

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

(Commercial Division)

(Sitting as a court designated pursuant to the
Bankruptcy and Insolvency Act, RSC 1985, c. B-3)

No.: 500-11-060355-217
500-11-060356-215

IN THE MATTER OF THE BANKRUPTCY OF:

CHRONOMÉTRIQ INC.

-and-

HEALTH MYSELF INNOVATIONS INC.

Debtors/Petitioners

-and-

**RICHTER INC. (FORMERLY RICHTER
ADVISORY GROUP INC.)**

Trustee-Applicant

APPLICATION FOR DIRECTIONS

(Sections 30(1)d) and 34 of the *Bankruptcy and Insolvency Act*)

**TO ONE OF THE JUDGES OR TO THE REGISTRAR OF THE SUPERIOR COURT,
SITTING IN COMMERCIAL DIVISION IN THE DISTRICT OF MONTREAL, THE
APPLICANT RESPECTFULLY SUBMITS:**

I. Introduction

1. By the present Application for Directions (the "**Application**"), Richter Inc. (formerly Richter Advisory Group Inc.) ("**Richter**") seeks directions from this Court to be authorized to contest, in its capacity as trustee to the bankruptcy of ChronoMétriq Inc. and Health Myself Innovations Inc. (collectively, the "**Debtors**"), the appeal proceedings filed by L'Agence du Revenu du Québec ("**RQ**") and The Attorney General of Canada (for the Minister of National Revenue, Canada Revenue Agency) (the "**CRA**" and collectively with RQ, the "**Agencies**") before the Quebec Court of Appeal (files no. 500-09-029763-216 and 500-09-029765-211) (the "**Appeal Proceedings**") against an order rendered on October 27, 2021 (the "**First Order**") by the Honourable Martin Castonguay, J.S.C., authorizing, among other things, an Interim Lender Charge, an Administration Charge and a D&O Charge (as these terms are hereinafter defined) with priority over all statutory deemed trusts.

II. Proceedings

2. On October 26, 2021, each of the Debtors filed a Notice of Intention to Make a Proposal (the “**NOIs**”) pursuant to the provision of the BIA and Richter was appointed trustee to the NOIs, the whole as appears from the Court records.
3. On October 27, 2021, the Court rendered the First Order, which, among other things, approves (i) an interim financing facility in the maximum amount of \$1,600,000 made available by the Canadian Imperial Bank of Commerce (“**CIBC**” or the “**Interim Lender**”) guaranteed by a charge of \$1,920,000 (the “**Interim Lender Charge**”); (ii) a director’s and officer’s charge in the amount of \$250,000 (the “**D&O Charge**”); and (iii) an administration charge in the amount of \$200,000 as security for the professional fees and disbursements (the “**Administration Charge**” and collectively with the Interim Lender Charge and the D&O Charge, the “**Charges**”).
4. Paragraph 34 of the First Order provides that the Charges “shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind [...] or trusts (statutory or otherwise) affecting the Property in favour of any person”.
5. Pursuant to the First Order, an accelerated Sale and Investment Solicitation Process (the “**SISP**”) was approved by the Court in order to rapidly identify a potential purchaser to continue the operations of the Debtors.
6. On November 8, 2021, the Agencies filed an appeal of the First Order on the basis that the BIA would not give this Court the power and authority to grant judicial charges, as the Charges, that rank in priority to the statutory deemed trusts. An estimated amount of \$3,100,000 of unremitted source deductions is owed to the Agencies.
7. On November 25, 2021, a transaction was approved by the Court pursuant to which TELUS Health Solutions Inc. (“**Telus**”) purchased the majority of the Debtors’ assets free and clear of all encumbrances, hired the majority of employees that worked for the Debtors and assumed certain contracts (the “**Transaction**”).
8. In addition to preserving employment and economic activity, the Transaction generated proceeds that are currently held in trust by the Trustee, pending the Appeal Proceedings (the “**Transaction Proceeds**”).
9. On December 8, 2021, the Debtors, having failed to file a proposal within the prescribed delay, were deemed to have made an assignment in bankruptcy and Richter has agreed to act as trustee to the bankruptcy of the Debtors.
10. Besides the Transaction Proceeds, no other material realization is anticipated by Richter in the context of the Debtors’ bankruptcy. The Transaction Proceeds are not sufficient to pay the Interim Lender, the professionals benefiting from the

Administration Charge and the unremitted source deductions owed to the Agencies.

