

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

ASSOCIATE JUSTICE RAPPOS)

)

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TUESDAY, THE 14TH DAY

OF NOVEMBER, 2023

**IN THE MATTER OF THE PROPOSAL OF
2359374 ONTARIO INC.
OF THE TOWN OF WHITBY
IN THE PROVINCE OF ONTARIO**

**ORDER APPROVING PROPOSAL
(Section 60(5))
(Division I – Part III)**

UPON application by the proposal trustee, Dodick Landau Inc. (the “**Proposal Trustee**”), and upon reading the report of the Proposal Trustee dated June 16, 2023 (the “**Report**”), and the Court being satisfied that the required majority of creditors have duly accepted the Amended Proposal by 2359374 ONTARIO INC. dated August 23, 2023 (the “**Proposal**”) attached as Appendix “A” as amended and being satisfied that the said terms are reasonable and calculated to benefit the general body of creditors and that no offences or facts have been proven to justify the Court withholdings its approval,

1. **THIS COURT ORDERS** that the Proposal be and hereby is approved.



APPENDIX A

District of Ontario
Division No.: 09 – Toronto
Estate No. 31-2891308

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE PROPOSAL OF 2359374 ONTARIO INC.
OF THE TOWN OF WHITBY, IN THE PROVINCE OF ONTARIO

PROPOSAL (AMENDED)
(August 23, 2023)

2359374 Ontario Inc. hereby submits the following Proposal under Part III of the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3*.

PART I
INTERPRETATION

Definitions

1. In this Proposal:
 - (a) “Act” means the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3*, as amended.
 - (b) “Administrative Fees and Expenses” means the fees and expenses of the Trustee incidental to the NOI and the preparation and facilitation of the Proposal and any amendments thereto, including, without limitation, fees incurred by the Trustee in the administration of the Funded Proposal Payments, and the legal fees and expenses incurred by the Trustee and the Company before and following execution, acceptance and approval of this Proposal and in connection with the NOI and the preparation of this Proposal, as well as advice to the Company in connection therewith;
 - (c) “Affected Creditors” means those Creditors of the Company forming Class 1, as defined in Part III of this Proposal;
 - (d) “Approval Order” means an order of the Court approving this Proposal, to be granted pursuant to the provisions of the Act, the appeal period having

expired, and no appeal having been filed or any appeal therefrom having been dismissed and such dismissal having become final;

- (e) “Bankruptcy Reserve” means a reserve amount of \$15,000 to be held by the Trustee as security for the administrative costs of the bankruptcy of the Company, in the event that this Proposal is annulled, and the Company becomes bankrupt;
- (f) “Business Day” means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;
- (g) “Certificate of Full Performance” means the certificate that the Trustee issues to the Company and to the Official Receiver pursuant to Section 65.3 of the Act;
- (h) “Claim” means any right of any Person with indebtedness, liability or obligation of any kind against the Company which indebtedness, liability or obligation is in existence at the Date of Filing, whether or not reduced to judgement, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by surety or otherwise and whether or not such a right is executory in nature including, without limitation, the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause, chose in action, whether existing at present or commenced in the future based in whole or in part on facts which exist prior to or at the time of Date of Filing;
- (i) “Company” means 2359374 Ontario Inc.
- (j) “Court” means the Ontario Superior Court of Justice (In Bankruptcy and Insolvency);
- (k) “Court Approval Date” means the date on which the Approval Order is issued;
- (l) “Creditors” means any Person having a Claim;
- (m) “Creditors Meeting” means the meeting of the Affected Creditors called for the purpose of considering and voting upon this Proposal;
- (n) “Crown Claims” means Claims of Her Majesty in right of Canada or any province of all amounts of a kind contemplated by section 60(1.1) of the Act;
- (o) “Date of Filing” means December 5, 2022, the date on which the Company filed the NOI;

