

Court of Appeal File No.: COA-26-OM-0340
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.

RESPONDING FACTUM

(Re: Responding to the Attorney General of Canada's motion for leave to appeal)

September 21, 2026

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TO: THE SERVICE LIST

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PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. Synaptive Medical Inc. ("**Synaptive**") terminated 48 of its employees without paying their wages and severance pay.¹ A court-approved reverse vesting order ("**RVO**") then moved those claims into a shell company incorporated by Synaptive that is now a bankrupt and cannot pay them. The question is whether the CCAA Judge erred by declaring that both of the two companies is a "former employer".

2. This factum is prepared on behalf of the Respondents Richard Goldglass and the 47 other former employees of Synaptive whose employment was terminated during Synaptive's proceeding under the *Companies' Creditors Arrangement Act*, 1985, c. C-36, as amended ("**CCAA**") (the "**Terminated Employees**"). They are owed \$903,417.03. If the order under appeal stands, they may each receive up to \$8,844.22, subject to meeting the eligibility criteria under the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 ("**WEPPA**"), or a total of approximately \$375,040.50 from the Wage Earner Protection Program ("**WEPP**").² There is no other source of recovery for them.

3. The moving party, the Attorney General of Canada ("**AG**"), seeks leave to appeal. The Terminated Employees ask that the leave motion be dismissed.

4. Justice Jane Dietrich of the Ontario Superior Court (Commercial List) (the "**CCAA Judge**") has been supervising the insolvency proceedings of Synaptive since March 19, 2025. On July 7, 2026, Her Honour issued a declaration that the above-noted shell

¹ 1001270243 *Ontario Inc.*, 2025 ONSC 3967 at [paras 7, 9 & 14](#) [*Synaptive WEPP Decision*].

² *Ibid* at [para 15](#).

company, 1001270243 Ontario Inc. ("**ResidualCo**"), is a former employer under ss. 5(1)(b)(i) and 5(1)(b)(iv) of WEPPA and meets the criteria in s. 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 (the "**Regulations**") which s. 5(1)(b)(iv) expressly assigns to the court to determine.³ She decided nothing else. She did *not* decide that any employee is eligible for a WEPP payment, what any employee is owed, or that the Minister of Labour has to pay anyone.

5. The AG's proposed appeal does not meet the four-point CCAA test for leave to appeal. On the first criterion above, the appeal is not *prima facie* meritorious. First, s. 5(5) of WEPPA and s. 3.2 of the Regulations direct the court to determine the former employer, and the AG concedes this is an essential part of the statutory scheme.⁴ Second, the AG attacks findings that were not made below and otherwise just demonstrate it disagrees with the order without identifying a reviewable error. Leave must be denied.

6. The Terminated Employees accept that the treatment of employee claims in an RVO matters to insolvency practice and that the Declaration matters to this proceeding. These concessions do not help the AG. The Québec Court of Appeal heard a similar question in *Attorney General of Canada c Valeo Pharma inc.* (Montreal; 500-09-031382-252; "**Valeo Pharma**") on September 30, 2025, and has that appeal under reserve. Appellate guidance is expected to be coming. An appeal here would add further delay, and which prejudices 48 individuals who have been unpaid since June 2025 and whose WEPP applications the Minister is holding unprocessed pending this motion.

³ *Ibid* at [para 66](#).

⁴ Factum of the Moving Party, the Attorney General of Canada, dated August 27, 2026 at para 28.

B. Summary of Facts

7. The Terminated Employees accept as correct the facts in the moving party's summary of facts in paras. 4 to 14 of Part II of the factum of the AG, and the amounts stated in paragraph 77.

8. The Terminated Employees do not agree with:

(a) Paragraph 15, to the extent it states that the CCAA Judge issued the Declaration "to prevent the Minister from refusing to issue WEPP payments". In paragraphs 40, footnote 1, and paragraph 60 of the decision, Her Honour recorded that the Declaration was sought to address a practical problem encountered by the terminated employees in *Arrangement relatif à Former Gestion Inc.*,⁵ but the CCAA Judge held that the Minister must still determine individual eligibility and quantum.⁶

(b) Paragraph 16, to the extent it states that the CCAA Judge "found that Synaptive was also a 'former employer' under the scheme, in addition to ResidualCo". In paragraphs 65 and 66 of the Reasons for Decision, Her Honour declined to decide whether Synaptive is a former employer meeting the criteria in s. 3.2 of the Regulations, and the Declaration is confined to ResidualCo.⁷

(c) Paragraph 16, to the extent it characterises the Reasons as relying on "previous orders it had issued in other proceedings that deemed a residualco entity"

⁵ [2024 QCCS 3645](#) [Just For Laughs].

⁶ *Synaptive WEPP Decision*, *supra* note 1 at [paras 40, 60 & footnote 1](#).

