

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 June 17, 2025, at 1:30 p.m. ADT)

**Gavin MacDonald
Simon-Pierre Godbout**

COX & PALMER

Nova Centre – South Tower
1500-1625 Grafton Street
Halifax, NS N3J 0E8
Tel: (902) 421-6262
Fax: (902) 421-3130

gmacdonald@coxandpalmer.com
spgodbout@coxandpalmer.com

Solicitors for the Monitor,
Deloitte Restructuring Inc.

TABLE OF CONTENTS

PART I - BACKGROUND	1
PART II - FACTS	4
PART III - ISSUES	10
PART IV - LAW & ARGUMENT	11
PART V - RELIEF SOUGHT	16
LIST OF AUTHORITIES	17

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 and validating the timing and method of service of the Notice of Motion, the 10th report of the Monitor dated June 12, 2025 (the “**Tenth Report**”) and/or the Record on Motion so that the Motion is properly returnable and further service is dispensed with;
- (b) Approving the activities of the Monitor, as set out in the Tenth Report of the Monitor dated June 12, 2025;
- (c) Approving the fees and disbursements of the Monitor and the Monitor’s counsel, as set out in the Tenth Report of the Monitor;
- (d) Authorizing and directing the Monitor to distribute, from the funds currently held, the following amounts (the “**Proposed Second Distribution**”):
 - (i) \$15,000 to the Canada Revenue Agency (the “**CRA**”) as payment of the CRA Trust Claim (as defined in the Ninth Report); and

- (ii) \$389,324 to Toronto-Dominion Bank (“**TD Bank**”) in reduction of the Debtors’ indebtedness to TD Bank; and
 - (iii) Upon the termination of the CCAA proceedings, all funds then held by the Monitor to TD Bank.
- (e) Declaring that TD Bank, in its capacity as secured creditor of the Debtors, is entitled pursuant to its security to enforce the Debtors’ rights under all agreements giving rise to the accounts receivable presently owing to the Debtors, including the right to collect such amounts and to discharge the obligations of account debtors thereunder;
- (f) Terminating these CCAA proceedings upon the service of a monitor’s certificate certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with these CCAA proceedings have been completed to the satisfaction of the Monitor on the service list in these CCAA proceedings.;
- (g) Discharging Deloitte in its capacity as Monitor and declaring that Deloitte shall have no further duties or obligations pursuant to the terms of the Discharge Order or pursuant to the provisions of the CCAA;
- (h) Declaring that all steps taken by and activities of the Monitor, as outlined in the reports of the Monitor filed in the within matter including, without limitation, the Tenth Report, and all amounts distributed by the Monitor are approved;
- (i) Declaring that Deloitte has duly and properly discharged its duties, responsibilities and obligations as Monitor and is hereby discharged and

released from any and all further obligations as Monitor, or any claims which have been raised or could have been raised in these proceedings and any and all liability in respect of any act done or default made by Deloitte or any acts or omissions of Deloitte in respect of its conduct as Monitor pursuant to its appointment;

- (j) Declaring that, notwithstanding the release and discharge of Deloitte as Monitor, the terms beneficial to Deloitte as set out in any Order of the Court shall remain in full force and effect;
- (k) Discharging David Boyd, representative of Resolve Advisory Services Ltd., in his capacity as the CRO of the Debtors in these CCAA proceedings (the “**CRO**”) and declaring that the CRO shall have no further duties or obligations pursuant to the terms of the Discharge Order or pursuant to the provisions of the CCAA; and
- (l) Releasing the Administration Charge, the Directors’ and Officers’ Charge and the DIP Lender’s Charge granted by this Court in these CCAA proceedings (collectively, the “**Court Ordered Charges**”).

PART II - FACTS

Background

3. 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.
4. On September 21, 2023, upon application by the TD Bank, 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**”) a Directors’ and Officers’ Charge in the amount of \$375,000 (the “**D&O Charge**”) and a DIP Lender’s Charge in the amount of \$3,000,000.
5. 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.
6. On October 17, 2023, this Court approved an increase of the DIP Lender’s Charge from \$3,000,000 to \$4,000,000.

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 Debtors’ 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 alia*, 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 TD 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 employees met the criteria established by section 3.2 of

the *Wage Earner Protection Regulations*, SOR/2008-222 issued pursuant to the *Wage Earner Protection Act*, SC 2005, c. 47 (the “**WEPP**”) and are individuals to whom the WEPP applies.

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. On August 26, 2024, this Court issued an Ancillary Order extending the stay of proceedings from April 30, 2024, to October 31, 2024.

13. On October 30, 2024, this Court granted the following orders:

(a) The Distribution Order authorizing and directing Deloitte to distribute various amounts owing to the CRA, Maplewood Trust, by its Trustee Warren Ellis and Thunder Cove Investments Inc. (collectively, “**MTTCI**”), the Business Development Bank of Canada (“**BDC**”) and TD Bank, and to pay the WEPP Withholding, as defined in the Ninth Report, to Service Canada; and

(b) The Ancillary Order providing for, *inter alia*, the extension of the Stay Period from October 31, 2024, to June 30, 2025.

