Court File No. CV-25-00743485-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

ARBAT CAPITAL GROUP LTD.

Applicant

and

THE SECOND CUP COFFEE COMPANY INC.

Respondent

FACTUM
(COMEBACK MOTION)

May 28, 2025

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TO: THE SERVICE LIST

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APPLICANT'S FACTUM

PART I - INTRODUCTION

1. Arbat Capital Group Ltd. ("**Arbat**" or the "**Applicant**") sought and obtained an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), in respect of The Second Cup Coffee Company ("**Second Cup**" or the "**Company**") on May 22, 2025.

2. The Initial order was tailored to provide the Company with the relief needed to maintain the status quo prior to this comeback hearing (such period being referred to as the "**Initial Stay Period**").

3. The Applicant now seeks an amended and restated initial order (the "**ARIO**") pursuant to the CCAA, among other things:

(a) abridging the time for service of the notice of motion and motion record and dispensing with service on any person other than those served;

(b) extending the stay of proceedings up to and including August 28, 2025 (the "**Extended Stay Period**");

(c) approving an increase to the Administration Charge, to the maximum amount of $500,000;

(d) approving an increase to the Directors' Charge, to the maximum amount of $220,000;

(e) approving an amended and restated DIP Term Sheet dated May 29, 2025 between Arbat and the Company (the "**A&R DIP Term Sheet**"), and a corresponding increase in the borrowings under the DIP Loan and DIP Lender's Charge to a total of $900,000, plus interest, fees, and expenses, representing a $700,000 increase to the DIP Lender's Charge; and

(f) authorizing the Company to pay certain critical pre-filing amounts owing to suppliers.

4. The Applicant also seeks an order (the "**Claims Identification Order**") approving a proposed claims identification process (the "**Claims Identification Process**").

PART II - SUMMARY OF FACTS

5. The full facts in support of this application are set out in the Affidavit of Alexey Golubovich, sworn May 19, 2025 (the "**First Golubovich Affidavit**") and the Affidavit of Mr. Golubovich sworn May 27, 2025 (the "**Second Golubovich Affidavit**" and together with the First Golubovich Affidavit, the "**Golubovich Affidavits**").

6. All capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Golubovich Affidavits.

A. Background

7. This is a creditor-driven CCAA reorganization proceeding of the Company. The Company owns or controls the "Second Cup Café" brand and rights globally, outside of Canada. Second Cup franchises these rights to franchisees (the "**Franchisees**") located in approximately 20 countries worldwide, including in Pakistan, Egypt, Azerbaijan, Cyprus, and across sub-Saharan Africa. The Franchisees operate approximately 170 cafes worldwide.[1]

8. The Applicant is Second Cup's largest creditor by far, being owed over US$ 3,753,006.83 and £840,810.95 on an unsecured basis as of May 16, 2025. The initial application was supported by Park Investors LLC ("**Park**") and Svetlana Bortsova ("**Bortsova**" together with Arbat, the "**Majority Group**"). The Company owes Park and Bortsova £630,608.21 each. In addition to these debts, the Majority Group also holds 70% of the issued and outstanding shares of Second Cup.[2]

9. On the application of Arbat, the Company obtained protection under the CCAA pursuant to the terms of an Initial Order granted by the Honourable Mr. Justice Cavanagh on May 22, 2025.

10. The Initial Order, among other things:

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[1] Second Golubovich Affidavit at para 7, Tab 2 to the Motion Record filed May 27, 2025.
[2] Second Golubovich Affidavit at para 8, Tab 2 to the Motion Record filed May 27, 2025.

(a) declared Second Cup to be a debtor company to which the CCAA applies;

(b) appointed Grant Thornton Limited ("**GTL**") as monitor of the Company in these CCAA proceedings (the "**Monitor**") pursuant to section 11.7 of the CCAA;

(c) appointed Maxim Lojevsky as the Chief Restructuring Officer ("**CRO**") of the Company, and approved an engagement letter between the CRO and the Company (the "**CRO Engagement**");

(d) stayed all proceedings and remedies taken or that might be taken in respect of the Company and its respective current and former directors, employees, and representatives to and including June 1, 2025 (the "**Initial Stay Period**");

(e) granted an administration charge in the initial amount of $275,000 over the Company's Property (as defined in the Initial Order) as security for the payment of the fees and disbursements of the Monitor and its counsel, the CRO, and the Applicant's counsel (the "**Administration Charge**");

(f) approved, authorized, and directed the Company to execute an interim financing term sheet ("**DIP Term Sheet**") between the Applicant, as lender (in such capacity, the "**DIP Lender**"), and the Company, as borrower, establishing a charge (the "**DIP Lender's Charge**") over the Property in the maximum amount of $200,000 in favour of the DIP Lender; and

(g) granted an initial directors' charge ("**Directors' Charge**") over the Property, in favour of the Company's directors, in the amount of $100,000.

