# In the Court of Appeal of Alberta

**Citation: DGDP-BC Holdings Ltd v Third Eye Capital Corporation, 2021 ABCA 226**

**Date:** 20210617
**Docket:** 2001-0241-AC;
2001-0125-AC
**Registry:** Calgary



# 2001-0241-AC

**Between:**

**DGDP-BC Holdings Ltd.**

Appellant

- and -

**Third Eye Capital Corporation**

Respondent

- and -

**PricewaterhouseCoopers Inc.**

Respondent

# 2001-0125-AC

**And Between:**

**DGDP-BC Holdings Ltd.**

Appellant

- and -

**Third Eye Capital Corporation**

Respondent

- and -

**Accel Canada Holdings Limited and Accel Energy Canada Limited**

Respondents

- and -

**PricewaterhouseCoopers Inc. in its capacity as the court-appointed receiver of Accel Canada Holdings Limited and Accel Energy Canada Limited**

Respondent



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**The Court:**

**The Honourable Mr. Justice Jack Watson**
**The Honourable Mr. Justice Frans Slatter**
**The Honourable Madam Justice Ritu Khullar**

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**Memorandum of Judgment**

Appeal from the Order by
The Honourable Madam Justice K.M. Horner
Dated the 4th day of December, 2020
Filed on the 4th day of December, 2020
(Docket: 2001 06776)

Appeal from the Order by
The Honourable Madam Justice K.M. Horner
Dated the 12th day of June, 2020
Filed on the 15th day of June, 2020
(Docket: 2001 06776)

## Memorandum of Judgment



**The Court:**

[1] Two appeals were argued together. They both arise out of the insolvency of Accel Canada Holdings Limited and Accel Energy Canada Limited.

[2] The first appeal #2001-0125AC relates to the priority between a) an Interim Lenders' Charge given over the assets of the Accel Entities while they were in proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985 c. C-36, and b) a later Receiver's Borrowings Charge given when a receiver was appointed to facilitate the sale of the assets of the Accel Entities. The leave reasons reported as ***DGDP-BC Holdings Ltd v Third Eye Capital Corp***, 2020 ABCA 442 at para. 39 described the issue as follows:

> Can an order made in proceedings under the *BIA* or pursuant to section 13(2) of the *Judicature Act*, legally override the validity and priority of the charges contained in an earlier order granted pursuant to the *CCAA* in the same insolvency proceedings, without the consent of the person in whose favour the provision relating to validity and priority was given?

The crux of the dispute is that the supervising judge gave the later Receiver's Borrowings Charge priority over the earlier Interim Lenders' Charge.

[3] The second appeal #2001-0241AC arises out of a subsequent order which approved the sale of the assets of Accel Energy. It was originally contemplated that the assets of Accel Energy and Accel Holdings would be sold *en bloc*, but when complications arose, it was decided to sell the assets of Accel Energy separately. When that transaction was approved by the supervising judge, she granted an order vesting the sold Accel Energy assets in the purchaser free and clear of all encumbrances, including the Interim Lenders' Charge. However, the Interim Lenders' Charge was not completely satisfied during the transaction. The amounts advanced under the Interim Lenders' Charge had been allocated between Accel Energy and Accel Holdings. Only the portion allocated to Accel Energy was paid off.

[4] The appellant argues that it was not open to the supervising judge to bifurcate the Interim Lenders' Charge in this manner and that the transaction could not or should not have been approved unless the Interim Lenders' Charge was paid in full. In ***DGDP-BC Holdings Ltd v Third Eye Capital Corp***, 2021 ABCA 33 leave to appeal was given. The appellant states the issues as being whether the supervising judge had the statutory or inherent jurisdiction or discretion to partially vest out the Interim Lenders' Charge without its consent, and if so, did she err in law in the way she exercised her discretion.

Facts

[5] The facts are complex, but the essential narrative is as follows. In October 2019, the Accel Entities filed Notices of Intention to make a proposal under the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3. By November, the proceeding evolved into one under the *CCAA*, and PricewaterhouseCoopers was appointed as the Monitor.

