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

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3,
AS AMENDED**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
HAKIM OPTICAL LABORATORY LIMITED, IN THE CITY OF TORONTO, IN THE
PROVINCE OF ONTARIO**

AND

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
LAWRENCE OPHTHALMIC LAB INC., IN THE CITY OF TORONTO, IN THE
PROVINCE OF ONTARIO**

Applicants

FACTUM OF THE APPLICANTS

May 13, 2025

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PART I - OVERVIEW

1. Hakim Optical Laboratory Limited (“**HOLL**”), Lawrence Ophthalmic Lab Inc. (“**Lawrence Lab**” together with HOLL, the “**NOI Applicants**”) and Hakim Optical Worldwide Lenses Inc. (also known as Hakim Optical Lenses Worldwide Inc. and Hakim Optical Worldwide Lenese Inc. [sic]) (“**HOWL**”, and together with the NOI Applicants, the “**Applicants**” or the “**Company**”) constitute the largest privately owned optical chain in Canada. With approximately 70 active retail store locations, the Company offers a comprehensive selection of eyeglasses, contact lenses, prescription lenses and other optical services.
2. The Company is insolvent, faces a liquidity crisis, and requires immediate interim financing and the protections afforded by the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), in order to maintain the *status quo* and obtain the breathing room required to develop and implement its restructuring strategy.
3. To preserve its assets and stay the Landlord Enforcement Actions (as defined below), on April 16, 2025 (the “**Initial Filing Date**”), HOLL, which is the primary operating entity for the Applicants’ retail business, filed a Notice of Intention to Make a Proposal (“**NOI**” and such proceeding, the “**HOLL Proceeding**”) pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). Given the highly integrated nature of the Applicants’ operations, and to prevent potential disruptions to the Company’s business, Lawrence Lab filed an NOI on April 22, 2025 (together with the HOLL Proceeding the “**NOI Proceedings**”).
4. KSV Restructuring Inc. (“**KSV**”) consented to act as the proposal trustee (in such capacity, the “**Proposal Trustee**”) in the respective NOI Proceedings, and has overseen the operations of the Company since the Initial Filing Date.
5. No proposal has been filed as part of the NOI Proceedings to date. The principal purpose of the NOI Proceedings is to afford the Company the necessary time and stability to finalize the DIP Term Sheet (as defined below) and a stalking horse agreement, both intended to facilitate a court-approved sale and investment solicitation process (the “**SISP**”) for the

benefit of the Company and its stakeholders. The Applicants intend to return to court for approval of the SISP should the requested relief be granted.

6. To this end, the Applicants bring the within application for an initial order (the “**Initial Order**”), under the CCAA, substantially in the form attached at Tab 4 of the Motion Record of the Applicants dated May 8, 2025 (the “**Motion Record**”), *inter alia*:
 - (a) declaring that the Applicants are parties to which the CCAA applies;
 - (b) authorizing the continuation of the NOI Proceedings as proceedings under the CCAA (the “**CCAA Proceedings**”);
 - (c) appointing KSV as an officer of the Court to monitor the assets, business and affairs of the Applicants in the CCAA Proceedings (the entity appointed in such capacity, the “**Monitor**”);
 - (d) staying up to and including June 30, 2025 (the “**Stay Period**”), all proceedings and remedies taken or that might be taken in respect of the Applicants, the Monitor, or affecting the Applicants’ business or the Property (as defined below), except with the written consent of the Applicants and the Monitor, or with leave of the Court;
 - (e) approving HOLL’s and Lawrence Lab’s ability to borrow up to a principal amount of \$2,800,000 under a debtor-in-possession credit facility (the “**DIP Facility**”) in accordance with the DIP Term Sheet with the DIP Lender (as defined below); and
 - (f) granting the Administration Charge and the DIP Lender’s Charge (each as defined below and, collectively, the “**Charges**”) with respect to the Applicants’ current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively, the “**Property**”) in the following priorities:
 - (i) First – the Administration Charge up to a maximum amount of \$250,000; and;

- (ii) Second – the DIP Lender’s Charge up to a maximum amount of \$2,800,000, plus accrued and unpaid interest, fees and expenses in accordance with the DIP Term Sheet.
- 7. If the proposed Initial Order is granted, the Applicants also seek approval of the orders (the “**Discharge and Termination Orders**”) under the BIA, among other things:
 - (a) approving the fees and disbursements of KSV, in its capacity as Proposal Trustee, as described in the First Report (as defined below); and
 - (b) discharging the Proposal Trustee and terminating the NOI Proceedings.
- 8. If the Initial Order is not granted, the Applicants seek, strictly in the alternative, an order, pursuant to the BIA (the “**NOI Proceedings Order**”) *inter alios*:
 - (a) authorizing the procedural consolidation of the NOI Proceedings;
 - (b) extending the time for the NOI Applicants to file a consolidated proposal under the BIA, and the corresponding stay of proceedings, to and including June 30, 2025;
 - (c) approving the DIP Facility to finance the working capital requirements of HOLL and Lawrence Lab and other general corporate purposes, post-filing expenses and costs during the consolidated NOI Proceedings; and
 - (d) granting the Charges over the Property in the priority set out above.

PART II - FACTS

- 9. The facts underlying this motion are more fully set out in the affidavit of Douglas Robertson, sworn May 8, 2025 (the “**Robertson Affidavit**”).¹ All capitalized terms used but not defined herein have the meanings ascribed to them in the Robertson Affidavit or The First Report of the Proposal Trustee and the Pre-Filing Report of KSV as proposed Monitor dated May 9, 2025 (the “**First Report**”).

¹ Affidavit of Douglas Robertson, sworn May 8, 2025 [Robertson Affidavit], Applicants’ Motion Record dated May 8, 2025 at Tab 2 [Motion Record].

