

**500-09-029763-216 – 500-09-029765-211**

**COURT OF APPEAL OF QUÉBEC**

(Montréal)

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On appeal from a judgment of the Superior Court, District of Montréal,  
rendered on October 27, 2021 by the Honourable Justice Martin Castonguay.

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Nos. **500-09-029763-216 C.A.M.** – 500-11-060355-217 S.C.M.

**THE ATTORNEY GENERAL OF CANADA**

**APPELLANT**

v.

**CHRONOMÉTRIQ INC.**

**HEALTH MYSELF INNOVATIONS INC.**

**RESPONDENTS**

(Debtors / Petitioners)

- and -

**RICHTER ADVISORY GROUP INC.**

**RESPONDENT**

(Proposal Trustee)

- and -

**CANADIAN IMPERIAL BANK OF COMMERCE**

**CANADIAN BANKERS' ASSOCIATION**

**INSOLVENCY INSTITUTE OF CANADA**

**INTERVENERS**

(Style of cause continues next page)

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**APPELLANTS' BRIEF**

Dated April 8, 2022

Nos. **500-09-029765-211 C.A.M.** – 500-11-060355-217 S.C.M.

**L'AGENCE DU REVENU DU QUÉBEC**

**APPELLANT**

v.

**CHRONOMÉTRIQU INC.**

**HEALTH MYSELF INNOVATIONS INC.**

**RESPONDENTS**  
(Debtors / Petitioners)

- and -

**RICHTER ADVISORY GROUP INC.**

**RESPONDENT**  
(Proposal Trustee)

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**CANADIAN IMPERIAL BANK OF COMMERCE**  
**CANADIAN BANKERS' ASSOCIATION**  
**INSOLVENCY INSTITUTE OF CANADA**

**INTERVENERS**

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## APPELLANTS' ARGUMENT

### OVERVIEW

1. Employee source deductions are the cornerstone of Canada's personal income tax collection system.<sup>1</sup>
2. The *Income Tax Act* (ITA) and other federal and provincial statutes<sup>2</sup> (Fiscal Statutes), require employers<sup>3</sup> to withhold prescribed amounts from their employees' remuneration and to remit those amounts to the Crown.<sup>4</sup> Those withholdings are not the employer's property. When an employer does not remit those amounts, and instead uses them to satisfy other claims, the Crown is exposed as an involuntary creditor.
3. To protect the Crown from this sort of misappropriation, Parliament gave absolute priority to the Crown by explicitly deeming the property of the debtor to be held in trust "notwithstanding the *Bankruptcy and Insolvency Act*, any other enactment of Canada, any enactment of a province, or any other law". Parliament also ensured that the deemed trust for unremitted payroll deductions retains its priority in

<sup>1</sup> In *First Vancouver Finance v. M.R.N.*, 2002 SCC 49 at [para. 22](#) [*First Vancouver Finance*], the SCC stated that: "The collection of source deductions has been recognized as 'at the heart' of income tax collection in Canada". As mentioned in [Pembina on the Red Development Corp. Ltd. v. Triman Industries Ltd. \(1991\), 85 DLR \(4th\) 29 \(Man. C.A.\)](#), close to 90% of all personal income taxes paid in Canada are collected in this manner.

<sup>2</sup> *Income Tax Act*, RSC 1985, c. 1 (5th Supp) [ITA], as amended; the *Canada Pension Plan*, RSC 1985, c. C-8 [CPP], the *Employment Insurance Act*, SC 1996, c. 23 [EIA], the *Taxation Act*, CQLR, c. I-3 [TA], the *Tax Administration Act*, CQLR, c. A-6.002 [TAA] and the *Act respecting the Québec Pension Plan*, CQLR, c. R-9 [QPP].

The provisions of the statutes are virtually identical. The Crown will refer only to the ITA provision in this factum and when referring collectively to the statutes, will refer to the "Fiscal Statutes".

<sup>3</sup> Although the obligation under [section 153](#) of the ITA is for "...every person paying", for easier reading, we will refer to "employer" in this Factum.

<sup>4</sup> Both the provincial and federal tax authorities.

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insolvency and restructuring proceedings under the *Bankruptcy and Insolvency Act* (BIA).<sup>5</sup> Courts do not have authority to override these provisions.

4. In this case, in the context of a Division 1 proposal under the BIA, Chronométriq Inc. and a related corporation requested the Court to grant priming charges that would take priority over the Crown's deemed trust claims. Despite the absolute priority described above, the Court issued the order sought by the Debtors. The Court erred.
5. There is no provision in the BIA that gives the Court authority to subordinate the Crown's deemed trust claims to any charge on the debtor's property under a Division 1 proposal, not even the Court's inherent jurisdiction recognized under section [183](#) of the BIA.
6. The recent decision of the Supreme Court of Canada (SCC) in *Canada v. Canada North Group Inc.*<sup>6</sup> ([Canada North](#)), relied upon by the Debtors to obtain their Priming Charge Order, is not applicable in the present matter. That decision was issued in the context of a *Companies' Creditors Arrangement Act*<sup>7</sup> (CCAA) proceeding. Consistent with the significant flexibility and discretion associated with that statute, the SCC concluded that supervising judges have the ability, under section [11](#)—a provision at the heart of the CCAA which provides broad discretion to judges—to subordinate the Crown's deemed trust claims where such an order will achieve the objectives of the CCAA. In contrast, the BIA is a rules-based statute that does not contain a similar provision applicable to Division 1 proposals.
7. On a procedural level, the Court below did not give the Crown a reasonable opportunity to present its arguments. Despite the importance of the issues in this case, and that the Crown was served with the Motion less than four (4) hours before the hearing, the Court denied the Crown's request for an adjournment. This was a denial of justice.

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<sup>5</sup> *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3.

<sup>6</sup> *Canada v. Canada North Group Inc.*, [2021 SCC 30](#) [*Canada North*].

<sup>7</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36.

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**PART I – FACTS**

8. Chronométriq Inc. and its wholly owned subsidiary, Health Myself Innovations Inc. (collectively, the Debtors) were corporations carrying on business in Québec, providing healthcare management and patient engagement software for healthcare professionals.
9. At all material times, the Debtors were indebted to the Crown for over \$3.1 million for sources deductions and related amounts.<sup>8</sup>
10. On October 26, 2021, the Debtors sought protection from their creditors by filing Notices of Intention to file a proposal (NOIs) under the BIA. Richter Advisory Group Inc. was appointed as Trustee.
11. The next day, at 10:27 am, the Debtors notified the Crown with a Motion seeking, amongst other things, an order ranking creditor charges in the amount of \$1,450,000<sup>9</sup> on the Debtors' property in priority to the Crown's deemed trust pursuant to sections [50.6](#), [64.1](#), [64.2](#) and [183](#) of the BIA.<sup>10 11</sup>
12. The Debtors also requested that the Court declare that the priority of the Priming Charges would bind any subsequent trustee in bankruptcy, notwithstanding the provisions of any federal or provincial statute.<sup>12</sup>

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<sup>8</sup> See paragraph 42 of the Motion, **Appellants' Brief (hereinafter "A.B.")**, p. 64.

<sup>9</sup> The Priming Charges requested totalling \$1,450,000 were comprised of: \$1,000,000 Interim Lender's Charge, \$200,000 Administration Charge for post-filing professional fees (fees of the counsel for the Debtors, the Trustee and counsel for the Trustee) and \$250,000 Directors and Officers' Charge.

<sup>10</sup> *Motion for the Issuance of an Order Authorizing and Approving Interim Financing, a Sale and Investment Solicitation Process, and Administrative Charge, a Directors and Offices Charge, a Key Employee Retention Program, Procedural Consolidation of the Estates, and Other Relief* (Notification by email and Exhibits R-1 to R-13 are found at Schedule III), **A.B.**, p. 57ff.

<sup>11</sup> See paragraph 34 of the Priming Charge Order, **A.B.**, p. 39.

<sup>12</sup> See paragraph 37(d) of the Priming Charge Order, **A.B.**, p. 39.

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13. The Motion was returnable before the Court at 2:15 pm the same day, leaving the Crown with only 3 hours and 48 minutes to prepare for the hearing.
  14. Considering the importance and complexity of the legal questions raised by the Motion, the Crown sought an adjournment to allow sufficient time to prepare for the hearing.<sup>13</sup> This was the first motion before the Superior Court of Québec requesting to prime charges over the Crown's deemed trust in the context of BIA proceedings since the SCC issued its decision in [Canada North](#). CRA had a significant interest to protect its rights.
  15. The Court denied the Crown's request.
  16. At the hearing, the Debtors submitted an amended draft Order to the Court to clarify that the Priming Charge Order would apply to "trusts (statutory or otherwise)" and to increase the Interim Lender's Charge from \$1 M to \$1.6 M.<sup>14</sup> This amended draft Order was never submitted to the Crown and yet directly affected its rights.
  17. Upon hearing the Motion, the Court issued the Priming Charge Order. It appears that the Court relied on the [Canada North](#) decision, as was submitted in the oral submissions by the Debtors.<sup>15</sup> As explained below, *Canada North* is not applicable in the present file.
  18. When the Court rendered its reasons orally, it stated that it had the discretion to render the Priming Charge Order.<sup>16</sup> The Court, however, did not specify on which grounds it had authority to render such an Order under the BIA.

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<sup>13</sup> The Crown sought an adjournment of between 10 and 14 days and alternatively sought an Order carving out the priority of the Charges over the deemed trust until the issue could be argued at a future date. To facilitate the continuation of operations, the Crown agreed to the approval of a portion of the Interim Lender's Charge to ensure the payment of the current salaries and critical supplier costs.

<sup>14</sup> The total Priming Charges (Lender's Charge, Administration Charge, Directors and Officers Charge) sought was thereby increased to \$2 050 000.

<sup>15</sup> Transcript of proceedings held before the Honourable Martin Castonguay, J.C.S. on October 27, 2021 at pp. 79-82 [Transcript], **A.B., p. 296-299.**

<sup>16</sup> Transcript at pp. 94 and 95, **A.B., p. 311 and 312.**

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19. The Appellants appeal the Priming Charge Order rendered and challenge the terms of paragraphs 34 and 37(d), which read as follows:

[34] ORDERS AND DECLARES that each of the Charges shall constitute a charge on the Property and that such Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the “**Encumbrances**”), or trusts (statutory or otherwise) affecting the Property in favour of any person.

[37] ORDERS AND DECLARES that notwithstanding:

...

(d) the provisions of any federal or provincial statute; or

...

the Charges shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by any person, including any creditor of the Debtors, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

20. The Priming Charge Order states at paragraph 5 that the Court considered:

...the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“BIA”), in general, and sections [50.6](#), [64.1](#), [64.2](#), and [183](#) of the BIA, in particular;

but does not explain how the Court had authority under these provisions to subordinate the Crown’s deemed trust to the Priming Charges.

21. On November 25, 2021, approximately one month after the Priming Charge Order was pronounced, on the application of the Debtors, the Court issued an [Extension](#).

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[Approval, Vesting and Assignment Order](#) approving an Asset Purchase Agreement between the Debtors as vendors and Telus Health Solutions Inc. as the purchaser.

22. In paragraphs 30 and 31 of that Order, the Court directed the net proceeds of sale to be paid to the Trustee and held until order of the Court. The net proceeds of sale remain with the Trustee. The net proceeds of sale (approximately \$2.2M) are insufficient to pay both the \$2M+ in advanced Priming Charges and the \$3.1M in outstanding source deductions.
23. On December 8, 2021, the Debtors, having failed to file a proposal within the prescribed time, were deemed to have made an assignment in bankruptcy.

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## **PART II – ISSUES IN DISPUTE**

24. Did the Court have the authority under the BIA:
  - a. to subordinate the Crown's deemed trust claims for unremitted source deductions to the Priming Charges?
  - b. to declare that the Priming Charges shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors, notwithstanding the provisions of any federal or provincial statute?
25. Did the Court err in refusing the Appellants' request for an adjournment and violate the principles of natural justice (*audi alterem partem*)?

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**PART III – SUBMISSIONS****A. *Standard of review is correctness***

26. The determination of all of the issues listed above are questions of law. The standard of review on a question of law is correctness.<sup>17</sup>

**B. *The Court did not have the authority to subordinate the Crown's deemed trust claims to the Priming Charges***

27. In directing the Priming Charges to rank in priority to any trusts, statutory or otherwise, the Court acted beyond its authority.
28. The deemed trust provisions governed by the Fiscal Statutes establish that when a person, such as the Debtors, fails to remit source deductions to the Crown, their property, equal in value to the unremitted source deductions, is deemed to be held in trust for the Crown, to form no part of their estate, and to be owned by the Crown. Further, the proceeds from such property shall be paid to the Crown in priority to all secured creditors.
29. These deemed trust provisions operate notwithstanding any federal enactment, *specifically including the BIA*, any provincial enactment, or any other law and the Court does not have authority to set aside these provisions. The blanket paramountcy provision of subsection [227\(4.1\)](#) of the ITA supersedes the entire BIA<sup>18</sup>, including sections [50.6](#), [64.1](#), [64.2](#) and [183](#). To hold that the Court can grant priority to the Priming Charges over the deemed trust is to ignore the words of the ITA.
30. This absolute priority of the Crown for unremitted payroll deductions is specifically preserved by the BIA.

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<sup>17</sup> *Housen v. Nikolaisen*, 2002 SCC 33 at [para. 8](#).

<sup>18</sup> Except sections [81.1](#) and [81.2](#), neither of which is applicable in this case.

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31. Further, the provisions of the BIA governing the priming charges at issue did not permit the Court to subordinate the Crown's deemed trust claims to those priming charges. The Crown is not a secured creditor as defined in section [2](#) of the BIA.
32. It was equally not open to the Court to exercise its inherent jurisdiction to subordinate the deemed trusts to the Priming Charges, as doing so is contrary to the provisions of the ITA.
33. Finally, [Canada North](#), a decision of the SCC rendered in the context of CCAA proceedings, is simply not applicable in the present case.

**1. The deemed trust provisions of the ITA give the Crown an absolute priority over all secured creditors**

**a) Under subsection 227(4.1) of the ITA, the debtors' property is deemed to be held in trust for the Crown and proceeds have to be paid to the Crown in priority to all secured creditors**

34. The purpose of the deemed trust is to protect the Crown's ability to collect source deductions made by employers.<sup>19</sup> Those source deductions comprise a significant portion of the federal government's annual tax revenues.<sup>20</sup>
35. An employer paying salaries or wages to an employee is required to deduct or withhold amounts on account of income tax obligations, *Canada Pension Plan* (CPP) (or *Québec Pension Plan* (QPP)) contributions and Employment Insurance (EI) premiums and to remit those deductions to the Crown.<sup>21</sup>

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<sup>19</sup> Department of Finance Canada, Press Release 1997-030, "Unremitted Source Deductions and Unpaid GST" (7 April 1997) at p. 2.

<sup>20</sup> *Toronto-Dominion Bank v. Canada*, 2020 FCA 80 at [para. 40](#).

<sup>21</sup> [Section 153](#) of the ITA, [section 21](#) of the CPP, [section 59](#) of the QPP and [section 82](#) of the EIA.

36. Those source deductions are withheld from employees' gross salaries or wages and are not part of the employer's property.
37. Amounts so collected are sometimes "misappropriated" by employers for their own use.<sup>22</sup> In the present case, the Debtors misappropriated approximately \$3.1 million of source deductions.
38. Unlike creditors who can monitor the affairs of their debtor and regulate or terminate the supply of goods or services according to the risk of loss, the Crown is an involuntary creditor who must generally rely on the filings of taxpayers.<sup>23</sup>
39. Parliament therefore enacted powerful mechanisms designed to protect the collection of these payroll deductions, including the deemed trust mechanism.

**(1) The deemed trust mechanism under the ITA**

40. The deemed trust mechanism regarding payroll deductions is provided for in subsections [227\(4\) and \(4.1\)](#) of the ITA, subsections [23\(3\) and \(4\)](#) of the CPP, subsections [86\(2\) and \(2.1\)](#) of the *Employment and Insurance Act* (EIA), section [1015](#) of the *Taxation Act* (TA), section [20](#) of the *Tax Administration Act* (TAA) and section [59](#) of the QPP.
41. The deemed trust operates in two stages.

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<sup>22</sup> *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 SCR 411 at [para. 26](#).

<sup>23</sup> *First Vancouver Finance*, *supra* note 1 at [para. 23](#); *Canada (Minister of National Revenue) v. HSBC Bank of Canada*, 2004 FC 467 at [para. 15](#).

42. First, subsection 227(4) of the ITA<sup>24</sup> protects the original payroll deductions by way of a statutory trust by deeming those amounts to be held in trust for the Crown, separate and apart from the employer's other property:

<b>Trust for moneys deducted</b>	<b>Montant détenu en fiducie</b>
(4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.	(4) Toute personne qui déduit ou retient un montant en vertu de la présente loi est réputée, malgré toute autre garantie au sens du paragraphe 224(1.3) le concernant, le détenir en fiducie pour Sa Majesté, séparé de ses propres biens et des biens détenus par son créancier garanti au sens de ce paragraphe qui, en l'absence de la garantie, seraient ceux de la personne, et en vue de le verser à Sa Majesté selon les modalités et dans le délai prévus par la présente loi.

43. These original source deductions are to be remitted to the Crown at prescribed times.
44. Second, if an employer fails to remit its payroll deductions to the Crown as and when required, the “extension of trust” under subsection [227\(4.1\)](#) of the ITA<sup>25</sup> is triggered and the deemed trust extends to:
- The debtor's property,
  - The debtor's property held by the secured creditors of the debtor,
  - The proceeds from that property.

<sup>24</sup> See also [subsection 23\(3\)](#) of the CPP and [subsection 86\(2\)](#) of the EIA.

<sup>25</sup> See also [subsection 23\(4\)](#) of the CPP and [subsection 86\(2.1\)](#) of the EIA.

45. Subsection 227(4.1) provides:

<b>Extension of trust</b>	<b>Non-versement</b>
<p>(4.1) Notwithstanding any other provision of this Act, the <i>Bankruptcy and Insolvency Act</i> (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed:</p> <p>(a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and</p> <p>(b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest</p> <p>and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.</p>	<p>(4.1) Malgré les autres dispositions de la présente loi, la <i>Loi sur la faillite et l'insolvabilité</i> (sauf ses articles 81.1 et 81.2), tout autre texte législatif fédéral ou provincial ou toute règle de droit, en cas de non-versement à Sa Majesté, selon les modalités et dans le délai prévus par la présente loi, d'un montant qu'une personne est réputée par le paragraphe (4) détenir en fiducie pour Sa Majesté, les biens de la personne, et les biens détenus par son créancier garanti au sens du paragraphe 224(1.3) qui, en l'absence d'une garantie au sens du même paragraphe, seraient ceux de la personne, d'une valeur égale à ce montant sont réputés :</p> <p>a) être détenus en fiducie pour Sa Majesté, à compter du moment où le montant est déduit ou retenu, séparés des propres biens de la personne, qu'ils soient ou non assujettis à une telle garantie;</p> <p>b) ne pas faire partie du patrimoine ou des biens de la personne à compter du moment où le montant est déduit ou retenu, que ces biens aient été ou non tenus séparés de ses propres biens ou de son patrimoine et qu'ils soient ou non assujettis à une telle garantie.</p> <p>Ces biens sont des biens dans lesquels Sa Majesté a un droit de bénéficiaire malgré toute autre garantie sur ces biens ou sur le produit en découlant, et le produit découlant de ces biens est payé au receveur général par priorité sur une telle garantie.</p>

46. Consequently, under subsection [227\(4.1\)](#) of the ITA, Parliament directed that the debtor's assets (equal in value to the unremitted source deductions) become the property of the Crown as of the date of the original withholdings, removing it from the estate or patrimony of the debtor. Parliament then mandated that the proceeds of that property shall be paid to the Crown in priority to the claims of all of the debtor's secured creditors. The closing words of subsection 227(4.1) ("shall be paid...") are framed in mandatory, not discretionary language.<sup>26</sup>

**(2) The deemed trust supersedes any security interests**

47. Parliament intended that the Crown's deemed trust capture all assets of tax debtors, including those subject to a security interest. Under subsection [227\(4.1\)](#) of the ITA, the deemed trust specifically impresses property subject to a security interest within the meaning of subsection [224\(1.3\)](#) of the ITA.
48. Given the broad definition of security interest in subsection 224(1.3) of the ITA, it is clear that Parliament wished to give the Crown's deemed trust priority over the widest possible variety of "security interests". Subsection [224\(1.3\)](#) of the ITA reads as follows:

<p><b>security interest</b> means any interest in, or for civil law any right in, property that secures payment or performance of an obligation and includes an interest, or for civil law a right, created by or arising out of a debenture, mortgage, hypothec, lien, pledge, charge, deemed or actual trust, assignment or encumbrance of any kind whatever, however, or whenever arising, created, deemed to arise or otherwise provided for (garantie)</p>	<p><b>garantie</b> Intérêt ou, pour l'application du droit civil, droit sur un bien qui garantit l'exécution d'une obligation, notamment un paiement. Sont en particulier des garanties les intérêts ou, pour l'application du droit civil, les droits nés ou découlant de débiteures, hypothèques, privilèges, nantissements, sûretés, fiducies réputées ou réelles, cessions et charges, quelle qu'en soit la nature, de quelque façon ou à quelque date qu'elles soient créées, réputées exister ou prévues par ailleurs. (security interest)</p>
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<sup>26</sup> *Interpretation Act*, RSC 1985, c. I-21, [section 11](#); Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6<sup>th</sup> ed. (Markham, Ont.: LexisNexis, 2014) at pp. 91-92; also *Baron v. Canada*, [1993] 1 SCR 416 at pp. [440-443](#).

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49. As confirmed in [Caisse populaire Desjardins de l'Est de Drummond](#), Rothstein J. writing for the SCC majority, stated that the term “security interest” under subsection [224\(1.3\)](#) is broad in scope. It does not require any particular form but only that “the creditor’s interest in the debtor’s property secures payment or performance of an obligation”.<sup>27</sup>
50. The SCC’s decision in [Canada North](#) has not displaced the prevailing case law regarding the scope of subsection 224(1.3). The majority of justices in *Canada North* found that the Priming Charges under the CCAA are “security interests” as defined in subsection [224\(1.3\)](#) of the ITA.<sup>28</sup>
51. In any event, even if the Priming Charges were not security interests within the meaning of subsection [224\(1.3\)](#), which the Crown denies, the property in the present file is caught by the deemed trust, as it is “property of the person” within the meaning of [227\(4.1\)](#) of the ITA.

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<sup>27</sup> *Caisse populaire Desjardins de l'Est de Drummond v. Canada*, 2009 SCC 29 at [para. 15](#) : [15] In order to constitute a security interest for the purposes of s. [227\(4.1\)](#) ITA and s. [86\(2.1\)](#) EIA, the creditor must hold “any interest in property that secures payment or performance of an obligation”. The definition of “security interest” in s. [224\(1.3\)](#) ITA does not require that the agreement between the creditor and debtor take any particular form, nor is any particular form expressly excluded. So long as the creditor’s interest in the debtor’s property secures payment or performance of an obligation, there is a “security interest” within the meaning of this section. While Parliament has provided a list of “included” examples, these examples do not diminish the broad scope of the words “any interest in property”: see *Dagg v. Canada (Minister of Finance)*, 1997 CanLII 358 (SCC), [1997] 2 S.C.R. 403, at [para. 68](#), and R. Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at pp. 61-68.

<sup>28</sup> Four justices held the Priming Charges under the CCAA were security interests as defined in subsection 224(1.3):

- Justices Brown and Rowe (Abella J. concurring) – at [paras. 206-214](#);
- Justice Moldaver is in substantial agreement with Justices Brown and Rowe – at [para. 254](#);

Three justices held the Priming Charges are not “security interests” as defined in subsection 224(1.3):

- Justice Côté (Wagner CJ and Kasirer J concurring) – at [para. 62](#).

Justice Karakatsanis (Martin J concurring) did not decide on the question (at [para. 103](#)).

**b) Parliament ensured blanket paramountcy of the Crown's deemed trust**

52. As seen above, the deemed trust provisions contain strong statutory language designed to give the Crown an absolute priority over competing creditors. There is more.
53. Subsection 227(4.1) of the ITA applies notwithstanding any other federal or provincial statutory provisions or law and specifically, notwithstanding the BIA<sup>29</sup>:

(4.1) Notwithstanding any other provision of this Act, the <i>Bankruptcy and Insolvency Act</i> (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, ...	(4.1) Malgré les autres dispositions de la présente loi, la <i>Loi sur la faillite et l'insolvabilité</i> (sauf ses articles 81.1 et 81.2), tout autre texte législatif fédéral ou provincial ou toute règle de droit, ...
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54. The term “notwithstanding” is defined by the Concise Oxford Dictionary to mean “without regard to or prevention by; not the less for;”.<sup>30</sup>

<sup>29</sup> In contrast to the reasons of Madam Justice Côté and Madam Justice Karakatsanis in *Canada North* who did not address the effect of the notwithstanding phrase, Justices Brown and Rowe (Justice Abella concurring) and Justice Moldaver agreed that the notwithstanding phrase in ITA [subsection 227\(4.1\)](#) was effective to subordinate [section 11](#) of the CCAA; at paras. [200](#), [259-260](#).

<sup>30</sup> *Notwithstanding*, in J. B. Sykes, *Concise Oxford Dictionary of Current English*, 6<sup>th</sup> ed. (Oxford University Press, 1981). See also Bryan A. Garner, *Black's Law Dictionary*, 10<sup>th</sup> ed. (West Group, 2014) (“1. Despite; in spite of < notwithstanding the conditions listed above, the landlord can terminate the lease if the tenant defaults >”), Philip Babcock Gove, *Webster's Third New International Dictionary*, Unabridged (Merriam Webster, 2002) (“without prevention or obstruction from or by: in spite of <~ its wide distribution, it is an animal seldom encountered”) and Bryan A. Garner, *Garner's Modern English Usage*, 4<sup>th</sup> ed. (Oxford University Press, 2016) (“notwithstanding is a formal word used in the sense ‘despite’, ‘in spite of’, or ‘although’”).

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55. In [Re Engineered Buildings Ltd.](#), Justice Cairns, writing on behalf of a unanimous Court, interpreted the phrase, “notwithstanding anything in this Act” to mean that “where the facts come within that subsection, no other part of the Act applies”.<sup>31</sup>
56. The wording of subsection [227\(4.1\)](#) of the ITA makes it unequivocal that the ITA subordinates the BIA (and all sources of law - every other federal statute, provincial statute, and any other law) that interferes with the balance of the provision.
57. Parliament chose to make exceptions for sections [81.1](#) and [81.2](#) of the BIA, by excluding certain property from the scope of the extension of trust. It made no exception however for sections [50.6](#), [64.1](#), [64.2](#), or [183](#) of the BIA.
58. In addition, there is no conflict between the ITA and the BIA because there is no paramountcy clause in sections [50.6](#), [64.1](#), [64.2](#), or [183](#) of the BIA. These provisions do not operate “notwithstanding” any provisions of the ITA and therefore remain subject to ITA deemed trust provisions.<sup>32</sup>
59. As demonstrated, subsection [227\(4.1\)](#) of the ITA confers blanket paramountcy, ensuring that the provision will “absolutely, positively” prevail without regard to any other statutory provision specified in the clause.<sup>33</sup>

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<sup>31</sup> *Re Engineered Buildings Ltd. and City of Calgary* (1966), 57 DLR (2d) 322 at [p. 325](#), para. 14 citing Lord Watson’s speech in *Tennant v. Union Bank of Canada* (an 1894 decision of the Judicial Committee of the Privy Council).

<sup>32</sup> Therefore, the present case is readily distinguished from *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#) [*Century Services*], in which the SCC resolved two competing blanket paramountcy clauses—in the CCAA and in the deemed trust of the *Excise Tax Act*.

<sup>33</sup> Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (St. Paul, Minn.: Thomson/West, 2012) at p. [115](#) of 561.

**2. The absolute priority of the deemed trust is explicitly preserved by the BIA**

60. Subsection [67\(3\)](#) of the BIA specifically preserves the absolute priority of the Crown and the application of the deemed trust mechanism pertaining to unremitted payroll deductions.
61. While subsection [67\(2\)](#) of the BIA extinguishes all statutory deemed trusts in favour of the Crown, subsection [67\(3\)](#) of the BIA explicitly and unambiguously preserves the deemed trusts for unremitted source deductions in the Fiscal Statutes as trusts in the BIA.
62. In [Century Services](#), Justice Deschamps repeatedly expressed the statutory protection that Parliament afforded the ITA deemed trust in insolvency proceedings.<sup>34</sup> Although *Century Services* concerned the GST/HST deemed trust in a CCAA proceeding, Deschamps J. held that it was relevant that the ITA deemed trust is protected both in bankruptcy and in CCAA proceedings:

...Where Parliament has sought to protect certain Crown claims through statutory deemed trusts and intended that these deemed trusts continue in insolvency, it has legislated so explicitly and elaborately. For example, s. 18.3(2) of the CCAA and s. 67(3) of the BIA expressly provide that deemed trusts for source deductions remain effective in insolvency. Parliament has, therefore, clearly carved out exceptions from the general rule that deemed trusts are ineffective in insolvency. The CCAA and BIA are in harmony, preserving deemed trust assets and asserting Crown priority only in respect of source deductions. ...<sup>72</sup>

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<sup>34</sup> [Century Services](#), *supra* note 32 at [para. 45](#).

63. In his concurring reasons, Fish J. also emphasized Parliament's "clear and unmistakable" intent to enforce the deemed trust for unremitted source deductions throughout insolvency proceedings.<sup>35</sup>

**3. *The specific priming charge provisions in the BIA do not give the Court authority to rank charges ahead of the deemed trust***

64. In proposal proceedings, the BIA authorizes the Court to order charges against the **debtor's property** as security for the costs of professionals who assist the debtor company through the insolvency process<sup>36</sup>, as security for funds advanced by interim lenders<sup>37</sup>, and as security for indemnifying directors who continue in their positions through the insolvency proceeding.<sup>38</sup>

65. The BIA also permits the Court to order that the charges rank in priority to the claim of any **secured creditor** of the company.<sup>39</sup>

66. The Court could not rank the Priming Charges ahead of the deemed trust, because:

- a. the Debtors' property was already deemed to be held in trust for the Crown under the deemed trust provisions and formed no part of the estate or patrimony of the Debtors, and
- b. the Crown is not a "secured creditor" as defined in section [2](#) of the BIA.

67. In [Canada North](#), Côté J and Karakatsanis J. held that the Court's authority to prioritize the charges did not arise from the specific priming charge provisions under the CCAA, but rather from section [11](#) of the CCAA, which provides extensive

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<sup>35</sup> *Century Services*, *supra* note 32 at paras. [102-108](#).

<sup>36</sup> [Subsection 64.2\(1\)](#) of the BIA.

<sup>37</sup> [Subsection 50.6\(1\)](#) of the BIA.

<sup>38</sup> [Subsection 64.1\(1\)](#) of the BIA.

<sup>39</sup> Subsections [50.6\(3\)](#), [64.1\(2\)](#) and [64.2\(2\)](#) of the BIA.

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- discretion to the supervising judge in CCAA proceedings.<sup>40</sup> Section 5 below explains that the BIA does not have any provision similar to section [11](#) of the CCAA.
68. Six of the nine Justices of the SCC in [Canada North](#) confirmed that the Crown is not a “secured creditor” as defined in section [2](#) of the CCAA.<sup>41</sup> The Court agreed the Crown’s claims for outstanding source deductions cannot be subordinated by the specific priming provisions ([11.2](#), [11.51](#), [11.52](#)) of the CCAA.
69. The same reasoning applies to the specific priming charge provisions of the BIA. The Crown is not a secured creditor as defined in section [2](#) of the BIA and is therefore not affected by the Priming Charges created under the BIA.
70. Furthermore, subsections [50.6\(1\)](#), [64.1\(1\)](#) and [64.2\(1\)](#) of the BIA only authorize the Court to charge **the property of the debtor** – not property owned by other people. Subsection [227\(4.1\)\(b\)](#) of the ITA removed the property held in trust for the Crown from the estate or patrimony of the debtor before the commencement of proceedings under the BIA.<sup>42</sup>
71. Finally, and in any event, the language in subsection [227\(4.1\)](#) of the ITA is clear and ensures primacy of the deemed trust by specifically subordinating the BIA to the ITA.<sup>43</sup>

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<sup>40</sup> *Canada North*, *supra* note 6 at paras. [70](#), [163](#).

<sup>41</sup> *Ibid.* at paras. [165](#), [227](#); none of the SCC justices opined otherwise. Justices Côté (Wagner CJ and Kasirer J concurring) did not pronounce themselves on the matter; Justices Karakatsanis (Martin J concurring), Brown, Rowe and Abella concluded that the Crown is not a secured creditor. Justice Moldaver is in substantial agreement with justices Brown and Rowe.

<sup>42</sup> [Subsections 67\(2\) and \(3\)](#) of the BIA specifically preserve the statutory trust in the Fiscal Statutes.

<sup>43</sup> In *Canada North*, *supra* note 6 at [para. 205](#), Justices Brown and Rowe noted, “[205] Indeed, our colleagues’ view to the contrary leaves us wondering: if the all-encompassing scope of the notwithstanding clause of [subsection 227\(4.1\)](#) of the ITA is insufficient to prevail over the priming charges, what language would possibly be sufficient? Courts must give proper effect to Parliament’s plain statutory direction, and not strain to subvert it on the basis that Parliament’s categorical language or “basket clause” did not itemize a particular security interest.”

72. In conclusion, sections [50.6](#), [64.1](#) and [64.2](#) of the BIA did not give the Court authority to issue the Priming Charge Order and subordinate the Crown's deemed trust claims to the Priming Charges.

**4. Section 183 of the BIA: The Court does not have the authority to prime charges over the deemed trust by virtue of its inherent jurisdiction**

73. The Crown's absolute priority under the ITA takes precedence over the Court's authority to exercise its inherent jurisdiction under section [183](#) of the BIA.

**a) Inherent Jurisdiction: Overview**

74. The concept of inherent jurisdiction originated from the separation between legislative and judicial power, where the superior courts had jurisdiction to address issues that were not covered by legislation.<sup>44</sup>

75. The Court's inherent jurisdiction is therefore "a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so", and which is derived "not from any statute or rule of law, but from the very nature of the court as a superior court of law".<sup>45</sup>

76. Inherent jurisdiction has been used by the Courts in various contexts such as to permit a court to control its process or to fill in the gaps in legislation where a remedy is required but no law exists either directly authorizing the remedy or prohibiting it.<sup>46</sup>

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<sup>44</sup> Janis P. Sarra, *Rescue! The Companies' Creditors Arrangement Act*, 2<sup>nd</sup> ed. (Toronto: Thomson Carswell, 2013) at p. 124 [Janis, *Rescue!*].

<sup>45</sup> Sam Babe, "[Recent Use of Statutory Discretion and Inherent Jurisdiction in Insolvency and Restructuring](#)" in Janis P. Sarra, ed., *Annual Review of Insolvency Law* (Toronto, Ont.: Thomson Reuters, 2020) at p. 4 referring to *R. v. Caron*, 2011 SCC 5 at [para. 24](#), citing I. H. Jacob, "The Inherent Jurisdiction of the Court" (1970) 23 *Current Legal Problems* 23 at pp. 27, 51; see also *Procureure générale du Québec c. Asselin*, 2021 QCCS 1426 at [paras. 22-30](#).

<sup>46</sup> Janis, *Rescue!*, *supra* note 44 at p. 122.

**b) The Superior Court's inherent jurisdiction under the BIA**

77. Parliament conferred jurisdiction to superior courts in each province and territory with regards to insolvency and restructuring matters by enacting section [183](#) of the BIA.
78. The jurisdiction of the Superior Court of Québec is conferred more specifically by subsection 183(1.1) of the BIA, and reads as follows<sup>47</sup>:

<p><b>Superior Court jurisdiction in the Province of Quebec</b>  (1.1) In the Province of Quebec, the Superior Court is invested with the jurisdiction that will enable it to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during its term, as it is now, or may be hereafter, held, and in vacation and in chambers.</p>	<p><b>Compétence de la Cour supérieure de la province de Québec</b>  (1.1) Dans la province de Québec, la Cour supérieure possède la compétence pour exercer la juridiction de première instance, auxiliaire et subordonnée en matière de faillite et en d'autres procédures autorisées par la présente loi durant son terme, tel que celui-ci est maintenant ou peut par la suite être tenu, pendant une vacance judiciaire et en chambre.</p>
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79. Subsection 183(1.1) confirms the inherent jurisdiction of the Court that may be relied on, as is entrenched in section 96 of the [Constitution Act, 1867](#)<sup>48</sup> and as also confirmed in section 49 of the *Civil Code of Procedure*<sup>49</sup> (CCP).
80. In [Sam Lévy & Associés Inc](#), Justice Binnie of the SCC confirmed the nature of section [183](#) of the BIA in that the named courts "...retain their character as superior courts of inherent jurisdiction...".<sup>50</sup>

<sup>47</sup> Section 183(1.1) of the BIA was enacted to delete the words "in equity".

<sup>48</sup> [Babe](#), *supra* note 45 at p. 1; [Constitution Act](#), 1867, 30 & 31 Vict., c. 3 (U.K.) at s. 96 [Constitution Act, 1867]: "preserves the continued existence of the superior courts and their jurisdiction by requiring that superior court judges be appointed by the Governor General rather than by the provinces".

<sup>49</sup> *Code of Civil Procedure*, CQLR, c. C-25.01.

<sup>50</sup> *Sam Lévy & Associés Inc v. Azco Mining Inc.*, 2001 SCC 92 at [para. 20](#).

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81. The Alberta and the Ontario Courts of Appeal equally interpret section [183](#) of the BIA to preserve the Court's inherent jurisdiction.<sup>51</sup>
82. Furthermore, in insolvency and restructuring matters, the Courts have consistently relied on section [183](#) of the BIA as authority to exercise their inherent jurisdiction.
83. The Superior Court of Québec therefore can rely on subsection [183\(1.1\)](#) of the BIA to exercise its inherent jurisdiction in insolvency and restructuring matters, however, only within certain limits.

**c) *The limits of inherent jurisdiction***

84. The Court's inherent jurisdiction is not limitless. Inherent jurisdiction cannot operate with respect to a matter where Parliament has already acted or when it would contravene with any statutory provision.<sup>52</sup>
85. The SCC confirmed this principle in [Baxter Student Housing Ltd. et al. v. College Housing Co-operative Ltd. et al.](#) as follows:

In my opinion the inherent jurisdiction of the Court of Queen's Bench is not such as to empower a judge of that Court to make an order negating the unambiguous expression of the legislative will...

...

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<sup>51</sup> [Babe](#), *supra* note 45 at p. 2 in referring to *Kingsway General Insurance Company v. Residential Warranty Company of Canada Inc (Trustee of)*, 2006 ABCA 293 at [para. 1](#); *Business Development Bank of Canada v. Astoria Organic Matters Ltd*, 2019 ONCA 269 at [para. 64](#).

<sup>52</sup> Janis P. Sarra, "Selecting the Judicial Tool to get the Job Done: An Examination of Statutory Interpretation, Discretionary Power and Inherent Jurisdiction in Insolvency Matters", in Janis P. Sarra, ed., *Annual Review of Insolvency Law 2007* (Toronto, Ont.: Carswell, 2008) at p. 20 referring to Jacob, *supra* note 45 at p. 24; *Stelco Inc. (Bankruptcy), Re* (2005), 75 OR (3d) 5 at [para. 44](#); also 9354-9186 *Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at [para. 49](#) [*Callidus Capital*].

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Inherent jurisdiction cannot, of course, be exercised so as to conflict with a statute or a Rule.<sup>53</sup>

86. The Court did not have the authority to rely on its inherent jurisdiction in contradiction with the existing subsection [227\(4.1\)](#) of the ITA to render the Priming Charge Order.

87. In doing so, the Court exceeded its authority.

**5. *Canada North is not applicable to Division I proposals***

88. Although the SCC rendered the recent decision in [Canada North](#) with regards to the Court's authority to subordinate the Crown's deemed trust to priming charges<sup>54</sup>, this decision is not applicable in the present matter.

89. [Canada North](#) was rendered in the context of CCAA proceedings where the SCC specified that the Court's authority to subordinate the Crown's deemed trust to the priming charges is pursuant to the broad grant of authority under section 11 of the CCAA<sup>55</sup>:

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<sup>53</sup> *Baxter Student Housing Ltd. et al. v. College Housing Co-operative Ltd. et al.*, [1976] 2 SCR 475 at [p. 480](#).

<sup>54</sup> In a 5-4 decision, five of the nine justices of the SCC dismissed the Crown's appeal, holding the Court had authority to rank charges above the Crown's deemed trust pursuant to [section 11](#) of the CCAA, and four would have granted the appeal. However, the SCC's decision is not a 5-4 decision with clear lines; rather, the 160-page decision is comprised of four sets of reasons.

Dismissed Crown's appeal:

- Madam Justice Côté, with whom Chief Justice Wagner and Justice Kasirer concurred
- Madam Justice Karakatsanis, with whom Madam Justice Martin concurred

Would allow Crown's appeal:

- Justice Brown and Justice Rowe, with whom Madam Justice Abella concurred
- Justice Moldaver

<sup>55</sup> *Canada North*, *supra* note 6 at paras. [21-24](#), [70-71](#), [167-168](#), [172-176](#), [178-181](#).

<b>General power of court</b>	<b>Pouvoir général du tribunal</b>
<p>11 Despite anything in the <i>Bankruptcy and Insolvency Act</i> or the <i>Winding-up and Restructuring Act</i>, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.</p>	<p>11 Malgré toute disposition de la Loi sur la faillite et l'insolvabilité ou de la Loi sur les liquidations et les restructurations, le tribunal peut, dans le cas de toute demande sous le régime de la présente loi à l'égard d'une compagnie débitrice, rendre, sur demande d'un intéressé, mais sous réserve des restrictions prévues par la présente loi et avec ou sans avis, toute ordonnance qu'il estime indiquée.</p>

90. The proceedings in the present file are not governed by the provisions of the CCAA but by the BIA. The BIA does not contain a provision similar to section 11 of the CCAA.
91. In contrast to the language in section [183](#) of the BIA, as was considered by the Court in the present file, section 11 of the CCAA vests the supervising court in CCAA proceedings with broad powers.
92. The CCAA Court's jurisdiction is "*constrained only by restrictions set out in the CCAA itself, and the requirement that the order made be "appropriate in the circumstances"*".<sup>56</sup> As explained in [Canada North](#), the power conferred by section 11 is "vast".<sup>57</sup>
93. Justice Côté of the SCC recognized that the CCAA reorganization regime differs from the BIA reorganization regime (Division 1 proposals and in the present case) giving the Court in a CCAA proceeding more flexibility and larger powers:

Although both the CCAA and the BIA create reorganization regimes, what distinguishes the CCAA regime is that it is

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<sup>56</sup> [Canada North](#), *supra* note 6 at [para. 21](#) referring to *Century Services*, *supra* note 32 at [para. 14](#) and *Callidus Capital*, *supra* note 52 at [para. 67](#).

<sup>57</sup> [Canada North](#), *supra* note 6 at [para. 21](#).

restricted to companies with liabilities of more than \$5,000,000 and “offers a more flexible mechanism **with greater judicial discretion**, making it more responsive to complex reorganizations” (*Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379, at para. 14).<sup>58</sup>

[emphasis added]

94. Equally, at paragraph 140, Justice Karakatsanis wrote:

While proposals under the BIA’s restructuring regime similarly serve a remedial purpose, “this is achieved through a rules-based mechanism that offers less flexibility” (*Century Services*, at [para. 15](#)).<sup>59</sup>

95. Although reorganisations under Division I proposals and under CCAA proceedings may serve similar purposes, Parliament has chosen to maintain two distinct regimes. The SCC emphasized this distinction in [Century Services](#)<sup>60</sup>:

Tysoe J.A. therefore erred in my view by treating the CCAA and the BIA as distinct regimes subject to a temporal gap between the two, rather than as forming part of an integrated body of insolvency law. Parliament’s decision to maintain two statutory schemes for reorganization, the BIA and the CCAA, reflects the reality that reorganizations of differing complexity require different legal mechanisms. By contrast, only one statutory scheme has been found to be needed to liquidate a bankrupt debtor’s estate.

[emphasis added]

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<sup>58</sup> *Ibid.* at [para. 18](#). The SCC also recognizes in *Callidus Capital*, *supra* note 52 at [para. 73](#) “that the CCAA “offers a more flexible mechanism with greater judicial discretion” than the BIA (*Century Services*, *supra* note 32 at [para. 14](#))”. See also *Montréal (City) v. Deloitte Restructuring Inc.*, 2021 SCC 53 at [para. 51](#).

<sup>59</sup> *Canada North*, *supra* note 6 at [para. 140](#) referring to *Century Services*, *supra* note 32 at [para. 15](#).

<sup>60</sup> *Century Services*, *supra* note 32 at [para. 78](#).

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96. In maintaining two different regimes, the Court is still bound by all law enacted by Parliament<sup>61</sup>, even if this means that an insolvency matter will be treated differently under the BIA and the CCAA.
97. In the present case, the Court's inherent jurisdiction, as recognized by section [183](#) of the BIA, does not grant the same discretionary powers as section [11](#) of the CCAA. The Court's authority to exercise its inherent jurisdiction is limited and cannot contravene any statute, including subsection [227\(4.1\)](#) of the ITA.
98. The Court was therefore prohibited from exercising its inherent jurisdiction to grant the Priming Charge Order.

## **6. Conclusion**

99. In the context of this case, the Court was bound by the relevant statutory provisions at issue and did not have the authority to subordinate the Crown's deemed trust claims to the Priming Charges, even if the outcome could have been different under the CCAA:
- the deemed trust provisions give an absolute priority to the Crown over all secured creditors, notwithstanding the BIA or any other federal or provincial statute or other law;
  - the specific priming charge provisions are inapplicable to the Crown as the Crown is not a secured creditor who is subject to these provisions; and

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<sup>61</sup> In exercising its constitutional authority pursuant to sections [91\(3\)](#) (the raising of money by any mode or system of taxation) and [91\(21\)](#) (bankruptcy and insolvency) of the *Constitution Act, 1867*, Parliament may enact any legislation it considers appropriate to give effect to government policy. Unless legislation is *ultra vires* or irredeemably violates a Charter right, the Courts must apply legislation as written, despite any misgivings about the legislator's wisdom. (See *McDiarmid Lumber Ltd. v. God's Lake First Nation*, [2006 SCC 58](#) at [paras. 38-41](#); *Franks v. A.G. of B.C. (B.C. Benefits Board)*, 1999 BCCA 165 at [para. 8](#); *Taylor v. Canada (Attorney General)*, 2012 ONCA 479 at [para. 76](#); *Canada North*, *supra* note 6 at [para. 228](#).) The Court's role does not include re-opening a debate already concluded in Parliament. Policy is the bailiwick of Parliament, not the Courts.

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- unlike section [11](#) of the CCAA, the Court's inherent jurisdiction, as recognized under section [183](#) of the BIA, cannot contravene subsection [227\(4.1\)](#) of the ITA and therefore does not give the Court the discretionary powers that would allow it to displace the absolute priority of the Crown for unremitted payroll deductions.

**C. *The Court did not have the authority to declare that its Order operates "notwithstanding the provisions of any federal statute"***

100. There is no specific provision in the BIA that authorizes the Court to declare its Order operates notwithstanding any other statute. Presumably, paragraph 37(d) is an exercise of the Court's inherent jurisdiction. However, as noted above, inherent jurisdiction cannot be exercised contrary to any law or rule. Thus, the Court cannot exercise inherent jurisdiction to declare its own Order operates notwithstanding the provisions of any federal statute.

**D. *The Court violated the audi alteram partem principle***

101. The Crown was notified with the Debtors' motion less than four hours before the hearing. The Crown sought, but was denied an adjournment. The Crown was denied adequate time and opportunity to contest the Motion before the Court.
102. The Crown was equally denied the opportunity to make representations on the amended draft Priming Charge Order submitted by Respondents to the Court during the hearing.
103. This denial of justice and the result of the Priming Charge Order impacts the rights of the Crown.
104. Had the Crown been given an adequate opportunity to contest the Motion, it would have demonstrated that the Court did not have the authority to issue the impugned provisions of the Priming Charge Order.

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105. As part of the guiding principles of procedure and as recognized in section 17 of the CCP, the Court must allow the parties to be heard and to have an opportunity to debate before rendering its decision.<sup>62</sup>
106. Each party is entitled to a reasonable opportunity to respond to the evidence against them. This right includes the right to adequately prepare and respond to opposing arguments and equally to ensure that the Court obtains the party's arguments and authorities necessary to make an informed and impartial decision.
107. These principles were reiterated by this Court in [L.M. c. J.M.](#)<sup>63</sup> as follows:

[17] Le droit à une audition publique et impartiale (art. 23 Charte), le droit d'être entendu (art. 17, al. 1 C.p.c.), de même que le principe de contradiction (art. 17, al. 2 C.p.c.) sont des composantes de la règle de justice naturelle audi alteram partem.

[18] À la base, cette règle vise à donner aux parties une possibilité raisonnable de répliquer à la preuve présentée contre elles<sup>[7]</sup>. Elle comprend également le droit de prendre connaissance de la plaidoirie adverse et celui d'y répondre afin de s'assurer que le tribunal puisse véritablement avoir devant lui tous les arguments et toutes les autorités nécessaires à une prise de décision éclairée et impartiale<sup>[8]</sup>.

[19] Même si le tribunal joue un rôle de plus en plus important dans la gestion de l'instance depuis l'entrée en vigueur du nouveau Code de procédure civile, il doit exercer ses pouvoirs « en accord avec les principes et les objectifs de la procédure » (art. 9, al. 2 C.p.c.). Comme l'indiquent les auteurs Denis Ferland et Benoît Emery :

1-175 – Le tribunal veille au bon déroulement de l'instance et intervient pour en assurer la saine gestion, dans le respect des règles de justice naturelle, notamment le droit fondamental d'être pleinement entendu. [...].<sup>[9]</sup>

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<sup>62</sup> Section 17 of the CCP applies pursuant to [section 3](#) of the *Bankruptcy and Insolvency General Rules*, CRC, c. 368.

<sup>63</sup> *L.M. c. J.M.*, 2019 QCCA 2185 at [paras. 17-19](#).

108. The consequence of a breach of the rules of natural justice (*audi alterem partem*) is that the Priming Charge Order rendered is null.<sup>64</sup>
109. The Debtors and the Trustee had time to prepare their materials, present their position, evidence and arguments. Being served with the Motion materials less than four hours before the hearing, the Crown did not have a reasonable opportunity to consider its position, to marshal its arguments, and to prepare for the hearing of the Motion. This imbalance and denial of justice for the Crown violates the rules of natural justice.
110. The Court therefore erred in proceeding with the hearing and rendering the Priming Charge Order that is in appeal before this Court rendering the said Order null.

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<sup>64</sup> [Lessard c. Brodeur, 2006 QCCA 7.](#)

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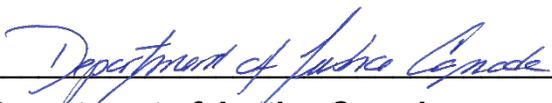
**PART IV – CONCLUSIONS**

111. The Court erred in law in declaring the Priming Charges had priority over statutory deemed trusts and that the trustee was bound to apply that priority notwithstanding the provisions of any federal or provincial statute. No Court has the authority to make such declarations and as such, these declarations are of no force and effect.
112. The Court also erred in refusing the Crown's request for an adjournment.
113. THE APPELLANT ASKS THE COURT OF APPEAL TO:
- (a) ALLOW the appeal;
  - (b) SET ASIDE the first instance Priming Charge Order declaring:
    - i. that the Lender Charge, the Administration Charge and the Directors' and Officers' Charge take priority over the Crown's deemed trust (paragraph 34 of the Priming Charge Order);
    - ii. a notwithstanding clause that had the effect of overriding the provisions of any federal statute (paragraph 37(d) of the Priming Charge Order);
  - (c) THE WHOLE with costs against the Respondents.

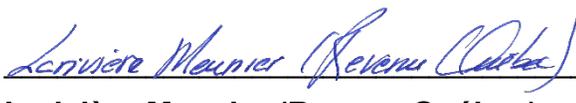
All of which is respectfully submitted.

Montréal, April 8, 2022

Québec, April 8, 2022



**Department of Justice Canada  
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L'Agence du revenu du Québec**

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**PART V – AUTHORITIES**

<b><u>Jurisprudence</u></b>	<b><u>Paragraph(s)</u></b>
<i>First Vancouver Finance v. M.R.N.</i> , 2002 SCC 49	..... 1,38
<i>Pembina on the Red Development Corp. Ltd. v. Triman Industries Ltd.</i> (1991), 85 DLR (4th) 29 (Man. C.A.)	..... 1
<i>Canada v. Canada North Group Inc.</i> , 2021 SCC 30	6,14,17,33,50,53,67,68,71,88, ..... 89,92,93,94,96
<i>Housen v. Nikolaisen</i> , 2002 SCC 33	..... 26
<i>Toronto-Dominion Bank v. Canada</i> , 2020 FCA 80	..... 34
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<i>Canada (Minister of National Revenue) v. HSBC Bank of Canada</i> , 2004 FC 467	..... 38
<i>Baron v. Canada</i> , [1993] 1 SCR 416	..... 46
<i>Caisse populaire Desjardins de l'Est de Drummond v. Canada</i> , 2009 SCC 29	..... 49
<i>Re Engineered Buildings Ltd. and City of Calgary</i> (1966), 57 DLR (2d) 322	..... 55
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<i>Business Development Bank of Canada v. Astoria Organic Matters Ltd</i> , 2019 ONCA 269	81
<i>Stelco Inc. (Bankruptcy), Re</i> (2005), 75 OR (3d) 5	84
<i>9354-9186 Québec inc. v. Callidus Capital Corp.</i> , 2020 SCC 10	84,92,93
<i>Baxter Student Housing Ltd. et al. v. College Housing Co-operative Ltd. et al.</i> , [1976] 2 SCR 475	85
<i>Montréal (City) v. Deloitte Restructuring Inc.</i> , 2021 SCC 53	93
<i>McDiarmid Lumber Ltd. v. God's Lake First Nation</i> , 2006 SCC 58	96
<i>Franks v. A.G. of B.C. (B.C. Benefits Board)</i> , 1999 BCCA 165	96
<i>Taylor v. Canada (Attorney General)</i> , 2012 ONCA 479	96
<i>L.M. c. J.M.</i> , 2019 QCCA 2185	107
<i>Lessard c. Brodeur</i> , 2006 QCCA 7	108
<b><u>Doctrine</u></b>	
Department of Finance Canada, Press Release 1997-030, "Unremitted Source Deductions and Unpaid GST" (7 April 1997)	34
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Sykes, J. B., <i>Concise Oxford Dictionary of Current English</i> , 6 <sup>th</sup> ed. (Oxford University Press, 1981)	54

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Jacob, I. H., "The Inherent Jurisdiction of the Court" (1970) 23 <i>Current Legal Problems</i> 23	..... 75
Sarra, Janis P., "Selecting the Judicial Tool to get the Job Done: An Examination of Statutory Interpretation, Discretionary Power and Inherent Jurisdiction in Insolvency Matters", in Janis P. Sarra, ed., <i>Annual Review of Insolvency Law 2007</i> (Toronto, Ont.: Carswell, 2008)	..... 84

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# **SCHEDULE I**

## **JUDGMENT**

Order appealed from (Martin Castonguay, J.S.C.), October 27, 2021

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**SUPERIOR COURT**  
(Commercial Division)

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

No: **500-11-060355-217**  
ESTATE No.: **41-2777077**  
ESTATE No.: **41-2777094**

DATE: **October 27, 2021**

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**PRESIDING: THE HONOURABLE MARTIN CASTONGUAY, J.S.C.**

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**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF:  
CHRONOMÉTRIQU INC.**

**Debtor/Petitioner**

-and-

**HEALTH MYSELF INNOVATIONS INC.**

**Debtor/Petitioner**

-and-

**RICHTER ADVISORY GROUP INC.**

**Proposal Trustee**

**ORDER AUTHORIZING AND APPROVING INTERIM FINANCING, AN ADMINISTRATION CHARGE, A SALE AND INVESTMENT SOLICITATION PROCESS, A DIRECTORS AND OFFICERS CHARGE, A KEY EMPLOYEE RETENTION PROGRAM, PROCEDURAL CONSOLIDATION OF THE ESTATES, AND OTHER RELIEF**

**[1] ON READING** the *Motion for the Issuance of an Order Authorizing and Approving Interim Financing, A Sale and Investment Solicitation Process, an Administration Charge, a Directors and Officers Charge, a Key Employee Retention Program, Procedural Consolidation of the Estates, and other Relief*

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("Motion") of ChronoMétriq Inc. and Health Myself Innovations Inc. (together, the "Debtors"), the affidavit and the exhibits in support thereof;

- [2] **CONSIDERING** the notification/service of the Motion;
- [3] **CONSIDERING** the submissions of counsel, the affidavit and exhibits in support of the Motion;
- [4] **CONSIDERING** the report filed by Richter Advisory Group in support of the Motion;
- [5] **CONSIDERING** the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("BIA"), in general, and sections 50.6, 64.1, 64.2, and 183 of the BIA, in particular; and
- [6] **CONSIDERING** that all secured creditors likely to be affected by the charges resulting from the orders herein have been notified of the Motion.

**THE COURT:**

- [7] **GRANTS** the Motion.
- [8] **ORDERS** that capitalized terms not otherwise defined herein shall have the same meaning as ascribed thereto in the Motion.

**NOTIFICATION/SERVICE**

- [9] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further notification/service thereof.
- [10] **PERMITS** notification/service of this Order at any time and place and by any means whatsoever.

**PROCEDURAL CONSOLIDATION**

- [11] **ORDERS** that the bankruptcy estates of the Debtors, Estate Nos. 41-2777077 and 41-2777094 (collectively, the "**Estates**") shall, subject to further order of the Court, be procedurally consolidated and shall continue under Estate No. 41-2777077, in such capacity, the "**Consolidated Proposal Proceeding**".
- [12] **ORDERS** that without limiting the generality of the foregoing, the Proposal Trustee is hereby authorized and directed to administer the Estates on a consolidated basis for all purposes in carrying out its administrative duties and other responsibilities as Proposal Trustee under the BIA as if the Consolidated Proposal Proceeding were a single proceeding under the BIA, including without

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limitation:

- (a) the meeting of creditors of the Debtors may be convened and conducted jointly;
  - (b) the Proposal Trustee is authorized to issue consolidated reports in respect of the Debtors; and
  - (c) the Proposal Trustee is authorized to deal with all filings and notices relating to the proposal proceedings of the Debtors, each as required under the BIA on a consolidated basis.
- [13] **ORDERS** any pleadings or other documents served or filed in the Consolidated Proposal Proceeding by any party shall be deemed to have been served or filed in each of the proceedings comprising the Consolidated Proposal Proceeding.
- [14] **ORDERS** that a copy of this Order shall be filed by the Debtors in the court file for each of the Estates, but any subsequent document required to be filed will be hereafter only be required to be filed in the Consolidated Proposal Proceeding in Estate No. 41-2777077.
- [15] **ORDERS** that the procedural consolidation of the Estates pursuant to this Order shall not:
- (a) affect the legal status or corporate structure of the Debtors; or
  - (b) cause either Debtor to be liable for any claim for which it is otherwise not liable, or cause either Debtor to have an interest in an asset to which it otherwise would not have.
- [16] **ORDERS** that the Estates are not substantively consolidated, and nothing in this Order shall be construed to that effect.

#### **DIP TERM SHEET AND INTERIM FINANCING CHARGE**

- [17] **ORDERS** that the Debtors are hereby authorized to borrow from Canadian Imperial Bank of Commerce ("**Interim Lender**"), such amounts from time to time as the Debtors may consider necessary or desirable, in consultation the Proposal Trustee up to a maximum principal amount of \$1,600,000 outstanding at any time, on the terms and conditions as set forth in the Amended and Restated DIP Term Sheet filed ("**DIP Term Sheet**") and in the Interim Financing Documents (as defined herein) to fund the expenditures of the Debtors and to pay such other amounts as are permitted by the terms of the Order and the Interim Financing Documents ("**Interim Facility**").
- [18] **ORDERS** that the Debtors are authorized to execute and deliver such credit

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agreements, security documents and other definitive documents (together with the DIP Term Sheet, the "**Interim Financing Documents**") as may be required by the Interim Lender in connection with the Interim Facility and the DIP Term Sheet, and the Debtors are hereby authorized to perform all of their obligations under the Interim Financing Documents.

- [19] **ORDERS** that the Debtors shall pay to the Interim Lender, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation, all fees and disbursements of counsel and all other reasonably required advisors to or agents of the Interim Lender) on a full indemnity basis under the DIP Term Sheet and the other Interim Financing Documents (the "**Interim Lender Indebtedness**") and shall perform all of their other obligations to the Interim Lender pursuant to the DIP Term Sheet, the Interim Financing Documents and this Order.
- [20] **DECLARES** that the Interim Lender be and is entitled to the benefit of and is hereby granted a charge, security and hypothec over the Debtors' present and future assets, rights, undertakings and property, movable, personal, corporeal or incorporeal, tangible or intangible and wherever situated, including all proceeds thereof (collectively the "**Property**") in the amount of \$1,920,000 for the principal amount of \$1,600,000 plus the additional mortgage of 20%, and all other amounts payable by the Debtors under the Interim Financing Documents ("**Interim Lender Charge**"), as continuing and collateral security for the Interim Lender Indebtedness and all obligations of the Debtors with respect to all amounts owing and all obligations required to be performed under or in connection with the Interim Financing Documents, which Interim Lender Charge shall have the priority established by paragraphs 33-34 hereof.
- [21] **ORDERS** that the claims of the Interim Lender pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to a proposal or these proceedings and the Interim Lender, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any proposal.
- [22] **ORDERS** that the Interim Lender may:
- (a) notwithstanding any other provision of this Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Interim Lender Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
  - (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to the Debtors if the Debtors fail to meet the provisions of the DIP Term Sheet and the other Interim Financing Documents.
- [23] **ORDERS** that the Interim Lender shall not take any enforcement steps with respect to its security or under the DIP Term Sheet (or underlying credit

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agreements) or the Interim Lender Charge without providing at least 3 days written notice (“**Notice Period**”) of a default thereunder to the Debtors, the Proposal Trustee and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Notice Period and without further Order of the Court, the Interim Lender shall be entitled to take any and all steps under its security, the DIP Term Sheet, the Interim Financing Documents, the Interim Lender Charge and otherwise permitted at law, but without having to send any additional demands under section 244 of the BIA, the *Civil Code of Quebec* or any other similar legislation. Upon demand or default under the Interim Financing Documents, the Interim Lender shall be under no obligation to make any further advance under the DIP Term Sheet or any other Interim Financing Document.

