

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c.
B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF TKC METAL RECYCLING INC.**

**FACTUM OF TKC METAL RECYCLING INC.
(Re Motion returnable October 1, 2024)**

September 25, 2024

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**FACTUM OF TKC METAL RECYCLING INC.
(Returnable October 1, 2024)**

PART I – INTRODUCTION

1. On July 26, 2024 (the “**NOI Filing Date**”), TKC Metal Recycling Inc. (the “**Company**”) initiated proceedings (the “**Proposal Proceedings**”) under section 50.4(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) by filing a notice of intention to file a proposal (the “**NOI**”). BDO Canada Limited (“**BDO**”) was appointed as Proposal Trustee.¹

2. This factum is filed in support of the Company’s motion for, *inter alia*,

(a) an approval and vesting order (the “**Approval and Vesting Order**”), substantially in the form attached at Tab 3 to the Motion Record, among other things:

(i) approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement between the Company and Triple M Metal LP

¹ Second Baird Affidavit, at para 7.

(the “**Purchaser**”) dated September 23, 2024 (the “**Sale Agreement**”);

- (ii) vesting in the Purchaser all of the Company’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement, the “**Purchased Assets**”) free and clear from any Encumbrances (as defined in the Approval and Vesting Order); and
- (iii) sealing the confidential appendices (the “**Confidential Appendices**”) to the Second Report of the Proposal Trustee, dated September 24, 2024 (the “**Second Report**”) until the earlier of (1) the closing of the Transaction and (2) further Order of the Court; and

(b) an order (the “**Ancillary Order**”), substantially in the form attached at Tab 5 to the Motion Record, among other things:

- (i) extending the time to file a proposal to November 23, 2024;
- (ii) authorizing the Proposal Trustee, by and on behalf of the Company, following the closing of the Transaction and payment of all outstanding professional fees secured by the Administration Charge (as defined in the Order of Justice Parayeski dated August 22, 2024 in the Proposal Proceedings) to make distributions from available funds:
 - (1) first to 1000909688 Ontario Inc. (the “**Lender**”), up to the amount of the indebtedness owing to the Lender as at the date of the distribution, and

- (2) second to The Toronto Dominion Bank (“**TD**”), up to the amount of the indebtedness owing to TD as at the date of distribution (together, the “**Distributions**”);
 - (iii) approving the Second Report and the activities and conduct of the Proposal Trustee detailed therein; and
 - (iv) approving the fees and disbursements of the Proposal Trustee and its counsel, Cozen O’Connor LLP (“**Cozen**”), as set out in the fee affidavit of Chris Mazur sworn September 24, 2024 (the “**BDO Fee Affidavit**”) and the fee affidavit of Dilina Lallani sworn September 24, 2024 (the “**Cozen Fee Affidavit**”), respectively; and
- (c) such other relief as this Court may deem just.

PART II - SUMMARY OF FACTS

3. A detailed background of the Company is more fully set out in the affidavits of Kenneth Baird sworn August 13, 2024 (the “**First Baird Affidavit**”),² and September 23, 2024 (the “**Second Baird Affidavit**”).
4. All capitalized terms herein that are not defined have the meaning set out in the First Baird Affidavit, the Second Baird Affidavit, or the Sale Agreement.
- A. Background of the Company**
5. The Company is a scrap metal recycling company, incorporated under the *Business*

² Exhibit A of the Second Baird Affidavit.

Corporations Act (Ontario) on March 7, 2017.³ The Company operates out of the leased premises located at 20 Cushman Road, St. Catharines, Ontario L2M 6S8 (the “**Property**”).⁴

6. The Company purchases and processes several types of ferrous and non-ferrous scrap metals, including electronic waste.⁵

B. The Proposal Proceedings

7. The NOI filing was prompted due to the Company’s ongoing liquidity challenges and inability to meet its liabilities as they became due. The Proposal Proceedings were commenced with the consent of the Lender.⁶

8. The primary purpose of the Proposal Proceedings is to create a stabilized environment to allow the Company to run a Sale Process to solicit bids for the Company’s business and assets, with the intention of maximizing realizations for all stakeholders.⁷

9. On August 22, 2024, the Court granted the following two orders:

- (a) a sale process order (the “**Sale Process Order**”) that, among other things, approved the sale process and bidding procedures (the “**Sale Process**”) in respect of the Company’s business, and authorized and directed the Company and the Proposal Trustee to carry out the Sale Process; and

- (b) an ancillary order (the “**August 22 Ancillary Order**”) that, among other things:

³ Second Baird Affidavit, at para 5.

