

**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 PLAN OF COMPROMISE OR
ARRANGEMENT OF **CARILLION CANADA HOLDINGS
INC., CARILLION CANADA INC., CARILLION
CANADA FINANCE CORP., CARILLION
CONSTRUCTION INC., CARILLION PACIFIC
CONSTRUCTION INC., CARILLION SERVICES INC.,
CARILLION SERVICES (FSCC) INC., BEARHILLS
FIRE INC., OUTLAND CAMPS INC., OUTLAND
RESOURCES INC., ROKSTAD POWER GP INC.,
0891115 BC LTD., GOLDEN EARS PAINTING &
SANDBLASTING LTD., PLOWE POWER SYSTEMS
LTD. AND CARILLION GENERAL PARTNER (B.C.)
LIMITED**

Applicants

AND IN THE MATTER OF SECTION 101 OF THE
COURTS OF JUSTICE ACT AND THE RECEIVERSHIP
OF 491313 B.C. LTD., CARILLION INVESTMENTS
(CANADA) INC., 2447586 ONTARIO INC., TWD ROADS
MANAGEMENT INC., VANBOTS CAPITAL
CORPORATION AND CARILLION CANADA (WOHC)
INC.

Debtors

**THIRTY-THIRD REPORT OF THE MONITOR AND RECEIVER,
ERNST & YOUNG INC.**

DATED APRIL 15, 2021

Court File No.: CV-18-590812-00CL

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INC., CARILLION SERVICES (FSCC) INC., BEARHILLS FIRE
INC., OUTLAND CAMPS INC., OUTLAND RESOURCES INC.,
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CARILLION INVESTMENTS (CANADA) INC., 2447586 ONTARIO
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CORPORATION AND CARILLION CANADA (WOHC) INC.**

Debtors

**THIRTY-THIRD REPORT OF THE MONITOR AND RECEIVER,
ERNST & YOUNG INC.**

DATED APRIL 15, 2021

INTRODUCTION

1. For the purposes of this Thirty-Third Report of the Monitor and the Receiver (the “**Thirty-Third Report**”), capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Glossary attached hereto as **Appendix “A”**.

2. On January 25, 2018, certain of the Applicants applied for and obtained the Initial Order that, among other things, (i) granted a stay of proceedings in favour of the Applicants and a limited stay of proceedings in favour of the Non-Applicant Stay Parties until February 23, 2018, and (ii) appointed EY as Monitor of the Applicants in these CCAA proceedings. The Stay Period was most recently extended to April 30, 2021, pursuant to an Order of the Court dated October 27, 2020.
3. On March 1, 2018, the Applicants sought and were granted the Additional Applicants Order that, among other things, added the Additional Applicants to these CCAA proceedings.¹ The Additional Applicants Order extended all of the rights and protections granted under the Initial Order to the Additional Applicants.
4. On June 13, 2018, the Applicants sought and were granted the Rokstad Additional Applicants Order that, among other things, added the Rokstad Additional Applicants to these CCAA proceedings. The Rokstad Additional Applicants Order granted all of the rights and protections granted under the Initial Order to the Rokstad Additional Applicants and RPC LP and CCI LP were extended the full benefit of the protections under the Initial Order, subject to the same restrictions as the Applicants under the Initial Order.
5. On April 29, 2020, this Court appointed EY as the equitable receiver (in such capacity, the “**Receiver**”) of certain related parties of the Applicants, including Carillion Investments (Canada) Inc., 491313 BC Limited, 2447586 Ontario Inc., Carillion Canada (WOHC) Inc., TWD Roads Management Inc., and Vanbots Capital Corporation (collectively, the “**Debtors**”). The receivership proceedings were harmonized with the CCAA proceedings as set out in the Receivership Order granted on April 29, 2020 (the “**Receivership Order**”).

PURPOSE

6. The purpose of this Thirty-Third Report is to support the motion for leave to appeal the Court decision of March 2, 2021.

¹ Pursuant to the Additional Applicants Order, (i) CPC was added as an Applicant to these CCAA proceedings immediately upon the granting of the Additional Applicants Order, and (ii) the Fairfax Vendors were added as Applicants to these CCAA proceedings immediately prior to the initial closing of the Fairfax Transaction, which occurred on March 7, 2018.

