Court File No. CV-23-00711935-00CL

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 TREES CORPORATION, ONTARIO CANNABIS HOLDINGS CORP., MIRACULO INC., 2707461 ONTARIO LTD., OCH ONTARIO CONSULTING CORP., AND 11819496 CANADA INC.

Applicants

FACTUM OF THE MONITOR

(Returnable January 2, 2024)

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TO: **SERVICE LIST**

TABLE OF CONTENTS

PART I - OVERVIEW

1. Ernst & Young Inc. ("**EY**") files this factum in its capacity as the monitor of the applicants to these CCAA proceedings (collectively, the "**Applicants**"). EY supports the Applicants' application for an amended and restated initial order, substantially in the form of proposed order attached to their application record at Tab 5. This factum addresses a single issue in respect of that application: should this Court approve EY's acting as the monitor pursuant to section 11.7(2) of the CCAA where an affiliate of EY has formerly acted as auditor of one of the Applicants in the two years preceding the CCAA application?

2. It is appropriate for this Court to grant EY permission to act as the monitor and consistent with section 11.7(2) of the CCAA.

3. The CCAA does not prohibit a person from acting as Monitor where it was formerly the auditor of an applicant. Rather, it permits this to occur but subjects it to express judicial scrutiny to ensure that it is appropriate where the audit engagement was recent. Section 11.7(2) clearly reflects that there will be times and circumstances in which a former auditor can and should be permitted to act as Monitor, and nothing in that section indicates that it should only occur sparingly or in exceptional circumstances; rather, simply that this scenario calls for additional judicial scrutiny.

4. The objective of section 11.7(2) is not to bar former auditors from acting as monitors but rather to ensure that the integrity of the insolvency process is maintained in that circumstance and to bar former auditors from acting only where doing so threatens that integrity. It calls for increased judicial scrutiny to ensure that the court officer's prior dealings with a debtor company do not give rise to a reasonable apprehension of bias, real or perceived.

5. There are numerous instances in which former auditors or affiliates of former auditors have been permitted to act as monitors in CCAA proceedings.

6. While EY did not itself act as auditor for any of the applicants, Ernst & Young LLP ("**EY LLP**"), an affiliate of EY, previously acted as auditor for Trees Corporation ("**Trees**"), one of the Applicants. EY LLP resigned from the auditor role on May 10, 2022 – over 19 months ago. The final period that EY LLP audited was for the year ended December 31, 2021, and the Applicants do not reference or rely on the audited financial statements from that period in the CCAA proceedings. There is no reasonable basis to expect that EY LLP's previous role will give rise to a reasonable apprehension of bias (real or perceived) in these CCAA proceedings, and EY has taken reasonable and appropriate steps – commensurate with its statutory and professional duties – to ensure that no reasonable apprehension of bias will arise in the future.

7. Additionally, EY is the best-positioned firm to act as monitor due to, among other reasons, its work to date on this engagement and its extensive subject matter expertise in the cannabis sector. The commercial realities of these CCAA proceedings mean that replacing EY would serve to duplicate costs and delay the Applicants' restructuring, eroding the Applicants' liquidity and causing worse outcomes for all of their stakeholders – without any corresponding benefit to the Applicants or their stakeholders, save arguably technical compliance with the CCAA (though as noted, the Act does not bar EY from acting as monitor).

PART II - THE FACTS

8. The Applicants seek the appointment of EY as monitor at their CCAA comeback hearing. The Applicants first engaged EY to act as proposed monitor, and to assist them with their CCAA

preparations in that capacity, on December 21, 2023, although EY commenced its preparatory work for this engagement during the week of November 30, 2023.

9. Since that time, EY has focused solely on preparing for the CCAA application and the restructuring ahead. As a result of these activities to date, EY is intimately familiar with the Applicants and their business.

10. EY LLP, an affiliate of EY, previously acted as auditor for Trees – one of the Applicants. However, to the best of EY's knowledge and belief, there is no conflict of interest or loss of independence arising from Trees' prior relationship with EY LLP as its auditor.[1] EY LLP resigned as Trees' auditor effective May 10, 2022 – over 19 months ago – and a new auditor was appointed following EY LLP's resignation. The final period that EY LLP audited was for the period ending December 31, 2021.[2] Since EY LLP's resignation, audited consolidated financial statements of Trees and its subsidiaries for the period ending March 31, 2023 have been completed by Trees' new auditor, Zeifmans LLP.[3]

PART III - THE ISSUES

11. The sole issue addressed in this factum is whether this Court should grant EY permission to act as the monitor of the Applicants pursuant to section 11.7(2) of the CCAA.

