No. S-266288
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF WESTERN POTASH CORP., WESTERN POTASH HOLDINGS CORP. AND 0907414 B.C. LTD.

AND

WPC (JERSEY) LIMITED

PETITIONER

NOTICE OF APPLICATION

Name of Applicant:	FTI Consulting Canada Inc., in its capacity as Monitor (in such capacity, the "**Monitor**") of Western Potash Corp. ("**WPC**"), Western Potash Holdings Corp. ("**WPHC**"), and 0907414 B.C. Ltd. ("**090 Ltd.**", and collectively, the "**Company**")
To:	Service List, attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by the applicant to the presiding judge or associate judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia on the 31st day of August, 2026 at 10:00AM before Justice Stephens for the orders set out in Part 1 below.

The applicant estimates that the application will take 2.5 hours.

☒ This matter is within the jurisdiction of an associate judge. Justice Stephens is seized of this proceeding.

☐ This matter is not within the jurisdiction of an associate judge.

PART 1: ORDERS SOUGHT

1. The Monitor seeks an amended and restated initial order (the "**ARIO**") in the form attached hereto as **Schedule "B"** pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), that, among other things:

   (a) abridges the time for service of this Application and the supporting materials, validates service thereof, and dispenses with further service;

(b) extends the Stay Period[1] up to and including December 18, 2026;

(c) increases the quantum of the Administration Charge from $500,000 to $700,000, modifies the beneficiaries of the Administration Charge to remove counsel for the Company, and authorizes payment of the reasonable fees and expenses of counsel for the Company in an amount not to exceed $100,000 (the "**Company Counsel Fee Cap**");

(d) increases the maximum borrowings permitted under the DIP Facility from US$1,000,000 to US$6,000,000, and a corresponding increase to the DIP Charge; and

(e) authorizes payment of certain critical pre-filing amounts owed by the Company.

2. The Monitor further seeks an order (the "**SISP Order**") in the form attached hereto as **Schedule "C"** approving a sale and investment solicitation process (the "**SISP**") in respect of the Company to be conducted by the Monitor.

PART 2: FACTUAL BASIS[2]

1. The facts in support of this Application are set out in a more fulsome manner in the Affidavit #1 of Timothy Mister sworn August 20, 2026 (the "**First Mister Affidavit**"), the Pre-Filing Report of the Monitor dated August 20, 2026 (the "**Pre-Filing Report**"), and the First Report of the Monitor dated August 27, 2026 (the "**First Report**"). Below is a brief summary of the background to the commencement of these CCAA Proceedings and the facts in support of this Application.

The CCAA Proceedings

2. On August 21, 2026, on the application of Appian, the Honourable Justice Stephens granted the Initial Order under the CCAA in respect of the Company (the proceedings commenced pursuant to the Initial Order being the "**CCAA Proceedings**"). The Initial Order, among other things: (a) declared that the Company are companies to which the CCAA applies; (b) granted a stay of proceedings in favour of the Company until and including August 31, 2026 (the "**Stay Period**"); (c) appointed FTI Consulting Canada Inc. as the Monitor of the Company; (d) granted certain enhanced powers to the Monitor (which are set out in greater detail below); (e) authorized WPC to borrow under the DIP Facility pursuant to the terms of the DIP Term Sheet entered into between WPC, as borrower, WPHC and 090 Ltd., as guarantors, and Appian, as lender (in such capacity, the "**DIP Lender**"), up to a maximum amount of US$1,000,000; and (f) granted the following charges with priority over all encumbrances (other than those in favour of secured creditors that were not served with materials in support of the Initial Order in advance) over the Company's Property: (i) the Administration Charge in the amount of $500,000; and (ii) the DIP Charge in the amount of US$1,000,000 (plus fees, interest and expenses).

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[1] Capitalized terms used but not otherwise defined in this Application have the meanings given to them in the First Report.

[2] All references to currency in this Application are to Canadian dollars, unless otherwise noted.

<u>Relief Sought in the Proposed ARIO</u>

A. Extension of the Stay Period

3. The Stay Period will expire on August 31, 2026. The Monitor is seeking an extension of the Stay Period up to and including December 18, 2026.

