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COURT OF QUEEN'S BENCH OF MANITOBA

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) JUDGMENT DELIVERED:
) September 15, 2020
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JOYAL C.J.Q.B.

I. INTRODUCTION

[1] This is a motion brought pursuant to Queen's Bench Rule 63 for a stay of an Order pending appeal. The Order under appeal relates to the access to and the production of certain documents and information in the possession of a non-party.

[2] While the eventual appeal will address the merits and the legal justification for the Order in question, there is no denying that this motion, and the underlying appeal, once again, bring into high relief the often-expressed concern (by appellate courts) respecting interlocutory appeals of discretionary decisions in relation to procedural issues.

[3] In the particular circumstances of this case, the discretionary decision now under appeal, and for which the stay is sought, relates to an issue of production. That procedural issue arose in the context of a proceeding whose unique complexity and obvious need for expeditious and proportionate progress, easily satisfied the rigorous requirements justifying the provision of the special and enhanced judicial oversight that comes with the designation of "case management". In short, the decision under appeal relates to a procedural determination arising from this Court's management of a cumbersome and complicated civil action (as requested or agreed to by a number of the parties).

[4] Following submissions made on a number of motions heard in June 2020, and as part of this Court's case management of this complex action, on August 7, 2020, this Court granted an Order compelling the Royal Canadian Mounted Police (the "RCMP"), a

non-party, to produce to the plaintiff (the "City") certain documents and information in its possession. The Order also dismissed the motion of Caspian Projects Inc., Caspian Construction Inc., Armik Babakhanians, Shaun Andre Babakhanians, Jenik Babakhanians, Triple D Consulting Services Inc., Pamela Anderson, 4816774 Manitoba Ltd. operating as Mountain Construction, JAGS Development Ltd., Brooke Holdings Ltd., Logistic Holdings Inc. and JAW Enterprises Inc. (collectively the "Caspian Defendants") to strike portions of the affidavits of Michael Jack sworn January 6, 2020 and March 21, 2020 and the affidavits of Victor Neufeld affirmed January 8, 2020 and April 9, 2020. In connection to the August 7, 2020 Order, this Court's written reasons were released in ***Winnipeg (City) v. Caspian Projects Inc. et al.***, 2020 MBQB 129.

[5] The Caspian Defendants have now appealed the August 7, 2020 Order and, with this motion, move for a stay pending the appeal.

[6] On this motion for a stay, this Court is being asked to determine whether, given the presumption of correctness attaching to this Court's decision now under appeal, the request (for the stay) represents one of those "clearest of cases" deserving of a stay of an interlocutory order. To make that determination, this Court must answer the following questions, which are questions similar to those raised for a court's consideration in the context of an injunction:

1. Is there an arguable case that the judgment under appeal is wrong?

2. Could the applicants, unless the stay is granted, suffer irreparable harm, namely harm that is not susceptible or is difficult to be compensated in damages?

3. On the balance of convenience, which of the parties involved would suffer the greater harm from the granting or the refusal to grant a stay pending disposition of the appeal on its merits?

See ***RJR-MacDonald Inc. v. Canada (Attorney General)***, [1994] 1 S.C.R. 311; ***Chicago Blower Corp. v. 141209 Canada Ltd.***, 1990 CarswellMan 127 (MBCA) ("***Chicago Blower***").

[7] For the reasons that follow, the Caspian Defendants' motion for a stay pending appeal is dismissed.

II. FACTUAL BACKGROUND

[8] The City's claim involves allegations that the defendants defrauded the City during the construction of the Winnipeg Police Services Headquarters ("WPSHQ Project") by submitting fraudulently-created or altered quotes and invoices, which did not reflect the actual costs of the work on the project, or, by fraudulently approving these invoices and quotes, and by paying and receiving bribes and kickbacks in return for participation or complicity in the identified fraudulent invoicing scheme.