[6] In November, the Court approved an interim financing loan, secured by the Interim Lenders' Charge, which was described in the Second Amended and Restated DIP Financing Term Sheet as a "super priority (debtor-in-possession), interim, revolving credit facility". The appellant DGDP-BC Holdings Ltd (through its predecessor 228139 Alberta Ltd) and Third Eye Capital Corporation were the two interim lenders. Through the Interim Lenders' Charge, the Court granted the debtor in possession loans priority over the other creditors of the Accel Entities. About $38 million was authorized.

[7] The Interim Lenders' Charge provided that Accel Energy and Accel Holdings would be acting jointly and severally as "Borrowers", and each (and certain affiliated entities) guaranteed the obligations of the other. Nevertheless, when the Monitor drew down funds, they were allocated either to Accel Energy or Accel Holdings, depending on which corporation was actually going to use the funds at the time.

[8] The Court approved a process for the sale of the assets of the Accel Entities. Details about the sale process can be found in 2020 ABCA 442 at paras. 11-14. The Monitor was able to negotiate a sale of the assets to Third Eye Capital. As noted, the originally contemplated combined sale of the assets of Accel Energy and Accel Holdings was found to be unworkable, and a sale of the Accel Energy assets proceeded, with an anticipated sale of the Accel Holdings assets to follow.

[9] As part of the sale process, Third Eye Capital applied under the *BIA* and s. 13(2) of the *Judicature Act*, RSA 2000, c. J-2 for the appointment of a receiver to replace the senior management of the Accel Entities and facilitate the sale. The insolvency had therefore evolved from the *BIA*, into the *CCAA*, and then back to the *BIA*.

[10] At this point, Third Eye Capital was wearing many hats. It was the primary secured creditor of the insolvent Accel Holdings, having advanced about $326 million. It was one of the interim lenders protected by the Interim Lenders' Charge and agent for the interim lenders. It was the successful bidder for the purchase of the assets of the Accel Entities. It was the applicant for the appointment of the receiver, to facilitate the sale of the Accel Energy assets to its nominee.

[11] The supervising judge appointed PricewaterhouseCoopers as receiver pursuant to s. 243(1) of the *BIA* and s. 13(2) of the *Judicature Act*, RSA 2000, c. J-2. The critical fact is that Third Eye Capital did not just want a receiver, it wished to have a receiver appointed with the power to borrow and to have the Receiver's Borrowings Charge take priority over all of the other charges against the assets of the Accel Entities, including the prior Interim Lenders' Charge. The Receiver

ultimately borrowed over $10 million. Over the objections of the appellant DGDP-BC Holdings, the Receivership order provided:

> 28. The priority of the charges created in the CCAA Proceedings (and continued by this Order) in relation to the Receiver's Charge and the Receiver's Borrowing Charge created hereunder, shall be as follows:
>
> First - the Receiver's Charge;
> Second - the Receiver's Borrowings Charge;
> Third - the Administration Charge as defined in the CCAA Proceedings;
> Fourth - the Interim Lenders' Charge as defined in the CCAA Proceedings;
> Fifth - the Intercompany Advance Charge as defined in the CCAA Proceedings;
> Sixth - the Directors' Charge as defined in the CCAA Proceedings.

The priority given to the Receiver's Borrowings Charge over the Interim Lenders' Charge is the central issue in the first appeal.

[12] As noted, the second appeal is from one provision of the Sale Approval and Vesting Order respecting the sale of the Accel Energy assets. The original DIP Financing Term Sheet had provided that both Accel Entities (Accel Holdings and Accel Energy) would be joint and several borrowers and that the Interim Lenders' Charge would attach to the assets of both Accel Entities. However, at the time of the sale of the Accel Energy assets, the debt secured by the Interim Lenders' Charge had been allocated by the Monitor to the two Accel Entities. Only that portion allocated to Accel Energy was to be paid off as part of the Accel Energy transaction. The portion allocated to Accel Holdings was deferred, and it was suggested that the appellant might not be paid in cash; rather its remaining debt might be converted to equity in the purchaser of the Accel Holdings assets or satisfied by some other non-cash consideration.

[13] Subsequent to the filing of these appeals, the sale of the Accel Energy assets closed, and the appellant DGDP-BC Holdings was paid the sums owing to it under the Interim Lenders' Charge that had been allocated to Accel Energy. The Receiver's Borrowings Charge allocated to Accel Energy was also paid out from the sale proceeds. Other payments were made, for example, on account of arrears of lease payments, arrears of municipal taxes, and amounts required to put contracts with third parties into good standing. Sufficient cash was inserted into the sale of the Accel Energy assets to satisfy these claims, but there was no "surplus" consideration available to pay creditors.

