

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1242939  
B.C. UNLIMITED LIABILITY COMPANY, 1241423 B.C. LTD., 1330096 B.C. LTD., 1330094  
B.C. LTD., 1330092 B.C. UNLIMITED LIABILITY COMPANY, 1329608 B.C. UNLIMITED  
LIABILITY COMPANY, 2745263 ONTARIO INC., 2745270 ONTARIO INC., SNOSPMIS  
LIMITED, 2472596 ONTARIO INC., AND 2472598 ONTARIO INC.**

Applicants

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**BOOK OF AUTHORITIES  
OF THE ATTORNEY GENERAL OF CANADA**  
(Regarding Applicants' Motion Returnable December 11, 2025)

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December 10, 2025

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
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| 1          | <i>Skydome Corp., Re</i> , 1998 CarswellOnt 5922 (OCJ Gen Div) |

1998 CarswellOnt 5922  
Ontario Court of Justice, General Division (Commercial List)

Skydome Corp., Re

1998 CarswellOnt 5922, 16 C.B.R. (4th) 118

**In the Matter of Skydome Corporation, Skydome  
Food Services Corporation and SAI Subco Inc.**

In the Matter of the Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36 as Amended

In the Matter of the Business Corporations Act, R.S.O. 1990, c. B.16, as Amended

In the Matter of a Proposed Plan of Compromise or Arrangement of Skydome  
Corporation, Skydome Food Services Corporation and SAI Subco Inc.

Blair J.

Judgment: November 27, 1998

Docket: 98-CL-3179

Counsel: *David E. Baird, Michael B. Rotsztain and Richard A. Conway*, for Applicants.  
*R.G. Marantz, Q.C.*, and *Andrew Diamond*, for Respondents Province of Ontario and Stadium  
Corporation.

*Derrick Tay and John Porter*, for Trustee for Bondholders and Bondholder.

*James Dube and Craig Thornburn*, for Respondents The Toronto Blue Jays Baseball Club.

*Alex Ilchenko*, for Respondent Ticketmaster Canada Ltd.

*Ronald Slaght*, for Respondent McDonald's Restaurants.

**Headnote**

**Corporations --- Arrangements and compromises — Under Companies' Creditors  
Arrangement Act — Arrangements — Approval by court — "Fair and reasonable"**

Three related corporations were involved in operation of sporting and entertainment facility — Corporations became insolvent because of changes in sporting, entertainment and economic environment, non-payment of disputed municipal taxes, competition from other facilities, heavy debt load, and costly negotiations with sports team that was facility's primary user — Corporations brought application for protection under Companies' Creditors Arrangement Act — Corporations sought as part of declaration court's approval of interim lease, and authorization of super priority loan from sports team in order to finance necessary operating expenses and essential capital expenditures — Corporations also sought authorization to withdraw sum from capital reserve account that was held as part of security arrangements regarding outstanding indebtedness to

group of bondholders — Application granted — Facility held large number of functions that drew millions of people to city throughout year and employed large number of employees — Substantial economic and financial effects would result to city, merchants, suppliers, entertainers and employees in tourist industry if facility were shut down — Broader public dimension was required to be considered in determining application — Authority existed in case law for granting of super priority — Proposed interim lease and super priority were so closely integrated that one could not be approved without other — Interim lease was key to ability of corporations to pursue attempt to put forward plan that would be acceptable to creditors — Importance of stability in situation in connection with presence of sports team and ability to attract other functions outweighed other concerns that could arise in relation to negotiation and execution of interim lease — Corporations proposed to make appropriate use of withdrawn reserve funds, and bondholders would not be prejudiced as many of proposed expenditures were for matters that had priority over bondholders — It is acceptable under Act for creditor's security to be weakened as part of balancing of prejudices between parties — Circumstances existed to make initial order under Act appropriate, and it was fair and reasonable to grant order requested — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36.

