

**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 C INTERNATIONAL INC., C  
INTERNATIONAL INCOME FUND, CII TRUST AND THE  
COMPANIES LISTED IN SCHEDULE "A"**

Applicants

**FACTUM OF THE APPLICANTS**

**GOODMANS LLP**

Barristers & Solicitors  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

Robert J. Chadwick (LSUC#: 35165K)  
Melaney J. Wagner (LSUC#: 44063B)  
Caroline Descours (LSUC#: 58251A)

Tel: (416) 979-2211

Fax: (416) 979-1234

Lawyers for the Applicants

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FACTUM OF THE APPLICANTS

(Motion Returnable April 10, 2013)

PART I – INTRODUCTION

1. C International Income Fund, formerly Cinram International Income Fund (the "**Fund**"), collectively with its direct and indirect subsidiaries (the "**Company**"), was one of the world's largest producers of pre-recorded multimedia products and related logistics services. The Fund, C International Inc., formerly Cinram International Inc. ("**CII**"), CII Trust, and the companies listed in Schedule "A" hereto (collectively, the "**Applicants**") were unable to find an out-of-court solution to their financial difficulties and sought protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "**CCAA**").<sup>1</sup>

Monitor's Eighth Report at paras. 2-3.

2. On June 25, 2012, the Applicants obtained an Order of this Honourable Court (the "**Initial Order**") granting relief pursuant to the CCAA. The relief granted under the

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<sup>1</sup> Any capitalized terms that are not defined herein shall have the meaning prescribed to them in the Eighth Report of FTI Consulting Canada Inc. in its capacity as Court-appointed Monitor dated March 28, 2013 (the "**Monitor's Eighth Report**"). All dollar amounts expressed herein, unless otherwise noted, are in United States currency.

Initial Order included, *inter alia*: (i) a stay of proceedings against the Applicants and C International Limited Partnership, formerly Cinram International Limited Partnership (together with the Applicants, the “**CCAA Parties**”) and the subsidiaries of the CCAA Parties that are also party to agreements to which the CCAA Parties are parties; and (ii) the appointment of FTI Consulting Canada Inc. (“**FTI**”) as monitor of the CCAA Parties (the “**Monitor**”).

Monitor’s Eighth Report at para. 1.

3. The Applicants’ principal objectives of these CCAA Proceedings were: (i) to ensure the ongoing operations of the Company; (ii) to ensure the Applicants have the necessary availability of working capital funds to maximize the ongoing business of the Company for the benefit of its stakeholders; and (iii) to complete the sale and transfer of substantially all of Cinram’s core business to Cinram Group, Inc., formerly known as Cinram Acquisition, Inc. or one or more of its nominees.

Monitor’s Eighth Report at para. 4.

4. On July 12, 2012, this Honourable Court made an order (the “**Approval and Vesting Order**”), *inter alia*: (i) approving the sale of substantially all of the property and assets used in connection with the business carried on by the Company in North America to Cinram Group Inc. (the “**Asset Sale Transaction**”) contemplated by the asset purchase agreement between CII and Cinram Group, Inc. dated June 22, 2012 (the “**Asset Purchase Agreement**”); (ii) approving the sale of the shares of Cooperatie Cinram Netherlands UA (the “**Share Sale Transaction**”) pursuant to the binding purchase offer dated June 22, 2012 provided by Cinram Group, Inc. to CII and 1362806 Ontario Limited; and (iii) granting certain additional relief.

Monitor’s Eighth Report at para. 6.

5. On July 25, 2012, the United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”) approved and entered the Final Recognition Order under chapter 15 of title 11 of the United States Code, as amended from time to time (the “**Bankruptcy Code**”), granting recognition of the CCAA Proceedings as the “foreign main

proceedings” of the CCAA Parties and recognizing the Initial Order on a final basis. The U.S. Court also granted an Order, *inter alia*, recognizing the Approval and Vesting Order and authorizing the assignment and assumption of certain executory contracts and unexpired leases.

Monitor’s Eighth Report at para. 7.

6. The Applicants completed the Asset Sale Transaction on August 31, 2013 and the Share Sale Transaction was completed on February 4, 2013.

Monitor’s Eighth Report at paras. 8 and 9.

