Court File No. CL-26-00000342-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 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 MONITOR

September 28, 2026

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Tel: 416-862-7525
Fax: 416-862-7661

Cliff Prophet
Tel: (416) 862-3509
Email: Cliff.Prophet@gowlings.com

Heather Fisher
Tel: (416) 369-7202
Email: heather.fisher@gowlingwlg.com

Sam Gabor
Tel: (403) 298-1946
Email: sam.gabor@gowlingwlg.com

Lawyers for the Monitor

TO: SERVICE LIST

Court File No. CL-26-00000342-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 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 MONITOR

INTRODUCTION

1. This Factum is filed on behalf of Goldhar & Associates Ltd. ("**Goldhar**") in its capacity as Court-appointed monitor of the Companies (in such capacity, the "**Monitor**").[1]

2. On August 7, 2026, upon application by the Bank of Montreal ("**BMO**"), in its capacity as senior secured lender to the Companies, this Court made an order (the "**Initial Order**" and the proceedings commenced thereby, the "***CCAA* Proceedings**) under the *Companies Creditors Arrangement Act*, RSC 1985, c C-36 (as amended, the "***CCAA***"), with Justice Black finding that this was an appropriate circumstance for a creditor-driven *CCAA* Proceeding.[2]

---

[1] The Companies are comprised of 13498140 Canada Inc., 2717922 Ontario Inc., 1000208180 Ontario Inc., 1000841404 Ontario Inc., Trinity Car Sales 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.

[2] Endorsement of Justice Black dated August 7, 2026 at paras 27-28, 59-64.

3. Pursuant to the Initial Order, amongst other things, Goldhar was appointed as Monitor in the creditor-driven *CCAA* Proceeding and was granted expanded powers to conduct and control the financial affairs and operations of the Companies, with Justice Black noting that it was a critical component of the Initial order that the Monitor had the expanded powers granted.[3] The Initial Order also provided for, amongst other things: (a) an initial stay of proceedings up to and including August 17, 2026 (the "**Stay Period**"); (b) approved an interim financing term sheet (the "**Interim Financing Term Sheet**"); and (c) granted certain court-ordered charges, including the Administration Charge and the Monitor's Borrowing Charge (as each are defined in the Initial Order.

4. On August 17, 2026, at the Comeback Hearing, Justice Conway granted an amended and restated initial order (the "**ARIO**") which, amongst other things, extended the Stay Period to October 30, 2026; and (b) approved the maximum availability under the Interim Financing Term Sheet up to $3,500,000 and granted a corresponding increase to the Monitor's Borrowing Charge.

5. On September 10, 2026, Justice Dunphy granted a second amended and restated initial order (the "**SARIO**") which, amongst other things, approved a key employee retention plan (the "**KERP**"), and an order (the "**SISP Process Approval Order**") which, amongst other things, approved: (a) the appointment of the Sales Agent (as defined below); and (b) approved a proposed sales and investment solicitation process (the "**SISP**").

6. This factum is filed in support of a motion by the Monitor for:

[3] Endorsement of Justice Black dated August 7, 2025 at para 45.

(a) an order (the "**Omnibus Order**") substantially in the form attached as Tab X to the Motion Record to, amongst other things:

(i) extending the stay of proceedings from the SARIO to November 27, 2026, or such further date as this Honourable Court may deem appropriate;

(ii) approving an increase to the amount secured by the Interim Financing Charge up to the maximum of $5,000,000 (plus interest, costs and fees) pursuant to the first amendment to the Interim Financing Term Sheet (the "**First Amended Interim Financing Term Sheet**");

(iii) approving the fees and disbursements of the Monitor and its counsel, Gowling WLG (Canada) LLP ("**Gowling**") and approving the activities, actions and conduct of the Monitor as set out in the Monitor's Reports;

(iv) authorizing the Monitor to remove Boban James ("**Boban**") and Godshi Boban ("**Ms. Boban**") from their positions as directors of the Companies (as applicable);

(v) declaring that the Companies meet the criteria (the "**WEPP Relief**") prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 (the "**WEPP Regulations**"); and

(b) an order (the "**CRO Appointment Order**"):

(i) approving the engagement of FAAN Advisors to provide the services of Naveed Manzoor to act as Chief Restructuring Officer of the Companies (the "**CRO**"); and

(ii) providing that the CRO shall be entitled to the benefit of a charge (the "**CRO Charge**") on the assets, property and undertaking of the Companies, which charge shall not exceed the aggregate amount of $75,000, as security for their fee and disbursements, which CRO Charge will rank *pari passu* with the Sales Agent Charge as provided in paragraph 50 of the SARIO.