TERMS OF REFERENCE

7. In preparing this Thirty-Third Report and making the comments herein, the Monitor has been provided with, and has relied upon the Information. Except as described in this Thirty-Third Report:
 - (i) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with GAAS pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information; and
 - (ii) some of the information referred to in this Thirty-Third Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.
8. Future oriented financial information referred to in this Thirty-Third Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.
9. Unless otherwise indicated, the Monitor's understanding of factual matters expressed in this Thirty-Third Report concerning the Applicants, the Debtors and their business is based on the Information, and not an independent factual determination made by the Monitor.
10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.
11. Copies of materials related to these CCAA proceedings and the Receivership proceedings are available on the Monitor's website at www.ey.com/ca/carillioncanada.

INVESTIGATION INTO AND ACTION REGARDING THE SWEEPED FUNDS

12. As described in the Sixteenth Report of the Monitor dated November 8, 2018, the Monitor filed a motion (the “**Monitor’s Motion**”) with this Court for an order (the “**Investigation Order**”) that, among other things, granted the Monitor with the authority and direction to take any steps or actions necessary to investigate the matters relevant to the approximately \$27.8 million of cash (the “**Held Funds**”) swept into a Carillion Canada bank account with HSBC UK and not returned to the Applicants.
13. On March 6, 2019, the Court issued a revised form of the Investigation Order (the “**Amended Investigation Order**”) that, among other things, authorized and directed the Monitor to investigate any and all matters relevant to the Held Funds, including requesting documents, making inquiries and conducting examinations to obtain information relevant to the investigation.
14. On February 21, 2020, this Court granted an Order (the “**Attornment Order**”) declaring that HSBC UK has attorned to the jurisdiction of this Court in these CCAA proceedings and that this Court has jurisdiction in this proceeding to determine the entitlement to the Held Funds.
15. On September 30, 2020, the Monitor served on the Service List a Notice of Motion (the “**Trust Funds Motion**”) and the Twenty-Ninth Report of the Monitor dated September 29, 2020 (the “**Twenty-Ninth Report**”) seeking certain relief with respect to the trust funds of \$21,699,020.71 (the “**Trust Funds**”). Further details with respect to the Trust Funds and the relief sought by the Monitor is described in the Twenty-Ninth Report and the Supplemental Report to the Twenty-Ninth Report dated December 24, 2020.
16. The Trust Funds Motion was heard on January 28, 2021. On March 2, 2021, the Court dismissed the Trust Funds Motion (the “**Trust Funds Decision**”). A copy of the endorsement with respect to the Trust Funds Decision is available on the Monitor’s website.

LEAVE TO APPEAL THE TRUST FUNDS DECISION

17. On March 16, 2021, the Monitor served a notice of motion seeking leave to appeal the Trust Funds Decision (the “**Notice for Leave**”). The Notice for Leave describes the reasons for leave to appeal the Trust Funds Decision.
18. As discussed in the Thirty-Second Report of the Monitor dated April 9, 2021 (the “**Thirty-Second Report**”), the Monitor is seeking an extension of the Stay Period for a further six months as there is work required to be done in these CCAA proceedings, including:
 - (i) completing certain of the post-closing matters with respect to the Roads Transaction;
 - (ii) working with the Applicants to: (i) complete financial statements and tax returns; (ii) file such returns with CRA; and (iii) work with the CRA to determine the quantum of its claim against the Applicants, which process has been ongoing for several months;
 - (iii) continuing to review the Claims received in the CCAA and the Receivership, determine the Related Party Claims based on the Related Party Claims Process and establish a process to determine D&O Claims;
 - (iv) continuing to work with certain parties to resolve certain environmental claims filed against the Applicants;
 - (v) continuing efforts to sell the remaining real estate assets of the Applicants and realize upon certain remaining receivables;
 - (vi) continuing efforts to realize upon the two remaining construction litigation claims; and
 - (vii) establishing a methodology for: (a) the allocation of costs among the Applicants and Debtors, and (b) an interim distribution to creditors of the Applicants and Debtors, subject to the approval of this Court.
19. As described in the Thirty-Second Report, the Applicants have sufficient liquidity for the administration of these CCAA proceedings during the Stay Period.

20. Therefore, the leave to appeal the Trust Funds Decision, if granted, will not impact the timing of these CCAA proceedings. The Monitor notes that the Trust Funds of \$21.7 million are significant to the Directors and Officers and estate of Carillion Construction as these funds would flow directly to the surety and subcontractors, thereby reducing claims filed by these parties against Carillion Construction.