### **SISP**

[24] **APPROVES AND AUTHORIZES** the SISP.

[25] **AUTHORIZES** the Proposal Trustee to conduct the SISP and to implement and perform any and all actions related thereto.

### **ADMINISTRATION CHARGE**

[26] **ORDERS** that the Debtors shall pay the reasonable fees and disbursements of the Proposal Trustee, the Proposal Trustee’s counsel, and the Debtors’ counsel and other advisors, directly related to these BIA proceedings and the restructuring of the Debtors’ business and affairs, whether incurred before or after this Order. The Debtors are hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Debtors on a weekly basis or on such other basis as such persons may agree in accordance with the cash flow approved by the Proposal Trustee and the Interim Lender.

[27] **DECLARES** that the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Debtors, are hereby granted a charge on the Property to the extent of the aggregate amount of \$200,000, as continuing and collateral security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings under the BIA and the Debtors’ restructuring, having the priority established by paragraphs 33-34 hereof (“**Administration Charge**”).

### **D&O INDEMNIFICATION AND CHARGE**

[28] **ORDERS** that the Debtors shall indemnify all of their directors and officers in office as at the date of the NOI filing or thereafter appointed (“**Directors and**

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**Officers**") relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as Directors or Officers of the Debtors after the commencement of these NOI proceedings, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct, or gross or intentional fault as further detailed subparagraph 64(4) of the BIA.

[29] **ORDERS** that the Directors and Officers are hereby granted a charge on the Property to the extent of an aggregate amount of \$250,000 ("**D&O Charge**") as security for the indemnity provided in paragraph 28 of this Order. The D&O Charge shall have the priority set out in paragraphs 33-34 of this Order.

[30] **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary:

- (a) No insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge; and
- (b) 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 for which the Directors and Officers are entitled to be indemnified in accordance with paragraph 28 of this Order.

#### **KERP**

[31] **ORDERS** that the Key Employee Retention Plan ("**KERP**") described in the Motion and summarized in the table filed under seal as Exhibit R-15 to the Motion is hereby approved, and the Debtors are hereby authorized and empowered to perform their obligations set forth thereunder, including by making the payments in accordance with the terms set out therein.

[32] **DECLARES** that the KERP contains sensitive and confidential information and shall be sealed in the Court file in this proceeding and segregated from, and shall not form part of, the public record.

#### **PRIORITIES AND GENERAL PROVISIONS RELATING TO THE CHARGES**

[33] **ORDERS AND DECLARES** that the priority of the Interim Lender Charge, the Administration Charge, and the D&O Charge (collectively, the "**Charges**") as between them with respect to the Property to which they apply shall be as follows:

- (a) first, the Administration Charge;
- (b) second, the D&O Charge; and

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(c) third, the Interim Lender Charge;

[34] **ORDERS AND DECLARES** that each of the Charges shall constitute a charge on the Property and that such Charges shall rank in priority to any and all other hypotecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the “**Encumbrances**”), or trusts (statutory or otherwise) affecting the Property in favour of any person.

[35] **ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title, or interest filed, registered, published, recorded, or perfected subsequent to the Charges coming into existence.

[36] **ORDERS** that except as may be approved or ordered by this Court, the Debtors shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with the Charges unless the Court orders same or the beneficiaries of the Charges consent in writing thereto.

[37] **ORDERS AND DECLARES** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order pursuant to the BIA or any bankruptcy order made pursuant to such an application;
- (c) the filing of any assignment for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statute; or
- (e) any negative covenants, prohibitions, or other similar provisions with respect to borrowings, incurring debt or the creation of the Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement to which the Debtors are a party;

the Charges shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by any person, including any creditor of the Debtors, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

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[38] **ORDERS** that any of the Charges created by this Order over leases of real property in Canada shall only be a charge in the Debtors' interests in such real property leases.

#### **GENERAL**

[39] **ORDERS** that the stay of proceedings contained in section 69.1 of the BIA shall not apply with respect to the Canadian Imperial Bank of Commerce.

[40] **ORDERS** that Exhibit R-15 filed in support of the Motion be kept confidential and under seal until further order of this Court.

[41] **ORDERS** that no person shall commence, proceed with or enforce any proceedings against the Proposal Trustee or any of the Directors and Officers, employees, legal counsel, or financial advisors of the Debtors or of the Proposal Trustee in relation to the business of the Debtors or any of its property, without first obtaining leave of this Court, upon five (5) business days' written notice to the Debtors' counsel, the Proposal Trustee and to all those referred to in this paragraph whom it is proposed be named in such proceedings.

[42] **DECLARES** that the NOI, this Order, and any proceeding or affidavit leading to this Order shall not, in and of themselves, constitute a default or failure to comply by the Debtors under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.

[43] **DECLARES** that this Order and its effects shall survive the filing by the Debtors of a proposal pursuant to the terms of the BIA, the issuance of an initial order in regard of the Debtors pursuant to the terms of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 or the bankruptcy of the Debtors, unless this Court orders otherwise.

[44] **DECLARES** that, except as otherwise specified herein or in the BIA, the Debtors and the Proposal Trustee are at liberty to serve any application, motion, notice, proof of claim form, proxy, circular, disclaimer or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given addresses as last shown on the records of the Debtors and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.

[45] **DECLARES** that, without limiting the generality of the preceding paragraph, the Debtors and any parties to these proceedings may serve any court materials in

500-11-060355-217

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these proceedings on all represented parties electronically by emailing a PDF or other electronic copy of such materials to counsels' email addresses.

- [46] **DECLARES** that, except as otherwise specified herein or in the BIA, or ordered by this Court, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a response on the Debtors' counsel and the Proposal Trustee and has filed such response with this Court, or appears on the service list prepared by the Debtors, the Proposal Trustee or their counsel, save and except when an order is sought against a person not previously involved in these proceedings.
- [47] **DECLARES** that the Debtors or the Proposal Trustee may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other.
- [48] **DECLARES** that the Debtors and the Proposal Trustee shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.
- [49] **ORDERS** and **DECLARES** that any interested person may apply to this Court to vary or rescind this Order or seek other relief upon five (5) business days' notice to the Debtors, the Proposal Trustee and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
- [50] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [51] **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States of America or elsewhere, to give effect to this Order and to assist, the Debtors, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors and the Proposal Trustee, as an officer of this Court, to grant representative status to the Proposal Trustee in any foreign proceeding or to assist the Debtors, the Proposal Trustee and their respective agents in carrying out this Order.
- [52] **ORDERS** that each of the Debtors and the Proposal Trustee is at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulator or administrative body, wherever located, for the recognition of the Order and for assistance in carrying out the terms of this Order, and that the Proposal Trustee is authorized and empowered to act as a representative of the within

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PAGE : 10

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside of Canada.

**[53] ORDERS** the provision execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

**[54] THE WHOLE** without costs.



MARTIN CASTONGUAY, J.S.C.

# **SCHEDULE II**

## **PROCEEDINGS**



Notice of Appeal, The Attorney General of Canada, November 8, 2021

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CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No:

No: 500-11-060355-217

COURT OF APPEAL

---

**THE ATTORNEY GENERAL OF CANADA**

for and in the name of Her Majesty the Queen (represented by the Minister of National Revenue), 200 René-Lévesque Boulevard West, East Tower, 9<sup>th</sup> Floor, in the city of Montreal, Province of Quebec, H2Z 1X4;

APPELLANT

v.

**CHRONOMÉTRIQ INC.**, a legal person duly incorporated under the Québec *Business Corporations Act*, CQLR c S-31.1, having its registered office at 100-1396 Saint-Patrick Street, in the city of Montreal, Province of Quebec, H3K 2C8;

RESPONDENT – Debtor/Petitioner

- and -

**HEALTH MYSELF INNOVATIONS INC.**, a legal person duly incorporated under the *Canada Business Corporations Act*, RSC 1985, c C-44, having its registered office at 100-1396 Saint-Patrick Street, in the city of Montreal, Province of Quebec, H3K 2C8;

RESPONDENT – Debtor/Petitioner

- and -

**RICHTER ADVISORY GROUP INC.**, a legal person having a place of business at 1981 McGill College avenue, Suite 1100, in the city of Montreal, Province of Quebec, H3A 0G6;

RESPONDENT – Proposal Trustee

**NOTICE OF APPEAL**  
**(Section 193 of the Bankruptcy and Insolvency Act and Section 352  
of the Code of Civil of Procedure)**  
**Appellant**  
**November 8, 2021**

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1. The appellant, the Attorney General of Canada, appeals from an Order rendered on October 27, 2021 by the Honourable Martin Castonguay, J.S.C., of the Superior Court of Quebec, Commercial Division (“**Court**”), which authorized and approved interim financing, an administrative charge, a sale and investment solicitation process, a directors and officers charge, a key employee retention program, procedural consolidation of the estates and other relief.
2. More particularly, this appeal concerns the Court’s order ranking the Lender Charge, the Administration Charge and the Directors and Officers Charge (collectively, the “**Charges**”) with priority over the Crown’s deemed trust (paragraph 34 of the Order) along with the order declaring a notwithstanding clause to override the provisions of any federal statute (paragraph 37 of the Order).
3. With less than a 4 hour notice of the respondents’ motion to obtain the Order under appeal, the Crown appeared before the Court and argued for a postponement of the hearing and, alternatively, for an order carving out the priority charges over the deemed trust until the issue be argued at a future date. The Crown did not contest the approval of a portion of the interim financing and charge to ensure the payment of the current salaries and critical suppliers’ costs for two weeks.
4. In addition, the Crown was not notified or informed that an amended draft order had been submitted to the Court by the respondents prior to the hearing, which amendment directly affected the Crown’s rights.
5. This amended draft order, which was later approved by the Court, was modified to specifically include that the priming Charges would rank in priority over “trusts

- (statutory or otherwise)". Further, this amended draft order increased the Lender Charge from \$1 MM to \$1.6 MM (plus the additional mortgage of 20%).
6. The respondent, ChronoMétriq Inc., has an estimated amount of \$1.4 MM of unremitted federal payroll deductions for the 2018, 2019 and 2020 tax years. Those amounts are subject to the deemed trust provisions for unremitted source deductions under the *Income Tax Act* ("ITA").
  7. The Court granted the Lender Charge for \$1,920,000 (which includes an addition mortgage of 20%), the Administrative Charge for \$200,000 and the Directors and Officers Charge for \$250,000.
  8. The duration of the hearing on October 27, 2021 was 2 hours and 36 minutes.
  9. The appellant files with this notice of appeal a copy of the Order rendered by the Court on October 27, 2021 in **Schedule 1**.
  10. The value of the subject matter of the dispute is estimated at \$1.4 MM for the appellant.
  11. This file is not confidential.

### **GROUND OF APPEAL**

12. The trial judge erred for the following reasons.
13. The Crown was denied an adequate time and opportunity to contest the motion regarding the order sought to rank the priming charges ahead of its deemed trust, and the notwithstanding clause to override the provisions of any federal statute.
14. The Crown was equally denied the opportunity to make representations on the amended draft order submitted by respondents to the Court.
15. The denial of justice and the result of the Order rendered impacts the future rights of the Crown in the present file.
16. Had the Crown been given an adequate opportunity to contest the motion presented, it would have demonstrated that:

- a) The Crown's deemed trust for unremitted source deductions has priority over court-ordered priming charges under the *Bankruptcy and Insolvency Act* ("**BIA**"); and
  - b) The Court did not have the authority under the BIA to render an order ranking the charges above the Crown's deemed trust for unremitted source deductions;
17. The Court therefore erred in declaring at paragraph 34 of the Order "that each of the Charges shall constitute a charge on the Property [of the respondents] and that such Charges shall rank in priority to any and all [...] trusts (statutory or otherwise)" (our underlining), thereby including the Crown's deemed trust.
18. The Court equally erred at paragraph 37 of the Order by declaring a notwithstanding clause to override the provisions of any federal statute.

**I. The Deemed Trust has priority over the Priming Charges**

19. Payroll deductions are at the heart of income tax collection in Canada. The ITA requires a person paying salaries or wages to an employee to deduct or withhold amounts on account of the employee's tax for the year and to remit those deductions to the Crown. Parliament has provided powerful collection tools to protect the collection of payroll deductions, including the deemed trust mechanism.
20. Under the deemed trust mechanism governed by subsection 227(4.1) of the ITA, the property of employers with payroll deductions arrears is deemed to be held in trust, and the proceeds of such property shall be paid to the Receiver General in priority to all security interests, notwithstanding any other provincial or federal statutes or any other laws.
21. More specifically, the Crown's deemed trust operates in two stages:
- a) First, subsection 227(4) of the ITA deems amounts withheld to be held in trust for the benefit of the Crown;

- b) Second, under subsection 227 (4.1) of the ITA, if the amount deemed to be held in trust for the Crown is not paid to the Crown when due, all property of the debtor and all property held by secured creditors of the debtor, in an amount equal to the failed remittance, are deemed to be held in trust for the Crown; Subsection 227 (4.1) of the ITA also requires that the proceeds from such property must be paid to the Crown in priority to all security interests;
22. The appellant submits that the clear language of subsection 227(4.1) of the ITA gives the Crown priority over priming charges.
- a) When the debtor fails to remit payroll deductions, all of its property is deemed to be held in trust for the Crown, separate and apart from its own property and thus, not available to any other creditors;
- b) The ITA provides that the Crown's claim under the deemed trust will prevail over any interest that is a "security interest" within the meaning of subsection 224(1.3) of the ITA. A priming charge is a "security interest" within the meaning of subsection 224(1.3) of the ITA;
- c) Subsection 227(4.1) of the ITA explicitly operates notwithstanding "any other provision of [...] the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act) [...];
23. In addition, the BIA recognizes the deemed trust for unremitted source deductions under subsection 67(3) of the BIA.
24. Sections 50.6, 64.1 and 64.2 of the BIA permit the granting of priority charges above a secured creditor, but the Crown's deemed trust for unremitted source deductions is not a security interest, and subsection 227(4.1) of the ITA overrides these provisions.

**II. Canada North**

25. On July 28, 2021, the Supreme Court of Canada rendered a 5-4 decision in *Her Majesty the Queen v. Canada North Group Inc., et al.* ("**Canada North**")<sup>1</sup> under the *Companies' Creditors Arrangement Act* ("CCAA").
26. The Supreme Court of Canada relied on the broad discretionary power provided for under section 11 of the CCAA to authorize priming charges above the Crown's deemed trust.
27. The Supreme Court of Canada did not address the discretionary power under section 183 of the BIA, which is not as broad as section 11 of the CCAA.
28. The appellant submits that section 183 of the BIA did not give the discretionary power to the trial judge to prioritize the Charges above the Crown's deemed trust.

**CONCLUSIONS**

29. The appellant will ask the Court of Appeal to :
  - a) **ALLOW** the appeal;
  - b) **SET ASIDE** the first instance Order regarding:
    - i. The order and declaration priming the Lender Charge, the Administration Charge and the Directors and Officers Charge with priority over the Crown's deemed trust (paragraph 34 of the Order);
    - ii. The order declaring a notwithstanding clause to override the provisions of any federal statute (paragraph 37 of the Order);
  - c) **CONDEMN** the respondents to pay the appellant legal costs on appeal.

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<sup>1</sup> 2021 SCC 30

Notice of Appeal, The Attorney General of Canada, November 8, 2021

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This notice of appeal has been notified to ChronoMétriq Inc., to Health Myself Innovations Inc. and to Me Michel Laroche, Me David Ward and Me Larry Ellis from Miller Thomson LLP, lawyers who represented ChronoMétriq Inc. and Health Myself Innovations Inc. in first instance; to Richter Advisory Group Inc. and to Me Hugo Babos-Marchand from McCarthy Tétrault who represented Richter Advisory Group Inc. in first instance, and to the Office of the Superior Court, District of Montreal.

MONTREAL, November 8, 2021

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**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
Quebec Regional Office  
Guy-Favreau Complex  
200 René-Lévesque Blvd West  
East Tower, 9<sup>th</sup> Floor  
Montréal (Québec) H2Z 1X4  
Fax: 514-283-3103

Per: Me Kim Sheppard  
Phone: 514-283-8460 / 438-885-1946  
Email: kim.sheppard@justice.gc.ca

Notice of Appeal, The Attorney General of Canada, November 8, 2021

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CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No:

No: 500-11-060355-217

COURT OF APPEAL

---

**THE ATTORNEY GENERAL OF CANADA**

for and in the name of Her Majesty the Queen (represented by the Minister of National Revenue)

APPELLANT

v.

**CHRONOMÉTRIQ INC.**, a legal person duly incorporated under the Québec *Business Corporations Act*, CQLR c S-31.1

RESPONDENT – Debtor/Petitioner

- and -

**HEALTH MYSELF INNOVATIONS INC.**, a legal person duly incorporated under the *Canada Business Corporations Act*, RSC 1985, c C-44

RESPONDENT – Debtor/Petitioner

and

**RICHTER ADVISORY GROUP INC.**, a legal person

RESPONDENT – Proposal Trustee

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**LIST OF SCHEDULE IN SUPPORT OF NOTICE OF APPEAL**

Appellant

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**SCHEDULE 1:** Order authorizing and approving interim financing, an administration charge, a sale and investment solicitation process, a directors and officers charge, a key employee retention program, procedural consolidation of the estates, and other relief rendered by the Honourable Martin Castonguay, J.C.S. of the Superior Court (Commercial Division) on October 27, 2021.

C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

N° : 500-09-

N° première instance: 500-11-060355-217

COURT OF APPEAL

**L'AGENCE DU REVENU DU QUÉBEC**,  
ayant son bureau au 3800, rue de Marly,  
secteur 5-2-8, Québec (Québec) G1X 4A5

APPELLANT

v.

**CHRONOMÉTRIQ INC.**, a legal person duly incorporated under the Québec *Business Corporations Act*, CQLR c S-31.1, having its registered office at 100-1396 Saint-Patrick Street, in the city of Montréal, Province of Québec, H3K 2C8;

RESPONDENT – Debtor/Petitioner

- and -

**HEALTH MYSELF INNOVATIONS INC.**, a legal person duly incorporated under the *Canada Business Corporations Act*, RSC 1985, c C-44, having its registered office at 100-1396 Saint-Patrick Street, in the city of Montréal, Province of Québec, H3K 2C8;

RESPONDENT – Debtor/Petitioner

- and -

**RICHTER ADVISORY GROUP INC.**, a legal person having a place of business at 1981 McGill College avenue, Suite 1100, in the city of Montréal, Province of Québec, H3A 0G6;RESPONDENT – Proposal Trustee

---

**NOTICE OF APPEAL**  
**(Section 193 of the Bankruptcy and Insolvency Act and Section 352  
of the Code of Civil of Procedure)**

---

1. The appellant, l'Agence du Revenu du Québec ("ARQ" or "The Crown"), appeals from an Order rendered on October 27, 2021 by the Honourable Martin Castonguay, J.S.C., of the Superior Court of Quebec, Commercial Division ("Court"), which authorized and approved interim financing, an administrative charge, a sale and investment solicitation process, a directors and officers charge, a key employee retention program, procedural consolidation of the estates and other relief.
2. More particularly, this appeal concerns the Court's order ranking the Lender Charge, the Administration Charge and the Directors and Officers Charge (collectively, the "Charges") with priority over the Crown's deemed trust (paragraph 34 of the Order) along with the order declaring a notwithstanding clause to override the provisions of any federal statute (paragraph 37 of the Order).
3. With less than a 4 hour notice of the respondents' motion to obtain the Order under appeal, the Crown appeared before the Court and argued for a postponement of the hearing and, alternatively, for an order carving out the priority charges over the deemed trust until the issue be argued at a future date. The Crown did not contest the approval of a portion of the interim financing and charge to ensure the payment of the current salaries and critical suppliers' costs for two weeks.
4. In addition, the Crown was not notified or informed that an amended draft order had been submitted to the Court by the respondents prior to the hearing, which amendment, directly affected the Crown's rights.
5. This amended draft order, which was later approved by the Court, was modified to specifically include that the priming Charges would rank in priority over "trusts

(statutory or otherwise)". Further, this amended draft order increased the Lender Charge from \$ 1 MM to \$ 1.6 MM (plus the additional mortgage of 20%).

6. The respondent, ChronoMétriq Inc. has an estimated amount of \$ 1 715 981,16 (on 2021-10-27) of unremitted provincial payroll deductions for the 2018, 2019 and 2020 tax years. Those amounts are subject to the deemed trust provisions for unremitted source deductions under the *Income Tax Act* ("ITA").
7. The Court granted the Lender Charge for \$ 1,920,000 (which includes an addition mortgage of 20%), the Administrative Charge for \$ 200,000 and the Directors and Officers Charge for \$ 250,000;
8. The duration of the hearing on October 27, 2021 was 2 hours and 36 minutes;
9. The appellant files with this notice of appeal a copy of the Order rendered by the Superior Court on October 27, 2021 in **Schedule 1**;
10. The value of the subject matter of the dispute is estimated at \$ 1 715 981,16 (on 2021-10-27) for the appellant;
11. This file is not confidential;

#### GROUNDS OF APPEAL

12. The trial judge erred for the following reasons.
13. The Crown was denied an adequate time and opportunity to contest the motion regarding the order sought to rank the priming charges ahead of its deemed trust, and the notwithstanding clause to override the provisions of any federal statute.
14. The Crown was equally denied the opportunity to make representations on the amended draft order submitted by respondents' to the Court.
15. The denial of justice and the result of the Order rendered, impacts the future rights of the Crown in the present file.
16. Had the Crown been given an adequate opportunity to contest the motion presented, it would have demonstrated that:

- a) The Crown's deemed trust for unremitted source deductions has priority over court-ordered priming charges under the *Bankruptcy and Insolvency Act* ("BIA"); and
  - b) The Court did not have the authority under the BIA to render an order ranking the charges above the Crown's deemed trust for unremitted source deductions;
17. The Court therefore erred in declaring at paragraph 34 of the Order "that each of the Charges shall constitute a charge on the Property [of the respondents] and that such Charges shall rank in priority to any and all [...] trusts (statutory or otherwise)" (our underlining), thereby including the Crown's deemed trust.
  18. The Court equally erred at paragraph 37 of the Order by declaring a notwithstanding clause to override the provisions of any federal statute, including more particularly, the BIA.
  19. Under the deemed trust mechanism governed by subsection 227(4.1) of the ITA the property of employers with payroll deductions arrears is deemed to be held in trust and the proceeds of such property shall be paid to the Crown in priority to all security interests, notwithstanding any other provincial or federal statutes or any other laws.
  20. More specifically, the Crown's deemed trust operates in two stages:
    - a) First, the ITA requires a person paying salaries or wages to an employee to deduct or withhold amounts on account of the employee's tax for the year and to remit those deductions to the Crown. Subsection 227(4) of the ITA and section 20 of the *Loi sur l'administration fiscale*<sup>1</sup> deems those amounts to be held in trust for the benefit of the Crown;
    - b) Second, under subsection 227 (4.1) of the ITA if the amount deemed to be held in trust for the Crown is not paid to the Crown when due, all property of the debtor and all property held by secured creditors of the debtor, in an amount equal to the failed remittance, are deemed to be held in trust for the

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<sup>1</sup> RLRQ, c. A-6.002

Crown; Subsection 227 (4.1) of the ITA also requires that the proceeds from such property must be paid to the Crown in priority to all security interests;

21. The appellant submits that subsection 227(4.1) of the ITA gives the Crown priority over priming charges for the following reasons:
  - a) The ITA provides that the Crown's claim under the deemed trust will prevail over any interest that is a "security interest" within the meaning of subsection 224(1.3) of the ITA; A priming charge is a "security interest" within the meaning of subsection 224(1.3) of the ITA;
  - b) Subsection 227(4.1) of the ITA explicitly operates notwithstanding "any other provision of [...] the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act) [...];
22. In addition, the BIA recognizes the deemed trust for unremitted source deductions under subsection 67(3) of the BIA.
23. Sections 50.6, 64.1 and 64.2 of the BIA permit the granting of priority charges above a secured creditor, but the Crown's deemed trust for unremitted source deductions is not a security interest, and subsection 227(4.1) of the ITA overrides these provisions.
24. On July 28, 2021, the Supreme Court of Canada rendered a 5-4 decision in *Her Majesty the Queen v. Canada North Group Inc., et al.* ("**Canada North**")<sup>2</sup> under the *Companies' Creditors Arrangement Act* ("CCAA").
25. The Supreme Court of Canada relied on the broad discretionary power provided for under section 11 of the CCAA to authorize priming charges above the Crown's deemed trust.
26. The Supreme Court of Canada did not address the discretionary power under section 183 of the BIA, which is not as broad as section 11 of the CCAA.
27. The appellant submits that section 183 of the BIA did not give the discretionary power to the trial judge to prioritize the Charges above the Crown's deemed trust.

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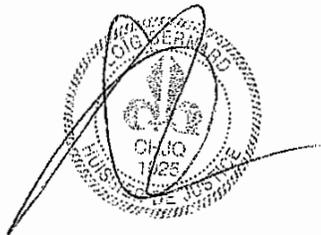
<sup>2</sup> 2021 SCC 30

CONCLUSIONS

28. The appellant will ask the Court of Appeal to :
- a) **ALLOW** the appeal;
  - b) **SET ASIDE** the first instance Order regarding:
    - i. The order and declaration priming the Lender Charge, the Administration Charge and the Directors and Officers Charge with priority over the Crown's deemed trust (paragraph 34 of the Order);
    - ii. The order declaring a notwithstanding clause to override the provisions of any federal statute (paragraph 37 of the Order);
  - c) **CONDEMN** the respondents to pay the appellant legal costs on appeal.

This notice of appeal has been notified to ChronoMétriq Inc., to Health Myself Innovations Inc. and to Me Michel Laroche, Me David Ward and Me Larry Ellis from Miller Thomson LLP, lawyers who represented ChronoMétriq Inc. and Health Myself Innovations Inc. in first instance; to Richter Advisory Group Inc. and to Me Hugo Babos-Marchand from McCarthy Tétrault who represented Richter Advisory Group Inc. in first instance, and to the Office of the Superior Court, District of Montreal.

Québec, November 8, 2021



*Larivière Meunier*

Me Daniel Cantin, avocat  
 LARIVIÈRE MEUNIER  
 3800, rue de Marly, secteur 5-2-8  
 Québec (Québec) G1X 4A5  
 Ligne directe : 418 652-5245  
 Télécopieur : 418 577-5327  
 Courriel : Notif-Quebec@revenuquebec.ca  
 Avocats de l'appelante  
 L'Agence du revenu du Québec

Motion for the issuance of an order authorizing and approving interim financing, a sale and investment solicitation process, an administrative charge, a directors and officers charge, a key employee retention program, procedural consolidation of the estates, and other relief, October 26, 2021

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**CANADA**  
**PROVINCE OF QUÉBEC**  
**DISTRICT OF MONTRÉAL**

**No.: 500-11-060355-217**

**Estate No. 41-2777077**

**No.: 500-11-060356-215**

**Estate No. 41-2777094**

**SUPERIOR COURT**  
**(Commercial Division)**

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**IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL OF:**

**CHRONOMÉTRIQ INC.**, a legal person duly incorporated under the Québec *Business Corporations Act*, CQLR c S-31.1, having its registered office at 100-1396 Saint-Patrick Street, in the city of Montréal, Province of Québec, H3K 2C8;

**Debtor/Petitioner**

- and -

**HEALTH MYSELF INNOVATIONS INC.**, a legal person duly incorporated under the *Canada Business Corporations Act*, RSC 1985, c C-44, having its registered office at 100-1396 Saint-Patrick Street, in the city of Montréal, Province of Québec, H3K 2C8;

**Debtor/Petitioner**

- and -

**RICHTER ADVISORY GROUP INC.**, a legal person having a place of business at 1981 McGill College avenue, Suite 1100, in the city of Montréal, Province of Québec, H3A 0G6;

**Proposal Trustee**

**MOTION FOR THE ISSUANCE OF AN ORDER AUTHORIZING AND APPROVING  
INTERIM FINANCING, A SALE AND INVESTMENT SOLICITATION PROCESS, AN  
ADMINISTRATIVE CHARGE, A DIRECTORS AND OFFICERS CHARGE, A KEY  
EMPLOYEE RETENTION PROGRAM, PROCEDURAL CONSOLIDATION OF THE  
ESTATES, AND OTHER RELIEF**

**(Sections 50.6, 64.1, 64.2, and 183 of the *Bankruptcy and Insolvency Act*)**

Motion for the issuance of an order authorizing and approving interim financing, a sale and investment solicitation process, an administrative charge, a directors and officers charge, a key employee retention program, procedural consolidation of the estates, and other relief, October 26, 2021

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- 2 -

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTRÉAL, OR TO ONE OF ITS REGISTRARS, THE PETITIONER RESPECTFULLY SUBMITS AS FOLLOWS:**

**1. INTRODUCTION**

1. On October 26, 2021, ChronoMétriq Inc. and its wholly owned subsidiary Health Myself Innovations Inc. (together, “**ChronoMétriq**” or the “**Debtors**”) each filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to the relevant provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“**BIA**”) and named Richter Advisory Group Inc. (“**Richter**”) as proposal trustee (“**Proposal Trustee**”).
2. With the filing of the NOI, ChronoMétriq, with the assistance of counsel and the Proposal Trustee, plans to carry out a restructuring process in these NOI proceedings.
3. In order to properly embark on this restructuring process, ChronoMétriq requests an Order of this Honourable Court, substantially in the form of the draft Order communicated herewith as **Exhibit R-1**:
  - a) authorizing Canadian Imperial Bank of Commerce (“**CIBC**”) to provide interim credit facilities to the Debtors and granting a charge in relation thereto;
  - b) granting an Administrative Charge (as defined below);
  - c) granting a D&O Charge (as defined below);
  - d) authorizing a Key Employee Retention Program (“**KERP**”);
  - e) approving the immediate commencement of an accelerated sales and investment solicitations process (“**Sales Process**”) as described herein; and
  - f) consolidating, for procedural purposes only, Estates Nos. 41-2777077 and 41-2777094.

**2. CHRONOMÉTRIQ’S BUSINESS AND AFFAIRS**

**A. Overview**

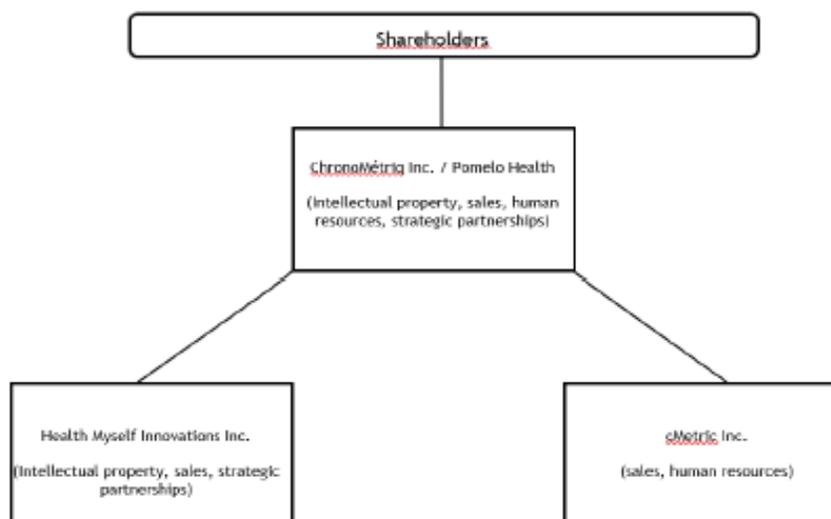
4. ChronoMétriq Inc., doing business as Pomelo Health, was founded in 2012 to provide healthcare management and patient engagement software for healthcare professionals. The company’s platform of products improves clinic productivity, efficiency and communications with patients. The proprietary software is a complete patient portal that can be easily adapted for healthcare practices in any setting: from local family practices to provincial health authorities. A copy of the corporate profile for ChronoMétriq Inc. is filed herewith as **Exhibit R-2**.

Motion for the issuance of an order authorizing and approving interim financing, a sale and investment solicitation process, an administrative charge, a directors and officers charge, a key employee retention program, procedural consolidation of the estates, and other relief, October 26, 2021

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- 3 -

5. Among other features, the software allows for online health care appointment booking, medical self-service, and automated reminders that help manage queues at clinics and hospitals.
6. ChronoMétriq's customers are located in both Canada and the United States. These customers include 337 pharmacies in 11 provinces and territories and 12,000 paramedical professionals across Canada. The Debtors also have a contract with the government of the Province of Québec that provides ChronoMétriq with access to all of the province's general practitioners. Additionally, ChronoMétriq has a contract with the Province of Newfoundland and Labrador for the official COVID-19 vaccination and flu shot booking system.
7. Health Myself Innovations Inc. ("**HMI**") is a wholly owned subsidiary of ChronoMétriq Inc. A copy of the corporate profile for HMI is filed herewith as **Exhibit R-3**.
8. HMI has developed and operates an online portal called "The Health Myself Patient Portal", which is designed to provide a secure and convenient way for patients and health care providers to engage online. This portal extends the functionality of electronic medical records systems by providing online appointment management with automated reminders, as well as secure bi-directional messaging between patients and providers.
9. In addition to HMI, ChronoMétriq Inc. also owns cMetric Inc. ("**cMetric**"), a U.S. company that pays operating expenses including salaries for one employee and third-party contractors who are based in the United States. cMetric has limited revenue, approximately \$115,000 for the fiscal year ended June 30, 2021. No insolvency proceedings are anticipated for cMetric. Below is a corporate chart of ChronoMétriq Inc. and its subsidiaries:



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**B. Board of Directors**

10. The members of ChronoMétriq Inc.'s Board of Directors ("**BOD**") are Elodie Dupuy, Maurizio de Franciscis, Paul LePage, Yan Raymond-Lalande, and Rémi Lalonde-Richard. HMI's directors are Yan Raymond-Lalande, Rémi Lalonde-Richard, and David Taylor.

**C. Employees**

11. As at October 25, 2021, ChronoMétriq Inc. employs 48 people. The employees are not unionized.
12. ChronoMétriq Inc.'s employees are based in offices located in Montréal and Toronto. The vast majority of the company's employees work in the Montréal office.
13. While the Debtors also have an office in Boston, Massachusetts, no employees are currently based in that office and the lease will end in January, 2022.

**D. Shareholders**

14. Full In Partners ("**Full In**") is an American based growth equity firm that focuses on changing the fundraising experience for entrepreneurs through the application of proprietary technology and value-add strategy, guidance, and relationships post-investment.
15. In 2019, Full In became the primary equity investor in ChronoMétriq Inc. when the Debtors secured more than \$20 million in Series B funding led by Full In with additional participation from existing investors. The objective of this round of financing was to further ChronoMétriq's position as a leader in the healthcare solutions space in Canada and give the Debtors significant opening traction in the United States.
16. In July and September 2021, Full In made additional capital investments of \$5,000,000 in ChronoMétriq Inc. in an effort to alleviate the Debtors' urgent liquidity issues, as described in further detail below. As of the date of this motion, Full In controls 45.53% of ChronoMétriq Inc. (on a fully diluted basis).

**ASSETS**

17. The operations of ChronoMétriq Inc. and HMI are fully integrated. As a result, the financial information described in this motion is presented on a consolidated basis. As at the filing of the NOI, ChronoMétriq's assets included the following:

<b>Asset</b>	<b>Approximate Book Value</b>
Receivables	\$701,000
Tax Credits & Subsidies	\$2,174,000
Acquisition Costs	\$3,250,000
Deferred Development Costs	\$1,800,000

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Fixed Assets	\$400,000
<b>Total:</b>	<b>\$8,325,000</b>

### 3. INDEBTEDNESS

18. As at October 25, 2021, the total indebtedness of ChronoMétriq is \$9,192,413 million. Of that amount, \$3,193,414.20 is owed to secured creditors, as appears from the below. The remaining amount is owed to ChronoMétriq's trade creditors and other unsecured creditors.

Secured Claims	Approximate Amount of Indebtedness
CIBC	\$2,923,724.20
Investissement Québec	\$139,055
Business Development Bank of Canada	\$130,635
<b>Total:</b>	<b>\$3,193,414.20</b>

#### A. Indebtedness to CIBC

19. ChronoMétriq Inc., as borrower, CIBC, as lender, and HMI and cMetric, as guarantors, entered into a credit agreement dated June 30, 2020 ("**CIBC Credit Agreement**") pursuant to which CIBC agreed to make certain credit facilities available to ChronoMétriq Inc. These credit facilities include a Term Loan of \$3,000,000, a Revolver with a credit limit of \$2,000,000, and a Demand Visa Credit Facility with credit limits of \$100,000 and US\$100,000 (as such terms are defined in the CIBC Credit Agreement). A copy of the CIBC Credit Agreement is filed herewith as **Exhibit R-4**.
20. The indebtedness owed by ChronoMétriq Inc. under the CIBC Credit Agreement is secured by a first-ranking security on the universality of ChronoMétriq's assets, corporeal and incorporeal, present and future, of whatever nature and wherever situated for an aggregate amount of \$6,900,000, including an additional hypothec in the amount of \$900,000 with interest, but only on the first \$6,000,000, at the rate of 25% per annum, as appears from a copy of the reports of ChronoMétriq Inc. and HMI from the *Registre des droits personnels et réels mobiliers* dated October 8, 2021 ("**RDPRM Report**"), copies of which are filed herewith as **Exhibits R-5 and R-6**.
21. On August 20, 2021, CIBC delivered a *Notice of an Event of Default and Reservation of Rights* ("**August 20 Notice of Default**") to ChronoMétriq Inc., in which CIBC, *inter alia*:
- a) advised ChronoMétriq Inc. that it was in default pursuant to the terms of the CIBC Credit Agreement;
  - b) advised ChronoMétriq Inc. that the Revolver was frozen such that no further drawdowns could be made; and

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- c) requested that ChronoMétriq Inc. contact CIBC to discuss its financial situation and any actions contemplated by ChronoMétriq Inc. to improve the same;

as appears from a copy of the August 20 Notice of Default, filed herewith as **Exhibit R-7**.

- 22. On October 15, 2021, counsel for CIBC sent a demand letter to ChronoMétriq Inc. ("**October 15 Demand Letter**") pursuant to which CIBC, *inter alia*:

- a) advised that ChronoMétriq Inc. owed \$3,021,356.45 under the CIBC Credit Agreement as of October 14, 2021;

- b) advised that ChronoMétriq Inc. was in default of the CIBC Credit Agreement as it is insolvent and indebted to Canada Revenue Agency and Revenu Québec in an aggregate amount exceeding \$3.2 million for collected and unremitted employee source deductions and/or HST;

- c) demanded repayment of ChronoMétriq Inc.'s indebtedness; and

- d) enclosed:

- i. a *Notice of Intention to Enforce Security*, served pursuant to section 244(1) of the BIA; and

- ii. a *Prior Notice of the Exercise of a Hypothecary Right*, served pursuant to Article 2757 and following of the *Civil Code of Québec*.

as appears from a copy of the October 15 Demand Letter, filed herewith as **Exhibit R-8**.

- 23. Following the issuance of the October 15 Demand Letter, ChronoMétriq and CIBC engaged in discussions during which it was agreed that the commencement of these NOI proceedings is necessary and urgently required for ChronoMétriq. CIBC agreed that it would support the restructuring contemplated herein.

- 24. Accordingly, CIBC, ChronoMétriq Inc., HMI and cMetric entered into a forbearance agreement, dated October 22, 2021, pursuant to which CIBC agreed to forbear from enforcing its security interests subject to the terms of the agreement. A copy of the Forbearance Agreement is filed herewith as **Exhibit R-9**

- 25. As at October 21, 2021, the total indebtedness owing under the CIBC Credit Agreement is \$2,923,724.20.

#### **B. Indebtedness to IQ**

- 26. Investissement Québec ("**IQ**"), as lender and ChronoMétriq Inc, as borrower, are parties to a letter agreement, dated March 5, 2018 ("**IQ Loan Agreement**"), pursuant to which IQ provided a loan to ChronoMétriq Inc. in the maximum amount of \$385,000. A copy of the IQ Loan Agreement is filed herewith as **Exhibit R-10**.

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27. ChronoMétriq Inc.'s indebtedness under the IQ Loan Agreement is stated to be secured by a first-ranking security on the universality of ChronoMétriq Inc.'s assets, corporeal and incorporeal, present and future, of whatever nature and wherever situated for an aggregate amount of \$462,000 including an additional sum equal to 20% of the mortgage principal, with interest of 25% per year with interest at the rate of 25% per annum, as appears from a copy of the RDPRM Report (Exhibit R-5).
28. On September 30, 2020, CIBC, IQ and ChronoMétriq Inc. entered into an inter-creditor agreement ("**CIBC/IQ Inter-Creditor Agreement**"). A copy of the CIBC/IQ Inter-Creditor Agreement is filed herewith as **Exhibit R-11**.
29. Pursuant to the CIBC/IQ Inter-Creditor Agreement, the parties agreed that IQ's security over ChronoMétriq Inc.'s assets would rank subordinate to CIBC's security.
30. As at October 25, 2021, the indebtedness of ChronoMétriq Inc. under the IQ Loan Agreement is approximately \$139,055.

**C. Indebtedness to BDC**

31. By letter agreement dated February 6, 2018, ChronoMétriq Inc., as borrower, and Business Development Bank of Canada ("**BDC**"), as lender, entered into a credit agreement ("**BDC Loan Agreement**") whereby BDC agreed to advance a \$770,000 secured loan to ChronoMétriq Inc. ("**BDC Loan**"). The BDC loan is repayable in monthly payments of principal and interest over the term and matures January 23, 2022. A copy of the BDC Loan Agreement is filed herewith as **Exhibit R-12**.
32. The BDC Loan is in addition to an earlier loan made by BDC to ChronoMétriq Inc. The current balance of the prior loan is \$36,290.
33. The BDC Loan is stated to be secured by a first-ranking security on the universality of ChronoMétriq Inc.'s assets, corporeal and incorporeal, present and future, of whatever nature and wherever situated for an aggregate amount of \$462,000 with interest at the rate of 25% per annum, as appears from a copy of the RDPRM Report (Exhibit R-5).
34. On September 16, 2020, CIBC, BDC and ChronoMétriq Inc. entered into an inter-creditor agreement ("**CIBC/BDC Inter-Creditor Agreement**"). A copy of the CIBC/BDC Inter-Creditor Agreement is filed herewith as **Exhibit R-13**.
35. Pursuant to the CIBC/BDC Inter-Creditor Agreement, the parties agreed that BDC's security over ChronoMétriq Inc.'s assets would rank subordinate to CIBC's security.
36. BDC and IQ subsequently entered into an inter-creditor agreement pursuant to which they agreed that their respective security over ChronoMétriq Inc.'s assets would rank *pari passu*.
37. As at October 25, 2021, \$130,635 is outstanding under the BDC Loan Agreement.

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**D. Suppliers and Other Creditors**

38. As at October 25, 2021, ChronoMétriq owes \$1,542,000 to its trade creditors and other unsecured creditors. Other liabilities include \$742,000, for earn outs, a shareholder loan, convertible debentures and deferred revenue.

**E. Employee Obligations**

39. As at October 25, 2021, ChronoMétriq Inc.'s bimonthly payroll obligations are \$230,000. The company is current in its payroll obligations.
40. ChronoMétriq Inc.'s books and records reflect accrued performance bonuses of \$472,870. Further, there is an estimated liability for accrued vacation pay of \$17,332, and a \$50,000 severance payment.
41. In addition, the Board of Directors of ChronoMétriq Inc. ("**BOD**") also approved a Key Employee Retention Program, which is described in greater detail below.

**F. Tax Obligations**

42. As of the date of the NOI filing, ChronoMétriq owes \$3,181,454 to Revenu Québec and the Canada Revenue Agency in unremitted employee source deductions.

**4. FINANCIAL DIFFICULTIES**

43. Over the past several years, ChronoMétriq has accumulated significant losses that ultimately led to the Debtors' insolvency and inability to continue operations without urgent financial support. The nature and extent of the Debtors' financial difficulties were recently determined by certain members of the BOD, namely the Full In nominees and the independent director, Mr. Lepage, as described in greater detail below.

**A. Full In's Capital Investment in July 2021**

44. Due to an urgent need for additional capital, ChronoMétriq Inc. and certain funds affiliated with Full In Management, LLC (a corporation related to Full In) entered into a Subscription Agreement on July 23, 2021, pursuant to which they subscribed for \$4,000,000 in Class B Preferred Shares of ChronoMétriq Inc. (the "**July Capital Injection**").
45. As a condition to the July Capital Injection, it was agreed that Mr. James Feldkamp would assist ChronoMétriq's management team going forward. This was in part because Full In had certain concerns that ChronoMétriq's affairs were not being managed efficiently and to full potential.

**B. Mismanagement of ChronoMétriq's Affairs**

46. Following the July Capital Injection, and during the course of August 2021, certain members of the BOD and Mr. Feldkamp began investigating ChronoMétriq's affairs and the management practices of certain officers ("**Former Officers**"). As they

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reviewed ChronoMétriq's financial information and reporting, it was discovered, among other things:

- a) ChronoMétriq's cash flow statements were not accurate in that they reflected a positive cash balance, whereas ChronoMétriq's actual cash balance was, at all material times, negative;
  - b) ChronoMétriq's balance sheet and other financial reporting did not accurately reflect amounts owing to the federal and provincial tax authorities for unremitted employee source deductions and/or HST. Additionally, some or all of the Former Officers may have received default notices from the tax authorities that were not appropriately brought to the attention of the BOD or the Debtors' shareholders;
  - c) ChronoMétriq's revenues and growth had been similarly misreported and overstated. For instance, it appears that in order to project exponential growth, ChronoMétriq employed at their height a total of 104 employees, when their actual needs at that time would have actually required approximately 30 employees;
  - d) on August 20, 2021, CIBC had sent the August 20 Notice of Default to the Former Officers, which notice was not appropriately reported and addressed internally; and
  - e) while insolvent or near insolvent ChronoMétriq had incurred certain disproportionately high "business expenses", which costs contributed to the companies' emerging cash flow crisis.
47. After discovering the above, the BOD took the following operational and financial control steps in an effort to address financial discrepancies and safeguard company assets:
- a) on September 2, 2021, a first emergency BOD meeting was held, during which, *inter alia* the Chief Financial Officer ("**CFO**") of ChronoMétriq Inc., i.e. one of the Former Officers, was suspended pending further investigation by the BOD. A new independent and experienced CFO was appointed by the BOD in order to manage ChronoMétriq's finances;
  - b) cash control measures were implemented, pursuant to which ChronoMétriq's spending was significantly curtailed; and
  - c) staff headcount was reduced by 23 employees across all areas of operations including sales, information technology, human resources and business development.

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48. Notwithstanding these efforts, ChronoMétriq continued to experience serious liquidity issues requiring immediate funding to maintain going concern operations.

**C. Full In's September Emergency Funding**

49. At the beginning of September 2021, the BOD determined that with certain additional capital being made available, ChronoMétriq could stabilize the business in the short term.

50. Full In accommodated ChronoMétriq's September 2021 financial needs by agreeing to provide \$1 million in immediately available additional equity funding, and up to an additional \$5 million in equity investments, as may be required by ChronoMétriq at Full In's discretion, ("**Full In Emergency Funding**").

51. On September 9, 2021, a second emergency BOD meeting was held, during which, among other things:

- a) the Full In Emergency Funding was approved; and
- b) Mr. Feldkamp, Co-CEO of ChronoMétriq Inc., was given full signing authority on all contracts.

52. Subsequently, during the balance of September 2021, ChronoMétriq pursued additional cost cutting measures by consolidating and reducing discretionary consulting fees and other variable expenditures.

53. On October 15, 2021, following an extensive internal investigation of management practices, ChronoMétriq Inc. terminated the following Former Officers: Yan Raymond-Lalande, Remi Lalonde-Richard, Benoit Arbour, and Lorenzo Pirri.

54. More generally, the BOD and ChronoMétriq's new management have been working diligently to stabilize ChronoMétriq's operations and implement cost reduction and control measures to preserve cash.

55. Despite these actions, ChronoMétriq has essentially run out of liquidity to the detriment of creditors and other stakeholders. Without the benefit of these proceedings and the support of CIBC, the Debtors will be required to shut down operations in the very near term.

**5. PROPOSED RESTRUCTURING**

56. In light of the foregoing, following extensive analysis and consideration, ChronoMétriq determined that it is the best interest of stakeholders to engage in the more formal restructuring process contemplated by this motion.

57. ChronoMétriq believes that a restructuring process focusing on a sale and investment solicitation process ("**Restructuring Process**"), conducted by the Proposal Trustee with the assistance of ChronoMétriq, is the most viable option available.

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**A. SISP**

58. ChronoMétriq requests court approval of an accelerated SISP to be conducted under the control of the Proposal Trustee. The objective of the SISP is to put the Debtors assets to market as quickly as possible with a view to assessing interest in a going concern sale or investment that will preserve and maximize creditor recoveries. The timeline for the SISP is as follows:

<b>Steps</b>	<b>Dates</b>
Creation of virtual data room and identification of potential interested parties	October 25 to November 2, 2021
Issuance of teaser and confidentiality agreement to potential interested parties	November 3, 2021, or earlier
Due date for Bids	November 15, 2021
Selection of successful bidder (including auction if necessary), negotiation of contract and completion of transaction including court approval	November 30, 2021

59. The Debtors are seeking approval of an accelerated SISP because they have extremely limited liquidity and there is benefit in maintaining the going concern value of the business. It is also a requirement of the DIP Term Sheet that the bid deadline be no later than November 15, 2021.
60. If the Proposal Trustee and the Debtors can establish that there is sufficient interest in the Debtors' assets, then it may be appropriate to discuss a short extension of the SISP supported by a commensurate increase in interim financing. This could only be done with the support of CIBC, which would need to be sought at that time.
61. ChronoMétriq is of the view that the sales process contemplated by the SISP optimizes the chances of securing the best possible investment in the business (whether by way of restructuring, refinancing, recapitalization or by other means) or the best possible price for the purchase of the Debtors' assets, all for the benefit of ChronoMétriq's creditors and other stakeholders.
62. Again, it is also a term of both the Forbearance Agreement and the DIP Term Sheet that ChronoMétriq immediately seek court approval of and initiate the SISP.

**B Operational Restructuring**

63. During the currency of the SISP, ChronoMétriq intends to maintain operations to maximize the likelihood of identifying a synergistic purchase or interested investor.
64. At the same time, ChronoMétriq, working with the assistance of the Proposal Trustee, will continue to look to accelerate the collection of accounts receivable, reduce costs, and otherwise preserve available cash-flow through to the conclusion of a successful sales process.

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65. ChronoMétriq respectfully submits that the proposed Restructuring Process constitutes the best available option for the realization of the Debtors' assets and the maximization of going concern value for the benefit of creditors, employees and other stakeholders.

**6. RELIEF SOUGHT**

**A. Interim Financing and Interim Lender's Charge**

66. During the past week, ChronoMétriq, and their advisers have been in discussions with CIBC regarding the Debtors' urgent financing needs, such as would be sufficient to support the proposed Restructuring Process and ChronoMétriq's post-filing working capital requirements.

67. CIBC (in such capacity, the "**Interim Lender**") is prepared to provide \$1,000,000 in interim financing ("**Interim Financing Facility**") to ChronoMétriq pursuant to the interim financing facility term sheet ("**DIP Term Sheet**"). The Interim Financing Facility is to be secured by a super-priority charge ("**Interim Lender's Charge**") over all of ChronoMétriq's present and after-acquired property, which will rank behind only the Administration Charge and the D&O Charge (both as defined below). A copy of the DIP Term Sheet is filed herewith, under confidential seal, as **Exhibit R-14**.

68. The Interim Financing Facility will be used, to the extent required, to implement the proposed Restructuring Process.

69. Given ChronoMétriq's current financial situation, including cash position, the Interim Financing Facility is the only feasible financing alternative available to sustain operations. The terms of the Interim Financing Facility are fair, reasonable and adequate.

70. ChronoMétriq cannot continue operations without the support of CIBC and the protections of these proceedings. As explained in the Proposal Trustee's report, ChronoMétriq requires immediate financing to, among other things, meet payroll obligations and maintain operations during a SISF.

71. The Proposal Trustee is supportive of the proposed Interim Financing Facility and the Interim Lender's Charge.

**B. Key Employee Retention Plan**

72. In order to facilitate the Restructuring Process, ChronoMétriq, in consultation with the Proposal Trustee, has developed the KERP. The terms and conditions of the KERP are filed, under confidential seal, as **Exhibit R-15**.

73. ChronoMétriq operates in a highly competitive industry where it is challenging to retain talent. As a result, ChronoMétriq has identified 17 key employees who are crucial to the Debtors' operations ("**KERP Employees**").

74. The KERP provides incentives for the KERP Employees to remain with ChronoMétriq Inc. during these NOI proceedings. As previously discussed,

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ChronoMétriq's restructuring plan involves a SISP. These employees will work to implement the SISP and maintain operations as a going concern, even though their own continued employment is not guaranteed.

75. The retention of these employees will provide critical stability in these otherwise uncertain times for ChronoMétriq and will allow the Debtors to maintain orderly operations and maximize enterprise value throughout the course of the restructuring.
76. The cost of the KERP is based on a percentage of the KERP Employee's annual salary. The estimated cost of the KERP is \$194,000.
77. ChronoMétriq Inc.'s directors have approved the KERP, and it is supported by the Proposal Trustee.
78. ChronoMétriq believes that the KERP provides appropriate and reasonable incentives for the retention of the KERP Employees. Accordingly, ChronoMétriq submits that this Court should approve the KERP to assist ChronoMétriq in completing a restructuring for the benefit of all stakeholders.
79. A sealing order is requested with respect to the KERP because the information in the KERP contains confidential and sensitive information regarding the key employees and their compensation.

**C. Administration Charge**

80. Counsel for ChronoMétriq, the Proposal Trustee and its counsel are essential to the Restructuring Process and the sale efforts contemplated in these proceedings.
81. The Proposal Trustee and its counsel and counsel for ChronoMétriq have advised ChronoMétriq that they are prepared to provide or continue to provide professional services to the Debtors only if they are protected by a charge over ChronoMétriq's assets.
82. Therefore, ChronoMétriq seeks, as security for the professional fees and disbursements incurred in the context of these proceedings by their counsel and the Proposal Trustee and its counsel, both before and after the date of an order to be issued on the present motion, a charge ("**Administration Charge**") over all of the property of ChronoMétriq of every nature and kind whatsoever, wherever situated and regardless of whose possession it may be in ("**Property**") in the aggregate amount of \$200,000, which charge would rank in priority to the claims of all secured creditors.
83. The Administration Charge is reasonable in the circumstances and the amount has been determined based on an assessment of what could be the outstanding fees and disbursements of ChronoMétriq's professionals and advisors in these proceedings.

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**D. D&O Charge**

84. In order to carry on business during these proceedings and in order to complete the Restructuring Process, ChronoMétriq requires the active and committed involvement and continued participation of some of their remaining directors and/or officers. These directors and officers have confirmed their willingness to remain involved in the management of ChronoMétriq's business after the filing of the present proceedings ("**Remaining D&Os**").
85. Although ChronoMétriq intends to comply with all applicable laws and regulations, including the timely remittance of source deductions and federal and provincial sales tax, the Remaining D&Os are nevertheless concerned about the possibility of their personal liability in the context of the present proceedings given the Restructuring Process.
86. Considering the risk that the Remaining D&Os may be exposed to in assisting ChronoMétriq during the Restructuring Process, they require ChronoMétriq to indemnify them of all liabilities that the Remaining D&Os may incur in the context of their employment after the filing of these proceedings.
87. Although the Remaining D&Os currently benefit from directors' and officers' insurance coverage, this coverage may prove insufficient or be subject to standard exclusions that could make it difficult to cover all potential liabilities that can arise in the context of an insolvency process, including liability for unremitted sales taxes, as well as employee wages and vacations.
88. ChronoMétriq therefore requests a Court-ordered charge in the amount of \$250,000 ("**D&O Charge**") over ChronoMétriq's assets, property and undertaking, to indemnify the Remaining D&Os in respect of any liability they may incur in connection with these proceedings, but only to the extent that such claims are not covered by the current insurance coverage in place. As appears from the draft Order, ChronoMétriq requests that such charge rank prior to any and all other charges existing over the assets and undertakings of ChronoMétriq, except for the Administration Charge.
89. ChronoMétriq submits that the requested D&O Charge is reasonable and adequate given the potential exposure of the Remaining D&Os to personal liability, especially under a scenario where ChronoMétriq would not be able to secure satisfactory offers in respect of the business and assets.
90. The Proposal Trustee has advised that it is supportive of the D&O Charge, including the amount thereof.

**E. Procedural Consolidation**

91. As noted above, HMI is a wholly owned subsidiary of ChronoMétriq Inc. The operations of HMI and ChronoMétriq are fully integrated. ChronoMétriq Inc. pays the Debtors' expenses, regardless of which entity incurs the cost. HMI does not have its own borrowing facilities and relies on, and benefits from, funds extended to ChronoMétriq Inc. The Debtors' customers and vendors generally do not

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distinguish between the two businesses but rather deal with the enterprise as a whole.

92. A consolidated proposal proceeding will allow the Debtors' NOI proceedings to be managed in a more efficient and cost-effective manner than if there were separate proceedings.

**7. CONCLUSION**

93. For the reasons set forth above, ChronoMétriq believes it is both appropriate and necessary that the relief sought be granted. With such relief, ChronoMétriq will be able to proceed with the Restructuring Process in order to maximize the value of the business and assets for the benefit of stakeholders.
94. As will appear from the Proposal Trustee's report, the Proposal Trustee supports the present motion.
95. All parties who may be affected by the orders sought herein will be served with the present motion.
96. Considering the urgency of the situation, ChronoMétriq respectfully submits that the notice given for the presentation of this motion is proper and sufficient.
97. ChronoMétriq respectfully submits that this motion should be granted in accordance with its conclusion.

**WHEREFORE, MAY THIS COURT:**

**GRANT** this *Motion for the Issuance of an Order Authorizing and Approving Interim Financing, a Sale and Investment Solicitation Process, an Administration Charge, a Directors and Officers Charge, a Key Employee Retention Program, Procedural Consolidation of the Estates, and other Relief ("Motion")*.

**ISSUE** the order substantially in the form of the draft Order filed in support of the Motion as Exhibit R-1

**WITHOUT COSTS**, save and except in case of contestation.

**MONTRÉAL, October 26, 2021**

*MILLER THOMSON LLP*

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**MILLER THOMSON LLP**  
**Lawyers for the Debtors**  
**ChronoMétriq Inc. and Health Myself**  
**Innovations Inc.**

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**SWORN STATEMENT**

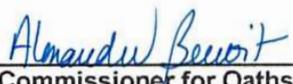
I, the undersigned, James Feldkamp, having my principal place of business at 100-1396 Saint-Patrick Street, in the city of Montréal, Province of Québec, solemnly declare the following:

1. I am Chief Executive Officer of ChronoMétriq Inc.
2. I have taken cognizance of the attached *Motion for the Issuance of an Order Authorizing and Approving Interim Financing, A Sale and Investment Solicitation Process, an Administration Charge, a Directors and Officers Charge, a Key Employee Retention Program, Procedural Consolidation of the Estates, and other Relief ("Motion")*.
3. All the facts alleged in the Motion of which I have personal knowledge are true.
3. Where I have obtained facts alleged in the Motion from others, I believe them to be true.

AND I HAVE SIGNED

  
James Feldkamp

Solemnly declared before me at Montréal, Québec  
on the 26 day of October 2021

  
Commissioner for Oaths  
for the Province of Québec



Motion for the issuance of an order authorizing and approving interim financing, a sale and investment solicitation process, an administrative charge, a directors and officers charge, a key employee retention program, procedural consolidation of the estates, and other relief, October 26, 2021

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**NOTICE OF PRESENTATION**

**TO:** the Service List (attached)

**TAKE NOTICE** that the *Motion for the Issuance of an Order Authorizing and Approving Interim Financing, and for an Administration Charge, a Directors and Officers Charge, a Key Employee Incentive Program, Procedural Consolidation of the Estates, and other Remedies* will be presented for adjudication before the Honourable Martin Castonguay of the Superior Court of Quebec, Commercial Division, **in courtroom 16.04 and via video-conference (Microsoft Teams)**, on **October 27, 2021 at 2:15pm**. Coordinates of the video-conference will be communicated to the Service List in due course.

**DO GOVERN YOURSELVES ACCORDINGLY.**

**MONTRÉAL, October 26, 2021**

*MILLER THOMSON LLP*

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**MILLER THOMSON LLP**  
**Lawyers for the Debtors**  
**ChronoMétriq Inc. and Health Myself**  
**Innovations Inc.**

Minutes of hearing, October 27, 2021

<b>CANADA</b>		<b>PROCÈS-VERBAL D'AUDIENCE</b>		<b>COUR SUPÉRIEURE</b>	
PROVINCE DE QUÉBEC				Chambre commerciale	
DISTRICT DE MONTRÉAL					
500-11-060355-217			Salle 16.04	27 octobre 2021	
L'HONORABLE MARTIN CASTONGUAY, J.C.S.					JC00C9

**IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL OF :**

**Debtor / Petitioner**

ChronoMétriq Inc.

**Attorneys**

Me Michel La Roche  
Miller Thomson  
mlaroche@millerthomson.com

Me David Ward  
dward@millerthomson.com.

Me Larry Ellis  
lellis@millerthomson.com

**Debtor / Petitioner**

Health Myself Innovations Inc.

Me Michel Laroche  
Me David Ward  
Me Larry Ellis

**Proposal Trustee**

Richter Advisory Group Inc.

