

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

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

**September 5, 2017**

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**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.)**

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

**September 5, 2017**

**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. Following the completion of a sale of substantially all of the assets of the Company, the CCAA Proceedings are now substantially complete, with certain remaining matters to be completed as described herein. As the Stay Period (defined below) expires on September 15, 2017, the Monitor is seeking an extension of the Stay Period from the Court until the CCAA Proceedings are terminated upon the Monitor filing a certificate with the Court, certifying that the administration of the CCAA Proceedings is complete.

## Background

3. The Amended and Restated Initial Order provided the Company with, *inter alia*, a stay of proceedings until February 23, 2017 (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), pursuant to which CIBC and GSO agreed, among other things, to continue to forbear from exercising their rights and remedies under their respective loan documents. Among other terms, the amended and restated forbearance agreement with CIBC allowed the Company to continue to borrow under its revolving facility with CIBC (the “**CIBC Facility**”), subject to the terms and conditions contained in that forbearance agreement.
4. 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**”).
5. As the Company required financing to pursue its restructuring plan incremental to that provided for under the CIBC Facility, the Amended and Restated Initial Order also granted the Company the authority to enter into an agreement with GSO (and certain related entities) for a new non-revolving credit facility in the maximum amount of \$5.5 million (the “**DIP Credit Facility**”) to provide additional funding for the Company’s operations during the CCAA Proceedings.
6. 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, for orders approving, among other things, (i) the proposed sale and investment solicitation process (“**SISP**”) to be carried out by the Company with the Monitor’s assistance, (ii) the execution of an asset purchase agreement dated January 24, 2017, as amended (the “**Sale Agreement**”), between the Company 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 under the proposed SISP, and (iii) a liquidation consulting agreement (the “**Liquidation Consulting Agreement**”) dated January 24, 2017, including the sale guidelines (the “**Sale Guidelines**”) in connection with same, between the Company and a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions

ULC (together, the “**Consultant**”), pursuant to which the Consultant was to provide guidance to the Company on the liquidation of inventory and owned furniture, fixtures and equipment at certain underperforming stores.

7. On January 30, 2017, the Court issued an order which, among other things, authorized the Company to enter into the Sale Agreement, approved the SISP, authorized the Company to enter into the Liquidation Consulting Agreement, and approved the Sale Guidelines.
8. Since the SISP did not result in any superior offers, on May 2, 2017, the Court granted an order (the “**Approval and Vesting Order**”) approving the Sale Agreement, and vesting, upon the closing of the transaction (the “**Transaction**”), all of the rights, title and interest in and to the Purchased Assets (as set out and described in the Sale Agreement), in the Purchaser, free and clear of and from all Claims (as defined in the Approval and Vesting Order, except for those permitted encumbrances, easements and restrictive covenants listed on Schedule “C” to the Approval and Vesting Order). Copies of the Approval and Vesting Order and the reasons of Justice Pattillo are attached hereto as **Appendices “B”** and “**C**”, respectively.
9. The terms of the Sale Agreement required the Company to use commercially reasonable efforts to obtain consents to the assignment of contracts (the “**Assumed Contracts**”) and leases (the “**Assumed Real Property Leases**”) contemplated in the Sale Agreement to the Purchaser. In the event that such consents could not be obtained, the Company was required to take steps to obtain an order assigning the Company’s rights and obligations under such agreements to the Purchaser, pursuant to section 11.3 of the CCAA. Since the Company was unable to obtain the required consents for one Assumed Real Property Lease and one Assumed Contract, the Court issued an order (the “**Assignment Order**”) on June 6, 2017 which among other things, assigned the rights and obligations under those contracts to the Purchaser and vested the Company’s rights, title and interest therein, in the Purchaser as Purchased Assets under the Sale Agreement, provided that upon the closing of the Transaction, the cure costs shall be paid by the Purchaser. A copy of the Assignment Order is attached hereto as **Appendix “D”**.
10. On June 6, 2017, the Court also issued an order (the “**Distribution and Stay Extension Order**”) which, among other things, (i) extended the Stay Period to September 15, 2017, (ii) authorized and directed the Company to make a distribution to GSO in partial satisfaction of the amounts owing under the DIP Credit Facility, (iii) approved a reduction in the Directors’ Escrow of \$172,597 upon delivery of

