

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

**IN THE MATTER OF THE PROPOSAL OF
2505243 ONTARIO LIMITED, OF THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO**

**FACTUM OF THE PROPOSAL TRUSTEE
(Motion Returnable August 31, 2023)**

August 28, 2023

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PART I. OVERVIEW

1. On July 2, 2020, Princes Gate GP Inc., in its capacity as general partner of Princes Gates Hotel Limited Partnership (“**PGH**”), terminated its agreements with 2505243 Ontario Limited (“**250**”) for food and beverage services at PGH’s hotel, Hotel X Toronto. As a result, 250 was forced to terminate all of its employees who worked at Hotel X.
2. On September 24, 250 filed a Notice of Intention to Make a Proposal pursuant to s. 50.4(1) of the *Bankruptcy and Insolvency Act* (“**BIA**”).¹
3. By reasons dated July 5, 2021 (the “**Decision**”),² this Court held that PGH terminated its agreements with 250 unlawfully. The Court awarded 250 “reliance damages” of \$6,388,645.07 plus damages arising from the mass termination of its employees (the “**Former Employees**”) under the *Employment Standards Act, 2000* (“**ESA**”).³
4. Although the Court accepted that termination pay was owing to 250’s employees, the Decision did not endorse a specific methodology for quantifying those, nor did it determine the specific amounts owing to the Former Employees. Instead, the Court directed PGH to pay \$2.063 million (the maximum amount that 250 represented was owing at trial) to the Proposal Trustee, in trust, and directed that the Proposal Trustee run a process for determining the termination entitlements of the Former Employees.⁴

¹ Proposal Trustee’s Eighth Report to the Court dated August 18, 2023 (the “**Eighth Report**”), s. 1.0, [para. 1](#).

² [2505243 Ontario Limited o/a ByPeterandPaul.com v. Princes Gate GP Inc. et al., 2021 ONSC 4649](#) (“**Decision**”).

³ [Employment Standards Act](#), 2000, SO 2000, c 41.

⁴ Decision at paras [449](#) - [451](#).

5. On this motion, the Proposal Trustee seeks orders (among other things):
- (a) approving the proposed methodology for determining the Former Employees' termination pay claims (the "**Claims**");
 - (b) approving the process for notifying Former Employees' of the Claims and, if necessary, resolving such Claims, all as described in detail in the Eighth Report and summarized below (the "**Employee Compensation Claims Process**");
 - (c) appointing Cavalluzzo LLP ("**Cavalluzzo**") as representative counsel to the Former Employees; and
 - (d) approving the Proposal Trustee's Seventh and Eighth Reports and the activities described therein.

PART II. FACTS

A. 250 is contracted to provide food and beverage services to Hotel X

6. 250 is part of a hospitality services group that operates under the business name "ByPeterandPaul".⁵

7. In 2017, 250 entered into agreements with PGH to provide food, beverage and catering services at Hotel X, which is located on the Exhibition Grounds in Toronto.⁶

⁵ Decision at [para. 24](#).

⁶ Decision, at paras. [12\(b\)](#), [14](#), [16](#).

8. The agreements between 250 and PGH included leases to service two restaurants at Hotel X and a food and beverage agreement for 250 to operate and provide services to Hotel X's banquet facilities, conference halls, a roof top patio and other facilities.⁷

9. 250 began providing services under the agreements after Hotel X opened in March 2018.⁸ 250 employed approximately 275 salaried and hourly individuals at Hotel X before March 2020.⁹

B. COVID-19 causes Hotel X to shut down in March 2020

10. On March 23, 2020, Hotel X and both of its restaurants shut down due to the COVID-19 pandemic.¹⁰

11. 250 received little notice of the shutdown and was forced to lay off its employees in or around the same period.¹¹

C. Hotel X terminates its agreements with 250 in July 2020 and 250 terminates its employees

12. During the COVID-19 shut-down, and unbeknownst to 250, Hotel X negotiated a Letter of Intent with an alternative food and beverage services provider to replace 250.¹²

13. Hotel X terminated its agreements with 250 on July 2, 2020.¹³ 250 received no notice that PGH would be terminating its agreements.¹⁴

⁷ Decision, at [para. 16](#).

⁸ Decision, at [para. 18](#).

⁹ Eighth Report, s. 3.1, para. 1, **Motion Record (“MR”), Tab 2, p. 29**.

¹⁰ Decision, at [para. 177](#).

¹¹ Decision, at [para. 177](#); Eighth Report, s. 3.2, para. 3(a), **MR, Tab 2, p. 31**.

¹² Decision, at [para. 12\(k\)](#).

¹³ Decision, at [para. 12\(n\)](#).

¹⁴ Decision, at [para. 254](#).

14. After the new food and beverage provider took over, it did not make employment offers to the vast majority of 250's employees.¹⁵ As a result, 250 notified the Former Employees that they were being terminated via a WhatsApp message on July 25, 2020 and then formally notified them that they were being terminated on August 21, 2020.¹⁶

15. 250 paid the Former Employees their outstanding wages and vacation pay but made no other payments to the Former Employees at that time.¹⁷

16. As set out further below, employers are required to provide enhanced notice of termination or pay in lieu of notice to their employees when more than 200 employees are terminated within the same 4-week period under the *ESA*.¹⁸

D. 250 sues PGH for damages and files a NOI

17. On July 20, 2020, 250 sued PGH seeking damages for breach of its agreements.¹⁹ On September 9, 2020, the Hotel, along with other creditors, commenced a bankruptcy application seeking to have 250 involuntarily adjudged bankrupt.²⁰

18. 250 delivered a NOI in response to the bankruptcy application, and the bankruptcy application was stayed pursuant to an order made on October 9, 2020.²¹

19. On July 26, 2021, 250 filed a proposal (the "**Proposal**") with the Official Receiver.²²

¹⁵ Decision, at [para. 268](#).

¹⁶ Eighth Report, s. 3.2, para. 3(b), **MR, Tab 2, p. 31**.

¹⁷ Eighth Report, s. 3.1, para. 3, **MR, Tab 2, p. 29**.

¹⁸ *ESA*, ss. [58\(1\)](#), [61](#); O. Reg. 288/01, s. [3\(1\)2](#).

¹⁹ Decision, at [para. 12\(o\)](#).

²⁰ Decision, at [para. 12\(q\)](#).

