

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

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

Applicants

FACTUM OF THE APPLICANTS

August 6, 2025

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PART I – INTRODUCTION

1. This factum is delivered in support of the comeback hearing (the “**Comeback Hearing**”) for the Application by QM GP Inc. (“**QM GP**”) and Highpoint Environmental Services Inc. (“**Highpoint**” together with QM GP, the “**Applicants**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”), including relief in respect of the Applicants’ affiliates, QM LP, QMF LP, TWT LP and Quantum Holdings LP (the “**Non-Applicant Related Parties**”, together with the Applicants, the “**Company**”). Capitalized terms not otherwise defined herein are defined in the Affidavits of Agnieszka Barrett sworn on July 28, 2025 and August 5, 2025.

2. At the Comeback Hearing, the Company seeks an amended and restated Initial Order (the “**ARIO**”) substantially in the form of the draft order at Tab 3 of the Motion Record dated August 5, 2025 (the “**Motion Record**”) to, among other things:

- (a) extend the Initial Stay Period until and including November 7, 2025 (the “**Stay Period**”);
- (b) continue the stay of proceedings against third parties that have provided Third-Party Indemnity Obligations during the Stay Period;
- (c) continue the stay of Performance Bonds during the Stay Period;
- (d) authorize the Company to borrow the subsequent advances under the DIP Facility up to the principal amount of \$14,000,000;
- (e) increase the quantum of the priority charges;
- (f) approve a key employee retention plan (the “**KERP**”);
- (g) grant a charge (the “**KERP Charge**”) for the benefit of the KERP beneficiaries;

(h) seal the KERP Summary (as defined below) until further Order of this Court.

3. The Company also seeks an order in the form of draft order included at Tab 6 of the Motion Record (the “**SISP Approval Order**”) to, among other things, approve a sale and investment solicitation process (the “**SISP**”) in the form attached as Schedule “A” to the proposed SISP Approval Order.

PART II – OVERVIEW

4. These CCAA Proceedings are the only viable option for the Company to preserve and maximize value for its stakeholders, while concurrently providing the stability and liquidity necessary to continue operations and pursue a comprehensive restructuring transaction through the SISP.

5. The relief that was granted in the Initial Order should be continued, and in the case of the DIP Facility, the DIP Lender’s Charge and the Administration Charge, expanded, to permit additional borrowing and secure additional fees or potential obligations of the DIP Lender, respectively.

6. The proposed ARIO and the SISP Approval Order are necessary to allow the Company to take further steps in pursuit of a financial and operational restructuring for the benefit of the Company and its stakeholders generally.

PART III – FACTS

A. Background

7. The Applicants and Non-Applicant Related Parties are affiliated entities registered in Ontario and Manitoba.¹

8. QM LP is the core operating entity of the Company.² QM LP and each of the other Non-Applicant Related Parties share common ownership, management and operational ties with the Applicants, including as borrowers and guarantors under the Company's credit facilities with the Bank of Nova Scotia ("**BNS**") and as indemnitors under the Company's bonding facilities.³

9. The Company has operated for over 40 years and is a leading provider of environmental and industrial services in Canada. It offers a wide range of demolition, remediation and emergency response services across Canada, primarily in Ontario, Manitoba, Saskatchewan, Alberta and British Columbia (the "**Business**").⁴

10. With over 400 employees across the country, 140 of which are unionized, QM LP is one of the few Canadian companies that provides nation-wide coverage in this industry.⁵ The Company also relies heavily on its vendors and third-party service providers, including specialized suppliers for equipment, construction materials, fuel and rental equipment that are critical to its Business.⁶

¹ Affidavit of Agnieszka Barrett sworn August 5, 2025 at [para. 8](#) [**Second Barrett Affidavit**].

² Affidavit of Agnieszka Barrett sworn July 28, 2025 at [para. 29](#) [**Initial Barrett Affidavit**].

³ Initial Barrett Affidavit at [para. 128](#).

⁴ Initial Barrett Affidavit at [paras. 8 and 11](#).

⁵ Initial Barrett Affidavit at [para. 8](#) and [52](#).

⁶ Initial Barrett Affidavit at [para. 5](#).

11. Until recently, the Company's growth has been driven, in part, by a series of mergers and acquisitions over the last two decades, including a 2016 acquisition by WeShall Investments Inc. ("WeShall"), the Company's primary shareholder and the DIP Lender.⁷

12. As of the commencement of these proceedings, the Company had approximately 250 active projects.⁸ Based on its preliminary review, the Company has identified seven key projects that are expected to contribute approximately \$37,000,000 of future revenue.⁹

13. Several of the Company's active projects are bonded by Intact, the Company's current bonding surety, and Aviva, the Company's former bonding surety.¹⁰ The bonding facilities with Intact and Aviva are governed by various bond facility agreements and indemnities.¹¹

14. BNS is the Company's senior secured lender.¹² As of July 28, 2025, BNS' aggregate potential exposure is approximately \$34,300,000.¹³

B. Financial Difficulties and Need for CCAA Protection

15. The Company faced recent financial and operational challenges, including employee turnover, internal financial tracking deficiencies, difficulties obtaining timely change orders for out-of-scope work, ERP system transition issues, bonding difficulties, trade payable problems, supply disruptions, and cash flow strain from unreleased project holdbacks.¹⁴

⁷ Initial Barrett Affidavit at [paras. 41-43](#).

