

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF SAINT JOHN

**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 709280 NB LTD., 103232 P.E.I. INC.,  
CAN-AM LOBSTER & SHELLFISH LTD., 103233 P.E.I. INC.,  
103234 P.E.I. INC., 3249640 NOVA SCOTIA LIMITED and  
12588129 CANADA INC. (each a "Company" and  
collectively the "Companies")**

**B E T W E E N :**

**THE TORONTO-DOMINION BANK**

**APPLICANT**

- and -

**709280 NB LTD., 103232 P.E.I. INC., CAN-AM LOBSTER  
& SHELLFISH LTD., 103233 P.E.I. INC., 103234 P.E.I.  
INC., 3249640 NOVA SCOTIA LIMITED, and 12588129  
CANADA INC.**

**RESPONDENTS**

**BRIEF ON LAW**

**Submitted on Behalf of the Monitor, Deloitte Restructuring Inc.**  
(for the Hearing scheduled for August 23, 2024, at 11:00 a.m. ADT)

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Solicitors for the Monitor,  
Deloitte Restructuring Inc.

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## PART I - BACKGROUND

1. Deloitte Restructuring Inc. (“**Deloitte**”), in its capacity as the court-appointed monitor (the “**Monitor**”) of 709280 NB LTD., 103232 P.E.I. INC., CAN-AM LOBSTER & SHELLFISH LTD., 103233 P.E.I. INC., 103234 P.E.I. INC., 3249640 NOVA SCOTIA LIMITED and 12588129 CANADA INC. (collectively, the “**Debtors**”), is bringing this motion to seek relief pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCA**”).

2. Specifically, the Monitor is requesting an order as follows:

- (a) If necessary, abridging the time for service of this Notice of Motion, the eighth report of the Monitor dated August 15, 2024 (the “**Eighth Report**”) and/or the Record on Motion, or excusing the lack of service of this Notice of Motion and/or the Record on Motion;
- (b) extending the Stay Period (as defined below) from August 30, 2024, until and including October 31, 2024;
- (c) approving the activities of the Monitor, as set out the Eighth Report of the Monitor dated August 15, 2024.

3. Capitalized terms used herein and not otherwise defined have the meaning attributed to them in the Eighth Report.

## PART II - FACTS

### Background

4. The Debtors are a group of privately held companies carrying on business as buyers, processors and wholesalers of live and cooked lobster in Atlantic Canada.
5. On September 21, 2023, upon application by the Toronto-Dominion Bank (the “**Applicant**”), this Court granted protection to the Debtors under the CCAA, pursuant to:
  - (a) an initial order, which, among other things, appointed the Monitor and the CRO, and approved a stay of proceedings until October 1, 2023 (as subsequently extended, the “**Stay Period**”); and
  - (b) a charging order, which, among other things, granted an administration charge in the amount of \$250,000 (as subsequently amended, the “**Administration Charge**”).
6. On September 29, 2023, this Court approved, among other things:
  - (a) an amended and restated initial order, which extended the Stay Period to October 6, 2023, and provided more limited powers to the Monitor; and
  - (b) an amended and restated charging order, which increased the quantum of the Administration Charge to \$500,000.
7. Pursuant to an order granted on October 25, 2023, this Court approved, among other things, a sale and investment solicitation process (the “**SISP**”) and an extension of the Stay Period to January 31, 2024. The SISP was developed by the Monitor in consultation with the CRO and the Applicant.

8. On January 29, 2024, this Court granted the following orders:
  - (a) The Approval and Vesting Order (the “**AVO**”) authorizing the sale of the Companies’ assets in accordance with the terms of the Sale Agreement dated January 12, 2024 (the “Sale Agreement”) to Phillips Bridge Seafood ULC (the “Transaction”)
  - (b) The Ancillary Order providing for, inter alias, the extension of the Stay Period from January 31, 2024 to April 30, 2024;
  - (c) The Priority Claims Order for the purposes of settling any claims that rank in priority to the claims of the Applicant, The Toronto-Dominion Bank;
  
9. On March 19, 2024, this Court issued an Amended Approval and Vesting Order to facilitate the conveyancing of certain of classes of assets, among the Purchased Assets to newly incorporated affiliates of the Purchaser, namely, Phillips Bridge Properties Canada ULC and Phillips Bridge Logistics Corp.
  
10. On April 15, 2024, this Court issued an Ancillary Order extending the Stay Period from April 30, 2024, until and including August 30, 2024, approving the activities of the Monitor as reported in the Seventh Report of the Monitor dated April 10, 2024 and declaring that the Debtors, and their collective former employes were individuals to whom the *Wage Earner Protection Act*, SC 2005, c. 47 (the “**WEPPA**”) applies.

