

**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.**

Applicant

**RESPONDING SUPPLEMENTAL FACTUM
OF THE ATTORNEY GENERAL OF CANADA
(motion returnable June 10, 2026)**

May 27, 2026

ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Ontario Regional Office
120 Adelaide Street West, Suite 400
Toronto, Ontario, M5H 1T1

Per: Walter Kravchuk

LSO#: 57160U

Tel: 365-375-2752

Email: walter.kravchuk@justice.gc.ca

Per: Emily Atkinson

LSO#: 76906B

Tel: 416-988-2475

Email: emily.atkinson@justice.gc.ca

Per: Jake Norris

LSO#: 89466J

Tel: 416-347-6823

Email: jake.norris@justice.gc.ca

Counsel for the Attorney General of
Canada

TO: The Registrar
 330 University Avenue
 Toronto, ON

AND TO: The Service List

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PART I – OVERVIEW

1. Synaptive Medical Inc. (“**Synaptive**”) brought a motion on August 27, 2025¹ in this *Companies’ Creditors Arrangement Act* (“**CCAA**”) proceeding seeking relief in connection with the *Wage Earner Protection Program Act* (“**WEPPA**”)² and s 3.2 of the *Wage Earner Protection Program Regulations* (“**WEPPR**”).³ On May 5, 2026, this Court issued an endorsement⁴ permitting Richard Goldglass and other employees terminated by Synaptive in or around the commencement of the CCAA proceeding (“**Terminated Employees**”) to explain how the Court’s April 28, 2026 order appointing a receiver (“**Receivership Order**”) over Synaptive’s assets in a new insolvency proceeding materially affects Synaptive’s WEPPA motion in this CCAA proceeding.

2. In their May 15, 2026, supplemental submissions, the Terminated Employees reiterate their request that this Court declare that 1001270243 Ontario Inc. (“**ResidualCo**”)⁵ meets the criteria under ss 5(1)(b)(i) and 5(1)(c) of the WEPPA because ResidualCo is the Terminated Employees’ “former employer”. They also argue that the Receivership Order made in a new insolvency proceeding supports the relief sought because Synaptive’s employees that have been or will be newly terminated in or around

¹ Applicant’s Motion Record seeking WEPP Relief was delivered August 27, 2025; Amended Motion Record delivered September 25, 2025; and Further Amended Motion Record (named in error as Amended Motion Record) delivered October 17, 2025.

² *Wage Earner Protection Program Act*, [SC 2005, c 47](#) [**WEPPA**].

³ *Wage Earner Protection Program Regulations*, [SOR/2008-222](#) [**WEPPR**].

⁴ Responding Supplemental Record of the Attorney General of Canada dated May 27, 2026 [**AGC RSR**] at Exhibit ‘H’.

⁵ The Terminated Employees erroneously refer to ResidualCo as 1001253954 Ontario Inc. (which is in fact Synaptive Medical Holdings Inc. incorporated May 30, 2025). Court filings of Synaptive and of the Attorney General of Canada correctly identify 1001253954 Ontario Inc. as the ResidualCo, which is a company assigned into bankruptcy on September 3, 2025 – see Exhibit ‘G’ to Affidavit of Richard Goldglass sworn September 17, 2025 in Responding Motion Record of the Terminated Employees.

the separate receivership proceeding will receive WEPP payments and that this justifies a finding that ResidualCo meets eligibility criteria under the WEPPA in this pre-existing CCAA insolvency proceeding.

3. The Attorney General of Canada (“AGC”) requests that this WEPPA motion be dismissed. As raised in the AGC’s previously filed facts, this Court lacks the jurisdiction, or should decline jurisdiction, to issue the declarations sought with respect to eligibility criteria under ss 5(1)(b)(i) and 5(1)(c) of the WEPPA and, as a matter of statutory interpretation, ResidualCo cannot be understood as the “former employer” under the WEPPA and WEPPR. In addition, in connection with the present CCAA proceeding, Synaptive did not terminate all of its employees and therefore cannot meet the criteria under s 3.2 of the WEPPR.

4. Furthermore, the Receivership Order made in a separate insolvency proceeding has no bearing on the questions raised on this WEPPA motion. It is a red herring raised to encourage this Court to achieve the Terminated Employees’ preferred outcome, in this and other proceedings, which is not achievable on the present motion on the basis of the WEPPA and WEPPR as currently drafted. The Receivership Order itself does not guarantee that certain individuals will receive WEPP payments because the Minister—exclusively charged with reviewing WEPP applications to make eligibility determinations—would need to assess all of the criteria under s 5(1) of the WEPPA before issuing payment.