III. First Meeting of Creditors

11. On January 6, 2022, the first meeting of creditors of the Debtors was presided by Richter (the “**First Meeting**”), the whole as appears from a copy of the minutes from the First Meeting (the “**Minutes**”), communicated herewith as **Exhibit R-1**.
12. During the First Meeting, Richter’s mandate was confirmed and representatives of CIBC and of the CRA were appointed as inspectors to the estate of the Debtors.
13. Pursuant to paragraph 30(1)d) of the BIA, Richter requested permission from the inspectors to defend the Appeal Proceedings in the name of the Debtors and in favour of the Debtors’ estate. Considering that both the CRA and CIBC are parties in the Appeal Proceedings, the inspectors took the position that they were in conflict of interest.

IV. Directions Sought:

14. Considering the foregoing, the directions of this Court are sought to confirm, in the absence of inspectors with the authority to grant the permission required by paragraph 30(1)d) of the BIA, that Richter is authorized to contest the Appeal Proceedings in its capacity as trustee to the Debtors.
15. While paragraph 30(3) of the BIA provides that a trustee may choose to perform any action referred to under paragraph 30(1) of the BIA, including the choice to institute or defend any action relating to the property of the bankrupt, when no inspectors are appointed, there is no specific provision in the BIA granting the same authority to trustees when inspectors are appointed, but such cannot vote due to conflict of interest.
16. It is submitted that the interests of the Debtors have to be defended in the Appeal Proceedings and that the authorization sought by Richter to contest the Appeal Proceedings is appropriate and beneficial to the estate of the Debtors.
17. Richter, in its capacity as trustee to the Debtors’ bankruptcy, is the only party empowered to defend the interests of the Debtors since they both became bankrupt after the filing of the Appeal Proceedings.
18. In seeking the First Order, it is the Debtors that requested the Charges with the belief that they were essential to a successful restructuring.
19. The BIA allows insolvent companies to seek such specific remedies with the aim of facilitating the emergence and the continuation of their businesses as viable economic entities.

20. At the time the Agencies filed the Appeal Proceedings, their position and the relief sought before the Quebec Court of Appeal could have had an impact on the Debtors' ability to complete their restructuring insofar as, among other things, CIBC could have refused to provide additional financing which was essential in the circumstances to allow for the sale transaction to close.
21. As appears from the Court record, CIBC only agreed to provide interim financing to the Debtors on the condition that such financing be secured by a first ranking court-ordered interim financing charge, ranking ahead the deemed trusts.
22. In this context, the Debtors' choice to institute NOIs proceedings could have been significantly impacted when, in turn, it was the most cost-efficient proceedings in the circumstances. Furthermore, the Debtors had every right to expect that the BIA and the CCAA be interpreted in a harmonious way such that the ruling of the Supreme Court of Canada in *Canada v Canada North Group Inc* would apply *mutatis mutandis* to proceedings under the BIA.
23. In light of the above, it is essential that the position and considerations of the Debtors be argued before the Quebec Court of Appeal.
24. The Agencies are aware of the position advanced by Richter and its intent to assert, as trustee to the Debtors' bankruptcy, the position that the Debtors would have made before the Court and the considerations that are specific to them.
25. The Agencies have advised Richter that this Application would proceed on an uncontested basis.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Application for Directions* of Richter Advisory Group Inc. ("**Richter**") in its capacity as trustee to the bankruptcy of ChronoMétriq Inc. and Health Myself Innovations Inc. (collectively, the "**Debtors**");

DECLARE that Richter is authorized to contest the appeal filed by L'Agence du Revenu du Québec and The Attorney General of Canada (for the Minister of National Revenue, Canada Revenue Agency) before the Quebec Court of Appeal (files no. 500-09-029763-216 and 500-09-029765-211) against the order rendered on October 27, 2021 (the "**First Order**") by the Honourable Martin Castonguay, J.S.C.;

THE WHOLE without costs.

MONTRÉAL, April 8, 2022

McCarthy Tétrault sncrl srl

McCARTHY TÉTRAULT LLP

Lawyers for Richter Advisory Group Inc.

M^{re} Hugo Babos-Marchand

(hbmarchand@mccarthy.ca)

M^{re} Frédérique Drainville

(fdrainville@mccarthy.ca)

2500 - 1000 De La Gauchetière St. West

Montréal, QC H3B 0A2

Telephones: 514.397.4156

514.397.4216

SOLEMN DECLARATION

I, Andrew Adessky, CPA, CA, MBA, CIRP, LIT, domiciled and residing for the purpose hereof at 1981 McGill College Avenue, Montréal, Québec H3A 0G6, solemnly declare that:

1. I am the representative of the trustee in the matter of the bankruptcies of ChronoMétriq Inc. and Health Myself Innovation Inc.;
2. I have read the *Application for Directions* and all the facts alleged therein are true to my personal knowledge;

AND I HAVE SIGNED:



Andrew Adessky, CPA, CA, MBA, CIRP, LIT

Sworn before me by
technological means in Montreal,
on April 8, 2022



no. 205380

Commissioner of Oaths for the
Province of Québec

**NOTICE OF PRESENTATION
COMMERCIAL (COURTROOM 16.10)**

1. PRESENTATION OF THE PROCEEDING

TAKE NOTE that the **Application for Directions** will be presented in the Commercial Practice Division of the Superior Court, in Courtroom 16.10 of the Montreal courthouse during the **virtual calling of the roll** on April 15, 2022, at 8:45 a.m., or as soon as counsel may be heard.

