

**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  
15315441 CANADA INC.**

Applicant

**FACTUM OF THE APPLICANT  
(CCAA TERMINATION AND DISTRIBUTION ORDER)**

March 25, 2025

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**TO: THE SERVICE LIST**

## PART I - OVERVIEW<sup>1</sup>

1. Facing a severe liquidity crisis, the F&F Entities commenced the CCAA Proceedings on June 5, 2023, to stabilize their business operations and to secure a going-concern solution for the benefit of their employees, creditors, and other stakeholders.

2. The CCAA Proceedings have been successful. The Court-approved SISP conducted by the F&F Entities and the Monitor resulted in FFHC entering into the Subscription Agreement and the Transactions with the Purchaser, which closed on September 15, 2023. As a result of the Transactions, among other things, the F&F Entities are continuing to operate, with most employees retaining their employment, most of their landlords retaining a paying tenant and most of their suppliers retaining a paying counterparty. In addition, the Transactions generated approximately \$13 million in proceeds in excess of the secured debt of the F&F Entities.

3. The Claims Process that was designed to identify, quantify, and resolve claims against Residual Co. with respect to the F&F Entities, with a view to making distributions to the Applicant's creditors, is now substantially complete (subject to one Disputed Claim). Accordingly, the Applicant seeks the CCAA Termination and Distribution Order, among other things:

- a. authorizing the Proposed Distributions to creditors with Proven Claims against the Applicant on a pro-rata basis without regard to which F&F Entity any Proof of Claim was filed against;
- b. approving the Ninth Report and the activities of the Monitor referred to therein, as well as the fees of the Monitor and its counsel;
- c. terminating the CCAA Proceedings upon the CCAA Termination Time;
- d. establishing a reserve for the Monitor to complete the CCAA Proceedings;
- e. lifting the stay of proceedings for the sole purpose of allowing Residual Co. to make an assignment in bankruptcy; and

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<sup>1</sup> All capitalized terms used in this factum and not otherwise defined have the meanings given to them in the affidavit of Avininder Grewal sworn March 20, 2025 (the "**Grewal Affidavit**") and the Ninth Report of the Monitor dated March 20, 2025 (the "**Ninth Report**", and together with all previous Reports of the Monitor, the "**Monitor's Reports**"), as applicable.

- f. extending the Stay Period until the CCAA Termination Time or such later date that the Court may order.

## **PART II - FACTS**

4. The facts with respect to this motion are more fully set out in the Grewal Affidavit and the Ninth Report. Dollar amounts referred to herein are in Canadian dollars unless otherwise stated.

### **A. Background**

5. FFHC, through its wholly-owned subsidiaries, is an independent cannabis retail chain with many retail cannabis stores open across Canada and two (2) licensed wholesale distribution facilities. Certain subsidiaries of FFHC also carry on business as a wholesale cannabis distributor and operate digital platforms which provide various services and software products relating to cannabis products.<sup>2</sup>

6. Following the completion of the SISP, the F&F Entities with the assistance of the Monitor identified the successful bid and transaction. On August 29, 2023, the F&F Entities sought and obtained from the Court: (a) the Approval and Reverse Vesting Order which, among other things, approved the Subscription Agreement between FFHC and the Purchaser and the Transactions contemplated therein; and (b) the Claims Process Order which approved the Claims Process pursuant to which claimants could file claims against the Applicant.<sup>3</sup>

7. The Transactions closed on September 15, 2023, and among other things, the following occurred on closing:

- a. all of FFHC's right, title and interest in and to the Excluded Assets vested absolutely and exclusively in Residual Co. All applicable Claims and Encumbrances continued to attach to the Excluded Assets and to the Purchase Price;

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<sup>2</sup> Grewal Affidavit at [para. 4.](#)

<sup>3</sup> Grewal Affidavit at [para. 9.](#)

- b. all Excluded Contracts, Excluded Leases and Excluded Liabilities were channeled to, assumed by and vested absolutely and exclusively in Residual Co.; and
- c. the F&F Entities were deemed to cease being applicants in these CCAA Proceedings, with Residual Co. becoming an applicant in these CCAA Proceedings, and the F&F Entities were deemed to be released from the purview of the ARIO and all other Orders of this Court granted in respect of these CCAA Proceedings, save and except for the Approval and Reverse Vesting Order.<sup>4</sup>

8. The Applicant has periodically sought and obtained orders that extended the Stay Period, most recently until and including March 31, 2025.<sup>5</sup>

9. Since the Stay Extension and Late Claims Approval Order, the Applicant has periodically sought and obtained orders that extended the Stay Period, most recently until and including March 31, 2025.

## **B. Claims Process**

10. Subject to one Disputed Claim which is anticipated to be determined by the Claims Officer shortly, the Monitor has completed the administration of the Claims Process. The quantum of the Disputed Claim is approximately \$100,000, with all parties having submitted their materials to the Claims Officer by March 12, 2025.<sup>6</sup>

11. Below is a summary breakdown of the approximate amount of the Proven Claims against each of the F&F Entities in the Claims Process:<sup>7</sup>

F&F Entity	Unsecured (\$M)	Secured (\$M)	Total (\$M)
Fire & Flower Holdings Corp.	\$6.6	\$0.3	\$6.9
Fire & Flower Inc.	\$12.5	\$0.3	\$12.8
13318184 Canada Inc.	\$2.3	-	\$2.3

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<sup>4</sup> Grewal Affidavit at [para. 10](#).