the Monitor's Certificate (as defined in the Approval and Vesting Order) to the Purchaser, and authorized and directed the Monitor to release \$600,000 from the Directors' Escrow to the Purchaser, or as the Purchaser may otherwise direct in writing with the consent of the Monitor and CIBC, (iv) approved the Monitor's fourth report to the Court dated June 1, 2017 and the activities, actions and conduct of the Monitor set out therein; and (v) approved the fees and expenses of the Monitor and those of its counsel, Cassels Brock & Blackwell LLP ("**Cassels**"), for the periods from April 2, 2017 to May 20, 2017 and from April 1, 2017 to May 22, 2017, respectively. A copy of the Distribution and Stay Extension Order is attached hereto as **Appendix "E"**.

11. The key elements of the Transaction, which was in large part a credit bid, have been outlined in the previously filed reports of the Monitor (the "**Reports**") and, therefore, have not been repeated herein (capitalized terms not otherwise defined herein shall have the meanings ascribed in the Sale Agreement).
12. The Transaction was completed on June 28, 2017 (the "**Closing Date**") and the Monitor's Certificate was delivered to the Purchaser on the same date and filed with the Court.
13. 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.
14. 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.
15. On July 18, 2017 the Court issued an order granting among other things, the expansion of the powers of the Monitor, 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.

### **Purpose of this Report**

16. The purpose of this, the Monitor's sixth report (the "**Sixth Report**"), is to provide information to this Honourable Court regarding the following:
- (i) the activities of the Monitor since July 13, 2017, the date of the Monitor's fifth report (the "**Fifth Report**");
  - (ii) the Directors' Escrow and the Escrow Funds (as defined below);
  - (iii) the motion by the Monitor seeking an order, among other things:
    - a) approving the Fifth Report and this Sixth Report, and the activities, actions, and conduct of the Monitor set out therein;
    - b) approving the Monitor's fees and disbursements for the period from May 21, 2017 to August 19, 2017 as set out in the Affidavit of Andrew Adessky sworn September 5, 2017 (the "**Adessky Affidavit**") and those of the Monitor's counsel, Cassels for the period from May 23, 2017 to August 24, 2017, as set out in the Affidavit of Jane Dietrich sworn September 1, 2017 (the "**Dietrich Affidavit**") plus the amount of approximately \$100,000 (excluding HST) for the Monitor and Cassels in aggregate to complete the administration of the CCAA Proceedings;
    - c) authorizing the Monitor, Cassels, and Fasken Martineau DuMoulin LLP (legal counsel for the Company) to pay any unused professional fee retainers to the Monitor on behalf of the Company;
    - d) authorizing the Monitor on behalf of the Company to pay amounts remaining on hand from time to time, if any, to the Purchaser or as the Purchaser may direct in writing, pursuant to the terms of the Sale Agreement; and
    - e) terminating the CCAA Proceedings and discharging Richter from all liabilities and actions in its capacity as Monitor (save for gross negligence and wilful misconduct) subject to the Monitor filing a certificate (the "**Monitor's Discharge Certificate**"), confirming the Remaining Matters (as defined later in this Sixth Report) have been completed.

## Terms of Reference

17. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.
18. 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

19. The activities of the Monitor from the commencement of the CCAA Proceedings to July 13, 2017 are detailed in the Reports. Subsequent to the filing of the Fifth Report, the Monitor's activities have included:
  - (i) maintaining a website at <https://richter.ca/en/folder/insolvency-cases/g/graffon-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 Canada Revenue Agency ("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**");
- (v) monitoring the Company's sales tax liability position and the payment of post-filing sales tax liability, and filing certain post-filing sales tax returns;
  - (vi) continuing to hold the Directors' Escrow, now reduced to \$50,000 (as described later in this Sixth Report);
  - (vii) acting as escrow agent for the Escrow Funds (as defined below);
  - (viii) 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;
  - (ix) responding to calls and enquiries from creditors, former employees and other stakeholders regarding the Transaction and the CCAA Proceedings; and
  - (x) preparing this Sixth Report.

