

**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 COMPROMISE OR
ARRANGEMENT OF TRINITY RAVINE COMMUNITY INC.

**FACTUM OF THE APPLICANT
(returnable February 23, 2022)**

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TO: **SERVICE LIST ATTACHED**

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PART I - NATURE OF THIS APPLICATION

1. This factum is filed in support of an application made by Trinity Ravine Community Inc. (“**Trinity Ravine**” or the “**Applicant**”) for an initial order (the “**Initial Order**”) and other related relief under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”).
2. The Applicant is a registered charitable organization whose primary business is the development of a real estate development project known as Trinity Ravine Community. The purpose of the project is to provide a community for senior citizen residents, with accessibility features and specialized amenities to enable its residents to “age in place”.
3. Due to the recent skyrocketing costs of construction and the devastating impact of the COVID-19 pandemic, the project will not be completed by its intended completion date. The Applicant is facing mounting pressure from its creditors at this time. Accordingly, the Applicant has commenced these CCAA proceedings to obtain the necessary “breathing

room” to design and implement a restructuring plan that protects the interests of all of the Applicant’s creditors and other stakeholders.

PART II - THE FACTS

4. The facts underlying this Application are more fully set out in the affidavit of Jeremy Anderson sworn February 22, 2022 (the “**Anderson Affidavit**”).¹ Capitalized terms not defined herein have the meanings ascribed to them in the Anderson Affidavit.

A. Corporate Structure and Business

5. The Applicant, Trinity Ravine, is a registered charitable organization developing a real estate development project known as Trinity Ravine Community (the “**Project**”) located at 1256 Markham Road, Scarborough, Ontario (the “**Development Land**”).²

6. The Applicant is affiliated with Global Kingdom Ministries Church Inc. (the “**Church**”), a member church of the Pentecostal Assemblies of Canada, which is a fellowship of over 1,100 Canadian churches. The Church is the Applicant’s sole member.³

B. The Development Project

7. The Applicant is developing the Trinity Ravine Community, a two-tower, 605-unit Project at the Development Land (the “**Trinity Ravine Community**”), which is intended to serve as a senior citizens’ community.⁴ Trinity Ravine Community is intended to enable local residents to “age in place”. In addition to typical condominium-style amenities including a

¹ Affidavit of Jeremy Anderson sworn February 22, 2022 (the “**Anderson Affidavit**”), Tab 2 to the Applicant’s Application Record dated February 22, 2022 (the “**Application Record**”).

² Anderson Affidavit at paras 2 and 26, Tab 2 to the Application Record.

³ Anderson Affidavit at paras 15 and 17, Tab 2 to the Application Record.

⁴ Anderson Affidavit at para 26, Tab 2 to the Application Record.

fitness centre, concierge and games room, the Project also planned to have an accessible, 230-seat, bistro-inspired dining room and an on-site wellness centre staffed with nurses, doctors and physiotherapists.⁵

8. The Development Land is the Applicant's primary asset, and is a "shovel ready", permitted land parcel. The last appraised value for the Development Land as a high-density residential development property was approximately \$32 million.⁶

C. **Trinity Ravine Life Leases**

9. The Project utilizes a life lease structure pursuant to which prospective residents buy the right to occupy units in the Project ("**Suites**") upon completion.⁷
10. Between November 21, 2015 and November 6, 2019, the Applicant sold life leases to a total of 439 purchasers (collectively, the "**Purchasers**") pursuant to Life Lease Occupancy Agreements (the "**Life Lease Agreements**").⁸
11. Pursuant to the majority of the Life Lease Agreements, the Purchasers agreed to certain payment terms in respect of their Suites, including a 20% deposit, paid in a series of installments over a period of time (collectively, the "**Deposit**") and 80% payable on the completion of the Project.⁹
12. The Life Lease Agreements establish the "Completion Date" (*ie*, the date upon which interior work in the Suite has been completed to the extent necessary for occupation and

⁵ Anderson Affidavit at para 28, Tab 2 to the Application Record.

⁶ Anderson Affidavit at para 27, Tab 2 to the Application Record.

⁷ Anderson Affidavit at para 33, Tab 2 to the Application Record.

⁸ Anderson Affidavit at para 38, Tab 2 to the Application Record.

