



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00748510-00CL

DATE: 07-AUG-2025

NO. ON LIST: 1

TITLE OF PROCEEDING: IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF QM GP INC. AND HIGHPOINT ENVIRONMENTAL SERVICES INC.

BEFORE: Madam Justice STEELE

PARTICIPANT INFORMATION

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For Other:

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Observers, Non-Counsel and Other

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- Jawad Janmohamed (unknown)
- John Taghavi (observer)

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- Ron Hicks (unknown)
- JKohn Taghabi (unknown)
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- Brentyn Hall (observer)
- Greg Street (unknown)
- Hikmet Gurler (observer)
- J. Gossett (observer)
- David Saldanha and Greg McDonald (EY, observer)
- Frank DeLuca (observer)

ENDORSEMENT OF Madam Justice STEELE:

- [1] On or about July 29, 2025, I granted the Initial Order in these CCAA proceedings. At the Comeback Hearing, on August 7, 2025, the applicants sought Court approval of an ARIO and SISP.
- [2] The Applicant and the Monitor advised that following discussions with Intact, BNS, and the DIP Lender, agreement in principle had been reached, which they were including in the proposed ARIO. At my direction, following the hearing, the proposed revised ARIO was sent to me. The amendments include:
- a. Amendment of ARIO (para. 60): further to submissions made at the Comeback Hearing, the provision has been revised to include the ability of parties to seek to amend or vary the ARIO, provided that the chargees pursuant to the ARIO shall be entitled to rely on the priorities in the ARIO in respect of all matters arising or actions taken prior to the date the ARIO may be amended, varied, or stayed.
 - b. Service of revised LRO schedule on the Service List (para. 27(e)): further to requests from stakeholders, the Monitor will serve any updated LRO Schedule on the Service List when updated.
- [3] The Monitor supports the relief sought.
- [4] No person filed materials opposing the relief sought. The notice to creditors that the Comeback Hearing was scheduled for August 7, 2025 was sent out on July 29, 2025. The record was served on August 5, 2025.
- [5] Capitalized terms used in this endorsement that are not defined herein have the meaning set out in the Company's factum.

Should the stay be extended?

- [6] The Applicants seek an extension of the Stay Period up to November 7, 2025.
- [7] I am satisfied that the requested stay extension should be granted. Under s. 11.02(3) of the CCAA, the Court may extend the stay for any period it considers appropriate, provided that the Court is satisfied that circumstances exist such that the stay extension is appropriate, and that the debtor company has acted and continues to act in good faith and with due diligence.
- [8] As noted by the Company, the circumstances support the extension of the Stay Period. Among other things,
- a. The additional time is needed for the Monitor, in consultation with the Company, to advance the proposed SISP;
 - b. The requested stay extension period aligns with the proposed timelines in the SISP Procedures;
 - c. The Company has acted and continues to act in good faith and with due diligence to stabilize its operations and advance its restructuring efforts;
 - d. As set out in the Cash Flow Forecast, provided the Company has access to the DIP Facility, the Company is expected to have sufficient liquidity to operate during the proposed extension;
 - e. The Monitor and the DIP Lender support the requested extension to the Stay Period.

Should the increase to the DIP and corresponding DIP Charge be granted?

- [9] At the initial hearing, I approved the DIP Facility and authorized the Company to borrow up to \$3.3 million during the initial Stay Period. The Company now seeks the Court's approval to increase the maximum borrowing under the DIP Facility to \$12.7 million. The DIP Term Sheet has been amended to specify that the principal amount of the DIP Facility is \$12,700,000 (instead of \$14,000,000, as had originally been contemplated).
- [10] Under section 11.2 of the CCAA, the Court may approve interim financing. Under s. 11.2(2) the court may order that the charge on the DIP financing rank in priority over the claim of any secured creditor of the company. The factors for the court to consider are set out at para. 11.2(4) of the CCAA.
- [11] As noted by the Company at para 37 of its factum, the factors set out in para. 11.2(4) of the CCAA support the proposed further borrowing under the DIP Facility:

- a. The DIP Facility provides urgently needed liquidity to fund a restructuring and a sale and investment solicitation process (“SISP”);
- b. The Applicants will remain in operation under current management, with oversight from the Proposed Monitor;
- c. The DIP Lender is both a creditor and the majority equity holder, ensuring strong alignment with the success of the restructuring;
- d. The Facility enables the continued performance of the Applicants’ profitable construction projects, expected to generate over \$40 million in revenue and preserve going-concern value;
- e. The Applicants’ receivables generated by the continued operation of the Applicants’ business constitutes substantial security for the DIP Charge;
- f. The DIP Charge is narrowly scoped, ranking behind the Administration Charge and ahead only of secured creditors who have declined to provide interim funding. This minimizes prejudice and supports a balanced, fair outcome; and
- g. The proposed Monitor has reviewed the DIP Agreement, cash flow forecasts, and the Applicants’ operational plans, and supports the Facility and DIP Charge as necessary, reasonable, and appropriate in the circumstances.