11. Since obtaining the Initial Order, the Company, with the assistance of the CRO, has acted in good faith and with due diligence to stabilize the Company's ongoing operations and to advance its restructuring objectives. The Company, with the assistance of the CRO and the oversight of the Monitor, has, among other things:

(a) communicated with, provided information to, and answered questions of various stakeholders, including employees, suppliers and Franchisees;

(b) commenced their review of the Company's books and records; and

(c) taken preliminary steps toward stabilizing the Company's cash flow and operations.[3]

PART III - ISSUES

12. The principal issues to be determined on this application are whether:

(a) the stay of proceedings should be extended to August 28, 2025;

(b) additional borrowing under the A&R DIP Term Sheet and a corresponding increase to the quantum of the DIP Lender's Charge should be approved;

(c) the quantum of the Administration Charge should be increased;

(d) the quantum of the Directors' Charge should be increased;

(e) the Critical Supplier Payments, defined below, should be approved; and

[3] Second Golubovich Affidavit at para 10, Tab 2 to the Motion Record filed May 27, 2025.

(f) the Claims Identification Process should be approved.

PART IV - LAW AND ARGUMENT

A. Stay Period Should be Extended

13. The Initial Order granted an initial 10-day stay of proceedings ending on June 1, 2025.

14. The Applicant seeks an order extending the stay of proceedings to and including August 28, 2025.

15. The court may grant an extension of the stay of proceedings where the court is satisfied that (a) circumstances exist that make the order appropriate; and (b) the Company has acted, and are acting, in good faith and with due diligence.[4] A stay of proceedings is appropriate to provide a debtor with breathing room while it seeks to restore solvency and emerge from the CCAA on a going concern basis.[5]

16. It is respectfully submitted that the following factors weigh in favor of granting the extension of the stay:

(a) since the granting of the Initial Order, the Company has acted and continue to act in good faith and with due diligence to advance a restructuring;[6]

(b) the Cash Flow Forecast shows sufficient liquidity during the proposed extended stay period to fund obligations and the costs of the CCAA proceedings;[7]

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[4] CCAA, s 11.02(2)-(3).
[5] *Target Canada Co, Re*, 2015 ONSC 303 at para 8.
[6] Second Golubovich Affidavit at para 13, Tab 2 to the Motion Record filed May 27, 2025.
[7] First Report of the Monitor, dated May 28, 2025 (the "**First Report**") at para 54.

(c) an extension of the Stay Period through August 28, 2025 will accommodate the anticipated timeline of the Claims Identification Process and otherwise allow the parties an opportunity to pursue a successful process and a sale and investment solicitation process;[8]

(d) the Monitor supports the requested extension of the stay of proceedings;[9] and

(e) no creditor will suffer material prejudice as a result of the extension of the stay.

B. The Additional Borrowing Under the A&R DIP Term Sheet Should be Approved and the DIP Lender's Charge Should be Increased

17. Pursuant to the Initial Order, the court approved the DIP Term Sheet and granted a DIP Lender's Charge in the amount of $200,000 (plus interest, fees, and expenses).

18. Approval is now sought for the Company to borrow up to $900,000, plus interest, fees, and expenses, in aggregate, pursuant to the A&R DIP Term Sheet. A corresponding increase to the DIP Lender's Charge, to a total of $900,000 plus interest, fees, and expenses is also requested.

19. Section 11.2 of the CCAA provides the court with the jurisdiction to approve interim financing and a related charge.[10] Section 11.2(4) lists the following non-exhaustive factors that the court is required to consider:

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

[8] Second Golubovich Affidavit at para 12, Tab 2 to the Motion Record filed May 27, 2025.
[9] First Report at para 35.
[10] CCAA, s 11.2.