- (p) “Employee Preferred Claim” means a Claim by a current or former employee of the Company, or such portion of such Claim, that would be payable in priority under Subsection 136(1) of the Act;
- (q) “Effective Date” means 10 calendar days from the date of the Approval Order, unless the Approval Order is appealed, in which case the Effective Date means the later of: (i) one Business Day after the full and final determination of the appeal; and (ii) the expiry of any further appeal periods;
- (r) “Event of Default” has the meaning given to it in Part VIII of this Proposal;
- (s) “Funded Proposal Payments” shall mean funds which will be advanced to the Trustee for distribution, as set out and defined in Paragraph 16 hereof;
- (t) “Inspectors” means the inspectors appointed pursuant to Part X of this Proposal;
- (u) “Levy” means the levy imposed by the Superintendent of Bankruptcy under the Act;
- (v) “Maturity Date” means the date on which all payments to the Creditors have been made and the Certificate of Full Performance has been issued by the Trustee to the Company, provided that no Event of Default has occurred that has not been cured or waived;
- (w) “NOI” means the Notice of Intention to Make a Proposal filed by the Company on December 5, 2022;
- (x) “Person” means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or instrumentality thereof, or any other entity howsoever designated or constituted;
- (y) “Post-Filing Crown Claims” means all Crown Claims that became due or shall become due on or after the Date of Filing;
- (z) “Post-Filing Goods and Services” means the goods supplied, services rendered, and other consideration given or provided to the Company on or after the Date of Filing;
- (aa) “Pre-Filing Crown Claims” means all Crown Claims that were outstanding as at the Date of Filing;
- (bb) “Preferred Claim” means any claim that is afforded priority under Section 136(1) of the Act;

- (cc) “Preferred Creditor” means any Unsecured Creditor holding a Preferred Claim, solely in respect to that Preferred Claim;
- (dd) “Proposal” means this proposal dated January 4, 2023 together with any amendments or additions thereto;
- (ee) “Proposal Period” means the period between the Court Approval Date and the Maturity Date;
- (ff) “Proven” as used in relation to any Claim means such Claim as finally accepted or determined by the Trustee in accordance with the provisions of the Act and this Proposal, subject to the Creditor’s right of appeal to Court, the Court’s determination of that Claim or any applicable appeal periods having expired and no appeal having been made;
- (gg) “Related Party Claim” shall mean a claim by any person that is related to the Company within the meaning of the Act;
- (hh) “Secured Claim” means any Claim by a Secured Creditor, excluding the Crown Claims;
- (ii) “Secured Creditor” means a Person holding a mortgage, hypothec, pledge, charge, lien or privilege on or against the property of the Company or any part thereof as security for a Claim, but excludes the Canada Revenue Agency to the extent of its Crown Claims;
- (jj) “Trustee” means Dodick Landau Inc., solely in its capacity as proposal trustee of the Company;
- (kk) “Unsecured Claim” means the value of any Proven Claim in respect of which no Security is held; and
- (ll) “Unsecured Creditors” means those Persons with Claims in respect of which no security is held, and which is not afforded priority under Section 136(1) of the Act and which is not a Related Party Claim.

Headings

2. The division of this Proposal into parts, paragraphs and subparagraphs, and the insertion of headings herein, is for convenience of reference only and is not to affect the construction or interpretation of this Proposal.

Number, etc.

3. In this Proposal, where the context requires, a word importing the singular includes the plural and vice versa, and a word importing gender includes the masculine, feminine and neuter genders.

Date for Action

4. In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day that is a Business Day.

Accounting Principles

5. Accounting terms not otherwise defined in this Proposal have the meanings assigned to them in accordance with generally accepted Canadian accounting principles.

PART II PURPOSE AND EFFECT OF THIS PROPOSAL

Purpose of Proposal

6. The purpose of this Proposal is to effect a restructuring of the indebtedness of the Company in the manner contemplated herein and as permitted by the Act in the expectation that all Creditors will derive a greater benefit from the restructuring and the continued operation of the business and affairs of the Company than would result from a bankruptcy of the Company. Persons with any Related Party Claims shall be stayed during this Proposal but not participate in any voting nor in any dividends to be made under this proposal. Related Party Claims will no longer be stayed and may be paid by the Company once this Proposal is fully performed as evidenced by a Certificate of Full Performance.

