FAX TRANSMISSION SHEET

Ministry of the Attorney General Crown Law Office Civil Law (416) 212-4344 Fax/Télécopieur (416) 326-4181 8th Floor 720 Bay Street Toronto, ON M7A 2S9

Ministère du Procureur général Bureau des avocats de la Couronne Droit civil

8° étage 720, rue Bay

Toronto, ON M7A 2S9

DATE:

June 20, 2017

FROM:

Vanessa Glasser, Counsel

RE:

Bridging Finance Inc. v. Thomas Canning

In the Matter of an Application Pursuant to Subsections 47(1) and 243(1)

of the Bankruptcy Act

Court File No. CV-17-11773-00CL

TO:

NAME	FIRM	FAX NO.	
SEE ATTACHED LIST			

This facsimile may contain PRIVILEGED and CONFIDENTIAL INFORMATION only for the use of the Addressee(s) named above. If you are not the intended recipient of this facsimile or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original facsimile to us at the above address via first class mail. Thank you.

NUMBER OF PAGES TRANSMITTED (incl. cover page):

67

ORIGINAL TO FOLLOW:

YES

NO.

If there are any transmission problems, please contact CAROL ANAKA at (416) 212-1250.

MESSAGE:

Please see letter dated June 20, 2017 and documentation attached.

Ministry of the Attorney General

Crown Law Office Civil Law

720 Bay Street 8th Floor Toronto ON M7A 2S9 Ministère du Procureur général

Bureau des avocats de la Couronne Droit civil

720 rue Bay 8° étage Toronto ON M7A 2S9



Vanessa Glasser Tel/Tél: (416) 326-4576 Fax/Téléc.: (416) 326-4181 Vanessa.Glasser@Ontario.ca

DELIVERED BY E-MAIL: Toronto.commerciallist@JUS.gov.on.ca

June 20, 2017

The Honourable Justice Conway Superior Court of Justice Commercial Court 330 University Avenue 7th Floor Toronto, ON M5G 1R7

Your Honour:

Re: Bridging Finance Inc. v. Thomas Canning

In the Matter of an Application Pursuant to Subsections 47(1) and 243(1)

of the Bankruptcy Act

Court File No. CV-17-11773-00CL

Please find enclosed the Responding Record of the Ontario Farm Products Marketing Commission.

I have also enclosed a copy of the correspondence to opposing counsel.

Yours truly,

Vanessa Glasser

Counsel

VG:ca

Encls.

Ministry of the Attorney General

Crown Law Office Civil Law

720 Bay Street 8th Floor Toronto ON M7A 2S9

Vanessa Glasser Tel/Tél: (416) 326-4576 Fax/Téléc.: (416) 326-4181

Vanessa.Glasser@Ontario.ca

Ministère du Procureur général

Bureau des avocats de la Couronne Droit civil

720 rue Bay 8^e étage Toronto ON M7A 2S9



DELIVERED BY FACSIMILE:

June 20, 2017

AIRD & BERLIS LLP

Barristers & Solicitors 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9

Attention: Sam Babe

Dear Mr. Babe:

Re: Bridging Finance Inc. v. Thomas Canning
In the Matter of an Application Pursuant to Subsections 47(1) and 243(1)
of the *Bankruptcy Act*Court File No. CV-17-11773-00CL

I am counsel representing the Ontario Farm Products Marketing Commission (the "Commission") and will be attending the hearing of this matter tomorrow, June 21, 2017. Enclosed is the Responding Record of the Commission and referenced exhibits.

The Commission received part of the Application Record of Bridging Finance Inc. on Thursday, June 15, 2017 after 10:00 pm. At the time Mr. Clark's affidavit was prepared it was not clear that we received the entirety of the record despite repeated requests for the complete copy. As a result, the Commission has addressed only the Applicant's materials received as of June 20, 2017. The Commission respectfully reserves its right to make further submissions to this Court upon review of a complete copy of the Applicant's materials.

As set out in the affidavit included with our materials, the Commission is concerned with some of the terms of the proposed forms of order. In particular, we disagree that the Canning License may be "transferred" to the prospective purchaser as

part of the transaction and terms that attempt to circumvent the regulatory function of the Commission and other tribunals, agencies, or commissions. It would be improper for the Court to grant any order in the circumstances without complete information about the Commission's interests.

