Court File No. CL-26-00000342-0000

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 13498140 CANADA INC., 2717922 ONTARIO INC., 1000208180 ONTARIO INC., TRINITY CAR SALES INC., 1000841404 ONTARIO INC., 13517683 CANADA INC., 12332248 CANADA INC., 1000454978 ONTARIO INC., 1986096 ONTARIO INC., 1001087905 ONTARIO INC., DOWNTOWN AUTO CENTRE LTD., TRINITY CAR AND TRUCK RENTAL INC., TRINITY AUTO INC., LARRY HUDSON FAMILY HOLDINGS INC. AND 1000493417 ONTARIO INC.

FACTUM OF THE APPLICANT
(Returnable August 7, 2026)

August 6, 2026

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Lawyers for the Applicant, Bank of Montreal

TO: **THE SERVICE LIST**

PART I: OVERVIEW[1]

1. This Factum is filed in support of Bank of Montreal's (**"BMO"** or the **"Bank"**) application for relief under the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of the automotive group comprising 13498140 Canada Inc., 2717922 Ontario Inc., 1000208180 Ontario Inc., Trinity Car Sales Inc., 1000841404 Ontario Inc., 13517683 Canada Inc., 12332248 Canada Inc., 1000454978 Ontario Inc., 1986096 Ontario Inc., 1001087905 Ontario Inc., Downtown Auto Centre Ltd., Trinity Car and Truck Rental Inc., Trinity Auto Inc., Larry Hudson Family Holdings Inc. and 1000493417 Ontario Inc. (collectively, the **"Debtors"** or the **"Trinity Auto Group"**).

2. The Trinity Auto Group operates a multi-location automotive enterprise across the Greater Toronto Area and Southwestern Ontario, financed by a suite of operating, vehicle-floorplan, leasing, goodwill and real-estate credit facilities with aggregate authorized borrowing limits of approximately $80.9 million.

3. The Debtors are in default under the credit facilities advanced by BMO. As at July 24, 2026, the aggregate principal and accrued interest owing to BMO under these facilities was approximately $85.2 million. BMO has demanded repayment of all amounts owing and delivered Notices of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* ("**BIA**").

4. BMO has determined that independent Court supervision is required and seeks CCAA protection to stabilize the businesses and implement the necessary restructuring, including meaningful controls over cash, vehicle inventory, sale proceeds and material operational decisions.

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[1] Capitalized terms used but not defined in this section shall have the meanings ascribed to such terms in the Affidavit of Daniel To sworn August 5, 2026 (the "**To Affidavit**").

PART II: FACTS

5. The facts underlying this application are more fully set out in the Affidavit of Daniel To, sworn August 5, 2026 (the **"To Affidavit"**). Capitalized terms used but not defined herein have the meanings ascribed to them in the Initial Affidavit.

The Debtors and their Businesses

6. The Debtors comprise an integrated automotive group operating in the Greater Toronto Area and Southwestern Ontario. Their businesses (the "**Businesses**") include four (4) franchised new-vehicle dealerships, two (2) used-vehicle dealerships, collision-repair centres, a vehicle-rental business, towing services, automotive-service businesses and commercial real estate assets.[2]

7. The Debtors are closely held private corporations, each controlled by James Boban, who is listed as a director of every Debtor and has been the principal representative with whom BMO has dealt.[3]

8. The Debtors employ approximately 144 individuals, and approximately 18 independent contractors provide services in connection with their towing operations.[4]

9. The Trinity Auto Group's banking relationship with BMO began in 2020. As the Trinity Auto Group expanded, BMO provided additional credit facilities for operating, vehicle-floorplan, leasing, goodwill and real-estate financing to support acquisitions and ongoing operations.[5]

10. These credit facilities provided by BMO to the Trinity Auto Group were most recently amended and restated pursuant to a credit agreement dated August 29, 2025 (the **"Credit**

[2] To Affidavit at para 7.
[3] To Affidavit at para 6.
[4] To Affidavit at para 51.
[5] To Affidavit at paras 56 and 58.

