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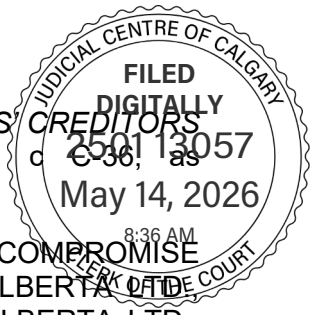

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* RSC 1985, c C-36, as amended

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 2345137 ALBERTA LTD., 2351497 ALBERTA LTD., 2497902 ALBERTA LTD., SUMMIT S AUTO LTD., SUMMIT V AUTO LTD., MK AUTO K-M LTD., 2437342 ALBERTA LTD., 1972207 ALBERTA LTD., 1175104 B.C. LTD., 1262113 B.C. LTD., 1272986 B.C. LTD., 2412170 ALBERTA LTD. AND 2416326 ALBERTA LTD.

DOCUMENT **BRIEF OF LAW**

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PART I - INTRODUCTION

1. This Brief of Law is submitted by BDO Canada Limited ("**BDO**"), in its capacity as Court-appointed Monitor (in such capacity, the "**Monitor**") of 2345137 Alberta Ltd. ("**Vermilion Chrysler**"), 1262113 B.C. Ltd. ("**Western Sport Products**"), 2497902 Alberta Ltd. ("**Castle Ford**"), 1175104 B.C. Ltd. ("**Cranbrook Mitsubishi**"), 1272986 B.C. Ltd. ("**Sun Valley Nissan**"), Summit V Auto Ltd. ("**Arrow VW**"), 2437342 Alberta Ltd. ("**Squamish Chrysler**", with Vermilion Chrysler, Western Sport Products, Castle Ford, Cranbrook Mitsubishi, Sun Valley Nissan, and Arrow VW, the "**Operating Debtors**"), Summit S Auto Ltd. ("**Real Co**"), MK Auto K-M Ltd. ("**MK Auto**"), 2351497 Alberta Ltd. ("**235 AB**") and 1972207 Alberta Ltd. ("**197 AB**", and together with Vermilion Chrysler, Cranbrook Mitsubishi, Sun Valley Nissan, Western Sport Products, Squamish Chrysler, Castle Ford, Arrow VW, Real Co, MK Auto, and 235 AB, the "**Summit Auto Group**"), 2412170 Alberta Ltd. ("**Westcastle Dealership**") and 2416326 Alberta Ltd. ("**Westcastle Real Co**") together with Westcastle Dealership, "**Westcastle GMC**" and together with the Summit Auto Group, the "**Debtors**") in support of its application for:

   (a) an Order, among other things:

      (i) deeming service of the Application to be good and sufficient;

      (ii) extending the Stay Period up to and including July 24, 2026;

      (iii) declaring that the transfer of the Westcastle GMC Vehicles is void as against the Monitor pursuant to sections 36.1 and 11 of the CCAA and section 95 of the BIA and authorizing the Monitor to take custody of the Westcastle GMC Vehicles from any person, sell them and retain the proceeds of sale for distribution to creditors;

      (iv) increasing the Westcastle GMC Administration Charge from $250,000 to $500,000;

      (v) decreasing the Westcastle Borrowing Charge from $150,000 to $50,000;

      (vi) declaring that the *Wage Earner Protection Program Act*, SC 2005, c 47, s. 1 ("**WEPPA**"), applies to each of the Debtors and their employees whose employment has been terminated in these proceedings meet the criteria

prescribed by section 3.2 of the *Wage Earner Protection Program* Regulations, SOR/2008-222 ("**WEPPR**");

(vii) approving the wind-down / liquidation of Cranbrook Mitsubishi, Squamish Chrysler and Sun Valley Nissan;

(viii) declaring the Dodge Ram shall be returned to the estate of Squamish Chrysler pursuant to section 36. of the CCAA and section 96 of the BIA, and directing 1526782 BC Ltd. ("**152 BC**") / Aristotle Mounzer and the Insurance Corporation of British Columbia to take any steps to assist the Monitor in transferring the Dodge Ram into the name of Squamish Chrysler;

(ix) approving the actions, activities and conduct of the Monitor, as set out in the Seventh Report of the Monitor, dated May 11, 2026 (the "**Seventh Report**");

(x) approving the fees and disbursements of the Monitor and its legal counsel, Miller Thomson LLP ("**Miller Thomson**") as set out in the Seventh Report;

(xi) temporarily sealing the Confidential Appendix to the Seventh Report of the Monitor dated May 11, 2026 (the "**Confidential Appendix**") on the Court record; and

(xii) approving the Listing Process;

(b) an Order, among other things, approving a claims procedure with respect to Westcastle GMC; and

(c) such further and other relief as the Monitor may request and this Honourable Court may grant.

PART II – FACTS

2. The facts relevant to this Application are set out in detail in the Seventh Report and the Supplement to the Seventh Report of the Monitor dated May 11, 2026 ("**Supplement the Seventh Report**").

3. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Seventh Report and Supplement the Seventh Report.

PART III - ISSUES

4. The issues to be determined by this Honourable Court are whether:

   (a) this Court should grant the requested extension of the Stay of Proceedings;

   (b) this Court should declare that the transfer of the Westcastle GMC Vehicles is void against the Monitor;

   (c) this Court should increase the Westcastle GMC Administration Charge;

   (d) this Court should decrease the Westcastle Borrowing Charge;

   (e) this Court should declare that the Debtors and their terminated employees meet the criteria under WEPPA and WEPPR;

   (f) this Court should approve the liquidation and wind-down of Cranbrook Mitsubishi, Squamish Chrysler and Sun Valley Nissan;

   (g) this Court should return the Dodge Ram to Squamish Chrysler;

   (h) this Court should approve the Listing Process;

   (i) this Court should approve the Claims Procedure;

   (j) this Court should approve the fees and activities of the Monitor and its counsel; and

   (k) this Court should grant a restricted court access order.

A. The Stay of Proceedings should be extended

5. The Stay of Proceedings currently expires on May 29, 2026. The Monitor requests an extension of the Stay of Proceedings to July 24, 2026. Pursuant to section 11.02(2) of the CCAA, this Court has discretion to make an order extending the Stay of Proceedings granted in an initial order for any period that the Court considers necessary. [1]

6. Section 11.02(3) permits the Court to make an order to extend the stay if the applicant satisfies the Court that circumstances exist that make the order appropriate; and the

[1] *Companies' Creditor Arrangement Act,* RSC 1985, c C-36 s. 11, s. 11.02(2) .

applicant has acted, and is acting, in good faith and with due diligence.[2] Appropriateness of a stay extension is assessed by inquiring into whether the order sought advances the policy objectives underlying the CCAA.[3]

7. The Court's role on an application for a stay extension under section 11.02(1) is not to re-evaluate the initial decision, but rather to consider whether the applicant has established that the current circumstances support an extension as being appropriate and that the applicant has acted, and is acting, in good faith and with due diligence, as required under s. 11.02(3).[4]

8. The extension of the Stay of Proceedings to July 24, 2026, is necessary and appropriate in the circumstances to allow the Monitor time to wind-down and liquidate the remaining Dealerships and their inventory or conduct any further sales in relation to the remaining Dealerships, and run the Claims Procedure (if approved by this Honourable Court).

9. The Stay of Proceedings is appropriate because: (i) there will be no material prejudice to the Debtors' creditors and stakeholders as a result of the proposed extension of the Stay of Proceedings; (ii) the Fourth Revised Cash Flow Forecast shows there is sufficient liquidity; (ii) the extension of the Stay of Proceedings will allow the Monitor to continue an orderly liquidation and sale of the Debtors' assets, facilitate further Dealership sales, and run the Claims Procedure being sought in the Application; and (iv) the Debtors have acted, and are acting, in good faith and with due diligence.

B. The Transfer of the Westcastle GMC Vehicles is a Fraudulent Preference

10. Less than 3 months prior to the inclusion of Westcastle GMC in the within CCAA Proceedings, the former director of Westcastle GMC, Mr. Michael Koch, transferred the Westcastle GMC Vehicles to The Loan Store.[5]

11. The purported consideration for the Westcastle GMC Vehicles was a settlement of an alleged debt owed to The Loan Store or its affiliates.[6]

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[2] CCAA, s. 11.02(3).

[3] *Re Canada North Group Inc,* 2017 ABQB 508 at para 34 [*Canada North*], citing *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 at paras 15, 70-71.

[4] *Canada North, ibid* at para 33.

[5] Supplement to Seventh Report.

[6] Supplement to the Seventh Report at paras 65-72.

12. The Loan Store claims there is a binding settlement agreement based on a series of emails between counsel for Mr. Koch and counsel for The Loan Store.[7]

13. The Affidavits of Michael Koch and Martin Hausner, each sworn February 22, 2026, state there was a lawyer negotiated settlement involving the Westcastle GMC Vehicles.[8]

14. Counsel for Mr. Koch advised counsel for the Monitor that he did not negotiate any terms of the settlement agreement with counsel for The Loan Store.[9]

15. Further, there are potential issues related to the underlying Security Package that need further consideration in the Claims Procedure.[10]

16. The financial statements of Westcastle GMC do not disclose any indebtedness owing to The Loan Store[11] and advances made by The Loan Store appear to have been made to Mr. Koch personally, and not Westcastle GMC.[12]

17. The Westcastle GMC Vehicles were subject to TD Bank's security registered in the PPR, an AllPAAP registration against the Westcastle Dealership that owned the Westcastle GMC VehcilesVehicles by Great North Auto Finance, and unsecured creditor claims.[13]

18. The transfer of the Westcastle GMC Vehicles by Westcastle GMC, authorized by former director Mr. Koch, was made with the effect of giving The Loan Store a preference over the TD Security and other creditors of Westcastle GMC.[14]

19. The transfer of the Westcastle GMC Vehicles is void against the Monitor pursuant to section 95 of the BIA,[15] as incorporated in the CCAA by section 36.1.[16]

> **36.1 (1)** Sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* apply, with any modifications that the circumstances require, in respect of a compromise or arrangement unless the compromise or arrangement provides otherwise.

