COURT FILE NO.	B301-191521 B301-191522 B301-191523 B301-191524 B301-191525 B301-191526
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	FTI CONSULTING CANADA INC., SOLELY IN ITS CAPACITY AS LICENSED INSOLVENCY TRUSTEE OF THE BANKRUPT ESTATE OF WOLVERINE ENERGY AND INFRASTRUCTURE INC., WOLVERINE EQUIPMENT INC., WOLVERINE CONSTRUCTION INC., WESTERN CANADIAN MULCHING LTD., HD ENERGY RENTALS LTD. and LIBERTY ENERGY SERVICES LTD.
DOCUMENT	**REPLY BRIEF OF THE TRUSTEE**

Clerk's Stamp

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Torys LLP 4600 Eighth Avenue Place East 525 - Eighth Ave SW Calgary, AB T2P 1G1 Attention: Kyle Kashuba / Bilal Qureshi Telephone No.: +1 403.776.3744 / +1 403.776.3769 Email: kkashuba@torys.com / bqureshi@torys.com Fax No.: +1 403.776.3800 File No.: 39586-2010

APPLICATION BEFORE THE HONOURABLE JUSTICE C.D. SIMARD ON NOVEMBER 4, 2025 AT 10:00 AM ON THE COMMERCIAL LIST

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PART I - INTRODUCTION

1. Capitalized terms not otherwise defined in this Reply Brief of the Trustee have the meaning ascribed to them in the Bench Brief of the Trustee filed September 2, 2025 (the "**Trustee Brief**").

2. On October 30, 2025, the Related Parties (or, the "**Respondents**") filed a brief of law (the "**Respondents' Brief**") and state that:

   (a) WEI was not insolvent at the time of the Impugned Transactions;

   (b) the Related Parties were at arm's length with WEI at the time of the Impugned Transactions; and

   (c) the corporate veil should not be pierced.

   (collectively, the "**Respondents' Position**").

3. The Trustee restates its position as set out in the Trustee Brief and confines its submissions to address the Respondents' Position to assist this Honourable Court in determining whether the Impugned Transactions should be declared void as against the Trustee and whether the corporate veil should be pierced to give proper effect to such declaration.

PART II – ADDRESSING THE RESPONDENTS' POSITION

A. WEI was insolvent at the time of the Impugned Transactions

4. The test is whether WEI could meet its obligations as they became due.[1] WEI could not.

[1] BIA, s 2, definition of "insolvent person".

5. The Respondents claim that WEI was not insolvent because it had a history of tight cash flow, regularly paid creditors within 60–90 days and obtained waivers from lenders.[2] This conflates chronic liquidity strain with solvency. Being "tight on cash" does not equate to solvency – it is a warning sign. WEI could not meet its obligations as they became due and consequently voluntarily filed for creditor protection under the CCAA less than five months after the Impugned Transactions.

The CWB Letter

6. The Respondents also attempt to minimize the significance of the April 27, 2023 CWB Letter, suggesting it was merely a request for a repayment plan.[3] That is incorrect. The letter expressly advised WEI to "make arrangements to repay the Borrower's indebtedness to CWB in full by July 31, 2023" and required confirmation and supporting documentation of same by June 30, 2023. This was not a casual inquiry – it was a requirement to refinance CWB's indebtedness as a result of WEI's failure to adhere to its obligations under its credit facilities with CWB.

7. WEI clearly failed to comply with CWB's refinancing requirement and instead diverted funds to the Douglas Corporations for the benefit of Mr. Douglas mere days before CWB's deadline. Less than five months later, WEI sought protection under the CCAA. This sequence of events clearly confirms WEI was unable to meet its obligations and was insolvent at the time of the First and Second Impugned Transactions.

8. The Respondents' suggestion that Mr. Douglas was willing to invest funds in WEI to assist with the CWB loans is not evidence of solvency;[4] it is indicative of a liquidity crisis and WEI's

[2] Brief of the Respondents filed October 30, 2025 [**Respondents' Brief**], at para 10.
[3] Respondents' Brief, at para 24.
[4] Respondents' Brief, at para 34(b).

inability to meet its obligations in the ordinary course. If WEI had sufficient funds to meet its obligations, there would be no need for a director to inject personal capital to repay a secured creditor. Furthermore, the "term sheet" appended as Exhibited "**G**" to Mr. Douglas' Affidavit, is unsigned and undated, was never advanced and is irrelevant.

