

**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 1001270243 ONTARIO INC.**

Applicant

**FACTUM OF THE APPLICANT
(Motion for WEPP Relief,
returnable November 12, 2025)**

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PART I - INTRODUCTION

1. Synaptive Medical Inc. (“**Synaptive**”) brings this motion for a declaration that the “ResidualCo”¹ entity under its reverse vesting order transaction and/or Synaptive, in the alternative, meets the eligibility criteria under section 3.2 of the *Wage Earner Protection Program Regulations* (the “**WEPP Relief**”). Absent this declaration, Synaptive’s terminated employees will be barred from recovering up to a collective \$274,022.88 of unpaid wages and similar amounts under the Wage Earner Protection Program (“**WEPP**”).

2. Synaptive recently emerged from this CCAA proceeding when it consummated a reverse vesting transaction on June 26, 2025. Synaptive originally requested the WEPP Relief on its motion for the reverse vesting order. However, due to opposition that Synaptive received prior to the hearing from Employment and Social Development Canada (“**ESDC**”)—the federal government body that administers the WEPP—Synaptive agreed to adjourn this issue to the within motion.

3. The WEPP Relief is critical for Synaptive’s terminated employees. They suffered from a general sense of anxiety and uncertainty about the future during this CCAA proceeding and continue to suffer from financial hardship—a result of temporary layoffs, permanent terminations and at least \$903,417.03 of unpaid claims relating to their employment. In the climate of this anxiety and uncertainty, they had been counting on government support in the form of WEPP Relief.

4. The WEPP’s purpose is to serve as a “safety net” for employees in precisely this situation. It was established so the government can satisfy employees’ eligible wage claims when they lose

¹ ResidualCo is 1001270243 Ontario Inc.

their jobs because of their employers' insolvencies, thereby getting wage payments to employees quickly, when they need it most.

5. ESDC opposes Synaptive's requested declaration—an approach that runs contrary to the WEPP's purpose. It would deny Synaptive's terminated employees this critical source of recovery while leaving ESDC no worse off than it would have been had Synaptive sold its business under a traditional approval and vesting order structure (which would have been detrimental to other stakeholders).

6. Since the WEPP was enacted in 2005, it and the CCAA have evolved symbiotically to ensure that WEPP Relief was available to employees as insolvency practice shifted from plans of arrangement to approval and vesting order transactions. The common thread running through this evolutionary history is that employees should not be left in the cold when they lose their jobs because of their employers' insolvencies.

7. RVOs represent the latest tool in the insolvency practice toolkit, and it is open to this Court to align this tool with the remedial objectives of the CCAA and the WEPP's function as a safety net.

PART II - SUMMARY OF FACTS

A. Synaptive has emerged from CCAA protection

8. On March 19, 2025, Synaptive Medical Inc. (“**Synaptive**”) obtained protection from this Court under the *Companies' Creditors Arrangement Act* (the “**CCAA**”) and has since successfully emerged from its CCAA proceeding as a going concern. The key milestones of this CCAA proceeding were:

- (a) **Initial Order:** on March 19, 2025, this Court granted an initial order providing Synaptive with customary “day 1” relief under the CCAA, including the appointment of Richter Inc. as the monitor (in such capacity, the “**Monitor**”);²
- (b) **ARIO and SISP:** on March 26, 2025, this Court granted an amended and restated initial order that extended and expanded the relief granted under the initial order, as well as an order approving a sale and investment solicitation process in respect of Synaptive’s business and/or assets (the “**SISP**”);³
- (c) **KERP Approval:** on April 25, 2025, this Court granted an order approving a key employee retention plan and a corresponding charge in favour of 43 of Synaptive’s key employees;⁴
- (d) **Winning Bid:** on June 2, 2025, a subscription agreement (the “**Subscription Agreement**”) between Synaptive and 1001253954 Ontario Inc. (the “**Purchaser**”) was declared to be the “Successful Bid” under the SISP;⁵
- (e) **Reverse Vesting Order:** on June 18, 2025, this Court granted a reverse vesting order (the “**RVO**”) that approved and implemented the Subscription Agreement under a “reverse vesting” structure—namely, the RVO provided that, following the

² Initial Order dated March 19, 2025, Exhibit “B” to the Affidavit of Diane Zimmerman sworn August 27, 2025 (“**Zimmerman Affidavit**”), Tab 2 of the Amended Motion Record of Synaptive Medical Inc. dated September 25, 2025 (“**MR**”).

³ Amended and Restated Initial Order dated March 26, 2025, Exhibit “C” to the Zimmerman Affidavit, MR, Tab 2; Third Report of the Monitor dated June 14, 2025 (“**Third Report**”), s 1.4, Exhibit “H” to the Zimmerman Affidavit, MR, Tab 2.

⁴ Affidavit of Magnus Momsen sworn April 17, 2025 (“**April 17 Momsen Affidavit**”), para 12, Exhibit “D” to the Zimmerman Affidavit, MR, Tab 2; Third Report, s 1.5, Exhibit “H” to the Zimmerman Affidavit, MR, Tab 2.

⁵ Subscription Agreement dated June 12, 2025, Exhibit “E” to the Zimmerman Affidavit, MR, Tab 2; Third Report, s 5.6, Exhibit “H” to the Zimmerman Affidavit, MR, Tab 2.

