

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
Court No: 500-11-055622-183
Estate No: 41-2448488

SUPERIOR COURT
(Commercial Division)
Bankruptcy and Insolvency Act

IN THE MATTER OF THE PROPOSAL OF:

C & E CANADA INC.

legal person duly incorporated under the laws of
Canada, having its registered office at 1000 de la
Gauchetiere, Suite 2100, Montreal QC H3B 4W5

Debtor

-and-

RICHTER ADVISORY GROUP INC.

Trustee

**REPORT OF THE TRUSTEE ON THE FINANCIAL SITUATION
OF THE DEBTOR AND ON THE PROPOSAL
(Sections 50(5) and 50(10)(b) of the *Bankruptcy and Insolvency Act*)**

1. The purpose of the First Meeting of Creditors is to consider the proposal filed on February 12, 2019 (hereinafter the "**Proposal**") by C & E Canada Inc. (the "**Debtor**" or the "**Company**").
2. Pursuant to Sections 50(5) and 50(10)(b) of the Bankruptcy and Insolvency Act, and in order to assist the ordinary unsecured creditors (hereinafter the "**Unsecured Creditors**") in considering the Proposal (as defined below), the Trustee is hereby submitting its report on the financial situation of the Debtor and on the Proposal.
3. All the capitalized terms that are not otherwise defined herein shall have the meaning ascribed thereto in the Proposal.
4. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

INTRODUCTION

5. On November 28, 2018, the Debtor filed a Notice of Intention to Make a Proposal (the "**NOI**"), the whole as appears in the documents filed in the court record.

6. On November 28, 2018, documents were sent by regular mail to all creditors of the Debtor, as identified by it, which included a copy of the Debtor's NOI, the whole as appears in the documents filed in the court records.
7. On November 30, 2018 and January 15, 2019, the Court granted extensions of time for the filing of a Proposal through to February 15, 2019.
8. On February 12, 2019, the Debtor filed a Proposal to its creditors. We enclose herewith the Proposal made by the Debtor to its creditors, a proof of claim form, a voting form, a proxy and a notice indicating the place and time of the creditors' meeting to address the Proposal.
9. This report summarizes the relevant information and key elements that may assist the Unsecured Creditors in evaluating the Debtor's affairs and the Proposal, presented as follows:
 - a) Overview of the Debtor
 - b) Causes of Insolvency
 - c) Asset Liquidation
 - d) Financial Information
 - e) Proposal
 - f) Estimated Distribution to the Unsecured Creditors
 - g) Trustee's Conclusion and Recommendation
10. Additional information related to the Debtor, causes of insolvency, and other matters have previously been detailed in reports of the Trustee dated November 28, 2018 and January 11, 2019. All prior reports of the Trustee have been filed in the court record and can be found on the Trustee's website at: <https://www.richter.ca/insolvencycase/ce-canada-inc>.

OVERVIEW OF THE DEBTOR

11. Crabtree & Evelyn is an international retailer of body, fragrance and home care products with stores globally. The Debtor is a wholly owned subsidiary of Crabtree & Evelyn Holdings Limited which is an investment holding company located in London, England.
12. At the time of the filing, the Debtor had approximately 123 full-time and part-time employees, virtually all of whom were involved in the retail operations. Managerial and administrative services are provided by related entities located in the United States and the United Kingdom.

13. At the time of filing, the Debtor operated 19 retail stores in Canada including Ontario (11), British Columbia (6), Quebec (1) and Alberta (1). All retail stores were closed on or before December 27, 2018.
14. The Debtor does not have a distribution center in Canada, with all product being supplied by Harvey (as defined below), a related entity located in the United States. In addition, the Debtor sold its inventory through various specialty retailers throughout Canada and through an e-commerce platform.

CAUSES OF INSOLVENCY

15. The NOI was filed in a context where the Debtor has been experiencing significant losses over the last few years which it attributes to:
 - Changing consumer demand for new product items;
 - The rise of e-commerce; and
 - Long-term declines in traditional retail traffic and productivity.
16. The Debtor does not have its own third-party lending facilities and instead has relied upon financial support from related entities:
 - Harvey Supply Chain International, LLC ("**Harvey**") has been the primary supplier of inventory to the Debtor; and
 - Crabtree & Evelyn, Ltd. ("**C&E US**") has provided administrative and management services to the Debtor.