<sup>5</sup> Grewal Affidavit at [para. 14](#).

<sup>6</sup> Grewal Affidavit at [para. 19](#).

<sup>7</sup> Grewal Affidavit at [para. 20](#).

11180703 Canada Inc.	-	-	-
10926671 Canada Ltd.	\$11.4	-	\$11.4
Friendly Stranger Holdings Corp.	\$0.2	-	\$0.2
Pineapple Express Delivery Inc.	\$0.3	-	\$0.3
Hifyre Inc.	\$3.9	-	\$3.9
<b>TOTAL (\$M)</b>	<b>\$37.6</b>		

**C. Approval of the Fees and Activities of the Monitor and its Counsel**

12. During the relevant periods of time described in the Ninth Report, the Monitor has fulfilled the role of the Monitor as such role is described in the ARIO and prescribed by the CCAA.

13. During the relevant periods of time described in the Ninth Report, the Monitor has undertaken, among other things, the following activities:

- a. continued to operate and monitor its telephone hotlines and email account for stakeholder inquiries;
- b. supervised and assisted with activities relating to the Claims Process, which included, among other things:
  - i. engaging in discussions with Claimants;
  - ii. engaging in discussions with the Claims Officer regarding outstanding Notices of Dispute to determine the method of adjudication for certain disputed claims and next steps to initiate the adjudication process;
  - iii. coordinating and communicating the process as set out by the Claims Officer, and facilitating the delivery of applicable materials to the Claims Officer;
  - iv. negotiating and litigating certain Notices of Dispute; and

- c. engaging in discussions with the sole director of Residual Co. as part of dealing with Disputed Claims.<sup>8</sup>

14. The Monitor and TGF have been paid their fees and disbursements at their standard rates and charges by the Applicant, as applicable, from time to time, in accordance with paragraph 33 of the ARIO, as part of the costs of the CCAA Proceedings.<sup>9</sup>

15. The Monitor and TGF have maintained records of their professional time and costs. The Monitor now requests approval of its fees and disbursements for the period of October 1, 2024, to March 16, 2025, and the fees and disbursements for its legal counsel for the period of October 1, 2024, to March 16, 2025 (both periods are collectively referred to as the “**Period**”).<sup>10</sup>

16. The fees of the Monitor for the period of October 1, 2024, to March 16, 2025 are \$126,956.00, and HST in the amount of \$16,504.28, for a total of \$143,460.28, as more particularly described in the Affidavit of Jeffrey Rosenberg sworn March 20, 2025 (the “**Rosenberg Affidavit**”).<sup>11</sup>

17. The fees of the Monitor’s counsel from October 1, 2024, to March 16, 2025 are \$122,869.00, disbursements in the amount of \$3,696.08, and HST in the amount of \$16,452.17, for a total of \$143,007.25, as more particularly described in the Affidavit of Rebecca L. Kennedy, sworn March 20, 2025 (the “**Kennedy Affidavit**”, together with the Rosenberg Affidavit, the “**March Fee Affidavits**”).<sup>12</sup>

18. The Monitor and TGF billed amounts at each firm’s standard/regular hourly rates, which are consistent with the hourly rates charged by other firms of comparable size and expertise for the provision of similar services regarding significant and complex commercial restructuring and accounting matters.<sup>13</sup>

19. In the Monitor’s professional judgement, the accounts requested to be approved on this motion, as set out in the Fee Affidavits, are reasonable in the circumstances and have been validly

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<sup>8</sup> Ninth Report at [para. 21](#).

<sup>9</sup> Ninth Report at [para. 35](#).

<sup>10</sup> Ninth Report at [para. 36](#).

<sup>11</sup> Ninth Report at [para. 37](#).

<sup>12</sup> Ninth Report at [para. 38](#).

<sup>13</sup> Rosenberg Affidavit at para. 5; Kennedy Affidavit at para. 7.

incurred in accordance with the provisions of the Orders issued in the CCAA Proceedings.<sup>14</sup>

#### **D. Termination Reserve**

20. The Monitor shall require a reserve fund for the benefit of itself, its counsel, and the Applicant's counsel in the amount of \$200,000.00 along with an amount of \$25,000.00 for the benefit of the Claims Officer and \$75,000.00 in Director fees (the "**Estimated Termination Fees**") to fund the remainder of these CCAA Proceedings up to and including the CCAA Termination Time. The Monitor shall require a further reserve fund for the benefit of itself and its counsel in the amount of \$100,000.00 (the "**Estimated Bankruptcy Fees**") to fund the administration of the bankruptcy of Residual Co.<sup>15</sup>

