

# **2003 BCSECCOM 812**

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from the requirement to have current AIF filed on SEDAR in order to be a qualifying issuer for the purposes of MI 45-102

## **Applicable British Columbia Provisions**

Multilateral Instrument 45-102, ss. 1.1 and 4.1

**IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH  
COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO, QUÉBEC,  
NOVA SCOTIA, NEW BRUNSWICK, PRINCE EDWARD ISLAND AND  
NEWFOUNDLAND AND LABRADOR**

**AND**

**IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM  
FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

**IN THE MATTER OF CELL-LOC INC., 1073691 ALBERTA LTD. AND  
CAPITOL ENERGY RESOURCES INVESTMENT PARTNERSHIP**

## **MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the “Jurisdictions”) has received an application (the “Application”) from 1073691 Alberta Ltd. (“Newco”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”), in connection with a proposed plan of arrangement (the “Arrangement”) under the *Business Corporations Act* (Alberta) (the “ABCA”) involving Newco, Cell-Loc Inc. (“Cell-Loc”), Capitol Energy Investment Partnership (the “Partnership”), and the holders (“Cell-Loc Shareholders”) of common shares of Cell-Loc (“Common Shares”), the holders (“Cell-Loc Warrantholders”) of warrants (“Warrants”) and holders (“Cell-Loc Optionholders”) of options (“Options”) to purchase Common

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Shares (the Cell-Loc Shareholders, Cell-Loc Warrantholders and Cell-Loc Optionholders collectively known as the “Cell-Loc Securityholders”), that:

- 1.1 the requirements contained in the Legislation of Alberta, Saskatchewan, Ontario, New Brunswick, Prince Edward Island and Newfoundland and Labrador to file a preliminary prospectus and a prospectus, and to receive receipts therefor (the “Prospectus Requirement”), in certain of the Jurisdictions, shall not apply to first trades of securities to be made in connection with the Arrangement;
  - 1.2 would deem or declare Newco to be a reporting issuer at the time of the Arrangement becoming effective for the purposes of the Legislation in the Jurisdictions, other than British Columbia and Québec; and
  - 1.3 the requirement of Newco to have a “current AIF” filed on SEDAR in order to be considered a “qualifying issuer” under Multilateral Instrument 45-102 (“MI 45-102”), and in order to qualify for the shortened hold period contemplated by the decision no. 2003-C-0377 (the “CVMQ Resale Decision”) of the Commission de valeurs mobilières du Québec (“CVMQ”), would not apply.
2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the Principal Regulator for the Application;
  3. AND WHEREAS unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or Québec Commission Notice 14-101;
  4. AND WHEREAS Newco and Cell-Loc have represented to the Decision Makers that:

### Background

- 4.1 On September 25, 2003, Cell-Loc announced that it had entered into an agreement in respect of the Arrangement to be effected pursuant to a statutory plan of arrangement under Section 193 of the ABCA. The Arrangement will be carried out pursuant to an arrangement agreement (the “Arrangement Agreement”) dated November 3, 2003 among the Partnership, Newco and Cell-Loc. While the mechanics of the Arrangement are more precisely

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described below under the heading “The Arrangement Steps”, the effect of the Arrangement will be to transfer Cell-Loc's existing technology assets to a new subsidiary company, Newco, to distribute all the common shares of Newco (the “Newco Shares”) to the existing Cell-Loc Shareholders as a return of capital, by providing Cell-Loc Shareholders (other than dissenting Cell-Loc Shareholders) with one Newco Share for each Common Share held, and to convert Cell-Loc into an oil and gas exploration and production company, to be known as Capitol Energy Resources Ltd., all concurrent with an investment by third parties by way of private placement that would result in an infusion of cash to both Newco and Cell-Loc.

- 4.2 The information circular (the “Information Circular”) describing the Arrangement, which is dated November 3, 2003, has been printed and mailed to the Cell-Loc Securityholders.

