

**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 SEARS CANADA INC., 9370-2751 QUÉBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

**FACTUM OF THE MOVING PARTIES
GAP (CANADA) INC. AND OLD NAVY (CANADA), INC.
(returnable October 16, 2018)**

Date: October 5, 2018

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TO: **SERVICE LIST**

PART I - INTRODUCTION

The Co-Tenancy Stay

1. By paragraph 15 to the Initial Order of the Honourable Justice Hainey dated June 22, 2017, as amended and restated on July 13, 2017 in these proceedings (“Initial Order”), the Court imposed the Co-Tenancy Stay on the following terms:

“15. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the owners, operators, managers or landlords of commercial shopping centres or other commercial properties (including retail, office and industrial (warehouse) properties) in which there is located a store, office or warehouse owned or operated by the Sears Canada Entities shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the insolvency of, or declarations of insolvency by, any or all of the Sears Canada Entities, or as a result of any steps taken by the Sears Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.”

Irwin Affidavit, paragraph 8, Exhibits “A” & “B”

The Motion

2. The criteria which are expressly stated in paragraph 15 of the Initial Order for the continuation of the Co-Tenancy Stay Period no longer exist. There is no longer any store, office or warehouse owned or operated by the Sears Canada Entities located in any commercial

shopping centres or other commercial properties (including retail, office and industrial (warehouse) properties) in which the Moving Parties Gap (Canada) Inc. And Old Navy (Canada), Inc. (“Gap”) have agreements or arrangements with the owners, operators, managers or landlords of such properties.

3. Further, with respect to assets of the Sears Canada Entities, the liquidation of assets at Sears Canada’s retail locations is now completed, all retail locations are closed, and leases in respect of such locations have been disclaimed or surrendered back to the Landlord. The monetization of Residual Assets is now substantially complete.

4. Given these circumstances, Gap accordingly now moves for:

- (a) A declaration that the stay of proceedings (“Co-Tenancy Stay”) provided in paragraph 15 of the Initial Order of the Honourable Justice Hailey dated June 22, 2017, as amended and restated on July 13, 2017 (“Initial Order”), and as extended by subsequent orders made in this proceeding, is no longer of any force or effect in accordance with its terms as against Gap, and as a result, Gap, as a co-tenant of the Applicants in a number of commercial shopping centres and other commercial properties, is entitled to exercise any rights *nunc pro tunc* that it may have against its Landlords whose Leases were affected by the Co-Tenancy Stay arising from the failure of any of the Applicants to operate in such commercial shopping centres or other commercial properties (the “Co-Tenancy Rights”); or
- (b) In the alternative, an Order permanently vacating and/or lifting the Co-Tenancy Stay as against Gap.

5. Gap also moves for a declaration that the Co-Tenancy Stay did not suspend or otherwise delay the running of any waiting period with respect to the exercise of Co-Tenancy Rights (a “Waiting Period”) by Gap, and that any relief granted shall operate retroactively.

Affidavit of Matthew Irwin sworn September 7, 2018 (“Irwin Affidavit”), paragraphs 2 - 4

6. This is a case of first impression for these issues.

PART II – SUMMARY OF THE FACTS

Gap is affected by Paragraph 15 of the Initial Order

7. Gap operated 256 retail locations in Canada as of the end of April, 2018. Its stores are most commonly found in commercial shopping centres.

Irwin Affidavit, paragraph 6

8. Gap is not a creditor of the Applicants. However, Gap has been affected by the Co-Tenancy Stay.

Irwin Affidavit, paragraph 7

9. The terms of Gap’s leases with its landlords typically grant Gap certain Co-Tenancy Rights, including, without limitation, the right to a reduction or the restructuring of rent in the event that specifically-named anchor tenants such as the Applicants cease to operate within the retail complex, or if the amount of occupied retail space in the complex falls below a specified percentage of total available space.

