Court File No. 542329

SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF an application of Mernova Medicinal Inc. and Creso Canada Limited.

AND IN THE MATTER OF the *Companies' Creditors Arrangement Act,* R.S.C., 1985, c. C-36, as amended

SUPPLEMENT TO THE THIRD REPORT TO THE COURT SUBMITTED BY GRANT THORNTON LIMITED IN ITS CAPACITY AS MONITOR

AUGUST 4, 2025

Doane Grant Thornton

Grant Thornton Limited
Monitor

1000-1675 Grafton Street
Halifax, NS B3J 0E9

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APPENDICES

Purpose of the Supplemental Report

1. Grant Thornton Limited, as monitor (in such capacity, the "**Monitor**"), has prepared this supplement to the Third Report ("**Supplemental Report**") to provide the Court with an update on concerns raised by counsel for the Canada Revenue Agency ("**CRA**") with respect to the Companies' motion as outlined in the Third Report (the "**Sale Approval Motion**"). The Monitor understands the concerns raised by CRA regarding the Sale Approval Motion include:

   (a) CRA has requested clarification and/or rewording of paragraph 27 of the proposed approval and reverse vesting order ("**RVO**") regarding certain set off provisions as regards Mernova's pre-CCAA and post-CCAA filing amounts;

   (b) CRA has requested a rewording of paragraph 3 of the proposed *Wage Earner Protection Program Act* order ("**WEPPA Order**");

   (c) CRA has advised that it opposes the Companies' request for a release in the RVO for the Companies' current and sole director, Micheline MacKay ("**Ms. MacKay**"), on the basis that CRA is of the view such relief will prejudice CRA by excluding CRA from recovery as part of the CCAA Proceedings and impairing CRA's other methods for recovery, being potential assessments against Ms. MacKay. As a result, the Monitor understands CRA has requested to carve out an exclusion to paragraph 25 of the RVO pertaining to a release from claims as against Ms. MacKay for pre-CCAA unpaid harmonized sales tax and excise taxes; and

   (d) CRA has requested a rewording of paragraph 10 to the RVO pertaining to the releases sought and their exclusion to assessments which may be raised by CRA pursuant to s. 160 of the *Income Tax Act* ("**ITA**").

Terms of Reference

2. This Supplemental Report is intended to be read by stakeholders in conjunction with the Monitor's Third Report dated July 30, 2025, including the terms of reference paragraphs noted therein. Terms not defined within this Supplemental Report have the meaning as set out in the Third Report, application and motion materials and previous orders of the Court, unless otherwise noted.

Correspondence with CRA

3. On July 29, 2025, the Companies filed the Sale Approval Motion documents with the Court, providing notice of same to the Service List on July 28, 2025. On August 1, 2025, CRA and the Companies engaged in email correspondence regarding CRA's position on the Sale Approval Motion as follows:

(a) At 8:48 AM, counsel to CRA raised the above noted concerns, a copy which is attached hereto as **Appendix "A"**.

(b) At 3:14 PM, counsel to the Companies provided their response ("**Companies' Response**") to CRA's concerns, a copy of which is attached hereto as **Appendix "B"**.

(c) At 4:30 PM, counsel to CRA responded ("**CRA Subsequent Response**"), attached at **Appendix "C"**, regarding the wording of the WEPPA Order and that it would seek instructions from CRA as to its position on the Sale Approval Motion.

Paragraph 27 of the RVO

4. Paragraph 27 of the RVO as drafted within the Companies' motion materials states as follows:

CANADA REVENUE AGENCY SET-OFF

27. The Canada Revenue Agency's right of set off is preserved to the extent that: (i) any amounts that are, or become, due to Mernova or Creso with respect to obligations arising prior to the CCAA filing date of April 16, 2025; or (ii) any amounts that are, or become, due to Mernova or Creso with respect to obligations arising after the CCAA filing date of April 16, 2025 are applied against any amounts that are, or become due, from Mernova or Creso with respect to obligations arising after the CCAA filing date of April 16, 2025

<u>CRA Concerns</u>

5. The Monitor understands that CRA has requested the Companies clarify this provision of the RVO, being: "*Is it intended to provide that CRA will have a right of set off of pre-CCAA filing amounts and post-CCAA filing amounts that are due or become due to Mernova or Creso against any post-CCAA filing amounts that are due or become due from Mernova or Creso?"*

Companies' Response

6. The Companies' Response to CRA was: "*This provision has been requested by the Canada Revenue Agency in other cannabis insolvency proceedings, including the Delta 9 decision referenced in our brief of law. It allows the CRA to set-off any credits that Mernova might have against any of the Excluded Liabilities that ultimately get moved over to Creso so mutuality is not lost. We propose to keep it as presently worded.*"

Monitor's Views

7. The Monitor is following up with the Companies' counsel to confirm the proposed wording is consistent with the Monitor's expectation of how pre-CCAA and post-CCAA tax matters are treated within insolvency filings that include RVO's.

8. Should CRA propose revised wording for this paragraph, the Monitor will review CRA's suggestions and advise the Court at the Hearing of its views thereof.

WEPPA Order

9. Paragraph 3 of the proposed WEPPA Order as drafted within the Companies' motion materials states as follows:

WAGE EARNER PROTECTION PROGRAM ACT

3. Pursuant to section 5(5) of the Wage Earner Protection Program Act (Canada), SC 2005, c 47, s 1 ("WEPPA"), the Applicants and their collective former employees meet the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222 and are individuals to whom the WEPPA applies as of the date of this Order

CRA Concerns

10. The Monitor understands that CRA has requested that:

(a) the "Applicants" as noted in paragraph 3, should be replaced with Mernova Medicinal Inc.; and

(b) removal of the wording at the end of paragraph 3, being: "and are individuals to whom the WEPPA applies as of the date of this Order".

11. The Monitor notes that CRA provided a suggested rewording of paragraph 3 within the CRA Concerns email.

Companies' Response

12. In the Companies' Response they advised that the Monitor had independently requested to amend the wording of this paragraph to wording that Service Canada has requested on other insolvency matters to which Grant Thornton Limited has been involved, being as follows:

> **WAGE EARNER PROTECTION PROGRAM ACT**
>
> **THIS COURT ORDERS AND DECLARES** that pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act* (Canada), S.C. 2005, c. 47, s. 1 ("**WEPPA**"), the COMPANY NAME meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and the COMPANY NAME former employees are eligible to receive payments under and in accordance with the WEPPA following the termination of their employment.

CRA Subsequent Response

13. The Monitor notes that counsel to CRA suggested further revised wording of this paragraph 3 within the CRA Subsequent Response.

Monitor's Views

14. As noted above, the Monitor has received previous direction from Service Canada on the wording it has suggested should be included within *Wage Earner Protection Program Act* ("**WEPPA**") declarations, templated as shown in paragraph 12 of this Supplemental Report.

15. The Monitor's primary concern is that any terminated employees of Mernova are not prejudiced by the form of transaction subject to the Sale Approval Motion (being a reverse vesting transaction versus a traditional asset sale), given prior uncertainty as to whether employees who were terminated as part of reverse vesting transactions in a CCAA proceeding could benefit from WEPPA.

16. As noted within paragraphs 87 to 90 of the Third Report, the Proposed Transaction requires Mernova to terminate all employees at closing. The Monitor is of the view that the termination of Mernova's employees is permanent, regardless of if these employees are re-hired by CIG post-closing, as the termination will sever the years of service earned by the employees and such post-closing employment is uncertain.