#### **Table of Authorities**

##### **Cases considered by *Blair J*:**

*Anvil Range Mining Corp., Re* (1998), 7 C.B.R. (4th) 51 (Ont. Gen. Div. [Commercial List]) — applied

*Lehndorff General Partner Ltd., Re* (1993), 17 C.B.R. (3d) 24, 9 B.L.R. (2d) 275 (Ont. Gen. Div. [Commercial List]) — referred to

*Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 17 C.B.R. (3d) 1, (sub nom. *Olympia & York Developments Ltd., Re*) 12 O.R. (3d) 500 (Ont. Gen. Div.) — referred to

*Westar Mining Ltd., Re*, 70 B.C.L.R. (2d) 6, 14 C.B.R. (3d) 88, [1992] 6 W.W.R. 331 (B.C. S.C.) — considered

##### **Statutes considered:**

*Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36

Generally — referred to

s. 8 — considered

s. 11 [rep. & sub. 1997, c. 12, s. 124] — referred to

s. 11(6) [en. 1997, c. 12, s. 124] — considered

##### **Endorsement. *Blair J*:**

1 Skydome Corporation, Skydome Food Services and SAI Subco Inc. — all related and presently insolvent companies — apply for the protection of the Court available in appropriate



circumstances under the provisions of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA").

2 Once considered to be the Crown Jewel of the sports and entertainment facility world the Skydome, it seems, has developed a few financial fissures. It has insufficient funds or sources of funds to meet all of its ongoing liabilities as they become due. The same is true for all 3 Applicants, which I shall refer to generically in this endorsement as "The Skydome" unless the context requires otherwise. Various reasons are put forward for this in the materials, but in summary they are the following:

1. Changes in the sporting, entertainment and economic environment in recent years have place financial strains on the operations of the facility. These changes include, but are not limited to, declining revenues as a result of a significant downturn in attendance at Blue Jays games since the halcyon World Series days of the early 1990's, and the cost of competing for entertainment providers in an environment where the entertainers must be paid in U.S. dollars but the revenue is received in weakened Canadian dollars.
2. Non-payment of Municipal taxes of approximately \$3.6 million (Skydome contests its liability for such taxes in the sense that it has been engaged in a lengthy battle with the taxing authorities over the proper assessment base for its municipal taxes);
3. The Skydome now faces competition from other entertainment facilities in this City and elsewhere.
4. The Applicants carry a very heavy debt load, which is the legacy of the construction of the domed stadium and the initial development and marketing of the Skydome.
5. In connection with the latter, there are various outstanding executory contracts which provide benefits to those who were involved in supporting the initial Skydome venture, in continuing consideration of that support, but which as a result reduce the benefits provided by revenues that can be generated by the Skydome now.
6. Because renters of Skyboxes were called upon to pay first and last years rent in advance, there are no revenues coming in for the last year of the 10 year leases which are now about to expire; and,
7. The Skydome faces a major negotiating battle with its primary source of financial life, the Blue Jays, over the Blue Jays sub-lease (or, more accurately, license) of the premises.

3 This latter problem has been resolved, subject to approval and granting of CCAA protection, through the execution of an Interim Licensing Agreement (which I will call the Interim Lease, since everyone else does), under which the Blue Jays will remain in the Skydome for a further one year period (subject to a right to renew for a further one year period) on the same terms

as those contained in the present lease which expires at the end of this year. There is also an agreement *in principal only* between Skydome and the Baseball Club with respect to a long-term 10 year arrangement; but this arrangement has not yet been finalized and, indeed, its negotiation and acceptance is proposed to be made the subject of the Plan of Arrangement which the Applicants are hoping to be able to put forward.