²¹ Eighth Report, s. 1.0, para. 2, **MR, Tab 2, p. 25**.

²² A copy of the Proposal is attached as Appendix "B" to the Eighth Report, **MR, Tab 2B, p. 42**.

20. The requisite majority of 250's creditors subsequently voted to approve the Proposal on August 16, 2021. The Proposal was approved by Order of this Court made August 30, 2021.²³

E. PGH is held liable to 250 for 250's termination obligations toward the Former Employees

21. In the Decision, this Court held that it was foreseeable that PGH cancelling its agreements with 250 without notice would force 250 to terminate its employees at Hotel X without notice.²⁴ PGH was, therefore, responsible for paying damages for amounts that 250 owed to its Former Employees.

22. This Court also held that PGH was liable for other losses suffered by PGH's decision to terminate the agreements in bad faith and without notice.

23. In the result, the Court ordered PGH to pay to the Proposal Trustee:

- (a) "reliance damages" in the net amount of \$6,388,645.07, being \$7,124,524.92 less \$735,879.85 by way of set-off for damages owed to PGH (the "**PGH Litigation Funds**"); and
- (b) \$2.063 million in employee compensation damages (the "**PGH Litigation Employee Funds**"). The PGH Litigation Employee Funds do not form part of 250's estate and are not available for distribution to 250's other creditors.²⁵

²³ Eighth Report, s. 1.0, para. 9, **MR, Tab 2, p. 26**.

²⁴ Decision, at [para. 450](#).

²⁵ Decision, at paras. [453](#), [455](#).

24. At trial, 250 presented four different scenarios reflecting its potential liability in respect of and toward the Former Employees. The \$2.063 million figure was the highest amount under the four scenarios.²⁶

25. The Court made no determination as to the accuracy of this \$2.063 million (or any other amount). Rather, the Court made clear that the task of determining the appropriate amount of the Claims and the process for so doing would be left to the Proposal Trustee.²⁷ As a result, the final amount may be more or less than \$2.063 million provided that pursuant to the Decision and the terms of the Proposal:

- (a) any shortfall will be an unsecured claim on the estate; and
- (b) any surplus will be returned to PGH.²⁸

F. Cavalluzzo LLP files a class action on behalf of the Former Employees asserting their rights upon termination

26. On March 16, 2022, Cavalluzzo commenced a class action against PGH, 250, and others in a claim bearing court file number CV-22-678525-CP on behalf of the Former Employees to preserve their rights upon termination (the “**Class Action**”).²⁹

27. At the return of this motion, Cavalluzzo and 250 are seeking an Order on consent to discontinue the Class Action (given that the substance of the claim in the Class Action will be dealt with under the proposed Employee Compensation Claims Process).

²⁶ Decision, at para. [449](#).

²⁷ Decision, at paras. [449](#), [451](#).

²⁸ Decision, at [para. 451](#); Proposal Approval Order, Schedule A, art. 2.02, **MR, Tab 2B, p. 45**.

²⁹ Eighth Report, s. 1.1, para. 1(e); s. 3.4, paras. 1-3, **MR, Tab 2, pp. 27, 33**.

G. *The proposed methodology for calculating the Former Employees' termination pay and Employee Compensation Claims Process*

28. The Proposal Trustee has received, in trust, the full \$2.063 million from PGH.³⁰ However, the Proposal Trustee has not yet started a claims process because PGH appealed this Court's decision to the Court of Appeal for Ontario and, after losing its appeal, sought further leave to appeal to the Supreme Court of Canada.³¹ Leave to appeal was denied on May 4, 2023.

29. The Proposal Trustee has now developed, and seeks approval of, the methodology for calculating the Former Employees' Claims and the Employee Compensation Claim Process.

30. The Proposal Trustee developed the Claim methodology and the Employee Compensation Claims Process with the input of its counsel, 250, and Cavalluzzo.³² Both 250 and Cavalluzzo support the proposed methodology and the Employee Compensation Claims Process.³³

PART III. ISSUES

31. These submissions address three issues on this motion, namely the Proposal Trustee's request that the Court approve:

- (a) the methodology for quantifying the Former Employees' Claims for termination pay (as described in the Eighth Report);

³⁰ Eighth Report, s. 2.0, para. 10, **MR, Tab 2, p. 29**.

³¹ Eighth Report, s. 3.1, para. 7, **MR, Tab 2, p. 30**.

³² Eighth Report, s. 3.1, para. 8; s. 3.5, para. 1(e), **MR, Tab 2, p. 34**.

³³ Eighth Report, s. 3.5, para. 1(e), **MR, Tab 2, p. 34**.

- (b) the Employee Compensation Claims Process (as described in the Eighth Report; and
- (c) the appointment of Cavalluzzo as representative counsel for the Former Employees.

PART IV. LAW AND ARGUMENT

A. The Order being sought is required

32. The Decision contemplated that the Proposal Trustee may move for further Orders or directions in relation to the employee claims process.³⁴

33. Since the Court's decision did not quantify the Former Employees' Claims, the Proposal Trustee now seeks the Court's approval of the proposed methodology for calculating the Claims under the *ESA* (as discussed further below).

B. The methodology for calculating the Claims

34. Before March 2020, 250 employed over 275 employees at Hotel X, including hostesses, servers, bartenders, bus personnel, food prep and kitchen staff, and managers.³⁵

35. Virtually all of the Former Employees were terminated in the same four-week period after Hotel X ended its agreements with 250. Accordingly, the Former Employees were entitled to (but did not receive) enhanced notice of termination, fixed at 12 weeks' notice of termination pursuant to ss. 58 and 60 of the *ESA*, and O. Reg. 288/01.³⁶

³⁴ Decision, at [para. 458](#).

³⁵ Decision, at [para. 19](#); Eighth Report, s. 3.1, para. 1, **MR, Tab 2, p. 29**.

³⁶ *ESA*, ss. [58](#), [60](#); O. Reg. 288/01, [s. 3\(1\)](#).

