

**1735825 ONTARIO INC. (FORMERLY KNOWN AS GRAFTON-FRASER INC.)**

**SEVENTH REPORT OF RICHTER ADVISORY GROUP INC.,  
IN ITS CAPACITY AS MONITOR OF  
1735825 ONTARIO INC.**

**April 2, 2019**

## Table of Contents

|  |    |
|--|----|
| Introduction.....  | 1  |
| Purpose of this Report.....  | 4  |
| Terms of Reference.....  | 5  |
| The Monitor's Activities .....                                     | 5  |
| The Closing Escrow Funds .....                                     | 7  |
| The Directors' Escrow .....  | 7  |
| Tax Refunds.....   | 8  |
| Bankruptcy and Termination of CCAA Proceedings.....                | 8  |
| Approval of the Monitor's Activities and Fee Approval Request..... | 9  |
| Monitor's Conclusions and Recommendations .....                    | 10 |

## Table of Appendices

|  |   |
|--|---|
| Amended and Restated Initial Order dated January 30, 2017..... | A |
| Court Orders dated January 30, 2017 .....                      | B |
| Approval and Vesting Order dated May 2, 2017 .....             | C |
| Distribution and Stay Extension Order dated June 6, 2017.....  | D |
| Expansion of Powers Order dated July 18, 2017 .....            | E |
| Court Order dated September 12, 2017 .....                     | F |

**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  
1735825 ONTARIO INC. (FORMERLY KNOWN AS GRAFTON-FRASER INC.)**

**SEVENTH REPORT OF RICHTER ADVISORY GROUP INC.  
In its capacity as Monitor of the Company**

**April 2, 2019**

**Introduction**

1. On January 25, 2017 (the "**Filing Date**"), the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued an order, as amended and restated at a subsequent Court attendance on January 30, 2017 (the "**Amended and Restated Initial Order**"), granting 1735825 Ontario Inc. (formerly known as Grafton-Fraser Inc.) (the "**Company**") protection pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). Richter Advisory Group Inc. ("**Richter**") was appointed as monitor (the "**Monitor**"). The proceedings commenced by the Company under the CCAA are herein referred to as the "**CCAA Proceedings**". A copy of the Amended and Restated Initial Order is attached hereto as **Appendix "A"**.

2. The Amended and Restated Initial Order provided the Company with, *inter alia*, a stay of proceedings which has been extended a number of times most recently on September 12, 2017, as discussed below, (the “**Stay Period**”). The Amended and Restated Initial Order also granted the Company the authority to enter into amended and restated forbearance agreements with its two primary secured creditors, being Canadian Imperial Bank of Commerce (“**CIBC**”) as agent and lender, as well as GSO Capital Partners LP (“**GSO**”) as agent for the GSO Lenders (as defined in the Amended and Restated Initial Order), which permitted the Company to continue to borrow under its revolving facility with CIBC (the “**CIBC Facility**”). The Amended and Restated Initial Order also provided for the sum of \$772,597 (the “**Directors’ Escrow**”) to be paid by the Company to the Monitor to hold, in trust, for the Company’s indemnification obligations with respect to post-filing statutory liabilities of its directors and officers (the “**Directors**”).
3. Contemporaneous with the Company’s service of its application for the Amended and Restated Initial Order, the Company served a motion, returnable January 30, 2017 and the Court issued orders on January 30, 2017 ( collectively, the “**January 30 Order**”) approving, among other things, (i) a proposed sale and investment solicitation process and sale agreement between GFI and 1104307 B.C. Ltd. (now GSO GF Acquisition B.C. Ltd., a party related to GSO, and referred to herein as the “**Purchaser**”) to serve as the stalking horse bid; and (ii) a liquidation consulting agreement whereby an agent would provide guidance to GFI on the liquidation of inventory and owned furniture, fixtures and equipment at certain underperforming stores. A copy of the January 30 Order is attached hereto as **Appendix “B”**.
4. Since the sale and investment solicitation process did not result in any superior offers on May 2, 2017, the Court granted an order (the “**Approval and Vesting Order**”) approving a sale of substantially all of the assets of the Company pursuant to the stalking horse bid. Attached hereto as **Appendix “C”** is the Approval and Vesting Order.
5. The sale transaction which was in large part a credit bid and which has been outlined in the previously filed reports of the Monitor was completed on June 28, 2017 (the “**Closing Date**”) and the Monitor’s closing certificate was delivered to the Purchaser on the same date and filed with the Court. Pursuant to the Approval and Vesting Order, the Company filed articles of reorganization on June 28, 2017 changing its name from Grafton-Fraser Inc. to 1735825 Ontario Inc.