#### **The Escrow Funds**

- 20. 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.
- 21. In order to facilitate the funding and payment of these closing amounts, certain funds (the "**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).
- 22. 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 Sixth Report, all amounts payable pursuant to the Directions have been paid, and \$86,115.44 of the Escrow Funds is being held by the Monitor.
- 23. As contemplated by the Directions, the above-noted surplus Escrow Funds will be transferred to the Purchaser.

## **The Directors' Escrow**

24. Pursuant 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**").
25. 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.
26. In addition, on August 30, 2017, Directors' Counsel consented to the payment of stay bonuses, in the amount of approximately \$2,100, owing by the Company to certain employees from the remaining amount of the Directors' Escrow. The Monitor anticipates making these payments shortly.
27. In light of the status of the CCAA Proceedings, the Monitor is seeking an order directing that, unless otherwise agreed in writing by the Purchaser and Directors' Counsel (or absent an agreement or further order of the Court), 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**

28. 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.
29. The Monitor continues to correspond with the CRA in connection with the ITC tax refund (the "**ITC Tax Refund**").
30. Any refunds of income taxes paid by the Company were Purchased Assets under the Sale Agreement. As a result, the Monitor is of the view that it is appropriate that it pay any amounts in its hands from time to time to the Purchaser in accordance with the Sale Agreement.

## Termination of the CCAA Proceedings

31. The CCAA Proceedings have facilitated an orderly sale of the Company's assets through the completion of the Transaction. Other than the professional fees which remain to be paid in the ordinary course as at the date of this Sixth Report, the Monitor is not aware of any other unpaid post-filing obligations of the Company.
32. As noted above, the Monitor continues to correspond with CRA regarding the ITC Tax Refund and other tax matters.
33. As a result, the Monitor on behalf of the Company is requesting that the Stay Period be extended until the CCAA Proceedings are terminated, to provide the parties with sufficient time to finalize the outstanding tax and administrative matters. In the Monitor's view, it would be beneficial for the CCAA Proceedings not to be terminated until the remaining tax-related activities and administrative matters, including the making of the various payments set out herein (collectively, the "**Remaining Matters**"), have been completed.
34. The Amended and Restated Initial Order granted separate court-ordered Charges over the Company's Property, namely the Administration Charge, the KERP Charge, the Directors' Charge, the Term Lenders' DIP Charge and the ABL Lender's DIP Charge (each as defined in the Amended and Restated Initial Order).
35. The Monitor has been advised by the Company that all amounts owing that were secured by the KERP Charge have been paid in full. As a result, the Monitor is of the view that the KERP Charge can now be terminated.
36. Further, as described above, amounts owing by the Company under the Term Lenders' DIP Charge and the ABL Lender's DIP Charge were released upon closing of the Transaction. As a result, the Monitor is of the view that it is appropriate that the Term Lenders' DIP Charge and the ABL Lender's DIP Charge be terminated as well.
37. Prior to filing of the Monitor's Discharge Certificate, the Monitor will ensure that all amounts that would have been secured by the Administration Charge have been paid. Consequently, the Monitor is of the view that the Administration Charge may be discharged upon termination of the CCAA Proceedings.

38. Similarly, as the Directors' Escrow stands as collateral to indemnify the Directors in the same way as the Directors' Charge, the Monitor is of the view that the Directors' Charge should be treated in the same way as the Directors' Escrow and, subject to further order of the Court, the Directors' Charge is proposed to be terminated upon the filing of the Monitor's Discharge Certificate. The Monitor understands that the Directors' Counsel supports the proposed treatment of the Directors' Charge.
39. In the Monitor's view, it is appropriate that the CCAA Proceedings be terminated and the Monitor be discharged of its duties and obligations in these proceedings upon the filing of the Monitor's Discharge Certificate with the Court certifying that the Remaining Matters have been completed, for the following reasons:
- (a) all of the Company's assets have been sold pursuant to the Sale Agreement;
  - (b) the Company's operations have ceased upon closing of the Transaction;
  - (c) as such, there is no prospect that the Company will file a plan of compromise or arrangement;  
and
  - (d) the only outstanding matters in the CCAA Proceedings are certain sundry administrative issues (as set out herein).