21. The Estimated Termination Fees and Estimated Bankruptcy Fees constitute the Monitor's best estimate of fees and disbursements, excluding HST, for services that have been or will be provided, on the assumption that there are no delays, disputes, or unforeseen developments in connection with any of the remaining steps of these CCAA Proceedings and the subsequent bankruptcy proceedings of Residual Co., if applicable. The reserve to cover the Estimated Termination Fees and Estimated Bankruptcy Fees (the "**Termination Reserve**") will need to be approximately \$452,000.00, inclusive of HST.<sup>16</sup>

### **PART III – ISSUES**

25. The issues to be considered on this motion are whether this Court should:

- a. approve the Proposed Distributions to creditors with Proven Claims against the Applicant on a pro-rata basis without regard to which F&F Entity any Proof of Claim was filed against;
- b. approve the Ninth Report and the conduct and activities of the Monitor referred to therein;
- c. approve the fees and disbursements of the Monitor and TGF;

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<sup>14</sup> Ninth Report at [para. 43](#).

<sup>15</sup> Grewal Affidavit at [para. 20](#); Ninth Report at [para. 39](#).

<sup>16</sup> Grewal Affidavit at [para. 41](#); Ninth Report at [para. 40](#).

- d. authorize the termination of the CCAA Proceedings and ancillary relief including lifting the stay of proceedings for the sole purpose of allowing Residual Co. to make an assignment in bankruptcy following the CCAA Termination Time;
- e. approve the releases in favour of the Monitor Released Parties; and
- f. extend the Stay Period until the CCAA Termination Time or such later date that the Court may order.

## **PART IV – LAW AND ARGUMENT**

### **A. The Proposed Distributions Should be Authorized and Approved<sup>17</sup>**

26. The Applicant seeks authority for the Monitor to make the Proposed Distributions to creditors with Proven Claims against the Applicant on a pro-rata basis without regard to which F&F Entity any Proof of Claim was filed against. The Approval and Reverse Vesting Order vested all of the F&F Entities' right, title and interest in and to the Excluded Assets exclusively in Residual Co., with all applicable Claims and Encumbrances continuing to attach to the Excluded Assets in the same nature and priority as they had immediately prior to the transfer.<sup>18</sup>

27. Further, all Excluded Contracts, Excluded Leases, and Excluded Liabilities were channeled to, assumed by, and vested absolutely and exclusively in Residual Co., such that the Excluded Contracts, Excluded Leases and Excluded Liabilities became the obligations of Residual Co.<sup>19</sup>

28. Although the Approval and Reverse Vesting Order had the effect of making Proven Claims be as against the Applicant, the pro-rata basis of the Proposed Distributions effectively mirrors the outcome that would occur if the F&F Entities' estates were substantively consolidated.

29. In *Redstone Investment Corporation (Re)*, Regional Senior Justice Morawetz (as he then was) summarized the case law in Canada and the United States and set out the following general

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<sup>17</sup> Capitalized terms used in this section and not otherwise defined have the meanings given to them in the [Approval and Reverse Vesting Order](#) dated August 29, 2023, the [Claims Procedure Order](#) dated August 29, 2023, the Grewal Affidavit, or the Ninth Report, as applicable.

<sup>18</sup> Approval and Reverse Vesting Order at [para. 7\(a\)](#).

<sup>19</sup> Approval and Reverse Vesting Order at [para. 7\(b\)](#).



principles that courts should consider when determining whether to make a substantive consolidation order:

- a. Are the elements of consolidation present, such as the intertwining of corporate functions and other commonalities across the group?
- b. Do the benefits of consolidation outweigh the prejudice to particular creditors?
- c. Is consolidation fair and reasonable in the circumstances?<sup>20</sup>

30. In applying the first of these principles, the Court should evaluate whether the following seven elements of consolidation are present:

- a. difficulty in segregating assets;
- b. presence of consolidated financial statements;
- c. profitability of consolidation at a single location;
- d. co-mingling of assets and business functions;
- e. unity of interests in ownership;
- f. existence of inter-corporate loan guarantees; and
- g. transfer of assets without observing corporate formalities.<sup>21</sup>

31. The Manitoba Court of Appeal in *Nygaard*<sup>22</sup> and this Court<sup>23</sup> have since affirmed that the foregoing *Redstone* principles is the correct framework to be applied by courts when considering whether to make an order for substantive consolidation.

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<sup>20</sup> *Redstone Investment Corporation (Re)*, [2016 ONSC 4453](#) at [para. 78](#) [*Redstone*].

<sup>21</sup> *Redstone* at [para. 47](#).

<sup>22</sup> *White Oak Commercial Finance, LLC v Nygard Holdings (USA) Limited et al.*, [2023 MBCA 73](#) at para. 26 [*Nygaard*].

<sup>23</sup> *Steven v Hutchens*, [2023 ONSC 6713](#) at [para. 45](#).

32. The foregoing considerations and factors support the Applicant's request for the Proposed Distributions to be made on a pro-rata basis without regard to which F&F Entity any Proof of Claim was filed against.