14. The distributions contemplated by the Distribution Order dated October 30, 2024, have since been completed to the satisfaction of the Monitor.

15. As at the date of the Tenth Report, the Debtors have approximately \$459,000 of cash which forms the basis of the Proposed Second Distribution (the “**Distributable Funds**”).

16. While efforts continue to increase the Distributable Funds, there is no certainty this will occur and furthermore, further activities will continue with the appointment of Deloitte as the Receiver of the Debtors pursuant to security held by TD Bank.

17. The Monitor is proposing to withhold \$41,000 (inclusive of HST) to cover the outstanding and projected professional fees of the Monitor and the Monitor's Counsel, to complete the administration of these CCAA Proceedings.

18. As part of the Distribution Order granted on October 30, 2024, the Court authorized the Monitor to pay the WEPP Withholding of up to \$25,000 to Service Canada without further order of the Court.

19. The Monitor has received a statement from Service Canada outlining the super priority. The Monitor is in the process of paying the WEPP Amount to Service Canada.

20. The Monitor is proposing to withhold \$5,000 to cover financial consulting services provided to the Monitor throughout these CCAA Proceedings.

21. Subsequent to the Ninth Report, the Monitor has realized on an account receivable in 103234 PEI Inc. ("**103**") in the amount of \$15,000 which has priority over TD Bank's secured claim. The proposed distribution to CRA is \$15,000 (the "**Second CRA Distribution**").

22. Enclosed as Appendix B to the Ninth Report was a copy of the Security Opinion. Paragraph 56 of the Ninth Report provided a summary of the Security Opinion, namely that the TD Bank's security maintains a residual charge over all proceeds subject to the Deemed Trust Claim and specific encumbrances maintained by MTTCl and BDC.

23. As part of the Distribution Order granted on October 30, 2024, the CRA Trust Claim, and the indebtedness of the Debtors to MTTCI and BDC were paid by the Monitor.

24. As at the date of the Tenth Report, the proposed distribution to TD Bank is \$389,324.

25. The Monitor continues realization efforts related to specific assets of the Debtors, mostly notably:

(a) a related party amount valued in the books and records at approximately \$533,000;

(b) a promissory note valued in the books and records at approximately \$150,000;

(c) a related party amount valued in the books and records at approximately \$86,000;

(d) an account receivable valued at approximately \$24,000; and

(e) an account receivable valued at approximately \$15,000 (collectively, the “Residual Assets”).

26. The Monitor continues to have ongoing and productive discussions with counterparties to the Residual Assets and anticipates that some realizations may occur on or before June 30, 2025.

27. As contained in the Security Opinion, the Applicant is the only party with an interest in the Residual Assets and such the Monitor and TD Bank have engaged in discussions regarding optionality as it relates to the Residual Assets and these CCAA Proceedings, which discussions

have concluded with the TD Bank appointing Deloitte as the Receiver after June 30, 2025 to continue realization activities pertaining to the Residual Assets.

PART III - ISSUES

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

- (a) The approval of the Monitor's activities as set out in the Tenth Report of the Monitor;
- (b) The approval of the Proposed Second Distribution;
- (c) The approval of the Monitor and Monitor's Counsel's Fees; and
- (d) The termination of these CCAA proceedings, discharge of the Monitor and the CRO, and the release of the Court Ordered Charges.

PART IV - LAW & ARGUMENT

Approval of Monitor's Activities

29. 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](#)

30. The activities of the Monitor, through the Ninth Report dated October 24, 2024, were approved by this Court in the Distribution Order dated October 30, 2024.

31. 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.

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

Approval of the Proposed Second Distribution

33. The Monitor respectfully submits that it is appropriate for this Court to authorize the Proposed Second Distribution.

34. In [*AbitibiBowater inc. \(arrangement relative à\)*](#), 2009 QCCS 6461 at paragraph 75, the Court approved the distribution of proceeds from sale proceeds from a CCAA sale process on the basis that, among other things:

- (a) The distributions were made in accordance with valid and enforceable security interest; and
- (b) The distribution would leave the debtor with sufficient liquidity.

35. The Monitor respectfully submits that both criteria are satisfied by the Proposed Second Distribution. The Security Opinion prepared by the Monitor's counsel confirms that the security held by TD Bank is valid and enforceable against the Debtors' assets.

Approval of the Fees

36. The Monitor submits that the Court's broad powers granted under Section 11 of the CCAA provide the Court broad supervisory powers and the inherent jurisdiction to approve or

disapprove of any account during CCAA proceedings if it concludes that it is just and equitable to do so (see [Tepper Holdings Inc. \(Re\)](#), 2011 NBQB 311 at para 30).

