

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
SOURCE ONE FINANCIAL CORPORATION**

FACTUM OF THE PROPOSAL TRUSTEE

Date: December 14, 2023

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TO: SERVICE LIST

PART I – OVERVIEW

1. This is a motion by BDO Canada Limited (“**BDO**”) in its capacity as the trustee in the proposal (in such capacity, the “**Proposal Trustee**”) of Source One Financial Corporation (the “**Company**”) for an Order, among other things:

(a) approving the proposal filed with the Official Receiver on November 1, 2023 (the “**Proposal**”), which proposal was unanimously accepted at the creditors meeting held on November 22, 2023 (the “**First Meeting**”); and

(b) declaring that the Company’s former employees are eligible to receive payments pursuant to the *Wage Earner Protection Program Act*.¹

2. For the purposes of voting on the Proposal, there was a single class of creditors, comprised of all unsecured creditors. At the First Meeting, the Proposal was accepted by all creditors voting in person or by proxy.

3. The Proposal Trustee is of the view that the Proposal is advantageous to the creditors of the Company for the following reasons:

(a) since the Proposal is externally funded and the Company has no assets of value remaining, the creditors’ recovery will be substantially better under the Proposal when compared to the estimated recovery under a bankruptcy; and

(b) the Proposal complies with the requirements as set out in sections 59 and 60 of the *Bankruptcy and Insolvency Act*.²

¹ [SC 2005, c 47, s 1](#) [“*WEPPA*”].

² [RSC 1985, c B-3](#) [“*BIA*”].

4. The Proposal Trustee is of the opinion that the Proposal is advantageous to the creditors of the Company and will maximize their recovery. The Proposal Trustee recommends that the Proposal be approved by this Court.

5. All of the Company's employees have been terminated and so the criteria are met for eligibility for Wage Earner Protection Program payments pursuant to *WEPPA* and the Wage Earner Protection Program Regulations, SOR/2008-222.³

PART II – FACTS

A. Background

6. The Company is an Ontario Corporation located in Burlington, Ontario that provided automotive finance loans to non-prime and sub-prime borrowers in Canada through a network of new and used vehicle dealers. In addition, the Company acted as administrative agent to Westlake Services, LLC (“**Westlake**”) for their automotive loan portfolio, which was generated by the Company.

7. The Company ceased operations September 8, 2023 and terminated approximately 85% of its workforce.

8. The Company's business was no longer economically viable and had not been for at least the past few years. The Company's insolvency was a direct result of growing operating losses exacerbated by: i) significant and rapid rise in interest rates; ii) increasing defaults in the loan portfolios; iii) negative affect of rising interest rates on new loan originations; and iv) the increasing cost of funding. Accordingly, the management decided to wind down its business.⁴

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

⁴ First Report of the Proposal Trustee dated December 7, 2023, Motion Record Tab 3 at [paras 5, 61](#) [the “**Report**”].

9. On October 6, 2023 (the “**Filing Date**”), the Company filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to section 50.4(1) of the *BIA* and BDO was named as Proposal Trustee. On November 1, 2023, the Company filed the Proposal which was subsequently accepted by all creditors voting in person or by proxy at the First Meeting.⁵

i. Secured Creditors

10. Cortland Credit Lending Corporation (“**Cortland**”) financed the Company’s lease portfolios and held a general security interest in all of the Company’s assets (the “**Cortland Security**”). The Proposal Trustee obtained an opinion from its independent counsel that the Cortland Security created a valid security interest and was enforceable in accordance with its terms.⁶

11. On November 1, 2023, Cortland assigned its security and all right to repayment of the debt owing to it from the Company to Westlake (the “**Cortland Assignment**”). At the time, Cortland was owed approximately \$8,400,000 plus fees.

12. Prior to the Cortland Assignment, Westlake and the Company did not have a lender-borrower relationship. Rather, the Company simply serviced the loan portfolio owned by Westlake. The inability of the Company and Westlake to negotiate a new sales and service agreement resulted in Westlake transitioning its portfolio to a competitor. The Company released Westlake’s portfolio and any funds collected in respect thereof to Westlake prior to the First Meeting.

13. Upon completion of the Cortland Assignment, Westlake proceeded to foreclose on all the assets of the Company subject to the Cortland Security pursuant to the *Personal Property Security*

⁵ Report at [paras 16, 44](#).