17. Upon termination and with the Companies' payment of wages and vacation pay up to closing, the Monitor expects that a majority of Mernova's employees will be entitled to a claim for termination pay owing. The Monitor notes the following with regards to termination pay owing to Mernova's employees:

(a) a claim for termination pay owing, in the Monitor's view, is unsecured and would rank subordinate to the secured claim of La Plata;

(b) as the Purchase Price of the transaction is not sufficient to repay the full indebtedness of La Plata, no distributions will be made to the Companies' unsecured creditors, including that of Mernova's employees for termination pay;

(c) the Monitor has not yet been made aware by CIG of the employees that CIG intends to re-hire post-closing, however it is possible that not all employees will be offered a position post-closing;

(d) should an employee not be offered a position by CIG post-closing, the ability for these employees to apply to Service Canada for their respective claims under WEPPA would allow for funds to be paid to those employees for termination pay; and

(e) in the event that an employee is offered a position by CIG post-closing, those employees would still lose their years of service earned with Mernova upon their termination, to which a claim under WEPPA may provide for some compensation as a result of starting a new position post-closing.

18. The Monitor has considered CRA's objection to the wording suggested by the Monitor (as previously provided to it by Service Canada) as well as recent case law on the matter, including the decision of the Québec Court of Appeal in *Attorney General of Canada v. Former Gestion Inc.*, 2024 QCCA 1441 (a copy of which is attached hereto as **Appendix "D"**). The Monitor is of the view that it is appropriate and sufficient for the proposed WEPPA Order to declare that Mernova meets the criteria prescribed by section 3.2 of the

Wage Earner Protection Program Regulations, being Mernova is an entity to which WEPPA applies. The Monitor will then work with employees to facilitate claims under WEPPA, which are ultimately approved or denied by Service Canada.

19. The Monitor is therefore of the view that the wording of this paragraph as proposed by CRA is appropriate in the circumstances.

Releases

CRA Concerns

20. The Monitor understands that CRA opposes the relief sought by the Companies for a release of liabilities against Ms. MacKay as CRA is of the view that it is prejudiced by being excluded from this method of recovery for the outstanding HST and excise taxes owing by the Companies.

21. CRA has advised the Companies the outstanding pre-filing tax balances of the Companies are:

(a) HST – $452,731.19; and

(b) Excise Taxes – $1,405,161.83

Companies' Response

22. The Monitor understands the Companies disagree with CRA's position, the Companies intend to continue with the Sale Approval Motion including releases for Ms. MacKay and that the Companies take the position CRA is not prejudiced by this relief as CRA would be in the same position in the event of a bankruptcy or asset sale.

Monitor's View

23. The Monitor has considered CRA's position in light of the CCAA Proceedings overall, the impacts on other stakeholders of the requested release and the Proposed Transaction. The Monitor confirms that it continues to be supportive of the Companies' requested relief as outlined within paragraphs 97-98 of the Monitor's Third Report. The Monitor's continued support is informed by, among other things:

(a) Regarding CRA's position that it will be excluded by recovery as part of the CCAA Proceedings, the Monitor is of the view that CRA is not prejudiced by the use of an

RVO as a transaction structure in that CRA would not receive recovery under an alternative transaction structure. While the Monitor notes that CRA is prejudiced by the requested release as against Ms. McKay, in that it limits CRA's ability to pursue remedies against Ms. McKay as a director, such prejudice in the Monitor's view is outweighed by the benefits to other creditors and stakeholders under the Proposed Transaction.

(b) As noted within paragraph 100 of the Third Report, the form of release is built into the form of RVO attached as a schedule to the SPA, which RVO in turn must be acceptable to the Purchaser as a condition of closing. The Monitor understands that the Purchaser intends to re-hire Ms. MacKay post-closing as a person of significant knowledge of Mernova's facility and operations, and the Responsible Person in Charge ("**RPIC**") under Mernova's Health Canada license for the legal possession, cultivation and distribution of cannabis pursuant to the *Cannabis Act* and *Cannabis Regulations*. Should a release not be granted to Ms. MacKay, this would have a material negative impact on the ability for the Proposed Transaction to close or, even if it does close, on Mernova's operations following closing;

(c) As stated within paragraph 87 of the affidavit of Ms. MacKay sworn on April 9, 2025, the Companies were previously on a payment plan with CRA regarding the Companies' indebtedness for HST and excise tax arrears of $14k and $16k per month, respectively, which ceased in January 2025 due to the insolvency of the Companies' parent, Melodial Global Health Limited ("**Melodial**"), and pending insolvency of the Companies. The Monitor understands that the Companies have remained current with regards to its post-filing tax obligations throughout these CCAA proceedings.

(d) The Monitor is of the view that the Proposed Transaction was the best offer received pursuant to the SISP for all stakeholders, including CRA, as the Purchaser intends to continue Mernova's operations post-closing, allowing for continued collection by CRA of HST, income taxes, payroll taxes and excise taxes; and

(e) The Monitor notes that should the Proposed Transaction not close because of Ms. MacKay not being granted a release of liability, the Companies other creditors, suppliers, employees and stakeholders would be prejudiced by not being afforded the opportunity to continue business with Mernova post-closing and potential loss of employment of Mernova's employees in the Windsor, NS area.

24. The Monitor notes that the Companies' motion for a release of its director is limited to only that of its current director, being Ms. MacKay, and does not include any prior or previous directors of the Companies.

25. The Monitor is supportive of the Companies' request for a release of Ms. MacKay as a director of the Companies, as it is of the view that such a release is commercially reasonable and appropriate in the circumstances for the reasons set out in this Supplemental Report and the Third Report. While the CRA may suffer some prejudice as a result of the release (as it results in the CRA surrendering a potential avenue of recovery), the Monitor is of the view that this release is outweighed by the benefits of the Proposed Transaction and the potential prejudice to the creditors and stakeholders as a whole should the Proposed Transaction not close.

<u>Support from La Plata and CIG</u>

26. The Monitor has received letters of support for a release to be granted to Ms. MacKay from both La Plata and CIG, attached hereto as **Appendix "E"** and **Appendix "F"**, respectively.

Paragraph 10 of the RVO

27. Paragraph 27 of the RVO as drafted within the Companies' motion materials states as follows:

APPROVAL AND VESTING

10. At the Closing Time and without limiting the provisions of paragraph 5 hereof, the Purchaser, Mernova, and the Monitor shall be deemed released from any and all Excluded Liabilities (including all Claims other than Retained Liabilities) and all claims, liabilities, (direct, indirect, absolute or contingent) or obligations with respect to any Taxes including penalties and interest thereon (other than those that are Retained Liabilities) of, or that relate to Mernova, provided, as it relates to the Purchaser and Mernova, such release shall not apply to (a) Taxes in respect of the business and operations conducted by Mernova after the Closing Date; or (b) Taxes expressly assumed as Retained Liabilities *pursuant to the SPA, including without limiting the generality of the foregoing, all Taxes that could be assessed against the Purchaser and Mernova (including their affiliates and any predecessor corporations) pursuant to sections 160 and 160.01 of the Income Tax Act, R.S.C. 1985 c.1 (5th Supp.), or any provincial or foreign tax equivalent in connection with Mernova. For greater certainty, nothing in this paragraph shall release or discharge any Claims against ResidualCo with respect to Taxes that are transferred to ResidualCo*

<u>CRA Concerns</u>

28. The Monitor understands that CRA requested a rewording of this paragraph 10 to the proposed RVO for the elimination of "*a provision in the order whereby the court oversteps the authority of the Minister to assess under section 160 of the Income Tax Act. The reworded provision allows the court to expressly declare that the factors necessary to raise a section 160 assessment are not present".*

<u>Companies' Response</u>

29. The Companies' provided in their response that they agree to amend paragraph 10 of the proposed RVO as suggested by CRA.

