

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

No.: 500-09-029765-211  
No.: 500-11-060355-217

COURT OF APPEAL

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**AGENCE DU REVENU DU QUÉBEC**

*Appellant*

v.

**CHRONOMÉTRIQU INC.**

*Respondent – Debtor/Petitioner*

-and-

**HEALTH MYSELF INNOVATIONS INC.**

*Respondent – Debtor/Petitioner*

-and-

**RICHTER ADVISORY GROUP INC.**

*Respondent – Proposal Trustee*

-and-

**CANADIAN IMPERIAL BANK OF  
COMMERCE**, a legal person duly  
incorporated under the *Bank Act*, SC 1991 c.  
46, having an establishment at 1155 boul.  
René-Lévesque West, in the City of  
Montreal, Province of Québec, H3B 3Z4

*Applicant*

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**APPLICATION FOR LEAVE TO INTERVENE OF CANADIAN IMPERIAL BANK OF  
COMMERCE**

(Articles 185 *et seq.* and 378 *CCP*)

**TO ONE OF THE HONOURABLE JUDGES OF THE COURT OF APPEAL, THE APPLICANT, CANADIAN IMPERIAL BANK OF COMMERCE, RESPECTFULLY SUBMITS THE FOLLOWING:**

**I. INTRODUCTION**

1. Canadian Imperial Bank of Commerce (“**CIBC**”) brings this application for leave to intervene in the appeal to this Court by the Agence du Revenu du Québec and the Attorney General of Canada (in related file n° 500-09-029763-216) from the Order dated October 27, 2021 made by Mr. Justice Castonguay (the “**Judgment**”) which, among other things, authorized and approved interim financing by, and an interim financing charge, in favour of CIBC in the maximum principal amount of \$1,600,000, ranking in priority to, *inter alia*, any and all encumbrances, security interests or trusts affecting the property of ChronoMétriq Inc. (“**ChronoMétriq**”) and Health Myself Innovations Inc. (“**HMI**”, and together with ChronoMétriq, the “**Debtors**”).
2. The main question raised by the appeal is whether a judge of the Quebec Superior Court exercising their jurisdiction under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“**BIA**”) 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.
3. As the interim lender and beneficiary of the interim financing charge, CIBC is directly affected by the appeal as there are insufficient funds available in the Debtors’ estates to pay both the interim financing provided by CIBC and the Crown’s deemed trust claim.
4. For reasons unknown to CIBC, it was not named as a party on the appeal by the Appellant, notwithstanding the fact that it participated in the hearing before the Superior Court, as it appears from the hearing minutes appended hereto. Accordingly, CIBC brings this motion for leave to intervene in this appeal with a right to fully participate therein.

## II. **RELEVANT FACTS**

5. ChronoMétriq, doing business as Pomelo Heath, provides healthcare management and patient engagement software for healthcare professionals. 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 more than 330 pharmacies in 11 provinces and territories and 12,000 para-medical professionals across Canada.
7. The Debtors also have a contract with the Government of the Province of Quebec that provides ChronoMétriq with access to all of the provinces' general practitioners. Additionally, ChronoMétriq has a contract with the province of Newfoundland and Labrador for the COVID-19 vaccination and flu shot booking system.
8. HMI is a wholly owned subsidiary of ChronoMétriq. 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 record systems by providing online appointment management with automated reminders, as well as secure by-directional messaging between patients and providers.
9. As of October 25, 2021 ChronoMétriq employed 48 people based in offices located in Montreal and Toronto.
10. Pursuant to a credit agreement dated June 30, 2020, CIBC provided various credit facilities to ChronoMétriq 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. HMI provided CIBC with a secured guarantee for the amount owed by ChronoMétriq under these credit facilities.

11. As of October 21, 2021, the total indebtedness owing by the Debtors to CIBC was approximately \$2,900,000.
12. At that time, ChronoMétriq also owed an estimated amount of \$1,400,000 of unremitted federal payroll deductions and an additional approximate amount of \$1,716,000 of unremitted provincial payroll deductions, which are subject to the deemed trust provisions under the Income Tax Act (“ITA”).

### III. PROCEDURAL HISTORY

13. On October 26, 2021 the Debtors each filed on an urgent basis a notice of intention make a proposal pursuant to the provisions of the BIA and named Richter Advisory Group Inc. as proposal trustee (the “**Proposal Trustee**”).
14. This urgent insolvency filing was precipitated by a liquidity crisis caused by years of mismanagement and significant financial losses. ChronoMétriq had insufficient liquidity to pay its next payroll which needed to be funded without delay.
15. At the request of the Debtors, CIBC reluctantly agreed to provide interim financing, conditional on such financing being secured by a first ranking court-ordered interim financing charge.
16. On October 27, 2021, Mr. Justice Castonguay granted an order:
  - a. approving an interim financing facility by, and an interim lender’s charge, in favour of CIBC in the maximum principal amount of \$1,600,000;
  - b. approving a sale and investment solicitation process for the Debtors’ business and assets;
  - c. approving an administration charge and a director’s and officer’s charge;
  - d. approving a key employee retention plan; and
  - e. procedurally consolidating the Debtors’ bankruptcy estates.

17. The full amount of the interim financing facility has been advanced by CIBC. A sale of the Debtors' business and assets on a going-concern basis to Telus Health was approved by the Court, and the sale transaction was completed on November 29, 2021.
18. The Proposal Trustee currently holds net sale proceeds totaling approximately \$2,054,000. This amount is insufficient to pay the interim financing amount owed to CIBC and the unpaid source deduction trust claims of CRA and the Quebec Minister of National Revenue.
19. The Attorney General of Canada and Revenu Québec have appealed the Order of Mr. Justice Castonguay on the basis that section 183 of the BIA does not give a judge in the exercise of his/her bankruptcy jurisdiction the power to grant charges ranking in priority to the Crown's deemed trust claims for unremitted source deductions.

#### **IV. GROUND'S FOR CIBC'S INTERVENTION**

20. If the Appellant is successful on the appeal, there will be insufficient funds available to repay CIBC as the interim financing lender.
21. CIBC only agreed to provide interim financing to the Debtors on the condition that such financing be secured by a first ranking court-ordered interim financing charge, which ranked in priority to, *inter alia*, any trusts, statutory or otherwise.
22. Accordingly, CIBC 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.

#### **WHEREFORE, MAY IT PLEASE THE COURT TO:**

**GRANT** the *Application for Leave to Intervene of Canadian Imperial Bank of Commerce*;

**ALLOW** Canadian Imperial Bank of Commerce to intervene in these appeal proceedings on the same terms as the Respondents with respect to the length of its factum and oral submissions;

The whole with costs to follow suit.

**MONTRÉAL**, December 10, 2021

*Woods s.e.n.c.r.l./LLP*

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**Woods LLP**

Mtre. Sylvain Rigaud

Mtre. Joshua Bouzaglou

srigaud@woods.qc.ca

jbouzaglou@woods.qc.ca

notification@woods.qc.ca

2000 McGill College Avenue, Suite 1700

Montréal, Québec H3A 3H3

Tel.: 514 982-4545 / Fax: 514 284-2046

Code BW 0208 / Our File: 6923-1

**NOTICE OF PRESENTATION**

**To: Mtre. Daniel Cantin**  
LARIVIÈRE MEUNIER  
3800, rue de Marly, secteur 5-2-8  
Québec (Québec) G1X 4A5

*Lawyers for the Appellant, Agence du Revenu du Québec*

**Mtre. Michel Laroche**  
**Mtre. David Ward**  
**Mtre. Larry Ellis**  
MILLER THOMPSON LLP  
3700-1000 De La Gauchetière Street West  
Montréal (Québec) H3B 4W5

*Lawyers for the Respondents, Chronométriq Inc. and Health Myself  
Innovations inc.*

**Mtre. Hugo Babos-Marchand**  
**Mtre. Frédérique Drainville**  
McCarthy Tétrault LLP  
2500-1000 De La Gauchetière Street West  
Montréal (Québec) H3B 0A2

*Lawyers for the Respondent, Richter Advisory Group Inc.*

**TAKE NOTICE** that the *Application for Leave to Intervene of Canadian Imperial Bank of Commerce* will be presented for adjudication before one of the Honourable Judges of the Court of Appeal sitting in the Ernest-Cormier Building, located at 100, Notre-Dame Street East, in Montreal, on **December 20, 2021**, in room **RC-18**, at **9:30** or so soon thereafter as counsel may be heard.

**DO GOVERN YOURSELVES ACCORDINGLY.**

**MONTREAL**, December 10, 2021

*Woods s.e.n.c.r.l./LLP*

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**Woods LLP**

Mtre. Sylvain Rigaud

Mtre. Joshua Bouzaglou

srigaud@woods.qc.ca

jbouzaglou@woods.qc.ca

notification@woods.qc.ca

2000 McGill College Avenue, Suite 1700

Montréal, Québec H3A 3H3

Tel.: 514 982-4545 / Fax: 514 284-2046

Code BW 0208 / Our File: 6923-1

## AFFIDAVIT

I, the undersigned, Eric Laflamme, Managing Director for the Canadian Imperial Bank of Commerce, carrying on business at 1155 René-Lévesque Ouest, Office 300, Montréal (Québec), solemnly declares that:

1. I am a duly authorized representative of the Applicant Canadian Imperial Bank of Commerce;
2. All the facts alleged in the present application are true.

AND I HAVE SIGNED:

*Eric Laflamme*

Eric Laflamme (Dec 10, 2021 14:36 EST)

**Eric Laflamme**

Solemnly affirmed before me by  
technological means in  
Montreal, the 10th day of December 2021

*Johanna Messier* 

**Commissioner for Oaths**

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

No.: 500-09-029765-211  
No.: 500-11-060355-217

C O U R T O F A P P E A L

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**AGENCE DU REVENU DU QUÉBEC**

*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**

*Applicant*

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<p><b>LIST OF SCHEDULES IN SUPPORT OF APPLICATION FOR LEAVE TO INTERVENE OF CANADIAN IMPERIAL BANK OF COMMERCE</b></p>
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<b>SCHEDULE 1</b>	Notice of Appeal of Appellant Agence du Revenu du Québec
<b>SCHEDULE 2</b>	Judgment <i>a quo</i> dated October 27, 2021
<b>SCHEDULE 3</b>	Minutes of hearing held on October 27, 2021

# **SCHEDULE 1**

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.

**CHRONOMÉTRIQU 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

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

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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 I 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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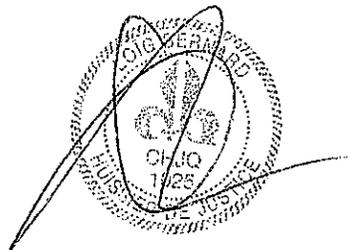
<sup>2</sup> 2021 SCC 30

## 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



*Daniel Cantin*

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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

# **SCHEDULE 2**

**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:  
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 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*

("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

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

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

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**

**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

(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.

- [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

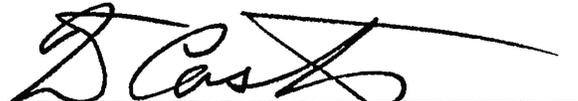
these proceedings on all represented parties electronically by emailing a PDF or other electronic copy of such materials to counsels' email addresses.

- [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

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.

COPIE CERTIFIÉE CONFORME  
AU DOCUMENT DÉTENU PAR LA COUR



# **SCHEDULE 3**

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

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

Debtor / Petitioner	Attorneys
ChronoMétriq Inc.	Me Michel La Roche <b>Miller Thomson</b> mlaroche@millerthomson.com  Me David Ward dward@millerthomson.com.  Me Larry Ellis lellis@millerthomson.com

Debtor / Petitioner	Attorneys
Health Myself Innovations Inc.	Me Michel Laroche Me David Ward Me Larry Ellis

Proposal Trustee	Attorneys
Richter Advisory Group Inc.	Me Hugo Babos- Marchand <b>McCarthy Tétrault</b> hbmarchand@mccarthy.ca

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

Me Kim Sheppard  
 Pour : Le Procureur Général du Canada

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

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

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

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 : <b>Denise Boily, g.a.c.s.</b>	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

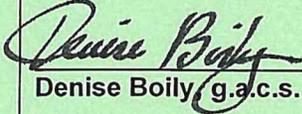
CANADA		PROCÈS-VERBAL D'AUDIENCE		COUR SUPÉRIEURE	
PROVINCE DE QUÉBEC				Chambre commerciale	
DISTRICT DE MONTRÉAL					
500-11-060355-217				Salle 16.04	
					27 octobre 2021
L'HONORABLE MARTIN CASTONGUAY, J.C.S.					JC00C9

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><u>Témoin (anglais)</u></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><u>Témoin (anglais)</u></b> : M. Andrew Adessky
	1981 Mc Gill College
	Montréal
	Assermenté
15h22	Interrogé par Me La Roche
15h42	Fin de l'interrogatoire en chef
	- Questions du Tribunal au témoin
15h42	Contre-interrogé par Me Sheppard
15h50	Contre-interrogé par Me Cantin

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

	- 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
	- <b>Commentaires du Tribunal à Me Tschamper</b>
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

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;"> <b>R-14 :</b> DIP Term Sheet  <b>R-15 :</b> The KERP  <b>R-16 :</b> First Report of the Trustee on the State of Petitioners' Business and Financial Affairs  <b>R-17 :</b> Week Projected Cashflow </p> <div style="text-align: center;">   <b>HON. MARTIN CASTONGUAY, J.C.S.</b> </div>
16h51	Le Tribunal commente
16h55	Fin de la séance
	 <b>Denise Boily, g.a.c.s.</b>