A. THE APPLICANTS' BUSINESS, OPERATIONS & CORPORATE STRUCTURE

10. The Applicants consist of HOLL, Lawrence Lab and HOWL, which is not an actively maintained entity but is party to certain agreements on behalf of the Company. HOLL and Lawrence Lab are corporations incorporated pursuant to the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended (“CBCA”).² Although no longer an actively maintained company and possessing no assets or accounts of its own, HOWL was incorporated pursuant to the *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16, as amended.³ The Applicants share a registered head office at 3430 Lawrence Avenue East, Scarborough, Ontario, with Sir Karim Hakimi (“**Sir Hakimi**”) acting as sole director of each entity.⁴
11. HOLL operates the Company’s optical retail and service businesses and is the tenant under the majority of the Company’s retail and laboratory leases.⁵ Since its incorporation, HOLL has made all lease payments for the Retail Stores (as defined in the Robertson Affidavit), regardless of the party named in each lease.⁶ In addition to its lease interests, HOLL’s most material assets consist of the Company’s optical inventory, owned equipment and intellectual property, which includes Hakim Optical brand-related assets and goodwill.
12. Lawrence Lab provides lens processing and manufacturing services exclusively for HOLL. It operates two laboratories in the Greater Toronto Area.⁷ Lawrence Lab’s main assets include equipment and machinery used in lens production. It manufactures all “Hakim Optical” branded prescription lenses and supplies them to HOLL at cost.
13. As a result of the Company’s historical business practices, HOWL is the named party on a number of the Applicants’ retail leases and certain utility accounts. However, HOLL has effected payment under such arrangements since the time of its incorporation, as HOWL

² Robertson Affidavit, *supra* at paras 25-29.

³ Robertson Affidavit, *supra* at para 29.

⁴ Robertson Affidavit, *supra* at para 29.

⁵ Robertson Affidavit, *supra* at para 26.

⁶ Robertson Affidavit, *supra* at paras 29-30.

⁷ Robertson Affidavit, *supra* at para 27.

does not possess any assets or accounts of its own and the Company does not maintain separate accounting records for HOWL.⁸

14. Prior to the COVID-19 global pandemic, the Company was experiencing stable revenue with consistent profitability. However, over the past five years, the Company has experienced the lasting effects of the COVID-19 pandemic, where it saw significant declines in sale revenues and production capacity. Coupled with the rise of increased foreign competition in a crowded competitive Canadian optical retail market and the general shift by Canadian consumers away from brick-and-mortar retail stores towards online options, the Company has been unable to return to its pre-COVID sales performance.⁹
15. Following a cyber-attack in 2022, the Company was required to make significant capital investments into its digital infrastructure and security, utilizing cash resources that would have otherwise been used for marketing and store upgrades. Decreased revenues, coupled with higher than forecasted operating costs and the significant fixed costs associated with an expansive brick and mortar retail network, started a liquidity spiral that became worse as time progressed.¹⁰

B. PRE-FILING RESTRUCTURING EFFORTS & THE NOI PROCEEDINGS

16. Pursuant to a letter agreement between HOLL and RBC dated April 22, 2021 (as amended by written agreement on August 11, 2022), RBC had extended three credit facilities to HOLL with an aggregate availability of \$14,560,085 (collectively, the “**RBC Loan**”).¹¹
17. The RBC Loan was guaranteed by each of Evelyn Aimis Holdings (“**Evelyn Aimis**”), an affiliate company, Lawrence Lab, and their parent company, 605529 Ontario Inc., up to a maximum amount of \$13,900,000, plus interest, pursuant to guarantee and postponement of claim agreements dated April 29, 2021.¹²

⁸ Robertson Affidavit, *supra* at para 30.

⁹ Robertson Affidavit, *supra* at para 10.

¹⁰ Robertson Affidavit, *supra* at para 11.

¹¹ Robertson Affidavit, *supra* at para 81.

¹² Robertson Affidavit, *supra* at para 83.

18. As security for the RBC Loan, RBC was granted, among other things, the following security:
- (a) General Security Agreement dated April 29, 2021, granted by HOLL;
 - (b) a General Security Agreement dated April 29, 2021, granted by Lawrence Lab; and
 - (c) a Postponement and Assignment of Claim dated April 29, 2021, between Sir Hakimi and HOLL, as amended pursuant to an amending agreement signed by Sir Hakimi and HOLL dated April 29, 2021.¹³
19. The Company's liquidity crisis led to repeated defaults under the RBC Loan. After providing several concessions, allowances and extensions, RBC issued demand letters on HOLL on September 12, 2024.¹⁴ On December 11, 2024, RBC brought an application to appoint a receiver over all assets, undertakings and properties of Evelyn Aimis, pursuant to the guarantee it provided under the RBC Loan. The application was subsequently withdrawn on February 3, 2025, following the Debt Assignment (as defined below).¹⁵
20. To address its liquidity challenges and the threat of RBC enforcing on its security, the Applicants have undertaken a number of restructuring and cash conservation initiatives in the past several years, including completing a sale transaction involving all of the Company's Atlantic Canada stores and using the proceeds realized to fund the Company's working capital needs.¹⁶
21. To conserve much needed liquidity, over the past 18 months the Company made the difficult decision to close approximately 40 unprofitable stores and laboratory locations (collectively, the "**Closed Stores**") prior to lease expiry and, in doing so, stopped making monthly rent payments associated with these locations.¹⁷ As a result, the Company has received a number of termination and default notices from landlords of the Closed Stores, and many have started enforcement proceedings against the Applicants (collectively, the

¹³ Robertson Affidavit, *supra* at paras 85-87.

¹⁴ Robertson Affidavit, *supra* at para 12.

¹⁵ Robertson Affidavit, *supra* at para 12.

¹⁶ Robertson Affidavit, *supra* at paras 13-14, 100.

¹⁷ Robertson Affidavit, *supra* at para 15.