Me Hugo Babos- Marchand  
McCarthy Tétrault  
hbmarchand@mccarthy.ca

Me Nathalie Nouvet (14h36)  
Stikeman Elliott  
nnouvet@stikeman.com  
Pour : Ful in Partners

Me Jennifer Tschamper (16h26)  
Dunton Rainville  
Pour : 2 administrateurs :  
M. Yan & M. R. Lalonde

Me Kim Sheppard  
Pour : Le Procureur Général du Canada

Me Daniel Cantin  
danielcantin@revenuquebec.ca  
Pour : L'Agence du Revenu du Québec

Me Harvey Chaiton  
harvey@chaitons.com  
Pour : Canadian Imperial Bank of Commerce

Minutes of hearing, October 27, 2021

<b>CANADA</b>		<b>PROCÈS-VERBAL D'AUDIENCE</b>		<b>COUR SUPÉRIEURE</b>	
PROVINCE DE QUÉBEC				Chambre commerciale	
DISTRICT DE MONTRÉAL					
500-11-060355-217			Salle 16.04	27 octobre 2021	
L'HONORABLE MARTIN CASTONGUAY, J.C.S.					JC00C9

Nature de la cause : Motion for the issuance of an order authorizing and approving interim financing, a sale and investment Solicitation process, an administrative charge, a directors and officers charge, a key employee retention program, procedural consolidation of the estates, and other relief (N.C.)

Greffière : Denise Bolly, g.a.c.s.	Interprète N/A	Sténographe N/A
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## ENREGISTREMENT NUMÉRIQUE

Audition AM :	Début	Fin	Audition PM :	Début 14h19	Fin 16h55
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Affaires référées au maître des rôles	Résultat de l'audition : <b>JUGEMENT</b>
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14h19	Début de la séance
14h19	Identification des procureurs
14h21	Représentations de Me La Roche
14h22	Représentations de Me Sheppard
14h25	Représentations de Me Cantin
	- <b>Questions et commentaires du Tribunal</b>
14h28	Échanges entre le Tribunal et M. Chaiton
14h29	Le Tribunal procède à l'audition de la preuve du débiteur / requérant
14h29	<b><u>PREUVE DU DÉBITEUR / REQUÉRANT</u></b>
14h29	<b><u>Témoin (anglais) :</u></b> M. James Feldkamp
	1396 St-Patrick
	Montréal
	Assermenté

Minutes of hearing, October 27, 2021

CANADA		PROCÈS-VERBAL D'AUDIENCE		COUR SUPÉRIEURE	
PROVINCE DE QUÉBEC				Chambre commerciale	
DISTRICT DE MONTRÉAL					
500-11-060355-217			Salle 16.04	27 octobre 2021	
L'HONORABLE MARTIN CASTONGUAY, J.C.S.					JC00C9

14h30	Interrogé par Me La Roche
15h04	Fin de l'interrogatoire en chef
	- <b>Questions du Tribunal au témoin à quelques reprises</b>
15h04	Échanges entre le Tribunal, Me Sheppard et Me Cantin
15h06	Suspension de la séance
15h10	Reprise
15h10	<b>Témoin (anglais)</b> : M. James Feldkamp
	Sous le même serment
15h10	Contre-interrogé par Me Sheppard
15h16	Contre-interrogé par Me Cantin
15h17	Échanges entre le Tribunal, Me Cantin et Me La Roche
15h18	Le témoin est contre-interrogé par Me Chaiton
15h21	Fin des contre-interrogatoires
15h21	Fin du témoignage
15h22	<b>Témoin (anglais)</b> : M. Andrew Adessky
	1981 Mc Gill College
	Montréal
	Assermenté
15h22	Interrogé par Me La Roche
15h42	Fin de l'interrogatoire en chef
	- <b>Questions du Tribunal au témoin</b>
15h42	Contre-interrogé par Me Sheppard
15h50	Contre-interrogé par Me Cantin

Minutes of hearing, October 27, 2021

<b>CANADA</b>		<b>PROCÈS-VERBAL D'AUDIENCE</b>		<b>COUR SUPÉRIEURE</b>	
PROVINCE DE QUÉBEC				Chambre commerciale	
DISTRICT DE MONTRÉAL					
500-11-060355-217			Salle 16.04	27 octobre 2021	
L'HONORABLE MARTIN CASTONGUAY, J.C.S.					JC00C9

	- Question du Tribunal au témoin
15h56	Contre-interrogé par Me Chaiton
15h59	Fin des contre-interrogatoires
15h59	Fin du témoignage
15h59	<b><u>PREUVE DU DÉBITEUR / REQUÉRANT CLOSE</u></b>
15h59	Suspension de la séance
16h10	Reprise
16h10	Argumentation de Me La Roche
16h17	Argumentation de Me Sheppard
16h20	Argumentation de Me Cantin
16h24	Argumentation de Me Chaiton
16h26	Me Jennifer Tschamper de Dunton Rainville souligne sa présence
16h26	Représentations de Me Tshamper
	- Commentaires du Tribunal à Me Tschamper
16h29	Le Tribunal procède à rendre jugement
16h29	<b><u>JUGEMENT :</u></b> Pour les motifs énoncés verbalement et enregistrés, le Tribunal :
16h35	<b>ACCUEILLE</b> la requête suivant le projet de jugement soumis; <b><u>Voir jugement écrit déposé au dossier de la Cour.</u></b>
16h39	Suspension de la séance
16h45	Reprise
16h45	Représentations de Me La Roche
	- Me La Roche demande la mise sous scellés de documents

Minutes of hearing, October 27, 2021

CANADA		PROCÈS-VERBAL D'AUDIENCE		COUR SUPÉRIEURE	
PROVINCE DE QUÉBEC				Chambre commerciale	
DISTRICT DE MONTRÉAL					
500-11-060355-217				Salle 16.04	27 octobre 2021
L'HONORABLE MARTIN CASTONGUAY, J.C.S.					JC00C9

	- Questions du Tribunal
16h49	Le Tribunal rend l'ordonnance suivante :
16h49	<p><b><u>ORDONNANCE DE MISE SOUS SCHELLÉS :</u></b></p> <p><b>LE TRIBUNAL :</b></p> <p><b>ORDONNE</b> la mise sous scellés des documents suivants :</p> <p style="padding-left: 40px;">R-14 : DIP Term Sheet R-15 : The KERP R-16 : First Report of the Trustee on the State of Petitioners' Business and Financial Affairs R-17 : Week Projected Cashflow</p> <p style="text-align: center;"> HON. MARTIN CASTONGUAY, J.C.S.</p>
16h51	Le Tribunal commente
16h55	Fin de la séance
	<p style="text-align: center;"> Denise Boily, g.c.s.</p>

Judgment granting the application for leave to intervene of Canadian Imperial Bank of Commerce (Baudouin, J.A.), December 20, 2021

## COURT OF APPEAL

CANADA  
PROVINCE OF QUEBEC  
REGISTRY OF MONTREAL

No: 500-09-029763-216, 500-09-029765-211  
(500-11-060355-217, )

### MINUTES OF THE HEARING

DATE : December 20, 2021

THE HONOURABLE CHRISTINE BAUDOIN, J.A.

No: 500-09-029763-216	
APPLICANT	COUNSEL
<b>CANADIAN IMPERIAL BANK OF COMMERCE</b>	Mtre JOSHUA BOUZAGLOU ( <i>Woods</i> ) By videoconference
APPELLANT	COUNSEL
<b>ATTORNEY GENERAL OF CANADA</b>	Mtre KIM SHEPPARD ( <i>Department of Justice Canada</i> ) By videoconference
RESPONDENTS	COUNSEL
<b>CHRONOMETRIQ INC. HEALTH MYSELF INNOVATIONS INC. RICHTER ADVISORY GROUP INC.</b>	Mtre MICHEL LA ROCHE ( <i>Miller Thomson</i> ) Absent
<b>RICHTER ADVISORY GROUP INC.</b>	Mtre FRÉDÉRIQUE DRAINVILLE ( <i>McCarthy Tétrault</i> ) By videoconference

Judgment granting the application for leave to intervene of Canadian Imperial Bank of Commerce (Baudouin, J.A.), December 20, 2021

500-09-029763-216, 500-09-029765-211

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No: 500-09-029765-211	
APPLICANT	COUNSEL
<b>CANADIAN IMPERIAL BANK OF COMMERCE</b>	Mtre JOSHUA BOUZAGLOU ( <i>Woods</i> ) By videoconference
APPELLANT	COUNSEL
<b>AGENCE DU REVENU DU QUÉBEC</b>	Mtre DANIEL CANTIN ( <i>Larivière Meunier</i> ) By videoconference
RESPONDENTS	COUNSEL
<b>CHRONOMETRIQ INC. HEALTH MYSELF INNOVATIONS INC. RICHTER ADVISORY GROUP INC.</b>	Mtre MICHEL LA ROCHE ( <i>Miller Thomson</i> ) Absent
<b>RICHTER ADVISORY GROUP INC.</b>	Mtre FRÉDÉRIQUE DRAINVILLE ( <i>McCarthy Tétrault</i> ) By videoconference

DESCRIPTION: **500-09-029763-216, 500-09-029765-211**  
**Application for leave to intervene of Canadian Imperial Bank of Commerce (Articles 185 and 378 C.c.p.)**

Clerk at the hearing : René Gutknecht

Courtroom: RC-18

Judgment granting the application for leave to intervene of Canadian Imperial Bank of Commerce (Baudouin, J.A.), December 20, 2021

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HEARING

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10:49 Commencement of the hearing. Identification of counsel.

10:51 Discussion between the Court and the counsel.

10:54 BY THE JUDGE: Judgment – see page 4.

10:56 Conclusion of the hearing.

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René Gutknecht, Clerk at the hearing

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JUDGMENT

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[1] I am seized of an application for leave to intervene in two different files involving the Attorney General of Canada (500-09-029763-218) and the Agence du revenu du Québec (500-09-029765-211) that are, for all intents and purposes, identical and rest on the same grounds.

[2] On October 27, 2021, the Superior Court, Commercial Division (the Honourable Mr. Justice Martin Castonguay) rendered an order which authorized and approved interim financing by, and an interim lender's charge, in favour of the Applicant in the maximum amount of \$1,600,000, an administration charge, a sale and investment solicitation process, a directors and officers charge, a key employee retention program, procedural consolidation of the estates and other relief.

[3] On November 8, 2021 each of the Appellants, Attorney General of Canada and Agence du revenu du Québec, filed a notice of appeal, both of which are, for all intents and purposes, identical. The Attorney General of Canada's Notice of appeal states:<sup>1</sup>

2. More particularly, this appeal concerns the Court's order ranking the Lender Charge, the Administration Charge and the Directors and Officers Charge (collectively, the "**Charges**" with priority over the Crown's deemed trust (paragraph 34 of the Order) along with the order declaring a notwithstanding clause to override the provisions of any federal statute (paragraph 37 of the Order).

(...)

6. The respondent, ChronoMétriq Inc. has an estimated amount of \$ 1,4 MM of unremitted federal payroll deductions for the 2018, 2019 and 2020 tax years. Those amounts are subject to the deemed trust provisions for unremitted source deductions under the *Income Tax Act* ("**ITA**").

(...)

16. Had the Crown been given an adequate opportunity to contest the motion presented, it would have demonstrated that:

- a) The Crown's deemed trust for unremitted source deductions has priority over court-ordered priming charges under the *Bankruptcy and Insolvency Act* ("**BIA**"); and

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<sup>1</sup> For the purpose of the present decision, the Attorney General of Canada's Notice of appeal is taken as an example. Agence du revenu du Québec's are the same, save for the amounts at para. 6.

500-09-029763-216, 500-09-029765-211

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- b) The Court did not have the authority under the BIA to render an order ranking the charges above the Crown's deemed trust for unremitted source deductions;

17. The Court therefore erred in declaring at paragraph 34 of the Order "that each of the Charges shall constitute a charge on the Property [of the respondents] and that such Charges shall rank in priority to any and [...] trusts (statutory or otherwise)" (our underlining), thereby including the Crown's deemed trust.

18. The Court equally erred at paragraph 37 of the Order by declaring a notwithstanding clause to override the provisions of any federal statute, including more particularly, the BIA.

[4] Its conclusions read as follows:

29. (...)

- b) **SET ASIDE** the first instance Order regarding:

- i. The order and declaration priming the Lender Charge, the Administration Charge and the Directors and Officers Charge with priority over the Crown's deemed trust (paragraph 34 of the Order);
- ii. The order declaring a notwithstanding clause to override the provisions of any federal statute (paragraph 37 of the Order);

[5] The Applicant, Canadian Imperial Bank of Commerce, requests leave to intervene in both appeal proceedings (art. 185 *CCP*) and argues that the main question raised by the appeals is whether the Quebec Superior Court exercising its jurisdiction under the *Bankruptcy and Insolvency Act* has the power to grant charges in favour of interim lenders and others ranking in priority to the Crown's deemed trust claim for unremitted source deductions.

[6] The Applicant further submits that as the interim lender and beneficiary of the interim financing charge, it is directly affected by the appeals as there are insufficient funds available in the Debtors' estates to repay both the interim financing provided by the interim lender and beneficiary of the interim financing charge and the Crown's deemed trust claim. It therefore argues that it "has a direct, substantial and genuine interest in contesting the appeal on the merits and should be entitled to fully participate therein on the same terms as the Respondents with respect to the length of its factum and oral submissions".

[7] The Appellants and the Respondents in both matters confirm they do not contest the Applicant's application for leave to intervene.

[8] Given these circumstances, I am satisfied that leave to intervene should be granted under the same terms and time limits as the Respondents.

Judgment granting the application for leave to intervene of Canadian Imperial Bank of Commerce (Baudouin, J.A.), December 20, 2021

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500-09-029763-216, 500-09-029765-211

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**FOR THESE REASONS, THE UNDERSIGNED:**

[9] **GRANTS** the *Application for Leave to intervene of Canadian Imperial Bank of Commerce*;

[10] **ALLOWS** the Applicant to intervene in these appeal proceedings on the same terms as the Respondents with respect to the length of its factum and oral submissions and under the same time limits;

[11] **COSTS** to follow suit.



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CHRISTINE BAUDOIN, J.A.

Judgment granting the motion for voluntary intervention on an amicable basis from Canadian Bankers' Association (Baudouin, J.A.), February 7, 2022

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## COURT OF APPEAL

CANADA  
 PROVINCE OF QUEBEC  
 REGISTRY OF MONTREAL

No: 500-09-029763-216, 500-09-029765-211  
 (500-11-060355-217)

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### MINUTES OF THE HEARING

---

DATE : February 7, 2022

THE HONOURABLE CHRISTINE BAUDOIN, J.A.

No: 500-09-029763-216	
APPLICANT	COUNSEL
<b>CANDIAN BANKERS' ASSOCIATION</b>	Mtre CHRISTIAN LACHANCE Mtre BENJAMIN JARVIS <i>(Davies Ward Phillips &amp; Vineberg)</i> By videoconference
APPELLANT	COUNSEL
<b>ATTORNEY GENERAL OF CANADA</b>	Mtre KIM SHEPPARD <i>(Department of Justice Canada)</i> By videoconference
RESPONDENTS	COUNSEL
<b>RICHTER ADVISORY GROUP INC. RICHTER ADVISORY GROUP INC. in continuance of proceeding for CHRONOMETRIQ INC. and HEALTH MYSELF INNOVATIONS INC.</b>	Mtre HUGO ANTHONY BABOS- MARCHAND <i>(Mccarthy Tétrault)</i> By videoconference

Judgment granting the motion for voluntary intervention on an amicable basis from Canadian Bankers' Association (Baudouin, J.A.), February 7, 2022

500-09-029763-216, 500-09-029765-211

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INTERVENER	COUNSEL
<b>CANADIAN IMPERIAL BANK OF COMMERCE</b>	Mtre JOSHUA BOUZAGLOU (Woods) By videoconference

No: 500-09-029765-211	
APPELLANT	COUNSEL
<b>AGENCE DU REVENU DU QUÉBEC</b>	Mtre DANIEL CANTIN (Larivière Meunier (Revenu Québec)) By videoconference
RESPONDENTS	COUNSEL
<b>RICHTER ADVISORY GROUP INC. RICHTER ADVISORY GROUP INC. in continuance of proceeding for CHRONOMETRIQ INC. and HEALTH MYSELF INNOVATIONS INC.</b>	Mtre HUGO ANTHONY BABOS- MARCHAND (Mccarthy Tétrault) By videoconference
INTERVENER	COUNSEL
<b>CANADIAN IMPERIAL BANK OF COMMERCE</b>	Mtre JOSHUA BOUZAGLOU (Woods) By videoconference

DESCRIPTION: **500-09-029763-216**  
**Motion for voluntary intervention on an amicable basis** (Sections 184, 185 and 187 C.c.p.).  
**500-09-029763-216, 500-09-029765-211**  
**Motion for consolidation of appeals** (Section 378 paragraph 3 C.c.p.).

Clerk at the hearing : René Gutknecht

Courtroom: RC-18

Judgment granting the motion for voluntary intervention on an amicable basis from Canadian Bankers' Association (Baudouin, J.A.), February 7, 2022

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500-09-029763-216, 500-09-029765-211

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HEARING

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10:30 Commencement of the hearing. Identification of counsel.

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Until 10:44 Hearing file: 500-09-029765-211.

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10:45 Submissions by Mtre Lachance about the motion for voluntary intervention on an amicable basis.

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10:51 Discussion between the Court and Mtre Lachance.

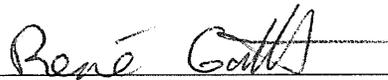
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10:53 **BY THE JUDGE:** Judgment – see page 4.

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10:54 Conclusion of the hearing.

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René Gutknecht, Clerk at the hearing

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JUDGMENT

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[1] I am seized of a Motion for Voluntary Intervention on an amicable basis in the present file presented this time by the Applicant, Canadian Bankers' Association. On December 20, 2021, the undersigned allowed the CIBC to intervene as it appears from the reasons of the judgment 2021 QCCA 1923.

[2] The Applicant which presents itself as being the national voice of the Canadian banking industry, serves its members in matters that concern the banking industry and advocates for public policy that contributes to a sound and successful banking system. It has a history of intervening across the country in various court cases impacting the banking industry.

[3] The Applicant argues that this appeal raises a fundamental issue in insolvency law which will impact several ongoing reorganizations under the *Bankruptcy and Insolvency Act*, presented as follows: Pursuant to the *Bankruptcy and Insolvency Act*, can a Court grant super-priority charges (priming charges) with priority over deemed trusts created by section 227 (4.1) of the *Income Tax Act* (Deemed Trusts)?

[4] More specifically, the Applicant submits that:

The CBA is seeking to intervene in the present matter because the outcome of this Appeal will directly impact lending practices in Canada. Indeed, the position taken by the Appellants would introduce significant uncertainty into the business of bank lending to companies in financial difficulty. This could quite obviously produce negative outcomes for Canadian borrowers as well as have unintended and detrimental impacts on lending practices. The CBA seeks to ensure that this Court is fully apprised of the broader implications of its ruling and the consequences for distressed lending in Canada.

[5] The Appellants, the Respondents and the Intervener do not contest the Applicant's Motion. At the hearing, attorney for the Applicant confirmed that his client would not request any additional delay and would act according to the schedule already set by this Court.

[6] The Applicant's Motion for voluntary Intervention on an amicable basis should be granted as it is expedient. Considering the importance of the issues in dispute, I am of the view that the usefulness of its contribution to the debate goes beyond the mere interest of the parties.

Judgment granting the motion for voluntary intervention on an amicable basis from Canadian Bankers' Association (Baudouin, J.A.), February 7, 2022

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500-09-029763-216, 500-09-029765-211

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**FOR THESE REASONS, THE UNDERSIGNED:**

[7] **GRANTS** the Application for Leave to Intervene on an amicable basis from the Canadian Bankers' Association;

[8] **ALLOWS** the Applicant to intervene in this Appeal proceedings on the same terms as the Respondents and the Intervener CIBC with respect to the length of its factum and oral submissions and under the same time limits;

[9] **COSTS** to follow suit.



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CHRISTINE BAUDOIN, J.A.

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## COURT OF APPEAL

CANADA  
 PROVINCE OF QUEBEC  
 REGISTRY OF MONTREAL

No: 500-09-029765-211  
 (500-11-060355-217)

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### MINUTES OF HEARING

---

DATE: February 7, 2022

THE HONOURABLE CHRISTINE BAUDOIN, J.A.

APPELLANT	COUNSEL
<b>AGENCE DU REVENU DU QUÉBEC</b>	Mtre DANIEL CANTIN <i>(Larivière Meunier (Revenu Québec))</i> By videoconference
RESPONDENTS	COUNSEL
<b>RICHTER ADVISORY GROUP INC. RICHTER ADVISORY GROUP INC. in continuance of proceeding for CHRONOMETRIQ INC. and HEALTH MYSELF INNOVATIONS INC.</b>	Mtre HUGO ANTHONY BABOS-MARCHAND <i>(Mccarthy Tétrault)</i> By videoconference
INTERVENER	COUNSEL
<b>CANADIAN IMPERIAL BANK OF COMMERCE</b>	Mtre JOSHUA BOUZAGLOU <i>(Woods)</i> Absent

DESCRIPTION: **Motion for consolidation of appeals**  
 (Section 378 paragraph 3 *C.c.p.*).

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Clerk at the hearing : René Gutknecht

Courtroom: RC-18

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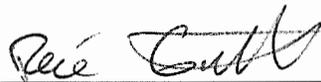
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HEARING

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10:30	Commencement of the hearing. Identification of counsel.
10:34	Discussion between the judge and all counsel.
10:37	Submissions by Mtre Cantin about the motion for consolidation of appeals.
10:43	Discussion between the judge and all counsel.
10:44	<b>BY THE JUDGE:</b> Judgment – see page 3.
	Conclusion of the hearing.

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René Gutknecht, Clerk at the hearing

500-09-029765-211

PAGE : 3

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**JUDGMENT**

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[1] Pursuant to article 378 al. 3 of the *Code of Civil Procedure*, l'Agence du Revenu du Québec (ARQ) presents an Application for the Consolidation of Appeals. The context is as follows:

[2] ARQ and the Attorney General of Canada both appeal from an Order dated October 27, 2021, rendered by the honourable Justice Martin Castonguay S.C.J. in the respective file 500-09-029765-211 and 500-09-029763-216, which "authorized and approved interim financing by, and interim charge, in favour of the Commercial Imperial Bank of Commerce, ranking priority, to inter alia, any and all encumbrances, security, interests of trusts affecting the property of the debtors".

[3] Both appeals rest essentially on the same grounds, raise the same object – priority over unremitted source deduction – and the same question as to whether the judge, based on article 183 of the *Bankruptcy and Insolvency Act*, could grant charges in favour of CIBC and other ranking in priority to the Crown's deemed trust claim for unremitted source deduction under article 60 (1.1) for an approved interim financing.

[4] All parties involved in both files, including the Trustee and the Intervener, consent to the consolidation of the appeals.

[5] It is in the interest of justice that both appeals be consolidated.

**FOR THESE REASONS, THE UNDERSIGNED:**

[6] **GRANTS** the Application for the Consolidation of Appeals;

[7] **CONSOLIDATES** appeals number 500-09-029765-211 and 500-09-029763-216 so they are subject to the same deadlines and heard by the same panel of the Court of Appeal;

[8] **TAKES NOTE** of Appellants' decision to produce a common brief;

[9] **ORDERS** the Appellants' brief to be filed with the office of the Court of Appeal and notified to the other parties to the proceedings within the same time limit of April 8, 2022, as specified in the appeal management decision of January 27, 2022 in the file 500-09-029763-216;

[10] **WITHOUT COSTS.**

  
CHRISTINE BAUDOIN, J.A.

Judgment granting the application for voluntary intervention on an amicable basis from the Insolvency Institute of Canada (Hamilton, J.A.), February 24, 2022

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## COURT OF APPEAL

CANADA  
PROVINCE OF QUEBEC  
REGISTRY OF MONTREAL

No.: 500-09-029763-216, 500-09-029765-211  
(500-11-060355-217)

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### MINUTES OF THE HEARING

---

DATE : February 24, 2022

THE HONOURABLE STEPHEN W. HAMILTON, J.A.

No.: 500-09-029763-216	
APPLICANT	COUNSEL
<b>INSOLVENCY INSTITUTE OF CANADA</b>	Mtre ALAIN RIENDEAU Mtre BRANDON FARBER <i>(Fasken Martineau DuMoulin)</i> By videoconference
APPELLANT	COUNSEL
<b>ATTORNEY GENREAL OF CANADA</b>	Mtre KIM SHEPPARD <i>(Ministry of Justice Canada)</i> By videoconference
RESPONDENTS	COUNSEL
<b>RICHTER ADVISORY GROUP INC. RICHTER ADVISORY GROUP INC., in continuance of proceeding for CHRONOMETRIQ INC. and HEALTH MYSELF INNOVATIONS INC.</b>	Mtre HUGO ANTHONY BABOS- MARCHAND <i>(McCarthy Tétrault)</i> By videoconference

Judgment granting the application for voluntary intervention on an amicable basis from the Insolvency Institute of Canada (Hamilton, J.A.), February 24, 2022

500-09-029763-216, 500-09-029765-211

PAGE : 2

INTERVENERS	COUNSEL
<b>CANADIAN IMPERIAL BANK OF COMMERCE</b>	Mtre JOSHUA BOUZAGLOU Mtre PATRICK OUELLET Mtre SYLVAIN RIGAUD ( <i>Woods</i> ) Absent
<b>CANADIAN BANKERS' ASSOCIATION</b>	Mtre BENJAMIN JARVIS ( <i>Davies Ward Phillips &amp; Vineberg</i> ) By videoconference

No.: 500-09-029765-211	
APPLICANT	COUNSEL
<b>INSOLVENCY INSTITUTE OF CANADA</b>	Mtre ALAIN RIENDEAU Mtre BRANDON FARBER ( <i>Fasken Martineau DuMoulin</i> ) By videoconference
APPELLANT	COUNSEL
<b>AGENCE DU REVENU DU QUÉBEC</b>	Mtre DANIEL CANTIN ( <i>Larivière Meunier (Revenu Québec)</i> ) By videoconference
RESPONDENTS	COUNSEL
<b>RICHTER ADVISORY GROUP INC. RICHTER ADVISORY GROUP INC., in continuance of proceeding for CHRONOMETRIQ INC. and HEALTH MYSELF INNOVATIONS INC.</b>	Mtre HUGO ANTHONY BABOS- MARCHAND ( <i>McCarthy Tétrault</i> ) By videoconference

Judgment granting the application for voluntary intervention on an amicable basis from the Insolvency Institute of Canada (Hamilton, J.A.), February 24, 2022

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PAGE : 3

INTERVENERS	COUNSEL
<p align="center"><b>CANADIAN IMPERIAL BANK OF COMMERCE</b></p>	<p align="center">Mtre JOSHUA BOUZAGLOU Mtre PATRICK OUELLET Mtre SYLVAIN RIGAUD (Woods) Absent</p>
<p align="center"><b>CANADIAN BANKERS' ASSOCIATION</b></p>	<p align="center">Mtre BENJAMIN JARVIS (Davies Ward Phillips &amp; Vineverg) By videoconference</p>

DESCRIPTION: **500-09-029763-216**  
**Application for voluntary intervention on an amicable basis from the Insolvency Institute of Canada (Articles 184, 185 and 187 C.C.P.).**

**500-09-029765-211**  
**Application for voluntary intervention on an amicable basis from the Insolvency Institute of Canada (Articles 184, 185 and 187 C.C.P.).**

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Clerk at the hearing: Mélanie Camiré

Courtroom: RC-18

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Judgment granting the application for voluntary intervention on an amicable basis from the Insolvency Institute of Canada (Hamilton, J.A.), February 24, 2022

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HEARING

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10:24	Commencement of the hearing. Identification of counsel.
10:25	Submissions by Mtre Riendeau. The motion is not contested.
10:32	<b>BY THE JUDGE:</b> Judgment – see page 5. Exchanges between the parties concerning the management of the file.
10 h 41	Conclusion of the hearing.

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Mélanie Camiré, Clerk at the hearing

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JUDGMENT

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[1] On October 27, 2021, the debtor Chronométriq inc. filed a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (the “*BIA*”) and the Superior Court, Commercial Division (the Honourable Martin Castonguay) rendered an order which authorized and approved interim financing by, and an interim lender’s charge in favour of, the Canadian Imperial Bank of Commerce, as well as an administration charge, a directors and officers charge and other relief.

[2] On November 8, 2021 the Appellants filed notices of appeal in which they argue that the Crown’s deemed trusts for unremitted deductions at source have priority over any court-ordered priming charges under the *BIA* and that the Superior Court did not have the authority under the *BIA* to render an order ranking the priming charges above the deemed trusts.

[3] On December 20, 2021, my colleague Justice Baudouin authorized the Canadian Imperial Bank of Commerce, the interim lender, to intervene in the appeals.<sup>1</sup> On February 7, 2022, she also authorized the Canadian Bankers’ Association to intervene in the appeals.<sup>2</sup>

[4] I am seized with similar applications by the Insolvency Institute of Canada. The Appellants, the Respondents and the Interveners all consent to the applications. The Respondents, the CIBC, the CBA and the Institute agree that they will work together to avoid duplication in their representations to the Court.

[5] In my view, the question raised in these appeals is important and intervention of the Institute could assist the Court in understanding the implications of its decision on restructuring proceedings across Canada and therefore be quite useful.

**FOR THESE REASONS, THE UNDERSIGNED:**

[6] **GRANTS** the Applications for voluntary intervention on an amicable basis by the Applicant the Insolvency Institute of Canada;

[7] **ALLOWS** the Applicant to intervene in these appeal proceedings;

[8] **AUTHORIZES** the Applicant to file a factum not to exceed 15 pages in length within the same delay as the Respondent;

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<sup>1</sup> *Canadian Imperial Bank of Commerce c. Chronometriq inc.*, 2021 QCCA 1923

<sup>2</sup> *Canadian Bankers’ Association c. Richter Advisory Group Inc.*, 2022 QCCA 191

Judgment granting the application for voluntary intervention on an amicable basis from the Insolvency Institute of Canada (Hamilton, J.A.), February 24, 2022

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500-09-029763-216, 500-09-029765-211

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[9] **DEFERS** to the Master of the Rolls and the panel that will hear the appeal the length of the oral submissions;

[10] **COSTS** to follow suit.



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STEPHEN W. HAMILTON, J.A.

# **SCHEDULE III a)**

## **EXHIBITS**



R-1 Draft Order

**SUPERIOR COURT**  
(Commercial Division)

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

No: **500-11- 060355-217**  
No.: **500-11- 060356-215**  
ESTATE No.: **41-2777077**  
ESTATE No.: **41-2777094**

DATE: **October 27, 2021**

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**PRESIDING: THE HONOURABLE MARTIN CASTONGUAY**

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**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF:**

**CHRONOMÉTRIQ INC.**

**Debtor/Petitioner**

-and-

**HEALTH MYSELF INNOVATIONS INC.**

**Debtor/Petitioner**

-and-

**RICHTER ADVISORY GROUP INC.**

**Proposal Trustee**

**ORDER AUTHORIZING AND APPROVING INTERIM FINANCING, AN ADMINISTRATION CHARGE, A SALE AND INVESTMENT SOLICITATION PROCESS, A DIRECTORS AND OFFICERS CHARGE, A KEY EMPLOYEE RETENTION PROGRAM, PROCEDURAL CONSOLIDATION OF THE STATES, AND OTHER RELIEF**

**[1] ON READING** the *Motion for the Issuance of an Order Authorizing and Approving Interim Financing, A Sale and Investment Solicitation Process, an Administration Charge, a Directors and Officers Charge, a Key Employee Retention Program, Procedural Consolidation of the Estates, and other Relief*

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– 2 –

(“**Motion**”) of ChronoMétriq Inc. and Health Myself Innovations Inc. (together, the “**Debtors**”), the affidavit and the exhibits in support thereof;

- [2] **CONSIDERING** the notification/service of the Motion;
- [3] **CONSIDERING** the submissions of counsel, the affidavit and exhibits in support of the Motion and the Proposal Trustee’s report;
- [4] **CONSIDERING** the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“**BIA**”), in general, and sections 50.6, 64.1, 64.2, and 183 of the BIA, in particular; and
- [5] **CONSIDERING** that all secured creditors likely to be affected by the charges resulting from the orders herein have been notified of the Motion.

**THE COURT:**

- [6] **GRANTS** the Motion.
- [7] **ORDERS** that capitalized terms not otherwise defined herein shall have the same meaning as ascribed thereto in the Motion.

**NOTIFICATION/SERVICE**

- [8] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further notification/service thereof.
- [9] **PERMITS** notification/service of this Order at any time and place and by any means whatsoever.

**PROCEDURAL CONSOLIDATION**

- [10] **ORDERS** that the bankruptcy estates of the Debtors, Estate Nos. ● and ● (collectively, the “**Estates**”) shall, subject to further order of the Court, be procedurally consolidated and shall continue under Estate No. ●, in such capacity, the “**Consolidated Proposal Proceeding**”.
- [11] **ORDERS** that without limiting the generality of the foregoing, the Proposal Trustee is hereby authorized and directed to administer the Estates on a consolidated basis for all purposes in carrying out its administrative duties and other responsibilities as Proposal Trustee under the BIA as if the Consolidated Proposal Proceeding were a single proceeding under the BIA, including without limitation:
  - (a) the meeting of creditors of the Debtors may be convened and conducted jointly;

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– 3 –

- (b) the Proposal Trustee is authorized to issue consolidated reports in respect of the Debtors; and
  - (c) the Proposal Trustee is authorized to deal with all filings and notices relating to the proposal proceedings of the Debtors, each as required under the BIA on a consolidated basis.
- [12] **ORDERS** any pleadings or other documents served or filed in the Consolidated Proposal Proceeding by any party shall be deemed to have been served or filed in each of the proceedings comprising the Consolidated Proposal Proceeding.
- [13] **ORDERS** that a copy of this Order shall be filed by the Debtors in the court file for each of the Estates, but any subsequent document required to be filed will be hereafter only be required to be filed in the Consolidated Proposal Proceeding in Estate No. ●.
- [14] **ORDERS** that the procedural consolidation of the Estates pursuant to this Order shall not:
- (a) affect the legal status or corporate structure of the Debtors; or
  - (b) cause either Debtor to be liable for any claim for which it is otherwise not liable, or cause either Debtor to have an interest in an asset to which it otherwise would not have.
- [15] **ORDERS** that the Estates are not substantially consolidated, and nothing in this Order shall be construed to that effect.

**DIP TERM SHEET AND INTERIM FINANCING CHARGE**

- [16] **ORDERS** that the Debtors are hereby authorized to borrow from Canadian Imperial Bank of Commerce ("**Interim Lender**"), such amounts from time to time as the Debtors may consider necessary or desirable, in consultation the Proposal Trustee up to a maximum principal amount of \$1,000,000 outstanding at any time, on the terms and conditions as set forth in the DIP Term Sheet filed as Exhibit R-14 to the Motion ("**DIP Term Sheet**") and in the Interim Financing Documents (as defined herein) to fund the ongoing expenditures of the Debtors and to pay such other amounts as are permitted by the terms of the Order and the Interim Financing Documents ("**Interim Facility**").
- [17] **ORDERS** that the Debtors are authorized to execute and deliver such credit agreements, security documents and other definitive documents (together with the DIP Term Sheet, the "**Interim Financing Documents**") as may be required by the Interim Lender in connection with the Interim Facility and the DIP Term Sheet, and the Debtors are hereby authorized to perform all of their obligations under the Interim Financing Documents.
- [18] **ORDERS** that the Debtors shall pay to the Interim Lender, when due, all amounts

owing (including principal, interest, fees and expenses, including without limitation, all fees and disbursements of counsel and all other reasonably required advisors to or agents of the Interim Lender) on a full indemnity basis under the DIP Term Sheet and the other Interim Financing Documents (the "**Interim Lender Indebtedness**") and shall perform all of their other obligations to the Interim Lender pursuant to the DIP Term Sheet, the Interim Financing Documents and this Order.

- [19] **DECLARES** that the Interim Lender be and is entitled to the benefit of and is hereby granted a charge, security and hypothec over the Debtors' present and future assets, rights, undertakings and property, movable, personal, corporeal or incorporeal, tangible or intangible and wherever situated, including all proceeds thereof (collectively the "**Property**") in the amount of \$1,200,000 for the principal amount of \$1,000,000 plus the additional mortgage of 20%, and all other amounts payable by the Debtors under the Interim Financing Documents ("**Interim Lender Charge**"), as continuing and collateral security for the Interim Lender Indebtedness and all obligations of the Debtors with respect to all amounts owing and all obligations required to be performed under or in connection with the Interim Financing Documents, which Interim Lender Charge shall have the priority established by paragraphs 32-33 hereof.
- [20] **ORDERS** that the claims of the Interim Lender pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to a proposal or these proceedings and the Interim Lender, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any proposal.
- [21] **ORDERS** that the Interim Lender may:
- (a) notwithstanding any other provision of this Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Interim Lender Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
  - (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to the Debtors if the Debtors fail to meet the provisions of the DIP Term Sheet and the other Interim Financing Documents.
- [22] **ORDERS** that the Interim Lender shall not take any enforcement steps with respect to its security or under the DIP Term Sheet (or underlying credit agreements) or the Interim Lender Charge without providing at least 3 business days written notice ("**Notice Period**") of a default thereunder to the Debtors, the Proposal Trustee and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Notice Period and without further Order of the Court, the Interim Lender shall be entitled to take any and all steps under its security, the DIP Term Sheet, the Interim Financing Documents, the Interim Lender Charge and otherwise permitted at law, but without having to send any additional demands under

section 244 of the BIA, the *Civil Code of Quebec* or any other similar legislation. Upon default under the Interim Financing Documents, the Interim Lender shall be under no obligation to make any further advance under the DIP Term Sheet or any other Interim Financing Document.

### **SISP**

[23] **APPROVES AND AUTHORIZES** the SISP.

[24] **AUTHORIZES** the Proposal Trustee to conduct the SISP and to implement and perform any and all actions related thereto.

### **ADMINISTRATION CHARGE**

[25] **ORDERS** that the Debtors shall pay the reasonable fees and disbursements of the Proposal Trustee, the Proposal Trustee's counsel, and the Debtors' counsel and other advisors, directly related to these BIA proceedings and the restructuring of the Debtors' business and affairs, whether incurred before or after this Order. The Debtors are hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Debtors on a weekly basis or on such other basis as such persons may agree in accordance with the cash flow approved by the Proposal Trustee and the Interim Lender.

[26] **DECLARES** that the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Debtors, are hereby granted a charge on the Property to the extent of the aggregate amount of \$200,000, as continuing and collateral security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings under the BIA and the Debtors' restructuring, having the priority established by paragraphs 32-33 hereof ("**Administration Charge**").

### **D&O INDEMNIFICATION AND CHARGE**

[27] **ORDERS** that the Debtors shall indemnify all of their directors and officers in office as at the date of the NOI filing or thereafter appointed ("**Directors and Officers**") relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as Directors or Officers of the Debtors after the commencement of these NOI proceedings, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct, or gross or intentional fault as further detailed subparagraph 64(4) of the BIA.

[28] **ORDERS** that the Directors and Officers are hereby granted a charge on the Property to the extent of an aggregate amount of \$250,000 ("**D&O Charge**") as security for the indemnity provided in paragraph 27 of this Order. The D&O

Charge shall have the priority set out in paragraphs 32-33 of this Order.

- [29] **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary:
- (a) No insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge; and
  - (b) 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 for which the Directors and Officers are entitled to be indemnified in accordance with paragraph 27 of this Order.

#### **KERP**

- [30] **ORDERS** that the Key Employee Retention Plan ("**KERP**") described in the Motion and summarized in the table filed under seal as Exhibit R-15 to the Motion is hereby approved, and the Debtors are hereby authorized and empowered to perform their obligations set forth thereunder, including by making the payments in accordance with the terms set out therein.
- [31] **DECLARES** that the KERP contains sensitive and confidential information and shall be sealed in the Court file in this proceeding and segregated from, and shall not form part of, the public record.

#### **PRIORITIES AND GENERAL PROVISIONS RELATING TO THE CHARGES**

- [32] **ORDERS AND DECLARES** that the priority of the Interim Lender Charge, the Administration Charge, and the D&O Charge (collectively, the "**Charges**") as between them with respect to the Property to which they apply shall be as follows:
- (a) first, the Administration Charge;
  - (b) second, the D&O Charge; and
  - (c) third, the Interim Lender Charge;
- [33] **ORDERS AND DECLARES** that each of the Charges shall constitute a charge on the Property and that such Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property in favour of any person.
- [34] **ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title, or interest filed, registered, published,

recorded, or perfected subsequent to the Charges coming into existence.

**[35] ORDERS** that except as may be approved or ordered by this Court, the Debtors shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with the Charges unless the Court orders same or the beneficiaries of the Charges consent in writing thereto.

**[36] ORDERS AND DECLARES** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order pursuant to the BIA or any bankruptcy order made pursuant to such an application;
- (c) the filing of any assignment for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statute; or
- (e) any negative covenants, prohibitions, or other similar provisions with respect to borrowings, incurring debt or the creation of the Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement to which the Debtors are a party;

the Charges shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by any person, including any creditor of the Debtors, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

**[37] ORDERS** that any of the Charges created by this Order over leases of real property in Canada shall only be a charge in the Debtors' interests in such real property leases.

#### **GENERAL**

**[38] ORDERS** that the stay of proceedings contained in section 69.1 of the BIA shall not apply with respect to the Canadian Imperial Bank of Commerce.

**[39] ORDERS** that Exhibit R-15 filed in support of the Motion be kept confidential and under seal until further order of this Court.

**[40] ORDERS** that no person shall commence, proceed with or enforce any proceedings against the Proposal Trustee or any of the Directors and Officers,

employees, legal counsel, or financial advisors of the Debtors or of the Proposal Trustee in relation to the business of the Debtors or any of its property, without first obtaining leave of this Court, upon five (5) business days' written notice to the Debtors' counsel, the Proposal Trustee and to all those referred to in this paragraph whom it is proposed be named in such proceedings.

- [41] **DECLARES** that the NOI, this Order, and any proceeding or affidavit leading to this Order shall not, in and of themselves, constitute a default or failure to comply by the Debtors under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
- [42] **DECLARES** that this Order and its effects shall survive the filing by the Debtors of a proposal pursuant to the terms of the BIA, the issuance of an initial order in regard of the Debtors pursuant to the terms of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 or the bankruptcy of the Debtors, unless this Court orders otherwise.
- [43] **DECLARES** that, except as otherwise specified herein or in the BIA, the Debtors and the Proposal Trustee are at liberty to serve any application, motion, notice, proof of claim form, proxy, circular, disclaimer or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given addresses as last shown on the records of the Debtors and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.
- [44] **DECLARES** that, without limiting the generality of the preceding paragraph, the Debtors and any parties to these proceedings may serve any court materials in these proceedings on all represented parties electronically by emailing a PDF or other electronic copy of such materials to counsels' email addresses.
- [45] **DECLARES** that, except as otherwise specified herein or in the BIA, or ordered by this Court, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a response on the Debtors' counsel and the Proposal Trustee and has filed such response with this Court, or appears on the service list prepared by the Debtors, the Proposal Trustee or their counsel, save and except when an order is sought against a person not previously involved in these proceedings.
- [46] **DECLARES** that the Debtors or the Proposal Trustee may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other.

- [47] **DECLARES** that the Debtors and the Proposal Trustee shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.
- [48] **ORDERS** and **DECLARES** that any interested person may apply to this Court to vary or rescind this Order or seek other relief upon five (5) business days' notice to the Debtors, the Proposal Trustee and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order
- [49] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [50] **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States of America or elsewhere, to give effect to this Order and to assist, the Debtors, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors and the Proposal Trustee, as an officer of this Court, to grant representative status to the Proposal Trustee in any foreign proceeding or to assist the Debtors, the Proposal Trustee and their respective agents in carrying out this Order.
- [51] **ORDERS** that each of the Debtors and the Proposal Trustee is at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulator or administrative body, wherever located, for the recognition of the Order and for assistance in carrying out the terms of this Order, and that the Proposal Trustee is authorized and empowered to act as a representative of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside of Canada.
- [52] **ORDERS** the provision execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.
- [53] **THE WHOLE** without costs.
-

## R-2 Corporate Profile for ChronoMétriq Inc.

25/10/2021 10:35

Registraire des entreprises - État de renseignements d'une personne morale au registre des entreprises



## Rechercher une entreprise au registre

## État de renseignements d'une personne morale au registre des entreprises

Renseignements en date du 2021-10-25 10:34:33

## État des informations

## Identification de l'entreprise

Numéro d'entreprise du Québec (NEQ)	1168072438
Nom	ChronoMétriq Inc.

## Adresse du domicile

Adresse	100-1396 rue Saint-Patrick Montréal Québec H3K2C8 Canada
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## Adresse du domicile élu

Nom de l'entreprise	ChronoMétriq Inc.
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Adresse	100-1396 RUE Saint-Patrick Montréal Québec H3K2C8 Canada
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## Immatriculation

Date d'immatriculation	2012-03-07
Statut	Immatriculée
Date de mise à jour du statut	2012-03-07
Date de fin d'existence prévue	Aucune date de fin d'existence n'est déclarée au registre.

## Forme juridique

Forme juridique	Société par actions ou compagnie
Date de la constitution	2012-03-06 Constitution
Régime constitutif	QUÉBEC : Loi sur les sociétés par actions (RLRQ, C. S-31.1)
Régime courant	QUÉBEC : Loi sur les sociétés par actions (RLRQ, C. S-31.1)

## R-2 Corporate Profile for ChronoMétriq Inc. (cont'd)

25/10/2021 10:35

Registraire des entreprises - État de renseignements d'une personne morale au registre des entreprises

**Dates des mises à jour**

Date de mise à jour de l'état de renseignements	2021-06-23
Date de la dernière déclaration de mise à jour annuelle	2020-09-18 2020
Date de fin de la période de production de la déclaration de mise à jour annuelle de 2021	2022-01-01
Date de fin de la période de production de la déclaration de mise à jour annuelle de 2020	2021-01-01

**Faillite**

L'entreprise n'est pas en faillite.

**Fusion et scission**

Aucune fusion ou scission n'a été déclarée.

**Continuation et autre transformation**

Aucune continuation ou autre transformation n'a été déclarée.

**Liquidation ou dissolution**

Aucune intention de liquidation ou de dissolution n'a été déclarée.

**Activités économiques et nombre de salariés****1<sup>er</sup> secteur d'activité**

Code d'activité économique (CAE)	4839
Activité	Autres services de télécommunications
Précisions (facultatives)	-

**2<sup>e</sup> secteur d'activité**

Aucun renseignement n'a été déclaré.

**Nombre de salariés**

Nombre de salariés au Québec  
De 50 à 99

**Convention unanime, actionnaires, administrateurs, dirigeants et fondé de pouvoir****Actionnaires**

<b>Premier actionnaire</b>	
Le premier actionnaire n'est pas majoritaire.	
Nom	FULL IN PARTNERS FUND I, L.P.

## R-2 Corporate Profile for ChronoMétriq Inc. (cont'd)

25/10/2021 10:35

Registraire des entreprises - État de renseignements d'une personne morale au registre des entreprises

Adresse	551 Madison Avenue, Floor 11, New York New York 10022 United States
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<b>Deuxième actionnaire</b>	
Nom	Bridgescale Opportunities II, LP
Adresse	1259 El Camino Real, Suite 417 Menlo Park Californie 94025 États-Unis

<b>Troisième actionnaire</b>	
Nom	COMPAGNIE CAPUA 2
Adresse	304-699 rue Saint-Maurice Montréal (Québec) H3C1L4 Canada

**Convention unanime des actionnaires**

Il existe une convention unanime des actionnaires conclue en vertu d'une loi du Québec ou d'une autre autorité législative du Canada.
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**Liste des administrateurs**

Nom de famille	Richard
Prénom	Rémi
Date du début de la charge	2012-03-06
Date de fin de la charge	
Fonctions actuelles	Vice-président
Adresse	616 av. Victoria Saint-Lambert (Québec) J4P2J6 Canada

Nom de famille	Plensa
Prénom	Joan
Date du début de la charge	2016-12-09
Date de fin de la charge	
Fonctions actuelles	Administrateur
Adresse	Rambla Sant Just 7, Sant Just Desvern 08960 Espagne

Nom de famille	Chaplinsky
Prénom	Robert
Date du début de la charge	2017-07-06
Date de fin de la charge	
Fonctions actuelles	Administrateur
Adresse	1259 El Camino Real, Suite 417 Menlo Park Californie 94025 États-Unis

Nom de famille	Dupuy
Prénom	Élodie
Date du début de la charge	

## R-2 Corporate Profile for ChronoMétriq Inc. (cont'd)

25/10/2021 10:35

Registraire des entreprises - État de renseignements d'une personne morale au registre des entreprises

Date de fin de la charge	2019-09-30
Fonctions actuelles	Administrateur
Adresse	4100-1155 boul. René-Lévesque ouest Montréal Québec H3B3V2 Canada

Nom de famille	Raymond Lalande
Prénom	Yan
Date du début de la charge	2012-03-06
Date de fin de la charge	
Fonctions actuelles	Président
Adresse	103-425 rue Sainte-Hélène Montréal (Québec) H2Y2K9 Canada

Nom de famille	Lepage
Prénom	Paul
Date du début de la charge	2020-02-07
Date de fin de la charge	
Fonctions actuelles	Administrateur
Adresse	530-455 rue Saint-Pierre Montréal (Québec) H2Y2M8 Canada

**Dirigeants non membres du conseil d'administration**

Nom de famille	Maurice
Prénom	Jean-François
Fonctions actuelles	Secrétaire
Adresse	4000-1 Place Ville-Marie Montréal (Québec) H3B4M4 Canada

**Fondé de pouvoir**

Aucun fondé de pouvoir n'a été déclaré.
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**Administrateurs du bien d'autrui**

Aucun administrateur du bien d'autrui n'a été déclaré.
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**Établissements**

Numéro et nom de l'établissement	Adresse	Activités économiques (CAE)
<b>0004 - ChronoMétriq Inc.</b> <b>(Établissement principal)</b>	1396 rue Saint-Patrick Montréal (Québec) H3K1A6 Canada	Autres services de télécommunications (4839)

**Documents en traitement**

## R-2 Corporate Profile for ChronoMétriq Inc. (cont'd)

25/10/2021 10:35

Registraire des entreprises - État de renseignements d'une personne morale au registre des entreprises

Aucun document n'est actuellement traité par le Registraire des entreprises.

**Index des documents****Documents conservés**

Type de document	Date de dépôt au registre
Déclaration de mise à jour courante	2021-06-23
Déclaration de mise à jour courante	2021-05-20
Déclaration de mise à jour courante	2020-10-09
DÉCLARATION DE MISE À JOUR ANNUELLE 2020	2020-09-18
Déclaration de mise à jour courante	2020-06-23
Déclaration de mise à jour de correction	2020-02-21
Déclaration de mise à jour courante	2020-02-20
DÉCLARATION DE MISE À JOUR ANNUELLE 2019	2019-12-19
Certificat de modification	2019-09-19
Certificat de modification	2019-09-13
Déclaration de mise à jour courante	2018-10-01
Déclaration de mise à jour courante	2018-08-30
DÉCLARATION DE MISE À JOUR ANNUELLE 2018	2018-08-30
DÉCLARATION DE MISE À JOUR ANNUELLE 2017	2018-03-15
Déclaration de mise à jour courante	2017-09-08
Déclaration de mise à jour courante	2017-09-08
Déclaration de mise à jour courante	2017-08-30
Certificat de modification	2017-07-06
Déclaration de mise à jour courante	2017-01-10
DÉCLARATION DE MISE À JOUR ANNUELLE 2016	2016-08-01
DÉCLARATION DE MISE À JOUR ANNUELLE 2015	2015-09-18
DÉCLARATION DE MISE À JOUR ANNUELLE 2014	2014-11-13
Déclaration de mise à jour courante	2013-10-29
DÉCLARATION DE MISE À JOUR ANNUELLE 2013	2013-10-04
Certificat de modification	2013-08-21
Déclaration de mise à jour courante	2013-03-13
Déclaration de mise à jour courante	2013-01-14
Déclaration de mise à jour courante	2012-08-28
Déclaration initiale	2012-03-07
Certificat de constitution	2012-03-07

**Index des noms**

Date de mise à jour de l'index des noms 2020-10-09

**Nom**

Nom	Versions du nom dans une autre langue	Date de déclaration du nom	Date de déclaration du retrait du nom	Situation
ChronoMétriq Inc.		2012-03-06		En vigueur

**Autres noms utilisés au Québec**

## R-2 Corporate Profile for ChronoMétriq Inc. (cont'd)

25/10/2021 10:35

Registraire des entreprises - État de renseignements d'une personne morale au registre des entreprises

<b>Autre nom</b>	<b>Versions du nom dans une autre langue</b>	<b>Date de déclaration du nom</b>	<b>Date de déclaration du retrait du nom</b>	<b>Situation</b>
Pomelo Santé	Pomelo Health	2020-10-09		En vigueur



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## R-3 Corporate Profile for Heath Myself Innovations Inc.

25/10/2021 10:05

Registraire des entreprises - État de renseignements d'une personne morale au registre des entreprises



## Rechercher une entreprise au registre

## État de renseignements d'une personne morale au registre des entreprises

Renseignements en date du 2021-10-25 10:04:56

## État des informations

## Identification de l'entreprise

Numéro d'entreprise du Québec (NEQ)	1175603860
Nom	Health Myself Innovations Inc.

## Adresse du domicile

Adresse	100-1396 rue Saint-Patrick Montréal Québec H3K2C8 Canada
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## Adresse du domicile élu

Adresse	Aucune adresse
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## Immatriculation

Date d'immatriculation	2020-07-20
Statut	Immatriculée
Date de mise à jour du statut	2020-07-20
Date de fin d'existence prévue	Aucune date de fin d'existence n'est déclarée au registre.

## Forme juridique

Forme juridique	Société par actions ou compagnie
Date de la constitution	2013-05-24 Constitution
Régime constitutif	CANADA: Loi canadienne sur les sociétés par actions, L.R.C. (1985), c. C-44
Régime courant	CANADA: Loi canadienne sur les sociétés par actions, L.R.C. (1985), c. C-44

## Dates des mises à jour

## R-3 Corporate Profile for Heath Myself Innovations Inc. (cont'd)

25/10/2021 10:05

Registraire des entreprises - État de renseignements d'une personne morale au registre des entreprises

Date de mise à jour de l'état de renseignements	2020-10-09
Date de la dernière déclaration de mise à jour annuelle	Aucune déclaration de mise à jour annuelle n'a été produite à ce jour.
Date de fin de la période de production de la déclaration de mise à jour annuelle de 2021	2021-11-15

**Faillite**

L'entreprise n'est pas en faillite.

**Fusion et scission**

Aucune fusion ou scission n'a été déclarée.

**Continuation et autre transformation**

Aucune continuation ou autre transformation n'a été déclarée.

**Liquidation ou dissolution**

Aucune intention de liquidation ou de dissolution n'a été déclarée.

**Activités économiques et nombre de salariés****1<sup>er</sup> secteur d'activité**

Aucune activité

**2<sup>e</sup> secteur d'activité**

Aucune activité

**Nombre de salariés**

Nombre de salariés au Québec

Aucun

**Convention unanime, actionnaires, administrateurs, dirigeants et fondé de pouvoir****Actionnaires****Premier actionnaire**

Le premier actionnaire est majoritaire.

Nom

ChronoMétriq Inc.

Adresse

100-1396 rue Saint-Patrick Montréal Québec H3K2C8  
Canada**Convention unanime des actionnaires**

Il existe une convention unanime des actionnaires conclue en vertu d'une loi du Québec ou d'une autre autorité législative du Canada.

## R-3 Corporate Profile for Heath Myself Innovations Inc. (cont'd)

25/10/2021 10:05

Registraire des entreprises - État de renseignements d'une personne morale au registre des entreprises

**Liste des administrateurs**

Nom de famille	Raymond Lalande
Prénom	Yan
Date du début de la charge	2020-06-26
Date de fin de la charge	
Fonctions actuelles	Président, Secrétaire
Adresse	103-425 rue Sainte-Hélène Montréal (Québec) H2Y2K9 Canada

Nom de famille	Lalonde Richard
Prénom	Rémi
Date du début de la charge	2020-06-26
Date de fin de la charge	
Fonctions actuelles	Administrateur
Adresse	616 Avenue Victoria Saint-Lambert Québec J4P3S8 Canada

Nom de famille	Taylor
Prénom	David
Date du début de la charge	2020-06-26
Date de fin de la charge	
Fonctions actuelles	Administrateur
Adresse	934 Shaw Street Toronto Ontario M6G3M6 Canada

**Dirigeants non membres du conseil d'administration**

Aucun dirigeant non membre du conseil d'administration n'a été déclaré.

**Fondé de pouvoir**

Aucun fondé de pouvoir n'a été déclaré.

**Administrateurs du bien d'autrui**

Aucun administrateur du bien d'autrui n'a été déclaré.

**Établissements**

Aucun établissement n'a été déclaré.

**Documents en traitement**

Aucun document n'est actuellement traité par le Registraire des entreprises.

**Index des documents**

## R-3 Corporate Profile for Heath Myself Innovations Inc. (cont'd)

25/10/2021 10:05

Registraire des entreprises - État de renseignements d'une personne morale au registre des entreprises

**Documents conservés**

Type de document	Date de dépôt au registre
Déclaration de mise à jour courante	2020-10-06
Déclaration d'immatriculation	2020-07-20

**Index des noms**

Date de mise à jour de l'index des noms	2020-10-06
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**Nom**

Nom	Versions du nom dans une autre langue	Date de déclaration du nom	Date de déclaration du retrait du nom	Situation
Health Myself Innovations Inc.		2020-07-20		En vigueur

**Autres noms utilisés au Québec**

Autre nom	Versions du nom dans une autre langue	Date de déclaration du nom	Date de déclaration du retrait du nom	Situation
Pomelo Santé	Pomelo Health	2020-10-06		En vigueur
Innovations HM		2020-07-20		En vigueur



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## R-3 Corporate Profile for Heath Myself Innovations Inc. (cont'd)

25/10/2021 10:06

Information concernant les sociétés de régime fédéral - 852948-5 - Centre de dépôt en ligne - Corporations Canada - Sociétés - I...

**Gouvernement  
du Canada****Government  
of Canada**[Canada.ca](#) → [Innovation, Sciences et Développement économique Canada](#)→ [Corporations Canada](#) → [Recherche d'une société de régime fédéral](#)**Information concernant les sociétés de régime fédéral - 852948-5**

 Attention aux arnaques et aux activités suspectes. Consultez les [alertes de Corporations Canada](#).

**Note**

Ces renseignements sont à la disposition du public conformément à la législation (voir [Divulgence publique de renseignements corporatifs](#)).

[Commandes des copies de documents corporatifs](#)**Numéro de société**

852948-5

**Numéro d'entreprise (NE)**

813033735RC0001

**Dénomination sociale**

Health Myself Innovations Inc.

**Statut**

Actif

**Régime législatif***Loi canadienne sur les sociétés par actions - 2013-05-24*[Commander un Profil corporatif](#) [[Télécharger PDF](#)] [[Visionner HTML](#)].[Lecteurs PDF](#)**Adresse du siège social**1396 rue Saint-Patrick  
Suite 100

## R-3 Corporate Profile for Heath Myself Innovations Inc. (cont'd)

25/10/2021 10:06

Information concernant les sociétés de régime fédéral - 852948-5 - Centre de dépôt en ligne - Corporations Canada - Sociétés - I...

Montréal QC H3K 2C8  
Canada

**Note**

Les sociétés par actions de régime fédéral actives doivent mettre à jour ces renseignements dans les 15 jours suivant tout changement. Une clé de société est requise. Si vous n'êtes pas autorisé à mettre ces renseignements à jour, vous pouvez soit communiquer avec la société soit vous adresser à Corporations Canada. Nous aviserons la société de ses obligations de déclaration.

**Administrateurs**

**Nombre minimal d'administrateurs** 1

**Nombre maximal d'administrateurs** 12

Yan Raymond-Lalande  
425 Rue Sainte-Hélène, app. 103  
Montréal QC H2Y 2K9  
Canada

Rémi Lalonde Richard  
616 Avenue Victoria  
Saint-Lambert QC J4P 3S8  
Canada

David Taylor  
934 Shaw Street  
Toronto ON M6G 3M6  
Canada

**Note**

Les sociétés par actions de régime fédéral actives doivent mettre à jour les renseignements concernant les administrateurs (noms, adresses, etc.) dans les 15 jours suivant tout changement. Une clé de société est requise. Si vous n'êtes pas autorisé à mettre ces renseignements à jour, vous pouvez soit communiquer avec la société soit vous adresser à Corporations Canada. Nous aviserons la société de ses obligations de déclaration.

**Dépôts annuels**

## R-3 Corporate Profile for Heath Myself Innovations Inc. (cont'd)

25/10/2021 10:06

Information concernant les sociétés de régime fédéral - 852948-5 - Centre de dépôt en ligne - Corporations Canada - Sociétés - I...

**Date d'anniversaire (MM-JJ)**

05-24

**Date de la dernière assemblée annuelle**

2018-07-13

**Période de dépôt annuel (MM-JJ)**

05-24 au 07-23

**Type de société**

Société n'ayant pas fait appel au public et comptant 50 actionnaires ou moins

**Statut des dépôts annuels**

2021 - En retard

2020 - Déposé

2019 - Déposé

**Historique de la société****Historique de la dénomination sociale**

2013-05-24 jusqu'à maintenant

Health Myself Innovations Inc.

**Certificats et documents déposés****Certificat de constitution en société**

2013-05-24

**Certificat de modification \***

2020-07-17

Renseignements concernant les modifications aux statuts. Province ou territoire du siège social

\* L'information concernant les modifications sont seulement disponibles pour les modifications effectuées après le 2010-03-20. Certains certificats émis avant 2000 pourraient ne pas être listés. Pour obtenir des renseignements supplémentaires [contactez Corporations Canada](#).