4. During the proposed extension of the Stay Period, the Monitor will have an opportunity to conduct the SISP for the benefit of the Company and its stakeholders with the necessary breathing room afforded to the Company through the protections of the CCAA.

B. Increases to Authorized DIP Facility Borrowings and DIP Charge

5. The Initial Order approved DIP Facility advances to WPC pursuant to the DIP Term Sheet, subject to certain conditions and an initial borrowing limit of US$1,000,000 (or $1,400,000 CAD) before the Comeback Hearing.

6. The Monitor is now seeking to increase the maximum amount that can be borrowed under the DIP Facility to an aggregate amount of US$6,000,000, which is the maximum amount permitted by the DIP Term Sheet.

C. Amendments to Administration Charge

7. The Initial Order granted an Administration Charge of $500,000 over the Property for the benefit of the Monitor, counsel to the Monitor, and counsel to the Company.

8. The Monitor, as supported by the DIP Lender, is now seeking to modify the beneficiaries of the Administration Charge to remove counsel for the Company as a beneficiary. In lieu of inclusion in the Administration Charge, the Monitor and the DIP Lender propose that the Company's legal counsel be authorized to have their reasonable fees paid in an amount not to exceed the Company Counsel Fee Cap of $100,000. The proposed ARIO also directs legal counsel for the Company to submit their invoices to the Monitor on a weekly basis for review and approval.

9. In addition to the removal of Company counsel from the Administration Charge, the Monitor is seeking an increase to the Administration Charge from $500,000 to $700,000. The increased amount is necessary having regard to the scope of the restructuring proceedings and the anticipated professional fees that will be incurred in connection with the SISP.

D. Authority to Make Critical Pre-Filing Payments

10. The First Mister Affidavit set out that the Company is facing significant payment issues with the Ministry on account of WPC's non-payment of amounts owed to the Ministry under the Mineral Leases, and that the Company has no liquidity to make such payments. Annual payments due under the Mineral Leases total approximately $543,552. The Mineral Leases are at risk of cancellation if overdue payments are not made, with no guarantee that such Mineral Leases can be re-obtained on commercially comparable terms.

11. In light of the risk that the Mineral Leases may be cancelled, which may result in significant

impairment to the value of the Company and the Milestone Project and the prospects of a successful SISP, the Monitor seeks through the ARIO the continued authority to pay critical pre-filing amounts to the Ministry and other parties with respect to the Mineral Lease obligations, municipal taxes, and other amounts deemed as critical payments by the Monitor.

12. As reflected in the Cash Flow Projection, the Monitor has forecasted a payment of approximately $1,700,000 in respect of pre-filing amounts owed under the Mineral Leases, to other parties, and in respect of municipal taxes.

Relief Sought in the Proposed SISP Order

13. As outlined in the First Mister Affidavit, the purpose of these CCAA Proceedings is for the Monitor to conduct a value-maximizing SISP while the Company has the benefit of the protections of the CCAA. The Monitor agrees that conducting the proposed SISP will result in the best chance to maximize value for the Company and its stakeholders in the circumstances.

14. The SISP would be conducted by the Monitor, as an independent court officer, with the assistance of FTI Capital Advisors, and is intended to broadly market the Company's business and Property to the market and provide a structured and orderly process for interested parties to perform due diligence and submit offers for a broad range of potential transactions. The key features of the SISP are set out in greater detail in the First Report.

PART 3: LEGAL BASIS

15. The Monitor relies on the CCAA, the *Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court.

A. Stay Extension Should be Granted

16. Pursuant to s. 11.02(3) of the CCAA, the Court may extend the Stay Period for any period the Court considers necessary provided that: (a) circumstances exist that make the order appropriate; and (b) the applicant has acted and continues to act in good faith and with due diligence.

CCAA, s. 11.02(3)

17. In determining whether the appropriate circumstances exist to extend the stay, the Court should inquire whether the order sought advances the remedial purpose of the CCAA, which courts have held to include avoiding the social and economic losses resulting from liquidation of an insolvent company.

North American Tungsten Corporation Ltd. (Re), 2015 BCSC 1376 at para. 25, citing *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 70.

18. The continuation of the stay of proceedings will advance the remedial purpose of the CCAA, which is to facilitate the survival of going concerns and permit debtors to continue to carry on business and, where possible, avoid the social and economic costs of

liquidating their assets.

