

**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

**REPLY FACTUM OF THE ATTORNEY GENERAL OF CANADA
(motion returnable November 12, 2025)**

November 5, 2025

ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Ontario Regional Office
120 Adelaide Street West, Suite 400
Toronto, Ontario, M5H 1T1

Per: Walter Kravchuk

LSO#: 57160U

Tel: 365-375-2752

Email: walter.kravchuk@justice.gc.ca

Per: Emily Atkinson

LSO#: 76906B

Tel: 416-988-2475

Email: emily.atkinson@justice.gc.ca

Per: Jake Norris

LSO#: 89466J

Tel: 416-347-6823

Email: jake.norris@justice.gc.ca

Counsel for the Attorney General of
Canada

TO: The Registrar
 330 University Avenue
 Toronto, ON

AND TO: The Service List

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PART I – OVERVIEW

1. Synaptive Medical Inc. (“**Synaptive**”) originally sought a determination pursuant to s 5(5) of the *Wage Earner Protection Program Act* (“**WEPPA**”)¹ and s 3.2 of the *Wage Earner Protection Program Regulations* (“**WEPPR**”)² that the former employer in this proceeding under the *Companies’ Creditors Arrangement Act* (“**CCAA**”)³ had terminated all of its employees, except those retained to wind down the business. It sought to have 1001270243 Ontario Inc. (“**ResidualCo**”) and/or Synaptive declared the “former employer” under s 3.2 WEPPR. After delivering its factum, Synaptive amended its notice of motion to seek further relief: a declaration that ResidualCo and/or Synaptive meet the conditions in ss 5(1)(b)(i) and (c) of the WEPPA (“**Declaratory Relief**”).

2. The factum of Richard Goldglass and other terminated employees (“**Terminated Employees**”), delivered the same day as the factum of the Attorney General of Canada (“**Canada**”), seeks to support the Declaratory Relief sought. The Terminated Employees argue that such relief is necessary because Service Canada has previously denied WEPP applications following a s 3.2 WEPPR determination. They seek to bypass the administrative process prescribed by Parliament and obtain the Court’s declaration as to the meaning of “former employer” in the context of ss 5(1)(b)(i) and (c) of the WEPPA.

3. In opposing such relief, Canada relies on and adopts the positions set out in its main factum. In addition, Canada argues in this Reply that this Court should not grant this relief because a) declaratory relief is not available when Parliament has established an administrative process to address the question at issue and b) the common law concept of

¹ *Wage Earner Protection Program Act*, [SC 2005, c 47](#) [WEPPA].

² *Wage Earner Protection Program Regulations*, [SOR/2008-222](#) [WEPPR].

³ *Companies’ Creditors Arrangement Act*, [RSC 1985, c C-36](#) [CCAA].

“common employer” does not justify granting the Declaratory Relief sought in this case.

PART II – ARGUMENTS AND THE LAW

A) DECLARATORY RELIEF ON WEPPA SS 5(1)(B)(I) AND (C) IS UNAVAILABLE

4. This Court has no jurisdiction to interfere in the Minister’s eligibility determinations pursuant to ss 5(1)(b)(i) and (c) and 9 of the WEPPA. As stated in Canada’s main factum, the WEPPA contains an administrative scheme for the Minister’s eligibility decisions and review of those decisions. The Federal Court of Appeal has exclusive jurisdiction over any judicial reviews.⁴ The Minister interprets “former employer” under ss 5(1)(b)(i) and (c) when assessing eligibility, such that the first condition for declaratory relief, as expressed in *SA v Metro Vancouver Housing Corp*, is not met.⁵

5. Furthermore, the power to grant declaratory relief under s 97 of the *Courts of Justice Act* (“CJA”)⁶ is highly discretionary and “should be exercised sparingly, and with extreme caution.”⁷ The jurisprudence confirms that a declaration will not be issued where an adequate alternative remedy exists⁸ or to allow litigants to bypass the administrative processes prescribed by the legislature, with limited exceptions.⁹ Granting an application for declaratory relief made for the “clear purpose” of taking the Court’s declaration to an administrative decision maker to instruct it on how to address the question at issue “would

⁴ *Federal Courts Act*, [RSC 1985, c F-7, s 28\(1\)\(h\)](#).

⁵ [2019 SCC 4](#) at [para 60](#); *Chiang (Re)*, [2022 CIRB 1027](#) at [paras 5, 38, 44-46, 73-74](#).

⁶ *Courts of Justice Act*, [RSO 1990, c C 43 \[CJA\]](#).

⁷ *Godin v Sabourin*, [2016 ONSC 770](#) at [para 6](#).

