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Court File No. CV13-10034-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

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

AND IN THE MATTER OF THE NOTICE OF INTENTION OF STARFIELD RESOURCES
INC., OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

Applicant

FACTUM OF THE APPLICANT
(returnable March 15, 2013)

Dated: March 12, 2013

~~FASKEN-MARTINEAU DuMULIN LLP~~
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Nunavut Water
Board

MAR 08 2013

Public Registry

SERVICE LIST
(March 8, 2013)

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Court File No. CV13-10034-00CL

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IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
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AND IN THE MATTER OF THE NOTICE OF INTENTION OF STARFIELD
RESOURCES INC., OF THE CITY OF TORONTO IN THE PROVINCE OF
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Applicant

FACTUM OF THE APPLICANT
(returnable March 15, 2013)

PART I - INTRODUCTION

1. Starfield Resources Inc ("Starfield" or the "Company") filed a Notice of Intention to Make a Proposal ("NOI") under section 50.4 (1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") on March 7, 2013. PricewaterhouseCoopers Inc. ("PwC") was named as proposal trustee in connection with the NOI (the "Trustee").
2. This application is brought by the Company seeking an order substantially in the form of the draft Order included at Tab 1A of the application record, pursuant to, inter alia, sections 50.4(9), 64.1 and 64.2 of the BIA:
 - (a) approving the Sales Process (as defined below);
 - (b) granting a priority Administrative Charge and D&O Charge (as these terms are defined below);

- (c) approving the Retention Payments offered by Starfield to certain employees to incentivize them to remain with the Company through the restructuring process; and
- (d) extending the time within which a proposal must be filed with the Official Receiver under section 62(1) of the BIA to April 26, 2013

PART II - THE FACTS¹

BACKGROUND

Corporate History and Structure

- 3. Starfield is a Canadian-based exploration and emerging early-stage development company exploring for copper, cobalt, nickel and platinum group elements ("PGE") in North America. The Company's shares are publicly traded on the Toronto Stock Exchange ("TSX") under the symbol "SRU" and in the U.S. on the Over-The-Counter Bulletin Board under the symbol "SRFDF".²
- 4. Starfield was incorporated on April 22, 1994 under the *Business Corporations Act* (Alberta). The Company amended its articles on October 6, 1994 to change the Company's name to Starfield Communications Group Inc. The articles were amended again on December 18, 1997 to change its name to Starfield Resources Inc. On October 27, 2006, the Company filed articles of continuance in British Columbia. The Company is governed by the *Business Corporations Act* (British

¹ Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the first report of the Proposal Trustee, dated March 8, 2013 (the "Trustee Report").

² Trustee Report, para. 6, Application Record, Tab 3.

Columbia) and is a reporting issuer in the provinces of British Columbia, Alberta and Ontario, and in the North West Territories. Starfield's registered office is located at 625 Howe Street, Suite 420, Vancouver, British Columbia, and the Company's head office is located at 120 Adelaide Street West, Suite 900, Toronto, Ontario.³

5. The Company currently holds a direct or indirect interest in the following mineral properties/projects (the "Projects"):

(a) a nickel-copper-cobalt-PGE project in Ferguson Lake, Nunavut (the "Ferguson Lake Project");

(b) a nickel-copper-cobalt-PGE project in Montana, USA;

(c) a copper-silver project in California, USA; and

(a) an early stage gold property which straddles the Nevada-California border.⁴

6. Substantially all of the Ferguson Lake Project assets are held by Starfield directly.

The Company acquired its interest in the above U.S. projects through its

acquisition of all of the shares of Nevoro Inc. ("Nevoro"); a formerly ~~TSX-listed~~ corporation incorporated under the laws of Canada, pursuant to a plan of

arrangement in October 2009.⁵

³ Trustee Report, para. 7, Application Record, Tab 3.

⁴ Trustee Report, para. 8, Application Record, Tab 3.

⁵ Trustee Report, para. 9, Application Record, Tab 3.

7. Starfield Resources Inc. is the parent company and the primary direct or indirect shareholder of the following entities:

- (a) Nevoro Inc. (Canada);
- (b) Sheffield Resources Ltd. (B.C.);
- (c) Aurora Platinum Exploration Inc. (B.C.);
- (d) Nevoro Copper Inc. (Nevada);
- (e) Nevoro Montana Inc. (Montana); and
- (f) Nevoro Nevada Inc. (Nevada).⁶

8. The Company has not initiated insolvency proceedings in the U.S. There is presently no intention to commence insolvency proceedings in respect of the

Company's Canadian or U.S. subsidiaries. The Company advises that substantially all administrative and Project-related costs are paid for by Starfield.⁷

Company Operations

9. Starfield operates from a 2,150 square foot leased office facility in Toronto, Ontario. The Company also owns a semi-permanent exploration camp on the western shore of Ferguson Lake, Nunavut, capable of accommodating a team of up to 65 persons. There is also a 830 metre gravel airstrip adjacent to the

⁶ Trustee Report, para. 10, Application Record, Tab 3.