SUMMARY OF FACTS

7. The facts in support of the Monitor's motion are more fully set out in the Third Report of the Monitor dated September 25, 2026 (the "**Third Report**"). Further details on the background of the Companies and these *CCAA* Proceedings are set out in the:

(a) the Pre-Filing Report of the Monitor dated August 6, 2026;

(b) the First Report of the Monitor dated August 14, 2026;

(c) the Second Report of the Monitor dated September 3, 2026;

(d) the Supplement to the Monitor's Second Report dated September 4, 2026;

(e) the Second Supplement to the Monitor's Second Report dated September 7, 2026; and

(f) the Third Supplement to the Monitor's Second Report dated September 9, 2026 (the "**Third Supplement**").

(together with the Third Report, the "**Monitor's Reports**").

8. Capitalized terms not otherwise defined herein have the meaning given to them in the Third Report.

STATEMENT OF ISSUES

9. The issues to be determined by this Honourable Court are as follows:

(a) should the Stay Period be extended;

(b) should the Interim Financing Term Sheet be amended;

(c) should the CRO be appointed;

(d) should the activities, actions and conduct of the Monitor be approved;

(e) should the Monitor's and it its counsel's fees be approved; and

(f) should the WEPP Relief be approved.

STATEMENT OF LAW

The Stay Period Should be Extended

10. The current Stay Period will expire on October 30, 2026. The Monitor is seeking an extension of the Stay Period to November 27, 2026. This Court should extend the Stay Period to

provide the Debtors with breathing room to effect the SISP and to negotiate and close one or more transactions for the Debtors' business and/or property.

11. The Monitor, the Sales Agent and the CRO (if approved) will need to time properly and diligently administer the SISP, the KERP and to work towards the closing of one or more transactions for the Debtors' business and/or property. The extension of the Stay Period is necessary and appropriate in the circumstances to provide the Debtors with continued breathing space while it attempts to maximize value for the benefit of their stakeholders through the CCAA Proceedings.

12. This Court can extend a CCAA stay pursuant to section 11.02(2)-(3) of the CCAA[4], where (a) the order is appropriate in the circumstances; and (b) the applicant has acted, and is acting, in good faith and with due diligence. Both of these factors are satisfied here. In particular, the Monitor submits that, amongst other things:

(a) the Debtors, with the oversight and control of the Monitor, are acting in good faith and with due diligence;

(b) an extension will not prejudice or adversely affect any group of creditors. The Debtors and the Monitor are also not aware of any party opposed to the proposed extension of the Stay Period, which is supported by BMO;

(c) it is particularly appropriate to extend the stay where the Debtors are pursuing a Court-approved SISP;[5] and

[4] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, ss. 11.02(2)-(3).
[5] Hudson's Bay Company, Re, 2025 ONSC 1897 at para 19.

(d) the Cash Flow Forecast indicates that, with the advances made available under the Interim Financing Term Sheet (should the amount available be increased to $5,000,000 as sought by the Monitor), the Debtors will have sufficient liquidity to meet its obligations during the extended Stay Period being sought.

13. For the reasons set out above, the Monitor submits that the Stay Period should be extended to November 27, 2026.

The First Amended Interim Financing Term Sheet Should be Approved

14. The Interim Financing Term Sheet should be amended to provide the Debtors with the funding to maintain going-concern operations while the SISP continues to be implemented and one or more transactions are identified thereby.[6]

15. The First Amended Interim Financing Term Sheet increases availability under the Interim Financing Term Sheet to the maximum principal amount of $5,000,000 and extends the maturity date to December 31, 2026.[7]

16. The cash flow forecast prepared by the Monitor (the "**Cash Flow Forecast**") demonstrates that the Debtors require additional interim funding to maintain operations and fund these CCAA Proceedings through the proposed extension of the Stay Period. In particular, the Debtors require to make draws under the Interim Financing Term Sheet in the weeks of October 2, October 9 and October 30, 2026 in order to fund operations. An increase in the Debtors' ability to borrow under the Interim Financing Term Sheet will allow the Debtors to, amongst

[6] Third Report of the Monitor dated September 25, 2026, [the "**Third Report**"] at paras 28-29.
[7] Third Report, at para 29.

other things, continue its restructuring efforts and in the interim maintain the value of its property, assets and undertakings for the benefit of its stakeholders.[8]

17. The First Amended Interim Financing Term Sheet also adds events of default triggered by failure to generate expressions of interest or bids in the SISP that are acceptable to BMO. Given BMO's position as DIP Lender, senior secured creditor and most significant economic interest, these amendments are reasonable.