R-3 Corporate Profile for Heath Myself Innovations Inc. (cont'd)

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25/10/2021 10:06

Information concernant les sociétés de régime fédéral - 852948-5 - Centre de dépôt en ligne - Corporations Canada - Sociétés - I...

Commandes des copies de documents corporatifs

Débuter une nouvelle recherche

[Retour aux résultats de la recherche](#)

**Date de modification:**

2021-10-20

R-4 CIBC Credit Agreement dated June 30, 2020



**CIBC**  
**Commercial Banking**

Canadian Imperial Bank of Commerce  
 CIBC Innovation Banking  
 40 King Street West, Suite 5702  
 Toronto, ON M5H 3Y2

June 30, 2020

ChronoMétriq Inc.  
 100-1396 rue Saint-Patrick  
 Montréal, Québec H3K 2C8

Attention: Yan Raymond Lalande, CEO

Dear Mr. Lalande:

Re: Credit Facilities

Canadian Imperial Bank of Commerce (“**CIBC**”) is pleased to establish the following credit facilities (each a “**Credit**” and collectively, the “**Credits**”) in favour of ChronoMétriq Inc. (the “**Borrower**”), to which intervene Health Myself Innovations Inc. and cMetric Inc. (each a “**Guarantor**” and collectively with the Borrower, the “**Credit Parties**”):

**Demand Operating Credit (the “Revolver”)**

Credit Limit: \$2,000,000

Borrowing Base: Notwithstanding the limit of this Credit specified above, the sum of the Canadian dollar loans and the US dollar loans outstanding under this Credit shall at no time exceed the “**Borrowing Base**”, which for the purposes hereof shall mean the sum of:

1. the Monthly Recurring Revenue for the previous month multiplied by three (3), multiplied by the Gross Retention Rate, plus
2. 80% of Eligible Tax Credits and 60% of Accrued Tax Credits, minus
3. all Prior Ranking Claims (including the amount of any Liens on the assets of the Borrower by any governmental authority or regulatory or tax authority in existence, at the time of calculation of the Borrowing Base), minus
4. the amount authorized by CIBC under the Demand Visa Credit Facility.

“**Accrued Tax Credits**” means the accrued but unfiled federal and provincial Scientific Research and Experimental

Development (SRED) tax credits, or the provincial Tax Credit for the Development of E-Business (TCEB), or the provincial Tax Credit for Multimedia Titles (CTMM) in respect of the current tax year of the Borrower which (a) comply in all respects with this Agreement, and (b) are earned by and will be owing to the Borrower by Her Majesty the Queen in right of Canada or in right of any Province of Canada, as applicable, to be claimed by the Borrower in its annual federal and provincial corporate tax returns, as applicable (such returns to be filed within one hundred eighty (180) days of the Borrower's fiscal year end), and are acceptable to CIBC in all respects, each of which have been assigned to CIBC and in respect of which the Borrower has completed the appropriate direction and assignment documentation, which will, among other things, direct the Minister of Revenue or the Receiver General of Canada, as applicable, to pay to CIBC all amounts to be paid to the Borrower pursuant to such Accrued Tax Credits.

**“Eligible Tax Credits”** means, in respect of the then previous fiscal year only, the unpaid filed Scientific Research and Experimental Development (SRED) tax credits (in respect of the then previous fiscal year only, or the provincial Tax Credit for the Development of E-Business (TCEB), or the provincial Tax Credit for Multimedia Titles (CTMM), as certified by an accountant or consultant acceptable to CIBC, which (a) comply in all respects with this Agreement, and (b) are earned by and owing to the Borrower by Her Majesty the Queen in right of Canada or in right of any Province of Canada, as applicable, properly claimed by the Borrower in its annual federal or provincial corporate tax return (such return to be filed within one hundred eighty (180) days of the Borrower's fiscal year end) and certified as such in writing by the Borrower's auditor or consultant (acceptable to CIBC) and are acceptable to CIBC in all respects, each of which have been assigned to CIBC and in respect of which the Borrower has completed and delivered to CIBC the appropriate direction and assignment documentation, which will, among other things, direct the Minister of Revenue or the Receiver General of Canada, as applicable to pay to CIBC all amounts to be paid to the Borrower pursuant to such Eligible Tax Credits.

**“Gross Retention Rate”** means, for each twelve (12) month period, the number equal to: (i) the Recurring Revenue for the month prior to the beginning of each period minus the Recurring Revenue Churn during such period, divided by (ii) the Recurring Revenue for the month prior to the beginning of such period, represented as a percentage. Notwithstanding the foregoing, in no event shall the Gross Retention Rate exceed 100%.

**“Monthly Recurring Revenue”** means the Recurring Revenue for the latest month.

**“Recurring Revenue”** means the revenue recognized from the Borrower’s recurring subscription-based sales, made pursuant to a customer service agreement with the Borrower or any of the Guarantors that have executed the required agreements listed under the heading “Security” below.

**“Recurring Revenue Churn”** means the amount of monthly Recurring Revenue lost from cancelled, reduced or discontinued customer service agreements during any period.

**Purpose:** All amounts obtained under this Credit are to be used for expenses incurred in the normal course of business by the Borrower, including growth and working capital needs.

**Description and Rate:** A revolving Credit, available as follows:

- ▶ Canadian dollar loans, which will also be available by way of overdrafts.  
Interest on Canadian dollar loans will be calculated at the CIBC Prime Rate plus 1.25% per annum and will be payable monthly.
- ▶ US dollar loans, which will also be available by way of overdrafts.  
Interest on US dollar loans will be calculated at the WSJ Prime Rate plus 1.25% per annum and will be payable monthly.

**Repayment:** All amounts under this Credit are repayable immediately on demand by CIBC, and this Credit may be terminated in whole or in part by CIBC at any time.

Upon receipt by the Borrower of a notice of assessment and of payment of the federal or provincial Scientific Research and Experimental Development (SRED) tax credits, the provincial Tax Credit for the Development of E-Business (TCEB) or the provincial Tax Credit for Multimedia Titles (CTMM), as applicable, the Borrower shall deliver such payments to CIBC in order to repay the Revolver. In the event the Borrower fails to deliver such payments to CIBC, this Credit shall become immediately due and payable.

#### **Term Loan**

**Loan Amount:** \$3,000,000

R-4 CIBC Credit Agreement dated June 30, 2020 (*cont'd*)

PAGE 4

Purpose:	This loan is to be used to refinance the existing debts of the Borrower and to provide additional cash runway.
Description and Rate:	<p>A non-revolving Term Loan (the “<b>Term Loan</b>”) available as follows:</p> <p>Canadian dollar Term Loan of \$3,000,000. Interest on the Canadian dollar Term Loan will be calculated at the CIBC Prime Rate plus 1.75% per annum.</p> <p>The interest rate may not be fixed for any principal amount if, during the period that the interest rate is proposed to be fixed, any of such principal amount will be required to be repaid as specified under Repayment below. Interest on this loan is payable monthly.</p>
Repayment:	<p>An initial payment of \$83,333.333 on the first anniversary of the Closing Date and thereafter regular monthly payments of \$83,333.333, payable on the last day of each month.</p> <p>The Borrower hereby binds and obliges itself to repay on the fourth anniversary of the Closing Date the entire amount of the Term Loan outstanding on such date in principal, interest and fees and interest on arrears of interest and fees.</p> <p>Notwithstanding the foregoing, at any time that an Event of Default is continuing, this Term Loan is repayable immediately on demand by CIBC.</p> <p><b>Demand VISA Credit Facility (the “Demand Visa Credit Facility”)</b></p>
Credit Limit:	Such amount as may be authorized and agreed to in writing by CIBC from time to time in its sole unfettered discretion. The credit exposure under this Credit shall be reserved from the Borrowing Base. As of the Closing Date, the credit limit is CDN\$100,000 plus US\$100,000.
Purpose:	All amounts obtained under this Credit are to be used to support a US Bank Commercial Card Program that the Borrower wishes to establish with the US Bank National Association, Canada Branch (“ <b>US Bank</b> ”).
Repayment:	All amounts under this Credit are repayable immediately on demand by CIBC, and this Credit may be terminated in whole or in part by CIBC at any time.
Documentation	CIBC’s standard US Bank Canada Commercial Card Acknowledgement and Indemnity Agreement is required.

**Cash Management Services**

## Cash Management Agreement

“Cash Management Agreement” means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements between the Borrower or Guarantor, on the one hand, and CIBC or an Affiliate of CIBC, on the other hand; provided, that CIBC or its Affiliate may also provide such services through an unaffiliated third party financial institution or other provider (including, for clarity, US Bank and its Affiliates in the case of credit cards and related services), and such arrangements shall be deemed to be Cash Management Agreements hereunder. CIBC may provide such services pursuant to separate agreements. All obligations under such agreements shall constitute “Obligations” hereunder shall be secured by the Security.

**Security**

The following security, which shall be in form and substance satisfactory to CIBC, is required to secure all present and future indebtedness and liabilities of the Credit Parties to each of CIBC and CIBC’s Affiliates (including under any foreign exchange contract or derivative). All references in any such security to indebtedness or liabilities of the Credit Parties to CIBC shall be deemed to be references to indebtedness and liabilities of the Credit Parties to each of CIBC and CIBC’s Affiliates.

- (a) first ranking Liens security documents, subject only to Permitted Liens, required to create Liens in all present and future movable property of the Credit Parties, including all claims, inventory (property in stock), equipment, incorporeal rights (including intellectual property) and securities;
- (b) full recourse guarantees (each, a “**Guarantee**”) from each Guarantor, each such guarantee supported by all relevant security agreements conveying to CIBC a perfected first priority security interest in each such Guarantor’s present and after acquired personal property, including intellectual property and assets;
- (c) copies of certificates of insurance evidencing the effectiveness of all insurance required to be maintained by the Credit Parties and naming CIBC as loss payee and additional insured, as the case may be, on all such insurance;

- (d) cessions of rank between CIBC, Business Development Bank of Canada and Investissement Québec, in form and substance satisfactory to CIBC;
- (e) a 50% Export Development Canada loan loss guarantee to cover the Revolver;
- (f) directions of payment in favour of CIBC for federal and provincial tax credits of the Credit Parties for fiscal years 2020 and 2021;
- (g) within ninety (90) days of the Closing Date, landlord waivers in form and substance acceptable to CIBC for all leased properties of the Credit Parties. Additional landlord waivers may become required if the Borrower adds additional premises in due course.

To the extent the Borrower creates or acquires a Subsidiary after the date hereof, it shall cause such Subsidiary to grant forthwith the Guarantee and Security contemplated in this Section and upon execution thereof and delivery of customary corporate documents and legal opinions, such Subsidiary shall be deemed to be a Credit Party hereunder.

### Covenants

Financial Covenants:

The Borrower will ensure that:

- (a) the revenues of the Borrower for the most recently ended 12-month period (the "**Most Recent TTM Period**") are at least 20% greater than the revenues generated during the 12-month period ending immediately prior to the Most Recent TTM Period; and
- (b) at all times when the Borrower has a negative EBITDA, at the end of each trailing sixth-month period, the Available Cash of the Borrower on the last day of such period shall be greater than the Adjusted EBITDA for such period.

“**Available Cash**” means cash in financial accounts under the control of CIBC and subject to first ranking liens in its favour, plus any amount available to the Borrower under the Revolver at such time (taking into account the Borrowing Base).

“**Adjusted EBITDA**” means, for any period, (a) EBITDA for such period, plus (b) any non-cash expenses incurred pursuant

to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, plus (c) stock-based compensation, less (d) any research and development costs or software development costs capitalized, in each case, during such period, less (e) lease payments that would otherwise have been operating expense prior to IFRS 16.

“**EBITDA**” means, for any period, (a) Net Income for such period, plus (b) Interest Expense for such period, plus (c) to the extent deducted in the calculation of Net Income, depreciation expense and amortization expense for such period, plus (d) income tax expense for such period.

**Positive Covenants:**

**Bank Accounts:**

The Borrower and its direct or indirect Subsidiaries that have guaranteed the Credits and provided security to CIBC shall transition their North American domiciled deposit and operating bank accounts to CIBC within 60 days after the date of this Agreement. In jurisdictions where CIBC does not provide such bank accounts, the Borrower and its direct or indirect Subsidiaries that have guaranteed the Credit and provided security to CIBC shall establish and maintain deposit and operating bank accounts with such financial institutions as are acceptable to CIBC (the “**Control Accounts**”). Such financial institutions at which the Control Accounts are established and the Borrower and its direct or indirect Subsidiaries that have guaranteed the Credit and provided security to CIBC shall enter into three-party agreements, in form and substance satisfactory to CIBC (the “**Deposit Account Control Agreements**”), providing that, among other things, all cash, cheques and items received or deposited in the Control Accounts are subject to CIBC’s Security, that the depository bank has no Lien upon, or right of set-off against, the Control Accounts and any cash, cheques, items, wires or other funds from time to time on deposit therein, except as otherwise provided in the Deposit Account Control Agreements. With respect to any account located in a jurisdiction outside of North America, the Borrower and its direct and indirect Subsidiaries shall not permit the balances in any such accounts to materially exceed amounts necessary for normal operating requirements.

**Intellectual Property:**

The Borrower and its Subsidiaries shall remain the sole owner of the Intellectual Property which it owns or purports to own except for (a) non-exclusive licenses granted to its customers in the ordinary course of business, (b) over-the-counter

software that is commercially available to the public, and (c) material Intellectual Property licensed to Borrower and its Subsidiaries, as applicable. To the best of the Borrower's knowledge and except as disclosed in writing by the Borrower to CIBC with specific reference to this paragraph: (i) each Patent which the Borrower and its Subsidiaries owns or purports to own and which is material to the Borrower's business is valid and enforceable, and no part of the Intellectual Property which the Borrower or its Subsidiaries owns or purports to own and which is material to the Borrower's business has been judged invalid or unenforceable, in whole or in part; and (ii) no claim has been made that any part of the Intellectual Property violates the rights of any third party except to the extent such claim would not reasonably be expected to have a Material Adverse Effect on the Borrower's business.

The Borrower and its Subsidiaries shall (i) protect, defend and maintain the validity and enforceability of its Intellectual Property material to the Borrower's business; (ii) promptly advise CIBC in writing of material infringements or any other event that could reasonably be expected to materially and adversely affect the value of its Intellectual Property; and (iii) not allow any Intellectual Property material to the Borrower's business to be abandoned, forfeited or dedicated to the public without CIBC's written consent.

Field Exam:

At CIBC's option, a field exam of accounts receivable by an outside auditor ("**Field Exam**") shall be conducted.

Access to Collateral: Books and Records:

Notwithstanding CIBC's option to conduct a Field Exam, the Borrower shall allow CIBC, or its agents, during normal business hours, to inspect any collateral and audit (including pursuant to a field examination or an appraisal) and copy their books and records, including accounts receivable. Such inspections or audits shall be conducted no more often than once every twelve (12) months unless an Event of Default has occurred and is continuing in which case such inspections and audits shall occur as often as CIBC shall determine is necessary. The foregoing inspections and audits shall be at the Borrower's expense.

Borrower hereby undertakes to deposit into Borrower's operating or deposit account with CIBC, without delay, any cheque or amount received from any taxing authority with respect to the Eligible Tax Credits in reduction of the Credit. The failure by Borrower to do so within ten (10) days following receipt of any such cheque or amount shall constitute an immediate Event of Default for which there shall be no grace or cure period.

**Subsidiaries:** For each material Subsidiary created after the date of this Agreement, the Borrower shall cause each such Subsidiary to enter into the agreements listed under the heading "Security" above that are applicable to such Subsidiary at the discretion of CIBC. In addition to the forgoing, CIBC reserves the right to cause each material non-North American Subsidiary to enter into the agreements listed under the heading "Security" above.

**Existence:** The Borrower and the Guarantors shall maintain their existence.

**Negative Covenants:**

Without the prior written consent of CIBC:

**Capital Expenditures:** the Borrower and its Subsidiaries will not make capital expenditures for fixed or capital assets, calculated in accordance with GAAP, exceeding a total of \$300,000 during any fiscal year;

**Restricted Payments:** the Borrower and its Subsidiaries will not pay any dividends, make any capital payments or redemptions, pay any amount on account of Postponed Debt or make any gifts or gratuities to affiliated persons;

**Lien Restrictions:** the Borrower and its Subsidiaries will not create, incur or suffer to exist any Lien on any of their property except for (i) Purchase Money Liens securing an aggregate amount not exceeding \$500,000; (ii) Permitted Liens, and (iii) Liens securing the IQ Loans and the BDC Loans;

**Amalgamations:** the Borrower and its Subsidiaries will not enter into any amalgamations or similar transactions;

**Debt Restrictions:** the Borrower and its Subsidiaries will not create, incur, assume or permit to exist any Debt, except for (i) amounts owed to CIBC under the Credits, (ii) Purchase Money Obligations in an

R-4 CIBC Credit Agreement dated June 30, 2020 (*cont'd*)

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- aggregate amount for the Borrower and its Subsidiaries not exceeding \$500,000 at any time, and (iii) the BDC/IQ Loans not exceeding \$540,000 at any time;
- Dispositions of Property: the Borrower and its Subsidiaries will not sell or otherwise dispose of any property, except for sales in the normal course of business for fair market value;
- Restriction on Investments: the Borrower and its Subsidiaries will not make any Investments in the aggregate, except for Investments to (a) subsidiaries that are Guarantors and (b) subsidiaries who are not Guarantors in an amount exceeding \$75,000;
- Transactions with Affiliates: except as specifically permitted hereunder, the Borrower will not enter into any transaction, including the purchase, sale or exchange of any property or the rendering of any services, with any of its shareholders or with any of its Affiliates, or with any of its or their directors or officers, or enter into, assume or permit to exist any employment, consulting or analogous agreement or arrangement with any such shareholder or Affiliate or with any of its directors or officers, except a transaction or agreement or arrangement which is in the ordinary course of business of the Borrower, which is upon fair and reasonable terms not less favourable to the Borrower than it would obtain in a comparable arms-length transaction;
- Change of Business: none of the Borrower and its Subsidiaries will change its principal business activity;
- Financial Assistance: the Borrower will not provide any financial assistance by means of loan, guarantee of Debt or otherwise to any person, except in favour of CIBC or of the Guarantors;
- Change of Control: there shall be no change in the effective control of the Borrower so long as any Credit is in effect;
- (for the purposes hereof, a change in the effective control of the Borrower shall be deemed to have occurred in the event that: (a) any person, including persons acting as a group, becomes the owner of the Borrower's securities having 50% or more of the total voting power of the Borrower; (b) a majority of the members of the board of directors of the Borrower are replaced during any 12-month period; or (c) any person, including persons acting as a group, acquires assets from the Borrower that have a total fair market value equal to or more than 50% of the total fair market value of all of the assets of the Borrower, as applicable, immediately before such acquisition); and

Permitted Acquisitions: the Credit Parties will not make any Acquisition other than Permitted Acquisitions.

**“Permitted Acquisition”** means any Acquisition that complies with the following criteria:

- (a) no Event of Default exists at the time of such Acquisition or would exist after giving effect to such Acquisition;
- (b) the Acquisition is non-hostile in nature;
- (c) the business conducted by such Person or the division, product line of business or assets acquired in such Acquisition shall be the same as or substantially similar to those operated or used as part of the business conducted by the Borrower or a business which will result in the realization of synergies with the product and service offerings which are made available by the Borrower;
- (d) if the Acquisition targets a Person that becomes a Subsidiary of the Borrower, it shall provide a Guarantee and deliver such Security Documents and certificates as are consistent with the documentation provided to CIBC by the Borrower and comply with the requirements of this Agreement; and
- (e) the aggregate acquisitions within a 12-month period do not exceed \$100,000.

#### **Conditions Precedent**

Conditions Precedent: In addition to the documentation specified in Section 5.1 of Schedule A hereto, the obligation of CIBC to make available any Credit is subject to CIBC’s receipt of the following, in form and substance satisfactory to CIBC:

- (a) satisfactory completion of CIBC's due diligence, including, but not limited to, anti-money laundering requirements and know your customer requirements;
- (b) most recent board approved budget for the current fiscal year of the Borrower;
- (c) updated forecast of the Borrower including the impact of COVID-19;
- (d) borrowing base certificate;
- (e) Officer’s Certificate as to calculation of and compliance with all applicable financial covenants;
- (f) Corporate documents of the Credit Parties including

- resolutions and borrowing authority to CIBC's satisfaction;
- (g) the agreements listed under the heading "Security", executed by the Credit Parties and delivered and registered wheresoever required by applicable law;
  - (h) Legal opinions from the Borrower's external counsel, in form and substance satisfactory to CIBC;
  - (i) CIBC shall be satisfied that the cash and investment securities of the Borrower have been moved to CIBC's account;
  - (j) a payout letter for the RBC Credit Facilities pursuant to which Royal Bank of Canada covenants to terminate the RBC Credit Facilities, to release the relevant Credit Party from its obligations thereunder and to undertake to discharge all Liens securing such RBC Credit Facilities;
  - (k) receipt of executed documents to issue share purchase warrants entitling the holders thereof to acquire securities in the Borrower with an aggregate value equal to 3% of the Term Loan divided by the exercise price of US\$4.30, the whole in the form and substance satisfactory to CIBC.
  - (l) since June 30, 2019, no Material Adverse Effect has occurred or circumstance exists which may result in such a Material Adverse Effect.

### **Reporting Requirements**

Reporting Requirements:

The Borrower will provide to CIBC:

- (a) within 30 days after the end of each month, a borrowing base certificate;
- (b) within 30 days after the end of each fiscal quarter, an aged accounts receivable and accounts payable listing by invoice date;
- (c) within 30 days after the end of each month, the unaudited consolidated financial statements of the Borrower for such month, prepared in accordance with GAAP with a comparison to last year's results from the same period, as well as the budget;

R-4 CIBC Credit Agreement dated June 30, 2020 (*cont'd*)

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- (d) within 30 days of each month, a Compliance Certificate;
- (e) within 30 days after the end of each fiscal year, the budget for the Borrower approved by the board of directors for its next fiscal year, with a comparison to last year's results from the same period;
- (f) within 120 days after the end of each fiscal year, the annual reviewed consolidated financial statements of the Borrower and Guarantor for such year, prepared in accordance with GAAP; and
- (g) contemporaneously with members of the board of directors, all board and board subcommittee materials.

**Fees**

Set-Up Fee:	A fee of \$12,500, payable on the Closing Date.
Annual Fee:	A fee of \$7,500, payable on each anniversary of this letter.
Other:	All out of pocket costs including with limitation, reasonable legal costs are the account of the Borrower.

**Other Provisions**

Schedule A:	The attached Schedule A, which contains certain additional provisions applicable to the Credits, and certain definitions, forms part of this Agreement.
Closing Date:	The date on which the conditions precedent hereunder have either been met to the satisfaction of the Lender or, as the case may be, waived by the Lender (the " <b>Closing Date</b> ")
Notice of Borrowing:	Whenever the Borrower desires to obtain any amount under a Credit (other than by way of a permitted overdraft), it will give to CIBC irrevocable prior written notice as specified in Schedule A hereto.
Interest on Excess Amounts:	The interest rate applicable to any outstanding amount under a Credit which is in excess of the limit of such Credit shall be the Interest Rate Applicable to Credit Limit Excesses specified in Schedule A hereto.
Interest on Overdue Amounts:	Interest on overdue amounts is payable as specified in Schedule A hereto.

R-4 CIBC Credit Agreement dated June 30, 2020 (*cont'd*)

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- Interest Payment Dates: Except with respect to interest on amounts in default, which is payable on demand, or as otherwise specified herein or in Schedule A hereto, interest and fees will be calculated and payable monthly in arrears on the last day of the month and on the maturity date for the Revolver.
- Communications: Any communication or notice to be given with respect to the Credits may be effectively given by delivering the same at the addresses set out on the signature page hereof, or by sending the same by email or prepaid registered mail to the parties at such addresses. Any notice so mailed will be deemed to have been received on the tenth day next following the mailing thereof, provided that postal service is in normal operation during such time. Any email notice will be deemed to have been received on transmission if sent on a Business Day and, if not, on the next Business Day following transmission. Either party may from time to time notify the other party, in accordance with this section, of any change of its address which thereafter will be the address of such party for all purposes of the Credits.
- Counterparts and Electronic Delivery: This letter and all Security may be signed in counterparts by the Borrower and CIBC. This letter may be executed in facsimile or by other electronic means, delivery of which shall be effective as delivery of a manually executed counterpart of this letter.
- Replacements: This letter supersedes and replaces all prior discussions, letters and agreements (if any) describing the terms and conditions of any credit facility established by CIBC in favour of the Borrower.
- Authorized Debits: The Borrower authorizes CIBC to debit its Operating Account for any interest, fees or other amounts that are payable by the Borrower to CIBC with respect to the Credits, as and when such amounts are payable.

R-4 CIBC Credit Agreement dated June 30, 2020 (*cont'd*)

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When you sign this Agreement, you recognize that: (a) you have read it and all the documents attached thereto (including Schedule A, “Additional Definitions and Provisions”); (b) you have obtained all the information and explanations requested on the said documents from CIBC; (c) you fully understand the meaning of the said documents; (d) the Agreement was freely negotiated by you and CIBC and, consequently, that it must not be construed as a contract of adhesion; and, finally, (e) that CIBC has the power and authority to transmit current and future information on you to any guarantor.

The parties confirm their express wish that this Letter and all documents related thereto be drawn up in English. *Les parties confirment leur volonté expresse de voir le présent contrat et tous les documents s’y rattachant être rédigés en anglais.*

**[Remainder of this page intentionally left blank]**

R-4 CIBC Credit Agreement dated June 30, 2020 (cont'd)

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Address:  
1155 René-Lévesque Ouest  
B. 300, Montreal,  
Quebec H3B 4P9

Attention: Éric Laflamme

e-mail: [eric.laflamme@cibc.com](mailto:eric.laflamme@cibc.com)

Yours truly,

**CANADIAN IMPERIAL BANK OF COMMERCE**

By:   
Name: Éric Laflamme  
Title: Authorized Signatory

By:   
Name: Imran Premji  
Title: Authorized Signatory

R-4 CIBC Credit Agreement dated June 30, 2020 (cont'd)

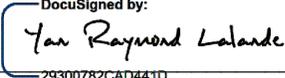
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DocuSign Envelope ID: 33F06170-9122-42B1-801A-4758E840F94C

Accepted this 3<sup>th</sup> day of August, 2020.

Address:  
100-1396 rue Saint-Patrick  
Montréal, Québec H3K 2C8

**CHRONOMÉTRIQ INC.**

By:   
Name: Yan Raymond-Lalande  
Title: President

DocuSigned by:  
29300782CAD44JD

Attention:  
Yan Raymond-Lalande and  
Émilie Lazure

E-mail:  
[yan@chronometriq.ca](mailto:yan@chronometriq.ca)  
[emilie.lazure@chronometriq.ca](mailto:emilie.lazure@chronometriq.ca)

R-4 CIBC Credit Agreement dated June 30, 2020 (cont'd)

DocuSign Envelope ID: 33F06170-9122-42B1-801A-4758E840F94C

**ACKNOWLEDGEMENT**

The guarantors declare that they have received a copy of this Agreement and agree to be liable pursuant to its terms and conditions.

**CMETRIC INC.**

DocuSigned by:

*Yan Raymond Lalande*

Address:  
100-1396 rue Saint-Patrick  
Montréal, Québec H3K 2C8

By: \_\_\_\_\_  
Name: Yan Raymond Lalande  
Title: ceo

Attention:  
Yan Raymond-Lalande and Émilie  
Lazure

E-mail:  
[yan@chronometriq.ca](mailto:yan@chronometriq.ca)  
[emilie.lazure@chronometriq.ca](mailto:emilie.lazure@chronometriq.ca)

**HEALTH MYSELF INNOVATIONS INC.**

DocuSigned by:

*Yan Raymond Lalande*

Address:  
100-1396 rue Saint-Patrick  
Montréal, Québec H3K 2C8

By: \_\_\_\_\_  
Name: Yan Raymond Lalande  
Title: ceo

Attention:  
Yan Raymond-Lalande and Émilie  
Lazure

E-mail:  
[yan@chronometriq.ca](mailto:yan@chronometriq.ca)  
[emilie.lazure@chronometriq.ca](mailto:emilie.lazure@chronometriq.ca)

**SCHEDULE A - ADDITIONAL DEFINITIONS AND PROVISIONS  
FOR DEMAND & TERM FACILITIES**

**1. GENERAL**

**1.1 Use of Funds, Returns.** The Borrower will use the Credits only for the purposes specified in this Agreement. The Borrower may not at any time exceed the limit of any Credit, and CIBC may, without notice to the Borrower, return any item that, if paid, would result in the limit of any Credit being exceeded. If, on the other hand, CIBC in its sole discretion elects to pay any such item, the Borrower will pay to CIBC immediately the amount by which the limit of the applicable Credit has been exceeded.

**1.2 Notice of Failure.** The Borrower will promptly notify CIBC of the occurrence of any failure to perform or observe any of its covenants in this Agreement.

**1.3 Confidentiality.** The terms of this Agreement are confidential between the Borrower and CIBC, and accordingly the Borrower will not disclose the contents of this Agreement to anyone except its professional advisors.

**1.4 Applying money received.** At any time that the Borrower has failed (beyond any period of grace permitted by CIBC) to perform or observe any of its covenants in this Agreement, all moneys received by CIBC from the Borrower or from any Security may be applied on such parts of the Borrower's liabilities to CIBC as CIBC may determine.

**1.5 Right of Set-Off.** At any time that the Borrower has failed (beyond any period of grace permitted by CIBC) to perform or observe any of its covenants in this Agreement, CIBC is authorized at any time to set-off and apply any deposits held by it and any other amounts owed by it to or for the credit of the Borrower against any and all of the obligations of the Borrower with respect to the Credits, irrespective of whether or not CIBC has made any demand and even though any such obligations may not yet be due and payable.

**1.6 Registration of Security.** The Security will be registered or filed in all jurisdictions and in all offices as CIBC considers necessary or advisable from time to time to create, perfect or protect any Lien created thereby.

**1.7 Expenses.** The Borrower will reimburse CIBC for all fees and out-of-pocket expenses (including the reasonable fees and expenses of CIBC's solicitors and of any other experts and advisors hired by CIBC) incurred by CIBC in preparing and registering any Security, in responding to requests from the Borrower for waivers, amendments and other matters, in exercising its rights under this Agreement or any Security, and in enforcing any Security.

**1.8 Further information requirements.** The Borrower will provide such further information about its business and its Subsidiaries as is reasonably requested by CIBC from time to time, and such information shall be in a form acceptable to CIBC.

**1.9 Consent to release information.** CIBC may from time to time give any credit or other information about the Borrower to, or receive such information from, (i) any financial institution, credit reporting agency, rating agency or credit bureau, (ii) any person, firm or corporation with whom the Borrower may have or proposes to have financial dealings, and (iii)

R-4 CIBC Credit Agreement dated June 30, 2020 (*cont'd*)

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any person, firm or corporation in connection with any dealings the Borrower has or proposes to have with CIBC. The Borrower agrees that CIBC may use that information to establish and maintain the Borrower's relationship with CIBC and to offer any services as permitted by law, including services and products offered by CIBC's Subsidiaries when it is considered that this may be suitable to the Borrower.

**1.10 Instructions by fax, phone and e-mail.** The Borrower may deliver, and CIBC may accept, instructions by fax, telephone (including cellular phone) and internet e-mail ("Electronic Communication"), according to CIBC-approved procedures, which procedures may be limited to particular types of communications or services. Unless the Borrower expressly indicates otherwise, the Borrower agrees that CIBC may also communicate with the Borrower by e-mail or fax. This may include (i) CIBC sending confidential information to the Borrower, at the Borrower's request; or (ii) the Borrower sending confidential information to CIBC. An Electronic Communication may not be a secure means of communication and the Borrower assumes responsibility for the risks of using Electronic Communications including, without limitation, the possibility that an Electronic Communication is: intercepted by or sent to an unauthorized person, misunderstood, lost, delayed, or not received by CIBC at all. CIBC is entitled to rely upon any Electronic Communication from or purporting to be from the Borrower, as if such instructions were given in writing. However, CIBC may choose not to act upon an Electronic Communication if it believes that the Electronic Communication is unauthorized, incorrect or unclear. CIBC shall not be liable for, and the Borrower will indemnify and save CIBC harmless from, any claims, losses, damages, liabilities and expenses that CIBC incurs (other than those due to CIBC's gross negligence or wilful misconduct) including among other things all legal fees and expenses, arising from CIBC acting or declining to act on any of your Electronic Communications given under this Agreement. This indemnity is in addition to any other indemnity or assurance against loss provided by you to CIBC under this Agreement or otherwise.

**1.11 Further Assurances.** The Borrower will, and will ensure that each of its Subsidiaries will, from time to time promptly upon request by CIBC do and execute all such acts and documents as may be reasonably required by CIBC to give effect to the Credits and the Security, and to any transfer pursuant to Section 1.16 of this Schedule.

**1.12 Insurance.** The Borrower will, and will ensure that each of its Subsidiaries will, keep all its respective assets and property insured (to the full insurable value) against loss or damage by fire and all other risks usual for similar property and for any other risks CIBC may reasonably require. If CIBC requests, these policies will include a loss payable clause (and with respect to mortgage security, a mortgagee clause) in favour of CIBC. As further security, the Borrower assigns all insurance proceeds to CIBC. The Borrower will provide to CIBC either the policies themselves or adequate evidence of their existence. If any insurance coverage for any reason stops, CIBC may (but shall have no obligation to) insure the property. The Borrower will notify CIBC immediately of any loss or damage to any such asset or property.

**1.13 Environmental.** The Borrower will, and will ensure that each of its Subsidiaries will, carry on its business, and maintain its assets and property in accordance with all applicable environmental laws and regulations. If there is any release, deposit, discharge or disposal of pollutants of any sort (collectively, a "Discharge") in connection with the business or property of the Borrower or any of its Subsidiaries, and CIBC pays any fines or for any clean-up suffers any loss or damage as a result of the Discharge, the Borrower will reimburse CIBC, its

R-4 CIBC Credit Agreement dated June 30, 2020 (*cont'd*)

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directors, officers, employees and agents for any and all losses, damages, fines, costs and other amounts (including amounts spent preparing any necessary environmental assessment or other reports, or defending any lawsuits) that result. If CIBC asks, the Borrower will defend any lawsuits, investigations or prosecutions brought against CIBC or any of its directors, officers, employees and agents in connection with any Discharge. The Borrower's obligation under this section continues even after all Credits have been repaid and this Agreement has terminated.

**1.14 Related Transactions.** None of the Borrower and its Subsidiaries will enter into any transaction, including the purchase, sale or exchange of any property or the rendering of any services, with any of its shareholders or with any of its Affiliates, or with any of its or their directors or officers, or enter into, assume or permit to exist any employment, consulting or analogous agreement or arrangement with any such shareholder or Affiliate or with any of its directors or officers, except a transaction or agreement or arrangement which is in the ordinary course of business of the Borrower or such Subsidiary and which is upon fair and reasonable terms not less favourable to the Borrower or its applicable Subsidiary than it would obtain in a comparable arms-length transaction.

**1.15 Waiver.** No delay on the part of CIBC in exercising any right or privilege will operate as a waiver thereof, and no waiver of any failure or default will operate as a waiver thereof unless made in writing and signed by an authorized officer of CIBC, or will be applicable to any other failure or default.

**1.16 Assignment.** CIBC may assign, sell or participate (herein referred to as a "transfer") all or any part of its rights and obligations under all or any of the Credits to any third party, and the Borrower agrees to sign any documents and take any actions that CIBC may reasonably require in connection with any such transfer. Upon completion of the transfer, the third party will have the same rights and obligations under this Agreement as if it were a party to it, with respect to all rights and obligations included in the transfer. The Borrower may not assign any of its rights or obligations under any of the Credits.

**1.17 Authorized Debits.** The Borrower authorizes CIBC to debit its Operating Account for any interest, fees or other amounts that are payable by the Borrower to CIBC with respect to the Credits, as and when such amounts are payable.

**1.18 Communications.** Any communication or notice to be given with respect to the Credits may be effectively given by delivering the same at the addresses set out on the signature page of this Agreement, or by sending the same by facsimile or prepaid registered mail to the parties at such addresses. Any notice so mailed will be deemed to have been received on the tenth day next following the mailing thereof, provided that postal service is in normal operation during such time. Any facsimile notice will be deemed to have been received on transmission if sent on a Business Day and, if not, on the next Business Day following transmission. Either party may from time to time notify the other party, in accordance with this section, of any change of its address which thereafter will be the address of such party for all purposes of the Credits.

**1.19 Governing Law.** This Agreement shall be governed by the laws of Quebec, and the Borrower submits itself to the jurisdiction of any competent federal or provincial court in such jurisdiction.

R-4 CIBC Credit Agreement dated June 30, 2020 (*cont'd*)

**1.20 Certain Definitions.** In this Agreement the following terms have the following meanings:

**“Affiliate”** means, with respect to any person, any other person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such person, and includes any person in like relation to an Affiliate. A person shall be deemed to control another person if the first person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person, whether through the ownership of voting securities, by contract or otherwise.

**“Agreement”** means the attached letter agreement between CIBC and the Borrower, including this Schedule and any other Schedules thereto, as the same may be amended or supplemented from time to time.

**“BDC Loans”** means the \$115,000 and the \$385,000 loans pursuant to certain letters of offer dated December 2, 2016 and February 6, 2018, respectively among the Borrower, as borrower and Business Development Bank of Canada, as lender, as the same may be amended or supplemented from time to time.

**“BDC/IQ Loans”** means collectively the BDC Loans and the IQ Loans.

**“Business Day”** means (i) with respect to any amount denominated in Canadian dollars and all matters pertaining thereto, any day excluding Saturday, Sunday and any day which is a legal holiday in Toronto or Montreal, Canada, and (ii) with respect to any amount denominated in US dollars and all matters pertaining thereto, any day excluding Saturday, Sunday or any day which is a legal holiday in New York, U.S.A. or Toronto or Montreal, Canada.

**“Compliance Certificate”** means an Officer’s Certificate in the form prescribed by CIBC and stating, as of the applicable date, (i) that the Borrower is not in default of the observance or performance of any of its covenants in this Agreement (or describing any default then existing), (ii) that all representations and warranties contained in this Agreement are true and accurate as if made on and as of such date (or describing any thereof that are not then true and accurate), (iii) the particulars and calculation of all financial covenants of the Borrower contained in this Agreement. Unless otherwise prescribed by CIBC, a Compliance Certificate shall be substantially in the form attached as Exhibit 1 to this Schedule A.

**“Copyrights”** means any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

**“Debt”** means, with respect to any person, (i) an obligation of such person for borrowed money, (ii) an obligation of such person evidenced by a note, bond, debenture or other similar instrument, (iii) an obligation of such person for the deferred purchase price of property or services, excluding trade payables and other accrued current liabilities incurred in the ordinary course of business in accordance with customary commercial terms, (iv) a capitalized lease obligation of such person, (v) a guarantee, indemnity, or financial support obligation of such person, determined in accordance with GAAP, (vi) an obligation of such person or of any other person secured by a Lien on any property of such person, even though such person has not otherwise assumed or become liable for the payment of such obligation, or (vii) an obligation

R-4 CIBC Credit Agreement dated June 30, 2020 (*cont'd*)

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arising in connection with an acceptance facility or letter of credit issued for the account of such person.

**“Event of Default”** means any of the following events or circumstances:

- (i) if the Borrower fails to pay any amount when due and payable hereunder;
- (ii) if the Borrower defaults in the performance or observance of any negative covenant contained herein, or of any other term or covenant contained herein if such other default continues for 30 days or more;
- (iii) if any representation or warranty contained in this Agreement or the Security or in any certificate delivered to CIBC by or on behalf of the Borrower is untrue in any material respect on the date as of which it was made;
- (iv) if an aggregate amount exceeding \$50,000 owed by the Borrower or its Subsidiaries is not paid when due or the maturity thereof is accelerated;
- (v) if any obligation of the Borrower and its Subsidiaries to CIBC is or becomes unenforceable or if the enforceability thereof is disputed, or if any of the Security ceases to constitute a Lien of the nature and priority contemplated by this Agreement;
- (vi) if a Credit Party is in default under the BDC Loan or the IQ Loan;
- (vii) if any of the Borrower and its Subsidiaries commits an act of bankruptcy under the Bankruptcy and Insolvency Act (Canada), or if any insolvency proceeding or proceeding for its winding up, liquidation or dissolution is commenced by or against any of them and is not being contested in good faith, or publicly announces or admits in writing its inability to pay its debts generally as they become due, or suspends or threatens to suspend transaction of all or any substantial part of its usual business, or any action is taken by any of the Borrower and its Subsidiaries or any shareholder of any of them in furtherance of any of the foregoing;
- (viii) if an encumbrancer (including without limitation an execution creditor) takes possession of any property of any of the Borrower and its Subsidiaries which in the opinion of CIBC is material;
- (ix) if there exists for three Business Days any final judgement of a court of competent jurisdiction against any of the Borrower and its Subsidiaries which has not been satisfied in full (exclusive of any amount adequately covered by insurance);
- (x) if in the reasonable opinion of CIBC there has occurred any event which has had a Material Adverse Effect; or
- (xi) if there is any change in the effective control of the Borrower, as determined by CIBC.

**“GAAP”** means those accounting principles which are recognized as being generally accepted in Canada from time to time as set out in the handbook published by the Chartered Professional Accountants of Canada. If the Borrower, or the party to which references to GAAP are intended to apply, has adopted International Financial Reporting Standards (“IFRS”), then the applicable

R-4 CIBC Credit Agreement dated June 30, 2020 (*cont'd*)

references in this Agreement to GAAP or Generally Accepted Accounting Principles may be interpreted to mean IFRS, but only if CIBC has consented to such change.

**“Intellectual Property”** means all of a Person’s right, title and interest in and to the following: (i) its Copyrights, Trademarks and Patents, (ii) any and all trade secrets and trade secret rights, (iii) any and all source code, (iv) any and all design rights, (v) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights described above and (vi) all amendments, renewals and extensions of the any of the Intellectual Property described above.

**“Investment”** means, with respect to any person, any direct or indirect investment in or purchase or other acquisition of the securities of or any equity interest in any other person, any loan or advance to, or arrangement for the purpose of providing funds or credit to (excluding extensions of trade credit in the ordinary course of business in accordance with customary commercial terms), or capital contribution to, any other person, or any purchase or other acquisition of all or substantially all of the property of any other person.

**“IQ Loans”** means the \$385,000 and the \$575,000 loans pursuant to that certain letters of offer dated March 5, 2018 and July 11, 2018, respectively, among the Borrower, as borrower and Investissement Québec, as lender, as the same may be amended or supplemented from time to time.

**“Lien”** includes without limitation a mortgage, hypothec, whether legal or conventional lien, Prior Ranking Claims, security interest, prior claim, charge or encumbrance of any sort on any property or asset, and includes conditional sales contracts, title retention agreements, capital trusts, capital leases and leasing.

**“Material Adverse Effect”** means a material adverse effect on the business, property, condition (financial or otherwise) or prospects of the Borrower and its Subsidiaries, considered as a whole, or a material adverse effect on the ability of any of the Borrower and its Subsidiaries to perform its obligations under any of this Agreement and the Security to which it is a party.

**“Officer’s Certificate”** means a certificate, in form satisfactory to CIBC, signed by a senior officer of the Borrower.

**“Operating Account”** means any Canadian dollar or US dollar account of the Borrower with CIBC as is selected by CIBC from time to time for the purposes hereof.

**“Patents”** means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

**“Permitted Lien”** means, at any time, the following:

- (i) statutory Liens for taxes not yet due and payable or which are being actively contested and for other undetermined or inchoate Liens arising out of operation of applicable laws in the ordinary course of business which relate to amounts not overdue and payable or a claim for which has not been filed or registered pursuant to applicable law;

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(ii) Liens, easements, rights-of-way, restrictions and other similar encumbrances arising in the ordinary course of business of the Credit Parties which, in the aggregate, do not affect the value or marketability of such Credit Party's property in a material way;

(iii) the pledges or deposits of cash or securities made pursuant to applicable laws relating to workmen's compensation or similar applicable laws, or deposits of cash made in good faith in connection with offers, tenders, leases or contracts (excluding, however, the borrowing of money or the repayment of money borrowed) and deposits of cash or securities in order to secure appeal bonds or bonds required in respect of judicial proceedings;

(iv) Liens created by the Security and other Liens consented to in writing by CIBC;

**"Postponed Debt"** means any Debt for borrowed money that is incurred at such time as no failure by the Borrower to perform or observe any of its covenants in this Agreement is continuing or would be created by the incurrence thereof (to be evidenced by pro forma financial statements delivered to CIBC) and which has the following attributes: (i) no principal thereof is repayable so long as any amount is owed by the Borrower to CIBC (or until such earlier date as CIBC may agree upon in writing), (ii) no covenant with respect to such Debt is more onerous than or in addition to the covenants specified herein, and (iii) all rights of the holder of such Debt are postponed and subordinated to all rights of CIBC under or in respect of the Credits pursuant to a subordination agreement satisfactory in form and substance to CIBC.

**"Prior Ranking Claims"** means, at any time, any liability of any of the Borrower and its Subsidiaries that ranks, in right of payment in any circumstances, equal to or in priority to any liability of the Borrower or such Subsidiary to CIBC, and may include unpaid wages, salaries and commissions, unremitted source deductions for vacation pay, arrears of rent, unpaid taxes, amounts owed in respect of worker's compensation, amounts owed to unpaid vendors who have a right of repossession, and amounts owing to creditors which may claim priority by statute or under a Purchase Money Lien.

**"Purchase Money Lien"** means any Lien which secures a Purchase Money Obligation permitted by this Agreement, provided that such Lien is created not later than 30 days after such Purchase Money Obligation is incurred and does not affect any asset other than the asset financed by such Purchase Money Obligation.

**"Purchase Money Obligation"** means any Debt (including without limitation a capitalized lease obligation) incurred or assumed to finance all or any part of the acquisition price (and not exceeding the fair market value) of any asset acquired by any of the Borrower and its Subsidiaries.

**"RBC Credit Facilities"** means the facilities granted to the Borrower pursuant to that certain credit agreement dated August 6, 2019 among the Borrower, as borrower and Royal Bank of Canada, as lender.

**"Security"** means, collectively, all of the items of security held by CIBC for the indebtedness and liabilities, or any part thereof, of the Borrower to CIBC.

R-4 CIBC Credit Agreement dated June 30, 2020 (*cont'd*)

**“Subsidiary” or “Subsidiaries”** of any person means any other person of which shares or other equity units having ordinary voting power to elect a majority of the board of directors or other individuals performing comparable functions, or which are entitled to or represent more than 50% of the owners’ equity or capital or entitlement to profits, are owned beneficially or controlled, directly or indirectly, by any one or more of such first person and the Subsidiaries of such first person, and shall include any other person in like relationship to a Subsidiary of such first person.

**“Trademarks”** means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

## 2. INTEREST RATES; PAYMENTS; CALCULATIONS

2.1 **Variable interest.** Each variable interest rate provided for in this Agreement will change automatically, without notice, whenever the CIBC Prime Rate or the WSJ Prime Rate, as the case may be, changes.

2.2 **Payment of interest.** Interest is calculated on the applicable balance at the end of each day. Interest is payable in arrears once a month on the day required by CIBC, unless otherwise specified in this Agreement, and interest on amounts in default is payable on demand.

2.3 **Interest Rate Applicable to Credit Limit Excesses.** The Interest Rate Applicable to Credit Limit Excesses will be charged on the amount outstanding under a Credit that exceeds the limit of such Credit, and if there are several parts of a Credit, the Interest Rate Applicable to Credit Limit Excesses will be charged if the limit of a particular part is exceeded. To determine if the limit of a Credit has been exceeded, any amount in a currency other than the currency in which the limit is designated will be converted into that currency, as described in Section 2.10 of this Schedule.

2.4 **Default Rate.** Immediately upon the occurrence and during the continuance of an Event of Default, all obligations outstanding hereunder shall bear interest at the rate applicable to such amounts plus 5%. Fees and expenses which are required to be paid by the Borrower but are not paid when due shall bear interest at the highest rate payable under this Agreement. Payment or acceptance of the increased interest rate provided for in this Section 2.4 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of CIBC.

2.5 **Reductions of Limit of Credits.** On or prior to each date on which the limit of any Credit is reduced, the Borrower will repay such outstanding amounts thereunder, if any, as are necessary so that, after giving effect to the repayment, the total of all amounts outstanding under such Credit does not exceed the limit as so reduced.

2.6 **Payments.** If any payment is due on a day other than a Business Day, such payment will be due on the next Business Day.

2.7 **CIBC’s pricing policy.** The fees, interest rates and other charges for the Borrower’s banking arrangements with CIBC are dependent upon each other. Accordingly, if the Borrower cancels or does not follow through with, in the manner originally contemplated, any

R-4 CIBC Credit Agreement dated June 30, 2020 (*cont'd*)

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of these arrangements, CIBC reserves the right to require payment by the Borrower of increased or added fees, interest rates and charges as a condition of the continuation of the Borrower's banking arrangements.

**2.8 Calculations.** The following terms apply to all calculations under the Credits:

(a) CIBC Prime Rate and WSJ Prime Rate shall be determined by CIBC if and whenever such determination is required for the purpose of this Agreement, and such determination by CIBC shall be conclusive evidence of such rate.

(b) All interest and fees hereunder shall be computed on the basis of the actual number of days elapsed divided by 365. Any such applicable interest rate, expressed as an annual rate of interest for the purpose of the *Interest Act* (Canada), shall be equivalent to such applicable interest rate multiplied by the actual number of days in the calendar year in which the same is to be determined and divided by 365.

(c) In calculating interest or fees payable hereunder for any period, unless otherwise specifically stated, the first day of such period shall be included and the last day of such period shall be excluded.

(d) Notwithstanding any other provision of this Agreement, in no event shall the CIBC Prime Rate or the WSJ Prime Rate, as applicable, be less than the CIBC Prime Rate or the WSJ Prime Rate as of the date of this Agreement.

**2.9 CIBC's Records.** CIBC's loan accounting records will provide conclusive evidence of all terms and conditions of the Credits such as principal loan balances, interest calculations, and payment dates.

**2.10 Foreign Currency Conversion.** If it is necessary for any purpose relating to the Credits that an amount denominated in a currency other than Canadian dollars be expressed in or equated to an amount of Canadian dollars (such as, for example, to determine whether amounts denominated in US dollars that are outstanding under a Credit which has a limit specified in Canadian dollars exceed the limit of such Credit so as to make applicable the Interest Rate Applicable to Credit Limit Excesses), the applicable amount of Canadian dollars shall be determined by CIBC in accordance with its normal practice.

**2.11 Deemed Re-Investment Principle.** For the purpose of the *Interest Act* (Canada) and any other purpose, the principle of deemed re-investment of interest is not applicable to any calculation under this Agreement, and the rates of interest and fees specified in this Agreement are intended to be nominal rates and not effective rates or yields.

**2.12 Certain Definitions.** If and whenever required for the purpose of this Agreement, the following terms have the following definitions:

“**CIBC Prime Rate**” means a fluctuating annual interest rate equal at all times to the greater of (i) the reference rate of interest (however designated) of CIBC for determining interest chargeable by it on loans in Canadian dollars made in Canada and (ii) 2.45% per annum.

R-4 CIBC Credit Agreement dated June 30, 2020 (*cont'd*)

**“Interest Rate Applicable to Credit Limit Excesses”** means the annual interest rate generally established by CIBC from time to time for the purpose of calculating interest on overdrafts in accounts maintained with CIBC in Canada.

**“WSJ Prime Rate”** means the “Prime Rate” published by the Wall Street Journal as the base rate on corporate loans posted by at least 75% of the nation’s 30 largest banks as the same may be changed from time to time. The WSJ Prime Rate shall be the higher of i) 3.25% or ii) the applicable WSJ Prime Rate at all times.

### 3. NOTICE OF BORROWING; NOTICE OF REPAYMENT; OVERDRAFTS

3.1 **Notice of Borrowing.** Whenever the Borrower desires to obtain any amount under a Credit (other than a loan by way of a permitted overdraft), it will give to CIBC irrevocable prior written notice (a “**Notice of Borrowing**”) specifying the Credit under which such amount is to be obtained and the particulars of such amount including the Business Day on which such amount is to be obtained. A notice requesting any loan in an amount exceeding \$10,000,000 or US \$10,000,000 must be given not later than 10:00 a.m. on the Business Day preceding the applicable borrowing date.

3.2 **Notice of Repayment.** Whenever the Borrower desires to make any repayment or repayments under one or more of the Credits in an aggregate amount exceeding \$10,000,000 (or an equivalent amount in any other currency) on any day, it will give to CIBC irrevocable written notice specifying the particulars of such repayment not later than 10:00 a.m. on the Business Day preceding the applicable repayment date.

3.3 **Overdrafts.** If the Borrower is entitled under any Credit to obtain loans in Canadian dollars or US dollars by way of overdraft, the debit balance in the Borrower’s applicable Operating Account from time to time will be deemed to be a loan in Canadian dollars or US dollars, as the case may be, outstanding to the Borrower under such Credit and bearing interest as set out in this Agreement for loans in such currency under such Credit. If at any time the Borrower is a party to a cash concentration arrangement with CIBC, the amount of any overdraft from time to time in the Canadian dollar or US dollar concentration account of the Borrower established pursuant to such arrangement will also be deemed to be a loan in Canadian dollars or US dollars, as applicable, outstanding to the Borrower under the applicable Credit and bearing interest as set out above on the basis of the CIBC Prime Rate or the WSJ Prime Rate, as the case may be.

### 4. INDEMNITIES

4.1 **Reserve Indemnity.** If subsequent to the date of this Agreement any change in or introduction of any applicable law, or compliance by CIBC with any request or directive by any central bank, superintendent of financial institutions or other comparable authority, shall subject CIBC to any tax with respect to the Credits or change the basis of taxation of payments to CIBC of any amount payable under the Credits (except for changes in the rate of tax on the overall net income of CIBC), or impose any capital maintenance or capital adequacy requirement, reserve requirement or similar requirement with respect to the Credits, or impose on CIBC any other condition or restriction, and the result of any of the foregoing is to increase the cost to CIBC of making or maintaining the Credits or any amount thereunder or to reduce any amount otherwise received by CIBC under the Credits, CIBC will promptly notify the

R-4 CIBC Credit Agreement dated June 30, 2020 (*cont'd*)

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Borrower of such event and the Borrower will pay to CIBC such additional amount calculated by CIBC as is necessary to compensate CIBC for such additional cost or reduced amount received. A certificate of CIBC as to any such additional amount payable to it and containing reasonable details of the calculation thereof shall be conclusive evidence thereof.

**4.2 Currency Indemnity.** Interest and fees hereunder shall be payable in the same currency as the principal to which they relate. Any payment on account of an amount payable in a particular currency (the “proper currency”) made to or for the account of CIBC in a currency (the “other currency”) other than the proper currency, whether pursuant to a judgement or order of any court or tribunal or otherwise and whether arising from the conversion of any amount denominated in one currency into another currency for any purpose, shall constitute a discharge of the Borrower’s obligation only to the extent of the amount of the proper currency which CIBC is able, in the normal course of its business within one Business Day after receipt by it of such payment, to purchase with the amount of the other currency so received. If the amount of the proper currency which CIBC is able to purchase is less than the amount of the proper currency due to CIBC, the Borrower shall indemnify and save CIBC harmless from and against any loss or damage arising as a result of such deficiency.

**4.3 Tax Indemnity.** All payments by the Borrower under this Agreement shall be made free and clear of, and without reduction for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, other than taxes imposed on the overall net income of CIBC or franchise taxes, taxes on doing business or taxes measured by the capital or net worth of CIBC (collectively “**Excluded Taxes**”), now or hereafter imposed, levied, collected, withheld or assessed by any country or any political subdivision thereof (collectively “**Taxes**”); provided, however, that if any Taxes are required to be withheld from any interest or other amount payable to CIBC hereunder, the amount so payable to CIBC shall be increased to the extent necessary to yield to CIBC, on a net basis after payment of all Taxes and after payment of all Excluded Taxes imposed by any relevant jurisdiction on any additional amounts payable under this section, interest or any such other amount payable hereunder at the rate or in the amount specified in this Agreement. The Borrower shall be fully liable and responsible for and shall, promptly following receipt of a request from CIBC, pay to CIBC any and all sales, goods and services taxes payable under the laws of Canada or any political subdivision thereof with respect to any and all goods and services made available hereunder to the Borrower by CIBC, and such taxes shall be included in the definition of “Taxes” for all purposes hereof. Whenever any Taxes are payable by the Borrower, as promptly as possible thereafter it shall send to CIBC, a certified copy of an original official receipt showing payment thereof. If the Borrower fails to pay any Taxes when due or fails to remit to CIBC as aforesaid the required documentary evidence thereof, the Borrower shall indemnify and save harmless CIBC from any incremental taxes, interest, penalties or other liabilities that may become payable by CIBC or to which CIBC may be subjected as a result of any such failure. A certificate of CIBC as to the amount of any such taxes, interest or penalties and containing reasonable details of the calculation thereof shall be *prima facie* evidence thereof.

**4.4 Default Indemnity.** The Borrower shall indemnify and save harmless CIBC from all claims, demands, liabilities, damages, losses, costs, charges and expenses, including any loss or expense arising from interest or fees payable by CIBC to lenders of funds obtained by it in order to make or maintain any amount under the Credits and any loss or expense incurred in liquidating or re-employing deposits from which such funds were obtained, which may be

R-4 CIBC Credit Agreement dated June 30, 2020 (*cont'd*)

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incurred by CIBC as a consequence of (i) default by the Borrower in the payment when due of any amount hereunder or the occurrence of any other default relative to any of the Credits, (ii) default by the Borrower in obtaining any amount after the Borrower has given notice hereunder that it desires to obtain such amount, (iii) default by the Borrower in making any optional repayment of any amount after the Borrower has given notice hereunder that it desires to make such repayment, or (iv) the repayment of any loan on which interest is payable at a fixed annual rate otherwise than on the expiration of the fixed interest rate period applicable thereto, or the repayment of any other amount otherwise than on any specified maturity date thereof. A certificate of CIBC as to any such loss or expense and containing reasonable details of the calculation thereof shall be *prima facie* evidence thereof.

**5. CONDITIONS PRECEDENT****5.1 Conditions Precedent to the Initial Amount**

CIBC shall not be obliged to make available the initial amount under any Credit unless it shall have received (a) all required Security, which shall have been duly registered and filed as required hereby, (b) such financial and other information relating to the Borrower and its Subsidiaries, and any guarantor, as CIBC shall have reasonably requested, (c) confirmation of all insurance maintained by the Borrower and its Subsidiaries, and such insurance shall comply with the requirements of this Agreement, (d) payment of all fees and other amounts which shall have become due and payable by the Borrower to CIBC on or prior to the initial borrowing date, and (e) the following documents in form, substance and execution acceptable to CIBC: (i) a certified copy of the constating documents and by-laws of each of the Borrower and its Subsidiaries, and of each corporate guarantor, and of all corporate proceedings taken and required to be taken by each of them to authorize the execution and delivery of such of this Agreement and the Security to which it is a party and the performance of the transactions by it contemplated therein; (ii) a certificate of incumbency for each of the Borrower and its Subsidiaries, and for each corporate guarantor, setting forth specimen signatures of the persons authorized to execute such of this Agreement and the Security to which it is a party; (iii) such legal opinions addressed to CIBC relative to the Borrower, this Agreement and the Security as CIBC may require; and (iv) such other documents relative to this Agreement and the transactions contemplated herein as CIBC may reasonably require.

**5.2 Conditions Precedent to All Amounts**

CIBC shall not be obliged to make available any amount under any Credit unless (a) CIBC shall have received any applicable Notice of Borrowing, (b) on the applicable borrowing date the Borrower shall not have failed to observe or perform any of its covenants in this Agreement, and the Borrower shall have delivered to CIBC, if so requested by CIBC, an Officers' Certificate to such effect, (c) the representations and warranties contained in this Agreement shall be true on and as of the applicable borrowing date with the same effect as if such representations and warranties had been made on and as of the applicable borrowing date, and the Borrower shall have delivered to CIBC, if so requested by CIBC, an Officers' Certificate to such effect, (d) all other conditions specified herein, to the extent not previously satisfied for any reason, other shall have been satisfied, and (e) in respect of any amount that would result in the aggregate amount outstanding under the Credits being increased, there shall not have occurred subsequent to the date of last annual financial statements of the Borrower, in

R-4 CIBC Credit Agreement dated June 30, 2020 (*cont'd*)

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the opinion of CIBC, any event which (individually or with any other events) has had, or which has a reasonable possibility of having, a Material Adverse Effect.

**6 REPRESENTATIONS AND WARRANTIES**

**6.1 Representations and Warranties.** To induce CIBC to establish and maintain each Credit, the Borrower represents and warrants as follows:

(a) Each of the Borrower and its Subsidiaries has all necessary power and authority to own its property, to carry on the business carried on by it, to enter into and perform its obligations under such of this Agreement and the Security to which it is a party.

(b) This Agreement, and upon delivery thereof the Security, have been duly executed and delivered by each of the Borrower and its Subsidiaries as are parties thereto, and constitute the legal, valid and binding obligation of each of them enforceable in accordance with their terms.

(c) The execution and delivery by the Borrower and its Subsidiaries of this Agreement and the Security and the performance by them of their obligations thereunder, and the obtaining by the Borrower of amounts under the Credits, will not conflict with or result in a breach of any applicable law, and will not conflict with or result in a breach of or constitute a default under any of the provisions of its constating documents or by-laws or any agreement or restriction to which it is a party or by which it is bound.

(d) The Borrower has delivered to CIBC a true and complete copy of its most recent financial statements, and such financial statements present fairly the financial position of the Borrower, in accordance with GAAP, as of the date thereof and for the fiscal period then ended. All financial statements of the Borrower delivered by the Borrower to CIBC after the date of this Agreement will present fairly the financial position of the Borrower, in accordance with GAAP, as of the dates thereof and for the fiscal periods then ended.

(e) Since the date of the most recent financial statements of the Borrower delivered to CIBC, there has occurred no event which (individually or with any other events) has had, or which has a reasonable possibility of having, a Material Adverse Effect.

