



No. S-209201  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND:

IN THE MATTER OF MOUNTAIN EQUIPMENT CO-OPERATIVE AND  
1314625 ONTARIO LIMITED

PETITIONERS

**NOTICE OF APPLICATION**

**Names of applicant: Kevin Harding on his own behalf and on behalf of Save MEC**

To: The Service List

TAKE NOTICE that an application will be made by the applicant Kevin Harding, on his own behalf and on behalf of Save MEC, before the Honourable Madam Justice Fitzpatrick by MS Teams videoconference, on the 28th day of September, 2020, at 10:00 a.m., for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. abridging the time for service of this Notice of Application and supporting materials, and dispensing with service thereof upon any interested party, other than those parties listed as having received notice in this Notice of Application;
2. The relief set out in paragraph 2 of **Part 1: ORDERS SOUGHT** of the Notice of Application of the Petitioners dated September 22, 2020 be adjourned for not less than 14 days;
3.
  - a. Victory Square Law Office be appointed as representative counsel for the members of Mountain Equipment Co-op (the "**Members**");
  - b. Representative counsel will have the ability to retain outside counsel assistance.
  - c. Victory Square Law Office be granted a charge to the maximum amount of \$100,000 over the Property of the Petitioner in respect of its anticipated fees (the "**Members Charge**"), to allow for the effective participation of the Members in the proceedings; and

- d. That the Members Charge shall rank in priority over all other security interests, trusts, liens, charges, encumbrances, or other secured claims in favour of any person or entity other than the:
    - i. Administrative Charge (to the maximum amount of \$1,000,000);
    - ii. D & O Charge (to a maximum amount of \$4,500,000);
    - iii. Key Employee Charge (to a maximum amount of \$778,000); and
    - iv. Interim Financing Charge (to a maximum amount of \$102,000,000).
4. Such further and other relief as this Honourable Court deems just.

## **Part 2: FACTUAL BASIS**

1. The applicant is the spokesperson for the steering committee of Save MEC, a highly motivated, well organized group of Members, seeking to preserve MEC's status as a cooperative association with an operating business.
2. Save MEC is controlled by a steering committee consisting of a geographically representative group of Members;
3. MEC is subject to proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.-36, as amended, that were commenced on September 14, 2020 (the "**CCAA Proceedings**")
4. Alvarez & Marsal Canada Inc. has been appointed as monitor in the CCAA Proceedings (the "**Monitor**").
5. The CCAA Proceedings have been initiated for the main purpose of approving a sale of MEC's assets. Stakeholders, and in particular the Members, have had little opportunity to engage in the process or explore alternative options to address MEC's liquidity issues.
6. The financial statements produced to date indicate that there is potentially significant equity in MEC and although the terms of the proposed Transaction are subject to sealing orders and have not been disclosed, it appears likely that it will not realize sufficient funds to pay unsecured creditors let alone the Members.

## **The Members**

7. The Members are a financially vulnerable group of approximately 5,700,000 individuals who have a significant financial interest in the CCAA Proceedings. This financial interest is represented by shares purchased and shares earned as a result of patronage returns, all with a face value of \$5. As set out at page 70 of the first affidavit of Philippe Arrata, the Members' financial interests as of February 23, 2020 was \$192,122, 000.

8. At page 84 of the first affidavit of Philippe Arrata, the listed “shares, and partial shares, issued by application of patronage return” have a value of \$163,485,000. The balance of the Members’ interest is from the original \$5 membership fee each Member pays.
9. As set out in the first affidavit of Kevin Harding, Save MEC has emerged as the only voice seeking to represent the Members (1<sup>st</sup> affidavit of Kevin Harding, para. 34).
10. Save MEC has generated significant media attention, support of up to 120,000 individuals who have signed its initial petition and financial support from concerned members who have contributed to Save MEC’s legal fund. As set out in the 1<sup>st</sup> affidavit of Kevin Harding:
  - a. Save MEC coordinates over 80 volunteers (para. 23);
  - b. Save MEC has organized a Facebook group, which currently has over 9,100 Members (para. 20);
  - c. Save MEC launched a petition expressing disapproval of the sales process, which has collected over 140,000 signatures (para. 17);
  - d. Save MEC has since launched a second petition with the objective of fulfilling the requirements of the bylaws of MEC to call a general membership meeting. That petition currently has 8,800 signatures (para. 31);
  - e. Save MEC has also launched a go fund me campaign to assist with legal fees and 2,500 people have since provided donations (para. 32).