LETTER FROM THE SURETY ASSOCIATION OF CANADA

21. Attached as **Appendix “B”** to this Thirty-Third Report is a copy of a letter that Steven D. Ness, President of the Surety Association of Canada (the “**SAC**”) addressed to the Monitor (the “**SAC Letter**”). The Monitor understands that the SAC is a national trade association that represents the interests of the surety industry across Canada. Its members consist of primary surety firms, surety reinsurers, surety/insurance brokers, and other organizations that provide related and complementary services to the surety industry.
22. Among other things, the SAC Letter provides its view of the impact of the Trust Funds Decision on the construction industry and the surety industry in Canada. It states that members of the construction industry and the surety industry relied on the court decisions in the Alberta Court of Appeal in *Iona Contractors Ltd. v. Guarantee Company of North America* and the Ontario Court of Appeal in *The Guarantee Company of North America v. Royal Bank of Canada*, in determining how to treat funds that are subject to a trust pursuant to the *Construction Lien Act* (or its successor). It describes how construction companies maintain their accounts relating to construction projects, and the uncertainty that the Trust Funds Decision will cause for members of the construction industry (including suppliers and subcontractors) as well as for the surety industry. In particular, the SAC Letter states:

It is well known that contractors typically do not maintain separate bank account for every project. However, it is possible to trace the transaction on a project-specific basis within the bank account.

The decision has the potential to have a significant impact on the construction industry and surety industry. If contractors and lenders are encouraged to blend and co-mingle trust funds to avoid their trust obligations under the Act, the certainty created by the Iona and Guarantee decisions will be lost. In addition to the obvious administrative issues and costs of doing so, maintaining separate bank accounts for every project would negatively impact the liquidity that is essential for

operation of a construction company. From the surety industry's perspective, restricting a surety's access to only contract balances kept in a separate identifiable account will drastically alter its risk selection approach, which will result in a contractor being evaluated, not on its ability to perform, but on its ability to use its existing cash reserves to finance project completion. This will lead to qualified contractors being unable to secure necessary surety support for work they would otherwise be capable of performing.

23. The Monitor understands the concerns raised by the SAC and requests that the Court consider the views of the SAC, as set out in the SAC Letter when determining whether to grant leave to appeal the Trust Funds Decision.

All of which is respectfully submitted this 15th day of April, 2021.

ERNST & YOUNG INC.

in its capacity as the Monitor of: Carillion Canada Holdings Inc., Carillion Canada Inc., Carillion Canada Finance Corp., Carillion Construction Inc., Carillion Pacific Construction Inc., Carillion Services Inc., Carillion Services (FSCC) Inc., Bearhills Fire Inc., Outland Camps Inc., Outland Resources Inc., Rokstad Power GP Inc., 0891115 BC Ltd., Golden Ears Painting & Sandblasting Ltd., Plowe Power Systems Ltd., and Carillion General Partner (B.C.) Limited and in its capacity as Receiver of 491313 B.C. Ltd., Carillion Investments (Canada) Inc., 2447586 Ontario Inc., TWD Roads Management Inc., Vanbots Capital Corporation, and Carillion Canada (WOHC) Inc., and not in its personal capacity

Per:



Murray McDonald
Chairman

**Appendix “A”
Glossary of Terms**

Term	Definition
2447586 Ontario	2447586 Ontario Inc.
491313 BC	491313 BC Limited
Bearhills	Bearhills Fire Inc.
Carillion Canada	Carillion Canada Inc.
Carillion Canada Construction	Carillion Canada (WOHC) Inc Carillion Construction Inc.
Carillion Finance	Carillion Canada Finance Corp.
Carillion Group	A global integrated support services and construction company headquartered in the United Kingdom, conducting business primarily in the U.K., Canada, and the Middle East.
Carillion Holdings	Carillion Canada Holdings Inc.
Carillion Investments	Carillion Investments (Canada) Inc.
Carillion Pacific	Carillion Pacific Construction Inc.
Carillion Services	Carillion Services Inc.
CCI LP	CCI (B.C.) Limited Partnership.
Carillion Parent	Carillion plc, a corporation incorporated under the laws of the U.K., the ultimate parent of the Applicants, acting by its
CPC	Carillion Pacific Construction Inc.
FSCC	Carillion Services FSCC Inc.
Golden Ears	Golden Ears Painting & Sandblasting Ltd
Outland Camps	Outland Camps Inc.
Outland Entities	491313 BC Ltd., Outland Resources Inc., Outland Camps, Bearhills, 9198-4468 Quebec Inc., and Tangmaarvik Inland
Outland Resources	Outland Resources Inc.
Plowe	Plowe Power Systems Ltd
Rokstad Entities	Collectively, Carillion General Partner (B.C.) Limited, CCI (BC) Limited Partnership, RPC Limited Partnership, Rokstad Power GP Inc., 0891115 BC Ltd., Golden Ears Painting & Sandblasting Ltd., Plowe Power Systems Ltd., and Rokstad
RPC	Rokstad Power Corporation.
RPC LP	RPC Limited Partnership