### Cell-Loc

- 4.3 Cell-Loc was incorporated under the ABCA on June 30, 1995 under the name “Cell-Loc Inc.”. Cell-Loc's name was changed to “Cell-Loc Inc.” on September 12, 1996. On July 1, 2000, Cell-Loc amalgamated with its wholly-owned subsidiary, Intelligent Databases International Ltd., continuing as “Cell-Loc Inc.”. The head office of Cell-Loc is located at Suite #220, Franklin Atrium, 3015 - 5th Avenue N.E., Calgary, Alberta T2A 6T8 and the registered office of Cell-Loc is located at 3700, 400 - 3rd Avenue S.W., Calgary, Alberta, T2P 4H2.
- 4.4 Cell-Loc's business involves the development and marketing of patented and patent-pending network-based wireless location technology that forms the basis of its Collocate<sup>d</sup> family of products which enable location-based services, as well as the construction of wireless location networks within cities.
- 4.5 The authorized capital of Cell-Loc consists of an unlimited number of Common Shares, of which, as at October 31, 2003, 33,395,958 Common Shares were issued and outstanding. Also, as of October 31, 2003, 2,103,868 Common Shares were issuable in connection with the exercise of outstanding Options, and 3,887,324 Common Shares were issuable in connection with the exercise of outstanding Warrants.

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- 4.6 Cell-Loc is, and has been for a period of time in excess of 12 months, a reporting issuer under the securities legislation of Alberta, British Columbia, Manitoba, Saskatchewan, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador and, to the best of its knowledge, is not in default of any requirement under the Legislation.
- 4.7 The Common Shares are listed and posted for trading on the Toronto Stock Exchange (the “TSX”) under the trading symbol “CLQ”.

### Newco

- 4.8 Newco was incorporated under the ABCA as 1073691 Alberta Ltd. on October 29, 2003. Newco's head office is located at Suite #220, Franklin Atrium, 3015 – 5th Avenue N.E., Calgary, Alberta, T2A 6T8, and its registered office is located at #3500, 855 – 2nd Street S.W., Calgary, Alberta, T2P 4J8.
- 4.9 Newco has not conducted any business to date, but has executed the Arrangement Agreement.
- 4.10 The authorized capital of Newco consists of an unlimited number of Newco Shares. As of the date hereof, there is one Newco Share issued and outstanding, which Newco Share is owned by Cell-Loc.
- 4.11 Newco is not a reporting issuer in any Jurisdiction.
- 4.12 Upon completion of the Arrangement, all of Cell-Loc's assets relating to its existing wireless location intellectual property business, including Cell-Loc's interest in its subsidiaries, TimesThree Inc., TimesThree (Barbados) Inc. and Cellocate Technologies (Barbados) Inc. (collectively, the “Technology Assets”), will have been acquired by Newco pursuant to a purchase and sale agreement between Cell-Loc and Newco effective December 1, 2003 (the “Purchase and Sale Agreement”).
- 4.13 Newco intends to apply to the TSX Venture Exchange (the “TSXV”) to have the Newco Shares listed on the TSXV upon the completion of the Arrangement.