⁴ Second Baird Affidavit, at para 5.

⁵ Second Baird Affidavit, at para 6.

⁶ Second Baird Affidavit, at paras 8, 10.

⁷ First Baird Affidavit, at para 6.

- (i) granted an Administration Charge in the amount of \$200,000;
- (ii) granted a Directors' Charge in the amount of \$200,000;
- (iii) granted a forty-five (45) day extension of time to file a proposal to and including October 9, 2024 in accordance with section 50.4(9) of the BIA; and
- (iv) approved the first report of the Proposal Trustee.⁸

C. The Sale Process and Bidding Procedures

10. The Sale Process was developed by the Company, in consultation with the Proposal Trustee in respect of the Company's assets ("**Assets**"), comprised of the following:⁹

Lot #	Description
Lot 1	Machinery and Equipment
Lot 2	Inventory
Lot 3	Office furniture and equipment
Lot 4	Leased Assets
Lot 5	Intangible Assets
Lot 6	The Company's interest, if any, in the Lease Agreement

11. On August 9, 2024, the Proposal Trustee prepared an advertisement (the "**Advertisement**") summarizing the Company's Assets and the Sale Process.¹⁰ Potential bidders were invited to bid on all or part of the Assets on an "as is, where is" basis.¹¹

⁸ Second Baird Affidavit, at para 11; Exhibit "C" and Exhibit "D" of the Second Baird Affidavit.

⁹ Second Baird Affidavit, at para 13.

¹⁰ Second Baird Affidavit, at para 15; Exhibit "E" of the Second Baird Affidavit.

¹¹ Second Baird Affidavit, at para 14.

12. The Proposal Trustee posted the Advertisement in the Financial Post and in Insolvency Insider with weekly releases beginning on August 12, 2024.¹²
13. The results of the Sale Process can be summarized as follows:
 - (a) the Proposal Trustee reached out to fifteen (15) industry players as well as eleven (11) auctioneers to participate in the Sale Process;¹³
 - (b) thirteen (13) potential bidders executed a non-disclosure agreement and were granted access to an electronic data room created by the Company and the Proposal Trustee;¹⁴
 - (c) twelve (12) potential bidders accessed the data room;¹⁵
 - (d) eight (8) potential bidders attended the Property for a site visit;¹⁶ and
 - (e) the Company received seven (7) bids by the Bid Deadline of 3:00 p.m. on September.¹⁷
14. The Purchaser's bid met the bid requirements, and was for substantially all of the Company's Assets. The Purchaser's bid was determined to be the Successful Bid.¹⁸
15. The Company, with the assistance of the Proposal Trustee and their respective legal

¹² Second Baird Affidavit, at para 16.

¹³ Second Baird Affidavit, at para 17.

¹⁴ Second Baird Affidavit, at para 18.

¹⁵ Second Baird Affidavit, at para 19.

¹⁶ Second Baird Affidavit, at para 19.

¹⁷ Second Baird Affidavit, at para 20.

¹⁸ Second Baird Affidavit, at para 21.

advisors, thereafter negotiated the Sale Agreement with the Purchaser for the Purchased Assets.¹⁹

PART III - STATEMENT OF ISSUES

16. The issues to be determined by this Honourable Court on this motion are whether:

- (a) the Sale Agreement and Transaction contemplated therein, should be approved and the Purchased Assets vested to the Purchaser in accordance with the Approval and Vesting Order;
- (b) the Confidential Appendices to the Second Report should be sealed;
- (c) the Company should be granted an extension of time to file a proposal to November 23, 2024;
- (d) the Proposal Trustee, upon closing of the Transaction and after payment of all outstanding professional fees, should be authorized to make Distributions first to the Lender until paid in full and second to TD until paid in full;
- (e) the Second Report and the activities and conduct described therein should be approved; and
- (f) the fees and disbursements of the Proposal Trustee and its counsel should be approved.

¹⁹ Second Baird Affidavit, at para 22; Exhibit "F" to the Second Baird Affidavit.

