

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SYNAPTIVE MEDICAL INC.

Applicant

AIDE MEMOIRE OF THE ATTORNEY GENERAL OF CANADA
(REGARDING APPLICANT'S SOUGHT RELIEF RELATED TO THE WEPP)

OVERVIEW

1. The Attorney General of Canada (“**AGC**”) represents Employment and Social Development Canada (“**ESDC**”) regarding the application of the Wage Earner Protection Program (“**WEPP**”).

2. The Applicant seeks, *inter alia*, a Reverse Vesting Order (“**RVO**”) where Synaptive Medical Inc. (“**Synaptive**”) would sell its shares to a purchaser pursuant to a Subscription Agreement (“**Proposed Transaction**”). The agreement requires the purchaser to make offers of continued employment to at least 90% of the aggregate number of employees of Synaptive and its subsidiaries.¹

3. Prior to the closing of the Proposed Transaction, Synaptive would form a new entity, ResidualCo. By way of the RVO, Synaptive seeks to add the ResidualCo as an Applicant to this proceeding and to deem the ResidualCo to be the former employer of any former employees of

¹ Applicant's Motion Record at PDF pages 11 and 28-29 of 232.

Synaptive for the purposes of a determination that the ResidualCo meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*.²

AGC opposes sought WEPPA relief

(A) Relief contrary to purpose of the WEPPA

4. The AGC does not oppose the RVO generally. However, it opposes the relief sought at paragraph 7 of the Stay Extension and Termination Order (“**WEPPA Declaration Relief**”).

5. The WEPPA Declaration Relief in the context of a RVO is contrary to the purpose of the WEPP, which is to offer timely financial assistance to employees who are dismissed or terminated by an insolvent employer who is in the process of liquidation – i.e., when the former employer ceases or will cease to exist. According to the Regulatory Impact Analysis Statement (“**RIAS**”), the WEPP’s purpose is to provide relief to individuals who have been terminated by an insolvent employer undergoing liquidation.³ In the context of continuity of employment, the RIAS stated that the difference between a terminated and transferred employee is often made by the court.⁴

6. WEPPA allows employees to rapidly receive payment shortly after termination, when they most need it, rather than waiting for an eventual dividend at the close of proceedings; it is to accelerate payment to employees, not subsidize an employer’s restructuring with taxpayer dollars. The employees receive the WEPPA entitlements upfront, and the taxpayer is reimbursed later by stepping into the shoes of the employee for the wage claims via the Crown’s subrogation rights.⁵

7. Section 5(1)(b)(iv) of the WEPPA is designed for the Court to function as a gatekeeper. Pursuant to s. 5(5) of the WEPPA and s. 3.2 of the WEPPR, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.

² *Wage Earner Protection Program Regulations*, SOR/2008-222, s. 3.2 [“**WEPPR**”]: the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.

³ WEPPA, s. 4; Regulatory Impact Analysis Statement – *Regulations Amending the Wage Earner Protection Program Regulations*, (2021) C Gaz II at 2728 (*Wage Earner Protection Program Act*) [**Gazette**].

⁴ Gazette at 2739.

⁵ WEPPA, s. 36.

8. The Applicant’s motion materials show that the key objective of the RVO is a continuation of Synaptive business as a going concern. Meanwhile, the ResidualCo is not an employer, which owes (or could owe) eligible wages to terminated employees.

9. To ensure the accomplishment of the overriding policy objective, Parliament conferred to the Superior Court a critical judicial supervisory role to ensure that all employees are terminated or that it is clear that they will be terminated following the winding down of the operations. This meets the policy objectives of the Program, being that non-liquidating proceedings do not give rise to WEPP benefits.

