

**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  
CANNAPIECE GROUP INC., CANNAPIECE CORP., CANADIAN CRAFT GROWERS  
CORP., 2666222 ONTARIO LTD., 2580385 ONTARIO INC. AND 2669673 ONTARIO INC.

Applicants

**FACTUM OF THE APPLICANTS**

**(returnable November 3, 2022)**

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**PART I - INTRODUCTION**

1. CannaPiece Group Inc. (“**CPG**”), CannaPiece Corp. (“**CPC**”), Canadian Craft Growers Corp. (“**CCG**”), 2580385 Ontario Inc. (“**258**”), 2666222 Ontario Inc. (“**222**”), and 2669673 Ontario Inc. (“**673**”, and together with CPG, CPC, CCG, 258, 222 and 673, the “**Applicants**” or the “**Company**”) seek this Court’s protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”).
2. This factum is filed in support of an application by the Company under the CCAA for an order substantially in the form attached as Tab 3 to the Application Record (“**Initial Order**”), among other things:
  - (i) declaring that the Applicants are companies to which the CCAA applies;
  - (ii) providing a stay of proceedings for an initial period of not more than ten days to allow the Company to stabilize its business operations and develop

a sale and investment solicitation process for its business and property (“**Sale Process**”);

- (iii) appointing BDO Canada Limited (“**BDO**”) as monitor of the Company in these proceedings (“**Monitor**”);
- (iv) approving a DIP Term Sheet (as defined below) in the principal amount of \$500,000 during the initial stay period;
- (v) granting an Administration Charge and DIP Lender’s Charge (each as defined below) over the Company’s assets;
- (vi) scheduling a comeback hearing (“**Comeback Hearing**”) for November 10, 2022; and
- (vii) such further and other relief as counsel may request and this Court may deem just.

3. The Company operates a cannabis contract manufacturing business. In the past year, the Applicants have suffered losses due to, among other things:

- (a) substantial capital investments made by CPG and CPC to meet capacity requirements of customer contracts that never fully materialized;
- (b) a steep decline in the value of most publicly-traded cannabis companies in Canada, which form the basis of CPC’s client base;
- (c) intense competition and an over-supply of cannabis products leading to significant price compression; and

- (d) low market demand for cannabis products at the retail level, partially as a result of the illicit market for cannabis, causing the withdrawal of orders from licensed producers.
4. The Company's management team has made determined efforts to address the financial challenges, including, among other things, significantly reducing staff, maximizing automation to more efficiently address manufacturing demands, increasing the efficiency of full-time production staff, making efforts to expand service offerings to existing customers, and retaining external consultants to assist in identifying opportunities to improve liquidity. These efforts, although effective to a point, have been insufficient to completely address the challenges facing the Applicants.
  5. The Company is insolvent. The Applicants will have sufficient cash to sustain operations for the week ending November 6, 2022, including payroll, but will have insufficient funds thereafter to fund operating expenses without a draw under the DIP Loan (as defined below). Given its liquidity crisis, the Company requires the breathing room afforded by the CCAA in order to stabilize its operations for the benefit of all of its stakeholders. The CCAA provides the most appropriate forum for the Company to restructure its affairs.
  6. The Applicants seek to schedule the Comeback Hearing to request, among other things, approval of the Sale Process (including a stalking horse bid component), and an extension of the stay of proceedings.

## **PART II - THE FACTS**

7. The facts underlying this Application are more fully set out in the affidavit of Afshin Souzankar sworn November 2<sup>nd</sup>, 2022. (“**Souzankar Affidavit**”). Mr. Souzankar is the President and Chief Executive Officer of CPG as well as a member of the board of directors. He is also the CEO and a member of the board of directors of the Company’s wholly-owned subsidiaries, CPC, CCG, 258 and 266.<sup>1</sup>

### **A. Corporate Overview and the Business**

8. CPG, through its wholly-owned subsidiary, CPC, operates a cannabis manufacturing business.<sup>2</sup> CPC is the Company’s operating entity.<sup>3</sup> It holds the necessary cannabis licensed and operates the production business out of a licensed facility located at 1725 McPherson Court, Unit 2, Pickering, Ontario (the “**Pickering Facility**”).<sup>4</sup>

9. The Company provides extraction, processing, and packaging services for its customers, who include large and industry-leading licensed processors. The Applicants do not grow any flower, nor do they have any of their own cannabis brands, products, or retail operations. The operations of the Company are strictly business-to-business.<sup>5</sup>

10. Cannabis production operations at the Pickering Facility commenced in October of 2020 and have continued uninterrupted since that time, other than a temporary COVID-related shutdown in January 2021.<sup>6</sup>

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<sup>1</sup> Affidavit of Afshin Souzankar Sworn November 2, 2022 (“**Souzankar Affidavit**”) at para 2, Tab 2 to the Application Record of the Applicants dated November 2, 2022 (“**Application Record**”).

<sup>2</sup> Souzankar Affidavit at para 10, Tab 2 to the Application Record.

<sup>3</sup> Souzankar Affidavit at para 20, Tab 2 to the Application Record.

<sup>4</sup> Souzankar Affidavit at para 20, Tab 2 to the Application Record.

<sup>5</sup> Souzankar Affidavit at para 27, Tab 2 to the Application Record.

<sup>6</sup> Souzankar Affidavit at para 39, Tab 2 to the Application Record.

