



SUPERIOR COURT OF JUSTICE

**ENDORSEMENT**

COURT FILE NO.: CV-22-00691990-00CL DATE: January 28, 2025

NO. ON LIST: 3

TITLE OF PROCEEDING: 1000156489 ONTARIO INC.

BEFORE: **JUSTICE J. DIETRICH**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

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**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info

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**ENDORSEMENT OF JUSTICE J. DIETRICH:**

[1] Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor (the “Monitor”) of 1000156489 Ontario Inc. (f/k/a DCL Corporation) (the “Applicant”) seeks two orders.

[2] First, an order is sought extending the stay of proceedings until and including August 29, 2025.

[3] Second, an order is sought appointing Ursel Phillips Fellows Hopkinson LLP (“Ursel Phillips”) as representative counsel (“Representative Counsel”) for all members of both the Hourly DB Plan and the Salaried DB Plan (save and except those that opt-out of such representation) (the “Represented Parties”) for purposes of representing the Represented Parties’ rights in any entitlement to surplus under the Hourly DB Plan and the Salaried DB Plan (the “Representative Counsel Order”).

[4] Terms used herein and not otherwise defined have the meaning provided to them in the Ninth Report of the Monitor dated January 21, 2025 (the “Ninth Report”) or the Factum of the Monitor filed on this motion.

[5] No opposition was raised with respect to the relief sought by the Monitor.

[6] The Applicant and its affiliated Chapter 11 Debtors underwent a sale process in spring 2023 which cumulated in a going-concern sale of substantially all of the business and assets of the Applicant and the Chapter 11 Debtors. The Applicant no longer has any business, operations, or employees. On May 8, 2023, this Court granted the Monitor the expanded powers necessary to conduct an orderly wind-down of the Applicant. Currently, the Stay Period expires on January 31, 2025.

[7] The Monitor remains engaged with the following activities in relation to the wind-down of the Applicant: (i) ongoing discussions to resolve one outstanding claim filed against the Applicant pursuant to the claims procedure established in accordance with this Court’s Order of June 20, 2023; (ii) working with the Applicant to pursue a potential recovery in respect of the surplus balances remaining after the wind-down of certain of the registered pension plans – the Hourly DB Plan and the Salaried DB Plan – for which the Applicant is sponsor; and (iii) administering the USD\$750,000 CCAA Cash Pool. A stay extension is sought to permit the Monitor to continue these activities in an orderly manner.

[8] The Monitor also seeks the Representative Counsel Order to facilitate and streamline negotiations with respect to entitlement to the surplus balances in the Hourly DB Plan and Salaried DB Plan.

[9] In this respect, the Applicant is the sponsor of certain pension plans that were not assumed as part of the going concern transaction that was approved in 2023. On October 18, 2023, Wind-Up Orders were issued by the Financial Services Regulatory Authority of Ontario in respect of the Hourly DB Plan and Salaried DB Plan, effective April 14, 2023. The Monitor understands that both the Hourly DB Plan and Salaried DB Plan liabilities have been paid out or secured via a purchase of annuities. As a result, there is a crystalized surplus of approximately \$1.8 million in the Hourly DB Plan and approximately \$2.6 million in the Salaried DB Plan.

[10] It is the current intention of the Monitor to bring a motion requesting orders and/or declarations from the Court regarding surplus entitlement in the Hourly DB Plan and Salaried DB Plan. The Monitor is seeking the Representative Counsel Order to appoint Ursel Phillips as Representative Counsel for both the members of the Hourly DB Plan and members of the Salaried DB Plan for purposes of representing the members of those plans in any such motion and in any negotiations regarding surplus entitlement in order to achieve the members’ consent to such motion, or if no agreement can be reached to represent those persons at a hearing in respect of the matter.

[11] Section 11 of the CCAA confers broad jurisdiction on the Court to appoint representative counsel for vulnerable stakeholder groups. Representative Counsel should be appointed to enable vulnerable stakeholders (in this case, pension plan members) to meaningfully participate in CCAA proceedings that directly affect them: see *Nortel Networks Corporation (Re)* (2009), 55 C.B.R. (5th) 114 (Ont. S.C.) at paras. 13-16.

[12] The appropriate factors to be considered in a determination of whether a representation order is appropriate are set out in *CanWest Publishing Inc. (Re)* 2010 ONSC 1328 at para. 21 [*CanWest*]. The factors are neither exhaustive nor mandatory, rather they are considerations in what is to be a holistic analysis informed by the particular circumstances of the case. The factors set out in *CanWest* include: (a) the vulnerability and resources of the group sought to be represented; (b) any benefit to the companies under CCAA protection; (c) any social benefit to be derived from representation of the group; (d) the facilitation of the administration of the proceeding and efficiency; (e) the avoidance of multiplicity of legal retainers; (f) the balance of convenience and whether it is fair and just including to the creditors of the estate; (g) whether representative

counsel has already been appointed for those who have similar interests to the group seeking representation and who is also prepared to act for the group seeking the order; and (h) the position of other stakeholders and the Monitor.

[13] The Monitor has filed a report supporting the appointment of Representative Counsel in these circumstances. The appointment of Representative Counsel is intended to facilitate and streamline negotiations with respect to entitlement to the surplus balances in the Hourly DB Plan and Salaried DB Plan. Representative Counsel will represent the Represented Parties in these negotiations and at any surplus pension entitlement motion and protect the interests of the Represented Parties in the CCAA Proceedings, which do not necessarily align with the interests of the Applicant. Representative Counsel's involvement will also assist in simplifying the surplus distribution process for the benefit of the Applicant and the Represented Parties, avoid the need for multiple counsel to represent the interests of pension plan members and allow this key outstanding matter in the CCAA Proceedings to progress efficiently and expeditiously to resolution.


[14] Ursel Phillips has experience acting as representative counsel for employees and retirees of major Canadian companies seeking to preserve their pensions, benefits and severance entitlements during CCAA proceedings, including Air Canada, Sears Canada and Essar Steel Algoma and, most recently, was appointed as employee representative counsel in the CCAA proceedings of Nordstrom Canada.

[15] The Monitor's counsel also advised that the Administrator of the Hourly DB Plan and Salaried DB Plan has agreed to the terms of the Representative Counsel Order.

[16] The terms of the Representative Counsel Order, including the Opt-Out Notice provisions and the compensation provisions including the pro rata allocation between the Hourly DB Plan and Salaried DB Plan as well as the Global Fee Cap are appropriate in the circumstances.

[17] With respect to the requested stay extension, pursuant to section 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence. For the reasons set out in the Ninth Report of the Monitor the extension of the Stay Period as requested until August 29, 2025 is appropriate in the circumstances.

[18] Orders to go in the forms signed by me this day.



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Justice J. Dietrich