⁹ Anderson Affidavit at para 40, Tab 2 to the Application Record.

safe access to the Suite is available) (the “**Completion Date**”) as March 31, 2019, subject to extension for up to three (3) years on notice to the Purchasers. Notice of the extension of the Completion Date to March 31, 2022 was delivered to the Purchasers.¹⁰

13. Although substantially all required permits are in place, construction on the Development Land has not yet commenced, and the Project will not be completed by the Completion Date.¹¹

D. Assets and Liabilities

14. As at September 30, 2021, the Applicant had assets of \$25,766,228.49 and liabilities of approximately \$29,115,052.79.¹²

E. Financial Challenges

15. There are a total of 439 Purchasers in the Project. A total of approximately \$27.6 million has been paid to the Applicant in respect of Deposits.¹³
16. Due to factors which include skyrocketing construction costs and delays and uncertainty caused by the COVID-19 pandemic, the Project’s financial model is no longer viable.¹⁴
17. Over the course of late 2019 to 2021, a number of Purchasers purported to terminate their Life Lease Agreements and demanded a return of their Deposits. During this period, the Applicant accepted the termination requests of 188 Purchasers (the “**Refunded**

¹⁰ Anderson Affidavit at para 42, Tab 2 to the Application Record.

¹¹ Anderson Affidavit at para 4, Tab 2 to the Application Record.

¹² Anderson Affidavit at paras 44-47, Tab 2 to the Application Record.

¹³ Anderson Affidavit at para 57, Tab 2 to the Application Record.

¹⁴ Anderson Affidavit at para 4, Tab 2 to the Application Record.

Purchasers”), and Deposits (inclusive of interest) in the aggregate amount of \$12,229,521.49 were returned.¹⁵

18. Accordingly, a total of 280 Purchasers remain in the Project (the “**Remaining Purchasers**”), with Deposits in the aggregate principal amount of \$16,119,649.96.¹⁶
19. Of the Remaining Purchasers, approximately 120 have purported to terminate their Life Lease Agreements and demanded return of their Deposits. The Applicant has not formally accepted any of these additional terminations. In addition to processing the refunds demanded by the Refunded Purchasers, the Applicant spent Deposit monies on soft development costs such as commissions, broker fees, site plan approvals, architect fees and reporting, leaving minimal cash reserves. Consequently, the Applicant is unable to process further refund requests from the Remaining Purchasers.¹⁷
20. The Applicant is insolvent, as it is unable to meet its obligations as they generally come due, and has ceased paying its current obligations in the ordinary course of business.¹⁸

F. CCAA Protection and Potential Plan

21. Based on market appraisals, there is considerable equity in the Development Land. If the Project is definitively terminated and the Development Land is sold, it is likely that the proceeds will be sufficient to refund all Deposits and pay all other creditors.¹⁹

¹⁵ Anderson Affidavit at para 58, Tab 2 to the Application Record.

¹⁶ Anderson Affidavit at para 59, Tab 2 to the Application Record.

¹⁷ Anderson Affidavit at paras 60-61, Tab 2 to the Application Record.

¹⁸ Anderson Affidavit at para 62, Tab 2 to the Application Record.

¹⁹ Anderson Affidavit at para 8, Tab 2 to the Application Record.

22. Alternatively, the Project may be viable if it can be “re-priced” to reflect the current market, in which case the Development Land need not be sold. Over the past few months, the Applicant’s management team has been actively exploring potential solutions, and has engaged in discussions with Purchasers, potential financiers, secured creditors and other stakeholders in that regard. Although some Purchasers have indicated they are not willing to remain in the Project, there are also those who may be amenable to remaining in the Project at a higher purchase price if they have sufficient assurance that the Project will be completed on a reasonable timeline.²⁰
23. In either case, given the Applicant’s dwindling cash reserves as well as mounting pressure from Purchasers and other creditors, an orderly process is required. As such, the Applicant seeks to conduct a “dual track” sale and investment solicitation process (the “SISP”) under the CCAA, with a view toward either:²¹
- (a) securing sufficient financing and Purchaser support to complete the Project in a way that provides sufficient liquidity to deal with Purchasers who wish to terminate their Life Lease Agreements, or
 - (b) selling the Development Land and distributing the proceeds to Purchasers and other creditors.
24. If an Order is issued granting the Initial Order, the Applicant intends to seek Court approval of the SISP (among other things) within 10 days thereafter.

²⁰ Anderson Affidavit at para 9, Tab 2 to the Application Record.

²¹ Anderson Affidavit at para 10, Tab 2 to the Application Record.

PART III - ISSUES AND THE LAW

25. The principal issues on this Application are whether:
- (a) the Applicant meets the statutory requirements for relief under the CCAA;
 - (b) this Court should grant the stay of proceedings;
 - (c) this Court should appoint Deloitte Restructuring Inc. (“**Deloitte**”) as CCAA Monitor of the Applicant in these proceedings (the “**Proposed Monitor**” and, if appointed, the “**Monitor**”); and
 - (d) this Court should approve the Administration Charge (as defined below).