<u>Monitor's Views</u>

30. The Monitor is supportive of the Companies' amending paragraph 10 of the proposed RVO as suggested by CRA.

Good Faith and Due Diligence

31. As at the date of this Supplemental Report, the Monitor:

(a) is of the view that the Companies and their stakeholders are acting in good faith and with due diligence, pursuant to section 18.6(1) of the CCAA;

(b) is <u>not</u> of the view that it would be more beneficial to the Companies' creditors if proceedings were taken under the *Bankruptcy and Insolvency Act*, pursuant to section 23(1)(h) of the CCAA; and

(c) is not aware of any issue or condition that could be considered a material adverse change pursuant to s. 23(1)(d) of the CCAA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of August, 2025.

GRANT THORNTON LIMITED, SOLELY IN ITS CAPACITY AS MONITOR OF MERNOVA MEDICINAL INC. AND CRESO CANADA LIMITED AND NOT IN ITS CORPORATE OR PERSONAL CAPACITY

Liam Murphy, CPA, CA, CIRP, LIT
Senior Vice President

Appendix A

Original Email from CRA

Outlook

FW: Mernova Medicinal/Creso CCAA questions

From MacDonald, Gavin (Halifax) <GMacDonald@coxandpalmer.com>
Date Fri 8/1/2025 10:46 AM
To Sara Scott (sscott@stewartmckelvey.com) <sscott@stewartmckelvey.com>; 'dwedlake@stewartmckelvey.com' <dwedlake@stewartmckelvey.com>; Murphy, Liam <Liam.Murphy@doane.gt.ca>; Hines, Corey <Corey.Hines@doane.gt.ca>
Cc Chris Nyberg <cnyberg@mltaikins.com>; 'rzahara@mltaikins.com' <rzahara@mltaikins.com>; Kells, Meaghan (Halifax) <mkells@coxandpalmer.com>

Good morning, we've received the comments from CRA's counsel set out below and propose a call to discuss a response at your earliest convenience. Please let me know when the monitor and counsel are available.

Thanks,

Gavin

Gavin MacDonald
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Mailing address: PO Box 2380 Central, Halifax, NS B3J 3E5

From: Frappier K.C., Deanna (she her elle la) <Deanna.Frappier@justice.gc.ca>
Sent: August 1, 2025 8:48 AM
To: Kells, Meaghan (Halifax) <mkells@coxandpalmer.com>
Subject: Mernova Medicinal/Creso CCAA questions

Ms. Kells:

We are counsel for the Canada Revenue Agency and have a few comments and questions regarding the documents that have been filed for the August 5 hearing.

At page 93 of the 1000-page PDF, at paragraph 27 of the Approval and Vesting Order it is stated that:

> *27. The Canada Revenue Agency's right of set off is preserved to the extent that: (i) any amounts that are, or become, due to Mernova or Creso with respect to obligations arising prior to the CCAA filing date of April 16, 2025; or (ii) any amounts that are, or become, due to Mernova or Creso with respect to obligations arising after the CCAA filing date of April 16,*

2025 are applied against any amounts that are, or become due, from Mernova or Creso with respect to obligations arising after the CCAA filing date of April 16, 2025.

Could you provide clarity with respect to what that provision means? Is it intended to provide that CRA will have a right of set off of pre-CCAA filing amounts and post-CCAA filing amounts that are due or become due to Mernova or Creso against any post-CCAA filing amounts that are due or become due from Mernova or Creso?

At page 999 of the 1000-age PDF, at paragraph 3 of the WEPPA Order, we have comments on the wording of the order. The original paragraph 3 states:

> *3. Pursuant to section 5(5) of the Wage Earner Protection Program Act (Canada), SC 2005, c 47, s 1 ("WEPPA"), the Applicants and their collective former employees meet the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222 and are individuals to whom the WEPPA applies as of the date of this Order.*

Pursuant to section 3.2 of the Regulations, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated. In this case, the former employer is Mernova not the Companies and we suggest that the change be made in paragraph 3 of the WEPPA order. In addition, the phrase "…and are individuals to whom the WEPPA applies as of the date of this Order" has led employees to believe that they are eligible and which goes beyond what section 3.2 of the Regulations says. As a result, we would reword section 3 of the WEPPA order to read as follows:

> *3. Pursuant to section 5(5) of the Wage Earner Protection Program Act (Canada), SC 2005, c 47, s 1 ("WEPPA"), Mernova meets the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222.*

At page 146 of the 1000-page PDF, at paragraph 62 of the Brief of Law, we have comments on the releases for the director/officer of the Companies. Section 62 states:

> *62. As outlined above, the RVO (if granted) provides for releases involving these CCAA proceedings and the CIG Transaction for various third parties, including the current directors and officers of Mernova and Creso, Mernova's legal counsel, and the Monitor and its legal counsel. The D&O Released Claims include claims against the Released D&Os for unpaid harmonized sales tax and excise taxes relating to the pre-filing period.*

We oppose the release of the director/officer of the Companies on the basis that CRA will be prejudiced by being excluded from recovery as part of the CCAA proceedings and also have to surrender its other methods for recovery, being potential assessments against the officer/director. As a result, we are requesting that a carve out be incorporated into section 25 of the Approval and Vesting order (page 92 of 1000-page PDF) to exclude a release from claims against the released director/officer for unpaid harmonized sales tax and excise taxes relating to the pre-CCAA filing period, as Mernova has significant liabilities for HST and excise taxes, currently owing in the amounts of $452,731.19 and $1,405,161.83 respectively.

At page 85 of the 1000-page PDF, at paragraph 10 of the Approval and Vesting Order, we have comments and concerns as indicated. Section 10 states:

10. At the Closing Time and without limiting the provisions of paragraph 5 hereof, the Purchaser, Mernova and the Monitor shall be deemed released from any all Excluded Liabilities (including all Claims other than Retained Liabilities) and all claims, liabilities (direct, indirect, absolute or contingent) or obligations with respect to any Taxes including penalties and interest thereon (other than those that are Retained Liabilities) of, or that relate to Mernova, provided, as it relates to the Purchaser and Mernova, such release shall not apply to (a) Taxes in respect of the business and operations conducted by Mernova after the Closing Date; or (b) Taxes expressly assumed as Retained Liabilities pursuant to the SPA, including without limiting the generality of the foregoing, all Taxes that could be assessed against the Purchaser and Mernova (including their affiliates and any predecessor corporations) pursuant to sections 160 and 160.01 of the Income Tax Act, R.S.C. 1985 c. 1 (5th Supp.), or any provincial or foreign tax equivalent in connection with Mernova. For greater certainty, nothing in this paragraph shall release or discharge any Claims against ResidualCo with respect to Taxes that are transferred to ResidualCo.

We suggest the following wording in place of what has been provided:

10. At the Closing Time and without limiting the provisions of paragraph 5 hereof, the Purchase Price paid by the Purchaser is made at fair market value and the Purchaser is an arm's length party with the Applicants. For greater certainty, nothing in this paragraph shall release or discharge any Claims against ResidualCo with respect to Taxes that are transferred to ResidualCo.