PART II - FACTS

5. Following the Reverse Vesting Order approved on June 18, 2025 in this CCAA

proceeding, Synaptive emerged from this proceeding as a going concern, having retained 81 employees in Canada and having shed liabilities owed to terminated employees, among other liabilities, which were transferred to ResidualCo.⁶

6. After emerging from this CCAA proceeding, Synaptive began to face liquidity challenges under its new ownership.⁷ This led to a financial advisor being retained to assist Synaptive with restructuring strategies.⁸ On application of secured creditor Export Development Canada, returnable April 28, 2026, and on the consent of Synaptive, the Court granted the Receivership Order in the context of a new insolvency proceeding.⁹ Leading up to the Receivership Order, Synaptive furloughed a number of employees it had previously retained.¹⁰ The Receiver reports that at least some employees have since been terminated.¹¹

7. The outcome of the new receivership proceeding remains to be seen. The approved sale and investment solicitation process (“SISP”) sets forth the process for soliciting bids superior to the transaction contemplated by a Stalking Horse Bid.¹² The date for closing of the successful bid transaction is set for June 30, 2026.¹³ The Receiver views the sale or recapitalization of Synaptive’s assets (through the SISP) as an opportunity for a going-

⁶ Supplemental Report to the Fourth Report of the Monitor dated October 24, 2025 at para 5.1(f) [**Supplemental Report**]; Affidavit of Dianne Zimmerman, sworn August 27, 2025 [**Zimmerman Affidavit**], Exhibit F – Approval and Reverse Vesting Order, dated June 18, 2025, Applicant’s [Further] Amended Motion Record dated October 17, 2025 [**App AMR**], Tab 2F.

⁷ AGC RSR, Tab 1, Vol 3, p 1004 para 18 (PF Report Proposed Receiver, April 27, 2026).

⁸ Ibid.

⁹ AGC RSR, Tab 1, Vol 4, p 1218 (Order Appointing Receiver, April 28, 2026).

¹⁰ AGC RSR, Tab 1, Vol 4, p 1041 para 16(c) (First Report of the Receiver, May 8, 2026).

¹¹ AGC RSR, Tab 1, Vol 4, p 1045 para 29(c) (First Report of the Receiver, May 8, 2026).

¹² AGC RSR, Tab 1, Vol 3, p 897 (Motion Record of the Receiver, May 8, 2026).

¹³ AGC RSR, Tab 1, Vol 3, p 898 (Motion Record of the Receiver, May 8, 2026).

concern transaction, failing which the Receiver expects to pivot to a liquidation process.¹⁴

8. If a purchaser is selected or deemed to be the successful bidder in accordance with the SISP, the Receiver contemplates seeking an Approval and Reserve Vesting Order¹⁵ (“ARVO”), whereby a “ResidualCo” would be incorporated prior to closing of the transaction to which Excluded Liabilities would be transferred.¹⁶ On May 13, 2026, the Court approved the SISP and the Stalking Horse Bidder with no opposition.¹⁷

9. As of May 26, 2026, the Wage Earner Protection Program (“WEPP” or “Program”) has received two applications for WEPP payments arising from the receivership proceeding (bearing court file number CL-26-00000173-0000). The Program has not yet received the Trustee/Receiver Information Form from the Receiver in respect of these two applications. It has not reviewed these applications or determined whether the applicable eligibility criteria have been met.¹⁸

PART III –ARGUMENTS AND THE LAW

A. THIS COURT HAS NO JURISDICTION TO DECLARE THAT ELIGIBILITY CONDITIONS ARE MET UNDER THE WEPPA

10. The Terminated Employees’ supplemental submissions reiterate their request from previous submissions that this Court declare that ResidualCo meets the eligibility criteria under ss 5(1)(b)(i) and 5(1)(c) of the WEPPA on the basis that they disagree with decisions of the Minister¹⁹ in other matters where terminated employees have applied for WEPP.

¹⁴ AGC RSR, Tab 1, Vol 3, p 1008 para 27 (PF Report Proposed Receiver, April 27, 2026).

¹⁵ AGC RSR, Tab 1, Vol 3, p 835 (Motion Record of the Receiver, May 8, 2026).

¹⁶ AGC RSR, Tab 1, Vol 3, p 827 (Motion Record of the Receiver, May 8, 2026).

¹⁷ AGC RSR, Tab 1, Vol 4, p 1253 (SISP Approval Order, May 13, 2026).

¹⁸ AGC RSR at Tab 2, Affidavit of Jennifer Marsh, May 26, 2026 at paras 7-8.

¹⁹ *Minister* means the Minister of Labour, see WEPPR, [s 1](#).

11. As noted in the AGC’s previously filed facts, such relief is unavailable in this Court because it would interfere with the exclusive jurisdiction of the Minister to make WEPP eligibility determinations²⁰ and sidestep the recourse for challenging the Minister’s eligibility determinations chosen by Parliament through the Canada Industrial Relations Board (“CIRB”) and the Federal Court of Appeal.²¹ Accepting the Terminated Employees’ position would render various provisions of the WEPPA concerning reviews of a Minister’s eligibility determinations obsolete²² and run counter to Parliament’s clear intention to foster national consistency on questions of WEPP eligibility.

