

**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 PLAN OF
COMPROMISE OR ARRANGEMENT OF 1005477
B.C. LTD., MAINSTRAIN MARKET LTD.,
HERITAGE CANNABIS EXCHANGE CORP., and
1000921087 ONTARIO INC.**

Applicants

**FACTUM OF THE MONITOR
(CCAA Termination)**

September 25, 2024

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Chris Burr, LSO #55172H
Tel: 416-863-3261
Email: chris.burr@blakes.com

Lawyers for the Monitor

TO: **THE SERVICE LIST**

PART I - NATURE OF THE MOTION

1. Having successfully completed a sale and investment solicitation process and closing the resulting transaction, the Monitor is seeking an order that will bring an end to these CCAA proceedings.

PART II – BACKGROUND & FACTS

2. These CCAA proceedings were commenced on April 2, 2024 (the “**Initial Order Date**”), when the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an order (the “**Initial Order**”) granting Heritage Cannabis Holdings Corp. (“**Heritage**”), 1005477 B.C. Ltd. (“**1005**”), Mainstrain Market Ltd. (“**Mainstrain**”), Purefarma Solutions Inc. (“**Purefarma**”), 333 Jarvis Realty Inc. (“**333**”), 5450 Realty Inc. (“**5450**”), Premium 5 Ltd. (“**Premium**”), Heritage Cannabis Exchange Corp. (“**HCEC**”), Heritage Cannabis East Corporation (formerly CannaCure Corporation) (“**Heritage East**”), and Heritage Cannabis West Corporation (formerly Voyage Cannabis Corp.) (“**Heritage West**” and collectively, the “**Original Applicants**” or the “**Heritage Group**”) protection pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) and appointing KPMG Inc. (“**KPMG**”) as Monitor of the Applicants in the CCAA proceedings (in such capacity, the “**Monitor**”).¹

3. As part of the proceedings, the Initial Applicants conducted a Court-supervised sale and investor solicitation process (the “**SISP**”). Following the completion of the SISP, the successful bidders, BJK Holdings Ltd. (“**BJK**”) and HAB Cann Holdings Ltd. (the “**Purchaser**”) entered into an amended and restated stalking horse subscription agreement dated June 17, 2024 (the “**A&R SHA**”) among Heritage, Heritage East and Heritage West, as vendors, providing for the

¹ Fourth Report of the Monitor, dated September 22, 2024 (the “**Fourth Report**”), at para. 1.

acquisition by the Purchaser of substantially all of the Heritage Group’s business through a series of share subscriptions and purchases (the “**Transactions**”).²

4. On June 26, 2024, the Court granted an Approval and Reverse Vesting Order (the “**ARVO**”), among other things, approving the Transactions, vesting the unwanted liabilities of the “**Purchased Entities**” (as defined in the A&R SHA) in 1000921087 Ontario Inc. (“**Residual Co.**”), and adding Residual Co. as an Applicant in these CCAA proceedings.³

5. The Transactions closed on August 29, 2024, and the Purchased Entities were removed as Applicants in these CCAA proceedings. 1005, Mainstrain and Residual Co. therefore now constitute the “**Remaining Applicants**” of these CCAA proceedings.⁴

6. The Remaining Applicants have no ongoing operations as substantially all of the business and assets of the Heritage Group were sold pursuant to the Transactions. However, there remain certain administrative matters (collectively, the “**Remaining Matters**”) that need to be resolved by the Monitor, on behalf of the Remaining Applicants, including:⁵

- (a) preparing materials to make assignments in bankruptcy for each of the Remaining Applicants; and
- (b) transitioning the CCAA Proceedings into bankruptcy proceedings to allow for an orderly wind-up of the Remaining Applicants.

² Fourth Report, at paras. 3 and 5.

³ Fourth Report, at para. 6.

⁴ Fourth Report, at para. 15.

⁵ Fourth Report, at para. 18.

7. The costs of the wind-up are to be funded through the Administrative Expense Amount, a cash reserve established by the A&R SHA, of which the Monitor is currently holding approximately \$187,500.⁶

8. Once the Remaining Matters are completed, there will no longer be any need for the CCAA Proceedings. The Monitor accordingly seeks, on behalf of the Remaining Applicants, an order terminating these CCAA proceedings (the “**CCAA Termination Order**”), which, provides, among other things:

- (a) the Monitor will be authorized to serve a certificate in a specified form following the completion of the Remaining Matters to the Monitor’s satisfaction (the “**Monitor’s Termination Certificate**”), at which point these CCAA proceedings shall be terminated without any further act or formality and the Monitor will be discharged (the time of service of the Monitor’s Termination Certificate being the “**CCAA Termination Time**”);
- (b) in order to facilitate the orderly and efficient wind-up of the Remaining Applicants’ estates, the Monitor will be authorized to make an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”) from and after the CCAA Termination Time, to fund a reasonable reserve to the bankruptcy estates for the administration of the bankruptcies, to act as trustee in bankruptcy of the Remaining Applicants, and to procedurally consolidate the bankruptcies of the Remaining Applicants;
- (c) the following releases (collectively, the “**Releases**”) will be granted to:
 - (i) (a) the Monitor and its legal counsel; (b) counsel to the Applicants; and each of their respective affiliates and present and former officers, directors, partners, employees

⁶ Fourth Report, at para. 19.

and agents, as applicable (collectively, the “**Released Parties**”), in respect of any claims of any kind whatsoever based on any act or omission, transaction, dealing or other occurrence in respect of these CCAA proceedings or their respective conduct in these CCAA proceedings;

- (ii) BJK and the Purchaser (collectively, the “**BJK/HAB Released Parties**”), in respect of any claims of any kind whatsoever based on any act or omission, transaction, dealing or other occurrence existing or taking place following the commencement of these CCAA proceedings and prior to the CCAA Termination Time in respect of the DIP Facility and the Senior Loan Agreement (each as defined in the A&R SHA), the repayment thereof, and/or the realization on the security granted in connection therewith; and
 - (iii) the directors and officers of the Original Applicants and Residual Co who were directors or officers on the date of the Initial Order (collectively, the “**Released D&Os**”), in respect of any claims of any kind whatsoever based on any act or omission, transaction, dealing or other occurrence existing or taking place following the commencement of these CCAA proceedings and prior to the CCAA Termination Time in respect of the Remaining Applicants and Purchased Entities, the business, operations, assets, property and affairs of the Remaining Applicants and the Purchased Entities and/or these CCAA proceedings;
- (d) the CCAA stay of proceedings (the “**Stay Period**”) will be extended from September 27, 2024 to the CCAA Termination Time; and
- (e) the fees and disbursement of the Monitor and its counsel will be approved, including estimated fees necessary for the Monitor and its counsel to complete remaining duties in

these CCAA proceeding, estimated not to exceed \$50,000 (the “**Remaining Fees and Disbursements**”), approving certain Court reports of the Monitor, and approving the actions, conduct and activities of the Monitor referred to therein.

9. These CCAA proceedings have served their purpose. The business and operations of the Original Applicants have been sold, and the Remaining Applicants have no remaining material assets and conduct no business activities. The proposed CCAA Termination Order should be granted so these CCAA Proceedings can be brought to an orderly close, providing certainty and finality for all parties after the successful sale process.

PART III - THE ISSUES AND THE LAW

10. The issue on this motion is whether this Court should grant the CCAA Termination Order, including whether:

- (a) this Court should authorize the mechanism for terminating these CCAA Proceedings;
- (b) this Court should authorize the Remaining Applicants and the Monitor to make assignments in bankruptcy on a procedurally consolidated basis;
- (c) this Court should grant the Releases;
- (d) this Court should extend the Stay Period to the CCAA Termination Time; and
- (e) this Court should approve the fees and disbursements of the Monitor and its counsel.

A. These CCAA Proceedings Should be Terminated and the Monitor Should be Discharged

11. As noted above, the Remaining Applicants possess no material assets and conduct no business. The Monitor is accordingly seeking an Order terminating these CCAA proceedings, discharging KPMG as Monitor of the Remaining Applicants, and terminating, releasing, and discharging all Charges, upon service of the Monitor's Termination Certificate.

12. It is well established that this Court may grant an order terminating proceedings under the CCAA on terms similar to those sought in the proposed CCAA Termination Order.⁷ Specifically, such orders have frequently included provisions explicitly:

- (a) terminating the CCAA proceedings upon service of an executed certificate by the Monitor certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with the CCAA proceeding have been completed;⁸
- (b) terminating, releasing and discharging any charges connected to the CCAA proceeding upon delivery of the Monitor's certificate;⁹ and
- (c) discharging the Monitor from all further duties, obligations, and responsibilities as monitor.¹⁰

⁷ See, for example: *Re Aleafia Health Inc., et. al.*, (March 1, 2024), Ont. S.C.J. [Commercial List], CV-23-00703350-00CL ([CCAA Termination Order](#)) [*Aleafia Termination Order*]; *Re Express Fashion Apparel Canada Inc. et al.*, (December 8, 2017), Ont. S.C.J. [Commercial List], Court File No. CV-17-11785-00CL ([Stay Extension & Discharge & Termination Order](#)) [*Express Termination Order*]; *Re Forever XXI ULC*, (September 28, 2022), Ont. S.C.J. [Commercial List], Court File No. CV-19-00628233-00CL ([CCAA Termination Order](#)) [*Forever XXI Termination Order*]; *Re Golf Town et al.*, (March 29, 2018), Ont. S.C.J. [Commercial List], Court File No. CV-16-11527-00CL ([CCAA Termination Order](#)) [*Golf Town Termination Order*]; *Re Harte Gold Corp. et al.*, (February 15, 2021), Ont. S.C.J. [Commercial List], Court File No. CV-21-00673304-00CL ([CCAA Distribution and Termination Order](#)) [*Harte Gold Termination Order*]; *Re McEwan Enterprises Inc.*, (December 21, 2021), Ont. S.C.J. [Commercial List], Court File No. CV-21-00669445-00CL ([CCAA Termination Order](#)) [*McEwan Termination Order*]; *Re TGF Acquisition Parent Ltd et al.*, (June 22, 2021), Ont. S.C.J. [Commercial List], CV-21-00657098-00CL ([Wind-Down Order](#)) [*TGF Acquisition Parent Termination Order*].

⁸ See., i.e., *Aleafia Termination Order* at para. 7; *Harte Gold Termination Order* at para. 12; *Golf Town Termination Order* at para. 9.

⁹ See., i.e., *Aleafia Termination Order* at para. 11; *McEwan Termination Order* at para. 12; *Harte Gold Termination Order* at para. 14.

¹⁰ See., i.e., *Aleafia Termination Order* at para. 10; *McEwan Termination Order* at para. 14;; *Harte Gold Termination Order* at para. 15; *Golf Town Termination Order* at para. 12.

13. The proposed CCAA Termination Order is appropriate in the circumstances and provides for an effective and appropriate process whereby these CCAA proceedings may be terminated.

B. The Applicants and the Monitor should be Authorized to make an Assignment in Bankruptcy and Related Relief should be Granted

14. As part of the CCAA Termination Order, each of the Remaining Applicants is authorized to make an assignment in bankruptcy, and the Monitor is authorized to file any such assignment. The Monitor is further permitted, but not required, to act as trustee in bankruptcy in respect of the Remaining Applicants. These provisions are intended to facilitate the orderly and efficient wind-up of the Remaining Applicants' estates, and similar provisions are commonly included in CCAA termination orders.¹¹

15. In order to reduce the costs of the bankruptcy process and facilitate the orderly administration of the bankruptcy estates, the CCAA Termination Order authorizes the trustee to administer the bankruptcy estates as if such estates were in respect of a single bankrupt for the purposes of carrying out its duties and responsibilities as trustee under the BIA (the "**Consolidated Proceedings**"). The Consolidated Proceedings will allow, amongst other things, one newspaper notice, one mailing to all creditors of the Remaining Applicants, and one creditors' meeting.¹²

16. The Consolidated Proceedings: (a) will allow the Trustee to advance these proceedings in the most expedient and efficient manner for the benefit of stakeholders; (b) will facilitate the orderly administration of these proceedings; (c) will not prejudice creditor rights; and (d) will

¹¹ See., i.e., *Aleafia Termination Order* at para. 12-15; *Golf Town Termination Order* at para. 11; *Forever XXI Termination Order* at para. 14.

¹² Fourth Report, at para. 33.

reduce costs. CCAA courts have previously granted similar orders permitting the procedural consolidation of the bankruptcy estates of the debtors exiting a CCAA proceeding.¹³

17. The provisions of the CCAA Termination Order dealing with the anticipated bankruptcies of the Remaining Applicants are appropriate in the circumstances and will allow the anticipated bankruptcy proceedings to be heard in a consolidated and cost-efficient manner.

C. The Releases Should be Granted

18. As outlined above, the proposed CCAA Termination Order provides for a release of all claims against the Released Parties, the BJK/HAB Released Parties, and the Released D&Os. The Court has confirmed that it has jurisdiction to render orders approving releases (including third-party releases) in the context of CCAA proceedings. Such releases are commonly found in orders terminating proceedings under the CCAA.¹⁴

19. The test for third-party releases in CCAA proceedings is well established. The Court must ask: (a) whether the parties to be released were necessary and essential to the restructuring of the debtor; (b) whether the claims to be released are rationally connected to the purpose of the restructuring and necessary for it; (c) whether the restructuring could succeed without the releases; (d) whether the parties being released contributed to the restructuring; and (e) whether the releases benefit the debtors as well as the creditors generally.¹⁵ It is not necessary for each of these factors to apply in order for a release to be granted.¹⁶ Third-party releases may be granted outside of a plan of arrangement, and courts have granted releases to directors and officers of the debtors,¹⁷

¹³ See, i.e., *Aleafia Termination Order* at para. 13; *TGF Acquisition Parent Termination Order* at para. 11.

¹⁴ See, i.e., *Aleafia Termination Order* at para. 21; *Golf Town Termination Order* at para. 14; *Express Termination Order* at para. 7; *Forever XXI Termination Order* at para. 15.

¹⁵ *Re Lydian International Limited*, [2020 ONSC 4006](#) at para. 54.

¹⁶ *Re Green Relief Inc.*, [2020 ONSC 6837](#) at para. 28.

¹⁷ See, i.e., *Re Aleafia Health Inc., et. al.*, ([Unreported March 1, 2024 Endorsement of Madam Justice Conway](#)), Ont. S.C.J. [Commercial List], CV-23-00703350-00CL ("*Aleafia*"), at paras. 7-10; *Re ETREC Corporation*, [2020](#)

and to purchasers under a conventional or reverse vesting order, and DIP lenders,¹⁸ in circumstances where no plan was proposed or anticipated.

20. The proposed releases satisfy this test. The Released Parties, the BJK/HAB Released Parties, and the Released D&Os have facilitated and significantly contributed to these CCAA proceedings, including the Transactions, in a manner which allowed the Heritage Group's business to continue until such time as it could be sold, for the benefit of a variety of stakeholders.¹⁹ The Released D&Os played an important role by continuing to administer the business during the commencement of the CCAA proceeding, the development and conduct of the SISP and the sale of the Purchased Entities, which allowed the Monitor to focus its attention on achieving a successful sale process. In addition, BJK, by acting as the DIP Lender, ensured that the Original Applicants had the funding necessary to maintain operations during the proceedings and to successfully conduct the SISP. By acting as the stalking horse bidder, HAB Cann set the stage for a successful SISP, and the Purchaser ultimately acquired substantially all of the business and assets of the Heritage Group as a going concern.

21. Further, the proposed releases are appropriately limited in scope. The proposed Releases do not apply in respect of any claim or liability arising out of gross negligence or willful misconduct, and, in respect of the Released D&Os, only apply to directors and officers of the Remaining Applicants and Purchased Entities who held that role on the date of the Initial Order. Further, the proposed Releases do not apply in respect of any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA. In the case of the proposed release for the

[ABQB 751](#) at paras. 5-9 and *Re UrtheCast Corp.*, [2021 BCSC 1819](#) at paras. 91-95, *Golf Town Termination Order* at para. 14.

¹⁸ In respect of purchasers and DIP lenders, see *Aleafia*, at paras. 7-10; *CannaPiece Group Inc v. Marzilli*, [2023 ONSC 3291](#) at paras. 23-24; also see *Re Rambler Metals and Mining Limited*, [2023 NLSC 134](#) at paras. 90-109.

¹⁹ Fourth Report, at para. 27.

BJK/HAB Released Parties, it is limited to claims based on acts or omissions existing or taking place following the commencement of these CCAA proceedings and prior to the CCAA Termination Time, in respect of the DIP Facility and Senior Loan Agreement.²⁰

22. Finally, granting the Releases will provide certainty and finality to all parties, and is in the interest of all parties. The Monitor supports granting the proposed Releases.

D. The Stay Period Should be Extended

23. Pursuant to section 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence. There is no statutory time limit on how long a stay of proceedings can be extended.

24. The Stay Period currently expires on September 27, 2024. The Monitor requests that the Stay Period be extended to the CCAA Termination Time, which the Monitor anticipates to occur before the end of October. The Monitor submits that extending the Stay Period is warranted for the following reasons:²¹

- (a) the Remaining Applicants, with the assistance and oversight of the Monitor, have been acting, and continue to act, in good faith and with due diligence;
- (b) no creditor is expected to suffer material prejudice if the extension is granted;
- (c) as of the date of the Fourth Report, the Monitor is not aware of any party opposed to an extension of the Stay Period; and

²⁰ Fourth Report, at para. 26.

²¹ Fourth Report, at para. 42.

- (d) the remaining Administrative Expense Amount is projected to provide sufficient liquidity to fund the expenses in these CCAA proceedings to and including the CCAA Termination Time.

E. The Monitor's Reports and Activities, and the Accounts of the Monitor and its Counsel, should be Approved

25. The CCAA Termination Order approves the Monitor's second, third and fourth reports, along with the actions, conduct and activities of the Monitor referred to therein. As has been noted by this Court, requests to approve a monitor's reports are not unusual, and there are good policy and practical reasons for the court to do so, including:²²

- (a) allowing the Monitor to move forward with the next steps;
- (b) allowing the Monitor to bring its activities before the Court;
- (c) enabling the Court to satisfy itself that a monitor's activities have been conducted in prudent and diligent manners;
- (d) providing protection for a monitor not otherwise provided by the CCAA; and
- (e) protecting creditors from delay that may be caused by re-litigation of steps.

26. Such approval is commonly granted as part of CCAA termination orders.²³ The Monitor's reports and activities should be approved, as the Monitor has acted reasonably and in good faith throughout these CCAA proceedings.

²² *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at para. 23.

²³ See, i.e., *Aleafia Termination Order* at para. 3; *Harte Gold Termination Order* at para. 8.

27. The CCAA Termination Order also approves the fees and disbursements of the Monitor and its counsel, including the Remaining Fees and Disbursements (estimated not to exceed \$50,000). In considering whether to approve fees and disbursements, the court has regard to the “overriding principle of reasonableness,” and does not engage in a docket-by-docket or line-by-line assessment of the accounts.²⁴ The following factors assist a court in assessing the reasonableness of the Monitor’s fees:²⁵

- (a) the nature, extent and value of the assets being handled;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the company, its officers or its employees;
- (d) the time spent;
- (e) the Monitor’s knowledge, experience and skill;
- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results achieved; and
- (i) the cost of comparable services when performed in a prudent and economical manner.

28. Fee approvals are routinely given as part of CCAA termination orders,²⁶ and should be granted in the present case. The Monitor and its counsel have acted with diligence throughout these

²⁴ *Nortel Networks Inc.*, [2022 ONSC 668](#) at para. 10 [*Nortel*].

²⁵ *Nortel* at para. 11.

²⁶ See, i.e., *Aleafia Termination Order* at paras. 4-5.

CCAA proceedings, and the Monitor views the fees as reasonable and appropriate in the circumstances.²⁷

PART IV - NATURE OF THE ORDER SOUGHT

29. For the reasons set out above, the Monitor requests that this Court grant the proposed CCAA Termination Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of September, 2024.



BLAKE, CASSELS & GRAYDON LLP

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

Chris Burr, LSO #55172H

Tel: 416-863-3261

Email: chris.burr@blakes.com

Lawyers for the Monitor

²⁷ Fourth Report, at para. 38.

SCHEDULE “A”: LIST OF AUTHORITIES

1. *Caisse Populaire Vanier Ltee v. Bales (Gen. Div.)*, [1991 CanLII 7294 \(ON SC\)](#)
2. *CannaPiece Group Inc v. Marzilli*, [2023 ONSC 3291](#).
3. *Re Express Fashion Apparel Canada Inc. et al.*, (December 8, 2017), Ont. S.C.J. [Commercial List], Court File No. CV-17-11785-00CL ([Stay Extension & Discharge & Termination Order](#)).
4. *Re ENTREC Corporation*, [2020 ABQB 751](#).
5. *Re Forever XXI ULC*, (September 28, 2022), Ont. S.C.J [Commercial List], Court File No. CV-19-00628233-00CL ([CCAA Termination Order](#)).
6. *Re Golf Town et al.*, (March 29, 2018), Ont. S.C.J. [Commercial List], Court File No. CV-16-11527-00CL ([CCAA Termination Order](#)).
7. *Re Green Relief Inc.*, [2020 ONSC 6837](#).
8. *Re Harte Gold Corp. et al.*, (February 15, 2021), Ont. S.C.J. [Commercial List], Court File No. CV-21-00673304-00CL ([CCAA Distribution and Termination Order](#)).
9. *Re Lydian International Limited*, [2020 ONSC 4006](#).
10. *Re McEwan Enterprises Inc.*, (December 21, 2021), Ont. S.C.J. [Commercial List], Court File No. CV-21-00669445-00CL ([CCAA Termination Order](#)).
11. *Nortel Networks Inc.*, [2022 ONSC 668](#).
12. *NRS Block Bros. Realty Ltd. v. Minerva Technology Inc.*, [1997 CanLII 1274 \(BC SC\)](#).
13. *Target Canada Co. (Re)*, [2015 ONSC 7574](#).
14. *Re TGF Acquisition Parent Ltd et al.*, (June 22, 2021), Ont. S.C.J [Commercial List], CV-21-00657098-00CL ([Wind-Down Order](#)).
15. *Re UrtheCast Corp.*, [2021 BCSC 1819](#).

**SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS**

Companies’ Creditors Arrangement Act, RSC 1985, c C-36

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);

(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.

[...]

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

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

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

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

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

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

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

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

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party

continues to perform its obligations under the agreement in relation to the use of the intellectual property.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF 1005477 B.C. LTD., MAINSTRAIN MARKET LTD.,
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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE MONITOR
(CCAA TERMINATION)**

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

Chris Burr, LSO #55172H

Tel: 416-863-3261

Email: chris.burr@blakes.com

Lawyers for the Monitor