⁷ Trustee Report, para. 11, Application Record, Tab 3.

exploration camp, as well as several pieces of construction and exploration equipment located on the camp site.⁸

10. During 2012, Starfield had two full-time salaried employees. However, both individuals left the Company prior to January 1, 2013. In addition, the former CEO and CFO each left the Company on November 30, 2011 and March 23, 2012, respectively. As at the date of filing the NOI, Starfield had four consultants under contract, including the present CEO and the CFO. All four consultants are being paid in the ordinary course.⁹

Flow-Trough Share Structure

11. As is common among exploration and early stage resource development companies, Starfield does not yet generate revenues from operations and relies on the equity markets to finance its activities. As the public company in the corporate group, financing activities have historically been undertaken by the Company, with the proceeds from such financings used to fund the activities of the Company and its subsidiaries. Since approximately January 2012, the equity markets have effectively been closed to exploration and early stage development companies.¹⁰
12. The Company's three most recent equity financings have been through the issuance of flow-through common shares. As at the date of the Trustee Report,

⁸ Trustee Report, para. 14, Application Record, Tab 3.

⁹ Trustee Report, para. 15, Application Record, Tab 3.

¹⁰ Trustee Report, para. 16, Application Record, Tab 3.

Starfield had approximately 718 million issued and outstanding common shares, of which approximately 229 million are flow-through common shares.¹¹

13. A flow-through share is a ~~Canadian tax-based~~ financing incentive that is available to, among others, the mining sector for qualified projects located in Canada. It is a type of share issued by a corporation to an investor, pursuant to a subscription agreement with the corporation, under which the issuing corporation agrees to incur eligible Canadian exploration expenses (the "CEE's") in an amount up to the consideration paid by the investor for the shares in a particular year. The corporation renounces to the taxpayer an amount in respect of the expenditures so that the CEEs are considered to be the investor's expenses for tax purposes. As a result of the corporation renouncing the expenses, the investor can deduct the expenses for tax purposes as if incurred directly.¹²
14. Subject to certain conditions, the CEEs qualify for the "look-back" rule, which allows a corporation to renounce the CEEs incurred within an entire calendar year ("Year 1") with the renunciation being effective for tax purposes in the preceding calendar year ("Year 0"), the year the investor purchased the flow-through shares. Where a corporation has not expended all or part of the amounts it has renounced by the end of Year 1, the corporation must notify the investor of the shortfall within two months after the end of Year 1. The investor is vulnerable to having the deductions taken in calculating their Year 0 taxes being partially denied, income taxes being reassessed and any amount owing becoming immediately due.

¹¹ Trustee Report, para. 17, Application Record, Tab 3.

¹² Trustee Report, para. 18, Application Record, Tab 3.

In an effort to protect investors from such adverse consequences, subscription agreements typically contain an indemnity in favour of the investor from the issuing corporation. Furthermore, the corporation is also subject to penalties and interest from Canada Revenue Agency ("CRA") for the shortfall to compensate CRA for accelerating the investor's deduction by one year.¹³

15. In 2010, Starfield raised gross proceeds of approximately \$4.9 million from investors through two private placements of flow-through common shares (the "2010 Flow-Through Investors"). All of the proceeds were raised for exploration purposes and, therefore, the CEEs were renounced to investors in 2010. In February 2012, Starfield notified the 2010 Flow-Through Investors that the Company's expenditures in 2011 resulted in a shortfall of approximately \$969,000. As a result, the Company is subject to the provisions of the associated flow-through subscription agreement which the Company estimates has resulted in a contractual indemnity obligation to the 2010 Flow-Through Investors of approximately \$450,000. Starfield was also subject to penalties and interest from CRA of approximately \$60,000, although all these amounts were paid in 2012.¹⁴

16. In May 2011, Starfield raised gross proceeds of approximately \$3.9 million from investors through the private placement of flow through common shares (the "2011 Flow-Through Investors"). All of the proceeds were raised for exploration purposes and, therefore, the CEEs were renounced to investors in 2011. In December 2012, Starfield notified the 2011 Flow-Through Investors that

¹³ Trustee Report, para. 19, Application Record, Tab 3.

¹⁴ Trustee Report, para. 20, Application Record, Tab 3.

the Company's expenditures in 2012 resulted in a shortfall of approximately \$2.9 million. As a result, the Company is subject to the provisions of the associated flow-through subscription agreement which the Company estimates has resulted in a contractual indemnity obligation to the 2011 Flow-Through Investors of approximately \$1.4 million. In addition, the Company is subject to penalties and interest from CRA of approximately \$320,000.¹⁵

17. In summary, the Company has potential liabilities relating to Starfield's failure to incur adequate CEEs in connection with the issuance of its flow-through shares of approximately \$320,000 to CRA, \$450,000 to the 2010 Flow-Through Investors, and \$1.4 million to the 2011 Flow-Through Investors, as at the date of this First Report.¹⁶

Historical Financial Results

18. Below is a summary of the Company's unaudited balance sheet as at November 30, 2012:

¹⁵ Trustee Report, para. 21, Application Record, Tab 3.

¹⁶ Trustee Report, para. 22, Application Record, Tab 3.