18. The Monitor therefore seeks approval of the First Amended Interim Financing Term Sheet and amendments to the SARIO authorizing borrowings under the Interim Financing Term Sheet and increasing the Interim Financing Charge accordingly. The Monitor is of the view that the First Amended Interim Financing Term Sheet and proposed amendments to the SARIO are reasonable and necessary in the circumstances and is supportive of the relief sought.[9]

The Monitor's Reports and Activities Should be Approved

19. The proposed Omnibus Order provides for the approval of the actions, conduct and activities outlined in the Monitor's Reports.[10] As has been noted by this Court, requests to approve monitor's reports are not unusual, and there are good policy and practical reasons to do so, including:[11]

(a) allowing the monitor to move forward with the next steps;

---

[8] Third Report, at paras 30-32 and Appendix "B".
[9] Third Report, at paras 31-32.
[10] Third Report, at para 17; First Report of the Monitor dated August 14, 2026, at para 13; Second Report of the Monitor dated September 3, 2026, at para 14.
[11] *Target Canada Co. (Re)*, 2015 ONSC 7574 at para 23.

(b) allowing the monitor to bring its activities before the Court;

(c) enabling the Court to satisfy itself that a monitor's activities have been conducted in prudent and diligent manners;

(d) providing protection for a monitor not otherwise provided by the *CCAA*; and

(e) protecting creditors from delay that may be caused by re-litigation of steps.

20. The Monitor submits that the Monitor's Reports should be approved. The activities set out in the Monitor's Reports have been carried out in accordance with the orders of this Court, and the Monitor has acted reasonably and in good faith throughout these *CCAA* Proceedings. The Monitor understands that BMO supports such approval.

The Fees and Disbursements of the Monitor and its Counsel Should be Approved

21. The proposed Omnibus Order further provides for the approval of the following fees and disbursements of the Monitor and its counsel, Gowling:[12]

(a) fees of the Monitor from August 7, 2026 to September 6, 2026, totalling $403,128.63, together with disbursements and applicable taxes; and

(b) fees of Gowling from July 22, 2026 to September 18, 2026, totalling $430,332.25, together with disbursements and applicable taxes.

22. In considering whether to approve fees and disbursements, the court has regard to the "overriding principle of reasonableness," and does not engage in a docket-by-docket or line-

[12] Third Report, at paras 55-56.

byline assessment of the accounts.[13] The following factors assist a court in assessing the reasonableness of the Monitor's fees under the *CCAA*: (i) the nature, extent and value of the assets being handled; (ii) the complications and difficulties encountered; (iii) the degree of assistance provided by the company, its officers or its employees; (iv) the time spent; (v) the Monitor's knowledge, experience and skill; (vi) the diligence and thoroughness displayed; (vii) the responsibilities assumed; (viii) the results achieved; and (ix) the cost of comparable services when performed in a prudent and economical manner.[14]

23. The fees and disbursements are appropriate and should be approved. The Monitor and Gowling have acted with diligence throughout the *CCAA* Proceedings, and their fees and disbursements are not opposed by the Debtors. In addition, the Monitor has reviewed the fees and disbursements of Gowling, which the Monitor confirms reflect duly authorized and duly rendered services, and which are reasonable in the circumstances.[15] The Monitor understands that BMO supports the approval of the fees and disbursements of the Monitor and Gowling.

The CRO Appointment and the CRO Charge are Appropriate

24. The Monitor is seeking this Court's approval of the engagement of FAAN Advisors to provide the services of Naveed Manzoor to act as Chief Restructuring Officer of the Debtors. Pursuant to section 11 of the *CCAA*, this Court has the jurisdiction to grant an order approving the CRO Engagement Letter and appointing the CRO.[16]

---

[13] *Nortel Networks Inc.*, 2022 ONSC 6680 ("**Nortel**") at para 10.
[14] *Nortel* at para 11.
[15] Third Report, at para 57.
[16] CCAA, s. 11.

