

**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 BIOSTEEL SPORTS NUTRITION INC.

(the "**Applicant**")

**FACTUM OF THE APPLICANT**

September 19, 2023

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**TO: SERVICE LIST**

Court File No. CV-23-00706033-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

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(the "**Applicant**")

**FACTUM OF THE APPLICANT**

**PART I - NATURE OF THIS MOTION**

1. At the Comeback Hearing,<sup>1</sup> the Applicant seeks two orders which are critical to allow the Applicant to pursue a sale of the assets and/or business of BioSteel.
2. The Applicant is of the view that the requested relief, including the approval of the SISP, provides the best path forward by allowing the Applicant to realize on the assets and/or business of BioSteel for the benefit of stakeholders.
3. First, the Applicant seeks the ARIO, which, along with customary restructuring relief:
  - (i) extends the Stay of Proceedings until and including November 17, 2023 (the "**Stay Extension**");
  - (ii) confirms pre-filing obligations may not be set off against post-filing obligations without further order of the court;

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<sup>1</sup> Terms not otherwise defined herein have the meaning given to them in the Affidavit of Sarah Eskandari sworn September 13, 2023 (the "**Initial Eskandari Affidavit**") or the Affidavit of Sarah Eskandari, sworn September 15, 2023 (the "**Second Eskandari Affidavit**").

- (iii) increases the Administration Charge and the Directors' Charge to the maximum amounts of US\$1 million and US\$2.198 million, respectively; and
- (iv) approves the retention of the Financial Advisor and grants the Transaction Fee Charge to the maximum amount of US\$2.5 million to secure payment of the Transaction Fee.

4. Second, the Applicant seeks the SISP Approval Order, which, among other things, approves the SISP, authorizes the Applicant to implement the SISP pursuant to the terms thereof, and authorizes and directs the Applicant, the Financial Advisor, and the Monitor to perform their respective obligations and to do all things reasonably necessary to perform their obligations under the SISP.

5. The relief sought by the Applicant at the Comeback Hearing is supported by Canopy (the Applicant's largest secured creditor) and the Monitor.

## **PART II - FACTS**

### **A. BACKGROUND**

6. The Applicant, operating with BioSteel US and BioSteel Manufacturing, (collectively "**BioSteel**" or the "**BioSteel Entities**"), is a sports nutrition and hydration company, focused on high quality ingredients and with a strong presence in professional sports markets. BioSteel products, including ready-to-drink sports drinks ("**RTDs**"), hydration mixes and supplements, are available at retailers across Canada, the United States and online.<sup>2</sup>

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<sup>2</sup> Initial Eskandari Affidavit at para 2.

7. Pursuant to the BioSteel Loan Agreement, as of September 11, 2023, the Applicant owes to Canopy (as agent for itself and one of its affiliates), approximately \$366 million<sup>3</sup>, plus interest.<sup>4</sup>

8. Following the granting of the Initial Order on September 14, 2023, the Applicant has been working in good faith and with due diligence to, among other things: (i) stabilize its business and operations while in hibernation as part of this CCAA Proceeding, including securing its premises and working to ensure access to all of its assets; (ii) advise its stakeholders, including suppliers, customers and counterparties to the Sponsorship Agreements of the granting of the Initial Order; and (iii) respond to numerous creditor and stakeholder inquiries regarding this CCAA Proceeding, including requests related to obligations of suppliers and counterparties to the Sponsorship Agreements, and inquiries from interested parties on the proposed SISP.<sup>5</sup>

## **B. CHARGES**

9. The ARIO provides for increases in the amount of the Administration Charge to US\$1 million and the Directors' Charge to US\$2.198 million.<sup>6</sup> These modifications reflect the increased potential exposure to the beneficiaries of those charges from time to time during the Stay Extension period.<sup>7</sup>

10. The Applicant also seeks approval of the Special Committee's retention of Greenhill & Co. Canada Ltd. as Financial Advisor to assist and conduct the SISP and the approval of the related "Transaction Fee Charge" in the amount of US\$2.5 million to secure amounts payable to the Financial Advisor as the Transaction Fee.<sup>8</sup> In addition to all the work the Financial Advisor has done prior to commencement of this CCAA Proceeding to design, launch and conduct a refreshed

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<sup>3</sup> All references to currency in this Factum are references to Canadian dollars unless otherwise indicated.