10. The purpose of the WEPP is to provide timely, limited relief to employees whose employers are insolvent or bankrupt. It was intended to be a “safety net” for employees. The legislators sought to strike a balance in this statutory scheme. Recognizing that WEPP payments are funded with taxpayer dollars, the program sets limits on the WEPP payments.⁶

11. When the WEPP was launched, amendments made to the *Bankruptcy and Insolvency Act* elevated the ranking of unpaid wages and vacation pay to enjoy a limited “super-priority” status. This super-priority status means that claims for unpaid wages and vacation pay rank ahead of secured creditors in a bankruptcy process, up to a maximum of \$2,000 per wage claim. The purpose of the limited super-priority is (a) to allow the Crown to recover up to \$2,000 per WEPP claim from insolvent employer estates during the bankruptcy process, which helps reduce overall net program costs; and (b) to deter employers from avoiding paying workers amounts owed.⁷ These claims are protected if, instead of a bankruptcy, a court-approved proposal⁸ or asset sale⁹ occurs, providing consistent application across insolvency proceedings to avoid the “skewed incentives” of venue shopping.¹⁰

12. The structure of this Reverse Vesting Order is contrary to the intention and purpose of the WEPP. It is incompatible with the Crown’s super-priority element of a wage claim and the

⁶ *Metroland Media Group Ltd. (Re)*, 2024 ONSC 2261 at paras [40-41](#).

⁷ Gazette at [2730](#).

⁸ BIA, [s. 60\(1.3\)\(a\)](#).

⁹ BIA, [s. 65.13\(8\)](#).

¹⁰ *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60 at [para 47](#).

deterrence factor. It is also incompatible with the objective of the WEPP, which is to provide financial relief to employees who lose their employment due to their employer's liquidation, on the condition that it has terminated all of its employees.

13. The Governor in Council rejected the idea that WEPP should cover wages owed by an employer who is restructuring irrespective of whether bankruptcy or receivership will occur or is expected to occur. On its face, this change also excludes the situation contemplated by a Reverse Vesting Order wherein the real employer is removed from the bankruptcy proceeding. On this point, the Gazette notes that “[t]he WEPP is not designed to cover all forms of business restructurings.”¹¹

(B) Synaptive is the true employer

14. Synaptive did not terminate all its employees, and the transition employees are not being retained to wind down business operations. The company will carry on operations where designated Synaptive employees continue their employment with the purchaser.

15. By deeming the ResidualCo as the former employer, this Court would effectively render the Crown's right of recovery (by way of super-priority or otherwise) a nullity. By design, a ResidualCo will have no assets for recovery. This will turn the WEPP into a program that is completely paid for by public funds, contrary to the legislative intent.

16. Effectively, the Applicant seeks to assign the employment contracts to the ResidualCo in violation of the BIA's prohibition against the non-consensual assignment of employment contracts. The authority for assignments was codified in 2009 with the creation of BIA s. 84.1 (and CCAA s. 11.3). These provisions forbid non-consensual court-ordered assignments of employment contracts, as the provisions do “not apply in respect of rights and obligations that are not assignable by reason of their nature”¹² which, as noted by the Alberta Court of Appeal, includes

¹¹ Gazette at [2735](#).

¹² CCAA, [s. 11.3\(2\)](#); BIA, [s. 84.1\(3\)](#).

employment contracts as they are personal in nature.¹³ An RVO cannot be used to achieve indirectly an assignment that would not be permitted directly through the proper application of BIA s. 84.1, as the “underlying logic” of s. 84.1 must be applied to the RVO.¹⁴ Therefore the order sought by the Applicant is unavailable in this proceeding.

17. Further, in exchange for their WEPPA entitlements, employees assign their wage claims to the Crown so that the Crown may recoup taxpayer dollars used to fund those entitlements; via the Crown’s subrogation rights, and the taxpayer has at least the potential of recovery.¹⁵ Therefore, in a court-approved proposal¹⁶ or asset sale¹⁷ or bankruptcy¹⁸ the Crown will be able to rely on the employee claims for recovery. If, however, the employees are assigned to the ResidualCo, an entity bereft of assets, the subrogation rights are rendered worthless. The debtor company has shed the employee claims, avoided its obligations to its employees (and now, by extension, the Crown via the subrogation rights), defeating the “underlying logic” of both the WEPPA and BIA regarding the sacrosanct nature of employee claims across insolvency proceedings. Therefore, the *Harte Gold* test cannot be met, as the Crown¹⁹ will be “worse off under the RVO structure than [it] would have been under any other viable alternative.”