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[7] Supplement to the Seventh Report at para 65.

[8] Affidavit of Michael Koch, sworn February 22, 2026 at para 24; Affidavit of Martin Hausner, sworn February 22, 2026 at para 8.

[9] Supplement to the Seventh Report at paras 68-69, Appendix S and T.

[10] Supplement to the Seventh Reportat para 59-62, Appendix P, Q and R.

[11] Supplement to the Seventh Reportat para 63.

[12] Supplement to the Seventh Reportat para 62..

[13] Supplement to the Seventh Reportat para 76, Appendix U.

[14] Seventh Report at paras 36(f) and 78.

[15] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 95.

[16] CCAA, s 36.1.

Interpretation

(2) For the purposes of subsection (1), a reference in sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act*

(a) to "date of the bankruptcy" is to be read as a reference to "day on which proceedings commence under this Act";

(b) to "trustee" is to be read as a reference to "monitor"; and

(c) to "bankrupt", "insolvent person" or "debtor" is to be read as a reference to "debtor company".

Preferences

95 (1) A transfer of property made, a provision of services made, a charge on property made, a payment made, an obligation incurred or a judicial proceeding taken or suffered by an insolvent person

(a) in favour of a creditor who is dealing at arm's length with the insolvent person, or a person in trust for that creditor, with a view to giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy; and

(b) in favour of a creditor who is not dealing at arm's length with the insolvent person, or a person in trust for that creditor, that has the effect of giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is 12 months before the date of the initial bankruptcy event and ending on the date of the bankruptcy.

Preference presumed

(2) If the transfer, charge, payment, obligation or judicial proceeding referred to in paragraph (1)(a) has the effect of giving the creditor a preference, it is, in the absence of evidence to the contrary, presumed to have been made, incurred, taken or suffered with a view to giving the creditor the preference — even if it was made, incurred, taken or suffered, as the case may be, under pressure — and evidence of pressure is not admissible to support the transaction.

20. Subsection 95(1) of the Act may be separated into the following elements, each of which must be established for the transaction in issue to be set aside by the court:

(a) a transaction or action in issue must be a conveyance or transfer or property by the debtor company;

(b) the conveyance or transfer must have been made, incurred, taken or suffered by the debtor company;

(c) the conveyance or transfer must have been made, incurred, taken or suffered with a view to giving the creditor a preference over other creditors;

(d) the conveyance or transfer must have been made, incurred, taken or suffered within the period beginning on the day that is either three months or one year—depending on whether the creditor in question was an arm's length creditor or a non-arm's length creditor—before the date of the day on which proceedings commenced under the CCAA and ending on the date the debtor company became a debtor company, both dates included.

21. With respect to the test of intention, it is an objective one. That is, the intention of the debtor is to be inferred from all of the circumstances of the case:

> [I]t is for me to determine what was the intention. This must be a matter of inference. The test which I consider should be applied is an objective and not subjective one; that is to say, the intention which should be attributed to the parties will always be that which their conduct bears when reasonably construed and not that which, long after the event, they claim they believe was present in their minds.[17]

22. The intention will be that which the debtor's conduct bears when reasonably construed and not that which, long after the event, he or she claims was his or her intention.[18]

23. In the case of a corporate debtor, the intent of the corporation is to be ascertained by determining the intent of the "governing minds" or "directing minds" of the corporation.[19]

24. Courts have found that "with a view to giving that creditor a preference over other creditors" does not require that the debtor intended to give a preference over all other creditors. It is sufficient if he or she intended to give a preference over any one or more of them.[20]

25. The Supreme Court of Canada in *Hudson v Benallack* unanimously decided that "with a view to giving that creditor a preference" depends entirely on the intention of the debtor, and proof of concurrent intent is unnecessary ie. the concurrent intent on the part of the debt and creditor is unnecessary.[21]

26. Section 95(2) specifies that if the transfer, charge, payment, obligation or judicial proceeding referred to has the effect of giving the creditor a preference, it is, in the absence of evidence to the contrary, presumed to have been made with a view to giving

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[17] *Re Holt Motors Ltd Canadian Credits Men's Association Ltd v Stonewall Credit Union Society*, 1966 CanLII 437 (MB QB).

[18] *Ibid*.;

[19] *Candadian Imperial Bank of Commerce v Grande Cache Motor Inn Ltd*, 1977 CanLII 608 at para 29.

[20] *Deloitte & Touche Inc v White Veal Meat Packers Ltd*, 2000 CanLII 21117 at para 7.

[21] *Hudson v Benallack*, 1975 CanLII 158 (SCC), [1976] 2 SCR 168.

the creditor the preference, even if it was made, incurred, taken or suffered under pressure, and evidence of pressure is not admissible to support the transaction.

27. Three conditions precedent must be met for a payment to qualify as a fraudulent preference under s. 95 of the BIA, namely, that: (1) the payment must have been made within three months of bankruptcy; (2) the debtor must have been insolvent at the date of the payment; and (3) as a result of the payment, the creditor must have in fact received a preference over other creditors.[22]

28. The test in section 95(1) of the BIA is met for the following reasons:

(a) Westcastle GMC was insolvent at the date of the transfer of the Westcastle GMC Vehicles;

(b) the Westcastle GMC Vehicles were the property of Westcastle Dealership;

(c) Westcastle Dealership transferred the Westcastle GMC Vehicles to The Loan Store;

(d) the transfer of the Westcastle GMC Vehicles had the effect of giving The Loan Store a preference over the creditors of Westcastle GMC; and

(e) the transfer occurred within three months of Westcastle GMC entering the within CCAA proceedings.[23]

29. The Court has authority to make any Order it finds appropriate in respect of the CCAA Proceeding under section 11 of the CCAA.[24]

> **General power of court**
> **11** Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.[25]

30. The Supreme Court of Canada in *Century Services* discussed section 11 of the CCAA. The Court noted that Parliament has endorsed a broad reading of the CCAA developed in

[22] *Re Van der Liek*, 1970 CarswellOnt 82 at paras 2-4.

[23] Supplement to the Seventh Report at para 36.

[24] CCAA, s 11.

[25] CCAA, s 11.

jurisprudence and has granted deference and discretionary authority to the courts under the CCAA.[26]

31. The CCAA fundamentally grants courts the discretion to make any orders required to ensure that restructuring is successful and the objectives under the CCAA are met.[27]

32. The Court in 1057863 reviewed the statutory jurisdiction of section 11 and what is appropriate to be ordered:

> [47] In Canada North, Justice Côté, writing for the majority, synthesized the previous two decisions of the Court and stated:
>
> > [21] The most important feature of the CCAA - and the feature that enables it to be adapted so readily to each reorganization - is the broad discretionary power it vests in the supervising court (*Callidus Capital*, at paras. 47-48). Section 11 of the CCAA confers jurisdiction on the supervising court to "make any order that it considers appropriate in the circumstances". This power is vast. As the Chief Justice and Moldaver J. recently observed in their joint reasons, "On the plain wording of the provision, the jurisdiction granted by s. 11 is constrained only by restrictions set out in the CCAA itself, and the requirement that the order made be 'appropriate in the circumstances'" (*Callidus Capital*, at para. 67). Keeping in mind the centrality of judicial discretion in the CCAA regime, our jurisprudence has developed baseline requirements of appropriateness, good faith and due diligence in order to exercise this power. The supervising judge must be satisfied that the order is appropriate and that the applicant has acted in good faith and with due diligence (*Century Services*, at para. 69). The judge must also be satisfied as to appropriateness, which is assessed by considering whether the order would advance the policy and remedial objectives of the CCAA (para. 70). … [Emphasis added.][28]

33. In exercising this discretion, courts consider and balance the requirements of appropriateness, good faith, and due diligence.[29] Further, the relief granted must be consistent with the statutory objectives of the CCAA and in furtherance of its remedial purposes and considering the relevant factual circumstances. The overarching question is whether both the purpose of the order sought and the means it seeks to employ advance the remedial purpose of the CCAA.[30]

34. The Monitor seeks an Order for the return of the Westcastle GMC Vehicles in order to sell the same for the benefit of Westcastle GMC's creditors and stakeholders. The proceeds

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[26] *Century Services*, supra note 3, at para 68.

[27] *Montréal (City) v Deloitte Restructuring Inc.*, 2021 SCC 53 at para 48.

[28] *Re 1057863 BC Ltd*, 2022 BCSC 759 ("**1057863**") at paras 46–48 [**TAB 6**].

[29] *Century Services, supra* note 3 at para 70.

[30] *1057863, supra* note 28 at para 51.

will form part of the funds available to creditors with proven claims in the Claims Procedure.

35. The Monitor believes the return and sale of the Westcastle GMC Vehicles by the Monitor is necessary to protect the interests of Westcastle GMC and its stakeholders/creditors.

