COURT FILE NUMBER	2401-09688
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DELTA 9 CANNABIS INC., DELTA 9 LOGISTICS INC., DELTA 9 BIO-TECH INC., DELTA 9 LIFESTYLE CANNABIS CLINIC INC. and DELTA 9 CANNABIS STORE INC
APPLICANTS	2759054 ONTARIO INC. O/A FIKA HERBAL GOODS
DOCUMENT	**BRIEF OF LAW**
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PART I - INTRODUCTION

1. This bench brief is provided in support of the application returnable November 1, 2024 (the "**Application**") by 2759054 Ontario Inc. o/a Fika Herbal Goods ("**Fika**" or the "**Plan Sponsor**") before the Court of King's Bench of Alberta (the "**Court**").

2. The Application is for an order which, among other things:

   (a) accepts the filing of the Plan of Compromise and Arrangement of Delta 9 Cannabis Inc. (the "**Delta Parent**"), Delta 9 Cannabis Store Inc. ("**Delta Retail**"), Delta 9 Lifestyle Cannabis Clinic Inc. ("**Delta Lifestyle**") and Delta 9 Logistics Inc. ("**Delta Logistics**", and together with Delta Parent, Delta Retail and Delta Lifestyle, the "**Plan Entities**" and together with Delta 9 Bio-Tech Inc., the "**Applicants**") dated October 21, 2024 (as may be amended from time to time, the "**Plan**");

   (b) authorizes the Plan Entities to establish a single class of creditors for the purpose of considering and voting on the Plan, namely the "**Affected Creditors Class**" as described in the Plan;

   (c) authorizes the Plan Entities to call, hold and conduct a virtual meeting of the Affected Creditors Class (the "**Creditors' Meeting**") to consider and vote on a resolution to approve the Plan, and which approves procedures to be followed with respect to the Creditors' Meeting;

   (d) authorizes the hearing of the application for an order sanctioning the Plan (the "**Plan Sanction Hearing**") on December 9, 2024 should the Plan be approved for filing and be approved by the requisite majorities of creditors at the Creditors' Meeting; and

   (e) provides such further and other relief as counsel may request and this Honourable Court may deem appropriate.

3. Capitalized terms not otherwise defined herein have the meanings given to them in the Plan, or in the Application, as applicable.

PART II - FACTS

4. Additional information about the circumstances underlying these proceedings (the "**CCAA Proceedings**") is set out in the First Affidavit of John Arbuthnot IV sworn July 18, 2024 (the "**First Arbuthnot Affidavit**"), and the pre-filing report of Alvarez & Marsal Canada Inc. in its capacity as the monitor (the "**Monitor**") dated July 16, 2024 ("**Pre-Filing Report**"), the First Report of the Monitor dated July 22, 2024 (the "**First Report**"), the Third Affidavit of John Arbuthnot IV (the "**Third Arbuthnot Affidavit**") sworn September 3, 2024, the Second Report of the Monitor dated September 10, 2024, and the Third Report of the Monitor, to be filed. This factum is largely based on the affidavit of Mark Townsend, the court-appointed chief restructuring officer in these proceedings, sworn October 21, 2024 (the "**Second Townsend Affidavit**").

A. Background

5. The Applicants are a vertically integrated group of companies in the business of cannabis cultivation, processing, extraction, wholesale distribution and retail sales.[1] Delta Parent is the parent company of Delta 9 Bio-Tech Inc. ("**Bio-Tech**"), which holds cannabis licences from Health Canada and the CRA pursuant to the *Excise Act, 2001*.[2] Bio-Tech is not a Plan Entity and is currently being marketed in the Bio-Tech SISP, defined below.

6. While a large portion of the Applicants' business is cash-flow positive, there is insufficient capital to continue to meet the Applicants' debt obligations while also funding the operations of Bio-Tech, which is operating at a significant loss. The strain of the Applicants' debt burden has also made it difficult to raise additional capital and attract the necessary investment into the business to adequately scale its operations to a level where it is cash-flow positive across all segments.[3]

7. Leading up to these CCAA proceedings, the Applicants have worked extensively with the Plan Sponsor to develop a detailed restructuring plan for the Applicants' businesses. Most significantly, the Applicants have entered into a Restructuring Term Sheet (as defined and

[1] First Affidavit of John Arbuthnot IV, sworn July 18, 2024 (the "**Arbuthnot Affidavit**") at para 12.
[2] Arbuthnot Affidavit at para 2.
[3] Arbuthnot Affidavit at para 16.

described below) that sets out the key terms of the restructuring plan, including substantial interim financing to be provided by the Plan Sponsor, which financing is required to fund the ongoing operations of the Applicants and which will provide for repayment of all secured obligations owing to the Applicants' current secured lender.[4]

B. CCAA Proceedings

8. On July 15, 2024, the Honourable Justice D.R. Mah granted an Initial Order pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**Initial Order**") which, among other things, appointed Alvarez & Marsal Canada Inc. as the Monitor of the Applicants (in such capacity, the "**Monitor**").

