIT THE WSC COMPANIES**

24. Regardless of the standard adopted, Norma Walton's conduct is attributable to the WSC Companies. The facts of this case do not support altering the established test.

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<sup>26</sup> *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 at ss 140.1, 141 and 144 and *Companies' Creditors Arrangement Act*, RSC, 1985, c C-36 at s 6(8).

<sup>27</sup> DeJong Reply Affidavit at para 23, AR, Vol VIII, Tab 49 at p 190.

25. Justice Blair properly held that Norma Walton’s conduct met the strict requirements of *Canadian Dredge*.<sup>28</sup> As he held, the WSC Companies acquired properties, as intended, and had access to the funding necessary for their ongoing operations.<sup>29</sup>

26. From the simple fact that the listed WSC Companies hold surplus funds, they were not totally defrauded by Norma Walton.<sup>30</sup> There can be no suggestion here that Norma Walton’s “entire energies [were]...directed to the destruction of the undertaking of the corporation[s].”<sup>31</sup>

27. The Inspector/Manager’s investigation and Justice Brown’s findings concluded that the WSC Companies substantially benefitted from Norma Walton’s conduct.<sup>32</sup> As set out by Justice Blair in the Court of Appeal:

As a result of Ms. Walton’s net transfer of at least \$23.6 million from Rose & Thistle to the [WSC] Companies, the latter acquired funding necessary for their ongoing operations; Brown J. accepted the Inspector’s conclusion that the [Bernstein Companies’] investments in the [WSB] Companies “[were] a major source of funds for the [WSC] Companies.”<sup>33</sup>

28. While Norma Walton may have received some (limited) personal benefit, the vast majority of the misappropriated funds circulated among the Project Companies to their benefit.<sup>34</sup>

29. Even if that were not the case, the test is still met. A directing mind’s “design” or intention attracts liability even where the company did not actually realize a benefit. Consistent with its roots in criminal *mens rea*, the directing mind’s intention is just as (if not more)

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<sup>28</sup> Reasons of the Court of Appeal at para 79, AR, Vol II, Tab 7 at p 37.

<sup>29</sup> Reasons of the Court of Appeal at para 80, AR, Vol II, Tab 7 at p 37.

<sup>30</sup> Factum of the Intervener, Schonfeld Inc., at para 23.

<sup>31</sup> *Canadian Dredge* at 713.

<sup>32</sup> Fifth Report of the Inspector, Schonfeld Inc. at paras 8(b) and 9, AR, Vol WV, Tab 71 at pp 78-79; Schonfeld Factum at paras 14 and 17; Reasons of Justice Brown at paras 15, 39(ii), and 187, AR, Vol IV, Tab 32 at p 82, 93 and 137.

<sup>33</sup> Reasons of the Court of Appeal at para 80, AR, Vol II, Tab 7 at p 37, citing Reasons of Justice Brown at para 168 and 269, AR, Vol IV, Tab 32 at p 132 and 162.

<sup>34</sup> During the litigation, the Waltons declared bankruptcy and their personal receiver, Ira Smith, could not locate any significant funds in their personal possession: First Report of the Receiver, Ira Smith, dated December 1, 2014, Respondents’ Supplemental Record at Tab 1; The Waltons requested the release of funds from the Manager to support their living expenses and legal fees because they had no personal assets: Order of Justice Newbould dated March 5, 2015, AR, Vol V, Tab 37; The Waltons even granted the WSC investors “preferred” shareholdings in their personal residence in an attempt to defeat the Bernstein Companies’ claims: Reasons of Justice Brown at paras 146-148, AR, Vol IV, Tab 32 at p 126.


important than the result. The importance of intention over result is consistent with section 22.2 of the *Criminal Code*, which provides for criminal liability for a corporation where a senior officer or directing mind acts “with intent at least in part to benefit the organization.”<sup>35</sup> Again, it cannot be the case that the test for corporate civil liability is markedly higher than the test for corporate criminal liability.<sup>36</sup>

30. Whether or not the WSC Companies received an actual benefit (and they did), Norma Walton’s conduct is properly attributed to the corporations based on her intention and design. According to her own evidence, she consistently intended to benefit the WSC Companies by perpetrating her fraudulent scheme of “smooth[ing] out cash flow across the portfolio.”<sup>37</sup> The test in *Canadian Dredge* is met on these facts.