36. Because 250 did not provide notice of termination, it was instead required to provide pay in lieu of notice under s. 61 of the *ESA*.³⁷

37. Pay in lieu of notice – or termination pay – is calculated differently depending on whether an employee has a “regular work week”.³⁸ The Proposal Trustee’s procedure for determining the Former Employee Claims uses three different formulas for calculating the termination pay owing to those Former Employees depending on the structure of their work week:

- (a) **for salaried employees (Group A):** the employee’s regular gross weekly wage in 2020 (not including holiday pay, overtime, gratuities, or other payments statutorily excluded from the definition of “wages”) multiplied by 12 weeks;
- (b) **for hourly employees who worked the same number of hours a week (Group B):** the employee’s hourly wage in 2020 multiplied by the number of contracted hours per week multiplied by 12 weeks; and
- (c) **for hourly employees who worked variable hours (Group C):**
 - (i) the employee’s average actual weekly gross wages (not including weeks not worked) between May 2, 2020 – July 25, 2020 multiplied by 12 weeks; or

³⁷ *ESA*, s. [61\(1\)](#).

³⁸ *ESA*, ss. [61\(1.1\)](#).

- (ii) the employee's average actual weekly gross wages (not including weeks not worked) between February 7, 2020 – May 1, 2020 multiplied by 12 weeks if the employee in question had no wages during the period set out in item (i) immediately above.

1. Group A and B: calculating termination pay for employees with a regular work week

38. An “employee who usually works the same number of hours each week” has a “regular work week” for the purposes of the *ESA*.³⁹ For this group of employees, termination pay is based on their “regular wages for a regular work week” pursuant to ss. 60(1)(b) and 61(1)(a) of the *ESA*.⁴⁰ “Regular wages” and “regular work week” are both defined terms that together make up the formula for calculating termination pay:

- (a) “with respect to an employee who usually works the same number of hours each week”, a “regular work week” is determined by “a week of that many hours but not including overtime hours”;⁴¹ and
- (b) an employee's “regular wages” include their monetary remuneration but excludes a number of additions to an employee's base salary, including overtime pay, public holiday pay, premium pay, vacation pay, tips and other gratuities.⁴²

³⁹ *ESA*, s. [1\(1\)](#) (“regular work week”).

⁴⁰ *ESA*, ss. [60\(1\)\(b\)](#) and [61\(1\)\(a\)](#).

⁴¹ *ESA*, s. [1\(1\)](#) (“regular work week”).

⁴² *ESA*, s. [1\(1\)](#) (“wages” and “regular wages”).

39. The Proposal Trustee submits that salaried employees and hourly employees who work the same number of hours per week are employees with a “regular work week” and, as a result, should have their termination pay calculated according to the formula above based on their regular wages for a regular work week.

2. Group C: calculating termination pay for employees without a regular work week

40. For employees who do not have a “regular work week”, the *ESA* provides an alternative formula that calculates an employee’s weekly termination pay based on their average regular wages over a representative 12-week period of time.

41. Section 60 (which sets out the employer’s obligation to continue to pay wages during the notice period when giving notice of termination) and s. 61 (which refers back to s. 60 when calculating pay in lieu of notice) provide in relevant part as follows:⁴³

60 (1) During a notice period under section 57 or 58, the employer,

[...]

(b) shall in each week pay the employee the wages the employee is entitled to receive, which in no case shall be less than his or her regular wages for a regular work week; and

[...]

(2) For the purposes of clause (1) (b), if the employee does not have a regular work week or if the employee is paid on a basis other than time, the employer shall pay the employee an amount equal to the average amount of regular wages earned by the employee per week for the weeks in which the employee worked in the period of 12 weeks immediately preceding the day on which notice was given.

[...]

61 (1) An employer may terminate the employment of an employee without notice or with less notice than is required under section 57 or 58 if the employer,

⁴³ *ESA*, ss. [60\(1\)\(b\), \(2\)](#) and [61\(1\)\(a\), \(1.1\)](#). A supporting chart setting out the main statutory provisions is included at Appendix “A” to this factum.

(a) pays to the employee termination pay in a lump sum equal to the amount the employee would have been entitled to receive under section 60 had notice been given in accordance with that section; and

[...]

(1.1) For the purposes of clause (1) (a), if the employee does not have a regular work week or is paid on a basis other than time, the amount the employee would have been entitled to receive under section 60 shall be calculated as if the period of 12 weeks referred to in subsection 60 (2) were the 12-week period immediately preceding the day of termination. 2001, c. 9, Sched. I, s. 1 (15).

42. In the ordinary course, the statutory formula generates the employee's average regular wage by averaging their regular wages "for the weeks in which the employee worked in the period of 12 weeks immediately preceding the day" they received notice of termination or were terminated.⁴⁴ Weeks where the employee did not work are dropped out when averaging an employee's regular wages.

43. However, the statutory formula is difficult to apply where, as here, there are no "weeks in which the employee worked" in the months leading up to their termination because:

- (a) the Former Employees were laid off in March 2020;⁴⁵
- (b) from March 2020 to July 1, 2020, they were retroactively deemed to be on unpaid infectious disease emergency leave ("IDEL") since they were laid off because of COVID-19,⁴⁶

⁴⁴ ESA, ss. [60\(2\)](#), [61\(1.1\)](#).

⁴⁵ Eighth Report, s. 3.1, para. 2, **MR, Tab 2, p. 29**.

⁴⁶ Eighth Report, s. 3.2, at para. 3(a), **MR, Tab 2, p. 31**; ESA, s. [50.1\(1.1\)\(b\)](#); O. Reg. 228/20, ss. [4\(1\)-\(2\)](#).

- (c) from July 2, 2020 onward, their status converted to an ordinary lay-off after 250 lost its agreements with PGH and had no work for its employees;⁴⁷
- (d) on July 25, 2020, 250 sent its employees WhatsApp messages that made it clear that 250 had no more work for the employees and counselled them to inquire with the Ministry of Labour about their termination and severance entitlements, satisfying the statutory definition of a termination (as discussed below);⁴⁸ and
- (e) on August 21, 2020, 250 formally advised its employees that they were being terminated.⁴⁹

44. Since there are no “weeks in which the employee worked” in the 12 weeks before the Former Employees were terminated, there are no weeks with “regular wages” that can be used to apply the statutory formula and perform the required averaging.

45. The Proposal Trustee is not aware of any cases that have resolved how to apply ss. 60(2) and 61(1.1) in this situation. However, the Director of Employment Standard’s *Policy and Interpretation Manual* interprets “the period of 12 weeks immediately preceding” termination/notice of termination to mean the most proximate block of 12 weeks that actually has “weeks in which the employee worked”.⁵⁰ This interpretation gives effect to the implicit assumption in ss. 60(2) and 61(1.1) that there will be “weeks in which

⁴⁷ Eighth Report, s. 3.2, at para. 3(a), **MR, Tab 2, p. 31**; ESA, s. [56\(2\)](#).