Monitor filing a certificate confirming that the parties were ready to proceed to consummate the Subscription Agreement (the “**Closing Certificate**”), among other things:

- (i) the Purchaser would acquire 100% of Synaptive’s issued and outstanding shares for the purchase price described in the Subscription Agreement;
 - (ii) Synaptive’s “Excluded Liabilities” and “Excluded Assets” would be vested to 1001270243 Ontario Inc. (“**ResidualCo**”); and
 - (iii) Synaptive would be removed as the Applicant in this CCAA proceeding, and ResidualCo would be added as an Applicant;⁶
- (f) **Consummation of Subscription Agreement:** on June 26, 2025, the Monitor filed the Closing Certificate, and the Subscription Agreement closed in accordance with its terms (thereby causing the steps described in the previous subparagraph to occur, among other things);⁷ and
- (g) **CCAA Termination and Scheduling Order:** on August 6, 2025, this Court granted an order: (i) providing for the termination of this CCAA proceeding upon the Monitor filing a certificate confirming that all matters to be attended to in connection with this CCAA proceeding have been completed; and (ii) setting down a schedule for the within motion.⁸

⁶ Approval and Reverse Vesting Order dated June 18, 2025 (“**RVO**”), paras 5(a)-(c), (h) and 21, Exhibit “F” to the Zimmerman Affidavit, MR, Tab 2.

⁷ Fourth Report of the Monitor dated July 28, 2025 (“**Fourth Report**”), s 5.2, Exhibit “I” to the Zimmerman Affidavit, MR, Tab 2.

⁸ CCAA Termination and Scheduling Order dated August 6, 2025, paras 6, 14 Exhibit “J” to the Zimmerman Affidavit, MR, Tab 2.

9. In connection with its motion for the RVO, Synaptive originally requested that this Court grant the WEPP Relief—*i.e.*, declare that Synaptive and/or ResidualCo meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*⁹ (the “**WEPPR**”) for purposes of section 5(1)(b)(iv) of the *Wage Earner Protection Program Act*¹⁰ (the “**WEPPA**”).¹¹

10. However, due to opposition to the WEPP Relief that Synaptive received prior to the RVO hearing from the Attorney General of Canada, counsel to Employment and Social Development Canada (“**ESDC**”), Synaptive agreed to adjourn its motion for the WEPP Relief to a future motion (*i.e.*, to this motion).¹² Save for final administrative matters, this motion is expected to be the last issue to resolve before the Monitor issues its certificate terminating this CCAA proceeding.¹³

B. The WEPPA’s framework

11. The WEPPA governs and implements the WEPP—a federal program designed to provide timely payments to employees who are owed eligible wages from their insolvent employers.¹⁴ In the context of a liquidating CCAA proceeding where the former employer is not bankrupt or subject to a receivership, the following criteria is relevant to establishing whether an individual is eligible to receive a payment under the WEPPA:

- (a) **Termination:** the individual’s employment was terminated (among other possible outcomes);

⁹ *Wage Earner Protection Program Regulations*, SOR/2008-222 (“**WEPPR**”), s [3.2](#).

¹⁰ *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 (“**WEPPA**”), s [5\(1\)\(b\)\(iv\)](#).

¹¹ Fourth Report, para 2.9.

¹² Fourth Report, para 9.2.

¹³ Fourth Report, s 8.6, Exhibit “T” to the Zimmerman Affidavit, MR, Tab 2.

¹⁴ *WEPPA*, s [4](#).

- (b) **Eligible Wages:** the individual is owed eligible wages by the former insolvent employer; and
- (c) **Court's Determination:** the court supervising the former employer's CCAA proceeding determines that, pursuant to section 3.2 of the WEPPR, the individual's "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."¹⁵

12. In this context, the supervising court's declaration under section 3.2 of the WEPPR is needed to establish whether terminated employees will be provided with access to payments under the WEPP.

C. Synaptive's terminated employees have WEPP claims

13. On March 4, 2025, Synaptive made the difficult decision to issue temporary layoff notices to 149 of the 189 employees of it and its affiliate, Synaptive Medical USA, Inc. (which, for clarity, was not an applicant in this CCAA proceeding).¹⁶ Additionally, Synaptive had insufficient cash to meet certain of its payroll obligations prior to this CCAA proceeding, resulting in a missed payroll cycle for Synaptive's employees.¹⁷

14. These layoffs and missed payroll obligations created a general sense of anxiety and uncertainty for Synaptive's employees to the point where employee flight became a critical risk.¹⁸ Terminated employees are still facing significant financial hardships due to losing their jobs

¹⁵ WEPPA, ss [5\(1\)\(a\)](#), [\(b\)\(iv\)](#) and [\(c\)](#); WEPPR, s [3.2](#).

¹⁶ April 17 Momsen Affidavit, para 7, Exhibit "D" to the Zimmerman Affidavit, MR, Tab 2.

¹⁷ April 17 Momsen Affidavit, para 7, Exhibit "D" to the Zimmerman Affidavit, MR, Tab 2.

¹⁸ April 17 Momsen Affidavit, para 8, Exhibit "D" to the Zimmerman Affidavit, MR, Tab 2.

without receiving payment of outstanding wages, termination and vacation pay, bonuses and expense reimbursements.¹⁹

15. 53 of Synaptive's remaining employees were either terminated or resigned during this CCAA proceeding between March 20 and June 3, 2025 (collectively, the "**Terminated Employees**").²⁰ According to the Monitor's assessment, the Terminated Employees:

- (a) are owed a collective \$903,417.03 on account of the specific categories of employment-related claims summarized in the Monitor's claims register;²¹
- (b) hold a collective \$101,017.62 of priority claims (*i.e.*, claims that are entitled to a maximum statutory priority of \$2,000 per employee under sections 81.3 or 81.4 of the *Bankruptcy and Insolvency Act* ("**BIA**"));²²
- (c) if the WEPP Relief is granted, will be eligible to receive a collective \$375,040.50 of payments under the WEPP;²³ and
- (d) if the WEPP Relief is not granted, and absent any other sources of recovery, will collectively receive up to \$274,022.88 less of recoveries (*i.e.*, the amounts described in subparagraph (c) minus those described in subparagraph (b)).²⁴

¹⁹ Affidavit of Richard Goldglass sworn September 17, 2025, para 16, Tab 1 of the Responding Motion Record of Richard Goldglass and Other Terminated Employees, p 3.