7. The business and assets of Cinram Wireless LLC (“**Wireless**”), one of the Applicants in these proceedings whose primary business consists of providing repair, programming, packaging and related logistics services for mobile devices (the “**Wireless Services**”) in the United States solely for Motorola Mobility, LLC (“**Motorola**”), were excluded from the Asset Sale Transaction and were not sold to Cinram Group, Inc.

Monitor’s Eighth Report at paras. 14 and 16.

8. As further discussed below, on March 14, 2013, Wireless entered into a termination agreement (the “**Termination Agreement**”) with Motorola which contemplates, among other things: (i) the early transition of services provided by Wireless to Motorola under certain service agreements between Wireless and Motorola (the “**Operative Agreements**”) which, as previously disclosed in these proceedings, expire on June 15, 2013 (the “**Expiration Date**”); and (ii) the sale of the Equipment (as defined in the Termination Agreement) by Wireless to Motorola, representing a sale of substantially all of the assets of Wireless (the “**Wireless Sale Transaction**”).

Monitor’s Eighth Report at para. 27.

9. This factum is filed in support of the Applicants’ motion for an order, *inter alia*: (i) approving the Wireless Sale Transaction; (ii) authorizing Wireless, *nunc pro tunc*, to complete the Wireless Sale Transaction; (iii) vesting all of Wireless’ right, title and interest in and to the Equipment in Motorola, free and clear of all interests, liens, charges

and encumbrances; and (iv) sealing the Termination Agreement filed with the Court in a confidential supplement (the “**Confidential Supplement**”) to the Monitor’s Eighth Report.

## **PART II – THE FACTS**

### **A. TRANSITION OF SERVICES UNDER THE OPERATIVE AGREEMENTS AND SALE OF THE EQUIPMENT**

10. During these CCAA Proceedings, Wireless has continued to provide the Wireless Services to Motorola in accordance with the terms and conditions of the Operative Agreements, which expire on June 15, 2013.

Monitor’s Eighth Report at para. 15.

11. Motorola requested the commencement of the transition of its business from Wireless prior to the Expiration Date and the assistance of Wireless in this regard. Motorola also requested that Wireless continue to provide services under the Operative Agreements (as amended by the Termination Agreement) up to the Expiration Date and has requested Wireless’ assistance before and after the Expiration Date to assist in a transition of services being provided by Wireless. In connection therewith, CII and Wireless, with the assistance of the Monitor, and Motorola negotiated and entered into the Termination Agreement which provides for, among other things:

- (a) the acceleration of the payment of accounts payable owing by Motorola to Wireless;
- (b) the sale of the Equipment by Wireless to Motorola, representing a sale of substantially all of the assets of Wireless; and
- (c) the provision by Wireless and CII to Motorola of the right to use certain intellectual property rights and related software for a limited period as specified in the Termination Agreement.

Monitor’s Eighth Report at paras. 23-24 and 27-28.

12. The Equipment was originally purchased by Wireless for the benefit of Motorola in connection with the Wireless Services provided by Wireless to Motorola under the Operative Agreements. Motorola's monthly payments to Wireless under the Operative Agreements included amortization and capital cost payments in connection with the Equipment and, under the Operative Agreements, Motorola has the option to purchase the Equipment from Wireless upon expiry of the Operative Agreements at the net book value of the Equipment. Accordingly, the CCAA Parties did not pursue a sales process to solicit interest of other potential third party purchasers in respect of the Equipment.

Monitor's Eighth Report at paras. 17-18.

13. As consideration for the sale of the Equipment and as part of the early transition of Wireless Services to Motorola's new service provider, Motorola agreed to accelerate and pay to Wireless the remaining payments on the Equipment and the cost of capital owing by Motorola (the "**Equipment Payment**").

Monitor's Eighth Report at para. 27.

14. Pursuant to the Termination Agreement, the Applicants have agreed to seek promptly following the closing of the Wireless Sale Transaction (which occurred on March 21, 2013) orders from this Honourable Court and the U.S. Court approving the transfer of the Equipment to Motorola and vesting in Motorola all of Wireless' right, title and interest in and to the Equipment free and clear of all liens, claims and encumbrances (together, the "**Equipment Sale Approval and Vesting Orders**"). While the granting of the Equipment Sale Approval and Vesting Orders is not a condition to the completion of the Wireless Sale Transaction, pursuant to the Termination Agreement, the Monitor is required to hold in escrow \$100,000 from the Equipment Payment (the "**Holdback Amount**"), which Holdback Amount will be released for the benefit of Wireless upon the granting of the Equipment Sale Approval and Vesting Orders.