12. Moreover, by seeking a declaration that ResidualCo meets the eligibility criteria under ss 5(1)(b)(i) and 5(1)(c) of the WEPPA, the Terminated Employees are effectively seeking *mandamus*: they seek to have the Minister issue payment under the WEPP and take away the Minister’s exclusive power to determine eligibility under the WEPPA.²³ In the alternative, the declaration sought effectively seeks an advance judicial review of the Minister’s as yet unmade determination on eligibility. This Court has no jurisdiction to issue what amounts to an order of *mandamus* or an advance judicial review against the

²⁰ WEPPA, s 9; see especially French version that says, “[l]e ministre décide si le demandeur est admissible au prestations” i.e., the Minister decides if the applicant is eligible.

²¹ WEPPA, ss 2(1) (“Board” definition), 11-13, 14, 15-20; *Federal Courts Act*, RSC 1985, c F-7 [FC], s 28(1)(h); Factum of the Attorney General of Canada dated October 29, 2025 [AGC Main Factum] at paras 61-64; Reply Factum of the Attorney General of Canada dated November 5, 2025 [AGC Reply Factum] at para 4. See also *GMAC Commercial Credit Corporation - Canada v TCT Logistics Inc*, 2006 SCC 35 at paras 48-52 (a Bankruptcy Court did not have jurisdiction to make a certain determination in part because an administrative tribunal had the exclusive jurisdiction to make the determination at issue) and *Baxter Student Housing Ltd v College Housing Co-operative Ltd*, [1976] 2 SCR 475 at 480 (a superior court’s inherent jurisdiction does not allow for an order negating the unambiguous expression of the legislative will).

²² See WEPPA, ss 11-20.

²³ See WEPPA, ss 8, 9, 10.

Minister, who operates as a “federal board, commission or other tribunal” as defined in the *Federal Courts Act*.²⁴ Only the Federal Court has the power to issue such orders against the Minister.²⁵

B. THERE IS NO NEED FOR THE COURT TO PRE-EMPT THE MINISTER’S ELIGIBILITY DETERMINATIONS

13. Not only does this Court lack jurisdiction to make a declaration that ResidualCo meets the eligibility conditions under ss 5(1)(b)(i) and (5)(1)(c) of the WEPPA, but the notion that such a declaration is necessary because WEPP payments have been refused in other cases (where the courts have made an order pursuant to s 5(5) of the WEPPA) is premised on a misunderstanding of the statutory scheme.

14. A determination that a former employer meets the criteria under s 3.2 of the WEPPR pursuant to s 5(5) of the WEPPA is not designed to ensure that WEPP payments are made to terminated employees. Instead, and as is set out in the AGC’s Main Factum, s 5(5) of the WEPPA confers a gatekeeping role upon the superior courts that oversee qualifying CCAA and BIA proposal proceedings to determine if the true former employer has met the criteria in s 3.2 of the WEPPR, which may inform the Minister’s determination of whether a qualifying insolvency event has taken place.²⁶ In performing that gatekeeping function, the Court is bound by the statutory scheme and the meaning of “former employer” as it may be understood as a matter of statutory interpretation.

15. Once a s 3.2 WEPPR determination is made, it merely triggers the possibility for

²⁴ This exclusive jurisdiction must be respected, see e.g. *Okwuobi v Lester B Pearson School Board*; *Casimir v Quebec (Attorney General)*; *Zorrilla v Quebec (Attorney General)*, [2005 SCC 16](#) at paras [38-40](#).

²⁵ *FCA*, s [18\(1\)](#).

²⁶ AGC Main Factum at paras 3, 29, 43, 62.

a former employee to obtain a WEPP payment. The Minister must still independently assess if the eligibility conditions under s 5(1) of the WEPPA are satisfied, as the Quebec Court of Appeal acknowledged in *Former Gestion*.²⁷

16. Indeed, cases cited by the Terminated Employees, including *Former Gestion*,²⁸ *Taiga Motors*,²⁹ and *Syndic d'Intelgenx Corp*,³⁰ which do not involve the question of whether a “Residualco” could be understood as the former employer, do not justify the declaration the Terminated Employees seek. They are but examples of a superior court exercising its gatekeeping function under s 5(5) of the WEPPA. What happened after the Court’s order was issued in each case is a matter to be assessed through the review process set out in the WEPPA as outlined above, should individuals in those proceedings choose to pursue WEPP payments. *Cleo Energy* is equally unsupportive of the declaration sought, since the Court’s comments on the WEPPA concern timing of eligibility determinations, not who can make them (and it is the latter that the Terminated Employees have put in issue on this motion).³¹

17. Finally, any suggestion that a failure to grant the relief sought on this motion will have a chilling effect on RVOs more broadly is speculative at best. In *MJardin Group Inc.* in particular, this Court acknowledged that the benefits of an RVO may outweigh the possible unavailability of WEPP payments to terminated employees following the

²⁷ *Attorney General of Canada c Former Gestion Inc*, [2024 QCCA 1441](#) at paras [7](#), [16](#).

