No. S-245481
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 *THE BUSINESS CORPORATIONS ACT*, S.B.C. 2002

AND

IN THE MATTER OF BC TREE FRUITS COOPERATIVE, BC TREE FRUITS INDUSTRIES LIMITED and GROWERS SUPPLY COMPANY LIMITED

PETITIONERS

APPLICATION RESPONSE

Application Response of: the voting members of the BC Tree Fruits Cooperative (collectively, the "**Current Members**").

THIS IS A RESPONSE TO the notice of application (the "**Application**") of Steve Day, in his capacity as the representative of the former voting members of the BC Tree Fruits Cooperative (the "**Former Members**"), filed on October 10, 2025.

The Current Members estimate that the application will take 2 hours.

Part 1: ORDERS CONSENTED TO

The Current Members consent to the granting of the orders set out in NONE of the paragraphs in Part 1 of the notice of application.

Part 2: ORDERS OPPOSED

The Current Members oppose the granting of the orders set out in ALL of the paragraphs in Part 1 of the notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Current Members take no position on the granting of the orders set out in NONE of the paragraphs in Part 1 of the notice of application.

Part 4: FACTUAL BASIS

A. Overview

1. In the Application, Former Members of the BC Tree Fruits Cooperative ("**BCTFC**") seek to prevent the Current Members from meeting and voting on how the BCTFC should govern its affairs.

2. The Former Members criticize a lack of consideration for their interests and assume the rationale for the vote, *before* the Current Members have been allowed to meet and discuss the issues. The Current Members have been seeking, and patiently awaiting, a members' meeting since before the start of these proceedings.

3. The Former Members' application for oppression relief under Section 156 of the *Cooperative Association Act*, SBC 1999, c 28 (the "***Act***") cannot succeed:

    (a) **The application is fundamentally misconceived** – the law in British Columbia establishes that for an oppression claimant to block an organization from holding a special meeting vote, the claimant must meet the test for an interlocutory injunction. The Former Members have not applied for an interlocutory injunction and would not meet the test for one.

    (b) In any event, the test for the oppression remedy has not been met:

        (i) **The Former Members' alleged expectations are unreasonable** – the Former Members left the BCTFC voluntarily, fully aware that the BCTFC's rules could change with a vote of the Current Members. The fact that the BCTFC rule in question has not previously changed is irrelevant. This Court has found there can be no reasonable expectation that an organization's past practices will not change.

(ii) **The Current Members do not propose to exercise their voting rights in an oppressive or unfairly prejudicial manner** – rather, the Current Members seek to hold a meeting to discuss and vote on a rule amendment. Even if oppression principles require Current Members to consider the expectations of Former Members, the law does not require them to reach any particular conclusion. The law protects the Current Members' right to exercise their business judgment within a range of reasonable outcomes.

4. Further, the Former Members' application for relief under Section 157 of the *Act* cannot succeed. There is no risk of the BCTFC failing to comply with the *Act* as alleged by the Former Members. The section of the *Act* raised by the Former Members for this argument is not applicable to CCAA proceedings, and the Current Members' proposed meeting is not otherwise improper under the *Act*.

5. Finally, the Former Members' argument under Section 11 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("***CCAA***") is a red herring. The Former Members seek to stretch this Court's Section 11 jurisdiction far outside of its intended purpose and gain rights they never had – control over the BCTFC rules. In any event, the Former Members are not "creditors" of the BCTFC as they allege, and a *CCAA* stay is only a crystallization of creditor rights, not corporate procedures.

B. The CCAA Proceedings

6. These *CCAA* proceedings commenced pursuant to an initial order of this Court pronounced on August 13, 2024.

Initial order entered August 13, 2024

7. Contrary to allegations at paragraph 21 of the Application, the BCTFC clearly recognized the departure of Former Members from the cooperative as a contributing factor to the insolvency. The BCTFC's affidavit in support of the initial *CCAA* order states:

> 5. The Petitioners are currently in the midst of a liquidity crisis that has been building for many years. There are many factors that have led to this crisis, including […] a reduction in contracted BCTFC growers/members […].
>
> First Affidavit of Douglas Pankiw filed August 12, 2024 ("**Pankiw Affidavit #1")**, para 5

8. The Current Members believe the departure of Former Members from the BCTFC was a "significant factor" in the insolvency. In any event, the success of the Current Members' arguments on this Application does not depend on establishing that the Former Members were a contributing cause to the insolvency.

