

**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 A PLAN OF COMPROMISE OR ARRANGEMENT OF
1001270243 ONTARIO INC.**

**REPLY FACTUM OF RICHARD GOLDGLASS
AND OTHER TERMINATED EMPLOYEES
(Motion for WEPP Relief, returnable June 10, 2026)**

June 2, 2026

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TO: THE SERVICE LIST

1. The arguments of ESDC in its responding supplemental factum can be distilled to the following:

- (a) this Court has no jurisdiction to determine who an employee's former employer is under WEPPA because the Minister of Labour is "exclusively charged with reviewing WEPP applications to make eligibility determinations"¹; and
- (b) unreported court orders in RVO cases declaring that a residual company is a former employer have no weight and should be ignored.

2. ESDC's first argument is in substance a repeat of the argument that it unsuccessfully advanced in *Arrangement relatif à Former Gestion Inc.* (formerly known as *Just for Laughs*) where the CCAA court issued a WEPP Order making WEPPA apply to the case and ordered that the "RVO Entities" were a former employer.² The Quebec Court of Appeal, in denying leave to appeal to ESDC, held that the CCAA court had the authority to issue such an order as it "stayed within the boundaries of the broad discretion conferred on him by law."³ In this case, the Court should similarly issue the requested declaration that Synaptive's residualco is a former employer. Without the declaration, ESDC can be expected again to later deny the Terminated Employees' WEPP applications, as it has for the terminated employees in *Former Gestion* for the "RVO employees", *Taiga Motors Corporation et Deloitte Restructuring Inc.*,⁴ and other cases.

A) The distinct roles of trustees/receivers, the Minister and the Court under WEPPA

3. ESDC conflates the concepts of the *conditions precedent* necessary for WEPPA to apply to a case, with the concept of individual *eligibility* for an employee to receive a WEPP payment.

¹ Responding Supplemental Factum of the Attorney General of Canada, dated May 27, 2026 at par. 4 and also para 11.

² *Arrangement relatif à Former Gestion Inc.*, [2024 QCCS 3645](#) [*Former Gestion*], Supplementary Book of Authorities of Richard Goldglass and Other Terminated Employees [Supp BOA], Tab 1.

³ *Attorney General of Canada c Former Gestion Inc.*, 2024 QCCA 1441 at [para 18](#), Supp BOA, Tab 4 at 44.

⁴ (18 December 2024), Montreal 500-11-064357-243 (QCCS) [*Taiga Motors*], Supp BOA, Tab 15.

ESDC then obfuscates the roles and duties of trustees/receivers, the Minister and the Court that are expressly delineated in WEPPA:

- (a) **Role of the trustees/receivers:** Under section 21(1), trustees and receivers shall identify each individual owed eligible wages; the amount of the eligible wages owed; inform every individual of the WEPP process and the conditions under which payment may be made; provide those individuals and the Minister with the amount of the eligible wages owing; and inform the Minister when they are discharged.
- (b) **Role of the Court:** Under section 5(1)(b)(iv), entitled "Conditions of Eligibility", the Court is authorized for a CCAA proceeding or a proposal, to "determine" that the criteria prescribed by regulation "are met". Section 3.2 of the WEPPR then directs *the court – and the court alone* - to determine whether the former employer is "*the former employer* all of whose employees in Canada have been terminated."⁵ Such a former employer determination were made by courts in *Former Gestion Inc.*⁶; *Taiga Motors*⁷; *Arrangement relatif à Valeo Pharma inc.*⁸; and *Syndic d'Intelgenx Corp.*⁹
- (c) **Role of the Minister:** Section 6 lists the types of employees who are "not eligible" to receive a WEPP payment such as: officers and directors of the former employer; individuals with a controlling interest in the former employer; and individuals occupying a managerial position with the former employer; and individuals not dealing at arm's length with the aforementioned individuals.

⁵ Emphasis added.

⁶ *Former Gestion*, *supra* note 2.

⁷ *Taiga Motors*, *supra* note 4.

⁸ [2024 QCCS 580](#), Supp BOA, Tab 2.

⁹ [2024 QCCS 3678](#), Supp BOA, Tab 11.

4. Under section 9 entitled "Minister's determination of eligibility", it states "[i]f the Minister determines that the applicant is eligible to receive a payment, the Minister shall make the payment." Under section 23 entitled "Powers of Minister", there is a detailed list of powers granted to the Minister but *no authority* granted to the Minister to determine who the former employer is.¹⁰

5. The *conditions precedent* that are necessary for WEPPA to apply are set out in section 5(1) of WEPPA which opens stating that an employee is eligible to receive a payment if: the employee's employment has ended for reasons such as termination; the former employer is bankrupt; subject to a receivership; or subject to a CCAA or bankruptcy proposal proceeding where "a court determines ... that the criteria prescribed by regulation are met", as noted above.