Sincerely,

Vanessa Glasser

VG:ca Encl.

c.c. (See Service List)

ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

BETWEEN:

BRIDGING FINANCE INC., as agent for SPROTT BRIDGING INCOME FUND LP

Applicant

and

THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED

Respondents

IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

RESPONDING RECORD OF THE ONTARIO FARM PRODUCTS MARKETING COMMISSION

June 20, 2017

MINISTRY OF THE ATTORNEY GENERAL Crown Law Office - Civil 720 Bay Street, 8th Floor Toronto, ON M7A 2S9

D. Brent McPherson LSUC # 37214K

Vanessa Glasser LSUC # 58580C Tel (416) 326-4576 Fax: (416) 326-4181

Counsel for the Ontario Farm Products Marketing Commission

TO: (SEE SERVICE LIST ATTACHED)

ONTARIO | SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

BETWEEN:

BRIDGING FINANCE INC., as agent for SPROTT BRIDGING INCOME FUND LP

Applicant

and

THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED

Respondents

IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTIONS 47(1) AND 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

AFFIDAVIT OF JAMES CLARK (sworn June 20, 2017)

- I, JAMES CLARK, of Dutton, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:
- 1. I am the Chair of the Ontario Farm Products Marketing Commission (the "Commission"), a regulatory body established under the *Ministry of Agriculture*, *Food and Rural Affairs Act*.
- 2. I am advised by Mike Relf, Commission Secretary, that on June 15, 2017, Mr. Sam Rappos, counsel for Richter Advisory Group Inc. ("Richter"), attempted to serve the Commission with a copy of the motion record returnable June 21, 2017. In his c-mail, Mr. Rappos advised the recipients that the motion record would be served in three parts. On June 16, 2017, Mr. Relf contacted Mr. Rappos to advise him that the Commission had not received Part III of the motion record. Although Mr. Rappos has been responsive to Mr. Relf's request, at the

time of making this Affidavit, the Commission has not yet been served with copies of appendices "M" to "R" in Part III of the motion record. A copy of the e-mails exchanged with respect to service on the Commission of Part III of the motion record is attached as Exhibit "A" to this Affidavit.

FPMA Licensing Regime

- 3. The Commission performs a central role in the administration of the Farm Products Marketing Act ("FPMA") and supervises the local boards responsible for regulated marketing, including supply management, of agricultural products in Ontario.
- 4. As part of its statutory responsibilities, the Commission administers a food processor licensing program under the FPMA in accordance with Ontario Regulation 440 (Vegetables for Processing Marketing) ("Regulation 440". A copy of Regulation 440 is attached as Exhibit "B" to this Affidavit.
- 5. In accordance with section 3 of Regulation 440, a person must have a licence from the Commission before commencing or continuing to engage in the processing of vegetables and must comply with the terms and conditions of the licence. The respondent, Thomas Canning (Maidstone) Limited ("Thomas Canning"), currently holds a Commission issued processing licence (Licence No. 1994-18) (the "Canning Licence") with respect to the processing done at its Maidstone facility.
- 6. Section 4 of Regulation 440 provides that the Commission may refuse to grant a licence or may suspend or revoke a licence,
 - (a) where the applicant or licensee is not qualified by experience or equipment to properly engage in the business for which the application was made or the licence granted; or
 - (b) where the applicant or licensee has failed to comply with or has contravened the Act, the regulations, the plan or any order or direction of the Commission.
- 7. Section 5 of Regulation 440 authorizes the Commission to impose terms and conditions on a processor licence.
- 8. In the Ontario vegetable processing industry vegetable growers typically enter into contracts with processors such as Thomas Canning pursuant to which the processors agree to

purchase vegetables from the growers and commit to payment upon delivery. Vegetable growers have to put up significant costs and effort up front to produce their vegetables, and the above arrangements can leave growers in a vulnerable position should a processor be unwilling or unable to pay the growers upon delivery.

- 9. In part to provide a degree of protection to the growers, Section 7 of Regulation 440 authorizes the Commission to require a processor to furnish security or a performance bond. The amount of that security or performance bond shall not exceed 50 per cent of the price payable to producers for vegetables processed during the immediately preceding twelve-month period or proposed to be processed in the ensuing twelve-month period by the processor.
- 10. In accordance with section 3 of the FPMA, the Commission may do such acts, make such orders, and issue such directions as are necessary to enforce the due observance and carrying out of the provisions of this Act, the regulations or any plan.