⁷ *Ibid* at [paras 65-66](#).

to be a former employer. At paragraphs 43 to 48 of the decision, the CCAA Judge treated those orders as supporting a plain reading of the words "former employer", and rested her conclusion on the text, the purpose of WEPPA and the common employer doctrine.⁸

9. The Terminated Employees also add the additional facts below.

i. *The CCAA Proceeding and the Reverse Vesting Transaction*

10. Synaptive was a medical device and technology company. On March 19, 2025, it obtained protection under the CCAA. Richter Inc. was appointed Monitor.⁹

11. On June 18, 2025, the Court granted an RVO approving a subscription agreement. On closing, the purchaser acquired all of Synaptive's shares. Synaptive's excluded assets and excluded liabilities vested in ResidualCo. Further, Synaptive was removed, and ResidualCo was added, as applicant.¹⁰

12. No employment agreement of a Terminated Employee was a retained contract. Each was an excluded contract. As a result, all of the Terminated Employees' claims for unpaid wages, vacation pay and termination pay were excluded liabilities.¹¹

13. Of Synaptive's 137 employees earning income in Canada, 81 were retained, 48 were terminated, and 8 resigned.¹²

⁸ *Ibid* at [paras 43-48](#).

⁹ *Ibid* at [paras 5 & 7](#).

¹⁰ *Ibid* at [para 8](#).

¹¹ *Ibid* at [para 9](#).

¹² *Ibid* at [para 14](#).

14. The transaction closed on June 26, 2025. On closing, the employment contracts of the Terminated Employees and their claims for unpaid wages, vacation pay and termination pay vested in ResidualCo.¹³

15. On September 3, 2025, ResidualCo made an assignment in bankruptcy under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**").¹⁴

16. On April 28, 2026, on the application of Export Development Canada, the Court appointed Richter Inc. as receiver over the property of Synaptive.¹⁵

ii. *What the Terminated Employees are owed*

17. According to the Monitor's assessment, the Terminated Employees are owed \$903,417.03 for unpaid wages, vacation pay and termination pay; hold \$101,017.62 in priority claims under ss. 81.3 and 81.4 of the BIA; and will be eligible to receive approximately \$375,040.50 under WEPPA.¹⁶

18. There are no funds for distribution to unsecured creditors.

iii. *The Relief sought below*

19. The declaration under WEPPA was first sought by the company on the RVO approval motion in June 2025. The AG advised that it intended to oppose the relief and required further time. The WEPP motion was adjourned.¹⁷

¹³ *Ibid* at [para 11](#).

¹⁴ *Ibid* at [para 12](#).

¹⁵ *Ibid* at [para 13](#).

¹⁶ *Ibid* at [para 15](#).

¹⁷ *Synaptive Medical Inc v BDC Capital Inc et al* (18 June 2025), Toronto CV-25-00739279-00CL (ONSC).

20. The WEPP motion was heard a year later on June 10, 2026. Synaptive and ResidualCo, with the support of the Terminated Employees, sought a declaration that either or both are former employers under WEPPA. The Monitor and the Terminated Employees supported the relief. The AG opposed it.¹⁸

21. The CCAA Judge recorded the reason the Declaration was sought. In *Just for Laughs*, the Québec Superior Court declared that the RVO entities were former employers for the purposes of s. 5(1)(b)(iv) of WEPPA and s. 3.2 of the Regulations.¹⁹ The Minister of Labour then denied payment on the basis that the former employees were no longer owed wages by those entities, the claims having vested in a residual company.²⁰

22. The Minister later denied the WEPP applications of the terminated employees in *Just For Laughs* months after the court in each case had already made a former employer declaration. In each denial letter sent to the employees the stated ground was that the former employer was no longer the subject of CCAA proceedings and that the claims for eligible wages were "vested in the residualco."²¹

23. On July 10, 2026, the CCAA Judge approved a second RVO transaction where the claims of a second group of Synaptive employees terminated under the receivership (the "**Second Terminated Employees**") were transferred to another shell company, 10016656935 Ontario Inc. ("**ResidualCo Two**").²² Under that order, Synaptive was

¹⁸ *Synaptive WEPP Decision*, *supra* note 1 at [paras 2 & 5](#).

¹⁹ *Just For Laughs*, *supra* note 5.

²⁰ *Synaptive WEPP Decision*, *supra* note 1 at [paras 38-40 & footnote 1](#).

²¹ *Ibid* at [footnote 1](#).

²² *Export Development Canada v Synaptive Medical Inc* (10 July 2026), Toronto CL-26-00000173-0000 (ONSC).

removed as a respondent in the receivership proceeding and replaced with ResidualCo Two.

24. The Second Terminated Employees were terminated without being paid severance pay and other amounts owing to them. When they applied for a WEPP payment, the Minister denied their applications.²³

iv. *The Declaration of the CCAA Judge*

25. The Declaration was released on July 7, 2026, with Reasons for Decision. The CCAA Judge declared that ResidualCo is a former employer as contemplated by s. 5(1)(b)(i) of WEPPA, and is a former employer as contemplated by s. 5(1)(b)(iv) of WEPPA that meets the criteria prescribed by s. 3.2 of the Regulations.²⁴

26. The CCAA Judge held that the Minister must still consider eligibility for individual WEPP claims and determine whether such claims meet the statutory criteria required for payment and how much is to be paid.²⁵

27. Having found that ResidualCo is a former employer, the CCAA Judge held that there was no need to decide whether Synaptive is also a former employer that meets the criteria in s. 3.2 of the Regulations. She did not decide that question.²⁶

²³ Responding Motion Record of Richard Goldglass and the Terminated Employees, Affidavit of Abir Shamim sworn September 21, 2026, Exhibit A.