### The Arrangement

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- 4.14 On November 3, 2003, Cell-Loc obtained an interim order (the “Interim Order”) of the Court of Queen's Bench of Alberta (the “Court”) under section 193 of the ABCA providing for the calling and holding of the annual and special meeting (the “Meeting”) of Cell-Loc Securityholders, and other procedural matters. The Meeting is anticipated to be held on or about December 1, 2003.
- 4.15 The Interim Order provides that the resolution of the Cell-Loc Securityholders approving the Arrangement (the “Arrangement Resolution”) is required to be approved by at least 66 2/3% of the aggregate votes cast by the Disinterested Securityholders, voting together as a single class, present in person or by proxy at the Meeting. Each Cell-Loc Shareholder is entitled to one vote for each Common Share held, and each Cell-Loc Optionholder and each Cell-Loc Warrantholder is entitled to one vote for each Common Share such holder would be entitled to receive upon the valid exercise of the Options or Warrants, as applicable. Where used herein, “Disinterested Securityholders” means all Cell-Loc Securityholders other than those Cell-Loc Securityholders who are members of the Investor Group or are the nominees for election as directors of Cell-Loc as outlined in the Information Circular, and “Investor Group” means a group of investors, acting directly and through the Partnership, which will contribute \$4.9 million to Cell-Loc by way of a private placement financing pursuant to the Arrangement.
- 4.16 In connection with the Meeting and pursuant to the Interim Order, Cell-Loc mailed, on November 3, 2003 to each Cell-Loc Securityholder: (i) a notice of annual and special meeting; (ii) a form of proxy; (iii) the Information Circular; and (iv) a letter of transmittal. The Information Circular has been prepared substantially in accordance with OSC Rule 54-501, Prospectus Disclosure in Certain Information Circulars, except with respect to any relief granted therefrom, and contains disclosure of the Arrangement and the business and affairs of each of Cell-Loc, the Partnership and Newco.
- 4.17 For the Arrangement to become effective, a number of transactions and trades, which are outlined in section 4.20, must take place. Such transactions and trades are set out in the Plan of Arrangement the details of which are disclosed in the Information Circular. No one transaction or trade will be effective unless all are effective.

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- 4.18 In connection with the Arrangement, the Independent Committee of the Board of Directors of Cell-Loc asked Peters & Co. Limited to address the fairness, from a financial point of view, of the consideration to be received by Cell-Loc Shareholders pursuant to the Arrangement. In connection with this mandate, Peters & Co. Limited has prepared an opinion which states that, as of the date of the opinion, the consideration under the Arrangement is fair, from a financial point of view, to the Cell-Loc Shareholders.
- 4.19 The Arrangement also provides that Cell-Loc Securityholders will have the ability to exercise dissent rights and to be paid the fair value of their Common Shares, Options and/or Warrants, as applicable, as set forth under the ABCA, subject to modifications set out by the Interim Order.

### The Arrangement Steps

- 4.20 The Arrangement Agreement provides for the implementation of the Plan of Arrangement which provides for the following transactions to occur on the effective date of the Arrangement:
- 4.20.1 the Articles of Incorporation of Cell-Loc will be amended to create a new class of non-voting common shares (the “Non-Voting Common Shares”) in the capital of Cell-Loc and a new class of voting common shares designated as “new common shares” (the “New Common Shares”) in the capital of Cell-Loc;
  - 4.20.2 the Articles of Incorporation of Cell-Loc will also be amended to change its name from “Cell-Loc Inc.” to “Capitol Energy Resources Ltd.”;
  - 4.20.3 \$2.5 million will be invested in Cell-Loc by the Partnership and the Investor Group, at the price of \$0.829373 per share (the “Subscription Price”), in consideration for the issuance of an aggregate of 30,143,252 Non-Voting Common Shares;
  - 4.20.4 the Technology Assets, together with the associated contractual obligations and liabilities and the amount of \$2.5 million in cash (invested as per paragraph (c) above) will be transferred by Cell-Loc

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to Newco in consideration for: (i) that number of Newco Shares equal to the number of Common Shares outstanding immediately prior to the Arrangement (being, as at October 31, 2003, 33,395,958 Newco Shares) less one; and (ii) an indemnification given by Newco to Cell-Loc and its directors, officers and employees;