²⁰ Monitor's Employee Claims Register, Exhibit "K" to the Zimmerman Affidavit, MR, Tab 2.

²¹ Monitor's Employee Claims Register, "Total claim" column, Exhibit "K" to the Zimmerman Affidavit, MR, Tab 2.

²² Monitor's Employee Claims Register, "Priority claim, Salary and Vacation" column, Exhibit "K" to the Zimmerman Affidavit, MR, Tab 2; *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, ss [81.3](#) and [81.4](#).

²³ Monitor's Employee Claims Register, "MAX WEPP" column, Exhibit "K" to the Zimmerman Affidavit, MR, Tab 2.

²⁴ Monitor's Employee Claims Register, "MAX WEPP" column minus "Priority claim, Salary and Vacation" column, Exhibit "K" to the Zimmerman Affidavit, MR, Tab 2.

PART III - ISSUE

16. The only issue for this Court to determine on this motion is whether this Court should declare that ResidualCo, and in the alternative, Synaptive, meets the criteria prescribed by section 3.2 of the WEPPR.

PART IV - LAW AND ARGUMENT

17. It is appropriate for this Court to grant the WEPP Relief by declaring that ResidualCo, and in the alternative, Synaptive, meets the criteria under section 3.2 of the WEPPR. This is the only outcome that facilitates the WEPPA's purpose as a "safety net" for the Terminated Employees while leaving ESDC no worse off than it would have been had Synaptive sold its business under a traditional approval and vesting order ("**AVO**") structure.

18. Synaptive's legal argument proceeds in two parts. First, it describes how, as a matter of fact, ResidualCo meets the criteria under section 3.2 of the WEPPR—and how the WEPP Relief represents a positive next step in the WEPPA's and CCAA's symbiotic evolution as RVOs emerge as value-maximizing tools in the insolvency toolkit, while leaving ESDC no worse off than it would have been under an AVO structure.

19. Second, it describes how, through the lens of the modern approach to statutory interpretation, Synaptive meets the criteria under section 3.2 of the WEPPR—having regard, in particular, for Parliament's intention that the WEPPA serve as a safety net for terminated employees in insolvency scenarios.

A. ResidualCo meets the criteria under the WEPPR as a matter of fact

20. First and foremost, this Court should grant the WEPP Relief because ResidualCo meets the criteria in section 3.2 of the WEPPR as a matter of fact. This Court need only look to its own Order in this CCAA proceeding.

21. Under the Subscription Agreement, the Terminated Employees' employment agreements were "Excluded Contracts," and all of the Terminated Employees' claims, including claims for unpaid wages, vacation and termination pay, were "Excluded Liabilities."²⁵ All such Excluded Contracts and Excluded Liabilities were vested in ResidualCo by operation of the RVO.²⁶ By virtue of this vesting mechanism, ResidualCo became the former employer of all of the Terminated Employees upon consummation of the Subscription Agreement. ResidualCo is therefore the "former employer all of whose employees in Canada have been terminated" for purposes of section 3.2 of the WEPPR.²⁷ This Court approved this RVO structure, including the implementation steps set out in the RVO, making this result a byproduct of this Court's prior Order.

22. The fact that ResidualCo became the former employer of the Terminated Employees by operation of an RVO transaction is not a justification for denying WEPP Relief for those Terminated Employees. There are two key reasons for this. First, the availability of WEPP Relief in an RVO context represents a positive next step in the WEPPA's and CCAA's symbiotic evolution that has gradually occurred over the last two decades. Second, ESDC is no worse off

²⁵ Subscription Agreement, ss 1.1 ("Excluded Contracts", "Excluded Liabilities" and "Terminated Employees" definitions), 5.7(c), Exhibit "E" to the Zimmerman Affidavit, MR, Tab 2.

²⁶ Reverse Vesting Order, para 5(c), Exhibit "F" to the Zimmerman Affidavit, MR, Tab 2.

²⁷ WEPPA, ss [5\(1\)\(a\)](#), [\(b\)\(iv\)](#) and [\(c\)](#); WEPPR, s [3.2](#).

than it would have been in a scenario where Synaptive sold its business under a hypothetical approval and vesting order (“**AVO**”) structure. Each of these issues is addressed in turn.

(a) Relief must be available under the WEPPA in an RVO context for the WEPPA and the CCAA to realize their objectives

23. The WEPP Relief is the only outcome that accords with the objectives of the WEPPA and the CCAA. As discussed further below, the WEPPA is designed to be a “safety net” for employees who lose their jobs as a result of their employers’ insolvencies. This objective has informed the WEPPA’s and the CCAA’s symbiotic evolution over the past two decades as “liquidating” CCAAs overtook plans of arrangement as the most common means of addressing debtor companies’ insolvencies. Extending the WEPPA’s protections in an RVO context—the current frontier of this evolution—represents a positive step forward for Canadian insolvency practice. This Court should do so by granting the WEPP Relief.

24. The WEPPA was enacted in 2005—a time when Canadian CCAA practice revolved around plans of arrangement. Under this paradigm, a successful restructuring meant a debtor company successfully proposing a plan of arrangement to its creditors; failure to do so usually meant the debtor’s assets would be liquidated under the BIA, either in bankruptcy or receivership. Accordingly, the original version of the WEPPA was designed to protect employees from that specific form of failure—liquidating bankruptcy or receivership.²⁸

25. However, in the spirit of the CCAA’s flexible, remedial purpose, Canadian insolvency practice evolved to meet evolving market conditions. Courts facilitated the use of “liquidating”

²⁸ *Wage Earner Protection Program Act*, [S.C. 2005, c. 47, s. 1](#) (as it appeared on November 25, 2005), s 5.