Irwin Affidavit, paragraph 9

10. Typically, in the event such circumstances occur, Gap's leases allow Gap, as Co-Tenant, to withhold certain monthly fees payable to the landlord or to calculate the payable rent as a percentage of gross sales for the month. In certain leases, Gap also has the right to terminate its lease without penalty in those circumstances.

Irwin Affidavit, paragraph 10

11. Some of the Co-Tenancy Rights are subject to Waiting Periods before Gap can exercise its rights. There is often a Waiting Period (for example, 6 months) during which the retail complex is not occupied by an anchor tenant like the Applicants before any adjustment can be made to Gap's rent. Similarly, there is often a longer Waiting Period, such as 12 and upwards to 24 months, before Gap is entitled to exercise its right to terminate its lease.

Irwin Affidavit, paragraph 11

12. It is typical for Gap to have Co-Tenancy Rights in most of its leases. However, the specific nature of the Co-Tenancy Rights and the Waiting Periods varies from location to location.

Irwin Affidavit, paragraph 12

13. A total of 22 Gap locations are currently directly affected by the Co-Tenancy Stay because Gap has been unable to exercise its Co-Tenancy Rights in respect of those stores. Gap has produced a chart of those locations as well as redacted copies of the portions of the leases which contain the Co-Tenancy clauses for those locations.

Irwin Affidavit, paragraph 13, Exhibits “C” and “D”

14. By on or about January 28, 2018, or shortly thereafter, the Applicants ceased to operate in all of the commercial shopping centres and other commercial properties where Gap is a Co-Tenant. However, to the extent that the Co-Tenancy Stay remains in effect in accordance with its terms, Gap is prohibited from taking any proceedings or exercising Co-Tenancy Rights.

Irwin Affidavit, paragraph 14

15. On February 14, 2018, Gap delivered Notices of Co-Tenancy Failure to the Landlords of those 22 locations pursuant to its leases for those locations in relation to the closure of the Applicants' stores which are stated to have occurred on January 9, 2018.

Irwin Affidavit, paragraph 15

PART III – ISSUES

16. The issues on this motion are:

- (a) Is the Co-Tenancy Stay still in force?
- (b) If it is, should it be permanently vacated or lifted?
- (c) Did the Co-Tenancy Stay, while in force, suspend or otherwise delay the running of any waiting period with respect to the exercise of Co-Tenancy Rights by Gap?
- (d) If an Order is made that it is no longer in force, or that it be vacated or lifted, will it operate retroactively in relation to waiting periods?

PART IV - LAW AND ARGUMENT

The Co-Tenancy Stay is Likely No Longer of any Force or Effect

17. Where good faith efforts to negotiate mutually satisfactory terms with one of its landlords as to the consequences of the Co-Tenancy Failure under the terms of a given lease have failed, Gap has always intended to assert all available Co-Tenancy Rights against such Landlord.

Irwin Affidavit, paragraph 16

18. Paragraph 15 of the Initial Order states that the Co-Tenancy Stay applies to persons having agreements with landlords of, “commercial shopping centres...in which there is located a store, office, or warehouse owned or operated by the Sears Canada Entities.” [emphasis added] Accordingly, the Initial Order appears to state on its face that the Co-Tenancy Stay ceases to stay a Co-Tenant like Gap as soon as the Applicants cease to own or operate in a given retail complex.

Irwin Affidavit, paragraph 17

19. The Twelfth Report of the Monitor dated February 13, 2018 states that the liquidation of assets at the Applicants’ retail locations is complete and all of the Applicants’ retail locations are now closed.

Irwin Affidavit, paragraph 18, Exhibit “E”

20. The Fourteenth Report of the Monitor dated March 1, 2018 states that, as of the date of that report, all retail store leases had been disclaimed by the Applicants and the Applicants no longer occupied any such retail store locations.