²⁸ *Arrangement relatif à Former Gestion Inc*, [2024 QCCS 3645](#).

²⁹ *Taiga Motors Corporation et Deloitte Restructuring Inc.* (18 December 2024), Montreal 500-11-064358-243 (QCCS), Supplementary Book of Authorities of the Attorney General of Canada dated November 5, 2025, Tab 1.

³⁰ *Syndic d'Intelgenx Corp*, [2024 QCCS 3678](#).

³¹ *Cleo Energy Corp (Re)*, [2025 ABKB 621](#) at paras [45-46](#).

granting of such an order.³² The Court referred to the Monitor’s acknowledgment that given the debtors would emerge from the CCAA proceedings, WEPPA would not be triggered and that this impact on former employees should be balanced against the benefits of the proposed RVO, including preserving employment of the continuing employees.³³ The Court agreed with the Monitor, noting that “[t]he preservation of jobs and customer and supplier relationships in this case outweighs the acknowledged negative effects for the former employees” in connection with the WEPPA.³⁴

C. UNREPORTED ONTARIO SUPERIOR COURT ORDERS NOT DETERMINATIVE OF THE WEPPA MOTION

18. The three recently discovered and unreported Ontario Superior Court orders addressed in the Terminated Employees’ supplemental submissions,³⁵ which deem a “Residualco”—an entity created in the context of an RVO—as the “former employer” for the purposes of termination and severance pay in connection with the WEPP, do not justify granting the present motion.

³² *In the Matter of a Plan of Compromise or Arrangement Involving MJardin Group Inc et al* (3 April 2023), Toronto CV-22-00682101-00CL (ONSC) (Endorsement of Justice Kimmel) [*MJardin Endorsement*], Responding Supplemental Book of Authorities of the Attorney General of Canada [**AGC RSBOA**], Tab 2.

³³ *MJardin Endorsement*, *supra* note 32 at para 8.

³⁴ *MJardin Endorsement*, *supra* note 32 at para 17.

³⁵ These cases were put forward by the AGC: *In the Matter of a Plan of Compromise or Arrangement of Just Energy Group Inc et al* (3 November 2022), Toronto CV-21-0065842 (ONSC) (Approval and Vesting Order) [*Just Energy Group Order*], Supplemental Book of Authorities of Richard Goldglass and Other Terminated Employees dated May 15, 2026 [**Terminated Employees SBOA**] at Tab 13; *In the Matter of a Plan of Compromise or Arrangement Involving Validus Power Corp et al* (4 January 2024), Toronto CV-23-00705215-00CL (ONSC) (Approval and Vesting Order) [*Validus Power Corp*], Terminated Employees SBOA at Tab 16, and *In the Matter of a Plan of Compromise or Arrangement of Contract Pharmaceuticals Limited et al* (17 April 2024), Toronto CV-23-711401-00CL (ONSC) (Ancillary Relief Order) [*Contract Pharmaceuticals Order*], Terminated Employees SBOA at Tab 14.

19. None of these orders contemplate s 3.2 of the WEPPR or focus on WEPPA issues and do not pronounce on the meaning of “former employer” under provisions of the WEPPA or the WEPPR as a matter of statutory interpretation. The only reference to the WEPP in each order is contained in a single paragraph, where a “Residualco” is deemed to be the “former employer” of former employees, terminated within a certain time period, and whose claims against the original debtor(s) were transferred to the “Residualco”.³⁶ The deeming is stated as being “solely for the purposes of” termination and severance pay under the WEPP.³⁷

20. Endorsements available with respect to two of the orders offer little insight into the basis for the inclusion of this paragraph in the orders. The reported endorsement in *Just Energy Group* briefly states that former employees would be transferred to the “Residualco” to “assist [them] in relation to their entitlements under the WEPPA”.³⁸ The unreported endorsement in *Contract Pharmaceuticals* refers to the applicants’ submission that the WEPPA would not otherwise be triggered without the WEPPA relief sought and the Court’s agreement to grant that relief on the basis that it would assist former employees to access WEPP payments.³⁹

21. As such, there is no basis for the Terminated Employees’ assertion that, in these three matters, the Court recognized that employees may have more than one employer, in

³⁶ *Validus Power Corp*, *supra* note 35 at para 34; *Contract Pharmaceuticals Order*, *supra* note 35 at para 4; *Just Energy Group Order* at para 34.