The Audit Waiver

9. In reference to the Audit Waiver, the Respondents allege that the Trustee misconstrues the facts by failing to mention that there were two emails from November 4, 2022, one at 2:23 PM and one at 12:33 PM.[5] The Respondents rely on the 12:33 PM email and assert that the Audit Waiver was granted.[6]

10. The Respondents fail to appreciate that the 12:33 PM email was retrieved from WEI's server, which operates on Mountain Standard Time.[7] The 2:33 PM email, received directly from Fiera, was sent from Toronto, Ontario, which is in Eastern Standard Time.[8] The two-hour discrepancy is explained by the time zone difference. This is further corroborated by the signature block of Nelson Penelas, which appears in both emails and includes a Toronto-based area code.

11. There was clearly only one waiver email that was recorded differently due to its geographic origin. The Respondents' attempt to rely on this discrepancy to undermine the Trustee's interpretation is unfounded and ignores the technical realities of email timestamping.

[5] Respondents' Brief, at para 19.
[6] *Ibid.*
[7] First Report, para 34(d).
[8] *Ibid.*

12. Fiera had advised the Trustee that it has no record of providing the Audit Waiver and confirms that it only waived the September 30 financial covenants.[9] It is therefore difficult if not impossible to reconcile how WEI came to possess a letter purporting to waive additional covenants that Fiera did not waive pursuant to the Original Waiver Email.

13. This inconsistency is particularly striking given that the Original Waiver Email (received directly from Fiera) expressly contradicts the contents of the purported Audit Waiver. Notably, if such a waiver had not been provided to the auditor, the year-end financial statements would have included a going concern note and all secured debt would have been classified as current.[10]

14. WEI's persistent operating losses, repeated covenant breaches, reliance on lender waivers, failure to meet CWB's July 31, 2023 repayment deadline and inability to make principal payments to Fiera collectively establish that WEI could not meet its liabilities as they became due and was insolvent at the time of the Impugned Transactions.

B. The Related Parties were <u>not</u> at arm's length with WEI at the time of the Impugned Transactions

15. Whether parties were dealing at arm's length is a question of fact.[11] The statutory test requires an assessment of whether (i) there was a common mind directing the bargaining; (ii) the parties acted in concert without separate interests; and (iii) one party exercised *de facto* control over the other.[12]

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[9] First Report, para 27.
[10] First Report, para 37.
[11] BIA, s 4(4).
[12] *Scott v Golden Oakes Enterprises Inc*, 2024 SCC 32, at para 127.

16. The Respondents rely on the Court of Appeal's decision in ***Piikani*** to argue that Mr. Douglas was dealing at arm's length with WEI, citing the presence of independent directors.[13] However, ***Piikani*** does not stand for the general proposition that directors are at arm's length simply because independent directors are present on the board.

17. Rather, the Court of Appeal in ***Piikani*** addressed a narrow exception: directors negotiating their own compensation may be considered arm's length if the corporation is represented by independent individuals:

> Section 102(6)(b) recognizes that when directors are negotiating their own compensation (or severance arrangements) their interests are recognizably adverse to those of the corporation. So long as the corporation is represented by independent individuals, the director would be dealing at arm's length in such negotiations.[14]

18. The Trustee does not take issue with whether Mr. Douglas was at arm's length during compensation negotiations. Those discussions, if they occurred, should have been formalized in a written agreement. Yet, neither the Trustee nor the Respondents have been able to locate any executed agreement requiring the payments made under the Impugned Transactions. This absence of documentation further distinguishes the case at bar from ***Piikani***, where the payments were made pursuant to executed, pre-existing agreements.[15]

19. The Respondents submit that the Trustee "admits" the Related Parties did not control WEI.[16] That is a mischaracterization. The Trustee's position is that the Related Parties did not exercise *de jure* control over WEI, but rather *de facto* control.[17]

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[13] Respondents' Brief, at para 30.
[14] *Piikani Energy Corporation (Re)*, 2013 ABCA 293 [***Piikani***], at para 35.
[15] *Piikani*, at paras 4 and 5.
[16] Respondents' Brief, at para 32.
[17] Brief of the Applicant filed September 2, 2025 [**Trustee's Brief**], paras 83-95.

20. The Respondents concede that Mr. Douglas maintained signing authority over WEI's accounts and was the primary point of contact with lenders, stating rhetorically, "who else were the lenders to speak to?".[18] This admission reinforces that Mr. Douglas was not a peripheral figure, he was the one directing the financial affairs of WEI. His central role in lender negotiations and operational oversight is not incidental; it is indicative of *de facto* control.

21. Mr. Douglas' control over WEI was further entrenched by his position as the *sole* director of each of the Debtors – wholly owned subsidiaries of WEI that operated as its revenue-generating arms.[19] WEI itself functioned as a centralized administrative entity, while the Debtors carried out the core business operations.[20] Mr. Douglas' exclusive authority over the entities responsible for generating WEI's income underscores his operational dominance and reinforces the Trustee's position that he exercised *de facto* control over WEI at the time of the Impugned Transactions.

