

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

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 1000156489 ONTARIO INC.

Applicant

**FACTUM OF THE MONITOR**

January 28, 2026

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1000156489 Ontario Inc. (f/k/a DCL  
Corporation) and not in its personal or  
corporate capacity

**TO: THE SERVICE LIST**

## PART I - NATURE OF THE MOTION

1. This factum is filed in support of a motion by Alvarez & Marsal Canada Inc. (“**A&M**”) in its capacity as the monitor (in such capacity, the “**Monitor**”) of 1000156489 Ontario Inc. (f/k/a DCL Corporation) (the “**Applicant**”) in the within proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**” and the proceedings, the “**CCAA Proceedings**”). The CCAA Proceedings were commenced on December 20, 2022, by the issuance of an initial order by this Court (the “**Court**”).

2. The CCAA Proceedings have nearly run their course. Following approval of a sale transaction, a claims procedure order was granted by the Court and all filed claims in the claims procedure have since been resolved. Further, entitlement to surplus amounts in the Applicant’s registered pension plans has been definitively established pursuant to a settlement agreement that was approved by the Court in the CCAA Proceedings, and distribution of the surplus amounts in accordance with the settlement agreement has received the consent of the Financial Services Regulatory Authority of Ontario (“**FSRA**”). As these surplus amounts have now been received, the Monitor, on behalf of the Applicant, is now in a position to make a distribution to the Applicant’s unsecured creditors with proven claims.

3. In order to implement such a distribution, the Monitor seeks the following orders:

(a) an order (the “**Distribution Order**”), which, among other things:

(i) authorizes the Monitor to make one or more distributions to each of the Applicant’s unsecured creditors (the “**Unsecured Creditors**”) that hold a proven claim in the Claims Procedure (a “**Proven Claim**”) on a *pro rata*,

*pari passu* basis in accordance with the Proposed Distribution Methodology (as defined below); and

(ii) approves the activities and fees of the Monitor and its counsel; and

(b) an Order (the “**Stay Extension Order**”) which will, among other things, extend the Stay Period (as defined below) to June 30, 2026.

4. The proposed distributions are fair and reasonable in the circumstances and should be approved. The Proposed Distribution Methodology provides for the fair and efficient distribution of funds to the Unsecured Creditors, while also providing for sufficient reserves to fund the remainder of the CCAA Proceedings. The distributions will facilitate the continued orderly wind down of the Applicant, and permit the CCAA Proceedings to move forward to their completion.

## **PART II - SUMMARY OF FACTS**

5. The facts regarding this motion are more fully set out in the Eleventh Report of the Monitor.<sup>1</sup>

### **A. The CCAA Proceedings and Chapter 11 Proceedings**

6. On December 20, 2022 (the “**Petition Date**”), the Court granted the Initial Order, which, among other things, appointed A&M as the Monitor and granted a stay of proceedings for an initial 10-day period (the “**Stay Period**”). On December 29, 2022, the Court granted the Amended and

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<sup>1</sup> Report of the Monitor dated January 26, 2026 (“**Eleventh Report**”). Unless otherwise specified, capitalized terms in this factum have the same meaning as in the Eleventh Report. Unless otherwise stated, all monetary amounts referred to in this factum are expressed in Canadian dollars.

Restated Initial Order (the “**ARIO**”), which, among other things, approved the DIP Facility and the Final DIP Credit Agreement (each as defined in the ARIO) and extended the Stay Period.<sup>2</sup>

7. The Applicant is part of the broader DCL Group,<sup>3</sup> and the CCAA Proceedings were commenced as part of a larger coordinated restructuring of the DCL Group. In connection with this broader restructuring, on the Petition Date, HIG Color Holdings and certain of its subsidiaries (“**DCL US**”) filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “**Chapter 11 Proceedings**,” and together with the CCAA Proceedings, the “**Restructuring Proceedings**”).<sup>4</sup>