[12] Points Athabasca Contracting Partnership Limited made oral submissions regarding the Langley Bay Tailings Project, one of the Big 7 Projects, objecting to the priming by the DIP Lender. However, no evidence was before the court from Points Athabasca.

[13] The DIP Lender has made it clear that the collateral package is key to its decision to lend. The DIP financing is necessary for the Applicant to continue operations and avoid liquidation. Further, as noted by the Applicant and the Monitor, the Supreme Court of Canada, in *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 7, confirmed, at para. 205: “[T]he purpose of CCAA proceedings is not to disadvantage creditors but rather to try to provide a constructive solution for all stakeholders when a company has become insolvent.” The Supreme Court of Canada further, at para. 205, quoted from the dissenting reasons of Doherty J.A. in *Elan Corp. v. Comiskey* (1990), 41 O.A.C. 282, at para. 57: “The legislation is remedial in the purest sense in that it provides a means whereby the devastating social and economic effects of bankruptcy or creditor initiated termination of ongoing business operations can be avoided while a court-supervised attempt to reorganize the financial affairs of the debtor company is made.”

[14] In *Comstock Canada Ltd. (Re)*, 2013 ONSC 4756, Morawetz J. (as he then was) referred to the applicant’s factum, citing *Indalex*, in determining, at para. 55, that it was appropriate to

grant a super-priority DIP charge over various trust claimants and construction lien claimants.

- [15] As noted by Osborne J. in *Pride Holdings Inc. et al*, 2024 ONSC 2026, at para. 27: “DIP financing will be ordered where the benefits of financing to all stakeholders outweigh potential prejudice to some creditors. Even where it can be established that a creditor may be prejudiced, this factor is only one factor to be considered in equal measure with the other factors set out in section 11.2(4).”
- [16] I am satisfied that the borrowing increase under the DIP, and corresponding increase to the DIP Charge should be approved. Among other things, the DIP funding is necessary for the Company to restructure and undertake the proposed SISF. The DIP Lender will not lend if parties can start pulling out assets – the collateral package is required as a condition to the funding.

Should the Increase to the administration charge be approved?

- [17] The Applicants seek an increase to the first-ranking Administration Charge from \$400,000 to \$1,250,000. The proposed increase was determined in consultation with the Monitor.
- [18] Under s. 11.52(1) of the CCAA, the court has the authority to grant the Administration Charge.
- [19] The Applicants submit that the proposed charge is proportionate to the scale of work anticipated during the extended stay period, including the implementation of the SISF, among other things. The Monitor has reviewed the anticipated professional fees and considers the proposed charge amount to be reasonable and necessary.
- [20] I am satisfied that the proposed increase to the Administration Charge should be granted.

Should the increase to the Directors' Charge be approved?

- [21] The Applicants seek approval of an increase to the D&O Charge from \$3.6 million to \$4.9 million. The \$1.3 million increase corresponds to the reduction in the proposed DIP Facility (initially the Applicants sought a \$14 million DIP Facility). There is a \$1.3 million claim in respect of outstanding sales taxes (that became due post-filing), which will not be paid in cash from the DIP Facility. The requested increase to the D&O Charge reflects this potential liability.
- [22] The Directors' Charge ranks third, behind the Administration Charge and DIP Lender's Charge.
- [23] The Court has the authority under s. 11.51 of the CCAA to approve the charge, and the priority. Notice has been provided to affected secured creditors, as required.

[24] As noted by the Applicants, the D&Os continue to be exposed to potential statutory liabilities for which available insurance is either insufficient or unavailable. I am satisfied that the increased amount of the D&O Charge of \$4.9 million is reasonable and proportionate to the risks faced by the Company's directors and officers during the post-filing period.

Should the stay of indemnities, guarantees and letters of credit be continued?

[25] As noted in my prior endorsement, on July 28, 2025, Intact called on the Kingsdale LOC. Further to my endorsement the funds were held by BNS pending the Comeback Hearing. Following the initial hearing, the treatment of the Kingsdale LOC was negotiated among Intact, the Company, and the DIP Lender, in consultation with the Monitor, and has been reflected in para. 15 of the ARIO.

[26] The Applicants seek to continue the stay of any indemnity, guarantee, letter of credit, or similar obligation made by certain third parties in respect of obligations of the Company under its surety arrangements with Intact and Aviva. The Applicants also seek to stay any indemnities and guarantees in respect of bonds on Continuing QM Projects to allow the projects to continue unhindered.

[27] With regard to the other indemnities, guarantees, and letters of credit, I am satisfied that the stay should continue to apply.

[28] As noted by Black J. in the recent decision of 2675970 *Ontario Inc.*, 2024 ONSC 6174, at para. 46, the court has jurisdiction under section 11 to grant a stay of a guarantee of letter of credit where circumstances warrant.