**(i) The elements of consolidation are present.**

**(A) *The F&F Entities had consolidated financial statements and their assets are difficult to segregate.***

33. The F&F Entities had, during all relevant times, consolidated financial statements which did not report individual entity-level financials. Within the consolidated financial statements, the various F&F Entities were grouped within specific segments based on the nature of each entity's business functions, failing to specify which F&F Entity owned which asset within a given segment.<sup>24</sup>

34. While it may be possible to segregate assets based on legal right and/or title, the difficulty is in assigning value to these assets. The Transaction was for the entire business of F&F and did not include an allocation of purchase price towards any specific F&F Entity. While assets such as retail spaces and inventory may more easily be assessed for value, the value of added value assets such as IP are difficult to determine.<sup>25</sup>

35. If the Applicant and the Monitor were to use the unaudited book value of the most recent unaudited consolidated financial statement before the CCAA Proceedings commenced, it is possible to divide the asset value in each segment equally amongst the various F&F Entities in each segment. However, this is a highly imprecise way of allocating the value of assets for each F&F Entity and does not take into account the value that certain F&F Entities offered which cannot be determined from looking at a financial statement.<sup>26</sup>

36. Adding complexity is the inter-connectedness of F&F and the value add of entities with lower or no profitability.<sup>27</sup> The following examples, among others, highlight the interconnectedness of F&F and the value add of the various entities:

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<sup>24</sup> Grewal Affidavit at [para. 23](#); Ninth Report at [para. 29](#).

<sup>25</sup> Grewal Affidavit at [para. 25](#); Ninth Report at [para. 30](#).

<sup>26</sup> Grewal Affidavit at [para. 26](#).

<sup>27</sup> Ninth Report at [para. 31](#).

- a. FFHC was the ultimate parent company of all F&F Entities. Despite not being a profitable entity, the C-Suite employees operated out of FFHC, directing the F&F Entities and driving a majority of value for the business of the F&F Entities;
- b. Fire & Flower Inc. was the most profitable F&F Entity. However, it benefitted from the IP of other F&F Entities which it kept at its store; and
- c. Hifyre Inc. owned and operated the Hifyre digital platform, used to drive Fire & Flower Inc. and Friendly Stranger Holdings Corp.'s (together with Fire & Flower Inc., the "**Retail Entities**") operations and provide insight into consumer behaviours. While Hifyre Inc. had a significant number of its own customers, it benefitted significantly from its relationship with the Retail Entities. Similarly, the Retail Entities benefitted significantly from the use of Hifyre Inc.'s IP.<sup>28</sup>

37. The Monitor has conducted a review of the assets of F&F and has determined that any attempt to allocate a value to each F&F Entity would be a lengthy and costly exercise, and could still lead to uncertainty.<sup>29</sup>

**(B) The F&F Entities experienced profitability of consolidation at a single location.**

38. As set out above, Fire & Flower Inc. was the most profitable F&F Entity, but it benefitted from: (a) FFHC through employing the C-Suite employees which drove value for the business of the F&F Entities; and (b) from the use of IP Hifyre Inc.'s IP.<sup>30</sup>

**(C) The F&F Entities co-mingled their assets and business functions and assets were transferred without observing corporate formalities.**

39. The F&F Entities co-mingled their assets and business functions through, among other things, FFHC's debt obligations funding the operations of the other F&F Entities. This integrated manner of conducting their business continued during the CCAA Proceedings, when assets of one F&F Entity were sold in the normal course, the proceeds of sale were used for the benefit of all the F&F Entities without observing any corporate formalities.<sup>31</sup>

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<sup>28</sup> Ninth Report at [para. 31](#).

<sup>29</sup> Ninth Report at [para. 32](#).

<sup>30</sup> Ninth Report at [para. 31](#).

<sup>31</sup> Grewal Affidavit at [paras. 28-29](#); Ninth Report at [para. 31](#).

**(D) There is unity of interests in ownership.**

40. As stated above, FFHC was the ultimate parent company of all the F&F Entities.<sup>32</sup>

**(E) Inter-corporate loan guarantees exist.**

41. As described in the Affidavit of Stephane Trudel sworn June 5, 2023 (the “**First Trudel Affidavit**”), FFHC’s obligations under the ACT Loan Agreement (as defined and described in the First Trudel Affidavit) were guaranteed by each of the F&F Entities. Similarly, the DIP Facility was also guaranteed by each of the F&F Entities.<sup>33</sup>

**(ii) The benefits of consolidation outweigh the prejudice to particular creditors.**

42. As set out above, it is very difficult to determine the percentage of recovery that different creditors will receive on an entity-by-entity basis allocation and distribution. Further, while some creditors would receive more if distributions were made in this manner, the creditors who filed Proofs of Claim against FFHC would receive nothing despite FFHC employing the C-Suite employees and being the borrower under the ACT Loan Agreement and DPI Facility, which drove value for the F&F Entities’ business.

