

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF MEDIFOCUS INC. (the "Applicant").**

**FACTUM OF MEDIFOCUS INC.**  
(Re: Continuation Under the *Companies' Creditors' Arrangement Act*)

October 5, 2021

**WEISZ FELL KOUR LLP**  
Royal Bank Plaza, South Tower  
200 Bay Street  
Suite 2305, P.O. Box 120  
Toronto, ON M5J 2J3

**Caitlin Fell** LSO No. 60091H  
cfell@wfklaw.ca  
Tel: 416.613.8282

**Patrick Corney** LSO No. 65462N  
pcorney@wfklaw.ca  
Tel: 416.613.8287

**Shaun Parsons** LSO No. 81240A  
sparsons@wfklaw.ca  
Tel: 416.613.8284

Fax: 416.613.8290

**Lawyers for Medifocus Inc.**

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## **PART I – OVERVIEW**

1. Medifocus Inc. (“**Medifocus**” or the “**Applicant**”) seeks an Order, substantially in the form attached at Tab 4 of the Motion Record (the “**Initial Order**”)<sup>1</sup> that, among other things:
  - a) abridges the time for service of this Motion, validates the manner of service, and declares that this Motion is properly returnable before the Court;
  - b) declares that Medifocus is a company to which the *Companies Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) applies;
  - c) authorizes the continuation under the CCAA of Medifocus’ proposal proceedings commenced under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), on September 8, 2021, pursuant to the Notice of Intention to make a Proposal filed by Medifocus (the “**NOI**”);
  - d) appoints msi Spergel Inc. (the “**Proposed Monitor**” or “**MSI**”) as an officer of this Honourable Court (the “**Court**”) to monitor the business and financial affairs of the Applicant;
  - e) stays all proceedings and enforcement processes taken or that might be taken in respect of Medifocus, the Proposed Monitor, or their respective employees and representatives until January 7, 2022 (the “**Stay of Proceedings**”);
  - f) approves the Sale Process and Stalking Horse Bid, and detailed in the Tong Affidavit (as defined below);

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<sup>1</sup> Proposed form of Draft Order, [Motion Record of Medifocus Inc. \(Returnable October 7, 2021\)](#), at Tab 4, Record page 244 (PDF page 247).

- g) approves a debtor-in-possession credit facility term sheet (the “**DIP Term Sheet**”), pursuant to which Medifocus will obtain DIP financing up to a maximum of \$700,000; and
- h) grants the following charges over the property of Medifocus, listed in order of priority:

**First** – Administration Charge (to the maximum amount of \$200,000); and

**Second** – DIP Lender’s Charge (to the maximum amount of \$700,000).

- 2. Such further and other relief as may be requested and this Honorable Court deems just.
- 3. For the reasons described within, the above relief should be granted. In summary:
  - a) Relief under the CCAA is appropriate: Medifocus is an Ontario company with greater than \$5 million in debt that is both balance sheet and cash flow insolvent, and conversion of its NOI proceedings to the CCAA will maximize stakeholder value without prejudice to any stakeholder;
  - b) The Proposed Monitor should be appointed: MSI is a licenced insolvency trustee that meets the requirements set out in section 11.7 of the CCAA;
  - c) A stay of proceedings until January 7, 2022 is appropriate: Medifocus has acted and is acting in good faith and with due diligence. The customary 10-day stay granted in connection with an initial order under the CCAA is not required in these circumstances. A stay of proceedings is already in place as a result of the NOI, and it is proposed that the BIA proceedings be taken up and continued under the CCAA pursuant to section 11.6 of the CCAA. The Honourable Justices Hainey and Gilmore have used their

discretion to dispense with the 10-day stay in previous BIA proposal conversions. Further, the policy rationale behind the brief 10 day stay on an initial application is not engaged or relevant in these circumstances: this is not an *ex parte* motion; sufficient notice to creditors of this motion has been provided and a rapid comeback hearing is not necessary to prevent misuse of the initial order. Moreover, the Proposed Monitor supports the requested Stay of Proceedings;

- d) The Sale Process and Stalking Horse Bid should be approved: the factors set out in section 36 (3) of the CCAA and *Soundair* principles are met and the proposed Sale Process and Stalking Horse Bid maximize stakeholder value while minimizing prejudice;
- e) The DIP Term Sheet should be approved: the test for the approval of interim financing under the CCAA is met and the benefit of the proposed financing to all stakeholders outweighs any prejudice to individual creditors; and
- f) The Administration Charge and the DIP Lender's Charge should be approved: the statutory requirements for such charges are met, and each charge is a necessary component of Medifocus' going concern restructuring, which offers greater stakeholder value than a liquidation.

## **PART II – FACTS**

### **A. Background**

2. The detailed factual background to this application is found in the Affidavit of Raymond Tong, sworn October 4, 2021, as filed (the “**Tong Affidavit**”).<sup>2</sup>

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<sup>2</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 13 (PDF page 17) [*Tong Affidavit*].

