

**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 1570499 B.C. LTD.**

**FACTUM OF THE MONITOR
(STAY EXTENSION AND DISTRIBUTION ORDER)**

July 28, 2026

CASSELS BROCK & BLACKWELL LLP
Suite 3200, Bay Adelaide Centre - North Tower
40 Temperance Street
Toronto, ON M5H 0B4

Ryan Jacobs LSO#: 59510J
Tel: 416.860.6465
rjacobs@cassels.com

Joseph J. Bellissimo LSO#: 46555R
Tel: 416.860.6572
jbellissimo@cassels.com

Joshua Gordon LSO#: 91617D
Tel: 416.869.5343
jgordon@cassels.com

*Lawyers for the Monitor, AlixPartners
Restructuring, Inc.*

TO: THE SERVICE LIST

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TABLE OF CONTENTS

Page No.

PART I - NATURE OF THIS MOTION	1
PART II - SUMMARY OF FACTS	2
A. Background	2
B. The Stay Extension and Distribution Order.....	4
PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES	6
A. The Court Ought to Grant the Stay Extension and Distribution Order.....	6
<i>The Stay Period Should be Extended</i>	<i>6</i>
<i>The Monitor's Activities and the Sixth Report Should be Approved</i>	<i>8</i>
<i>The Fees and Disbursements of the Monitor and Cassels Should be Approved</i>	<i>9</i>
<i>The Distribution Methodology and Distributions Should be Approved</i>	<i>10</i>
PART IV - ORDER REQUESTED	14
SCHEDULE "A"	i
SCHEDULE "B"	ii

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**FACTUM OF THE MONITOR
(STAY EXTENSION ORDER)**

PART I - NATURE OF THIS MOTION

1. This Factum is filed in support of a motion by AlixPartners Restructuring, Inc., in its capacity as court-appointed monitor¹ (in such capacity, the “**Monitor**”) of 1570499 B.C. Ltd. (“**ResidualCo**”), pursuant to the Amended and Restated Initial Order dated October 27, 2025 (as further amended from time to time, the “**ARIO**”) and the Order (Approval and Reverse Vesting Order) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated January 2, 2026 (the “**ARVO**”), seeking an Order (the “**Stay Extension and Distribution Order**”), *inter alia*:

- (a) extending the Stay Period (as defined in the ARIO) to and including January 15, 2027;

¹ Effective June 1, 2026, AlixPartners Restructuring, Inc. was substituted in place of KSV Restructuring Inc. as Court Officer in these proceedings pursuant to an order dated June 3, 2026 issued by the Ontario Superior Court of Justice (Commercial List). The professionals involved in these proceedings from the outset remain unchanged.

- (b) approving the Sixth Report of the Monitor dated July 24, 2026 (the “**Sixth Report**”) and the Monitor’s activities described therein;
 - (c) approving the fees and disbursements of the Monitor and its counsel, Cassels Brock & Blackwell LLP (“**Cassels**”), as set out in the Fee Affidavits (as defined below) appended to the Sixth Report; and
 - (d) approving the Distribution Methodology (as defined in the Sixth Report) and authorizing and empowering the Monitor, on behalf of ResidualCo, to make the Distributions (as defined in the Sixth Report) in accordance with the Distribution Methodology.
2. Capitalized terms not defined herein have their meaning as set out in the Sixth Report.

PART II - SUMMARY OF FACTS

A. Background

3. On October 17, 2025, B+H Architects Corp. (the “**Original Applicant**” or “**BHA**”) obtained an initial order (the “**Initial Order**”) under the CCAA, which among other things, appointed KSV Restructuring Inc. as the Monitor in these CCAA proceedings.² The Initial Order was subsequently amended and restated by the ARIO.³

4. BHA is a leading architecture and design firm headquartered in Toronto, Ontario, and has operated under the “B+H” brand for more than 70 years. Its portfolio includes several of Toronto’s

² Sixth Report of the Monitor dated July 24, 2026 at section 1.0.1 [*Sixth Report*].

³ Sixth Report at section 1.0.4.

most prominent buildings, such as Ripley’s Aquarium of Canada, Brookfield Place, Mount Sinai Hospital, the Toronto Eaton Centre, and the MaRS Convergence Centre. Although based in Toronto, BHA maintains an international practice, with projects completed in the United States, China, Singapore, the Kingdom of Saudi Arabia, India, Qatar, Vietnam, Brazil, and the United Arab Emirates.