Effect of Proposal

7. During the Proposal Period, and provided that an Event of Default has not occurred and is continuing hereunder, all Creditors and persons with Related Party Claims will be stayed from commencing or continuing any proceeding or remedy against the Corporation or any of its property or assets in respect of a Claim including, without limitation, any proceeding or remedy to recover payment of any monies, to recover or enforce any judgment against the Company in respect of a Claim or to commence any formal proceedings against it other than as provided for under this Proposal.
8. Upon implementation of all elements of this Proposal, and the filing of the Certificate of Full Performance by the Trustee, all Claims other than Related Party Claims against the Company and its directors shall be fully, finally and completely satisfied and released as provided in Paragraphs 37 and 38, below.

**PART III
CLASSIFICATION OF CREDITORS**

9. For the purpose of this Proposal, the Creditors of the Company shall be comprised of single class, consisting of Creditors having Proven Preferred Claims and Unsecured Claims (“Class 1”), which, for greater certainty, shall include Preferred Creditors entitled to vote pursuant to the Act and claims of Her Majesty in right of Canada and any province for all amounts other than Crown Claims, but shall not include persons with Related Party Claims.

**PART IV
SECURED CREDITORS**

10. The Company’s Secured Creditors shall be unaffected by this Proposal.

**PART V
TREATMENT OF VARIOUS CLAIMS,
FUNDING OF PROPOSAL AND DISTRIBUTION**

Crown Claims

11. The Company covenants and agrees to, within six months after the Effective Date, pay in full all amounts that were outstanding at the Date of Filing of a kind that could be subject to a demand under: (i) Subsection 224(1.2) of the ITA; (ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to s.224(1.2) of the *ITA* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee’s premium, or employer’s premium, as defined in the *Employment Insurance Act*, and of any related interest, penalty or other amounts; or (iii) under any substantially similar provision of provincial legislation, including all amounts contemplated by Section 60(1.1) of the Act. This payment of Crown Claims (if any) will be made in addition to the Funded Proposal Payments.
12. At the Date of Filing, according to the Company, it owes the amount of \$54,226.16 to the Canada Revenue Agency for employee source deductions withheld but not remitted, including related penalties and interest calculated up to the Date of Filing.

Employee Preferred Claims

13. As at the date of the filing of the Proposal, there are no known Employee Preferred Claims. All Proven Employee Preferred Claims shall be paid out of additional funds to be delivered by the Company to the Trustee and shall be remitted by the Trustee to the entitled claimants (if any) immediately after the Effective Date.

Preferred Claims (in addition to Employee Preferred Claims)

14. Proven Preferred Claims, other than Employee Preferred Claims (if any), which shall be satisfied pursuant to Paragraph 13 of this Proposal, shall be paid in full, without interest, out of the Funded Proposal Payments, in priority to Proven Unsecured Claims.

Unsecured Claims

15. Proven Unsecured Claims shall be paid out of the Funded Proposal Payments on a *pro rata* basis.

Funding the Proposal

16. The Company's obligation to fund the Funded Proposal Payments shall commence thirty-days following payment in full of the Crown Claims. The Company will cause to be paid to the Trustee monthly payments in the form of cash instalments for 60 months to equal the amount set out in Paragraph 17 of this Proposal (the "Funded Proposal Payments").
17. The Funded Proposal Payments will be made until an amount is paid to the Trustee equal to the lesser of:
 - (i) 20% of the value of the Proven Claims; and
 - (ii) \$60,000.00.

For greater certainty, the amounts set out in this Paragraph 17 shall not include Crown Claims, if any, which Crown Claims will be paid in addition to the payments referred to in this Paragraph.

Distributions

Payment of Employee Preferred Claims

18. Immediately following the Effective Date, the Trustee shall issue distributions out of such funds in respect of all Proven Employee Preferred Claims, if any.