This wording eliminates including a provision in the order whereby the court oversteps the authority of the Minister to assess under section 160 of the Income Tax Act. The reworded provision allows the court to expressly declare that the factors necessary to raise a section 160 assessment are not present.

We look forward to your responses.

Deanna Frappier, K.C.

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Appendix B

Companies' Response to CRA

Outlook

RE: Mernova Medicinal/Creso CCAA questions

From MacDonald, Gavin (Halifax) <GMacDonald@coxandpalmer.com>
Date Fri 8/1/2025 3:14 PM
To Frappier K.C., Deanna (she her elle la) <Deanna.Frappier@justice.gc.ca>
Cc Ryan Zahara <rzahara@mltaikins.com>; Chris Nyberg <cnyberg@mltaikins.com>; Hines, Corey <Corey.Hines@doane.gt.ca>; Murphy, Liam <Liam.Murphy@doane.gt.ca>; David Wedlake <dwedlake@stewartmckelvey.com>; Kells, Meaghan (Halifax) <mkells@coxandpalmer.com>

Ms. Frappier,

Thank you for your email. With respect to the points raised, we respond as follows on behalf of the applicant companies.

1. **Paragraph 27 of the Approval and Vesting Order**

This provision has been requested by the Canada Revenue Agency in other cannabis insolvency proceedings, including the Delta 9 decision referenced in our brief of law. It allows the CRA to set-off any credits that Mernova might have against any of the Excluded Liabilities that ultimately get moved over to Creso so mutuality is not lost. We propose to keep it as presently worded.

2. **WEPPA Order**

Independently of your email, the Monitor has asked that paragraph 3 be amended using the following wording provided by Service Canada to GT on a prior insolvency proceeding. We have agreed to make this change to align with direction from Service Canada.

WAGE EARNER PROTECTION PROGRAM ACT

THIS COURT ORDERS AND DECLARES that pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act* (Canada), S.C. 2005, c. 47, s. 1 (**"WEPPA"**), the COMPANY NAME meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and the COMPANY NAME former employees are eligible to receive payments under and in accordance with the WEPPA following the termination of their employment.

3. **Release of Director and Officer**

As noted in the materials, the applicants are requesting a full release for the sole officer and director, among others. In our view, this relief is amply supported on the evidence and is consistent with caselaw in other provinces. It is the applicants' position that CRA is not prejudiced by this relief since it would be in the same position in the event of a bankruptcy or asset sale.

4. **ITA s. 160 Language**

We agree to revise paragraph 10 of the AVO with the wording you propose.

We have reviewed your points with the Monitor and its counsel and understand that they concur with our comments.

Please advise as soon as possible what position Canada Revenue Agency will be taking at Tuesday's hearing.

Regards,
Gavin

Gavin MacDonald
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Mailing address: PO Box 2380 Central, Halifax, NS B3J 3E5

From: Frappier K.C., Deanna (she her elle la) <Deanna.Frappier@justice.gc.ca>
Sent: August 1, 2025 9:03 AM
To: MacDonald, Gavin (Halifax) <GMacDonald@coxandpalmer.com>
Subject: RE: Mernova Medicinal/Creso CCAA questions

Thank you.

…Deanna

From: MacDonald, Gavin (Halifax) <GMacDonald@coxandpalmer.com>
Sent: Friday, August 1, 2025 9:02 AM
To: Frappier K.C., Deanna (she her elle la) <Deanna.Frappier@justice.gc.ca>; Kells, Meaghan (Halifax) <mkells@coxandpalmer.com>
Cc: 'cnyberg@mltaikins.com' <cnyberg@mltaikins.com>; 'rzahara@mltaikins.com' <rzahara@mltaikins.com>
Subject: RE: Mernova Medicinal/Creso CCAA questions

Ms. Frappier,

I acknowledge receipt of your email. We're reviewing and will be back to with the applicants' response shortly.

Gavin

Gavin MacDonald
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Could you provide clarity with respect to what that provision means? Is it intended to provide that CRA will have a right of set off of pre-CCAA filing amounts and post-CCAA filing amounts that are due or become due to Mernova or Creso against any post-CCAA filing amounts that are due or become due from Mernova or Creso?

At page 999 of the 1000-age PDF, at paragraph 3 of the WEPPA Order, we have comments on the wording of the order. The original paragraph 3 states:

> *3. Pursuant to section 5(5) of the Wage Earner Protection Program Act (Canada), SC 2005, c 47, s 1 ("WEPPA"), the Applicants and their collective former employees meet the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222 and are individuals to whom the WEPPA applies as of the date of this Order.*

Pursuant to section 3.2 of the Regulations, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated. In this case, the former employer is Mernova not the Companies and we suggest that the change be made in paragraph 3 of the WEPPA order. In addition, the phrase "…and are individuals to whom the WEPPA applies as of the date of this Order" has led employees to believe that they are eligible and which goes beyond what section 3.2 of the Regulations says. As a result, we would reword section 3 of the WEPPA order to read as follows:

> *3. Pursuant to section 5(5) of the Wage Earner Protection Program Act (Canada), SC 2005, c 47, s 1 ("WEPPA"), Mernova meets the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222.*

At page 146 of the 1000-page PDF, at paragraph 62 of the Brief of Law, we have comments on the releases for the director/officer of the Companies. Section 62 states:

> *62. As outlined above, the RVO (if granted) provides for releases involving these CCAA proceedings and the CIG Transaction for various third parties, including the current directors and officers of Mernova and Creso, Mernova's legal counsel, and the Monitor and its legal counsel. The D&O Released Claims include claims against the Released D&Os for unpaid harmonized sales tax and excise taxes relating to the pre-filing period.*

We oppose the release of the director/officer of the Companies on the basis that CRA will be prejudiced by being excluded from recovery as part of the CCAA proceedings and also have to surrender its other methods for recovery, being potential assessments against the officer/director. As a result, we are requesting that a carve out be incorporated into section 25 of the Approval and Vesting order (page 92 of 1000-page PDF) to exclude a release from claims against the released director/officer for unpaid harmonized sales tax and excise taxes relating to the pre-CCAA filing period, as Mernova has significant liabilities for HST and excise taxes, currently owing in the amounts of $452,731.19 and $1,405,161.83 respectively.

At page 85 of the 1000-page PDF, at paragraph 10 of the Approval and Vesting Order, we have comments and concerns as indicated. Section 10 states:

> *10. At the Closing Time and without limiting the provisions of paragraph 5 hereof, the Purchaser, Mernova and the Monitor shall be deemed released from any all Excluded Liabilities (including all Claims other than Retained Liabilities) and all claims, liabilities (direct, indirect, absolute or contingent) or obligations with respect to any Taxes including penalties and interest thereon (other than those that are Retained Liabilities) of, or that relate to Mernova, provided, as it relates to the Purchaser and Mernova, such release shall not apply to (a) Taxes in respect of the business and operations conducted by Mernova after the Closing Date; or (b) Taxes expressly assumed as Retained Liabilities pursuant to the SPA, including without limiting the generality of the foregoing, all Taxes that could be assessed against the Purchaser and Mernova (including their affiliates and any predecessor corporations) pursuant to sections 160 and 160.01 of the Income Tax Act, R.S.C. 1985 c. 1 (5th Supp.), or any provincial or foreign tax equivalent in connection with Mernova. For greater certainty, nothing in this paragraph shall release or discharge any Claims against ResidualCo with respect to Taxes that are transferred to ResidualCo.*

We suggest the following wording in place of what has been provided:

> *10. At the Closing Time and without limiting the provisions of paragraph 5 hereof, the Purchase Price paid by the Purchaser is made at fair market value and the Purchaser is an arm's length party with the Applicants. For greater certainty, nothing in this paragraph shall release or discharge any Claims against ResidualCo with respect to Taxes that are transferred to ResidualCo.*

This wording eliminates including a provision in the order whereby the court oversteps the authority of the Minister to assess under section 160 of the Income Tax Act. The reworded provision allows the court to expressly declare that the factors necessary to raise a section 160 assessment are not present.