(f) The Borrower has not failed to observe or perform (beyond any period of grace permitted by CIBC) any of its covenants in this Agreement.

(g) Except as disclosed in writing by the Borrower to CIBC prior to the date of this Agreement with specific reference to this paragraph, to the best knowledge of the Borrower, (i) the business carried on and the property owned or used at any time by any of the Borrower and its Subsidiaries and their respective predecessors have at all times been carried on, owned or used in compliance with all environmental laws; (ii) there are no circumstances that could reasonably be expected to give rise to any civil or criminal proceedings or liability regarding the release from or presence of any hazardous substance on any lands used in or related to the business or property of any of the Borrower and its Subsidiaries (iii) there are no proceedings and there are no circumstances or material facts which could give rise to any proceeding in which it is or could be alleged that any of the Borrower and its Subsidiaries is responsible for any domestic or foreign clean up or remediation of lands contaminated by

R-4 CIBC Credit Agreement dated June 30, 2020 (*cont'd*)

hazardous substances or for any other remedial or corrective action under any environmental laws; and (iv) each of the Borrower and its Subsidiaries has maintained all environmental and operating documents and records relating to its business and property in the manner and for the time periods required by any environmental laws and has never had conducted an environmental audit of its business or property.

(h) No representation or warranty made by the Borrower herein or in any other document furnished to CIBC from time to time contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they are made, not misleading. All projections and *pro forma* information delivered to CIBC from time to time by the Borrower were prepared in good faith based on assumptions believed by the Borrower to be reasonable at the time of delivery.

**6.2 Survival.** All representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the obtaining of amounts under any Credit, and the delivery of each Notice of Borrowing and the obtaining of any amount under any Credit shall constitute a reaffirmation on and as of such delivery date and such borrowing date, in each case by reference to the then-existing facts and circumstances, of all representations and warranties contained in this Agreement.

## 7. TERM LOANS

**7.1 Term Loan.** The following terms apply to the Term Loan:

(a) **Non-revolving Loan.** Unless otherwise stated in this Agreement, the Term Loan is non-revolving. This means that any principal repayment is not available to be re-borrowed, and permanently reduces the amount of the Term Loan.

(b) **Floating Rate Term Loan.** The Term Loan may have either (i) blended payments or (ii) payments of fixed principal amounts, plus interest, as described below:

(i) **Blended payments.** If the Term Loan has blended payments, the amount of the monthly payments is fixed for the term of such Loan, but the interest rate will vary with changes in the CIBC Prime Rate or the WSJ Prime Rate (as the case may be). If the CIBC Prime Rate or the WSJ Prime Rate during any month is lower than it was at the outset, a larger portion of the monthly payment will be allocated to principal and as a result such Loan may be repaid prior to its original maturity. If, however, the CIBC Prime Rate or the WSJ Prime Rate is higher than it was at the outset, the amount of principal that is repaid will be reduced, and as a result there may remain principal outstanding on the original maturity date.

(ii) **Payments of principal plus interest.** If the Term Loan has specified principal payments, in addition to interest, such principal payments are due on each specified payment date. The interest payment is also due on the same date, and will usually be a different amount each month due to the reducing balance of the Loan, the number of days in the month, and changes in the CIBC Prime Rate or the WSJ Prime Rate (as the case may be) during the month and from month to month.

R-4 CIBC Credit Agreement dated June 30, 2020 (*cont'd*)

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(c) **Prepayment.** Unless otherwise specified in this Agreement, the Term Loan cannot be prepaid within 24 months after the Closing Date without paying the applicable prepayment fee, namely:

- (i) 2% of the Term Loan if the repayment occurs within 12 months of the Closing Date;
- or
- (ii) 1% of the Term Loan if the repayment occurs within 24 months of the Closing Date.

## R-5 RDPRM Report for ChronoMétriq Inc.



Date, heure, minute de certification : **2021-10-25 09:32**

**Critère de recherche** Nom d'organisme : **ChronoMétriq Inc.**

**Critère de sélection** Nom d'organisme :  
**CHRONOMETRIQ INC**  
 Code Postal :  
**H3B4P9**

Fiche	Inscription	Date	h:min
001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION 20-0850335-0001	2020-08-26	13:56
	PRÉAVIS D'EXERCICE D'UN DROIT HYPOTHÉCAIRE 21-1150305-0001	2021-10-25	09:00
	CESSION DE RANG 20-1044771-0001	2020-10-09	09:00
	RECTIFICATION D'UNE INSCRIPTION 20-1008953-0001	2020-10-01	12:31
	CESSION DE RANG 20-0959101-0001	2020-09-22	09:09
	RECTIFICATION D'UNE INSCRIPTION 20-0950624-0002	2020-09-18	11:22

## R-5 RDPRM Report for ChronoMétriq Inc. (cont'd)



Date, heure, minute de certification : **2021-10-25 09:32**

**Critère de recherche** Nom d'organisme : ChronoMétriq Inc.

**Critère de sélection** Nom d'organisme : CHRONOMETRIQ INC Code Postal : H3B4P9

**Fiche 001 - Détail de l'inscription 1 (de 6)**

INSCRIPTION	DATE-HEURE-MINUTE	DATE EXTRÊME D'EFFET
20-0850335-0001	2020-08-26 13:56	2030-08-26
HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION		

**PARTIES**

**Titulaire**

CANADIAN IMPERIAL BANK OF COMMERCE  
1155 René-Lévesque Blvd. West, Suite 300, Montreal, Quebec H3B 4P9

**Titulaire**

BANQUE CANADIENNE IMPÉRIALE DE COMMERCE  
1155 René-Lévesque Blvd. West, Suite 300, Montreal, Quebec H3B 4P9

**Constituant**

CHRONOMÉTRIQ INC.  
4100-1396 Saint-Patrick Street, Montreal, Quebec H3B 4P9

**BIENS**

1. Any and all movable property of every nature and description, corporeal and incorporeal, present and future and wherever situate, including but without limitation, all Claims, Property in Stock, Equipment, Intellectual Property and Securities, present and future and all substitutions and replacements thereof and increases, additions and accessions thereto, and all proceeds, fruits and income in any form derived from any dealing with any of the foregoing (the whole being hereinafter called the "Collateral").

2. Without limiting the foregoing, the security hereby constituted also covers the following property:

- a) the proceeds of any sale, rental or other disposal of the Collateral, any claim resulting from such sale, rental or other disposal as well as any property acquired in replacement thereof;
- b) all of the Grantor's Contractual Rights, present and future;
- c) all insurance or expropriation indemnities payable with respect to the Collateral;
- d) all other rights, absolute or conditional, in respect of the Collateral and all fruits and revenues generated thereby; and
- e) all documents of title, records, invoices and accounts evidencing the Collateral or relating thereto.

**Definitions :**

"Bank" means Canadian Imperial Bank of Commerce / Banque Canadienne Impériale de Commerce.

"Claims" means, regardless of the debtors or the situs thereof, any and all claims, customer accounts, book debts, accounts receivable and any other amounts or property now or hereafter owing to the Grantor,

## R-5 RDPRM Report for ChronoMétriq Inc. (cont'd)

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either absolutely or conditionally, including all claims and indemnities payable under insurance policies covering the same, all deposits and credit balances with financial institutions, suppliers or others, all judgments, rights and accessories thereto, all security interests in support thereof and all books, papers, invoices, notes and data files evidencing, recording or supporting the same.

"Contractual Rights" means any and all rights, title and interest, present and future, of the Grantor in all contracts, leases, bids, offers, supply agreements and all other agreements of any nature and description relating to the Collateral, or relating to the enterprise and undertaking of the Grantor.

"Equipment" means tangible movable property such as machinery, logging and agricultural equipment, tractors, tools, rolling stock, furniture and fixtures, and all Contractual Rights, licences and other rights and records, files, charts, plans, drawings, specifications, manuals, documents and warranties relating thereto.

"Grantor" means ChronoMétriq Inc.

"Intellectual Property" means the enterprise of the Grantor and all of its trade names, trade marks, copyrights, designs, processes, know-how, goodwill, licences, franchises, permits, quotas, patents and other rights of intellectual and industrial property of any nature and description, and all pending applications pertaining thereto.

"Property in Stock" means, regardless of the situs thereof at any particular time, (a) all inventory of raw materials, goods in process, finished products and stock in trade of any nature and description, whether or not the same is held for let or hire, leasing, resale or otherwise, (b) all goods and materials used in or procured for the packaging thereof, (c) any such property held by third parties under let or hire, leasing, conditional sale, franchise, licence, consignment or other like contractual arrangements with its lawful owner, (d) any such property sold by the Grantor and later taken back for any reason, and (e) all amounts and proceeds paid or payable to or for the account of the Grantor as a result of the sale, lease or other dealings with any of the foregoing.

"Securities" means any and all deposits of money or precious metals, bonds, debentures, treasury bills, bankers' acceptances, bills of exchange, shares, stocks, warrants, options, units, participations, mutual funds and other securities and instruments of title of any nature and description, negotiable or not, including all manner of investments described in Section 1 of the Securities Act (Québec), all certificates and guaranteed investment certificates evidencing the same and all securities and security entitlements, as such terms are used in An Act respecting the transfer of securities and the establishment of security entitlements (Quebec).

### MENTIONS

#### Somme de l'hypothèque

\$6,900,000 with interest, but only on the first \$6,000,000, at the rate of 25% per annum.

#### Référence à l'acte constitutif

Forme de l'acte : Sous seing privé  
Date : 2020-08-26  
Lieu : Montreal, Quebec

#### Autres mentions :

## R-5 RDPRM Report for ChronoMétriq Inc. (cont'd)

The amount of the hypothec above includes an additional hypothec in the amount of \$900,000.

The Grantor is hereby authorized to collect the Claims which form part of the Collateral so long as the Bank has not withdrawn such authorization and provided that the Grantor deposits with the Bank all proceeds of such collection unless otherwise permitted by the Bank. Upon the Bank withdrawing its authorization to the Grantor to collect the Claims, the Bank may begin collecting the Claims and it shall be entitled to a reasonable commission which it may deduct from any amount so recovered.

**REMARQUES**

INSCRIPTION	DATE-HEURE-MINUTE
20-0950624-0002	2020-09-18 11:22
RECTIFICATION D'UNE INSCRIPTION	
20-0959101-0001	2020-09-22 09:09
CESSION DE RANG	
20-1008953-0001	2020-10-01 12:31
RECTIFICATION D'UNE INSCRIPTION	
20-1044771-0001	2020-10-09 09:00
CESSION DE RANG	
21-1150305-0001	2021-10-25 09:00
PRÉAVIS D'EXERCICE D'UN DROIT HYPOTHÉCAIRE	

**AVIS D'ADRESSE**

N° 014722

## R-5 RDPRM Report for ChronoMétriq Inc. (cont'd)



Date, heure, minute de certification : 2021-10-25 09:32

**Critère de recherche** Nom d'organisme : ChronoMétriq Inc.

**Critère de sélection** Nom d'organisme : CHRONOMETRIQ INC Code Postal : H3B4P9

**Fiche 001 - Détail de l'inscription 2 (de 6)**

INSCRIPTION	DATE-HEURE-MINUTE	
21-1150305-0001	2021-10-25 09:00	
PRÉAVIS D'EXERCICE D'UN DROIT HYPOTHÉCAIRE		
<b>PARTIES</b>		
<b>Titulaire</b>		
CANADIAN IMPERIAL BANK OF COMMERCE		
40 King Street West, Suite 5702, Toronto, Ontario		M5H 3Y2
<b>Titulaire</b>		
CANADIAN IMPERIAL BANK OF COMMERCE		
1155 René-Lévesque Boulevard West, Suite 300, Montreal, Quebec		H3B 4P9
<b>Constituant</b>		
CHRONOMÉTRIQ INC.		
100-1396 rue Saint-Patrick, Montréal, Québec		H3K 2C8

**BIENS**

The Hypothec affects the following property:

1. Any and all movable property of every nature and description, corporeal and incorporeal, present and future and wherever situate, including but without limitation, all Claims, Property in Stock, Equipment, Intellectual Property and Securities, present and future.
2. Without limiting the foregoing, the security hereby constituted also covers the following property:
  - a) the proceeds of any sale, rental or other disposal of the Collateral, any claim resulting from such sale, rental or other disposal as well as any property acquired in replacement thereof;
  - b) all of the Grantor's Contractual Rights, present and future;
  - c) all insurance or expropriation indemnities payable with respect to the Collateral;
  - d) all other rights, absolute or conditional, in respect of the Collateral and all fruits and revenues generated thereby; and
  - e) all documents of title, records, invoices and accounts evidencing the Collateral or relating thereto (Hereinafter collectively, the "Hypothecated Property").

**MENTIONS****Droit dont l'exercice est projeté :**

Vente sous contrôle de justice

**Référence à l'inscription visée**

NUMÉRO	NATURE
20-0850335-0001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION

R-5 RDPRM Report for ChronoMétriq Inc. (*cont'd*)

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**Référence à l'acte de préavis**

Forme de l'acte : Sous seing privé

Date : 2021-10-15

Lieu : Toronto, Ontario

## R-5 RDPRM Report for ChronoMétriq Inc. (cont'd)



Date, heure, minute de certification : 2021-10-25 09:32

Critère de recherche Nom d'organisme : ChronoMétriq Inc.

Critère de sélection Nom d'organisme : CHRONOMETRIQ INC Code Postal : H3B4P9

Fiche 001 - Détail de l'inscription 3 (de 6)

INSCRIPTION	DATE-HEURE-MINUTE	
20-1044771-0001	2020-10-09 09:00	
CESSION DE RANG		
<b>PARTIES</b>		
<b>Cédant</b>		
INVESTISSEMENT QUÉBEC		
600, rue de La Gauchetière Ouest, bureau 1500, Montréal (Québec)		H3B 4L8
<b>Cessionnaire</b>		
BANQUE CANADIENNE IMPÉRIALE DE COMMERCE		
1155, boul. René-Lévesque ouest, bureau 300, Montréal (Québec)		H3B 4P9
<b>Constituant</b>		
CHRONOMÉTRIQ INC.		
1396, rue Saint-Patrick, bureau 100, Montréal (Québec)		H3K 2C8

**MENTIONS****Référence à l'inscription visée**

NUMÉRO	NATURE
13-1083051-0001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION
15-0819556-0001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION
16-1223581-0001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION
18-0276200-0002	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION
18-0888911-0001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION
18-0888911-0002	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION
20-0850335-0001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION

**Référence à l'acte constitutif**

Forme de l'acte : Sous seing privé

Date : 2020-09-30

Lieu : Saint-Laurent

**REMARQUES**

Inscriptions de radiation - Quant à l'inscription visée

20-1108815-0001	2020-10-27 09:00	Radiation quant à	13-1083051-0001
20-1108815-0001	2020-10-27 09:00	Radiation quant à	15-0819556-0001
20-1108815-0001	2020-10-27 09:00	Radiation quant à	16-1223581-0001
20-1108815-0001	2020-10-27 09:00	Radiation quant à	18-0888911-0001
20-1108815-0001	2020-10-27 09:00	Radiation quant à	18-0888911-0002

## R-5 RDPRM Report for ChronoMétriq Inc. (cont'd)



Date, heure, minute de certification : 2021-10-25 09:32

**Critère de recherche** Nom d'organisme : ChronoMétriq Inc.

**Critère de sélection** Nom d'organisme : CHRONOMETRIQ INC Code Postal : H3B4P9

**Fiche 001 - Détail de l'inscription 4 (de 6)**

INSCRIPTION	DATE-HEURE-MINUTE
20-1008953-0001	2020-10-01 12:31
RECTIFICATION D'UNE INSCRIPTION	

**PARTIES**

**Titulaire**

CANADIAN IMPERIAL BANK OF COMMERCE  
1155 René-Lévesque Blvd. West, Suite 300, Montreal, Quebec H3B 4P9

**Titulaire**

BANQUE CANADIENNE IMPÉRIALE DE COMMERCE  
1155 René-Lévesque Blvd. West, Suite 300, Montreal, Quebec H3B 4P9

**Constituant**

CHRONOMÉTRIQ INC.  
100-1396 Saint-Patrick Street, Montreal, Quebec H3K 2C8

**MENTIONS**

**Référence à l'inscription visée**

NUMÉRO	NATURE
20-0850335-0001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION

**Objet de la rectification :**

The postal code in the address of the "Constituant" CHRONOMÉTRIQ INC. should be H3K 2C8 instead of H3B 4P9.

**AVIS D'ADRESSE**

N° 014722

## R-5 RDPRM Report for ChronoMétriq Inc. (cont'd)



Date, heure, minute de certification : **2021-10-25 09:32**

**Critère de recherche** Nom d'organisme : ChronoMétriq Inc.

**Critère de sélection** Nom d'organisme : CHRONOMETRIQ INC Code Postal : H3B4P9

**Fiche 001 - Détail de l'inscription 5 (de 6)**

INSCRIPTION	DATE-HEURE-MINUTE	
20-0959101-0001	2020-09-22 09:09	
CESSION DE RANG		
<b>PARTIES</b>		
<b>Cédant</b>		
BANQUE DE DÉVELOPPEMENT DU CANADA 5, Place Ville-Marie, Montréal (Québec)		H3B 5E7
<b>Cessionnaire</b>		
BANQUE CANADIENNE IMPÉRIALE DE COMMERCE 1155, boul. René-Lévesque ouest, bureau 300, Montréal (Québec)		H3B 4P9
<b>Constituant</b>		
CHRONOMÉTRIQ INC. 1396, rue Saint-Patrick, bureau 100, Montréal (Québec)		H3K 2C8

**MENTIONS**

**Référence à l'inscription visée**

NUMÉRO	NATURE
18-0276200-0001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION
20-0850335-0001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION

**Référence à l'acte constitutif**

Forme de l'acte : Sous seing privé

Date : 2020-09-16

Lieu : Montréal

## R-5 RDPRM Report for ChronoMétriq Inc. (cont'd)



Date, heure, minute de certification : **2021-10-25 09:32**

**Critère de recherche** Nom d'organisme : ChronoMétriq Inc.

**Critère de sélection** Nom d'organisme : CHRONOMETRIQ INC Code Postal : H3B4P9

**Fiche 001 - Détail de l'inscription 6 (de 6)**

INSCRIPTION	DATE-HEURE-MINUTE
20-0950624-0002	2020-09-18 11:22

RECTIFICATION D'UNE INSCRIPTION

**PARTIES**

**Titulaire**

CANADIAN IMPERIAL BANK OF COMMERCE  
1155 René-Lévesque Blvd. West, Suite 300, Montreal, Quebec H3B 4P9

**Titulaire**

BANQUE CANADIENNE IMPÉRIALE DE COMMERCE  
1155 René-Lévesque Blvd. West, Suite 300, Montreal, Quebec H3B 4P9

**Constituant**

CHRONOMÉTRIQ INC.  
100-1396 Saint-Patrick Street, Montreal, Quebec H3B 4P9

**MENTIONS**

**Référence à l'inscription visée**

NUMÉRO	NATURE
20-0850335-0001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION

**Objet de la rectification :**

The address of the "Constituant" CHRONOMÉTRIQ INC. should be 100-1396 Saint-Patrick Street, Montreal, Quebec, H3B 4P9 instead of 4100-1396 Saint-Patrick Street, Montreal, Québec, H3B 4P9.

**AVIS D'ADRESSE**

N° 014722

## R-6 RDPRM Report for Heath Myself Innovations Inc.



Date, heure, minute de certification : **2021-10-25 09:00**

**Critère de recherche** Nom d'organisme : **Health Myself Innovations Inc.**

**Critère de sélection** Nom d'organisme :

**HEALTH MYSELF INNOVATIONS INC**

Code Postal :

**H3B4P9**

Fiche	Inscription	Date	h:min
001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION 20-0950624-0001	2020-09-18	11:22
	RECTIFICATION D'UNE INSCRIPTION 20-1008953-0002	2020-10-01	12:31

## R-6 RDPRM Report for Heath Myself Innovations Inc. (cont'd)



Date, heure, minute de certification : **2021-10-25 09:00**

**Critère de recherche** Nom d'organisme : Health Myself Innovations Inc.

**Critère de sélection** Nom d'organisme : HEALTH MYSELF INNOVA... Code Postal : H3B4P9

**Fiche 001 - Détail de l'inscription 1 (de 2)**

INSCRIPTION	DATE-HEURE-MINUTE	DATE EXTRÊME D'EFFET
20-0950624-0001	2020-09-18 11:22	2030-09-17
HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION		

**PARTIES**

**Titulaire**

CANADIAN IMPERIAL BANK OF COMMERCE

1155 René-Lévesque Blvd. West, Suite 300, Montreal, Quebec

H3B 4P9

**Titulaire**

BANQUE CANADIENNE IMPÉRIALE DE COMMERCE

1155 René-Lévesque Blvd. West, Suite 300, Montreal, Quebec

H3B 4P9

**Constituant**

HEALTH MYSELF INNOVATIONS INC.

100-1396 Saint-Patrick Street, Montreal, Quebec

H3B 4P9

**BIENS**

1. Any and all movable property of every nature and description, corporeal and incorporeal, present and future and wherever situate, including but without limitation, all Claims, Property in Stock, Equipment, Intellectual Property and Securities, present and future and all substitutions and replacements thereof and increases, additions and accessions thereto, and all proceeds, fruits and income in any form derived from any dealing with any of the foregoing (the whole being hereinafter called the "Collateral").

2. Without limiting the foregoing, the security hereby constituted also covers the following property:

- a) the proceeds of any sale, rental or other disposal of the Collateral, any claim resulting from such sale, rental or other disposal as well as any property acquired in replacement thereof;
- b) all of the Grantor's Contractual Rights, present and future;
- c) all insurance or expropriation indemnities payable with respect to the Collateral;
- d) all other rights, absolute or conditional, in respect of the Collateral and all fruits and revenues generated thereby; and
- e) all documents of title, records, invoices and accounts evidencing the Collateral or relating thereto.

**Definitions :**

"Bank" means Canadian Imperial Bank of Commerce / Banque Canadienne Impériale de Commerce.

"Claims" means, regardless of the debtors or the situs thereof, any and all claims, customer accounts, book debts, accounts receivable and any other amounts or property now or hereafter owing to the Grantor,

**R-6 RDPRM Report for Heath Myself Innovations Inc. (cont'd)**

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either absolutely or conditionally, including all claims and indemnities payable under insurance policies covering the same, all deposits and credit balances with financial institutions, suppliers or others, all judgments, rights and accessories thereto, all security interests in support thereof and all books, papers, invoices, notes and data files evidencing, recording or supporting the same.

"Contractual Rights" means any and all rights, title and interest, present and future, of the Grantor in all contracts, leases, bids, offers, supply agreements and all other agreements of any nature and description relating to the Collateral, or relating to the enterprise and undertaking of the Grantor.

"Equipment" means tangible movable property such as machinery, logging and agricultural equipment, tractors, tools, rolling stock, furniture and fixtures, and all Contractual Rights, licences and other rights and records, files, charts, plans, drawings, specifications, manuals, documents and warranties relating thereto.

"Grantor" means Health Myself Innovations Inc.

"Intellectual Property" means the enterprise of the Grantor and all of its trade names, trade marks, copyrights, designs, processes, know-how, goodwill, licences, franchises, permits, quotas, patents and other rights of intellectual and industrial property of any nature and description, and all pending applications pertaining thereto.

"Property in Stock" means, regardless of the situs thereof at any particular time, (a) all inventory of raw materials, goods in process, finished products and stock in trade of any nature and description, whether or not the same is held for let or hire, leasing, resale or otherwise, (b) all goods and materials used in or procured for the packaging thereof, (c) any such property held by third parties under let or hire, leasing, conditional sale, franchise, licence, consignment or other like contractual arrangements with its lawful owner, (d) any such property sold by the Grantor and later taken back for any reason, and (e) all amounts and proceeds paid or payable to or for the account of the Grantor as a result of the sale, lease or other dealings with any of the foregoing.

"Securities" means any and all deposits of money or precious metals, bonds, debentures, treasury bills, bankers' acceptances, bills of exchange, shares, stocks, warrants, options, units, participations, mutual funds and other securities and instruments of title of any nature and description, negotiable or not, including all manner of investments described in Section 1 of the Securities Act (Québec), all certificates and guaranteed investment certificates evidencing the same and all securities and security entitlements, as such terms are used in An Act respecting the transfer of securities and the establishment of security entitlements (Quebec).

**MENTIONS****Somme de l'hypothèque**

\$6,900,000 with interest, but only on the first \$6,000,000, at the rate of 25% per annum.

**Référence à l'acte constitutif**

Forme de l'acte : Sous seing privé  
Date : 2020-09-17  
Lieu : Montreal, Quebec

**Autres mentions :**

R-6 RDPRM Report for Heath Myself Innovations Inc. (cont'd)

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The amount of the hypothec above includes an additional hypothec in the amount of \$900,000.

The Grantor is hereby authorized to collect the Claims which form part of the Collateral so long as the Bank has not withdrawn such authorization and provided that the Grantor deposits with the Bank all proceeds of such collection unless otherwise permitted by the Bank. Upon the Bank withdrawing its authorization to the Grantor to collect the Claims, the Bank may begin collecting the Claims and it shall be entitled to a reasonable commission which it may deduct from any amount so recovered.

**REMARQUES**

INSCRIPTION

20-1008953-0002

RECTIFICATION D'UNE INSCRIPTION

DATE-HEURE-MINUTE

2020-10-01 12:31

**AVIS D'ADRESSE**

N° 014722

## R-6 RDPRM Report for Heath Myself Innovations Inc. (cont'd)



Date, heure, minute de certification : **2021-10-25 09:00**

**Critère de recherche** Nom d'organisme : Health Myself Innovations Inc.

**Critère de sélection** Nom d'organisme : HEALTH MYSELF INNOVA... Code Postal : H3B4P9

**Fiche 001 - Détail de l'inscription 2 (de 2)**

INSCRIPTION	DATE-HEURE-MINUTE
20-1008953-0002	2020-10-01 12:31
RECTIFICATION D'UNE INSCRIPTION	

**PARTIES**

**Titulaire**

CANADIAN IMPERIAL BANK OF COMMERCE  
1155 René-Lévesque Blvd. West, Suite 300, Montreal, Quebec H3B 4P9

**Titulaire**

BANQUE CANADIENNE IMPÉRIALE DE COMMERCE  
1155 René-Lévesque Blvd. West, Suite 300, Montreal, Quebec H3B 4P9

**Constituant**

HEALTH MYSELF INNOVATIONS INC.  
100-1396 Saint-Patrick Street, Montreal, Quebec H3K 2C8

**MENTIONS**

**Référence à l'inscription visée**

NUMÉRO	NATURE
20-0950624-0001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION

**Objet de la rectification :**

The postal code in the address of the "Constituant" HEALTH MYSELF INNOVATIONS INC. should be H3K 2C8 instead of H3B 4P9.

**AVIS D'ADRESSE**

N° 014722

R-7 CIBC Notice of Default dated August 20, 2021

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**Canadian Imperial Bank of Commerce**  
CIBC Innovation Banking  
1155 Rene-Levesque West, Suite 300  
Montreal QC H3B 4P9

August 20, 2021

CHRONOMETRIQ INC.  
100-1396 rue Saint-Patrick  
Montréal, Québec H3K 2C8

Dear Mr. Lalande:

**Re: Notice of an Event of Default and Reservation of Rights**

Reference is made to that certain credit agreement dated as of June 30, 2020 (as amended or otherwise modified from time to time, the "**Credit Agreement**") among, *inter alios*, ChronoMetriq Inc., as borrower (the "**Borrower**") and Canadian Imperial Bank of Commerce, as lender (the "**Lender**"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement.

Pursuant to paragraph (b) of the "Financial Covenants" section of the Credit Agreement, at all times when the Borrower has a negative EBITDA, at the end of each trailing sixth-month period, the Available Cash of the Borrower on the last day of such period must be greater than the Adjusted EBITDA for such period. The certificate of compliance that the Borrower delivered to us on July 28, 2021 indicated that the Available Cash was only 1,606,070\$, with a negative EBITDA of 3,283,105\$. Please be advised this constitutes an Event of Default under paragraph (b) of the "Financial Covenants" section of the Credit Agreement (the "**Event of Default (Available Cash)**").

As you know, if an Event of Default occurs and is continuing, the Credit Agreement provides that the Lender may pursue any available remedy to collect the payment of principal, interest, fees and other amounts on the loans or to enforce its rights under the Credit Agreement, the Guarantee and Security and the other operative documents thereunder (the "**Operative Documents**"). We would also like to bring to your attention that we froze the Revolver so that no drawdowns can currently be made thereunder.

Please be advised that, at this time, this notice is not a notice of demand or acceleration against the Borrower and neither accelerates nor purports to accelerate the Borrower's obligations under the Credit Agreement.

The Lender hereby reserves all of its rights, powers, privileges and remedies under the Credit Agreement, the Guarantee, the Security, the other Operative Documents and any applicable law as a result of the occurrence and the continuance of the Event of Default (Available Cash) and any other default or Event of Default that is now in existence or hereafter occurs. For certainty, the Lender has not waived, and has no intention of waiving at this time, any defaults or any Events of Default (including, without limitation, the Event of Default (Available Cash)) that exist on the date hereof or that may occur

R-7 CIBC Notice of Default dated August 20, 2021 (*cont'd*)

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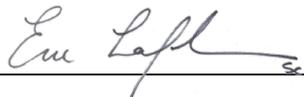
-2-

after the date hereof, or any of its rights and remedies in respect thereof. At no time shall any prior or subsequent course of conduct by the Lender directly or indirectly limit, impair or otherwise adversely affect any of the Lender's rights, powers, privileges and remedies under any Operative Document or obligate the Lender to agree to, or to negotiate or consider an agreement to, any waiver of any obligation, default or Event of Default under any of the Operative Documents or any amendment to any term or condition of any of the Operative Documents. The Lender has not agreed to forbear with respect to any of its rights or remedies relating to any defaults or any Events of Default that are continuing on the date hereof or that may occur after the date hereof. Nothing contained herein, and no delay on the part of the Lender in exercising any such rights or remedies, shall or may be construed as a waiver of any such rights or remedies.

Following the receipt of this letter, we ask you to reach out to us or on before August 24<sup>th</sup> 2021 in order to further discuss the financial situation of the Borrower and any action currently contemplated by the Borrower to improve its financial situation.

Yours truly,

**CANADIAN IMPERIAL BANK OF  
COMMERCE**

Per :  \_\_\_\_\_

Eric Laflamme  
Authorized Signatory

and Per :  \_\_\_\_\_

Elie Bou Daher  
Authorized Signatory

CC: Yan-Raymond Lalande  
Remi Richard  
Elodie Dupuy  
Paul Lepage

R-8 Letter of Demand dated October 15, 2021



REPLY TO: HARVEY G. CHAITON  
FILE NO.: 68463  
DIRECT: 416-218-1129  
FAX: 416-218-1129  
EMAIL: harvey@chaitons.com

**PRIVATE & CONFIDENTIAL**

October 18, 2021

**VIA EMAIL**

Health Myself Innovations Inc.  
1396 rue Saint-Patrick, Suite 100  
Montréal, QC H3K 2C8

Attention: James Feldkamp

**Re: *Indebtedness of ChronoMétriq Inc. (the "Borrower") to Canadian Imperial Bank of Commerce ("CIBC")***

Dear Sir,

We are the lawyers for CIBC.

Please find enclosed a copy of our letter to the Borrower dated October 15, 2021 (without enclosures) demanding payment of the Borrower's indebtedness to CIBC.

Payment of the Borrower's indebtedness to CIBC was guaranteed by Health Myself Innovations Inc. (the "**Company**") pursuant to an unlimited guarantee dated August 26, 2020 (the "**Guarantee**").

The Company's liability under the Guarantee is payable on demand and is secured by, among other things, a security agreement dated August 26, 2020 and a movable hypothec dated September 18, 2020.

On behalf of CIBC, we hereby demand payment of the Company's indebtedness to CIBC under the Guarantee. Payment of the total amount owing together with additional interest accrued and legal costs actually incurred to the date of payment is to be made forthwith.

Enclosed please find our client's Notice of Intention to Enforce Security, which is served upon you pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (Canada). Also please find enclosed our client's Prior Notice of the Exercise of a Hypothecary Right, which is served upon you pursuant to Article 2757 and following of the *Civil Code of Quebec*.

Yours truly,  
CHAITONS LLP

A handwritten signature in black ink, appearing to read "Harvey G. Chaiton".

Harvey G. Chaiton  
PARTNER  
Encl.

Cc: Canadian Imperial Bank of Commerce

## R-8 Letter of Demand dated October 15, 2021 (cont'd)



REPLY TO: HARVEY G. CHAITON  
 FILE NO.: 68463  
 DIRECT: 416-218-1129  
 FAX: 416-218-1129  
 EMAIL: harvey@chaitons.com

**PRIVATE & CONFIDENTIAL**

October 15, 2021

**VIA REGULAR MAIL, REGISTERED MAIL AND EMAIL**

ChronoMétriq Inc.  
 100-1396 rue Saint-Patrick  
 Montréal, Québec H3K 2C8

Attention: James Feldkamp and Yan Raymond Lalande, co-CEOs

**Re: *Indebtedness of ChronoMétriq Inc. (the "Borrower") to Canadian Imperial Bank of Commerce ("CIBC")***

Dear Sirs,

We are the lawyers for CIBC.

Pursuant to a credit agreement dated June 30, 2020 and accepted by the Borrower on August 31, 2020, as amended (the "**Credit Agreement**"), CIBC made certain credit facilities available to the Borrower, including a Term Loan of \$3.0 million and a Demand Visa Credit Facility with credit limits of CDN\$100,000 and US\$100,000. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Credit Agreement.

According to CIBC's records, the outstanding indebtedness owed by the Borrower as of October 14, 2021 was CDN\$3,021,356.45, calculated as follows:

Term Loan Principal:	\$2,916,666.67
Term Loan Accrued Interest:	\$ 4,708.22
CDN Demand Visa Credit Facility:	\$ 99,981.56

Interest continues to accrue at the applicable rates under the Credit Agreement. Payment of the indebtedness owed to CIBC is secured by, among other things, a movable hypothec dated August 26, 2020.

We are advised by CIBC that the Borrower is insolvent and is indebted to Canada Revenue Agency and Revenu Québec in an aggregate amount exceeding \$3.2 million for collected and unremitted employee source deductions and/or HST. Such events constitute Events of Default under the Credit Agreement.

As a result of the Events of Default, CIBC may immediately demand repayment of the Term Loan. The Demand Visa Credit Facility is repayable on demand.

Accordingly, on behalf of CIBC, we hereby demand payment of the Borrower's indebtedness to CIBC.

Unless payment of the aforesaid sum of CDN\$3,021,356.45, together with further amounts drawn or charged to the Demand Visa Credit Facility, additional interest accrued and legal costs actually incurred to the date of payment are paid forthwith, CIBC shall take such steps as it deems necessary or desirable to recover payment of the Borrower's indebtedness in full, without further demand upon or notice to the Borrower.

R-8 Letter of Demand dated October 15, 2021 (*cont'd*)

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**Chaitons**<sup>LLP</sup>

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Enclosed please find our client's Notice of Intention to Enforce Security, which is served upon you pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (Canada). Also please find enclosed our client's Prior Notice of the Exercise of a Hypothecary Right, which is served upon you pursuant to Article 2757 and following of the *Civil Code of Quebec*.

Yours truly,  
CHAITONS LLP



Harvey G. Chaiton  
PARTNER  
Encl.

Cc: Canadian Imperial Bank of Commerce  
Health Myself Innovations Inc.  
CMetric Inc.

R-8 Letter of Demand dated October 15, 2021 (*cont'd*)

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**NOTICE OF INTENTION TO ENFORCE A SECURITY**  
(given pursuant to section 244 of the *Bankruptcy and Insolvency Act*)

To: **HEALTH MYSELF INNOVATIONS INC.**, an insolvent person

Take notice that:

1. **CANADIAN IMPERIAL BANK OF COMMERCE**, a secured creditor, intends to enforce its security on all of the present and after-acquired property of Health Myself Innovations Inc. (the "**Company**").
2. The security that is to be enforced includes a general security agreement dated August 26, 2020 and a movable hypothec dated September 18, 2020 (collectively, the "**Security**").
3. The indebtedness secured by the Security as at the close of business on October 14, 2021 is CDN\$3,021,356.45, plus costs, with respect to credit facilities under a credit agreement dated June 30, 2020 and accepted by the Company on August 31, 2020, as amended.
4. The secured creditor will not have the right to enforce the Security until after the expiry of the 10-day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at Toronto, this 18<sup>th</sup> day of October, 2021.

**CANADIAN IMPERIAL BANK OF  
COMMERCE,**  
by its lawyers, Chaitons LLP



Per:

\_\_\_\_\_  
Harvey Chaiton

R-8 Letter of Demand dated October 15, 2021 (*cont'd*)

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**PRIOR NOTICE OF THE EXERCISE OF A HYPOTHECARY RIGHT**  
(Art. 2757 and following of the *Civil Code of Quebec*)

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**Date and Place**

October 18, 2021, in Toronto, Province of Ontario.

**Nature of the Notice and Recourse to be Exercised**

Prior Notice of exercise of a hypothecary right pursuant to articles 2757 and following of the *Civil Code of Quebec*, namely the right of the Creditor to proceed with the sale under judicial authority of the movable property hereinafter described.

**Person Giving Notice**

**CANADIAN IMPERIAL BANK OF COMMERCE**, a legal person having business establishments at 40 King Street West, Suite 5702, Toronto, Ontario, M5H 3Y2 and at 1155 René-Lévesque Boulevard West, Suite 300, Montreal, Quebec, H3B 4P9, herein represented by its attorney, Mr. Sam Rappos (Hereinafter the “**Creditor**”).

**Persons Receiving Notice**

**HEALTH MYSELF INNOVATIONS INC.**, a legal person having its registered office at 100-1396 rue Saint-Patrick, Montréal, Québec H3K 2C8 (Hereinafter the “**Debtor**”).

**Qualification and Registration Number of the Hypothecary Rights**

The Creditor’s rights result from a conventional hypothec without delivery pursuant to the deed of Movable Hypothec executed on September 18, 2020, registered at the Register of Personal and Movable Real Rights (“**RPMRR**”) on September 18, 2020 under number 20-0950624-0001 and rectified on October 1, 2020 under number 20-1008953-0002 (Hereinafter, the “**Hypothec**”).

Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the credit agreement dated June 30, 2020 and accepted by the Debtor on August 31, 2020, as amended (the “**Credit Agreement**”), the Guarantee dated August 26, 2020 (the “**Guarantee**”), or the Hypothec.

R-8 Letter of Demand dated October 15, 2021 (*cont'd*)

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**Description of the Hypothecated Property**

The Hypothec affects the following property:

1. Any and all movable property of every nature and description, corporeal and incorporeal, present and future and wherever situate, including but without limitation, all Claims, Property in Stock, Equipment, Intellectual Property and Securities, present and future.
2. Without limiting the foregoing, the security hereby constituted also covers the following property:
  - a) the proceeds of any sale, rental or other disposal of the Collateral, any claim resulting from such sale, rental or other disposal as well as any property acquired in replacement thereof;
  - b) all of the Grantor's Contractual Rights, present and future;
  - c) all insurance or expropriation indemnities payable with respect to the Collateral;
  - d) all other rights, absolute or conditional, in respect of the Collateral and all fruits and revenues generated thereby; and
  - e) all documents of title, records, invoices and accounts evidencing the Collateral or relating thereto (Hereinafter collectively, the “**Hypothecated Property**”).

**Claim in Capital and Interest**

The Hypothec secures the payment of all indebtedness and the fulfillment of all present or future, direct or indirect, obligations of the Debtor to the Creditor, including, without limitation, pursuant to the Guarantee. The outstanding indebtedness of the Debtor to the Creditor under the Guarantee, in principal and interest, calculated as at October 14, 2021, is CDN\$3,021,356.45, calculated as follows:

Term Loan Principal:	\$2,916,666.67
Term Loan Accrued Interest:	\$ 4,708.22
CDN Demand Visa Credit Facility:	\$ 99,981.56

Interest continues to accrue at the applicable rates under the Credit Agreement.

R-8 Letter of Demand dated October 15, 2021 (*cont'd*)

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**Description of the Defaults of the Debtor**

The sums owed by the Debtor to the Creditor are repayable on demand under the Guarantee. By letter dated October 18, 2021, the Creditor has demanded payment of the Debtor's indebtedness to the Creditor. Consequently, to remedy its default the Debtor must pay to the Creditor the full balance owed under the Guarantee, in principal, interest, and costs (Hereinafter the "**Default**").

**Call to Surrender the Hypothecated Property**

Consequently, the Debtor is hereby called upon to surrender the Hypothecated Property described in the present Notice within twenty (20) days from the date of publication of the present Notice with the *Registre des droits personnels et réels mobiliers* of the Province of Quebec so that the aforementioned Hypothecated Property may be sold under judicial authority.

Nonetheless, the Debtor or any third party may remedy the default at any time prior to the Hypothecated Property having been sold under judicial authority.

This Notice is given without prejudice and without forgoing or waiving the Creditor's right to execute any and all other recourses permitted by law.

**CANADIAN IMPERIAL BANK OF COMMERCE**, by its  
attorney, duly authorized



Per: \_\_\_\_\_  
Sam RAPPOS, lawyer  
**CHAITONS LLP**  
5000 Yonge Street, 10<sup>th</sup> floor  
Toronto, ON M2N 7E9

R-9 Forbearance Agreement dated October 22, 2021

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**FORBEARANCE AGREEMENT**

**THIS AGREEMENT** is made as of the 22<sup>nd</sup> day of October, 2021,

**BETWEEN:**

**CANADIAN IMPERIAL BANK OF COMMERCE**  
(“CIBC” or the “Bank”)

– and –

**CHRONOMÉTRIQU INC.**  
(the “Borrower”)

– and –

**HEALTH MYSELF INNOVATIONS INC.**  
(“HMI”)

– and –

**CMETRIC INC.**  
(“CMetric”)

**RECITALS:**

- A. Pursuant to a credit agreement dated June 30, 2020 and accepted by the Borrower, HMI and CMetric (collectively, the “**Obligors**”) on August 31, 2020, as amended (the “**Credit Agreement**”), the Bank made certain credit facilities available to the Borrower.
- B. The Obligors have executed and delivered to the Bank the agreements described in **Schedule “A”** attached hereto as security for the indebtedness and obligations owed by the Obligors to the Bank (collectively, the “**Security**”).
- C. The Borrower is in default of its obligations to the Bank under the Credit Agreement.
- D. By letter dated October 15, 2021, the Bank demanded payment of the Borrower’s indebtedness, liabilities and obligations to CIBC and issued a Notice of Intention to Enforce Security (“**NITES**”) pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and issued a Prior Notice of the Exercise of a Hypothecary Right pursuant to Article 2757 and following of the *Civil Code of Quebec* (the “**Prior Notice**”).
- E. By letters dated October 18, 2021, the Bank demanded payment of HMI’s and CMetric’s (collectively, the “**Guarantors**”) respective indebtedness, liabilities and obligations to

R-9 Forbearance Agreement dated October 22, 2021 (*cont'd*)

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CIBC and issued NITES pursuant to section 244 of the BIA. The Bank also issued a Prior Notice to HMI.

- F. The Borrower and HMI (collectively, the “**Applicants**”) have advised the Bank that they intend to file a notice of intention to make a proposal (the “**NOI**”) under the *Bankruptcy and Insolvency Act* (the “**BIA**”) (the “**BIA Proceedings**”) and to make an application to the Commercial Division of the Québec Superior Court of the District of Montréal (the “**Court**”) for an order granting the following Court-ordered charges (collectively, the “**BIA Priority Charges**”) (i) an administrative charge in an amount of \$200,000, (ii) a debtor-in-possession (“**DIP**”) interim financing charge in an amount of \$1,000,000, and (iii) a directors and officers charge in the amount of \$250,000, each of which ranks or will rank in priority to the Security (the NOI, the BIA Proceedings, the granting of the Order, the granting of the BIA Priority Charges and any other circumstance or event that is a default or event of default under the Credit Agreement and Security arising solely as a result of compliance with the Order, collectively, the “**BIA Events of Default**”).
- F. In addition, there are a number of currently existing and continuing defaults under the Credit Agreement and the Security (all defaults and events of default under the Credit Agreement and the Security existing on the date hereof, the “**Existing Events of Default**”).
- G. At the request of the Obligors, the Bank confirms that it will provide DIP financing to the Applicants and will not object to the issuance of the Order under the BIA and will forbear from enforcing its Security, subject to and in accordance with the terms of this Forbearance Agreement (the “**Agreement**”).

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the parties agree as follows:

#### ARTICLE 1 - INTERPRETATION

- 1.1 **Definitions.** In this Agreement, unless the context otherwise requires, all capitalized terms defined in the Credit Agreement and the Security and not otherwise defined herein shall have the meanings ascribed to such terms in the Credit Agreement and the Security, as applicable.
- 1.2 **Gender and Number.** Words importing the singular include the plural and vice versa and words importing gender include all genders.
- 1.3 **Time.** Time is of the essence in the performance of the Obligors’ obligations.
- 1.4 **Severability.** Each of the provisions contained in this Agreement is distinct and severable, and a declaration of invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Agreement.

R-9 Forbearance Agreement dated October 22, 2021 (*cont'd*)

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- 1.5 **Headings.** The division of this Agreement into articles, sections and clauses, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 1.6 **Entire Agreement.** This Agreement, the Credit Agreement and the Security together with the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understanding or other agreements, oral or written, express, implied or collateral between the parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.
- 1.7 **Governing Law.** This Agreement shall be construed in accordance with the laws of Ontario and the laws of Canada applicable therein.
- 1.8 **Conflicts.** If there is any inconsistency or conflict between the terms of this Agreement and the terms of the Credit Agreement and the Security or any other agreement executed in connection therewith or herewith, the provisions of this Agreement shall prevail to the extent of the inconsistency.

**ARTICLE 2 - ACKNOWLEDGEMENTS**

- 2.1 **Recitals.** The parties hereto acknowledge and agree that each of the foregoing recitals is true and accurate both in substance and in fact.
- 2.2 **Indebtedness.** The Borrower acknowledges that as of October 21, 2021, the amount owing to the Bank under the Credit Agreement and secured by the Security is \$2,923,724.20 in principal and interest (together with all additional accrued interest, fees, costs, and other amounts payable under the Credit Agreement and the Security, the “**Indebtedness**”). The Borrower confirms that the Indebtedness is unconditionally owing to the Bank, it does not dispute that it is liable to pay the Indebtedness to the Bank on any ground whatsoever, it has no claim, demand, setoff or counterclaim against the Bank on any basis whatsoever, and there is no matter, fact or thing which may be asserted by it in extinction or diminution of the Indebtedness or result in any bar to or delay in the recovery thereof. If there are any claims for setoff, counterclaim or damages, they are hereby expressly released and discharged.
- 2.3 **Default.** The Borrower acknowledges and agrees that it is in default of its obligations contained in the Credit Agreement and the Security, including without limitation by reason of the Existing Events of Default, the BIA Events of Default, and its non-payment of the Indebtedness pursuant to the Borrower Demand (as such term is defined below).
- 2.4 **The Borrower.** The Borrower acknowledges and agrees that the Credit Agreement and the Security now held by the Bank for payment and performance of the Indebtedness have not been released, waived or varied, and are valid, binding and enforceable against them in

R-9 Forbearance Agreement dated October 22, 2021 (*cont'd*)

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accordance with their written terms. The Borrower further acknowledges and agrees that the Revolver (as defined in the Credit Agreement) has or will be terminated and that no amounts are available to it under the Revolver.

- 2.5 **Guarantors.** The Guarantors confirm that they have respectively guaranteed the payment and performance of the Indebtedness and obligations owing by the Borrower to the Bank in accordance with the Guarantees (as defined in Schedule "A"). The Guarantors do not dispute their respective liability to the Bank under the Guarantees on any basis whatsoever and confirm that they have no claim for setoff, counterclaim or damages on any basis whatsoever against the Bank. If there are any claims, they are hereby expressly released and discharged. The Guarantors confirm that the Guarantees have not been released, waived or varied, that they are binding upon them and that they are valid and enforceable against them in accordance with their written terms.
- 2.6 **CIBC's Rights.** Each of the Obligors acknowledges, confirms and agrees that the Bank is entitled to exercise its rights and remedies under the Credit Agreement and the Security, at law and in equity. Each of the Obligors further acknowledges and agrees that except as provided in this Agreement, the Bank (by itself or through its employees or agents) has not made any promises, or taken any action or omitted to take any action which would constitute a waiver of its right to take any enforcement action in connection with the enforcement of the Credit Agreement and the Security, or which would estop it from so doing and that no statement, representation, promise, act or omission by the Bank or its employees or agents shall create such a waiver or estoppel. Each of the Obligors acknowledges and agrees that by entering into this Agreement, the Bank, except as provided in this Agreement, has not waived any of its rights under any of the Credit Agreement and the Security, including without limitation the Bank's right to take any enforcement action in connection with the enforcement of the Credit Agreement and the Security.
- 2.7 **Borrower Demand Letter, NITES and Prior Notice.** The Borrower acknowledges receipt of a demand letter sent by the Bank dated October 15, 2021 (the "**Borrower Demand**") wherein the Bank demanded immediate payment of its indebtedness, obligations and liabilities to the Bank. The Borrower also acknowledges receipt of a NITES issued on behalf of the Bank pursuant to Section 244(1) of the BIA, and a Prior Notice. The Borrower further acknowledges that the Borrower Demand, the NITES and the Prior Notice are valid and effective, and that the time given by the Bank for payment was reasonable. The Borrower agrees not to contest the validity of the Borrower Demand, the NITES, the Prior Notice, or the reasonableness of the time given for payment in any proceeding for any reason whatsoever.
- 2.8 **Guarantors Demand Letters, NITES and Prior Notice.** The Guarantors each acknowledge receipt of a demand letter sent by the Bank dated October 18, 2021 (collectively, the "**Guarantors Demands**"), wherein the Bank demanded immediate payment of the Guarantors' respective indebtedness, obligations and liabilities to the Bank. The Guarantors also each acknowledge receipt of a NITES issued on behalf of the Bank pursuant to Section 244(1) of the BIA. HMI acknowledges receipt of a Prior Notice issued on behalf of the Bank. The Guarantors further acknowledge that the Guarantors Demands,

R-9 Forbearance Agreement dated October 22, 2021 (*cont'd*)

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the NITES and the Prior Notice are valid and effective, and that the time given by the Bank for payment was reasonable. The Guarantors agree not to contest the validity of the Guarantors Demand, the NITES, the Prior Notice, or the reasonableness of the time given for payment in any proceeding for any reason whatsoever.

**ARTICLE 3 - FORBEARANCE**

- 3.1 The Obligors have requested and the Bank has agreed to forbear from enforcing the Security, subject to and in accordance with the terms of this Agreement. The Bank agrees not to take any steps to enforce the Security until the occurrence of an Event of Default (hereinafter referred to as the “**Forbearance Termination Date**” and the period commencing on the date hereof and ending on (but excluding) the Forbearance Termination Date is the “**Forbearance Period**”).

**ARTICLE 4 - CONDITIONS**

- 4.1 The Bank’s agreement to forbear is conditional upon the Obligors delivering to the Bank on or before 5:00 p.m. on October 22, 2021: (a) executed copies of this Agreement; and (b) executed waivers of the 10-day period under section 244 of the BIA.

**ARTICLE 5 - COVENANTS AND AGREEMENTS**

During the Forbearance Period:

- 5.1 **Principal and Interest.** The Borrower shall continue to pay to the Bank all regularly scheduled principal and interest payments owing under the Credit Agreement when due.
- 5.2 **Forbearance Fee.** In consideration for the Bank’s forbearance and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Obligors shall pay to CIBC a forbearance fee equal to one point five percent (1.5%) of the amount of the Indebtedness owed at the date of execution of this Agreement (the “**Forbearance Fee**”), which shall be fully earned on execution of this Agreement. The Forbearance Fee shall form part of the Indebtedness and shall be secured by the Security.
- 5.3 **Sale Process.** The Applicants shall conduct a sale process (the “**Sale Process**”) satisfactory to the Bank, pursuant to which the Applicants will offer to sell their assets and business operations. The Sale Process shall be approved by the Court in the BIA Proceedings and shall have a bid deadline of no later than November 30, 2021 and otherwise on terms acceptable to CIBC. The Applicants agree that any offer that they wish to accept that is in an amount that is not sufficient to provide for repayment of the Indebtedness in full shall be subject to the Bank’s consent.
- 5.4 **Cash Flow.** The Applicants shall prepare a cash flow-statement to be filed as part of its BIA Proceedings, which must be satisfactory to the Bank (the “**Cash Flow**”). The Applicants shall abide by the Cash Flow at all times during the BIA Proceedings.
- 5.5 **Reporting Requirements.** The Obligors shall provide to the Bank all reporting that is required by the Bank under the DIP term sheet to be approved by the Court in the BIA

R-9 Forbearance Agreement dated October 22, 2021 (*cont'd*)

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Proceedings (the “**DIP Term Sheet**”). The Obligors are required to satisfy all reporting requirements set out in the Credit Agreement and the Security and shall promptly provide CIBC with whatever additional documentation and information that it may reasonably require.

- 5.6 **Bridge.** The Bank and the Borrower agree that certain critical expenses (the “**Critical Expenses**”) must be paid in connection with ordinary course business operations and that are set out as Schedule “B” to this Forbearance Agreement. The Bank agrees to, immediately upon execution of this Forbearance Agreement, fund the Critical Expenses. The Borrower agrees that any amounts the Bank funds to pay Critical Expenses shall constitute an advance pursuant to the DIP Term Sheet and shall receive all of the protections, priorities and rights afforded to DIP Loan proceeds that are usual and customary and that are reflected in the DIP Term Sheet.

**ARTICLE 6 - DEFAULT**

- 6.1 **Events of Default.** Any one or more of the following events will constitute an event of default under this Agreement (each an “**Event of Default**”):
- (a) the non-payment when due of any principal, interest or other amounts payable by the Borrower or any other of the Obligors to the Bank under this Agreement, the Credit Agreement or the Security;
  - (b) a default or material breach of any obligation, promise, covenant, term or condition occurs under this Agreement, the Credit Agreement or the Security after execution of this Agreement (other than the Existing Events of Default and the BIA Events of Default);
  - (c) any representation or warranty made by any of the Obligors in the Credit Agreement or the Security, or in any certificate or other document delivered to the Bank in connection with the Credit Agreement, the Security or this Agreement, is false or misleading in any material respect;
  - (d) the existence of an event of default under the DIP Term Sheet;
  - (e) the bankruptcy of any of the Obligors;
  - (f) the Order is not granted by the Court in the BIA Proceedings;
  - (g) the Applicants receive no offers under the Sale Process by November 30, 2021;
  - (h) the bid deadline under the Sale Process is extended beyond November 30, 2021 without the Applicants obtaining the prior written consent of the Bank;
  - (i) if there is any termination of the BIA Proceedings or termination or lifting of the stay of proceedings granted in the Order without the Applicants obtaining the prior written consent of the Bank;

R-9 Forbearance Agreement dated October 22, 2021 (*cont'd*)

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- (j) the Applicants enter into a sale transaction where the sale proceeds will be insufficient to repay the Indebtedness to the Bank in full without obtaining the prior written consent of the Bank;
- (k) the Applicants incur any material expense other than as included in the Cash Flow, without the Applicants obtaining the prior written consent of the Bank;
- (l) the existence of an adverse variance of actual cash flows from the Cash Flow by an amount exceeding ten percent (10%) without the Applicants obtaining the prior written consent of the Bank;
- (m) if any financial reporting information provided by or on behalf of the Obligors to the Bank proves to be false, misleading, inaccurate or incorrect in any material respect, or if there is a failure to provide the Bank with such financial reporting or other information as they may require from time to time acting reasonably; or
- (n) if the Bank, in its sole and absolute discretion, acting reasonably, determines that there's a material adverse change after the date of this Agreement in the business or financial condition of any of the Obligors (other than the Existing Events of Default and the BIA Events of Default).

6.2 **Remedies.** In addition to the Bank's rights and remedies available under the Credit Agreement, the Security, under this Agreement, at law or in equity, on the Forbearance Termination Date or upon the occurrence of an Event of Default, whichever is earlier:

- (a) the outstanding balance of the Indebtedness owing by the Borrower to the Bank shall, at the option of the Bank, become immediately due and payable; and
- (b) the Security shall, at the Bank's option, become enforceable in accordance with their terms, including without limitation the Bank's right to the appointment of a private receiver or the court appointment of an interim receiver, national receiver and receiver and manager of the property, assets and undertakings of any of the Obligors.

#### **ARTICLE 7 - CONSENTS**

7.1 Subject to applicable law, upon the occurrence of an Event of Default, the Obligors consent to any action by the Bank in connection with the enforcement of the Security, without the necessity of further notice or demand, and hereby agree not to directly or indirectly commence, carry on, consent to, or be a party in any way to any proceeding which would constrain any such action or which would call into question the validity or enforceability of the Indebtedness, and/or the Security. Without limiting the generality of the foregoing, upon or after the occurrence of an Event of Default, the Obligors each hereby irrevocably consent to the private or Court appointment of a receiver in respect of any or all of the property or assets of each of the Obligors.

**ARTICLE 8 - GENERAL PROVISIONS**

- 8.1 **Reimbursement.** The Obligors agree to reimburse the Bank in respect of all reasonable expenses (including fees and disbursements at its lawyers' normal charges) which the Bank has incurred or will incur in connection with the review of the Security, the negotiation and preparation of this Agreement, the BIA Proceedings, and the administration and the enforcement of the Credit Agreement and this Agreement. To the extent such expenses have not been included in the Indebtedness, the Bank may pay such expenses directly and the amount so paid shall form part of the Indebtedness, shall bear interest from the date of payment at the highest rate payable by the Obligors for any of the Indebtedness to the Bank, and shall be secured by the Security.
- 8.2 **Independent Legal Advice.** The Obligors acknowledge that, in executing and delivering this Agreement, they have acted and continue to act freely and without duress. The Obligors acknowledge that the actions of the Bank in entering into this Agreement have been fair and reasonable and that the Bank (i) has not acted in a managerial capacity with respect to the Obligors, and (ii) has no fiduciary duty to the Obligors in connection with this Agreement, the Credit Agreement or the Security. The Obligors confirm that they have had the benefit of independent legal advice in connection with the negotiation of this Agreement. The Obligors hereby waive and agree not to assert or cause to be asserted any defence, right or claim with respect to any matter set forth in this Agreement.
- 8.3 **Capacity and Authority.** The Obligors represent and warrant to the Bank that they have the capacity and authority to enter into and perform their obligations under this Agreement.
- 8.4 **Necessary Proceedings.** The execution and delivery of this Agreement and the performance by the Obligors of their obligations hereunder have been duly authorized by all necessary proceedings.
- 8.5 **Notices.** Any notice, consent or approval required or permitted to be given in connection with this Agreement (a "**Notice**") shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by e-mail:
- (a) in the case of a Notice to the Bank at:

Canadian Imperial Bank of Commerce  
CIBC Innovation Banking  
4<sup>th</sup> Floor, Commerce Court West, 199 Bay Street  
Toronto, ON M5L 1A2

Attention: Mark McQueen  
E-mail: mark.mcqueen@cibc.com

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and with a copy to:

Chaitons LLP  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

Attention: Harvey Chaiton  
E-mail: harvey@chaitons.com

(b) in the case of a Notice to the Obligors:

ChronoMetriq Inc.  
1396 rue Saint-Patrick, Suite 100  
Montréal, QC H3K 2C8

Attention: James Feldkamp  
E-mail: james.feldkamp@pomelohealth.io

and with a copy to:

Miller Thomson LLP  
Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, Ontario M5H 3S1

Attention: Larry Ellis  
E-mail: lellis@millერთhompson.com

The date of receipt of such notice shall be the date of the actual delivery to the address specified if delivered or the date of actual transmission to the electronic address if sent by electronic communication, respectively, unless such date is not a Business Day, in which event the date of receipt shall be the next Business Day immediately following the date of such delivery or transmission. **“Business Day”** means a day other than a Saturday, Sunday, statutory holiday in the Province of Ontario, or any other day on which the Schedule 1 Canadian Chartered Banks located in the City of Toronto are not open for business during normal banking hours.

- 8.6 **Assignment.** The Obligors may not assign this Agreement or any rights or obligations under this Agreement except with the prior written consent of the Bank which may be withheld in the Bank’s sole discretion.
- 8.7 **Amendment.** No amendment, modification, waiver of this Agreement and, unless otherwise specified, no consent or approval by any party, shall be binding unless executed in writing by the party to be bound thereby.

R-9 Forbearance Agreement dated October 22, 2021 (*cont'd*)

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- 10 -

- 8.8 **Enurement.** This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors (including any successor by reason of amalgamation of any party), and permitted assigns.
- 8.9 **No Third-Party Beneficiaries.** Unless expressly stated herein, this Agreement shall be solely for the benefit of the parties hereto and no other person or entity shall be a third-party beneficiary hereof.
- 8.10 **No Novation.** This Agreement shall not constitute and shall not be deemed or construed to be a satisfaction, reinstatement, novation or release of the Credit Agreement or the Security.
- 8.11 **Execution and Delivery.** This Agreement may be executed in counterparts, and acceptance of this Agreement may be provided by email transmission in PDF format and, on such execution and transmission, this Agreement shall be binding on the parties with the same force and effect as if originally executed.

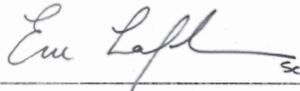
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R-9 Forbearance Agreement dated October 22, 2021 (cont'd)

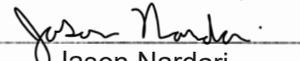
- 11 -

IN WITNESS OF WHICH the parties have duly executed this Agreement on the date described above.

CANADIAN IMPERIAL BANK OF  
COMMERCE

Per: 

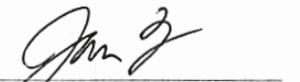
Name: Eric Laflamme  
Title: Authorized Signatory

Per: 

Name: Jason Nardari  
Title: Authorized Signatory

We have authority to bind the corporation.

