

COURT FILE NO. CL-26-00000265-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF
FRESHSTONE BRANDS INC.**

Applicant

**FACTUM OF THE APPLICANT
(Re: Initial Order)
(Returnable June 9, 2026)**

June 8, 2026

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**ONTARIO
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**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
FRESHSTONE BRANDS INC.**

(Applicant)

PART I - OVERVIEW

1. Freshstone Brands Inc. (the “**Applicant**” or “**Freshstone**”) seeks creditor protection and certain other ancillary relief in the context of the current proceedings (the “**CCAA Proceedings**”) pursuant to an order (the “**Initial Order**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), substantially in the form of the draft order attached to the Applicant’s Application Record dated June 8, 2026 (the “**Application Record**”) at Tab 1.
2. Freshstone is a leading Canadian manufacturer of prepared meals with operations strategically located mainly in Ontario, near the U.S. market, and specializing in fresh, high-quality products for retail, foodservice and co-manufacturing channels.
3. Given the current economic context, Freshstone has faced significant financial challenges in recent months. Persistent inflationary pressures affecting raw material costs, labor expenses, and supply chain logistics have substantially increased the company’s cost of operations. At the same time, these inflationary conditions have led to reduced consumer demand, leading to increased price-sensitive purchasing behavior. The combination of rising costs and declining sales volumes has compressed Freshstone’s margins and generated material financial difficulties.

4. In an effort to stabilize its operations and address the foregoing financial challenges, Freshstone previously initiated a comprehensive and rigorous market solicitation process, with the assistance of Origin Merchant Partners (“**Origin**”), to assess the potential strategic opportunity of divesting its *Kitchen Partners* division and related business assets (“**Kitchen Partners**”).

5. As a result of this market solicitation process, Freshstone successfully completed the sale of Kitchen Partners (the “**Kitchen Partners Transaction**”), the proceeds of which enabled it to satisfy its obligations to its then senior secured creditor, and ultimately effect a material reduction in its total indebtedness.

6. Despite the above, Freshstone has been unable to restore financial stability and is now seeking protection under the CCAA through the commencement of the present CCAA Proceedings in order to complete its restructuring by initiating, under the supervision of the Court, a sale and investment solicitation process with respect to its remaining business and assets¹.

PART II - THE FACTS

7. The facts with respect to this motion are more fully set out in the Burdzy Affidavit. Capitalized terms used within this Factum but not otherwise defined have the meanings ascribed to them in the Burdzy Affidavit.

A. Overview of Business and Operations

8. Freshstone is the result of the business combination of various companies operating in the food sector in Canada. It has grown into a portfolio of facilities and brands which have become leading providers of private-label and branded offerings of ready-to-go meals and meal

¹ The Affidavit of Frank Burdzy sworn on June 8, 2026 (the “**Burdzy Affidavit**”) at paras. 7-11, Tab 1 of the Application Record.

kits, salads, *entrees*, and sides, to supermarkets, club stores, convenience stores, co-man, and food-service customers in the United States and Canada².

9. Freshstone carries the following operating units/brands:

- (a) Freshstone Brands. Freshstone Brands serves as the corporate identity and umbrella under which its operating brands function;
- (b) Tiffany Gate. Tiffany Gate creates, packages and delivers fresh-prepared food products to customers across Canada and the U.S. By combining state-of-the-art technology and food science with artisanal cooking techniques, Tiffany Gate is able to create homemade recipes on a commercial scale. Its product offering includes, *inter alia*, fresh salads, cooked grains, sous vide vegetables, sides, entrées, kits, dressings, dips and home meal replacement solutions. Its customers include some of the largest grocery retail and food service companies in Canada and the United States, which customers are served through two (2) sub-platforms, i.e., Fresh Gourmet (retail-oriented), and Fresh Food Systems (bulk and customizable products for foodservice customers);
- (c) Johnston's. Johnston's is a legacy brand within Freshstone's portfolio, as it has been operating for over 75 years, mainly in the Maritimes. It manufactures different types of salads, such as coleslaw, potato salads, pasta salads and bean salads. Its branding mainly relies on the preservation of its traditional recipes and the use of quality ingredients acquired through partnerships with local farmers and businesses;

² Burdzy Affidavit, at para. 16, Application Record, Tab 2.

- (d) Keybrand. Keybrand's activities consist of the production of fresh and refrigerated foods, including various salads and specialty food products. It enables scale manufacturing for retailers and institutional customers;
- (e) Dip-A-Chip. Dip-A-Chip is a specialty consumer brand focused on snack-adjacent products, such as dips and complimentary snack products. Its products are designed primarily for retail grocery distribution, such as Metro or Giant Tiger; and
- (f) Kingsway. Kingsway is an established prepared-food facility. It manufactures a variety of dips, dressings and specialized functional vitamins used as ingredients in the dairy industry. The Kingsway operation prides itself on its longstanding and dedicated employees who understand its business³.

10. Freshstone is a privately owned company formed by amalgamation between Freshstone Brands Inc., Kitchen Partners Limited and 12901927 Canada Ltd. on January 1, 2022 under the *Canada Business Corporations Act*. A corporate chart outlining FFG's organization structure is contained in the Burdzy Affidavit⁴.

