

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No:

No: 500-11-060355-217

COURT OF APPEAL

THE ATTORNEY GENERAL OF CANADA

for and in the name of Her Majesty the Queen (represented by the Minister of National Revenue), 200 René-Lévesque Boulevard West, East Tower, 9th Floor, in the city of Montreal, Province of Quebec, H2Z 1X4;

APPELLANT

v.

CHRONOMÉTRIQ INC., a legal person duly incorporated under the Québec *Business Corporations Act*, CQLR c S-31.1, having its registered office at 100-1396 Saint-Patrick Street, in the city of Montreal, Province of Quebec, H3K 2C8;

RESPONDENT – Debtor/Petitioner

- and -

HEALTH MYSELF INNOVATIONS INC., a legal person duly incorporated under the *Canada Business Corporations Act*, RSC 1985, c C-44, having its registered office at 100-1396 Saint-Patrick Street, in the city of Montreal, Province of Quebec, H3K 2C8;

RESPONDENT – Debtor/Petitioner

- and -

RICHTER ADVISORY GROUP INC., a legal person having a place of business at 1981 McGill College avenue, Suite 1100, in the city of Montreal, Province of Quebec, H3A 0G6;

RESPONDENT – Proposal Trustee

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

Appellant
November 8, 2021

1. The appellant, the Attorney General of Canada, appeals from an Order rendered on October 27, 2021 by the Honourable Martin Castonguay, J.S.C., of the Superior Court of Quebec, Commercial Division ("**Court**"), which authorized and approved interim financing, an administrative charge, a sale and investment solicitation process, a directors and officers charge, a key employee retention program, procedural consolidation of the estates and other relief.
2. More particularly, this appeal concerns the Court's order ranking the Lender Charge, the Administration Charge and the Directors and Officers Charge (collectively, the "**Charges**") with priority over the Crown's deemed trust (paragraph 34 of the Order) along with the order declaring a notwithstanding clause to override the provisions of any federal statute (paragraph 37 of the Order).
3. With less than a 4 hour notice of the respondents' motion to obtain the Order under appeal, the Crown appeared before the Court and argued for a postponement of the hearing and, alternatively, for an order carving out the priority charges over the deemed trust until the issue be argued at a future date. The Crown did not contest the approval of a portion of the interim financing and charge to ensure the payment of the current salaries and critical suppliers' costs for two weeks.
4. In addition, the Crown was not notified or informed that an amended draft order had been submitted to the Court by the respondents prior to the hearing, which amendment directly affected the Crown's rights.
5. This amended draft order, which was later approved by the Court, was modified to specifically include that the priming Charges would rank in priority over "trusts

- (statutory or otherwise)". Further, this amended draft order increased the Lender Charge from \$1 MM to \$1.6 MM (plus the additional mortgage of 20%).
6. The respondent, ChronoMétriq Inc., has an estimated amount of \$1.4 MM of unremitted federal payroll deductions for the 2018, 2019 and 2020 tax years. Those amounts are subject to the deemed trust provisions for unremitted source deductions under the *Income Tax Act* ("ITA").
 7. The Court granted the Lender Charge for \$1,920,000 (which includes an addition mortgage of 20%), the Administrative Charge for \$200,000 and the Directors and Officers Charge for \$250,000.
 8. The duration of the hearing on October 27, 2021 was 2 hours and 36 minutes.
 9. The appellant files with this notice of appeal a copy of the Order rendered by the Court on October 27, 2021 in **Schedule 1**.
 10. The value of the subject matter of the dispute is estimated at \$1.4 MM for the appellant.
 11. This file is not confidential.

GROUND OF APPEAL

12. The trial judge erred for the following reasons.
13. The Crown was denied an adequate time and opportunity to contest the motion regarding the order sought to rank the priming charges ahead of its deemed trust, and the notwithstanding clause to override the provisions of any federal statute.
14. The Crown was equally denied the opportunity to make representations on the amended draft order submitted by respondents to the Court.
15. The denial of justice and the result of the Order rendered impacts the future rights of the Crown in the present file.
16. Had the Crown been given an adequate opportunity to contest the motion presented, it would have demonstrated that:

- a) The Crown's deemed trust for unremitted source deductions has priority over court-ordered priming charges under the *Bankruptcy and Insolvency Act* ("BIA"); and
 - b) The Court did not have the authority under the BIA to render an order ranking the charges above the Crown's deemed trust for unremitted source deductions;
17. The Court therefore erred in declaring at paragraph 34 of the Order "that each of the Charges shall constitute a charge on the Property [of the respondents] and that such Charges shall rank in priority to any and all [...] trusts (statutory or otherwise)" (our underlining), thereby including the Crown's deemed trust.
18. The Court equally erred at paragraph 37 of the Order by declaring a notwithstanding clause to override the provisions of any federal statute.

