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April 4, 2019

Via Fax

The Honourable Justice Michael J. Wood
Supreme Court of Nova Scotia
The Law Courts
1815 Upper Water Street
Halifax, Nova Scotia

Dear Justice Wood:

Re: Application by Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd. dba Quadriga CX and Quadriga Coin Exchange for relief under the Companies' Creditors Arrangement Act – Hfx No. 484742

Submissions for Motion returnable April 8, 2019 at 2:00 p.m.

We are counsel for Ernst & Young Inc. ("EY") in its capacity as the monitor (the "**Monitor**") of Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd. ("**Quadriga**" or the "**Company**") d/b/a Quadriga CX and Quadriga Coin Exchange (collectively, the "**Applicants**"). On February 5, 2019, the Applicants were granted protection from their creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to the Initial Order (the "**Initial Order**") of the Nova Scotia Supreme Court (the "**Court**").

Filed with this motion is the Fourth Report of the Monitor dated April 1, 2019 (the "**Fourth Report**").¹ Stewart McKelvey has filed materials with the Court in relation to its decision to withdraw as Applicants' counsel. Miller Thomson LLP and Cox & Palmer (collectively, "**Representative Counsel**") have filed materials with the Court in respect of a motion to address the fee cap set forth in the order appointing Representative Counsel (the "**Fee Cap**").

A. Issues

These submissions address the following issues before the Court:

- (a) Proposed transition of the CCAA proceedings into proceedings under the *Bankruptcy and Insolvency Act* (the "**BIA**");

¹ All capitalized terms used but not defined herein have the meaning ascribed to them in the Fourth Report.

- (b) The motion of Representative Counsel to address the Fee Cap;
- (c) Asset preservation request with the estate of Gerald Cotten (the "**Estate**"), Jennifer Robertson and other entities; and
- (d) Assistance and requested relief with respect to the Third Party Payment Processors.

B. Facts

1. Proposed Transition of CCAA Proceedings

As set out in the Fourth Report, on March 13, 2019, Stewart McKelvey informed the Court and the Service List of its decision to withdraw as counsel to the Applicants in these CCAA proceedings. The Applicants have not obtained new counsel to represent them in these CCAA proceedings. Stewart McKelvey continues to represent Jennifer Robertson and the Estate.

As previously reported by the Monitor, the Applicants had no employees and only utilized the services of a small number of independent contractors to oversee the Quadriga operations. On January 28, 2019, the Applicants shut down the Quadriga website and exchange platform as a result of their liquidity constraints. The Applicants have not carried on business as a cryptocurrency exchange since that date.

At the comeback hearing on March 5, 2019, the Court asked counsel to consider the proposed purpose and future structure for the CCAA proceedings considering the limited ongoing operations of the Applicants. The withdrawal of Stewart McKelvey as counsel to the Applicants has accelerated that review.

Pursuant to section 23(1)(h) the Monitor is to advise the Court where the Monitor "is of the opinion that it would be more beneficial to the Company's creditors if proceedings in respect of the Company were taken under the" BIA. The Monitor has reached this conclusion given the Applicants' current circumstances.

The Monitor has consulted with Peter Wedlake, the Court-appointed CRO, Representative Counsel and Stewart McKelvey in respect of possible alternative processes to administer the Quadriga insolvency proceedings following the withdrawal of Stewart McKelvey as Applicants' counsel, and believe that transitioning the CCAA proceedings to bankruptcy proceedings under the BIA is the best option for the reasons set out in the Fourth Report. In this scenario, the Monitor would transition to the role of trustee-in-bankruptcy of each of the Applicants and the roles of the directors of the Applicants would end. The role of the CRO would also end with the termination of the CCAA proceedings. The CRO and Representative Counsel support this transition. The Monitor is not aware of any stakeholders objecting.

2. **Representative Counsel Motion**

Representative Counsel has filed a motion requested an increase of the Fee Cap to \$400,000 during the CCAA proceedings and removal of the Fee Cap following termination of the CCAA proceedings. Representative Counsel has currently incurred fees in excess of the current Fee Cap as outlined in the Affidavit of Asim Iqbal sworn April 2, 2019 (the "**Iqbal Affidavit**"). Representative Counsel continues to be important to the administration of the CCAA proceedings and any proceedings in respect the Applicants under the BIA by representing the interest of Affected Users.

3. **Asset Preservation Request**

During the course of the Monitor's investigation into Quadriga's business and affairs, the Monitor became aware of occurrences where the corporate and personal boundaries between Quadriga and its founder Gerald Cotten were not formally maintained, and it appeared to the Monitor that Quadriga funds may have been used to acquire assets held outside the corporate entity.

Discussions between the Monitor and counsel to Ms. Robertson and the Cotten Estate have culminated in a form of preservation of assets order (the "**Asset Preservation Order**") which involves all assets held by the Cotten Estate, Ms. Robertson, the Seaglass Trust, Robertson Nova Consulting Inc., and Robertson Nova Property Management Inc (collectively, the "**Preserving Parties**").

The Asset Preservation Order would, subject to agreed modifications, prohibit the Preserving Parties from selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of the Preserving Parties, wherever situate.

4. **Third Party Payment Processors**

As set out in the Pre-Filing Report of the Monitor and the Fourth Report, the Applicants used third party payment processors (the "**Third Party Payment Processors**") to act as custodian of Quadriga funds because of the banking challenges faced by the Applicants. At the initial hearing, the Applicants and the Monitor indicated their intention to demand the return of funds being held by the Third Party Payment Processors. To assist the effort, the Applicants requested and the Court granted the following relief in the Initial Order:

27. ... the Monitor shall be empowered on behalf of the Applicants to take any and all steps... to take possession of the following Property of the Applicants:

...

- (b) the proceeds held in any bank account maintained by or financial instrument issued in the name of, or standing to the credit of, any third payment providers, including the Third Party Payment Providers, held on behalf of the Applicants...

28. Any person in possession of any of the Property wherever situate, including any Third Party Payment Provider, shall forthwith advise the Applicants and the Monitor of the existence of any Property in such person's possession or control, shall grant immediate and continued access to the Property and information and documentation related thereto to the Applicants and the Monitor.

Initial Order at paras. 27 and 28, Tab 2.

Immediately following the issuance of the Initial Order, the Monitor wrote to the known Third Party Payment Processors requesting the return of any property of the Applicants and information and documentation related to any property that the Third Party Payment Processor was holding or held in the past (the **"Requested Information"**). The Requested Information is required to verify the amount held by each Third Party Payment Processor and investigate the location of Quadriga's missing funds and its business and affairs.

With the requests outstanding for approximately two (2) months, the majority of Third Party Payment Processors have not delivered the Applicants' property to the Monitor or the Requested Information. The Monitor is current seeking relief against eight (8) payment processors: VoPay International Inc. (**"VoPay"**), 9133-8079 Quebec Inc. (**"Alto"**), 1009926 B.C. Ltd. (**"B.C. Ltd."**), BillerFY Labs Inc. (**"BillerFY"**), ePADregistry Inc. (**"ePAD"**), POSConnect Inc. (**"POSConnect"**), WB21 Pte. Ltd. and Black Bank Inc. (collectively, **"WB21"**). The issues with each of the Third Party Payment Processors are addressed in detail in the Fourth Report and summary of the status of outstanding requests is set out below:

- (a) **VoPay:** Continues to hold \$116,262.17 of property of the Applicants (VoPay has confirmed is not objecting to the relief sought by the Monitor);
- (b) **Alto:** Continues to hold either \$20,876.77 or \$36,212.97 of property of the Applicants. Alto has stated it has never done any business with the Applicants;
- (c) **B.C. Ltd.:** Prior to the CCAA filing, B.C. Ltd. delivered approximately \$5.8 million of bank drafts to another Third Party Payment Processor acting on behalf of Quadriga. B.C. Ltd. has not responded to the Monitor's request for the Requested Information or other communications regarding the bank drafts which it delivered;
- (d) **BillerFY and ePAD:** Have not responded to any requests for return of the Applicants' property and delivery of the Requested Information;

- (e) **POSConnect:** Has stated it will continue to hold the Applicants' property until April 28, 2019 and has requested payment for compiling the Requested Information. Since the filing of the Fourth Report, discussions between POSConnect and the Monitor are ongoing regarding granting the Monitor access to online information to the Monitor and providing an accounting to the Monitor along with returning Quadriga funds;
- (f) **WB21:** Has refused to deliver property of the Applicants and the Requested Information pending an internal investigation.

C. Submissions

1. The Termination and Bankruptcy Assignment Order

The Court has jurisdiction to grant the Order sought by the Monitor to transition the CCAA proceedings to proceedings under the BIA (the "**Transition Order**"). Section 11 of the CCAA codifies the Court's discretionary authority under the CCAA and provides as follows:

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.

CCAA, s. 11, Tab 1.

In *Century Services Inc. v. Canada (Attorney General)* ("Century Services"), the Supreme Court of Canada held that the appropriateness requirement in section 11 of the CCAA must be assessed in light of the policy objectives underlying the CCAA:

... Appropriateness under the CCAA is assessed by inquiring whether the order sought advances the policy objectives underlying the CCAA. The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA — avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. ... when an order is sought that does realistically advance the CCAA's purposes, the ability to make it is within the discretion of a CCAA court. [Citations omitted]

CCAA, s. 11, Tab 1.

Century Services Inc. v. Canada (Attorney General) [Century Services], 2010 SCC 60 at paras 70-71, Tab 3.

The Supreme Court of Canada also expressly held in that decision that a CCAA Court has authority to lift the stay under the CCAA to commence proceedings under the BIA and stated in part:

The CCAA is silent on the transition into liquidation but the breadth of the court's discretion under the Act is sufficient to construct a bridge to liquidation under the BIA. The court must do so in a manner that does not subvert the scheme of distribution under the BIA. Transition to liquidation requires partially lifting the CCAA stay to commence proceedings under the BIA.

Century Services at para 80, Tab 3.

Should Quadriga's CCAA proceedings be transitioned to bankruptcy proceedings, the current objectives of data and asset recovery, including ongoing investigatory powers, with the intent of optimizing recoveries to stakeholders will continue to be met. Any remaining ancillary objectives, i.e. the potential sale of the Quadriga platform or a restructuring plan, could be pursued within the bankruptcy proceedings if determined to be viable and beneficial.

Paragraph 47 of the Initial Order anticipated the potential of the Monitor taking on subsequent roles such as receiver or Trustee. Paragraph 11 of the Initial Order also contemplated permitting proceedings, such as filing assignments into bankruptcy, to be commenced with the consent of the Monitor and the Applicants.

Courts have permitted proceedings under the CCAA to overlap with proceedings under BIA and have authorized the lifting of the CCAA stays to permit assignments into bankruptcy to be made. For example, in the CCAA proceedings of Hollinger Inc., the Court authorized the CRO to file assignments into bankruptcy with respect to the CCAA debtors. Similarly, in the CCAA proceedings of Canwest Global Communications Corp., the Court allowed the Monitor to continue to perform various functions and carry on some of the tasks that remained outstanding in the CCAA proceedings following a filing into bankruptcy by the CCAA debtor and appointment of the trustee in bankruptcy. The lifting of the stay will be limited for the sole purpose of filing the assignments and following the assignments under the BIA, the stay of proceedings under the BIA in respect of the Applicants will be in place which will continue to restrain creditors from filing actions, lawsuits or other claims against the Applicants outside of the bankruptcy proceedings.

Olympia & York Developments Ltd. (Re), 1995 CarswellOnt 340 (Gen. Div.), Tab 4.

Re Canwest Global Communications, Order (CMI Transition) of Justice Pepal dated October 21, 2011, Court File No. CV-09-8396-00CL [CMI Transition Order], Tab 5.

Re Hollinger Inc. et. al., Order of Justice Hainey dated March 21, 2015, Court File No. 07-CL-7120, Tab 6.

The Monitor believes that given the nature of the circumstances facing Quadriga and its stakeholders, the Applicants' estates would benefit from introducing additional and appropriate flexibility to the bankruptcy proceedings, including by extending the time to comply with certain obligations under the BIA, allowing the Representative Counsel and the Official Committee to continue within the bankruptcy proceedings and to permit Representative Counsel to file an omnibus claim on behalf of Affected Users for purposes of the first creditors' meeting, and modifying the manner in which certain notices are to be provided.

According to section 49(3) of the BIA, an assignment in bankruptcy must be made in the locality of the debtor which is defined in section 2 to mean the principal place (a) where the debtor has carried on business during the year immediately preceding the bankruptcy, (b) where the debtor resided during that year, and (c) in cases not coming within (a) or (b), where the greater portion of the debtor's property is located. In this case, as set out in the affidavit of Jennifer Robertson sworn January 30, 2019, the Applicants' business was primarily carried on by Mr. Cotten from his residence in Nova Scotia. Furthermore, this Court already held Nova Scotia to be the proper jurisdiction for their CCAA proceedings.

Extending time to complete any steps or dispensation with certain procedures under the BIA is not contrary to and is expressly permitted under the BIA.

BIA, ss. 187(11) and (12), Tab 1.

Courts have also modified other statutory requirements of the BIA. For example, in the bankruptcy of General Motors Nova Scotia Finance Company, this Court varied the BIA scheme for filing and proving claims, allowed for certain omnibus claims to be filed, and waived compliance with certain requirements of the BIA. Similarly, in the bankruptcy of MF Global Canada Co., the court approved a claims procedure entirely different from the one prescribed by the BIA, appointed representative counsel and extended deadlines for various steps mandated by the BIA to be taken.

CMI Transition Order, Tab 5

Re MF Global Canada Co., Order (Re Bankruptcy Administration) of Justice Campbell dated November 8, 2011, Order (Re Customer representative Counsel) of Justice Campbell dated November 14, 2011, Claims Process Order of Justice Campbell dated January 27, 2012, Court File. No. 31-OR207854, Tab 7.

Re General Motors Nova Scotia Finance Company, Order for Directions of Justice Chipman dated October 29, 2013, Tab 8.

The Order modifying the statutory obligations of the Trustee sought by the Monitor on this motion is intended to avoid duplication of steps taken, and minimize the costs incurred, in administering the estates of the Applicants and to promote efficiencies.

A proposed term of the Transition Order addresses the separate account currently being held by the Monitor, in accordance with the Banking Arrangement Order, in respect of the disputed fees claimed by Costodian Inc. In order to maintain the segregated nature of the separate account should the proceedings transition to bankruptcy, the Monitor proposes a Court ordered charge. The charge would be without prejudice to ultimate rights and defences in respect of the disputed fees as currently provided in the Banking Arrangement Order. The Monitor acknowledges that there is not a specific provision in the CCAA permitting for such a charge and would require the Court to exercise its discretionary jurisdiction under s. 11 to grant it. The alternative structure would involve the Monitor continuing in some limited capacity to hold the separate account.

As noted above, section 11 of the CCAA provides that a Court may, subject to the restrictions set out in the CCAA, make any order it considers appropriate in the circumstances. The discharge and release of court-appointed officers is a common feature at the termination of CCAA proceedings. In particular, on numerous occasions Courts have granted orders discharging chief restructuring officers and releasing them from claims against them arising from their actions in CCAA proceedings.

Re NewPage Port Hawkesbury Corp., Discharge Order of Justice Murphy dated April 17, 2014, Hfx. No. 355063, Tab 9.

Re Timminco Limited et al., Order of Justice Hainey dated December 23, 2015, Court File No. CV-12-9539-00CL, Tab 10.

Re Collins & Aikman Automotive Canada Inc., Discharge Order of Justice Hoy dated June 15, 2010, Court File No. 07-CL-7105, Tab 11.

Re First Leaside Wealth Management Inc. et al., Discharge and Transition Order of Justice Wilton-Siegal dated December 7, 2012, Court File No., CV-12-9617-00CL, Tab 12.

No party has raised an objection to any activities undertaken by the either the Monitor or CRO, or the requested relief. The Monitor served the Office of the Superintendent in Bankruptcy with its notice of motion and Fourth Report.

2. Representative Counsel Motion

The nature of these proceedings has been uncertain and quickly evolving and as such Representative Counsel's earlier fee estimates were understated. Though Representative Counsel's fees have exceeded the Fee Cap, they have agreed to discount the fees incurred to date with the Official

Committee as set out in the Iqbal Affidavit. The increase in the Fee Cap with the negotiated discount will allow Representative Counsel to continue to fulfill their mandate to Affected Users during the transition to the bankruptcy proceedings if authorized by the Court.

Representative Counsel has also requested an elimination the specific Fee Cap in the bankruptcy proceedings in respect of the Applicants. Given the oversight of the Official Committee, the inspectors appointed under the BIA, and the requirement to pass accounts before the Court, the Monitor submits there is still transparency and protections with respect to the fees incurred by the Representative Counsel and therefore supports the relief sought by Representative Counsel. Granting the relief will also reduce costs by reducing the amount of necessary motions to alter the Fee Cap in respect of Representative Counsel.

3. Asset Preservation Order

The form of Asset Preservation Order is based off the Model Mareva Injunction Order in Ontario, with agreed upon modifications with Ms. Robertson and her counsel. Rule 42 of the Nova Scotia Civil Procedure Rules provides jurisdiction to the Court to grant the Asset Preservation Order. Additionally, this Court has granted preservation orders in other cases such as *Reddick v. MacInnis*.

Model Maerva Order, Tab 13.

Rule 42, Nova Scotia Civil Procedure Rules, Tab 1.

Reddick v. MacInnis, 2018 CarswellNS 624 (N.S.S.C.), Tab 14.

During the course of the negotiations with the Monitor, Ms. Robertson consented on behalf of all the Preserving Parties to the Asset Preservation Order in the form sought by the Monitor in respect of assets, wherever situate, relating to the Estate, assets held by her personally and through corporate entities and the Seaglass Trust. The Monitor and Ms. Robertson's counsel specifically negotiated the Asset Preservation Order rather than the Monitor pursuing contested mareva injunction proceedings against the Preserving Parties.

The Monitor submits that the Asset Preveration Order will benefit the for Quadriga and its stakeholders. The Asset Preservation Order will freeze certain asets that may be recoverable for Quadriga's stakeholders and will allow the Monitor's investigation of Quadriga's business and affairs to continue without concern that assets may be dissipated. The Asset Presvation Order also provides for protocols to disclose, preserve and monetize assets with supervision from the Monitor.

The Monitor notes in particular paragraph 18 of the draft Asset Preservation Order, which is proposed in order to give bonafide third party purchasers the ability to acquire assets from the Preserving

Parties free and clear of potential claims that may be asserted by the Applicants and/or the Affected Users. The relief will permit the monetization of certain depreciating assets in a manner that maximizes value for ultimate beneficiary of the proceeds from the asset which benefits both Ms. Robertson and Affected Users

4. Third Party Payment Processors

Requested Information

It has been approximately two (2) months since the Monitor initially requested the Requested Information from the Third Party Payment Processors. The Third Party Payment Processors have been withholding the Requested Information from the Monitor contrary to the Initial Order and the right of access to the Monitor set out in section 24 of the CCAA. Each of the Third Party Payment Processors has had ample time to produce accounts statements for the funds they held on behalf of the Applicants and collect supporting documentation for the account statements, such as the underlying bank account statements which held Quadriga property. Certain of the Third Party Payment Processors, such as BillerFY and POSConnect, even had agreements which required them to separately account for the Applicants' property and produce transaction information on a periodic basis.

It is common in insolvency proceedings that third parties will be required to produce documentation and accounting records to Court appointed officers with respect to the debtors' property. Section 164 of the BIA states:

164(1) Where a person has, or is believed or suspected to have, in his possession or power any of the property of the bankrupt, or any book, document or paper of any kind relating in whole or in part to the bankrupt, his dealings or property, or showing that he is indebted to the bankrupt, **he may be required by the trustee to produce the book, document or paper for the information of the trustee, or to deliver to him any property of the bankrupt in his possession.**

Paragraphs 4 – 6 of the Model Receivership Order in Nova Scotia also grants specific powers to Receivers to compel books, documents, contracts and accounting records from any person.

BIA, s. 164, Tab 1.

Model Receivership Order, para. 4 – 6, Tab 15.

Recognizing the unique nature of this case and the efforts that would need to be undertaken to seek the return of property from third parties, the Court specifically granted additional powers to the Monitor in the Initial Order to seek access to information and documentation from third parties who held Quadriga property. Interpreting the CCAA to grant additional powers to the Monitor in the Initial Order is

authorized by section 11 of the CCAA and is consistent with Canada's insolvency regime which should be interpreted harmoniously. In *Century Services*, the Supreme Court of Canada stated that the intention of Parliament was "for the CCAA to operate *in tandem* with other insolvency legislation, such as the BIA."

Century Services, para. 76, Tab 3.

By not delivering the Requested Information, the Monitor submits that the Third Party Payment Processors (except VoPay) are in violation of the Initial Order. The Monitor is now seeking specific relief against the parties to ensure that the Third Party Payment Processors are aware that the Court requires delivery of the Requested Information to the Monitor in a timely manner.

Return of Property

At the initial application hearing, the Court expected that the Monitor would seek the return of property of Quadriga held by any third party returning for additional relief if the third parties were uncooperative. Each of the Third Party Payment Processors (except VoPay) has refused to deliver property of the Applicants which they hold to the Monitor. Certain of the Third Party Payment Processors have admitted to holding certain property (VoPay has admitted holding \$116,262.17, WB21 has admitted to holding at least CDN\$11.77 and US\$5.53 and POSConnect has admitted to holding approximately \$300,000) and others have ignored the Monitor's request.

The Monitor is requesting relief to require the Third Party Payment Processors to deliver any property of the Applicants which they continue to hold. The relief is consistent with section 164 of the BIA which requires third parties to deliver property of the bankrupt to the trustee-in-bankruptcy and paragraph 4 of the Model Receivership Order in Nova Scotia. The additional relief appears to be required as the Third Party Payment Processors have not cooperated with the Monitor to date and continue to develop reasons to not return property of the Applicants. The property in the majority of instances was deposited by Affected Users and continued delay by the Third Party Payment Processors may affect their recovery from the insolvency proceedings.

BIA, s. 164, Tab. 1.

Model Receivership Order, para. 4, Tab 15.

The intention of the Monitor is to require the Third Party Payment Processors to return any admitted property which they hold within five (5) days of the requested Order if issued by the Court. The Monitor will also review the Requested Information and Quadriga's books and records to determine if it agrees with the Third Party Payment Processors' accounting for the property which they hold. If there is a further disagreement on the amount of property held by a Third Party Payment Processors and the matter

cannot be resolved consensually, the Monitor will schedule an additional motion with the Court on at least seven (7) days' to the applicable Third Party Payment Processor.

As an update for the Court, VoPay has indicated following the filing of the Fourth Report that will not take a position with respect to the Monitor's requested relief and the funds they are holding will be returned within the timeframe set out in the Order sought by the Monitor. Discussions with POSConnect are also ongoing to a potential resolution that would adjourn the motion to a future date.

Yours truly,

A handwritten signature in blue ink, appearing to be 'EP', with a long horizontal stroke extending to the right.

Elizabeth Pillon

EP/kl

cc. Service List

TAB 1

List of Authorities

Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36

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.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3

49. (3) The assignment made under subsection (1) shall be offered to the official receiver in the locality of the debtor, and it is inoperative until filed with that official receiver, who shall refuse to file the assignment unless it is in the prescribed form or to the like effect and accompanied by the sworn statement required by subsection (2).

...

164 (1) Where a person has, or is believed or suspected to have, in his possession or power any of the property of the bankrupt, or any book, document or paper of any kind relating in whole or in part to the bankrupt, his dealings or property, or showing that he is indebted to the bankrupt, he may be required by the trustee to produce the book, document or paper for the information of the trustee, or to deliver to him any property of the bankrupt in his possession.

...

187 (11) Where by this Act the time for doing any act or thing is limited, the court may extend the time either before or after the expiration thereof on such terms, if any, as it thinks fit to impose.

187 (12) Where in the opinion of the court the cost of preparing statements, lists of creditors or other material required by this Act to be sent with notices to creditors, or the cost of sending the material or notices, is unjustified in the circumstances, the court may give leave to omit the material or any part thereof or to send the material or notices in such manner as the court may direct.

Nova Scotia Civil Procedure Rules

42.01 (1) A party to a proceeding may make a motion for an order preserving any of the following, in accordance with this Rule:

- (a) evidence that is relevant to an issue in the proceeding;
- (b) property claimed in the proceeding;
- (c) assets that would be available to satisfy a judgment claimed in the proceeding.

...

Preservation of assets (Mareva Injunction)

42.11 (1) A party who files an undertaking required by Rule 41.06, of Rule 41 - Interlocutory Injunction and Receivership, may make a motion for an interim or interlocutory injunction that does any of the following:

- (a) restrains a party from disposing of assets available to satisfy a judgment claimed in the proceeding;
- (b) restrains a party from removing assets from Nova Scotia;
- (c) requires a party or other person to cooperate in preserving assets.

(2) The party must satisfy the judge that the party has met requirements of the common law for an injunction preserving assets, such as the requirements on each of the following subjects:

- (a) a claim for damages;
- (b) the strength of the party's case;
- (c) the risk that assets will be made unavailable to satisfy a judgment for the damages;
- (d) the likelihood of recovery on a judgment for the damages if the assets are not preserved.

(3) Rule 41 - Interlocutory Injunction and Receivership, applies to an injunction preserving assets, except an interlocutory injunction for preservation of assets continues until judgment is satisfied.

(4) An injunction preserving assets may be directed to a person who has control of an asset belonging to a party claimed against, or in which the party has an interest.

TAB 2

[Attached]

2019

No. 484742

Supreme Court of Nova Scotia

Application by Quadriga Fintech Solutions Corp., Whiteside Capital Corporation and 0984750 B.C. Ltd. (dba Quadriga CX and Quadriga Coin Exchange), (the "**Applicants**") for relief under the *Companies' Creditors Arrangement Act*

Initial Order

Before the Honourable Justice Michael J. Wood in chambers:

The Applicants propose to make a compromise or arrangement under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the "**CCAA**") and they have applied for an initial order and, now or in the future, other relief under the CCAA as may be sought on notice of motion.

This motion is being brought without notice to any other party except for Jennifer Henderson, a secured creditor due to the urgent nature of the matter as argued by the Applicants.

The following parties, represented by the following counsel, made submissions:

<u>Party</u>	<u>Counsel</u>
Applicants	Maurice P. Chiasson, Q.C. and Sara L. Scott, Stewart McKelvey
Proposed Monitor Ernst & Young Inc.	Elizabeth Pillon and Lee Nicholson, Stikeman Elliott LLP



On motion of the Applicant the following is ordered and declared:

Service

1. Further service of this application is hereby dispensed with so that the motion is properly returnable today.

Application

2. The Applicants are affiliated debtor companies for purposes of the CCAA and are companies to which the CCAA applies.

Plan of Arrangement

3. The Applicants, in consultation with the Monitor, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the "**Plan**").

Possession of Property and Operations

4. The Applicants shall remain in possession and control of their current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further order of this Court, the

Applicants shall continue to carry on business in a manner consistent with the preservation of their respective businesses (the "**Business**") and Property. The Applicants shall be authorized and empowered to continue to retain and employ consultants, agents, experts, accountants, counsel, and such other persons (collectively "**Assistants**") and the employees and contractors currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. The Applicants may pay the following expenses whether incurred prior to or after this Order:

- (a) all current and future fees, wages, salaries, employee and pension benefits, vacation pay, and expenses payable to employees, independent contractors and consultants who continue to provide service on or after the date of this Order ("**Active Employees**"), in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) all current and future employee health, dental, life insurance, short and long term disability and related benefits (collectively, the "**Group Benefits**") payable on or after the date of this Order to Active Employees, in each case incurred in the ordinary course of business and consistent with existing policies and arrangements or such amended policies and arrangements as are necessary or desirable to deliver the existing Group Benefits;
- (c) with prior written approval of the Monitor, the fees and disbursements for any Assistants (except for those contractors providing services to the Applicants in the ordinary course of business) retained or employed by the Applicants in respect of these proceedings, at their reasonable standard rates and charges.

6. Except as otherwise provided to the contrary herein, the Applicants may pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance including directors and officers insurance, maintenance, and security services and forensic or other investigations or audits; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

7. The Applicants shall remit or pay, in accordance with legal requirements or on terms as may be agreed to between the Applicants and the applicable authority:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
 - (i) employment insurance,
 - (ii) Canada Pension Plan,

- (iii) Quebec Pension Plan, and
- (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province or any regulatory or administrative body or any other authority, in all cases in respect of municipal realty, municipal business, or other taxes, assessments or levies of any nature or kind which are:
 - (i) entitled at law to be paid in priority to claims of secured creditors;
 - (ii) attributable to or in respect of the ongoing Business carried on by the Applicants; and
 - (iii) payable in respect of the period commencing on or after the date of this Order.

8. Until such time as the Applicants disclaim a real property lease in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases, including, for greater certainty, common area maintenance charges, utilities and realty taxes, and any other amounts payable to the landlord under the lease, or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, in accordance with existing lease agreements. On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid.

9. Except as specifically permitted herein or by further order of this Court, the Applicants are hereby directed, until further order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their respective creditors as of this date without prior written consent of the Monitor;
- (b) to not dispose of any of their cryptocurrency assets;
- (c) to grant no security interests, trusts, liens, charges, or encumbrances upon or in respect of any of their respective Property; and
- (d) to not grant credit or incur liabilities except in the ordinary course of the Business or with the prior written approval of the Monitor.

Restructuring

10. The Applicants shall, subject to such requirements as are imposed by the Monitor and under any agreements for debtor in possession financing which may be granted, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their respective businesses or operations,
- (b) terminate the employment of such of their respective employees or temporarily lay off such of their employees as they deem appropriate and, as applicable, in accordance with the terms of any collective agreement;
- (c) terminate the engagement of any contractors or temporarily suspend the services provided by any contractor as they deem appropriate; and
- (d) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any refinancing.

No Proceedings Against the Applicants or the Property

11. Until and including the 7th day of March, 2019, or such later date as this Court may order (the **"Stay Period"**), no claim, grievance, application, action, suit, right or remedy, or proceeding or enforcement process in any court, tribunal, or arbitration association (each, a **"Proceeding"**) shall be commenced, continued, or enforced against or in respect of any of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

12. During the Stay Period, no Proceeding shall be commenced, continued, or enforced against or in respect of:

- (a) the following bank accounts (the **"Bank Accounts"**) maintained by 700964 N.B. Inc. which constitute, in part, property of the Applicants:
 - (i) Account number 5213360 5234 with The Toronto-Dominion Bank of Canada (Branch Address – 184 Hampton Road, Quispamsis, New Brunswick E2E 4Z4); and
 - (ii) Account number 7002815 with Canadian Imperial Bank of Commerce (Branch Address – 83c Hampton Rd, Rothesay, New Brunswick E2E 2K3),
- (b) any cash, bank drafts or similar financial instruments held for the benefit of the Applicants (the **"Bank Drafts"**) in the possession of:
 - (i) Finconnect,
 - (ii) Black Banx Inc. (formerly known as WB21),
 - (iii) POSConnect Inc.,
 - (iv) 1009926 B.C. Ltd.,
 - (v) VoPay International Inc.,
 - (vi) Billerfy Labs Inc.,

- (vii) Costodian Inc. (the parties listed in (i) – (vii) collectively described as the **"Third Party Payment Providers"**), or
- (viii) Stewart McKelvey,

except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of, or affecting the, Bank Accounts or the Bank Drafts are hereby stayed and suspended pending further order of this Court. The funds belonging to the Applicants maintained in the Bank Accounts or represented by the Bank Drafts shall be included within the term Property.

No Exercise of Rights or Remedies

13. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being **"Persons"** and each being a **"Person"**) against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall:

- (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on;
- (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;
- (c) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety, or the environment;
- (d) prevent the filing of any registration to preserve or perfect a security interest; or
- (e) prevent the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder, provided that the Applicants shall not be required to file a defence during the Stay Period.

No Interference with Rights

14. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate, or cease to perform any right, renewal right, contract, agreement, licence, or permit in favour of or held by the Applicants, including but not limited to renewal rights in respect of existing insurance policies on the same terms, except with the written consent of the Applicants and the Monitor, or leave of this Court.

Continuation of Services

15. During the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, or other services to the Business or the Applicants, are hereby restrained until further order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Applicants, and the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, and domain

names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

Non-Derogation of Rights

16. Notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property, or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants.

Proceedings Against Directors and Officers

17. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current, or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court, these proceedings are dismissed by final order of this Court, or with leave of this Court.

Appointment of Monitor

18. Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Applicants, the Property, and the Applicants' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and the Applicants and their respective shareholders, officers, directors, employees and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, cooperate fully with the Monitor in the exercise of its powers and discharge of its obligations, and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

19. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the activities of the Applicants, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants in their preparation of the Applicants' cash flow statements;
- (d) advise the Applicants in their development of the Plan and any amendments to the Plan, and, to the extent deemed appropriate by the Monitor, assist in their negotiations with creditors, customers, vendors, and other interested Persons;

- (e) assist the Applicants, to the extent deemed appropriate by the Monitor, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents and to the Business of the Applicants, to the extent that is necessary to adequately assess the Applicants' Business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel, consultants, agents, experts or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, including any affiliate of, or person related to the Monitor;
- (h) develop a claims process to ascertain the quantum of the claims of all creditors; and
- (i) be at liberty to perform such other duties as are required by this Order or by this Court from time to time.

20. Except as set out in paragraph 22 or in paragraph 25, the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

21. The Applicants shall cease to use the cash management system currently in place through the use of Third Party Payment Providers as described in the initial affidavit of Jennifer Henderson.

22. Notwithstanding paragraph 20, the Monitor is authorized and directed to maintain a trust account (the "**Disbursement Account**") for the purpose of assisting with the post filing cash management services for the Applicant 0984750 B.C. Ltd. (the "**Cash Management Services**") as may reasonably be required by the Applicants in relation to the disbursements for costs and expenses incurred by the Applicants following the date of this Order to preserve the Property and/or fund these proceedings, and shall be, in its capacity as provider of the Cash Management Services, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management Services. The Cash Management Services provided by the Monitor shall not include collecting any standard operating trade receipts or making any disbursements in respect of the trading platform operated by the Applicants if restarted at any time during these proceedings.

23. The Monitor shall disburse the funds in the Disbursement Account at the direction of the Applicants provided that such disbursements are consistent with this Order and the CCAA as determined by the Monitor or this Court.

24. Notwithstanding any other provision of this Order and without in any way limiting the protections for the Monitor set forth in this Order and the CCAA, the Monitor shall have no obligation to make any payment from the Disbursement Account held on behalf of the Applicants unless the Monitor is holding sufficient funds in the Disbursement Account, adequate to effect any such payment.

25. Notwithstanding paragraph 20, the Monitor, is authorized and directed to maintain a cryptocurrency wallet (the "**Wallet**") for the purpose of maintaining any cryptocurrency found as at the filing date or discovered thereafter relating to the Applicants, for the purpose of preserving the Property. The Wallet and any cryptocurrency held therein shall be maintained by the Monitor pending further order of this Court.

26. Nothing herein contained shall limit the protections afforded the Monitor at law including those protections set out in the CCAA.

27. As part of the provision of the Cash Management Services, the Monitor shall be empowered on behalf of the Applicants to take any and all steps, including seeking any necessary order from this Court, to take possession of the following Property of the Applicants:

- (a) the Bank Accounts belonging to the Applicants,
- (b) the proceeds held in any bank account maintained by or financial instrument issued in the name of, or standing to the credit of, any third payment providers, including the Third Party Payment Providers, held on behalf of the Applicants, including the Bank Drafts.

28. Any person in possession of any of the Property wherever situate, including any Third Party Payment Provider, shall forthwith advise the Applicants and the Monitor of the existence of the Property in such person's possession or control and shall grant immediate and continued access to the Property and information and documentation related thereto to the Applicants and the Monitor.

29. The Disbursement Account and the Wallet shall be included within the term Property.

30. The Monitor shall provide any creditor of the Applicants or a potential Debtor In Possession lender ("**DIP Lender**") with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor or a DIP Lender addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors or a DIP Lender unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

31. The Monitor, counsel to the Monitor, and all counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case not to exceed their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a weekly/monthly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers in the amounts of \$50,000, \$50,000, and \$100,000, respectively to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

32. The Monitor and its legal counsel shall pass their accounts from time to time before a judge of this court or a referee appointed by a judge.

Administrative Charge

33. The Monitor, the Monitor's counsel, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property,

which charge shall not exceed an aggregate amount of \$2,000,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 37 and 39.

Directors' Charge

34. The Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's negligence or actionable misconduct.

35. The directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**" and together with the Administration Charge, the "**Charges**") on the Property, which charge shall not exceed an aggregate amount of \$100,000, as security for the indemnity provided in paragraph 34 of this Order. The Directors' Charge shall have the priority set out in paragraphs 37 and 39.

36. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 34 of this Order.

Charges

37. Until further Order of this Court, the priorities of the Directors' Charge and the Administration Charge, as among them, with respect to the Property, shall be:

First – the Administration Charge; and

Second – the Directors' Charge.

38. The filing, registration or perfection of the Charges shall not be required and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

39. The Charges shall constitute a charge on the Property and shall rank in priority to claims of any security interests in favour of any secured creditor of the Applicants, trusts, liens, charges, and encumbrances and claims, statutory or otherwise, in favour of any Person.

40. The Applicant and the beneficiaries of the Charges shall be entitled, upon giving notice to parties likely affected, to seek an order changing the amount of the Charges or providing that the Charges shall rank in priority to secured creditors not named in paragraph 39.

41. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any encumbrance over any Property that ranks in priority to, or *pari passu* with the beneficiaries of the Charges unless the Applicant also obtains the prior written consent of the beneficiaries of the Charges, or further order of this Court.

42. The Charges shall not be rendered invalid or unenforceable and the rights and remedies of the beneficiaries of the Charges shall not otherwise be limited or impaired in any way by:

- (a) the pendency of these proceedings and the declarations of insolvency made herein;
- (b) any application for a bankruptcy order issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA"), or any bankruptcy order made pursuant to such applications;
- (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or
- (d) any negative covenants, prohibitions, or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, sublease, offer to lease, or other agreement (collectively, an "Agreement") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:
 - (i) the creation of the Administration Charge shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which any of the Applicants is a party;
 - (ii) none of the beneficiaries of the Charges shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants seeking the creation of the Administration Charge; and
 - (iii) the payments made by the Applicants pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

Service and Notice

43. The Monitor shall:

- (a) without delay, publish in the Globe and Mail a notice containing the information prescribed under the CCAA,
- (b) within five days after the date of this Order,
 - (i) make this Order publicly available in the following manner:
 - (A) by posting a copy of the Order on the website of the Applicant, 0984750 – quadrigacx.com,
 - (B) by posting a copy of the Order on the Monitor's website – www.ey.com/ca/quadriga, and
 - (C) by posting a copy of the Order on www.reddit.com/r/quadrigacx.

- (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$10,000, and
- (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.

44. The Applicants and the Monitor may give notice of this Order, any other materials and orders in these proceedings, and any notices, and provide correspondence, by forwarding originals or true copies by prepaid ordinary mail, courier, personal delivery, or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and any such notice by courier, personal delivery, or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

45. The Applicants and the Monitor, and any party who has filed a demand of notice may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsel's e-mail addresses as recorded on the service list from time to time, and the Monitor may post a copy of any or all such materials on its website at www.ey.com/ca/quadriga.

General

46. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

47. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, construction lien trustee, or a trustee in bankruptcy of the Applicants, the Business or the Property.

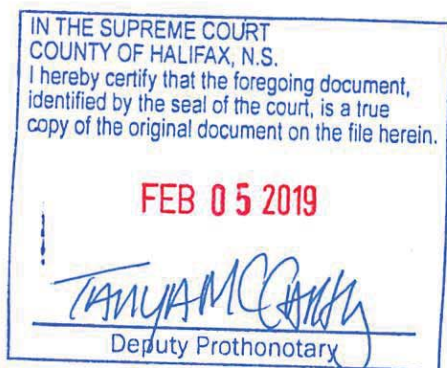
48. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction outside Nova Scotia, is requested to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

49. Each of the Applicants and the Monitor may apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and the Monitor may act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

50. Any interested party, including the Applicants and the Monitor, may apply to this Court to vary or amend this Order on such notice required under the *Civil Procedure Rules* or as this Court may order. In any event, any motion to extend the stay of proceedings or otherwise vary this Order shall be heard by this Court on March 5, 2019 at 11:00 a.m. Any party making a motion to be heard at such time, including the Applicants, shall file its notice of motion and other materials in support of the motion on or before February 25, 2019. The Monitor shall file its report in relation to such motion no later than March 1, 2019.

51. This Order and all of its provisions are effective as of 12:01 a.m. Atlantic Standard Time on the 5th day of February, 2019.

Issued: February 5, 2019.




Prothonotary

TANYA MCCARTHY
Deputy Prothonotary

TAB 3

[Attached]

Most Negative Treatment: Distinguished

Most Recent Distinguished: [Arrangement de MPECO Construction inc.](#) | 2019 QCCS 297, 2019 CarswellQue 730, EYB 2019-306949 | (Que. Bktcy., Feb 4, 2019)

2010 SCC 60

Supreme Court of Canada

Ted Leroy Trucking [Century Services] Ltd., Re

2010 CarswellBC 3419, 2010 CarswellBC 3420, 2010 SCC 60, [2010] 3 S.C.R. 379, [2010] G.S.T.C. 186, [2010] S.C.J. No. 60, [2011] 2 W.W.R. 383, [2011] B.C.W.L.D. 533, [2011] B.C.W.L.D. 534, 12 B.C.L.R. (5th) 1, 196 A.C.W.S. (3d) 27, 2011 D.T.C. 5006 (Eng.), 2011 G.T.C. 2006 (Eng.), 296 B.C.A.C. 1, 326 D.L.R. (4th) 577, 409 N.R. 201, 503 W.A.C. 1, 72 C.B.R. (5th) 170, J.E. 2011-5

Century Services Inc. (Appellant) and Attorney General of Canada on behalf of Her Majesty The Queen in Right of Canada (Respondent)

Deschamps J., McLachlin C.J.C., Binnie, LeBel, Fish, Abella, Charron, Rothstein, Cromwell JJ.

Heard: May 11, 2010

Judgment: December 16, 2010

Docket: 33239

Proceedings: reversing *Ted Leroy Trucking Ltd., Re* (2009), 2009 CarswellBC 1195, 2009 G.T.C. 2020 (Eng.), 2009 BCCA 205, 270 B.C.A.C. 167, 454 W.A.C. 167, [2009] 12 W.W.R. 684, 98 B.C.L.R. (4th) 242, [2009] G.S.T.C. 79 (B.C. C.A.); reversing *Ted Leroy Trucking Ltd., Re* (2008), 2008 CarswellBC 2895, 2008 BCSC 1805, [2008] G.S.T.C. 221, 2009 G.T.C. 2011 (Eng.) (B.C. S.C. [In Chambers])

Counsel: Mary I.A. Buttery, Owen J. James, Matthew J.G. Curtis for Appellant

Gordon Bourgard, David Jacyk, Michael J. Lema for Respondent

Subject: Estates and Trusts; Goods and Services Tax (GST); Tax — Miscellaneous; Insolvency

Related Abridgment Classifications

Tax

I General principles

I.5 Priority of tax claims in bankruptcy proceedings

Tax

III Goods and Services Tax

III.14 Collection and remittance

III.14.b GST held in trust

Headnote

Tax --- Goods and Services Tax — Collection and remittance — GST held in trust

Debtor owed Crown under Excise Tax Act (ETA) for unremitted GST — Debtor sought relief under Companies' Creditors Arrangement Act (CCAA) — Under order of BC Supreme Court, amount of GST debt was placed in trust account and remaining proceeds of sale of assets paid to major secured creditor — Debtor's application for partial lifting of stay of proceedings to assign itself into bankruptcy was granted, while Crown's application for payment of tax debt was dismissed — Crown's appeal to BC Court of Appeal was allowed — Creditor appealed to Supreme Court of Canada — Appeal allowed — Analysis of ETA and CCAA yielded conclusion that CCAA provides that statutory deemed trusts do not apply, and that Parliament did not intend to restore Crown's deemed trust priority in GST claims under CCAA when it amended ETA in 2000 — Parliament had moved away from asserting priority for Crown claims under both

CCAA and Bankruptcy and Insolvency Act (BIA), and neither statute provided for preferred treatment of GST claims — Giving Crown priority over GST claims during CCAA proceedings but not in bankruptcy would reduce use of more flexible and responsive CCAA regime — Parliament likely inadvertently succumbed to drafting anomaly — Section 222(3) of ETA could not be seen as having impliedly repealed s. 18.3 of CCAA by its subsequent passage, given recent amendments to CCAA — Court had discretion under CCAA to construct bridge to liquidation under BIA, and partially lift stay of proceedings to allow entry into liquidation — No "gap" should exist when moving from CCAA to BIA — Court order segregating funds did not have certainty that Crown rather than creditor would be beneficiary sufficient to support express trust — Amount held in respect of GST debt was not subject to deemed trust, priority or express trust in favour of Crown — Excise Tax Act, R.S.C. 1985, c. E-15, ss. 222(1), (1.1).

Tax --- General principles — Priority of tax claims in bankruptcy proceedings

Debtor owed Crown under Excise Tax Act (ETA) for unremitted GST — Debtor sought relief under Companies' Creditors Arrangement Act (CCAA) — Under order of BC Supreme Court, amount of GST debt was placed in trust account and remaining proceeds of sale of assets paid to major secured creditor — Debtor's application for partial lifting of stay of proceedings to assign itself into bankruptcy was granted, while Crown's application for payment of tax debt was dismissed — Crown's appeal to BC Court of Appeal was allowed — Creditor appealed to Supreme Court of Canada — Appeal allowed — Analysis of ETA and CCAA yielded conclusion that CCAA provides that statutory deemed trusts do not apply, and that Parliament did not intend to restore Crown's deemed trust priority in GST claims under CCAA when it amended ETA in 2000 — Parliament had moved away from asserting priority for Crown claims under both CCAA and Bankruptcy and Insolvency Act (BIA), and neither statute provided for preferred treatment of GST claims — Giving Crown priority over GST claims during CCAA proceedings but not in bankruptcy would reduce use of more flexible and responsive CCAA regime — Parliament likely inadvertently succumbed to drafting anomaly — Section 222(3) of ETA could not be seen as having impliedly repealed s. 18.3 of CCAA by its subsequent passage, given recent amendments to CCAA — Court had discretion under CCAA to construct bridge to liquidation under BIA, and partially lift stay of proceedings to allow entry into liquidation — No "gap" should exist when moving from CCAA to BIA — Court order segregating funds did not have certainty that Crown rather than creditor would be beneficiary sufficient to support express trust — Amount held in respect of GST debt was not subject to deemed trust, priority or express trust in favour of Crown.