11. The Company holds a standard processing and sale for medical purposes licence (the “**Cannabis Licence**”) and a licence under the *Excise Act, 2001* (Canada) (the “**Excise Cannabis Licence**”).<sup>7</sup>
12. The Company currently employs 155 employees, 146 with CPC (including 10 temporary workers) and 9 with CPG.<sup>8</sup>

## **B. Debts and Obligations**

### **i. Carmela Marzilli**

13. Carmela Marzilli (“**Marzilli**”) is the Company’s senior secured creditor.<sup>9</sup>
14. CPC, as borrower, entered into a letter of commitment with Marzilli, as lender on February 10, 2022 (the “**Marzilli Loan Agreement**”). Pursuant to the Marzilli Loan Agreement, Marzilli made available \$6,689,500 to the Company (“**Marzilli Loan**”), across four loan advances.<sup>10</sup>
15. As security for the obligations under the Marzilli Loan Agreement, CPC agreed to provide Marzilli with a first-ranking security interest in all of the CPC’s present or after-acquired property (excluding accounts receivable and certain enumerated equipment), pursuant to a General Security Agreement dated February 28, 2022 (the “**Marzilli GSA**”).<sup>11</sup> As of November 1, 2022, there is approximately \$6,788,635 outstanding under the Marzilli Loan Agreement.<sup>12</sup>

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<sup>7</sup> Souzankar Affidavit at para 40, Tab 2 to the Application Record.

<sup>8</sup> Souzankar Affidavit at para 44, Tab 2 to the Application Record.

<sup>9</sup> Souzankar Affidavit at para 84, Tab 2 to the Application Record.

<sup>10</sup> Souzankar Affidavit at paras 85-86, Tab 2 to the Application Record.

<sup>11</sup> Souzankar Affidavit at para 87, Tab 2 to the Application Record.

<sup>12</sup> Souzankar Affidavit at para 88 Tab 2 to the Application Record.

**ii. 2125028 Ontario Inc.**

16. CPC, as borrower, is party to two loan and security agreements dated May 27, 2020 and December 7, 2020, respectively (together, the “**212 Loan Agreements**”) with 2125028 Ontario Inc. (“**Equipment Lender**”) as lender. The loans under the 212 Loan Agreements, each in the principal amount of \$3,000,000, are secured by certain manufacturing and processing equipment that is currently used at the Pickering Facility.<sup>13</sup>
17. There is currently a total of approximately \$4,000,000 owing to the Equipment Lender pursuant to the 212 Loan Agreements.<sup>14</sup>

**iii. Unsecured Creditors**

18. The Company is party to a number of unsecured loan agreements as follows:
- (a) 2726398 Ontario Inc. (“**272**”), as lender, and CPG, as borrower, entered into two debenture agreements pursuant to which 272 agreed to loan CPG the aggregate principal amount of \$7,000,000 (the “**272 Loan**”). In connection with the 272 Loan, 272 has commenced an action in the Ontario Superior Court of Justice in respect of the outstanding amount owing under the 272 Loan, being \$815,576.23.<sup>15</sup>
- (b) CPG, as borrower, and 2756295 Ontario Inc. (“**275**”), as lender, entered into a loan agreement (“**275 Loan Agreement**”) pursuant to which 275 agreed to loan to CPG the principal amount of \$3,100,000 (the “**275 Loan**”). 275 made significant subsequent

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<sup>13</sup> Souzankar Affidavit at para 89, Tab 2 to the Application Record.

<sup>14</sup> Souzankar Affidavit at para 100, Tab 2 to the Application Record.

<sup>15</sup> Souzankar Affidavit at paras 101-110, Tab 2 to the Application Record.

advances. There is currently approximately \$19,518,902 owing by CPG under the 275 Loan.<sup>16</sup>

(c) CPG, as borrower, is party to a loan agreement with Novo Integrated Sciences Inc. (“**Novo**”) as lender, pursuant to which Novo agreed to loan to CPG a loan in the principal amount of \$300,000 (the “**Novo Loan**”). There is currently approximately \$405,945 owing by CPG under the terms of the Novo Loan.<sup>17</sup>

**iv. PPSA Creditors**

19. The following parties have filed registrations against the Company under the *Personal Property Security Act* (“**PPSA**”):<sup>18</sup>

(a) 272 has a registration against CCG securing amounts owed by CPG as secured under the 262 Loan Agreements and guaranteed by CCG;

(b) Marzilli has a registration against CPC with respect to all present and after-acquired personal property of the Company for all collateral classifications except consumer goods, accounts, and motor vehicles;

(c) Solid Packaging Robotik Inc., a Canadian equipment manufacturer, has a registration against CPG with respect to 4 pre-roll machines; and

(d) Vitalis Extraction Technology Inc. has a registration against CPC with respect to certain co-solvent injection equipment used for CO2 extraction.

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<sup>16</sup> Souzankar Affidavit at paras 111-113 Tab 2 to the Application Record.

<sup>17</sup> Souzankar Affidavit at paras 114-115, Tab 2 to the Application Record.

<sup>18</sup> Souzankar Affidavit at para 116, Tab 2 to the Application Record.

**v. Equity Interests and Share Capital Contributions**

20. The co-founders of the Company contributed \$1,040,000 to the Company in start-up capital. In addition, certain members of the management team have contributed approximately \$1,765,000 in various formats (including interest-free loans and unpaid wages since February of 2021). Further, approximately \$18 million in shareholder capital was raised from 110 individual and corporate investors, most of whom are family and/or friends of the Company's founders.<sup>19</sup>

**vi. Other Creditors**

21. The Company owes various additional amounts to Canada Revenue Agency ("CRA")<sup>20</sup>, to trade creditors,<sup>21</sup> and to a number of judgment creditors.<sup>22</sup>

**C. Financial Challenges**

22. The Canadian cannabis industry is an extremely challenging operating environment. The industry is highly regulated, highly taxed, and subject to ever-changing legislation and delays at all levels of government.<sup>23</sup> The Company has faced pressures similar to many large and small cannabis industry participants due to the over-supply in the market for cannabis products, the impact of the illegal market on the demand for legal cannabis products, inflation, and high interest rates.<sup>24</sup>

23. As a result of the challenges to the cannabis industry and in particular the over-supply of cannabis products, the Company has seen a number of large customers withdraw or

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<sup>19</sup> Souzankar Affidavit at para 119, Tab 2 to the Application Record.