22. The Respondents assert that Mr. Douglas was prepared to invest in WEI during the summer of 2023.[21] Despite this assertion, and with full knowledge of CWB's July 31 repayment deadline, WEI did not receive any capital infusion from Mr. Douglas.

23. Instead, WEI inexplicably made payments to the Douglas Corporations of funds that had been allegedly owing over the span of two years. These payments were made:

    (a) within one day of the demand for payment by Mr. Douglas in direct contrast to WEI's inability to meet CWB's request for repayment days later; and

[18] Respondents' Brief, at para 35 and 36.
[19] First Report, at para 64(b).
[20] *Ibid.*
[21] Respondents' Brief, at para 34(b).

(b) at a time of financial distress and in preference to Mr. Douglas, served Mr. Douglas' personal interests and were plainly contrary to WEI's own interests and the interests of its creditors.

24. Arm's length commercial dealings are wholly inconsistent with a situation in which a company, facing a liquidity crisis so severe that its director contemplated injecting personal capital, instead diverts funds to that same director. The timing, nature, and recipient of the payments demonstrate that Mr. Douglas was the controlling mind behind the transactions. These payments served his personal interests and were plainly contrary to the interests of WEI and its creditors.

25. Overall, the Impugned Transactions were not made in furtherance of WEI's interests – they served Mr. Douglas's personal interests at a time when WEI was in financial distress. Coupled with the Related Parties' 45.71% voting share of WEI,[22] Mr. Douglas' signing authority over WEI's accounts, his role as the primary point of contact with lenders and his position as the sole director of the Debtors (the entities generating WEI's revenue) the evidence points to a single conclusion: Mr. Douglas exercised *de facto* control over WEI. The factual test under subsection 4(4) of the BIA is therefore satisfied. These were not arm's length dealings; the Impugned Transactions were executed under the influence of a common mind.

C. The corporate veil should be pierced

26. At its core, this case raises a significant issue in Canadian insolvency law. If directors are permitted to extract funds from insolvent corporations through entities they solely own and control without formal approval, documentation or disclosure, and then shield themselves

[22] Trustee's First Report, at para 60.

from liability behind the corporate veil, the integrity of the federal insolvency regime is imperiled. To accept the Respondents' position would be to sanction a blueprint for abuse, setting a chilling precedent that invites directors to circumvent the priority scheme codified in the BIA and frustrate creditor recovery with impunity.

27. The Respondents' argument that the corporate veil cannot be pierced merely because Mr. Douglas was the sole shareholder and director of the Douglas Corporations misapprehends the applicable legal test and ignores the factual record.[23]

28. The law is clear: while corporations enjoy separate legal personality, courts will pierce the corporate veil where the corporate form is abused to perpetrate fraud or achieve an improper purpose.[24] The Trustee does not seek to pierce the veil on the basis of mere control, but on the basis of Mr. Douglas' improper use of the Douglas Corporations to extract value from WEI in preference to other creditors.[25]

29. The improper purpose is manifest. Mr. Douglas extracted over $1 million from WEI through entities he solely owned and controlled, at a time when WEI was in financial distress and facing a repayment deadline from CWB. Mr. Douglas now seeks to shield those funds from recovery by invoking the corporate veil. This is not a legitimate invocation of corporate separateness – it is a misuse of the corporate form to defeat the statutory scheme of the BIA.

30. The Respondents emphasize that WEI was a publicly traded company at the time of the Impugned Transactions, yet they simultaneously argue that the disclosure obligations imposed

[23] Respondents' Brief, at paras 26 to 28.
[24] *Driving Force Inc v I Spy-Eagle Eyes Safety Inc*, 2022 ABCA 25, at para 53.
[25] Trustee's Brief, paras 52 to 72.

by relevant corporate and securities laws were too cumbersome to follow.[26] They suggest that assembling the board to approve every aged payable and record minutes for each decision would have been impractical given the operational realities of WEI's business.[27]

31. That position, however, cannot justify the absence of documentation surrounding a $1 million immediate payment to a director at a time of financial distress. This was not a routine day-to-day transaction – it was a material payment to an insider, made in preference to other creditors and at a time when WEI was facing a repayment deadline from its secured lender. The absence of disclosure is not a procedural inconvenience, it is a substantive failure that undermines the credibility of the Respondents' position and raises serious concerns about the legitimacy of the Impugned Transactions.

