

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

No. 500-11-062372-236

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

9500-1798 QUÉBEC INC.

9500-1830 QUÉBEC INC.

Debtors

-and-

THE BANK OF NOVA SCOTIA

Applicant

-and-

RAYMOND CHABOT INC.

Monitor / Petitioner

**Amended Application for the Issuance of an Order (i) Terminating the CCAA Proceedings
(ii) Discharging the Monitor [...] and (iii) Regarding the Administration of the
Bankruptcies [...]**¹

(Section 11 of the *Companies' Creditors Arrangement Act*, section 183 of the *Bankruptcy and
Insolvency Act* and article 49 of the *Civil Code of Procedure*)

**TO THE HONOURABLE JUSTICE MICHEL A. PINSONNAULT OF THE SUPERIOR COURT,
SITTING IN THE COMMERCIAL DIVISION IN AND FOR THE JUDICIAL DISTRICT OF
MONTREAL, THE APPLICANT HEREBY RESPECTFULLY SUBMITS:**

I - ORDERS SOUGHT

1. By way of the present *Amended Application for the Issuance of an Order (i) Terminating the CCAA Proceedings (ii) Discharging the Monitor [...] and (iii) Regarding the Administration of the Bankruptcies [...]* (the "**Amended Application**"), Raymond Chabot

¹ Capitalized terms used in this Application and not otherwise defined shall have the meanings ascribed to them in the ARIO.

Inc., in its capacity as Court appointed Monitor in the CCAA Proceedings (the “**Monitor**”), seeks the issuance of an order:

- (a) terminating the CCAA Proceedings and discharging the Monitor from its duties in relation to the CCAA Proceedings;
- (b) consolidating the bankruptcy files of the debtors in one single bankruptcy file and ancillary relief [...].

the whole in accordance with the terms of the draft Order Terminating the CCAA Proceedings [...] and Consolidating Bankruptcy Files [...] (the “**Amended Proposed Order**”) communicated herewith as **Exhibit P-1A**.

II - PROCEDURAL BACKGROUND AND CONTEXT

2. On May 15, 2023, the applicant, The Bank of Nova Scotia (“**Scotiabank**”), filed an application pursuant to the *Companies Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended, (the “**CCAA**”) entitled *Application for an Initial Order, an Amended and Restated Initial Order and Other Relief* (the “**Initial Application**”).
3. On May 17, 2023, the Superior Court of Quebec (Commercial Division) (the “**Court**”) partially granted the Initial Application, commencing proceedings under the CCAA in respect of Capcium Inc. (“**Capcium**”) and Gelcan Corporation Inc. (“**Gelcan**” and together with Capcium, the “**Initial Debtors**”) (the “**CCAA Proceedings**”), and rendered an Initial Order which, *inter alia*:
 - (a) stayed all proceedings and remedies taken or that might be taken in respect of the Initial Debtors, and any of their Property, Directors or Officers, until May 26, 2023 (the “**Stay Period**”); and
 - (b) approved an interim financing facility in the initial amount of \$250,000 (the “**Interim Financing**”) and an interim financing charge in the initial amount of \$300,000 (the “**Interim Financing Charge**”).
4. On May 17, 2023, the Court further granted the Initial Application and rendered a Bidding Procedure Order approving the implementation of a sale and investment solicitation process (the “**SISP**”) and the procedures of the SISP setting out the manner in which bids and proposals for a broad range of executable transactions in respect of the business and/or assets of the Initial Debtors will be solicited from interested parties (the “**SISP Procedures**”).
5. On May 26, 2023, the Court granted the remaining conclusions of the Initial Application and rendered an Amended and Restated Order (the “**ARIO**”) which, *inter alia*, extended the Stay Period until July 24, 2023, and increased the Interim Financing to \$1,200,000 and the corresponding Interim Financing Charge to \$1,440,000.
6. On July 24, 2023, the Court granted an Extension Order which, *inter alia*, extended the Stay Period until and including September 6, 2023.
7. On September 6, 2023, the Court granted an Extension Order which, *inter alia*, extended the Stay Period until and including September 29, 2023.