6. On the Closing Date, (i) the Monitor understands that GSO, as lender, assigned to the Purchaser certain (but not all) amounts owing to GSO by the Company (the “**Assigned Debt**”) together with any security granted by the Company in favour of GSO in respect of such obligations (the “**Assigned Security**”), (ii) all of the amounts owing by the Company (as well as the Company’s wholly-owned subsidiary, 2473304 Ontario Inc.) to CIBC were released, and (iii) the Purchaser released the Company from all of its obligations pursuant to the Assigned Debt and Assigned Security.
7. On June 6, 2017, the Court issued an order (the “**Distribution and Stay Extension Order**”) which, among other things, (i) authorized and directed the Monitor to release \$600,000 from the Directors’ Escrow to the Purchaser thereby reducing the Directors’ Escrow to \$172,597 and (v) approved certain fees and expenses of the Monitor and those of its counsel, Cassels Brock & Blackwell LLP (“**Cassels**”). A copy of the Distribution and Stay Extension Order is attached hereto as **Appendix “D”**.
8. On July 18, 2017, given the directors of GFI had resigned, the Court issued an order granting among other things, the expansion of the powers of the Monitor (the “**Expansion of Powers Order**”), as set out in the Amended and Restated Initial Order (or any other Order of this Court made in the Company’s CCAA Proceedings), including, *inter alia*, the authorization to take any and all actions and steps and execute any and all documents on behalf of the Company, as appropriate, in order to (i) exercise the Company’s rights or perform the Company’s obligations under the Sale Agreement and any ancillary agreements in connection therewith, and (ii) perform such functions and duties as the Monitor considers necessary or desirable in order to facilitate or assist the Company in dealing with its wind-down, the CCAA Proceedings or other activities. A copy of the Expansion of Powers Order is attached hereto as **Appendix “E”**.
9. On September 12, 2017, the Court issued an order (the “**September 12 Order**”) which among other things:
  - (i) approved certain fees and disbursements of the Monitor and Cassels including anticipated further fees and disbursements of the Monitor and Cassels to complete their remaining duties and administration of these CCAA proceedings; and
  - (ii) authorized and directed the Monitor to remit to the Purchaser all net amounts GFI may have available (including amounts held in trust by the Monitor for GFI);
  - (iii) extended the Stay Period until the filing of a certificate of the Monitor certifying that the Remaining Activities (as defined in the Monitor’s sixth report) have been completed; and

- (iv) provided that upon the filing of the Monitor's Discharge Certificate (as defined therein), the CCAA Proceedings would be terminated and the Monitor would be discharged.

A copy of the September 12 Order is attached hereto as **Appendix "F"**.

### **Purpose of this Report**

10. The purpose of this, the Monitor's seventh report (the "**Seventh Report**"), is to provide information to this Honourable Court regarding the following:
  - (i) The status of and termination of the CCAA proceedings;
  - (ii) the receipt of and treatment of various tax assessments by Canada Revenue Agency ("**CRA**") subsequent to the September 12 Order;
  - (iii) the activities of the Monitor since September 5, 2017, the date of the Monitor's sixth report (the "**Sixth Report**");
  - (iv) the remaining Directors' Escrow and the Closing Escrow Funds (as defined below); and
  - (v) the motion by the Monitor seeking an order, among other things:
    - a) approving the Seventh Report (and the activities, actions, and conduct of the Monitor);
    - b) authorizing the Monitor to release the remaining amount of the Director's Escrow to the Purchaser;
    - c) authorizing the Monitor, for and on behalf of GFI to file an assignment in bankruptcy (the "**Bankruptcy Assignment**") and authorizing the Monitor to name Richter as trustee of the bankruptcy estate (the "**Trustee**");
    - d) following the Bankruptcy Assignment, authorizing the Monitor to transfer to the Trustee, from the balance of the proceeds of sale in its accounts (the "**Escrowed Funds**") the amount of \$30,000 (plus taxes) to the bankruptcy estate of GFI, to provide funding for the respective professional costs incurred by the Trustee for the bankruptcy estate as third party funds ("**Third Party Funds**") and authorizing and directing the Trustee to pay

certain funds to the bankruptcy estate in order to provide funding for the professional costs incurred by the Trustee for the bankruptcy estate;

e) confirming the provisions of the September 2017 Order and authorizing the Monitor (a) after payment of the amounts set out above and payment of the fees and expenses as approved in all previous orders of the Court, including the estimated costs to complete the administration of the CCAA proceedings, to transfer any balance of the Escrowed Funds to the Purchaser; and (b) following the Bankruptcy Assignment and payments above, to file the Monitor's Discharge Certificate, as defined in the September 2017 Order and to terminate the CCAA proceedings in accordance with the September 2017 Order.