Monitor's Eighth Report at paras. 30-31.

15. If the Equipment Sale Approval and Vesting Orders are not granted, the Holdback Amount is to be used by Wireless in seeking the discharge and release of any competing

liens or claims asserted against the Equipment by a specified time period, with any remaining balance of the Holdback Amount being released for the benefit of Wireless, provided that if a discharge and release of competing liens or claims asserted would require payment of an aggregate amount equal to or in excess of the Holdback Amount, the Holdback Amount will be released from escrow and paid to Motorola.

Monitor's Eighth Report at para. 31.

**B. FURTHER FACTUAL BACKGROUND**

16. Facts relating to the Termination Agreement, the sale of the Equipment contemplated thereby and the requested relief are more fully set out in the Monitor's Eighth Report.

**PART III – ISSUES AND THE LAW**

**A. APPROVAL OF THE WIRELESS SALE TRANSACTION IS APPROPRIATE**

17. The Applicants seek an Order, *inter alia*, approving the Wireless Sale Transaction in order to maximize value for the benefit of the CCAA Parties' stakeholders with respect to the assets of Wireless that were excluded under the Asset Purchase Agreement and were not sold to Cinram Group, Inc..
18. Sections 36(1), (2), (3), (6) and (7) of the CCAA govern a sale of assets of a debtor company to a third party and the Wireless Sale Transaction meets the requirements of these sections.
19. It is well established in Ontario that the Court has the jurisdiction to approve a sale of all or substantially all of the assets of a debtor company in a CCAA proceeding in the absence of a plan of arrangement where such sale is in the best interests of the stakeholders generally.

*Re Canadian Red Cross Society* (1998), 5 C.B.R. (4<sup>th</sup>) 299 at paras. 45-46; Book of Authorities, Tab 1.

*Re Nortel Networks Corp.* (2009), 55 C.B.R. (5<sup>th</sup>) 229 (Ont. Sup. Ct. J. [Commercial List]) at paras. 35-40, 48; Book of Authorities, Tab 2.

*Re Brainhunter Inc.* 2009 CarswellOnt 7627 (Sup. Ct. J. [Commercial List]) at paras. 12-13; Book of Authorities, Tab 3. See also *Re Brainhunter Inc.* (2009), 62 C.B.R. (5<sup>th</sup>) 41 (Ont. Sup. Ct. J. [Commercial List]) at para. 15; Book of Authorities, Tab 4.

*Re Consumer Packaging Inc.* (2001), 27 C.B.R. (4<sup>th</sup>) 197 (Ont. C.A.) at paras. 5 and 9; Book of Authorities, Tab 5.

CCAA, Section 36(1).

20. Section 36(3) of the CCAA sets out a non-exhaustive list of factors for the Court to consider in determining whether to grant the authorization for a debtor company to sell its assets outside of the ordinary course of business in a CCAA proceeding:

- (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.

CCAA, Section 36(3).

*Re Canwest Publishing Inc./Publications Canwest Inc.* (2010), 68 C.B.R. (5<sup>th</sup>) 233 (Ont. Sup. Ct. J. [Commercial List]) at para. 13; Book of Authorities, Tab 6.

*Re Brainhunter Inc.* (2009), 62 C.B.R. (5<sup>th</sup>) 41 (Ont. Sup. Ct. J. [Commercial List]) at para. 15; Book of Authorities, Tab 4.

*Re White Birch Paper Holding Co.* (2010), 72 C.B.R. (5<sup>th</sup>) 49 (Que. Sup. Ct.) at paras. 46-49; Book of Authorities, Tab 7.



21. Prior to the enactment of Section 36(3), CCAA Courts in reviewing a proposed sale of assets as part of a court supervised sales process in a CCAA proceeding considered the following factors adopted by the Ontario Court of Appeal in *Royal Bank v. Soundair Corp.* relating to a sale of assets by a receiver, which factors overlap with the Section 36(3) factors and continue to be applied by CCAA Courts in conjunction therewith:

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

*Royal Bank v. Soundair Corp.* (1991), 83 D.L.R. (4<sup>th</sup>) 76 (Ont. C.A.) at para. 16; Book of Authorities, Tab 8.