⁶ Report at [para 29](#).

Act (Ontario) (the “*PPSA*”). As a result of the Cortland Assignment and Westlake’s foreclosure, neither Cortland nor Westlake are creditors any longer and the Company no longer maintains any loan portfolios.⁷

14. The Company’s only remaining generally secured creditor is 1717030 Ontario Limited (“**171**”), a corporation owned by one of the Company’s directors. 171 took, and *PPSA* registered, security against the Company for monies advanced to the Company to maintain operations. 171 will not realize any recoveries as a secured creditor and has agreed not to seek payment under the Proposal for any claim that it may have.

15. The Company leased certain photocopiers, attachments, and accessories from CWB National Leasing Inc. (“**CWB**”). CWB registered a security interest against the Company under the *PPSA*. CWB’s secured claim is not affected by the Proposal and the Company intends to return the leased equipment to CWB.

ii. Other Creditors

16. The Proposal Trustee has received and admitted unsecured claims totaling \$141,498.07.⁸

17. In addition to 171, other related-party creditors include 1717031 Ontario Limited, Larman Investments Ltd., and Kooy Brothers Lawn Equipment Ltd. (collectively and together with 171, the “**Non-Participating Creditors**”). Other than 171, the Non-Participating Creditors are unsecured. The Non-Participating Creditors have agreed to postpone and waive any dividend distribution under the Proposal, which would have otherwise been payable to them on their proven claims, to allow for a maximum realization to the proven arm’s length creditors.⁹

⁷ Report at [para 35](#).

⁸ Report at [para 38](#).

⁹ Report at [paras 36, 39-41](#).

iii. Employees

18. When the Company ceased operations in early September, 2023, it terminated 30 of its 35 employees. The remaining five employees were kept on to assist with the wind-down of operations and transitioning of the loan portfolios to an alternative service provider. These remaining employees have subsequently also been terminated.¹⁰

19. The wages, vacation pay and preferred claims of the Company's former employees (the "**Former Employees**") have been paid. However payment of any termination pay and severance, if applicable, owing to the Former Employees will be claimed pursuant to *WEPPA* should the Court order that the Former Employees are eligible to receive such payments.¹¹

B. Creditors' Acceptance of the Proposal

20. The Proposal was filed with the Official Receiver on November 1, 2023. On November 9, 2023, the Proposal Trustee sent a report to every known creditor affected by the Proposal, which included: (i) a formal notice of meeting of creditors; (ii) a copy of the Proposal; (iii) the Company's Statement of Affairs, including a list of creditors; (iii) a Proof of Claim form and general proxy; and (iv) a voting letter. The Proposal Trustee prepared and provided a report to creditors, setting out the Proposal Trustee's understanding, after appropriate inquiries, of the liabilities of the Company, the Company's assets, and the value thereof, the Company's conduct and the causes of the Company's insolvency (the "**Trustee's Report to Creditors**").¹²

21. The First Meeting was presided over by the Proposal Trustee as Chairperson. The Proposal Trustee reported to the meeting on its investigation of the Company's affairs. A vote was taken,

¹⁰ Report at [paras 46, 47](#).

¹¹ Report at [para 47](#).

¹² Report at [paras 13-15](#); see Appendices V, VI, Motion Record [Tabs 3\(E\), 3\(F\)](#).

and the Proposal was accepted by all eligible creditors voting in person or by proxy, and thus accepted by the majorities required by the *BIA*.¹³

C. Summary of the Proposal

22. The purpose of the Proposal is to complete a wind-down of the business of the Company and to provide all affected creditors a greater benefit than would result from a bankruptcy of the Company.

23. The Proposal will be funded by 2164155 Ontario Inc. (the “**Sponsor**”), a corporation owned by one of the Company’s directors. The Sponsor will pay to the Proposal Trustee:

- (a) \$250,000 immediately after Court approval of the Proposal (the “**Funded Proposal Payment**”) which the Proposal Trustee shall use to pay:
 - (i) the fees and expenses of the Proposal Trustee and its counsel and of the Company’s counsel relating to the preparation and facilitation of the Proposal;
 - (ii) any proven non-employee claims afforded priority under subsection 136(1) of the *BIA*;
 - (iii) part of the proven unsecured claims, on a *pro rata* basis, in that order; plus
- (b) the amount of the claims by Former Employees payable in priority under paragraph 136(1)(d) of the *BIA*, if any, immediately after Court approval of the Proposal, which the Trustee will then immediately pay over to the entitled Former Employees; and plus

¹³ Report at [paras 16, 27](#).

