

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

FACTUM OF THE MONITOR

September 29, 2026

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)

Tel: 416.862.4908

Email: mwasserman@osler.com

Tiffany Sun (LSO# 84440N)

Tel: (416) 862-4932

Email: tsun@osler.com

Counsel for Deloitte Restructuring Inc., solely
in its capacity as Monitor of Freshstone
Brands Inc. and not in its personal or
corporate capacity

PART I - NATURE OF THE MOTION

1. This factum is filed in support of a motion by Deloitte Restructuring Inc. (“**Deloitte**”) in its capacity as the monitor (in such capacity, the “**Monitor**”) of Freshstone Brands Inc. (the “**Applicant**”) in the within proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**” and the proceedings, the “**CCAA Proceedings**”). The CCAA Proceedings were commenced on June 9, 2026, by the issuance of an initial order by this Court (the “**Court**”).

2. Pursuant to prior orders of this Court, the Applicant conducted, with the assistance of GlassRatner Advisory Canada Inc., as sale advisor, and under the supervision of the Monitor, a Court-supervised sale and investor solicitation process (the “**SISP**”) resulting in a going-concern sale transaction for the Applicant’s business, for which the Applicant is now seeking Court approval.

3. To continue to move these CCAA Proceedings toward an orderly resolution, the Monitor seeks an order (the “**Fee Approval Order**”), among other things:

- (a) approving the fees and disbursements of the Monitor and its counsel, Osler, Hoskin & Harcourt LLP (“**Osler**”); and
- (b) approving the Reports (as defined below) and the activities and conduct of the Monitor described therein.

PART II - SUMMARY OF FACTS

4. The facts regarding this motion are more fully set out in the Fourth Report of the Monitor.¹

A. The CCAA Proceedings

5. On June 9, 2026, the Applicant sought and obtained an initial order (the “**Initial Order**”) from the Court under the CCAA, which, among other things, appointed Deloitte as Monitor in the CCAA Proceedings and granted a stay of proceedings until June 18, 2026 (the “**Stay Period**”).²

6. On June 18, 2026, the Court granted an Amended and Restated Initial Order (the “**ARIO**”) which, among other things, extended the Stay Period to October 16, 2026.³

7. Pursuant to the Initial Order and the ARIO, the Court approved a DIP Facility Loan Agreement dated as of June 8, 2026 (the “**DIP Credit Agreement**”), between the Applicant, as borrower, and Garrington Financial Services Inc., as lender (in such capacity, the “**DIP Lender**”), pursuant to which the DIP Lender has agreed to advance up to \$7 million to the Applicant, subject to the terms and conditions of the DIP Credit Agreement.⁴

8. On June 18, 2026, the Court also granted the Applicant’s motion for an Order (the “**SISP Order**”), among other things: (i) approving the implementation of the SISP in accordance with the procedures appended to the SISP Order; and (ii) approving, *nunc pro tunc*, the execution of the Subscription Agreement dated June 12, 2026 (as amended from time to time, the “**Subscription**

¹ Report of the Monitor dated September 25, 2026 (“**Fourth Report**”). Unless otherwise specified, capitalized terms in this factum have the same meaning as in the Fourth Report. Unless otherwise stated, all monetary amounts referred to in this factum are expressed in Canadian dollars.

² [Fourth Report](#) at para. 1.

³ [Fourth Report](#) at para. 2.

⁴ [Fourth Report](#) at para. 3.

Agreement”) between the Applicant, as issuer, and Mr. Frank Burdzy, as the investor, and authorizing the use of the Subscription Agreement as the “stalking horse bid” under the SISP.⁵

PART III - THE ISSUES AND THE LAW

9. This factum addresses the following issues:

- (a) the reports and activities of the Monitor should be approved; and
- (b) the fees of the Monitor and its counsel should be approved.

A. The Reports and Activities of the Monitor Should be Approved

10. The Monitor seeks the approval of the actions, conduct and activities outlined in the First Report of the Monitor dated June 13, 2026, the Second Report of the Monitor dated August 19, 2026, the Third Report of the Monitor dated September 15, 2026 and the Fourth Report (collectively, the “**Reports**”).

11. This Court has jurisdiction to approve the reports and activities of the Monitor pursuant to s. 11 of the CCAA, which authorizes the Court to “make any order that it considers appropriate in the circumstances.”⁶ This Court has noted that requests to approve a monitor’s report and activities are “not unusual,” and there are “good policy and practical reasons” for the court to do so, including: (a) allowing the monitor to move forward with the next steps; (b) allowing the monitor to bring its activities before the Court; (c) enabling the Court to satisfy itself that a monitor’s activities have been conducted in a prudent and diligent manner; (d) providing protection for a

⁵ [Fourth Report](#) at paras. 4(a)-4(b).

⁶ CCAA, s. 11.

monitor not otherwise provided by the CCAA; and (e) protecting creditors from delay that may be caused by re-litigation of steps.⁷

12. The Monitor submits that the Reports, and the activities and conduct described within, should be approved. The activities set out in the Reports were necessary to advance these CCAA Proceedings, are consistent with the Monitor's duties and powers, have been undertaken with efficiency and reasonableness, and are in the interest of the Applicant's stakeholders.⁸ Further, the proposed Fee Approval Order is properly limited such that "only Deloitte, in its capacity as Monitor and in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such ratification and approval."⁹

B. The Fees of the Monitor and its Counsel Should be Approved

13. The ARIO provides that the Monitor and its legal counsel shall pass their accounts from time to time and that they shall be paid their reasonable fees and disbursements by the Applicant as part of the costs of the CCAA Proceedings, in each case at their standard rates and charges.¹⁰

14. In accordance with the ARIO, the Monitor seeks the approval of the following fees and disbursements:

⁷ *Laurentian University of Sudbury*, [2022 ONSC 2927](#) at paras. 13-14 [*Laurentian*], citing *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at paras. 2, 12, 22.

⁸ [Fourth Report](#) at para. 20.

⁹ Draft Fee Approval Order at para. 2, Tab 2 to the Motion Record of the Monitor dated September 25, 2026.

¹⁰ [Fourth Report](#) at paras. 13-14.

- (a) fees of the Monitor totalling \$551,582.00, and disbursements in the amount of \$40,435.10, all excluding applicable taxes, each incurred from the commencement of the CCAA Proceedings to September 19, 2026;¹¹ and
- (b) fees of the Monitor's counsel Osler totalling \$156,921.00, and disbursements in the amount of \$11,417.10, all excluding applicable taxes, each incurred from the commencement of the CCAA Proceedings to September 19, 2026.¹²

15. In considering whether to approve fees and disbursements, the court has regard to the “overriding principle of reasonableness,” and does not engage in a docket-by-docket or line-by-line assessment of the accounts.¹³ The following factors assist a court in assessing the reasonableness of the Monitor's fees under the CCAA: (i) the nature, extent and value of the assets being handled; (ii) the complications and difficulties encountered; (iii) the degree of assistance provided by the company, its officers or its employees; (iv) the time spent; (v) the Monitor's knowledge, experience and skill; (vi) the diligence and thoroughness displayed; (vii) the responsibilities assumed; (viii) the results achieved; and (ix) the cost of comparable services when performed in a prudent and economical manner.¹⁴

16. The fees and disbursements should be approved. The Monitor's and Osler's fees and disbursements are consistent with market rates for similar services in the Toronto market, are

¹¹ [Fourth Report](#) at paras. 15-16.

¹² [Fourth Report](#) at paras. 15, 17.

¹³ *Nortel Networks Inc.*, [2022 ONSC 668](#) at para. 10 [*Nortel*]; *Laurentian* at para. 9.

¹⁴ *Nortel* at para. 11.

reasonable and appropriate in the circumstances and have been validly incurred in accordance with the provisions of the Orders issued in the CCAA Proceedings.¹⁵

PART IV - NATURE OF THE ORDER SOUGHT

17. For the reasons set out above, the Monitor requests that this Court grant the proposed Fee Approval Order substantially in the form of the draft order included at Tab 2 of the Motion Record of the Monitor dated September 25, 2026.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of September, 2026.



OSLER, HOSKIN & HARCOURT LLP

per Tiffany Sun

P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Lawyers for the Monitor

TO: THE SERVICE LIST

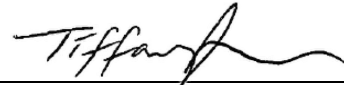
¹⁵ [Fourth Report](#) at para. 18.

SCHEDULE "A": LIST OF AUTHORITIES

1. *Laurentian University of Sudbury*, [2022 ONSC 2927](#)
2. *Nortel Networks Inc.*, [2022 ONSC 668](#)
3. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)

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

Date September 29, 2026



Signature
Tiffany Sun

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

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

General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

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

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

PROCEEDING COMMENCED AT TORONTO

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OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto, Canada M5X 1B8

Marc Wasserman (LSO# 44066M)

Tel: (416) 862-4908

E-mail: mwasserman@osler.com

Tiffany Sun (LSO# 84440N)

Tel: (416) 862-4932

E-mail: tsun@osler.com

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