



District of British Columbia
Division No.: 03-Vancouver
Court No.: B-240300
Estate No.: 11-3089419
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF CLOUD DIAGNOSTICS CANADA ULC**

NOTICE OF APPLICATION

**Name of applicant: Cloud Diagnostics Canada ULC (the "Applicant") or
("Cloud DX")**

To: The Service List

TAKE NOTICE that an application will be made by the Applicant to the presiding judge or associate judge at the courthouse at the Vancouver Law Courts, 800 Smithe Street, Vancouver, British Columbia V6Z 2E1 on June 21, 2024 at 2:00 p.m. for the order set out in Part 1 below.

The applicant estimates that the application will take 5.

- This matter is within the jurisdiction of an associate judge.
 This matter is not within the jurisdiction of an associate judge.

Part 1: ORDER SOUGHT

1. The Order Made After Application by the Honourable Justice Sharma (the "**Order**") pronounced on June 11, 2024, be corrected to:

10. "The priorities as among the

First – the Administration Charge, up to the maximum amount of \$200,000.00; and

2. Each party bear the costs of this application;
3. Such further and other relief as this Honorable Court may deem meet and just.

Part 2: FACTUAL BASIS

Granting of the Order by the Honourable Justice Sharma

1. On June 11, 2024, Jonathan L. Williams, counsel for the applicant, made an application seeking an order granting a first priority charge in the maximum amount of \$200,000 on the property, assets and undertakings of Cloud DX, to rank ahead in priority to all other charges, claims and encumbrances in favour of Crowe MacKay & Company Ltd. and Owen Bird Law Corporation. The Honourable Justice Sharma granted the Order.
2. As part of the Order, paragraph 3 of the order granted Crowe MacKay & Company Ltd. (the “**Proposal Trustee**”) and Owen Bird Law Corporation (“**Owen Bird**”) a charge (the “**Administration Charge**”) on all current and future assets, undertakings and properties of Cloud DX to which the administration charge should not exceed \$200,000.
3. At paragraph 10 of the Order, it indicates that the priorities as among the charges shall be first for the administration charge “up to the maximum amount of \$75,000.00”.
4. The proposed increase from \$75,000 to \$200,000 is consistent with the Proposal Trustee’s First Report to Court, filed June 10, 2024, and was always intended to be the total amount of the Administration Charge.
5. The increase proposed represents a clerical error in drafting the Order and ask the Court to use its inherent jurisdiction to correct the order.

Part 3: LEGAL BASIS

Rule 13-1(17)

1. This application is brought pursuant to the court’s inherent jurisdiction to control its processes and Rule 13-1(17) entitled “Correction of Orders”.

2. The Applicant relies on Rule 13-1(17) and seeks an order to correct the Order if necessary.
3. Rule 13-1(17) authorizes the Court to amend an order at any time to provide for any matter that should have been but was not adjudicated on.

Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rule(s)], Rule 13-1(17)

4. A court can retain jurisdiction to deal with matters not dealt with in the entered order even if there is no "slip" and the order as entered accurately reflects the manifest intention of the court. The court can be functus officio with respect to liability and damages, but not with respect to the issue of costs.
5. Rule 13-1(17) Provides that the court may at any time correct a clerical mistake in an order or an error arising in an order from an accidental slip or omission, or may amend an order to provide for any matter that should have been but was not adjudicated on.
6. The Honourable Mr. Justice N. Brown in *Lochhead v. Lochhead*, 2011 BCSC 1662 provides two accepted uses of Rule 13-1(17):

"[20] In summary, Rule 13-1(17) has two accepted uses:

(1) to correct an accidental slip in the drawing of an order which, if left as is, would produce a result contrary to the intention of the court (as found in the reasons for judgment); or

(2) to amend an order to provide for a matter which should have been but was not adjudicated on."

7. In this matter, the stated amount of \$75,000.00 in the original order falls within an "accidental slip or omission" specified under Rule 13-1(17).

Part 4: MATERIAL TO BE RELIED ON

1. At the hearing of this Application, Cloud DX will rely on:

- a) Affidavit #1 of Jonathan L. Williams, sworn June 17, 2024;
- b) Pleadings in this matter; and
- c) such further and other materials as counsel may advise and this Honourable Court may allow.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- a) file an application response in Form 33,
- b) file the original of every affidavit, and of every other document, that
 - i) you intend to refer to at the hearing of this application, and
 - ii) has not already been filed in the proceedings, and
- c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - i) a copy of the filed application response;
 - ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: June 17, 2024



Signature of lawyer for applicant
Thomas W. Deneka

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____

Signature of [] Judge
[] Associate Judge

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above