36. The Monitor has prepared a plan to sell the Westcastle GMC Vehicles via auction with Open Lane.[31]

37. The Loan Store will not be prejudiced by allowing the sale of the Westcastle GMC Vehicles, as it will be free to prove its claim in the Claims Procedure.

38. It is appropriate that the transferred assets be returned to Westcastle GMC for sale by the Monitor, with any claims to the resulting proceeds to be addressed through the administration of the Claims Procedure.

C. The Westcastle GMC Administration Charge should be increased

39. The Monitor seeks an increase to the Westcastle GMC Administration Charge from $250,000 to $500,000 to provide security for the professional fees and disbursements of the Monitor, counsel for the Monitor, and counsel for BMO (collectively, the "**Professionals Group**") incurred so far and to be incurred.

40. A court may grant an administration charge in a CCAA proceeding pursuant to section 11.52 of the CCAA.[32]

41. In deciding whether to grant an administration charge, courts have considered a number of factors including: (i) the size and complexity of the businesses being restructured; (ii) the role of the beneficiaries of the charge; (iii) whether there is unwarranted duplication of roles; (iv) whether the amount of the proposed charge appears to be fair and reasonable; (v) the position of the secured creditors likely to be affected by the charge; and (vi) the position of the monitor.[33]

42. The Professionals Group will continue to have extensive involvement during these CCAA Proceedings. The Professionals Group have contributed and will continue to contribute to

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[31] Seventh Report at para 107.

[32] CCAA, s. 11.52.

[33] *Canwest Publishing Inc., Re*, 2010 ONSC 222 at para 54 ; *Re Lydian International Limited*, 2019 ONSC 7473 at para 46.

managing creditor claims through the Claims Procedure and will be necessary to and will ensure that there is no unnecessary duplication of roles amongst them.

43. The Monitor supports the increase to the Westcastle GMC Administration Charge. The Monitor believes the quantum of the Westcastle GMC Administration Charge sought is necessary and appropriate to secure the fees of the Professional Group and is consistent with the Fourth Revised Cash Flow Forecast.

D. The Westcastle Borrowing Charge should be decreased

44. The Monitor seeks a decrease to the Westcastle Borrowing Charge from $150,000 to $50,000.

45. The Monitor does not anticipate any need to borrow funds in respect of Westcastle GMC.

46. At this time the Westcastle Borrowing Charge may be decreased.

E. The Liquidation and Wind-Down of Cranbrook Mitsubishi should be approved

47. Despite significant efforts undertaken through the SISP and thereafter, no viable offers remain in respect of Cranbrook Mitsubishi.[34]

48. There was one prospective purchaser for Cranbrook Mitsubishi, who executed an asset purchase agreement and had significantly advanced a transaction however, this purchaser has since decided it will not be moving forward with any transaction. As such, and based on a recommendation by the Sales Agent, the Monitor is in the process of winding-down Cranbrook Mitsubishi.[35]

49. The wind-down / liquidation plan for Cranbrook Mitsubishi (the "**Cranbrook Mitsubishi Wind-Down / Liquidation**"), which has been developed with the assistance of the Operations Consultant is set out in the Seventh Report at paragraph 38.[36]

50. The Monitor has already commenced the Cranbrook Mitsubishi Wind- Down / Liquidation given the lack of alternatives.

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[34] Seventh Reportat para 37.

[35] Seventh Reportat paras 34-38.

[36] Seventh Report at para 38.

51. The Monitor is permitted to perform such other functions or duties, facilitate or assist the winding-down or liquidation of the Debtors.[37]

52. Further, the Debtors are permitted under section 10(a) of the ARIO to permanently or temporarily cease, downsize or shut down any portion of their business or operations and to dispose of redundant or non-material assets not exceeding $100,000 in any one transaction or $1,000,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Debtors (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA.[38]

53. Pursuant to section 36 of the CCAA, the Court has the jurisdiction to approve a sale transaction in the context of a CCAA proceeding. In deciding whether to approve the transaction, the Court must consider the factors set out in section 36(3):[39]

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading up to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in its opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

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[37] ARIO at para 25(w).
[38] ARIO at para 10(a).
[39] CCAA, s. 36(3).

54. As set out above, the SISP was run with no viable offers and there is no hope for a going concern transaction at present. The Monitor in the Seventh Report sets out the necessity for a wind-down of Cranbrook Mitsubishi.

55. The wind-down and liquidation satisfies the requirements of section 36 of the CCAA.

56. The Monitor seeks approval *nunc pro tunc* of the Cranbrook Mitsubishi Wind-Down / Liquidation.

F. The Liquidation and Wind-Down of Squamish Chrysler should be approved

57. Following the completion of the SISP, the Sales Agent and the Monitor continued to engage with three parties that had expressed an interest in Squamish Chrysler.[40]

58. Based on recent discussions with the Sales Agent, only one party remains interested in Squamish Chrysler and this party so far has been unable to secure financing or otherwise advance a viable transaction.[41]

59. No viable offer or transaction has been presented for Squamish Chrysler to date.[42]

60. The wind-down and liquidation plan for Squamish Chrysler (the "**Squamish Chrysler Wind-Down / Liquidation**") which was developed with the assistance of the Operations Consultant, is set out in the Seventh Report at paragraph 48.[43]

61. As set out above, pursuant to the ARIO, the Monitor is permitted to perform such other functions or duties, facilitate or assist the winding-down or liquidation of the Debtors.[44]

62. The Debtors are permitted under section 10(a) to permanently or temporarily cease, downsize or shut down any portion of their business or operations and shall require authorization by this Court in accordance with section 36 of the CCAA.[45]

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[40] Seventh Report at para 43.
[41] Seventh Reportat para 44.
[42] Seventh Reportat para 45.
[43] Seventh Reportat para 48.
[44] ARIO at para 25(w).
[45] ARIO at para 10(a).

63. The SISP was run with no viable offers and there is no hope for a transaction at present. The Monitor in the Seventh Report sets out the necessity for a wind-down of Squamish Chrysler.[46]

64. The wind-down and liquidation satisfies the requirements of section 36 of the CCAA.

G. The Liquidation and Wind-Down of Sun Valley Nissan should be approved

65. The Monitor with the assistance of the Sales Agent and its legal counsel, has been negotiating a potential transaction with an interested party for the purchase of Sun Valley Nissan.[47] At the date of the Seventh Report, this interested purchaser has not secured financing.[48]

66. The Monitor is aware of additional parties that may be interested in purchasing Sun Valley Nissan, and it continues its efforts to secure a viable transaction for this Dealership.[49]

67. In the event that the Monitor is unable to advance a viable going-concern transaction, the Monitor seeks approval to complete a wind-down / liquidation of Sun Valley Nissan similar to the Cranbrook Mitsubishi Wind-Down / Liquidation and Squamish Chrysler Wind-Down / Liquidation.[50]

68. The ARIO as set out above, provides the Debtors and Monitor with the powers to liquidate Sun Valley Nissan if necessary.[51]

H. The WEPPA Declaration should be approved

69. The Monitor is seeking a declaration (the "**WEPPA Declaration**") that: (i) pursuant to sections 5(1)(b)(iv) and 5(5) of the WEPPA, each of the Debtors and their employees whose employment has been terminated in these proceedings meet the criteria prescribed by section 3.2 of the WEPPR; and (ii) each of the former employees of the Debtors that have been terminated during the pendency of these proceedings are individuals to whom the WEPPA applies as of their respective termination dates.

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[46] Seventh Report at para 44-47.
[47] Seventh Report at para 52,
[48] Seventh Report at para 52.
[49] Seventh Report at para 53.
[50] Seventh Report at para 54.
[51] ARIO at para 10(a) and 25(w).

70. The Monitor wants to ensure that the Wage Earner Protection Program ("**WEPP**") is available to allow terminated employees of the Debtors to access compensation for any wages, severance or termination pay owed by the Debtors. Employees terminated by the Debtors during the CCAA Proceedings will only have access to the WEPP if this Court determines that the criteria established by the WEPPR are met.[52]

71. Pursuant to section 5(1)(b)(iv) of WEPPA an individual is eligible to receive payment under the WEPP if the former employee is subject to proceedings under the CCAA and a court determines under subsection (5) that the criteria prescribed by the regulation are met.[53]

72. Pursuant to section 5(5) of WEPPA on the application by any person, a court may in proceedings under the CCAA determine that the former employer meets the criteria prescribed by regulation.[54] Further, pursuant to section 3.2 of the WEPPR, and for the purposes of 5(5) of WEPPA, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.[55]

73. The WEPP was established to provide for payments to individuals in respect of wages owed to them by employers who are insolvent.[56]

74. The Debtors are subject to CCAA proceedings and the terminated employees have been terminated as a result of the within CCAA Proceedings. The criteria of WEPPR and WEPPA are met and the former employees should be entitled to the benefits of WEPPA.

75. WEPPA declarations are not novel, and similar relief has been granted in numerous other insolvency proceedings including recently in the CCAA proceedings of the Coast Automotive Group.[57]

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[52] WEPPA, ss. 5(1)(iv) and 5(5); WEPPR, s. 3.2.

[53] WEPPA, ss. 5(1)(iv)

[54] WEPPA, s. 5(5).

[55] WEPPR, s. 3.2.

[56] WEPPA, s. 4.

