

FORCE FILED



No. S245481
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *COOPERATIVE ASSOCIATION ACT*, S.B.C. 1999, c. 28

AND

IN THE MATTER OF BC TREE FRUITS COOPERATIVE, BC TREE FRUITS INDUSTRIES
LIMITED and GROWERS SUPPLY COMPANY LIMITED

PETITIONERS

NOTICE OF APPLICATION

Name of applicant: Alvarez & Marsal Canada Inc., in its capacity as court-appointed Monitor of the Petitioners (the "**Monitor**").

To: The Service List, a copy of which is attached hereto as Schedule "A"

TAKE NOTICE that an application will be made by the applicant before the Honourable Madam Justice Gropper BY TEAMS at 800 Smithe Street, Vancouver BC on July 16, 2025 at 9:00 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take 30 minutes.

This matter is not within the jurisdiction of an associate judge. Madam Justice Gropper is seized of these proceedings. The date and time of this application has been set by Scheduling.

Part 1 ORDERS SOUGHT

1. An order, in substantially the form attached hereto as Schedule "B" (the "**SGM Order**"):
 - (a) abridging the time for service of this Notice of Application such that it is properly returnable on July 16, 2025; and

(b) declaring that the board of directors of BC Tree Fruits Cooperative not be required to call a Special General Meeting of its members (a “**SGM**”) until further order of this court.

2. Such further and other relief as this Honourable Court may deem just.

Part 2 FACTUAL BASIS

3. Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Supplemental Thirteenth Report of the Monitor dated July 11, 2025 (the “**Supplemental Report**”).

Background

4. On August 26, 2024, this court granted an amended and restated initial order (the “**ARIO**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) which, among other things, appointed A&M as monitor of the Petitioners with certain enhanced powers, and granted a stay of proceedings until and including November 3, 2024 (the “**Stay**”).

5. The Stay has since been extended on a number of occasions, most recently to August 29, 2025.

6. Since its appointment, the Monitor has actively marketed and sold nearly all of the Petitioners’ assets. The Monitor recently received court approval to sell all the remaining real property and other assets to Manage Wildstone Partnership (the “**Wildstone Transaction**”). As set out in the Thirteenth Report of the Monitor dated July 9, 2025, the closing date of the Wildstone Transaction has been extended and it is now expected to close on July 25, 2025.¹

7. Upon completion of the Wildstone Transaction, the Monitor expects the estate to have significant surplus funds after making distributions to pay in full the outstanding proven claims of all of the Petitioners’ creditors (the “**Surplus Funds**”).²

8. As it stands, distributions of Surplus Funds are governed by BCTFC’s “**Rules**”, which were last revised on November 16, 2021. Rule 125 of the Rules provides that, in the year that

¹ Thirteenth Report, at paras. 1.5, 4.2, and 4.4.

² Thirteenth Report, at para. 6.1.

BCTFC intends to permanently cease operations, any surplus funds must be distributed to the members and former members in proportion to the tonnage of fruit accepted by BCTFC in the previous 6 years (“**Rule 125**”).³

9. For the majority of these CCAA proceedings, the current members have had legal representation pursuant to an order granted August 26, 2024 (the “**Representative Counsel Order**”). Among other things, the Representative Counsel Order appointed Mr. Amarjit Singh Lalli (the “**Current Members’ Representative**”) as the representative of all the voting members of BCTFC (the “**Current Members**”) and appointed Osler, Hoskin & Harcourt LLP as representative counsel for the Current Members (the “**Current Members’ Representative Counsel**”).
10. On July 9, 2025, the Monitor filed a Notice of Application (the “**Former Members Representative Application**”) seeking, among other things, an order:
 - (a) appointing Steve Day as the representative of all former members of BC Tree Fruits Cooperative (“**BCTFC**”) who delivered fruit to BCTFC at any time during the years 2018 through 2023 (the “**Former Members**”); and
 - (b) appointing Nathanson, Schachter & Thompson LLP (“**NST**”) as representative counsel for Steve Day (in such capacity, the “**Former Members’ Representative Counsel**”) in his capacity as the representative of the Former Members.
11. The Monitor seeks to have the within Notice of Application heard concurrently with the Former Members’ Representative Application .