<sup>20</sup> Souzankar Affidavit at paras 121-123, Tab 2 to the Application Record.

<sup>21</sup> Souzankar Affidavit at para 124, Tab 2 to the Application Record.

<sup>22</sup> Souzankar Affidavit at para 126, Tab 2 to the Application Record.

<sup>23</sup> Souzankar Affidavit at para 127, Tab 2 to the Application Record.



discontinue their orders beginning in September of 2022. In particular, two of the Company's major concentrate product customers (which, prior to cancelling their orders, accounted for approximately \$400,000 of the Company's monthly revenue) cancelled their orders indefinitely.<sup>25</sup>

24. The Company is in default of several significant settlement agreements with creditors and faces at least 12 imminent enforcement proceedings in respect of claims totalling over \$10 million. Certain creditor parties have been granted consents to judgment against the Company such that they may shortly be entitled to take out judgments and levy execution.<sup>26</sup>

**D. Need for CCAA Protection**

25. As a result of their continuing financial difficulty, the Applicants are insolvent and cannot meet their liabilities as they become due. The Applicants have determined that a CCAA proceeding is required to complete a sale process and otherwise address their current financial challenges by restructuring their operations.<sup>27</sup>

**E. Proposed DIP Loan**

26. Pursuant to the interim cash flow forecast prepared by the Applicants, with the assistance of the Monitor, for the week ending November 13, 2022 ("**Interim Cash Flow**

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<sup>24</sup> Souzankar Affidavit at para 128, Tab 2 to the Application Record.

<sup>25</sup> Souzankar Affidavit at para 129, Tab 2 to the Application Record.

<sup>26</sup> Souzankar Affidavit at paras 131-141, Tab 2 to the Application Record.

<sup>27</sup> Souzankar Affidavit at paras 147-148, Tab 2 to the Application Record.

**Forecast**”), the Company requires immediate funding to ensure operations through the initial ten-day stay of proceedings.<sup>28</sup>

27. To facilitate the Company’s operations during this interim period, Cardinal Advisory Limited (the “**DIP Lender**”) has agreed to provide to the Company a loan of \$500,000 (the “**DIP Loan**”) pursuant to a DIP Term Sheet between the Applicants and the DIP Lender, dated November 2, 2022 (the “**DIP Term Sheet**”).<sup>29</sup>
28. The DIP Loan is conditional upon court approval of the charge in favour of the DIP Lender in the amount of \$500,000 (the “**DIP Lender’s Charge**”). The amount of the DIP Loan is limited to the amount required by the Applicants between the date of the hearing for the Initial Order and the proposed Comeback Hearing.<sup>30</sup>

**F. Proposed Monitor**

29. The Applicants are proposing that BDO Canada Limited (“**BDO**”) act as monitor of the Company in these CCAA proceedings. BDO has developed critical knowledge about the Applicants, their business operations, financial challenges, strategic initiatives, and restructuring efforts to date. BDO has reviewed and assisted in the preparation of the Cash Flow Forecast, and has provided guidance and assistance in the commencement of these CCAA proceedings.<sup>31</sup>

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<sup>28</sup> Souzankar Affidavit at para 82, Tab 2 to the Application Record.

<sup>29</sup> Souzankar Affidavit at para 153, Tab 2 to the Application Record.

<sup>30</sup> Souzankar Affidavit at para 155, Tab 2 to the Application Record.

<sup>31</sup> Souzankar Affidavit at paras 149-150, Tab 2 to the Application Record.

### **PART III - ISSUES**

30. The issues to be addressed before this Honourable Court are whether:
- (a) the Applicants meet the definition of “company” and “debtor company” under the CCAA;
  - (b) the stay of proceedings should be granted;
  - (c) the Administration Charge should be granted;
  - (d) the DIP Loan should be approved and the DIP Lender’s Charge granted; and
  - (e) BDO should be appointed as monitor.

### **PART IV - LAW AND ARGUMENT**

#### **A. Applicants are Debtor Companies**

31. The CCAA applies in respect of a “debtor company” or “affiliated company” where the total claims against the debtor or affiliate exceeds \$5,000,000.<sup>32</sup> The term “company” is defined as “any company, corporation or legal person incorporated by or under an Act of Parliament or the legislature of a province...”.<sup>33</sup> “Debtor company” is defined as “any company that: (a) is bankrupt or insolvent...”.<sup>34</sup>

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<sup>32</sup> s. 3(1), *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (“CCAA”).

<sup>33</sup> s. 2(1), CCAA.

<sup>34</sup> s. 2(1), CCAA.

32. The insolvency of a debtor is determined as of the time the debtor files its CCAA application.<sup>35</sup>
33. The CCAA does not define “insolvent”. However, courts have held that a company is insolvent under the CCAA if:<sup>36</sup>
- (i) the company meets the definition of “insolvent person” under the BIA, which includes a person “...who is for any reason unable to meet [its] obligations as they generally become due...”,<sup>37</sup> or
  - (ii) the company faces a looming liquidity crisis.<sup>38</sup>
34. In *Re Stelco Inc.*, Justice Farley held that the definition of “insolvent” should be expanded to give effect to the objectives of the CCAA of allowing the debtor company to obtain breathing room in order to restructure.<sup>39</sup>
35. Protection under the CCAA may be extended not only to a debtor company, but also to entities that are “necessary parties” to ensure that a stay of proceedings is effective. A court should “take into account the relationship between any particular company and the larger group of which it is a member, as well as the need to place that company within the protection of the Initial Order so that the order will work effectively.”<sup>40</sup>

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<sup>35</sup> *Re Stelco Inc. (2004)*, 48 CBR (4<sup>th</sup>) 299 (Ont Sup Ct J [Commercial List]) at para 4.