(1<sup>st</sup> affidavit of Kevin Harding).

11. The steering committee of Save MEC includes Kevin Harding of British Columbia, Dru Oja Jay of Quebec, Elliott Hegel of Ontario, How-sen Chong of Ontario, Jamie Biggar of Ontario, Lacey Chyz of Alberta, Matthew Carroll of British Columbia, Michael Kelly of British Columbia, Nicole Ong of British Columbia, Yuill Herbet of Nova Scotia, and Marie-Hélène Viau of Quebec. Mr. Harding has been appointed as the spokesperson.

(1<sup>st</sup> affidavit of Kevin Harding, para 26, 28)

12. There is a significant interest from within this group to explore opportunities for addressing MEC’s liquidity issues in the short term. While the path forward has not yet been determined, considerations include steps to allow the company to realize on some of its real property assets and reduce debt in an orderly fashion while continuing to operate MEC’s business, eventually producing a profit.
13. The Save MEC steering committee has formed a finances working group. The group includes not less than 17 key people volunteering to assist in their personal capacity. The members of this group have diverse professional backgrounds with significant experience in co-op matters generally and a number of them with MEC. The group is receiving assistance from an impressive list of individuals.

(1st affidavit of Kevin Harding, para 39)

14. The finances working group has been engaged in active conversations and coordination with a number of large credit unions, co-operatives, financial companies, and other organizations. The working group has also been in contact with key co-operative and credit union leaders. The most definitive sources of funding thus far include the following:
- a. An anonymous group have been in discussions with Save MEC to purchase the underlying real estate for approximately \$90 million;  
(1st affidavit of Kevin Harding, para 54)
  - b. The same anonymous group is further open to providing additional funds to provide an operating loan to MEC to operate as a cooperative;  
(1st affidavit of Kevin Harding, para 54)
  - c. A serious statement of interest from a group of socially progressive investors to raise and provide approximately \$15 to \$20 million in the form of an appropriate debt instrument.  
(1st affidavit of Kevin Harding, para 52)
  - d. An offer from Brim Financial, to generate \$7-10 million of additional income through a credit card rewards program.  
(1st affidavit of Kevin Harding, para 47)

#### **Sales process and Proceedings.**

15. The Members need time to be able to adequately review the information that has been provided by the Petitioners and the Monitor regarding the sales process and the CCAA Proceeding generally for reasons including, but not limited to, the following:
- a. No notice was given to the Members of the Board's intention to sell the assets until after the sales process had completed and the CCAA Proceedings had been commenced on September 14, 2020;
  - b. the Board and the special committee created by it have been actively involved in efforts to obtain refinancing since February and in attempting to find other solutions to MEC's liquidity crisis, including the sale of its assets, since at least June or July, all without notice to the Members ;
  - c. given the sealing orders already granted by this Honourable Court and those sought by the Monitor, the Members still have no meaningful access to information regarding the sales process nor for the Transaction for which the Petitioners seek approval;
  - d. the proposed time frame for approval/vesting order does not allow stakeholders, including and perhaps particularly the Members, to

address/investigate other options putting the steering committee of Save MEC and the Members generally at a serious disadvantage.

### **Part 3: LEGAL BASIS**

#### **Adjournment**

1. The Members take no position on the relief sought in paragraph 1 of **Part 1: ORDERS SOUGHT** in the Petitioners Notice of Application
2. On an application, the Court may adjourn the application from time to time either to a particular date or generally.

