

BLG Helps to Overturn Controversial Interest Act Decision

September 11, 2018

BLG represented ClearFlow Energy Finance Corp. before Ontario Court of Appeal

Toronto (September 11, 2018) – Borden Ladner Gervais LLP (BLG) is proud to announce it has successfully represented ClearFlow Energy Finance Corp. (CEF) in a significant case before the Ontario Court of Appeal. BLG's [Barry Bresner](#) and [Graham Splawski](#) acted for CEF to overturn a lower court decision which had interpreted Section 4 of the Interest Act in a way that caused considerable uncertainty across the Canadian commercial lending industry.

CEF had financed the operations of Solar Power Network Inc. (SPN) through a complex series of loan agreements and promissory notes. The loans went into default and, although SPN executed forbearance agreements acknowledging the indebtedness, SPN later took the position that an Administration Fee and a Discount Fee charged by CEF constituted interest and, as those fees were not stated at an annual rate or percentage, they were in breach of Section 4 of the Interest Act (Canada).

Section 4 provides that where a contract provides for interest at a rate or percentage that is less than a year, no interest exceeding 5 per cent will be recoverable unless the contract contains a statement of the yearly rate or percentage to which the other rate is equivalent. The loan agreements, but not the promissory notes, contained a simple formula for calculating the equivalent nominal annual rate.

Justice McEwen of the Ontario Superior Court of Justice held that the Administration Fee was not interest, but that the Discount Fee of .003 per cent per diem was interest and violated Section 4. In the result, the application judge interpreted Section 4 as capping the total interest payable on the loans at 5 per cent, effectively negating the stated base interest rate of 12 per cent per annum (24 per cent per annum after default).

The Court of Appeal allowed CEF's appeal. While the Court of Appeal agreed that the Discount Fee was interest, the annualizing formula in the loan agreements was sufficient compliance with Section 4. The Court of Appeal recognized the wide acceptance in commercial lending of formulae as sufficient compliance with Section 4.

Regarding the promissory notes, the Court agreed that the Discount Fee violated Section 4, but that the Interest Act had to be interpreted in light of modern commercial reality rather than on a strict literal reading. It was held that Section 4 only applied to the Discount Fee and that, as that Fee was already less than 5 per cent, the Interest Act had no effect.

The Court of Appeal was not prepared to adopt a strict interpretation that would lead to negating the bargain between the parties in order to provide a windfall to the borrower at the expense of the lender and contrary to the common intentions of the parties.

In the result, CEF was held entitled to 100 per cent of the interest and fees provided for in the loan agreements and promissory notes.

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.