[57] [65] See e.g.: *BBB Canada Ltd.* (February 21, 2023), ONSC, Court File No. CV-23-0064493-00CL (Amended and Restated Initial Order) at para 23; *FIGR, Brands Inc.* (February 2, 2022), ONSC, Court File No. CV-21-00655373-00CL (Order (Stay Extension, Distribution, WEPPA and Fee Approval)) at para 4; *Nilex Inc.* (December 13, 2022), ABKB, Court File No. 24-2878531 (Order (Interim Distribution)) at para 3; *Scotch and Soda Canada Inc.* (May 16, 2023), ONSC, Court File No. 31-2941767 (Extension and Liquidation Sale Approval Order) at para 33.

76. These CCAA Proceedings commenced with the intention of liquidating and winding down the Summit Auto Group's business operations as a going concern. There has been the sale of each of Arrow VW and Castle Ford. Following the closing of these transactions, some but not all of the employees were moved over to the new purchaser and any remaining employees of these entities which were not transferred to the purchasers were terminated.[58] Additionally, there will be employees terminated by the remaining Dealerships due to the wind-downs and liquidations. The WEPP Declaration is necessary for these employees to access compensation for unpaid employment liabilities.

77. Subject to the WEPP Declaration being granted, the Monitor will assist terminated employees in filing claims for payments under WEPPA.

I. The Claims Procedure should be approved

78. There are a number of potential creditors of the Westcastle GMC estate. These include secured and unsecured claimants.

79. Courts routinely accept claims processes as a commonly recognized element of CCAA proceedings, including those involving asset liquidations, on the basis of the broad judicial discretion conferred in section 11 thereof.[59]

80. While there are "no set rules" as to how a claims process is structured, courts have considered the following factors in determining whether to approve a proposed claims process order:

    (a) whether the process is fair and reasonable to all stakeholders; and

    (b) whether the process allows for the usual steps and procedures, consistent with what has been ordered in other proceedings.[60]

81. The Claims Procedure is fair and reasonable.

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[58] Seventh Report at para 65.

[59] *CCAA*, s 11.; *Re Bul River Mineral Corp*, 2014 BCSC 1732 [***Bul River***] at paras 29-31; *Re Soccer Express Trading Corp*, 2020 BCSC 749 at para 106].

[60] *Bul River* at paras 32 and 41, citing *Re Steels Industrial Products Ltd*, 2012 BCSC 1501 at paras 38-39.

82. Further the Claims Procedure has been developed by the Monitor to include steps and procedures that are commonly found in processes approved by insolvency courts, including that this Claims Procedure:

(a) addresses all claims for which Claimants may be entitled to distribution from the Monitor;

(b) establishes broad notice and publication steps to communicate the commencement of the proposed claims process to potential Claimants;

(c) requires Claimants to prove their Claims by the Claims Bar Date, and correspondingly bars late submissions from consideration, thus creating the certainty required by such process;

(d) provides an opportunity for the Monitor to review and, if appropriate, contest any Claims made; and

(e) establishes an adjudication procedure for Claims which cannot be agreed upon or settled by negotiation.[61]

83. The Monitor believes that the proposed process allows flexibility and ensures that all Claims are addressed fairly, while minimizing, to the extent possible, costs and time. Further, the Claims Procedure is fair and reasonable, and the implementation of the Claims Procedure is appropriate and prudent at this time.

84. The Supreme Court of Canada in *Century Services* further stated the importance of the single proceeding model in Canadian insolvency proceedings:

> [22] While insolvency proceedings may be governed by different statutory schemes, they share some commonalities. The most prominent of these is the single proceeding model. The nature and purpose of the single proceeding model are described by Professor Wood in Bankruptcy and Insolvency Law:
>
> > They all provide a collective proceeding that supersedes the usual civil process available to creditors to enforce their claims. The creditors' remedies are collectivized in order to prevent the free-for-all that would otherwise prevail if creditors were permitted to exercise their remedies. In the absence of a collective process, each creditor is armed with the knowledge that if they do not strike hard and swift to seize the debtor's assets, they will be beat out by other creditors. [pp. 2-3]
>
> The single proceeding model avoids the inefficiency and chaos that would attend insolvency if each creditor-initiated proceedings to recover its debt. Grouping all

[61] *Re Toys "R" Us (Canada) Ltd,* 2018 ONSC 609 at para 8.

> possible actions against the debtor into a single proceeding controlled in a single forum facilitates negotiation with creditors because it places them all on an equal footing, rather than exposing them to the risk that a more aggressive creditor will realize its claims against the debtor's limited assets while the other creditors attempt a compromise. With a view to achieving that purpose, both the CCAA and the BIA allow a court to order all actions against a debtor to be stayed while a compromise is sought.[62]

85. In *Peace River Hydro*, the Supreme Court of Canada further described that "[t]he central role of courts in ensuring the equitable and orderly resolution of insolvency disputes is reflected in the "single proceeding model"."[63]

86. This Honourable Court recently provided its own commentary on the importance and reasoning behind a single proceeding model in insolvency proceedings.

> [45] The single proceeding model, which is a shared commonality amongst bankruptcy and insolvency proceedings, reflects the central role of courts in ensuring equitable and orderly resolution of insolvency disputes: *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 at para 22; *Peace River Hydro* at para 54; *Mundo Media Ltd (Re)*, 2022 ONCA 607 at para 6. This model favours the enforcement of stakeholder rights through a centralized judicial process to "mitigate the inefficiency and chaos if each stakeholder initiated a separate claim to enforce its rights": *Peace River Hydro* at para 55; *Century Services* at para 22.

87. The proposed Claims Procedure uses the single proceeding model to deal with all disputes of Westcastle GMC and is the most efficient, orderly and appropriate method to determine the claims of Westcastle GMC.

88. The Monitor respectfully submits that this Honourable Court should approve the Claims Procedure, grant the Claims Procedure Order, and direct that the Monitor proceed with the implementation of the Claims Procedure as soon as practicable.[64]

J. The Transfer of the Dodge Ram should be approved

89. During or just prior to the commencement of the within CCAA Proceedings the Dodge Ram was transferred from Squamish Chrysler to 152 BC, a corporation controlled by Aristotle Mounzer, a former management/owner of Squamish Chrysler.[65]

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[62] *Century Services* supra note 3 at para 22.

[63] *Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41 at para 54.

[64] Seventh Report at para 144.

[65] Seventh Report at para 89.

90. The Monitor has reviewed the records of Squamish Chrysler related to the Dodge Ram. There is no record of any consideration being paid for the Dodge Ram.[66] Further, there is no documentation supporting the transfer of the Dodge Ram to 152 BC.[67] Counsel for the Monitor has requested any documentation from counsel for 152, and as of today's date has not received any supporting documentation.[68]

91. On August 15, 2025, the Dodge Ram was in the name of Squamish Chrysler.[69] Shortly after the granting of the ARIO, the Dodge Ram was identified as missing by Squamish Chrysler.[70]

92. Sometime after the ARIO, the CRO became aware that Mr. Mounzer was in possession of the Dodge Ram and, and a security interest was registered against the Dodge Ram in the PPR.[71]

93. The Dodge Ram was subject to BMO's floor plan finacing.

94. The Monitor is of the opinion that the Dodge Ram has an estimated fair market value of $65,000.[72]

95. The transfer was done in apparent secret, without notice to Squamish Chrysler, and neither Management nor staff were aware of any sale of this vehicle to 152 BC, the consideration is none and therefore grossly inadequate, and there is a close relationship between Mr. Mounzer and Squamish Chrysler evidencing the intent to defraud, defeat or delay a creditor.

96. The transfer of the Dodge Ram is void as against the Monitor pursuant to section 96 of the BIA[73], as incorporated in the CCAA by section 36.1.[74]

> **Transfer at undervalue**
>
> **96 (1)** On application by the trustee, a court may declare that a transfer at undervalue is void as against, or, in Quebec, may not be set up against, the trustee — or order that a party to the transfer or any other person who is privy to the

[66] Seventh Report at para 89.
[67] Seventh Report at para 89.
[68] Seventh Report at para 97.
[69] Seventh Report at para 88, Appendix L.
[70] Seventh Report at para 87.
[71] Seventh Report at paras 89-90.
[72] Seventh Report at para 87.
[73] *BIA*, s. 96.
[74] CCAA, s. 36.1.

> transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if
>
> **(a)** the party was dealing at arm's length with the debtor and
>
> **(i)** the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and that ends on the date of the bankruptcy,
>
> **(ii)** the debtor was insolvent at the time of the transfer or was rendered insolvent by it, and
>
> **(iii)** the debtor intended to defraud, defeat or delay a creditor; or
>
> **(b)** the party was not dealing at arm's length with the debtor and
>
> **(i)** the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and ends on the date of the bankruptcy, or
>
> **(ii)** the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on the day before the day on which the period referred to in subparagraph (i) begins and
>
> **(A)** the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or
>
> **(B)** the debtor intended to defraud, defeat or delay a creditor.
>
> **Establishing values**
>
> **(2)** In making the application referred to in this section, the trustee shall state what, in the trustee's opinion, was the fair market value of the property or services and what, in the trustee's opinion, was the value of the actual consideration given or received by the debtor, and the values on which the court makes any finding under this section are, in the absence of evidence to the contrary, the values stated by the trustee.

97. Where the evidence established that a sale of property was made at conspicuously less than fair market value; was made within one year of bankruptcy; the debtor was insolvent at the relevant time; and the debtor intended to defraud its creditors, the transaction was found to be a transfer at undervalue and had no effect on the trustee.[75]

98. The test set out in section 96 of the BIA is met:

(a) the transfer of the Dodge Ram occurred either prior to or during the CCAA Proceedings;

(b) Squamish Chrysler was insolvent when the transfer occurred; and

[75] *André Gabbay et Associés inc. c. Strunk*, 2016 QCCS 1448.