³⁷ *Ibid.*

³⁸ *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, [2022 ONSC 6354](#) at para 67. There is no reference to deeming the “Residualco” as the “former employer”.

³⁹ *In the Matter of a Plan of Compromise or Arrangement of Contract Pharmaceuticals Limited et al* (17 April 2024), Toronto CV-23-711401-00CL (ONSC) (Endorsement of Justice W.D. Black), AGC RSBOA Tab 1.

line with the concept of “common employer”. The Court provided no analysis in this respect. It is also unclear how the Court could be seen as having implicitly applied the common employer doctrine insofar as its requirements and the purpose of invoking it were absent.⁴⁰

22. There are additional reasons why the orders in *Just Energy Group*, *Validus Power Corp*, and *Contract Pharmaceuticals* need not impact the Court’s determinations on the present motion. Horizontal *stare decisis* only applies to questions of law, not questions of mixed fact and law or the application of the law to the facts.⁴¹ In *Just Energy Group*, *Validus Power Corp*, and *Contract Pharmaceuticals*, the Court did not address questions of law that are currently before this Court, including the meaning of “former employer” in the WEPPA and WEPPR as a matter of statutory interpretation. The Court did not establish or modify the law; rather, it deemed the concept of “former employer” in the WEPPA to apply to a particular set of facts before it.

23. Similarly, in the above-noted three cases, the Court did not address questions of fact that have been raised on this motion, including with respect to the relationship between the terminated employees and the “Residualco”. In contrast, the facts are clear on this motion that the Terminated Employees did not work for ResidualCo.

24. Even if the orders in *Just Energy Group*, *Validus Power Corp*, and *Contract Pharmaceuticals* are considered to have implicitly determined questions of law with

⁴⁰ It is unclear whether there was an employment relationship between the “Residualco” and the former employees in question and there appears to be no need to invoke the doctrine where employment liabilities are already imposed on a “Residualco” by a contractual agreement and an RVO. See AGC Reply Factum at paras 8-9.

⁴¹ *R v Sullivan*, [2022 SCC 19](#) at para 44. See also *Essex (County) v Enbridge Gas Inc*, [2025 ONCA 268](#) at paras [26-28](#) and *Bhuthal v Sahsi*, [2024 BCCA 73](#) at [para 10](#).

respect to the meaning of “former employer” (which the AGC denies), s 6 the WEPPA and related WEPPR provisions show the drafter’s intention that “former employer” be understood to mean the original debtor with whom terminated employees had an employment relationship.⁴² As is set out in the AGC’s Main Factum, these provisions exclude individuals from WEPP payments who took on an important role in the business of the former employer, as well as individuals close to someone who took on such a role.⁴³ If a “Residualco” was found to be the “former employer”, these sections would have no meaning and individuals who may bear responsibility for the insolvency of the original debtor would not be barred from WEPP payments, contrary to the drafter’s intention.⁴⁴ The latter risk is live on this motion, where the Monitor’s WEPP Register lists a possible former officer of Synaptive as being owed salary amounts.⁴⁵

25. Appropriate consideration of s 6 of the WEPPA and related sections of the WEPPR weigh in favour of refusing to grant WEPP relief similar to that granted in *Just Energy Group*, *Validus Power Corp*, and *Contract Pharmaceuticals*.⁴⁶ These provisions bear

⁴² *Sullivan*, *supra* note 41 at paras [75-78](#). The Court can depart from horizontal *stare decisis* when a decision was reached by inadvertence or was not fully considered (taken in exigent circumstances). See e.g. *Prestidge v Definity Insurance Company*, [2026 NBCA 49](#) at paras [24-25](#) where a decision was found not to be fully considered where, among other factors, the case was “undefended and unopposed with no analysis of the legal issues”.

⁴³ AGC Main Factum at paras 32-33, 37; WEPPA, ss [2\(5\)](#) & [6](#); WEPPR, ss [4-5](#).

⁴⁴ Briefing Book: An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies’ Creditors Arrangement Act and to make consequential amendments to other Acts at [10](#), Book of Authorities of the Attorney General of Canada dated October 29, 2025 at Tab 17.

⁴⁵ Zimmerman Affidavit, Exhibit K – Monitor’s Employee/WEPP Claims Register, App AMR, Tab 2K.