(c) the amount of claims of His Majesty in right of Canada or any Province of the kinds contemplated by section 60(1.1) of the *BIA* that were outstanding as at the Filing Date, if any, to the Proposal Trustee to be remitted by the Proposal Trustee, all within six months after Court approval of the Proposal.¹⁴

24. There will be no distributions under the Proposal to equity holders or to the Non-Participating Creditors.¹⁵

25. In consideration of the Sponsor funding the Proposal, all existing shares of the Company shall be cancelled and retired; and the Company will issue one hundred new common shares to the Sponsor, representing 100% of the issued and outstanding shares of the Company.¹⁶

26. Upon the implementation date of the Proposal, all affected creditors will be deemed to have waived the Company's defaults and will have their pre-filing claims released, leaving only the Company's obligations under the Proposal.¹⁷

D. Conduct of the Company

27. The Proposal Trustee is not aware of the Company having committed any of the offenses mentioned in sections 198 to 200 of the *BIA*.¹⁸

28. The realizable assets of the Company are not of a value equal to fifty cents on the dollar on the amount of the Company's unsecured liabilities which would be a fact listed in section 173 of the *BIA*.¹⁹ This fact is, however, not due to circumstance for which the Company can justly be held responsible but rather is due to external economic factors and the foreclosure by Westlake.²⁰

¹⁴ Proposal at [paras 14-18, 22, 23](#), Motion Record [Tab 3\(B\)](#).

¹⁵ Proposal at [paras 20, 25](#).

¹⁶ Proposal at [para 27](#).

¹⁷ Proposal at [paras 44, 47](#).

¹⁸ Report at [para 61](#).

¹⁹ Report at [para 60](#).

²⁰ Report at [para 61](#).

PART III – ISSUES

29. There are two issues in this motion, these being whether this Honourable Court should:
- (a) approve the Proposal; and
 - (b) declare the Former Employees to be eligible for payments pursuant to *WEPPA*.

PART IV – LAW AND ARGUMENT

A. The Creditors have Voted in Favour of the Amended Proposal

30. Pursuant to paragraph 54(2)(d) of the *BIA*, a proposal is deemed to be accepted by the creditors if it has achieved the requisite "double majority" voting threshold at a duly constituted meeting of creditors, which, in the case of the Proposal, was met due to unanimous approval.

B. The Proposal should be Approved

31. The *BIA* requires that the Proposal Trustee apply to the Court in order for the Court to sanction the proposal. At the Court hearing, s. 59(2) of the *BIA* provides that the Court shall refuse to approve a proposal only where its terms (a) are not reasonable; or (b) are not calculated to benefit the general body of creditors.²¹

32. In order to satisfy the test set out in s. 59(2) of the *BIA*, the courts have held that the following three-pronged test must be satisfied:

- (a) the proposal is reasonable;
- (b) the proposal is calculated to benefit the general body of creditors; and
- (c) the proposal is made in good faith.²²

²¹ *BIA* s 59(2).

²² *BIA*, s 59(2); *Kitchener Frame Limited (Re)*, 2012 ONSC 234, at paras 19-21 [*"Kitchener Frame"*].

33. In *Kitchener Frame Limited (Re)* ("***Kitchener Frame***"), Justice Morawetz, as he then was, stated as follows in respect of the test to be met under s. 59(2) of the *BIA*:

The first two factors are set out in s. 59(2) of the *BIA* while the last factor has been implied by the court as an exercise of its equitable jurisdiction. The courts have generally taken into account the interests of the debtor, the interests of the creditors and the interests of the public at large in the integrity of the bankruptcy system.²³

34. Justice Morawetz also noted that in considering the approval of a proposal, courts have accorded substantial deference to (i) the majority vote of creditors at a meeting of creditors; and (ii) the recommendation of the proposal trustee.²⁴

35. The Proposal Trustee is of the opinion that the Proposal is advantageous for the creditors of the Company for the following reasons:

- (a) because the Company has no remaining assets and the Proposal is being funded by the Sponsor, the Proposal provides for a distribution to the creditors which exceeds what would be otherwise available from a bankruptcy;
- (b) the Proposal is calculated to benefit the general body of the creditors of the Company; and
- (c) the affected creditors represented at the First Meeting voted unanimously to accept the Proposal.

