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By Facsimile Only

Alberta Court of Appeal

TransCanada Pipelines Tower, 2600

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Attention: Deputy Registrar - Court of Appeal - Calgary

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Attention: Howard Gorman

Dear Madam, Sir:

McDonald v. Brookfield et al
Court of Appeal File Number 1501-0131AC

I respond to your letter dated December 14, 2016.

I advise that we have instructions to seek Leave to the Supreme Court of Canada.

A copy of the transcript of the proceedings conducted June 15, 2016 is required for the following reasons:

1. **New Evidence Application**
2. The terms of the Judgment must be settled and the transcript is required to demonstrate that the new evidence application was granted on June 15, 2016.
3. A significant portion of the appeal hearing was argued based on the new evidence which was admitted after the Appeal Panel vacated the court room to rule on this application.
4. When the Appeal Panel returned to the courtroom, I inquired as to whether the documents referred to in the new evidence application could be referred to in the argument of the appeal and the C.J. Fraser confirmed that the documents were part of the appeal.
5. The Judgment despite the earlier ruling by the Appeal Panel dismissed the new evidence application.
6. **The Oppression Remedy**
7. The principle national public issue to be developed in the Application for Leave to Appeal is the meaning of the deeming language set forth in the ABCA.
8. The Appeal Panel stated: "Whether companies are affiliates for the oppression remedy depends on the definitions in the statute, not the terms of the loan agreement between

them.”

9. The Appeal Panel failed to interpret the following wording referred to in the transcript and section 2 of the ABCA:
 - a. “they are deemed to be affiliated with each other” [ABCA section 2(1)(b)];
 - b. “votes that may be cast to elect directors” [ABCA section 2(2)(a)]; and
 - c. “votes ... sufficient, if exercised, to elect” [ABCA section 2(2)(b)].

10. The transcript of the proceedings conducted June 15, 2016 is required to clarify the discussion surrounding the deeming language of the ABCA to define the term affiliate and the qualification as a compliant pursuant to the oppression section of the ABCA.

11. **Document Disclosure**

12. The attached press release dated July 03, 2008 was admitted during the hearing on June 15, 2016 and the transcript is required to prove this document is part of the record.

13. The document is important to the Application for Leave to Appeal since the Appeal Panel overlooked the fact that Computershare Trust Company had the cheque in their possession to pay the required interest and Computershare Trust Company were awaiting Tricap’s approval to pay the interest on the unsecured indebtedness.

14. The press release dated July 03, 2008 makes clear reference to the fact that Birch Mountain had applied to Tricap, the secured lender, and was waiting for Tricap to authorize the release of the interest payment by Computershare Trust Company.

15. The transcript of the proceedings conducted June 15, 2016 is required to clarify the discussion surrounding the admission of the press release and the significance of the

default created by not authorizing the interest payment.

Yours truly,

John McDonald