6. There is no mention in sections 9 nor 5 (the latter being Conditions of Eligibility), or anywhere else in WEPPA for that matter, that the Court is prohibited from pronouncing the legal identity of the employees' former employer, which for RVOs, is typically the debtor's successor company.

7. In this case, Synaptive's residualco is a bankrupt, making WEPPA apply automatically. The declaration that residualco is a former employer is nevertheless still required because ESDC has in past cases substituted its own opinion that a residualco is not a former employer when assessing individual WEPP applications, and then denied the payments.

¹⁰ Moreover, in ESDC's own published explanation of how WEPP employee eligibility works, there is *no mention* of ESDC exclusively determining who the employee's former employer is: Employment and Social Development Canada, "Wage Earner Protection Program for an employee: Eligibility" (modified 13 August 2025), online: <https://www.canada.ca/en/employment-social-development/services/wage-earner-protection/employee/eligibility.html>. Examples of cases where the Minister has denied individual eligibility under section 9 include *Fagnoli (Re)*, 2020 CIRB 932 at [para 2](#): "...the Minister's review decision which found that [the WEPP applicant] was not dealing at arm's length with her former employer"; and *Wes Au v II Nature of the Application*, 2020 CIRB 931 at [para 2](#): the Minister "found that [the WEPP applicant] was not eligible to receive a payment under the *WEPP Act* on the basis that his wages were earned while he was a director of his former employer".

The WEPP Order process for CCAA proceedings is illustrative for the declaration sought in this motion

8. For the determination by the court that WEPPA applies to a CCAA proceeding, the incorporation of the phrase "the former employer" in section 3.2 of the WEPPR is doing real definitional work: it requires the court to identify which entity bears that status of former employer, not merely to do an employee headcount. In a CCAA proceeding with an RVO transaction, the identity of the former employer(s) is precisely what the court is asked to provide as a *condition precedent*, before the Minister can proceed to assess an individual's *eligibility* for a WEPP payment.

9. Once a judicial determination of former employer is rendered by the CCAA court, it cannot be later disregarded by the Minister. The Minister's role under section 9 is to determine whether the individual WEPP applicant fits the statutory individual eligibility criteria, not to sit as a *de facto* appellate body disregarding the court's prior order and replacing it with its own opinion.

10. At paragraph 24 of its responding supplementary factum ESDC invokes the *Sullivan* presumption of consistent expression, which should mean that "former employer" means the same thing in section 5 as it does in section 6. ESDC's application of the presumption conflates the *meaning* of a term with the *identification* of the entity to which it applies at a given moment. Rather, in both provisions, "former employer" should consistently mean the entity that holds the terminated employees' eligible wages claims (e.g., unpaid severance pay) and stands as the legally responsible counterparty to those claims. In this case, the RVO transaction, executed under the authority of the CCAA and the court's approval order, transferred the status of former employer from Synaptive to its residualco. After that transfer, the residualco became the former employer for every purpose WEPPA addresses, including the section 6 eligibility exclusions. The consistency of the phrase "former employer" is preserved. ESDC's proposition that residualco is

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not the former employer has no support in the statute and produces the absurdity that the employees' *liabilities* exist in residualco, while the legal *identity* that would allow them to be administered under the WEPPA remains stranded in a now-solvent operating entity, who ESDC says is not their former employer.

B) Past Court orders are good law and form consistent RVO commercial practice

11. In paras. 18-25 of its responding supplemental factum, ESDC attempts to discard the court orders in *Re Just Energy Corp*,¹¹ *Validus Power Corp et al*,¹² and *Contract Pharmaceuticals Limited et al*¹³ by characterizing them as perfunctory, lacking substantive statutory analysis; akin to casual judicial accommodations, granted without full consideration of the statutory scheme, and therefore unworthy of horizontal *stare decisis*. That submission misapprehends the nature of Canadian commercial jurisprudence.

12. The court orders form a consistent body of law among commercial courts who, confronted with the novel mechanics of RVO transactions, recognize the utility of RVO transactions to help debtors restructure, and *also* recognize that the approval of the RVO and the transfer of employee liabilities to a residualco then make the residualco a former employer, so that the employees can still apply for a WEPP payment.

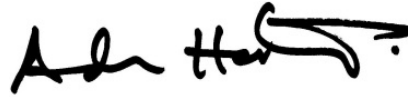
13. A declaration that answers the structural question of who the former employer as requested in this motion is consistent with the past court orders and is not judicial overreach. It preserves the Minsiter's role to assess individual eligibility. Moreover, it is the only reading under which RVO transactions do not become a catch-22 trap for the employees terminated in a RVO transaction, thereby threatening the future use of the RVO tool in restructurings.

¹¹ (3 November 2022), Toronto CV-21-00658423-00CL (ONSC), Supp BOA, Tab 14.

¹² (4 January 2024), Toronto CV-23-00705215-00CL (ONSC), Supp BOA, Tab 16.