[9] Following the completion by the RCMP of its investigation into the WPSHQ Project and after the determination by the Manitoba Prosecutions Service to not lay charges, the City in the context of its action, filed a motion to require the RCMP to produce to the City, certain documents and information in its possession relating to the WPSHQ Project. As earlier noted, that Order was granted on August 7, 2020.

III. LEGAL BACKDROP

[10] The earlier three questions set out at paragraph six that need be considered on this motion are to be referenced not as separate hurdles, but as interrelated considerations. See ***Apotex Fermentation Inc. v. Novopharm Ltd.***, 1994 CanLII

16694 (MB CA) at para. 14. In other words, the sometimes overlapping analysis and answers to those questions will hopefully permit the Court to engage in a balanced and informed calibration that points to a just and equitable determination pending appeal.

[11] In the particular circumstances of this case, my consideration of the relevant three questions will be undertaken against a backdrop of an increasing body of jurisprudence challenging and resisting interlocutory appeals of discretionary procedural decisions. A sampling of that jurisprudence is cited and discussed immediately below.

[12] Courts have regularly determined that appeals of interlocutory orders are neither desirable nor advisable. See ***Doyle v. Suche***, 2019 MBCA 67 at paras. 9-11. The Manitoba Court of Appeal in ***Loeppky et al. v. Taylor McCaffrey LLP***, 2015 MBCA 83, considered an appeal of a discretionary order which directed the defendant's motion for summary judgment be heard prior to examinations for discovery. The Court determined that "an appellate court will only be justified in interfering if the motion judge misdirected himself or if his decision is so clearly wrong as to amount to an injustice" (at para. 2). The Court went on to add (at para. 3):

> Given this highly deferential standard of review and the increasing importance of "a proportionate, more expeditious and less expensive means to achieve a just result" (*Hryniak v Mauldin*, 2014 SCC 7 at para 4, [2014] 1 SCR 87), counsel should carefully consider the wisdom of appealing interlocutory procedural orders that are primarily concerned with management of the civil litigation process. Rarely will such appeals be successful.
>
> [emphasis added]

[13] In ***Winnipeg (City of) v. The Neighbourhood Book Store and Café Ltd.***, 2019 MBCA 3 (CanLII), the Manitoba Court of Appeal affirmed its approach to interlocutory appeals. The Court noted that "normally, interlocutory appeals should be

discouraged both in civil and criminal matters" as they can take on a life of their own and "[t]hey are often a significant source of delay and an inefficient use of judicial resources" (at para. 78).

[14] Even in the more specific context of an interlocutory stay, it is recognized that there is a heavy onus on an applicant. In ***Chicago Blower***, Monnin CJM noted that "heavy onus on the applicants" as he also noted the presumption in favour of the correctness of the decision, which in that case, was also a matter of judicial discretion (at para. 8).

[15] The heavy onus on the party seeking the stay was confirmed in the Manitoba Court of Queen's Bench decision in ***Alleyn-Dornn v. Dornn***, 2011 MBQB 117 (CanLII) ("***Dornn***"), where the Court was considering a stay of an order in the context of a family law proceeding. Following reference to the Manitoba Court of Appeal's judgment in ***Chicago Blower*** and in noting that there is "a heavy onus on the applicants since the presumption is in favour of the correctness of the decision" (at para. 6), the Court at para. 7 went on to note that:

> It is also reasonable to consider the onus a heavier one when it comes to stays of interim Orders, given the Court of Appeal's past pronouncements of which *Viner v. Viner*, 2010 MBCA 85, is only one example. Therefore as I proceed to consider the stay issue I need to recognize the Order of sale is final relief and the care and control Order is interim only.

[16] Finally, I note the judgment of the Federal Court in ***Wellcome Foundation Ltd. v. Novopharm Ltd.***, 1992 CarswellNat 705 (FCA), where the Court summarized the burden on the party seeking a stay by explaining that a stay of an interlocutory order should only be granted in the "clearest of cases" (at para. 17).