These related entities advised the Debtor that they would no longer continue to support the Debtor in view of the significant balances owing by the Debtor. Harvey has recently decided to shift from an internal manufacturing and distribution center to an importer model and can no longer subsidize Canadian production and distribution. C&E US is in the process of restructuring its operations as well.

ASSET LIQUIDATION

17. Following the NOI filing, on November 30, 2018, the Court issued an order approving an inventory disposition agreement entered into on November 26, 2018 between the Debtor and Gordon Brothers Canada ULC ("**GB**") pursuant to which GB acted as consultant and assisted the Debtor in the liquidation of all inventory and fixtures located in the retail stores.
18. The Debtor has certain outstanding wholesale receivables with various Canadian customers and minimal inventory located in a US warehouse, as discussed further below.

19. As a result of the inventory and store fixture liquidation, all of the Debtor's retail locations were closed and the premises returned to the landlords by December 27, 2018. Similarly, all employees involved in the retail operations were terminated on or before December 27, 2018.

FINANCIAL INFORMATION

20. The following financial data is based upon unaudited financial information prepared by the Debtor's representatives, the Debtor's books and records, and discussions with the Debtor's representatives. The Trustee has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of such information. This information is submitted solely to assist the reader in assessing the financial position of the Debtor. The Trustee makes no representation or warranty as to the accuracy of said financial information.
21. Profit and Loss - as noted in the table below, the Debtor reported a combined net loss of \$4.6 million for the 10-month ended October 2018. The Debtor's cumulative 31-month loss prior to filing the NOI on November 28, 2018 was approximately \$10.9 million:

Profit & Loss Overview			
(\$000's)	Unaudited	Audited	
	10 Mos. Ended Oct/18	Year Ended Dec/17	9 Mos. Ended Dec/16
Sales	\$ 7,552	\$ 10,632	\$ 8,632
Gross Profit	4,089 54%	4,807 45%	5,410 63%
Expenses	(7,423)	(9,730)	(6,623)
Operating Loss	(3,334)	(4,923)	(1,213)
Other Rev. / (Exp.)	(1,295)	105	(195)
Net Loss	\$ (4,629)	\$ (4,818)	\$ (1,408)

22. Balance Sheet - the following table summarizes the Debtor's last month-end balance sheet prior to the November 28, 2018 NOI filing:

C & E Canada
Balance Sheet as at Oct 31, 2018 (unaudited)
(\$000's)

Assets	
Current Assets	
Cash and Cash Equivalents	\$ 429
Trade Receivables - Third Party	342
Other Receivables (Incl GST)	384
Non-Trade Receivable - C&E Group	945
Inventory	1,639
	<u>3,738</u>
Non-Current Assets	
Property Plant & Equipment	1,418
Intangible Assets	790
	<u>2,208</u>
Total Assets	<u>\$ 5,946</u>
Current Liabilities	
Trade Payables - Third Party	53
Trade Payables - C&E Group	10,638
Other Payables (Incl GST)	524
Rent	188
Non-Trade Payables - C&E Group	11,661
	<u>23,062</u>
Total Liabilities	<u>23,062</u>
Shareholders' Equity	
Share Capital	435
Retained Earnings	(17,551)
	<u>(17,117)</u>
Total Liabilities and Shareholders' Equity	<u>\$ 5,946</u>

23. We have summarized the assets and liabilities of the Debtor as reported on the Debtor's Statement of Financial Affairs dated February 12, 2019:

a) **Assets**

The assets indicated below are based on the books and records of the Debtor, the Statement of Affairs as of February 12, 2019 and management's representations.

