

**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
1242939 B.C. UNLIMITED LIABILITY COMPANY, 1241423 B.C. LTD., 1330096 B.C.
LTD., 1330094 B.C. LTD., 1330092 B.C. UNLIMITED LIABILITY COMPANY, 1329608
B.C. UNLIMITED LIABILITY COMPANY, 2745263 ONTARIO INC., 2745270
ONTARIO INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., AND 2472598
ONTARIO INC.**

FACTUM OF THE EMPLOYEE REPRESENTATIVE COUNSEL

February 9, 2026

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Employee Representative Counsel

TO: SERVICE LIST

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Applicants

**FACTUM OF THE EMPLOYEE REPRESENTATIVE COUNSEL
(Re: Hardship Fund Program)
(Returnable February 11, 2026)**

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PART I. OVERVIEW

1. Employee Representative Counsel (“**ERC**”) brings this motion to approve the Hardship Programs Term Sheet dated February 3, 2026 (the “**Term Sheet**”) providing for three programs designed to alleviate various forms of hardship experienced by the Applicants’ non-unionized employees and granting incidental orders and releases necessary to carry out the Hardship Programs. These programs include:

- (a) **The Trust Program**, to extend and settle future claims for long-term disability (“**LTD**”) benefits for approximately 157 former employees of the Applicants whose LTD benefits would otherwise have terminated;
- (b) **The Woodward’s Replacement Policy**, to continue and settle LTD benefits owing to a former employee of Woodward’s Stores Limited/Simpsons, Limited (both predecessors of the Applicants) through a paid-up contract of insurance, whose LTD benefits would otherwise have terminated; and
- (c) **The Employee Hardship Program**, to provide an avenue for the Applicants’ former employees and retirees facing extraordinary hardship to obtain some relief provided certain conditions in the Term Sheet, and eligibility requirements are met.

2. The Term Sheet is the product of extensive negotiation between ERC, the Applicants, the Secured Lenders, and other parties. It resolves outstanding disputes over entitlement to two funds, as further described below, without the expense and uncertainty of litigation, in a manner that is fair and reasonable and that protects the most vulnerable stakeholders in this CCAA proceeding.

3. ERC has consulted throughout with its represented employees through its Employee Committee established for this purpose, in pursuing the negotiations over the Term Sheet. It asks

that the Court approve the Term Sheet and grant the requested Order enclosed (the “**Hardship Programs Order**”).

PART II. FACTUAL BACKGROUND

A. *The parties*

4. On March 7, 2025 (the “**Filing Date**”), the Applicants sought and obtained protection under the CCAA pursuant to an initial order of the Superior Court of Justice.¹

5. On May 5, 2025, the Court appointed Ursel Phillips Fellows Hopkinson LLP as ERC to represent the interests of non-unionized current and former employees with continuing entitlements from the Applicants as at the Filing Date, retirees of the Applicants, and any person claiming an interest under or on behalf of a current or former employee of the Applicants but excluding directors and officers of the Applicants.²

6. ERC has been consulting with the Employee Committee established under the order appointing ERC and engaged in extensive negotiations with (among other parties) 1242939 B.C. Unlimited Liability (the “**Company**”) and its secured lenders, Restore Capital, LLC, Pathlight Capital LP, and 2171948 Ontario Inc. (collectively, the “**Secured Lenders**”) in preparing the proposed Term Sheet.³ It has also consulted extensively with Manufacturers Life Insurance Company (“**Manulife**”), which was administering many of the Applicants’ employee benefits.⁴

B. *The hardships caused by the Applicants’ insolvency*

7. After operating for 355 years, the Applicants liquidated their operations and closed 96

¹ Affidavit of Rita De Fazio Affidavit, sworn February 4, 2026 [“**De Fazio Affidavit**”], at para. 6, **Motion Record of the Employee Representative Counsel** [“**ERC MR**”], **Tab 2, p. 20**.

² De Fazio Affidavit, at para. 8, **ERC MR, Tab 2, p. 20-21**.

³ De Fazio Affidavit, at para. 14, **ERC MR, Tab 2, p. 22**; Thirteenth Report of the Monitor Alvarez & Marsal Canada Inc., dated February 9, 2026 [“**Monitor’s Report**”], at para. 4.31(a).

⁴ De Fazio Affidavit, at para. 14, **ERC MR, Tab 2, p. 22**.

stores across the country. All but eight of the Applicants' approximately 9,364 employees have been terminated from their employment, with remaining employees retained only to wind down the business.⁵ In addition to the loss of continued employment income, the Applicants' employees and retirees suffered hardships including the loss of group benefits, other-post employment benefits, termination and severance pay amounts over and above the maximum benefit available under the Wage Earner Protection Program, salary continuances, parental leave top-up benefits and Supplemental Executive Retirement Plan benefits.⁶

8. In addition, the Applicants notified 188 disabled employees and former employees that their LTD benefits would terminate effective June 15, 2025.⁷ While many employees receive LTD benefits through insurance policies that provide protection against the insolvency of the employer, this group had been receiving LTD benefits that were funded through the Company's general revenues and administered under various administrative-services only ("**ASO**") plans.⁸ The vast majority of those individuals were covered by an ASO plan with Manulife under Group Policy G0083432 (the "**ASO Plan Document**") (collectively, the "**ASO LTD Recipients**").⁹ In addition, there was also one former Woodward/Simpsons employee who was covered by an ASO plan under Group Policy 83002 (the "**Woodwards Plan Document**"), also administered by Manulife (the "**Woodwards LTD Recipient**").¹⁰

9. The ASO LTD Recipients and the Woodward LTD Recipient are a highly vulnerable groups of stakeholders in these proceedings, as the vast majority have been determined to be

⁵ De Fazio Affidavit, at para. 19, **ERC MR, Tab 2, p. 24.**

⁶ De Fazio Affidavit, at para. 21, **ERC MR, Tab 2, p. 24-26.**

⁷ De Fazio Affidavit, at para. 24, **ERC MR, Tab 2, p. 27.**

⁸ De Fazio Affidavit, at para. 23, **ERC MR, Tab 2, p. 27.**

⁹ De Fazio Affidavit, at para. 28, **ERC MR, Tab 2, p. 28.**

¹⁰ De Fazio Affidavit, at para. 31, **ERC MR, Tab 2, p. 28.**

completely disabled from performing any occupation,¹¹ and their only alternative source of income to support themselves in the event of the termination of their LTD benefits are government welfare and benefits programs.¹² By agreement between the ERC, the Monitor, the Applicants and the Secured Lenders, monthly LTD Benefits for this group have continued while the negotiations of the Term Sheet continued.¹³

C. The disputed funds

10. In ERC's investigations and discussions with the Applicants and Secured Lenders, it became apparent that there were two potential sources of funds that could be used to alleviate the hardships faced by the Applicants' former employees. It was also apparent that entitlement to those funds would be highly contested. Those funds consist of (1) \$9.9 million held in a trust originally established by Zellers Limited ("**Zellers**"), continued by the Company following its merger with Zellers; and (2) \$1.6 million held by Manulife as a reserve to fund various benefits in accordance with contractual arrangements between Manulife and the Company.