Taxation --- Taxe sur les produits et services — Perception et versement — Montant de TPS détenu en fiducie

Débitrice devait à la Couronne des montants de TPS qu'elle n'avait pas remis, en vertu de la Loi sur la taxe d'accise (LTA) — Débitrice a entamé des procédures judiciaires en vertu de la Loi sur les arrangements avec les créanciers des compagnies (LACC) — En vertu d'une ordonnance du tribunal, le montant de la créance fiscale a été déposé dans un compte en fiducie et la balance du produit de la vente des actifs a servi à payer le créancier garanti principal — Demande de la débitrice visant à obtenir la levée partielle de la suspension de procédures afin qu'elle puisse faire cession de ses biens a été accordée, alors que la demande de la Couronne visant à obtenir le paiement des montants de TPS non remis a été rejetée — Appel interjeté par la Couronne a été accueilli — Créancier a formé un pourvoi — Pourvoi accueilli — Analyse de la LTA et de la LACC conduisait à la conclusion que le législateur ne saurait avoir eu l'intention de redonner la priorité, dans le cadre de la LACC, à la fiducie réputée de la Couronne à l'égard de ses créances relatives à la TPS quand il a modifié la LTA, en 2000 — Législateur avait mis un terme à la priorité accordée aux créances de la Couronne sous les régimes de la LACC et de la Loi sur la faillite et l'insolvabilité (LFI), et ni l'une ni l'autre de ces lois ne prévoyait que les créances relatives à la TPS bénéficiaient d'un traitement préférentiel — Fait de faire primer la priorité de la Couronne sur les créances découlant de la TPS dans le cadre de procédures fondées sur la LACC mais pas en cas de faillite aurait pour effet de restreindre le recours à la possibilité de se restructurer sous le régime plus souple et mieux adapté de la LACC — Il semblait probable que le législateur avait par inadvertance commis une anomalie rédactionnelle — On ne pourrait pas considérer l'art. 222(3) de la LTA comme ayant implicitement abrogé l'art. 18.3 de la LACC, compte tenu des modifications récemment apportées à la LACC — Sous le régime de la LACC, le tribunal avait discrétion pour établir une passerelle vers une liquidation opérée sous le régime de la LFI et de lever la suspension partielle des procédures afin de permettre à la débitrice de procéder à la transition au régime de liquidation — Il n'y avait aucune certitude, en vertu de l'ordonnance du tribunal, que la Couronne était le bénéficiaire véritable de la fiducie ni de fondement pour donner

naissance à une fiducie expresse — Montant perçu au titre de la TPS ne faisait l'objet d'aucune fiducie présumée, priorité ou fiducie expresse en faveur de la Couronne.

Taxation --- Principes généraux — Priorité des créances fiscales dans le cadre de procédures en faillite

Débitrice devait à la Couronne des montants de TPS qu'elle n'avait pas remis, en vertu de la Loi sur la taxe d'accise (LTA) — Débitrice a entamé des procédures judiciaires en vertu de la Loi sur les arrangements avec les créanciers des compagnies (LACC) — En vertu d'une ordonnance du tribunal, le montant de la créance fiscale a été déposé dans un compte en fiducie et la balance du produit de la vente des actifs a servi à payer le créancier garanti principal — Demande de la débitrice visant à obtenir la levée partielle de la suspension de procédures afin qu'elle puisse faire cession de ses biens a été accordée, alors que la demande de la Couronne visant à obtenir le paiement des montants de TPS non remis a été rejetée — Appel interjeté par la Couronne a été accueilli — Créancier a formé un pourvoi — Pourvoi accueilli — Analyse de la LTA et de la LACC conduisait à la conclusion que le législateur ne saurait avoir eu l'intention de redonner la priorité, dans le cadre de la LACC, à la fiducie réputée de la Couronne à l'égard de ses créances relatives à la TPS quand il a modifié la LTA, en 2000 — Législateur avait mis un terme à la priorité accordée aux créances de la Couronne sous les régimes de la LACC et de la Loi sur la faillite et l'insolvabilité (LFI), et ni l'une ni l'autre de ces lois ne prévoyait que les créances relatives à la TPS bénéficiaient d'un traitement préférentiel — Fait de faire primer la priorité de la Couronne sur les créances découlant de la TPS dans le cadre de procédures fondées sur la LACC mais pas en cas de faillite aurait pour effet de restreindre le recours à la possibilité de se restructurer sous le régime plus souple et mieux adapté de la LACC — Il semblait probable que le législateur avait par inadvertance commis une anomalie rédactionnelle — On ne pourrait pas considérer l'art. 222(3) de la LTA comme ayant implicitement abrogé l'art. 18.3 de la LACC, compte tenu des modifications récemment apportées à la LACC — Sous le régime de la LACC, le tribunal avait discrétion pour établir une passerelle vers une liquidation opérée sous le régime de la LFI et de lever la suspension partielle des procédures afin de permettre à la débitrice de procéder à la transition au régime de liquidation — Il n'y avait aucune certitude, en vertu de l'ordonnance du tribunal, que la Couronne était le bénéficiaire véritable de la fiducie ni de fondement pour donner naissance à une fiducie expresse — Montant perçu au titre de la TPS ne faisait l'objet d'aucune fiducie présumée, priorité ou fiducie expresse en faveur de la Couronne.

The debtor company owed the Crown under the Excise Tax Act (ETA) for GST that was not remitted. The debtor commenced proceedings under the Companies' Creditors Arrangement Act (CCAA). Under an order by the B.C. Supreme Court, the amount of the tax debt was placed in a trust account, and the remaining proceeds from the sale of the debtor's assets were paid to the major secured creditor. The debtor's application for a partial lifting of the stay of proceedings in order to assign itself into bankruptcy was granted, while the Crown's application for the immediate payment of the unremitted GST was dismissed.

The Crown's appeal to the B.C. Court of Appeal was allowed. The Court of Appeal found that the lower court was bound by the ETA to give the Crown priority once bankruptcy was inevitable. The Court of Appeal ruled that there was a deemed trust under s. 222 of the ETA or that an express trust was created in the Crown's favour by the court order segregating the GST funds in the trust account.

The creditor appealed to the Supreme Court of Canada.

Held: The appeal was allowed.

Per Deschamps J. (McLachlin C.J.C., Binnie, LeBel, Charron, Rothstein, Cromwell JJ. concurring): A purposive and contextual analysis of the ETA and CCAA yielded the conclusion that Parliament could not have intended to restore the Crown's deemed trust priority in GST claims under the CCAA when it amended the ETA in 2000. Parliament had moved away from asserting priority for Crown claims in insolvency law under both the CCAA and Bankruptcy and Insolvency Act (BIA). Unlike for source deductions, there was no express statutory basis in the CCAA or BIA for concluding that GST claims enjoyed any preferential treatment. The internal logic of the CCAA also militated against upholding a deemed trust for GST claims.

Giving the Crown priority over GST claims during CCAA proceedings but not in bankruptcy would, in practice, deprive companies of the option to restructure under the more flexible and responsive CCAA regime. It seemed likely that Parliament had inadvertently succumbed to a drafting anomaly, which could be resolved by giving precedence to s. 18.3 of the CCAA. Section 222(3) of the ETA could no longer be seen as having impliedly repealed s. 18.3 of the CCAA by

being passed subsequently to the CCAA, given the recent amendments to the CCAA. The legislative context supported the conclusion that s. 222(3) of the ETA was not intended to narrow the scope of s. 18.3 of the CCAA.

The breadth of the court's discretion under the CCAA was sufficient to construct a bridge to liquidation under the BIA, so there was authority under the CCAA to partially lift the stay of proceedings to allow the debtor's entry into liquidation. There should be no gap between the CCAA and BIA proceedings that would invite a race to the courthouse to assert priorities.

The court order did not have the certainty that the Crown would actually be the beneficiary of the funds sufficient to support an express trust, as the funds were segregated until the dispute between the creditor and the Crown could be resolved. The amount collected in respect of GST but not yet remitted to the Receiver General of Canada was not subject to a deemed trust, priority or express trust in favour of the Crown.

Per Fish J. (concurring): Parliament had declined to amend the provisions at issue after detailed consideration of the insolvency regime, so the apparent conflict between s. 18.3 of the CCAA and s. 222 of the ETA should not be treated as a drafting anomaly. In the insolvency context, a deemed trust would exist only when two complementary elements co-existed: first, a statutory provision creating the trust; and second, a CCAA or BIA provision confirming its effective operation. Parliament had created the Crown's deemed trust in the Income Tax Act, Canada Pension Plan and Employment Insurance Act and then confirmed in clear and unmistakable terms its continued operation under both the CCAA and the BIA regimes. In contrast, the ETA created a deemed trust in favour of the Crown, purportedly notwithstanding any contrary legislation, but Parliament did not expressly provide for its continued operation in either the BIA or the CCAA. The absence of this confirmation reflected Parliament's intention to allow the deemed trust to lapse with the commencement of insolvency proceedings. Parliament's evident intent was to render GST deemed trusts inoperative upon the institution of insolvency proceedings, and so s. 222 of the ETA mentioned the BIA so as to exclude it from its ambit, rather than include it as the other statutes did. As none of these statutes mentioned the CCAA expressly, the specific reference to the BIA had no bearing on the interaction with the CCAA. It was the confirmatory provisions in the insolvency statutes that would determine whether a given deemed trust would subsist during insolvency proceedings. Per Abella J. (dissenting): The appellate court properly found that s. 222(3) of the ETA gave priority during CCAA proceedings to the Crown's deemed trust in unremitted GST. The failure to exempt the CCAA from the operation of this provision was a reflection of clear legislative intent. Despite the requests of various constituencies and case law confirming that the ETA took precedence over the CCAA, there was no responsive legislative revision and the BIA remained the only exempted statute. There was no policy justification for interfering, through interpretation, with this clarity of legislative intention and, in any event, the application of other principles of interpretation reinforced this conclusion. Contrary to the majority's view, the "later in time" principle did not favour the precedence of the CCAA, as the CCAA was merely re-enacted without significant substantive changes. According to the Interpretation Act, in such circumstances, s. 222(3) of the ETA remained the later provision. The chambers judge was required to respect the priority regime set out in s. 222(3) of the ETA and so did not have the authority to deny the Crown's request for payment of the GST funds during the CCAA proceedings.

La compagnie débitrice devait à la Couronne des montants de TPS qu'elle n'avait pas remis, en vertu de la Loi sur la taxe d'accise (LTA). La débitrice a entamé des procédures judiciaires en vertu de la Loi sur les arrangements avec les créanciers des compagnies (LACC). En vertu d'une ordonnance du tribunal, le montant de la créance fiscale a été déposé dans un compte en fiducie et la balance du produit de la vente des actifs de la débitrice a servi à payer le créancier garanti principal. La demande de la débitrice visant à obtenir la levée partielle de la suspension de procédures afin qu'elle puisse faire cession de ses biens a été accordée, alors que la demande de la Couronne visant à obtenir le paiement immédiat des montants de TPS non remis a été rejetée.

L'appel interjeté par la Couronne a été accueilli. La Cour d'appel a conclu que le tribunal se devait, en vertu de la LTA, de donner priorité à la Couronne une fois la faillite inévitable. La Cour d'appel a estimé que l'art. 222 de la LTA établissait une fiducie présumée ou bien que l'ordonnance du tribunal à l'effet que les montants de TPS soient détenus dans un compte en fiducie créait une fiducie expresse en faveur de la Couronne.

Le créancier a formé un pourvoi.

Arrêt: Le pourvoi a été accueilli.

Deschamps, J. (McLachlin, J.C.C., Binnie, LeBel, Charron, Rothstein, Cromwell, JJ., souscrivant à son opinion) : Une analyse téléologique et contextuelle de la LTA et de la LACC conduisait à la conclusion que le législateur ne saurait avoir eu l'intention de redonner la priorité, dans le cadre de la LACC, à la fiducie réputée de la Couronne à l'égard de ses créances relatives à la TPS quand il a modifié la LTA, en 2000. Le législateur avait mis un terme à la priorité accordée aux créances de la Couronne dans le cadre du droit de l'insolvabilité, sous le régime de la LACC et celui de la Loi sur la faillite et l'insolvabilité (LFI). Contrairement aux retenues à la source, aucune disposition législative expresse ne permettait de conclure que les créances relatives à la TPS bénéficiaient d'un traitement préférentiel sous le régime de la LACC ou celui de la LFI. La logique interne de la LACC allait également à l'encontre du maintien de la fiducie réputée à l'égard des créances découlant de la TPS.

Le fait de faire primer la priorité de la Couronne sur les créances découlant de la TPS dans le cadre de procédures fondées sur la LACC mais pas en cas de faillite aurait pour effet, dans les faits, de priver les compagnies de la possibilité de se restructurer sous le régime plus souple et mieux adapté de la LACC. Il semblait probable que le législateur avait par inadvertance commis une anomalie rédactionnelle, laquelle pouvait être corrigée en donnant préséance à l'art. 18.3 de la LACC. On ne pouvait plus considérer l'art. 222(3) de la LTA comme ayant implicitement abrogé l'art. 18.3 de la LACC parce qu'il avait été adopté après la LACC, compte tenu des modifications récemment apportées à la LACC. Le contexte législatif étayait la conclusion suivant laquelle l'art. 222(3) de la LTA n'avait pas pour but de restreindre la portée de l'art. 18.3 de la LACC.

L'ampleur du pouvoir discrétionnaire conféré au tribunal par la LACC était suffisant pour établir une passerelle vers une liquidation opérée sous le régime de la LFI, de sorte qu'il avait, en vertu de la LACC, le pouvoir de lever la suspension partielle des procédures afin de permettre à la débitrice de procéder à la transition au régime de liquidation. Il n'y avait aucune certitude, en vertu de l'ordonnance du tribunal, que la Couronne était le bénéficiaire véritable de la fiducie ni de fondement pour donner naissance à une fiducie expresse, puisque les fonds étaient détenus à part jusqu'à ce que le litige entre le créancier et la Couronne soit résolu. Le montant perçu au titre de la TPS mais non encore versé au receveur général du Canada ne faisait l'objet d'aucune fiducie présumée, priorité ou fiducie expresse en faveur de la Couronne.

Fish, J. (souscrivant aux motifs des juges majoritaires) : Le législateur a refusé de modifier les dispositions en question suivant un examen approfondi du régime d'insolvabilité, de sorte qu'on ne devrait pas qualifier l'apparente contradiction entre l'art. 18.3 de la LACC et l'art. 222 de la LTA d'anomalie rédactionnelle. Dans un contexte d'insolvabilité, on ne pourrait conclure à l'existence d'une fiducie présumée que lorsque deux éléments complémentaires étaient réunis : en premier lieu, une disposition législative qui crée la fiducie et, en second lieu, une disposition de la LACC ou de la LFI qui confirme l'existence de la fiducie. Le législateur a établi une fiducie présumée en faveur de la Couronne dans la Loi de l'impôt sur le revenu, le Régime de pensions du Canada et la Loi sur l'assurance-emploi puis, il a confirmé en termes clairs et explicites sa volonté de voir cette fiducie présumée produire ses effets sous le régime de la LACC et de la LFI. Dans le cas de la LTA, il a établi une fiducie présumée en faveur de la Couronne, sciemment et sans égard pour toute législation à l'effet contraire, mais n'a pas expressément prévu le maintien en vigueur de celle-ci sous le régime de la LFI ou celui de la LACC. L'absence d'une telle confirmation témoignait de l'intention du législateur de laisser la fiducie présumée devenir caduque au moment de l'introduction de la procédure d'insolvabilité. L'intention du législateur était manifestement de rendre inopérantes les fiducies présumées visant la TPS dès l'introduction d'une procédure d'insolvabilité et, par conséquent, l'art. 222 de la LTA mentionnait la LFI de manière à l'exclure de son champ d'application, et non de l'y inclure, comme le faisaient les autres lois. Puisqu'aucune de ces lois ne mentionnait spécifiquement la LACC, la mention explicite de la LFI n'avait aucune incidence sur l'interaction avec la LACC. C'était les dispositions confirmatoires que l'on trouvait dans les lois sur l'insolvabilité qui déterminaient si une fiducie présumée continuerait d'exister durant une procédure d'insolvabilité.

Abella, J. (dissidente) : La Cour d'appel a conclu à bon droit que l'art. 222(3) de la LTA donnait préséance à la fiducie présumée qui est établie en faveur de la Couronne à l'égard de la TPS non versée. Le fait que la LACC n'ait pas été soustraite à l'application de cette disposition témoignait d'une intention claire du législateur. Malgré les demandes répétées de divers groupes et la jurisprudence ayant confirmé que la LTA l'emportait sur la LACC, le législateur n'est pas intervenu et la LFI est demeurée la seule loi soustraite à l'application de cette disposition. Il n'y avait pas de considération de politique générale qui justifierait d'aller à l'encontre, par voie d'interprétation législative, de l'intention aussi clairement exprimée par le législateur et, de toutes manières, cette conclusion était renforcée par l'application d'autres principes

d'interprétation. Contrairement à l'opinion des juges majoritaires, le principe de la préséance de la « loi postérieure » ne militait pas en faveur de la préséance de la LACC, celle-ci ayant été simplement adoptée à nouveau sans que l'on ne lui ait apporté de modifications importantes. En vertu de la Loi d'interprétation, dans ces circonstances, l'art. 222(3) de la LTA demeurait la disposition postérieure. Le juge siégeant en son cabinet était tenu de respecter le régime de priorités établi à l'art. 222(3) de la LTA, et il ne pouvait pas refuser la demande présentée par la Couronne en vue de se faire payer la TPS dans le cadre de la procédure introduite en vertu de la LACC.

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United Used Auto & Truck Parts Ltd., Re (2000), 2000 BCCA 146, 135 B.C.A.C. 96, 221 W.A.C. 96, 2000 CarswellBC 414, 73 B.C.L.R. (3d) 236, 16 C.B.R. (4th) 141, [2000] 5 W.W.R. 178 (B.C. C.A.) — referred to

Cases considered by *Fish J.*:

Ottawa Senators Hockey Club Corp., Re (2005), 2005 G.T.C. 1327 (Eng.), 6 C.B.R. (5th) 293, 2005 D.T.C. 5233 (Eng.), 2005 CarswellOnt 8, [2005] G.S.T.C. 1, 193 O.A.C. 95, 73 O.R. (3d) 737 (Ont. C.A.) — not followed

Cases considered by *Abella J.* (dissenting):

Canada (Attorney General) v. Canada (Public Service Staff Relations Board) (1977), [1977] 2 F.C. 663, 14 N.R. 257, 74 D.L.R. (3d) 307, 1977 CarswellNat 62, 1977 CarswellNat 62F (Fed. C.A.) — referred to

Doré c. Verdun (Municipalité) (1997), (sub nom. *Doré v. Verdun (City)*) [1997] 2 S.C.R. 862, (sub nom. *Doré v. Verdun (Ville)*) 215 N.R. 81, (sub nom. *Doré v. Verdun (City)*) 150 D.L.R. (4th) 385, 1997 CarswellQue 159, 1997 CarswellQue 850 (S.C.C.) — referred to

Ottawa Senators Hockey Club Corp., Re (2005), 2005 G.T.C. 1327 (Eng.), 6 C.B.R. (5th) 293, 2005 D.T.C. 5233 (Eng.), 2005 CarswellOnt 8, [2005] G.S.T.C. 1, 193 O.A.C. 95, 73 O.R. (3d) 737 (Ont. C.A.) — considered

R. v. Tele-Mobile Co. (2008), 2008 CarswellOnt 1588, 2008 CarswellOnt 1589, 2008 SCC 12, (sub nom. *Tele-Mobile Co. v. Ontario*) 372 N.R. 157, 55 C.R. (6th) 1, (sub nom. *Ontario v. Tele-Mobile Co.*) 229 C.C.C. (3d) 417, (sub nom. *Tele-Mobile Co. v. Ontario*) 235 O.A.C. 369, (sub nom. *Tele-Mobile Co. v. Ontario*) [2008] 1 S.C.R. 305, (sub nom. *R. v. Tele-Mobile Company (Telus Mobility)*) 92 O.R. (3d) 478 (note), (sub nom. *Ontario v. Tele-Mobile Co.*) 291 D.L.R. (4th) 193 (S.C.C.) — considered

Statutes considered by *Deschamps J.*:

Bank Act, S.C. 1991, c. 46

Generally — referred to

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Generally — referred to

s. 67(2) — referred to

s. 67(3) — referred to

s. 81.1 [en. 1992, c. 27, s. 38(1)] — considered

s. 81.2 [en. 1992, c. 27, s. 38(1)] — considered

s. 86(1) — considered

s. 86(3) — referred to

Bankruptcy Act and to amend the Income Tax Act in consequence thereof, Act to amend the, S.C. 1992, c. 27

Generally — referred to

s. 39 — referred to

Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act and the Income Tax Act, Act to amend the, S.C. 1997, c. 12

s. 73 — referred to

s. 125 — referred to

s. 126 — referred to

Canada Pension Plan, R.S.C. 1985, c. C-8

Generally — referred to

s. 23(3) — referred to

s. 23(4) — referred to

Cités et villes, Loi sur les, L.R.Q., c. C-19

en général — referred to

Code civil du Québec, L.Q. 1991, c. 64

en général — referred to

art. 2930 — referred to

Companies' Creditors Arrangement Act, Act to Amend, S.C. 1952-53, c. 3

Generally — referred to

Companies' Creditors Arrangement Act, 1933, S.C. 1932-33, c. 36

Generally — referred to

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

s. 11 — considered

s. 11(1) — considered

s. 11(3) — referred to

s. 11(4) — referred to

s. 11(6) — referred to

s. 11.02 [en. 2005, c. 47, s. 128] — referred to

s. 11.09 [en. 2005, c. 47, s. 128] — considered

s. 11.4 [en. 1997, c. 12, s. 124] — referred to

s. 18.3 [en. 1997, c. 12, s. 125] — considered

s. 18.3(1) [en. 1997, c. 12, s. 125] — considered

s. 18.3(2) [en. 1997, c. 12, s. 125] — considered

s. 18.4 [en. 1997, c. 12, s. 125] — referred to

s. 18.4(1) [en. 1997, c. 12, s. 125] — considered

s. 18.4(3) [en. 1997, c. 12, s. 125] — considered

s. 20 — considered

s. 21 — considered

s. 37 — considered

s. 37(1) — referred to

Employment Insurance Act, S.C. 1996, c. 23

Generally — referred to

s. 86(2) — referred to

s. 86(2.1) [en. 1998, c. 19, s. 266(1)] — referred to

Excise Tax Act, R.S.C. 1985, c. E-15

Generally — referred to

s. 222(1) [en. 1990, c. 45, s. 12(1)] — referred to

s. 222(3) [en. 1990, c. 45, s. 12(1)] — considered

Fairness for the Self-Employed Act, S.C. 2009, c. 33

Generally — referred to

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)

s. 227(4) — referred to

s. 227(4.1) [en. 1998, c. 19, s. 226(1)] — referred to

Interpretation Act, R.S.C. 1985, c. I-21

s. 44(f) — considered

Personal Property Security Act, S.A. 1988, c. P-4.05

Generally — referred to

Sales Tax and Excise Tax Amendments Act, 1999, S.C. 2000, c. 30

Generally — referred to

Wage Earner Protection Program Act, S.C. 2005, c. 47, s. 1

Generally — referred to

s. 69 — referred to

s. 128 — referred to

s. 131 — referred to

Statutes considered *Fish J.*:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Generally — referred to

s. 67(2) — considered

s. 67(3) — considered

Canada Pension Plan, R.S.C. 1985, c. C-8

Generally — referred to

s. 23 — considered

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

s. 11 — considered

s. 18.3(1) [en. 1997, c. 12, s. 125] — considered

s. 18.3(2) [en. 1997, c. 12, s. 125] — considered

s. 37(1) — considered

Employment Insurance Act, S.C. 1996, c. 23

Generally — referred to

s. 86(2) — referred to

s. 86(2.1) [en. 1998, c. 19, s. 266(1)] — referred to

Excise Tax Act, R.S.C. 1985, c. E-15

Generally — referred to

s. 222 [en. 1990, c. 45, s. 12(1)] — considered

s. 222(1) [en. 1990, c. 45, s. 12(1)] — considered

s. 222(3) [en. 1990, c. 45, s. 12(1)] — considered

s. 222(3)(a) [en. 1990, c. 45, s. 12(1)] — considered

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)

Generally — referred to

s. 227(4) — considered

s. 227(4.1) [en. 1998, c. 19, s. 226(1)] — considered

s. 227(4.1)(a) [en. 1998, c. 19, s. 226(1)] — considered

Statutes considered *Abella J.* (dissenting):

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Generally — referred to

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

s. 11 — considered

s. 11(1) — considered

s. 11(3) — considered

s. 18.3(1) [en. 1997, c. 12, s. 125] — considered

s. 37(1) — considered

Excise Tax Act, R.S.C. 1985, c. E-15

Generally — referred to

s. 222 [en. 1990, c. 45, s. 12(1)] — considered

s. 222(3) [en. 1990, c. 45, s. 12(1)] — considered

Interpretation Act, R.S.C. 1985, c. I-21

s. 2(1)"enactment" — considered

s. 44(f) — considered

Winding-up and Restructuring Act, R.S.C. 1985, c. W-11

Generally — referred to

APPEAL by creditor from judgment reported at 2009 CarswellBC 1195, 2009 BCCA 205, [2009] G.S.T.C. 79, 98 B.C.L.R. (4th) 242, [2009] 12 W.W.R. 684, 270 B.C.A.C. 167, 454 W.A.C. 167, 2009 G.T.C. 2020 (Eng.) (B.C. C.A.), allowing Crown's appeal from dismissal of application for immediate payment of tax debt.

Deschamps J.:

1 For the first time this Court is called upon to directly interpret the provisions of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("*CCAA*"). In that respect, two questions are raised. The first requires reconciliation of provisions of the *CCAA* and the *Excise Tax Act*, R.S.C. 1985, c. E-15 ("*ETA*"), which lower courts have held to be in conflict with one another. The second concerns the scope of a court's discretion when supervising reorganization. The relevant statutory provisions are reproduced in the Appendix. On the first question, having considered the evolution of Crown priorities in the context of insolvency and the wording of the various statutes creating Crown priorities, I conclude that it is the *CCAA* and not the *ETA* that provides the rule. On the second question, I conclude that the broad discretionary jurisdiction conferred on the supervising judge must be interpreted having regard to the remedial nature of the *CCAA* and insolvency legislation generally. Consequently, the court had the discretion to partially lift a stay of proceedings to allow the debtor to make an assignment under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*"). I would allow the appeal.

1. Facts and Decisions of the Courts Below

2 Ted LeRoy Trucking Ltd. ("LeRoy Trucking") commenced proceedings under the *CCAA* in the Supreme Court of British Columbia on December 13, 2007, obtaining a stay of proceedings with a view to reorganizing its financial affairs. LeRoy Trucking sold certain redundant assets as authorized by the order.

3 Amongst the debts owed by LeRoy Trucking was an amount for Goods and Services Tax ("*GST*") collected but unremitted to the Crown. The *ETA* creates a deemed trust in favour of the Crown for amounts collected in respect of *GST*. The deemed trust extends to any property or proceeds held by the person collecting *GST* and any property of that person held by a secured creditor, requiring that property to be paid to the Crown in priority to all security interests. The *ETA* provides that the deemed trust operates despite any other enactment of Canada except the *BIA*. However, the *CCAA* also provides that subject to certain exceptions, none of which mentions *GST*, deemed trusts in favour of the Crown do not operate under the *CCAA*. Accordingly, under the *CCAA* the Crown ranks as an unsecured creditor in respect of *GST*. Nonetheless, at the time LeRoy Trucking commenced *CCAA* proceedings the leading line of jurisprudence held that the *ETA* took precedence over the *CCAA* such that the Crown enjoyed priority for *GST* claims under the *CCAA*, even though it would have lost that same priority under the *BIA*. The *CCAA* underwent substantial amendments in 2005 in which some of the provisions at issue in this appeal were renumbered and reformulated (S.C. 2005, c. 47). However, these amendments only came into force on September 18, 2009. I will refer to the amended provisions only where relevant.

4 On April 29, 2008, Brenner C.J.S.C., in the context of the *CCAA* proceedings, approved a payment not exceeding \$5 million, the proceeds of redundant asset sales, to Century Services, the debtor's major secured creditor. LeRoy Trucking

proposed to hold back an amount equal to the GST monies collected but unremitted to the Crown and place it in the Monitor's trust account until the outcome of the reorganization was known. In order to maintain the *status quo* while the success of the reorganization was uncertain, Brenner C.J.S.C. agreed to the proposal and ordered that an amount of \$305,202.30 be held by the Monitor in its trust account.

5 On September 3, 2008, having concluded that reorganization was not possible, LeRoy Trucking sought leave to make an assignment in bankruptcy under the *BIA*. The Crown sought an order that the GST monies held by the Monitor be paid to the Receiver General of Canada. Brenner C.J.S.C. dismissed the latter application. Reasoning that the purpose of segregating the funds with the Monitor was "to facilitate an ultimate payment of the GST monies which were owed pre-filing, but only if a viable plan emerged", the failure of such a reorganization, followed by an assignment in bankruptcy, meant the Crown would lose priority under the *BIA* (2008 BCSC 1805, [2008] G.S.T.C. 221 (B.C. S.C. [In Chambers])).

6 The Crown's appeal was allowed by the British Columbia Court of Appeal (2009 BCCA 205, [2009] G.S.T.C. 79, 270 B.C.A.C. 167 (B.C. C.A.)). Tysoe J.A. for a unanimous court found two independent bases for allowing the Crown's appeal.

7 First, the court's authority under s. 11 of the *CCAA* was held not to extend to staying the Crown's application for immediate payment of the GST funds subject to the deemed trust after it was clear that reorganization efforts had failed and that bankruptcy was inevitable. As restructuring was no longer a possibility, staying the Crown's claim to the GST funds no longer served a purpose under the *CCAA* and the court was bound under the priority scheme provided by the *ETA* to allow payment to the Crown. In so holding, Tysoe J.A. adopted the reasoning in *Ottawa Senators Hockey Club Corp. (Re)*, [2005] G.S.T.C. 1, 73 O.R. (3d) 737 (Ont. C.A.), which found that the *ETA* deemed trust for GST established Crown priority over secured creditors under the *CCAA*.

8 Second, Tysoe J.A. concluded that by ordering the GST funds segregated in the Monitor's trust account on April 29, 2008, the judge had created an express trust in favour of the Crown from which the monies in question could not be diverted for any other purposes. The Court of Appeal therefore ordered that the money held by the Monitor in trust be paid to the Receiver General.

2. Issues

9 This appeal raises three broad issues which are addressed in turn:

- (1) Did s. 222(3) of the *ETA* displace s. 18.3(1) of the *CCAA* and give priority to the Crown's *ETA* deemed trust during *CCAA* proceedings as held in *Ottawa Senators*?
- (2) Did the court exceed its *CCAA* authority by lifting the stay to allow the debtor to make an assignment in bankruptcy?
- (3) Did the court's order of April 29, 2008 requiring segregation of the Crown's GST claim in the Monitor's trust account create an express trust in favour of the Crown in respect of those funds?

3. Analysis

10 The first issue concerns Crown priorities in the context of insolvency. As will be seen, the *ETA* provides for a deemed trust in favour of the Crown in respect of GST owed by a debtor "[d]espite ... any other enactment of Canada (except the *Bankruptcy and Insolvency Act*)" (s. 222(3)), while the *CCAA* stated at the relevant time that "notwithstanding any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a debtor company shall not be [so] regarded" (s. 18.3(1)). It is difficult to imagine two statutory provisions more apparently in conflict. However, as is often the case, the apparent conflict can be resolved through interpretation.

11 In order to properly interpret the provisions, it is necessary to examine the history of the *CCAA*, its function amidst the body of insolvency legislation enacted by Parliament, and the principles that have been recognized in the

jurisprudence. It will be seen that Crown priorities in the insolvency context have been significantly pared down. The resolution of the second issue is also rooted in the context of the *CCAA*, but its purpose and the manner in which it has been interpreted in the case law are also key. After examining the first two issues in this case, I will address Tysoe J.A.'s conclusion that an express trust in favour of the Crown was created by the court's order of April 29, 2008.

3.1 Purpose and Scope of Insolvency Law

12 Insolvency is the factual situation that arises when a debtor is unable to pay creditors (see generally, R. J. Wood, *Bankruptcy and Insolvency Law* (2009), at p. 16). Certain legal proceedings become available upon insolvency, which typically allow a debtor to obtain a court order staying its creditors' enforcement actions and attempt to obtain a binding compromise with creditors to adjust the payment conditions to something more realistic. Alternatively, the debtor's assets may be liquidated and debts paid from the proceeds according to statutory priority rules. The former is usually referred to as reorganization or restructuring while the latter is termed liquidation.

13 Canadian commercial insolvency law is not codified in one exhaustive statute. Instead, Parliament has enacted multiple insolvency statutes, the main one being the *BIA*. The *BIA* offers a self-contained legal regime providing for both reorganization and liquidation. Although bankruptcy legislation has a long history, the *BIA* itself is a fairly recent statute — it was enacted in 1992. It is characterized by a rules-based approach to proceedings. The *BIA* is available to insolvent debtors owing \$1000 or more, regardless of whether they are natural or legal persons. It contains mechanisms for debtors to make proposals to their creditors for the adjustment of debts. If a proposal fails, the *BIA* contains a bridge to bankruptcy whereby the debtor's assets are liquidated and the proceeds paid to creditors in accordance with the statutory scheme of distribution.

14 Access to the *CCAA* is more restrictive. A debtor must be a company with liabilities in excess of \$5 million. Unlike the *BIA*, the *CCAA* contains no provisions for liquidation of a debtor's assets if reorganization fails. There are three ways of exiting *CCAA* proceedings. The best outcome is achieved when the stay of proceedings provides the debtor with some breathing space during which solvency is restored and the *CCAA* process terminates without reorganization being needed. The second most desirable outcome occurs when the debtor's compromise or arrangement is accepted by its creditors and the reorganized company emerges from the *CCAA* proceedings as a going concern. Lastly, if the compromise or arrangement fails, either the company or its creditors usually seek to have the debtor's assets liquidated under the applicable provisions of the *BIA* or to place the debtor into receivership. As discussed in greater detail below, the key difference between the reorganization regimes under the *BIA* and the *CCAA* is that the latter offers a more flexible mechanism with greater judicial discretion, making it more responsive to complex reorganizations.

15 As I will discuss at greater length below, the purpose of the *CCAA* — Canada's first reorganization statute — is to permit the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets. Proposals to creditors under the *BIA* serve the same remedial purpose, though this is achieved through a rules-based mechanism that offers less flexibility. Where reorganization is impossible, the *BIA* may be employed to provide an orderly mechanism for the distribution of a debtor's assets to satisfy creditor claims according to predetermined priority rules.

16 Prior to the enactment of the *CCAA* in 1933 (S.C. 1932-33, c. 36), practice under existing commercial insolvency legislation tended heavily towards the liquidation of a debtor company (J. Sarra, *Creditor Rights and the Public Interest: Restructuring Insolvent Corporations* (2003), at p. 12). The battering visited upon Canadian businesses by the Great Depression and the absence of an effective mechanism for reaching a compromise between debtors and creditors to avoid liquidation required a legislative response. The *CCAA* was innovative as it allowed the insolvent debtor to attempt reorganization under judicial supervision outside the existing insolvency legislation which, once engaged, almost invariably resulted in liquidation (*Reference re Companies' Creditors Arrangement Act (Canada)*, [1934] S.C.R. 659 (S.C.C.), at pp. 660-61; Sarra, *Creditor Rights*, at pp. 12-13).

17 Parliament understood when adopting the *CCAA* that liquidation of an insolvent company was harmful for most of those it affected — notably creditors and employees — and that a workout which allowed the company to survive was optimal (Sarrazin, *Creditor Rights*, at pp. 13-15).

18 Early commentary and jurisprudence also endorsed the *CCAA*'s remedial objectives. It recognized that companies retain more value as going concerns while underscoring that intangible losses, such as the evaporation of the companies' goodwill, result from liquidation (S. E. Edwards, "Reorganizations Under the Companies' Creditors Arrangement Act" (1947), 25 *Can. Bar Rev.* 587, at p. 592). Reorganization serves the public interest by facilitating the survival of companies supplying goods or services crucial to the health of the economy or saving large numbers of jobs (*ibid.*, at p. 593). Insolvency could be so widely felt as to impact stakeholders other than creditors and employees. Variants of these views resonate today, with reorganization justified in terms of rehabilitating companies that are key elements in a complex web of interdependent economic relationships in order to avoid the negative consequences of liquidation.

19 The *CCAA* fell into disuse during the next several decades, likely because amendments to the Act in 1953 restricted its use to companies issuing bonds (S.C. 1952-53, c. 3). During the economic downturn of the early 1980s, insolvency lawyers and courts adapting to the resulting wave of insolvencies resurrected the statute and deployed it in response to new economic challenges. Participants in insolvency proceedings grew to recognize and appreciate the statute's distinguishing feature: a grant of broad and flexible authority to the supervising court to make the orders necessary to facilitate the reorganization of the debtor and achieve the *CCAA*'s objectives. The manner in which courts have used *CCAA* jurisdiction in increasingly creative and flexible ways is explored in greater detail below.

20 Efforts to evolve insolvency law were not restricted to the courts during this period. In 1970, a government-commissioned panel produced an extensive study recommending sweeping reform but Parliament failed to act (see *Bankruptcy and Insolvency: Report of the Study Committee on Bankruptcy and Insolvency Legislation* (1970)). Another panel of experts produced more limited recommendations in 1986 which eventually resulted in enactment of the *Bankruptcy and Insolvency Act* of 1992 (S.C. 1992, c. 27) (see *Proposed Bankruptcy Act Amendments: Report of the Advisory Committee on Bankruptcy and Insolvency* (1986)). Broader provisions for reorganizing insolvent debtors were then included in Canada's bankruptcy statute. Although the 1970 and 1986 reports made no specific recommendations with respect to the *CCAA*, the House of Commons committee studying the *BIA*'s predecessor bill, C-22, seemed to accept expert testimony that the *BIA*'s new reorganization scheme would shortly supplant the *CCAA*, which could then be repealed, with commercial insolvency and bankruptcy being governed by a single statute (*Minutes of Proceedings and Evidence of the Standing Committee on Consumer and Corporate Affairs and Government Operations*, Issue No. 15, October 3, 1991, at pp. 15:15-15:16).

21 In retrospect, this conclusion by the House of Commons committee was out of step with reality. It overlooked the renewed vitality the *CCAA* enjoyed in contemporary practice and the advantage that a flexible judicially supervised reorganization process presented in the face of increasingly complex reorganizations, when compared to the stricter rules-based scheme contained in the *BIA*. The "flexibility of the *CCAA* [was seen as] a great benefit, allowing for creative and effective decisions" (Industry Canada, Marketplace Framework Policy Branch, *Report on the Operation and Administration of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act* (2002), at p. 41). Over the past three decades, resurrection of the *CCAA* has thus been the mainspring of a process through which, one author concludes, "the legal setting for Canadian insolvency restructuring has evolved from a rather blunt instrument to one of the most sophisticated systems in the developed world" (R. B. Jones, "The Evolution of Canadian Restructuring: Challenges for the Rule of Law", in J. P. Sarrazin, ed., *Annual Review of Insolvency Law 2005* (2006), 481, at p. 481).

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 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.

23 Another point of convergence of the *CCAA* and the *BIA* relates to priorities. Because the *CCAA* is silent about what happens if reorganization fails, the *BIA* scheme of liquidation and distribution necessarily supplies the backdrop for what will happen if a *CCAA* reorganization is ultimately unsuccessful. In addition, one of the important features of legislative reform of both statutes since the enactment of the *BIA* in 1992 has been a cutback in Crown priorities (S.C. 1992, c. 27, s. 39; S.C. 1997, c. 12, ss. 73 and 125; S.C. 2000, c. 30, s. 148; S.C. 2005, c. 47, ss. 69 and 131; S.C. 2009, c. 33, ss. 25 and 29; see also *Alternative granite & marbre inc., Re*, 2009 SCC 49, [2009] 3 S.C.R. 286, [2009] G.S.T.C. 154 (S.C.C.); *Quebec (Deputy Minister of Revenue) c. Rainville* (1979), [1980] 1 S.C.R. 35 (S.C.C.); *Proposed Bankruptcy Act Amendments: Report of the Advisory Committee on Bankruptcy and Insolvency* (1986)).

24 With parallel *CCAA* and *BIA* restructuring schemes now an accepted feature of the insolvency law landscape, the contemporary thrust of legislative reform has been towards harmonizing aspects of insolvency law common to the two statutory schemes to the extent possible and encouraging reorganization over liquidation (see *An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts*, S.C. 2005, c. 47; *Gauntlet Energy Corp., Re*, 2003 ABQB 894, [2003] G.S.T.C. 193, 30 Alta. L.R. (4th) 192 (Alta. Q.B.), at para. 19).

25 Mindful of the historical background of the *CCAA* and *BIA*, I now turn to the first question at issue.

3.2 GST Deemed Trust Under the CCAA

26 The Court of Appeal proceeded on the basis that the *ETA* precluded the court from staying the Crown's enforcement of the GST deemed trust when partially lifting the stay to allow the debtor to enter bankruptcy. In so doing, it adopted the reasoning in a line of cases culminating in *Ottawa Senators*, which held that an *ETA* deemed trust remains enforceable during *CCAA* reorganization despite language in the *CCAA* that suggests otherwise.

27 The Crown relies heavily on the decision of the Ontario Court of Appeal in *Ottawa Senators* and argues that the later in time provision of the *ETA* creating the GST deemed trust trumps the provision of the *CCAA* purporting to nullify most statutory deemed trusts. The Court of Appeal in this case accepted this reasoning but not all provincial courts follow it (see, e.g., *Komunik Corp., Re*, 2009 QCCS 6332 (C.S. Que.), leave to appeal granted, 2010 QCCA 183 (C.A. Que.)). Century Services relied, in its written submissions to this Court, on the argument that the court had authority under the *CCAA* to continue the stay against the Crown's claim for unremitted GST. In oral argument, the question of whether *Ottawa Senators* was correctly decided nonetheless arose. After the hearing, the parties were asked to make further written submissions on this point. As appears evident from the reasons of my colleague Abella J., this issue has become prominent before this Court. In those circumstances, this Court needs to determine the correctness of the reasoning in *Ottawa Senators*.

28 The policy backdrop to this question involves the Crown's priority as a creditor in insolvency situations which, as I mentioned above, has evolved considerably. Prior to the 1990s, Crown claims largely enjoyed priority in insolvency. This

was widely seen as unsatisfactory as shown by both the 1970 and 1986 insolvency reform proposals, which recommended that Crown claims receive no preferential treatment. A closely related matter was whether the *CCAA* was binding at all upon the Crown. Amendments to the *CCAA* in 1997 confirmed that it did indeed bind the Crown (see *CCAA*, s. 21, as am. by S.C. 1997, c. 12, s. 126).

29 Claims of priority by the state in insolvency situations receive different treatment across jurisdictions worldwide. For example, in Germany and Australia, the state is given no priority at all, while the state enjoys wide priority in the United States and France (see B. K. Morgan, "Should the Sovereign be Paid First? A Comparative International Analysis of the Priority for Tax Claims in Bankruptcy" (2000), 74 *Am. Bank. L.J.* 461, at p. 500). Canada adopted a middle course through legislative reform of Crown priority initiated in 1992. The Crown retained priority for source deductions of income tax, Employment Insurance ("EI") and Canada Pension Plan ("CPP") premiums, but ranks as an ordinary unsecured creditor for most other claims.

30 Parliament has frequently enacted statutory mechanisms to secure Crown claims and permit their enforcement. The two most common are statutory deemed trusts and powers to garnish funds third parties owe the debtor (see F. L. Lamer, *Priority of Crown Claims in Insolvency* (loose-leaf), at § 2).

31 With respect to GST collected, Parliament has enacted a deemed trust. The *ETA* states that every person who collects an amount on account of GST is deemed to hold that amount in trust for the Crown (s. 222(1)). The deemed trust extends to other property of the person collecting the tax equal in value to the amount deemed to be in trust if that amount has not been remitted in accordance with the *ETA*. The deemed trust also extends to property held by a secured creditor that, but for the security interest, would be property of the person collecting the tax (s. 222(3)).

32 Parliament has created similar deemed trusts using almost identical language in respect of source deductions of income tax, EI premiums and CPP premiums (see s. 227(4) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) ("*ITA*"), ss. 86(2) and (2.1) of the *Employment Insurance Act*, S.C. 1996, c. 23, and ss. 23(3) and (4) of the *Canada Pension Plan*, R.S.C. 1985, c. C-8). I will refer to income tax, EI and CPP deductions as "source deductions".

33 In *Royal Bank v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411 (S.C.C.), this Court addressed a priority dispute between a deemed trust for source deductions under the *ITA* and security interests taken under both the *Bank Act*, S.C. 1991, c. 46, and the *Alberta Personal Property Security Act*, S.A. 1988, c. P-4.05 ("*PPSA*"). As then worded, an *ITA* deemed trust over the debtor's property equivalent to the amount owing in respect of income tax became effective at the time of liquidation, receivership, or assignment in bankruptcy. *Sparrow Electric* held that the *ITA* deemed trust could not prevail over the security interests because, being fixed charges, the latter attached as soon as the debtor acquired rights in the property such that the *ITA* deemed trust had no property on which to attach when it subsequently arose. Later, in *First Vancouver Finance v. Minister of National Revenue*, 2002 SCC 49, [2002] G.S.T.C. 23, [2002] 2 S.C.R. 720 (S.C.C.), this Court observed that Parliament had legislated to strengthen the statutory deemed trust in the *ITA* by deeming it to operate from the moment the deductions were not paid to the Crown as required by the *ITA*, and by granting the Crown priority over all security interests (paras. 27-29) (the "*Sparrow Electric* amendment").