32. The Respondents rely on the affidavit of Nikolaus Kiefer (the "**Kiefer Affidavit**") to support the legitimacy of the Impugned Transactions.[28] However, Mr. Kiefer was not the CFO of WEI at the time of the Impugned Transactions as he resigned from that role in March 2023.[29] The Kiefer Affidavit offers no executed agreements, board minutes or formal resolutions authorizing the Impugned Transactions to the Douglas Corporations.

33. Instead, the Kiefer Affidavit relies on general assertions about Mr. Douglas' character and historical business practices, none of which address the specific governance failures surrounding the Impugned Transactions.[30] The absence of contemporaneous documentation from the relevant period, coupled with the fact that the affiant was no longer in a decision-

[26] Respondents' Brief, at paras 40.
[27] *Ibid.*
[28] Affidavit of Nikolaus Kiefer sworn on October 28, 2025 [**Kiefer Affidavit**].
[29] Kiefer Affidavit, at para 3.
[30] Kiefer Affidavit, at paras 7 and 8.

making role at the time of the Impugned Transactions, undermines the probative value of the affidavit. The Kiefer Affidavit should be subject to significant scrutiny from this Court, and given minimal if any weight as evidence in these proceedings. Further, Mr. Kiefer is currently a colleague of Mr. Douglas at GIP, which calls into question the self-serving nature of its content.

34. Notably, no affidavit from an independent board member with knowledge of the alleged approval process has been proffered.

35. With respect to the documentation that is provided to assist this Honourable Court, the 2022 Information Circular expressly states that no external management contracts were in effect during the relevant period. That representation is irreconcilable with the Respondents' claim that the Douglas Corporations, as external entities, were owed compensation under such contracts. Further, the ESA relied upon to justify the $525,000 payment was unsigned. If no external contracts existed, there could be no legitimate basis for payments to external entities.

36. The Supreme Court of Canada has identified a non-exhaustive list of badges of fraud from which a court may infer an intent to defraud or delay creditors.[31] Those badges of fraud are undoubtedly present here:

(a) The Impugned Transactions were made to non-arm's length parties: the Douglas Corporations are entities solely owned and controlled by Mr. Douglas.

(b) WEI was facing actual liabilities, was insolvent and under pressure from secured lenders, including CWB and Fiera.

[31] *Aquino v Bondfield Construction*, 2024 SCC 31, at paras 44 and 45.

(c) The Impugned Transactions were self-serving, lacked any formal board approval, executed agreements or supporting documentation.

(d) The Impugned Transactions were made in secret, without disclosure to shareholders or creditors, despite WEI being a publicly traded company.

(e) The Impugned Transactions were executed with unusual haste. They were paid either on the day of or immediately after receiving the applicable invoice, even as 87% of WEI's trade payables remained outstanding.[32]

37. These badges of fraud reinforce the Trustee's position that the corporate form was abused to effect preferential payments. Absent veil piercing, Mr. Douglas will be permitted to shield the Impugned Transactions behind defunct or undercapitalized entities, frustrating creditor recovery and undermining the integrity of the bankruptcy process. Judicial intervention is not only warranted – it is necessary to preserve the integrity of the BIA.

38. Accordingly, the Trustee respectfully submits that the corporate veil should be pierced and Mr. Douglas should be held personally liable for the value of the Impugned Transactions. The Court, in its inherent jurisdiction, may opt to rule on this portion of relief being sought at the Application to be heard on November 3, 2025, or bifurcate the Application to have this specific issue adjudicated at a subsequent point in time. The Trustee defers to this Court on this discretionary matter.

PART III - CONCLUSION

39. The Impugned Transactions were executed at a time of financial distress, in preference to other creditors and without the safeguards required by law and corporate governance. Mr.

[32] First Report, at para 82(g).

Douglas' central role in WEI's operations, his control over the Debtors and his ownership of the Douglas Corporations establish *de facto* control and a common mind directing the bargaining.

40. The absence of executed agreements, formal board approval and disclosure combined with the timing, haste and self-serving nature of the payments engage multiple badges of fraud recognized by the Supreme Court of Canada.

41. To allow Mr. Douglas to shield himself from liability through defunct or undercapitalized entities would be to endorse a model of corporate conduct that invites abuse and erodes the integrity of the BIA. The corporate veil must not be permitted to operate as a barrier to accountability where it has been used to defeat the very purpose of federal legislation.

42. Accordingly, the Trustee respectfully submits that the Respondents' Position have been addressed and requests that this Court grant the relief requested by it, including declaring the Impugned Transactions void as against the Trustee and order each of the Related Parties to return the value of the Impugned Transactions to the estate of WEI, for the Trustee to distribute to the its creditors in accordance with their legal entitlements.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3rd DAY OF NOVEMBER, 2025.

Torys LLP
Counsel for the Trustee

TABLE OF AUTHORITIES