43. It is the Applicant’s and the Monitor’s view that the overall benefits of the Proposed Distributions outweigh any potential prejudice. Given the inter-connected nature of the F&F Entities, the lack of allocation of purchase price towards any specific F&F Entity, and the complexities, time and cost of conducting an investigation to assign value to the assets of each F&F Entity, any prejudice suffered by particular creditors is outweighed by the benefits of the Proposed Distributions being made on a pro-rata basis without regarding to which F&F Entity any Proof of Claim was filed against, as FFHC had nominal assets.<sup>34</sup>

**(iii) The Proposed Distributions are fair and reasonable.**

44. The Proposed Distributions to creditors on a pro-rata basis are expected to be approximately 30 cents on the dollar. Resources are limited. As noted above, a forensic

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<sup>32</sup> Ninth Report at [para. 31](#).

<sup>33</sup> Ninth Report at [para. 31](#).

<sup>34</sup> Ninth Report at [para. 34](#); Grewal Affidavit at [para. 30](#).

investigation to assign a monetary value to the assets of the F&F Entities could be long, complex, and costly and would negatively affect distributions overall.<sup>35</sup>

45. In addition, it is very likely that there will be strong opposition from creditors with Proven Claims who filed Proofs of Claim as against FFHC, as they would practically receive no distributions. Such litigation will further erode the funds available to be distributed to the Applicant's creditors.

46. For all the reasons set out above, it is the Applicant's and the Monitor's view that the Proposed Distributions are fair and reasonable in the circumstances.<sup>36</sup>

**(iv) This Court has jurisdiction to approve the Proposed Distributions.**

47. The Court has the authority to approve distributions to creditors during CCAA proceedings, including outside of a plan of compromise or arrangement.<sup>37</sup> This concept applies regardless of whether the creditors receiving a distribution are secured or unsecured.<sup>38</sup>

48. There is nothing in the CCAA that precludes a distribution of cash to creditors of the debtor during the pendency of CCAA proceedings.<sup>39</sup> In *Nortel*, Justice Newbould states the following:

"I see no difference between an interim distribution, as in the case of *AbitibiBowater*, or a final distribution, as in the case of *Timminco*, or a distribution to an unsecured or secured creditor, so far as a jurisdiction to make the order is concerned without any plan of arrangement."<sup>40</sup>

49. Accordingly, this Court has the jurisdiction to approve the Proposed Distributions. As the Court-ordered Claims Process was designed to identify, quantify, and resolve claims against Residual Co. with respect to the F&F Entities, with a view to making distributions to the Applicant's creditors, the Proposed Distributions to the Applicant's creditors should be approved.<sup>41</sup>

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<sup>35</sup> Ninth Report at [para. 33](#).

<sup>36</sup> Grewal Affidavit at [para. 30](#); Ninth Report at [para. 34](#).

<sup>37</sup> *Nortel Networks Corp.*, Re, [2014 ONSC 4777](#) at [paras 53-55](#) [*Nortel*].

<sup>38</sup> Re Mobilicity, Distribution Order granted August 14, 2015, Court File No. CV-13-10274-00CL

<sup>39</sup> *AbitibiBowater Inc.*, [2009 QCCS 6461 \(Que. S.C.\)](#) at [para 71](#).

<sup>40</sup> *Nortel* at [para 58](#).

<sup>41</sup> Grewal Affidavit at [para. 31](#).

## **B. The Monitor's Activities in the Ninth Report Should be Approved**

50. A request to approve a monitor's report "is not unusual".<sup>42</sup> There are policy and practical reasons for the Court to approve the Monitor's activities and provide a level of protection for the Monitor during the CCAA Proceedings. Specifically, Court approval:

- a. allows the Monitor to move forward with next steps in the CCAA Proceedings;
- 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>43</sup>

51. The form of the proposed order, with respect to approval of the Ninth Report and the Monitor's activities described therein, is consistent with the language used in *Target*<sup>44</sup> and subsequent proceedings.<sup>45</sup>

52. In the present case, the Ninth Report and the conduct and activities of the Monitor referred to therein, which are summarized above, should be approved.

53. The Monitor has acted responsibly and carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the ARIO. No party has put forward

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<sup>42</sup> *Re Target Canada Co*, [2015 ONSC 7574](#) at para 2 [*Target*].

<sup>43</sup> *Target*, *ibid* at [para 22](#).

<sup>44</sup> *Target*, *ibid* at [paras 7 and 26](#).

<sup>45</sup> See, for example: [Re Clover Leaf Foods](#) (29 September 2020), Toronto CV-20-00641220-00CL (Ont Sup Ct [Commercial List]) Order (Re Approval of Monitor's Activities and Fees and for Stay Extension) at para 3.

evidence to the contrary. It is respectfully submitted that in the circumstances, the Court should respect the good faith decisions of the Monitor related to the CCAA Proceedings.

**C. The Monitor's and TGF's Fees Should be Approved**

**(i) Jurisdiction of this Court to Pass the Accounts**

54. The jurisdiction of this Court to pass the accounts is confirmed at paragraph 34 of the ARIO, which provides that "The Monitor and its legal counsel shall pass their accounts from time to time before a judge of this court or a referee appointed by a judge."<sup>46</sup>

**(ii) The Fair and Reasonable Test for Approval of Accounts**

55. The test on a motion to pass accounts is to consider the "overriding principle of reasonableness".<sup>47</sup> The overall value contributed by the Monitor and its counsel is the predominate consideration in assessing the reasonableness of the accounts.<sup>48</sup>

56. There has been adequate disclosure of the activities of the Monitor and the Monitor's counsel in the Ninth Report and throughout the CCAA Proceedings. Based on the record filed in support of the motion and the degree of Court oversight and involvement throughout the CCAA Proceedings, it is respectfully submitted that the Court can and should determine that the Monitor's and the Monitor's counsel's accounts are fair and reasonable.