PART IV - THE LAW

[1] Report of the Proposed Monitor dated December 21, 2023, para 11(d) ("**Pre-Filing Report**").
[2] Pre-Filing Report, para 9.
[3] Affidavit of Jeffrey Holmgren dated December 21, 2023, Exhibit "N", Tab 2 of the Applicants' Application Record dated December 21, 2023, p 783.

12. It is appropriate for this Court to grant EY permission to act as the monitor in these CCAA proceedings. The objective captured by section 11.7(2) of the CCAA – that the impartiality of the court's officer is not compromised by its history with the debtor company so as to impair the integrity of the insolvency process – is not a concern in the present circumstances. No known reasonable apprehension of bias, real or perceived, will arise as a result of EY LLP's prior role as the auditor for Trees.

13. Insolvency is an existential threat for an applicant and may have a profound impact on stakeholders, especially if restructuring efforts fail. The monitor may play a vital role in a restructuring process, and – although a monitor is the representative of the court and not an agent of the debtor – it is to be expected that an applicant in such circumstances will wish to engage as monitor a firm that it is familiar with and has confidence in to assist with its survival and the success of its restructuring efforts. While there are many firms that an insolvent debtor could seek to engage when first embarking on a restructuring path, it is not surprising that a debtor would choose a firm that is known to it, including as a result of past work experiences and engagements. The court should not lightly disregard a debtor's proposed monitor and compel a debtor to engage and work with a firm that it is not familiar or comfortable with.

14. It is a fundamental objective of insolvency law that the insolvency process be, and be seen by the public as being, fair and impartial to all stakeholders. The court-appointed monitor serves a critical role in administering this objective. It acts as the Court's "eyes and ears," essentially implementing the Court's commercial oversight of the restructuring process. It is therefore critical

that the monitor act, and be seen by the public to act, with professional neutrality and scrupulously avoid placing itself in a position of potential or actual conflict of interest.[4]

15. This objective is reflected in section 11.7(2) of the CCAA, which imposes certain guardrails that this Court must take into consideration when deciding whether to appoint a particular firm as monitor. Section 11.7(2) provides that:

> **11.7(2)** Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company
>
> (a) if the trustee is or, at any time during the two preceding years, was
>
> […]
>
> (iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company[5]

16. Section 11.7(2) only applies where the proposed monitor is a former auditor – it does not apply where the proposed monitor is not a former auditor but is related to or an affiliate of a former auditor. In this sense, section 11.7(2) mirrors the Rules of Professional Conduct set by the Canadian Association of Insolvency and Restructuring Professionals.[6] As noted, EY LLP, an affiliate of EY, previously acted as Trees' auditor. EY and EY LLP are separate legal entities, and the formalities separating these legal entities are carefully observed. It widens the scope of 11.7(2)

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[4] *Ernst & Young Inc. v. Essar Global Fund Limited*, 2017 ONCA 1014, para 109.
[5] *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, s 11.7(2)(a)(iii) ("**CCAA**").
[6] Canadian Association of Insolvency and Restructuring Professionals, *Rules of Professional Conduct*, r 4(2).

to purport to extend it to circumstances in which a proposed monitor is related to a former auditor but is not the former auditor.

17. Nonetheless, even if section 11.7(2) applies in the present circumstances, that section expressly contemplates that there will be times and circumstances in which the court will permit (with such conditions as the court may impose) a former auditor to act as monitor, and is not a bar to this occurring. The Act is silent, however, on the criteria that the court should consider when determining whether to grant permission.

18. EY submits that: (i) the overriding objective of section 11.7(2) of the CCAA is the preservation of the integrity of the insolvency process; that is, to provide public confidence that the insolvency system is impartial; (ii) the overriding duty of a monitor engaged by its appointment a CCAA monitor is to act with professional neutrality, and to scrupulously avoid placing itself in a position of potential or actual conflict of interest; and (iii) as a result of the two foregoing considerations, the key consideration for the court in determining whether to permit a former auditor to act as monitor is whether the facts of the case before it raise a reasonable apprehension of bias or conflict of interest, either real or perceived.

