Court File No. CV-25-00751289-00CL

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT OF NORWOOD INDUSTRIES INC.

Applicant

BOOK OF AUTHORITIES OF THE APPLICANT (CCAA APPLICATION RETURNABLE SEPTEMBER 12, 2025)

September 9, 2025

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TAB 1

Debt Restructuring: Principles and Practice Highlights

Debt Restructuring: Principles and Practice
John D. Honsberger, Vern W. DaRe

Publisher's Note

DEBT RESTRUCTURING: Principles and Practice
John D. Honsberger, Q.C., and Vern DaRe
Release No. 2, June 2025

This work is the authority on reorganization and debt restructuring of insolvent, or near insolvent, commercial and financial institutions, and farmers in Canada. Included is a critical discussion of the history, theory and purpose of the debt restructuring process. Also included are discussions on drafting and an interpretation of the *Bankruptcy and Insolvency Act* (BIA) and the *Companies' Creditors Arrangement Act* (CCAA). Together this provides an in-depth and overall analysis and understanding of what's on the line during the debt restructuring process.

What's New in this Update:

Release No. 2 features updates to the case law and commentary in Chapter 3 (Structuring a Plan and Prefiling Procedures), Chapter 8 (Proposals Under the Bankruptcy & Insolvency Act), Chapter 9 (Arrangements Under the Companies' Creditors Arrangement Act) and Chapter 12 (Mediation Between Insolvent Farms and Their Creditors).

Highlights:

• **CHAPTER 9—ARRANGEMENTS UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT—**While CCAA courts have confirmed their jurisdiction to approve reverse vesting transactions by the exercise of their discretion under section 11 of the CCAA, the courts have also repeatedly confirmed that reverse vesting orders should be the exception and not the rule. *Royal Bank of Canada v. Chesswood Group Ltd. et al.*, 2025 CarswellOnt 3642, 2025 ONSC 1577 (Ont. S.C.J. [Commercial List]) at para 19; *Delta 9 Cannabis Inc (Re)*, 2025 CarswellAlta 161, 2025 ABKB 52 (Alta. K.B.) at para 59. Given the extraordinary nature of reverse vesting orders, there must be sufficient evidence, and best practice would be to include direct evidence from the parties or at a minimum, explain why none is available.

• **CHAPTER 9—ARRANGEMENTS UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT—**The court's authority to order a creditor meeting is derived from sections 4 and 5 of the CCAA. These provisions are permissive and require the exercise of judicial discretion in furtherance of the CCAA's remedial purpose. The decision to order a meeting of creditors requires an assessment of whether it is in the best interests of the debtor and its stakeholders to hold the meeting. The decision to order a meeting of creditors is performed on a low standard. An order directing a creditors' meeting is often uncontroversial and generally does not involve argument as to whether the proposed plan is fair and reasonable. However, when a creditor's meeting is opposed, the court should more carefully examine the material filed and the issues or concerns raised and consider the equities as they relate to the debtor company and secured creditors.

End of Document

Debt Restructuring: Principles and Practice § 9:19

Debt Restructuring: Principles and Practice
John D. Honsberger, Vern W. DaRe

Part II. Preliminary Procedures and Legal Issues

Chapter 9. Arrangements Under the Companies' Creditors Arrangement Act

III. Commencement of Proceedings

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§ 9:19. Initial Application

Proceedings are commenced by an initial application as defined by s. 11(2) of the Act. The application must be accompanied by a projected cash flow statement of the company and all financial statements, whether audited or unaudited, prepared during the last year prior to the application, or where no such statements were prepared in the prior year, a copy of the most recent such statement. Under the new s. 10(2) of the CCAA, 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. The new s. 10(3) authorizes the court to order a publication ban of any cash-flow statement or any part thereof if it is satisfied the release would unduly prejudice the debtor company and the ban would not unduly prejudice the company's creditors.

The initial application which commences proceedings is usually an application to the court for a declaration that the debtor applicant is a corporation to which the C.C.A.A. applies and it has standing to apply, authorization to file plan of compromise on or before a certain date, the appointment of a monitor and its duties and contains a comeback clause. The initial order usually also will put in place stay provisions and operating financing and restructuring terms reasonably necessary for continued operation of the debtor during a brief but realistic sorting-out period on an urgent basis. Proliferation of advisory committees and extension of broad protection to the directors is best left for subsequent orders and come back clauses should not be used to provide answers to overreaching initial orders. The language of the order should not read like a trust indenture but should be clear, simple and readily understandable. [1] To achieve this and some consistency, Model Initial CCAA Orders have been developed in several provinces of Canada. For instance, Model Initial Orders have now been completed in Ontario and Quebec and are being drafted in British Columbia and Alberta.