The Canning Licence

- 11. On April 13, 2017, upon consideration of concerns raised by the Ontario Processing Vegetable Growers ("OPVG"), which is the local board that represents growers of vegetables for processing, that Thomas Canning had contracted with growers for delivery of tomatoes in 2016 and then declined to arrange for harvest and delivery of those tomatoes resulting in significant financial losses to those growers, the Commission issued an order to Thomas Canning ("Order") that:
 - (a) added terms and conditions to the Canning Licence requiring Thomas Canning to:
 - submit a business plan that demonstrated how it would meet its 2017 commitments;
 - ii. make a financial settlement with growers for tomatoes not received or paid for in 2016; and
 - iii. comply with the business plan
 - (b) required Thomas Canning to put in place an irrevocable standby letter of credit in the amount of \$2.6 million to be forfeited if it failed to comply with or contravened any term or condition of the licence.

The Order required that the business plan and letter of credit be in place by May 1, 2017. A copy of the OPVG's letter to the Commission dated March 21, 2017 is attached as Exhibit "C" to this Affidavit. A copy of the Order is attached as Exhibit "D" to this Affidavit.

- 12. The Commission's intent in issuing the Order was twofold. First, because the Commission had been advised by OPVG that Thomas Canning had defaulted on contractual commitments in 2016, the Commission wanted to ensure that there was adequate security in place for growers choosing to contract with Thomas Canning in 2017. As noted above, in the vegetables for processing industry, growers must invest a considerable amount of money and effort up front and I and the other Commission members who approved the Order wanted to ensure that Thomas Canning complied with its obligations to the growers under Regulation 440. Second, the Commission wanted to ensure that Thomas Canning made a financial settlement with the 14 growers that had fulfilled their contractual commitments to Thomas Canning in the 2016 growing season and who were not paid for their efforts. Nine of these growers have initiated legal action against Thomas Canning seeking damages in the amount of \$2.85 million.
- 13. The Commission gave Thomas Canning until April 24, 2017 to make any written submissions that it wanted the Commission to consider before the Order took effect on May 1, 2017.
- 14. On April 21, 2017, Elmer Buchanan, OPVG's trustee, advised me verbally that he had heard that Thomas Canning was "in receivership".
- 15. On April 24, 2017, Mike Relf, Commission Secretary and Michele Ireland, Commission legal counsel, spoke by telephone to Mr. David Ullmann and Ms. Alexandra Teodorescu at Blaney, McMurtry LLP, counsel for Thomas Canning. I am advised by Mr. Relf and Ms. Ireland, that they asked Mr. Ullman directly whether Thomas Canning was in receivership and that Mr. Ullmann's response was that the "doors were still open".
- 16. On April 24, 2017, subsequent to the phone call referred to above, the Commission received a submission from Blaney, McMurtry LLP on behalf of Thomas Canning. The submission asked the Commission to:

- (a) suspend its Order pending an opportunity to make oral submissions with respect to the terms set out in the Order and the potential revocation of Thomas Canning's processor licence;
- (b) extend the deadline to July 7, 2017 to submit the business plan and furnish security; and
- (c) amend the amount of requested security.

The submission did not disclose any information about a court order made on April 20, 2017 appointing Richter Advisory Group Inc. ("Richter") as an interim receiver for Thomas Canning.

- 17. On April 27, 2017, in good faith reliance upon the April 24, 2017 submissions, the Commission granted Thomas Canning's request for an oral hearing and to suspend the Order pending the outcome of the hearing.
- 18. On April 29, 2017, based on an internet search, the Commission learned that Richter had been appointed as an interim receiver for Thomas Canning on April 20, 2017. The Report of the Interim Receiver dated April 28, 2017 provides that that Mr. Ullmann was advised on April 20, 2017 that the court had appointed an interim receiver for Thomas Canning (see paragraphs 12 and 13). Information about the appointment of an interim receiver would have been a relevant consideration for the Commission's April 27, 2017 decision to grant Thomas Canning's request for an oral hearing and to suspend its Order.
- 19. On May 1, 2017, the Commission became aware that Richter had been discharged as interim receiver but was subsequently appointed as Thomas Canning's financial monitor. The Commission continued with its hearing process on the understanding that the court order appointing the monitor did not prevent the Commission from doing so.
- 20. On May 11, 2017, the Commission held a pre-hearing teleconference to decide procedural matters for its hearing. Representatives for Thomas Canning, Bridging Finance Inc., Richter, OPVG, the 2016 growers and Agricorp attended the pre-hearing conference. Valerie Gilvesy, a fellow Commission member chaired the pre-hearing conference.
 - 21. I am advised by Ms. Gilvesy and the pre-hearing conference notes reflect that:
 - (a) during the pre-hearing teleconference, Thomas Canning requested that the Commission hold the hearing at the end of June to allow time for negotiations to