### **PART III: SUBMISSIONS ON COSTS**

31. The Bernstein Companies seek no costs from the Intervener, the Canadian Chamber of Commerce.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 7<sup>th</sup> day of May, 2019.

  
For: **PETER H. GRIFFIN**

  
For: **SHARA N. ROY**

  
For: **PAUL-BRIK VEEL**

  
For: **MADISON ROBINS**

<sup>35</sup> *Criminal Code* at s 22.2; “Intent at least in part to benefit the organization” *Regulatory and Corporate Liability* at 5:40:130, R Supp BOA at Tab 4.

<sup>36</sup> *Standard Investments* at para 55.

<sup>37</sup> Affidavit of Norma Walton sworn June 26, 2014 at paras 8 and 38, AR, Vol XI, Tab 57 at pp 78 and 119; Norma Walton also intended to benefit the shareholders in the WSC Companies, including DeJong, at the expense of the Bernstein Companies – see Reasons of Justice Brown at paras 148 and 289, AR, Vol IV, Tab 32 at pp 126 and 168-169.

**PART VII: TABLE OF AUTHORITIES AND STATUTORY PROVISIONS**

<b><u>AUTHORITY</u></b>	<b><u>Cited in Para</u></b>
<a href="#"><i>0738827 BC Ltd v CPI Crown Properties International Corp.</i>, 2013 ABQB 499</a>	14
<a href="#"><i>373409 Alberta Ltd. v Bank of Montreal</i>, 2002 SCC 81</a>	10
<a href="#"><i>AI Enterprises v Bram</i>, 2014 SCC 12</a>	14
<a href="#"><i>Bilta v Nazir</i>, [2014] 1 All ER 168 (CA) at para 34 (per Patten LJ), aff'd [2015] 2 All ER 1083</a>	13
<a href="#"><i>Bilta (UK) Ltd (in liq) v Nazir</i>, [2015] UKSC 23</a>	8, 17
<a href="#"><i>Canadian Dredge &amp; Dock Co v The Queen</i>, [1985] 1 SCR 662</a>	1, 2, 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 19, 25, 26, 30
<a href="#"><i>Deloitte &amp; Touche v Livent Inc. (Receiver of)</i>, 2017 SCC 63</a>	4, 7, 17, 20
<a href="#"><i>El Ajou v Dollar Land Holdings plc</i>, [1994] 2 All ER 685 (CA)</a>	13, 14, 17
<a href="#"><i>Lennards Carrying Co Ltd. v Asiatic Petroleum Co Ltd.</i>, [1915] AC 705</a>	5
<a href="#"><i>Meridian Global Funds Management Asia Ltd v Securities Commission</i>, [1995] 3 All ER 918</a>	8
<a href="#"><i>Moore v I. Bresler Ltd.</i>, [1944] 2 All ER 515</a>	9
<a href="#"><i>Morris v Bank of India</i>, [2005] EWCA Civ 693</a>	13, 14, 17
<a href="#"><i>Moulin Global Eyecare Trading Ltd. (in liq) v Commissioner of Inland Revenue</i>, [2014] HKCFA 22, [2014] 3 HKC 323</a>	12, 17
<a href="#"><i>Standard Investments Ltd. et al v Canadian Imperial Bank of Commerce</i>, (1985) 52 OR (2d) 473, [1985] OJ No 2668 (CA)</a>	7, 29
<b><u>LEGISLATION</u></b>	
<a href="#"><i>Bankruptcy and Insolvency Act</i>, RSC, 1985, c. B-3 at <a href="#">ss 140.1, 141 and 144</a></a>	22
<a href="#"><i>Companies' Creditors Arrangement Act</i>, RSC, 1985, c C-36 at s <a href="#">6(8)</a></a>	22
<a href="#"><i>Criminal Code</i>, RSC, 1985, c. C-46 at section <a href="#">22.2</a></a>	7, 29