Agreement"), which provides for an aggregate authorized borrowing limits of approximately $80.9 million. BMO also provided separate real-estate financing to 1000493417 Ontario Inc. (the "**Advance Boulevard Financing**") for the property municipally known as 222 Advance Boulevard, Brampton, Ontario (the "**Advance Boulevard Property**"). The liabilities of the Debtors under the Credit Agreement is joint and several.[6]

Defaults and Financial Difficulties of the Trinity Auto Group

11. The Trinity Auto Group's rapid expansion materially increased its working-capital, floorplan and fixed debt-service requirements. In early 2026, BMO developed material concerns regarding liquidity, floorplan exposure, inventory controls and financial reporting.[7]

12. A reconciliation based on physical inventory counts conducted on July 2, 2026 and July 3 2026, identified 264 vehicles that had been sold and delivered without repayment of the corresponding BMO floorplan advances. The aggregate advances associated with these sold-in-violation or "SIV" vehicles were approximately $13.0 million.[8]

13. As at July 16, 2026, approximately $43.5 million was outstanding under the $35 million new-vehicle floorplan facility. The Debtors have no availability under their existing new-vehicle credit facilities, and management has advised BMO that the funds required to cure the identified SIV deficiency are not available.[9]

14. A subordinate charge was also registered against the Advance Boulevard Property without BMO's knowledge or consent.[10]

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[6] To Affidavit at paras 57, 59 and 60.
[7] To Affidavit at paras 70 and 72.
[8] To Affidavit at paras 9, 81 and 90.
[9] To Affidavit at para 10.
[10] To Affidavit at para 84.

15. On July 29, 2026, CRA served BMO with a requirement to pay pursuant to the *Income Tax Act* in respect of 2717922 Ontario Inc., which operates Oakville Mitsubishi. The CRA Requirement to Pay asserts that 2717922 Ontario Inc. owes CRA $213,981.96 in outstanding corporate income taxes and requires BMO to remit to CRA amounts that BMO would otherwise pay or advance to 2717922 Ontario Inc., up to that amount (the "**Requirement to Pay**"). As a result of the Requirement to Pay, the bank account in respect of 2717922 Ontario Inc. has been frozen by BMO.[11]

16. As at July 24, 2026, the aggregate principal and accrued interest owing to BMO under the Credit Agreement and the Advance Boulevard Financing was approximately $85.2 million, excluding further interest, fees, costs and expenses (the **"Indebtedness"**).[12]

17. The Indebtedness is supported by an extensive security package granted by the borrowers and guarantors.[13]

18. The facilities were payable on demand to the extent set out in the Credit Agreement. In addition, the repayment and reporting breaches constituted defaults under the applicable General Security Agreements, and the unauthorized subordinate charge constituted a default under the Advance Boulevard Financing and mortgage documents.[14]

19. On July 27, 2026, BMO demanded repayment from the borrowers and guarantors and delivered Notices of Intention to Enforce Security pursuant to section 244(1) of the BIA. The Indebtedness has not been repaid.[15]

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[11] To Affidavit at para 65.
[12] To Affidavit at para 60.
[13] To Affidavit at para 61.
[14] To Affidavit at para 85.
[15] To Affidavit at para 12

20. BMO has lost confidence that management can stabilize the Businesses and implement the necessary restructuring without independent Court supervision and meaningful controls over cash, vehicle inventory, sale proceeds and material operational decisions.[16]

Need for CCAA Proceedings

21. The Debtors are insolvent and face an immediate liquidity crisis. The claims against the Debtors exceed $5 million.[17]

22. Based on the Cash Flow Forecast, the Debtors do not have sufficient liquidity to continue operating in the ordinary course and satisfy their obligations as they become due without the Interim Facility (defined below) and the protections afforded by the CCAA.[18]

23. BMO is not prepared to provide further funding outside a formal, Court-supervised restructuring process. Subject to the granting of the Initial Order and the terms of the Interim Term Sheet, BMO is prepared to provide the Interim Facility to fund the Debtors' working-capital requirements and the costs of these proceedings.[19]

24. Immediate Court protection is required to avoid an uncontrolled cessation of operations, protect the Debtors' vehicle inventory and sale proceeds, maintain employment and preserve relationships with OEMs, customers, suppliers, retail financing partners and other stakeholders.[20]

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[16] To Affidavit at para 11.
[17] To Affidavit at para 96.
[18] To Affidavit at para 97.
[19] To Affidavit at para 94.
[20] To Affidavit at para 98.