- conclude with respect to Thomas Canning's financial circumstances and possible opportunities to refinancing;
- (b) Bridging Finance Inc. reserved the right to seek to enforce a stay of the Commission's proceeding in accordance with the May 1, 2017 court order should the Commission set a hearing date earlier than late June 2017;
- (c) Bridging Finance Inc. asked the Commission to commit to providing a processing licence to a prospective purchaser of the Thomas Canning business; and
- (d) the Commission invited the parties to make brief written submissions outlining the financial assurances they were prepared to offer 2017 growers contracting with Thomas Canning should the hearing date be moved to June.

A copy of the pre-hearing conference notes is attached as Exhibit "E" to this Affidavit.

- 22. On May 18, 2017, the Commission issued a decision with respect to the hearing date. A copy of the Commission's May 18, 2017 decision ("May 18th Decision") is attached as Exhibit "F" to this Affidavit.
 - 23. The key aspects of the May 18th Decision are that:
 - (a) growers contracting with Thomas Canning for the 2017 crop year will agree on appropriate financial security to protect them in the event of a breach of contract by Thomas Canning; and
 - (b) one week in advance of the hearing (i.e. June 21, 2017), Thomas Canning will submit its business plan for making settlement with all growers for tomatoes not received or paid for in 2016.
- 24. In response to the inquiry of Bridging Finance Inc. regarding whether the Commission would grant a licence to a purchaser of the Thomas Canning business, the May 18th Order provides: "A vegetable processing license issued by the Commission is not transferable. In the event that Thomas Canning's business is sold to a new entity, that entity may apply to the Commission for a processing licence. The Commission's licensing criteria is set out in Regulation 440."

25. At the request of Thomas Canning, Bridging Finance Inc., and Richter, the Commission scheduled a licensing hearing with respect to the terms of the Order for June 28, 2017. A copy of the Commission's Notice of Hearing is attached as Exhibit "G" to this affidavit.

The Commission's Concerns with the Application and Motion

- 26. As a regulatory body, the Commission serves the public interest in the administration of the legislative authorities that underpin the regulated marketing of agricultural products in Ontario. The Commission has concerns with respect to the Application and Motion Record returnable on June 21, 2017 and the proposed orders filed by Bridging Finance Inc., as set out below.
- 27. Schedule B "Purchased Assets" set out in the Applicant's materials includes the Canning Licence in the definition of "Purchased Assets", and the intent appears to be that the purchaser will simply continue Thomas Canning's business under the Canning Licence. It is the Commission's position that processor licences (and in particular the Canning Licence) are not transferable. Accordingly, the following items/paragraphs should be struck from the Applicant's materials:
 - (a) Paragraph (c) of Schedule B;
 - (b) paragraph 31 of the Order Appointing a Receiver; and
 - (c) paragraph 9 of the Approval and Vesting Order;
- 28. If the purchaser wishes to operate Thomas Canning's processing facility, it will need to apply to the Commission for a processing licence and meet all applicable licensing criteria, and the Commission will have the ability, pursuant to its regulatory authority, to impose such terms and conditions on the licence as it sees fit.
- 29. In the alternative, even if the Court had jurisdiction to determine that the Canning Licence can and should be transferred to the purchaser as part of the proposed sale transaction, the proposed orders should make it clear that such transfer will carry with it all terms and conditions which presently attach to the Canning Licence, including the requirement for a plan for financial settlement with the unpaid growers that contracted with Thomas Canning in 2016 and for the posting of security as provided for in the Order and the May 18th Decision. The Commission is not aware of any plans by either Thomas Canning or the prospective purchaser in

this regard. Further, the Commission would not be in a position to either issue a new licence or support a transfer until it was satisfied that the purchaser meets the licensing criteria in Regulation 440.

