Court file number	2403-15089
Court	Court of King's Bench of Alberta
Judicial Centre	Edmonton
	In the Matters 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 Freedom Cannabis Inc.
Document	**Minister's brief of law**
Address for service and contact information of party filing this document	**Department of Justice Canada** 300 EPCOR Tower, 10423 – 101 Street N.W. Edmonton Alberta T5H 0E7 Attention: George F. Bódy Telephone: 780-495-7595 Email: George.Body@justice.gc.ca File number:500202833

Application before the Honourable Justice Harris
on Friday April 11, 2025 at 2:00 pm MDST on the Commercial List

1. The Minister brings this application pursuant to paragraph 15 of the Amended and Restated Initial Order pronounced by the Honourable Justice Lema on August 16, 2024 (the "**ARIO**") in this proceeding to preserve her ability to pursue directors' liability assessments against the directors of Freedom Cannabis Inc for a portion of the approximately $10 million Freedom owes the Minister under the *Excise Act, 2001*.

2. As set out in the affidavit of CRA officer Debbie Mitchell sworn 24 February 2025[1], Freedom Cannabis Inc. ("**Freedom**") is liable to His Majesty the King in right of Canada as represented by the Minister of National Revenue (the "**Minister**")

   (a) pursuant to the *Excise Tax Act*, R.S.C., 1985 c. E-15 ("**ETA**") in the sum of $201,776.46[2] and,

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1 Affidavit of CRA officer Debbie Mitchell sworn February 24, 2025 ("**Mitchell February Affidavit**")

2 Mitchell February Affidavit, paragraph 7.

(b) pursuant to the *Excise Act, 2001*, S.C. 2002 c. 22 (**EA2001**) in the sum of $9,693,946.85.[3]

Freedom incurred both debts before the commencement of these proceedings on August 8, 2024.

3. As set out in the second Mitchell Affidavit sworn March 11, 2025, on June 20, 2024, CRA certified $4,764,620.64 of Freedom's liability under the *Excise Act, 2001*, filed the certificate with the Federal Court[4], and sought and obtained a writ of seizure and sale from the Federal Court directed to the Sheriff of Alberta.[5] CRA completed these steps before the commencement of the CCAA proceedings and the issuance of the Initial Order by the Honourable Justice Lema on August 8, 2024.

4. Paragraphs 13 and 14 of the ARIO prohibit creditors from taking any proceedings or enforcement steps in any court in respect of Freedom.

5. However, paragraph 15 allows creditors to take steps against Freedom to comply with statutory time limitations to preserve their rights at law:

> 15. Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity. [6]

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3 Mitchell February Affidavit, paragraph 8.

4 Affidavit of Debbie Mitchell sworn March 11, 2025 ("**Mitchell March Affidavit")**, Exhibit A (certificate).

5 Mitchell March Affidavit, Exhibit B (Federal Court writ).

6 ARIO, August 16, 2024. Tab A.

***Excise Act, 2001* ss. 295(2) – Conditions precedent to assessment**

6. Section 295 of the *Excise Act, 2001*[7] imposes joint and several liability upon the director of a corporation for the liabilities of their companies under that statute.

> **Liability of directors**
>
> 295 (1) If a corporation fails to pay any duty or interest as and when required under this Act, the directors of the corporation at the time it was required to pay the duty or interest are jointly and severally or solidarily liable, together with the corporation, to pay the duty or interest and any interest that is payable on the duty or interest under this Act.
>
> **Limitations**
>
> (2) A director of a corporation is not liable unless
>
> (a) a certificate for the amount of the corporation's liability has been registered in the Federal Court under section 288 and execution for that amount has been returned unsatisfied in whole or in part;
>
> (b) the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the corporation's liability has been proved within six months after the earlier of the date of commencement of the proceedings and the date of dissolution; or
>
> (c) the corporation has made an assignment or a bankruptcy order has been made against it under the *Bankruptcy and Insolvency Act* and a claim for the amount of the corporation's liability has been proved within six months after the date of the assignment or bankruptcy order.
>
> **Diligence**
>
> (3) A director of a corporation is not liable for a failure under subsection (1) if the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.
>
> **Assessment**
>
> (4) The Minister may assess any person for any amount of duty or interest payable by the person under this section and, if the Minister sends a notice of assessment, sections 188 to 205 apply with any modifications that the circumstances require.

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7 *Excise Act, 2001*, S.C. 2002, c. 22, as amended, section 295 – Tab B.

Time limit

(5) An assessment of any amount payable by a person who is a director of a corporation shall not be made more than two years after the person ceased to be a director of the corporation.

Amount recoverable

(6) If execution referred to in paragraph (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

Preference

(7) If a director of a corporation pays an amount in respect of the corporation's liability that is proved in liquidation, dissolution or bankruptcy proceedings, the director is entitled to any preference to which Her Majesty would have been entitled had the amount not been so paid, and if a certificate that relates to the amount has been registered, the director is entitled to an assignment of the certificate to the extent of the director's payment, which assignment the Minister is empowered to make.

Contribution

(8) A director who satisfies a claim under this section is entitled to contribution from the other directors who were liable for the claim.

7. Summarizing the conditions precedent set out in subsection 295(2), the Minister must exhaust her remedies against the debtor corporation before turning to the directors for recovery of the debt.[8]

   (a) Paragraph 2(a) provides for the return of a writ issued against the debtor company unsatisfied in whole or in part;

   (b) Paragraph 2(b) provides for the Minister filing a claim in the dissolution proceedings instituted by a company; and

   (c) Paragraph 2(c) provides for the Minister filing a proof of claim with the appointed trustee in bankruptcy after the debtor company has made an assignment in bankruptcy.

8. The conditions set out in subsection 295(2) apply in different circumstances and the fulfillment of the applicable condition satisfies the Minister's obligation to exhaust her

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8 *Walsh* v. *The Queen*, *2009 TCC 557* (CanLII) at para. 27. Tab C.

remedies against the corporation before turning to its directors. The completion of the applicable condition precedent is NOT an assessment of the directors under the provision. That is a separate step (under subsection 295(4)) and the Minister does not seek permission in this application to assess the directors. The Minister understands she is enjoined by the ARIO from assessing the directors at this time.

9. Parliament decided a director is not liable unless the Minister has taken the appropriate step under subsection 2 – i.e., she has attempted to recover her claim against the debtor company first. However, there is no provision under subsection 2 that contemplates an RVO under the CCAA or the BIA wherein the Minister cannot take any of the prescribed steps to protect her legal position.

Statutory mechanism to collect tax debts.

10. The *Excise Act, 2001* sets out statutory mechanisms for the Minister to certify the debts under the statute and seek writs of enforcement from the Federal Court. The Federal Court system "piggybacks" on the provincial superior courts' systems for the enforcement of its judgments.

    (a) First, the Minister issues a certificate setting out the liability of the debtor under the statute (EA2001 ss. 288(1))[9];

    (b) The Minister then produces the certificate to the Federal Court, which that Court shall register, and upon registration, the certificate has the same effect, and all proceedings may be taken on it as if it were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest on the amount as provided under this Act to the day of payment and, for the purposes of those proceedings, the certificate is deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty and enforceable as such. (EA2001 ss. 288(2))

    (c) The Minister may then request the Federal Court to issue a writ to the sheriff of the locale of the debtor. Pursuant to section 13 of the *Federal Courts Act*, all sheriffs of the provincial superior courts are *de facto* sheriffs of the Federal Court.

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9 Section 288 of the *Excise Act, 2001* is set out at Tab B.

(d) Paragraph 1(1)(tt) of the *Civil Enforcement Act* of Alberta defines "writ" to include any writ issued by the Alberta Court of Appeal, the Federal Court of Canada or the Supreme Court of Canada that is similar in nature to a writ of enforcement.

(e) Subsection 26(a) of the *Civil Enforcement Act* prohibits judgment creditors from initiating writ proceedings in respect of money judgments against personal property unless the writ in respect of that judgment has been registered in the Alberta Personal Property Registry.[10]

11. In June 2024 – six weeks before the commencement of the CCAA proceedings – the Minister certified $4,764,620.64 of Freedom's liability under the *Excise Act, 2001* and obtained a writ of seizure and sale from the Federal Court for execution in Alberta.[11] This amount was in respect of Freedom's liability for the period between July 31, 2022 and June 30, 2023.[12] CRA did not take any additional steps to execute the writ before this Court imposed a stay of proceedings on August 8, 2024.

12. The Crown anticipates Freedom's CCAA process most likely will conclude in April 2025 with a reverse vesting order (RVO), with Freedom emerging from the process with a judicially cleansed balance sheet and the transfer of the Minister's claims and other creditors' claims to a corporate scapegoat ("**GarbageCo**"). The Minister also acknowledges the intent

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[10] Section 26 of the *Civil Enforcement Act* RSA 2000 c. C-15, as amended, provides:

Registration required
26 A judgment creditor may not initiate any writ proceedings in respect of a money judgment
(a) against any personal property unless a writ issued in respect of that judgment is registered in the Personal Property Registry, or
(b) against land unless a writ issued in respect of that judgment is registered in the Personal Property Registry and
(i) in the case of land under the *Land Titles Act*, is registered under the Land Titles Act, and
(ii) in the case of land that is not under the *Land Titles Act*, is registered, filed or otherwise recorded in accordance with the regulations.

[11] Affidavit of Debbie Mitchell sworn March 11, 2025, filed ("**Mitchell March Affidavit**"). The Minister's certificate is Exhibit "A" to the affidavit, and the Writ is Exhibit "B".

[12] Mitchell March Affidavit, paragraph 3.

of Freedom to seek a release of its directors at that time from liability pursuant to CCAA s. 5.1. That issue is not before the Court in this application and the Minister does not make any submissions on that issue at this time.

13. The Minister seeks permission to proceed to execute the Writ against Freedom to fulfill the statutory pre-conditions set out in EA2001 ss. 295(2)(a). If the Minister does not fulfill those conditions, she cannot assess the directors.[13] Given, on one hand, the quantum of Freedom's liabilities to its secured creditors (including JL Legacy Ltd. and the various court-ordered security interests/priming charges), and on the other, its limited assets, the Minister accepts there are no exigible assets to seize. The Minister has structured the proposed seizure process to consist of

    (a) registration of the Writ in the PPR to meet the requirements of the *Civil Enforcement Act*;

    (b) issuance of a warrant to a civil enforcement agency to execute the Writ;

    (c) the civil enforcement agency contacting the Monitor to advise of the seizure;

    (d) the Monitor advising the civil enforcement agency in writing that Freedom has no exigible assets;

    (e) the civil enforcement agency returning the Writ to CRA unsatisfied; and

    (f) CRA discharging the Writ from the PPR.

14. These steps would fulfill both the letter and the spirit of EA2001 ss.295(2)(a) without impeding the SISP process or the CCAA proceedings.

15. As noted above, these steps will NOT determine the liability of the directors of Freedom, nor will taking these steps preclude or predetermine the question of releases Freedom will likely seek under CCAA s.5.1. However, this relief is necessary *now* to preserve the Minister's

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13 *Walsh* v. *The Queen*, *2009 TCC 557* (CanLII) at para 28. Tab B.

rights under the statute, as contemplated by paragraph 15 of the ARIO, reproduced at paragraph 5, above.

16. In the recent *Delta 9*[14] CCAA proceedings, Justice Marion was critical of the lateness of CRA's notice of opposition to the release of the directors of the Delta 9 companies. Justice Marion observed, at paragraph 138 of his reasons, that "a party seeking to oppose a release on these grounds should engage and advise of its position early in the process and build an evidentiary record to allow the Court to reasonably assess those factors. "

17. In the course of the hearing before Justice Lema on February 28, 2025, Freedom presented, for the first time, its proposed resolution of the CCAA proceedings – to conduct a sales and solicitation process for approximately two months, with approval of an offer by its senior secured creditor (and DIP lender) JL Legacy Ltd. as the stalking horse bid. The contemplated RVO included in the motion record included a provision releasing the directors of Freedom from liability pursuant to section 5.1 of the CCAA. In the February 28 hearing, the Crown voiced its opposition to the SISP process (unsuccessfully) and stated it would oppose the release of the directors from liability.

18. Considering Justice Marion's observations that a party seeking to oppose a release should make its position known early and build an evidentiary record for the Court, the Crown is attempting to comply with that observation. The Crown has voiced its opposition to the releases and is attempting, in this application, to fulfill the statutory condition precedent necessary to assess the directors later.

19. In a subsequent application (currently scheduled for April 29, 2025), the Court will hear arguments on this issue and either will release the directors from liability, or it will not. If the Court releases the directors, that will be the end of the matter (subject to a potential appeal). If the Court does not release the directors, the Minister expects the Court will transfer Freedom's liability under the *Excise Act, 2001* to GarbageCo, and the Minister will be precluded from certifying the liability of Freedom for its debts. It is not clear if the Minister could assess GarbageCo. for the *Excise Act, 2001* debt, then certify that debt against

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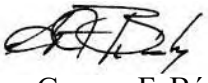
14 *Delta 9 Cannabis Inc. (Re)*, 2025 ABKB 52 (CanLII), Tab C.

GarbageCo. Although GarbageCo will not have any assets (and a writ would be returned wholly unsatisfied), GarbageCo has no directors, and none of the directors of Freedom were, are, or will be directors of GarbageCo.

20. The steps contemplated by the Minister (as set out in the draft order) are those legally necessary preserve the Minister's rights to be able to assess the directors later without interfering with the current SISP or the CCAA proceedings as a whole. These steps do not determine whether the Minister may assess the directors for their liability under the *Excise Act, 2001*, but they do preserve the Minister's ability to do so, subject to later decisions of this Court. Denying the Minister's application to attempt to execute the Writ effectively terminates the Minister's rights and makes any subsequent determination of a release of liability under CCAA s. 5.1 moot vis-à-vis the Minister.

All of which is respectfully submitted.

Attorney General of Canada



Per: George F. Bódy
Senior Counsel – Department of Justice Canada

Schedule "A"

Clerk's Stamp

COURT FILE NUMBER	2403-15089
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENTS ACT*, R.S.C. 1985, c. C-36, as amended

ENT EC

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF FREEDOM CANNABIS INC.

DOCUMENT **AMENDED AND RESTATED INITIAL ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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DATE ON WHICH ORDER WAS PRONOUNCED:	August 15, 2024
NAME OF JUSTICE WHO MADE THIS ORDER:	The Honourable Justice M. J. Lema
LOCATION OF HEARING:	Edmonton, Alberta

UPON the application of Freedom Cannabis Inc. (the "**Applicant**"); **AND UPON** having read the Application, the First Affidavit of JohnFrank Potestio, sworn on August 5, 2024 (the "**First Potestio Affidavit**"), the Second Affidavit of JohnFrank Potestio, sworn on August 12, 2024 (the

"**Second Potestio Affidavit**"), the Pre-Filing Report of KPMG Inc., in its capacity as Proposed Monitor dated August 6, 2024, and the First Report of KPMG Inc., in its capacity as Monitor dated August 13, 2024;

AND UPON reading the consent of KPMG Inc. to act as Monitor;

AND UPON being advised that the secured creditors who are likely to be affected by the charges created herein have been provided notice of this application and either have not indicated their opposition or alternatively consent to the within Order;

AND UPON hearing counsel for the Applicant, 2563138 Alberta Ltd. and 2399751 Alberta Ltd. (each a "**Non-Applicant Stay Party**" and collectively the "**Non-Applicant Stay Parties**", together with the Applicant, the "**Freedom Group**"), counsel for the Monitor, and counsel for any other parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the notice of application for this order (the "**Order**") and supporting materials is hereby abridged and deemed good and sufficient and this application is properly returnable today.

APPLICATION

2. The Applicant is a company to which the *Companies' Creditors Arrangement Act* RSC, c C-36, as amended (the "**CCAA**") applies. Although not an Applicant, the Non-Applicant Stay Parties shall enjoy the benefits of the protections and authorizations provided under the terms of this Order.

PLAN OF ARRANGEMENT

3. The Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. The Applicant shall:

(a) remain in possession and control of its current and future assets, licenses, authorizations, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**");

(b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property;

(c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order; and

(d) and each of the Non-Applicant Stay Parties shall, be entitled to continue to utilize the central cash management system currently in place as described in the First Potestio Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank or credit union providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. To the extent permitted by law, the Applicant shall be entitled but not required to make the following advances or payments of the following expenses, incurred prior to, on or after the date of this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable prior to, on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll and benefits processing expenses;

(b) the reasonable fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order; and

(c) in accordance with the Cash Flow Forecast, for goods and services actually supplied to the Applicant, including for periods prior to the date of this Order by third party supplies, up to a maximum aggregate amount of $500,000, if, in the opinion of the Monitor, the supplier or vendor of such goods or services is critical to the Business and ongoing operations of the Applicant or necessary for the operation or preservation of the Business or the Property.

6. Except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course on, or after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicant on or following the date of this Order.

7. The Applicant shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of:

(i) employment insurance,

(ii) Canada Pension Plan, and

(iii) income taxes,

but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after August 8, 2024, or where such Sales Taxes were accrued or collected prior to August 8, 2024 but not required to be remitted until on or after August 8, 2024;

(c) any taxes, duties or other payments required under the Cannabis Legislation (as defined below) (collectively, the "**Cannabis Taxes**"), but only where such Cannabis Taxes are accrued or collected after August 8, 2024; and

(d) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by the Applicant.

8. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicant from time to time for the period commencing from and including the date of this Order ("**Rent**"), but shall not pay any rent in arrears.

9. Except as specifically permitted in this Order, the Applicant is hereby directed, until further order of this Court:

(a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of the date of this Order;

(b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and

(c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. The Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined in paragraph 33), have the right to:

(a) permanently or temporarily cease, downsize or shut down any portion of its business or operations and to dispose of redundant or non-material assets not exceeding $250,000 in any one transaction or $1,000,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicant (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;

(c) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor (as defined below) or further Order of the Court, their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Applicant deems appropriate, in accordance with section 32 of the CCAA; and

(d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**").

11. The Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:

    (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice; and

    (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT, THE NON-APPLICANT STAY PARTIES OR THEIR RESPECTIVE PROPERTY

13. Until and including September 18, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant, the Non-Applicant Stay Parties or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant, the Non-Applicant Stay Parties or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court or the written consent of the Applicant and the Monitor.

NO EXERCISE OF RIGHTS OR REMEDIES

14. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**"), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicant, the Non-Applicant Stay Parties or the Monitor, or their respective representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with the written consent of the Applicant and the Monitor or leave of this Court, provided that nothing in this Order shall:

    (a) empower any entity within the Freedom Group to carry on any business that such entity of the Freedom Group is not lawfully entitled to carry on;

    (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;

    (c) prevent the filing of any registration to preserve or perfect a security interest;

    (d) prevent the registration of a claim for lien; or

    (e) exempt the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment.

