Court File No.: CV-15-11192-00CL

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

FACTUM OF THE APPLICANTS
(Plan Sanction Motion returnable November 23, 2016)

November 21, 2016

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TO: THE SERVICE LIST

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PART I - OVERVIEW

1 Victorian Order Of Nurses For Canada ("**VON Canada**"), Victorian Order Of Nurses For Canada – Eastern Region ("**VON East**") and Victorian Order Of Nurses For Canada – Western Region ("**VON West**" and, together with VON East and VON Canada, the "**Applicants**") seek Orders (the "**Plan Sanction Orders**"), among other things, sanctioning their Amended and Restated Plans of Compromise or Arrangement dated November 18, 2016 (each, a "**CCAA Plan**" and, collectively, the "**CCAA Plans**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

2 The CCAA Plans will maximize and expedite returns to creditors. The VON Canada CCAA Plan will also allow VON Canada's operations to continue as a going concern. VON East and VON West have ceased operating and, as a result, their sole remaining objective at this

time is to return value to creditors as quickly and efficiently as possible through their CCAA Plans.

3 For the reasons set out herein, the Applicants submit that the CCAA Plans should be sanctioned pursuant to section 6 of the CCAA.

PART II - THE FACTS

A. VON GROUP STRUCTURE

4 On November 25, 2015, the Applicants were granted protection under the CCAA pursuant to the Order of the Honourable Justice Penny (as amended, the "**Initial Order**").[1]

5 The Applicants are part of a group of five affiliated and separately incorporated regional operating entities:

(a) VON Canada;

(b) VON East;

(c) VON West;

(d) Victorian Order Of Nurses For Canada - Ontario Branch ("**VON Ontario**"); and

(e) Victorian Order Of Nurses For Canada Nova Scotia Branch ("**VON Nova Scotia**").[2]

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

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[1] Affidavit of Jo-Anne Poirier, sworn November 21, 2016 (the "**Poirier Affidavit**") at Para. 9.
[2] Poirier Affidavit at para. 1; Eighth Report of Collins Barrow Toronto Limited, dated November 21, 2016, (the "**Eighth Report**") at para. 25.

7 The VON Group provides home and community care services on a not-for-profit charitable basis. VON Canada is the administrative centre of the VON Group and is fully integrated with each of VON Ontario and VON Nova Scotia and was, until the cessation of the operations of VON East and VON West, fully integrated with those regional operating entities as well. Shortly after the granting of the Initial Order, the operations of VON East and VON West were entirely shut down and all of their assets have been monetized.[3] This shutdown of VON East and VON West was an important aspect of the overall restructuring plan for the VON Group.

B. CCAA PLANS

8 Each of the CCAA Plans seeks to achieve the same result: to distribute funds available to creditors as quickly and efficiently as possible in order to maximize recoveries for those creditors.[4]

9 The VON Canada CCAA Plan also allows VON Canada to continue as a going concern, which is a significant benefit to a large number of stakeholders of the VON Group who depend upon VON Canada to provide administrative services and stability to the VON Group as a whole. The continuation of VON Canada as a going concern will also preserve not less than 150 existing jobs at VON Canada.[5] While certain of these jobs may transfer to another VON Group entity in the case of a VON Canada shut down, there is no guarantee that all or even a large portion of these jobs would be transferred to other VON Group entities and the administrative costs associated with any such transfer would be extensive.

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[3] Eighth Report at para. 26.
[4] Poirier Affidavit at para. 23.
[5] Poirier Affidavit at para. 25.

10 In general terms, the CCAA Plans provide:

(a) unsecured creditors (other than convenience class creditors in the case of the VON Canada CCAA Plan) will receive cash distributions equal to their respective pro rata shares of the remaining funds of VON Canada, VON East or VON West, as applicable, after accounting for payment of priority claims and, in the case of the VON Canada CCAA Plan only, after accounting for: (i) convenience class distributions; and (ii) a CDN$250,000 reserve for VON Canada's ongoing working capital requirements following implementation of the VON Canada CCAA Plan;

(b) in the case of the VON Canada CCAA Plan, unsecured creditors whose claims are less than CDN $5,000 will receive payment in full and unsecured creditors whose claims are more than CDN $5,000, and who elected to receive such treatment, will receive payment in full up to CDN $5,000 through the convenience class election; and

(c) a release of the court-ordered charges granted in the Initial Order, provided, however, that a cash reserve not to exceed the amounts of CDN $5,000 for each of VON East and VON West and $50,000 for VON Canada will be paid by the respective Applicant and held by the Monitor to cover any costs that would otherwise have been secured by such court-ordered charges.[6]

11 The CCAA Plans also provide for certain releases and injunctions in favour of, among others, the Applicants, their directors and officers, the Chief Restructuring Officer of VON

[6] Poirier Affidavit at para. 24.

Canada and the Monitor. The releases are subject to carve outs for, among other things, claims that cannot be compromised under Section 5.1(2) or 19(2) of the CCAA.[7]

12 Certain amendments were made to the CCAA Plans as originally included in the Applicants' information package sent to affected unsecured creditors (the "**Originally Circulated Plans**"):

(a) The VON Canada CCAA Plan was amended and restated on November 2, 2016 (the "**November 2 Plan**"). The general effect of the amendments was to change the latest date by which distributions to creditors are to be made from February 27, 2017 to December 30, 2016. Notice of these amendments was sent to those parties on the Service List that could be reached by email on November 2, 2016. Notice of these amendments was also placed on the Monitor's website on November 2, 2016. The November 2 Plan was voted upon at the VON Canada Creditors' Meeting.

(b) The VON Canada Plan was subsequently further amended following the VON Canada Creditors' Meeting to add increased flexibility with respect to the methods of distribution of cash under the VON Canada Plan and to make certain other administrative changes, in particular to ensure that the definition of 'Claims Procedure Order' also includes the VON Canada WEPPA Claims Order (as described below) for the purposes of the VON Canada CCAA Plan. These additional changes are of an administrative nature and are required to better give effect to the implementation of the VON Canada CCAA Plan. Notice of these changes was provided in the Applicants' Motion Record in support of the motions

[7] Poirier Affidavit at para. 28.

for the Plan Sanction Orders, which was served upon the Service List and posted to the Monitor's website.

(c) The VON East CCAA Plan and the VON West CCAA Plan were also amended following the meetings to vote upon such CCAA Plans to add increased flexibility with respect to the methods of distribution of cash under the VON East Plan and the VON West Plan and to clarify that the Monitor's certificate confirming implementation of the VON East Plan or the VON West Plan, as applicable, can be delivered once distributions have been issued by the applicable Applicant. These additional changes are of an administrative nature and are required to better give effect to the implementation of the VON East CCAA Plan and the VON West CCAA Plan. Notice of these changes was provided in the Applicants' Motion Record in support of the motions for the Plan Sanction Orders, which was served upon the Service List and posted to the Monitor's website.[8]

C. CLAIMS PROCEDURE

13 At a motion heard on February 24, 2016, the Court issued a Stay Extension and Claims Procedure Order in respect of VON Canada and its directors, officers and the Chief Restructuring Officer of VON Canada (the "**VON Canada Claims Procedure Order**").[9]

14 At motions heard on October 5, 2016, the Court issued Claims Procedure Orders in respect of VON East and VON West and also issued the VON Canada WEPPA Claims Order establishing a procedure for the Government of Canada to file subrogated claims against VON

[8] Poirier Affidavit at paras. 17-19; Poirier Affidavit at Exhibit "A", Exhibit "B" and Exhibit "C".
[9] Poirier Affidavit at para. 13.

Canada in connection with the Wage Earner Protection Program (collectively, with the VON Canada Claims Procedure Order, the "**Claims Procedure Orders**").[10]

15 Claims in the following aggregate values were filed (or deemed filed) and accepted under the Claims Procedure Orders:

(a) VON Canada: approximately CDN $23 million;

(b) VON East: approximately CDN $3.6 million; and

(c) VON West: approximately CDN$ 0.7 million.[11]

16 Each of VON Canada, VON East and VON West and the Monitor have complied with all of the notification and service requirements contained in the Claims Procedure Orders.[12]

D. CREDITORS MEETINGS

17 At motions heard on October 5, 2016, the Court issued orders approving the filing of plans of compromise or arrangement of each of the Applicants and authorizing each of the Applicants to call and hold meetings of creditors to vote on such plans and setting the procedures to be used at such meetings (collectively, the "**Meeting Orders**").[13]

18 The meetings of creditors of each of the Applicants (the "**Meetings**") were held on November 3, 2016 (in the case of VON Canada) and on November 16, 2016 (in the case of VON East and VON West). The Meetings were conducted in accordance with the Meeting Orders.

[10] Poirier Affidavit at para. 14.
[11] Poirier Affidavit at para. 15.
[12] Poirier Affidavit at para. 16.
[13] Poirier Affidavit at para. 14.

19 Each of the CCAA Plans was approved by the required majorities of voting creditors at the Meetings. A summary of the voting results at each Meeting is set out below[14]:

	Percentage of Voting Creditors Voting In Favour By Number	Percentage of Voting Creditors Voting In Favour By Value
VON Canada	94%	99%
VON East	83%	76%
VON West	63%	67.5%

20 The Applicants now seek to move forward and, subject to Court approval, implement the CCAA Plans on an expedited basis so that creditors' recoveries can be distributed as soon as possible and VON Canada can emerge from these CCAA proceedings as a solvent going concern entity.

E. MONITOR'S RECOMMENDATION

21 For the reasons set out in the Eighth Report of the Monitor, the Monitor believes that the CCAA Plans are fair and reasonable, and that implementation of each of the CCAA Plans will result in a greater recovery for the affected creditors of each of VON Canada, VON East and VON West than would be the case in a bankruptcy of each of the Applicants. The Monitor supports the sanctioning of the CCAA Plans.[15]

22 Bankruptcies are the likely alternative to implementation of the CCAA Plans for those Applicants that have sufficient funds to support a bankruptcy process.[16] The Monitor has reported that the recoveries available to creditors under the CCAA Plans are superior to the recoveries expected to be achieved by a bankruptcy of each of VON East or VON Canada. In

[14] Poirier Affidavit at paras. 20 – 22.
[15] Eighth Report at paras. 120 and 121.
[16] Poirier Affidavit at para. 5.

the case of VON West, the liquidity position is such that it likely could not fund a bankruptcy process at all and, even if such a bankruptcy process could be funded it would generate no recoveries at all for unsecured creditors.[17]

PART III - ISSUES AND THE LAW[18]

23 The issue to be considered on this motion are whether the Court should approve the CCAA Plans, including the releases contained therein.

A. The Requirements for CCAA Plan Approval Have Been Met

24 Section 6 of the CCAA provides that a compromise or arrangement is binding on a debtor company and all of its creditors if a majority in number representing two-thirds in value of the creditors present and voting at a meeting of creditors approve the compromise or arrangement and the compromise or arrangement has been sanctioned by the Court.[19]

25 The required majority of Creditors holding Voting Claims, in both number and value, voted in favour of each of the CCAA Plans, thus satisfying the first requirement set out in Section 6 of the CCAA.

26 Having satisfied the voting criteria, the issue before the Court is whether it should approve and sanction the CCAA Plans.

27 The exercise of the Court's authority to sanction a CCAA plan is a matter of discretion. The criteria to be satisfied in seeking the Court's approval of a plan of compromise or arrangement are well established:

(a) there must be strict compliance with all statutory requirements;

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[17] Poirier Affidavit at Para 5; Eighth Report at para. 50, 77, 120, Appendix "S", Appendix "T" and Appendix "V".
[18] All capitalized terms used in this Part III and not otherwise defined have the meanings given to such terms in the CCAA Plans.
[19] *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, s. 6 [**CCAA**].

(b) all materials filed and procedures carried out must be examined to determine if anything has been done or purported to have been done which is not authorized by the CCAA; and

(c) the plan must be fair and reasonable.[20]

i. There has been strict compliance with statutory requirements

28 Both the first and the second requirements of the sanctioning test refer to compliance with the procedural requirements of the CCAA and the various Orders granted during the course of the CCAA proceedings.[21]

29 With respect to the first part of the test, factors that may be considered by the Court include whether:

(a) the Applicants come within the definition of a "debtor company" under section 2 of the CCAA;

(b) the Applicants have total claims against them in excess of $5 million;

(c) the notices calling the Meetings were sent in accordance with the Meeting Orders;

(d) the creditors were properly classified;

(e) the meetings of creditors were properly constituted;

(f) the voting was properly carried out; and

(g) the CCAA Plans were approved by the requisite double majority.[22]

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[20] *Canadian Airlines Corp. (Re)*, 2000 ABQB 442 at para. 60 [***Canadian Airlines***], leave to appeal denied 2000 ABCA 238, affirmed 2001 ABCA 9, leave to appeal to SCC denied, [2001] S.C.C.A. 60; See also *SkyLink Aviation Inc. (Re)* , 2013 ONSC 2519 at para. 26.

[21] *Olympia & York Developments Ltd., v. Royal Trust Co.*, (1993), 17 C.B.R. (3d) 1 at para. 19 (ON. Gen. Div.) [***Olympia & York***].

30 The Applicants have complied with the procedural requirements of the CCAA, the Initial Order, the Claims Procedure Orders, the Meeting Orders and all other Orders granted by the Court in these proceedings. In particular:

(a) in granting the Initial Order, this Court found that the Applicants qualified as "debtor companies" under the CCAA. The Applicants liabilities, collectively, far exceed the $5 million threshold under the CCAA;

(b) prescribed notices to creditors and other interested persons as required under the Claims Procedure Orders and the Meeting Orders were delivered within the timeframes and in the manner required by such Orders;

(c) the classification of each of the Applicants' Creditors for voting purposes into one voting class for each Applicant was approved by this Court pursuant to the Meeting Orders. For the reasons described further below, this classification was appropriate;

(d) the Meetings were properly constituted and the voting was properly carried out in accordance with the Meeting Orders;

(e) the CCAA Plans were approved by the required statutory "double majority" under section 6(1) of the CCAA.[23]

31 Sections 6(3), 6(5) and 6(6) provide that the Court may not sanction a CCAA Plan unless it contains certain specified provisions concerning crown claims, employee priority claims and pension claims (if applicable).[24]

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[22] *Canadian Airlines*, *supra*, at para. 62.
[23] CCAA, s. 6(1)
[24] CCAA, ss. 6(3), 6(5) and 6(6).

32 In accordance with the provisions of the CCAA, the CCAA Plans do not compromise government claims of the type described in section 6(3) and employee-related payments of the kind described in section 6(5). Such claims, if any, will be paid pursuant to the CCAA Plans. Accordingly, the requirements in sections 6(3) and 6(5) are satisfied. The Applicants note that the CCAA requires that payments under Section 6(5) of the CCAA are to be made immediately following the court's sanction of a plan of compromise or arrangement. In the current case, the Applicants' payment of the amounts described in Section 6(5) of the CCAA will be made on or prior to the implementation of the CCAA Plans, which may result in a non-material delay in payment of such amounts when compared to the timing of distributions contemplated by a strict reading of Section 6(5) of the CCAA.

33 The Applicants are not subject to any outstanding pension related claims of the type described in Section 6(6) of the CCAA. All normal cost contributions are Excluded Claims under the VON Canada CCAA Plan and have been paid during these proceedings. No such claims could have arisen against VON East and VON West during these proceedings as the operations of VON East and VON West were shut down at the commencement of these proceedings. Any amounts owing in connection with normal cost contributions for former VON East and VON West employees up to the commencement of these proceedings were paid in full.[25]

34 In accordance with section 6(8) of the CCAA, the CCAA Plans do not provide any consideration or distributions to holders of equity claims.[26] While existing members of the Applicants will retain their membership interests post-implementation of the CCAA Plans, those membership interests do not have economic value as the Applicants are not-for-profit corporations.

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[25] Eighth Report at para. 95.
[26] CCAA, s. 6(8).

35 The Applicants accordingly submit that the statutory requirements for the sanction of the Plan under section 6 of the CCAA have been satisfied.

ii. Nothing has been done or purported to be done that is not authorized by the CCAA

36 With respect to the second part of the test for sanction of a plan of compromise and arrangement under the CCAA, courts ought to rely on the reports of the Monitor and on the parties in assessing whether anything has been done or purported to have been done that is not authorized by the CCAA.[27]

37 Throughout the course of these proceedings, the Applicants have acted in good faith and with due diligence and have complied with the requirements of the CCAA and the Orders of this Court. The Monitor's reports have not identified any conduct or action by the Applicants that is not authorized by the CCAA.

38 The Applicants therefore submit that the second part of the plan sanction test has been met.

iii. The Plan is Fair and Reasonable

39 With respect to the final part of the plan sanction test—whether the Plan is fair and reasonable—the Court does not require perfection. Rather, the Court will consider the relative degrees of prejudice that would flow from granting or refusing the relief being sought under the CCAA and whether the plan represents a reasonable and fair balancing of interests, in light of the other commercial alternatives available.[28]

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[27] *Canadian Airlines*, *supra*, at para. 64 (citing *Olympia & York*) and *Canwest Global Communications Corp. (Re)*, 2010 ONSC 4209 at para. 17 [***Canwest Global***].
[28] *Canadian Airlines*, *supra*, at para. 3; *Canwest Global*, *supra*, at para. 19; *AbitibiBowater Inc., Re*, 2010 QCCS 4450 at para. 33 [***Abitibi***].

40 In assessing the fairness and reasonableness of a plan of compromise and arrangement, the Court's discretion ought to be guided by the objectives of the CCAA, namely to "enable compromises to be made for the common benefit of the creditors and of the company, particularly to keep a company in financial difficulties alive and out of the hands of liquidators."[29] Parliament has recognized that reorganization, if commercially feasible, is in the most cases preferable to liquidation and further achieves the remedial purpose of the CCAA.[30]

41 The court should be reluctant to second-guess the decisions of creditors who have already voted to approve the CCAA Plans. In the current case, Creditor support creates an inference that the CCAA Plans are fair and reasonable,[31] which supplements the clear objective evidence that the CCAA Plans provide greater recoveries than the only available alternative of bankruptcy.

42 Factors to be considered by courts in considering whether a plan is fair and reasonable in the circumstances include:

(a) whether the claims were properly classified and whether the requisite majorities of creditors approved the CCAA Plans;

(b) what creditors would receive on a liquidation or bankruptcy compared to the CCAA Plans;

(c) available alternatives to the CCAA Plans and bankruptcy;

(d) oppression of the rights of creditors;

(e) unfairness to shareholders; and

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[29] *Northland Properties Ltd. (Re)* (1989), 73 C.B.R. (N.S.) 195 at para. 27 (B.C.C.A.).
[30] *Canadian Airlines, supra*, at para. 95; *Century Services Inc. v. Canada (Attorney General)(sub nom Ted Leroy Trucking [Century Services] Ltd., (Re)*, [2010] 3 S.C.R. 379 at para. 70.
[31] *Abitibi, supra*, at para. 34. See also *Canadian Airlines, supra*, at para. 97 (citing *Olympia & York, supra*), and *Sammi Atlas Inc. (Re),* (1998), 3 C.B.R. (4th) 171 (Ont. S.C.J.) at paras. 4 and 5.

(f) the public interest.[32]

43 Each of these factors strongly supports approval of the CCAA Plans by this Court.

Classification / Creditor Approval

44 The Applicants' approach to classification of Creditors is appropriate in the circumstances and justified under the provisions of the CCAA.

45 Each Applicant applied to the Court for approval of its decision to place its Creditors holding Unsecured Proven Claims into a single class in accordance with Section 22(1) of the CCAA.[33] The Court approved that classification.

46 In accordance with Section 22 of the CCAA, each of the Applicants placed their respective Creditors holding Unsecured Proven Claims (being the only group of creditors compromised or affected under each of the CCAA Plans) in a single class based upon their commonality of interests.[34]

47 The factors to be considered in determining whether creditors have a "commonality of interest" are:

(a) the nature of the debts, liabilities or obligations giving rise to their claims;

(b) the nature and rank of any security in respect of their claims;

(c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and

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[32] *Canwest Global*, *supra*, at para. 21. See also *Sino-Forest Corp.*, *Re*, 2012 ONSC 7050 (*Re*) at para. 60 [***Sino-Forest***], leave to appeal denied, 2013 ONCA 456.
[33] CCAA, s. 22(1).
[34] CCAA, s. 22(2).

(d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.[35]

48 By classifying its Creditors holding Unsecured Proven Claims in a single voting class, each of the Applicants complied with the provisions of the CCAA:

(a) the Creditors entitled to vote in this single class all hold unsecured claims against the applicable Applicant that rank equally;

(b) in absence of approval of the CCAA Plan, each of these Creditors, in its capacity as such, would have the sole remedy of seeking to enforce its unsecured creditor right to payment;

(c) in a bankruptcy or liquidation scenario, each of these Creditors would have the right to its pro rata share of the pool of assets, if any, available for distribution to unsecured creditors; and

(d) all of these Creditors are offered the same consideration under the applicable CCAA Plan in connection with their unsecured claims.

49 As noted above, the required majorities of creditors have approved each of the CCAA Plans.

Expected Recoveries in a Bankruptcy

50 The Monitor's Seventh and Eighth Reports make clear that the recoveries of affected unsecured creditors in a bankruptcy of each of the Applicants would be lower than the

[35] CCAA s. 22(2).

recoveries expected under the CCAA Plans. Below is a summary of the hypothetical expected recoveries in a bankruptcy as compared to each of the CCAA Plans for unsecured claims[36]:

	Estimated Range Of Recoveries – Bankruptcy	**Estimated Range Of Recoveries – CCAA Plan**
VON Canada	3.49%-5.25%	7.45%-8.52%
VON East	1.67%-3.2%	4.7%-5.59%
VON West	0%	2.55% - 3.98%

51 It is important to note that in the case of the VON Canada CCAA Plan, creditor recovery calculations above also account for the $250,000 reserve that VON Canada will retain for working capital purposes going forward. This is the amount of working capital that VON Canada has determined it must maintain to operate as a going concern. As can be seen above, even after accounting for such working capital reserve, the recoveries under the VON Canada CCAA Plan are still significantly higher than recoveries would be in a bankruptcy, where no such working capital reserve is maintained. The above calculations also include a reserve for remaining administrative expenses to complete the CCAA proceedings in the amount of $5,000 for each of VON East and VON West and $50,000 for VON Canada.

Available Alternatives to the CCAA Plan or a Bankruptcy

52 There were no viable alternatives to the proposed CCAA Plans other than bankruptcy.[37]

[36] Eighth Report at para. 50, 77, 120, Appendix "S", Appendix "T" and Appendix "V".
[37] Poirier Affidavit at para. 26.

53 VON Canada has considered a number of restructuring alternatives and no better viable options to maximize recoveries for creditors have been identified. VON Canada could not, for example, put forward a viable plan that would preserve any of its pre-filing debt, as its cash flows could not support or service such debt going forward. Any conversion of VON Canada's pre-filing debt into equity would also not be a viable option because VON Canada, as a not-for-profit, does not provide returns to equity holders. Finally, as VON Canada is a not-for-profit organization, a sale of its business was also not a viable option to generate returns for creditors. The sole remaining option to preserve the going concern operation of VON Canada is to pay out any funds available at this time to pre-filing creditors as efficiently and quickly as possible in order to fully and finally settle those pre-filing obligations.

54 The VON East Plan and the VON West Plan simply seek to distribute all remaining cash available to creditors in the most efficient manner possible. VON East and VON West are entirely shut down and all of their assets have been monetized. There is nothing left to do with either of these entities other than to pay out creditors in accordance with their respective priorities as efficiently as possible. There are only two options for VON East and VON West to achieve this objective: distribution under a CCAA Plan or bankruptcy and, as set out above, recoveries under the CCAA Plans are better than in bankruptcy.

No Oppression of Creditors

55 The pre-insolvency rights and relative priorities of Creditors are respected under the CCAA Plans and there is no oppression of Creditors' rights.

56 In the present case, each CCAA Plan treats Creditors fairly and each offers all of its respective unsecured creditors distributions based upon a consistent methodology that applies to all such creditors.

57 The VON Canada CCAA Plan establishes a 'Convenience Class' for Creditors who will receive a full recovery on their unsecured claims up to $5,000. This Convenience Class mechanism is commonly used in CCAA plans.[38] Those Creditors of VON Canada who elect to participate in the Convenience Class, or who are deemed to elect to participate in the Convenience Class, are deemed to have voted in favour of the VON Canada CCAA Plan. There was no objection to the inclusion of the Convenience Class in the VON Canada CCAA Plan from any Creditors and, as described above, the VON Canada CCAA Plan was supported by a very significant majority of VON Canada's voting creditors, including large Creditors who would not have elected to participate in the Convenience Class. The VON East CCAA Plan and the VON West CCAA Plan do not have a 'Convenience Class'.

No Unfairness to Shareholders

58 As Creditors holding Unsecured Proven Claims are not being paid in full, the CCAA Plans cannot provide recoveries to members of the Applicants. The treatment of the members is consistent with the provisions of the CCAA.[39]

The CCAA Plan is in the Public Interest

59 While the VON East CCAA Plan and VON West CCAA Plan only seek to return remaining value to creditors, the VON Canada CCAA Plan allows VON Canada to continue as a going concern. The continuation of VON Canada as a going concern is of substantial benefit to a variety of stakeholders including the over 150 employees of VON Canada who will retain employment, the beneficiaries of the VON Canada Pension Plan, which VON Canada administers, and the users of the health care services of the VON Group as a whole, who depend upon the administrative functions of VON Canada.

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[38] See, for example, *Re. Canwest Global Communications Corp.*, (2010) ONSC 4209 2010 and *In the Matter of MBAC Fertilizer Corp. et al* (CV-16-11475-00CL)
[39] See CCAA, s. 6(8).

iv. The Releases are Appropriate in the Circumstances

60 The beneficiaries of the releases contained in Article 7 of each of the CCAA Plans are:

(a) the Applicants;

(b) the present and former directors and officers of the Applicants;

(c) the Monitor;

(d) the Chief Restructuring Officer of VON Canada;

and persons acting on behalf of each of the foregoing.

61 The scope of the claims being released are quite limited and include:

(a) the Claims against the Applicants that were called for pursuant to the Claims Procedure Orders and that are being compromised and receiving distributions under the CCAA Plans;

(b) the Director and Officer Claims that were called for pursuant to the Claims Procedure Orders; and

(c) any claims relating to, arising out of or in connection with the CCAA Plans, the CCAA proceedings or the restructuring, disclaimer, resiliation, breach or termination of any contract, lease agreement or other arrangement.

62 Releases of claims against the Applicants and their directors and officers are expressly contemplated in Sections 4, 5 and 5.1 of the CCAA.[40]

[40] CCAA at s. 4 and 5.1.

63 In addition, it is now well established that courts have the jurisdiction to sanction plans containing releases in favour of third parties, where the CCAA does not expressly authorize or contemplate such releases.[41]

64 Courts have the jurisdiction to sanction the release of third parties where the factual circumstances indicate that they are appropriate for the success of the plan.[42] Thus courts have approved third party releases in the context of plans of arrangement where the releases are rationally tied to a resolution of the debtors' claims, will benefit creditors generally, and are not overly broad. In considering whether to approve such releases, Courts have taken into account the following factors:

(a) whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;

(b) whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;

(c) whether the plan would fail without the releases;

(d) whether the third parties being released were contributing in a tangible and realistic way to the plan;

(e) whether the release benefitted the debtors as well as the creditors generally;

(f) whether the creditors voting on the plan had knowledge of the nature and effect of the releases; and

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[41] *Muscletech Research and Development Inc. (Re)* [2006], O.J. No. 4087 at para. 8 (S.C.J. [Commercial List]). See also *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, [2008] O.J. No. 2265, at para. 66 (S.C.J. [Commercial List]) [***Metcalfe & Mansfield***], affirmed 2008 ONCA 587; *Cline Mining Corp.* (Re), 2015 ONSC 622 at paras. 12-14 and 22-28.
[42] *Metcalfe & Mansfield*, *supra*, at para. 66.

(g) whether the releases were fair and reasonable and not overly broad.[43]

65 The releases and injunctions in the CCAA Plans are an important part of the overall framework of compromises in the CCAA Plans and the Applicants believe the releases and injunctions in favour of the released parties are necessary and facilitate the successful completion of the CCAA Plans.[44]

66 The directors and officers, the Chief Restructuring Officer of VON Canada and the Monitor played important roles in the development and implementation of the CCAA Plans and provided stability for the Applicants throughout the restructuring process.[45]

67 The releases of the Monitor and the present and former directors and officers of each of the Applicants and the Chief Restructuring Officer of VON Canada are a necessary part of each of the CCAA Plans because:

(a) each of the CCAA Plans provides for the payment in full of all remaining funds (other than for working capital needs in the case of VON Canada) to creditors. As a result, no funds would remain for any indemnification obligations that may become owing to directors or officers of any of the Applicants or to the Chief Restructuring Officer of VON Canada if indemnified claims against these parties are not released under the CCAA Plans;

(b) no material funds would be available post-implementation of the CCAA Plans for the Monitor to respond to any claims that may be made against the Monitor post-implementation of the CCAA Plans; and

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[43] *Metcalfe & Mansfield*, *supra*, at para. 143; *Nortel Networks Corp.* (Re), 2010 ONSC 1708 at paras. 79-82, leave to appeal denied 2010 ONCA 402; *Canwest Global*, *supra*, at para. 30.
[44] Poirier Affidavit at para. 29.
[45] Poirier Affidavit at para. 30.

(c) the releases provide a fresh start in particular for the directors and officers of VON Canada who would continue to serve in their roles as directors or officers of VON Canada post-implementation of the VON Canada Plan. Those directors and officers (many of whom were also directors and officers of VON East and VON West) would be less likely to continue to serve in their capacities as directors (all of whom serve in such capacity as volunteers) or as officers if there remained a risk of continuing liability following the CCAA proceedings of any of the Applicants.[46]

68 The releases are not overly broad and cover only: (i) claims that should have been filed pursuant to the Claims Procedure Orders to the extent such claims exist; and (ii) claims in connection with the Plans and these CCAA proceedings. In the claims process carried out pursuant to the Claims Procedure Orders, no claims were filed against present or former directors or officers of the Applicants or the Chief Restructuring Officer of VON Canada. The Applicants are not aware of any claims being asserted against any of the released parties relating to, arising out of or in connection with the CCAA Plans or these CCAA proceedings. The releases are subject to carve outs for, among other things, claims that cannot be compromised under Section 5.1(2) or 19(2) of the CCAA.[47]

69 The terms of the releases were clearly set out in the CCAA Plans.

70 The proposed releases are consistent with both the terms of Section 4 and Section 5.1 of the CCAA and, to the extent applicable, the principles established by the jurisprudence relating to third party releases.

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[46] Poirier Affidavit at para. 31.
[47] Poirier Affidavit at para. 32.

PART IV - NATURE OF THE ORDER SOUGHT REQUESTED

71 Throughout the course of the CCAA Proceedings, the Applicants have acted in good faith and with due diligence. The Applicants have complied with the requirements of the CCAA and the Orders of this Court.

72 Unless the CCAA Plans are implemented, bankruptcy would appear to be the only alternative for each of the Applicants (and may not even be possible for VON West), which would be detrimental to all stakeholders and provide reduced recoveries (or in the case of VON West no recoveries) to unsecured creditors of the Applicants.

73 The CCAA Plans are fair and reasonable.

74 The CCAA Plans were approved at the Meetings. The Monitor also recommends approval of the CCAA Plans.

75 The proposed form of Sanction Order also provides for an extension of the Stay Period (as defined in the Initial Order) for each Applicant until such Applicant's CCAA Plan is implemented, subject in each case to an outside date, which in the case of VON East and VON West is February 27, 2017 and in the case of VON Canada is December 30, 2016. In each case the outside date was selected because it is the last possible date upon which distributions could be made in accordance with the applicable Applicant's CCAA Plan. The Applicants are continuing to act in good faith and with due diligence in their efforts to implement their respective CCAA Plans and will continue to do so during the proposed extended Stay Period. The extension of the Stay Period is necessary to provide continued protection and stability so that the CCAA Plans can be implemented without interference from third parties. The CCAA Plans provide for a reserve of sufficient funds for the Applicants to take the steps necessary to implement CCAA Plans during the extended stay period.

76 The proposed form of Sanction Order contains provisions that would facilitate the termination of these CCAA proceedings, the discharge of the Monitor and the discharge of the Chief Restructuring Officer of VON Canada without the need to return to court for a further hearing on these matters following implementation of the CCAA Plans. The Applicants believe that this is the most efficient way to terminate these proceedings. No interested party would be prejudiced by this proposal as the only remaining steps in these proceedings will be the implementation of the CCAA Plans in the very short term, for which funding has been set aside in accordance with the CCAA Plans.

77 For all of the reasons set out above, the Applicants requests that the Court approve the CCAA Plans and grant the requested relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of November, 2016.

Norton Rose Fulbright Canada LLP

Norton Rose Fulbright Canada LLP

Lawyers for the Applicants

SCHEDULE "A"
LIST OF AUTHORITIES

1	*AbitibiBowater Inc., Re*, 2010 QCCS 4450
2	*ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, (2008), 43 C.B.R. (5th) 269 (S.C.J. [Commercial List]), affirmed 2008 ONCA 587
3	*Canadian Airlines Corp. (Re)*, 2000 ABQB 442, leave to appeal denied 2000 ABCA 238, affirmed 2001 ABCA 9, leave to appeal to SCC denied [2001] S.C.C.A. 60
4	*Canwest Global Communications Corp. (Re)*, 2010 ONSC 4209
5	*Century Services Inc. v. Canada (Attorney General)(sub nom Ted Leroy Trucking [Century Services] Ltd., Re*), [2010] 3 S.C.R. 379
6	*Cline Mining Corp. (Re)*, 2015 ONSC 622
7	*In the Matter of MBAC Fertilizer Corp. et al (CV-16-11475-00CL)*
8	*Muscletech Research and Development Inc. (Re),* (2006), 25 C.B.R. (5th) 231 (S.C.J. [Commercial List])
9	*Nortel Networks Corp. (Re)*, 2010 ONSC 1708, leave to appeal denied 2010 ONCA 402
10	*Northland Properties Ltd. (Re),* (1989) 73 C.B.R. (N.S.) 195 (B.C.C.A.)
11	*Olympia & York Developments Ltd. (Re)*, (1993), 17 C.B.R. (3d) 1 (Ont. Gen. Div.)
12	*Sino-Forest Corp., Re*, 2012 ONSC 7050, leave to appeal denied, 2013 ONCA 456
13	*Sammi Atlas Inc. (Re), (1998), 3 C.B.R. (4th) 171 (Ont. S.C.J.)*
14	*SkyLink Aviation Inc. (Re)*, 2013 ONSC 2519

SCHEDULE "B"
RELEVANT STATUTES

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Definitions

2 (1) In this Act,

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)

Compromise with unsecured creditors

4 Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

Claims against directors — compromise

5.1 (1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

Exception

(2) A provision for the compromise of claims against directors may not include claims that

(a) relate to contractual rights of one or more creditors; or

(b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

Compromises to be sanctioned by court

6 (1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

(a) on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(b) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act or is in the course of being wound up under the Winding-up and Restructuring Act, on the trustee in bankruptcy or liquidator and contributories of the company.

Court may order amendment

6 (2) If a court sanctions a compromise or arrangement, it may order that the debtor's constating instrument be amended in accordance with the compromise or arrangement to reflect any change that may lawfully be made under federal or provincial law.

Restriction — certain Crown claims

6 (3) Unless Her Majesty agrees otherwise, the court may sanction a compromise or arrangement only if the compromise or arrangement provides for the payment in full to Her Majesty in right of Canada or a province, within six months after court sanction of the compromise or arrangement, of all amounts that were outstanding at the time of the application for an order under section 11 or 11.02 and that are of a kind that could be subject to a demand under

(a) subsection 224(1.2) of the Income Tax Act;

(b) any provision of the Canada Pension Plan or of the Employment Insurance Act that refers to subsection 224(1.2) of the Income Tax Act and provides for the collection of a contribution, as defined in the Canada Pension Plan, an employee's premium, or employer's premium, as defined in the Employment Insurance Act, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the Income Tax Act, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Income Tax Act, or

(ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a province providing a comprehensive pension plan as defined in

subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a provincial pension plan as defined in that subsection.

Restriction — default of remittance to Crown

6 (4) If an order contains a provision authorized by section 11.09, no compromise or arrangement is to be sanctioned by the court if, at the time the court hears the application for sanction, Her Majesty in right of Canada or a province satisfies the court that the company is in default on any remittance of an amount referred to in subsection (3) that became due after the time of the application for an order under section 11.02.

Restriction — employees, etc.

6 (5) The court may sanction a compromise or an arrangement only if

(a) the compromise or arrangement provides for payment to the employees and former employees of the company, immediately after the court's sanction, of

(i) amounts at least equal to the amounts that they would have been qualified to receive under paragraph 136(1)(d) of the Bankruptcy and Insolvency Act if the company had become bankrupt on the day on which proceedings commenced under this Act, and

(ii) wages, salaries, commissions or compensation for services rendered after proceedings commence under this Act and before the court sanctions the compromise or arrangement, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the company's business during the same period; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

Restriction — pension plan

6 (6) If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if

(a) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that was required to be paid by the employer to the fund, and

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision,

within the meaning of subsection 2(1) of the Pension Benefits Standards Act, 1985,

(C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the Pooled Registered Pension Plans Act, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the Pension Benefits Standards Act, 1985, if the prescribed plan were regulated by an Act of Parliament,

(C) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the Pooled Registered Pension Plans Act; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

Non-application of subsection (6)

6 (7) Despite subsection (6), the court may sanction a compromise or arrangement that does not allow for the payment of the amounts referred to in that subsection if it is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, respecting the payment of those amounts.

Payment — equity claims

6 (8) No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

General power of court

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

Claims that may be dealt with by a compromise or arrangement

19 (1) Subject to subsection (2), the only claims that may be dealt with by a compromise or arrangement in respect of a debtor company are

(a) claims that relate to debts or liabilities, present or future, to which the company is subject on the earlier of

> **(i)** the day on which proceedings commenced under this Act, and
>
> **(ii)** if the company filed a notice of intention under section 50.4 of the Bankruptcy and Insolvency Act or commenced proceedings under this Act with the consent of inspectors referred to in section 116 of the Bankruptcy and Insolvency Act, the date of the initial bankruptcy event within the meaning of section 2 of that Act; and

(b) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the days referred to in subparagraphs (a)(i) and (ii).

Exception

(2) A compromise or arrangement in respect of a debtor company may not deal with any claim that relates to any of the following debts or liabilities unless the compromise or arrangement explicitly provides for the claim's compromise and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:

(a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence;

(b) any award of damages by a court in civil proceedings in respect of

> **(i)** bodily harm intentionally inflicted, or sexual assault, or
>
> **(ii)** wrongful death resulting from an act referred to in subparagraph (i);

(c) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of others;

(d) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of the company that arises from an equity claim; or

(e) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (d).

Company may establish classes

22 (1) A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

Factors

(2) For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

(a) the nature of the debts, liabilities or obligations giving rise to their claims;

(b) the nature and rank of any security in respect of their claims;

(c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and

(d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

Related creditors

(3) A creditor who is related to the company may vote against, but not for, a compromise or arrangement relating to the company.

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 VICTORIAN ORDER OF NURSES FOR CANADA ET AL.

Court File No: CV-15-11192-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

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