C & E Canada	
Reported Assets Balance as at February 12, 2019	
(\$000's)	
Cash	\$ 2,267
Trade Receivables	186
Inventory	196
Intellectual Property	-
Total Assets	\$ 2,649

- Cash in bank (\$2,267K) – represents the estimated net bank position as of the filing of the Proposal but prior to the payment of estimated outstanding post-filing obligations and prior to costs of implementing a proposal including professional fees.
- Trade Receivables (\$186K) – represents the estimated book value of the remaining wholesale accounts receivable. The Company with the assistance of the Proposal Trustee is pursuing the collection of these receivables.
- Inventory (\$196K) – represents the estimated book value of inventory owned by the Company. The inventory is in a warehouse (controlled by Harvey) which is located in the United States. Harvey has made an offer to purchase this remaining inventory for \$54,000 which was accepted by the Debtor. While only representing approximately 30% of the cost value of the inventory, the Proposal Trustee supported the acceptance of this offer to avoid the cost of taking possession of this inventory, packaging and transporting same to another third party warehouse, the challenges that may be encountered in locating a purchaser for this remaining inventory and any likely restrictions on the disposition of branded inventory (with the Crabtree & Evelyn name).
- Intellectual Property – the Proposal Trustee has been advised that the trade name Crabtree & Evelyn is owned by related entities in either the United States or the United Kingdom. The Debtor has registered the domain name “crabtree-evelyn.ca”, however this is believed to have no value without the corresponding ownership of the Crabtree & Evelyn trade-name. Consequently, the domain name would remain as an asset of the Debtor following acceptance of the Proposal.

b) **Liabilities**

Liabilities indicated below are based on the books and records of the Debtor, the Statement of Affairs as of February 12, 2019 and management's representations.

C & E Canada	
Estimated Liabilities as at February 12, 2019	
(\$000's)	
Secured Creditors	\$ -
Preferred Creditors	-
Subsequent Creditors	-
Unsecured Creditors	
Trade Claims	278
Related Party Claims	14,764
Employee Claims	34
Landlord Claims	2,158
	<u>17,234</u>
Total Liabilities	\$ 17,234

Secured Creditors (\$0)

- The Debtor did not have its own lending facility, relying instead on cash flow generated by the business and the financial support received from related creditors as discussed elsewhere in this report. As such, the statement of affairs does not reflect any amount owing to secured creditors.

Preferred Creditors (estimated at \$0)

- The Debtor believe that all amounts owing to Preferred Creditors (including employee wages and vacation) have been paid in full. However, it will be determined through the claims process if any creditors will claim preferred status.

Subsequent Creditors (estimated at \$0)

- To the knowledge of the Debtor, virtually all obligations incurred by the Debtor subsequent to the filing of the NOI were paid by the Debtor post-filing. In the event any amounts are owing, as per the terms of the Proposal, they will be paid in full prior to distributions to unsecured creditors.

Unsecured Creditors (estimated at \$17.2M)

With regards to unsecured creditors, we note the following:

- Trade creditors (\$0.3M): the amounts reflected above are based on the books and records of the Debtor;

- Related creditors (\$14.8M): This relates to amounts owed to Harvey (\$11.7M) in connection with the supply of inventory to the Debtor and to C&E US (\$3.1M) in connection with services rendered. As noted above, the Debtor relied on these related parties for financial support in lieu of any credit agreement with a financial institution;
 - Employees (\$34K): the amounts reflected above consist of estimated amounts to certain employees for pay in lieu of notice of termination. All wages and accrued vacation pay were paid to terminated employees upon their departure; and
 - Landlords (\$2.2M): the amounts reflected above represent an estimate of the aggregate amount that could be claimed by landlords pursuant to section 65.2(4)(b) of the Act in respect of damages for resiliated leases plus unpaid pre-filing rent.
24. Proof of claim forms and Employee Claim Notices (where applicable) will be sent to all known creditors. However, at the present date, the Trustee is unable to determine if the Debtor's records are consistent with those of its creditors. Upon reception of the proofs of claim, the Trustee will review them and deal with any discrepancies for purposes of collocation of claims.
25. The Trustee cautions that these amounts may change as proofs of claims are filed and such changes may be significant.