**Request for Approval of the Monitor's Activities and the Fees/Expenses of the Monitor and its Counsel**

40. 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.
41. On April 20, 2017, the Court issued an order which approved, *inter alia*, the fees and disbursements of the Monitor and its counsel, Cassels, for the periods from January 25, 2017 to April 1, 2017 and January 20, 2017 to March 31, 2017 respectively, in connection with the performance of their duties in these CCAA Proceedings.
42. The Distribution and Stay Extension Order approved, *inter alia*, the fees and disbursements of the Monitor and its counsel, Cassels, for the periods from April 2, 2017 to May 20, 2017 and April 1, 2017 to May 22, 2017, respectively, in connection with the performance of their duties in these CCAA Proceedings.

43. The Monitor and Cassels have maintained detailed records of their professional time and costs. The Monitor is seeking approval of its fees and disbursements for the period from May 21, 2017 to August 19, 2017 and those of Cassels for the period from May 23, 2017 to August 24, 2017 (the “**Periods**”) in connection with the performance of their duties in these CCAA Proceedings.
44. Pursuant to paragraphs 31, 32 and 33 of the Amended and Restated Initial Order, any expenditure or liability properly made or incurred by the Monitor, including the fees and disbursements of the Monitor and the fees and disbursements of its legal counsel, were authorized to be paid on a periodic basis subject to any final assessment or taxation as may be ordered by the Court. In addition, an Administration Charge, in the amount of \$500,000, was granted as security for the professional fees and disbursements of the Monitor, the Monitor’s counsel, the Company’s counsel, and counsel for the Directors in respect of these CCAA Proceedings.
45. The total fees of the Monitor during the Periods amount to \$308,769.55, together with expenses and disbursements in the amount of \$122,407.11 (both excluding HST) (collectively, the “**Monitor’s Fees and Disbursements**”). The time spent by the Monitor’s personnel during the Periods is more particularly described in the Adessky Affidavit attached as **Appendix “F”** to this report. The Adessky Affidavit includes a summary of the personnel, hours, and hourly rates charged by the Monitor in respect of the within proceedings for the Periods. The Adessky Affidavit also provides a breakdown of the disbursements which include certain of the Cassels’ Fees and Disbursements, as detailed in the Dietrich Affidavit.
46. The total fees for services provided by Cassels during the Periods amount to \$126,077.86, including expenses, disbursements and HST (collectively, the “**Cassels’ Fees and Disbursements**”). The time spent by Cassels personnel during the Periods is more particularly described in the Dietrich Affidavit attached as **Appendix “G”** to this report. Included in the Dietrich Affidavit is a summary of the personnel, hours, and hourly rates charged by Cassels in respect of the within proceedings for the Periods.
47. The Monitor respectfully submits that the Monitor’s Fees and Disbursements and the Cassels’ Fees and Disbursements are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Amended and Restated Initial Order. Accordingly, the Monitor now seeks the approval of the Monitor’s Fees and Disbursements and the Cassels’ Fees and Disbursements

48. As at the date of this Sixth Report, the Monitor estimates that, barring unforeseen circumstances, the fees and disbursements of the Monitor for the period from August 20, 2017 and Cassels for the period from August 26, 2017 up to and including the effective date of the Monitor's discharge will not be more than \$100,000 (excluding HST) in aggregate for the Monitor and Cassels (the "**Remaining Fees Estimate**"). Any monies remaining after payment of the fees and disbursements of the Monitor and its counsel will be transferred to the Purchaser pursuant to the terms of the Sale Agreement.
49. The Monitor respectfully submits that the Monitor's Fees and Disbursements and the Cassels' Fees and Disbursements are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Initial Order. Accordingly, the Monitor now seeks the approval of the Monitor's Fees and Disbursements and Cassels' Fees and Disbursements as well as the Remaining Fees Estimate.

#### **Monitor's Conclusions and Recommendations**

50. 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 16(iii) of this Sixth Report.

All of which is respectfully submitted this 5th day of September, 2017.

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

Per:



Gilles Benchaya, CPA, CA, CIRP, LIT