I. The Deemed Trust has priority over the Priming Charges

19. Payroll deductions are at the heart of income tax collection in Canada. The ITA requires a person paying salaries or wages to an employee to deduct or withhold amounts on account of the employee's tax for the year and to remit those deductions to the Crown. Parliament has provided powerful collection tools to protect the collection of payroll deductions, including the deemed trust mechanism.
20. Under the deemed trust mechanism governed by subsection 227(4.1) of the ITA, the property of employers with payroll deductions arrears is deemed to be held in trust, and the proceeds of such property shall be paid to the Receiver General in priority to all security interests, notwithstanding any other provincial or federal statutes or any other laws.
21. More specifically, the Crown's deemed trust operates in two stages:
- a) First, subsection 227(4) of the ITA deems amounts withheld to be held in trust for the benefit of the Crown;

- b) Second, under subsection 227 (4.1) of the ITA, if the amount deemed to be held in trust for the Crown is not paid to the Crown when due, all property of the debtor and all property held by secured creditors of the debtor, in an amount equal to the failed remittance, are deemed to be held in trust for the Crown; Subsection 227 (4.1) of the ITA also requires that the proceeds from such property must be paid to the Crown in priority to all security interests;
22. The appellant submits that the clear language of subsection 227(4.1) of the ITA gives the Crown priority over priming charges.
- a) When the debtor fails to remit payroll deductions, all of its property is deemed to be held in trust for the Crown, separate and apart from its own property and thus, not available to any other creditors;
 - b) The ITA provides that the Crown's claim under the deemed trust will prevail over any interest that is a "security interest" within the meaning of subsection 224(1.3) of the ITA. A priming charge is a "security interest" within the meaning of subsection 224(1.3) of the ITA;
 - c) Subsection 227(4.1) of the ITA explicitly operates notwithstanding "any other provision of [...] the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act) [...];
23. In addition, the BIA recognizes the deemed trust for unremitted source deductions under subsection 67(3) of the BIA.
24. Sections 50.6, 64.1 and 64.2 of the BIA permit the granting of priority charges above a secured creditor, but the Crown's deemed trust for unremitted source deductions is not a security interest, and subsection 227(4.1) of the ITA overrides these provisions.

II. Canada North

25. On July 28, 2021, the Supreme Court of Canada rendered a 5-4 decision in *Her Majesty the Queen v. Canada North Group Inc., et al.* ("**Canada North**")¹ under the *Companies' Creditors Arrangement Act* ("CCAA").
26. The Supreme Court of Canada relied on the broad discretionary power provided for under section 11 of the CCAA to authorize priming charges above the Crown's deemed trust.
27. The Supreme Court of Canada did not address the discretionary power under section 183 of the BIA, which is not as broad as section 11 of the CCAA.
28. The appellant submits that section 183 of the BIA did not give the discretionary power to the trial judge to prioritize the Charges above the Crown's deemed trust.

CONCLUSIONS

29. The appellant will ask the Court of Appeal to :
 - a) **ALLOW** the appeal;
 - b) **SET ASIDE** the first instance Order regarding:
 - i. The order and declaration priming the Lender Charge, the Administration Charge and the Directors and Officers Charge with priority over the Crown's deemed trust (paragraph 34 of the Order);
 - ii. The order declaring a notwithstanding clause to override the provisions of any federal statute (paragraph 37 of the Order);
 - c) **CONDEMN** the respondents to pay the appellant legal costs on appeal.

¹ 2021 SCC 30

This notice of appeal has been notified to ChronoMétriq Inc., to Health Myself Innovations Inc. and to Me Michel Laroche, Me David Ward and Me Larry Ellis from Miller Thomson LLP, lawyers who represented ChronoMétriq Inc. and Health Myself Innovations Inc. in first instance; to Richter Advisory Group Inc. and to Me Hugo Babos-Marchand from McCarthy Tétrault who represented Richter Advisory Group Inc. in first instance, and to the Office of the Superior Court, District of Montreal.