8. On September 22, 2023, the Court granted an Approval and Vesting Order (the “**Approval Order**”), approving, *inter alia*:
 - (a) the purchase and sale and other transactions (collectively, the “**Transaction**”) contemplated in the Investment and Transaction Agreement (the “**Purchase Agreement**”) dated as of September 21, 2023 entered into by and between (i) 15382335 Canada Inc. (“**Purchaser 1**”), (ii) 15382416 Canada Inc. (“**Purchaser 2**”, collectively with Purchaser 1, “**Purchasers**”), as purchasers, (iii) Capcium Inc. and Gelcan Corporation Inc. (collectively, “**Capcium**”), and (iv) the Monitor.
 - (b) the pre-closing reorganization steps contemplated in the Purchase Agreement.
9. On September 30, 2023, the Monitor issued: (i) the Monitor’s closing certificate (the “**Closing Certificate**”) and (ii) the Monitor’s assignment certificate, thereby confirming the closing of the Purchase and Sale Transaction.
10. Pursuant to the Approval Order, effective as of the issuance of the Closing Certificate, 9500-1798 Québec Inc. (“**ResidualCo 1**”) and 9500-1830 Québec Inc. (“**ResidualCo 2**” and collectively with ResidualCo 1, the “**New Debtors**”) were added as debtors in the CCA Proceedings and the Initial Debtors (Capcium Inc. and Gelcan Corporation Inc.) were deemed to cease to be debtors in the CCA Proceedings.
11. Furthermore, in accordance with paragraph 22 of the Approval Order:
 - (a) all Excluded Assets and Excluded Contracts were transferred to ResidualCo 1; and
 - (b) all Excluded Liabilities were transferred to and assumed by ResidualCo 2.
- 11.1 On December 1, 2023, the Monitor filed an Application for the Issuance of an Order (i) Terminating the CCA Proceedings (ii) Discharging the Monitor, (iii) Regarding the Administration of the Bankruptcies and (iv) Regarding WEPPA (the “**CCAA Termination Application**”).
- 11.2 Pursuant to the CCA Termination Application, the Monitor was *inter alia* seeking a declaration that pursuant to section 5(5) of the Wage Earner Protection Program Act, S.C. 2005, c. 47, s.1 (the “**WEPPA**”), ResidualCo 2 meets the criteria established by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222 (the “**WEPP Regulations**”).
- 11.3 The CCA Termination Application was presented on December 6, 2023. Services Canada contested the conclusion regarding the application of the WEPPA (the “**WEPPA Conclusion**”) and the hearing on the CCA Termination Application was suspended *sine die*.
- 11.4 Since December 6, 2023:
 - (a) the Monitor’s counsel engaged in discussions with the Attorney General of Canada with a view to find a mutually agreeable solution regarding the WEPPA Conclusion;

- (b) the Monitor engaged in discussions with the Purchasers regarding their intentions further to the closing of the Transaction as regards the resumption of Capcium's operations and the former employees of Capcium;
- (c) the Monitor has engaged in discussions directly with Services Canada regarding the WEPPA Conclusion;
- (d) the Monitor has had discussions with the Superintendent of Bankruptcy; and
- (e) the Monitor has prepared and will be sending out shortly a notice to the former employees of Capcium regarding Services Canada's position on the WEPPA Conclusion.

11.5 As at the date hereof, no agreement has been reached between the Monitor and Services Canada regarding the WEPPA Conclusion.

11.6 In order to move forward with the file, the Monitor has decided to amend the CCAA Termination Application in order to withdraw its request for the issuance of the WEPPA Conclusion. Any question regarding the WEPPA Conclusion will be dealt with in the context of the bankruptcies of ResidualCo 1 and ResidualCo 2, as the case may be.

III - STEPS TAKEN BY THE MONITOR SINCE THE FOURTH REPORT

12. As more fully described in the Fifth Report of the Monitor (the "**Fifth Report**"), since the issuance of its Fourth Report dated September 21, 2023, the Monitor namely:
- (a) worked in consultation with the Purchasers to close the Purchase and Sale Transaction, which closed on September 30, 2023;
 - (b) continued its ongoing communications with the stakeholders of the Initial Debtors;
 - (c) exercised control over the receipts and disbursement of the Initial Debtors;
 - (d) proceeded to a partial distribution to Scotiabank, in its capacity as interim lender;
 - (e) has prepared the documentation required for the management of the bankruptcy of ResidualCo 1 and ResidualCo 2 and the management of the Wage Earner Protection Program ("**WEPP**") of the latter.
13. As provided for in the Approval Order, Mr. Dominic Deslandes, the representative of the Monitor in charge of the CCAA Proceedings, was designated as director of ResidualCo 1 and ResidualCo 2. Mr. Deslandes resigned, effective immediately following the incorporation and organization of these companies.
14. Furthermore, as provided for in the Purchase Agreement, all of the Initial Debtors' employees were terminated as of September 29, 2023. Although a director remained in office at the time the layoffs were made, such director informed the Monitor that he did not want to sign the termination letters and, in the absence of any other person in authority to sign the termination letters, the Monitor signed the letters for and on behalf of the Initial Debtors.

15. The actions of the Monitor were taken in accordance with and pursuant to the powers granted to it under the orders of this Court rendered in the CCAA Proceedings, including the Initial Order.

IV - TERMINATION OF THE CCAA PROCEEDINGS AND DISCHARGE OF THE MONITOR

16. At this time, the only remaining steps to be completed in the CCAA Proceedings are as follows:
 - (a) completing certain payments for post-filing goods and services received by the Initial Debtors; and
 - (b) the assignment into bankruptcy of the New Debtors.
17. Whereas, following completion of the above-mentioned administrative steps, the role entrusted by the Court to the Monitor will be completed, the Monitor requests that the proceedings be terminated and that he be discharged, all with effect from the CCAA Termination Time (as defined below).
18. The Monitor is therefore seeking an order providing that the CCAA Proceedings be deemed completed upon the issuance of a certificate by the Monitor (the "**CCAA Termination Certificate**") certifying that, to the best of the Monitor's knowledge, substantially all issues and matters outstanding in the CCAA Proceedings are now resolved or completed. The CCAA Proceedings will be completed without further act or formality on the date and at the time of issuance of the CCAA Termination Certificate (the "**CCAA Termination Time**").
19. The Monitor also requests the Court to approve his activities, including those described in the Fifth Report, to discharge him from his duties and to order that he be fully discharged from any liability or obligation that he has or may have or omissions, with the exception of gross or intentional fault.
20. Given the powers granted to the Monitor under *inter alia* the Initial Order, the Monitor is also seeking a release in favour of the Monitor, its legal counsel and their respective, directors, officers, employees and other representatives.
21. Finally, the Monitor requests that no proceedings be taken against him without the prior authorization of the Court upon notice given to the Monitor and on condition that the prior authorization orders the payment of a security sufficient to guarantee the payment of the Monitor's legal fees and court costs.
22. The Monitor has duly and properly fulfilled his duties, functions, obligations and responsibilities in the context of the CCAA Proceedings and pursuant to the CCAA as well as under the orders of this Court rendered in the CCAA Proceedings.

V - CONSOLIDATION OF THE BANKRUPTCY FILES OF RESIDUALCO 1 AND RESIDUALCO 2

23. In order to facilitate and make more efficient the administration of the bankruptcies of ResidualCo 1 and ResidualCo 2, and thus reduce the costs that will be incurred in connection with the bankruptcies, the Monitor requests that this Court authorize:

- (a) the consolidation of the bankruptcy files of ResidualCo 1 and ResidualCo 2 into one single bankruptcy file (the “**Consolidated Bankruptcy File**”) so that;
 - (i) one single statement of affairs and one list of creditors be prepared;
 - (ii) only one first creditors’ meeting be held and, if applicable, one meeting of inspectors (if any) and other creditors’ meetings be held jointly; and
 - (iii) all notices, letters and communications to be sent from time to time in the context of the bankruptcy of ResidualCo 1 and ResidualCo 2 be consolidated into one single notice, letter or communication.
 - (b) the filing of a joint trustee’s report for the Consolidated Bankruptcy File.
24. ResidualCo 1 and ResidualCo 2 have no assets of value to be realized and there are insufficient funds to reimburse in full the advances made under the Interim Financing, such that there will be no distribution to unsecured creditors.
25. In light of the foregoing, no creditor of the New Debtors will be prejudiced by the conclusions sought in this Application and the only stakeholder with an economic interest, Scotiabank, consents to the relief being sought pursuant hereto. [...]

VI - CONCLUSION

38. Since the commencement of these CCAA Proceedings, the Monitor, the Initial Debtors, the New Debtors and Scotiabank have acted and continue to act in good faith and with due diligence.
39. Scotiabank, the New Debtors’ most important secured creditor and the interim lender, is supportive of this Application.
40. In light of the foregoing, the Monitor respectfully submits that the present Application should be granted in accordance with its conclusions.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Amended Application for the Issuance of an Order (i) Terminating the CCAA Proceedings (ii) Discharging the Monitor [...] and (iii) Regarding the Administration of the Bankruptcies [...];

RENDER an order substantially in the form of the amended draft order communicated as **Exhibit P-1A**;

THE WHOLE without legal costs, save in case of contestation.

Montréal, [...] February 23, 2021[...]

McCarthy Tétrault, s.e.n.c.r.l., s.r.l.

McCarthy Tétrault LLP

Lawyers for the Monitor

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**NOTICE OF PRESENTATION
COMMERCIAL DIVISION**

TO : Service List

TAKE NOTICE that *Amended Application for the Issuance of an Order (i) Terminating the CCAA Proceedings (ii) Discharging the Monitor and (iii) Regarding the Administration of the Bankruptcies* shall be presented in the Commercial Division of the Superior Court of the Montréal Courthouse, **on February 27, 2024 at 9:00, virtually, in room 16.06** which can be accessed via the link below.

By videoconference : teams@teams.justice.gouv.qc.ca

ID of the conference VTC : 1173094864

PLEASE GOVERN YOURSELF ACCORDINGLY.

Montréal, February 23, 2024

McCarthy Tétrault, s.é.n.c.r.l., s.r.l.

McCarthy Tétrault LLP
Lawyers for the Monitor

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9500-1830 QUÉBEC INC.

Debtors

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THE BANK OF NOVA SCOTIA

Applicant

-and-

RAYMOND CHABOT INC.

Monitor / Petitioner

AFFIDAVIT

I, the undersigned, Dominic Deslandes, Partner, Raymond Chabot Inc., domiciled for the purpose hereof at 600 de la Gauchetière Street West, Suite 2000, Montréal, Québec, H3B 4L8, solemnly affirm that all the facts alleged in the present *Application for the Issuance of an Order (i) Terminating the CCAA Proceedings (ii) Discharging the Monitor and (iii) Regarding the Administration of the Bankruptcies* are, to the best of my knowledge, true.

AND I HAVE SIGNED,

Dominic Deslandes

SOLEMNLY AFFIRMED TO BEFORE ME BY
TECHNOLOGICAL MEANS IN MONTREAL, this
26th day of February, 2024

COMMISSIONER OF OATHS
FOR THE PROVINCE OF QUÉBEC

CANADA

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DISTRICT OF MONTREAL

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LIST OF EXHIBITS

Exhibit P-1A Amended Proposed Order

Montréal, [...] February 23, 202[...]14

McCarthy Tétrault, s.e.n.c.r.l., s.r.l.

McCarthy Tétrault LLP
Lawyers for the Monitor

N° : 500-11-062372-236
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RAYMOND CHABOT INC.

Monitor

**AMENDED APPLICATION FOR THE ISSUANCE OF
AN ORDER (I) TERMINATING THE CCAA
PROCEEDINGS (II) DISCHARGING THE MONITOR,
[...] AND (III) REGARDING THE ADMINISTRATION
OF THE BANKRUPTCIES [...]**

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