The Priority Dispute

[14] The supervising judge decided that the appointment of a receiver was called for. Third Eye Capital argued that the supervising judge had a discretion to set the priorities between the various charges in any reasonable fashion and that changes in the "risk profile" justified giving priority to

the Receiver's Borrowings Charge. The appellant argued that the Receiver's Borrowings Charge should at best rank *pari passu* with the Interim Lenders' Charge. The supervising judge held:

> THE COURT: Thank you, Mr. Simard [counsel for Third Eye Capital]. With respect to the issue of the priority of the charges of the receiver's borrowings and the receiver's fees, I am prepared in this instance to make the direction that those be as per the paragraph of the draft order set out at paragraph 28. In other words, Mr. Czechowskyj [counsel for DGDP-BC Holdings], I am going to allow Third Eye Capital in these specific contextual circumstances to prime the current outstanding 38 million in DIP financing.
>
> My reasons for doing so are essentially that for the very things that you point out, Mr. Czechowskyj, COVID, the Russian/Saudi Arabia pricing war, the continued deterioration of the Alberta energy sector at the moment and the months-long and court-application-intense arrangement proceedings to date, there is -- a lot of the stakeholders have a lot invested, not just Third Eye Capital in this matter, seen being brought to a conclusion. It's difficult for me to assess the increased closing risk referred to by both the monitor and Mr. Simard based on the Veracity reports, but I support the application by Third Eye Capital for the receiver at this point, and I think it's appropriate at this time, given that I will control the come-back application for approval of the sale -- the purchase and sale agreement in whatever, you know, form it takes and that the mon -- excuse me, the monitor and soon-to-be receiver -- because I will -- obviously inherent in my decision is that I will be granting a receivership order -- is on the first line and has an obligation at law as well as under the order to have all of the interests of all of the stakeholders as it moves forward, so I'm satisfied on these circumstances that the priorities as outlined at paragraph -- draft paragraph 28 of the receivership order are appropriate, and I would make that direction.

The supervising judge's reasons did not directly engage the issue of whether she had jurisdiction to restructure the priorities as set out in para. 28 of the order.

[15] The need for financing during restructuring proceedings is recognized in the *CCAA*:

> Interim financing
>
> 11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow

> statement. The security or charge may not secure an obligation that exists before the order is made.
>
> (2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.
>
> (3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.
>
> (4) In deciding whether to make an order, the court is to consider, among other things, . . .

The appellant particularly relies on the requirement in s. 11.2(3) that in some circumstances the priority of the Interim Lenders' Charge could only be varied with its consent. It is clear that if what became the Receiver's Borrowings Charge had been created under s. 11.2(1), those charges could not have been given priority without the consent of the appellant.

[16] The respondents argue, however, that the Receiver's Borrowings Charge was not a charge granted under the *CCAA* and therefore does not fit within the provisions of s. 11.2(3). That section, they argue, only applies when two or more interim financing charges are made under the *CCAA*. Since the Receiver's Borrowings Charge was made under the *BIA*, it is not subject to the requirement for consent, and the wide jurisdiction given to supervising judges under the *BIA* allowed this supervising judge to set priorities.

[17] The respondents rely on s. 243(1)(c) of the *BIA*, which authorizes the supervising judge to "take any other action that the court considers advisable". There is a similar wide-ranging discretion under s. 13(2) of the *Judicature Act*, but it does not enhance the analysis here. These provisions create a plenary and open-ended jurisdiction in the court. Technically they are not a part of the "inherent" jurisdiction of the court; they are a residual statutory jurisdiction, not part of the "inherent jurisdiction of superior courts of record": ***Century Services Inc v Canada (Attorney General)***, 2010 SCC 60 at para. 64, [2010] 3 SCR 379. However, the appellant is correct that in either case, the residual or inherent discretion would yield to any specific statutory provision that expressly or impliedly narrowed it.