15. Nothing in this Order shall prevent any party from taking an action against the Applicant where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

NO INTERFERENCE WITH RIGHTS

16. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour or renew, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, licence, authorization or permit in favour of or held by the Applicant or the Non-Applicant Stay Parties, except with the written consent of the Applicant, the relevant Non-Applicant Stay Party and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. During the Stay Period, all persons having:

    (a) statutory or regulatory mandates for the supply of goods and/or services; or

    (b) oral or written agreements or arrangements with any entity within the Freedom Group, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Freedom Group

    are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Freedom Group or exercising any other remedy provided under such agreements or arrangements. The Freedom Group shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Freedom Group in accordance with the payment practices of the Freedom Group, or such other practices as may be agreed upon by the supplier or service provider and each of the Freedom Group and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any person, other than the DIP Lender where applicable, be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 15 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Freedom Group with respect to any claim against the directors or officers that arose before the date of this Order and that relates to any obligations of the Freedom Group whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. The Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicant after the commencement of the within proceedings except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. The directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $1,500,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 37 and 39 herein.

22. Notwithstanding any language in any applicable insurance policy to the contrary:

(a) no insurer or indemnitor shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and

(b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. KPMG Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property, Business, and financial affairs and the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor’s functions.

24. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicant's receipts and disbursements, Business and dealings with the Property;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicant;

(c) assist the Applicant, to the extent required by the Applicant, in its dissemination to the DIP Lender and its counsel on a bi-weekly basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings, including reporting on a basis as reasonably required by the DIP Lender;

(d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than monthly**,** or as otherwise agreed to by the DIP Lender;

(e) advise the Applicant in its development of the Plan and any amendments to the Plan;

(f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(g) assist the Applicant in communications with their stakeholders, including creditors and governmental authorities;

(h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicant to the extent that is necessary to adequately assess the Property, Business, and financial affairs of the Applicant or to perform its duties arising under this Order;

(i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(j) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicant and any other Person; and

(k) perform such other duties as are required by this Order or by this Court from time to time.

25. The Monitor shall not take possession of the Property, nor be deemed to take possession of the Property, pursuant to any provision of any federal, provincial or other law respecting, among other things, the manufacturing, possession, processing and distribution of cannabis or cannabis products including, without limitation, under the *Cannabis Act* S.C. 2018, c. 16, as amended, the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, as amended, the *Excise Act*, *2001*, S.C. 2002, c. 22, as amended, the Ontario *Cannabis Licence Act*, S.O. 2018, c. 12, Sched. 2, as amended, the Ontario *Cannabis Control Act*, S.O. 2017, c. 26, Sched. 1, as amended, the *Ontario Cannabis Retail Corporation Act*, 2017, S.O. 2017, c. 26, as amended, the British Columbia *Cannabis Control and Licensing*

Act, S.B.C. 2018, c. 29, as amended, the British Columbia *Cannabis Distribution Act*, S.B.C. 2018, c. 28, as amended, the Alberta *Gaming, Liquor and Cannabis Act*, R.S.A. 2000, c. G-1, as amended, the Alberta *Gaming, Liquor and Cannabis Regulation,* Alta. Reg. 143/996, as amended, *The Cannabis Control (Saskatchewan) Act*, S.S. 2018, c. C-2.111, as amended, the Saskatchewan *Cannabis Control (Saskatchewan) Regulations,* R.R.S. c. C-2.111 Reg. 1, the Manitoba *The Liquor, Gaming and Cannabis Control Act*, C.C.S.M. c. L153, as amended, the Manitoba *Cannabis Regulation*, M.R. 120/2018, as amended, the Newfoundland and Labrador *Cannabis Control Act*, S.N.L. 2018, c. C-4.1, as amended, the Newfoundland and Labrador *Cannabis Control Regulations*, NLR. Reg. 93/18, as amended, the Newfoundland and Labrador *Cannabis Licensing and Operations Regulations*, NLR. Reg. 94/18, as amended, the Nova Scotia *Cannabis Control Act*, S.N.S. 2018, c 3, as amended, the Nova Scotia *Cannabis Retail Regulations*, NS. Reg. 203/2019, the Prince Edward Island *Cannabis Control Act*, R.S.P.E.I. 1998, c. C-1.2, as amended, the Prince Edward Island *Cannabis Control Regulations*, PEI. Reg. EC575/18, as amended, the New Brunswick *Cannabis Control Act*, S.N.B. 2018, c. 2, the Yukon *Cannabis Control and Regulation Act*, S.Y. 2018, c. 4, as amended, the Yukon *Cannabis Control and Regulation*, YOIC. 2018/139, the Yukon *Cannabis Control and Regulation General Regulation*, YOIC. 2018/184, the Yukon *Cannabis Licensing Regulation*, YOIC. 2019/43, the Yukon *Cannabis Remote Sales Regulation*, YOIC. 2022/29, the Northwest Territories *Cannabis Legalization and Regulation Implementation Act*, S.N.W.T. 2018, c. 6, as amended, or other such applicable federal, provincial or other legislation or regulations (collectively, the "**Cannabis Legislation**"), and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof within the meaning of any Cannabis Legislation or otherwise, and nothing in this Order shall be construed as resulting in the Monitor being an employer or successor employer within the meaning of any statute, regulation or rule of law or equity for any purpose whatsoever. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other

contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation or regulation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order be deemed to be in possession of any of the Property within the meaning of any federal or provincial environmental legislation.

26. The Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

27. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, including under any Cannabis Legislation, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. The Monitor, counsel to the Monitor, and counsel to the Applicant including insolvency and litigation counsel, shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to the date of this Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant in accordance with such parties' retainer agreements. For greater clarity, the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid its reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings) by the Applicant for its work in preparing for and obtaining this Initial Order up to and including the August 8, 2024 hearing of the application for this Order (the "**Initial Order Fees and Disbursements**").

29. The Monitor and its legal counsel shall pass their accounts from time to time.

30. The Monitor, counsel to the Monitor, if any, and the Applicant's counsel as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $500,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 37 and 39 hereof.

DIP FINANCING

31. The Applicant is hereby authorized and empowered to obtain and borrow under an interim credit facility from JL Legacy Ltd. (the "**DIP Lender**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, including the costs of these proceedings, provided that borrowings under such credit facility shall not exceed $1,500,000 unless permitted by further order of this Court.

32. Such credit facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet between the Applicant and the DIP Lender dated as of August 6, 2024 (the "**DIP Term Sheet**"), filed.

33. The Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs, and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities, and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

34. The DIP Lender shall be entitled to the benefits of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property to secure all obligations under the Definitive Documents incurred on or after the date of this Order which charge shall not exceed the aggregate amount advanced on or after the date of this Order under the Definitive

Documents plus interest and costs. The DIP Lender's Charge shall not secure any obligation existing before this the date this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 37 and 39 hereof.

35. Notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the DIP Term Sheet or the Definitive Documents or the DIP Lender's Charge, the DIP Lender may, upon 3 business days' notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Term Sheet, Definitive Documents, and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment, and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

36. The DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES

37. The priorities of the Administration Charge, the Directors' Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $500,000);

Second – Directors' Charge (to the maximum amount of $1,500,000); and

Third – DIP Lender's Charge (to the maximum principal amount of $1,500,000 plus interest, fees, and expenses).

38. The filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

39. Each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and subject always to section 34(11) of the CCAA such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

40. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender, and the beneficiaries of the Directors' Charge and the Administration Charge, or further order of this Court.

41. The Charges and the DIP Term Sheet shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by:

(a) the pendency of these proceedings and the declarations of insolvency made in this Order;

(b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications;

(c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;

(d) the provisions of any federal or provincial statutes; or

(e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") that binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

(i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof including the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a new breach by the Applicant of any Agreement to which it is a party;

(ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Applicant entering into the DIP Term Sheet, or the execution, delivery or performance of the Definitive Documents; and

(iii) the payments made by the Applicant pursuant to this Order, including the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

ALLOCATION

42. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Administration Charge, the DIP Charge, and the Directors' Charge amongst the various assets comprising the Property.

"STATUS QUO" OF APPLICANT'S LICENSE

43. The status quo in respect of the Applicant's Health Canada licenses and the cannabis excise license (collectively, the "**Licenses**") shall be preserved and maintained during the pendency of the Stay Period, including the Applicant's ability to sell cannabis inventory in the ordinary course under the Licenses, and to the extent any Licenses may expire during the Stay Period, the term of such License shall be deemed to be extended by a period

equal to the Stay Period.

SERVICE AND NOTICE

44. The Monitor shall (i) without delay, publish in The Globe and Mail (National Edition), Calgary Herald, and Edmonton Journal a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than $1,000 and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder; provided that the Monitor shall not be required to make the claims, names and addresses of individuals who are creditors publicly available unless otherwise ordered by this Court.

45. The Monitor shall establish a case website in respect of the within proceedings at https://kpmg.com/ca/freedom (the "**Monitor's Website**").

46. The Applicant and the Monitor and their respective counsel are at liberty to serve this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, recorded mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail or recorded mail, on the seventh day after mailing. Any person that wishes to be served with any application and other materials in these proceedings must deliver to the Applicant or the Monitor by way of ordinary mail, courier, or electronic transmission, a request to be added to the service list (the "**Service List**") to be maintained by the Monitor.

47. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsel's email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on the Monitor's website.

GENERAL

48. The Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

49. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.

50. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of the Applicant, the Business or the Property.

51. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

52. Each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

53. Any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

54. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Daylight Time on the date of this Order.

Justice of the Court of King's Bench of Alberta

CANADA

CONSOLIDATION

CODIFICATION

Excise Act, 2001

Loi de 2001 sur l’accise

S.C. 2002, c. 22

L.C. 2002, ch. 22

Current to February 4, 2025

Last amended on July 1, 2024

À jour au 4 février 2025

Dernière modification le 1 juillet 2024

Published by the Minister of Justice at the following address:
http://laws-lois.justice.gc.ca

Publié par le ministre de la Justice à l’adresse suivante :
http://lois-laws.justice.gc.ca

OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence
31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts
(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve
31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité — lois
(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

This consolidation is current to February 4, 2025. The last amendments came into force on July 1, 2024. Any amendments that were not in force as of February 4, 2025 are set out at the end of this document under the heading "Amendments Not in Force".

NOTE

Cette codification est à jour au 4 février 2025. Les dernières modifications sont entrées en vigueur le 1 juillet 2024. Toutes modifications qui n'étaient pas en vigueur au 4 février 2025 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

Canada, apply to a judge of the court to review the authorization.

Limitation period for review application

(8) An application under subsection (7) shall be made

(a) within 30 days after the authorization was served on the person in accordance with this section; or

(b) within such further time as a judge may allow, on being satisfied that the application was made as soon as practicable.

Hearing in camera

(9) An application under subsection (7) may, on the application of the person, be heard *in camera*, if the person establishes to the satisfaction of the judge that the circumstances of the case justify *in camera* proceedings.

Disposition of application

(10) On an application under subsection (7), the judge shall determine the question summarily and may confirm, set aside or vary the authorization and make any other order the judge considers appropriate.

Directions

(11) If any question arises as to the course to be followed in connection with anything done or being done under this section and there is no direction in this section with respect to it, a judge may give any direction the judge considers appropriate.

No appeal from review order

(12) No appeal lies from an order of a judge made under subsection (10).

Certificates

288 (1) Any duty, interest or other amount payable by a person (in this section referred to as the "debtor") under this Act, or any part of the duty, interest or amount, that has not been paid as and when required under this Act may be certified by the Minister as an amount payable by the debtor.

Registration in court

(2) On production to the Federal Court, a certificate in respect of a debtor shall be registered in the Court and when so registered has the same effect, and all proceedings may be taken on the certificate, as if it were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest on the amount as provided under this Act to the day of payment and, for

demander à un juge de la même cour de réviser l'autorisation.

Délai de présentation de la requête

(8) La requête visée au paragraphe (7) doit être présentée :

a) dans les trente jours suivant la date où l'autorisation a été signifiée à la personne en application du présent article;

b) dans le délai supplémentaire que le juge peut accorder s'il est convaincu que la personne a présenté la requête dès que matériellement possible.

Huis clos

(9) Une requête visée au paragraphe (7) peut, à la demande de la personne, être entendue à huis clos si la personne démontre, à la satisfaction du juge, que les circonstances le justifient.

Ordonnance

(10) Dans le cas d'une requête visée au paragraphe (7), le juge statue sur la question de façon sommaire et peut confirmer, annuler ou modifier l'autorisation et rendre toute autre ordonnance qu'il juge indiquée.

Mesures non prévues

(11) Si aucune mesure n'est prévue au présent article sur une question à résoudre en rapport avec une chose accomplie ou en voie d'accomplissement en application du présent article, un juge peut décider des mesures qu'il estime indiquées.

Ordonnance sans appel

(12) L'ordonnance rendue par un juge en application du paragraphe (10) est sans appel.

Certificat

288 (1) Tout ou partie des droits, intérêts ou autres sommes exigibles d'une personne (appelée « débiteur » au présent article) aux termes de la présente loi qui n'ont pas été payés selon les modalités de temps ou autres prévues par la présente loi peuvent, par certificat du ministre, être déclarés exigibles du débiteur.

Enregistrement à la Cour fédérale

(2) Sur production à la Cour fédérale, le certificat fait à l'égard d'un débiteur y est enregistré. Il a alors le même effet que s'il s'agissait d'un jugement rendu par cette cour contre le débiteur pour une dette de la somme attestée dans le certificat, augmentée des intérêts courus comme le prévoit la présente loi jusqu'au jour du paiement, et toutes les procédures peuvent être engagées à la faveur

the purposes of those proceedings, the certificate is deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty and enforceable as such.

Costs

(3) All reasonable costs and charges incurred or paid for the registration in the Court of a certificate or in respect of any proceedings taken to collect the amount certified are recoverable in like manner as if they had been included in the amount certified in the certificate when it was registered.

Charge on property

(4) A document issued by the Federal Court evidencing a registered certificate in respect of a debtor, a writ of that Court issued pursuant to the certificate or any notification of the document or writ (such document, writ or notification in this section referred to as a "memorial") may be filed, registered or otherwise recorded for the purpose of creating a charge, lien or priority on, or a binding interest in, property in a province, or any interest in such property, held by the debtor, in the same manner as a document evidencing

(a) a judgment of the superior court of the province against a person for a debt owing by the person, or

(b) an amount payable or required to be remitted by a person in the province in respect of a debt owing to Her Majesty in right of the province

may be filed, registered or otherwise recorded in accordance with the law of the province to create a charge, lien or priority on, or a binding interest in, the property or interest.

Creation of charge

(5) If a memorial has been filed, registered or otherwise recorded under subsection (4),

(a) a charge, lien or priority is created on, or a binding interest is created in, property in the province, or any interest in such property, held by the debtor, or

(b) such property or interest in the property is otherwise bound,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b), and the charge, lien, priority or binding interest created shall be subordinate to any charge, lien, priority or binding interest in respect of which all steps necessary to make it effective against other creditors

du certificat comme s'il s'agissait d'un tel jugement. Pour ce qui est de ces procédures, le certificat est réputé être un jugement exécutoire de la cour contre le débiteur pour une créance de Sa Majesté.

Frais et dépens

(3) Les frais et dépens raisonnables engagés ou payés pour l'enregistrement à la Cour fédérale d'un certificat ou pour l'exécution des procédures de recouvrement de la somme qui y est attestée sont recouvrables de la même manière que s'ils avaient été inclus dans cette somme au moment de l'enregistrement du certificat.

Charge sur un bien

(4) Un document délivré par la Cour fédérale et faisant preuve du contenu d'un certificat enregistré à l'égard d'un débiteur, un bref de cette cour délivré au titre du certificat ou toute notification du document ou du bref (ce document, ce bref ou cette notification étant appelé « extrait » au présent article) peut être produit, enregistré ou autrement inscrit en vue de grever d'une sûreté, d'une priorité ou d'une autre charge un bien du débiteur situé dans une province, ou un droit sur un tel bien, de la même manière que peut l'être, en application de la loi provinciale, un document faisant preuve :

a) soit du contenu d'un jugement rendu par la cour supérieure de la province contre une personne pour une dette de celle-ci;

b) soit d'une somme à payer ou à remettre par une personne dans la province au titre d'une créance de Sa Majesté du chef de la province.

Charge sur un bien

(5) Une fois l'extrait produit, enregistré ou autrement inscrit en application du paragraphe (4), une sûreté, une priorité ou une autre charge grève un bien du débiteur situé dans la province, ou un droit sur un tel bien, de la même manière et dans la même mesure que si l'extrait était un document faisant preuve du contenu d'un jugement visé à l'alinéa (4)a) ou d'une somme visée à l'alinéa (4)b). Cette sûreté, priorité ou charge prend rang après toute autre sûreté, priorité ou charge à l'égard de laquelle les mesures requises pour la rendre opposable aux autres créanciers ont été prises avant la production, l'enregistrement ou autre inscription de l'extrait.

were taken before the time the memorial was filed, registered or otherwise recorded.

Proceedings in respect of memorial

(6) If a memorial is filed, registered or otherwise recorded in a province under subsection (4), proceedings may be taken in the province in respect of the memorial, including proceedings

(a) to enforce payment of the amount evidenced by the memorial, interest on the amount and all costs and charges paid or incurred in respect of

(i) the filing, registration or other recording of the memorial, and

(ii) proceedings taken to collect the amount,

(b) to renew or otherwise prolong the effectiveness of the filing, registration or other recording of the memorial,

(c) to cancel or withdraw the memorial wholly or in respect of any of the property or interests affected by the memorial, or

(d) to postpone the effectiveness of the filing, registration or other recording of the memorial in favour of any right, charge, lien or priority that has been or is intended to be filed, registered or otherwise recorded in respect of any property or interest affected by the memorial,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b), except that, if in any such proceeding or as a condition precedent to any such proceeding, any order, consent or ruling is required under the law of the province to be made or given by the superior court of the province or by a judge or official of the court, a like order, consent or ruling may be made or given by the Federal Court or by a judge or official of the Federal Court and, when so made or given, has the same effect for the purposes of the proceeding as if it were made or given by the superior court of the province or by a judge or official of the court.

Presentation of documents

(7) If

(a) a memorial is presented for filing, registration or other recording under subsection (4), or a document

Procédures engagées à la faveur d'un extrait

(6) L'extrait produit, enregistré ou autrement inscrit dans une province en application du paragraphe (4) peut, de la même manière et dans la même mesure que s'il s'agissait d'un document faisant preuve du contenu d'un jugement visé à l'alinéa (4)a) ou d'une somme visée à l'alinéa (4)b), faire l'objet dans la province de procédures visant notamment :

a) à exiger le paiement de la somme attestée par l'extrait, des intérêts y afférents et des frais et dépens payés ou engagés en vue de la production, de l'enregistrement ou autre inscription de l'extrait ou en vue de l'exécution des procédures de recouvrement de la somme;

b) à renouveler ou autrement prolonger l'effet de la production, de l'enregistrement ou autre inscription de l'extrait;

c) à annuler ou à retirer l'extrait dans son ensemble ou uniquement en ce qui concerne un ou plusieurs biens ou droits sur lesquels il a une incidence;

d) à différer l'effet de la production, de l'enregistrement ou autre inscription de l'extrait en faveur d'un droit, d'une sûreté, d'une priorité ou d'une autre charge qui a été ou qui sera produit, enregistré ou autrement inscrit à l'égard d'un bien ou d'un droit sur lequel l'extrait a une incidence.