⁸ *Iris Technologies Inc v Canada*, [2024 SCC 24](#) at [para 58](#). See also *Bryton Capital Corp GP Ltd v CIM Bayview Creek Inc*, [2023 ONCA 363](#) at [para 64](#).

⁹ *Landau v Canada (Attorney General)*, [2017 ONSC 2938](#) at [paras 3](#) and [33](#). See also *CB Powell Limited v Canada (Border Services Agency)*, [2010 FCA 61](#) at [paras 30-33 \[CB Powell\]](#).

be an unwarranted intrusion” into the administrative process.¹⁰

6. In this matter, since the Minister considers who the “former employer” is in making eligibility determinations, the Declaratory Relief sought would needlessly intrude on the administrative process. Moreover, no efficiency would be gained if the Declaratory Relief was issued, as the terminated employees would still have to apply for WEPP.¹¹

7. In addition, the WEPPA cases the Terminated Employees rely upon do not justify granting the Declaratory Relief. The judicial determinations in *Just For Laughs*,¹² *Taiga*,¹³ and *Valeo*¹⁴ were sought under WEPPA s 5(5) and WEPPR s 3.2 and did not pre-empt the Minister’s eligibility determinations regarding WEPPA ss 5(1)(b)(i) and (c).¹⁵ Moreover, neither *Just for Laughs* nor *Taiga* involved a dispute as to whether “former employer” in the WEPPA should refer to a numbered company created in the CCAA proceedings to take on liabilities of the entity for which the terminated employees performed services.¹⁶ Only *Valeo* involved a brief finding that an entity like ResidualCo was the “former

¹⁰ *Halton v CNR*, [2018 ONSC 6095](#) at [paras 120-23](#). See also *GLP NT Corp v Canada (Attorney General)*, [2003 CanLII 41554](#) (ONSC) at [paras 18](#) and [20-21](#) [*GLP NT*].

¹¹ *GLP NT*, *supra* note 10 at [paras 17](#) and [19](#); *CB Powell*, *supra* note 9 at [para 32](#).

¹² Factum of Richard Goldglass et al, October 29, 2025 at [paras 17, 42, and 47-50](#), **CaseCenter[CC], F6 Goldglass Factum, pp [F125](#), [F133](#), [F136-37](#)**.

¹³ *Ibid* at [para 51](#), **CC, F6 Goldglass Factum, p [F138](#)**.

¹⁴ *Arrangement relatif à Valeo Pharma inc*, [2025 QCCS 580](#) [*Valeo QCCS*].

¹⁵ Affidavit of Richard Goldglass, sworn October 29, 2025, Exhibit “A” - WEPPA Order (Arrangement relative à Former Gestion Inc, (*Just for Laughs*) at [para 37](#), **CC, 5: Supplementary Responding Motion Record of Richard Goldglass and other Terminated Employee, p [F102](#)**; *Taiga Motors Corporation et Deloitte Restructuring Inc.* (18 December 2024), [Montreal 500-11-064358-243](#) (QCCS) at [para 7](#), **AGC Supplementary Book of Authorities [Supp AGC Auth], Tab 1. Valeo QCCS, *supra* note 14 at [paras 18-20](#)**.

¹⁶ *Arrangement relatif à Former Gestion Inc*, [2024 QCCS 3645](#); *Taiga Motors Corporation et Deloitte Restructuring Inc.*, [2024 QCCS 4319](#); *Arrangement relating to 9526-1624 Québec inc*, [2025 QCCS 3490](#).

employer” and it is currently under appeal.¹⁷ Finally, in *Re Lynx Air*, which did not involve an RVO structure, the Court addressed what would be included within “eligible wages” under WEPPA, after a s 3.2 WEPPR determination was made.¹⁸ The relief sought did not seek to tie the Minister’s hands with respect to eligibility under s 5(1) WEPPA.

B) THE “COMMON EMPLOYER” CONCEPT DOES NOT JUSTIFY GRANTING THE RELIEF SOUGHT

8. The common employer doctrine recognizes that an employee may simultaneously have more than one employer. For the requisite finding that there was an intention to create an employer/employee relationship with the proposed common employer, the parties’ conduct during the employment is central.¹⁹ Such an intention, moreover, cannot be inferred merely because the corporate entities in question are related.²⁰

9. Not only is it unclear how Synaptive and ResidualCo could collectively be seen as bankrupt under s 5(1)(b)(i) of the WEPPA if found to be “common employers”, but Synaptive terminated the former employees and then liabilities associated with their employment, among others, were transferred to ResidualCo.²¹ None of the terminated

¹⁷ *Valeo QCCS*, *supra* note 14 at [para 18](#); *Attorney General of Canada c Valeo Pharma inc*, [2025 QCCA 483](#) at [paras 1-6](#).