9. On July 24, 2024 (the "**Comeback Hearing**"), the Honourable Associate Chief Justice K.G. Nielsen granted, among other orders, an Amended and Restated Initial Order (the "**ARIO**"), an Order approving the sales and investment solicitation process (the "**Bio-Tech SISP**") in respect of a going-concern sale of the assets and/or shares of Bio-Tech Inc., and an Order approving a claims procedure with respect to the Applicants (the "**Claims Procedure**").

10. This Court approved a restructuring term sheet between the Applicants and the Plan Sponsor dated July 12, 2024 (the "**Restructuring Term Sheet**") pursuant to the ARIO.

11. The Restructuring Term Sheet contemplates the acquisition of the Applicants' retail cannabis operations by the Plan Sponsor through a plan of arrangement with the concurrent goal of monetizing Bio-Tech Inc.'s business as a going-concern through the SISP.

12. On September 11, 2024 (the "**Second Stay Extension and Approval Hearing**"), the Honourable Justice C.D. Simard granted a Stay Extension and Approval Order, among other things, extending the stay of proceedings up to and including November 1, 2024 (the "**Stay Period**"); approving Amendment No. 1 to the Interim Financing Term Sheet (the "**Amended Interim Financing Term Sheet**"); authorizing the Applicants to borrow up to $17,500,000 from the Plan Sponsor under the Amended Interim Financing Term Sheet and

[4] Arbuthnot Affidavit at para 6.

approving the increase of the Interim Financing Charge to the amounts outstanding under the Amended Interim Financing Term Sheet; approving the accounts of the Monitor's legal counsel; and approving the Monitor's activities, actions and conduct as set out in the Pre-Filing Report, the First Report and the Second Report.[5]

C. Plan

13. The Plan Sponsor, in consultation with the Applicants and the Monitor, developed the Plan to, among other things: (i) facilitate and implement the restructuring in accordance with the Restructuring Term Sheet; (ii) effect a compromise, settlement, release and discharge of all Affected Claims in exchange for distributions to Affected Creditors; and (iii) ensure the continuation of the Applicants and their retail operations for the benefit of all stakeholders.[6]

14. The principal features of the Plan include the following, as more fully particularized in the Plan:

    (a) The Applicants' cannabis retail operations will continue as normal and without disruption following the Retail Implementation Date;

    (b) The Retail Restructuring, pursuant to which, on the Retail Implementation Date, the Plan Sponsor will acquire 100% ownership of Delta Retail, Delta Lifestyle and Delta Logistics (collectively, the "**Delta Retail Entities**") in exchange for the following consideration:[7]

        (i) A convenience payment shall be made to each Convenience Creditor in full consideration for the irrevocable, full and final compromise and satisfaction of such Convenience Creditor's Affected Claim;[8]

[5] Second Townsend Affidavit at para 7.
[6] Plan at s. 2.1, Second Townsend Affidavit at para 10.
[7] Plan at Section 10.1, Second Townsend Affidavit at para 15.
[8] Plan at Section 5.2, Second Townsend Affidavit at para 15.

(ii) A Shareholder Equity Pool will be established to be distributed *pro rata* among Qualifying Existing Common Shareholders of Delta Parent;[9] and

(iii) A Creditor Equity Pool and a Creditor Cash Pool will be established to be distributed *pro rata* among eligible voting creditors;[10]

(c) The Bio-Tech Transaction, pursuant to which, on the Bio-Tech Closing Date, the Plan Sponsor will acquire a 100% equity interest in Delta Parent and indirectly Bio-Tech, if the Bio-Tech SISP does not result in a bid for Bio-Tech's share capital in exchange for the consideration described in section 10.5 of the Plan.[11]

15. Affected Creditor is defined in the Plan as being any Creditor with an Affected Claim, but only with respect to and to the extent of such Affected Claim. Affected Claim means any Claim that is not an Unaffected Claim.