(c) the Dodge Ram was subject to BMO's security and was transferred from Squamish Chrysler defeating BMO's claim.

K. The Listing Process should be approved

99. Real Co is the owner of the following properties among others:

(a) a commercial property located at the address of 4524 Railway Avenue Vermillion Alberta, which is the real property where Vermilion Chrysler previously operated (the "**Vermilion Real Property**"); and

(b) a commercial property located at the address of 1104 Chief Mountain Avenue Pincher Creek, Alberta, encompassing an industrial property which was used previously for storage (the "**Pincher Creek Real Property**").[76]

100. As such, on April 7, 2026, the Monitor issued a request for proposal (the "**RFP Process**") to four (4) commercial real estate brokerages, seeking proposals to assist the Monitor in the marketing and sale of the Vermilion Real Property and Pincher Creek Real Property.[77]

101. As a result of the RFP Process, and pursuant to the authority granted under the ARIO, the Monitor, on behalf of Real Co, has negotiated and intends on entering into / finalizing exclusive listing agreements as follows (among other terms therein) (collectively the **"Listing Process**"):

(a) Vermilion Real Property – with Colliers Edmonton at an initial list price of $1.39 million (to be amended by the Monitor from time to time); and

(b) Pincher Creek Real Property – with Cushman & Wakefield Calgary at an initial list price of $1.15 million (to be amended by the Monitor from time to time).[78]

102. Pursuant to paragraph 15(l) of the ARIO, the Monitor is empowered to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Monitor in its discretion may deem appropriate.[79]

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[76] Seventh Report at para 55.
[77] Seventh Report at para 57.
[78] Seventh Report at para 58.
[79] ARIO at 15(l).

103. The Monitor intends to commence the Listing Process. The Monitor seeks approval of the Listing Process, including on *nunc pro tunc* basis.

L. The Fees and Activities should be approved

104. In *Target*, the Court noted that there are good policy and practical reasons to grant the approval of Monitor's reports and activities, including (i) allowing the Monitor to bring its activities before the Court; (ii) allowing an opportunity for stakeholders' concerns to be addressed; (iii) enabling the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners; (iv) providing protection for the Monitor not otherwise provided by the CCAA; and (v) protecting creditors from delay that may be caused by re-litigation of steps or potential indemnity claims by the Monitor.[80]

105. This Court in *Winalta* has held that the appropriate focus on an application to approve a CCAA monitor's fees is whether the fees are fair and reasonable in all of the circumstances to ensure the monitor is fairly compensated while safeguarding the efficiency and integrity of the CCAA process.[81]

106. In considering whether to approve fees and disbursements, the Court has regard to the "overriding principle of reasonableness," and does not engage in a docket-by-docket or line-byline assessment of the accounts.[82]

107. The Monitor has acted responsibly throughout these proceedings and carried out its activities, including the expansive mandate it was given under the Initial Order, the ARIO, and the Amended and Restated Westcastle GMC CCAA Order, in a manner consistent with the provisions of the CCAA and in compliance with the ARIO, consistent with the standard applied by courts on a request for activity approval. Accordingly, the Seventh Report and activities of the Monitor described therein should be approved.

108. Paragraphs 31 and 32 of the ARIO provide that the Monitor and its counsel, Miller Thomson, shall:

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[80] *Re Target Canada Co*, 2015 ONSC 7574 at paras 2, 22-23; *Re Laurentian University of Sudbury*, 2022 ONSC 2927 [***Laurentian***] at paras 13-14.

[81] *Re Winalta Inc* , 2011 ABQB 399 [***Winalta***] at para 30. .

[82] *Laurentian, supra* note 80 at para 9.

(a) be paid their reasonable fees and disbursements, in each case at their standard rates and charges (including any pre-filing fees and disbursements related to the CCAA proceedings); and

(b) pass their accounts from time-to-time.[83]

109. The following factors assist a court in assessing the reasonableness of the Monitor's fees under the CCAA: (i) the nature, extent and value of the assets being handled; (ii) the complications and difficulties encountered; (iii) the degree of assistance provided by the company, its officers or its employees; (iv) the time spent; (v) the Monitor's knowledge, experience and skill; (vi) the diligence and thoroughness displayed; (vii) the responsibilities assumed; (viii) the results achieved; and (ix) the cost of comparable services when performed in a prudent and economical manner.[84]

110. The fees and disbursements are appropriate and should be approved. The Monitor and its counsel have acted with diligence throughout these CCAA proceedings. The Monitor has reviewed the fees and disbursements of Miller Thomson and supports the approval of Miller Thomson's fees.[85]

M. The Restricted Court Access Order should be granted

111. The Monitor seeks a restricted court access order in respect of the Confidential Appendix which contains sensitive commercial information, including pricing allocations and appraisal information related to the Vermillion Real Property and Pincher Creek Real Property.[86]

112. In *Sierra Club of Canada v Canada (Minister of Finance)*, the Supreme Court of Canada held that courts should exercise their discretion to grant sealing orders where (i) the order is necessary to prevent a serious risk to an important interest, including a commercial interest, because reasonable alternative measures will not prevent the risk, and (ii) the salutary effects of the order outweigh its deleterious effects, including the effects on the

[83] ARIO at paras 31-32.
[84] *Laurentian*, supra note 80 at para 10.
[85] Seventh Report at para 85.
[86] Seventh Report at para 63.

right to free expression, which includes the public interest in open and accessible court proceedings.[87]

113. In *Sherman Estate v Donovan*, the Supreme Court of Canada recast the test from Sierra Club differently without altering its essence. According to Sherman Estate, a person asking a court to exercise discretion in a way that limits the presumption of an open court must establish that:

(a) court openness poses a serious risk to an important public interest;

(b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

(c) as a matter of proportionality, the benefits of the order outweigh its negative effects.[88]

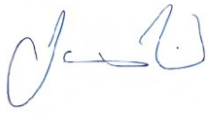
114. The dissemination of the commercially sensitive information contained in the Confidential Appendix could prejudice the sale process of the real property and impair any further marketing or sale efforts.

115. It is appropriate that the Confidential Appendix remain confidential until the conclusion of these CCAA Proceedings and respectfully requests that the Confidential Appendix be temporarily sealed until the conclusion of these CCAA Proceedings or further order of this Honourable Court.

PART IV - REQUESTED RELIEF

116. For the reasons set out above, the Monitor requests that this Honourable Court grant the relief sought in the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of May 2026.



James W. Reid / Pavin Takhar
Counsel for the Monitor, BDO Canada Limited

[87] *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 [*Sierra Club*] at para 53.
[88] *Sherman Estate v Donovan*, 2021 SCC 25 [*Sherman Estate*] at para 38

TABLE OF AUTHORITIES

A. Legislation

1.	*Companies' Creditors Arrangement Act*, RSC 1985, c. C-36.
2.	*Bankruptcy and Insolvency Act,* RSC 1985, c. B-3.
3.	*Wage Earner Protection Program Act, SC 2005, c. 47, s. 1.*
4.	*Wage Earner Protection Program Regulations, SOR/2008-222.*

B. Case Law

1.	*Re Canada North Group Inc,* 2017 ABQB 508
2.	*Century Services Inc v Canada (Attorney General)*, 2010 SCC 60
3.	*Re Holt Motors Ltd Canadian Credits Men's Association Ltd v Stonewall Credit Union Society*, 1966 CanLII 437 (MB QB
4.	*Candadian Imperial Bank of Commerce v Grande Cache Motor Inn Ltd*, 1977 CanLII 608
5.	*Deloitte & Touche Inc v White Veal Meat Packers Ltd*, 2000 CanLII 21117
6.	*Hudson v Benallack*, 1975 CanLII 158 (SCC)
7.	*Re Van der Liek*, 1970 CarswellOnt 82
8.	*Montréal (City) v Deloitte Restructuring Inc.*, 2021 SCC 53
9.	*Re 1057863 BC Ltd, 2022 BCSC 759*
10.	*Canwest Publishing Inc., Re*, 2010 ONSC 222
11.	*Re Lydian International Limited*, 2019 ONSC 7473
12.	*BBB Canada Ltd.* (February 21, 2023), ONSC, Court File No. CV-23-0064493-00CL (Amended and Restated Initial Order)
13.	*FIGR, Brands Inc.* (February 2, 2022), ONSC, Court File No. CV-21-00655373-00CL (Order (Stay Extension, Distribution, WEPPA and Fee Approval)
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15.	*Scotch and Soda Canada Inc.* (May 16, 2023), ONSC, Court File No. 31-2941767 (Extension and Liquidation Sale Approval Order)
16.	*Re Bul River Mineral Corp*, 2014 BCSC 1732
17.	*Re Soccer Express Trading Corp*, 2020 BCSC 749
18.	*Re Steels Industrial Products Ltd*, 2012 BCSC 1501
19.	*Re Toys "R" Us (Canada) Ltd,* 2018 ONSC 609
20.	*Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41
21.	*André Gabbay et Associés inc. c. Strunk*, 2016 QCCS 1448
22.	*Re Target Canada Co*, 2015 ONSC 7574
23.	*Re Laurentian University of Sudbury*, 2022 ONSC 2927
24.	*Re Winalta Inc* , 2011 ABQB 399
25.	*Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41
26.	*Sherman Estate v Donovan*, 2021 SCC 25

TAB 7 - Van der Liek, Re, 1970 CarswellOnt 82

1970 CarswellOnt 82
Ontario Supreme Court, In Bankruptcy

Van der Liek, Re

1970 CarswellOnt 82, [1970] O.J. No. 1053, 14 C.B.R. (N.S.) 229

Re Van der Liek

Houlden J.