²³ [Kitchener Frame](#) at [para 20](#).

²⁴ [Kitchener Frame](#) at [para 21](#).

36. With respect to the requirement of the Proposal being made in good faith, the debtor must satisfy the Court that it has provided full disclosure to its creditors of its assets and encumbrances against such assets.²⁵

37. The Proposal Trustee submits that the Proposal was made by the Company in good faith. The Proposal was developed and refined by the Company and the Proposal Trustee, and was distributed to the creditors over ten days before the First Meeting was to be held. At the First Meeting of the Creditors, the Proposal was subject to discussions before the vote was called. Furthermore, information regarding the Company's *BIA* proposal proceedings has been disseminated through the Proposal Trustee's website and through mailings to known creditors.²⁶

38. Subsection 59(3) of the *BIA* states:

Where any of the facts mentioned in section 173 are proved against the debtor, the court shall refuse to approve the proposal unless it provides reasonable security for the payment of not less than fifty cents on the dollar on all the unsecured claims provable against the debtor's estate or such percentage thereof as the court may direct.²⁷

39. Among the facts listed in 173 is the following, in paragraph 173(1)(a):

The assets of the bankrupt are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities, unless the bankrupt satisfies the court that the fact that the assets are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities has arisen from circumstances for which the bankrupt cannot justly be held responsible.²⁸

40. Since the Company effectively has no assets, its assets are of a value less than fifty percent of the Company's unsecured liabilities. However, this fact has arisen from circumstances for

²⁵ *Kitchener Frame* at paras 35-36.

²⁶ Report at paras 13, 18, 44.

²⁷ *BIA*, s 59(3).

²⁸ *BIA*, s 173(1)(a).

which the Company cannot justly be held responsible including: (a) a significant and rapid rise in interest rates; (b) increasing defaults in the loan portfolios; (c) the negative effect of rising interest rates on new loan origination; and (d) the increasing cost of funding. In the end, when Westlake moved its portfolio to another loan service provider and enforced the security it purchased from Cortland, the Company was left with no assets.²⁹

41. The Proposal Trustee therefore submits that the fact listed in *BIA* paragraph 173(1)(a) does not exist and, as a result, subsection 59(3) of the *BIA* is not engaged.

42. In the alternative, if the Company can justly be held responsible for not having assets of a value equal to fifty percent of the amount of its unsecured liabilities, and if subsection 59(3) is therefore engaged, the Court should consider whether to exercise its discretion under subsection 59(3) to allow a percentage less than 50 cents on the dollar given that the Funded Proposal Payment will come from outside the estate and would not be available to the unsecured creditors in a bankruptcy.³⁰

C. Eligibility under *WEPPA*

43. Pursuant to subsection 5(5) of *WEPPA*, as a result of having filed a proposal under Division I of Part III of the *BIA*, the Company can seek a declaration regarding the eligibility of the Former Employees under *WEPPA*.³¹

44. In the context of a *BIA* Division I proposal, eligibility under *WEPPA* is established under subsections 5(1) and 5(5) as follows (emphasis added):

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

²⁹ Report at [para 61](#).

³⁰ See [In the Matter of the Proposal to Creditors of Conforti Holdings Limited](#), 2022 ONSC 5420 at [paras 43](#), [50](#) and [60](#).

³¹ *WEPPA*, [s 5\(5\)](#).

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

(b) one of the following applies:

[. . .]

(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.

[. . .]

(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.³²

45. The criteria cited in subsection 5(1)(a) of *WEPPA* are those prescribed in section 3 of the *WEPP Regulations* (emphasis added):

3 An individual's employment has ended for the purposes of paragraph 5(a) [*sic*] of the Act if it has ended for any of the following reasons:

(a) the individual resigned or retired;

(b) the individual's employment has terminated; or

(c) the term of the individual's employment has expired.³³

46. The criteria cited in subsection 5(5) of *WEPPA* is that prescribed in section 3.2 of the *WEPP Regulations*:

³² *WEPPA*, ss 5(1) and 5(5).