⁸ Initial Barrett Affidavit at [para. 75](#).

⁹ Initial Barrett Affidavit at [para. 76](#).

¹⁰ Initial Barrett Affidavit at [para. 9](#).

¹¹ Initial Barrett Affidavit at [paras. 101](#) and [108](#).

¹² Pre-Filing Report at [para. 5.11, p. 9](#).

¹³ Pre-Filing Report at [para. 5.12, p. 9](#).

¹⁴ Initial Barrett Affidavit at [paras. 11-12](#) and [113](#).

16. As a result, the Company is facing a liquidity crisis. Its liabilities exceed the value of its assets by approximately \$12,500,000.¹⁵ By the week ending August 8, 2025, the Company's net cash flow is projected to be negative \$3,150,000.¹⁶

17. The Company is reliant on critical interim DIP financing to continue operating in the ordinary course, to complete viable continuing projects and implement a strategic restructuring plan with the ultimate goal of continuing as a going concern for the benefit of its stakeholders.¹⁷

C. Activities Since the Initial Order

18. Since the Initial Order was granted, the Company has been working in good faith and with due diligence to stabilize its Business and operations. With the assistance and guidance of the Monitor, these activities have included, among other things:

- (a) liaising with employees, vendors, customers, partners and other key stakeholder groups regarding the CCAA Proceedings and anticipated next steps;
- (b) continuing to review its portfolio of projects to determine cost to complete, completion status and forecast project profitability;
- (c) pausing and/or disclaiming projects that cannot be continued and completed in an economic and cash flow positive manner, including by delivering approximately 90 notices of disclaimer (the "**Disclaimer Notices**") in accordance with section 32 of the CCAA;
- (d) developing the proposed SISP in consultation with the Monitor, the DIP Lender, and BNS; and

¹⁵ Initial Barrett Affidavit at [para. 81.](#)

¹⁶ Pre-Filing Report at [para. 8.3, p. 20.](#)

¹⁷ Initial Barrett Affidavit at [para. 15.](#)

- (e) continuing operations and continuing or restarting work on projects identified as Continuing QM Projects.¹⁸

19. The Monitor, the Company and Company's counsel have had discussions and responded to inquiries regarding the CCAA Proceedings from the Company's stakeholders, including secured and unsecured creditors, employees, partners, suppliers, vendors, contractors and subcontractors.¹⁹

PART IV – ISSUES

20. The issues to be determined at the Comeback Hearing are whether:

- (a) the Stay should be extended;
- (b) further borrowing under the DIP facility should be approved on a super-priority basis;
- (c) the Administration Charge and DIP Lender's Charge should be increased;
- (d) the Directors' Charge should be maintained;
- (e) the stay of Performance Bond Claims should be continued;
- (f) the stay of Third-Party Indemnity Obligations should be continued;
- (g) the KERP should be approved and the Confidential Exhibit sealed; and
- (h) the SISF should be approved.

¹⁸ Second Barrett Affidavit at [para. 17.](#)

¹⁹ Second Barrett Affidavit at [para. 18.](#)

PART V – LAW & ANALYSIS

A. The Stay Should Be Extended

21. The Applicants, with the support of the Monitor, seek an extension of the Stay Period up to and including November 7, 2025. The Applicants seek to continue such relief with respect to the Non-Applicant Related Parties, consistent with the relief granted under the Initial Order.

22. The Court may extend the stay of proceedings for any period it considers appropriate, provided that it is satisfied that circumstances exist making the extension appropriate, and that the debtor company has acted and is acting in good faith and with due diligence.²⁰

23. A stay of proceedings provides a debtor with “breathing room” while it seeks to restore solvency and emerge from the CCAA on a going concern basis.²¹ The requested relief entirely accords with the remedial purpose of the CCAA, as described by the Supreme Court of Canada in *Century Services*, as follows:²²

- (a) to permit a company to carry on business and, where possible, avoid the adverse effects of bankruptcy or liquidation while a court-supervised attempt to reorganize the financial affairs of a debtor company is made;²³
- (b) to avoid intangible losses like the evaporation of goodwill and to rehabilitate companies that are key elements in a complex web of interdependent economic relationships;²⁴

²⁰ CCAA, [s 11.02\(3\)](#).

²¹ *Re Lydian International Limited*, [2019 ONSC 7473](#) at [para. 22](#) [**Lydian**]; *Industrial Properties Regina Limited v Copper Sands Land Corp*, [2018 SKCA 36](#) at [paras. 18-20](#) [**Industrial Properties**].

²² *Century Services Inc v Canada (Attorney General)*, [2010 SCC 60](#) at [para. 70](#) [**Century**].

²³ *Century* at [paras. 15, 59 and 70](#).

²⁴ *Century* at [paras. 17-18](#); *Canada v Canada North Group Inc*, [2021 SCC 30](#) at [paras. 19 to 21](#) [**Canada North**].