<sup>36</sup> *Re Stelco Inc. (2004)*, 48 CBR (4<sup>th</sup>) 299 at paras 21-22, and 26 (Ont Sup Ct J [Commercial List]).

<sup>37</sup> s. 2, *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“BIA”).

<sup>38</sup> *Re Stelco Inc. (2004)*, 48 CBR (4<sup>th</sup>) 299 (Ont Sup Ct J [Commercial List]) at para 40.

<sup>39</sup> *Re Stelco Inc. (2004)*, 48 CBR (4<sup>th</sup>) 299 (Ont Sup Ct J [Commercial List]) at para 26.

<sup>40</sup> *First Leaside Wealth Management Inc., Re*, 2012 ONSC 1299 at paras 29-30.

36. Each of the Applicants are incorporated pursuant to the laws of Ontario and have their registered head offices in Ontario. The Applicants are unable to meet their obligations as they generally become due and they face an imminent liquidity crisis.<sup>41</sup>
37. The Applicants have total debts approaching \$50,000,000, well in excess of \$5,000,000.<sup>42</sup>
38. The Company has filed the required financial information, including an interim cash flow projection, and accordingly meets the technical requirements of the CCAA.<sup>43</sup>
39. Accordingly, the Applicants submit that they are debtor companies to whom the CCAA applies.

## **B. Stay of Proceedings**

40. Pursuant to section 11.02 of the CCAA, a court may grant a stay of proceedings upon an initial application under the CCAA for a period of no more than ten days, provided that the court is satisfied that circumstances exist that make the order appropriate.<sup>44</sup>
41. A stay of proceedings is appropriate where it provides a debtor with breathing room while the debtor seeks to restore solvency and emerge from the CCAA on a going concern basis.<sup>45</sup> The purpose of the CCAA stay of proceedings is to maintain the *status quo* to provide a structured environment in which an insolvent company can continue to

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<sup>41</sup> Souzankar Affidavit at para 10, Tab 2 to the Application Record.

<sup>42</sup> Souzankar Affidavit at paras 78-80, Tab 2 to the Application Record.

<sup>43</sup> Souzankar Affidavit at para 78 and 82; Interim Cash Flow Forecast at Exhibit M to the Souzankar Affidavit; Financial Statements at Exhibit L to the Souzankar Affidavit.

<sup>44</sup> s. 11.02, CCAA; [Re Lydian International Limited](#), 2019 ONSC 7473 at para 22.

<sup>45</sup> [Target Canada Co.](#), 2015 ONSC 303 at para 8.

carry on business and develop a restructuring plan for the benefit of the company and all of its stakeholders.<sup>46</sup>

42. Section 11.001 of the CCAA further provides:<sup>47</sup>

An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

43. The purpose of section 11.001 “is to make the insolvency process fairer, more transparent and more accessible by limiting the decisions made at the outset of the proceedings to measures that are reasonably necessary to avoid the immediate liquidation of an insolvent company and to allow for broader participation in the restructuring process.”<sup>48</sup> Its intent is to ensure that the relief granted upon an initial application is limited to the relief reasonably necessary for the debtor to continue to operate in the ordinary course.<sup>49</sup>

44. The Applicants submit that given their current financial condition, a stay of proceedings at this time is in the best interest of the Company and its stakeholders and is both necessary and appropriate.

45. The Applicants have limited the relief sought on this application to relief that is reasonably necessary in the circumstances to maintain the *status quo* and to give the Applicants the breathing room necessary to stabilize their operations and develop a sale process for the benefit of their stakeholders.

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<sup>46</sup> [Century Services v Canada \(Attorney General\)](#), 2010 SCC 60 at para 60.

<sup>47</sup> s. 11.001, CCAA.

<sup>48</sup> [Re Clover Leaf Holdings Company](#), 2019 ONSC 6966 at para 13.

<sup>49</sup> [Re Lydian International Limited](#), 2019 ONSC 7473 at paras 30, 32.

46. The Applicants submit that the stay should be extended to the Company's directors and officers so that they may focus on the CCAA proceedings, including developing and implementing the Sale Process.

**C. DIP Loan and DIP Lender's Charge**

47. Section 11.2 of the CCAA allows this Honourable Court to grant the DIP Loan, and to order a charge ("**DIP Lender's Charge**") that ranks in priority to the Applicants' secured creditors, on notice to those secured creditors that would be affected and in an amount that the Court considers appropriate having regard to the Applicants' Interim Cash Flow Statement.<sup>50</sup>

48. The security or charge may not secure an obligation that exists before the order is made.<sup>51</sup>

49. Section 11.2(5) provides that a court shall not grant an order for interim financing at the same time as granting an initial order under section 11.2 unless it is satisfied that the terms of the loan are limited to those terms that are reasonably necessary for the applicant's continued operations in the ordinary course of business during the initial stay of proceedings.<sup>52</sup> What is "reasonably necessary" in each case is fact dependent.<sup>53</sup>

50. In determining whether the DIP Lender's Charge is appropriate, a court is required to consider the following factors under section 11.2(4) of the CCAA:<sup>54</sup>

(4) In deciding whether to make an order, the court is to consider, among other things,

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<sup>50</sup> s. 11.2(1), CCAA.