³³ *WEPP Regulations*, s 3.

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.³⁴

47. The Company is the subject of proceedings under Division I of Part III of the *BIA* and all of the Company's employees have been terminated.³⁵ This Honourable Court should therefore, on this motion by the Proposal Trustee under subsection 5(5) of *WEPPA*, determine and declare that the Company meets the criteria prescribed by regulation for the Former Employees to receive payments under the Wage Earner Protection Program.

D. Conclusion

48. The Proposal Trustee is of the view that the Proposal has been made by the Company in good faith and maximizes the recovery for the creditors. The Proposal has been unanimously approved by the voting creditors. The Proposal Trustee submits that the Proposal satisfies the test set out under s. 59(2) of the *BIA* and complies with the requirements as set out in section 60 of the *BIA*. Accordingly, the Proposal Trustee recommends that the Proposal be sanctioned by the Court.

49. Furthermore, the Proposal Trustee submits that the Company meets the criteria set by *WEPPA* for the Former Employees to receive payments under the Wage Earner Protection Program.

PART V – ORDER SOUGHT

50. The Proposal Trustee respectfully requests that this Court issue an Order, among other things:

³⁴ WEPP Regulations, [s 3.2](#).

³⁵ Report at [paras 46, 47](#).

- (a) approving the Proposal; and
- (b) declaring the Former Employees eligible for payments pursuant to *WEPPA*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of December, 2023.



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SCHEDULE “A” – AUTHORITIES CITED

1.	<i>Kitchener Frame Limited (Re)</i> , 2012 ONSC 234
2.	<i>In the Matter of the Proposal to Creditors of Conforti Holdings Limited</i> , 2022 ONSC 5420

SCHEDULE “B” – LEGISLATION CITED

Bankruptcy and Insolvency Act, RSC 1985, C. B-3, as amended

Notice of intention

50.4 (1) Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person’s locality, stating

- (a) the insolvent person’s intention to make a proposal,
- (b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
- (c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor’s books,

and attaching thereto a copy of the consent referred to in paragraph (b).

Vote on proposal by creditors

54 (1) The creditors may, in accordance with this section, resolve to accept or may refuse the proposal as made or as altered at the meeting or any adjournment thereof.

Voting system

(2) For the purpose of subsection (1),

- (a) the following creditors with proven claims are entitled to vote:
 - (i) all unsecured creditors, and
 - (ii) those secured creditors in respect of whose secured claims the proposal was made;
- (b) the creditors shall vote by class, according to the class of their respective claims, and for that purpose
 - (i) all unsecured claims constitute one class, unless the proposal provides for more than one class of unsecured claim, and
 - (ii) the classes of secured claims shall be determined as provided by subsection 50(1.4);
- (c) the votes of the secured creditors do not count for the purpose of this section, but are relevant only for the purpose of subsection 62(2); and
- (d) the proposal is deemed to be accepted by the creditors if, and only if, all classes of unsecured creditors — other than, unless the court orders otherwise, a class of creditors having equity claims — vote for the acceptance of the proposal by a majority in number

and two thirds in value of the unsecured creditors of each class present, personally or by proxy, at the meeting and voting on the resolution.

Court to hear report of trustee, etc.

59 (1) The court shall, before approving the proposal, hear a report of the trustee in the prescribed form respecting the terms thereof and the conduct of the debtor, and, in addition, shall hear the trustee, the debtor, the person making the proposal, any opposing, objecting or dissenting creditor and such further evidence as the court may require.

Court may refuse to approve the proposal

(2) Where the court is of the opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal, and the court may refuse to approve the proposal whenever it is established that the debtor has committed any one of the offences mentioned in sections 198 to 200.

Reasonable security

(3) Where any of the facts mentioned in section 173 are proved against the debtor, the court shall refuse to approve the proposal unless it provides reasonable security for the payment of not less than fifty cents on the dollar on all the unsecured claims provable against the debtor's estate or such percentage thereof as the court may direct.

Court may order amendment

(4) If a court approves a proposal, it may order that the debtor's constating instrument be amended in accordance with the proposal to reflect any change that may lawfully be made under federal or provincial law.