*Supreme Court Civil Rules Rule 22-1(7)(b)*

3. If the transaction sought to be approved by the Petitioners is approved, the Members will undoubtedly lose their substantial financial interest in MEC as well as their membership in the largest retail co-operative in Canada.
4. Paragraph 4.15.2 of the Restructuring Support Agreement provides that Court approval of the Transaction must be sought no later than 15 days after the Comeback Order.

Affidavit #1 of Philippe Arrata, made September 13, 2020, Exhibit M, page 405

5. There is no prejudice to the Petitioners, the Proposed Purchaser, or the Lenders if an adjournment is granted which is consistent with the Restructuring Support Agreement. There is severe prejudice to the Members if the Transaction is approved.
6. Unless a Member saw news reports following the granting of the Initial Order herein on September 14, 2020, the only evidence of Members being advised of the CCAA proceeding by the Petitioners is a letter of September 18, 2020, emailed to Members for which MEC had current email addresses.

Affidavit #1 of Robert Wallis, made September 22, 2020, para. 51 and Exhibit C

7. The Members represented by the steering committee of Save MEC require time to investigate other avenues that might be available to save MEC. An adjournment of two weeks, while not much time, will allow them to consider options and to attempt to put a transaction together that is more favourable to all of the stakeholders, including the Members, than the Transaction proposed by the Petitioners.

#### **Cooperative Association a Protected Freedom**

8. The Members submit that the CCAA Proceedings must be advanced in a manner which respects and does not unnecessarily infringe on the associational

protections of cooperatives in Canada under section 2(d) of the *Charter*. This right is to be applied in a generous and purposive fashion: *Mounted Police Assn of Ontario/ Assoc de la Police Montee de l'Ontario v Canada (Attorney General)*, 2015 SCC 1 (“*Mounted Police*”), para. 47. The rights guaranteed (constitutive, derivative and purposive) were described in *Mounted Police* as follow:

54 The purposive approach, adopted by Dickson C.J. in the Alberta Reference, defines the content of s. 2(d) by reference to the purpose of the guarantee of freedom of association: “... to recognize the profoundly social nature of human endeavours and to protect the individual from state-enforced isolation in the pursuit of his or her ends” (Alberta Reference, at p. 365). The object of Dickson C.J.’s words is a concrete one, not an abstract expression of a desire for a better life. Elaborating on this interpretive approach, Dickson C.J. states that the purpose of the freedom of association encompasses the protection of (1) individuals joining with others to form associations (the constitutive approach); (2) collective activity in support of other constitutional rights (the derivative approach); and (3) collective activity that enables “those who would otherwise be vulnerable and ineffective to meet on more equal terms the power and strength of those with whom their interests interact and, perhaps, conflict”: Alberta Reference, at p. 366.

9. The right to join co-operatives and exercise associated collective rights goes to the root of the protection offered by, and purpose of s. 2(d). While section 2(d) freedoms to not extend to activity which is solely economic, cooperatives provide important social and community benefits.
10. The International Co-operative Alliance (“ICA”) defines co-operatives as “people centered enterprises owned, controlled and run by and for their members to realise their common economic, social, and cultural needs and aspirations”.<sup>1</sup>
11. The overlap between the economic and social purpose of co-operatives was captured by 1971 Report on Co-operatives by the Select Committee on Company Law of the Ontario Legislative Assembly authored by the Honourable Gordon R. Carton, QC (the “Carton Report”):

10 [...]Co-operation is a mixture of business and social philosophy with the emphasis increasingly on business and in recent years there have been a number of statements to the effect that ideology must not be insisted upon at the expense of efficiency. Nevertheless, despite certain difficulties in reconciling commercial efficiency with cooperative principles, the social ideology of the co-operative as voluntary group of individuals, motivated by common need rather

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<sup>1</sup> <https://www.ica.coop/en/cooperatives/what-is-a-cooperative>

than speculative profit, combining to aid each other through organized self-help still permeates its economic purpose.

