

COURT FILE NUMBER 2401-09688
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL DISTRICT CALGARY

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF DELTA 9 CANNABIS INC., DELTA 9
LOGISTICS INC., DELTA 9 BIO-TECH INC., DELTA 9
LIFESTYLE CANNABIS CLINIC INC. and DELTA 9 CANNABIS
STORE INC.

APPLICANTS DELTA 9 CANNABIS INC., DELTA 9 LOGISTICS INC., DELTA
9 BIO-TECH INC., DELTA 9 LIFESTYLE CANNABIS CLINIC
INC. and DELTA 9 CANNABIS STORE INC.

DOCUMENT **BENCH BRIEF OF SNDL INC.**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT
McCarthy Tétrault LLP
4000, 421 – 7th Avenue SW
Calgary, AB T2P 4K9
Attention: Sean Collins, KC / Lance Williams / Ashley Bowron
Tel: 403-260-3531 / 604-643-7100
Fax: 403-260-3501 / 604-643-7900
Email: scollins@mccarthy.ca / lwilliams@mccarthy.ca /
abowron@mccarthy.ca

**BENCH BRIEF OF SNDL INC.
WITH RESPECT TO THE APPLICATION
TO BE HEARD BY
THE HONOURABLE JUSTICE M.A. MARION**

January 10, 2024 at 10:00 a.m.

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. FACTS	2
III. SNDL'S POSITION ON MATTERS IN ISSUE	10
IV. LAW AND ARGUMENT	10
V. CONCLUSION	21
VI. LIST OF AUTHORITIES AND DOCUMENTS.....	23

I. INTRODUCTION¹

1. This Bench Brief is submitted on behalf of the Applicant, SNDL Inc. ("**SNDL**"), in support of its Application seeking declarations that:
 - (a) an Event of Default under the Debenture occurred on April 1, 2023;
 - (b) the entire outstanding Principal Amount, plus the MOIC Premium, accrued and unpaid interest at the rate of 18% from and after April 1, 2023, became due and payable in cash upon the issuance of the SNDL Demand; and
 - (c) SNDL is entitled to recover from Delta 9 the Protective Disbursement and its costs including legal fees on a solicitor and own client basis with a right to full indemnity, as set out in the relevant loan documents.
2. The Application concerns the interpretation of the Debenture and the effect of two Waivers granted by SNDL to Delta 9 on August 11, 2022 and September 9, 2022, respectively. Interpreting the Debenture and the Waivers in accordance with well understood principles of contractual interpretation, leads to the conclusion that SNDL is entitled to payment of the Principal, the MOIC Premium, together with accrued and accruing interest, at the Default Rate, from the date Delta 9 committed an Event of Default, being April 1, 2023.
3. The Debenture clearly establishes Events of Default and remedies which accrue to SNDL upon the occurrence of same. Delta 9 committed its First Breach as of August 11, 2022, and the second on September 9, 2022. SNDL granted Delta 9 two Waivers in relation to these defaults, the first on August 11, 2022, the second on September 9, 2022. These Waivers, both of which were acknowledged by Delta 9, clearly stated that non-compliance with the conditions thereunder would result in the Waivers ceasing to apply, without further notice. On March 31, 2023, Delta 9 failed to satisfy a condition of the Second Waiver, resulting in an automatic occurrence of an Event of Default. On their terms, the Waivers satisfy the legal requirements for notice of an Event of Default under the Debenture or, alternatively, amended those requirements.

¹ Capitalized terms used in the Introduction that are not otherwise defined are defined below.

4. The Debenture unequivocally provides that an Event of Default triggers an increase in the interest payable thereunder from 10% to 18%, and such increased rate is thus applicable to both the Principal and the MOIC Premium.
5. Charging interest on the MOIC Premium at the Default Rate is not only objectively reasonable but also aligns with the parties' commercial expectations, for reasons including it compensates SNDL for the risk it assumed in lending to Delta 9 and is a fair estimate of the potential damages SNDL will sustain by not having the benefit of the income stream to the agreed upon maturity date. Moreover, the Default Rate reflects the increased risk of non-payment that occurs when an Event of Default has occurred and payment remains outstanding.

II. FACTS

The Debenture

6. On March 30, 2022, SNDL (by its predecessor Sundial Growers Inc.) advanced a \$10 million loan to Delta 9 Cannabis Inc. ("**Delta 9**"). The financing was structured as a 10% Senior Secured Second Lien Convertible Debenture (the "**Debenture**") having a Maturity Date of March 30, 2025.²
7. Section 1 of the Debenture provides in pertinent part:

Definitions: In this Convertible Debenture, unless there is something in the subject matter or context inconsistent therewith:
[...]

(o) "**Default**" means the occurrence of any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default hereunder. [...]

(r) "**Event of Default**" has the meaning specified in Section 9.
[...]

(ff) "**MOIC Premium**" means, with respect to (i) any portion of this Convertible Debenture called for redemption pursuant to Section 3 or (ii) the entire Principal Amount in the event of an Event of Default, all required interest payments due from the redemption date or the date the Event of Default first occurred, as applicable,

² Affidavit #1 of Ryan Hellard sworn December 19, 2024 (the "**First Hellard Affidavit**") at Exhibit "B" (the "**Debenture**").

through to the Maturity Date calculated at the rate of 10.00% per annum.³

8. Section 2(c) of the Debenture provides that the applicable interest rate increases to 18% following the occurrence of and continuance of an Event of Default (the “**Default Rate**”):

(c) During the continuance of an Event of Default, the interest rate on this Convertible Debenture will be increased from 10% or 15%, as applicable, to 18% from and including the date the Event of Default initially occurred, and will remain at 18% until such Event of Default has been rectified (at which point the rate will revert to 10% or 15%, as applicable).⁴

9. Under section 8(b) of the Debenture, Delta 9 covenanted and agreed to the terms regarding payment of principal, premium and interest:

(b) Payment of Principal, Premium and Interest: The Issuer covenants and agrees for the benefit of the Holder that it will duly and punctually pay the principal of, premium (if any) and interest on this Convertible Debenture in accordance with the terms hereof. In addition, the Issuer shall pay interest on overdue principal and premium (if any) at the rate then applicable to this Convertible Debenture, and it will pay interest on overdue instalments of interest at the same rate to the extent lawful.⁵

10. Under section 8(e) of the Debenture, Delta 9 covenanted and agreed that it would not incur any indebtedness, subject only to certain exceptions including that Delta 9 was permitted to incur debt, not exceeding \$6 million, provided that, among other things, the proceeds of such debt were used primarily to acquire certain real property designated as the “Expansion Properties” (the “**Use of Proceeds Requirement**”):

(e) Limitation on Indebtedness: The Issuer will not, and will not permit any of its Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (in any such case, “incur”) any Indebtedness (including Acquired Indebtedness) and the Issuer will not permit any of its Subsidiaries to issue any preferred stock (except to the Issuer or one of its other Subsidiaries); provided, however, that the Issuer and its Subsidiaries may incur the following items of Indebtedness:

³ Debenture, s. 1.