11. Freshstone's operations are detailed in the Burdzy Affidavit. As a summary:

- (a) The Applicant has six (6) primarily facilities, four (4) of which are located in Ontario, one in Price-Edward-Island and one in Saskatchewan. However, Freshstone will unfortunately need to close four (4) facilities in the short-term (i.e.: the Kitchener Facilities, the PEI Facility) to streamline its production, and has already ceased its operations at the one (1) location (the Delisle Facility). In fact, on June 5, 2026, the landlord of the Kitchener Facilities issued notices of

³ *Ibid*, at para. 17.

⁴ *Ibid*, at paras. 13-14.

termination of the leases for such locations, and on June 7, 2026, the landlord of the PEI Facility issued a notice of distress due to Freshstone's failure to pay rent arrears⁵;

- (b) The Applicant receives most of its inputs from suppliers that are located in: (i) Canada (approximately 75%), U.S. (approximately 20%) and other countries (approximately 5%). In 2025, Freshstone had 37 significant suppliers which accounted for approximately 48% of its supply needs⁶.
- (c) The Applicant has three primary sale channels: (i) retail (approximately 48%); (ii) food service (approximately 47%); and (iii) co-packing and other (approximately 5%). In 2025, Freshstone has a concentrated customer basis with six (6) significant customers that accounted for approximately 66.3% of sales⁷.
- (d) The Applicant uses a centralized cash management system and maintains a total of eight (8) bank accounts with CIBC, two (2) of which are maintained to collect receivables to be remitted to the purchaser of Kitchen Partners in the context of the Kitchen Partners Transaction, and one (1) which serves as a cash collateral account in relation to the Continuing Obligations (as defined below) (the "**Cash Collateral Account**"). Freshstone further holds ten (10) credit cards with American Express⁸.

⁵ *Ibid*, at paras. 19-21.

⁶ *Ibid*, at paras. 27-28; It should be noted that the values presented date from prior to the Kitchen Partners Transaction, and therefore include the information related to Kitchen Partners.

⁷ *Ibid*, at paras. 31-32; It should be noted that the values presented date from prior to the Kitchen Partners Transaction, and therefore include the information related to Kitchen Partners.

⁸ *Ibid*, at paras. 34-37.

B. Employees

12. As at May 11, 2026, Freshstone had a total of 338 non-unionized employees on payroll, which total number is composed of 169 direct labour employees and an additional 169⁹ employees in positions classified as indirect labour, administrative and management, all of whom are located in Canada. As mentioned in the Burdzy Affidavit, due to the imminent closure of the Kitchener Facilities, the PEI Facility, and the ceasing of operations at the Delisle Facility, Freshstone will need to review the headcount at these facilities¹⁰.

13. As the time of the Burdzy Affidavit, Freshstone is current in the payment of the wages of its employees, and vacation accrual liability totals approximately \$654,000. Freshstone intends to remain current in the payment of the wages and vacation accruals of its employees until the closing of any transaction resulting from the SISP, or the implementation of a plan of compromise or arrangement, which represents a total disbursement of approximately \$815,000 bi-weekly¹¹.

C. Financial Position

(i) Assets and Liabilities

14. As at April 25, 2026, Freshstone's assets had a book value of approximately \$81,798,244.00. Following the Kitchen Partners Transaction, the book value of Freshstone's assets amount, in the aggregate, to approximately \$60,000,000¹².

15. As at April 25, 2026, Freshstone's liabilities had a book value of approximately \$80,376,951.00. Following the Kitchen Partners Transaction, the book value of Freshstone's assets amount, in the aggregate, to approximately \$50,000,000¹³.

⁹ These employees are supplemented, from time to time, by approximately 20-40 temporary agency workers.

¹⁰ Burdzy Affidavit, at para. 22, Application Record, Tab 2.

¹¹ *Ibid*, at paras. 24-25.

¹² *Ibid*, at paras. 45-46.

D. Capital Structure

16. The Applicant's capital structure, as presented in the Burdzy Affidavit, is summarily described below.

(i) The Extinguished Credit Agreement

17. Following the Kitchen Partners Transaction, the Applicant was able to generate sufficient liquidity to fully repay its obligations under the Extinguished Credit Agreement, but for the Continuing Obligations. As such, the Borrower Syndicated Security was released and discharged¹⁴.

(ii) The Letters of Credit

18. At the request of the Applicant, CIBC issued a letter of credit in favour of Food Processors Affiliation Canada Inc., as beneficiary, in the amount of \$65,000 on September 8, 2021, and a letter of credit in favour of Granite Property Nominee Inc., as beneficiary, in the amount of \$445,978.02 on May 26, 2022 (collectively, the "**Letters of Credit**"). The obligations of the Applicant in respect of the Letters of Credit (the "**Continuing Obligations**") are secured by a first-ranking security interest in all amounts due and outstanding to the credit of the Applicant or CIBC or otherwise held in the Cash Collateral Account (which, as of May 8, 2026, was in the amount of \$510,978.02)¹⁵.

(iii) The Promissory Notes

19. In response to the financial challenges described above, the Applicant sought additional financing from various parties, including existing stakeholders, but was unable to secure such additional liquidity. Accordingly, in order to protect and maintain Freshstone's business and

¹³ *Ibid*, at paras. 47 and 49.

¹⁴ *Ibid*, at paras. 55 and 78.

¹⁵ *Ibid*, at paras. 56-58.

operations, Mr. Burdzy agreed to provide Freshstone with additional secured financing from time to time¹⁶.