8. As part of the Restructuring Proceedings, DCL Group conducted a sales process that culminated in a transaction (the “**Transaction**”) with Pigments Services, Inc. (“**Pigments**”), an affiliate of the pre-petition term loan lenders to the Applicant and DCL US. The Transaction was approved by the Court on March 29, 2023, and closed on April 14, 2023.<sup>5</sup> On closing, the Monitor received the following amounts from Pigments: (i) the Canadian Designated Amount Portion of USD \$575,000, which was established to fund fees and costs associated with winding down the CCAA Proceedings; and (ii) the CCAA Cash Pool of USD \$750,000, to be available for distribution to the Applicant’s unsecured creditors.<sup>6</sup>

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<sup>2</sup> Eleventh Report at paras. 1.1, 1.5.

<sup>3</sup> The Applicant is a subsidiary of its U.S. parent, H.I.G. Colors Inc. (“**Holdings**”), a direct wholly-owned subsidiary of the ultimate corporate parent, H.I.G. Colors Holdings, Inc. (“**HIG Colors Holdings**” and, together with Holdings and its direct and indirect subsidiaries, including the Applicant and its subsidiaries, the “**DCL Group**”).

<sup>4</sup> Eleventh Report at para. 1.4.

<sup>5</sup> Eleventh Report at para. 1.6.

<sup>6</sup> Eleventh Report at paras. 3.13-3.14.

9. On May 8, 2023, the Court granted the “**Expanded Powers Order**”, which, among other things, granted the Monitor expanded powers to, among other things, oversee the wind-down activities of the Applicant.<sup>7</sup>

## **B. Update on Registered Pension Plans**

10. The Applicant is the sponsor of various registered pension plans, including: (i) the Hourly DB Plan; and (ii) the Salaried DB Plan (collectively, the “**Plans**”). None of the registered pension plans were assumed by Pigments as part of the Transaction.<sup>8</sup>

11. On January 28, 2025, the Court granted the Representative Counsel Order, which appointed Ursel Phillips Fellows Hopkinson LLP as representative counsel (the “**Representative Counsel**”) for the purpose of representing the interests of all members of the Plans (collectively, the “**Represented Parties**”). Owing to the inability to obtain the Plans’ original governing documents, the Monitor, pursuant to the authority granted in the Expanded Powers Order, began negotiating with Representative Counsel regarding a consensual split of the surplus assets held by each of the Plans, which culminated in the Surplus Sharing Agreement dated August 18, 2025 (the “**Settlement Agreement**”).<sup>9</sup>

12. Pursuant to the Settlement Agreement, the Net Surplus of each Plan is to be divided between the Represented Parties and the Applicant, with 45% of the Net Surplus being paid to the Represented Parties and 55% being paid to the Monitor on behalf of the Applicant (the “**Company**”).

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<sup>7</sup> Eleventh Report at para. 1.7.

<sup>8</sup> Eleventh Report at para. 3.1.

<sup>9</sup> Eleventh Report at paras. 1.9, 3.3.

Share”).<sup>10</sup> On August 25, 2025, the Court granted the “**Settlement Approval Order**”, approving the Settlement Agreement, and further declared that the the Applicant is entitled to the surplus in the Plans for the purposes of s. 79(3)(b) of the *Pension Benefits Act*.<sup>11</sup>

13. Following the granting of the Settlement Approval Order, the Monitor’s counsel has worked with Representative Counsel, the administrator of the Plans, and staff of FSRA in order to seek FSRA’s approval of the contemplated surplus distribution. On January 9, 2026, FRSA served consent orders for each of the Plans, for payment of surplus to the Monitor (i) in respect of the Hourly DB Plan in the amount of \$920,505; and (ii) in respect of the Salaried DB Plan in the amount of \$1,393,335, each as at September 30, 2025, plus investment earnings and adjusted for expenses to the date of payment.<sup>12</sup> As of the date of this factum, the Monitor has received payment of the Company Share in the amount of \$2,286,800 and the Monitor’s portion of the Agreed Expenses.