<sup>51</sup> s. 11.2(1), CCAA.

<sup>52</sup> s. 11.2(5), CCAA.

<sup>53</sup> [8440522 Canada Inc., Re](#), 2013 ONSC 6167 at para 30.

<sup>54</sup> s. 11.2(4), CCAA.

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

51. In accordance with the DIP Term Sheet, the Company is seeking \$500,000 to be made available upon the issuance of the proposed Initial Order. This amount is limited to the amount reasonably necessary to allow the Applicants to meet critical payments and continue operations during the initial 10-day stay of proceedings. As indicated in the Interim Cash Flow Forecast, with the DIP Loan, the Company will have sufficient liquidity to meet payroll and finance its operations during the 10-day stay period.<sup>55</sup>

52. It is submitted that the Court should approve the DIP Term Sheet and grant the DIP Lender's Charge. The DIP Loan is essential to the Company because it provides the Applicants with the interim financing needed to preserve enterprise value pending determination of a Sale Process. The benefits of such new financing to all stakeholders outweigh the potential prejudice to any particular creditors.

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<sup>55</sup> Souzankar Affidavit at para 156, Tab 2 to the Application Record.



53. The following additional factors support the approval of the DIP Term Sheet and the granting of the DIP Lender's Charge:

- (i) the availability of the DIP Loan is contingent on an order of this Court approving the DIP Term Sheet and the DIP Lender's Charge being granted to secure any advances made thereunder;<sup>56</sup>
- (ii) the necessity of the DIP Loan is demonstrated and supported by the Interim Cash Flow Forecast;<sup>57</sup>
- (iii) the Applicants' business will be managed by its directors and senior management, in consultation with the proposed Monitor;
- (iv) in the absence of the DIP Loan, the Applicants will be unable to continue to carry on business or carry out the Sale Process and will be forced to shut down its operations to the detriment of their stakeholders;<sup>58</sup>
- (v) no creditor should be materially prejudiced as a result of the DIP Loan and the DIP Lender's Charge; and
- (vi) the proposed Monitor is supportive of the DIP Loan, the DIP Term Sheet, and the DIP Lender's Charge.<sup>59</sup>

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<sup>56</sup> Souzankar Affidavit at para 154, Tab 2 to the Application Record.

<sup>57</sup> Souzankar Affidavit at para 155, Tab 2 to the Application Record.

<sup>58</sup> Souzankar Affidavit at para 156, Tab 2 to the Application Record.

<sup>59</sup> Pre-Filing Report of the Monitor, to be filed.

**D. Administration Charge**

54. The Applicants seek a first-ranking court-ordered charge in the amount of \$250,000 over the Applicants' Property (as defined in the Initial Order) in favour of the Monitor, counsel to the Monitor, and counsel to the Applicants to secure payment of their professional fees and disbursements, whether incurred before or after the date of the Initial Order ("**Administration Charge**").<sup>60</sup>

55. Section 11.52 of the CCAA expressly provides that courts have jurisdiction to grant a priority administration charge.<sup>61</sup> In deciding whether to grant an administration charge, courts have considered a number of factors including:<sup>62</sup>

- a. the size and complexity of the businesses being restructured;
- b. the proposed role of the beneficiaries of the charge;
- c. whether there is an unwarranted duplication of roles;
- d. whether the quantum of the proposed charge appears to be fair and reasonable;
- e. the position of the secured creditors likely to be affected by the charge; and
- f. the position of the Monitor.

56. The Applicants submit that it is appropriate for this Court to exercise its discretion to grant the Administration Charge. The nature of the Applicants' business requires the expertise, knowledge and continuing participation of the beneficiaries of the Administration Charge. These parties will play a critical role in assisting the Applicants with the Sale Process and the progression of the CCAA proceedings. Each proposed

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<sup>60</sup> Souzankar Affidavit at paras 157-158, Tab 2 to the Application Record.

<sup>61</sup> s. 11.52, CCAA.

<sup>62</sup> [Canwest Publishing Inc. Re](#), 2010 ONSC 222 at para 54; see also, [Re Lydian International Limited](#), 2019 ONSC 7473 at para 46.

beneficiary of the Administration Charge is performing distinct functions and there is no duplication of roles. The quantum of the proposed Administration Charge is in line with the nature and size of the Applicants' business and the involvement required by the professional advisors.<sup>63</sup>

57. The proposed Monitor is also supportive of the granting and quantum of the Administration Charge.<sup>64</sup>

**E. Appointment of Monitor**

58. A court is required to appoint a person to monitor the business and financial affairs of a debtor company at the time that an initial CCAA order is made pursuant to section 11.7 of the CCAA.<sup>65</sup>

59. Section 11.7(2) of the CCAA also sets out certain requirements for and restrictions on who may act as a monitor, including that the monitor be a trustee within the meaning of subsection 2 of the BIA.<sup>66</sup>

60. BDO is a trustee within the meaning of subsection 2(1) of the BIA and is not disqualified under any of the restrictions pursuant to section 11.7(2) of the CCAA. BDO has also consented to its appointment as Monitor.<sup>67</sup>

61. The Applicants request that BDO be appointed monitor of the Applicants during these CCAA proceedings.

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<sup>63</sup> Souzankar Affidavit at para 160, Tab 2 to the Application Record.

<sup>64</sup> Pre-Filing Report of the Monitor, to be filed.

<sup>65</sup> s. 11.7, CCAA.

<sup>66</sup> s 11.7(2)

<sup>67</sup> Souzankar Affidavit at paras 1149-152, Tab 2 to the Application Record.