<sup>4</sup> Pre-Filing Report of the Monitor dated September 14, 2023 at para 2(d).

<sup>5</sup> Second Eskandari Affidavit at para 6.

<sup>6</sup> Second Eskandari Affidavit at para 24(d)(ii).

<sup>7</sup> First Report of the Monitor at paras 7.2.2 and 7.3.2 [First Report].

<sup>8</sup> Second Eskandari Affidavit at para 24(d)(iii).

marketing process to identify proposals for a transaction or investment in BioSteel,<sup>9</sup> it is anticipated that the Financial Advisor will play a key role in the SISP.<sup>10</sup> The Transaction Fee Charge only secures the Transaction Fee payable to the Financial Advisor in circumstances of the completion of the SISP.

11. The amount of the increase of the Administration Charge and the Directors' Charge has been determined with guidance from the Monitor and is supported by Canopy and the Monitor.<sup>11</sup>

### C. SISP

12. The proposed SISP authorizes the Applicant (with the assistance of the Financial Advisor and under the oversight of the Monitor), to solicit binding bids from interested parties for executable transactions involving the business and/or assets of the Applicant and all or substantially all of the assets of each of its affiliates, BioSteel US and BioSteel Manufacturing.<sup>12</sup>

13. The proposed SISP will commence no later than four days following the granting of the SISP Approval Order but is expected to be officially launched promptly after its approval.<sup>13</sup>

14. A summary of the significant dates and processes within the proposed SISP is as follows:<sup>14</sup>

<b>SISP Process</b>	<b>Deadline</b>
<b>SISP Approval Order</b>	September 21, 2023
<b>Commence Solicitation</b>	No later than September 25, 2023
<b>Qualified Bid Deadline</b>	October 16, 2023 (5:00 pm ET)
<b>Definitive Agreement Deadline</b>	October 23, 2023 (5:00 pm ET)
<b>Transaction Order</b>	No later than November 3, 2023, subject to court availability
<b>Closing of Successful Bid</b>	No later than November 15, 2023

<sup>9</sup> Initial Eskandari Affidavit at para 75.

<sup>10</sup> Second Eskandari Affidavit at para 24(c).

<sup>11</sup> First Report at paras 7.2.2 and 7.3.3.

<sup>12</sup> Second Eskandari Affidavit at para 11(b).

<sup>13</sup> Second Eskandari Affidavit at para 12 and 20(b).

<sup>14</sup> Second Eskandari Affidavit at para 19.

15. Typical of a SISP of this nature, interested parties must enter into a non-disclosure agreement in form and substance satisfactory to the Applicant and submit a binding offer meeting the requirements enumerated in the SISP (a “**Qualified Bid**” and, a party submitting a Qualified Bid, a “**Qualified Bidder**”), as determined by the Applicant, in consultation with the Monitor.<sup>15</sup> If one or more Qualified Bids have been received by the Applicant on or before the Qualified Bid Deadline, the Applicant will proceed to evaluate the bids received and, if appropriate, negotiate with the parties who submitted those bids with the objective of selecting the Successful Bid (or one or more such bids, in each case with the consent of Canopy) and entering into a definitive agreement in respect of such bid(s) by no later than 5:00 p.m. Eastern Time on October 23, 2023.<sup>16</sup>

16. The SISP authorizes the Applicant to provide general updates and information in respect of the SISP to counsel to any creditor on a confidential basis if such counsel confirms in writing that the applicable creditor will not bid in the SISP and counsel executes a confidentiality agreement with the Applicant.<sup>17</sup>

17. The Applicant, in consultation with its professionals and the Monitor, developed the proposed SISP in order to build on the marketing processes that began pre-filing.<sup>18</sup>

### **PART III - ISSUES AND THE LAW**

18. The principal issues on this Application are whether this Court should grant the ARIO and the SISP Approval Order.

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<sup>15</sup> Second Eskandari Affidavit at para 13.