3. Medifocus is engaged in the research, development and sale of medical device systems that deliver focused microwave-generated heat to diseased tissue, thereby destroying or shrinking the targeted tissue.<sup>3</sup> Medifocus developed two platforms through which heat is delivered to human tissue for therapeutic purposes (the “**Business**”). Medifocus is incorporated under the laws of Ontario and primarily operates in the United States, but conducts Business and holds patents across several jurisdictions, including certain Asian jurisdictions.<sup>4</sup>

4. On September 8, 2021, the Applicant filed the NOI. MSI was appointed as the proposal trustee in the NOI proceedings (in such capacity, the “**Proposal Trustee**”).<sup>5</sup>

5. Unless otherwise specified herein, all monetary amounts are stated in Canadian dollars.

## **B. The Applicant’s Business**

6. The Applicant is incorporated under the Ontario *Business Corporations Act* (the “**OBCA**”) Medifocus maintains its registered head office at 1090 Don Mills Rd, Suite #404, Toronto, Ontario M3C 3R6.<sup>6</sup>

7. Medifocus is a health technology company developing emergent treatments that utilize microwave technology and thermotherapy.<sup>7</sup>

8. The Applicant has a wide breadth of licences, patents and approvals, but their operations primarily involve two main medical technologies:

- (a) “**Prolieve**”: a thermotherapy platform that delivers heat directly to diseased tissue via a catheter. The catheter is attached to a modular, free-standing unit that

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<sup>3</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 14 (PDF page 18), Affidavit para 9.

<sup>4</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) pages 14, 17 (PDF pages 18, 21), Affidavit paras 9, 24.

<sup>5</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 13 (PDF page 17), Affidavit para 4.

<sup>6</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 17 (PDF page 21), Affidavit para 19.

<sup>7</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 17 (PDF page 21), Affidavit para 23.

generates, controls and monitors heat delivery. Prolieve is used to treat Benign Prostatic Hyperplasia, also known as an enlarged prostate. Medical use of Prolieve is approved by the United States Food and Drug Administration (the “FDA”).<sup>8</sup>

- (b) The “**APA Platform**”: this platform delivers heat to diseased tissue via microwave beams originating outside of the patient’s body. Under this method of heat delivery, military radio positioning technology is used to insert a fine needle probe into the diseased tissue. This probe acts as a receptor for microwave generated heat which is delivered to the targeted tissue. The APA Platform is being developed for the treatment of breast cancer.<sup>9</sup> Currently, the APA Platform is in Phase III clinical trials, which have been delayed due to insufficient cash flow.<sup>10</sup>

9. Since its inception, the Applicant has incurred substantial operating losses while operating in a capital-intensive industry. As a medical technology company focused on new and emergent treatment options, Medifocus is subject to certain risks and uncertainties including, among others, current and potential competitors with greater financial resources and its dependence on certain significant customers.<sup>11</sup> Until a larger customer base can be developed, Medifocus projects to be reliant on capital infusions, alongside revenue from the sale of Prolieve.<sup>12</sup>

10. Due to constrained patient demand and from additional COVID-19 related supply chain disruptions, sales of Prolieve have been halted since May 2021.<sup>13</sup>

11. Additional circumstances have further contributed to Medifocus’ working capital issues, including hesitancy by third party lenders to advance additional funding while non-essential

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<sup>8</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 15 (PDF page 19), Affidavit para 10.

<sup>9</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 15 (PDF page 19), Affidavit para 11.

<sup>10</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 15 (PDF page 19), Affidavit para 12.

<sup>11</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 17 (PDF page 21), Affidavit para 24.

<sup>12</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 16 (PDF page 20), Affidavit para 14.

<sup>13</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 16 (PDF page 20), Affidavit para 14.



medical procedures are limited. Medifocus has therefore faced difficulty raising the requisite funds to continue operations.<sup>14</sup>

12. The Applicant is insolvent. Ongoing protection under the CCAA will provide the breathing room necessary to maximize value for all affected stakeholders.<sup>15</sup> Medifocus is not able to meet its liabilities as they generally become due.<sup>16</sup> Additionally, the aggregate of Medifocus' property is not, at a fair valuation, sufficient to enable payment of all of its obligations, due and accruing due.<sup>17</sup>

13. It is the intention of Medifocus that these CCAA proceedings will provide them with the time required to complete the Court-supervised Sale Process that will maximize value for the Applicant and its stakeholders.<sup>18</sup>

## **C. Assets and Liabilities of the Applicant**

### **(1) Assets and Liabilities Generally**

14. Medifocus' primary assets are its main medical technologies Prolieve and APA 1000, and related licenses and approvals.<sup>19</sup>

15. As of March 31, 2021, Medifocus' interim financial statements reflected total gross sales of USD \$1,100,989. In the same period, the Applicant had a gross profit of USD \$270,399.20.

16. Pursuant to the 2021 Interim Financial Statements, the Applicant has the following liabilities owing (in USD):<sup>20</sup>

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<sup>14</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 16 (PDF page 20), Affidavit para 16.

<sup>15</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 16 (PDF page 20), Affidavit para 17.

<sup>16</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 34 (PDF page 38), Affidavit para 94.

<sup>17</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 34 (PDF page 38), Affidavit para 94.

<sup>18</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 16 (PDF page 20), Affidavit para 17.

<sup>19</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 145 (PDF page 149), Affidavit Exhibit G.

