



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-25-00738691-00CL

DATE: March 19, 2025

NO. ON LIST: 1

TITLE OF PROCEEDING: Re Mitel Networks Corporation

BEFORE: JUSTICE CONWAY

**PARTICIPANT INFORMATION**

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## **ENDORSEMENT OF JUSTICE CONWAY:**

- [1] All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Applicant dated March 17, 2025. All currency references are to U.S. dollars, unless otherwise noted.
- [2] All factual references are from the Affidavit of Janine Yetter, Chief Financial Officer of Mitel (Delaware), Inc. sworn March 10, 2025 and the two Affidavits of Andrew Harmes, counsel to MNC, sworn March 10 and 14, 2025. In addition, the proposed Information Officer, FTI Canada, has filed a pre-filing report dated March 17, 2025.
- [3] This application is brought pursuant to Part IV of the CCAA and s. 106 of the CJA in connection with the Chapter 11 Cases commenced by the Debtors in the United States Bankruptcy Court for the Southern District of Texas (Houston Division).
- [4] On March 10, 2025, I granted an Interim Stay Order in favour of MNC and its directors and officers pending the return of the application for the Initial Recognition Order and the Supplemental Order. That application proceeded before me today. The relief sought is supported by the *ad hoc* group of senior lenders and is recommended by FTI Canada. The application is otherwise unopposed.
- [5] I am granting both orders, for the reasons set out below.

## **Background to the Proposed Restructuring**

- [6] The background to the proposed restructuring is set out in my endorsement of March 10, 2025. Briefly, MNC is part of a global company that provides business communications and collaboration solutions. The Mitel Group is a global company with over 65 million end users in approximately 146 countries.
- [7] For the last several years, the Company has experienced significant liquidity challenges. Despite taking certain initiatives to address these constraints through the 2022 Transaction, the Company began to evaluate its options to pursue a deleveraging transaction. The Company has reached an agreement-in-principle on a proposed pre-packaged chapter 11 plan that will reduce the Company's funded indebtedness by over \$1.15 billion and reduce annual cash interest expense by approximately \$135 million, and position the reorganized Debtors for long-term growth. The plan is supported under the RSA by holders of 100% of the ABL Loan Claims, 72.1% of the Priority Lien Claims, and over 81.1% of the Non-Priority Lien Term Loan Deficiency Claims.
- [8] The Debtors filed the Petitions on March 9 and 10, 2025 and have now obtained 13 First Day Orders: (a) Foreign Representative Order; (b) Interim DIP Order; (c) Cash Management Order; (d) Wages Order; (e) Critical Vendors Order; (f) Taxes Order; (g) Utilities Order; (h) NOL Order; (i) Customer Programs Order; (j) Stay Enforcement Order;

(k) Insurance Order; (I) Joint Administration Order; and (m) Claims Agent Retention Order.

- [9] MNC is one of the Debtors. It is the sole Canadian entity in the Mitel Group and the main entity through which the Company conducts its business in Canada. MNC is a wholly-owned subsidiary of Mitel Networks (International) Limited, a holding company through which the Mitel Group holds its United States, Canadian and international operating segments.
- [10] MNC's registered and head office is located at leased premises in Ottawa, Ontario. MNC has approximately 323 employees in Canada. None of MNC's employees are unionized.
- [11] MNC's revenue during the third fiscal quarter of 2024 represented approximately 2.9% of the Company's total consolidated revenue. MNC is a guarantor of the Company's approximately \$1.31 billion of funded indebtedness and has secured its guarantees of the Senior Loans and Junior Loans.

### **The Initial Recognition Order**

- [12] MNC seeks the Initial Recognition Order that appoints MNC as the Foreign Representative in respect of these CCAA recognition proceedings and recognizes the Chapter 11 Cases as a foreign main proceeding.
- [13] Pursuant to s. 47(1) of the CCAA, the court shall recognize a foreign proceeding if the proceeding is a foreign proceeding and the applicant is a foreign representative in respect of that proceeding. There is no question that the Chapter 11 Cases are a foreign proceeding. Further, MNC has been appointed by the U.S. Bankruptcy Court to act as the Foreign Representative of the Chapter 11 Cases and has filed the documents required under s. 46(2) to apply for a recognition order. It. The requirements of s. 47(1) have been met.
- [14] Pursuant to s. 47(2), this court must specify whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding. A foreign main proceeding is defined in s. 45(1) as a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests (COMI). In the absence of evidence to the contrary, a debtor's COMI is deemed to be the location of its registered office: s. 45(2).
- [15] This presumption can be rebutted with evidence demonstrating that a debtor company's COMI is located in a jurisdiction other than the location of its registered office: *Paladin Labs Canadian Holding Inc.*, 2022 ONSC 4931, at para. 20. In *Paladin*, at para. 21 and *Diebold Nixdorf, Incorporated*, 2023 ONSC 4230, at para. 28, Chief Justice Morawetz said that there are three primary factors to consider: (a) whether the location is readily ascertainable by creditors; (b) whether the location is one in which the debtor's principal assets or operations are found; and (c) whether the location is where the management of