- (c) to provide 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 a debtor company is made;²⁵ and
- (d) to create conditions for preserving the status quo while attempts are made to find common ground amongst stakeholders for a reorganization that is fair to all.²⁶
(emphasis added)

24. The circumstances of this matter support the extension of the Stay Period:

- (a) it is necessary to allow the Monitor, in consultation with the Company, to advance the proposed SISP in order to solicit a value-maximizing transaction for the benefit of its stakeholders;
- (b) it aligns with the proposed timelines in the SISP Procedures. The SISP Procedures provide for (i) a Bid Deadline of September 25, 2025, (ii) the selection of the Successful Bid by September 29, 2025, and (iii) Court approval in respect of the Successful Bid to take place as soon as practicable after selection of the Successful Bid, subject to availability of the Court;
- (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) creditors of the Company would not be materially prejudiced by the proposed extension of the Stay Period;

²⁵ Century at [para. 59](#).

²⁶ Century at [para. 77](#).

- (e) as detailed in the Cash Flow Forecast, with access to the DIP Facility, the Company is expected to have sufficient liquidity to continue its operations during the proposed extension of the Stay Period; and
- (f) the Monitor and the DIP Lender are supportive of the requested extension of the Stay Period.

B. The DIP Facility and DIP Charge Should be Expanded

25. Pursuant to the Initial Order, this Court approved the DIP Facility and authorized the Company to borrow up to a maximum principal amount of \$3,300,000 (the “**Initial Advance**”) during the Initial Stay Period. The quantum of the Initial Advance under the DIP Facility was determined based on the Company’s needs during the initial 10-day Initial Stay Period.²⁷

26. Pursuant to the proposed ARIO, the Company now seeks this Court’s approval to increase the amount it may borrow under the DIP Facility to the maximum principal amount of \$14,000,000.

27. BNS objected to the DIP Facility and priming of its secured loan position at the initial hearing. Such objections should not be given effect for several reasons.

(i) Interim Financing is Not Extraordinary Relief

28. Approval of interim financing is typical relief in restructuring proceedings and is specifically authorized in section 11.2 of the CCAA. That provision authorizes the Court to approve debtor-in-possession financing (“**DIP**”) and grant a super-priority charge over all existing charges and interests in the property of the debtor to secure obligations under the DIP.²⁸

²⁷ Initial Barrett Affidavit at [para. 150](#).

²⁸ CCAA, [s 11.2\(1\)](#).

29. In *Canada v. Canada North Group Inc.*²⁹, the Supreme Court of Canada upheld a priming charge in favour of a DIP lender, over the interests of the Canada Revenue Agency in respect of outstanding source deduction obligations of the debtors.³⁰ In citing *Indalex Limited*, 2011 ONCA,³¹ the Court stated that priority restructuring charges are “required to derive the most value for the stakeholders.”³² The restructuring charges benefit all creditors, “including those whose claims are protected by a deemed trust”.³³

30. In *Comstock Canada Ltd. (Re)*, 2013 ONSC,³⁴ Justice Morawetz (as he then was) concluded that it was appropriate for the DIP charge to take priority over all secured creditors as well as construction lien and trust claimants. In doing so, the Chief Justice accepted the reasoning of the applicants in that case that:

“*Indalex* is the correct resolution of the priority issue on the grounds of paramountcy in circumstances where, but for the granting of priority over a statutory deemed trust in favour of the DIP lender, the DIP financing would not be advanced and the distressed companies and its stakeholders would see an immediate halt to the restructuring”.³⁵

31. In *League Assets Corp. (Re)*, 2013 BCSC,³⁶ the Court granted the DIP charge notwithstanding that a substantial number of the secured creditors were opposed to the DIP charge and the proceedings generally.³⁷ Among others, the objections focused on the fact that there was an insufficient evidentiary basis for the relief sought, and that the secured creditors would be prejudiced by a charge ranking ahead of their security.³⁸

²⁹ *Canada v. Canada North Group Inc.*, [2021 SCC 30](#) [**Canada North**].

³⁰ *Canada North* at [para. 71](#).

³¹ *Indalex Limited (Re)*, [2011 ONCA 265](#) [**Indalex**].

³² *Canada North* at [para. 30](#).

³³ *Canada North* at [para. 30](#).

³⁴ *Comstock Canada Ltd. (Re)*, [2013 ONSC 4756](#) [**Comstock**].

³⁵ *Comstock* at [paras. 54-55](#).

³⁶ *League Assets Corp. (Re)*, [2013 BCSC 2043](#) [**League**].

³⁷ *League* at [para. 17](#).

³⁸ *League* at [para. 18](#).

32. The Court in *League* agreed that failure to obtain DIP financing would likely have forced the debtor into liquidation, leading to multiple, costly realization proceedings and potential prejudice to stakeholders with significant equity interests.³⁹ It was noted that a core objective of the CCAA is to avoid liquidation where possible to preserve value for all stakeholders.⁴⁰ Accordingly, the Court granted the DIP financing over the objections of secured creditors as an urgent necessity.⁴¹

33. BNS has alleged that the DIP Lender in the months prior to the CCAA filing, previously agreed to fund the Company through an equity injection and so therefore the DIP Charge should be subordinate to the security of BNS. That fact is contested and in any case, the Court has affirmed that the CCAA empowers it to override secured creditors' interests where it is essential to approve interim financing, including in instances where there have been subordination agreements between creditors.⁴² Without super-priority status, no financing would be available, leading to liquidation and worse outcomes for all stakeholders even in instances where there are subordination agreements between creditors.