25. An immediate receivership and liquidation would likely cause greater disruption and increase the risk that OEM relationships, retail financing arrangements, employee and customer relationships and dealership goodwill would be impaired.[21]

26. A creditor-initiated CCAA proceeding provides the best available opportunity to preserve the Trinity Auto Group's going-concern and dealership franchise value, protect its vehicle inventory and cash proceeds, maintain employment, stabilize relationships with key stakeholders and develop and implement an orderly Court-supervised sale process.[22]

PART III: ISSUES

27. The issues to be considered on this application are whether:

(a) each of the Debtors is a debtor company to which the CCAA applies;

(b) Goldhar should be appointed as Monitor;

(c) the stay of proceedings should be granted;

(d) the Interim Term Sheet (as defined below) should be approved and the Interim Financing Charge (as defined below) should be granted;

(e) the Monitor should be granted expanded powers;

(f) the Administration Charge (as defined below) should be granted;

(g) the Directors' Charge (as defined below) should be granted; and

[21] To Affidavit at para 100.
[22] To Affidavit at para 15.

(h) the Debtors should be authorized, subject to the supervision and control of the Monitor and the terms of the Interim Term Sheet, to continue to use their existing Cash Management System (as defined below).

PART IV: LAW AND ARGUMENT

B. The Debtors are a "debtor company" to which the CCAA applies

28. The CCAA applies in respect of a "debtor company" whose liabilities exceed $5 million.[23] The term "debtor company" is defined as any "company" that is, among other things, "insolvent", and the term "company" is defined as "any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province".[24]

29. Courts have referred to the definition of "insolvent person" in Subsection 2(1) of the BIA.[25] The BIA defines "insolvent person" as a person: (a) who is for any reason unable to meet his obligations as they generally become due; (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due; or (c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.[26]

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[23] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, s 3(1) [CCAA]; *MPX International Corporation*, 2022 ONSC 4348 at para 46; *Laurentian University of Sudbury*, 2021 ONSC 659 at para 25 [*Laurentian*]; *McEwan Enterprises Inc.*, 2021 ONSC 6453 at para 24 [*McEwan*].

[24] CCAA, s. 2(1), "debtor company" and "company".

[25] *Laurentian* at para 30; *McEwan* at para 25; *Target Canada Co. (Re)*, 2015 ONSC 303 at para 26.

[26] Section 2 of the BIA defines "insolvent person" as a person: (a) who is for any reason unable to meet his obligations as they generally become due; (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due; or (c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

30. The test for determining whether a company is an "insolvent person" under the BIA is disjunctive – satisfaction of any one of the above criteria is sufficient.[27]

31. The Debtors are each a "company" within the meaning of the CCAA as each Debtor is incorporated under Canadian federal or provincial laws.[28] The Debtors also fall within the definition of a "debtor company" as their outstanding liabilities are in excess of $5 million. As at July 24, 2026, the Trinity Auto Group's outstanding liabilities to BMO alone exceed $85 million.[29]

32. The Debtors are in default under their secured lending facilities and face an immediate liquidity crisis. They have no availability under their existing credit facilities and cannot meet obligations as they generally become due without interim financing. In addition, the account of Oakville Mitsubishi has been frozen as a result of CRA issuing the Requirement to Pay.[30]

33. Absent the protections afforded by the CCAA, there is a material risk of further deterioration in liquidity, additional SIV exposure and impairment of the Debtors' inventory and going-concern value, as well as an increased exposure to BMO. [31]

34. The CCAA proceedings will permit the Businesses to continue operating within their existing corporate, contractual and regulatory framework while management's institutional knowledge is retained and the restructuring, cash management and sale process are directed by the Monitor under the supervision of the Court.[32]

[27] *McEwan* at para 26; *Laurentian* at para 31.
[28] To Affidavit at paras 47-48 and Exhibit A.
[29] To Affidavit at paras 60 and 96.
[30] To Affidavit at paras 94 and 97.
[31] To Affidavit at para 95.
[32] To Affidavit at para 99.