37. Accordingly, the Monitor seeks the approval of the following fees and disbursements of itself and of its counsel, Cox & Palmer:

- (a) Fees and Disbursements of the Monitor from October 1, 2024 to March 31, 2025 in the amount of \$61,012.69 (inclusive of HST), charged at an average billing rate of approximately \$472.15 per hour; and
- (b) Fees and disbursements of the Monitor's counsel for the period of October 1, 2024 to March 31, 2025 in the amount of \$13,365.90 (inclusive of HST), charged at an average billing rate of approximately \$353.33 per hour.

38. The Monitor submits that the role of the Court in approving the fees and disbursements incurred by the Monitor and its counsel is to ensure that fees are fair and reasonable in the circumstances (see [Bank of Nova Scotia v. Deimer](#), 2014 ONCA 851 at para 45). The Monitor is of the view that the fees incurred are reasonable and directly related to the steps necessarily undertaken to complete the Transaction and are consistent with the mandate of the Monitor and appropriate in the circumstances and should therefore be approved.

Termination of the CCAA Proceedings, Discharge of the Monitor and the CRO and Release of the Court Ordered Charges

39. Section 11 of the CCAA vests this Court with broad discretion to make “any order that it considers appropriate in the circumstances.” This discretion has been characterized as the “engine that drives” the CCAA’s flexible statutory scheme, allowing Courts to make orders

responsive to the circumstances of each case (see [9354-9186 Québec inc. v. Callidus Capital Corp.](#), 2020 SCC 10 at para 48 [*Callidus*]).

40. The exercise of this Court’s discretion under section 11 of the CCAA must “further the remedial objectives of the CCAA and be guided by the baseline considerations of appropriateness, good faith, and due diligence” (*Callidus, ibid*, at paras 49, 67 and 70; [Century Services Inc. v. Canada \(Attorney General\)](#), 2010 SCC 60 at paras 59 and 70 [*Century Services*]). An order under section 11 of the CCAA will be appropriate where it “advances the policy objectives underlying the CCAA” (*Callidus, ibid*, at para 50; *Century Services, ibid*, at para 70). These objectives include “providing for timely, efficient and impartial resolution of a debtor’s insolvency” and “preserving and maximizing the value of a debtor’s assets” ((*Callidus, ibid*, at para 40; *Century Services, ibid*, at paras 15, 59, 70).

41. Having regard to the foregoing considerations, the Monitor submits that it is appropriate for this Court to exercise its jurisdiction to authorize the termination of the CCAA Proceedings, the release the Court Ordered Charges and the discharge of the Monitor and the CRO given that, among other things:

- (a) The Residual Assets will be dealt with by Deloitte in its capacity as private receiver of the Debtors, following its appointment by the principal secured creditor, TD Bank, pursuant to, *inter alia*, a General Security Agreement dated May 19, 2022, granted in favour of TD Bank;
- (b) The D&O Charge was granted as security for indemnity obligations of the Companies in favour of their directors and officers arising during the course of these CCAA proceedings. The CCAA proceedings are now being terminated, the

Debtors have ceased operations, and the Monitor is not aware of any outstanding or anticipated claims requiring recourse to the D&O Charge;

- (c) The Administration Charge was granted as security for the payment of professional fees and disbursement incurred by the Monitor, counsel to the Monitor, counsel to the Applicant, TD Bank, the Chief Restructuring Officer and the Debtor's counsel. The Monitor proposes to hold the amount of \$41,000 to cover the estimated Monitor's fees and the estimated legal fees to complete the CCAA proceedings and the Monitor is not aware of any other outstanding or anticipated claims requiring recourse to the Administration Charge; and
- (d) The interim financing facility that formed the basis of the DIP Lender's Charge has been fully satisfied and repaid in accordance with its terms.

42. TD Bank, the sole stakeholder with an economic interest in these CCAA Proceedings, is supportive of the termination of the CCAA Proceedings and the release of the Court Ordered Charges.

PART V - RELIEF SOUGHT

43. For the reasons set out above, the Monitor requests the order substantially in the form attached to the Monitor's Notice of Motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of June, 2025.

COX & PALMER



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.

Cox & Palmer
Nova Centre – South Tower
1500-1625 Grafton Street
Halifax, NS B3J 0E8
Telephone: 902 421 6262
Fax: 902-421-3130
gmacdonald@coxandpalmer.com
spgodbout@coxandpalmer.com

LIST OF AUTHORITIES

Cases

1. *AbitibiBowater Inc. (arrangement relatif à)*, [2009 QCCS 6461](#)
2. *Re Target Canada Co.*, [2015 ONSC 7574](#)
3. *Tepper Holdings Inc. (Re)*, [2011 NBOB 311](#)
4. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#)
5. *9354-9186 Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#)
6. *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#)

Statutes

7. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36
8. *Wage Earner Protection Act*, SC 2005, c. 47
9. *Wage Earner Protection Regulations*, SOR/2008-222