> **(a)** the period during which the company is expected to be subject to proceedings under this Act;
>
> **(b)** how the company's business and financial affairs are to be managed during the proceedings;
>
> **(c)** whether the company's management has the confidence of its major creditors;
>
> **(d)** whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
>
> **(e)** the nature and value of the company's property;
>
> **(f)** whether any creditor would be materially prejudiced as a result of the security or charge; and
>
> **(g)** the monitor's report referred to in paragraph 23(1)(b), if any.[11]

20. In *Canwest Global*, Justice Pepall highlighted the importance of meeting the criteria set out in section 11.2(1) in addition to those found in s. 11.2(4), namely:

(a) whether notice has been given to secured creditors likely to be affected by the security or charge;

(b) whether the amount granted under a DIP facility is appropriate having regard to the debtors' cash-flow statement; and

(c) whether the DIP charge secures an obligation that existed before the order approving the DIP financing was made.[12]

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[11] CCAA, s 11.2(4).

[12] *Canwest Global Communications Corp. (Re)*, [2009] OJ No 4286 at paras 31-34.

21. The section 11.2(1) and 11.2(4) criteria support the approval of increased borrowing under the DIP Term Sheet and a related increase to the DIP Lender's Charge:

(a) BMO was given notice of the Applicant's application for the Initial Order and motion for the proposed ARIO and do not oppose;

(b) the DIP Lender's Charge does not prime any Secured Creditor or statutory deemed trust amounts;

(c) the Cash Flow Forecast indicates that the Company requires the DIP Facility to continue to operate as a going concern;[13]

(d) the ability to borrow funds under the DIP Facility is critical to the Company's restructuring. The proposed borrowings provide required liquidity and permit operating receipts to be used to fund post-filing debt service to the Company's major secured creditor, an accommodation that is essential to retaining its support for the process;

(e) the First Report illustrates that the terms of the A&R DIP Term Sheet are within the bounds of reasonable interim financing terms;

(f) the DIP Lender is intimately familiar with the business and operations of the Company, substantially reducing the administrative costs that would otherwise arise in connection with an interim financing facility;[14]

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[13] First Report at para 54.
[14] First Golubovich Affidavit at paras 128 to 138, Exhibit "A" to the Second Affidavit, Tab 2 of the Motion Record.

(g) the Company will be managed throughout the CCAA process by the CRO, with the oversight of the Monitor – each of whom will review and supervise spending under the DIP Facility;

(h) in the absence of the DIP Facility, the Company will be unable to continue to carry on business or carry out a restructuring and will be forced to shut down operations to the detriment of stakeholders; and

(i) the Monitor is supportive of the increased borrowing under the A&R DIP Term Sheet and the corresponding charge.[15]

22. Of note, the availability of additional financing under the A&R DIP Term Sheet is conditional upon this Court's approval of the increased DIP Lender's Charge.[16]

23. Section 11.2 of the CCAA permits interim financing facilities to be structured to allow debtors to use their post-filing operating receipts to service debt, if such payments are made in a manner consistent with the pre-filing status quo.[17]

24. In the case at hand, the DIP Facility will support expenses other than debt service. The Company's debt service obligations will be paid from operating receipts in accordance with past practice, also respecting the pre-filing status quo.[18]

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[15] First Report at para 56.
[16] See Section 13(a)(ii) of the A&R DIP Term Sheet, being Master Page A97 in Case Center.
[17] *Comark Inc., Re*, 2015 ONSC 2010 at paras 40-41; *Performance Sports Group Ltd., Re*, 2016 ONSC 6800 at para 22; *BZAM Ltd. Plan of Arrangement*, 2024 ONSC 1645 at para 56.
[18] See the Cash Flow Forecast attached as Appendix F to the First Report.

25. The A&R DIP Term Sheet also permits the use of the DIP Facility to fund professional fees incurred by the Debtor.[19]

26. The proposed ARIO confirms, at paragraph 38, that "[t]he DIP Lender's Charge shall not secure an obligation that exists before this Order is made."