19. As set out below, there is no real or perceived reasonable apprehension of bias, and EY has implemented, and will continue to implement at all times during the pendency of these CCAA proceedings, appropriate and prudent steps to ensure that this remains the case.

20. The protection afforded by section 11.7(2) should not be circumvented by self-serving arguments after the fact that it would be costly to substitute a new monitor; however, there should be a net benefit to stakeholders in any refusal to permit a proposed monitor to act. The commercial

realities in these circumstances mean that replacing EY, which is otherwise best positioned to serve as the monitor, would create unnecessary cost and delay in these proceedings, causing significant negative effects for the Applicants and their stakeholders and without any corresponding benefit for stakeholders or furthering the objects of the Act (i.e., preserving the integrity of the insolvency process where there is otherwise a reasonable apprehension of bias or conflict of interest).

A. There is no real or perceived reasonable apprehension of bias

21. EY's engagement as the monitor in these CCAA proceedings will not cause a real or perceived reasonable apprehension of bias – the risk that section 11.7(2) of the CCAA was enacted to safeguard against. EY's affiliate, EY LLP, resigned as the auditor of Trees effective May 10, 2022, and EY has taken appropriate steps to ensure that EY LLP's prior engagement will not give rise to a perceived bias during these CCAA proceedings.[7]

22. Section 11.7(2) was designed to address the potential perception of bias that can arise where, among other things, a former auditor acts as monitor in CCAA proceedings.[8] While section 11.7(2) does not outright prohibit a debtor company's former auditor from acting as monitor, it calls for careful judicial scrutiny and, where appropriate, approval in such circumstances.

23. This objective is illustrated by the cases where courts refused to grant a firm permission to act as monitor, both of which involved an actual perception of bias. First, in the pre-amendment *Stokes Building* case, the proposed monitor continued to act as the debtor company's auditor at the

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[7] Pre-Filing Report, para 9.
[8] *Lutheran Church - Canada, Re*, 2016 ABQB 419, paras 52-68; *Hickman Equipment (1985) Ltd., Re (2002)*, 34 C.B.R. (4th) 203 (Nfld. T.D.), paras 8-9; *Stokes Building Supplies Ltd., Re (1992)*, 13 C.B.R. (3d) 10 (Nfld. T.D.), paras 22-23; *Nelson Education Limited (Re)*, 2015 ONSC 3580, para 37.

time of the CCAA filing, leading to a finding that it lacked the necessary independence to act as monitor.[9]

24. Second, in the *Nelson Education* decision, this Court refused to appoint a proposed monitor at the comeback hearing because it found a reasonable apprehension of bias on an unusual and unique set of facts before it. The Court identified a number of facts that warranted concern about the choice of proposed monitor, including:

(a) the same individuals that worked on the pre-filing advisory work for the debtor would also be working as representatives of the monitor, if appointed (i.e., individual members of the firm wore "two hats" as both agent to the debtor and as monitor);

(b) the proposed monitor would be recommending to the Court approval of its own work product prepared as the debtor's advisor pre-CCAA (i.e., approval of a sale transaction negotiated and structured by the proposed monitor while acting as the debtor's advisor);

(c) there was limited time for the Court and stakeholders to consider the monitor's recommendations (i.e., the Court was asked to approve at the outset of the CCAA proceedings a nine-day CCAA process from start to finish to give effect to a quick flip sale transaction);

[9] *Stokes Building Supplies Ltd., Re (1992)*, 13 C.B.R. (3d) 10 (Nfld. T.D.), paras 22-23.

(d) the proposed monitor had incurred over $5 million of fees in the two years prior to the CCAA filing (i.e., a financial interest that contributed to a reasonable apprehension of bias, real or perceived); and

(e) the proposed monitor had participated directly and extensively in negotiations with, and on behalf of, the debtor company opposite financial stakeholders that now opposed its appointment (i.e., was adverse to stakeholders prior to its appointment, again contributing to a reasonable apprehension of bias, real or perceived). [10]

25. As a result of these considerations, this Court ultimately found in *Nelson Education* that:

> The issue of an appropriate monitor requires the balancing of interests. This is not like some cases in which a financial advisor has had some advisory role with the debtor and then becomes a monitor, usually with no objection being raised. Often it may be appropriate for that to occur taken the knowledge of the debtor acquired by the advisor. This case is different in that the financial advisor has been front row and centre in the very sales process that will be the subject of debate in these proceedings and has engaged in negotiations on behalf of Nelson.[11]

26. None of those facts and important considerations from the *Nelson Educational* decision are present in the current circumstances.