²⁴ *Synaptive WEPP Decision*, *supra* note 1 at [para 66](#).

²⁵ *Ibid* at [para 22](#).

²⁶ *Ibid* at [para 65](#).

PART II – RESPONSE TO THE MOVING PARTY'S ISSUES

A. Leave is granted sparingly in CCAA cases and on Fourt-Point leave to appeal criteria

28. On a motion for leave to appeal under ss. 13 and 14 of the CCAA, it is established law that this Court considers:

- (a) whether the proposed appeal is *prima facie* meritorious;
- (b) whether the points on the proposed appeal are significant to the practice;
- (c) whether they are significant to the action; and
- (d) whether the proposed appeal will unduly hinder the progress of the action.²⁷

29. Leave is granted sparingly in CCAA cases.²⁸ Further, in granting leave, the Court must be satisfied that there are "serious and arguable grounds that are of real and significant interest to the parties."²⁹

30. The AG raises two issues, neither of which are meritorious. The first is whether the CCAA Judge exceeded her jurisdiction, or erred in exercising it, by issuing the Declaration. The second is whether she erred in her interpretation of "former employer" in WEPPA and the Regulations. Neither discloses an error. Leave to appeal should be denied. The cases do not clearly indicate whether the four factors are conjunctive, this

²⁷ *Nortel Networks Corporation (Re)*, 2016 ONCA 332 at [para 34](#).

²⁸ *Ibid.*

²⁹ *Urbancorp Inc v 994697 Ontario Inc*, 2024 ONCA 26 at [para 15](#).

Court has treated the failure to demonstrate that the proposed appeal is *prima facie* meritorious as fatal and that leave will be denied.³⁰

31. Discretionary orders of a CCAA Judge are entitled to substantial deference on appeal. Absent an error in principle or a palpable and overriding error of fact, this Court should not interfere with orders made during the ongoing supervision of an insolvency proceeding.³¹ The AG's proposed grounds do not engage an error in principle, but rather take issue with the CCAA Judge's application of settled legal principles to the specific factual matrix before Her Honour. Having failed to persuade the CCAA Judge, the AG seeks an impermissible re-weighting of the record on a leave to appeal. The proposed appeal therefore fails to meet the threshold of *prima facie* merit.

32. Restraint reflects the position of the CCAA Judge under review. A CCAA Judge manages an insolvency as it unfolds, over months and dozens of orders, the facts shifting, and comes to a motion knowing what the proceeding has already required. This proceeding has run since March 19, 2025 and has passed through two RVOs, an assignment in bankruptcy and a receivership. The CCAA Judge has been there throughout, and the AG identifies nothing in that history claiming Her Honour misunderstood.

33. The AG raises two issues, neither of which are meritorious. The first is whether the judge exceeded her jurisdiction, or erred in exercising it, by issuing the Declaration.

³⁰ *Ibid* at [para 14](#).

³¹ *Ivaco Inc, Re*, [2006] OJ No 4152, 83 (OR) 3d 108 (ONCA) at [para 71](#).

The second is whether she erred in her interpretation of "former employer" under WEPPA and the Regulations. Neither discloses a *prima facie* error.

B. The proposed appeal is not prima facie meritorious

i. *WEPPA divides the work between the Court and the Minister*

34. WEPPA separates two questions. The first is whether the program applies to a proceeding at all. Section 5(1)(b) makes that turn on the insolvency event, and for a CCAA proceeding s. 5(1)(b)(iv) and s. 5(5) expressly direct a *court* to determine whether the former employer meets the criteria in s. 3.2 of the Regulations.

35. The second question is whether a particular employee applicant is to be paid WEPP and how much. Section 6 lists specific individuals who are not eligible at all. Section 8 requires an application to the Minister, and s. 9 provides that if the Minister determines the applicant is eligible, the Minister *shall* make the payment. The statutory scheme commits the threshold eligibility question to the supervising court, while reserving *individual* entitlement and quantum eligibility determinations for the Minister.

36. The Minister's powers are enumerated, and the power to determine who the former employer is *not* among them. Nothing in s. 5 or s. 9 prohibits a court from identifying the entity that holds the terminated employees' claims. The AG's submission treats a condition of the program's application as though it were an element of individual eligibility. By conflating a threshold condition of the program with an element of individual eligibility, the AG's position departs from the statutory text and overreaches.

ii. *The Attorney General concedes the Court has jurisdiction*

37. The AG submits that Parliament assigned the criteria in s. 5(1) of WEPPA to the Minister, made those decisions reviewable by the Canada Industrial Relations Board ("**CIRB**") and then by the Federal Court of Appeal, and confined the Superior Court to the narrow gatekeeping task in s. 5(5) of confirming that the former employer meets the criteria in s. 3.2 of the Regulations. It adds that the *Federal Courts Act*, R.S.C. 1985, c. F-7 gives the Federal Court exclusive original jurisdiction to grant declaratory relief against a federal board, which includes the Minister acting under WEPPA. On that reading, the Declaration is an advance judicial review of a decision the Minister has not yet made.