*Re Nortel Networks Corp.* (2009), 56 C.B.R. (5<sup>th</sup>) 224 (Ont. Sup. Ct. J. [Commercial List]) at paras. 34-36; Book of Authorities, Tab 9.

*Re Canwest Publishing Inc./Publications Canwest Inc.* (2010), 68 C.B.R. (5<sup>th</sup>) 233 (Ont. Sup. Ct. J. [Commercial List]) at para. 13; Book of Authorities, Tab 6.

*Re White Birch Paper Holding Co.* (2010), 72 C.B.R. (5<sup>th</sup>) 49 (Que. Sup. Ct.) at para. 48-54; Book of Authorities, Tab 7.

22. The Applicants submit that the Wireless Sale Transaction meets the requirements under Sections 36(2) and (3) of the CCAA and is appropriate, fair and reasonable in the circumstances because:

- (a) the Equipment was originally purchased by Wireless for the benefit of Motorola in connection with the Wireless Services provided by Wireless to Motorola under the Operative Agreements;
- (b) Motorola has the option to purchase the Equipment from Wireless upon expiry of the Operative Agreements at the net book value of the Equipment;

- (c) as consideration for the sale of the Equipment and as part of the early transition of services, Motorola agreed to accelerate and pay to Wireless the remaining payments on the Equipment and the cost of capital owing by Motorola;
- (d) under the Termination Agreement, Motorola also agreed to accelerate the payment of accounts payable owing by Motorola to Wireless;
- (e) the CCAA Parties have acted in good faith to maximize value for their stakeholders, made satisfactory efforts to obtain the best price for the Equipment and have not acted improvidently;
- (f) the CCAA Parties have kept their first lien lenders apprised of their progress through the CCAA Proceedings and the lenders are supportive of the Wireless Sale Transaction;
- (g) the Wireless Sale Transaction represents the best available alternative in the circumstances taking into account such factors as, among others: (i) the aggregate value to stakeholders; (ii) Wireless' existing relationship and obligations under the Operative Agreements with Motorola, its sole customer; and (iii) the timeframe within which the transaction could be completed;
- (h) the Monitor believes the Wireless Sale Transaction is in the best interests of the CCAA Parties and their stakeholders; and
- (i) notice of this motion has been given to the secured creditors who are likely to be affected by the Wireless Sale Transaction.

Monitor's Eighth Report at paras. 17-18, 27 and 42-45.

23. The Applicants also seek an Order from this Honourable Court vesting all of Wireless' right, title and interest in and to the Equipment in Motorola, free and clear of all interests, liens, charges and encumbrances. The Court has the jurisdiction to make such an Order pursuant to Section 36(6) of the CCAA:

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.

CCAA, Section 36(6).

24. In addition, the Wireless Sale Transaction is in compliance with Section 36(7) of the CCAA. Pursuant to Section 36(7), “[t]he 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(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement.” The Court has noted that the reference to paragraph 6(4)(a) in Section 36(7) should be to paragraph 6(6)(a).

CCAA, Section 36(7).

*Re Canwest Global Communications*, 2009 CarswellOnt 7169 (Sup. Ct. J. [Commercial List]) at para. 28, FN 2; Book of Authorities, Tab 10.

25. The CCAA Parties can and will make the payments that would be required under paragraphs 6(5)(a). Wireless does not sponsor any pension plans. Accordingly, Section 6(6)(a) of the CCAA does not apply.

Affidavit of John Bell sworn June 22, 2012 at paras. 64-67 .

26. The Monitor recommends approval of the Wireless Sale Transaction by this Honourable Court.

Monitor’s Eighth Report at para. 46.

**B. SEALING THE CONFIDENTIAL SUPPLEMENT**

27. The Applicants request that this Honourable Court seal the Confidential Supplement, which contains the Termination Agreement containing confidential and commercially sensitive information relating to the Wireless Sale Transaction and the Wireless business.

Monitor’s Eighth Report at para. 32.

28. This Honourable Court has the discretion pursuant to Section 137(2) of the *Courts of Justice Act* (Ontario) and pursuant to its inherent jurisdiction to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.

*Courts of Justice Act*, RSO 1990, c. C.43, Section 137(2).