the debtor takes place. As he stated in *Diebold*, at para. 29, these primary factors may be interpreted with reference to the following: (a) the location where corporate decisions are made; (b) the location of employee administrations, including human resource functions; (c) the location of the company's marketing and communication functions; (d) whether the enterprise is managed on a consolidated basis; (e) the extent of integration of an enterprise's international operations; (f) the centre of an enterprise's corporate, banking, strategic and management functions; (g) the existence of shared management within entities in an organization; (h) the location where cash management and accounting functions are overseen; (i) the location where pricing decisions and new business development initiatives are created; and (j) the location of an enterprise's treasury management functions, including management of accounts receivable and accounts payable.

[16] Having regard to those factors, I am satisfied that although MNC's registered office is in Ottawa, its COMI is in the United States. MNC is deeply integrated with the Mitel Group, which is managed on a consolidated and integrated basis. In particular, the Mitel Group's financial position is managed and reported on a consolidated basis. Stand-alone financial statements for MNC are not typically prepared. Mitel Group's overall capital structure, including its funded indebtedness, is managed on a consolidated basis. Its Cash Management System centralizes collections and disbursements for the entire corporate group. MNC's employees participate in benefits managed out of the United States. In addition, MNC's ties to the United States include the exercise of strategic oversight by Mitel Group's senior leadership and the Parents Boards (both of which are primarily US-based). The United States is readily ascertainable by the principal creditors of MNC who will be impacted by (and supporting) the restructuring through the Chapter 11 Cases.

[17] I am therefore granting the order recognizing the Chapter 11 Cases as a foreign main proceeding. Pursuant to s. 48(1) of the CCAA, I am granting the required stay and other relief with respect to MNC.

[18] Initial Recognition Order to go as signed by me and attached to this endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

### **The Supplemental Order**

[19] The Supplemental Order provides for a stay of proceedings in Canada in respect of the MNC and its directors and officers. I agree that this stay is necessary to preserve and protect the value of the Canadian business and to provide the required stability during the restructuring period.

[20] The order also recognizes the First Day Orders. Pursuant to s. 49(1) of the CCAA, the court has broad jurisdiction to grant any order that it considers appropriate if it is satisfied that it is necessary for the protection of the debtor company's property or the interests of a

creditor or creditors. Section 52(1) requires the court to cooperate, to the maximum extent possible, with the foreign representative and the foreign court.

- [21] I highlight only one of those orders, the Interim DIP Order. The Debtors negotiated a secured post petition financing facility with certain Senior Lenders for \$60 million of DIP New Money Term Loans and refinanced Priority Lien Loans through the roll-up and equitization of \$62 million. MLN US is the borrower and each of the Debtors (including MNC) are guarantors of the DIP loans.
- [22] I am satisfied that the Interim DIP Order should be recognized. The new money under the DIP Facility is required for continued operations of the group and to fund the restructuring, which will ultimately benefit stakeholders by reducing the group's debt load and interest expense. Those funds will directly benefit MNC since approximately half of the new money will be used by it for payment of its operational expenses during this period.
- [23] With respect to the roll-up of \$62 million of the Priority Lien Loans, although this may not be permissible in a plenary CCAA proceeding, there is no impediment to approving a roll-up in Part IV recognition proceedings: see *Diebold*, at para. 43. In this case, MNC has already guaranteed the Priority Lien Loans (that form part of the Senior Loans) and encumbered its assets to secure that guarantee. Counsel to FTI Canada has given an independent opinion that this security is valid and enforceable. I am therefore satisfied that recognizing this order would not materially prejudice the interest of any Canadian stakeholders. I further note that under the restructuring plan MNC's general unsecured creditors are expected to be unimpaired.
- [24] The DIP facility is therefore approved, as is the corresponding DIP Charge (which will rank behind the Administration Charge and the D&O Charge).
- [25] With respect to the remaining relief in the Supplemental Order, I appoint FTI Canada as the Information Officer. The Administration Charge of CDN\$500,000 to secure professional fees is acceptable. The D&O Charge of CDN\$3.8 million to secure MNC's indemnity obligations is estimated to cover the exposure of directors and officers during the restructuring period. It excludes gross negligence or wilful misconduct. It applies only to the extent that there is no or insufficient coverage under the directors' and officers' insurance policy for MNC.
- [26] Supplemental Order to go as signed by me and attached to this Endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

### **Next Steps**

- [27] Counsel advised the court that they are seeking further orders from the U.S. Bankruptcy Court and will be returning to this court for additional recognition orders. They shall book

those motions through the Commercial List office before me. If I am unavailable, the matter may proceed before another Commercial List judge.

A handwritten signature in blue ink, appearing to read "Conway J.", with a stylized flourish at the end.