

**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  
TACORA RESOURCES INC.

Applicant

**FACTUM OF THE MONITOR**  
**(APPROVAL OF REPORTS AND FEES)**

July 24, 2024

**Cassels Brock & Blackwell LLP**  
Suite 3200, Bay Adelaide Centre – North Tower  
40 Temperance St.  
Toronto, ON M5H 0B4

**Ryan Jacobs LSO#59510J**  
Tel: 416.860.6465  
[rjacobs@cassels.com](mailto:rjacobs@cassels.com)

**Jane Dietrich LSO#49302U**  
Tel: 416.860.5223  
[jdietrich@cassels.com](mailto:jdietrich@cassels.com)

**Alan Merskey LSO#413771**  
Tel: 416.860.2948  
[amerskey@cassels.com](mailto:amerskey@cassels.com)

**Monique Sassi LSO# 63638L**  
Tel: 416.860.6886  
[msassi@cassels.com](mailto:msassi@cassels.com)

*Lawyers for the Monitor, FTI Consulting Canada  
Inc.*

**TO: The Service List**

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**FACTUM OF THE MONITOR**  
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**PART I - INTRODUCTION<sup>1</sup>**

1. This factum is filed by FTI Consulting Canada Inc. in its capacity as court appointed monitor (the “**Monitor**”) of Tacora Resources Inc. (the “**Applicant**”) in support of the Applicant’s motion for, among other things, an Order (the “**Stay Extension, DIP, and Fees Approval Order**”) substantially in the form found at Tab 5 of the Applicant’s Motion Record dated July 22, 2024:

- (a) approving the Monitor’s Reports<sup>2</sup>, and the actions, conduct and activities of the Monitor described therein; and
- (b) approving the fees and disbursements of the Monitor and its legal counsel, Cassels Brock & Blackwell LLP (“**Cassels**”), incurred in the CCAA Proceeding for the

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meaning given to them in Eleventh Report of the Monitor dated July 22, 2024 (the “**Eleventh Report**”).

<sup>2</sup> The “Reports” are comprised of the Pre-Filing Report of the Monitor dated October 9, 2023; the First Report of the Monitor dated October 20, 2023; the Second Report of the Monitor dated January 18, 2024; the Third Report of the Monitor dated March 13, 2024; the Fourth Report dated March 14, 2024; the Supplement to the Fourth Report dated March 26, 2024; the Second Supplement to the Fourth Report dated April 10, 2024; the Fifth Report dated April 7, 2024; the Sixth Report dated April 9, 2024; the Seventh Report dated April 14, 2024; the Eighth Report of the Monitor dated April 21, 2024; the Supplement to the Eighth Report dated April 24, 2024; the Ninth Report of the Monitor dated June 3, 2024; the Tenth Report of the Monitor dated June 19, 2024; and the Eleventh Report.

period from October 10, 2023 to July 7, 2024, as detailed in the Fee Affidavits (as defined below).

2. As set out in the Eleventh Report, the Monitor is supportive of the other relief sought in the Stay Extension, DIP, and Fees Approval Order and not otherwise described herein and the relief sought by the Applicant in the Approval and Reverse Vesting Order.

## **PART II - SUMMARY OF FACTS**

3. Pursuant to paragraph 33 of the ARIO, the Monitor and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges as part of the costs of the CCAA Proceeding. Pursuant to paragraph 34 of the ARIO, the Monitor and its counsel are directed to pass their accounts from time to time.<sup>3</sup>

4. The activities of the Monitor to date are set out in the Reports.

5. Details of the total fees and disbursements incurred by the Monitor and Cassels are set out in the Affidavit of Jodi Porepa sworn July 22, 2024 and the Affidavit of Ryan Jacobs sworn July 19, 2024 (together, the “**Fee Affidavits**”), respectively, attached as Appendices “D” and “E” to the Eleventh Report. The Fee Affidavits contain redactions to certain of the invoices to address privilege and confidentiality concerns.<sup>4</sup>

## **PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

6. This factum addresses the following issues to be determined on this Motion:

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<sup>3</sup> *In the Matter of Tacora Resources Inc.*, (October 30, 2023), Ontario Superior Court of Justice (Commercial List), Court File No. CV-23-00707394-00CL ([Amended and Restated Initial Order](#)) at paras 33 & 34.

<sup>4</sup> Eleventh Report of the Monitor dated July 22, 2024 at paras 67 & 68, Appendix “D”, Appendix “E” [*Eleventh Report*]

- (a) whether the Reports, and the actions, conduct, and activities of the Monitor described therein should be approved; and
- (b) whether the fees and disbursements of the Monitor and its legal counsel, as described in the Fee Affidavits, should be approved.

***The Reports and the Actions, Activities and Conduct of the Monitor Set Out Therein Ought to be Approved***

7. In *Target Canada Co. (Re)*, the Court wrote that a request to approve a monitor’s report “is not unusual” and that “there are good policy and practical reasons for the court to approve of the Monitor’s activities and providing a level of protection for monitors during the CCAA process...”<sup>5</sup> Specifically, Court approval:

- (a) allows the Monitor to move forward with the next steps in the CCAA proceeding;
- (b) brings the Monitor’s activities before the Court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the Monitor’s activities have been conducted in prudent and diligent manners;
- (e) provides protection for the Monitor not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay and distribution that would be caused by:
  - (i) re-litigation of steps taken to date, and
  - (ii) potential indemnity claims by the Monitor.<sup>6</sup>

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<sup>5</sup> *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at paras [2](#) and [22](#) [*Target Canada*]

<sup>6</sup> *Target Canada* at para [23](#).

8. In this case, the Monitor’s activities and conduct are described in detail in the Reports and should be approved. The Monitor carried out its activities, in good faith, in a manner consistent with the provisions of the CCAA and in compliance with the Orders of the Court issued in this CCAA Proceeding.