Toutefois, dans le cas où la loi provinciale exige — soit dans le cadre de ces procédures, soit préalablement à leur exécution — l'obtention d'une ordonnance, d'une décision ou d'un consentement de la cour supérieure de la province ou d'un juge ou d'un fonctionnaire de celle-ci, la Cour fédérale ou un juge ou un fonctionnaire de celle-ci peut rendre une telle ordonnance ou décision ou donner un tel consentement. Cette ordonnance, cette décision ou ce consentement a alors le même effet dans le cadre des procédures que s'il était rendu ou donné par la cour supérieure de la province ou par un juge ou un fonctionnaire de celle-ci.

Présentation des documents

(7) L'extrait qui est présenté pour production, enregistrement ou autre inscription en application du paragraphe (4), ou un document concernant l'extrait qui est présenté pour production, enregistrement ou autre inscription dans le cadre des procédures visées au paragraphe (6), à un agent d'un régime d'enregistrement des droits sur des biens d'une province, est accepté pour

relating to the memorial is presented for filing, registration or other recording for the purpose of any proceeding described in subsection (6), to any official of a property registry system of a province, or

(b) access is sought to any person, place or thing in a province to make the filing, registration or other recording,

the memorial or document shall be accepted for filing, registration or other recording or the access shall be granted, as the case may be, in the same manner and to the same extent as if the memorial or document relating to the memorial were a document evidencing a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b) for the purpose of a like proceeding, except that, if the memorial or document is issued by the Federal Court or signed or certified by a judge or official of the Court, any affidavit, declaration or other evidence required under the law of the province to be provided with or to accompany the memorial or document in the proceedings is deemed to have been provided with or to have accompanied the memorial or document as so required.

production, enregistrement ou autre inscription de la même manière et dans la même mesure que s'il s'agissait d'un document faisant preuve du contenu d'un jugement visé à l'alinéa (4)a) ou d'une somme visée à l'alinéa (4)b) dans le cadre de procédures semblables. Pour ce qui est de la production, de l'enregistrement ou autre inscription de cet extrait ou ce document, l'accès à une personne, à un endroit ou à une chose situé dans une province est donné de la même manière et dans la même mesure que si l'extrait ou le document était un document semblable ainsi délivré ou établi. Lorsque l'extrait ou le document est délivré par la Cour fédérale ou porte la signature ou fait l'objet d'un certificat d'un juge ou d'un fonctionnaire de cette cour, tout affidavit, toute déclaration ou tout autre élément de preuve qui doit, selon la loi provinciale, être fourni avec l'extrait ou le document ou l'accompagner dans le cadre des procédures est réputé être ainsi fourni ou accompagner ainsi l'extrait ou le document.

Sale, etc.

(8) Despite any law of Canada or of a province, a sheriff or other person shall not, without the written consent of the Minister, sell or otherwise dispose of any property or publish any notice or otherwise advertise in respect of any sale or other disposition of any property pursuant to any process issued or charge, lien, priority or binding interest created in any proceeding to collect an amount certified in a certificate made under subsection (1), interest on the amount or costs, but if that consent is subsequently given, any property that would have been affected by such a process, charge, lien, priority or binding interest if the Minister's consent had been given at the time the process was issued or the charge, lien, priority or binding interest was created, as the case may be, shall be bound, seized, attached, charged or otherwise affected as it would be if that consent had been given at the time the process was issued or the charge, lien, priority or binding interest was created, as the case may be.

Interdiction de vendre

(8) Malgré les lois fédérales et provinciales, ni le shérif ni une autre personne ne peut, sans le consentement écrit du ministre, vendre un bien ou autrement en disposer ou publier un avis concernant la vente ou la disposition d'un bien ou autrement l'annoncer, par suite de l'émission d'un bref ou de la création d'une sûreté, d'une priorité ou d'une autre charge dans le cadre de procédures de recouvrement d'une somme attestée dans un certificat fait en application du paragraphe (1), des intérêts y afférents et des frais et dépens. Toutefois, si ce consentement est obtenu ultérieurement, tout bien sur lequel un tel bref ou une telle sûreté, priorité ou charge aurait une incidence si ce consentement avait été obtenu au moment de l'émission du bref ou de la création de la sûreté, priorité ou charge, selon le cas, est saisi ou autrement grevé comme si le consentement avait été obtenu à ce moment.

Completion of notices, etc.

(9) If information required to be set out by any sheriff or other person in a minute, notice or document required to be completed for any purpose cannot, because of subsection (8), be so set out without the written consent of the Minister, the sheriff or other person shall complete the minute, notice or document to the extent possible without that information and, when that consent of the Minister is given, a further minute, notice or document setting out all the information shall be completed for the same purpose, and the sheriff or other person, having

Établissement des avis

(9) Dans le cas où des renseignements qu'un shérif ou une autre personne doit indiquer dans un procès-verbal, un avis ou un document à établir à une fin quelconque ne peuvent, en raison du paragraphe (8), être ainsi indiqués, le shérif ou l'autre personne doit établir le procès-verbal, l'avis ou le document en omettant les renseignements en question. Une fois le consentement du ministre obtenu, un autre procès-verbal, avis ou document indiquant tous les renseignements doit être établi à la même fin. S'il se conforme au présent paragraphe, le shérif ou l'autre

complied with this subsection, is deemed to have complied with the Act, regulation or rule requiring the information to be set out in the minute, notice or document.

Application for an order

(10) A sheriff or other person who is unable, because of subsection (8) or (9), to comply with any law or rule of court is bound by any order made by a judge of the Federal Court, on an *ex parte* application by the Minister, for the purpose of giving effect to the proceeding, charge, lien, priority or binding interest.

Deemed security

(11) If a charge, lien, priority or binding interest created under subsection (5) by filing, registering or otherwise recording a memorial under subsection (4) is registered in accordance with subsection 87(1) of the *Bankruptcy and Insolvency Act*, it is deemed

(a) to be a claim that is secured by a security and that, subject to subsection 87(2) of that Act, ranks as a secured claim under that Act; and

(b) to also be a claim referred to in paragraph 86(2)(a) of that Act.

Details in certificates and memorials

(12) Despite any law of Canada or of the legislature of a province, in any certificate in respect of a debtor, any memorial evidencing a certificate or any writ or document issued for the purpose of collecting an amount certified, it is sufficient for all purposes

(a) to set out, as the amount payable by the debtor, the total of amounts payable by the debtor without setting out the separate amounts making up that total;

(b) to refer to the rate of interest to be charged on the separate amounts making up the amount payable in general terms as interest at the prescribed rate under this Act applicable from time to time on amounts payable to the Receiver General, without indicating the specific rates of interest to be charged on each of the separate amounts or to be charged for any period; and

(c) to refer to the penalty calculated under section 251.1 to be charged on the separate amounts making up the amount payable in general terms as a penalty under that section on amounts payable to the Receiver General.

2002, c. 22, s. 288; 2006, c. 4, s. 123.

personne est réputé se conformer à la loi, à la disposition réglementaire ou à la règle qui exige que les renseignements soient indiqués dans le procès-verbal, l'avis ou le document.

Demande d'ordonnance

(10) S'il ne peut se conformer à une loi ou à une règle de pratique en raison des paragraphes (8) ou (9), le shérif ou l'autre personne est lié par toute ordonnance rendue, sur requête *ex parte* du ministre, par un juge de la Cour fédérale visant à donner effet à des procédures ou à une sûreté, une priorité ou une autre charge.

Présomption de garantie

(11) La sûreté, la priorité ou l'autre charge créée selon le paragraphe (5) par la production, l'enregistrement ou autre inscription d'un extrait en application du paragraphe (4) qui est enregistrée en conformité avec le paragraphe 87(1) de la *Loi sur la faillite et l'insolvabilité* est réputée, à la fois :

a) être une réclamation garantie et, sous réserve du paragraphe 87(2) de cette loi, prendre rang comme réclamation garantie aux termes de cette loi;

b) être une réclamation visée à l'alinéa 86(2)a) de cette loi.

Contenu des certificats et extraits

(12) Malgré les lois fédérales et provinciales, dans le certificat fait à l'égard d'un débiteur, dans l'extrait faisant preuve du contenu d'un tel certificat ou encore dans le bref ou document délivré en vue du recouvrement d'une somme attestée dans un tel certificat, il suffit, à toutes fins utiles :

a) d'indiquer, comme somme exigible du débiteur, le total des sommes exigibles de celui-ci et non les sommes distinctes qui forment ce total;

b) d'indiquer de façon générale le taux d'intérêt réglementaire en application de la présente loi sur les sommes à payer au receveur général comme étant le taux applicable aux sommes distinctes qui forment la somme exigible, sans détailler les taux applicables à chaque somme distincte ou pour une période donnée;

c) d'indiquer de façon générale la pénalité calculée selon l'article 251.1 sur les sommes à payer au receveur général comme étant la pénalité calculée selon cet article sur les sommes distinctes qui forment la somme exigible.

2002, ch. 22, art. 288; 2006, ch. 4, art. 123.

dispose of the things in a manner the Minister considers appropriate in the circumstances.

Proceeds of disposition

(3) Any surplus resulting from a disposition, after deduction of the amount owing and all expenses, shall be paid or returned to the owner of the things seized.

Exemptions from seizure

(4) Anything of any person in default that would be exempt from seizure under a writ of execution issued by a superior court of the province in which the seizure is made is exempt from seizure under this section.

Person leaving Canada or defaulting

294 (1) If the Minister suspects that a person has left or is about to leave Canada, the Minister may, before the day otherwise fixed for payment, by notice to the person served personally or sent by registered or certified mail addressed to their last known address, demand payment of any amount for which the person is liable under this Act or would be so liable if the time for payment had arrived, and the amount shall be paid without delay despite any other provision of this Act.

Seizure

(2) If a person fails to pay an amount required under subsection (1), the Minister may direct that things of the person be seized, and subsections 293(2) to (4) apply, with any modifications that the circumstances require.

Liability of directors

295 (1) If a corporation fails to pay any duty or interest as and when required under this Act, the directors of the corporation at the time it was required to pay the duty or interest are jointly and severally or solidarily liable, together with the corporation, to pay the duty or interest and any interest that is payable on the duty or interest under this Act.

Limitations

(2) A director of a corporation is not liable unless

(a) a certificate for the amount of the corporation's liability has been registered in the Federal Court under section 288 and execution for that amount has been returned unsatisfied in whole or in part;

(b) the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the corporation's liability has been proved within six months after the earlier of the

Produit de l'aliénation

(3) Le surplus de l'aliénation, déduction faite de la somme due et des dépenses, est payé ou rendu au propriétaire des choses saisies.

Restriction

(4) Le présent article ne s'applique pas aux choses appartenant à une personne en défaut qui seraient insaisissables malgré la délivrance d'un bref d'exécution par une cour supérieure de la province dans laquelle la saisie est opérée.

Personnes quittant le Canada ou en défaut

294 (1) S'il soupçonne qu'une personne a quitté ou s'apprête à quitter le Canada, le ministre peut, avant le jour par ailleurs fixé pour le paiement, par avis signifié à personne ou envoyé par courrier recommandé ou certifié à la dernière adresse connue de la personne, exiger le paiement de toute somme dont celle-ci est redevable en vertu de la présente loi ou serait ainsi redevable si le paiement était échu. Cette somme doit être payée sans délai malgré les autres dispositions de la présente loi.

Saisie

(2) Le ministre peut ordonner la saisie de choses appartenant à la personne qui n'a pas payé une somme exigée aux termes du paragraphe (1); dès lors, les paragraphes 293(2) à (4) s'appliquent, avec les adaptations nécessaires.

Responsabilité des administrateurs

295 (1) Les administrateurs de la personne morale au moment où elle était tenue de verser des droits ou intérêts comme l'exige la présente loi sont, en cas de défaut par la personne morale, solidairement tenus, avec cette dernière, de payer ces droits et intérêts ainsi que les intérêts y afférents.

Restrictions

(2) L'administrateur n'encourt de responsabilité que si :

a) un certificat précisant la somme pour laquelle la personne morale est responsable a été enregistré à la Cour fédérale en application de l'article 288, et il y a eu défaut d'exécution totale ou partielle à l'égard de cette somme;

b) la personne morale a entrepris des procédures de liquidation ou de dissolution, ou elle a fait l'objet d'une dissolution, et une réclamation de la somme

date of commencement of the proceedings and the date of dissolution; or

(c) the corporation has made an assignment or a bankruptcy order has been made against it under the *Bankruptcy and Insolvency Act* and a claim for the amount of the corporation's liability has been proved within six months after the date of the assignment or bankruptcy order.

Diligence

(3) A director of a corporation is not liable for a failure under subsection (1) if the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

Assessment

(4) The Minister may assess any person for any amount of duty or interest payable by the person under this section and, if the Minister sends a notice of assessment, sections 188 to 205 apply with any modifications that the circumstances require.

Time limit

(5) An assessment of any amount payable by a person who is a director of a corporation shall not be made more than two years after the person ceased to be a director of the corporation.

Amount recoverable

(6) If execution referred to in paragraph (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

Preference

(7) If a director of a corporation pays an amount in respect of the corporation's liability that is proved in liquidation, dissolution or bankruptcy proceedings, the director is entitled to any preference to which Her Majesty would have been entitled had the amount not been so paid, and if a certificate that relates to the amount has been registered, the director is entitled to an assignment of the certificate to the extent of the director's payment, which assignment the Minister is empowered to make.

Contribution

(8) A director who satisfies a claim under this section is entitled to contribution from the other directors who were liable for the claim.

2002, c. 22, s. 295; 2004, c. 25, s. 198.

pour laquelle elle est responsable a été établie dans les six mois suivant le début des procédures ou, si elle est antérieure, la date de la dissolution;

c) la personne morale a fait une cession ou une ordonnance de faillite a été rendue contre elle en application de la *Loi sur la faillite et l'insolvabilité* et une réclamation de la somme pour laquelle elle est responsable a été établie dans les six mois suivant la cession ou l'ordonnance.

Diligence

(3) L'administrateur n'encourt pas de responsabilité s'il a agi avec autant de soin, de diligence et de compétence pour prévenir le manquement que ne l'aurait fait une personne raisonnablement prudente dans les mêmes circonstances.

Cotisation

(4) Le ministre peut établir une cotisation pour un montant de droits ou d'intérêts exigible d'une personne aux termes du présent article. Les articles 188 à 205 s'appliquent, avec les adaptations nécessaires, dès l'envoi par le ministre d'un avis de cotisation.

Prescription

(5) L'établissement d'une telle cotisation pour une somme exigible d'un administrateur se prescrit par deux ans après qu'il a cessé d'être administrateur.

Somme recouvrable

(6) Dans le cas du défaut d'exécution visé à l'alinéa (2)a), la somme à recouvrer d'un administrateur est celle qui demeure impayée après le défaut.

Privilège

(7) L'administrateur qui verse une somme, au titre de la responsabilité d'une personne morale, qui est établie lors de procédures de liquidation, de dissolution ou de faillite a droit au privilège auquel Sa Majesté aurait eu droit si cette somme n'avait pas été versée. En cas d'enregistrement d'un certificat relatif à cette somme, l'administrateur a droit à ce que le certificat lui soit cédé par le ministre jusqu'à concurrence de son versement.

Répétition

(8) L'administrateur qui a satisfait à la réclamation peut répéter les parts des administrateurs tenus responsables de la réclamation.

2002, ch. 22, art. 295; 2004, ch. 25, art. 198.

Docket: 2006-3312(IT)G

BETWEEN:

ROY WALSH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on May 1, 2009 at Fredericton, New Brunswick

Before: The Honourable Justice G. A. Sheridan

Appearances:

Counsel for the Appellant:	D. Andrew Rouse
Counsel for the Respondent:	David Besler

JUDGMENT

The appeal from the Notice of Assessment No. 19501 dated February 2, 2005 made under the *Income Tax Act* is allowed, with costs, and the assessment is vacated on the bases that:

1. the Minister has not proven that the execution of the Writ of Seizure and Sale was returned unsatisfied as required by paragraph 227.1(2)(*a*); and

2. the Appellant ceased to be a director of Jardine Security Ltd. on May 31, 2002 and is, therefore, relieved of liability under subsection 227.1(4) of the *Act*.

Signed at Ottawa, Canada, this 4th day of November, 2009.

"G. A. Sheridan"

Sheridan J.

Citation: 2009TCC557
Date: 20091104
Docket: 2006-3312(IT)G

BETWEEN:

ROY WALSH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Sheridan, J.

[1] In February 2005, the Appellant was assessed under section 227.1 of the *Income Tax Act* for the unremitted source deductions of his solely owned company.

[2] The question raised in the pleadings is whether the Appellant was a director during the period contemplated by subsection 227.1(4) and if so, whether he exercised the due diligence required under subsection 227.1(3) of the *Act*. At the hearing, a further issue arose as to whether a writ of execution had been returned unsatisfied under paragraph 227.1(2)(*a*) and is considered below under the heading "Preliminary Matter".

[3] Section 227.1 provides that:

> *Liability of directors for failure to deduct*
>
> 227.1(1) Where a corporation has failed to deduct or withhold an amount as required by subsection 135(3) or 135.1(7) or section 153 or 215, has failed to remit such an amount or has failed to pay an amount of tax for a taxation year as required under Part VII or VIII, the directors of the corporation at the time the corporation was required to deduct, withhold, remit or pay the amount are jointly and severally, or solidarily, liable, together with the corporation, to pay that amount and any interest or penalties relating to it.
>
> *Limitations on liability*
>
> 227.1(2) A director is not liable under subsection (1), unless

> (*a*) a certificate for the amount of the corporation's liability referred to in that subsection has been registered in the Federal Court under section 223 and execution for that amount has been returned unsatisfied in whole or in part;
>
> (*b*) the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the corporation's liability referred to in that subsection has been proved within six months after the earlier of the date of commencement of the proceedings and the date of dissolution; or
>
> (*c*) the corporation has made an assignment or a bankruptcy order has been made against it under the *Bankruptcy and Insolvency Act* and a claim for the amount of the corporation's liability referred to in that subsection has been proved within six months after the date of the assignment or bankruptcy order.
>
> 227.1(3) A director is not liable for a failure under subsection (1) where the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.
>
> *Limitation period*
>
> 227.1(4) No action or proceedings to recover any amount payable by a director of a corporation under subsection (1) shall be commenced more than two years after the director last ceased to be a director of that corporation.

[4] The Appellant's primary position is that subsection 227.1(4) bars the Minister from recovering the unremitted source deductions from him because he ceased to be a director of the company on May 31, 2002, more than two years before he was assessed for those amounts on February 2, 2005. He argues, alternatively, that if he was a director of the company at the relevant time, he exercised the diligence required of him by subsection 227.1(3).

[5] The Respondent contends that at no time did the Appellant cease to be either a *de jure* or *de facto* director of the company and that he failed to take reasonable steps to prevent its failure to remit the source deductions.