## The Transaction

11. The Transaction was completed on April 23, 2024 (the “**Closing Date**”). Subsequent to the Closing Date, the Debtors’ ongoing business operations ceased, and all employees were terminated by the Monitor;

12. Subsequent to closing, certain former staff of the Debtors have assisted the Monitor to collect trade accounts receivables, filing excise tax returns and providing the Monitor information required for WEPPA;

13. The Monitor continues to receive cooperation from former staff and the CRO is assisting with the administration of the CCAA Proceedings;

14. The Monitor is actively engaged in preparing a proposed distribution schedule (the “**Proposed Distribution Schedule**”), which is nearing completion and will be shared with the affected stakeholders in the near future.

15. The Monitor also continues to be engaged with CRA regarding the CRA Priority Claim. The CRA Priority Claim is part of the Proposed Distribution Schedule.

## Extension of the Stay Period

16. The Stay Period currently expires on August 30, 2024 and the Monitor seeks to extend the Stay Period until and including October 31, 2024;

17. The requested extension will allow the Monitor to complete the Priority Claims Process and other remaining issues in the estate, including finalizing the Proposed Distribution

Schedule and preparing a motion for the distribution of the proceeds of sale for consideration by this Court to be heard in the coming months;

18. The Monitor has prepared an interim statement of receipt and disbursements with the Eighth Report which shows that if the Stay Period is extended, the Debtors will have sufficient funds to cover their expenses during the extended Stay Period;

### **PART III - ISSUES**

19. The primary legal questions at issue on this motion relate to:

- (a) The extension of the Stay Period to and including October 31, 2024;
- (b) Approval of the Monitor's activities as set out in the Eighth Report of the Monitor.

## **PART IV - LAW & ARGUMENT**

### Extension of the Stay Period

20. Pursuant to section 11.02 of the CCAA, the Court may grant an extension of the stay of proceeding where: (a) circumstances exist that make the order appropriate and (b) the debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence. There is no statutory time limit on how long a stay of proceeding can be extended.

21. The Stay Period currently expires on August 30, 2024. The Monitor asks that the Stay Period be extended until October 31, 2024 inclusively. The Monitor submits that extending the Stay Period is appropriate in the circumstances for the following reasons:

- (a) The stay of proceeding will provide the necessary time for the Monitor to complete the remaining post closing items, primarily, collection efforts for residual assets and distribution;
- (b) The stay of proceeding is required to provide the necessary stability and certainty to enable the Monitor to prepare a Proposed Distribution Schedule to be shared with the affected stakeholders and to enter into discussions with the stakeholders and their professional advisors about the proposed distribution;
- (c) The Monitor and the CRO, with the powers granted to them, have acted and continue to act in good faith and with due diligence in their oversight of the operations of the Debtors;
- (d) The Debtors are acting in good faith and with due diligence;

## Approval of Monitor's Activities

22. The Monitor submits that a request to approve a monitor's report is not unusual and there are good policy and practical reasons for the Court to approve a monitor's activities, in particular, court approval:

- (a) allows the Monitor to move forward with the next steps in the CCAA proceedings;
- (b) brings the Monitor's activities before the Court;
- (c) allows and opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enable the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;
- (e) provides protection for the Monitor not otherwise provided by the CCAA; and
- (f) protect the creditors from the delay and distribution that would be caused by:
  - (i) Re-litigation of steps taken to date; and
  - (ii) Potential indemnity claims by the Monitor.

See: [Re Target Canada Co., 2015 ONSC 7574](#)

23. The activities of the Monitor, through the Seventh Report dated April 10, 2024, and were approved by this Court in the Ancillary Order dated April 15, 2024.

24. The Monitor has acted responsibly and carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the Initial Orders and the other orders

made in this proceeding.

25. The Monitor submits that the activities outlined in the Eighth Report filed for this motion should be approved.

**PART V - RELIEF SOUGHT**

26. For the reasons set out above, the Monitor requests the orders substantially in the forms attached to the Monitor's Notice of Motion.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 22<sup>nd</sup> day of August, 2024.

**COX & PALMER**



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**Gavin MacDonald**  
**Simon-Pierre Godbout**

Solicitors for the Moving Party, Deloitte Restructuring Inc., in its capacity as the court-appointed monitor of 709280 NB LTD., 103232 P.E.I. INC., CAN-AM LOBSTER & SHELLFISH LTD., 103233 P.E.I. INC., 103234 P.E.I. INC., 3249640 NOVA SCOTIA LIMITED and 12588129 CANADA INC.

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**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

**Cases**

1. *Re Target Canada Co.*, [2015 ONSC 7574](#)

**Statutes**

2. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36
3. *Wage Earner Protection Act*, SC 2005, c. 47