⁴⁸ Eighth Report, s. 3.2, at para. 3(b), **MR, Tab 2, p. 31**.

⁴⁹ Eighth Report, s. 3.2, at para. 3(b), **MR, Tab 2, p. 31**.

⁵⁰ *Employment Standards Act Policy and Interpretation Manual* (the “Manual”), [s. 60 – Requirements during notice period](#), and [s. 61 – Pay instead of notice](#).

the employee worked” in the relevant averaging period. As a result, if there are no wages during the 12 weeks immediately before notice was given, the employer is to “look back in blocks of 12 weeks, until a 12-week period can be found in which the employee has weeks worked and then average the wages earned over that 12-week period.”⁵¹

46. The Proposal Trustee submits that the Director’s interpretation should be applied in this case because it aligns with the proper approach to interpreting the *ESA*, the termination pay scheme, and the specific averaging provisions under ss. 60(2) and 61(1.1). In particular:

- (a) because the *ESA* is benefits-conferring legislation, it should be “interpreted in a broad and generous manner”.⁵² Any “doubt arising from difficulties of language should be resolved in favour of the claimant”.⁵³
- (b) the Director’s interpretation aligns with how termination pay is calculated for employees who have a regular work week, for whom temporary disruptions in their hours of work or their rate of pay before they are terminated do not affect the amount of termination pay they receive.⁵⁴
- (c) when calculating termination pay for employees with irregular patterns of employment, ss. 60(2) and 61(1.1) intend for there to be weeks actually

⁵¹ *Employment Standards Act Policy and Interpretation Manual*, [s. 61 – Pay instead of notice](#).

⁵² *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at [para. 36](#). See also *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, at [pp. 1002-3](#). Termination pay in particular “is intended to ‘cushion’ employees against the adverse effects of economic dislocation likely to follow from the absence of an opportunity to search for alternative employment”: *Rizzo*, at para. [25](#).

⁵³ *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at [para. 36](#). See also *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, at [pp. 1002-3](#).

⁵⁴ See *Rainbow Concrete Industries Limited v David Gallagher*, 2020 CanLII 68932 (ON LRB) at paras. [41-53](#) and cases cited therein.

worked during the applicable averaging period. They direct the employer to drop out any weeks not actually worked. They do not contemplate any scenario where there are no weeks actually worked. In context, the reference in s. 60(2) to “the period of 12 weeks immediately preceding the day on which notice was given” and the qualifier in s. 61(1.1) that when giving pay in lieu of notice the “period of 12 weeks referred to in subsection 60 (2) [is] the 12-week period immediately preceding the day of termination” must refer to the most proximate 12-week period preceding the termination/notice of termination where there are “weeks in which the employee worked”.

47. The *Manual* has previously been applied by the Court of Appeal for Ontario as an interpretive aide in construing the *ESA*⁵⁵ and the Proposal Trustee submits that it should be applied to determine the Former Employee Claims to statutory termination pay. This interpretation of ss. 60(1) and (2) aligns with the accepted approach to statutory interpretation: words should be read “so as to avoid absurd results, including those that would defeat the purpose of the statutory scheme in issue” and those that “render part of a statute pointless, redundant or incapable of application”.⁵⁶

⁵⁵ *Render v. ThyssenKrupp Elevator (Canada) Limited*, 2022 ONCA 310, at [para. 80](#). See also *National Automobile, Aerospace Transportation and General Workers Union of Canada (C.A.W. - Canada) Local No. 27 v. London Machinery Inc.*, 2006 CanLII 8711 (ON CA), at paras. [123-124](#) (*per* Laskin J.A., concurring in the result).

⁵⁷ *ESA*, s. [56\(1\)](#).

(a) *The day of termination*

48. The time periods in the formula above are based on deeming July 25, 2020 to be the “day of termination”. The Proposal Trustee submits that July 25, 2020 is the proper “day of termination” because it is the first event that satisfies the statutory definition of a termination.

49. Under s. 56(1) of the *ESA*, an employee is terminated if one of three things happens:

(a) the employer dismisses the employee or otherwise refuses or is unable to continue employing him or her;

(b) the employer constructively dismisses the employee and the employee resigns from his or her employment in response to that within a reasonable period; or

(c) the employer lays the employee off for a period longer than the period of a temporary lay-off. [Emphasis added.]⁵⁷

50. The Proposal Trustee understands that on July 25, 2020, 250 advised its employees that it had no work for those employees and acknowledged that its actions may trigger the Former Employees’ statutory rights under the *ESA*:

In essence, Hotel X are not allowing us to bring you back and operate out of Hotel X. This is now the subject of a lawsuit. The Ministry of Labour will have information regarding your options, but I understand that any severance on [sic] termination arising as a result of this is the responsibility of the new operator(s) under the provisions of the Employment Standards Act. I apologize but this is simply out of PNP’s control at this time, and in the meantime thank you for your dedication and please be safe. [Emphasis added.]⁵⁸

51. Although the July 25, 2020 WhatsApp messages were followed by a separate notification that 250 was terminating the employment of the Former Employees in August 2020, the WhatsApp messages themselves satisfy the statutory definition of a termination. As described in the supporting opinion of the proposed representative

⁵⁷ *ESA*, s. [56\(1\)](#).

⁵⁸ Letter dated August 16, 2023 from Cavalluzzo LLP to the Proposal Trustee, **MR, Tab 2E, p. 71**.

counsel, 250's statements make clear that it "considered itself 'unable to continue employing' its workforce" as of that date and that the employees in question had the right to seek termination pay (albeit from the new operator).⁵⁹

C. The Employee Compensation Claims Process

52. The Employee Compensation Claims Process is set out fully in the Proposal Trustee's Eighth Report, and its salient points are as follows:⁶⁰

- (a) the Proposal Trustee will send a proof of claim form (the "**POC Form**") to each Former Employee (other than the 2020 Employees defined and described below), with a schedule detailing the calculation of their Claim based on the methodology described above;
- (b) except as addressed in (e) below, a Former Employee will be deemed to accept the calculation of their Claim (as set out in the POC Form) 30 days after the POC Form is sent to them by email;
- (c) if a Former Employee does not agree with the calculation of their Claim, then they will be required, within 30 days of the date the POC Form is sent, to send a notice of dispute (by letter or email) to the Proposal Trustee with their calculation of the claim (a "**Notice of Dispute**"). Permitted disputes will be limited to any incorrect information or miscalculation but may not, for greater certainty, be based on an objection to the methodology itself. The Proposal Trustee will provide a copy of any Notice of Dispute to Cavalluzzo

⁵⁹ Letter dated August 16, 2023 from Cavalluzzo LLP to the Proposal Trustee, **MR, Tab 2E, p. 71**.