C. Goldhar should be appointed as Monitor

35. Section 11.7 of the CCAA requires that a trustee be appointed to monitor the business and financial affairs of the debtor company.[33]

36. BMO proposes that Goldhar & Associates Ltd. ("**Goldhar**") be appointed Monitor in these CCAA proceedings (in such capacity, the "**Proposed Monitor**", and once appointed the "**Monitor**"). Goldhar has consented to act as Monitor, is a licensed trustee within the meaning of Section 2 of the BIA and is not subject to any of the restrictions on who may be appointed as monitor as set out in Section 11.7(2) of the CCAA.[34]

37. In addition, Goldhar was retained by BMO as a financial advisor in connection with the Debtors' financial difficulties and dealings with BMO. Goldhar has completed comprehensive assessments of inventory and other aspects of the Businesses and is familiar with the operations of the Debtors.[35]

38. As a result, Goldhar has developed critical knowledge about the Debtors, their business operations and financial challenges that will be essential to the success of any CCAA proceedings.[36]

39. The Proposed Monitor is supportive of the relief sought herein.[37]

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[33] CCAA, s. 11.7(1).
[34] To Affidavit at paras 101-102; *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s. 2 [BIA]; CCAA, s. 11.7(2).
[35] To Affidavit at para 103.
[36] To Affidavit at para 103.
[37] To Affidavit at para 104.

D. The stay of proceedings should be granted

40. Section 11.02 of the CCAA provides this Court with the jurisdiction to grant a stay of proceedings for a period of not more than 10 days if it is satisfied that circumstances exist that make the order appropriate.[38]

41. Absent exceptional circumstances, the relief sought shall be limited to relief reasonably necessary for the ordinary course continued operations and, whenever possible, the *status quo* should be maintained during the initial 10-day period.[39]

42. The Applicant seeks a stay of proceedings until August 17, 2026 (the "**Stay Period**") in respect of the Monitor, the Debtors and their property, to afford them the space to stabilize operations in an orderly manner for the benefit of all stakeholders. The Stay Period will permit the Monitor to work with the Debtors' employees to stabilize operations and protect the asset base. Among other things, the stay of proceedings is intended to prevent CRA from enforcing the Requirement to Pay during the Stay Period, subject to the terms of the Initial Order and applicable law [40]

43. The Applicant also seeks a limited stay of proceedings in favour of the Debtors' current directors and officers.[41] Such relief is appropriate to ensure their continued involvement in the restructuring and orderly wind-down efforts, and to prevent creditors from circumventing the stay

[38] CCAA, s. 11.02; see also *Boreal Capital Partners Ltd et al. (Re)*, 2021 ONSC 7802 at para 15; *Laurentian* at para 35.
[39] CCAA, s. 11.001; *Lydian International Limited (Re)*, 2019 ONSC 7473 at para 26 [*Lydian*].
[40] To Affidavit at paras 129-130.
[41] To Affidavit at para 132.

by pursuing claims against directors and officers, rather than the Debtors', arising from debts and obligations.[42]

44. During the Stay Period, BMO intends to work with the Monitor to achieve an efficient transition of control over the Businesses.[43]

E. Interim Term Sheet should be approved and Interim Financing Charge should be granted

45. Subject to Court approval, execution of the Interim Term Sheet and satisfaction or waiver of the conditions therein, BMO, in its capacity as the "**Interim Lender**", is prepared to provide a super-priority, non-revolving demand credit facility to the Borrowers in a maximum principal amount of $3.5 million (the "**Interim Facility**"). Pursuant to the Interim Facility, the borrowers may obtain advances of up to $500,000 in the aggregate prior to the Comeback Hearing (the "**Maximum Initial Amount**").[44]

46. The Interim Facility will provide the Debtors' with the financing necessary to fund working-capital requirements and meet cash-flow obligations during the Stay Period and beyond.[45]

47. The Applicant is also seeking a charge over the Debtors' property in favour of the Interim Lender to secure all obligations owing under the Interim Facility, including principal, interest, fees and expenses (the "**Interim Financing Charge**"). The Interim Financing Charge is proposed to rank above all other encumbrances, but below the Administration Charge.[46]

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[42] *Pride Group Holdings Inc.*, 2024 ONSC 1830 at paras 32-35.
[43] To Affidavit at para 131.
[44] To Affidavit at paras 116-117.
[45] To Affidavit at paras 117 and 120.
[46] To Affidavit at para 117.