<sup>20</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 25 (PDF page 29), Affidavit para 58.

Accounts payable:	\$322,709
Accrued expenses:	\$1,188,056
Accrued interest payable:	\$5,899,599
Convertible notes payable (net of discount), current portion	\$5,540,000
Royalties owing:	\$2,190,867
Promissory notes payable:	\$783,897
<b>Total</b>	<b>\$15,925,128</b>

## (2) Secured Obligations

17. Medifocus' sole secured creditor is Asset Profits Limited (“**Asset Profits**” or the “**Stalking Horse Bidder**”). Asset Profits extended loans to Medifocus pursuant to loan agreements dated May 13, 2016, August 1, 2016 and October 31, 2016 (the “**Promissory Notes**”).<sup>21</sup> As a term of the Promissory Notes, Medifocus agreed to grant security in favour of Asset Profits over Medifocus' intellectual property. On April 21, 2021, Medifocus executed a general and continuing security agreement granting a security interest in all of its property, assets and undertakings in favour of Asset Profits.<sup>22</sup>

18. Under the Promissory Notes, Asset Profits advanced a combined USD \$500,000 to Medifocus. In total, the Applicant's current indebtedness under the Promissory Notes, including accrued interest, to Asset Profits is approximately USD \$997,485.<sup>23</sup>

<sup>21</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 24 (PDF page 28), Affidavit para 55.

<sup>22</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 24 (PDF page 28), Affidavit para 55.

<sup>23</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 24 (PDF page 28), Affidavit para 56.

### (3) Unsecured Obligations

19. As set out in the table above, Medifocus additionally has the following unsecured obligations (in USD):

- (a) Accounts payable of: \$322,709;
- (b) Accrued Expenses of: \$1,188,056;
- (c) Accrued interest payable of \$5,899,599; and
- (d) Convertible notes payable (the “**Convertible Notes**”) of \$5,540,000.<sup>24</sup>

20. The Convertible Notes arose from the sale of convertible redeemable promissory notes and warrants, taken during the fiscal year ending March 31, 2014.<sup>25</sup> The net proceeds from that offering helped fund costs relating to Prolieve, including research and development activities, capital expenditures and repayment of debt.<sup>26</sup>

### D. Commencement of Restructuring Proceedings

21. These NOI proceedings were initiated by the Applicant in response to liquidity issues due in part to the COVID-19 pandemic and the supply chain disruptions caused thereunder.<sup>27</sup> Declining revenue and the pause of the sale of Medifocus’ flagship medical treatment, Prolieve, resulted in the Applicant becoming insolvent and unable to meet its liabilities as they generally become due.<sup>28</sup>

<sup>24</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 25 (PDF page 29), Affidavit para 59.

<sup>25</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 24 (PDF page 28), Affidavit para 57.

<sup>26</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 24 (PDF page 28), Affidavit para 57.

<sup>27</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 19 (PDF page 23), Affidavit para 31.

<sup>28</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 19 (PDF page 23), Affidavit para 31.

**E. Objectives for Continuing these Proceedings Under the CCAA**

22. Medifocus seeks to continue the restructuring efforts initiated through the NOI proceedings pursuant to section 11.6 of the CCAA. The continuation of this proceeding under the CCAA will, among other things:

- (a) permit the Applicant to continue operations and to solicit going concern sale offers through a stalking horse sale process;
- (b) preserve costs by avoiding the need to return to Court every 45 days for approval of a stay extension;
- (c) allow the Applicant the benefit of the flexibility of the CCAA, including by potentially implementing a reverse vesting structure in order to preserve the value of the FDA approvals and the Asia Approvals (as defined below);
- (d) avoid the devastating effects of bankruptcy and liquidation, which would destroy significant value for stakeholders, stall Medifocus' future research and result in a loss of employment for the Applicant's employees; and
- (e) preserve the status quo while attempts are made to maximize value for stakeholders and resolve outstanding disputes.<sup>29</sup>

23. At the time of this Application, the Applicant's immediate objectives are to formally canvass the market for purchasers of the business as a going-concern through a court-supervised stalking horse sale process (the "**Sale Process**").

**(1) Stalking Horse Sale Process**

24. The Applicant seeks approval of the Sale Process, with the view of finding a purchaser for all or part of Medifocus' Business and/or assets.<sup>30</sup> The Sale Process contemplates that a Reverse

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<sup>29</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 26 (PDF page 30), Affidavit para 64.

<sup>30</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 28 (PDF page 32), Affidavit para 70.

Vesting Order may be necessary to retain the existing FDA approvals – a key component of value for the Applicant’s business.<sup>31</sup>

***The Stalking Horse Bid***

25. A proposed asset purchase agreement has been submitted by Asset Profits, the Stalking Horse Bidder, for the purchase of the assets of the Applicant on an “as is, where is” basis (the “**Stalking Horse Bid**”).<sup>32</sup>

26. The key terms of the Stalking Horse Bid include:

- (a) the purchase of substantially all of the assets of Medifocus (the “**Purchased Assets**”) and the assumption of substantially all of its liabilities relating to the Purchased Assets which are due and payable or relate to period from and after the closing date;
- (b) the purchase price payable by the Stalking Horse Bidder to the Applicant is the aggregate of the following:
  - (i) the assignment and assumption of the amount of the DIP loan advanced by the Asset Profits to Medifocus pursuant to the DIP Term Sheet (as defined below);
  - (ii) the payment in cash, or the assumption of, any priority payables of Medifocus, which by operation of law, are in priority to the security interest of Asset Profits in respect to the Stalking Horse Bid; and
  - (iii) the amount of \$1,079,818.85 as a credit bid of the secured indebtedness owing by Medifocus to Asset Profits.  
(the “**Purchase Price**”)

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<sup>31</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 28 (PDF page 32), Affidavit para 70.