**(iii) Factors to Be Considered**

57. The test to be applied in determining whether to approve the Monitor's and counsel to the Monitor's fees is whether they are fair and reasonable. To aid in the determination of whether a court-appointed officer's fees are fair and reasonable, the Ontario Court of Appeal has recognized the following list of non-exhaustive factors:<sup>49</sup>

- a. the nature, extent and value of the assets being handled;

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<sup>46</sup> [Amended and Restated Initial Order](#) issued by Osborne J. on June 15, 2023, at para 34.

<sup>47</sup> *Nortel Networks Inc.*, 2022 ONSC 6680 [*Nortel Inc*] at [para 10](#).

<sup>48</sup> *Re Nortel Networks Corporation et al.*, 2017 ONSC 673 [*Nortel Corp*] at [paras 15, 21](#).

<sup>49</sup> *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at [para 33](#); see also *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, 2023 ONSC 3400 at [para 23](#).

- b. the complications and difficulties encountered;
- c. the degree of assistance provided by the company, its officers or its employees;
- d. the time spent;
- e. the Monitor's knowledge, experience and skill;
- f. the diligence and thoroughness displayed;
- g. the responsibilities assumed;
- h. the results achieved; and
- i. the cost of comparable services when performed in a prudent and economical manner.

58. These factors are not intended to be an exhaustive list and other factors may be material in any particular case.<sup>50</sup> Certain of the relevant factors are addressed immediately below.

59. The Monitor, with the assistance of TGF, carried out important activities in the CCAA Proceedings during the Period, as detailed in the Ninth Report and the Fee Affidavits. The more significant responsibilities that the Monitor and TGF has assumed include: (a) supervising and assisting with activities relating to the Claims Process, which included, among other things: (i) engaging in discussions with Claimants; (ii) engaging in discussions with the Claims Officer regarding outstanding Notices of Dispute to determine the method of adjudication for certain disputed claims and next steps to initiate the adjudication process; (iii) coordinating and communicating the process as set out by the Claims Officer, and facilitating the delivery of applicable materials to the Claims Officer; (iv) negotiating and litigating certain Notices of Dispute; and (b) engaging in discussions with the sole director of Residual Co. as part of dealing with Disputed Claims.<sup>51</sup>

60. The breadth of matters detailed in the Ninth Report demonstrate the diligence and

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<sup>50</sup> *Nortel Corp*, *supra* at [para 14](#).

<sup>51</sup> Ninth Report at [para. 21](#).



thoroughness displayed by the Monitor and TGF.

61. The time spent, and thus the fees and disbursements of the Monitor and TGF resulting from their activities, are commensurate with the significant role and responsibilities and activities undertaken. The work has been undertaken with a view of advancing the interests of the Applicant and its stakeholders by conducting the Claims Process in accordance with the Claims Process Order, with the goal of making a distribution to the Applicant's creditors as quickly as possible.

62. The Monitor and its counsel's professional fees and disbursements are comparable to the rate charged by other professional firms of comparable size and expertise for the provision of similar services regarding significant and complex commercial restructuring matters.<sup>52</sup>

63. Accordingly, it is respectfully submitted that a consideration of the factors articulated by the courts supports the conclusion that the remuneration of the Monitor and its counsel is fair and reasonable and their fees and disbursements for the Period should be approved.

#### **D. The CCAA Proceedings Should be Terminated**

64. The proposed CCAA Termination and Distribution Order provides that the CCAA Proceedings shall be terminated upon service by the Monitor of an executed Monitor's Termination Certificate on the service list in these CCAA Proceedings, certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with the CCAA Proceedings have been completed.<sup>53</sup>

65. Upon filing the Monitor's Termination Certificate, these CCAA Proceedings and the stay of proceedings will be terminated, and FTI will be released and discharged as Monitor.<sup>54</sup>

66. Section 11 of the CCAA provides this Court with broad discretion to make "any order that it considers appropriate in the circumstances."<sup>55</sup> The discretion conferred by section 11 of the CCAA is not boundless. Rather, it must be exercised in furtherance of the CCAA's remedial objectives, having regard to whether (a) the order sought is appropriate in the circumstances; (b)

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<sup>52</sup> Rosenberg Affidavit at para. 5; Kennedy Affidavit at para. 7.

<sup>53</sup> Grewal Affidavit at [para. 37](#).

<sup>54</sup> Grewal Affidavit at [para. 38](#).