48. Pursuant to section 11.2 of the CCAA, the Court may make an order approving an interim financing facility and declaring that all or part of the Debtors' property is subject to a security or charge, and order that the security or charge rank in priority over the claim of any secured creditor of the Debtors.[47]

49. In deciding whether to make such an order, the Court is to consider the following:[48]

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b) of the CCAA, if any.

50. Section 11.2(1) of the CCAA provides that notice must be provided to those secured creditors likely to be affected by the Interim Financing Charge and that the charge may not secure an obligation that existed prior to the order.[49]

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[47] CCAA, s. 11.2(1)(2).
[48] CCAA, s. 11.2(4).
[49] CCAA, s. 11.2(1)

51. Section 11.2(5) of the CCAA provides that where an interim financing charge is sought for the initial 10-day stay period, no order shall be made approving the charge unless the Court is satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operation of the debtor company in the ordinary course of business during that period.[50]

52. The Applicant submits that the Interim Facility and Interim Financing Charge satisfy the applicable factors set out in section 11.2(4) of the CCAA and should therefore be approved for the following reasons:

(a) the Debtors are in a liquidity crisis and require the Interim Facility in order to carry out a successful restructuring and continue operating in the ordinary course;[51]

(b) BMO believes that the quantum of the Interim Facility is reasonable and necessary for the Debtors to continue operations pending the Comeback Hearing, having regard to the Cash Flow Forecast of the Debtors;[52]

(c) the Proposed Monitor is of the view that the Maximum Initial Amount is reasonably necessary to maintain operations and the Businesses pending the Comeback Hearing;[53]

(d) the Interim Term Sheet contains terms and conditions that are reasonable and competitive;[54] and

(e) the secured creditors who are not served with the Application Record will not be primed by the Interim Financing Charge. The Applicant intends to serve all secured

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[50] CCAA, s. 11.2(5)
[51] To Affidavit at para 12.
[52] To Affidavit at para 120.
[53] To Affidavit at para 120.
[54] To Affidavit at para 116.

creditors with the motion materials in respect of the amended and restated initial order which will, among other things, seek priority for the Interim Financing Charge over the security of such creditors.[55]

53. The Monitor has reviewed the terms of the Interim Facility, supports its approval, and agrees that the quantum of the Interim Financing Charge is appropriate.[56]

F. The Monitor should be granted expanded powers

54. Section 23(1)(k) empowers the Court to authorize the Monitor to perform any additional functions it considers appropriate in the circumstances.[57] Courts have granted expanded powers to a monitor in CCAA proceedings.[58]

55. The proposed Initial Order provides that the Monitor, in addition to and without in any way limiting its prescribed rights pursuant to the CCAA, is authorized and empowered, but not required, to exercise the powers set out in the Initial Order, including powers otherwise exercisable by a board of directors or any officers of the Debtors, as applicable, and among other things:[59]

(a) take possession of and exercise control over the Property and any and all proceeds, receipts, and disbursements arising out of or from the Property;

(b) manage, operate and carry on the Businesses, including but not limited to reducing the inventory levels;

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[55] To Affidavit at para 140.
[56] To Affidavit at para 120.
[57] *CCAA*, s. 23(1)(k); *Ernst & Young Inc. v. Essar Global Fund Limited*, 2017 ONCA 1014 at para 106.
[58] *See* Monitor's Enhanced Powers Order, in the *Matter of Harte Gold Corp*., dated January 28, 2022, Toronto, Court File No. CV-21-00673304-00CL.
[59] To Affidavit at para 105.