Starfield Resources Inc.Consolidated balance sheet as at November 30, 2012
(in \$000s CAD)

ASSETS		LIABILITIES AND SHAREHOLDER'S EQUITY	
Current Assets		Current Liabilities	
Cash	\$ 876	Accounts payable and accrued liabilities	\$ 748
Accounts receivable	26	Income tax payable	29
Prepaid expenses and deposits	420	Total Current Liabilities	\$ 777
Total Current Assets	\$ 1,322		
Mineral properties	\$ 13,893	Shareholders' Equity	
Equipment	186	Share capital	155,155
		Contributed surplus	15,196
		Warrants	2,772
Total Assets	\$ 15,401	Retained earnings (deficit)	(158,499)
		Total Shareholders' Equity	\$ 14,624
		Total Liabilities and Shareholders' Equity	\$ 15,401

19. The November 30, 2012 balance sheet reflects that the Company has an accumulated retained earnings deficit of approximately \$158 million. The notes accompanying the Company's November 30, 2012 financial statements state that the Company's operating budget indicates that the cash on hand at November 30, 2012 will be depleted by April 2013 if the Company continues as a going concern and does not obtain additional cash through financing and/or investing activities. Furthermore, the November 30, 2012 balance sheet does not reflect the Company's obligations in connection with the May 2011 flow-through share issuance, as detailed above.¹⁷
20. As a result of the sustained losses and challenging financial markets, Starfield has exhausted its liquidity and has no ability to raise additional equity, which

¹⁷ Trustee Report, para. 25, Application Record, Tab 3.

¹⁸ Trustee Report, para. 26, Application Record, Tab 3.

historically has been the primary source of capital for the Company, and as such, --- has elected to file a NOI and restructure the Company.¹⁹

Creditors

21. The Company does not have any secured creditors. All employee related amounts are current, all required remittances of employee withholdings and HST have been made when due, and the Company has no pension obligations whatsoever.²⁰
22. The Company estimates that it had total unsecured obligations of approximately \$2.3 million as at March 6, 2013 (inclusive of the contractual indemnity claims of the 2010 Flow-Through Investors and the 2011 Flow-Through Investors). The following table summarizes the amounts owing to unsecured creditors:

Starfield Resources Inc. Estimated unsecured creditors as at March 6, 2013 (\$000)	
Trade payables	\$ 144
Accrued liabilities	1,857
Taxes payable	320
	<u>\$ 2,321</u>

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23. In addition, the Company is a defendant in three litigation matters, as follows:

- (a) a claim by Discovery 2010 Flow-Through Limited Partnership seeking damages in the amount of \$114,569.00 plus interest and costs relating to the contractual indemnity contemplated in its 2010 Flow-Through Investors subscription agreement;

¹⁹ Trustee Report, para. 27, Application Record, Tab 3.

²⁰ Trustee Report, para. 29, Application Record, Tab 3.

²¹ Trustee Report, para. 30, Application Record, Tab 3.

- (b) a claim by Nicholson & Associates Natural Resource Development Inc. for alleged non-payment of invoices in the amount of \$146,123.83 plus interest and costs; and
- (c) a confidential private arbitration relating to an historic joint venture.

Each of these litigation matters is ongoing and is subject to defences and counterclaims asserted, or to be asserted by Starfield. The parties to these matters have been served with the materials in support of the Company's application.²²

COMPANY'S CASH-FLOWS FOR PERIOD ENDING MAY 3, 2013

- 24. As at March 8, 2013, the Company's consolidated cash balance was approximately \$524,000.²³
- 25. Starfield, with the assistance of the Trustee, has prepared consolidated cash flow projections of its receipts and disbursements for the 9-week period ending May 3, 2013 (the "Cash Flow Projection"). The consolidated cash flow projections estimates that for the period March 8, 2013 to May 3, 2013, the Company will have total receipts of approximately \$57,000, total operating disbursements of approximately \$577,600 for net cash outflow of approximately \$520,600. The ending cash position as at May 3, 2013 is estimated to be \$3,400. The Cash Flow Projection was filed with the Office of the Superintendent of Bankruptcy Canada on March 8, 2013.²⁴

²² Trustee Report, para. 31, Application Record, Tab 3.

²³ Trustee Report, para. 32, Application Record, Tab 3.

²⁴ Trustee Report, para. 32, Application Record, Tab 3.

26. As a result of its constrained liquidity position, the Company has suspended its exploration and development activities at the Projects. The Cash Flow Forecast assumes that the Company will continue to fund normal course obligations relating to the preservation and maintenance of the Projects in Canada and the U.S., such as ~~claim maintenance fees and other required maintenance costs,~~ during these BIA proceedings. These costs were traditionally paid by Starfield through its Canadian accounts, and ~~payment of these expenses going forward are~~ necessary to preserve Starfield's interests in these properties during the proposed sales process.²⁵
27. As a result, based on the assumptions made by Starfield contained in the ~~notes to the Cash Flow Projection, Starfield should have sufficient funds to meet its~~ current obligations through to May 3, 2013.²⁶

PROPOSED SALES PROCESS

28. In June 2011, Starfield retained the services of Gryphon Partners Canada Inc. to assist the Company with raising additional capital, finding an investor to acquire control of the Company's outstanding shares, or a sale of all or substantially all of the Company's assets. The Company did not receive any serious expressions of interest through that process.²⁷
29. In November 2012, the Company retained PwC to assist and advise the Company on strategic alternatives to maximize value of the Company and its assets,

²⁵ Trustee Report, para. 33, Application Record, Tab 3.