1. The Trust

11. On June 1, 1980, Zellers established the Zellers Limited Health and Welfare Trust (the "**Trust**") to provide health and welfare benefits "for Participating Members, their eligible dependents, [and] beneficiaries".¹⁴ The Agreement and Declaration of Trust (the "**Trust Agreement**") expressly authorized the Trustees "to establish the Plan ... defining the health and welfare benefits to be provided" (the "**Trust Plan**") and to "change or modify the benefits provided

¹¹ De Fazio Affidavit, at para. 30, **ERC MR, Tab 2, p. 28.**

¹² De Fazio Affidavit, at para. 34, **ERC MR, Tab 2, p. 29.**

¹³ De Fazio Affidavit, at para. 26, **ERC MR, Tab 2, p. 27.**

¹⁴ De Fazio Affidavit, at paras. 35-36, **ERC MR, Tab 2, p. 29-30.**

under the Plan and the eligibility rule or rules”.¹⁵

12. The Trust Agreement defined a Participating Member as “any employee who is eligible in accordance with the terms of the Plan and on whose behalf contributions are being made by his Participating Employer”.¹⁶ It defined a Participating Employer as Zellers “as well as any affiliate, subsidiary or operating division which elects to participate in the Plan, agrees to make contributions, and is approved for participation by the Trustees.”¹⁷

13. When Zellers merged with the Company on January 31, 1981, the Company assumed the responsibilities of the settlor of the Trust (*mutatis mutandi* for Zellers) and as Participating Employer under art. 1.06 of the Trust Agreement.¹⁸

14. Pursuant to their power under art. 3.02 of the Trust Agreement, the trustees restated the Trust Plan in 2021, renaming it The Hudson’s Bay Company ULC Employee Life and Health Plan (the “**HBC Plan**”).¹⁹ The HBC Plan incorporated by reference the ASO Plan Document for the purposes of defining the benefits provided thereunder.²⁰

15. The Trust currently has approximately \$9.9 million in assets, held in an account at the Bank of Nova Scotia and its affiliates (“**ScotiaWealth**”).²¹

16. The Trust Agreement provides that the Trust Agreement and Trust Plan “shall be terminated by the Trustees on receipt of written instructions from Zeller’s”.²² Pursuant to art.

¹⁵ The Trust Agreement, s. 3.02, **ERC MR, Tab 2B, p. 91.**

¹⁶ The Trust Agreement, s. 1.05, **ERC MR, Tab 2B, p. 88.**

¹⁷ The Trust Agreement, s. 1.06, **ERC MR, Tab 2B, p. 88.**

¹⁸ De Fazio Affidavit, at paras. 40-41, **ERC MR, Tab 2, p. 30.**

¹⁹ De Fazio Affidavit, at para. 42, **ERC MR, Tab 2, p. 31.**

²⁰ De Fazio Affidavit, at para. 42, **ERC MR, Tab 2, p. 31.**

²¹ De Fazio Affidavit, at para. 45, **ERC MR, Tab 2, p. 31.**

²² The Trust Agreement, s. 12.00, **ERC MR, Tab 2B, p. 103.**

12.01 of the Trust Agreement, upon termination, the Trustees shall:

- (a) **make provisions out of the Trust Fund for the payment of reasonable expenses incurred up to the date of termination** of the Trust Fund and the expenses incidental to such termination;
- (b) arrange for a final audit and report of their transactions and accounts for the purpose of terminating their trusteeship; and
- (c) **pay the residue** of the Trust Fund, if any, **in accordance with a formula adopted by the Trustees.**²³

[Emphasis added]

2. *The Company Reserve Funds*

17. As noted above, the Company contracted with Manulife to administer various ASO group benefits and other policies for its employees, former employees, and retirees and employees of certain legacy employers.

18. Manulife and the Company are party to a financial arrangements document, effective October 1, 2024 (the “**Financial Arrangements**”), in respect of the administration of such benefits on an ASO basis.²⁴

19. In accordance with the Financial Arrangements, Manulife held a reserve of funds to pay for the payment of benefits, administrative service charges and applicable taxes (the “**Company Reserve Fund**”).²⁵ This reserve was not held in a formal trust arrangement.²⁶ Manulife continues to hold the Company Reserve Fund, which was in the approximate amount of \$1,639,000 as of January 31, 2026.²⁷

20. The Secured Lenders claimed entitlement to the Company Reserve Fund.²⁸ Under the

²³ The Trust Agreement, s. 12.01, **ERC MR, Tab 2B, p. 103**; De Fazio Affidavit, at para. 56, **ERC MR, Tab 2, p. 33-34**.

²⁴ De Fazio Affidavit, at para. 50, **ERC MR, Tab 2, p. 32**.

²⁵ De Fazio Affidavit, at para. 51, **ERC MR, Tab 2, p. 32-3**.

²⁶ De Fazio Affidavit, at para. 51, **ERC MR, Tab 2, p. 33-3**.

²⁷ De Fazio Affidavit, at para. 51, **ERC MR, Tab 2, p. 32-3**.

²⁸ De Fazio Affidavit, at para. 52, **ERC MR, Tab 2, p. 33**.

Financial Arrangements, the Company is entitled to a refund of the Company Reserve Fund on termination of the arrangement.²⁹

D. ERC negotiates the Term Sheet and interim extensions to the LTD benefits for the ASO LTD Recipients

21. Over the past nine months, ERC has been negotiating with (among other parties) the Company, its Secured Lenders, the Monitor, the Trustees, and Manulife to settle the dispute over entitlement to the Trust assets and the Company Reserve Funds, establish the various programs in the Term Sheet, and conduct due diligence on various aspects of those programs.³⁰ Those negotiations were multi-faceted, and involved financial, legal, tax, and benefits considerations.³¹ Significant effort was made to ensure that the benefits could be provided in the most economical fashion, while protecting all parties from undue liabilities.³²

22. Upon the request of ERC and with the support of the Applicants, the Monitor and the Secured Lenders, the Company extended ASO LTD benefits to July 15, 2025 to facilitate further diligence and negotiation.³³

23. ERC further negotiated with the Applicants and the Secured Lenders, with the consent of the Monitor, subsequent extensions to the payment of ASO LTD benefits from July 15, 2025 to February 15, 2026 (the “**Post-Filing LTD Payments**”) to facilitate further diligence and negotiations.³⁴ As of February 15, 2026, the Company will have paid approximately \$1,050,000 in Post Filing LTD Payments to the ASO LTD Recipients and the Woodward LTD Recipient.³⁵

²⁹ De Fazio Affidavit, at para. 51, **ERC MR, Tab 2, p. 32-3.**

³⁰ De Fazio Affidavit, at para. 14, **ERC MR, Tab 2, p. 22.**

³¹ De Fazio Affidavit, at para. 15, **ERC MR Tab 2, p. 22;** Monitor’s Report, at para. 4.31(a).

³² De Fazio Affidavit, at para. 15, **ERC MR Tab 2, p. 22.**

³³ De Fazio Affidavit, at para. 25, **ERC MR Tab 2, p. 27.**

³⁴ De Fazio Affidavit, at para. 26, **ERC MR Tab 2, p. 27.**

³⁵ Hardship Program Term Sheet, dated February 3, 2026 [“**Term Sheet**”], **ERC MR, Tab 2A, p. 50.**

To secure the Post-Filing LTD Payments, ERC undertook to support reimbursement of the Applicants for the cost of the Post-Filing LTD Payments from the assets of the Trust.³⁶

24. During this period, several ASO LTD Recipients reached age 65 and ceased to be entitled to LTD benefits under their respective plans.³⁷ As of February 4, 2026, there are now only 157 ASO LTD Recipients who continue to receive ASO LTD benefits under the ASO Plan Document (the “**Extended LTD Recipients**”) in addition to the Woodward’s LTD Recipient.³⁸

E. The Term Sheet

25. The Hardship Programs Terms Sheet proposes to establish three separate programs: (a) the Trust Program; (b) the Woodward’s Replacement Policy; and (c) the Employee Hardship Program. The Hardship Programs would be funded through the Trust, the Company Reserve Fund, and – in the case of the Employee Hardship Program – the Applicant’s cash on hand in the amount of \$250,000, if applicable, representing foregone payments owing to the Secured Lenders.³⁹

1. The Trust Program

26. The Trust Program contemplates that the Trustees will arrange to wind up the Trust, clear its outstanding tax liabilities, reimburse the Applicants for trust expenses advanced by the Company, and distribute the remaining assets to the Extended LTD Recipients.