⁴ Debenture, s. 2(c).

⁵ Debenture, 8(b).

[...]

(vii) the incurrence by the Issuer or any Subsidiaries of Indebtedness in an aggregate principal amount not to exceed \$6.0 million; provided that, (a) the Indebtedness is unsecured and provided by holders of Common Shares (who were holders of Common Shares on the Issue Date), (b) the maturity date of such Indebtedness is at least 91 days after the Maturity Date, (c) such Indebtedness is not mandatorily redeemable prior to maturity, or redeemable or repayable prior to maturity at the option of the holder thereof, and (d) the net proceeds from such Indebtedness are used primarily (along with the net proceeds from an issuance or issuances of equity securities raising at least \$3.0 million) to fund the acquisition of the “Expansion Properties” (as such term is used in the management’s discussion and analysis of the Issuer for the three and nine-month period ending September 30, 2021)⁶

11. Section 9(c) of the Debenture provides that an Event of Default occurs when Delta 9 fails to comply with any covenant or provision under the Debenture for 30 days after written notice has been given to it by SNDL:

9. **Events of Default**: Each of the following is an “Event of Default”:

[...]

(c) failure by the Issuer or any of its Subsidiaries to comply with any of the covenants or provisions under this Convertible Debenture for 30 days after written notice has been given to the Issuer by the Holder;

12. Upon the occurrence of an Event of Default, the entire Outstanding Principal amount, plus the MOIC Premium, and accrued and unpaid interest became immediately due and payable upon the issuance of the SNDL Demand

If an Event of Default occurs, the entire outstanding Principal Amount plus the MOIC Premium and accrued and unpaid interest shall be immediately due and payable in cash upon demand of the Holder.⁷

13. Section 11 of the Debenture governs notices, stating:

Notice: The notice provisions contained in Section 12.1 (Notices) of the Note Purchase Agreement dated March 30, 2022 between the

⁶ Debenture, s. 8(e).

⁷ Debenture, s. 9(c).

Issuer and Holder will apply *mutatis mutandis* to this Convertible Debenture.⁸

14. Section 12.1 of the Note Purchase Agreement (the “**Note Purchase Agreement**”).⁹ states:

All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed to have been duly given or made as of the date delivered or sent if delivered personally or sent by email or sent by prepaid courier to the Parties at the following addresses (or at such other addresses as shall be specified by the parties by like notice): [...] ¹⁰

The Breach

15. On April 25, 2022, Delta 9 obtained a loan in the amount of \$4,990,264.37 from one of its shareholders, which loan is due July 15, 2025 (the “**Shareholder Loan**”). The purpose of the loan was to fund the acquisition of the Expansion Properties in accordance with the Use of Proceeds Requirement.¹¹
16. However, by at least August 11, 2022, Delta 9 had breached the Use of Proceeds Requirement (the “**First Breach**”).¹²

The Waivers

17. As discussed in more detail below, following Delta 9’s Breach of the Use of Proceeds Requirement, SNDL and Delta 9 entered into two waivers (defined below collectively as the Waivers). The Waivers waived the Use of Proceeds Requirement in respect of the Shareholder Loan on the terms set out in the Waivers. The Waivers recite that Delta 9 was obligated under s. 8(e) of the Debenture to not incur indebtedness other than in accordance with the Debenture; that Delta 9 had incurred the Shareholder Loan; and that the use of the Shareholder Loan had breached the Use of Proceeds Requirement (i.e., the Breach). Both Waivers provided that if Delta 9 failed to comply with the conditions set

⁸ Debenture, s. 11.

⁹ First Hellard Affidavit at Exhibit “A” (the “**Note Purchase Agreement**”).

¹⁰ Note Purchase Agreement, s. 12.1.

¹¹ First Hellard Affidavit at paras 9 and 10.

¹² First Hellard Affidavit at para 11.

of both waivers, the Waiver would automatically cease to apply without any requirement of SNDL to provide further notice to Delta 9.

18. SNDL and Delta 9 entered into the first waiver on August 11, 2022 (the “**First Waiver**”). Its recitals stated:

Reference is made to the 10% Senior Secured Second-Lien Convertible Debenture (the “Convertible Debenture”) of Delta 9 Cannabis Inc. (the “Issuer”) dated March 30, 2022 and issued to Sundial Growers Inc. (the “Holder”), and capitalized terms used but not defined herein have the meanings given to such terms in the Convertible Debenture.

Whereas pursuant to Section 8(e) of the Convertible Debenture, the Issuer and its Subsidiaries are prohibited from incurring Indebtedness except in compliance with the exceptions set forth in clauses (i) through (viii) of such covenant;

And whereas pursuant to Section 8(e)(vii), the Issuer is permitted to incur certain Indebtedness in an aggregate amount not to exceed \$6 million provided, among other things, that the net proceeds of such Indebtedness are used primarily (along with the net proceeds from an issuance or issuances of equity securities raising at least \$3.0 million) to fund the acquisition of the Expansion Properties (the “Use of Proceeds Requirement”);

And whereas on April 25, 2022 the Issuer received a loan from a shareholder of the Issuer in the amount of \$4,990,264.37 due July 15, 2025 (the “Shareholder Loan”);

And whereas the Issuer had not, as of the date hereof, complied with the Use of Proceeds Requirement in relation to the Shareholder Loan;

[...] ¹³

19. By at least August 22, 2022, Delta 9 failed to comply with requirement (d) of the First Waiver, which, in summary, related to completing a public or private offering by that date.¹⁴
20. Accordingly, the First Waiver automatically ceased to apply.
21. Following the First Waiver ceasing to apply, but prior to 30 days having passed, SNDL and Delta 9 executed the second waiver on September 9, 2022 (the “**Second Waiver**”,

¹³ First Hellard Affidavit at para 12 and Exhibit “D”.