TWD	TWD Roads Management Inc.
Term	Definition
\$	Canadian Dollars.
Additional Applicants	The Additional Vendors and CPC.
Additional Applicants Order	The Order (Adding Applicants and Corporate Governance) granted and issued on March 1, 2018.
Additional Vendors	Collectively Carillion Services Inc., Carillion Services (FSCC) Inc., Bearhills Fire Inc., Outland Camps Inc., and Outland Resources Inc.
Administration Charge	The charge granted in the Initial Order, up to a maximum amount of \$5 million, over the Applicants' Property in favour of the Monitor, counsel to the Monitor, counsel to the Applicants and independent counsel to the Board of Directors as security for their professional fees and disbursements incurred at their respective standard rates and charges, both before and after the Initial Order was granted in the CCAA proceedings.
Amended Project Charges Order	The Order granted on March 14, 2018 (as amended on December 19, 2018), that granted a super-priority Project Charge as security for the repayment of intercompany or third party advances made in respect of a construction project.
Applicants	Collectively, Carillion Canada Holdings Inc., Carillion Canada Inc., Carillion Canada Finance Corp., Carillion Construction Inc., Carillion Pacific Construction Inc., Carillion Services Inc., Carillion Services (FSCC) Inc., Bearhills Fire Inc., Outland Camps Inc., and Outland Resources Inc.
Applicants' Property	The Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof.
Approval Order	The Sale Approval, Vesting and Interim Financing Order granted and issued on February 8, 2018.
Assistants	The employees, independent contractors, sub-contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons retained or employed by the Applicants from time to time.
Assigned Contracts	Collectively, the Initial Assigned Contracts and the Additional Assigned Contracts
Assignment Approval Order	The Assignment Approval Order granted and issued on March 1, 2018
Blakes	Blake, Cassels & Graydon LLP.
BNP	BNP Paribas.
Board of Directors	The Applicants' current board of directors in such capacity.

Business Support Services	Services provided by the Carillion Canada Group that includes facilities management and services, strategic asset management and engineering and energy services across a number of sectors, including oil and gas, healthcare and aviation.
Canadian Sweep Arrangements	The arrangements under the global liquidity solutions whereby cash from the bank accounts of certain Canadian entities within the Carillion Group that were swept daily into a Canadian bank account of Carillion Canada at HSBC Canada.
Carillion Canada Property	The Applicants' Property, together with all of the Non-Applicant Stay Parties' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof.
Carillion Pension Plan	The Retirement Plan for Employees of Carillion Canada, which is sponsored and administered by Carillion Canada and provides both defined benefit and defined contribution pension benefits.
Carillion Suppliers	Third-party suppliers with whom Carillion Canada, Carillion Construction and certain of the Non-Applicant Stay parties have agreements for the purchase of goods and/or services
Cash Management System	The centralized cash management system in place as of the date of the Initial Order among the Carillion Canada Entities whereby the cash from certain of the Carillion Canada Group's operating entities (including the Applicants, Carillion Canada and Carillion Construction, and certain non-applicants, including Carillion Services (CAMH) Inc. and Carillion Services (FSCC) Inc.) was centralized in the bank accounts held by Carillion Canada and Carillion Construction with HSBC, or such other substantially similar central cash management system instituted as a replacement.
Cash Sweep	Carillion plc's cash sweep of approximately \$28 million on January 12, 2018 from the Applicants' Cash Management System.
Claims Package	Has the meaning ascribed to it in the Claims Procedure Order.
Claims Procedure Order	The Claims Procedure Order granted and issued on July 6, 2018, as amended on January 29, 2019 and May 23, 2019, and as may be further amended or amended and restated from time to time.
Claims Process	The process commenced pursuant to the Claims Procedure Order to determine the status and validity of claims filed against the Applicants.
CCAA	<i>Companies' Creditors Arrangement Act</i> , R.S.C. 1985, c. C-36, as amended.