27. Further, this is not a case in which there is fraud or allegations of fraud or significant claims for wrongful or improper public disclosures – things that might make "front and centre" the recent prior work of an affiliate of EY and therefore warrant a different choice of monitor by virtue of prospective conflicts of interest (i.e., a reasonable apprehension of bias, real or perceived). While

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[10] *Nelson Education Limited (Re)*, 2015 ONSC 3580, para 30 and para 37.
[11] *Nelson Education Limited (Re)*, 2015 ONSC 3580, para 38.

those circumstances may also justify a court's decision to deny approval of a monitor under section 11.7(2) of the CCAA, they do not apply in the present circumstances.

28. Where these concerns do not arise, the courts to date have been willing to approve with little fanfare the appointment of a monitor that was an auditor or an affiliate of an auditor that acted in the two preceding years.[12]

29. There are no facts to suggest that the auditing role of EY's affiliate, EY LLP, will result in a reasonable apprehension of bias if EY is permitted to act as the monitor in these CCAA proceedings. To the best of EY's knowledge and belief, there is no conflict of interest or loss of independence arising from Trees' prior relationship with EY LLP as its auditor.[13] Critically, EY is not "front and centre" in the restructuring process by reason of its affiliate's prior role as auditor.

30. As noted, EY LLP resigned as Trees' auditor effective May 10, 2022 – over 19 months ago – and a new auditor was appointed following EY LLP's resignation. The final period that EY LLP audited was for the year ended December 31, 2021.[14] Additionally, the audited consolidated financial statements of Trees and its subsidiaries for the period ending March 31, 2023, the most

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[12] *Re Duvaltex Inc. et al.*, Court File No. 200-11-028987-231 (Sup. Ct. Q. (Commercial Division)), Initial Order dated December 14, 2023, para 16, Proposed Monitor's Pre-Filing Report dated December 13, 2023, paras 15-19; *Re Kaisen Energy Corp.*, Court File No. 2101-14684 (Ct. K.B. Alta.), Amended and Restated Initial Order dated December 20, 2021, para 23, Pre-Filing Report of the Proposed Monitor dated December 3, 2021, paras 19-21; *Re The Aldo Group Inc. et al.*, Court File No. 500-11-058644-200 (Sup. Ct. Q. (Commercial Division)), Amended and Restated Initial Order dated May 15, 2020, para 36, Pre-Filing Report of the Proposed Monitor dated May 6, 2020, paras 9-12; *Re Ernest Enterprises (MTL) Ltd./Les Entreprises Ernest (MTL) Ltée*, Court File No. 500-11-058761-202 (Sup. Ct. Q. (Commercial Division)), Amended and Restated Initial Order dated September 14, 2020, para 36, Report of the Proposed Monitor dated September 4, 2020, paras 7-9; *Lutheran Church - Canada, Re*, 2016 ABQB 419, paras 52-68; *Fonderie Poitras ltée, Re*, 2009 QCCS 547, para 23; *Hickman Equipment (1985) Ltd., Re (2002)*, 34 C.B.R. (4th) 203 (Nfld. T.D.), paras 8-9.

[13] Pre-Filing Report, para 11(d).

[14] Pre-Filing Report, para 9.

recent period available, were completed by Trees' new auditor, Zeifmans LLP.[15] To the extent any interested party relies on Trees' most recent public financials, those financials no longer involve audits conducted by EY LLP.