29. The Courts will exercise their discretion to depart from the general principle that court proceedings should be public where it is demonstrated that openness would cause serious harm or injustice. In *MacIntyre v. Nova Scotia (Attorney General)*, the Supreme Court of Canada held:

Undoubtedly every Court has a supervisory and protecting power over its own records. Access can be denied when the ends of justice would be subverted by disclosure or the judicial documents might be used for an improper purpose. The presumption, however, is in favour of public access and the burden of contrary proof lies upon the person who would deny the exercise of the right.

*MacIntyre v. Nova Scotia (Attorney General)* (1982), 132 D.L.R. (3d) 385 (S.C.C.) at para. 70; Book of Authorities, Tab 11.

30. In *Sierra Club of Canada v. Canada (Minister of Finance)*, a decision of the Supreme Court of Canada interpreting the sealing provisions of the Federal Court Rules, the following test to determine when a sealing order should be made was adopted:

A confidentiality order under Rule 151 should only be granted when:

(a) such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and

(b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

*Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522 at para. 53 [*Sierra Club*]; Book of Authorities, Tab 12.

31. With respect to the first branch of the *Sierra Club* test, the Termination Agreement comprises confidential and commercially sensitive information relating to the Wireless Sale Transaction and the Wireless business. Protection of the confidential and commercially sensitive information of the CCAA Parties and their business, the disclosure of which would cause harm to the CCAA Parties' restructuring and operations as they wind down and may allow Motorola's competitors to determine sensitive operational and financial data, is an important commercial interest that should be protected.

Monitor's Eighth Report at para. 32.

32. With respect to the second branch of the *Sierra Club* test, the Applicants submit that keeping this information confidential will not have any deleterious effects. In any event, the salutary effects of sealing the Termination Agreement outweigh any conceivable deleterious effects. In the normal course, outside the context of a CCAA proceeding, a company's confidential and commercially sensitive information would be kept strictly confidential. There is no compelling reason for allowing disclosure of the information in the Termination Agreement.

33. The Monitor recommends that the Confidential Supplement be sealed by this Honourable Court pending further Order of this Court.

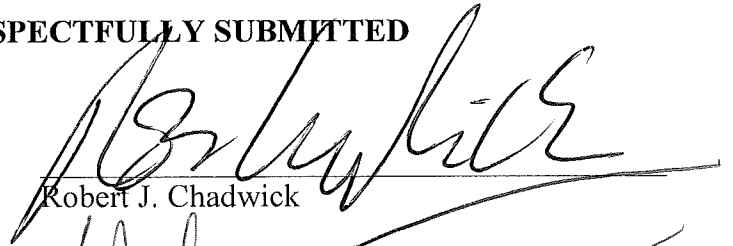
Monitor's Eighth Report at para. 46.

34. Accordingly, the Applicants submit that this Honourable Court ought to order that the Confidential Supplement be permanently sealed from and does not form part of the public record.

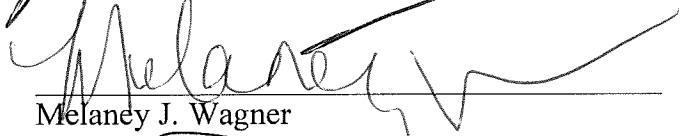
#### **PART IV – ORDER REQUESTED**

35. For the reasons set out above, the Applicants request that this Honourable Court approve the Wireless Sale Transaction and grant the requested relief.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

A large, stylized handwritten signature in black ink, appearing to read "R. Chadwick", written over a horizontal line.

Robert J. Chadwick

A handwritten signature in black ink, appearing to read "Melaney J. Wagner", written over a horizontal line.

Melaney J. Wagner

A handwritten signature in black ink, appearing to read "CD", written over a horizontal line.

Caroline Descours

**SCHEDULE "A"**

**ADDITIONAL APPLICANTS**

C International General Partner Inc., formerly Cinram International General Partner Inc.

CRW International ULC, formerly Cinram International ULC

1362806 Ontario Limited

CUSH Inc., formerly Cinram (U.S.) Holding's Inc.

CIHV Inc., formerly Cinram, Inc.