(c) exercise control over the Cash Management System and every bank account held in the name of the Debtors, open one or more new accounts, direct the deposit and disbursement of funds and issue binding directions to any financial institution maintaining an account of the Debtors;

(d) approve, direct, restrict or prohibit the purchase, sale, lease, transfer, wholesale disposition, dealer trade, re-chatteling, re-aging or other dealing with any other motor vehicle or vehicle inventory;

(e) execute, assign, issue and endorse documents of whatever nature in respect of the Property, whether in the Monitor's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;

(f) perform such functions, enter into such agreements and incur such obligations as the Monitor considers necessary or desirable to facilitate or assist the winding-down or liquidation of the Debtors, the realization or sale of the Property, and the distribution of net proceeds subject to further Order where required;

(g) notify or otherwise contact suppliers, original equipment manufacturers, franchisors, regulators, lessors and other stakeholders to advise of the commencement of these proceedings and the continued obligations of such Persons under existing agreements with the Debtors; and

(h) execute the Interim Term Sheet and any document or agreement related thereto for and on behalf of the Debtors and take such steps and actions as the Monitor deems reasonably necessary or advisable in connection with the Interim Facility.

56. With respect to the London Used Car Superstore, the Trinity Auto Group intended to shut down and liquidate this Business as it is not viable. The only parties with PPSA registrations against Trinity Car Sales Inc. (which operates the London Used Car Superstore) are BMO and The Toronto-Dominion Bank ("**TD Bank**"). BMO understands that TD Bank's registrations were made in anticipation of a proposed refinancing that did not proceed, and that TD Bank has not made any loan, and is not owed any money, by the Debtors.[60]

57. BMO is of the view that these powers will ensure that there are necessary protections in place throughout the CCAA proceedings and that appropriate steps are taken to progress towards successful sales and cost-effective realizations of the Debtors' assets.[61]

G. The Administration Charge should be granted

58. The Applicant is seeking a first priority Court-ordered charge (the "**Administration Charge**") in the amount of $350,000 to secure the professional fees and disbursements of the Monitor, along with its counsel, and counsel to the Debtors at their standard rates and charges, whether incurred before or after the date of the Initial Order.[62]

59. Section 11.52 of the CCAA authorizes this Court to grant an administration charge. Courts have considered the following non-exhaustive factors in determining whether an administration charge is appropriate:[63]

(a) the size and complexity of the business being restructured;

[60] To Affidavit at para 62 and 106.
[61] To Affidavit at para 107.
[62] To Affidavit at para 108.
[63] CCAA, s. 11.52; *Canwest Publishing Inc.*, 2010 ONSC 222 at para 54.

(b) the proposed role of the beneficiaries of the charge;

(c) whether there is unwarranted 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.

60. The Applicant submits that it is appropriate for this Court to grant the proposed Administration Charge, given that:

(a) the amount of the proposed Administration Charge is the amount reasonably necessary for the Stay Period to ensure the continued participation of the proposed beneficiaries of the Administration Charge, whose expertise, knowledge and assistance will be critical to the success of these CCAA proceedings;[64]

(b) the quantum of the proposed Administration Charge is fair and reasonable;[65]

(c) each proposed beneficiary of the Administration Charge performs distinct functions and there is no duplication of roles;[66]

(d) the Proposed Monitor is supportive of the Administration Charge.[67]

H. The Directors' Charge should be granted

61. The Applicant seeks a charge in the amount of $250,000 to secure the indemnity of its current directors and officers for liabilities they may incur during these CCAA proceedings (the

[64] To Affidavit at para 110.
[65] To Affidavit at para 112.
[66] To Affidavit at para 113.
[67] To Affidavit at para 115.

"**Directors' Charge**"). The Directors' Charge is proposed to rank subordinate to the Administration Charge and the Interim Financing Charge.[68]

62. Section 11.51 of the CCAA authorizes this Court to grant charges in favour of directors where appropriate circumstances exist.[69] This Court has held that the purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protections against liabilities that could be incurred during the restructuring.[70]

63. The Applicant submits that it is appropriate in these circumstances for this Court to exercise its jurisdiction to grant the proposed Directors' Charge, given that:

(a) the directors and officers have considerable experience with, and knowledge of, the Debtors' Businesses and will be critical during these CCAA proceedings, including efforts to preserve value, maximize recoveries for stakeholders, and maintain ordinary-course operations;[71]

(b) the directors and officers have indicated that their continued service and involvement in these CCAA proceedings is conditional upon the granting of the Directors' Charge;[72]

(c) the Directors' Charge would only cover obligations and liabilities that the directors and officers may incur after the commencement of the CCAA proceedings and does not cover wilful misconduct or gross negligence; and

[68] To Affidavit at paras 121 and 125.
[69] CCAA, s. 11.51; *Canwest Global Communications Corp. (Re)* (2009), 2009 CanLII 55114 at para 45 (ONSC) [*Canwest Global*]; *Lydian* at para 52; *U.S. Steel Canada Inc. (Re)*, 2014 ONSC 6145 at para 20.
[70] *Canwest Global* (2009) at para 48 (ONSC).
[71] To Affidavit at para 123.
[72] To Affidavit at para 122.