38. The AG's submission has two targets: the determination under s. 5(5), and the declaration that ResidualCo is a bankrupt former employer under s. 5(1)(b)(i). The AG concedes the first. Its factum states that "[a]lthough the Superior Court must identify the 'former employer' to conduct its s. 5(5) gatekeeping function, neither the WEPPA nor the WEPPR grant it jurisdiction to decide if an entity is a bankrupt 'former employer' under s. 5(1)(b)(i)". That concession is dispositive. In admitting that the supervising court must identify the "former employer" to perform its s. 5(5) gatekeeping function, the AG concedes the very legal determination made by the CCAA Judge that it now seeks to appeal. As the CCAA Judge put it, "[i]t is not possible to determine if an entity meets the criteria established by s. 3.2 of the Regulations without determining if that entity is a

former employer."³² Where two companies are candidates and the claims sit in one of them, identifying the former employer is the determination.

39. The concession reaches the second target as well, because s. 5(1)(b)(iv) is a single condition. Its two limbs are joined by "and": the former employer is the subject of proceedings under Division I of Part III of the *BIA* or under the *CCAA*, **and** a court has made a determination under s. 5(5). Section 3.2 of the Regulations makes the court's determination "for the purposes of" that provision. The AG accepts that the determination under s. 5(5) belongs to the court. A determination made for the purposes of s. 5(1)(b)(iv) cannot be made without knowing which entity the provision is asking about. The AG's argument splits one condition between two decision-makers and gives the judge the half that depends on the other.

40. The words of the Regulations expressly direct the determination to the court. Section 3.2 provides that, for the purposes of s. 5(5) of WEPPA, "**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" [Emphasis added]. WEPPA does contain language barring review in a court: s. 13 makes the Minister's individual eligibility decision on review final, and s. 20 makes the CIRB's decision final. Neither provision mentions a determination made by a court under s. 5(5). The preclusive clauses in ss. 13 and 20 insulate the Minister's administrative rulings from review, but they do not circumscribe the judicial determinations expressly contemplated under s. 5(5).

³² *Synaptive WEPP Decision*, *supra* note 1 at [para 31](#).

41. The Québec Court of Appeal has already declined to disturb a materially identical declaration on another leave to appeal motion brought by the AG. In *Just For Laughs*, a residual entity took on the terminated employees' claims under a RVO, and the Québec Superior Court declared that the RVO entities were former employers meeting the s. 3.2 criteria. The AG sought leave to appeal. The Quebec Court of Appeal refused the AG's leave motion, holding that the judge "stayed within the boundaries of the broad discretion conferred on him by law".

iii. Section 97 of the Courts of Justice Act empower the declaration

42. The AG's other complaint is that nothing in WEPPA supports the second declaration, that ResidualCo is a bankrupt former employer under s. 5(1)(b)(i). It ignored that the source of that power is s. 97 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. This Court set out the criteria for declaratory relief as acknowledged by the CCAA Judge in this Court's decision in *Bryton Capital Corp GP Ltd v CIM Bayview Creek Inc*³³: the court has jurisdiction over the issue, the dispute is real and not theoretical, the moving party has a genuine interest in its resolution, and the responding party has an interest in opposing it.³⁴ Below, the AG disputed only the first ground. To oust the Superior Court's jurisdiction in a civil proceeding, clear and unequivocal statutory wording is required, as this Court held in *Brewer's Retail Inc v Campbell*.³⁵ WEPPA contains no such wording, ousting the jurisdiction of the Superior Court.

³³ 2023 ONCA 363 at [para 63](#).

³⁴ *Synaptive WEPP Decision*, *supra* note 1 at [paras 58-62](#).

³⁵ 2023 ONCA 534 at [paras 64-65](#).

43. The *Federal Courts Act* does not answer the point, because the Declaration does not run against the Minister. It declares the status of a company in an insolvency proceeding the CCAA Judge was supervising. No relief was sought or granted against the Minister, and the supervising judge held that "[t]he Minister still must consider individual claims and determine whether such individual claims meet all the criteria required for payment and how much is to be paid."³⁶ Because the Declaration neither determines individual WEPP entitlement nor binds the Minister's subsequent assessment under s. 9, it does not constitute an advance judicial review.

44. The Minister exercises that power, and does so on individual eligibility grounds. In the WEPP case of *Fagnoli (Re)*,³⁷ the Minister found the applicant was not dealing at arm's length with her former employer. In the WEPP case of *Wes Au II Nature of the Application*,³⁸ the Minister found the applicant ineligible because his wages were earned while he was a director. Both of those determinations went to the CIRB for review. The Declaration of the CCAA Judge touches neither kind of finding, and the explanation of WEPP eligibility published by Employment and Social Development Canada ("ESDC"), the federal department that oversees WEPP, does not claim the power to decide who the former employer is.