¹³ (17 April 2024), Toronto CV-23-007114101-00CL (ONSC), Supp BOA, Tab 13.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of June, 2026.



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SCHEDULE “A”

LIST OF AUTHORITIES

1. *Fagnoli (Re)*, 2020 CIRB 932.
2. *Wes Au v II Nature of the Application*, 2020 CIRB 931.

**SCHEDULE “B”
RELEVANT STATUTES**

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

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.

Courts of Justice Act, R.S.O. 1990, c. C.43, as amended.

Declaratory orders

97 The Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may make binding declarations of right, whether or not any consequential relief is or could be claimed.

Employment Standards Act, 2000, S.O. 2000, c. 41.

Separate persons treated as one employer

4(1) Subsection (2) applies if associated or related activities or businesses are or were carried on by or through an employer and one or more other persons.

Same

(2) The employer and the other person or persons described in subsection (1) shall all be treated as one employer for the purposes of this Act.

Wage Earner Protection Program Act, S.C. 2005, c. 47, s. 1.

Interpretation

Definitions

2 (1) The following definitions apply in this Act.

...

eligible wages means

(a) wages other than termination pay and severance pay that were earned during the longer of the following periods:

(i) the six-month period ending on the date of the bankruptcy or the first day on which there was a receiver in relation to the former employer,

(ii) the period beginning on the day that is six months before one of the following days and ending on the date of the bankruptcy or the first day on which there was a receiver in relation to the former employer:

(A) the day on which a proposal is filed by or in respect of the employer under Division I of Part III of the *Bankruptcy and Insolvency Act* or, if a notice of intention to make a proposal is filed by or in respect of the employer under that Division, the day on which the notice of intention is filed,

(B) the day on which the most recent proceedings under the *Companies' Creditors Arrangement Act* are commenced, and

(iii) the period beginning on the day that is six months before one of the following days and ending on the day on which a court makes a determination under subsection 5(5):

(A) the day on which a proposal is filed by or in respect of the employer under Division I of Part III of the *Bankruptcy and Insolvency Act* or, if a notice of intention to make a proposal is filed by or in respect of the employer under that Division, the day on which the notice of intention is filed,

(B) the day on which the most recent proceedings under the *Companies' Creditors Arrangement Act* are commenced; and

(b) termination pay and severance pay that relate to employment that ended

(i) during the period referred to in paragraph (a), or

(ii) during the period beginning on the day after the day on which the period referred to in paragraph (a) ends and ending on the day on which the trustee is discharged or the receiver completes their duties, as the case may be. (salaire admissible)

wages includes salaries, commissions, compensation for services rendered, vacation pay, termination pay, severance pay and any other amounts prescribed by regulation. (salaire)

...

Eligibility for Payments

Conditions of eligibility

5 (1) An individual is eligible to receive a payment if

(a) the individual's employment ended for a reason prescribed by regulation;

(b) one of the following applies:

the former employer is bankrupt,

the former employer is subject to a receivership,
the former employer is the subject of a foreign proceeding that is recognized by a court under subsection 270(1) of the *Bankruptcy and Insolvency Act* and
the court determines under subsection (2) that the foreign proceeding meets the criteria prescribed by regulation, and
a trustee is appointed, or
the former employer is the subject of proceedings under Division I of Part III of the *Bankruptcy and Insolvency Act* or under the *Companies' Creditors Arrangement Act* and a court determines under subsection (5) that the criteria prescribed by the regulations are met; and
(c) the individual is owed eligible wages by the former employer,
(d) [Repealed, 2009, c. 2, s. 343]
...

Prescribed criteria – other proceedings

5(5) On application by any person, a court may, in proceedings under Division I of Part III of the *Bankruptcy and Insolvency Act* or under the *Companies' Creditors Arrangement Act*, determine that the former employer meets the criteria prescribed by regulation.

Exceptions

6 An individual is not eligible to receive a payment in respect of any wages earned during, or that otherwise relate to, a period in which the individual
(a) was an officer or director of the former employer;
(b) had a controlling interest within the meaning of the regulations in the business of the former employer;
(c) occupied a managerial position within the meaning of the regulation with the former employer;
or
(d) was not dealing at arm's length with
(i) an officer or director of the former employer,
(ii) a person who had a controlling interest within the meaning of the regulations in the business of the former employer, or
(iii) an individual who occupied a managerial position within the meaning of the regulations with the former employer.

Application for Payment

Minister's determination of eligibility

9 If the Minister determines that the applicant is eligible to receive a payment, the Minister shall make the payment.

Wage Earner Protection Program Regulations, SOR/2008-222.

Proceedings under Bankruptcy and Insolvency Act or Companies' Creditors Arrangement Act

3.2 For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.

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

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

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Proceeding commenced at **TORONTO**

REPLY FACTUM
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