34. Courts have consistently recognized the broader public policy objective of encouraging interim financing in CCAA proceedings to avoid the significant economic and social costs of large-scale business failures, consistent with Supreme Court of Canada commentary that super-priority charges are necessary to attract interim lenders and support successful restructurings.⁴³

³⁹ *League* at [para. 60](#).

⁴⁰ *League* at [para. 60](#).

⁴¹ *League* at [para. 62](#).

⁴² *Dynamic Technologies Group Inc (Companies' Creditors Arrangement Act) (Re)*, [2023 ABKB 172](#) at [paras. 22-23](#) [*Dynamic*].

⁴³ *Dynamic* at [paras. 26-30](#).

(ii) Expanded Borrowing Under the DIP Facility Meets the Statutory Test

35. Section 11.2(1) of the CCAA permits the Court to grant a charge in respect of interim financing on notice to the secured creditors likely to be affected by the charge.⁴⁴ In this case, all secured creditors have been provided notice.⁴⁵

36. Once that threshold issue is met, section 11.2(4) of the CCAA further provides a non-exhaustive list of factors that guide the Court's discretion in deciding whether to approve interim financing, including: the expected duration of the CCAA proceedings; the proposed management of the debtor's business and affairs during the restructuring; the level of creditor confidence in current management; whether the financing will enhance the prospects of a viable plan; the nature and value of the debtor's assets; the potential for material prejudice to creditors; and the Monitor's report, if any.⁴⁶

37. Those factors support further borrowing under the DIP Facility in this case, because:

- (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;

⁴⁴ CCAA, [s 11.2\(1\)](#).

⁴⁵ Second Barrett Affidavit at [paras.18-19](#).

⁴⁶ CCAA, [s 11.2\(4\)](#).

- (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.

38. In particular, and to address the objections of BNS at first instance, DIP financing should be approved where the benefits of financing to all stakeholders outweigh potential prejudice to some creditors. The fact that there may be some prejudice is not the test, as this factor is only one to be considered in equal measure with the other factors set out in section 11.2(4).⁴⁷

C. The Administration Charge Should be Increased

39. The Applicants seek an increase to the Administration Charge from \$400,000 to \$1,250,000. This proposed increase has been determined in consultation with the Monitor, who supports the increase as reasonable and necessary to secure payment of professional fees and disbursements through the proposed stay extension.

40. Under section 11.52(1) of the CCAA, the Court is authorized to grant a security or charge over the property of a debtor company in respect of the fees and expenses of the Monitor, its counsel, and any financial or legal advisors retained in connection with the CCAA proceedings.⁴⁸ In *Re Canwest Global Communications Corp.*,⁴⁹ for instance, the Court approved a \$15 million

⁴⁷ *Pride Group Holdings Inc et al*, [2024 ONSC 2026](#) at [para 27](#) [**Pride Group**]; **see also** *Re AbitibiBowater Inc*, [2009 QCCS 6453](#) at [paras 16](#) and [37](#) [**AbitiBowater**]; *League* at [para 51](#); and *Pacific Shores Resort & Spa Ltd (Re)*, [2011 BCSC 1775](#) at [para 49](#) [**Pacific Shores**].

⁴⁸ CCAA, [s 11.52\(1\)](#).

⁴⁹ *Canwest Global Communications Corp. (Re)*, [2009 ONSC 55114](#) [**Canwest Global**].

administration charge pursuant to s. 11.52 of the CCAA, recognizing the magnitude and complexity of the restructuring.⁵⁰ Justice Pepall accepted that “estimating quantum is an inexact exercise” and was satisfied that the charge was “required and reasonable in the circumstances” given the role of the professionals and the support of the Monitor.⁵¹ The Court emphasized that professionals “have played a necessary and integral role in the restructuring activities” and that their continued participation was essential to implement the recapitalization transaction.⁵²

41. The quantum of the Administration Charge is not unusual for proceedings of this size and operational complexity. In *Mastermind GP Inc. (Re)*, 2023 ONSC, the Court approved an increase to the Administration Charge from \$750,000 to \$1 million, citing the nature and complexity of the proceedings, the anticipated work involved, and the support of the Monitor.⁵³ In *Biosteel Sports Nutrition Inc. (Re)*, 2023 ONSC, the Court increased the Administration Charge to USD \$1 million.⁵⁴ Justice Cavanagh emphasized the size and complexity of the enterprise, the number of professionals involved, the potential liability exposure of directors and officers, and the support of both the Monitor and the principal secured creditor.

42. The proposed increase in the Administration Charge is proportionate to the scale of work anticipated during the extended stay period, including implementation of the SISP, supervision and assistance with the Company’s operations on its many projects, supervision of cash flows and accounting, and dealing with multiple key stakeholders such as the sureties and lenders. The increase is supported by the Monitor, who has reviewed the anticipated professional fees and

⁵⁰ *Canwest Global* at [para. 39](#).

⁵¹ *Canwest Global* at [para. 39-40](#).