45. The AG's contention that the administrative appeal route provides an adequate alternative remedy is contradicted by the evidentiary record. In *Just For Laughs*, the Minister accepted the court's determination yet refused payment later to the employee

³⁶ *Synaptive WEPP Decision*, *supra* note 1 at [para 60](#).

³⁷ [2020 CIRB 932](#).

³⁸ [2020 CIRB 931](#).

anyway.³⁹ The Minister did the same in *Taiga Motors Corporation et Deloitte Restructuring Inc.*⁴⁰ In each WEPP denial letter from ESDC, the stated ground was that eligible wages were transferred to another company. On that approach the determination Parliament assigned to the court in s. 5(5) decides nothing. A remedy that the Minister can set aside by naming a different company is not an adequate alternative.

46. ResidualCo is bankrupt. Refusing the second declaration would have left ResidualCo the former employer in the CCAA proceeding and that same question open in its bankruptcy. The CCAA Judge declined to build that contradiction into her own case-managed proceeding. Her Honour had jurisdiction, and she exercised it on the record before her.

iv. *The statutory interpretation argument attacks findings that were not made*

47. The AG submits that "former employer" must bear only one meaning throughout WEPPA, that the presumption of consistent expression applies with force because s. 6 of WEPPA and ss. 4 and 5 of the Regulations sit close to s. 5 and presuppose an entity that ran a business and issued shares, and that the CCAA Judge attributed two meanings to the term by treating ResidualCo as the former employer for some provisions and Synaptive for others. Its submission is that a term whose meaning turns on the provision at issue makes the scheme unpredictable and arbitrary.

³⁹ *Synaptive WEPP Decision*, *supra* note 1 at [footnote 1](#).

⁴⁰ (18 December 2024), Montreal 500-11-064357-243 (QCCS).

48. The presumption is not in dispute. The AG conflates the existence of two former employers with the creation of two distinct legal definitions. As the CCAA Judge properly held, ResidualCo is an employer under the established single definition, reflecting the reality that an employee may simultaneously have more than one employer under settled common employer principles. The established common employer doctrine has produced that result for decades and recently has been re-confirmed by this court in *O'Reilly v ClearMRI Solutions Ltd*,⁴¹ that an employee may simultaneously have more than one employer, and each is an employer in the same sense of the word. On the AG's approach, every common employer finding would offend the presumption of consistent expression. The same answer meets the presumption of coherence. Two entities answering to one definition is how the scheme was designed to work where liabilities move.

49. The s. 6 concern was answered below, and the answer has not been engaged. The CCAA Judge held that where a terminated employee has two former employers, there is no concern that a former officer of Synaptive will receive compensation contrary to s. 6 merely because ResidualCo is also a former employer. The exclusions operate on the individual's relationship to whichever entity employed him. A managing director of Synaptive is excluded because he managed Synaptive. Nothing in the Declaration alters that.

50. The wider premise is also wrong on the evidentiary record. The AG's factum states that the CCAA Judge "found that Synaptive was also a 'former employer' under the scheme, in addition to ResidualCo".⁴² In fact, Her Honour declined to decide whether

⁴¹ [2021 ONCA 385](#) [O'Reilly].

⁴² Factum of the Moving Party, the Attorney General of Canada, dated August 27, 2026 at para 16.

Synaptive meets the criteria in s. 3.2 of the Regulations, and the Declaration is confined to ResidualCo. The AG is seeking to appeal findings that the court did not make. The AG's complaint about the three approval and vesting orders meets the same difficulty. The CCAA Judge treated them as confirming a plain reading of the words, and rested her conclusion on the text, the purpose of WEPPA and the common employer doctrine.

v. *The Attorney General's reading turns eligibility on the form of the transaction*

51. The AG submits that the purpose in s. 4 of WEPPA is qualified by the rest of the scheme, that "purpose" statements carry less weight than substantive provisions, and that the program is available only where an original debtor that ran a business is in bankruptcy, receivership, or a restructuring in which all employees are terminated. It relies on the Regulatory Impact Analysis Statement, which simply says the program "is not designed to cover all forms of business restructurings".⁴³

52. Section 4 of WEPPA establishes the program "to provide for payments to individuals in respect of wages owed to them by employers who are insolvent". On the AG's reading, the claims for unpaid wages sit in ResidualCo while the only entity capable of being the former employer is a solvent operating company that no longer owes them. WEPPA would protect employees whose employer is liquidated and abandon employees whose claims are moved by a debtor to a company that is insolvent. The mischief is the same in both cases: no solvent employer from whom lost wages can be claimed as

⁴³ *Ibid* at para 6.

identified by Justice Collier in *Just For Laughs*⁴⁴ and which is acknowledged by the CCAA Judge.⁴⁵