Century Services Inc. v. Canada (Attorney General), 2010 SCC 60 at para. 70., *Canada v. Canada North Group Inc.*, 2021 SCC 30 at para. 21.

19. A stay of proceedings helps achieve this purpose by preserving the status quo for the debtor company, facilitating the ongoing operations of the debtor company's business, preserving the value of the business, and providing the debtor company with the necessary time, flexibility, and "breathing room" to carry out a supervised restructuring or organised sale process.

Lehndorff General Partners Ltd., Re, (1993), 9 BLR (2d) 275, 17 CBR (3d) 24 (Ont. Gen. Div.) at paras. 5-7; *North American Tungsten Corporation Ltd. (Re)*, 2015 BCSC 1376 at para. 25; *Timminco Limited (Re)*, 2012 ONSC 2515 at para. 15.

20. The CCAA is a flexible instrument and debtor companies are entitled to seek protection in the context of a wide range of restructuring options.

Metcalfe & Mansfield Alternative Investments II Corp., (Re), 2008 ONCA 587 at para. 44; *Worldspan Marine Inc., Re*, 2011 BCSC 1758 at paras. 12-13.

21. The extension of the Stay Period is necessary and in the interests of stakeholders to provide a stable environment within which to conduct a value-maximizing SISP. Subject to approval of additional DIP Facility borrowings, the Company is forecast to have sufficient liquidity to fund its obligations during the requested extension to the Stay Period.

22. It is appropriate to extend the Stay Period because: (a) since the Initial Order was granted, the Monitor has acted and continues to act in good faith and with due diligence, and has taken substantial steps to advance the restructuring, including, among other things, executing the DIP Term Sheet, engaging with creditors, stakeholders and employees, and developing the proposed SISP in consultation with the DIP Lender; (b) there is a realistic prospect of a successful restructuring; (c) the Second Cash Flow Projection provides that the Company is forecast to have sufficient liquidity to continue operating during the requested extension of the Stay Period (subject to this Court authorizing the increased maximum borrowings under the DIP Facility to US$6 million); and (d) the Monitor and the DIP Lender support the extension of the Stay Period.

B. The DIP Facility and DIP Charge Should be Increased

23. The Initial Order limited the quantum of borrowing available under the DIP Facility to US$1,000,000 (or $1,400,000 CAD), being the amount required for the first 10 days of these CCAA Proceedings in accordance with s. 11.001 of the CCAA.

CCAA, s. 11.001.

24. As set out in the Second Cash Flow Projection, additional borrowings up to a principal amount of US$6,000,000 under the DIP Facility, being the maximum amount available

under the DIP Term Sheet, is required to fund the SISP and permit the Company to continue operating in the ordinary course through the proposed extension of the Stay Period.

25. Section 11.2(4) of the CCAA sets out factors to be considered in connection with a request to approve interim financing. These factors remain present in this case for the reasons established at the Initial Order hearing. In particular: (a) the Company has an urgent and immediate need for interim financing to preserve going-concern value; (b) alternative financing is not available on more favourable terms; (c) the terms of the DIP Facility, including the interest rate and priority of the DIP Charge, remain appropriate in the circumstances and are below the average rate of DIP facilities in the Canadian mining sector during the period between November 2023 and July 2026; and (d) based on the information available to the Monitor, no creditor would be materially prejudiced by the increases to the maximum borrowings permitted by the DIP Term Sheet and the corresponding increase to the DIP Charge.

CCAA, s. 11.2(4).

C. Administration Charge Should be Modified

26. The Monitor is seeking: (a) an increase to the Administration Charge from $500,000 to $700,000; (b) the removal of counsel for the Company as a beneficiary of the Administration Charge; and (c) the establishment of a Company Counsel Fee Cap in the amount of $100,000.

27. Among the factors to be considered in connection with the granting of the Administration Charge are: (a) the size and complexity of the businesses being restructured; (b) the proposed role of the beneficiaries of the charge; (c) whether there is an unwarranted duplication of roles; (d) whether the quantum of the proposed charge appears to be fair and reasonable; (e) the position of the secured creditors likely to be affected by the charge; and (f) the position of the Monitor.

Canwest Publishing Inc. (Re), 2010 ONSC 222 at para. 54.