PART IV – LAW & ARGUMENT

A. The Sale Agreement and Transaction Should Be Approved

17. Subsection 65.13(1) of the BIA authorizes this Court to approve a sale of a debtor company's assets outside of the ordinary course of business.²⁰ When deciding whether to approve such a sale, the Court is required to consider the non-exhaustive list of factors set out at subsection 65.13(4) of the BIA:²¹

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the trustee approved the process leading to the proposed sale or disposition;
- (c) whether the trustee filed with the Court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, considering their market value.

²⁰ [s. 65.13\(1\)](#), BIA.

²¹ [s. 65.13\(4\)](#), BIA.

18. The BIA s. 65.13(4) criteria largely correspond to the common law factors applied to the consideration of an asset sale in insolvency articulated in *Royal Bank of Canada v Soundair Corp.*²²
- (a) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;
 - (b) whether the interests of all parties have been considered;
 - (c) the efficacy and integrity of the process by which offers have been obtained; and
 - (d) whether the working out of the process was unfair.²³
19. The Company submits that the factors listed at s. 65.13(4) of the BIA are satisfied in this case:
- (a) *whether the Sale Process leading to the Transaction was reasonable in the circumstances* – the Proposal Trustee facilitated the Sale Process that was approved by the Court in accordance with the Sale Process Order.²⁴ The Proposal Trustee posted the Advertisement in more than one publication and on multiple times, including in *Insolvency Insider*, where approximately 9,000 people could view the Advertisement and Sale Process.²⁵ The Assets were also broadly marketed to both industry players as well as auctioneers;²⁶

²² *Royal Bank of Canada v Soundair Corp.*, 1991 CanLII 2727 (ON CA). [“*Soundair*”]

²³ *Soundair*, *supra* note 21.

²⁴ Second Report, at para 3.3.2.

²⁵ Second Baird Affidavit, at para 15.

²⁶ Second Baird Affidavit, at para 17.

(b) *whether the Proposal Trustee approved the process leading to the proposed sale or disposition* – the Proposal Trustee, in consultation with the Company, developed the Sale Process and filed its First Report supporting the Company’s motion for Court approval of the Sale Process;²⁷

(c) *whether the Proposal Trustee filed a Report to the Court stating that in their opinion the sale would be more beneficial to the creditors than a sale under a bankruptcy* – the Proposal Trustee states in its Second Report that the Sale Agreement provides the greatest realization for substantially all of the Company’s Assets included in the Sale Process;²⁸

(d) *the extent to which creditors were consulted* – the Lender, being the Company’s first ranking secured creditor, has been involved in all aspects of the Proposal Proceedings, including the Sale Process, and supports the relief sought by the Company.²⁹ The Proposal Trustee notified all creditors at the commencement of the Proposal Proceedings, and has routinely updated its website, including by posting the within motion materials. No creditor opposed the Sale Process, or advised the Proposal Trustee that they oppose the Sale Process since the granting of the Sale Process Order. The Lender and the other creditors registered under the *Personal Property Security Act* (Ontario) have been served with this motion;

²⁷ Second Baird Affidavit, at para 13.

²⁸ Second Report, at para 3.3.2.

²⁹ Second Report, at para 3.3.2.

(e) *the effects of the proposed sale on the creditors and other interested creditors* – the Transaction, if approved, is more beneficial than a bankruptcy, and will give the Company the ability to consider whether it can put forward a viable proposal to its creditors;³⁰

(f) *whether the consideration to be received for the assets is reasonable considering their market value* – the Purchase Price for the Purchased Assets is fair and reasonable in the circumstances, based on the outcome of the Sale Process, and is supported by the appraisal set out in a Confidential Appendix to the Second Report.³¹ The terms of the Sale Agreement were negotiated by the Company, in consultation with the Proposal Trustee, including the Purchase Price and potential adjustment to the Purchase Price.³²

20. In light of the foregoing, the Company submits that the *Soundair* principles have also been met: the Company's Assets were broadly advertised to a wide-range of potential bidders in an effort to obtain the best price; the Company has not acted improvidently; the interests of the parties have been properly considered; the process has been carried out with efficacy and integrity; and there is no unfairness in the circumstances.³³

B. The Confidential Appendices Should be Sealed

21. The Company seeks an Order to seal the Confidential Appendices to the Second Report, which contain an unredacted copy of the Sale Agreement, the bid summaries, and an appraisal of certain Assets, until the earlier of: (1) the closing of the Transaction or (2) further Order of the Court.

³⁰ Second Report, at para 4.4.

³¹ Second Report, at para 3.3.2.

³² Second Report, at paras 21, 22, 24.