### **C. The Proposed Distributions**

14. On June 20, 2023, the Court granted the “**Claims Procedure Order**”, which, among other things, established the Claims Procedure, pursuant to which creditors were able to file claims against the Applicant or against the Applicant’s Directors or Officers, as applicable. All deadlines

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<sup>10</sup> Eleventh Report at paras. 3.5-3.6. The Net Surplus is composed of the Gross Surplus less Administrator Expenses and Agreed Expenses, all as determined on the Distribution Date.

<sup>11</sup> Eleventh Report at para. 1.10.

<sup>12</sup> Eleventh Report at para. 3.10.

associated with the Claims Procedure have passed,<sup>13</sup> and all Claims have been resolved. The total amount of resolved Claims totals approximately \$31.1 million.<sup>14</sup>

15. As set out above, the CCAA Cash Pool is available for distribution to the Unsecured Creditors. Further, under the terms of the Expanded Powers Order, any surplus amounts in the Plans received by the Applicant are deemed to form part of the CCAA Cash Pool. In light of the Monitor's receipt of the Company Share, the Monitor seeks to make one or more cash distributions from the CCAA Cash Pool to each of the Applicant's Unsecured Creditors holding a Proven Claim, including any tax refunds received by the Applicant in respect of any such distributions and any returned or undeliverable distributions, and from amounts remaining in the Administrative Reserve (as defined below) following payment of all amounts to be satisfied thereby. Approximately \$2.2 million (net of accrued unpaid professional fees and fees to complete the remaining wind-down activities) is estimated to be available for this purpose.<sup>15</sup>

16. The proposed distributions will be made on a *pro rata, pari passu* basis, in accordance with the "**Proposed Distribution Methodology**," pursuant to which each Unsecured Creditor holding a Proven Claim will receive a *pro rata* distribution up to the maximum amount of the Proven Claim amount, which is projected to result in a recovery of approximately 7.1% of each Unsecured Creditor's accepted Claim amount.

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<sup>13</sup> The Claims Procedure Order established a deadline of August 18, 2023 for Pre-filing Claims and Director / Officer Claims (the "**Claims Bar Date**") and required Restructuring Period Claims to be filed by the later of: (i) 30 days after the Monitor sent the applicable Claims Package; or (ii) the Claims Bar Date.

<sup>14</sup> Eleventh Report at paras. 1.8, 4.2-4.3.

<sup>15</sup> Eleventh Report at paras. 4.4-4.6.

17. All distributions will be made in Canadian dollars,<sup>16</sup> and each Claimant may transfer or assign its Claim in accordance with the Claims Procedure Order (provided that the Applicant and the Monitor will not be obliged to deal with the transferee unless written notice and satisfactory evidence has been received, and the Monitor has provided written confirmation acknowledgment). The claims of persons who were required to assert a Proven Claim in accordance with the Claims Procedure, but did not do so, will be extinguished.<sup>17</sup>

### **PART III - THE ISSUES AND THE LAW**

18. This factum addresses the following issues:

- (a) the distributions and the Proposed Distribution Methodology should be approved;
- (b) the reports and activities of the Monitor should be approved;
- (c) the fees of the Monitor and its counsel should be approved; and
- (d) the Stay Period should be extended until and including June 30, 2026.

#### **A. The Distributions and the Proposed Distribution Methodology Should be Approved**

19. This court has jurisdiction to approve the proposed distributions pursuant to s. 11 of the CCAA, which authorizes the Court to “make any order that it considers appropriate in the circumstances.” This expansive language is intended to recognize a “broad reading of CCAA authority,” and grants the Court a wide-ranging discretion, subject only to baseline considerations of appropriateness, good faith, and due diligence.<sup>18</sup> “Appropriateness” in this context refers to

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<sup>16</sup> Any Proven Claim denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada daily average exchange rate on the Petition Date: Eleventh Report at para. 4.7(ii).