60 (1) No proposal shall be approved by the court that does not provide for the payment in priority to other claims of all claims directed to be so paid in the distribution of the property of a debtor and for the payment of all proper fees and expenses of the trustee on and incidental to the proceedings arising out of the proposal or in the bankruptcy.

Certain Crown claims

(1.1) Unless Her Majesty consents, no proposal shall be approved by the court that does not provide for the payment in full to Her Majesty in right of Canada or a province, within six months after court approval of the proposal, of all amounts that were outstanding at the time of the filing of the notice of intention or of the proposal, if no notice of intention was filed, and are of a kind that could be subject to a demand under

(a) subsection 224(1.2) of the Income Tax Act;

(b) any provision of the Canada Pension Plan or of the Employment Insurance Act that refers to subsection 224(1.2) of the Income Tax Act and provides for the collection of a contribution, as defined in the Canada Pension Plan, an employee's premium, or

employer's premium, as defined in the Employment Insurance Act, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the Income Tax Act, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Income Tax Act, or

(ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

Idem

(1.2) No proposal shall be approved by the court if, at the time the court hears the application for approval, Her Majesty in right of Canada or a province satisfies the court that the debtor is in default on any remittance of an amount referred to in subsection (1.1) that became due after the filing

(a) of the notice of intention; or

(b) of the proposal, if no notice of intention was filed.

Proposals by employers

(1.3) No proposal in respect of an employer shall be approved by the court unless

(a) it provides for payment to the employees and former employees, immediately after court approval of the proposal, of amounts at least equal to the amounts that they would be qualified to receive under paragraph 136(1)(d) if the employer became bankrupt on the date of the filing of the notice of intention, or proposal if no notice of intention was filed, as well as wages, salaries, commissions or compensation for services rendered after that date and before the court approval of the proposal, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the bankrupt's business during the same period; and

(b) the court is satisfied that the employer can and will make the payments as required under paragraph (a).

Voting on proposal

(1.4) For the purpose of voting on any question relating to a proposal in respect of an employer, no person has a claim for an amount referred to in paragraph (1.3)(a).

Proposals by employers — prescribed pension plans

(1.5) No proposal in respect of an employer who participates in a prescribed pension plan for the benefit of its employees shall be approved by the court unless

(a) the proposal provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that was required to be paid by the employer to the fund, and

(A.1) an amount equal to the sum of all special payments, determined in accordance with section 9 of the Pension Benefits Standards Regulations, 1985, that were required to be paid by the employer to the fund referred to in sections 81.5 and 81.6 to liquidate an unfunded liability or a solvency deficiency,

(A.2) any amount required to liquidate any other unfunded liability or solvency deficiency of the fund as determined at the time of the filing of the notice of intention or of the proposal, if no notice of intention was filed,

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the Pension Benefits Standards Act, 1985,

(C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the Pooled Registered Pension Plans Act, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(A.1) an amount equal to the sum of all special payments, determined in accordance with section 9 of the Pension Benefits Standards Regulations, 1985, that would have been required to be paid by the employer to the fund referred to in sections 81.5 and 81.6 to liquidate an unfunded liability or a solvency deficiency if the prescribed plan were regulated by an Act of Parliament,

(A.2) any amount required to liquidate any other unfunded liability or solvency deficiency of the fund as determined at the time of the filing of the notice of intention or of the proposal, if no notice of intention was filed,

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the Pension Benefits Standards Act, 1985, if the prescribed plan were regulated by an Act of Parliament,

(C) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the Pooled Registered Pension Plans Act; and

(b) the court is satisfied that the employer can and will make the payments as required under paragraph (a).

Non-application of subsection (1.5)

(1.6) Despite subsection (1.5), the court may approve a proposal that does not allow for the payment of the amounts referred to in that subsection if it is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, respecting the payment of those amounts.

Payment — equity claims

(1.7) No proposal that provides for the payment of an equity claim is to be approved by the court unless the proposal provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

Payment to trustee

(2) All moneys payable under the proposal shall be paid to the trustee and, after payment of all proper fees and expenses mentioned in subsection (1), shall be distributed by him to the creditors.

Distribution of promissory notes, stock, etc., of debtor

(3) Where the proposal provides for the distribution of property in the nature of promissory notes or other evidence of obligations by or on behalf of the debtor or, when the debtor is a corporation, shares in the capital stock of the corporation, the property shall be dealt with in the manner prescribed in subsection (2) as nearly as may be.