²⁶ Trustee Report, para. 34, Application Record, Tab 3.

²⁷ Trustee Report, para. 35, Application Record, Tab 3.

including but not limited to a sale of all or a material portion of the assets of Starfield. PwC, with the assistance of Starfield's management, undertook a sale and investment solicitation process ("SISP") in which it prepared an information memorandum detailing the sale or investment opportunity and canvassed over 125 potential buyers or investors beginning on November 20, 2012. Each prospect received a copy of the information memorandum and was solicited to sign a Confidentiality Agreement ("CA") and conduct further due diligence. A total of four confidentiality agreements were executed and two non-binding letters of interest ("LOIs") were received as at February 22, 2013. Neither of these LOIs has resulted in a binding offer as at the date of the Trustee Report.²⁸

30. The Trustee has advised that it supports a brief continuation of the sale or investment solicitation process in these BIA proceedings with the belief that it will bring a sense of finality to the SISP and provide the highest likelihood of a transaction or series of transactions to maximize value for the Company's stakeholders. The Trustee has proposed to aggressively re-market the Company's assets to third parties for an additional period of approximately 37 days as follows: 30 days for submission of a non-binding LOI and an additional 7 days for submission of a binding offer.²⁹
31. The proposed sales process (the "Sales Process") would provide a further means for testing the market, gauging interest in the Company and/or its assets and determining whether a transaction that would result in realizations greater than

²⁸ Trustee Report, para. 36, Application Record, Tab 3.

²⁹ Trustee Report, para. 37, Application Record, Tab 3.

liquidation value is available. The Trustee has agreed to be fully involved in all aspects of the proposed Sales Process to ensure that the marketing process is fair and reasonable, and that prospective interested parties have the ability to make an offer for the Company and/or its assets. The proposed Sales Process contemplates that the Company is not required to accept the highest, best or any offer received.³⁰

32. The principal elements of the proposed Sales Process are as follows:

- (a) As soon as practical after the Sales Process is approved by this Court, an information memorandum will be sent to a list of potentially interested parties by the Trustee, which list has been developed by the Trustee and the Company.
- (b) Once a confidentiality agreement has been signed by any interested parties, they will receive access to an electronic data room to conduct preliminary due diligence. The electronic data room is being refreshed by the Company with assistance of the Trustee.
- (c) After preliminary due diligence has been conducted, interested parties are required to submit non-binding LOIs to the Trustee by 12pm EST on April 12, 2013 (the "LOI Deadline"). A template agreement for a non-binding LOI will be available in the Company's electronic data room at least two weeks prior to the LOI Deadline.

³⁰ Trustee Report, para. 38, Application Record, Tab 3.

- (d) The acceptability of any LOI received is to be determined by the Company, in consultation with the Trustee.
 - (e) If no satisfactory LOIs are received by the LOI Deadline, then the Company, in consultation with the Trustee, will consider whether to continue the Sales Process, and the Trustee will advise the Court accordingly.
 - (f) If satisfactory LOIs are received, a potential purchaser will be required to submit a binding asset purchase agreement ("APA") by 12PM EST on April 19, 2013. These APAs will then be reviewed by the Trustee and the Company.
 - (g) Management and the Trustee will provide their recommendation to ~~Starfield's board of directors with respect to selecting offers to~~ consummate a transaction, and the Trustee shall promptly notify all successful bidders.
 - (h) Once the terms and conditions of all recommended offers have been finalized, such offers will be submitted to this Court for approval. Closing of each transaction is anticipated to occur shortly thereafter.³¹
33. While the proposed time-frame is condensed, the Trustee is of the view that the deadlines proposed in the Sales Process are reasonable given the Company's previous marketing efforts and its lack of liquidity.³²

³¹ Trustee Report, para. 39, Application Record, Tab 3.

³² Trustee Report, para. 40, Application Record, Tab 3.

34. The Trustee has agreed to report back to this Court if facts or circumstances require the Company or the Trustee to re-evaluate the time periods or the Sales Process based on facts or circumstances at that time. The Trustee will be assisted by PricewaterhouseCoopers Corporate Finance Group in the Sales Process.³³

ADMINISTRATION CHARGE AND D&O CHARGE

35. The Company proposes a charge in favour of its legal counsel, counsel to the directors of Starfield, the Trustee and the Trustee's legal counsel to assist in these NOI proceedings (the "Insolvency Professionals") in an amount not to exceed \$100,000, charging all of the assets of the Company as security for the professional fees and disbursements incurred both before and after the Filing Date (the "Administrative Charge"). The Company is current in the payment of the Insolvency Professionals' invoices and, subject to an accrual relating to the preparation of the Company's application and this First Report, ~~there are no~~ material amounts presently owing by the Company to the Insolvency Professionals.³⁴

36. Starfield was only able to provide the Insolvency Professionals with minimal retainer fees for their services as the Company needs its available cash to fund its limited operations during these proceedings. Depending upon the timing of cash receipts and disbursements, cash may not be available to pay ongoing professional

³³ Trustee Report, para. 41, Application Record, Tab 3.