Judgment: October 20, 1970

Counsel: *C. H. Morawetz, Q.C.* , for trustee.
J. Cannings , for Anna Maria Van der Liek.

Subject: Corporate and Commercial; Insolvency
Related Abridgment Classifications
Bankruptcy and insolvency
XI Avoidance of transactions prior to bankruptcy
XI.1 Fraudulent preferences
XI.1.d Miscellaneous
Headnote
Bankruptcy --- Avoidance of transactions prior to bankruptcy — Fraudulent preferences — Onus of proof
Fraudulent preferences — Burden of proof on trustee — Presumption — The Bankruptcy Act, R.S.C. 1952, c. 14, ss. 2(j), 64, 64A, as enacted by 1966-67 (Can.), c. 32, s. 11.
In order to raise the prima facie presumption that there has been a fraudulent preference so that the onus is cast upon the defendant to rebut it, the trustee must establish three things:
1. The conveyance, transfer, charge, payment, etc., took place within three months of bankruptcy. If the conveyance, etc. is in favour of a related person, the period is, of course, 12 months under s. 64A. Ordinarily there is no problem in establishing the date of the transaction but occasionally, difficult questions arise. For instance, it has been held that the day on which the petition is filed in the case of a receiving order is excluded in calculating the three-months' period.
2. It must be proved that the debtor was an insolvent person at the date of the alleged preference. Section 2 (*j*) defines "insolvent person" and the section provides three definitions of insolvency.
The court will not presume insolvency. It must be proved and if it is not, then the application must be dismissed.
The usual method of proving insolvency is to call two or three creditors whose claims were overdue at the date of the preference. It may be possible for the trustee to prepare a balance sheet to show in solvency within the meaning of s. 2 (*j*)(iii) but the records of a bankrupt are usually in such a state that this is very difficult.
3. It must be shown that as a result of the conveyance, transfer, etc., the creditor received a preference. It is not sufficient if the trustee proves that the making of a payment or conveyance conferred a preference over other creditors at the date of bankruptcy but it must be shown that the effect of the payment, conveyance, transfer, etc. was *at the date when it was made* to give preferential treatment to the creditors who received it.
The matter of preference or no preference is ordinarily proved by evidence of other creditors that their accounts which were outstanding at the relevant date, were still unpaid at the date of the bankruptcy so that the creditor who received the security, etc. will, as a result of receiving it, be given different treatment than other creditors. The creditors, who give this evidence, will ordinarily be the same creditors who prove the insolvency.
Once the trustee has proved these three essentials, he need proceed no further and the onus is then on the creditor to satisfy the court, if he can, that there was no intent on the part of the debtor to give a preference. If the creditor can show on the balance of probabilities that the dominant intent of the debtor was not to prefer the creditor but was some other purpose, then the application will be dismissed, but if the creditor fails to meet the onus, then the trustee succeeds.

Annotation

Section 64(2) of the Bankruptcy Act creates a prima facie presumption of a fraudulent preference if the conveyance, transfer, payment, etc. has the effect of giving any creditor a preference over other creditors. In the present case the learned Bankruptcy Judge dealt with the difficult question as to whether the trustee must prove that the creditor who received the conveyance, transfer, payment, etc. did receive a preference over other creditors as at the date of bankruptcy or as of the date when he received the conveyance, transfer, payment, etc.

One can visualize a situation where payments were made to all creditors of the debtor two months before bankruptcy and subsequently the debtor incurred new debts as a result of which he was declared bankrupt two months later. In this case it would seem that the payments to all the creditors two months before bankruptcy could not be attacked as a preference because at the time of the payment all creditors were treated alike. In another situation, one particular creditor might have been paid two months before bankruptcy while other creditors were not paid at that time. However, the debts of all other creditors were paid, let us say, six weeks before bankruptcy but subsequent thereto new debts were incurred and bankruptcy was declared six weeks later. Likewise, in this case neither the payment which was made two months before bankruptcy nor the payments which were made six weeks before bankruptcy could be attacked as fraudulent preferences.

It would seem that the provisions of s. 64(2) bear out the dictum of the learned Bankruptcy Judge that the trustee must show that the effect of the conveyance, transfer, etc. was *at the date when it was made* to give preferential treatment to the creditor who received it.

***Houlden J.*:**

1 This is an appeal from a decision of the registrar [13 C.B.R. (N.S.) 28] in which he found that certain security obtained by the Royal Bank of Canada constituted a preference. The matter has been settled but there are certain items on which I wish to comment, realizing that my comments are obiter but I make them in the hope that they may be of assistance to solicitors practising in the bankruptcy court. I should point out that neither counsel appearing on the appeal was in any way involved in the trial proceedings.

2 In order to raise the prima facie presumption that there has been a fraudulent preference so that the onus is cast upon the defendant to rebut it, the trustee must establish three things:

3 1. The conveyance, transfer, charge, payment, etc., took place within three months of bankruptcy. If the conveyance, etc. is in favour of a related person, the period is, of course, 12 months under s. 64A [en. 1966-67, c. 32, s. 11]. Ordinarily there is no problem in establishing the date of the transaction but occasionally difficult questions arise. For instance, it has been held that the day on which the petition is filed in the case of a receiving order, is excluded in calculating the three-months, period: *Re Dawes; Ex parte Official Receiver* (1897), 4 Mans. 117.

4 2. It must be proved that the debtor was an insolvent person at the date of the alleged preference: *Re Manuel; Ex parte Brody, Chernin and Mendelson* (1923), 3 C.B.R. 628 (N.S.) ; *Re Hart Brothers Construction Ltd.* (1954), 34 C.B.R. 116, 12 W.W.R. (N.S.) 711 (B.C.) Section 2 (j) defines "insolvent person" and the section provides three definitions of insolvency.

5 The court will not presume insolvency. It must be proved and if it is not, then the application must be dismissed: *Re Audio Records Ltd.; Hamel v. Galet* (1962), 4 C.B.R. (N.S.) 99 (Que.) .

6 In this case, the proof of insolvency left a great deal to be desired, and I would like to say a few words about how insolvency should be proved to the court. The usual method is to call two or three creditors whose claims were overdue at the date of the preference. It might be possible for the trustee to prepare a balance sheet to show insolvency within the meaning of s. 2(j)(iii) but from my own experience, the records of a bankrupt are usually in such a state that this is very difficult and the method I have suggested is usually the most convenient way of establishing insolvency.

7 3. It must be shown that as a result of the conveyance, transfer, etc., the creditor received a preference. At the trial of this application, the trustee proved that the giving of the mortgage conferred a preference over other creditors at the date of the bankruptcy. In my judgment, this is not right. In preparing for the hearing of this appeal, I was surprised to find no case which had squarely faced this issue. There are a number of cases which say that it must be shown that there is a preference in fact, but none deals with the issue of what is the relevant time. Until I am overruled by a higher court, I propose to require that in applications attacking fraudulent preferences, it must be shown that the effect of the conveyance, transfer, etc. was *at the date when it was made* to give preferential treatment to the creditor who received it.

8 The matter of preference or no preference is ordinarily proved by evidence of other creditors that their accounts which were outstanding at the relevant date, were still unpaid at the time of the bankruptcy so that the creditor who received the security, etc. will, as a result of receiving it, be given different treatment than other creditors. The creditors, who give this evidence, will ordinarily be the same creditors who prove the insolvency.

9 When the trustee has proved these three essentials, he need proceed no further and the onus is then on the creditor to satisfy the court, if he can, that there was no intent on the part of the debtor to give a preference. If the creditor can show on the balance of probabilities that the dominant intent of the debtor was not to prefer the creditor but was some other purpose, then the application will be dismissed, but if the creditor fails to meet the onus, then the trustee succeeds.

TAB 21 - André Gabbay et Associés inc. c. Strunk, 2016 QCCS 1448

2016 QCCS 1448
Superior Court of Quebec

André Gabbay et Associés inc. v. Strunk

2016 CarswellQue 2685, 2016 QCCS 1448, 265 A.C.W.S. (3d) 20, 34 C.B.R. (6th) 212, J.E. 2016-700, EYB 2016-264079

In the matter of the bankruptcy of: Collection GBT inc. (Debtor) and André Gabbay et associés inc. (Applicant) v. Christine Strunk and 9238-6879 Québec inc. (Respondents)

Turcotte, J.C.S.

Hearing: February 11, 2016
Judgment: 15 March 2016
File: Montreal Sup. C. 500-11-047248-147

Lawyer: Dominique Vallières, for the applicant
Mr. Michel Amar, for the respondents

Subject: Insolvency

Related Shelter Classifications

Bankruptcy and insolvency

XI Avoidance of transactions prior to bankruptcy
XI.1 Fraudulent preferences
XI.1.d Miscellaneous

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undervalue and claiming repayment from numbered company — Motion granted — Law provides that transfer at undervalue "means a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor" — Here, value of accounts receivable amounted to $122,000 and value of debtor's inventory amounted to $12,000 — Value of property sold to numbered company amounted to $134,000 for which it only paid $62,000 — Evidence showed that sale was made within one year of bankruptcy and that debtor was insolvent at relevant time — Evidence showed that debtor clearly intended to defraud its creditors — Hence, sale was transfer at undervalue — Therefore, transaction had no effect against trustee, and numbered company and its controlling mind were solidarily ordered to pay to trustee balance of value of property sold by debtor.