<sup>16</sup> Second Eskandari Affidavit at para 15.

<sup>17</sup> Second Eskandari Affidavit at para 18.

<sup>18</sup> Second Eskandari Affidavit at para 10; First Report at para 3.2.3.

**A. AMENDED AND RESTATED INITIAL ORDER**

**(i) Stay Extension**

19. On an application other than an initial application, subsection 11.02(2) of the CCAA gives this Court discretion to grant a stay of proceedings for any period that it considers necessary, provided it is satisfied that such an extension is appropriate and that the debtor company has acted and continues to act in good faith and with due diligence and is working to advance this CCAA Proceeding.<sup>19</sup>

20. The requested Stay Extension is appropriate and necessary to, among other things, enable the Applicant to, if approved, implement the SISP. The Applicant is seeking an extension of the Stay of Proceedings until November 17, 2023, to coincide with the outside date under the SISP.<sup>20</sup>

21. Furthermore, the Cash Flow Statement shows that the Applicant will have sufficient funds to meet its obligations during the proposed stay period without the need for financing.<sup>21</sup>

22. Sections 11 and 11.02 of the CCAA allow this Court to stay rights held by creditors if the exercise of those rights could jeopardize the restructuring process, including creditors' rights to effect pre-filing versus post-filing compensation (set-off).<sup>22</sup> Completion of the SISP without disruption is the Applicant's priority at this time. Any attempt to exercise set-off in this manner

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<sup>19</sup> [CCAA, s 11.02\(2\), \(3\)](#).

<sup>20</sup> Second Eskandari Affidavit at para 24(a).

<sup>21</sup> Second Eskandari Affidavit at para 24(a); First Report at para 5.0.1.

<sup>22</sup> *Montreal (City) v Deloitte Restructuring Inc*, [2021 SCC 53](#) at para [62](#) [*Montreal (City)*]. See also *Carillion Canada Inc*, [2022 ONSC 4617](#) at paras [29](#) and [70](#).

risks both distracting the Applicant and interfering with the SISF. The requested order staying pre-filing/post filing set-off, subject to further Order of the Court, is therefore appropriate.<sup>23</sup>

**(ii) Administration Charge**

23. The CCAA authorizes this Court to grant a priority charge over a debtor company's assets for professional fees and disbursements on notice to affected secured creditors.<sup>24</sup> The factors to be considered are well established in the case law.<sup>25</sup>

24. The increase of the Administration Charge to US\$1 million is fair and reasonable given the number of beneficiaries, the size and complexity of the Applicant's business, and the complexity of this CCAA Proceeding.<sup>26</sup> The Monitor also supports the increase in the Administration Charge.<sup>27</sup>

**(iii) Directors' Charge**

25. In deciding whether to grant or increase a directors' charge, this Court must be satisfied that: (i) notice has been given to the likely affected secured creditors; (ii) the amount is appropriate; (iii) the Applicant could not obtain adequate indemnification insurance for the Directors and Officers at a reasonable cost; and (iv) the charge does not apply to obligations incurred by a director or officer as a result of their gross negligence or wilful misconduct.<sup>28</sup>

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<sup>23</sup> See for example, in *LoyaltyOne, Co.* (March 20, 2023), Ont Sup Ct J [Commercial List], Court File No CV-23-00696017-00CL ([Amended and Restated Initial Order](#)) at para 22 [*LoyaltyOne ARIO*], where Justice Conway recently granted a CCAA amended and restated initial order staying creditors rights to effect pre-filing versus post-filing set-off.

<sup>24</sup> [CCAA, s 11.52](#).

<sup>25</sup> Courts have considered: (i) the size and complexity of the business being restructured; (ii) the proposed role of the beneficiaries of the charge; (iii) whether there is an unwarranted duplication of roles; (iv) whether the quantum of the proposed charge appears to be fair and reasonable; (v) the position of the secured creditors likely to be affected by the charge; and (vi) the position of the Monitor: *Canwest Publishing Inc.*, [2010 ONSC 222](#) [*Canwest*] at para 54.

<sup>26</sup> First Report at para 7.2.2.

<sup>27</sup> First Report at para 7.2.2.

