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July 22, 2008

The Honourable Justice John D. Murphy  
The Law Courts  
1815 Upper Water Street  
Halifax, NS B3J 1S7

My Lord:

**RE: Canadian Sailing Expeditions Inc. – *Companies' Creditors Arrangement Act*  
S.H. No. 297999**

I am scheduled to appear before your Lordship on Friday, July 25, 2008 for an application seeking an order approving an extension of a stay of proceedings issued pursuant to an order of Justice Moir on June 27, 2008 (the "Initial Order") pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA").

Filed with this application is the affidavit of Douglas Prothero, president and director of Canadian Sailing Expeditions Inc. (the "Company"). I understand that BDO Dunwoody Goodman Rosen Inc., in its capacity as court appointed monitor of the Company, will be filing a further report directly with the court.

Pursuant to paragraph 42 of the Initial Order, the Company is permitted to apply to this Honourable Court for further relief and it is pursuant to this section that the Company is requesting an extension of the stay provided for under the Initial Order from July 24, 2008 to and including September 4, 2008. The efforts of the Company at restructuring to the date of his affidavit and the reasons for its request for an extension are set out in the affidavit of Mr. Prothero.

Paragraph 11(4) of the CCAA sets out the jurisdiction of the Court to consider the Company's application:

**Robert G. MacKeigan, Q.C.**

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(4) Other than initial application court orders – A court may, on an application in respect of a company other than an initial application, make an order on such terms as it may impose,

(a) staying until otherwise ordered by the court, for such period as the court deems necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in subsection 1;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of or proceeding with any other action, suit or proceeding against the company.

Pursuant to section 11(6) of the CCAA, the burden of demonstrating to the Court that it is appropriate for it to grant the requested extension rests with the Company. Section 11(6) reads as follows:

(6) Burden of proof on application – The court shall not make an order under subsection (3) or (4) unless

(a) the applicant satisfies the court that circumstances exist that make such an order appropriate; and

(b) in the case of an order under subsection (4), the applicant also satisfies the court that the applicant has acted and is acting, in good faith and with due diligence.

In the recent decision of Justice MacAdam, *Re Federal Gypsum Company* (2007 NSSC 347) at paragraph 16, Justice MacAdam cited Justice Glennie of the New Brunswick Court of Queen's Bench in *Re Cansugar Inc.*, 2004 NBQB 7 in summarizing the requirements to order an extension of a stay termination date as follows:

(a) the circumstances exist to make the order appropriate;

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- (b) that the applicant has acted and continues to act in good faith; and
- (c) that the applicant has acted and continues to act with due diligence.

Justice Farley in *Lehndorff General Partners Ltd., Re*, (1993) 17 CBR (3d) 24 (Ont. Gen. Div. [Commercial List]) in connection with the principles to be reviewed in such applications commented at para 6 as follows:

The CCAA is intended to provide a structured environment for the negotiation of compromises between the debtor company and its creditors for the benefit of both. Where a debtor company realistically plans to continue operating or to otherwise deal with its assets but it requires the protection of the court in order to do so *and it is otherwise too early for the court to determine whether the debtor company will succeed, relief should be granted under the CCAA...* [emphasis added]

These comments of Justice Farley were quoted with approval by Justice Glennie of the New Brunswick Court of Queen's Bench in *Re Simpson's Island Salmon Ltd.* 2006 NBQB 6 at para 27.

Justice Glennie further wrote in *Re Cansugar Inc.*, supra at para 9:

In my opinion, the requirements of section 11(6) of the CCAA have been satisfied in this case. The continuation of a stay is supported by the overriding purpose of the CCAA, which is to allow an insolvent company a reasonable period of time to reorganize and propose a plan of arrangement to its creditors and the court, and to prevent manoeuvres for positioning among creditors in the interim.

Justice MacAdam in *Re Federal Gypsum Company*, supra, also quoted from *Re San Francisco Gifts Ltd.*, 2005 ABQB 91 at para 28 on the supervisory role of the court in applications to extend stays of proceeding:

The court's role during the stay period has been described as a supervisory one, meant to: "*preserve the status quo and to move the*

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*process along to the point where an arrangement or compromise is approved or it is evident that the attempt is doomed to failure.”* That is not to say that the supervising judge is limited to a myopic view of balance sheets, scheduling creditors meetings and the like. On the contrary, this role requires attention to changing circumstances and vigilance in ensuring that a delicate balance of interest is maintained. [emphasis added]

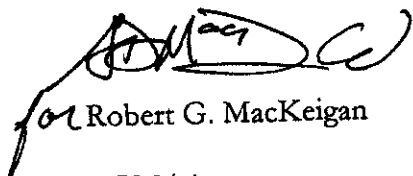
It is respectfully submitted that the Company should be given a reasonable opportunity to prepare and present a plan to its stakeholders with the requested extension unless it is clear that the Company has not been proceeding with due diligence and in good faith.

Mr. Prothero's affidavit notes efforts made on several fronts to create a plan of reorganization. We further expect that the report of the monitor in respect of the Company's efforts will validate this evidence. Therefore, we submit it is too early to draw any conclusions as to whether the Company will succeed or fail in its restructuring.

It is submitted that the extension sought by the Company is a relatively short although longer than the initial stay of 30 days provided by the Initial Order (which is the maximum allowed pursuant to the applicable section of CCAA). The extensions granted in *Cansugar* (3 months) and *San Francisco Gifts* (5 1/2 months) were significantly longer. The extensions granted in *Simpson's Island* (6 weeks) and *Re Federal Gypsum* (6 weeks) are consistent with the extension sought by the Company.

I will be pleased to respond to any questions the court may have in connection with this application. Mr. Prothero will also be in attendance and will be able to respond to any questions arising from his affidavit.

Respectfully submitted,

  
for Robert G. MacKeigan

RGM/gj