We look forward to your responses.

Deanna Frappier, K.C.

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Department of Justice Canada
Government of Canada

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Appendix C

CRA Subsequent Response

Outlook

RE: Mernova Medicinal/Creso CCAA questions

From Frappier K.C., Deanna (she her elle la) <Deanna.Frappier@justice.gc.ca>
Date Fri 8/1/2025 4:32 PM
To MacDonald, Gavin (Halifax) <GMacDonald@coxandpalmer.com>
Cc Ryan Zahara <rzahara@mltaikins.com>; Chris Nyberg <cnyberg@mltaikins.com>; Hines, Corey <Corey.Hines@doane.gt.ca>; Murphy, Liam <Liam.Murphy@doane.gt.ca>; David Wedlake <dwedlake@stewartmckelvey.com>; Kells, Meaghan (Halifax) <mkells@coxandpalmer.com>

Thank you for your responses. In relation to the WEPPA order, only the Minister can determine the eligibility of the employees, therefore, the court has no authority to declare that "…the [company name] former employees are eligible to receive payments under and in accordance with the WEPPA following the termination of their employment". Would you be agreeable to the following wording which is similar to that provided to you by Service Canada:

> *Pursuant to section 5(5) of the Wage Earner Protection Program Act (Canada), SC 2005, c 47, s 1 ("WEPPA"), Mernova meets the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222 and Mernova's former employees are individuals who may apply for the Wage Earner Protection Program as of the date of this Order.*

I will need to contact my clients on Tuesday morning to get instructions on our position at the hearing.

…Deanna

From: MacDonald, Gavin (Halifax) <GMacDonald@coxandpalmer.com>
Sent: Friday, August 1, 2025 3:14 PM
To: Frappier K.C., Deanna (she her elle la) <Deanna.Frappier@justice.gc.ca>
Cc: Ryan Zahara <rzahara@mltaikins.com>; Chris Nyberg <cnyberg@mltaikins.com>; Hines, Corey <corey.hines@doane.gt.ca>; Liam Murphy <liam.murphy@ca.gt.com>; David Wedlake <dwedlake@stewartmckelvey.com>; Kells, Meaghan (Halifax) <mkells@coxandpalmer.com>
Subject: RE: Mernova Medicinal/Creso CCAA questions

Ms. Frappier,

Thank you for your email. With respect to the points raised, we respond as follows on behalf of the applicant companies.

1. **Paragraph 27 of the Approval and Vesting Order**

This provision has been requested by the Canada Revenue Agency in other cannabis insolvency proceedings, including the Delta 9 decision referenced in our brief of law. It allows the CRA to set-off any credits that Mernova might have against any of the Excluded Liabilities that ultimately get moved over to Creso so mutuality is not lost. We propose to keep it as presently worded.

2. **WEPPA Order**

Independently of your email, the Monitor has asked that paragraph 3 be amended using the following wording provided by Service Canada to GT on a prior insolvency proceeding. We have agreed to make this change to align with direction from Service Canada.

WAGE EARNER PROTECTION PROGRAM ACT

THIS COURT ORDERS AND DECLARES that pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act* (Canada), S.C. 2005, c. 47, s. 1 ("**WEPPA**"), the COMPANY NAME meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and the COMPANY NAME former employees are eligible to receive payments under and in accordance with the WEPPA following the termination of their employment.

3. **Release of Director and Officer**

As noted in the materials, the applicants are requesting a full release for the sole officer and director, among others. In our view, this relief is amply supported on the evidence and is consistent with caselaw in other provinces. It is the applicants' position that CRA is not prejudiced by this relief since it would be in the same position in the event of a bankruptcy or asset sale.

4. **ITA s. 160 Language**

We agree to revise paragraph 10 of the AVO with the wording you propose.

We have reviewed your points with the Monitor and its counsel and understand that they concur with our comments.

Please advise as soon as possible what position Canada Revenue Agency will be taking at Tuesday's hearing.

Regards,
Gavin

Gavin MacDonald
Partner | Cox & Palmer
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E gmacdonald@coxandpalmer.com
F 902 421 3130
Nova Centre | South Tower, Suite 1500 – 1625 Grafton Street, Halifax NS B3J 0E8
Mailing address: PO Box 2380 Central, Halifax, NS B3J 3E5

From: Frappier K.C., Deanna (she her elle la) <Deanna.Frappier@justice.gc.ca>
Sent: August 1, 2025 9:03 AM

To: MacDonald, Gavin (Halifax) <GMacDonald@coxandpalmer.com>
Subject: RE: Mernova Medicinal/Creso CCAA questions

WARNING - This Message originated outside your organization. Please be cautious when opening attachments or clicking on links.

Thank you.

…Deanna

From: MacDonald, Gavin (Halifax) <GMacDonald@coxandpalmer.com>
Sent: Friday, August 1, 2025 9:02 AM
To: Frappier K.C., Deanna (she her elle la) <Deanna.Frappier@justice.gc.ca>; Kells, Meaghan (Halifax) <mkells@coxandpalmer.com>
Cc: 'cnyberg@mltaikins.com' <cnyberg@mltaikins.com>; 'rzahara@mltaikins.com' <rzahara@mltaikins.com>
Subject: RE: Mernova Medicinal/Creso CCAA questions

EXTERNAL EMAIL – USE CAUTION / COURRIEL EXTERNE – FAITES PREUVE DE PRUDENCE
Ms. Frappier,

I acknowledge receipt of your email. We're reviewing and will be back to with the applicants' response shortly.

Gavin

Gavin MacDonald
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F 902 421 3130
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Mailing address: PO Box 2380 Central, Halifax, NS B3J 3E5

From: Frappier K.C., Deanna (she her elle la) <Deanna.Frappier@justice.gc.ca>
Sent: August 1, 2025 8:48 AM
To: Kells, Meaghan (Halifax) <mkells@coxandpalmer.com>
Subject: Mernova Medicinal/Creso CCAA questions

Ms. Kells:

We are counsel for the Canada Revenue Agency and have a few comments and questions regarding the documents that have been filed for the August 5 hearing.

At page 93 of the 1000-page PDF, at paragraph 27 of the Approval and Vesting Order it is stated that:

> *27. The Canada Revenue Agency's right of set off is preserved to the extent that: (i) any amounts that are, or become, due to Mernova or Creso with respect to obligations arising prior to the CCAA filing date of April 16, 2025; or (ii) any amounts that are, or become, due to Mernova or Creso with respect to obligations arising after the CCAA filing date of April 16, 2025 are applied against any amounts that are, or become due, from Mernova or Creso with respect to obligations arising after the CCAA filing date of April 16, 2025.*

Could you provide clarity with respect to what that provision means? Is it intended to provide that CRA will have a right of set off of pre-CCAA filing amounts and post-CCAA filing amounts that are due or become due to Mernova or Creso against any post-CCAA filing amounts that are due or become due from Mernova or Creso?

