

**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 SECTION 101 OF THE *COURTS OF JUSTICE ACT*,  
R.S.O. 1990, C. C-43, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
VICTORIAN ORDER OF NURSES FOR CANADA, VICTORIAN ORDER OF  
NURSES FOR CANADA – EASTERN REGION AND VICTORIAN ORDER OF  
NURSES FOR CANADA – WESTERN REGION

Applicants

**MOTION RECORD  
(Re: Pension Matters)  
(Returnable July 14, 2016)**

May 30, 2016

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**INDEX**

Tab:	Document:	Page No.:
1	Notice of Motion returnable on July 14, 2016	1
2	Affidavit of Jo-Anne Poirier sworn May 30, 2016 along with Exhibits:	12
(a)	A copy of the Second Amended and Restated Initial Order dated November 25, 2015 (entered January 19, 2016)	32
(b)	A copy of the Endorsement dated January 19, 2016	51
(c)	A copy of the Certificate of Continuance for VON Canada dated July 8, 2014	53
(d)	A copy of the Certificate of Continuance for VON East dated July 8, 2014	55
(e)	A copy of the Certificate of Continuance for VON West dated July 8, 2014	57
(f)	A copy of the Pension Plan text, as amended and restated effective January 1, 2014, and all subsequent amendments	59
(g)	A copy of the most recent Actuarial Valuation Report, as of June 1, 2015	158
(h)	A copy of the letter delivered to FSCO dated February 18, 2016	234
3	Draft form of Order	240

**Tab 1**

**ONTARIO  
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NURSES FOR CANADA – WESTERN REGION

Applicants

**NOTICE OF MOTION  
(returnable July 14, 2016)**

Victorian Order Of Nurses For Canada ("**VON Canada**") will make a motion to a Judge presiding over the Commercial List on July 14, 2016 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR** an order authorizing and directing VON Canada to take steps to restructure certain aspects of the VON Canada Pension Plan as described in the form of draft order included in VON Canada's motion record.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) The Applicants in this proceeding are VON Canada, Victorian Order Of Nurses For Canada – Eastern Region ("**VON East**") and Victorian Order Of Nurses For Canada – Western Region ("**VON West**");

- (b) VON East and VON West have ceased operating at this time;
- (c) When VON East and VON West did operate, their operations were distinct and separate from the other entities in the VON group of companies, which includes VON Canada, Victorian Order Of Nurses For Canada – Ontario Branch (“**VON Ontario**”) and Victorian Order Of Nurses For Canada Nova Scotia Branch (“**VON Nova Scotia**” and, together with VON Ontario, VON Canada, VON East and VON West, the “**VON Group**”);
- (d) The VON Canada Pension Plan (the “**Pension Plan**”) was established on January 1, 1958 and is a defined benefit pension plan, registered in Ontario;
- (e) VON Canada is the sponsor and administrator of the Pension Plan;
- (f) The Pension Plan was available to employees of the five entities in the VON Group;
- (g) The Pension Plan is in a wind-up deficit position;
- (h) Most recent estimates suggest that, as of January 1, 2016, the wind-up deficiency was \$20 million, which represents a deficit of approximately 6% of total assets of the Pension Plan;
- (i) As a result of the shutdown of operations of VON East and VON West, neither VON East nor VON West will be in a position to make any contributions to the Pension Plan going forward;
- (j) VON East and VON West contributed to the Pension Plan for service of their employees up to November 25, 2015 and no further contributions to the Pension Plan have been made by VON East and VON West since that time;

- (k) VON Canada has considered, with the assistance of its legal and pension advisors, options to most appropriately address the fact that former VON East and VON West employees have entitlements under the Pension Plan while: (i) VON East and VON West are no longer contributing to the Pension Plan; and (ii) as VON East and VON West no longer have employees, no such employees are contributing to the Pension Plan;
- (l) The VON Canada board of directors, in consultation with VON Canada's advisors and the board's advisors, determined that the appropriate approach in the circumstances would be to implement the proposed Pension Plan restructuring whereby the assets and liabilities related to VON East and VON West members would be separated from the remainder of the Pension Plan and dealt with for the benefit of the VON East and VON West members;
- (m) This proposed course of action was determined to treat the stakeholders of the various VON Group entities as fairly as possible in the circumstances and is consistent with the overall restructuring goal of this proceeding, which is to separate the core VON Ontario and VON Nova Scotia operating entities and VON Canada from the assets and liabilities associated with the non-continuing entities;
- (n) The proposed Pension Plan restructuring achieves substantially the same result for VON East and VON West members as a full wind up of the Pension Plan would at this time;
- (o) The Pension Plan benefits and entitlements of Pension Plan members employed or formerly employed by employers other than VON East and VON West will not be affected by the above steps and will be processed in the ordinary course;

- (p) The additional grounds set out in the Affidavit of Jo-Anne Poirier, sworn May 30, 2016 (the "**Poirier Affidavit**");

*General*

- (q) The provisions of the CCAA; and
- (r) Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) The Poirier Affidavit;
- (b) A Report of Collins Barrow Toronto Limited, in its capacity as Monitor of the Applicants, to be filed; and
- (c) Such further and other material as counsel may advise and this Court may permit.

May 30, 2016

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
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Court File No. CV-15-11192-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(Returnable July 14, 2016)**

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## Tab 2

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**Applicants**

**AFFIDAVIT OF JO-ANNE POIRIER  
(sworn May 30, 2016)**

I, Jo-Anne Poirier, of the City of Ottawa, in the Province of Ontario, MAKE OATH  
AND SAY:

1. I am the President and Chief Executive Officer of Victorian Order Of Nurses  
For Canada ("VON Canada") as well as its four separately incorporated regional operating  
entities:

- (a) Victorian Order Of Nurses For Canada – Eastern Region ("VON East");
  - (b) Victorian Order Of Nurses For Canada – Western Region ("VON West");
  - (c) Victorian Order Of Nurses For Canada – Ontario Branch ("VON Ontario");
- and



- (d) Victorian Order Of Nurses For Canada Nova Scotia Branch ("**VON Nova Scotia**").

VON Canada, VON East, VON West, VON Ontario and VON Nova Scotia, are referred to herein, collectively, as the "**VON Group**" and VON Canada, VON East and VON West are referred to herein as the "**Applicants**".