⁵² *Canwest Global* at [para. 39-40](#).

⁵³ *Mastermind GP Inc. (Re)*, Endorsement of Steele J., Ontario Superior Court of Justice (Commercial List), [Court File No. CV-23-00710259-00CL, November 30, 2023 \(released December 2, 2023\)](#).

⁵⁴ *BioSteel Sports Nutrition Inc. (Re)*, Endorsement of Cavanagh J., Ontario Superior Court of Justice (Commercial List), [Court File No. CV-23-00706033-00CL, September 21, 2023](#).

considers the revised amount to be reasonable and necessary. In these circumstances, the requested increase is both necessary and appropriate.

D. The Directors Charge Should be Maintained

43. The Applicants seek to maintain the Directors' Charge as granted in the Initial Order in the amount of \$3.6 million to ensure continued protection for their D&Os against personal liabilities that may arise during the course of these proceedings. In granting the Initial Order, this Court found that the requirements under section 11.51 of the CCAA were satisfied.

44. As recognized in *Canwest Global*, such charges play a critical role in preventing destabilization, maintaining management continuity, and supporting the debtor's overall restructuring efforts.⁵⁵ In *Jaguar Mining Inc. (Re)*⁵⁶, the Court set out the relevant criteria for granting and continuing a Directors' Charge: (i) notice to affected secured creditors; (ii) appropriateness of the amount; (iii) the applicant's inability to obtain adequate indemnification insurance at reasonable cost; and (iv) exclusion of liabilities arising from gross negligence or wilful misconduct.⁵⁷

45. Applying these criteria to the present circumstances, the Applicants have provided notice to affected secured creditors. The amount of \$3.6 million remains reasonable and proportionate to the risks faced by the D&Os during the post-filing period. The Applicants continue to be exposed to potential statutory liabilities for which available insurance is either insufficient or unavailable.⁵⁸ The charge explicitly excludes liabilities arising from gross negligence or wilful misconduct, and the Monitor has confirmed that the Directors' Charge, at its current level, remains reasonable and appropriate in the circumstances.

⁵⁵ *Canwest Global* at [para. 48](#).

⁵⁶ *Jaguar Mining Inc. (Re)*, [2014 ONSC 494](#) [*Jaguar Mining*].

⁵⁷ *Jaguar Mining* at [para. 45](#).

⁵⁸ Initial Barrett Affidavit at [para. 161](#).

E. The Stay of Indemnities, Guarantees and Letters of Credit Should Be Continued

46. The Applicants similarly seek to continue the temporary stay of any indemnity, guarantee, letter of credit, or similar obligation made by certain third parties, including WeShall, and its related parties and affiliates, in respect of the obligations of the Company under its surety arrangements with Intact and Aviva.

47. 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 and avoid piecemeal enforcement against affiliates of the DIP Lender and Applicants during the restructuring.

48. 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 those projects.⁵⁹ It is appropriate to stay any enforcement on guarantees to allow resources and energy to be directed at a successful restructuring rather than on enforcement proceedings.

49. Courts have relied on jurisdiction under Section 11 to stay claims on third party guarantees and letters of credit. In *Tokyo Smoke*, Justice Black reviewed the leading cases on the application of stays to guarantees. In that case, the stay was opposed by a party seeking to enforce a guarantee against a non-stay party affiliate of the CCAA debtor.⁶⁰

50. Justice Black reviewed the case law and held that Section 11 permits a Court to stay third party guarantees and letters of credit,⁶¹ referring to the recent decisions in *Pride Groups*,⁶²

⁵⁹ Second Barrett Affidavit at [para. 15](#).

⁶⁰ *2675970 Ontario Inc*, [2024 ONSC 6174](#) [*Tokyo Smoke*].

⁶¹ In *Tokyo Smoke*, Justice Black considered the argument that Section 11.04 of the CCAA prohibited stays of guarantees and letters of credit. Justice Black reviewed case commentary and accepted the argument made by the applicants that Section 11.04 of the CCAA merely states that a stay of proceedings does not automatically stay guarantees and letters of credit, however the section was not a blanket prohibition on the Court utilizing its jurisdiction under Section 11 to grant a stay of a guarantee of letter of credit where circumstances warranted.

⁶² *Pride Group Holdings Inc*, [2024 ONSC 1830](#).

Nordstrom Canada,⁶³ and *Bed Bath & Beyond Canada*,⁶⁴ in which the Ontario Court stayed guarantees by non-applicant parties.⁶⁵

51. The Court in *Tokyo Smoke* also relied on Justice Kimmel's decision in *Re Balboa Inc. et al. (Re)*,⁶⁶ in which the Court granted a stay of claims against guarantees granted by the principals of the applicants in that case, noting that it was not in the best interests of the CCAA applicants' stakeholders or the administration of justice for parties to be forced to respond to uncoordinated actions in respect of the purported guarantees of the very indebtedness that the CCAA applicants were attempting to restructure.⁶⁷ Such a stay was consistent with the single proceeding model that favours the resolution of claims within the CCAA process and avoids the inefficiencies and chaos that could otherwise result from uncoordinated attempts at recovery.⁶⁸

52. Similarly, in *Woodward's Ltd. Estate*⁶⁹ the British Columbia Supreme Court considered whether a stay of proceedings under the CCAA could be extended to prevent third-party trust companies from drawing on letters of credit securing the debtor's payments towards executive retirement benefits plans. In that case, the debtor had issued cash-collateralized letters of credit through CIBC in favour of Canada Trust and Montreal Trust to guarantee these obligations.⁷⁰ As part of its restructuring, the debtor sought to stay the trusts from drawing on the letters of credit, arguing that full payment to the executives would disrupt creditor equality and undermine the reorganization process.⁷¹ The trust companies and retirees objected, contending that letters of

⁶³ *Nordstrom Canada Retail, Inc.*, [2023 ONSC 1422](#).