34 The amended text of s. 227(4.1) of the *ITA* and concordant source deductions deemed trusts in the *Canada Pension Plan* and the *Employment Insurance Act* state that the deemed trust operates notwithstanding any other enactment of Canada, except ss. 81.1 and 81.2 of the *BIA*. The *ETA* deemed trust at issue in this case is similarly worded, but it excepts the *BIA* in its entirety. The provision reads as follows:

222. (3) Despite any other provision of this Act (except subsection (4)), any other enactment of Canada (except the *Bankruptcy and Insolvency Act*), any enactment of a province or any other law, if at any time an amount deemed by subsection (1) to be held by a person in trust for Her Majesty is not remitted to the Receiver General or withdrawn in the manner and at the time provided under this Part, property of the person and property held by any secured creditor of the person that, but for a security interest, would be property of the person, equal in value to the amount so deemed to be held in trust, is deemed

35 The Crown submits that the *Sparrow Electric* amendment, added by Parliament to the *ETA* in 2000, was intended to preserve the Crown's priority over collected GST under the *CCAA* while subordinating the Crown to the status of an unsecured creditor in respect of GST only under the *BIA*. This is because the *ETA* provides that the GST deemed trust is effective "despite" any other enactment except the *BIA*.

36 The language used in the *ETA* for the GST deemed trust creates an apparent conflict with the *CCAA*, which provides that subject to certain exceptions, property deemed by statute to be held in trust for the Crown shall not be so regarded.

37 Through a 1997 amendment to the *CCAA* (S.C. 1997, c. 12, s. 125), Parliament appears to have, subject to specific exceptions, nullified deemed trusts in favour of the Crown once reorganization proceedings are commenced under the Act. The relevant provision reads:

18.3 (1) Subject to subsection (2), notwithstanding any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a debtor company shall not be regarded as held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

This nullification of deemed trusts was continued in further amendments to the *CCAA* (S.C. 2005, c. 47), where s. 18.3(1) was renumbered and reformulated as s. 37(1):

37. (1) Subject to subsection (2), despite any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a debtor company shall not be regarded as being held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

38 An analogous provision exists in the *BIA*, which, subject to the same specific exceptions, nullifies statutory deemed trusts and makes property of the bankrupt that would otherwise be subject to a deemed trust part of the debtor's estate and available to creditors (S.C. 1992, c. 27, s. 39; S.C. 1997, c. 12, s. 73; *BIA*, s. 67(2)). It is noteworthy that in both the *CCAA* and the *BIA*, the exceptions concern source deductions (*CCAA*, s. 18.3(2); *BIA*, s. 67(3)). The relevant provision of the *CCAA* reads:

18.3 (2) Subsection (1) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, subsection 23(3) or (4) of the *Canada Pension Plan* or subsection 86(2) or (2.1) of the *Employment Insurance Act*....

Thus, the Crown's deemed trust and corresponding priority in source deductions remain effective both in reorganization and in bankruptcy.

39 Meanwhile, in both s. 18.4(1) of the *CCAA* and s. 86(1) of the *BIA*, other Crown claims are treated as unsecured. These provisions, establishing the Crown's status as an unsecured creditor, explicitly exempt statutory deemed trusts in source deductions (*CCAA*, s. 18.4(3); *BIA*, s. 86(3)). The *CCAA* provision reads as follows:

18.4 (3) Subsection (1) [Crown ranking as unsecured creditor] does not affect the operation of

(a) subsections 224(1.2) and (1.3) of the *Income Tax Act*,

(b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution

Therefore, not only does the *CCAA* provide that Crown claims do not enjoy priority over the claims of other creditors (s. 18.3(1)), but the exceptions to this rule (i.e., that Crown priority is maintained for source deductions) are repeatedly stated in the statute.

40 The apparent conflict in this case is whether the rule in the *CCAA* first enacted as s. 18.3 in 1997, which provides that subject to certain explicit exceptions, statutory deemed trusts are ineffective under the *CCAA*, is overridden by the one in the *ETA* enacted in 2000 stating that GST deemed trusts operate despite any enactment of Canada except the *BIA*. With respect for my colleague Fish J., I do not think the apparent conflict can be resolved by denying it and creating a rule requiring both a statutory provision enacting the deemed trust, and a second statutory provision confirming it. Such a rule is unknown to the law. Courts must recognize conflicts, apparent or real, and resolve them when possible.

41 A line of jurisprudence across Canada has resolved the apparent conflict in favour of the *ETA*, thereby maintaining GST deemed trusts under the *CCAA*. *Ottawa Senators*, the leading case, decided the matter by invoking the doctrine of implied repeal to hold that the later in time provision of the *ETA* should take precedence over the *CCAA* (see also *Solid Resources Ltd., Re* (2002), 40 C.B.R. (4th) 219, [2003] G.S.T.C. 21 (Alta. Q.B.); *Gauntlet*

42 The Ontario Court of Appeal in *Ottawa Senators* rested its conclusion on two considerations. First, it was persuaded that by explicitly mentioning the *BIA* in *ETA* s. 222(3), but not the *CCAA*, Parliament made a deliberate choice. In the words of MacPherson J.A.:

The *BIA* and the *CCAA* are closely related federal statutes. I cannot conceive that Parliament would specifically identify the *BIA* as an exception, but accidentally fail to consider the *CCAA* as a possible second exception. In my view, the omission of the *CCAA* from s. 222(3) of the *ETA* was almost certainly a considered omission. [para. 43]

43 Second, the Ontario Court of Appeal compared the conflict between the *ETA* and the *CCAA* to that before this Court in *Doré c. Verdon (Municipalité)*, [1997] 2 S.C.R. 862 (S.C.C.), and found them to be "identical" (para. 46). It therefore considered *Doré* binding (para. 49). In *Doré*, a limitations provision in the more general and recently enacted *Civil Code of Québec*, S.Q. 1991, c. 64 ("C.C.Q."), was held to have repealed a more specific provision of the earlier *Quebec Cities and Towns Act*, R.S.Q., c. C-19, with which it conflicted. By analogy, the Ontario Court of Appeal held that the later in time and more general provision, s. 222(3) of the *ETA*, impliedly repealed the more specific and earlier in time provision, s. 18.3(1) of the *CCAA* (paras. 47-49).

44 Viewing this issue in its entire context, several considerations lead me to conclude that neither the reasoning nor the result in *Ottawa Senators* can stand. While a conflict may exist at the level of the statutes' wording, a purposive and contextual analysis to determine Parliament's true intent yields the conclusion that Parliament could not have intended to restore the Crown's deemed trust priority in GST claims under the *CCAA* when it amended the *ETA* in 2000 with the *Sparrow Electric* amendment.

45 I begin by recalling that Parliament has shown its willingness to move away from asserting priority for Crown claims in insolvency law. Section 18.3(1) of the *CCAA* (subject to the s. 18.3(2) exceptions) provides that the Crown's deemed trusts have no effect under the *CCAA*. Where Parliament has sought to protect certain Crown claims through statutory deemed trusts and intended that these deemed trusts continue in insolvency, it has legislated so explicitly and elaborately. For example, s. 18.3(2) of the *CCAA* and s. 67(3) of the *BIA* expressly provide that deemed trusts for source deductions remain effective in insolvency. Parliament has, therefore, clearly carved out exceptions from the general rule that deemed trusts are ineffective in insolvency. The *CCAA* and *BIA* are in harmony, preserving deemed trusts and asserting Crown priority only in respect of source deductions. Meanwhile, there is no express statutory basis for concluding that GST claims enjoy a preferred treatment under the *CCAA* or the *BIA*. Unlike source deductions, which are clearly and expressly dealt with under both these insolvency statutes, no such clear and express language exists in those Acts carving out an exception for GST claims.

46 The internal logic of the *CCAA* also militates against upholding the *ETA* deemed trust for GST. The *CCAA* imposes limits on a suspension by the court of the Crown's rights in respect of source deductions but does not mention the *ETA* (s. 11.4). Since source deductions deemed trusts are granted explicit protection under the *CCAA*, it would be

inconsistent to afford a better protection to the *ETA* deemed trust absent explicit language in the *CCAA*. Thus, the logic of the *CCAA* appears to subject the *ETA* deemed trust to the waiver by Parliament of its priority (s. 18.4).

47 Moreover, a strange asymmetry would arise if the interpretation giving the *ETA* priority over the *CCAA* urged by the Crown is adopted here: the Crown would retain priority over GST claims during *CCAA* proceedings but not in bankruptcy. As courts have reflected, this can only encourage statute shopping by secured creditors in cases such as this one where the debtor's assets cannot satisfy both the secured creditors' and the Crown's claims (*Gauntlet*, at para. 21). If creditors' claims were better protected by liquidation under the *BIA*, creditors' incentives would lie overwhelmingly with avoiding proceedings under the *CCAA* and not risking a failed reorganization. Giving a key player in any insolvency such skewed incentives against reorganizing under the *CCAA* can only undermine that statute's remedial objectives and risk inviting the very social ills that it was enacted to avert.

48 Arguably, the effect of *Ottawa Senators* is mitigated if restructuring is attempted under the *BIA* instead of the *CCAA*, but it is not cured. If *Ottawa Senators* were to be followed, Crown priority over GST would differ depending on whether restructuring took place under the *CCAA* or the *BIA*. The anomaly of this result is made manifest by the fact that it would deprive companies of the option to restructure under the more flexible and responsive *CCAA* regime, which has been the statute of choice for complex reorganizations.

49 Evidence that Parliament intended different treatments for GST claims in reorganization and bankruptcy is scant, if it exists at all. Section 222(3) of the *ETA* was enacted as part of a wide-ranging budget implementation bill in 2000. The summary accompanying that bill does not indicate that Parliament intended to elevate Crown priority over GST claims under the *CCAA* to the same or a higher level than source deductions claims. Indeed, the summary for deemed trusts states only that amendments to existing provisions are aimed at "ensuring that employment insurance premiums and Canada Pension Plan contributions that are required to be remitted by an employer are fully recoverable by the Crown in the case of the bankruptcy of the employer" (Summary to S.C. 2000, c. 30, at p. 4a). The wording of GST deemed trusts resembles that of statutory deemed trusts for source deductions and incorporates the same overriding language and reference to the *BIA*. However, as noted above, Parliament's express intent is that only source deductions deemed trusts remain operative. An exception for the *BIA* in the statutory language establishing the source deductions deemed trusts accomplishes very little, because the explicit language of the *BIA* itself (and the *CCAA*) carves out these source deductions deemed trusts and maintains their effect. It is however noteworthy that no equivalent language maintaining GST deemed trusts exists under either the *BIA* or the *CCAA*.

50 It seems more likely that by adopting the same language for creating GST deemed trusts in the *ETA* as it did for deemed trusts for source deductions, and by overlooking the inclusion of an exception for the *CCAA* alongside the *BIA* in s. 222(3) of the *ETA*, Parliament may have inadvertently succumbed to a drafting anomaly. Because of a statutory lacuna in the *ETA*, the GST deemed trust could be seen as remaining effective in the *CCAA*, while ceasing to have any effect under the *BIA*, thus creating an apparent conflict with the wording of the *CCAA*. However, it should be seen for what it is: a facial conflict only, capable of resolution by looking at the broader approach taken to Crown priorities and by giving precedence to the statutory language of s. 18.3 of the *CCAA* in a manner that does not produce an anomalous outcome.

51 Section 222(3) of the *ETA* evinces no explicit intention of Parliament to repeal *CCAA* s. 18.3. It merely creates an apparent conflict that must be resolved by statutory interpretation. Parliament's intent when it enacted *ETA* s. 222(3) was therefore far from unambiguous. Had it sought to give the Crown a priority for GST claims, it could have done so explicitly as it did for source deductions. Instead, one is left to infer from the language of *ETA* s. 222(3) that the GST deemed trust was intended to be effective under the *CCAA*.

52 I am not persuaded that the reasoning in *Doré* requires the application of the doctrine of implied repeal in the circumstances of this case. The main issue in *Doré* concerned the impact of the adoption of the *C.C.Q.* on the administrative law rules with respect to municipalities. While Gonthier J. concluded in that case that the limitation provision in art. 2930 *C.C.Q.* had repealed by implication a limitation provision in the *Cities and Towns Act*, he did so on the basis of more than a textual analysis. The conclusion in *Doré* was reached after thorough contextual analysis of

both pieces of legislation, including an extensive review of the relevant legislative history (paras. 31-41). Consequently, the circumstances before this Court in *Doré* are far from "identical" to those in the present case, in terms of text, context and legislative history. Accordingly, *Doré* cannot be said to require the automatic application of the rule of repeal by implication.

53 A noteworthy indicator of Parliament's overall intent is the fact that in subsequent amendments it has not displaced the rule set out in the *CCAA*. Indeed, as indicated above, the recent amendments to the *CCAA* in 2005 resulted in the rule previously found in s. 18.3 being renumbered and reformulated as s. 37. Thus, to the extent the interpretation allowing the GST deemed trust to remain effective under the *CCAA* depends on *ETA* s. 222(3) having impliedly repealed *CCAA* s. 18.3(1) because it is later in time, we have come full circle. Parliament has renumbered and reformulated the provision of the *CCAA* stating that, subject to exceptions for source deductions, deemed trusts do not survive the *CCAA* proceedings and thus the *CCAA* is now the later in time statute. This confirms that Parliament's intent with respect to GST deemed trusts is to be found in the *CCAA*.

54 I do not agree with my colleague Abella J. that s. 44(f) of the *Interpretation Act*, R.S.C. 1985, c. I-21, can be used to interpret the 2005 amendments as having no effect. The new statute can hardly be said to be a mere re-enactment of the former statute. Indeed, the *CCAA* underwent a substantial review in 2005. Notably, acting consistently with its goal of treating both the *BIA* and the *CCAA* as sharing the same approach to insolvency, Parliament made parallel amendments to both statutes with respect to corporate proposals. In addition, new provisions were introduced regarding the treatment of contracts, collective agreements, interim financing and governance agreements. The appointment and role of the Monitor was also clarified. Noteworthy are the limits imposed by *CCAA* s. 11.09 on the court's discretion to make an order staying the Crown's source deductions deemed trusts, which were formerly found in s. 11.4. No mention whatsoever is made of GST deemed trusts (see Summary to S.C. 2005, c. 47). The review went as far as looking at the very expression used to describe the statutory override of deemed trusts. The comments cited by my colleague only emphasize the clear intent of Parliament to maintain its policy that only source deductions deemed trusts survive in *CCAA* proceedings.

55 In the case at bar, the legislative context informs the determination of Parliament's legislative intent and supports the conclusion that *ETA* s. 222(3) was not intended to narrow the scope of the *CCAA*'s override provision. Viewed in its entire context, the conflict between the *ETA* and the *CCAA* is more apparent than real. I would therefore not follow the reasoning in *Ottawa Senators* and affirm that *CCAA* s. 18.3 remained effective.

56 My conclusion is reinforced by the purpose of the *CCAA* as part of Canadian remedial insolvency legislation. As this aspect is particularly relevant to the second issue, I will now discuss how courts have interpreted the scope of their discretionary powers in supervising a *CCAA* reorganization and how Parliament has largely endorsed this interpretation. Indeed, the interpretation courts have given to the *CCAA* helps in understanding how the *CCAA* grew to occupy such a prominent role in Canadian insolvency law.

3.3 Discretionary Power of a Court Supervising a CCAA Reorganization

57 Courts frequently observe that "[t]he *CCAA* is skeletal in nature" and does not "contain a comprehensive code that lays out all that is permitted or barred" (*ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587, 92 O.R. (3d) 513 (Ont. C.A.), at para. 44, per Blair J.A.). Accordingly, "[t]he history of *CCAA* law has been an evolution of judicial interpretation" (*Dylex Ltd., Re* (1995), 31 C.B.R. (3d) 106 (Ont. Gen. Div. [Commercial List])), at para. 10, per Farley J.).

58 *CCAA* decisions are often based on discretionary grants of jurisdiction. The incremental exercise of judicial discretion in commercial courts under conditions one practitioner aptly describes as "the hothouse of real-time litigation" has been the primary method by which the *CCAA* has been adapted and has evolved to meet contemporary business and social needs (see Jones, at p. 484).

59 Judicial discretion must of course be exercised in furtherance of the *CCAA*'s purposes. The remedial purpose I referred to in the historical overview of the Act is recognized over and over again in the jurisprudence. To cite one early example:

The legislation is remedial in the purest sense in that it provides a means whereby the devastating social and economic effects of bankruptcy or creditor initiated termination of ongoing business operations can be avoided while a court-supervised attempt to reorganize the financial affairs of the debtor company is made.

(*Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), 41 O.A.C. 282 (Ont. C.A.), at para. 57, per Doherty J.A., dissenting)

60 Judicial decision making under the *CCAA* takes many forms. A court must first of all provide the conditions under which the debtor can attempt to reorganize. This can be achieved by staying enforcement actions by creditors to allow the debtor's business to continue, preserving the *status quo* while the debtor plans the compromise or arrangement to be presented to creditors, and supervising the process and advancing it to the point where it can be determined whether it will succeed (see, e.g., *Hongkong Bank of Canada v. Chef Ready Foods Ltd.* (1990), 51 B.C.L.R. (2d) 84 (B.C. C.A.), at pp. 88-89; *Pacific National Lease Holding Corp., Re* (1992), 19 B.C.A.C. 134 (B.C. C.A. [In Chambers]), at para. 27). In doing so, the court must often be cognizant of the various interests at stake in the reorganization, which can extend beyond those of the debtor and creditors to include employees, directors, shareholders, and even other parties doing business with the insolvent company (see, e.g., *Canadian Airlines Corp., Re*, 2000 ABQB 442, 84 Alta. L.R. (3d) 9 (Alta. Q.B.), at para. 144, per Paperny J. (as she then was); *Air Canada, Re* (2003), 42 C.B.R. (4th) 173 (Ont. S.C.J. [Commercial List]), at para. 3; *Air Canada, Re* [2003 CarswellOnt 4967 (Ont. S.C.J. [Commercial List])], 2003 CanLII 49366, at para. 13, per Farley J.; Sarra, *Creditor Rights*, at pp. 181-92 and 217-26). In addition, courts must recognize that on occasion the broader public interest will be engaged by aspects of the reorganization and may be a factor against which the decision of whether to allow a particular action will be weighed (see, e.g., *Canadian Red Cross Society / Société Canadienne de la Croix Rouge, Re* (2000), 19 C.B.R. (4th) 158 (Ont. S.C.J.), at para. 2, per Blair J. (as he then was); Sarra, *Creditor Rights*, at pp. 195-214).

61 When large companies encounter difficulty, reorganizations become increasingly complex. *CCAA* courts have been called upon to innovate accordingly in exercising their jurisdiction beyond merely staying proceedings against the debtor to allow breathing room for reorganization. They have been asked to sanction measures for which there is no explicit authority in the *CCAA*. Without exhaustively cataloguing the various measures taken under the authority of the *CCAA*, it is useful to refer briefly to a few examples to illustrate the flexibility the statute affords supervising courts.

62 Perhaps the most creative use of *CCAA* authority has been the increasing willingness of courts to authorize post-filing security for debtor in possession financing or super-priority charges on the debtor's assets when necessary for the continuation of the debtor's business during the reorganization (see, e.g., *Skydome Corp., Re* (1998), 16 C.B.R. (4th) 118 (Ont. Gen. Div. [Commercial List]); *United Used Auto & Truck Parts Ltd., Re*, 2000 BCCA 146, 135 B.C.A.C. 96 (B.C. C.A.), aff'g (1999), 12 C.B.R. (4th) 144 (B.C. S.C. [In Chambers]); and generally, J. P. Sarra, *Rescue! The Companies' Creditors Arrangement Act* (2007), at pp. 93-115). The *CCAA* has also been used to release claims against third parties as part of approving a comprehensive plan of arrangement and compromise, even over the objections of some dissenting creditors (see *Metcalfe & Mansfield*). As well, the appointment of a Monitor to oversee the reorganization was originally a measure taken pursuant to the *CCAA*'s supervisory authority; Parliament responded, making the mechanism mandatory by legislative amendment.

63 Judicial innovation during *CCAA* proceedings has not been without controversy. At least two questions it raises are directly relevant to the case at bar: (1) what are the sources of a court's authority during *CCAA* proceedings? (2) what are the limits of this authority?

64 The first question concerns the boundary between a court's statutory authority under the *CCAA* and a court's residual authority under its inherent and equitable jurisdiction when supervising a reorganization. In authorizing measures during *CCAA* proceedings, courts have on occasion purported to rely upon their equitable jurisdiction to advance the purposes of the Act or their inherent jurisdiction to fill gaps in the statute. Recent appellate decisions have counselled against purporting to rely on inherent jurisdiction, holding that the better view is that courts are in most cases simply construing the authority supplied by the *CCAA* itself (see, e.g., *Skeena Cellulose Inc., Re*, 2003 BCCA 344, 13 B.C.L.R. (4th) 236 (B.C. C.A.), at paras. 45-47, *per* Newbury J.A.; *Stelco Inc. (Re)* (2005), 75 O.R. (3d) 5 (Ont. C.A.), paras. 31-33, *per* Blair J.A.).

65 I agree with Justice Georgina R. Jackson and Professor Janis Sarra that the most appropriate approach is a hierarchical one in which courts rely first on an interpretation of the provisions of the *CCAA* text before turning to inherent or equitable jurisdiction to anchor measures taken in a *CCAA* proceeding (see G. R. Jackson and J. Sarra, "Selecting the Judicial Tool to get the Job Done: An Examination of Statutory Interpretation, Discretionary Power and Inherent Jurisdiction in Insolvency Matters", in J. P. Sarra, ed., *Annual Review of Insolvency Law 2007* (2008), 41, at p. 42). The authors conclude that when given an appropriately purposive and liberal interpretation, the *CCAA* will be sufficient in most instances to ground measures necessary to achieve its objectives (p. 94).

66 Having examined the pertinent parts of the *CCAA* and the recent history of the legislation, I accept that in most instances the issuance of an order during *CCAA* proceedings should be considered an exercise in statutory interpretation. Particularly noteworthy in this regard is the expansive interpretation the language of the statute at issue is capable of supporting.

67 The initial grant of authority under the *CCAA* empowered a court "where an application is made under this Act in respect of a company ... on the application of any person interested in the matter ..., subject to this Act, [to] make an order under this section" (*CCAA*, s. 11(1)). The plain language of the statute was very broad.

68 In this regard, though not strictly applicable to the case at bar, I note that Parliament has in recent amendments changed the wording contained in s. 11(1), making explicit the discretionary authority of the court under the *CCAA*. Thus in s. 11 of the *CCAA* as currently enacted, a court may, "subject to the restrictions set out in this Act, ... make any order that it considers appropriate in the circumstances" (S.C. 2005, c. 47, s. 128). Parliament appears to have endorsed the broad reading of *CCAA* authority developed by the jurisprudence.

69 The *CCAA* also explicitly provides for certain orders. Both an order made on an initial application and an order on subsequent applications may stay, restrain, or prohibit existing or new proceedings against the debtor. The burden is on the applicant to satisfy the court that the order is appropriate in the circumstances and that the applicant has been acting in good faith and with due diligence (*CCAA*, ss. 11(3), (4) and (6)).

70 The general language of the *CCAA* should not be read as being restricted by the availability of more specific orders. However, the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising *CCAA* authority. Appropriateness under the *CCAA* is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*. The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* — avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.

71 It is well-established that efforts to reorganize under the *CCAA* can be terminated and the stay of proceedings against the debtor lifted if the reorganization is "doomed to failure" (see *Chef Ready*, at p. 88; *Philip's Manufacturing*

Ltd., Re (1992), 9 C.B.R. (3d) 25 (B.C. C.A.), at paras. 6-7). However, when an order is sought that does realistically advance the *CCAA*'s purposes, the ability to make it is within the discretion of a *CCAA* court.

72 The preceding discussion assists in determining whether the court had authority under the *CCAA* to continue the stay of proceedings against the Crown once it was apparent that reorganization would fail and bankruptcy was the inevitable next step.

73 In the Court of Appeal, Tysoe J.A. held that no authority existed under the *CCAA* to continue staying the Crown's enforcement of the GST deemed trust once efforts at reorganization had come to an end. The appellant submits that in so holding, Tysoe J.A. failed to consider the underlying purpose of the *CCAA* and give the statute an appropriately purposive and liberal interpretation under which the order was permissible. The Crown submits that Tysoe J.A. correctly held that the mandatory language of the *ETA* gave the court no option but to permit enforcement of the GST deemed trust when lifting the *CCAA* stay to permit the debtor to make an assignment under the *BIA*. Whether the *ETA* has a mandatory effect in the context of a *CCAA* proceeding has already been discussed. I will now address the question of whether the order was authorized by the *CCAA*.

74 It is beyond dispute that the *CCAA* imposes no explicit temporal limitations upon proceedings commenced under the Act that would prohibit ordering a continuation of the stay of the Crown's GST claims while lifting the general stay of proceedings temporarily to allow the debtor to make an assignment in bankruptcy.

75 The question remains whether the order advanced the underlying purpose of the *CCAA*. The Court of Appeal held that it did not because the reorganization efforts had come to an end and the *CCAA* was accordingly spent. I disagree.

76 There is no doubt that had reorganization been commenced under the *BIA* instead of the *CCAA*, the Crown's deemed trust priority for the GST funds would have been lost. Similarly, the Crown does not dispute that under the scheme of distribution in bankruptcy under the *BIA*, the deemed trust for GST ceases to have effect. Thus, after reorganization under the *CCAA* failed, creditors would have had a strong incentive to seek immediate bankruptcy and distribution of the debtor's assets under the *BIA*. In order to conclude that the discretion does not extend to partially lifting the stay in order to allow for an assignment in bankruptcy, one would have to assume a gap between the *CCAA* and the *BIA* proceedings. Brenner C.J.S.C.'s order staying Crown enforcement of the GST claim ensured that creditors would not be disadvantaged by the attempted reorganization under the *CCAA*. The effect of his order was to blunt any impulse of creditors to interfere in an orderly liquidation. His order was thus in furtherance of the *CCAA*'s objectives to the extent that it allowed a bridge between the *CCAA* and *BIA* proceedings. This interpretation of the tribunal's discretionary power is buttressed by s. 20 of the *CCAA*. That section provides that the *CCAA* "may be applied together with the provisions of any Act of Parliament... that authorizes or makes provision for the sanction of compromises or arrangements between a company and its shareholders or any class of them", such as the *BIA*. Section 20 clearly indicates the intention of Parliament for the *CCAA* to operate *in tandem* with other insolvency legislation, such as the *BIA*.

77 The *CCAA* creates conditions for preserving the *status quo* while attempts are made to find common ground amongst stakeholders for a reorganization that is fair to all. Because the alternative to reorganization is often bankruptcy, participants will measure the impact of a reorganization against the position they would enjoy in liquidation. In the case at bar, the order fostered a harmonious transition between reorganization and liquidation while meeting the objective of a single collective proceeding that is common to both statutes.

78 Tysoe J.A. therefore erred in my view by treating the *CCAA* and the *BIA* as distinct regimes subject to a temporal gap between the two, rather than as forming part of an integrated body of insolvency law. Parliament's decision to maintain two statutory schemes for reorganization, the *BIA* and the *CCAA*, reflects the reality that reorganizations of differing complexity require different legal mechanisms. By contrast, only one statutory scheme has been found to be needed to liquidate a bankrupt debtor's estate. The transition from the *CCAA* to the *BIA* may require the partial lifting of a stay of proceedings under the *CCAA* to allow commencement of the *BIA* proceedings. However, as Laskin J.A. for the Ontario Court of Appeal noted in a similar competition between secured creditors and the Ontario Superintendent

of Financial Services seeking to enforce a deemed trust, "[t]he two statutes are related" and no "gap" exists between the two statutes which would allow the enforcement of property interests at the conclusion of *CCAA* proceedings that would be lost in bankruptcy *Ivaco Inc. (Re)* (2006), 83 O.R. (3d) 108 (Ont. C.A.), at paras. 62-63).

79 The Crown's priority in claims pursuant to source deductions deemed trusts does not undermine this conclusion. Source deductions deemed trusts survive under both the *CCAA* and the *BIA*. Accordingly, creditors' incentives to prefer one Act over another will not be affected. While a court has a broad discretion to stay source deductions deemed trusts in the *CCAA* context, this discretion is nevertheless subject to specific limitations applicable only to source deductions deemed trusts (*CCAA*, s. 11.4). Thus, if *CCAA* reorganization fails (e.g., either the creditors or the court refuse a proposed reorganization), the Crown can immediately assert its claim in unremitted source deductions. But this should not be understood to affect a seamless transition into bankruptcy or create any "gap" between the *CCAA* and the *BIA* for the simple reason that, regardless of what statute the reorganization had been commenced under, creditors' claims in both instances would have been subject to the priority of the Crown's source deductions deemed trust.

80 Source deductions deemed trusts aside, the comprehensive and exhaustive mechanism under the *BIA* must control the distribution of the debtor's assets once liquidation is inevitable. Indeed, an orderly transition to liquidation is mandatory under the *BIA* where a proposal is rejected by creditors. The *CCAA* is silent on the transition into liquidation but the breadth of the court's discretion under the Act is sufficient to construct a bridge to liquidation under the *BIA*. The court must do so in a manner that does not subvert the scheme of distribution under the *BIA*. Transition to liquidation requires partially lifting the *CCAA* stay to commence proceedings under the *BIA*. This necessary partial lifting of the stay should not trigger a race to the courthouse in an effort to obtain priority unavailable under the *BIA*.

81 I therefore conclude that Brenner C.J.S.C. had the authority under the *CCAA* to lift the stay to allow entry into liquidation.

3.4 Express Trust

82 The last issue in this case is whether Brenner C.J.S.C. created an express trust in favour of the Crown when he ordered on April 29, 2008, that proceeds from the sale of LeRoy Trucking's assets equal to the amount of unremitted GST be held back in the Monitor's trust account until the results of the reorganization were known. Tysoe J.A. in the Court of Appeal concluded as an alternative ground for allowing the Crown's appeal that it was the beneficiary of an express trust. I disagree.

83 Creation of an express trust requires the presence of three certainties: intention, subject matter, and object. Express or "true trusts" arise from the acts and intentions of the settlor and are distinguishable from other trusts arising by operation of law (see D. W. M. Waters, M. R. Gillen and L. D. Smith, eds., *Waters' Law of Trusts in Canada* (3rd ed. 2005), at pp. 28-29 especially fn. 42).

84 Here, there is no certainty to the object (i.e. the beneficiary) inferrable from the court's order of April 29, 2008, sufficient to support an express trust.

85 At the time of the order, there was a dispute between Century Services and the Crown over part of the proceeds from the sale of the debtor's assets. The court's solution was to accept LeRoy Trucking's proposal to segregate those monies until that dispute could be resolved. Thus there was no certainty that the Crown would actually be the beneficiary, or object, of the trust.

86 The fact that the location chosen to segregate those monies was the Monitor's trust account has no independent effect such that it would overcome the lack of a clear beneficiary. In any event, under the interpretation of *CCAA* s. 18.3(1) established above, no such priority dispute would even arise because the Crown's deemed trust priority over GST claims would be lost under the *CCAA* and the Crown would rank as an unsecured creditor for this amount. However, Brenner C.J.S.C. may well have been proceeding on the basis that, in accordance with *Ottawa Senators*, the Crown's GST claim would remain effective if reorganization was successful, which would not be the case if transition to the

liquidation process of the *BIA* was allowed. An amount equivalent to that claim would accordingly be set aside pending the outcome of reorganization.

87 Thus, uncertainty surrounding the outcome of the *CCAA* restructuring eliminates the existence of any certainty to permanently vest in the Crown a beneficial interest in the funds. That much is clear from the oral reasons of Brenner C.J.S.C. on April 29, 2008, when he said: "Given the fact that [*CCAA* proceedings] are known to fail and filings in bankruptcy result, it seems to me that maintaining the status quo in the case at bar supports the proposal to have the monitor hold these funds in trust." Exactly who might take the money in the final result was therefore evidently in doubt. Brenner C.J.S.C.'s subsequent order of September 3, 2008, denying the Crown's application to enforce the trust once it was clear that bankruptcy was inevitable, confirms the absence of a clear beneficiary required to ground an express trust.

4. Conclusion

88 I conclude that Brenner C.J.S.C. had the discretion under the *CCAA* to continue the stay of the Crown's claim for enforcement of the GST deemed trust while otherwise lifting it to permit LeRoy Trucking to make an assignment in bankruptcy. My conclusion that s. 18.3(1) of the *CCAA* nullified the GST deemed trust while proceedings under that Act were pending confirms that the discretionary jurisdiction under s. 11 utilized by the court was not limited by the Crown's asserted GST priority, because there is no such priority under the *CCAA*.

89 For these reasons, I would allow the appeal and declare that the \$305,202.30 collected by LeRoy Trucking in respect of GST but not yet remitted to the Receiver General of Canada is not subject to deemed trust or priority in favour of the Crown. Nor is this amount subject to an express trust. Costs are awarded for this appeal and the appeal in the court below.

Fish J. (concurring):

I

90 I am in general agreement with the reasons of Justice Deschamps and would dispose of the appeal as she suggests.

91 More particularly, I share my colleague's interpretation of the scope of the judge's discretion under s. 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("*CCAA*"). And I share my colleague's conclusion that Brenner C.J.S.C. did not create an express trust in favour of the Crown when he segregated GST funds into the Monitor's trust account (2008 BCSC 1805, [2008] G.S.T.C. 221 (B.C. S.C. [In Chambers])).

92 I nonetheless feel bound to add brief reasons of my own regarding the interaction between the *CCAA* and the *Excise Tax Act*, R.S.C. 1985, c. E-15 ("*ETA*").

93 In upholding deemed trusts created by the *ETA* notwithstanding insolvency proceedings, *Ottawa Senators Hockey Club Corp. (Re)* (2005), 73 O.R. (3d) 737, [2005] G.S.T.C. 1 (Ont. C.A.), and its progeny have been unduly protective of Crown interests which Parliament itself has chosen to subordinate to competing prioritized claims. In my respectful view, a clearly marked departure from that jurisprudential approach is warranted in this case.

94 Justice Deschamps develops important historical and policy reasons in support of this position and I have nothing to add in that regard. I do wish, however, to explain why a comparative analysis of related statutory provisions adds support to our shared conclusion.

95 Parliament has in recent years given detailed consideration to the Canadian insolvency scheme. It has declined to amend the provisions at issue in this case. Ours is not to wonder why, but rather to treat Parliament's preservation of the relevant provisions as a deliberate exercise of the legislative discretion that is Parliament's alone. With respect, I reject any suggestion that we should instead characterize the apparent conflict between s. 18.3(1) (now s. 37(1)) of the *CCAA* and s. 222 of the *ETA* as a drafting anomaly or statutory lacuna properly subject to judicial correction or repair.

II

96 In the context of the Canadian insolvency regime, a deemed trust will be found to exist only where two complementary elements co-exist: first, a statutory provision *creating* the trust; and second, a *CCAA* or *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*") provision *confirming* — or explicitly preserving — its effective operation.

97 This interpretation is reflected in three federal statutes. Each contains a deemed trust provision framed in terms strikingly similar to the wording of s. 222 of the *ETA*.

98 The first is the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) ("*ITA*") where s. 227(4) *creates* a deemed trust:

227 (4) Trust for moneys deducted — Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act. [Here and below, the emphasis is of course my own.]

99 In the next subsection, Parliament has taken care to make clear that this trust is unaffected by federal or provincial legislation to the contrary:

(4.1) Extension of trust — Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person ... equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, ...

...

... and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

100 The continued operation of this deemed trust is expressly *confirmed* in s. 18.3 of the *CCAA*:

18.3 (1) Subject to subsection (2), notwithstanding any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a debtor company shall not be regarded as being held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

(2) Subsection (1) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, subsection 23(3) or (4) of the *Canada Pension Plan* or subsection 86(2) or (2.1) of the *Employment Insurance Act*...

101 The operation of the *ITA* deemed trust is also confirmed in s. 67 of the *BIA*:

67 (2) Subject to subsection (3), notwithstanding any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a bankrupt shall not be regarded as held in trust for Her Majesty for the purpose of paragraph (1)(a) unless it would be so regarded in the absence of that statutory provision.

(3) Subsection (2) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, subsection 23(3) or (4) of the *Canada Pension Plan* or subsection 86(2) or (2.1) of the *Employment Insurance Act*...

102 Thus, Parliament has first *created* and then *confirmed the continued operation of* the Crown's *ITA* deemed trust under *both* the *CCAA* and the *BIA* regimes.

103 The second federal statute for which this scheme holds true is the *Canada Pension Plan*, R.S.C. 1985, c. C-8 ("*CPP*"). At s. 23, Parliament creates a deemed trust in favour of the Crown and specifies that it exists despite all contrary provisions in any other Canadian statute. Finally, and in almost identical terms, the *Employment Insurance Act*, S.C. 1996, c. 23 ("*EIA*"), creates a deemed trust in favour of the Crown: see ss. 86(2) and (2.1).

104 As we have seen, the survival of the deemed trusts created under these provisions of the *ITA*, the *CPP* and the *EIA* is confirmed in s. 18.3(2) the *CCAA* and in s. 67(3) the *BIA*. In all three cases, Parliament's intent to enforce the Crown's deemed trust through insolvency proceedings is expressed in clear and unmistakable terms.

105 The same is not true with regard to the deemed trust created under the *ETA*. Although Parliament creates a deemed trust in favour of the Crown to hold unremitted GST monies, and although it purports to maintain this trust notwithstanding any contrary federal or provincial legislation, it does not *confirm* the trust — or expressly provide for its continued operation — in either the *BIA* or the *CCAA*. The second of the two mandatory elements I have mentioned is thus absent reflecting Parliament's intention to allow the deemed trust to lapse with the commencement of insolvency proceedings.

106 The language of the relevant *ETA* provisions is identical in substance to that of the *ITA*, *CPP*, and *EIA* provisions:

222. (1) [Deemed] Trust for amounts collected — Subject to subsection (1.1), every person who collects an amount as or on account of tax under Division II is deemed, for all purposes and despite any security interest in the amount, to hold the amount in trust for Her Majesty in right of Canada, separate and apart from the property of the person and from property held by any secured creditor of the person that, but for a security interest, would be property of the person, until the amount is remitted to the Receiver General or withdrawn under subsection (2).

...

(3) Extension of trust — Despite any other provision of this Act (except subsection (4)), any other enactment of Canada (except the *Bankruptcy and Insolvency Act*), any enactment of a province or any other law, if at any time an amount deemed by subsection (1) to be held by a person in trust for Her Majesty is not remitted to the Receiver General or withdrawn in the manner and at the time provided under this Part, property of the person and property held by any secured creditor of the person that, but for a security interest, would be property of the person, equal in value to the amount so deemed to be held in trust, is deemed

(a) to be held, from the time the amount was collected by the person, in trust for Her Majesty, separate and apart from the property of the person, whether or not the property is subject to a security interest, ...

...

... and the proceeds of the property shall be paid to the Receiver General in priority to all security interests.

107 Yet no provision of the *CCAA* provides for the continuation of this deemed trust after the *CCAA* is brought into play.

108 In short, Parliament has imposed *two* explicit conditions, or "building blocks", for survival under the *CCAA* of deemed trusts created by the *ITA*, *CPP*, and *EIA*. Had Parliament intended to likewise preserve under the *CCAA*

deemed trusts created by the *ETA*, it would have included in the *CCAA* the sort of confirmatory provision that explicitly preserves other deemed trusts.

109 With respect, unlike Tysoe J.A., I do not find it "inconceivable that Parliament would specifically identify the *BIA* as an exception when enacting the current version of s. 222(3) of the *ETA* without considering the *CCAA* as a possible second exception" (2009 BCCA 205, 98 B.C.L.R. (4th) 242, [2009] G.S.T.C. 79 (B.C. C.A.), at para. 37). *All* of the deemed trust provisions excerpted above make explicit reference to the *BIA*. Section 222 of the *ETA* does not break the pattern. Given the near-identical wording of the four deemed trust provisions, it would have been surprising indeed had Parliament not addressed the *BIA* at all in the *ETA*.

110 Parliament's evident intent was to render GST deemed trusts inoperative upon the institution of insolvency proceedings. Accordingly, s. 222 mentions the *BIA* so as to *exclude* it from its ambit — rather than to *include* it, as do the *ITA*, the *CPP*, and the *EIA*.

111 Conversely, I note that *none* of these statutes mentions the *CCAA* expressly. Their specific reference to the *BIA* has no bearing on their interaction with the *CCAA*. Again, it is the confirmatory provisions *in the insolvency statutes* that determine whether a given deemed trust will subsist during insolvency proceedings.

112 Finally, I believe that chambers judges should not segregate GST monies into the Monitor's trust account during *CCAA* proceedings, as was done in this case. The result of Justice Deschamps's reasoning is that GST claims become unsecured under the *CCAA*. Parliament has deliberately chosen to nullify certain Crown super-priorities during insolvency; this is one such instance.

III

113 For these reasons, like Justice Deschamps, I would allow the appeal with costs in this Court and in the courts below and order that the \$305,202.30 collected by LeRoy Trucking in respect of GST but not yet remitted to the Receiver General of Canada be subject to no deemed trust or priority in favour of the Crown.

Abella J. (dissenting):

114 The central issue in this appeal is whether s. 222 of the *Excise Tax Act*, R.S.C. 1985, c. E-15 ("*EIA*"), and specifically s. 222(3), gives priority during *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("*CCAA*"), proceedings to the Crown's deemed trust in unremitted GST. I agree with Tysoe J.A. that it does. It follows, in my respectful view, that a court's discretion under s. 11 of the *CCAA* is circumscribed accordingly.

115 Section 11¹ of the *CCAA* stated:

11. (1) Notwithstanding anything in the *Bankruptcy and Insolvency Act* or the *Winding-up Act*, where an application is made under this Act in respect of a company, the court, on the application of any person interested in the matter, may, subject to this Act, on notice to any other person or without notice as it may see fit, make an order under this section.

To decide the scope of the court's discretion under s. 11, it is necessary to first determine the priority issue. Section 222(3), the provision of the *ETA* at issue in this case, states:

222 (3) Extension of trust — Despite any other provision of this Act (except subsection (4)), any other enactment of Canada (except the *Bankruptcy and Insolvency Act*), any enactment of a province or any other law, if at any time an amount deemed by subsection (1) to be held by a person in trust for Her Majesty is not remitted to the Receiver General or withdrawn in the manner and at the time provided under this Part, property of the person and property held by any secured creditor of the person that, but for a security interest, would be property of the person, equal in value to the amount so deemed to be held in trust, is deemed

(a) to be held, from the time the amount was collected by the person, in trust for Her Majesty, separate and apart from the property of the person, whether or not the property is subject to a security interest, and

(b) to form no part of the estate or property of the person from the time the amount was collected, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to a security interest

and is property beneficially owned by Her Majesty in right of Canada despite any security interest in the property or in the proceeds thereof and the proceeds of the property shall be paid to the Receiver General in priority to all security interests.

116 Century Services argued that the *CCAA*'s general override provision, s. 18.3(1), prevailed, and that the deeming provisions in s. 222 of the *ETA* were, accordingly, inapplicable during *CCAA* proceedings. Section 18.3(1) states:

18.3 (1) ... [N]otwithstanding any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a debtor company shall not be regarded as held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

117 As MacPherson J.A. correctly observed in *Ottawa Senators Hockey Club Corp. (Re)* (2005), 73 O.R. (3d) 737, [2005] G.S.T.C. 1 (Ont. C.A.), s. 222(3) of the *ETA* is in "clear conflict" with s. 18.3(1) of the *CCAA* (para. 31). Resolving the conflict between the two provisions is, essentially, what seems to me to be a relatively uncomplicated exercise in statutory interpretation: does the language reflect a clear legislative intention? In my view it does. The deemed trust provision, s. 222(3) of the *ETA*, has unambiguous language stating that it operates notwithstanding any law except the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*").

118 By expressly excluding only one statute from its legislative grasp, and by unequivocally stating that it applies despite any other law anywhere in Canada *except* the *BIA*, s. 222(3) has defined its boundaries in the clearest possible terms. I am in complete agreement with the following comments of MacPherson J.A. in *Ottawa Senators*:

The legislative intent of s. 222(3) of the *ETA* is clear. If there is a conflict with "any other enactment of Canada (except the *Bankruptcy and Insolvency Act*)", s. 222(3) prevails. In these words Parliament did two things: it decided that s. 222(3) should trump all other federal laws and, importantly, it addressed the topic of exceptions to its trumping decision and identified a single exception, the *Bankruptcy and Insolvency Act* The *BIA* and the *CCAA* are closely related federal statutes. I cannot conceive that Parliament would specifically identify the *BIA* as an exception, but accidentally fail to consider the *CCAA* as a possible second exception. In my view, the omission of the *CCAA* from s. 222(3) of the *ETA* was almost certainly a considered omission. [para. 43]

119 MacPherson J.A.'s view that the failure to exempt the *CCAA* from the operation of the *ETA* is a reflection of a clear legislative intention, is borne out by how the *CCAA* was subsequently changed after s. 18.3(1) was enacted in 1997. In 2000, when s. 222(3) of the *ETA* came into force, amendments were also introduced to the *CCAA*. Section 18.3(1) was not amended.

120 The failure to amend s. 18.3(1) is notable because its effect was to protect the legislative *status quo*, notwithstanding repeated requests from various constituencies that s. 18.3(1) be amended to make the priorities in the *CCAA* consistent with those in the *BIA*. In 2002, for example, when Industry Canada conducted a review of the *BIA* and the *CCAA*, the Insolvency Institute of Canada and the Canadian Association of Insolvency and Restructuring Professionals recommended that the priority regime under the *BIA* be extended to the *CCAA* (Joint Task Force on Business Insolvency Law Reform, *Report* (March 15, 2002), Sch. B, proposal 71, at pp. 37-38). The same recommendations were made by the Standing Senate Committee on Banking, Trade and Commerce in its 2003 report, *Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act*; by the Legislative Review Task Force (Commercial) of the Insolvency Institute of Canada and the Canadian Association of Insolvency and

Restructuring Professionals in its 2005 *Report on the Commercial Provisions of Bill C-55*; and in 2007 by the Insolvency Institute of Canada in a submission to the Standing Senate Committee on Banking, Trade and Commerce commenting on reforms then under consideration.