<sup>32</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 29 (PDF page 33), Affidavit para 71.

- (c) the Sale Process provides an expense reimbursement of a maximum of \$25,000 payable to Asset Profits for its expenses reasonably incurred in connection with the Stalking Horse Bid, which is payable upon termination of the Stalking Horse Bid.<sup>33</sup>

### *The Sale Process*

27. In connection with the Stalking Horse Bid, the Applicant seeks approval of the Sale Process to solicit superior offers to that of the Stalking Horse Bid. The Proposed Monitor will conduct and supervise the Sale Process.

28. The Applicant and the Proposed Monitor will review and evaluate each bid and: (i) the Applicant, with the consent of the Proposed Monitor, may identify the highest or otherwise best offer for the assets/Business of Medifocus (the “**Successful Bid**”), or (ii) if no bids, other than the Stalking Horse Bid, have been received by the bid deadline on November 22, 2021, then Medifocus shall declare the Stalking Horse Bid as the Successful Bid.<sup>34</sup>

29. A Reverse Vesting Order may be necessary to retain the existing FDA approvals and the Asia Approvals (as defined below) – key components of value for the Business.<sup>35</sup> Medifocus operates overseas and holds equivalent regulatory approvals in Hong Kong, Thailand, Singapore, South Korea and Malaysia, among others (the “**Asia Approvals**”).<sup>36</sup> The Asia Approvals were granted based on the FDA approval of Medifocus’ technologies and are contingent on Medifocus maintaining its FDA approvals.<sup>37</sup> Should Medifocus lose, transfer or otherwise have a third-party apply to the FDA to receive the approvals, it would need to re-enter the time consuming regulatory process to receive necessary Asia Approvals.<sup>38</sup>

<sup>33</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 29 (PDF page 33), Affidavit para 72.

<sup>34</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 30 (PDF page 34), Affidavit para 75.

<sup>35</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 28 (PDF page 32), Affidavit para 70.

<sup>36</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 21 (PDF page 25), Affidavit para 39.

<sup>37</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 21 (PDF page 25), Affidavit para 39.

<sup>38</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 21 (PDF page 25), Affidavit para 40.

30. If approved, the Sale Process will commence within five calendar days of the Initial Order, with an anticipated closing at the end of November 2021.<sup>39</sup>

### **PART III – ISSUES**

31. The issues at this motion are whether this Court should:

- (a) permit the Applicant to continue these NOI proceedings under the CCAA;
- (b) extend the Stay of Proceedings, initially granted under the BIA, under the CCAA;
- (c) approve the Stalking Horse Bid and the Sale Process;
- (d) approve the DIP Term Sheet and DIP Lender's Charge;
- (e) approve MSI as Monitor of the Applicant; and
- (f) approve the Administration Charge.

### **PART IV – LAW & ARGUMENT**

#### **A. The Applicant Should be Permitted to Continue Under the CCAA**

32. Section 11.6(a) of the CCAA provides this Court with authority to permit the Applicant to continue these NOI proceedings under the CCAA.<sup>40</sup>

33. To continue an NOI proceeding under the CCAA, the Applicant must:<sup>41</sup>

- (a) have not filed a proposal under the BIA;

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<sup>39</sup> Affidavit of Raymond Tong, sworn October 4, 2021 at Record page 30 (PDF page 34), Affidavit para 74.

<sup>40</sup> *Companies Creditors Arrangement Act*, RSC 1985, c C-36 [CCAA] at s 11.6(a).

<sup>41</sup> *(Re) Clothing for Modern Times Ltd.*, 2011 ONSC 7522 at para 9; *Comstock Canada Ltd. (Re)*, 2013 ONSC 4756 [Comstock] at paras 37-43; *Urbancorp Inc. (Re)*, 2016 ONSC 3288 at paras 36-41.

- (b) demonstrate that the proposed continuation is consistent with the purposes of the CCAA; and,
- (c) demonstrate that the threshold requirements for a CCAA application – that (i) the Applicant is “debtor company” with total liabilities over \$5 million and, (ii) the Applicant has disclosed all information required by section 10(2) of the CCAA – or reasonable “surrogates” therefor – are met.<sup>42</sup>

34. Each of these requirements are met.<sup>43</sup>

**(1) The Applicant has not filed a proposal**

35. Medifocus has not filed a proposal under the BIA.<sup>44</sup>

**(2) The proposed continuation is consistent with the purposes of the CCAA**

36. The purpose of the CCAA is remedial; it provides a means for companies to avoid the devastating social and economic consequences of commercial bankruptcies.<sup>45</sup> The CCAA permits companies to continue to operate, which maintains the *status quo* while searching for common ground amongst stakeholders for a fair reorganization. Companies bring greater value as going concerns, especially since they are “key elements in a complex web of interdependent economic relationships.”<sup>46</sup>

37. Medifocus’ objectives (as detailed above) are consistent with the purposes of the CCAA. The Applicant intends to use the CCAA proceeding to carry out the Sale Process and implement a

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<sup>42</sup> *Ibid.*

<sup>43</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 22, 25, 31 (PDF pages 26, 29, 35), Affidavit paras 45, 59, 81.