Distributions to Unsecured Creditors

19. Interim distributions will be made to Unsecured Creditors with Proven Unsecured Claims when sufficient Funded Proposal Payments have, in the Trustee's discretion, accumulated to warrant an interim distribution. The Trustee may make an interim distribution at any time and frequency as the Trustee deems appropriate in the Trustee's discretion.
20. The Funded Proposal Payments shall be distributed by the Trustee in the following order of priority:

- (a) first, to the Administrative Fees and Expenses;
- (b) second, to establish the Bankruptcy Reserve, to be held in trust by the Trustee, which amount shall be used to fund the administrative costs of the bankruptcy of the Company in the event that this Proposal is annulled, and the Company becomes bankrupt, failing which such amount shall be distributed in accordance with Subparagraphs 20(c) and 20(d) of this Proposal;
- (c) third, to Proven Claims of Preferred Creditors, other than Employee Preferred Claims which will have been satisfied out of additional funds, without interest (if any); and
- (d) fourth, the balance of the Funded Proposal Payments shall be distributed *pro rata* among all of the Unsecured Creditors on account of Proven Unsecured Claims.

Amendments to Agreements

- 21. Notwithstanding the terms and conditions of all agreements or other arrangements with Creditors entered into before the Date of Filing, provided that no Event of Default has occurred and is continuing hereunder, all such agreements or other arrangements will be deemed to be amended to the extent necessary to give effect to all the terms and conditions of this Proposal. In the event of any conflict or inconsistency between the terms of such agreements or arrangements and the terms of this Proposal, the terms of this Proposal will govern. All Creditors will provide such acknowledgements, agreements, discharges or other documentation as may be necessary to give effect to the intent of this Proposal.

Treatment of Claims

- 22. For purposes of this Proposal, each Creditor holding a Claim will receive the treatment provided for in this Proposal on account of such Claim.

PART VI POST-FILING OBLIGATIONS

Payment of Post-Filing Goods & Services

- 23. During the Proposal Period, all Post-Filing Goods and Services shall be paid in full in the ordinary course of business by the Company.

Post-Filing Crown Claims

- 24. During the Proposal Period, the Company shall remit all Post-Filing Crown Claims as and when due.

Reporting by the Company

25. During the Proposal Period, the Company shall provide to the Trustee every three months commencing on first day of the month following the month in which the Approval Order is issued, a report containing the information set out below:
- (i) a cash flow statement for the Company's business and affairs for the prior three months; and
 - (ii) evidence of Company's filing and remittance of source deductions and HST.

PART VII LEVY, MANDATORY PAYMENTS AND PREFERRED CLAIMS

Levy

26. The Levy, if applicable, shall be deducted by the Trustee from payments to creditors by the Trustee.

Payment of Fees and Expenses

27. The Administrative Fees and Expenses, on and incidental to the proceedings arising out of the Proposal, or in a bankruptcy, if any, shall be paid in priority to the Crown Claims, the Claims of Preferred Creditors, and the Claims of general Unsecured Creditors. The Trustee will be at liberty to withdraw and pay such Administrative Fees and Expenses at any time and from time-to-time subject to final approval by the Registrar in Bankruptcy upon completion of the Proposal. The Trustee's disbursements will be charged in addition to its fees based on the actual costs incurred and/or as allowed by tariff.

Employee Claims

28. As per Part V of this Proposal, all Proven Employee Preferred Claims will be paid in priority to other Claims as soon as reasonably possible after the Effective Date.

Preferred Claims

29. As per Part V of this Proposal, all Proven Preferred Claims (if any) are to be paid without interest in full priority to all Claims of the Unsecured Creditors including, without limitation, any entitlement of the Unsecured Creditors to the payments to be made under Part V of this Proposal.

**PART VIII
EVENTS OF DEFAULT**

30. The following events will constitute Events of Default for purposes of section 63 of the Act and otherwise under this Proposal:
- (a) the non-payment by the Company of any of its obligations hereunder within thirty (30) days after written notice has been given by the Trustee that such payment is past due; and
 - (b) the breach or failure by the Company to observe and perform any other covenant and provision of this Proposal, other than payment as provided for in Subparagraph 30(a) hereof which is not remedied within thirty (30) days after written notice thereof has been given to the Company by the Trustee.