³⁴ Trustee Report, para. 42, Application Record, Tab 3.

fees on a timely basis and hence the reason the Administrative Charge is being sought.³⁵

37. The Company believes it is critical to the success of its restructuring to have such a charge in place to ensure that its Insolvency Professionals are protected with respect to their ~~fees and disbursements~~.³⁶

38. The Company further proposes a charge to indemnify its directors and officers by way of a Directors' and Officers' Charge (the "D&O Charge"), for liabilities incurred by the Company that result in post-filing claims against the directors and officers in their personal capacities.³⁷

39. The Company does maintain an insurance policy for its directors and officers and the premiums for such policy have been paid monthly and paid in respect of the current month.³⁸

40. The amount of the D&O Charge is capped at \$100,000 and was estimated by the Company's board of directors and its legal advisors by taking the provisions of the insurance policy for its directors and officers. The D&O Charge is proposed to rank immediately subsequent to the Administrative Charge as against all assets of the Company.³⁹

³⁵ Trustee Report, para. 43, Application Record, Tab 3.

³⁶ Trustee Report, para. 44, Application Record, Tab 3.

³⁷ Trustee Report, para. 45, Application Record, Tab 3.

³⁸ Trustee Report, para. 46, Application Record, Tab 3.

³⁹ Trustee Report, para. 47, Application Record, Tab 3.

41. The board of directors and its legal counsel are not aware of any material directors' and officers' charges or potential liabilities; however, for the purpose of a filing, they believe the \$100,000 affords them some protection for issues that may arise. The Company's directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified.⁴⁰
42. Furthermore, due to the potential for personal liability, the directors and officers of the Company have stated that they are unwilling to continue their services and involvement in this restructuring without the protection of a small D&O Charge. As the Company will require the participation of its directors and officers to effect a successful restructuring, the Trustee has advised that the D&O Charge is required and reasonable in the circumstances.⁴¹
43. The Trustee has advised that the proposed Administrative Charge and the proposed D&O Charge (together the "Court-Ordered Charges") and rankings are required and reasonable in the circumstances of the BIA proceedings, in order to preserve the Company's operations and attempt to maintain an enterprise value and, accordingly, supports the granting and the proposed priority ranking of the Court-Ordered Charges. The Company does not have any secured creditors (excluding any purchase money security interests, specific equipment lessors and statutory encumbrances) and, therefore, no secured creditor would be affected by

⁴⁰ Trustee Report, para. 48, Application Record, Tab 3.

⁴¹ Trustee Report, para. 49, Application Record, Tab 3.

the proposed Court-Ordered Charges. Furthermore, all known creditors of the Company, including the 2010 Flow-Through Investors and the 2011 Flow-Through Investors, have received notice of these proceedings.⁴²

PROPOSED RETENTION PAYMENTS

44. The Company believes that incentives are required to ensure that the consultants Starfield currently has under contract, including the current CEO and the current CFO, are willing to continue their services with the Company in its current circumstances through to completion of the Sales Process.⁴³
45. The Company, in conjunction with the Trustee, has formulated and is seeking this Court's approval of the Retention Payments to the Company's four remaining consultants (the "Key Employees") in the aggregate amount of \$25,000 per month (the "Aggregate Monthly Amount") payable on the 15th of each month in respect of the current month, commencing March 15, 2013, on the following terms:
- (a) the Aggregate Monthly Amount is to be distributed among the Key Employees in accordance with a memorandum of distribution to be approved by the board of directors of the Company, the Trustee and the Key Employees on or before the March 15, 2013;

⁴² Trustee Report, para. 50, Application Record, Tab 3.

⁴³ Trustee Report, para. 51, Application Record, Tab 3.

20.... - - - - -

- (b) to be entitled to receive his or her share of each Aggregate Monthly Amount a Key Employee must not have resigned or had his contract terminated for cause prior to the applicable payment date; and
- (c) Each Retention Payment is subject to the Company having sufficient available cash to pay the Aggregate Monthly Amount, and the Retention Payments shall cease upon the Company making or being deemed to have made an assignment in bankruptcy.⁴⁴
46. The Company believes that absent the approval of the Retention Payments in favour of the Key Employees, they are likely to seek other employment opportunities. The departure of any of the Key Employees would undermine Starfield's restructuring efforts and could have an adverse impact on the success of the Company's proposed Sales Process.⁴⁵
47. Starfield's Board of Directors have reviewed and approved the proposed Retention Payments and the terms and conditions thereof.⁴⁶
48. Based on the foregoing, the Trustee has advised that the proposed Retention Payments appear to be appropriate and reasonable in the circumstances, in order to preserve the Company's operations and maintain some enterprise value and, accordingly, supports the Company's request for approval of the Retention Payments.⁴⁷

⁴⁴ Trustee Report, para. 52, Application Record, Tab 3.