[17] As I stated earlier, the jurisprudential commentary respecting the desirability and advisability of interlocutory appeals provides an undeniable backdrop against which I must consider the three interrelated questions that will decide this motion. Although that commentary with respect to interlocutory appeals can in no way be determinative on this present motion, it may to some extent, inform some aspects of my analysis in respect of the three questions that I must address. I will now move to my analysis with respect to those three questions.

Is there an arguable case that the judgment under appeal is wrong?

[18] There is no question that, in the present case, arguments can and will be made on appeal that suggest, for example, that this Court erred in law in failing to find that the RCMP was not lawfully in possession of the documents and information in question. Those arguments were made on the original motion. Similarly, arguments can and will be made on appeal that this Court erred in finding that Rule 30.10 could be used to provide access to documents that the Caspian Defendants say are not lawfully in the possession of a non-party. Those arguments were also made on the original motion. These are just some of the arguments that may be raised on appeal. That said, and knowing that arguments can be made in every case under appeal, the more relevant and determinative question that must be asked is whether this is a case where the heavy onus on the applicants has been discharged so as to demonstrate that there are not only arguments to be made, but arguments with some prospect of success. That question must be answered in the context and in the circumstances of this particular case.

[19] The City is correct to argue that a judge managing a complex case involving serious allegations of fraud and conspiracy (where there are hundreds of thousands of documents to be reviewed by one means or another) has the discretion to determine interlocutory procedural questions. As noted earlier, that has been acknowledged in various ways in the appellate jurisprudence. Nonetheless and notwithstanding the presumption of correctness for interlocutory procedural decisions (especially within case management framework), it need be acknowledged that the threshold for determining an arguable case is relatively low. Despite my confidence in the analysis that I conducted in coming to the determinations that I was required to make in granting the August 7, 2020 Order, I note for example that there is no authority specifically on point whereby a Manitoba court, or a court of comparable jurisdiction, has granted a party access to documents which the Caspian Defendants suggest should have been returned to the defendants because of the alleged expiration of detention periods. While I remain unconvinced of the strength of such arguments as raised on appeal, they are potentially purer questions of law (and not just judicial discretion) which may, as a consequence, attract on appeal a less deferential standard of review. In any event, assuming without deciding that such may be the case, in the context of this case, the issues raised by the Caspian Defendants on appeal, whether they are ultimately successful or not, or whether they, too, will be the subject of negative appellate commentary flowing from the interlocutory nature of the appeal, represent issues that are, for the purposes of my consideration of this first of three questions, not arguments that can be considered frivolous or vexatious.

[20] As it relates to this first question, I am prepared to assume without deciding that Caspian's case on appeal is an arguable case. My determination/working assumption in this regard, however, is not and will not be dispositive as I must now still address the other two questions (along with this first question) as interrelated considerations.

Could the Caspian Defendants suffer irreparable harm unless the stay is granted?

[21] Considering irreparable harm, I note at the outset that one of the central arguments invoked by the Caspian Defendants in opposing the motion for non-party production, was necessity. In that regard, in opposing the early non-party production, the Caspian Defendants emphasized repeatedly that, given the fact that they (the Caspian Defendants) have been given by the RCMP, copies of the documents and information in possession of the RCMP, the City could (subject to arguments about privilege) easily access those documents and information in the ordinary course of discovery. I mention that position because it provides a reference point for assessing the coherence and credibility of some of the arguments made by the Caspian Defendants as it relates to their position on irreparable harm (and in relation to the balance of convenience).

[22] The Caspian Defendants now contend that they would suffer irreparable harm if, pending appeal, a stay was not granted given the potential of wrongful disclosure of privileged and confidential information. Conversely, the Caspian Defendants say a stay will protect against the irreparable harm which they say comes from the wrongful disclosure of privileged and confidential information. I am not so persuaded.

[23] As it relates to concerns respecting privilege, and as this Court has already set out in its reasons granting the City's motion for production from a non-party, Rule 30.10

contemplates a process by which purported privileged documents can be assessed and if necessary, protected. This Court has invited the Caspian Defendants to provide the necessary identifying information and detail to ensure that otherwise privileged documents are not disclosed. Nothing to date has been filed by the Caspian Defendants.