Carton Report, Page 4

12. As noted in the 1945 Report of the *Royal Commission on Co-operatives*, cooperatives have been an important historic counterbalance to inequality in society:

In the modern world of large enterprises, especially when times are difficult, some individuals with low incomes are likely to feel that they are being taken advantage of and are powerless to resist such exploitation. The establishment of a co-operative associations in meeting the needs of such members and in bringing relief to this feeling of frustration by providing an outlet to normal creative activity. The value of such an objective for individual ambition, not only to the member himself but to the community generally, need hardly be stressed. Although the associations render important social services by providing a vehicle whereby individuals in low income groups may help themselves, it is none the less true that they themselves are dependent on Government services and facilities financed by taxes levied upon those who possess the ability to pay.

(Page 30)

13. Furthermore, the importance of the associational activities of co-operatives is evidenced by Canada's international commitments. Canada has maintained membership in the Organization of American States ("OAS) since 1991 and is signatory to the OAS Charter, which specifically holds the following at article 45:

The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms:

[...]

g) Recognition of the importance of the contribution of organizations such as labor unions, cooperatives, and cultural, professional, business, neighborhood, and community associations to the life of the society and to the development process;

14. Moreover, and as described by the International Cooperative Alliance, the international principles of cooperative associations, as codified at section 8(2) of the CAA, members have fundamental interests at stake that exceed their investment. Those principles are further supported by international human rights instruments.

Like in any cooperative, the 5 million members and owners of the MEC need to exercise their democratic voice to shape the future of their cooperative. They need time to investigate the potential financial re-structuring that safeguards its cooperative identity and mission. It is fundamental that they exercise their rights in this critical juncture. Any decision regarding the sale and termination of the cooperative cannot be taken without the approval of the members' assembly. Members should be able to exercise their rights to democratic member control (2nd cooperative principle) and ownership (member economic participation, 3rd cooperative principle) and seek a viable solution through cooperation among cooperatives (6th cooperative principle). As per the international definition enshrined in the ICA Statement on the Cooperative identity (1995) and in ILO Recommendation 193 (2002), cooperative members are not simply clients, but the co-owners of the cooperative enterprise that they control democratically.

(1st affidavit of Kevin Harding)

15. Given the forgoing, it is clear that the Members enjoy section 2(d) protection under the *Charter*. The present CCAA Proceedings and any subsequent orders must coincide with the *Charter* protected activities of the Members seeking fulsome and meaningful participation on decisions which affect associational activities.
16. MEC is the largest retail co-operative in Canada. The rights of its Members should not be ignored nor disregarded.

### **Oppression Remedy**

17. The Members claim that MEC's Board of Directors (the Board) has oppressed or unfairly prejudiced its Members by attempting to dispose of substantially all of MEC's assets to Kingswood Capital Management, LP ("**Kingswood**"). It is submitted that the Board's conduct is contrary to the reasonable expectations of Members and a substantial departure from the standards of fair dealing. The restructuring of an extremely large cooperative such as MEC is a unique situation that warrants cautious scrutiny of the court to ensure fairness to all stakeholders including the Members and the Canadian public.
18. Section 71(2) of the Cooperative Association Act, ("**CAA**") states that a co-operative association must not dispose of the whole or substantially the whole of the undertakings of the association unless (a) the disposition is authorized by a special resolution of the members [...] These rights are further guaranteed within the Rules of MEC at the following section:

8.11 The Co-operative must not dispose of the whole or substantially the whole of its undertaking unless:



- (a) the disposition is authorized by a special resolution, and
- (b) all members have the opportunity to vote on the special resolution in accordance with Rule 8.09.