⁴⁶ This Court has found that the failure to give certain terms effect in a provision and relying on an irrelevant provision justifies departing from it, see *R v Zhou*, [2025 ONSC 6043](#) at paras [107-108](#). It has also determined that a “perfunctory” decision was either reached *per incuriam* or was not fully considered, see *R v Gallan*, [2024 ONSC 5338](#) at

directly on the interpretation of “former employer” in the statutory scheme, including the question of whether it is capable of referring to a “Residualco” created pursuant to a contractual agreement and an RVO. Consideration of these provisions may well have encouraged the Court to omit the WEPP relief from the orders in *Just Energy Group*, *Validus Power Corp*, and *Contract Pharmaceuticals* based on the import of the provisions and the presumption of consistent expression in statutory interpretation, which holds absent indications that “former employer” should have a different meaning in different parts of the statutory scheme.⁴⁷

D. NO ABSURD CONSEQUENCE

26. The Terminated Employees assert that accepting the AGC’s position on this motion would create an absurd consequence because employees terminated in connection with the Receivership Order will receive WEPP payments and the Terminated Employees (previously terminated before the RVO in the CCAA proceedings took effect) will not.⁴⁸ They allege this would create “unequal treatment” among terminated employees, which would amount to “an absurd interpretation of the [WEPPA].”⁴⁹

27. This position is speculative, as it is based on the assumption that “Synaptive employees who may be terminated in or around the receivership will receive WEPP.”⁵⁰ Not only is it not yet clear how the receivership will unfold,⁵¹ but the Minister has not yet

para [13](#).

⁴⁷ AGC Main Factum at para 34.

⁴⁸ Supplementary Factum of Terminated Employees dated May 15, 2026 [SFTE] at paras 22-26.

⁴⁹ SFTE at para 25.

⁵⁰ SFTE at para 26.

⁵¹ Importantly, the construction used to list the eligibility requirements in s 5(1) of the WEPPA suggests the test for eligibility is conjunctive, see e.g. *Dundurn No 314 (Rural Municipality) v Canada (Attorney General)*, [2025 FC 366](#) at paras [20](#) and [23](#). See also

reviewed the two WEPP applications received to date that arose from the receivership proceeding, or determined whether the applicable eligibility criteria have been met.⁵²

28. Even if the Minister were to make different WEPP eligibility determinations as between the Terminated Employees and employees impacted by Synaptive's receivership, this would not necessarily produce an absurd consequence. Rather, different facts and legal constraints flowing from different insolvency proceedings could reasonably lead to different results. The Minister must assess eligibility in accordance with the law and the facts relevant to the circumstances of each applicant,⁵³ which may differ for the Terminated Employees compared to any employees terminated in connection with Synaptive's more recent receivership.

29. In this case, the Terminated Employees' employment was terminated before the RVO took effect in this CCAA proceeding, in which Synaptive has sought a determination under s 3.2 of the WEPPR to trigger an eligible insolvency event under the WEPPA.⁵⁴ Synaptive emerged from these CCAA proceedings, having retained 81 employees in Canada and having transferred employment liabilities, among other liabilities, to ResidualCo.⁵⁵ In contrast, s 3.2 of the WEPPR appears inapplicable at this stage of the Receivership proceeding and it remains to be seen whether Synaptive will emerge from the subsequent Receivership proceeding anew.

Hobin v Enterprise Rent-A-Car Canada Company, [2017 ABQB 670](#) at para [22](#), aff'd on appeal in *Hobin v Enterprise Rent-A-Car Canada Company*, [2018 ABCA 92](#) at para [4](#).

⁵² AGC RSR at Tab 2, Affidavit of Jennifer Marsh, May 26, 2026 at paras 7-8.

⁵³ *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#) at para [90](#).

⁵⁴ See dates in Zimmerman Affidavit, Exhibit K – Monitor's Employee/WEPP Claims Register, App AMR, Tab 2K.

⁵⁵ Supplemental Report at para 5.1(f); Zimmerman Affidavit, Exhibit F – Approval and Reverse Vesting Order, dated June 18, 2025, App AMR, Tab 2F.

30. Ultimately, the Court is bound by how the WEPPA and WEPPR are currently drafted. It is for Parliament and the Governor in Council to consider the merits of amending the legislation in order to provide for outcomes currently not contemplated therein, including the outcome sought by the Terminated Employees.

ALL OF WHICH IS RESPECTFULLY SUBMITTED on May 27, 2026.



ATTORNEY GENERAL OF CANADA

Per: Walter Kravchuk / Emily Atkinson / Jake Norris

Counsel for the Attorney General of Canada

CERTIFICATION OF AUTHORITIES

I, WALTER KRAVCHUK, counsel for the Attorney General of Canada, am satisfied as to the authenticity of every authority cited in this factum.

DATED at the City of Toronto, in the Province of Ontario this 27th day of May, 2026.