At page 999 of the 1000-age PDF, at paragraph 3 of the WEPPA Order, we have comments on the wording of the order. The original paragraph 3 states:

> *3. Pursuant to section 5(5) of the Wage Earner Protection Program Act (Canada), SC 2005, c 47, s 1 ("WEPPA"), the Applicants and their collective former employees meet the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222 and are individuals to whom the WEPPA applies as of the date of this Order.*

Pursuant to section 3.2 of the Regulations, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated. In this case, the former employer is Mernova not the Companies and we suggest that the change be made in paragraph 3 of the WEPPA order. In addition, the phrase "…and are individuals to whom the WEPPA applies as of the date of this Order" has led employees to believe that they are eligible and which goes beyond what section 3.2 of the Regulations says. As a result, we would reword section 3 of the WEPPA order to read as follows:

> *3. Pursuant to section 5(5) of the Wage Earner Protection Program Act (Canada), SC 2005, c 47, s 1 ("WEPPA"), Mernova meets the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222.*

At page 146 of the 1000-page PDF, at paragraph 62 of the Brief of Law, we have comments on the releases for the director/officer of the Companies. Section 62 states:

> *62. As outlined above, the RVO (if granted) provides for releases involving these CCAA proceedings and the CIG Transaction for various third parties, including the current directors and officers of Mernova and Creso, Mernova's legal counsel, and the Monitor and its legal counsel. The D&O Released Claims include claims against the Released D&Os for unpaid harmonized sales tax and excise taxes relating to the pre-filing period.*

We oppose the release of the director/officer of the Companies on the basis that CRA will be prejudiced by being excluded from recovery as part of the CCAA proceedings and also have to surrender its other methods for recovery, being potential assessments against the officer/director. As a result, we are requesting that a carve out be incorporated into section 25 of the Approval and Vesting order (page 92 of 1000-page PDF) to exclude a release from claims against the released director/officer for unpaid harmonized sales tax and excise taxes relating to the pre-CCAA filing period, as Mernova has significant liabilities for HST and excise taxes, currently owing in the amounts of $452,731.19 and $1,405,161.83 respectively.

At page 85 of the 1000-page PDF, at paragraph 10 of the Approval and Vesting Order, we have comments and concerns as indicated. Section 10 states:

> *10. At the Closing Time and without limiting the provisions of paragraph 5 hereof, the Purchaser, Mernova and the Monitor shall be deemed released from any all Excluded Liabilities (including all Claims other than Retained Liabilities) and all*

claims, liabilities (direct, indirect, absolute or contingent) or obligations with respect to any Taxes including penalties and interest thereon (other than those that are Retained Liabilities) of, or that relate to Mernova, provided, as it relates to the Purchaser and Mernova, such release shall not apply to (a) Taxes in respect of the business and operations conducted by Mernova after the Closing Date; or (b) Taxes expressly assumed as Retained Liabilities pursuant to the SPA, including without limiting the generality of the foregoing, all Taxes that could be assessed against the Purchaser and Mernova (including their affiliates and any predecessor corporations) pursuant to sections 160 and 160.01 of the Income Tax Act, R.S.C. 1985 c. 1 (5th Supp.), or any provincial or foreign tax equivalent in connection with Mernova. For greater certainty, nothing in this paragraph shall release or discharge any Claims against ResidualCo with respect to Taxes that are transferred to ResidualCo.

We suggest the following wording in place of what has been provided:

10. At the Closing Time and without limiting the provisions of paragraph 5 hereof, the Purchase Price paid by the Purchaser is made at fair market value and the Purchaser is an arm's length party with the Applicants. For greater certainty, nothing in this paragraph shall release or discharge any Claims against ResidualCo with respect to Taxes that are transferred to ResidualCo.

This wording eliminates including a provision in the order whereby the court oversteps the authority of the Minister to assess under section 160 of the Income Tax Act. The reworded provision allows the court to expressly declare that the factors necessary to raise a section 160 assessment are not present.

We look forward to your responses.

Deanna Frappier, K.C.

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Appendix D

Attorney General of Canada v. Former Gestion Inc., 2024 QCCA 1441

2024 QCCA 1441
Cour d'appel du Québec

Attorney General of Canada c. Former Gestion Inc.

2024 CarswellQue 14163, 2024 CarswellQue 13464, 2024 QCCA 1441, EYB 2024-556086

ATTORNEY GENERAL OF CANADA, APPLICANT-IMPLEADED PARTY, v. FORMER GESTION INC., 9379-3834 QUÉBEC INC., FORMER GROUPE INC., FORMER MANAGEMENT INC., BOUFFONS MONTRÉAL INC., BOUFFONS MTL ARTS DE LA TABLE AND 9517-3258 QUÉBEC INC., RESPONDENTS-APPLICANTS-DEBTORS, and PRICEWATERHOUSE COOPERS INC., IMPLEADED PARTY-MONITOR, and SEYA ACMAZALE, ABDELLAH ATBI, ARIANNE AUGER, NEIL BANSIL, NICOLAS BRAZAO, ANNE BUSSIÈRES-GODBOUT, CATHERINE CAHILL, KYRA CARLETON, ANDRÉ COURNOYER, ISABELLE DESMARAIS, YOURI DROUADAINE, AMÉLIE DURAND, MARGO ELI, ANDRÉ JUNIOR GIRARDEAU, BRUCE HILLS, SUZANNE HINKS, MARIE-LAURENCE JACOB, ROBYN KASZOR, JESSIE KRAVITZ, LEE-ANNE LANCASTER, ÉRIC LAVOIE, AMY LEDUC-CAMERON, CHRISTOPHER MACGREGOR, FRÉDÉRIC MARCHAND, JUNIOR PATRICK MOURGAPANAIK VIRASSAMY, FRANÇOISE POIRIER-CHARETTE, THOMAS ANDREW QUIRK, ANDREW REDDICK, CHRISTINE MELKO ROSS, GABRIELLE ROSS, CHRISTINE ROZON, BRENT FRANCIS A. SCHIESS, LUCY SEGAL, LYNE THÉRIAULT, KIM THOMAS, JULIAN TISSIER, LYSANNE GAUDREAU VILLENEUVE, ROSIE WAXMAN AND OZ WEAVER, IMPLEADED PARTIES-INTERESTED PERSONS

Vauclair J.C.A.