<sup>17</sup> Eleventh Report at paras. 4.5-4.7. See Eleventh Report at para. 4.7 for a detailed summary of the Proposed Distribution Methodology.

<sup>18</sup> *Ted Leroy Trucking [Century Services] Ltd., (Re)*, [2010 SCC 60](#) at paras. 68-70.



whether the order in question will further “the policy objectives underlying the CCAA”, which include the timely, efficient and impartial resolution of the debtor’s insolvency.<sup>19</sup>

20. Pursuant to this authority, Justice Gascon in *AbitibiBowater* determined that CCAA courts have the jurisdiction to approve interim distributions to creditors prior to the termination of the CCAA proceedings.<sup>20</sup> While *AbitibiBowater* dealt with secured creditors, this Court has subsequently held that nothing in the CCAA precludes such a distribution from being made to unsecured creditors during ongoing CCAA proceedings:

I see no difference between an interim distribution, as in the case of *AbitibiBowater*, or a final distribution, as in the case of *Timminco*, or a distribution to an unsecured or secured creditor, so far as a jurisdiction to make the order is concerned without any plan of arrangement.<sup>21</sup>

21. Accordingly, CCAA courts have on multiple occasions approved interim distributions to unsecured creditors that have proven their claims in a claims process.<sup>22</sup> While no strict test applies to such distributions, CCAA courts have considered whether the proposed order provides for fair and efficient distributions, and whether the proposed order provides for sufficient reserves to be maintained following the distributions.<sup>23</sup>

22. The proposed distributions satisfy these criteria. The Proposed Distribution Methodology provides for the equal treatment of all Unsecured Creditors, each of whom will receive a *pro rata*

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<sup>19</sup> 9354-9186 *Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#) at paras. 40, 49-50.

<sup>20</sup> *AbitibiBowater inc. (Arrangement relatif à)*, [2009 QCCS 6461](#) at para. 71.

<sup>21</sup> *Nortel Networks Corporation et al (Re)*, [2014 ONSC 4777](#) at para. 58.

<sup>22</sup> See, e.g., *Carillion Canada Inc. et al. (Re)*, (August 4, 2021), Ont S.C.J. [Commercial List], Court File No. CV-18-590812-00CL ([Interim Distribution Order](#)); *FIGR Brands et al. (Re)*, (February 2, 2022), Ont S.C.J. [Commercial List], Court File No. CV-21- 00655373-00CL ([Order re Stay Extension, Distribution, WEPPA and Fee Approval](#)) at paras. 5-10.

<sup>23</sup> *Carillion Canada Inc. et al. (Re)*, (August 4, 2021), Ont S.C.J. [Commercial List], Court File No. CV-18-590812-00CL ([Endorsement of Justice Dietrich](#)) at p. 2; *FIGR Brands et al. (Re)*, (February 2, 2022), Ont S.C.J. [Commercial List], Court File No. CV-21- 00655373-00CL ([Endorsement of Justice McEwen](#)) at p. 2.

distribution designed to ensure that they receive a fair and proportionate share of the CCAA Cash Pool.<sup>24</sup> A proportionate distribution of this type accords with the *pari passu* principle, a “governing principle” of Canadian insolvency law which requires assets to be distributed equally among creditors.<sup>25</sup>

23. Further, the Proposed Distribution Methodology authorizes the Monitor, on behalf of the Applicant, to establish a reserve from the funds held by the Monitor on behalf of the Applicant and distributable to Unsecured Creditors (the “**Administrative Reserve**”). The Administrative Reserve (which is currently estimated to be \$500,000) will be used to pay all remaining professional fees and disbursement of counsel to the Applicant, the Monitor and counsel to the Monitor in respect of the CCAA Proceedings and other costs for completion of the wind-down of the CCAA Proceedings.<sup>26</sup>

24. The Monitor submits that the proposed distributions are in the best interest of the Applicant and its stakeholders and should be approved. The proposed distributions provide for a fair and efficient distribution of the CCAA Cash Pool, maintain an appropriately sized Administrative Reserve for future expenses, and will facilitate the timely wind-down of the Applicant’s estate and termination of the CCAA Proceedings.