31. Finally, EY has taken appropriate and diligent steps to eliminate the risk of a perception of bias, including:

(a) ensuring that none of the members of EY working or expected to work on this monitor engagement have had any involvement in the prior audit work done by EY LLP for Trees; and

(b) putting in place appropriate ethical walls and similar measures between EY and EY LLP to preserve confidentiality and to prevent any disclosure of information between their respective representatives in connection with this matter.[16]

32. Section 11.7(3) of the CCAA contains a mechanism to replace a monitor at any time during CCAA proceedings. In the unlikely event that something comes to light in the future that calls into question EY's acting as monitor, there is a satisfactory means for the Court and stakeholders alike to address it. Should that occur, that is the appropriate time and means to address it – not presently under section 11.7(2) of the CCAA.[17]

33. The Court should also, respectfully, be mindful of efforts by individual stakeholders objecting to the appointment of a monitor under section 11.7(2) to gain an advantage or perceived

[15] Affidavit of Jeffrey Holmgren dated December 21, 2023, Exhibit "N", Tab 2 of the Applicants' Application Record dated December 21, 2023, p 783.
[16] Pre-Filing Report, para 11.
[17] CCAA, s 11.7(3).

advantage in CCAA proceedings. Section 11.7(2) is intended to ensure the integrity of the insolvency process, not encourage or permit tactical maneuvering for advantage through influencing the selection of the monitor.

B. EY is best positioned to act as monitor; its replacement would cause costly delay

34. EY has recently been engaged as the Applicants' proposed monitor, during which time it has spent considerable effort familiarizing itself with the Applicants, their business and their main stakeholders. Were this Court to refuse to grant EY permission to act as monitor, the replacement firm would need to spend considerable time and money duplicating this work, and such a late change would add considerable uncertainty to these CCAA proceedings. If there was a reasonable apprehension of bias, real or perceived, it would be appropriate for the Court to appoint a different Monitor notwithstanding the cost and delay. But in the absence of such reasonable apprehension of bias, imposing that cost and delay is not warranted and ultimately does not benefit stakeholders or the insolvency process itself. In short, EY is the best positioned firm to act as the Applicants' monitor in the circumstances, and there is no basis on these facts for disturbing the Applicants' choice of proposed monitor.

35. CCAA proceedings represent an existential threat to the debtor company. Barring exceptional circumstances, it is reasonable and desirable that, in facing such an existential threat, a debtor company be free to choose to engage a restructuring firm that the debtor is familiar with and has confidence in. The practical realities of CCAA proceedings mean that a last-minute change to the debtor company's choice of restructuring firm can inject great cost and risk into the debtor's restructuring efforts.

36. Indeed, the pre-amendment case of *Re Hickman Equipment* recognized that:

> Permitting the auditor of a company to act as its monitor under a reorganization plan under the CCAA is merely a recognition of the commercial realities at play when a company is forced to seek protection under the CCAA. Under the CCAA, relief from one's creditors is not automatic. There is no automatic stay of proceedings against the applicant company by creditors merely because it has applied for such relief. The relief must be granted by the order of the Court after the application is filed and after the applicant company has declared and publicly filed documents declaring that it is insolvent. Therefore, in order to prepare for a CCAA application, the applicant company will usually require the continuing assistance of its own accountants and auditors. These professionals would most likely be the accounting professionals most knowledgeable about the affairs and business of the applicant company and most competent to promptly assemble the requisite information and plans to support the initial application for relief under the CCAA. A mandatory requirement that the auditor of an applicant company not be permitted to serve as monitor would, in most cases, result in considerable additional delay because the proposed monitor (not being familiar with the affairs of the company) would need to be brought up to speed. This extra work would obviously result in a duplication of expense for a company which is already cash strapped. Most importantly, it would delay a CCAA application being made on a timely basis, resulting in obvious risk of adverse moves being made against the applicant company by its creditors before it can obtain court protection.[18]

37. This guidance is salient in the present circumstances. EY's work has involved, among other things:

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[18] *Hickman Equipment (1985) Ltd., Re (2002)*, 34 C.B.R. (4th) 203 (Nfld. T.D.), paras 8-9.

(a) reviewing the Applicants' books and records, including those relating to their credit facilities;

(b) engaging with the Applicants' management on various calls and correspondence to better understand their business and the challenges that led to their CCAA filing;

(c) assisting the Applicants in preparing their 13-week cash flow forecast and a proposed budget underlying that forecast; and

(d) helping the Applicants with considering cost reduction opportunities and options with respect to unprofitable retail locations.

38. Over the course of its pre-filing engagement, EY has become intimately familiar with the Applicants' business, their financial affairs and the events that led to their decision to seek relief under the CCAA. Were EY to be replaced with another monitor, most or all of this pre-filing work would need to be duplicated. The time and effort involved in such an onboarding process would necessarily result in considerable delay to these CCAA proceedings and add further unnecessary cost to a company that is already facing significant financial distress. This added expense would further erode the Applicants' liquidity, leading to a worse chance of success in these CCAA proceedings and worse outcomes for creditors and other stakeholders.