- 30. I am advised by the Chair of the Ontario Tomato Seedling Growers Marketing Board, Mr. Dave Dick, that their board has not yet invoiced processors for 2017 licence fees and that at least one seedling grower has not been paid by Thomas Canning for seedlings produced for a Thomas Canning grower for the 2017 season. As noted above, the nature of the vegetables for processing industry is such that growers are required to make considerable financial expenditures up front. It would be an unjust result if the purchase transaction does not include measures to ensure that Thomas Canning's 2017 tomato seedling growers and tomato growers are fully compensated financially for their efforts.
- 31. The concerns that I have set out in my Affidavit are shared, in part, by OPVG. I have received a letter from Geoff Spurr, legal counsel to OPVG, dated June 19, 2017 setting out OPVG's submissions with respect to the proposed purchase transaction. A copy of the OPVG's letter is attached as Exhibit "H" to this Affidavit.
- 32. I make this Affidavit for the purpose of bringing to the Court's attention matters that should be addressed by this Honourable Court in considering the proposed relief sought in the application and motion of Bridging Finance Inc., and for no other or improper purpose whatsoever.

SWORN before me at the City of Guelph, Province of Ontario, this 20th day of June, 2017.

Commission of Oaths, etc.

James Clark

This	is Exhibit "	<i>i</i>)	." referre	d to in the
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swor	n/affirmed	before m	e this	30 4
day	of JUL	Ę		20
1	Mudil	MILL	nd	*****
A C	OMMISSION	ER FOR	AKING A	FFIDAVITS

From:

(reland, Michele (OMAFRA)

To:

"Sam P, Rappos"

Cct

Relf, Mike (OMAFRA)

Subject:

RE: Document 3 of 3? e: Bridging Finance Inc. v. Thomas Canning (Maidstone) Limited et al, Court File No. CV-17-11773-00CL - Motion returnable June 21, 2017

Date:

Tuesday, June 20, 2017 10:13:00 AM

Hi Sam,

Confirming receipt of your e-mail which contains appendices "I" to "L". Looks like we still need appendices "M" to "R".

Thanks,

Michele

----Original Message----

From: Sam P. Rappos [mailto:samr@chaitons.com]

Sent: Tuesday, June 20, 2017 9:07 AM

To: Relf, Mike (OMAFRA); Ireland, Michele (OMAFRA)

Subject: RE: Document 3 of 3? e: Bridging Finance Inc. v. Thomas Canning (Maidstone) Limited et al,

Court File No. CV-17-11773-00CL - Motion returnable June 21, 2017

Please confirm receipt of this e-mail.

Sam P. Rappos

Lawyer | Chaitons LLP | T: 416.218.1137

----Original Message-----

From: Relf, Mike (OMAFRA) [mailto:mike.relf@ontario.ca]

Sent: Monday, June 19, 2017 6:37 PM

To: Ireland, Michele (OMAFRA); Sam P. Rappos

Subject: Re: Document 3 of 3? e: Bridging Finance Inc. v. Thomas Canning (Maidstone) Limited et al,

Court File No. CV-17-11773-00CL - Motion returnable June 21, 2017

It did not arrive in mine either...

Mike

From: Ireland, Michele (OMAFRA) Sent: Monday, June 19, 2017 18:28

To: Sam P. Rappos

Cc: Relf, Mike (OMAFRA)

Subject: RE: Document 3 of 3? e: Bridging Finance Inc. v. Thomas Canning (Maidstone) Limited et al,

Court File No. CV-17-11773-00CL - Motion returnable June 21, 2017

Thanks - It didn't make it to my inbox. I'll follow up with Mike to make sure we got it.

From: Sam P. Rappos [mailto:samr@chaitons.com]

Sent: Monday, June 19, 2017 6:26 PM

To: Ireland, Michele (OMAFRA)

Cc: Relf, Mike (OMAFRA)

Subject: Re: Document 3 of 3? e: Bridging Finance Inc. v. Thomas Canning (Maidstone) Limited et al,

Court File No. CV-17-11773-00CL - Motion returnable June 21, 2017

I sent you part III at 136 pm.

On Jun 19, 2017, at 6:23 PM, Ireland, Michele (OMAFRA) <Michele.Ireland@ontario.ca<mailto:Michele.Ireland@ontario.ca>> wrote: Hi Sam,

I'm not sure that draft order was Part III. I was thinking Part III would be more substantial based on the content of the other materials.

If you have a moment, could I ask you to please re-send Part III? Apologies if we missed it on our end.