¹⁴ First Hellard Affidavit at para 14.

and together with the First Waiver, the "**Waivers**"). The Second Waiver contained the recitals in the First Waiver listed above, except that one recital was amended to confirm the Breach being waived remained ongoing, as noted below:

And whereas the Issuer had not complied, **and continues to not comply**, with the Use of Proceeds Requirement in relation to the Shareholder Loan;¹⁵ **[emphasis added]**

22. The Second Waiver also added recitals describing the First Waiver's expiry:

And whereas the parties entered into a waiver with respect to the Issuer's compliance with the Use of Proceeds Requirement in relation to the Shareholder Loan on August 11, 2021 [*sic*] (the "**First Waiver**");

And whereas the First Waiver automatically ceased to apply at 5:00 p.m. (Calgary time) on August 22, 2022 as the Issuer failed to comply with a condition subsequent set forth in the First Waiver;¹⁶

23. As with the First Waiver, requirement (b) of the Second Waiver mandates that Delta 9 was required to close the acquisition of the Expansion Properties by March 31, 2023, failing which Delta 9 agreed to immediately repay \$4,000,000 of the Shareholder Loan. As with the First Waiver, the Second Waiver provided that if this condition, or any other, was not satisfied, then the Second Waiver would automatically terminate without any requirement of SNDL to provide further notice to Delta 9:

[...]

(b) To the extent that the acquisition of the Expansion Properties does not close by March 31, 2023, a minimum of \$4,000,000.00 of the Shareholder Loan shall immediately be repaid by the Issuer.

[...]

This Waiver will automatically cease to apply (without any requirement on the part of the Holder to provide notice to the Issuer) if the Issuer fails to comply with any of the requirements set forth in the clauses above.¹⁷ **[emphasis added]**

¹⁵ First Hellard Affidavit at para 15 and Exhibit "E".

¹⁶ First Hellard Affidavit at Exhibit "E".

¹⁷ First Hellard Affidavit at paras 16 and Exhibit "E".

24. The acquisition of the Expansion Properties did not close by March 31, 2023 and Delta 9 did not repay \$4,000,000 of the Shareholder Loan but instead, utilized the proceeds for general corporate purposes.¹⁸
25. Given that Delta 9 failed to comply with the Second Waiver, effective March 31, 2023, the Second Waiver automatically ceased to apply, and an Event of Default occurred the following day (i.e. April 1, 2023).

March 7, 2024 Notice of Default and Automatic Cessation of Waivers

26. On March 7, 2024, SNDL provided written notification to Delta 9 providing notice of default by Delta 9 of the Second Waiver and confirmation that the Second Waiver automatically ceased to apply (the “**Notice Letter**”). The Notice Letter confirms that the Second Waiver automatically ceased to apply without need for further notice and reserved SNDL’s rights in respect of the Debenture or the Waivers:

This letter constitutes written notice of default by Delta 9 Cannabis Inc (“Delta 9”) of **the Waiver** between Delta 9 and SNDL Inc. (“SNDL”) dated September 9, 2022 (the “Second Waiver”). [...]

The Second Waiver set forth a list of compliance requirements, including item (b) below:

“(b) To the extent that the acquisition of the Expansion Properties does not close by March 31, 2023, a minimum of \$4,000,000.00 of the Shareholder Loan shall immediately be repaid by the Issuer.”

As per Delta 9 public filings dated November 13, 2023, the acquisition of the Expansion Properties has not closed. Therefore, as per the language on page 2 of the Second Waiver, the Second Waiver automatically ceases to apply (without any requirement on the part of the Holder to provide notice to the Issuer) given that the Issuer has failed to comply with the above noted requirement.

This letter does not operate as a waiver of any of SNDL’s rights in respect of the Convertible Debenture, First Waiver, Second Waiver or any other agreement it has or may have with the Parties under law.

We request that you confirm receipt of this letter, however confirmation is not required to automatically cease the application

¹⁸ First Hellard Affidavit at para 17.

of the Second Waiver in accordance with its terms.¹⁹ [emphasis added]

May 21, 2024 Demand by SNDL

27. On May 21, 2024, SNDL, by and through its counsel, issued a demand upon Delta 9 (the “**SNDL Demand**”) demanding repayment of the “Total Indebtedness” owing by Delta 9 to SNDL, which was then \$12,512,876.71 plus additional accrued interest, legal fees and expenses and additional costs or amounts recoverable by SNDL Inc. Concurrent demands were issued upon the Guarantors.²⁰

Outstanding Balance

28. On September 12, 2024, Delta 9 made a payment on account of the amounts outstanding under the Debenture in the amount of \$11,696,814.00. Such payment did not include the MOIC Premium, interest at the Default Rate nor SNDL’s recoverable fees, costs and other expenses. The September 12, 2024 payment was made without prejudice to SNDL’s right to claim such amounts from Delta 9.²¹

29. After accounting for the September 12, 2024 payment, the balance outstanding as at December 31, 2024, inclusive of the MOIC Premium, but exclusive of SNDL’s recoverable fees, costs and other expenses, calculated from the date of the Event of Default occurring on April 1, 2023 is set out in the table below:

Period			Outstanding	Interest Rate	Interest Accrued	Interest Paid	Repayment	Payment Gap	Updated Balance		
03/31/23	Principal	\$ 10,000,000.00									
04/01/23	MOIC Premium	\$ 2,000,000.00									
04/01/23			\$ 12,000,000.00						\$ 12,000,000.00		
04/30/23			\$ 12,000,000.00	18%	\$ 177,534.25	\$ 83,347.33		\$ 94,186.92	\$ 12,094,186.92		
05/31/23			\$ 12,094,186.92	18%	\$ 184,891.95	\$ 83,347.33		\$ 101,544.62	\$ 12,195,731.54		
06/30/23			\$ 12,195,731.54	18%	\$ 180,430.00	\$ 83,347.33		\$ 97,082.67	\$ 12,292,814.21		
07/31/23			\$ 12,292,814.21	18%	\$ 187,928.50	\$ 83,347.33		\$ 104,581.17	\$ 12,397,395.38		
08/31/23			\$ 12,397,395.38	18%	\$ 189,527.30	\$ 83,347.33		\$ 106,179.97	\$ 12,503,575.36		
09/30/23			\$ 12,503,575.36	18%	\$ 184,984.40	\$ 83,347.33		\$ 101,637.07	\$ 12,605,212.43		
10/31/23			\$ 12,605,212.43	18%	\$ 192,704.34	\$ 83,347.33		\$ 109,357.01	\$ 12,714,569.44		
11/30/23			\$ 12,714,569.44	18%	\$ 188,105.96	\$ 83,347.33		\$ 104,758.63	\$ 12,819,328.07		
12/31/23			\$ 12,819,328.07	18%	\$ 195,977.67	\$ 83,347.33		\$ 112,630.34	\$ 12,931,958.42		
01/31/24			\$ 12,931,958.42	18%	\$ 197,699.53	\$ 83,347.33		\$ 114,352.20	\$ 13,046,310.61		
02/29/24			\$ 13,046,310.61	18%	\$ 186,580.11	\$ 83,347.33		\$ 103,232.78	\$ 13,149,543.40		
03/31/24			\$ 13,149,543.40	18%	\$ 201,025.90	\$ 83,347.33		\$ 117,678.57	\$ 13,267,221.96		
04/30/24			\$ 13,267,221.96	18%	\$ 196,282.19	\$ 83,347.33		\$ 112,934.86	\$ 13,380,156.82		
05/31/24			\$ 13,380,156.82	18%	\$ 204,551.44			\$ 204,551.44	\$ 13,584,708.26		
06/30/24			\$ 13,584,708.26	18%	\$ 200,979.25			\$ 200,979.25	\$ 13,785,687.51		
07/31/24			\$ 13,785,687.51	18%	\$ 210,751.06			\$ 210,751.06	\$ 13,996,438.56		
08/31/24			\$ 13,996,438.56	18%	\$ 213,972.95			\$ 213,972.95	\$ 14,210,411.52	Per Diem	
09/11/24			\$ 14,210,411.52	18%	\$ 77,086.62			\$ 77,086.62	\$ 14,287,498.13		
09/30/24			\$ 14,287,498.13	18%	\$ 133,871.90		\$ 11,696,814	\$ (11,562,942.29)	\$ 2,724,555.84		
10/31/24			\$ 2,724,555.84	18%	\$ 41,652.11			\$ 41,652.11	\$ 2,766,207.96		
11/30/24			\$ 2,766,207.96	18%	\$ 40,924.72			\$ 40,924.72	\$ 2,807,132.68		
12/31/24			\$ 2,807,132.68	18%	\$ 42,914.52			\$ 42,914.52	\$ 2,850,047.20		
12/31/24			\$ 2,850,047.20	18%							1,405.50

¹⁹ First Hellard Affidavit at para 18 and Exhibit “F”.

²⁰ First Hellard Affidavit at para 20 and Exhibit “G” and “H”.

²¹ First Hellard Affidavit at para 31.

²² First Hellard Affidavit at para 32.

30. Section 17(c) of the GSA provides:

17. COSTS AND EXPENSES

[...]

- (c) Sundial may pay or satisfy any Encumbrances or pay any sum necessary to clear title to any Collateral, and the Debtor agrees to repay the same on demand, plus interest thereon at the Agreed Rate.²³

31. Delta 9 is required to pay SNDL the interest penalty paid by SNDL for the purchase of the Senior Debt (equal to 3-months interest) in the amount of \$270,000.00 (the “**Protective Disbursement**”) in addition to SNDL’s fees, costs and expenses, including legal fees calculated as between a solicitor and own client with a right to full indemnity.²⁴

III. SNDL’S POSITION ON MATTERS IN ISSUE

32. SNDL submits:

- (a) an Event of Default occurred and has been occurring continuously since April 1, 2023. Default Interest at the rate of 18% has accrued since that date and continues to accrue on the Principal Amount and MOIC Premium;
- (b) The Protective Disbursement plus interest thereon calculated at the Default Rate is owing by Delta 9 to SNDL; and
- (c) SNDL is entitled to recover its costs from Delta 9 including legal fees on a solicitor and own client basis with a right to full indemnity, as set out in the relevant loan documents.

IV. LAW AND ARGUMENT

Principles of Contractual Interpretation

33. The goal of contractual interpretation is to ascertain the parties’ objective intentions at the time of the contract’s formation.²⁵ The exercise is grounded in the words of the contract,

²³ First Hellard Affidavit at para 33 and Exhibit “C”, section 17(c).

²⁴ First Hellard Affidavit at para 34.

²⁵ *Sattva Capital Corp. v Creston Moly Corp.*, [2014 SCC 53](#) at paras [47-48](#) and [55](#) [Book of Authorities (“BOA”)
TAB 20]

whose meaning is rooted in the actual language used by the parties. In *Sattva Capital Corp. v Creston Moly Corp.*, the Supreme Court of Canada stated:

[47] [...] the interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction. The overriding concern is to determine “the intent of the parties and the scope of their understanding” [...] To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning:

No contracts are made in a vacuum: there is always a setting in which they have to be placed. . . . In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating.

[...]

[48] The meaning of words is often derived from a number of contextual factors, including the purpose of the agreement and the nature of the relationship created by the agreement [...].

34. A legitimate interpretation will be consistent with the language the parties employed to express their agreement.²⁶ A meaning that strays too far from the actual words fails to give effect to the way in which the parties chose to define their obligations.²⁷
35. The modern rule also urges a “practical, common-sense approach not dominated by the technical rules of construction.”²⁸ Contractual interpretation requires an examination of a contract as a whole, not just the specific words in dispute.²⁹ The words of the provision

²⁶ *Resolute FP Canada Inc. v Ontario (Attorney General)*, [2019 SCC 60](#) at para [76](#) [BOA TAB 18] in dissent, on other grounds citing Geoff R. Hall, *Canadian Contractual Interpretation Law* 3rd ed. (Toronto: LexisNexis, 2016) at 9-11 [BOA TAB 22].

²⁷ *Resolute FP Canada Inc. v Ontario (Attorney General)*, [2019 SCC 60](#) at para [76](#) [BOA TAB 18], in dissent, on other grounds

²⁸ *Sattva Capital Corp v Creston Moly Corp.*, [2014 SCC 53](#), at para [47](#) [BOA TAB 20]; see also Geoff R. Hall, *Canadian Contractual Interpretation Law*, 4th ed (Toronto: LexisNexis Canada, 2020) at para 2.1.1 [BOA TAB 23].