**SCHEDULE A – RESPONDENTS – THE “BERNSTEIN COMPANIES”**

1. Dr. Bernstein Diet Clinics Ltd.
2. 2272551 Ontario Limited
3. DBDC Investments Atlantic Ltd.
4. DBDC Investments Pape Ltd.
5. DBDC Investments Highway 7 Ltd.
6. DBDC Investments Trent Ltd.
7. DBDC Investments St. Clair Ltd.
8. DBDC Investments Tisdale Ltd.
9. DBDC Investments Leslie Ltd.
10. DBDC Investments Lesliebrook Ltd.
11. DBDC Fraser Properties Ltd.
12. DBDC Fraser Lands Ltd.
13. DBDC Queen’s Corner Inc.
14. DBDC Queen’s Plate Holdings Inc.
15. DBDC Dupont Developments Ltd.
16. DBDC Red Door Developments Inc.
17. DBDC Red Door Lands Inc
18. DBDC Global Mills Ltd.
19. DBDC Donalda Developments Ltd.
20. DBDC Salmon River Properties Ltd.
21. DBDC Cityview Industrial Ltd.
22. DBDC Weston Lands Ltd.
23. DBDC Double Rose Developments Ltd.
24. DBDC Skyway Holdings Ltd.
25. DBDC West Mall Holdings Ltd.
26. DBDC Royal Gate Holdings Ltd.
27. DBDC Dewhurst Developments Ltd.
28. DBDC Eddystone Place Ltd.
29. DBDC Richmond Row Holdings Ltd.



**SCHEDULE B - LIST OF WALTON SCHEDULE B COMPANIES  
("WSB COMPANIES")**

1. Twin Dragons Corporation
2. Bannockburn Lands Inc. / Skyline
3. Wynford Professional Centre Ltd.
4. Liberty Village Properties Ltd.
5. Liberty Village Lands Inc.
6. Riverdale Mansion Ltd.
7. Royal Agincourt Corp.
8. Hidden Gem Developments Inc.
9. Ascalon Lands Ltd.
10. Tisdale Mews Inc.
11. Lesliebrook Holdings Ltd.
12. Lesliebrook Lands Ltd
13. Fraser Properties Group
14. Fraser Lands Ltd.
15. Queen's Corner Corp.
16. Northern Dancer Lands Ltd.
17. Dupont Developments Ltd.
18. Red Door Developments Inc. and Red Door Lands Ltd.
19. Global Mills Inc.
20. Donalda Developments Ltd.
21. Salmon River Properties Ltd.
22. Cityview Industrial Ltd.
23. Weston Lands Ltd.
24. Double Rose Developments Ltd.
25. Skyway Holdings Ltd.
26. West Mall Holdings Ltd.
27. Royal Gate Holdings Ltd.
28. Royal Gate Nominee Inc.
29. Royal Gate (Land) Nominee Inc.
30. Dewhurst Development Ltd.
31. Eddystone Place Inc.
32. Richmond Row Holdings Ltd.
33. El-Ad (1500 Don Mills) Limited
34. 165 Bathurst Inc.

**SCHEDULE C - LIST OF WALTON SCHEDULE C PROPERTIES  
("WSC PROPERTIES")**

1. 3270 American Drive, Mississauga, Ontario
2. 0 Luttrell Ave., Toronto, Ontario
3. 2 Kelvin Avenue, Toronto, Ontario
4. 346 Jarvis Street, Suites A, B, C, E and F, Toronto, Ontario
5. 1 William Morgan Drive, Toronto, Ontario
6. 324 Price Edward Drive, Toronto, Ontario
7. 24 Cecil Street, Toronto, Ontario
8. 30 and 30A Hazelton Avenue, Toronto, Ontario
9. 777 St. Clarens Avenue, Toronto, Ontario
10. 252 Carlton Street and 478 Parliament Street, Toronto, Ontario
11. 66 Gerrard Street East, Toronto, Ontario
12. 2454 Bayview Avenue, Toronto, Ontario
13. 319-321 Carlaw, Toronto, Ontario
14. 260 Emerson Ave., Toronto, Ontario
15. 44 Park Lawn Circle, Toronto, Ontario
16. 19 Tennis Crescent, Toronto, Ontario
17. 646 Broadview Avenue, Toronto, Ontario