RVO caselaw

18. In *Just Energy*, the Court stated that “reverse vesting orders are relatively new structures ...[and] should not be the ‘norm’ and that a court should carefully consider whether a reverse vesting order is warranted in the circumstances.”²⁰ While RVOs have become more “common” since *Just Energy*, they continue to be granted only in extraordinary circumstances.

¹³ *Ford Motor Company of Canada, Limited v. Welcome Ford Sales Ltd.*, [2011 ABCA 158](#). See also [When Insolvency and Restructuring Law Supersedes Contracts](#) (Alberta Law Review) and *Arrangement relatif à Xebec Adsorption Inc.*, [2023 QCCS 466](#).

¹⁴ *Long Run Exploration Ltd (Re)*, 2024 ABKB 710 at [para 58](#).

¹⁵ WEPPA, [s. 36\(1\)](#).

¹⁶ BIA, [s. 60\(1.3\)\(a\)](#).

¹⁷ BIA, [s. 65.13\(8\)](#).

¹⁸ BIA, [s. 81.3](#) and [s. 136\(1\)\(d\)](#).

¹⁹ *Harte Gold Corp. (Re)*, 2022 ONSC 653 at [para 38](#).

²⁰ *Just Energy Group Inc. et. al. v Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354 at para [33](#).

19. In *Just for Laughs*, the applicants were Former Gestion Inc. (subject of an asset vesting order) alongside a number of other entities (RVO Entities) who sold their shares to a purchasing company and transferred liabilities to a ResidualCo.

20. Former Gestion Inc. and the RVO Entities terminated their employees prior to the RVO hearing and sought a declaration that they meet the criteria prescribed by s. 3.2 of the WEPPR. They did not seek a declaration that the ResidualCo was the former employer, and the Court made no such order.²¹

21. The Applicant relies on *Valeo Pharma*,²² where the Court issued an Approval and Reverse Vesting Order stating that any employee of the Debtors, Valeo Pharma Inc., VPI Pharmaceuticals Inc., and Valeo Pharma Corp., that is required to be terminated immediately prior to the Closing Date in accordance with the Purchase Agreement, shall be first deemed to be transferred into the ResidualCo and shall be terminated immediately following such transfer.

22. The Court stated in *Valeo Pharma* that the purchaser will retain 36 of Valeo's 60 employees, although within 30 days after closing the purchaser may elect not to retain some of the 36 employees. All employees not retained would also be transferred to the ResidualCo, who will then terminate the employee's contracts.

23. The outcome in *Valeo Pharma* undermines Parliament's intended purpose for the WEPP, as Valeo is emerging from the CCAA proceedings and continuing as a going concern. The AGC successfully sought leave to appeal the decision in *Valeo Pharma*²³ and the appeal will be heard later in 2025.

²¹ *Arrangement relatif à Former Gestion Inc.*, 2024 QCCS 3645 at [paras 6](#) and [37](#) [*Just for Laughs*].

²² *Arrangement relatif à Valeo Pharma inc.*, [2025 QCCS 580](#).

²³ *Attorney General of Canada c Valeo Pharma inc.*, [2025 QCCA 483](#).

CONCLUSION

24. The AGC recognizes the importance of the proposed RVO to a number of stakeholders and does not oppose the closing of the Proposed Transaction. However, the AGC submits that the WEPPA declaration should not be granted on June 18, 2025. The AGC seeks that the Applicant withdraw its WEPPA related sought relief, or that a full hearing is scheduled to determine this issue.

25. Service Canada was not served with the Applicant's motion record or the Monitor's factum. The AGC's counsel of record obtained a copy of the motion record on June 16, 2025 and a copy of the factum on June 17, 2025 from the Tax Law Division.²⁴

26. The issues raised in the Applicant's and Monitor's materials raise serious questions about the interpretation of the WEPPA, the WEPPR, and whether the program intends to capture situations like the proposed transaction. The issue to be decided is of fundamental importance to the Canada-wide administration of the WEPP.

27. Given the short notice, the AGC would require additional time to prepare substantive materials. The AGC proposes that three-quarters to a full day be scheduled to deal with the WEPPA relief to be heard within 60 days of the closing date of the proposed transaction and that nothing in the terms of the proposed transaction or otherwise ordered by the Court on June 18, 2025 shall be meant to deem the RedisualCo as a former employer for the purposes of a section 3.2 WEPPR determination.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto, Ontario this 17th day of June, 2025.

²⁴ See attached email at Tab 1 from AGC counsel to the Applicant's and Monitor's counsel regarding service.



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Counsel for the Attorney General of Canada

TAB 1

Khalfan, Fatemah

From: Kravchuk, Walter (he him il lui)
Sent: June 17, 2025 3:28 PM
To: tushara.weerasooriya@mcmillan.ca; stephen.brown-okruhlik@mcmillan.ca;
aslavens@torys.com; mnoel@torys.com
Cc: Khalfan, Fatemah; Norris, Jake (he him il lui)
Subject: Synaptive Medical Inc., Re - Court File No. CV-25-00739279-00CL - Motion for Reverse Vesting Order and CCAA Termination - AGC's position re WEPPA relief

To: Tushara Weerasooriya; Stephen Brown-Okruhlik (counsel for the Monitor)

To: Adam Slavens; Mike Noel (counsel for Synaptive Medical Inc.)

Dear Counsel,

I am a lawyer with the Attorney General of Canada, which represents Service Canada and the Wage Earner Protection Program. Yesterday (June 16), I received the Applicant's Motion Record returnable June 18, which I understand was not served on Service Canada, and which was delivered to my colleagues in the Tax Law Division on the evening of June 12. Today, I received the Monitor's Factum in respect of tomorrow's motion, which was served on my tax law colleagues (but not on Service Canada) yesterday.

Having reviewed the materials, as well as the reports of the Monitor (collectively "Motion Materials"), our client opposes the WEPPA Declaration Relief, although it does not oppose the proposed transaction generally. The sought WEPPA relief in the context of a RVO is contrary to the purpose of the WEPP, which is to offer timely financial assistance to employees who are dismissed or terminated by an insolvent employer who is in the process of liquidation - i.e. when the former employer ceases or will cease to exist. The Motion Materials show that the key objective of the RVO is a continuation of Synaptive business as a going concern. Meanwhile, the ResidualCo is not an employer, which owes (or could owe) eligible wages to terminated employees.

Our client asks that the WEPPA declaration be removed from the Stay Extension and Termination Order located at Tab 4 of the Motion Record. Should you wish to proceed with seeking the WEPPA relief tomorrow, we will serve and file the AGC's Aide Memoire later today to assist the court. We are of the view that hearing the WEPPA issue on its full merits would require at least $\frac{3}{4}$ of a day, and we propose that a hearing take place within 60 days of the closing of the proposed transaction.

Please add my assistant Fatemah Khalfan as well as my colleague, counsel Jake Norris, to CaseCenter. We would also appreciate receiving the zoom link to the June 18 hearing. Should you have any question, do not hesitate to contact me.

Walter

Walter Kravchuk

Counsel / Avocat

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

**IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SYNAPTIVE MEDICAL
INC. TECHNOLOGIES INC. (the "Applicant")**

**ONTARIO
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Proceeding Commenced at Toronto

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