<sup>28</sup> *Jaguar Mining Inc, Re*, [2014 ONSC 494](#) at para 45.



26. Notice has been given to the Applicant's secured creditors.<sup>29</sup> In addition, while insurance remains in place, the complexity of the overall enterprise and the exclusions and conditions of the insurance, create risk that such insurance may not provide sufficient coverage.<sup>30</sup> The increased quantum of the Directors' Charge has been determined, with guidance from the Monitor, to reflect the potential obligations and liabilities that the Directors and Officers may face during the proposed Stay Extension.<sup>31</sup> The D&O Indemnity secured by the Directors' Charge does not apply to any obligations incurred as a result of gross negligence or wilful misconduct.<sup>32</sup>

**(iv) Financial Advisor Engagement and Transaction Fee Charge**

27. This Court has also previously exercised its discretion under section 11 of the CCAA to approve agreements engaging financial advisors in complex CCAA proceedings, particularly where the assets to be sold are complicated.<sup>33</sup> The CCAA authorizes this Court to grant a priority charge over a debtor company's assets to secure such fees and expenses.<sup>34</sup> The factors to be considered are the same as those considered when granting an administration charge.<sup>35</sup>

28. The Transaction Fee Charge is necessary and reasonable in the circumstances as it is a condition of the retention of the Financial Advisor.<sup>36</sup> The Special Committee retained the Financial Advisor to capitalize on its expertise in distressed M&A situations and explore alternative

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<sup>29</sup> Affidavit of Service of Stephanie Fernandes dated September 15, 2023.

<sup>30</sup> Initial Eskandari Affidavit at para 90.

<sup>31</sup> Initial Eskandari Affidavit at para 105(b); First Report at para 7.3.2.

<sup>32</sup> Second Eskandari Affidavit at para 9(c).

<sup>33</sup> *Just Energy Corp, Re*, [2021 ONSC 1793](#) at paras [113](#), [126](#). This charge was subsequently increased to \$8.6 million: *Just Energy Group Inc, et al (Re)*, (March 19, 2021), Ont Sup Ct J [Commercial List], Court File No. CV-21-00658423-00CL ([Amended and Restated Initial Order](#)) at para 52; *Sanjel Corporation (Re)*, (April 4, 2016), AB QB, Court File No 1601-03143 ([Initial Order](#)) at para 6 (in which the Alberta Court of Queen's Bench (as it then was) granted charges to financial advisors in the maximum aggregate amounts of US\$6.1 million and US\$500,000).

<sup>34</sup> [CCAA, s 11.52](#).

<sup>35</sup> Courts have considered, in the context of a Financial Advisor charge: (i) the size and complexity of the business being restructured; (ii) the proposed role of the beneficiaries of the charge; (iii) whether there is an unwarranted duplication of roles; (iv) whether the quantum of the proposed charge appears to be fair and reasonable; (v) the position of the secured creditors likely to be affected by the charge; and (vi) the position of the Monitor; and (vii) the incentives created by the charge: *Canwest* at paras [54-55](#).

<sup>36</sup> Initial Eskandari Affidavit at para 105(c).

strategies to maximize the value of the BioSteel brand.<sup>37</sup> The Transaction Fee Charge is also consistent with similar charges this Court has recently approved in similar circumstances.<sup>38</sup>

## **B. SISP APPROVAL ORDER**

29. It is well recognized that this Court has jurisdiction to approve a sale process in relation to a debtor company's business and assets "to establish the boundaries of the playing field and act as a referee in the process", prior to the development (or even in the absence) of a plan of compromise or arrangement.<sup>39</sup> Such court approval adds additional certainty that the process will be honoured, absent exceptional circumstances.<sup>40</sup> This Court has recently approved single phase sale and investment solicitation processes of a similar nature and duration.<sup>41</sup>

30. In approving a sales process, this Court has considered, among other things, the following factors:<sup>42</sup>

- (a) Is a sale warranted at this time? A sale of the assets and/or business of BioSteel represents the best available outcome for stakeholders. There is no other realistic option available to the Applicant given its liquidity challenges and the position of its secured creditor, Canopy, that it does not wish to remain a stakeholder of BioSteel.