27. If approved, the Term Sheet provides that:

- (a) Immediately upon approval of the Term Sheet, the Trustees will transfer \$1,050,000 to the Company for Post-Filing LTD Payments (the “**Post-Filing LTD**

³⁶ De Fazio Affidavit, at para. 26, **ERC MR, Tab 2, p. 27.**

³⁷ De Fazio Affidavit, at para. 27, **ERC MR Tab 2, p. 28.**

³⁸ De Fazio Affidavit, at para. 28, **ERC MR Tab 2, p. 28.**

³⁹ Term Sheet, s. C(2), **ERC MR, Tab 2A, p. 57.**

Reimbursement").⁴⁰

- (b) The trustees will enter into arrangements with the Company which permit the continuance of monthly LTD payments (net of all applicable statutory deductions, as determined by the Company) to each Extended LTD Recipient in the amount that each Extended LTD Recipient would have received pursuant to the HBC Plan and ASO Plan Document but for the Applicants' insolvency until the earlier of (i) such time as the LTD Termination Payments) are finalized and processed, (ii) the Extended LTD Recipient's attainment of age 65, or (iii) the Extended LTD Recipient's death ("**Interim LTD Payments**").⁴¹ Interim LTD Payments made prior to December 31, 2026 are to be funded by the Trust in advance and are thereafter reimbursable to the Company by the Trust from the Trust Program.⁴²
- (c) No other assets of the Trust would be distributed until the Trustees are reasonably satisfied that they have no personal liability in connection with the tax obligations of the Trust as of the effective date of the wind-up of the Trust (which may include a tax clearance certificate, other form of written confirmation or an order of the Court (the "**Tax Comfort**").⁴³ Once the Tax Comfort is obtained, the remaining assets in the Trust shall be distributed in accordance with the distribution waterfall at para. A.4 of the Term Sheet (the "**Distribution Waterfall**") which, among other things, contemplates:
- (i) a Wind-Up Reserve to be retained by the Trust, in an amount expected to be

⁴⁰ Term Sheet, s. A(5)(i)(a), **ERC MR, Tab 2A, p. 54.**

⁴¹ Term Sheet, s. A(5)(i)(b), **ERC MR, Tab 2A, p. 54.**

⁴² Term Sheet, s. A(5)(i)(c), **ERC MR, Tab 2A, p. 54-5.**

⁴³ Term Sheet, s. A(3), **ERC MR, Tab 2A, p. 51-52.**

sufficient to cover the wind-up costs and liabilities of the Trust;⁴⁴ and

- (ii) following the establishment of the Wind-Up Reserve, the remaining Trust assets shall be made available for distribution (the “**Available Amount**”) to (a) fund the Trust Program for the Extended LTD Recipients; and (b) the Monitor, on behalf of the Company, to reimburse the Company for specified LTD-related expenses (the “**Reimbursement**”).⁴⁵
- (d) The Distribution Waterfall also provides that the target distributions from the Available Amount will consist of: (a) \$3.95 million to the Company to be applied to the Trust Program (for the benefit of the Extended LTD Recipients); and (b) \$4.1 million to the Monitor, on behalf of the Company, as part of the Reimbursement.⁴⁶ If the Available Amount is sufficient, the targeted distributions will be made in full; if there is a shortfall, the Trust Program Payment and the Reimbursement will be reduced equally.⁴⁷

28. The Term Sheet further provides mechanics for the distribution of any residual assets in the Wind-Up Reserve.⁴⁸

29. The Reimbursement and Post-Filing LTD Reimbursement will be held by the Monitor pending distribution to the FILO Agent or pursuant to further order of the Court.⁴⁹

30. Even without the Reimbursement contemplated by the Term Sheet, the assets in the Trust are insufficient to fully insure or otherwise provide complete replacement of the Extended LTD

⁴⁴ Term Sheet, s. A(4)(i), **ERC MR, Tab 2A, p. 52.**

⁴⁵ Term Sheet, s. A(4)(ii), **ER MR, Tab 2A, p. 52.**

⁴⁶ Term Sheet, s. A(4)(iii)(b), **ERC MR, Tab 2A, p. 53.**

⁴⁷ Term Sheet, s. A(4)(iv), **ERC MR, Tab 2A, p. 53.**

⁴⁸ Term Sheet, s. A(4)(v), **ERC MR Tab 2A, p. 53-4.**

⁴⁹ Term Sheet, s. A(4)(iv)(b), **ERC MR, Tab 2A, p. 53.**

Recipients' LTD benefits.⁵⁰

31. The Hardship Programs Term Sheet contemplates that the LTD component of the ASO Plan Document and the Woodward's Plan Document will be terminated, given that the benefit plans can no longer continue because of the Applicants' insolvency.⁵¹ In lieu thereof, in addition to the Post-Filing LTD Payments, the Trust Program contemplates three forms of payment to the Extended LTD Recipients from the Trust (together, the "**LTD Settlement Payments**"):

- (a) **Interim LTD Payments**, described at para. 27(b) above;⁵²
- (b) **LTD Termination Payment**, which will consist of a lump-sum payment reflecting the sum of all Pre-Determined Monthly Payments each individual would have received for the period beginning February 16, 2026 and ending May 15, 2028, or such other period as may be determined by ERC having regard to the actual funds available, or age 65, whichever is earlier, but for the Applicants' insolvency, less applicable statutory deductions.⁵³ Each individual's LTD Termination Payment shall be reduced by any Interim LTD Payments made to the individual;⁵⁴ and
- (c) **Residual Trust Program Payment**, under which (to the extent there are funds that cannot be distributed as an LTD Termination Payment) the Company and/or its agent is authorized and directed to, subject to receipt of applicable instructions from the ERC, pay each Extended LTD Recipient from the Trust Program a final lump-sum payment

⁵⁰De Fazio Affidavit, at paras. 69-70, **ERC MR, Tab 2, p. 39-40.**

⁵¹De Fazio Affidavit, at paras. 66-67, **ERC MR, Tab 2, p. 39.**

⁵²Term Sheet, s. A(5)(i)(b), **ERC MR, Tab 2A, p. 54.**

⁵³Term Sheet, s. A(5)(ii), **ERC MR, Tab 2A, p. 55.**

⁵⁴Term Sheet, s. A(5)(ii), **ERC MR, Tab 2A, p. 55.**

allocated *pari passu* amongst the Extended LTD Recipients.⁵⁵

2. *The Woodward Replacement Policy*

32. The Trust assets cannot be used to fund benefits for the Woodwards LTD Recipient because they were never a beneficiary of the Trust.⁵⁶ This is because the Woodwards LTD Recipient was never actively employed by Zellers or the Company, did not fall within the definition of Participating Member under the Trust Agreement,⁵⁷ and did not receive benefits under the Trust Plan.⁵⁸

33. As such, the Term Sheet provides for the purchase a contract of insurance at the cost of approximately \$57,000⁵⁹ to fully satisfy all obligations to the Woodwards LTD Recipient under the Woodwards LTD Policy.⁶⁰ The Woodwards Replacement Policy would be substantially similar to the Woodwards Plan Document and would result in a policy under which the Woodwards LTD Recipient would cease to be eligible for benefits upon the earlier of: recovery from disability; age 65; or death.⁶¹