CCAA proceedings, which emerged to facilitate the continuation of a debtor's business through the sale of its assets under an AVO.²⁹ In recognizing the safety net that the WEPPA provides, courts facilitated creative means of ensuring that employees could recover under the WEPPA in a liquidating CCAA context. For example, Regional Senior Justice Morawetz (as he then was) granted a receivership order over certain property of a debtor within a concurrent CCAA for purposes of facilitating employees' access to the WEPPA.³⁰

26. The WEPPA was eventually amended to catch up with this new reality. Parliament added section 5(1)(b)(iv) to the WEPPA in 2018, and the WEPPR was subsequently amended to add section 3.2 in 2021.³¹ These provisions were designed to facilitate WEPP payments when an employer engages in a liquidating restructuring.³²

27. RVOs are the latest frontier of this evolution. They emerged to respond to a market need by providing a means of acquiring distressed assets that are difficult or impossible to transfer through a conventional asset purchase structure.³³ RVO structures advance the same goals as an AVO—chief among them, maximizing value for the debtor's stakeholders.³⁴ RVOs are designed to drive better value for all stakeholders where an AVO structure is poorly suited to monetize the

²⁹ See, e.g., *Cliffs Over Maple Bay Investments Ltd. v Fisgard Capital Corp.*, [2008 BCCA 327](#), para [32](#).

³⁰ Endorsement of Morawetz R.S.J. dated October 19, 2012, *Re Cinram International Inc. et. al.*, Court File No. CV12-9767-00CL (Ont. Sup. Ct. J. [Commercial List]) ([link](#)). See also *Victorian Order of Nurses for Canada (Re)*, [2015 ONSC 7371](#), paras [48-55](#).

³¹ *Budget Implementation Act, 2018, No. 2*, S.C. 2018, c. 27, s [629\(1\)](#). WEPPA, s [5\(1\)\(b\)\(iv\)](#); *Regulations Amending the Wage Earner Protection Program Regulations*, [SOR/2021-196](#), s 1; WEPPR, s [3.2](#).

³² *Regulations Amending the Wage Earner Protection Program Regulations*, [SOR/2021-196](#), Canada Gazette, Part II, Volume 155, Number 18 ([link](#)), Regulatory Impact Analysis Statement, s 1.

³³ See, e.g., *Harte Gold Corp. (Re)*, [2022 ONSC 653](#), para [71](#); *Arrangement relatif à Blackrock Metals Inc.*, [2022 QCCS 2828](#), para [115](#).

³⁴ *British Columbia v Peakhill Capital Inc.*, [2024 BCCA 246](#), para [24](#).

debtor's assets. Indeed, whether any stakeholder would be worse off under an RVO is a prime consideration under the *Harte Gold* analysis.³⁵

28. This Court has yet to determine whether or how the WEPPA fits into this emerging RVO landscape. This question is critical. The availability of relief for employees under the WEPPA could be a significant consideration for an insolvent employer weighing its options in future CCAA proceedings. If WEPPA relief were determined to be categorically unavailable by virtue of the RVO structure itself, debtors may be discouraged from employing RVOs in favour of AVOs in circumstances where an RVO is value-maximizing and otherwise appropriate.

29. This Court should not cause the RVO's evolution, and the broader evolution of insolvency practice under the CCAA, to veer off course without a good justification that aligns both with the remedial objectives of the CCAA and the WEPPA's function as a safety net. No such justification exists in this case. In particular, as discussed in the next section, ESDC is no worse off under Synaptive's RVO as it would have been under a hypothetical alternative AVO transaction.

(b) The WEPP Relief leaves ESDC no worse off under Synaptive's RVO as it would have been under an AVO structure

30. From ESDC's perspective, Synaptive's RVO and a hypothetical alternative AVO transaction providing for the same consideration are economically identical. Namely, were the WEPP Relief to be granted in connection with a hypothetical AVO:

- (a) ESDC would, pursuant to the WEPPA, make payments to Terminated Employees who have eligible claims;

³⁵ *Harte Gold Corp. (Re)*, [2022 ONSC 653](#), para [38](#).

- (b) ESDC would be subrogated to those Terminated Employees' eligible claims to the extent of those payments; and
- (c) ESDC's subrogated claims would be entitled to the same recovery from the proceeds of sale held by the Monitor, having regard for the amount of the cash consideration paid under the transaction and the claims of other creditors.

31. Put differently, Synaptive's RVO transaction did not, by virtue of being an RVO, categorically "nullify" ESDC's claims. Rather, ESDC's recoveries are purely a function of the amount of consideration that the Purchaser paid for Synaptive's shares under the Subscription Agreement and the claims of Synaptive's other creditors—as they would have been in a hypothetical AVO structure. The fact that ESDC may receive small or nil recoveries on its subrogated claims is a feature of the WEPPA, not a bug of RVOs. The entire purpose of the WEPPA is to shift insolvency risk from employees to the government in accordance with its framework.³⁶

32. From ESDC's perspective, the only difference between Synaptive's RVO and a hypothetical AVO structure is a highly technical distinction: the RVO switched the entity against which ESDC's claims would be assertible under an AVO—a version of Synaptive that has been stripped of its valuable assets—with a ResidualCo entity.

33. This technicality is a weak justification for removing the WEPPA's safety net for Synaptive's Terminated Employees. It is also a weak justification for discouraging future

³⁶ *House of Commons Debates*, 38-1, No. 127 (28 September 2005) at [1725](#) (Hon. Joe Fontana, Minister of Labour and Housing, Lib.); *House of Commons Debates*, 38-1, No. 92 (5 May 2005) at [1835](#) (Hon. Marlene Jennings, Parliamentary Secretary to the Prime Minister (Canada-US), Lib.).

employers from using an RVO structure in similar circumstances where one is otherwise value-maximizing.