39. Additionally, the Applicants chose to engage EY to act as monitor because, among other reasons, EY is an experienced, well-respected restructuring firm that the Applicants trust to oversee this challenging period based on the previous work of EY's affiliate. EY also has significant experience in restructuring and SISP processes in the cannabis sector, including

working with debtor organizations on licensing matters when a restructuring or sale transaction occurs. EY has worked both with licensed producers and licensed retailers across Canada.[19]

40. For example, EY has overseen or managed SISP processes that resulted in successful restructurings or sales in CCAA proceedings for the following organizations: AgMedica Bioscience, PharmHouse Inc., CannTrust Holdings Inc., The Flowr Corporation, Phoena Inc., H12 Brands Inc., Lightbox Enterprise Ltd. d/b/a Dutch Love Cannabis, Choom Holdings Inc. and its affiliates, Wildflower Brands Inc, Custom Cannabis, Tantalus Labs Ltd, Atlas Growers Ltd, Atlas Biotechnologies, Zenabis Group, Bonify Holdings Corporation and Pure Global. EY has also worked with significant cannabis organizations on out of court cost reduction programs and liquidity management processes. Additionally, EY has advised different levels of government in this sector including Health Canada, provincial agencies responsible for distributing cannabis in their provinces, and provincial organizations responsible for licensing cannabis retail operators.[20]

41. This experience makes EY uniquely positioned to act as Monitor of the Applicants and to help the organization restructure and complete a successful SISP process that will enable them to continue their operations as a going concern.

42. It would be unreasonable in these circumstances to force the Applicants, in the face of an existential threat their business, to "roll the dice" and engage a new firm (and individuals at that firm) which it has never worked with and that has no familiarity with it or its business.

[19] First Report of the Monitor dated December 29, 2023, para 12.
[20] First Report of the Monitor dated December 29, 2023, para 12.

PART V - RELIEF REQUESTED

43. For all of the foregoing reasons, EY respectfully requests that this Court grant it permission to act as monitor pursuant to section 11.7(2) of the CCAA by granting the amended and restated initial order substantially in the form of proposed order attached to the Applicants' application record at Tab 5.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of December, 2023.

David Bish / Mike Noel

Lawyers for the Monitor,
Ernst & Young Inc.

SCHEDULE A – LIST OF AUTHORITIES

1. *Ernst & Young Inc. v. Essar Global Fund Limited*, 2017 ONCA 1014
2. *Lutheran Church - Canada, Re*, 2016 ABQB 419
3. *Hickman Equipment (1985) Ltd., Re (2002)*, 34 C.B.R. (4th) 203 (Nfld. T.D.)
4. *Stokes Building Supplies Ltd., Re (1992)*, 13 C.B.R. (3d) 10 (Nfld. T.D.)
5. *Nelson Education Limited (Re)*, 2015 ONSC 3580
6. *Re Duvaltex Inc. et al.*, Court File No. 200-11-028987-231 (Sup. Ct. Q. (Commercial Division)), Initial Order dated December 14, 2023, Proposed Monitor's Pre-Filing Report dated December 13, 2023
7. *Re Kaisen Energy Corp.*, Court File No. 2101-14684 (Ct. K.B. Alta.), Amended and Restated Initial Order dated December 20, 2021, Pre-Filing Report of the Proposed Monitor dated December 3, 2021
8. *Re The Aldo Group Inc. et al.*, Court File No. 500-11-058644-200 (Sup. Ct. Q. (Commercial Division)), Amended and Restated Initial Order dated May 15, 2020, Pre-Filing Report of the Proposed Monitor dated May 6, 2020
9. *Re Ernest Enterprises (MTL) Ltd./Les Entreprises Ernest (MTL) Ltée*, Court File No. 500-11-058761-202 (Sup. Ct. Q. (Commercial Division)), Amended and Restated Initial Order dated September 14, 2020, Report of the Proposed Monitor dated September 4, 2020
10. *Fonderie Poitras ltée, Re*, 2009 QCCS 547