⁶⁰ Eighth Report, s. 3.3, **MR, Tab 2, pp. 32-33**.

who will attempt to resolve the disputed Claim (a “**Disputed Claim**”) with the Former Employee and the Proposal Trustee within 30 days. If the dispute is not resolved in 30 days, then the Proposal Trustee will bring a motion to have the Disputed Claim determined by the Court or the Proposal Trustee may, in its sole discretion, select and appoint a claims officer to resolve any Disputed Claims whose decision shall be final and binding.

- (d) the Proposal Trustee will also send a separate letter to those Former Employees who, based on 250’s records, either quit or were terminated for cause in early 2020, before the restaurants closed (the “**2020 Employees**”). This letter will advise the 2020 Employees of the Court’s decision and provide them with an opportunity to file a claim within 30 days, while also advising them that based on 250’s records, they do not have a claim to the PGH Litigation Employee Funds. The Proposal Trustee will refer these employees to Cavalluzzo if they require additional information. The Proposal Trustee will work with Cavalluzzo to the extent that Cavalluzzo believes that any of these claims have any merit.
- (e) if there are any other individuals who believe they are entitled to participate in the Employee Compensation Claims Process (but do not receive a POC Form from the Proposal Trustee), they may submit a claim to the Proposal Trustee for consideration. The Proposal Trustee will refer these individuals to Cavalluzzo if the Proposal Trustee requires additional information. If Cavalluzzo believes that any of these claims have any merit, then the

Proposal Trustee will review and consider the claim in accordance with the contemplated Disputed Claim process described above.

53. The Proposal Trustee submits that the proposed Employee Compensation Claims Process is reasonable and suitable for the circumstances of this case. A reverse claims process is a fair, efficient, and transparent way of proceeding when a proposal trustee has access to the identity of the creditors, is satisfied that they have legitimate claims, and has access to the information needed to calculate their entitlements. It provides:

- (a) an efficient method for determining the Former Employees' Claims in accordance with their rights under the ESA;
- (b) adequate time for Former Employees to review and consider their Claims, including with the assistance of representative counsel (if appointed);
- (c) assistance to the Former Employees in the calculation of their claims and reduces the need for them to obtain professional advice in this regard; and
- (d) a fair mechanism for resolving any Claims that are in dispute.

54. As set out in the Eighth Report, the Employee Compensation Claims Process should be approved because:

- (a) it is similar to the employee claims process under the *Wage Earner Protection Program Act*, whereby a receiver or licensed insolvency trustee determines the identity of eligible employees, as well as the amount of unpaid wages (other than termination and severance pay) owing and then

sends a pre-completed proof of claim for wages owing to eligible employees;⁶¹

- (b) reverse claims processes are commonly used to improve the efficiency and timeliness of claim processes and to reduce the costs for creditors seeking professional assistance to complete their claims;⁶²
- (c) the methodology to quantify the claims is consistent with the *ESA* for the reasons set out above;
- (d) it does not affect 250's other unsecured creditors who do not have recourse to the PGH Litigation Employee Funds; and
- (e) it is supported by both 250 and Cavalluzzo, as proposed Representative Counsel.⁶³

D. The appointment of Cavalluzzo as representative counsel is necessary

55. Representative counsel is regularly appointed in insolvency proceedings to ensure that vulnerable groups can pursue their rights in an economical fashion and to streamline insolvency proceedings by providing one point of contact for both the trustee and creditors.⁶⁴

⁶¹ Eighth Report, s. 3.5, para. 1(a), **MR, Tab 2, p. 34**. See, in particular, *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1, s. [21\(1\)](#) and *Wage Earner Protection Program Regulations*, SOR/2008-222, ss. [15-16](#).

⁶² Eighth Report, s. 35.5, para. 1(b), **MR, Tab 2, p. 34**.

⁶³ Eighth Report, s. 35.5, para. 1(e), **MR, Tab 2, p. 34**.

⁶⁴ See, e.g., *Canwest Publishing (Re)*, 2010 ONSC 1328 at paras. [20-21](#).

56. The Proposal Trustee submits that it will be efficient and economical to appoint Representative Counsel in this case to:⁶⁵

- (a) assist the Former Employees to understand their rights related to the Employee Compensation Claims Process and the insolvency process generally;
- (b) assist the Former Employees to consider their Claims as will be set out in the POC Form;
- (c) assist the Proposal Trustee to locate any Former Employees that may have moved or who otherwise do not respond to the Proposal Trustee;
- (d) assist to resolve disputes between the Proposal Trustee and the Former Employees concerning Former Employees' Claims;
- (e) respond to inquiries from Former Employees about their Claims; and
- (f) reduce professional costs given that the Proposal Trustee contemplates that its fees and its counsel's fees will likely be greater than the cap agreed to with Cavalluzzo.⁶⁶

57. The Court has authority to appoint representative counsel for the Former Employees and provide for their fees pursuant to ss. 183(1) and 197(1) of the *BIA*.⁶⁷

⁶⁵ Eighth Report, s. 4.2, **MR, Tab 2, p. 34**.

⁶⁶ Eighth Report, s. 4.4(d), **MR, Tab 2, p. 35**

⁶⁷ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3., ss. [183\(1\)](#), [197\(1\)](#). See, e.g., *Proposition de Brunswick Health Group Inc.*, 2023 QCCS 3224, at [paras. 45-46](#).

58. The Proposal Trustee believes that Cavalluzzo is an appropriate choice for Representative Counsel as it is a union-side labour and employment firm that has already filed the Class Action on behalf of the Former Employees. Cavalluzzo has advised the Proposal Trustee that it has taken the following steps to organize and advance the interests of the Former Employees in the Class Action:

- (a) provided ongoing advice, information, and assistance to the affected workers since 2020;
- (b) secured the names of 236 potentially affected workers;
- (c) held Zoom information sessions with the affected workers; and
- (d) has engaged in ongoing efforts to organize the affected workers along with the three representative plaintiffs.⁶⁸

59. The Proposal Trustee and Cavalluzzo have agreed that Cavalluzzo's fees will be capped at \$35,000, plus HST.⁶⁹ The Proposal Trustee is of the view that the fee structure is reasonable and appropriate.