The application is made to the court “in a summary way” by petition, by originating summons or by notice of motion in accordance with the practice of the court in which the application is made. [2]

It is further evidence that Parliament intended proceedings to commence by the filing of a plan of compromise or arrangement as the Act provides that once a compromise or arrangement is made then the company, a creditor, trustee in bankruptcy or liquidator can apply to the court to order meetings to be held to consider the plan. The Act, however, is silent as to who may make an initial application to commence proceedings to fix a date for a plan to be filed. One might assume that the initial application may be made by any of those whom the Act permits to apply for meetings to be ordered to consider a plan once it is proposed. It might even be assumed that “any person interested in the matter” may make the initial application as such a person is authorized by the Act to make an initial application for an order staying proceedings. It is the debtor corporation, however, which almost always makes the initial application to commence proceedings under the Act.

Affidavit evidence should be filed to support an initial application. It should depose to such facts as will demonstrate that the debtor company is qualified to use the Act. At a minimum it will depose that the company or affiliated debtor companies propose to make a compromise or arrangement with its, or their, creditors and it has, or they have, total claims within the meaning of s. 12 of the Act against them exceeding five million dollars. It is well to list creditors by name and their estimated claims, the total of which will amount to more than five million dollars. If creditors and their estimated claims are not listed the court may question whether it has jurisdiction. The affidavit also should describe the company and any affiliates, its history and explain how it got into the financial condition that prompted it to propose a compromise or arrangement to its creditors.

As the initial application in the proceedings usually also will be the initial application for an order staying proceedings and related relief, there should be included in the affidavit a statement indicating the projected cash flow of the company. There also should be attached copies of all financial statements, audited or unaudited, prepared during the year prior to the application, or where no such statements were prepared in the prior year, a copy of the most recent statement. [3]

The affidavit should say that the application is made in good faith and should make full disclosure and place candidly and frankly before the court all the facts and circumstances which bear on the jurisdiction of the court, the provisions of the order requested and upon which the court is asked to exercise its discretion. [4]

The initial application often will be *ex parte* and accompanied by an initial application for a stay of proceedings. As the court cannot make an order to stay proceedings on a first application for more than 10 days, more often on an *ex parte* initial application courts will grant only a short stay of proceedings and direct that any application to continue the stay be on notice to the creditors.

Initial orders usually are dealt with on an immediate basis. If an interested person on reflection feels that there should be some amendment to the order, he should make use of the come-back clause on a timely basis to seek an amendment. [5] Some courts, relying on the general or statutory authority of the court where it has been just and convenient to do so have appointed interim receivers in CCAA proceedings and have given the interim receiver similar authority to that given to interim receivers in bondholders actions, including the right to borrow money and to give interim receiver certificates to secure the repayment. [6] The power or jurisdiction of a court of equity to grant a receiver depends simply upon its jurisdiction over the person of the defendant, just as the power of jurisdiction to grant an injunction does. [7]

While it is not the usual practice for CCAA applicants to request a claims procedure and meetings order concurrently with an initial CCAA application, the court has granted such relief in appropriate circumstances. [8] For example, the support of the restructuring proposal from the only creditors with an economic interest, the existence of a comeback hearing and a sufficient claims bar date that will not prejudice creditors' right or time to assert their claims, are factors that may favour the granting of a claims procedure and meetings order concurrently with the initial application.

Footnotes

1 Royal Oak Mines Inc. (Re) (1998), 6 C.R.B. (4th) 314 (Ont. Ct. (Gen. Div.)). See *CCAA and Receivership Orders: Developing a Standard*, CBA (Ontario)—Continuing Legal Education (May 11, 2001).