Facts

[6] In December 1996, the Appellant purchased a company known as Jardine Security Ltd. ("JSL") from Douglas Jardine. At that time, JSL was in the business of providing security services on public and private property as well as traffic safety control on road construction sites in the Miramichi region of New Brunswick.

[7] The Appellant and his wife acquired all the shares of the company. The Appellant became the sole director. For some reason, a change of directors was never filed with the New Brunswick corporate registry. Thus, at all times relevant to this appeal, the name of the former owner of JSL, Douglas Jardine, was shown in the records of the New Brunswick corporate registry as the sole director of JSL.

[8] The Appellant's goal when he acquired JSL was to expand its operations from the Miramichi region to the entire province. With this in mind, he sought and was successful in securing a contract with New Brunswick Power to provide traffic control services across New Brunswick. He accomplished this by taking a calculated risk: following his negotiations with New Brunswick Power, the Appellant was confident that upon the satisfactory performance of its obligations, JSL's contract would be renewed at a higher price, thus permitting the company to compensate for its low bid and to recoup its outlays for the additional staff, training and equipment needed at the new job sites.

[9] Things looked promising until 2000 when, contrary to all expectations, New Brunswick Power did not renew its contract; at the last minute, JSL was underbid by one of its own former employees. This was a devastating blow to the company. The Appellant met with Hal Raper, Chartered Accountant, to review the company's financial situation and to develop a plan[1] to mitigate the effect of the lost contract. Mr. Raper advised the Appellant to try to increase profit margins by renegotiating contract prices; if this could be accomplished, his projections for the company's future were favourable. As a consequence, the Appellant met with JSL clients and was able to persuade some of them to pay a higher price for the company's services[2]. Armed with this success and Mr. Raper's projections, the Appellant met with the company's banker in the hope of securing additional financing to cover, among other costs, the source deductions. By that time, the company's account manger at the bank had changed; the new representative did not say no but deferred his decision for six months to see how the company performed against its projections.

[10] Meanwhile, the Appellant made some major changes to shore up the company: he laid off staff, including the field manager and bookkeeper, whose respective duties were taken over by the Appellant and his wife. He managed to get the company out of its lease and relocated the business office to the basement of his home. The Appellant injected his own funds into the company: he cashed in insurance policies

[1] Exhibit A-1, Tabs 2 and 3.

[2] Exhibit A-1, Tab 3.

and RRSP's, remortgaged his house and used his personal line of credit and credit cards to cover the company's expenses.

[11] Throughout this time, the Appellant kept the Canada Revenue Agency informed of the company's difficulties and continued working with officials to reduce the company's outstanding liabilities. Although JSL would ultimately succeed in retiring its HST debt, the company was unable to get caught up on its source deduction remittances.

[12] Just when the Appellant began to "see light at the end of the tunnel"[3], two new crises arose: one of its major clients was bought out by an Ontario company which promptly reduced, by more than half, the security services JSL had been providing. Around the same time, an internationally owned security company that had traditionally confined its operation to large urban centers began making incursions into the small events market in the Miramichi. JSL was in no position to compete with the rates the larger, more established firm could offer to its clients.

[13] Thus it was that when the Appellant reported back to the bank in late March or early April 2002, the necessary financing was refused. The Appellant's last-ditch efforts to secure new investors were equally unsuccessful. After consulting with Mr. Raper, the Appellant decided there was nothing for it but to shut down JSL.

[14] The Appellant immediately found employment at a local funeral home and began working long hours to earn the money needed to pay off the personal debt he had incurred trying to salvage the company. While the company's bank account remained open, it was not used for any purpose. After JSL ceased operations, a few cheques came in from late-paying clients; these, the Appellant passed on to Mr. Raper who, in turn, sent them directly to the CRA[4]. When letters from the CRA began arriving for JSL, the accumulated bundles of unopened mail were also forwarded to Mr. Raper for his attention.

[15] When the Appellant told Mr. Raper of his decision to close the company, Mr. Raper, as was his practice, advised him that it would be prudent to resign his position as sole director. About a month later, when Mr. Raper discovered that the Appellant had not yet resigned and was at a loss as to how to go about it, he drafted the following letter:

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[3] Transcript, page 53, lines 1-2.

[4] Exhibit A-1, Tabs 6 and 7.

May 31, 2002

To: Jardine Securty Ltd.
Fr: Roy Walsh

Delivered – Letter of resignation

I am unable to continue as a director. This is my notice of resignation as a director.

[Signature of Roy Walsh]

Roy Walsh[5]

[16] The Appellant went to Mr. Raper's office and signed the letter in his presence. Mr. Raper told him to put the original in the JSL Minute Book. Although the Appellant had no memory of what he had actually done with the letter, his usual practice was to follow Mr. Raper's instructions. In this case, however, he said he was unlikely to have done so because he had never had the Minute Book in his possession. His best guess was that he must have put the resignation letter with the company's general business records which, at the request of the CRA, the Appellant had delivered to the official conducting the JSL payroll audit in the fall of 2002. These documents were never returned to the company. When he was unable to locate the original resignation letter, the Appellant concluded that it must have been with the other JSL documents turned over to the CRA.

[17] Following the payroll audit, in December 2002, JSL was assessed for unremitted payroll deductions together with penalties and interest.

[18] In February 2003, Lawrence Anderson, a CRA Collections Officer, called the Appellant to advise that he was responsible for paying the company's source deductions[6]. This came as a shock to the Appellant who had believed that his obligations as a director ended when the company ceased operations. Although he told Mr. Anderson he would have his accountant get in touch with him, he did not, in fact, act on this promise immediately because he owed money to Mr. Raper for past services and had no funds to pay either him or the CRA. As it happened, around this same time he bumped into Mr. Raper who, upon learning of the Appellant's new difficulties, undertook to help him notwithstanding his outstanding invoices. Thus it

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[5] Exhibit A-1, Tab 5.

[6] Exhibit R-4.

was that about a month later, on March 12, 2003, Mr. Raper (with the Appellant in his office) called Mr. Anderson to discuss the situation.

[19] The next significant event occurred on May 14, 2004. Pursuant to paragraph 227.1(2)(*a*) of the *Act*, the Minister registered a Certificate of Registration[7] in the Federal Court of Canada for $75,503.11 representing JSL's unremitted source deductions for 2001 and 2002. On December 15, 2004, a Writ of Seizure and Sale[8] was issued and sent to the New Brunswick Sheriff's Office for execution. Whether the Writ was returned unsatisfied is in issue and is discussed below under the heading "Preliminary Matter".

[20] On February 2, 2005, the Appellant was assessed under section 227.1 for the company's unremitted source deductions.

1. Preliminary Matter

[21] At the hearing, an issue arose as to whether the Minister was able to prove his compliance with paragraph 227.1(2)(*a*); namely, that a writ of execution had been returned unsatisfied:

> 227.1(2) A director is not liable under subsection (1), unless
>
> > (*a*) a certificate for the amount of the corporation's liability referred to in that subsection has been registered in the Federal Court under section 223 and execution for that amount has been returned unsatisfied in whole or in part; [Emphasis added.]

[22] The matter came up during the examination of the CRA's representative, Mr. Anderson. Counsel for the Respondent had just put in evidence copies of the section 223 Certificate[9] and the Writ of Seizure and Sale[10] (the "Writ") that had been sent to for execution. Counsel then presented to Mr. Anderson a copy of a letter from the Sheriff's Office dated January 24, 2005 advising that the Writ had been returned unsatisfied. At that point, counsel for the Appellant objected to the admission of the

[7] Exhibit R-1 and as amended, Exhibit R-2.

[8] Exhibit R-3.

[9] Exhibit R-1 and R-2.

[10] Exhibit R-3.

letter on the ground that it had not been included in the Respondent's List of Documents and because it was hearsay. After a short break, counsel for the Respondent (who had not been counsel during the exchange of documents or examinations for discovery) confirmed that, contrary to his understanding, the Sheriff's letter had not been listed among the Respondent's documents.

[23] This led to the further question as to whether, if the letter were excluded from evidence, the appeal ought to be allowed on the basis that a director is not liable under subsection 227.1(1) unless the Minister can establish that he has fulfilled the conditions of paragraph 227.1(2)(*a*). Counsel for the Appellant argued that whether the Writ had been returned unsatisfied lay exclusively within the knowledge of the Minister and the onus was upon him to prove his strict compliance with all the elements of paragraph 227.1(2)(*a*). The Minister's failure to refer to the Sheriff's letter in his List of Documents or to call a witness with personal knowledge that the Writ had been returned unsatisfied meant that the Minister was unable to do so; accordingly, the Appellant was not liable under subsection 227.1(1) and the assessment was not valid.

[24] My first inclination was to admit the Sheriff's letter. By the time of counsel's objection to its admission, the Appellant himself had testified that "[t]here were no assets"[11] in the company. Until the Sheriff's letter was presented to Mr. Anderson, neither counsel seemed to have realized that it had not been included in the Respondent's List of Documents. Further, while there was no reference to the letter itself in the Reply to the Notice of Appeal, the assumption in paragraph 8(aa) stated that the execution of the Writ of Seizure and Sale was returned unsatisfied on January 24, 2005, the date of the Sheriff's letter. Counsel for the Respondent pointed to certain representations made by counsel for the Appellant at the examination for discovery: on his reading of the transcript, he argued that counsel for the Appellant had indicated that his client did not take issue with assumption 8(aa). Finally, there was Mr. Anderson's oral evidence that he had reviewed the CRA file and, in particular, the documents filed with the Federal Court. Mr. Anderson is an official with over 20 years experience with the CRA, most of it in Collections. Counsel for the Appellant did not challenge Mr. Anderson's credibility. For my part, I found him to be a very reliable witness: he answered the questions put to him with the facts as he knew them; as will be seen from my review below of his testimony regarding the Appellant's status as a director, he was not one to embellish his answers to bolster the

[11] Transcript, page 73, line 21.

Respondent's case. When he did not know an answer or could not discern one from his colleagues' diary notations, he candidly said so.

[25] Notwithstanding the above, however, I ultimately decided that the letter ought to be excluded. There was no justification to deviate from the general rule of excluding from evidence documents not referred to in a party's pleadings or list of documents[12]. While the Appellant's testimony that JSL had no assets was consistent with the Minister's assumption that the execution of the Writ of Seizure and Sale was returned unsatisfied, it is not proof that the Minister took the steps required of him under paragraph 227.1(2)(*a*)[13]. Paragraph 227.1(2)(*a*) requires nothing of the taxpayer; its focus is the action that must be taken by the Minister to trigger the taxpayer's liability under subsection 227.1(1) and, in turn, his power to assess. As for the representations of counsel for the Appellant at examinations for discovery, I accept his interpretation of the portions of the discovery read in at the hearing[14]: that because his client had no knowledge of the facts assumed in paragraph 8(aa), he could not dispute them, but nor did he admit them. Finally, though a credible witness, Mr. Anderson's involvement with the Appellant's file ended long before the Writ of Seizure and Sale was sent for execution. His testimony that the Writ had been returned unsatisfied was based entirely on the information in the excluded letter[15]. Although counsel for the Respondent argued that hearsay went to weight rather than admissibility, Rip, J. (as he then was) reached a different conclusion in *Gestions Rodney Cleary & Fils Ltée v. R.*[16], one of the cases filed by the Respondent. In that case, C.J. Rip, compared the Minister's use of hearsay evidence during the assessment process and at trial:

> I shall consider the hearsay objection first. There is no doubt that in making an assessment, officials of a taxing authority, such as the Canada Customs and Revenue Agency and the Ministère du Revenu du Québec rely on hearsay as well as direct

[12] *Tax Court of Canada Rules (General Procedure),* subsection 89(1); *Scavuzzo v. R.,* [2006] 2 C.T.C. 2429, (T.C.C.).

[13] I note, as well, that although the Appellant pleaded at paragraph 2 of the Notice of Appeal that JSL was "insolvent" when it ceased operations, this allegation was denied by the Minister through the combined operation of paragraphs 2 and 6 of the Reply to the Notice of Appeal.

[14] Transcript, page 106, lines 20-25, to page 110, lines 1-15, inclusive.

[15] Transcript, page 91, lines 9-18, inclusive.

[16] [2005] 5 C.T.C. 2007. (T.C.C.).

> evidence. An assessment is not bad simply because the assessor relied on hearsay evidence. The problem is that if the assessment is questioned in a court of law and the Minister has the onus of proving misrepresentation, for example, or where the onus of proof shifts to the Crown, the hearsay evidence gathered by the assessor cannot be used to defend the assessment; the ordinary rules of evidence prevail.[6] The evidence of an employee of the CCRA, the Ministère du Revenu du Québec or any government department is subject to the same standards as the evidence of any other citizen. That the person may hold a particular office does not grant him or her the privilege of adducing inadequate evidence. A court cannot admit statements as proof of their truth or as proof of assertions implicit therein when such written or oral statements are made by persons otherwise than in testimony and in the proceeding in which it is offered.[17]

[26] What, then, is the consequence of having excluded the Sheriff's letter? Given the unexpected nature of the issue, counsel did not have (or request) the opportunity to make submissions based on a careful review of the legislation and jurisprudence, if any. However, in *Worrell v. R.*[18], a decision of the Federal Court of Appeal cited by the Appellant in respect of the due diligence issue, Evans, J.A. held:

> Whether directors have exercised due diligence to prevent [failures to remit] from occurring has both a legal and a factual aspect. As a matter of law, the liability of a director for unremitted source deductions and G.S.T. does not crystallise until the conditions prescribed in subsection 227.1(2) have been satisfied. Moreover, if the remittances are made in full, albeit late, the directors will not be liable for the company's previous failure to remit.[19] [Emphasis added.]

[27] The purpose of paragraph 227.1(2)(*a*) is to require the Minister to exhaust his remedies of recovery against the corporate taxpayer before permitting him the extraordinary remedy of assessing a third party, its director, for the company's unremitted source deductions[20]. While subsection 227(10) provides that the Minister "… may at any time assess any amount payable under … section 227.1", that otherwise broad power to assess is contingent upon the fulfillment of the conditions set out in paragraph 227.1(2)(*a*). In this way, paragraph 227.1(2)(*a*) is analogous to subparagraph 152(4)(*a*)(i) which, briefly stated, limits the Minister's

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[17] Above, at paragraph 22. In reaching his decision, Rip, J. also considered certain provisions of the *Canada Evidence Act*; that legislation was not raised by counsel in their submissions.

[18] [2001] 1 C.T.C 79. (F.C.A.).

[19] Above, at paragraph 74.

[20] Consistent with this is subsection 227.1(5) which limits the amount of the taxpayer's liability under paragraph 227.1(2)(*a*) to "the amount … remaining unsatisfied after execution".

power to assess beyond the normal reassessment period to circumstances where the taxpayer's actions amount to misrepresentation. While subparagraph 152(4)(*a*)(i) is silent as to onus and manner of proof, the jurisprudence has established that the imposition of conditions on the Minister's power to assess has the effect of shifting the onus, which otherwise lies with the taxpayer, to the Minister and that the Minister's burden of proof under that provision is a heavy one.

[28] Similarly, the language of paragraph 227.1(2)(*a*) places the onus on the Minister but does not specify how he is to prove his compliance with its conditions. Thus, it is for the Court to decide whether the Minister has met his evidentiary burden. While I have some sympathy for counsel for the Respondent's characterization of the omission of the Sheriff's letter from the Respondent's List of Documents as "an irregularity", it seems to me that proof of the Minister's fulfillment of the conditions in paragraph 227.1(2)(*a*) is so fundamental to his power to assess under subsection 227(10) that any doubt on that score must be resolved in favour of the taxpayer. Here, the Minister has produced no evidence to show that the execution of the Writ of Seizure and Sale was returned unsatisfied. Absent proof that the Minister has satisfied the requirements of paragraph 227.1(2)(*a*), no liability attaches under subsection 227.1(1) and the assessment upon which it was based cannot stand.

[29] The appeal is allowed, with costs, and the assessment is vacated on the basis that the Minister has not proven that the execution of the Writ of Seizure and Sale was returned unsatisfied in whole or in part as required by paragraph 227.1(2)(*a*) of the *Act*.

2. Was the Appellant a *de jure* or *de facto* director?

[30] In the event I am in error on the Preliminary Matter, I have also considered the Appellant's primary basis for his appeal; namely, that he was not a director of JSL at the relevant time under subsection 227.1(4) of the *Act.*

A. Was the Appellant a *de jure* director?

[31] For the reasons set out below, I am satisfied that the Appellant was not a *de jure* director of JSL because he resigned from that position on May 31, 2002.

[32] The relevant portions of section 66 of the *Business Corporations Act* of New Brunswick provide that:

> 66(1) A director of a corporation ceases to hold office when

> (a) he dies or resigns;
>
> …
>
> (2) A resignation of a director becomes effective at the time a written resignation is sent to the corporation, or at the time specified in the resignation, whichever is later.

[33] The Crown's position is that given the absence of the original of the resignation letter and the implausibility of its having gone astray when the company's records were turned over to the CRA, the Appellant is not to be believed in his assertion that he signed a letter of resignation on or about May 31, 2002. On this point, counsel submitted:

> … if a letter of resignation had been in [the JSL documents delivered to the CRA payroll auditor], then it would have been brought to the attention of the CRA. The fact that nobody there ever found it is why we are here today, and I would suggest that is evidence in itself that the letter never made it to the company's books and records.[21]

[34] The first weakness of this argument is that it is premised upon the infallibility of the document management processes of a large government agency. In its characterization of the letter not having been "found", counsel's argument also presupposes that someone at the CRA was actually looking for it. I am unable to embrace either of these hypotheses. The JSL payroll audit was a different beast entirely from the Appellant's personal assessment for the company's unremitted source deductions. Various CRA officials were involved with their files from the time JSL first fell behind in its remittances to the moment of the Appellant's personal assessment in February 2005. In these circumstances, there is no reason to conclude that the records from one file would necessarily make their way to the other. Thus, the Appellant's conclusion that the letter must have gone astray along with the other JSL records turned over to the CRA is plausible and, in any event, more likely than the thesis proposed by the Respondent.

[35] Further, while counsel for the Respondent invited the Court to draw the inference that the letter did not exist because it could not now be found, he did not directly challenge the credibility of the Appellant or Mr. Raper. The Appellant's candid admission that he had no memory of what he had done with the letter had the ring of truth. He did not strike me as one with a penchant for filing documents, even

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[21] Transcript, page 164, lines 17-24.

under ideal conditions[22]. As it was, he had been living for several months with the stress of keeping a sinking business afloat; when he signed the resignation letter, he had just taken the difficult decision to close JSL. When Mr. Raper suggested he resign his directorship, the Appellant felt, quite understandably, the layman's unease with the notion of writing a letter to himself to say he had resigned. That unease led to procrastination, ended only by Mr. Raper's offer to draft the letter for him and insistence on getting it signed. Although Mr. Raper did not specifically remember the events of May 31, 2002, he testified that it was his practice to record, for billing purposes, the client's name and the time spent in his daytimer. The Appellant put in evidence a copy of Mr. Raper's daytimer[23] showing a meeting with the Appellant of 15 minutes' duration on May 31, 2002. This document was not challenged on cross-examination.