Section 147 applies

(4) Section 147 applies to all distributions made to the creditors by the trustee pursuant to subsection (2) or (3).

Power of court

(5) Subject to subsections (1) to (1.7), the court may either approve or refuse to approve the proposal.

Trustee shall examine proof

135 (1) The trustee shall examine every proof of claim or proof of security and the grounds therefor and may require further evidence in support of the claim or security.

Determination of provable claims

(1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

Priority of claims

136 (1) Subject to the rights of secured creditors, the proceeds realized from the property of a bankrupt shall be applied in priority of payment as follows:

(a) in the case of a deceased bankrupt, the reasonable funeral and testamentary expenses incurred by the legal representative or, in the Province of Quebec, the successors or heirs of the deceased bankrupt;

(b) the costs of administration, in the following order,

(i) the expenses and fees of any person acting under a direction made under paragraph 14.03(1)(a),

(ii) the expenses and fees of the trustee, and

(iii) legal costs;

(c) the levy payable under section 147;

(d) the amount of any wages, salaries, commissions, compensation or disbursements referred to in sections 81.3 and 81.4 that was not paid;

(d.01) the amount equal to the difference a secured creditor would have received but for the operation of sections 81.3 and 81.4 and the amount actually received by the secured creditor;

(d.02) the amount equal to the difference a secured creditor would have received but for the operation of sections 81.5 and 81.6 and the amount actually received by the secured creditor;

(d.1) claims in respect of debts or liabilities referred to in paragraph 178(1)(b) or (c), if provable by virtue of subsection 121(4), for periodic amounts accrued in the year before the date of the bankruptcy that are payable, plus any lump sum amount that is payable;

(e) municipal taxes assessed or levied against the bankrupt, within the two years immediately preceding the bankruptcy, that do not constitute a secured claim against the real property or immovables of the bankrupt, but not exceeding the value of the interest or, in the Province of Quebec, the value of the right of the bankrupt in the property in respect of which the taxes were imposed as declared by the trustee;

(f) the lessor for arrears of rent for a period of three months immediately preceding the bankruptcy and accelerated rent for a period not exceeding three months following the bankruptcy if entitled to accelerated rent under the lease, but the total amount so payable shall not exceed the realization from the property on the premises under lease, and any payment made on account of accelerated rent shall be credited against the amount payable by the trustee for occupation rent;

(g) the fees and costs referred to in subsection 70(2) but only to the extent of the realization from the property exigible thereunder;

(h) in the case of a bankrupt who became bankrupt before the prescribed date, all indebtedness of the bankrupt under any Act respecting workers' compensation, under any Act respecting unemployment insurance or under any provision of the Income Tax Act creating an obligation to pay to Her Majesty amounts that have been deducted or withheld, rateably;

(i) claims resulting from injuries to employees of the bankrupt in respect of which the provisions of any Act respecting workers' compensation do not apply, but only to the extent of moneys received from persons guaranteeing the bankrupt against damages resulting from those injuries; and

(j) in the case of a bankrupt who became bankrupt before the prescribed date, claims of the Crown not mentioned in paragraphs (a) to (i), in right of Canada or any province, rateably notwithstanding any statutory preference to the contrary.

173 (1) The facts referred to in section 172 are:

(a) the assets of the bankrupt are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities, unless the bankrupt satisfies the court that the fact that the assets are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities has arisen from circumstances for which the bankrupt cannot justly be held responsible;

(b) the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by the bankrupt and as sufficiently disclose the business transactions and financial position of the bankrupt within the period beginning on the day that is three years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included;

(c) the bankrupt has continued to trade after becoming aware of being insolvent;

(d) the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet the bankrupt's liabilities;

(e) the bankrupt has brought on, or contributed to, the bankruptcy by rash and hazardous speculations, by unjustifiable extravagance in living, by gambling or by culpable neglect of the bankrupt's business affairs;

(f) the bankrupt has put any of the bankrupt's creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against the bankrupt;

(g) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, incurred unjustifiable expense by bringing a frivolous or vexatious action;

(h) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, when unable to pay debts as they became due, given an undue preference to any of the bankrupt's creditors;

(i) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, incurred liabilities in order to make the bankrupt's assets equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities;