Heard: 22 october 2024
Judgment: 1 november 2024
Docket: C.A. Qué. Montréal 500-09-031195-241

Counsel: *Me Kim Sheppard, Me Jonathan Bachir-Legault*, for the applicant
Me Ilia Kravtsov, Me Sandra Abitan, Me Jack Matthew Little, for the respondents
Me Denis Ferland, for the impleaded party Pricewaterhouse Coopers inc.
Me Andrew J. Hatnay, Me Abir Shamim, Me Nicolas Brochu, for the impleaded parties Seya Acmazale, Abdellah Atbi, Arianne Auger, Neil Bansil, Nicolas Brazao, Anne Bussières-Godbout, Catherine Cahill, Kyra Carleton, André Cournoyer, Isabelle Desmarais, Youri Drouadaine, Amélie Durand, Margo Eli, André Junior Girardeau, Bruce Hills, Suzanne Hinks, Marie-Laurence Jacob, Robyn Kaszor, Jessie Kravitz, Lee-Anne Lancaster, Éric Lavoie, Amy Leduc-Cameron, Christopher MacGregor, Frédéric Marchand, Junior Patrick Mourgapanaik Virassamy, Françoise Poirier-Charette, Thomas Andrew Quirk, Andrew Reddick, Christine Melko Ross, Gabrielle Ross, Christine Rozon, Brent Francis A. Schiess, Lucy Segal, Lyne Thériault, Kim Thomas, Julian Tissier, Lysanne Gaudreau Villeneuve, Rosie Waxman and Oz Weaver

Subject: Insolvency; Corporate and Commercial

***Vauclair J.C.A.* :**

1 I am seized with an application by the Attorney General of Canada ("AGC") seeking leave to appeal the decision rendered on August 27, 2024, by the Honourable Justice David R. Collier of the Superior Court, District of Montreal. The decision was rendered in connection with the restructuring of the Just for Laughs Group ("JFL Group") under the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 ("*CCAA*"): see *Arrangement relatif à Former Gestion Inc.*, 2024 QCCS 3645.

Context

2 The context is fully explained in the decision of Collier, J. It is sufficient for the purposes of the present application to point out that negotiations yielded a transaction with ComediHa! 24 Inc. pursuant to which (1) certain entities of the JFL Group, notably Former Gestion Inc., sold the bulk of their assets under an asset vesting order, and (2) others sold their shares and transferred certain of their liabilities to a company newly incorporated for the transaction ("ResidualCo") pursuant to a reverse vesting order (the "RVO Entities"). The transaction was made under the *CCAA*. On June 7, 2024, the Superior Court approved the transaction.

3 The transaction agreement required that all employees of Former Gestion Inc. be terminated, and that 55 employees of five RVO Entities also be terminated and their employment liabilities transferred to ResidualCo. A difficulty arose regarding the latter group of employees.

4 Before Collier, J., an application for declaratory relief was presented seeking to secure the application of the *WEPPA* for the terminated employees because of the concern "that Employment and Social Development Canada (ESDC), the body that administers WEPPA, may refuse to pay outstanding wages to the former employees of the RVO Entities": 2024 QCCS 3645, para. 9.

The decision

5 Collier, J. declared that the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 ("*WEPPA*") applied to former employees of Former Gestion Inc. and to former employees of the RVO Entities.

6 He determined that the RVO Entities (as well as Former Gestion Inc., but this is not at issue in the proposed appeal) met the criteria prescribed by s. 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 ("*WEPP Regulations*") and that the *WEPPA* applied.

7 It is undisputed, and I agree, that according to ss. 5(1)(iv) and 5(5) of the *WEPPA* and s. 3.2 of the *WEPP Regulations*, the Superior Court, as a court seized with relevant proceedings, may determine whether the criteria prescribed by s. 3.2 of the *WEPP Regulations* are satisfied. That limited conclusion is then factored in when establishing a former employee's eligibility for payments under the *WEPPA*.

8 Section 3.2 of the *WEPP Regulations* provides:

> 3.2 For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.
>
> 3.2 Pour l'application du paragraphe 5(5) de la Loi, le tribunal peut décider si l'ancien employeur est l'ancien employeur dont tous les employés ont été congédiés ou licenciés au Canada, à l'exception de ceux dont les services sont retenus pour cesser progressivement ses activités commerciales.

9 It is also apparent that s. 3.2 of the *WEPP Regulations* gives the judge broad discretion to make the determination under that section.

10 Collier, J.'s declaratory conclusion reads:

> [37] DECLARES that pursuant to section 5(5) of WEPPA, Former Gestion Inc. and the RVO Entities as defined herein are former employers that meet the criteria prescribed by section 3.2 of the WEPP Regulations, and all their former employees in Canada who have been terminated are individuals to whom WEPPA applies;

Position of the parties

11 The applicant submits that Collier, J. went further than required by arrogating the Minister's powers to himself. By declaring that the *WEPPA* applied, he infringed the discretion of the Minister, who, according to law, is responsible for determining the eligibility of individuals under the *WEPPA*. This error allegedly transpires from Collier, J.'s reasons, where he decided "the relevant time for determining when WEPPA applies" and referred, in passing, to s. 5(1)(c) of the *WEPPA*. The applicant insisted on the words used in paragraph 34 of the decision:

> [34] The Court agrees with the Applicants that the relevant time for determining when WEPPA applies is the moment at which all an insolvent entity's employees are terminated due to a bankruptcy or restructuring. That is when the employee's entitlement to compensation arises and neither the Act nor the regulations indicate that circumstances arising after the termination are relevant. Consequently, in the event an employee is owed eligible wages by a former employer at the moment the former employer terminates all its employees, s. 5(1)(c) of WEPPA ("the individual is owed eligible wages by the former employer") is satisfied.

[Underlining added]

12 In his application for leave to appeal, the AGC argues that Collier, J. erred:

> a. by failing to decline to rule on a matter under the exclusive jurisdiction of the Minister to determine WEPP eligibility, which is subject to review only by the CIRB and the Federal Court of Appeal. The Superior Court, therefore, infringed upon the Minister's exclusive jurisdiction.
>
> b. subsidiarily, by determining that the relevant time to determine eligibility is when all of an insolvent entity's employees are terminated. The criteria used by the Superior Court to make this determination is flawed. The relevant time for determining when WEPPA applies is the moment at which all the conditions of eligibility are met.
>
> [Reference omitted]

13 All of the respondents stress that the decision does not declare *eligibility*, but only the applicability of the *WEPPA*. Moreover, they submit, the decision is sound since it would be unfair that eligibility of terminated employees for the federal assistance program be determined by the mode of purchase, regardless of the structure or impact of the global transaction.

Leave to appeal

14 Given the broad powers conferred on the judge in this respect, leave to appeal is granted only sparingly. Such leave is governed by s. 13 of the *CCAA*. The case law recognizes that, to obtain leave, four cumulative criteria must be met:

> [15] In a series of cases emanating first from British Columbia and then from Quebec, Alberta and Ontario, there has developed a consensus among the Courts of Appeal that leave to appeal an order or decision made under the *CCAA* should be granted only where there are serious and arguable grounds that are of real significance and interest to the parties and to the practice in general. The test is often expressed as a four-part one:
>
> 1. whether the issue on appeal is of significance to the practice;
>
> 2. whether the issue raised is of significance to the action itself;
>
> 3. whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and,
>
> 4. whether the appeal will unduly hinder the progress of the action.
>
> [References omitted]

Stomp Pork Farm Ltd., Re, 2008 SKCA 73, para. 15; see also *Bloom Lake, g.p.l. (Arrangement relatif à)*, 2015 QCCA 1351, paras. 29-30.

Analysis

15 The applicant has failed to convince me that the appeal is *prima facie* meritorious.

16 Again, it is undisputed, and I agree, that it is for the Minister to decide if an applicant under the *WEPPA* is *eligible* to receive a payment.

17 Collier, J. never concluded that one or more of the employees is *eligible* to receive a payment under the *WEPPA*. The only declaratory conclusion is reproduced above, and it obviously does not speak to eligibility. Further, the applicant has failed to convince me that it does so indirectly.