SCHEDULE B – TEXT OF STATUTES AND REGULATIONS

Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36

PART II – JURISDICTION OF COURTS

Court to appoint monitor

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

Restrictions on who may be monitor

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

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

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

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

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

(b) if the trustee is

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

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

Court may replace monitor

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

Canadian Association of Insolvency and Restructuring Professionals,
Rules of Professional Conduct

RULES

4. Members shall with respect to any professional engagement be free of any influence, interest or relationship which impairs their professional judgement or objectivity or which, in the view of a reasonable and informed observer, has that effect;

INTERPRETATIONS TO THE RULES

Rule 4

1. Members should be satisfied that their own or associates' relationship with the debtor, any creditor or any other clients having an interest in the professional engagement is not such as to impair his professional judgement or objectivity.

2. Members shall not permit themselves to be placed in a position of conflict of interest; in keeping with this principle, members shall not accept any appointment;

a) which is prohibited by law, or

b) as a receiver, a receiver-manager, agent for a secured creditor, liquidator or any appointment under the Bankruptcy and Insolvency Act, except as an inspector, in respect of any insolvent person or corporation where the member is, or at any time during the immediately preceding two years was:

i) related to such person or corporation; or

ii) the auditor or accountant of such person or corporation.

3. The two-year time period commences at the date of the last audit report or the last review engagement report. The two-year time period must expire on or before the date of the initial bankruptcy event as defined in Section 2 of the BIA.

4. A member shall not permit himself to be placed or remain in a position where a conflict of interest may exist, or may appear to exist, without making full disclosure to, and obtaining the written consent of all interested parties; in keeping with this principle, a member shall not accept any appointment:

a) as trustee under the Bankruptcy and Insolvency Act where the member has already accepted an appointment as receiver, receiver manager, agent for a secured creditor, liquidator, trustee under a trust indenture issued by the bankrupt corporation or by any corporation related to the bankrupt corporation, or on behalf of any person related to the bankrupt without having first made disclosure of such prior appointment to the Bankruptcy Court or the Official Receiver, as the case may be; following the acceptance of such appointment as trustee under the Bankruptcy and Insolvency Act , the member

shall inform the creditors of the bankrupt of his prior appointment as soon as reasonably possible thereafter;

b) as receiver, receiver-manager, agent for a secured creditor or on behalf of any person related to the bankrupt where the member has already accepted an appointment as trustee under the Bankruptcy and Insolvency Act without first obtaining the permission of the inspectors of the bankrupt estate; where inspectors have not been appointed at the time that the second appointment is to be taken, the member shall obtain the approval of the creditors of the bankrupt of having taken the second appointment as soon as reasonably possible thereafter; and if the second appointment is taken before obtaining the approval of the creditors, it should be taken subject to their approval.

c) as receiver, receiver-manager, agent for a secured creditor or trustee under the Bankruptcy and Insolvency Act in respect of any corporation where the member is, or at any time during the immediately preceding two years was, the trustee (or related to such trustee) under a trust indenture issued by such corporation or by any corporation related to such corporation without first obtaining the permission of the creditors secured under such trust indenture; upon the acceptance of an appointment as trustee under the Bankruptcy and Insolvency Act , the member shall inform the creditors of the bankrupt corporation of his prior appointment as (or relationship to) the trustee under a trust indenture or by any corporation related to the bankrupt corporation as soon as reasonably possible thereafter.

d) as receiver, receiver-manager, agent for a secured creditor, liquidator of an insolvent company under the Winding Up Act, or trustee under the Bankruptcy and Insolvency Act , in respect of any corporation where the member is related to an officer or director of such corporation.

e) as receiver, receiver-manager, agent for a secured creditor, or trustee under the Bankruptcy and Insolvency Act in respect of any person or corporation where the member is a creditor, or an officer or director of any corporation that is a creditor, of such person or corporation unless the relationship is sufficiently remote that the member can act with complete objectivity;

f) in any court-appointed capacity under the Companies' Creditors Arrangements Act without disclosing to the Court any professional involvement with the debtor during the immediately preceding two years.

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 TREES CORPORATION, ONTARIO CANNABIS HOLDINGS CORP., MIRACULO INC., 2707461 ONTARIO LTD., OCH ONTARIO CONSULTING CORP., AND 11819496 CANADA INC.

Court File No. CV-23-00711935-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at TORONTO

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