⁴⁵ Trustee Report, para. 53, Application Record, Tab 3.

⁴⁶ Trustee Report, para. 54, Application Record, Tab 3.

⁴⁷ Trustee Report, para. 55, Application Record, Tab 3.

COMPANY'S REQUEST FOR AN EXTENSION

49. The Company is seeking an extension to April 26, 2013 of the time to file a proposal to permit it and the Trustee to undertake the Sale Process described above. This represents a 20-day extension to the initial 30-day stay provided for in the BIA.⁴⁸
50. The Trustee has advised that it supports the Company's request for an extension for the following reasons:
- (a) the Company is acting in good faith and with due diligence in taking steps to facilitate a sale of its operations;
 - (b) it is the Trustee's view that an extension will not prejudice or adversely affect any group of creditors;
 - (c) the Cash Flow Projection indicates that Starfield should have sufficient liquidity to continue to fund operations through the period ending April 26, 2013; and
 - (d) at least 30 days will be required to establish whether there is any serious interest in acquiring the Company and/or its assets.⁴⁹
51. While it is too early to say whether a viable proposal will be presented by the Company to its creditors, the Trustee has advised that the early request of the extension is appropriate given the circumstances, as it minimizes costs incurred in

⁴⁸ Trustee Report, para. 56, Application Record, Tab 3.

⁴⁹ Trustee Report, para. 57, Application Record, Tab 3.

re-attending before this Court prior to April 7, 2013 solely for the purposes of seeking a short extension of the stay until the LOIs have been received and reviewed. Given that these LOIs are not due until April 12, 2012 (and the extension will have to be sought prior to that date), the current extension request more properly reflects the timeframe by which the Trustee will be able to provide a meaningful update to this Court on the progress of the Sales Process.⁵⁰

NOTICE OF THIS APPLICATION

52. Application materials for this application were served on, among others: (a) all unsecured trade creditors; (b) all unsecured equity claimants; and (c) various government entities, including federal and Nunavut taxing authorities.

PART III - ISSUES

53. The issues on this application are as follows:
- (a) Should this Court approve the Sales Process?
 - (b) Should this Court grant a priority Administrative Charge and D&O Charge?
 - (c) Should this Court approve the Retention Payments?
 - (d) Should this Court extend the time within which a proposal must be filed with the Official Receiver under section 62(1) of the BIA?

⁵⁰ Trustee Report, para. 58, Application Record, Tab 3.

PART IV - LAW AND ARGUMENT

A. COURT SHOULD APPROVE THE SALES PROCESS

54. Section 65.13 of the BIA provides statutory jurisdiction for the sale of the

Company's assets outside of the ordinary course of business ~~in the context of an~~

NOI:

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

[...]

65.13(4) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the trustee approved the process leading to the proposed sale or disposition;

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

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

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

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.⁵¹

55. The Company is under no statutory obligation to obtain Court approval of the Sales Process or to notify its creditors, who are all unsecured, of its intention to continue the SISP that it had undertaken prior to filing the NOI. However, the Company is seeking this Court's approval of the Sales Process in good faith to

⁵¹ BIA, s. 65.13.

ensure that this Court, and the Company's creditors, are made aware of the proposed marketing process at an early stage.

56. The Company respectfully submits that the Sales Process will provide a further means for testing the market to determine whether there is potential for a transaction that would results in realizations greater than liquidation under a bankruptcy.

57. The Trustee supports the Sales Process and has agreed to participate in all aspects of the Sales Process to ensure that it is both fair and reasonable. The Sales Process does not require that the Company accept the highest, best or any offer received and this Court will retain its jurisdiction to approve any proposed sale under 65.13 of the BIA.

B. COURT SHOULD GRANT THE ADMINISTRATIVE CHARGE AND THE D&O CHARGE

The Administrative Charge

58. Starfield is seeking a first priority Administrative Charge in the maximum amount of \$100,000 to secure the reasonable fees and disbursements of the intended beneficiaries for services rendered to the Company in connection with these NOI proceedings.

59. Section 64.2 of the BIA provides statutory jurisdiction to grant an administration charge and to grant super-priority status to such charge and states as follows:

64.2(1) 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 a person in respect of

whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

64.2(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.⁵²

[...]

60. In the present matter, the Company respectfully submits that the proposed Administrative Charge in favour of the Insolvency Professionals is supported by the following factors:

- (a) the Company operates a business which includes multiple mineral properties/projects in remote locations;
- (b) the proposed beneficiaries will provide essential financial and legal services throughout these NOI proceedings and the continued participation of each of the Insolvency Professionals is critical to the success of the Company's restructuring;
- (c) the Administrative Charge is necessary to ensure that the proposed beneficiaries' fees and disbursements are protected; and

⁵² BIA, s. 64.2.

- (d) the quantum of the proposed Administrative Charge is reflective of the complexity of Starfield's business and is both fair and reasonable in the circumstances of these NOI proceedings.