20. More specifically, since July 2025, Mr. Burdzy advanced several loans to Freshstone, which were each reflected in promissory notes¹⁷. The secured loans advanced by Mr. Burdzy to Freshstone are summarily described as follows:

- (a) On July 10, 2025, Mr. Burdzy advanced to Freshstone an initial principal amount of \$1.15 million, with an interest rate of twenty percent (20%) per annum pursuant to a first promissory note initially dated July 10, 2025, which was subsequently amended and restated on October 28, 2025 and further amended and restated on May 8, 2026 (as amended and restated, the “**First Promissory Note**”)¹⁸;
- (b) On October 28, 2025, Mr. Burdzy further advanced to Freshstone an additional principal amount of \$2 million, with a “*new money fee*” in the amount of \$2 million fully earned by the Holder as of January 1, 2026, pursuant to a second promissory note initially dated October 28, 2025, which was subsequently amended and restated on May 8, 2026 (as amended and restated, the “**Second Promissory Note**”)¹⁹;
- (c) On May 8, 2026, Mr. Burdzy further advanced to Freshstone an additional principal amount of \$2 million, with an interest rate of twenty-five percent (25%) per annum, pursuant to a third promissory note dated May 8, 2025 (the “**Third Promissory Note**”)²⁰;

¹⁶ *Ibid*, at para. 59.

¹⁷ *Ibid*, at paras. 60-62 and 66.

¹⁸ *Ibid*, at para. 60.

¹⁹ *Ibid*, at para. 61.

²⁰ *Ibid*, at para. 62.

(d) On June 4, 2026, given Freshstone's challenging financial situation and immediate liquidity needs, Mr. Burdzy further advanced to Freshstone an additional principal amount of \$2,750,000, with an interest rate of five percent (5%) per annum, pursuant to a fourth promissory note (the "**Fourth Promissory Note**", together with the First Promissory Note, the Second Promissory Note and the Third Promissory Note, the "**Promissory Notes**")²¹.

21. Each of the Promissory Notes provide that the loans made available thereunder will mature at the earliest of:

(a) the date on which a majority of the board of directors of Freshstone agree to indefeasibly prepay the Principal Amount (as such term is defined in the respective Promissory Notes), together with, as applicable, all accrued and unpaid interest or the "*new money fee*", in full; or

(b) December 31, 2027²².

22. All obligations under the Promissory Notes are secured against all present and after-acquired personal property owned, leased, licensed, possessed or acquired by Freshstone, or in which Freshstone has rights, except for the Excluded Assets (as such term is defined in the Amended and Restated GSA), pursuant to a General Security Agreement, which was initially dated October 28, 2025, and which was thereafter amended and restated, from time to time, to reflect the additional advances made by Mr. Burdzy under the Promissory Notes²³.

23. As of June 5, 2026, the amounts due by the Applicant to Mr. Burdzy, in his capacity as Holder, pursuant to the Promissory Notes total \$10,149,133.47.

²¹ *Ibid*, at para. 66.

²² *Ibid*, para. 67.

²³ *Ibid*, at paras. 63-65 and 68-69.

E. Kitchen Partners Solicitation Process

24. In the context of the Kitchen Partners Solicitation Process, Freshstone, with the assistance of an investment bank, Origin, engaged in an extensive process to identify and solicit potential buyers in order to pursue its operations on a going concern basis and preserve its employees' jobs amid its financial difficulties²⁴.

25. In the context of these efforts, Freshstone, with the assistance of Origin, proceeded with the following rigorous steps:

- (a) prepared and sent a "*teaser*" and a non-disclosure agreement ("**NDA**") to a list of 173 parties (62 strategic, 111 sponsors) which reflected a wide cross section of the market for potential bidders, and who could therefore potentially be interested in a transaction involving Kitchen Partners;
- (b) circulated to 68 potential bidders having executed an NDA a Confidential Information Memorandum providing such potential bidders with various information regarding Freshstone and Kitchen Partners, which potential bidders were also granted access to a confidential virtual data room set up by Origin to perform their due diligence;
- (c) held due diligence calls and discussions with these potential bidders;
- (d) received seven (7) non-binding letters of intent²⁵.

26. Following this thorough market canvassing, Freshstone closed the Kitchen Partners Transaction on May 8, 2026. It should be noted that while the Kitchen Partners Transaction

²⁴ *Ibid*, para. 75.

²⁵ *Ibid*, para. 76.

closed, Freshstone agreed to provide certain transitional services to the purchaser of Kitchen Partners and intends to continue to provide same²⁶.

27. Ultimately, the proceeds of the Kitchen Partners Transaction generated sufficient liquidity allowing Freshstone to repay fully repay its obligations under the Extinguished Credit Agreement, thereby enhancing the Applicant's liquidity position²⁷.

PART III - ISSUES

28. The principal issues to be determined by this Court at the initial hearing will be whether this Court should grant the Initial Order sought, and, more specifically whether the Court should:

- (a) grant protection in favour of the Applicant under the CCAA, and order a stay of proceedings against such Applicant (the "**Stay of Proceedings**");
- (b) appoint Deloitte Restructuring Inc. ("**Deloitte**") as the monitor in these proceedings (in such capacity, the "**Monitor**");
- (c) grant the Administration Charge and the Directors' Charge; and
- (d) approve the DIP Credit Agreement and grant the requested DIP Lender's Charge as set out in the draft Initial Order.