53. The AG's remaining answer is that the CCAA Judge should not have looked beyond Synaptive at all. Synaptive retained 81 employees, so it cannot meet s. 3.2 of the Regulations. ResidualCo holds the severance pay liabilities but, on the AG's reading, cannot be a former employer. On that construction no entity qualifies, and a provision Parliament enacted in 2021 to provide much-needed payments to employees in restructuring proceedings delivers nothing to the 48 employees that a restructuring displaced.

vi. *The Common Employer finding applies O'Reilly to a Vesting Order*

54. The AG submits that because WEPPA does not define "employer", the term takes its content from the common law tests that identify an employment relationship in Ontario. Further, the AG says that this Court held in *O'Reilly* that a related corporation bears employment obligations only where, on the evidence assessed objectively, there was an intention to create an employment relationship. It submits that the CCAA Judge departed from that precedent by treating the transfer of the contracts as sufficient, and that she looked only to the effects of the reverse vesting order rather than assessing the total relationship between the parties as the common law requires — control, the provision of tools, financial risk, and exclusivity of service — none of which ever existed between ResidualCo and the Terminated Employees. Its further submission is that the employees

⁴⁴ *Supra* note 5.

⁴⁵ *Synaptive WEPP Decision*, *supra* note 1 at [para 48](#).

were terminated before the vesting, so that by closing there was no employment contract left to move.

55. The AG's submission fails for three reasons. First, in *O'Reilly*, this Court held that the common employer doctrine does not involve piercing the corporate veil, and that liability attaches only where a corporation can be said to have intended to enter into a contract of employment with the employee.⁴⁶ Whether the corporation undertook the employment obligations is a question of contractual formation. The CCAA Judge asked what formed the contract. She answered that a court order in an insolvency proceeding may change the parties to a contract without the consent of a party, as s. 11.3 of the CCAA illustrates, and that the debtor's RVO intended to move the employment contracts and the employment claims to ResidualCo on closing. Synaptive and ResidualCo shared an officer and director. That is exactly the framework set out in *O'Reilly*.

56. The factors the Attorney General lists answer a different question. *671122 Ontario Ltd v Sagaz Industries Canada Inc*,⁴⁷ and *Braiden v La-Z-Boy Canada Limited*⁴⁸ ask whether a worker carries on business for himself or for another, which is how the common law sorts employees from independent contractors and identifies which of several entities directs the work. No one disputes that ResidualCo directed no work. The question under *O'Reilly* is whether a corporation can be said to have intended to enter into a contract of employment, and that is a question of contractual formation.⁴⁹ The AG's test built on

⁴⁶ *O'Reilly*, *supra* note 39 at [paras 49-50](#).

⁴⁷ [2001 SCC 59](#).

⁴⁸ [2008 ONCA 464](#).

⁴⁹ *O'Reilly*, *supra* note 39 at [paras 49-51](#).

control over ongoing actual work cannot decide who owes wages for work that has already stopped.

57. Second, the absence of prior consent or active control is the direct, intended consequence of a court-approved vesting order. The AG contends that the employees never worked for ResidualCo and could not have consented to contract with it. That contention ignores the legal effect of the court's own order. The RVO was granted on June 18, 2025. The AG was served, appeared, and did not contest or appeal that order. The transfer of the employment contracts and liabilities to ResidualCo under s. 11.3 of the CCAA is an unassailable *fait accompli*. The CCAA Judge did not invent a legal fiction as the AG asserts; Her Honour addressed the legal reality established by a final, binding order of the Superior Court. The AG cannot now mount a collateral attack on the operational effects of the RVO under the guise of an appeal of the Declaration.

58. Third, the RVO transferred the accrued employment liabilities, not ongoing obligations of active service. Section 5(1)(c) of WEPPA focuses on the entity who owes eligible wages. Under the terms of the court-approved transaction, all claims for unpaid wages, vacation pay, and termination pay vested exclusively in ResidualCo, leaving Synaptive with no ongoing liability.

59. The reading the AG asks this Court to endorse also turns on the form of the transaction alone. Below, it accepted that had Synaptive sold its assets under an ordinary vesting order rather than restructuring by reverse vesting order, these same employees would have been eligible for WEPPA. The CCAA Judge found that the two structures produce the same outcome for the workforce: 81 employees keep their jobs, 48 lose them.

No employee has any say nor did they give consent in which vehicle is chosen. Yet on the AG's position the 48 are paid or unpaid according to the choice. That is not a reading of WEPPA that warrants a second appellate hearing.

**PART II - ADDITIONAL ISSUES RAISED BY THE TERMINATED
EMPLOYEES**

60. The Terminated Employees raise two further issues. The first is whether the significance of the points on the proposed appeal supports refusing leave, given that the same question is already under reserve in the Québec Court of Appeal. The second is whether an appeal would unduly hinder the progress of this proceeding by prolonging the delay in payment to the Terminated Employees, which is the factor under the CCAA leave to appeal test.