<sup>55</sup> CCAA, [s. 11](#).

the debtor company is acting in good faith; and (c) the debtor company is acting with due diligence.<sup>56</sup>

67. In furtherance of the remedial objectives of the CCAA, this Court has routinely granted orders akin to the proposed CCAA Termination and Distribution Order to terminate CCAA proceedings and discharge the court-appointed monitor.<sup>57</sup> These prior orders terminating CCAA proceedings have also provided for a variety of additional relief to assist in the interim and subsequent periods surrounding the termination of the CCAA proceedings, which include, among other things, authority for a CCAA debtor to be assigned into bankruptcy and establishment of reserves necessary to complete the CCAA proceedings and the bankruptcy proceedings.<sup>58</sup>

68. Accordingly, the establishment of the Termination Reserve and lifting the stay of proceedings for the sole purpose of permitting Residual Co. to make an assignment in bankruptcy is appropriate in the circumstances.

69. It is also appropriate for this Court to terminate the CCAA Proceedings in the manner contemplated by the CCAA Termination Order, as:

- (a) The F&F Entities and the Applicant have acted in good faith and with due diligence throughout these CCAA Proceedings;
- (b) all matters requiring resolution within the ambit of the CCAA Proceedings will have been completed by the CCAA Termination Time; and
- (c) the Monitor supports the termination of the CCAA Proceedings on the terms set out in the proposed CCAA Termination Order.

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<sup>56</sup> 9354-9186 *Quebec Inc v Callidus Capital Corp*, 2020 SCC 10 [Callidus] at para. 49.

<sup>57</sup> *Golf Town Canada Holdings Inc (Re)* (March 29, 2018), Toronto, CV-16-11527-00CL ([CCAA Termination Order](#)) (ON SC); *Old API Wind-Down Ltd (Re)* (May 17, 2019), Toronto, CV-18-603053-00CL (CCAA Termination Order) (ON SC); *Harte Gold Corp (Re)* (February 15, 2022), Toronto, CV-21-00673304-00CL ([CCAA Termination Order](#)); *Tacora Resources Inc. (Re)* (October 7, 2024), Toronto, CV-23-00707394-00CL ([CCAA Termination Order](#)).

<sup>58</sup> *Tacora Resources Inc. (Re)* (October 7, 2024), Toronto, CV-23-00707394-00CL ([CCAA Termination Order](#)); *Ignite Holdings Inc. et al., (Re)* (January 30, 2024), Toronto, CV-23-00708635-00CL ([CCAA Termination and Distribution Order](#)).

## **E. The Releases in Favour of the Monitor Released Parties is Appropriate**

70. The proposed CCAA Termination and Distribution Order seeks a release of the Monitor and its affiliates, officers, directors, employees, legal counsel and agents from any and all claims that any Person may have or be entitled to assert against any of the Monitor Released Parties, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence in any way relating to, arising out of, or in respect of, the CCAA Proceedings or with respect to their respective conduct in these CCAA Proceedings.

71. It is now common practice for third party releases in favour of the parties to a restructuring, their professional advisors, their directors and officers, and the Monitor to be approved outside of a CCAA plan in the context of a transaction, including in the context of RVO transactions.<sup>59</sup> In approving releases in *Harte Gold*, Justice Penny, citing Chief Justice Morawetz in *Lydian*, applied the following criteria ordinarily considered with respect to third-party releases provided for under a plan:

- a. whether the claims to be released are rationally connected to the purpose of the restructuring;
- b. whether the release contributed to the restructuring;
- c. whether the release is fair, reasonable and not overly broad;
- d. whether the restructuring could succeed without the release;
- e. whether the release benefits the debtor as well as the creditors generally; and
- f. creditors' knowledge of the nature and the effect of the releases.<sup>60</sup>

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<sup>59</sup> *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828 at para. 128; *Harte Gold Corp (Re)*, 2022 ONSC 653 at para. 79; *Green Relief Inc (Re)*, 2020 ONSC 6837 [Green Relief] at para. 76; *Re Nelson Education Limited*, 2015 ONSC 5557 at para. 49; *Golf Town Canada Holdings Inc (Re)* (March 29, 2018), Toronto, CV-16-11527-00CL ([CCAA Termination Order](#)) (ON SC); *Green Growth Brands Inc et al (Re)* (May 19, 2021), Toronto, Court File No. CV-20-00641220-00CL ([Order Terminating CCAA Proceedings](#)) (ON SC); *Fire & Flower Holdings Corp (Re)*, (August 29, 2023), Toronto, Court File No. CV-23-00700581-00CL ([Approval and Reverse Vesting Order](#)) (ON SC).

<sup>60</sup> *Harte Gold* at paras. 78-86; *Lydian International Limited (Re)*, 2020 ONSC 4006 at para. 54; see also *Green Relief* at para. 27, where Justice Koehnen also cited Chief Justice Morawetz's decision in *Lydian*.