Request for a Special General Meeting

12. On July 9, 2025, the Current Members’ Representative sent a member requisition for a SGM to all members of the BCTFC board of directors (the “**Directors**”) to amend Rule 125 (the “**Member Requisition**”).
13. The Member Requisition was signed by 38 of the Current Members. A copy of the Member Requisition is attached to the Supplemental Report as Appendix “A”.

³ Thirteenth Report, at para. 6.2.

14. The Member Requisition seeks to pass a special resolution that would delete Rule 125 in its entirety and replace it with the following (with changes from the current Rule 125 highlighted, the “**Proposed Rule 125**”):

125. Distribution of surplus in final year of operations

After setting aside the amount required as a reserve and paying any dividend permitted by these Rules, the Association must, but only in the year in which it intends to permanently cease operations, distribute the whole of its then accumulated surplus, including all amounts realized from the sale or other disposition of its assets (but after setting aside an amount equal to the aggregate paid up capital of all its outstanding shares), to the members ~~and former members~~ of the Association (including the heirs, executors, administrators, successors and assigns) in the same proportion that the tonnage of tree fruits accepted by the Association from each of them (or from the grower through whom the member ~~or former member~~ derives ~~or derived~~ membership) in the previous 6 years bears to the total tonnage of tree fruits accepted by the Association from ~~all its growers~~ them during those same 6 years.

15. The Proposed Rule 125 would limit the persons entitled to share in the distribution of the Surplus Funds to the Current Members, thereby eliminating any entitlement of the Former Members to share in the Surplus Funds.
16. As noted in the Thirteenth Report, the Monitor was previously made aware that the Current Members may seek to amend the Rules as contemplated by the Member Requisition, prompting the Monitor to seek the Former Members’ Representation Order so as to ensure that the Former Members had representation in these proceedings, including to respond to any steps proposed to be taken by the Current Members to amend the Rules. The Former Members’ Representative Counsel was advised of the Monitor’s intentions in that regard.
17. The Monitor is of the view that it would be appropriate for the Former Members to have legal representation and an opportunity for them to seek relief from this Honourable Court – should they choose to do so – in respect of any steps proposed to be taken by the Current Members to affect the Former Members’ entitlement to share in the Surplus Funds (or any matters).

Part 3 LEGAL BASIS

18. The Monitor relies on:

- (a) the CCAA;
- (b) The *Cooperative Association Act*, SBC 1999, c. 28 (the “CAA”)
- (c) the *Supreme Court Civil Rules*;
- (d) the inherent and equitable jurisdiction of this Court; and
- (e) such further and other legal bases and authorities as counsel may advise and this Court may permit.

Requirements to Requisition a SGM

19. Section 151 of the CAA outlines the requirements for a requisitioned SGM:

151. Member requisitioned special general meetings

(1) A requisition under section 150 (2) for a special general meeting must

- (a) state the object of the meeting,*
- (b) state the name and address of the representative of the requisitioning members,*
- (c) if applicable, set out the resolution to be submitted to the meeting, and*
- (d) be served on the association.*

(2) If the directors receive a requisition that complies with subsection (1), then, within 7 days after the date the requisition is served on the association, the directors must

- (a) call the requisitioned general meeting, or*
- (b) refuse to call the requisitioned general meeting on one or more of the following grounds:*

- (i) it clearly appears that the proposal is submitted by the members for the purposes of enforcing a personal claim or redressing a personal grievance against the association or its officers, or primarily for the purpose of promoting causes that are extraneous to the purposes of the association;*

- (ii) *substantially the same proposal was considered and defeated by the membership within 3 years immediately before the date the requisition containing the proposal was delivered to the registered office;*
- (iii) *the business of the requisitioned general meeting as stated in the requisition includes a matter outside the powers of the members.*

20. In addition to the CAA, Rule 41(2) of the Rules provides the following:

41 (2) The directors must call a special general meeting on receipt of a written requisition signed by:

(a) if there are 100 or fewer members of the Association, at least 20% of the members,

(b) otherwise, at least the greater of:

- i) 20 members, and*
- ii) 10% of the members.*

21. It is the Monitor's view that the Member Requisition meets the required criteria under section 151 of the CAA and the Rules to requisition a SGM.
22. Section 151(2) of the CAA requires the Directors to call a SGM within seven days of receiving a requisition unless it has reason to refuse to do so. As the Member Requisition was filed on July 9, 2025, the Directors will need to send notice of a SGM on July 16, 2025, with the SGM to be held as soon as July 30, 2025 (a minimum notice period of 14 days is required for a general meeting per Rule 45 and CAA section 146).

The Remedial Objective of the CCAA

23. Section 11 of the CCAA provides the court with broad authority to make any order that it considers appropriate in the circumstances.

CCAA, s. 11.

24. The Court's analysis as to the "appropriateness" of an order is guided by the overarching objective of the CCAA: to enable companies to compromise or otherwise restructure their debts to avoid the devastating social and economic effects of insolvency by preserving their business in a manner intended to cause the least amount of harm to a debtor company, its stakeholders and the communities in which it carries on business. The CCAA is remedial legislation which should be given a broad and liberal interpretation.

Ted Leroy Trucking [Century Services] Ltd, Re, 2010 SCC 60, [2010] 3 SCR 379 at paras 18-19, 70
[*Century Services*].

Lehndorff General Partner Ltd, Re, [1993] OJ No 14 (ONCJ), 17 CBR (3d) 24 at para 5.

North American Tungsten Corp (Re), 2015 BCSC 1376, at paras 25, 27.

25. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit. The CCAA creates conditions for preserving the status quo while attempts are made to find common ground amongst stakeholders for a reorganization that is fair to all.

Century Services, at para. 70 and 77.

26. Postponing the requirement for the Directors to convene a SGM until further order of this Court will help preserve the status quo and promote fairness.
27. The Member Requisition to amend the Rules appears to be attempting to do precisely what the CCAA is designed to prevent. As Farley J. describes in *Lehndorff General Partner Ltd. (Re)* (1993), 17 C.B.R. (3d) 24 at 31 (Ont. Ct. J.):

... the intention of the CCAA is to prevent any manoeuvres for positioning among the creditors during the period required to develop a plan and obtain approval of creditors. Such manoeuvres could give an aggressive creditor an advantage to the prejudice of others who are less aggressive and would undermine the company's financial position making it even less likely that the plan will succeed.

28. Delaying the SGM will give a key stakeholder group – the Former Members – adequate time to secure legal representation and seek guidance on the proposed Rules amendment by the Current Members, which will affect their right to participate in the distribution of Surplus Funds, or on other related matters.
29. The Monitor respectfully submits that the SGM Order furthers the objectives of the CCAA and is appropriate in the circumstances.

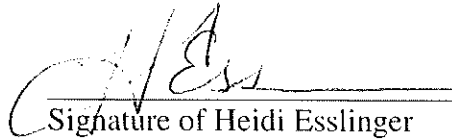
Part 4 MATERIAL TO BE RELIED ON

30. Thirteenth Report of the Monitor, dated July 9, 2025.
31. Supplemental Thirteenth Report of the Monitor, dated July 11, 2025.
32. Such further and other materials as counsel may advise and this Court may allow.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 11-Jul-2025



Signature of Heidi Esslinger
Lawyer for the Monitor, Alvarez & Marsal
Canada Inc.

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs of Part 1 of
this Notice of Application

☐ with the following variations and additional terms:

.....
.....
.....

Date:

.....
Signature of ☐ Judge ☐ Associate
Judge

The Solicitors for the Monitor are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232 E-mail: hesslinger@fasken.com (Reference: Heidi Esslinger/285937.00020)

APPENDIX**THIS APPLICATION INVOLVES THE FOLLOWING:**

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ none of the above

SCHEDULE "A"

No. S245481
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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AND

IN THE MATTER OF BC TREE FRUITS COOPERATIVE, BC TREE FRUITS INDUSTRIES
LIMITED and GROWERS SUPPLY COMPANY LIMITED

PETITIONERS

CCAA SERVICE LIST

As at May 29, 2025

<p>Fasken Martineau DuMoulin LLP</p> <p>Attention: Kibben Jackson</p> <p>Mishaal Gill</p> <p>Heidi Esslinger</p> <p>Suzanne Volkow</p> <p>Email: kjackson@fasken.com</p> <p>mgill@fasken.com</p> <p>hesslinger@fasken.com</p> <p>svolkow@fasken.com</p> <p>jbeaulieu@fasken.com</p> <p>richeung@fasken.com</p> <p><i>Counsel for the Monitor, Alvarez & Marsal Canada Inc.</i></p>	<p>Norton Rose Fulbright Canada LLP</p> <p>Attention: Howard Gorman, K.C. Scott Silver</p> <p>Email: howard.gorman@nortonrosefulbright.com Scott.Silver@nortonrosefulbright.com</p> <p><i>Counsel for the Petitioners</i></p>
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<p>Alvarez & Marsal Canada Inc.</p> <p>Attention: Todd Martin Anthony Tillman Pinky Law Monica Cheung</p> <p>Email: tmartin@alvarezandmarsal.com atillman@alvarezandmarsal.com pinky.law@alvarezandmarsal.com monicacheung@alvarezandmarsal.com</p> <p><i>Court Appointed Monitor</i></p>	
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<p>Osler LLP</p> <p>Attention: Mary Buttery, K.C. Emma Newbery Christian Garton Lucas Hodgson</p> <p>Email: mbuttery@osler.com enewbery@osler.com cgarton@osler.com lhodgson@osler.com</p> <p><i>Counsel for BC Tree Fruits members</i></p>	<p>Province of British Columbia</p> <p>Attention: Aaron Welch</p> <p>Email: aaron.welch@gov.bc.ca AGLSBRevTaxInsolvency@gov.bc.ca</p>

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<p>Lax O'Sullivan Lisus Gottlieb LLP</p> <p>Attention: Rahool Agarwal Annecy Pang</p> <p>Email: ragarwal@lolg.ca apang@lolg.ca</p> <p><i>Counsel for Mangal Capital Inc.</i></p>	<p>Dentons Canada LLP</p> <p>Attention: Eamonn Watson Afshan Naveed</p> <p>Email: Eamonn.watson@dentons.com Afshan.naveed@dentons.com</p> <p><i>Counsel for BC Investment Agriculture Foundation</i></p>
<p>Mission Bottle Washing Co. Ltd.</p> <p>Attention: Maged Said</p> <p>Email: msaid@mbwco.ca</p>	<p>Vernon Law</p> <p>Attention: Steven Dvorak</p> <p>Email: sdd@vernonlaw.ca</p> <p><i>Counsel for N.M. Bartlett Inc.</i></p>

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SCHEDULE "B"
DRAFT ORDER

[see attached]

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *COOPERATIVE ASSOCIATION ACT*, S.B.C. 1999, c. 28

AND

IN THE MATTER OF BC TREE FRUITS COOPERATIVE, BC TREE FRUITS INDUSTRIES
LIMITED and GROWERS SUPPLY COMPANY LIMITED

PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
JUSTICE GROPPER) July 16, 2025

ON THE APPLICATION OF Alvarez & Marsal Canada Inc. in its capacity as monitor of the Petitioners (in such capacity, the “**Monitor**”) coming on for hearing at Vancouver, British Columbia on this date; AND ON HEARING Kibben Jackson and Heidi Esslinger, counsel for the Monitor, and those counsel listed in Schedule “A” attached hereto; AND UPON READING the material filed, including the Thirteenth Report of the Monitor dated July 9, 2025, the Supplemental Thirteen Report of the Monitor dated July 11, 2025; AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), the British Columbia Supreme Court Civil Rules, and the inherent jurisdiction of this Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of this notice of application and supporting materials is hereby abridged such that the notice of application is properly returnable today.

2. The directors (collectively, the “**Directors**”) of BC Tree Fruits Cooperative shall not be required to call a special general meeting of its members pursuant to the member requisition delivered to the Directors on July 9, 2025 and as prescribed by its rules and the *Cooperative Association Act*, SBC 1999, c 28 until further Order of this Court.
3. Endorsement of this order by counsel appearing on this application, other than counsel for the Monitor, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Kibben Jackson
Lawyer for the Monitor, Alvarez & Marsal
Canada Inc.

BY THE COURT

REGISTRAR

SCHEDULE "A"
COUNSEL APPEARING

Name of Party	Counsel Name

No. S245481
Vancouver Registry

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AND

IN THE MATTER OF BC TREE FRUITS
COOPERATIVE, BC TREE FRUITS INDUSTRIES
LIMITED and GROWERS SUPPLY COMPANY
LIMITED

PETITIONERS

ORDER MADE AFTER APPLICATION

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