29. If the Initial Order sought is granted, the Applicant intends to file supplementary motion materials (including a supplementary factum) and return before the Court at the "*comeback hearing*" in order to seek the relief set out in the draft ARIO and SISP Order, as defined and as further contemplated in the Burdzy Affidavit.

²⁶ *Ibid*, para. 77.

²⁷ *Ibid*, para. 78.

PART IV - THE LAW

A. This Court Should Grant Protection to the Applicant under the CCAA

(i) The Applicant is a debtor company to which the CCAA applies

30. Pursuant to section 3 of the CCAA, the CCAA applies to a “debtor company” or “affiliated debtor companies” where the total of claims against the debtor or its affiliates exceeds \$5 million²⁸. The CCAA defines “company” as, among other things:

*Any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province and any incorporated company having assets or doing business in Canada, wherever incorporated (...)*²⁹

31. In *Re Cinram*, Morawetz J. (as he then was) succinctly explained the applicable test for companies “having assets or doing business” in Canada under the CCAA:

[46] The test for “having assets or doing business in Canada” is disjunctive, such that either “having assets” in Canada or “doing business in Canada” is sufficient to qualify an incorporated company as a “company” within the meaning of the CCAA.

*[47] Having only nominal assets in Canada, such as funds on deposit in a Canadian bank account, bring a foreign corporation within the definition of “company”. In order to meet the threshold statutory requirements of the CCAA, an applicant need only be in technical compliance with the plain words of the CCAA.*³⁰

(ii) The Applicant is insolvent

32. As set out above, companies are entitled to CCAA protection if they are, a “debtor company” which means, inter alia, a company that is insolvent³¹.

33. Although the CCAA does not define the term “insolvent”, the definition of “insolvent person” under section 2(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) is well-established

²⁸ Companies’ Creditors Arrangement Act (R.S.C., 1985, c. C-36), [s. 3\(1\)](#) [CCAA].

²⁹ CCAA, [s. 2\(1\)](#).

³⁰ *Re Cinram*, 2012 ONSC 3767, at paras. [46-47](#).

³¹ CCAA, [s. 2\(1\)](#) and [s. 3\(1\)](#).

to be the governing definition in applications under the CCAA. The definition of “insolvent person” in the BIA is as follows:

... “insolvent person” means a person who is not bankrupt and who resides, carries on business or has property in Canada, and whose liability to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.³²

34. The tests for “insolvent person” under the BIA are disjunctive. A company satisfying either (a), (b) or (c) of the test is considered insolvent for the purposes of the CCAA³³.

35. Indeed, in *Stelco Re, 2004*, Farley J. applied an expanded definition of “insolvent” in the CCAA context to reflect the “rescue” emphasis of the CCAA, modifying part (a) of the BIA’s definition of “insolvent person” to include a financially troubled corporation, facing a “looming liquidity crisis,” that is “reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring”. In doing so, Farley J. recognized that it would defeat the purpose of the CCAA to limit or prevent an application until the financial difficulties of a company are so advanced that such company would not have sufficient financial resources to successfully complete its restructuring. Accordingly, for the purposes of the CCAA, a company is insolvent if, at the time of filing, there is a reasonably foreseeable expectation that there is a looming liquidity condition or crisis that

³² *Stelco Re*, 2004 CanLII 24933 (ON SC), at [paras. 21-22](#) [*Stelco Re, 2004*]. See also *Bankruptcy and Insolvency Act*, (R.S.C., 1985 c. B-3), at [s. 2](#), “insolvent person”.

³³ *Stelco Re, 2004*, at [para. 28](#).

would result in such company being unable to pay its debts as they generally become due if a stay of proceedings and ancillary protection are not granted by the court³⁴.

36. In applying these tests, the financial statements of the company may be used as a starting point, but they are adjusted to reflect what would then be reasonably and objectively expected based on the totality of the evidence³⁵.

37. In the matter at hand, the Applicant clearly meets the test for insolvency under the BIA and the expanded test for insolvency under the CCAA due to the following reasons:

- (a) based on the cash-flow test, the Applicant is insolvent as a result of its inability to meet its obligations generally as they become due; and
- (b) the Applicant has an aggregate amount of outstanding indebtedness well in excess of \$5 million³⁶.

38. For all of the foregoing reasons, the Applicant is a debtor company to which the CCAA applies and is eligible for protection under the CCAA.

(iii) The Court has Jurisdiction over the Applicant

39. Subsection 9(1) of the CCAA provides that an application under the CCAA may be made to the court in the province in which the Applicant's head office or "chief place of business" in Canada is situated³⁷.

40. The registered office and chief place of business of the Applicant is in Ontario³⁸.

³⁴ *Ibid*, at [paras. 25-26 and 40](#).

³⁵ *Re 4519922 Canada Inc.*, 2015 ONSC 124, at [paras. 29-30](#).

³⁶ Burdzy Affidavit, at para. 49, Application Record, Tab 2.

³⁷ CCAA, [s. 9\(1\)](#).

³⁸ Burdzy Affidavit, at para. 18, Application Record, Tab 2.

41. Accordingly, this Court is the appropriate venue for these CCAA proceedings and the Applicant's chief place of business is in Ontario, Canada.