CCI CDN Master Account	The bank account of Carillion Canada with HSBC Canada bearing account number 002-792257-001.
CCI UK Master Account	The bank account of Carillion Canada located at a branch of HSBC UK whereby cash was swept on a daily basis from the CCI CDN Master Account to the CCI UK Master Account.
Charges	The charges entitled to the benefit of the CCAA Charges.
CCAA Charges	The Administration Charge, the Directors' Charge and the Intercompany Charge.
Construction Business	The in-house engineering, architectural design and project management capabilities for buildings and infrastructure.
Court	The Ontario Superior Court of Justice (Commercial List) in the City of Toronto in the Province of Ontario.
Cure Costs	Means the monetary defaults in relation to either (A) an Assigned Contract, or (B) a contract for which consent to assignment has been obtained from the counterparty to such contract, if any, other than payment obligations that arise solely by reason of: (i) the insolvency of the Applicants or their affiliates, (ii) the commencement of the CCAA proceedings, or (iii) the failure to perform a non-monetary obligation under such Assigned Contract, which shall be in an amount agreed to by the Vendors (in consultation with the Purchaser), the Monitor, and the counterparty to such Assigned Contract or as otherwise determined by further order of the Court.
D&O Claims	Has the meaning ascribed to it in the Claims Procedure Order.
DIP	Debtor-in-possession.
Director(s)	Any/all current and former directors (or their estates) of the Applicants in such capacity.
Directors' Charge	The \$11 million charge on the Applicants' Property as security for the indemnity provided by the Applicants in favour of the Board of Directors pursuant to the Initial Order.
Escrow Amounts	The amount held in escrow by the Monitor and subject to the terms of the Fairfax Transaction.
EY	Ernst & Young Inc.
Ellis Don Transaction	The sale transactions among CCI and its related party Carillion Ottawa Holdings Inc., as vendors, and EllisDon Corporation and EllisDon Ottawa Inc., as purchasers.
Encumbrances	All security interests, trusts (including deemed or constructive trusts), liens, charges (but excluding the Charges) and encumbrances, claims of secured creditors, statutory or otherwise (including, without limitation, any deemed trusts that may be created under any statute, including, without limitation, the Ontario <i>Pension Benefits Act</i> , R.S.O. 1990, c. P.8) in favour of any Person.

Environmental Legislation	Canadian environmental legislation including, without limitation, the <i>Canadian Environmental Protection Act, 1999</i> , S.C. 1999, c. 33, the <i>Ontario Environmental Protection Act</i> , R.S.O. 1990, c. E.19, the <i>Ontario Water Resources Act</i> , R.S.O. 1990, c. O.40, or the <i>Ontario Occupational Health and Safety Act</i> , R.S.O. 1990, c. O.1, and regulations thereunder.
Excluded Claims	Has the meaning ascribed to it in the Claims Procedure Order.
Fairfax	Hamblin Wasta Investment Counsel Ltd., in its capacity as the investment manager of Fairfax Financial Holdings Limited and certain affiliates thereof.
Fairfax Transaction	The sale to Fairfax of the Applicants' services portfolio which includes the Business Support Services and Outland Entities
Fairfax Vendors	Carillion Construction, CCI, Carillion Services, Outland Resources, Outland Camps, Bearhills and FSCC.
Filing Date	The date that the Initial Order was granted, January 25, 2018.
First Report	The first report of the Monitor dated February 6, 2018.
First MacCuish Affidavit	The affidavit of John MacCuish sworn February 19, 2018.
GAAS	Generally Accepted Assurance Standards.
Held Funds	Approximately \$27.8 million of cash originated by certain entities of the Carillion Canada Group that are currently being held by HSBC UK in the CCI UK Master Account.
Highway Maintenance Business	The year-round routine and preventative road maintenance services provided by the Carillion Canada Entities across the provinces of Ontario and Alberta.
HSBC UK	HSBC Bank plc
HST	Harmonized sales taxes.
Information	Unaudited financial information, books, records and financial information prepared by the Applicants, discussions with Management, and information from other third party sources.
Initial Assigned Contracts	The contracts identified as "Initial Assigned Contracts" on Schedule "B" to the Assignment Approval Order.
Initial Order	Order granted and issued by the Court on January 25, 2018, as amended and restated from time to time, declaring that Carillion Canada Holdings, Carillion Canada, Carillion Canada Finance, and Carillion Construction commencing the CCAA proceedings and appointing EY as Monitor.
Initial Stay Period	January 25, 2018 until February 23, 2018.
Intercompany Advance(s)	Advances or loans made by an Applicant, with the consent of the Monitor, to another Applicant or Non-Applicant Stay Party on an inter-company basis.
Intercompany Charge	A charge and security (to the maximum amount outstanding from time to time) against the applicable Carillion Canada