34. The latest guidance from the Quebec courts affirms the appropriateness of a substance over form approach. In its recent *Former Gestion Inc.* decision, the Quebec Superior Court recognized that:

The problem or “mischief” sought to be cured by WEPPA is the absence of a solvent employer who can pay wages owing to former employees. Seen in this context, the cessation of the employer’s business operations, or the transfer of its liabilities to an insolvent third party, are irrelevant to the application of the Act. In the case of both an asset sale and a reverse vesting order, employees who have lost their jobs have no solvent employer from whom they can claim lost wages.³⁷

35. This approach accords with the purposive nature of the CCAA and recognizes the important function that the WEPPA serves for terminated employees. This Court should adopt this same reasoning.

B. In the alternative, Synaptive meets the WEPPR criteria

36. In the alternative, Synaptive meets the criteria under section 3.2 of the WEPPR. This Court’s determination that Synaptive meets the criteria under section 3.2 of the WEPPR accords

³⁷ *Arrangement relatif à Former Gestion Inc.*, [2024 QCCS 3645](#), para [32](#). See also, *Syndic d’Intelgenx Corp.*, [2024 QCCS 3678](#), para [43](#). The Quebec Superior Court came to a similar decision in the Valeo Pharma matter; leave to appeal that decision was granted on April 23, 2025, and the Quebec Court of Appeal’s consideration of the *Valeo* decision is expected in the coming days or weeks: *Arrangement relatif à Valeo Pharma inc.*, [2025 QCCS 580](#), paras [17-21](#); *Attorney General of Canada c Valeo Pharma inc.*, [2025 QCCA 483](#).

with the objectives of the WEPPA and WEPPR, having regard for the modern approach to statutory interpretation.

37. Under the modern approach to statutory interpretation, courts must interpret statutory language according to its text, context and purpose to find a meaning that is harmonious with the scheme of the Act, the object of the Act, and the intention of Parliament or the legislature.³⁸ This approach rejects the “plain meaning” rule, which focused solely on the literal meaning of statutory words. Instead, the modern approach is a holistic exercise, taking into consideration the scheme of the legislation, the intention of Parliament and the objectives behind the legislation.³⁹

38. The objectives of the WEPPA are informed by, and compliment, the objectives of the broader Canadian insolvency landscape, including the objectives of the CCAA. Those CCAA objectives are well-established. The CCAA is flexible, remedial legislation designed to facilitate the restructuring or orderly liquidation of insolvent companies in a manner that avoids the social and economic costs of liquidation, protects jobs and communities, ensures fair treatment of creditors and maximizes value for stakeholders.⁴⁰

39. However, maximum value for stakeholders does not necessarily mean full recoveries for stakeholders. Insolvencies regularly cause unavoidable economic losses for various groups. The WEPPA’s framework was designed to protect one such group: employees. Parliament recognized that, when employers become insolvent, employees “cannot afford to bear the risk of coming up

³⁸ *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, 154 DLR (4th) 193 (S.C.C.), para 21; *Canada Trustco Mortgage Co. v Canada*, 2005 SCC 54, para 10; *R v Downes*, 2023 SCC 6, para 24.

³⁹ 2747-3174 *Québec Inc. v. Quebec (Régie des permis d'alcool)*, [1996] 3 SCR 919, 140 DLR (4th) 577 (S.C.C.), para 160; *Verdun v. Toronto-Dominion Bank*, [1996] 3 SCR 550, 139 DLR (4th) 415, para 22.

⁴⁰ 9354-9186 *Québec Inc. v Callidus Capital Corp.*, 2020 SCC 10, paras 41-42; *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60, para 59.

empty-handed after they have done their hard work each and every day.”⁴¹ It enacted the WEPPA in 2005 so that the “government [could act] on behalf of the workers of Canada” to ensure that “workers get their wages quickly, when they need it most.”⁴²

40. As Justice Conway recognized, the WEPPA was thus designed to be a “safety net” for employees.⁴³ When an employer enters an insolvency proceeding, ESDC intervenes under the WEPPA by making a payment to employees on account of their eligible wage claims in qualifying circumstances, thereby avoiding a scenario where employees must depend “solely upon the value of the assets in employers’ estates.”⁴⁴ ESDC is, in turn, subrogated to employees’ rights in respect of those eligible wage claims.⁴⁵

41. An outcome that denies WEPP relief to Synaptive’s former employees runs contrary to the WEPPA’s purpose as a safety net. Namely, the Terminated Employees—who are facing significant financial hardship after losing their jobs because of Synaptive’s insolvency—will be collectively up to \$274,022.88 worse off if the WEPP Relief is not granted.⁴⁶ Synaptive’s employees did not choose for the Subscription Agreement to be structured as an RVO transaction. Instead, the Purchaser chose an RVO structure when it submitted its bid after the Monitor had

⁴¹ *House of Commons Debates*, 38-1, No. 127 (28 September 2005) at [1725](#) (Hon. Joe Fontana, Minister of Labour and Housing, Lib.).

⁴² *House of Commons Debates*, 38-1, No. 127 (28 September 2005) at [1725](#) (Hon. Joe Fontana, Minister of Labour and Housing, Lib.); *House of Commons Debates*, 38-1, No. 92 (5 May 2005) at [1835](#) (Hon. Marlene Jennings, Parliamentary Secretary to the Prime Minister (Canada-US), Lib.).

⁴³ *Metroland Media Group Ltd. (Re)*, [2024 ONSC 2261](#), para [40](#).

⁴⁴ *House of Commons Debates*, 38-1, No. 92 (5 May 2005) at [1835](#) (Hon. Marlene Jennings, Parliamentary Secretary to the Prime Minister (Canada-US), Lib.); WEPPA, s [9](#).

⁴⁵ WEPPA, s [36\(1\)](#).

⁴⁶ See the Monitor’s Employee Claims Register, “MAX WEPP” column minus “Priority claim, Salary and Vacation” column, Exhibit “K” to the Zimmerman Affidavit, MR, Tab 2; Affidavit of Richard Goldglass sworn September 17, 2025, para 16, Tab 1 of the Responding Motion Record of Richard Goldglass and Other Terminated Employees, p 3.