2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL IN PRACTICE DIVISION

The contact information to join the calling of the roll of room 16.10 is as follows:

a) using Teams: click on the link available on the site

<http://www.tribunaux.qc.ca>;

You must then enter your name and click “Join Now”. To facilitate the process and the identification of participants, we ask that you enter your name in the following manner:

Attorneys: Mtre Name, Surname (name of party represented)

Trustees: Name, Surname (trustee)

Superintendent: Name, Surname (superintendent)

Parties not represented by an attorney: Name, Surname (specify: plaintiff, defendant, applicant, respondent, creditor, opposing party, or other)

Persons attending a public hearing may simply indicate “public”.

b) by telephone:

Canada, Quebec (Charges will apply): +1 581-319-2194

Canada (Toll free): (833) 450-1741

Conference ID: 820 742 874#

c) by videoconference: teams@teams.justice.gouv.qc.ca

VTC Conference ID: 11973653703

d) in person: if and only if you do not have access to one of the above-mentioned technological means. You may then go to room 16.10 of the Montreal Courthouse, located at:

1 Notre-Dame St. East, Montreal, Quebec

3. FAILURE TO PARTICIPATE IN THE VIRTUAL CALLING OF THE ROLL

TAKE NOTE that if you wish to contest the proceeding, you must inform in writing the party that initiated the proceeding at the contact information indicated in this notice of presentation at least 48 hours before the date of presentation of the proceeding and participate in the virtual calling of the roll. Otherwise, a judgment may be rendered against you during the presentation of the proceeding, without further notice or delay.

4. OBLIGATIONS

4.1 Duty of cooperation

TAKE NOTE that you are duty-bound to co-operate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and to make sure that relevant evidence is preserved (*Code of Civil Procedure*, art. 20).

4.2 Dispute prevention and resolution processes

TAKE NOTE that before referring your dispute to the Court, you must consider private dispute prevention and resolution processes, which consist of negotiation between the parties as well as mediation and arbitration, in which the parties call on a third person to assist them (*Code of Civil Procedure*, art. 2).

PLEASE GOVERN YOURSELF ACCORDINGLY.

Montréal, April 8, 2022

McCarthy Tétrault sencl srl

McCarthy Tétrault LLP

Lawyers for Richter Advisory Group Inc.

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)
(Sitting as a court designated pursuant to the
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IN THE MATTER OF THE BANKRUPTCY OF:

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-and-

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Debtors/Petitioners

-and-

**RICHTER INC. (FORMERLY RICHTER
ADVISORY GROUP INC.)**

Trustee-Applicant

LIST OF EXHIBITS
(APPLICATION FOR DIRECTIONS)

Exhibit R-1: Copy of the minutes from the First Meeting.

Montréal, April 8, 2022

McCarthy Tétrault senecl srl

McCarthy Tétrault LLP
Lawyers for Richter Advisory Group Inc.

CANADA
Province of Québec
District of: QC
Division No. 01-Montréal
Court No. 500-11-060355-217
Estate No. 41-2777077

SUPERIOR COURT
(Commercial Division)
Bankruptcy and Insolvency Act

**In the Matter of the Bankruptcy of
ChronoMétriq Inc. and Health Myself Innovations Inc.**
Debtors

-and-

Richter Advisory Group Inc.
Licensed Insolvency Trustee

**Minutes of the First Meeting of Creditors held by virtue of section 102(1)
of the *Bankruptcy and Insolvency Act***

On: January 6, 2022 10:30 a.m.
At: Videoconference with Microsoft Teams
Chaired by: Andrew Adessky, CPA, CA, MBA, CIRP, LIT

ATTENDANCE

The attendance was recorded as per the attached attendance list (the “Attendees”).

Andrew Adessky, Partner at Richter Advisory Group Inc. (“Richter” or the “Trustee”), informed the Attendees that he will be chairing the Meeting (the “Chairperson”).

The Chairperson advised that James Feldkamp, the former CEO of ChronoMétriq Inc. and Health Myself Innovations Inc. was sent a notice to attend the meeting but did not respond (as will be more fully discussed below). Also in attendance from Richter was Ken Le Chong. Me Hugo Babos-Marchand of McCarthy Tétrault LLP, attorney for the Trustee was also present.