“Landlord Enforcement Actions”).¹⁸ Specifically, over the past year, the Company has been served with approximately 12 statements of claim from active landlords, seeking, among other things, damages for unpaid rent and other alleged lease obligations.¹⁹ The Company has also received notices of termination, notices of re-entry and/or letters of default with respect to approximately 28 of its Closed Stores. Additionally, a number of trade creditors have threatened to or actually cut off the Company’s supply of goods and services due to unpaid invoices.²⁰

22. Led by its founder, Sir Hakimi, the Company undertook an informal marketing process, which resulted in identifying and, in January 2025, completing a refinancing transaction with an arm’s length third party, 1001112855 Ontario Inc. (**“855 Ontario”**), pursuant to which, 855 Ontario agreed to assume the RBC Loan (the **“Debt Assignment”**). In conjunction with the Debt Assignment, 855 Ontario, as lender, HOLL, as borrower and guarantor, and Lawrence Lab, as guarantor, entered into an Amending Agreement to the HOLL Credit Agreement (as defined in the Robertson Affidavit), whereby 855 Ontario agreed to extend a non-revolving demand credit to HOLL in the maximum aggregate amount of \$5,000,000 under the existing, but amended, credit facility (the **“Bridge Loan”**).²¹
23. The Bridge Loan was provided for the limited purpose of funding HOLL’s working capital needs, the payment of certain fees and expenses, including the professional fees and expenses incurred in respect of commencing the NOI Proceedings and preparing for the CCAA Proceedings and negotiating a stalking horse offer with 855 Ontario, and the payment of certain pre-filing obligations and other costs.²²

¹⁸ Robertson Affidavit, *supra* at para 15.

¹⁹ Robertson Affidavit, *supra* at para 57.

²⁰ Robertson Affidavit, *supra* at paras 98, 119.

²¹ Robertson Affidavit, *supra* at para 88.

²² Robertson Affidavit, *supra* at para 88.

C. CONTINUATION UNDER THE CCAA AND EXTENSION OF RELIEF TO HOWL

24. To obtain reprieve from, among other things, aggressive procedural steps taken in connection with the Landlord Enforcement Actions (including attempted execution of garnishment orders and seizure of personal property), the Company commenced the NOI Proceedings.²³ However, certain landlords have taken the position that because HOWL is not subject to the NOI Proceedings, they are not subject to a stay of proceedings, and have continued Landlord Enforcement Actions against HOWL notwithstanding the NOI Proceedings, resulting in distraction and disruption for the Company and its advisors.²⁴
25. HOLL and Lawrence Lab commenced the NOI Proceedings to obtain breathing room in order to, among other things, focus its restructuring efforts on advancing discussions with 855 Ontario towards a definitive stalking horse offer intended to be implemented through a court-supervised SISP.
26. Accordingly, a comprehensive stay in favour of all Applicants under the CCAA is necessary to provide the Company with much needed breathing room to stabilize the business and preserve enterprise value, while also (a) providing the Applicants with greater flexibility to pursue a SISP and (b) achieving process efficiencies and procedural cost savings by avoiding mandatory court attendances that would be required if the NOI Proceedings continue under the BIA.²⁵

D. DIP FINANCING

27. As set out in the cash flow projection (the “**Cash Flow Forecast**”) prepared by the Company and reviewed by the proposed Monitor, the Company requires access to immediate financing to continue operating in the ordinary course and fund the proposed CCAA Proceedings.²⁶

²³ Robertson Affidavit, *supra* at paras 117-118.

²⁴ Robertson Affidavit, *supra* at para 118.

²⁵ Robertson Affidavit, *supra* at para 121.

²⁶ Robertson Affidavit, *supra* at para 130.

28. Since the commencement of the NOI Proceedings, the Applicants, with the assistance of the Proposal Trustee, have worked diligently to finalize the DIP Term Sheet with the DIP Lender.
29. On May 8, 2025, the Applicants finalized a binding commitment letter (the “**DIP Term Sheet**”) among:
- (a) HOLL and Lawrence Lab, as borrowers;
 - (b) certain other affiliates of the Applicants as guarantors; and
 - (c) 855 Ontario, as DIP lender, (in such capacity, the “**DIP Lender**”).²⁷
30. The primary purpose of the DIP Facility is to fund the working capital requirements of the Company, including the payment of professional fees incurred during these CCAA Proceedings (or alternatively, the NOI Proceedings, as applicable).²⁸
31. The DIP Term Sheet provides for a DIP Facility of up to \$2,800,000 (the “**Facility Amount**”) with the following key financial terms:
- (a) an initial advance (the “**Initial Advance**”) in a principal amount of \$200,000;
 - (b) minimum subsequent advances of \$100,000;
 - (c) a 10.9% per annum interest rate on the advanced amounts;
 - (d) a commitment fee equal to 3.5% of the Facility Amount, to be deducted from the Initial Advance; and
 - (e) a monthly fee of \$2,500.²⁹
32. The DIP Facility is conditional upon, among other things, the granting of a priority charge over the Property in favour of the DIP Lender to secure the amounts borrowed under the

²⁷ Robertson Affidavit, *supra* at para 107.

²⁸ Robertson Affidavit, *supra* at para 111.

²⁹ Robertson Affidavit, *supra* at paras 108-110.

DIP Facility (the “**DIP Lender’s Charge**”), which would be subordinate only to the Administration Charge.³⁰

PART III– ISSUES

33. The issues on this motion are as follows:
- (a) whether this Court should permit the Company to continue the NOI Proceedings under the CCAA;
 - (b) whether this Court should approve KSV as Monitor of the Applicants in these CCAA Proceedings;
 - (c) whether this Court should grant the requested stay of proceedings to and including June 30, 2025;
 - (d) whether this Court should approve the DIP Term Sheet and the DIP Lender’s Charge;
 - (e) whether this Court should approve the Administration Charge; and
 - (f) whether this Court should issue Discharge and Termination Orders.