	Property of the Carillion Canada Entity that receives an Intercompany Advance.
Intercompany Transaction(s)	Transactions between and among the Carillion Canada Group including, without limitation, intercompany funding transactions, buying and selling goods and services (including, without limitation, head office and shared services), and the allocation of, collection from, and payment of costs, expenses and other amounts.
Lien Claims	The rights of any person who supplied services and/or materials to preserve or perfect their liens pursuant to the relevant Provincial Lien Legislation.
KERP	Key Employee Retention Plan.
KERP Charge	The charge granted over the Applicants' Property to secure amounts owing to the KERP Participants.
KERP Participant	Certain employees of the Applicants in the KERP.
KERP Order	The Order of the Court approving the KERP and KERP Charge.
Lien Regularization Order	The Order of the Court dated March 14, 2018, as amended May 23, 2019.
Management	Management of the Applicants.
Minority Outland Contracts	Certain contracts of Tangmaarvik and 9198-4418 Quebec Inc
Monitor	EY, in its capacity as Court-appointed Monitor of the Applicants in the CCAA Proceedings
Monitor's Website	www.ey.com/ca/carillioncanada .
Non-Applicant Stay Parties	The Outland Entities, Rokstad Entities, Services Entities and Other Carillion Canada Subsidiaries.
OPEB Claims	Has the meaning ascribed to it in the Claims Procedure Order.
Other Carillion Canada Subsidiaries	Collectively, 2447586 Ontario Inc., Carillion Investments (Canada) Inc., Carillion Canada (WOHC) Investments Inc., Carillion Canada (WOHC) Inc., Hospital Infrastructure Partners Inc., Carillion Build Finance Inc., Carillion Pacific Construction Inc., Vanbots Capital Corporation, TWD Roads Management Inc., Vanbrook Construction Corporation Inc., and Vanmed Construction Corporation Inc.
Pension Claims	Has the meaning ascribed to it in the Claims Procedure Order.
Person(s)	Any individual, corporation, firm, limited or unlimited liability company, general or limited partnership, association (incorporated or unincorporated), trust, unincorporated organization, joint venture, trade union, government authority or any agency, regulatory body or officer thereof or any other entity, wherever situate or domiciled, and whether or not having legal status.

Pooling Accounts	Collectively, the CCI UK Master Account and certain bank accounts of entities of the Carillion Group that participated in the multi-currency and multi-jurisdictional pooling arrangement administered by HSBC UK.
Post-Filing Claims	Has the meaning ascribed to it in the Claims Procedure Order.
PPP	Private Public Partnerships.
PPP Business	The design, construction, finance, maintenance and service for projects with governments across the defence, healthcare, education, transport, and energy sectors.
Pre-Filing Report	The pre-filing report of the Proposed Monitor dated January 24, 2018.
Proceeding(s)	A proceeding or enforcement process in any court or tribunal.
Project Charges	A charge granted as security for the repayment of advances made by an intercompany or a third party for a construction project, against all amounts paid or payable to Carillion Construction or Carillion Pacific as applicable, in respect of such construction project.
Project Charges Order	The Order of this Court dated March 14, 2018, as amended on December 19, 2018, and October 18, 2019.
Proposed Monitor	Ernst & Young Inc.
Provincial Lien Legislation	The <i>Construction Lien Act</i> , RSO 1990, c. C.30, <i>Builders' Lien Act</i> , RSA 2000, c B-7, <i>Builders' Liens Act</i> , CCSM c B91, the <i>Builders' Lien Act</i> , SS 1984-85-86, c B-7.1, <i>Builders Lien Act</i> , SBC 1997, c 45 and any similar provincial lien legislation applicable to the Carillion Projects in any Canadian province.
Relationship Documents	The documents governing the global liquidity solutions provided by HSBC Bank, including: Relationship Acceptance Form, Service Amendment Form, Global Liquidity Solutions Form, Master Services Agreement, Global Liquidity Solutions Services Schedule, Pooling Annex, Cash Concentration Annex, Interest Optimization Appendix, GLS Country Conditions – United Kingdom, and Canadian Participant Country Conditions.
Restructuring Claims	Has the meaning ascribed to it in the Claims Procedure Order.
Reynolds Initial Affidavit	The Affidavit of Elizabeth Reynolds sworn January 24, 2018
Roads Business	Year-round routine and preventative road maintenance services for approximately 40,000 kilometers of highways across the provinces of Ontario and Alberta.
Roads Transaction	The sale transaction among CCI, CCFC and TWD Roads Management Inc., as vendors, and Emcon Services Inc. and 1165565 B.C. Ltd., as purchasers.