[36] The Appellant said it was normally his practice to follow Mr. Raper's advice, evidence that is consistent with his having acted on Mr. Raper's suggestions for improving the company's financial outlook. One exception, however, was his handling of the resignation letter. Because he had never had the company's Minute Book in his possession, it would make sense for the Appellant simply to put the letter with the company's other records in the home business office, especially since, by that time, the company itself was defunct. In these circumstances, the Appellant would have been less credible if he had insisted that he had a clear memory of placing the letter neatly in the Minute Book as instructed.

[37] The second prong of the Crown's argument is that, even if the Appellant signed the letter, that does not amount to a written resignation having been "sent to the corporation" as contemplated by subsection 66(2) of the New Brunswick *Business Corporations Act.* While acknowledging the practical difficulties of resigning as a director of a solely owned corporation, counsel for the Respondent argued that a director must do something more than "resign in his own mind"[24]. In my view, this characterization of the Appellant's actions does not accurately describe what he, in fact, did.

[38] There is no statutory requirement in the New Brunswick *Business Corporations Act* that, to be effective, the written resignation must be placed in the

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[22] And, as this case has shown, even lawyers lose track of documents.

[23] Exhibit A-1, Tab 4.

[24] Transcript, page 165, line 4.

company's Minute Book. The key to provisions like subsection 66(2) is that there be "meaningful communication with the corporation"[25] of a director's decision to resign.

[39] In *Perricelli v. R.*[26], even though the relevant provincial legislation contemplated a written resignation, the Court held on the facts of that case that a director had effectively resigned when he announced his intentions to the two remaining directors:

> I am satisfied Mr. Perricelli resigned in the summer of 1990. He did so when the three directors and shareholders were all together. It is a matter of whether this resignation was effective in accordance with the laws of Ontario. Did any one of the three men utter the words: "Notice of this meeting is waived?" Unlikely. Did Mr. Cuthbert and Mr. Lishman say: "We accept Mr. Perricelli's resignation and hereby elect the two of us as ongoing directors?" Again, unlikely. But did all three leave the meeting with an understanding that Mr. Perricelli would no longer serve in his capacity as director? Absolutely.[27]

[40] The facts in the present case are even more compelling. Here, there was a written resignation signed by the company's only director in the presence of the corroborating witness who had drafted it. The letter was then taken to the company's business office.

[41] In these circumstances, I am satisfied that there was "meaningful communication" to JSL of the Appellant's resignation effective May 31, 2002; thus, the Appellant ceased to be a *de jure* director as of that date.

B. Was the Appellant a *de facto* director of JSL?

[42] The Respondent's alternative position is that, even if the Appellant's resignation was effective, he remained a *de facto* director of JSL and as such, is liable for the company's unremitted source deductions.[28] While acknowledging that there had not been much for the Appellant to do once the company ceased operations, counsel for the Respondent argued that the little he had done warranted a finding that he remained in control of JSL. Counsel relied, in particular, on the Appellant's

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[25] *Hart v. Lefebvre*, (1991), 2 B.L.R. (3d) 84 at paragraph 5. (Ont. S.C.J., December 1, 1999).

[26] [2002] G.S.T.C. 71. (T.C.C.).

[27] Above, at paragraph 32.

[28] *Wheeliker v. R.*, [1999] 2 C.T.C. 395. (F.C.A.); *McDougall v. R.*, [2001] 1 C.T.C 2283. (T.C.C.).

having forwarded JSL cheques and correspondence to Mr. Raper and having authorized him to carry on discussions with CRA officials. Counsel submitted that the Appellant's actions went beyond mere holding out, as in *Hartrell v. R.*[29]; here, the Appellant actually maintained control of JSL at all times relevant to this appeal.

[43] In my view, the Appellant's actions do not support such a conclusion. It must be remembered that although the Appellant resigned as a director on May 31, 2002, he continued to be a shareholder of JSL and had to comply with the CRA's request for company's records. As a practical matter, JSL's mail was being sent to the Appellant's home only because its business office had had to be relocated there when JSL began to encounter financial difficulties; but for this, given the Appellant's lack of involvement after May 31, 2002, he might not even have been aware of the correspondence. Had the Appellant been acting as a director, it would have made sense for him to deposit the cheques in the company's bank account which remained open. Instead, he simply passed them on to the company's accountant for his attention, along with any letters to the company from the CRA which had accumulated.

[44] The Appellant did much less than the taxpayers in *Netupsky v. R.*[30] or *Scavuzzo v. R.*[31]. In *Netupsky*, the appellant was held not to be a *de facto* director, even though after his resignation, he had signed a series of detailed letters to third parties and taken out a bank loan on behalf of the corporation. In *Scavuzzo*, Bowman, C.J. distinguished between actions taken by the appellant in his role as general manager from those in his capacity as director of the company to find that, even though the appellant had signed "many contracts"[32] on its behalf after his resignation, he was not a *de facto* director of the corporation. In the present case, Mr. Anderson confirmed on cross-examination that the CRA had no documentation signed by the Appellant on behalf of JSL after he resigned on May 31, 2002.

[45] As for the discussions between the Appellant and/or Mr. Raper and CRA officials after May 31, 2002, Mr. Raper was acting for both JSL and the Appellant in his personal capacity. Further muddying the waters was the fact that the CRA also

[29] [2007] 1 C.T.C. 2109. (T.C.C.).

[30] [2003] G.S.T.C. 15. (T.C.C.).

[31] Above.

[32] At paragraph 25.

had active files for both taxpayers: JSL's payroll audit assessment and the Appellant's director's liability assessment. As often happens with solely owned corporations, a clear distinction was not always maintained between the company and its directing mind. Even the CRA officials seem to have had problems keeping the players straight: their notes reveal that, at times, it was difficult to determine what was being discussed with whom on whose behalf. For example, although the heading of Mr. Anderson's diary entries[33] is shown as "Jardine Security Ltd.", he testified that, in his mind, the "client" referred to in those notes was the Appellant personally.

[46] Much of the confusion seems to have arisen from the fact that, for reasons unknown, no change of directors was ever filed for JSL with the New Brunswick corporate registry. Mr. Anderson's evidence was that, by the time of the payroll audit in September 2003, the CRA official who took over the file, Phyllis Koval, had discovered that the former owner, Douglas Jardine, was shown, incorrectly, as the director of JSL in the New Brunswick corporate registry. Based on her notes, Mr. Anderson confirmed that one "Trinda Blackmore", described in the notes as the "accountant for Mr. Jardine's business"[34], had told Ms. Koval that Douglas Jardine had ceased to be a director when the company was sold[35]. While there is no clear evidence of Trinda Blackmore's identity or role in these matters, Mr. Anderson's understanding was that she was affiliated with Grant Thornton, the same accounting firm as Mr. Raper. More importantly, however, there is nothing in Ms. Koval's notes to show that either the Appellant or Mr. Raper were ever involved in these discussions or asked about the Appellant's status. Mr. Anderson testified that he never raised the matter of the directorship with the Appellant or Mr. Raper because what he was interested in was that JSL had ceased operations. While he could not remember if the Appellant had ever identified himself as a director, Mr. Anderson added that as a CRA official, he has "… never had, in 20 years, anybody that named themselves as director of the company."[36] Thus, the description in Mr. Anderson's notes of the Appellant as the "director of this non-operating business [JSL]"[37] was

[33] Exhibit R-4.

[34] Transcript, page 123, lines 23-24.

[35] From which I infer that, at some point, the CRA had been looking to Mr. Jardine for payment of the outstanding source deductions.

[36] Transcript, page 115, lines 6-7.

[37] Exhibit R-4.

based on his own assumption rather than information received from the Appellant or Mr. Raper.

[47] Both the Appellant and Mr. Raper testified that he had never advised the Appellant not to disclose that he had resigned as the director of JSL. On the evidence presented, it seems that no one from the CRA ever sought confirmation of this fact from the Appellant or his representative. The CRA notes are not precise enough to conclude that the Appellant was a *de facto* director of JSL, as counsel for the Respondent urged me to do, simply because someone, (apparently) an accountant, at Grant Thornton acting for Mr. Jardine, undertook to remove Mr. Jardine's name from the New Brunswick corporate registry, after the Appellant had resigned and when the CRA was discussing his potential tax liability.

[48] As mentioned above, subsection 227(10) authorizes the Minister to assess "at any time". He may do so on assumed facts. On Mr. Anderson's interpretation of Ms. Koval's notes, as early as the fall of 2003, the CRA was aware that Mr. Jardine was not a director of JSL and was, at the very least, forming the view that the Appellant might be. For reasons known only to the Minister, rather than acting on his officials' assumptions, he chose to wait to assess the Appellant until February 2, 2005. The upshot is that his right to recover the amounts assessed under subsection 227.1(1) is now barred by subsection 227.1(4) of the *Act.*

[49] For the reasons set out above, the appeal is allowed, with costs, and the assessment is vacated on the basis that the Appellant ceased to be either a *de jure* or *de facto* director of Jardine Security Ltd. on May 31, 2002.

3. Did the Appellant exercise due diligence?

[50] In view of my conclusions above, it is not necessary for me to consider the issue of whether the Appellant exercised due diligence under subsection 227.1(3) of the *Act*.

Signed at Ottawa, Canada, this 4th day of November, 2009.

"G. A. Sheridan"

Sheridan J.

CITATION:	2009TCC557
COURT FILE NO.:	2006-3312(IT)G
STYLE OF CAUSE:	ROY WALSH AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Fredericton, New Brunswick
DATE OF HEARING:	May 1, 2009
REASONS FOR JUDGMENT BY:	The Honourable Justice G. A. Sheridan
DATE OF JUDGMENT:	November 4, 2009

APPEARANCES:

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Court of King's Bench of Alberta

Citation: Delta 9 Cannabis Inc (Re), 2025 ABKB 52

Date: 20250129
Docket: 2401 09668
Registry: Calgary

In the Matter of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as Amended

In the Matter of the Compromise or Arrangement of Delta 9 Cannabis Inc., Delta 9 Logistics Inc., Delta 9 Bio-Tech Inc., Delta 9 Lifestyle Cannabis Clinic Inc., and Delta 9 Cannabis Store Inc.

Reasons for Decision
of the
Honourable Justice M.A. Marion

I. Introduction and Background

[1] "**Delta 9**", comprised of Delta 9 Cannabis Inc (**Delta 9 Parent**), Delta 9 Logistics Inc, Delta 9 Lifestyle Cannabis Clinic Inc, Delta 9 Cannabis Store Inc and Delta 9 Bio-Tech Inc (**Bio-Tech**), is a vertically integrated group of companies in the business of cannabis cultivation, processing, extraction, wholesale distribution, retail sales and business to business sales.

[2] In recent years, Delta 9 has suffered losses due to a number of factors, including intense competition; over-supply of cannabis products leading to significant price compression; illicit supply of cannabis; burdensome regulatory costs; significant capital required for new product development; increased financing costs due to changing capital market investor sentiment driving investment away from the cannabis sector; and higher interest rates. By March 2024, Delta 9 was in breach of covenants owed to its secured creditor and, in May 2024, it received a demand and notice of intention to enforce security under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (*BIA*).

[3] Delta 9 then sought relief under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (*CCAA*). On July 15, 2024, the Court granted an initial order (**Initial Order**) under the *CCAA* providing, among other things, a stay of proceedings against Delta 9 (**Stay**).

[4] On July 24, 2024, on the "comeback" application with respect to the Initial Order, the Court granted an Amended and Restated Initial Order (**ARIO**), a Claims Procedure Order and an order approving a sale and investment solicitation process (**SISP**) with respect to Bio-Tech (**Bio-Tech SISP Order**). The ARIO approved, among other things, the appointment of a Chief Restructuring

Officer, Delta 9 group borrowing funds from 2759054 Ontario Inc operating as Fika Herbal Goods (**Fika** or **Plan Sponsor**) subject to an approved interim financing term sheet, among other things.

[5] On September 11, 2024, the Court granted an order, among other things, extending the Stay period under the ARIO to November 1, 2024 and approving an amendment to the Interim Financing Term Sheet between the Delta 9 group and Fika.

[6] On November 1, 2024, I granted a further extension order extending the Stay to January 31, 2025, approving a further amendment to the interim financing, increasing the financing charge, and amending a claims procedure order to allow the court-appointed monitor (**Monitor**) to accept late claims.

[7] On November 8, 2024, I dismissed Fika's application seeking, among other things, a creditors' meeting for a proposed plan of arrangement: ***Delta 9 Cannabis Inc (Re)***, 2024 ABKB 657.

[8] On November 21, 2024, Fika's counsel notified the Court that January 10, 2025 had been scheduled for two separate applications in this matter: determining the amount owing under a credit facility between SNDL Inc and Delta 9 (**SNDL Dispute**) and an application for approval of an amended plan of arrangement (**Plan**).

[9] On December 2, 2024, the Court granted an order (**Meeting Order**) for, among other things, a creditor's meeting (**Meeting**) for the Plan.

[10] On December 20, 2024, the Meeting was held in accordance with the Meeting Order. The single class of unsecured affected creditors (**Affected Creditors**) overwhelmingly approved the Plan.

[11] On December 30, 2024, Delta 9's counsel served unfiled applications (**Applications**) to the service list in this matter, which included:

(a) an application for a Sanction Order and Stay Extension (**Sanction Application**) relating to the Plan for defined "Plan Entities", extending the Stay, and approving the fees and disbursements of the Monitor and its legal counsel; and

(b) an application for a "Sale Approval and Vesting Order" (**SAVO**) and an "Approval and Reverse Vesting Order" (**ARVO**), for two proposed transactions:

(i) first, approving a sale and vesting of certain assets to 6599362 Canada Ltd (**659**) contemplated in a December 28, 2024 asset purchase agreement (**APA**), including in particular a 95,000 square-foot cannabis cultivation and processing facility in Winnipeg, Manitoba (**Bio-Tech Facility**) (the **659 Transaction**); and

(ii) second, approving a December 28, 2024 share purchase agreement (**SPA**) between Delta 9 Parent, Bio-Tech and Simply Solventless Concentrates Ltd (**SSCL**) by which Delta 9 Parent would sell its shares of Bio-Tech to SSCL pursuant to a reverse vesting order (**RVO**) structure (the **SSCL Transaction**).

[12] At the same time, Delta 9's counsel served a sixth affidavit of John Arbuthnot IV (**Arbuthnot**) dated December 30, 2024 (**Sixth Affidavit**) and a seventh Arbuthnot affidavit dated December 30, 2024 (**Seventh Affidavit**).

[13] On January 3, 2025, the Monitor's counsel provided the Court with the sixth report of the Monitor dated January 4, 2025 (**Sixth Monitor's Report**).

[14] On January 4, 2025, Delta 9's counsel advised the Court that the SNDL Dispute application had been adjourned by consent to be heard by another Justice on February 11, 2025. On January 6, 2025, Delta 9's counsel served filed copies of the Applications, the Sixth Affidavit, the Seventh Affidavit, and briefs supporting the Applications.

[15] On January 9, 2025, Delta 9's counsel provided the Court updated proposed forms of orders and an affidavit of service. Counsel also advised that they had recently been told that the Canada Revenue Agency (**CRA**) may oppose aspects of the Applications and provided the Court additional case authorities and evidence filed earlier in the action that Delta 9 might rely on.

[16] On January 9, 2025, the Monitor's counsel provided the Court with a supplement to the Sixth Monitor's Report (**Monitor's Supplement**).

[17] There was no questioning on any of the evidence filed in respect of or relied on at the Hearing.

[18] On January 10, 2025, I heard the Applications (**Hearing**).

[19] During the Hearing, CRA objected to certain aspects of the Applications, particularly the releases contemplated in the AVRO for the SSCL Transaction. I understand that CRA raised its opposition only shortly before the Hearing. During oral argument at the Hearing, CRA provided me a written brief, which seeks (among other things) a lifting of the Stay to allow it to issue director's liability assessments against Bio-Tech's director (Arbuthnot) and former directors for Bio-Tech's unremitted excise duties. CRA filed no application or evidence in support of its position. It referred to, among other things, an SSCL press release that was not in evidence and upon which I have not relied in making my decision.

[20] No party sought an adjournment of the Hearing, or the opportunity to file any further evidence. The Applications proceeded on the record before me.

[21] Ultimately, only CRA had any opposition to the Applications.

[22] On January 10, 2025, I granted uncontested aspects of the Applications, for a restricted court access and sealing order, and approving the Monitor and its counsel's fees and disbursements. I reserved on the core aspects of the Applications.

II. Issues

[23] The issues raised in the Applications are:

(a) Should the Court sanction the Plan?

(b) Should the Court extend the Stay?

(c) Should the Court approve the 659 Transaction on the terms proposed?

(d) Should the Court approve the SSCL Transaction on the terms proposed?

III. Analysis

A. Sanction Application

1. Legal Framework for Plan Sanction under the *CCAA*

[24] The Court may sanction a compromise or plan of arrangement if a majority in number representing two thirds in value of the creditors (or class of creditors), at a creditors' meeting, vote in agreement to a compromise or arrangement as proposed (or altered or modified at the meeting): *CCAA*, section 6(1); ***9354-9186 Québec inc v Callidus Capital Corp***, 2020 SCC 10 [***Callidus***] at para 57; Once sanctioned, the plan is binding on each class of creditors that participated in the vote: *CCAA*, section 6(1); ***Callidus*** at para 57.

[25] The general test courts apply when considering whether to sanction a plan is well established. It requires: (i) strict compliance with all statutory requirements; (ii) all materials filed and procedures carried out must authorized by the *CCAA*; and (iii) a fair and reasonable plan: ***Target Canada Co (Re)***, 2016 ONSC 316 [***Target Canada 2016***] at para 70; ***Re Northland Properties Ltd***, 1988 CanLII 3250 aff'd 1989 CanLII 2672 (BC CA); ***Canadian Airlines Corp (Re)***, 2000 ABQB 442 at para 60 leave to appeal refused 2000 ABCA 238; ***Lutheran Church Canada (Re)***, 2016 ABQB 419 at para 114; ***Re: Canwest Global Communications Corp***, 2010 ONSC 4209 at para 14; ***Laurentian University of Sudbury***, 2022 ONSC 5645 at para 23.

[26] In considering whether the applicant has complied with all statutory requirements under the *CCAA*, the Court will typically consider the following, as described in ***Laurentian University*** at para 24 (citing ***Canwest Global*** at para 15):

(a) if the applicant comes within the definition of a "debtor company" under section 2(1) of the *CCAA*:

(b) if the applicant has total claims in excess of $5 million;

(c) if the creditors were properly classified;

(d) if the notice of meeting was sent in accordance with the meeting order;

(e) if the meeting was properly constituted;

(f) if the voting was properly carried out; and

(g) if the plan was approved by the requisite majorities.