3. *The Employee Hardship Program*

34. Assuming that the Reimbursement will reach the target amount of \$4,100,000, the Secured Lenders have agreed to forego \$250,000 in indebtedness owing to them to establish the Employee Hardship Program.⁶² The Employee Hardship Program will be funded through the Applicants'

⁵⁵ Term Sheet, s. A(5)(iii), **ERC MR, Tab 2A, p. 55.**

⁵⁶ De Fazio Affidavit, at para. 74, **ERC MR, Tab 2, p. 42.**

⁵⁷ De Fazio Affidavit, at para. 74, **ERC MR, Tab 2, p. 42.**

⁵⁸ De Fazio Affidavit, at para. 31, **ERC MR, Tab 2, p. 28.**

⁵⁹ Term Sheet, s. B(2), **ERC MR, Tab 2A, p. 56-7.**

⁶⁰ De Fazio Affidavit, at para. 77, **ERC MR, Tab 2, p. 42.**

⁶¹ De Fazio Affidavit, at para. 77, **ERC MR, Tab 2, p. 42.**

⁶² Term Sheet, s. C(2), **ERC MR, Tab 2A, p. 57.**

general revenues if and when the Monitor receives the Minimum Reimbursement.⁶³

35. The Employee Hardship Program will allow former employees who were terminated on or after the Filing Date, as well as certain retirees and other eligible individuals such as dependents, to apply for funds to alleviate exceptional hardships.⁶⁴ Applicants who meet the criteria in s. C(4) of the Term Sheet can receive up to a maximum payment of up to eight (8) weeks' of their regular wages (as determined by applicable employment standards legislation) up to a maximum gross weekly amount of \$1,200 per week, with the possibility of also receiving further payment of up to \$2,500 on a discretionary basis in cases of medical and other emergencies.⁶⁵

36. The Monitor has agreed to administer the application process, which will run from the date of the funding of the Employee Hardship Program to six (6) months thereafter or until such earlier date as funds no longer exist in the Employee Hardship Program.⁶⁶ If the Monitor denies an application, the Term Sheet provides for the ability to appeal to a Hardship Committee that consists of one appointee of the Applicants, one appointee of ERC, and one appointee of the Monitor.⁶⁷

37. Any unused funds will be retained by the Monitor on behalf of the Applicants, to be held pending distributions to the FILO Agent or pursuant to further order of the Court.⁶⁸

4. *Incidental directions, releases, and declarations*

38. To facilitate the various programs described above, the Term Sheet and proposed order provides incidental releases:

(a) for the Applicants, the Monitor, the Hardship Committee, the Trustees and all former

⁶³ Term Sheet, s. C(2), **ERC MR, Tab 2A, p. 57.**

⁶⁴ Term Sheet, s. C(4), **ERC MR Tab 2A, p. 58.**

⁶⁵ Term Sheet, s. C(7), **ERC MR, Tab 2A, p. 59-60.**

⁶⁶ Term Sheet, s. C(3), **ERC MR Tab 2A, p. 57-8.**

⁶⁷ Term Sheet, s. C(6), **ERC MR Tab 2A, p. 59.**

⁶⁸ Term Sheet, s. C(10), **ERC MR Tab 2A, p. 60.**

trustees of the Trust, Employee Representative Counsel, Manulife and ScotiaWealth, as applicable, and their respective directors, officers, employees, legal counsel, and other advisors, to be released from any and all present and future claims whatsoever in connection with their administration of the Trust, termination of the Trust Plan and LTD component of the ASO Plan Document, termination of the Trust, termination of the Woodward's LTD Policy, and implementation of the Hardship Programs Term Sheet, and the carrying out the terms of the Hardship Programs and the Hardship Programs Order; and

- (b) for the Monitor, Employee Representative Counsel and the Hardship Committee to incur no liability in connection with the Hardship Programs;

in each case, subject only to claims for fraud or wilful misconduct or claims that are not permitted to be released pursuant to section 5.1(2) of the CCAA.⁶⁹ In addition to these releases, the Represented Employees seek to limit any obligations: (a) of the Applicants, the Monitor and Manulife with respect to the Woodward's LTD Recipient to the purchase and provision of the Woodward's Replacement Policy; and (b) of the Trustees and ScotiaWealth with respect to the payments to Extended LTD Recipients under the Trust Program to the extent of any funds remaining in the Maximum Trust Program Payment, which are required and available to be paid to Extended LTD Recipients.

39. The Term Sheet and draft Order also seeks declarations to clarify the treatment of the payments out of the various programs, described further below.

⁶⁹ *Companies' Creditors Arrangement Act*, [RSC 1985, c C-36](#), s. [5.1\(2\)](#) ["CCAA"].

PART III. ISSUES

40. ERC submits that:

- (a) The Court has the power to grant the orders sought under s. 11 of the CCAA;
- (b) It is appropriate for the Court to make an order approving the Term Sheet;
- (c) The ancillary releases and declarations are appropriate; and
- (d) The Court should exercise its discretion to seal the confidential versions of the Term Sheet containing the names of the individual beneficiaries, their maximum benefit dates, and benefit amounts, as well as other personal information in respect of the Trustees in the Term Sheet and the Trust Agreement.

PART IV. LAW & ARGUMENT

A. *The Court has Jurisdiction to Grant the Order*

41. This Court has the jurisdiction “to approve major transactions, including settlement agreements, during the stay period defined in the Initial Order”.⁷⁰ In addition to its powers to “make binding declarations of right” under s. 97 of the Courts of Justice Act, the Court also has the power to “make any order that it considers appropriate in the circumstances” pursuant to the broad grant of authority in s. 11 of the CCAA and its inherent jurisdiction to give effect to the remedial objectives of the CCAA.⁷¹

⁷⁰ *In Re DCL Corporation*, [2025 ONSC 4976](#), at para 14; *Stelco Inc., Re*, [2006 CanLII 16526 \(ON CA\)](#), at paras. 10-11; *Labourers’ Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation*, [2013 ONSC 1078](#), at paras. 36, 41, and 44, leave to appeal to CA refused, [2013 ONCA 456](#), leave to appeal to SCC refused [2014 CanLII 11054](#).

⁷¹ *Courts of Justice Act*, [RSO 1990, c C.43](#), s. 97 [“CJA”]; CCAA, s. 11; 9354-9186 *Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#), at paras. 67-68; *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#), at paras. 64-70; *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, [2008 ONCA 587](#), at para. 44; *Canadian Red Cross Society/Société canadienne de la Croix-Rouge, Re*, [1998 CanLII 14907 \(ON SC\)](#), at para. 43.

B. The Court Should Approve the Term Sheet

42. In determining whether to exercise its discretion to approve a settlement agreement, the Court considers three factors:

- (a) whether the settlement is fair and reasonable in the circumstances;
- (b) whether the settlement will benefit the debtor and its stakeholders generally; and
- (c) whether the settlement is consistent with the purpose and spirit of the CCAA.⁷²

43. When reviewing a transaction for fairness and reasonableness, the Court considers how the transaction moves the CCAA proceedings towards a successful compromise, including whether the transaction permits the debtor to move on to remaining steps that need to be accomplished before the CCAA proceedings can be concluded.⁷³

44. Each of the three programs created by the Term Sheet meets the fair and reasonable test, as articulated further below.