QUORUM

The Chairperson examined the proofs of claim, confirmed to the Attendees that there is Quorum and declared that the meeting is validly constituted.

The Chairperson called the meeting to order at approximately 10:00 a.m.

The Chairperson advised the Attendees that the purpose of the Meeting was to:

- Consider the affairs of the Debtors and present the Trustee's Report on the preliminary administration;
- Affirm the appointment of the Trustee;
- Appoint inspectors; and
- Give instructions to the Trustee as the creditors may see fit with respect to the administration of the estate.

TRUSTEE'S REPORT

The Chairperson presented an overview of the Trustee's Report on the preliminary administration to date and mentioned that the report will be available on the Trustee's website after the meeting.

The Chairperson noted the following:

- During the Notice of Intention ("**NOI**") process, pursuant to a court authorized SISP, the majority of the assets of the Debtors were sold to TELUS Health Solutions Inc. ("**TELUS**"). TELUS also retained the books and records of the Debtors and the Trustee will have access to them as required;
- That following the sale of assets to TELUS, the Debtors ceased operations and all employees who were not hired by TELUS had been terminated, including James Feldkamp;
- That the Debtors were deemed to have made an assignment in bankruptcy on December 8, 2021 having failed to file a proposal or extension of the stay of proceedings by December 7, 2021;
- That the Statement of Affairs was not signed by Mr. Feldkamp as a representative of the Debtors as he was terminated on November 29, 2021, approximately one week prior to the deemed assignment in bankruptcy;
- The Trustee did not take possession of the premises as the value of the remaining fixtures was minimal and it would have been more expensive to take control of the premises;
- That the Trustee had approximately \$2.2 million in its trust account resulting from the transaction with TELUS and that this will either be used to reimburse the interim lender (the CIBC) and pay related court ordered charges or it would be remitted to the taxing authorities on account of a priority claim they were filing for unpaid deductions at source. This matter will only be settled following a ruling from the court of appeal.

QUESTION PERIOD

Following the delivery of the Trustee's Report, the Chairperson opened the floor for questions. The following is a summary of certain (but not all) of the questions that took place during the question period:

- Q: Number of employees of the Debtors:

A: The Trustee advised that at the time of the commencement of the NOIs, the Debtors employed approximately 48 people, the majority of whom were offered employment by TELUS. Earlier in 2021, the Debtors had at one point approximately 100 employees, but various layoffs occurred in 2021 prior to the NOI filings.

- Q: Will the Trustee pursue a payment of \$100K made to James Feldkamp prior to the deemed bankruptcy.

A: The Trustee will be reviewing this matter with the inspectors to be appointed.

- Q: Why is the website still operating?

A: The Trustee advised that with the sale of the assets which included the intellectual property, that TELUS was continuing to offer similar services including continuing business with certain of the clients of the Debtors.

- Q: Payment of fees to Richter at the start of the NOI proceedings for the bankruptcy.

A: The Trustee explained that it is customary to ensure that in the event of a bankruptcy, the Trustee has the necessary funds to administer the estate, especially where it is uncertain if there will be available assets. If the Debtors had not gone bankrupt, the funds would have been returned to the Debtors.

- Q: What is the status of recovery of tax credits?

A: This will be looked into as this will require the preparation of the tax returns, but in any event, this will only serve to reduce the amounts claimed by the tax authorities.

- Q: Was there a D&O insurance policy in place?

A: The Trustee will have to verify this.

AFFIRMATION OF TRUSTEE APPOINTMENT

The appointment of Richter Advisory Group Inc., as trustee of this bankruptcy, is unanimously confirmed by the creditors in attendance.

APPOINTMENT OF INSPECTORS

The Chairperson provided a brief description of the duties of an inspector and asked if there were any interested parties to serve as inspector(s) in the bankruptcy proceedings.

The creditors confirmed the appointment of two (2) persons as inspector:

Inspector	<u>Eric Laflamme</u>	Representing	<u>CIBC</u>
Inspector	<u>Patrick Dowling</u>	Representing	<u>CRA</u>

INSTRUCTIONS TO THE TRUSTEE

There were no instructions/directions given to the Trustee

ADJOURNMENT OF MEETING

The Chairperson inquired whether anyone present had any further questions or other matters of business to discuss. There being no further questions or other matters to attend to, the meeting was adjourned by the Chairperson at approximately 10:40 a.m.



Andrew Adessky, CPA, CA, MBA, CIRP, LIT

- Appendices:
- Attendance list
 - Trustee's report to the first meeting of creditors