[18] How these various sections interact is a pure question of statutory interpretation. The provisions of the *CCAA* and *BIA* should be interpreted in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the statutes, the object of the statutes, and the intention of Parliament. Since the two statutes deal with the same topic, they should be interpreted and applied in a complementary way, with due regard to their different focuses: ***Century Services*** at paras. 24, 76, 78; ***Reference re Broadcasting Regulatory Policy CRTC 2010-168***, 2012 SCC 68 at paras. 37, 41, [2012] 3 SCR 489.

[19] The proper interpretation of s. 11.2(3) of the *CCAA* is clear. The reference to "the security or charge" in that subsection can only be a reference to a security or charge under subsection 11.2(1). While the priority of a section 11.2 charge cannot be subordinated to another charge under that section without the consent of a prior holder of such a charge, that requirement of consent does not extend to charges created through other sources of jurisdiction, such as the *BIA*. The appellant did not enjoy a veto over the priority of the Receiver's Borrowings Charge as it argues.

[20] The other side of the equation is that the supervising judge clearly has authority to authorize a receiver to borrow and to grant the receiver security. The very wide wording of s. 243(1)(c) of the *BIA* ("take any other action that the court considers advisable") has been interpreted to give supervising judges the broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise: ***Third Eye Capital Corporation v Dianor Resources Inc.***, 2019 ONCA 508 at paras. 57-58, 435 DLR (4th) 416. Further, s. 31(1) of the *BIA* provides:

> 31 (1) With the permission of the court, an interim receiver, a receiver within the meaning of subsection 243(2) or a trustee may make necessary or advisable advances, incur obligations, borrow money and give security on the debtor's property in any amount, on any terms and on any property that may be authorized by the court and those advances, obligations and money borrowed must be repaid out of the debtor's property in priority to the creditors' claims.

This provision clearly authorizes the order that was made. While the phrase "in priority to the creditors' claims" applies most directly to the pre-insolvency creditors of the insolvent corporation, there is no reason to limit the supervising judge's mandate to order the priority of borrowings made to facilitate the insolvency proceedings themselves. In addition, s. 243(1)(c) is wide enough to allow a supervising judge to set the order of priority.

[21] In summary, the answer to the question on which leave to appeal was granted is that the supervising judge did have the jurisdiction or discretion to make the order granting priority to the Receiver's Borrowings Charge.

[22] The parties did not contest whether leave to appeal was granted on the consequential issue, namely whether the supervising judge exercised her discretion to reorder the priorities between the Interim Lenders' Charge and the Receiver's Borrowings Charge in a reasonable way. As noted, a supervising judge's discretion is very wide, and it follows that the exercise of that discretion will not be disturbed on appeal in the absence of an error in principle, an error of law, or a wholly unreasonable decision.

[23] Finding that a supervising judge has a discretion to subordinate a super priority (debtor-in-possession) credit facility obviously does not mean that it should routinely be done. The importance and necessity of providing funding in *CCAA* proceedings, and the need to give that funding super priority, are well recognized: ***Re Timminco Ltd***., 2012 ONSC 948 at para. 49, 86 CBR (5th) 171; ***Re Canada North Group Inc***., 2017 ABQB 550 at paras. 100-102, 60 Alta LR

(6th) 103. Uncertainty in the priority given to those advances undermines the system and would "not represent a positive development": ***Sun Indalex Finance, LLC v United Steelworkers***, 2013 SCC 6 at para. 59, [2013] 1 SCR 271. There is no indication, however, that the supervising judge disregarded these important considerations. She was entitled to decide that, in the context of this particular insolvency, it was necessary to give priority to the Receiver's Borrowings Charge to protect the overall interests of all of the stakeholders.

[24] Some argument was directed to whether, at the time the Receiver's Borrowings Charge was granted, the *CCAA* proceeding was "successful", "unsuccessful", "continuing", or "terminated". The Receiver argues that once the insolvency transitioned from the *CCAA* to the *BIA* ". . . the CCAA Proceedings were no more". However, merely because the insolvency transitioned from one statute to the other did not mean that the Interim Lenders' Charge somehow disappeared or lost its priority or could just be disregarded. The Interim Lenders' Charge exists whether or not the *CCAA* proceedings are terminated and whether or not they are successful. The status of the *CCAA* proceedings was obviously relevant, as it was the apparent lack of success of the restructuring that led to the appointment of the receiver. However, the inability of the *CCAA* proceeding to achieve its desired objectives did not invalidate the prior Interim Lenders' Charge. The appellant still held that valid charge and was entitled to put forward the legitimate expectations that it had with regard to its priority. Circumstances had changed, but the background need to respect the position of debtor-in-possession financing remained.