[24] As the City has contended, it appears that the Caspian Defendants have been unwilling or unable to describe the sort of documents which might be privileged. This is curious, given their bold invocation of privilege on the City's original Rule 30.10 motion. If there is indeed a legitimate issue of privilege, there is a need for the Caspian Defendants to substantiate that claim with identification and detail that is hardly unexpected in the litigation process.

[25] The Caspian Defendants have had copies of the seized documents in the possession of the RCMP since the seizures. It is far from obvious as to why at some point – certainly since they became aware of the City's intention to seek access to those documents from the RCMP – some effort has not been made to identify and describe any of the purportedly privileged documents. Indeed, in the event of an unsuccessful result for them on the City's Rule 30.10 motion (which did occur), one might have expected such information and detail as part of the Caspian Defendants' argument when they invoked privilege as a relevant and important factor in this Court's Rule 30.10 analysis. In the end, on the matter of potentially privileged documents, it is the Caspian Defendants who, by their own inaction, are depriving themselves of the expedited protection they deserve and the clarity that this Court and some of the other parties need and have a

right to expect. In so doing, they place themselves in an awkward position when claiming irreparable harm.

[26] As it relates to any eventual and properly specified claim for privilege, I note that a document which might be privileged in a different case may not be so in the present case because of the allegations of fraud and conspiracy. Moreover, as a practical matter, I have no reason to doubt the City when it says it has no interest in any document over which privilege is properly claimable. In any event, I repeat, Rule 30.10 has an explicit mechanism for dealing with this issue if a dispute arises.

[27] The Caspian Defendants' invocation of privilege in relation to irreparable harm is not convincing. Despite having copies of what they had previously said were the same documents as the RCMP and despite having had many months to confront the issue, the Caspian Defendants have provided nothing but vague allusions to confidentiality and privilege. As noted in ***Double Diamond Distribution Ltd. v. Crocs Canada, Inc.***, 2019 FCA 243 (CanLII), speculative harm cannot support a stay application. See para. 14. Similarly, as noted by the Nova Scotia Court of Appeal in ***Lavy v. Hong***, 2018 NSCA 6 (CanLII) "[s]uspicion and speculation and bald assertions are not a substitute for evidence. An inference of irreparable harm requires an evidentiary basis" (at para. 12).

[28] The same deficiencies in the Caspian Defendants' arguments respecting privilege apply to their arguments concerning the supposed "confidential" documents. What are the documents that are "confidential"? Again, despite having the same documents as the RCMP, and having had them for many months, the Caspian Defendants provided

nothing by way of evidence of such supposed confidentiality. If any of those supposedly confidential documents are not relevant, the City would presumably have no interest in them and they would, in any case, be subject to the implied undertaking rule. If they are relevant, confidentiality is not an impediment to production and accordingly, such supposed confidentiality (particularly when it is unsubstantiated), should not be overemphasized as a factor when considering irreparable harm on a motion such as this.

[29] To the extent that it has been argued that the Caspian Defendants might suffer harm should the RCMP documents be produced to the City and, if later, their appeal is successful, I remain unpersuaded that the Caspian Defendants will suffer "irreparable" harm. In addressing this point, I return to my original observation in respect of this second question where I noted the Caspian Defendants' earlier and repeated emphasis on the fact that the non-party production was unnecessary. In that regard, the Caspian Defendants stated on several occasions that copies of the seized documents were in their possession and would be produced in the normal discovery process. If such is the case, given the already mentioned mechanism to deal with privilege and my comments respecting the concept of "confidentiality", what harm would possibly follow from those documents being produced now, rather than later? Put somewhat differently, what harm can possibly follow the disclosure of documents that the Caspian Defendants repeatedly stated they would produce in the ordinary course?

[30] Insofar as the Caspian Defendants respond by saying that without a stay, they will not be given an opportunity to screen the seized documents for relevance, I am in agreement with the City when it submits that if some of the documents produced to the

City are in fact not relevant, it does not follow that harm is a consequence. In such an instance, what exactly is the alleged harm, let alone the irreparable harm that would follow from the production of those "irrelevant" documents to the City?