(j) the bankrupt has on any previous occasion been bankrupt or made a proposal to creditors;

(k) the bankrupt has been guilty of any fraud or fraudulent breach of trust;

(l) the bankrupt has committed any offence under this Act or any other statute in connection with the bankrupt's property, the bankruptcy or the proceedings thereunder;

(m) the bankrupt has failed to comply with a requirement to pay imposed under section 68;

(n) the bankrupt, if the bankrupt could have made a viable proposal, chose bankruptcy rather than a proposal to creditors as the means to resolve the indebtedness; and

(o) the bankrupt has failed to perform the duties imposed on the bankrupt under this Act or to comply with any order of the court.

Bankruptcy offences

198 (1) Any bankrupt who

(a) makes any fraudulent disposition of the bankrupt's property before or after the date of the initial bankruptcy event,

(b) refuses or neglects to answer fully and truthfully all proper questions put to the bankrupt at any examination held pursuant to this Act,

(c) makes a false entry or knowingly makes a material omission in a statement or accounting,

(d) after or within one year immediately preceding the date of the initial bankruptcy event, conceals, destroys, mutilates, falsifies, makes an omission in or disposes of, or is privy to the concealment, destruction, mutilation, falsification, omission from or disposition of, a book or document affecting or relating to the bankrupt's property or affairs, unless the bankrupt had no intent to conceal the state of the bankrupt's affairs,

(e) after or within one year immediately preceding the date of the initial bankruptcy event, obtains any credit or any property by false representations made by the bankrupt or made by any other person to the bankrupt's knowledge,

(f) after or within one year immediately preceding the date of the initial bankruptcy event, fraudulently conceals or removes any property of a value of fifty dollars or more or any debt due to or from the bankrupt, or

(g) after or within one year immediately preceding the date of the initial bankruptcy event, hypothecates, pawns, pledges or disposes of any property that the bankrupt has obtained on credit and has not paid for, unless in the case of a trader the hypothecation, pawning, pledging or disposing is in the ordinary way of trade and unless the bankrupt had no intent to defraud,

is guilty of an offence and is liable, on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both, or on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

Failure to comply with duties

(2) A bankrupt who, without reasonable cause, fails to comply with an order of the court made under section 68 or to do any of the things required of the bankrupt under section 158 is guilty of an offence and is liable

(a) on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both; or

(b) on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

Failure to disclose fact of being undischarged

199 An undischarged bankrupt who

(a) engages in any trade or business without disclosing to all persons with whom the undischarged bankrupt enters into any business transaction that the undischarged bankrupt is an undischarged bankrupt, or

(b) obtains credit to a total of \$1,000 or more from any person or persons without informing them that the undischarged bankrupt is an undischarged bankrupt,

is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Bankrupt failing to keep proper books of account

200 (1) Any person becoming bankrupt or making a proposal who has on any previous occasion been bankrupt or made a proposal to the person's creditors is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both, if

(a) being engaged in any trade or business, at any time within the period beginning on the day that is two years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, that person has not kept and preserved proper books of account; or

(b) within the period mentioned in paragraph (a), that person conceals, destroys, mutilates, falsifies or disposes of, or is privy to the concealment, destruction, mutilation, falsification or disposition of, any book or document affecting or relating to the person's property or affairs, unless the person had no intent to conceal the state of the person's affairs.

Proper books of account defined

(2) For the purposes of this section, a debtor shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, also accounts of all goods sold and purchased, and statements of annual and other stock-takings.

Wage Earner Protection Program Act, SC 2005, c 47

Conditions of eligibility

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

- (a)** the individual's employment ended for a reason prescribed by regulation;
- (b)** one of the following applies:
 - (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.

Prescribed criteria — other proceedings

(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.

Wage Earner Protection Program Regulations, SOR/2008-222

Termination of Employment

3 An individual's employment has ended for the purposes of [paragraph 5\(a\)](#) of the [Act](#) if it has ended for any of the following reasons:

- (a) the individual resigned or retired;
- (b) the individual's employment has terminated; or
- (c) the term of the individual's employment has expired.

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

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF SOURCE ONE FINANCIAL CORPORATION**

Court File No: BK-23-02995640-0032
Estate File No: 32-2995640

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

Proceedings commenced at Toronto

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