Fourth Affidavit of Amarjit Singh Lalli filed July 15, 2025 ("**Lalli Affidavit #4**"), para 19

9. Over the past 12 months, substantially all of the BCTFC's property has been sold, and these *CCAA* proceedings are near an end. The primary remaining issue is the distribution of approximately $12-15M of surplus BCTFC funds.

Fourteenth Report of the Monitor filed August 25, 2025, para 9.4

C. The BCTFC Rules

10. The BCTFC has governing rules established under the *Act* (the "**Rules**").

11. Currently, Rule 125 provides for a distribution of surplus funds to both Current Members and Former Members, based on the volumes of fruit that each grower provided to the BCTFC in the previous six years.

Pankiw Affidavit #1, Exhibit D, pg 66

12. The Rules (and Section 68 of the *Act*) also provide that they can be amended by the Current Members. An amendment requires a special resolution, passed by a 2/3 majority of the Current Members at either an annual general meeting ("**AGM**") or a special meeting. Current Members have the sole power to requisition a special meeting; Former Members have no such authority. The Former Members are not entitled to vote under the Rules or the *Act*.

Lalli Affidavit #4, para 11

Act, Section 68

13. Rule 17(1) states "[w]hen a member withdraws from membership or a membership is terminated or ceases for any reason, all rights and privileges attached to membership cease" (except for requiring the BCTFC to redeem the Former Members' membership share).

Pankiw Affidavit #1, Exhibit D, pg 47

14. While it is true that Rule 125 has remained unchanged for at least the previous six years (the period when any Former Members who may be entitled to surplus funds under Rule 125 would have left BCTFC), the procedures to amend the Rules, and the fact that Former Members cannot vote on such amendments, have also remained unchanged.

Lalli Affidavit #4, Exhibit A

Pankiw Affidavit #1, Exhibit D

D. <u>The Current Members' Requisition</u>

15. The Current Members have been stayed from holding an AGM or a special meeting since before the commencement of these *CCAA* proceedings:

    (a) the Current Members requested a special meeting by way of a requisition dated August 3, 2024, which was stayed by order of this Court in the *CCAA* proceedings; and

    (b) the AGM scheduled to be held on November 21, 2024, was postponed by consecutive orders of this Court in the *CCAA* proceedings and is currently stayed until at least November 28, 2025.

Lalli Affidavit #4, para 12

16. Despite this, the Current Members have continued to pursue holding an AGM during these *CCAA* proceedings to meet, confer, and exercise their voting rights, particularly given the expected distribution of surplus funds.

Lalli Affidavit #4, para 13

17. Given the lack of an AGM, the Current Members requisitioned a special meeting (the "**Special Meeting**") by way of a requisition dated July 9, 2025 (the "**Members' Requisition**").

Lalli Affidavit #4, para 17

18. The Members' Requisition states "the object of the Special Meeting is to consider, and if sought fit, to pass" a special resolution to amend Rule 125 (the "**Special Resolution**"). The

proposed amendment would limit the distribution of any surplus BCTFC funds to only Current Members.

Lalli Affidavit #4, Exhibit C, pg 47

19. The Special Meeting was stayed by this Court on the application of the receiver (then monitor), Alvarez & Marsal Canada Inc. (the "**Receiver**"), so that Former Members could have the opportunity to retain counsel. The Receiver agreed the Special Meeting meets the required criteria under the *Act* and the Rules.

Order made after application (SGM deferral) entered July 31, 2025

Supplemental Report to the Thirteenth Report of the Monitor filed July 14, 2025, paras 2.5 and 2.10

Receivership order entered August 27, 2025

E. <u>The Oppression Application</u>

20. The Former Members bring this Application under Sections 156 and 157 of the *Act*, seeking orders:

(a) prohibiting the BCTFC from holding the Special Meeting; and

(b) directing the Receiver to distribute any BCTFC surplus funds in accordance with the current drafting of Rule 125.