**PART IX
TRUSTEE**

31. The Trustee is acting solely in its capacity as proposal trustee under the Act and not in its personal capacity and no officer, director, employee or agent of the Trustee shall incur any obligations or liabilities in connection with this Proposal or in connection with the business or liabilities of the Company.
32. Any payments made by the Trustee to Creditors hereunder shall be made by the Trustee net of any levies payable or due under the Act.

**PART X
INSPECTORS**

Appointment of Inspectors

33. At the Creditors Meeting, the Affected Creditors will be entitled to appoint one or more, but not exceeding five (5) Inspectors in total.

Powers of Inspectors

34. The Inspectors, by way of majority, will have the following powers, but will have no personal liability to the Company or other Creditors:
- (a) the power to extend the dates the Funded Proposal Payments are due under this Proposal;
 - (b) the power to waive any default in the performance of any provision of this Proposal; and

- (c) the power to advise the Trustee in respect of such matters as may be referred to the Inspectors by the Trustee.

PART XI CONDITIONS PRECEDENT

Creditor Approval

35. The Trustee shall call a meeting of the Affected Creditors of the Company to seek creditor approval for the Proposal in the requisite majority in number and value of the classes, as set out in the Act, of each of the classes of creditors described in this Proposal. The performance of this Proposal by the Company shall be conditional upon approval of the Affected Creditors. If the Affected Creditors do not approve the Proposal, the Trustee shall report on the result of the vote as required under section 57 of the Act and the Company shall be deemed bankrupt.

Court Approval

36. In the event the Proposal is approved by the Affected Creditors the Trustee shall, within five (5) days of such approval, apply to the Court for a hearing to seek the Approval Order. The performance of this Proposal by the Company shall be conditional upon the issuance of the Approval Order. In the event that the Court does not approve the Proposal, the Company shall be deemed bankrupt.

PART XII RELEASES

37. As at 12:01 a.m. the Maturity Date, the Company, shall be released and discharged from any and all Claims except for Related Party Claims. This release shall have no force or effect if the Company becomes bankrupt before the terms of the Proposal are fully performed.
38. As of 12:01 a.m. the Maturity Date, each and every present and former director of the Company shall be released from claims against them that arose before the Date of Filing and that relate to the obligations of the Company where such persons are by law liable in their capacity as directors for the payment of such obligations, provided that nothing herein shall release or discharge any director of the Company from any claims coming within the exceptions set out in section 50(14) of the Act. This release shall have no force or effect if the Company becomes bankrupt before the terms of the Proposal are fully performed.


Amnette z/Amnette (Aug 23, 2023 16:39 EDT)


Amnette z/Amnette (Aug 23, 2023 16:39 EDT)

**PART XIII
MISCELLANEOUS**

Related-Party Creditors

39. The following Creditors have agreed, as evidenced by such Creditors' signed confirmation appended hereto as Schedule "A", that (i) they are related to the Company within the meaning of the Act, (ii) they will not file Claims in this Proposal, and (iii) will not participate in distributions to Creditors under this Proposal:
- (a) Annette Zupancic; and
 - (b) 2701402 Ontario Inc.

Preferential Payments

40. Sections 95 to 101 of the Act shall not apply to any dealings by the Company at any time prior to the Date of Filing unless the Company becomes bankrupt before the terms of the Proposal are fully performed. The releases contemplated in Part XII of this Proposal include releases from all claims, actions, or remedies available to Creditors or others pursuant to Sections 95 to 101 of the Act, provided that nothing herein shall release any director of the Company from any claims coming within the exceptions set out in Section 50(14) of the Act.

Consents, Waivers and Agreements

41. On the Effective Date, all Creditors will be deemed to have consented and agreed to all of the provisions of this Proposal in its entirety. For greater certainty, each such Creditor will be deemed to have waived any default by the Company in any provision, express or implied, in any agreement existing between the Creditor and the Company that has occurred on or prior to the Date of Filing, and to have agreed that, to the extent that there is any conflict between the provisions of any such agreement and the provisions of this Proposal, the provisions of this Proposal take precedence and priority and the provisions of any such agreement are amended accordingly.

Further Actions

42. The Company and the Creditors will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of this Proposal and to give effect to the transactions contemplated hereby.