16. Unaffected Claim means any and all:

(a) Claims against Bio-Tech;

(b) Post-Filing Claims;

(c) Crown Claims;

(d) Secured Claims;

(e) Claims secured by a Charge;

(f) Employee Priority Claims;

(g) Intercompany Claims;

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[9] Plan at Section 5.4, Second Townsend Affidavit at para 15.
[10] Plan at Section 4.1, Second Townsend Affidavit at para 15.
[11] Plan at Section 10.1, Second Townsend Affidavit at para 15. The Plan Sponsor 33. As discussed at para 33 of the Second Townsend Affidavit, as a result of certain regulatory provisions regarding the direct and indirect ownership of a licensed cannabis producer such as Bio-Tech, the Plan Sponsor will not be able to acquire Bio-Tech's share capital until such time as Bio-Tech ceases to be a licensed cannabis producer. As a result, Bio-Tech and its direct parent Delta Parent will not be acquired by the Plan Sponsor until Bio-Tech ceases to be a licensed cannabis producer.

(h) D&O Claims that cannot be compromised pursuant to the provisions of Section 5.1(2) of the CCAA; and

(i) Claims that cannot be compromised pursuant to the provisions of section 19(2) of the CCAA.

17. In effect, the Affected Creditors are the Plan Entities' unsecured creditors.

18. The proposed Plan provides that all Affected Claims shall constitute a single class and shall vote as a single class as they are all unsecured creditors of the Plan Entities.[12]

19. We anticipate that the Monitor's Third Report will confirm that a greater benefit is expected to be derived from the approval of the Plan and the continued operation of the business than would result in a bankruptcy or liquidation of the Plan Entities.[13]

D. Meeting Order

20. The proposed Meeting Order sets out the procedures for the Creditors' Meeting, including the notice to be provided to Affected Creditors, the conduct of the meeting and the process for voting on the Plan.

21. Among other things, the Meeting Order provides:

(a) the Plan Entities are authorized to call, hold and conduct the Meeting on November 25, 2024 at 10:00 a.m. (Calgary time);

(b) procedures for the conduct of the Creditors' Meeting, including that a representative of the Monitor will act as the Chairperson and only those Persons entitled to attend the Meeting are (i) the Affected Creditors entitled to vote at the Meeting, (ii) Convenience Class Creditors; (iii) the Chairperson, the scrutineers and the secretary; (iv) the Monitor and the Monitor's legal counsel; (v) one or more representatives of the Board and/or senior management of the Plan Entities and

[12] Second Townsend Affidavit at para 17.
[13] Second Townsend Affidavit at para 11.

their legal counsel; and (vi) one or more representatives of the Plan Sponsor and its legal counsel;

(c) that a single class of Affected Creditors will vote on the Plan, and the process by which such voting will occur, including proxy requirements;

(d) in order to be approved, the Plan must receive an affirmative vote by a Required Majority of voting creditors with Affected Claims representing at least two thirds in value of the total amount of Affected Claims voting on the Plan;

(e) details of the Convenience Creditor election;

(f) processes for the assignment or transfer of claims;

(g) voting procedures for Disputed Voting Claims; and

(h) that in the event the Plan is approved by the Required Majority, the Sanction Hearing will be held on December 9, 2024.

PART III - ISSUES

22. This Bench Brief sets out the relevant law with respect to the following issues that will be before this Court at the Application hearing:

(a) Are the Plan Entities authorized to call, hold and conduct a meeting of Affected Creditors to vote on a resolution to approve the Plan?

(b) Is the classification of creditors as one single class proposed by the Plan Entities approved?

PART IV - LAW AND ANALYSIS

A. Authorization to Hold a Meeting of Creditors

23. Sections 4 and 5 of the CCAA provide the authority for the calling of meetings of 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.
>
> **5** Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or 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.

24. Sections 4 and 5 of the CCAA both use the permissive word "may", which indicates that the question of whether a court will order a meeting of the creditors of a debtor company is discretionary and will be based upon the facts of each case.

25. Proceedings under the CCAA are intended to be flexible and responsive, with the aim of providing fairness, certainty and stability to stakeholders. In order to achieve these aims, the CCAA, including ss. 4 and 5, is to be interpreted liberally by the courts.[14]

26. The standard for issuing a meeting order is low.[15] The court is not required to assess the fairness and reasonableness of the plan at this stage, nor the appropriateness of its specific provisions.[16]

27. Instead, the granting of a meeting order should be viewed as a procedural step in the CCAA process.[17] A court should only decline to accept a plan for filing and call a meeting of creditors if there is "no hope that the plan would be approved by the creditors or, if it was approved by the creditors, it would not, for some other reason, be approved by the court".[18]

28. A Court may grant a meeting order in cases where the application for a meeting order is contested, and where the contesting creditors have not been given a vote on the plan.[19] Opposing creditors who have not been given a vote can make their views known at the final sanction hearing.[20] The outcome of a vote on a plan of arrangement is not

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[14] *Kerr Interior Systems Ltd.*, *Re*, 2011 ABQB 214 at para 25, Tab 2.
[15] *Arrangement relatif à Bloom Lake*, 2018 QCCS 1657 at para 19, Tab 3.
[16] *Quest University Canada (Re)*, 2020 BCSC 1845 at 32, Tab 4.
[17] *Jaguar Mining Inc. (Re)*, 2014 ONSC 494 at para 48, Tab 5.
[18] *ScoZinc Ltd. (Re)*, 2009 NSSC 163 at para 7, Tab 6; *Arrangement relatif à Bloom Lake*, 2018 QCCS 1657 at para 19, Tab 3.
[19] See for example *Canwest Publishing Inc.*, 2010 ONSC 222, Tab 7.
[20] *Xplore Inc. (Re)*, 2024 ONSC 4593 at para 90, Tab 8. Note that this case is in the context of a *Canada Business Corporations Act*, RSC 1985, c C-44 plan of arrangement.

determinative of whether it will be approved at the final sanction hearing, [21] meaning a non-voting creditor will not be prejudiced by the fact that a vote is held.

29. The Applicants submit that the low threshold for accepting the Plan for filing with the court and directing a meeting of creditors is satisfied because there is no reason to believe that the Plan will not be approved by the Affected Creditors. The Plan is beneficial to Plan Entities' creditors because it will enable substantially greater recoveries for creditors than in a bankruptcy or liquidation of the Plan Entities.[22]

30. It is expected that SNDL Inc. ("**SNDL**"), a secured creditor of the Applicants, will oppose this Application. The Applicants submit that the proper forum to hear and consider SNDL's concerns with the Plan is at the sanction hearing. Since SNDL is not affected by the Plan, it will not be prejudiced if a vote is held. Issues of fairness can be addressed at the Sanction Hearing, once the views of the voting creditors have been assessed.

31. The SNDL Claim shall continue to constitute valid outstanding indebtedness of the Plan Entities from and after the Retail Implementation Date, and the debt shall be serviced in the ordinary course and in accordance with the terms of the SNDL Credit Agreement.[23] The SNDL Credit Agreement and the SNDL Security shall constitute Continuing Contracts[24] which shall remain in place, unaffected by the implementation of the Plan.[25]

32. For certainty, the SNDL Security will remain valid and effective as against the Applicants, unaffected by the Plan in all respects, and will only be discharged upon the full and final satisfaction of the SNDL Claim in accordance with the SNDL Credit Agreement. The Plan Sponsor will keep the SNDL Credit Agreement in good standing and, if necessary, will provide a guarantee of the outstanding obligations of the Applicants under the SNDL Credit Agreement.[26]

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[21] *Ibid* at para 93, Tab 8.
[22] Plan at Section 2.1.
[23] Second Townsend Affidavit at para 21.
[24] "**Continuing Contract**" means a contract, arrangement, or other agreement (oral or written) for which a notice of disclaimer pursuant to section 32 of the CCAA has not been sent by any of the Applicants.
[25] *Ibid.*
[26] Second Townsend Affidavit at para 28.

33. Further, the Plan does not contain any terms that would make it incapable of being approved by the Plan Entities' creditors and sanctioned by this Court.

34. The Monitor and the Plan Entities are expected to be supportive of the Plan and the Meeting Order.[27] The Plan is being put forward by the Plan Sponsor in good faith, and is believed to be in the best interest of the Applicants' stakeholders.[28]

35. The Plan Sponsor prepared the Plan in consultation with the Applicants, the Monitor, and Mark Townsend in his capacity as Chief Restructuring Officer with a view to restructuring the Applicants' retail operations and maintaining continued post-CCAA retail operations.[29]

B. Approval of the Division of Creditors

36. Pursuant to section 22(1) of the CCAA, a debtor that divides its creditors into classes for purposes of voting on its plan of arrangement must apply to the court for approval of the classification.[30]

37. Section 22(2) of the CCAA provides that creditors may be placed in the same class if "their interests or rights are sufficiently similar to give them a commonality of interest".[31] In determining whether creditors have a commonality of interest, the following factors are considered:

(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 described above.[32]

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[27] Second Townsend Affidavit at para 11.
[28] *Ibid.*
[29] *Ibid* at para 13.
[30] s 22(1), CCAA, Tab 1.
[31] s 22(2), CCAA, Tab 1.
[32] s 22(2), CCAA, Tab 1.

38. These factors, which were added to the CCAA in 2009, did not alter the factors that had previously been identified in case law that pre-dated the amendment.[33] The principles applicable to the classification of creditors are summarized in *Canadian Airlines Corp (Re)* at para 31, as adopted by the Court of Appeal of Alberta in *Trican Well Service Ltd v Delphi Energy Corp*:

1. commonality of interest should be viewed on the basis of the non-fragmentation test, not an identity of interest test;

2. the interests to be considered are the legal interests the creditor holds qua creditor in relation to the debtor company, prior to and under the plan as well as on liquidation;

3. the commonality of these interests are to be viewed purposively, bearing in mind the object of the CCAA, namely to facilitate reorganization;

4. in placing a broad and purposive interpretation on the CCAA, the court should take care in resisting classification approaches that could jeopardize a viable plan;

5. absent bad faith, the motivations of the creditors to approve or disapprove are irrelevant; and

6. the requirement of creditors being able to consult together means being able to assess their legal entitlement as creditors before or after the plan, in a similar manner.[34]

39. Classification is fact-driven and dependent on the circumstances of each case and there are no fixed rules.[35] The excessive fragmentation of creditors should be avoided.[36] Classes of creditors must have some "community of interest and rights which are not so dissimilar as

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[33] *Re SemCanada Crude Company*, 2009 ABQB 490 at paras 44-45, Tab 9.
[34] *Trican Well Service Ltd v Delphi Energy Corp*, 2020 ABCA 363 [**Trican**] at para 14, Tab 10.
[35] *Re Stelco Inc.*, [2005] OJ No 4883 at para 22 (ONCA), Tab 11; *Re Lydian International Limited*, 2020 ONSC 3850 at para 23, Tab 12.
[36] *Trican*, *supra* note 34 at para 15, Tab 10.

to make it impossible for the creditors in the class to consult with a view toward a common interest".[37]

40. The Meeting Order and Plan propose that all of the Plan Entities' Affected Creditors with Affected Claims will vote on the Plan in a single class. The Applicants submit that the classification of Affected Creditors as a single class is fair and reasonable, having regard to the Affected Creditors' legal interests in relation to the Plan Entities and the consideration offered to them under the Plan. As stated above, the Affected Creditors are the Plan Entities' unsecured creditors.

41. The Plan treats all Affected Creditors with Affected Claims the same, with the exception of the Convenience Creditors, who will be paid up to $4,000 in total satisfaction of their claims.

42. The Applicants submit that the proposed classification is consistent with the objectives of the CCAA and the interests of their creditors, and should be approved.

C. The Plan Does not Provide for Payment of Equity Claims

43. Section 5.4 of the Plan states that if the Plan is approved, the Plan Sponsor will establish a "Shareholder Equity Pool", consisting of 135,135 Class "A" voting common shares in the capital of the Plan Sponsor. The Shareholder Equity Pool will be distributed to Delta Parent's existing shareholders holding 50,000 or more Delta Parent common shares (the "**Qualifying Shareholders**"), in proportion to their holdings of Delta Parent common share as of the Filing Date.[38]

44. The proposed distribution of the Shareholder Equity Pool to the Qualifying Shareholders is consistent with section 6(8) of the CCAA. The Qualifying Shareholders of Delta Parent do not have an "equity claim" as defined in the *CCAA*, which means they do not fall within the ambit of CCAA section 6(8).

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[37] *Trican*, *supra* note 34 at para 15, Tab 10, citing *Skylar-Peppler Furniture Corp v Bank of Nova Scotia* (1991), 1991 CanLII 8306 (ON SCDC), 86 DLR (4th) 621 at para 14.

[38] Second Townsend Affidavit at para 12.

45. Section 6(8) of the CCAA reads as follows:

> **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.[39]

46. The term "equity claim" is defined in the CCAA as follows:

> ***equity claim*** means a claim that is in respect of an equity interest, including a claim for, among others,
>
> (a) a dividend or similar payment,
>
> (b) a return of capital,
>
> (c) a redemption or retraction obligation,
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> (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
>
> (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d);[40]

47. Based on the above definition, to constitute an "equity claim", there must be a "claim". The CCAA defines a "claim" as "any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act"*.[41]

48. The definition of a "claim provable in bankruptcy" at section 2 of the BIA "includes any claim or liability provable in proceedings under this Act by a creditor". Section 121 of the BIA elaborates on the definition of "claims provable" and defines it as follows:

> **121 (1)** All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.[42]

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[39] S 6(8), CCAA, Tab 1.
[40] S 2, CCAA, Tab 1.
[41] *Ibid*.
[42] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 121(1), Tab 13.

49. The Qualifying Shareholders of Delta Parent do not have a "claim" in this case. They do not claim to be owed any debt or liability related to the Shareholder Equity Pool. They are not seeking payment of any debt or liability. Therefore, they do not have an "equity claim".

50. The distribution of the Shareholder Equity Pool to the Qualifying Existing Common Shareholders of Delta Parent does not run afoul section 6(8) of the *CCAA* because no equity claim is being paid. The Qualifying Shareholders of Delta Parent did not submit proofs of claim to the Monitor for evaluation and were not invited to do so because the Plan does not pay equity claims, as defined in the CCAA.

51. The Shareholder Equity Pool is not an asset of the Plan Entities and it is not being distributed or paid to equity holders. The Shareholder Equity Pool is simply being offered as an additional benefit in the Plan for stakeholders, which does not prejudice creditors.

52. In *Nelson Financial Group Ltd., Re*, the court found that the claims of the majority, if not all, preferred shareholders constituted equity claims. In doing so, it noted the following characteristics of the claims advanced by the preferred shareholders:

> In this case, in essence the claims of the preferred shareholders are for one or a combination of the following:
>
> (a) declared but unpaid dividends;
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> (b) unperformed requests for redemption;
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> (c) compensatory damages for the loss resulting in the purchased preferred shares now being worthless and claimed to have been caused by the negligent or fraudulent misrepresentation of Nelson or of persons for whom Nelson is legally responsible; and
>
> (d) payment of the amounts due upon the rescission or annulment of the purchase or subscription for preferred shares.[43]

53. In contrast, the Qualifying Shareholders have not advanced any claims described above for unpaid dividends, underperformed requests for redemption, compensatory damages, or payment upon rescission. The shareholders hold equity, but they do not have equity claims. Therefore, advancing shares in the Plan Sponsor to the Qualifying Existing Common

[43] *Nelson Financial Group Ltd., Re*, 2010 ONSC 6229 at para 33, Tab 14.

Shareholders of Delta Parent does not constitute payment of an "equity claim" and the Plan is compliant with the CCAA.

PART V - CONCLUSION

54. Based on the foregoing, the Plan Sponsor requests that this Honourable Court grant the relief sought in the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 24th day of October, 2024

MILLER THOMSON LLP

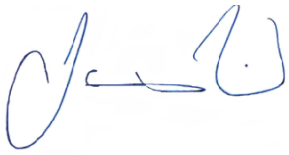
Per: 

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TABLE OF AUTHORITIES

TAB	AUTHORITIES
1	*Companies' Creditors Arrangement Act*, RSC 1985, c C-36.
2	*Kerr Interior Systems Ltd. (Re)*, 2011 ABQB 214.
3	*Arrangement relatif à Bloom Lake*, 2018 QCCS 1657.
4	*Quest University Canada (Re)*, 2020 BCSC 1845.
5	*Jaguar Mining Inc. (Re)*, 2014 ONSC 494.
6	*ScoZinc Ltd. (Re)*, 2009 NSSC 163.
7	*Canwest Publishing Inc.*, 2010 ONSC 222.
8	*Xplore Inc. (Re)*, 2024 ONSC 4593.
9	*SemCanada Crude Company (Re)*, 2009 ABQB 490.
10	*Trican Well Service Ltd v Delphi Energy Corp*, 2020 ABCA 363.
11	*Stelco Inc. (Re)*, [2005] OJ No 4883.
12	*Lydian International Limited (Re)*, 2020 ONSC 3850.
13	*Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
14	*Nelson Financial Group Ltd., (Re)*, 2010 ONSC 6229.