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<sup>37</sup> Initial Eskandari Affidavit at para 75.

<sup>38</sup> *LoyaltyOne ARIO* at paras 36-37.

<sup>39</sup> *Stelco Inc, Re*, [2005 CanLII 8671 \(ON CA\)](#) at para 44. See also, *Nortel Networks Corp (Re)*, [2009 CanLII 39492 \(ON SC\)](#) at para 48 [*Nortel*].

<sup>40</sup> Once a sale process has been approved by the Court, it has an interest in maintaining the integrity of that process: see, for example, *Brainhunter Inc, Re*, [2010 ONSC 1035](#) at para 47.

<sup>41</sup> *Acerus Pharmaceuticals Corporation, et al*, (March 9, 2023), Ont Sup Ct J [Commercial List], Court File No CV-23-00693595-00CL ([SISP Approval and Extension to Stay of Proceedings](#)) at para 4; *Flowr Corporation, et al*, (October 28, 2022), (Ont Sup Ct J [Commercial List]), Court File No CV-22-00688966-00CL ([SISP Order](#)) at para 3; *Harte Gold Corp., Re* (December 20, 2021), Ont Sup Ct J [Commercial List]), Court File No CV-21-00673304-00CL ([SISP Approval Order](#)) at para 5; *Clover Leaf Holdings, et al*, (December 20, 2019), Ont Sup Ct J [Commercial List]), Court File No CV-19-631523-00CL ([Bidding Procedures, Stalking Horse Approval and Stay Extension Order](#)) at para 3.

<sup>42</sup> *Nortel* at para 49. Although *Nortel* was decided prior to the 2009 amendments to the CCAA, which incorporated provisions on asset sales including section 36, the factors set out in *Nortel* continue to apply: *Brainhunter Inc (Re)*, [2009 CanLII 72333 \(ON SC\)](#) at paras 13-19 [*Brainhunter*]; *In The Matter of A Plan of Compromise or Arrangement of Green Growth Brands Inc*, [2020 ONSC 3565](#) at para 61.

- (b) Will the sale be of benefit to the whole “economic community”? The SISP will benefit the economic community as a whole, as it is designed to solicit the highest and best bid to the benefit of the Applicant’s stakeholders including lenders, suppliers and customers.
- (c) Do any of the debtor’s creditors have a bona fide reason to object to a sale? The SISP is designed to solicit the highest and best bid for the benefit of, among others, the Applicant’s creditors. It is expected that all distributable proceeds from a transaction under the SISP will, after satisfaction of priority amounts, flow to the benefit of Canopy given the significant secured obligations owing to it and its wholly owned affiliate, 1106, and the likelihood that they will suffer a significant shortfall.<sup>43</sup> Notably, the SISP has the support of Canopy. No stalking horse bid has been identified and the specific assets to be sold will be determined through the SISP. To the extent that any creditor of the Applicant opposes the terms of a proposed sale (including the sale of any specific assets or contracts), the creditor will have an opportunity at the sale approval hearing to bring such concerns to the Court’s attention if they cannot be resolved prior to the hearing.
- (d) Is there a better viable alternative? The SISP is the only viable avenue to monetize the assets and/or business of BioSteel for the benefit of the Applicant’s stakeholders. It must be undertaken expeditiously to prevent any further uncertainty from potentially eroding the value of the BioSteel business. Given the desire of its secured lender to exit this business, there is no other viable process available to BioSteel at this time.

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<sup>43</sup> First Report at para 4.2.4(d).

31. In addition, this Court is entitled to consider whether the proposed SISP is likely to satisfy the requirements of section 36 of the CCAA, even though a sale is not yet proposed, including:<sup>44</sup>

- (a) That the process is fair and that the best price will be obtained. The SISP is fair, transparent, and objective. In particular, it is designed to facilitate a process to market the BioSteel business to obtain the best possible price and achieve a going concern solution for the benefit of all stakeholders, without unduly prolonging the process. The SISP builds on the extensive marketing campaign that began in the one year prior to filing, including the renewed process commenced in August 2023.<sup>45</sup> In the circumstances, the Applicant is also of the view that the proposed SISP provides a fair and reasonable process that will adequately canvass the market, while simultaneously protecting against the burdens of an extended CCAA Proceeding.<sup>46</sup>
- (b) Whether the Monitor supports the SISP. The Monitor was involved, pre-filing, in the development of the SISP and supports the SISP.<sup>47</sup>
- (c) The extent to which creditors were consulted. Canopy and 1106 (who are the fulcrum creditors) were consulted during the development of the SISP. The proposed SISP also provides that the Applicant may continue to consult with creditors throughout the SISP.