A. Leave should be denied, notwithstanding its significance

61. While the intersection of RVOs and statutory wage protection claims is a subject of discussion in insolvency practice, this proceeding is a uniquely poor vehicle for appellate consideration. First, the order under appeal does not decide the broad legal question the AG seeks to argue. The CCAA Judge explicitly declined to decide whether Synaptive remained a former employer under s. 3.2 of the Regulations, confining her declaration strictly to ResidualCo on a narrow and idiosyncratic evidentiary record. An appeal here cannot settle other wider practice issues because the foundational finding the AG attacks was never made.

62. Second, to the extent the insolvency practice requires further appellate guidance on the interaction between RVOs and WEPPA, the Québec Court of Appeal has issued a

decision in *Attorney General of Canada c Former Gestion Inc*⁵⁰ denying leave to appeal to AG and a second case is already under reserve with the Québec Court of Appeal in *Valeo Pharma*. That case is expected to squarely address the broader issue ,and has been under reserve since September 30, 2025. Granting leave on this truncated record would duplicate appellate resources without providing the definitive common-law guidance the AG claims to seek.

63. The AG's answer is that the anticipated decision in *Valeo Pharma* is distinguishable and that this Court should hear the question in a common law jurisdiction. The distinction AG draws is that *Valeo* concerns an approval and RVO that contemplated transferring employees to the residual entity before their termination, whereas here the original debtor terminated the employees first. That difference cuts against granting leave. In *Valeo Pharma*, the transfer preceded termination, so the Québec Court of Appeal will decide whether a residual entity that received employees can be their former employer. Here, the claims moved after termination, and the supervising judge answered a narrower question: which of two companies owes the wages. The broader ruling is the one already under reserve.

64. As for the common law, the doctrine the AG says was misapplied is *O'Reilly*,⁵¹ a decision of this Court that the CCAA Judge applied to the facts before her. Applying settled Ontario law to an unusual transaction is not a reason to hear the question twice.

⁵⁰ [2024 QCCA 1441](#).

⁵¹ *Supra* note 39.

i. *Leave Would Prolong the Delay WEPPA Exists to Prevent*

65. The AG submits that an appeal will not hinder the progress of the proceeding, because the restructuring steps are complete and the only remaining steps are the resolution of the issue under WEPPA and the issuance of the Monitor's termination certificate.

66. That submission measures hindrance by the wrong yardstick. The purpose of WEPPA is to provide for prompt payments to employees in respect of wages owed to them by employers who are insolvent, and to provide them quickly, rather than leaving employees to await a distribution from an estate. Here there will be no distribution. The employees have been without a WEPP payment since June 2025, a delay completely contrary to the legislation purpose of WEPP.

67. Consequences follow from granting leave. As noted, the Terminated Employees were terminated in June 2025. They have not been paid. There are no funds for unsecured creditors. Their WEPP applications are on hold pending this motion and an appeal, if leave is granted. The second group has been denied, and the declaration that would answer their denial is the one now under attack. If leave is granted, both groups wait for this Court, and the receiver continues to spend estate time and funds on a question the CCAA Judge has already decided.

68. If leave is refused, nothing is lost. The Minister will still decide individual eligibility for a WEPP payment and quantum under s. 9. The CIRB and the Federal Court of Appeal can still review those eligibility decisions, as applicable. The scheme operates as Parliament intended it.

B. Conclusion

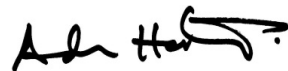
69. The AG asks this Court to review a declaration that decided which corporate entity holds the employees' severance pay liabilities. Parliament gave that determination to the court, and the AG concedes she had to make it.

70. Refusing leave preserves a sound discretionary declaration eliminates an artificial administrative impasse, and maintains the eligibility assessments to the Minister with her statutory discretion under s. 9. Conversely, granting leave subjects 48 former employees, who have remained unpaid for over fifteen months and counting, to protracted appellate litigation over modest statutory entitlements, with no corresponding benefit to the administration of the insolvency proceeding and only further costs and delays.

ORDER REQUESTED

71. The Terminated Employees request an order dismissing the motion of the Attorney General of Canada for leave to appeal, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of September, 2026.



ANDREW J. HATNAY



ROBERT DRAKE



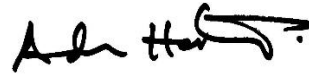
ABIR SHAMIM

Lawyers for Richard Goldglass and other
terminated employees

CERTIFICATE (Rule 4.06.1(2.1))

I, **Andrew J. Hatnay**, lawyer for the Respondent, certify that I am satisfied as to the authenticity of every authority cited in this factum.

September 21, 2026

A handwritten signature in black ink, appearing to read "Andrew J. Hatnay", with a stylized flourish at the end.