²⁹ Geoff R. Hall, *Canadian Contractual Interpretation Law* 4th ed (Toronto: LexisNexis Canada, 2020) at 2.2.1 [BOA TAB 23] citing *Hnatiuk et al. v Court et al.*, [2010 MBCA 20](#) at para [43](#) [BOA TAB 10].

must be considered in harmony with the rest of the contract and in light of its purposes and commercial context.³⁰

36. Further, in the commercial context, an accurate interpretation is one that accords with sound business sense and commercial principles.³¹ While commercial efficacy is not a policy goal on its own and should not be used to further the goal of giving effect to the parties' intentions, where one possible interpretation will allow the contract to meet the commercial objective, and the other will not, then the former must be chosen.³²

The Event of Default Occurred on April 1, 2023

37. The Event of Default occurred on April 1, 2023. As discussed in greater detail below, such interpretation of the Debenture is correct whether the Waivers constituted written notice as contemplated by the Debenture, or, in the alternative, the Waivers amended the Debenture's notice requirements as a subsequent agreement among the parties. In either case, as of April 1, 2023, an Event of Default occurred and the entire Principal Amount, the MOIC Premium, the Protective Disbursements, and accrued and unpaid interest became immediately due and payable.

The Waivers Constituted Notice of Default

38. SNDL submits that the Waivers constituted written notice of Delta 9's "failure to comply with any of the covenants ... under [the] Debenture for 30 days after written notice ..."³³. This interpretation is consistent with relevant legal principles and clear on the plain language of the Debenture.
39. The purpose of a provision requiring notice of an apprehended breach is to provide the party in breach an opportunity to remedy its breach. In *Pioneer Hi-Bred International Inc. v Richardson International Ltd.*, the Manitoba Court of Queen's Bench considered a

³⁰ Geoff R. Hall, *Canadian Contractual Interpretation Law* 4th ed (Toronto: LexisNexis Canada, 2020) at 2.2.1 [BOA TAB 23] citing *Tercon Contractors Ltd. v British Columbia (Transportation and Highways)*, [2010 SCC 4](#) at para 64 [BOA TAB 21].

³¹ Geoff Hall, *Canadian Contractual Interpretation Law*, 4th ed (Toronto: LexisNexis Canada, 2020) at 2.6.1 [BOA TAB 23]; *Kentucky Fried Chicken Canada v Scott's Food Services Inc.*, [1998 CanLII 4427](#) (ON CA) at para 27 [BOA TAB 13]; *Resolute FP Canada Inc. v Ontario (Attorney General)*, [2019 SCC 60](#) at para 79 [BOA TAB 18], in dissent, on other grounds.

³² Geoff Hall, *Canadian Contractual Interpretation Law*, 4th ed (Toronto: LexisNexis Canada, 2020) at 2.6.1 [BOA TAB 23].

³³ First Hellard Affidavit at paras 13 and 16 and Exhibits "D" and "E".

provision entitling a party to terminate a contract upon providing the counterparty 30 days written notice of an apprehended breach. The court observed the non-defaulting party was entitled to the remedy provided given that the notice specified the apprehended breach and consequences of non-compliance:

[58] [...] For such a remedy to be forthcoming, specifics of the particular breach complained of must be given in sufficient detail so as to enable the party to understand the behaviour being impugned by the other party. Notice need be clear and concise as its time period for termination has started as of a given letter. Such clarity should leave no doubt in the mind of the other party of the possible and expected consequences of non-compliance.³⁴

40. The Debenture incorporates s. 12.1 of the Note Purchase Agreement; which provides that notice must be delivered in writing and is “deemed to have been duly given or made as of the date delivered or sent [...]”. No specific format or content is required.³⁵

Events leading to the execution and delivery of both Waivers which, subject to the conditions contained in the Waivers, waived the Breach

41. The Waiver enabled Delta 9 to understand the behaviour being impugned by SNDL, was clear and concise irrespective of the time period for termination, and there can be no objective reading of the Waiver other than the failure to comply with the conditions in the Waivers would lead to the automatic cessation of the Waivers and the occurrence of an Event of Default.
42. In this regard:
- (a) an Event of Default would have occurred 30 days after August 22, 2022 but for SNDL issuing, within a 30 day period, the Second Waiver;
 - (b) by at least March 31, 2023, Delta contravened the requirement that the acquisition of the Expansion Properties was to have occurred; and
 - (c) the Second Waiver automatically ceased to apply, an Event of Default occurred the next day (i.e. April 1, 2023) and the entire Principal Amount plus the MOIC Premium and accrued and unpaid interest became due and payable in cash.

³⁴ *Pioneer Hi-Bred International Inc. v Richardson International Ltd.*, [2010 MBQB 161](#) at para 58 [BOA TAB 16].

³⁵ Note Purchase Agreement, s 12.1.

In the Alternative, the Waivers Amended the Notice of Default

43. If the Waivers did not constitute written notice of default under the Debenture, then the Waivers constitute an amendment to Section 9(c) of the Debenture, which stipulates that an Event of Default occurs for 30 days after SNDL provided written notice of the Breach to Delta 9.
44. It is well established that parties entering into supplementary agreements may waive or amend a right to receive a further notice of default based on their knowledge or conduct. For example, in *Frenchmen's Creek Estates Inc. v Tuckernuck Mortgage Administration Inc.*, the Ontario Superior Court held that a debtor waived the right to notice of the default because a supplementary agreement indicated that the debtor was aware of the requirements for compliance and that a failure on the part of the debtor to make the requisite payments constituted default.³⁶
45. In the matter at bar, by executing the Waivers, Delta 9 agreed that in consideration of receiving the benefit of the Waivers, instead of requiring a "written notice of default", the Waivers amended Section 9(b) of the Debenture by deleting the requirement on the part of SNDL to provide further written notice to Delta9 of the Breach.
46. Delta 9, in executing the Waivers, expressly acknowledged the Breach and the amended requirements for notice in the event that Delta 9 failed to comply with the Waiver. Indeed, each Waiver confirmed expressly that SNDL was under no obligation to provide any notice to Delta of the automatic cessation: "this Waiver will automatically cease to apply (without any requirement on the part of the Holder to provide notice to the Issuer) if [Delta 9] fails to comply with any of the requirements set forth in the clauses above".