³³ Second Report, at paras 14-21; Second Report, at paras 3.1.1 – 3.3.2.

22. Pursuant to the *Courts of Justice Act* (Ontario), this Court has the discretion to order any document filed in a civil proceeding be treated as “confidential”, sealed and not form part of the public record.³⁴
23. The test to determine whether a sealing order should be granted, as set out by the Supreme Court of Canada in *Sierra Club of Canada v Canada (Minister of Finance)*, and recast in *Sherman Estate*, is as follows:
- (a) whether court openness poses a serious risk to an important public interest;
 - (b) the order is necessary to prevent risk to an important interest because reasonably alternative measures will not prevent the risk; and
 - (c) whether the benefits of the confidentiality order outweigh the negative effects.³⁵
24. The Supreme Court of Canada has explicitly recognized commercial interests such as preserving confidential information or avoiding a breach of a confidentiality agreement are an “important public interest” for purposes of this test.³⁶
25. The Sale Agreement has only been redacted to withhold the Purchase Price and the deposit, which are both commercially sensitive.
26. It is likely that disclosure of the Purchase Price and the Deposit to third parties would negatively impact the integrity of any future sale efforts, including by setting a sale price

³⁴ *Courts of Justice Act*, R.S.O. 1990, c C.43, [s. 137\(2\)](#).

³⁵ *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 [“*Sierra Club*”], at para 53; *Sherman Estate v. Donovan*, 2021 SCC 25 [“*Sherman Estate*”], at paras [38](#) and [43](#).

³⁶ *Sierra Club*, at para 55; *Sherman Estate*, at paras 41-43.

ceiling.³⁷ Similarly, disclosing the summary of the bids and the appraisal would also negatively impact the integrity of any future sale efforts should the Transaction fail to close.³⁸

27. The benefits of sealing the Confidential Appendices provides the Company with the ability to maximize value for the Purchased Assets at a future date, should the Transaction not close. This far outweighs the deleterious effects of the public not knowing the specific Purchase Price (and Deposit) for a very limited time until the Closing of the Transaction, which is anticipated to be shortly after the Approval and Vesting Order is granted.
28. The Proposal Trustee supports the Company's request to seal the Confidential Appendices.³⁹

C. An Extension of Time to File a Proposal Should Be Granted

29. The Company is seeking a 45-day extension of time to file a proposal from October 9, 2024 to and including November 23, 2024 (the "**Extension**") to allow the Company time to close the proposed Transaction, if approved.⁴⁰
30. Pursuant to section 50.4(9) of the BIA, the Court may extend the time by which the Company is required to file a proposal in 45-day intervals where the Court is satisfied that:
 - (a) the debtor company has acted, and is acting, in good faith and with due diligence;

³⁷ Second Baird Affidavit, at para 28.

³⁸ Second Baird Affidavit, at para 28.

³⁹ Second Report, at para 3.2.4.

⁴⁰ Second Baird Affidavit, at para 25.

- (b) the debtor company would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.⁴¹
31. It is anticipated that the Transaction will close after the expiry of the appeal period for the Approval and Vesting Order, if granted, and prior to the Outside Date of October 31, 2024.⁴²
32. If the Extension is granted, the Company will likely be able to complete the Transaction and consider whether it can put forward a proposal to its creditors.⁴³
33. The Company has acted and continues to act in good faith and with due diligence in furtherance of these Proposal Proceedings, and no creditor will be materially prejudiced if the Extension is granted.⁴⁴
34. The Extension is supported by the Proposal Trustee and the Lender.⁴⁵

⁴¹ [s. 50.4\(9\)](#), BIA.

⁴² Second Baird Affidavit, at para 24(f), (g).

⁴³ Second Baird Affidavit, at para 29; *Mustang GP Ltd. (Re)*, 2015 ONSC 6562 (CanLII), at para 41; In the Matter of the Notice of Intention to Make a Proposal of Whyte's Foods Inc., [Order of Cavanagh, J.](#) (6 October 2023) (Court File No.: BK-23-02978830-0031), Ontario Superior Court of Justice (Commercial List), at para 13. [*"Whyte's Foods"*]; *Whyte's Foods*, [Endorsement of Cavanagh, J.](#)

⁴⁴ Second Baird Affidavit, at paras 31, 34; Second Report, at paras 4.5, 6.2; *In the Matter of the Notice of Intention to Make a Proposal of Hemsana Inc.*, [Endorsement of Cavanagh J.](#) (9 April 2024) (Court File No.: BK-24-03054351-0031), Ontario Superior Court of Justice (Commercial List).