PROPOSAL

26. The Trustee notes that the following is only a summary of the terms of the Proposal. Creditors are advised to read the Proposal for complete details of the terms of the Proposal.
27. The terms of the Proposal provide that cash on hand, subject to any reserve for amounts due to Subsequent Creditors (the "**Initial Fund Contribution**"), will be remitted to the Proposal Trustee by the Debtor within 5 business days following the approval of the Proposal by the Court, for distribution to the Debtor's creditors in accordance with the terms of the Proposal. Further, the Debtor shall remit to the Proposal Trustee the net cash proceeds from the realization of the remaining assets as of the date of the Proposal, being inventory and accounts receivable (the "**Final Contribution**") as soon as reasonably practicable following receipt.
28. The Initial Fund Contribution and the Final Contribution (together the "**Creditors' Fund**") shall be available for distribution in accordance with articles 2.4 and 2.9 of the Proposal.
29. The Proposal applies only to Unsecured Claims, Preferred Claims (if any) and Employee Claims. For further clarity, the Proposal does not apply to Secured Claims, or to Post-Filing Claims.

30. According to the terms of the Proposal, the following amounts must be paid in priority from the Creditors Fund:
- a) Professional Fees (as defined in the Proposal) as they become due;
 - b) Crown claims that could be subject to a demand under Section 224 (1.2) of the *Income Tax Act*, or under any substantially similar provision of provincial legislation, shall be paid in full, within six months of the approval of the Proposal by the Court, or as may otherwise be arranged with the Crown - expected to be nil;
 - c) Amounts owing to employees (past and present) and that they would have been entitled to receive under Section 136(1)(d) of the Act if the Debtor had been declared bankrupt on the date of the approval of the Proposal, shall be paid in their entirety immediately after the approval of the Proposal – expected to be nil; and
 - d) Preferred Claims, as described in paragraph 136 the Act, being such claims directed by the Act to be paid in priority to all other claims in the distribution of the property of a bankrupt, excluding the employee claims noted in the c) above. The Preferred Claims, without interest or penalty, shall be paid in their entirety in priority to Unsecured Claims within thirty (30) days of the approval of the Proposal by the Court or as may be otherwise arranged with the Preferred Creditors – expected to be nil.
31. The remaining balance of the Creditors' Fund, after payment of the above-noted priority claims, shall be used by the Proposal Trustee to make a payment to the unsecured creditors, which shall receive:
- a) The lesser of three thousand dollars (\$3,000) or the amount of their Proven Claim; and
 - b) For Unsecured Creditors with a Proven Claim in excess of \$3,000, for the portion of the Proven Claim in excess of \$3,000, an amount equal to their pro rata share, calculated on the basis of the remaining amount of its Proven Claim, of the balance of the Creditors' Fund after payment of the amounts defined in a) above.

The Proposal Trustee shall make an interim distribution no later than thirty (30) days after the Effective Date (as defined in the Proposal). As soon as reasonably practical thereafter, the Proposal Trustee shall proceed with a final distribution of the Creditors' Fund in respect of Proven Claims in accordance with Article 2.4 of the Proposal. The Superintendent's Levy shall be withheld from each of the above-noted distributions in accordance with the provisions of the BIA.

32. In addition to the distributions from the Creditor's Fund, the Proposal provides that Harvey directs the Proposal Trustee to retain the sum of \$150,000 from the amounts otherwise payable on account of Harvey's Proven Claim (the "**Special Distribution Fund**"). The Special Distribution Fund will be distributed as follows:
- \$20,000 on a pro rata basis to holders of Employee Statutory Claims (as defined in the Proposal) or such lesser amount which satisfies the Employee Statutory Claims in full;
 - \$100,000 on a pro rata basis to holders of Landlord Claims (as defined in the Proposal) or such lesser amount which satisfies the Landlord Claims in full; and
 - The balance of the Special Distribution Fund on a pro rata basis to holders of Unsecured Claims other than Harvey, C&E US, holders of Employee Statutory Claims and holders of Landlord Claims.
33. Subject to the terms of the Proposal, each unsecured creditor with a Proven Claim equal to or less than \$3,000 shall be deemed to have voted in favour of the Proposal. Likewise, any employee that has not filed a proof of claim prior to the first meeting of creditors shall be deemed to have voted in favour of the Proposal in an amount equal to his/her Employee Claim.