⁶⁴ *Bed Bath & Beyond Canada Limited (Re)*, [2023 ONSC 1014](#).

⁶⁵ *Tokyo Smoke* at [paras 24-26](#).

⁶⁶ *In Re Balboa Inc.*, [2025 ONSC 2314](#).

⁶⁷ *Tokyo Smoke* at [para 30](#).

⁶⁸ *Tokyo Smoke* at [para 30](#).

⁶⁹ *Woodward's Ltd. Estate*, [1993 CanLII 662 \(BCSC\)](#) [**Woodward's**].

⁷⁰ *Woodward's*.

⁷¹ *Woodward's*.

credit are separate, third-party agreements and that their enforcement should not be impeded by the stay.⁷²

53. The Court nonetheless held that, while letters of credit are generally independent of the obligations they secure, courts retain jurisdiction under both their inherent powers and Section 11 of the CCAA to stay third-party enforcement in appropriate circumstances.⁷³ The Court found that it was necessary to stay enforcement of the letters of credit to preserve the integrity of the restructuring. This decision affirms that CCAA courts may, in suitable cases, stay recourse to letters of credit to maintain the viability of the restructuring process.⁷⁴

F. The KERP Should Be Approved and the Confidential Exhibit Sealed

54. The Applicants seek approval of a KERP and granting of a KERP Charge for the benefit of key employees necessary to the success of the restructuring proceeding. In approving employee retention payments, this Court has exercised their broad jurisdiction under section 11 of the CCAA to grant “any order it considers appropriate in the circumstances.”⁷⁵

55. In *Just Energy*, the Court set out the factors to be considered by the Court in determining whether to approve such plan, including whether:

- (a) the Monitor approves the KERP;
- (b) the beneficiaries of the KERP would consider other employment opportunities if the charge was not approved;

⁷² *Woodward's*.

⁷³ *Woodward's*.

⁷⁴ *Woodward's*.

⁷⁵ CCAA, [s 11](#).

- (c) the beneficiaries of the KERP are crucial to the successful restructuring of the debtor company;
- (d) a replacement could be found in a timely manner; and
- (e) the board of directors exercised their business judgement in developing the KERP.⁷⁶

56. The Company submits that the KERP complies with the factors set out in *Just Energy*. Namely, the Company's board exercised its business judgment in developing the KERP and the Monitor was consulted in the development of the KERP and approves of it. It is unlikely the Company would be able to replace these key employees on an expedient basis if they were to depart. The key employees are needed to maintain the Company's operations, as well as service the projects and the emergency response business. The viability of the restructuring is dependent on their continued involvement.

57. The KERP is appropriate, reasonable and justified in the circumstances, and the terms, conditions and amounts of potential payments are in line with employee retention plans approved in other CCAA proceedings.

58. The Applicants also seek to seal the Confidential Exhibit, which is a summary of the KERP. The Applicants submit that the sealing of the Confidential Exhibit is appropriate in light of the factors in *Sherman Estate*.⁷⁷ Specifically, the Confidential Exhibit contains confidential and sensitive personal information that employees reasonably expect to be protected. As a matter of proportionality, the benefits of sealing the requested information outweigh any negative effects, as the aggregate amount of the KERP has been disclosed to stakeholders and the retention of

⁷⁶ *Just Energy Group Inc et al*, 2021 ONSC 7630 at para. 7.

⁷⁷ *Sherman Estate v Donovan*, 2021 SCC 25 at para 38.

the Key Employees benefits all stakeholders by allowing the Applicants to maximize any potential value in a SISP.

G. The SISP Should Be Approved⁷⁸

59. The Applicants intend to conduct a SISP to solicit offers for a sale or investment transaction for the Company and its business. The remedial nature of the CCAA provides courts with expansive powers to facilitate restructurings, including the authority to approve sale processes prior to or as an alternative to a plan of compromise and arrangement.⁷⁹

60. In *Nortel*, the Court considered the following factors when determining whether to approve a proposed sale process: (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?; and (d) Is there a better viable alternative?⁸⁰

61. The *Nortel* criteria may also be evaluated alongside the sale approval factors set out in subsection 36(3) of the CCAA, which courts frequently consider concurrently when deciding whether to approve a sale process: (a) whether a sale process is reasonable in the circumstances; (b) whether the Monitor approves of the process; (c) whether the Monitor considers the proposed sale more beneficial than a sale or disposition in a bankruptcy; (d) the extent to which creditors were consulted; (e) the effects of the proposed sale on stakeholders; and (f) whether the consideration is fair and reasonable.⁸¹

⁷⁸ Capitalized terms used in this section and not otherwise defined have the meanings given to them in the SISP.