Performance

43. All obligations of the Company under this Proposal will commence as of the Effective Date. All obligations of the Company under this Proposal will be fully

performed for the purposes of Section 65.3 of the Act only upon the Company having made the payments to the Trustee provided for herein and a Certificate of Full Performance is issued by the Trustee to the Company and the Office of the Superintendent of Bankruptcy.

Acceleration of Payments

44. Notwithstanding the payment structure set out in Part V of this Proposal, nothing herein prevents or restricts the Company from accelerating any of the Funded Proposal Payments or from satisfying the full amount of the Funded Proposal Payments in advance of the time period contemplated in Part V of this Proposal.

Binding Effect

45. The provisions of this Proposal will be binding on the Creditors and the Company, and their respective heirs, executors, administrators, successors and assigns, upon issuance of the Approval Order after all appeal periods have expired.

PART XIV ANNULMENT OF PROPOSAL

46. If this Proposal is annulled by an order of the Court, all payments on account of Claims made pursuant to the terms of this Proposal will reduce the Claims of Creditors.

PART XV AMENDMENTS

47. The Company may propose amendments to the Proposal at any time prior to the conclusion of the Creditors Meeting provided that any such amendment does not reduce the rights and benefits given to the Creditors pursuant to the Proposal before such amendment and that any and all amendments shall be deemed to be a part of and incorporated into the Proposal.

DATED at the City of Toronto, in the Province of Ontario, as of this 23rd day of August 2023.

2359374 Ontario Inc.

Per: 
Annette Zupancic (Aug 23, 2023 16:39 EDT)

Name: Annette Zupancic

Title: President

SCHEDULE "A"

CONFIRMATION OF RELATED-PARTY CREDITORS

Pursuant to this Proposal, the following Creditors hereby confirm, acknowledge and agree that they will not file a Claim in this Proposal and will not participate in any distributions to Unsecured Creditors under this Proposal.

Date: August 23, 2023

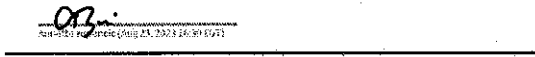
Annette Zupancic


Annette Zupancic (Aug 23, 2023 10:51:03)

Witness:

Date: August 23, 2023

2701402 Ontario Inc


Annette Zupancic (Aug 23, 2023 10:51:03)

Per: Annette Zupancic

Title: President

I have authority to bind the corporation







Proposal of 2359374 Ontario Inc. - Aug 23 23 - Amended - Final

Final Audit Report

2023-08-23

Created:	2023-08-23
By:	Rahn Dodick (rahn.dodick@dodick.ca)
Status:	Signed
Transaction ID:	CBJCHBCAABAAJJGyG_Ctq0Tthu50pd-991-KMtdkyz9K

"Proposal of 2359374 Ontario Inc. - Aug 23 23 - Amended - Final" History

-  Document created by Rahn Dodick (rahn.dodick@dodick.ca)
2023-08-23 - 8:10:17 PM GMT- IP address: 69.158.127.124
-  Document emailed to annette.zupancic@jimmyguacos.com for signature
2023-08-23 - 8:13:17 PM GMT
-  Email viewed by annette.zupancic@jimmyguacos.com
2023-08-23 - 8:38:31 PM GMT- IP address: 72.143.193.207
-  Signer annette.zupancic@jimmyguacos.com entered name at signing as Annette zupancic
2023-08-23 - 8:39:14 PM GMT- IP address: 72.143.193.207
-  Document e-signed by Annette zupancic (annette.zupancic@jimmyguacos.com)
Signature Date: 2023-08-23 - 8:39:16 PM GMT - Time Source: server- IP address: 72.143.193.207
-  Agreement completed.
2023-08-23 - 8:39:16 PM GMT

**IN THE MATTER OF THE PROPOSAL OF 2359374
ONTARIO INC. OF THE TOWN OF WHITBY IN
THE PROVINCE OF ONTARIO**

**Court File No. BK-23-02891305-0031
Estate File No. 31-2891305**

***ONTARIO*
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

ORDER

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