“extensively canvassed the market during the SISP.”⁴⁷ Importantly, this RVO structure, including its implementation steps, was approved by this Court.

42. It would be unfairly and materially prejudicial to the Terminated Employees to adopt a narrow reading of the WEPPA and the WEPPR in a manner that categorically denies them from recovering on claims that the Monitor has determined are otherwise eligible for WEPP.⁴⁸ This outcome is contrary to the WEPPA’s purpose as a safety net for employees.⁴⁹

43. It is also contrary to the purpose of the CCAA. Depriving the Terminated Employees of a WEPPA entitlement merely because Synaptive sold its business under an RVO transaction may disincentivize future employers from selecting RVO transactions in cases where one otherwise generates the maximum value for its stakeholders.

⁴⁷ Endorsement of Justice Dietrich dated June 18, 2025, para 20, Exhibit “G” to the Zimmerman Affidavit, MR, Tab 2.

⁴⁸ Monitor’s Employee Claims Register, “MAX WEPP” column, Exhibit “K” to the Zimmerman Affidavit, MR, Tab 2.

⁴⁹ *Metroland Media Group Ltd. (Re)*, [2024 ONSC 2261](#), para [40](#).

PART V - ORDER REQUESTED

44. For the reasons described above, Synaptive respectfully requests that this Court declare that ResidualCo, and in the alternative, Synaptive meet the criteria prescribed by section 3.2 of the WEPPR.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of October, 2025.



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SCHEDULE “A”

LIST OF AUTHORITIES

1. *Cliffs Over Maple Bay Investments Ltd. v Fisgard Capital Corp.*, [2008 BCCA 327](#)
2. *Victorian Order of Nurses for Canada (Re)*, [2015 ONSC 7371](#)
3. *Harte Gold Corp. (Re)*, [2022 ONSC 653](#)
4. *Arrangement relatif à Blackrock Metals Inc.*, [2022 QCCS 2828](#)
5. *British Columbia v Peakhill Capital Inc.*, [2024 BCCA 246](#)
6. *Arrangement relatif à Former Gestion Inc.*, [2024 QCCS 3645](#)
7. *Syndic d’Intelgenx Corp.*, [2024 QCCS 3678](#)
8. *Arrangement relatif à Valeo Pharma inc.*, [2025 QCCS 580](#)
9. *Attorney General of Canada c Valeo Pharma inc.*, [2025 QCCA 483](#)
10. *Rizzo & Rizzo Shoes Ltd. (Re)*, [\[1998\] 1 SCR 27](#), 154 DLR (4th) 193 (S.C.C.)
11. *Canada Trustco Mortgage Co. v Canada*, [2005 SCC 54](#)
12. *R v Downes*, [2023 SCC 6](#)
13. *2747-3174 Québec Inc. v. Quebec (Régie des permis d'alcool)*, [\[1996\] 3 SCR 919](#), 140 DLR (4th) 577 (S.C.C.)
14. *Verdun v. Toronto-Dominion Bank*, [\[1996\] 3 SCR 550](#), 139 DLR (4th) 415
15. *9354-9186 Québec inc. v Callidus Capital Corp.*, [2020 SCC 10](#)
16. *Century Services Inc. v Canada (Attorney General)*, [2010 SCC 60](#)
17. *Metroland Media Group Ltd. (Re)*, [2024 ONSC 2261](#)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY – LAWS

Wage Earner Protection Program Act, S.C. 2005, c. 47, s. 1

Establishment

[4](#) The Wage Earner Protection Program is established to provide for payments to individuals in respect of wages owed to them by employers who are insolvent.

Conditions of eligibility

[5 \(1\)](#) An individual is eligible to receive a payment if

- (a) the individual’s employment ended for a reason prescribed by regulation;
- (b) one of the following applies:
 - (i) the former employer is bankrupt,
 - (ii) the former employer is subject to a receivership,
 - (iii) the former employer is the subject of a foreign proceeding that is recognized by a court under subsection 270(1) of the Bankruptcy and Insolvency Act and
 - (A) the court determines under subsection (2) that the foreign proceeding meets the criteria prescribed by regulation, and
 - (B) a trustee is appointed, or
 - (iv) the former employer is the subject of proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies’ Creditors Arrangement Act and a court determines under subsection (5) that the criteria prescribed by regulation are met; and
- (c) the individual is owed eligible wages by the former employer.
- (d) [Repealed, 2009, c. 2, s. 343]

Subrogation

[36 \(1\)](#) If a payment is made under this Act to an individual in respect of eligible wages, Her Majesty in right of Canada is, to the extent of the amount of the payment, subrogated to any rights the individual may have in respect of the eligible wages against

- (a) the bankrupt or insolvent employer; and

(b) if the bankrupt or insolvent employer is a corporation, a director of the corporation.

Wage Earner Protection Program Regulations, SOR/2008-222

Proceedings Under Bankruptcy and Insolvency Act or Companies' Creditors Arrangement Act

[3.2](#) For the purposes of subsection 5(5) of the Act, 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.

Companies' Creditors Arrangement Act, R.S.C. 1985, c C-36

General power of court

[11](#) Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, 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.

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

Security for unpaid wages, etc. – bankruptcy

[81.3 \(1\)](#) The claim of a clerk, servant, travelling salesperson, labourer or worker who is owed wages, salaries, commissions or compensation by a bankrupt for services rendered during the period beginning on the day that is six months before the date of the initial bankruptcy event and ending on the date of the bankruptcy is secured, as of the date of the bankruptcy, to the extent of \$2,000 – less any amount paid for those services by the trustee or by a receiver – by security on the bankrupt's current assets on the date of bankruptcy.

Security for unpaid wages, etc. – receivership

[81.4 \(1\)](#) The claim of a clerk, servant, travelling salesperson, labourer or worker who is owed wages, salaries, commissions or compensation by a person who is subject to a receivership for services rendered during the six months before the first day on which there was a receiver in relation to the person is secured, as of that day, to the extent of \$2,000 – less any amount paid for those services by a receiver or trustee – by security on the person's current assets that are in possession or under the control of the receiver.