5. On January 2, 2026, the Court granted the ARVO, which, among other things:⁴

- (a) approved the Amended Stalking Horse Agreement and the transactions contemplated thereby (the “**Transaction**”);
- (b) vested in Surbana Jurong Holdings (Canada) Ltd. (“**SJHC**”) the Subscribed Shares (as defined in the Amended Stalking Horse Agreement) free and clear of all Encumbrances other than the Permitted Encumbrances;
- (c) deemed the Original Applicant to be removed, and added ResidualCo as the Applicant debtor company, in these CCAA proceedings upon closing of the Transaction;
- (d) approved the transfer to and vesting in ResidualCo of BHA’s right, title and interest in and to, and liabilities and obligations under, the Excluded Assets and the Excluded Liabilities (each as defined in the Amended Stalking Horse Agreement);
and

⁴ Sixth Report at section 1.0.8.

- (e) expanded the Monitor's power to, among other things, perform such activities as may be required to facilitate or assist ResidualCo in undertaking the orderly completion of these CCAA proceedings and the administration of ResidualCo's estate, including assigning ResidualCo, or causing ResidualCo to be assigned, into bankruptcy.

6. The Transaction closed on January 30, 2026.⁵

7. On February 10, 2026, the Court granted the Claims Procedure Order, which, among other things, approved the procedure (the "**Claims Procedure**") for soliciting and determining claims against ResidualCo and authorized the Monitor to carry out and administer the Claims Procedure.⁶

8. Also on February 10, 2026, the Court granted an Ancillary Order, which, among other things, extended the stay of proceedings to and including May 29, 2026.⁷

9. On May 29, 2026, the Court granted an order extending the Stay Period to and including July 31, 2026.⁸

B. The Stay Extension and Distribution Order

10. The Monitor is seeking an extension of the Stay of Proceedings from July 31, 2026 to and including January 15, 2027 to provide sufficient time to implement the proposed Distributions (if

⁵ Sixth Report at section 1.0.9.

⁶ Sixth Report at section 1.0.10(a).

⁷ Sixth Report at section 1.0.10(b).

⁸ Sixth Report at section 1.0.11.

approved by the Court), resolve the Unresolved Claim (as discussed below), and complete the remaining administration of these CCAA proceedings.⁹

11. The Monitor is also seeking approval of the Sixth Report, and the activities of the Monitor described therein, as well as the fees and disbursements of the Monitor and its legal counsel, Cassels.¹⁰

12. In support of this motion, the Sixth Report attaches the Affidavit of Noah Goldstein sworn July 24, 2026 and the Affidavit of Natalie E. Levine sworn July 23, 2026 (together, the “**Fee Affidavits**”), which provide a comprehensive listing of accounts sought to be passed, including each account and summary tables identifying the individual professionals who have worked on this matter, their hourly billing rates and total number of hours worked, among other information.¹¹

13. The Monitor is also seeking authority to make, on behalf of ResidualCo, one or more distributions to Creditors with Accepted Claims in accordance with the Distribution Methodology set out in the Sixth Report and the proposed Stay Extension and Distribution Order.¹²

14. Following the establishment of the Expense Holdback, the Monitor expects that \$2.574 million will be available for distribution on account of Accepted Claims.¹³

15. The proposed Distribution will advance the orderly completion of these CCAA proceedings by distributing available funds to creditors while preserving amounts required to fund

⁹ Sixth Report at section 3.0.1(b).

¹⁰ Sixth Report at section 1.1.1 (d).

¹¹ Sixth Report at section 5.0.3.

¹² Sixth Report at section 2.2.4.

¹³ Sixth Report at section 2.2.2.

the remaining administration of the estate, including work associated with the Claims Procedure and the completion of these proceedings.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

16. The issues to be determined on this Motion are whether this Court should:

- (a) extend the Stay Period to January 15, 2027;
- (b) approve the Sixth Report and the actions, conduct and activities of the Monitor set out therein;
- (c) approve the fees of the Monitor and Cassels as set out in the Sixth Report; and
- (d) approve the Distribution Methodology and authorize the Monitor, on behalf of ResidualCo, to make the proposed Distributions.