4 The Applicants seek the usual declaratory relief that is sought on these applications; namely, an order declaring that they are corporations to which the Act applies; and a broad stay order which, although there are quibbles with certain provisions in it, is more or less of the sort generally sought and granted when Initial Orders are made under s. 11 of the CCAA. They also ask for the appointment of PricewaterhouseCoopers Inc. as monitor. In addition, however, and as part of the package, the Applicants ask the Court to approve the Interim Lease and authorize the parties to enter into it, and they ask the Court to authorize a "Super Priority" loan of up to \$3.5 million from the Blue Jays in order to finance their necessary operating expenses, and certain capital expenditures which they say are essential, and as well the costs of restructuring. Finally, they seek additional authorization to withdraw the sum of \$1,260,000 from a capital reserve account with Montreal Trust Company of Canada — which reserve fund is held as part of the security arrangements regarding \$58 million of outstanding indebtedness to a group of Skydome Bondholders. The withdrawal would be for the purpose of making necessary capital expenditures with respect to YK2 compliance enhancements, improvements to the Skydome sound system and renovation regarding the Skydome Hotel.

5 No one seriously submits that it is in anyone's interests for the Skydome to be shut down or, indeed, for the Blue Jays not to continue to play ball from that facility. It would be folly to suggest otherwise, at least for the moment. The Skydome is a popular facility which draws about 4 million people to its various functions throughout the year — there have been 270 such events in 1998. It has 160 full-time employees and 1100 part-time employees who work there during the baseball season. Without going into to them in detail, there are very substantial economic and financial ripple effects for merchants, suppliers, entertainers, people working and employed in the tourist industry in Toronto, and Governments in the form of tax revenues of various sorts from the continued operation of the Skydome. It is said, for instance, that Skydome related activities generate \$326 million in revenues for the economy of the GTA and \$45 million in sales taxes for the Province of Ontario.

6 Thus there is a broader public dimension which must be considered and weighed in the balance on this Application as well as the interests of those most directly affected: see *Re Anvil Range Mining Corp.*, unreported decision of Ontario Court of Justice General Division August 20, 1998 [reported at(1998), 7 C.B.R. (4th) 51 (Ont. Gen. Div. [Commercial List])]. As was stated in that case:

The Court in its supervisory capacity has a broader mandate. In a receivership such as this one which works well into the social and economic fabric of a territory, that mandate must encompass having an eye for the social consequences of the receivership too. These interests cannot override the lawful interests of secured creditors ultimately, but they can and must be weighed in the balance as the process works its way through.

7 The Anvil Range case concerned a CCAA proceeding which had been turned into a receivership, but the same principles apply in my view to a case such as this. While it may be engaging a trifle in hyperbole to raise the interests of Blue Jays fans to the level of "the social and economic fabric" of the region, they too can't be ignored altogether and the true economic ramifications of a failed Skydome are surely something that must be considered.

8 The two issues that raised the most concern were those dealing with the "Super Priority" loan and with the use of the capital reserve fund for the purposes requested. What is at stake here is protection of the Bondholders (who say their outstanding loan, with default ramifications taken into account is about \$70 million) and the Province of Ontario (which has secured loans behind that of the Bondholders totalling about \$24 million) with regard to a potential \$3.5 million loan and the reduction of the Bondholders' security by less than \$1.3 million. While these numbers are large numbers to the ordinary person they are really not very significant numbers relevant to the overall numbers involved.

9 There is ample authority in previous decisions of the Court for the granting of a Super Priority in CCAA situations — even to shareholders who are advancing funds — and I see no reason in principle why such a Super Priority should not be approved here. Although the Bondholders oppose the Interim Lease — indeed it is really at the heart of their objections — the Province does not. The two are so closely integrated in the proposal being put forward by the Applicants that I do not see how one can be approved (the Interim Lease) and the other (the Super Priority Loan) not.

10 The Interim Lease is key to the ability of the Skydome to pursue its attempt to put forward a Plan that will be acceptable to its creditors, including the Bondholders who will have the opportunity to vote and to approve or reject that Plan. The proposed Plan, as I have indicated, will include a Long-Term Lease component. The Bondholders main complaint, it seems to me, is that they have been excluded from the negotiation process — as they see it — to this point, and that their consent was not sought with respect to the Interim Lease. Mr. Tay did not say what the response would have been had the consent been sought. The Bondholders are also suspicious that the object of this exercise is to solidify the position of the major shareholders of the Skydome — Labatts and the CIBC — who are also part owners of the Blue Jays, by putting in place an Interim Lease that will be binding for up to two years regardless of whether the CCAA proceedings succeed or not, and which will in any event put them under subtle pressures to approve a final Plan with a final lease that they might otherwise have been able to resist.