CHRONOMETRIQ INC.

Per:   
Name: James Feldkamp  
Title: CEO

I have authority to bind the corporation

HEALTH MYSELF INNOVATIONS  
INC.

Per:   
Name: James Feldkamp  
Title: CEO

I have authority to bind the corporation

CMETRIC INC.

Per:   
Name: James Feldkamp  
Title: CEO

I have authority to bind the corporation

**SCHEDULE "A"**

**SECURITY**

1. Movable Hypothec dated August 26, 2020 executed by Chronometriq Inc.
2. Guarantee dated August 26, 2020 executed by Health Myself Innovations Inc.
3. Security Agreement dated August 26, 2020 executed by Health Myself Innovations Inc.
4. Movable Hypothec dated September 18, 2020 executed by Health Myself Innovations Inc.
5. Guarantee dated September 18, 2020 executed by CMetric Inc.
6. Security and Pledge Agreement dated September 18, 2020 executed by CMetric Inc.

## R-9 Forbearance Agreement dated October 22, 2021 (cont'd)

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**SCHEDULE "B"**

Estimated Date	Vendor	Amount
Thursday	Groupe Access	16,000
Friday	ChronoInnovation	10,000
Friday	Logient	15,000
Friday	FibreNoire	600
	Digital Paws	88,000
	Ownly	39,000
	Salesforce	28,000
	Alarm System	300
	SBK	1,000
	ZoomInfo	7,000
	Telus	7,000
	TeamViewer	2,300
	Okiok Data	17,500
Tuesday	Equipment	2,000
Tuesday	Empire Insurance	800
<b>Total</b>		<b>234,500</b>
Thursday 10/28	Payroll	230,000

## R-10 Investissement Québec Loan Agreement

CONFIDENTIEL

Le 5 mars 2018

Monsieur Yan Raymond-Lalande  
Président  
**ChronoMétriq inc.**  
1396, rue St-Patrick, bureau 100  
Montréal (Québec) H3K 2C8

**Objet : Offre de prêt**  
**Dossier : D149152 - E123041**

Monsieur,

En réponse à votre demande d'aide financière, Investissement Québec a autorisé un prêt au montant maximal de trois cent quatre-vingt-cinq mille dollars (385 000 \$) à votre entreprise.

Conséquemment, vous trouverez ci-jointe une offre de prêt en double exemplaire qui en définit les conditions et termes. Pour accepter cette offre, vous devrez nous retourner **avant le 5 avril 2018**, un exemplaire de ladite offre dûment signée.

Avec l'offre de prêt, veuillez nous remettre :

- la ou les résolution(s) datée (s) du même jour ou après la date d'émission de l'offre de prêt par IQ (selon le modèle annexé à l'offre).
- le chèque représentant les frais d'étude dus en vertu de l'offre de prêt.
- l'original du formulaire intitulé « Autorisation de prélèvement automatique et de déboursement-entreprise » dûment complété et signé, accompagné, le cas échéant, de l'original du formulaire intitulé « confirmation des coordonnées bancaires pour déboursement électronique » dûment complété et signé.
- un chèque original portant la mention « NUL » ou l'original du formulaire intitulé « Confirmation des coordonnées bancaires pour déboursement électronique » dûment complété et signé.
- les coordonnées du conseiller juridique de votre choix, lequel devra communiquer avec Madame Andréa Maria Pereira da Rocha, conseiller juridique à Investissement Québec au (514) 873-9031 ou à l'adresse électronique suivante : andrea.rocha@invest-quebec.com.**
- une liste à jour des biens dont l'Entreprise est propriétaire, incluant, le cas échéant, tout droit de propriété intellectuelle, et ce, à la satisfaction d'IQ.
- les prorogations, demandées en vertu de l'offre de prêt dûment signées par les personnes désignées, accompagnées, le cas échéant, de la ou les résolution(s) datée (s) du même jour ou après la date d'émission de la prorogation.
- le document intitulé « Déclaration de l'entreprise » dûment complété et signé.
- autres :

R-10 Investissement Québec Loan Agreement (*cont'd*)

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Si de plus amples renseignements s'avéraient nécessaires, nous vous saurions gré de vous adresser au soussigné.

Nous vous prions d'accepter, Monsieur, nos meilleures salutations.



Marc Drouin  
Directeur de portefeuille  
Direction régionale, Ouest de Montréal et Outaouais

MD/mel

p. j.

R-10 Investissement Québec Loan Agreement (*cont'd*)

## OFFRE DE PRÊT

Dossier : D149152      Entreprise : E123041  
Volet : FUFRR      Forme : PRET

PAR : **INVESTISSEMENT QUÉBEC**, personne morale constituée en vertu de la Loi sur Investissement Québec (RLRQ, chapitre I-16.0.1), ayant son siège au 1195, avenue Lavigèrie, bureau 060, Québec (Québec) G1V 4N3 et ayant une place d'affaires au 3300, boulevard de la Côte-Vertu, bureau 210, St-Laurent (Québec) H4R 2B7 (« **IQ** »).

À : **CHRONOMÉTRIQ INC.**, personne morale légalement constituée ayant sa principale place d'affaires au 1396, rue St-Patrick, bureau 100, Montréal (Québec) H3K 2C8 (l'« **Entreprise** »).

**1. PRÊT**

- 1.1 IQ offre à l'Entreprise un prêt au montant maximal de trois cent quatre-vingt-cinq mille dollars (385 000 \$) (le « **Prêt** »), aux conditions et termes énoncés aux présentes.
- 1.2 Pour accepter cette offre, IQ devra avoir reçu un exemplaire original dûment signé par toutes les parties avant le **5 avril 2018**.
- 1.3 Les mots et expressions utilisés aux présentes et commençant par une lettre majuscule ont le sens qui leur est donné à l'annexe A, à moins qu'une signification particulière ne leur soit donnée, soit en fonction du contexte ou soit aux termes d'une disposition particulière.

**2. PROJET**

- 2.1 Le Prêt n'est offert que pour le projet d'amélioration du fonds de roulement requis pour le développement du marché canadien (le « **Projet** »), qui, accompagné de son financement, s'établit comme suit :

Projet		Financement	
Fonds de roulement	2 770 000 \$	Injection capital-actions – actions ordinaires	2 000 000 \$
		Prêt à terme IQ <i>pari passu</i> avec BDC	385 000 \$
		Prêt à terme - Fédéral - BDC <i>pari passu</i> avec IQ	385 000 \$
Total :	<b>2 770 000 \$</b>	Total :	<b>2 770 000 \$</b>

**3. TAUX D'INTÉRÊT**

- 3.1 Le Prêt portera intérêt, à compter de son déboursement, au Taux flottant. La majoration s'appliquant au Taux préférentiel afin de déterminer le Taux flottant est de 7,87 % l'an.
- 3.2 Le Taux préférentiel s'établit actuellement, aux fins de référence seulement, à 3,45 % l'an.

**4. PAIEMENT DES INTÉRÊTS**

- 4.1 L'Entreprise paiera les intérêts calculés au taux et de la manière prévus au titre « TAUX D'INTÉRÊT » le dernier jour de chaque mois à compter du dernier jour du mois suivant le premier déboursement du Prêt.

**5. REMBOURSEMENT DU PRÊT**

- 5.1 L'Entreprise bénéficiera d'une période de moratoire de remboursement de capital sur le Prêt d'une durée de 12 mois à compter du premier déboursement du Prêt.



R-10 Investissement Québec Loan Agreement (*cont'd*)

## OFFRE DE PRÊT

Dossier : D149152

Entreprise : E123041

- 5.2 À l'échéance de la période de moratoire prévue au paragraphe précédent, l'Entreprise remboursera le capital du Prêt, en 36 versements mensuels et consécutifs, payables le dernier jour de chaque mois à compter du dernier jour du premier mois suivant la fin de telle période de moratoire comme suit :

Nombre de versements	Montant
1	10 675 \$
35	10 695 \$

- 5.3 Sous réserve que l'Entreprise ne soit pas en défaut en vertu de la présente offre et que la Banque de développement du Canada (« BDC ») y consente également, elle pourra rembourser un montant représentant jusqu'à 15 % du solde du Prêt, par année civile, et ce, sans pénalité. Si l'Entreprise ne se prévaut pas de ce remboursement annuel, elle ne pourra pas le reporter sur l'année suivante.
- 5.4 Tout remboursement de capital effectué en vertu du paragraphe précédent viendra réduire d'autant les remboursements prévus au paragraphe 5.2, en commençant par les versements dont les échéances sont les plus éloignées.
6. DÉBOURSEMENT
- 6.1 IQ déboursera le Prêt, selon les besoins de liquidité de l'Entreprise, tels qu'établis par IQ, à son entière discrétion, et seulement si l'Entreprise n'est pas en défaut aux termes de la présente offre.
- 6.2 Les déboursements du Prêt seront faits concurremment et proportionnellement au déboursement du prêt de trois cent quatre-vingt-cinq mille dollars (385 000 \$) consenti par la BDC dans le cadre du Projet (le « Prêt-BDC »).

## 7. ENGAGEMENTS À REMPLIR AVANT LE DÉBOURSEMENT DU PRÊT

- 7.1 Le premier déboursement du Prêt n'aura lieu que lorsqu'IQ aura obtenu à sa satisfaction :
- 7.1.1 une confirmation écrite de toutes les autres sources de financement du Projet à des termes et conditions acceptables à IQ;
  - 7.1.2 les sûretés prévues au titre « SÛRETÉS », avec confirmation de leur publication;
  - 7.1.3 une opinion juridique des conseillers externes de l'Entreprise sur le statut corporatif de l'Entreprise et sa capacité d'emprunter, sur la validité des sûretés prévues au titre « SÛRETÉS », leur rang, la capacité de l'Entreprise à les consentir, leur caractère exécutoire et tout autre sujet qu'IQ pourra requérir;
  - 7.1.4 une liste à jour des biens dont l'Entreprise est propriétaire, incluant, le cas échéant, tout droit de propriété intellectuelle;
  - 7.1.5 le formulaire intitulé « Autorisation de prélèvement automatique et de déboursement – entreprise » dûment complété et signé accompagné, le cas échéant, du spécimen de chèque original et personnalisé au nom de l'Entreprise ou du formulaire intitulé « Confirmation des coordonnées bancaires pour déboursement électronique ».
- 7.2 Avant chaque déboursement du Prêt, l'Entreprise devra avoir remis à IQ, dans une forme qui lui sera satisfaisante, une demande de déboursement accompagnée des documents pertinents y afférents.



Initiales d'IQ

R-10 Investissement Québec Loan Agreement (*cont'd*)

## OFFRE DE PRÊT

Dossier : D149152

Entreprise : E123041

## 8. SÛRETÉS

- 8.1 À titre de garantie spécifique et continue de l'exécution par l'Entreprise de toutes ses obligations vis-à-vis d'IQ aux termes de la présente offre et en garantie de l'exécution de toutes ses autres obligations envers IQ, présentes et futures, directes et indirectes, l'Entreprise doit :
- 8.1.1 consentir à IQ une hypothèque principale au montant de trois cent quatre-vingt-cinq mille dollars (385 000 \$) et une hypothèque additionnelle au montant de soixante-dix-sept mille dollars (77 000 \$) grevant l'universalité de ses biens meubles, présents et futurs, corporels et incorporels.  
  
Étant entendu que cette hypothèque sera sujette à toutes les hypothèques publiées en date du 2 mars 2018, à l'exception, le cas échéant, des hypothèques consenties par l'Entreprise en faveur d'un actionnaire, d'une personne ou société liée, d'un assureur, d'un locateur ou d'un fournisseur;
  - 8.1.2 Cette hypothèque devra être *pari passu* avec celle consentie ou à être consentie en faveur de BDC, en garantie du Prêt-BDC prévu au Projet, étant entendu que l'Entreprise devra faire en sorte que ce prêteur s'engage aux termes d'une entente entre créanciers à partager sur une base proportionnelle avec IQ tout produit de réalisation des actifs grevés aux termes de cette hypothèque, le tout à des termes à la satisfaction d'IQ;
  - 8.1.3 faire en sorte qu'IQ obtienne le cautionnement solidaire de Yan Raymond-Lalande, au montant de cent soixante-treize mille deux cent cinquante dollars (173 250 \$);
  - 8.1.4 faire en sorte qu'IQ obtienne le cautionnement solidaire de Rémi Lalonde-Richard, au montant de cent soixante-treize mille deux cent cinquante dollars (173 250 \$);
  - 8.1.5 faire en sorte qu'IQ obtienne le cautionnement solidaire de Maxime Méthot, au montant de trente-huit mille cinq cents dollars (38 500 \$);
  - 8.1.6 souscrire, à la satisfaction d'IQ, une police d'assurance tous risques avec clause hypothécaire couvrant les actifs de l'Entreprise pour le plein montant du Prêt et désignant IQ à titre de créancière hypothécaire.
- 8.2 Sous réserve que l'Entreprise ne soit pas en défaut en vertu de la présente offre et que BDC y consente également, IQ reconnaît et convient que :
- 8.2.1 l'Entreprise pourra disposer de ses biens en stocks dans le cours normal de ses affaires et un prêteur pourra détenir une hypothèque mobilière grevant en premier rang l'universalité des comptes à recevoir et des stocks de l'Entreprise ainsi que le produit de leurs assurances en garantie uniquement de tout crédit d'exploitation.
  - 8.2.2 un prêteur pourra détenir une hypothèque mobilière grevant en premier rang tout nouvel équipement financé par un prêt spécifique (autre que ceux prévus au Projet, s'il en est) qu'il a consenti à l'Entreprise en autant cependant que cette hypothèque ne serve uniquement qu'à la garantie du prêt finançant l'acquisition de tel équipement.
  - 8.2.3 un prêteur pourra détenir une hypothèque mobilière grevant en premier rang les crédits d'impôt financés par un prêt spécifique qu'il a consenti à l'Entreprise et pour lequel il a obtenu le cautionnement d'IQ.

Dans tous les cas, une cession de rang devra être signée par IQ, à sa satisfaction, et publiée au Registre des droits personnels réels mobiliers ou tout autre registre approprié, le cas échéant.

  
Initiales d'IQ  
Page 3 / 5

R-10 Investissement Québec Loan Agreement (*cont'd*)

## OFFRE DE PRÊT

Dossier : D149152

Entreprise : E123041

## 9. ENGAGEMENTS PARTICULIERS DE L'ENTREPRISE

9.1 Outre les engagements généraux stipulés aux présentes, l'Entreprise s'engage, à compter de la date d'acceptation de la présente offre et jusqu'au remboursement de la totalité du Prêt, à :

9.1.1 fournir les états financiers suivants :

Entité	Type	Fréquence	Délai (jours) (de la fin de chaque exercice financier)
ChronoMétriq inc.	Mission d'examen	Annuelle	120

## 10. FRAIS D'ÉTUDE ET FRAIS DE GESTION

## 10.1 FRAIS D'ÉTUDE

10.1.1 La présente offre est sujette à des frais d'étude (« **Frais d'étude** ») de 1 % du montant du Prêt, soit trois mille huit cent cinquante dollars (3 850 \$).

10.1.2 IQ reconnaît avoir reçu la somme de trois mille huit cent cinquante dollars (3 850 \$) en paiement total des Frais d'étude.

10.1.3 Ces Frais d'étude ne sont remboursables, ni en totalité, ni en partie sauf si l'Entreprise abandonne la réalisation du Projet pour une raison, qui de l'avis d'IQ, est hors de son contrôle.

10.1.4 Le seul encaissement des Frais d'étude ne crée aucun droit en faveur de l'Entreprise et n'oblige aucunement IQ à effectuer un quelconque déboursement sur le Prêt, ces droits et ces obligations ne pouvant être générés que dans la mesure où les conditions et termes mentionnés à la présente offre sont rencontrés.

## 10.2 FRAIS DE GESTION

10.2.1 L'Entreprise s'engage à payer annuellement, à la date anniversaire de l'acceptation de la présente offre par toutes les parties, des frais de gestion au montant de trois cent cinquante dollars (350 \$).

## 11. AUTRES DISPOSITIONS

11.1 Seule la version française de la présente offre sera considérée comme officielle et dans tous les cas, celle-ci prévaudra sur toute traduction qui pourrait l'accompagner.

11.2 L'Entreprise reconnaît que les stipulations contenues à la présente offre et à ses annexes ont été librement discutées entre elle et IQ et qu'elle a reçu les explications adéquates sur leur nature et leur étendue.

11.3 La présente offre ainsi que ses annexes, le cas échéant, une fois signée par les parties, constituera le contrat de prêt.

11.4 IQ se réserve le droit, à son entière discrétion, d'arrimer les termes et conditions de la présente offre de prêt avec ceux du Prêt-BDC.



Initiales d'IQ

R-10 Investissement Québec Loan Agreement (cont'd)

OFFRE DE PRÊT

Dossier : D149152

Entreprise : E123041

INTERVENUE ENTRE LES PARTIES À : MONTRÉAL

INVESTISSEMENT QUÉBEC

Par :   
Signature

Date : 5 mars 2018

Marc Drouin  
Directeur de portefeuille  
Nom du signataire autorisé en lettres moulées

Par :   
Signature

Date : 5 mars 2018

Renée Lepage  
Directrice de portefeuille principale et représentante  
régionale  
Direction régionale, Ouest de Montréal et Outaouais  
Nom du signataire autorisé en lettres moulées

ACCEPTATION DE L'ENTREPRISE

Après avoir pris connaissance des conditions et termes énumérés dans la présente offre ainsi qu'à ses annexes, nous acceptons cette offre de Prêt.

CHRONOMÉTRIQU INC.

Par :   
Signature

Date : 5 mars 2018

Yan Raymond-Lalonde  
Nom du signataire autorisé en lettres moulées

## R-10 Investissement Québec Loan Agreement (cont'd)

## OFFRE DE PRÊT

## ANNEXE A

## Conditions et termes généraux du prêt

Dossier : D149152

Entreprise : E123041

## 1. DÉFINITIONS

Aux fins de la présente offre, les expressions suivantes ont le sens qui leur est donné ci-après à moins que le contexte n'exige un sens différent :

« **Changement important** » signifie tout changement, toute modification, à la hausse ou à la baisse selon le cas, qui de l'avis raisonnable d'IQ, pourrait affecter négativement et de manière importante la réalisation du Projet ou un Élément important;

« **Dépenses** » signifie les dépenses indiquées au Projet;

« **Élément important** » signifie l'existence juridique de l'Entreprise, sa situation financière, ses résultats d'exploitation, sa capacité d'exploiter son entreprise, de détenir ses biens ou d'exécuter ses obligations générales ou aux termes de toute convention de crédit ou de sûretés à laquelle elle peut être partie.

« **Taux flottant** » signifie un taux annuel calculé mensuellement, égal au Taux préférentiel, auquel s'ajoute une majoration. La majoration tient compte du risque associé à l'intervention financière pour un terme déterminé.

« **Taux préférentiel** » signifie le taux préférentiel utilisé par la majorité de 6 banques à charte canadiennes choisies par IQ, exprimé sur une base annuelle. Ce taux est révisé une fois par semaine et est donc susceptible de varier hebdomadairement.

« **Ventes nettes** » signifie les ventes brutes moins les retours, rabais et escomptes de caisse consentis par l'Entreprise à ses clients.

## 2. INTÉRÊT

2.1. À compter du dernier déboursement du Prêt, l'Entreprise aura la faculté de demander par écrit à IQ de changer le Taux flottant s'appliquant au Prêt pour le taux fixe en vigueur à IQ à cette époque.

Dans le cas d'une demande de changement du Taux flottant au taux fixe, l'Entreprise pourra choisir la période durant laquelle le taux fixe, en vigueur à IQ à l'époque de ce choix, s'appliquera sur le Prêt. À l'expiration de la période choisie, l'Entreprise pourra renouveler son choix, et ce, de période en période jusqu'à l'échéance du Prêt ou demander que le Taux flottant en vigueur à IQ à cette époque s'applique sur le Prêt. À cet effet, l'Entreprise devra, au plus tard 15 jours suivant l'échéance de chaque période, aviser IQ de son choix par écrit, à défaut de quoi, IQ appliquera sur le Prêt le Taux flottant en vigueur à IQ à cette époque. L'Entreprise, si elle a déjà opté pour le Taux flottant, pourra en tout temps revenir au taux fixe en vigueur à IQ à l'époque de sa demande et celui-ci prévaudra alors pour la période que l'Entreprise choisira.

Si l'Entreprise demande à IQ de changer le Taux flottant s'appliquant au Prêt pour le taux fixe, elle accepte dès à présent que ce taux fixe soit celui prévalant à IQ au moment de la conversion effective du Taux flottant au taux fixe, à condition que celui-ci n'ait pas varié à la hausse depuis la date de la

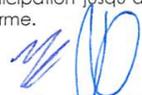
demande de conversion. Dans le cas contraire, l'Entreprise bénéficiera d'un délai de 5 jours, à compter de la date à laquelle elle aura été informée par IQ du nouveau taux fixe en vigueur pour accepter ou refuser par écrit ce nouveau taux.

IQ se réserve un délai maximal d'un mois pour effectuer la conversion du Taux flottant s'appliquant au Prêt au taux fixe, et ce, dans la mesure où les fonds à taux fixe sont disponibles à IQ à des conditions qui lui sont acceptables

- 2.2. L'Entreprise accepte dès à présent toute variation du Taux préférentiel qu'IQ pourra déterminer de temps à autre et dont IQ tiendra compte dans le calcul des intérêts payables sur tout montant dû et exigible aux termes des présentes.
- 2.3. Tout état de compte expédié à l'Entreprise par IQ constituera une preuve incontestable de l'exactitude de ce calcul, à défaut par l'Entreprise d'aviser IQ du contraire dans un délai de 10 jours de la réception de tout tel état de compte.
- 2.4. Toute somme non payée à échéance en vertu des présentes portera intérêt à compter de cette date au taux stipulé à la présente offre, et ce, sans avis ni mise en demeure.
- 2.5. Tout intérêt non payé à échéance portera lui-même intérêt à compter de cette date au taux stipulé à la présente offre, et ce, sans avis ni mise en demeure.

## 3. REMBOURSEMENT PAR ANTICIPATION

- 3.1. L'Entreprise pourra rembourser tout ou partie du Prêt par anticipation, en tout temps et sans avis, et si, le cas échéant tout prêteur pari passu y consent également, de la façon suivante :
  - 3.1.1. en payant, si le Prêt porte intérêt au Taux flottant, une indemnité égale à 3 mois d'intérêts sur le montant remboursé par anticipation, et ce, au taux d'intérêt alors applicable sur le Prêt;
  - 3.1.2. en payant, si le Prêt porte intérêt à taux fixe, une indemnité, sur le montant remboursé par anticipation, correspondant au plus élevé :
    - 3.1.2.1. de 3 mois d'intérêts, et ce, au taux d'intérêt alors applicable sur le Prêt;
    - 3.1.2.2. du différentiel d'intérêt applicable sur la durée restante du Terme équivalente à la différence entre le taux d'intérêt applicable au Prêt et le taux d'intérêt applicable aux obligations du Québec d'un terme équivalent à la durée restante du Terme, actualisé au taux des obligations du Canada dont le terme est équivalent à la durée restante du Terme.
  - 3.1.3. Toutefois, l'indemnité ne pourra en aucun temps excéder le montant des intérêts à courir à compter de la date du remboursement par anticipation jusqu'à la date d'échéance du Terme.



Initiales d'IQ

## R-10 Investissement Québec Loan Agreement (cont'd)

## OFFRE DE PRÊT

## ANNEXE A

## Conditions et termes généraux du prêt

Dossier : D149152

Entreprise : E123041

## 4. TRANSFERTS ÉLECTRONIQUES

- 4.1. Le déboursement du Prêt pourra être effectué par IQ directement dans le compte bancaire de l'Entreprise si IQ a obtenu l'original du formulaire intitulé « Autorisation de prélèvement automatique et de déboursement – entreprise » et, le cas échéant, un spécimen de chèque original et personnalisé au nom de l'Entreprise ou le formulaire intitulé « Confirmation des coordonnées bancaires pour déboursement électronique ». Toutefois, IQ se réserve le droit de procéder au déboursement du Prêt au moyen de chèque(s) si elle juge ce mode de déboursement préférable selon les circonstances.
- 4.2. L'Entreprise autorise par la présente IQ à effectuer par débits manuels ou électroniques à même son compte bancaire tout paiement que l'Entreprise doit faire à IQ aux termes des présentes ainsi que ses modifications subséquentes, le cas échéant. À cet effet, l'Entreprise autorise par la présente la banque ou l'institution financière avec laquelle elle fait affaires à honorer les débits effectués par IQ et s'engage à compléter et à signer le formulaire intitulé « Autorisation de prélèvement automatique et de déboursement-entreprise ».
- 4.3. IQ enverra à l'avance à l'Entreprise une note de débit contenant tous les renseignements relatifs aux paiements à être effectués par l'Entreprise.
- 4.4. L'Entreprise s'engage à renouveler l'autorisation apparaissant plus haut si elle change de banque ou d'institution financière avant que le Prêt ne soit entièrement remboursé ou tant que l'Entreprise pourra être endettée envers IQ quant à tout paiement dû aux termes des présentes et à informer IQ de ce changement en lui remettant un nouveau formulaire intitulé « Autorisation de prélèvement automatique et de déboursement-entreprise » dûment complété et signé..
- 4.5. L'Entreprise accepte que le remboursement de tout montant dû en vertu de la présente offre ainsi que ses modifications subséquentes, le cas échéant, soit effectué au moyen de chèques si IQ juge ce mode de paiement préférable selon les circonstances.

## 5. ENGAGEMENTS GÉNÉRAUX DE L'ENTREPRISE

À compter de la date d'acceptation de la présente offre et pour toute la durée du Prêt, l'Entreprise s'engage à :

- 5.1. fournir sur demande d'IQ, ses états financiers audités, ses états financiers semestriels, ses états financiers prévisionnels, les états financiers de ses filiales et de toute caution et, le cas échéant, ses états financiers consolidés ou tout autre état financier, audité ou non, requis par IQ et dans le délai prescrit par celle-ci;
- 5.2. fournir des prévisions financières annuelles avec les hypothèses de travail dans un délai de trente (30) jours de chaque début d'exercice financier;
- 5.3. ne pas modifier ses statuts ni son capital-actions autorisé ou émis ou payé, y compris ne pas émettre de nouvelles actions de son capital-actions ni réduire son capital versé ou déclaré ni acheter, racheter,

convertir ou échanger toutes actions de son capital-actions;

- 5.4. ne pas se continuer ou se proroger sous une loi autre que sa loi constitutive;
- 5.5. transiger sur une base d'affaires et « à distance » avec toute personne;
- 5.6. ne pas consentir de prêts, avances ou toute autre forme d'aide financière à ses actionnaires, administrateurs, officiers ou entreprises liées, ni y effectuer des placements, ni leur accorder de sûretés, ni effectuer des transactions en dehors du cours normal de ses opérations;
- 5.7. ne pas fusionner;
- 5.8. ne pas déclarer ou verser de dividende;
- 5.9. ne pas déménager à l'extérieur du Québec une partie substantielle de ses activités;
- 5.10. faire en sorte qu'il n'y ait pas de changement dans le contrôle de l'Entreprise ou dans le contrôle ultime de l'Entreprise;

On entend par contrôle la détention d'actions comportant un nombre de droits de vote suffisant pour permettre l'élection de la majorité des administrateurs de l'Entreprise. On entend par contrôle ultime la détention desdites actions par une ou des personnes physiques donnant le contrôle de l'Entreprise par l'intermédiaire d'une ou de plusieurs personnes morales actionnaires l'une de l'autre ou de l'Entreprise. Advenant le décès de l'actionnaire qui a le contrôle ultime de l'Entreprise, la transmission des actions de l'actionnaire décédé à ses héritiers ne sera pas présumée constituer un changement dans le contrôle ultime de l'Entreprise à la condition que ledit contrôle demeure entre les mains des héritiers légaux de l'actionnaire décédé;

- 5.11. assurer et maintenir assurés contre tous risques ses actifs, jusqu'à concurrence de leur valeur de remplacement, ou souscrire et maintenir en vigueur toute police d'assurance quelconque requise par IQ et fournir à cette dernière, sur demande, copie des polices d'assurance ainsi souscrites et de leur renouvellement. Advenant que l'Entreprise fasse défaut de respecter le présent engagement, IQ pourra y remédier, aux frais de l'Entreprise, et ce, sans préjudice à tout autre droit en sa faveur;
- 5.12. sauf pour ce qui est expressément permis à la présente offre, ne pas grever, vendre ou disposer de quelque façon de ses actifs, sauf dans le cours normal de ses opérations;
- 5.13. révéler sans délai à IQ tout litige ou procédure devant une cour de justice ou un tribunal, une commission ou agence gouvernementale dans lequel elle est partie;
- 5.14. se conformer en tout temps aux lois auxquelles elle est assujettie au Québec et plus particulièrement, mais sans limiter la portée générale de ce qui précède, aux normes en matière de protection de l'environnement, de travail et de droits de la personne;

  
Initiales d'IQ  
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## R-10 Investissement Québec Loan Agreement (cont'd)

## OFFRE DE PRÊT

## ANNEXE A

## Conditions et termes généraux du prêt

Dossier : D149152

Entreprise : E123041

- 5.15. adopter en tout temps un comportement éthique et socialement responsable;
- 5.16. permettre à IQ, si de l'avis de cette dernière et à sa seule discrétion, la situation financière de l'Entreprise se détériore, (i) de nommer un de ses représentants à titre d'observateur au conseil d'administration de l'Entreprise ou (ii) de demander à l'Entreprise la création d'un comité de gestion;
- 5.17. maintenir ses opérations;
- 5.18. n'apporter aucun changement significatif au Projet. Si le coût réel du Projet dépasse le total prévu, l'Entreprise devra fournir ou faire en sorte que ses actionnaires fournissent les sommes nécessaires pour couvrir tout montant excédant les prévisions, et ce, d'une manière qu'IQ devra juger satisfaisante, avant que le solde du Prêt ne soit déboursé. Si les dépenses réellement encourues par l'Entreprise quant au Projet s'avèrent inférieures aux dépenses totales prévues au titre « PROJET », IQ se réserve le droit de réduire le montant du Prêt proportionnellement;
- 5.19. remettre à IQ, au cours de la durée du Prêt, tout document qu'elle pourra juger utile ou pertinent;
- 5.20. fournir, à la demande d'IQ, les certificats ou documents requis conformément aux lois du Québec;
- 5.21. ne pas céder ni transférer les droits qui lui sont conférés aux termes de la présente offre;
- 5.22. acquitter toutes les dépenses se rapportant à la préparation et à l'inscription, s'il y a lieu, des documents nécessaires pour donner effet légal à la présente offre et à tout amendement à celle-ci;
- 5.23. payer tous les coûts encourus par IQ pour exercer ses droits aux termes de la présente offre, y compris ceux permettant d'obtenir l'exécution de toutes les obligations de l'Entreprise et des cautions, le cas échéant, pour protéger, exécuter ou préserver toute sûreté consentie en garantie du Prêt ou procéder à une évaluation des actifs de l'Entreprise et des cautions, le cas échéant, sur demande d'IQ, incluant notamment tous les frais et honoraires judiciaires, charges ou autres dépenses judiciaires, les frais et honoraires extrajudiciaires, ainsi que les frais et honoraires d'agent, de syndic ou autres;
- 5.24. payer tous les coûts raisonnables facturés par un consultant externe choisi par IQ pour la conseiller sur toute question reliée au Prêt; pourront plus particulièrement faire l'objet du mandat confié à ce consultant externe la préparation de diagnostics financiers et opérationnels de l'Entreprise et des cautions, le cas échéant, l'évaluation des sûretés et des éléments de propriété intellectuelle reliés au Projet ainsi que toute autre question concernant la protection des droits d'IQ;
- 5.25. permettre à tout représentant d'IQ, sur avis préalable à l'Entreprise, d'entrer pendant les heures normales d'affaires dans les locaux de l'Entreprise et d'y effectuer, aux frais d'IQ, l'examen des livres, des installations physiques et des stocks de l'Entreprise et d'obtenir copie de tout document;
- 5.26. ne pas permettre que les hypothèques et autres sûretés consenties par l'Entreprise, ou pour son bénéfice, prenant rang avant celles consenties à IQ en garantie du Prêt, servent à garantir : i) toute nouvelle obligation, ainsi que tout nouveau crédit et augmentation de crédit existant et, ii) toute somme de nouveau avancée suite à un remboursement partiel ou total des prêts à terme déjà garantis par lesdites hypothèques, le cas échéant, à moins dans tous les cas d'avoir obtenu le consentement préalable écrit d'IQ.
- 6. CAS DE DÉFAUT**
- Nonobstant toute disposition contraire contenue à la présente offre et même si les conditions ont été respectées, IQ se réserve le droit, à sa discrétion, de résilier le Prêt ou toute partie non déboursée de celui-ci ou d'en différer le déboursement et de résilier le moratoire de capital, le cas échéant, et l'Entreprise s'engage à rembourser, sur demande, toutes ou partie des sommes déboursées sur le Prêt, avec intérêts, frais et accessoires, dans les cas suivants :
- 6.1. si l'Entreprise interrompt ou abandonne le Projet en tout ou en partie;
- 6.2. si l'Entreprise ou une caution fait cession de ses biens, est sous le coup d'une ordonnance de séquestre en vertu de la Loi sur la faillite et l'insolvabilité, fait une proposition à ses créanciers ou commet un acte de faillite en vertu de ladite loi, ou si elle ou une caution est sous le coup d'une ordonnance de liquidation en vertu des règles de liquidation prévues à la Loi sur les sociétés par actions ou de toute autre loi ou même effet, ou si elle se prévaut des dispositions de la Loi sur les arrangements avec les créanciers des compagnies;
- 6.3. si l'Entreprise ou une caution est insolvable ou sur le point de le devenir ou si elle ou une caution ne maintient pas son existence légale ou si sa situation financière ou celle d'une caution se détériore de façon à mettre en péril sa survie;
- 6.4. si l'Entreprise est en défaut aux termes d'une convention ou d'un acte de garantie relativement à ses emprunts notamment, sans limiter la généralité de ce qui précède, si elle est en défaut aux termes de toute convention intervenue avec IQ, ou si l'Entreprise fait l'objet d'une demande de remboursement de tout prêt payable à demande;
- 6.5. si, de l'avis d'IQ et sans son consentement, il survient un Changement important dans le Projet ou dans son financement, dans la nature des opérations de l'Entreprise ou de façon générale, dans le niveau du risque;
- 6.6. en cas d'erreur ou d'omission dans une déclaration, de réticence, de fausse déclaration, de fraude ou de falsification de documents de la part de l'Entreprise ou d'une caution;
- 6.7. si l'Entreprise ou d'une caution fait défaut de remplir l'un quelconque de ses engagements stipulés à la présente offre.



Initiales d'IQ

## R-10 Investissement Québec Loan Agreement (cont'd)

## OFFRE DE PRÊT

## ANNEXE A

## Conditions et termes généraux du prêt

Dossier : D149152

Entreprise : E123041

## 7. DISPOSITIONS GÉNÉRALES

- 7.1. Ce contrat sera régi par les lois du Québec et en cas de contestation, les tribunaux du Québec du district judiciaire de Montréal seront seuls compétents. De plus, la présente offre est sujette à l'application des conditions et termes énoncés dans la Loi sur Investissement Québec.
- 7.2. Par son acceptation de la présente offre, l'Entreprise déclare que tous les renseignements de nature technique ou de nature financière ou économique qui ont été fournis à IQ sur une base historique sont véridiques.
- 7.3. Pour les fins de la présente offre, tous les avis devront être envoyés par écrit, par poste certifiée ou recommandée ou par livraison de main à main ou par télécopieur. Les avis provenant d'IQ seront envoyés au siège de l'Entreprise, à l'attention du représentant autorisé qui signera l'acceptation de la présente offre pour et au nom de l'Entreprise. Tous les avis provenant de l'Entreprise ou de ses actionnaires seront envoyés à Investissement Québec, à sa place d'affaires du 600, de La Gauchetière Ouest, bureau 1500, Montréal (Québec), H3B 4L8, à l'attention de son Secrétaire. Tous les avis seront censés être reçus le jour de leur livraison, au cas d'envoi de main à main, le jour de leur transmission s'ils sont transmis par télécopieur et si ce jour est un jour ouvrable, pendant les heures normales de bureau ou le jour ouvrable suivant, le troisième jour ouvrable suivant leur mise à la poste par leur expéditeur, au cas d'envoi par poste certifiée ou recommandée;
- 7.4. Advenant le cas où l'Entreprise est régie par de nouvelles normes comptables et que celles-ci avaient un effet important sur toute disposition de la présente offre référant à tout calcul basé sur les états financiers de l'Entreprise, IQ aura alors le droit d'amender telle disposition de façon à la rendre conforme aux fins pour lesquelles elle avait été originalement stipulée.

## 8. FRAIS DE DISPONIBILITÉ ET D'ANNULATION

- 8.1. Si l'Entreprise ne demande pas le déboursement de tout montant du Prêt qu'elle est en droit de recevoir :
- 8.1.1. dans les 2 mois suivant la date d'acceptation de la présente offre, si le Prêt porte intérêt à taux fixe, ou;
- 8.1.2. dans les 12 mois suivant la date d'acceptation de la présente offre, si le Prêt porte intérêt à Taux flottant;
- 8.2. L'Entreprise pourra demander le maintien de la portion du Prêt qu'elle est en droit de recevoir en payant à IQ une indemnité calculée sur une base quotidienne, à compter de la date ci-haut mentionnée, au taux de 1,5 % l'an, sur cette portion du Prêt (les « **Frais de disponibilité** ») et payable le dernier jour de chaque mois à compter du dernier jour du mois suivant la date ci-haut mentionnée.
- 8.3. L'Entreprise pourra demander l'annulation de tout solde non déboursé et les Frais de disponibilité

cesseront de courir à partir de la date de la réception par IQ d'une telle demande écrite.

- 8.4. Si l'Entreprise demande l'annulation de plus de 25 % du montant du Prêt, des frais d'annulation représentant 0,5 % du montant annulé seront exigés et payables le dernier jour du mois suivant ladite annulation.

## 9. DIVULGATION PUBLIQUE

- 9.1. En acceptant la présente offre, l'Entreprise consent à ce qu'IQ puisse divulguer publiquement les principaux paramètres de l'intervention financière consentie à l'Entreprise comprenant, entre autres et non limitativement, le nom de l'Entreprise, son genre d'exploitation, son emplacement, la nature et le montant de l'intervention financière prévue aux présentes ainsi que le nombre d'employés au service de l'Entreprise.
- 9.2. Si l'Entreprise désire annoncer officiellement le Projet ou procéder à une inauguration officielle, elle devra en prévenir IQ 15 jours à l'avance, de façon à permettre à cette dernière d'y participer.



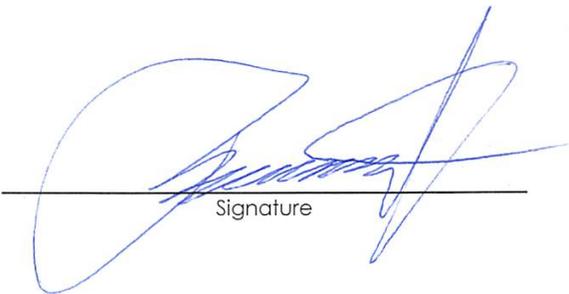
Initiales d'IQ

## R-10 Investissement Québec Loan Agreement (cont'd)

EXTRAIT DU PROCÈS-VERBAL  
D'UNE ASSEMBLÉE DES ADMINISTRATEURS DE :CHRONOMÉTRIQ INC. (l'« Entreprise »), tenue à son siège, le 5 mars 2018.

Il est résolu à l'unanimité que l'Entreprise :

- 1) accepte l'offre de Prêt d'Investissement Québec (« IQ »), selon les conditions et termes mentionnés à ladite offre de prêt et à ses annexes (Dossier : D149152);
- 2) autorise par les présentes Yan Raymond Lalonde à accepter au nom de l'Entreprise ladite offre de prêt et à signer tout document nécessaire ou utile pour donner effet à la présente résolution;
- 3) ratifie tout geste posé par cette personne, le cas échéant, relativement à l'acceptation de ladite offre de prêt.

Copie conforme d'une résolution adoptée par les administrateurs de **CHRONOMÉTRIQ INC.** lors d'une assemblée valablement tenue à la date mentionnée ci-dessus.Signé ce 5 mars 2018.Maxime Néhot  
Nom du secrétaire  
Signature

## R-11 CIBC-Investissement Québec Inter-Creditor Agreement

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**CESSION DE RANG EN FAVEUR DE LA BANQUE CANADIENNE IMPÉRIALE DE COMMERCE**

Attendu que **CHRONOMÉTRIQ INC.** (l'« Entreprise ») a consenti à Investissement Québec (« IQ ») :

- une hypothèque grevant l'universalité de ses biens meubles, présents et futurs, corporels et incorporels (l'« Hypothèque d'IQ 1 »), laquelle a été inscrite au Registre des droits personnels et réels mobiliers (« RDPRM ») le 6 décembre 2013, sous le numéro 13-1083051-0001;
- une hypothèque grevant l'universalité de ses créances, présentes et futures, incluant notamment l'universalité de ses crédits d'impôt, présents et futurs (l'« Hypothèque d'IQ 2 »), laquelle a été inscrite au RDPRM le 25 août 2015, sous le numéro 15-0819556-0001;
- une hypothèque grevant l'universalité de ses créances, présentes et futures, incluant notamment l'universalité de ses crédits d'impôt, présents et futurs (l'« Hypothèque d'IQ 3 »), laquelle a été inscrite au RDPRM le 15 décembre 2016, sous le numéro 16-1223581-0001;
- une hypothèque grevant l'universalité de ses biens meubles, présents et futurs, corporels et incorporels (l'« Hypothèque d'IQ 4 »), laquelle a été inscrite au RDPRM le 23 mars 2018, sous le numéro 18-0276200-0002;
- une hypothèque grevant l'universalité de ses créances, présentes et futures, incluant notamment l'universalité de ses crédits d'impôt, présents et futurs (l'« Hypothèque d'IQ 5 »), laquelle a été inscrite au RDPRM le 14 août 2018, sous le numéro 18-0888911-0001;
- une hypothèque grevant l'universalité de ses créances, présentes et futures, incluant notamment l'universalité de ses crédits d'impôt, présents et futurs (l'« Hypothèque d'IQ 6 »), laquelle a été inscrite au RDPRM le 14 août 2018, sous le numéro 18-0888911-0002;

(collectivement l'« Hypothèque d'IQ »).

Attendu que l'Entreprise a consenti à la **BANQUE CANADIENNE IMPÉRIALE DE COMMERCE** (le « Créancier ») une hypothèque grevant l'universalité des biens meubles, présents et futurs, corporels et incorporels de l'Entreprise (l'« Hypothèque du Créancier »), laquelle a été inscrite au RDPRM le 26 août 2020 sous le numéro 20-0850335-0001;

**IQ CONVIENT DE CE QUI SUIT :**

1. IQ cède par les présentes son rang au Créancier relativement à l'Hypothèque du Créancier, en ce qui a trait à l'universalité des biens meubles, présents et futurs, corporels et incorporels de l'Entreprise (les « Biens visés »), et dans les limites prévues ci-dessous.
2. Cette cession de rang s'étend également au produit de la vente, de la location ou de toute autre aliénation des Biens visés, aux créances et sommes d'argent résultant d'une telle vente, location ou de toute autre aliénation des Biens visés de même qu'au produit d'assurance s'y rattachant.

R-11 CIBC-Investissement Québec Inter-Creditor Agreement (*cont'd*)

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CHRONOMÉTRIQU INC. (E123041)

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3. La présente cession de rang ne donne préséance au Créancier sur les Biens visés qu'à l'égard des crédits actuellement garantis par l'Hypothèque du Créancier, tels que ceux-ci peuvent être modifiés, à l'exception toutefois d'une augmentation de tels crédits. Par conséquent, toute réutilisation de l'Hypothèque du Créancier afin (i) de garantir tout nouveau crédit et augmentation de crédit existant de l'Entreprise garantis par l'Hypothèque du Créancier ou (ii) de garantir toute somme avancée par le Créancier suite à un remboursement des prêts à terme déjà garantis par l'Hypothèque du Créancier, ne donnera pas priorité de rang au Créancier sur l'Hypothèque d'IQ.
4. IQ se réserve tous ses droits et priorités aux termes de l'Hypothèque d'IQ sur tous les biens autres que les Biens visés.
5. IQ s'engage à signer les documents qui pourraient être nécessaires pour que la présente cession de rang puisse être inscrite au RDPRM, sous réserve des dispositions prévues au paragraphe suivant.
6. La présente cession de rang est conditionnelle à ce que :
  - a. Banque de développement du Canada, prêteur pari passu avec IQ à l'égard de l'Hypothèque d'IQ 4, cède également son rang en faveur du Créancier, et ce, sur les Biens visés (Hypothèque conventionnelle sans dépossession inscrite au RDPRM le 23 mars 2018 sous le numéro 18-0276200-0001);
  - b. tout titulaire d'une hypothèque sur les Biens visés dont le rang est postérieur à celui de l'Hypothèque d'IQ, mais antérieur à celui de l'Hypothèque du Créancier, cède également son rang en faveur du Créancier de manière à ce que malgré l'interversion de rang qui s'établit entre l'Hypothèque d'IQ et l'Hypothèque du Créancier sur les Biens visés, l'hypothèque de tel titulaire demeurera postérieure à l'Hypothèque d'IQ.

Signée à Saint-Laurent, ce 30e jour de septembre 2020.

**INVESTISSEMENT QUÉBEC**

Par :  Sébastien Mondou  
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Sébastien Mondou  
Directeur de comptes principal, Réseau régional  
Direction régionale MTL, St-Laurent

## R-12 Business Bank of Development of Canada Loan Agreement



BDCID: 10010551363

**Letter of Offer dated February 6, 2018**

**ChronoMétriq Inc.**  
 1396 Rue Saint-Patrick  
 suite 100  
 Montréal, QC  
 H3K 2C8

**Attention of: Mr. Yan Raymond-Lalande****Re: Loan No. 110164-02**

Business Development Bank of Canada (“**BDC**”) is pleased to offer you the following loan (hereinafter individually or collectively referred to as the “**Loan**”) according to the terms of this letter (the “**Letter of Offer**”):

Loan 110164-02 in the amount of \$385,000.00

The Letter of Offer is open for acceptance until February 16, 2018 (the “**Acceptance Date**”) after which date it will become null and void.

This Loan is in addition to the existing CDN dollar loan on which \$108,870.00 is outstanding.

**LOAN PURPOSE AND FUNDING****Loan Purpose**

Working Capital	770,000.00
	770,000.00

**Funding**

BDC 110164-02	385,000.00
Investissement Québec (Pari passu)	385,000.00
	770,000.00

No change to the Loan Purpose or Funding may be made without BDC’s prior written consent. The proceeds of the Loan may only be used for the Loan Purpose.

R-12 Business Bank of Development of Canada Loan Agreement (*cont'd*)

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**LETTER OF OFFER** ChronoMétriq Inc. - 110164, February 6, 2018

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**BORROWER**

ChronoMétriq Inc. (the "**Borrower**")

**GUARANTOR**

Rémi Lalonde Richard

Yan Raymond-Lalande

Maxime Méthot

(Hereinafter individually or collectively referred to as the "**Guarantor**"). The terms of each guarantee are set forth in the Security section below.

**INTEREST RATE**

**Loan 110164-02**

**Floating Rate:** BDC's Floating Base Rate plus a variance of 5.77% per year (the "**Variance 02**"). On the date hereof, BDC's Floating Base Rate is 5.55% per year.

BDC's Floating Base Rate is defined as the annual rate of interest announced from time to time as BDC's floating rate then in effect for determining floating interest rates for Canadian dollar loans. It shall vary automatically without notice to BDC clients upon each change in BDC's Floating Base Rate.

**INTEREST CALCULATION**

Calculated monthly on each Loan from the date of disbursement. Interest on arrears is calculated and compounded monthly at the rate applicable to each Loan.

R-12 Business Bank of Development of Canada Loan Agreement (*cont'd*)

**LETTER OF OFFER** ChronoMétriq Inc. - 110164, February 6, 2018

### REPAYMENT

All payments must be made by pre-authorized debit from your bank account and will be applied in the following order: 1) prepayment indemnity, 2) protective disbursement, 3) standby fees, 4) arrears of fees, interest and principal, 5) current balances of fees, interest and principal, 6) cancellation fees and 7) other amounts.

The balance of the Loan in principal and interest and all other amounts owing pursuant to the Loan shall become due and payable on the Maturity Date (the "**Maturity Date**").

#### Loan 110164-02

#### Regular

Payments			Start Date	End Date
Number	Frequency	Amount (\$)		
1	Once	10,675.00	23-02-2019	23-02-2019
35	Monthly	10,695.00	23-03-2019	23-01-2022

In addition, interest is payable monthly on the 23<sup>rd</sup> day of the month (the "**Payment Date 02**") commencing on the next occurring Payment Date 02 following the first advance on the Loan.

Maturity Date: January 23, 2022 (the "**Maturity Date 02**").

### PREPAYMENT

**Annual Prepayment Privilege:** Provided that the Borrower is not in default of any of its obligations to BDC, the Borrower may, once in any 12 month period, prepay up to 15% of the outstanding principal on any Loan without indemnity. The first prepayment can be made at any time more than one year after February 6, 2018. The prepayment privilege is not cumulative and each prepayment on an individual Loan must be at least 12 months subsequent to the last prepayment on that same loan. The prepayment privilege is not transferable from one individual Loan to another and is not applicable if any Loan is being repaid in full.

**Partial Indemnity:** At any time, if your loan is on a floating interest rate, three months further interest on the principal prepaid, or if the Loan is on a fixed interest rate, three months further interest together with an Interest Differential Charge. The Interest Differential Charge is a present value amount calculated by determining the difference between BDC's Base Rate then applicable to the Loan and the corresponding BDC Base Rate at the time of prepayment multiplied by the principal that would have been outstanding at each future Payment Date until the next Interest Adjustment Date or the maturity of the principal if earlier.

R-12 Business Bank of Development of Canada Loan Agreement (*cont'd*)

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**LETTER OF OFFER** ChronoMétriq Inc. - 110164, February 6, 2018

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**SECURITY**

The Loan, interest on the Loan and all other amounts owing under the Loan shall be secured by the following (the “**Security**”):

**Loan 110164-02**

1. This Loan and all security for the Loan is pari passu with a \$385,000 loan and all security for that loan from Investissement Québec subject to a Pari Passu Agreement in terms satisfactory to BDC and the other lender. Any personal guarantees taken by the lenders are excluded from the pari passu agreement but shall remain enforceable by BDC and by the other lender, in accordance with their terms.
2. First rank hypothec on the universality of all present and future moveable property, corporeal and incorporeal of ChronoMétriq inc. Without limiting the universal character of the hypothec, a detailed list (model, make, year and serial number) of the equipment, machinery, tools, vehicles and intellectual property must be delivered to BDC.

This hypothec shall be subordinated and rank, but only in respect of claims and inventory, after any other hypothec that may be granted by the grantor in favour of any bank or financial institution granting it operating loans or operating credit, BDC reserving its rights and priority on all other property of the grantor, including the insurance indemnities and the claims or sums of money resulting from the leasing, sale or other disposal of such other property.

The present hypothec ranks after all prior existing charges on the charged property as of the date of the present Letter of Offer.

3. Personal Guarantee from Yan Raymond-Lalande, equivalent to 45% of the outstanding Loan amount on the date BDC demands payment of the advances made under the Loan. The guarantor is personally responsible for the payment of the cancellation, standby and legal fees.
4. Personal Guarantee from Rémi Lalonde-Richard, equivalent to 45% of the outstanding Loan amount on the date BDC demands payment of the advances made under the Loan. The guarantor is personally responsible for the payment of the cancellation, standby and legal fees.
5. Personal Guarantee from Maxime Méthot, equivalent to 15% of the outstanding Loan amount on the date BDC demands payment of the advances made under the Loan. The guarantor is personally responsible for the payment of the cancellation, standby and legal fees.

R-12 Business Bank of Development of Canada Loan Agreement (*cont'd*)

**LETTER OF OFFER** ChronoMétriq Inc. - 110164, February 6, 2018

**DISBURSEMENT**

Funds shall be disbursed to solicitor or notary unless otherwise authorized and as follows:

**Loan 110164-02**

1. This Loan will only be disbursed once all Conditions Precedent have been met.

Invoices evidencing working capital improvements expenditures are not required.

The Loan will be disbursed as follows :

(The Borrower shall initial one of the options below)

- BDC will disburse the full amount of the Loan directly to the Borrower, as soon as possible.
- BDC will disburse {\$\_\_\_\_\_} directly to the Borrower, as soon as possible.
- BDC will contact the Borrower prior to disbursement.

**CONDITIONS PRECEDENT**

Any obligation to make any advance under the Letter of Offer is subject to the following conditions being fulfilled to the satisfaction of BDC:

1. Security in form and substance satisfactory to BDC.
2. Provision of documents evidencing expenditures under the Loan Purpose, if applicable.
3. No material adverse change.
4. Satisfaction of all applicable disbursement conditions contained in the Disbursement section of this Letter of Offer.
5. No Default shall have occurred.
6. Loan from other lender (Investissement Québec \$385,000 with amortization of 36 months + initial postponement of 12 months) is to be confirmed by supplying a copy of accepted letter of offer.
7. ID verification for Rémi Lalonde Richard (Canadian passport or driver's license card).

**UNDERLYING CONDITIONS**

The following conditions shall apply throughout the term of the Loan:

1. Borrower must obtain BDC's prior written consent before declaring or paying dividends, repaying shareholders' loans, redeeming convertible debentures and/or share capital.

R-12 Business Bank of Development of Canada Loan Agreement (*cont'd*)

**LETTER OF OFFER** ChronoMétriq Inc. - 110164, February 6, 2018

## COVENANTS

The Borrower:

- Confirms that the information in the Application for Financing and all information provided to BDC by the Borrower or on the Borrower's behalf is true.
- Agrees to comply with laws and regulations, including but not limited to environmental laws, applicable to the Borrower and its business.
- Authorizes BDC to obtain relevant information from any party for the purpose of evaluating the financial condition of the Borrower or its business.
- Agrees to obtain BDC's prior written consent a) to change the nature of the business; b) to amalgamate, merge, acquire or otherwise restructure the business or create an affiliated company; c) to sell or transfer shares or any interest in a partnership or limited partnership or trust or change the effective voting control (as determined by BDC).
- Agrees to refrain from conducting, or permitting to be conducted, any activity which BDC has described as an "Ineligible Activity" in the Application for Financing and acknowledges that this covenant applies to any entity that controls, is controlled by, or is under common control with, the Borrower.
- Agrees to keep secured assets insured against physical damage and other losses on an "All-Risks" Basis including Equipment Breakdown (or Boiler & Machinery) where applicable, for their full replacement value and to name BDC as loss payee as its interests may appear and to ensure that a standard mortgage clause be included in all policies insuring real property and to maintain all policies of insurance in effect for the duration of the Loan.

## REPORTING OBLIGATIONS

The Borrower shall provide to BDC within 90 days of its fiscal year end the following financial statements:

Company	Type	Frequency	Period Ending
ChronoMétriq Inc.	Review Engagement	Annual	June

and such other financial and operating statements and reports as and when BDC may reasonably require.

## DEFAULT

- Any representation to BDC is false.
- Failure to make any payment or to comply with the terms of this Letter of Offer or any Security or any other agreement between the Borrower and/or the Guarantor and BDC in respect of this loan or any other loan.
- Insolvency or bankruptcy or failure to perform obligations to other creditors.
- Cessation of business.

The occurrence of any of the above events by the Borrower constitutes a Default at which time BDC may demand immediate payment of the Loan and enforce the Security.

R-12 Business Bank of Development of Canada Loan Agreement (*cont'd*)

**LETTER OF OFFER** ChronoMétriq Inc. - 110164, February 6, 2018

## **FEES**

### **PAYABLE BY BORROWER AND GUARANTOR:**

**Cancellation:** If the Borrower does not draw on the Loan by the Lapsing Date indicated below (the "**Lapsing Date**"), the Loan shall lapse and be cancelled and the Borrower and the Guarantor shall pay BDC the applicable cancellation fee indicated below. If the Loan is partially disbursed on the Lapsing Date, the Borrower and the Guarantor shall pay BDC a percentage of the cancellation fee in proportion to the percentage of the Loan that is cancelled. No cancellation fee will be payable if 50% or more of the Loan has been disbursed.

#### **Loan 110164-02**

Lapsing Date: February 6, 2019 (the "**Lapsing Date 02**").  
Cancellation Fee: \$11,550.00 (the "**Cancellation Fee 02**").

**Legal:** Fees and expenses, payable on demand, incurred by BDC in connection with the placing of the Loan and the Security including the enforcement of the Loan and the Security, whether or not any documentation is entered into or any advances made.

### **PAYABLE BY BORROWER:**

**Loan Management:** Payable annually on the Payment Date immediately following each anniversary of the first disbursement date.

#### **Loan 110164-02**

\$350.00 per year (the "**Management Fee 02**")

**Transaction and Administration:** The Standard Loan Amendment, Security Processing and administration fees for the handling of the Loan.

## **SUCCESSORS AND ASSIGNS**

The Letter of Offer shall be binding on the Borrower and its respective successors and assigns. BDC may assign, sell or grant participation in (a "**transfer**") all or any part of its rights and obligations under the Letter of Offer to any third party, and the Borrower agrees to sign any documents and take any actions that BDC may reasonably require in connection with any such transfer.

## **ANTI-MONEY LAUNDERING / KNOW YOUR CLIENT**

The Borrower and each Guarantor acknowledge that, pursuant to prudent banking practices in respect of "knowing your client", BDC, in compliance with its internal policies, is required to verify and record information regarding the Borrower and each Guarantor, their directors, authorized signing officers, shareholders and other Persons in control of the Borrower and each Guarantor. The Borrower and each Guarantor agree to promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by BDC in order to comply with internal policies and applicable laws on anti-money laundering and anti-terrorist financing.

R-12 Business Bank of Development of Canada Loan Agreement (*cont'd*)

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**LETTER OF OFFER** ChronoMétriq Inc. - 110164, February 6, 2018

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**ACCEPTANCE**

By original signature, fax, or any other electronic means acceptable to BDC.

**LANGUAGE CLAUSE**

The parties have expressly requested that this Letter of Offer and all related documents be drawn up in the English language. Les parties reconnaissent leur volonté expresse que la présente lettre d'offre ainsi que tous les documents qui s'y rattachent soient rédigés en langue anglaise.

**GOVERNING LAW**

This Letter of Offer shall be governed by and construed in accordance with the laws of the jurisdiction in which the Business Centre of BDC is located as shown on the first page of this Letter of Offer.

Should you have any questions regarding the Letter of Offer, do not hesitate to communicate with one of the undersigned.

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Chaima El hafiane  
Senior Client Relationship Officer  
Phone: (514) 283-4355  
[Chaima.Elhafiane@bdc.ca](mailto:Chaima.Elhafiane@bdc.ca)

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Justin Brasier  
Senior Account Manager  
Phone: (514) 313-2743  
[Justin.Brasier@bdc.ca](mailto:Justin.Brasier@bdc.ca)

R-12 Business Bank of Development of Canada Loan Agreement (*cont'd*)

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**LETTER OF OFFER** ChronoMétriq Inc. - 110164, February 6, 2018

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**ACCEPTANCE**

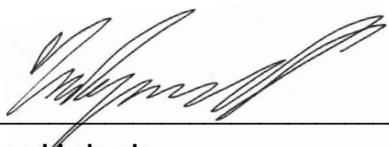
We accept the terms and conditions this 9th day of February 2018.

**ChronoMétriq Inc.**

  
\_\_\_\_\_, Authorized Signing Officer  
Name: Yan Raymond-Lalande

**GUARANTORS**

  
\_\_\_\_\_  
**Rémi Lalonde Richard**

  
\_\_\_\_\_  
**Yan Raymond-Lalande**

  
\_\_\_\_\_  
**Maxime Méthot**

## R-13 CIBC-Business Bank of Development of Canada Inter-Creditor Agreement

**CESSION DE RANG PAR BANQUE DE DÉVELOPPEMENT DU CANADA**

**BANQUE DE DEVELOPPEMENT DU CANADA** (« **BDC** »), ici représentée par Jeffrey Duong-Boudrias, agent principal, relations clients et par Jean-Philippe Salvas, directeur, comptes majeurs, dûment autorisés aux fins des présentes

**CONSENT À BANQUE CANADIENNE IMPÉRIALE DE COMMERCE** (l'« **Autre Créancier** ») la présente cession de rang.

**ATTENDU QUE:**

- 1) **Chronométriq inc.** (ci-après nommé le « **Constituant** ») a hypothéqué en faveur de BDC, en vertu d'un acte publié au Registre des droits personnels et réels mobiliers (ci-après « **RDPRM** ») sous le numéro 18-0276200-0001, l'universalité de ses biens meubles corporels et incorporels, présents et futurs (la « **Sûreté BDC** »).
- 2) Afin de garantir plusieurs facilités de crédit, consenties par l'Autre Créancier à Chronométriq inc., le Constituant a hypothéqué en faveur de l'Autre Créancier, en vertu d'un acte publié au RDPRM sous le numéro 20-0850335-0001, l'universalité de ses biens meubles corporels et incorporels, présents et futurs (la « **Sûreté de l'Autre Créancier** »).
- 3) BDC accepte de céder priorité de rang à l'Autre Créancier, tel que ci-après décrit.

**EN CONSÉQUENCE,**

- 4) Sous réserve des autres dispositions des présentes, BDC cède priorité à l'Autre Créancier relativement à la Sûreté BDC en faveur de la Sûreté de l'Autre Créancier à l'égard de tous les biens grevés par la Sûreté BDC.

Signé à Montréal, le 16 septembre 2020.