121 Yet the *BIA* remains the only exempted statute under s. 222(3) of the *ETA*. Even after the 2005 decision in *Ottawa Senators* which confirmed that the *ETA* took precedence over the *CCAA*, there was no responsive legislative revision. I see this lack of response as relevant in this case, as it was in *R. v. Tele-Mobile Co.*, 2008 SCC 12, [2008] 1 S.C.R. 305 (S.C.C.), where this Court stated:

While it cannot be said that legislative silence is necessarily determinative of legislative intention, in this case the silence is Parliament's answer to the consistent urging of Telus and other affected businesses and organizations that there be express language in the legislation to ensure that businesses can be reimbursed for the reasonable costs of complying with evidence-gathering orders. I see the legislative history as reflecting Parliament's intention that compensation not be paid for compliance with production orders. [para. 42]

122 All this leads to a clear inference of a deliberate legislative choice to protect the deemed trust in s. 222(3) from the reach of s. 18.3(1) of the *CCAA*.

123 Nor do I see any "policy" justification for interfering, through interpretation, with this clarity of legislative intention. I can do no better by way of explaining why I think the policy argument cannot succeed in this case, than to repeat the words of Tysoe J.A. who said:

I do not dispute that there are valid policy reasons for encouraging insolvent companies to attempt to restructure their affairs so that their business can continue with as little disruption to employees and other stakeholders as possible. It is appropriate for the courts to take such policy considerations into account, but only if it is in connection with a matter that has not been considered by Parliament. Here, Parliament must be taken to have weighed policy considerations when it enacted the amendments to the *CCAA* and *ETA* described above. As Mr. Justice MacPherson observed at para. 43 of *Ottawa Senators*, it is inconceivable that Parliament would specifically identify the *BIA* as an exception when enacting the current version of s. 222(3) of the *ETA* without considering the *CCAA* as a possible second exception. I also make the observation that the 1992 set of amendments to the *BIA* enabled proposals to be binding on secured creditors and, while there is more flexibility under the *CCAA*, it is possible for an insolvent company to attempt to restructure under the auspices of the *BIA*. [para. 37]

124 Despite my view that the clarity of the language in s. 222(3) is dispositive, it is also my view that even the application of other principles of interpretation reinforces this conclusion. In their submissions, the parties raised the following as being particularly relevant: the Crown relied on the principle that the statute which is "later in time" prevails; and Century Services based its argument on the principle that the general provision gives way to the specific (*generalia specialibus non derogant*).

125 The "later in time" principle gives priority to a more recent statute, based on the theory that the legislature is presumed to be aware of the content of existing legislation. If a new enactment is inconsistent with a prior one, therefore, the legislature is presumed to have intended to derogate from the earlier provisions (Ruth Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at pp. 346-47; Pierre-André Côté, *The Interpretation of Legislation in Canada* (3rd ed. 2000), at p. 358).

126 The exception to this presumptive displacement of pre-existing inconsistent legislation, is the *generalia specialibus non derogant* principle that "[a] more recent, general provision will not be construed as affecting an earlier, special provision" (Côté, at p. 359). Like a Russian Doll, there is also an exception within this exception, namely, that an earlier, specific provision may in fact be "overruled" by a subsequent general statute if the legislature indicates, through its language, an intention that the general provision prevails (*Doré c. Verdun (Municipalité)*, [1997] 2 S.C.R. 862 (S.C.C.)).

127 The primary purpose of these interpretive principles is to assist in the performance of the task of determining the intention of the legislature. This was confirmed by MacPherson J.A. in *Ottawa Senators*, at para. 42:

[T]he overarching rule of statutory interpretation is that statutory provisions should be interpreted to give effect to the intention of the legislature in enacting the law. This primary rule takes precedence over all maxims or canons or aids relating to statutory interpretation, including the maxim that the specific prevails over the general (*generalia specialibus non derogant*). As expressed by Hudson J. in *Canada v. Williams*, [1944] S.C.R. 226, ... at p. 239 ...:

The maxim *generalia specialibus non derogant* is relied on as a rule which should dispose of the question, but the maxim is not a rule of law but a rule of construction and bows to the intention of the legislature, if such intention can reasonably be gathered from all of the relevant legislation.

(See also Côté, at p. 358, and Pierre-Andre Côté, with the collaboration of S. Beaulac and M. Devinat, *Interprétation des lois* (4th ed. 2009), at para. 1335.)

128 I accept the Crown's argument that the "later in time" principle is conclusive in this case. Since s. 222(3) of the *ETA* was enacted in 2000 and s. 18.3(1) of the *CCAA* was introduced in 1997, s. 222(3) is, on its face, the later provision. This chronological victory can be displaced, as Century Services argues, if it is shown that the more recent provision, s. 222(3) of the *ETA*, is a general one, in which case the earlier, specific provision, s. 18.3(1), prevails (*generalia specialibus non derogant*). But, as previously explained, the prior specific provision does not take precedence if the subsequent general provision appears to "overrule" it. This, it seems to me, is precisely what s. 222(3) achieves through the use of language stating that it prevails despite any law of Canada, of a province, or "any other law" *other than the BIA*. Section 18.3(1) of the *CCAA*, is thereby rendered inoperative for purposes of s. 222(3).

129 It is true that when the *CCAA* was amended in 2005,² s. 18.3(1) was re-enacted as s. 37(1) (S.C. 2005, c. 47, s. 131). Deschamps J. suggests that this makes s. 37(1) the new, "later in time" provision. With respect, her observation is refuted by the operation of s. 44(f) of the *Interpretation Act*, R.S.C. 1985, c. I-21, which expressly deals with the (non) effect of re-enacting, without significant substantive changes, a repealed provision (see *Canada (Attorney General) v. Canada (Public Service Staff Relations Board)*, [1977] 2 F.C. 663 (Fed. C.A.), dealing with the predecessor provision to s. 44(f)). It directs that new enactments not be construed as "new law" unless they differ in substance from the repealed provision:

44. Where an enactment, in this section called the "former enactment", is repealed and another enactment, in this section called the "new enactment", is substituted therefor,

...

(f) except to the extent that the provisions of the new enactment are not in substance the same as those of the former enactment, the new enactment shall not be held to operate as new law, but shall be construed and have effect as a consolidation and as declaratory of the law as contained in the former enactment;

Section 2 of the *Interpretation Act* defines an enactment as "an Act or regulation or *any portion of an Act or regulation*".

130 Section 37(1) of the current *CCAA* is almost identical to s. 18.3(1). These provisions are set out for ease of comparison, with the differences between them underlined:

37.(1) Subject to subsection (2), despite any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a debtor company shall not be regarded as being held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

18.3 (1) Subject to subsection (2), notwithstanding any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a debtor company shall not be regarded as held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

131 The application of s. 44(f) of the *Interpretation Act* simply confirms the government's clearly expressed intent, found in Industry Canada's clause-by-clause review of Bill C-55, where s. 37(1) was identified as "a technical amendment to reorder the provisions of this Act". During second reading, the Hon. Bill Rompkey, then the Deputy Leader of the Government in the Senate, confirmed that s. 37(1) represented only a technical change:

On a technical note relating to the treatment of deemed trusts for taxes, the bill [*sic*] makes no changes to the underlying policy intent, despite the fact that in the case of a restructuring under the CCAA, sections of the act [*sic*] were repealed and substituted with renumbered versions due to the extensive reworking of the CCAA.

(*Debates of the Senate*, vol. 142, 1st Sess., 38th Parl., November 23, 2005, at p. 2147)

132 Had the substance of s. 18.3(1) altered in any material way when it was replaced by s. 37(1), I would share Deschamps J.'s view that it should be considered a new provision. But since s. 18.3(1) and s. 37(1) are the same in substance, the transformation of s. 18.3(1) into s. 37(1) has no effect on the interpretive queue, and s. 222(3) of the *ETA* remains the "later in time" provision (Sullivan, at p. 347).

133 This means that the deemed trust provision in s. 222(3) of the *ETA* takes precedence over s. 18.3(1) during *CCAA* proceedings. The question then is how that priority affects the discretion of a court under s. 11 of the *CCAA*.

134 While s. 11 gives a court discretion to make orders notwithstanding the *BIA* and the *Winding-up Act*, R.S.C. 1985, c. W-11, that discretion is not liberated from the operation of any other federal statute. Any exercise of discretion is therefore circumscribed by whatever limits are imposed by statutes *other* than the *BIA* and the *Winding-up Act*. That includes the *ETA*. The chambers judge in this case was, therefore, required to respect the priority regime set out in s. 222(3) of the *ETA*. Neither s. 18.3(1) nor s. 11 of the *CCAA* gave him the authority to ignore it. He could not, as a result, deny the Crown's request for payment of the GST funds during the *CCAA* proceedings.

135 Given this conclusion, it is unnecessary to consider whether there was an express trust.

136 I would dismiss the appeal.

Appeal allowed.

Pourvoi accueilli.

Appendix

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as at December 13, 2007)

11. (1) Powers of court — Notwithstanding anything in the *Bankruptcy and Insolvency Act* or the *Winding-up Act*, where an application is made under this Act in respect of a company, the court, on the application of any person interested in the matter, may, subject to this Act, on notice to any other person or without notice as it may see fit, make an order under this section.

...

(3) Initial application court orders — A court may, on an initial application in respect of a company, make an order on such terms as it may impose, effective for such period as the court deems necessary not exceeding thirty days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under an Act referred to in subsection (i);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of or proceeding with any other action, suit or proceeding against the company.

(4) Other than initial application court orders — A court may, on an application in respect of a company other than an initial application, make an order on such terms as it may impose,

(a) staying, until otherwise ordered by the court, for such period as the court deems necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in subsection (1);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of or proceeding with any other action, suit or proceeding against the company.

...

(6) Burden of proof on application — The court shall not make an order under subsection (3) or (4) unless

(a) the applicant satisfies the court that circumstances exist that make such an order appropriate; and

(b) in the case of an order under subsection (4), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

11.4 (1) Her Majesty affected — An order made under section 11 may provide that

(a) Her Majesty in right of Canada may not exercise rights under subsection 224(1.2) of the *Income Tax Act* or any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, in respect of the company if the company is a tax debtor under that subsection or provision, for such period as the court considers appropriate but ending not later than

(i) the expiration of the order,

(ii) the refusal of a proposed compromise by the creditors or the court,

(iii) six months following the court sanction of a compromise or arrangement,

(iv) the default by the company on any term of a compromise or arrangement, or

(v) the performance of a compromise or arrangement in respect of the company; and\

(b) Her Majesty in right of a province may not exercise rights under any provision of provincial legislation in respect of the company where the company is a debtor under that legislation and the provision has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection,

for such period as the court considers appropriate but ending not later than the occurrence or time referred to in whichever of subparagraphs (a)(i) to (v) may apply.

(2) When order ceases to be in effect — An order referred to in subsection (1) ceases to be in effect if

(a) the company defaults on payment of any amount that becomes due to Her Majesty after the order is made and could be subject to a demand under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(iii) under any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection; or

(b) any other creditor is or becomes entitled to realize a security on any property that could be claimed by Her Majesty in exercising rights under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

(3) Operation of similar legislation — An order made under section 11, other than an order referred to in subsection (1) of this section, does not affect the operation of

(a) subsections 224(1.2) and (1.3) of the *Income Tax Act*,

(b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection,

and for the purpose of paragraph (c), the provision of provincial legislation is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as subsection 224(1.2) of the *Income Tax Act* in respect of a sum referred to in subparagraph (c)(i), or as subsection 23(2) of the *Canada Pension Plan* in respect of a sum referred to in subparagraph (c)(ii), and in respect of any related interest, penalties or other amounts.

18.3 (1) Deemed trusts — Subject to subsection (2), notwithstanding any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a debtor company shall not be regarded as held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

(2) Exceptions — Subsection (1) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, subsection 23(3) or (4) of the *Canada Pension Plan* or subsection 86(2) or (2.1) of the *Employment Insurance Act* (each of which is in this subsection referred to as a "federal provision") nor in respect of amounts deemed to be held in trust under any law of a province that creates a deemed trust the sole purpose of which is to ensure remittance to Her Majesty in right of the province of amounts deducted or withheld under a law of the province where

(a) that law of the province imposes a tax similar in nature to the tax imposed under the *Income Tax Act* and the amounts deducted or withheld under that law of the province are of the same nature as the amounts referred to in subsection 227(4) or (4.1) of the *Income Tax Act*, or

(b) the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan*, that law of the province establishes a "provincial pension plan" as defined in that subsection and the amounts deducted or withheld under that law of the province are of the same nature as amounts referred to in subsection 23(3) or (4) of the *Canada Pension Plan*,

and for the purpose of this subsection, any provision of a law of a province that creates a deemed trust is, notwithstanding any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as the corresponding federal provision.

18.4 (1) Status of Crown claims — In relation to a proceeding under this Act, all claims, including secured claims, of Her Majesty in right of Canada or a province or any body under an enactment respecting workers' compensation, in this section and in section 18.5 called a "workers' compensation body", rank as unsecured claims.

...

(3) Operation of similar legislation — Subsection (1) does not affect the operation of

(a) subsections 224(1.2) and (1.3) of the *Income Tax Act*,

(b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection,

and for the purpose of paragraph (c), the provision of provincial legislation is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as subsection 224(1.2) of the *Income Tax Act* in respect of a sum referred to in subparagraph (c)(i), or as subsection 23(2) of the *Canada Pension Plan* in respect of a sum referred to in subparagraph (c)(ii), and in respect of any related interest, penalties or other amounts.

...

20. [Act to be applied conjointly with other Acts] — The provisions of this Act may be applied together with the provisions of any Act of Parliament or of the legislature of any province, that authorizes or makes provision for the sanction of compromises or arrangements between a company and its shareholders or any class of them.

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as at September 18, 2009)

11. General power of court — 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.

...

11.02 (1) Stays, etc. — initial application — A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(2) Stays, etc. — other than initial application — A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(3) Burden of proof on application — The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

...

11.09 (1) Stay — Her Majesty — An order made under section 11.02 may provide that

(a) Her Majesty in right of Canada may not exercise rights under subsection 224(1.2) of the *Income Tax Act* or any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, in respect of the company if the company is a tax debtor under that subsection or provision, for the period that the court considers appropriate but ending not later than

(i) the expiry of the order,

(ii) the refusal of a proposed compromise by the creditors or the court,

(iii) six months following the court sanction of a compromise or an arrangement,

(iv) the default by the company on any term of a compromise or an arrangement, or

(v) the performance of a compromise or an arrangement in respect of the company; and

(b) Her Majesty in right of a province may not exercise rights under any provision of provincial legislation in respect of the company if the company is a debtor under that legislation and the provision has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection,

for the period that the court considers appropriate but ending not later than the occurrence or time referred to in whichever of subparagraphs (a)(i) to (v) that may apply.

(2) When order ceases to be in effect — The portions of an order made under section 11.02 that affect the exercise of rights of Her Majesty referred to in paragraph (1)(a) or (b) cease to be in effect if

(a) the company defaults on the payment of any amount that becomes due to Her Majesty after the order is made and could be subject to a demand under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection; or

(b) any other creditor is or becomes entitled to realize a security on any property that could be claimed by Her Majesty in exercising rights under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

(3) Operation of similar legislation — An order made under section 11.02, other than the portions of that order that affect the exercise of rights of Her Majesty referred to in paragraph (1)(a) or (b), does not affect the operation of

(a) subsections 224(1.2) and (1.3) of the *Income Tax Act*,

(b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection,

and for the purpose of paragraph (c), the provision of provincial legislation is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as subsection 224(1.2) of the *Income Tax Act* in respect of a sum referred to in subparagraph (c)(i), or as subsection 23(2) of the *Canada Pension Plan* in respect of a sum referred to in subparagraph (c)(ii), and in respect of any related interest, penalties or other amounts.

37. (1) Deemed trusts — Subject to subsection (2), despite any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a debtor company shall not be regarded as being held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

(2) Exceptions — Subsection (1) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, subsection 23(3) or (4) of the *Canada Pension Plan* or subsection 86(2) or (2.1) of the *Employment Insurance Act* (each of which is in this subsection referred to as a "federal provision"), nor does it apply in respect of amounts deemed to be held in trust under any law of a province that creates a deemed trust the sole purpose of which is to ensure remittance to Her Majesty in right of the province of amounts deducted or withheld under a law of the province if

(a) that law of the province imposes a tax similar in nature to the tax imposed under the *Income Tax Act* and the amounts deducted or withheld under that law of the province are of the same nature as the amounts referred to in subsection 227(4) or (4.1) of the *Income Tax Act*, or

(b) the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan*, that law of the province establishes a "provincial pension plan" as defined in that subsection and the amounts deducted or withheld under that law of the province are of the same nature as amounts referred to in subsection 23(3) or (4) of the *Canada Pension Plan*,

and for the purpose of this subsection, any provision of a law of a province that creates a deemed trust is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as the corresponding federal provision.

Excise Tax Act, R.S.C. 1985, c. E-15 (as at December 13, 2007)

222. (1) [Deemed] Trust for amounts collected — Subject to subsection (1.1), every person who collects an amount as or on account of tax under Division II is deemed, for all purposes and despite any security interest in the amount, to hold the amount in trust for Her Majesty in right of Canada, separate and apart from the property of the person and from property held by any secured creditor of the person that, but for a security interest, would be property of the person, until the amount is remitted to the Receiver General or withdrawn under subsection (2).

(1.1) Amounts collected before bankruptcy — Subsection (1) does not apply, at or after the time a person becomes a bankrupt (within the meaning of the *Bankruptcy and Insolvency Act*), to any amounts that, before that time, were collected or became collectible by the person as or on account of tax under Division II.

...

(3) Extension of trust — Despite any other provision of this Act (except subsection (4)), any other enactment of Canada (except the *Bankruptcy and Insolvency Act*), any enactment of a province or any other law, if at any time an amount deemed by subsection (1) to be held by a person in trust for Her Majesty is not remitted to the Receiver General or withdrawn in the manner and at the time provided under this Part, property of the person and property held by any secured creditor of the person that, but for a security interest, would be property of the person, equal in value to the amount so deemed to be held in trust, is deemed

(a) to be held, from the time the amount was collected by the person, in trust for Her Majesty, separate and apart from the property of the person, whether or not the property is subject to a security interest, and

(b) to form no part of the estate or property of the person from the time the amount was collected, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to a security interest

and is property beneficially owned by Her Majesty in right of Canada despite any security interest in the property or in the proceeds thereof and the proceeds of the property shall be paid to the Receiver General in priority to all security interests.

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (as at December 13, 2007)

67. (1) Property of bankrupt — The property of a bankrupt divisible among his creditors shall not comprise

(a) property held by the bankrupt in trust for any other person,

(b) any property that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides, or

(b.1) such goods and services tax credit payments and prescribed payments relating to the essential needs of an individual as are made in prescribed circumstances and are not property referred to in paragraph (a) or (b),

but it shall comprise

(c) all property wherever situated of the bankrupt at the date of his bankruptcy or that may be acquired by or devolve on him before his discharge, and

(d) such powers in or over or in respect of the property as might have been exercised by the bankrupt for his own benefit.

(2) Deemed trusts — Subject to subsection (3), notwithstanding any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a bankrupt shall not be regarded as held in trust for Her Majesty for the purpose of paragraph (1)(a) unless it would be so regarded in the absence of that statutory provision.

(3) Exceptions — Subsection (2) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, subsection 23(3) or (4) of the *Canada Pension Plan* or subsection 86(2) or (2.1) of the *Employment Insurance Act* (each of which is in this subsection referred to as a "federal provision") nor in respect of amounts deemed to be held in trust under any law of a province that creates a deemed trust the sole purpose of which is to ensure remittance to Her Majesty in right of the province of amounts deducted or withheld under a law of the province where

(a) that law of the province imposes a tax similar in nature to the tax imposed under the *Income Tax Act* and the amounts deducted or withheld under that law of the province are of the same nature as the amounts referred to in subsection 227(4) or (4.1) of the *Income Tax Act*, or

(b) the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan*, that law of the province establishes a "provincial pension plan" as defined in that subsection and the amounts deducted or withheld under that law of the province are of the same nature as amounts referred to in subsection 23(3) or (4) of the *Canada Pension Plan*,

and for the purpose of this subsection, any provision of a law of a province that creates a deemed trust is, notwithstanding any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as the corresponding federal provision.

86. (1) Status of Crown claims — In relation to a bankruptcy or proposal, all provable claims, including secured claims, of Her Majesty in right of Canada or a province or of any body under an Act respecting workers' compensation, in this section and in section 87 called a "workers' compensation body", rank as unsecured claims.

...

(3) Exceptions — Subsection (1) does not affect the operation of

(a) subsections 224(1.2) and (1.3) of the *Income Tax Act*;

(b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection,

and for the purpose of paragraph (c), the provision of provincial legislation is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as subsection 224(1.2) of the *Income Tax Act* in respect of a sum referred to in subparagraph (c)(i), or as subsection 23(2) of the *Canada Pension Plan* in respect of a sum referred to in subparagraph (c)(ii), and in respect of any related interest, penalties or other amounts.

Footnotes

- 1 Section 11 was amended, effective September 18, 2009, and now states:
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.
- 2 The amendments did not come into force until September 18, 2009.

TAB 4

[Attached]

1995 CarswellOnt 340
Ontario Court of Justice (General Division), Commercial List

Olympia & York Developments Ltd., Re

1995 CarswellOnt 340, [1995] O.J. No. 2658, 34 C.B.R. (3d) 93, 57 A.C.W.S. (3d) 706

Re BANKRUPTCY OF OLYMPIA & YORK DEVELOPMENTS LIMITED

Farley J.

Heard: April 18, 1995

Judgment: September 1, 1995

Docket: Docs. 31-204546T, 31-204573T and 31-204574T

Counsel: *Patricia D.S. Jackson*, for moving party, Bank of Nova Scotia.
Arnie Herschorn, for Institute for Advanced Talmudic Study.

Subject: Corporate and Commercial; Insolvency; Property; Estates and Trusts

Related Abridgment Classifications

Bankruptcy and insolvency

[VIII](#) Property of bankrupt

[VIII.19](#) Miscellaneous

Bankruptcy and insolvency

[XIV](#) Administration of estate

[XIV.3](#) Trustee's possession of assets

[XIV.3.d](#) Miscellaneous

Bankruptcy and insolvency

[XIX](#) Companies' Creditors Arrangement Act

[XIX.1](#) General principles

[XIX.1.c](#) Application of Act

[XIX.1.c.i](#) Relationship between Act and Bankruptcy and Insolvency Act

Headnote

Corporations --- Arrangements and compromises — Under Companies' Creditors Arrangement Act — Arrangements — Effect of arrangement

Bankruptcy --- Property of bankrupt

Bankruptcy --- Administration of estate — Trustee's possession of assets

Receiving orders — Annuling, reviewing and rescinding order — Receiving order vesting only part of debtor's assets in trustee and not including assets previously alienated by debtor in bona fide fashion — Creditor's motion to annul bankruptcy or rescind receiving order dismissed.

A bank brought a motion for an order pursuant to s. 181 of the *Bankruptcy and Insolvency Act* annulling the bankruptcy of O&Y created by a receiving order in conjunction with two other orders, or, in the alternative, an order pursuant to s. 187(5) of the Act reviewing and rescinding the orders. The receiving order had been advanced by the petitioning creditors in accordance with the procedure set out in the *Companies' Creditors Arrangement Act* ("CCAA") plan approved by the creditors and sanctioned by the court.

The bank argued that the orders were contrary to the *Bankruptcy and Insolvency Act* for the following reasons: they created a partial and entirely voidable bankruptcy, apparently for the purpose of avoiding significant adverse tax consequences associated with a "proper" bankruptcy; they vested only a portion of the assets of O&Y that the Act requires to be vested in the trustee; they limited the powers and duties that the Act requires of a trustee in bankruptcy; they required the administrator to act contrary to the Act; and they allowed for the use of certain sections of the Act in respect

of certain preferences and settlements while at the same time limiting the trustee's power to review and challenge other potential preferences, settlements, and reviewable transactions that the trustee would examine in a "proper" bankruptcy. It was intended that these faults would be corrected when the orders were annulled, when the utility of those parts of the *Bankruptcy and Insolvency Act* sought to be relied on had been exhausted. The bank also argued that the orders had been granted on an ex parte basis so that the parties affected by them, such as the bank, had not been allowed to participate. The administrator and the trustee argued that the bank was trying to use the motion to obtain relief that would have the effect of shielding the bank from an action being continued by the trustee to set aside alleged preferential transactions that benefited the bank, to the prejudice of other unsecured creditors of O&Y.

Held:

The motion was dismissed.

The court has an inherent jurisdiction to give purpose and meaning to the *Bankruptcy and Insolvency Act* or to supplement what is permitted by the legislation. A strict and technical approach to the Act would defeat the purpose of the legislation, which is the appropriate distribution of the bankrupt's property among the bankrupt's creditors. Where a bankrupt has entered into bona fide contractual arrangements regarding certain of its assets, those assets will not form part of the property of the bankrupt. In this case, the receiving order would have the effect of having all property of the bankrupt devolve upon the trustee, except that property previously alienated in a bona fide fashion.

Section 6(b) of the CCAA provides that a court-sanctioned plan under the CCAA is binding upon a trustee in bankruptcy already in existence; therefore, the rights and obligations of a subsequently appointed trustee will be subject to a pre-existing sanctioned CCAA plan. Implicit in s. 16(3) of the *Bankruptcy and Insolvency Act*, which provides that the trustee will take possession of all the bankrupt's property, is the concept of property that is capable of devolving upon the trustee. In this case, the preference action was the only asset comprising the property of O&Y that was capable of devolving upon the trustee.

It is contrary to the general philosophy of the *Bankruptcy and Insolvency Act* to require that the trustee actually take possession of certain assets when that action would subject the trustee to greater liability than there would be value in the asset.

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Amirault Fish Co., Re, 32 C.B.R. 186, [1951] 4 D.L.R. 203 (N.S. T.D.) — referred to
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Develox Industries Ltd., Re, 14 C.B.R. (N.S.) 132, [1970] 3 O.R. 199, 12 D.L.R. (3d) 579 (S.C.) — considered
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Gasthof Schnitzel House Ltd. v. Sanderson, 27 C.B.R. (N.S.) 75, [1978] 2 W.W.R. 756 (B.C. S.C.) — referred to
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Loxtave Buildings of Canada Ltd., Re (1943), 25 C.B.R. 22 (Sask. K.B.) — referred to

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Statutes considered:

Assignments and Preferences Act, R.S.O. 1990, c. A.33.

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

s. 2 "property"

s. 16(3)

s. 30(1)

s. 46

s. 66(2)

s. 67(1)

s. 71(2)

s. 158(a)

s. 181

s. 181(1)

s. 187(5)

Business Corporations Act, R.S.O. 1990, c. B.16 —

s. 248 [am. S.O. 1994, c. 27, s. 71(33)]

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 —

s. 6(b) [am. S.C. 1992, c. 27, s. 90]

Fraudulent Conveyances Act, R.S.O. 1990, c. F.29.

Forms considered:

Bankruptcy and Insolvency Rules,

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Sched. III,

re-en. SOR/92-579, s. 31]

Motion under s. 181 of *Bankruptcy and Insolvency Act* for order annulling bankruptcy or rescinding receiving orders.

Jarley J.:

1 The Bank of Nova Scotia ("BNS") moved for an order pursuant to s. 181 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("BIA"), annulling the bankruptcy of Olympia & York Developments Limited ("OYDL") created by a receiving order dated December 20, 1994 ("receiving order") in combination with two other orders of the same date (conjunctively the "December orders"), or, in the alternative, an order pursuant to s. 187(5) of BIA reviewing and rescinding the December orders. BNS was supported in this regard by various other parties (Martin Orbach, Lewis Gestetner, and HRF Fund Holdings Inc.; the Institute for Advanced Talmudic Study; and Yeshiva Yesodei Hatora), which, subsequent to the hearing but prior to the release of my decision, have entered into settlement agreements with the respondents Coopers & Lybrand OYDL Inc., the administrator ("administrator") pursuant to the OYDL *Companies Creditors' Arrangement Act* (R.S.C. 1985, c. C-36 — "CCAA") plan, and Coopers & Lybrand Limited, the trustee in bankruptcy of OYDL ("trustee"), pursuant to the receiving order. The OYDL Creditors' Monitoring Committee supported the position of the administrator and trustee.

2 On May 20, 1992, petitions in bankruptcy were issued against OYDL by 976910 Ontario Inc., Credit Lyonnais, and the HongKong and Shanghai Banking Corporation Limited. The subject receiving order made against OYDL was advanced by the petitioners in accordance with the procedure set out in s. 10.7 of the OYDL CCAA plan, which was approved by the creditors of OYDL under the CCAA and sanctioned by the court on February 5, 1993. I granted the receiving order on December 20, 1994, together with two other orders, administrative in nature, which are individually referred to as the BIA admin order and the CCAA admin order.

3 BNS submits that the December orders are contrary to BIA in that they:

- (a) create a partial and entirely voidable bankruptcy of OYDL, for the apparent purpose of avoiding significant adverse tax consequences associated with a "proper" bankruptcy of OYDL;
- (b) vest only a portion of the assets of OYDL which BIA requires to be vested in the trustee;
- (c) limit the powers and duties which BIA requires of a trustee in bankruptcy such as the trustee;
- (d) require the administrator to act contrary to BIA; and
- (e) allow for the use of certain sections of BIA in respect of certain preferences and settlements while at the same time limiting the trustee's power to review and challenge other potential preferences, settlements, and reviewable transactions which the trustee would examine under a "proper" bankruptcy of OYDL,

but all in contemplation that the December orders would be annulled in the future (and hence, in the language of BIA, "ought never to have been made") when the utility of those portions of BIA sought to be relied on has been exhausted. BNS also complains that the December orders were made on an ex parte basis without the participation of those, such as BNS, whose rights would be affected by them. The administrator and trustee countered by saying that BNS is attempting to use this motion to obtain relief which would have the effect of shielding itself from an action being continued by the trustee to set aside certain alleged preferential transactions which were for the benefit of BNS, to the prejudice of the other unsecured creditors of OYDL.

4 The two sections of BIA which were specified by BNS were:

181. (1) Where, in the opinion of the court, a receiving order ought not to have been made ... the court may by order annul the bankruptcy.

187(5) Every court may review, rescind or vary any order made by it under its bankruptcy jurisdiction.

5 In the proceedings under CCAA, the creditors of OYDL negotiated and voted on the OYDL CCAA Plan; 27 of 35 classes of creditors voted in favour, the remaining 8 voted against the plan. The claims of BNS with respect to the swap transactions (defined infra) were included in Class 33A, which class voted against the plan. The February 5, 1993, sanction order appointed the administrator as the administrator of OYDL; in s. 16(b) the order provided that, in exercising its power and authority pursuant to the plan, the administrator was the agent of OYDL and not the agent of the creditors of OYDL.

6 On June 10, 1993, the administrator commenced an action ("preference action") which sought to set aside and declare void certain transactions between OYDL, Olympia & York CC Limited ("OYCC"), Baden Real Estate Corp., and BNS ("swap transactions") on the basis that:

(a) the swap transactions were entered into with the intention and effect of giving BNS an improper preference over the other creditors of OYDL and of defeating, hindering, delaying, prejudicing, or defrauding OYDL's creditors contrary to the Ontario *Fraudulent Conveyances Act*, the Ontario *Assignments and Preferences Act*, and BIA;

(b) they constituted settlements pursuant to BIA; and

(c) they were oppressive, unfairly prejudicial to, or unfairly disregarded the interests of OYDL, OYCC, and the security holders and creditors thereof, contrary to s. 248 of the Ontario *Business Corporations Act*.

In its statement of defence, BNS stated:

(a) Class 33A was specifically excluded from those classes of creditors which approved the plan and, accordingly, none of the terms of the plan apply to BNS in its capacity as a creditor in respect of the swap transaction; and

(b) the administrator, which was appointed by the sanction order and which derives all its authority from the sanction order in the plan, therefore has no standing to assert any of the claims set forth in the statement of claim in the preference action.

BNS then moved to dismiss the preference action on the foregoing basis.

7 On December 20, 1994, counsel for the administrator representing OYDL and for each of the petitioning creditors attended upon me regarding the December orders. There had been some discussions two weeks earlier between counsel for the administrator and for BNS concerning the possibility of the receiving order motion and on December 19, 1994, counsel for the administrator advised counsel for BNS that the administrator intended to proceed within the next day with the bankruptcy of OYDL as contemplated in s. 10.7 of the plan. In the affidavit of Paul Currie, an employee of the administrator, it was set out that one of the principal reasons for seeking the December orders was the pending BNS motion. Another factor considered was the position of the federal and provincial Crowns under the CCAA plan. The Ontario Court of Appeal in *Fine's Flowers Ltd. v. Fine's Flowers Ltd. (Creditors of)* (1993), 22 C.B.R. (3d) 1, has now ruled subsequent to the approval of the subject plan that the Crown is not bound by CCAA proceedings. Further, Mr. Currie indicated that "[a] bankruptcy under section 10.7 will enable the Administrator to effectively deal with the remaining assets of OYDL, creditors who are affected by the Plan and creditors who are not affected by the Plan." The receiving order was issued in the general form of Form 28 of Schedule 111 of BIA.

8 The administrator was appointed in the CCAA proceedings and is charged with the responsibility of implementing the plan. In pursuing the BIA proceedings the administrator is required to follow the provisions of s. 10.7 of the CCAA

plan. The provisions of the plan and of the December orders do not restrict the court from utilizing its discretion at the hearing of any motion to annul the receiving order.

9 The administrator points out that, in addition to having claims under Class 33A (swap transactions), BNS is a substantial creditor of OYDL in the Class 28 unsecured creditors as to \$540 million of unsecured claims. While creditors of Class 28 voted in favour of the plan and are bound by it, they are only bound by it, in my view, qua their condition of being a Class 28 creditor — and not in their condition, if such were the case, under a class which did not vote in favour of the plan.

10 In accordance with the receiving order the provisions of BIA and s. 10.7 of the plan, it is the position of the administrator and trustee that the preference action was vested in the trustee. On January 30, 1995, the administrator issued its annual report to the creditors of OYDL; it stated, at pp. 17-8, that:

A fundamental objective in making the [bankruptcy] filing was to ensure that OYDL and the Administrator could utilize the sections of the Plan available to continue the preference action. As you will recall the Plan provided for a section 10.7 "limited bankruptcy" of OYDL if defendants to preference actions sought to have preference actions dismissed on jurisdictional grounds. Certain creditors have sought this remedy and after considering the consequences of such action the Administrator decided to utilize section 10.7 of the Plan.

Effect of 10.7(L) Bankruptcy

Counsel has advised that the effect of 10.7(L) is as follows:

- * OYDL is in bankruptcy;
- * the vesting of assets to the Trustee is limited to the preference action; and
- * the Plan continues to be binding on OYDL.

11 BNS asserts that the fact that the bankruptcy was so limited was not clear from the December orders or from the affidavit of Mr. Currie since the receiving order merely appoints Coopers & Lybrand Limited as the trustee in bankruptcy of the estate of OYDL (not a portion of the estate) and there is nothing contained therein to suggest that the apparent objective of this "limited" vesting of assets in the trustee was an attempt to avoid the potential negative tax consequences associated with the possible change in control of all of the assets of OYDL being vested in the trustee.

12 Section 10.7(L) of the plan provides:

(L) Notwithstanding the granting of a receiving order pursuant to this Section 10.7, the Plan as sanctioned shall continue to be binding upon all Creditors and shall be binding upon the trustee in bankruptcy of the Relevant Applicant and the Relevant Applicant. Such receiving order shall, accordingly, vest all Preference Claims in the trustee but shall not vest any other assets nor require any administration save as contemplated hereby or ordered by the Court. Without limiting the foregoing, the powers of the Administrator with respect to OYDL and its property shall not be diminished or modified by the terms of this Section 10.7 or any deemed vesting of title in a trustee in bankruptcy of OYDL. When all Recourses [proceedings taken to enforce Preference Claims] in respect of a Relevant Applicant have been completed, whether by withdrawal of the Recourses, settlement thereof, final judgment in respect thereof or otherwise, and any required administration of the bankrupt estate completed, *the Relevant Applicant shall, in the case of OYDL, and may, in the case of the other Relevant Applicants, apply for the annulment of the receiving order pursuant to Section 181 and Subsection 187(5) of the Bankruptcy Act, and the Administrator and the Creditors of the Relevant Applicant shall not oppose such annulment unless it adversely affects the exercise of a Recourse, any judgment rendered in respect of a Recourse or any settlement made between a Moving Party and a Respondent.* (Emphasis added.)

13 Section 10.7(M) of the plan provides:

(M) The application for annulment provided for in Section 10.7(L) may be made earlier than therein contemplated with the consent of the relevant Moving Party and the trustee in bankruptcy of the Relevant Applicant on such terms as the relevant Moving Party may, in its discretion, agree to accept.

14 It appears to me that the issue in this motion is whether the court should either annul the receiving order or rescind the December orders either because there was no jurisdiction in the court to have granted these orders on December 20, 1994, or that BNS, as supported by the other parties, has shown additional information as to why this court's discretion should be so exercised.

15 If BIA does not allow for such a receiving order in the sense that the legislation does not permit a receiving order of the nature granted, then clearly I cannot impose my views of what is an appropriate regime to operate under regarding bankruptcy matters and disregard what is the express will of Parliament: see *R. v. McIntosh*, [1995] S.C.J. No.16, at pp. 39-40. This, of course, should be contrasted with the aspect of the inherent jurisdiction of this court to deal with the vacuum which is required to be filled so as to give purpose and meaning to the legislation or to supplement what is permitted by the legislation so that there is a firm foundation on which to build, as opposed to a partial base of sand. In this regard see the views of Chadwick J. in his unreported decision *Re J.P. Capital Corp.*, released February 28, 1995 [reported at (1995), 31 C.B.R. (3d) 102 (Ont. Bkcty.)] (especially at p. 4 [p. 104 C.B.R.] where he comments on *Re A. & F. Baillargeon Express Inc.* (1993), 27 C.B.R. (3d) 36 (C.S. Que.); *Montreal Trust Co. v. Churchill Forest Industries (Manitoba) Inc.* (1971), 21 D.L.R. (3d) 75 (Man. Q.B.); in *Re Thustie* (1923), 3 C.B.R. 654 (Ont. S.C.); *Re Loxtave Buildings of Canada Ltd.* (1943), 25 C.B.R. 22 (Sask. K.B.); *Re Cheerio Toys & Games Ltd.* (1971), 15 C.B.R. (N.S.) 77 (Ont. S.C.), affirmed [1972] 2 O.R. 845 (C.A.); *Re Westar Mining Ltd.* (1992), 14 C.B.R. (3d) 88 (B.C. S.C.); *Re Woodward's Ltd.* (1993), 17 C.B.R. (3d) 236 (B.C. S.C.); *Re Lehndorff General Partner Ltd.* (1993), 9 B.L.R. (2d) 275 (Ont. Gen. Div.). It should, however, be recognized that in the present situation there is no such general enabling language present, as was the case in *Canada (Minister of Indian Affairs & Northern Development) v. Curragh Inc.* (1994), 27 C.B.R. (3d) 148 (Ont. Gen. Div.) [Commercial List], where "takes such other action as the court [deems] advisable" was in place. As Chadwick J. said at p. 143 of *Re N.T.W. Management Group Ltd.* (1994), 29 C.B.R. (3d) 139 (Ont. Bkcty.):

Courts have recognized in dealing with the bankruptcy and insolvency legislation a technical or stringent interpretation should not be applied. The Act has to be flexible to deal with the numerous situations and variations which arise from time to time. To take a technical approach to the Act would in my view defeat the whole purpose of the legislation.

Clearly, it would be undesirable for the general working of the bankruptcy and insolvency regime (be it pursuant to BIA or CCAA or a combination thereof since there must be a meshing of these two pieces of legislation) for some party to escape the scrutiny (and if found wanting, the rectification) of a preference review merely through a technical device. However, it must be acknowledged that the prevailing legislation may not always be perfect so as to preclude such a result; it may be that a party may be able to take advantage of such an imperfection until such is cured by amendment.

16 BNS submits that the December orders create a partial and entirely voidable bankruptcy in which only certain preference claims of OYDL and no other assets vest in the trustee, which limited vesting of assets would be contrary to s. 71(2) of BIA, which provides:

71(2) On a receiving order being made or an assignment being filed with an official receiver, a bankrupt ceases to have any capacity to dispose of or otherwise deal with his property, which shall, subject to this Act and to the rights of secured creditors, forthwith pass to and vest in the trustee named in the receiving order or assignment, and in any case of change of trustee the property shall pass from trustee to trustee without any conveyance, assignment or transfer.

"Property" for the purpose of BIA has been broadly defined in s. 2 as:

2. In this Act,

... "property" includes money, goods, things in action, land and every description of property, whether real or personal, legal or equitable, and whether situated in Canada or elsewhere, and includes obligations, easements and every description of estate, interest and profit, present or future, vested or contingent in, arising out of or incident to property

BNS then submits that s. 67(1) of BIA reinforces the aspect that a bankruptcy must involve *all* the bankrupt's property (but implicitly this must mean *all* property of *value* since it would be inappropriate to distribute "excess" liabilities).

67. (1) The property of a bankrupt divisible among his creditors shall not comprise

(a) property held by the bankrupt in trust for any other person,

(b) any property that as against the bankrupt is exempt from execution or seizure under the laws of the province within which the property is situated and within which the bankrupt resides,

but it shall comprise

(c) *all property* wherever situated of the bankrupt at the date of his bankruptcy or that may be acquired by or devolve on him before his discharge, and

(d) such powers in or over or in respect of the property as might have been exercised by the bankrupt for his own benefit. (Emphasis added.)

It must be recognized that one of the fundamental purposes of the bankruptcy legislation is the appropriate distribution of the bankrupt's property amongst its creditors. See L.W. Houlden and C.H. Morawetz, *Bankruptcy and Insolvency Law of Canada*, 3d ed., looseleaf (Scarborough, Ont.: Carswell, 1995). It would seem to me that "shall" should be read in the imperative sense and that "all property" cannot be modified to provide that it should be part of the property: see *Cheerios*, supra, at p. 81. That s. 46 of BIA provides for the appointment of an interim receiver over "any part" of the property of a debtor does not seem to me to imply that BIA also provides by implication that a trustee can be appointed over "part" of the bankrupt's estate. However, of course, it should be noted that the property does not include all assets which are legally but not beneficially held by the bankrupt. In this regard it would seem to me that where the bankrupt has entered into bona fide contractual arrangements as to certain of its assets, then these assets would by implication not form part of the property of the bankrupt in the Frankian jurisprudential sense that certain of the bundle of rights (and reciprocal obligations) of those assets which have been dealt with have been alienated; however, that would not thereby "disqualify" those remaining rights (and obligations) from forming part of the bankrupt's property. It would seem that it is clear that the preference action is an asset which is appropriately property capable of devolving upon the trustee; similarly, if the preference action is successful, then the security which the BNS claims in relation to the swap transactions will be void and thus there is the appropriate devolution to the trustee of this (inchoate) right to the property forming the security for the BNS swap transaction as of the receiving order.

17 It seems to me that the receiving order would have the effect of having all property of the bankrupt devolve upon the trustee. However, as discussed immediately above, this would not include any aspect of assets which have been otherwise alienated in a bona fide fashion. It would appear that the concern of BNS as to whether or not all (appropriate) property has so devolved upon the trustee lies as to para.4 of the BIA admin order of December 20, 1994, which states:

This Court Orders that, notwithstanding the granting of the Receiving Order pursuant to section 10.7 of the Plan, the Plan as sanctioned shall continue to be binding on the trustee in bankruptcy OYDL and OYDL.

Section 66(2) of BIA provides that "Nothing in this Act [BIA] shall be deemed to affect the operation of [CCAA]." It would seem to me that the sanctioned plan can be taken into account in the situation of determining what property is to devolve unto the trustee. As Blair J. said in his reasons in sanctioning the plan on February 5, 1993 (over two years ago) [reported as *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 17 C.B.R. (3d) 1 (Ont. Gen. Div.), at p. 19]:

From this perspective it could be said that the parties are merely being held to — or allowed to follow — their contractual arrangement. There is, indeed, authority to suggest that a Plan of compromise or arrangement is simply a contract between the debtor and its creditors, sanctioned by the court, and that the parties should be entitled to put anything into such a Plan that could be lawfully incorporated into any contract: see *Re Canadian Vinyl Industries Inc.* (1978), 29 C.B.R. (N.S.) 12 (C.S. Que.), at p. 18; L.W. Houlden & C.H. Morawetz, *Bankruptcy Law of Canada*, vol. 1 (Toronto: Carswell, 1984) pp. E-6 and E-7.

18 Thus, if one takes into account the sanctioned plan (which, by implication, Blair J. determined was a bona fide contract), then it appears that the only property which was not burdened by the contractual relations of the plan was the preference action and the related asset to it. If there were other assets not so dealt with in the plan, then they would also have to be dealt with in the sense that they would devolve unto the trustee. If there are in fact other assets not so dealt with but which would have to be in accordance with this perspective, it may be entirely possible that the administrator and trustee may wish to revisit the question, especially if there would be severe adverse tax consequences. I note that CCAA need not be employed to revitalize a corporation but can also involve a liquidation scenario: See *Lehndorff*, supra, at p. 284 [B.L.R.], relying on *Re Associated Investors of Canada Ltd.* (1987), 67 C.B.R. (N.S.) 237 (Alta. Q.B.), at p. 318, reversed on other grounds (1988), 71 C.B.R. (N.S.) 71 (C.A.), and *Re Amirault Fish Co.*, 32 C.B.R. 186, [1951] 4 D.L.R. 203 (N.S. T.D.), at pp. 187-188 (C.B.R.). In this regard I believe it fair and reasonable to categorize the Olympia & York CCAA plan as being more of the liquidation scenario as opposed to the revitalization one; those classes which did not vote in favour of the plan were allowed, in effect, to exercise and realize upon their security with the attendant "disappearance" of those assets from the scene. No one has appealed the sanction order of February 5, 1993, which approved the plan which contains s. 10.7(L) and (M). Section 6(b) of CCAA provides that a court sanctioned plan under CCAA is binding upon a trustee in bankruptcy already in existence; a fortiori, it would seem that the rights and obligations of a subsequently appointed trustee would be subject to a pre-existing sanctioned CCAA plan.