MONTREAL, November 8, 2021

Attorney General of Canada

ATTORNEY GENERAL OF CANADA

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CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No:

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COURT OF APPEAL

THE ATTORNEY GENERAL OF CANADA
for and in the name of Her Majesty the
Queen (represented by the Minister of
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APPELLANT

v.

CHRONOMÉTRIQ INC., a legal person duly
incorporated under the Québec *Business
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RESPONDENT – Debtor/Petitioner

- and -

HEALTH MYSELF INNOVATIONS INC., a
legal person duly incorporated under the
Canada Business Corporations Act, RSC
1985, c C-44

RESPONDENT – Debtor/Petitioner

and

RICHTER ADVISORY GROUP INC., a
legal person

RESPONDENT – Proposal Trustee

LIST OF SCHEDULE IN SUPPORT OF NOTICE OF APPEAL

Appellant

SCHEDULE 1: Order authorizing and approving interim financing, an administration charge, a sale and investment solicitation process, a directors and officers charge, a key employee retention program, procedural consolidation of the estates, and other relief rendered by the Honourable Martin Castonguay, J.C.S. of the Superior Court (Commercial Division) on October 27, 2021.

SCHEDULE 1

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No: 500-11-060355-217
ESTATE No.: 41-2777077
ESTATE No.: 41-2777094

DATE: October 27, 2021

PRESIDING: THE HONOURABLE MARTIN CASTONGUAY, J.S.C.

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF:
CHRONOMÉTRIQ INC.**

Debtor/Petitioner

-and-

HEALTH MYSELF INNOVATIONS INC.

Debtor/Petitioner

-and-

RICHTER ADVISORY GROUP INC.

Proposal Trustee

ORDER AUTHORIZING AND APPROVING INTERIM FINANCING, AN ADMINISTRATION CHARGE, A SALE AND INVESTMENT SOLICITATION PROCESS, A DIRECTORS AND OFFICERS CHARGE, A KEY EMPLOYEE RETENTION PROGRAM, PROCEDURAL CONSOLIDATION OF THE ESTATES, AND OTHER RELIEF

[1] **ON READING** the *Motion for the Issuance of an Order Authorizing and Approving Interim Financing, A Sale and Investment Solicitation Process, an Administration Charge, a Directors and Officers Charge, a Key Employee Retention Program, Procedural Consolidation of the Estates, and other Relief*

JC00C9

("Motion") of ChronoMétriq Inc. and Health Myself Innovations Inc. (together, the "Debtors"), the affidavit and the exhibits in support thereof;

- [2] **CONSIDERING** the notification/service of the Motion;
- [3] **CONSIDERING** the submissions of counsel, the affidavit and exhibits in support of the Motion;
- [4] **CONSIDERING** the report filed by Richter Advisory Group in support of the Motion;
- [5] **CONSIDERING** the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("BIA"), in general, and sections 50.6, 64.1, 64.2, and 183 of the BIA, in particular; and
- [6] **CONSIDERING** that all secured creditors likely to be affected by the charges resulting from the orders herein have been notified of the Motion.

THE COURT:

- [7] **GRANTS** the Motion.
- [8] **ORDERS** that capitalized terms not otherwise defined herein shall have the same meaning as ascribed thereto in the Motion.

NOTIFICATION/SERVICE

- [9] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further notification/service thereof.
- [10] **PERMITS** notification/service of this Order at any time and place and by any means whatsoever.

PROCEDURAL CONSOLIDATION

- [11] **ORDERS** that the bankruptcy estates of the Debtors, Estate Nos. 41-2777077 and 41-2777094 (collectively, the "Estates") shall, subject to further order of the Court, be procedurally consolidated and shall continue under Estate No. 41-2777077, in such capacity, the "**Consolidated Proposal Proceeding**".
- [12] **ORDERS** that without limiting the generality of the foregoing, the Proposal Trustee is hereby authorized and directed to administer the Estates on a consolidated basis for all purposes in carrying out its administrative duties and other responsibilities as Proposal Trustee under the BIA as if the Consolidated Proposal Proceeding were a single proceeding under the BIA, including without

limitation:

- (a) the meeting of creditors of the Debtors may be convened and conducted jointly;
 - (b) the Proposal Trustee is authorized to issue consolidated reports in respect of the Debtors; and
 - (c) the Proposal Trustee is authorized to deal with all filings and notices relating to the proposal proceedings of the Debtors, each as required under the BIA on a consolidated basis.
- [13] **ORDERS** any pleadings or other documents served or filed in the Consolidated Proposal Proceeding by any party shall be deemed to have been served or filed in each of the proceedings comprising the Consolidated Proposal Proceeding.
- [14] **ORDERS** that a copy of this Order shall be filed by the Debtors in the court file for each of the Estates, but any subsequent document required to be filed will be hereafter only be required to be filed in the Consolidated Proposal Proceeding in Estate No. 41-2777077.
- [15] **ORDERS** that the procedural consolidation of the Estates pursuant to this Order shall not:
- (a) affect the legal status or corporate structure of the Debtors; or
 - (b) cause either Debtor to be liable for any claim for which it is otherwise not liable, or cause either Debtor to have an interest in an asset to which it otherwise would not have.
- [16] **ORDERS** that the Estates are not substantively consolidated, and nothing in this Order shall be construed to that effect.

DIP TERM SHEET AND INTERIM FINANCING CHARGE

- [17] **ORDERS** that the Debtors are hereby authorized to borrow from Canadian Imperial Bank of Commerce ("**Interim Lender**"), such amounts from time to time as the Debtors may consider necessary or desirable, in consultation the Proposal Trustee up to a maximum principal amount of \$1,600,000 outstanding at any time, on the terms and conditions as set forth in the Amended and Restated DIP Term Sheet filed ("**DIP Term Sheet**") and in the Interim Financing Documents (as defined herein) to fund the expenditures of the Debtors and to pay such other amounts as are permitted by the terms of the Order and the Interim Financing Documents ("**Interim Facility**").
- [18] **ORDERS** that the Debtors are authorized to execute and deliver such credit

agreements, security documents and other definitive documents (together with the DIP Term Sheet, the "Interim Financing Documents") as may be required by the Interim Lender in connection with the Interim Facility and the DIP Term Sheet, and the Debtors are hereby authorized to perform all of their obligations under the Interim Financing Documents.

- [19] **ORDERS** that the Debtors shall pay to the Interim Lender, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation, all fees and disbursements of counsel and all other reasonably required advisors to or agents of the Interim Lender) on a full indemnity basis under the DIP Term Sheet and the other Interim Financing Documents (the "Interim Lender Indebtedness") and shall perform all of their other obligations to the Interim Lender pursuant to the DIP Term Sheet, the Interim Financing Documents and this Order.
- [20] **DECLARES** that the Interim Lender be and is entitled to the benefit of and is hereby granted a charge, security and hypothec over the Debtors' present and future assets, rights, undertakings and property, movable, personal, corporeal or incorporeal, tangible or intangible and wherever situated, including all proceeds thereof (collectively the "Property") in the amount of \$1,920,000 for the principal amount of \$1,600,000 plus the additional mortgage of 20%, and all other amounts payable by the Debtors under the Interim Financing Documents ("Interim Lender Charge"), as continuing and collateral security for the Interim Lender Indebtedness and all obligations of the Debtors with respect to all amounts owing and all obligations required to be performed under or in connection with the Interim Financing Documents, which Interim Lender Charge shall have the priority established by paragraphs 33-34 hereof.
- [21] **ORDERS** that the claims of the Interim Lender pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to a proposal or these proceedings and the Interim Lender, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any proposal.
- [22] **ORDERS** that the Interim Lender may:
- (a) notwithstanding any other provision of this Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Interim Lender Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
 - (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to the Debtors if the Debtors fail to meet the provisions of the DIP Term Sheet and the other Interim Financing Documents.
- [23] **ORDERS** that the Interim Lender shall not take any enforcement steps with respect to its security or under the DIP Term Sheet (or underlying credit

agreements) or the Interim Lender Charge without providing at least 3 days written notice ("**Notice Period**") of a default thereunder to the Debtors, the Proposal Trustee and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Notice Period and without further Order of the Court, the Interim Lender shall be entitled to take any and all steps under its security, the DIP Term Sheet, the Interim Financing Documents, the Interim Lender Charge and otherwise permitted at law, but without having to send any additional demands under section 244 of the BIA, the *Civil Code of Quebec* or any other similar legislation. Upon demand or default under the Interim Financing Documents, the Interim Lender shall be under no obligation to make any further advance under the DIP Term Sheet or any other Interim Financing Document.