28. Jurisdiction to grant the Administration Charge is set out in s. 11.52 of the CCAA, to secure the fees and expenses of, among others, the monitor, legal counsel to the monitor and the financial, legal and other experts engaged by the debtor company for the purpose of proceedings under the CCAA.

CCAA, s. 11.52; *Worldspan Marine Inc. (Re),* 2013 SCSC 1593, at para. 4.

29. The requested increase to the quantum of the Administration Charge is appropriate in this case in view of the increased activity anticipated in these proceedings as the SISP moves forward. The proposed increase to the Administration Charge directly affects Appian, as DIP Lender and pre-filing senior secured creditor, and Appian supports the increase.

30. The Administration Charge should no longer apply to the fees and expenses of counsel for the Company. As noted above, in lieu of inclusion in the Administration Charge, the

Monitor and the DIP Lender propose that the Company's legal counsel be authorized to have their reasonable fees paid in an amount not to exceed the Company Counsel Fee Cap of $100,000.

31. The purpose of an administration charge granted pursuant to s. 11.52 of the CCAA, has been described as "serv[ing] the purposes of the CCAA and facilitat[ing] the restructuring process by providing security for fees and expenses incurred by the Monitor in its oversight of the debtor, and by counsel retained by the Monitor and the debtor company to provide necessary assistance in the CCAA proceedings."

CCAA, s. 11.52; *Worldspan Marine Inc. (Re),* 2013 SCSC 1593, at para. 4.

32. The purpose is to *provide necessary assistance* in the CCAA proceedings. In a debtor-driven CCAA proceeding, the debtor's counsel advances the proceeding because the debtor remains in control of its assets and restructuring. In these circumstances, the scope of work reasonably required of the Company's legal counsel is significantly reduced. In addition, the Company retained its counsel only two days before the date of the Initial Order such that they possess no institutional knowledge that could be leveraged for the benefit of the Company's estate.

33. It is common in CCAA proceedings involving the expansion of the monitor's powers to exclude debtors' counsel from the Administration Charge.

See *Chesswood Group Limited et al.*, (November 8, 2024) Toronto, CV-24-00730212-00CL at para. 40 (Amended and Restated Initial Order); *Xiwang Iovate Holdings Company Limited et al.,* (November 28, 2025) Toronto, Court File No. BK-25-03268936-0031 at para. 43 (Amended and Restated Initial Order);

34. The Monitor also notes that this Court recently dismissed an application by a group of CCAA debtors who had sought an order approving an administration charge for legal counsel to such CCAA debtors in the amount of $175,000 in another creditor driven CCAA proceeding.

See *Minglian Holdings Ltd. And 0882892 B.C. Ltd.* (Vancouver Registry No. S-257237), Seventh Report of the Monitor at paras. 5 and 9.

35. In the context of this case, the enhanced powers granted to the Monitor under the Initial Order are extensive and effectively vest operational and decision-making authority in the Monitor to the exclusion of the Company and its directors and officers. Among other things, the Monitor has been granted the authority to:

(a) manage, operate, and carry on the business of the Company;

(b) execute documents in the name of the Company;

(c) enter into agreements and incur obligations in the ordinary course;

(d) engage, retain or terminate the services of any employees, consultants, agents or advisors as the Monitor deems necessary;

(e) receive and collect monies owing to the Company;

(f) control the Company's bank accounts; and

(g) take such other steps as may be necessary or desirable for the preservation and protection of the Company's business and assets, which enhanced powers are to be exercised to the exclusion of the Company and all other persons.

36. Given the scope of the Monitor's enhanced powers, the Monitor is effectively fulfilling the role that would ordinarily be performed by the Company's management and, to a significant extent, by the Company's legal counsel. The Monitor, with the assistance of its own legal counsel, is responsible for overseeing and directing all aspects of the CCAA Proceedings.

37. The Company has provided no evidence that any new participation, by them or their counsel, would be essential or even beneficial to the restructuring process. Therefore, the costs of such counsel being borne as a priority charge against the Company's limited assets is neither necessary nor appropriate. Rather, the Company Counsel Fee Cap ensures that the Company's counsel is reasonably compensated for the limited and defined role it may play in these CCAA Proceedings, while avoiding duplication of the work being performed by the Monitor and its counsel and preserving the Company's limited resources for the benefit of all stakeholders.