2. I have held that position since January 2, 2014. As such, I have personal knowledge of the matters to which I hereinafter depose, except where otherwise stated. In preparing this affidavit I have also consulted, where necessary, with other members of VON Group's management team. Where I have relied upon other sources of information, I have stated the source of that information and believe such information to be true.

3. This affidavit is sworn in support of a motion to seek the Court's authorization and direction with respect to steps VON Canada seeks to take to restructure certain aspects of the VON Canada Pension Plan (the "**Pension Plan**") as set out in greater detail below (the "**Pension Plan Restructuring**").

#### I. INTRODUCTION

4. On November 25, 2015 (the "**Filing Date**"), the Court issued an Initial Order (the "**Initial Order**") in these proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") and an Order (the "**Receivership Order**") appointing Collins Barrow Toronto Limited as Receiver of certain property of the Applicants (in such capacity, the "**Receiver**") pursuant to Section 101 of the *Courts of Justice Act* (Ontario). The Initial Order also appointed Collins Barrow Toronto Limited as Monitor of the Applicants (in such capacity, the "**Monitor**").

5. At a hearing on December 9, 2015 (the "Comeback Hearing"), the Initial Order and the Receivership Order were amended and restated to modify the ranking of the court ordered charges granted therein.

6. On January 19, 2016, the Initial Order was further amended and restated. A copy of the Second Amended and Restated Initial Order and the endorsement granted in connection therewith are attached hereto as Exhibit "A" and Exhibit "B", respectively.

7. At a motion heard on May 27, 2016, the Court issued orders extending the Stay Period (as defined in the Initial Order) to November 25, 2016 and terminating the receivership.

**II. VON EAST AND VON WEST**

8. The VON Group is made up of five separate corporate employers as noted above, including the three Applicants. The Certificate of Continuance for each of VON Canada, VON East and VON West are attached hereto as Exhibits "C", "D" and "E", respectively.

9. Prior to 2000, over 60 separately incorporated local entities provided health care under the Victorian Order Of Nurses name throughout Canada. In 2000, VON Canada began consolidating all of these local entities through an initiative known as "One VON". As a result, the operations and employees and certain assets and liabilities of these local entities were transferred to the applicable regional operating entity (VON East, VON West, VON Nova Scotia or VON Ontario). The local entities are now known as "community corporations" and carry on primarily a fund raising role. As part of the One VON initiative, many of the overhead functions of the various local entities were consolidated at VON Canada and VON Canada continues to provide those overhead functions today.

10. VON East and VON West have ceased operating at this time. When they did operate, their operations were distinct and separate from the other entities in the VON Group:

- (a) VON East and VON West paid all remuneration to their respective employees independent of the other entities in the VON Group. At no time did VON Canada, VON Ontario or VON Nova Scotia pay any such remuneration;
- (b) Each of VON Canada, VON East and VON West has its own employer number as issued by Canada Revenue Agency ("CRA"). The relevant CRA employer number is on the employee's T4 slip;
- (c) VON East and VON West also made all required contributions to the Pension Plan by matching the contributions of their respective employees who are members in the Pension Plan;
- (d) VON East and VON West each received revenues directly from government funding agencies, private contracts and/or donations from funders in their regions and used those revenues to fund their activities; and
- (e) VON East and VON West were also the counterparties to the various leases of real property that they used in connection with carrying on their businesses and owned or leased the assets that were used in the performance of their employees' duties.

11. While VON Canada did provide certain overhead functions to VON East and VON West, VON East and VON West each paid VON Canada fees to cover the costs of those services.

12. VON East and VON West were entirely shut down shortly after the commencement of this proceeding on November 25, 2015. All employees of VON East and VON West were terminated on the Filing Date, though some personnel were re-engaged on a contract basis to perform critical wind down functions.

III. THE PENSION PLAN

13. The restructuring of the Pension Plan is a matter that has to be resolved as part of these CCAA proceedings.

14. The Pension Plan was established on January 1, 1958. It is a defined benefit pension plan, registered in Ontario.

15. VON Canada is the sponsor and administrator of the Pension Plan. VON Canada retained the services of various agents including: (i) Morneau Shepell, Ltd. pursuant to an Administrative Services Agreement effective as of June 1, 2015 in respect of certain administrative pension services; and (ii) Mercer (Canada) Limited pursuant to a letter of engagement dated July 29, 2009 with VON Canada in respect of certain actuarial, consulting, and administrative services.

16. A copy of the Pension Plan text, as amended and restated effective January 1, 2014, and all subsequent amendments are attached hereto as Exhibit "F".

Pension Plan Summary

17. Set out below is a summary of key aspects of the Pension Plan. This description is intended as a general summary only. Reference should be made to the full text of the Pension Plan for a complete description of all terms of the Pension Plan.

18. The Pension Plan was available to employees of the five entities in the VON Group.

19. All permanent full-time employees of entities in the VON Group may voluntarily become members of the Pension Plan after completing six months of continuous

employment and would otherwise be required to become a member of the Pension Plan after 12 months of continuous employment.

20. All employees of a VON Group entity, other than permanent full-time employees, may voluntarily become members of the Pension Plan after completion of 24 months of continuous employment.<sup>1</sup>

21. Certain exceptions to the foregoing eligibility requirement exist for employees in Manitoba and Quebec and in other limited circumstances.

22. Subject to the terms and limitations contained in the Pension Plan, active members of the Pension Plan currently contribute, by payroll deduction, the sum of 7% of pensionable earnings up to the particular Year's Maximum Pensionable Earnings (as defined under the Pension Plan) and 9.75% of pensionable earnings in excess of the particular Year's Maximum Pensionable Earnings calculated on a full-time basis and then modified as necessary to account for non-full-time employment.

23. Subject to the terms and limitations contained in the Pension Plan, the employer of a particular Pension Plan member shall match the member's contribution. In addition, each of the VON Group entities is to remit its proportionate share of contributions which in the opinion of the Pension Plan actuary are required to amortize any unfunded liability or solvency deficiency determined in accordance with the provisions of the *Pension Benefits Act* (Ontario) that may arise from time to time.

---

<sup>1</sup> The definition of an 'Employee' for the purposes of the Pension Plan includes persons who are employed on an other than full-time basis, but does not include those who are engaged on a contract basis.