19. The test for oppression under the CBCA, and which would apply to Division 1 (s. 156-157.2) of the CAA, was set out by the Supreme Court of Canada in *BCE Inc., Re*, 2008 SCC 69, 2008 CarswellQue 12595 (“BCE”). The BC Court in *Radford v. MacMillan*, 2017 BCSC 1168 (B.C. S.C.), aff’d in 2018 BCCA 335 (B.C. C.A.), and applied in *Potter*, summarizes the principles to be drawn from BCE in BC

[119] Reasonable expectations are assessed by what is "objective and contextual", rather than only according to the stakeholder's own expectations. The expectations must be realistic. Expectations may evolve over time and not be static. The overarching considerations guiding the reasonable expectations analysis were best summarized by the Court in BCE as follows: ...

[120] The Court in BCE compiled a non-exhaustive list of factors that may be looked to in determining the existence of reasonable expectations: general commercial practice, the nature of the corporation, the relationship that exists between the parties, past practice, self-protection steps the petitioner could have taken, any representations and agreements and the fair resolution of conflicting interests between corporate stakeholders (BCE at para. 72).

[121] Evidence of expectation may take many forms depending on the facts of a case (BCE at para. 70). The determinations as to an expectation and its reasonableness are questions of fact

20. The application of these factors demonstrate a clear need to endorse the participation of the Members in these proceedings. Cooperative members have a statutory and institutional right to determine the future of the cooperative. In this context the Members had an expectation of advanced notice. Rather than receive any indication of MEC’s impending and untimely wind up, the Members discovered the fate of their organization in the news at a time that ensured they would be barred from any objection or remedial efforts.
21. The Members have been unfairly denied participation prior to these proceedings and ought to be granted participation and delay in the modest terms they are seeking in his application.
22. The oppression remedy has been considered by the courts in CCAA proceedings. See, for example, the decision of the Alberta Court of Queen’s Bench in *Re Canadian Airlines Corp.* (2000), 20 C.B.R. (4<sup>th</sup>) 1.

### **Representation Order**

23. Section 11 of the CCAA provides:

*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.*

24. The Court can make a representation order under the general jurisdiction granted by section 11 of the *CCAA*.

*Nortel Networks Corp. (Re)*, [2009] O.J. No. 2166, at paras. 10-16

25. This Court may also make a representation order under Rule 20-3 of the *Supreme Court Civil Rules*.

26. The factors that have been considered by the courts in granting the appointment of representatives in *CCAA* cases are the following:

- a. the vulnerability and resources of the group sought to be represented;
- b. any benefit to the companies under *CCAA* protection;
- c. any social benefit to be derived from representation of the group;
- d. the facilitation of the administration of the proceedings and efficiency;
- e. the avoidance of a multiplicity of legal retainers;
- f. the balance of convenience and whether it is fair and just including to the creditors of the Estate;
- g. whether representative counsel has already been appointed for those who have similar interests to the group seeking representation and who is also prepared to act for the group seeking the order; and
- h. the position of other stakeholders and the Monitor.

*Canwest Publishing Inc.*, 2010 ONSC 1328, at para. 21

*Urbancorp Inc. (Re)*, 2016 ONSC 5426, at para. 11

*Target Canada Co. (Re)* 2015 ONSC 303 at para 61  
1057863 BC Ltd (Re) 2020 BCJ No 1441 at para 125.

27. The issue of whether to appoint a representative counsel is one of equity, there can be no hard and fast rules governing any particular case, but the above factors need be considered.

*Urbancorp Inc. (Re)*, 2016 ONSC 5426, at para. 12

28. Vulnerability is a subjective factor that is relevant to a representation and payment order, and cannot be reduced to a consideration of impecuniosity.

*Arrangement relatif a Les Investissements Hexagone inc.*, 2016 QCCS 6792

### Funding for representative counsel and its related charge

29. Section 11.52(1)(c) of the *CCAA* allows the court to place a charge on the petitioner's assets to secure payment of the legal fees and disbursements required to ensure the effective participation by the Members in these proceedings.

30. Section 11.52 of the *CCAA* provides:

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

*(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;*

*(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and*

*(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.*

*(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.*

31. The necessity of such a charge in a restructuring is warranted to ensure the involvement of professionals and achieve the best possible outcome for the stakeholders.