2 CCAA, s. 10.

3 CCAA, s. 11(2).

4 Langley's Ltd. (Re), [1938] 3 D.L.R. 230, [1938] O.R. 123 at p. 132 (C.A.); 229531 B.C. Ltd. (Re) (1989), 72 C.B.R. (N.S.) 310 (B.C.S.C.). If the application is made *ex parte*, full disclosure of all material facts is essential: 229531 B.C. Ltd. (Re) (1989), 72 C.B.R. (N.S.) 310 (B.C.S.C.). In Re Hester Creek Estate Winery Ltd. (2004), 50 C.B.R. (4th) 73 (B.C.S.C.), the court held that full disclosure of material facts had not been provided and that it had been misled. In the circumstances, the *ex parte* order was not extended. In Re

Encore Developments Ltd. (2009), 52 C.B.R. (5th) 30, 2009 BCSC 13, the court set aside from the outset the *ex parte* initial order where the applicant failed to fully disclose, with good faith, all relevant or material information as to the urgency and the reason why notice should not be given in the circumstances. See also Re Marine Drive Properties Ltd. (2009), 56 C.B.R. (5th) 65, 2009 BCSC 1083. Similarly, see CanaSea Petrogas Group Holdings Ltd., Re, 2014 CarswellOnt 14845, 2014 ONSC 6116, at para. 36, where the Court held, on a comeback motion, that the original evidence presented on the *ex parte* application and relied upon by the Court to grant the initial CCAA order was not accurate; that the actual evidence does not support the conclusion that the Canadian debtors qualified as applicants under the CCAA; and that as a result, the initial order was declared to be void *ab initio*; leave to appeal to Ont. C.A. refused 2014 CarswellOnt 17259, 2014 ONCA 824 (Sharpe J.A.). The Court of Appeal also found, at paragraph 3, that the moving parties were unable to offer an acceptable explanation for having moved *ex parte* in the circumstances.

5 Cineplex Odeon Corp. (Re) (2001), 26 C.B.R. (4th) 21 (Ont. S.C.J.). An interested person should not feel constrained about relying on the comeback clause in an initial CCAA order in seeking to have it set aside or varied. The onus lies with the CCAA debtor in a comeback motion to satisfy the court that the terms of the initial CCAA order should be upheld: Re Warehouse Drug Store Ltd. (2005), 11 C.B.R. (4th) 323 (Ont. S.C.J. (Comm. List)).

6 See United Co-Operatives of Ontario (Re) (order dated August 27, 1984, Ont. C.A., Houlden J.A.), United Maritime Fishermen Co-op (Re) (1988), 67 C.B.R. (N.S.) 170 (Q.B.), revd on other grounds 69 C.B.R. (N.S.) 161, 88 N.B.R. (2d) 253 (C.A.).

7 Bond Brewing Holdings v. National Australia Bank, [1970] 1 A.C.S.R. 445 at p. 461, 18 I.B.L. 24 (Sup. Ct. Vict.), and see "Unsecured Creditors and Court-Appointed Receivers" (1991), 107 L.Q.R. 551.

8 SkyLink Aviation Inc., Re, 2013 CarswellOnt 2785, 2013 ONSC 1500 (Ont. S.C.J. [Commercial List]), at para. 35; and Cline Mining Corp., Re, 2014 CarswellOnt 18943, 2014 ONSC 6998, at paras. 61–65.

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Debt Restructuring: Principles and Practice § 9:25

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IV. Stay of Proceedings

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§ 9:25. Generally

A stay of proceedings under the CCAA is not an automatic stay as in a proposal under the *Bankruptcy and Insolvency Act*. An application must be made. The Act provides that where an application is made under this Act in respect of a company the court may make an order staying proceedings against the company for such period as the court considers necessary, subject to the provisions of the Act. [1] Proceedings are not restricted to court proceedings but encompass regulatory proceedings. [2] A stay of proceedings will not stay a defendant's equitable right of set-off in an action brought by the debtor. [3]

The primary purpose of a stay is to benefit a qualified debtor company by giving it a breathing space to negotiate with its creditors, to provide creditor protection by prohibiting a race for the debtor's assets and to protect the jurisdiction of the court over the debtor, its creditors and the reorganization process. The breathing space to restructure is good not only for the enterprise and the creditors, but also for the public, which includes among its members, the employers, employees, suppliers, shareholders, landlords and customers of the enterprise. It is also beneficial to the public as a whole to enable enterprises to regain the opportunity to contribute to the country's economic strength. [4] The question is whether granting a stay will usefully further efforts to achieve the remedial purpose of the CCAA including avoiding the social and economic losses resulting from the liquidation of an insolvent company. [5]

Any reorganization involves a turbulent rivalry of many interests such as the debtor, its existing creditors, unionized or non-unionized employees, pensioners, possible future suppliers of credit, others whose conduct could seriously impair the debtor's ability to focus and concentrate its efforts to restructure its affairs and continue in business in the meantime [6] and, in addition, the representatives of these parties. A stay of proceedings makes it possible to maintain the status quo among all of the competing interests during the period of the stay.