⁴⁵ Second Baird Affidavit, at para 33; Second Report, at paras 4.5, 6.1, 6.2.

D. The Distribution Should Be Authorized

35. The Lender is the Company's first ranking secured creditor, which relates to a general security agreement over all classes of collateral except consumer goods that was granted to Meridian Credit Union, registered under the *Personal Property Security Act* ("PPSA"), and assigned to the Lender.⁴⁶ The Lender made a demand on the Company on July 12, 2024, and as at July 10, 2024, the total indebtedness owing to the Lender from the Company is about \$2.2 million.⁴⁷
36. Counsel for the Proposal Trustee has reviewed the security and has determined that the Lender has a valid, enforceable, properly perfected security interest in the collateral of the Company.⁴⁸
37. TD provided the Company with certain VISA credit cards, which the Company uses in its business to cover certain expenses. TD holds a general security agreement from the Company registered under the PPSA. As of the NOI Filing Date, the Company's indebtedness to TD totaled approximately \$35,000.⁴⁹
38. Following the Closing of the Transaction, if approved, it is appropriate for the Court to authorize the Proposal Trustee, by and on behalf of the Company, after satisfaction of professional fees secured by the Administration Charge and priority claims that may be

⁴⁶ Second Baird Affidavit, at para 35.

⁴⁷ Second Baird Affidavit, at para 36.

⁴⁸ Second Report, at para 1.1.9.

⁴⁹ Second Report, at para 2.7.1.

subject to the Director's Chare, to make Distributions first to satisfy the indebtedness owing to the Lender and second to satisfy the indebtedness of TD.⁵⁰

E. The Second Report Should Be Approved

39. The Company seeks this Court's approval of the activities and conduct of the Proposal Trustee, as set out in the Second Report. The approval of a court officer's activities and reports is relief that is routinely granted in insolvency proceedings, and this Court approved the Proposal Trustee's First Report in the August 22 Ancillary Order.⁵¹
40. The approval is only for the Proposal Trustee personally and is not intended to create rights or impose obligations for any other party.

F. The Fees and Disbursements of the Proposal Trustee and its Counsel Should Be Approved

41. Courts routinely consider the following non-exhaustive factors when considering whether to approval a court officer's fees in insolvency proceedings:
- (a) the nature, extent and value of the assets handled;
 - (b) the complications and difficulties encountered;
 - (c) the degree of assistance provided by the company, its officers or its employees and the time spent;

⁵⁰ Second Report, at paras 1.1.8, 1.2.1, 2.7.1, and 6.1.

⁵¹ Exhibit "D" to the Second Baird Affidavit, at para 14; *In the Matter of the Notice of Intention to Make a Proposal of Go-For Industries Inc.*, [Order of Black J.](#) (3 June 2024) (Court File No.: BK-24-00459813-0031), Ontario Superior Court of Justice (Commercial List), [*Go-For Industries*"], at para 2; *In the Matter of the Notice of Intention to Make a Proposal of The Body Shop Canada Limited*, Order of [Cavanagh J.](#) (30 May 2024) (Court File No.: BK-24-03050418-0031), Ontario Superior Court of Justice (Commercial List), at para 3.

- (d) the [court officer's] knowledge, experience and skill;
- (e) the diligence and thoroughness displayed;
- (f) the responsibilities assumed;
- (g) the results of the [court officer's] efforts; and
- (h) the cost of comparable services when performed in a prudent and economical manner.⁵²

42. The fees and disbursements of the Proposal Trustee, and its legal counsel, Cozen meet the above-noted requirements and are fair and reasonable in the circumstances:

- (a) the work performed by the Proposal Trustee, as described in the BDO Fee Affidavit, was undertaken in furtherance of these Proposal Proceedings. This includes facilitating the Sale Process, reviewing the bids, and negotiating the Sale Agreement with the Purchaser, which, if approved, provides a better result for the Company's creditors than a sale under a bankruptcy;⁵³
- (b) the Proposal Trustee has reviewed the fees charged by its counsel, and confirmed that the work described in the Cozen Fee Affidavit relate to advice sought by the Proposal Trustee, and was undertaken in furtherance of these Proposal Proceedings;⁵⁴ and
- (c) the Proposal Trustee and Cozen have charged their usual rates, which are consistent

⁵² [*Bank of Nova Scotia v. Diemer*](#), 2014 ONSC 365, at para 9; [*Re Nortel Networks Corporation et al*](#), 2017 ONSC 673, para. 13; [*Belyea v. Federal Business Development Bank*](#), 1983 CanLII 4086 (NB CA); [*Confectionately Yours Inc., Re*](#), 2002 CanLII 45059 (ON CA), at para. 51.