25. Where the appointment of a chief restructuring officer, is desirable or necessary, for successful *CCAA* proceedings, as is anticipated here, *CCAA* courts have exercised their jurisdiction under section 11 to appoint a CRO, including in the circumstance where the Court is of the view that a chief restructuring officer will stabilize operations pending a restructuring or sale, and assist the debtors in their *CCAA* objectives.[17] The appointment of the CRO is particularly necessary in these proceedings, given the complexity of the Debtors' businesses and the vacuum of control created by the termination of senior management.[18]

26. The relief is appropriate in the circumstances as, amongst other things:

(a) the CRO is very experienced in restructuring proceedings of this nature;

(b) the experience and expertise of the CRO will be beneficial to the Debtors and their stakeholders in achieving a positive outcome in these proceedings; and

(c) the Monitor has reviewed the proposed fees and disbursements set out in the CRO Engagement Letter and believe them to be fair and reasonable in the circumstances.

27. *CCAA* courts have also granted CROs certain protections from liability in the execution of their duties in a similar manner to court-appointed monitors. These protections, are necessary in the circumstances, and will ensure that the CRO can conduct the day-to-day business of the Debtors and oversee the Debtors' restructuring efforts as part of these *CCAA* Proceedings.[19]

---

[17] *Walter Energy Canada Holdings, Inc., Re*, 2016 BCSC 107 at para 27.
[18] Third Report, at paras 47-48, 50.
[19] *Northstar Aerospace, Inc. (Re)*, 2012 ONSC 3974 at paras 11, 12.

28. The Monitor is requesting that a charge be granted against the Property in the maximum amount of $75,000 to secure the fees and disbursements of the CRO and counsel to the CRO which charge will rank *pari passu* with the Sales Agent Charge and in priority to the Interim Lender's Charge, but ahead of the D&O Charge and the KERP Charge.[20]

29. Sub-section 11.52(1) of the *CCAA* provides this Court with the jurisdiction to grant an administration charge in respect of the fees and expenses of the monitor and any financial, legal and other experts engaged by a company for the *CCAA* proceedings.[21] It is appropriate in the circumstances for the CRO Charge to secure the monthly fees and expenses of the CRO.

The WEPP Relief is Appropriate

30. After the date of the Initial Order approximately ten employees were terminated, including Boban and Ms. Boban.[22]

31. Section 5(1) of the *Wage Earner Protection Program Act*[23] ("**WEPPA**") permits eligible former employees of a company subject to the *CCAA* to collect certain benefits, including termination and severance pay, if certain criteria are met, namely: (i) the individual's employment is ended for a reason prescribed by regulation; (ii) the individual is owed eligible wages by a former employer; (iii) the former employer is subject to proceedings under the

[20] Third Report, at paras 51 and 53.
[21] CCAA, s.11.52(1).
[22] Third Report, at para 62.
[23] *Wage Earner Protection Program Act*, SC 2005, c 47, s 1 ["**WEPPA**"].

CCAA; and (iv) a court determines under s. 5(5) of the WEPPA that the criteria prescribed by regulation are met.[24]

32. Section 3.2 of the WEPP Regulations provides that:[25]

> **3.2** For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.

33. To assist eligible terminated employees the Monitor seeks a declaration that the Debtors meet the criteria prescribed by s.3.2 of the WEPP Regulations such that eligible employees may submit claims and seek to receive payments under the WEPPA Regulations.

34. The Debtors are subject to the *CCAA* Proceedings, accordingly, the only determination this Court must make is whether the Debtors are a "former employer, all of whose employees in Canada have been terminated other than any retained to wind-down their business operations.

35. The Monitor recommends that the Court make an order granting the WEPP Relief. If such declaration is made, the Monitor intends to work with the Debtors and eligible employees to assist them in filing claim with Service Canada.

The Removal of Directors is Appropriate

36. Section 11.5 of the *CCAA* provides that:[26]

---

[24] WEPPA, s.5(1), 5(5).
[25] *Wage Earner Protection Program Regulations*, SOR/2008-222, s.3.2 ["**WEPP Regulations**"].
[26] CCAA, s.11.5; see also *Re Crystallex International Corporation*, 2012 ONSC 2125 at para 71.

Removal of directors

11.5 (1) The court may, on the application of any person interested in the matter, make an order removing from office any director of a debtor company in respect of which an order has been made under this Act if the court is satisfied that the director is unreasonably impairing or is likely to unreasonably impair the possibility of a viable compromise or arrangement being made in respect of the company or is acting or is likely to act inappropriately as a director in the circumstances.