72. Justice Penny found that it is not necessary for each of the above factors to apply for a release to be approved.<sup>61</sup>

73. The proposed releases in favour of the Monitor Released parties comply with the *Lydian* factors applied in *Harte Gold* and *Green Relief*, are consistent with releases previously approved by this Court in the Approval and Reverse Vesting Order, are reasonable and appropriate in the circumstances,<sup>62</sup> and should be granted:

- a. **The Monitor Released Parties made significant and material contributions to the restructuring.** In addition to all the Monitor's efforts throughout the CCAA Proceedings as outlined in its previous Monitor's Reports, which activities were approved by this Court, the Monitor Released Parties have significant contributions to the Claims Process, all as outlined in the Ninth Report.<sup>63</sup>
- b. **The releases are fair, reasonable and not overly broad.** The scope of the Monitor Released Claims are consistent with the releases granted by this Court in the Approval and Reverse Vesting Order, along with recognized precedents, including *Harte Gold* and *Just Energy*.<sup>64</sup> Further, the Monitor Released Claims explicitly carve out any claims resulting from fraud or wilful misconduct.
- c. **The releases provide certainty and finality.** The Monitor Released Claims will achieve certainty and finality for the Monitor Released Parties in the most efficient and appropriate manner given the circumstances.
- d. **All creditors and contractual counterparties have knowledge of the nature and effect of the Monitor Released Claims.** Potentially affected stakeholders have been served with this Motion.<sup>65</sup>

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<sup>61</sup> *Harte Gold* at [para. 80](#).

<sup>62</sup> *Harte Gold* at [paras. 78-86](#); *Green Relief* at [paras. 50-57](#).

<sup>63</sup> Ninth Report at [paras. 22-31](#).

<sup>64</sup> *Harte Gold (Re)* (January 28, 2022), Toronto, CV-21-00673304-00CL ([Approval and Reverse Vesting Order](#)) (ON SC); *Just Energy (Re)* (November 3, 2022), Toronto, CV-21-00658423-00CL ([Approval and Vesting Order](#)) (ON SC).

<sup>65</sup> Affidavit of Service of Philip Yang sworn March 21, 2025.

**F. The Stay Period Should be Extended**

74. The Applicant is seeking an extension of the Stay Period from March 31, 2025, until and including the CCAA Termination Time or such later date as the Court may order.

75. The Court may grant an extension of the Stay Period “for any period that the court considers necessary” where (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and (b) the applicant satisfies the court that it has acted, and is acting, in good faith and with due diligence.<sup>66</sup>

76. The extension of the Stay Period is necessary and appropriate in the circumstances to allow time for the Applicant and the Monitor to complete the outstanding activities required to complete the CCAA Proceedings in an efficient manner which include: (a) making the Proposed Distributions to the Applicant’s creditors; (b) completing necessary statutory and administrative steps for terminating the CCAA Proceedings and discharging the Monitor; and (c) bankrupting and administering Residual Co.<sup>67</sup>

77. The extension of the Stay Period to the CCAA Termination Time would also obviate the need for a further attendance before the Court and avoid the parties incurring unnecessary costs.

78. The Applicant has acted in good faith and with due diligence to complete the CCAA Proceedings. The Monitor supports the extension of the Stay Period.<sup>68</sup>

**PART V – ORDER SOUGHT**

79. For the reasons set out above, the Applicant respectfully submits that the Court should grant the proposed CCAA Termination and Distribution Order in the form attached to the Applicant’s Motion Record.

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<sup>66</sup> CCAA, *supra* [s. 11.02\(2\) and \(3\)](#).

<sup>67</sup> Grewal Affidavit at [para. 43](#).

<sup>68</sup> Ninth Report at [para. 47](#).

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 25<sup>th</sup> day of March, 2025.

A handwritten signature in cursive script, reading "Stikeman Elliott LLP", positioned above a horizontal line.

**STIKEMAN ELLIOTT LLP**

## SCHEDULE “A” – LIST OF AUTHORITIES

1. *Redstone Investment Corporation (Re)*, [2016 ONSC 4453](#)
2. *White Oak Commercial Finance, LLC v Nygard Holdings (USA) Limited et al.*, [2023 MBCA 73](#)
3. *Steven v Hutchens*, [2023 ONSC 6713](#)
4. *Nortel Networks Corp, Re*, [2014 ONSC 4777](#)
5. *AbitibiBowater Inc.*, [2009 QCCS 6461 \(Que. S.C.\)](#)
6. *Re Target Canada Co*, [2015 ONSC 7574](#).
7. *Nortel Networks Inc*, [2022 ONSC 6680](#)
8. *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#)
9. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#)
10. *Triple-I Capital Partners Limited v 12411300 Canada Inc*, [2023 ONSC 3400](#)
11. *9354-9186 Quebec Inc v Callidus Capital Corp*, [2020 SCC 10](#)
12. *Arrangement relatif à Blackrock Metals Inc*, [2022 QCCS 2828](#)
13. *Harte Gold Corp (Re)*, [2022 ONSC 653](#)
14. *Green Relief Inc (Re)*, [2020 ONSC 6837](#)

15. *Re Nelson Education Limited*, [2015 ONSC 5557](#)
16. *Lydian International Limited (Re)*, [2020 ONSC 4006](#)



## **SCHEDULE “B” TEXT OF STATUTES AND REGULATIONS**

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

#### **General power of court**

**11** Despite anything in the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#), if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

#### **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.

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

Court File No. CV-23-00700581-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
15315441 CANADA INC.**

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

PROCEEDING COMMENCED AT TORONTO

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