C. The Administration Charge Should be Increased

27. The Administration Charge in the Initial Order was limited to the amount of professional fees and disbursements of the Monitor, counsel to the Monitor, and counsel to Arbat ("**Professionals Group**") incurred and estimated to be incurred to the end of the Initial Stay Period.[20]

28. The Applicant asks to increase the Administration Charge from $275,000 to $600,000 in order to appropriately protect the services to be provided by the Professionals Group during the proposed extended Stay Period.

29. Section 11.52 of the CCAA expressly provides the court with jurisdiction to grant and amend the Administration Charge.[21]

30. Section 11.52(2) of the CCAA permits the court to order that the Administration Charge "rank in priority over the claim of any secured creditor of the company".[22] In *Canada North Group*, the Supreme Court of Canada stated that "[s]uper-priority charges in favour of the

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[19] See Section 4 of the A&R DIP Term Sheet, being Master Page A92 in Case Center.
[20] Second Golubovich Affidavit at para 16, Tab 2 to the Motion Record filed May 27, 2025.
[21] CCAA, s 11.52.
[22] CCAA, s. 11.52(2).

monitor, financiers and other professionals are required to derive the most value for the stakeholders. They are beneficial to all creditors…”.[23]

31. The appropriate quantum of an administration charge is a question of fact to be assessed in the totality of the circumstances.[24]

32. In *Canwest Publishing*, Justice Pepall considered several factors when deciding whether to grant an administration charge, including:

(a) the size and complexity of the businesses being restructured;

(b) the proposed role of the beneficiaries of the charge;

(c) whether there is an unwarranted duplication of roles;

(d) whether the quantum of the proposed charge appears to be fair and reasonable;

(e) the position of the secured creditors likely to be affected by the charge; and

(f) the position of the Monitor.[25]

33. The Applicant submits that it is appropriate for this court to exercise its jurisdiction to increase the Administration Charge:

(a) the beneficiaries of the Administration Charge have and will contribute essential legal and financial advice, and general oversight, throughout this CCAA

[23] *Canada v Canada North Group Inc.*, 2021 SCC 30 at para 30.
[24] *Canwest Publishing Inc., Re*, 2010 ONSC 222 at para 54.
[25] *Canwest Publishing Inc., Re*, 2010 ONSC 222 at para 54.

proceeding, without which it is unlikely the Company will achieve a successful restructuring;[26]

(b) each of the proposed beneficiaries of the Administration Charge is performing unique functions without the unwarranted duplication of roles;[27]

(c) the quantum of the proposed increase to the Administration Charge was determined in consultation with the Monitor and is based on the estimated fees of the Professionals Group from the date of the Comeback Hearing through to the end of the proposed extended Stay Period;[28]

(d) all secured creditors have been given notice of this CCAA proceeding and the Administration Charge; and

(e) The Monitor and the DIP Lender are supportive of the increase in the Administration Charge.

34. Furthermore, it is unlikely that the Professionals Group will continue to participate in the CCAA proceedings without the increased Administration Charge.

D. The Increased Directors' Charge Should Be Approved

35. The quantum of the Directors' Charge set out in the Initial Order was set based on the Applicant's and Monitor's best estimate, on the limited information available, of the amount needed to protect the Company's current, former, and future directors and officers

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[26] First Golubovich Affidavit at para 124, Exhibit "A" to the Second Affidavit, Tab 2 of the Motion Record.
[27] First Golubovich Affidavit at para 124, Exhibit "A" to the Second Affidavit, Tab 2 of the Motion Record.
[28] First Report at para 60.

from personal liability and to ensure that they remained aligned with the overall restructuring efforts.

36. Arbat now asks to increase the Directors' Charge from $100,000 to $220,000, on the same relative priority as in the Initial Order, ranking below amounts owing to the Crown on account of statutory deemed trusts, BMO's security interest, the Administration Charge, and above the DIP Lender's Charge.

37. Pursuant to section 11.51 of the CCAA, a Court may grant a Directors' Charge on a super-priority basis.[29]

38. The purpose of a Directors' Charge was described in *Canwest Global Communications Corp., Re*:[30]

> The purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protection against liabilities they incur during the restructuring…Retaining the current directors and officers of the applicants would avoid destabilization and would assist in the restructuring. The proposed charge would enable the applicants to keep the experienced board of directors supported by the experienced senior management.