*U.S. Steel Canada Inc. (Re)*, 2014 ONSC 6145, at para. 22

32. Factors to consider in approving an administrative charge include:

- a. The size and complexity of the businesses being restructured;
- b. The proposed role of the beneficiaries of the charge;
- c. Whether there is an unwanted duplication of roles;
- d. Whether the quantum of the proposed charge appears to be fair and reasonable;
- e. The position of the secured creditors likely to be affected by the charge; and
- f. The position of the Monitor.

*Canwest Publishing Inc.*, 2010 ONSC 222, at para. 54.

*Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 107, at para. 42.

33. Before incurring, or continuing to incur, fees and expenses to be claimed from a debtor in a *CCAA* restructuring, the interested person must first take appropriate steps to set up with the monitor and the debtor the rules applicable to the "effective participation" of its experts, subject to the Court's approval. Such rules must take into consideration the following factors:
- a. a court officer is already involved, namely the court appointed monitor and, as such, he is the "eyes and ears" of the Court, and he must, at all times, remain independent and act impartially for the benefit of all stakeholders;
  - b. therefore, services already rendered or to be rendered by the monitor must not be duplicated by the interested person's financial, legal or other experts, at least, not for the debtor's account;
  - c. an "effective participation" has to be pro-active and constructive, never losing sight of the global picture of the restructuring and the interests of all stakeholders;
  - d. an "effective participation" shall not include challenging the merits per se of the restructuring proceedings; the debtor need not fund the opponent of its restructuring;
  - e. "time is of the essence": the monitor must be in a position to assess appropriately, and budget for, the fees and expenses to be incurred in a restructuring; therefore, interested persons claiming the right to be indemnified or secured for their financial, legal or other experts' "effective participation" must act quickly to obtain confirmation of said right and set up the applicable rules;
  - f. once the rules are established by the claimant, the monitor and the debtor, they must be authorized by the Court, including whether or not fees and expenses already incurred ought to be included; and
  - g. as authorizing the payment of fees and expenses before any distribution to a debtor's stakeholders is tantamount to granting prior ranking security, the Court has endorsed Judge Gascon's comments on the principles governing the granting of a *CCAA* administration charge

*Homburg Invest Inc. (Arrangement relatif à)*, 2014 QCCS 980, para. 100.

### **Representation Order in the Present Circumstances**

#### Vulnerability and resources of the group sought to be represented:

34. The Members are a financially vulnerable group of 5,700,000 members dispersed throughout, Canada and each with a membership share with a par value of \$5 per share.
35. Individually, the Members would have no financial interest in bearing significant legal costs on their own.

36. Notwithstanding the small amount of equity held as individuals, collectively, this group has interest in but no access to equity in the amount of \$192,122,000 as of February 2020.
37. Lastly, the organization that the Members have built may be wound up without their participation. This would be a collective trauma to those members who joined and participated in MEC's activities because of its cooperative status.

Benefit to the companies under CCAA protection:

38. The present CCAA Proceedings involve a member owned cooperative. The Members are the actual fabric of MEC, they are what has made MEC so successful and accordingly, the interests of the Members are salutary to both MEC's interests and the interests of creditors.
39. The proposed sale does not incorporate MEC's co-operative identity, as the cooperative will be a shell association without assets. The sale may protect the interests of creditors and, to a lesser extent the consuming public, but not the cop at the heart of the present sales plan.

Social benefit to be derived from representation of the group:

40. Cooperatives are an important and significant feature of the Canadian economy. The members of cooperatives are community members who have joined their economic interests in a manner that promotes their retail needs, retains a larger share of the economy in local communities and facilitates community engagement.
41. Furthermore, there are 5.7 million members of MEC. That membership represents over 15% of the Canadian population and 22% of the working age population of Canada.
42. MEC is a Canadian icon and its members represent a significant sector of Canadian society. It is not an overstatement to say that Canada will benefit as a whole from membership participation in these proceedings.
43. Furthermore, if the Members are able to successfully engage the cooperative community in a manner that retains MEC's status as a cooperative, Canadian society will benefit as a whole.