[31] As it relates to the "relevance" of the documents and its impact on my consideration respecting irreparable harm, I cannot help but note my earlier concerns (as expressed in my written reasons justifying the August 7, 2020 Order) respecting the apparently more-narrow view of relevance as advanced in the evidence (see the affidavit of Pamela Anderson) and in the submissions by the Caspian Defendants on the City's Rule 30.10 motion. In other words, there is basis to believe that the Caspian Defendants' perspective on relevance seems to place a preemptively restrictive grip on documents and information which would normally and naturally be provided given both the low threshold for relevance applicable during the discovery process and the unique nature of the allegations contained in the City's Statement of Claim.

[32] The case law submitted by the City on this motion was both applicable and helpful to its position on irreparable harm.

[33] In ***Intact Insurance Company v. Malloy***, 2019 NSCA 85 (CanLII) ("***Malloy***"), the Nova Scotia Court of Appeal considered a stay of an interlocutory order compelling the insurer to produce certain documents relating to the plaintiff's claim and the appeal. The Court in ***Malloy*** summarized the applicant's assertions as to irreparable harm in the following manner (at para. 18):

> (1) once produced the production cannot be undone, and
>
> (2) if successful on appeal any victory will be hollow as the appeal will be moot.

[34] The Nova Scotia Court of Appeal in ***Malloy*** was not persuaded by either of the two arguments. Instead, it reasoned as follows (at paras. 19 and 24):

> It is true that once produced (for the purpose of discovery in this case) production cannot be "undone". However, here there is no suggestion that the documents ordered to be produced are sensitive in nature, contain personal information or that their mere disclosure would otherwise harm the appellant. In fact, the appellant said (through its affiant) that it is willing and able to produce the balance of the outstanding production at an appropriate time once relevance has been determined on appeal. Furthermore, as the respondent pointed out, the implied undertaking in *Rule* 14.03 protects against the use of documents for a purpose outside the purpose of this action.
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> It is also important to remember that the risk of a moot appeal does not automatically constitute irreparable harm (see *Colpitts v. Nova Scotia Barristers' Society*, 2019 NSCA 45 at para. 51). Other than stating that it would suffer serious prejudice and irreparable harm if a stay were not granted, nothing of substance was offered by the appellant. In the specific context of this case, I see no irreparable harm to the appellant.
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> [emphasis added]

[35] The Federal Court in ***Jiang Sheng Co. v. Great Tempo S.A.***, 1998 CarswellNat 1013 (FC TD), addressed the argument that, absent a stay, a proposed appeal may be rendered moot. In that case, the Federal Court refused a stay of an interlocutory order for production of documents explaining as follows (at para. 6):

> The prospect of this proceeding being rendered abortive, should the Supreme Court of Canada reverse the unanimous decision of the Court of Appeal, is not a special circumstance (*Beloit Canada Ltée/Ltd.*, loc cit.). Should this whole proceeding be set aside, by reason of the decision of the Supreme Court of Canada, the Plaintiff may well have to answer in costs. They opposed this motion for a stay knowing that to be the case. The Plaintiff will have production of documents, together with discovery, but on the terms that the time frame be extended and that naming of witnesses and production of witnesses for discovery all be mutual obligations.
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> [emphasis added]

[36] When I consider the case law submitted by the Caspian Defendants on the issue of irreparable harm, I note that none of the decisions relied upon by the Caspian

Defendants in support of their stay application, were interlocutory procedural matters involving decisions of a case management judge. Moreover, as the City has also argued, and as I explain below, the authorities relied upon by the Caspian Defendants in relation to irreparable harm are distinguishable.