- 4.20.5 each Option held by a Cell-Loc Optionholder (other than Options held by dissenting Cell-Loc Optionholders) will be exchanged for a New Options ("New Options" means one option to acquire a Newco Share for each Option held and one option to acquire a New Common Share for each two Options held);
- 4.20.6 Cell-Loc will acquire all outstanding Common Shares from the holders thereof (other than holders that are dissenting Cell-Loc Shareholders) and shall deliver in exchange for each Common Share held one-half (1/2) of one New Common Share and one Newco Common Share, in each case free of any claims. The Common Shares acquired by Cell-Loc will be cancelled and returned to the status of authorized but unissued shares;
- 4.20.7 the stated capital of the New Common Shares issued pursuant to the exchange set forth in paragraph (f) above shall be reduced to the amount of \$1.00;
- 4.20.8 each Warrant held by a Cell-Loc Warrantholder (other than Warrants held by dissenting Cell-Loc Warrantholders) will be exchanged for New Warrants ("New Warrants" means, for every two Warrants held, one warrant in Cell-Loc and two warrants in Newco);
- 4.20.9 the Warrants and Options shall be cancelled and terminated and cease to represent any right or claim whatsoever;
- 4.20.10 an additional \$2.2 million will be invested in Cell-Loc by the Partnership and the Investor Group,

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at the Subscription Price, in consideration for the issuance of an aggregate of 15,275,490 Non-Voting Common Shares and 11,250,523 New Common Shares;

- 4.20.11 of the total investment in Cell-Loc by the Partnership and the Investor Group of \$4.9 million (being comprised of the investments described in paragraphs (c) and (j) above and the purchase from Cell-Loc by certain members of the Investor Group prior to the date hereof of \$200,000 aggregate principal amount of non-interest bearing, unsecured, redeemable, convertible debentures): (i) \$2.5 million shall be funded to Newco as per paragraph (d) above; (ii) \$1.2 million will be retained by Cell-Loc for the purpose of meeting trades payable and other liabilities of Cell-Loc relating to the period up to the completion of the Arrangement (with Cell-Loc providing Newco, on or before the effective time of the Arrangement, with executed unconditional releases from all creditors receiving such payments, together with a full and complete accounting to Newco respecting all such payments); (iii) \$1 million will be retained by Cell-Loc for ongoing working capital; and (iv) the remaining \$200,000 will be applied by Cell-Loc towards working capital required during the period up to the effective time of the Arrangement;
- 4.20.12 the articles of Cell-Loc will be amended by deleting the Common Shares and the rights privileges, restrictions and conditions attaching thereto and by re-designating the New Common Shares as the “common shares” of Cell-Loc; and
- 4.20.13 Cell-Loc will make an application to list the New Common Shares on the TSXV.
- 4.21 No fractional New Common Shares will be issued pursuant to the Arrangement. In the event the Arrangement results in a registered Cell-Loc Shareholder becoming entitled to a fractional New Common Share, in lieu of any fractional New Common Share, such registered Cell-Loc Shareholder will receive the next lowest



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number of New Common Shares. Additionally, no fractional New Options or New Warrants will be issued pursuant to the Arrangement and, in lieu of any such fractional New Options or New Warrants, such Securityholder shall receive the next lowest number of New Options or New Warrants, as applicable.

- 4.22 The end result of the trades described above is that: (a) each holder of a Common Share will receive one Newco Share; (b) the Technology Assets will be transferred to Newco and Newco will be owned by the existing Cell-Loc Shareholders; and (c) Cell-Loc will change its name to Capitol Energy Resources Ltd. and be converted into an oil and gas exploration and production company.

### General

- 4.23 The Information Circular in connection with the Arrangement provided to all Securityholders, and filed in all of the Jurisdictions contains (or, to the extent permitted, incorporates by reference) prospectus-level disclosure regarding the business of Cell-Loc, Newco and Capitol Energy Resources Ltd., including pro forma financial statements for the portions of the business to be acquired by Newco pursuant to the Purchase and Sale Agreement, and complete descriptions of Cell-Loc's Technology Assets and technology business, directors and officers, share capital and all other items required to be included in prospectuses under National Instrument 41-501 General Prospectus Requirements. Audited financial statements for Cell-Loc, which essentially represent the business to be acquired by Newco, are available on SEDAR.
- 4.24 The Technology Assets that will be transferred to Newco from Cell-Loc pursuant to the Arrangement have been the subject of continuous disclosure on an ongoing basis for more than 12 months, in accordance with Cell-Loc's responsibilities as a reporting issuer.
- 4.25 The Arrangement will require the approval of the Cell-Loc Securityholders, voting as ordered in the Interim Order of the Court, and of the Court. In considering whether to approve the arrangement, the Court will consider whether the Arrangement is fair to such Cell-Loc Securityholders.
- 4.26 The Board of Directors of Cell-Loc has (i) received a fairness opinion from Peters & Co. Limited to the effect that the