⁷⁹ *Nortel Networks Corporation (Re)*, [2009 ONSC 39492](#) at [paras 47-48](#).

⁸⁰ *Nortel* at [para 49](#).

⁸¹ CCAA, [s 36\(3\)](#); *Brainhunter Inc (Re)*, [2009 ONSC 72333](#) at [para 16](#); *Hudson's Bay Company (Re)*, [2025 ONSC 1897](#) at [para 48](#); *STS Renewables Ltd et al. (Re)*, [Endorsement of Justice Osborne dated May 23, 2025](#) (re ARIIO and SISP Approval Order) at para 25 [Court File No. CV-25-00743275-00CL]; *Earth Boring Company Ltd, et al. (Re)*, [Endorsement of Justice Cavanagh dated May 28, 2025](#) (re TARIO and SISP Approval Order) at para 15 [CV-25-00741419-00CL].

62. Courts have also been guided by the following additional factors in determining whether to approve a SISP:

- (a) the fairness, transparency and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances; and
- (c) whether the sales process will, in the circumstances, optimize the chances of securing the best possible price for the assets for sale.⁸²

63. The Applicants request that the SISP be approved to permit them to canvass for interest in a restructuring opportunity or sale. Among other things, it is a condition of the DIP Facility that the Applicants receive bids no later than September 29, 2025.⁸³

64. The SISP 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 designed to solicit the highest value available for the property and Business in the form of a broad variety of potential transactions.⁸⁴ The SISP will canvass the market for a variety of potential transaction structures, including a going concern sale of all, substantially all or one or more components of the property and Business of the Company, as well as investment in the Business;

65. The SISP was developed by the Company in consultation with the Monitor, the DIP Lender, and BNS. The SISP contemplates consultation with both the DIP Lender and BNS,

⁸² *Walter Energy Canada Holdings, Inc.*, [2016 BCSC 107](#) at [paras 20-21](#); *CCM Master Qualified Fund v blutip Power Technologies*, [2012 ONSC 1750](#) at [para 6](#). See also *Tacora Resources Inc. (Re)*, [2023 ONSC 6126](#) at [paras 166-167](#); *Nordstrom Canada Retail, Inc.*, [2023 ONSC 1631](#) at [para 9](#); and *Bron Media Corp (Re)*, [2023 BCSC 1563](#) at [para 41](#).

⁸³ Pre-Filing Report at [Appendix B](#).

⁸⁴ [SISP Approval Order](#).

however to ensure the integrity and fairness of the SISP, the Monitor will not be required to consult with any Insider that has indicated an intention by August 29, 2025 to participate in the SISP.⁸⁵

66. The SISP contemplates that the DIP Lender will have the right to make a Backstop Credit Bid in the event that no Bids are received that would satisfy the obligations outstanding to the DIP Lender (along with any priority payables). The Backstop Credit Bid will be for an amount not less than the highest Bid(s) received by the Bid Deadline, thereby setting a notional floor for the bidding and ensuring that the process is competitive and likely to elicit the best possible offers.

67. Any Bidders participating in the SISP will do so with the awareness that the DIP Lender may submit a Backstop Credit Bid in the event offers are of insufficient value to pay out outstanding DIP Facility (along with priority payables). Similar backstop credit bid terms have been built into sale processes in other CCAA proceedings and accepted by this Court.⁸⁶ In *Shelter Cove*, Justice Conway approved a SISP providing for a backstop credit bid by the DIP lender, relying among other things on the Monitor's view in that case that such backstop bid structure would incentivize bidders to put in bids above the outstanding DIP amount and that bidders would be aware at the outset of the SISP of the possibility that the DIP Lender may submit a credit bid at the end.⁸⁷

68. The Monitor is supportive of the proposed SISP.⁸⁸ The Company believes that the structure and milestones of the proposed SISP will provide sufficient time to canvass the market in a fair and transparent manner while allowing key secured creditors to have consultation rights in the process. The DIP Lender and BNS will be consulted in the selection of any Successful Bids, and any Successful Bid selected will be subject to Court approval.

⁸⁵ [SISP Approval Order](#).

⁸⁶ *Fresh City Farms and Mama Earth Organics*, 2024 ONSC 2016 at [paras 8-9](#). See also 2039882 Ontario Limited O/A *Shelter Cove* 2024, ONSC, [Endorsement of Conway J \[Shelter Cove\]](#).

⁸⁷ *Shelter Cove* at [para. 8](#).

⁸⁸ Second Barrett Affidavit at [paras. 60-83](#).

PART VI. REQUESTED RELIEF

69. For the reasons set out above, the Applicants respectfully request that this Court grant the Orders substantially in the form appended as Tabs 3 and 6 of the Motion Record.

PURSUANT TO RULE 4.06(2.1), THE UNDERSIGNED certifies that they are satisfied as to the authenticity of every authority cited in this factum.



NATASHA RAMBARAN | LSO #80200N

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of August, 2025.