21. The Former Members have not applied for an injunction.

Part 5: LEGAL BASIS

22. The Application cannot succeed on the basis of alleged oppression under Section 156 of the *Act* because:

(a) the Application is fundamentally misconceived and does not properly seek interlocutory injunctive relief; and

(b) in any event, the two-part test for oppression has not been met.

23. Further, there is no basis to find that the BCTFC has (or is likely to) contravene the *Act* or the Rules, as contemplated by Section 157 of the *Act*.

24. Finally, relief under Section 11 of the *CCAA* is not appropriate or applicable in these circumstances because:

(a) the Former Members are not "creditors";

(b) a *CCAA* stay does not preclude corporate actions;

(c) the relief sought by the Former Members is not within the purpose of a *CCAA* restructuring; and

(d) there is no legal foundation to support the proposed permanent injunction.

A. <u>The Application is fundamentally misconceived</u>

i. The Former Members have not properly sought an interlocutory injunction

25. Where an oppression claimant seeks to block the holding of a special meeting, this Court has held that the claimant must meet the three-part test for granting an interlocutory injunction established in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] S.C.R. 311.

> *Hardy v. Whistler Film Festival Society*, 2024 BCSC 990 at paras 1-3 and 38
>
> *Shariff v. VI Fitness Centres Inc*., 2016 BCSC 680 at paras 1-2 and 35-36

26. The *RJR-MacDonald* test asks:

(a) is there a serious question to be tried;

(b) will the applicant suffer irreparable harm if the injunction is refused; and

(c) who will suffer the greater inconvenience from the granting or refusal of the remedy?

> *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] S.C.R. 311 at para 334

27. There are logical reasons for requiring an oppression claimant to seek an interlocutory injunction in such cases:

    (a) the meeting itself is not *per se* oppressive. It is lawfully called, and the special business is properly before the meeting;

    (b) the outcome of the meeting has yet to be determined. It is not a foregone conclusion that a resolution will be passed. Nor can it be assumed that it will be passed without having appropriate regard to the required interests. One cannot properly assess whether an act that is lawful is carried out in manner that is oppressive if the act has not yet occurred; and

    (c) in such circumstances, this Court should not take the extraordinary step of enjoining a meeting and preventing *any* decision from being made, without first considering whether the high threshold for granting an injunction, including the risk of irreparable harm, has been demonstrated.

28. In this case, the Former Members seek to prevent Current Members from having a forum where, as stated in the Members' Requisition, they can "consider" the proposed amendment to Rule 125. The Current Members' conduct cannot be properly assessed until that meeting has occurred. This issue is amplified by the fact that Current Members have been denied any form of members' meeting since before the start of these CCAA proceedings.

29. The extraordinary relief sought by the Former Members requires an interlocutory injunction under the *RJR-MacDonald* test, and the Former Members have failed to seek one. The Application should be denied on this basis alone.

ii. The Former Members would not meet the test for an interlocutory injunction

30. Even if the Former Members had properly sought an interlocutory injunction, they cannot meet the requirements of the *RJR-MacDonald* test, and the injunction ought to be denied. Among other factors:

    (a) there is no risk of irreparable harm; this case is purely about claims to economic entitlements which will not be lost if the meeting is allowed to proceed. If the

Special Meeting proceeds, the Special Resolution passes, and it is subsequently challenged as oppressive on the basis of the full record from the meeting, any potential economic harm to the Former Members can be remedied by withholding a distribution of BCTFC's surplus funds, or by means of appropriate reserves pending resolution of the oppression challenge; and

(b) the balance of convenience favours the Current Members – an interlocutory injunction would prevent Current Members from ever having the opportunity to formally and collectively consider the interests of Former Members before voting on whether to amend Rule 125.

RJR-MacDonald Inc. v. Canada (Attorney General), [1994] S.C.R. 311 at para 334

31. This Court has denied interlocutory injunctions where an oppression claimant seeks to prevent a special meeting on the basis that:

(a) the Court has broad remedial powers in the circumstances; and

(b) to the extent the claimant may be able to prove the result of the meeting was prejudicial, the Court could craft the appropriate remedy.

Shariff v. VI Fitness Centres Inc., 2016 BCSC 680 at paras 56-57

B. <u>In any event, there is no oppression</u>

32. Even if this Court determines that the Applicants' failure to seek or to satisfy the test for an injunction is not fatal to this Applicant, the test for oppression has not been met.