<sup>44</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 31 (PDF page 35), Affidavit para 81.

<sup>45</sup> *Canada v. Canada North Group Inc.*, 2021 SCC 30 at para 137 [*Canada North*].

<sup>46</sup> *Canada North*, *ibid* at para 137 citing *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para 18.



transaction structure to maximize value for all stakeholders. The protections afforded by the CCAA will prevent a bankruptcy and liquidation which would erode the future profitability of Medifocus' going-concern operations, and place their key licenses and approvals (including the Asia Approvals) in jeopardy, to the detriment of the Applicant's economic community.

**(3) The Applicant has satisfied the threshold requirements for an initial CCAA application**

38. A "debtor company" is defined under section 2(1) of the CCAA as, *inter alia*, a "company" that is "insolvent" or that has committed an act of bankruptcy within the meaning of the BIA.<sup>47</sup>

39. Medifocus is incorporated under the OBCA and therefore a "company" within the meaning of the CCAA.<sup>48</sup>

40. Through filing the NOI, the Applicant committed an act of bankruptcy.<sup>49</sup> Medifocus is not able to meet its liabilities as they generally become due.<sup>50</sup> Additionally, the aggregate of Medifocus' property is not, at a fair valuation, sufficient to enable payment of all of its obligations, due and accruing due.<sup>51</sup>

41. Medifocus' total liabilities exceed the statutory threshold of \$5 million in liabilities.<sup>52</sup>

***Medifocus has disclosed all information required by s. 10(2) of the CCAA***

42. Medifocus and the Proposal Trustee have disclosed the documentary items required by section 10(2) of the CCAA<sup>53</sup> in support of this motion, namely:

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<sup>47</sup> *CCAA, supra* s 2(1); BIA

<sup>48</sup> *CCAA, supra* s 2(1) ("means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province").

<sup>49</sup> *Comstock, supra* at para 41.

<sup>50</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 34 (PDF page 38), Affidavit para 94.

<sup>51</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 34 (PDF page 38), Affidavit para 94.

<sup>52</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 25 (PDF page 29), Affidavit para 59.

<sup>53</sup> *CCAA, supra* s 10(2).

- (a) the Tong Affidavit contains a projected cash flow forecast for the initial period of the filing, through November 26, 2021 (the “**CCAA Cash Flows**”);<sup>54</sup>
- (b) the First Report provides the prescribed representations required of a debtor company regarding the preparation of the CCAA Cash Flows;<sup>55</sup> and,
- (c) copies of all required financial statements for the Applicant (as applicable) were disclosed to the Court as attachments to the Tong Affidavit.<sup>56</sup>

**B. The Proposed Extension of the Stay of Proceedings should be Granted**

43. The Applicant seeks to extend the Stay of Proceedings granted under the BIA through the analogous stay under the CCAA.

44. Section 11.02(1) of the CCAA addresses the stay of proceedings that may be granted upon an initial application under the CCAA:

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days, (...)

45. The initial application 10-day stay period is customary but not mandatory. The language of section 11.02 is permissive and maintains judicial discretion regarding the length of the stay

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<sup>54</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) pages 26, 173 (PDF pages 30, 177), Affidavit para 62, Exhibit “J”.

<sup>55</sup> See: [First Report of the Proposed Monitor, msi Spergel](#), dated October 5, 2021 [*First Report*].

<sup>56</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) pages 22, 119, 145 (PDF pages 26, 122, 149), Affidavit para 45, Exhibits “F” and “G”.

period.<sup>57</sup> This Court has previously dispensed with this 10-day stay period: *Re TribalScale Inc.* and *Re JMX Contracting et al.*<sup>58</sup>

46. No written reasons were issued by the Court in either *TribalScale* or *JMX*. However, the facts of each case are analogous to the case at hand: (i) they were BIA proposal conversion proceedings under section 11.6 of the CCAA; (ii) creditors were given adequate notice (seven and six days' notice, respectively)<sup>59</sup> of the conversion hearing; and (iii) the relief was unopposed (together, the “**TribalScale Factors**”).

47. The initial 10-day stay period arises from the policy rationale that all parties potentially affected by an initial order should have adequate notice and may respond substantively to the application at a comeback hearing.<sup>60</sup>

48. In the present motion, the TribalScale Factors are met: (i) this is a BIA proposal conversion motion; (ii) the Applicant's creditors were given 9 days notice of this motion (in addition to having notice of the NOI proceeding since September 8, 2021); (iii) the Applicant is unaware of any opposition to the proposed stay period (nor any of the relief sought). As such, the policy rationale for the initial 10-day stay period is not engaged.