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<sup>24</sup> Eleventh Report at para. 4.7.

<sup>25</sup> *Nortel Networks Corp., (Re)*, [2015 ONCA 681](#) at paras. 23-24.

<sup>26</sup> Eleventh Report at para. 4.7(v).

**B. The Reports and Activities of the Monitor Should be Approved**

25. The Monitor seeks the approval of the actions, conduct and activities outlined in its Seventh Report, Eighth Report, Ninth Report, Tenth Report, and Eleventh Report (the “**Reports**”).<sup>27</sup>

26. Requests to approve a monitor’s report and activities are not unusual, and there are good policy and practical reasons for the court to do so, including: (i) allowing the monitor to move forward with the next steps; (ii) allowing the monitor to bring its activities before the Court; (iii) enabling the Court to satisfy itself that a monitor’s activities have been conducted in a prudent and diligent manner; (iv) providing protection for a monitor not otherwise provided by the CCAA; and (v) protecting creditors from delay that may be caused by re-litigation of steps.<sup>28</sup>

27. The Monitor submits that the Reports, and the activities and conduct described within, should be approved. The activities set out in the Reports have been carried out in accordance with the orders of the Court, and the Monitor has acted reasonably and in good faith throughout.

**C. The Fees of the Monitor and its Counsel Should be Approved**

28. The Monitor additionally seeks the approval of the following fees and disbursements:

- (a) fees of the Monitor totalling \$950,437.00, and disbursements in the amount of \$18,850.55, each incurred from December 7, 2022, to January 17, 2026;<sup>29</sup> and

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<sup>27</sup> The Seventh Report, Eighth Report, Ninth Report, and Tenth Report (without appendices) are attached to the Eleventh Report as Appendices “H”, “I”, “J”, and “A”, respectively.

<sup>28</sup> *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at para. 23.

<sup>29</sup> Eleventh Report at para. 7.2.

- (b) fees of the Monitor’s counsel, Osler, Hoskin & Harcourt LLP (“**Osler**”) totalling \$986,677.50, and disbursements in the amount of \$2,720.79, each incurred from December 20, 2022, to December 31, 2025.<sup>30</sup>

29. In considering whether to approve fees and disbursements, the court has regard to the “overriding principle of reasonableness,” and does not engage in a docket-by-docket or line-by-line assessment of the accounts.<sup>31</sup> The following factors assist a court in assessing the reasonableness of the Monitor’s fees under the CCAA: (i) the nature, extent and value of the assets being handled; (ii) the complications and difficulties encountered; (iii) the degree of assistance provided by the company, its officers or its employees; (iv) the time spent; (v) the Monitor’s knowledge, experience and skill; (vi) the diligence and thoroughness displayed; (vii) the responsibilities assumed; (viii) the results achieved; and (ix) the cost of comparable services when performed in a prudent and economical manner.<sup>32</sup>

30. The fees and disbursements should be approved. The Monitor and Osler have acted with diligence throughout the CCAA Proceedings, and the Monitor has reviewed the fees and disbursements of Osler, which the Monitor has confirmed are reasonable in the circumstances.<sup>33</sup>

#### **D. The Stay Period Should be Extended**

31. 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

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<sup>30</sup> Eleventh Report at para. 7.3.

<sup>31</sup> *Nortel Networks Inc.*, [2022 ONSC 668](#) at para. 10 [*Nortel*].

<sup>32</sup> *Nortel* at para. 11.

<sup>33</sup> Eleventh Report at para. 7.4.

company satisfies the Court that it has acted, and is acting, in good faith and with due diligence. There is no statutory time limit on how long a stay of proceedings can be extended.