[25] The supervising judge concluded that giving priority to the Receiver's Borrowings Charge was justified by a change in the "risk profile". As the appellant points out, the change in the risk profile affected all the stakeholders, but this was still a relevant consideration. It is true that when the funds secured by the Interim Lenders' Charge were advanced, the interim lenders faced a certain risk profile. One component of that risk profile, however, was that the risk profile could change. An interim lender advancing debtor-in-possession financing is entitled to insist on security and insist on a level of priority. There is, however, no assurance that the interim lender will actually be repaid. One component of the risk profile is always that the anticipated restructuring will be unsuccessful, or for any other reason, there will simply not be enough funds to pay all the legitimate claimants.

[26] At the time of the application for the receivership order, the respondents argued that the insolvent corporations were in dire financial straits and required additional funding in order to keep operating. If they had ceased operating, it was argued, a liquidation may have followed, resulting in losses to many. In that context, it was reasonable for the supervising judge to appoint a receiver, to give the receiver the power to borrow, and to establish the priority of the Receiver's Borrowings Charge. Certainly, one relevant consideration was which stakeholder should be subordinated to the receiver's borrowings. The appellant suggests that Third Eye Capital, as the major secured creditor, should have been expected to fund the receivership. There is no indication that the supervising judge disregarded this consideration.

[27] In summary, the supervising judge did have the discretion and jurisdiction to establish the priority of the Receiver's Borrowings Charge. There is no indication of any error of principle in the way she exercised her discretion, nor can it be said that the ultimate decision was unreasonable. It follows that appeal #2001-0125AC must be dismissed.



The Bifurcation and Vesting Issue

[28] The second appeal arises from the bifurcation of the Interim Lenders' Charge, its allocation between the two Accel Entities, and the subsequent sale of the Accel Energy assets without paying out the Interim Lenders' Charge in full. When the Accel Energy assets were sold, they were transferred free and clear of all encumbrances, including the Interim Lenders' Charge. Sufficient cash was built into the sale transaction to pay out the portion of the Interim Lenders' Charge and the Receiver's Borrowings Charge related to Accel Energy but not the portion related to Accel Holdings.

[29] The appellant argues that the supervising judge had no discretion to bifurcate the Interim Lenders' Charge in this way, and even if there was such a discretion, it was not reasonably exercised.

[30] A number of aspects of sales transactions under receiverships are well established:

(a) The assets of the insolvent corporation can be sold free and clear of encumbrances, even if the sale does not generate sufficient funds to pay out all creditors, or any class of creditors: ***Dianor Resources***.

(b) If the insolvent corporation has more than one asset, individual assets can be sold free and clear of all encumbrances, again even if the sale does not generate sufficient funds to pay out all creditors, or any class of creditors. Any unpaid debts remain in place, and can be satisfied by subsequent sales of other assets.

(c) When assets are sold free and clear of all encumbrances, that could include encumbrances related to debtor-in-possession financing, even if the sale does not generate sufficient funds to pay out those encumbrances. Security and priority given to debtor-in-possession lenders provide no assurance that the loans will actually be repaid.

It is against this background that the appellant argues that there was no jurisdiction or discretion to vest the assets of Accel Energy in the purchaser free and clear of the Interim Lenders' Charge unless that charge was paid off in full. There is, however, no reason in principle to carve that exception out of the general propositions just stated.

[31] As previously discussed, the power given to supervising judges in s. 243(1)(c) of the *BIA* to "take any other action that the court considers advisable" has been read very widely. That power

would include the mandate to sell some of the assets of the insolvent corporation, while only paying out a portion of the debtor-in-possession financing.

[32] Alternatively, the appellant argues that the discretion should not have been exercised in this case. The original DIP Financing Term Sheet had provided that Accel Holdings and Accel Energy would be joint and several borrowers and that the Interim Lenders' Charge would attach to the assets of both Accel Entities. The appellant argues that it was unfair to allocate the interim Lenders' charge between the two entities, and then allow the sale to proceed without paying off the charge in full. However, as previously noted, the debtor-in-possession lender is never assured that its loans will be paid back at all or in full. There is always a prospect that the insolvency will evolve unfavourably, meaning that there are insufficient funds to meet all legitimate claims. When exercising her discretion the supervising judge must weigh the legitimate expectations of all stakeholders against the changed circumstances.