RECONSTRUCT LLP

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Re Lydian International Limited*, [2019 ONSC 7473](#)
2. *Industrial Properties Regina Limited v Copper Sands Land Corp.*, [2018 SKCA 36](#)
3. *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#)
4. *Canada v Canada North Group Inc.*, [2021 SCC 30](#)
5. *Indalex Limited (Re)*, [2011 ONCA 265](#)
6. *Comstock Canada Ltd. (Re)*, [2013 ONSC 4756](#)
7. *League Assets Corp. (Re)*, [2013 BCSC 2043](#)
8. *Dynamic Technologies Group Inc (Companies’ Creditors Arrangement Act) (Re)*, [2023 ABKB 172](#)
9. *Pride Group Holdings Inc et al*, [2024 ONSC 2026](#)
10. *Re AbitibiBowater Inc.*, [2009 QCCS 6453](#)
11. *Pacific Shores Resort & Spa Ltd (Re)*, [2011 BCSC 1775](#)
12. *Canwest Global Communications Corp. (Re)*, [2009 ONSC 55114](#)
13. *Mastermind GP Inc. (Re)*, November 30, 2023 Ontario Superior Court of Justice (Commercial List), [Amended Initial Order](#) (Application under the Companies’ Creditors Arrangement Act)
14. *BioSteel Sports Nutrition Inc. (Re)*, Endorsement of Cavanagh J., Ontario Superior Court of Justice (Commercial List), [Court File No. CV-23-00706033-00CL, September 21, 2023](#)
15. *Noya Holdings Inc., Re*, Endorsement of Cavanagh J., Ontario Superior Court of Justice (Commercial List), [Court File No. CV-24-00730120-00CL, November 15, 2024](#)
16. *Jaguar Mining Inc. (Re)*, [2014 ONSC 494](#)

17. *2675970 Ontario Inc.*, [2024 ONSC 6174](#)
18. *Pride Group Holdings Inc.*, [2024 ONSC 1830](#)
19. *Nordstrom Canada Retail, Inc.*, [2023 ONSC 1422](#)
20. *Bed Bath & Beyond Canada Limited (Re)*, [2023 ONSC 1014](#)
21. *In Re Balboa Inc.*, [2025 ONSC 2314](#)
22. *Woodward's Ltd. Estate*, [1993 CanLII 662 \(BCSC\)](#)
23. *Just Energy Group Inc et al*, [2021 ONSC 7630](#)
24. *Nortel Networks Corporation (Re)*, [2009 ONSC 39492](#)
25. *Brainhunter Inc (Re)*, [2009 ONSC 72333](#)
26. *Hudson's Bay Company (Re)*, [2025 ONSC 1897](#)
27. *STS Renewables Ltd et al. (Re)*, [Endorsement of Justice Osborne dated May 23, 2025](#)
(re ARIO and SISP Approval Order) at para 25 [Court File No. CV-25-00743275-00CL]
28. *Earth Boring Company Ltd, et al. (Re)*, [Endorsement of Justice Cavanagh dated May 28, 2025](#)
(re TARIO and SISP Approval Order) at para 15 [CV-25-00741419-00CL]
29. *Walter Energy Canada Holdings, Inc.*, [2016 BCSC 107](#)
30. *CCM Master Qualified Fund v blutip Power Technologies*, [2012 ONSC 1750](#)
31. *Tacora Resources Inc. (Re)*, [2023 ONSC 6126](#)
32. *Nordstrom Canada Retail, Inc.*, [2023 ONSC 1631](#)
33. *Bron Media Corp (Re)*, [2023 BCSC 1563](#)

34. *Fresh City Farms and Mama Earth Organics*, [2024 ONSC 2016](#)
35. *Fresh City Farms and Mama Earth Organics*, January 26, 2024, Ontario Superior Court of Justice (Commercial List), [Sale Process Order](#) (Application under the Companies' Creditors Arrangement Act). Schedule "A" SISP Terms at para 11.

SCHEDULE “B”

TEXT OF STATUTES AND REGULATIONS

Companies' Creditors Arrangement Act, [RSC 1985, c C-36](#)

General power of court

11 Despite anything in the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#), if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Burden of proof on application

11.02 (3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Persons obligated under letter of credit or guarantee

11.04 No order made under [section 11.02](#) has affect on any action, suit or proceeding against a person, other than the company in respect of whom the order is made, who is obligated under a letter of credit or guarantee in relation to the company.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Factors to be considered

11.2(4) In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;

- **(d)** whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- **(e)** the nature and value of the company's property;
- **(f)** whether any creditor would be materially prejudiced as a result of the security or charge; and
- **(g)** the monitor's report referred to in [paragraph 23\(1\)\(b\)](#), if any.

Security or charge relating to director's indemnification

- **11.51 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a)** the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b)** any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c)** any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Disclaimer or resiliation of agreements

32 (1) Subject to subsections (2) and (3), a debtor company may — on notice given in the prescribed form and manner to the other parties to the agreement and the monitor — disclaim or resiliate any agreement to which the company is a party on the day on which proceedings commence under this Act. The company may not give notice unless the monitor approves the proposed disclaimer or resiliation.

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

- (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 with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d)** the extent to which the creditors were consulted;
- (e)** the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f)** whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

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

Court File No. CV-25-00748510-00CL

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at *Toronto*

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