A. The Court Ought to Grant the Stay Extension and Distribution Order

The Stay Period Should be Extended

17. The Monitor is seeking an extension of the Stay Period from July 31, 2026 to and including January 15, 2027.¹⁴

18. Pursuant to section 11.02(2) of the CCAA, this Court is empowered to grant a stay extension, for any period it considers necessary, where satisfied that: (i) circumstances exist which

¹⁴ Sixth Report at section 3.0.1.

make such an order appropriate; and (ii) the applicants have acted and are continuing to act in good faith and with due diligence.¹⁵

19. This Court has indicated that, in the context of a “super monitor”, the monitor is held to a good faith standard.¹⁶

20. Extending the Stay Period is necessary and appropriate in the circumstances to allow the Monitor to complete the remaining administration of these proceedings.¹⁷ As described in the Sixth Report, while the Claims Procedure has been substantially completed, one Claim in the amount of approximately \$3.954 million (the “**Unresolved Claim**”) remains unresolved.¹⁸ The proposed extension will provide the Monitor with sufficient time to address the Unresolved Claim, implement the proposed Distribution Methodology (if approved by the Court), make distributions to creditors holding Accepted Claims, and attend to the remaining administrative matters required to complete these CCAA proceedings.¹⁹

21. The Monitor is requesting an extension of the Stay Period to January 15, 2027 as a prudent measure to ensure sufficient time to complete the remaining steps in the administration of these proceedings and to avoid the cost and expense associated with a further stay extension motion, if required.²⁰

¹⁵ CCAA, ss. [11.02\(2\)-\(3\)](#).

¹⁶ *Forme Development Group Inc. (Re)* (February 20, 2020), ONSC (Commercial List), Court File No. CV-18-608313-00CL ([Endorsement of Mr. Justice Hainey](#)); *In the Matter of a Compromise or Arrangement of Balboa Inc. et al.* (July 31, 2024), ONSC (Commercial List), Court File No. CV-24-00713245-00CL ([Endorsement of Madame Justice Steele](#)).

¹⁷ Sixth Report at section 3.0.

¹⁸ Sixth Report at section 2.2.1.

¹⁹ Sixth Report at sections 3.0.1(b).

²⁰ Sixth Report at section 3.0.1(b).

22. As outlined in the Sixth Report, the Monitor is satisfied that: (i) no creditor will be materially prejudiced by the extension; (ii) there is sufficient liquidity, together with the Expense Holdback to fund the remaining administration of these proceedings through the proposed extension period; and (iii) no party has indicated any opposition to the extension.²¹

23. In these circumstances, the requested stay extension is reasonable, appropriate and necessary to permit the Monitor to complete the remaining administration of these proceedings and facilitate the orderly completion of the CCAA process.

24. The Monitor has acted in good faith in discharging its duties and obligations under the CCAA and submits that the Stay Period should be extended to January 15, 2027.²²

The Monitor's Activities and the Sixth Report Should be Approved

25. As noted by this Court, requests to approve a monitor's report are not unusual, and there are good policy and practical reasons for the court to do so, including:²³

- (a) allowing the monitor to move forward with the next steps in these CCAA proceedings;
- (b) allowing the monitor to bring its activities before the Court;
- (c) allowing an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;

²¹ Sixth Report at section 3.0.1.

²² Sixth Report at section 3.0.1(a).

²³ *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at paras 2, 22-23.

- (d) enabling the court to satisfy itself that a monitor's activities have been conducted in prudent and diligent manners;
- (e) providing protection for the monitor not otherwise provided by the CCAA; and
- (f) protecting creditors from delay that may be caused by re-litigation of steps and potential indemnity claims by the monitor.

26. This Court has previously approved the Monitor's reports and activities in these CCAA proceedings, including most recently on May 29, 2026.²⁴

27. The Sixth Report and the actions, conduct and activities of the Monitor described therein should be approved, as the Monitor has acted reasonably and in good faith, and in compliance with the Orders of the Court, throughout these CCAA proceedings.