ESTIMATED DISTRIBUTION TO THE UNSECURED CREDITORS

34. In the event that the creditors reject the Proposal, the Debtor will automatically be bankrupt. The following information serves to advise the creditors of the Proposal Trustee's estimate as to the distribution to creditors under the Proposal in comparison to the estimated distribution under a bankruptcy scenario.

Proposal

35. Based on the Claims reflected in the Debtor's Statements of Affairs, the amount of the Proposal (\$2.0 million) would be distributed as follows:

C & E Canada Summary of Proposal	# of creditors	Estimated Claims	Original Estimated Distribution	Original Recovery %	Projected Reallocation from Harvey	Revised Distribution	Revised Recovery %
Secured Creditors		\$ -	\$ -		\$ -	\$ -	
Preferred Creditors		-	-		-	-	
Subsequent Creditors		-	-		-	-	
Unsecured Creditors							
Trade Claims	31	277,766	70,666	25.4%	33,709	104,375	37.6%
Related Party Claims	2	14,764,000	1,633,689	11.1%	(150,000)	1,483,689	10.0%
Employee Claims	8	33,877	17,586	51.9%	16,291	33,877	100.0%
Landlord Claims	15	2,158,107	278,059	12.9%	100,000	378,059	17.5%
Total Liabilities	56	\$17,233,749	\$2,000,000	11.6%	\$ -	\$2,000,000	11.6%

36. It is estimated that the \$2.0 million Proposal would represent an 11.6% total recovery to Unsecured Creditors, based upon the estimated claims known to the Proposal Trustee. We caution that these amounts may change as proofs of claims are filed and such changes may be significant.
37. As noted above, while the overall recovery is in excess of 11% of the total estimated claims, as a result of the application of a “convenience class” and the agreement of Harvey to reallocate a portion of its dividend, we estimate that 30 (or 54%) of creditors will be paid in full (including all Employee Claims).

Bankruptcy

38. As previously noted, the Debtor’s remaining assets consist primarily of cash and some remaining inventory and accounts receivable. In a bankruptcy scenario, the realization to unsecured creditors from the Debtor’s estate is estimated to approximate the Original Estimated Distribution to the unsecured creditors in the Proposal as reflected in the table in the prior section.
39. Unlike in the Proposal, in the event of a bankruptcy, there is no undertaking by Harvey to allocate a portion of its dividend to other unsecured creditors. As a result, in a bankruptcy, it is believed that the recovery for substantially all unsecured creditors (excluding related party claims) will be lower.
40. Payment of all claims under the Proposal is expected to be significantly quicker than the timeline for processing and distribution in the context of a bankruptcy.

Other considerations

41. Sections 95 to 101 of the Act will not be applicable to the Proposal. The remedies pursuant to these provisions relate to the recovery of certain amounts under reviewable transactions, preferential treatments and asset disposals.
42. The Trustee has performed a cursory review of the transactions that occurred during the three-month period (with unrelated third parties) and 12-month period (for transactions with related parties), prior to the filing of the NOI. Pursuant to our cursory review of these transactions, it appears that same have been concluded in the normal course of business according to historical payment patterns and/or terms of payment made available to the Debtor by the creditors. No material reviewable transaction was noted.

TRUSTEE’S CONCLUSION AND RECOMMENDATION

43. The Proposal Trustee recommends that the unsecured creditors vote in favour of the Proposal as it will provide a higher recovery for the unsecured creditors as a direct result of the allocation by

Harvey of the Special Distribution Fund and it will provide a faster distribution of funds as opposed to a bankruptcy.

Respectfully submitted at Montreal, this 13th day of February 2019.

Richter Advisory Group Inc.
Trustee

A handwritten signature in blue ink, appearing to read 'A Adessky', with a long horizontal flourish extending to the right.

Andrew Adessky, CPA, CA, CIRP, LIT