49. Following the initial application, section 11.02(2) states that the Court may extend the stay of proceedings “on any terms that it may impose...for any period it considers necessary...”,

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<sup>57</sup> See: section 11 of the *Interpretation Act*, RSC, 1985, c. I-21: “The expression “shall” is to be construed as imperative and the expression “may” as permissive.” *CCAA*, *supra* s 11.02(1) “A court **may**, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period **may** not be more than 10 days...”

<sup>58</sup> [Initial Order of Justice Gilmore, dated 31 July 2020, in the Matter of a Plan of Compromise or Arrangement of TribalScale Inc. \(CV- 20-00645116-00CL\)](#); [Initial Order and Endorsement of Justice Hainey, dated 29 September 2020, in the Matter of a Plan of Compromise or Arrangement of JMX Contracting et al. \(31-2639875\)](#).

<sup>59</sup> [Affidavit of Service of Christel Paul sworn July 27, 2020](#); [Affidavit of Service of Christel Paul sworn September 24, 2020](#).

<sup>60</sup> *CCAA*, *supra* s 11.02(1); *Lydian International Limited (Re)*, 2019 ONSC 7473 at paras 29-31.

provided that (i) the requested stay of proceedings is appropriate in the circumstances; and, (ii) that the Applicant has acted, and is acting, in good faith and with due diligence.<sup>61</sup>

50. The requested stay of proceedings is appropriate in the circumstances. It will allow the Applicant to implement the Sale Process and finalize a restructuring transaction that maximizes stakeholder benefit and without the expense of returning to Court for a stay extension motion.

51. The Applicant has acted, and is acting, in good faith and with due diligence. Since Medifocus filed the NOI, it has taken numerous steps to develop and implement their restructuring strategy – as described above and in the Tong Affidavit and First Report.<sup>62</sup>

52. The Proposed Monitor supports an extension to the Stay of Proceedings.<sup>63</sup> As demonstrated by the CCAA Cash Flows, the Applicant will have sufficient liquidity to continue operations up to and including November 26, 2021.<sup>64</sup>

### **C. The DIP Term Sheet and DIP Lender’s Charge Should be Approved**

53. The Applicant has secured a DIP commitment from Asset Profits that provides debtor-in-possession financing, up to a maximum of \$700,000, in order to continue operations during the restructuring proceedings. The DIP Term Sheet is conditional on Court approval and the granting of a priority charge (“**DIP Lender’s Charge**”).<sup>65</sup>

54. The proposed DIP Lenders’ Charge will rank behind the Administration Charge.<sup>66</sup>

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<sup>61</sup> *CCAA*, *supra* s 11.02(2)-(3).

<sup>62</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#); [First Report, supra at Report](#) page 23, para 61.

<sup>63</sup> [First Report, supra at Report](#) page 24, para 62.

<sup>64</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 173 (PDF page 177), Affidavit Exhibit J

<sup>65</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 28 (PDF page 32), Affidavit para 69.

<sup>66</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 33 (PDF page 37), Affidavit para 92.

55. Section 11.2 of the CCAA grants this Court the authority to approve the proposed DIP Term Sheet and DIP Lender's Charge.<sup>67</sup>

56. Generally, DIP financing will be approved where the benefits of financing to all stakeholders outweigh any prejudice to individual creditors.<sup>68</sup> DIP financing must be limited to what is reasonably necessary for the continued operations of the debtor in the ordinary course of business.<sup>69</sup>

57. In considering whether to grant the DIP Lender's Charge, section 11.2(4) of the CCAA requires this Court to consider the following factors:<sup>70</sup>

- (a) the period during which the Applicant is expected to be subject to the CCAA;
- (b) how the Applicant's business and financial affairs will be managed during the proceedings;
- (c) whether the Applicant's management has the confidence of their major creditors;
- (d) whether the DIP loan would enhance the prospects of a viable compromise or arrangement being made;
- (e) the nature and value of the Applicant's property;
- (f) whether any creditor would be materially prejudiced by the security or charge; and
- (g) the monitor's report.

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<sup>67</sup> *CCAA*, *supra* s 11.2(1)-11.2(2).

<sup>68</sup> *Re AbitibiBowater Inc.*, 2009 QCCS 6453 at para 16.

<sup>69</sup> *CCAA*, *supra* s 11.2(5).

<sup>70</sup> *CCAA*, *supra* s 11.2(4).

58. Taking into account the aforementioned considerations, the DIP Term Sheet and the associated DIP Lender's Charge should be approved for the following reasons:

- (a) the Applicant's restructuring strategy is far more than a mere "germ of a plan" – among other things, the Sale Process has been fully developed and negotiated. The DIP financing is a necessary component of the next stages of the restructuring plan.<sup>71</sup>
- (b) the notice requirements under section 11.2(1) have been met;<sup>72</sup>
- (c) the Applicant intends to use the DIP financing to operate as a going-concern, including to maintain regulatory approvals while carrying out the Sale Process;
- (d) there is no principled basis for any secured creditor to object to the DIP Lender's Charge – the sole secured creditor is the DIP lender;
- (e) the quantum of the DIP loan is reasonably limited to what is necessary in the circumstances, having regard to the CCAA Cash Flows; and
- (f) the Proposed Monitor is supportive of the relief.<sup>73</sup>

#### **D. The Stalking Horse Bid and Sale Process Should be Approved**

59. This Court has jurisdiction to approve a sale of assets outside of the ordinary course of business,<sup>74</sup> as well as the jurisdiction to approve a sale process in relation to a CCAA debtor's business and assets prior to the development of a plan of compromise and arrangement.<sup>75</sup>

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<sup>71</sup> *Industrial Properties Regina Limited v Copper Sands Land Corp.*, 2018 SKCA 36 at para. 32.