33. The Current Members agree the proper test for oppression under Section 156 of the *Act* is:

(a) does the evidence support the reasonable expectation asserted by the claimant; and

(b) does the evidence establish that the reasonable expectation was violated by conduct falling within the terms "oppression", "unfair prejudice" or "unfair disregard" of a relevant interest?

BCE Inc v. 1976 Debentureholders, 2008 SCC 69 at para 68

Potter v. Vancouver East Cooperative Housing Association, 2019 BCSC 871 at para 93

i. The Former Members assert an unreasonable expectation

34. It is unreasonable for a party to expect that rules which may be amended will not change, particularly where the party has voluntarily surrendered their vote.

35. The starting point for determining the content of "reasonable expectations" in the oppression context is the legal framework and organizational structure surrounding the expectations.

Safarik v. Ocean Fisheries Ltd., 1995 CanLII 6269 (BCCA) at para 15

Hui v. Hoa, 2015 BCCA 128 at para 51

36. The British Columbia Court of Appeal has found that where a shareholder voluntarily surrendered her voting control in a company, took no steps to legally protect her interests, and then claimed oppression for the loss of her company income:

(a) "her expectations of continued income from the company were no longer anchored to the corporate structure"; and

(b) the new controlling shareholder could terminate the income stream without violating any reasonable expectations, as her expectations were no longer "reflected by corporate reality".

Hui v. Hoa, 2015 BCCA 128 at paras 51-53

37. Further, this Court has stated that "[w]hile past practice may create reasonable expectations, practices and expectations can change over time and there can be no reasonable expectation that there will not be a change in past practice […]. The expectations that count are those that are reasonable and which are in existence at the time of the challenged decision".

Boffo Family Holdings Ltd. v. Garden Construction Ltd., 2011 BCSC 1246 at para 112

38. Even if Rule 125 entitlements to Former Members are viewed as contractual entitlements as alleged at paragraph 36 of the Application, the *full* terms of the contract are that it may be amended. "[T]he contractual force of conduct permitted by a company's articles of association cannot be ignored when determining if conduct is oppressive".

Walker v. Betts, 2006 BCSC 128 at para 81

39. In the Application, Former Members ignore that Rule 125 may be amended, and instead argue their expectations regarding Rule 125 are reasonable due to:

(a) the fact that Rule 125 has not changed since 2008; and

(b) a broad suggestion that the "nature" of the BCTFC is "premised on mutual understanding and respect".

Application, paras 46-52

40. These arguments must fail:

(a) the proper starting point for the analysis is the legal framework of the BCTFC, which permits amendments to Rule 125, but gives the Former Members no vote on amendments;

(b) this Court stated it is unreasonable to expect that past practices will not change; and

(c) the Former Members' optimistic picture of the BCTFC is undermined by the reality of an organization afflicted by serious longstanding discord between Current Members and Former Members. The BCTFC's own evidence is that in the years leading up to the insolvency, significant discord over BCTFC issues led to "an increase in growers electing to resign their membership and/or send their fruit to competitors".

Safarik v. Ocean Fisheries Ltd., 1995 CanLII 6269 (BCCA) at para 15

Hui v. Hoa, 2015 BCCA 128 at para 51

Boffo Family Holdings Ltd. v. Garden Construction Ltd., 2011 BCSC 1246 at para 112

Pankiw Affidavit #2, para 7

41. The Former Members left the BCTFC voluntarily over the past six years and forfeited their vote on BCTFC issues, knowing the Rules could change, but taking no steps to protect their interests before leaving. They did so while in some level of conflict with the Current Members. In these circumstances, the Former Members cannot reasonably assert an expectation that Rule 125 would not ever change after their departure.

ii. There is no oppressive or unfairly prejudicial conduct

42. Even if the Former Members do have a reasonable expectation that Rule 125 will not change, the Current Members do not propose to improperly violate those expectations with oppressive or unfairly prejudicial conduct.

43. Where a controlling or majority party is required to consider another party's reasonable expectations when exercising its powers, the decision makers are not required to reach any particular outcome. They must have "appropriate regard" for minority interests, but minority interests are not a veto power.