Thanks,

Michele

Sam P. Rappos

Lawyer

Chaitons LLP

T: 416.218,1137

From: Relf, Mike (OMAFRA)

Sent: Monday, June 19, 2017 1:34 PM

To: Sam P. Rappos; Ireland, Michele (OMAFRA)

Subject: RE: Document 3 of 3? e: Bridging Finance Inc. v. Thomas Canning (Maidstone) Limited et al,

Court File No. CV-17-11773-00CL - Motion returnable June 21, 2017

Is this the document you are referring to?

Regards,

Mike

From: Sam P. Rappos [mailto:samr@chaitons.com]

Sent: Monday, June 19, 2017 1:00 PM

To: Ireland, Michele (OMAFRA)

Cc: Relf, Mike (OMAFRA)

Subject: Re: Document 3 of 3? e: Bridging Finance Inc. v. Thomas Canning (Maidstone) Limited et al, Court File No. CV-17-11773-00CL - Motion returnable June 21, 2017

I re-sent it to Mike. Did he not receive it? I never got a bounce back.

On Jun 19, 2017, at 12:56 PM, Ireland, Michele (OMAFRA)
<Michele Ireland@ontario.ca < mailto: Michele Ireland@ontario.ca >> wrote:
Good afternoon Mr. Rappos,

I am following up on the e-mail from Mike Relf below. The Commission has not yet received Part III of III of the of the motion record. We would appreciate receiving a copy of the outstanding materials as soon as possible.

Thank you,

Michele Ireland | Counsel

Legal Services Branch | OMAFRA | Office: 519.826.4521 | Blackberry: 519.830.5781 | Email:

michele.ireland@ontario.ca < mailto:michele.ireland@ontario.ca >

This message is intended for the named recipient/s only and it may contain information that is privileged or confidential. If you received it and are not an intended recipient, please notify me immediately and delete the message.

Sam P. Rappos

Lawyer

Chaitons LLP

T: 416.218.1137

From: Relf, Mike (OMAFRA) <mike.relf@ontario.ca<mailto:mike.relf@ontario.ca>>

Sent: Friday, June 16, 2017 12:43

To: Sam P. Rappos

Subject: Document 3 of 3? e. Bridging Finance Inc. v. Thomas Canning (Maidstone) Limited et al, Court

File No. CV-17-11773-00CL - Motion returnable June 21, 2017

Good afternoon,

We have received documents 1 and 2 out of 3 documents. Should we be expecting the third document.

Regards,

Mike

From: Sam P. Rappos

Sent: Friday, June 16, 2017 10:18

To: 'Sam Babe'; 'Lonergan, Clark'; Forbes, Katherine; Mahmood, Wajahat; David T. Ullmann; 'Timothy

Dunn'; 'neil@neilboykolaw.com<mailto;neil@neilboykolaw.com>';

bobthomas67@hotmail.ca<mailto:bobthomas67@hotmail.ca>; William Thomas;

'diane.winters@justice.gc.ca<mailto:diane.winters@justice.gc.ca>'; O'Hara, Kevin (MOF); Relf, Mike

(OMAFRA); 'bleil@spencerbutcher.com<mailto;bleil@spencerbutcher.com>'; 'John Goudy';

gspurr@wilsonspurrlaw.ca<<u>mailto:gspurr@wilsonspurrlaw.ca</u>>'; 'dvd5@bell.net<<u>mailto:dvd5@bell.ne</u>t>';

'kevin.mccormack@agricorp.com<mailto:kevin.mccormack@agricorp.com>';

'service@ctscoxons.com<mailto:service@ctscoxons.com>'; Meredith, Greg (OMAFRA); Borovilos, George

(OMAFRA)

Subject: RE: Bridging Finance Inc. v. Thomas Canning (Maidstone) Limited et al, Court File No. CV-17-

11773-00CL - Motion returnable June 21, 2017

Please find attached a draft copy of the Order that will be sought in connection with the motion to be heard on June 21, 2017.

Regards,

Sam Rappos

Sam P. Rappos

Lawyer

Chaitons LLP

T: 416.218.1137

From: Sam P. Rappos

Sent: Thursday, June 15, 2017 10:11 PM

To: 'Sam Babe'; 'Lonergan, Clark'; Forbes, Katherine; Mahmood, Wajahat; David T. Ullmann; 'Tirnothy

Dunn'; 'neil@neilboykolaw.com<mailto:neil@neilboykolaw.com>';

bobthomas67@hotmail.ca<mailto:bobthomas67@hotmail.ca>; William Thomas;

'thomascanning@mnsi.net<<u>mailto:thomascanning@mnsi.net</u>>';