¹⁸ *Re Lynx Air Holdings Corporation and 1263343 Alberta Inc Dba Lynx Air*, [2025 ABKB 182](#) at [paras 1, 3, and 30](#).

¹⁹ *O'Reilly v ClearMRI Solutions Ltd*, [2021 ONCA 385](#) at [paras 2, 49-54, 57-60, 63, 65, and 70](#) [O'Reilly]; *Downtown Eatery (1993) Ltd v Ontario*, [2001 CanLII 8538](#) at [paras 30-40](#); *Scamurra v Scamurra Contracting*, [2022 ONSC 4222](#) at [paras 65, 73-74, and 80](#); *Sinclair v Dover Engineering Services Ltd*, [1988 CanLII 3358](#) (BCCA) at [paras 8, 18](#).

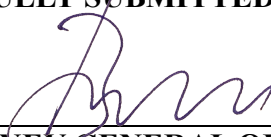
²⁰ *O'Reilly*, *supra* note 19 at [paras 65, 88, and 90](#).

²¹ Affidavit of Dianne Zimmerman, sworn August 27, 2025 [Zimmerman Affidavit], Exhibit “E” - Subscription Agreement, dated June 12, 2025 [Subscription Agreement] at ss 1.1 (“Company”, “Excluded Liabilities”, “ResidualCo”, “Terminated Employees”), 3.1, 5.7(c), 6.2(c), 7.2(e), **CC, A31, Applicant’s [Further] Amended Motion Record [App AMR], pp A2169, A2182, A2190, A2192, A2195**; Exhibit “F” – Approval and Reverse Vesting Order, dated June 18, 2025 [ARVO] at paras 5(c), 20(c)-(d), **CC, A29 App AMR, pp A2236 and A2243**; Exhibit “H”, Third Report of the Monitor, dated June

employees were simultaneously employed by ResidualCo and Synaptive. ResidualCo exercised no control over their employment, including over matters of their selection, remuneration, method of work, and dismissal.²² Indeed, while Synaptive and ResidualCo are related corporations, ResidualCo has not assisted in running Synaptive’s business.²³ There was no intention to create an employment relationship between the terminated employees and ResidualCo; only an intention to transfer liabilities to ResidualCo.

10. In the alternative, while it is appropriate to draw upon the common law to interpret private law concepts that are not defined in a statute, the common law cannot defeat statutory provisions.²⁴ The common law concept of “common employer”, not referenced in the WEPPA or the WEPPR, cannot supplant Parliament’s clear intention that “former employer” refers to the entity for whom employees performed services for remuneration.

ALL OF WHICH IS RESPECTFULLY SUBMITTED on November 5, 2025.



ATTORNEY GENERAL OF CANADA

Per: Walter Kravchuk / Emily Atkinson / Jake Norris

Counsel for the Attorney General of Canada

14, 2025 at para 5.8(g), **CC, A29 App AMR, p A2286**. See also Richard Goldglass, sworn September 17, 2025 [Goldglass Affidavit #1], paras 13, 15, Exhibits “A” and “B” (Synaptive terminated the employees), **CC, F4 Responding Motion Record of Richard Goldglass and other Terminated Employees [Goldglass RMR]**, pp **F24, F32, F34**.

²² *O’Reilly, supra* note 19 at [para 54](#).

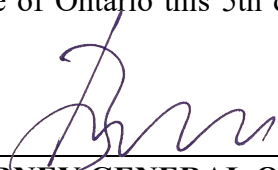
²³ Versus the common employer in *O’Reilly, supra* note 19 at [paras 57, 59-60, 63](#), and *Downtown Eatery, supra* note 19 at [para 40](#). The record suggests Dylan White is the sole appointed director of ResidualCo, see Canada’s Factum at para 15, **CC, B1 Factum of the Attorney General [AGC Factum]**, p **B-1-437-38**. The Employee RMR, Goldglass Affidavit #1, Exhibits “E” & “F” refers to Magnus Momsen as an officer of Synaptive and the Purchaser, not ResidualCo., **CC, F4, Goldglass RMR**, pp **F27, F44-52, F53-62**.

²⁴ *Beach Place Ventures Ltd v Employment Standards Tribunal*, [2022 BCCA 147](#) at [paras 61-64](#). See also Ruth Sullivan, *The Construction of Statutes*, 7th ed, Chapter 17, Part 1 [4], **Supp AGC Auth, Tab 2**.

CERTIFICATION OF AUTHORITIES

I, WALTER KRAVCHUK, counsel for the Attorney General of Canada, am satisfied as to the authenticity of every authority cited in this factum.

DATED at the City of Toronto, in the Province of Ontario this 5th day of November, 2025.