IHC Corporation

CMFG LLC, formerly Cinram Manufacturing LLC

CDIST LLC, formerly Cinram Distribution LLC

Cinram Wireless LLC

CRSMI LLC, formerly Cinram Retail Services, LLC

One K Studios, LLC

**SCHEDULE “B”  
LIST OF AUTHORITIES**

1. *Re Canadian Red Cross Society* (1998), 5 C.B.R. (4<sup>th</sup>) 299
2. *Re Nortel Networks Corp.* (2009), 55 C.B.R. (5<sup>th</sup>) 229 (Ont. Sup. Ct. J. [Commercial List])
3. *Re Brainhunter Inc.*, 2009 CarswellOnt 7627 (Sup. Ct. J. [Commercial List])
4. *Re Brainhunter Inc.* (2009), 62 C.B.R. (5<sup>th</sup>) 41 (Ont. Sup. Ct. J. [Commercial List])
5. *Re Consumer Packaging Inc.* (2001), 27 C.B.R. (4<sup>th</sup>) 197 (Ont. C.A.)
6. *Re Canwest Publishing Inc./Publications Canwest Inc.* (2010), 68 C.B.R. (5<sup>th</sup>) 233 (Ont. Sup. Ct. J. [Commercial List])
7. *Re White Birch Paper Holding Co.* (2010), 72 C.B.R. (5<sup>th</sup>) 49 (Que. Sup. Ct.)
8. *Royal Bank v. Soundair Corp.* (1991), 83 D.L.R. (4<sup>th</sup>) 76 (Ont. C.A.)
9. *Re Nortel Networks Corp.* (2009), 56 C.B.R. (5<sup>th</sup>) 224 (Ont. Sup. Ct. J. [Commercial List])
10. *Re Canwest Global Communications*, 2009 CarswellOnt 7169 (Sup. Ct. J. [Commercial List])
11. *MacIntyre v. Nova Scotia (Attorney General)* (1982), 132 D.L.R. (3d) 385 (S.C.C.)
12. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522



**SCHEDULE “C”  
STATUTORY REFERENCES**

***COMPANIES’ CREDITORS ARRANGEMENT ACT*  
R.S.C. 1985, c. C-36, as amended**

s. 6(5)(a)

*Restriction – employees, etc.* – The court may sanction a compromise or an arrangement only if:

- a) the compromise or arrangement provides for payment to the employees and former employees of the company, immediately after the court’s sanction, of:
  - i) amounts at least equal to the amounts that they would have been qualified to receive under paragraph 136(1)(d) of the *Bankruptcy and Insolvency Act* if the company had become bankrupt on the day on which proceedings commenced under this Act, and
  - ii) wages, salaries, commissions or compensation for services rendered after proceedings commence under this Act and before the court sanctions the compromise or arrangement, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the company’s business during the same period.

s. 6(6)(a)

*Restriction – pension plan* – If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if:

- a) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:
  - i) an amount equal to the sum of all amounts that were deducted from the employees’ remuneration for payment to the fund,
  - ii) if the prescribed pension plan is regulated by an Act of Parliament,
    - A. an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and
    - B. an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*,
    - C. an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*, and
  - iii) in the case of any other prescribed pension plan,

- A. an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and
- B. an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament,
- C. an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the *Pooled Registered Pension Plans Act*.

s. 36(1)

*Restriction on disposition of business assets* – 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.

s. 36(2)

*Notice to creditors* – 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.

s. 36(3)

*Factors to be considered* – 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.

s. 36(6)

*Assets may be disposed of free and clear* – 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.

s. 36(7)

*Restriction – employers* – 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(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement.

***COURTS OF JUSTICE ACT***  
**R.S.O. 1990, c. C-43, as amended**

s. 137(2)

*Sealing documents* – 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 *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

Court File No: CV12-9767-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
C INTERNATIONAL INC., C INTERNATIONAL INCOME FUND, CII TRUST  
AND THE COMPANIES LISTED IN SCHEDULE "A"

Applicants

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

Proceeding commenced at Toronto

**FACTUM**  
**(Motion Returnable April 10, 2013)**

**GOODMANS LLP**

Barristers & Solicitors  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

Robert J. Chadwick LSUC#: 35165K  
Melaney J. Wagner LSUC#: 44063B  
Caroline Descours LSUC#: 58251A

Tel: (416) 979-2211  
Fax: (416) 979-1234

Lawyers for the Applicants