(d) BMO and the Proposed Monitor have reviewed the quantum of the Directors' Charge and determined it to be reasonable in the circumstances.[73]

I. The Debtors should be authorized to continue using their existing cash management system and making further advances in consultation with the Monitor

64. Section 11 of the CCAA provides that this Court may make any order that it considers appropriate in the circumstances.[74]

65. Under the proposed Initial Order, the Applicant seeks authorization to continue utilizing its existing cash management system described in the To Affidavit.

66. The Debtors' cash management system is centralized primarily through its operating accounts at BMO with certain accounts for the Ancillary Operations at TD. The Debtors use funds in those accounts to pay suppliers, operating expenses, payroll, taxes and other business obligations in the ordinary course.[75]

67. Given the nature and scale of the Debtors' operations through its cash management system, the continued use of the existing cash management system is required and appropriate during these CCAA Proceedings. Continued use of the Debtors' existing cash management system will minimize disruption to their Businesses and avoid the need to negotiate and implement alternative banking arrangements at a time when the Debtors require stability.[76]

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[73] To Affidavit at para 124.
[74] CCAA, s. 11.
[75] To Affidavit at para 134.
[76] To Affidavit at para 135.

68. The Proposed Monitor supports the request to operate the cash management system on existing terms throughout the CCAA proceedings.[77]

PART V: RELIEF REQUESTED

69. The Applicant submits that the relief sought on the within application is appropriate in the circumstances and respectfully requests that the proposed form of Initial Order be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED as of the date first written above.

Per

CHAITONS LLP
Lawyers for the Applicant

[77] To Affidavit at para 136.

SCHEDULE A – LIST OF AUTHORITIES

Case law

1. *Boreal Capital Partners Ltd et al (Re)*, 2021 ONSC 7802.
2. *Canwest Global Communications Corp (Re)*, 2009 CanLII 55114.
3. *Canwest Publishing Inc*, 2010 ONSC 222.
4. *Ernst & Young Inc. v. Essar Global Fund Limited*, 2017 ONCA 1014.
5. *Laurentian University of Sudbury*, 2021 ONSC 659.
6. *Lydian International Limited (Re)*, 2019 ONSC 7473.
7. *McEwan Enterprises Inc*, 2021 ONSC 6453.
8. *Monitor's Enhanced Powers Order, in the Matter of Harte Gold Corp., dated January 28, 2022,* Toronto, Court File No. CV-21-00673304-00CL.
9. *MPX International Corporation*, 2022 ONSC 4348.
10. *Pride Group Holdings Inc*, 2024 ONSC 1830.
11. *Target Canada Co (Re)*, 2015 ONSC 303.
12. *US Steel Canada Inc (Re)*, 2014 ONSC 6145.

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

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date August 6, 2026

Signature

SCHEDULE B – STATUTES AND REGULATIONS

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3**

Section 2, "Insolvent Person"

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

> **(a)** who is for any reason unable to meet his obligations as they generally become due,
>
> **(b)** who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
>
> **(c)** the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

***Companies' Creditors Arrangement Act*, R.S.C. 1985, c C-36**

Section 2(1), "Company"

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies; (*compagnie*)

Section 2(1), "Company"

debtor company means any company that

> (a) is bankrupt or insolvent,
>
> (b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,
>
> (c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or
>
> (d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent; (compagnie débitrice)

Section 3

Application
(1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than $5,000,000 or any other amount that is prescribed.

Affiliated companies
(2) For the purposes of this Act,

(a) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and

(b) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

Company controlled
(3) For the purposes of this Act, a company is controlled by a person or by two or more companies if

(a) securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those companies; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.