[29] Among other things, the requested stay against these third-party indemnitors is necessary for the Company to access the DIP financing. As noted by the Applicants, a core objective of these proceedings is to complete the Continuing QM Projects, which if successfully completed, would minimize the exposure of the sureties for bonds on these projects. I agree with the Applicants that it is appropriate to stay any enforcement on guarantees so that resources can be focused on a successful restructuring as opposed to enforcement proceedings.

Should the KERP be approved, and confidential appendix sealed?

[30] The Applicants seek approval of a KERP and granting of a KERP Charge (maximum amount of \$540,000) for the benefit of certain employees the Company has determined are necessary to the success of the restructuring.

[31] The proposed KERP Charge would rank fourth, below the Administration Charge, DIP Lender's Charge, and Director's Charge.

[32] The Court has exercised its broad discretion under s. 11 of the CCAA to grant “any order it considers appropriate in the circumstances” in approving employee retention payments.

[33] In *Just Energy Group Inc. et al*, 2021 ONSC 7630, at para. 7-16, the court set out the following factors to be considered in determining whether to approve a KERP:

- a. Approval of the Monitor;
- b. Likelihood of employee departures;
- c. Are beneficiaries of KERP critical to a successful restructuring;
- d. Ease of replacing departing employees;
- e. Business judgment of the board.

[34] I am satisfied that the proposed KERP complies with the factors set out in *Just Energy*. The Company’s board exercised its business judgment in development the KERP. The Monitor was consulted and approves of the KERP. The Company states that it is unlikely it could replace these key employees quickly if they were to leave. The key employees are needed to maintain the Company’s operations and the viability of the restructuring depends on their continued involvement. The KERP and KERP Charge are approved.

[35] The Applicants ask the Court to seal the confidential appendix, which sets out the KERP participants and corresponding KERP payments. The sealing order is approved. I am satisfied that the requested sealing of a very limited amount of personal information is appropriate in light of the factors set out in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 38. The appendix contains confidential and sensitive personal information that employees reasonably expect to be protected. The benefits of sealing this limited amount of information outweighs and negative effects. The aggregate amount of the KERP has been disclosed to stakeholders, and they do need to see the individual amounts and recipients.

Should the SISP be approved?

[36] The Applicants intend to conduct a SISP to solicit offers for a sale or investment transaction for the Company and its business. As noted by the Court in *Re Nortel Networks*, 55 CBR (5th) 229, at para. 47-48, the Court has the jurisdiction under the CCAA to authorize a sale process.

[37] I am satisfied that the SISP should be approved.

[38] In *Nortel*, at para. 49, the Court considered the following factors:

- a. Is a sale transaction warranted at this time?
- b. Will the sale benefit the whole economic community?
- c. Do any creditors have a *bona fide* reason to object to the sale?
- d. Is there a better viable alternative?

[39] As noted by Osborne J. in *Hudson's Bay Company, Re*, 2025 ONSC 1897, at para. 49, courts have also considered a proposed sale process in light of the criteria in s. 36(3) of the CCAA:

- a. Whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- b. Whether the Monitor approved the process leading to the proposed sale or disposition;
- c. Whether the Monitor filed a report stating that in its opinion the sale or disposition would be more beneficial to creditors than a bankruptcy;
- d. The extent to which creditors were consulted;
- e. The effects of the proposed sale or disposition on creditors and stakeholders; and
- f. Whether the consideration to be received for the assets is fair and reasonable, taking into account their fair market value.

[40] The SISP, which was developed by the Company in consultation with the Monitor, the DIP Lender, and BNS, is to be conducted by the Monitor, with the assistance of the Company and in consultation with the DIP Lender and BNS. The SISP is a one-phase process over 45 days. It is a condition of the DIP Facility that the Applicants receive bids by September 29, 2025.

[41] The SISP contemplates that the DIP Lender may make a Backstop Credit Bid if no Bids are received that would satisfy the obligations of the DIP Lender. The Backstop Credit Bid is not permitted to be less than the highest Bid received by the Bid Deadline. Any Bidders participating in the SISP would be made aware of the ability of the DIP Lender to make a Backstop Credit Bid. The inclusion of the potential Backstop Credit Bid will likely incentivize bidders to bid above the outstanding DIP amount. If the Backstop Credit Bid is the successful bid, it would still be subject to court approval.

[42] As noted by the Applicants, similar backstop credit bid terms have been built into sale processes in other CCAA proceedings approved by this court: *Fresh City Farms and Mam Earth Organics*, 2024 ONSC 2016, at paras. 8-9; 2039882 *Ontario Limited O/A Shelter Cove*, 2024 (unreported endorsement of Conway J., CV-24-00713069-00CL).

[43] The Monitor supports the proposed SISP. To ensure the integrity and fairness of the process, the Monitor would not be required to consult with any Insider that has indicated an intention to participate in the SISP. The SISP has been designed to canvass the market for a variety of potential transaction structures, including a going concern sale of all or part of the Business, and investment in the Business.

[44] Two orders attached.

A handwritten signature in blue ink, appearing to be "J. Lee" or similar, written in a cursive style.