⁵³ Second Report, at para 5.4.

⁵⁴ Second Report, at para 5.7.

with comparable firms in the market for work of this nature.⁵⁵

PART V - ORDER REQUESTED

43. For the foregoing reasons, the Company respectfully requests this Honourable Court grant the Approval and Vesting Order and the Ancillary Order in the forms proposed at Tabs “3” and “5” of the Motion Record, respectively.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of September, 2024.



Kyla Mahar / Gina Rhodes
MILLER THOMSON LLP
Lawyers for TKC Metal Recycling Inc.

⁵⁵ Second Report, at paras 5.3, 5.7.

SCHEDULE “A”
LIST OF AUTHORITIES

1. [Royal Bank of Canada v Soundair Corp.](#), [1991] O.J. No. 1137, 4 OR (3d) 1.
2. [Sierra Club of Canada v Canada \(Minister of Finance\)](#), 2002 SCC 41.
3. [Sherman Estate v. Donovan](#), 2021 SCC 25.
4. [Mustang GP Ltd. \(Re\)](#), 2015 ONSC 6562 (CanLII).
5. *In the Matter of the Notice of Intention to Make a Proposal of Whyte’s Foods Inc.*, [Order of Cavanagh, J.](#) (6 October 2023) (Court File No.: BK-23-02978830-0031), Ontario Superior Court of Justice (Commercial List).
6. *In the Matter of the Notice of Intention to Make a Proposal of Whyte’s Foods Inc.*, [Endorsement of Cavanagh, J.](#) (6 October 2023) (Court File No.: BK-23-02978830-0031), Ontario Superior Court of Justice (Commercial List).
7. *In the Matter of the Notice of Intention to Make a Proposal of Hemsana Inc.*, [Endorsement of Cavanagh J.](#) (9 April 2024) (Court File No.: BK-24-03054351-0031), Ontario Superior Court of Justice (Commercial List).
8. *In the Matter of the Notice of Intention to Make a Proposal of Go-For Industries Inc.*, [Order of Black J.](#) (3 June 2024) (Court File No.: BK-24-00459813-0031), Ontario Superior Court of Justice (Commercial List).
9. *In the Matter of the Notice of Intention to Make a Proposal of The Body Shop Canada Limited*, Order of [Cavanagh J.](#) (30 May 2024) (Court File No.: BK-24-03050418-0031), Ontario Superior Court of Justice (Commercial List).
10. [Bank of Nova Scotia v. Diemer](#), 2014 ONSC 365.
11. [Re Nortel Networks Corporation et al](#), 2017 ONSC 673, para. 13.
12. [Belyea v. Federal Business Development Bank](#), 1983 CanLII 4086 (NB CA).
13. [Confectionately Yours Inc., Re](#), 2002 CanLII 45059 (ON CA).

**SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY - LAWS**

[Bankruptcy and Insolvency Act](#), RSC 1985, c B-3, s 1, as amended

Extension of time for filing proposal

50.4(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

Restriction on disposition of assets

65.13 (1) An insolvent person in respect of whom a notice of intention is filed under [section 50.4](#) or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Individuals

(2) In the case of an individual who is carrying on a business, the court may authorize the sale or disposition only if the assets were acquired for or used in relation to the business.

Notice to secured creditors

(3) An insolvent person who applies to the court for an authorization shall give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

- (4) In deciding whether to grant the authorization, the court is to consider, among other things,
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the trustee approved the process leading to the proposed sale or disposition;

(c) whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Assets may be disposed of free and clear

(7) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the insolvent person or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Courts of Justice Act, RSO 1990, c C.43, as amended

Sealing documents

137(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

IN THE MATTER OF NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TKC METAL RECYCLING INC.

District of: Ontario
Division No.: 07-Hamilton
Court No.: 32-3109134
Estate No.: 32-3109134

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

Proceedings commenced at Hamilton

FACTUM
(Returnable October 1, 2024)

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