The Fees and Disbursements of the Monitor and Cassels Should be Approved

28. The Monitor also seeks approval of its fees and disbursements and the fees and disbursements of its legal counsel, Cassels, in each case incurred between May 1, 2026 to June 30, 2026.²⁵

29. In considering whether to approve fees and disbursements, the Court has regard to the "overriding principle of reasonableness," and does not engage in a docket-by-docket or line-by-line assessment of the accounts.²⁶ The guiding principle is whether the fees are fair, reasonable

²⁴ *In the Matter of a Compromise or Arrangement of B+H Architects Corp.* (May 29, 2026), ONSC (Commercial List), Court File No. CL-25-00753537-0000 ([Stay Extension Order](#)).

²⁵ Sixth Report at section 5.0.1.

²⁶ *Nortel Networks Inc.*, [2022 ONSC 6680](#) at para [10](#).

and proportionate given the value of the Applicant's assets and liabilities, as well as the complexity of the Applicant's business and the CCAA proceedings. As a non-exhaustive list of factors for consideration, the Ontario Court of Appeal has cited: (a) the time spent; (b) the monitor's knowledge, experience and skill; (c) the responsibilities assumed; (d) the complications and difficulties encountered; (e) the results achieved; and (f) the cost of comparable services when performed in a prudent and economical manner.²⁷

30. The Fee Affidavits provide detailed information on the fees and disbursements of the Monitor and Cassels from May 1, 2026 to June 30, 2026.²⁸

31. The Monitor is of the view that the hourly rates charged by Cassels are consistent with the rates charged by large corporate law firms practicing in the area of corporate insolvency and restructuring in the Toronto market, that Cassels' billings reflect work performed consistent with the Monitor's instructions and that the overall fees charged by Cassels and the Monitor are reasonable and appropriate in the circumstances.²⁹

The Distribution Methodology and Distributions Should be Approved

32. The Court has authority under section 11 of the CCAA to approve distributions to creditors during a CCAA proceeding, including outside of a plan of compromise or arrangement.³⁰ This proposition applies regardless of whether the creditors receiving a distribution are secured or

²⁷ *Confectionately Yours Inc (Re)*, [2002 CanLII 45059](#) (ON CA) at paras [42-54](#); *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) at para [33](#).

²⁸ Sixth Report at Appendix "C" and Appendix "D".

²⁹ Sixth Report at section 5.0.4.

³⁰ CCAA, s. [11](#); *Re Nortel Networks Corporation et al*, [2014 ONSC 4777](#) at paras [53-55](#) [*Nortel (2014)*]; *Timminco Limited (Re)*, 2014 ONSC 3393 at para [38](#).

unsecured creditors.³¹ Orders authorizing distributions are routinely granted by courts in CCAA proceedings.³²

33. In approving a distribution, courts consider a number of factors including, among other things, whether: (i) the recipients have a valid entitlement to the proposed distribution; (ii) the distribution would leave the estate with sufficient liquidity to complete the administration of the proceedings; and (iii) the amounts owed to the proposed recipients exceed the amount of the proposed distribution.³³ The proposed Distributions satisfies these considerations.

34. The Monitor conducted the Claims Procedure in accordance with the Claims Procedure Order. Seven Proofs of Claim were filed by the Claims Bar Date. Of those claims, the Monitor accepted four Claims totaling approximately \$26.264 million, one Claim was withdrawn, one Claim was disallowed and not disputed, and one Claim in the amount of approximately \$3.954 million (being the Unresolved Claim) remains unresolved.³⁴ Accordingly, the holders of the Accepted Claims have established entitlements to distributions from ResidualCo's estate and the Claims Procedure is substantially complete, subject only to the resolution of the Unresolved Claim.³⁵

35. The Monitor has determined that ResidualCo has total proceeds of approximately \$2.674 million, consisting of the Transaction proceeds, the return of the UAE arbitration deposit, and interest earned on funds held in the Monitor's account. After establishing a \$100,000 Expense

³¹ *Nortel (2014)* at paras [56-58](#); *Abitibowater Inc. (Re)*, [2009 QCCS 6461](#) at paras [71](#) [*Abitibowater*]

³² *Nortel (2014)* at paras [56-58](#); *Re Windsor Machine & Stamping Ltd*, [2009 CanLII 39772](#) (ONSC) at paras [8](#); *Abitibowater* at paras [70-75](#).

³³ *Abitibowater* at paras [70-75](#); *Nortel(2014)* at paras [56-58](#); *Windsor Machine* at para [8](#).