37. The Monitor submits that it is appropriate and necessary to remove Boban and Ms. Boban as the Debtors' directors (as applicable). Further, their continued incumbency as directors would threaten to impair the ability of the Debtors to restructure through the SISP and generally as:[27]

(a) Boban has failed to respond to the allegations set forth in the Third Supplement;

(b) Ms. Boban does not perform employee or management functions for the dealership businesses;

(c) Boban has failed to identify the cause of the vehicles "sold-in-violation" or explain the use of the relevant proceeds, which, as at the date of the Initial Order amounted to approximately $13 million in sold-in-violation vehicles (which amount has increased to approximately $17 million); and

[27] Third Report, at paras 42-46.

(d) between July 28 and August 6, 2026 Boban transferred $769,659.95 from the Debtors' TD bank accounts to bank accounts controlled by Susan Smith, the former CFO of the Debtors.

ORDER REQUESTED

38. For the reasons set out above, the Monitor requests that this Court grant the proposed Omnibus Order and CRO Appointment Order.

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



Heather Fisher

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Tel: 416-862-7525
Fax: 416-862-7661

Cliff Prophet
Tel: (416) 862-3509
Email: Cliff.Prophet@gowlings.com

Heather Fisher
Tel: (416) 369-7202
Email: heather.fisher@gowlingwlg.com

Sam Gabor
Tel: (403) 298-1946
Email: sam.gabor@gowlingwlg.com

Lawyers for the Monitor

SCHEDULE "A"

LIST OF AUTHORITIES

Case Law

1. *Hudson's Bay Company, Re*, 2025 ONSC 1897

2. *Target Canada Co. (Re)*, 2015 ONSC 7574

3. *Nortel Networks Inc.*, 2022 ONSC 6680

4. *Walter Energy Canada Holdings, Inc., Re*, 2016 BCSC 107

5. *Northstar Aerospace, Inc. (Re)*, 2012 ONSC 3974

6. *Re Crystallex International Corporation*, 2012 ONSC 2125

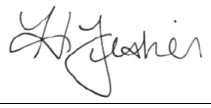
Endorsements

1. Endorsement of Justice W.D. Black dated August 7, 2026 ITMO the *CCAA* and ITMO a plan of compromise or arrangement of 13498140 Canada Inc. et al.

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 September 28, 2026



Signature

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

***Companies' Creditors Arrangement Act*, RSC 1985, c C-36**

Section 11

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.

Section 11.02

Stays, etc. — initial application

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

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

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

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

Stays, etc. — other than initial application

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

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

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

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

Burden of proof on application

(3) The court shall not make the order unless

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

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

Restriction

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

Section 11.2

Interim financing

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

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.

Section 11.5

Removal of directors

11.5(1) The court may, on the application of any person interested in the matter, make an order removing from office any director of a debtor company in respect of which an order has been made under this Act if the court is satisfied that the director is unreasonably impairing or is likely to unreasonably impair the possibility of a viable compromise or arrangement being made in respect of the company or is acting or is likely to act inappropriately as a director in the circumstances.

Section 11.52

Court may order security or charge to cover certain expenses

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
Section 36

(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.

Wage Earner Protection Program Act, SC 2005, c 47, s 1

Section 5

Conditions of eligibility

5(1) An individual is eligible to receive a payment if

(a) the individual's employment ended for a reason prescribed by regulation;

(b) one of the following applies:

(i) the former employer is bankrupt,

(ii) the former employer is subject to a receivership,

(iii) the former employer is the subject of a foreign proceeding that is recognized by a court under subsection 270(1) of the Bankruptcy and Insolvency Act and

(A) the court determines under subsection (2) that the foreign proceeding meets the criteria prescribed by regulation, and

(B) a trustee is appointed, or

(iv) the former employer is the subject of proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act and a court determines under subsection (5) that the criteria prescribed by regulation are met; and

(c) the individual is owed eligible wages by the former employer.

(d) [Repealed, 2009, c. 2, s. 343]

Prescribed criteria — other proceedings

(5) On application by any person, a court may, in proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act, determine that the former employer meets the criteria prescribed by regulation.

Wage Earner Protection Program Regulations, SOR/2008-222

Section 3.2

Proceedings Under Bankruptcy and Insolvency Act or Companies' Creditors Arrangement Act

3.2 For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.

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

FACTUM OF THE MONITOR

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Cliff Prophet
Tel: (416) 862-3509
Email: Cliff.Prophet@gowlings.com

Heather Fisher
Tel: (416) 369-7202
Email: heather.fisher@gowlingwlg.com

Sam Gabor
Tel: (403) 298-1946
Email: sam.gabor@gowlingwlg.com

Lawyers for the Monitor