Irwin Affidavit, paragraph 19, Exhibit “F”

21. The circumstances which led to the imposition of the Co-Tenancy Stay at the time that the Initial Order was granted no longer exist. In particular, at paragraph 11 of the 21st report to the Court submitted by FTI Consulting Canada Inc., in its capacity as Monitor, dated July 20, 2018, it reported as follows:

“The liquidation of assets at Sears Canada’s retail locations is now completed, all retail locations are closed, and leases in respect of such locations have been disclaimed or surrendered back to the Landlord. The monetization of Residual Assets is now substantially complete. The major assets of the Sears Canada Entities that remain to be realized upon are the Applicants’ remaining owned real estate assets...”

Irwin Affidavit, paragraph 20, Exhibit “G”

22. The most recent extension of the Stay Period contained in the Initial Order until December 18, 2018 was made for the purposes of permitting the claims and priorities issues to proceed toward resolution, and of permitting monetization of Sears remaining owned real property.

Irwin Affidavit, paragraph 21

23. In order to avoid any allegation that Gap is in breach of the Co-Tenancy Stay in relation to those 22 locations, Gap seeks a declaration confirming that the Co-Tenancy Stay is no longer of any force or effect in accordance with its terms as against Gap. It is the position of Gap that the terms of the Co-Tenancy Stay no longer apply to Gap and the court should thus provide a declaration to that effect in order to ensure that Gap and its landlords understand their rights and obligations.

Irwin Affidavit, paragraph 22

The Co-Tenancy Stay did not suspend any Waiting Period

24. Although Gap does not believe that the Co-Tenancy Stay could in any way have delayed or otherwise affected Waiting Periods, Gap also seeks a declaration that the Co-Tenancy Stay did not suspend or otherwise delay the running of any waiting period with respect to the exercise of Co-Tenancy Rights, and that any Order vacating and/or lifting the Co-Tenancy Stay shall operate retroactively. If the Co-Tenancy Stay prevented the Waiting Period from running during the stay period, it would mean that Waiting Periods would run only after the date on which the Co-Tenancy Stay no longer applied, thereby further delaying the date on which Gap can enforce its rights against landlords.

Irwin Affidavit, paragraph 23

25. From reviewing the material filed by the Applicants in respect of the Initial Order, it appears that when the Applicants brought their Application, they did not ask the court to affect any substantive rights of the Co-Tenants or to delay the running of any Waiting Period.

Irwin Affidavit, paragraph 24

26. In particular, in their Factum dated June 22, 2017, the Applicants made, among others, the following submissions to the Court in support of their request for the Co-Tenancy Stay:

“100. While this process is being resolved, the Co-Tenancy Stay postpones the contractual rights of these Tenants for a finite period. Any prejudice to those Tenants is therefore significantly outweighed by the benefits of the Co-Tenancy Stay to all of the stakeholders of the Applicants.” [Emphasis added]

Irwin Affidavit, paragraph 25

27. The Initial Order and Co-Tenancy Stay in particular make no reference to the staying or delaying of any Waiting Period, nor do any subsequent Orders in these proceedings appear to affect Waiting Periods.

Irwin Affidavit, paragraph 26

28. Certain Landlords have taken the position that the Co-Tenancy Stay affected the substantive rights of Gap by also staying the commencement of the Waiting Periods.

Irwin Affidavit, paragraph 27

29. Gap therefore asks the court to confirm and declare that the Co-Tenancy Stay did not delay or otherwise affect the running of any Waiting Period and, as a result, that any applicable Waiting Period ran during the period of the Co-Tenancy Stay.

Irwin Affidavit, paragraph 28

The Co-Tenancy Stay Should be Permanently Vacated in Respect of Gap

30. If the court determines that the Co-Tenancy Stay is still in effect in accordance with its terms, Gap seeks an order permanently vacating and lifting the Co-Tenancy Stay as against Gap, because the underlying purpose for such stay no longer exists.