D. SISP Order Should be Granted

38. The CCAA is remedial in nature and confers broad powers on the court to facilitate a restructuring, including the power to approve a sale process in relation to a CCAA debtor's business and assets. Canadian courts have regularly granted orders approving sales processes in CCAA proceedings, recognizing that such approvals are consistent with the remedial nature of the CCAA, which confers broad powers to approve sales in relation to a CCAA debtor's business and assets either prior to or in the absence of a plan of arrangement and compromise.

Century Services, at para. 59.

39. In *Walter Energy*, this Court set out the following three factors for determining whether to approve a sales process, which are the appropriate factors to consider on this application: (a) the fairness, transparency, and integrity of the proposed process; (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the applicant debtors; and (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

Walter Energy Canada Holdings, Inc. (Re), 2016 BCSC 107 at paras. 20-21; *PCAS Patient Care Automation Services Inc. (Re)*, 2012 ONSC 2840

[*PCAS Patient Care*] at paras. 17-19.

40. While the decision to approve a particular form of sales process is distinct from the approval of a proposed sale, the reasonableness and adequacy of a proposed sales process may also be assessed with reference to the non-exhaustive factors set out in section 36 of the CCAA, including whether the process leading to the proposed sale or disposition was reasonable in the circumstances, whether the monitor approved the process leading to the proposed sale or disposition, and the extent to which creditors were consulted.

PCAS Patient Care at para. 17; CCAA, s. 36(3).

41. The court in *Nortel* identified several factors to be considered in determining whether to approve a sale process: (a) whether a sale transaction is warranted at this time; (b) whether the sale will benefit the whole economic community; (c) whether any of the debtors' creditors have a bona fide reason to object to a sale of the business; and (d) whether there is a better viable alternative.

Nortel Networks Corporation (Re), 2009 CanLII 39492 (Ont. S.C.J.) at paras. 47-49; CCAA, s. 11 and s. 36.

42. Having regard to the *Nortel* and *Walter Energy* factors, the SISP should be approved because:

(a) a sale or investment transaction is warranted and is the only viable option to maintain a going concern outcome. The Milestone Project continues to require significant capital investment to achieve completion and requires a well-capitalized third party to provide that investment;

(b) the whole economic community, including employees, potential customers, environmental authorities and potential suppliers would benefit from a potential of a going concern solution;

(c) the SISP will be conducted by the Monitor with the assistance of FTI Capital Advisors, who has extensive experience and familiarity with the Company's business and property;

(d) the DIP Lender has been consulted and involved in the development of the SISP and is supportive of its approval; and

(e) there is no better viable alternative.

43. The proposed SISP has been constructed with input and assistance from FTI Capital Advisors, who is very familiar with the Milestone Project and potentially interested parties. The proposed SISP provides a substantial period (approximately 14 weeks) for letters of intent to be obtained and for binding agreements to be entered into. The SISP also provides flexibility to the Monitor to amend deadlines, with the consent of the DIP Lender.

44. The SISP includes appropriate consultation rights for Appian as the DIP Lender and senior secured creditor, procedural safeguards with respect to the sharing of information related

to the SISP with Insiders and the DIP Lender, and protections to ensure that potential bidders do not receive information regarding the status of competing bids.

45. The SISP is a fair and transparent process that will provide the Company with an opportunity to attempt to maximize value for its assets in the interest of stakeholders.

Accordingly, the Monitor respectfully submits that the SISP ought to be approved and that granting the SISP Order is both appropriate and necessary in the circumstances. Any Successful Bid arising from the SISP will be subject to further application to this Court for approval under section 36 of the CCAA.

PART 4: MATERIAL TO BE RELIED ON

1. The First Mister Affidavit;
2. The Pre-Filing Report of the Monitor; and
3. The First Report of the Monitor, to be filed.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

(a) file an application response in Form 33,

(b) file the original of every affidavit, and of every other document, that:

  (i) you intend to refer to at the hearing of this application, and

  (ii) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

  (i) a copy of the filed application response;

  (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

  (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: August 27, 2026

Stikeman Elliott LLP
per: Philip

Signature of Maria Konyukhova / Philip Yang
☒ Lawyer for filing party(ies)