³⁴ Sixth Report at sections 2.0.4.

³⁵ Sixth Report at 2.3.1(b).

Holdback for the potential remaining costs of administering these proceedings, approximately \$2.574 million is available for distribution.³⁶ The Expense Holdback is intended to address, among other things, the fees of the Monitor and Cassels to complete the Claims Procedure, make distributions, finalize or otherwise address the Unresolved Claim, address any ancillary or unexpected matters, and prepare a motion to terminate these CCAA proceedings.³⁷

36. The proposed Distribution Methodology also protects the holder of the Unresolved Claim. The Monitor proposes to hold back approximately \$336,800, being the amount that would otherwise be distributable on account of the Unresolved Claim if it is ultimately admitted as a Proven Claim against ResidualCo.³⁸ As a result, the Interim Distribution may proceed without prejudicing the holder of the Unresolved Claim.³⁹

37. The proposed Interim Distribution is fair and efficient.⁴⁰ It will permit the timely distribution of the majority of the available proceeds to creditors with Accepted Claims, rather than requiring those creditors to await the resolution of the Unresolved Claim, while preserving both the Expense Holdback and the Distribution Holdback.⁴¹ The proposed Distribution Methodology therefore balances the interests of creditors holding Accepted Claims with those of the holder of the Unresolved Claim and maintains sufficient reserves to complete the administration of these proceedings.⁴²

³⁶ Sixth Report at section 2.2.1.

³⁷ Sixth Report at section 2.2.2(b).

³⁸ Sixth Report at section 2.2.3.

³⁹ Sixth Report at section 2.3.1(i).

⁴⁰ *Carillion Canada Inc. et al. (Re)* (August 4, 2021), Ont. S.C.J. (Commercial List), Court File No. CV-18-590812-00CL ([Endorsement of Justice Dietrich](#)) at p. 2; *FIGR Brands et al. (Re)* (February 2, 2022), Ont. S.C.J. (Commercial List), Court File No. CV-21-00655373-00CL ([Endorsement of Justice McEwen](#)) at p. 2; Sixth Report at section 2.3.1(i).

⁴¹ Sixth Report at section 2.3.1.

⁴² Sixth Report at section 2.3.1(d); [Endorsement of Justice Dietrich](#) at p. 2; [Endorsement of Justice McEwen](#) at p. 2.

38. Further, the proposed Distribution Methodology provides for the equal treatment of all creditors holding Accepted Claims, each of whom will receive a *pro rata, pari passu* distribution calculated in accordance with the approved Claims Procedure.⁴³ Such a proportionate distribution accords with the *pari passu* principle, a fundamental principle of Canadian insolvency law requiring similarly situated creditors to share rateably in the available assets of an insolvent estate.⁴⁴

39. The Court's authority to grant the requested relief is further supported by Justice Kimmel's endorsement in *One Bloor West Toronto Group (The One) Inc. (Re)*, 2026 ONSC 1854 (“*One Bloor West*”).⁴⁵ In that case, Justice Kimmel confirmed that section 11 of the CCAA confers broad discretion on the supervising court to make orders that are not restricted by the CCAA, usefully further the remedial objectives of the statute, and are consistent with the baseline considerations of appropriateness, good faith and due diligence.⁴⁶ Justice Kimmel further confirmed that the Court may exercise that authority to implement practical solutions in insolvency proceedings where the relief advances the restructuring process and does not prejudice stakeholders.⁴⁷

40. The proposed Stay Extension and Distribution Order is consistent with those principles. As in *One Bloor West*, the relief sought advances the remedial objectives of the CCAA by facilitating the efficient administration of the estate and resolving outstanding issues in a practical manner.⁴⁸ The Distribution Methodology represents the type of relief that a supervising court may authorize

⁴³ Sixth Report at section 2.2.4(a).

⁴⁴ *Nortel Networks Corp. (Re)*, [2015 ONCA 681](#) at paras [23-24](#).

⁴⁵ *In the Matter of a Plan of Compromise or Arrangement of One Bloor West Toronto Group (The One) Inc. and One Bloor West Toronto Commercial (The One) GP Inc.* (March 20, 2026), ONSC (Commercial List), Court File No. CV-25-00740512-00CL ([Endorsement of Justice Kimmel](#)).