18 By declaring that the RVO Entities are former employers that meet the criteria prescribed by s. 3.2 of the *WEPP Regulations*, the judge stayed within the boundaries of the broad discretion conferred on him by law. Moreover, there is nothing wrong with the judge justifying his decision by using a time reference that is relevant to the specific realities of the case and pertinent for purposes of "determin[ing] whether the former employer is the former employer all of whose employees in Canada have been terminated", as s. 3.2 requires. Finally, since the judge came to this conclusion, it is quite evident that the terminated employees are individuals to whom the *WEPPA* applies. The judge's words to that effect seem somewhat superfluous, and in making that statement, the judge did not decide the question of *eligibility*, neither generally nor individually.

19 In short, the judge addressed a specific situation and offered a response authorized by the *WEPPA* and its regulations. Despite the arguments ably presented by counsel for the applicant, the assertion that the decision readily qualifies all the employees as being *eligible* for a *WEPPA* payment has no merit in the circumstances.

FOR THESE REASONS, THE UNDERSIGNED:

20 *DISMISSES* the application for leave to appeal, with legal costs.

Appendix E

La Plata – Letter of Support of the Release of Ms. MacKay

August 1, 2025

To Whom it May Concern:

Re: Share Purchase Agreement for the shares of Mernova Medicinal Inc. – CCAA Proceedings (Hearing Date: August 5, 2025)

We are the first secured creditor of Mernova Medicinal Inc. ("**Mernova**") and the Interim Lender in the proceedings commenced under the *Companies' Creditors Arrangement Act* ("**CCAA**") regarding Mernova and Creso Canada Limited (collectively, the "**Companies**") as Hfx No. 542329.

We write with respect to the proposed reverse vesting order being sought as part of a Share Purchase Agreement (the "**Transaction**") between the Companies and Canada's Island Garden Inc. ("**CIG**").

Mernova operates in an extraordinarily challenging and heavily regulated sector. The current sole director of Mernova, Micheline MacKay (the "**Current Director**") has demonstrated exceptional governance and has implemented best practices that have been vital to navigating the complexities of the cannabis industry. The Current Director's strategic oversight has enabled Mernova to adapt to extreme market conditions, maintain operational stability, and position itself for survival under CCAA protection.

The Transaction would not be possible without the Current Director's diligence and expertise in maintaining the operations of Mernova throughout the duration of the CCAA proceedings including their leadership in the sales process that precipitated the Transaction.

We understand that equally critical to the Transaction is CIG's intention to continue to rely on the Current Director post-closing. Beyond Ms. MacKay's deep knowledge and understanding of Mernova's business, we understand that CIG intends for her to continue in her role as the "responsible person" required under cannabis legislation for the maintenance of Mernova's cannabis licenses.

The Transaction is contingent on the continued participation of the Current Director and the leadership of Ms. MacKay. Without her involvement, the operational continuity and long-term viability of Mernova would be at significant risk, jeopardizing the livelihoods of its employees and undermining the value of the proposed transaction. The expertise, dedication, and institutional knowledge of this individual cannot be replicated, and her absence would render it nearly impossible for the Transaction to proceed. Should the Transaction not proceed and the Current Director cease her participation, the total value of Mernova in a share purchase would be significantly diminished. It is our belief that the continued involvement of the Current Director is critical to maximizing the value of Mernova and, in particular, to selling it as a going concern.

Furthermore, we respectfully request that the Court approve the Transaction without imposing prior directors' liabilities on the Current Director for actions taken in her capacity as director before Mernova entered CCAA protection. Imposing such liabilities would unfairly penalize this individual for her efforts to steer Mernova through unprecedented challenges and could deter her continued participation, which, as outlined above, is critical to the success of the Transaction and the preservation of Mernova's operations.

The approval of the Transaction as proposed will safeguard the employment of Mernova's workforce, maintain the integrity of its operations, and maximize value for all stakeholders. We believe this path forward, with the retention of the Current Director in the go-forward entity, represents the best opportunity for Mernova to emerge from CCAA protection as a sustainable and competitive enterprise.

We respectfully ask that the unique and indispensable contributions of the Current Director and leadership team be considered as part of the relief being sought on August 5, 2025.

Thank you for your attention to this matter. Should you require further information, please do not hesitate to contact us.

Yours truly,

La Plata Capital LLC

Geoffrey M. Long
President

Appendix F

CIG – Letter of Support of the Release of Ms. MacKay

Canada's Island Garden

August 2nd, 2025

To Whom it May Concern:

Re: Share Purchase Agreement for the shares of Mernova Medicinal Inc. – CCAA Proceedings (Hearing Date: August 5, 2025)

We are the prospective purchaser of the shares of Mernova Medicinal Inc. ("**Mernova**") in the proceedings commenced under the *Companies' Creditors Arrangement Act* ("**CCAA**") regarding Mernova and Creso Canada Limited (collectively, the "**Companies**") as Hfx No. 542329.

We write with respect to the proposed reverse vesting order being sought as part of a Share Purchase Agreement (the "**Transaction**") between the Companies and Canada's Island Garden Inc. ("**CIG**").

Mernova operates in an extraordinarily challenging and heavily regulated sector. The current director of Mernova, Micheline MacKay (the "**Current Director**") has demonstrated exceptional governance and implemented best practices that have been vital to navigating the complexities of the cannabis industry. The Current Director's strategic oversight has enabled Mernova to adapt to extreme market conditions, maintain operational stability, and position itself for survival under CCAA protection.

The Transaction would not be possible without the Current Director's diligence and expertise in maintaining the operations of Mernova throughout the duration of the CCAA proceedings including her leadership in the sales process that precipitated the Transaction and maintaining the key relationship with the provincial authorities who are the most significant clients of Mernova.

A critical component of the Transaction is CIG's intention to continue to rely on the Current Director post-closing. Beyond Ms. MacKay's deep knowledge and understanding of Mernova's business, we intend for her to continue in her role as the "responsible person" required under cannabis legislation for the maintenance of Mernova's cannabis licenses. We are not aware of any other person willing and able to fulfill the role of responsible person at Mernova. Without such a responsible person, Mernova would be entirely unable to continue its operations.

The Transaction is contingent on the continued participation of the Current Director and the leadership of Ms. MacKay. Without her involvement, the operational continuity and long-term viability of Mernova would be at significant risk, jeopardizing the livelihoods of its employees and undermining the value of the proposed transaction. The expertise, dedication, and institutional knowledge of this individual cannot be replicated, and her absence would render it nearly impossible for the Transaction to proceed. Should the Transaction not proceed and the Current Director cease her participation, the total value of Mernova in a share purchase would be dramatically diminished.

Furthermore, we respectfully request that the Court approve the Transaction without imposing prior directors' liabilities on the Current Director for actions taken in her capacity as director before Mernova entered CCAA protection. Imposing such liabilities would unfairly penalize this individual for her efforts to steer Mernova through unprecedented challenges and could deter her continued participation, which, as outlined above, is critical to the success of the Transaction and the preservation of Mernova's operations.

The approval of the Transaction as proposed will safeguard the employment of Mernova's workforce, maintain the integrity of its operations, and maximize value for all stakeholders. We believe this path forward, with the retention of the Current Director in the go-forward entity, represents the best opportunity for Mernova to emerge from CCAA protection as a sustainable and competitive enterprise.

We respectfully ask that the unique and indispensable contributions of the Current Director and leadership team be considered as part of the relief being sought on August 5, 2025.

Thank you for your attention to this matter. Should you require further information, please do not hesitate to contact us.

Yours truly,

Alex Smith

CEO

Canada’s Island Garden Inc.