<sup>72</sup> See, the Affidavits of Service of Levi Rivers, sworn September 28, 2021 and October 5, 2021, as filed.

<sup>73</sup> [First Report, supra at Report](#) page 24, para 62.

<sup>74</sup> *CCAA*, supra s 36.

<sup>75</sup> *Nortel Networks Corporation (Re)*, [2009] OJ No 3169 at para 48 [*Nortel*].

60. Section 36(3) of the CCAA sets out the following list of factors for the Court to consider in determining whether to approve a sale transaction outside the ordinary course:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor 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.<sup>76</sup>

61. CCAA courts have also considered the *Soundair* principles, which generally correspond with the subsection 36(3) criteria.<sup>77</sup>

62. In addition to the above, the factors to be considered by the Court in determining whether to authorize a stalking horse process are well-established (the “*Brainhunter* Criteria”) including:<sup>78</sup>

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<sup>76</sup> CCAA, *supra* s 36(3).

<sup>77</sup> *Royal Bank of Canada v Soundair Corp.*, [1991] OJ No 1137).

<sup>78</sup> *Re Brainhunter Inc.*, 62 CBR (5<sup>th</sup>) 41 (WL) [*Brainhunter*] at paras 13-17; *Nortel*, *supra* at para 49.

- (a) is the sale warranted at this time?
- (b) will the sale benefit the whole “economic community”?
- (c) do any of the debtors’ creditors have a *bona fide* reason to object to a sale of the business?
- (d) is there a better viable alternative?

63. The Applicant submits that the Stalking Horse Bid and Sale Process satisfy the requirements under subsection 36(3) of the CCAA and the *Soundair* principles, as well as the *Brainhunter* Criteria:

- (a) the proposed Sale Process follows significant discussion with respect to potential alternatives;
- (b) the Sale Process is designed to be broad and flexible, while attracting additional interest based on the Stalking Horse Bid. The process will permit the Applicant to explore and canvas the market for a bid that is superior to the Stalking Horse Bid;
- (c) the Stalking Horse Bid will result in an outcome for the Applicant’s stakeholders (in particular, its trade creditors, employees and suppliers) that is far better than what would have been obtained in a liquidation or bankruptcy;
- (d) the Sale Process contemplated is fair and reasonable. The Proposed Monitor will conduct the process with the assistance of the Applicant;
- (e) the Stalking Horse Bid and Sale Process are open and transparent;



- (f) the Proposed Monitor has been involved in the development of the Sale Process and Stalking Horse Bid and supports their approval;
- (g) as the “floor” bid in the Sale Process, the consideration provided by the Stalking Horse Bid is fair and reasonable in the circumstances;
- (h) the Stalking Horse Bidder is Medifocus’ sole secured creditor; and
- (i) the Stalking Horse Bid – as well as any superior offers to the Stalking Horse Bid chosen as the successful bid – will aim to preserve the Applicant’s business as a going-concern, considering that far greater enterprise value is likely to be derived from continued operation than could be obtained in a liquidation or bankruptcy. Continued operation is a far better outcome for all stakeholders.

64. The Sale Process is intended to commence immediately following the issuance of an approval Order by this Court, to be conducted over a period of six (6) weeks, with a bid submission deadline of November 22, 2021.<sup>79</sup>

65. The CCAA courts have previously approved similar timelines.<sup>80</sup> The Applicant submits that this timeline effectively balances ensuring that creditor recoveries can be maximized through an effective Sale Process, while simultaneously mitigating any potential for prejudice to stakeholders as the result of delays.

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<sup>79</sup> [Affidavit of Raymond Tong, sworn October 4, 2021 at Record](#) page 30 (PDF page 34), Affidavit para 75.

<sup>80</sup> See, for example: [Nortel](#), *supra* at paras 18-19 and 55-56.

**E. MSI Should be Appointed as the Monitor**

66. Should the Initial Order be granted, section 11.7 of the CCAA requires the Court to appoint a licensed insolvency trustee (as defined under the BIA) to monitor the affairs of the subject debtor.<sup>81</sup>

67. In the present case, it is appropriate for MSI to be appointed as Monitor. MSI has consented to the appointment and is a “trustee” within the meaning of section 2(1) of the BIA, without being subject to the restrictions set out under s. 11.7(2) of the CCAA.<sup>82</sup>

**F. The Administration Charge Should be Granted**

68. The Applicant is seeking an Administration Charge (as defined in the Initial Order).

69. Section 11.52 of the CCAA grants this court jurisdiction to order the proposed Administration Charge.

70. The Administration Charge is warranted, given that:

- (a) these proceedings will require the extensive involvement of professional advisors subject to the Administration Charge;
- (b) the professionals subject to the Administration Charge have contributed, and will continue to contribute, to the restructuring of the Applicant;
- (c) there is no unwarranted duplication of roles, therefore the fees incurred by these proceedings will be minimized;

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<sup>81</sup> CCAA, *supra* s. 11.7.