The MOIC Premium is due and owing

47. A contractual provision that seeks to predetermine recoverable damages for possible future breaches may be considered an unenforceable penalty depending on the factual

³⁶ *Frenchmen's Creek Estates Inc. v Tuckernuck Mortgage Administration Inc.*, [2007 CanLII 7404](#) (ON SC) at para [29](#) [BOA TAB 5], rev'd on other grounds in [2008 ONCA 107](#) [BOA TAB 6].

matrix and the interpretation of the contract as a whole. The onus for demonstrating a contractual term is an unenforceable penalty rests with the party seeking to set it aside.³⁷

48. Traditionally, the common law distinguished between an unenforceable penalty clause and an enforceable liquidated damages clause based on whether the clause represented a genuine pre-estimate, made at the time of contracting, of the damages to be suffered in the event of a breach.³⁸
49. Canadian jurisprudence has evolved and mandates a holistic assessment be undertaken to determine whether the stipulation in question is fair and reasonable.³⁹
50. Courts will typically refrain from interfering in contractual relationships. In *Tercon Contractors Ltd v British Columbia (Transportation and Highways)*, Binnie, J. wrote that “there is [...] a public interest in leaving knowledgeable parties free to order their own commercial affairs” and so “freedom of contract will often, but not always, trump other societal values.”⁴⁰
51. A court should not “strike down a penalty clause as being unconscionable lightly because it is a significant intrusion on the freedom of contract.”⁴¹ The Supreme Court of Canada addressed the penalty doctrine directly in *Elsley v JG Collins Ins. Agencies*; it found it is difficult to justify striking a penalty clause absent oppression, with Justice Dickson writing for a unanimous court:

It is now evident that the power to strike down a penalty clause is a blatant interference with freedom of contract and is designed for the sole purpose of providing relief against oppression for the party having to pay the stipulated sum. It has no place where there is no oppression. [emphasis added]⁴²

³⁷ *Infinite Maintenance Systems Ltd. v ORC Management Ltd.*, [2001 CanLII 24082](#) (ON CA) at para 13 [BOA TAB 11], citing *Canadian General Electric Co. v Canadian Rubber Co. of Montreal*, [1915 CanLII 45](#) (SCC) [BOA TAB 1].

³⁸ Geoff Hall, *Canadian Contractual Interpretation Law*, 4th ed (Toronto: LexisNexis Canada, 2020) at 9.18.3 [BOA TAB 23].

³⁹ Geoff Hall, *Canadian Contractual Interpretation Law*, 4th ed (Toronto: LexisNexis Canada, 2020) at 9.18.4 [BOA TAB 23].

⁴⁰ *Tercon Contractors Ltd v British Columbia (Transportation and Highways)*, [2010 SCC 4](#) at paras 122-123 [BOA TAB 21].

⁴¹ *MTK Auto West Ltd. v Allen*, [2003 BCSC 1613](#) at para 22 [BOA TAB 15].

⁴² *Elsley v J.G. Collins Ins. Agencies*, [1978 CanLII 7](#) (SCC), at para 47 [BOA TAB 4].

52. In *HF Clarke Ltd. v Thermidaire Corp. Ltd*, Chief Justice Laskin, as he then was, observed that the role of the courts in interpreting alleged penalty clauses is to be concerned with fairness and reasonableness in the surrounding circumstances.⁴³ Judicial interference is justified if the contractual result would otherwise be “a grossly and punitive response to the problem to which it was addressed”.⁴⁴
53. Courts typically enforce contractual provisions such as the MOIC Premium unless the contractual provision imposes an “extravagant and unconscionable” amount in comparison to the greatest loss that could conceivably be provided to have followed the breach and if there is oppression.⁴⁵

SNDL is Entitled to Interest on the MOIC Premium together with interest thereon at the Default Rate

54. Liability to pay the MOIC Premium is either triggered (i) by Delta 9’s voluntary redemption of a portion or the entirety of the Debenture⁴⁶, or (ii) an Event of Default. The amount of premium payable equates to all required interest payments due from the date the MOIC Premium is triggered until repayment. MOIC Premium is defined as:

1. **Definitions:** In this Convertible Debenture, **unless there is something in the subject matter or context inconsistent therewith:**

- (ff) **“MOIC Premium”** means, with respect to (i) any portion of this Convertible Debenture called for redemption pursuant to Section 3 or (ii) the entire Principal Amount in the event of an Event of Default, all required interest payments due from the redemption date or the date the Event of Default first occurred, as applicable, through to the Maturity Date calculated at the rate of 10.00% per annum.⁴⁷ **[emphasis added]**

⁴³ *HF Clarke Ltd. v Thermidaire Corp. Ltd.*, [1974 CanLII 30](#) (SCC) at 331 **[BOA TAB 9]**.

⁴⁴ *HF Clarke Ltd. v Thermidaire Corp. Ltd.*, [1974 CanLII 30](#) (SCC) at 338 **[BOA TAB 9]**.

⁴⁵ *Prudential Insurance Co. of America v Cedar Hills Properties Ltd.* (1994), [1994 CanLII 1960 \(BC CA\)](#), at para. 16 **[BOA TAB 17]**, quoting with approval from *Dunlop Pneumatic Tyre Co. v New Garage & Motor Co.*, [1915] A.C. 79 (H.L.).

⁴⁶ Debenture, s. 3.

⁴⁷ Debenture, s. 1(ff).

55. Section 2(c) of the Debenture, as previously noted, stipulates that during the continuance of an Event of Default, the interest rate will be increased from 10% to 18%.⁴⁸
56. Section 8(b) of the Debenture, contains Delta 9's covenant and agreement to pay interest on any overdue principal and any overdue premium at the applicable rates. Section 8(b) states:

Payment of Principal, Premium and Interest

The Issuer covenants and agrees for the benefit of the Holder that it will duly and punctually pay **the principal of, premium (if any) and interest** on this Convertible Debenture in accordance with the terms hereof. In addition, the Issuer shall **pay interest on overdue principal and premium (if any) at the rate then applicable to this Convertible Debenture, and it will pay interest on overdue instalments of interest at the same rate** to the extent lawful.⁴⁹
[emphasis added]

57. The rate of interest to be paid on the MOIC Premium following an Event of Default is the Default Rate of 18% because:
- (a) the definition of MOIC is expressly subject to the stipulation that the defined term is subject to the proviso that there is nothing in the subject matter or context of the definition inconsistent with the Debenture. In this case, the specific provisions in Section 2(c) and 8(b) (which mandate payment of Default Interest) at the rate of 18% renders the subject matter and context of the definition of MOIC Premium which stipulates that interest is payable on the MOIC Premium at a rate of 10% is inconsistent with operative terms of the Debenture; and
 - (b) Section 2(c) expressly provides that SNDL is entitled to "interest on overdue principal and premium (if any)" at the applicable interest rate. The MOIC Premium is a premium by definition. Read in its ordinary grammatical sense, references to the ordinary and colloquial category "premium" necessarily includes the MOIC Premium.