19 I do not see this type of situation, namely, an open bona fide arrangement which has been approved in accordance with the provisions of CCAA, as being contrary to public policy, as was the concern in *Re Knechtel Furniture Ltd.* (1985), 56 C.B.R. (N.S.) 258 (Ont. S.C.), where the "private" arrangement was designed to keep certain assets out of the hands of creditors (with no quid pro quo). Similarly, there does not appear to be any material risk of abuse, as would be the case where an undischarged bankrupt tried to deal with his property despite having no status (see *McNamara v. Pagecorp Inc.* (1989), 76 C.B.R. (N.S.) 97 (Ont. C.A.)), since in the present case the administrator appointed pursuant to the plan sanctioned by the court would be dealing with matters in accordance with that plan and would always be under the general supervisory jurisdiction of the court.

20 It would seem to me that implicit in s. 16(3) of BIA requiring the trustee to take "possession of ... all property of the bankrupt" is the concept, as discussed above, that if the property which is capable of devolving upon the trustee in that it has not otherwise been appropriately alienated. The same philosophy would also deal with the concerns of BNS as to s. 158(a). It would also appear contrary to the general philosophy of the bankruptcy legislation to require an actual taking of possession of certain assets when that action would subject the trustee in the estate to greater liability than there would be value in the asset (e.g., the possession of leased premises with attendant exposure to occupation rent or the possession of hazardous property with the exposure to environmental liability). It would also appear that the plan which was sanctioned has otherwise dealt with the other potential preference settlements and related matters.

21 It does not seem to me that BNS has made out a case that the obtaining of the December orders was an abusive process if the preference action is truly the only asset which comprises the property of OYDL when one looks at what is capable of devolving upon the trustee. It is not, of course, improper to use BIA for specific purposes aside from the division of the bankrupt's assets amongst creditors, including being able to employ remedies which would not be available outside the bankruptcy: see *Re Maple City Ford Sales (1986) Ltd.* (1992), 14 C.B.R. (3d) 188 (Ont. Bkcty.); *Re Four Twenty-Seven Investments Ltd.*; *Re 495487 Ontario Ltd.* (1985), 55 C.B.R. (N.S.) 183 (Ont. S.C.), affirmed (1985), 58 C.B.R. (N.S.) 266 (Ont. C.A.); *Re 676915 Ontario Ltd.* (1989), 76 C.B.R. (N.S.) 164 (Ont. S.C.); *Gasthof Schnitzel House Ltd. v. Sanderson* (1978), 27 C.B.R. (N.S.) 75 (B.C. S.C.).

22 I would observe that I do not feel that s. 30(1) of BIA advances the cause of the administrator and trustee since that section clearly contemplates that a trustee in bankruptcy would have had devolved onto him the rights of the bankrupt tenant vis-à-vis the lease. That section only allows the trustee to otherwise deal with that property. It would seem to me that *Stead Lumber Company v. Lewis (No. 2)* (1957), 37 C.B.R. 24 (Nfld. T.D.); *Re Erin Features #1 Ltd.* (1991), 8 C.B.R. (3d) 205 (B.C. S.C.); *Re Bakermaster Foods Ltd.* (1985), 56 C.B.R. (N.S.) 314 (Ont. S.C.), should be viewed in the same light vis-à-vis the trustee's ability to disclaim or abandon "improvident contracts."

23 I would also note as to the status of BNS to bring this motion that the obiter views of Houlden J. in *Re Develox Industries Ltd.* (1970), 14 C.B.R. (N.S.) 132 (Ont. S.C.), at p. 133, were not exhaustive when he said:

In view of the disposition which I propose to make of this application, I do not have to give a definite answer to this question. However, it would seem to me that the application to rescind or annul a receiving order should be by the debtor, the petitioning creditor or the trustee. In my view, to permit any creditor to bring such an application would be an abuse to the process of the court. For the purpose of this application I will assume that the landlord has the necessary status to ask that the receiving order be annulled or rescinded.

It would not seem that he was attempting to be definitive in all circumstances, but rather that he was giving rather valuable guidance as to the question in a general sense. Thus, it would appear that where there are unusual circumstances this general rule would not and should not be applied rigidly and unthinkingly. It would seem to me that a lack of jurisdiction proposal by a creditor would be an unusual circumstance worthy of giving that creditor status. However, I would also be of the view that motions of this nature would be truly infrequent and that if creditors were to inappropriately bring such a motion, they should be made an example for others by severe costs awards or other suitable sanction.

24 The motion of BNS is dismissed. BNS is to pay the administrator and trustee jointly \$10,000 costs. This is not a severe costs award.

Motion dismissed.

TAB 5

[Attached]

**ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

THE HONOURABLE	)	FRIDAY, THE 21 ST
	)	
MADAM JUSTICE PEPALL	)	DAY OF OCTOBER, 2011

**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 CANWEST GLOBAL COMMUNICATIONS CORP., AND THE OTHER
APPLICANTS LISTED ON SCHEDULE "A"**

Applicants

**ORDER
(CMI TRANSITION)**

THIS MOTION, made by FTI Consulting Canada Inc. in its capacity as the Court-appointed Monitor ("**Monitor**") of Canwest Global Communications Corp. and the other Applicants listed on **Schedule "A"** hereto (other than Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc., Canwest Television GP Inc. & Fox Sports World Canada Holdco Inc.) and The National Post Company/La Publication National Post (collectively, the "**Remaining CMI Entities**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order modifying the rights, duties and obligations of the CMI Trustee (as defined below) set forth in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") and other ancillary relief (as described in greater detail below) was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Twenty-Fourth Report of the Monitor and on hearing the submission of counsel to the Monitor and such other counsel as were present, and on being advised that the Service List was served with the Motion Record herein:

1. **THIS COURT ORDERS** that the time for service of the Motion Record shall be and is hereby abridged, if necessary, and that the motion is properly returnable today and that service thereof upon any interested party other than the persons served with the Motion Record is hereby dispensed with.
2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the consolidated plan of compromise, arrangement and reorganization accepted for filing by this Court on June 23, 2010, as restated on July 16, 2010, concerning, affecting and involving Canwest Global, Canwest Media Inc. (now 4514866 Canada Inc.) ("**CMI**"), Canwest Television GP Inc., Canwest Television Limited Partnership, Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc., Fox Sports World Canada Holdco Inc., Fox Sports World Canada Partnership, National Post Holdings Ltd. (now 4514858 Canada Inc.), The National Post Company/La Publication National Post, MBS Productions Inc., Yellow Card Productions Inc., Global Centre Inc. and 4501063 Canada Inc., as may be amended (the "**Plan**").
3. **THIS COURT ORDERS** that this Order shall become operative upon the bankruptcy of CMI and shall bind any trustee in bankruptcy that may be appointed in respect of CMI (the "**CMI Trustee**").
4. **THIS COURT ORDERS** that the Monitor shall:
 - (a) continue to hold the Ordinary CMI Creditors Sub-Pool and the Convenience Class Pool in trust for the benefit of the Affected Creditors of the Plan Entities (other than the Noteholders) in accordance with the Plan and the Plan Sanction Order dated July 28, 2010 (the "**Plan**");

Sanction Order") and continue to be authorized, empowered and directed to make distributions thereunder in accordance with the Plan and the Plan Sanction Order until further order of this Court;

- (b) continue to hold and maintain the Plan Implementation Fund in accordance with the Plan Emergence Agreement and the Plan;
- (c) continue to be authorized, directed and empowered to liquidate any assets of the CMI Entities (other than the CTLP Entities) not transferred to New Canwest and to contribute any net proceeds realized therefrom to the Plan Implementation Fund in accordance with the September 27 Order, the Plan, the Plan Sanction Order and the Plan Emergence Agreement and any such assets shall continue to not constitute property of the CMI Entities (and as such shall not vest in any CMI Trustee);
- (d) continue to be empowered with the rights and powers granted, and continue to be authorized and directed to perform its functions and fulfill its obligations, under the Plan, the Plan Emergence Agreement, the Plan Sanction Order and the Order dated September 27, 2010 (the "**September 27 Order**"), including, without limitation, to take such additional actions and execute such documents, in the name of and on behalf of any of Canwest and the Canwest Subsidiaries (other than the CTLP Plan Entities), as the Monitor considers necessary or desirable in order to perform its functions and fulfill its obligations under the September 27 Order, the Plan, the Plan Sanction Order and the Plan Emergence Agreement, and to facilitate the completion of these proceedings, the winding up of the estates of Canwest and the Canwest Subsidiaries (other than the CTLP Plan Entities) and the completion of the Wind-up Strategy (as defined in the September 27 Order), and

where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons including Canwest and the Canwest Subsidiaries and without interference from any other Person, including any trustee in bankruptcy of Canwest or the Canwest Subsidiaries; and

- (e) return to Court in order to seek such further authority or directions as the Monitor considers appropriate with respect to the proceedings of CMI under the CCAA.

5. **THIS COURT ORDERS** that the time periods for the CMI Trustee to perform its statutory obligations prescribed by Sections 16, 21, 22, 24, 27, 102 of the BIA (save for such reports as may be required pursuant to subsection 27(c) of the BIA) are hereby extended until further Order of this Honourable Court, and until such Order is made, the CMI Trustee shall be relieved from performing any such obligations.

6. **THIS COURT ORDERS** that the Noteholders and the Trustee shall have no Claims against CMI and that the Claims Procedure Order, the CMI Claims Bar Date, the Meeting Order and the Restructuring Period Claims Bar Date shall apply to resolve all Claims against CMI.

7. **THIS COURT ORDERS** that the Monitor, in the name of and on behalf of CMI, is authorized and directed to pay to the CMI Trustee appointed in respect of CMI a retainer of \$10,000 for its fees and disbursements from the Plan Implementation Fund, without any personal liability to the Monitor in connection therewith.

8. **THIS COURT ORDERS AND DECLARES** that in addition to the protections in favour of the Monitor as set out in the Initial Order, the CCAA, the Plan, the Plan Sanction Order and the September 27 Order, the Monitor shall not be liable for any act or omission on the part of the Monitor pertaining to the discharge of its duties

under this Order, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor.

Stykeall J

ENTERED AT / INSERTE A TORONTO
ON / LE NO:
LE / DANS LE REGISTRE NO.:

OCT 25 2011

PER/PAR:



Schedule "A"

The Applicants

1. Canwest Global Communications Corp.
2. Canwest Media Inc.
3. 30109, LLC
4. 4501063 Canada Inc.
5. 4501071 Canada Inc.
6. Canwest Finance Inc./Financiere Canwest Inc.
7. Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc.
8. Canwest International Communications Inc.
9. Canwest International Distribution Limited
10. Canwest International Management Inc.
11. Canwest Irish Holdings (Barbados) Inc.
12. Canwest MediaWorks Turkish Holdings (Netherlands) B.V.
13. Canwest MediaWorks (US) Holdings Corp.
14. Canwest Television GP Inc.
15. CGS Debenture Holding (Netherlands) B.V.
16. CGS International Holdings (Netherlands) B.V.
17. CGS NZ Radio Shareholding (Netherlands) B.V.
18. CGS Shareholding (Netherlands) B.V.
19. Fox Sports World Canada Holdco Inc.
20. Global Centre Inc.
21. MBS Productions Inc.
22. Multisound Publishers Ltd.
23. National Post Holdings Ltd.
24. Western Communications Inc.
25. Yellow Card Productions Inc.

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 CANWEST
GLOBAL COMMUNICATIONS CORP., AND THE OTHER APPLICANTS LISTED ON
SCHEDULE "A"

Court File No: CV-09-8396-00C1

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER
(CMI TRANSITION)

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

David R. Byers LSUC#: 22992W
Tel: (416) 869-5697

Maria Konyukhova LSUC#: 52880V
Tel: (416) 869-5230

Jennifer Imrie LSUC#: 56812H
Tel: (416) 869-6853
Fax: (416) 947-0866

Lawyers for the Monitor

TAB 6

[Attached]

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)



THE HONOURABLE

MR. JUSTICE HAINEY

) MONDAY, THE 21ST
)
) DAY OF MARCH, ~~2015~~ 2018

Handwritten signature

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE
OR ARRANGEMENT WITH RESPECT TO HOLLINGER INC.,
4322525 CANADA INC. and SUGRA LIMITED

Applicants

ORDER
(re: Termination and Discharge Motion)

THIS MOTION brought by the Applicants was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Applicants' Notice of Motion dated March 16, 2018 (the "**Notice of Motion**"), the Affidavit of the Chief Restructuring Officer of the Applicants and the Non-Applicants (the "**CRO**") sworn March 16, 2018 (the "**Aziz Affidavit**") and the Thirty-third Report of Ernst and Young Inc. in its capacity as Court-appointed Monitor of the Applicants (the "**Monitor**") and on hearing from counsel for the Applicants and the Monitor and such other counsel as were present and on being advised that the Service List as of March 16, 2018 was served electronically with the Notice of Motion.

Service

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record herein be and is hereby abridged such that the motion is properly returnable today and further that service upon any interested party other than those parties served is hereby dispensed with.

The Monitor

2. **THIS COURT ORDERS** that all actions and activities of the Monitor, as previously described and reported to this Court in the Reports of the Monitor filed with this Court during the course of this proceeding, are hereby approved.

3. **THIS COURT ORDERS** that the fees and disbursements of the Monitor, being \$2,310,486.50 in fees together with expenses and disbursements in the sum of \$277,051.11 plus HST of \$228,113.73, totaling \$2,815,651.34 as summarized in the Affidavit of Fiona Han attached as Appendix C to the Thirty-Third Report, are approved.

4. **THIS COURT ORDERS** that the fees and disbursements of Lenczner Slaght Royce Smith Griffin LLP ("**Lenczner Slaght**"), being \$863,672.00 together with expenses and disbursements in the sum of \$16,706.84 plus HST of \$74,864.60, totaling \$955,243.44 as summarized in the Affidavit of Matthew Lerner attached as Appendix D to the Thirty-Third Report, are approved..

5. **THIS COURT ORDERS** that, upon the filing of assignments in bankruptcy by the Applicants, the Monitor shall file a certificate substantially in the form attached as Schedule "A" (the "**Monitor's Certificate**") hereto, the Monitor shall be discharged, provided however that

notwithstanding its discharge herein, the Monitor shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings.

6. **THIS COURT ORDERS** that, upon the filing of the Monitor's Certificate, the Monitor shall be released and discharged from any and all liability that the Monitor now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the Monitor while acting in its capacity as the Monitor herein, save and except for any gross negligence or wilful misconduct on the Monitor's part. Without limiting the generality of the foregoing, the Monitor is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within proceedings.

7. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor in these proceedings, except with prior leave of this Court and on prior written notice to the Monitor and such further order securing, as security for costs, the solicitor and his own client costs of the Monitor in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

Chief Restructuring Officer

8. **THIS COURT AUTHORIZES AND DIRECTS** the CRO to file assignments in bankruptcy with respect to each of the Applicants and to take any steps reasonably incidental thereto.

9. **THIS COURT ORDERS** that, upon the filing of the Monitor's Certificate, the CRO shall be discharged as CRO of the Applicants and Non-Applicants, provided however that

notwithstanding his discharge herein, the CRO shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings.

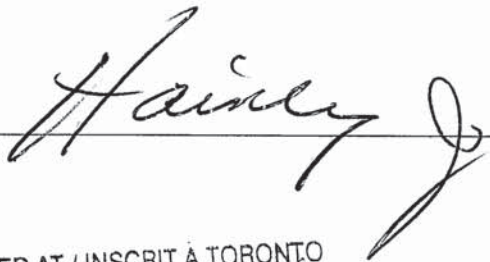
10. **THIS COURT ORDERS** that, upon the filing of the Monitor's Certificate, the CRO shall be released and discharged from any and all liability that the CRO now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the CRO while acting in its capacity as CRO herein, save and except for any gross negligence or wilful misconduct on the CRO's part. Without limiting the generality of the foregoing, the CRO is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within proceedings.

11. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the CRO in any way arising from or related to its capacity or conduct as CRO in these proceedings, except with prior leave of this Court and on prior written notice to the CRO and such further order securing, as security for costs, the solicitor and his own client costs of the CRO in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

Termination of Proceedings

12. **THIS COURT ORDERS** that upon the filing of the Monitor's Certificate, the Charges (as defined in the Initial Order) shall be fully and finally terminated, discharged and released and these proceedings shall be terminated.

13. **THIS COURT AUTHORIZES AND DIRECTS** the proposed Trustee in Bankruptcy of the Applicants to pay any outstanding fees and disbursements of the CRO, counsel to the Applicants, the Monitor and Lenczner Slaght in respect of the finalization of these CCAA proceedings.

A handwritten signature in cursive script, appearing to read "Hainey J.", is written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 21 2018

PER / PAR:

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Schedule A – Form of Monitor’s Certificate

Court File No. 07-CL-7120

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

AND IN THE MATTER OF A PROPOSED PLAN OF
COMPROMISE
OR ARRANGEMENT WITH RESPECT TO HOLLINGER INC.,
4322525 CANADA INC. and SUGRA LIMITED

APPLICANTS

MONITOR’S CERTIFICATE

RECITALS

A. Pursuant to an Initial Order of the Justice Morawetz of the Ontario Superior Court of Justice (the “**Court**”) granted on August 1, 2007, Ernst & Young Inc. was appointed as Monitor (the “**Monitor**”) of the Applicants.

B. Pursuant to the Order dated May 21, 2008, BlueTree Advisors Inc. (“**BlueTree**”) was appointed as the Chief Restructuring Officer (the “**CRO**”) of the Applicants. BlueTree was also retained, pursuant to board resolutions passed by each of Domgroup Ltd., 10 Toronto Street Inc., Holcay Holdings Ltd. and 021173 N.B. Limited a.k.a. Willett Foods f.k.a. Willett Food Company (collectively, the “**Non-Applicants**”) on June 16, 2008, to provide the services of CRO of the Non-Applicants.

THE MONITOR CERTIFIES the following:

1. The Monitor certifies that the Applicants have filed assignments in bankruptcy appointing Ernst & Young Inc. as proposed trustee in bankruptcy. As a result of the filing of this certificate, the terms of the Order of ► dated March 21, 2018 relating to:

- (a) the termination of these proceedings;
 - (b) the discharge and release of the CRO of the Applicants and the Non-Applicants;
- and
- (c) the discharge and release of the Monitor

has become effective.

2. This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

**Ernst & Young Inc., in its capacity as Court-
appointed Monitor of the Applicants, and not
in its personal or corporate capacity**

Per: _____

Name:

Title:

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 AND ARRANGEMENT OF HOLLINGER INC. 4322525 CANADA INC. AND
SUGRA LIMITED

Court File No.: 07-CL-7120

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at Toronto

ORDER
(Termination and Discharge)

Thornton Grout Finnigan LLP
Barristers and Solicitors
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TD West Tower
Toronto, ON M5K 1K7

Leanne M. Williams (LSO# 41877E)
Tel: 416-304-0060
Fax: 416-304-1313
Email: lwilliams@tgf.ca

Lawyers for the Applicants and the Non-Applicants

TAB 7

[Attached]

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

THE HONOURABLE MR.	)	TUESDAY, THE 8 TH
	)	
JUSTICE COLIN L. CAMPBELL	)	DAY OF NOVEMBER, 2011

**IN THE MATTER OF THE BANKRUPTCY OF
MF GLOBAL CANADA CO.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**ORDER
(RE BANKRUPTCY ADMINISTRATION)**

THIS MOTION made without notice by KPMG Inc., in its capacity as the trustee in bankruptcy (the "Trustee") of MF Global Canada Co. ("MF Global Canada") was heard on this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Richard M. Harris, sworn November 8, 2011 and on hearing the submissions of counsel for the Trustee, no one else appearing.

1. **THIS COURT ORDERS** that the five day period for sending the prescribed notice required by section 102(1) of the *Bankruptcy and Insolvency Act* (the "BIA") shall be extended to twenty one (21) days from the date of the Bankruptcy Order herein, namely to November 25, 2011.

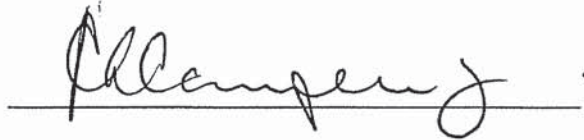
2. **THIS COURT ORDERS** that MF Global, its present and former officers, directors, solicitors, agents, servants, shareholders, contractors, any persons acting on its instructions behalf and all other persons having notice of this Order are hereby restrained and enjoined from disturbing or interfering with the Trustee and with the exercise by the Trustee of its powers and the performance by the Trustee of its duties pursuant to the BIA and any order made in the within proceedings.
3. **THIS COURT ORDERS** that all parties and all other persons having notice of this order do forthwith provide access to the Trustee of all books, records, and documents, including but not limited to, all records and data whether stored electronically or magnetically or in any other form for use by a computer or audio or visual system, and all property of every nature and kind whatsoever, wheresoever situated, that is in their possession, power, or control related to or used in connection with any of the past, present and future undertaking, property and assets of whatsoever nature and kind, and wherever situate, of MF Global Canada, including those held by MF Global as trustee and agent, and including all legal and beneficial interests therein (the "Assets"), including but not limited to the following:
 - (a) any and all cheques, cash, or other forms of payment, including post-dated cheques and other remittances relating to the obligations, present or future, of MF Global Canada;
 - (b) all records and accounts of all bank accounts operated by or on behalf of MF Global Canada, or over which MF Global Canada has control;
 - (c) all books, accounts, invoices, letters, papers and documents which may evidence or relate to any of the Assets, business or affairs of MF Global Canada; and
 - (d) all access codes, user names and related passwords and any other information required by the Trustee to be able to access any of the IT systems, desktop and

other computers, laptops, phone systems and all other electronics owned by, in the possession of or on the premises of MF Global Canada.

4. **THIS COURT ORDERS** that the Trustee shall be at liberty and is hereby authorized and empowered, if in its opinion it is necessary or desirable for the purposes of receiving, preserving and protecting the Assets or any part or parts thereof, to do any or all of the following, for, on behalf of, and in the name of MF Global, but without obligation:
- ✓ (a) to take such steps for the preservation and protection of the Assets as the Trustee considers necessary or appropriate, including, without limitation, taking control of all cash, bank deposits and securities held by or in the name of MF Global;
 - (b) to confirm and reconcile all customer accounts and securities positions of MF Global Canada;
 - ✓ (c) to employ and retain such agents, assistants, experts, auditors and advisors as the Trustee may consider necessary or desirable for the purposes of receiving, managing, operating, preserving, developing and protecting the Assets or any part or parts thereof or generally exercising its powers and performing its duties hereunder;
 - (d) to establish a bank account or accounts in the name of the Trustee and to collect all monies now or hereafter owing to MF Global Canada;
 - ✓ (e) to take any steps, enter into any agreements or incur any obligations necessary or incidental to the exercise of the aforesaid powers;
 - (f) to authorize the completion or withhold approval of trades that might have been initiated by MF Global Canada prior to the suspension of its right to trade securities, as might be considered by the Trustee to be necessary or appropriate; and

- (g) to provide any information regarding MF Global Canada that it deems appropriate to Investment Industry Regulatory Organization of Canada ("IIROC") and Canadian Investor Protection Fund ("CIPF").
5. **THIS COURT ORDERS** that without limiting the generality of any of the provisions hereof, all persons, firms or corporations be and they are hereby restrained and enjoined from terminating any contracts, licences or agreements or disturbing or interfering with same or any utility services, including but not limited to the furnishing of gas, heat electricity, water, telephone or any other utilities of like kind, furnished up to November 4, 2011 to MF Global Canada, and they are hereby restrained and enjoined from cutting off, discontinuing or altering any such utilities or services to the Trustee and all such contracting parties are hereby required to continue to provide such services as may be required under their contracts with MF Global Canada.
6. **THIS COURT ORDERS** that without limiting the generality of any of the provisions hereof, all persons, firms and corporations be and they are hereby restrained and enjoined from disturbing or interfering with the occupation, use or possession by the Trustee of any premises owned or leased by MF Global Canada.
7. **THIS COURT ORDERS** that the Trustee shall not be deemed to be a receiver under s.243 of the BIA.
8. **THIS COURT ORDERS** that liberty be reserved to any interested person or persons to apply to this Court for further or other orders, on at least seven days' notice to the Trustee.
9. **THIS COURT ORDERS** that the Trustee may from time to time apply to this Court for advice and directions in the discharge of the Trustee's powers and duties hereunder.

10. **THIS COURT ORDERS SEEKS AND REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Trustee carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Trustee in any foreign proceeding, or to assist the Trustee in carrying out the terms of this Order.

A handwritten signature in cursive script, appearing to read "P. Chamberlain", is written over a horizontal line.

**IN THE MATTER OF THE BANKRUPTCY OF MF GLOBAL CANADA CO.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

PROCEEDINGS COMMENCED AT TORONTO

**ORDER
(RE BANKRUPTCY ADMINISTRATION)**

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3Y4

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LSUC#31888K

Lawyers for KPMG Inc.,
in its capacity as trustee in bankruptcy of
MF Global Canada Co.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

THE HONOURABLE MR.
JUSTICE COLIN CAMPBELL

)
)
)

FRIDAY, THE 27TH
DAY OF JANUARY, 2012

**IN THE MATTER OF THE BANKRUPTCY OF
MF GLOBAL CANADA CO.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**



CLAIMS PROCESS ORDER

THIS MOTION, made by KPMG Inc., in its capacity as trustee in bankruptcy of MF Global Canada Co. (the "**Trustee**") for an order approving a procedure for, *inter alia*, the determination and resolution of Revised Net Equity Claims and Creditor Claims was heard this day by conference call.

ON READING the Notice of Motion, the Fourth Report of the Trustee dated January 25, 2012 (the "**Fourth Report**") and the Schedules thereto, and the Supplement to the Fourth Report dated January 26, 2012 (the "**Supplementary Report**") and on hearing the submissions of counsel to the Trustee, Customer Representative Counsel, Canadian Investor Protection Fund, Friedberg Mercantile Group Inc. and James Giddens, the SIPA Trustee of MF Global Inc., no one else appearing although duly served as set out in the Affidavit of Service of Miriam Sinclair, dated January 26, 2012, to be filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged so that this Motion is properly returnable today and that any further service of the Notice of Motion and the Motion Record is hereby dispensed with.

DEFINITIONS

2. **THIS COURT ORDERS** that for purposes of this Claims Process Order the following terms shall have the following meanings:

- (a) **"Authorized Activity"** has the meaning ascribed in paragraph 29 hereof;
- (b) **"BIA"** means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended;
- (c) **"Business Day"** means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;
- (d) **"Cheque Issuing Process"** has the meaning ascribed in paragraph 29 hereof;
- (e) **"CIPF"** means Canadian Investor Protection Fund;
- (f) **"Claim"** means any right of a Person against MF Global Canada in connection with any indebtedness, liability or obligation of any kind whatsoever in existence on the Date of Bankruptcy and any interest accrued thereon or costs payable in respect thereof, whether liquidated, unliquidated, reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, by guarantee, surety, or otherwise, and whether or not such right is executory or anticipatory in nature, or any right or ability of any person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, together with any other claims of any kind that, if unsecured, would be a debt or liability provable in bankruptcy within the meaning of the BIA; For greater certainty, the foregoing definition of Claim is not intended to expand the definition of "claims provable" pursuant to section 121 of the BIA;

- (g) **"Claimant"** means any Person that has filed a Revised Net Equity Claim or a Creditor Proof of Claim pursuant to this Claims Process;
- (h) **"Claims Bar Date"** means 5:00 p.m. (Toronto Time) on May 10, 2012;
- (i) **"Claims Process"** means the process for identifying, determining and/or barring Claims established by this Claims Process Order;
- (j) **"Claims Process Order"** means this Order;
- (k) **"Commodity Customer"** means any Person that appears on the books and records of MF Global Canada as a Customer of MF Global Canada with a commodities or futures account as at the Date of Bankruptcy;
- (l) **"Corporate FX Customer"** has the meaning ascribed in paragraph 2(ee) hereof;
- (m) **"Court"** means the Ontario Superior Court of Justice (Commercial List);
- (n) **"Creditor"** means, in its capacity asserting such a claim, any Person with a Claim against MF Global Canada, other than a Claim for Net Equity;
- (o) **"Creditor Claims Package"** means the package containing the Notice of Meeting of Creditors and Creditor Proof of Claim;
- (p) **"Creditor Proof of Claim"** means the form to be completed and filed by a Creditor in accordance with this Claims Process Order, which shall be substantially in the form attached hereto as **Schedule "D"**;
- (q) **"Customer"** has the meaning ascribed to it in section 253 of the BIA;
- (r) **"Customer Account Statement"** means the account statement for a Customer produced by the Trustee from the books and records of MF Global Canada or Third Party Records as at the Date of Bankruptcy showing the Net Equity Calculation;
- (s) **"Customer Claims Package"** means the package containing the Notice of Meeting of Creditors, Customer Account Statement and the applicable Customer Instruction Letter describing the Net Equity Calculation in respect of the applicable Customer and summarizing the Claims Process, and more particularly:

- (i) for Commodity Customers (excluding most Excluded Customers) – the Commodity Customer Instruction Letter in the form attached as **Schedule “B-1”** hereto;
 - (ii) for Excluded Customers – the Excluded Customer Instruction Letter in the form attached as **Schedule “B-1x”** hereto;
 - (iii) for Equities Customers – the Equity Customer Instruction Letter in the form attached as **Schedule “B-2”** hereto;
 - (iv) for Retail/Online FX Customers – the Retail FX Customer Instruction Letter in the form attached as **Schedule “B-3”** hereto;
 - (v) for Corporate FX Customers – the Corporate FX Instruction Letter in the form attached as **Schedule “B-4”** hereto; and
 - (vi) for Unpaid Customers – the Unpaid Customer Letter in the form attached as **Schedule “B-5”** hereto;
- (t) **“Customer Pool Fund”** has the meaning ascribed to it in section 261 of the BIA;
- (u) **“Customer Representative Order”** means the order of the Honourable Mr. Justice Colin L. Campbell dated November 14, 2011, as it may be amended from time to time;
- (v) **“Date of Bankruptcy”** mean November 4, 2011;
- (w) **“Dispute Proceedings”** has the meaning ascribed to it in paragraph 17 hereof;
- (x) **“Disputed Claimant”** means a Claimant that has received a Notice of Disallowance pursuant to paragraphs 15 or 16 hereof;
- (y) **“Equities Customer”** means any Person that appears on the books and records of MF Global Canada as a Customer of MF Global Canada as at the Date of Bankruptcy whose account held cash and/or securities, excluding any Commodity Customers;
- (z) **“Estate”** means the bankruptcy estate of MF Global Canada;
- (aa) **“Excess Claim”** means the difference between the amount claimed by a Claimant in a Proof of Claim and the amount accepted or allowed by the Trustee as set out in a Notice of Disallowance;

- (bb) **"Excluded Customer List"** has the meaning ascribed to it in the Transfer Agreement;
- (cc) **"Excluded Customer"** means a Customer on the Excluded Customer List;
- (dd) **"FX"** means foreign exchange;
- (ee) **"FX Customer"** means any Person that appears on the books and records of MF Global Canada as a Customer of MF Global Canada as at the Date of Bankruptcy who dealt in online FX (a **"Retail FX Customer"**) or corporate FX (a **"Corporate FX Customer"**) trading through or with MF Global Canada;
- (ff) **"General Fund"** has the meaning ascribed to it in section 261 of the BIA;
- (gg) **"MF Global Canada"** means MF Global Canada Co.;
- (hh) **"Net Equity"** means the amount of "net equity" (as that term is defined in section 253 of the BIA) of each Customer;
- (ii) **"Net Equity Calculation"** means the amount of Net Equity of a Customer as calculated by the Trustee from the books and records of MF Global Canada or Third Party Records as at the Date of Bankruptcy;
- (jj) **"Notice of Disallowance"** means the notice that may be delivered to a Claimant revising or rejecting such Claimant's Proof of Claim, which notice shall be substantially in the form attached as **Schedule "E"** hereto and delivered in accordance with paragraph 24 hereof;
- (kk) **"Notice to Creditors"** means the notice to be published in accordance with paragraphs 3 and 4 hereof, substantially in the form of the notice attached hereto as **Schedule "A"**;
- (ll) **"November Month End Statement"** means the account statement for a Customer produced by the Trustee from the books and records of MF Global Canada, or Third Party Records as at November 30, 2011;
- (mm) **"Person"** means any individual, partnership, firm, joint venture, trust, entity, corporation, unincorporated organization, trade union, pension plan administrator, pension plan regulator, governmental authority or agency, employee or other association or similar entity, howsoever designated or constituted;

- (nn) **"Proof of Claim"** means, as the circumstances apply, either a Creditor Proof of Claim or a Revised Net Equity Proof of Claim;
- (oo) **"RBCDS"** means RBC Dominion Securities Inc.;
- (pp) **"Residual Amount"** means, with respect to any Customer whose account was a Transferred Account, the total calculated by subtracting the Transferred Amount from the Net Equity Calculation, as determined by the Trustee;
- (qq) **"Residual Amount Payment"** has the meaning ascribed in paragraph 22 hereof;
- (rr) **"Retail FX Customer"** has the meaning ascribed in paragraph 2(ee) hereof;
- (ss) **"Revised Net Equity Claim"** means any Claim asserted by a Customer disputing the Trustee's Net Equity Calculation for that Customer;
- (tt) **"Revised Net Equity Proof of Claim"** means the form of Proof of Claim for Customers asserting a Revised Net Equity Claim in substantially the form attached as **Schedule "C"** hereto;
- (uu) **"Third Party Records"** means the books and records of various contract counterparties providing clearing, back office and support arrangements to MF Global Canada in the ordinary course of business of MF Global Canada;
- (vv) **"Transfer Agreement"** means the Account Transfer and Support Agreement dated November 17, 2011 between the Trustee and RBCDS;
- (ww) **"Transferred Amount"** means the value of the cash and securities transferred to RBCDS in respect of a particular Transferred Account in accordance with the Transfer Agreement;
- (xx) **"Transferred Account"** has the meaning ascribed to it in the Transfer Agreement;
- (yy) **"Unpaid Customer"** means any Customer with a Transferred Account that has protection from CIPF in its capacity as a Customer and that, in the opinion of the Trustee, has a Claim for a Residual Amount.

PUBLICATION OF NOTICE

3. **THIS COURT ORDERS** that the Trustee shall cause the Notice to Creditors to be placed in The Globe and Mail (National Edition) and the French language translation thereof to be placed in La Presse on two different dates each prior to February 17, 2012.

4. **THIS COURT ORDERS** that the Trustee shall cause the Notice of Meeting of Creditors, Notice to Creditors, the Customer Claims Package and the Creditor Claims Package, and all other documents attached as Schedules hereto to be posted on the Trustee's website at www.kpmg.ca/mfglobalcanada commencing five Business Days after the date hereof until at least 60 days after the Claims Bar Date.

DIRECT NOTICE AND CLAIMS PACKAGES

5. **THIS COURT ORDERS** that the Trustee shall send a copy of the Customer Claims Package to each Customer to the last known address of such Customer as shown in the books and records of MF Global Canada or Third Party Records, by prepaid ordinary mail on or before February 17, 2012.

6. **THIS COURT ORDERS** that the Trustee shall send a copy of the Creditor Claims Package to each Creditor of which the Trustee is aware to the last known address of such Creditor as shown in the books and records of MF Global Canada or Third Party Records by prepaid ordinary mail on or before February 17, 2012.

7. **THIS COURT ORDERS** that, upon request of any Person, the Trustee shall provide a copy of the requested Customer Claims Package and/or the Creditor Claims Package to the Person by the delivery means requested by such Creditor in accordance with paragraph 25 hereof.

CLAIMS BAR DATE – REVISED NET EQUITY CLAIMS

8. **THIS COURT ORDERS** that any Customer asserting a Revised Net Equity Claim shall set out its Claim in a Revised Net Equity Proof of Claim and deliver the Revised Net Equity

Proof of Claim to the Trustee in accordance with paragraph 25 hereof so that it is received by the Trustee by no later than , the Claims Bar Date.

9. **THIS COURT ORDERS** that any Customer who does not deliver a Revised Net Equity Proof of Claim to the Trustee on or before the Claims Bar Date, in accordance with paragraph 8 hereof shall be deemed to accept the amount of the Net Equity Calculation, if any, set out in the Customer Account Statement delivered to such Customer by the Trustee pursuant to paragraph 5 hereof and any other Claim in respect of Net Equity shall be forever barred and extinguished.

CREDITOR PROOFS OF CLAIM

10. **THIS COURT ORDERS** that any Person asserting a Claim against MF Global Canada other than a Claim for Net Equity shall set out its Claim in a Creditor Proof of Claim and deliver the Creditor Proof of Claim to the Trustee in accordance with paragraph 25 hereof.

CURRENCY OF CLAIMS

11. **THIS COURT ORDERS** that if any Claim arose in a currency other than Canadian or US dollars, then the Claimant asserting such Claim shall complete its Proof of Claim indicating the amount of the Claim in Canadian dollars. For greater certainty, if the reference transactions relating to a Claim are in US dollars, the Proof of Claim may be filed indicating the amount of the Claim in US dollars and if the reference transactions relating to a Claim are in any other currency, the Proof of Claim must be filed indicating the amount of the Claim in Canadian dollars using the exchange rates referred to in paragraph 13 hereof.

12. **THIS COURT ORDERS** that: (a) the Trustee is authorized to pay any Net Equity Claim in U.S. dollars, if the reference transactions relate to U.S. dollars or if permitted pursuant to the account documents/agreements in place between the Customer and MF Global Canada; and (b) the Trustee is authorized to pay any Net Equity Claim in Canadian dollars, if the reference transactions are in any currency other than U.S. dollars, if the Trustee deems it necessary. The foregoing terms shall not affect the Trustee's rights pursuant to section 262(2.1) of the BIA.

13. **THIS COURT ORDERS** that the applicable currency conversion rates to be applied by the Trustee shall be

- (a) with respect to the Claim for Net Equity of Commodity Customers, the conversion rates established by the GMI system used by MF Global Canada;
- (b) with respect to the Claim for Net Equity of an Equities Customer, the rate published on the Customer Account Statements;
- (c) with respect to FX Customers, the noon spot rate of the Bank of Canada on the Date of Bankruptcy; and
- (d) with respect to the Claims of Creditors, the noon spot rate of the Bank of Canada on the Date of Bankruptcy,

a summary of which is to be posted on the Trustee's Website within five Business Days of the date of this Claims Process Order.

REVIEW PROCESS

14. **THIS COURT ORDERS** that the Trustee is hereby authorized and directed to use reasonable discretion as to the adequacy of compliance in the manner in which any Proof of Claim is completed or executed and the Trustee may, where it is satisfied that a Proof of Claim has been adequately described or proven, waive strict compliance with the requirements of this Claims Process Order as to completion and execution of the Proof of Claim.

DETERMINATION OF CLAIMS

15. **THIS COURT ORDERS** that the Trustee shall review each Revised Net Equity Proof of Claim received by the Claims Bar Date and shall either accept the Revised Net Equity Proof of Claim as filed or revise or reject the amount claimed by sending a Notice of Disallowance to such Customer.

16. **THIS COURT ORDERS** that the Trustee shall review each Creditor Proof of Claim and shall either accept the Creditor Proof of Claim as filed or revise or reject the amount claimed by sending a Notice of Disallowance to such Creditor.

APPEAL OF DISALLOWANCE

17. **THIS COURT ORDERS** that any Disputed Claimant who intends to dispute a Notice of Disallowance shall bring a motion to the Court to appeal the Notice of Disallowance in accordance with Section 135 of the BIA (the “**Dispute Proceedings**”).

18. **THIS COURT ORDERS** that any Disputed Claimant that fails to commence Dispute Proceedings in accordance with the provisions of Section 135 of the BIA, including the 30-day deadline set forth in section 135, shall be deemed to accept the Notice of Disallowance as final and binding, and the Claimant shall be and is hereby forever barred from making or enforcing:

- (a) the Claim, on any basis, if a Notice of Disallowance disputing the Claim in whole was issued; or
- (b) the Excess Claim, if a Notice of Disallowance revising the Claim was issued;

and the Claim or Excess Claim shall be forever extinguished, barred and released, and the Claimant shall be deemed to have fully and finally released and discharged the Claim or Excess Claim.

19. **THIS COURT ORDERS** that, notwithstanding paragraphs 15 to 18 hereof, the Trustee is authorized to apply to the Court at any time for the purpose of seeking the Court’s determination of the validity of any Proof of Claim filed with the Trustee in the Claims Process.

PAYMENT OF FURTHER NET EQUITY AMOUNTS

20. **THIS COURT ORDERS** that the Trustee is authorized to send to each Unpaid Customer, in accordance with paragraph 25 hereof, a cheque payable to such Unpaid Customer in the amount of the Residual Amount of such Unpaid Customer along with the Unpaid Customer Letter (the “**Residual Amount Payment**”).

21. **THIS COURT ORDERS** that, in the event that the Residual Amount Payment is deposited, endorsed or otherwise negotiated by or for the benefit of the Customer named thereon, such Customer’s Net Equity shall be deemed to be credited by the amount of the Residual Amount Payment; provided that the deposit, endorsement or negotiation of the cheque by or for the benefit of the Customer shall be without prejudice to the ability of such Customer to assert a Revised Net Equity Claim or other Claim in accordance with the terms hereof.

22. **[intentionally deleted].**

GENERAL PROVISIONS

23. **THIS COURT ORDERS** that the Trustee, in addition to its prescribed rights and obligations under the BIA and under the Bankruptcy Orders, is hereby directed and empowered to take such other actions and fulfill such other roles as are contemplated by this Claims Process Order.

24. **THIS COURT ORDERS** that the duties and responsibilities of the Customer Representative Counsel shall not include the representation of any Disputed Claimant in any Dispute Proceedings, provided that, for greater certainty, whether or not a Customer has opted-out in accordance with the Customer Representative order shall not affect its right to file a Proof of Claim or appeal a decision of the Trustee.

25. **THIS COURT ORDERS** that, except as otherwise set out herein, any notice or communication required to be delivered pursuant to the terms of this Claims Process Order shall be in writing and may be delivered by facsimile or electronic transmission, personal delivery, courier or, as necessary, by prepaid mail and, in the case of notices or communications to the Trustee, shall be addressed to the Trustee as follows:

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5

Attention: MF Global Canada – Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

26. **THIS COURT ORDERS** that, in the event that the day on which any notice or communication required to be delivered pursuant to the Claims Process is not a Business Day, then such notice or communication shall be required to be delivered on the next Business Day.

27. **THIS COURT ORDERS** that in the event of any strike, lock-out or other event which interrupts postal service in any part of Canada, all notices and communications during such

interruption may only be delivered by email, facsimile transmission, personal delivery or courier and any notice or other communication given or made by prepaid mail within the seven (7) day period immediately preceding the commencement of such interruption, unless actually received, shall be deemed not to have been delivered. All such notices and communications shall be deemed to have been received, in the case of notice by email, facsimile transmission, personal delivery or courier prior to 5:00 p.m. (local time) on a Business Day, when received, if received after 5:00 p.m. (local time) on a Business Day or at any time on a non-Business Day, on the next following Business Day, and in the case of a notice mailed as aforesaid, on the fourth Business Day following the date on which such notice or other communication is mailed.

PROTECTIONS FOR THE TRUSTEE

28. **THIS COURT ORDERS** that: (a) in carrying out the terms of this Claims Process Order, the Trustee shall have all of the protections given to it by the BIA and as an officer of this Court, including the stay of proceedings in its favour; (b) the Trustee shall not incur any liability as a result of the carrying out of the provisions of this Claims Process Order, save and except for wilful misconduct and gross negligence; and (c) the Trustee shall be entitled to rely on the books and records of MF Global Canada and Third Party Records without independent investigation, and shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

PROTECTIONS FOR RBCDS

29. **THIS COURT ORDERS** that RBCDS, its affiliates, successors, and assigns shall not incur any liability or responsibility whatsoever, for or in connection with any claim by any former Customer of MF Global Canada arising from, relating to or in connection with the following activities in respect of Transferred Accounts wherein the account holder had not made satisfactory arrangements with RBCDS with respect to their Transferred Account (the "Authorized Activity"):

Type of Transferred Account	Authorized Activity
Non-Registered Accounts - cash only balances (corporate Customers)	In the event that a Transferred Account had a cash only balance, if RBCDS issued a cheque for the account balance to the account holder and sent the cheque to the client's last known

	address according to the books and records of MF Global Canada by ordinary mail (the “ Cheque Issuing Process ”).
Transferred Accounts with cash only balances under \$100,000 in the name of individuals (i.e. non-corporate Customers)	In the event that a Transferred Account had a cash only balance less than \$100,000, if RBCDS followed the Cheque Issuing Process.
Transferred Accounts with cash only balances over \$100,000 in the name of individuals (i.e. non-corporate Customers)	In the event that a Transferred Account had a cash only balance in excess of \$100,000, if RBCDS followed the Cheque Issuing Process after satisfying the following protocol: (i) the Customers presented themselves at any branch of RBCDS or Royal Bank of Canada; (ii) the Customers were asked to show copies of their MF Global Canada account statements and their photo identification (eg. valid driver's license or passport in the name of the account holder); and (iii) the Customers completed a form confirming their name and address.
Transferred Accounts with equity and cash positions of \$5,000 or less	In the event that the Transferred Account held marketable securities positions and the total value of the Customer's account was \$5,000 or less, RBCDS liquidated the securities positions in the account and followed the Cheque Issuing Process.

EXTENSION OF TIME TO SEND NOTICE OF MEETING

30. **THIS COURT ORDERS** that the period for sending the prescribed notice required by section 102(1) of the BIA(the “**Bankruptcy Notice**”) be further extended to February 17, 2012.

31. **THIS COURT ORDERS** that, notwithstanding paragraph 11(b) of the Customer Representative Counsel Order, a copy of the Customer Representative Counsel Order need only be sent by the Trustee to the Excluded Customers on Part A of the Excluded Customer List.

32. **THIS COURT ORDERS** that, notwithstanding paragraph 23(b) of the Account Transfer Support and Vesting Order dated November 14, 2012, a copy of the Account Transfer Support and Vesting Order need only be sent by the Trustee to Excluded Customers on Part A of the Excluded Customer List.