**PART V - RELIEF REQUESTED**

62. The Applicants respectfully request that this Honourable Court grant the relief provided for in the proposed Initial Order in accordance with the terms of the CCAA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of November, 2022.



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David S. Ward  
MILLER THOMSON LLP

Lawyer for the Applicants

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. [Re Stelco Inc. \(2004\)](#), 48 CBR (4<sup>th</sup>) 299 (Ont Sup Ct J [Commercial List])
2. [First Leaside Wealth Management Inc., Re](#), 2012 ONSC 1299
3. [Re Lydian International Limited](#), 2019 ONSC 7473
4. [Target Canada Co.](#), 2015 ONSC 303
5. [Century Services v Canada \(Attorney General\)](#), 2010 SCC 60
6. [Re Clover Leaf Holdings Company](#), 2019 ONSC 6966
7. [8440522 Canada Inc., Re](#), 2013 ONSC 6167
8. [Canwest Publishing Inc., Re](#), 2010 ONSC 222
9. [Re Lydian International Limited](#), 2019 ONSC 7473

## SCHEDULE “B” RELEVANT STATUTES

### Companies’ Creditors Arrangement Act (R.S.C., 1985, c. C-36)

s. 2(1), CCAA.

#### Interpretation

#### Definitions

**2 (1)** In this Act,

***bargaining agent*** means any trade union that has entered into a collective agreement on behalf of the employees of a company;

***bond*** includes a debenture, debenture stock or other evidences of indebtedness

***cash-flow statement***, in respect of a company, means the statement referred to in paragraph 10(2)(a) indicating the company’s projected cash flow

***claim*** means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act*;

***collective agreement***, in relation to a debtor company, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the debtor company and a bargaining agent; (*convention collective*)

***company*** means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies;

***court*** means

- (a) in Nova Scotia, British Columbia and Prince Edward Island, the Supreme Court,
- (a.1) in Ontario, the Superior Court of Justice,
- (b) in Quebec, the Superior Court,
- (c) in New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen’s Bench,
- (c.1) in Newfoundland and Labrador, the Trial Division of the Supreme Court, and
- (d) in Yukon and the Northwest Territories, the Supreme Court, and in Nunavut, the Nunavut Court of Justice; (*tribunal*)

***debtor company*** means any company that

- (a) is bankrupt or insolvent,
- (b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,
- (c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or
- (d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent;

***director*** means, in the case of a company other than an income trust, a person occupying the position of director by whatever name called and, in the case of an income trust, a person occupying the position of trustee by whatever named called;

***eligible financial contract*** means an agreement of a prescribed kind;

***equity claim*** means a claim that is in respect of an equity interest, including a claim for, among others,

- (a) a dividend or similar payment,
- (b) a return of capital,
- (c) a redemption or retraction obligation,
- (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
- (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d)

***equity interest*** means

- **(a)** in the case of a company other than an income trust, a share in the company — or a warrant or option or another right to acquire a share in the company — other than one that is derived from a convertible debt, and
- **(b)** in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt;

**financial collateral** means any of the following that is subject to an interest, or in the Province of Quebec a right, that secures payment or performance of an obligation in respect of an eligible financial contract or that is subject to a title transfer credit support agreement:

- **(a)** cash or cash equivalents, including negotiable instruments and demand deposits,
- **(b)** securities, a securities account, a securities entitlement or a right to acquire securities, or
- **(c)** a futures agreement or a futures account; (*garantie financière*)

**income trust** means a trust that has assets in Canada if

- **(a)** its units are listed on a prescribed stock exchange on the day on which proceedings commence under this Act, or
- **(b)** the majority of its units are held by a trust whose units are listed on a prescribed stock exchange on the day on which proceedings commence under this Act;

**initial application** means the first application made under this Act in respect of a company

**monitor**, in respect of a company, means the person appointed under section 11.7 to monitor the business and financial affairs of the company

**net termination value** means the net amount obtained after netting or setting off or compensating the mutual obligations between the parties to an eligible financial contract in accordance with its provisions;

**prescribed** means prescribed by regulation;

**secured creditor** means a holder of a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, all or any property of a debtor company as security for indebtedness of the debtor company, or a holder of any bond of a debtor company secured by a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, or a trust in respect of, all or any property of the debtor company, whether the holder or beneficiary is resident or domiciled within or outside Canada, and a trustee under any trust deed or other instrument securing any of those bonds shall be deemed to be a secured creditor for all purposes of this Act except for the purpose of voting at a creditors' meeting in respect of any of those bonds;

**shareholder** includes a member of a company — and, in the case of an income trust, a holder of a unit in an income trust — to which this Act applies;

**Superintendent of Bankruptcy** means the Superintendent of Bankruptcy appointed under subsection 5(1) of the [Bankruptcy and Insolvency Act](#);

**Superintendent of Financial Institutions** means the Superintendent of Financial Institutions appointed under subsection 5(1) of the [Office of the Superintendent of Financial Institutions Act](#);

**title transfer credit support agreement** means an agreement under which a debtor company has provided title to property for the purpose of securing the payment or performance of an obligation of the debtor company in respect of an eligible financial contract;

**unsecured creditor** means any creditor of a company who is not a secured creditor, whether resident or domiciled within or outside Canada, and a trustee for the holders of any unsecured bonds issued under a trust deed or other instrument running in favour of the trustee shall be deemed to be an unsecured creditor for all purposes of this Act except for the purpose of voting at a creditors' meeting in respect of any of those bonds.