ANDREW J. HATNAY

SCHEDULE “A”
LIST OF AUTHORITIES

1. *1001270243 Ontario Inc.*, [2025 ONSC 3967](#)
2. *671122 Ontario Ltd v Sagaz Industries Canada Inc*, [2001 SCC 59](#)
3. *Arrangement relatif à Former Gestion Inc.*, [2024 QCCS 3645](#)
4. *Attorney General of Canada c Former Gestion Inc*, [2024 QCCA 1441](#)
5. *Braiden v La-Z-Boy Canada Limited*, [2008 ONCA 464](#)
6. *Brewer's Retail Inc v Campbell*, [2023 ONCA 534](#)
7. *Bryton Capital Corp GP Ltd v CIM Bayview Creek Inc*, [2023 ONCA 363](#)
8. *Export Development Canada v Synaptive Medical Inc* (10 July 2026), Toronto CL-26-00000173-0000 (ONSC)
9. *Fagnoli (Re)*, [2020 CIRB 932](#)
10. *Ivaco Inc, Re*, [\[2006\] OJ No 4152, 83 \(OR\) 3d 108 \(ONCA\)](#)
11. *Nortel Networks Corporation (Re)*, [2016 ONCA 332](#)
12. *O'Reilly v ClearMRI Solutions Ltd*, [2021 ONCA 385](#)
13. *Synaptive Medical Inc v BDC Capital Inc et al* (18 June 2025), Toronto CV-25-00739279-00CL (ONSC)
14. *Taiga Motors Corporation et Deloitte Restructuring Inc*, (18 December 2024), Montreal 500-11-064357-243 (QCCS).
15. *Urbancorp Inc v 994697 Ontario Inc*, [2024 ONCA 26](#)
16. *Wes Au II Nature of the Application*, [2020 CIRB 931](#)

SCHEDULE “B” RELEVANT STATUTES

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

Leave to appeal

13 Except in Yukon, any person dissatisfied with an order or a decision made under this Act may appeal from the order or decision on obtaining leave of the judge appealed from or of the court or a judge of the court to which the appeal lies and on such terms as to security and in other respects as the judge or court directs.

14 (1) An appeal under section 13 lies to the highest court of final resort in or for the province in which the proceeding originated.

(2) All appeals under section 13 shall be regulated as far as possible according to the practice in other cases of the court appealed to, but no appeal shall be entertained unless, within twenty-one days after the rendering of the order or decision being appealed, or within such further time as the court appealed from, or, in Yukon, a judge of the Supreme Court of Canada, allows, the appellant has taken proceedings therein to perfect his or her appeal, and within that time he or she has made a deposit or given sufficient security according to the practice of the court appealed to that he or she will duly prosecute the appeal and pay such costs as may be awarded to the respondent and comply with any terms as to security or otherwise imposed by the judge giving leave to appeal.

Wage Earner Protection Program Act, SOR/2008-222

s. 4 — Program Established

4 The Wage Earner Protection Program is established to provide for payments to individuals in respect of wages owed to them by employers who are insolvent.

s. 5 — Eligibility for Payments

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:

(i) the former employer is bankrupt,

(ii) the former employer is subject to a receivership,

(iii) 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

(A) the court determines under subsection (2) that the foreign proceeding meets the criteria prescribed by regulation, and

(B) a trustee is appointed, or

(iv) 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 regulation are met; and

- (c) the individual is owed eligible wages by the former employer.
- (2) On application by any person, a court may, in a proceeding under Part XIII of the *Bankruptcy and Insolvency Act*, determine that the foreign proceeding meets the criteria prescribed by regulation. If the court determines that the foreign proceeding meets the prescribed criteria, the court may appoint a trustee for the purposes of this Act.
- (3) An individual who is eligible to receive a payment because of subparagraph (1)(b)(iii) is only eligible to receive a payment in respect of eligible wages earned for employment in Canada and termination pay and severance pay that relate to that employment.
- (4) For the purposes of this Act, if all of the conditions set out in subparagraph (1)(b)(iii) are met, the former employer is deemed to be bankrupt and the date of the bankruptcy is deemed to be the day on which all of those conditions are met.
- (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.

s. 6 — 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 regulations 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.

s. 8 — Application for Payment

8 To receive a payment, an individual is to apply to the Minister in the manner and during the period provided for in the regulations.

s. 9 — 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.

s. 13 — Review is final

13 Subject to the right of appeal under section 14, the Minister's confirmation, variation or rescission, as the case may be, is final and may not be questioned or reviewed in any court.

s. 20 — Decision is final

20 The Board's decision is final and shall not be questioned or reviewed in any court.

Wage Earner Protection Program Regulations - SOR/2008-222

s. 3.2 — Proceedings under BIA or CCAA

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.

s. 4 — Controlling Interest

4 For the purpose of paragraph 6(b) of the Act, an individual had a controlling interest in the business of their former employer if the individual owned

- (a) more than 40% of the voting shares in the business;
- (b) a block of voting shares that is large enough such that no one shareholder or coalition of shareholders can block a motion; or
- (c) enough shares in the business to control the business's policy.

s. 5 — Excluded Managers

5 For the purpose of paragraph 6(c) of the Act, an individual occupied a managerial position with their former employer if the responsibilities of the individual included making binding

- (a) financial decisions affecting the business of the former employer; or
- (b) decisions with respect to the payment or the non-payment of wages by the former employer.

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

Court of Appeal File No.: COA-26-OM-0340
Court File No.: CV-25-00739279-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
1001270243 ONTARIO INC.

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

RESPONDING FACTUM
**(Re: Responding to the Attorney General of
Canada's motion for leave to appeal)**

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