



**MILLER THOMSON**  
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March 21, 2019

**Delivered Via Facsimile**

**Swanick and Associates**  
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North York, ON M3B 3K9

Attention: Bruce A. Simpson

- and -

**MNP Ltd.**  
111 Richmond Street West  
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Attention: Sheldon Title

**Sherry A. Kettle**  
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File: 0217040.0004

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Dear Sirs:

**Re: In the matter of the Notice of Intention to Make a Proposal of 1787930 Ontario  
cob as Messenger Freight  
Court File No. 35-2395481**

Attached are a Notice of Appeal from the Order of Mr. Justice Raikes made March 13, 2019 and Certificate Respecting Evidence which are hereby being served upon you.

Yours truly,

MILLER THOMSON LLP

Per:

  
Sherry A. Kettle

SAK/sj

Enc.

c: client

38241628.1

Court of Appeal File No:  
Court File Nos. 35-2395487 and 35-2395481

## COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF NOTICES OF INTENTION TO MAKE A PROPOSAL OF 1732427  
ONTARIO INC. AND 1787930 ONTARIO INC. BOTH OF THE CITY OF ST. THOMAS, IN  
THE PROVINCE OF ONTARIO

### NOTICE OF APPEAL

Transit Petroleum Inc. ("Transit"), a creditor of 1787930 Ontario Inc. ("178"),  
APPEALS to the Court of Appeal from the order of Mr. Justice Raikes dated March 13, 2019  
made at London.

THE APPELLANT ASKS that the order be set aside and an order be granted as  
follows:

1. The appeal be allowed, and the order requiring Transit to pay costs to 178 be set  
aside with 178 and Transit bearing their own costs of the motion; and
2. Transit receive its costs of this appeal.

THE GROUNDS OF APPEAL are as follows:

1. The motion judge erred in the application of the governing principles and failed to  
take into account and to give proper weight to relevant factors;
2. The motion judge erred in finding that Transit was not partially successful on the  
motion as the decision on the motion required 178 to pay \$48,434.30 to Transit by  
way of set-off for the supply of fuel, which payment 178 had failed to make to Transit  
even though the fuel was supplied in July 2018;

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3. The motion judge erred in awarding an amount to 178 that an unsuccessful party could not reasonably expect to pay;
4. The motion judge erred in awarding an amount to 178 that is not reasonable for the nature of the motion, not proportional to the amount claimed by 178 and which is excessive for the materials submitted by 178;
5. The motion judge erred in awarding costs to 178 even though 178 had created unnecessary complexity and thus caused additional time to be expended by both parties by relying solely on one witness who gave contradictory evidence in his three affidavits and on cross-examination and who did not have first-hand knowledge of relevant and material facts;
6. The motion judge erred in awarding costs to 178 even though 178 had advanced a fraudulent preference position that 178 had no standing to bring and which Transit was required to expend time in addressing; and
7. The motion judge erred in awarding costs to 178 even though 178's evidence was less than fulsome and arguably inaccurate and which:
  - (a) required Transit to address by way of two responding motion records and five affidavits causing unnecessary legal costs;
  - (b) 178 unsuccessfully tried to clarify by way of three affidavits from the same affiant instead of providing accurate and consistent evidence by appropriate individuals in the first instance, including Louise Vonk and Blaine Skirtschak; and
  - (c) will result in 178 being compensated for its additional legal costs arising from attempting to address and clarify its own inaccurate and inconsistent evidence

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and conversely not compensating Transit for its legal costs arising from attempting to respond to each of the affidavits delivered by 178 which, in addition to the evidence on cross-examination, contained inconsistent and inaccurate statements.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS: ss. 183(2) and 193 (c) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended as the property involved in the appeal exceeds in value \$10,000. Leave to appeal is not required.

March 21, 2019

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Trustee of 1787930 Ontario Inc.

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PROVINCE OF ONTARIO

Court of Appeal File No:  
Court File Nos. 35-2395487 and 35-2395481

**COURT OF APPEAL FOR ONTARIO**  
Proceeding commenced at London

**NOTICE OF APPEAL**

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Lawyers for the Appellant,  
Transit Petroleum Inc.

Court of Appeal File No:  
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**APPELLANT'S CERTIFICATE RESPECTING EVIDENCE  
(TRANSIT PETROLEUM INC.)**

The appellant certifies that the following evidence is required for the appeal, in the appellant's opinion:

1. Exhibit numbers: Exhibit "1" to the Cross-examination of Monique Paul conducted on November 12, 2018;
2. The affidavit evidence of:
  - (a) Nathan McDaniel sworn September 18, 2018; and
  - (b) Nathan McDaniel sworn October 15, 2018;
  - (c) Nathan McDaniel sworn October 31, 2018;
  - (d) Affidavit of Don Poort sworn October 4, 2018;
  - (e) Affidavit of Monique Paul sworn October 4, 2018;
  - (f) Affidavit of Trevor Chambers sworn October 4, 2018;
  - (g) Affidavit of Tina Thorne sworn October 23, 2018;
  - (h) Affidavit of Monique Paul sworn October 23, 2018;
3. The oral evidence of:
  - (a) Transcript of the cross-examination of Nathan McDaniel conducted on November 12, 2018; and
  - (b) Transcript of the cross-examination of Monique Paul conducted on November 12, 2018.

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March 21, 2019

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**APPELLANT'S CERTIFICATE  
RESPECTING EVIDENCE**

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