PART V. ORDERS SOUGHT

60. The Proposal Trustee requests that the Court grant the relief sought in the draft order enclosed at Appendix "A" to the Notice of Motion and in particular approve:

⁶⁸ Email from Cavalluzzo LLP to Proposal Trustee, dated June 20, 2023, **MR, Tab 2D, p. 65.**

⁶⁹ Email from Cavalluzzo LLP dated June 20, 2023, **MR, Tab 2D, p. 66.**

- (a) the methodology for calculating the Former Employees' Claim for termination pay set out therein;
- (b) the Employee Compensation Claims Process;
- (c) the appointment of Cavalluzzo as representative counsel to the Former Employees; and
- (d) the approval of the Seventh and Eighth Reports and the activities described therein.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

August 28, 2023



Jeffrey Larry/Catherine Fan
Paliare Roland Rosenberg Rothstein LLP

Lawyers for the Proposal Trustee

APPENDIX “A” – CHART OF KEY ESA PROVISIONS

250’S STATUTORY OBLIGATIONS		RELEVANT STATUTORY DEFINITIONS	
<p>Obligation when providing notice of termination</p>	<p>s. 60 (1) <u>During a notice period under section 57 or 58, the employer,</u></p> <p style="text-align: center;">[...]</p> <p>(b) <u>shall in each week pay the employee the wages the employee is entitled to receive, which in no case shall be less than his or her regular wages for a regular work week;</u> and</p> <p style="text-align: center;">[...]</p> <p>(2) <u>For the purposes of clause (1) (b), if the employee does not have a regular work week or if the employee is paid on a basis other than time, the employer shall pay the employee an amount equal to the average amount of regular wages earned by the employee per week for the weeks in which the employee worked in the period of 12 weeks immediately preceding the day on which notice was given.</u></p>	<p>s. 1(1) “regular wages” means wages other than overtime pay, public holiday pay, premium pay, vacation pay, domestic or sexual violence leave pay, infectious disease emergency leave pay, termination pay, severance pay and termination of assignment pay and entitlements under a provision of an employee’s contract of employment that under subsection 5 (2) prevail over Part VIII, Part X, Part XI, section 49.7, subsection 50.1 (1.2), Part XV or section 74.10.1; (“salaire normal”)</p>	<p>s. 1(1) “wages” means,</p> <p>(a) monetary remuneration payable by an employer to an employee under the terms of an employment contract, oral or written, express or implied,</p> <p>(b) any payment required to be made by an employer to an employee under this Act, and</p> <p>(c) any allowances for room or board under an employment contract or prescribed allowances,</p> <p>but does not include,</p> <p>(d) tips or other gratuities,</p> <p>(e) any sums paid as gifts or bonuses that are dependent on the discretion of the employer and that are not related to hours, production or efficiency,</p> <p>(f) expenses and travelling allowances, or</p> <p>(g) subject to subsections 60 (3) or 62 (2), employer contributions to a benefit plan and payments to which an employee is entitled from a benefit plan; (“salaire”)</p>
<p>Obligations when giving pay in lieu of notice</p>	<p>s. 61 (1) An employer may terminate the employment of an employee without notice or with less notice than is required under section 57 or 58 if the employer,</p> <p>(a) pays to the employee termination pay in a lump sum equal to the amount the employee would have been entitled to receive under section 60 had notice been given in accordance with that section; and</p> <p>...</p> <p>(1.1) <u>For the purposes of clause (1) (a), if the employee does not have a regular work week or is paid on a basis other than time, the amount the employee would have been entitled to receive under section 60 shall be calculated as if the period of 12 weeks referred to in subsection 60 (2) were the 12-week period immediately preceding the day of termination.</u></p>	<p>s. 1(1) “regular work week”, with respect to an employee who usually works the same number of hours each week, means a week of that many hours but not including overtime hours; (“semaine normale de travail”)</p>	

SCHEDULE “A” - AUTHORITIES

1. *2505243 Ontario Limited o/a ByPeterandPaul.com v. Princes Gate GP Inc. et al.*, [2021 ONSC 4649](#).
2. *Canwest Publishing (Re)*, [2010 ONSC 1328](#).
3. *Employment Standards Act Policy and Interpretation Manual*, [s. 60 – Requirements during notice period](#), and [s. 61 – Pay instead of notice](#)
4. *Machtiger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, [1992 CanLII 102 \(SCC\)](#).
5. *National Automobile, Aerospace Transportation and General Workers Union of Canada (C.A.W. - Canada) Local No. 27 v. London Machinery Inc.*, [2006 CanLII 8711 \(ON CA\)](#).
6. *Proposition de Brunswick Health Group Inc.*, [2023 QCCS 3224](#).
7. *Rainbow Concrete Industries Limited v. David Gallagher*, [2020 CanLII 68932 \(ON LRB\)](#).
8. *Render v. ThyssenKrupp Elevator (Canada) Limited*, [2022 ONCA 310](#).
9. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, [1998 CanLII 837 \(SCC\)](#).

SCHEDULE “B” – LEGISLATION AND REGULATIONS

Employment Standards Act, 2000, SO 2000, c 41.

Definitions

1 (1) In this Act,

“regular wages” means wages other than overtime pay, public holiday pay, premium pay, vacation pay, domestic or sexual violence leave pay, infectious disease emergency leave pay, termination pay, severance pay and termination of assignment pay and entitlements under a provision of an employee’s contract of employment that under subsection 5 (2) prevail over Part VIII, Part X, Part XI, section 49.7, subsection 50.1 (1.2), Part XV or section 74.10.1; (“salaire normal”)

[...]

“regular work week”, with respect to an employee who usually works the same number of hours each week, means a week of that many hours but not including overtime hours; (“semaine normale de travail”)

[...]

“wages” means,

(a) monetary remuneration payable by an employer to an employee under the terms of an employment contract, oral or written, express or implied,

(b) any payment required to be made by an employer to an employee under this Act, and

(c) any allowances for room or board under an employment contract or prescribed allowances,

but does not include,

(d) tips or other gratuities,

(e) any sums paid as gifts or bonuses that are dependent on the discretion of the employer and that are not related to hours, production or efficiency,

(f) expenses and travelling allowances, or

(g) subject to subsections 60 (3) or 62 (2), employer contributions to a benefit plan and payments to which an employee is entitled from a benefit plan; (“salaire”)

[...]