BCE Inc v. 1976 Debentureholders, 2008 SCC 69 at paras 102-104

Goetz Investments Inc. v. Partners in Motion Pictures Inc., 2015 BCSC 547 at paras 68-69

44. If a "decision is found to have been within the range of reasonable choices [that] could have [been] made in weighing conflicting interests, the court will not go on to determine whether [the] decision was the perfect one".

BCE Inc v. 1976 Debentureholders, 2008 SCC 69 at para 112

45. The Current Members do not propose to amend Rule 125 without considering the interests of Former Members. Rather, the Current Members have requisitioned the Special Meeting with the express purpose to "consider" the amendment before voting, and to pass the amendment if deemed fit. Until now, the Current Members have not had the forum to hold this discussion.

46. The significance of various factors contributing to the BCTFC's insolvency can be debated; however, both the BCTFC and Current Members have deposed that the departure of Former Members was a factor to at least some extent.

47. Given this fact (and other facts or rationales which may be raised or debated at the Special Meeting), it is possible that after fairly considering all required interests, an amendment to Rule 125 is within the range of reasonable outcomes.

48. To find that an amendment to Rule 125 is oppressive or unfairly prejudicial *before* the Current Members have had the opportunity to consider and vote on the amendment would be giving the Former Members the veto power they clearly do not have.

C. The BCTFC is not in contravention of the *Act* or the Rules

49. There is no basis to the argument that the BCTFC is (or is likely to be) in contravention of the *Act* or the Rules. As such, any relief pursuant to Section 157 of the *Act* is unwarranted.

50. The Former Members argue the proposed Special Resolution would contravene Section 194.24 of the *Act*. This is false:

(a) Section 194.24 is part of a detailed scheme for winding up a cooperative in a liquidation under the *Act*. None of this scheme is applicable to a *CCAA*; and

(b) even if Section 194.24 of the Act does apply to the Special Resolution (which is firmly denied), that section restricts a cooperative from "carry[ing] on its business", not from exercising its governance powers.

Act, Sections 194.1 to 194.39

51. The Former Members also argue the *Act* and the Rules require the BCTFC to refuse to call the Special Meeting because the meeting is requisitioned for an alleged improper purpose. This is false:

(a) there are no grounds for the BCTFC to refuse to call the meeting. The Special Meeting was called for the legitimate purpose of voting on a proposed amendment to the Rules; and

(b) the Receiver agreed in its application to temporarily stay the Special Meeting that the meeting meets the required criteria under the *Act* and the Rules.

Act, Section 151

Pankiw Affidavit #1, Exhibit D, pg 52

D. Relief under Section 11 of the *CCAA* is not appropriate

52. The Former Members seek to use Section 11 of the *CCAA* beyond its scope, to gain rights they do not otherwise have – a vote on the BCTFC Rules or the ability to preclude the Current Members from exercising their votes. This relief should be denied.

i. The Former Members are not creditors

53. As a preliminary issue, the Former Members are not "creditors". As such, they do not earn the *CCAA* benefits of the *pari passu* principle, nor do they have a creditor claim that "crystallized" on the filing date, as suggested at paragraphs 69-70 of the Application.

54. Equity and debt claims are treated differently in insolvency proceedings, as "shareholders have no economic interest in an insolvent enterprise". Courts will look to statutory definitions and the "substance of the relationship" to determine the character of a particular legal relationship.

Bul River Mineral Corporation (Re), 2014 BCSC 1732 at paras 65-71, and 82

55. Pursuant to Section 2(1) of the *CCAA*, an "equity claim" means a claim in respect of an "equity interest" (meaning a share in the company).

CCAA, Section 2(1)

56. Equity "is comprised of the corporation's total assets unencumbered by debt or other liabilities. It is the residual economic interest in the corporation's assets, after all outstanding debts have been satisfied".

All Canadian Investment Corporation (Re), 2019 BCSC 1488 at para 64

57. The Former Members' interest in the BCTFC surplus funds derives only from the Former Members' former annual fruit contributions as shareholding co-op members. Further, the

Former Members received no guaranteed or promised returns (akin to a loan) when contributing their fruit. They only received the *potential* share in a percentage of remaining assets (alongside Current Members), if those assets were to exist upon a winding up and all creditors are paid in full.