⁴⁸ Debenture, s. 2(b).

⁴⁹ Debenture, s 8(b).

58. The interpretation of a contract always begins with the words it uses.⁵⁰ Each aspect of contractual interpretation is rooted in the actual language used by the parties. The first tenet of contract construction is to give words in a contract their plain and ordinary meaning unless to do so would result in an absurdity.⁵¹ In the absence of a specific definition for a term of a contract, courts are to have resort to the plain ordinary meaning of the term.⁵²
59. Here, the plain ordinary meaning of the term “premium”, an undefined term, does not restrict the word to only *some* premiums or exclude the MOIC Premium. There is no principle of contractual interpretation to support the position that a category expressed in ordinary language must or should be narrowly interpreted to exclude an instance of that category.
60. In *Goodfellow v CUMIS General Insurance Company*, the Ontario Superior Court considered whether a “Corporation”, a defined term, should be excluded from the undefined term of “person” which CUMIS argued must apply only to human beings.⁵³ The fact that “Corporation” was defined as an entity under the agreement did not mean the undefined term “person” would therefore exclude a “Corporation” where the context did not so require:

[43] When I consider the language of the exception in the context of the D&O Policy as a whole, I do not agree that the word “person” should be given a meaning other than its ordinary meaning, which, in the context of a person making a claim or bringing an action, includes both an individual and a corporation. It is not necessary to give this word a narrower and more limited meaning. The purpose of the exception applies to both individuals and corporations. If CUMIS wished to limit its risk and exclude coverage for a person bringing a derivative action which is a corporation, it could have done so using clear language. I conclude that the language of the exception is not ambiguous and the word “person”, as used in the exception, includes a person that is a corporation.⁵⁴

⁵⁰ Geoff Hall, *Canadian Contractual Interpretation Law*, 4th ed (Toronto: LexisNexis Canada, 2020) at 2.1.1 [BOA TAB 23].

⁵¹ *Group Eight Investments Ltd. v Taddei*, [2005 BCCA 489](#) at paras. 19-22 [BOA TAB 8].

⁵² *Group Eight Investments Ltd. v Taddei*, [2005 BCCA 489](#) at paras. 20 [BOA TAB 8].

⁵³ *Goodfellow v CUMIS General Insurance Company*, [2021 ONSC 3604](#) at para 41 [BOA TAB 7].

⁵⁴ *Goodfellow v CUMIS General Insurance Company*, [2021 ONSC 3604](#) at para 43 [BOA TAB 7].

61. Yet words alone are not enough. As part of the contextual analysis, language must not be closely parsed, but rather be understood in the manner that a reasonable commercial person would construe them:

Words are therefore interpreted in the way in which a reasonable commercial person would construe them. And the standard of the reasonable commercial person is hostile to technical interpretations and undue emphasis on niceties of language.⁵⁵

62. Even if it were not readily evident from the language of the Debenture, including s. 2(c), that the MOIC Premium is included within the category expressed by references to “premium”, the use in s. 2(c) of the clarifying phrase “(if any)” leaves no doubt on this matter. The meaning of “premium (if any)” is plain and obvious: it captures all premiums under the Debenture, including defined premiums such as the MOIC Premium and any others.
63. To the extent Delta 9 argues that any ambiguity as to SNDL’s entitlement to charge interest at the Default Rate on the MOIC Premium should be resolved in its favour because it did not draft the Debenture, thus engaging the doctrine of *contra proferentem*, then SNDL submits that the doctrine is not engaged in the facts of this case.
64. The Alberta Court of Appeal has confirmed that the *contra proferentum* doctrine should not be invoked where there are sophisticated parties represented by lawyers and where both had a meaningful opportunity to participate in the negotiation of the instrument.⁵⁶ SNDL and Delta 9 are sophisticated commercial entities, both represented by lawyers, whose commercial relationship involved numerous contractual arrangements outlining their financial obligations to one another.

The Parties are Sophisticated Commercial Parties with Equal Bargaining Power

65. A stipulated-consequence-on-breach clause may also be considered a penalty where there is a gap in sophistication or inequality of bargaining power between the parties. In his dissenting opinion in *Chandos*, Wakeling, JA reviewed the existing case law on penalty

⁵⁵ Geoff Hall, *Canadian Contractual Interpretation Law*, 4th ed (Toronto: LexisNexis Canada, 2020) at 2.6.4 [BOA TAB 23].

⁵⁶ *Royal Bank of Canada v Swartout*, [2011 ABCA 362](#) at para 48 [BOA TAB 19].

clauses and held that, where parties had the resources to retain counsel, a stipulated-consequence-on-breach clause is enforceable absent oppression, writing:

Whenever parties with capacity and sufficient resources to retain legal counsel make commercial bargains the law is predisposed to enforce their bargains. This is so whether or not they actually retained counsel. There is a legal presumption that commercial parties know the burdens and benefits their bargain bestows on them and whether the terms are improvident or suspect for other reasons.⁵⁷

66. Equity requires courts to intervene where a term in a commercial contract is so “manifestly grossly one-sided that its enforcement would bring the administration of justice into disrepute.”⁵⁸ This as a “bright-line test” that stipulated-consequence-on-breach terms in commercial contracts will “seldom meet”.⁵⁹
67. SNDL and Delta 9 are sophisticated corporate entities with the benefit of legal counsel.⁶⁰ There is no evidence of oppression or disproportionate bargaining power between the parties, let alone a manifestly and grossly one-sided agreement and, respectfully, this Court should not infer otherwise.⁶¹
68. The unifying principles outlined above mandate that Courts generally consider “two broad factors” when assessing oppression in the context of a stipulated-consequence-on-breach clause: the unconscionability of the stipulated sum, and the sophistication and bargaining power of the parties.⁶²
69. Neither factor is present here.
70. In this case, the MOIC Premium was included to compensate SNDL for loss of interest income if Delta 9 repaid the SNDL prior to maturity, either voluntarily or involuntarily.⁶³

⁵⁷ *Capital Steel Inc v Chandos Construction Ltd*, [2019 ABCA 32](#) at para [191](#) [BOA TAB 2], aff’d [2020 SCC 25](#) [BOA TAB 3].

⁵⁸ *Capital Steel Inc v Chandos Construction Ltd*, [2019 ABCA 32](#) at para [106](#) [BOA TAB 2], aff’d [2020 SCC 25](#) [BOA TAB 3]; see also *Jinnah v Alberta Dental Association and College*, [2022 ABCA 336](#) at para 16 [BOA TAB 12].