Subsidiary
(4) For the purposes of this Act, a company is a subsidiary of another company if

(a) it is controlled by

(i) that other company,

(ii) that other company and one or more companies each of which is controlled by that other company, or

(iii) two or more companies each of which is controlled by that other company; or

(b) it is a subsidiary of a company that is a subsidiary of that other company.

R.S., 1985, c. C-36, s. 31997, c. 12, s. 1212005, c. 47, s. 125.

Section 11

General Power of Court
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. 111992, c. 27, s. 901996, c. 6, s. 1671997, c. 12, s. 1242005, c. 47, s. 128.

Section 11.001

Relief reasonably necessary
An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

2019, c. 29, s. 136

Section 11.02

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

> **(a)** staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
>
> **(b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
>
> **(c)** prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

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

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

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

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

Burden of proof on application
(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

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

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

2005, c. 47, s. 128, 2007, c. 36, s. 62(F)2019, c. 29, s. 137.

Section 11.2

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

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

Priority — other orders
(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

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

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application
(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

1997, c. 12, s. 1242005, c. 47, s. 1282007, c. 36, s. 652019, c. 29, s. 138.

Section 11.4

Critical supplier
(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring a person to be a critical supplier to the company if the court is satisfied that the person is a supplier of goods or services to the company and that the goods or services that are supplied are critical to the company's continued operation.

Obligation to supply
(2) If the court declares a person to be a critical supplier, the court may make an order requiring the person to supply any goods or services specified by the court to the company on any terms and conditions that are consistent with the supply relationship or that the court considers appropriate.

Security or charge in favour of critical supplier
(3) If the court makes an order under subsection (2), the court shall, in the order, declare that all or part of the property of the company is subject to a security or charge in favour of the person declared to be a critical supplier, in an amount equal to the value of the goods or services supplied under the terms of the order.

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

1997, c. 12, s. 124 2000, c. 30, s. 156 2001, c. 34, s. 33(E) 2005, c. 47, s. 128 2007, c. 36, s. 65

Section 11.51

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

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

Restriction — indemnification insurance
(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault
(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

2005, c. 47, s. 1282007, c. 36, s. 66.

Section 11.52

Court may order security or charge to cover certain costs
(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.

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

2005, c. 47, s. 1282007, c. 36, s. 66

Section 11.7

Court to appoint monitor
11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the Bankruptcy and Insolvency Act.

Restrictions on who may be monitor
(2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

(a) if the trustee is or, at any time during the two preceding years, was

(i) a director, an officer or an employee of the company,

(ii) related to the company or to any director or officer of the company, or

(iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or

(b) if the trustee is

(i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the Civil Code of Quebec that is granted by the company or any person related to the company, or

(ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

Section 23

Duties and functions
(1) The monitor shall

(a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,

(i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and

(ii) within five days after the day on which the order is made,

(A) make the order publicly available in the prescribed manner,

(B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than $1,000 advising them that the order is publicly available, and

(C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;

(b) review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;

(c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;

(d) file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any —

(i) without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances,

(ii) not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and

(iii) at any other time that the court may order;

(d.1) file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any, to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the Bankruptcy and Insolvency Act do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at least seven days before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;

(e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);

(f) file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;

(f.1) for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;

(g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;

(h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the Bankruptcy and Insolvency Act, so advise the court without delay after coming to that opinion;

(i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;

(j) make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and

(k) carry out any other functions in relation to the company that the court may direct.

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 13498140 CANADA INC., 2717922 ONTARIO INC., 1000208180 ONTARIO INC., TRINITY CAR SALES INC., 1000841404 ONTARIO INC., 13517683 CANADA INC., 12332248 CANADA INC., 1000454978 ONTARIO INC., 1986096 ONTARIO INC., 1001087905 ONTARIO INC., DOWNTOWN AUTO CENTRE LTD., TRINITY CAR AND TRUCK RENTAL INC., TRINITY AUTO INC., LARRY HUDSON FAMILY HOLDINGS INC. AND 1000493417 ONTARIO INC.

Court File No. CL-26-00000342-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

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(Returnable August 7, 2026)

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