Table of precedents

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3
Generally — referred to

S.2 "Undervalued transaction" — Considered

S. 4(2) — Considered

s. 4(2)(b)(i) — considered

S. 4(5) — Considered

S. 96 — considered

S. 96(1) — considered

S. 96(2) — Considered

S. 96(3) — Considered

Civil Code of Québec, S.Q. 1991, c. 64
Art. 1619 — referred to

MOTION by a trustee for a declaration that the sale of the debtor's assets was an undervalued transaction.

Turcotte, J.C.S.:

1 In 2014, the debtor was active in the business of importing women's clothing. HSBC Bank Canada finances its operations. In order to guarantee the repayment of the advances it was able to grant him, the debtor granted him a first movable hypothec on the universality of his movable property, including his accounts receivable [1] . In March, the debtor was in financial difficulty and owed the bank $122,300 when the bank served her with a notice of withdrawal of authorization to collect her debts [2] .

2 The debtor negotiates a settlement with the bank, which accepts a final payment of $62,100 plus a transfer of US$7,156 held in a U.S. account [3] . The $62,100 comes from the proceeds from the sale of the debtor's assets and accounts receivable. It is the respondent 9238-6879 Québec inc. ("9238") [4] who acquires it.

3 Five months later, the debtor was declared bankrupt and the applicant, André Gabbay and Associates Inc., was appointed trustee in bankruptcy. In the course of his investigation, he found that under the terms of

the agreement between the debtor and the respondent 9238, the debtor declared that the value of her accounts receivable was $122,100 [5] . No value is disclosed for other assets sold [6] .

4 The trustee applied to the Tribunal for a declaration that the transaction between the debtor and respondent 9238 constituted an undervalued transaction within the meaning of the *Bankruptcy and Insolvency Act* [7] (« *BIA* ") and, consequently, that it is unenforceable against it. He claims from the respondent 9238 and its officer, the other respondent Christine Strunk, the payment of the difference between the consideration paid and the actual value of the object of the transaction.

ISSUES

5 The Tribunal must decide whether the agreement for the sale and assignment of accounts receivable constitutes an undervalued transaction. If so, it must be determined whether the conditions of section 96 *BIA* are met, such that the respondents could be liable to the trustee.

THE ANALYSIS

1. The undervalued transaction

6 An undervalued transaction is defined in section 2 BIA *as a* disposition of property for which the debtor receives no consideration or receives consideration that is clearly less than the consideration given by the debtor.

7 In this case, the debtor stated that the value of her accounts receivable is $122,100 and that the value of the inventory is $12,000. It is not known what value it has placed on the other assets sold. Thus, respondent 9238 acquires property valued at $134,100 for which it pays only $62,100.

8 As a result, the debtor received consideration that was lower than its own valuation, with the result that it entered into an undervalued transaction.

9 The conditions required to declare that this transaction is unenforceable against the trustee are listed in section 96 (1) *BIA*. However, they differ depending on whether the transaction is between persons who deal at arm's length with each other or not. So this is the first thing to validate.

2. Do the parties to the agreement not deal with each other at arm's length?

10 Section 4(5) *BIA* states that related persons are deemed to be not dealing at arm's length. However, the parties to the transaction are not related persons within the meaning of Article 4(2) *BIA*. In the absence of a presumption, the relationship of arm's length must be proven. Author Denis Brochu [8] writes that a non-arm's length relationship exists when a person exercises control over the debtor:

> (. . .) The exercise of control or influence over the debtor to the point where their interests may be confused, or the fact that they have sufficient moral or psychological leverage to influence the debtor can lead to a state of dependency.

11 The evidence does not support this conclusion. It is true that the debtor and the respondent 9238 operate at the same address, in the same field, and their officers are friends who render each other many services. There is, however, no evidence as to the control they can exercise over each other.

3. The conditions of section 96(1) BIA

12 It is the first paragraph of section 96(*1)* BIA that applies when the parties to the transaction deal deal at arm's length with each other. The following three conditions must be met to obtain the desired remedy: (i) the transaction must have taken place within one year prior to its bankruptcy; (ii) the debtor was insolvent at the time of the transaction or became insolvent as a result of the transaction; and, (iii) the debtor intended to defraud, defraud or delay the payment of its creditors.

(i) The first condition

13 The transaction took place on April 7, 2014 and the date of bankruptcy is September 10, 2014. Thus, the transaction was made within the year preceding the bankruptcy, so that the first condition of section

96(1) *BIA* is met.

(ii) The second condition

14 The trustee must show that the debtor was insolvent at the time of the transaction or became insolvent as a result of the transaction.

15 At the time of settlement, the debtor was in financial difficulty. The bank had recalled its credit powers and the debtor was unable to meet its obligations as they fell due. All of his assets were insufficient to cover his current obligations in the ordinary course of his business.

16 The trustee has determined that the second condition is met.

(iii) The third condition

17 It now remains to be determined whether the debtor intended to defraud, defraud or delay the payment of its creditors.

18 On this subject, author Denis Brochu [9] wrote that even if the burden of proof may seem demanding, the fact remains that the only way out for the parties is to show that the debtor was solvent at the time of the transaction or that it did not render it insolvent:

> Moreover, even if the trustee's burden of proof is high, it is difficult to see how interested parties could defeat his approach other than by showing that the debtor was solvent at the time of the transaction or that the transaction did not render him insolvent. In closing, it should be noted that the court could conclude that the parties did not deal at arm's length. In this case, it is sufficient that the transaction occurred during the period beginning one year before the opening of the bankruptcy and ending on the date of the bankruptcy.
>
> (Emphasis added)

19 The Court of First Instance shares that view. Proceeding with the transaction is an intentional act and, obviously, the result is to the detriment of the general body of creditors. Had it not been for the transaction, the debtor would have recovered its debts, as did respondent 9238. After paying the bank the agreed sum of $62,100, the difference would have benefited the creditors.

20 Instead, all of the debtor's transactions are easily transferred to respondent 9238 through the sale of the debtor's other assets, namely, the debtor's rights to use its telephone and fax numbers, its rights to use computer licences and the sale of goodwill [10] . Respondent 9238 hires Nicole Gervais, the debtor's officer, to collect the accounts.

21 It is difficult to see how the debtor can claim that she did not intend to defraud her creditors. The debtor no longer owns anything, while Ms. Gervais and the respondent 9238 profit from the transaction.

22 The debtor replies that, in any event, the creditors would not have received anything if it had not paid down what it owed to the bank [11] . This may be the case, except that this is not the reality of this case. The bank is not a party to the agreement for the sale and assignment of accounts receivable. It was not the bank that assigned the accounts receivable but the debtor.

23 Since all the conditions were met, the Court concluded that the debtor had carried out an undervalued transaction.

4. Powers of the Tribunal in the event of an undervalued transaction

24 Section 96(1) of the *BIA* provides that the court may, if it is of the opinion that a debtor has entered into an undervalued transaction, declare the transaction unenforceable against the trustee or order the trustee to pay to the estate, alone or with all or some of the parties or persons interested in the transaction, the difference between the value of the consideration received and the value attributed to it by the trustee. Section 96(1) *BIA* states that the order may be directed against a party to the transaction, but does not necessarily include the debtor:

96(1) On application by the trustee, a court may declare that a transfer at undervalue is void as against, or in Quebec, may not be set up against, the trustee - or order that a party to the transfer or any other person who is privy to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor (. . .).

(Emphasis added)

25 Thus, the Tribunal may order respondent 9238 to pay the trustee the undue benefit of the transaction. The second paragraph of section 96 *BIA* sets out how the amount payable to the trustee is determined. The Tribunal must accept the assessment made by the latter, unless it is proven otherwise:

96(2) In making an application under this section, the trustee shall state what the trustee considers to be the fair market value of the property or services and the value of the consideration actually given or received by the debtor, and the assessment made by the trustee shall, in the absence of evidence to the contrary, be the valuation on which the court relies in making a decision under this section.

(Emphasis added)

26 The trustee assessed the accounts receivable at $122,100 and the inventory at $12,000. The amount of $122,100 comes from section 2.1.4 of the agreement [12] between the debtor and the respondent 9238. As for the value of the inventory, the trustee relied on the debtor's assertion [13] .

27 The trustee did not specify anything about goodwill and other considerations of the sale.

28 According to the testimonial evidence, respondent 9238 received only $100,000 or at most $110,000 for accounts receivable. This assertion, in addition to being contrary to the written statement of the parties, is not supported by any document. The same remark applies with regard to the charges which are certified to have been incurred in the collection of the accounts.

29 The Tribunal considers that there is no evidence to the contrary to the assessment made by the trustee, so that the value of the assets involved in the transaction is established at $134,100. Given that the consideration received is $62,100, respondent 9238 must pay the difference to the trustee, i.e. $72,000.

5. Christine Strunk's personal responsibility

30 As we have seen, section 96 *BIA* provides that the Tribunal may order the parties to the act, or a person interested in the transaction, to pay the amount that constitutes the undue advantage. The third paragraph of section 96 *BIA* specifies that a person related to a party to the transaction is an interested person:

(3) In this section, interested person means any person who is related to a party to the transaction and who, directly or indirectly, benefits from the transaction or causes the transaction to benefit others.