A. The Applicant should be granted CCAA protection

26. It is respectfully submitted that the Applicant meets the statutory requirements for relief under the CCAA.
27. The CCAA applies to a “debtor company” where the total claims against the debtor exceed five million dollars.²² The total claims against the Applicant exceed five million dollars.²³
28. The CCAA defines “company” and “debtor company” as follows:

“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, railway or telegraph companies, insurance companies and companies to which the Trust and Loan Companies Act applies;

²² CCAA, s. 2(1), “debtor company”, s. 3(1).

²³ Anderson Affidavit at para 44, Tab 2 to the Application Record.

“debtor company” means any company that (a) is bankrupt or insolvent...”

29. The Applicant was incorporated under Part II of the *Canada Corporations Act*, and was continued under the *Canada Not-for-profit Corporations Act*. The Applicant is therefore a “company” within the meaning of the CCAA.
30. While the CCAA does not define “insolvent”, the definition of “insolvent person” under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) should be considered by the Court in assessing whether an applicant is a “debtor company” in the context of the CCAA.²⁴ The scope of the definition of “insolvent” was expanded in *Stelco* by Justice Farley, who held that the definition should be expanded to give effect to the objectives of the CCAA of allowing the debtor company to obtain breathing room in order to restructure.²⁵
31. The Applicant is currently insolvent. The test under the BIA is satisfied. The Applicant’s liabilities materially exceed its assets. The cash flow forecasts²⁶ demonstrate that the Applicant is unable to pay liabilities that are currently due and coming due. In particular, as described above, a number of Purchasers have purported to terminate their Life Lease Agreements and have demanded return of their Deposits, and the Applicant is unable to refund the Deposits at this time.

²⁴ BIA, s. 2, “insolvent person”.

²⁵ *Re Stelco Inc.*, 2004 CarswellOnt 1211 (Sup Ct.) [“*Stelco*”], leave to appeal to CA refused, 2004 CarswellOnt 2936, leave to appeal to SCC refused, 2004 CarswellOnt 5200, at para 26, Tab 1 to the Brief of Authorities of the Applicant (the “**Brief of Authorities**”).

²⁶ Exhibits “T” and “U” to the Anderson Affidavit.

32. The Applicant has filed the required financial information, including cash flow projections, and accordingly meets the requirements of the CCAA in this regard.²⁷
33. The CCAA is remedial legislation, intended to facilitate compromises and arrangements between companies and their creditors. In particular, during periods of financial hardship, debtors turn to the Court so that the Court may apply the CCAA in a flexible manner in order to accomplish the statute's goals. The Court should give the CCAA a broad, liberal interpretation so as to encourage and facilitate successful restructurings wherever possible.²⁸
34. The CCAA will allow the Applicant to implement a "dual track" SISP with the objective of enabling the Applicant to either: (i) secure the necessary financing and Purchaser support to complete the Project, or (ii) sell the Development Land and distribute the proceeds to Purchasers and other creditors. The Initial Order sought by the Applicant will provide the necessary and required space for the Applicant to design and implement the SISP, with a view to protecting the interests of the Purchasers and other stakeholders.²⁹
35. The Proposed Monitor supports the relief requested.

Special Considerations for Applicants involved in Real Estate Development

36. Due to the typical corporate structure of most real estate development companies as well as the nature of assets involved, Courts have provided special considerations when deciding

²⁷ Anderson Affidavit at paras 67-69, Tab 2 to the Application Record; Exhibits "T" and "U" to the Anderson Affidavit.

²⁸ *Re Lehndorff General partner Ltd.*, [1993] O.J. No. 14 [***Lehndorff***] at para 5, Tab 2 to the Brief of Authorities.

²⁹ Anderson Affidavit at para 10, Tab 2 to the Application Record.

whether a CCAA proceeding is appropriate in respect of a real estate development debtor.

In this regard, Courts may be particularly hesitant to grant CCAA protection where:³⁰

- (a) There is material prejudice to the first mortgagee(s);
- (b) There is no indication a CCAA will result in a better outcome than the first mortgagee enforcing its own remedies through a power of sale and/or receivership;
- (c) The equity in the properties cannot support the DIP financing;
- (d) There are a limited number of creditors outside the first mortgagee;
- (e) There are no employees or real operating business; and
- (f) The CCAA proceedings appear to be for the purpose of just buying more time for the debtor.

37. This case is one in which CCAA relief is clearly appropriate. The Applicant is not a profit-motivated development company seeking to increase returns by terminating existing purchase agreements in the hopes of selling at a higher price.