58. This clear distinction between creditors and the Former Members as equity holders is consistent with how these *CCAA* proceedings have unfolded. The Former Members:

(a) had no claim that could be crystallized against BCTFC at the time of the CCAA filing;

(b) were not included in the *CCAA* claims process; and

(c) only gained an interest in BCTFC's surplus funds after its decision to permanently cease operations and all creditors were paid in full.

59. Critically, the Former Members' own Application admits at paragraph 10(b) that Rule 125 provides for a stake "**in the Cooperative's equity**" [emphasis added].

60. Accordingly, the Former Members' *CCAA* arguments must be viewed through the lens that Former Members are not creditors and do not have the benefit of *CCAA* creditor rights and protections, including the *pari passu* principle. Rather, the Former Members' interests are internal to the BCTFC, derive solely from their former status as "equity" holders in the BCTFC, and are subject to valid BCTFC corporate actions. Indeed, the Former Members have not pointed to any case law in which the *pari passu* principle was held to apply among the equity holders (or the current and former equity holders) of a debtor in *CCAA* proceedings.

ii. The CCAA does not preclude corporate actions

61. A *CCAA* stay of proceedings is designed to protect a debtor from external actions, not to restrict the debtor from taking actions on its own accord. A debtor's actions are subject only to restrictions placed upon it by court order and the supervision of the court generally.

> [I]t is clear from [a] review of section 11.02(1) of the *CCAA* and the references to the underlying purpose of the Act and the Stay, that the standard Stay Order is intended to prevent other entities from exercising

> rights and remedies against the company in question but does not prevent the company from taking action on its own behalf […]
>
> *Communications, Energy & Paperworkers' Union of Canada v. Global Television*, 2010 FC 988 at para 62

62. Specifically, the Ontario Court of Appeal has confirmed that Section 11 of the *CCAA* does not override corporate organizational law. In that case, the Court of Appeal overturned a removal of directors ordered under Section 11 of the *CCAA* amidst oppression allegations because the action of removing directors fell outside of the restructuring process. The Court found that:

(a) corporate activities which take place during a restructuring are governed by the applicable corporate law;

(b) there may be situations where a court could remove a director on grounds of oppression; however, it would do so pursuant to the oppression provisions in the relevant corporate act; and

(c) because the corporate statute in question already provided for the removal of directors (including by way of the oppression remedy), the court was not entitled to supplant that process through the exercise of its Section 11 discretion.

> *Stelco Inc. (Bankruptcy), Re*, 2005 CanLII 8671 (ON CA) at paras 39, 43-44, and 47-48

63. This case is directly analogous to the BCTFC proceedings. The Former Members are asking this Court to exercise *CCAA* Section 11 discretion to directly override the proper process under the *Act* for considering and addressing potentially oppressive conduct.

64. While a court may sometimes use Section 11 discretion under the *CCAA* to postpone certain corporate meetings (as it did for the various Current Members' requested meetings in this case), this relief is granted on the basis that a meeting would distract the debtors during the restructuring.

> *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ON SC) at paras 53-54

65. This concern is no longer applicable. The *CCAA* proceedings are effectively complete and the Current Members seek to exercise corporate rights that are unattached to the restructuring proceedings. Furthermore, the order currently sought by the Former Members is not procedural in nature (as it was for the requested meetings). Rather it is a substantive order under the *Act*, similar to that sought in *Stelco,* and Section 11 of the *CCAA* is not the appropriate avenue for such relief.

iii. The discretionary relief sought is outside the purpose of the CCAA

66. Even if Section 11 of the *CCAA* can be used to override corporate organizational law in some circumstances—such as postponing a corporate meeting to allow the debtor to focus on restructuring—the discretion afforded by Section 11 is not unlimited. Among other factors, it cannot be used where there is no restructuring purpose to anchor the discretion.

67. At paragraphs 66-68 of the Application, the Former Members claim the only requirement for use of Section 11 is that it be "appropriate in the circumstances." This is incorrect. An order under the CCAA is not "appropriate" simply because someone is asking for such relief, or even because that person believes that a particular outcome is unfair.

68. The exercise of Section 11 discretion is bounded by the nature of the *CCAA* itself. What is "appropriate" must be assessed according to whether the requested order would "further the remedial objectives of the *CCAA* and be guided by the baseline considerations of appropriateness, good faith, and due diligence."