(Emphasis added)

31 First of all, Ms Strunk is linked to a party to the transaction. As defined in section 4(2)(b)(i) *BIA*, it is related to respondent 9238 because it has control over it:

(2) Pour l'application de la présente loi, des personnes sont liées entre elles et constituent des ***personnes liées*** si elles sont :

(. . .)

b) soit une entité et, selon le cas :

(i) la personne qui la contrôle, si elle est contrôlée par une seule personne.

(Nos soulignements)

32 Selon le témoignage de Mme Strunk, c'est elle qui, dans les faits, contrôle l'intimée 9238, son frère n'agissant que comme prête-nom. La compagnie n'a été créée que dans le but de lui permettre de percevoir des revenus de consultante au Canada, compte tenu qu'elle est résidente de l'Allemagne.

33 Ensuite, Mme Strunk a, de façon directe ou indirecte, bénéficié elle-même du produit de la transaction. Elle a reconnu qu'elle retire pour son bénéfice personnel tout ce qui est déposé au compte de l'intimée 9238.

34 Ainsi, le syndic a fait la démonstration que Mme Strunk est une personne intéressée au sens de l'article 96(3) *LFI* et par voie de conséquence, solidairement redevable envers lui du paiement de la somme de 72 000 $.

POUR CES MOTIFS, LE TRIBUNAL :

35 *ACCUEILLE* la requête;

36 *DÉCLARE* que la convention de vente et de cession de comptes à recevoir intervenue le 7 avril 2014, entre la débitrice et 9238-6879 Québec inc., constitue une opération sous-évaluée;

37 *DÉCLARE* que cette opération est inopposable au syndic à la faillite de la débitrice;

38 *CONDAMNE* solidairement 9238-6879 Québec inc. et Christine Strunk à payer au syndic André Gabbay et associés inc., en sa qualité de syndic à la faillite de la débitrice, la somme de 72 000 $, avec intérêts au taux légal, majorés de l'indemnité additionnelle prévue à l'article 1619 *C.c.Q.*, et ce, depuis l'assignation;

39 *WITH LEGAL COSTS*.

Request granted.

Footnotes

1 Exhibit I-4.

2 Exhibit I-1.

3 Exhibit I-2, items 1 and 3.

4 Exhibit R-1, s. 5.1.1.

5 *Id.*, art. 2.1.4.

6 *Id.*, s. 4: goodwill, inventory, rights to use computer programs, rights to use telephone and fax numbers.

7 R.S.C., 1985, c. B-3.

8 Denis BROCHU, *Précis de la faillite et de l'insolvabilité*, 3 e ed., Brossard, CCH Publications Ltd., 2010, p. 432.

9 Supra, note 8, p. 433.

10 Supra, note 4, s. 4.

11 According to the R-1 agreement, the amounts owed to the bank amounted to $122,300 while the bank held a mortgage on accounts receivable valued at $122,100.

12 R-1.

13 R-2, p. 56.

TAB 23 - Re Laurentian University of Sudbury, 2022 ONSC 2927

CITATION: Laurentian University of Sudbury, 2022 ONSC 2927
COURT FILE NO.: CV-21-656040-00CL
DATE: 2022-05-18

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LAURENTIAN UNIVERSITY OF SUDBURY

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *Ashley Taylor, Elizabeth Pillon and Ben Muller*, for the Monitor

D.J. Miller and Andrew Hanrahan, for Laurentian University of Sudbury

David T. Ullmann, for The Art Gallery of Sudbury

André Claude, for University of Sudbury

Dylan Chochla, for Toronto-Dominion Bank

Pamela L.J. Huff, for Royal Bank of Canada

Andrew J. Hatnay, for Thorneloe University

Danielle Stampley, for Laurentian University Staff Union

Charlotte Chien, for Northern Ontario School of Medicine

Mark Mandelker, for Canadian Universities Reciprocal Insurance Exchange

Heather Fisher, for the Auditor General of Ontario

HEARD AND DETERMINED: May 11, 2022

REASONS: May 18, 2022

ENDORSEMENT

[1] Ernst & Young Inc., the Monitor (the "Monitor") of Laurentian University of Sudbury ("LU"), brought this motion for approval of: (a) the Monitor's First through Ninth Reports and the Supplementary Fifth Report ("the Reports") and the Twelfth Report, and the activities of the

Monitor described therein; and (b) the fees and disbursements of (i) the Monitor; (ii) Ernst & Young LLP ("EY FAAS"); and (iii) Stikeman Elliot LLP ("Stikeman") for the period from February 1, 2021 to December 31, 2021.

[2] The motion was not opposed.

[3] The Monitor submits that as a result of the complexity of the issues involved and the lack of internal resources at LU, the Monitor was required to engage in far more aspects of the restructuring than in most CCAA proceedings. As described in the Twelfth Report, the activities of the Monitor and its counsel during this proceeding included participating in a multi-party mediation process to implement certain critical restructuring actions, significant claims administration, assisting and supporting LU in connection with a real estate review, operational and governance review and various extensive regulatory investigations.

[4] As referenced in the factum, the work performed by the Monitor and its counsel has been reported to the Court and stakeholders in numerous reports filed over the course of the CCAA proceedings.

[5] Affidavits have been filed by lead professionals of the Monitor and Stikeman and provide a comprehensive listing of the accounts sought to be approved, including summaries of each account, individual professionals who have worked on the matter, each of their positions, average hourly billing rates, total number of hours worked and total associated professional fees. Stikeman's accounts have been redacted to remove privileged, confidential, and sensitive information.

[6] The Monitor, EY FAAS and Stikeman state that the accounts have been billed at each firm's standard/regular hourly rates, which they submit are consistent with the hourly rates charged by other firms in the Toronto market for the provision of similar services.

[7] Counsel to the Monitor made specific reference to the accounts submitted by EY FAAS and noted that due to the limited resources within LU's finance team and numerous competing demands, LU requested EY FAAS's assistance with the preparation of LU's annual financial statements. In my view, the engagement of EY FAAS was reasonable in the circumstances.

[8] Counsel to the Monitor submits that it is not necessary or desirable for the Court to engage in a review of each individual entry in the accounts, as there has been considerable disclosure of the activities of the Monitor and Stikeman in the Reports and the Twelfth Report and through the proceedings that took place before the Court.

[9] The role of the Court on a motion to pass accounts is to evaluate them based on the "overriding principle of reasonableness". The overall value contributed by the Monitor and its counsel is the predominant consideration in assessing the reasonableness of the accounts. (See *Nortel Networks Corp. (Re)*, 2017 ONSC 673 ("*Nortel*")). The Court does not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of a professional services may not be instructive when looked at in isolation. As the Court of Appeal has stated: "The focus of the fair and reasonable assessment should be on what was accomplished,

and not on how much time it took". (See *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at paragraph 45).

[10] The following factors set out in *Confectionately Yours Inc., Re* 2002 CanLII 45059 and referenced in *Nortel* at paragraph [14] provide guidance as to how to evaluate the quantum of requested fees:

(a) the nature, extent and value of the assets being handled;

(b) the complications and difficulties encountered;

(c) the degree of assistance provided by the company, its officers or its employees;

(d) the time spent;

(e) the Monitor's knowledge, experience and skill;

(f) the diligence and thoroughness displayed;

(g) the responsibilities assumed;

(h) the results achieved; and

(i) the cost of comparable services when performed in a prudent and economical manner.

[11] Commencing at paragraph 30 of the Monitor's factum and continuing through to paragraph 47, a comprehensive summary of this CCAA proceeding is provided with respect to the foregoing nine factors.

[12] Having reviewed the Reports, including the accounts, I am satisfied that the remuneration sought by the Monitor, EY FAAS and Stikeman is fair and reasonable. In arriving at this conclusion, I have taken into account that no party has opposed the requested relief.

[13] With respect to the request to approve the Reports and the activities of the Monitor, I repeat what I stated in *Re Target Canada Co*., 2015 ONSC 7574, at para. 2 ("*Target*"), that a request to approve a Monitor's report "is not unusual" and that:

> "there are good policy and practical reasons for the court to approve of Monitor's activities and providing a level of protection for Monitors during the CCAA process…"

[14] Specifically, Court approval:

(a) allows the Monitor to move forward with next steps in the CCAA proceeding;

(b) brings the Monitor's activities before the Court;

(c) allows an opportunity for the concerns of stakeholders to be addressed, and any problems to be rectified;

(d) enables the Court to satisfy itself that the Monitor's activities have been conducted in a prudent and diligent manner;

(e) provides protection for the Monitor not otherwise provided by the CCAA;

(f) protects the creditors from the delay and distribution that would be caused by:

i. re-litigation of steps taken to date, and

ii. potential indemnity claims by the Monitor.

(See *Target* at para 22).

[15] The Monitor submits that the Reports and the activities of the Monitor described therein should be approved. The Monitor further submits that it has acted responsibly and carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the Initial Order and no party has put forward evidence to the contrary.

[16] In the circumstances and again noting there is no opposition to the requested relief, I am satisfied that (a) the Reports and the Twelfth Report, and the activities of the Monitor described therein, and (b) the fees and disbursements incurred during the period February 1, 2021 through to and including December 31, 2021, being:

(a) for the Monitor, $4,917,795.07 and disbursements of $54,754.33 (plus applicable taxes);

(b) for EY FAAS, $947,000 and disbursements of $119.89 (plus applicable taxes); and

(c) for Stikeman, $2,762,526.55 and disbursements of $12,425.19 (plus applicable taxes).

should be approved.

[17] The motion is granted and an Order reflecting the foregoing has been signed.

Chief Justice G.B. Morawetz

Date: May 18, 2022