39. In *Jaguar Mining Inc., Re,* the Court set out the following factors to be considered with respect to the approval of a directors' charge:[31]

(a) whether notice has been given to the secured creditors likely to be affected by the charge;

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[29] s 11.51, CCAA.
[30] *Canwest* at para 48.
[31] 2014 ONSC 494, at para 45.

(b) whether the amount is appropriate;

(c) whether the applicant could not obtain adequate indemnification insurance for the director or officer at a reasonable cost; and

(d) whether the charge does not apply in respect of any obligation incurred by a director or officer as a result of the director's or officer's gross negligence or wilful misconduct.

40. To ensure the ongoing stability of Second Cup's business during these CCAA proceedings, the continued participation of the Company's directors is required. The directors have skills, knowledge, and expertise, as well as established relationships with various stakeholders that will contribute to a successful restructuring.[32]

41. The Company's D&O insurance policy has lapsed, with the result that there is a significant risk of personal exposure to the Board if the Director's Charge is not granted. Accordingly, the Directors' Charge is intended to protect the Board from any personal liability that may attach to them because of the Company's failure to meet certain obligations, as well as where the Majority Group's interests diverge from those of the Company and its stakeholders throughout these CCAA proceedings.[33]

[32] First Golubovich Affidavit at para 142, Exhibit "A" to the Second Affidavit, Tab 2 of the Motion Record.
[33] First Golubovich Affidavit at paras 140 and 143, Exhibit "A" to the Second Affidavit, Tab 2 of the Motion Record.

42. The Monitor has determined that the increase to the Directors' Charge is necessary to account for the total costs associated with wages, salaries, applicable withholdings, benefits, and accrued vacation pay over the Extended Stay Period.[34]

E. The Critical Payments Should be Approved

43. The Applicant seeks authorization to make certain pre-filing payments (the "**Critical Supplier Payments**") to certain suppliers (the "**Critical Suppliers**") that are critical to the Company's ongoing operations. The Applicant is not seeking a corresponding "critical suppliers charge".

44. These Critical Supplier Payments would only be made with the Monitor's approval and consent.[35]

45. The court has jurisdiction to grant this relief pursuant to the court's general jurisdiction under section 11 of the CCAA to make orders that it considers appropriate in the circumstances. This court has routinely granted orders allowing applicants in CCAA proceedings to pay pre-filing amounts to critical suppliers with the consent of the Monitor.[36] In doing so, the court has applied the following criteria:

(a) whether the goods and services concerned are integral to the business;

(b) the Company's need for the uninterrupted supply of the goods or services;

[34] First Report at para 62.
[35] See paragraph 5(d) of the draft ARIO, being page A122 in Case Center, Tab 3 of the Motion Record.
[36] *Springer Aerospace Holdings Limited*, 2022 ONSC 6581 ("***Springer***"), paras 25-27; *McEwan Enterprises Inc*., 2021 ONSC 6453, paras 32-33 ("***McEwan***").

(c) the Monitor's support and willingness to work with the Company to ensure that payments to suppliers in respect of pre-filing liabilities are appropriate; and

(d) the effect on the Company's ongoing operations and ability to restructure if it were unable to make pre-filing payments to its critical suppliers.[37]

46. These criteria are satisfied. The Critical Supplier Payments primarily relate to critical payment for coffee beans, powders, and syrup which are essential to the Company's continued operations. The Applicant understands that the Critical Suppliers are refusing to provide further goods to the Company unless they are paid for certain pre-filing amounts owing.[38]

47. The Company's franchisees are required to purchase these supplies from the Company, meaning that the Company's failure to acquire these supplies would result in value destruction for the Company and its stakeholders.[39]

F. Claims Identification Process Should be Approved

48. The court's general power under section 11 of the CCAA includes the authority to approve a procedure to solicit and determine claims against a debtor company. This authority is "well accepted" in CCAA proceedings.[40]

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[37] CCAA, s 11. See *Springer*, paras 25-27; *McEwan Enterprises Inc.*, 2021 ONSC 6453, para 33; *Canwest*, paras. 41-43; *Canwest Publishing Inc.*, 2010 ONSC 222, paras 47-51.
[38] First Report at para 37.
[39] First Report at para 38.
[40] *Re Toys "R" Us (Canada) Ltd.*, 2018 ONSC 609 at para. 8 ["***Toys "R" Us***"]; *see also* ScoZinc Ltd. Re, 2009 NSSC 136 at para. 25.