PART IV – LAW & ARGUMENT

A. THE NOI PROCEEDINGS SHOULD BE CONTINUED UNDER THE CCAA

34. HOLL must file a proposal by May 16, 2025 (the “**Filing Deadline**”) or it will be deemed bankrupt pursuant to section 50.4(8) of the BIA.³¹ The relief requested by the Applicants includes and contemplates the continuance of the NOI Proceedings pursuant to the CCAA.
35. Section 11.6(a) of the CCAA provides the Court with jurisdiction to permit the Company to continue the NOI Proceedings under the CCAA provided that no proposal has been

³⁰ Robertson Affidavit, *supra* at para 114.

³¹ BIA, s [50.4\(8\)](#).

filed.³² No proposal has been filed in the NOI Proceedings to date, and the Filing Deadline does not provide the Applicants with sufficient time to file a proposal.³³

36. In *Re Clothing for Modern Times Ltd.*, this Court held that a debtor company seeking to convert a proceeding from the BIA to the CCAA should demonstrate that:
- (a) it has not filed a proposal under the BIA;
 - (b) the proposed continuation is consistent with the purposes of the CCAA; and
 - (c) it has provided the Court with the information that would otherwise form part of an initial CCAA application pursuant to section 10(2) of the CCAA.³⁴
37. In *Century Services*, the Supreme Court of Canada described the purposes of the CCAA as:
- (a) “avoiding the social and economic losses resulting from liquidation of an insolvent company;” and
 - (b) Creating conditions to preserve the *status quo* while attempts are made to find a reorganization solution that is fair to all stakeholders.³⁵
38. Further, CCAA courts have held that, in appropriate circumstances, the purposes of the CCAA will be met even though the re-organization involves the sale of the company as a going concern, with the consequence that the debtor no longer continues to carry on business.³⁶

³² CCAA, s [11.6\(a\)](#).

³³ Robertson Affidavit, *supra* at para 116.

³⁴ *Clothing for Modern Times Ltd., Re*, 2011 ONSC 7522 at para 9 [*Clothing*], followed with approval in *Re Comstock Canada, Ltd.*, 2013 ONSC 4756 at paras 36-45; *Re Urbancorp. Toronto Management Inc.*, 2016 ONSC 3288 at paras 36-48. See also *In the Matter of The Body Shop Canada Limited*, 2024 ONSC 3882 (Endorsement of Justice Osborne) at para 10 [Body Shop Endorsement]; *In the Matter of a Plan of Compromise or Arrangement of Joriki Topco Inc. and Joriki Inc.*, 2025 ONSC 704 (CanLII) at para 15.

³⁵ *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at paras 15, 69, 70 and 77.

³⁶ *Clothing*, *supra*, at para 12; *Body Shop Endorsement*, *supra* at para 14.

39. The Company submits that the applicable criteria are satisfied in this case, and that it is appropriate for the NOI Proceedings to continue under the CCAA, given, among other things:
- (a) the NOI Applicants have not filed proposals under the BIA;
 - (b) with the benefit of the protection and the flexibility afforded by the CCAA, the Company will be best positioned to avoid the social and economic costs of liquidation while restructuring its affairs and maximizing going-concern value for the benefit of all stakeholders;
 - (c) a continuation under the CCAA preserves the *status quo* while the Applicants finalize a stalking horse agreement with 855 Ontario with a view to undertaking a court-supervised SISP;
 - (d) the Company has satisfied the disclosure requirements under section 10(2) of the CCAA, by providing the following information:
 - (i) a Cash Flow Forecast indicating, on a weekly basis, the projected cash flow of the debtor company for the period of May 5 to August 17, 2025;³⁷
 - (ii) a report containing the prescribed representations of the Company regarding the preparation of the Cash Flow Forecast, which the proposed Monitor has reviewed and assessed as reasonable;³⁸ and
 - (iii) the most recent financial statements available.³⁹
40. Further, the CCAA Proceedings will also have the additional benefit of reducing the administrative and legal costs of this insolvency proceeding. Under the NOI Proceedings, the Proposal Trustee and the Company are required to report to this Court every 45 days to seek an extension of time to file a proposal.⁴⁰ The costs associated with preparing for these

³⁷ CCAA, s [10\(2\)](#); First Report, *supra* s 4.0, Appendix D.

³⁸ First Report, *supra* s 4.0, Appendices D-E.

³⁹ Robertson Affidavit, *supra* at para 77, Exhibits G-H.

⁴⁰ BIA, s [50.4\(9\)](#).

hearings would be eliminated if the NOI Proceedings were to be continued under the CCAA, in which the Monitor and Company would only be required to report to this Court as prescribed under the CCAA or when Court involvement is required in the reorganization process.

41. In addition to the factors relevant for granting a continuation under the CCAA, each of the Applicants must demonstrate it is a “debtor company” or an “affiliated debtor company” with liabilities exceeding \$5 million.⁴¹
42. A “debtor company” is defined under section 2(1) of the CCAA as, *inter alia*, a “company” that is “insolvent” or that has committed an act of bankruptcy within the meaning of the BIA.⁴² A corporation incorporated by or under an Act of Parliament or of the legislature of any province falls under the definition of “company” in the CCAA.
43. The Company meets the threshold test to come within the parameters of the CCAA. Each of the Applicants is a “debtor company” whose cumulative liabilities exceed \$5 million and should therefore be permitted to continue the NOI Proceedings under the CCAA, for the following reasons:
 - (a) HOLL and Lawrence Lab are corporations incorporated under the CBCA, and HOWL is a corporation incorporated under the laws of Ontario – each of the Applicants is therefore a “debtor company” as defined in the CCAA;
 - (b) the Company is operated on an integrated and consolidated basis;⁴³
 - (c) the Company is unable to meet its obligations generally as they become due;⁴⁴ and

⁴¹ CCAA, s [2\(1\)](#), and s [3\(1\)](#).

⁴² CCAA, s [2\(1\)](#), and s [3\(1\)](#); BIA, s [2\(1\)](#).