45. The Term Sheet provides substantial benefits to stakeholders, particularly the Extended LTD Recipients and the Woodward's LTD Recipient, but also other eligible employees and the Applicants' creditors, without litigation that would be costly, time consuming, and uncertain.⁷⁴ For this reason, the Term Sheet has the support of all relevant parties, including the Monitor.⁷⁵

46. The settlement is consistent with the purpose and spirit of the CCAA insofar as it efficiently resolves competing claims to the disputed funds, including the Company Reserve Fund, which is

⁷² *In Re DCL Corporation*, [2025 ONSC 4976](#), at para 14; *Robertson v. ProQuest Information & Learning Co.*, [2011 ONSC 1647](#) at para. 22; *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, [2013 ONSC 1078](#) at para. 49, leave to appeal to CA refused, [2013 ONCA 456](#), leave to appeal to SCC refused [2014 CanLII 11054](#); *The Cash Store Financial Services Inc. (Re)*, [2015 ONSC 7538](#) at para. 14.

⁷³ *Air Canada, Re*, [2004 CanLII 11700 \(ON SC\)](#) at para 9.

⁷⁴ Monitor's Report, at para. 4.31(a).

⁷⁵ Monitor's Report, at para. 4.32.

an asset of the Applicants, as well as the provides a scheme for the orderly wind of the Trust and distribution of its assets. The Term Sheet is a global resolution, consistent with the CCAA's objective of enabling an orderly wind-up of the debtor company's affairs.⁷⁶

47. The only party who has objected to the approval of the Hardship Programs Order is Mr. Robert Rene Turpin. As set out in the Monitor's Report, the Monitor is not aware of any evidence to substantiate Mr. Turpin's claims and does not believe that Mr. Turpin has articulated a legitimate or credible basis to object to the Hardship Programs Order.⁷⁷

1. The Trust Program

(a) The quantum allocated between the CCAA stakeholders is fair and reasonable

48. The Applicants and the Secured Lenders asserted entitlements to both the Trust assets and the Company Reserve Fund, which entitlements were disputed by ERC. Determination of the entitlements to the Trust assets and Company Reserve Fund would have required complex and costly litigation, including a consideration of the Quebec law under which the Trust Agreement is to be construed.⁷⁸ This litigation would pose risks to multiple parties and stakeholders, including the Applicants, Secured Lenders, the Trust, Manulife, the Extended LTD Recipients and former employees facing hardships. The available funds may have been eroded through litigation costs regardless of ultimately findings of the Court.

49. In light of their positions, the parties' compromise is fair and reasonable and supported by the Monitor.⁷⁹ The Extended LTD Recipients would have faced the immediate loss of LTD

⁷⁶ *Re Nortel Networks Corporation et al*, [2014 ONSC 5274](#), at para [22](#).

⁷⁷ Monitor's Report, at para. 3.24.

⁷⁸ Trust Agreement, s. 13.00, **ERC MR, Tab 2B, p. 104**.

⁷⁹ Monitor's Report, at para. 4.31.

payments upon which they rely as their primary source of income while entitlement to the assets was litigated, and would have faced the possibility of ultimate loss on the merits. The Applicants and Secured Lenders would have faced the costs of litigation and the possibility of loss as well, given the complexity of the issues.

(b) *The distribution of Trust assets is consistent with the Trust Agreement*

50. As noted above, the Trust Agreement provides for termination upon written instruction of the Company (standing *mutatis mutandi* for Zellers).

51. The distribution of the assets contemplated by the Term Sheet is consistent with art. 12.01 of the Trust Agreement, detailed at para. 16 above.

52. Payment of the Reimbursement and the withholding of the Wind Up Reserve are consistent with art. 12.01(a) of the Trust Agreement, which requires the Trustees to pay “reasonable expenses incurred up to the date of termination” and “expenses incidental to such termination” upon wind-up.

53. The LTD Settlement Payments provided for under s. A(5) of the Term Sheet and defined therein, represent a formula for payment of the residual assets of the Trust Fund to the Extended LTD Recipients, consistent with art. 12.01(c) of the Trust Agreement which requires the Trustees to pay the residue of the Trust “in accordance with a formula adopted by the Trustees”. The Extended LTD Recipients are beneficiaries of the Trust, who received LTD benefits pursuant to the HBC Plan, and who are uniquely vulnerable amongst former employees of the Company because they are unable to find alternative income through employment because of their disability. The Trustees are signatories to the Term Sheet and have agreed to distribute the remaining Trust assets in accordance with the Term Sheet.

2. The Woodward Replacement Policy

54. It is fair and reasonable for the parties to provide for a portion of the Company Reserve Fund to be used to purchase a replacement policy for the Woodwards LTD Recipient. The Woodwards Replacement Policy assists a vulnerable stakeholder in these proceedings, whose circumstances do not allow them to be included in the Trust Program.

3. The Employee Hardship Program

55. Hardship funds which provide modest payments to vulnerable stakeholders are an accepted tool in CCAA proceedings, available in certain circumstances. This Court has approved the creation of a hardship fund to mitigate the dislocation experienced by employees in a number of insolvencies.⁸⁰

56. The Employee Hardship Program creates a fair process for employees with extraordinary hardships to apply to the Monitor for hardship payments, as well as a mechanism to appeal a denial to an independent Hardship Committee.⁸¹ This program design also substantively mirrors the terms of the employee hardship fund approved in *Sears*.⁸²

C. The ancillary releases and declarations are fair and reasonable.

1. The Releases are appropriate

57. CCAA courts have, on multiple occasions, approved releases in the absence of a CCAA plan, both on consent and in contested matters. These releases have been in favour of, among other

⁸⁰ *Re Sears Canada*, [Employee Hardship Fund Order, Ontario Superior Court of Justice \(Commercial List\), Court File No. CV-17-11846-00CL, August 18, 2017](#); *Target Canada Co. (Re)*, [2015 ONSC 303](#) at paras 53-55; *Nortel Networks Corporation (Re)*, [2009 CanLII 41210 \(ON SC\)](#) at para 9.

⁸¹ Term Sheet, para. C(6), **ER MR Tab 2A, p. 59**.

⁸² *Re Sears Canada*, [Employee Hardship Fund Order, Ontario Superior Court of Justice \(Commercial List\), Court File No. CV-17-11846-00CL, August 18, 2017](#).

parties, directors, officers, monitors, counsel, employees, shareholders and advisors.⁸³ Where, as here, a settlement provides for releases in favour of third parties, the court will assess:

- (a) whether the claims to be released are “rationally related to the purpose of the plan”;
- (b) whether the claims to be released are “necessary for the plan of arrangement”;
- (c) whether “the parties who have claims released against them [are] contributing in a tangible and realistic way”; and
- (d) Whether the “plan benefit[s] the debtor and the creditors generally”.⁸⁴

58. As in most discretionary exercises, it is not necessary for each of the above factors to apply for the Court to grant a release.⁸⁵

59. All of those criteria are met in relation to the contemplated third-party releases in favour of ERC, the Trustees, the Monitor, Manulife and ScotiaWealth, and the Hardship Committee. The releases are “not overly broad or offensive to public policy”:⁸⁶ as the Monitor notes, the releases are sufficiently narrow and are rationally connected to the relief sought, as they are for the benefit of the parties implementing the Hardship Programs.⁸⁷ They also preserve claims that are not permitted to be released pursuant to s. 5.1(2) of the CCAA and claims arising from fraud or wilful

⁸³ *Re Green Relief Inc.*, [2020 ONSC 6837](#), at para. 76; *Nelson Education Limited (Re)*, [2015 ONSC 5557](#), at para. 49; *Golf Town Canada Holdings Inc. (Re)*, [CCAA Termination Order, Ontario Superior Court of Justice \(Commercial List\), Court File No. CV-16-11527-00CL, March 29, 2018](#); *Green Growth Brands Inc. et al. (Re)*, [Order Terminating CCAA Proceedings, Ontario Superior Cort of Justice \(Commercial List\), Court File No. File No. CV-20-00641220-00CL, May 19, 2021](#).