Rokstad Additional Applicants	Collectively, Rokstad Power GP Inc., 0891115 BC Ltd., Golden Ears Painting & Sandblasting Ltd., Plowe Power Systems Ltd., and Carillion General Partner (B.C.) Limited.
Rokstad Additional Applicants Order	The Order (adding the Rokstad Additional Applicants) granted and issued on June 13, 2018.
Rokstad Purchaser	Rokstad Holdings Corporation, or its designated purchaser.
Rokstad Transaction	The sale transaction among the Rokstad Vendors and Rokstad Holdings Corporation.
Rokstad Vendors	Rokstad Power GP Inc., 0891115 BC Ltd., Golden Ears Painting & Sandblasting Ltd. and Plowe Power Systems Ltd.
Sales Taxes	Goods and services taxes, harmonized sales taxes or other applicable sales taxes required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants.
Seaforth Project	The project performed by Carillion Pacific, involving new construction and upgrades to the Seaforth Armoury located in Vancouver, B.C.
Segregated Funds	Segregated bank accounts established by the Applicants to hold funds advanced to them on the condition that such funds be used for a specific purpose in respect of a specific portion of the Carillion Canada Business.
Services Entities	Collectively, Carillion Services Inc., Carillion Services (WOHC) Inc., Carillion Services (ROH) Inc., Carillion EllisDon Services (Sault) Inc., Carillion Services (Sault) Inc., Carillion Services (CAMH) Inc., Carillion Services (FSCC) Inc., Carillion EllisDon Services (NOH) Inc., AP Services General Partner Inc., and AP Services Limited Partnership.
Service List	The list of all Persons appearing in person or by counsel in the CCAA proceedings that is maintained and updated as necessary by the Monitor and posted, as updated from time to time, on the Monitor's Website.
Stay Extension and Enhanced Monitor's Powers Order	The Order of this Court dated October 17, 2019, that, among other things, extended the stay of proceedings up to and including April 30, 2020, and granted additional powers to the Monitor.
Stay Extension and Service Order	The Order of the Court dated February 23, 2018, among other things, (i) extending the Stay Period to May 25, 2018 and (ii) approving substituted service on affected parties who were not on the service list or otherwise served with the Lien Regularization Order and CCAA Charges Priority Order.
Stay Period	Stay of proceedings in favour of the Applicants up to and including October 30, 2020, or such later date as the Court may order.
Subsidiaries	Carillion Services, 491313 BC Ltd., Outland Resources, Outland Camps and Bearhills.
Tangmaarvik	Tangmaarvik Inland Camp Services Inc.

TGF	Thornton Grout Finnigan LLP
Third Party Advances	An advance, on a no-fee, no-interest basis, made on or after the date of this Order, by a third party to Carillion Construction or Carillion Pacific, to fund the payment of fees, costs or expenses related to a construction project.
Transmission and Distribution Business	Transmission and distribution of sustainable energy solutions to homes, businesses and public buildings and infrastructure services for sub-stations, cabling and overhead power lines, primarily operated by RPC LP.
Union Station Claims	Has the meaning ascribed to it in the Claims Procedure Order.
UK	The United Kingdom.
UK Liquidation Proceedings	The UK liquidation proceedings commenced on January 15, 2018, of Carillion plc, the ultimate parent company of the Carillion Group, and five related Carillion Group entities based in the UK
UK Liquidator	The “Official Receiver” appointed by the UK High Court on January 25, 2018 as liquidator of Carillion plc, the ultimate parent company of the Carillion Group and five related Carillion Group entities based in the UK.

Appendix "B"
SAC Letter

**Steven D. Ness,
President**

April 13, 2021

Ernst & Young Inc.
EY Tower
100 Adelaide Street West, PO Box 1
Toronto, ON, M5H 0B3

Dear Sir/Madam

**Re: Carillion Construction Inc. (“Carillion”) decision regarding trust fund provisions of the
*Construction Lien Act***

I write on behalf of the Surety Association of Canada (“SAC”) regarding the decision of the Ontario Superior Court, addressing the trust fund provisions of the *Construction Lien Act* (the “Act”) in the insolvency proceedings of Carillion (the “Trust Decision”).

SAC is the national trade association that represents the interests of the surety industry across Canada. Its members consist of primary surety firms, surety reinsurers, surety/insurance brokers, and other organizations that provide related and complementary services to the surety industry. The majority of the surety industry’s premium revenue, which was approximately \$650 million in 2020, is derived from construction contract surety bonds, being performance bonds and labour and material payment bonds. Therefore, issues impacting the construction industry, and specifically the flow of funds in the construction industry, are important to SAC.