32. The Stay Period currently expires on January 31, 2026. The Monitor asks that the Stay Period be extended to and including June 30, 2026. The Monitor submits that extending the Stay Period is warranted for the following reasons:<sup>34</sup>

- (a) the Applicant, with the assistance and oversight of the Monitor, continues to act in good faith and with due diligence;
- (b) the extension of the Stay Period is required to provide the necessary stability and certainty to enable the Monitor to facilitate the wind-down of the CCAA Proceedings;
- (c) the extension of the Stay Period should provide the time necessary for the Monitor to effect the proposed distributions; and
- (d) amounts currently held by the Monitor are expected to provide sufficient liquidity to fund the remaining costs anticipated to be incurred to complete the wind-down of the CCAA Proceedings (and any related wind-down proceedings such as formal bankruptcies).

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<sup>34</sup> Eleventh Report at para. 5.2.

**PART IV - NATURE OF THE ORDER SOUGHT**

33. For the reasons set out above, the Monitor requests that this Court grant the proposed Distribution Order and the proposed Stay Extension Order substantially in the form of the draft orders included at Tabs 2 and 3 of the Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 28th day of January, 2026.



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**OSLER, HOSKIN & HARCOURT LLP**  
per Marleigh Dick

## SCHEDULE “A”: LIST OF AUTHORITIES

1. *9354-9186 Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#)
2. *AbitibiBowater inc. (Arrangement relatif à)*, [2009 QCCS 6461](#)
3. *Carillion Canada Inc. et al. (Re)*, (August 4, 2021), Ont S.C.J. [Commercial List], Court File No. CV-18-590812-00CL ([Interim Distribution Order](#))
4. *Carillion Canada Inc. et al. (Re)*, (August 4, 2021), Ont S.C.J. [Commercial List], Court File No. CV-18-590812-00CL ([Endorsement of Justice Dietrich](#))
5. *FIGR Brands et al. (Re)*, (February 2, 2022), Ont S.C.J. [Commercial List], Court File No. CV-21- 00655373-00CL ([Order re Stay Extension, Distribution, WEPPA and Fee Approval](#))
6. *FIGR Brands et al. (Re)*, (February 2, 2022), Ont S.C.J. [Commercial List], Court File No. CV-21- 00655373-00CL ([Endorsement of Justice McEwen](#))
7. *Nortel Networks Corporation et al (Re)*, [2014 ONSC 4777](#)
8. *Nortel Networks Corp., (Re)*, [2015 ONCA 681](#)
9. *Nortel Networks Inc.*, [2022 ONSC 668](#)
10. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
11. *Ted Leroy Trucking [Century Services] Ltd., (Re)*, [2010 SCC 60](#)

I certify that I am satisfied as to the authenticity of every authority.

Date January 28, 2026



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Signature  
Marleigh Dick

**SCHEDULE “B”**  
**TEXT OF STATUTES, REGULATIONS & BY-LAWS**

***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.

[...]

**Stays, etc. — initial application**

**11.02 (1)** A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

**(a)** staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;

**(b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

**(c)** prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Stays, etc. — other than initial application**

**(2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

**(a)** staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

**(b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

**(c)** prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.



### **Burden of proof on application**

(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.

### **Restriction**

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

### ***Pension Benefits Act, RSO 1990, c P.8***

#### **Payment of surplus**

#### **Continuing pension plan, payment to employer**

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[...]

#### **Wind up, payment to employer**

(3) Subject to section 89, the Chief Executive Officer shall not consent to payment of surplus to an employer out of a pension plan that is being wound up in whole unless,

- (a) the Chief Executive Officer is satisfied, based on reports provided with the employer's application for payment of the surplus, that the pension plan has a surplus;
- (b) the payment of surplus to the employer on the wind up of the pension plan is authorized either as provided in section 77.11 or by a court order declaring that the employer is entitled to the surplus when the plan is being wound up;
- (c) provision has been made for the payment of all liabilities of the pension plan as calculated for purposes of the termination of the pension plan; and
- (d) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus.

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

Court File No: CV-22-00691990-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
1000156489 ONTARIO INC.

**Applicant**

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE MONITOR**

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