32. The Applicant submits that the totality of the factors considered in connection with a SISP weigh in favour of approving the proposed SISP and authorizing the Applicant, the Financial Advisor, and the Monitor to undertake their obligations thereunder.

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<sup>44</sup> *Brainhunter* at paras 15-19; [CCAA, s 36\(3\)](#).

<sup>45</sup> Second Eskandari Affidavit at para 20(a).

<sup>46</sup> Second Eskandari Affidavit at para 22.

<sup>47</sup> First Report at para 3.5.1.

**PART IV - ORDER REQUESTED**

33. For all of the reasons above, the Applicant requests that this Court grant the requested ARIO and SISP Approval Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 19<sup>th</sup> day of September, 2023.



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## SCHEDULE “A”

### LIST OF AUTHORITIES

1. *Acerus Pharmaceuticals Corporation, et al*, (March 9, 2023), Ont Sup Ct J [Commercial List], Court File No CV-23-00693595-00CL ([SISP Approval and Extension to Stay of Proceedings](#)).
2. *Brainhunter Inc (Re)*, [2009 CanLII 72333 \(ON SC\)](#).
3. *Brainhunter Inc (Re)*, [2010 ONSC 1035](#).
4. *Canwest Publishing Inc*, [2010 ONSC 222](#).
5. *Carillion Canada Inc*, [2022 ONSC 4617](#).
6. *Clover Leaf Holdings, et al*, (December 20, 2019), Ont Sup Ct J [Commercial List], Court File No CV-19-631523-00CL ([Bidding Procedures, Stalking Horse Approval and Stay Extension Order](#)).
7. *Flowr Corporation, et al*, (October 28, 2022), Ont Sup Ct J [Commercial List], Court File No. CV-22-00688966-00CL ([SISP Order](#)).
8. *Harte Gold Corp., Re* (December 20, 2021), Ont Sup Ct J [Commercial List], Court File No CV-21-00673304-00CL ([SISP Approval Order](#)).
9. *Jaguar Mining Inc, Re*, [2014 ONSC 494](#).
10. *Just Energy Corp, Re*, [2021 ONSC 1793](#).
11. *Just Energy Group Inc, et al (Re)*, (March 19, 2021), (Ont Sup Ct J [Commercial List]), Court File No. CV-21-00658423-00CL ([Amended and Restated Initial Order](#)).
12. *LoyaltyOne, Co* (March 20, 2023), Ont Sup Ct J [Commercial List], Court File No CV-23-00696017-00CL ([Amended and Restated Initial Order](#)).
13. *In The Matter of a Plan of Compromise or Arrangement of Green Growth Brands Inc.*, [2020 ONSC 3565](#).
14. *Montreal (City) v Deloitte Restructuring Inc*, [2021 SCC 53](#).
15. *Nortel Networks Corp (Re)* (2009), [2009 CanLII 39492 \(ON SC\)](#).
16. *Sanjel Corporation (Re)*, (April 4, 2016), AB QB, Court File No. 1601-03143 ([Initial Order](#)).
17. *Stelco Inc, Re*, [2005 CanLII 8671 \(ON CA\)](#).

## SCHEDULE "B"

### TEXT OF STATUTES, REGULATIONS & BY – LAWS

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

##### **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.

##### **Stays, etc. — initial application**

...

##### **Stays, etc. — other than initial application**

11.02 (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.

...

### **Court may order security or charge to cover certain costs**

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

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

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

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

### **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 on disposition of business assets**

...

### **Factors to be considered on a proposed Sale or Disposition**

36 (3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.



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PROCEEDING COMMENCED AT  
TORONTO

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