⁸⁴ *Nortel Networks Corporation (Re)*, [2010 ONSC 1708](#), at paras. 30, 77-82; *Labourers’ Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation*, [2013 ONSC 1078](#) at para 50, leave to appeal to CA refused, [2013 ONCA 456](#), leave to appeal to SCC refused [2014 CanLII 11054](#). See generally *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#), at para. 62 re: approval of settlements with third party releases.

⁸⁵ *Harte Gold Corp. (Re)*, [2022 ONSC 653](#) at para. 80.

⁸⁶ *Nortel Networks Corporation (Re)*, [2010 ONSC 1708](#), at paras. 30 and 82; *Labourers’ Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation*, [2013 ONSC 1078](#), at paras. 47 and 65, leave to appeal to CA refused, [2013 ONCA 456](#), leave to appeal to SCC refused [2014 CanLII 11054](#).

⁸⁷ Monitor’s Report, at para. 4.31(c).

misconduct. The releases are designed to ensure that funds are available to be distributed and that the parties who will implement the programs in the Term Sheet are willing to act in that capacity, which ultimately serves the interests of both the debtors and creditors:

- (a) The Applicants and ERC have negotiated the Term Sheet to provide for an orderly and efficient resolution to the issues in dispute;
- (b) The Trustees' cooperation is necessary to oversee the orderly wind-up and distribution of the assets of the Trust. The Trustees do not derive any personal benefits under the Term Sheet, but have indicated their willingness to assist with implementation of the Term Sheet subject to various protections;
- (c) Manulife and ScotiaWealth are required to cooperate in transferring the assets in accordance with the Term Sheet, as well as (in the case of Manulife) by arranging for the Woodward's Replacement Policy;
- (d) The participation of the Monitor, ERC and the Hardship Committee is essential to ensure that Employee Hardship Program can be implemented and administered; and
- (e) The Applicants' cooperation is necessary to purchase the Woodward's Replacement Policy, and to make the payments to individuals under the Trust Program and the Employee Hardship Program, as neither the Trust nor the Monitor have the capacity to implement such payments.

2. *The Court should grant the declarations with respect to the character of the Employee Hardship Program payments*

60. To facilitate the orderly distribution of the Employee Hardship Program, the order also seeks a declaration about the characterization of those funds.

61. Para. 21 of the order seeks a declaration that payments from the Employee Hardship

Program are not earnings arising from the employment of Hardship Applicants but are intended to alleviate particular hardships faced by those Hardship Applicants, which is relevant to whether receipt of Employee Hardship Fund payments will result in any repayment obligations in relation to Employment Insurance (“EI”).

62. This relief is consistent with the Social Security Tribunal’s determination in *Canada Employment Insurance Commission v VA* that payments from the employee hardship fund established in the *Sears* insolvency did not constitute “earnings”.⁸⁸ In that case, the Tribunal held that hardship payments that were only available to employees who could demonstrate extraordinary hardship and that they were funded by a foregone KERP payment from the company to an executive, and that they were therefore not “earnings” within the meaning of the *Employment Insurance Act* and associated regulations.⁸⁹ In the present case, the criteria for receipt of payments from the Employee Hardship Fund are the same as in *Sears*, and similar to *Sears*, those payments are being funded by foregone payments owing to the Secured Lenders.⁹⁰

63. Granting the proposed declaration provides both applicants to the Employee Hardship Fund, the Company and the Monitor with certainty that the funds will not trigger an obligation to repay any EI benefits a person may have previously received and therefore avoid delays in the process of disbursing funds while the Monitor ascertains the amount of the EI repayment, if any.⁹¹ Instead, those funds can be disbursed immediately and used for their intended purpose, which is to alleviate extraordinary hardships faced by eligible individuals.

⁸⁸ *Canada Employment Insurance Commission v VA*, [2020 SST 400](#).

⁸⁹ *Canada Employment Insurance Commission v VA*, [2020 SST 400](#), at paras. [75-77](#), [88](#), [95-99](#), [107-112](#); *Employment Insurance Regulations*, [SOR/96-332](#), ss. [35\(1\)](#), [\(2\)](#), and [36\(9\)](#).

⁹⁰ *Canada Employment Insurance Commission v VA*, [2020 SST 400](#), at para. [29](#).

⁹¹ If the funds are properly considered earnings, the Monitor may be required to determine the amount of the overpayment and remit that amount pursuant to s. [46](#) of the *Employment Insurance Act*, [SC 1996, c 23](#).

D. The Sealing Order is Appropriate

64. ERC and the Applicants are seeking a sealing order in respect of confidential personal information contained in: (a) Schedule “A” to the Term Sheet, which identifies the Extended LTD Recipients, their Pre-Determined Monthly Amounts and their Maximum Benefit (Age 65) dates; (b) para. B.1 of the Term Sheet which identifies the Woodward’s LTD Recipient; c) portions of the Term Sheet and Trust Agreement which identify current and former Trustees and their personal information. That information includes both their personal information and – in the case of the LTD Beneficiaries, because it reveals their receipt of LTD benefits – by implication, their personal health information and financial information.⁹²

65. This Court has the discretion pursuant to section 137(2) of the *Courts of Justice Act*⁹³ and its inherent jurisdiction to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.

66. The test to determine if a sealing order should be granted requires the court to determine whether: (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.⁹⁴ In relation to those factors:

- (a) The sensitive personal and compensation information of employees is an important public interest that should be protected.⁹⁵ The Court in *Sierra Club* and *Sherman Estate*

⁹² De Fazio Affidavit, at para. 95, **ERC MR Tab 2, p. 47.**

⁹³ *CJA*, s. [137\(2\)](#).

⁹⁴ *Sherman Estate v Donovan*, [2021 SCC 25](#) at para [38](#).

⁹⁵ See *Tacora Resources Inc. (Re)*, [2023 ONSC 6126](#), at paras. [160-161](#); *Just Energy Group Inc. et al.*, [2021 ONSC 7630](#), at para. [28](#); *Canwest Global Communications Corp. (Re)*, [2009 CanLII 55114 \(ON SC\)](#) at para [52](#); *Re Essar Steel Algoma Inc et al.*, [2015 ONSC 7656](#) at paras [22-26](#).

explicitly recognized that commercial interests, such as protecting confidential information, are an important public interest for purposes of this test.⁹⁶ CCAA courts have previously granted sealing orders to protect analogous details about individual names and compensation arrangements in key employee retention plans.⁹⁷ Employees have a reasonable expectation that their names and financial and health information will be kept confidential.⁹⁸ None of the parties whose Personal Information is redacted consented to the public disclosure of their Personal Information;⁹⁹

- (b) There is no other way to protect the Extended LTD Recipients' and the Woodward's LTD Recipient's privacy interests; and
- (c) The information over which confidentiality is sought (i.e., individual employee names and their financial and health information) to be maintained is discrete, proportional and limited. The public interest in transparency in how the Trust Program is administered is served by disclosing the aggregate amount of the benefits that will be paid, the time period over which they will be paid, and the number of individuals to whom they will be paid in the De Fazio Affidavit. The benefits of sealing Schedule "A" and paragraph B.1 of the Term sheet outweigh its negative effects and no party will be prejudiced by the sealing request.¹⁰⁰

⁹⁶ *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#), at paras. [53-56](#); *Sherman Estate v. Donovan*, [2021 SCC 25](#), at para. [54](#).