⁴³ Robertson Affidavit, *supra* at paras 69-72, 77.

⁴⁴ Robertson Affidavit, *supra* at para 130.

- (d) the Company has secured debts of approximately \$16.3 million and unsecured debts of approximately \$10 million, well in excess of the \$5 million statutory threshold.⁴⁵

B. THE PROPOSED STAY EXTENSION SHOULD BE GRANTED

44. The Applicants request a stay of proceedings up to and including June 30, 2025. Although section 11.02(1) of the CCAA contemplates an initial 10-day stay period on an initial CCAA application, this Court has, in a number of previous cases involving a conversion from a BIA proceeding to a CCAA proceeding, authorized an initial stay extension beyond the statutory 10-day period.⁴⁶
45. The rationale for the 10-day stay period in an initial order issued under section 11.02(1) of the CCAA stems from concerns of procedural fairness arising from the *ex parte* nature of most applications for an initial order under the CCAA.⁴⁷
46. As Chief Justice Morawetz explained in *Re Lydian International Limited*, this rationale:

The practice of granting wide-sweeping relief at the initial hearing must be altered in light of the recent amendments. The intent of the amendments is to limit the relief granted on the first day. The ensuing 10 day period allows for a stabilization of the operations and a negotiating window, *followed by a comeback motion where the request for expanded relief can be considered on proper notice to all affected parties* (emphasis added).

In my view, this is consistent with the objectives of the amendments, which include the requirement for “participants in an insolvency proceeding to act

⁴⁵ Robertson Affidavit, *supra* at paras 25-31; First Report, *supra* s 2.0.

⁴⁶ See for example: *In the Matter of a Plan of Compromise or Arrangement of the Body Shop Canada Limited, in the City of Toronto, in the Province of Ontario*, Toronto, Court File No. CV-24-00723586-00CL (Initial Order) at para 16. See also: *Body Shop Endorsement*, *supra* at para 19 referencing: *In the Matter of a Plan of Compromise or Arrangement of Tribalscale Inc.*, (July 31, 2020) Toronto, Court File No. CV-20-00645116-00CL (Initial Order) (ONSC) at para 17; *In the Matter of Cannmart Labs, Inc.*, (May 2, 2024), Toronto, Court File No. CV-24-00719639-00CL (Initial Order) at para 18; *In the Matter of a Proposal of Cannmart Labs, Inc.*, (May 2, 2024), Toronto, Court File No. BK-24-03063478-0031 (Endorsement of Justice Penny) at para 19; *In the Matter of the Notice of Intention to Make a Proposal of Medifocus Inc. of the City of Toronto in the Province of Ontario*, (October 7, 2021), Toronto, Court File No. CV-20-00669781-00CL (Endorsement of Justice Cavanagh). [Medifocus Inc., Endorsement]; *In the Matter of a Plan of Compromise or Arrangement of Medifocus Inc.* (October 7, 2021), Toronto, Court File No. CV-21-00669781-00CL (Initial Order) at para 16.

⁴⁷ *Body Shop Endorsement*, *supra* at para 20; *Medifocus Inc., Endorsement*, *supra*.

in good faith” and “improving participation of all players”. It may also result in more meaningful comeback hearings.⁴⁸

47. This motion is not brought on an *ex parte* basis. All creditors have been aware of the Company’s restructuring process since shortly after the HOLL Proceeding commenced on April 16, 2025.⁴⁹ Since that time, the Company’s advisors and proposed Monitor have engaged with a number of stakeholders to provide information about the Company’s situation and the relief proposed in the instant motion.⁵⁰
48. A motion to take up and continue a BIA proceeding under the CCAA is more analogous to a motion contemplated under section 11.02(2) than under section 11.02(1) of the CCAA.⁵¹ This Court may grant an extension of the stay of proceedings under section 11.02(2) of the CCAA for any period it considers necessary, if it is satisfied that: (a) circumstances exist that make the order appropriate, and (b) the applicant has acted, and is acting, in good faith and with due diligence.⁵²
49. The requested initial Stay Period is appropriate in the circumstances, having regard to, among other considerations, the following:
- (a) the Applicants urgently require the continuation of the existing stay of proceedings for the NOI Applicants, and an extension of the stay of proceedings to HOWL to provide stability to the business, and prevent the ongoing Landlord Enforcement Actions and similar proceedings by other creditors;
 - (b) the Motion Record was served on the Service List on May 8, 2025, providing all stakeholders with notice and an opportunity to respond;
 - (c) the Company’s Cash Flow Forecast demonstrates that the Company will have sufficient liquidity to meet its obligations during the Stay Period;

⁴⁸ [*Lydian International Limited \(Re\)*, 2019 ONSC 7473](#) at paras 30-32.

⁴⁹ First Report, *supra* s 8.0; Robertson Affidavit, *supra* at para 102.

⁵⁰ First Report, *supra* s 8.0; Robertson Affidavit, *supra* at para 102.

⁵¹ [*Body Shop Endorsement*](#), *supra* at para 21; [*Medifocus Inc., Endorsement*](#), *supra*.

⁵² [*CCAA s 11.02\(2\), Body Shop Endorsement*](#), *supra* at para 21; [*Sunrise/Saskatoon Apartments Limited Partnership \(Re\)*, 2017 BCSC 808](#) at paras 21-25.