**BANQUE DE DÉVELOPPEMENT DU CANADA**

par :   
 Jeffrey Duong-Boudrias, agent principal, relations clients

par :   
 Jean-Philippe Salvas, directeur, comptes majeurs



# **SCHEDULE III b)**

## **DEPOSITIONS**



Hearing of October 27, 2021

**C A N A D A  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL**

**S U P E R I O R C O U R T**  
**(Commercial Division)**

**No. 500-11-060355-217**

**IN THE MATTER OF THE NOTICE  
OF INTENTION TO MAKE A  
PROPOSAL OF:**

**CHRONOMÉTRIQ INC.**

**- and -**

**HEALTH MYSELF INNOVATIONS  
INC.**

**Debtors/Petitioners**

**- and -**

**RICHTER ADVISORY GROUP INC.**

**Proposal Trustee**

MOTION FOR THE ISSUANCE OF AN ORDER AUTHORIZING AND  
APPROVING INTERIM FINANCING, A SALE AND INVESTMENT  
SOLICITATION PROCESS, AN ADMINISTRATIVE CHARGE, A DIRECTORS  
AND OFFICERS CHARGE, A KEY EMPLOYEE RETENTION PROGRAM,  
PROCEDURAL CONSOLIDATION OF THE ESTATES, AND OTHER RELIEF  
(N.C.)

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Transcript of proceedings held before the Honourable Martin Castonguay, J.C.S. on October 27,  
2021, in Montréal, Québec.

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Hearing of October 27, 2021

(ii)

**APPEARANCES :**

Me Michel Laroche	for the Debtors
Me David Ward	ChronoMétriq Inc. and
Me Larry Ellis	Health Myself Innovations Inc.
Me Hugo Babos-Marchand	for the Proposal Trustee
Me Nathalie Nouvet	for Ful in Partners
Me Kim Sheppard	for the Attorney General of Canada
Me Jennifer Tschamper	for Mr. Yan & Mr. R. Lalande
Me Daniel Cantin	for the Quebec Revenue Agency
Me Harvey Chaiton	for the Canadian Imperial Bank of Commerce
Ms. Denise Boily	Registrar

Preliminaries, October 27, 2021

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1

1 --- Upon commencing at 2:19 p.m./La séance débute à 14h19

2 **LA GREFFIÈRE:**

3 Alors, on peut procéder à l'identification des  
4 procureurs? Maître Laroche?

5 **Me LA ROCHE:**

6 Ils vont s'installer avant, 30 secondes. On va les  
7 laisser s'installer.

8 **LA GREFFIÈRE:**

9 Est-ce qu'il y a des procureurs en virtuel, aussi, dans  
10 le dossier de ChronoMétriq?

11 **Me LA ROCHE:**

12 Il devrait en avoir, oui. Plusieurs sont...

13 **LA GREFFIÈRE:**

14 Bon, d'accord. Je pense peut-être commencer par les gens  
15 en virtuel.

16 **Me LA ROCHE:**

17 Attendez, Madame, on n'est pas pressé, là.

18 **LA GREFFIÈRE:**

19 OK, d'accord, on va attendre.

20 **Me LA ROCHE:**

21 On va le laisser s'installer.

22 Bonjour, Monsieur le juge, bonjour Madame.

23 **LA GREFFIÈRE:**

24 Oui, alors, dans le dossier ChronoMétriq Inc., Health  
25 Myself Innovations Inc. et Richter Advisory, veuillez

Preliminaries, October 27, 2021

---

2

1 vous identifier, s'il vous plait.

2 **Me LA ROCHE:**

3 I'll do it part in French, part in English, because we  
4 have people in Toronto and we have people out of Province  
5 of Quebec.

6 So for the Debtors/Petitioner, ChronoMétriq Inc. and  
7 Health Myself Innovation Inc, Michel La Roche from Miller  
8 Thomson.

9 **Me BABOS-MARCHAND:**

10 Good afternoon, Mr. Justice. Hugo Babos-Marchand from  
11 McCarthy Tétrault for Richter Advisory Group.

12 **LA GREFFIÈRE:**

13 Oui, alors en virtuel, est-ce qu'on peut identifier qui  
14 représente les...?

15 **Me SHEPPARD:**

16 Yes, hello. Kim Sheppard for the Attorney General of  
17 Canada.

18 **THE COURT:**

19 Kim Sheppard?

20 **Me SHEPPARD:**

21 Yes.

22 **LA GREFFIÈRE:**

23 S-H-E-P-P-A-R-D comme le procureur général?

24 **Me SHEPPARD:**

25 C'est ça, procureur général du Canada.

Preliminaries, October 27, 2021

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3

1 **LA GREFFIÈRE:**

2 C'est beau. Oui, Maître...

3 **Me CANTIN:**

4 Bonjour, Monsieur le juge. Vous me permettez de prendre,  
5 d'utiliser le français? Alors, Daniel Cantin pour  
6 l'Agence de Revenu du Québec.

7 **LA GREFFIÈRE:**

8 Oui? Maître Harvey?

9 **Me CHAITON:**

10 Good afternoon. My name is Harvey Chaiton, C-h-a-i-t-o-  
11 n. I am with my colleague, Sam Rapos, R-a-p-o-s, and we  
12 represent the Canadian Imperial Bank of Commerce.

13 **THE COURT:**

14 With which firm?

15 **Me CHAITON:**

16 Chaiton in Toronto, Chaitons LLP.

17 **THE COURT:**

18 I'm sorry.

19 Okay, that's it.

20 **LA GREFFIÈRE:**

21 C'est complet?

22 **THE COURT:**

23 No other lawyers?

24 **Me LA ROCHE:**

25 My partner, Larry Ellis, from my Toronto office is also

Preliminaries, October 27, 2021

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4

1 present on the line. I recognize him.

2 **Me ELLIS:**

3 Good afternoon.

4 **LA COUR:**

5 C'est lui, en bas?

6 **LA GREFFIÈRE:**

7 Oui.

8 **LA COUR:**

9 OK, oui. Vous êtes prêt? Est-ce que c'est contesté?

10 **Me LA ROCHE:**

11 Ce n'est pas contesté, sauf, je crois, de la part de  
12 Maître Sheppard pour le ministère du Revenu, et je n'ai  
13 pas eu de contact avec Maître Cantin, donc on devrait  
14 peut-être leur demander.

15 **Me SHEPPARD:**

16 Donc, oui, Monsieur le juge, en fait, nous, I will speak  
17 in English, I guess, for the following request.

18 So for the Attorney General of Canada, for CRA, Canada  
19 Revenue Agency, we are contesting the "la charge", the  
20 charge to be asked today.

21 We're willing to accept a certain amount, 30,000, for the  
22 payment of the salaries for the next two weeks, but we're  
23 asking the Court to postpone the remainder of the motion  
24 for two weeks from now, considering that we were served  
25 with the motion this morning at 10:30, and do not have a

Preliminaries, October 27, 2021

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5

1 position or do not have a mandate from the client at this  
2 point in time.

3 But considering the super priority charges that are being  
4 asked in the file, and considering the fact that there  
5 will be some deemed trust amounts that are owing, this is  
6 an issue that is of concern for CRA and so we will  
7 probably have representations to make.

8 **THE COURT:**

9 Okay. I just want to make sure I understand. The sound  
10 was cut off at one point in time.

11 You said you are in agreement with the payment for the  
12 salary of tomorrow, but you want to postpone the rest of  
13 the order of the file about two weeks from now; am I  
14 correct?

15 **Me SHEPPARD:**

16 Exactly, exactly, to be able to have a position in the  
17 file and to be able to determine regarding the super  
18 priorities and a ranking of the super priorities  
19 regarding the deemed trust.

20 **THE COURT:**

21 Is there ---

22 **Me SHEPPARD:**

23 And also, there's other questions that need to be asked.  
24 I mean, we just received a copy of the cash flow. There  
25 is a lot of analysis that still needs to be taken into

Preliminaries, October 27, 2021

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6

1 consideration on the file.

2 Also, regarding the employees and the amounts that are  
3 owed, there's certain amounts that are also being -- that  
4 are also -- my words are not coming out well in English  
5 right now. And ---

6 Il y a aussi d'autres contrats qui sont à analyser à  
7 l'égard des employés et des vacances impayées.

8 **LA COUR:**

9 OK, mais je comprends que vous voulez un report d'à peu  
10 près deux semaines, mais vous êtes d'accord avec une  
11 ordonnance amputée d'un certain nombre de choses, une  
12 ordonnance qui porterait seulement pour certaines charges  
13 prioritaires permettant le paiement des employés.

14 **Me SHEPPARD:**

15 Exactly. So the DIP financing ---

16 **THE COURT:**

17 DIP financing?

18 **Me SHEPPARD:**

19 The DIP financing for 230,000 plus the charge that goes  
20 with the 230,000.

21 **Me LA ROCHE:**

22 If I may comment, Ms. Sheppard's request in a normal  
23 file, and normally, I would have come to an agreement  
24 just to support the payroll for 15 days, but after you  
25 going to heard the testimony of the officer and the

Preliminaries, October 27, 2021

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7

1 representative of Richter in this file, it's impossible  
2 to have a cut and paste because we are going to ask to  
3 the Court to approve a SISP on a very, very short period  
4 of time, and it's very important to be accurate with the  
5 payment to Google or the other computer company and keep  
6 the employees. So that's why we have discussion, but we  
7 didn't come to an agreement on a partial DIP on the  
8 assets.

9 **THE COURT:**

10 I'm just inquiring, who's contesting..

11 **ME LAROCHE:**

12 Sorry

13 **THE COURT:**

14 So is there somebody else who contests?

15 **Me CANTIN:**

16 Oui, Monsieur le juge, alors Daniel Cantin pour l'Agence  
17 de Revenu du Québec. Je le ferais en français ce que  
18 Maître Sheppard nous a avancé tout à l'heure. Alors, à  
19 l'égard de, bon, dans le peu de cour de temps qu'on a eu,  
20 j'ai trouvé certaines informations pertinentes, et  
21 d'ailleurs je vais demander au contrôleur, au contrôleur,  
22 je m'excuse, au syndic de me transmettre certains  
23 documents que j'ai toujours pas obtenu.  
24 À tout de moins, vous devez savoir que on a une créance  
25 de retenue à la source suite au paiement des salaires de

Preliminaries, October 27, 2021

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8

1 1 810 000, on pourra vous faire la démonstration.  
2 Cependant les remises conséquentes aux salaires qui sont  
3 payés sont de l'ordre d'environ 194 000\$ par mois  
4 seulement, juste pour les droits, sans pénalité et sans  
5 intérêt.  
6 Alors, c'est quand même des sommes substantielles,  
7 sachant, comme on voit dans la requête au paragraphe 39  
8 notamment, que les salaires sont d'environ 460 000\$ par  
9 mois. Donc, les remises gouvernem..., donc comme je vous  
10 disais tout à l'heure, c'est des sommes considérables. Ce  
11 qu'on vous demande dans le projet d'ordonnance au  
12 paragraphe 33, donc, de ce que j'en comprend, c'est donc  
13 d'exercer votre discrétion pour accorder une super  
14 priorité aux trois charges demandées, et ce en avant des  
15 remises gouvernementales.  
16 Alors, c'est là, effectivement, qu'on a, que ça accroche,  
17 qu'on a un problème, que ça nous prend une démonstration  
18 un peu plus complète à ce niveau-là. On n'a pas eu  
19 l'occasion, compte tenu du très très court délai, dans ce  
20 qui a un peu plus avec Maître La Roche, j'ai discuté avec  
21 Maître Sheppard très, très brièvement, tout à l'heure,  
22 alors...  
23 **LA COUR:**  
24 Bon, écoutez, je vais entendre la preuve...  
25 **Me CANTIN:**

Preliminaries, October 27, 2021

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9

1 Je suis d'accord avec la...oh, excusez.

2 **LA COUR:**

3 Je vais entendre la preuve, vous pourrez poser des  
4 questions.

5 **Me CANTIN:**

6 Ça va.

7 **LA COUR:**

8 Parce que je suis...

9 **Me CANTIN:**

10 Ça va, ça me convient.

11 **LA COUR:**

12 C'est parce que là, je suis pas en mesure de juger sur,  
13 euh, j'entends ce que vous me demandez, Maître La Roche,  
14 je connais pas plus votre dossier, je suis aussi dans le  
15 noir que vous, je l'ai eu de matin, pis je siégeais ce  
16 matin, alors je l'ai vu...très, très peu. Alors,  
17 j'entends Maître La Roche, il dit : « je veux faire une  
18 preuve. »

19 Pis après ça, je déciderais si aux vues de la preuve il y  
20 a lieu d'accorder les, les trois, les trois demandes au  
21 point de vue, mais je vous entends que de parts et  
22 d'autres, PGQ, PGC, pour la paye, vous êtes en encore  
23 avec ça, les chargent pour permettre la paye. C'est le  
24 reste que vous voulez vérifier.

25 Okay. For your benefit, Mr. Chaiton, I will hear the

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10

1 proof.

2 **Me CHAITON:**

3 Yes.

4 **THE COURT:**

5 And then I will decide if -- and Me Cantin, Me Sheppard  
6 could ask questions to the witness. Then I will decide  
7 if I issue an order just part of the order or a complete  
8 order as are one, okay? I'll decide later on.

9 But I need to hear the proof because what Me La Roche  
10 told me -- told the Court, it's important, given the  
11 actual circumstances that we have, all the charges for  
12 D&O and KERP, we have all the charges right now.  
13 So I'm going to hear the proof and the request was made  
14 to postpone part of it for two weeks; then I'll decide if  
15 I -- what I do.

16 **Me CHAITON:**

17 Thank you.

18 **THE COURT:**

19 Okay, thank you. But you understand that part of the  
20 proof will be in French. I can't translate the proof,  
21 okay?

22 **Me CHAITON:**

23 That's okay. Yes, thank you.

24 **THE COURT:**

25 Okay. Procédez.

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11

1 **LA GREFFIÈRE:**

2 Alors...

3 **ME LA ROCHE:**

4 Premier témoin, James Feldkamp. Il est pas, faudrait le  
5 voir.

6 Mr. Feldkamp, you want to open -- okay, thank you very  
7 much.

8

9 **JAMES FELDKAMP, SWORN:**

10 **1396 ST-PATRICK**

11 **MONTREAL, QUEBEC**

12 **--- EXAMINATION-IN-CHIEF BY Me LA ROCHE:**

13 **Q.** Mr. Feldkamp, what is your relationship with one of  
14 the Debtors, ChronoMétriq Inc.?

15 **A.** So I am the CEO, the Chief Executive Officer of  
16 ChronoMétriq.

17 **Q.** And what is your relationship with the other Debtor,  
18 Health Myself Innovation Inc.?

19 **A.** I am also the CEO of Health Myself Innovation Inc.

20 **Q.** When did you start your function at those two  
21 companies?

22 **A.** So I was originally hired as an advisor, as a  
23 consulting advisor on July 22<sup>nd</sup> of this year, and  
24 then became co-CEO on September 2<sup>nd</sup>, and became the  
25 full CEO on September 15<sup>th</sup>.

1 **Q.** So since those dates, you're aware of all the facts  
2 and the operation of both companies?

3 **A.** Yes. The two companies operate as one. They're --  
4 ChronoMétriq DBA...

5 **Q.** Can you explain the relationship between the two  
6 companies?

7 **A.** Certainly. So ChronoMétriq, which was started in  
8 2012 last fall, acquired Health Myself Innovations  
9 Inc.

10 So ChronoMétriq is based out of Montreal, and Health  
11 Myself based out of Toronto, so acquired outright  
12 Health Myself, and then changed the business name  
13 for both companies to Pomelo Health. And so they  
14 operate as one company, but there are still  
15 contracts signed under both ChronoMétriq and Health  
16 Myself.

17 **Q.** Can you describe to the Court the activities of  
18 ChronoMétriq Inc?

19 **A.** Certainly. So ChronoMétriq Inc. is in the health  
20 tech area. They provide a service to provide  
21 scheduling and booking, reminders, queueing, patient  
22 portals.

23 To give you an example, how someone would -- as a  
24 patient, and as a normal individual in Quebec, or  
25 any province across Canada, if you needed to book an

1           appointment for a clinic, you would be able to go  
2           and, using our software, the Pomelo platform, you  
3           could then book your appointment and receive  
4           reminders. You can also do telemedicine with your  
5           doctor and view your records through the patient  
6           portal.

7           So we serve more than a million patients across  
8           Canada and some in the United States and work with  
9           thousands of clinics and pharmacies as well.

10   **Q.**   What is the particular relationship between  
11           ChronoMétriq and the Quebec Government?

12   **A.**   So the Quebec Government, we have a contract that  
13           we've been working together with the Quebec  
14           Government to develop, at the request of the  
15           Ministry of Health -- or it's the Quebec hub, which  
16           is going live right now, this fall, and it is for  
17           all of the appointments and reminders across the  
18           province, so there as one of the technology solution  
19           providers. Any individual that -- and then come on  
20           to our website and book an appointment with any of  
21           the clinics that are on the Quebec hub.

22           And so we provide the booking and reminders feature,  
23           which also then reminds them of their appointment  
24           and works for the correspondence between the general  
25           practitioner and the patient.

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14

1 **Q.** What about Health Myself Innovation operation?

2 **A.** Yeah. So the two operate as one. So Health Myself,  
3 within our Pomelo universe, we have the Chronosuite,  
4 which was the -- which came from the ChronoMétriq.  
5 And then we have the Health Myself, which is now the  
6 Pomelo platform. And so different services we  
7 provide with different integration with the EMRs,  
8 the (audio glitch) ---

9 **Q.** Want to repeat?

10 **A.** --- as well as pharmacies ---

11 **Q.** Do you want to repeat ---

12 **A.** Sorry.

13 **Q.** We missed you.

14 **A.** Oh, sorry, yeah, it might be the connection. So  
15 with the EMRs, the electronic medical records -- so  
16 this is -- for example, Telus has several EMRs,  
17 others -- WELL Health, MedPAR, for example. And  
18 then also with pharmacies, we work with, among  
19 others, Walmart of Canada and their 337 pharmacies.

20 **Me LA ROCHE:**

21 Madame, il y a quelqu'un qui voudrait rentrer qui  
22 représente un actionnaire.

23 **LA GREFFIÈRE:**

24 Désolée.

25 **Me LA ROCHE:**

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15

1 Non, non, ça va, Madame.

2 **LA GREFFIÈRE:**

3 Merci.

4 **Me LA ROCHE:**

5 C'est parce que je l'ai vu à l'écran, c'est juste pour  
6 ça.

7 **LA COUR:**

8 C'est qui?

9 **Me LA ROCHE:**

10 Nathalie Nouvet de Stikeman.

11 **LA GREFFIÈRE:**

12 Est-ce qu'on doit l'identifier, oui?

13 **LA COUR:**

14 Oui, s'il vous plait.

15 **LA GREFFIÈRE:**

16 Alors, Maître Nouvet, on voit que vous êtes une nouvelle  
17 arrivante au dossier, là. Maître Nouvet, vous entendez?

18 **Me NOUVET:**

19 Oui. Oui, pardon pour le retard.

20 **LA GREFFIÈRE:**

21 Est-ce que c'est possible de vous identifier, s'il vous  
22 plait, au complet, avec le nom de la partie que vous  
23 représentez?

24 **Me NOUVET:**

25 Oui.

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16

1 **LA GREFFIÈRE:**

2 Allez-y.

3 **Me NOUVET:**

4 Nathalie Nouvet de Stikeman Elliott.

5 **LA GREFFIÈRE:**

6 Oui, pour?

7 **Me NOUVET:**

8 Je représente Full In, qui est un actionnaire sur la  
9 distribution.

10 **LA GREFFIÈRE:**

11 Comment vous écrivez Full In?

12 **Me NOUVET:**

13 F-U-L-L.

14 **LA GREFFIÈRE:**

15 Oui.

16 **Me NOUVET:**

17 I-N.

18 **LA GREFFIÈRE:**

19 Merci.

20 **Me LA ROCHE:**

21 Elle est sur le service list que je vous ai remis.

22 **LA GREFFIÈRE:**

23 Ah oui? OK.

24 **Me LA ROCHE:**

25 Non, ça va.

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17

1 **BY Me LA ROCHE:**

2 **Q.** I'm sorry, Mr. Feldkamp. How many employees are  
3 working in both companies?

4 **A.** Employees that are employed primarily in the  
5 Montreal office. We also have an office in Toronto,  
6 so employees in Toronto, and one employee currently  
7 based in the United States.

8 **THE COURT**

9 **Q.** So how many employees? I didn't get it.

10 **ME LA ROCHE:**

11 Forty-eight (48).

12

13 **A.** Sorry, 48.

14 **Q.** I saw in the Richter Report that you have some kind  
15 of operation in the U.S.; can you describe to the  
16 Court why you have company and what kind of  
17 operation you have in the U.S.?

18 **A.** Yes. So a little more than a year ago -- so  
19 ChronoMétriq, and now Pomelo Health, made an entry  
20 into the U.S. market with several EMRs, and also  
21 pharmacies there, and set up an office that was in  
22 Boston.  
23 We still have the clients and are continuing to  
24 operate with the partners in the United States, but  
25 currently the office in Boston is vacant. There is

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18

1 no longer any employees based there, and the lease  
2 will expire at the end of January.

3 **Q.** Can you explain more precisely what ChronoMétriq  
4 needs to operate -- computer, office, employees.  
5 Explain to the Court what is really necessary to  
6 continue the operation as a going concern?

7 **A.** Yeah. So ChronoMétriq is a SAS business, is a  
8 software-as-a-service business, and so what is  
9 essential for the software-as-a-service is obviously  
10 the employees themselves.

11 We also have critical consultants. So these are  
12 basically employees in that they perform critical  
13 roles in the engineering and other areas for the  
14 development and maintenance of that software as well  
15 as the service and support for the clinics and the  
16 patients.

17 In addition, obviously, the equipment, the  
18 technology equipment that we have for the employees  
19 and the office.

20 But also very importantly is the online service. So  
21 we operate our business in the cloud, so the servers  
22 in the cloud, so the (inaudible) ---

23 **Q.** You want to repeat the last ---

24 **A.** --- the Salesforce ---

25 **Q.** --- the last word, please? You operate in the

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19

1 cloud.

2 **A.** Sorry, it's ---

3 **Q.** You operate in the cloud and -- just continue,  
4 please.

5 **A.** Yeah, so operating in the cloud -- so a number of  
6 service providers are very essential to the  
7 functioning of our software. So our servers are  
8 hosted in the cloud with Amazon with their AWS -- is  
9 the name of their hosting service.

10 We have other providers -- Salesforce for all of our  
11 contracts as well as the client support; Twilio for  
12 our messaging, for doing SMS messaging, among  
13 others. So we have a number of cloud service  
14 providers that are integral to providing continuity  
15 of service to the clinics and the patients.

16 **Q.** Do you have any supplier that you could postpone the  
17 payments?

18 **A.** Yes. Yes, you know, there are -- we have been  
19 downsizing the firm and also reducing the expenses,  
20 so we have consultants which are no longer employed  
21 with the company. So the -- obviously there's  
22 outstanding liabilities, but it's not any -- there's  
23 a number of service providers which are not a  
24 continuing ongoing service for the company.

25 **Q.** I'm going to come back on the essential operation

1 later on.

2 I understand that CIBC is your banker.

3 **A.** That is correct. CIBC is our primary lender. We  
4 have a \$3 million Canadian dollar loan with them,  
5 also the credit card facility, as well as we did  
6 have a \$2 million revolver, but that has been shut  
7 off.

8 **Q.** What are your relationships with CIBC --  
9 financially, I mean?

10 **A.** Yeah. So they are -- they are to support the  
11 ChronoMétriq in its operations.

12 **Q.** They support what? Can you repeat your answer,  
13 please?

14 **A.** To support the working capital requirement so that  
15 the banking facilities and the working capital  
16 requirements for the business -- they're an integral  
17 part of that. So with the -- as I mentioned, for  
18 example, the online -- the cloud services that are -  
19 - go through recurring payments with the credit  
20 cards, all of that is all through our banking  
21 relationship with CIBC.

22 **Q.** You just told me that you have a line of credit of  
23 \$3 million, right?

24 **A.** No, at the moment, we do not have any line of  
25 credit. The -- when we went into default on our

1 loan, the -- we did have a \$2 million line of credit  
2 which was shut off. We do have, for -- temporarily,  
3 we do have, at the moment, a \$250,000 line of  
4 credit.

5 **Q.** Did you receive a letter of default?

6 **A.** Yes, a letter of default was delivered to the  
7 previous CEO and CFO, and that was on August 20<sup>th</sup>.

8 **Q.** Were you able to make an arrangement with CIBC?

9 **A.** So I was not aware of the Notice of Default until  
10 September the 1<sup>st</sup>. So the -- we have come to an  
11 arrangement that the -- we are still in default with  
12 our loan from CIBC.

13 **THE COURT:**

14 Just so I understand, Mr. Feldkamp, you said that you had  
15 a debt to -- with CIBC of \$3 million. So previously,  
16 then, you had a loan of \$3 million plus a credit margin  
17 of \$2 million? Am I correct?

18 **A.** Okay, so let me clarify. So there was a \$3 million  
19 that was to help us finance the acquisition of  
20 Health Myself. That loan has come due, and we have  
21 been paying back the installments on that loan  
22 beginning October 1<sup>st</sup> of this year. In addition to  
23 the \$3 million loan, we had ... default an additional  
24 \$2 million line of credit. But when we went into  
25 default, the line of credit was terminated, so it's

1           just the repayment on the \$3 million loan.

2   **Q.**   Can you talk to the Court about the financial  
3           difficulties of both the companies?

4   **A.**   Certainly.  So it came to my attention, the  
5           financial difficulties of the company, on the  
6           evening of August 30<sup>th</sup>, and -- pardon me, on August  
7           30<sup>th</sup>, it came to my attention that the cash in the  
8           bank at that time was \$770,000 Canadian dollars,  
9           which was substantially less than what I was  
10          previously led to believe.

11          So that was, as you can understand, from the  
12          employees and other commitments, that left us with  
13          less than two weeks of capital.  And so we have been  
14          in an extremely tight capital situation since that  
15          time.

16          So when it was discovered, we put the company on to  
17          a containment strategy to stop all of the -- this --  
18          the non-essential spending to see what was  
19          happening.  We were -- the backers -- so one of the  
20          venture capital firms that's an investor in the  
21          company provided a \$1 million additional infusion of  
22          equity to stabilize the company to find out what the  
23          situation was.  And then it was discovered that the  
24          debts of the company greatly exceeded what were  
25          known.  And then, also, with the discovery of the

1 Notice of Default and discussions with the bank, it  
2 became clear that the company was insolvent.

3 **Q.** To date, do you have any explanation?

4 **A.** Yeah, what has come to light is that the -- you  
5 know, that the true financial situation of the  
6 company -- it was understood that the true financial  
7 was very different than what was communicated to the  
8 Board of Directors. And it is -- there was trying  
9 to reflect a better financial situation than was the  
10 actual truth. And when that was discovered and the  
11 investigation done, the former directors --  
12 actually, I would say the former CEO and president,  
13 as well the CFO, their termination -- their  
14 employment was terminated.

15 And the financial situation was -- instead of being  
16 at a very healthy situation, it was an unhealthy  
17 situation. And with it the size of the employees,  
18 it just could not be justified by the cashflow and  
19 the revenues coming in relative to the credit and  
20 the liabilities that were there.

21 **Q.** Can you give to the Court and explain to the Court  
22 what kind of measure you took at that time?

23 **A.** Yeah. So as mentioned, we put the company on  
24 containment to really look at all of the spending  
25 and to very aggressively reduce the spending. So

1 all non-essential spending we looked at so to  
2 eliminate the service providers, external  
3 consultants, also to consolidate the different  
4 service providers and to limit those to the  
5 essential.

6 We also took additional downsizing measures. So we  
7 have severed the employees -- so there was a  
8 downsizing that took place just before I joined.  
9 Actually, the same day, on July 22<sup>nd</sup>, there were 23  
10 employees that were let go with severance. And we  
11 had -- in addition to four of the employees, we had  
12 a further seven employees who were given severance  
13 as part of a downsizing that took place last  
14 Thursday.

15 So with the employees, there were over 100 employees  
16 at the beginning of this year, and there are now  
17 (inaudible) downsize the employees, downsize the  
18 spend, and removed non-essential services.

19 **Q.** Why you decide to file the two Notice of Intent to  
20 file a proposal? Why you use the BIA?

21 **A.** Yeah, so several reasons with the BIA. I mean  
22 first, obviously, with the cash situation, there was  
23 simply insufficient cash to maintain operations as  
24 usual, you know and that was very critical because  
25 we support, as mentioned, more than a million

1 patients around Canada and the United States every  
2 day, and also the thousands of clinics and  
3 pharmacies, and there was just insufficient cash to  
4 continue that. And so we needed a way in order to  
5 continue the operation; that was number one.  
6 The second is that there is very significant  
7 interest in this company. We have been approached  
8 by a number of different companies over the last  
9 several months who are interested in acquiring  
10 Pomelo Health. And so the structure coming into the  
11 proposal structure, as we saw, is the best way to  
12 provide continuity of service to the patients and to  
13 the clinics, and to go through an organized,  
14 transparent process to find a buyer and to sell to  
15 the best offer to then recruit for both of the -- to  
16 pay the liabilities and the employees.

17 **Q.** Are you in contact with some potential buyers?

18 **A.** Yes, we are. We have received an unsolicited LOI  
19 earlier this week.  
20 We also have a key client who we're very deeply  
21 integrated with on an ongoing basis, and so we have  
22 reached out to them. They are also very interested.  
23 They are very concerned that there is continuity of  
24 service, and they're interested as well.  
25 In addition, we have several others that have

1           expressed interest, other EMRs, other strategics  
2           that have expressed interest in buying ChronoMétriq.

3 **Q.**   And why did you decide to conduct a SISP through  
4           Richter? You're no able to do it yourself?

5 **A.**   Well, the reason for using the SISP process, and  
6           with Richter as the trustee, is for the  
7           transparency, to have the transparency and have an  
8           organized process to ensure that there is the  
9           greatest return for all of the shareholders and  
10          employees there.

11          So using a professional trustee to monitor through  
12          the process, we believe was the best way to ensure  
13          the best result for all involved.

14 **Q.**   I'm referring to the Richter Report and, more  
15          particularly, at section 27, where we can see the  
16          timeline.

17 **THE COURT:**

18          Just hold on, Maître.

19 **Me LA ROCHE:**

20          Le rapport de Richter, je vous en donne une copie papier,  
21          ici. Oh, pardon, vous en avez une avec les annexes, alors  
22          que celle-là était...celle-là était assez épurée. Merci.  
23          Alors, je suis à la page 9, page 9 section 27.

24 **BY Me LA ROCHE:**

25 **Q.**   Do you have in front of you, Mr. Feldkamp? It's the

1 ---

2 **A.** Yes, I do.

3 **Q.** Okay. How come the timeline is so short?

4 **A.** Yeah, so the timeline was very short with it because  
5 the -- as mentioned, you know, the discovery of the  
6 true cash financial situation of the company came  
7 only on August 30<sup>th</sup>. And with that discovery, as  
8 mentioned, it was extremely dire from there. And  
9 so, as mentioned, it's \$770,000 Canadian dollars in  
10 the bank with a company that has the cashflow  
11 requirements of more than a \$1 million a month, so  
12 that was within several weeks of completely running  
13 out of capital.

14 And so again, as mentioned, with the timeline -- so  
15 on the -- in early September, with the Board of  
16 Directors, with the support of outside investors, he  
17 concluded that there is obviously a need for  
18 additional equity and to better understand the  
19 situation, if it could be turned. And so that was  
20 brought in, the additional \$1 million in equity  
21 infusion.

22 But then going through the investigation and  
23 discovering the full detail of the indebtedness of  
24 the company, it became clear that it (inaudible) to  
25 function on its own and would require significant

1 additional equity infusion. And so that was when it  
2 determined was to go through the BIA process to then  
3 find a path for an organized transparent sales  
4 process.

5 **Q.** Did you discuss with CIBC that timeline?

6 **A.** Absolutely. So upon learning on August 30<sup>th</sup> -- you  
7 know, so that happened at night when I discovered.  
8 The -- spoke with the then CFO and said, "It's very  
9 important that we get in contact with the bank. We  
10 need to speak to the bank immediately."  
11 So they reached out to the bank the following day to  
12 set up a meeting for the 1<sup>st</sup> of September. It is  
13 then that I learned about the Notice of Default,  
14 which was sent out to the then CFO and then CEO,  
15 which I was not previously aware of, and we had a  
16 meeting with the bank, the President of the Bank  
17 there, and they had been (inaudible) ---

18 **Q.** Repeat, please.

19 **A.** --- financial situation.

20 **Q.** Can you repeat your last sentence.

21 **A.** Sorry.

22 **Q.** Just repeat the last 30 seconds.

23 **A.** So yes, certainly. So in the meeting with the bank,  
24 CIBC communicated that there had been regular  
25 discussions with (inaudible) financial situations

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29

1 had a number of questions. And so yes, we worked  
2 with them on a daily basis (inaudible) rapidly  
3 deteriorating financial situation of the company.

4 **THE COURT:**

5 I get the general scope of the answer.

6 **Me LA ROCHE:**

7 I think so.

8 **Q.** Did you ask for the bank for additional delay?

9 **A.** Yes, we did. We asked the bank both for -- two  
10 things. We asked them to turn back on the revolving  
11 credit facility, which had been turned off. So we  
12 asked for -- to turn back on the \$2 million  
13 revolver. And we also asked for a postponement on  
14 the repayment schedule, because the \$3 million loan,  
15 which the initial payment was due on October 1<sup>st</sup> --  
16 and so this was September 1<sup>st</sup> -- we asked for a delay  
17 in that. The bank was unwilling to either turn back  
18 on the revolver or provide reprieve for the debt  
19 repayment.

20 **Q.** But they are prepared to help you and assist you  
21 financially during the timeline for the SISP?

22 **A.** Absolutely. No, the bank has been very helpful.  
23 When we discussed the sales opportunity and the  
24 interest to provide the assistance for the DIP  
25 financing to see through the critical needs for

1 continuity of the operation to find a buyer for the  
2 company.

3 **Q.** Why it's so critical for the company to continue  
4 business and try to find a buyer in a going concern?

5 **A.** So as mentioned, we're a software business that's an  
6 integral part of the healthcare market in Canada  
7 and, to a lesser extent, the United States, and so  
8 patients and clinic where the general practitioners  
9 and pharmacies rely on (inaudible) every day.

10 And so if we were unable to provide our service and  
11 it went blank, then all of those appointments, all  
12 of those reminders, and those patient portals would  
13 be shut off. And so it would have a detrimental  
14 impact on both the patients and, as well, the  
15 healthcare community for both the clinics as well as  
16 on the pharmacy side.

17 **Q.** You're not an expert, but as a CIO I will ask you a  
18 question. What will be the value of both companies  
19 if you cease the operation today or tomorrow?

20 **A.** Yeah, I -- the key thing with a software (inaudible)  
21 is, unlike a manufacturing business which has the  
22 plant, and equipment, and the assets, the key asset  
23 for a software business is the continuity of that  
24 software. So it is that intellectual property  
25 that's keeping it going. And so if it ceases

1 operations, the recovery value is very low because  
2 it's rented cloud space; it's -- there's some  
3 laptops, but the office is rented.  
4 So it's not like in manufacturing where you have --  
5 you know, you can recover in the plant, and the  
6 equipment. In a software situation, that is  
7 minimal. So the value of the company, if it ceased  
8 to be an ongoing concern, the recovery value  
9 (inaudible).

10 **Q.** I didn't get the last part of the answer. What  
11 would be the value ---

12 **A.** Okay.

13 **Q.** What would be the value ---

14 **A.** The ---

15 **Q.** Sorry, what would be value of the company if you  
16 ceased to operate?

17 **A.** Yeah, so if we cease to operate, the recovery value  
18 of the company would be very low, because the value  
19 of the company is in the service and the ongoing  
20 service that it provides. It's not in the assets,  
21 the physical assets, but it's actually in the  
22 service, which is -- needs to be a living thing.

23 **Q.** Do you have any amount in mind?

24 **A.** I do not.

25 **Q.** Okay. Let's talk about a sensible subject for

1           Maître Sheppard and Cantin. What are the amounts  
2           due to the Revenue Canada and Revenue Quebec for the  
3           deduction at source?

4   **A.**    Yeah, so as I understand, as we have looked at it,  
5           for Revenue Canada -- we have \$1.37 million for  
6           Revenue Canada. And also, then, for Revenue Quebec,  
7           I believe we have \$1.8 million that are currently  
8           due. So ---

9   **Q.**    For ---

10 **A.**    --- we do have ---

11 **Q.**    Sorry.

12 **A.**    --- a number of tax credits, so that is not  
13           including the tax credits, because we have roughly,  
14           I believe, the similar amount in tax credits that  
15           are due. But those are the deduction at source  
16           liabilities.

17 **Q.**    When you're talking about tax credit, you're talking  
18           about tax relief from the Quebec Government that's  
19           going to offset the amount due?

20 **A.**    Yes.

21 **Q.**    What's the tax credit amount? What is the level of  
22           the tax credit amount?

23 **A.**    Yeah, I don't have the exact one in front of me, but  
24           it's between \$1 million and \$2 million. I believe  
25           they're referred to as SRED Credits, s-r-e-d

1 credits.

2 **UNKNOWN SPEAKER3:**

3 Est-ce qu'il y en a avec le fédéral?

4 **Me LA ROCHE:**

5 Mr. Adessky will testify, and he's referring to section  
6 13 of his report.

7 **Q.** When did you discover the level of the amount due to  
8 Revenue Canada and Revenue Quebec?

9 **A.** Yes, the discovery happened during the month of  
10 September. So when we discovered that the -- when I  
11 discovered on the 30<sup>th</sup> of August that there was a  
12 very low cash situation, then we -- from September  
13 2<sup>nd</sup>, the CFO was put on leave, and we had a new CFO  
14 put in place. And the focus was on understanding  
15 the full true financial situation of the company.  
16 And so it was during the course of September where  
17 we discovered the liabilities due to Revenue Quebec  
18 and Revenue Canada.

19 **Q.** And what year are we talking about?

20 **A.** Sorry. Yeah, we're talking -- all of this is the  
21 current year 2021.

22 **Q.** I'm sorry. Can you repeat your answer?

23 **A.** Yeah, so this -- we are talking about the current  
24 calendar year, 2021.

25 **Q.** Do you owe any to Revenue Canada for 2018, '19, or

1 '20? Do you have any arrears?

2 **A.** Yes. So when we -- we discovered there's -- for  
3 revenue that we were looking at, there's past  
4 numbers for Revenue Quebec due for 2018 and 2019.  
5 And I believe that there were -- found levels due  
6 for this current calendar year, 2021.

7 **Q.** And what about Revenue Canada?

8 **A.** Yeah, I don't have in front of me, unfortunately,  
9 the exact dates for those liabilities, but I could  
10 follow up with that. I'm not sure exactly the  
11 months that those are from.

12 **Q.** And what about the years, if you don't recall the  
13 months?

14 **A.** Yeah, I would -- I would believe that they would be  
15 similar, because they would be similar there, but I  
16 was not able to get that information in time for  
17 this call.

18 **Q.** So it could be for 2018, '19. We're talking about  
19 arrears?

20 **A.** Yes. Yes, we're talking about arrears.

21 **Q.** Did you receive any assessments from Revenue Canada?

22 **A.** (Inaudible) Canada, but we have received assessments  
23 ---

24 **Q.** When? When?

25 **A.** So for Revenue Quebec, there were -- we discovered

1           that there were three assessments received. They  
2           were all received this year in March -- one in March  
3           and two in June. And then ChronoMétriq spoke to  
4           Revenue Quebec and agreed on a payment plan. And so  
5           we (inaudible) post-dated cheques that would be  
6           cashed on a monthly basis to catch up with the  
7           amounts that were owed in arrears.

8   **Q.** Did they cash any cheque?

9   **A.** Yeah, the cheques were cashed regularly until the  
10          most recent one when there was insufficient capital  
11          in the account to fund the cheque and it bounced.

12 **Q.** And what about Revenue Canada? Did you have any  
13          discussion or any agreement with Revenue Canada?

14 **A.** Not to my awareness, no.

15 **Me LA ROCHE:**

16 No further questions, thank you.

17 **THE COURT:**

18 OK, Maître Sheppard, Maître Cantin, est-ce que vous avez  
19 des questions?

20 **--- CROSS-EXAMINATION BY Me SHEPPARD:**

21 **Q.** Hello, Mr. Feldkamp. I have a couple of questions  
22          to ask you. And in kind of -- it's better that I  
23          ask some of these questions to the monitor, then  
24          just let me know and I'll defer them to him.

25          Hold on. I'll just come back right now with the ---

1 **THE COURT:**

2 Maître Sheppard, how much time do you need? Both you and

3 Maître Cantin for your ---

4 **Me SHEPPARD:**

5 I would say 10 minutes.

6 Maître Cantin, vous en avez besoin pour combien de temps?

7 **Me CANTIN:**

8 En fait, j'aurais, pour l'instant je n'ai qu'une

9 question, je vais voir si vous allez couvrir le sujet,

10 alors, donc, peut-être deux minutes, maximum.

11 **Me SHEPPARD:**

12 I would say maybe five, ten, max.

13 **THE COURT:**

14 OK, on va suspendre 5 minutes. J'ai été obligé de faire

15 une gestion avant que vous commenciez et j'ai un coup de

16 téléphone à passer, de toute façon, on va suspendre.

17 Partez pas, déconnectez-vous pas, là, je vais juste aller

18 passer mon coup de fil, j'en ai pour 5 minutes, pis on

19 fera le contre-interrogatoire après, OK?

20 --- Upon recessing at 3:06 p.m./

21 L'audience est suspendue à 15h06

22 --- Upon resuming at 3:10 p.m./

23 L'audience est reprise à 15h10

24 **LA GREFFIÈRE:**

25 Maître Sheppard? Elle est au téléphone. Votre témoin est

1 où, là? OK.

2 **LA COUR:**

3 Bon, tout le monde est là.

4 **THE REGISTRAR:**

5 Okay. Could you repeat your name, please?

6 **Me SHEPPARD:**

7 Excusez-moi.

8 **THE COURT:**

9 Okay, Me Sheppard. Go ahead.

10 **THE REGISTRAR:**

11 The witness ---

12 **JAMES FELDKAMP, RESUMED:**

13 **--- CROSS-EXAMINATION BY Me SHEPPARD:**

14 **Q.** Okay. Okay.

15 So as I was mentioning, I just have a couple of  
16 questions for you, and if it needs to be referred to  
17 monitor, then that's fine.

18 You were mentioning that, you know, you reduced your  
19 suppliers, you reduced certain of your costs, your  
20 monthly costs, but what are the -- who are the  
21 providers that you still have now, and what are the  
22 costs that you still have now, apart from your  
23 salary costs?

24 **A.** Oh, yeah. So I mean, the costs that are essential  
25 are a number.

1           So in addition to the salary, we also have --  
2           there's critical contractors that basically work as  
3           an integral part of the software providing.  
4           So on the technical development side, as well as on  
5           the IT infrastructure and security, so critical  
6           areas. So those contractors are critical.  
7           We also have the software providers. As I said, we  
8           work with a number of external providers for the  
9           hosting, for the service providing, for the (audio  
10          glitch) things we do, working with external  
11          providers on that.

12          So ---

13 **Q.**   And how much does that represent for the next few  
14          weeks?

15 **A.**   Yeah. So that is in the cash flow forecast. So let  
16          me refer to the cash flow.

17 **Me LA ROCHE:**

18   You're looking at -- we're talking about Mr. Hawkins  
19   (phonetic)?

20 **MR. FELDKAMP:**

21   Yeah. The monitor, it provides the detail on that. I  
22   can pull up because they compiled the latest cash flow.  
23   We don't have -- okay. So we're looking at for -- so  
24   they had -- for last week to come into it 313, so we're  
25   looking at an additional for 524,000 there and then

1 300,000, so we're looking at -- the prices that we have -  
2 - you know, additional -- more than 600,000 plus the  
3 370,000 that went out leading up to this week in just the  
4 last few days.

5 **Q.** Okay. And then when you were talking about your  
6 assets would come back to your -- the application,  
7 and it's at paragraph 17, when you're talking about  
8 your receivables for 701,000, if you look at your --  
9 the projected cash flow ---

10 **A.** Yeah.

11 **Q.** --- I'm just trying to align the amounts in your  
12 projected cash flow with the amounts of your assets;  
13 it's the amount of your expected ---

14 **A.** Yeah. So it's already -- go ahead.

15 **Q.** --- cash flow -- no go ahead.

16 **A.** Okay. So you have the receivables of the 701,000  
17 that you mentioned from the paragraph 17, and then  
18 we can see in the cash flow, the projected cash flow  
19 for this week, 5,000, roughly 5,200 in projected  
20 receivables for next week, 244,000. So within the  
21 next two weeks, those are the receivables.

22 **Q.** Right. So the 603,000 is the same, I guess,  
23 reference as the 701, but it would be for following  
24 weeks?

25 And then when you come down to the tax credits and

1 subsidies, you had mentioned in the cash flow that  
2 it's the CEWS, the Canadian Emergency Wage Subsidy,  
3 and that you are waiting for that amount too.  
4 What information have you received from Service  
5 Canada?

6 **A.** Yeah. So with that, we have -- because we're owed  
7 for the CEWS for both July and September, and we  
8 received for August, and for some reason, we have  
9 not received for July. So July -- and I'm going to  
10 pull back some numbers -- I believe July is 244,000.  
11 Oh, here it is. Yeah. July, the CEWS is 240,000  
12 that we're owed for that; and September, 138,000.  
13 Both of those should have been received. Normally,  
14 we would have expected to get the September last  
15 week. We have not received that, and we have not  
16 received the July.

17 **Q.** Okay. I want to come just a little bit of questions  
18 regarding the employees. You have certain employees  
19 that were term. Are there other employees ---

20 **A.** Yes.

21 **Q.** --- that are going to be terminated?

22 **A.** No. We have done -- as I said, we had three  
23 restructuring efforts this year, so we had the first  
24 one in March and the third just these past two  
25 weeks.

1           So we have slimmed down the organization. As I  
2           said, we have cut it in more than half, from 104  
3           employees to now 48 employees.

4           So no, there is -- it -- to further cut the  
5           employees would impact the service to the clients  
6           and to the patients.

7   **Q.**    Okay. And I -see also from your motion that we have  
8           had on the -- you have accrued vacation of  
9           approximately 17,000 and then you have severance of  
10          50. Those are amounts that have not been paid?

11 **A.**    Correct.

12 **Q.**    Okay. I won't be long.

13 **LA COUR:**

14 Maître Cantin, est-ce que vous avez vos questions, pour  
15 les demander?

16 **Me CANTIN:**

17 Do you understand some French or do you prefer in  
18          English?

19 **MR. FELDKAMP:**

20 I would prefer in English, if possible.

21 **--- CROSS-EXAMINATION BY Me CANTIN:**

22 **Q.**    Okay. I'm on Exhibit B from the Trustee. Just,  
23          this fee that you ---

24 **THE COURT:**

25 Me Cantin?

1 Q. --- you presented for payroll ---

2 **THE COURT:**

3 Me Cantin?

4 Si ça peut vous aider, je crois que Monsieur Adessky  
5 s'exprime en français, va témoigner sur son rapport,  
6 alors peut-être qu'il y a des choses que Monsieur  
7 Feldkamp, que Monsieur Adessky pourrait répondre plus  
8 facilement. Si ça peut vous conforter.

9 **Me Cantin:**

10 Ça pourra en effet me conforter, ça va être plus simple,  
11 ça va être moins...

12 Ça va, OK.

13 **Me CANTIN:**

14 C'est en plus que Maître Sheppard a couvert, je voulais  
15 deux-trois précisions, mais effectivement comme ça  
16 provient du syndic, et je viens de l'avoir à l'instant,  
17 Maître Sheppard m'a transmis l'annexe B il y a 32  
18 secondes, alors.

19 **Me SHEPPARD:**

20 Je l'ai reçu une minute avant l'audition, donc on analyse  
21 rapidement.

22 **Me LA ROCHE:**

23 Oui. Maître Cantin, Monsieur Feldkamp va rester à votre  
24 disposition si Monsieur Adessky répond pas à votre  
25 question.

1 So Mr. Feldkamp, you're going to stay available for the  
2 Court, and if anyone has further questions.

3 **MR. FELDKAMP:**

4 Certainly, Your Honour. Yes, I will stay available.

5 **THE COURT:**

6 Okay. So Me Chaiton, the -- we're done with Mr.  
7 Feldkamp, and then we're going to hear Mr. Adessky of  
8 Richter. And Me Cantin had a few questions for Mr.  
9 Feldkamp, but it's going to be Mr. Adessky can answer  
10 those questions. They are technical ---

11 **Me CHAITON:**

12 Your Honour, I did have a few questions for Mr. Feldkamp,  
13 if you don't mind.

14 **THE COURT:**

15 Okay, go ahead.

16 **Me CHAITON:**

17 Thank you.

18 **--- CROSS-EXAMINATION BY Me CHAITON:**

19 **Q.** Mr. Feldkamp, just a few questions.

20 I understand that last week, the Bank of Commerce  
21 provided Pomelo with an overdraft in the amount of  
22 \$250,000? Is that correct?

23 **A.** That is correct.

24 **Q.** And why was it required at that time?

25 **A.** Yeah. So the cash balance of the company was

1           virtually zero, and so required the overdraft in  
2           order to bridge the company to continue regular  
3           operations so we did get to this court proceeding.

4 **Q.**   And that was a new credit facility that was made  
5           available by the bank?

6 **A.**   Yeah.  Either -- yeah, a new credit facility or a  
7           partial reopening of the revolver, yeah.

8 **Q.**   And would Pomelo have been able to continue in  
9           business without the financial lifeline that was  
10          provided by the bank?

11 **A.**   No, the financial lifeline is very important, and as  
12          mentioned, you know, the cash requirements to keep  
13          us having capital to fund the regular operations is  
14          very important.

15 **Q.**   And if Pomelo has access only to enough interim  
16          financing to make payroll, could its business  
17          survive for two weeks as proposed by CRA?

18 **A.**   Now, that -- we have deep concerns there, because as  
19          mentioned, it's not just the employees, it's the  
20          service providers that provide the platform on which  
21          we operate.  And so if we were unable to pay them,  
22          we would see a disruption in service.

23          We have seen this where we had the credit limit  
24          where it was exceeded, and one of the service  
25          providers was not paid, and they turned off the

1 service, and that can disrupt the messaging.

2 So it's definitely not just the employees. It's

3 mentioned for service as a software business, as

4 ChronoMétriq.

5 Work of the different service providers that come

6 together with the employers to provide the service

7 that we have.

8 **Q.** Okay. And one further question. When Ms. Sheppard  
9 was asking you about the amount of money that Pomelo  
10 needed, two weeks, and you had looked at the cash  
11 flow and was responding to her, did those amounts  
12 include professional fees that would be required by  
13 Pomelo to continue in these proceedings?

14 **A.** So I'm looking at the Exhibit B with it, so we have  
15 -- yes, it would be including -- there's the  
16 professional fees to continue to operate is part of  
17 it, yes.

18 **Q.** That would be required in order to have the benefit  
19 of the stay of proceedings; is that correct?

20 **A.** That's -- that is correct.

21 **Q.** All right. Thank you. I have no further.

22 **THE COURT:**

23 Thank you.

24 Prochain témoin.

25 Thank you, Mr. Feldkamp. Just stay connected.

Discussion, October 27, 2021

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1 **Me LA ROCHE:**

2 À cause de la télé, est-ce que je tasse la télé ou est-ce  
3 qu'il se met là?

4 **LA GREFFIÈRE:**

5 Non, non, il faut pas toucher la télé.

6 **Me LA ROCHE:**

7 OK, merci. Bon, qu'est-ce que vous suggérez, à côté, là?

8 **LA GREFFIÈRE:**

9 Vous pouvez mettre le truc, ici.

10 **Me LA ROCHE:**

11 À côté, là, peut-être.

12 **LA GREFFIÈRE:**

13 Vous pouvez mettre le, le, OK. Ça, ici, ça se déplace.

14 **Me LA ROCHE:**

15 Madame Boily?

16 **LA GREFFIÈRE:**

17 Oui?

18 **Me LA ROCHE:**

19 Il peut être debout, là? Je peux l'installer là?

20 **LA GREFFIÈRE:**

21 Comme vous voulez.

22 **Me LA ROCHE:**

23 Oui. Monsieur Adessky?

24 **LA GREFFIÈRE:**

25 En anglais ou en français?

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1 **LE TÉMOIN:**

2 Peu importe.

3 **Me LA ROCHE:**

4 On va commencer en anglais.

5

6 **ANDREW ADESSKY, SWORN:**

7 **1396 ST-PATRICK**

8 **MONTREAL, QUEBEC**

9 **Me LA ROCHE:**

10 No, you have to stay there because you have the  
11 microphone upon registry.

12 **--- EXAMINATION IN-CHIEF BY Me LA ROCHE:**

13 **Q.** What is your function at Richter?

14 **A.** I'm a partner in Richter Advisory Group in providing  
15 financial services. I'm a Trustee in Bankruptcy  
16 since 1995.

17 **Q.** And what is your relationship with the Debtors?

18 **A.** Richter Advisory Group was retained about 10 days  
19 ago by the Debtors on a preliminary short-term  
20 consulting mandate to do a cursory financial review  
21 as to assist them effectively in preparation to the  
22 proceeding, given the insolvency situation that they  
23 were in.

24 **Q.** Can you describe to the Court in summary the scope  
25 of the work you have done?

- 1 **A.** So the focus that we have done has been to track the  
2 preliminary high-level cursory review of the  
3 financial information. We were only able to attend  
4 at the company just for various reasons, on-again  
5 off-again last week. At the company last Friday, so  
6 we have been at the company for a few days now since  
7 Friday, meeting both with the Director of Finance as  
8 well as discussions and communications with Mr.  
9 Feldkamp and other -- the CFO for the company, Mr.  
10 Ewing (phonetic). We have been in contact with him,  
11 as well as in contact with Me La Roche and his  
12 colleagues from Miller Thomson, as well as -- I'm  
13 sorry, I should add as well, some contact with Mr.  
14 Chaiton and CIBC as well.
- 15 **Q.** Did you have full cooperation of the Debtors?
- 16 **A.** Yes, they have been very cooperative.
- 17 **Q.** Did you have full access to all the register?
- 18 **A.** Yes. They have provided -- answered their  
19 questions, whatever questions were asked, to the  
20 best of their ability.
- 21 **Q.** Were you in contact with CIBC too?
- 22 **A.** Yes, we have had numerous communications over the  
23 last few days in particular with Mr. Chaiton and Mr.  
24 Rapos.
- 25 We have also had a few calls with -- directly with

1 Mr. Chaiton and CIBC at the same time.

2 **Q.** Did you prepare this report yourself?

3 **A.** Myself and my partner, Mr. Shenk (phonetic), who is  
4 in the room, yes.

5 **Q.** So you're fully aware of the consent of the report?

6 **A.** Yes, sir.

7 **Q.** We're going to take a few minutes to review it.

8 So I won't ask you questions page by page, but if  
9 you could summarize to the Court your report and  
10 highlight what should be highlighted for this  
11 hearing?

12 **A.** So we -- the report talks, obviously, about the  
13 balance sheet of the company as we know it today,  
14 the assets and liabilities. It's clear that the  
15 company is clearly insolvent. The liabilities  
16 clearly are larger than the assets.

17 We talk about the original liquidities needs. The  
18 company, as Mr. Feldkamp testified a few minutes  
19 ago, has essentially no cash. It was out of cash.  
20 As of last Wednesday or Thursday, they reported  
21 about \$40,000 of cash in the bank.

22 Mr. Feldkamp testified earlier that the bank had,  
23 because of the default, terminated their revolver  
24 facilities, so the company effectively had been  
25 surviving on cash infusions. We talked about the

1 important motions from Full In, who's the major  
2 equity shareholder, and that's the cash that they  
3 have been using is slowly kind of -- has been  
4 dwindling over the last few months, obviously, so  
5 they have had no -- so between the expenses, which  
6 exceed the cash receipts right now, you know, they  
7 have run out of cash, effectively. So as of the end  
8 of last week, prior to the CIBC providing the new  
9 advance, the new facility they provided them on an  
10 urgent basis, the company had no ability to continue  
11 operating.

12 **Q.** Let's review the financial situation in more detail.  
13 You are referring to the Debtor assets at section  
14 13?

15 **A.** Yes.

16 **Q.** Can you describe to the Court?

17 **A.** So it's a very simple -- the company reported -- is  
18 currently reporting about \$2.8 million of  
19 receivables, 700 which are trade receivables, so  
20 these are collections of which, to the extent the  
21 collectible next few weeks are reflected in the CFB,  
22 the cash flow; the tax credits are about \$2.2  
23 million.

24 As was mentioned earlier, these are a combination of  
25 scientific research tax credits as well as the

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1 business tax credits. These would only be  
2 collectible; you know, the intention obviously would  
3 be to get the tax returns filed.  
4 They are, as I understand it -- don't have the exact  
5 cut off, but a significant portion is as of the  
6 company's most recent year end, June 30<sup>th</sup>, 2021, and  
7 then there's some additional credits that have  
8 accrued in July, August, and September. But  
9 certainly, the intention would be to apply those  
10 credits -- I can't speak to the full value until the  
11 tax returns are done, but that's what the books  
12 reflect.  
13 There is -- well, \$3.2 million of acquisition costs,  
14 which, in discussing with the company, believe  
15 that's -- that amount should be written off.  
16 Mr. Feldkamp testified earlier about ChronoMétriq  
17 acquiring Health Myself or HMI in 2020, and on a  
18 combined consolidated basis, these costs disappear,  
19 and the Director of Finances agreed that -- with us  
20 -- that these costs, there's no value to this asset.  
21 There are deferred development costs of about \$1.8  
22 million. This is an accounting exercise in the  
23 sense that some companies depend upon the criteria,  
24 the status of the development of the software, will  
25 write these expenses off the same year they incurred

1           them. Other times, accounting rules allow you to  
2           accrue them and then amortize them over a period of  
3           time.

4           But this -- so there is no realizable direct value.  
5           You're not going to sell this. You're going to  
6           sell, hopefully, the company and these deferred  
7           development costs have contributed to that, but it's  
8           not an asset that can be realized upon, such as it  
9           is.

10          The fixed assets, you know, leasehold improvements,  
11          computers, the like, it's -- again, it's going to be  
12          limited value from the fixed assets, overall.

13   **Q.**   We're going to stop there for a moment, and we're  
14          going to come back on the Debtor debts.

15          So what are the assets that's going to put on sale  
16          in the SISP?

17   **A.**   The assets, essentially are, as Mr. Feldkamp, I  
18          think, fairly correctly testified, the assets are  
19          the product, the software that the company has  
20          developed and the relationships that it has with --  
21          whether it's Walmart, whether it's the Province of  
22          Quebec. Data is what you -- you're selling either  
23          to a competitor or someone who's going to add it  
24          onto their platform.  
25          You know, I would believe that there is a market for

1           sure for this, but it's not -- you're not selling a  
2           tangible asset. You are selling kind of the  
3           business that they have created and the contracts  
4           that they have developed. These don't appear on the  
5           balance sheet, but this is what we're going to be  
6           selling.

7   **Q.** Mr. Adessky, you don't have a lot of gray hair, but  
8           many years of -- but many years of experience, it is  
9           possible to sell those assets without it being a  
10          going concern?

11 **A.** Can you sell something? Yes. Will the value be  
12          diminished? It will be, I think, in my experience,  
13          substantially diminished, because first of all, some  
14          of the people who are going to be interested in it  
15          are existing customers, what you need to keep this  
16          going. And that's going to be very critical to  
17          them. If you turn off this business, or don't  
18          service the servicing business, you're damaging the  
19          value of the business substantially. It doesn't  
20          mean you can't sell it, but the value certainly will  
21          be, in my view, substantially reduced.

22 **Q.** Let's talk about the Debtor's debts, make a review  
23          of section 14 of your report.

24 **A.** Certainly. So as was discussed, the CIBC is owed  
25          about \$2.9 million. Mr. Feldkamp explained that

1           that was an acquisition loan that was just starting  
2           to be paid down. In fact, there's another payment  
3           that's -- is coming due. The CIBC agreed not to  
4           include that in the cash flow in estimates that  
5           postponing the payment of that in order to provide  
6           the company with additional liquidity.  
7           We have amounts that are owing to the BBC  
8           Investissement Quebec of 130,000, 139,000  
9           respectively. These rank behind the CIBC security.  
10          We have the tax obligation we talked earlier about,  
11          \$3.2 million. It does go back to 2018. We have  
12          looked at it as much as we can in the timeframe. So  
13          this is a combination of the amounts owed, both  
14          federally and provincially, about \$1.8 million  
15          provincially and about \$1.4 million federal.  
16          And again, as I say, it goes back to 2018 on the  
17          federal side and 2019 on the provincial side.  
18          In terms of unsecured creditors, approximately \$2.8  
19          million, of which trade creditors, amounts that they  
20          owe, former shareholders, employee -- we talk about  
21          employee obligations, the payroll that is being paid  
22          -- to be paid tomorrow covers the employees through  
23          the end of this month.  
24          Vacation pay is relatively minimal, and there are  
25          performance bonuses that were accruing for the most

1 recent fiscal year end, which the company has been  
2 unable to pay due to its financial situation.

3 **Q.** You prepared for the Court a cash flow, because you  
4 are -- we are seeking for a DIP. Can you explain to  
5 the Court what's going to cover the DIP, which  
6 expenses are essential and what you intend not to  
7 approve, but you have to include in the DIP?

8 **A.** So the DIP was prepared with the company, obviously,  
9 based on our communications with them. It's the  
10 company's cash flow, obviously.

11 The cash flows reflect about during the weeks two to  
12 six through the end of November, and this would be  
13 the -- obviously, in the cash flow, it has to be  
14 filed with the official receiver, about \$600,000 of  
15 receivables.

16 There could be timing issues in there, but this is  
17 the best estimate right now of when those amounts  
18 will hopefully be collected.