⁹⁷ See for example, *Acerus Pharmaceuticals Corporation et al (Re)*, [Amended and Restated Initial Order, Ontario Superior Court of Justice \(Commercial List\), Court File No CV-23- 00693595-00CLJ](#), February 3, 2023, at para [65](#); *Ontario Securities Commission v. Bridging Finance Inc.*, [2021 ONSC 4347](#), at paras [25-27](#); *Just Energy Group Inc. et al.*, [2021 ONSC 7630](#), at paras [26-29](#); *Golf Town Canada Holdings Inc (Re)*, [Initial Order, Ontario Superior Court of Justice \(Commercial Liast\), Court File No CV-16-11527- 00CL](#), September 14, 2016 at para [64](#).

⁹⁸ *Tacora Resources Inc. (Re)*, [2023 ONSC 6126](#), at para. [160](#).

⁹⁹ De Fazio Affidavit at para 95, **ERC MR, Tab 2, p. 47**.

¹⁰⁰ Monitor's Report, at para. 4.31(d).

67. To facilitate the cooperation of the individual Trustees, ERC and the Applicants are also seeking an order permitting the redaction of the names of the Trustees in para. A.2 and in the signatures to the Term Sheet, to protect their privacy and address their reservations in respect of their personal information being made public. The current Trustees have expressed reservations in respect of their personal information being made public. They are not beneficiaries to the Term Sheet and have agreed to continue to assist with the implementation of the Term Sheet, provided the protections are available. The recent communications from Mr. Turpin to the Court and the Service List, as reported in the Thirteenth Report of the Monitor, particularly Mr. Turpin's statement with respect to "retaliation" and seeking the Trustees personally liable underlines the reasonable basis for the Trustees' reservations.¹⁰¹

68. ERC and the Applicants further seek a sealing order over the names and personal addresses of the original trustees of the Trust on pages 20 and 21 of the Trust Agreement, being Exhibit "B" to the De Fazio affidavit. The original trustees have long ceased acting in their capacities as Trustees, disclosure of their information is unnecessary to the proceedings, and their personal addresses are particularly private information deserving of protection.

PART V. ORDERS SOUGHT

69. ERC seeks an order approving the Term Sheet in the form of Schedule "A" to the notice of motion.

¹⁰¹ Email from Mr. Turpin to the Service List dated February 4, 2026 at 9:20 PM, Appendix "C" to the Monitor's Report, Tab 38, p. 465, "**Retaliation:** Sealing the names of Trustees prevents me from holding them personally liable for the **Unjust Enrichment** of third parties at the expense of my lineage."

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 9TH DAY OF FEBRUARY, 2026.



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Employee Representative Counsel

CERTIFICATE

Court File No. CV-25-00738613-00CL

**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
1242939 B.C. UNLIMITED LIABILITY COMPANY, 1241423 B.C. LTD., 1330096 B.C.
LTD., 1330094 B.C. LTD., 1330092 B.C. UNLIMITED LIABILITY COMPANY, 1329608
B.C. UNLIMITED LIABILITY COMPANY, 2745263 ONTARIO INC., [2745270
ONTARIO INC.](#), SNOSPMIS LIMITED, 2472596 ONTARIO INC., AND 2472598
ONTARIO INC.**

CERTIFICATE

I, Karen Ensslen, lawyer at Ursel Phillips Fellows Hopkinson LLP, Employee Representative
Counsel, certify that:

1. I am satisfied as to the authenticity of the authorities cited in this factum.



DATE: February 9, 2026

Karen Ensslen
Ursel Phillips Fellows Hopkinson LLP
Employee Representative Counsel

SCHEDULE "A"

Authorities Referred To

1. *9354-9186 Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#)
2. *Acerus Pharmaceuticals Corporation et al (Re)*, [Amended and Restated Initial Order, Ontario Superior Court of Justice \(Commercial List\), Court File No CV-23- 00693595-00CL](#), February 3, 2023
3. *Air Canada, Re*, [2004 CanLII 11700 \(ON SC\)](#)
4. *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, [2008 ONCA 587](#)
5. *Canada Employment Insurance Commission v VA*, [2020 SST 400](#)
6. *Canadian Red Cross Society/Société canadienne de la Croix-Rouge, Re*, [1998 CanLII 14907 \(ON SC\)](#)
7. *Canwest Global Communications Corp. (Re)*, [2009 CanLII 55114 \(ON SC\)](#)
8. *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#),
9. *Golf Town Canada Holdings Inc. (Re)*, [CCAA Termination Order, Ontario Superior Court of Justice \(Commercial List\), Court File No. CV-16-11527-00CL, March 29, 2018](#)
10. *Golf Town Canada Holdings Inc (Re)*, [Initial Order, Ontario Superior Court of Justice \(Commercial Liast\), Court File No CV-16-11527- 00CL, September 14, 2016 at para 64.](#)
11. *Green Growth Brands Inc. et al. (Re)*, [Order Terminating CCAA Proceedings, Ontario Superior Cort of Justice \(Commercial List\), Court File No. File No. CV-20-00641220-00CL, May 19, 2021.](#)
12. *Green Relief*, [2020 ONSC 6837](#)
13. *Harte Gold Corp. (Re)*, [2022 ONSC 653](#)
14. *In Re DCL Corporation*, [2025 ONSC 4976](#)
15. *Just Energy Group Inc. et al.*, [2021 ONSC 7630](#)
16. *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation*, [2013 ONSC 1078](#), leave to appeal to CA refused, [2013 ONCA 456](#), leave to appeal to SCC refused [2014 CanLII 11054](#)
17. *Nelson Education Limited (Re)*, [2015 ONSC 5557](#)

18. *Nortel Networks Corporation (Re)*, [2009 CanLII 41210 \(ON SC\)](#)
19. *Nortel Networks Corporation (Re)*, [2010 ONSC 1708](#)
20. *Re Essar Steel Algoma Inc et al*, [2015 ONSC 7656](#) at paras [22–26](#).
21. *Re Nortel Networks Corporation et al*, [2014 ONSC 5274](#)
22. *Re Sears Canada*, [Employee Hardship Fund Order, Ontario Superior Court of Justice \(Commercial List\), Court File No. CV-17-11846-00CL, August 18, 2017](#)
23. *Robertson v. ProQuest Information & Learning Co.*, [2011 ONSC 1647](#)
24. *Sherman Estate v Donovan*, [2021 SCC 25](#)
25. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#)
26. *Stelco Inc., Re*, [2006 CanLII 16526 \(ON CA\)](#)
27. *Tacora Resources Inc. (Re)*, [2023 ONSC 6126](#)
28. *Target Canada Co. (Re)*, [2015 ONSC 303](#)
29. *The Cash Store Financial Services Inc. (Re)*, [2015 ONSC 7538](#)

SCHEDULE “B”

Relevant Statutes, Regulations and By-laws

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

Claims against directors — compromise

5.1 (1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

Exception

(2) A provision for the compromise of claims against directors may not include claims that

(a) relate to contractual rights of one or more creditors; or

(b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

[...]

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.

R.S., 1985, c. C-36, s. 11; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 124; [2005, c. 47, s. 128](#).

Courts of Justice Act, RSO 1990, c C.43

Declaratory orders

97 The Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may make binding declarations of right, whether or not any consequential relief is or could be claimed. 1994, c. 12, s. 39; 1996, c. 25, s. 9 (17).