ATTORNEY GENERAL OF CANADA

Per: Walter Kravchuk (LSO#: 57160U)

Tel: (365) 275-2752

Email: Walter.Kravchuk@justice.gc.ca

Counsel for the Attorney General of Canada

SCHEDULE “A” – LIST OF AUTHORITIES

STATUTES, REGULATIONS, AND ORDERS IN COUNCIL

1. *Federal Courts Act*, [RSC 1985, c F-7](#), ss [18\(1\)](#), [28\(1\)\(h\)](#)
2. *Wage Earner Protection Program Act*, [SC 2005, c 47](#), ss [2\(1\)](#), [2\(5\)](#), [6](#), [8-20](#)
3. *Wage Earner Protection Program Regulations*, [SOR/2008-222](#), ss [1](#), [4-5](#)

CASELAW

1. *Arrangement relatif à Former Gestion Inc*, [2024 QCCS 3645](#)
2. *Attorney General of Canada c Former Gestion Inc*, [2024 QCCA 1441](#)
3. *Baxter Student Housing Ltd v College Housing Co-operative Ltd*, [\[1976\] 2 SCR 475](#)
4. *Bhuthal v Sahsi*, [2024 BCCA 73](#)
5. *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#)
6. *Cleo Energy Corp (Re)*, [2025 ABKB 621](#)
7. *Dundurn No 314 (Rural Municipality) v Canada (Attorney General)*, [2025 FC 366](#)
8. *Essex (County) v Enbridge Gas Inc*, [2025 ONCA 268](#)
9. *GMAC Commercial Credit Corporation - Canada v TCT Logistics Inc*, [2006 SCC 35](#)
10. *Hobin v Enterprise Rent-A-Car Canada Company*, [2017 ABQB 670](#)
11. *Hobin v Enterprise Rent-A-Car Canada Company*, [2018 ABCA 92](#)
12. *In the Matter of a Plan of Compromise or Arrangement of Contract Pharmaceuticals Limited et al* (17 April 2024), Toronto CV-23-711401-00CL (ONSC) (Ancillary Relief Order)
13. *In the Matter of a Plan of Compromise or Arrangement of Contract Pharmaceuticals Limited et al* (17 April 2024), Toronto CV-23-711401-00CL (ONSC) (Endorsement of Justice W.D. Black)
14. *In the Matter of a Plan of Compromise or Arrangement of Just Energy Group Inc et al* (3 November 2022), Toronto CV-21-0065842 (ONSC) (Approval and Vesting Order)

15. *In the Matter of a Plan of Compromise or Arrangement Involving MJardin Group Inc et al* (3 April 2023), Toronto CV-22-00682101-00CL (ONSC) (Endorsement of Justice Kimmel)
16. *In the Matter of a Plan of Compromise or Arrangement Involving Validus Power Corp et al* (4 January 2024), Toronto CV-23-00705215-00CL (ONSC) (Approval and Vesting Order)
17. *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, [2022 ONSC 6354](#)
18. *Okwuobi v Lester B Pearson School Board; Casimir v Quebec (Attorney General); Zorrilla v Quebec (Attorney General)*, [2005 SCC 16](#)
19. *Prestidge v Definity Insurance Company*, [2026 NBCA 49](#)
20. *R v Gallan*, [2024 ONSC 5338](#)
21. *R v Sullivan*, [2022 SCC 19](#)
22. *R v Zhou*, [2025 ONSC 6043](#)
23. *Syndic d'Intelgenx Corp*, [2024 QCCS 3678](#)
24. *Taiga Motors Corporation et Deloitte Restructuring Inc.* (18 December 2024), [Montreal 500-11-064358-243](#) (QCCS)

LEGISLATIVE MATERIALS

25. Briefing Book: An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts at [10](#).

SCHEDULE “B” - STATUTES AND LEGISLATION

Federal Courts Act, RSC 1985, c F-7, ss 18(1), 28(1)(h).

Extraordinary remedies, federal tribunals

18(1) Subject to section 28, the Federal Court has exclusive original jurisdiction

(a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

...

Remedies to be obtained on application

(3) The remedies provided for in subsections (1) and (2) may be obtained only on an application for judicial review made under section 18.1.

Judicial review

28 (1) The Federal Court of Appeal has jurisdiction to hear and determine applications for judicial review made in respect of any of the following federal boards, commissions or other tribunals:

(h) the Canada Industrial Relations Board established by the Canada Labour Code;

Wage Earner Protection Program Act, SC 2005, c 47, ss 2(1), 2(5), 6, 8-20

Definitions

2(1) The following definitions apply in this Act

Board means the Canada Industrial Relations Board established by section 9 of the *Canada Labour Code*. (*Conseil*)

...