> *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para 59

69. "The question is whether the order [under Section 11] will usefully further efforts to achieve the remedial purpose of the CCAA — avoiding the social and economic losses resulting from liquidation of an insolvent company".

> *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para 70

70. Whether an exercise of discretion under the *CCAA* is "appropriate" requires the Court to consider whether the discretion has been exercised "in accordance with the CCAA's objectives as an insolvency statute" [emphasis added]. These objectives include "providing

for timely, efficient and impartial resolution of a debtor's insolvency; preserving and maximizing the value of a debtor's assets; ensuring fair and equitable treatment of the claims against a debtor; protecting the public interest; and, in the context of a commercial insolvency, balancing the costs and benefits of restructuring or liquidating the company".

> *9354-9186 Québec inc. v. Callidus Capital Corp.,* 2020 SCC 10 at paras 40 and 74

71. The Former Members' Application does not advance these purposes – the insolvency is effectively resolved, there will not be a restructuring of the BCTFC, and a liquidation is taking place.

72. Whether the Special Meeting proceeds and whether the Current Members are acting oppressively if they amend the Rules (part of the constating documents of the BCTFC) at that meeting is a purely internal corporate issue that is entirely unrelated to any restructuring objectives. The fact that the court postponed the holding of the Special Meeting in order to facilitate the restructuring does not create the required nexus with the restructuring that would be necessary to ground this Court's jurisdiction to preclude the Special Meeting from ever taking place.

73. There is no "insolvency purpose" to be served such that intervening in the dispute between Current Members and Former Members can be supported through an exercise of this court's jurisdiction under Section 11. Now that the restructuring is complete and the reasons for postponing the Special Meeting no longer exist, the dispute should be resolved in accordance with the *Act*, not under the *CCAA*.

iv. A permanent injunction should be denied

74. The Former Members also seek a permanent injunction to prevent the BCTFC from calling the Special Meeting under Section 11 of the *CCAA,* and/or under this Court's inherent jurisdiction. There is no legal basis to support using a permanent injunction in this fashion.

75. The Former Members have not met the test for a permanent injunction under this Court's inherent jurisdiction:

(a) the Former Members have not established their legal rights – rather, they ask this Court to make a final oppression finding on an incomplete record, before the

Current Members can fulfill their duties and give appropriate regard to Former Member interests at the Special Meeting (which could result in a range of reasonable outcomes);

(b) there is already an available statutory remedy – the oppression remedy is a well-defined, flexible remedy designed precisely to assess the complaint brought by the Former Members, and address it on a *remedial* basis if required; and

(c) permanent injunctive relief is not appropriate or required – as discussed above with respect to an interlocutory injunction, there is no risk of irreparable harm. Any risk to the Former Members can be mitigated, including by holding appropriate reserves from any distribution of surplus funds to the Current Members. It is the Current Members who risk not being able to properly exercise their rights at all.

Vancouver Coastal Health Authority v. Adamson, 2020 BCCA 145 at para 34

Vancouver Coastal Health Authority at para 36

76. Critically, this Court has denied granting a permanent injunction in *CCAA* proceedings where it would effectively allow the applicant to "unilaterally and prospectively vary the terms of a contract to which it is a party".

Re, Doman Industries Ltd. (Trustee of), 2003 BCSC 376 at para 76

77. This is exactly what the Former Members are seeking to do in this case. Former Members seek to unilaterally vary the terms of the Rules by giving themselves power over a Special Meeting where they have no standing.

Part 6: MATERIAL RELIED ON

1. First Affidavit of Douglas Pankiw filed August 12, 2024;

2. Fourth Affidavit of Amarjit Singh Lalli filed July 15, 2025;

3. Supplemental Report to the Thirteenth Report of the Monitor filed July 14, 2025

4. Fourteenth Report of the Monitor filed August 25, 2025;

5. Initial Order entered August 13, 2024;

6. Order made after application (SGM deferral) entered July 31, 2025;

7. Receivership order entered August 27, 2025; and

8. Such further and other material as counsel may advise and this Court may permit.

☒ The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

☐ The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent's ADDRESS FOR SERVICE is: [insert address]

Dated: November 12, 2025

Mary Buttery, K.C. / Christian Garton
Counsel for the Current Members