- (d) the proposed Initial Order provides that any interested party may seek relief from the Initial Order on application to this Court made on seven days' notice;⁵³
- (e) 855 Ontario, the Company's senior secured creditor and the DIP Lender, supports the initial Stay Period;
- (f) the Applicants intend to return to Court prior to the expiry of the Stay Period to seek approval of a court-supervised sale process, which is anticipated to include a stalking horse bid by 855 Ontario (or an affiliate thereof);
- (g) since the commencement of the NOI Proceedings, the Applicants, in consultation with the Proposal Trustee, have worked diligently with the Proposal Trustee to stabilize the business and communicate with all stakeholders;
- (h) requiring the Applicants to return within 10 days for a comeback hearing would be "both unnecessary and inefficient in that it will needlessly increase professional costs",⁵⁴ and
- (i) the proposed Monitor supports a stay of proceedings until June 30, 2025, and does not believe that the extension will adversely affect or prejudice any creditors.⁵⁵

C. KSV SHOULD BE APPOINTED AS MONITOR

50. Section 11.7 of the CCAA requires that a trustee be appointed to monitor the debtor company's business and financial affairs.⁵⁶ KSV, who is the Proposal Trustee in the NOI Proceedings, has consented to act as Monitor in these CCAA Proceedings and is a trustee within the meaning of subsection 2(1) of the BIA.⁵⁷

⁵³ Draft Initial Order at para 52, Motion Record at Tab 4.

⁵⁴ [Body Shop Endorsement](#), *supra* at para 20.

⁵⁵ First Report, *supra* s 3.0 at para 4.

⁵⁶ CCAA s 11.7.

⁵⁷ First Report, *supra* s 3.0 at para 4; BIA, *supra* s 2(1).

51. Further, the proposed Monitor is not subject to any of the restrictions as to who may be appointed as monitor set out in section 11.7(2) of the CCAA.⁵⁸ As such, the proposed Monitor should be appointed as Monitor in the CCAA Proceedings of the Applicants.

D. THE ADMINISTRATION CHARGE SHOULD BE APPROVED

52. The Applicants request that this Court grant a super-priority Administration Charge on the Property in favour of the Applicants' counsel, the proposed Monitor, and the proposed Monitor's independent legal counsel in the amount of \$250,000 (the "**Administration Charge**").⁵⁹ The Administration Charge is proposed to rank ahead of and have priority over the DIP Lender's Charge and all other security in favour of the Applicants' secured creditors.
53. Section 11.52 of the CCAA provides this Court with express statutory jurisdiction to grant the Administration Charge.⁶⁰
54. In *Canwest Publishing*, Justice Pepall identified the following non-exhaustive list of factors the Court may consider when granting an administration charge:
- (a) the size and complexity of the business being restructured;
 - (b) the proposed role of the beneficiaries of the charge;
 - (c) whether there is an unwarranted duplication of roles;
 - (d) whether the quantum of the proposed charge appears to be fair and reasonable;
 - (e) the position of the secured creditors likely to be affected by the charge; and
 - (f) the position of the monitor.⁶¹

⁵⁸ First Report, *supra* s 3.0 at para 4(a); CCAA, s [11.7\(2\)](#).

⁵⁹ Robertson Affidavit, *supra* at para 124.

⁶⁰ CCAA, s [11.52](#).

⁶¹ [Canwest Publishing Inc./Publications Canwest Inc., Re, 2010 ONSC 222](#) at para [54](#).

55. The Applicants submit that the Administration Charge is warranted, necessary, and appropriate in the circumstances, given that:
- (a) the Company's proposed restructuring will require the extensive involvement of the professional advisors receiving the benefit of the Administration Charge;
 - (b) the professionals receiving the benefit of the Administration Charge have contributed, and will continue to contribute, to the restructuring of the Applicants;
 - (c) there is no unwarranted duplication of roles so the professional fees associated with these proceedings will be minimized;
 - (d) the DIP Lender, who is also the Company's senior secured creditor, has advised that it supports the proposed quantum of the Administration Charge; and
 - (e) the proposed Monitor believes that the proposed quantum of the Administration Charge is reasonable and appropriate in the circumstances.⁶²

E. THE DIP TERM SHEET & DIP CHARGE SHOULD BE APPROVED

56. Section 11.2(1) of the CCAA provides the Court with the express statutory authority to approve the DIP Term Sheet and the DIP Lender's Charge.⁶³
57. Section 11.2(2) of the CCAA further provides this Court with the express statutory authority to order that the DIP Lender's Charge ranks in priority over the claim of any secured creditor of the Company.⁶⁴
58. Section 11.2(4) of the CCAA sets out the following factors to be considered by this Court in deciding whether to grant a DIP charge:
- (a) the period during which the company is expected to be subject to proceedings under the CCAA;

⁶² Robertson Affidavit, *supra* at paras 124-127; First Report, *supra* s 6.1 at para 4.

⁶³ CCAA, s [11.2](#).

⁶⁴ CCAA, s [11.2\(2\)](#).

- (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.⁶⁵
59. The Applicants submit that the DIP Facility and the DIP Lender's Charge should be approved, given that:
- (a) the notice requirements under section 11.2(1) of the CCAA have been met;
 - (b) 855 Ontario, the senior secured creditor of the Company and the DIP Lender, is not prepared to advance additional financing outside of the CCAA Proceedings or, in the alternative, without the NOI Proceedings Order;
 - (c) without the DIP Facility, the Applicants will be unable to continue operating, and a disorderly shutdown would result in, among other things, the termination of all Company's employees and forced liquidation of the Company's assets;⁶⁶
 - (d) the terms of the DIP Facility are within the range of similar facilities recently approved by the Court and other Canadian courts in CCAA and other restructuring proceedings;⁶⁷ and

⁶⁵ CCAA, s [11.2\(4\)](#).

⁶⁶ First Report, *supra* s 5.1 at para 1(b).

⁶⁷ First Report, *supra* s 5.1 at para 1(d), Appendix G.