24. Standard retirement benefits under the Pension Plan are calculated as monthly lifetime entitlements based upon a formula that takes into account: (i) the retiring members' best average continuous five years of pensionable earnings; and (ii) the number of years of credited service rendered by such employee.

25. In the case of terminated employees with vested pension benefits under the Pension Plan, those terminated employees would receive a deferred pension benefit payable in accordance with the standard benefits calculations as described above using such terminated employee's average pensionable earnings and credited service. Payment would begin when such terminated employee reaches age 60. A terminated employee may, instead of electing to receive the deferred benefits described above, elect upon meeting certain criteria to receive an amount equal to the commuted value of the deferred pension benefit either: (i) to transfer such amount to another registered pension plan; (ii) to transfer such amount to a prescribed retirement savings arrangement; or (iii) for the purchase for the member of a lifetime pension benefit arrangement to commence at or after age 50. Certain exceptions to the above arrangement apply to Alberta and Quebec employees.

26. While the normal form of pension benefits payments under the Pension Plan are monthly payments for the retired member's lifetime,<sup>2</sup> with a five year guarantee period, retired members may also elect to waive this form of pension in return for alternative forms of payments that are the actuarial equivalent of the normal form of pension. Those alternative forms are subject to the qualifications and limitations contained in the Pension Plan and are described in Section 12.4 of the Pension Plan.

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<sup>2</sup> This is the normal form of pension benefit for a member without a spouse. The normal form of pension benefit for a member with a spouse is a joint and survivor pension. This joint and survivor pension is for an actuarially reduced amount so that the joint and survivor pension has the same actuarial present value as the pension that would be payable if the member was single.

27. All benefits under the Pension Plan are subject to the lifetime pension benefits limit described in Section 13.2 of the Pension Plan.

28. The Pension Plan would be discontinued automatically in the event of a bankruptcy, liquidation or sale of assets of VON Canada. In the event of a discontinuance, the assets of the Pension Plan fund are to be converted to cash and that cash is to be used in accordance with Section 17.3 of the Pension Plan to, among other things, (i) provide for the continuance of pension benefit payments then in effect to retired members and other beneficiaries associated with those retired members, (ii) provide for deferred pension benefits to which members have become entitled (for example, as a result of termination or early retirement), and (iii) provide pension benefits commencing at age 60 to active members that have accrued benefits at the date of discontinuance, to the extent sufficient funding is available for this purpose.

Pension Plan Membership

29. The report of the most recent actuarial valuation of the Pension Plan for funding purposes, as of June 1, 2015, used the following membership data in respect of the Pension Plan:

<b>Pension Plan Membership</b>	
Active Members	2,945
Suspended Members	266
Deferred Pensioners	602
Pensioners and Survivors	2,081
<b>Average Annual Pension</b>	
Suspended Members	\$3,885
Deferred Pensioners	\$3,388
Pensioners and Survivors	\$6,660

Estimated Membership by Employer	
VON East	172
VON West	370
VON Canada	204
VON Nova Scotia	1,576
VON Ontario	3,370
Other Participating Employers <sup>3</sup>	202

30. There is significant variability between the annual pension amounts of individual members. Individual annual pension amounts range from under \$1,000 to over \$40,000. Approximately 75% of Pension Plan members receive less than \$9,000 annually from the Pension Plan.

31. The employment of 129 active members of the Pension Plan (35 employees of VON Canada and 94 employees of VON East and VON West) was terminated on November 25, 2015.<sup>4</sup>

Pension Plan Funding

32. The most recent actuarial valuation report for funding purposes regarding the Pension Plan, as of June 1, 2015, showed that the Pension Plan was in a funding excess position on a going concern basis at the time of such report. The funding excess as at June 1, 2015 was \$48,072,000 on a going concern basis. The total assets of the Pension Plan at that time were \$341,607,000 after actuarial adjustments. The going concern assets were

<sup>3</sup> Includes Pension Plan members from four employers separate from the VON Group: Acclaim Health, Nova Montreal, Nova West Island, and the Health and Home Care Society of British Columbia. These employers no longer have any active employees under the Pension Plan but they were contributing their share of payments to fund the Pension Plan deficit on behalf of their members. Since the last valuation, asset and liabilities with respect to Acclaim Health have been transferred out to the Acclaim Health Pension Plan on November 19, 2015.

<sup>4</sup> The employment of other VON Canada, VON East and VON West employees was also terminated on November 25, 2015. However, these additional employees were not members of the Pension Plan.



approximately \$40 million higher than the January 1, 2014 values, and the going concern funding excess increased by approximately \$35 million between January 1, 2014 and June 1, 2015. A copy of the most recent actuarial valuation report, as of June 1, 2015, is attached hereto as Exhibit "G".

33. Notwithstanding the above going concern valuation, the Pension Plan is in a wind-up deficit position. Based upon the valuation as at June 1, 2015, the estimated wind-up deficiency for the Pension Plan was \$15 million. The most recent estimates suggest that as of January 1, 2016, the wind-up deficiency was \$20 million. This represents a deficit of approximately 6% of total assets of the Pension Plan.

34. The wind-up deficit fluctuates from time to time based upon a number of factors outside of the control of the VON Group including, without limitation, applicable interest rates and financial market conditions.

35. The wind-up deficit calculation also depends upon a number of actuarial assumptions including, without limitation: (i) the manner in which members may elect to receive their benefits on wind-up, and (ii) the prevailing annuity market at the time of benefit settlement.

36. Other than VON East and VON West, the VON Group has continued to make ordinary course contributions to the Pension Plan as required by the terms of the Pension Plan and applicable law. No portion of the current wind-up deficit is attributable to a failure by the VON Group to make required ordinary course payments.

37. Per the actuarial valuation report, the VON Group monthly contributions to the Pension Plan were expected to be between \$680,000 and \$710,000 for the June 2015 to June 2018 period for the Pension Plan as a whole. This amount has reduced to between

\$650,000 to \$680,000 per month as a result of terminations of employment on November 25, 2015.

#### IV. RESTRUCTURING OF VON EAST AND VON WEST PORTIONS OF THE PENSION PLAN

38. As a result of the shutdown of operations of VON East and VON West, neither VON East nor VON West will be in a position to make any contributions to the Pension Plan going forward. VON East and VON West contributed to the Pension Plan for service of their employees up to November 25, 2015. No further contributions to the Pension Plan have been made by VON East and VON West since that time.