REPRESENTATIVE COUNSEL "OPT OUT" PERIOD

33. **THIS COURT ORDERS** that paragraph 4 of the Customer Representative Counsel Order dated November 14, 2011 be and the same is hereby amended, *nunc pro tunc*, to extend the deadline for notifying the Customer Representative Counsel and the Trustee to "opt out" of representation from January 31, 2012 to March 31, 2012 such that paragraph 4 of the Customer Representative Order shall be deemed to read:

4. **THIS COURT ORDERS** that any individual Customer who does not wish to be represented by the Customer Representative Counsel and to be bound by this Order and all other related orders which may subsequently be made in these proceedings shall by March 31, 2012, notify the Customer Representative Counsel and the Trustee in writing by facsimile, mail or delivery, in the form attached as **Schedule "A"** hereto, and shall thereafter not be so represented and shall represent themselves as an independent individual party to the extent they wish to appear in the Proceedings.

APPROVAL OF TRUSTEE'S ACTIVITIES AND TRUSTEE'S REPORT

34. **THIS COURT ORDERS** that the Fourth Report and the activities of the Trustee as detailed in the Fourth Report, are hereby approved.

DIRECTIONS

35. **THIS COURT ORDERS** that the Trustee may, at any time, and with such notice as this Court may require, seek directions from the Court with respect to this Claims Process Order and the Claims Process set out herein, including the forms attached as Schedules thereto.

36. **THIS COURT ORDERS** that the foregoing terms of this Claims Process Order shall not restrict or in any way affect the right of the Trustee to apply to the Court for directions and/or declaratory relief with respect to any Claim in the estate of MF Global Canada.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
TILERO DANE LE REGISTRE NO.:

JAN 27 2012

SCHEDULE "A"

NOTICE TO CUSTOMERS OF MF GLOBAL CANADA CO.

NOTICE OF CLAIMS BAR DATE FOR REVISED NET EQUITY CLAIMS AGAINST MF GLOBAL CANADA CO.

NOTICE IS HEREBY GIVEN that, pursuant to an Order of the Ontario Superior Court of Justice made on January 27, 2012 (the "**Claims Process Order**"), a Claims Process was approved for determination of "revised net equity" claims of customers and claims of ordinary creditors against MF Global Canada Co.

PROOFS OF CLAIM FOR REVISED NET EQUITY CLAIMS MUST BE FILED WITH THE TRUSTEE ON OR BEFORE 5:00 P.M. (TORONTO TIME) ON APRIL 10, 2012 (THE "CLAIMS BAR DATE"), FAILING WHICH ALL SUCH REVISED NET EQUITY CLAIMS WILL BE BARRED AND FOREVER EXTINGUISHED. THE CLAIMS BAR DATE ONLY APPLIES TO REVISED NET EQUITY CLAIMS, NOT TO ORDINARY CREDITOR CLAIMS.

The Trustee will send a Claims Package to all known Customers and Creditors in accordance with the Claims Process Order. A copy of the Trustee's Claims Process Order, and all forms relating to the Claims Process can be found on the Trustee's website at: www.kpmg.ca/mfglobalcanada. Persons requiring further information regarding the Claims Process or claim documentation may contact the Trustee at:

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5

Attention: MF Global Canada –Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

SCHEDULE "B-1"

TO: Commodities Customers of MF Global Canada Co.

KPMG Inc. was appointed as trustee in bankruptcy of MF Global Canada Co. pursuant to a Bankruptcy Order dated November 4, 2011 (the "**Date of Bankruptcy**").

Enclosed herewith is a copy of an account statement for your account at MF Global Canada Co. as at the Date of Bankruptcy (the "**Date of Bankruptcy Statement**") and November 30, 2011 (the "**November Month End Statement**").

In accordance with the *Bankruptcy and Insolvency Act*, claims against MF Global Canada Co. are to be determined as at the Date of Bankruptcy. As you are likely aware, the Trustee entered into arrangements with RBC Dominion Securities Inc. ("**RBCDS**") for the transfer of your account to RBCDS. The Trustee understands that, in connection with the transfer of your account, the value of the cash and securities shown on the Date of Bankruptcy Statement were transferred to RBCDS and allocated to your account (the "**Transfer Amount**"). Pursuant to an Order of the Ontario Superior Court of Justice (the "**Court**") dated November 14, 2011, the Transfer Amount is a credit against the net equity claim that you had against MF Global Canada Co. as at the Date of Bankruptcy. As a result, the books and records of MF Global Canada Co. indicate that your "net equity" claim has been fully paid and you do not have any further claim in the estate. This is confirmed in the November Month End Statement.

If you agree with the foregoing, no further action is required on your part. In the event that you believe that you have any additional claim(s) against MF Global Canada Co., you are required to file a Proof of Claim with the Trustee in accordance with the Claims Process Order issued by the Court on January 27, 2012. Any such Claim must be filed with the Trustee prior to the Claims Bar Date of May 10, 2012. As the Trustee does not anticipate that you will have a Claim, the Trustee has not included the Proof of Claim form or the Claims Process Order with this letter. Copies of the Claims Process Order and all applicable claims forms can be obtained from the Trustee upon request or by downloading the applicable claims form(s) from the Trustee's website: www.kpmg.ca/mfglobalcanada.

In the event that you have any questions in connection with the information contained in this letter or the Claims Process, you should first check the Trustee's Frequently Asked Questions posted on the Trustee's website or you can contact the Trustee directly at the contact particulars noted below.

Be advised that, in the event you intend to assert any additional claim against the estate, you must file a properly completed Proof of Claim with the Trustee prior to the Claims Bar Date or your claim will be forever barred and extinguished.

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5
Attention: MF Global Canada -Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

SCHEDULE "B-1x"

TO: Customers of MF Global Canada Co. that are Excluded Customers under the Account Transfer and Support Agreement dated November 17, 2011 between KPMG Inc., in its capacity as trustee in bankruptcy of MF Global Canada Co (the "Trustee") and RBC Dominion Securities Inc. ("RBCDS")

KPMG Inc. was appointed as Trustee pursuant to a Bankruptcy Order dated November 4, 2011 (the "**Date of Bankruptcy**"). Enclosed herewith are copies an account statement for your account at MF Global Canada Co. as at the Date of Bankruptcy (the "**Date of Bankruptcy Statement**") and November 30, 2011 (the "**November Month End Statement**").

[In accordance with the *Bankruptcy and Insolvency Act*, claims against MF Global Canada Co. are to be determined as at the Date of Bankruptcy. As you are aware, the Trustee has transferred certain accounts to RBC Dominion Securities Inc. The Trustee understands that, in connection with the transfer of your account, an interim balance of cash and securities with a value of \$• were transferred to RBCDS and allocated to your account (the "**Transfer Amount**"). The Transfer Amount is a credit against the "net equity" claim that you had against MF Global Canada Co. as at the Date of Bankruptcy. The books and records of MF Global Canada Co. indicate that your net equity claim in the estate is \$•. Of this amount, you continue to be owed the amount of \$•, being the difference between the net equity showing on the Date of Bankruptcy Statement and the Transfer Amount. This balance is accepted by the Trustee. However, we caution you to review the enclosed statements carefully to determine if there are any transactions that have not been recorded or are incorrectly recorded]

OR

[In accordance with the *Bankruptcy and Insolvency Act*, claims against MF Global Canada Co. are to be determined as at the Date of Bankruptcy. As a result of the lack of information relating to certain transactions in your account on foreign exchanges, the Trustee has been unable to make a preliminary determination of the net equity claim in respect of your account at MF Global Canada Co. The Trustee will provide further information to you with respect to your net equity calculation as soon as information becomes available. In the interim, the Trustee acknowledges that you have a conditional claim for net equity in the Claims Process.]

If you agree with the foregoing, no further action is required on your part. In the event that you believe that you have any additional claim(s) against MF Global Canada Co., you are required to file a Proof of Claim with the Trustee in accordance with the Claims Process Order issued by the Court on January 27, 2012. Any such Claim must be filed with the Trustee prior to the Claims Bar Date of May 10, 2012. Copies of the Claims Process Order and all applicable claims forms can be obtained from the Trustee upon request or by downloading the applicable claims form(s) from the Trustee's website: www.kpmg.ca/mfglobalcanada.

In the event that you have any questions in connection with the information contained in this letter or the Claims Process, you should first check the Trustee's Frequently Asked Questions posted on the Trustee's website or you can contact the Trustee directly at the contact particulars noted below.

Be advised that, in the event you intend to assert any additional claim against the estate, you must file a properly completed Proof of Claim with the Trustee prior to the Claims Bar Date or your claim will be forever barred and extinguished.

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.

333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5
Attention: MF Global Canada –Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

SCHEDULE "B-2"

TO: Equities Customers of MF Global Canada Co.

KPMG Inc. was appointed as trustee in bankruptcy of MF Global Canada Co. pursuant to a Bankruptcy Order dated November 4, 2011 (the "**Date of Bankruptcy**").

Enclosed herewith is a copy of an account statement for your account at MF Global Canada Co. as at the Date of Bankruptcy (the "**Date of Bankruptcy Statement**") and November 30, 2011 (the **November Month End Statement**").

In accordance with the *Bankruptcy and Insolvency Act* ("**BIA**"), claims against MF Global Canada are to be determined as at the Date of Bankruptcy. As you are likely aware, the Trustee entered into arrangements with RBC Dominion Securities Inc. ("**RBCDS**") for the transfer of your account to RBCDS. The Trustee understands that, in connection with the transfer of your account, the value of the cash and securities shown on the Date of Bankruptcy Statement were transferred to RBCDS and allocated to your account (the "**Transfer Amount**"). Pursuant to an Order of the Ontario Superior Court of Justice (the "**Court**") dated November 14, 2011, the Transfer Amount is a credit against the net equity claim that you had against MF Global Canada Co. as at the Date of Bankruptcy. In addition, the BIA authorizes the Trustee to make distributions of securities in kind. The Trustee has confirmed that all cash and securities in your account as at the Date of Bankruptcy were transferred to RBCDS. As a result, the books and records of MF Global Canada Co. indicate that your "net equity" claim has been fully paid and you do not have any further claim in the estate. This is confirmed in the November Month End Statement.

If you agree with the foregoing, no further action is required on your part. In the event that you believe that you have any additional claim(s) against MF Global Canada Co., you are required to file a Proof of Claim with the Trustee in accordance with the Claims Process Order issued by the Court on January 27, 2012. Any such Claim must be filed with the Trustee prior to the Claims Bar Date of May 10, 2012. As the Trustee does not anticipate that you will have a Claim, the Trustee has not included the Proof of Claim form or the Claims Process Order with this letter. Copies of the Claims Process Order and all applicable claims forms can be obtained from the Trustee upon request or by downloading the applicable claims form(s) from the Trustee's website: www.kpmg.ca/mfglobalcanada.

In the event that you have any questions in connection with the information contained in this letter or the Claims Process, you should first check the Trustee's Frequently Asked Questions posted on the Trustee's website or you can contact the Trustee directly at the contact particulars noted below.

Be advised that, in the event you intend to assert any additional claim against the estate, you must file a properly completed Proof of Claim with the Trustee prior to the Claims Bar Date or your claim will be forever barred and extinguished.

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5
Attention: MF Global Canada -Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

SCHEDULE "B-3"

TO: Retail/Online FX Customers of MF Global Canada Co.

KPMG Inc. was appointed as trustee in bankruptcy of MF Global Canada Co. pursuant to a Bankruptcy Order dated November 4, 2011 (the "**Date of Bankruptcy**").

Pursuant to the FX Customer Payment Order of the Ontario Superior Court of Justice (the "**Court**") dated November 24, 2011, you were provided with a cheque in the amount of the Trustee's Net Equity Calculation for your FX account with MF Global Canada Co. (the "**Net Equity Payment**").

In accordance with the *Bankruptcy and Insolvency Act*, claims against MF Global Canada Co. are to be determined as at the Date of Bankruptcy. Pursuant to the FX Customer Payment Order, the Net Equity Payment is a credit against the net equity claim that you had against MF Global Canada Co. as at the Date of Bankruptcy. As a result, the books and records of MF Global Canada Co. indicate that your "net equity" claim has been fully paid and you do not have any further claim in the estate. This should be confirmed by viewing your online account statements and positions on the FXCM website.

If you agree with the foregoing, no further action is required on your part. In the event that you believe that you have any additional claim(s) against MF Global Canada Co., you are required to file a Proof of Claim with the Trustee in accordance with the Claims Process Order issued by the Court on January 27, 2012. Any such Claim must be filed with the Trustee prior to the Claims Bar Date of May 10, 2012. As the Trustee does not anticipate that you will have a Claim, the Trustee has not included the Proof of Claim form or the Claims Process Order with this letter. Copies of the Claims Process Order and all applicable claims forms can be obtained from the Trustee upon request or by downloading the applicable claims form(s) from the Trustee's website: www.kpmg.ca/mfglobalcanada.

In the event that you have any questions in connection with the information contained in this letter or the Claims Process, you should first check the Trustee's Frequently Asked Questions posted on the Trustee's website or you can contact the Trustee directly at the contact particulars noted below.

Be advised that, in the event you intend to assert any additional claim against the estate, you must file a properly completed Proof of Claim with the Trustee prior to the Claims Bar Date of May 10, 2012 or your claim will be forever barred and extinguished.

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5

Attention: MF Global Canada -Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

SCHEDULE "B-4"

TO: Corporate FX Customers of MF Global Canada Co.

KPMG Inc. was appointed as trustee in bankruptcy of MF Global Canada Co. pursuant to a Bankruptcy Order dated November 4, 2011 (the "**Date of Bankruptcy**").

Pursuant to the FX Customer Payment Order of the Ontario Superior Court of Justice (the "**Court**") dated November 24, 2011, you were provided with a cheque in the amount of the Trustee's Net Equity Calculation for your FX account with MF Global Canada (the "**Net Equity Payment**").

In accordance with the *Bankruptcy and Insolvency Act*, claims against MF Global Canada are to be determined as at the Date of Bankruptcy. Pursuant to the FX Customer Payment Order, the Net Equity Payment is a credit against the net equity claim that you had against MF Global Canada Co. as at the Date of Bankruptcy. As a result, the books and records of MF Global Canada Co. indicate that your "net equity" claim has been fully paid and you do not have any further claim in the estate. This is confirmed by the account statement for your account dated November 4, 2011, and the calculation of the Net Equity Payment in Canadian dollars, copies of which are attached.

If you agree with the foregoing, no further action is required on your part. In the event that you believe that you have any additional claim(s) against MF Global Canada Co., you are required to file a Proof of Claim with the Trustee in accordance with the Claims Process Order issued by the Court on January 27, 2012. Any such Claim must be filed with the Trustee prior to the Claims Bar Date of May 10, 2012. As the Trustee does not anticipate that you will have a Claim, the Trustee has not included the Proof of Claim form or the Claims Process Order with this letter. Copies of the Claims Process Order and all applicable claims forms can be obtained from the Trustee upon request or by downloading the applicable claims form(s) from the Trustee's website: www.kpmg.ca/mfglobalcanada.

In the event that you have any questions in connection with the information contained in this letter or the Claims Process, you should first check the Trustee's Frequently Asked Questions posted on the Trustee's website or you can contact the Trustee directly at the contact particulars noted below.

Be advised that, in the event you intend to assert any additional claim against the estate, you must file a properly completed Proof of Claim with the Trustee prior to the Claims Bar Date of May 10, 2012 or your claim will be forever barred and extinguished.

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5

Attention: MF Global Canada –Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

SCHEDULE "B-5"

TO: Specific "Unpaid" Customers of MF Global Canada Co. whose Accounts were transferred to RBC Dominion Securities Inc. ("RBCDS")

KPMG Inc. was appointed as trustee in bankruptcy of MF Global Canada Co. pursuant to a Bankruptcy Order dated November 4, 2011 (the "**Date of Bankruptcy**").

Enclosed herewith is a copy of an account statement for your account at MF Global Canada Co. as at the Date of Bankruptcy (the "**Date of Bankruptcy Statement**") and November 30, 2011 (the "**November Month End Statement**").

In accordance with the *Bankruptcy and Insolvency Act*, claims against MF Global Canada Co. are to be determined as at the Date of Bankruptcy. As you are likely aware, the Trustee entered into arrangements with RBCDS for the transfer of various accounts to RBCDS. The Trustee has confirmed that, in connection with the transfer of your account, cash and securities in an amount shown on the November Month End Statement were transferred to RBCDS and allocated to your account (the "**Transfer Amount**"). The Transfer Amount is a credit against the net equity claim that you had against MF Global Canada Co. as at the Date of Bankruptcy. The books and records of MF Global Canada Co. indicate that there is a residual amount of "net equity" due to you (the "**Residual Amount**"). Enclosed is a cheque for the Residual Amount due to you. The Residual Amount is equal to the difference between the value of your net equity and the Transfer Amount.

The value of your net equity as at the Date of Bankruptcy is indicated on the enclosed Date of Bankruptcy Statement (see the line for "Total Equity"). All post bankruptcy transactions are set out on the enclosed November Month End Statement.

The payment of the Residual Amount indicates to the Trustee that your "net equity" claim against the estate of MF Global Canada Co. has been fully satisfied and that you do not have any further claim in the estate.

If you agree with the foregoing, no further action is required on your part. In the event that you believe that you have any additional claim(s) against MF Global Canada Co., you are required to file a Proof of Claim with the Trustee in accordance with the Claims Process Order issued by the Court on January 27, 2012. Any Claim for a Revised Net Equity Amount must be filed with the Trustee prior to the Claims Bar Date of May 10, 2012. Copies of the Claims Process Order and all applicable claims forms can be obtained from the Trustee upon request or by downloading the applicable claims form(s) from the Trustee's website: www.kpmg.ca/mfglobalcanada.

In the event that you have any questions in connection with the information contained in this letter or the Claims Process, you should first check the Trustee's Frequently Asked Questions posted on the Trustee's website or you can contact the Trustee directly at the contact particulars noted below.

Be advised that, in the event you intend to assert a Revised Net Equity Claim against the estate, you must file a properly completed Revised Net Equity Proof of Claim with the Trustee prior to the Claims Bar Date of May 10, 2012 or your Revised Net Equity Proof of Claim will be forever barred and extinguished.

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5

Attention: MF Global Canada –Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

SCHEDULE "C"

Court File No. 31-0R-207854-T

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE BANKRUPTCY OF
MF GLOBAL CANADA CO.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

REVISED NET EQUITY PROOF OF CLAIM

Instructions

In order to have a valid Revised Net Equity Claim as a Customer of MF Global Canada Co., this Revised Net Equity Proof of Claim form must be properly completed and delivered to KPMG Inc. in its capacity as trustee in bankruptcy of MF Global Canada Co. (the "Trustee") prior to the Claims Bar Date (described below).

These instructions are provided to assist you in preparing the Revised Net Equity Proof of Claim form in a complete and accurate manner. DO NOT LEAVE ANY SECTIONS OF THE FORM BLANK.

General

- ☐ You must ensure that you include your complete name, address, telephone number and account number on the Revised Net Equity Proof of Claim form.
- ☐ The Revised Net Equity Proof of Claim form must be dated, signed personally by the individual completing it, and witnessed. The Revised Net Equity Proof of Claim form is incomplete UNLESS it has been signed and witnessed.
- ☐ If the individual completing the Revised Net Equity Proof of Claim form is not the Customer himself/herself, but is completing on behalf of a corporation, he/she must state his/her position or title.

Revised Net Equity Claims

"Net Equity" is defined in Section 253 of the *Bankruptcy and Insolvency Act* as:

"net equity" means, with respect to the securities account or accounts of a customer, maintained in one capacity, the net dollar value of the account or accounts, equal to the amount that would be owed by a securities firm to the customer as a result of the liquidation by sale or purchase at the close of business of the securities firm on the date of bankruptcy of the securities firm, of all security positions of the customer in each securities account, other than customer name securities reclaimed by the customer, including any amount in respect of a securities transaction not settled on the date of bankruptcy but settled thereafter, less any indebtedness of the customer to the securities firm on the date of bankruptcy including any amount owing in respect of a securities transaction not settled on the date of bankruptcy but settled thereafter, plus any payment of indebtedness made with the consent of the trustee after the date of bankruptcy;

In the event that you claim a net equity position that differs from the net equity amount which has been confirmed to you in the attached letter from the Trustee from the books and records of MF Global Canada Co. you must provide all of the particulars of your Revised Net Equity Claim and attach all supporting documentation giving rise to the Revised Net Equity Claim

The Revised Net Equity Proof of Claim form is incomplete unless you include a statement (marked as "Schedule "A") setting out particulars of the Revised Net Equity Claim. You must acknowledge receipt of and account for any Net Equity Payment provided to you by the Trustee or Transfer Amount (the value of the cash and securities transferred to RBC Dominion Securities Inc. with respect to your account) received prior to the date hereof as a credit against any Revised Net Equity Claim.

A. Particulars of Customer

1. Full Legal Name: _____
2. Full Mailing Address: _____

3. Account Number: _____
4. Telephone Number: _____
5. Facsimile Number: _____
6. E-mail Address: _____
7. Attention (Contact Person): _____

B. Proof of Revised Net Equity Claim

I, _____ [name of Customer or Representative of Customer], of _____ (City, Province) do hereby certify:

- (a) that I *[tick one]*

☐ am the Customer of MF Global Canada Co.; OR

☐ am _____ (state position or title)
of

_____ (name of Customer)

(b) that I have knowledge of all of the circumstances connected with the Revised Net Equity Claim referred to below;

(c) the Claimant asserts its claim against Mf Global Canada Co. for the following additional amount of "net equity":

\$ _____ [insert \$ value of Revised Net Equity Claim]

(Note: Claims should be calculated in US dollars if the reference transactions relate to US dollars, and should be calculated in Canadian dollars if the reference transactions are in any other currency, including Canadian dollars. Currencies will be converted in accordance with the Claims Process Order.)

D. Particulars of Revised Net Equity Claim:

The Particulars of the undersigned's total Revised Net Equity Claim are set out in the attached Schedule "A".

E. Filing of Revised Net Equity Proof of Claim

This Revised Net Equity Proof of Claim must be received by the Trustee no later than 5:00 p.m. (Toronto time) on the Claims Bar Date of May 10, 2012, by facsimile transmission, personal delivery, courier or prepaid mail at the following address:

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5

Attention: MF Global Canada –Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

Failure to file your Revised Net Equity Proof of Claim as directed by 5:00 p.m. (Toronto time) on May 10, 2012 (the Claims Bar Date) will result in your Revised Net Equity Claim being barred and you will be prohibited from making or enforcing the Revised Net Equity Claim against the estate of MF Global Canada Co.

Dated at _____ this _____ day of _____, 2012.

Name and address of Witness:

Witness Signature

Name of Customer

Per: _____

SCHEDULE "D"

Court File No. 31-OR-207854-T

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE BANKRUPTCY OF
MF GLOBAL CANADA CO.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

CREDITOR PROOF OF CLAIM

Instructions

In order to have a valid Claim as a Creditor of MF Global Canada Co., this Creditor Proof of Claim form must be properly completed and delivered to KPMG Inc. in its capacity as trustee in bankruptcy of MF Global Canada Co. (the "Trustee").

These instructions are provided to assist you in preparing the Creditor Proof of Claim form in a complete and accurate manner. DO NOT LEAVE ANY SECTIONS OF THE FORM BLANK.

General

- ☐ You must ensure that you include your complete name, address, telephone number and account number on the Creditor Proof of Claim form.
- ☐ The Creditor Proof of Claim form must be dated, signed personally by the individual completing it, and witnessed. The Creditor Proof of Claim form is incomplete UNLESS it has been signed and witnessed.
- ☐ If the individual completing the Creditor Proof of Claim form is not the Creditor himself/herself, but is completing on behalf of a corporation, he/she must state his/her position or title.

I. Particulars of Creditor

1. Full Legal Name: _____

2. Full Mailing Address: _____

3. Account Number: _____
4. Telephone Number: _____
5. Facsimile Number: _____
6. E-mail Address: _____
7. Attention (Contact Person): _____

II. Proof of Claim

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

1. That I am a creditor of the above named debtor, (*or* That I am , of)).
2. That I have knowledge of all the circumstances connected with the claim referred to in this form.
3. That MF Global Canada Co. was, at the date of bankruptcy, namely the 4th day of November, 2011, and is still indebted to the above named creditor (referred to in this form as the "creditor") in the sum of \$_____, as shown by the statement of account attached hereto and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled.

(Note: Claims should be calculated in Canadian dollars using the noon spot rate of the Bank of Canada as of November 4, 2011. Currencies will be converted in accordance with the Claims Process Order and a schedule of FX conversion rates is posted on the Trustee's website: www.kpmg.ca/mfglobalcanada)

4. (*Check and Complete appropriate category*).

A. UNSECURED CLAIM

That in respect of the said debt, I do not hold any assets of the debtor as security and

(*check appropriate description*)

- ☐ I do not claim a right to a priority
- ☐ I claim a right to a priority under Section 136 of the *Bankruptcy and Insolvency Act* (*Set out on an attached schedule details to support the priority claim*).

B. SECURED CLAIM

That in respect of the said debt, I hold assets of the debtor valued at \$_____ as security, particulars of which are as follows:

(*Give full particulars of the security, including the date on which the security was given and the value at which the creditor assesses the security, and attach a copy of the security documents*).

C. CLAIM BY FARMER, FISHERMAN OR AQUACULTURIST

That I hereby make a claim under subsection 81.2(1) of the *Bankruptcy and Insolvency Act* for the unpaid amount of \$ *(Attach a copy of the sales agreement and delivery documents)*.

D. CLAIM BY WAGE EARNER OF \$ _____

- ☐ That I hereby make a claim under subsection 81.3(8) of the Act in the amount of \$ _____
- ☐ That I hereby make a claim under subsection 81.4(8) of the Act in the amount of \$ _____

(Give full particulars of the claim, including the calculations upon which the claim is based.)

E. CLAIM BY EMPLOYEE FOR UNPAID AMOUNT REGARDING PENSION PLAN OF \$ _____

- ☐ That I hereby make a claim under subsection 81.5 of the Act in the amount of \$ _____
- ☐ That I hereby make a claim under subsection 81.6 of the Act in the amount of \$ _____

(Give full particulars of the claim, including the calculations upon which the claim is based.)

5. That to the best of my knowledge and belief, I am (or the above named creditor is) (or am not or is not) related to the debtor within the meaning of Section 4 of the *Bankruptcy and Insolvency Act*.

6. That the following are the payments that I have received from and the credits that I have allowed to the debtor within the three months (or, if the creditor and the debtor are related within the meaning of Section 4 of the *Bankruptcy and Insolvency Act*, within the 12 months) immediately preceding the date of bankruptcy:

(Provide details of payments and credits).

III. Filing of Claim

This Creditor Proof of Claim must be returned to and received by the Trustee at the following address:

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5

Attention: MF Global Canada –Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

Dated at _____ this _____ day of _____, 2012.

Name and address of Witness:

Witness Signature

Name of Creditor

Per: _____

SCHEDULE "E"

Court File No. 31-0R-207854-T

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE BANKRUPTCY OF
MF GLOBAL CANADA CO.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

NOTICE OF DISALLOWANCE (OR PARTIAL DISALLOWANCE)

Name of Claimant: _____

Reference#: _____

Pursuant to the Claims Process Order of the Honourable Justice Campbell, dated January ■, 2012, KPMG Inc., in its capacity as trustee in bankruptcy of MF Global Canada Co., hereby gives you notice that it has reviewed your Proof of Claim or Revised Net Equity Proof of Claim and has disallowed your Claim in full (or has partially disallowed your Claim for \$■ and accepted your Claim in the amount of \$■.

Reason for Disallowance (or Partial Disallowance)

AND TAKE FURTHER NOTICE that if you are dissatisfied with our decision in disallowing your claim, you may appeal to the Court within the 30-day period after the day on which this notice is served or sent, or within such period as the Court may, on application made within the

30-day period, allow, failing which, the above-referenced disallowance of your claim shall be final and conclusive.

A copy of the Claims Process Order and copies of all necessary forms can be found at:
www.kpmg/ca/mfglobalcanada.

Address for Service:

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
Canada, M5H 2S5

Attention: MF Global Canada –Claims
Telephone: 416-777-3666
Toll Free Number: 1-866-602-6743
Fax: 416-777-3364
Email: mfglobalcanada@kpmg.ca

Dated at _____ this _____ day of _____, 2012.

KPMG INC., in its capacity as Trustee in Bankruptcy
of MF Global Canada Co.

Per: _____

IN THE MATTER OF THE BANKRUPTCY OF MF GLOBAL CANADA CO., OF THE CITY OF TORONTO, IN THE PROVINCE OF
ONTARIO

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
PROCEEDINGS COMMENCED AT TORONTO

CLAIMS PROCESS ORDER

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
Scotia Plaza, 40 King Street West
Toronto, Ontario, M5H 3Y4

CRAIG J. HILL
Tel: (416) 367-6156
Fax: (416) 361-7301
(LSUC #31888K)

Lawyers for KPMG Inc., in its capacity as trustee in
bankruptcy of MF Global Canada Co.

TOR01: 4821308: v3

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

THE HONOURABLE MR.	)	MONDAY, THE 14 TH DAY
	)	
JUSTICE COLIN L. CAMPBELL	)	OF NOVEMBER, 2011

**IN THE MATTER OF THE BANKRUPTCY OF
MF GLOBAL CANADA CO.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**ORDER
(RE CUSTOMER REPRESENTATIVE COUNSEL)**

THIS MOTION made on shortened notice by KPMG Inc., in its capacity as the trustee in bankruptcy (the "**Trustee**") of MF Global Canada Co. ("**MF Global Canada**") was heard on Monday, November 14, 2011 at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Trustee and on hearing the submissions of counsel for the Trustee and the proposed Customer Representative Counsel (as defined below):

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is abridged, service of notice of motion material and the motion record is validated, all such that this motion is properly returnable on November 14, 2011.
2. **THIS COURT ORDERS** that, subject to further Order of the Court, Callidus Capital Corporation, ^{AND XL FOODS INC. (COLLECTIVELY)} the "**Customer Representative**") is hereby appointed to represent all "customers" (as such term is defined in the *Bankruptcy and Insolvency Act* (Canada) (the

"BIA")) of MF Global Canada as at November 4, 2011, other than MF Global Inc. (collectively, the "**Customers**") in all matters relating to MF Global Canada's proceedings under the BIA (collectively, the "**Proceedings**").

3. **THIS COURT ORDERS** that Stikeman Elliott LLP is hereby appointed as counsel (the "**Customer Representative Counsel**") to represent the Customers in respect of all matters affecting the Customers in the Proceedings.
4. **THIS COURT ORDERS** that any individual Customer who does not wish to be represented by the Customer Representative Counsel and to be bound by this Order and all other related orders which may subsequently be made in these proceedings shall by December 14, 2011, notify the Customer Representative Counsel and the Trustee in writing by facsimile, mail or delivery, in the form attached as **Schedule "A"** hereto, and shall thereafter not be so represented and shall represent themselves as an independent individual party to the extent they wish to appear in the Proceedings.
5. **THIS COURT ORDERS** that, subject to further Order of the Court, the Customer Representative Counsel shall have no obligation to consult with or seek instructions from the Customers other than the Customer Representative.
6. **THIS COURT ORDERS** that pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Trustee is hereby authorized and directed to provide to the Customer Representative Counsel as soon as possible after the granting of this Order, without charge,
 - (a) all available information from the books and records of MF Global Canada under the Trustee's control with respect to the names, last known addresses, last known phone numbers and e-mail addresses (if any) of all Customers. The Customer Representative Counsel shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it only for the purpose of facilitating its communications with the customers; and

- (b) upon request of the Customer Representative Counsel, such documents and data as the Customer Representative Counsel deems necessary or desirable in order to perform its role as counsel to the Customers in the Proceedings. The Customer Representative Counsel is authorized to provide information obtained under this paragraph to the Customer Representative for the purpose of seeking and obtaining instructions in connection with carrying out its responsibilities as Customer Representative Counsel.
7. **THIS COURT ORDERS** that any Customer whose personal information is provided to the Customer Representative Counsel by the Trustee pursuant to this Order is deemed to have consented to such provision for the purposes of any applicable privacy legislation to the Trustee providing such information, and to the collection, use, and disclosure by the Customer Representative Counsel of such information, provided that such information will be used or disclosed by the Customer Representative Counsel solely for the purposes of representing the Customers' interests in the Proceedings.
8. **THIS COURT ORDERS** that the reasonable legal fees of and incidental fees and disbursements incurred by the Customer Representative and Customer Representative Counsel shall be paid by the Trustee on a periodic basis, forthwith upon the rendering of accounts (redacted to preserve any claim for privilege) to the Trustee and that, in the event of any disagreement regarding such fees and disbursements, such matters may be remitted to this Court for determination.
9. **THIS COURT ORDERS** that, subject to further order of the Court, and without limitation to any other right or protection in favour of the Customer Representative Counsel: (a) the Customer Representative Counsel shall not be required to take any step or action if it reasonably believes that there will not be sufficient funds available to it to complete such step or action; and (b) Stikeman Elliott LLP may apply to be discharged from its role as Customer Representative Counsel at any time in its sole discretion, including, without limitation, on the basis that it reasonably believes that there are

insufficient funds available to it to carry out the terms of this Order or otherwise fulfill its role as Customer Representative Counsel.

10. **THIS COURT ORDERS** that Callidus Capital Corporation, ^{AND XL FOODS INC. che} may resign as Customer Representative at any time in its sole discretion and that in the event of ^{either che} Callidus Capital Corporation's ^{or XL FOODS INC.} resignation, the Trustee may appoint another Customer as the Customer Representative to replace Callidus Capital Corporation, ^{or XL FOODS INC. che}
11. **THIS COURT ORDERS** that the Trustee shall provide notice of this Order to the Customers by: (a) publishing a notice in the form attached as **Schedule "B"** hereto (the "Notice") in the national edition of *The Globe and Mail* and in *La Presse* (in French) as soon as practicable after the granting of this Order; (b) e-mailing or mailing a copy of the Notice, together with the Notice of Bankruptcy required by Section 102(c) of the BIA and a copy of this Order, after the granting of this Order to the Customers to the e-mail or physical address of the Customer as last shown in the books and records of MF Global Canada; and (c) posting a copy of the Notice on the Trustee's website as soon as practicable after the granting of this Order.
12. **THIS COURT ORDERS** that the Customer Representative and the Customer Representative Counsel are hereby authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body and other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.
13. **THIS COURT ORDERS** that the Customer Representative and the Customer Representative Counsel shall have no liability as a result of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, save and except for any gross negligence or unlawful misconduct on their part and that no action or other proceedings shall be commenced against the Customer Representative and/or the Customer Representative Counsel relating to their acting as such, except with prior leave of this Court to be obtained on at least seven (7) days' notice to the Customer

Representative and/or the Customer Representative Counsel and upon further order in respect of security for costs, to be given by the plaintiff for the costs on a substantial indemnity basis, of the Customer Representative and/or the Customer Representative Counsel in connection with any such action or proceeding.

14. **THIS COURT ORDERS** that the Customer Representative and the Customer Representative Counsel shall be at liberty and are authorized at any time to apply to this Honourable Court for advice and directions in the discharge or variation of their powers and duties.
15. **THIS COURT ORDERS** that in the event that this Order is later amended by further Order of the Court, the Trustee may post such further Order on the Trustee's website and such posting shall constitute adequate notice to the Customers of such amended Order.

 Ch. Campbell

SCHEDULE "A"

Court File No. 31-OR-207854-T

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE BANKRUPTCY OF
MF GLOBAL CANADA CO.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

OPT-OUT LETTER

KPMG Inc.,
Trustee in Bankruptcy of
MF Global Canada Co.
333 Bay Street, Suite 4600
Bay Adelaide Centre
Toronto, Ontario
M5H 2S5

Attention: Elizabeth Murphy
Telephone: (416) 777-8500
Fax: (416) 777-8818
elizabethmurphy@kpmg.ca

STIKEMAN ELLIOTT LLP
Barristers and Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1B9

Attention: Maria Konyukhova
Telephone: (416) 869-5230
Fax: (416) 947-0866
mkonyukhova@stikeman.com

I, _____, am a Customer of MF Global Canada Co., as defined in the Order of Mr. Justice Campbell dated November 14, 2011 (the "**Order**").

Under paragraph 4 of that Order, Customers who do not wish Stikeman Elliott LLP to act as their representative counsel may opt out.

I hereby notify Stikeman Elliott LLP and the Trustee that I do not wish to be bound by the Order and will be represented as an independent individual party at my own expense to the extent I wish to appear in these proceedings.

Date

Signature

SCHEDULE "B"

On November 1, 2011, an Application for Bankruptcy Order was issued by the Canadian Investor Protection Fund against MF Global Canada Co. ("**MF Canada**"). On November 4, 2011 MF Canada consented to the immediate making of a Bankruptcy Order and KPMG Inc. was appointed as trustee in bankruptcy of MF Canada (the "**Trustee**"). As a result, the Trustee has a mandate to administer the estate of MF Canada in accordance with Part XII of the *Bankruptcy and Insolvency Act* (the "**BIA**").

Pursuant to an order of the Ontario Superior Court of Justice dated November 14, 2011, Callidus Capital Corporation (the "**Customer Representative**") was appointed as representative of all "customers" (as such term is defined in the BIA) of MF Canada as at November 4, 2011, other than MF Global Inc. (collectively, the "**Customers**") in all matters relating to MF Canada's proceedings under the BIA (collectively, the "**Proceedings**"). Stikeman Elliott LLP was appointed as representative counsel for the Customers ("**Customer Representative Counsel**").

The reasonable legal fees of and incidental fees and disbursements incurred by the Customer Representative and Customer Representative Counsel shall be paid by the Trustee on a periodic basis. Accordingly, **you are not required to contribute to the fees of the Customer Representative Counsel.**

If you do not wish to be bound by this order, you must notify the Trustee, KPMG Inc. and Stikeman Elliott LLP, in writing, by mail, e-mail or delivery on or before **December 14, 2011**. Your notice that you do not wish to be bound by this order must be in the form of a fully completed "Opt-Out Letter" substantially in the form attached as Schedule "A" to the Order dated November 14, 2011 and available on the Trustee's website at www.kpmg.ca/mfglobalcanada.

Additional information concerning the Proceedings, including previous orders granted in the Proceedings, can be found on the Trustee's website at www.kpmg.ca/mfglobalcanada.

Customers may contact Stikeman Elliott LLP in confidence directly at – mkonyukhova@stikeman.com or by telephone to Ms. Maria Konyukhova at 416-869-5230.

**IN THE MATTER OF THE BANKRUPTCY OF MF GLOBAL CANADA CO.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

PROCEEDINGS COMMENCED AT TORONTO

**ORDER
(RE CUSTOMER REPRESENTATIVE COUNSEL)**

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3Y4

CRAIG J. HILL
Direct Phone: 416-367-6156
Direct Fax: 416-361-7301
LSUC#31888K

Lawyers for KPMG Inc.,
in its capacity as trustee in bankruptcy of
MF Global Canada Co.

TAB 8

[Attached]

2009

District of Nova Scotia
Division No. 01-Halifax
Court No. 34181
Estate No. 51-125147

Hfx No. 318069



SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF
GENERAL MOTORS NOVA SCOTIA FINANCE COMPANY

Court Administration

OCT 29 2013

Halifax, N.S.

ORDER FOR DIRECTIONS

Sgd.

JLC, J.

Justice James L. Chipman

BEFORE THE HONOURABLE _____ IN CHAMBERS:

UPON READING the First Report of Grant Thornton Limited (which includes the former practice of Green Hunt Wedlake Inc. (the "**Trustee**") dated October 18, 2013 (the "**Trustee's Report**") and other material on file herein;

AND UPON IT APPEARING that the Trustee has entered into a settlement agreement with various parties that *inter alia* resolve certain claims pursued by the Trustee in the United States Bankruptcy Court – Southern District of New York (the "**US Court**") as part of the bankruptcy of Motors Liquidation Company (formerly known as General Motors Corporation) (the "**Settlement Agreement**");

AND UPON BEING SATISFIED that it is appropriate to order directions regarding a process for approval by the creditors of General Motors Nova Scotia Finance Company (the "**Bankrupt**") of the Settlement Agreement and recognition by this Honourable Court of an approval order of the US Court as well as certain other procedural matters;

UPON HEARING Gavin MacDonald, counsel to the Trustee, John Stringer, Q.C., counsel to General Motors of Canada Limited, together with such other counsel as were present;

ON THE MOTION of the Trustee;

IT IS HEREBY ORDERED THAT:

NOTICE AND SERVICE

1. The time and method for service of the motion materials be and is hereby abridged and validated such that this motion is properly returnable today and further service thereof is waived.

GLOBAL PROOF OF CLAIM

2. Consistent with the Order for Directions of this Honourable Court issued November 27, 2009, the Trustee shall accept the global proof of claim (the “**Global Proof of Claim**”) from the parties to the Settlement Agreement who hold beneficial interests in Series 8.375% Guaranteed Notes maturing December 7, 2015 or of Series 8.875% Guaranteed Notes maturing July 10, 2023 (collectively, the “**Notes**”) issued in each case by the Bankrupt (the “**Representative Noteholders**”) on behalf of all past, present and future beneficial or legal owners of the Notes (collectively, “**All Holders**”) solely with respect to claims by All Holders against the Bankrupt in respect of the Notes (the “**Note Claims**”) in the form attached as Appendix G to the Trustee’s Report for distributions by the Trustee from the estate of the Bankrupt and, subject to Section 10 of this Order, for voting at a meeting of creditors of the Bankrupt to be held pursuant to the terms of this Order.
3. The Global Proof of Claim is deemed for the purposes of the administration of the affairs of this bankruptcy to be separate Proofs of Claim filed by each holder of Notes with respect to each of their respective Note Claims.
4. Dividends payable from the estate of the Bankrupt in respect of Note Claims shall be made to Deutsche Bank Luxembourg S.A. and Banque Générale du Luxembourg S.A. or their respective successors (collectively, the “**Fiscal and Paying Agent**”) in accordance with the terms of the Fiscal and Paying Agency Agreement dated as of July 10, 2003 and governing the issuance of the Notes (the “**Fiscal and Paying Agency Agreement**”).
5. Any proofs of claim filed with the Trustee with respect to Note Claims as of the date of this Order shall be deemed withdrawn by the applicable creditor, and no further proofs of claim in respect of the Note Claims may be filed with the Trustee subsequent to the date of this Order other than for voting purposes in accordance with Section 10 of this Order.

CREDITORS MEETING

6. The notice and service thereof of a meeting of creditors of the Bankrupt by the Trustee to be held October 31, 2013 beginning at 9:30am Eastern Standard Time pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”), s. 103 or, if adjourned, at such other times and places as the Trustee may determine (the “**Creditors Meeting**”) for consideration and approval of the Settlement Agreement be and is hereby approved, validated and confirmed as being effective as to form, service and delivery, and that no further notice or service is required on any person or party.
7. The holding of the Creditors Meeting at the offices of Akin Gump Strauss Hauer & Feld LLP, counsel to the Trustee, in the City of New York, State of New York, United States of America be and is hereby approved and confirmed.
8. Any creditor holding a Note Claim that is not a Representative Noteholder may vote at the Creditors Meeting by filing a proof of claim and proxy for voting purposes with the

Trustee prior to the Creditors Meeting substantially in the form prescribed by the BIA (an **"Individual Noteholder"**).

9. The value of the Global Proof of Claim for voting purposes shall be reduced by the amount of all proofs of claim for voting purposes submitted to the Trustee by Individual Noteholders prior to the Creditors Meeting. For greater certainty, the Representative Noteholders shall be entitled to vote at the Creditors Meeting the full value of the Note Claims less the value of any proofs of claim filed by Individual Noteholders.
10. Notwithstanding any proofs of claim for voting purposes filed by Individual Noteholders, dividends by the Trustee from the estate of the Bankrupt to All Holders shall be made in accordance with Section 4 of this Order.
11. The Creditors Meeting shall be conducted in accordance with the provisions of the BIA.

RECOGNITION MOTION

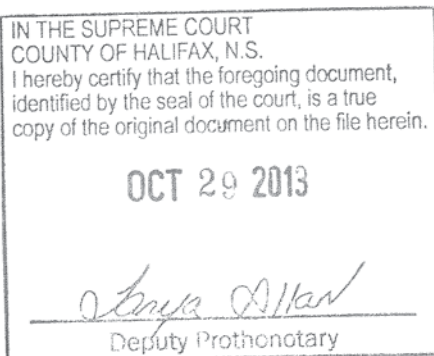
12. A motion by the Trustee be and is hereby scheduled for 9:30 am in General Chambers, Law Courts, Halifax, Nova Scotia on November 12, 2013 (the **"Recognition Motion"**) for the following relief:
 - (a) Recognition of an Order of the US Court approving the Settlement Agreement and granting certain ancillary relief in connection with that Agreement;
 - (b) Approval of the actions of the Trustee to the date of the hearing, including the execution of the Settlement Agreement;
 - (c) Approval of the interim fees and expenses of the Trustee and its counsel to the date of the hearing;
 - (d) Authorization for the Trustee to pay such approved fees and expenses (in part) from the assets of the estate of the Bankrupt;
 - (e) Authorization for the GM Canada Payment (as defined in the Settlement Agreement) to be made and disbursed pursuant to the direction of the Trustee as provided in paragraph 5 of the Settlement Agreement; and
 - (f) An injunction against All Holders from making any claims which would have the effect of nullifying or adversely modifying the releases contained in paragraphs 13 to 22 or the acknowledgements contained in paragraph 23 of the Settlement Agreement, and a further injunction giving effect to the bar order contained in paragraph 31 of the Settlement Agreement.
13. Notice of the Recognition Motion shall be given in accordance with the procedures set forth in Sections 15 to 21 of this Order.

14. The Trustee shall file a notice of such motion with this Court with such additional materials as required by the BIA or the Civil Procedure Rules subsequent to the Creditors Meeting but no later than the close of business on November 6, 2013.