Irwin Affidavit, paragraph 29

31. From reviewing the material filed by the Applicants in respect of the Initial Order it appears that the Applicants made submissions to the court arguing that the Co-Tenancy Stay was

necessary to ensure the orderly wind-down of the Applicants' operations in Canada and to postpone the Co-Tenant Right of the Co-Tenants for a finite period.

Irwin Affidavit, paragraph 30

32. The circumstances which led to the imposition of the Co-Tenancy Stay at the time of the Initial Order no longer exist. The orderly wind-down of the Applicants' business is complete. In fact, no Sears retail store has operated in Canada since on or about January 28, 2018.

Irwin Affidavit, paragraph 31

33. Gap was not served with, and did not receive, the material filed by the Applicants in respect of the Initial Order. The Co-Tenancy Stay was granted without notice to Gap.

Irwin Affidavit, paragraph 32

34. The Co-Tenancy Stay does not provide any further benefits to the stakeholders of the Applicants. Should the Co-Tenancy Stay be lifted and Gap be able to exercise its rights against its landlords, it would not have any negative effect on the Applicants' CCAA proceedings. The Co-Tenancy Stay merely delays the inevitable date on which Gap may exercise its Co-Tenancy Rights.

Irwin Affidavit, paragraph 33

35. The Co-Tenancy Rights are purely a matter of contract between Gap and its landlords. The landlords agreed to grant the Co-Tenancy Rights to Gap as a commercial term of the leases and voluntarily assumed the risk that the Applicants might cease operations at some point during the

term of the leases. The landlords are sophisticated parties who did not negotiate for a term that the bankruptcy or insolvency of a co-tenant would operate as an exception to the timely exercise of Co-Tenancy Rights. To the extent that the landlords have suffered any loss as a result of the insolvency of the Applicants, none results from any act or omission of Gap.

Irwin Affidavit, paragraph 34

36. To date, the financial impact of the Co-Tenancy Stay on Gap in relation to those 22 locations has been calculated to be approximately \$1,750,730.19.

Irwin Affidavit, paragraph 35

37. Gap wishes to exercise its Co-Tenancy Rights, free from the restrictions of the Co-Tenancy Stay, retroactive to the date that such rights initially arose. This will mean that Gap will be at liberty to seek from its' landlords rent relief and other contractual benefits, retroactive to the date (in most, if not all cases, in January 2018) that Gap became entitled to the Co-Tenancy Rights.

Irwin Affidavit, paragraph 36

Applicable Legal Principles

38. The purpose of the CCAA is to provide a structured environment for the negotiation of compromises between a debtor company and its creditors for the benefit of both.

Re Canwest Global Communications Corp., 2011 CarswellOnt 2392 (SCJ - Commercial List), per Pepall J. at para. 22

39. The stay provisions in the CCAA are discretionary and very broad. Section 11.02 provides that:

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

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

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

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

(2) 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.

Canwest, *supra*, at para. 23

40. The discretion provided in section 11 is the engine that drives this broad and flexible statutory scheme. The stay of proceedings in section 11 should be broadly construed to accomplish the legislative purpose of the CCAA and in particular to enable continuance of the company seeking CCAA protection.

Canwest, supra, at para. 24

41. Section 11 provides an insolvent company with breathing room and by doing so, preserves the status quo to assist the company in its restructuring or arrangement and prevents any particular stakeholder from obtaining an advantage over other stakeholders during the restructuring process. It is anticipated that one or more creditors may be prejudiced in favour of the collective whole. The possibility that one or more creditors may be prejudiced should not affect the court's exercise of its authority to grant a stay of proceedings under the CCAA because this effect is offset by the benefit to all creditors and to the company of facilitating a reorganization. The court's primary concerns under the CCAA must be for the debtor and all of the creditors.