19 You had a discussion earlier about could these be  
20 cut back? As Mr. Feldkamp testified, they have  
21 already done various reductions. We haven't gone  
22 through every expense, obviously, in the timeframe  
23 allowed, but we have gone through the categories.  
24 Payroll, again, you stop paying payroll, these  
25 employees are very mobile. This is a very tight job

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1 market or a very good job market if you're an  
2 employee looking for a job. It's a tough job market  
3 if you're an employer trying to hire someone. These  
4 employees are needed to do all the tasks that are  
5 needed. The consultants include Mr. Feldkamp, the  
6 CEO, the CFO, and CAHR.  
7 The operating expenses, we have bank credit cards,  
8 those line items, those refer to really all of the  
9 other primary operating expenses, the Amazon's  
10 hosting the servers in the U.S.; you know, paying  
11 the rent; paying the contractors. A number of the  
12 company's -- even though it has 48 employees, relies  
13 heavily on a number of contractors, third-party  
14 developers to work side by side with the employees  
15 who are owed arrears. And again, if these people  
16 are not paid, the fear is, obviously, they will  
17 simply stop -- they will just move onto another  
18 project.  
19 It -- and the difficulty is -- because we had this  
20 discussion with the company. Could you, you know,  
21 suspend something?  
22 The problem, they said, is that -- and then I  
23 believe that it's trying to bring these people back  
24 after three weeks. They all will have moved on.  
25 And it's someone who is in the middle of developing

1 something, a program that's about to launch, like,  
2 the Quebec hub as Mr. Feldkamp talked about, the  
3 disruption there simply disturbs the -- you know,  
4 you lose a few.

5 And if you say, "Well, we're going to park that  
6 project," and we will save whatever we're going to  
7 save, aside from putting at risk, perhaps, your  
8 obligations under the contract, you are, you know,  
9 risking when you -- if you're able to get these  
10 people back, you have just completely interrupted  
11 the flow of the work, and it's not like you could  
12 take -- that I can step in to do that quite so  
13 easily. It's not a -- it's not -- I don't want to -  
14 - there's some jobs that are easier to find  
15 replacements for and there are others where these  
16 are people very integrated into the operations of  
17 the company.

18 **Q.** I understand that your cash flow was based on the  
19 timeline of the SISP?

20 **A.** Correct. As the cash flow reflects, CIBC had  
21 consented to provide a million-dollar DIP facility,  
22 and that DIP facility loan would take us -- if we  
23 can achieve these projections -- through the weekend  
24 of November 19<sup>th</sup>, as a result.

25 And CIBC has indicated a willingness to increase the

1           SISP -- sorry, the DIP to \$1.6 million, based on the  
2           opening of the offers, which is, you know, scheduled  
3           right now for November 15<sup>th</sup>.

4           So if the offers come in and demonstrate sufficient  
5           interest in value in the company, then CIBC has  
6           indicated that it would allow for an increase in the  
7           DIP to fund the continuing obligations.

8   **Q.**    If not, it's going to be the end of their -- the  
9           operation?

10 **A.**    If there's no increase, the company is under a  
11          Notice of Intention, it can't continue to operate if  
12          it can't meet its obligations, obviously.

13 **Q.**    And why the timeline is so short?

14 **A.**    Well, again, the timeline is driven certainly by the  
15          liquidity available to the company. It -- as we  
16          mention in our report, while it is a very tight  
17          compressed timeline, there are certain factors that  
18          hopefully mitigate how tight the timeline is, and  
19          that is that company has already had been approached  
20          and had discussions with various interested parties,  
21          so their ability to move quickly has already kind of  
22          started, and they have obviously certain  
23          information. Therefore, it will be faster for them  
24          to do their due diligence.

25          The most likely purchaser is someone who is already

1 familiar with the company, either because they're a  
2 competitor and have a similar platform and therefore  
3 can integrate, and they understand the business and  
4 the market; or it's a customer, perhaps, who is  
5 again -- you know, can't afford the disruption and  
6 wants to continue this on.

7 So we think there are -- these people will be able  
8 to move very quickly, at a minimum by November 15 to  
9 give us the indication as to interest, if not a very  
10 firm offer.

11 Q. If I understand correctly your testimony, CIBC is  
12 there. You're going to conduct a SISP. If you have  
13 a good offer, CIBC will continue to support you  
14 until the transaction, and if the SISP is a  
15 disaster, you won't be able to draw more money than  
16 a million dollars, and it's going to be  
17 theoretically, the end of the operation?

18 A. I don't want to speak for ---

19 Q. It's your understanding?

20 A. That's my understanding, yes.

21 Q. And you personally discussed with the bank those  
22 objectives and issues?

23 A. Yes, we have had those discussions with the bank.

24 Q. Perfect.

25 **THE COURT:**

1           Is there -- What is the rate of the DIP charged by  
2           CIBC in comparison with the rate of the -- what used  
3           to be the credit line?

4   **A.**    I'm not sure of the credit line. The DIP is an 8.7  
5           percent interest rate with a \$10,000 facilities fee.  
6           We've looked at it and the effective rate and  
7           everything else with the timeframe we're satisfied  
8           with it.

9   **Q.**    Well, there's a premium from -

10 **ME LA ROCHE:**

11           It's not too aggressive. I saw worse than that.  
12           Probably one remaining question. Due to the  
13           emergency and the shortfall, are you aware if CIBC  
14           already advanced some money ---

15 **A.**    Yes.

16 **Q.**    --- previous to that hearing ---

17 **A.**    Yes. As a ---

18 **Q.**    --- on an emergency basis?

19 **A.**    As was discussed a little bit earlier by Mr.  
20           Feldkamp, the CIBC effectively gave them a new  
21           availability. The CIBC had terminated their  
22           revolver, what day -- last Friday, in order to  
23           again, preserve the value of the business and keep  
24           the operations going. They allowed them to -- they  
25           gave them up to 250,000 as the cash flows reflect,

1 but 170,000 was used as part of the DIP that's being  
2 requested today.

3 **Q.** I know we're going to have to discuss according to  
4 section 50 of the BIA, but what's -- so what's the  
5 total amount that was advanced and what was the  
6 purpose of the advance?

7 **A.** The total amount advanced was \$170,000 and that was  
8 used to pay -- it was used to pay the contractors,  
9 licences, software providers, servicers in the U.S.  
10 Much of the same is forecast to go on. These are  
11 just amounts that the company felt had to be paid  
12 without damaging the business.

13 **Q.** Okay.

14 **LA COUR:**

15 J'imagine que vous voulez que ce soit considéré comme  
16 faisant partie du, euh, on regardera ça.

17 **Me LA ROCHE:**

18 Va falloir en discuter, effectivement, mais on pouvait  
19 même pas attendre, parce que on serait pas ici, devant  
20 vous.

21 **LA COUR:**

22 Oui, mais ça, on n'est pas obligé d'en discuter  
23 maintenant.

24 **Me LA ROCHE:**

25 Non, je vais juste demander certaines questions.

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1 **PAR Me LA ROCHE:**

2 **Q.** Was it 170?

3 **A.** Huh?

4 **Q.** Was the money advanced by CIBC on an emergency  
5 basis, was it 170?

6 **A.** Yes, it's in the cash flow. It's 170,434 is the net  
7 amount.

8 **Q.** I don't have any further questions. Thank you, Mr.  
9 Adessky.

10 **A.** Thank you.

11 **THE COURT:**

12 Me Sheppard, Me Cantin?

13 **--- CROSS-EXAMINATION BY Me SHEPPARD:**

14 **Q.** We -- so Mr. Adessky, I have a couple of questions  
15 for you regarding the projected cash flow.

16 When we look at the amount regarding the projected  
17 disbursements, can you just identify for me which  
18 ones concern the critical suppliers?

19 **A.** So the -- if I understand the question -- the lines  
20 that are called "operating expenses" and "U.S. bank  
21 credit cards", those would be third-party -- those  
22 would be outside the company. They're not  
23 employees. These would be -- as I said, these are  
24 contractors that work closely with the company,  
25 maybe at the company's premises, software providers,

1 service providers in the U.S. and Canada. Those  
2 would be the two lines, I think, that you're asking  
3 about.

4 **Q.** Okay. So I understand, there's a little portion of  
5 it that cut, but from what I understand is that you  
6 said that it's the operating expenses and it's also  
7 the U.S. bank credit cards.

8 But can you give me a little bit more detail  
9 regarding the U.S. bank credit cards in a sense of  
10 how is this a critical supplier?

11 **A.** Well, because the suppliers just charge -- suppliers  
12 charge or have a credit card, effectively. So the  
13 CIBC has a -- there's a credit card facility which  
14 is, in turn, backstops a U.S. credit card facility  
15 and the practice is that the suppliers in the U.S.,  
16 rather than letting the company charge the credit  
17 card, and that's how they don't have to deal with  
18 concerns about the credit worthiness of the  
19 customer, of ChronoMétriq, in this case. They bill  
20 -- they charge the credit card directly. And so if  
21 this ---

22 **Q.** So that the ---

23 **A.** It would ---

24 **Q.** So those critical suppliers are paid? Is it the --  
25 does that mean that it's the U.S. bank credit card

1           that is not paid and must be reimbursed?

2   **A.**    It's -- if the bank credit card is not able to be  
3           paid, the CIBC will not backstop that bank credit  
4           card facility, and therefore, the company would have  
5           to pay then directly.  It's the same thing.  
6           It's not really -- I think -- yeah, it's -- we kept  
7           the title of the way the company captioned it on  
8           their cash flow, but I don't distinguish that  
9           between that and operating expenses.  If the bank  
10          credit card is not available, those suppliers will  
11          either stop supplying or they will simply ask the  
12          company.  And so it's the same thing as the lines --  
13          operating expenses.

14   **Q.**    And which U.S. bank is - which credit card is it,  
15          with which company?

16   **A.**    I don't recall the company, I'm sorry.

17   **Q.**    But it's not an affiliated company of the CIBC?

18   **A.**    I couldn't say.  I don't know.

19   **Q.**    Okay.  And do you the terms of agreement regarding  
20          the payment?  If payment is not made there's  
21          interest that's charged?

22   **A.**    I'm not specifically certain, no.

23   **Q.**    Okay.  The second question I have for you, you  
24          mentioned about the third-party developers, so that,  
25          I'm assuming, again comes under the operating

1 expenses, and like you just mentioned, they charge  
2 it to the credit cards? There's no other third-  
3 partylike, you were mentioning Amazon or other  
4 clouds or whatever that would be in another section  
5 of this projected cash flow? Is that right?

6 **A.** That is right, yes, correct. Primarily the contract  
7 developers are primarily an operating expenses,  
8 Amazon, for example, is in the U.S. bank credit card  
9 line, but they're not -- that's the only two places.

10 **Q.** Okay. And then when you mention a little bit lower  
11 down in section "Other Restructuring Costs" Note 6 -  
12 --

13 **A.** Yes.

14 **Q.** In your Note 6, you refer to or the company refers  
15 to provision for potential deposits post-filing.  
16 Can you explain what potential deposits, what are  
17 you referring to?

18 **A.** These are just most likely expected to be local  
19 service providers. It may be utilities, it may be  
20 Hydro Quebec. It's just a general provision because  
21 sometimes a supplier will ask for -- to continue  
22 supplying but they want to be paid in advance. And  
23 so it's just a small provision to cover these  
24 eventualities.

25 **Q.** Coming now to the current salaries, are deductions

1 at source -- are steps being taken for deductions at  
2 source to be deducted and to be remitted?

3 **A.** Yes. This is ---

4 **Q.** So the current salaries that will be paid?

5 **A.** This is the gross amount that would be paid to ADP,  
6 including deductions at source and ADP will then  
7 remit the funds.

8 **Q.** So ADP has been in function since when?

9 **A.** I don't know.

10 **Q.** And since they have been in function, have they been  
11 paying all of the deductions at source, both  
12 federally and provincially?

13 **A.** I can't answer that. My understanding is that the  
14 issues with deductions at source in terms of  
15 deductions at source not being timely paid, was  
16 occurring up until about May or June of this year,  
17 and it started in July, deductions at source with  
18 the payroll were being remitted correctly. But I  
19 don't specifically know ADPs ---

20 **THE COURT:**

21 Did you see, Me Sheppard ---

22 **Q.** Regarding the books ---

23 **THE COURT:**

24 Did you see, Me Sheppard, while you were asking questions  
25 about the deduction, Mr. Feldkamp was nodding his head?

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1 So maybe after Mr. Adessky, you can ask him the question  
2 directly, okay?

3 **Me SHEPPARD:**

4 Okay. Well, I see that he's nodding, so it's okay. I  
5 can accept his answer that way; that's fine for me.  
6 I'm sorry if I didn't hear you, Mr. Judge. Sometimes  
7 it's cutting ---

8 **THE COURT:**

9 No problem.

10 **Me SHEPPARD:**

11 --- the virtual.

12 **Q.** I had a question. Just one second. Oh, yes.  
13 Regarding the books and the records of the company,  
14 have you analyzed them as monitor or as trustee?  
15 Have you looked at them, or do you have access to  
16 them?

17 **A.** We certainly have access to them. In terms of  
18 analysis, it has been -- as I testified earlier, it  
19 has been very cursory. We only started, and given  
20 the crisis, our focus has been on trying to get a  
21 cash flow going and all of the documentation,  
22 preparation that surrounds getting to the Notice of  
23 Intention of Filing.  
24 So we have not done the deep review. The financial  
25 statements for the years ended 2020 were the subject

1 of a Notice to Reader. The financial statements for  
2 2021, June 30, 2021, I believe, we were informed  
3 that Deloitte had started their review, but that  
4 process has not been completed as of yet.

5 So we will certainly have access to it; it's normal  
6 process report. All trustees have access, and you  
7 know, we will do whatever review that we deem as  
8 necessary, going forward.

9 **Q.** Okay. And do the creditors, can the creditors  
10 therefore rely on you and companies to be able to  
11 have access to these documents for further auditing  
12 regarding the deductions at source?

13 **A.** Well, I mean, our job is -- we will do our job as  
14 proposal trustees, and we represent -- obviously, we  
15 will report to all the stakeholders.

16 If you're asking me if a creditor can call me up and  
17 say, "Hey, give me this or give me that," that's not  
18 normally the way it works. But certainly, if  
19 someone has put in questions that we think are  
20 relevant to the re-structuring, that need to be  
21 brought to the attention of the Court and the  
22 stakeholders, then certainly we will do that work.

23 **Q.** Okay. That's all for me.

24 **THE COURT:**

25 Me Cantin?

1 **Me SHEPPARD:**

2 Thank you.

3 **MR. ADESSKY:**

4 Thank you.

5 **--- CONTRE-INTERROGATOIRE PAR Me CANTIN:**

6 **Q.** Oui, merci, Monsieur le juge. Alors, Monsieur  
7 Adessky, quelques questions. « J'occupe le poste  
8 depuis une dizaine de jours, » c'est ça vous dites?

9 **R.** Oui. On a été engagé (inaudible) le 16 octobre, 15-  
10 16 octobre, on n'était pas... (inaudible) le 22 parce  
11 qu'il y avait juste... juste la semaine commençait... la  
12 semaine dernière c'était comme un peu... ça commence à  
13 être... ça commence à être juste un peu normal comme  
14 ça, mais on commence notre travail effectivement la  
15 semaine dernière.

16 **Q.** Alors depuis la semaine dernière, avez-vous effectué  
17 un travail particulier pour réviser les dépenses qui  
18 apparaissent dans l'Annexe B de votre rapport?

19 **R.** Notre travail...

20 **Q.** Vous avez révisé ces dépenses-là?

21 **R.** Oui, le travail qu'on a fait c'était plus le nom...  
22 commence d'où, c'est quoi la nature des dépenses,  
23 les chiffres versus, par exemple, (inaudible)  
24 historique. On n'a pas la chance nécessairement  
25 d'aller dire, écoutes... d'aller fournisseur par

1           fournisseur. Ça c'est pas normal... pas normalement  
2           une façon qu'on fait ça. On regarde effectivement,  
3           comme on dit en anglais, le *run rate*. On regarde  
4           comme les chiffres, tu sais, si ça fait du sens.  
5           Ici on regarde c'est quoi... qu'est-ce qui est inclus  
6           dans ça. On regarde l'affirmation historique.  
7           Ça c'est la façon qu'on a fait le travail.

8   **Q.**   Alors est-ce que je dois comprendre qu'à ce stade-  
9           ci, vous n'avez pas été capable encore de vérifier  
10          s'il y avait d'autres dépenses compressées ou  
11          d'autres postes de dépenses compressées?

12   **R.**   Ben, c'est sûr que comme on dit dans le rapport, on  
13          va travailler avec les compagnies et c'est sûr qu'on  
14          va regarder les dépenses plus en détail pour voir si  
15          une... est-ce que tout le temps les choses sont  
16          nécessaires, puis est-ce qu'il y a moyen de couper  
17          d'autres dépenses. Mais comme M. Feldkamp a déjà  
18          témoigné, il a déjà fait beaucoup de réduction de  
19          dépenses depuis les derniers mois. Alors pour  
20          l'instant, (inaudible) voici, ça c'est les dépenses  
21          qui vont être payées dans les prochaines semaines.

22   **Q.**   Alors est-ce que j'ai bien compris que, toujours  
23          selon l'Annexe B, lorsqu'on voit apparaître la  
24          mention de *payroll*, les salaires à 234 987 et  
25          poussière par (inaudible), c'est la paye... c'est la

1           paye qui est versée?

2   **R.**   Je m'excuse, il manque... votre micro doit être coupé.

3           J'ai pas compris la question encore.

4   **LA COUR :**

5   Vous gelez, Maître Cantin.

6   **PAR Me CANTIN :**

7   **Q.**   Je m'excuse, je vais reprendre. Est-ce que dans le  
8           poste *payroll* qui apparait à l'Annexe B, on voit ces  
9           234 000, 232 000 par 15 jours de salaires?

10   **R.**   Oui.

11   **Q.**   Est-ce que ça inclut les déductions à la source?

12   **R.**   Oui, oui, c'est le montant brut qui va être payé à  
13           ADP et puis ADP va remettre... oui, c'est brut, oui.

14   **Q.**   Ok. Alors est-ce que je dois comprendre de votre  
15           réponse que lorsque vous demandez dans l'ordonnance  
16           que les charges, les trois charges qui sont  
17           demandées doivent être prioritaires à toutes autres  
18           charges, priorités, et cetera, ça n'inclut pas les  
19           déductions à la source? Les déductions à la source  
20           vont continuer à être payées régulièrement? C'est  
21           ce que je dois comprendre?

22   **R.**   Si tu parles des déductions à la source pour la paye  
23           normale, oui, ça va être payé. C'est déjà dans le  
24           *cash flow*. Chaque fois qu'il y a une paye... demain,  
25           il y a une paye, les déductions à la source qui

1 viennent avec cette paye vont être payées. Si tu  
2 parles des arriérages, oui, les charges viennent  
3 avant les arriérages, mais si tu parles de dans les  
4 prochaines... si on parle de l'Annexe B et toutes les  
5 payes qui est là, le paiement des déductions à la  
6 source est déjà inclus, alors c'est pas une question  
7 de charges. C'est payé selon le *cash flow*.

8 **LA COUR :**

9 Est-ce que je comprends, pour compléter la question de Me  
10 Cantin que la situation fiscale des autorités fédérales  
11 et provinciales ne se détériorera pas?

12 **M. ADESSKY :**

13 Oui, exactement ça.

14 **Me CANTIN :**

15 Intéressant comme une réponse.

16 **LA COUR :**

17 Pardon? Qu'est-ce que vous dites, Maître Cantin?

18 **Me CANTIN :**

19 J'ai dit que c'est très intéressant comme réponse.

20 Effectivement, vous vous doutez bien que c'est ce qu'on  
21 visait... en tout cas, c'est ce que moi je visais  
22 aujourd'hui en priorité comme information. Alors je m'en  
23 tiens à ça. Ça complète mes questions.

24 **LA COUR :**

25 Parfait.

1 **Me LA ROCHE :**

2 Il y a quelqu'un qui a levé la main. Je sais  
3 pas si c'est une erreur, Larry Ellis de Toronto, mon  
4 associé.

5 **LA COUR :**

6 Me Chaiton aussi.

7 **Me CHAITON:**

8 Yes, I have just a few questions, if you don't mind.

9 **--- CROSS-EXAMINATION BY Me CHAITON:**

10 **Q.** Mr. Adessky, I understand that the Bank of Commerce  
11 temporarily withdrew its reimbursement or recourse  
12 obligations to the U.S. bank in respect of the  
13 credit facility sometime last week. Are you  
14 familiar with that?

15 **A.** Yes, we were informed that that had been done -- I  
16 think it was Tuesday of last week, and then it was  
17 reinstated on the Wednesday. I may have the days  
18 not 100% right, but yes.

19 **Q.** Prior to its reinstatement, what were the  
20 implications on Pomelo's business as a result of the  
21 termination of the recourse obligation?

22 **A.** Well, I know actually the company had a very strong  
23 reaction to that because again, it's my assumption -  
24 - I don't have the details of the -- how the  
25 facility works -- but obviously this was supporting

1 credit cards that were being used by service  
2 providers, by suppliers in the U.S., and if those  
3 credit cards are not available to use, that disrupts  
4 the business, because those people either, you know,  
5 stop servicing the company and/or perhaps demand COD  
6 payments. And so it's the way the company's been  
7 operating, from my understanding, for some time now,  
8 and ---

9 **Q.** And were you aware of any reaction by service  
10 providers?

11 **A.** I'm not specifically aware. Mr. Feldkamp might be  
12 aware of some reaction. I think the situation was  
13 corrected within 24 hours, but perhaps Mr. Feldkamp  
14 can speak to that. I cannot.

15 **Q.** Okay. And just one further question. You were  
16 talking before that the amounts under the  
17 overdraft facility by the banking institution, and I  
18 think you had said that a number of \$170,000. Are  
19 you familiar with the amount drawn as of today?

20 **A.** This is the number we have as of the start of the  
21 week. So if there has been additional drawings  
22 Monday, Tuesday, we haven't had the opportunity to  
23 update it.

24 **Q.** All right.

25 **Me CHAITON:**

**ANDREW ADESSKY (Plaintiff) Cross-exam. by M<sup>e</sup> Chaiton**  
October 27, 2021

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1 Your Honour, I don't know if it's important to you, and I  
2 hesitate to provide any evidence, but I can give you that  
3 balance if you wish.

4 **THE COURT:**

5 But it's not the proper way to give evidence, Me Chaiton.  
6 You're the attorney.

7 **Me CHAITON:**

8 I understand.

9 **THE COURT:**

10 But I was made aware that there is a situation that will  
11 -- I will need to address later on regarding the cash  
12 advances of CIBC for emergency purpose.

13 **Me CHAITON:**

14 Yes.

15 **THE COURT:**

16 Then we can -- I can get a proof of the exact amount at  
17 that point in time.

18 **Me CHAITON:**

19 Okay.

20 **THE COURT:**

21 Okay?

22 **Me CHAITON:**

23 That's fine. Thank you.

24 I have no further questions, Mr. Adessky.

25 **MR. ADESSKY:**

Discussion, October 27, 2021

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1 Okay.

2 **Me CHAITON:**

3 Thank you.

4 **LA COUR:**

5 Est-ce que vous avez d'autres témoins, Maître La Roche?

6 **Me LA ROCHE:**

7 J'ai pas d'autre témoin.

8 Mr. Ellis, do you have a question? You raised your hand.

9 **MR. ELLIS:**

10 Oh.

11 **THE COURT:**

12 Thank you, Michel. Okay.

13 **Me LA ROCHE:**

14 J'ai pas d'autre question, j'ai pas d'autre témoin.

15 **LA COUR:**

16 On va prendre un petit 10 minutes, puis après ça, vous  
17 allez venir faire vos représentations de part et d'autre.

18 **Me LA ROCHE:**

19 Merci.

20 --- Upon recessing at 3:59 p.m./

21 L'audience est suspendue à 15h59

22 --- Upon resuming at 4:10 p.m./

23 L'audience est reprise à 16h10

24 **LA GREFFIÈRE:**

25 Est-ce que, oui, tous les procureurs sont présents? Il en

1 manque.

2 **LA COUR:**

3 On y va.

4 **LA GREFFIÈRE:**

5 Maître Sheppard, Maître...Maître Ellis? Maître Novet?

6 **LA COUR:**

7 Je pense tout le monde est là, là. Allez-y.

8 **--- REPRÉSENTATIONS PAR Me LA ROCHE:**

9 **Me LA ROCHE:**

10 For those in Toronto, you're going to have a French  
11 immersion course. So I'm going to plead in French.

12 Monsieur le juge, je vous demande des choses faciles et  
13 des choses difficiles. Chose faciles, de joindre les deux  
14 dossiers, choses un peu plus faciles, puis la  
15 jurisprudence est constante à la Cour Suprême qu'il faut  
16 permettre la restructuration, donc une charge  
17 d'administration, une charge de directeur, etc.  
18 Approuver un KERP, parce que les employés sont  
19 essentiels.

20 La chose un petit peu plus difficile, mais elle est  
21 facile dans un sens, c'est ce que je vous demande c'est  
22 un peu de temps pour la survie de la compagnie. Pas de  
23 DIP, plus de compagnie, un, Monsieur Adessky a dit, une  
24 certaine valeur. Mais effectivement, avec la preuve qui a  
25 été démontrée devant vous, tout le monde qui tourne

1 autour, avec la lettre d'intention non-sollicitée qu'on a  
2 eu d'un bureau très sérieux à Montréal, on pense qu'il y  
3 a quelque chose à faire dans les prochaines semaines.  
4 Donc, ce qu'on vous demande, c'est d'approuver un DIP  
5 pour les employés, des essential suppliers, pour pouvoir  
6 garder la compagnie en vie.  
7 Il n'y a aucune autre source de financement, aucune autre  
8 solution que je peux avancer devant vous. Il y en avait  
9 une avant la CIBC de la part d'un actionnaire qui s'est  
10 retiré, et il ne reste que cette solution-là pour essayer  
11 de sauver pas juste les employés, les 48 emplois, je  
12 pense qu'on parle d'une business en général. Vous avez  
13 compris, pis j'ai pas voulu faire pleurer la Cour, mais  
14 il y a des dizaines de milliers d'utilisateurs sur ce site-là.  
15 Vous et moi, qui pouvons consulter notre dossier médical,  
16 des cliniques pour les rendez-vous, des pharmacies, des  
17 gouvernements, etc.  
18 Donc, on vous a pas demandé comme on demande souvent six  
19 mois ou huit mois ou neuf mois; on est à peine à 30  
20 jours. Et même la CIBC, qui est gentille mais qui a été  
21 dure, a dit : « moi, je vais vous offrir 1.6, mais vous  
22 toucherez pas à plus qu'un million, vous allez venir me  
23 voir avec les offres. Si ça se tient pas, c'est terminé;  
24 si ça se tient, je vais vous aider pis on va conclure une  
25 transaction. » Donc, c'est excessivement rigoureux,

1 excessivement court.

2 Bon, la difficulté, parce que j'ai, il me manque deux  
3 amis dans cette salle, soit Maître Cantin et Maître  
4 Sheppard. Parce que un jugement a été rendu, et j'ai  
5 sauvé les arbres, j'en ai imprimé que deux copies. J'ai  
6 imprimé la cause de la Cour Suprême rendue par le Juge  
7 Côté du 28 juillet, qui fait mal à Revenu Canada,  
8 Revenu Québec, parce qu'elle permet effectivement, elle  
9 explique, puis je l'ai lu et relu, cet été. Elle explique  
10 ce que c'est le deemed trust, ce qui est un créancier  
11 garanti, ce qui est un créancier ordinaire.

12 Mais ce que je retiens, c'est que si c'est essentiel, si  
13 ça favorise la restructuration de la compagnie, et non  
14 pas vers une liquidation, effectivement, un DIP peut être  
15 mis en avant des charges, et non pas des garanties, la  
16 Cour Suprême le dit très bien, des charges prévues par la  
17 Loi du ministère du Revenu.

18 Je ne sais pas si vous voulez que je vous cite ou si vous  
19 la connaissez assez bien parce qu'elle est récente, ou  
20 que je vous cite certaines pages?

21 **LA COUR:**

22 Certains paragraphes.

23 **Me LA ROCHE:**

24 Alors, je pense c'était 20, 21.

25 **LA COUR:**

1 20 et 21?

2 **Me LA ROCHE:**

3 Ça commençait à 20. Évidemment, c'est la LACC, mais on  
4 sait très bien, ça commence à se ressembler, et les  
5 principes commencent à se ressembler, mais c'est la LACC.

6 « La vision sous-jacente au régime de la  
7 LACC est donc une compagnie débitrice  
8 possède une plus grande valeur [ce que  
9 Monsieur Adessky a dit, aussi] lorsqu'elle  
10 poursuit ses activités que lorsqu'elle est  
11 liquidée. *Century Services*. La survie d'une  
12 entreprise en activités gère mal le résultat  
13 qui présente le client d'avantages net. »

14 Le Juge Côté continue au paragraphe 28:

15 Il existe des considérations d'ordre  
16 pratique, qui expliquent pourquoi les juges  
17 surveillants doivent disposer du pouvoir  
18 discrétionnaire [c'est 11 de la LACC]  
19 d'ordonner des charges ayant priorité sur  
20 des fiducies présumées. [Donc, le juge a le  
21 pouvoir]—Pour restructurer une compagnie  
22 sous le régime de la LACC, il faut souvent  
23 obtenir l'aide de nombreux professionnels,  
24 ainsi que le juge-en-chef Wagner et le juge  
25 Moldaver l'ont récemment reconnu au nom

1 d'une cour unanime. Le contrôleur joue un  
2 rôle crucial dans une instance introduite  
3 sous le régime de la LACC, le contrôleur est  
4 un expert indépendant et impartial qui agit  
5 comme les yeux et les oreilles du tribunal  
6 tout au long de la procédure. »

7 29:

8 « Notre Cour a pareillement conclu que le  
9 financement est essentiel [ce qui est le cas  
10 ici]étant donné qu'il a été démontré maintes  
11 et maintes fois que la priorité accordée au  
12 financement DE constitue un élément clé de  
13 la capacité du débiteur de tenter de  
14 conclure un arrangement. » Et, on ne parle  
15 pas d'une liquidation, ici.

16 30:

17 « Pour que les parties prenantes bénéficient  
18 d'une valorisation maximum [ce qui est le  
19 cas de Monsieur Adessky a témoigné] il est  
20 nécessaire de constituer des charges  
21 prioritaires en faveur du contrôleur, des  
22 bailleurs de fonds [qui sont la CIBC] et  
23 d'autres professionnels. Ces mesures  
24 profitent à l'ensemble des créanciers, y  
25 compris ceux dont les créances sont

1                   protégées par une fiducie présumée. »  
2 Pas de growing concern, on n'a pas de preuve devant vous,  
3 je sais même pas si les DAS vont être payés. On prend une  
4 chance de poursuivre l'entreprise 15 jours, trois  
5 semaines, un mois. On va avoir une offre qui va couvrir  
6 la CIBC, les DAS et donc les deux gouvernements vont en  
7 bénéficier. Et là, je passe sous silence les usagers,  
8 ceux qui bénéficient des services, que ce soit les  
9 citoyens du Québec, le gouvernement du Québec et les  
10 autres gouvernements.  
11 Donc, je veux pas, vous avez été assez gentil de nous  
12 trouver du temps, et qu'on arrive à la dernière minute,  
13 je veux pas m'éterniser, mais avec l'expérience que vous  
14 avez, je pense qu'on est dans les conditions,  
15 effectivement, pour vous demander les conclusions que  
16 l'on recherche.

17 **LA COUR:**

18 Maître Sheppard, Maître Cantin?

19 **Me SHEPPARD:**

20 (inaudible) je pense que tout le monde est au courant,  
21 pardon?

22 **Me CANTIN:**

23 Oh, je peux te laisser aller, mais j'avais débuté.

24 **Me SHEPPARD:**

25 Oh, j'avais pas compris.

1 **LA COUR:**

2 C'est bien la première fois qu'on voit le provincial  
3 laisser une chance au fédéral.

4 **Me LA ROCHE:**

5 Et je me demandais avant, excusez-moi Maître Sheppard et  
6 Maître Cantin, est-ce que vous vouliez que je vous plaide  
7 50.6 tout de suite, ou on verra ça plus tard?

8 **Me CANTIN:**

9 On verra ça plus tard.

10 **Me LA ROCHE:**

11 Merci, c'est ce que j'avais compris.

12 **LA COUR:**

13 Maître Sheppard, Maître Cantin vous a laissé la parole.

14 **--- REPRÉSENTATIONS PAR Me SHEPPARD:**

15 **Me SHEPPARD:**

16 Donc, merci beaucoup. Donc, Monsieur le juge, dans un  
17 premier temps, j'aimerais juste soulever, puis je pense  
18 que tout le monde est au courant, que les procédures nous  
19 ont été signifiées ce matin à 10 h 27. Trois heures et 45  
20 minutes après, on est devant vous, et on vous plaide, on  
21 souligne, on soulève le dossier de *Canada North*. C'est  
22 un, un arrêt, qui est particulier.

23 On est dans un contexte (inaudible) puis tandis que dans  
24 le dossier présentement, on est dans un contexte de  
25 proposition. Il pourrait y avoir une, des motifs de

1 contestation à l'égard de, du jugement qui a été rendu et  
2 il pourrait y avoir des distinctions. Mais, on n'est pas  
3 dans une position présentement de vous le plaider à  
4 l'intérieur de trois heures et demis ou trois heures 45  
5 d'avis.

6 Et lorsqu'on regarde les montants, tel que déjà  
7 mentionné, on est tout à fait d'accord que les montants  
8 de, le DIP financing soit là pour les employés. On a  
9 aussi entendu qu'il y avait certains montants, qui  
10 étaient des montants cruciaux des critical suppliers.  
11 Par contre, dans le cashflow, le « productive cashflow »,  
12 il y a plusieurs items puis lignes (inaudible) à court  
13 terme dans les prochaines couples de semaines. Donc, que  
14 ce soit le paiement des cartes de crédits, les suppliers  
15 sont déjà payés. Que ce soit les professionnels, que ce  
16 soit le CFO, tous les autres portent au cashflow ont pas  
17 d'incidence sur les opérations courantes de la compagnie.  
18 Donc, pour l'instant qu'est-ce que je vous demanderais  
19 c'est effectivement d'accueillir les frais, les charges,  
20 DIP charges, mais limiter au montant de salaires puis  
21 limiter au montant- qu'on peut aller voir le cashflow -  
22 mais le operating expenses pour les deux prochaines  
23 semaines et remettre le restant du dossier à deux  
24 semaines pour voir si, si potentiellement on a une  
25 contestation à déposer.

1 Et je vais juste, de façon subsidiaire, si vous jugez que  
2 c'est pas la bonne avenue, ça serait de faire, j'ai le  
3 terme en anglais, désolée, un carve out, donc vraiment de  
4 dire on va accorder les charges tel que demandé, sauf à  
5 l'égard de la super priorité qui est demandée de toutes  
6 les charges sur les fiducies présumées. Donc, faire un  
7 carve out que c'est ces charges (inaudible) en super  
8 priorité sur la, la...j'ai le deemed trust en tête, sauf  
9 la fiducie présumée, que cet aspect-là sera plaidé à une  
10 date ultérieure.

11 Donc, c'est ça mon plaidoyer.

12 **LA COUR:**

13 C'est vos représentations?

14 **Me SHEPPARD:**

15 Merci.

16 LA COUR:

17 Maître Cantin?

18 **--- REPRÉSENTATIONS PAR Me CANTIN:**

19 **Me CANTIN:**

20 Alors, Monsieur le juge, je seconde (inaudible) on s'en  
21 est parlé très, très brièvement durant les pauses, mais  
22 en fait, *Canada North* c'est sûr c'est une décision de la  
23 Cour Suprême, mais ce que la cour nous dit surtout, il y  
24 a une large discrétion du juge et il faut appliquer les  
25 éléments de *Canada North* ou le principe invoqué dans

1 cette décision-là à chacun des dossiers.  
2 Faut faire ben, ben attention, parce que effectivement,  
3 il faut... ça prend une démonstration, ça prend une preuve  
4 que la priorité qui est demandée à ce stade-ci, c'est  
5 véritablement nécessaire pour la survie de la compagnie,  
6 pour que la compagnie demeure en activités.  
7 Et je vous soumetts que dans la requête et dans le rapport  
8 du contrôleur, on n'a rien de démonstration, ici, qui  
9 vient nous dire que c'est absolument nécessaire d'avoir  
10 une super priorité au-delà des priorités de la Couronne,  
11 là, sur les remises. On voit le cashflow, on voit qu'il y  
12 a un travail qui a été fait, mais on voit aussi, on a  
13 entendu qu'il y a un travail qui pourrait être fait  
14 autant plus pour essayer de voir s'il y a pas des  
15 dépenses... d'autres dépenses compressées, d'autres frais  
16 compressés.  
17 Juste pour la restructuration dans le prochain mois, on  
18 est au-delà de 700 000\$ de déboursé qui devrait être  
19 consacré, là. On le sait pas, on espère qu'il y aura une  
20 vente, mais on le sait pas s'il en aura une, mais vous,  
21 de l'ordonnance qui vous est proposée, qui cause  
22 problème, et on pourrait très bien vous suggérer de  
23 modifier la définition de ce paragraphe-là, mais encore  
24 là, il faudrait voir, il faut être capable d'explorer un  
25 peu plus puis de voir un peu plus ce qui en est au niveau

1 avec le contrôleur... ou pas le contrôleur (inaudible) pour  
2 voir où ça s'en va.  
3 Là, on a compris dans la preuve que les remises courantes  
4 seraient payées, on l'espère, c'est l'affirmation du  
5 syndic, c'est pas l'affirmation de la directrice. En tout  
6 cas, on espère que ce sera fait. Le problème, là, c'est  
7 qu'on en a également pour 3.2 millions de remises non-  
8 effectuées. Alors, effectivement, dans ce sens-là, c'est  
9 pas, j'adopte donc la position de Maître Sheppard, il  
10 faut qu'on puisse s'y pencher un peu plus que le trois  
11 heures après la remise d'une requête, là, pour regarder à  
12 quoi ça tient, tout ça.  
13 Mais je comprends que Maître La Roche vous soumetts *Canada*  
14 *North*, et encore une fois, c'est pas parce que c'est  
15 demandé que c'est nécessairement un rubber stamp, là. Il  
16 va falloir, je vous admetts qu'on commence à le voir,  
17 cette situation-là, et ça commence à être problématique.  
18 Je vous rappelle, Monsieur le juge, qu'on parle de remise  
19 de 194 000\$ par paie, par mois plutôt. Je pense que ça  
20 s'insère dans ce budget-là, bon, là, il semble  
21 qu'effectivement ça inclut le 239 000 de paie, mais il y  
22 a assurément moyen de conserver les droits de la Couronne  
23 dans le contexte qu'on nous présente, ici, aujourd'hui.  
24 **THE COURT:**  
25 Merci. Mr. Chaiton, do you have something to say prior

1 to my judgement?

2 **Me CHAITON:**

3 I would like to say this, that the Canadian Imperial Bank  
4 of Commerce was prepared to support this process to try  
5 to affect the going concerned sale of the Pomelo business  
6 for the benefit of all stakeholders. And we heard Mr.  
7 Adessky indicate that if there is no funding, then the  
8 company is going to have to go into bankruptcy and  
9 liquidate it, and it will have a significant adverse  
10 impairment to the value of the business, and who knows  
11 what, if anything, will be realized for the benefit of  
12 creditors.

13 The advantage of the going concern fail, if there is a  
14 buyer, is significant, in my respectful submission, for  
15 all stakeholders, including CRA. There will be 48 jobs  
16 that would be saved. You heard that there will --  
17 there's over a million patients. And there are tens of  
18 clinics and pharmacies that use the software platform of  
19 Pomelo Health. And they would be adversely impacted by  
20 an immediate shutdown of this business.

21 CRA's claim would only rank behind -- assuming this  
22 proceeding continues, CRA's claim would only rank behind  
23 a limited DIP charge, which needs to be provided to track  
24 this going concern sale. So in my submission, I think it  
25 is fairly obvious that CRA gains to benefit considerably

1 by the possibility of a going concern sale, because  
2 otherwise, not only they, but perhaps all creditors,  
3 including the bank, may stand to realize very little, if  
4 anything.

5 **THE COURT:**

6 Thank you. That's it?

7 **Me CHAITON:**

8 Yes, it is. Thank you.

9 **THE COURT:**

10 Okay.

11 Le tribunal va faire une...

12 **--- REPRÉSENTATIONS DE Me TSCHAMPER:**

13 **Me TSCHAMPER:**

14 Je m'excuse de vous interrompre, tout le monde, j'ai pas  
15 eu l'occasion encore de me nommer, je suis arrivée sur la  
16 ligne à environ 2 h 45. Mon nom est Jennifer Tschamper,  
17 je suis avocate chez Dunton Rainville, et je représente,  
18 en fait, deux administrateurs, Monsieur Yan et Raymond  
19 Lalonde, ainsi que Monsieur Rémi Richard Lalonde.

20 Lesquels n'ont pas été parti aux discussions, j'ai obtenu  
21 la copie de cette requête-là à environ 3 h 00 de l'après-  
22 midi sur le site de Richter.

23 Alors, j'ai pris (coupure d'audio) du fait que on n'a pas  
24 été tenu au courant de tout ça. Je vois notamment,  
25 j'avais pris connaissance assez rapidement de vous, j'en

1 ai pris connaissance et dans le projet du jugement,  
2 notamment, au paragraphe 45 qui vous est soumis, je vous  
3 (coupure d'audio), je vois qu'il y a une liste de  
4 sélection de gens à qui les requêtes sont envoyées et les  
5 avis du processus. Nous ne sommes pas sur cette liste-là,  
6 les...actionnaires que je représente sont aussi  
7 actionnaires minoritaires et ils ne sont pas sur cette  
8 liste-là, raison pour laquelle nous n'avons pas obtenu  
9 copie de ladite demande.

10 Alors, j'aimerais qu'on puisse modifier à tout le moins,  
11 je vais réserver mes recours évidemment et les recours de  
12 nos clients pour le processus qui est en cours. Comme je  
13 vous dis, j'ai pas la possibilité de prendre position vu  
14 le très court délai auquel on a été audité. Par contre,  
15 au niveau du paragraphe 45 à tout le moins pour (coupure  
16 d'audio) sans préjudice, faudrait que ce paragraphe-là  
17 soit modifié afin que nos clients puissent également être  
18 avisés, là, des prochains, des prochaines étapes dans le  
19 processus.

20 Et notamment, je crois qu'on vous a informé, en fait, au  
21 moment des plaidoiries de Maître qui est présent, je  
22 m'excuse, j'ai pas votre nom, il y a eu une lettre  
23 d'intention non-sollicitée qui a été transmise, là, à la  
24 société. Alors, c'est sûr qu'au niveau de la façon de  
25 tenir les... on aurait peut-être des suggestions, aussi,

1 à ce sujet-là dans l'intérêt des actionnaires  
2 minoritaires et de tous les créanciers afin que l'offre,  
3 que les offres...

4 **LA COUR:**

5 Maître? Maître La Roche a fait cinq ans, quand vous avez  
6 demandé pour d'être tenue au courant que il faisait que  
7 oui, maintenant vous pourrez faire les représentations  
8 tout à l'heure. Là, vous venez d'arriver, mais moi, quand  
9 j'ai commencé...et j'ai une ordonnance à rendre, à  
10 préparer. Alors, je vais faire ça, mais vous pourrez  
11 toujours faire valoir vos droits ultérieurement, là. Là,  
12 c'est une mesure d'urgence.

13 **Me TSCHAMPER:**

14 Oui.

15 **LA COUR:**

16 Alors, ça va?

17 **Me TSCHAMPER:**

18 Oui, Absolument, mais ce qui est important pour nous est  
19 d'être avisé et d'avoir la copie de la requête que je  
20 n'ai pas...

21 **LA COUR:**

22 Oui, c'est réglé, c'est réglé, Maître, OK. Merci.

23 **Me TSCHAMPER:**

24 Parfait merci.

25 **---JUGEMENT:**

1 **LA COUR:**

2 Alors, pour les raisons qu'on suit, le tribunal va faire  
3 voir la requête et accorder les charges.

4 Mr. Chaiton, I will give my reasons in French but, for  
5 your benefit, I'm granting the motion as presented, okay?

6 **Me CHAITON:**

7 Thank you, Your Honour.

8 **THE COURT:**

9 Le tribunal est saisi d'une demande pour le financement  
10 intérimaire, en anglais, on dit DIP, et encore une fois,  
11 c'est pas vraiment le terme, ça devrait être plutôt  
12 interim financing. Parce qu'il y a une différence  
13 importante entre le...DIP au sens américain et celui en  
14 vertu de, au Canada. Et une charge, un KERP, ce qu'on  
15 appelle un KERP, c'est le même terme, est de même qu'une  
16 charge pour les administrateurs.

17 La preuve m'a été fournie par Monsieur Feldkamp, que  
18 j'appelais Falkan mais c'est Feldkamp, et par Monsieur  
19 Adessky, qui fait état d'une situation absolument  
20 catastrophique de la compagnie. À telle enseigne que  
21 l'ensemble du conseil d'administration a été viré par les  
22 investisseurs, et sans ménagement. N'empêche qu'ils ont  
23 des droits et on a l'intervention d'une avocate qui  
24 représente certains de ces administrateurs-là, et ils  
25 devront être avisés, tenus au courant de la suite de

Judgment, October 27, 2021

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1 l'évènement.

2 La situation est bien simple : c'est une entreprise qui  
3 fait dans la consultation médicale, qui aide à organiser  
4 les rendez-vous auprès de plusieurs cliniques, qui  
5 dessert à peu près un million de personne. Et c'est par  
6 voix par serveurs, c'est la prise de rendez-vous, des  
7 confirmations de rendez-vous.

8 Tout le monde, moi le premier, je reçois ces courriels-  
9 là, qui sont générés dans le Cloud, comme on dit, et pour  
10 aider les cliniques médicales et aider les médecins,  
11 aider les patients en ces temps difficiles. On est  
12 toujours bien dans une pandémie, avoir contact auprès de  
13 leur médecin, et médecins auprès de leurs patients.  
14 Tenir une façon ordonnée de procéder quand il y a une  
15 période de délestage, comme on a vu, il y a le côté  
16 social, mais il y a aussi, qui est important, même si on  
17 m'a pas, on n'a pas insisté là-dessus avec réserve, puis  
18 j'en remercie les avocats.

19 Il y a un côté business, aussi. On m'a convaincu que sans  
20 les mesures demandées, la compagnie n'ira pas de l'avant,  
21 n'a aucune chance de survie. Et je comprends Revenu  
22 Canada, je comprends Revenu Québec, ils font des  
23 représentations et aimeraient bien que la priorité que je  
24 donnerais n'affecte pas leur...deemed trust, fiducie  
25 présumée. Ça n'arrivera pas, parce que c'est...tout le

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1 principe de la, de la charge, c'est pour permettre ce  
2 financement-là pour la garder en vie.  
3 Alors, la question que je me suis posée, j'ai posé la  
4 question moi-même à Monsieur Adessky; est-ce que la  
5 situation des, de Revenu Canada et Revenu Québec va se  
6 détériorer? La réponse est non. Les déductions à la  
7 source devront se faire avec, pendant l'emploi des gens.  
8 N'oublions pas qu'il y a 48 employés, au-delà des  
9 patients, il y a 48 employés qui, qui vont travailler.  
10 Il y a des...creditors suppliers, et qui vont continuer à  
11 travailler.  
12 Donc, la situation est au-delà de ça, si la compagnie se  
13 vend, si elle vend pas, l'État ne sera pas dans une pire  
14 situation. Si elle se vend, l'État, et là, je parle  
15 de...le fédéral et provincial, vont récupérer une partie  
16 de leur créance. Alors, il y a tout à gagner.  
17 Je comprends qu'ils fassent, qu'ils aient fait les  
18 représentations qu'ils ont fait, c'est leur devoir, mais  
19 je pense que l'issue est assez claire à voir. En début du  
20 temps du peu de temps qu'on a eu, je dirais à Maître  
21 Cantin puis à Maître Sheppard, welcome to my world. C'est  
22 ça la Chambre commerciale, c'est ça, alors j'ai pas eu  
23 plus de temps que vous. Faut que je me fasse une tête pis  
24 faut que je décide.  
25 Alors, là, je regarde, je soupèse puis, et j'ai quand

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1 même une certaine discrétion, pis me semble que c'est un  
2 cas où je dois exercer ma discrétion pour permettre, au  
3 moins donner une chance, que ce soit par qui que ce soit,  
4 pour que ce service-là continue entre-temps, et on va  
5 voir, c'est pas, on ne parle pas d'une situation qui peut  
6 durer éternellement, on parle de six semaines.

7 Alors, pour toutes ces raisons, le tribunal va signer le  
8 projet d'ordonnance qui lui a été fourni.

9 Maître La Roche, vous m'avez envoyé trois projets, le  
10 dernier à 13 h 31, ça, c'est le bon?

11 **Me LA ROCHE:**

12 Ça, c'est le dernier en Word pour que vous puissiez faire  
13 des changements.

14 **LA COUR:**

15 Je n'en ferais pas, alors c'est le dernier, parce que je  
16 commencerais pas à changer le paragraphe 45. Dans mes  
17 motifs, je vous ai demandé de voir à ce que ces gens-là  
18 soient avisés, alors je commencerais pas...

19 **Me LA ROCHE:**

20 Toute personne qui a un intérêt qui demande au syndic  
21 d'être sur la liste, et là, automatiquement, même il y en  
22 a qui désirent d'être enlevés parce qu'ils sont tannés  
23 d'être là, dans des dossiers qui vieillissent.

24 **LA COUR:**

25 Alors, on va suspendre, je vais aller, j'en ai pour peut-

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1 être un 10-15 minutes pour préparer le...je me demandais  
2 s'il y avait d'autres versions, alors on va préparer le  
3 prochain...

4 **Me LA ROCHE:**

5 C'est la dernière que je vous ai envoyé en format Word.

6 **LA COUR:**

7 Et on va la signer.

8 **Me LA ROCHE:**

9 Monsieur le juge, peut-être un élément, vous devrez  
10 décider dans lequel des dossiers nous allons demeurer,  
11 parce qu'il y a deux numéros, et donc il y en a juste un  
12 qui va continuer à suivre. Donc, vous avez le choix,  
13 Madame, c'est, je sais que c'est administratif, sinon...  
14 (discussion technique)

15 **LA COUR:**

16 J'ai tout simplement besoin du premier numéro, le 355-  
17 217, c'est tout, j'ai pas besoin de l'autre. Merci.

18 **LA GREFFIÈRE:**

19 Alors, il y a pas de jonction de demandée?

20 **LA COUR:**

21 Oui, ben c'est pas vraiment une jonction. C'est une  
22 consultation administrative, sinon on va monter deux  
23 dossiers, donc c'est une consultation administrative.

24 **LA GREFFIÈRE:**

25 Là, il faut s'entendre. J'ai uniquement le numéro

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1 finissant par 217.

2 **LA COUR:**

3 C'est correct. C'est correct, Madame, c'est ça.

4 **LA GREFFIÈRE:**

5 Alors, ce que vous m'avez remis pour remettre au juge,  
6 les sous scellés, c'est quoi, ça?

7 **Me LA ROCHE:**

8 OK, il y avait une copie des pièces pour le juge, mais  
9 l'autre, c'est qu'au dossier, nous avons déposé la  
10 procédure et non les pièces et les deux pièces...

11 **LA GREFFIÈRE:**

12 Ça va aller dans le 217, Maître.

13 **Me LA ROCHE:**

14 Oui, oui. Oui. Merci, Madame.

15 **LA GREFFIÈRE:**

16 OK, correct. Non, mais faut être clair, parce que moment  
17 donné, c'est confus.

18 **Me LA ROCHE:**

19 Vous avez deux binders, il y en a un, c'est à lui, il le  
20 jettera, et l'autre c'est pour mettre dans le dossier qui  
21 est pièce sous scellés.

22 (discussion technique)

23 --- Upon recessing at 4:39 a.m./

24 L'audience est suspendue à 16h39

25 --- Upon resuming at 4:45 p.m./

Discussion, October 27, 2021

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1 L'audience est reprise à 16h45

2 **LA GREFFIÈRE:**

3 Maître Sheppard? OK, tout le monde est là.

4 **Me LA ROCHE:**

5 Juste pour pas vous prendre par surprise et vous piéger,  
6 Monsieur le juge, il n'y a rien dans l'ordonnance sauf  
7 que vous approuvez le term sheet que vous avez devant  
8 vous sous scellés, qui est R-14, et dans R-14, Maître  
9 Babos-Marchand me rappelle, c'est pas moi qui l'a  
10 négocié, qu'on parle de cette somme, qui est déjà  
11 avancée. Donc, si vous approuvez l'ordonnance telle  
12 quelle, vous réglez la question de 50.6, alors que vous  
13 aviez dit qu'on réglerait ça plus tard. Donc, je voulais  
14 vous le souligner.

15 **LA COUR:**

16 C'est parce que tout simplement le 170 424, dans vraie  
17 vie, là, c'est 900, 800, 870 000.

18 **Me LA ROCHE:**

19 Ou ce qu'il va arriver, ou ce qu'il va arriver, c'est  
20 qu'ils vont percevoir des comptes à recevoir pis ils vont  
21 diminuer, ils vont diminuer l'autre en pratique. Ça  
22 changera pas grand-chose...

23 **LA COUR:**

24 C'est pas significatif.

25 **Me LA ROCHE:**

Discussion, October 27, 2021

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1 Non, ça l'est pas, pis je voulais pas vous piéger, mais  
2 c'est, moi, la transparence devant le tribunal, j'ai été  
3 élevé comme ça. Pis Maître Babos-Marchand m'a dit, oh,  
4 oh, oh. Merci. Je m'excuse de vous avoir fait revenir,  
5 mais je pense que c'est un élément important.

6 **LA COUR:**

7 C'est bien.

8 Donc, alors...

9 **LA GREFFIÈRE:**

10 (inaudible).

11 **LA COUR:**

12 C'est signé?

13 **LA GREFFIÈRE:**

14 Ça rien changé à votre jugement?

15 **LA COUR:**

16 Non.

17 **LA GREFFIÈRE:**

18 Combien de copie?

19 **Me LA ROCHE:**

20 Une pour moi...

21 **Me CANTIN:**

22 J'en ai besoin d'une pour notre part.

23 **Me LA ROCHE:**

24 Juste deux, Madame.

25 **Me SHEPPARD:**

Discussion, October 27, 2021

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1 Alors, moi, j'en veux à peu près sept. (rires) Non, non,  
2 non, trois, quatre, cinq, cinq.

3 **LA COUR:**

4 Puis vous allez faire suivre vos services...

5 **Me LA ROCHE:**

6 Oui, définitivement.

7 **LA COUR:**

8 Maître Sheppard, Maître Chaiton, Maître Cantin, et la  
9 nouvelle avocate, Maître Jennifer Tshamper, je pense.

10 **LA GREFFIÈRE:**

11 Je l'ai noté, je l'ai noté.

12 **LA COUR:**

13 Je la vois plus, elle est plus là.

14 **Me TSHAMPER:**

15 Oui, je suis encore là, Monsieur le juge.

16 **LA COUR:**

17 Alors, vous allez être sur le servors list à partir de  
18 cet après-midi.

19 **Me TSHAMPER:**

20 Très bien, merci.

21 **LA COUR:**

22 OK, donc, qu'est-ce qui est sous scellés, là?

23 **Me LA ROCHE:**

24 Pardon?

25 **LA COUR:**

Discussion, October 27, 2021

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1 Qu'est-ce qui est sous scellés?

2 **Me LA ROCHE:**

3 Les deux pièces, c'est-à-dire le DIP announcing, les  
4 termes de la vente de commerce, et le deuxième, c'est la  
5 liste des employés avec le KERP, leurs salaires sont là.  
6 Fait que si la compétition prend ça, ils vont venir les  
7 chercher.

8 **LA COUR:**

9 OK, OK. Alors, une ordonnance de...

10 **LA GREFFIÈRE:**

11 C'est une ordonnance? Est-ce que c'est une ordonnance?

12 **Me LA ROCHE:**

13 Non. C'est-à-dire c'est dans la requête, je crois pas que  
14 c'est dans l'ordonnance. Simplement prononcer un CV...

15 **LA COUR:**

16 Alors, le tribunal ordonne la mise sous scellés des  
17 pièces?

18 **Me LA ROCHE:**

19 R-14 et R-15.

20 **LA COUR:**

21 R-14, R-15.

22 (discussion technique)

23 **Me LA ROCHE:**

24 Monsieur le juge, le syndic m'indique que la feuille qui  
25 vous a été donnée, qui est le cashflow, qui ne faisait

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1 pas, qui fait partie du rapport, faut qu'elle soit  
2 déposée sous scellés, aussi, parce que si les  
3 compétiteurs mettent la main là-dessus, c'est down la  
4 compagnie. C'est ce que vous me dites, Monsieur Adessky?

5 **LA GREFFIÈRE:**

6 Un moment, un moment, s'il vous plait. Alors, là, il y  
7 avait R-14, R-15 sous scellés?

8 **Me LA ROCHE:**

9 Oui.

10 **LA GREFFIÈRE:**

11 Et ça, ça va être quoi, R-16?

12 **Me BABOS-MARCHAND:**

13 Le rapport du syndic, c'est coté quoi, Madame la...

14 **LA GREFFIÈRE:**

15 Je le sais pas. Ça pas été...

16 **Me LA ROCHE:**

17 Il a pas été coté, le rapport du syndic.

18 **Me BABOS-MARCHAND:**

19 Mettez le rapport du syndic comme R-16.

20 **LA GREFFIÈRE:**

21 Un instant.

22 **Me LA ROCHE:**

23 On a déjà R-16.

24 **Me BABOS-MARCHAND:**

25 Excusez-moi.

Discussion, October 27, 2021

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1 **LA GREFFIÈRE:**

2 Là, faudrait pas se tromper, là.

3 **LA COUR:**

4 C'est R-14, R-15.

5 **Me LA ROCHE:**

6 R-14, R-15 sont sous scellés, on va mettre le rapport du  
7 syndic R-16.

8 **LA GREFFIÈRE:**

9 Non, non, un instant. R-14, R-15, est-ce qu'on met les  
10 titres?

11 **Me LA ROCHE:**

12 Ils sont déjà dans la liste de pièces.

13 **LA GREFFIÈRE:**

14 Je peux noter les titres sous scellés, R-14, R-15...

15 **Me LA ROCHE:**

16 C'est des term sheets, je vous le montre, ici.

17 **LA GREFFIÈRE:**

18 Non, non, non, ça, je vais le faire demain, les titres.

19 **Me LA ROCHE:**

20 Le DIP, D-I-P.

21 **Me BABOS-MARCHAND:**

22 Non, non, elle va regarder demain avec la liste. C'est  
23 juste que R-16 qui s'ajoute...

24 **LA GREFFIÈRE:**

25 Il est 16 h 49. OK, R-16.

Discussion, October 27, 2021

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1 **Me LA ROCHE:**

2 Rapport du syndic Richter. Et R-17, cashflow sous  
3 scellés.

4 **LA COUR:**

5 Cashflow au rapport de R-16.

6 **LA GREFFIÈRE:**

7 OK, maintenant, est-ce que vous prenez votre ordonnance,  
8 Monsieur le juge?

9 **LA COUR:**

10 Oui, alors, le tribunal ordonne la mise sous scellés des  
11 pièces suivantes : R-14, R-15, R-16 et R-17.

12 **LA GREFFIÈRE:**

13 Bon, c'est beau, tout ça, mais deux secondes, on va noter  
14 ça correctement. R-14 et R-15 sous scellés, ça, c'est R-  
15 17.

16 **LE COUR:**

17 Le rapport de Richter.

18 **LA GREFFIÈRE:**

19 R-17.

20 **Me LA ROCHE:**

21 Ça, c'est R-16. Monsieur le juge, vous voulez expliquer  
22 ce qu'on faisait ou vous voulez que je le fasse? Parce  
23 que tous les gens se demandent ce qu'on fait, là.

24 **LA COUR:**

25 Expliquez-le à Maître Chaiton, en anglais. Alors, pour

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1 les avocats qui sont là, il y a eu une question suite à  
2 ma signature de l'ordonnance, qui sont, en fait, qui sont  
3 le dispositif de mon jugement. Il y a eu une question de  
4 certains documents qui étaient pas encore, j'avais pas  
5 rendu d'ordonnance de mise sous scellés, notamment à ce  
6 qui a trait au KERP qui montre les salaires des employés  
7 concernés, et notamment quant au cashflow dont on a  
8 parlé.

9 Alors, le cashflow que vous avez entre les mains, il est  
10 confidentiel et j'ai ordonné la mise sous scellés. Ça  
11 peut pas tomber entre les mains de compétiteurs pour  
12 obtenir la valeur de la compagnie.

13 Mr. Chaiton, there was an issue about exhibits to be  
14 produced under seal which I just ordered, normally the  
15 term sheet of the next six weeks, which will remain  
16 confidential and under seal in the Court record.

17 That was it. Okay?

18 **Me CHAITON:**

19 Thank you. Yes.

20 **LA COUR:**

21 OK, alors, ça complète.

22

23 --- Upon adjourning at 4:55 p.m./L'audience est ajournée

24 à 16h55

25

Stenographer's Certificate

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12 **C E R T I F I C A T D E T R A N S C R I P T I O N**

13

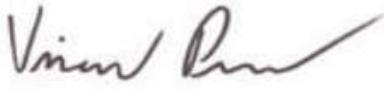
14 Je, soussigné, Vincent Perreault, sténographe officiel,  
15 certifie que les pages qui précèdent sont et contiennent  
16 la transcription du fichier numérique fait hors de mon  
17 contrôle et sont au meilleur de la qualité dudit  
18 enregistrement, le tout, selon la loi. Et j'ai signé :

19

20

21

22

23   
Vincent Perreault

24

Attestation

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**ATTESTATION**

We undersigned, Department of Justice Canada and Larivière Meunier (Revenu Québec), hereby attest that this Appellants' Brief is in compliance with the requirements of the *Civil Practice Regulation of the Court of Appeal* and that the depositions that we have had transcribed are at the disposal of the other parties, free of charge, in paper or technological format.

Time requested for the oral arguments: 1 h 30

Montréal, April 8, 2022

Québec, April 8, 2022



**Department of Justice Canada  
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