Budget Implementation Act, 2018, No. 2, SC 2018, c 27

Amendments to the Act

[629 \(1\)](#) Paragraph 5(b) of the Act is replaced by the following:

(b) one of the following applies:

- (i) the former employer is bankrupt,
- (ii) the former employer is subject to a receivership,
- (iii) the former employer is the subject of a foreign proceeding that is recognized by a court under subsection 270(1) of the Bankruptcy and Insolvency Act and
 - (A) The court determines under subsection (2) that the foreign proceeding meets the criteria prescribed by regulation, and
 - (B) a trustee is appointed, or
- (iv) the former employer is the subject of proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act and a court determines under subsection (5) that the criteria prescribed by regulation are met

SCHEDULE “C”

KEY HANSARD EXCERPTS

HOUSE HANSARD EXCERPTS

The following table provides key Hansard excerpts from Parliamentary debates relating to the enactment of the *Wage Earner Protection Program Act*.

Stage	Key Excerpts
Bill C-55, 2005 – WEPPA first enacted	
<u>Preliminary Mentions</u> 38 th Parl., 1 st Sess., No. 092, vol. 140 (5 May 2005)	Hon. Marlene Jennings (Parliamentary Secretary to the Prime Minister (Canada-US), Lib.), T1835, pp. 5749-50: I wish to deal with the issue of wage protection. Today, the Government of Canada announced a wage earner protection program. I would like to read part of the news release that went out. It states: Today, the Minister of Labour and Housing, accompanied by the Leader of the Government in the House and the Minister of Industry announced the Government’s intention to move quickly to establish the Wage Earner Protection Program. The program will help protect workers by providing a guaranteed payment of wages owed up to \$3000 should their employer declare bankruptcy. Under the present bankruptcy system, workers’ claims for unpaid wages rank after secured creditors. As a result, many workers have to wait from one to three years to get a fraction of the wages owed to them-13 cents on the dollar on average. These workers are often the most vulnerable and working in low-wage jobs in small businesses (under 10 employees) in the construction, retail and food services sectors. Under the proposed program, affected workers could make their wage claim right away and should receive their money about six weeks later. The Minister for Labour and Housing stated:

Stage	Key Excerpts
	This program is about fairness and helping the most vulnerable workers. The Wage Earner Protection Program will ensure that workers get their wages quickly, when they need it most. It will also ensure that payment of wages will no longer depend solely upon the amount of assets in employers' estates. The Leader of the Government stated: There is a need to address a number of issues related to employees and businesses that suffer bankruptcies or insolvencies...Our Government has put forward an ambitious legislative agenda that reflects the priorities of Canadians. The member who put forward Bill C-281 is correct in that protecting workers and employees, who have earned wages when their employer goes under bankruptcy or insolvency, is something that is a priority for Canadians. The Leader of the Government also stated: We want to ensure workers do not face undue hardship if the business or enterprise, where they are employed runs into difficulty. The Minister of Industry stated: The Government recognizes that the present insolvency system lacks an effective mechanism to provide certain and timely payment of the wages owing to workers whose employers go into bankruptcy or receivership under the Bankruptcy and Insolvency Act...The Wage Earner Protection Program is designed to remedy this gap and to form part of a comprehensive insolvency reform package, which I intend to introduce this spring.
Second Reading 38th Parl., 1st Sess., No. 127, vol. 140 (28 September 2005)	Hon. Joe Fontana (Minister of Labour and Housing, Lib.), T1725, p. 8167: Just as important, I want to talk about how the reforms will improve the protection of workers whose employers undergo restructuring or become bankrupt. I am very passionate about this topic. Under our current system, too many workers are vulnerable when their employers enter into a restructuring or file for bankruptcy. Canadian workers suffer lost wages, reduced pension benefits and uncertainty that their collective agreements may be unilaterally changed by a court.

Stage	Key Excerpts
	The government has heard from Canadian workers about the need to ensure that they are more fairly treated when their employers suffer economic hardship. The reforms introduced by my colleague will do just that. For example, we are proposing new measures, including the wage earner protection program, for the first time in our history which will provide workers with a guaranteed payment for unpaid wages up to \$3,000. An estimated 10,000 to 15,000 workers in every workplace across the country in both federal and provincial jurisdictions are left with unpaid wages or reduced pensions due to employer bankruptcies in Canada. These workers did not agree to become lenders to their employers when they were hired. They cannot afford to bear the risk of coming up empty-handed after they have done their hard work each and every day. They need to have their paycheques to buy groceries, to pay their mortgages and to pay their car payments. [...] The situation facing unpaid workers in Canada exposes a clear gap in our system. Clearly, changes are needed. That is why the government is acting on behalf of the workers of Canada. The wage earner protection program will apply when an employer goes bankrupt, or is put into receivership under the Bankruptcy and Insolvency Act. These are the employees who are unpaid.
Second Reading 38th Parl., 1st Sess., No. 128, vol. 140 (29 September 2005)	Mr. John Duncan (Vancouver Island North, CPC), T1700, p. 8243: Amazingly, we actually have a consensus from all parties in the House of Commons that we need legislation in this area. This bodes well for the fact that we have people who go to work every day and expect to be paid for their day's wages.
	Mr. Jim Prentice (Calgary Centre-North, CPC), T1715, p. 8244: The wage earner protection program features of this legislation are quite important because they provide protection for everyday working Canadians who find themselves caught up in the nightmare of a bankruptcy or an insolvency or a creditor protection scheme. [...] It is important that the House is drawing together to protect working Canadians, so that they do not suffer those kinds of losses in the event of a bankruptcy.