SERVICE PROTOCOL

15. The Trustee shall post of a copy of the Settlement Agreement, this Order, the Trustee's Report, and any other materials filed in connection with this Order on its website at http://www.grantthornton.ca/services/reorg/creditor_updates.
16. Notice of the Recognition Motion shall be given by the Trustee to All Holders with the assistance of the Fiscal and Paying Agent through the applicable clearinghouses in accordance with the terms of the Fiscal and Paying Agency Agreement and this Order. The form of such notice shall be substantially in the form attached hereto as Schedule "A". Delivery of such notice by the Trustee to the Fiscal and Paying Agent shall be sufficient notice and service to All Holders.
17. In accordance with section 1 of Schedule B of the Terms and Conditions of the Notes, at page 44 of the Fiscal and Paying Agency Agreement, the Trustee shall notify the Luxembourg Stock Exchange of the Recognition Motion in accordance with the rules of such exchange and the terms of the Fiscal and Paying Agency Agreement. The form of such notice shall be substantially in the form attached hereto as Schedule "A".
18. The Trustee shall give notice of the Recognition Motion by pre-paid private courier to all creditors of the Bankrupt who have filed proofs of claim with the Trustee. The Notice at Schedule "B" is approved for the purpose of such notification.
19. The Trustee shall give notice of the Recognition Motion to the parties to the Settlement Agreement in accordance with paragraph 28 of the Settlement Agreement.
20. The Trustee shall give notice of the Recognition Motion to the Office of the Superintendent of Bankruptcy in accordance with the provisions of the BIA.
21. The service and notice requirements outlined in this Order shall be considered valid and sufficient service and notice for the Recognition Motion pursuant to the BIA, the *Bankruptcy and Insolvency Act Rules*, and the *Civil Procedure Rules* (Nova Scotia).

Issued October 29, 2013.




Deputy Prothonotary

Tanya Allan
Deputy Prothonotary

Schedule "A"

Notice to All Holders

THIS NOTICE CONTAINS IMPORTANT INFORMATION OF INTEREST TO THE BENEFICIAL OWNERS OF THE NOTES. IF APPLICABLE, ALL DEPOSITARIES, CUSTODIANS AND OTHER INTERMEDIARIES RECEIVING THIS NOTICE ARE REQUESTED TO PASS THIS NOTICE TO SUCH BENEFICIAL OWNERS IN A TIMELY MANNER.

In accordance with normal practice, the Fiscal Agent (as defined below) expresses no view as to the truth, veracity, accuracy or completeness of the contents of this Notice. The Fiscal Agent does not make any representation that all relevant information has been disclosed to the Noteholders in or pursuant to this Notice. Accordingly, the Fiscal Agent recommends that Noteholders consider seeking their own financial, tax, accounting, investment and legal advice. No responsibility or liability is or will be accepted by the Fiscal Agent in relation to the accuracy or completeness of this Notice or any other written or oral information made available to any person receiving this notice or its advisors and any such liability is expressly disclaimed.

This notice is issued by the Nova Scotia Trustee (as defined below) in its capacity as trustee in bankruptcy for the Issuer (as defined below). None of the foregoing is intended or should be construed as investment, financial, legal or tax advice by or on behalf of the Issuer, the Nova Scotia Trustee or their respective directors, officers, agents, attorneys or employees. Each person receiving this notice should seek the advice of its own advisors in respect of the matters set forth herein. NOTHING IN THIS NOTICE CONSTITUTES ANY PROMOTION IN RESPECT OF OR ANY INVITATION, ENDORSEMENT OR OFFER TO INVEST OR DEAL IN THE LOAN (AS DEFINED IN THE OFFERING CIRCULAR) OR THE NOTES OR IN ANY OTHER ASSETS, SECURITIES OR FINANCIAL INSTRUMENTS IN ANY JURISDICTION.

Holders of the 2015 Notes and the 2023 Notes (as are both defined below) (collectively, the "Noteholders") are reminded that the Fiscal Agent acts solely as agent of the Issuer and has no obligations or relationships of agency or trust towards any Noteholder. The Fiscal Agent will not be filing any claims on behalf of the Noteholders. The Nova Scotia Trustee is appointed pursuant to the Bankruptcy and Insolvency Act (Canada) to represent the general interests of unsecured creditors of the Issuer. The Nova Scotia Trustee will not be filing any documentation on behalf of any particular Noteholder.

NOTICE

To the Holders of the

General Motors Nova Scotia Finance Company

£350,000,000

8.375 Percent Notes due 2015 (the "2015 Notes")

XS0171922643

and

£250,000,000

8.875 Percent Notes due 2023 (the "2023 Notes")

XS0171908063

Reference is made to the Fiscal and Paying Agency Agreement among General Motors Nova Scotia Finance Company (the "Issuer"), General Motors Corporation, now known as Motors Liquidation Company (the "Guarantor"), Deutsche Bank Luxembourg S.A. (the "Fiscal Agent") and Banque Générale du Luxembourg S.A. dated July 10, 2003 pursuant to which the 2015 Notes and the 2023 Notes were issued.

PLEASE TAKE NOTICE that Grant Thornton Limited (carrying on the practice of Green Hunt Wedlake Inc.) in its capacity as trustee in bankruptcy for the Issuer (the "Nova Scotia Trustee") has scheduled a motion to be heard by the Supreme Court of Nova Scotia in Bankruptcy and Insolvency (the "NS Court") seeking recognition of an Order of the United States Bankruptcy Court – Southern District of New York (the "US Court"), an injunction barring actions by all past, present and future Noteholders in accordance with the terms of the Settlement Agreement (as defined below) among other relief (the "Recognition Motion").

RECOGNITION MOTION

The Nova Scotia Trustee is bringing the Recognition Motion for an order:

1. recognising the order of the US Court approving the settlement agreement entered into by the Trustee (the "Settlement Agreement"), that resolves among other matters, (a) the Administrative Expense Claim filed by General Motors LLC ("New GM") (as defined in the motion filed by Motors Liquidation Company GUC Trust in the US Court on September 27, 2013 pursuant to Sections 105, 363 and 1142 of the Bankruptcy Code and Bankruptcy Rules 3020 and 9019 (the "US Motion"), subject to paragraph 10 of the Settlement Agreement), (b) the GUC Trust's objections to all claims asserted against Motors Liquidation Company f/k/a General Motors Corporation ("Old GM") based on its guarantee (the "Guarantee") of the obligations of the Issuer under the Notes, (c) the GUC Trust's objection to the claim of the Nova Scotia Trustee, and (d) all claims arising from or related to the Lock-Up Agreement, the Consent Fee, and the Intercompany Loans (all as defined in the US Motion). and granting certain ancillary relief in connection with that Agreement;
2. approving the actions of the Nova Scotia Trustee to the date of the hearing, including execution of the Settlement Agreement;
3. approving the interim fees and expenses of the Nova Scotia Trustee and its counsel to the date of the hearing;
4. authorizing the Nova Scotia Trustee to pay such approved fees and expenses from the assets of the estate of the Issuer authorizing the payment from General Motors of Canada Limited

contemplated by paragraph 5 of the Settlement Agreement to be made and disbursed pursuant to the direction of the Nova Scotia Trustee and in accordance with the Settlement Agreement; and

5. issuing an injunction against all past, present and future Noteholders from making any claims which would have the effect of nullifying or adversely modifying the releases contained in paragraphs 13 to 22 or the acknowledgements contained in paragraph 23 of the Settlement Agreement, and a further injunction giving effect to the bar order contained in paragraph 31 of the Settlement Agreement.

The Recognition Motion is scheduled to be heard by the NS Court on November 12, 2013 at 9:30 am Atlantic Standard Time at the Law Courts, 1815 Upper Water St., Halifax Regional Municipality, Province of Nova Scotia, Canada.

Any responses or objections to the Recognition Motion must be in writing, conform with the requirements of the *Bankruptcy and Insolvency Act* (Canada), *Bankruptcy and Insolvency Act Rules*, and *Civil Procedure Rules* (Nova Scotia), be filed with the NS Court and served on the Nova Scotia Trustee no later than November 8, 2013 at 4:30pm Atlantic Standard Time.

All materials filed by the Nova Scotia Trustee in respect of the Recognition Order are posted on its website: http://www.grantthornton.ca/services/reorg/creditor_updates.

If no responses are timely filed and served, the NS Court may make an order granting the relief requested in the Recognition Motion, which order may be entered with no further notice or opportunity to be heard offered to any party.

The principal terms of the proposed settlement include:

- a. The allowance of a \$1.073 billion general unsecured claim against the Old GM estate based upon the Guarantee in favor of the Noteholders;
- b. reduction of the approximately \$1.608 billion claim filed by the Nova Scotia Trustee to an allowed, general unsecured claim of \$477 million;
- c. payment by General Motors of Canada Limited of \$50 million in cash to the Nova Scotia Trustee, to be applied in part to pay certain fees and expenses of certain parties involved in litigating and settling the disputes underlying the Settlement Agreement in the amount of \$17.5 million (plus any additional amounts owed by Issuer to the Canadian Office of Superintendent of Bankruptcy pursuant to applicable bankruptcy laws in Canada), with the remainder to be distributed to the Noteholders allocated as follows: approximately 57.43% to the 2015 Notes and approximately 42.57% to the 2023 Notes;
- d. various releases given by all past, present and future Noteholders and all other parties referenced within and released pursuant to the Settlement Agreement;
- e. a special distribution (the "Initial Distribution") of common stock of General Motors Company (the "GM Common Stock"), warrants to purchase GM Common Stock and units of

beneficial interest in the GUC Trust (the “GUC Trust Units”), pursuant to Sections 5.3 and 5.8 of the GUC Trust Agreement (copy of which may be found at <https://www.mlcguctrust.com/KeyDocuments.aspx>), to the holders of record of the Notes as of a date (the “Noteholder Record Date”) following the expiration of applicable appeals periods for orders issued in respect of the US Motion and Recognition Motion, as the beneficial holders of the allowed portions of the Guarantee Claim and the Wind-Up Claim; and

- f. a special distribution of excess distributable assets of the GUC Trust, pursuant to Sections 5.4 and 5.8 of the GUC Trust Agreement, to all holders of record of the GUC Trust Units (including the GUC Trust Units distributed in the Initial Distribution) as of a record date to be set after the date of the Initial Distribution.

The Initial Distribution will consist of, in the aggregate, (a) 6,174,015 shares of GM Common Stock, (b) 5,612,741 warrants to acquire GM Common Stock at an exercise price of \$10.00, expiring July 10, 2016, (c) 5,612,741 warrants to acquire GM Common Stock at an exercise price of \$18.33, expiring July 10, 2019, and (d) 1,550,000 GUC Trust Units. In addition, in the event that any assets become available for distribution to holders of general unsecured claims against the MLC estate in respect of the legal action styled as *Official Committee of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A. et al.* (Adv. Pro. No. 09-00504 (Bankr. S.D.N.Y. July 31, 2009)) (the “Term Loan Avoidance Action”), such distributions will be made to the Noteholders as of the Noteholder Record Date, as the beneficial holders of the allowed portions of the Guarantee Claim and the Wind-Up Claim. For additional information regarding the Term Loan Avoidance Action, please see the disclosure in the GUC Trust’s Form 10-K, filed on March 31, 2013, under the headings “Item 1. Business—Term Loan Avoidance Action” and “Item 3. Legal Proceedings—Term Loan Avoidance Action.”

If the Noteholders have any questions, they should contact Peter Wedlake of Grant Thornton Limited (includes the former practice of Green Hunt Wedlake Inc.) by email: Peter.Wedlake@ca.gt.com or by telephone: 902.453.6600 (Halifax, Nova Scotia, Canada).

This notice is given by the Nova Scotia Trustee on behalf of the Issuer on [DATE]

Schedule "B"

Notice of Recognition Motion to Creditors

District of: Nova Scotia
Division No. 01 – Halifax
Court No. 34181
Estate No. 51-125147

Notice to Proven Creditors

In the matter of the bankruptcy of

GENERAL MOTORS NOVA SCOTIA FINANCE COMPANY

The Nova Scotia Trustee has scheduled a motion to be heard by the Supreme Court of Nova Scotia in Bankruptcy and Insolvency (the "NS Court") seeking recognition of an Order of the United States Bankruptcy Court – Southern District of New York (the "US Court"), an injunction barring actions by all past, present and future holders (collectively, the Noteholders) of Series 8.375% guaranteed notes maturing December 7, 2015 or of Series 8.875% guaranteed notes maturing July 10, 2023 (collectively, the "Notes") issued by General Motors Nova Scotia Finance Company (the "Issuer") in accordance with the terms of the Settlement Agreement (as defined below) among other relief (the "Recognition Motion").

RECOGNITION MOTION

The Nova Scotia Trustee is bringing the Recognition Motion for an order:

1. recognising the order of the US Court approving the settlement agreement entered into by the Trustee (the "Settlement Agreement"), that resolves among other matters, (a) the Administrative Expense Claim filed by General Motors LLC ("New GM") (as defined in the motion filed by Motors Liquidation Company GUC Trust in the US Court on September 27, 2013 pursuant to Sections 105, 363 and 1142 of the Bankruptcy Code and Bankruptcy Rules 3020 and 9019 (the "US Motion"), subject to paragraph 10 of the Settlement Agreement), (b) the GUC Trust's objections to all claims asserted against Motors Liquidation Company f/k/a General Motors Corporation ("Old GM") based on its guarantee (the "Guarantee") of the obligations of the Issuer under the Notes, (c) the GUC Trust's objection to the claim of the Nova Scotia Trustee, and (d) all claims arising from or related to the Lock-Up Agreement, the Consent Fee, and the Intercompany Loans (all as defined in the US Motion). and granting certain ancillary relief in connection with that Agreement;
2. approving the actions of the Nova Scotia Trustee to the date of the hearing, including execution of the Settlement Agreement;
3. approving the interim fees and expenses of the Nova Scotia Trustee and its counsel to the date of the hearing;

4. authorizing the Nova Scotia Trustee to pay such approved fees and expenses from the assets of the estate of the Issuer;
5. authorizing the payment from General Motors of Canada Limited contemplated by paragraph 5 of the Settlement Agreement to be made and disbursed pursuant to the direction of the Nova Scotia Trustee and in accordance with the Settlement Agreement; and
6. issuing an injunction against all past, present and future Noteholders from making any claims which would have the effect of nullifying or adversely modifying the releases contained in paragraphs 13 to 22 or the acknowledgements contained in paragraph 23 of the Settlement Agreement, and a further injunction giving effect to the bar order contained in paragraph 31 of the Settlement Agreement.

The Recognition Motion is scheduled to be heard by the NS Court on November 12, 2013 at 9:30 am Atlantic Standard Time at the Law Courts, 1815 Upper Water St., Halifax Regional Municipality, Province of Nova Scotia, Canada.

Any responses or objections to the Recognition Motion must be in writing, conform with the requirements of the *Bankruptcy and Insolvency Act* (Canada), *Bankruptcy and Insolvency Act Rules*, and *Civil Procedure Rules* (Nova Scotia), be filed with the NS Court and served on the Nova Scotia Trustee no later than November 8, 2013 at 4:30pm Atlantic Standard Time.

All materials filed by the Nova Scotia Trustee in respect of the Recognition Order are posted on its website: http://www.grantthornton.ca/services/reorg/creditor_updates.

If no responses are timely filed and served, the NS Court may make an order granting the relief requested in the Recognition Motion, which order may be entered with no further notice or opportunity to be heard offered to any party.

Please do not hesitate to contact the undersigned should you have further questions.

Grant Thornton Limited

(includes the former practice of Green Hunt Wedlake Inc.) – Trustee

Suite 315, 7001 Mumford Road
Halifax Shopping Centre, Tower One
Halifax, Nova Scotia B3L 4N9
Phone: 902.453.6600
Fax: 902.453.9257
Email: Peter.Wedlake@ca.gt.com

TAB 9

[Attached]

APR 17 2016



SUPREME COURT OF NOVA SCOTIA

Hfx No. 355063

IN THE MATTER OF:

The *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36, as amended.

THE MATTER OF:

A Plan of Compromise or Arrangement of
NewPage Port Hawkesbury Corp.

Applicant

DISCHARGE ORDER

BEFORE THE HONOURABLE JUSTICE JOHN D. MURPHY IN CHAMBERS

UPON MOTION by Ernst & Young Inc. ("E&Y"), in its capacity as Monitor (the "**Monitor**") of NewPage Port Hawkesbury Corp. (the "**Applicant**" or "**NPPH**") for an Order approving the Monitor's actions, reports and fees, as well as the fees of its counsel, discharging E&Y as Monitor and terminating these CCAA proceedings;

UPON READING the Seventeenth Report of the Monitor dated February 6, 2014 (the "**Seventeenth Report**"), the Affidavit of George Kinsman sworn February 6, 2014 (the "**Kinsman Affidavit**"), the Affidavit of Maria Konyukhova sworn February 6, 2014 (the "**Konyukhova Affidavit**") and the Affidavit of Tim Hill sworn September 5, 2013 (the "**Hill Affidavit**");

AND UPON HEARING Elizabeth Pillon, counsel for the Monitor, together with such other counsel as were present;

NOW UPON MOTION:

IT IS HEREBY ORDERED AND DIRECTED THAT:

1. Any capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Seventeenth Report.

APPROVAL OF ACTIVITIES

2. The actions of the Monitor as described in the Eleventh to the Seventeenth Reports of the Monitor, and the Supplement to the Thirteenth Report, are hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS

3. The fees and disbursements of the Monitor for the period from September 9, 2011 to June 20, 2013, inclusive, and the Monitor's fees and disbursements, as estimated, to complete its remaining duties and the administration of these CCAA Proceedings, all as set out in the Kinsman Affidavit and the Seventeenth Report, are hereby approved.
4. The fees and disbursements of the Monitor's counsel, Stikeman Elliott LLP ("**Stikeman**") for the period from September 9, 2011 to November 15, 2013, inclusive, and Tim Hill ("**Hill**"), for the period from September 5, 2011 to April 10, 2013, inclusive, and Stikeman's and Hill's fees and disbursements, as estimated, in connection with the completion by the Monitor of its remaining duties and the administration of these CCAA Proceedings, all as set out in the Pilon Affidavit, the Hill Affidavit and the Seventeenth Report, are hereby approved.

DISCHARGE OF THE MONITOR

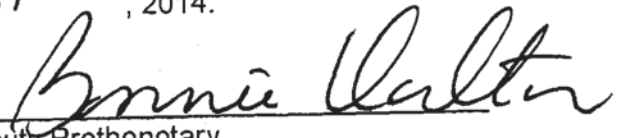
5. E&Y is discharged as Monitor of Newpage and shall have no further duties as Monitor, save and except as set out in paragraph 105 of the Seventeenth Report and paragraph 7 herein. E&Y's discharge is effective immediately on the filing of a certificate with the Court (the "**Discharge Certificate**") certifying that:
 - a. fees and disbursements of the Monitor and of its counsel have been paid in full; and
 - b. any and all matters that may be incidental to the termination of these CCAA Proceedings or any other matters necessary to complete the CCAA Proceedings have been completed.
6. The Monitor has satisfied all of its obligations pursuant to the CCAA and these CCAA Proceedings and shall have no further obligations, liabilities, responsibilities or duties as Monitor, save and except as set out in paragraph 105 of the Seventeenth Report and paragraph 7 herein and the filing of the Discharge Certificate.

7. Notwithstanding the foregoing, the Monitor shall have the authority from and after the date of this Order to complete any matters that may be incidental to the termination of these CCAA Proceedings or any other matters necessary to complete these CCAA Proceedings, including as set out in the Seventeenth Report.
8. In addition to the rights and protections afforded the Monitor under the CCAA, the Plan, the Initial Order and the Sanction Order, the Monitor shall not be liable for any act or omission on the part of the Monitor, or any reliance thereon, including without limitation, with respect to any information disclosed, any act or omission pertaining to the discharge of duties or obligations in the CCAA Proceedings and/or this Order or as requested by the Applicant, save and except for any claim or liability arising out of any negligence or misconduct on the part of the Monitor.
9. No action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court and on prior written notice to the Monitor.
10. Notwithstanding any provision of this Order, nothing contained in this Order shall affect, vary, derogate from or amend any of the protections in favour of the Monitor at law or pursuant to the Initial Order.

TERMINATION OF CCAA PROCEEDING

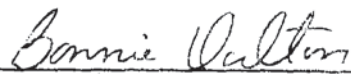
11. The Administrative Charge shall be and is hereby terminated, discharged and vacated in its entirety upon the Monitor's filing with this Court of the Discharge Certificate.
12. The CCAA Proceedings shall be and are hereby terminated upon the Monitor's filing with this Court of the Discharge Certificate.

DATED at Halifax, Nova Scotia, this 17th day of April, 2014.


Deputy Prothonotary

IN THE SUPREME COURT
COUNTY OF HALIFAX, N.S.
I hereby certify that the foregoing document,
identified by the seal of the court, is a true
copy of the original document on the file herein.

APR 17 2014


Deputy Prothonotary

TAB 10

[Attached]

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	MONDAY, THE 16 TH DAY
	)	
JUSTICE NEWBOULD	)	OF DECEMBER, 2013

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
TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

Applicants

ORDER
(Re Stay Extension to June 16, 2014, Approval of CRO's Execution of Documents,
Approval of Cost Allocation, Monitor's Fee Approval & Discharge of CRO and
Approval of Activities)

THIS MOTION, made by Timminco Limited ("**Timminco**") and Bécancour Silicon Inc. ("**BSI**" and, together, the "**Timminco Entities**"), for an order (a) extending the Stay Period (as defined in paragraph 18 of the Initial Order of the Honourable Mr. Justice Morawetz dated January 3, 2012) until June 16, 2014; (b) authorizing the CRO (as defined below) to execute certain documents in relation to the Memphis Property (as defined below); (c) approving the Proposed Cost Allocation Methodology (as defined below); (d) approving the fees and disbursements of FTI Consulting Canada Inc. in its capacity as the court appointed monitor of the Timminco Entities (the "**Monitor**") and its counsel; (e) approving the Twenty-First, Twenty-Second and Twenty-Third Reports (as these terms are defined

below) of the Monitor; and (f) discharging Russell Hill Advisory Services Inc. ("**Russell Hill**") as Chief Restructuring Officer ("**CRO**") of the Timminco Entities and approving the activities of the Russell Hill undertaken in its capacity as CRO of the Timminco Entities, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Sean Dunphy sworn December 5, 2013 (the "**Dunphy Affidavit**"), and the Twenty-Third Report of the Monitor dated December 6, 2013 (the "**Twenty-Third Report**"), and on hearing the submissions of counsel for the Timminco Entities and the Monitor, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Kathryn Esaw sworn December 6, 2013, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including June 16, 2014.

APPROVAL OF EXECUTION OF DOCUMENTS BY THE CRO

3. **THIS COURT ORDERS AND DECLARES** that the execution of the following documents by the CRO or Mr. Dunphy, as the case may be, relating to the sale of the Memphis Property (as defined and described in the Dunphy Affidavit) is hereby approved, *nunc pro tunc*:

- (a) Tennessee Department of Revenue Franchise, Excise Tax Return (2012) for Timminco Properties Inc.;

- (b) US Corporation Income Tax Return (Form 1120) for Timminco Properties Inc. (2012);
- (c) Resolution that Timminco Properties Inc. ("TPI") pay to Timminco Holdings Corporation ("THC") a dividend in the approximate amount of US\$175,000;
- (d) Resolution that THC repay certain intercompany indebtedness to Timminco in the approximate amount of US\$175,000; and
- (e) Declaration of amendment of the charters of THC or TPI as needed to authorize Sean Dunphy to execute the documents necessary to effect the transfer of the sale proceeds from the Memphis Property Sale.

APPROVAL OF PROPOSED COST ALLOCATION METHODOLOGY

4. **THIS COURT ORDERS** that the Proposed Cost Allocation Methodology (as defined and described in the Twenty-Third Report) is hereby approved.

APPROVAL OF FEES AND DISBURSEMENTS

5. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from September 10, 2012 to October 31, 2013, inclusive, all as set out or described in the affidavit of Nigel Meakin sworn December 3, 2013 and the Twenty-Third Report, are approved.

6. **THIS COURT ORDERS** that the fees and disbursements of the Monitor's counsel, Blake, Cassels and Graydon LLP, for the period from September 1, 2012 to October 31, 2013, inclusive, all as set out or described in the affidavit of Linc Rogers sworn December 3, 2013 and the Twenty-Third Report, are approved.

APPROVAL OF THE MONITOR'S REPORTS

7. **THIS COURT ORDERS** that the Twenty-First Report of the Monitor dated June 17, 2013 (the “**Twenty-First Report**”), the Twenty-Second Report of the Monitor dated September 9, 2013 (the “**Twenty-Second Report**”) the Twenty-Third Report, and the activities of the Monitor described therein are hereby approved.

DISCHARGE OF CRO AND APPROVAL OF ACTIVITIES OF THE CRO

8. **THIS COURT ORDERS AND DECLARES** that the activities undertaken by Russell Hill in its capacity as CRO of the Timminco Entities are hereby approved.

9. **THIS COURT ORDERS** that Russell Hill and its affiliates and legal counsel, and their respective officers, directors, partners, employees and agents (collectively, the “**Released Parties**”) are hereby released and discharged from any and all claims that any person may have or be entitled to assert against them, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of this Order in any way relating to, arising out of or in respect of these CCAA proceedings or Russell Hill acting in its capacity as CRO in these CCAA proceedings (collectively, the “**Released Claims**”), and any such Released Claims are hereby released, stayed, extinguished and forever barred and the Released Parties shall have no liability in respect thereof; provided that the Released Claims shall not include any claim or liability arising out of any gross negligence or willful misconduct on the part of the Released Parties.

10. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against Russell Hill in any way arising from or related to its capacity or conduct as CRO, except with prior leave of this Court on at least seven days’ prior written notice to Russell Hill, and upon further order securing, as security for costs, the solicitor and client costs of the CRO in connection with any proposed action or proceeding.

11. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, nothing contained in this Order shall affect, vary, derogate from or amend any of the protections in favour of the CRO as set out in the Order of the Honourable Mr. Justice Newbould dated August 17, 2012, the Order of the Honourable Mr. Justice Morawetz dated November 5, 2012 and any other Order of this Court in the Timminco Entities' CCAA proceedings.

12. **THIS COURT ORDERS** that Russell Hill shall be discharged and relieved from any further obligations, liabilities, responsibilities or duties in its capacity as CRO pursuant to the CRO Appointment Order and any other Orders of this Court in these CCAA proceedings effective as of the signing of this Order.

GENERAL

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor, the CRO, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor and to the CRO, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

RECEIVED
CHIEF JUSTICE
LE JUDICIAIRE DU QUÉBEC



DEC 16 2013



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 TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER

(Re Stay Extension to December 16, 2013)

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Ashley John Taylor LSUC#: 39932E
Tel: (416) 869-5236

Maria Konyukhova LSUC#: 52880V
Tel: (416) 869-5230

Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-5230
Fax: (416) 947-0866

Lawyers for the Applicants

TAB 11

[Attached]

The Honourable
Madam Justice Hoy



Court File No. 07-CL-7105

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

June 15, 2010

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
COLLINS & AIKMAN AUTOMOTIVE CANADA INC.

APPLICATION UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

DISCHARGE ORDER

THIS MOTION made by Collins & Aikman Automotive Canada Inc. (the "Applicant") for an order: (a) approving the First through Seventeenth Monitor's Reports and the activities referred to therein; (b) approving the fees and disbursements of the Monitor and the Monitor's legal counsel; (c) discharging Ernst & Young Inc. as Monitor in these CCAA proceedings; (d) discharging Allan Rutman and Axis Consulting Group Inc. as CRO in these CCAA proceedings; and (e) terminating these CCAA proceedings, was heard this day at 330 University Avenue, Toronto.

ON READING the Motion Record of the Applicant including the affidavit of Allan Rutman sworn June 8, 2010, the Seventeenth Report of the Monitor dated June 11, 2010 (the "Seventeenth Report"), the affidavit of Sharon Hamilton sworn June 11, 2010 (the "Hamilton Affidavit") and the affidavit of Robert Chadwick sworn June 11, 2010 (the "Chadwick Affidavit"), and on hearing the submissions of counsel for the

Applicant and Ernst & Young Inc. ("EYI" or the "**Monitor**"), no one else appearing for any other person on the service list, although duly served as appears from the affidavit of service of Colleen Thompson sworn June 8, 2010.

DEFINED TERMS

1. **THIS COURT ORDERS** that all defined terms used, but not defined, herein shall have the meanings ascribed to such terms in the Initial Order of the Honourable Mr. Justice Echlin dated July 19, 2007 (the "**Initial Order**").

APPROVAL OF MONITOR'S ACTIVITIES

2. **THIS COURT ORDERS** that the Seventeenth Report of the Monitor and the activities of the Monitor referred to therein are hereby approved.

MONITOR'S FEES AND DISBURSEMENTS

3. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from July 14, 2007, through to April 12, 2010, inclusive, and the Monitor's fees and disbursements, as estimated, to complete its remaining duties and the administration of these CCAA proceedings, all as set out in the Hamilton Affidavit and the Seventeenth Report, are hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of the Monitor's legal counsel, Goodmans LLP ("Goodmans"), for the period from April 2, 2007, through to May 28, 2010, inclusive, and Goodmans' fees and disbursements, as estimated, in connection with the completion by the Monitor of its remaining duties and the administration of these CCAA proceedings, all as set out in the Chadwick Affidavit and the Seventeenth Report, are hereby approved.

DISCHARGE OF THE MONITOR

5. **THIS COURT ORDERS AND DECLARES** that EYI, whether in its capacity as Monitor or otherwise, and its affiliates and legal counsel, and their respective officers, directors, partners, employees and agents (collectively, the "**Released Parties**") are hereby released and discharged from any and all claims that any person may have or be entitled to assert against them, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of this Order in any way relating to, arising out of or in respect of these CCAA proceedings and the Monitor acting in its capacity as monitor in these CCAA proceedings (collectively, the "**Released Claims**"), and any such Released Claims are hereby released, stayed, extinguished and forever barred and the Released Parties shall have no liability in respect thereof; provided that the Released Claims shall not include any claim or liability arising out of any gross negligence or willful misconduct on the part of the Released Parties.

6. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against EYI in any way arising from or related to its capacity or conduct as Monitor, except with prior leave of this Court on at least seven (7) days prior written notice to EYI, and upon further order securing, as security for costs, the solicitor and client costs of EYI in connection with any proposed action or proceeding.

7. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, nothing contained in this Order shall affect, vary, derogate from or amend any of the protections in favour of the Monitor at law or pursuant to the Initial Order.

8. **THIS COURT ORDERS** that, notwithstanding the foregoing, the Monitor shall have the authority from and after the date of this Order to complete any matters that may be incidental to the termination of these CCAA proceedings or any other matters necessary to complete these CCAA proceedings as requested by the Applicant and/or the CRO (as defined below) and agreed to by the Monitor.

9. **THIS COURT ORDERS** that the completion of the Monitor's duties shall be evidenced and its discharge shall be effected by the filing of a certificate of the Monitor with this Court (the "**Monitor's Certificate**").

10. **THIS COURT ORDERS** that upon the filing of the Monitor's Certificate the Monitor shall be discharged and relieved from any further obligations, liabilities, responsibilities or duties in its capacity as Monitor pursuant to the Initial Order and any other Orders of this Court in these CCAA proceedings.

DISCHARGE OF THE CRO

11. **THIS COURT ORDERS AND DECLARES** that Allan Rutman and Axis Consulting Group Inc. (the "**CRO**"), and its affiliates and legal counsel, and their respective officers, directors, partners, employees and agents (collectively, the "**CRO Released Parties**") are hereby released and discharged from any and all claims that any person may have or be entitled to assert against them, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of this Order in any way relating to, arising out of or in respect of these CCAA proceedings or Allan Rutman and Axis Consulting Group Inc. acting in their capacity as CRO in these CCAA proceedings (collectively, the "**CRO Released Claims**"), and any such CRO Released Claims are hereby released, stayed, extinguished and forever barred and the CRO Released Parties shall have no liability in respect thereof; provided that the CRO Released Claims shall not include any claim or liability arising out of any gross negligence or willful misconduct on the part of the CRO Released Parties.

12. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against Allan Rutman or Axis Consulting Group Inc. in any way arising from or related to their capacity or conduct as CRO, except with prior leave of this Court on at least seven (7) days prior written notice to the CRO, and upon further order securing, as security for costs, the solicitor and client costs of the CRO in connection with any proposed action or proceeding.

13. **THIS COURT ORDERS** that, notwithstanding any provisions of this Order, nothing contained in this Order shall affect, vary, derogate from or amend any of the protections in favour of the CRO pursuant to the Order of Madam Justice Pepall dated September 11, 2007 (the "**CRO Appointment Order**").

14. **THIS COURT ORDERS** that, notwithstanding the foregoing, the CRO shall have the authority from and after the date of this Order to complete any matters that may be incidental to the termination of these CCAA proceedings or any other matters necessary to complete in respect of these CCAA proceedings.

15. **THIS COURT ORDERS** that upon the filing of the Monitor's Certificate the CRO shall be discharged and relieved from any further obligations, liabilities, responsibilities or duties in its capacity as CRO pursuant to the CRO Appointment Order and any other Orders of this Court in these CCAA proceedings.

DISBURSEMENTS OF FUNDS

16. **THIS COURT ORDERS** that the Monitor is directed to pay the funds currently held in connection with the outstanding dispute regarding entitlement to proceeds of sale of certain assets from the Scarborough facility (the "**Scarborough Proceeds**") to Zeifman and Partners Inc., the Trustee in Bankruptcy of the Applicant, to be held pending further order of the court. For greater certainty, the Scarborough Proceeds shall not vest in Zeifman and Partners Inc. as Trustee in Bankruptcy and shall remain subject to the DIP Lender's Charge.

17. **THIS COURT ORDERS** that the CRO is authorized and directed to pay any outstanding fees and disbursements of the CRO, counsel to the Applicant, the Monitor and the Monitor's counsel and counsel to the DIP Lender.

18. **THIS COURT ORDERS** that following the payments set forth in paragraph 17 above the CRO is authorized and directed to distribute all remaining funds of the Applicant to the DIP Lender on account of the outstanding DIP Facility.

19. **THIS COURT ORDERS** that following the payments set forth in paragraphs 17 and 18 above the Court-ordered charges set forth in the Initial Order, other than the DIP Lender's Charge, shall be discharged and released. For greater certainty, the DIP Lender's Charge shall continue to apply to all property of the Applicant, including the Scarborough Proceeds.

STAY EXTENSION

20. **THIS COURT ORDERS** that the Stay Period referred to in the Initial Order is extended until the date that the Monitor's Certificate is filed with the Court.

TERMINATION OF CCAA

21. **THIS COURT ORDERS** that upon the filing of the Monitor's Certificate the Applicant's CCAA proceedings shall be terminated.

GENERAL

22. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or elsewhere to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 15 2010

PER / PAR:



Christina Laslavic
Registrar, Superior Court of Justice

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 COLLINS & AIKMAN
AUTOMOTIVE CANADA INC.
APPLICATION UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED

Court File No: 07-CL-7105

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

DISCHARGE ORDER

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Ashley John Taylor LSUC# 39932E
Tel: (416) 869-5236
Fax: (416) 947-0866

Lawyers for Collins & Aikman Automotive
Canada Inc.

TAB 12

[Attached]

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) FRIDAY, THE 7th
JUSTICE WILTON-SIEGEL) DAY OF DECEMBER, 2012

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
First Leaside Wealth Management Inc., First Leaside Finance Inc., First
Leaside Securities Inc., FL Securities Inc., First Leaside Management Inc.,
First Leaside Accounting and Tax Services Inc., First Leaside Holdings Inc.,
2086056 Ontario Inc., First Leaside Realty Inc., First Leaside Capital Inc., First
Leaside Realty II Inc., First Leaside Investments Inc., 965010 Ontario Inc.,
1045517 Ontario Inc., 1024919 Ontario Inc., 1031628 Ontario Inc., 1056971
Ontario Inc., 1376095 Ontario Inc., 1437290 Ontario Ltd., 1244428 Ontario Ltd.,
PrestonOne Development (Canada) Inc., PrestonTwo Development (Canada)
Inc., PrestonThree Development (Canada) Inc., PrestonFour Development
(Canada) Inc., 2088543 Ontario Inc., 2088544 Ontario Inc., 2088545 Ontario Inc.,
1331607 Ontario Inc., Queenston Manor General Partner Inc., 1408927 Ontario
Ltd., 2107738 Ontario Inc., 1418361 Ontario Ltd., 2128054 Ontario Inc., 2069212
Ontario Inc., 1132413 Ontario Inc., 2067171 Ontario Inc., 2085306 Ontario Inc.,
2059035 Ontario Inc., 2086218 Ontario Inc., 2085438 Ontario Inc., First Leaside
Visions Management Inc., 1049015 Ontario Inc., 1049016 Ontario Inc., 2007804
Ontario Inc., 2019418 Ontario Inc., FL Research Management Inc., 1031628
Ontario Inc., 1045516 Ontario Inc., 2004516 Ontario Inc., 2192341 Ontario Inc.,
and First Leaside Fund Management Inc.

DISCHARGE AND TRANSITION ORDER

This motion ("**Motion**"), made by the Applicants and the entities listed on
Schedule "A" (collectively, "**First Leaside**") to the Initial Order of the Honourable Mr.
Justice Brown dated February 23, 2012, as amended ("**Initial Order**"), for an order

- (a) approving a Custodial and Services Agreement (the "**Custodial Agreement**") between First Leaside Securities Inc. ("**FLSI**") and Fidelity

Clearing Canada ULC ("**Fidelity**"), and authorizing and directing the CRO (as defined below) to execute and carry out the terms of the Custodial Agreement;

- (b) terminating and discharging these CCAA proceedings forthwith and providing for the transition of these proceedings to a receivership of First Leaside by order of this Court ("**Receivership Order**"), pursuant to section 101 of the *Courts of Justice Act*, R.S.C. 1990, c. C.43, as amended ("**CJA**");
- (c) approving the activities of G.S. MacLeod & Associates Inc. ("**MacLeod & Associates**") in its capacity as Chief Restructuring Officer ("**CRO**") and Grant Thornton Limited ("**GTL**") in its capacity as Court-appointed monitor (the "**Monitor**"), both appointed by the Initial Order to date;
- (d) approving the fees and disbursements of the Monitor, the Monitor's independent counsel and Fraser Milner Casgrain LLP in its capacity as representative counsel ("**Representative Counsel**") appointed by the Initial Order for the interests of the nearly 1,200 investors of FLSI in these proceedings, for the period up to and including November 30, 2012;
- (e) releasing and discharging MacLeod & Associates and GTL from any and all liability that they may have arising out of their acts or omissions while acting in their capacities as, respectively, CRO and Monitor, save and except for any gross negligence or wilful misconduct on their part; and
- (f) such further and other relief as this Honourable Court may deem just

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Gregory MacLeod, sworn December 3, 2012, the Seventh Report (the "**Seventh Report**"), of GTL, as Monitor of First Leaside,

counsel for the OSC, counsel³ for IIRBC, and counsel for the Independent Committee of the Board of Directors of First Leaside Wealth Management Inc., counsel for

dated December 4, 2012, and on hearing the submissions of counsel to First Leaside, the Monitor and Representative Counsel, no one appearing for any other person on the service list, although properly served as appears from the affidavits of service of Patricia Hoogenband sworn December 4, 2012 and Maria Konidis sworn December 5, 2012, filed: *the Trustees of the First Leaside Fund and Winberg Fund.*

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record shall be and is hereby abridged and that the Motion is properly returnable today and that service thereof upon any interested party other than the persons served with the Motion Record is hereby dispensed with.

2. **THIS COURT ORDERS** that the Custodial Agreement between FLSI and Fidelity, as described in the Seventh Report, be and is hereby approved, and the CRO is hereby authorized and directed to execute and carry out the terms of the Custodial Agreement in the name of FLSI, including the provision to Fidelity of a deposit in the amount of \$300,000 (the "Deposit").

3. **THIS COURT ORDERS** that Fidelity shall be entitled to and is hereby granted a first priority charge over the Deposit, notwithstanding the other charges provided for and/or continued under this Order or the Receivership Order.

4. **THIS COURT ORDERS** that paragraphs 5, 12, 13, 14, 15, 16, 17, *and 19* of this Order shall become effective upon the issuance of the Receivership Order appointing GTL as receiver and manager (the "Receiver") of First Leaside and shall bind: *Howe*

(a) the Receiver or any other receiver appointed pursuant to the Receivership Order or otherwise; and

(b) any trustee in bankruptcy of any of the corporations or limited partnerships which constitute First Leaside.

5. **THIS COURT ORDERS** that these CCAA proceedings and the Stay Period (as defined in the Initial Order and amended most recently on October 22, 2012) shall

be terminated. Notwithstanding the termination of these CCAA proceedings, other than as expressly provided in this Order or the Receivership Order, all orders issued in these CCAA proceedings shall continue to be in full force and effect. Nothing in this Order shall diminish or alter the rights or obligations of any person arising under the Initial Order which had vested or accrued prior to the granting of this Order. Any pleadings, motions, evidence and reports filed in the CCAA proceedings (and which were not sealed) shall be available for use in the receivership as though the same were filed in the receivership, without the necessity of having such documents filed again in the receivership.

APPROVAL OF CRO'S AND MONITOR'S ACTIVITIES

6. **THIS COURT ORDERS** that the activities of MacLeod & Associates as Court-appointed CRO and GTL, as Monitor, as disclosed in the affidavits of Gregory MacLeod sworn November 13, 2012 and December 3, 2012 and the Sixth Report of the Monitor and the Seventh Report of the Monitor be and are hereby approved.

APPROVAL OF FEES

7. **THIS COURT ORDERS** that the fees and disbursements of the Monitor, in the amount of \$682,638.99, inclusive of HST, for the period from February 23, 2012 through November 30, 2012, as disclosed in the Affidavit of Jonathan Krieger sworn December 4, 2012, be and are hereby approved.

8. **THIS COURT ORDERS** that the fees and disbursements of counsel to the Monitor, Blake, Cassels & Graydon LLP ("**Monitor's Counsel**"), in the amount of \$786,794.66, inclusive of HST, for the period from February 23, 2012 through November 30, 2012, as disclosed in the Affidavit of Matthew Kanter sworn December 4, 2012, be and are hereby approved.

~~9. **THIS COURT ORDERS** that the fees and disbursements of Representative Counsel in the amount of \$874,762.24, inclusive of HST, for the period from February 23, 2012 through November 30, 2012, as disclosed in the Affidavit of R. Shayne Kukulowicz sworn December 4, 2012, be and are hereby approved.~~

*Th 8

10. **THIS COURT ORDERS** that the Monitor, Monitor's Counsel and Representative Counsel shall be at liberty, upon further motion brought in the receivership proceedings bearing Court File No. CV-12-9930-00CL (the "**Receivership Proceedings**"), to seek approval of their fees and disbursements for the period from and after December 1, 2012, provided that such fees and disbursements are invoiced in accordance with the preliminary billing protocol set out in paragraphs 21-23 of the Monitor's First Report dated March 21, 2012.

11. **THIS COURT ORDERS** that the allocation of all fees and costs of the CRO, the Monitor, the Monitor's Counsel, Representative Counsel, and First Leaside's counsel incurred during the CCAA proceedings or under the authority of this Order shall be subject to approval of the Court in the Receivership Proceedings on motion by the Receiver.

RELEASE AND DISCHARGE OF CRO AND MONITOR

12. **THIS COURT ORDERS AND DECLARES** that upon the appointment of the Receiver, MacLeod & Associates is discharged as CRO of First Leaside and its appointment is terminated, and GTL is discharged as Monitor of First Leaside and its appointment is terminated. MacLeod & Associates and GTL, together with their officers, directors, partners, employees and agents (collectively, "**Released Parties**") shall be released and discharged from any and all liability that the Released Parties now have or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the Released Parties while acting in their respective capacities herein, save and except for any gross negligence or wilful misconduct on the part of the Released Parties. Without limiting the generality of the foregoing, the Released Parties shall be forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in these CCAA proceedings, save and except for any gross negligence or wilful misconduct on the part of the Released Parties.

13. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against MacLeod & Associates, GTL or any of the other Released

Parties in any way arising from or related to their capacity or conduct as, respectively, CRO or Monitor in connection with First Leaside, except with prior leave of this Court on at least seven days' prior written notice to the CRO or Monitor, as applicable.

14. **THIS COURT ORDERS** that notwithstanding any provisions of this Order, the termination of the CCAA proceedings and the discharge of the CRO, MacLeod & Associates may continue, as a consultant, to assist the Receiver with respect to any matters the Receiver may request on such terms as the Receiver and MacLeod & Associates may agree, without further order or approval of this Court, and MacLeod & Associates may carry out such functions and duties as may be incidental to the termination of the CCAA proceedings and the transition to a receivership of First Leaside pursuant to the Receivership Order, including dealing with the transition of any bank accounts over which the CRO has signing authority. In carrying out such functions and duties, MacLeod & Associates shall continue to have the benefit of all orders made in these CCAA proceedings (including all protections and stays of proceedings) and nothing contained in this Order shall affect, vary, derogate from or amend any of the protections in favour of the CRO pursuant to paragraphs 27, 30, 31 and 32 of the Initial Order, which paragraphs shall continue to apply in the receivership, *mutatis mutandis*.

15. **THIS COURT ORDERS** that notwithstanding any provisions of this Order, the termination of the CCAA proceedings and the discharge of the Monitor, the Monitor may carry out such functions and duties as may be incidental to the termination of the CCAA proceedings and the transition to a receivership of First Leaside pursuant to the Receivership Order. In carrying out such functions and duties, the Monitor shall continue to have the benefit of all orders made in these CCAA proceedings (including all protections and stays of proceedings) and nothing contained in this Order shall affect, vary, derogate from or amend any of the protections in favour of the Monitor pursuant to paragraphs 36, 37 and 38 of the Initial Order, which paragraphs shall continue to apply in the receivership, *mutatis mutandis*.

COURT-ORDERED CHARGES

16. **THIS COURT ORDERS** that notwithstanding any provisions of this Order or the termination of the CCAA proceedings, and subject to paragraph 3 of this Order, the Directors' Charge, the Administration Charge and the Inter-Company Charge, created by paragraphs 31, 41 and 49A(b) of the Initial Order, shall continue to constitute a charge on all of the assets, undertakings and remaining properties of First Leaside acquired for, or used in relation to a business carried on by First Leaside, including all proceeds thereof, in accordance with the terms, limitations and priority provided in paragraphs 31, 32, 41, 49A, 49B and 50 through 55 of the Initial Order.