39. VON Canada has considered, with the assistance of its legal and pension advisors, options to most appropriately address the fact that former VON East and VON West employees have entitlements under the Pension Plan while: (i) VON East and VON West are no longer contributing to the Pension Plan; and (ii) as VON East and VON West no longer have employees, no such employees are contributing to the Pension Plan.

40. In considering this issue, VON Canada's board of directors considered three options:

- (a) the entire Pension Plan could continue and VON Ontario, VON Nova Scotia and VON Canada would effectively bear the cost of funding the existing wind-up deficiency, including that portion of the deficiency attributable to VON East and VON West;
- (b) if permitted and to the extent a pension regulator does not require an alternative approach, contributions would be suspended for VON East and VON West for a period of time to determine if market conditions may improve and the wind-up deficit may reverse. A partial wind-up of the VON East and VON West portions of the Pension Plan could then be implemented at

adjusted values to account for any market fluctuations during that period. There is, of course, no guarantee that market conditions would improve or that the wind-up deficit would reverse during this period; or

- (c) a segregation of the assets and liabilities attributable to the VON East and VON West portions of the Pension Plan at this time, which assets and liabilities would be dealt with for the benefit of the VON East and VON West members.

41. In evaluating each of these options, the following factors were considered:

- (a) the valuation of, and obligations under, the Pension Plan are subject to change on an ongoing basis. It is not possible to know at any particular time whether the existing wind-up deficiency will decrease due to more favourable market conditions or increase due to less favourable market conditions;
- (b) whether VON Ontario, VON Nova Scotia and VON Canada have a legal obligation to pay, or are permitted under applicable law to pay, any amounts on behalf of VON East and VON West to the Pension Plan, and fairness considerations related to any such payments;
- (c) the overall rationale of the restructuring process as it relates to VON East and VON West, which is to separate the assets and liabilities of VON East and VON West from the remainder of the VON Group;
- (d) the fact that neither VON East nor VON West will have any ongoing source of funding through which to pay any portion of the wind-up deficit in accordance with the Pension Plan;
- (e) provincial funders, including the Ontario Ministry of Health and Long Term Care have raised concerns of cross-subsidization of costs in other provinces using the funds provided by such provincial funders. The VON Group has sought to avoid this cross-subsidization throughout these proceedings;
- (f) the terms of the bank financing available to VON Ontario and VON Nova Scotia, and guaranteed by VON Canada, provides that it is an event of default

if any of VON Ontario, VON Nova Scotia or VON Canada is required, as a result of a termination of the Pension Plan (in whole or in part), to make additional contributions to the Pension Plan or to incur additional liability or obligation to the Pension Plan; and

(g) the cost of implementing each of the three options.

42. The portion of the wind-up deficit attributable to VON East and VON West was estimated by Mercer (Canada) Limited to be approximately \$2 million as of January 1, 2016.

43. The VON Canada board of directors, in consultation with VON Canada's advisors and the board's advisors, determined that the appropriate approach in the circumstances would be to implement the Pension Plan Restructuring whereby the assets and liabilities related to VON East and VON West members would be separated from the remainder of the Pension Plan and dealt with for the benefit of the VON East and VON West members. This approach would have the effect of segregating the VON East and VON West portions of the Pension Plan and would ensure that the continuing VON Group entities do not subsidize Pension Plan costs that are properly payable by VON East or VON West. This proposed course of action was determined to treat the stakeholders of the various VON Group entities as fairly as possible in the circumstances and is consistent with the overall restructuring goal of this proceeding, which is to separate the core VON Ontario and VON Nova Scotia operating entities and VON Canada from the assets and liabilities associated with the non-continuing entities. The proposed Pension Plan Restructuring achieves substantially the same result for VON East and VON West members as a full wind up of the Pension Plan would at this time.

44. On February 18, 2016, a letter was delivered by VON Canada to the Financial Services Commission of Ontario ("FSCO") outlining the proposed Pension Plan

Restructuring. The letter sought to obtain the views of FSCO, as the body with regulatory oversight over the Pension Plan, with respect to the proposed Pension Plan Restructuring. Numerous discussions were held with FSCO both before and after the delivery of the February 18 letter to explain the mechanics of the proposal and the reasons for the proposal. The VON Group, or its counsel, also had discussions with various stakeholders who indicated their interest in discussing this matter, including counsel for the Ontario Nurses Association and the United Nurses of Alberta and also including the Nova Scotia Department of Health and Wellness regarding the proposal. A copy of the letter delivered to FSCO is attached hereto as Exhibit "H".

45. On April 27, 2016, VON Canada was advised that FSCO will not take a position at this time on VON Canada's proposed approach to the Pension Plan Restructuring. Therefore, at this time the proposed Pension Plan Restructuring is being prepared without direct input from FSCO. FSCO is on the Service List and will receive notice of this motion.

46. In summary, the Pension Plan Restructuring divides the members of the Pension Plan into four categories that receive the following treatment:

- (a) *Members who are or were employed by VON Canada, VON Ontario and VON Nova Scotia, other than the Terminated and Affected VON Canada Employees (as defined below) (over 5000 members).*

The pension benefits of employees and former employees of VON Nova Scotia and VON Ontario continue to accrue or to be paid in full, as the case may be, and these employers continue to contribute to the Pension Plan, in accordance with the Pension Plan terms and applicable law. Similarly, the pension benefits of employees and former employees of VON Canada (other than those whose employment was terminated on November 25, 2015 or who

were already eligible for pension payments on November 25, 2015 but whose payments had not yet commenced at that time or since November 25, 2015 have become eligible for pension payments) continue to accrue or to be paid in full, as the case may be, and VON Canada continues to contribute to the Pension Plan as normal, in accordance with the Pension Plan terms and applicable law.

- (b) *Members who were employed by VON Canada until their employment was terminated on commencement of the CCAA Proceeding or were eligible for pension payments when the CCAA Proceedings commenced but whose payments had not yet commenced at that time or since November 25, 2015 have become eligible for pension payments (the "Terminated and Affected VON Canada Employees") (approximately 42 members).*

VON Canada's operations have not been terminated and VON Canada is continuing to contribute to the Pension Plan. As a result, individuals who lost their employment with VON Canada on November 25, 2015 would be provided with a normal statement of their benefit entitlements and options upon their termination of employment, as they would be if they had been terminated in the ordinary course. In addition, members who were eligible for pension payments but whose payment had not commenced prior to the commencement of the CCAA proceedings and members who have become eligible to receive payments since the commencement of the CCAA proceedings would have their relevant pension payments paid in full as per the option they had selected.

Since VON Canada is expected to continue to operate and would continue to make all required contributions in respect of its employees and its former employees, terminated VON Canada members' benefits would be payable in full, as ordinary course terminations, with no special steps required.

- (c) *Members who are former employees of VON East and VON West in provinces where applicable law contemplates partial wind-ups (approximately 457 individuals).*

Plan members from VON East and VON West who worked in New Brunswick, Newfoundland, Prince Edward Island,<sup>5</sup> Manitoba or Saskatchewan would be included in a partial wind-up of the Plan. For efficiency, a single partial wind-up would be declared to cover all eligible members. As a result of the partial wind-up, VON East and VON West members' benefits will be reduced to reflect the wind-up deficit of their portion of the Pension Plan. A partial wind-up is the termination of a portion of the Pension Plan in accordance with applicable pension legislation.

- (d) *Members from VON East and VON West employed in provinces where applicable law does not contemplate partial wind-ups (approximately 85 individuals).*

Pension Plan members from VON East and VON West who worked in Alberta, British Columbia and Quebec would not be included in the partial wind-up of the Pension Plan. I am advised by Martin Rochette of Norton Rose Fulbright Canada LLP, counsel to the VON Group, that pension legislation in these provinces does not specifically provide for partial wind-ups but provide for an analogous procedure. The same ratio as is used in a partial wind-up would also be used to determine the funded portion of benefit entitlements for these VON East and VON West members who are not included in the partial wind-up. In other words, these members' benefits will be reduced in the same manner as the benefits of members who are included in the partial wind-up and will be treated in a manner analogous to the members who are subject to the partial wind-up.

47. The partial wind-up, or analogous procedure where no partial wind up is available in a particular province as a matter of law, would be undertaken for VON East and VON West members as follows if Court approval is obtained:

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<sup>5</sup> Prince Edward Island does not have its own pension legislation in force at this time.

- (a) A split of Pension Plan assets between the portion relating to VON East and VON West members and the portion relating to the three remaining entities would be undertaken;
- (b) Assets attributable to VON East and VON West as of November 25, 2015 would be rolled forward, including their investment return and related cash flows following November 25, 2015 and the resulting asset value would be segregated and re-invested in a portfolio of fixed income securities;
- (c) Commuted values and estimated annuity purchase costs for VON East and VON West members if full funding was available would be calculated based upon applicable actuarial standards to determine the aggregate wind-up liability for VON East and VON West;
- (d) Calculation and reporting to applicable regulators of the partial wind-up ratio or analogous ratio in provinces where partial wind-ups are not provided for by the legislation would be completed in accordance with each applicable provincial regulator's requirement;
- (e) The partial wind-up report, or analogous reports in provinces where partial wind-ups are not provided for in the legislation, would require approval by the Superintendent of Financial Services in Ontario;
- (f) Statements of benefits and payment options will be prepared and distributed for all VON East and VON West members based upon an approximate percentage of benefits that will be paid. This is only a preliminary approximation of benefit payments;
- (g) VON East and VON West members not in receipt of pension payments or who have not yet elected to commence receipt of pension payments will have 90 days to choose between receiving an annuity from an insurance company or a lump sum commuted value. In the event that no election is made, the default approach will be to receive an annuity from an insurance company. In the case of VON East and VON West members who have retired, an annuity will be purchased from an insurance company;



- (h) The market will be canvassed by VON Canada to identify potential annuity providers. A list of potential annuity providers (the "**Bidders List**") that is representative of the market will be prepared by VON Canada. Bids will be solicited from the annuity providers on the Bidders List by VON Canada and the preferred provider will be selected by VON Canada to provide the annuities described in item 47 (g) above for VON East and VON West Pension Plan members. Selection will be made based upon the financial terms offered by the potential annuity providers solicited;
- (i) Pension Plan assets available to VON East and VON West members would again be rolled forward from the date of the prior roll forward in item (b) above including their investment return and related cash flows;
- (j) VON East and VON West members' entitlements will be finalized taking into account the cost to purchase annuities, VON East's and VON West's costs of administering the Pension Plan Restructuring, and benefits to be covered by annuity purchases. If the cost to purchase annuities is higher or lower than had been estimated, the benefits (both annuities and commuted values) payable to all VON East and VON West members will be adjusted so that all benefit entitlements are adjusted by an equivalent percentage;
- (k) Annuity premiums, adjusted as required and net of any commuted value payments elected by members, will be paid to the insurance company that provides these annuities from the available Pension Plan funds that have been segregated for VON East and VON West as provided in the step in item 47(b) above. Monthly pension payments from these annuities will begin to be paid shortly thereafter and the interim pension payments described below that are to be made until the completion of item 47(j) above will cease to be made;
- (l) Commuted values will be paid to all members that so elected;
- (m) Prescribed reports will be prepared and filed with FSCO with respect to the partial wind-up group confirming that all benefits have been settled; and

- (n) all required annual update reports will be prepared and filed with FSCO, as required.

48. It is expected that the above process will require between 12 and 24 months to complete. Precise estimates of timing cannot be made as the timing of many steps will depend upon factors outside of the VON Group's control including, without limitation, the timing for applicable regulators to process approval requests and other matters at various stages throughout the process.

49. Until the step in item 47 (j) above is completed, VON East and VON West members who are currently receiving payments, or on whose behalf payments are being received, under the Pension Plan at this time will continue to receive their payments in full.

50. After the step in item 47 (j) above is completed, payments to VON East and VON West members will be adjusted for each member's lifetime: (i) to reflect the estimated funded ratio of the Pension Plan; and (ii) to eliminate excess payments previously made, where such excess payments are calculated by determining the difference between the amount of the pension payments made following November 25, 2015 and the amount that those pension payments should have been at the reduced estimated funded ratio. Any pension reductions will be performed on an actuarially equivalent basis, considering the member's expected lifetime, in fairness to the individual and other Pension Plan members of VON East and VON West.

51. Due to the length of time it may take for the Pension Plan Restructuring to be implemented, the VON East and VON West members who are eligible to begin receiving periodic payments of benefits under the Pension Plan would not receive these payments and may, as a result, suffer economic hardship unless an interim payment process is established. To remedy this concern, during the interim period while the Pension Plan Restructuring is

being implemented, and subject to the consent of the relevant pension regulator where required, these members will be permitted to start receiving benefits under the Pension Plan. These benefits would be paid in accordance with a reduced ratio of 80%. The members entitled to lump sum payments would not be in receipt of any interim payments.

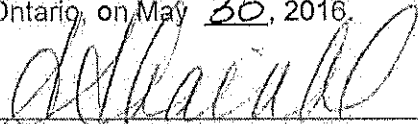
52. While the most recent estimated valuation as of January 1, 2016, suggests a deficit of 6% or a ratio of 94%, given the uncertainty in markets and other uncertainties related to pension obligations and costs, until the Pension Plan Restructuring is completed a lower ratio has been used in order to limit the risk that interim payments exceed the final payments due. After final determinations are made on the funding ratio of the Pension Plan in accordance with item 47 (j) above, payments to these VON East and VON West members will be adjusted: (i) to reflect the funded ratio of the Pension Plan; and (ii) to provide a lump-sum payment for any previously missed portions of pension payments as a result of the reduced estimated payment ratio of 80%.

53. For greater certainty, the Pension Plan benefits and entitlements of Pension Plan members employed or formerly employed by employers other than VON East and VON West will not be affected by the above steps and will be processed in the ordinary course.

**VI. PURPOSE OF AFFIDAVIT**

54. This affidavit is sworn in support of the Applicants' motion for approval of its proposed Pension Plan Restructuring and for no improper purpose.

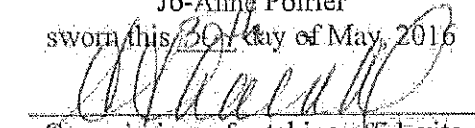
SWORN BEFORE ME at the City of  
Ottawa, Province of  
Ontario, on May 30, 2016.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

*Esther Shainblum*  
LSUC 28647N  
CAN\_DMS: 1102576472113

  
\_\_\_\_\_  
Jo-Anne Poirier

This is Exhibit "A" to the Affidavit of  
Jo-Anne Poirier  
sworn this 30<sup>th</sup> day of May, 2016

  
\_\_\_\_\_  
Commissioner for taking affidavits  
J. Shambum  
LSUC: 28647N

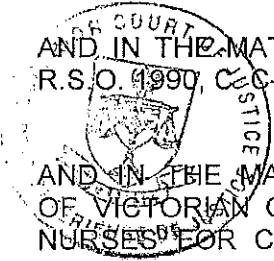
**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR ) WEDNESDAY, THE 25TH  
JUSTICE PENNY ) DAY OF NOVEMBER, 2015

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

AND IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*,  
R.S.O. 1990, C.C-43, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF VICTORIAN ORDER OF NURSES FOR CANADA, VICTORIAN ORDER OF  
NURSES FOR CANADA – EASTERN REGION AND VICTORIAN ORDER OF  
NURSES FOR CANADA – WESTERN REGION



**Applicants**

**SECOND AMENDED AND RESTATED INITIAL ORDER**

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Jo-Anne Poirier sworn November 24, 2015 (the "Poirier Affidavit") and the Exhibits thereto and on hearing the submissions of counsel for the Applicants, Collins Barrow Toronto Limited (as the proposed Monitor), the Board of Directors of the Applicants and Bank of Nova Scotia, no one else appearing although duly served as appears from the affidavit of service of Evan Cobb sworn November 25, 2015 and on reading the

consent of Collins Barrow Toronto Limited to act as the Monitor,

#### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

#### **APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

#### **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan"). The Bank of Nova Scotia shall be treated as unaffected in any Plan.

#### **POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court and subject to Paragraph 11 hereof, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "Business") and Property. The Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants shall be entitled to establish and utilize the Modified Cash Management System (as defined in the Poirier Affidavit and as described in the Poirier Affidavit) or replace it with another substantially similar central cash management system (the "Cash Management System") and that The Bank of Nova Scotia, or any other present or future bank, providing the Cash Management System shall not be

under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System. For greater certainty, and without limiting the generality of the foregoing, the Applicants and The Bank of Nova Scotia are authorized to terminate the Existing Mirror Netting Agreement (as defined in the Poirier Affidavit) and the existing cash management system as described in the Poirier Affidavit.

6. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses, and volunteer and director expense reimbursements, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges;
- (c) the fees and disbursements of the Monitor, counsel to the Monitor, the Chief Restructuring Officer, the Applicants' counsel and counsel to the boards of directors of the Applicants; and
- (d) liabilities for charges incurred on credit cards issued to the Applicants.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order,



monthly in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business. Notwithstanding the foregoing, the termination of the Existing BNS Facility (as defined in the Poirier Affidavit) is hereby approved and Victorian Order Of Nurses For Canada is authorized to enter into the BNS Guarantee (as defined in the Poirier Affidavit), perform its obligations thereunder, and grant security over its Property as security for its obligations to The Bank of Nova Scotia.

## **RESTRUCTURING**

11. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and
- (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

12. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes an Applicant's entitlement to remove any such

fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If an Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to that Applicant's claim to the fixtures in dispute. For greater certainty, and without limiting any other provisions of this Order, nothing in this Order shall restrict the Applicants or their employees from retrieving and removing from any leased premises any medical records or personal property of employees and former employees.

13. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

14. THIS COURT ORDERS that until and including February 26, 2016, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants, the Chief Restructuring Officer or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants, the Chief Restructuring Officer and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the

Business or the Property are hereby stayed and suspended pending further Order of this Court.

15. THIS COURT ORDERS that, notwithstanding paragraphs 14 and 17 herein, nothing herein will prevent The Bank of Nova Scotia from enforcing its rights against any cash collateral or other security held by The Bank of Nova Scotia in connection with any letters of credit or credit cards issued by The Bank of Nova Scotia in connection with, or for the benefit of, any of the Applicants.

16. THIS COURT ORDERS that upon (i) the occurrence of an event that would permit demand and enforcement by The Bank of Nova Scotia under the BNS Guarantee and any related security and (ii) granting of an Order of this Court, granted on 2 business days' notice to the Applicants and the Monitor, approving the exercise of such rights and remedies, The Bank of Nova Scotia shall be entitled to exercise any and all of its rights and remedies against the Victorian Order Of Nurses For Canada or its Property under and pursuant to the BNS Guarantee and related security.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

17. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants, the Chief Restructuring Officer or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants, the Chief Restructuring Officer and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

18. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

## **CONTINUATION OF SERVICES**

19. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names, information technology support and data processing services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

## **NON-DEROGATION OF RIGHTS**

20. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

21. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of any of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

## DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

22. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$750,000, as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 herein.

24. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

## PROTECTIONS FOR NON-APPLICANT ENTITIES

25. THIS COURT ORDERS that, without limiting Paragraphs 14 through 19 hereof with respect to the Applicants, during the Stay Period, no Funder (as defined in the Poirier Affidavit), save and except the Ministry of Health and Long-Term Care, the Local Health Integration Networks and their respective affiliated and associated entities, shall:

- (a) discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by Victorian Order Of Nurses For Canada Nova Scotia Branch or Victorian Order Of Nurses For Canada – Ontario Branch (collectively, the "Non-Applicant Entities"); or
- (b) have any rights to accelerate, amend, declare in default or enforce on any contract, agreement, instrument or other document,

in each case, due to the Applicants being parties to this proceeding, having made an Application to this Court pursuant to the CCAA and the *Courts of Justice Act* (Ontario) including any declarations of insolvency contained therein in respect of the Applicants or the Non-Applicant Entities, the appointment of a receiver in respect of the Applicants, or taking any steps in furtherance thereof, or complying with the terms of any Order granted in these CCAA proceedings or under the *Courts of Justice Act* (Ontario), except with the written consent of the Applicants, Chief Restructuring Officer and the Monitor, or leave of this Court.

**APPOINTMENT OF MONITOR**

26. THIS COURT ORDERS that Collins Barrow Toronto Limited is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their members, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

27. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicants in their development of any Plan and any amendments to such Plan;
- (d) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or members' meetings for voting on any Plan;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

28. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

29. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

30. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

31. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

32. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Chief Restructuring Officer (as defined below), counsel to the Applicants and counsel to the boards of directors of the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, the Chief Restructuring Officer, counsel for the Applicants and counsel to the boards of directors of the Applicants on a weekly basis.

33. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

34. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Chief Restructuring Officer, the Applicants' counsel and counsel to the boards of directors of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 39 and 41 hereof.

**APPOINTMENT OF CHIEF RESTRUCTURING OFFICER**

35. THIS COURT ORDERS that Victorian Order Of Nurses For Canada is authorized to engage March Advisory Services Inc. as Chief Restructuring Officer (in such capacity, the "**Chief Restructuring Officer**") on the terms and conditions set out in the form of CRO Engagement Letter (as such term is defined in the Poirier Affidavit). The Chief Restructuring Officer shall not be engaged by, and shall not be deemed to have been engaged by,



Victorian Order Of Nurses For Canada – Eastern Region or Victorian Order Of Nurses For Canada – Western Region.

36. THIS COURT ORDERS Victorian Order Of Nurses For Canada is authorized to enter into the CRO Engagement Letter and Victorian Order Of Nurses For Canada is authorized to perform its obligations thereunder.

37. THIS COURT ORDERS that any obligations of Victorian Order Of Nurses For Canada under the CRO Engagement Letter for payment of fees and expenses shall be entitled to the benefit of the Administration Charge and any obligations of Victorian Order Of Nurses For Canada under the CRO Engagement Letter for payment of indemnities shall be entitled to the benefit of the Directors' Charge.

38. THIS COURT ORDERS that any claims of the Chief Restructuring Officer under the CRO Engagement Letter shall be treated as unaffected in any Plan.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

39. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$250,000); and

Second – Directors' Charge (to the maximum amount of \$750,000).

40. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge or the Administration Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

41. THIS COURT ORDERS that each of the Directors' Charge and the Administration Charge (each as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

42. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge or the Administration Charge, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

43. THIS COURT ORDERS that the Directors' Charge and the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds any of the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which any Applicant is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicants pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

44. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

**KEY EMPLOYEE RETENTION PLAN**

45. THIS COURT ORDERS that the payments to be made pursuant to the Key Employee Retention Plan (as such terms are defined in the Poirier Affidavit), which is attached as a confidential exhibit to the Poirier Affidavit, are hereby approved and the Applicants are authorized and directed to make payments in accordance with the terms of such Key Employee Retention Plan.

**SEALING**

46. THIS COURT ORDERS that Confidential Exhibits "K" and "L" to the Poirier Affidavit be and are hereby sealed pending further Order of the Court and shall not form part of the public record.

**SERVICE AND NOTICE**

47. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in either the National Post (national edition) or the Globe and Mail (national edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, by ordinary mail, a notice to every known creditor who has a claim against any of the Applicants of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available.

48. THIS COURT ORDERS the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol

with the following URL: [www.collinsbarrow.com/en/cbn/restructuring-and-recovery-engagements/v-o-n](http://www.collinsbarrow.com/en/cbn/restructuring-and-recovery-engagements/v-o-n) (the "Website").

49. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

50. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "Service List"). The Monitor shall post the Service List, as may be updated from time to time, on the Website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

**GENERAL**

51. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

52. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants (or any of them), the Business or the Property.

53. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the


Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

54. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

55. THIS COURT ORDERS that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

56. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

 JAN 19 2016

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

AND IN THE MATTER OF SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF VICTORIAN ORDER OF NURSES FOR CANADA, VICTORIAN ORDER OF NURSES FOR CANADA – EASTERN REGION AND VICTORIAN ORDER OF NURSES FOR CANADA – WESTERN REGION

Court File No: CV-15-11152-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**SECOND AMENDED AND RESTATED ORDER**

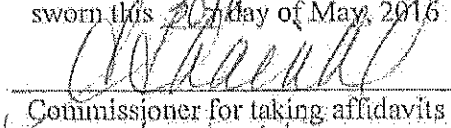
**Norton Rose Fulbright Canada LLP**  
Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street, P.O. Box 84  
Toronto, Ontario M5J 2Z4 CANADA

**Matthew Halpin LSUC#26208F**  
Tel: 613.780.8654  
Fax: 613.230.5459  
Email: [matthew.halpin@nortonrosefulbright.com](mailto:matthew.halpin@nortonrosefulbright.com)

**Evan Cobb LSUC #55787N**  
Tel: 416.216.1929  
Fax: 416.216.3930  
Email: [evan.cobb@nortonrosefulbright.com](mailto:evan.cobb@nortonrosefulbright.com)

Lawyers for the Applicants

This is Exhibit "B" to the Affidavit of  
Jo-Anne Poirier  
sworn this 20<sup>th</sup> day of May, 2016.



Commissioner for taking affidavits

E. Shambum  
LSUC : 28647N

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 SECTION 101 OF THE COURTS OF JUSTICE ACT,  
R.S.O. 1990, C. C-43, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF VICTORIAN ORDER OF NURSES FOR CANADA, VICTORIAN ORDER OF  
NURSES FOR CANADA – EASTERN REGION AND VICTORIAN ORDER OF  
NURSES FOR CANADA – WESTERN REGION

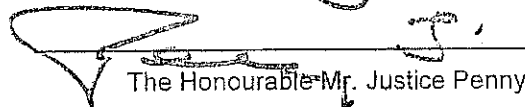
Applicants

ENDORSEMENT

(January 19, 2016)

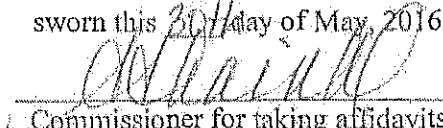
The Ministry of Health and Long-Term Care, the Local Health Integration Networks and their respective affiliated and associated entities have confirmed and agreed that they shall not take any steps to declare in default, discontinue, fail to honour, alter, interfere with, repudiate, terminate, cease to perform, or enforce any rights under their agreements with Victorian Order of Nurses for Canada – Ontario Branch as a result of: (i) the Applicants having made an application to this Court pursuant to the *Companies' Creditors Arrangement Act* (Canada) and the *Courts of Justice Act* (Ontario); (ii) any declarations of insolvency contained therein in respect of the Applicants; or (iii) the appointment of a receiver in respect of the Applicants.

Second Amended and  
Order to issue in  
the this day.

Restored District  
The term signed by  
  
The Honourable Mr. Justice Penny



This is Exhibit "C" to the Affidavit of  
Jo-Anne Poirier  
sworn this 30<sup>th</sup> day of May, 2016

  
Commissioner for taking affidavits  
E. Shambles  
LSUC: 28647N



## Certificate of Continuance

*Canada Not-for-profit Corporations Act*

## Certificat de prorogation

*Loi canadienne sur les organisations à but non lucratif*

VICTORIAN ORDER OF NURSES FOR CANADA  
LES INFIRMIÈRES DE L'ORDRE DE VICTORIA DU CANADA

Corporate name / Dénomination de l'organisation

063160-4

Corporation number / Numéro de  
l'organisation

I HEREBY CERTIFY that the above-named corporation, the articles of continuance of which are attached, is continued under section 211 of the *Canada Not-for-profit Corporations Act*.

JE CERTIFIE que l'organisation susmentionnée, dont les statuts de prorogation sont joints, a été prorogée en vertu de l'article 211 de la *Loi canadienne sur les organisations à but non lucratif*.

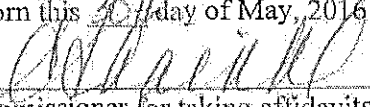
Virginie Ethier

Director / Directeur

2014-07-08

Date of Continuance (YYYY-MM-DD)  
Date de prorogation (AAAA-MM-JJ)

This is Exhibit "D" to the Affidavit of  
Jo-Anne Poirier  
sworn this 30<sup>th</sup> day of May, 2016

  
\_\_\_\_\_  
Commissioner for taking affidavits  
E. Shainblum  
LSIC: 28647N

**Certificate of Continuance**

*Canada Not-for-profit Corporations Act*

**Certificat de prorogation**

*Loi canadienne sur les organisations à but non lucratif*

VICTORIAN ORDER OF NURSES FOR CANADA-WESTERN REGION  
LES INFIRMIÈRES DE L'ORDRE DE VICTORIA DU CANADA- WESTERN REGION

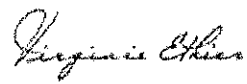
Corporate name / Dénomination de l'organisation

424677-2

Corporation number / Numéro de l'organisation

I HEREBY CERTIFY that the above-named corporation, the articles of continuance of which are attached, is continued under section 211 of the *Canada Not-for-profit Corporations Act*.

JE CERTIFIE que l'organisation susmentionnée, dont les statuts de prorogation sont joints, a été prorogée en vertu de l'article 211 de la *Loi canadienne sur les organisations à but non lucratif*.



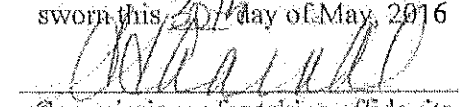
Virginie Ethier

Director / Directeur

2014-07-08

Date of Continuance (YYYY-MM-DD)  
Date de prorogation (AAAA-MM-JJ)

This is Exhibit "E" to the Affidavit of  
Jo-Anne Poirier  
sworn this 20<sup>th</sup> day of May, 2016

  
Commissioner for taking affidavits

E-Shainblum  
LSUC : 28647N



**Certificate of Continuance**

*Canada Not-for-profit Corporations Act*

**Certificat de prorogation**

*Loi canadienne sur les organisations à but non lucratif*

VICTORIAN ORDER OF NURSES FOR CANADA - EASTERN REGION  
LES INFIRMIÈRES DE L'ORDRE DE VICTORIA DU CANADA - EASTERN REGION

Corporate name / Dénomination de l'organisation

426334-1

Corporation number / Numéro de l'organisation

I HEREBY CERTIFY that the above-named corporation, the articles of continuance of which are attached, is continued under section 211 of the *Canada Not-for-profit Corporations Act*.

JE CERTIFIE que l'organisation susmentionnée, dont les statuts de prorogation sont joints, a été prorogée en vertu de l'article 211 de la *Loi canadienne sur les organisations à but non lucratif*.

Virginie Ethier

Director / Directeur

2014-07-08

Date of Continuance (YYYY-MM-DD)  
Date de prorogation (AAAA-MM-JJ)