Before the 1997 amendments to the Act, the court had an unlimited authority to stay proceedings. The practice developed that a short stay of proceedings initially was granted on an *ex parte* application. In order to continue the stay a new application had to be made on notice to all persons to be affected. The new procedure introduced by the 1997 amendments substantially follows the former practice. An order may be made on an initial application for a period not exceeding 30 days under the old Act. That was reduced to 10 days by the November 2019 amendments under the new section 11.02(1) of the CCAA. As was noted by the Court in a recent decision: “The intent behind the new section 11.02(1) is clear. It limits the exercise of discretion by the Court in determining the length of any stay [on an initial application] such that the maximum amount of any stay [on an initial application] will be 10 days, as opposed to the previous 30-day limit.” [7] The stay may be extended on subsequent applications. The Act, however, is now designed to provide additional evidence to assist the court in the exercise of its discretion whether to order a stay, and to provide additional supervision of the debtor company during the period of any stay.

Footnotes

1 CCAA, ss. 11 and 11.02.

2 Anvil Range Mining Corp. (Re) (1998), 3 C.B.R. (4th) 93 (Ont. Ct. (Gen. Div.)), and see **§ § 8:41 to 8:51**, "Stay of Proceedings". See also Re Just Energy Corp., 2021 CarswellOnt 3724, 2021 ONSC 1793 (Ont. S.C.J. [Commercial List]), at para. 77; BZAM Ltd. Plan of Arrangement, 2024 ONSC 1645 (Ont. S.C.J. [Commercial List]) at paras. 46-49; Tantalus Labs Ltd. (Re), 2023 BCSC 1450 (B.C. S.C.).

3 Cam-Net Communications v. Vancouver Telephone Co. (1999), 17 C.B.R. (4th) 26, 182 D.L.R. (4th) 436 (B.C.C.A.).

4 Toronto Stock Exchange Inc. v. United Keno Hill Mines Ltd. (2000), 19 C.B.R. (4th) 299, 48 O.R. (3d) 746 (S.C.J.), which considered Nova Metal Products Inc. v. Comiskey (1990), 1 O.R. (3d) 289 *sub nom.* Elan Corp. v. Comiskey, 41 O.A.C. 282 (C.A.), *per* Doherty J.A. dissenting, and Hongkong Bank of Canada v. Chef Ready Foods Ltd. (1990), 4 C.B.R. (3d) 311, 51 B.C.L.R. (2d) 84 (C.A.). See also Philip Services Corp. (Re) (1999), 13 C.B.R. (4th) 159 (Ont. S.C.J. (Comm. List)); and Redstone Investment Corp., Re, 2014 CarswellOnt 5119, 2014 ONSC 2004 (Ont. S.C.J.), at paras. 50–51; and Re Toys "R" Us (Canada) Ltd., 2017 CarswellOnt 14645, 2017 ONSC 5571 (Ont. S.C.J. [Commercial List]), at paras. 7, 14; and Bondfield Construction Company, Re, 2019 CarswellOnt 5597, 2019 ONSC 2310 (Ont. S.C.J. [Commercial List]), at paras. 14, 15.

5 Ted Leroy Trucking Ltd., Re, 2010 CarswellBC 3419 (S.C.C.), at para. 70; Re Just Energy Corp., 2021 CarswellOnt 3724, 2021 ONSC 1793 (Ont. S.C.J. [Commercial List]), at para. 36.

6 Campeau v. Olympia & York Developments Ltd. (1992), 14 C.B.R. (3d) 303, 14 C.P.C. (3d) 339 (Ont. Ct. (Gen. Div.)); Victorian Order of Nurses for Canada, Re, 2015 CarswellOnt 19150, 2015 ONSC 7371, at para. 15.

7 Miniso International Hong Kong Limited v. Migu Investments Inc., 2019 CarswellBC 2208, 2019 BCSC 1234, at para. 66 (our emphasis). In Clover Leaf Holdings Company, Re, 2019 CarswellOnt 20001, 2019 ONSC 6966 (Ont. S.C.J. [Commercial List]), at para. 13, the Court observed that the purpose of this new section is to make the "insolvency process fairer, more transparent and more accessible by limiting the decisions made at the outset of the proceedings to measures that are reasonably necessary to avoid the immediate liquidation of an insolvent company and to allow for broader participation in the restructuring process."

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