[37] The Caspian Defendants rely upon ***Nova Scotia v. O'Connor***, 2001 NSCA 47 (CanLII) ("***O'Connor***"), where the Nova Scotia Court of Appeal was addressing the decision of the lower court that had determined that access be granted to certain government documents over which Her Majesty the Queen in Right of Nova Scotia claimed cabinet privilege pursuant to s. 13 of Nova Scotia's *Freedom of Information and Protection of Privacy Act*, S.N.S. 1993, c. 5. As distinct from ***O'Connor***, the Order in the present case does not compel the production of documents subject to privilege, statutory or otherwise. Indeed, any assertion of privilege will be addressed as already noted, in accordance with requirements of Rule 30.10.

[38] The defendants also rely upon ***Canada (Transportation Safety Board) v. Carroll-Byrne***, 2020 NSCA 21 (CanLII), where the decision being appealed from was a decision requiring that the Transportation Safety Board produce the audio data from a cockpit voice recorder made during an Air Canada flight over which the Transportation Safety Board claimed statutory privilege pursuant to s. 28 of the *Canadian Transportation Accident Investigation and Safety Board Act*, S.C. 1989, c. 3. Again, unlike the decision before the Nova Scotia Court of Appeal, the Order in the present case does not compel the production of documents subject to privilege, statutory or otherwise. To repeat, any

assertion of privilege will be addressed in accordance with the requirements of Rule 30.10.

[39] The defendants also invoke ***2502731 Nova Scotia Ltd. v. Plazacorp Retail Properties Ltd.***, 2004 NSCA 62 (CanLII), where the decision being appealed from was a decision that required a non-party to produce sensitive and confidential business information to its competitor. As the City has argued, in the present case, the Order in question does not compel the production of sensitive and confidential business information to a business competitor.

[40] Finally, in citing ***Ting (Re)***, 2019 ONCA 768 (CanLII), the Caspian Defendants are relying upon a decision which involved an appeal in the context of a bankruptcy proceeding during which the bankrupt's son was ordered to produce documents relating to the bankrupt's assets and to attend for examination. In that case, the Court found that the implied undertaking rule did not adequately mitigate the prospect of irreparable harm to the bankrupt's son. In the present case, and as I have already noted, I accept the City's submission that any identified and purportedly privileged documents will be addressed as outlined and to the extent any "confidential" documents are to be produced pursuant to the Order in question, they will be subject to the implied undertaking rule.

[41] In light of the foregoing, the Caspian Defendants have failed to discharge their onus of establishing that they will suffer irreparable harm if a stay is not granted.

Balance of Convenience: Which of the parties would suffer the greater harm from the granting of or the refusal to grant a stay pending appeal?

[42] In addressing this third question, the Court is required to balance the harm that would be suffered by each party in order to determine which of the parties will suffer the

greater harm. In attempting to balance that harm, the Court must address and consider two possibilities. First, the potential harm that the City will suffer if the stay is granted and second, the potential harm the Caspian Defendants will suffer if the stay is refused.

[43] As it relates to any potential harm to the Caspian Defendants in the event of the stay being refused, I have already determined when addressing the previous question respecting irreparable harm, that there is insufficient evidence and/or clarity in Caspian's position so as to permit me to conclude the Caspian Defendants will suffer any harm, let alone irreparable harm were a stay not granted.

[44] Conversely, in the circumstances of this case, there is a discernible harm that will be suffered by the City.

[45] As the City has argued, this matter is being case managed. In that regard, the City is correct to assume that as part of the case management process, it can be anticipated that strict deadlines will be imposed for the exchange of affidavits of documents, for examinations for discovery and for any other interlocutory motions that need be adjudicated. Similarly, as I have already indicated to the parties, and as is consistent with this Court's scheduling policies in respect of matters submitted for case management, the trial dates will be scheduled within an approximate period of two years. Accordingly, if the stay sought by the Caspian Defendants is granted, the timelines identified will be compromised and this Court's effort to ensure the action moves forward in an expeditious manner would have been negated. Such a result is of particular concern in the context of case management where the Court's aggressive oversight can be expected in order to ensure that the civil action and its processes remain proportionate

and move inexorably and efficiently to the finality and clarity that all parties presumably seek and that will, in all likelihood, only come from a trial. To the extent that any and all of this may be compromised, there is a discernible harm and prejudice that falls to the City in its attempts to prosecute an enormously complex claim that alleges on behalf of the City, and the citizens of Winnipeg, wrongs that include fraud, conspiracy and the payment and receipt of bribes and kickbacks.