- (e) the proposed Monitor is of the view that the DIP Facility and the DIP Lender's Charge are reasonable, appropriate and necessary in the circumstances.⁶⁸

F. NON-PAYMENT OF RENTS FOR CLOSED STORES IS APPROPRIATE

60. The Applicants have not occupied the Closed Stores for months, if not years, prior to the Initial Filing Date, and rent has not been paid under applicable leases since that time. Although many Closed Store leases have expired in accordance with their terms, or have been actively terminated by applicable landlords, there may be a subset of Closed Stores whose leases have not been terminated even though they are unoccupied.
61. The DIP Facility does not provide sufficient (or any) liquidity for the Applicants to pay post-filing rent for Closed Stores, and any such payment obligation would represent a material unfunded post-filing liability of the Applicants that would jeopardize the viability of a successful restructuring. Such payments would result in a windfall to some, but not all, landlords of Closed Stores, given that the Applicants had not been "using" the rights under the applicable leases for an extended period of time prior to the Initial Filing Date.
62. Courts have authorized the suspension of post-filing rent payments where appropriate based on the unique circumstances of a case,⁶⁹ and the Applicants submit that it is appropriate for the Court to exercise its discretion to do so in this case

G. THIS COURT SHOULD ISSUE THE NOI DISCHARGE AND TERMINATION ORDERS

63. If the proposed Initial Order is granted, the Company also seeks the Discharge and Termination Orders, pursuant to the BIA, which, among other things:
- (a) approves the conduct and fees of the Proposal Trustee; and
- (b) discharges the Proposal Trustee upon the granting of the Initial Order.⁷⁰

⁶⁸ First Report, *supra* s 5.1 at paras 1-2.

⁶⁹ [*In Re Hudson Bay Company*, 2025 ONSC 1530](#) at paras [59-61](#).

⁷⁰ Robertson Affidavit, *supra* at paras 131-133.

64. In *Target Canada Co. (Re)*, this Court held that “there are good policy and practical reasons for the court to approve of [a] Monitor’s activities and providing a level of protection for [a] Monitor during the CCAA process”.⁷¹ Moreover, such practice allows the “monitor and stakeholders to move forward confidently with next steps in the proceedings, by fostering the orderly building-block nature of CCAA proceedings”.⁷² These factors and considerations have been applied to proposal trustees under the BIA, when approving their activities.⁷³
65. In light of the foregoing, as part of the continuation of the NOI Proceedings under the CCAA, and resulting termination of the NOI Proceeding, the Company respectfully requests that this Court approve the activities of the Proposal Trustee, as outlined in the First Report. The Proposal Trustee has acted in good faith and with due diligence in the fulfillment of its duties in the NOI Proceedings and has made meaningful contributions, including assisting the Company in stabilizing its operations.⁷⁴
66. The Company further seeks this Court’s approval of the Proposal Trustee’s fees. As held by the Court of Appeal for Ontario in *Bank of Nova Scotia v. Diemer*, the Court is not required to conduct a line-by-line review of accounts.⁷⁵ The applicable standard is whether the fees are fair, reasonable, and proportionate, having regard to the value of the company’s assets and liabilities, the complexity of its business, and the nature of the NOI Proceedings. Having regard to the foregoing the Company submits that the fees detailed in the First Report meet this standard.

Alternative Relief if the Initial Order is Not Granted

67. In the alternative to the Initial Order and pursuant to the BIA, the Company seeks the NOI Proceedings Order, which, among other things: (a) administratively consolidates the NOI

⁷¹ [Re Target Canada Co., 2015 ONSC 7574](#), at para 22 [*Target*].

⁷² [Target](#), *supra* at para 12.

⁷³ [In the Matter of Organic Garage \(Canada\) Ltd., 2412383 Ontario Inc., 2347018 Ontario Inc., 2507158 Ontario Inc., and 2581751 Ontario Inc. \(May 2, 2024\), Court File No. BK-24-03051650-0031 \(Endorsement\)](#).

⁷⁴ Robertson Affidavit, *supra* at paras 132-133.

⁷⁵ [Bank of Nova Scotia v. Diemer, 2014 ONCA 851](#), at para 45.

Proceedings, pursuant to section 3 of the *Bankruptcy and Insolvency General Rules*;⁷⁶ (b) grants the Charges;⁷⁷ and (c) extends the period within which the Company must file a consolidated proposal to and including June 30, 2025, pursuant to section 50.4(9) of the BIA.⁷⁸

PART V – RELIEF REQUESTED

68. For all of the foregoing reasons, the Applicants request that this Honourable Court grant an order substantially in the form of the draft Initial Order located at Tab 4 of the Applicants' Motion Record and the orders substantially in the form of the draft Discharge and Termination Orders located at Tabs 5 and 6 of the Applicants' Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of May, 2025.

Bennett Jones LLP

BENNETT JONES LLP

⁷⁶ This Court has jurisdiction under the [Bankruptcy and Insolvency General Rules, C.R.C., c. 368 at s 3](#) and [Rules of Civil Procedure, RRO 1990, Reg 194, Rule 1.04\(1\)](#) to grant administrative consolidation orders in NOI proceedings, as in the case here, particularly where the estates are interrelated, and no creditor is prejudiced. See for example: [In the Matter of the Notice of Intention to Make a Proposal of Electro Sonic Inc.](#), and [In the Matter of the Notice of Intention to Make a Proposal of Electro Sonic of America LLC, \(Toronto\) Court File no.: 31-1835443 and 31-1835488 \(ONSC\) \(Endorsement of Justice Brown\)](#) at paras [4-6](#).

⁷⁷ S [64.2\(1\)](#) and S [50.6](#) of the BIA authorize the Court, on notice to affected secured creditors, to grant administration and interim financing charges, respectively. These provisions mirror those in the CCAA and are applied similarly in complex BIA proposals or those likely to be continued under the CCAA.

⁷⁸ S [50.4\(9\)](#) of the BIA permits the Court to grant an extension where the debtor acts in good faith and with due diligence, is likely to make a viable proposal, and no creditor would be materially prejudiced. Each of these factors is met in the present circumstances.