### **Terms of Reference**

11. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.
12. In preparing this report and conducting its analyses, the Monitor has obtained and relied upon certain unaudited, draft, and/or internal financial information of the Company, the Company's books and records and discussions with various parties, including the Company's former employees and certain of its former directors (collectively, the "**Information**"). Except as otherwise described in this report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the Chartered Professional Accountant Canada Handbook and, as such, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

### **The Monitor's Activities**

13. The activities of the Monitor from the commencement of the CCAA Proceedings to September 5, 2017 are detailed in the Reports. Subsequent to the filing of the Sixth Report, the Monitor's activities have included:
  - (i) maintaining a website at <https://richter.ca/en/folder/insolvency-cases/g/grafon-fraser-inc>, where all materials filed with the Court and all orders made by the Court in connection with the CCAA Proceedings are available in electronic format;

- (ii) completing certain post-closing deliveries and the execution of ancillary documents in connection with the Transaction;
- (iii) corresponding with certain Transferred Employees (as defined in the Sale Agreement) who, have been permitted by the Purchaser, for administrative purposes, to assist the Monitor in carrying out its duties regarding the CCAA Proceedings;
- (iv) corresponding with CRA and the Company's tax advisors regarding input tax credits (the "ITCs") claimed by the Company on pre-filing liabilities owing as at the Filing Date, which ITCs were disallowed by CRA, including the filing of a notice of objection in connection with CRA's treatment of such ITCs (the "CRA Objection") and the resolution of the CRA Objection as discussed below;
- (v) continuing to hold the Directors' Escrow, now reduced to \$43,893.63 (as described later in this Seventh Report);
- (vi) acting as escrow agent for the Escrow Funds (as defined below);
- (vii) holding the Wind-Down Amount (as provided for and defined in the Sale Agreement) in the original amount of \$200,000, which amount was established to fund the reasonable costs, fees and disbursements necessary for winding down and completing the CCAA Proceedings. A balance of \$41,880 remains as of the date of this Report;
- (viii) responding to calls and enquiries from creditors, former employees and other stakeholders regarding the Transaction and the CCAA Proceedings;
- (ix) assisting the Transferred Employees and the Company's tax advisors with the preparation of the financial statement and tax return for the fiscal year ended February 3, 2018;
- (x) transferring the \$537,050.25 ITC Tax Refund, received on January 7, 2019, along with \$16,806.51 of miscellaneous funds from the Company's CIBC bank account, to the Monitor's trust account; and
- (xi) preparing this Seventh Report.



### **The Closing Escrow Funds**

14. Pursuant to the Sale Agreement, the Purchaser was required to pay certain amounts upon closing of the Transaction, including but not limited to certain of the cure costs, transfer taxes owing to certain provincial taxing authorities, and the Wind-Down Amount.
15. In order to facilitate the funding and payment of these closing amounts, certain funds (the “**Closing Escrow Funds**”) were sent to the Monitor in escrow to be paid out pursuant to directions (“**Directions**”) executed by the Purchaser (which Directions were consented to by both the Monitor and CIBC).
16. On or immediately following the Closing Date, in accordance with the Directions, the Monitor issued the majority of the payments. As at the date of this Seventh Report, all amounts payable pursuant to the Directions have been paid, and \$74,283.94 of the Closing Escrow Funds is being held by the Monitor, inclusive of \$8,919.39 of accumulated interest. The Sale Agreement also provided that any remaining portion of the Closing Escrow Funds not required for the wind down of GFI or the completion of the CCAA Proceedings shall form the property of the Purchaser and be returned to the Purchaser on the date of the Monitor’s discharge under the CCAA Proceedings.
17. As contemplated by the Directions and the Sale Agreement, the above-noted surplus Closing Escrow Funds will be transferred to the Purchaser at the CCAA Termination Time.