The D&O Charge

61. Starfield is seeking to indemnify its directors and officers for obligations and liabilities that they may incur as directors or officers of the Company from and after the filing of the NOI by granting a second priority ~~D&O Charge over the~~ Property in their favour in the maximum amount of \$100,000. It is proposed that the D&O charge rank immediately behind the Administrative Charge.
62. Section 64.1 of the BIA expressly provides for the granting of directors' and officers' charge on a priority basis:

64.1(1) On application by a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) 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 property of the person is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the person to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.

64.1(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

64.1(3) The court may not make the order if in its opinion the person could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

64.1(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or

*officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.*⁵³

63. In the present matter, the ~~Company does maintain an insurance policy for its~~ directors and officers. Accordingly, the draft Initial Order provides that the directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified under the current policy. In *Re Timminco Ltd.*⁵⁴ the Ontario Superior Court of Justice adopted a similar approach in its application of the equivalent provision in the *Companies' Creditors Arrangement Act*, R.S.C., c.-C-36, as amended ("CCAA"),⁵⁵ and approved the limited D&O charge in favour of the directors and officers.
64. Section 11.51 of the CCAA is substantially similar to section 64.1 of the BIA and the Company submits that the jurisprudence under the CCAA provision should be applicable in interpreting section 64.1 of the BIA.⁵⁶
65. In *Re Canwest Global Communications Corp.*, Pepall J. considered the purposes behind section 11.51 of the CCAA and stated:

"The purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protection against liabilities they could incur during the restructuring: Re General Publishing Co. [(2003), 39 CBR (4th) 216]. Retaining the current directors and officers of the applicants would avoid

⁵³ BIA, s. 64.1.

⁵⁴ *Re Timminco Ltd.*, 2012 ONSC 106 at paras 33-36 (Ont. S.C.J. [Comm. List]), Commercial List — Authorities Book, Tab 1.

⁵⁵ CCAA s. 11.51.

⁵⁶ *Re Kitchener Frame Limited*, 2012 ONSC 234 at paras 45-47 (Ont. S.C.J. [Comm. List]), Commercial List Authorities Book, Tab 2.

*destabilization and would assist in the restructuring. The proposed charge would enable the applicants to keep the experienced board of directors supported by experienced senior management. The proposed Monitor believes that the charge is required and is reasonable in the circumstances and also observes that it will not cover all of the directors' and officers' liabilities in the worst case scenario. In all of the circumstances, I approved the request."*⁵⁷

66. In the present matter, the Company submits that the D&O charge should be granted on the following basis:

- (a) the Company's directors and officers have advised that, due to the potential for personal liability, they are unwilling to continue their services and involvement in the restructuring without the protection of the D&O Charge;
- (b) the continued involvement of the current directors and officers is critical to a successful restructuring of the Company;
- (c) the Company does not have any secured creditors who are entitled to notice of the proposed D&O Charge or who's security may be affected by the charge. Nonetheless, the Company has exceeded the minimum requirements of section 64.1(1) and has notified all of its creditors of the return date of this application and has provided each of them with copies of its application record;
- (d) the board of directors and its legal counsel have advised that they are not aware of any material directors' and officers' potential liabilities; however, given the potential for personal liability in the context of these

⁵⁷ *Re Canwest Global Communications Corp.*, (2009), 59 CBR (5th) 72 at para 48 (Ont. S.C.J. [Comm. List]), Commercial List Authorities Book, Tab 3,

NOI proceedings, the amount of the proposed D&O Charge is reasonable;
and

(e) the Trustee has advised that it is supportive of the D&O charge and the amount thereunder.

67. For these reasons, it is submitted that this Honourable Court should grant the D&O Charge.

C. THE COURT SHOULD APPROVE THE RETENTION PAYMENTS

68. The Company seeks an order approving the Retention Payments offered by Starfield to its remaining Key Employees as an incentive for them to remain with the Company through the restructuring process. The Company is proposing Retention Payments in the aggregate amount of \$25,000 per month payable on the 15th of each month.

69. There is no express statutory jurisdiction under either the BIA or the CCAA for the Court to approve the Retention Payments. However, employee retention payments are frequently approved in CCAA proceedings where the continued involvement of key employees is deemed to be critical to a successful restructuring. Some of the factors that a Court will consider when determining whether to approve an employee retention plan were set out in *Re Grant Forest Products Inc.*, and include:

(a) whether the Monitor supports the employee retention plan;

- (b) whether the key employees who are subject of the employee retention plan are likely to pursue other employment opportunities;
- (c) whether the employees are truly "key employees" whose continued participation in the Company is crucial to the restructuring;
- (d) whether the quantum of the proposed retention payments is reasonable; and
- (e) the business judgment of the board of directors regarding the necessity of the retention payments.⁵⁸

70. The Company submits that a restructuring under section 50.4 of the BIA is substantially similar to a restructuring under the CCAA and that the above referenced principles should be applied by this Honourable Court when considering the Retention Payments. The Company further submits that the Retention Payments should be approved based on the following factors:

- (a) the Trustee has advised that it is supportive of the Retention Payments;
- (b) absent this Court's approval of the Retention Payments, the Key Employees will have no incentive to remain with the Company through the restructuring process and are therefore likely to seek other employment opportunities;

⁵⁸ *Re Grant Forest Products*, 57 C.B.R. (5th) 128, at paras 8-18 (Ont. S.C.J. [Comm. List]), Commercial List Authorities Book, Tab 4.