ATTORNEY GENERAL OF CANADA

Per: Walter Kravchuk (LSO#: 57160U)

Tel: (365) 275-2752

Email: Walter.Kravchuk@justice.gc.ca

Counsel for the Attorney General of Canada

SCHEDULE “A” – LIST OF AUTHORITIES

STATUTES, REGULATIONS, AND ORDERS IN COUNCIL

1. *Courts of Justice Act*, RSO 1990, c C.43, s 97
2. *Federal Courts Act*, RSC 1985, c F-7, s 28(1)(h).
3. *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36
4. *Wage Earner Protection Program Act*, SC 2005, c 47, ss 5(1)(b)-(c), 9
5. *Wage Earner Protection Program Regulations*, SOR/2008-222, s 3.2

CASELAW

6. *SA v Metro Vancouver Housing Corp*, 2019 SCC 4
7. *Chiang (Re)*, 2022 CIRB 1027
8. *Godin v Sabourin*, 2016 ONSC 770
9. *Canada (Attorney General) v Iris Technologies Inc*, 2022 FCA 101
10. *Iris Technologies Inc v Canada*, 2024 SCC 24
11. *Bryton Capital Corp GP Ltd v CIM Bayview Creek Inc*, 2023 ONCA 363
12. *Landau v Canada (Attorney General)*, 2017 ONSC 2938
13. *CB Powell Limited v Canada (Border Services Agency)*, 2010 FCA 61
14. *Halton v CNR*, 2018 ONSC 6095
15. *GLP NT Corp v Canada (Attorney General)*, 2003 CanLII 41554 (ONSC)
16. *Arrangement relatif à Valeo Pharma inc*, 2025 QCCS 580
17. *Taiga Motors Corporation et Deloitte Restructuring Inc*. (18 December 2024), Montreal 500-11-064358-243 (QCCS)
18. *Arrangement relatif à Former Gestion Inc*, 2024 QCCS 3645.
19. *Taiga Motors Corporation et Deloitte Restructuring Inc*, 2024 QCCS 4319
20. *Arrangement relating to 9526-1624 Québec inc*, 2025 QCCS 3490.
21. *Attorney General of Canada c Valeo Pharma inc*, 2025 QCCA 483

- 22. *Re Lynx Air Holdings Corporation and 1263343 Alberta Inc Dba Lynx Air*, 2025 ABKB 182
- 23. *O'Reilly v ClearMRI Solutions Ltd*, 2021 ONCA 385
- 24. *Downtown Eatery (1993) Ltd v Ontario*, 2001 CanLII 8538
- 25. *Scamurra v Scamurra Contracting*, 2022 ONSC 4222
- 26. *Sinclair v Dover Engineering Services Ltd*, 1988 CanLII 3358 (BCCA)
- 27. *Beach Place Ventures Ltd v Employment Standards Tribunal*, 2022 BCCA 147

SECONDARY SOURCES

- 28. Ruth Sullivan, *The Construction of Statutes*, 7th ed (Toronto: LexisNexis Canada, 2022) at Chapter 17, Part 1 [4]

SCHEDULE “B” - STATUTES AND LEGISLATION

1. *Courts of Justice Act*, RSO 1990, c C.43, s 97

Declaratory orders

97 The Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may make binding declarations of right, whether or not any consequential relief is or could be claimed. 1994, c. 12, s. 39; 1996, c. 25, s. 9 (17).

2. *Federal Courts Act*, RSC 1985, c F-7, s 28(1)(h).

Judicial review

28 (1) The Federal Court of Appeal has jurisdiction to hear and determine applications for judicial review made in respect of any of the following federal boards, commissions or other tribunals:

- (h) the Canada Industrial Relations Board established by the Canada Labour Code;

3. *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, s 11

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.

4. *Wage Earner Protection Program Act*, SC 2005, c 47, ss 5(1)(b)-(c), 9

Eligibility for Payments

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]

...

Minister's determination of eligibility

9 If the Minister determines that the applicant is eligible to receive a payment, the Minister shall make the payment.

5. Wage Earner Protection Program Regulations, SOR/2008-222, s 3.2

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.

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36, AS AMENDED et al
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Department of Justice Canada
Ontario Regional Office
120 Adelaide Street West, Suite 400
Toronto, Ontario, M5H 1T1

**Per: Walter Kravchuk / Emily Atkinson /
Jake Norris**

LSO#: 57160U / 76906B / 89466J

Tel: 365-375-2752 / 416-988-2475 / 416
347-6823

Email: walter.kravchuk@justice.gc.ca
emily.atkinson@justice.gc.ca
jake.norris@justice.gc.ca

Counsel for the Attorney General of Canada