B. The Relief Sought at the Initial Hearing is Reasonably Necessary

42. Pursuant to s. 11.001, the relief sought on an initial application is to be limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during the initial stay period³⁹. The stated purpose of section 11.001 is to make the insolvency process fairer, more transparent and more accessible by limiting the decisions that can be taken at the outset of a CCAA proceeding to measures that are reasonably necessary to avoid the immediate liquidation of an insolvent company, thereby allowing for broader participation in the restructuring process⁴⁰.

43. As specifically detailed below, the Applicant has worked with its advisors and the proposed Monitor to limit the relief sought on this initial application to only the relief that is reasonably necessary in the circumstances for the continued operation of its business. In each case, the Applicant has considered whether the requested relief is necessary for the immediate stabilization of their business to protect its interests as well as those of various stakeholders. In cases where immediate relief is necessary, the Applicant has attempted to limit any authorizations from the Court to what is required within the proposed initial stay period and will only seek additional authorizations upon a comeback motion scheduled by the Court.

(i) The Stay of Proceedings is Necessary and Appropriate

44. Pursuant to section 11.02 of the CCAA, a court may, upon an initial application under the CCAA, grant a stay of proceedings against all proceedings in respect of a debtor company for a

³⁹ CCAA, [s. 11.001](#).

⁴⁰ CCAA, [s. 11.001](#), [11.02\(1\)](#) and [\(3\)](#). See also *Lydian International Limited (Re)*, 2019 ONSC 7473, at [paras. 22-26](#) [*Lydian*]; and *Clover Leaf Holdings Company, Re.*, 2019 ONSC 6966, at [para. 13](#).

period of no more than ten days, provided that the court is satisfied that circumstances exist to make the order appropriate⁴¹.

45. The court's exercise of its discretionary authority to grant a stay pursuant to the CCAA must be informed by the purpose behind the CCAA, which should be broadly and liberally interpreted⁴².

46. The CCAA stay of proceedings has been described as "the engine that drives a broad and flexible statutory scheme"⁴³. The purpose of stay orders is to maintain the status quo and provide the debtor company with an essential respite from the burden of dealing with litigation and other claims against it while it consults with its stakeholders and attempts to carry on as a going concern, restructure its financial affairs and negotiate an acceptable restructuring arrangement⁴⁴.

47. Given the Applicant's current financial condition and the liquidity crisis it faces, which was detailed above, it requires the Stay of Proceedings in order to provide it with the breathing room necessary to stabilize its operations, and, concurrently, with the court's authorization, conduct a SISF with the assistance of a sale advisor and under the supervision of the proposed Monitor and of the Court, the purpose of which will be to allow for the maximization of the value of the Applicant's remaining business and assets, all for the benefit of its creditors and other stakeholders, including its employees.

48. The commencement of a CCAA proceeding to address the significant issues the Applicant faces represents the only realistic and viable path forward for the Applicant at this time. An inability to restructure in a coordinated, court-supervised manner would be potentially

⁴¹ CCAA, [s. 11.02\(1\)](#). See also *Lydian*, at [para. 22](#).

⁴² *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ON SC), at [paras. 31](#) and [47](#); *Sino-Forest Corporation (Re)*, 2012 ONSC 2063, at para. [40](#).

⁴³ *Nortel Networks Corporation (Re)*, 2010 ONSC 1304, at [para. 34](#).

⁴⁴ *Re, Doman Industries Ltd. (Trustee of)*, 2003 BCSC 376, at [para. 22](#).

disastrous for many stakeholders of the Applicant, including the employees and customers of the Applicant. The Stay of Proceedings is, at this time, in the best interests of the Applicant and their stakeholders and is both necessary and appropriate.

49. The Applicant also requests that the Stay of Proceedings extend to its directors and officers (the “**D&Os**”). Section 11.03 of the CCAA provides that an order made under section 11.02 of the CCAA may provide that no person may commence or continue any action against a director of the company, or any claim against directors that arose before the commencement of proceedings under the CCAA and that relates to the obligations of the company⁴⁵.

50. The Applicant submits that the Stay of Proceedings should be extended to the Applicant’s D&Os, with respect to all claims that relate to any obligations of the Applicant whereby the D&Os are alleged under any law to be liable in their capacity as such, so that they may focus on the CCAA proceedings, which may include developing and implementing a SISF.

51. For the foregoing reasons, the initial Stay of Proceedings up to June 19, 2026, should be granted on the terms sought herein.

C. Deloitte Should be Appointed as Monitor

52. Pursuant to section 11.7 of the CCAA, a court is required to appoint a person to monitor the business and financial affairs of a debtor company at the time that an initial CCAA order is made⁴⁶. Section 11.7(2) of the CCAA also sets out certain requirements and restrictions as to who may act as a monitor, providing that the monitor must be a trustee within the meaning of subsection 2 of the BIA⁴⁷.

⁴⁵ CCAA, [s. 11.03](#).

⁴⁶ CCAA, [s. 11.7](#).

⁴⁷ CCAA, [s. 11.7\(2\)](#).

53. Deloitte is a trustee within subsection 2(1) of the BIA and is not disqualified under any of the restrictions pursuant to section 11.7(2) of the CCAA. Deloitte has consented to act as Monitor of the Applicant in these proceedings⁴⁸.

54. For all the reasons noted above and further set out in the Burdzy Affidavit, the Applicant submits that Deloitte ought to be appointed by this Court as Monitor of the Applicant in these CCAA proceedings.

D. The Priority Charges should be Granted

(i) The Administrative Charge

55. At the initial hearing, the Applicant requests that this Court grant a super-priority charge on the Applicant's assets, property and undertaking (the "**Property**") in a maximum amount of \$250,000 to secure the fees and disbursements incurred in connection with services rendered to the Applicant both before and after the commencement of the CCAA Proceedings by counsel to the Applicant, Deloitte and Deloitte's counsel (the "**Administration Charge**").

56. As a super-priority charge, the Administration Charge is contemplated to rank in priority to the DIP Lender's Charge (as defined below) and the Directors' Charge (as defined below) and to all other security interests, claims of secured creditors, trusts, liens, charges and encumbrances, statutory or otherwise in favour of any person other than secured creditors with properly perfected security interests that did not receive notice of this Application.

57. This Court has the jurisdiction to grant the Administration Charge pursuant to section 11.52 of the CCAA⁴⁹. In *Canwest Publishing Inc.*, Pepall J. identified six non-exhaustive factors that the Court will consider when determining whether to grant an administration charge:

⁴⁸ Monitor's consent to Act dated June 8, 2026, Application Record Tab 2 – Exhibit "O".

⁴⁹ CCAA, [s. 11.52](#).

- (a) The size and complexity of the business being restructured;
- (a) The proposed role of the beneficiaries of the charge;
- (b) Whether there is an unwarranted duplication of roles;
- (c) Whether the quantum of the proposed charge appears to be fair and reasonable;
- (d) The position of the secured creditors likely to be affected by the charge; and
- (e) The position of the monitor⁵⁰.

58. The Applicant worked with the proposed Monitor to estimate the quantum of the Administration Charge, which is warranted, necessary, and appropriate in view of the complexities of the anticipated CCAA proceedings and the services provided by the beneficiaries of same. Specifically, considering the above-mentioned factors detailed in *Canwest Publishing Inc.*, the Administration Charge and its quantum are reasonable in the circumstances given that:

- (a) The Applicant operates a complex business that is subject to regulatory obligations;
- (b) The beneficiaries of the Administration Charge will provide essential legal and financial advice throughout the CCAA Proceedings, without which the Applicant will not be able to successfully navigate these CCAA proceedings;
- (c) Each of the proposed beneficiaries will play a critical role in these restructuring proceedings;

⁵⁰ *Canwest Publishing Inc, Re*, 2010 ONSC 222 [*Canwest Publishing*] at [para. 54](#).

- (d) The beneficiaries of the Administration Charge each provide unique services, and there is no anticipated unwarranted duplication of their roles;
- (e) The Administration Charge does not purport to prime any secured party who has not received notice of this Application;
- (f) The quantum of the Administration Charge was determined following consultation with the proposed Monitor;
- (g) The proposed Monitor believes that the proposed quantum of the Administration Charge is reasonable and necessary and is in line with the nature and size of the Applicant's business and the involvement required by the proposed Monitor, counsel to the proposed Monitor, counsel to the Applicant.
- (h) The Applicant's advisors have engaged in a significant amount of work on a pre-filing basis in order to explore strategic alternatives, secure the necessary financing to allow the Applicant's to pursue a restructuring, all for the benefit of the Applicant's stakeholders.

59. CCAA courts have acknowledged the importance of priority charges, like the Administration Charge, to ensure the willingness of professionals to participate in CCAA proceedings⁵¹. Thus, granting the Administration Charge, as presented, is appropriate and important to the CCAA proceedings and should be approved by this Court.

60. Lastly, it should be noted that the only secured creditor of the Applicant is Mr. Burdzy, who has agreed to have his pre-filing security primed by the Administration Charge.

⁵¹ *Timminco Limited (Re)*, 2012 ONSC 506, at [para. 66](#).

(ii) The Directors' Charge

61. The Applicant requests from this Court a priority charge in favour of the Applicant's current D&Os in the amount of \$1,750,000 (the "**Directors' Charge**") which will rank subordinate to both the Administration Charge and the DIP Charge but in priority to all other encumbrances. The Directors' Charge protects the D&Os against obligations and liabilities they may incur as directors and officers of the Applicant after the filing of the CCAA Proceedings, including amounts which may have accrued prior to the filing but which may be crystallized after the filing, except in relation to obligations or liabilities incurred as a result of the D&Os' gross negligence or willful misconduct.

62. Although, the Applicant maintains directors' and officers' liability insurance (the "**D&O Insurance**") for the D&Os, the current D&O Insurance policies may ultimately prove to be insufficient to adequately protect the D&Os against any potential liability.

63. The D&Os have significant concerns about their potential personal liability if they continue in their roles. However, the Applicant requires the continued participation of its D&Os to ensure the continuation of the Applicant's business during the CCAA Proceedings. The D&Os have indicated they will not continue their service with the Applicant unless the Initial Order grants the Directors' Charge. The resignation of the D&Os would, in all likelihood, render the CCAA Proceedings and the SISF much more challenging, and more costly, to the detriment of the Applicant's creditors and other stakeholders.

64. Section 11.51 of the CCAA provides the Court with the express statutory jurisdiction to grant the Directors' Charge in an amount the Court considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it⁵².

⁵² CCAA, [s. 11.51](#).

65. In *Jaguar Mining Inc*, Morawetz R.S.J. (as he then was) stated that, in order to grant a directors and officers' charge, the Court must be satisfied of the following factors:

- (a) Notice has been given to the secured creditors likely to be affected by the charge;
- (b) The amount is appropriate;
- (c) The applicant could not obtain adequate indemnification insurance for the director at a reasonable cost; and
- (d) The charge does not apply in respect of any obligation incurred by a director as a result of the director's gross negligence or willful misconduct⁵³.

66. With respect to the Applicant, the Directors' Charge is reasonable in the circumstances because:

- (a) The Applicant has given notice to its sole secured creditor likely to be affected by the Directors' Charge (the only secured creditor of the Applicant is Mr. Burdzy, who has agreed to have his pre-filing security primed by the Directors' Charge);
- (b) The Applicant consulted with the proposed Monitor with respect to the adequate quantum and scope of the Directors' Charge;
- (c) The continued involvement of D&Os is critical to the CCAA Proceedings and the Applicant's restructuring efforts. If the D&Os are not protected by the Directors' Charge there is a significant risk that they will either resign or become significantly distracted during a critical time for the Applicant;
- (d) The D&Os cannot be certain whether sufficient insurance coverage will be provided under existing D&O Insurance, and the Applicant may not have

⁵³ *Jaguar Mining Inc, (Re)*, 2014 ONSC 494 [*Jaguar Mining Inc*], at [para. 45](#).

sufficient funds available to satisfy any contractual indemnity should their D&Os need to call upon such indemnities; and

- (e) The Directors' Charge does not secure obligations incurred by a director as a result of the directors' gross negligence or wilful misconduct.

67. In *Canwest Global Communications*, Pepall J. applied s. 11.51 of the CCAA at the debtor company's request for a directors' and officers' charge, noting that the Court must be satisfied that the amount of the charge is appropriate in light of obligations and liabilities that may be incurred after the commencement of proceedings. In approving the request, Pepall J. stated:

The purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protections against liabilities they could incur during the restructuring: Re General Publishing Co. [(2003), 39 C.B.R. (4th) 216]. Retaining the current directors and officers of the applicants would avoid destabilization and would assist in the restructuring.⁵⁴

68. The Applicant submits that granting the Directors' Charge, as presented, is appropriate and important to the CCAA proceedings and should be approved by this Court.

E. The DIP Credit Agreement Should be Approved and the DIP Lender's Charge Should be Granted

69. In order to continue operations and carry out the restructuring steps described in the Burdzy Affidavit, including the implementation of the SISF, which is being pursued to achieve the highest or otherwise best transaction for Freshstone in order to maximize value for all stakeholders, interim financing is urgently required, even when taking into consideration the amounts recently advanced pursuant to the Fourth Promissory Note.

⁵⁴ *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ON SC) [*Canwest Global Communications*], at [para. 48](#).

70. In furtherance of the above, the Applicant is requesting this Court:
- (a) Approve the DIP Credit Agreement as between Freshstone and the DIP Lender;
 - (b) Authorize the Applicant to borrow under the DIP Credit Agreement an initial amount of up to \$1,600,000 during the initial Stay Period, which funding shall be made directly to the Applicant upon granting of the Initial Order (the “**Authorized DIP Amount**”); and
 - (c) Grant in favour of the DIP Lender a priority charge to secure its obligations under the DIP Credit Agreement (the “**DIP Lender’s Charge**”). The DIP Lender’s Charge will rank subordinate only to the Administration Charge.

71. Section 11.2 of the CCAA provides the Court with the jurisdiction to approve the DIP Credit Agreement and the DIP Lender’s Charge. Section 11.2(4) lists the factors Courts must consider in deciding whether to approve a priming charge in connection with interim financing:

Factors to be considered

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

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company’s business and financial affairs are to be managed during the proceedings;

(c) whether the company’s management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company’s property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

*(g) the monitor's report referred to in paragraph 23(1)(b), if any.*⁵⁵

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

- (a) Whether notice has been given to secured creditors likely to be affected by the security or charge;
- (b) Whether the amount to be granted under the DIP facility is appropriate and required having regard to the debtors' cash-flow statement; and
- (c) Whether the DIP charge secures an obligation that existed before the order approving the DIP was made⁵⁶.

73. The criteria from section 11.2(1) and 11.2(4) support approving the DIP Lender's Charge on the terms sought in the Initial Order:

- (a) The DIP Lender's Charge does not prime any secured party with a perfected security interest who has not received notice (the only secured creditor of the Applicant is Mr. Burdzy, who has agreed to have his pre-filing security primed by the DIP Lender's Charge);
- (b) The Applicant has immediate liquidity needs, and given its current financial circumstances, the Applicant faces great obstacles in obtaining alternative financing outside of these CCAA Proceedings;
- (c) The Authorized DIP Amount is necessary in order for the Applicant to implement its restructuring strategy, which will preserve the employment of many individuals and maximize value for the Applicant's stakeholders;

⁵⁵ CCAA, [s. 11.2](#).

⁵⁶ *Canwest Global Communications*, at [paras. 31-34](#).

- (d) Without the Authorized DIP Amount, the Applicant will not be able to continue operating;
- (e) The quantum of the Authorized DIP Amount is reasonable and appropriate having regard to the Cash Flow Statement, and has been limited to what is required for the proposed initial Stay Period; and
- (f) The proposed Monitor is of the view that the DIP Credit Agreement and the DIP Lender's Charge are appropriate and limited to what is reasonably necessary in the circumstances.

74. Also, it is important to note that the execution of the proposed the DIP Credit Agreement is the product of a competitive process conducted by Freshstone prior to the commencement of the CCAA Proceedings to achieve the best proposal in the circumstances. Indeed, over the past few weeks, GlassRatner Advisory Canada Inc. has been retained to assist the Applicant in seeking new financing options. In total, ten (10) potential parties were contacted. Six (6) parties were not interested in the opportunity and further discussions were held with four (4) parties. Ultimately, two (2) non-binding financing proposals were received (the "**DIP Proposals**").

75. The DIP Proposals were considered by Freshstone, in consultation with its advisors and by Deloitte, and it was determined that the DIP Proposal submitted by the DIP Lender was superior for a number of reasons, including cost, amount of available financing and potential speed of execution.

76. With these advantages, the Applicant submits that the DIP Credit Agreement with the DIP Lender should be approved. In *Great Basin*, the Court considered pricing and fees, milestones and other covenants of the DIP proposals in deciding which DIP proposal should be approved. The Court acknowledged that "the financial terms of each proposal, [and] factors such as timing, prejudice, risk and uncertainty play a central role in assessing each proposal."

The Applicant, in consultation with its advisors, has determined that the proposed DIP Facility represents the best proposal in the circumstances based on similar factors and this Court should take that into account in considering its approval⁵⁷.

77. Section 11.2(5) relates to interim financing and provides that no order under section 11.2 “shall be made ...unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.” The Applicant submits that this criterion is satisfied as the Initial Order specifies that the Authorized DIP Amount available to the Applicant is limited to \$1,600,000 during the initial stay period⁵⁸.

78. The amount was determined in consultation with the proposed Monitor and is consistent with the Applicant’s required borrowings as shown in the Cash Flow Statement. Providing the ability for Freshstone to borrow under the DIP Credit Agreement during the initial stay period will protect its stakeholders and allow the business to continue operating while the Applicant works to complete its restructuring, including by pursuing the SISP. Accordingly, the requested DIP Lender’s Charge is consistent with section 11.001 and section 11.2(5) of the CCAA.

PART V - ORDER SOUGHT

79. The Applicant respectfully request that this Court grant the requested Initial Order substantially in the form of the draft order attached at Tab 3 of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of June, 2026.

Stikeman Elliott LLP

Stikeman Elliott LLP
Lawyers for the Applicant

⁵⁷ *Great Basin Gold Ltd. (Re)*, 2012 BCSC 1459, at [paras. 10](#) and [14](#).

⁵⁸ CCAA, [s. 11.2\(5\)](#).

SCHEDULE "A"
LIST OF AUTHORITIES

Cases

1. *Cinram International Inc. (Re)*, [2012 ONSC 3767](#)
2. *Stelco Re*, [2004 CanLII 24933 \(ON SC\)](#)
3. *Re 4519922 Canada Inc.*, [2015 ONSC 124](#)
4. *Lydian International Limited (Re)*, [2019 ONSC 7473](#)
5. *Clover Leaf Holdings Company, Re.*, [2019 ONSC 6966](#)
6. *Nortel Networks Corporation (Re)*, [2009 CanLII 39492 \(ON SC\)](#)
7. *Sino-Forest Corporation (Re)*, [2012 ONSC 2063](#)
8. *Nortel Networks Corporation (Re)*, [2010 ONSC 1304](#)
9. *Re, Doman Industries Ltd. (Trustee of)*, [2003 BCSC 376](#)
10. *Canwest Publishing Inc, Re*, [2010 ONSC 222](#)
11. *Timminco Limited (Re)*, [2012 ONSC 506](#)
12. *Jaguar Mining Inc, (Re)*, [2014 ONSC 494](#)
13. *Canwest Global Communications Corp. (Re)*, [2009 CanLII 55114 \(ON SC\)](#)
14. *Great Basin Gold Ltd. (Re)*, [2012 BCSC 1459](#)

**SCHEDULE “B”
RELEVANT STATUTES**

Companies’ Creditors Arrangement Act, RSC 1985, c C-36

Definitions

2 (1) In this Act, [...]

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, telegraph companies, insurance companies and companies to which the Trust and Loan Companies Act applies; (compagnie) [...]

debtor company means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or

(d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent; (compagnie débitrice)

[...]

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

[...]

Jurisdiction of court to receive applications

9 (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

[...]

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

[...]

Stays, etc. — initial application

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

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

[...]

Burden of proof on application

11.02 (3) The court shall not make the order unless (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Interim financing

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

Priority — secured creditors

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

Priority — other orders

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

Factors to be considered

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

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

Additional factor — initial application

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

[...]

Security or charge relating to director's indemnification

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

Priority

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

Restriction — indemnification insurance

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

Negligence, misconduct or fault

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

Court may order security or charge to cover certain costs

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

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

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

Court to appoint monitor

11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the Bankruptcy and Insolvency Act.

Restrictions on who may be monitor

11.7 (2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

(a) if the trustee is or, at any time during the two preceding years, was

(i) a director, an officer or an employee of the company,

(ii) related to the company or to any director or officer of the company, or

(iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or

(b) if the trustee is

(i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the Civil Code of Quebec that is granted by the company or any person related to the company, or

(ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

Bankruptcy and Insolvency Act, RSC 1985, c B-3

2(1) *insolvent person* means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

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

Court File No.: CL-26-00000265-0000

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF FRESHSTONE
BRANDS INC.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**FACTUM OF THE APPLICANT
(RETURNABLE JUNE 9, 2026)**

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