#### **Meaning of related and dealing at arm's length**

**(2)** For the purpose of this Act, section 4 of the [Bankruptcy and Insolvency Act](#) applies for the purpose of determining whether a person is related to or dealing at arm's length with a debtor company

#### **Application**

- **3 (1)** This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

### Affiliated companies

(2) For the purposes of this Act,

- (a) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and
- (b) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

### Company controlled

(3) For the purposes of this Act, a company is controlled by a person or by two or more companies if

- (a) securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those companies; and
- (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.

### Subsidiary

(4) For the purposes of this Act, a company is a subsidiary of another company if

- (a) it is controlled by
  - (i) that other company,
  - (ii) that other company and one or more companies each of which is controlled by that other company, or
  - (iii) two or more companies each of which is controlled by that other company;or
- (b) it is a subsidiary of a company that is a subsidiary of that other company.

### Relief reasonably necessary

**11.001** An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

### Stays, etc. — initial application

**11.02 (1)** 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 10 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.

### Stays, etc. — other than initial application



**(2)** 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.

#### **Burden of proof on application**

**(3)** 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.

#### **Restriction**

**(4)** Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

#### **Interim financing**

- **11.2 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

##### **Priority — secured creditors**

**(2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

##### **Priority — other orders**

**(3)** The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

##### **Factors to be considered**

**(4)** In deciding whether to make an order, the court is to consider, among other things,

- **(a)** the period during which the company is expected to be subject to proceedings under this Act;
- **(b)** how the company's business and financial affairs are to be managed during the proceedings;
- **(c)** whether the company's management has the confidence of its major creditors;
- **(d)** whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- **(e)** the nature and value of the company's property;
- **(f)** whether any creditor would be materially prejudiced as a result of the security or charge; and
- **(g)** the monitor's report referred to in paragraph 23(1)(b), if any.

##### **Additional factor — initial application**

**(5)** When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to

what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

**Court may order security or charge to cover certain costs**

- **11.52 (1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of
  - **(a)** the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor’s duties;
  - **(b)** any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
  - **(c)** any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

**Priority**

**(2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

**Court to appoint monitor**

- **11.7 (1)** When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*.

**Restrictions on who may be monitor**

**(2)** Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

- **(a)** if the trustee is or, at any time during the two preceding years, was
  - **(i)** a director, an officer or an employee of the company,
  - **(ii)** related to the company or to any director or officer of the company, or
  - **(iii)** the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or
- **(b)** if the trustee is
  - **(i)** the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the *Civil Code of Quebec* that is granted by the company or any person related to the company, or
  - **(ii)** related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

**Court may replace monitor**

**(3)** On application by a creditor of the company, the court may, if it considers it appropriate in the circumstances, replace the monitor by appointing another trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, to monitor the business and financial affairs of the company.

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

**Interpretation**

**Definitions**

2 In this Act,

**affidavit** includes statutory declaration and solemn affirmation; (*affidavit*)

**aircraft objects**[Repealed, 2012, c. 31, s. 414]

**application**, with respect to a bankruptcy application filed in a court in the Province of Quebec, means a motion; (*Version anglaise seulement*)

**assignment** means an assignment filed with the official receiver; (*cession*)

**bank** means

- **(a)** every bank and every authorized foreign bank within the meaning of section 2 of the *Bank Act*,
- **(b)** every other member of the Canadian Payments Association established by the *Canadian Payments Act*, and
- **(c)** every local cooperative credit society, as defined in subsection 2(1) of the Act referred to in paragraph (b), that is a member of a central cooperative credit society, as defined in that subsection, that is a member of that Association;

**bankrupt** means a person who has made an assignment or against whom a bankruptcy order has been made or the legal status of that person;

**bankruptcy** means the state of being bankrupt or the fact of becoming bankrupt;

**bargaining agent** means any trade union that has entered into a collective agreement on behalf of the employees of a person; )

**claim provable in bankruptcy, provable claim or claim provable** includes any claim or liability provable in proceedings under this Act by a creditor;

**collective agreement**, in relation to an insolvent person, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the insolvent person and a bargaining agent; (*convention collective*)

**common-law partner**, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year

**common-law partnership** means the relationship between two persons who are common-law partners of each other;

**corporation** means a company or legal person that is incorporated by or under an Act of Parliament or of the legislature of a province, an incorporated company, wherever incorporated, that is authorized to carry on business in Canada or has an office or property in Canada or an income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, insurance companies, trust companies or loan companies; (

**court**, except in paragraphs 178(1)(a) and (a.1) and sections 204.1 to 204.3, means a court referred to in subsection 183(1) or (1.1) or a judge of that court, and includes a registrar when exercising the powers of the court conferred on a registrar under this Act;

**creditor** means a person having a claim provable as a claim under this Act;

**current assets** means cash, cash equivalents — including negotiable instruments and demand deposits — inventory or accounts receivable, or the proceeds from any dealing with those assets;

**date of the bankruptcy**, in respect of a person, means the date of

- **(a)** the granting of a bankruptcy order against the person,
- **(b)** the filing of an assignment in respect of the person, or
- **(c)** the event that causes an assignment by the person to be deemed;

**date of the initial bankruptcy event**, in respect of a person, means the earliest of the day on which any one of the following is made, filed or commenced, as the case may be:

- **(a)** an assignment by or in respect of the person,
- **(b)** a proposal by or in respect of the person,
- **(c)** a notice of intention by the person,
- **(d)** the first application for a bankruptcy order against the person, in any case
  - **(i)** referred to in paragraph 50.4(8)(a) or 57(a) or subsection 61(2), or
  - **(ii)** in which a notice of intention to make a proposal has been filed under section 50.4 or a proposal has been filed under section 62 in respect of the person and the person files an assignment before the court has approved the proposal,