'diane, winters@justice.gc.ca < mailto:diane, winters@justice.gc.ca > ';

'kevin.ohara@ontario.ca < mailto:kevin.ohara@ontario.ca > ';

'mike.relf@ontario.ca < mailto: mike.relf@ontario.ca > ';

'bleil@spencerbutcher.com<mailto:bleil@spencerbutcher.com>'; 'John Goudy';

'gspurr@wilsonspurrlaw.ca<mailto:gspurr@wilsonspurrlaw.ca>'; 'dvd5@bell.net<mailto:dvd5@bell.net>';

'kevin.mccormack@agricorp.com<mailto:kevin.mccormack@agricorp.com>';

'service@ctscoxons.com<mailto:service@ctscoxons.com>';

'greg.meredith@ontario.ca<mailto:greg.meredith@ontario.ca>';

'george.borovilos@ontario.ca<mailto:george.borovilos@ontario.ca>'

Cc: Lynn Lee

Subject: Bridging Finance Inc. v. Thomas Canning (Maidstone) Limited et al, Court File No. CV-17-

11773-00CL - Motion returnable June 21, 2017

Importance: High

PART I OF III

We are the lawyers for Richter Advisory Group Inc. in its capacities as the Court-appointed Interim Receiver and Monitor of the property, assets and undertakings of Thomas Canning (Maidstone) Limited and 692194 Ontario Limited in the above-noted proceeding.

Please be advised that the Interim Receiver and Monitor is bringing a motion returnable June 21, 2017 seeking an order:

- approving the fees and disbursements of the Interim Receiver and its counsel; (a)
- approving the Statement of Receipts and Disbursements of the Interim Receiver; (b)
- authorizing the Interim Receiver to pay the monies currently in its hands, and any and all monies received by the Interim Receiver after the date hereof, to the Applicant;

- (d) upon the Interim Receiver filing a discharge certificate with the Court, terminating the interim receivership proceeding and other ancillary relief;
- (e) approving the Report of the Interim Receiver and the Monitor dated June 15, 2017, and the activities of the Interim Receiver and the Monitor described therein;
- (f) approving the fees and disbursements of the Monitor and its counsel; and
- (g) upon the Monitor filing a discharge certificate with the Court, terminating the monitorship proceeding, discharging and releasing the Monitor, and other ancillary relief.

Please find attached a copy of the motion record returnable June 21, 2017, which is hereby served upon you pursuant to the Rules of Civil Procedure and the E-Service Protocol of the Commercial List approved in these proceedings.

The motion record will be served in three parts.

Regards,

Sam Rappos

Sam P. Rappos

Lawyer

Direct Tel: 416.218.1137

Direct Fax: 416.218.1837

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Farm Products Marketing Act

R.R.O. 1990, REGULATION 440 VEGETABLES FOR PROCESSING — MARKETING

Consolidation Period: From October 15, 2015 to the e-Laws currency date.

Last amendment: O. Reg. 309/15.

This is the English version of a bilingual regulation.

1. (1) In this Regulation,

"Association" means the Ontario Fruit and Vegetable Processors' Association; ("Association")

"green shipper" means any person who buys or acquires cucumbers or peppers from producers for the purpose of selling them to processors, and who may, before selling the cucumbers or peppers to a processor.

- (a) clean and separate them,
- (b) in the case of cucumbers, brine them to extend their storage life,
- (c) inspect them, or
- (d) sort them by size, grade, class or variety; ("expéditeur vert")

"local board" means Ontario Processing Vegetable Growers; ("commission locale")

"plan" means The Ontario Vegetable Growers' Marketing-for-Processing Plan; ("plan")

"processing" means,

- (a) canning, dehydrating, drying, freezing, pickling or processing with sugar or sulphur dioxide or any other chemical or by heat, and combining or mixing a vegetable with one or more other vegetables,
- (b) entering into a contract for the purchase of vegetables for the purpose of performing on the vegetables any of the operations mentioned in clause (a), or
- (c) entering into a contract for the purpose of having any of the operations mentioned in clause (a) performed on vegetables; ("transformation")

"processor" means a person engaged in the business of processing vegetables; ("transformateur")

"producer" means a person engaged in the production of vegetables; ("producteur")

"vegetables" means the following vegetables produced in Ontario and used for processing:

green and wax beans, lima beans, red beets, cabbage other than cabbage used for coleslaw, carrots, cauliflower, sweet corn, cucumbers, