

Court File No. CV-25-00098475-0000
Estate File No. 33-3174726

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE *BANKRUPTCY
AND INSOLVENCY ACT*, RSC 1985, c B-3,
AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF 1995677 ONTARIO INC. (formerly known as
DESLAURIER CUSTOM CABINETS INC.) OF THE CITY OF OTTAWA IN
THE PROVINCE OF ONTARIO**

**FACTUM OF THE 1995677 ONTARIO INC.
(RE: ASSIGNMENT, APPROVAL AND VESTING ORDER,
ADMINISTRATION CHARGE AND SEALING ORDER)**

Hearing date: January 29, 2025, at 10:00 a.m. (virtual)

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TO: SERVICE LIST

PART I – OVERVIEW

1. On January 16, 2025, 1995677 Ontario Inc. (the “**Company**” or “**199**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”). Raymond Chabot Inc. was appointed as proposal trustee under the *BIA* (the “**Proposal Trustee**”).

2. This factum is filed in support of the Company’s motion seeking two orders:
 - (a) an Assignment, Approval and Vesting Order (“**AVO**”), substantially in the form attached at Tab 4 of the Company’s motion record, which, among other things:
 - i. abridges the time to serve these motion materials so that this motion is properly returnable on January 29, 2025;
 - ii. authorizes and approves the transaction (the “**Transaction**”) contemplated in the asset purchase agreement dated December 6, 2024 (the “**APA**”) between the Company, as seller, and 1995677 Ontario Inc., as purchaser (collectively, the “**Purchaser**”);
 - iii. vests in the Purchaser all the Company’s right, title, benefit, and interest in and to the assets described in the APA (the “**Purchased Assets**”) free and clear of all Encumbrances (as

defined in the AVO) upon the delivery of the Proposal Trustee's certificate; and

- iv. assigns the agreements listed in Schedule "C" of the AVO (the "**Assumed Contracts**") pursuant to Section 84.1 of the *BIA*, R.S.C. 1985, c. B-3, as amended; and

(b) A Sealing Order in the form attached as Tab 6 of the Company's Motion Record (the "Ancillary Order") that, among other things:

- i. seals the Confidential Exhibits attached to the Affidavit of Jason Chartrand sworn January 17, 2025 until the closing of the Transaction or further order of the Court.

3. The Proposal Trustee is supportive of the requested relief.

PART II – FACTS

4. The relevant facts are set out more fully in the Affidavit of Jason Chartrand sworn January 17, 2025 (the "**Chartrand Affidavit**"), and the First Report of the Proposal Trustee, located at Tab 3 of the Company's Motion Record (the "**First Report**").¹

5. The Company is a respected leader in the cabinet industry (the "**Business**"), employing approximately 130 people, and is one of the largest employers of the

¹ Capitalized terms used herein but not otherwise defined have the meaning ascribed to them in the Affidavit of Jason Chartrand sworn January 17, 2025, Motion Record of 1995677 Ontario Inc., Tab 2 ("**Chartrand Affidavit**"); First Report of the Proposal Trustee, Motion Record of 1995677 Ontario Inc., Tab 3 ("**First Report**")

Town of Renfrew, Ontario.

Chartrand Affidavit *ibid* para 4

6. Since approximately mid-2022, the Company began experiencing significant cash flow pressures due to the lingering effects that COVID-19 had in the corporate real estate market and the slower than anticipated return to corporate offices by its customers.

Chartrand Affidavit *ibid* para 6-10

7. Although additional financing from financial institutions and the Company's shareholders temporarily sustained the Business' operations, that financing ran dry. Accordingly, the Company filed the NOI to develop and implement a long-term plan to restructure its Business and its balance sheet.

Chartrand Affidavit *ibid* para 5, Exhibit "B"

A. Sale Process

8. Before filing for creditor protection, Deslaurier explored several strategic alternatives including refinancing and a potential sale.

Chartrand Affidavit *ibid*, para 11

9. Two (2) independent advisors, Stephan May of Welch Capital Partners and Nick Bakish of Group RMC, strongly recommended against a public sale, concerned that it would further erode Deslauriers already fragile operational stability and damage its goodwill, one of Deslauriers most valuable assets.

Chartrand Affidavit *ibid*, para 12

10. Maintaining that goodwill was crucial to preserving the Company's

relationship with customers' supplies and the market at large, all of which was essential for sustaining the Company's value.

Chartrand Affidavit *ibid*, para 13

11. In February of 2024, Deslaurier entered negotiations with two (2) independent entrepreneurs who had recently exited their business with large transactions. These were referrals from various professionals in our network; many others were approached but not interested in the discussion. Both of these parties were provided with a detailed Confidential Information Memorandum ("CIM") and other financial and operational information. Both entrepreneurs engaged in discussions with the Company. In turn, I was requested not to disclose their names.

Chartrand Affidavit *ibid*, para 14

12. However, and complicating matters, RBC issued a demand letter on March 13, 2024.

Chartrand Affidavit *ibid* para 15, Exhibit "C"

13. RBC, in response to requests by Deslaurier, did not enforce its security at that time, but requested, and Deslaurier agreed to, a forbearance agreement in response to RBC's growing concerns about the Company's financial health.

Chartrand Affidavit *ibid*, para 16, Exhibit "D"

14. This agreement, although it provided time and some financial breathing room for Deslaurier, created uncertainty, and the interested investors withdrew from negotiations.

Chartrand Affidavit *ibid*, para 17

15. Following the withdrawal of the initial investors, Deslaurier made attempts to refinance its debt with alternative lenders. However, despite these efforts, the company's cash requirement was too significant for the alternate lenders to approve financing. The scale of the financial need made it impossible to secure the necessary funding, leaving Deslaurier with limited options.

Chartrand Affidavit *ibid*, para 18

16. As a result of Deslaurier being unable, during the forbearance period provided by RBC, to secure new financing, an agreement extending the forbearance period was entered into between RBC and Deslaurier on June 20, 2025.

Chartrand Affidavit *ibid*, para 19, Exhibit "E"

17. In May and June of 2024, Deslaurier explored further sales opportunities and engaged with three potential buyers. One of these buyers submitted a Letter of Intent ("LOI") in June of 2024, proposing to acquire the company. However, this offer required the existing secured debt to be converted into new term debt, a condition that was unacceptable to the company's secured creditors. As a result, this proposed sale did not advance.

Chartrand Affidavit *ibid*, para 20

18. In August of 2024, Deslaurier entered into a non-binding agreement with another potential purchaser, a company that was to be incorporated by Cliff brake Corporation (Jim McLeod) and Argyle Capital Partners (Neil Mohammed). Argyle Capital Partners had been contacted by Stephen May. This potential sale would

have required a vesting order process which would have provided for approximately \$2.5 million in cash to be distributed amongst the secured creditors with no value for unsecured creditors. The amount offered was, again, insufficient to gain support from the secured creditors.

Chartrand Affidavit *ibid*, para 21

19. In order to flesh out and make the non-binding agreement a binding one, RBC agreed to one more extension of the forbearance period and requested Deslaurier enter into a further extending agreement of the forbearance agreement on August 30, 2024.

Chartrand Affidavit *ibid*, para 22, Exhibit “F”

20. Potvin Construction of Ottawa and other private investors were approached, but no meaningful discussions or offers materialized. Despite continued efforts, none of the available options met Deslaurier’s strategic objectives or provided a viable solution to its financial difficulties. With typical refinancing and sale prospects exhausted, Deslaurier was finally able to come to an agreement with the two (2) major secured creditors to support a new transaction as described below.

Chartrand Affidavit *ibid*, para 23

21. Annexed and marked as Exhibit “G” is a redacted copy of the Asset Purchase Agreement, the unredacted version being annexed and marked as Confidential Exhibit “H” and lodged with the court on a confidential basis, pending determination of the request for an Approval and Vesting Order, together with a Sealing Order.

Chartrand Affidavit *ibid*, para 24, Exhibits “G” and “H”

22. In October 2024, the Company retained Capital Asset Management to prepare an appraisal of its assets (the “Valuation Report”). The appraisal report provides three values for the assets: (1) fair market value in place; (2) liquidation value in place; and (3) liquidation value. A Vesting Order sales process provides significantly more value to all parties involved even before considering protecting the substantial number of jobs the company represents to the Town of Renfrew. Annexed and marked as Confidential Exhibit “I” is a copy of the Valuation Report being lodged with the court on a confidential basis.

Chartrand Affidavit *ibid* para 35 (d), Exhibit “I”

B. Proposed New Transaction

23. The Transaction contemplates a sale of substantially all of the assets of the Business in a manner that will allow the Purchaser to continue to operate the Business as a going concern under a well-established enterprise, and maintaining the jobs of the approximately 130 employees and customer deposits and contracts will be assumed and carried out by the Purchaser. This will involve a change in control. Only some of the new owners are related to the last ownership group (James and Myself); the old controlling partner is now a minority partner.

Chartrand Affidavit *ibid*, para 25

24. The assets purchased by the Purchaser under the APA consist of all of the tangible and intangible assets, undertaking and properties of the Company that relate to the Business, other than the Excluded Assets, including the Accounts Receivable or collection rights for Accounts Receivable, Assumed Contracts, Books

and Records, Documentation, Equipment including Leased Hardware, Inventory, Intellectual Property, Permits, Prepaid Expenses, the goodwill of the Company., and all rights related to claims for refunds and rights of set-off (the “Purchased Assets”).

Chartrand Affidavit *ibid*, para 26

25. The Purchaser is required to provide the Vendor’s Counsel a deposit in trust, of seven hundred and fifty thousand (\$750,000.00) dollars (CDN). That has been done. The Purchaser has provided a wire confirmation indicating the Deposit has been wired to the Vendor’s solicitor in trust.

Chartrand Affidavit *ibid*, para 27

26. The Purchase Price is made up of three components as follows:

- i. The deposit of \$750,000.00
- ii. The balance as set out in the APA

Chartrand Affidavit *ibid*, para 28

27. The APA is conditional upon, among other things, the Court granting the AVO, including the assignment of the Consent Required Contracts.

Chartrand Affidavit *ibid*, para 29

28. The Purchaser unequivocally requires the Consent Required Contracts to continue to operate the Business in the ordinary course. As a result, it is a condition to closing the Transaction that the Consent Required Contracts be assigned to the Purchaser.

Chartrand Affidavit *ibid*, para 30

29. To date, the Proposal Trustee has been advised that the Company has worked diligently to identify all of the counterparties to the Consent Required Contracts that must consent to be provided with notice of this motion.

Chartrand Affidavit *ibid*, para 31

30. The Company has advised that it intends to communicate directly with such counterparties in an attempt to procure executed consents and waivers prior to the Closing Date. However, given the number of Consent Required Contracts, it may not be possible for all consents and waivers to be obtained prior to the anticipated Closing of the Transaction. Accordingly, the Company is seeking the assignment of the Consent Required Contracts in the AVO.

Chartrand Affidavit *ibid*, para 32

31. None of the Consent Required Contracts are agreements that cannot be assigned under the *BIA*, such as: (a) agreements that have been entered into after the commencement of the NOI proceedings, (b) eligible financial contracts, or (c) collective agreements.

Chartrand Affidavit *ibid*, para 33

32. The Purchaser insists that it is essential to the Transaction that the value of the Consent Required Contracts be preserved in its hands following the closing of the Transaction. As such, the Company has concluded that the only way to do so is through the AVO given that the Consent Required Contracts are not permitted to be assigned without the consent of the counterparty.

Chartrand Affidavit *ibid*, para 34

33. The “Closing Date” under the APA is 7 Business Days following the issuance of the AVO, or such later date as the Company and Purchaser may agree in writing. Accordingly, the Company is currently targeting a closing date of February 10, 2025.

Chartrand Affidavit *ibid*, Exhibit “G” , Article 8 – Conditions, page 105

34. The Transaction contemplates a sale of substantially all of the assets of the Business in a manner that will allow the Purchaser to continue to operate the Business as a going concern under a well-established enterprise.

PART III – ISSUES

35. The issues before this Court are:
- a) whether the Court should abridge the time for service of this motion pursuant to Rule 6 of the *Bankruptcy Rules*;
 - b) whether the Court should approve the Transaction;
 - c) whether this Court should assign the Consent Required Contracts identified in Schedule C of the AVO;
 - d) whether this Court should grant the Administration Charge; and
 - e) whether the Confidential Exhibits should be sealed?

PART IV – LAW & ARGUMENT

A. The Time for Service Should be Abridged

36. Rule 6 of the *Bankruptcy Rules* states, in part:

- 6 (1)** Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.
- (2)** Unless otherwise provided in these Rules, every notice or other document given or sent pursuant to the Act or these Rules
- (a)** must be received by the addressee at least four days before the event to which it relates, if it is served, delivered personally, or sent by facsimile or electronic transmission; or
- (b)** must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or by courier.
- (3)** A trustee, receiver or administrator who gives or sends a notice or other document shall prepare an affidavit, or obtain proof, that it was given or sent, and shall retain the affidavit or proof in their files.
- (4)** The court may, on an *ex parte* application, exempt any person from the application of subsection (2) or order any terms and conditions that the court considers appropriate, including a change in the time limits.

BIA at Rule 6

37. As evidenced by the Affidavits of Service of Megan Rivet, the Company served its Motion Record on January 17, 2025, and January 20, 2025 for the hearing scheduled for January 29, 2025. It was served by electronic transmission or courier, as contemplated by Rule 6 *BIA*.

Affidavit of Service of Megan Rivet sworn January 17 & 20, 2025

38. Rules 2 and 3 of the *Rules of Civil Procedure* grant the Court the jurisdiction to abridge the time for service in proposal proceedings where it is satisfied the interests of justice require abridgement.

Rules of Civil Procedure, RRO 1990, Reg 194, Rule 2-3. See for e.g. *In Re Entegrity Wind Systems Inc*, 2009 PESC 25, [para 3](#).

39. The Company respectfully submits that this is an appropriate case for the Court to exercise its discretion to abridge the time for service for the following reasons:

- a) the January 29, 2025, court date was the earliest available date to allow the parties to close in February 2024;
- b) the Company spent time building consensus amongst its stakeholders on the terms of the APA, AVO, and Ancillary Order, which required the Company to file its motion materials closer to the hearing date of January 29, 2025; and
- c) no prejudice will result to any party by reason of the proposed abridgement.

B. Approval of the Transaction

40. This Court has jurisdiction to approve a sale of assets outside the ordinary course of business pursuant to section 65.13 of the *BIA*.

***BIA* at s. 65.13**

41. Section 65.13(4) of the *BIA* provides a non-exhaustive list of factors for this Court to consider in determining whether to approve a sale under section 65.13:

- (4) 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 trustee approved the process leading to the proposed sale or disposition;
 - (c) whether the trustee 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.

***BIA*, at s. 65.13(4)**

42. Courts have noted that the criteria in subsection 36(3) of the *Companies' Creditors Arrangement Act* – which are identical to those contained in subsection 65.13(4) of the *BIA* correspond to the principles articulated in *Royal Bank of Canada v Soundair Corp*, for the approval of the sale of assets in an insolvency scenario:

- (a) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers have been obtained; and
- (d) whether there has been unfairness in working out of the process.

Feronia Inc (Re), 2020 BCSC 1372 at [para 39](#) [*"Feronia"*] citing *Royal Bank v Soundair Corp*, 1991 CanLII 2727 (Ont CA)

43. The Court has also noted that "It is not necessary for [a] debtor to present its proposal under the *BIA* before an order approving a sale".

Komtech Inc (Re), 2011 ONSC 3230 at [para 33](#)

44. Courts commonly approve sale transactions where a debtor company conducted a sales process prior to making an insolvency filing. In approving transactions of this nature, courts rely upon the same principles noted above. Courts will also consider whether the debtor has the economic means to go through an additional sale process if the current transaction is not approved.

Feronia, *supra* at [para 49](#); *Re Nelson Education Limited (Re)*, 2015 ONSC 5557 [*"Nelson"*] at [paras 31-39](#); *Nelson*, *supra* at [paras 31-39](#); *Elleway Acquisitions Limited v 4358376 Canada Inc*, 2013 ONSC 7009 (*"Elleway"*) at [paras 27](#) and [31-32](#); *Elleway*, *supra* at [paras. 33-37](#).

45. The above criteria provided in subsection 65.13(4) and the *Soundair* principles support this Court's approval of the transaction:

- a) The Sales Process was conducted by a company with extensive

experience executing marketing processes for technology companies;

- b) The timelines and terms of the Sales Process were reasonable and appropriate in the circumstances and resulted in a fair and equitable process to appropriately canvass the market for the Company;
- c) The terms of the APA are the result of extensive negotiations between the Company and Purchaser, with the assistance of their respective advisors and the oversight of the Proposal Trustee;
- d) The Transaction remains the best offer received from the Sales Process;
- e) The Transaction ensures the continuation of the Business as a going concern, which will preserve employment for some of the Company's eighteen employees, provide continued and uninterrupted services to its customers, and preserve ongoing revenue for the Company's critical vendors;
- f) The Transaction provides certainty to creditors and stakeholders;
- g) The Purchase Price provides reasonable recovery in the circumstances;
and
- h) The Company has insufficient cash flow to engage in a further, extended marketing process and there is no basis to expect that such a process will result in a better realization of the assets.

46. The alternative to the Transaction is liquidation. In a liquidation scenario, the Company will immediately experience a loss of its customers and market share and suffer a corresponding irreparable loss in value. In such circumstances, employees would have no continued employment, the customers would have no continued services, and the ongoing agreements with vendors would not be preserved.

Chartrand Affidavit *ibid* para 35(a)

47. Accordingly, the Company respectfully submits that the Court should approve the Transaction.

C. The Court should assign the Consent Required Contracts

48. In order to close and give effect to the Transaction, the Purchaser requires that it be assigned the Consent Required Contracts to permit the Purchaser to continue operating the business in the ordinary course without interruption.

49. Sections 66(1) and 84.1(1) of the *BIA* authorizes the Court to make an order assigning the rights and obligations of a debtor under an agreement to any person who is specified by the court agrees to the assignment.

***BIA*, at s. 84.1**

50. In determining whether to grant an assignment order, the Court considers the factors in section 84.1(4) of the *BIA*:

(a) whether the person to whom the rights and obligations are to be assigned is able to perform the obligations; and

(b) whether it is appropriate to assign the rights and obligations to that person.

BIA, at s. 84.1(4). *Re Aeropostale Canada Corp. (Notice of Intention)*, 2018 ONSC 1468, [paras 39-43](#).

51. The Company submits that it is appropriate to assign the Consent Required Contracts for the following reasons:

(a) None of the Consent Required Contracts are agreements that cannot be assigned under the *BIA*;

Chartrand Affidavit *ibid* para 33

(b) The Purchaser unequivocally requires the Consent Required Contracts to continue to operate the Business after closing of the Transaction;

Chartrand Affidavit *ibid* para 31

(c) Any Cure Costs due and owing to the counterparties to the Consent Required Contracts as of the Closing date will be paid by the Purchaser;

Chartrand Affidavit *ibid* para 31

(d) There is no prejudice caused by assigning the Consent Required Contracts;

(e) The Proposal Trustee supports the requested relief; and

(f) Notice has been provided to all counterparties of the Consent Required Contracts.

52. Based on the foregoing, the Company respectfully submits it is appropriate for this Court to assign the Consent Required Contracts.

53. Administration charges are routinely granted in insolvency proceedings where: (a) the debtor has limited means to obtain professional assistance; (b) the involvement of professional advisors is critical to the success of the proceedings under the *BIA*; and (c) the quantum of the proposed charge is commensurate with the complexity of the debtor's business.

Colossus Minerals Inc. (Re), 2014 ONSC 514 at [paras. 11-15](#); *Mustang GP Ltd., Re*, 2015 ONSC 6562 at [para. 33](#) and *Chester Basin Seafood Group Inc (re)*, 2023 NSSC 388 at [paras. 10-13](#).

54. The Administration Charge recognizes the value that insolvency professionals bring to such proceedings and allow them to be properly compensated for their efforts.

55. The Company submits that it is appropriate for this Court to grant the Administration Charge given the evidence that, among other things:

(a) the Company has relied heavily on the expertise, knowledge, and continued participation of its advisors and professionals during the NOI proceeding in order to negotiate the Transaction and assist with the Company's restructuring;

Chartrand Affidavit *ibid* para 38

(b) the Company requires the assistance of professional advisors to

navigate the NOI proceeding and close the Transaction;

Chartrand Affidavit *ibid* para 38

- (c) the roles of the beneficiaries of the Administration Charge are not duplicative; and
- (d) the quantum of the proposed Administration Charge is reflective of the complexity of the Company's business and is both reasonable and appropriate in the circumstances of the NOI proceeding.

D. Sealing Order

56. The Company seeks an order sealing the Confidential Exhibits attached to the Chartrand Affidavit, pending the closing of the Transaction or further order of the Court. This court has jurisdiction to make the sealing order sought.

Chartrand Affidavit *ibid* Exhibits "H" and "I"
[Courts of Justice Act, R.S.O. 1990](#), c. C.43 at s 137(2).

57. The test to determine if a sealing order should be granted is set out in *Sierra Club* and *Sherman Estate*:

- (a) whether Court openness poses a serious risk to the important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent the risk; and

- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41 at [para 53](#) [*“Sierra Club”*]; *Sherman Estate v Donovan*, 2021 SCC 25 at [para 38](#) [*“Sherman Estate”*]

58. Courts have applied the *Sierra Club* and *Sherman Estate* tests in the insolvency context to grant sealing orders over confidential or commercially sensitive documents to protect the interests of the debtor.

Ontario Securities Commission v. Bridging Finance Inc., 2021 ONSC 4347 at [paras 23-27](#)

59. The Confidential Exhibits contain sensitive information related to the valuation and purchase of the Company’s assets. If such information was to be made public, any subsequent sale process by the Proposal Trustee would be compromised to the detriment of the Company’s creditors.

60. The requested sealing order is appropriate in the circumstances to prevent a real and substantial risk of harm to the Company’s ability to maximize value and maintain integrity in further sale efforts. Ultimately, this would negatively impact the stakeholders of the Company, who have an interest in ensuring the highest value possible is received in exchange for the Company’s assets.

61. The sealing of the Confidential Appendices is limited to commercially sensitive information. The requested relief is the least restrictive means available, and thus, complies with *Sierra Club*, *Sherman Estate* and the *Courts of Justice Act*.

62. The Proposal Trustee supports the Company’s request to seal the Confidential Exhibits to the Chartrand Affidavit.

PART V – RELIEF REQUESTED

63. Based on the foregoing, the Company respectfully requests that this Court grant the AVO and the Ancillary Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 24th DAY OF JANUARY 2025



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SCHEDULE "A"

List of Authorities

1. <i>In Re Entegritiy Wind Systems Inc.</i> , 2009 PESC 25
2. <i>Feronia Inc (Re)</i> , 2020 BCSC 1372
3. <i>Komtech Inc (Re)</i> , 2011 ONSC 3230
4. <i>Re Nelson Education Limited (Re)</i> , 2015 ONSC 5557
5. <i>Elleway Acquisitions Limited v 4358376 Canada Inc.</i> , 2013 ONSC 7009
6. <i>Re Aeropostale Canada Corp. (Notice of Intention)</i> , 2018 ONSC 1468
7. <i>Colossus Minerals Inc. (Re)</i> , 2014 ONSC 514
8. <i>Re Mustang GP Ltd</i> , 2015 ONSC 6562
9. <i>Chester Basin Seafood Group Inc. (Re)</i> , 2023 NSSC 388
10. <i>Sierra Club of Canada v Canada (Minister of Finance)</i> , 2002 SCC 41
11. <i>Sherman Estate v Donovan</i> , 2021 SCC 25
12. <i>Ontario Securities Commission v. Bridging Finance Inc.</i> , 2021 ONSC 4347

Statutory Authorities

[Bankruptcy and Insolvency Act, RSC 1985, c B-3](#)

Notice of intention

50.4 (1) Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating

- (a) the insolvent person's intention to make a proposal,
- (b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
- (c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books,

and attaching thereto a copy of the consent referred to in paragraph (b).

Certain things to be filed

(2) Within ten days after filing a notice of intention under subsection (1), the insolvent person shall file with the official receiver

- (a) a statement (in this section referred to as a "cash-flow statement") indicating the projected cash-flow of the insolvent person on at least a monthly basis, prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention and signed by the trustee and the insolvent person;
- (b) a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and
- (c) a report containing prescribed representations by the insolvent person regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the insolvent person.

Creditors may obtain statement

(3) Subject to subsection (4), any creditor may obtain a copy of the cash-flow statement on request made to the trustee.

Exception

(4) The court may order that a cash-flow statement or any part thereof not be released to some or all of the creditors pursuant to subsection (3) where it is satisfied that

- (a) such release would unduly prejudice the insolvent person; and
- (b) non-release would not unduly prejudice the creditor or creditors in question.

Trustee protected

(5) If the trustee acts in good faith and takes reasonable care in reviewing the cash-flow statement, the trustee is not liable for loss or damage to any person resulting from that person's reliance on the cash-flow statement.

Trustee to notify creditors

(6) Within five days after the filing of a notice of intention under subsection (1), the trustee named in the notice shall send to every known creditor, in the prescribed manner, a copy of the notice including all of the information referred to in paragraphs (1)(a) to (c).

Trustee to monitor and report

(7) Subject to any direction of the court under paragraph 47.1(2)(a), the trustee under a notice of intention in respect of an insolvent person

- (a) shall, for the purpose of monitoring the insolvent person's business and financial affairs, have access to and examine the insolvent person's property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs, from the filing of the notice of intention until a proposal is filed or the insolvent person becomes bankrupt;

- (b) shall file a report on the state of the insolvent person's business and financial affairs
— containing the prescribed information, if any —

- (i) with the official receiver without delay after ascertaining a material adverse change in the insolvent person's projected cash-flow or financial circumstances, and

- (ii) with the court at or before the hearing by the court of any application under subsection (9) and at any other time that the court may order; and

- (c) shall send a report about the material adverse change to the creditors without delay after ascertaining the change.

Where assignment deemed to have been made

(8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within

a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

(a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;

(b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;

(b.1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and

(c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

Extension of time for filing proposal

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection

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

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.

Court may not extend time

(10) Subsection 187(11) does not apply in respect of time limitations imposed by subsection (9).

Court may terminate period for making proposal

(11) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted

under subsection (9) if the court is satisfied that

- (a) the insolvent person has not acted, or is not acting, in good faith and with due diligence,
- (b) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,
- (c) the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or
- (d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

Restriction on disposition of assets

65.13 (1) An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) 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.

Individuals

(2) In the case of an individual who is carrying on a business, the court may authorize the sale or disposition only if the assets were acquired for or used in relation to the business.