- (e) the application in respect of which a bankruptcy order is made, in the case of an application other than one referred to in paragraph (d), or
- (f) proceedings under the *Companies' Creditors Arrangement Act*; (*ouverture de la faillite*)

**debtor** includes an insolvent person and any person who, at the time an act of bankruptcy was committed by him, resided or carried on business in Canada and, where the context requires, includes a bankrupt;

**director** in respect of a corporation other than an income trust, means a person occupying the position of director by whatever name called and, in the case of an income trust, a person occupying the position of trustee by whatever name called;

**eligible financial contract** means an agreement of a prescribed kind;

**equity claim** means a claim that is in respect of an equity interest, including a claim for, among others,

- (a) a dividend or similar payment,
- (b) a return of capital,
- (c) a redemption or retraction obligation,
- (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
- (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d);

**equity interest** means

- (a) in the case of a corporation other than an income trust, a share in the corporation — or a warrant or option or another right to acquire a share in the corporation — other than one that is derived from a convertible debt, and
- (b) in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt;

**executing officer** includes a sheriff, a bailiff and any officer charged with the execution of a writ or other process under this Act or any other Act or proceeding with respect to any property of a debtor;

**financial collateral** means any of the following that is subject to an interest, or in the Province of Quebec a right, that secures payment or performance of an obligation in respect of an eligible financial contract or that is subject to a title transfer credit support agreement:

- (a) cash or cash equivalents, including negotiable instruments and demand deposits,
- (b) securities, a securities account, a securities entitlement or a right to acquire securities, or
- (c) a futures agreement or a futures account;

**General Rules** means the General Rules referred to in section 209;

**income trust** means a trust that has assets in Canada if

- (a) its units are listed on a prescribed stock exchange on the date of the initial bankruptcy event, or
- (b) the majority of its units are held by a trust whose units are listed on a prescribed stock exchange on the date of the initial bankruptcy event;

**insolvent person** means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

**legal counsel** means any person qualified, in accordance with the laws of a province, to give legal advice;

**locality of a debtor** means the principal place

- (a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,
- (b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or
- (c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated;

**Minister** means the Minister of Industry;

**net termination value** means the net amount obtained after netting or setting off or compensating the mutual obligations between the parties to an eligible financial contract in accordance with its provisions;

**official receiver** means an officer appointed under subsection 12(2);

**person** includes a partnership, an unincorporated association, a corporation, a cooperative society or a cooperative organization, the successors of a partnership, of an association, of a corporation, of a society or of an organization and the heirs, executors, liquidators of the succession, administrators or other legal representatives of a person;

**prescribed**

- (a) in the case of the form of a document that is by this Act to be prescribed and the information to be given therein, means prescribed by directive issued by the Superintendent under paragraph 5(4)(e), and
- (b) in any other case, means prescribed by the General Rules;

**property** means any type of property, whether situated in Canada or elsewhere, and includes money, goods, things in action, land and every description of property, whether real or personal, legal or equitable, as well as obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, in, arising out of or incident to property;

**proposal** means

- (a) in any provision of Division I of Part III, a proposal made under that Division, and
- (b) in any other provision, a proposal made under Division I of Part III or a consumer proposal made under Division II of Part III

and includes a proposal or consumer proposal, as the case may be, for a composition, for an extension of time or for a scheme or arrangement;

**public utility** includes a person or body who supplies fuel, water or electricity, or supplies telecommunications, garbage collection, pollution control or postal services;

**resolution or ordinary resolution** means a resolution carried in the manner provided by section 115;

**secured creditor** means a person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor, or a person whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable, and includes

- (a) a person who has a right of retention or a prior claim constituting a real right, within the meaning of the *Civil Code of Québec* or any other statute of the Province of Quebec, on or against the property of the debtor or any part of that property, or
- (b) any of
  - (i) the vendor of any property sold to the debtor under a conditional or instalment sale,
  - (ii) the purchaser of any property from the debtor subject to a right of redemption, or
  - (iii) the trustee of a trust constituted by the debtor to secure the performance of an obligation,

if the exercise of the person's rights is subject to the provisions of Book Six of the *Civil Code of Québec* entitled *Prior Claims and Hypothecs* that deal with the exercise of hypothecary rights;

**shareholder** includes a member of a corporation — and, in the case of an income trust, a holder of a unit in an income trust — to which this Act applies;

**special resolution** means a resolution decided by a majority in number and three-fourths in value of the creditors with proven claims present, personally or by proxy, at a meeting of creditors and voting on the resolution;

**Superintendent** means the Superintendent of Bankruptcy appointed under subsection 5(1);

**Superintendent of Financial Institutions** means the Superintendent of Financial Institutions appointed under subsection 5(1) of the *Office of the Superintendent of Financial Institutions Act*;

**time of the bankruptcy**, in respect of a person, means the time of

- (a) the granting of a bankruptcy order against the person,
- (b) the filing of an assignment by or in respect of the person, or
- (c) the event that causes an assignment by the person to be deemed;

***title transfer credit support agreement*** means an agreement under which an insolvent person or a bankrupt has provided title to property for the purpose of securing the payment or performance of an obligation of the insolvent person or bankrupt in respect of an eligible financial contract;

***transfer at undervalue*** means a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor;

***trustee or licensed trustee*** means a person who is licensed or appointed under this Act.

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 CANNAPIECE GROUP INC.,  
CANNAPIECE CORP., CANADIAN CRAFT GROWERS CORP., 2666222 ONTARIO LTD., 2580385 ONTARIO  
INC. AND 2669673 ONTARIO INC.

Court File No.: CV-22-00689631-00CL

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

Proceeding commenced at TORONTO

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**FACTUM OF THE MOVING APPLICANTS  
(returnable November 3, 2022 )**

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