⁵⁹ *Capital Steel Inc v Chandos Construction Ltd*, [2019 ABCA 32](#) at paras [107-108](#) [BOA TAB 2], aff’d [2020 SCC 25](#) [BOA TAB 3].

⁶⁰ First Hellard Affidavit at para 3.

⁶¹ *Mimi’s Parlour Ltd v 1816112 Alberta Ltd*, [2021 ABQB 254](#) at para [32](#) [BOA TAB 14].

⁶² Paul-Erik Veel, “Penalty Clauses in Canadian Contract Law” (2008) 66:2 UT Fac L Rev 229 at 239 [BOA TAB 24].

⁶³ First Hellard Affidavit at para 26.

71. Additionally, SNDL negotiated the MOIC Premium to provide stability and predictability on the theory that Delta 9 would have been less likely to repay SNDL early given the additional costs Delta would incur by making such early repayment, thus ensuring that SNDL would receive the interest income it bargained for.⁶⁴
72. Moreover, the MOIC Premium was negotiated to account for the financial losses and administrative costs associated with recovering the outstanding amounts that are owing by Delta 9 following an Event of Default. The MOIC Premium is intended to mitigate these losses which is especially important in this case where SNDL is forced to accept early repayment due to Delta 9's default.⁶⁵

Protective Disbursement and Costs

73. Section 17(c) of the GSA provides:

17. COSTS AND EXPENSES

[...]

- (c) Sundial may pay or satisfy any Encumbrances or pay any sum necessary to clear title to any Collateral, and the Debtor agrees to repay the same on demand, plus interest thereon at the Agreed Rate.⁶⁶

74. Delta 9 is required to pay SNDL the interest penalty paid by SNDL for the purchase of the Senior Debt (equal to 3-months interest) in the amount of \$270,000.00.⁶⁷
75. SNDL's fees, costs and expenses, including legal fees calculated as between a solicitor and own client with a right to full indemnity are recoverable from Delta 9.

V. CONCLUSION

76. Delta 9 did not comply with its obligations under the Debenture and was in Breach of the Debenture as of August 11, 2022. SNDL provided two Waivers intended to afford Delta 9 an opportunity to comply with the Debenture. All told, Delta 9 was afforded 233 days to

⁶⁴ First Hellard Affidavit at para 27.

⁶⁵ First Hellard Affidavit at para 28.

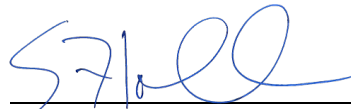
⁶⁶ First Hellard Affidavit at para 33 and Exhibit "C", s. 17(c).

⁶⁷ First Hellard Affidavit at para 34.

remedy the Breach. On any objective measure, the logical interpretation of the Debenture is that the Event of Default occurred upon the automatic cessation of the Second Waiver.

77. Further, the Debenture is clear that an Event of Default triggers an increase in the interest rate to 18%, and that such rate is applicable to interest on principal and premiums, if any, including the MOIC Premium. The Default Rate is reasonable, reflects the risk that SNDL took on in lending to Delta. SNDL and Delta 9 are sophisticated commercial parties with equal bargaining power and agreed to these terms, with the benefit of legal advice, with full appreciation for the consequences. Default interest on the MOIC Premium should be ordered.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 19TH DAY OF DECEMBER, 2024.

A handwritten signature in blue ink, appearing to read 'S7100', is positioned above a horizontal line.

Sean Collins, KC, Lance Williams
and Ashley Bowron
Counsel to SNDL Inc.

VI. LIST OF AUTHORITIES AND DOCUMENTS

Case Law

1. *Canadian General Electric Co. v Canadian Rubber Co. of Montreal*, [1915 CanLII 45](#) (SCC);
2. *Capital Steel Inc v Chandos Construction Ltd*, [2019 ABCA 32](#);
3. *Chandos Construction Ltd. v. Deloitte Restructuring Inc.*, [2020 SCC 25](#);
4. *Elsley v J.G. Collins Ins. Agencies*, [1978 CanLII 7](#) (SCC);
5. *Frenchmen's Creek Estates Inc. v Tuckernuck Mortgage Administration Inc.*, [2007 CanLII 7404](#) (ON SC);
6. *Frenchmen's Creek Estates Inc. v. Tuckernuck Mortgage Administration Inc.*, [2008 ONCA 107](#);
7. *Goodfellow v CUMIS General Insurance Company*, [2021 ONSC 3604](#);
8. *Group Eight Investments Ltd. v Taddei*, [2005 BCCA 489](#);
9. *HF Clarke Ltd. v Thermidaire Corp. Ltd.*, [1974 CanLII 30](#) (SCC);
10. *Hnatiuk et al. v Court et al.*, [2010 MBCA 20](#);
11. *Infinite Maintenance Systems Ltd. v ORC Management Ltd.*, [2001 CanLII 24082](#) (ON CA);
12. *Jinnah v Alberta Dental Association and College*, [2022 ABCA 336](#);
13. *Kentucky Fried Chicken Canada v Scott's Food Services Inc.*, [1998 CanLII 4427](#) (ON CA);
14. *Mimi's Parlour Ltd v 1816112 Alberta Ltd*, [2021 ABQB 254](#);
15. *MTK Auto West Ltd. v Allen*, [2003 BCSC 1613](#);
16. *Pioneer Hi-Bred International Inc. v Richardson International Ltd.*, [2010 MBQB 161](#);
17. *Prudential Insurance Co. of America v Cedar Hills Properties Ltd.* (1994), [1994 CanLII 1960 \(BC CA\)](#);
18. *Resolute FP Canada Inc. v Ontario (Attorney General)*, [2019 SCC 60](#);
19. *Royal Bank of Canada v Swartout*, [2011 ABCA 362](#);
20. *Sattva Capital Corp. v Creston Moly Corp.*, [2014 SCC 53](#);
21. *Tercon Contractors Ltd. v British Columbia (Transportation and Highways)*, [2010 SCC 4](#);

Secondary Sources

22. Geoff R. Hall, *Canadian Contractual Interpretation Law* 3rd ed. (Toronto: LexisNexis, 2016);
23. Geoff R. Hall, *Canadian Contractual Interpretation Law*, 4th ed (Toronto: LexisNexis Canada, 2020); and,
24. Paul-Erik Veel, "Penalty Clauses in Canadian Contract Law" (2008) 66:2 UT Fac L Rev 229.