[46] As the City has submitted, even if the RCMP documents are produced, they will require significant review and analysis on the part of the City's experts. It is credible for the City to submit that before any meaningful examinations for discovery can take place, the City will require a report from its experts, which will summarize the findings in respect of the RCMP documents. The City is being realistic when it submits that the experts' review and analysis of the RCMP documents and the preparation of the report will undoubtedly take many months to complete. All of that to say that should a stay be granted, the City will be required to hold off on its forensic investigation into the contents of the RCMP documents pending the outcome of the appeal, which may also take many months to complete. In other words, pending the outcome of the appeal, the entire action, which is supposedly receiving the benefit of case management, will for all intents and purposes be suspended insofar as much of the City's claim, by necessity, turns on the analysis of the electronic and paper trail that may be revealed by the RCMP documents and materials.

[47] I am in agreement with the City when it notes that if the stay is not granted, the litigation will carry on in the ordinary course. The lengthy process of making the

disclosures as required under the Order and the Caspian Defendants' claims of privilege over the RCMP documents (particularly the seized documents) can both occur in a fair and equitable manner such that the issue of privilege and the City's forensic investigation can be addressed concurrently.

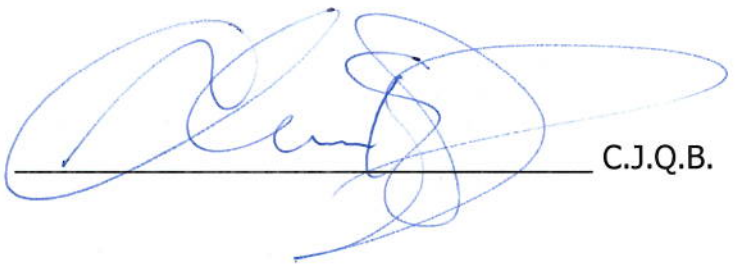
[48] The Caspian Defendants are entitled to their appeal and they will have it. For good or bad, Manitoba is one of only two provinces in the country (along with Prince Edward Island) which does not stipulate a leave requirement for the appeal of interlocutory motions. With the inevitability of their appeal, the Caspian Defendants will be able to address what they identify are the legal errors grounding the August 7, 2020 Order. In the meantime, as I have indicated, they would suffer little, if any, harm were the stay not granted. Conversely, a *de facto* suspension of this action pending appeal, would be unfair to the City who, like any other party, is entitled to have its action dealt with as expeditiously and as effectively as possible. So too is the City entitled to the disclosures it requires without prejudicial delay. As noted in ***G. (N.) v. Upper Canada College***, 2004 CanLII 60016 (ON CA) (CanLII) at para. 18, "[t]he rights of the parties to fair and expeditious justice should prevail." In the final analysis, I am of the view that if the stay is granted, the right of the City to such fair and expeditious justice will be jeopardized.

[49] I have therefore concluded that in the circumstances of this case, the balance of convenience favours the City. It will indeed suffer greater harm if the stay is granted than the harm likely to be suffered by the Caspian Defendants should the stay be refused.

IV. CONCLUSION

[50] In my consideration of the three relevant questions that need be examined on this motion, I have addressed them not as separate hurdles, but as interrelated considerations. While I have assumed without deciding that the Caspian Defendants' case on appeal is an arguable one, I have also determined that the Caspian Defendants would not suffer irreparable harm were the request of the stay not granted. Similarly, I have also determined that the balance of convenience in the circumstances of this case, favours the City, since it will suffer significantly greater harm if the stay is granted.

[51] In the result, the Caspian Defendants' motion for a stay of the Order pending appeal is dismissed.



C.J.Q.B.