Stage	Key Excerpts
Second Reading 38th Parl., 1st Sess., No. 131, vol. 140 (4 October 2005)	Hon. Marlene Jennings (Parliamentary Secretary to the Prime Minister (Canada-US), Lib.), T1700-5, p. 8418: At the forefront of Bill C-55 is a clear recognition on the part of the government that the present insolvency system lacks an effective way to protect workers whose employers go bankrupt. The wage earner protection program act established by Bill C-55 would remedy this problem. It would ensure that workers receive compensation for the wages owed and the vacation earned but not paid, up to a maximum of \$3,000 per worker. This program would ensure that these amounts are paid in a timely manner and are not dependent on whether or not there are sufficient assets in the bankrupt estate. [...] These workers never agreed to be creditors to their employers. They agreed to do a job for x number of hours for a specific amount of pay and to receive certain benefits, and if they maintained their side of the bargain, the employer had a condition and a bargain to pay them. Unfortunately, when companies go bankrupt, three-quarters of the workers receive nothing. [...] Under the proposed legislation, affected workers will be able to make their wage claim right away and should receive their money about six weeks later. That will be good news for these workers.
Second Reading 38th Parl., 1st Sess., No. 132, vol. 140 (5 October 2005)	Mr. Yves Lessard (Chambly-Borduas, BQ), T1605, p. 8450: There is an expression used in labour law, in fact a statement of principle: “All work deserves pay”. The same thing must apply in this case. It is amazing that there is no protection for workers in the event of bankruptcy in the year 2005. The bill will, of course, remedy that shortcoming. Just how it will do so, we will come back to later.

Stage	Key Excerpts
	Hon. Larry Bagnell (Parliamentary Secretary to the Minister of Natural Resources, Lib.), T1640, p. 8455: Bill C-55 will help thousands of Canadians who must rely on a fair and effective insolvency system to deal with the situation of financial distress. [...] First, the bill significantly enhances the protection of workers when their employer goes bankrupt or undergoes a restructuring process. The creation of the wage earner protection program act is a major breakthrough. Numerous previous attempts to deal with this issue have been made over the past 25 years and they have all failed. I firmly believe that the solution proposed in Bill C-55 not only greatly expands the protection to workers, but does so in a balanced and reasonable way that mitigates the adverse impact on credit. Let us not forget that bankruptcy is always about sharing the burden, because by definition bankruptcy means that there are insufficient assets to pay all the creditors. Bill C-55 ensures that the burden is shared in a fair and equitable manner by taxpayers, lenders and other creditors.
Pre-Proclamation	
General Discussion 39th Parl., 1st Sess., No. 068,	Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ), T1920, p. 4215: A year and a half ago, the government of the day tabled a bill in this House, Bill C-55. That bill conformed to the principles of social justice that employees must be paid for the hours they have worked. Workers have nothing but their salary as a source of income. Workers' pension funds are sacred. No one works all his or her life to end up as impoverished as someone who did not worked so hard for so long.

Stage	Key Excerpts
vol. 141 (24 October 2006)	Mr. Tom Lukiwski (Parliamentary Secretary to the Leader of the Government in the House of Commons and Minister for Democratic Reform, CPC), T1925, p. 4216: In particular, the wage earner protection program has strong support from parliamentarians, labour unions, the insolvency community and employers. This program should be brought into force as soon as possible. The current insolvency system does not provide adequate protection for unpaid wage earners. An estimated 10,000 to 20,000 workers a year are left with unpaid wage claims due to employer bankruptcies. That is why the wage earner protection program was proposed. The program will improve the protection of workers during the insolvency process. [...] We do not have to convince Canadians that it is important to protect vulnerable workers who suffer an economic setback through no fault of their own. We do not have to convince Canadians that it is the right thing to do. This government also understands that protecting Canadian workers when employers declare bankruptcy is the right thing to do.

SENATE HANSARD EXCERPTS

Stage	Key Excerpts
Bill C-55, 2005 – WEPPA first enacted	
Second Reading 38 th Parl., 1 st Sess., No. 098, vol. 142 (23 November 2005)	Hon. Bill Rompkey (Deputy Leader of the Government), T1500, p. 2146: The wage earner protection program will be a safety net [...].
	Hon. Michael A. Meighen, T1515-20, p. 2148:

Stage	Key Excerpts
	This enactment proposes the creation of distinct legislation, the Wage Earner Program Protection Act, on wages owed by an employer who is bankrupt or subject to receivership. Wage earners will receive up to \$3,000 from the government, which will then act on behalf of the wage earners in order to recover the wages owed by the employer. The purpose of this program is to provide employees with a more timely and certain outcome than at present. Currently, three years may elapse before unpaid wages are collected. Since wages now rank behind other debts, an average of only 13 cents on the dollar is now recoverable. Bill C-55 also provides unpaid wages and vacation pay of up to \$2,000, with priority above secured creditors of current assets such as cash, inventories and accounts receivable. Currently, wages due to employees rank behind secured creditors.
<u>Consideration of Committee Report</u> 38th Parl., 1st Sess., No. 099, vol. 142 (24 November 2005)	Unanimous observations of the Standing Senate Committee on Banking, Trade and Commerce: First, the Committee unanimously supports and approves of the long-overdue wage earner protection provisions of the Bill and does not wish to delay, or in any way deny — or appear to deny — access to enhanced legislated protection for this vulnerable group of creditors. [...] While the Committee wholeheartedly supports the principle of the wage earner protection regime, even in that instance we have questions. In our view, workers should be compensated in the timeliest manner possible, and we are not certain that the Bill's provisions meet the test of timeliness. For example, we wonder why the administrator is not able to pay the workers immediately, rather than waiting for workers to be paid out of the Wage Earner Protection Program.

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

Court File No. CV-25-00739279-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF 1001270243 ONTARIO INC.**

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO.

**FACTUM OF THE APPLICANT
(Motion for WEPP Relief,
returnable November 12, 2025)**

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