Leave of absence without pay

50.1 (1.1) An employee is entitled to a leave of absence without pay if the employee will not be performing the duties of his or her position,

- (b) because of one or more of the following reasons related to a designated infectious disease:
 - (i) The employee is under individual medical investigation, supervision or treatment related to the designated infectious disease.
 - (ii) The employee is acting in accordance with an order under [section 22](#) or [35](#) of the [Health Protection and Promotion Act](#) that relates to the designated infectious disease.
 - (iii) The employee is in quarantine or isolation or is subject to a control measure (which may include, but is not limited to, self-isolation), and the quarantine, isolation or control measure was implemented as a result of information or directions related to the designated infectious disease issued to the public, in whole or in part, or to one or more individuals, by a public health official, a qualified health practitioner, Telehealth Ontario, the Government of Ontario, the Government of Canada, a municipal council or a board of health, whether through print, electronic, broadcast or other means.
 - (iv) The employee is under a direction given by his or her employer in response to a concern of the employer that the employee may expose other individuals in the workplace to the designated infectious disease.
 - (v) The employee is providing care or support to an individual referred to in subsection (8) because of a matter related to the designated infectious disease that concerns that individual, including, but not limited to, school or day care closures.
 - (vi) The employee is directly affected by travel restrictions related to the designated infectious disease and, under the circumstances, cannot reasonably be expected to travel back to Ontario.
 - (vii) Such other reasons as may be prescribed. [2020, c. 3, s. 4 \(1\)](#).

[...]

What constitutes termination

56 (1) An employer terminates the employment of an employee for purposes of [section 54](#) if,

- (a) the employer dismisses the employee or otherwise refuses or is unable to continue employing him or her;

- (b) the employer constructively dismisses the employee and the employee resigns from his or her employment in response to that within a reasonable period; or
- (c) the employer lays the employee off for a period longer than the period of a temporary lay-off. 2000, c. 41, s. 56 (1).

Temporary lay-off

(2) For the purpose of clause (1) (c), a temporary layoff is,

- (a) a lay-off of not more than 13 weeks in any period of 20 consecutive weeks;
- (b) a lay-off of more than 13 weeks in any period of 20 consecutive weeks, if the lay-off is less than 35 weeks in any period of 52 consecutive weeks and,
 - (i) the employee continues to receive substantial payments from the employer,
 - (ii) the employer continues to make payments for the benefit of the employee under a legitimate retirement or pension plan or a legitimate group or employee insurance plan,
 - (iii) the employee receives supplementary unemployment benefits,
 - (iv) the employee is employed elsewhere during the lay-off and would be entitled to receive supplementary unemployment benefits if that were not so,
 - (v) the employer recalls the employee within the time approved by the Director, or
 - (vi) in the case of an employee who is not represented by a trade union, the employer recalls the employee within the time set out in an agreement between the employer and the employee; or
- (c) in the case of an employee represented by a trade union, a lay-off longer than a lay-off described in clause (b) where the employer recalls the employee within the time set out in an agreement between the employer and the trade union. 2000, c. 41, s. 56 (2); [2001, c. 9](#), Sched. I, s. 1 (12).

[...]

Notice, 50 or more employees

58 (1) Despite [section 57](#), the employer shall give notice of termination in the prescribed manner and for the prescribed period if the employer terminates the employment of 50 or more employees at the employer's establishment in the same four-week period. 2000, c. 41, s. 58 (1).

Information

- (2) An employer who is required to give notice under this section,
- (a) shall provide to the Director the prescribed information in a form approved by the Director; and
 - (b) shall, on the first day of the notice period, post in the employer's establishment the prescribed information in a form approved by the Director. 2000, c. 41, s. 58 (2).

Content

- (3) The information required under subsection (2) may include,
- (a) the economic circumstances surrounding the terminations;
 - (b) any consultations that have been or are proposed to take place with communities in which the terminations will take place or with the affected employees or their agent in connection with the terminations;
 - (c) any proposed adjustment measures and the number of employees expected to benefit from each; and
 - (d) a statistical profile of the affected employees. 2000, c. 41, s. 58 (3).

When notice effective

- (4) The notice required under subsection (1) shall be deemed not to have been given until the Director receives the information required under clause (2) (a). 2000, c. 41, s. 58 (4).

Posting

- (5) The employer shall post the information required under clause (2) (b) in at least one conspicuous place in the employer's establishment where it is likely to come to the attention of the affected employees and the employer shall keep that information posted throughout the notice period required under this section. 2000, c. 41, s. 58 (5).

Employee notice

- (6) An employee to whom notice has been given under this section shall not terminate his or her employment without first giving the employer written notice,
- (a) at least one week before doing so, if his or her period of employment is less than two years; or

- (b) at least two weeks before doing so, if his or her period of employment is two years or more. 2000, c. 41, s. 58 (6).

Exception

(7) Subsection (6) does not apply if the employer constructively dismisses the employee or breaches a term of the employment contract, whether or not such a breach would constitute a constructive dismissal. 2000, c. 41, s. 58 (7).

[...]

Requirements during notice period

60 (1) During a notice period under [section 57](#) or [58](#), the employer,

- (a) shall not reduce the employee's wage rate or alter any other term or condition of employment;
- (b) shall in each week pay the employee the wages the employee is entitled to receive, which in no case shall be less than his or her regular wages for a regular work week; and
- (c) shall continue to make whatever benefit plan contributions would be required to be made in order to maintain the employee's benefits under the plan until the end of the notice period. 2000, c. 41, s. 60 (1).

No regular work week

(2) For the purposes of clause (1) (b), if the employee does not have a regular work week or if the employee is paid on a basis other than time, the employer shall pay the employee an amount equal to the average amount of regular wages earned by the employee per week for the weeks in which the employee worked in the period of 12 weeks immediately preceding the day on which notice was given. [2001, c. 9](#), Sched. I, s. 1 (13).

Benefit plan contributions

(3) If an employer fails to contribute to a benefit plan contrary to clause (1) (c), an amount equal to the amount the employer should have contributed shall be deemed to be unpaid wages for the purpose of [section 103](#). 2000, c. 41, s. 60 (3).