SISP

[24] APPROVES AND AUTHORIZES the SISP.

[25] AUTHORIZES the Proposal Trustee to conduct the SISP and to implement and perform any and all actions related thereto.

ADMINISTRATION CHARGE

[26] ORDERS that the Debtors shall pay the reasonable fees and disbursements of the Proposal Trustee, the Proposal Trustee's counsel, and the Debtors' counsel and other advisors, directly related to these BIA proceedings and the restructuring of the Debtors' business and affairs, whether incurred before or after this Order. The Debtors are hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Debtors on a weekly basis or on such other basis as such persons may agree in accordance with the cash flow approved by the Proposal Trustee and the Interim Lender.

[27] DECLARES that the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Debtors, are hereby granted a charge on the Property to the extent of the aggregate amount of \$200,000, as continuing and collateral security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings under the BIA and the Debtors' restructuring, having the priority established by paragraphs 33-34 hereof ("**Administration Charge**").

D&O INDEMNIFICATION AND CHARGE

[28] ORDERS that the Debtors shall indemnify all of their directors and officers in office as at the date of the NOI filing or thereafter appointed ("**Directors and**

Officers") relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as Directors or Officers of the Debtors after the commencement of these NOI proceedings, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct, or gross or intentional fault as further detailed subparagraph 64(4) of the BIA.

[29] ORDERS that the Directors and Officers are hereby granted a charge on the Property to the extent of an aggregate amount of \$250,000 ("**D&O Charge**") as security for the indemnity provided in paragraph 28 of this Order. The D&O Charge shall have the priority set out in paragraphs 33-34 of this Order.

[30] ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary:

(a) No insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge; and

(b) The Directors and Officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors and Officers are entitled to be indemnified in accordance with paragraph 28 of this Order.

KERP

[31] ORDERS that the Key Employee Retention Plan ("**KERP**") described in the Motion and summarized in the table filed under seal as Exhibit R-15 to the Motion is hereby approved, and the Debtors are hereby authorized and empowered to perform their obligations set forth thereunder, including by making the payments in accordance with the terms set out therein.

[32] DECLARES that the KERP contains sensitive and confidential information and shall be sealed in the Court file in this proceeding and segregated from, and shall not form part of, the public record.

PRIORITIES AND GENERAL PROVISIONS RELATING TO THE CHARGES

[33] ORDERS AND DECLARES that the priority of the Interim Lender Charge, the Administration Charge, and the D&O Charge (collectively, the "**Charges**") as between them with respect to the Property to which they apply shall be as follows:

(a) first, the Administration Charge;

(b) second, the D&O Charge; and

(c) third, the Interim Lender Charge;

[34] ORDERS AND DECLARES that each of the Charges shall constitute a charge on the Property and that such Charges shall rank in priority to any and all other hypotecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "Encumbrances"), or trusts (statutory or otherwise) affecting the Property in favour of any person.

[35] ORDERS that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title, or interest filed, registered, published, recorded, or perfected subsequent to the Charges coming into existence.

[36] ORDERS that except as may be approved or ordered by this Court, the Debtors shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with the Charges unless the Court orders same or the beneficiaries of the Charges consent in writing thereto.

[37] ORDERS AND DECLARES that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order pursuant to the BIA or any bankruptcy order made pursuant to such an application;
- (c) the filing of any assignment for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statute; or
- (e) any negative covenants, prohibitions, or other similar provisions with respect to borrowings, incurring debt or the creation of the Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement to which the Debtors are a party;

the Charges shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by any person, including any creditor of the Debtors, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

- [38] **ORDERS** that any of the Charges created by this Order over leases of real property in Canada shall only be a charge in the Debtors' interests in such real property leases.