- (c) the participation of the Key Employees, which include the Company's CEO and CFO, are true key employees whose continued participation is critical to a successful restructuring;
- (d) the aggregate maximum amount under the Retention Payments of \$25,000 per month is reasonable considering the relative experience of the Key Employees and their familiarity with Starfield's assets and overall business; and
- (e) the Company's board of directors has determined that the Retention Payments are necessary and the Court should grant considerable deference to their business judgment.

D. THE COURT SHOULD EXTEND THE TIME WITHIN WHICH A PROPOSAL MUST BE FILED

- 71. The Company filed its NOI on March 7, 2013 and is seeking to extend the time within which a proposal must be filed with the Official Receiver beyond the 30 day period provided for in section 50.4(8) of the BIA. The Company is seeking to extend the period to April 26, 2013 to permit it and the Trustee to undertake the Sales Process.
- 72. The Court has authority to grant the requested extension under section 50.4(9) of the BIA, which states:

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

expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

(a) the insolvent person has acted, and is acting, in good faith and with due diligence,

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.⁵⁹

73. The Company respectfully submits that it has met the above referenced criteria on the following basis:

- (a) the Company has acted, and is continuing to act, in good faith and with due diligence in pursuing the Sales Process in consultation with the Trustee in an attempt to maximize value for all stakeholders;
- (b) it is too early to determine whether or not the Company will be in a position to make a viable proposal to creditors; however, under the Sales Process LOIs are not due until April 12, 2013, approximately 5 days after the expiration of the period within which the Company must file a proposal. Accordingly, the Company is seeking the requested extension to allow the Trustee sufficient time to evaluate any potential offers that it may receive under the Sales Process and to provide the Court with a meaningful update with regards to the progress under the Sales Process;
- (c) the Company's creditors will not be prejudiced by the requested extension, which will provide the Company with additional time to pursue the Sales Process for the benefit of all creditors. The Company has advised all of its

⁵⁹ BIA, s. 50.4(9).

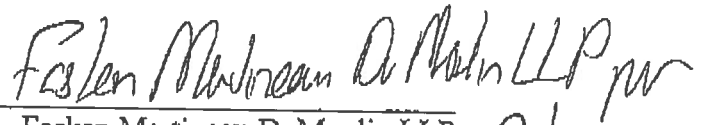

known creditors of the return date of this application and has provided each with copies of its application record;

- (d) the Company has sufficient cash-flow to continue to fund operations through the period ending April 26, 2013; and
- (e) the Trustee has advised that it is supportive of the requested extension.

PART V - ORDER REQUESTED

- 74. The Company therefore requests an Order substantially in the form of the draft order attached at Tab 1A of the Company's application record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of March, 2013


Fasken Martineau DuMoulin LLP 

Lawyers for Starfield Resources Inc.

TAB A

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Re Timminco Ltd.*, 2012 ONSC 106 (Ont. S.C.J. [Comm. List])
2. *Re Kitchener Frame Limited*, 2012 ONSC 234 (Ont. S.C.J. [Comm. List])
3. *Re Canwest Global Communications Corp.*, (2009), 59 CBR (5th) 72 (Ont. S.C.J. [Comm. List])
4. *Re Grant Forest Products*, 57 C.B.R. (5th) 128, (Ont. S.C.J. [Comm. List])

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TAB B

SCHEDULE "B" RELEVANT STATUTES

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

50.4 Notice of intention

(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).

[...]

Where assignment deemed to have been made

(8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

(a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;

(b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;

(b-1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and

(c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

Extension of time for filing proposal

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

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.

[...]

62 Filing of proposal

(1) If a proposal is made in respect of an insolvent person, the trustee shall file with the official receiver a copy of the proposal and the prescribed statement of affairs.

[...]

64.1 Security or charge relating to director's indemnification

(1) On application by a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) 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 property of the person is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the person to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.

Priority

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

Restriction - indemnification insurance

(3) ~~The court may not make the order if in its opinion the person could obtain adequate indemnification insurance.~~

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

64.2 Court may order a security or charge.....

(1) 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 a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

Priority

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

[...]

65.13 Restriction on disposition of assets

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

Individuals

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

Notice to secured creditors

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

Factors to be considered

(4) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the trustee approved the process leading to the proposed sale or disposition;

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

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

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

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

[...]

Companies' Creditors Arrangement Act, R.S.C., c. C-36

11.51 Security or charge relating to director's indemnification

(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.

Priority

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

Restriction - indemnification insurance

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred ~~by a director or officer if in its opinion~~ the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED
AND IN THE MATTER OF THE NOTICE OF INTENTION OF STARFIELD RESOURCES INC., OF THE CITY OF TORONTO IN
THE PROVINCE OF ONTARIO

Court File No. CV13-10034-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

Proceedings commenced in Toronto

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