[27] The assessment of whether a plan is fair and reasonable engages the Court's discretion: ***Canadian Airlines*** at para 95. In considering whether a plan is fair and reasonable, perfection is not required: ***Laurentian University*** at para 31; ***AbitibiBowater Inc (Re)***, 2010 QCCS 4450 at

para 33. The Court should consider the relative degrees of prejudice that would flow from granting or refusing to grant the relief sought and whether the plan represents a fair balancing of interests in light of other options: ***Laurentian University*** at para 31; ***Canadian Airlines*** at para 3.

[28] Accordingly, the Court will consider the following, as set out in ***Laurentian University*** at para 32 (citing ***Canwest Global*** at para 21), and recently confirmed in ***Nordstrom Canada Retail, Inc***, 2024 ONSC 1622:

(a) whether the claims were properly classified and whether the requisite majorities of creditors approved the plan;

(b) what creditors would receive on bankruptcy or liquidation as compared to the plan;

(c) alternatives available to the plan and bankruptcy;

(d) oppression of the rights of creditors;

(e) unfairness to shareholders; and

(f) the public interest.

[29] The *CCAA* specifically allows for releases of directors for pre-filing claims that relate to the obligations of the company where the directors are by law liable in their capacity as directors for payment of such obligations: *CCAA*, section 5.1. However, the Court's power to sanction a plan goes further to include plans that contain other third-party releases: ***Canadian Airlines*** at para 92; ***Wiebe v Weinrich Contracting Ltd***, 2020 ABCA 396 at para 32; ***Metcalfe & Mansfield Alternative Investments II Corp, (Re)***, 2008 ONCA 587 at paras 43, 78; ***Lutheran Church Canada*** at para 171; ***Canwest Global*** at paras 28-30; ***Laurentian University*** at para 39.

[30] While no single factor will be determinative, the jurisprudence about releases of third parties has developed over time and currently reflects the consideration of the following key factors summarized in ***Laurentian University*** at para 40 and ***Green Relief Inc***, 2020 ONSC 6837 at para 27 (both citing ***Lydian International Limited (Re)***, 2020 ONSC 4006 at para 54):

(a) whether the released claims are rationally connected to the purpose of the plan;

(b) whether the plan can succeed without the releases;

(c) whether the parties being released contributed to the plan;

(d) whether the releases benefit the debtors as well as the creditors generally;

(e) whether the creditors voting on the plan have knowledge of the nature and the effect of the releases; and

(f) whether the releases are fair, reasonable and not overly broad.

[31] Some factors may assume greater weight in one case than in another. Where releases are objected-to, the Court may also analyze the quality of the claims the objecting party wishes to maintain: ***Green Relief*** at paras 28-29.

[32] Finally, in considering whether a plan is fair and reasonable, courts are also mindful of the *CCAA's* remedial purpose: ***Canadian Airlines*** at para 95; ***Canwest Global*** at para 20.

[33] A modern summary of the *CCAA's* remedial purpose is set out in ***Callidus*** at paras 40-42. In summary: among Canada's insolvency statutes' objectives (providing for timely, efficient and impartial resolution of a debtor's insolvency; preserving and maximizing the value of a debtor's assets; ensuring fair and equitable treatment of the claims against a debtor; protecting the public interest; and, in the context of a commercial insolvency, balancing the costs and benefits of restructuring or liquidating the company), the *CCAA* generally prioritizes "avoiding the social and economic losses resulting from liquidation of an insolvent company" and has "the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by the firm's financial distress ... and enhancement of the credit system generally": ***Callidus*** at paras 40-41, citing (among others): ***Century Services Inc v Canada (Attorney General)***, 2010 SCC 60 at para 70 [***Century Services***]; J. P. Sarra, *Rescue! The Companies' Creditors Arrangement Act* (2nd ed. 2013), at pp 4-5 and 14; ***Ernst & Young Inc v Essar Global Fund Ltd***, 2017 ONCA 1014 at para 103.

2. Should the Court Sanction the Plan?

[34] The Plan affects the Affected Creditors but not persons holding unaffected claims (as defined). It contemplates certain "convenience" Affected Creditors with small claims to elect to receive the lesser of $4,000 and the value of their allowed affected claim. It also provides for the establishment by the Plan Sponsor of a $750,000 cash creditor pool and a creditor equity pool of Fika shares worth $4,000,000 (and the entitlement of each eligible voting non-convenience Affected Creditor with a proven claim to receive a *pro rata* cash and equity payment from those pools on Plan implementation in satisfaction of their claims). SNDL will ultimately be paid in full as part of Plan implementation (subject to confirmation of the total amount as affected by resolution of the adjourned SNDL Dispute). Upon sanctioning, the Plan shall constitute the full, final and absolute settlement of all rights by Affected Creditors.

[35] The Plan provides for releases (**Plan Releases**) of the Plan Entities, past and current employees, legal and financial advisors, other Plan Entities' representatives, directors and officers, the Monitor (and its legal advisors), and the Plan Sponsor.

[36] I accept the unchallenged evidence and find that there has been compliance with the *CCAA* statutory requirements and that all materials filed, and procedures carried out, including the Meeting, were *CCAA*-authorized and compliant. The Plan was overwhelmingly approved by the required special majority of properly classified and unsecured Affected Creditors.

[37] With respect to whether the Plan is fair and reasonable, I accept the unchallenged evidence and find that:

(a) the Plan Entities and the Plan Sponsor made considerable efforts to prepare the Plan in a manner that addresses, to the extent possible, the various stakeholder concerns;

(b) there are no other viable restructuring options available other than the Plan, the alternative to which would be formal liquidation. Under a formal liquidation, the Affected Creditors would likely receive no recovery, while under the Plan they receive significant and material recovery and a potential upside through the receipt

of Plan Sponsor shares. In a liquidation scenario, there would be increased professional fees and bankruptcy costs;

(c) there is no prejudice to the Affected Creditors, who voted overwhelmingly in favour of the Plan. A high degree of creditor support creates an inference that a plan is fair, reasonable and economically feasible, and a court should be reluctant to second guess creditors' business assessment of a plan: ***Canadian Airlines*** at para 97; ***Kerr Interior Systems Ltd (Re)***, 2008 ABQB 286 at para 106;

(d) the Plan provides the Plan Entities with the greatest opportunity to repay the outstanding debts to SNDL and continue with a stronger owner. It allows for the continuation of the retail cannabis operations to continue as normal without disruption or further store closures following the Plan, with continuing employment of employees and contractors;

(e) the Monitor's opinion, pursuant to section 23(1)(i) of the *CCAA*, is that "the Plan is fair and reasonable and provides the best available return"; and

(f) there are challenges to restructuring cannabis companies at an operational level. To the Monitor's knowledge, since January 2022 there have been 66 companies in the cannabis industry that have entered insolvency proceedings in Canada and, of those, only five have successfully restructured their operations, with the rest resulting in liquidation.

[38] There was no opposition to the sanctioning of the Plan. CRA raised a concern about ongoing tax remittances between the date of plan sanctioning and implementation, but was satisfied by Delta 9's counsel's explanation that CRA's post-filing claims were unaffected by the Plan and for which the Plan Entities would remain responsible.

[39] I have considered the Plan Releases. I find that the Plan is fair and reasonable with the Plan Releases included, for these reasons:

(a) I am advised they are typical forms of releases in *CCAA* proceedings (although that alone does not justify their inclusion);

(b) the inclusion of the Plan Releases was not opposed by any party (although that alone does not justify their inclusion);

(c) the Plan Releases are rationally connected to the Plan and its purposes. For example, they release claims of the Affected Creditors as part of the consideration for Affected Creditors obtaining partial recovery of their claims under the Plan;

(d) the Plan could not succeed without the releases as Plan implementation relies on the continued participation and involvement of the releasees;

(e) I accept the unchallenged evidence that the proposed releasees contributed to the Plan in precarious circumstances. It is obvious from the cumulative evidence in this matter that the negotiation of the terms of the Plan and the Delta 9 restructuring has been complex, protracted and difficult, involving significant work by Delta 9

Parent, the Chief Restructuring Officer, the Plan Sponsor, SNDL, CRA and the Monitor (and their various consultants, advisors, counsel and representatives);

(f) the Plan Releases are a key component of the Plan, and a condition of Plan implementation which (as discussed above) benefits the debtors and the Affected Creditors and other stakeholders. The Plan Releases ensure that all stakeholders have certainty and finality about their liabilities at the conclusion of the Plan Entities' restructuring;

(g) the terms of the Plan Releases were expressly included in Article 9 of the Plan which was provided to the Affected Creditors; and

(h) the Plan Releases are fair, reasonable and not overly broad. The Plan confirms that the Plan Releases do not apply to (1) unaffected claims (as defined in the Plan); (2) obligations to Affected Creditors under the Plan or under any court order made in these *CCAA* proceedings; (3) SNDL's claim related to the SNDL Dispute; (4) claims finally determined to be based on breach of trust (whether common law or statutory), fraud, wilful misconduct or gross negligence; or (5) claims against directors referred to in section 5.1(2) of the *CCAA*.

[40] For the above reasons, I find that Plan is fair, reasonable and consistent with the *CCAA*'s remedial purpose.

B. Stay Extension Application

1. Legal Framework for Stay Extension Application

[41] The Court may make an order extending a stay, restraint and prohibition of proceedings for any period the Court considers necessary, provided the applicant satisfies the Court that circumstances exist that make the order appropriate, and the applicant has acted (and is acting) in good faith and with due diligence: *CCAA*, sections 11.02(2) and (3). The burden of proof is on the applicant: ***Mantle Materials Group, Ltd (Re)***, 2024 ABKB 19 at para 35. Appropriateness of an extension is assessed by inquiring into whether the order sought advances the policy objectives underlying the *CCAA*: ***Re Canada North Group Inc***, 2017 ABQB 508 at para 34, citing ***Century Services*** at paras 15, 70, 71.

2. Should the Court Grant the Stay Extension?

[42] No party opposed the further Stay extension application. I am satisfied that Delta 9 and the Plan Sponsor have, since my last extension order, acted in good faith and with due diligence. This finding is supported by the Monitor's reports. Further, having found that the Plan is fair, reasonable and consistent with the *CCAA's* remedial purposes, I find that an extension is necessary in the circumstances to allow for Plan implementation and the determination of the SNDL Dispute in February 2025, among other things.

[43] The form of proposed stay extension order, extending the Stay until February 28, 2025, is granted.

C. Application to Approve the 659 Transaction

1. Legal Framework for Approval of Asset Sale

[44] A debtor company under *CCAA* protection may not sell or dispose of assets outside the ordinary course of business without court authorization: *CCAA*, section 36(1).

[45] Whether to grant authorization to sell assets is a matter of judicial discretion. It is not a rubber-stamp exercise; it involves the balancing of the interests of stakeholders: ***Bellatrix Exploration Ltd (Re)***, 2020 ABQB 332 at para 30.

[46] The non-exhaustive statutory factors in sections 36(3)-(5) of the *CCAA* that the Court must consider, as well as additional or overlapping factors developed in the common law, do not form a rigid checklist of factors that must be present in every transaction: ***Target Canada Co (Re)***, 2015 ONSC 1487 at paras 14-17; ***Royal Bank v Soundair Corp***, 1991 CanLII 2727 (ON CA), 1991 CarswellOnt 205 [***Soundair***]; ***Long Run Exploration Ltd (Re)***, 2024 ABKB 710 at paras 11-12; ***Sanjel Corporation (Re)***, 2016 ABQB 257 at paras 54-55; ***Acerus Pharmaceuticals Corporation (Re)***, 2023 ONSC 3314 at paras 10-11.

[47] The statutory factors under section 36(3) of the *CCAA*, as augmented by recognized common law factors, are:

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances. Common law factors include whether there was sufficient effort made to get the price at issue, whether the debtor or court-appointed officer acted improvidently, whether the process had integrity and was fair, reasonable, transparent and efficient; and whether the interests of all parties were considered: ***Sanjel Corporation (Re)*** at para 56; ***Soundair*** at para 16;

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

(c) whether the monitor filed 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. Common law factors include the weight to be given to the recommendation of the monitor and the business judgment rule, in that the Court will not lightly interfere with the exercise of the commercial and business judgment of the debtor company and a monitor where the process was fair, reasonable, transparent and efficient: ***Sanjel Corporation (Re)*** at para 57; ***Re AbitibiBowater*** at paras 70-72;

(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, accounting for their market value.

[48] I consider the 659 Transaction under this framework.

2. Should the Court Approve the 659 Transaction?

[49] The 659 Transaction involves the sale of the Bio-Tech Facility to 659, an arm's length party. It is conditional upon court approval of the proposed SAVO and the execution of a lease for the Facility between 659 (as landlord), SSCL (as tenant) and the Plan sponsor (as indemnifier).

[50] No party opposed the authorization of the 659 Transaction.

[51] Based on the evidence and the factors outlined above, I find it is appropriate to authorize the 659 Transaction, for these reasons:

(a) Sales Process. The sales process followed the court-approved Bio-Tech SISP Order. There was an extensive marketing process, assisted by a professional sales advisor, in which the Monitor solicited offers from many prospective bidders. There was interest from several parties, but only 659 (an arm's length party and previous owner of the land) made an offer. The APA was the result of good faith arm's length negotiations;

(b) Monitor's Recommendation. The Monitor is of the view that the 659 APA is commercially reasonable;

(c) Creditor Consultation. Creditors were provided notice of the application to approve the Bio-Tech SISP;

(d) Effect of the Sale. The effect of the 659 Transaction and the proposed SAVO is, among other things, to vest the Bio-Tech Facility in 659 and replace it with the proceeds for sale, preserving claims and their priority in the proceeds. Under the proposed SAVO, the Monitor shall not make distributions of the net proceeds without further court order;

The Plan Sponsor is the fulcrum creditor in respect of the priority of charges against the Bio-Tech Facility and it supports the sale. Bio-Tech owes significant amounts to CRA for unremitted GST ($657,056 as of July 12, 2024) and unremitted excise tax ($7,831,515 as of July 12, 2024) (together, **Arrears**) – CRA does not oppose authorization of the APA or the proposed SAVO; and

(e) Consideration. The only evidence of the value of the Bio-Tech Facility is the amount in the APA, which followed the extensive marketing process noted above.

[52] I am concerned with the definition of "Excluded Liabilities" and "Liabilities" in the APA as potentially overreaching and affecting future reclamation or remediation obligations which Manitoba Ministry of the Environment and Climate Change (**Ministry**) may later seek to enforce under *The Environment Act*, CCSM c E125 in respect of the Bio-Tech Facility. The Ministry was not served with or provided notice of the Applications. In response to that concern, Delta 9 (with the concurrence of the Plan Sponsor, the Monitor and 659) proposed that the SAVO be amended to give the Ministry the right to file a comeback application to vary the terms of the SAVO in respect of environmental obligations. That is appropriate in the circumstances.

[53] For these reasons, I grant the proposed form of SAVO (as amended).

D. Application to Approve the SSCL Transaction

[54] The application for authorization of the SPA involves the same general legal framework under section 36 of the *CCAA* as discussed above. However, its RVO structure warrants further discussion and analysis.

1. Legal Framework for Reverse Vesting Orders (RVO)

[55] The general structure of RVOs has been explained in J. Sarra, "Reverse Vesting Orders – Developing Principles and Guardrails to Inform Judicial Decisions", 2022 CanLIIDocs 43 as follows (footnotes omitted) [*Sarra - RVO*]:

> RVO usually involve the sale of an insolvent debtor company's shares to a purchaser in a transaction where unwanted assets and liabilities are excluded in the purchase transaction and are transferred, assigned and vested in a newly-incorporated company ('newco') as part of a pre-closing reorganization, allowing the debtor company to shed liabilities and retain the most valuable assets.
>
> The result of an RVO is to expunge the existing corporate structure of the debtor company of anything the purchaser does not want. The newco is added to the insolvency proceeding and continues in that process while the debtor company exits the insolvency proceeding with broad liability releases; then the newco is liquidated or placed in bankruptcy to be liquidated. The transaction takes place outside of a negotiated and court-approved plan of arrangement or compromise.

[56] See also: ***Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al***, 2022 ONSC 6354 at para 27.

[57] While not expressly contemplated in the *CCAA*, it is now well established that courts have discretionary jurisdiction to authorize transactions involving RVOs, including pursuant to sections 11 and 36 of the *CCAA*: ***Long Run Exploration*** at para 17; ***Invico Diversified Income Limited Partnership v NewGrange Energy Inc***, 2024 ABKB 214 at para 18; ***Southern Star Developments Ltd v Quest University Canada***, 2020 BCCA 364 at para 11; ***Just Energy*** at para 29; ***Fresh City Farms and Mama Earth Organics,*** 2024 ONSC 2016 at para 35; ***Harte Gold Corp (Re)***, 2022 ONSC 653 at paras 24-37; ***Rambler Metals and Mining Limited, Re CCAA***, 2023 NLSC 134 at paras 39-61;

[58] Concerns arise because RVOs lack the claims and creditor voting process contemplated by the *CCAA*, and releases included as part of the transaction may be overly broad, both of which may negatively impact negotiations which could otherwise lead to a more favourable compromise or arrangement: *Sarra-RVO* at 17; 24; ***Invico Diversified*** at para 19.

[59] Therefore, in the *CCAA* context, RVOs should not be routinely granted, must be justified by "compelling", "extraordinary" or "exceptional" circumstances, and should invite "close scrutiny" because they can lead to unfairness or prejudice to creditors or other stakeholders: ***Long Run*** at para 18; ***Harte Gold*** at para 38; ***Invico Diversified*** at para 19; *Sarra-RVO* at 25-31; ***Atlas Global Brands Inc***, 2024 ONSC 5570 at para 35; ***MCAP Financial Corporation v QRD***

(Willoughby) Holdings Inc, 2024 BCSC 1654 at para 11; ***Arrangement relatif à Blackrock Metals Inc***, 2022 QCCS 2828 at para 96 [***Blackrock Metals***].

[60] An RVO is not granted merely because it may be more convenient or beneficial for the purchaser; there must be an evidence-based rationale for value in the proposed RVO transaction: ***MCAP Financial*** at paras 11, 18; ***Harte Gold*** at para 38; ***Blackrock Metals*** at paras 114-116; ***Just Energy*** at para 33.

[61] Interrelated, non-exhaustive relevant factors to consider in approving a transaction involving an RVO include:

(a) the statutory basis for an RVO, which in my view includes consideration of whether the RVO furthers the *CCAA's* remedial purposes (as set out ***Callidus*** at paras 40-42 and ***Century Services*** at para 59);

(b) the factors outlined in section 36(3) of the *CCAA* (as noted above), as adjusted for the unique aspects of a reverse vesting transaction, including:

(i) the reasonableness of the sales process / sales effort;

(ii) any monitor recommendation;

(iii) creditor consultation;

(iv) the effect of the transaction on creditors and other stakeholders; and

(v) the consideration for the transaction;

(c) the reason why an RVO is necessary;

(d) whether the reverse vesting structure produces an economic result at least as favourable as any other viable alternative;

(e) the interests of all stakeholders, including whether any stakeholders are worse off under the reverse vesting structure than they would have been under any other viable alternative; and

(f) whether the consideration being paid reflects the value of the assets preserved under the reverse vesting structure.