Canwest, supra, at para. 25

42. Situations in which a court has lifted a stay in CCAA proceedings included where:

- a) a plan is likely to fail;
- b) the applicant shows hardship (the hardship must be caused by the stay itself and be independent of any pre-existing condition of the applicant creditor);
- c) the applicant shows necessity for payment;
- d) the applicant would be significantly prejudiced by refusal to lift the stay and there would be no resulting prejudice to the debtor company or the positions of creditors;

- e) it is necessary to permit the applicant to take steps to protect a right that could be lost by the passage of time;
- f) after the lapse of a significant period, the insolvent debtor is no closer to a proposal than at the commencement of the stay period;
- g) there is a real risk that a creditor's loan will become unsecured during the stay period;
- h) it is necessary to allow the applicant to perfect a right that existed prior to the commencement of the stay period;
- i) it is in the interests of justice to do so.

Canwest, supra, at para. 26

43. The lifting of a stay is discretionary. There are no statutory guidelines contained in the Act. In determining whether to lift the stay, the court should consider whether there are sound reasons for doing so consistent with the objectives of the CCAA, including a consideration of the balance of convenience, the relative prejudice to the parties and where relevant, the merits of the proposed action.

Canwest, supra, at para. 27

44. In *Re Target Canada Co.*, in deciding to grant a co-tenancy stay, Justice Morawetz made the following findings:

“The Applicants also seek landlord protection in relation to third party tenants. Many retail leases of non-anchored tenants provide that tenants have certain rights against their landlords if the anchor tenant in a particular shopping mall or centre becomes insolvent or

ceases operations. In order to alleviate the prejudice to TCC's landlords if any such non-anchored tenants attempt to exercise these rights, the Applicants request an extension of the stay of proceedings (the "Co-Tenancy Stay") to all rights of these third party tenants against the landlords that arise out of the insolvency of the Target Canada Entities or as a result of any steps taken by the Target Canada Entities pursuant to the Initial Order.

"The Applicants contend that the authority to grant the Co-Tenancy Stay derives from the broad jurisdiction under sections 11 and 11.02(1) of the CCAA to make an initial order on any terms that the court may impose. Counsel references *T. Eaton Co., Re*, 1997 CarswellOnt 1914 (Ont. Gen. Div.) as a precedent where a stay of proceedings of the same nature as the Co-Tenancy Stay was granted by the court in Eaton's second CCAA proceeding. The Court noted that, if tenants were permitted to exercise these "co-tenancy" rights during the stay, the claims of the landlord against the debtor company would greatly increase, with a potentially detrimental impact on the restructuring efforts of the debtor company.

"In these proceedings, the Target Canada Entities propose, as part of the orderly wind-down of their businesses, to engage a financial advisor and a real estate advisor with a view to implementing a sales process for some or all of its real estate portfolio. The Applicants submit that it is premature to determine whether this process will be successful, whether any leases will be conveyed to third party purchasers for value and whether the Target Canada Entities can successfully develop and implement a plan that their stakeholders, including their landlords, will accept. The Applicants further contend that while this

process is being resolved and the orderly wind-down is underway, the Co-Tenancy Stay is required to postpone the contractual rights of these tenants for a finite period. The Applicants contend that any prejudice to the third party tenants' clients is significantly outweighed by the benefits of the Co-Tenancy Stay to all of the stakeholders of the Target Canada Entities during the wind-down period.

“The Applicants therefore submit that it is both necessary and appropriate to grant the Co-Tenancy Stay in these circumstances.

“I am satisfied the Court has the jurisdiction to grant such a stay. In my view, it is appropriate to preserve the status quo at this time. To the extent that the affected parties wish to challenge the broad nature of this stay, the same can be addressed at the “comeback hearing”.”

