

Clerk's Stamp

COURT FILE NO.

COURT

COURT OF KING'S BENCH OF
ALBERTA

JUDICIAL CENTRE

CALGARY

IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, RSC
1985, c C-36, as amended

AND IN THE MATTER OF A PLAN OF
COMPROMISE OR ARRANGEMENT OF
CANACOL ENERGY LTD., 2654044
ALBERTA LTD., CANACOL ENERGY
ULC, 2498003 ALBERTA ULC,
CANTANA ENERGY GMBH, CNE OIL &
GAS, S.R.L, CANACOL ENERGY
COLOMBIA S.A.S., SHONA HOLDING
GMBH, CNE ENERGY S.A.S., and CNE
OIL & GAS S.A.S.

APPLICANT(S)

CANACOL ENERGY LTD., 2654044 ALBERTA LTD., CANACOL
ENERGY ULC, 2498003 ALBERTA ULC, CANTANA ENERGY
GMBH, CNE OIL & GAS, S.R.L, CANACOL ENERGY COLOMBIA
S.A.S., SHONA HOLDING GMBH, CNE ENERGY S.A.S., and CNE
OIL & GAS S.A.S.

DOCUMENT

BOOK OF AUTHORITIES

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DOCUMENT

Gowling WLG (Canada) LLP

1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Attn: **Clifton Prophet / Sam Gabor / Katherine Yurkovich**

Telephone (416) 862-3509/ (403) 298-1946/ (416) 862-4342

Facsimile (416) 862-7661

Email: clifton.prophet@gowlingwlg.com / sam.gabor@gowlingwlg.com
/ kate.yurkovich@ca.gowlingwlg.com

File No. G10088627

**APPLICATION BEFORE THE HONOURABLE JUSTICE JOHNSTON
November 18, 2025 AT 2:00 PM ON THE CALGARY COMMERCIAL LIST**

TABLE OF AUTHORITIES

TAB AUTHORITY

1. [Companies' Creditors Arrangement Act](#), RSC 1985, c-C 36, as amended [CCAA].
2. [Alberta Rules of Court](#), *Alta Reg 124/2010*.
3. [Sun Indalex Finance, LLC v United Steelworkers](#), 2013 SCC 6.
4. [Re LTL Management LLC](#), 2021 ONSC 835.
5. [Global Light Telecommunications Inc., \(Re\)](#), 2004 BCSC 745.
6. [Syncreon Group BV, Re](#), 2019 ONSC 5774.
7. [In the Matter of a Plan of Compromise or Arrangement of Sandvine Corporation et al](#), 2024 ONSC 6199.
8. [Re Ghana Gold Corporation](#), 2013 ONSC 3284.
9. Houlden and Morawetz, *Bankruptcy and Insolvency Law of Canada*, 4th Edition, § 20:11. “Debtor Company”.
10. [Stelco Inc., Re](#), 2004 CanLII 24933 (ON SC).
11. [Re Just Energy Corp.](#), 2021 ONSC 1793.
12. [Cinram International Inc. \(Re\)](#), 2012 ONSC 3767.
13. [Century Services Inc. v Canada \(Attorney General\)](#), 2010 SCC 60.
14. [Laurentian University of Sudbury](#), 2021 ONSC 1098.
15. [JTI-Macdonald Corp, Re](#), 2019 ONSC 1625.
16. [Bankruptcy and Insolvency Act](#), RSC 1985, c B-3.

17. [*Caterpillar Financial Services Corporation v. Boale, Wood & Company Ltd.*](#), 2014 BCCA 419.
18. [*PT Holdco, Inc, Re*](#), 2016 ONSC 495.
19. [*Lydian International Limited \(Re\)*](#), 2019 ONSC 7473.
20. [*Boreal Capital Partners Ltd et al. \(Re\)*](#), 2021 ONSC 7802.
21. [*Canwest Publishing Inc*](#), 2010 ONSC 222.
22. [*Springer Aerospace Holdings Limited*](#), 2022 ONSC 6581.
23. [*McEwan Enterprises Inc.*](#), 2021 ONSC 6453.

Tab

1



CANADA

CONSOLIDATION

CODIFICATION

Companies' Creditors Arrangement Act

Loi sur les arrangements avec les créanciers des compagnies

R.S.C., 1985, c. C-36

L.R.C. (1985), ch. C-36

Current to October 28, 2025

À jour au 28 octobre 2025

Last amended on December 12, 2024

Dernière modification le 12 décembre 2024



R.S.C., 1985, c. C-36

L.R.C., 1985, ch. C-36

An Act to facilitate compromises and arrangements between companies and their creditors

Loi facilitant les transactions et arrangements entre les compagnies et leurs créanciers

Short Title

Titre abrégé

Short title

1 This Act may be cited as the *Companies' Creditors Arrangement Act*.

R.S., c. C-25, s. 1.

Titre abrégé

1 *Loi sur les arrangements avec les créanciers des compagnies*.

S.R., ch. C-25, art. 1.

Interpretation

Définitions et application

Definitions

2 (1) In this Act,

aircraft objects [Repealed, 2012, c. 31, s. 419]

bargaining agent means any trade union that has entered into a collective agreement on behalf of the employees of a company; (*agent négociateur*)

bond includes a debenture, debenture stock or other evidences of indebtedness; (*obligation*)

cash-flow statement, in respect of a company, means the statement referred to in paragraph 10(2)(a) indicating the company's projected cash flow; (*état de l'évolution de l'encaisse*)

claim means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act*; (*réclamation*)

collective agreement, in relation to a debtor company, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the debtor company and a bargaining agent; (*convention collective*)

Définitions

2 (1) Les définitions qui suivent s'appliquent à la présente loi.

accord de transfert de titres pour obtention de crédit

Accord aux termes duquel une compagnie débitrice transfère la propriété d'un bien en vue de garantir le paiement d'une somme ou l'exécution d'une obligation relativement à un contrat financier admissible. (*title transfer credit support agreement*)

actionnaire S'agissant d'une compagnie ou d'une fiducie de revenu assujetties à la présente loi, est assimilée à l'actionnaire la personne ayant un intérêt dans cette compagnie ou détenant des parts de cette fiducie. (*shareholder*)

administrateur S'agissant d'une compagnie autre qu'une fiducie de revenu, toute personne exerçant les fonctions d'administrateur, indépendamment de son titre, et, s'agissant d'une fiducie de revenu, toute personne exerçant les fonctions de fiduciaire, indépendamment de son titre. (*director*)

agent négociateur Syndicat ayant conclu une convention collective pour le compte des employés d'une compagnie. (*bargaining agent*)

biens aéronautiques [Abrogée, 2012, ch. 31, art. 419]

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

court means

(a) in Nova Scotia, British Columbia and Prince Edward Island, the Supreme Court,

(a.1) in Ontario, the Superior Court of Justice,

(b) in Quebec, the Superior Court,

(c) in New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench,

(c.1) in Newfoundland and Labrador, the Trial Division of the Supreme Court, and

(d) in Yukon and the Northwest Territories, the Supreme Court, and in Nunavut, the Nunavut Court of Justice; (*tribunal*)

debtor company means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or

(d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent; (*compagnie débitrice*)

director means, in the case of a company other than an income trust, a person occupying the position of director by whatever name called and, in the case of an income trust, a person occupying the position of trustee by whatever name called; (*administrateur*)

eligible financial contract means an agreement of a prescribed kind; (*contrat financier admissible*)

compagnie Toute personne morale constituée par une loi fédérale ou provinciale ou sous son régime et toute personne morale qui possède un actif ou exerce des activités au Canada, quel que soit l'endroit où elle a été constituée, ainsi que toute fiducie de revenu. La présente définition exclut les banques, les banques étrangères autorisées, au sens de l'article 2 de la *Loi sur les banques*, les compagnies de télégraphe, les compagnies d'assurances et les sociétés auxquelles s'applique la *Loi sur les sociétés de fiducie et de prêt*. (*company*)

compagnie débitrice Toute compagnie qui, selon le cas :

a) est en faillite ou est insolvable;

b) a commis un acte de faillite au sens de la *Loi sur la faillite et l'insolvabilité* ou est réputée insolvable au sens de la *Loi sur les liquidations et les restructurations*, que des procédures relatives à cette compagnie aient été intentées ou non sous le régime de l'une ou l'autre de ces lois;

c) a fait une cession autorisée ou à l'encontre de laquelle une ordonnance de faillite a été rendue en vertu de la *Loi sur la faillite et l'insolvabilité*;

d) est en voie de liquidation aux termes de la *Loi sur les liquidations et les restructurations* parce que la compagnie est insolvable. (*debtor company*)

contrat financier admissible Contrat d'une catégorie réglementaire. (*eligible financial contract*)

contrôleur S'agissant d'une compagnie, la personne nommée en application de l'article 11.7 pour agir à titre de contrôleur des affaires financières et autres de celle-ci. (*monitor*)

convention collective S'entend au sens donné à ce terme par les règles de droit applicables aux négociations collectives entre la compagnie débitrice et l'agent négociateur. (*collective agreement*)

créancier chirographaire Tout créancier d'une compagnie qui n'est pas un créancier garanti, qu'il réside ou soit domicilié au Canada ou à l'étranger. Un fiduciaire pour les détenteurs d'obligations non garanties, lesquelles sont émises en vertu d'un acte de fiducie ou autre acte fonctionnant en faveur du fiduciaire, est réputé un créancier chirographaire pour toutes les fins de la présente loi sauf la votation à une assemblée des créanciers relativement à ces obligations. (*unsecured creditor*)

domiciled within or outside Canada, and a trustee for the holders of any unsecured bonds issued under a trust deed or other instrument running in favour of the trustee shall be deemed to be an unsecured creditor for all purposes of this Act except for the purpose of voting at a creditors' meeting in respect of any of those bonds. (*créancier chirographaire*)

Meaning of related and dealing at arm's length

(2) For the purpose of this Act, section 4 of the *Bankruptcy and Insolvency Act* applies for the purpose of determining whether a person is related to or dealing at arm's length with a debtor company.

R.S., 1985, c. C-36, s. 2; R.S., 1985, c. 27 (2nd Supp.), s. 10; 1990, c. 17, s. 4; 1992, c. 27, s. 90; 1993, c. 34, s. 52; 1996, c. 6, s. 167; 1997, c. 12, s. 120(E); 1998, c. 30, s. 14; 1999, c. 3, s. 22, c. 28, s. 154; 2001, c. 9, s. 575; 2002, c. 7, s. 133; 2004, c. 25, s. 193; 2005, c. 3, s. 15, c. 47, s. 124; 2007, c. 29, s. 104, c. 36, ss. 61, 105; 2012, c. 31, s. 419; 2015, c. 3, s. 37; 2018, c. 10, s. 89.

Application

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

Affiliated companies

(2) For the purposes of this Act,

(a) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and

(b) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

a) Dans les provinces de la Nouvelle-Écosse, de la Colombie-Britannique et de l'Île-du-Prince-Édouard, la Cour suprême;

a.1) dans la province d'Ontario, la Cour supérieure de justice;

b) dans la province de Québec, la Cour supérieure;

c) dans les provinces du Nouveau-Brunswick, du Manitoba, de la Saskatchewan et d'Alberta, la Cour du Banc de la Reine;

c.1) dans la province de Terre-Neuve-et-Labrador, la Section de première instance de la Cour suprême;

d) au Yukon et dans les Territoires du Nord-Ouest, la Cour suprême et, au Nunavut, la Cour de justice du Nunavut. (*court*)

valeurs nettes dues à la date de résiliation La somme nette obtenue après compensation des obligations mutuelles des parties à un contrat financier admissible effectuée conformément à ce contrat. (*net termination value*)

Définition de personnes liées

(2) Pour l'application de la présente loi, l'article 4 de la *Loi sur la faillite et l'insolvabilité* s'applique pour établir si une personne est liée à une compagnie débitrice ou agit sans lien de dépendance avec une telle compagnie.

L.R. (1985), ch. C-36, art. 2; L.R. (1985), ch. 27 (2^e suppl.), art. 10; 1990, ch. 17, art. 4; 1992, ch. 27, art. 90; 1993, ch. 34, art. 52; 1996, ch. 6, art. 167; 1997, ch. 12, art. 120(A); 1998, ch. 30, art. 14; 1999, ch. 3, art. 22, ch. 28, art. 154; 2001, ch. 9, art. 575; 2002, ch. 7, art. 133; 2004, ch. 25, art. 193; 2005, ch. 3, art. 15, ch. 47, art. 124; 2007, ch. 29, art. 104, ch. 36, art. 61 et 105; 2012, ch. 31, art. 419; 2015, ch. 3, art. 37; 2018, ch. 10, art. 89.

Application

3 (1) La présente loi ne s'applique à une compagnie débitrice ou aux compagnies débitrices qui appartiennent au même groupe qu'elle que si le montant des réclamations contre elle ou les compagnies appartenant au même groupe, établi conformément à l'article 20, est supérieur à cinq millions de dollars ou à toute autre somme prévue par les règlements.

Application

(2) Pour l'application de la présente loi :

a) appartiennent au même groupe deux compagnies dont l'une est la filiale de l'autre ou qui sont sous le contrôle de la même personne;

b) sont réputées appartenir au même groupe deux compagnies dont chacune appartient au groupe d'une même compagnie.

Clarification

(2) For greater certainty, once the perishable fruits or vegetables, as well as any of the proceeds of sale, are deemed to be held in trust by the purchaser for the supplier in accordance with subsection (1), they are not included in the property of the purchaser.

Provincial law

(3) The laws of general application in relation to trusts and trustees in force in the province in which the purchaser resided or carried on business when the purchaser applied to the court to sanction a compromise or an arrangement apply to the trust, and in the event of any inconsistency or conflict between this section and the provisions of any of those laws, the provisions of those laws prevail to the extent of the inconsistency or conflict.

Definitions

(4) The following definitions apply in this section.

perishable fruits or vegetables includes perishable fruits and vegetables that have been repackaged or transformed by the purchaser to the extent that the nature of the fruits or vegetables remains unchanged. (*fruits ou légumes périssables*)

proceeds of sale means the proceeds from the sale by the purchaser of the perishable fruits or vegetables that are subject to the trust, whether or not those proceeds have been kept by the purchaser in a separate account or have been combined with other funds. (*produit de vente*)

2024, c. 31, s. 3.

PART II

Jurisdiction of Courts

Jurisdiction of court to receive applications

9 (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

c) l'acheteur n'a pas acquitté le solde impayé lorsqu'il est devenu exigible conformément à ce qui était prévu dans la facture.

Précision

(2) Il est entendu que les fruits ou légumes périssables, ainsi que tout produit de vente, ne sont pas compris dans les biens de l'acheteur dès lors qu'ils sont réputés être détenus en fiducie par l'acheteur pour le fournisseur au titre du paragraphe (1).

Droit provincial

(3) La fiducie est assujettie aux lois d'application générale concernant les fiducies et les fiduciaires de la province où l'acheteur résidait ou exerçait des activités lorsqu'il a demandé au tribunal d'homologuer une transaction ou un arrangement, les dispositions de ces lois l'emportant sur les dispositions incompatibles du présent article.

Définitions

(4) Les définitions qui suivent s'appliquent au présent article.

fruits ou légumes périssables Sont compris parmi les fruits ou légumes périssables ceux qui sont réemballés ou transformés par l'acheteur sans qu'en soit changée leur nature. (*perishable fruits or vegetables*)

produit de vente Produit de la vente par l'acheteur des fruits ou légumes périssables assujettis à la fiducie, qu'il ait été gardé par l'acheteur dans un compte distinct ou combiné à d'autres fonds. (*proceeds of sale*)

2024, ch. 31, art. 3.

PARTIE II

Juridiction des tribunaux

Le tribunal a juridiction pour recevoir des demandes

9 (1) Toute demande prévue par la présente loi peut être faite au tribunal ayant juridiction dans la province où est situé le siège social ou le principal bureau d'affaires de la compagnie au Canada, ou, si la compagnie n'a pas de bureau d'affaires au Canada, dans la province où est situé quelque actif de la compagnie.

Single judge may exercise powers, subject to appeal

(2) The powers conferred by this Act on a court may, subject to appeal as provided for in this Act, be exercised by a single judge thereof, and those powers may be exercised in chambers during term or in vacation.

R.S., c. C-25, s. 9.

Form of applications

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

Documents that must accompany initial application

(2) An initial application must be accompanied by

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

Publication ban

(3) The court may make an order prohibiting the release to the public of any cash-flow statement, or any part of a cash-flow statement, if it is satisfied that the release would unduly prejudice the debtor company and the making of the order would not unduly prejudice the company's creditors, but the court may, in the order, direct that the cash-flow statement or any part of it be made available to any person specified in the order on any terms or conditions that the court considers appropriate.

R.S., 1985, c. C-36, s. 10; 2005, c. 47, s. 127.

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

R.S., 1985, c. C-36, s. 11; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 124; 2005, c. 47, s. 128.

Un seul juge peut exercer les pouvoirs, sous réserve d'appel

(2) Les pouvoirs conférés au tribunal par la présente loi peuvent être exercés par un seul de ses juges, sous réserve de l'appel prévu par la présente loi. Ces pouvoirs peuvent être exercés en chambre, soit durant une session du tribunal, soit pendant les vacances judiciaires.

S.R., ch. C-25, art. 9.

Forme des demandes

10 (1) Les demandes prévues par la présente loi peuvent être formulées par requête ou par voie d'assignation introductive d'instance ou d'avis de motion conformément à la pratique du tribunal auquel la demande est présentée.

Documents accompagnant la demande initiale

(2) La demande initiale doit être accompagnée :

- a)** d'un état portant, projections à l'appui, sur l'évolution hebdomadaire de l'encaisse de la compagnie débitrice;
- b)** d'un rapport contenant les observations réglementaires de la compagnie débitrice relativement à l'établissement de cet état;
- c)** d'une copie des états financiers, vérifiés ou non, établis au cours de l'année précédant la demande ou, à défaut, d'une copie des états financiers les plus récents.

Interdiction de mettre l'état à la disposition du public

(3) Le tribunal peut, par ordonnance, interdire la communication au public de tout ou partie de l'état de l'évolution de l'encaisse de la compagnie débitrice s'il est convaincu que sa communication causerait un préjudice indu à celle-ci et que sa non-communication ne causerait pas de préjudice indu à ses créanciers. Il peut toutefois préciser dans l'ordonnance que tout ou partie de cet état peut être communiqué, aux conditions qu'il estime indiquées, à la personne qu'il nomme.

L.R. (1985), ch. C-36, art. 10; 2005, ch. 47, art. 127.

Pouvoir général du tribunal

11 Malgré toute disposition de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*, le tribunal peut, dans le cas de toute demande sous le régime de la présente loi à l'égard d'une compagnie débitrice, rendre, sur demande d'un intéressé, mais sous réserve des restrictions prévues par la présente loi et avec ou sans avis, toute ordonnance qu'il estime indiquée.

L.R. (1985), ch. C-36, art. 11; 1992, ch. 27, art. 90; 1996, ch. 6, art. 167; 1997, ch. 12, art. 124; 2005, ch. 47, art. 128.

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

2019, c. 29, s. 136.

Rights of suppliers

11.01 No order made under section 11 or 11.02 has the effect of

- (a) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or
- (b) requiring the further advance of money or credit.

2005, c. 47, s. 128.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

Redressements normalement nécessaires

11.001 L'ordonnance rendue au titre de l'article 11 en même temps que l'ordonnance rendue au titre du paragraphe 11.02(1) ou pendant la période visée dans l'ordonnance rendue au titre de ce paragraphe relativement à la demande initiale n'est limitée qu'aux redressements normalement nécessaires à la continuation de l'exploitation de la compagnie débitrice dans le cours ordinaire de ses affaires durant cette période.

2019, ch. 29, art. 136.

Droits des fournisseurs

11.01 L'ordonnance prévue aux articles 11 ou 11.02 ne peut avoir pour effet :

- a) d'empêcher une personne d'exiger que soient effectués sans délai les paiements relatifs à la fourniture de marchandises ou de services, à l'utilisation de biens loués ou faisant l'objet d'une licence ou à la fourniture de toute autre contrepartie de valeur qui ont lieu après l'ordonnance;
- b) d'exiger le versement de nouvelles avances de fonds ou de nouveaux crédits.

2005, ch. 47, art. 128.

Suspension : demande initiale

11.02 (1) Dans le cas d'une demande initiale visant une compagnie débitrice, le tribunal peut, par ordonnance, aux conditions qu'il peut imposer et pour la période maximale de dix jours qu'il estime nécessaire :

- a) suspendre, jusqu'à nouvel ordre, toute procédure qui est ou pourrait être intentée contre la compagnie sous le régime de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*;
- b) surseoir, jusqu'à nouvel ordre, à la continuation de toute action, poursuite ou autre procédure contre la compagnie;
- c) interdire, jusqu'à nouvel ordre, l'introduction de toute action, poursuite ou autre procédure contre la compagnie.

Suspension : demandes autres qu'initiales

(2) Dans le cas d'une demande, autre qu'une demande initiale, visant une compagnie débitrice, le tribunal peut, par ordonnance, aux conditions qu'il peut imposer et pour la période qu'il estime nécessaire :

- a) suspendre, jusqu'à nouvel ordre, toute procédure qui est ou pourrait être intentée contre la compagnie sous le régime des lois mentionnées à l'alinéa (1)a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

2005, c. 47, s. 128, 2007, c. 36, s. 62(F); 2019, c. 29, s. 137.

Stays — directors

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

Exception

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.

Persons deemed to be directors

(3) If all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the company is deemed to be a director for the purposes of this section.

2005, c. 47, s. 128.

b) surseoir, jusqu'à nouvel ordre, à la continuation de toute action, poursuite ou autre procédure contre la compagnie;

c) interdire, jusqu'à nouvel ordre, l'introduction de toute action, poursuite ou autre procédure contre la compagnie.

Preuve

(3) Le tribunal ne rend l'ordonnance que si :

a) le demandeur le convainc que la mesure est opportune;

b) dans le cas de l'ordonnance visée au paragraphe (2), le demandeur le convainc en outre qu'il a agi et continue d'agir de bonne foi et avec la diligence voulue.

Restriction

(4) L'ordonnance qui prévoit l'une des mesures visées aux paragraphes (1) ou (2) ne peut être rendue qu'en vertu du présent article.

2005, ch. 47, art. 128, 2007, ch. 36, art. 62(F); 2019, ch. 29, art. 137.

Suspension — administrateurs

11.03 (1) L'ordonnance prévue à l'article 11.02 peut interdire l'introduction ou la continuation de toute action contre les administrateurs de la compagnie relativement aux réclamations qui sont antérieures aux procédures intentées sous le régime de la présente loi et visent des obligations de la compagnie dont ils peuvent être, ès qualités, responsables en droit, tant que la transaction ou l'arrangement, le cas échéant, n'a pas été homologué par le tribunal ou rejeté par celui-ci ou les créanciers.

Exclusion

(2) La suspension ne s'applique toutefois pas aux actions contre les administrateurs pour les garanties qu'ils ont données relativement aux obligations de la compagnie ni aux mesures de la nature d'une injonction les visant au sujet de celle-ci.

Présomption : administrateurs

(3) Si tous les administrateurs démissionnent ou sont destitués par les actionnaires sans être remplacés, quiconque dirige ou supervise les activités commerciales et les affaires internes de la compagnie est réputé un administrateur pour l'application du présent article.

2005, ch. 47, art. 128.

is satisfied that the director is unreasonably impairing or is likely to unreasonably impair the possibility of a viable compromise or arrangement being made in respect of the company or is acting or is likely to act inappropriately as a director in the circumstances.

Filling vacancy

(2) The court may, by order, fill any vacancy created under subsection (1).

1997, c. 12, s. 124; 2005, c. 47, s. 128.

Security or charge relating to director's indemnification

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

Priority

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

Restriction — indemnification insurance

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

Negligence, misconduct or fault

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

2005, c. 47, s. 128; 2007, c. 36, s. 66.

Court may order security or charge to cover certain costs

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

convaincu que ce dernier, sans raisons valables, compromet ou compromettra vraisemblablement la possibilité de conclure une transaction ou un arrangement viable ou agit ou agira vraisemblablement de façon inacceptable dans les circonstances.

Vacance

(2) Le tribunal peut, par ordonnance, combler toute vacance découlant de la révocation.

1997, ch. 12, art. 124; 2005, ch. 47, art. 128.

Biens grevés d'une charge ou sûreté en faveur d'administrateurs ou de dirigeants

11.51 (1) Sur demande de la compagnie débitrice, le tribunal peut par ordonnance, sur préavis de la demande aux créanciers garantis qui seront vraisemblablement touchés par la charge ou sûreté, déclarer que tout ou partie des biens de celle-ci sont grevés d'une charge ou sûreté, d'un montant qu'il estime indiqué, en faveur d'un ou de plusieurs administrateurs ou dirigeants pour l'exécution des obligations qu'ils peuvent contracter en cette qualité après l'introduction d'une procédure sous le régime de la présente loi.

Priorité

(2) Il peut préciser, dans l'ordonnance, que la charge ou sûreté a priorité sur toute réclamation des créanciers garantis de la compagnie.

Restriction — assurance

(3) Il ne peut toutefois rendre une telle ordonnance s'il estime que la compagnie peut souscrire, à un coût qu'il estime juste, une assurance permettant d'indemniser adéquatement les administrateurs ou dirigeants.

Négligence, inconduite ou faute

(4) Il déclare, dans l'ordonnance, que la charge ou sûreté ne vise pas les obligations que l'administrateur ou le dirigeant assume, selon lui, par suite de sa négligence grave ou de son inconduite délibérée ou, au Québec, par sa faute lourde ou intentionnelle.

2005, ch. 47, art. 128; 2007, ch. 36, art. 66.

Biens grevés d'une charge ou sûreté pour couvrir certains frais

11.52 (1) Le tribunal peut par ordonnance, sur préavis aux créanciers garantis qui seront vraisemblablement touchés par la charge ou sûreté, déclarer que tout ou partie des biens de la compagnie débitrice sont grevés d'une charge ou sûreté, d'un montant qu'il estime indiqué, pour couvrir :

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

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

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

Priority

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

2005, c. 47, s. 128; 2007, c. 36, s. 66.

Bankruptcy and Insolvency Act matters

11.6 Notwithstanding the *Bankruptcy and Insolvency Act*,

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

(b) an application under this Act by a bankrupt may only be made with the consent of inspectors referred to in section 116 of the *Bankruptcy and Insolvency Act* but no application may be made under this Act by a bankrupt whose bankruptcy has resulted from

(i) the operation of subsection 50.4(8) of the *Bankruptcy and Insolvency Act*, or

(ii) the refusal or deemed refusal by the creditors or the court, or the annulment, of a proposal under the *Bankruptcy and Insolvency Act*.

1997, c. 12, s. 124.

Court to appoint monitor

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

a) les débours et honoraires du contrôleur, ainsi que ceux des experts — notamment en finance et en droit — dont il retient les services dans le cadre de ses fonctions;

b) ceux des experts dont la compagnie retient les services dans le cadre de procédures intentées sous le régime de la présente loi;

c) ceux des experts dont tout autre intéressé retient les services, si, à son avis, la charge ou sûreté était nécessaire pour assurer sa participation efficace aux procédures intentées sous le régime de la présente loi.

Priorité

(2) Il peut préciser, dans l'ordonnance, que la charge ou sûreté a priorité sur toute réclamation des créanciers garantis de la compagnie.

2005, ch. 47, art. 128; 2007, ch. 36, art. 66.

Lien avec la *Loi sur la faillite et l'insolvabilité*

11.6 Par dérogation à la *Loi sur la faillite et l'insolvabilité* :

a) les procédures intentées sous le régime de la partie III de cette loi ne peuvent être traitées et continuées sous le régime de la présente loi que si une proposition au sens de la *Loi sur la faillite et l'insolvabilité* n'a pas été déposée au titre de cette même partie;

b) le failli ne peut faire une demande au titre de la présente loi qu'avec l'aval des inspecteurs visés à l'article 116 de la *Loi sur la faillite et l'insolvabilité*, aucune demande ne pouvant toutefois être faite si la faillite découle, selon le cas :

(i) de l'application du paragraphe 50.4(8) de la *Loi sur la faillite et l'insolvabilité*,

(ii) du rejet — effectif ou présumé — de sa proposition par les créanciers ou le tribunal ou de l'annulation de celle-ci au titre de cette loi.

1997, ch. 12, art. 124.

Nomination du contrôleur

11.7 (1) Le tribunal qui rend une ordonnance sur la demande initiale nomme une personne pour agir à titre de contrôleur des affaires financières ou autres de la compagnie débitrice visée par la demande. Seul un syndic au sens du paragraphe 2(1) de la *Loi sur la faillite et l'insolvabilité* peut être nommé pour agir à titre de contrôleur.

Restrictions on who may be monitor

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

(a) if the trustee is or, at any time during the two preceding years, was

(i) a director, an officer or an employee of the company,

(ii) related to the company or to any director or officer of the company, or

(iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or

(b) if the trustee is

(i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the *Civil Code of Quebec* that is granted by the company or any person related to the company, or

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

Court may replace monitor

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

1997, c. 12, s. 124; 2005, c. 47, s. 129.

No personal liability in respect of matters before appointment

11.8 (1) Despite anything in federal or provincial law, if a monitor, in that position, carries on the business of a debtor company or continues the employment of a debtor company's employees, the monitor is not by reason of that fact personally liable in respect of a liability, including one as a successor employer,

(a) that is in respect of the employees or former employees of the company or a predecessor of the company or in respect of a pension plan for the benefit of those employees; and

(b) that exists before the monitor is appointed or that is calculated by reference to a period before the appointment.

Personnes qui ne peuvent agir à titre de contrôleur

(2) Sauf avec l'autorisation du tribunal et aux conditions qu'il peut fixer, ne peut être nommé pour agir à titre de contrôleur le syndic :

a) qui est ou, au cours des deux années précédentes, a été :

(i) administrateur, dirigeant ou employé de la compagnie,

(ii) lié à la compagnie ou à l'un de ses administrateurs ou dirigeants,

(iii) vérificateur, comptable ou conseiller juridique de la compagnie, ou employé ou associé de l'un ou l'autre;

b) qui est :

(i) le fondé de pouvoir aux termes d'un acte constitutif d'hypothèque — au sens du *Code civil du Québec* — émanant de la compagnie ou d'une personne liée à celle-ci ou le fiduciaire aux termes d'un acte de fiducie émanant de la compagnie ou d'une personne liée à celle-ci,

(ii) lié au fondé de pouvoir ou au fiduciaire visé au sous-alinéa (i).

Remplacement du contrôleur

(3) Sur demande d'un créancier de la compagnie, le tribunal peut, s'il l'estime indiqué dans les circonstances, remplacer le contrôleur en nommant un autre syndic, au sens du paragraphe 2(1) de la *Loi sur la faillite et l'insolvabilité*, pour agir à ce titre à l'égard des affaires financières et autres de la compagnie.

1997, ch. 12, art. 124; 2005, ch. 47, art. 129.

Immunité

11.8 (1) Par dérogation au droit fédéral et provincial, le contrôleur qui, en cette qualité, continue l'exploitation de l'entreprise de la compagnie débitrice ou lui succède comme employeur est dégagé de toute responsabilité personnelle découlant de quelque obligation de la compagnie, notamment à titre d'employeur successeur, si celle-ci, à la fois :

a) l'oblige envers des employés ou anciens employés de la compagnie, ou de l'un de ses prédécesseurs, ou découle d'un régime de pension pour le bénéfice de ces employés;

b) existait avant sa nomination ou est calculée par référence à une période la précédant.

Miscellaneous Provisions

Authorization to act as representative of proceeding under this Act

56 The court may authorize any person or body to act as a representative in respect of any proceeding under this Act for the purpose of having them recognized in a jurisdiction outside Canada.

2005, c. 47, s. 131.

Foreign representative status

57 An application by a foreign representative for any order under this Part does not submit the foreign representative to the jurisdiction of the court for any other purpose except with regard to the costs of the proceedings, but the court may make any order under this Part conditional on the compliance by the foreign representative with any other order of the court.

2005, c. 47, s. 131.

Foreign proceeding appeal

58 A foreign representative is not prevented from making an application to the court under this Part by reason only that proceedings by way of appeal or review have been taken in a foreign proceeding, and the court may, on an application if such proceedings have been taken, grant relief as if the proceedings had not been taken.

2005, c. 47, s. 131.

Presumption of insolvency

59 For the purposes of this Part, if an insolvency or a reorganization or a similar order has been made in respect of a debtor company in a foreign proceeding, a certified copy of the order is, in the absence of evidence to the contrary, proof that the debtor company is insolvent and proof of the appointment of the foreign representative made by the order.

2005, c. 47, s. 131.

Credit for recovery in other jurisdictions

60 (1) In making a compromise or an arrangement of a debtor company, the following shall be taken into account in the distribution of dividends to the company's creditors in Canada as if they were a part of that distribution:

(a) the amount that a creditor receives or is entitled to receive outside Canada by way of a dividend in a foreign proceeding in respect of the company; and

(b) the value of any property of the company that the creditor acquires outside Canada on account of a provable claim of the creditor or that the creditor acquires

Dispositions diverses

Autorisation d'agir à titre de représentant dans toute procédure intentée sous le régime de la présente loi

56 Le tribunal peut autoriser toute personne ou tout organe à agir à titre de représentant dans le cadre de toute procédure intentée sous le régime de la présente loi en vue d'obtenir la reconnaissance de celle-ci dans un ressort étranger.

2005, ch. 47, art. 131.

Statut du représentant étranger

57 Le représentant étranger n'est pas soumis à la juridiction du tribunal pour le motif qu'il a présenté une demande au titre de la présente partie, sauf en ce qui touche les frais de justice; le tribunal peut toutefois subordonner toute ordonnance visée à la présente partie à l'observation par le représentant étranger de toute autre ordonnance rendue par lui.

2005, ch. 47, art. 131.

Instance étrangère : appel

58 Le fait qu'une instance étrangère fait l'objet d'un appel ou d'une révision n'a pas pour effet d'empêcher le représentant étranger de présenter toute demande au tribunal au titre de la présente partie; malgré ce fait, le tribunal peut, sur demande, accorder des redressements.

2005, ch. 47, art. 131.

Présomption d'insolvabilité

59 Pour l'application de la présente partie, une copie certifiée conforme de l'ordonnance d'insolvabilité ou de réorganisation ou de toute ordonnance semblable, rendue contre une compagnie débitrice dans le cadre d'une instance étrangère, fait foi, sauf preuve contraire, de l'insolvabilité de celle-ci et de la nomination du représentant étranger au titre de l'ordonnance.

2005, ch. 47, art. 131.

Sommes reçues à l'étranger

60 (1) Lorsqu'une transaction ou un arrangement visant la compagnie débitrice est proposé, les éléments énumérés ci-après doivent être pris en considération dans la distribution des dividendes aux créanciers d'un débiteur au Canada comme s'ils faisaient partie de la distribution :

a) les sommes qu'un créancier a reçues — ou auxquelles il a droit — à l'étranger, à titre de dividende, dans le cadre d'une instance étrangère le visant;

b) la valeur de tout bien de la compagnie que le créancier a acquis à l'étranger au titre d'une créance prouvable ou par suite d'un transfert qui, si la présente loi

Tab

2



ALBERTA

RULES OF COURT

Effective November 1, 2010

AR 124/2010
Includes changes from AR 158/2025

VOLUME ONE

Published June 2025

Part 6: Resolving Issues and Preserving Rights

Division 1 Applications to the Court

What this Division applies to

6.1 This Division

- (a) applies to every application filed in the Court unless a rule or an enactment otherwise provides or the Court otherwise orders or permits;
- (b) does not apply to originating applications unless another rule otherwise provides, the parties otherwise agree or the Court otherwise orders.

AR 124/2010 s6.1;23/2021

Application to the Court to exercise its authority

6.2 When the Court has authority under these rules, a person may make an application to the Court that the Court exercise its authority.

Subdivision 1 Application Process Generally

Applications generally

6.3(1) Unless these rules or an enactment otherwise provides or the Court otherwise permits, an application may only be filed during an action or after judgment is entered.

(2) Unless the Court otherwise permits, an application to the Court must

- (a) be in the appropriate form set out in Schedule A, Division 1 to these rules,
- (b) state briefly the grounds for filing the application,
- (c) identify the material or evidence intended to be relied on,
- (d) refer to any provision of an enactment or rule relied on,
- (e) specify any irregularity complained of or objection relied on,
- (f) state the remedy claimed or sought, and
- (g) state how the application is proposed to be heard or considered under these rules.

(3) Unless an enactment, the Court or these rules otherwise provide, the applicant must file and serve on all parties and every other person affected by the application, 5 days or more before the application is scheduled to be heard or considered,

- (a) notice of the application, and
- (b) any affidavit or other evidence in support of the application.

Information note

An application may be made both during an action and, if Court assistance is still required, after judgment. See rule 9.14 [*Further or other order after judgment or order entered*].

Rules related to the preparation and contents of affidavits are contained in rules starting at rule 13.18 [*Types of affidavit*].

Applications without notice

6.4 Despite any other rule to the contrary, notice of an application is not required to be served on a party if an enactment so provides or permits or the Court is satisfied that

- (a) no notice is necessary, or
- (b) serving notice of the application might cause undue prejudice to the applicant.

Subdivision 2**Application in Foreclosure Action****Notice of application in foreclosure action**

6.5(1) In a foreclosure action, notice of every application made by the plaintiff must be served on each person who filed and served on the plaintiff a statement of defence, a demand for notice or a notice of address for service.

(2) A defendant or subsequent encumbrancer who is not required to be served under subrule (1) must be served with notice of an application in a foreclosure action if the application is for one or more of the following:

- (a) a redemption order;
- (b) an order that secured property be offered for sale;
- (c) an order confirming sale to the plaintiff or other person;
- (d) an order for possession, but not a preservation order;
- (e) an order appointing a receiver and manager;
- (f) a foreclosure order.

(3) A defendant who is not required to be served under subrule (1) must be served with notice of an application in a foreclosure action if the application is for personal judgment against that defendant.

(4) A person who is not required to be served under subrule (1) must be served with notice of an application in a foreclosure action for an order for possession if the plaintiff seeks possession of secured property from that person.

Tab

3



SUPREME COURT OF CANADA

CITATION: Sun Indalex Finance, LLC v. United Steelworkers, 2013 SCC 6 **DATE:** 20130201
DOCKET: 34308

BETWEEN:

Sun Indalex Finance, LLC

Appellant
and

United Steelworkers, Keith Carruthers, Leon Kozierok, Richard Benson, John Faveri, Ken Waldron, John (Jack) W. Rooney, Bertram McBride, Max Degen, Eugene D'Iorio, Neil Fraser, Richard Smith, Robert Leckie and Fred Granville

Respondents

AND BETWEEN:

**George L. Miller, the Chapter 7 Trustee of the Bankruptcy Estates
of the U.S. Indalex Debtors**

Appellant
and

United Steelworkers, Keith Carruthers, Leon Kozierok, Richard Benson, John Faveri, Ken Waldron, John (Jack) W. Rooney, Bertram McBride, Max Degen, Eugene D'Iorio, Neil Fraser, Richard Smith, Robert Leckie and Fred Granville

Respondents

AND BETWEEN:

**FTI Consulting Canada ULC, in its capacity as court-appointed monitor of
Indalex Limited, on behalf of Indalex Limited**

Appellant
and

United Steelworkers, Keith Carruthers, Leon Kozierok, Richard Benson, John Faveri, Ken Waldron, John (Jack) W. Rooney, Bertram McBride, Max Degen, Eugene D'Iorio, Neil Fraser, Richard Smith, Robert Leckie and Fred Granville

Respondents

AND BETWEEN:

United Steelworkers

Appellant
and

**Morneau Shepell Ltd. (formerly known as Morneau Sobeco Limited
Partnership) and Superintendent of Financial Services**

Respondents

- and -

Superintendent of Financial Services, Insolvency Institute of Canada, Canadian Labour Congress, Canadian Federation of Pensioners, Canadian Association of Insolvency and Restructuring Professionals and Canadian Bankers Association
Interveners

CORAM: McLachlin C.J. and LeBel, Deschamps, Abella, Rothstein, Cromwell and Moldaver JJ.

REASONS FOR JUDGMENT: Deschamps J. (Moldaver J. concurring)
(paras. 1 to 84)

REASONS CONCURRING IN RESULT WITH THOSE OF DESCHAMPS J.: Cromwell J. (McLachlin C.J. and Rothstein J. concurring)
(paras. 85 to 262)

DISSENTING REASONS: LeBel J. (Abella J. concurring)
(paras. 263 to 280)

NOTE: This document is subject to editorial revision before its reproduction in final form in the *Canada Supreme Court Reports*.

SUN INDALEX FINANCE v. UNITED STEELWORKERS

Sun Indalex Finance, LLC

Appellant

v.

**United Steelworkers, Keith Carruthers, Leon Kozierok,
Richard Benson, John Faveri, Ken Waldron,
John (Jack) W. Rooney, Bertram McBride,
Max Degen, Eugene D'Iorio, Neil Fraser, Richard Smith,
Robert Leckie and Fred Granville**

Respondents

- and -

**George L. Miller, the Chapter 7 Trustee of the Bankruptcy
Estates of the U.S. Indalex Debtors**

Appellant

v.

**United Steelworkers, Keith Carruthers, Leon Kozierok,
Richard Benson, John Faveri, Ken Waldron,
John (Jack) W. Rooney, Bertram McBride,
Max Degen, Eugene D'Iorio, Neil Fraser, Richard Smith,
Robert Leckie and Fred Granville**

Respondents

- and -

**FTI Consulting Canada ULC, in its capacity as court-appointed
monitor of Indalex Limited, on behalf of Indalex Limited**

Appellant

v.

**United Steelworkers, Keith Carruthers, Leon Kozierok,
Richard Benson, John Faveri, Ken Waldron,
John (Jack) W. Rooney, Bertram McBride,
Max Degen, Eugene D'Iorio, Neil Fraser, Richard Smith,
Robert Leckie and Fred Granville**

Respondents

- and -

United Steelworkers

Appellant

v.

**Morneau Shepell Ltd. (formerly known as Morneau Sobeco
Limited Partnership) and Superintendent of Financial Services**

Respondents

and

**Superintendent of Financial Services,
Insolvency Institute of Canada,
Canadian Labour Congress,
Canadian Federation of Pensioners,
Canadian Association of Insolvency and
Restructuring Professionals and
Canadian Bankers Association**

Interveners

Indexed as: Sun Indalex Finance, LLC v. United Steelworkers

2013 SCC 6

provided that parties could commence *CCAA* proceedings without giving notice to interested persons:

11. (1) Notwithstanding anything in the *Bankruptcy and Insolvency Act* or the *Winding-up Act*, where an application is made under this Act in respect of a company, the court, on the application of any person interested in the matter, may, subject to this Act, on notice to any other person or without notice as it may see fit, make an order under this section.

[208] This provision was renumbered but not substantially changed when the Act was amended in September of 2009 (S.C. 2005, c. 47, s. 128, in force Sept. 18, 2009, SI/2009-68). Although it is not appropriate in every case, *CCAA* courts have discretion to make initial orders on an *ex parte* basis. This may be an appropriate — even necessary — step in order to prevent “creditors from moving to realize on their claims, essentially a ‘stampede to the assets’ once creditors learn of the debtor’s financial distress”: J. P. Sarra, *Rescue! The Companies’ Creditors Arrangement Act* (2007), at p. 55 (“*Rescue!*”); see also *Algoma Steel Inc., Re* (2001), 25 C.B.R. (4th) 194, at para. 7. The respondents did not challenge Morawetz J.’s decision to exercise his discretion to make an *ex parte* order in this case.

[209] This is not to say, however, that *ex parte* initial orders will always be required or acceptable. Without attempting to be exhaustive or to express any final view on these issues, I simply note that there have been at least three ways in which courts have mitigated the possible negative effect on creditors of making orders without notice to potentially affected parties. First, courts have been reluctant to grant

Tab

4

CITATION: Re: LTL Management LLC, 2021 ONSC 8357
COURT FILE NO.: CV-21-00673856-00CL
DATE: 20211217

**SUPERIOR COURT OF JUSTICE – ONTARIO
COMMERCIAL LIST**

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

AND IN THE MATTER OF LTL MANAGEMENT LLC

BEFORE: L. A. Pattillo J.

COUNSEL: See attached Appendix ‘A’

HEARD by Videoconference: December 17, 2021

ENDORSEMENT

[1] This is an application by LTL Management LLC (the “Debtor”) in its capacity as the foreign representative of the Debtor (“Foreign Representative”) for an Initial Recognition Order and a Supplementary Recognition Order in relation to Chapter 11 proceedings commenced on October 14, 2021, in the United States Bankruptcy Court for the Western District of North Carolina and subsequently transferred to the United States Bankruptcy Court for the District of New Jersey (the “Chapter 11 Case”).

[2] The Debtor is a North Carolina company and an indirect subsidiary of Johnson & Johnson (J&J), a global provider of health care products. The J&J group of companies includes approximately 250 subsidiaries with operations in 60 countries, including Johnson & Johnson Inc. in Canada (“J&J Canada”).

[3] The Debtor was created in 2021 as part of a corporate re-structuring, to hold certain of Johnson & Johnson Consumer Inc.’s assets and all of the claims in respect of JOHNSON’S® Baby Powder (the “Talc-Related Claims”). Its only assets in Canada are funds held by its legal counsel.

[4] In addition to the Talc-Related Claims in the US, some of the J&J companies, including J&J Canada as well as Valeant Pharmaceuticals International Inc., now Bausch Health Companies Inc., are named co-defendants (collectively the “Canadian Co-Defendants”) in some or all of the talc lawsuits in Canada (collectively the “Canadian Actions”).

[5] On November 15, 2021, the North Carolina Bankruptcy Court issued a preliminary injunction (the “US Preliminary Injunction”), in effect for 60 days (January 14, 2022) staying and

enjoining commencement or continuation of any action plaintiffs in the Talc-Related Actions including the plaintiffs in the Canadian Actions. A hearing is scheduled for January 11, 2022 before the New Jersey Bankruptcy Court to determine whether a more permanent injunction should be put in place.

[6] On February 15, 2022, the Official Committee of Talc Claimants is moving before the New Jersey Bankruptcy Court to have the entire Chapter 11 proceedings dismissed.

[7] On December 15, 2021, the Debtor sought and obtained authorization from the New Jersey Bankruptcy Court to act as the Foreign Representative on behalf of its estate in any judicial or other proceeding in Canada (“Foreign Representative Order”).

[8] The Foreign Representative seeks an order recognizing the Chapter 11 Case as a “foreign main proceeding” pursuant to s. 46(1) of the *Companies Creditors Arrangement Act* (CCAA); granting a stay of proceedings in respect of claims against the Debtor; and dispensing with the requirement under s. 53(b) of the CCAA to publish notice of the Recognition Proceedings in one or more Canadian newspapers.

[9] In addition, the Foreign Representative seeks a Supplemental Order recognizing and enforcing the US Preliminary Injunction; appointment of Ernst & Young Inc. as Information Officer; confirming that matters related to this proceeding shall be brought before this court; and adopting the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network (“JIN Guidelines”).

[10] Section 47 of the CCAA provides that a Court shall make an order recognizing a foreign insolvency proceeding if the following two requirements are met:

- 1) The application for recognition of a foreign proceeding relates to a “foreign proceeding” within the meaning of the CCAA; and
- 2) The applicant is a “foreign representative” within the meaning of the CCAA in respect of that foreign proceeding.

[11] Section 45(1) of the CCAA defines a “foreign proceeding” as any judicial proceeding in a jurisdiction outside of Canada dealing with creditors’ collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company’s business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.

[12] As the Chapter 11 Case is such a judicial proceeding, I am satisfied it is a “foreign proceeding” as defined by the CCAA.

[13] Further, the Debtor is a debtor company within the meaning of the CCAA. It is insolvent and the funds held by its counsel are sufficient to satisfy the requirement to “have assets in Canada”.

Tab

5

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *In the Matter of Global Light
Telecommunications Inc. et al.*,
2004 BCSC 745

Date: 20040604
Docket: L021991
Registry: Vancouver

**In the Matter of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36**

And

**In the Matter of the *Yukon Business Corporations Act*,
R.S.Y. 1986, c. 15**

And

**In the Matter of Global Light Telecommunications Inc.,
Un Limited and Brightstar Limited**

Petitioner

Before: The Honourable Mr. Justice Pitfield

Reasons for Judgment

Counsel for the Petitioners:

Scott A. Turner
David E. Gruber

Counsel for the Respondents:
UBS Capital Americas II, LLC and Canven V (Barbados)
Limited

Gordon D. Phillips

Counsel for York Capital Management LP

Douglas B. Hyndman

Counsel for Credit Suisse First Boston

Alan B. Brown

Counsel for the Monitor:
PricewaterhouseCoopers Inc.

Heather M. Ferris

Date and Place of Hearing:

April 26, 2004
Vancouver, B.C.

section 2 of the *Bank Act*, railway or telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies;...

[17] The substance of York's claim is that the court must engage in a qualitative or quantitative analysis of the Canadian assets in order to decide whether a company that is not incorporated in Canada and is not doing business in Canada otherwise qualifies as one "having assets ... in Canada". In my opinion, the court must not engage in that kind of analysis. Certainty is required in so far as the availability of the *Act* is concerned. In my opinion, importing an element of discretion into the question of eligibility would diminish the effectiveness of the *Act* as a means of assisting in the evolution of plans of arrangement acceptable to companies and their creditors. It is for that reason, I suggest, that courts concerned with the application of the *Act* have acknowledged the efficacy of "instant assets": see, for example, *Nova Metal Products Inc. v. Cominsky (Trustee of) (sub nom. Eland Corp. v. Cominsky)* (1990), 1 O.R. (3d) 289 (C.A.); *Cadillac Fairview Inc.* (1995), 30 C.B.R. (3d) 29 (Ont. Gen. Div. [Commercial List]); *Philips Manufacturing Ltd., Re* (1991), 9 C.B.R. (3d) 1 (B.C.S.C.); and *P.R.O. Holdings Ltd., Re* (1998), 24 C.B.R. (3d) 1 (N.B.C.A.). If a *de minimis* standard is thought to be appropriate in determining whether a company has assets in Canada, it is for parliament to amend the *Act* accordingly.

[18] I conclude that Brightstar qualified as a company at the time it applied to be added as a petitioner. It qualified as a company at the time of the application for the procedural order and at the time of the application to sanction the plan. It would not have qualified without opening the bank account. It would have ceased to qualify if the account balance had been reduced to nil, or if the bank account had been closed. The qualitative and quantitative analyses urged by York are only relevant in the assessment of the suitability of a

Tab

6

CITATION: Syncreon Group B.V., Re, 2019 ONSC 5774
COURT FILE NO.: CV-19-624659-00CL
DATE: 20191007

SUPERIOR COURT OF JUSTICE – ONTARIO

- COMMERCIAL LIST

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

IN THE MATTER OF SYNCREON GROUP B.V. AND SYNCREON
AUTOMOTIVE (UK) LTD.

APPLICATION OF CARINE VAN LANDSCHOOT UNDER SECTION 46 OF
THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

BEFORE: Hainey, J.

COUNSEL: *Linc Rogers, Aryo Shalviri and Caitlin McIntyre*, for the Foreign Representative,
Carine Van Landschoot

Stuart Brotman and Dylan Chochla for PricewaterhouseCoopers Inc. as Proposed
Information Officer

Joseph Pasquariello, for the Ad Hoc Group of Parent Credit Facilities Lenders
and Liquidity Facility Lenders

Andriana Georgallas and Katherine Lewis, U.S. attorneys for the syncreon
Group

Evan Cobb for the Indenture Trustee

Stephen Brown-Okruhlik and Waël Rostom for the Exit ABL Agent

HEARD: August 8, 2019

ENDORSEMENT

OVERVIEW

[1] At the conclusion of the argument on this application I granted the Initial Recognition Order sought by the applicant with reasons to follow.

for purposes of Part IV of the CCAA I must determine if the Scheme Proceedings are foreign proceedings under the CCAA..

[25] A “foreign proceeding” is defined in s. 45(1) of the CCAA as:

A judicial or administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditors’ collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company’s business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.

[26] I am satisfied, based upon the evidence before me, that the Scheme Proceedings are judicial proceedings in a jurisdiction outside Canada and that they deal with creditors’ collective interests generally. The Wilkinson Affidavit establishes that the scheme of arrangement provisions of the *Companies Act* permit companies to impose a compromise upon their creditors and are often used to affect a restructuring and a corresponding compromise of their liabilities.

[27] I am also satisfied that the Scheme Companies meet the definition of a “debtor company” under s. 2 of the CCAA. Under this section, a “debtor company” includes any “company” that is “insolvent”. A “company” includes any incorporated company having assets in Canada. The Scheme Companies are incorporated pursuant to the laws of the Netherlands and the United Kingdom. The evidence establishes that the Scheme Companies have assets in Canada in the form of funds being held on retainer by their legal counsel. Funds provided to counsel on retainer in any amount satisfies the requirement of “having assets in Canada”. (see: *Re Global Light Telecommunications Inc.*, 2004 BCSC 745 at para 17; *Re Cadillac Fairview Inc.* (1995), 30 C.B.R. (3d) 17, 52 A.C.W.S. (3d) 1034 at para 13).

[28] The evidence establishes that the Scheme Companies are insolvent, as that term was interpreted in *Re Stelco Inc.* (2004), 129 A.C.W.S. (3d) 1065. In *Re Stelco*, Farley, J. found that “insolvency,” as used in the CCAA, includes a company “reasonably expected to run out of liquidity within [a] reasonable proximity of time as compared with the time reasonably required to implement a restructuring.”

[29] I am satisfied that the Scheme Companies meet this criterion.

[30] I accept the applicant’s submissions that schemes of arrangement under the Companies Act have a statutory nexus to insolvency legislation, as they are only available to companies which are liable to be wound-up under the *English Insolvency Act 1986* c. 45.

[31] I am therefore satisfied that the Scheme Proceedings are sufficiently “related to bankruptcy or insolvency” to constitute “foreign proceedings” as defined in s. 45 of the CCAA.

The Scheme Proceedings are “Foreign Non-Main Proceedings”

[32] I have concluded that the Scheme Proceedings should be recognized as “foreign non-main proceedings”.

Tab

7

CITATION: In the Matter of a Plan of Compromise or Arrangement of Sandvine Corporation
et al., 2024 ONSC 6199

COURT FILE NO.: CV-24-00730836-00CL

DATE: 20241107

ONTARIO - SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SANDVINE CORPORATION, SANDVINE HOLDINGS UK LIMITED, PROCERA
NETWORKS, INC., PROCERA HOLDING, INC., NEW PROCERA GP COMPANY AND
SANDVINE OP (UK) LTD (collectively, the “Applicants”)**

RE: SANDVINE CORPORATION, SANDVINE HOLDINGS UK LIMITED,
PROCERA NETWORKS, INC., PROCERA HOLDING, INC., NEW PROCERA
GP COMPANY AND SANDVINE OP (UK) LTD., Applicants

BEFORE: Peter J. Osborne J.

COUNSEL: *Marc Wasserman, Jeremy Dacks, Martino Calvaruso and Karin Sachar*, Counsel
to the Applicants

Noah Goldstein and Murtaza Tallat, Proposed Court-appointed Monitor

Shayne Kukulowicz, Joseph J. Bellissimo and Alec Hoy, Counsel to the proposed
Court-appointed Monitor

Andrew Harmes, Counsel to Acquiom Agency Services LLC, as Co-
administrative Agent and Collateral Agent

HEARD: November 7, 2024

ENDORSEMENT

Relief Sought

1. Sandvine Corporation (“Sandvine Canada”), and the other applicant companies (collectively, the “Applicants” and together with the partnership Procera II LP and certain non-filing entities, “Sandvine” or the “Company”), seeks an initial order (the “Initial Order”) and related relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”).

2. In particular, the Applicants seek an urgent stay of proceedings (the “Stay of Proceedings”) for the permitted initial ten-day period (the “Initial Stay Period”) under s. 11.02(2) of the CCAA, an extension of the Stay of Proceedings to certain Non-Applicant Stay Parties (as defined below),

20. Further, Ontario is the proper forum for the restructuring. Ontario is the chief place of business of the Applicants as a whole, given that: (i) the majority of Sandvine’s North American Employees are in Canada; (ii) the majority of Sandvine’s assets (in particular the majority of its IP assets, cash, customer accounts receivable, inventory, fixed assets, and real estate investments) are in Canada; (iii) Sandvine’s General Counsel resides in Canada; (iv) Sandvine is operationally dependent on the shared services provided by the Accounting and A/R teams, each of which is primarily located in Canada; (v) Sandvine Canada issues all customer invoices; (vi) approximately two-thirds of Sandvine’s customer receipts are deposited into Sandvine Canada’s Canadian bank accounts; (vii) in 2023, Sandvine Canada generated approximately two-thirds of Sandvine’s revenue; (viii) approximately 69% of Sandvine’s customers contract with Sandvine Canada; (ix) the majority of Sandvine’s patents are held by Sandvine Canada; and (x) Sandvine Canada is party to the majority of Sandvine’s shared services agreements.

21. Canadian courts have accepted that a multinational enterprise such as the Applicants’ business must be restructured as a global unit, even where operating units are located in foreign jurisdictions: See, e.g., *Ted Baker Canada Inc. et al (Re)*, (April 26, 2024), Ont S.C.J. [Commercial List], Court File No. CV-24-718993-00CL at para. 28, in which the court held that the requirements of s. 9(1) of the CCAA were satisfied on the basis that the applicants, which included both Canadian and U.S. entities, maintained their head office and much of their business activities in Ontario. See also *Ghana Gold Corp (Re)*, 2013 ONSC 3284 at para. 56, in which the court included foreign applicants within a CCAA proceedings on the grounds that doing so was “critical to a restructuring.”

22. If the proposed Initial Order is granted, Sandvine intends to commence a recognition proceeding under Chapter 15 of the US Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas to ensure that actions taken in relation to US entities and US property will be under the supervision of the US courts.

The Applicants are Insolvent

23. The CCAA applies to a “debtor company” or affiliated debtor companies where the total amount of claims against the debtor or its affiliates exceeds \$5 million. The Applicants are each a “company” for the purposes of s. 2 of the CCAA as they do business in or have assets in Canada: *Lydian International Limited (Re)*, 2019 ONSC 7473 at para. 35-36 (“*Lydian*”).

24. A “debtor company” means, *inter alia*, a company that is insolvent: CCAA, ss. 2 and 3(1). The CCAA defines a “debtor company” as, among other things, any company that is insolvent or has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (“BIA”).

25. The determination of whether a company is insolvent requires consideration of the definition of “insolvent person” in the BIA, and the expanded concept of insolvency adopted in *Stelco Inc., Re*, 2004 CarswellOnt 1211 at para. 26 (“*Stelco*”), in which this Court held that a debtor is insolvent where there is a looming liquidity crisis such that it is reasonably foreseeable that the debtor will run out of cash unless its business is restructured. This approach to the insolvency criterion has been applied in other cases, including *Target* at para. 26; *Just Energy Corp. (Re)*,

Tab

8

CITATION: Re Ghana Gold Corporation, 2013 ONSC 3284
COURT FILE NO.: CV-13-10107-00CL
DATE: 20130607

**SUPERIOR COURT OF JUSTICE – ONTARIO
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
GHANA GOLD CORPORATION, GHANA GOLD INC., COASTAL EXPLORATIONS
LIMITED AND ABURI GOLDFIELDS GHANA LTD.

BEFORE: Justice Newbould

COUNSEL: C. Michael Citak and G.F. Camelino, for Minatura (BVI) Ltd.

John T. Porter and Kyla E.M. Mahar, for Applicants

Ian Aversa, for FCMI Parent Co. and FCMI Financial Corporation

Greg Azeff and Asim Iqbal, for the Monitor Ernst & Young Inc.

HEARD: June 3, 2013

ENDORSEMENT

[1] On May 9, Ghana Gold Corporation, Ghana Gold Inc., Coastal Explorations Limited and Aburi Goldfields (Ghana) Ltd. applied for protection under the CCAA and an Initial Order was granted which included a provision for immediate DIP financing, and an Administration charge, a DIP lender's charge and a directors' charge. It also provided for a sale and investment solicitation process ("SISP") that called for letters of intent to be submitted by June 11, 2013, offers by July 15, 2013 and court approval and closing by July 31, 2013.

[2] There is litigation between the parties. On February 12, 2013 Coastal and Aburi sued Minatura and related companies for damages arising from an alleged breach of a shareholders'

[55] Aburi is one of the applicants in the CCAA proceeding. The evidence of Mr. Griffis is that the centre of main interest of all of the applicants, including Aburi, is Ontario. See paragraphs 18 to 20 of his affidavit sworn May 8, 2013. Included in the list of factors in his affidavit are (i) all corporate decision making occurs at the head office in Ontario, (ii) all treasury management functions, including a centralized cash management system, are conducted from the head office, (iii) the only financing available to the applicants is with FCMI, which manages its financing in Toronto and (iv) the board of directors' meetings are customarily held in Ontario. In his responding affidavit, Mr. Turley, the president of Minatura, made the bald allegation that Aburi's banking is done in Ghana. What banking he is talking about is not stated, and I do not take his statement to be contradicting the affidavit of Mr. Griffis that all treasury management functions, including a centralized cash management system, are conducted from the head office in Ontario. Mr. Turley may be talking about a bank account in Ghana used to pay suppliers or Ghanaian employees.

[56] In this case, it is critical to a restructuring that the entire group of applicants be included in the CCAA proceeding. Without Aburi, a restructuring is highly unlikely. The Monitor has made that clear. The evidence of Mr. Griffis is that the applicants' business is fully integrated, and that is apparent from the entire record. With the centralized cash management of all applicants, including Aburi, being conducted in Ontario, and the lender FCMI being in Ontario, this Court in my view has the jurisdiction to deal with this CCAA proceeding, including any issue as to whether Aburi consented to its commencement. There are, in the language of LeBel J., objective factors that connect the legal situation or the subject matter of the litigation with the forum.

(b) Tort claim

[57] The statement of claim of Coastal and Aburi commenced in Ontario includes a claim in paragraph 19 that Minatura has misrepresented a number of things to "plaintiffs' suppliers, operators, bankers, financiers and government regulators". Where the misrepresentation took place is not pleaded in that paragraph, although in paragraph 22 it is alleged that the misrepresentations were disseminated in Ontario and elsewhere. In his affidavit, Mr. Griffis

Tab

9

Bankruptcy and Insolvency Law of Canada, 4th Edition § 20:11

Bankruptcy and Insolvency Law of Canada, 4th Edition

The Honourable Mr. Justice Lloyd W. Houlden, Mr. Justice Geoffrey B. Morawetz, Dr. Janis P. Sarra

Part II. Companies' Creditors Arrangement Act

Chapter 20. Interpretation (SS. 2-3)

I. Section 2

§ 20:11. “Debtor Company”

“Debtor company” is defined as any company that is bankrupt or insolvent, has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those statutes; has made an authorized assignment or against which a bankruptcy order has been made under the *BIA*; or is in the course of being wound up under the *WURA* because the company is insolvent.

To be able to use the Act, a company must be bankrupt or insolvent: [Reference Re Companies' Creditors Arrangement Act \(Canada\)](#), 16 C.B.R. 1, [1934] S.C.R. 659, [1934] 4 D.L.R. 75. The company must, in its application, admit its insolvency but see *post* § 24:2- 24:22.

Although it is common practice to refer to the definition of “insolvent person” in s. 2(1) of the *BIA* in referring to insolvency in the context of the *CCAA*, the test for insolvency under the *CCAA* differs from that under the *BIA* in order to meet the special circumstances and objectives of the *CCAA*. In *Re Stelco Inc.* (2004), 2004 CarswellOnt 1211, 48 C.B.R. (4th) 299 (Ont. S.C.J. [Commercial List]), leave to appeal to C.A. refused (2004), 2004 CarswellOnt 2936 (C.A.), Farley J. held that “insolvent” should be given an expanded meaning under the *CCAA* in order to give effect to the rehabilitative goal of the Act. The court concluded that it would defeat the purpose of the *CCAA* to limit or prevent an application until the financial difficulties of the applicant are so advanced that the applicant would not have sufficient financial resources to successfully complete its restructuring. Under this approach, a court should determine whether there is a reasonably foreseeable expectation at the time of filing that there is a looming liquidity condition or crisis that will result in the applicant running out of money to pay its debts as they generally become due in the future without the benefit of the stay and ancillary protection. How far forward the court should look will vary according to the complexity of and time required to complete a restructuring.

The test for insolvency favoured by Farley J. in *Stelco* may be at odds with the approach taken by the Court of Queens Bench of Manitoba in *Re Oblats de Marie Immaculee du Manitoba* (2004), [2004] M.J. No. 112, 2004 CarswellMan 104, 1 C.B.R. (5th) 279, [2004] 10 W.W.R. 164, 182 Man. R. (2d) 201, 2004 MBQB 71 and the Ontario Superior Court of Justice decision in *Enterprise Capital Management Inc. v. Semi-Tech Corp.* (1999), 1999 CarswellOnt 2213, 10 C.B.R. (4th) 133, which held that obligations due and accruing due should be limited to obligations currently payable or properly chargeable in a given accounting period. Farley J. favoured a more relaxed “reasonable foreseeability” insolvency test. For a discussion of *Stelco*, see Vern W. DaRe, “Is ‘Insolvency’ Still a Prerequisite to Restructuring?”, 49 C.B.R. (4th) 163; J. Guerard, “Case Comment: Re Stelco Inc.,” (2004) 16 Comm. Insol. R. 52.

In order for a bankrupt company to make an application under the *CCAA*, the inspectors of the bankrupt estate must consent to the application: s. 11.6(b).

The Ontario Superior Court of Justice held that a company's contingent liabilities, such as claims arising from unresolved litigation, factor into the determination of whether the company is a debtor company to which the *CCAA* applies. The court

Tab

10

**SUPERIOR COURT OF JUSTICE – ONTARIO
(Commercial List)**

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT WITH RESPECT TO STELCO INC. AND THE OTHER
APPLICANTS LISTED IN SCHEDULE "A"

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT
ACT*, R.S.C. 1985, c. C-36, AS AMENDED

BEFORE: FARLEY J.

COUNSEL: *Michael E. Barrack, James D. Gage and Geoff R. Hall*, for the Applicants

David Jacobs and Michael McCreary, for Locals 1005, 5328 and 8782 of the
United Steel Workers of America

Ken Rosenberg, Lily Harmer and Rob Centa, for United Steelworkers of America

Bob Thornton and Kyla Mahar, for Ernst & Young Inc., Monitor of the
Applicants

Kevin J. Zych, for the Informal Committee of Stelco Bondholders

David R. Byers, for CIT

Kevin McElcheran, for GE

Murray Gold and Andrew Hatnay, for Retired Salaried Beneficiaries

Lewis Gottheil, for CAW Canada and its Local 523

Virginie Gauthier, for Fleet

H. Whiteley, for CIBC

Gail Rubenstein, for FSCO

Kenneth D. Kraft, for EDS Canada Inc.

HEARD: March 5, 2004

ENDORSEMENT

[1] As argued this motion by Locals 1005, 5328 and 8782 United Steel Workers of America (collectively "Union") to rescind the initial order and dismiss the application of Stelco Inc. ("Stelco") and various of its subsidiaries (collectively "Sub Applicants") for access to the protection and process of the *Companies' Creditors Arrangement Act* ("CCAA") was that this access should be denied on the basis that Stelco was not a "debtor company" as defined in s. 2 of the CCAA because it was not insolvent.

- (a) the ability to meet liabilities as they fall due; and
- (b) that assets exceed liabilities.

On cross-examination MacGirr testified that in his opinion on either test STC was insolvent as at August 3, 1990 since as to (a) STC was experiencing then a negative cash flow and as to (b) the STC financial statements incorrectly reflected values. As far as (a) is concerned, I would comment that while I concur with MacGirr that at some time in the long run a company that is experiencing a negative cash flow will eventually not be able to meet liabilities as they fall due but that is not the test (which is a "present exercise"). On that current basis STC was meeting its liabilities on a timely basis.

[38] As will be seen from that expanded quote, MacGirr gave his own definitions of insolvency which are not the same as the s. 2 BIA tests (a), (b) and (c) but only a very loose paraphrase of (a) and (c) and an omission of (b). Nor was I referred to the *King* or *Proulx* cases *supra*. Further, it is obvious from the context that "*sometime in the long run...eventually*" is not a finite time in the foreseeable future.

[39] I have not given any benefit to the \$313 - \$363 million of improvements referred to in the affidavit of William Vaughan at paragraph 115 as those appear to be capital expenditures which will have to be accommodated within a plan of arrangement or after emergence.

[40] It seems to me that if the BIA (a) test is restrictively dealt with (as per my question to Union counsel as to how far in the future should one look on a prospective basis being answered "24 hours") then Stelco would not be insolvent under that test. However, I am of the view that that would be unduly restrictive and a proper contextual and purposive interpretation to be given when it is being used for a restructuring purpose even under BIA would be to see whether there is a reasonably foreseeable (at the time of filing) expectation that there is a looming liquidity condition or crisis which will result in the applicant running out of "cash" to pay its debts as they generally become due in the future without the benefit of the stay and ancillary protection and procedure by court authorization pursuant to an order. I think this is the more appropriate interpretation of BIA (a) test in the context of a reorganization or "rescue" as opposed to a threshold to bankruptcy consideration or a fraudulent preferences proceeding. On that basis, I would find Stelco insolvent from the date of filing. Even if one were not to give the latter interpretation to the BIA (a) test, clearly for the above reasons and analysis, if one looks at the meaning of "insolvent" within the context of a CCAA reorganization or rescue solely, then of necessity, the time horizon must be such that the liquidity crisis would occur in the sense of running out of "cash" but for the grant of the CCAA order. On that basis Stelco is certainly insolvent given its limited cash resources unused, its need for a cushion, its rate of cash burn recently experienced and anticipated.

[41] What about the BIA (c) test which may be roughly referred to as an assets compared with obligations test. See *New Quebec Reglan Mines Ltd. v. Blok-Andersen*, [1993] O.J. No. 727 (Gen. Div.) as to fair value and fair market valuation. The Union observed that there was no intention by Stelco to wind itself up or proceed with a sale of some or all of its assets and undertaking and therefore some of the liabilities which Stelco and Stephen took into account would not crystallize. However, as I discussed at the time of the hearing, the (c) test is what one might reasonably call or describe as an "artificial" or notional/hypothetical test. It presumes certain things which are in fact not necessarily contemplated to take place or to be involved. In that respect, I appreciate that it may

Tab

11

CITATION: Re Just Energy Corp., 2021 ONSC 1793
COURT FILE NO.: CV-21-00658423-00CL
DATE: 20210309

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF JUST ENERGY GROUP INC., JUST
ENERGY CORP., ONTARIO ENERGY COMMODITIES
INC., UNIVERSAL ENERGY CORPORATION, JUST
ENERGY FINANCE CANADA ULC, HUDSON ENERGY
CANADA CORP., JUST MANAGEMENT CORP., JUST
ENERGY FINANCE HOLDING INC., 11929747 CANADA
INC., 12175592 CANADA INC., JE SERVICES HOLDCO I
INC., JE SERVICES HOLDCO II INC., 8704104 CANADA
INC., JUST ENERGY ADVANCED SOLUTIONS CORP.,
JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS
CORP., JUST ENERGY INDIANA CORP., JUST ENERGY
MASSACHUSETTS CORP., JUST ENERGY NEW YORK
CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY,
LLC, JUST ENERGY PENNSYLVANIA CORP., JUST
ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS
INC., HUDSON ENERGY SERVICES LLC, HUDSON
ENERGY CORP., INTERACTIVE ENERGY GROUP LLC,
HUDSON PARENT HOLDINGS LLC, DRAG MARKETING
LLC, JUST ENERGY ADVANCED SOLUTIONS LLC,
FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL
HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY
MARKETING CORP., JUST ENERGY CONNECTICUT
CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS
CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

Applicants

BEFORE: Koehnen J.

COUNSEL:

Marc Wasserman, Michael De Lellis, Jeremy Dacks, Shawn Irving, Waleed Malik, David Rosenblatt and Justine Erickson, for the Applicants

Robert Thornton, Rebecca Kennedy and Rachel Bengino, Puya Fesharaki, for the Proposed Monitor

Scott Bomhof, for the Term Loan Lenders

Heather Meredith and James D. Gage, for the Credit Facility Lenders

Ryan Jacobs, Jane Dietrich and Michael Wunder, for the DIP Lender

Howard Gorman, for Shell

Robert Kennedy and Kenneth Kraft, for BP

Paul Bishop and Jim Robinson, Proposed Monitor

Brian Schartz, and Mary Kogut Brawley, US counsel for the Applicants

Chad Nichols and David Botter, U.S. Counsel to DIP Lender

Kelli Norfleet, U.S. Counsel to BP

Doug McIntosh, Advisor to the Credit Facility Lenders

John Higgins

HEARD: March 9, 2021

ENDORSEMENT**Overview**

- [1] The applicant, Just Energy Group Inc. (“Just Energy”) seeks protection under *the Companies’ Creditors Arrangement Act*, (the “CCAA”)¹ by way of an initial order. Just Energy is the ultimate parent of the Just Energy group of companies and limited partnerships.
- [2] Just Energy buys electricity and natural gas from power generators and re-sells it to consumer and commercial customers, usually under long term, fixed price contracts.

¹ R.C.C. 1985, c. c-36, as amended

[38] I underscore that in making these comments I am not intending to criticize the Texas regulators. Whether there is anything to be criticized in their conduct or whether their imposition of dramatically higher fees is appropriate will be for another day and another forum. I frame the issue in this way only to demonstrate that there is a genuine issue about the circumstances giving rise to Just Energy's liquidity crisis and a genuine issue about how best to sort out that crisis. Working out those issues in a manner that is as advantageous and fair to all stakeholders as the circumstances permit requires the calm deliberation and reflection that a CCAA stay will afford.

III. Specific Issues

[39] This application requires me to address the following specific issues:

- A. Is Ontario the Centre of Main Interest?
- B. Does Just Energy meet the insolvency requirements of the CCAA?
- C. Should the DIP be approved?
- D. Should the regulatory actions be stayed?
- E. Should suppliers' charges and pre-filing payments be authorized?
- F. Should set off rights be stayed?
- G. Should administrative and directors and officers charges be granted?
- H. Should noncorporate entities be captured by the stay?
- I. Should third-quarter bonuses be paid?
- J. Should a sealing order be granted?

A. Is Ontario the Centre of Main Interest?

[40] Just Energy has operations primarily in Canada and the United States. It has advised that it intends to commence a recognition proceeding under chapter 15 of the *US Bankruptcy Code* in Texas. This will ensure that actions taken in relation to US entities and US property or by US regulators are overseen by the US courts.

[41] The presence of significant business activities in the United States and the intention to commence a chapter 15 proceeding, engages the principle of the Centre of Main Interest or COMI.

- [42] Section 45 (2) of the CCAA provides that, in the absence of proof to the contrary, a debtor company's registered office is deemed to be its centre of main interest.
- [43] The registered office of Just Energy is located in Toronto.
- [44] Other evidentiary factors can displace the presumption of the registered office being the COMI. These include the location of the debtor's headquarters or head office functions, location of the debtor's management and the location that significant creditors recognize as being the centre of the company's operations.⁴
- [45] Here, the parent company, Just Energy Group Inc. is a CBCA corporation. Although it has offices in Mississauga and Houston, its registered office is in Toronto. Its common shares are listed on the Toronto Stock Exchange and the New York Stock Exchange. Just Energy is primarily a holding company although it is also the primary debtor or guarantor on substantially all of the obligations of its subsidiaries, including licenses granted by regulators to members of the Just Energy group. Just Energy has a number of subsidiaries throughout Canada, the United States and India. It has 333 Employees in Canada, 381 in the United States and 265 in India.
- [46] The following additional factors point to Canada as the COMI:
- a. During the recent CCAA plan of arrangement which was recognized under Chapter 15 of the US Bankruptcy Code, Canada was recognized as the COMI for the Just Energy group.
 - b. The operations of the Just Energy group are directed in part from its head office in Toronto. In particular, decisions relating to the Just Energy's primary business (buying, selling and hedging energy) are primarily made in Canada.
 - c. All other members of the Just Energy group report to Just Energy.
 - d. Just Energy Corp. (a Canadian subsidiary) acts as a centralized entity providing operational and administrative functions for the Just Energy group as a whole. These functions are performed by Canadian Just Energy employees and include, among other things:
 - i. most enterprise-wide IT services;
 - ii. enterprise-wide support for finance functions, including working capital management, credit management (including credit checks for customers), payment processing, financial reconciliations, managing business expenses, insurance, and taxation;

⁴ *Re Massachusetts Elephant & Castle Group* 2011 ONSC 4201

- iii. oversight for the legal, regulatory, and compliance functions across the entire Just Energy Group;
- iv. certain enterprise-wide HR functions, such as designing in-house learning and development programs;
- v. financial planning and analysis services, including customer enrollment, billing, customer service, and load forecasting;
- vi. supply planning services, including creating demand models which predict the amount of energy that each entity needs to purchase from suppliers and determining the proper distributor and pipeline necessary to get the gas to the end-consumer; and
- vii. internal audit services.

[47] In the foregoing circumstances I am satisfied Canada is the appropriate COMI.

B. Does Just Energy Meet the Insolvency Requirements?

[48] There is no doubt that Just Energy meets the threshold required by s. 3(1) of the *CCAA* that it be a company with liabilities in excess of \$5,000,000.

[49] A company must be “insolvent” to obtain protection under the *CCAA*.⁵ Although the *CCAA* does not define “insolvent,” the definition of insolvent under the *Bankruptcy and Insolvency Act* (“*BIA*”)⁶ is usually referred to meet this criteria.⁷ Section 2 of the *BIA* defines “insolvent person” as meaning (i) one who is unable to meet his obligations as they generally become due, (ii) who has ceased paying current obligations in the ordinary course or

- (iii) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

⁵ *CCAA* s. 2(1)(a) definition of a debtor company.

⁶ R. S. C. 1985, c. B-3

⁷ *Laurentian University of Sudbury* 2021 ONSC 659

Tab

12

CITATION: Cinram International Inc. (Re), 2012 ONSC 3767
COURT FILE NO.: CV-12-9767-00CL
DATE: 20120626

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CINRAM INTERNATIONAL INC., CINRAM INTERNATIONAL INCOME FUND, CII TRUST AND THE COMPANIES LISTED IN SCHEDULE “A”, Applicants

BEFORE: MORAWETZ J.

COUNSEL: Robert J. Chadwick, Melaney Wagner and Caroline Descours, for the Applicants

Steven Golick, for Warner Electra-Atlantic Corp.

Steven Weisz, for Pre-Petition First Lien Agent, Pre-Petition Second Lien Agent and DIP Agent

Tracy Sandler, for Twentieth Century Fox Film Corporation

David Byers, for the Proposed Monitor, FTI Consulting Inc.

**HEARD &
ENDORSED: JUNE 25, 2012**

REASONS: JUNE 26, 2012

ENDORSEMENT

[1] Cinram International Inc. (“CII”), Cinram International Income Fund (“Cinram Fund”), CII Trust and the Companies listed in Schedule “A” (collectively, the “Applicants”) brought this application seeking an initial order (the “Initial Order”) pursuant to the *Companies’ Creditors Arrangement Act* (“CCAA”). The Applicants also request that the court exercise its jurisdiction to extend a stay of proceedings and other benefits under the Initial Order to Cinram International Limited Partnership (“Cinram LP”, collectively with the Applicants, the “CCAA Parties”).

[42] The above comments with respect to the COMI are provided for informational purposes only. This court clearly recognizes that it is the function of the receiving court – in this case, the United States Bankruptcy Court for the District of Delaware – to make the determination on the location of the COMI and to determine whether this CCAA proceeding is a “foreign main proceeding” for the purposes of Chapter 15.

[43] In the result, I am satisfied that the Applicants meet all of the qualifications established for relief under the CCAA and I have signed the Initial Order in the form submitted, which includes approvals of the Charges referenced in the Initial Order.

MORAWETZ J.

Date: June 26, 2012

SCHEDULE “A”
ADDITIONAL APPLICANTS

Cinram International General Partner Inc.

Cinram International ULC

1362806 Ontario Limited

Cinram (U.S.) Holdings Inc.

Cinram, Inc.

IHC Corporation