I have read the Trust Decision and would like to comment on its impact, both on the surety industry and the construction industry more broadly.

Prior to the decisions of the Alberta Court of Appeal in *Iona Contractors Ltd. v. Guarantee Company of North America* and then the Ontario Court of Appeal in *The Guarantee Company of North America v. Royal Bank of Canada*, the priority to the funds impressed with a trust under the Act were, in the context of a bankruptcy or insolvency, challenged by lenders. These two decisions and the decisions that followed them provided certainty and clarity around the interpretation and application of the trust fund provisions in bankruptcies and insolvencies. More importantly, from the perspective of the construction and surety industries, they confirmed that the trust funds were to be used to satisfy the amounts owing to the subcontractors and suppliers, who are the trust beneficiaries.

In the context of the surety industry specifically, these decisions had a positive impact in providing the certainty necessary for sureties to assess their risks when they issue a bond. Knowing that the contract trust funds will remain within the construction pyramid on a project was a strong statement of support to the construction industry. From a high-level, surety bonds operate as credit-risk mitigation instruments. Sureties, in turn, weigh these risks prior to issuing bonds. The surety business model is predicated on loss mitigation, and sureties will assess risk based on potential for recovery.

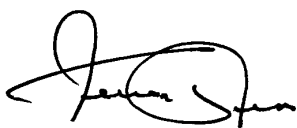
The Trust Decision threatens these principles that have been applied and relied upon by members of the construction industry and the surety industry. The Honourable Justice Hainey's decision seems to conclude that the funds in question could not be separately accounted for. It is well known that contractors typically do not maintain separate bank account for every project. However, it is possible to trace the transaction on a project-specific basis within the bank account.

The decision has the potential to have a significant impact on the construction industry and surety industry. If contractors and lenders are encouraged to blend and co-mingle trust funds to avoid their trust obligations under the Act, the certainty created by the *Iona* and *Guarantee* decisions will be lost. In addition to the obvious administrative issues and costs of doing so, maintaining separate bank accounts for every project would negatively impact the liquidity that is essential for operation of a construction company. From the surety industry's perspective, restricting a surety's access to only contract balances kept in a separate identifiable account will drastically alter its risk selection approach, which will result in a contractor being evaluated, not on its ability to perform, but on its ability to use its existing cash reserves to finance project completion. This will lead to qualified contractors being unable to secure necessary surety support for work they would otherwise be capable of performing.

The surety industry is grateful that the new *Construction Act* specifically states that mixing funds into one account will not affect trust claims against those funds. However, there are still a significant number of projects under the former *Act*, as well as in other provinces that do not have these same protections. The construction industry and surety industry, relying on the Court of Appeal decisions I mentioned above, now operate on the assumption that mixing of fund in one bank account will no longer escape the protections afforded by the trust provisions.

If the Trust Decision is upheld, and does not recognize tracing of funds, it would require a change in how construction and surety companies operate. Specifically, sureties will be forced to take a more restrictive approach to the availability of surety support to (a) small to mid-sized construction firms; and (b) subcontractors and suppliers.

Yours Very Truly,

A handwritten signature in black ink, appearing to read 'Steven D. Ness', with a stylized flourish at the end.

Steven D. Ness
President
Surety Association of Canada

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 **CARILLION CANADA HOLDINGS INC., CARILLION CANADA INC., CARILLION CANADA FINANCE CORP., CARILLION CONSTRUCTION INC., CARILLION PACIFIC CONSTRUCTION INC., CARILLION SERVICES INC., CARILLION SERVICES (FSCC) INC., BEARHILLS FIRE INC., OUTLAND CAMPS INC., OUTSAND RESOURCES INC., ROKSTAD POWER GP INC., 0891115 B.C. LTD., GOLDEN EARS PAINTING & SANDBLASTING LTD., PLOWE POWER SYSTEMS LTD. AND CARILLION GENERAL PARTNER (B.C.) LIMITED**

Applicants

AND IN THE MATTER OF SECTION 101 OF THE COURTS OF JUSTICE ACT AND THE RECEIVERSHIP OF **491313 B.C. LTD., CARILLION INVESTMENTS (CANADA) INC., 2447586 ONTARIO INC., TWD ROADS MANAGEMENT INC., VANBOTS CAPITAL CORPORATION AND CARILLION CANADA (WOHC) INC.**

Debtors

Court File No. CV-18-590812-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

**THIRTY-THIRD REPORT OF THE MONITOR,
ERNST & YOUNG INC.**

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