Re Target Canada Co., 2015 CarswellOnt 620, (SCJ – Commercial List), per Morawetz RSJ at paras. 44 – 48

45. Applying those principles to our case:

- (a) Giving that the winding down and sales processes are complete, there can no longer be any benefit in the Co-Tenancy Stay to all of the stakeholders of the Target Canada Entities, or any prejudice to them, or any detrimental impact on restructuring efforts;
- (b) The ongoing prejudice to Gap in any continuation of the Co-Tenancy Stay is substantial, and in any event significantly outweighs any prejudice to all of the stakeholders in its continuation or any detrimental impact in its continuation on

restructuring efforts (Gap emphasizes that, in its submission, that there is no prejudice and no detrimental impact whatsoever);

- (c) The intended effect of the Co-Tenancy Stay is limited to merely postponing the contractual rights of these Tenants for a finite period; and
- (d) There is no basis for suggesting that the intended effect of the Co-Tenancy Stay was to go beyond that intended effect and alter substantive rights in third party leases; and
- (e) There is no basis for suggesting that the effect of the Co-Tenancy Stay was to stop the running of Waiting Periods while it was in effect.

46. The specific and express wording of the Co-Tenancy Stay in paragraph 15 of the Initial Order is restricted to staying the taking of any proceedings or exercise of any rights or remedies by a tenant with Co-Tenancy Rights. It does not state that it extends to altering the terms of the Leases by delaying the running of waiting periods so that they do not commence until after the Co-Tenancy Stay has been lifted.

PART VI – RELIEF SOUGHT

47. Gap seeks an Order:

- (a) Ordering and declaring that the Co-Tenancy Stay provided in paragraph 15 of the Initial Order, and as extended by subsequent orders made in this proceeding, is no longer of any force or effect in accordance with its terms as against Gap and, without limiting the generality of the foregoing, is no longer of any force or effect, in particular, in relation to the Listed Leases described in the Notice of Motion, and that, as a result, Gap is entitled to exercise its Co-Tenancy Rights; and

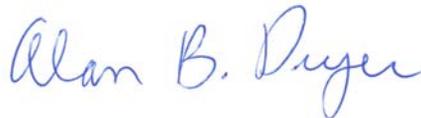
- (b) Ordering and declaring the Co-Tenancy Stay did not suspend or otherwise delay the running of any waiting period with respect to the exercise of the Co-Tenancy Rights by Gap, and that the relief granted in paragraph (a) shall operate retroactively.

48. In the alternative, Gap seeks an Order:

- (a) Permanently vacating and lifting the Co-Tenancy Stay as against Gap and, in particular, in relation to the Listed Leases described in the Notice of Motion, and that, as a result, Gap is entitled to exercise its Co-Tenancy Rights; and
- (b) Ordering and declaring the Co-Tenancy Stay did not suspend or otherwise delay the running of any waiting period with respect to the exercise of the Co-Tenancy Rights by Gap, and that the relief granted in paragraph (a) shall operate retroactively.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: October 5, 2018



Alan B. Dryer

Lawyer for Gap (Canada) Inc. and Old Navy (Canada) Inc.

SCHEDULE “A”
LIST OF AUTHORITIES

TAB	CASE
1	<i>Re Canwest Global Communications Corp.</i> , 2011 CarswellOnt 2392 (SCJ - Commercial List)
2	<i>Re Target Canada Co.</i> , 2015 CarswellOnt 620, (SCJ – Commercial List)

SCHEDULE “B”

STATUTORY PROVISIONS

1. Section 11.02 of the *Companies’ Creditors Arrangement Act (CCAA)*

Canada Federal Statutes
Companies' Creditors Arrangement Act
Part II — Jurisdiction of Courts (ss. 9-18.6)

R.S.C. 1985, c. C-36, s. 11.02

S 11.02

Currency

11.02

11.02(1) Stays, etc. — initial application

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

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

11.02(2) Stays, etc. — other than initial application

A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

11.02(3) Burden of proof on application

The court shall not make the order unless

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

11.02(4) Restriction

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

Amendment History

2005, c. 47, s. 128

Currency

Federal English Statutes reflect amendments current to September 19, 2018

Federal English Regulations are current to Gazette Vol. 152:19 (September 19, 2018)

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Court File No: CV-17-11846-00CL

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