See: ***Harte Gold*** at paras 23, 38; ***Long Run Exploration*** at paras 17-19; ***Fresh City Farms*** at paras 35-39; ***Rambler Metals*** at para 62; ***PricewaterhouseCoopers Inc v Canada Fluorspar (NL) Inc***, 2023 NLSC 88 at para 60; ***Blackrock Metals*** at paras 87-95; ***MCAP Financial*** at paras 11-12; ***Atlas Global*** at paras 50-53.

[62] Where releases are part of an RVO, then the factors noted above are also relevant (as adjusted for this context), namely:

(a) whether the released claims are rationally connected to the purpose of the plan / transaction;

(b) whether the plan / transaction can succeed without the releases;

(c) whether the parties being released contributed to the plan / transaction;

(d) whether the releases benefit the debtors as well as the creditors generally;

(e) whether the creditors have knowledge of the nature and the effect of the releases; and

(f) whether the releases are fair, reasonable and not overly broad. In my view, as illustrated by this case, when considering whether releases are fair it may be appropriate for the Court to consider the conduct of proposed releasees and any potential benefit a proposed releasee may obtain from the restructuring or transaction as a whole. I also find it is appropriate to consider the timelines and nature of the objection to the proposed release, and the effect on stakeholders if the RVO structure (with the proposed releases) is not approved.

[63] I now consider the SSCL Transaction under this framework.

2. Should the Court Approve the SSCL Transaction?

a. The SSCL Transaction

[64] The SSCL Transaction encompasses the SPA and the ARVO, which together involve (among other things):

(a) SSCL acquiring all the shares of Bio-Tech;

(b) the cancellation of any other securities in the capital of Bio-Tech, without consideration;

(c) the payment by SSCL of a deposit and the balance of the purchase price, which will be held by the Monitor for the benefit of Bio-Tech's stakeholders pending further court order;

(d) the potential termination (without compensation) of some Bio-Tech employees that SSCL may identify it does not wish to continue to employ;

(e) the creation of a residual company (**ResidualCo**) to which certain "Excluded Assets", "Excluded Contracts" and "Excluded Liabilities" will be transferred. Among other things, all taxes owing or accrued due by BioTech for the period prior to the *CCAA* filing date will be transferred to or vested in or assumed by ResidualCo;

(f) the release (**RVO Releases**) in favour of releasees (**RVO Releasees**), including Bio-Tech and its current and former directors and officers, legal counsel and advisors; the Monitor and its legal counsel; SSCL and its legal counsel, directors, officers, partners, employees, consultants, advisors and assignees; and any directors or officers of ResidualCo; and

(g) Bio-Tech's retention of all its other assets other than the Excluded Assets and Bio-Tech's cessation as applicant in the *CCAA* proceedings under the court's purview (other than the ARVO).

[65] Although the SSCL Transaction is distinct and requires its own separate authorization and approval, it must be considered in proper context. It is interrelated with the Plan and the 659 Transaction, the sanction, authorization and approval of which were sought at the same time as the SSCL Transaction as part of the overall restructuring of the Delta 9 group.

[66] Only CRA expressed any concern with the SSCL Transaction. Specifically, as noted above, it objects to the release of Bio-Tech's directors, with specific focus on Arbuthnot, from being assessed for personal liability for Bio-Tech's Arrears under the *Excise Tax Act*, RSC 1985 c E-15 and the *Excise Act, 2001*, SC 2002 c 22 (*Excise Act, 2001*). In my view, the RVO Releases must be viewed in context of their role in the SSCL Transaction and, in turn, the overall restructuring of the Delta 9 group.

[67] I turn to relevant factors below, with special attention paid to CRA's objection to the release of Bio-Tech's directors.

b. The Need for an RVO

[68] Reverse vesting transactions have been recognized as appropriate in cases where there are valuable assets which cannot be transferred to a purchaser, including where the debtor operates in a highly-regulated environment in which its existing permits, licences or other rights are difficult or impossible to transfer to a purchaser: ***Harte Gold*** at para 71; ***Just Energy*** at para 34; ***Xplore Inc (Re)***, 2024 ONSC 5250 at para 59; ***PaySlate Inc (Re)***, 2023 BCSC 608 at para 80; ***Peakhill Capital Inc v Southview Gardens Limited Partnership***, 2023 BCSC 1476at para 39 aff'd 2024 BCCA 246; ***Atlas Global*** at para 51.

[69] The cannabis industry is one such environment. The Court was advised of numerous examples where RVOs have been approved by courts in cannabis restructurings.[1] As noted in ***Atlas Global*** at para 36:

> It is fair to observe that the setbacks besetting the cannabis industry have in fact in large measure provided the impetus for the recently increased use of the reverse vesting structure. That is because in a highly regulated industry, like the cannabis industry, there are significant implications, for the transfer of a business, if a purchaser would have to start "from scratch" to obtain regulatory approval to

[1] Delta 9's Brief cited the following, not all of which have reported decisions: Atlas Global Approval and Reverse Vesting Order granted on October 29, 2024, Court File No. CV-24-00722386-00CL (ONSC); Indiva Limited, et al, Approval and Reverse Vesting Order granted October 21, 2024, Court File No. CV-24-00722044-00CL (ONSC); BZAM Ltd, et al, Approval and Vesting Order, granted October 15, 2024, Court File No. CV-24-00715773-00CL (ONSC); Phoena Holdings Inc, et al, Reverse Vesting Order granted March 21, 2024, Court File No.: CV-23-0069728500CL (ONSC); Fire & Flower, Reverse Vesting Order granted August 29, 2023, Court File No.: CV-23-0070058100CL (ONSC); Aleafia Health Inc., Reverse Vesting Order granted October 30, 2023, Court File No.: CV-2300703350-00CL (ONSC); Trees Corporation, Reverse Vesting Order granted April 5, 2024, Court File No.: CV-2300711935-00CL (ONSC); Eve & Co et al, Reverse Vesting Order granted October 7, 2022, Court File No.: CV-2200678884-00CL (ONSC).

operate the business in question rather than assuming the relevant licenses as part of the transaction.

[70] The Monitor's view is that an RVO structure is necessary to maximize value in this case due to the highly regulated nature of the cannabis business, the value of which is dependant on maintaining two non-transferrable licences: a licence with Health Canada under the *Cannabis Act*, SC 2018, c16 that permits BioTech to cultivate, process and sell cannabis and a licence with CRA requiring it to apply cannabis excise stamps to its cannabis products in accordance with the *Excise Act, 2001*.

[71] No party suggested that an RVO was unnecessary in this case or that the justification for an RVO was unreasonable.

[72] I find that there is a legitimate need for an RVO structure for Bio-Tech.

c. The Bio-Tech SISP Process

[73] As noted above, the Bio-Tech SISP process was court-approved in the July 24, 2024 Bio-Tech SISP Order, on notice to interested stakeholders including CRA.

[74] The approved Bio-Tech SISP process provided potential interested purchasers an opportunity to propose a wide range of transaction structures, including "one or more of a restructuring, recapitalization or other form of reorganization of the business and affairs of [Bio-Tech] as a going concern, or a sale of all, substantially all, or one or more component's of [Bio-Tech]'s assets ... and business operations ... as a going concern or otherwise".[2]

[75] Despite the extensive marketing process, SSCL (an arm's length cannabis producer) made the only offer for Bio-Tech's business or shares (whether by a reverse vesting structure or otherwise).

[76] I find the Bio-Tech SISP process was fair and reasonable.

d. Monitor Recommendation

[77] The Monitor's view is that an RVO is necessary to maximize value in this case. It is of the view that the ARVO, including the proposed releases, is a condition precedent in the SPA which allows Bio-Tech to continue its operations as a going concern. With respect to the RVO Releases, the Monitor is of the view that their inclusion is an "important element to ensure the orderly transaction and transition of the business of Bio-Tech and is supported by the Monitor".

e. Creditor Consultation

[78] Creditors have been on notice about the potential need for an RVO transaction in respect of Bio-Tech, together with releases of Bio-Tech directors, since early in and throughout these *CCAA* proceedings.[3]

[2] Bio-Tech SISP Order, Schedule A (clause 7).
[3] Arbuthnot's Seventh Affidavit, para 52.

[79] In Arbuthnot's second affidavit sworn July 18, 2024, he deposed that Delta 9 had entered into a July 12, 2024 Restructuring Term Sheet with the Plan Sponsor, which provided:

> The Plan Sponsor shall support any request of the Delta 9 Group for the Court to approve third party releases in favour of the board of directors of [Bio-Tech] as part of any approval and reverse vesting order sought in the CCAA Proceedings.

[80] In that same affidavit, Arbuthnot explained the terms of a proposed key employee retention plan (**KERP**) for which Delta 9 sought Court approval. Arbuthnot was one of the key employees. He stated (emphasis added):

> The Key Employees also include directors and officers that are necessary and integral to the business and operations of Delta 9 continuing to operate in the normal course. **A key component, and part of the intended consideration under the KERP, is that releases be sought for the directors and officers as part of any sales transaction and in conjunction with any plan of arrangement that is approved**. I am Bio-Tech's only director and the only person with the necessary security clearance to allow Bio-Tech to operate in compliance with its Health Canada Licence. It would be very difficult, if not impossible, to successfully complete the SISP for Bio-Tech without my continued involvement in the operation of the business and in the SISP.

[81] The Monitor included the proposed KERP terms in its first report dated July 22, 2024 (**First Monitor's Report**). The Monitor noted that "certain Key Employees have indicated that they are considering alternative employment opportunities should the consideration in the KERP not be provided, including both the material retention payment amounts and the traditional director and officer releases in the specified circumstances".[4] The KERP was developed to incentivize and retain the defined "Key Employees" including Arbuthnot.[5]

[82] The proposed KERP was attached as Appendix E to the First Monitor Report. It provided (emphasis added):

> As part of the enticement and compensation to the D&Os for continuing to provide services and maintain their roles as directors and officers of the D9 Group during their CCAA proceedings, the D9 Group agrees to seek and obtain a release of all **liability as a director and officer of any member of the D9 Group that is subject to a sale of its business and operations by way of a reverse vesting order** and/or a release of all liability as a director and officer of each member of D9 Group that is subject to a plan of arrangement or compromise in the CCAA Proceedings.[6]

[83] Schedule A of the KERP provided further specific references to releases as part of a reverse vesting order process with other specific key employee entitlements.

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[4] First Monitor's Report, para 104(e).
[5] First Monitor's Report, para 100.
[6] First Monitor's Report, Appendix E (clause 13).

[84] On July 24, 2024, the Court granted the ARIO (which approved the KERP), and the Bio-Tech SISP. Nobody sought permission to appeal those orders.

[85] On October 22, 2024, the Plan Sponsor applied for an order for a creditor's meeting with respect to its then proposed plan. The evidence and Monitor's report at that time further contemplated the release of the Bio-Tech directors.[7]

[86] As noted above, on December 30, 2024, Delta 9 served unfiled copies of its Applications and Arbuthnot's Sixth and Seventh Affidavits on the parties in the service list, including CRA. These materials include a redacted copy of the SPA for the SSCL Transaction, the specific terms of the RVO Releases, and the form of ARVO for the SSCL Transaction.

[87] CRA argues that it only received relevant details of the benefit Arbuthnot is obtaining from the restructuring process when it received the Sixth Monitor's Report in early January 2025 and the Monitor's Supplement on January 9, 2025.

[88] CRA is correct that the Court is not necessarily bound by the previous disclosed intention of Delta 9 and the Plan Sponsor to seek releases for Bio-Tech directors, or the Court's approval of the KERP which expressly contemplated them. However, they are relevant and important factors. Creditor consultation is a two-way street. By necessity, *CCAA* processes often move quickly and require diligent engagement by the Court and all stakeholders, including creditors. CRA chose to wait and see "how the *CCAA* process unfolded". It never questioned Arbuthnot on any of his affidavits. CRA allowed significant effort and resources to be expended or invested, while awaiting the outcome of the Bio-Tech SISP process, without apparently making it known to all stakeholders that it might object to a director's release if CRA was later of the view the director obtained an unjustified personal benefit out of the restructuring process.

[89] I find that there was reasonable consultation with creditors in respect of the SSCL Transaction. The possibility of an RVO structure, coupled with a requested release for Bio-Tech directors, was flagged very early on in these proceedings. The specific SSCL Transaction could not be proposed until the Bio-Tech SISP process had run its course, and the overall terms of the interrelated restructuring involving the Plan, the 659 Transaction, and the SSCL Transaction were finalized. Although time was compressed, as it often is in *CCAA* proceedings, there was sufficient time for creditors, including CRA, to respond.

f. Effect on Creditors and Other Stakeholders

i. General Effect on Creditors

[90] Bio-Tech creditors have not had the benefit of a creditor vote with respect to the proposed RVO structure, as contemplated by the *CCAA*.

[91] The proposed transactions, including the SSCL Transaction, will not provide sufficient proceeds to pay Bio-Tech's unsecured creditors, including CRA's significant claims against Bio-Tech for the Arrears. The Monitor noted that the lack of proceeds to pay CRA "is a function of the

[7] Affidavit of Mark Townsend sworn October 21, 2024, paras 42-43; Third Report of the Monitor dated October 29, 2024 (filed October 30, 2024), para 47; Sixth Monitor's Report, para 64.

value of Bio-Tech's business, as fully tested under the SISP, and the priority of the CRA claims relative to the claims of the priority creditors".[8] Delta 9 pointed to other cannabis restructurings where releases were approved notwithstanding significant amounts owing to CRA for excise tax and/or GST/HST.

[92] Zero recovery for unsecured creditors is often a function of the financial state of the debtor, not the RVO process: ***Long Run Exploration*** at para 19, citing ***Acerus Pharmaceuticals*** at para 32; ***Just Energy*** at para 57, ***Blackrock Metals*** at para 109; ***CCAA Plan of Arrangement – Clearbeach and Forbes***, 2021 ONSC 5564 at para 27(k). Further, there is no requirement that creditors be treated equally: ***Clearbeach and Forbes*** at para 27(k), citing ***Grafton-Fraser v Cadillac***, 2017 ONSC 2496 at paras 23-24.

[93] The Monitor is not aware of any stakeholder in the *CCAA* proceedings that would be worse off under the RVO structure.

[94] On the other hand, approval of the SSCL Transaction (which includes the RVO Releases) will allow the Bio-Tech business to continue as a going concern under the new ownership of SSCL, for the future benefit of all stakeholders including CRA.

ii. Effect on Future Application of the *Income Tax Act*

[95] CRA raised an issue with the potential effect of approving clause 4.3 of the SPA, which provides (with the language of concern emphasized):

> Pursuant to the Implementation Steps and the Approval and Vesting Order, at the Closing Time, all Taxes owed or owing or accrued due by Bio-Tech in respect of the period prior to the Filing Date shall be transferred to, vested in and assumed by ResidualCo, **including any Taxes related to debt forgiveness arising from or in connection with the consummation of the Transaction and the transfer of the Excluded Assets and Excluded Liabilities to ResidualCo**; provided, however, that the foregoing shall not: (a) relieve the Purchaser from Liability for Taxes arising during and in respect of the period from and after the Filing Date and relating to Retained Liabilities, or arising from audits or reassessments that relate to Retained Liabilities; or (b) relieve the Purchaser from any obligation to pay Taxes exigible by a purchaser in respect of a transaction like the Transaction in the same or similar circumstances. Any and all obligations and Liabilities arising from any audits or reassessments with respect to any Taxes that relate to a time period occurring, or facts arising, prior to the Closing Date, regardless of when such audit was commenced or completed, shall be transferred to and vest in ResidualCo.

[96] CRA argued that, if applicable, section 80 of the *Income Tax Act*, RSC 1985 c 1 (5th Supp) (*ITA*) operates to include certain forgiven debt amounts as income in the future and the Court cannot approve a provision in a transaction contract that requires the Minister not to apply the *ITA*. CRA relies on ***R v Beach***, 2001 BCCA 7 and ***Proposal of Sail Plein Air inc***, 2024 QCCS 1689 (under appeal) to say that such a court approval would be illegal. Such a provision prohibiting the

[8] Sixth Monitor's Report, para 54.

Minister from including income would be unenforceable: ***Canadian Red Cross Society, Re***, 2006 CanLII 22141 (ON SC) at para 45.

[97] Counsel for the Plan Sponsor provided some proposed language to include in the ARVO to attempt to address CRA's concern, as CRA made it clear it did not intend this "technical issue" (as CRA's counsel described it) to derail the Delta 9 restructuring process. The proposed language, in my view, assists by ensuring that CRA's position is not intended to bind the Minister. However, the proposed language effectively defers the matter in the same way that was rejected as inappropriate by the British Columbia Court of Appeal in ***Beach***. In ***Beach***, at para 18, the Court held that a court could not sanction a bankruptcy proposal that exempts a debtor from section 80 of the *ITA* and imposes that exemption on Revenue Canada. In my view, I must consider whether the SPA can be approved in its current form.

[98] An important rule of contractual interpretation is that if there are two apparently viable interpretations and one of them would result in illegality, the other interpretation should be preferred: ***Calgary (City) v International Association of Fire Fighters (Local 255)***, 2008 ABCA 77 at para 32. I interpret clause 4.3 of the SPA such that it was not objectively intended by the parties to the SPA to include a provision that would be illegal for the Court to approve.

[99] Accordingly, and based on the specific wording used by the parties to the SPA, I do not interpret any inclusion of *income* based on the operation of section 80 of the *ITA* to be part of "Taxes related to debt forgiveness arising from or in connection with the consummation of the Transaction" which are transferred to and vest in ResidualCo, under clause 4.3. At this time, it is unknown exactly how or whether section 80 of the *ITA* may be engaged or, if it is engaged, whether it would necessarily lead to taxes payable in any event.

[100] The proposed ARVO must be amended to include the language proposed by the Plan Sponsor in argument, as well as language that makes it clear that clause 4.3 does not apply to any future inclusion of income to Bio-Tech pursuant to section 80 of the *ITA*. As this matter was only briefly argued at the Hearing, I leave it to counsel to draft appropriate agreeable language based on these reasons. If issues arise in doing so, or if my decision has unintended consequences not raised in argument, counsel may seek my further direction.

iii. Effect on Future Environmental Obligations

[101] Although it was not raised by any party, it is incumbent on the Court to be vigilant about attempts to shed environmental remediation and reclamation obligations in an RVO: *Sarra-RVO* at para 24. RVO structures that retain environmental remediation and reclamation obligations, and which avoid attempting to usurp the regulatory enforcement of environment remediation and reclamation obligations, are factors cited in support of (or required for) the approval of RVOs: ***Long Run Exploration*** at para 23; ***Re Mantle Materials Group, Ltd***, 2023 ABKB 488 at paras 10-11; ***Rambler Metals*** at para 105; ***Harte Gold*** at para 83.

[102] It is also incumbent for applicants seeking approval of RVOs to ensure that all parties interested in or affected by the RVO are served and given notice: ***Validus Power Corp et al and Macquarie Equipment Finance Limited***, 2023 ONSC 6367 at para 119. Whenever real property is involved in a transaction, it is best practice to ensure that the applicable Crown office or environmental regulatory agency is given notice.