[33] The unique position of Third Eye Capital as a major secured creditor, as a DIP lender, as the agent of the DIP lenders, and as a supporter of the successful bidder for the assets was not lost on the supervising judge. Third Eye Capital might have been operating with an eye to its own best interests, but that is not necessarily and automatically an indicator that the order granted by the supervising judge was unreasonable. As Slatter JA observed in ***Wilks Brothers LLC v 12178711 Canada Inc***, 2020 ABCA 430 at para. 72, 85 CBR (6th) 9:

> During the approval process, all stakeholders are allowed to identify their own best interests, and pursue those best interests. Acting in one's own best interests is not bad faith: *Bhasin v Hrynew*, 2014 SCC 71 at para. 70, [2014] 3 SCR 494.

The DIP Financing Term Sheet certainly created legitimate expectations, but as noted there was never an assurance that the DIP funding would be repaid. There is no indication on this record that Third Eye Capital did anything that specifically breached a contract or was tortious or otherwise offended against a law. Third Eye Capital was merely able to persuade the supervising judge that the sale and vesting order it proposed represented the proper balancing of the interests of all of the stakeholders. The appellant's disappointment at the outcome is not a basis for upsetting the decision of the supervising judge.

[34] Notwithstanding that the original DIP Financing Term Sheet had provided that Accel Holdings and Accel Energy would be joint and several borrowers, it was always recognized that they were separate corporations, with separate primary secured creditors, and separate stakeholders. The Monitor from the beginning allocated the borrowings under the Interim Lenders' Charge between the two entities. The fact that the borrowings were joint and several was qualified early on in the initial *CCAA* order:

> 38 . . . The Amended Interim Financing Agreement contemplates that the Applicants are jointly and severally liable, and are cross-guaranteeing all DIP Advances (as defined therein) made by the Interim Lender. The Interim Lender

> shall be required to first recover repayment of all DIP Advances made to a particular Applicant (and proceeds of DIP Advances approved by the Monitor to have been allocated to such Applicant) from the property of such Applicant. Only in the event that the Interim Lender is unable to fully recover all such amounts from such Applicant's property, shall the Interim Lender be entitled to recover payment of such amounts, from the other Applicant's property.

As the appellant points out, this is a marshaling provision, which required the appellant to exhaust its remedies against one borrower before calling on the other. However, it does reflect the reality that there were two separate insolvent corporations, with separate businesses, and that bifurcated treatment of the Interim Lenders' Charge might at some point be necessary or appropriate.

[35] The remedy the appellant seeks is to have the Interim Lenders' Charge reattach to the Accel Energy assets, even though they have now been sold free and clear of encumbrances. As the respondents point out, after the asset transaction closes, many remedies are simply unavailable: ***Resurgence Asset Management LLC v. Canadian Airlines Corp***., 2000 ABCA 238 at para. 32, 266 AR 131. Unless this option was preserved under the sale agreement, it would be unprecedented to add conditions to the sale after the closing.

[36] In summary, the supervising judge did have the discretion and jurisdiction to approve the sale of the Accel Energy assets, free and clear of the Interim Lenders' Charge, even though that charge was not paid in full. There is no indication of any error in principle in the way she exercised her discretion, nor can it be said that the ultimate decision was unreasonable. It follows that appeal #2001-0241AC must be dismissed.

Appeal heard on June 7, 2021

Memorandum filed at Calgary, Alberta
this 17th day of June, 2021

Watson J.A.

Slatter J.A.

Authorized to sign for: Khullar J.A.

**Appearances:**

T.L. Czechowskyj, Q.C./I. Aversa /S. Babe
for the Appellant

C.D. Simard/K.R. Cameron
for the Respondent Third Eye Capital Corporation

R. Gurofsky/J.L. Cameron
for the Respondent PricewaterhouseCoopers Inc.

Respondents Accel Canada Holdings Limited and Accel Energy Canada Limited (No Appearance)