COMPLETION OF EXISTING TRANSACTIONS AND PAYMENTS

17. **THIS COURT ORDERS** that notwithstanding any provisions of this Order or the issuance of the Receivership Order, First Leaside and/or the Receiver are authorized and directed to pay the following on behalf of, or in the name of, First Leaside:

- (a) amounts that may be payable as post-filing obligations, including payroll obligations, in the CCAA proceedings;
- (b) cheques that have been issued by First Leaside, but which are outstanding and have not cleared First Leaside's bank accounts as of December 7, 2012; and
- (c) unpaid professional fees that have been incurred by counsel for First Leaside, the Monitor, Monitor's Counsel, Representative Counsel, and the CRO and counsel to First Leaside as provided for in the Initial Order.

18. **THIS COURT ORDERS** that notwithstanding any provisions of this Order and the issuance of the Receivership Order, certain transactions begun during the CCAA

proceedings but not fully completed may be completed by First Leaside and the CRO, as appropriate, including the following:

- (a) the sale of First Leaside Tax and Accounting Services Inc.'s interest in four accounting firms in Western Canada to Joanna L. Hampton Holdings Inc. and Jim Brander Professional Corporation, as approved by this Court on August 23, 2012 and
- (b) the entry into, and implementation of, the Custodial Agreement;
- (c) the completion of the Structform Transaction (as defined in the order of Mr. Justice Newbould dated November 20, 2012); and
- (d) post-closing activities and adjustments arising out of the Transaction (as defined in the Amended Sale and Vesting Order of Mr. Justice Pattillo dated October 22, 2012, as amended on November 28, 2012).

19. **18. THIS COURT ORDERS** that, to aid in the transition to receivership, First Leaside Realty II Inc. is hereby directed, as general partner of First Leaside Properties Limited Partnership, which controls F.L. Master Sherman Ltd. ("**Master Sherman**") to direct Master Sherman to pay funds that it currently holds to the Receiver in trust, pending further order of this Court.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO.
LE / DANS LE REGISTRE NO.:



DEC 10 2012



A. Anissimova
Registrar

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

Court File No: CV-12-9617-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
FIRST LEASIDE WEALTH MANAGEMENT ET AL.**

ONTARIO SUPERIOR COURT OF JUSTICE (Commercial List) Proceeding commenced at Toronto	
DISCHARGE AND TRANSITION ORDER	
CASSELS BROCK & BLACKWELL LLP 2100 Scotia Plaza 40 King Street West Toronto, Ontario M5H 3C2 John N. Birch LSUC #: 38968U Tel: 416.860.5225 Fax: 416.640.3057 jbirch@casselsbrock.com David S. Ward LSUC#: 33541W Tel: 416.869.5960 Fax: 416.360.3154 dward@casselsbrock.com Lawyers for First Leaside	

TAB 13

[Attached]

Commercial List No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST¹**

B E T W E E N:

PLAINTIFF

- and -

DEFENDANT

ORDER²

NOTICE

If you, the Defendant, disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least twenty-four (24) hours notice to the Plaintiff, for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

Any other person who knows of this order and does anything which helps or permits the Defendant to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

THIS MOTION, made without notice by the Plaintiff, [], for an interim Order in the form of a *Mareva* injunction restraining the Defendant, [], from dissipating its assets and other relief, was heard this day at [].

ON READING the Affidavit of [] sworn [], on hearing the submissions of counsel for the Plaintiff, and on noting the undertaking of the Plaintiff to abide by any Order this Court may make concerning damages arising from the granting and enforcement of this Order,

¹ Prepared by the Commercial List Users' Committee of the Ontario Superior Court of Justice. The theory and approach behind this model order is to give the Courts and practitioners a guide for the use of such orders, while recognizing that the model order must be tailored to suit the particular circumstances of each case before the Court.

² See generally UK Practice Direction form for "Freezing Injunctions" http://www.dca.gov.uk/civil/procedure/procrules_fin/contents/practice_directions/pd_part25.htm.

Mareva Injunction

1. **THIS COURT ORDERS** that the Defendant, and its servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of the Defendant, wherever situate [*that are located in Ontario*],³ including but not limited to the assets and accounts listed in Schedule “A” hereto;⁴
- (b) instructing, requesting, counselling, demanding , or encouraging any other person to do so; and
- (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

2. **THIS COURT ORDERS** that paragraph 1 applies to all of the Defendant’s assets whether or not they are in his own name and whether they are solely or jointly owned. For the purpose of this order, the Defendant’s assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Defendant is to be regarded as having such power if a third party holds or controls the assets in accordance with his direct or indirect instructions.⁵

3. **[THIS COURT ORDERS** that if the total value free of charges or other securities of the Defendant’ assets [*in Ontario*] exceeds \$[], the Defendant may sell, remove, dissipate, alienate, transfer, assign, encumber, or similarly deal with them so long as the total unencumbered value of the Defendant’s assets [*in Ontario*] remains above \$[]].⁶

³ See *Mooney v. Orr*, [1994] B.C.J. No. 2652 (B.C.S.C.) and *Pharma-Investment Ltd. v. Clark*, [1997] O.J. No. 1334 (Gen. Div.) for a discussion of the scope of a Mareva Injunction.

⁴ Ordinarily, the plaintiff must show grounds for the belief that the defendant has some assets within the jurisdiction to obtain the injunction in the first place, but in its standard form, the Mareva injunction is not limited to those named assets: *Cretanor Marine Co. Ltd. v. Irish Marine Management Ltd.* [1978] 1 W.L.R. 966 at 973 (C.A.).

⁵ *Federal Bank of the Middle East Ltd. v. Hadkinson*, [2000] 1 W.L.R. 1695 (Eng. C.A.)

⁶ *Z Ltd. v. A.*, [1982] 1 All ER 556 (C.A.). As a practical point, specifying the maximum amount to be frozen will be simple where the claim relates to a specific amount of money, however this task will be more challenging where the claim is for general damages to be particularized and quantified at a later stage of the litigation. It will also be difficult for the affected financial institutions to determine which assets may be released under this provision. It may therefore be more appropriate to deal with the quantification of the maximum amount to be frozen at the return of the motion.

Ordinary Living Expenses

4. **THIS COURT ORDERS** that the Defendant may apply for an order, on at least twenty-four (24) hours notice to the Plaintiff, specifying the amount of funds which the Defendant is entitled to spend on ordinary living expenses and legal advice and representation.⁷

Disclosure of Information

5. **THIS COURT ORDERS** that the Defendant prepare and provide to the Plaintiff within [] days of the date of service of this Order, a sworn statement describing the nature, value, and location of his assets worldwide [*in Ontario*], whether in his own name or not and whether solely or jointly owned.⁸

6. **THIS COURT ORDERS** that the Defendant submit to examinations under oath within [] days of the delivery by the Defendant of the aforementioned sworn statements.

7. **THIS COURT ORDERS** that if the provision of any of this information is likely to incriminate the Defendant, he may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information referred to in paragraph 5 herein is contempt of court and may render the Defendant liable to be imprisoned, fined, or have his assets seized.⁹

Third Parties

8. **THIS COURT ORDERS** [] (the “Banks”) to forthwith freeze and prevent any removal or transfer of monies or assets of the Defendant held in any account or on credit on behalf of the Defendant, with the Banks, until further Order of the Court, including but not limited to the accounts listed in Schedule “A” hereto.¹⁰

⁷ *Z Ltd. v. A.*, *supra*; *Pharma-Investments Ltd. v. Clark*, *supra* at para. 13. This provision may not be appropriate in the case of a specific fraud claim where the misappropriated amount is frozen, since the Defendant cannot be allowed to use funds that are identifiable as obtained wrongfully for living expenses. Further it will be difficult to specify an amount, without evidence from the Defendant regarding his or her needs and assets. See also the practical concerns raised above in footnote 5. Lord Denning has suggested that a separate account be opened so that the financial institutions affected by the order need not determine which sums are required for ordinary living expenses. Depending on the Plaintiff’s knowledge of the specific accounts of the Defendant, it might be possible to specify from which account the funds for living expenses may be withdrawn. Given these practical difficulties, it is more appropriate to address the issue of living expenses on the expeditious return of the motion.

⁸ The Court has the inherent power to make ancillary orders as appear to be just and convenient to ensure that the exercise of the Mareva jurisdiction is effective to achieve its purpose and may make an order of “discovery in aid”, an injunction where the plaintiff has “grounds for believing that the defendant does have assets within the jurisdiction, but has insufficient particulars of the whereabouts of such assets to make the injunction effective”: Sharpe, at 2.1070, 2.1080.

⁹ *Pharma Investment Ltd. v. Clark*, *supra* at para. 16, but see *CBS United Kingdom Ltd. v. Lambert* [1983] Ch. 37, [1982] 3 All E.R. 237 (C.A.).

¹⁰ *Z Ltd. v. A.*, *supra* at 563.

9. **THIS COURT ORDERS** that the Banks forthwith disclose and deliver up to the Plaintiff any and all records held by the Banks concerning the Defendant's assets and accounts, including the existence, nature, value and location of any monies or assets or credit, wherever situate [*in Ontario*], held on behalf of the Defendant by the Banks.¹¹

Alternative Payment of Security into Court

10. **THIS COURT ORDERS** that this Order will cease to have effect if the Defendant provides security by paying the sum of \$[] into Court, and the Accountant of the Superior Court of Justice is hereby directed to accept such payment.¹²

Variation, Discharge or Extension of Order

11. **THIS COURT ORDERS** that anyone served with or notified of this Order may apply to the Court at any time to vary or discharge this order, on four (4) days notice to the Plaintiff.

12. **THIS COURT ORDERS** that the Plaintiff shall apply for an extension of this Order within ten (10) days hereof, failing which this Order will terminate.¹³

¹¹ The Plaintiff ordinarily must bear any costs associated with a search of bank records to determine the whereabouts and amounts of the defendant's assets on deposit: *Searose Ltd. v. Seatrain U.K. Ltd.* [1981] 1 W.L.R. (Q.B.).

¹² Specifying the amount of security attracts the same practical problems identified in footnote 5.

¹³ *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, rule 40.02.

SCHEDULE “A”

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.

Commercial List No.:

Plaintiff

- and -

Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT TORONTO

ORDER

::ODMA\PCDOCS\TOR01\3701385\I

TAB 14

[Attached]

2018 CarswellNS 624
Nova Scotia Supreme Court

Reddick v. MacInnis

2018 CarswellNS 624, 295 A.C.W.S. (3d) 721

Barbara Ann Reddick (Plaintiff) v. Andrew Tyrone MacInnis (Defendant)

Patrick J. Murray J.

Heard: August 10, 2018
Judgment: August 27, 2018
Docket: SPH No. 478714

Counsel: Adam Rodgers, for Plaintiff
Candee McCarthy, for Defendant

Subject: Civil Practice and Procedure; Contracts; Property; Public

Related Abridgment Classifications

Civil practice and procedure

[XV](#) Preservation of property rights pending litigation

[XV.2](#) Interim preservation of property

Headnote

Civil practice and procedure --- Preservation of property rights pending litigation — Interim preservation of property Aunt instructed nephew to put his name on her lottery ticket, purportedly only for good luck — Lottery ticket ended up winning \$1.2 million prize — Lottery organizer divided prize between aunt and nephew by providing separate cheques — Aunt alleged she was entitled to entirety of prize money, but nephew disagreed — Aunt brought action against nephew to recover share of prize provided to him — Aunt brought motion for preservation order requiring nephew's share of lottery winnings to be held and preserved pending final decision in action — Motion granted — It was just and convenient to ensure disputed funds were preserved while litigation unfolded — To extent that strong prima facie case was required to satisfy first part of three-part test in face of undisputed facts, facts here were not undisputed, so first part of test was serious issue to be tried — Aunt showed her case was not frivolous or vexatious, and there were factors that suggested risk of non-recovery if aunt won at trial — Balance of convenience weighed so heavily in favour of granting order that it made up for any deficiency in proof of irreparable harm — Aunt undertook to move matter along without delay, as required pursuant to R. 42.07 of Civil Procedure Rules.

Table of Authorities

Cases considered by Patrick J. Murray J.:

G. (T.) v. Nova Scotia (Minister of Community Services) (2012), 2012 NSCA 71, 2012 CarswellNS 473, 1005 A.P.R. 317, 318 N.S.R. (2d) 317, 18 R.F.L. (7th) 138 (N.S. C.A. [In Chambers]) — considered

Giffin v. Soontiens (2011), 2011 NSCA 1, 2011 CarswellNS 1, 297 N.S.R. (2d) 316, 943 A.P.R. 316 (N.S. C.A. [In Chambers]) — referred to

Google Inc. v. Equustek Solutions Inc. (2017), 2017 SCC 34, 2017 CSC 34, 2017 CarswellBC 1727, 2017 CarswellBC 1728, 410 D.L.R. (4th) 625, 3 C.P.C. (8th) 219, 98 B.C.L.R. (5th) 1, [2017] 10 W.W.R. 1, [2017] 1 S.C.R. 824, 72 B.L.R. (5th) 100, 154 C.P.R. (4th) 1 (S.C.C.) — considered

Korem v. Crown Jewel Resort Ranch Inc. (2011), 2011 NSCA 102, 2011 CarswellNS 781, 979 A.P.R. 123, 309 N.S.R. (2d) 123 (N.S. C.A.) — considered

Maxwell Properties Ltd. v. Mosaik Property Management Ltd. (2017), 2017 NSCA 76, 2017 CarswellNS 687, 82 R.P.R. (5th) 18, 40 C.C.L.T. (4th) 177, 69 C.L.R. (4th) 179, 10 C.P.C. (8th) 255, 416 D.L.R. (4th) 755 (N.S. C.A.) — considered

National Bank Financial Ltd. v. Barthe Estate (2013), 2013 NSCA 127, 2013 CarswellNS 832, (sub nom. *Barthe v. National Bank Financial Ltd.*) 1063 A.P.R. 290, (sub nom. *Barthe v. National Bank Financial Ltd.*) 336 N.S.R. (2d) 290 (N.S. C.A.) — considered

North End Community Health Assn. v. Halifax (Regional Municipality) (2012), 2012 NSSC 92, 2012 CarswellNS 179, 314 N.S.R. (2d) 1, 994 A.P.R. 1 (N.S. S.C.) — considered

RJR-MacDonald Inc. v. Canada (Attorney General) (1994), 164 N.R. 1, (sub nom. *RJR-MacDonald Inc. c. Canada (Procureur général)*) 60 Q.A.C. 241, 54 C.P.R. (3d) 114, 111 D.L.R. (4th) 385, 1994 CarswellQue 120F, [1994] 1 S.C.R. 311, 1994 CarswellQue 120 (S.C.C.) — considered

Vogler v. Szendroi (2011), 2011 NSCA 37, 2011 CarswellNS 256, 955 A.P.R. 323, 302 N.S.R. (2d) 323 (N.S. C.A. [In Chambers]) — considered

Rules considered:

Civil Procedure Rules, N.S. Civ. Pro. Rules 2009

R. 42.02(1) — considered

R. 42.07 — considered

R. 42.11(1) — considered

R. 42.11(2) — considered

Words and phrases considered:

balance of convenience

The third part of the [three-part] *R.J.R. MacDonald* test [for injunctive relief and preservation order] is the balance of convenience, which requires the Court to consider the relative impact upon the parties of granting or withholding injunctive relief.

preservation orders

Preservation orders and *Mareva* injunctions are both forms of injunctive relief that preserve property. As R. 42.02(1) [of *Civil Procedure Rules* (N.S.)] indicates, however, a preservation order is the appropriate remedy where the property sought to be preserved, is the property actually claimed in the proceeding>. A *Mareva* injunction, on the other hand, is aimed at preserving assets to satisfy a judgment. The burden on the party seeking a *Mareva* injunction is much higher. . . .

.....

While a preservation order is an exceptional remedy, it is also an equitable one.

serious issue to be tried

The first part of the [three-part] test [for injunctive relief and preservation order] requires the Court to determine, based on the evidence, whether there is a serious issue to be tried. To meet this standard, the Plaintiff needs only to show that her case is not frivolous or vexatious. The Court is not to delve deeply into the merits.

MOTION by aunt for preservation order requiring nephew's share of lottery winnings to be held and preserved pending final decision in action.

Patrick J. Murray J. (orally):

Facts

1 In July 2018, a winning ticket bearing the names of Barbara Ann Reddick, and her nephew, Tyrone MacInnis, was drawn at the popular Chase the Ace lottery in Margaree. The lottery organizers then flipped over the ace of spades,

earning the individuals named on the ticket a total prize of \$1.2 million. The organizers issued the proceeds in two separate cheques, dividing the total prize equally between Ms. Reddick and Mr. MacInnis.

2 Unfortunately, what should have been a joyous event in their lives has led them to this courtroom. A dispute has arisen, with Ms. Reddick claiming the ticket belonged to her alone, and that she is entitled to the entirety of the prize money. She has filed legal action to recover the one-half share of the lottery winnings awarded to Mr. MacInnis.

3 Mr. MacInnis contests his aunt's claim and has filed a defence. He states, among other things, that the winning ticket was intended by both parties to be a joint ticket. He says that he and his aunt agreed to split the winnings in the event that one of the tickets bearing both of their names was drawn.

4 The motion before me today has been filed by Ms. Reddick. She seeks a preservation order requiring the share of the winnings held by Mr. MacInnis (\$611,319.50) to be held and preserved pending a final decision in the litigation. Mr. MacInnis contests the motion.

5 The parties have each filed affidavits in support of their positions. Ms. Reddick claims that if the funds are not preserved by this court, she stands to lose the entirety of her claim.

6 Mr. MacInnis has given evidence that he is a financially responsible person with savings of his own. He says the Plaintiff's claim is not a strong one, and that his right to the assets in dispute should not be interfered with. The lottery prize, he says, was properly split by the organizers between himself and Ms. Reddick.

7 I have considered the affidavit evidence, the oral evidence and the submissions from counsel on behalf of the parties. In my respectful view, there is some confusion in the case law, and therefore in the parties' submissions, between the test to be applied on a motion for injunctive relief in the form of a preservation order and that applied on a motion for a *Mareva* injunction.

8 *Civil Procedure Rule 42.02* applies to preservation orders:

42.02 (1) A party who files an undertaking as required by Rule 42.07 may make a motion for an injunction to preserve evidence relevant to an issue in, or **to preserve property claimed in, a proceeding.**

[*Emphasis added*]

9 *Mareva* injunctions, on the other hand, are addressed at *Rule 42.11*:

42.11 (1) A party who files an undertaking required by Rule 41.06, of Rule 41 - Interlocutory Injunction and Receivership, may make a motion for an interim or interlocutory injunction that does any of the following:

- (a) restrains a party from disposing of assets available to satisfy a judgment claimed in the proceeding;
- (b) restrains a party from removing assets from Nova Scotia;
- (c) requires a party or other person to cooperate in preserving assets.

(2) The party must satisfy the judge that the party has met requirements of the common law for an injunction preserving assets, such as the requirements on each of the following subjects:

- (a) a claim for damages;
- (b) the strength of the party's case;
- (c) the risk that assets will be made unavailable to satisfy a judgment for the damages;

(d) the likelihood of recovery on a judgment for the damages if the assets are not preserved.

...

10 Preservation orders and *Mareva* injunctions are both forms of injunctive relief that preserve property. As *Rule 42.02(1)* indicates, however, a preservation order is the appropriate remedy where the property sought to be preserved is the property actually claimed in the proceeding. A *Mareva* injunction, on the other hand, is aimed at preserving assets to satisfy a judgment. The burden on the party seeking a *Mareva* injunction is much higher. In *Injunctions and Specific Performance* (Looseleaf edition, updated to November 2017), at para. 2.700, the Honourable Justice Robert J. Sharpe states:

Interlocutory injunctions are frequently granted to restrain disposition of an asset where the plaintiff asserts a specific or proprietary claim in respect of that asset. Rules of Court, and in some jurisdictions legislation, typically provide for interim preservation of property. If the plaintiff sues for specific performance of an agreement of sale, an interlocutory injunction may be granted, restraining the defendant from defeating the plaintiff's claim by disposing of the property in question before trial. Similarly, even where the plaintiff asserts a money claim, an interlocutory injunction may be granted to protect the claim where the plaintiff has some proprietary right in the money or right to trace the particular fund. **The basis for injunctive relief here is to prevent dissipation or destruction of the property which is the subject matter of the suit. Such orders are made in accordance with the usual principles governing interlocutory injunctions and are to be distinguished from *Mareva* injunctions.**

[Emphasis added]

11 The Plaintiff in this case is asserting a proprietary claim in respect of the lottery winnings in the Defendant's possession, and she seeks an order restraining him from disposing of those funds. A preservation order is the proper form of relief in these circumstances. In *Korem v. Crown Jewel Resort Ranch Inc.*, 2011 NSCA 102, [2011] N.S.J. No. 604 (N.S. C.A.), MacDonald C.J.N.S. confirmed that the test for a preservation order is the three-part test for an interlocutory injunction set out in *RJR-MacDonald Inc. v. Canada (Attorney General)* [1994 CarswellQue 120F (S.C.C.)]; para. 9. The Supreme Court of Canada recently summarized this test in *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34, [2017] S.C.J. No. 34 (S.C.C.):

25 *RJR - MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, sets out a three-part test for determining whether a court should exercise its discretion to grant an interlocutory injunction: is there a serious issue to be tried; would the person applying for the injunction suffer irreparable harm if the injunction were not granted; and is the balance of convenience in favour of granting the interlocutory injunction or denying it. **The fundamental question is whether the granting of an injunction is just and equitable in all of the circumstances of the case. This will necessarily be context-specific.**

[Emphasis added]

12 Before applying the test, I wish to address the argument advanced by defence counsel that this case falls within "the third exception" recognized in *RJR-MacDonald* and, as such, the Plaintiff must satisfy the Court that she has a strong *prima facie* case, not just that there is a serious issue to be tried. In *RJR-MacDonald*, Cory and Sopinka J.J., for the Court, stated:

56 The suggestion has been made in the private law context that a third exception to the *American Cyanamid* "serious question to be tried" standard should be recognized in cases where the factual record is largely settled prior to the application being made. Thus in *Dialdex Communications Inc. v. Crammond* (1987), 34 D.L.R. (4th) 392 (Ont. H.C.), at p. 396, it was held that:

Where the facts are not substantially in dispute, the plaintiffs must be able to establish a strong *prima facie* case and must show that they will suffer irreparable harm if the injunction is not granted. If there are facts in dispute, a lesser standard must be met. In that case, the plaintiffs must show that their case is not a frivolous one and there is a substantial question to be tried, and that, on the balance of convenience, an injunction should be granted.

To the extent that this exception exists at all, it should not be applied in *Charter* cases. ...

13 Defence counsel submits that the basic facts in this case are not in dispute: Ms. Reddick told Mr. MacInnis to put his name on the ticket; both parties' names are on the ticket; Mr. MacInnis sent Ms. Reddick a video showing the completed tickets prior to the draw; Ms. Reddick did not object to the form of the tickets; and the lottery organizers determined that the ticket was a joint ticket and split the funds accordingly. Defence counsel says Ms. Reddick would have to show that there was an enforceable agreement in place not to split the funds equally, but her own evidence is that there were no discussions about Mr. MacInnis's share. The Defendant therefore submits that even if the Court accepts only the Plaintiff's evidence, she has not established a strong *prima facie* case.

14 In respect to this proposed third exception, I agree with the observation of Justice Wood in *North End Community Health Assn. v. Halifax (Regional Municipality)*, 2012 NSSC 92, [2012] N.S.J. No. 118 (N.S. S.C.), that the passage from *RJR-MacDonald* relied on by defence counsel, "suggests that the Supreme Court was not satisfied that such an exception exists...": para. 18. Even if this exception exists, however, I am not satisfied that the factual record is sufficiently settled for it to apply. There are clearly conflicts in the evidence regarding the discussions between the parties before Mr. MacInnis purchased the tickets with Ms. Reddick's funds. For example, according to Ms. Reddick's affidavit, she instructed Mr. MacInnis to put his name "somewhere on the tickets for good luck" and did not give him permission to put his phone number on the ticket. She said there was never any discussion of splitting the winnings and she "made it clear to [Mr. MacInnis] that his good luck was the reason he was writing his name on the ticket." She indicated that she was surprised when she saw the video of the tickets and realized Mr. MacInnis had put his home phone number on them. She said she wondered why he would do that, but she knew the tickets were already in the draw and "there was nothing I could do about it so I just let it go". If believed, these statements suggest that Ms. Reddick did not intend for Mr. MacInnis to write his name and phone number on the tickets in a manner that made them appear to be joint entries. Mr. MacInnis disputes Ms. Reddick's evidence, stating that his aunt told him to "put my name on the ticket with hers, and specifically told me to include my number as the contact number. She indicated if [we] won, we would split but to put my number down so that I could attend and claim the prize for us." Findings of fact will need to be made as to what was, and was not, said between the parties prior to Mr. MacInnis purchasing the tickets.

15 In the result I find that this is not a case where the proposed "third exception" in *RJR-MacDonald*, if it exists, would apply. The appropriate test is the lesser "serious issue to be tried" standard.

Applying the R.J.R. MacDonald Test

1) *Serious Issue to be Tried*

16 The first part of the test requires the Court to determine, based on the evidence, whether there is a serious issue to be tried. To meet this standard, the Plaintiff needs only to show that her case is not frivolous or vexatious. The Court is not to delve deeply into the merits.

17 I am satisfied that there is a serious issue to be tried in this case. The evidence establishes that when Mr. MacInnis told Ms. Reddick he was going to Margaree to buy Chase the Ace tickets, Ms. Reddick asked, "can you get me some?", and gave Mr. MacInnis money for the tickets. Although the tickets included both of their names, they were purchased with Ms. Reddick's funds alone. Mr. MacInnis bought his own tickets. There is a dispute concerning what discussions took place between the parties before the tickets were purchased. The findings of fact to be made at trial will be important in determining whether an enforceable contract was in place between the parties.

2) Irreparable Harm

18 The Plaintiff says she will suffer irreparable harm if the preservation order is not granted because Mr. MacInnis is young, not financially independent, and, as a student, has a very low net worth. She says that if he spends the money, it is unlikely he will be able to pay any judgment made against him. Mr. MacInnis says that Ms. Reddick has not proven that "there is no likelihood of recovery on a judgment for the damages if the assets are not preserved." He says he is a financially responsible person and there is no evidence that he intends to dispose of the funds. To date all of the funds remain intact, according to Mr. MacInnis' evidence.

19 In *RJR-MacDonald*, the Supreme Court described irreparable harm as follows:

59 "Irreparable" refers to the nature of the harm suffered rather than its magnitude. **It is harm** which either cannot be quantified in monetary terms or **which cannot be cured, usually because one party cannot collect damages from the other.** ... The fact that one party may be impecunious does not automatically determine the application in favour of the other party who will not ultimately be able to collect damages, although it may be a relevant consideration (*Hubbard v. Pitt*, [1976] Q.B. 142 (C.A.)).

[Emphasis added]

20 In *Maxwell Properties Ltd. v. Mosaik Property Management Ltd.*, 2017 NSCA 76, [2017] N.S.J. No. 374 (N.S. C.A.), Bryson J.A., for the Nova Scotia Court of Appeal, adopted the following passage from *American Cyanamid* as to the test for irreparable harm:

55 Lord Diplock describes how the test works in *American Cyanamid* at p. 408:

... the governing principle is that the court should first consider whether if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. ***If damages in the measure recoverable at common law would be (an) adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. (sic)***

[Emphasis by Bryson J.A.]

21 In *Vogler v. Szendroi*, 2011 NSCA 37, [2011] N.S.J. No. 214 (N.S. C.A. [In Chambers]), Bryson J.A. stated:

14 There is no invariable definition of irreparable harm. It usually takes on a contextual character. But it usually includes the inability to collect money from the unsuccessful party. ...

22 Going back to *American Cyanamid*, then, courts have recognized that where damages are an adequate remedy, the unsuccessful party's ability to pay any judgment against them is relevant to determining whether irreparable harm exists. I must therefore consider whether there is a risk that Mr. MacInnis would be unable to pay damages if Ms. Reddick's motion is denied and Mr. MacInnis is unsuccessful in the main action. The degree of risk required for a finding of irreparable harm has been considered in relation to stays of proceedings pending appeal, which are subject to the same principles as injunctions: *RJR-MacDonald*, at para. 41. In *Giffin v. Soontiens*, 2011 NSCA 1, [2011] N.S.J. No. 380 (N.S. C.A. [In Chambers]), the appellants were ordered to pay interim costs of \$175,000 to the respondent. They moved for a stay of the order pending an appeal decision. The irreparable harm cited by the appellants was the risk that they would be unable to recover the \$175,000 from the respondent if they were successful on appeal. Beveridge J.A. noted that "irreparable harm has been made out where the Court has been satisfied there is a risk the appellant will not recover if ultimately successful on the appeal..." He added that "[c]ases that have considered this aspect of irreparable harm have used different descriptors of the type or level of risk": paras. 28-29. Those descriptors have included "a significant risk

of non-repayment" and "a real risk" that the subsequent judgment will remain unsatisfied. After considering the cases, Beveridge J.A. stated:

34 In my opinion, the role that risk of repayment can play in establishing irreparable harm is not a static or fixed one, but varies according to the context of the case being decided. ...

23 Our Court of Appeal has made it clear that a finding of irreparable harm does not require evidence that the potentially unsuccessful party is financially irresponsible or intends to dispose of the funds in question. In *Vogler*, Bryson J.A. observed:

17 It is argued on behalf of Mr. Vogler that there is nothing to suggest that he is financially irresponsible or unable to manage money. That may well be but it is clear that unless he preserved his damage award intact, he could not readily repay it if the appellants were substantially successful on appeal. ...

24 A further case that is instructive is *National Bank Financial Ltd. v. Barthe Estate*, 2013 NSCA 127, [2013] N.S.J. No. 5791 (N.S. C.A.). In that case the Court found that the risk of non-repayment was sufficient. In finding irreparable harm, Fichaud J.A. stated:

22 In my view, these factors combine to constitute sufficient risk of non-recovery to satisfy the criterion of irreparable harm. **This is not a comment on Ms. Barthe's personal good faith.** I have no evidence, one way or the other, from Ms. Barthe. **I am assessing potential risk based on the evidence that is on the record.**

[*Emphasis added*]

25 In *Korem*, our Court of Appeal dealt specifically with a motion for a preservation order, noting that Mr. Korem would have to establish (as one of three things) that "without a preservation order, he will suffer irreparable harm". The Court in *Korem* did not believe that the assets would be destroyed and found that the respondent had a vested interest in maintaining them. It went on to find, however, that even if the assets were destroyed, those losses would not amount to harm "which cannot be cured" — a fundamental element of irreparable harm — because there were other protections available to Mr. Korem. The Court was satisfied that Mr. Korem could be compensated from the matrimonial assets for any potential losses.

26 On the evidence before me in the present case, there are factors that suggest a risk of non-recovery. Mr. MacInnis is 19 years old, and is about to enter his second year of university. He lives with his parents and works full-time at Tim Hortons during the summer, and part-time during the school year. He apparently has some savings, although the amount is unclear. Other than a used vehicle, he has no assets. It will be several years before Mr. MacInnis completes his undergraduate degree and decides whether to pursue further education or to enter the workforce. For these reasons, I am satisfied that Mr. MacInnis would be unable to readily pay any judgment entered against him if he does not preserve the lottery winnings intact. To borrow the words of Fichaud J.A., "these factors combine to constitute sufficient risk of non-recovery to satisfy the criterion of irreparable harm."

27 To be clear, this finding is not a comment on Mr. MacInnis' good faith, or on his ability to manage his finances in a responsible manner.

28 Even if I am wrong that the risk of non-recovery in this case is sufficient to prove irreparable harm, our Court of Appeal has recognized that, in some cases, the strength of one part of the three-part test may compensate for a deficiency in another. In *G. (T.) v. Nova Scotia (Minister of Community Services)*, 2012 NSCA 71, [2012] N.S.J. No. 340 (N.S. C.A. [In Chambers]), Beveridge J.A. wrote:

60 Although it is appropriate in most cases to address each of the criteria separately, there may well be any number of scenarios where the strength of one aspect of the test can compensate for a deficiency in another. This practical

reality was noted by Justice Robert J. Sharpe in his text, *Injunctions and Specific Performance*, looseleaf (Aurora, Ontario: Canada Law Book, 2009) (para. 2.450):

[T]he test is a relative and flexible one which, it is submitted, necessarily involves an evolution of other factors. Indeed it has been held that an interlocutory injunction may be granted even where "irreparable harm" has not been demonstrated. Similarly, attempts to make irreparable harm a condition precedent and hence a threshold test, have been rejected. ... If the plaintiff's case looks very strong, harm may appear to be more 'irreparable' than where the plaintiff has only an even chance of success. While judges seldom explicitly acknowledge that there is a "overflow" effect produced by strength of weakness of other factors, it cannot be doubted that, as a practical matter, it exists.

29 As will be seen below, the balance of convenience in this case weighs so heavily in favour of granting the order that, in my view, it makes up for any deficiency in the proof of irreparable harm.

3) Balance of Convenience

30 The third part of the *R.J.R. MacDonald* test is the balance of convenience, which requires the Court to consider the relative impact upon the parties of granting or withholding injunctive relief. In other words, will Ms. Reddick or Mr. MacInnis be more inconvenienced if the preservation order is granted or withheld? The law suggests that irreparable harm and balance of convenience are closely linked and may be considered together to arrive at a just result. Indeed, in Sharpe's *Injunctions and Specific Performance*, he writes at para. 2.418:

Irreparable harm and the assessment of the balance of convenience are very closely linked, [and] in some cases where the balance of convenience strongly favours an injunction, conclusive proof of irreparable harm may not be required.

31 There are obviously competing interests in play on this motion. Ms. Reddick wishes to preserve the funds in dispute to ensure that she will not be left without a remedy if she is ultimately successful in her claim against Mr. MacInnis. Mr. MacInnis wishes to be free to use his winnings as he pleases to support his education and to assist his family.

32 Having weighed and considered the evidence and submissions, I am satisfied that, in the unique circumstances of this case, the balance of convenience overwhelmingly favours granting the order.

33 These lottery winnings are the result of fairly recent events. The Defendant could not have relied or "banked" upon having these funds available to pay for his education or any ongoing expenses prior to the ticket being drawn. I find that Mr. MacInnis will suffer no harm if he is unable to access the funds until after a decision is made on Ms. Reddick's claim against him. He currently lives with his parents, attends university on a scholarship, and makes enough money from his job at Tim Hortons to pay his limited expenses.

Conclusion

34 While a preservation order is an exceptional remedy, it is also an equitable one. I find that it is just and convenient in the circumstances to ensure that the disputed funds are preserved while the litigation unfolds. The Plaintiff has undertaken to move the matter along without delay as required pursuant to *Rule 42.07*. I therefore grant the order preserving the \$611,319.50 currently held by Mr. MacInnis and claimed in Ms. Reddick's action against him.

Motion granted.

TAB 15

[Attached]

Supreme Court of Nova Scotia
In Bankruptcy and Insolvency

In the Matter of the Receivership of

Between: [copy standard heading from Notice of Application]

[name]

[title in proceeding]

and

[name]

[title in proceeding]

Receivership Order

Before the Honourable Justice [name or blank] in chambers

The Applicant¹ started this proceeding for an order, under both subsection 243(1) of the *Bankruptcy and Insolvency Act* (the “BIA”) and the equitable jurisdiction of this Court as partially codified by s. 43(9) of the *Judicature Act*, to appoint _____ as receiver (in such capacities, the “Receiver”) without security, of all² of the assets, undertakings and properties of the Respondent acquired for, or used in relation to a business carried on by the Respondent.

The Receiver satisfies the requirement for appointment without security in Rule 73.07(a).

On motion of the Applicant the following is ordered:

¹ Subsection 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

² If this is not a receivership of all of the assets of the Respondent, remove the reference to “all assets” and define or describe the specific assets under mandate, perhaps by including a schedule.

Service

1. The time for service of the notice of application and the supporting materials is hereby [abridged/abridged and validated]³ so that the application is properly returnable today and further service thereof is hereby dispensed with.

Appointment

2. Pursuant to the equitable jurisdiction, subsection 43(9) of the *Judicature Act*, Rule 73 – Receiver, and subsection 243(1) of the BIA, the Receiver is hereby appointed [receiver/receiver manager], without security, of all of the assets, undertakings, and properties of the Respondent acquired for, or used in relation to a business carried on by the Respondent, including all proceeds thereof (the "Property").

Receiver's Powers

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without limiting the generality of the foregoing, the Receiver is hereby empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - a. to take possession and control of the Property and any proceeds or receipts arising from the Property but, while the Receiver is in possession of any of the Property, the Receiver must preserve and protect it;
 - b. to change locks and security codes, relocate the Property to safeguard it, engage independent security personnel, take physical inventories, and place insurance coverage;
 - c. [to manage, operate, and carry on the business of the Respondent, including the powers to enter into any agreements, incur and pay any obligations in the ordinary

³ If service is effected in a manner other than as authorized by the *Civil Procedure Rules* or the *Bankruptcy and Insolvency General Rules*, use in appropriate circumstances.

*course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Respondent;]*⁴

- d. to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel, and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- e. to purchase or lease such machinery, equipment, inventories, supplies, premises, or other assets to continue the business of the Respondent, or any part or parts thereof;
- f. to receive and collect all monies and accounts now owed or hereafter owing to the Respondent and to exercise all remedies of the Respondent in collecting such monies, including, without limitation, to enforce any security held by the Respondent;
- g. to settle, extend, or compromise any indebtedness owing to the Respondent;
- h. to execute, assign, issue, and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Respondent, for any purpose pursuant to this Order;
- i. to undertake environmental or workers' health and safety assessments of the Property and operations of the Respondent;
- j. to initiate, prosecute, and continue the prosecution of any proceedings and to defend proceedings now pending or hereafter instituted with respect to the Property or the Receiver, and to settle or compromise any such proceedings, which authority extends to appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

⁴ Use only if a receiver manager is appointed. Re-letter the rest of the paragraphs otherwise.

- k. to make payment of any and all costs, expenses, and other amounts that the Receiver determines, in its sole discretion, are necessary or advisable to preserve, protect, or maintain the Property, including, without limitation taxes, municipal taxes, insurance premiums, repair and maintenance costs, costs or charges related to security, management fees, and any costs and disbursements incurred by any manager appointed by the Receiver;
- l. to market any or all of 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 Receiver in its discretion may deem appropriate;
- m. to sell, convey, transfer, lease, or assign the Property or any part or parts thereof out of the ordinary course of business,
 - i. without the approval of this Court in respect of any transaction not exceeding \$, provided that the aggregate consideration for all such transactions does not exceed \$; and
 - ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under section 60 of the *Personal Property Security Act* shall not be required.

- n. to sell the right, title, interest, property, and demand of the Respondent in and to the Property at the time the Respondent granted a security interest or at any time since, free of all claims including the claims of subsequent encumbrancers bound as named respondents, bound as parties joined as unnamed respondents, or bound under Rule 35.12;
- o. to report to, meet with, and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the

receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- p. to register a copy of this Order and any other orders in respect of the Property against title to any of the Property;
- q. to apply for any permits, licences, approvals, or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Respondent;
- r. to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondent including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Respondent;
- s. to exercise any shareholder, partnership, joint venture, or other rights which the Respondent may have; and
- t. to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps it shall be authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Respondent, and without interference from any other Person.

Duty to Provide Access and Co-Operation to the Receiver

- 4. The Respondent, all of its current and former directors, officers, employees, agents, accountants, legal counsel, and shareholders, and all other persons acting on its instructions or behalf, and all other individuals, firms, corporations, governmental bodies, or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, and information of any kind related to the business or affairs of the Respondent, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall, subject to their right to seek a variation of this Order, provide to the Receiver or permit the Receiver to make, retain, and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software, and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall, subject to their right to seek a variation of this Order, forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper, making copies of computer disks, or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase, or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

No Proceedings Against the Receiver

7. No proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

No Proceedings Against the Respondent or the Property

8. No Proceeding against or in respect of the Respondent or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Respondent or the Property are hereby stayed and suspended pending further order of this Court.

No Exercise of Rights or Remedies

9. All rights and remedies of any individual, firm, corporation, governmental body or agency or any other entities against the Respondent, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Respondent to carry on any business which the Respondent is not lawfully entitled to carry on, (ii) exempt the Receiver or the Respondent from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder, provided that the Applicant shall not be required to file a defence to same as the further prosecution of any such claim is stayed except with the written consent of the Applicant or the Receiver, or leave of this Court.

Personal Property Lessors

10. All rights and remedies of any Person pursuant to any arrangement or agreement to which any of the Respondent is a party for the lease or other rental of personal property of any nature or kind are hereby restrained except with consent of the Receiver in writing or leave

of this Court. The Receiver is authorized to return any Property which is subject to a lease from a third party to such Person on such terms and conditions as the Receiver, acting reasonably, considers appropriate and upon the Receiver being satisfied as to the registered interest of such Person in the applicable Property. The return of any item by the Receiver to a Person is without prejudice to the rights or claims of any other Person to the property returned or an interest therein.

No Interference with the Receiver

11. Subject to paragraph 16 of this Order related to the Respondent's employees, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate, or cease to perform any right, renewal right, contract, agreement, licence, or permit in favour of or held by the Respondent, without written consent of the Receiver or leave of this Court.

Continuation of Services

12. All Persons having oral or written agreements with the Respondent or statutory or regulatory mandates for the supply of goods or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, or other services to the Respondent are hereby restrained until further order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Receiver, and the Receiver shall be entitled to the continued use of the Respondent's current telephone numbers, facsimile numbers, internet addresses, and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Respondent or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.
13. The Receiver, in its sole discretion, may, but shall not be obligated to, establish accounts or payment on delivery arrangements with suppliers in its name on behalf of the Respondent for the supply of goods or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll

services, insurance, transportation services, utility, or other services to the Respondent, or any of them, if the Receiver determines that the opening of such accounts is appropriate.

14. No creditor of the Respondent shall be under any obligation as a result this Order to advance or re-advance any monies or otherwise extend any credit to the Respondent.

Receiver to Hold Funds

15. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

Employees

16. All employees of the Respondent shall remain the employees of the Respondent until such time as the Receiver, on the Respondent's behalf, may terminate the employment of such employees or they resign in accordance with their employment contract. The Receiver shall not be liable as a result of this Order for any employee-related liabilities, including any successor employer liabilities as provided for in subsection 14.06(1.2) of the BIA, wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, such amounts as may be determined by a court or tribunal of competent jurisdiction.
17. Pursuant to paragraph 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but

only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale") as permitted at law. Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. A prospective purchaser or bidder requesting the disclosure of personal information shall execute such documents to confirm the agreement of such Person to maintain the confidentiality of such information on terms acceptable to the Receiver. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Respondent, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

Limitation on Environmental Liabilities

18. Nothing herein contained shall require or obligate the Receiver to occupy or to take control, care, charge, occupation, possession, or management (separately or collectively, "Possession") of any of the Property that might, or any part thereof, which may be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial, or other legislation, statute, regulation or, rule of law or equity respecting the protection, conservation, enhancement, remediation, or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, *Canadian Environmental Protection Act, 1999* or the *Nova Scotia Environment Act* (collectively, the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.

Limitation on Liability

19. [Full name of Receiver] and, without limitation, a director, officer, or employee of the Receiver, shall incur no liability or obligation as a result of its appointment as the Receiver

or the carrying out the provisions of this Order, or in the case of any party acting as a director, officer, or employee of the Receiver so long as acting in such capacity, save and except for any negligence, breach of contract, or actionable misconduct on the part of such party, or in respect of the Receiver's obligations under subsections 81.4(5) and 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

Receiver's Accounts

20. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge to a maximum of \$ (the "Administrative Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and the Administrative Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges, and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.⁵
21. The Receiver and its legal counsel shall pass its accounts from time to time before a judge of this Court or a referee appointed by a judge.
22. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees, expenses and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

⁵ Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".

Receiver's Indemnity Charge

23. The Receiver shall be entitled to and is hereby granted a charge (the "Receiver's Indemnity Charge") upon all of the Property as security for all of the obligations incurred by the Receiver including obligations arising from or incident to the performance of its duties and functions under this Order [*including the management, operation, and carrying on of all or part of the business of a Respondent*], under the *Bankruptcy and Insolvency Act*, or otherwise, saving only liability arising from negligence or actionable misconduct of the Receiver.
24. The Receiver's Indemnity Charge shall form a second charge on the Property in priority to all security interests, trusts, liens, charges, and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA and subordinate in priority to the Administrative Charge.

Allocation of Costs

25. The Receiver shall file with the Court for its approval a report setting out the costs, fees, expenses, and liabilities of the Receiver giving rise to the Administrative Charge, the Receiver's Indemnity Charge, and the Receiver's Borrowings Charge, as defined below, and, unless the Court orders otherwise, all such costs, fees, expenses, and liabilities shall be paid in the following manner:
 - a. Firstly, applying the costs incurred in the receivership proceedings specifically attributable to an individual asset or group of assets against the realizations from such asset or group of assets;
 - b. Secondly, applying the costs *pro rata* against all of the assets based on the net realization from such asset or group of assets; and
 - c. Thirdly, applying non-specific costs incurred in the receivership proceedings *pro rata* against the assets based on the net realization from such asset or group of assets.

Funding of the Receivership

26. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$, or such greater amount as this Court may by further order authorize, at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of making payments, including interim payments, required or permitted to be made by this Order, including, without limitation, payments of amounts secured by the Administrative Charge and the Receiver's Indemnity Charge. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Indemnity Charge, the Administrative Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
27. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court on seven days' notice to the Receiver and the Applicant.
28. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
29. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

General

30. The Receiver may from time to time make a motion for advice and directions in the discharge of its powers and duties hereunder.
31. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondent.
32. The aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction outside Nova Scotia is hereby requested to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, and regulatory or administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
33. The Receiver is hereby authorized and empowered to apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
34. The Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Respondent's estate with such priority and at such time as this Court may determine.
35. Any interested party may make a motion to vary or amend this Order upon such notice required by the *Civil Procedure Rules* or on such notice as this Court may order.

36. Any Person affected by this Order which did not receive notice in advance of the hearing may make a motion to vary or amend this Order within five days of such Person being served with a copy of this Order.
37. In addition to the reports to be filed by the Receiver under legislation, the Receiver shall file a report of its activities with the Court when the Receiver determines that a report should be made, when the Court orders the filing of a report on the motion of an interested party or on the Court's own motion, and at the conclusion of the receivership.
38. The Receiver shall not be discharged without notice to such secured creditors and other parties as the Court directs.

Issued , 20

Prothonotary