[103] I raised a concern with the definition of "Excluded Liabilities" in the SPA as potentially overreaching and affecting future reclamation or remediation obligations the Ministry may seek to enforce in the future in respect of the Bio-Tech Facility. Section 2.2 of the SPA provides (emphasis added):

> 2.2 Excluded Liabilities
>
> (a) Pursuant to the Approval and Vesting Order, save and except for the Retained Liabilities, **all** debts, **obligations**, Liabilities, Encumbrances, indebtedness, Excluded Contracts, leases, agreements, undertakings, Claims, rights and entitlements **of any kind or nature whatsoever** (whether direct or indirect, **known or unknown, absolute or contingent, accrued or unaccrued**, liquidated or unliquidated, **matured or unmatured or due or not yet due**, **in law or in equity and whether based in statute or otherwise**) **of or against Bio-Tech**, the Bio-Tech Shares, or against, **relating to or affecting any of the Retained Assets**, or any Excluded Assets or Excluded Contracts, including, *inter alia*, the non-exhaustive list of Liabilities set forth in Schedule "C" (collectively, the "**Excluded Liabilities**") **shall be excluded and will no longer be binding on Bio-Tech**, the Bio-Tech Shares (or the holders thereof), Retained Assets, Employees, Permits and Licenses or Books and Records following the Closing Time.

[104] In argument, I was advised that there are no known environmental concerns with the Bio-Tech Facility, although that was not in evidence. I understood the position of Delta 9 to be that the definition of Excluded Liabilities was not intended to include the Ministry's right to take steps to protect the environment (including to issue environmental protection orders) in the future (which I took to mean whether any adverse environmental conditions arose before or after the *CCAA* filing). SSCL did not participate in the Hearing.

[105] As it did with the SAVO, following the Hearing, Delta 9 (with the concurrence of the Plan Sponsor, the Monitor and SSCL) proposed an additional term to the ARVO which would provide the Ministry 21 days upon service of a granted ARVO to apply to come back to vary its terms in respect of environmental liabilities. That is appropriate in the circumstances, if necessary, to allow appropriate language to be included to ensure that the ARVO does not have unintended consequences related to the future statutory discretion of the Ministry.

g. Viable Alternatives and Recovery Under Liquidation

[106] I find that there are no viable alternatives to the SSCL Transaction. According to the Monitor, if the SSCL Transaction were not to close and the ARVO is not granted, this would result in an immediate shut-down and liquidation of Bio-Tech. The Monitor is not aware of any viable alternative that would produce a more favourable result in the proceedings.[9] I accept the Monitor's unchallenged evidence.

[9] Sixth Monitor's Report, paras 49-52.

[107] CRA is potentially worse off if the RVO Releases are included in the ARVO. CRA has not adduced evidence of what, if any, likely recovery it might obtain from Arbuthnot or former Bio-Tech directors if the RVO Releases are not approved.

[108] There is no specific evidence of what the liquidation of Bio-Tech alone would likely generate, however, given that the only interest in the Bio-Tech business was from SSCL based on the assumption that required licences would be available and operations would continue, it can be inferred that recovery for creditors overall would be materially less.

[109] Further, as noted elsewhere in these Reasons, the SSCL Transaction is intertwined with the 659 Transaction and the Plan (both of which CRA agrees with or did not oppose). A liquidation of the Delta 9 businesses would result in Affected Creditors receiving no recovery, reduced recovery for the priority secured creditor SNDL, the shut-down of retail outlets and the Bio-Tech manufacturing business, the loss of jobs, and increased fees and bankruptcy costs.

[110] Based on the evidence before me, I find that the proposed RVO structure produces an overall economic result better than liquidation.

h. Consideration

[111] The consideration to be paid by SSCL in the SSCL Transaction is the only evidence of value of the assets preserved under the RVO structure. SSCL negotiated at arm's length pursuant to the Bio-Tech SISP. There is no evidence that the consideration is unreasonable. CRA appears to acknowledge that "the market has spoken".

i. The RVO Releases

[112] As noted, CRA's objection is not to the SSCL Transaction, *per se*, but the Bio-Tech directors or former directors being included in the RVO Releasees relating to the Arrears.

[113] I consider relevant factors below.

i. Rational Connection?

[114] I find that the RVO Releases, including the release of Arbuthnot, are rationally connected to the SSCL Transaction. Arbuthnot will be involved in the implementation of the SSCL Transaction and is the only person with the necessary security clearance to allow Bio-Tech to operate in compliance with its Health Canada Licence. Releasing Arbuthnot is part of the *quid pro quo* for his continued participation in the implementation of the SSCL Transaction, the 659 Transaction and the Plan. Further, the releases may avoid director indemnity claims or future litigation about director indemnity claims.

[115] CRA's argument that the release of Arbuthnot and former Bio-Tech directors in respect of the Arrears is not rationally connected to the SSCL Transaction or the Plan is based, at least in part, on its premise that their release is not necessary to the SSCL Transaction. I address that argument below.

ii. Can the SSCL Transaction or the Plan Succeed without the Releases?

[116] CRA stated that "mere assessing of directors does not impact the plan going forward". Unfortunately, CRA's statement is based on speculation and not evidence and I must base my decision on evidence. CRA has not contradicted the evidence filed by Delta 9, including Arbuthnot's affidavits, or the opinion and advice of the Monitor.

[117] I find that, based on the undisputed evidence, the release of Arbuthnot is integral to the success of the SSCL Transaction. CRA acknowledged that he was the "lynchpin" for the Health Canada licence. If that licence is not available to Bio-Tech, its business would be immediately disrupted and would likely result in an immediate shut-down and liquidation of Bio-Tech, which would garner a lower purchaser price.[10]

[118] As noted above, in the early phases of these proceedings, Arbuthnot and other directors were considering their options and the KERP, which contemplated their later release, was approved by the Court to incentivize their retention. It can be reasonably inferred that the contemplated releases, now coming to fruition, were important for Arbuthnot to continue to be involved.

[119] Without approval of the RVO Releases, one of the conditions to the SSCL Transaction would not be fulfilled. I agree with CRA that the Court should not accept releases simply because they have been packaged together as a condition precedent to a transaction or restructuring, and that "strong-arm tactics" of incumbent directors should be resisted: ***Green Relief*** at para 52. Success of the transaction or plan should be assessed with regard to factors other than potential strong-arming: ***Green Relief*** at para 53.

[120] However, in my view, the Court's assessment of whether requiring releases even constitutes director "strong-arming" in the *CCAA* process must be based on the evidence available. In this case, the concept of proposed releases was in the Restructuring Term Sheet and supported by the Plan Sponsor before the *CCAA* process even began.

[121] CRA speculates that, without the releases, SSCL would nonetheless proceed with the transaction. In my view, without the protection of the RVO Releases, there would be considerable uncertainty for SSCL as to whether Arbuthnot would agree to stay involved or on what terms. Without Arbuthnot's involvement, the entire nature of the SPA would be different and whether SSCL would waive the release condition or renegotiate another transaction is unknown. For example, if SSCL had to indemnify Arbuthnot or former Bio-Tech directors for their potential personal liability for the Arrears, it would materially change the economics of the SSCL Transaction. The best evidence I have is that the RVO Releases were made a condition of the SPA and the RVO structure because they were required and important, and that without them the closing of the SSCL Transaction would be at serious risk.

[122] If the SSCL Transaction were not to close, I find there would likely be a harmful ripple impact on the overall Delta 9 restructuring. In that event, the lease required for the 659 Transaction to close would not be signed, and the conditions of the 659 Transaction would be unfulfilled. It is unlikely that 659 would close the 659 Transaction at the same price, if at all, without a locked-in

[10] Sixth Monitor's Report, para 50.

and operating tenant. In turn, then, conditions of the Plan would be unfulfilled, and the implementation of the Plan would be at risk. The Plan Sponsor may withdraw the Plan if the Plan's conditions, including the approval of the SSCL Transaction, are not met.[11] The Plan Sponsor explained that the SSCL Transaction, with the RVO Releases, is critical to the Plan Sponsor because it is legally unable to acquire Bio-Tech due to its own regulatory restrictions.

[123] The best evidence before me is that the loss of Arbuthnot's cooperation and involvement could potentially cause the entire restructuring of Delta 9 to fail, or to have to restart the process over again, all of which would likely lead to less recovery, increased costs, and the loss of time and expense incurred to date by the Plan Sponsor and other stakeholders.

[124] It is fully open to creditors, like CRA, to argue that director's releases, that are made a condition precedent to transactions in restructurings, are not actually necessary for the transaction or plan to succeed, but they must provide the Court the evidentiary foundation to support those arguments. CRA did not do that, and, on balance, I find that the evidentiary record does not support CRA's position.

iii. Releasee Contribution

[125] The undisputed evidence is that the RVO Releasees, including Arbuthnot, contributed significantly to the SSCL Transaction, and they will continue to do so until the transaction closes and is implemented as part of the overall Delta 9 restructuring. CRA's argument that Arbuthnot was not the only one that contributed is true but is not a persuasive reason to reject the RVO Releases in this case.

iv. Benefit to Debtors and Creditors

[126] CRA argues that the RVO Releases do not benefit the creditors, but rather simply prevent CRA from potentially collecting against Bio-Tech's directors for amounts that Bio-Tech misappropriated when it failed to pay for excise duties and GST.

[127] CRA's position is again based on the premise that the RVO Releases are not necessary for the success of the SSCL Transaction or the Plan. For the reasons above, I find that premise to be unsupported and find that the RVO Releases benefit Bio-Tech and creditors generally.

v. Creditor Knowledge of the Nature and Effect of the Releases

[128] For the reasons above, including under the heading "creditor consultation", the creditors (including CRA) have had knowledge of the nature and effect of the proposed RVO Releases.

vi. Fair, Reasonable and Not Overly Broad?

[129] The proposed ARVO provides the RVO Releasees a broad release of all present future claims, liabilities and other matters based on any act, omission transaction, dealing or other occurrence existing or taking place prior to the "Closing Time" or arising in connection with or

[11] Fifth Monitor's Report dated November 26, 2024, paras 36-37.

relating in any manner whatsoever to the SPA, the SSCL Transaction, or the conduct of these *CCAA* proceedings.

[130] However, there are exceptions: the RVO Releases as treated under the proposed ARVO:

(a) do not release any claim not permitted to be released pursuant to section 5.1(2) of the *CCAA*, namely claims that relate to contractual rights of creditors or are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors;

(b) do not release any claim or liability arising out of any gross negligence or wilful misconduct on the part of the released directors and officers of Bio-Tech and ResidualCo;

(c) do not apply to or prevent any person from commencing or continuing actions for an "Insured Claim" under any insurance policy maintained by Bio-Tech, which can be a mitigating factor to the loss of claims: ***Atlas Global*** at paras 92-93;

(d) do not apply to performance of obligations under the SSCL Transaction; and

(e) do not affect certain CRA set-off rights against Bio-Tech for pre and post *CCAA* filing amounts owed.

[131] Other than CRA, no creditor or stakeholder opposed the releases as being unfair or overly broad.

[132] CRA's core position is that the release of Arbuthnot from assessment for the Arrears renders the RVO Releases unfair. CRA appears to suggest that Arbuthnot has intentionally and by design orchestrated the Delta 9 restructuring to his personal benefit, and that Arbuthnot has already received benefits that more than compensate him for his involvement and continued involvement in the restructuring. CRA describes the further release related to assessment for Arrears as a "gratuitous benefit".

[133] CRA argues the following:

(a) although Arbuthnot was integral to Bio-Tech due to his security clearance related to Health Canada licence, that should not excuse his mismanagement and his causing the effective misappropriation of funds owed to CRA for GST and Excise remittances;

(b) Arbuthnot obtained the benefit of the KERP program. CRA argues that this already compensated him for remaining involved and assisting the restructuring process and that he does not need the further benefit of the RVO Release for staying involved;

(c) Arbuthnot will remain employed by Bio-Tech moving forward, after SSCL becomes its owner;

(d) Arbuthnot and his father (Bill Arbuthnot) created for themselves an employment agreement which provided them each a right to $5,000,000 upon a change of control of Bio-Tech, for which they both filed claims in the *CCAA* proceedings in August 2024 (**Arbuthnot Claims**). CRA argues that the Arbuthnot Claims, which have been accepted as contingent claims, inflated the creditor pool which decreased potential recovery for other creditors and, further, gave those claims significant voting power on the Plan; and

(e) Arbuthnot and Bill Arbuthnot assigned the Arbuthnot Claims to another creditor (Uncle Sam's Cannabis Ltd), in return for a release of their personal liabilities to that creditor. CRA argues that Arbuthnot should not be able to obtain the benefit of those releases and then also release from potentially liability for the Arrears.

[134] CRA asserts that many of these details were not previously available and, therefore, CRA did not have an opportunity to provide comments earlier. I reject that notion. The Arbuthnot proofs of claims based on their employment agreements were filed in August 2024 as part of the claims process. The proposed release of Bio-Tech directors was known before and since that time. The quantum of claims was reported in the Fifth Report of the Monitor's dated November 26, 2024. It was open to CRA to seek more information about the claims of directors, or to question Arbuthnot on his affidavits, if CRA wanted to know more information about their claims or how they are affected by Delta 9's financial situation or its restructuring.

[135] Arbuthnot's employment agreement was executed in 2021, by a different director on behalf of Delta 9, long before the *CCAA* proceedings. There is no evidentiary basis to suggest it was improper when executed. Delta 9 Parent is a public company and Arbuthnot and others owed fiduciary obligations to ensure they acted in the best interest of the corporations. Delta 9 Parent had public reporting obligations that likely disclosed terms of his employment agreement. In my view, without more, Arbuthnot cannot be blamed for advancing claims in the *CCAA* proceedings he is contractually entitled to claim, or from assigning those claims to another party.

[136] Further, Arbuthnot cannot be blamed for the creation or use of the regulatory regime which makes his participation integral to a restructuring.

[137] I agree with CRA that, in appropriate cases, as part of considering the fairness of a release, other benefits connected to a restructuring obtained by a proposed releasee, and the proposed releasee's circumstances and conduct in the context of a restructuring, may be relevant in approving releases within an RVO structure. This could include whether the proposed releasee has acted in good faith: *CCAA*, section 18.6; ***Bellatrix Exploration Ltd (Re)***, 2020 ABQB 809 at para 105; ***Razor Energy Corp, Razor Holdings Gp Corp, and Blade Energy Services Corp (Re)***, 2025 ABKB 30 at paras 49-51.

[138] In my view, however, a party seeking to oppose a release on these grounds should engage and advise of its position early in the process and build an evidentiary record to allow the Court to reasonably assess those factors. That might include (among other things) evidence about the alleged net benefits already received by the proposed releasee, the economic benefits of the transaction overall, the potential value of the release to the releasee, the potential economic impact of not approving the release, the actual prejudice to the creditor, and whether the proposed releasee is acting in good faith.

[139] CRA has not done these things. While it is true that Delta 9 misused funds owed to CRA for other purposes, it appears to have been to attempt to maintain the business as a going concern during tumultuous times in a new industry. This is not an excuse but is a relevant factor, particularly given that the Arrears appear to have accumulated over an extended period and CRA did not strictly enforce its rights. In the *CCAA* proceedings, CRA waited to see how things unfolded, including whether the Bio-Tech SISP process might garner a qualifying bid that would generate CRA better recovery. Then, at the last possible moment, CRA asked the Court to reject the Bio-Tech directors' release and lift the Stay in its favour without a filed application or supporting evidence. CRA has not proven, on this record, that Arbuthnot or former directors did not act in good faith contrary to section 18.6 of the *CCAA*. The evidence and arguments from other Hearing participants, including the Monitor as court officer, suggests Arbuthnot has been acting in good faith.

[140] A creditor's approach and timeliness in advancing its position against a proposed release is also a relevant factor in assessing whether to approve an RVO structure with releases. I find that if I were to accede to CRA's position and grant the relief it seeks, it would be inconsistent with this Court's supervisory role to ensure that the *CCAA* process unfolds in a fair and transparent manner: ***Delta 9*** at para 64, citing ***Target Canada 2016*** at para 72. It would be unfair to the other *CCAA* stakeholders, particularly the Plan Sponsor (who has provided significant funding to Delta 9 for this *CCAA* process), SNDL (the priority secured creditor that stands to lose its full recovery if the restructuring is frustrated), and Arbuthnot (whose personal intentions and conduct is the target of CRA's assertions).

[141] Ultimately, in addition to these concerns, CRA essentially asks the Court to deny the proposed release of Bio-Tech's directors as unfair, on the speculative assertion or hope that doing so will allow CRA to collect more of the Arrears while not destroying the hard-earned benefits of the overall complex Delta 9 restructuring (which CRA otherwise supports). I am not satisfied it is appropriate to take that risk on the evidentiary record before me.

[142] In the circumstances, I am unable to agree with CRA that RVO Releases are unfair based on Arbuthnot's conduct or due to other benefits he may or may not have received. I find that, based on the record before me, that the RVO Releases are fair, reasonable and not overly broad.

j. Effect of Not Approving the RVO

[143] As noted above, I find that the effect of not approving the RVO, with the RVO Releases, at this juncture puts the benefits of the SSCL Transaction, the 659 Transaction and the Plan at serious risk.

k. Remedial Purpose of *CCAA*

[144] The remedial purpose of the *CCAA* favours approving the SSCL Transaction for the benefit of allowing Bio-Tech to continue as a going concern for the general benefit of stakeholders, including the Plan Sponsor, SNDL, Bio-Tech employees and others (including CRA). This is not overridden in this case by CRA's position, or the fact that Arbuthnot and other Bio-Tech Directors are released from being assessed for the Arrears.

l. Conclusion re SSCL Transaction

[145] For the reasons set out above, I find that the approval of the SSCL Transaction, including the RVO Releases is appropriate. I grant the form of proposed ARVO with the noted amendments noted above.

IV. Conclusion

[146] I grant the proposed "Order – Sanction of Plan and Stay Extension", the proposed SAVO and the proposed ARVO, as amended as noted above.

Heard on the 10th day of January 2025.
Dated at the City of Calgary, Alberta this 29th day of January 2025.

M.A. Marion
J.C.K.B.A.

Appearances:

Ryan Zahara, Molly McIntosh and Chris Nyberg, MLT Aikins LLP
for Delta 9 Cannabis Inc., Delta 9 Logistics Inc., Delta 9 Bio-Tech Inc., Delta 9 Lifestyle Cannabis Clinic Inc. and Delta 9 Cannabis Store Inc.

James Reid and Matthew Cressatti, Miller Thomson LLP
for 2759054 Ontario Inc. operating as Fika Herbal Goods

Ashley Bowron, McCarthy Tetrault LLP
for SNDL Inc.

David LeGeyt, Burnet, Duckworth & Palmer LLP
for the Monitor, Alvarez & Marsal Canada Inc.

Howard A. Gorman, K.C., Norton Rose Fulbright Canada LLP
for the directors and officers of Delta 9 and Bio-Tech

Daniel Segal and David Smith, Department of Justice Canada
for the Canada Revenue Agency