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## Nordstar bid likely to get go ahead, experts say

Court to decide if offer, actions of board were fair to shareholders, in good faith

Josh Rubin Toronto Star

**T**he fight for control of the company that publishes the Toronto Star is headed to court - but legal experts say they think it is unlikely that the courts will block the deal.

During the hearing, which is scheduled to begin at 10 a.m. Thursday, Ontario Superior Court Justice Cory Gilmore is expected to rule on whether the takeover bid for Torstar by entrepreneurs Jordan Bitove and Paul Rivett can go ahead.

Legal experts say it is possible that Gilmore could block the \$60-million deal, which on Tuesday was overwhelmingly approved by Torstar shareholders, but they doubted she would, unless new evidence is presented.

If it goes ahead, the acquisition is expected to close July 28.

Gilmore must look at whether the bid, the actions of Torstar's board leading up to it, and the actions of a special committee that explored a sale since last October, were fair to all shareholders and in good faith, legal experts say.

"The court will be interested in whether the proper procedures were followed by

the board... The judge will also consider if the arrangement is fair and reasonable on the surface," said Ermanno Pascutto, executive director of investor rights group FAIR Canada and former executive director of the Ontario Securities Commission.

The fact that shareholders, including those who hadn't signed "hard lock-ups" guaranteeing their support for the NordStar bid, voted overwhelmingly in favour of it, makes it much less likely Gilmore would block the deal from closing, Pascutto said.

"Approval by about 82 per cent of the disinterested shareholder in this case will carry a lot of weight with the judge," Pascutto said.

On Tuesday, 98.7 per cent of Torstar shareholders voted in favour of the 74-cent-per-share bid from NordStar. According to a Torstar press release, 99.7 per cent of the votes by class A shareholders were in favour of the deal, along with 98.1 per cent of class B shareholders.

Even among shareholders who hadn't signed lock-ups, support was strong,

with 81.9 per cent voting in favour.

Poonam Puri, a professor at York University's Osgoode Hall law school, said judges give "considerable weight" to shareholder approval for a simple reason.

"Overwhelming approval by the majority of shareholders, and by the 'majority of the minority,' is a key indicator of whether those affected by the plan consider it to be fair and reasonable," said Puri, adding that it's not the only factor a judge would consider.

Among the other factors, said Puri, is whether the bid was recommended by an independent committee, whether competing offers were solicited, whether the board got independent legal advice, and a "fairness opinion" by an independent legal source.

Based on what Torstar has made public so far, and the high level of shareholder support, Puri said it seems likely that the NordStar takeover (called a plan of arrangement in legal terms) will be approved by the court.

"It is more likely than not that a court will issue a final order approving the

plan of arrangement. This may change, however, if a dissenting security holder is able to provide new evidence that contradicts Torstar's public disclosure," Puri said.

The Bitove-Rivett bid - made through their company NordStar - is expected to be opposed in court by representatives of a second bid group, Canadian Modern Media Holdings.

Minority shareholders, including former Hamilton Spectator publisher Pat Collins, are also expected to oppose the NordStar bid. (Joe Groia, who will be representing some minority shareholders Thursday, did not respond to requests for comment from the Star.)

They'll likely have a tough road ahead of them, Puri said.

"It is rare for a court to block a proposed takeover on the basis of a breach of directors' duties. Canadian courts give deference to reasonable decisions of public company directors who are independent, have acted in good faith, on an informed basis, in a diligent manner," Puri said.