<sup>82</sup> CCAA, *supra* s. 11.7(2); Tong Affidavit, *supra* at Record page 31 (PDF page 35), Affidavit para 79.

- (d) the proposed Administration Charge ranks in priority to the interests of the secured creditors, who have been given notice of this requested relief; and
- (e) the Proposed Monitor is supportive of the proposed Charge.<sup>83</sup>

**PART V – RELIEF REQUESTED**

71. For the reasons set out above, the Applicant requests that this Honourable Court grant the draft Initial Order located at **Tab 4** of the Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 5<sup>th</sup> DAY OF OCTOBER, 2021**

*/s/ WEISZ FELL KOUR*

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**WEISZ FELL KOUR LLP**

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<sup>83</sup> [First Report, \*supra\* at Report](#) page 24, para 62.

**SCHEDULE "A"****List of Authorities**

1.	<i>Re Clothing for Modern Times Ltd.</i> , 2011 ONSC 7522
2.	<i>Re Urbancorp Inc.</i> , 2016 ONSC 3288
3.	<i>Comstock Canada Ltd. (Re)</i> , 2013 ONSC 4756
4.	<i>Canada v Canada North Group Inc.</i> , 2021 SCC 30
5.	<i>Century Services Inc. v. Canada (Attorney General)</i> , 2010 SCC 60
6.	<i>Lydian International Limited (Re)</i> , 2019 ONSC 7473
7.	<i>Nortel Networks Corporation (Re)</i> , [2009] OJ No 3169
8.	<i>Re AbitibiBowater Inc.</i> , 2009 QCCS 6453
9.	<i>Royal Bank of Canada v Soundair Corp.</i> , [1991] OJ No 1137
10.	<i>Industrial Properties Regina Limited v Copper Sands Land Corp.</i> , 2018 SKCA 36
11.	<i>Re Brainhunter Inc.</i> , 62 CBR (5 <sup>th</sup> ) 41 (WL)

**SCHEDULE "B"****Statutory Authorities***Companies Creditors Arrangement Act, RSC 1985, c C-36***2(1)**

**company** means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, telegraph companies, insurance companies and companies to which the Trust and Loan Companies Act applies; (compagnie)

**debtor company** means any company that

(a) is bankrupt or insolvent

(b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or

(d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent; (compagnie débitrice)

**10(2)** An initial application must be accompanied by

(a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;

(b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and

(c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

**11.02 (1)** A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**(2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

**11.2 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

**11.51 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

**11.6** Notwithstanding the *Bankruptcy and Insolvency Act*,

- (a) proceedings commenced under Part III of the Bankruptcy and Insolvency Act may be taken up and continued under this Act only if a proposal within the meaning of the Bankruptcy and Insolvency Act has not been filed under that Part; and
- (b) an application under this Act by a bankrupt may only be made with the consent of inspectors referred to in section 116 of the Bankruptcy and Insolvency Act but no application may be made under this Act by a bankrupt whose bankruptcy has resulted from
  - (i) the operation of subsection 50.4(8) of the Bankruptcy and Insolvency Act, or
  - (ii) the refusal or deemed refusal by the creditors or the court, or the annulment, of a proposal under the Bankruptcy and Insolvency Act.

**11.7 (1)** When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the Bankruptcy and Insolvency Act.

**(2)** Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

- (a) if the trustee is or, at any time during the two preceding years, was
  - (i) a director, an officer or an employee of the company,
  - (ii) related to the company or to any director or officer of the company, or
  - (iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or
- (b) if the trustee is
  - (i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the Civil Code of Quebec that is granted by the company or any person related to the company, or
  - (ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

**36 (1)** A debtor company in respect of which an order has been made under this Act 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.

**(2)** A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

**(3)** 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 monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor 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.

***Bankruptcy and Insolvency Act, RSC 1985, c B-3***

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**insolvent person** means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (personne insolvable)

***Interpretation Act, RSC, 1985, c I-21***

11 The expression “shall” is to be construed as imperative and the expression “may” as permissive.



AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF MEDIFOCUS INC. (the "Applicant")

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

*Proceedings commenced at Toronto*

**FACTUM**

**WEISZ FELL KOUR LLP**

Royal Bank Plaza, South Tower  
200 Bay Street  
Suite 2305, P.O. Box 120  
Toronto, ON M5J 2J3

**Caitlin Fell** LSO No. 60091H

cfell@wfkllaw.ca  
Tel: 416.613.8282

**Patrick Corney** LSO No. 65462N

pcorney@wfkllaw.ca  
Tel: 416.613.8287

**Shaun Parsons** LSO No. 81240A

sparsons@wfkllaw.ca  
Tel: 416.613.8284

Fax: 416.613.8290

**Lawyers for Medifocus Inc.**