Same

(4) Nothing in subsection (3) precludes the employee from an entitlement that he or she may have under a benefit plan. 2000, c. 41, s. 60 (4).

[...]

Pay instead of notice

61 (1) An employer may terminate the employment of an employee without notice or with less notice than is required under [section 57](#) or [58](#) if the employer,

- (a) pays to the employee termination pay in a lump sum equal to the amount the employee would have been entitled to receive under [section 60](#) had notice been given in accordance with that section; and
- (b) continues to make whatever benefit plan contributions would be required to be made in order to maintain the benefits to which the employee would have been entitled had he or she continued to be employed during the period of notice that he or she would otherwise have been entitled to receive. 2000, c. 41, s. 61 (1); [2001, c. 9](#), Sched. I, s. 1 (14).

No regular work week

(1.1) For the purposes of clause (1) (a), if the employee does not have a regular work week or is paid on a basis other than time, the amount the employee would have been entitled to receive under [section 60](#) shall be calculated as if the period of 12 weeks referred to in [subsection 60 \(2\)](#) were the 12-week period immediately preceding the day of termination. [2001, c. 9](#), Sched. I, s. 1 (15).

Information to Director

(2) An employer who terminates the employment of employees under this section and would otherwise be required to provide notices of termination under [section 58](#) shall comply with [clause 58 \(2\)](#) (a). 2000, c. 41, s. 61 (2).

Termination and Severance of Employment, O Reg 288/01

3. (1) The following periods are prescribed for the purposes of [subsection 58 \(1\)](#) of the [Act](#):

1. Notice shall be given at least eight weeks before termination if the number of employees whose employment is terminated is 50 or more but fewer than 200.
2. Notice shall be given at least 12 weeks before termination if the number of employees whose employment is terminated is 200 or more but fewer than 500.
3. Notice shall be given at least 16 weeks before termination, if the number of employees whose employment is terminated is 500 or more. O. Reg. 288/01, s. 3 (1).

Infectious Disease Emergency Leave, O Reg 228/20

Prescribed leave, deemed leave

4. (1) For the purposes of subclause 50.1 (1.1) (b) (vii) of the Act, the following reason is prescribed:

1. The employee's hours of work are temporarily reduced or eliminated by the employer for reasons related to the designated infectious disease.

(1.1) Entitlement to emergency leave under clause 50.1 (1.1) (b) of the Act because of the reason prescribed in paragraph 1 of subsection (1) related to coronavirus (COVID-19) is deemed to have started on March 1, 2020 and applies during the COVID-19 period.

(2) An employee who does not perform the duties of his or her position because of the reason set out in paragraph 1 of subsection (1) is deemed to be on infectious disease emergency leave under section 50.1 of the Act in respect of any time during the COVID-19 period that the employee does not perform such duties because of that reason.

Wage Earner Protection Program Act, S.C. 2005, c. 47, s. 1.

Duties of Trustees and Receivers

General duties

21 (1) For the purposes of this Act, a trustee or a receiver, as the case may be, shall

- (a) identify each individual who is owed eligible wages;
- (b) determine the amount of eligible wages owing to each individual;
- (c) inform each individual other than one who is in a class prescribed by regulation of the existence of the program established by section 4 and of the conditions under which payments may be made under this Act;
- (d) provide the Minister and each individual other than one who is in a class prescribed by regulation with the amount of eligible wages owing to the individual and any other information prescribed by regulation;
- (e) inform the Minister of when the trustee is discharged or the receiver completes their duties, as the case may be.

Wage Earner Protection Program Regulations, SOR/2008-222.

Information to Be Provided to the Minister

15 (1) For the purpose of paragraph 21(1)(d) of the Act, the trustee or receiver shall provide the Minister with the following information in the form provided by the Minister:

(a) the date of bankruptcy or receivership, or the day on which a court determines that the former employer meets the criteria set out in section 3.1 or 3.2, as the case may be;

(b) the name, address, telephone number, social insurance number, employee number and job title of the individual;

(c) the dates on which wages, other than severance pay or termination pay, were earned and the basis upon which they were calculated;

(c.1) the date on which any employment in respect of which severance pay or termination pay is owing ended;

(d) a statement as to whether or not the individual delivered a proof of claim for wages owing under section 124 of the Bankruptcy and Insolvency Act; and

(e) the names of the employer's officers, directors and owners and of the person responsible for the employer's payroll.

(2) The trustee or receiver shall provide the information within

(a) 45 days after the date of bankruptcy or after the first day on which there was a receiver in relation to the former employer, as the case may be, unless circumstances beyond the control of the trustee or receiver justify a longer period; or

(b) if the trustee or receiver requests the information under subsection 21(3) or (4) of the Act, 15 days after receiving the information.

Information to Be Provided to an Individual

16 (1) For the purpose of paragraph 21(1)(d) of the Act, the trustee or receiver shall provide each individual with the following information:

(a) the date of bankruptcy or receivership, or the day on which a court determines that the former employer meets the criteria set out in section 3.1 or 3.2, as the case may be;

(b) a statement informing the individual of their requirement under section 124 of the Bankruptcy and Insolvency Act to deliver a proof of claim for wages owing;

(c) a copy of the information and documents that they provided to the Minister with respect to the individual; and

(d) an application form for the Wage Earner Protection Program.

(2) The trustee or receiver shall provide the information within 45 days after the date of bankruptcy or after the first day on which there was a receiver in relation to the former employer, as the case may be, unless circumstances beyond the control of the trustee or receiver justify a longer period.

Bankruptcy and Insolvency Act, RSC 1985, c B-3.

Courts vested with jurisdiction

183 (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

- (a) in the Province of Ontario, the Superior Court of Justice;
- (b) [Repealed, 2001, c. 4, s. 33]
- (c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;
- (d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;
- (e) in the Province of Prince Edward Island, the Supreme Court of the Province;
- (f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;
- (g) in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and
- (h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

[...]

Costs in discretion of court

197 (1) Subject to this Act and to the General Rules, the costs of and incidental to any proceedings in court under this Act are in the discretion of the court.

**IN THE MATTER OF THE
PROPOSAL OF
2505243 ONTARIO LIMITED, OF
THE CITY OF TORONTO, IN THE
PROVINCE OF ONTARIO**

Court/Estate File No.: 31-2675288

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

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