49. Claims procedures assist CCAA reorganizations by resolving the universe of claims against the debtor(s) for the purposes of, among other things, determining potential distributions to creditors. A claims process provides certainty for the debtor and its stakeholders in making informed choices about restructuring options. These orders should be both flexible and expeditious.[41]

50. The proposed Claims Process meets the purpose of claims processes generally, which is "to streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost-efficient manner".[42]

51. This Court routinely approves claims processes in connection with the CCAA restructuring process.[43]

52. The Claims Identification Order contemplates that all claims against the Company, with the exception of BMO's secured claim, will be addressed in the Claims Identification Process.

53. The Claims Identification Process will allow the Company and its stakeholders to understand the universe of claims against the Company and create the framework for an efficient restructuring.

54. The Claims Identification Order contemplates that all litigation against the Company, including the oppression application commenced by Levelen Corp., Leonid Pekker, and

[41] *Re Timminco Ltd*., 2014 ONSC 3393 at para. 43.
[42] *Re Canwest Global Communications Corp*., 2011 ONSC 2215 at para. 40.
[43] *Toys "R" Us* at para. 8; see also *Re U.S. Steel Canada Inc.,* 2017 ONSC 1967 at paras. 5-6 ; *ScoZinc* at para. 25.

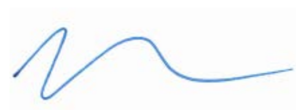
Vera Pekker (and discussed in the First Golubovich Affidavit at paragraph 118) will be addressed in the Claims Identification Process.[44]

55. The Claims Identification Process also empowers the Monitor to treat any Claim as being unaffected by the Claims Identification Process if the Monitor deems doing so as being in the best interest of the Company's stakeholders.[45]

PART V - ORDER REQUESTED

56. The Applicant respectfully requests that this Honourable Court grant the ARIO and the Claims Identification Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of May, 2025.



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[44] Claims Identification Order, Tab 6 to the Motion Record, at para 3(v), Page A200 in Case Center.
[45] Claims Identification Order, Tab 6 to the Motion Record, at Section 32, Page A200 in Case Center.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Target Canada Co, Re*, 2015 ONSC 303
2. *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ON SC)
3. *Comark Inc., Re*, 2015 ONSC 2010
4. *Performance Sports Group Ltd., Re*, 2016 ONSC 6800
5. *BZAM Ltd. Plan of Arrangement*, 2024 ONSC 1645
6. *Canada v Canada North Group Inc.*, 2021 SCC 30
7. *Canwest Publishing Inc., Re*, 2010 ONSC 222
8. *Jaguar Mining Inc., Re* 2014 ONSC 494
9. *Springer Aerospace Holdings Limited*, 2022 ONSC 6581
10. *McEwan Enterprises Inc.*, 2021 ONSC 6453
11. *Canwest Publishing Inc.*, 2010 ONSC 222
12. *ScoZinc Ltd. Re*, 2009 NSSC 136
13. *Re Timminco Ltd*., 2014 ONSC 3393
14. *Re Canwest Global Communications Corp*., 2011 ONSC 2215
15. *Weinrich Contracting Ltd v Wiebe*, 2022 ABCA 176

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date May 28, 2025

Gavin Finlayson, Larry Ellis and
Matthew Cressatti

SCHEDULE "B"
RELEVANT STATUTES

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

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

> **(a)** staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
>
> **(b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
>
> **(c)** prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

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

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

Burden of proof on application

(3) The court shall not make the order unless

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

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

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

> **(a)** the period during which the company is expected to be subject to proceedings under this Act;
>
> **(b)** how the company's business and financial affairs are to be managed during the proceedings;
>
> **(c)** whether the company's management has the confidence of its major creditors;
>
> **(d)** whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
>
> **(e)** the nature and value of the company's property;
>
> **(f)** whether any creditor would be materially prejudiced as a result of the security or charge; and
>
> **(g)** the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Security or charge relating to director's indemnification

11.51 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Restriction — indemnification insurance

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or willful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

> **(a)** the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
>
> **(b)** any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
>
> **(c)** any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

ARBAT CAPITAL GROUP LTD. and THE SECOND CUP COFFEE COMPANY INC. Court File No. CV-25-00743485-CL
Applicant Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

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