Related persons

2(5) Despite subsection 4(5) of the *Bankruptcy and Insolvency Act*,

(a) for the purposes of paragraph 6(d), an individual is considered to deal at arm's length with a related person if the Minister is satisfied that, having regard to the circumstances — including the terms and conditions of the individual's employment with the former employer, their remuneration and the duration, nature and importance of the work performed for the former employer — it is reasonable to conclude that the individual would have entered into a substantially similar contract of employment with the former employer if they had been dealing with each other at arm's length; and

(b) for the purposes of subsection 21(4), individuals who are related to each other are, in the absence of evidence to the contrary, deemed not to deal with each other at arm's length while so related.

...

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.

...

Application

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.

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.

Notification

10(1) The Minister is to inform the applicant of their eligibility or ineligibility to receive a payment.

Notification to trustee or receiver

(2) The Minister is to inform the trustee or receiver of the applicant's eligibility or ineligibility to receive a payment.

Review by Minister

Request for review

11 An Applicant who is informed under section 10 may request a review of their eligibility or ineligibility, as the case may be.

Review

12 The Minister may confirm, vary or rescind a determination of eligibility made under section 9. If the Minister varies the determination, the Minister shall make any payment resulting from the variation.

Notification

12.1 The Minister is to inform the applicant and the trustee or receiver of a decision made under section 12.

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.

Appeal to Board

Board

13.1 For the purposes of sections 14 to 20, the Board is considered to be composed of only the Chairperson and Vice-Chairpersons as its members.

Appeal on question of law or jurisdiction

14(1) The applicant may appeal the decision made by the Minister under section 12 to the Board only on a question of law or jurisdiction.

Regulations

(2) The Board may make regulations respecting the period during which and the manner in which an appeal may be made.

Assignment or appointment

14.1 (1) The Chairperson of the Board may assign a member of the Board or appoint an external adjudicator to determine an appeal that comes before the Board.

Powers, duties and functions

(2) A member of the Board and an external adjudicator have all the powers, duties and functions that are conferred on the Board by any of sections 14 to 18 with respect to any matter that has been assigned to them or for which they have been appointed, as the case may be, other than the power referred to in subsection 14(2).

Decision of member or external adjudicator

(3) A decision made by a member of the Board or an external adjudicator under any of sections 14 to 18 is deemed to be a decision made by the Board.

Limitation of liability

(4) A member of the Board and an external adjudicator are not personally liable, either civilly or criminally, for anything done or omitted to be done by them in good faith in the exercise or purported exercise of any power, or in the performance or purported performance of any duty or function, conferred on them under any of sections 14 to 18.

Remuneration and expenses — external adjudicator

(5) An external adjudicator shall be paid the remuneration and the fees that may be fixed by the Chairperson of the Board and is entitled to be paid reasonable travel and living expenses incurred by them in the course of their duties while absent from their ordinary place of residence.

Minister informed of appeal

15(1) The Board shall inform the Minister in writing when an appeal is brought and provide him or her with a copy of the request for appeal.

Documents provided to Board

(2) The Minister shall, on request of the Board, provide to the Board a copy of any document that the Minister relied on for the purpose of making the decision being appealed.

Documents provided to Minister

(3) The Board shall, on request of the Minister, provide to the Minister a copy of any document that is filed with the Board in the appeal.

Power of Minister

(4) The Minister may, in an appeal, make representations to the Board in writing.

Appeal on the record

16 The appeal is to be an appeal on the record and no new evidence is admissible.

Board's decision

17 The Board may confirm, vary or rescind the decision made by the Minister under section 12. If the Board varies the decision, the Minister shall make any payment resulting from the variation.

Copies of decision

18 The Board shall send a copy of its decision, and the reasons for it, to each party to the appeal, to the Minister and to the trustee or receiver.

No review by *certiorari*, etc.

19 No order may be made to review, prohibit or restrain and no process entered or proceeding taken to question, review, prohibit or restrain in any court — whether by way of injunction, *certiorari*, prohibition, *quo warranto* or otherwise — an action of the Board under any of sections 14 to 18.

Decision is final

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

Wage Earner Protection Program Regulations, SOR/2008-222, ss 1, 4-5

Interpretation

1 The following definitions apply in these Regulations

...

Minister means the Minister of Labour. (*ministre*)

...

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

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**

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

APPLICANT

**ONTARIO
SUPERIOR COURT OF JUSTICE**
(Commercial List)
Proceeding Commenced in Toronto

**RESPONDING SUPPLEMENTAL
FACTUM OF THE
ATTORNEY GENERAL OF CANADA**

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
Ontario Regional Office
120 Adelaide Street West, Suite 400
Toronto, Ontario, M5H 1T1

**Per: Walter Kravchuk / Emily Atkinson /
Jake Norris**

LSO#: 57160U / 76906B / 89466J

Tel: 365-375-2752 / 416-988-2475 / 416
347-6823

Email: walter.kravchuk@justice.gc.ca
emily.atkinson@justice.gc.ca
jake.norris@justice.gc.ca

Counsel for the Attorney General of Canada