Notice to secured creditors

(3) An insolvent person who applies to the court for an authorization shall 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

(4) 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 trustee approved the process leading to the proposed sale or disposition;

(c) whether the trustee 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

(5) If the proposed sale or disposition is to a person who is related to the insolvent person, the court may, after considering the factors referred to in subsection (4), 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 insolvent person; 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

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

(a) a director or officer of the insolvent person;

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

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

Assets may be disposed of free and clear

(7) 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 insolvent person 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

(8) The court may grant the authorization only if the court is satisfied that the insolvent person can and will make the payments that would have been required under paragraphs 60(1.3)(a) and (1.5)(a) if the court had approved the proposal.

Restriction — intellectual property

(9) If, on the day on which a notice of intention is filed under section 50.4 or a copy of the proposal is filed under subsection 62(1), the insolvent person 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 (7), that sale or disposition does not affect the 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.

Act to apply

66 (1) All the provisions of this Act, except Division II of this Part, in so far as they are applicable, apply, with such modifications as the circumstances require, to proposals made under this Division.

Assignments

(1.1) For the purposes of subsection (1), in deciding whether to make an order under subsection 84.1(1), the court is to consider, in addition to the factors referred to in subsection 84.1(3), whether the trustee approved the proposed assignment

Assignment of agreements

84.1 (1) On application by a trustee and on notice to every party to an agreement, a court may make an order assigning the rights and obligations of a bankrupt under the agreement to any person who is specified by the court and agrees to the assignment.

Individuals

(2) In the case of an individual,

- (a)** they may not make an application under subsection (1) unless they are carrying on a business; and
- (b)** only rights and obligations in relation to the business may be assigned.

Exceptions

(3) Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

- (a)** an agreement entered into on or after the date of the bankruptcy;
- (b)** an eligible financial contract; or

(c) a collective agreement.

Factors to be considered

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

(a) whether the person to whom the rights and obligations are to be assigned is able to perform the obligations; and

(b) whether it is appropriate to assign the rights and obligations to that person.

Restriction

(5) The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the person's bankruptcy, insolvency or failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court. Copy of order

(6) The applicant is to send a copy of the order to every party to the agreement.

[Rules of Civil Procedure, RRO 1990, Reg 194](#)

General Principle

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

Effect of Non-Compliance

2.01 (1) A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court,

(a) may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute; or

(b) only where and as necessary in the interest of justice, may set aside the proceeding or a step, document or order in the proceeding in whole or in part.

(2) The court shall not set aside an originating process on the ground that the proceeding should have been commenced by an originating process other than the one employed.

Court May Dispense with Compliance

2.03 The court may, only where and as necessary in the interest of justice,

dispense with compliance with any rule at any time.

Extension or Abridgment General Powers of Court

3.02 (1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

[Bankruptcy and Insolvency General Rules, CRC c 368](#)

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

6 (1) Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.

(2) Unless otherwise provided in these Rules, every notice or other document given or sent pursuant to the Act or these Rules

(a) must be received by the addressee at least four days before the event to which it relates, if it is served, delivered personally, or sent by facsimile or electronic transmission; or

(b) must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or by courier.

(3) A trustee, receiver or administrator who gives or sends a notice or other document shall prepare an affidavit, or obtain proof, that it was given or sent, and shall retain the affidavit or proof in their files.

(4) The court may, on an *ex parte* application, exempt any person from the application of subsection (2) or order any terms and conditions that the court considers appropriate, including a change in the time limits.

[Courts of Justice Act, R.S.o. 1990, c.C.43](#)

Sealing documents

137(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED
AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 1995677 ONTARIO INC.
(formerly known as DESLAURIER CUSTOM CABINETS INC.) OF THE CITY OF OTTAWA
IN THE PROVINCE OF ONTARIO**

Court File No. CV-25-00098475-0000
Estate File No. 33-3174726

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

Proceedings Commenced at OTTAWA

**FACTUM OF
1995677 ONTARIO INC.**

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