***The Fees of the Monitor and the Monitor’s Counsel Ought to be Approved***

9. In approving the fees and disbursements of the Monitor and its counsel, the Court must consider the overriding principle of reasonableness and whether those fees were “fair and reasonable in all of the circumstances”.<sup>7</sup>

10. The Court does not undertake a line-by-line analysis of the Monitor’s invoices; rather, “[t]he focus of the fair and reasonable assessment should be on what was accomplished, not how much time it took”.<sup>8</sup> The guiding principle is whether the fees are fair, reasonable and proportionate given the value of the Applicant’s assets and liabilities, as well as the complexity Applicant’s business and the CCAA proceedings. The Ontario Court of Appeal has provided guidance as to how to evaluate the quantum of requested fees, including assessing various factors including, but not limited to, (i) the time spent; (ii) the Monitor’s knowledge, experience and skill; (iii) the responsibilities assumed; (iv) the complications and difficulties encountered; (v) the results achieved; and (vi) the cost of comparable services when performed in a prudent and economical manner.<sup>9</sup>

11. The Monitor and its counsel have played, and continue to play, a significant and invaluable role in the CCAA Proceeding and the actions, conduct and activities of the Monitor and Cassels

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<sup>7</sup> *Nortel Networks Corp. et al. (Re)*, [2017 ONSC 673](#) at para [13](#); citing *Winalta Inc. (Re)*, [2011 ABQB 399](#) at para [30](#).

<sup>8</sup> *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) at para [45](#) [*Diemer*].

<sup>9</sup> *Confectionately Yours Inc. (Re)*, [2002 CanLII 45059](#) (ONCA) at paras [42 – 54](#); *Diemer* at para [33](#).

during the CCAA proceeding have been carried out in good faith and in accordance with the provisions of the Orders issued therein.<sup>10</sup> The Monitor and its counsel have provided the Applicant with invaluable assistance in the CCAA Proceeding and were instrumental in achieving the successful Sale Process outcome.<sup>11</sup>

12. The rates and fees charged by the Monitor and its counsel are reasonable and market for insolvency proceedings of similar complexity and are reasonable in the circumstances and validly incurred in accordance with the provisions of the ARIO.<sup>12</sup>

13. The Monitor and its counsel's actions, conduct, and activities in these CCAA Proceedings since their inception have been carried out in good faith.<sup>13</sup>

14. In light of the foregoing, the Monitor is of the view that the fees and disbursements of the Monitor and its counsel should be approved.

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<sup>10</sup> Eleventh Report at para 65; Affidavit of Heng Vuong sworn July 21, 2024 at paras 66-68 [*Vuong Affidavit*].

<sup>11</sup> *Vuong Affidavit* at para 66.

<sup>12</sup> Eleventh Report at para 69; *Vuong Affidavit* at para 67.

<sup>13</sup> Eleventh Report at para 65.

**PART IV - ORDER REQUESTED**

15. For the reasons set out herein, the Monitor requests that this Court grant the proposed Stay Extension, DIP, and Fees Approval Order as it relates to approval of the Reports, and the actions, conduct and activities of the Monitor described therein, and the fees of the Monitor and its counsel.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 24<sup>th</sup> day of July, 2024.

*Cassels Brock & Blackwell LLP*

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Suite 3200, Bay Adelaide Centre – North Tower  
40 Temperance St.  
Toronto, ON M5H 0B4

**Ryan Jacobs LSO#59510J**

Tel: 416.860.6465  
[rjacobs@cassels.com](mailto:rjacobs@cassels.com)

**Jane Dietrich LSO#49302U**

Tel: 416.860.5223  
[jdietrich@cassels.com](mailto:jdietrich@cassels.com)

**Alan Merskey LSO#413771**

Tel: 416.860.2948  
[amerskey@cassels.com](mailto:amerskey@cassels.com)

**Monique Sassi LSO# 63638L**

Tel: 416.860.6886  
[msassi@cassels.com](mailto:msassi@cassels.com)

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**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#)
2. *Confectionately Yours Inc. (Re)*, [2002 CanLII 45059](#) (ONCA)
3. *In the Matter of Tacora Resources Inc.*, (October 30, 2023), Ontario Superior Court of Justice (Commercial List), Court File No. CV-23-00707394-00CL ([Amended and Restated Initial Order](#))
4. Nortel Networks Corp. et al. (Re), [2017 ONSC 673](#)
5. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
6. *Winalta Inc. (Re)*, [2011 ABQB 399](#)



**SCHEDULE “B”**  
**TEXT OF STATUTES, REGULATIONS & BY - LAWS**

**Companies’ Creditors Arrangement Act, RSB 1985, c C-36**

**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 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) ...

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Court File No. CV-23-00707394-00CL

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SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**FACTUM  
(FEE AND ACTIVITIES APPROVAL)**

**Cassels Brock & Blackwell LLP**

Suite 3200, Bay Adelaide Centre – North Tower  
40 Temperance St.  
Toronto, ON M5H 0B4

**Ryan Jacobs LSO#59510J**

Tel: 416.860.6465

[rjacobs@cassels.com](mailto:rjacobs@cassels.com)

**Jane Dietrich LSO#49302U**

Tel: 416.860.5223

[jdietrich@cassels.com](mailto:jdietrich@cassels.com)

**Alan Merskey LSO#413771**

Tel: 416.860.2948

[amerskey@cassels.com](mailto:amerskey@cassels.com)

**Monique Sassi LSO# 63638L**

Tel: 416.860.6886

[msassi@cassels.com](mailto:msassi@cassels.com)

*Lawyers for the Monitor, FTI Consulting Canada Inc.*