GENERAL

- [39] **ORDERS** that the stay of proceedings contained in section 69.1 of the BIA shall not apply with respect to the Canadian Imperial Bank of Commerce.
- [40] **ORDERS** that Exhibit R-15 filed in support of the Motion be kept confidential and under seal until further order of this Court.
- [41] **ORDERS** that no person shall commence, proceed with or enforce any proceedings against the Proposal Trustee or any of the Directors and Officers, employees, legal counsel, or financial advisors of the Debtors or of the Proposal Trustee in relation to the business of the Debtors or any of its property, without first obtaining leave of this Court, upon five (5) business days' written notice to the Debtors' counsel, the Proposal Trustee and to all those referred to in this paragraph whom it is proposed be named in such proceedings.
- [42] **DECLARES** that the NOI, this Order, and any proceeding or affidavit leading to this Order shall not, in and of themselves, constitute a default or failure to comply by the Debtors under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
- [43] **DECLARES** that this Order and its effects shall survive the filing by the Debtors of a proposal pursuant to the terms of the BIA, the issuance of an initial order in regard of the Debtors pursuant to the terms of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 or the bankruptcy of the Debtors, unless this Court orders otherwise.
- [44] **DECLARES** that, except as otherwise specified herein or in the BIA, the Debtors and the Proposal Trustee are at liberty to serve any application, motion, notice, proof of claim form, proxy, circular, disclaimer or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given addresses as last shown on the records of the Debtors and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.
- [45] **DECLARES** that, without limiting the generality of the preceding paragraph, the Debtors and any parties to these proceedings may serve any court materials in

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

- [46] **DECLARES** that, except as otherwise specified herein or in the BIA, or ordered by this Court, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a response on the Debtors' counsel and the Proposal Trustee and has filed such response with this Court, or appears on the service list prepared by the Debtors, the Proposal Trustee or their counsel, save and except when an order is sought against a person not previously involved in these proceedings.
- [47] **DECLARES** that the Debtors or the Proposal Trustee may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other.
- [48] **DECLARES** that the Debtors and the Proposal Trustee shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.
- [49] **ORDERS and DECLARES** that any interested person may apply to this Court to vary or rescind this Order or seek other relief upon five (5) business days' notice to the Debtors, the Proposal Trustee and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
- [50] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [51] **REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States of America or elsewhere, to give effect to this Order and to assist, the Debtors, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors and the Proposal Trustee, as an officer of this Court, to grant representative status to the Proposal Trustee in any foreign proceeding or to assist the Debtors, the Proposal Trustee and their respective agents in carrying out this Order.
- [52] **ORDERS** that each of the Debtors and the Proposal Trustee is at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulator or administrative body, wherever located, for the recognition of the Order and for assistance in carrying out the terms of this Order, and that the Proposal Trustee is authorized and empowered to act as a representative of the within

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside of Canada.

[53] ORDERS the provision execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

[54] THE WHOLE without costs.



MARTIN CASTONGUAY, J.S.C.

No: 500-11-060355-217

COURT OF APPEAL OF QUEBEC
DISTRICT OF MONTREAL

Within 10 days after notification, the respondent, the intervenors and the impleaded parties must file a representation statement giving the name and contact information of the lawyer representing them or, if they are not represented, a statement indicating as much. If an application for leave to appeal is attached to the notice of appeal, the intervenors and the impleaded parties are only required to file such a statement within 10 days after the judgment granting leave or after the date the judge takes note of the filing of the notice of appeal. (Article 358, para. 2 C.C.P.)

THE ATTORNEY GENERAL OF CANADA (or and in the name of Her Majesty the Queen (represented by the Minister of National Revenue))
APPELLANT

v.

CHRONOMÉTRIQ INC., a legal person duly incorporated under the Québec Business Corporations Act, COLR c S-31.1

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-and-

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RESPONDENT – Proposal Trustee

NOTICE OF APPEAL

COPY RICHTER ADVISORY GROUP INC.

November 8, 2021

Me Kim Sheppard

ATTORNEY GENERAL OF CANADA

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OP 0828

The parties shall notify their proceedings (including briefs and memoranda) to the appellant and to the other parties who have filed a representation statement by counsel (or a non-representation statement). (Article 25, para. 1 of the Civil Practice Regulation)

If a party fails to file a representation statement by counsel (or non-representation statement), it shall be precluded from filing any other pleading in the file. The appeal shall be conducted in the absence of such party. The Clerk is not obliged to notify any notice to such party. If the statement is filed after the expiry of the time limit, the Clerk may accept the filing subject to conditions that the Clerk may determine. (Article 30 of the Civil Practice Regulation)



08/11/2021

12/11/2021