[...]

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

[Employment Insurance Act, SC 1996, c 23](#)

Return of benefits by employer or other person

46 (1) If under a labour arbitration award or court judgment, or for any other reason, an employer, a trustee in bankruptcy or any other person becomes liable to pay earnings, including damages for wrongful dismissal or proceeds realized from the property of a bankrupt, to a claimant for a period and has reason to believe that benefits have been paid to the claimant for that period, the employer or other person shall ascertain whether an amount would be repayable under [section 45](#) if the earnings were paid to the claimant and if so shall deduct the amount from the earnings payable to the claimant and remit it to the Receiver General as repayment of an overpayment of benefits.

Return of benefits by employer

(2) If a claimant receives benefits for a period and under a labour arbitration award or court judgment, or for any other reason, the liability of an employer to pay the claimant earnings, including damages for wrongful dismissal, for the same period is or was reduced by the amount of the benefits or by a portion of them, the employer shall remit the amount or portion to the Receiver General as repayment of an overpayment of benefits.

[Employment Insurance Regulations, SOR/96-332](#)

Determination of Earnings for Benefit Purposes

35 (1) The definitions in this subsection apply in this section.

employment means

(a) any employment, whether insurable, not insurable or excluded employment, under any express or implied contract of service or other contract of employment,

(i) whether or not services are or will be provided by a claimant to any other person, and

(ii) whether or not income received by the claimant is from a person other than the person to whom services are or will be provided;

(b) any self-employment, whether on the claimant's own account or in partnership or co-adventure; and

(c) the tenure of an office as defined in [subsection 2\(1\)](#) of the [Canada Pension Plan](#). (*emploi*)

income means any pecuniary or non-pecuniary income that is or will be received by a claimant from an employer or any other person, including a trustee in bankruptcy. (*revenu*)

pension means a retirement pension

(a) arising out of employment or out of service in any armed forces or in a police force;

(b) under the [Canada Pension Plan](#); or

(c) under a provincial pension plan. (*pension*)

self-employed person has the same meaning as in subsection 30(5). (*travailleur indépendant*)

(2) Subject to the other provisions of this section, the earnings to be taken into account for the purpose of determining whether an interruption of earnings under [section 14](#) has occurred and the amount to be deducted from benefits payable under [section 19](#), [subsection 21\(3\)](#), [22\(5\)](#), [152.03\(3\)](#) or [152.04\(4\)](#) or [section 152.18](#) of the [Act](#), and to be taken into account for the purposes of [sections 45](#) and [46](#) of the Act, are the entire income of a claimant arising out of any employment, including

(a) amounts payable to a claimant in respect of wages, benefits or other remuneration from the proceeds realized from the property of a bankrupt employer;

(b) workers' compensation payments received or to be received by a claimant, other than a lump sum or pension paid in full and final settlement of a claim made for workers' compensation payments;

(c) payments a claimant has received or, on application, is entitled to receive under

(i) a group wage-loss indemnity plan,

(ii) a paid sick, maternity or adoption leave plan,

(iii) a leave plan providing payment in respect of the care of a child or children referred to in [subsection 23\(1\)](#) or [152.05\(1\)](#) of the [Act](#),

(iv) a leave plan providing payment in respect of the care or support of a family member referred to in [subsection 23.1\(2\)](#) or [152.06\(1\)](#) of the [Act](#),

(v) a leave plan providing payment in respect of the care or support of a critically ill child, or

(vi) a leave plan providing payment in respect of the care or support of a critically ill adult;

(d) notwithstanding paragraph (7)(b) but subject to subsections (3) and (3.1), the payments a claimant has received or, on application, is entitled to receive from a motor vehicle accident insurance plan provided under a provincial law in respect of the actual or presumed loss of income from employment due to injury, if the benefits paid or payable under the Act are not taken into account in determining the amount that the claimant receives or is entitled to receive from the plan;

(e) the moneys paid or payable to a claimant on a periodic basis or in a lump sum on account of or in lieu of a pension; and

(f) where the benefits paid or payable under the Act are not taken into account in determining the amount that a claimant receives or is entitled to receive pursuant to a provincial law in respect of an actual or presumed loss of income from employment, the indemnity payments the claimant has received or, on application, is entitled to receive pursuant to that provincial law by reason of the fact that the claimant has ceased to work for the reason that continuation of work entailed physical dangers for

(i) the claimant,

(ii) the claimant's unborn child, or

(iii) the child the claimant is breast-feeding.

[...]

Allocation of Earnings for Benefit Purposes

[...]

36 (9) Subject to subsections (10) to (11), all earnings paid or payable to a claimant by reason of a lay-off or separation from an employment shall, regardless of the period in respect of which the earnings are purported to be paid or payable, be allocated to a number of weeks that begins with the week of the lay-off or separation in such a manner that the total earnings of the claimant from that employment are, in each consecutive week except the last, equal to the claimant's normal weekly earnings from that employment.

(10) Subject to subsection (11), where earnings are paid or payable to a claimant by reason of a lay-off or separation from an employment subsequent to an allocation under subsection (9) in respect of that lay-off or separation, the subsequent earnings shall be added to the earnings that were allocated and, regardless of the period in respect of which the subsequent earnings are purported to be paid or payable, a revised allocation shall be made in accordance with subsection (9) on the basis of that total.

(10.1) The allocation of the earnings paid or payable to a claimant by reason of a lay-off or separation from an employment made in accordance with subsection (9) does not apply if

(a) the claimant's benefit period begins in the period beginning on January 25, 2009 and ending on May 29, 2010;

(b) the claimant contributed at least 30% of the maximum annual employee's premium in at least seven of the 10 years before the beginning of the claimant's benefit period;

(c) the Commission paid the claimant less than 36 weeks of regular benefits in the 260 weeks before the beginning of the claimant's benefit period; and

(d) during the period in which the earnings paid or payable by reason of the claimant's lay-off or separation from an employment are allocated in accordance with subsection (9) or, if the earnings are allocated to five weeks or less, during that period of allocation or within six weeks following the notification of the allocation, the claimant is referred by the Commission, or an authority that the Commission designates, under [paragraph 25\(1\)\(a\)](#) of the [Act](#), to a course or program of instruction or training

(i) that is full-time,

(ii) that has a duration of at least 10 weeks or that costs at least \$5,000 or 80% of the earnings paid or payable by reason of the claimant's lay-off or separation from employment,

(iii) for which the claimant assumes the entire cost, and

(iv) that begins during one of the 52 weeks following the beginning of the claimant's benefit period.

(10.2) If any of the conditions under which the Commission may terminate the claimant's referral under [paragraph 27\(1.1\)\(b\)](#) of the [Act](#) exists, the earnings paid or payable to the claimant by reason of a lay-off or separation from an employment shall be re-allocated under subsection (9).

(11) Where earnings are paid or payable in respect of an employment pursuant to a labour arbitration award or the judgment of a tribunal, or as a settlement of an issue that might otherwise have been determined by a labour arbitration award or the judgment of a tribunal, and the earnings are awarded in respect of specific weeks as a result of a finding or admission that disciplinary action was warranted, the earnings shall be allocated to a number of consecutive weeks, beginning with the first week in respect of which the earnings are awarded, in such a manner that the total earnings of the claimant from that employment are, in each week except the last week, equal to the claimant's normal weekly earnings from that employment.

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

Court File No.: CV-25-00738613-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF 1242939 B.C. UNLIMITED LIABILITY COMPANY et al.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

(Proceeding commenced in Toronto)

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