Facilitation of the administration of the proceedings and efficiency:

44. To date, the Members have not been involved (with legal counsel) in these proceedings or the process leading to the proposed transaction.
45. Despite a statutory and associational right to participation in any plan to wind up the cooperative, they have heretofore been denied participation.

46. Granting this application will ensure orderly and efficient representation of their interests because the Members are properly represented by the steering committee and will allow the membership to speak through one conduit in a uniform voice.

Avoidance of a multiplicity of legal retainers:

47. There are 5.7 million Members. If representative counsel is not appointed, then either Members will not be represented at all, or they will need to enter into complex and impractical joint retainer arrangements which will be administratively difficult for all parties involved.

Balance of convenience and whether it is fair and just

48. The Members stand to be the primary losers in the proceedings. Based on the financial statements the Members will suffer a loss of value in excess of \$190 million.
49. As stated earlier, the Members have both a statutory and associational right to participation that was eliminated with the CCAA filing.
50. It is fair and just that these stakeholders be provided adequate representation in these proceedings.

No similar representative counsel has been appointed

51. No other representative counsel has been appointed in this matter.

Position of other stakeholders and the Monitor

52. To date, counsel for the applicant has been in contact with the Monitor who appears to recognize the potential benefit of the Members' participation. The applicants are not aware of the position of other stakeholders regarding the involvement of representative counsel on behalf of the Members.

Size and complexity of the businesses being restructure

53. MEC's financial arrangement are complex, and although the terms of the Transaction are not presently known, it is expected that they will involve a complicated financial arrangement. The financial interests of the Members is significant representing something in the order of \$190 million.

The proposed role of the beneficiaries of the charge

54. The primary proposed role of the beneficiaries of the charge is to represent the Members in the proceedings and in particular the Approval and Vesting Order Application.

55. In addition, it is anticipated that counsel will assist the Members in exploring alternative funding opportunities to address MEC's present liquidity issues and present a viable plan of arrangement.

No unwanted duplication of roles

56. While the Monitor is a representative of the Court and has an obligation to all stakeholders, it has not engaged with the Members who might oppose the Approval and Vesting Order Application.
57. While others may also oppose the Vesting Order Application, the Members will do so from their own unique position which would eliminate or limit any unnecessary duplication.

Quantum of the proposed charge is fair and reasonable

58. Given the complexity and time one of these proceedings, the proposed charge is fair and reasonable.
59. The cash flow statement produced on behalf of MEC anticipate significant professional fees not to exceed \$1,000,000. The anticipated fees of the Members are an insignificant amount in that context.

Section 8.2 Report of the Proposed Monitor

Position of the secured creditors likely to be affected by the charge

60. Due to the sealing order, the effect on secured creditors is unknown. However, it is our understanding that the secured creditors will be unaffected by the charge.

Position of the Monitor

61. As far as the applicant is aware, the Monitor takes no position on the proposed charge; however, our participation has been welcomed.

**Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Kevin Harding.

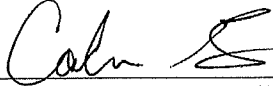
The applicant estimates that the application will take 60 minutes.

This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application:

- (a) file an application response in Form 33;
- (b) file the original of every affidavit, and of every other document, that:
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: September 25, 2020

  
\_\_\_\_\_  
Signature of Colin Gusikoski  
Counsel for the petitioners



To be completed by the court only:

Order made  
 in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of application

with the following variations and additional terms:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Signature of  Judge  Master

**APPENDIX**

*[The following information is provided for data collection purposes only and is of no legal effect.]*

**THIS APPLICATION INVOLVES THE FOLLOWING:**

*[Check the box(es) below for the application type(s) included in this application.]*

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts