Court of Appeal File No.:

Superior Court File No.: CV-25-00739279-00CL

COURT OF APPEAL FOR ONTARIO

IN 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 1001270243 ONTARIO INC.

NOTICE OF MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEAL FOR ONTARIO

(An appeal under the *Companies' Creditors Arrangement Act*)

The Attorney General of Canada, the moving party, will make a motion in writing to a panel of this Court on a date to be fixed by the Registrar, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

THE MOTION IS FOR:

1. An order granting leave to the Attorney General of Canada to appeal to the Court of Appeal for Ontario from the order of the Honourable Justice J. Dietrich dated July 7, 2026 declaring that 1001270243 Ontario Inc. (**ResidualCo**) is a former employer as contemplated by ss. 5(1)(b)(i) and 5(1)(b)(iv) of the *Wage Earner Protection Program Act,* S.C. 2005, c. 47 (**WEPPA**) and that ResidualCo meets the criteria prescribed by s. 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 (**Regulations**);

2. Costs of this motion, if applicable, to follow the outcome of the appeal; and

3. Such further and other relief as this Honourable Court deems just.

THE MOTION HAS BEEN SERVED AND IS BEING FILED:

☒ On time in accordance with r. 61.03.1(3) of the *Rules of Civil Procedure*

☐ Not within the required timelines and an extension of time is being sought for the following reasons:

THE GROUNDS FOR THE MOTION ARE:

Background

1. On March 19, 2025, Synaptive Medical Inc. (**Synaptive**) – a medical technology company – commenced CCAA proceedings to obtain protection from its creditors as a result of a liquidity crisis it was facing.

2. By way of a reverse vesting order (**RVO**), and under the terms of a subscription agreement dated June 12, 2025 (**Subscription Agreement**), the shares of Synaptive were sold to a purchaser. More specifically, on June 18, 2025, the Superior Court of Justice issued the RVO, which approved the share sale transaction (**Transaction**) as set out in the Subscription Agreement and gave effect to various provisions of the Subscription Agreement. The Transaction ultimately closed on June 26, 2025.

3. Before the close of the Transaction, Synaptive terminated 48 employees (**Terminated Employees**). Synaptive retained 81 employees following the close of the Transaction.

4. The Transaction permitted Synaptive to shed certain liabilities, including employment liabilities in respect of the Terminated Employees. These liabilities were transferred to a shell company –1001270243 Ontario Inc. (**ResidualCo**) – at the close of the Transaction, with the intention of assigning ResidualCo into bankruptcy shortly thereafter.

5. The Transaction resulted in Synaptive carrying on business while retaining valuable permits and licences, tax attributes, contracts, intellectual property, and certain assumed liabilities. Synaptive emerged from the CCAA proceeding as a going concern, while ResidualCo replaced it as the Applicant in the CCAA proceeding. Subsequently, on September 3, 2025, ResidualCo was assigned into bankruptcy.

6. The WEPPA allows the Government of Canada to make payments to individuals for wages owed to them if their former employer is bankrupt or subject to a receivership, or subject to other qualifying proceedings under the CCAA or the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (**BIA**), provided that certain requirements are met.

7. In the context of a CCAA proceeding, one requirement is that a court determine that all of the former employer's employees in Canada have been terminated (other than any employees retained to wind down the former employer's business operations), as is set out in s. 3.2 of the Regulations.

8. The Minister of Labour (**Minister**) assesses whether individuals who apply for payments under the Wage Earner Protection Program (**WEPP**) meet all the criteria under s. 5(1) of the WEPPA before issuing payment.

9. Synaptive brought a motion before the Superior Court seeking, *inter alia*, a declaration that Synaptive and/or ResidualCo meet(s) the conditions prescribed by ss. 5(1)(b)(i) and (c) of the WEPPA and/or meets the criteria prescribed by s. 3.2 of the Regulations (**SCJ Motion**).

10. The SCJ Motion was heard on June 10, 2026, and was opposed by the Attorney General of Canada (**AGC**). The Superior Court issued an Order, as well as Reasons for Decision (**Decision**), dated July 7, 2026.

11. The AGC seeks leave to appeal from the July 7, 2026, Order to the Court of Appeal for Ontario pursuant to *Rule* 61.03.1(3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and ss. 13-14 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (**CCAA**).

12. The relevant factors weigh in favour of granting leave to appeal:

   a. The proposed appeal is *prima facie* meritorious;

   b. The point on the proposed appeal is of significance to the practice;

   c. The point on the proposed appeal is of significance to the proceeding; and

   d. The proposed appeal will not hinder the progress of the proceeding.

A. APPEAL *PRIMA FACIE* MERITORIOUS

Superior Court Errors – Jurisdiction to issue declaratory relief in respect of s. 5(1) of the WEPPA

13. The Superior Court erred in exceeding its jurisdiction by issuing the declaratory relief that it did, particularly in respect of s. 5(1)(b)(i) and the first branch of s. 5(1)(b)(iv) of the WEPPA.

14. With respect to CCAA proceedings, the Superior Court has a limited jurisdiction to determine, under s. 3.2 of the Regulations, whether all of the employees in Canada of the "former employer", as that term is properly construed within the WEPPA scheme, have been terminated, except those retained to wind down the former employer's business operations.

15. In contrast, the WEPPA grants exclusive authority to the Minister to make assessments under s. 5(1) of the WEPPA. The Canada Industrial Relations Board (**CIRB**) and ultimately the Federal Court of Appeal are granted exclusive jurisdiction to review those assessments.

16. The Superior Court interfered with the jurisdiction assigned to the Minister and/or the CIRB and/or the Federal Courts by issuing the declaratory relief that it did, particularly in respect of s. 5(1)(b)(i) and the first branch of s. 5(1)(b)(iv) of the WEPPA, on questions that the WEPPA indicates the Minister will determine in making assessments under s. 5(1). The Superior Court erred in finding that the terms of the WEPPA were insufficiently clear to oust its jurisdiction.

17. Further, the Superior Court erred in relying on ss. 5(1)(b)(iv) and 5(5) of the WEPPA to conclude that it had jurisdiction, or ought to exercise jurisdiction, to issue declaratory relief in respect of s. 5(1)(b)(i) of the WEPPA. The authority conferred on the Superior Court in connection with ss. 5(1)(b)(iv) and 5(5) of the WEPPA is limited and does not extend to s. 5(1)(b)(i) of the WEPPA.

18. In the alternative, the Superior Court erred in declining to exercise jurisdiction to issue declaratory relief, particularly in respect of s. 5(1)(b)(i) and the first branch of s. 5(1)(b)(iv) of the WEPPA, in the circumstances.

Superior Court Errors – Interpretation of "Former Employer" in the WEPPA Statutory Scheme

19. The Superior Court erred in its statutory interpretation of "former employer" under the WEPPA and the Regulations and consequently erred in declaring that ResidualCo is a "former employer" as contemplated in ss. 5(1)(b)(i) and 5(1)(b)(iv) of the WEPPA and meets the criteria under s. 3.2 of the Regulations. For example:

    a. The Superior Court erred in determining that it did not need to address certain criteria, factors, and/or circumstances that binding authority, bearing on the interpretation of the provisions at issue, states govern the definition of "employer" and/or the determination of whether an employment relationship exists between a proposed employee and employer. The Superior Court erred in relying instead on the

Subscription Agreement and the RVO and/or on unjustified alterations it made to the governing legal test(s) and/or criteria.

b. In interpreting the term “former employer”, the Superior Court gave insufficient weight to provisions in the WEPPA and the Regulations which indicate the legislature’s intention that “former employer” refer to an entity that, in actual fact, is the true entity that ran a business and would have engaged with employees in relation to its business.

c. The Superior Court failed to interpret the general purpose statement at s. 4 of the WEPPA in light of the greater context of the statutory scheme and its history, including other provisions of the WEPPA and Regulations that limit the availability of WEPP payments and qualify the purpose of the WEPPA scheme.

d. The Superior Court erred in using an interpretation of “former employer” in the WEPPA and Regulations that departs from the presumption of consistent expression, which contemplates that a term be given the same meaning throughout a statutory scheme, absent an indication in the WEPPA scheme that departure from this presumption was intended.

e. The Superior Court erred in its interpretation of “former employer” by relying upon innovations in its Decision, and/or the RVO previously issued under the CCAA, to dismiss clear indications of legislative intent in the WEPPA scheme.

f. The Superior Court erred in its interpretation of "former employer" by relying on orders it had previously issued in other matters deeming a residualco entity as the "former employer" for the purposes of termination and severance pay under the WEPPA to support its finding that a plain reading of the words "former employer" encompass a residualco entity in the context of an RVO transaction.

g. Ultimately, the Superior Court erred in determining that the Transaction and/or RVO, which occurred subsequent to the termination of the employees, was sufficient to render ResidualCo a "former employer" as contemplated in ss. 5(1)(b)(i) and 5(1)(b)(iv) of the WEPPA, as well as in s. 3.2 of the Regulations.

h. Subparagraph 5(1)(b)(iv) and s. 5(5) of the WEPPA, as well as s. 3.2 of the Regulations, limit the discretion of the Superior Court to confirming whether the "former employer", as that term is correctly interpreted in the statutory scheme, meets the criteria in s. 3.2 of the Regulations, where applicable. These provisions cannot justify a declaration that an entity such as ResidualCo is a "former employer" under the WEPPA.

B. POINT OF APPEAL IS SIGNIFICANT TO THE PRACTICE

20. The proposed appeal raises important questions concerning the limits of the Superior Court's jurisdiction in respect of the WEPPA and the correct

statutory interpretation of the term "former employer" within the WEPPA scheme.

21. Answers to the questions raised will also affect the availability of the WEPP in insolvencies under the CCAA, particularly in RVO contexts and in cases where some of the original debtors' employees carry on employment with that original debtor that emerges from the restructuring proceedings at issue as a going concern.

22. In recent years, there has been a significant increase in the use of RVOs for the purpose of restructuring insolvent entities. In light of this, the achievement of the objectives of the WEPPA and the appropriate allocation of limited public funds is of significant interest to the practice and to the public in general.

C. POINT OF APPEAL IS SIGNIFICANT TO THE PROCEEDING ITSELF

23. The proposed appeal is significant to the proceeding itself because the statutory interpretation of "former employer" in the WEPPA scheme and a determination on the soundness of the Superior Court's Decision more broadly will impact various stakeholders in the proceeding, including both the Terminated Employees and the Government of Canada. In particular, the appeal outcome will inform whether the Terminated Employees may receive up to approximately $375,000 in WEPP payments.

24. The proposed appeal is also significant to the proceeding as it speaks to the very jurisdiction of the Superior Court to make the declarations and

determinations it made on the SJC Motion. If the Order being appealed remains undisturbed, it would have the effect of infringing on the Minister's exclusive authority to make assessments under s. 5(1) of the WEPPA.

D. APPEAL WILL NOT UNDULY HINDER THE PROGRESS OF THE PROCEEDING

25. The appeal will not hinder the progress of the CCAA proceeding because the restructuring steps at issue have been completed. There are no remaining litigation steps in the CCAA proceeding, other than a final resolution of the WEPPA issue – the subject matter of the proposed appeal. The fact that this appeal will not hinder the progress of the CCAA proceeding makes it an ideal case to resolve the issues raised on appeal.

26. Such further and other grounds for the motion as counsel may advise and this Honourable Court may permit.

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

1. The motion materials, including the Monitor's Reports, which were before the Honourable Justice J. Dietrich, including:

    a. Amended Motion Record of Synaptive dated October 17, 2025, including the Affidavit of Diane Zimmerman, sworn August 27, 2025, and exhibits thereto;

b. Responding Motion Record of the AGC dated September 17, 2025, including the Affidavit of Lisa Minarovich, sworn September 17, 2025, and exhibits thereto;

c. Responding Supplemental Record of the AGC dated May 27, 2026, including the Affidavit of Fatemah Khalfan, affirmed May 27, 2026, and exhibits thereto, as well as the Affidavit of Jennifer Marsh, affirmed May 26, 2026;

d. Responding Motion Record of Terminated Employees dated September 17, 2025, including the Affidavit of Richard Goldglass, sworn September 17, 2025, and exhibits thereto;

e. Supplementary Responding Motion Record of Terminated Employees dated October 29, 2025, including the Affidavit of Richard Goldglass, sworn October 29, 2025, and exhibits thereto;

f. Second Supplementary Responding Motion Record of Terminated Employees dated May 15, 2026, including the Affidavit of Abir Shamim sworn May 15, 2026, and exhibits thereto;

g. Third Supplementary Responding Motion Record of Terminated Employees dated June 2, 2026, including the Affidavit of Abir Shamim, sworn June 2, 2026, and exhibit thereto;

h. Pre-Filing Report of the proposed Monitor, Richter Inc., dated March 18, 2025;

i. First Report of Richter Inc., in its capacity as the Monitor (**Monitor**), dated March 24, 2025;

j. Second Report of the Monitor, dated April 22, 2025;

k. Third Report of the Monitor, dated June 14, 2025;

l. Fourth Report of the Monitor, dated July 28, 2025; and

m. Supplemental Report to the Fourth Report of the Monitor, dated October 24, 2025.

2. Reasons for Decision of Justice J. Dietrich dated July 7, 2026.

3. The Order of Justice J. Dietrich dated July 7, 2026.

4. Such further and other evidence as counsel may advise and this Honourable Court may permit.

Dated this 28th day of July, 2026

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AND TO: **THE SERVICE LIST**

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Applicant

COURT OF APPEAL FOR ONTARIO

Proceeding Commenced at Toronto

NOTICE OF MOTION FOR LEAVE TO APPEAL TO THE COURT OF APPEAL FOR ONTARIO
(An appeal under the *Companies' Creditors and Arrangement Act*)

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