38. In particular, there are several factors that militate in favour of CCAA protection, including:

³⁰ *Re Textbook (525 Princess Street) Inc. et al*, Court File No. CV-16-1162-00CL – handwritten endorsement of Justice Penny dated December 15, 2016, Tab 3 to the Brief of Authorities; *Re Hush Homes Inc.*, [2015 ONSC 370](#), paras 21-22; *Cliffs Over Maple Bay Investments. Ltd. v. Fisgard Capital Corp.*, [2008 BCCA 327](#) at paras 36-37.

- (a) The Applicant is not a standard commercial real estate developer; rather, it serves a charitable purpose, namely, to provide a living community for senior citizens as a marginalized group;
- (b) There is significant equity in the Development Land, and the realizable value of the Development Land greatly exceeds the Applicant's obligations to its lenders;
- (c) The "dual track" SISP contemplated by the Applicant is a viable plan and includes an achievable timeline for completion;
- (d) The process contemplated by the Applicant would pose no significant prejudice to its senior secured lenders; and
- (e) The SISP will ensure that recoveries of the Applicant's creditors are maximized, by providing for a sales and marketing process that thoroughly canvasses the market in an orderly manner, and a claims process that ensures that creditor claims are assessed and paid in a fair, timely and orderly fashion.

B. It is appropriate to grant the requested stay of proceedings

39. It is well recognized that the purpose of the CCAA is to maintain the *status quo* to provide a structured environment in which an insolvent company can continue to carry on business and develop a restructuring plan for the benefit of the company and all of its stakeholders. Accordingly, one of the fundamental reasons a debtor company seeks protection under the CCAA is to obtain a stay of proceedings.³¹

³¹ *Re Lehndorff General partner Ltd.*, [1993] O.J. No. 14. at para 5, Tab 2 to the Brief of Authorities; *Century Services v Canada (Attorney General)*, [2010 SCC 60](#) at para 14.

40. Pursuant to section 11.02 of the CCAA, a court may make an order staying all proceedings in respect of a debtor company for a period of ten days, provided that the Court is satisfied that (i) circumstances exist that make the order appropriate, and (ii) the applicant has acted, and is acting, in good faith and with due diligence.³²

41. The Court has granted CCAA protection to not-for-profit organizations providing community services. As stated by Justice Blair in the CCAA proceedings of *Red Cross*:³³

“All insolvency re-organizations involve unfortunate situations, both from personal and monetary perspectives. Many which make their way through the courts have implications beyond simply the resolution of the debt structure between corporate debtor and creditors. They touch the lives of employees. They have an impact on the continued success of others who do business with the debtor company. Occasionally, they affect the fabric of a community itself.” [emphasis added].

42. The Applicant is not merely affiliated with the Church; rather its business is premised on service of the senior citizens who are members of the Church. Accordingly, absent a stay of proceedings, the Project, its charitable purpose, and congregants who rely on the work of the Church would be negatively impacted.

43. The stay of proceedings will allow the Applicant to proceed to formulate and implement a restructuring plan, and avoid the devastating impact on the senior citizens’ community in the case of a receivership or bankruptcy.

C. The Proposed Monitor should be appointed

44. Pursuant to section 11.7 of the CCAA, the Court shall appoint a person to monitor the business and financial affairs of a debtor company at the same time that an initial CCAA

³² CCAA, s. 11.02.

³³ *Canadian Red Cross Society*, [\[2000\] OJ No 3421](#) (S.C.J. Comm. List) [*“Red Cross”*] at paras 2-3.

order is made.³⁴ Section 11.7 requires that the monitor be a trustee, within the meaning of section 2(1) of the BIA, subject to certain restrictions in subsection 11.7(2).

45. Deloitte is a “trustee” within the meaning of subsection 2(1) of the BIA, and Deloitte is not subject to any of the restrictions to who may act as a monitor under section 11.7(2) of the CCAA. Moreover, Deloitte has consented to be appointed as Monitor in these CCAA proceedings.

D. The Administration Charge should be approved

46. Section 11.52 of the CCAA gives this Court jurisdiction to grant a priority charge for the fees and expenses of financial, legal and other advisors or experts. In *Canwest Publishing*, Justice Pepall provided a list of factors to be considered in approving an administration charge, including:³⁵

- (a) The size and complexity of the businesses under CCAA protection;
- (b) The proposed role of the beneficiaries of the charge;
- (c) Whether there is an unwarranted duplication of roles;
- (d) Whether the quantum of the proposed charge is fair and reasonable
- (e) The position of secured creditors likely to be affected by the charge; and
- (f) The position of the Monitor.

³⁴ CCAA, s. 11.7.

³⁵ *Canwest Publishing/Publications Canwest Inc, Re*, [2010 ONSC 222](#) at para 54 [“*Canwest Publishing*”].

47. These factors have been subsequently applied by this Court in numerous proceedings.³⁶
48. The Applicant seeks an initial charge against the property of the Applicant (including, in particular, the Development Land) (the “**Administration Charge**”) in favour of its counsel, the Proposed Monitor, and the Proposed Monitor’s counsel, to an initial maximum aggregate amount of \$150,000, in order to secure payment of fees and expenses incurred in connection with the within application and for the initial ten day period. The Administration Charge is proposed to rank as a first-priority charge, with the exception of ranking in subordinate all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, the “**Encumbrances**”) in favour of any persons that have not been served with notice of this Application.³⁷
49. It is respectfully submitted that the Administration Charge satisfies the *Canwest* factors and should be granted. The amount of the Administration Charge is limited to what is reasonably necessary for the initial stay period and is supported by the Proposed Monitor. The SISP and CCAA process will require extensive input from advisors and there is an immediate need for such advice.
50. The Applicant’s secured creditors have been given notice of this Application.

³⁶ See for example, *U.S. Steel Canada Inc, Re*, [2014 ONSC 6145](#) at paras 23 and 24; *Target Canada Co, Re*, [2015 ONSC 303](#) at paras 74 and 75.

³⁷ Anderson Affidavit at para 74, Tab 2 to the Application Record.

PART IV - ORDER REQUESTED

51. For the reasons set out above, the Applicant submits that this Court should grant the relief sought and issue an Order substantially in the form of the draft Order attached as Tab 3 to the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of February, 2022.



MILLER THOMSON LLP

Lawyers for the Applicant

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Re Stelco Inc.*, 2004 CarswellOnt 1211 (Sup Ct.), leave to appeal to CA refused, 2004 CarswellOnt 2936, leave to appeal to SCC refused, 2004 CarswellOnt 5200.
2. *Re Lehndorff General partner Ltd.*, [1993] O.J. No. 14.
3. *Re Textbook (525 Princess Street) Inc. et al*, Court File No. CV-16-1162-00CL – handwritten endorsement of Justice Penny dated December 15, 2016.
4. *Re Hush Homes Inc.*, [2015 ONSC 370](#).
5. *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, [2008 CarswellBC 1758](#) (B.C. C.A.).
6. *Century Services inc. v Canada (Attorney General)*, [2010 SCC 60](#).
7. *Canadian Red Cross Society*, [\[2000\] OJ No 3421](#) (S.C.J. Comm. List).
8. *Canwest Publishing/Publications Canwest Inc, Re*, [2010 ONSC 222](#) at para 54.
9. *U.S. Steel Canada Inc, Re*, [2014 ONSC 6145](#).
10. *Target Canada Co, Re*, [2015 ONSC 303](#).

**SCHEDULE “B”
RELEVANT STATUTES**

Companies’ Creditors Arrangement Act (R.S.C., 1985, c. C-36)

Definitions

- **2 (1)** In this Act,

aircraft objects[Repealed, 2012, c. 31, s. 419]

bargaining agent means any trade union that has entered into a collective agreement on behalf of the employees of a company; (*agent négociateur*)

bond includes a debenture, debenture stock or other evidences of indebtedness; (*obligation*)

cash-flow statement, in respect of a company, means the statement referred to in paragraph 10(2)(a) indicating the company’s projected cash flow; (*état de l’évolution de l’encaisse*)

claim means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act*; (*réclamation*)

collective agreement, in relation to a debtor company, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the debtor company and a bargaining agent; (*convention collective*)

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*)

court means

- **(a)** in Nova Scotia, British Columbia and Prince Edward Island, the Supreme Court,
- **(a.1)** in Ontario, the Superior Court of Justice,
- **(b)** in Quebec, the Superior Court,
- **(c)** in New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen’s Bench,

- **(c.1)** in Newfoundland and Labrador, the Trial Division of the Supreme Court, and
- **(d)** in Yukon and the Northwest Territories, the Supreme Court, and in Nunavut, the Nunavut Court of Justice; (*tribunal*)

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*)

director means, in the case of a company other than an income trust, a person occupying the position of director by whatever name called and, in the case of an income trust, a person occupying the position of trustee by whatever named called; (*administrateur*)

eligible financial contract means an agreement of a prescribed kind; (*contrat financier admissible*)

equity claim means a claim that is in respect of an equity interest, including a claim for, among others,

- **(a)** a dividend or similar payment,
- **(b)** a return of capital,
- **(c)** a redemption or retraction obligation,
- **(d)** a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
- **(e)** contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d); (*réclamation relative à des capitaux propres*)

equity interest means

- **(a)** in the case of a company other than an income trust, a share in the company — or a warrant or option or another right to acquire a share in the company — other than one that is derived from a convertible debt, and
- **(b)** in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt; (*intérêt relatif à des capitaux propres*)

financial collateral means any of the following that is subject to an interest, or in the Province of Quebec a right, that secures payment or performance of an obligation in respect of an eligible financial contract or that is subject to a title transfer credit support agreement:

- **(a)** cash or cash equivalents, including negotiable instruments and demand deposits,
- **(b)** securities, a securities account, a securities entitlement or a right to acquire securities, or
- **(c)** a futures agreement or a futures account; (*garantie financière*)

income trust means a trust that has assets in Canada if

- **(a)** its units are listed on a prescribed stock exchange on the day on which proceedings commence under this Act, or
- **(b)** the majority of its units are held by a trust whose units are listed on a prescribed stock exchange on the day on which proceedings commence under this Act; (*fiducie de revenu*)

initial application means the first application made under this Act in respect of a company; (*demande initiale*)

monitor, in respect of a company, means the person appointed under section 11.7 to monitor the business and financial affairs of the company; (*contrôleur*)

net termination value means the net amount obtained after netting or setting off or compensating the mutual obligations between the parties to an eligible financial contract in accordance with its provisions; (*valeurs nettes dues à la date de résiliation*)

prescribed means prescribed by regulation; (*Version anglaise seulement*)

secured creditor means a holder of a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, all or any property of a debtor company as security for indebtedness of the debtor company, or a holder of any bond of a debtor company secured by a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, or a trust in respect of, all or any property of the debtor company, whether the holder or beneficiary is resident or domiciled within or outside Canada, and a trustee under any trust deed or other

instrument securing any of those bonds shall be deemed to be a secured creditor for all purposes of this Act except for the purpose of voting at a creditors' meeting in respect of any of those bonds; (*créancier garanti*)

shareholder includes a member of a company — and, in the case of an income trust, a holder of a unit in an income trust — to which this Act applies; (*actionnaire*)

Superintendent of Bankruptcy means the Superintendent of Bankruptcy appointed under subsection 5(1) of the [Bankruptcy and Insolvency Act](#); (*surintendant des faillites*)

Superintendent of Financial Institutions means the Superintendent of Financial Institutions appointed under subsection 5(1) of the [Office of the Superintendent of Financial Institutions Act](#); (*surintendant des institutions financières*)

title transfer credit support agreement means an agreement under which a debtor company has provided title to property for the purpose of securing the payment or performance of an obligation of the debtor company in respect of an eligible financial contract; (*accord de transfert de titres pour obtention de crédit*)

unsecured creditor means any creditor of a company who is not a secured creditor, whether resident or domiciled within or outside Canada, and a trustee for the holders of any unsecured bonds issued under a trust deed or other instrument running in favour of the trustee shall be deemed to be an unsecured creditor for all purposes of this Act except for the purpose of voting at a creditors' meeting in respect of any of those bonds. (*créancier chirographaire*)

- **Meaning of *related and dealing at arm's length***

(2) For the purpose of this Act, section 4 of the [Bankruptcy and Insolvency Act](#) applies for the purpose of determining whether a person is related to or dealing at arm's length with a debtor company.

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.
- **Affiliated companies**

(2) For the purposes of this Act,

 - (a) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and
 - (b) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

- **Company controlled**

(3) For the purposes of this Act, a company is controlled by a person or by two or more companies if

- **(a)** securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those companies; and
- **(b)** the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.

- **Subsidiary**

(4) For the purposes of this Act, a company is a subsidiary of another company if

- **(a)** it is controlled by
 - **(i)** that other company,
 - **(ii)** that other company and one or more companies each of which is controlled by that other company, or
 - **(iii)** two or more companies each of which is controlled by that other company; or
- **(b)** it is a subsidiary of a company that is a subsidiary of that other company.

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.

- **Stays, etc. — other than initial application**

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- **(a)** staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- **(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**
 - (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.
- **Restriction**
 - (4)** Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

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**
 - (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).
- **Court may replace monitor**

(3) On application by a creditor of the company, the court may, if it considers it appropriate in the circumstances, replace the monitor by appointing another trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, to monitor the business and financial affairs of the company.

Bankruptcy and Insolvency Act (R.S.C., 1985, c. B-3)

Definitions

2 In this Act,

affidavit includes statutory declaration and solemn affirmation; (*affidavit*)

aircraft objects[Repealed, 2012, c. 31, s. 414]

application, with respect to a bankruptcy application filed in a court in the Province of Quebec, means a motion; (*Version anglaise seulement*)

assignment means an assignment filed with the official receiver; (*cession*)

bank means

- (a) every bank and every authorized foreign bank within the meaning of section 2 of the *Bank Act*,
- (b) every other member of the Canadian Payments Association established by the *Canadian Payments Act*, and
- (c) every local cooperative credit society, as defined in subsection 2(1) of the Act referred to in paragraph (b), that is a member of a central cooperative credit society, as defined in that subsection, that is a member of that Association; (*banque*)

bankrupt means a person who has made an assignment or against whom a bankruptcy order has been made or the legal status of that person; (*failli*)

bankruptcy means the state of being bankrupt or the fact of becoming bankrupt; (*faillite*)

bargaining agent means any trade union that has entered into a collective agreement on behalf of the employees of a person; (*agent négociateur*)

child[Repealed, 2000, c. 12, s. 8]

claim provable in bankruptcy, provable claim or claim provable includes any claim or liability provable in proceedings under this Act by a creditor; (*réclamation prouvable en matière de faillite ou réclamation prouvable*)

collective agreement, in relation to an insolvent person, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the insolvent person and a bargaining agent; (*convention collective*)

common-law partner, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year; (*conjoint de fait*)

common-law partnership means the relationship between two persons who are common-law partners of each other; (*union de fait*)

corporation means a company or legal person that is incorporated by or under an Act of Parliament or of the legislature of a province, an incorporated company, wherever incorporated, that is authorized to carry on business in Canada or has an office or property in Canada or an income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the [Bank Act](#), insurance companies, trust companies or loan companies; (*personne morale*)

court, except in paragraphs 178(1)(a) and (a.1) and sections 204.1 to 204.3, means a court referred to in subsection 183(1) or (1.1) or a judge of that court, and includes a registrar when exercising the powers of the court conferred on a registrar under this Act; (*tribunal*)

creditor means a person having a claim provable as a claim under this Act; (*créancier*)

current assets means cash, cash equivalents — including negotiable instruments and demand deposits — inventory or accounts receivable, or the proceeds from any dealing with those assets; (*actif à court terme*)

date of the bankruptcy, in respect of a person, means the date of

- (a) the granting of a bankruptcy order against the person,
- (b) the filing of an assignment in respect of the person, or
- (c) the event that causes an assignment by the person to be deemed; (*date de la faillite*)

date of the initial bankruptcy event, in respect of a person, means the earliest of the day on which any one of the following is made, filed or commenced, as the case may be:

- **(a)** an assignment by or in respect of the person,
- **(b)** a proposal by or in respect of the person,
- **(c)** a notice of intention by the person,
- **(d)** the first application for a bankruptcy order against the person, in any case
 - **(i)** referred to in paragraph 50.4(8)(a) or 57(a) or subsection 61(2), or
 - **(ii)** in which a notice of intention to make a proposal has been filed under section 50.4 or a proposal has been filed under section 62 in respect of the person and the person files an assignment before the court has approved the proposal,
- **(e)** the application in respect of which a bankruptcy order is made, in the case of an application other than one referred to in paragraph (d), or
- **(f)** proceedings under the [Companies' Creditors Arrangement Act](#); (*ouverture de la faillite*)

debtor includes an insolvent person and any person who, at the time an act of bankruptcy was committed by him, resided or carried on business in Canada and, where the context requires, includes a bankrupt; (*débiteur*)

director in respect of a corporation other than an income trust, means a person occupying the position of director by whatever name called and, in the case of an income trust, a person occupying the position of trustee by whatever name called; (*administrateur*)

eligible financial contract means an agreement of a prescribed kind; (*contrat financier admissible*)

equity claim means a claim that is in respect of an equity interest, including a claim for, among others,

- **(a)** a dividend or similar payment,
- **(b)** a return of capital,
- **(c)** a redemption or retraction obligation,

- **(d)** a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
- **(e)** contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d); (*réclamation relative à des capitaux propres*)

equity interest means

- **(a)** in the case of a corporation other than an income trust, a share in the corporation — or a warrant or option or another right to acquire a share in the corporation — other than one that is derived from a convertible debt, and
- **(b)** in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt; (*intérêt relatif à des capitaux propres*)

executing officer includes a sheriff, a bailiff and any officer charged with the execution of a writ or other process under this Act or any other Act or proceeding with respect to any property of a debtor; (*huissier-exécutant*)

financial collateral means any of the following that is subject to an interest, or in the Province of Quebec a right, that secures payment or performance of an obligation in respect of an eligible financial contract or that is subject to a title transfer credit support agreement:

- **(a)** cash or cash equivalents, including negotiable instruments and demand deposits,
- **(b)** securities, a securities account, a securities entitlement or a right to acquire securities, or
- **(c)** a futures agreement or a futures account; (*garantie financière*)

General Rules means the General Rules referred to in section 209; (*Règles générales*)

income trust means a trust that has assets in Canada if

- **(a)** its units are listed on a prescribed stock exchange on the date of the initial bankruptcy event, or
- **(b)** the majority of its units are held by a trust whose units are listed on a prescribed stock exchange on the date of the initial bankruptcy event; (*fiducie de revenu*)

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*)

legal counsel means any person qualified, in accordance with the laws of a province, to give legal advice; (*conseiller juridique*)

locality of a debtor means the principal place

- **(a)** where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,
- **(b)** where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or
- **(c)** in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated; (*localité*)

Minister means the Minister of Industry; (*ministre*)

net termination value means the net amount obtained after netting or setting off or compensating the mutual obligations between the parties to an eligible financial contract in accordance with its provisions; (*valeurs nettes dues à la date de résiliation*)

official receiver means an officer appointed under subsection 12(2); (*séquestre officiel*)

person includes a partnership, an unincorporated association, a corporation, a cooperative society or a cooperative organization, the successors of a partnership, of an association, of a corporation, of a society or of an organization and the heirs, executors, liquidators of the succession, administrators or other legal representatives of a person; (*personne*)

prescribed

- **(a)** in the case of the form of a document that is by this Act to be prescribed and the information to be given therein, means prescribed by directive issued by the Superintendent under paragraph 5(4)(e), and
- **(b)** in any other case, means prescribed by the General Rules; (*prescrit*)

property means any type of property, whether situated in Canada or elsewhere, and includes money, goods, things in action, land and every description of property, whether real or personal, legal or equitable, as well as obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, in, arising out of or incident to property; (*bien*)

proposal means

- **(a)** in any provision of Division I of Part III, a proposal made under that Division, and
- **(b)** in any other provision, a proposal made under Division I of Part III or a consumer proposal made under Division II of Part III

and includes a proposal or consumer proposal, as the case may be, for a composition, for an extension of time or for a scheme or arrangement; (*proposition concordataire* ou *proposition*)

public utility includes a person or body who supplies fuel, water or electricity, or supplies telecommunications, garbage collection, pollution control or postal services; (*entreprise de service public*)

resolution or **ordinary resolution** means a resolution carried in the manner provided by section 115; (*résolution* ou *résolution ordinaire*)

secured creditor means a person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor, or a person whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable, and includes

- **(a)** a person who has a right of retention or a prior claim constituting a real right, within the meaning of the *Civil Code of Québec* or any other statute of the Province of Quebec, on or against the property of the debtor or any part of that property, or
- **(b)** any of
 - **(i)** the vendor of any property sold to the debtor under a conditional or instalment sale,
 - **(ii)** the purchaser of any property from the debtor subject to a right of redemption, or
 - **(iii)** the trustee of a trust constituted by the debtor to secure the performance of an obligation,

if the exercise of the person's rights is subject to the provisions of Book Six of the *Civil Code of Québec* entitled *Prior Claims and Hypothecs* that deal with the exercise of hypothecary rights; (*créancier garanti*)

settlement[Repealed, 2005, c. 47, s. 2]

shareholder includes a member of a corporation — and, in the case of an income trust, a holder of a unit in an income trust — to which this Act applies; (*actionnaire*)

sheriff[Repealed, 2004, c. 25, s. 7]

special resolution means a resolution decided by a majority in number and three-fourths in value of the creditors with proven claims present, personally or by proxy, at a meeting of creditors and voting on the resolution; (*résolution spéciale*)

Superintendent means the Superintendent of Bankruptcy appointed under subsection 5(1); (*surintendant*)

Superintendent of Financial Institutions means the Superintendent of Financial Institutions appointed under subsection 5(1) of the [Office of the Superintendent of Financial Institutions Act](#); (*surintendant des institutions financières*)

time of the bankruptcy, in respect of a person, means the time of

- **(a)** the granting of a bankruptcy order against the person,
- **(b)** the filing of an assignment by or in respect of the person, or
- **(c)** the event that causes an assignment by the person to be deemed;
(*moment de la faillite*)

title transfer credit support agreement means an agreement under which an insolvent person or a bankrupt has provided title to property for the purpose of securing the payment or performance of an obligation of the insolvent person or bankrupt in respect of an eligible financial contract; (*accord de transfert de titres pour obtention de crédit*)

transfer at undervalue means a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor; (*opération sous-évaluée*)

trustee or **licensed trustee** means a person who is licensed or appointed under this Act. (*syndic* ou *syndic autorisé*)

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

Court File No.: CV-22-00677236-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TRINITY RAVINE COMMUNITY INC.

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

Proceeding commenced at TORONTO

**FACTUM OF THE APPLICANT
(returnable February 23, 2022)**

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