SCHEDULE “A”

LIST OF AUTHORITIES

1. [*Bank of Nova Scotia v. Diemer*, 2014 ONCA 851.](#)
2. [*Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222.](#)
3. [*Century Services Inc. v. Canada \(Attorney General\)*, 2010 SCC 60.](#)
4. [*Clothing for Modern Times Ltd., Re*, 2011 ONSC 7522.](#)
5. [*In Re Hudson Bay Company*, 2025 ONSC 1530.](#)
6. [*In the Matter of a Plan of Compromise or Arrangement of Joriki Topco Inc. and Joriki Inc.*, 2025 ONSC 704 \(CanLII\).](#)
7. [*In the Matter of a Plan of Compromise or Arrangement of Medifocus Inc.* \(October 7, 2021\), Toronto, Court File No. CV-21-00669781-00CL \(Initial Order\).](#)
8. [*In the Matter of a Plan of Compromise or Arrangement of the Body Shop Canada Limited, in the City of Toronto, in the Province of Ontario*, Toronto, Court File No. CV-24-00723586-00CL \(Initial Order\).](#)
9. [*In the Matter of a Plan of Compromise or Arrangement of Tribalscale Inc.*, \(July 31, 2020\) Toronto, Court File No. CV-20-00645116-00CL \(Initial Order\) \(ONSC\).](#)
10. [*In the Matter of a Proposal of Cannmart Labs, Inc.*, \(May 2, 2024\), Toronto, Court File No. BK-24-03063478-0031 \(Endorsement of Justice Penny\).](#)
11. [*In the Matter of Cannmart Labs, Inc.*, \(May 2, 2024\), Toronto, Court File No. CV-24-00719639-00CL \(Initial Order\).](#)
12. [*In the Matter of Organic Garage \(Canada\) Ltd., 2412383 Ontario Inc., 2347018 Ontario Inc., 2507158 Ontario Inc., and 2581751 Ontario Inc.* \(May 2, 2024\), Court File No. BK-24-03051650-0031 \(Endorsement of Justice Cavanagh\).](#)
13. [*In the Matter of The Body Shop Canada Limited*, 2024 ONSC 3882 \(Endorsement of Justice Osborne\).](#)
14. [*In the Matter of the Notice of Intention to Make a Proposal of Electro Sonic Inc.*, and *In the Matter of the Notice of Intention to Make a Proposal of Electro Sonic of America LLC*, \(Toronto\) Court File No. 31-1835443 and 31-1835488 \(ONSC\) \(Endorsement of Justice Brown\).](#)
15. [*In the Matter of the Notice of Intention to Make a Proposal of Medifocus Inc. of the City of Toronto in the Province of Ontario*, \(October 7, 2021\), Toronto, Court File No. CV-20-00669781-00CL \(Endorsement of Justice Cavanagh\).](#)

16. [Lydian International Limited \(Re\), 2019 ONSC 7473.](#)
17. [Re Comstock Canada, Ltd., 2013 ONSC 4756.](#)
18. [Re Target Canada Co., 2015 ONSC 7574.](#)
19. [Re Urbancorp. Toronto Management Inc., 2016 ONSC 3288.](#)
20. [Sunrise/Saskatoon Apartments Limited Partnership \(Re\), 2017 BCSC 808.](#)

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

Dated: May 13, 2025

Linda Fraser-Richardson

LINDA FRASER-RICHARDSON

SCHEDULE “B”

RELEVANT STATUTES

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

Section 2

Definitions

In this Act,

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

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

Section 50

Notice of intention

50.4(9) Extension of time for filing proposal

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

Order — interim financing

50.6 (1) On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) 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 debtor'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 debtor an amount approved by the court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

Section 64

Court may order security or charge to cover certain costs

64.2 (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 person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) 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 trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
- (b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; 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 the effective participation of that person in proceedings under this Division.

Priority

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

(3) In the case of an individual,

- (a) the court may not make the order unless the individual is carrying on a business; and
- (b) only property acquired for or used in relation to the business may be subject to a security or charge.

Bankruptcy and Insolvency General Rules, C.R.C., c. 368

Section 3

General

In cases not provided for in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules.

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

Section 2

Definitions

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

debtor company means any company that

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

Section 3

Application

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

Section 10

Form of applications

(1) Applications under this Act shall be made by petition or by way of originating summons or notice of motion in accordance with the practice of the court in which the application is made.

Documents that must accompany initial application

(2) An initial application must be accompanied by

- (a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;
- (b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and
- (c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

Section 11

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

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

11.02(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.

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

11.2(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

11.2(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

11.2(4) In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;

- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

11.2(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Security or charge relating to director's indemnification

11.51(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority

11.51(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Restriction — indemnification insurance

11.51(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

11.51(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

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

11.52(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

11.6 *Bankruptcy and Insolvency Act* matters

- (a) proceedings commenced under Part III of the Bankruptcy and Insolvency Act may be taken up and continued under this Act only if a proposal within the meaning of the Bankruptcy and Insolvency Act has not been filed under that Part;

Court to appoint monitor

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

Restrictions on who may be monitor

11.7(2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

- (a) if the trustee is or, at any time during the two preceding years, was
 - (i) a director, an officer or an employee of the company,
 - (ii) related to the company or to any director or officer of the company, or
 - (iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or
- (b) if the trustee is
 - (i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act

constituting a hypothec within the meaning of the Civil Code of Quebec that is granted by the company or any person related to the company, or

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

Court may replace monitor

11.7(3) On application by a creditor of the company, the court may, if it considers it appropriate in the circumstances, replace the monitor by appointing another trustee, within the meaning of subsection 2(1) of the Bankruptcy and Insolvency Act, to monitor the business and financial affairs of the company.

Rules of Civil Procedure, RRO 1990, Reg 194

Rule 1

General Principle

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

Court File Nos.: BK-25-03212487-0031
BK-25-03214507-0031
Estate/Court File Nos.: BK-31-3212487
BK-31-3214507

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF HAKIM OPTICAL LABORATORY LIMITED, IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF LAWRENCE OPHTHALMIC LAB INC., IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings Commenced in Toronto

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