⁴⁶ Endorsement of Justice Kimmel at paras [23](#), [29-30](#).

⁴⁷ Endorsement of Justice Kimmel at paras [24-30](#).

⁴⁸ Endorsement of Justice Kimmel at paras [23-30](#), [50-54](#), [62](#).

under section 11 where the order is appropriate in the circumstances, furthers the objectives of the CCAA and is consistent with good faith and due diligence.

41. In these circumstances, the proposed Distribution Methodology, Distributions and Stay Extension and Distribution Order are fair, reasonable and appropriate. The Distribution Methodology provides for the timely and efficient distribution of available proceeds to creditors holding Accepted Claims, treats similarly situated creditors on a *pro rata, pari passu* basis, and facilitates the orderly wind-down of ResidualCo's estate without prejudicing the holder of the Unresolved Claim.⁴⁹ The Monitor submits that the Distribution Methodology and the Distributions should be approved.

PART IV - ORDER REQUESTED

42. For the reasons set out above, the Monitor respectfully requests that this Court grant the Stay Extension and Distribution Order.

⁴⁹ Sixth Report at section 2.2.4.; *Nortel (2014)* at paras [56-58](#); *AbitibiBowater* at paras [70-75](#).

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of July, 2026.

Cassels Brock & Blackwell LLP

Cassels Brock & Blackwell LLP

CASSELS BROCK & BLACKWELL LLP

Suite 3200, Bay Adelaide Centre - North
Tower
40 Temperance Street
Toronto, ON M5H 0B4

Ryan Jacobs LSO#: 59510J

Tel: 416.860.6465
rjacobs@cassels.com

Joseph J. Bellissimo LSO#: 46555R

Tel: 416.860.6572
jbellissimo@cassels.com

Joshua Gordon LSO#: 91617D

Tel: 416.869.5343
jgordon@cassels.com

Lawyers for the Monitor, AlixPartners
Restructuring, Inc.

SCHEDULE “A”
LIST OF AUTHORITIES

1. *Forme Development Group Inc. (Re)* (February 20, 2020), ONSC (Commercial List), Court File No. CV-18-608313-00CL ([Endorsement of Mr. Justice Hainey](#))
2. *In the Matter of a Compromise or Arrangement of Balboa Inc. et al.* (July 31, 2024), ONSC (Commercial List), Court File No. CV-24-00713245-00CL ([Endorsement of Madame Justice Steele](#))
3. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
4. *In the Matter of a Compromise or Arrangement of B+H Architects Corp.* (May 29, 2026), ONSC (Commercial List), Court File No. CL-25-00753537-0000 ([Stay Extension Order](#))
5. *Nortel Networks Inc.*, [2022 ONSC 6680](#)
6. *Confectionately Yours Inc (Re)*, [2002 CanLII 45059](#) (ONCA)
7. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#)
8. *Re Nortel Networks Corporation et al*, [2014 ONSC 4777](#)
9. *Timminco Limited (Re)*, [2014 ONSC 3393](#)
10. *AbitibiBowater inc. (Arrangement relatif à)*, [2009 QCCS 6461](#)
11. *Windsor Machine & Stamping Limited (Re)*, [2009 CanLII 39772](#) (ON SC)
12. *Carillion Canada Inc. et al. (Re)* (August 4, 2021), Ont. S.C.J. (Commercial List), Court File No. CV-18-590812-00CL ([Endorsement of Justice Dietrich](#))
13. *FIGR Brands et al. (Re)* (February 2, 2022), Ont. S.C.J. (Commercial List), Court File No. CV-21-00655373-00CL ([Endorsement of Justice McEwen](#))
14. *Nortel Networks Corporation (Re)*, [2015 ONCA 681](#)
15. *In the Matter of a Plan of Compromise or Arrangement of One Bloor West Toronto Group (The One) Inc. and One Bloor West Toronto Commercial (The One) GP Inc.* (March 20, 2026), ONSC (Commercial List), Court File No. CV-25-00740512-00CL ([Endorsement of Justice Kimmel](#))

I, Joshua Gordon, am satisfied as to the authenticity of every authority cited in this factum, in accordance with Rule 4.06.1(2.1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

Dated as of July 28, 2026



Joshua Gordon

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

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

General power of court

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

Stays, etc. — other than initial application

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

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

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

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