### **The Directors’ Escrow**

18. Pursuant to the Amended and Restated Initial Order, the Directors’ Escrow may be released only with the consent of the Monitor and the beneficiaries of the Directors’ Charge (as defined in the Amended and Restated Initial Order, and which consent may be communicated by counsel to the Directors (the “**Directors’ Counsel**”).
19. In accordance with the Amended and Restated Initial Order, upon the consent of the Directors’ Counsel, on July 31, 2017, \$93,892.53 of funds from the Directors’ Escrow was released, reducing the Directors’ Escrow to \$50,000.

20. As approved by the Directors, and the Purchaser, the Directors' Escrow account has been reduced by \$6,106.37 to \$43,893.63 based on the payment of the certain employment related payments.
21. In light of the status of the CCAA Proceedings, the Monitor is seeking an order directing that the remaining amount of the Directors' Escrow be paid to the Purchaser upon the termination of the CCAA Proceedings. The Monitor has been advised that both the Purchaser and Directors' Counsel support the requested relief.

### **Tax Refunds**

22. On March 24, 2017, CRA issued a notice of reassessment disallowing certain ITCs claimed by the Company on pre-filing liabilities owing as at the Filing Date. On June 22, 2017 the Company filed the CRA Objection in response to the CRA's notice of reassessment.
23. The Monitor on behalf of the Company with the assistance of the Transferred Employees and the Company's tax consultant, corresponded with CRA in connection with the ITC tax refund (the "**ITC Tax Refund**"). At the request of CRA, a Financial Statement and tax return for the fiscal year ended February 3, 2018 were prepared.
24. On January 7, 2019, CRA issued an ITC Tax Refund to the Company in the amount of \$537,050.25. This refund was deposited directly into the Company's CIBC account.
25. The Monitor subsequently transferred \$553,856.76 from the Company CIBC account to the Monitor's trust account, consisting of the ITC Tax Refund and other miscellaneous amounts. The Monitor then requested CIBC to close the Company CIBC account.

### **Bankruptcy and Termination of CCAA Proceedings**

26. In accordance with the present motion, following the order if granted, the Monitor intends to assign GFI into bankruptcy and Richter Advisory Group Inc. will act as trustee in bankruptcy. The Monitor is of the view to that an assignment into bankruptcy is the most efficient process at this point for an orderly wind-up of the GFI estate.

27. If the Order requested is granted, following the bankruptcy of GFI, the Monitor intends, in accordance with the September 12 Order, to proceed with the distribution of the net funds on hand (after payment of approved professional fees and the funding of the bankruptcy (to a maximum of \$30,000 plus taxes) to the Purchaser.
28. Thereafter, following the assignment into bankruptcy and the payment of the amounts described, the Monitor intends to file the Monitor's Discharge Certificate (as defined in the September 12 Order) and terminate the CCAA Proceedings in accordance with the September 12 Order.

### **Approval of the Monitor's Activities and Fee Approval Request**

29. The Monitor has reported on the status of the CCAA Proceedings and its actions and activities in connection thereto, from time to time, in the Reports to this Honourable Court during the CCAA Proceedings. Copies of the Reports are available on the Monitor's website at <https://www.richter.ca/insolvencycase/grafon-fraser-inc/>. As detailed in the Reports, to the best of the Monitor's knowledge, the Monitor has carried out its duties, as set out in the Initial Order and in subsequent Orders.
30. The Monitor and Cassels have maintained detailed records of their professional time and costs and have sought approval of their fees and disbursements throughout the CCAA Proceedings most recently as granted in the September 12 Order.
31. The estimated fees and disbursements of the Monitor and Counsel for the period from August 24, 2017 to completion of the CCAA Proceeding in the maximum amount of \$100,000 (excluding HST) were approved by the Court pursuant to the September 12 Order.
32. The Monitor's and Cassels' fees and disbursements since August 24, 2017 to complete the CCAA Proceedings remains within the \$100,000 previously approved amount. As at the date of this Seventh Report, the Monitor estimates that, barring unforeseen circumstances, the fees and disbursements of the Monitor and its counsel up to and including the effective date of the Monitor's discharge will not exceed the previously approved limits.

**Monitor's Conclusions and Recommendations**

33. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court issue an order granting the relief sought by the Monitor, as outlined in paragraph 10 of this Seventh Report.

All of which is respectfully submitted this 2<sup>nd</sup> day of April, 2019.

**Richter Advisory Group Inc.**  
**in its capacity as Monitor of**  
**1735825 Ontario Inc. (formerly known as Grafton-Fraser Inc.)**

Per:



Andrew Adessky, CPA, CA, CIRP, LIT