11 There is no evidence to support such a suggestion. Whether there is anything in it or not I do not know, but one of the characteristics of a CCAA restructuring is that by nature, it leaves the debtor company in possession and in charge of the show while it attempts to work out an acceptable arrangement with its creditors. If there are underlying business agenda in that process, they are not precluded; whether they ultimately succeed or fail will depend upon the dynamics of the negotiating game that will follow.

12 In weighing all of these factors, I am satisfied that the importance of stability in the situation at the Skydome for the next year or two in connection with not only the Blue Jays presence but also the ability to attract other revenue generating functions, outweighs other concerns that may arise in relation to the negotiation and execution of the Interim Lease.

13 As to the use of the funds in the capital reserve held by Montreal Trust, it makes sense in my view for them to be used for the purposes suggested by the Applicants. The Capital reserve fund withdrawal will be used for the YK2 enhancements, the improvements in the sound system, and the Hotel renovation — all of which will preserve the overall security. A significant portion of the total funds to be advanced, including the super-priority loan — which were deposited in the first place in order to — will be used to pay Municipal taxes and Rent which are matters that have priority over the Bondholders in any event. Thus there is little overall prejudice in that regard. I am satisfied that the Court has the authority either under s. 8 of the CCAA or under its broad discretionary powers in such proceedings, to make such an order. This is not a situation where someone is being compelled to advance further credit. What is happening is that the creditor's security is being weakened to the extent of its reduction in value. It is not the first time in restructuring proceedings where secured creditors — in the exercise of balancing the prejudices between the parties which is inherent in these situations — have been asked to make such a sacrifice. Cases such as *Re Westar Mining Ltd.* (1992), 14 C.B.R. (3d) 88 (B.C. S.C.) are examples of the flexibility which courts bring to situations such as this. See also *Re Lehndorff General Partner Ltd.* (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div. [Commercial List]); *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 17 C.B.R. (3d) 1 (Ont. Gen. Div.).

14 What subsection 11(6) of the CCAA requires for purposes of an Initial Order is that the applicant satisfy the court "that circumstances exist that make such an order appropriate". I am satisfied that such circumstances exist here and that it is fair and reasonable to grant the Order requested, although the detailed terms of the Order may require further clarification which the lateness of the day precludes for the present.

15 Mr. Tay raised a substantial issue when he pointed out that the Order as presently drafted, when read in conjunction with the Term Sheet reflecting the agreement between the Skydome and the Blue Jays for the Super Priority loan, could lead to a situation where, if the CCAA proceeding fails, the Blue Jays (called in that context "the CCAA Lender") could move to put in a receiver

and to realize upon their security without further court order. I would not have approved such a provision in the circumstances, but it is not necessary to make such a determination because Mr. Dube undertook to the Court on behalf of the Blue Jays that they would not seek to do so without approval of the Court.

16 Mr. Slaght argued on behalf of Macdonalds that the super priority should not extend to his client's lease regarding the food outlets. While I agree that the position of Macdonalds is somewhat different than that of other secured creditors — because Macdonalds must continue to pay a percentage of revenue as rent, and thus pour new monies in — I don't think that that circumstance is in itself sufficient to make distinctions from the position of other secured creditors.

17 As to other matters respecting the form of the Order, I will make the change suggested by Mr. Marantz and accepted by Mr. Baird regarding the necessity of consent of all secured creditors to any out of ordinary course disposition by the Skydome during the CCAA period. Other details I leave to counsel to agree to and to come back for a variation of the Order at a later date.

18 Accordingly, an Initial Order is granted as sought, subject to the foregoing.

*Application granted.*

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1242939 B.C. UNLIMITED LIABILITY  
COMPANY et al.

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceedings Commenced at TORONTO

**BOOK OF AUTHORITIES OF THE  
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