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consideration received by the Cell-Loc Shareholders under the Arrangement is fair, from a financial point of view, to Cell-Loc Shareholders, (ii) approved the Arrangement and (iii) recommended that Cell-Loc Securityholders vote in favour of the Arrangement.

- 4.27 Holders of Common Shares, Warrants and Options will have the right to dissent from the Arrangement under Section 191 of the ABCA, and the Information Circular discloses full particulars of this right in accordance with applicable law.
- 4.28 Exemptions from registration and prospectus requirements of the legislation of Québec in respect of trades made in securities of Newco in connection with the Arrangement and exemptions from prospectus requirements of the Legislation in respect of first trades in Newco Shares following the Arrangement may not be otherwise available in certain Jurisdictions.
- 4.29 under securities legislation, Newco would not become a reporting issuer upon completion of the Arrangement but would be deemed to be a reporting issuer upon the listing of the Newco Shares on the TSXV which might occur after completion of the Arrangement.
- 5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);
- 6. AND WHEREAS, each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;
- 7. THE DECISION of the Decision Makers under the Legislation is that:
  - 7.1 the Prospectus Requirement contained in the Legislation of Alberta, Saskatchewan, Ontario, New Brunswick, Prince Edward Island and Newfoundland and Labrador shall not apply to the first trade in Newco Shares acquired by Cell-Loc Shareholders in connection with the Arrangement and the first trade of Newco Shares acquired by Cell-Loc Securityholders on the exercise of all rights, automatic or otherwise, under warrants and options to purchase Newco Shares, provided that the conditions in subsections (3) or (4) of section 2.6 of MI 45-102 are satisfied and, for the purposes of determining the period of time that Newco has

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been a reporting issuer under section 2.6 of MI 45-102, the period of time that Cell-Loc was a reporting issuer in at least one of the jurisdictions listed in Appendix B of MI 45-102 immediately before the Arrangement may be included;

7.2 upon completion of the Arrangement:

7.2.1 in British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador, the requirement contained in the Legislation to have a “current AIF” filed on SEDAR in order to be a “qualifying issuer” for the purposes of MI 45-102 shall not apply to Newco provided that:

7.2.1.1 Newco files a notice on SEDAR advising that the Information Circular has been filed as an alternate form of annual information form and identifying the SEDAR Project Number under which the Information Circular was filed; and

7.2.1.2 Newco files a Form 45-102F2 on or before the tenth day after the distribution day of any securities certifying that it is a “qualifying issuer” except for the requirement to have a “current AIF”; with

such order to expire 140 days after Newco's financial year ended June 30, 2004; and

7.2.2 in Québec, the Information Circular shall be deemed to be the annual information form required in accordance with National Instrument 44-101, Short Form Prospectus Distributions, for the purposes of Newco qualifying for the shortened hold period contemplated by the CVMQ Resale Decision of the CVMQ, with such order to expire 140 days after Newco's financial year ended June 30, 2004;

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- 7.3 Newco shall upon completion of the Arrangement be deemed or declared to be a reporting issuer for the purposes of the Legislation of the Jurisdictions, other than British Columbia and Québec.

DATED at the City of Calgary	)	
in the Province of Alberta	)	
this 1 <sup>st</sup> day of December, 2003	)	Glenda A. Campbell, Q.C.,
	)	Vice-Chair
	)	
	)	Stephen R. Murison, Vice-Chair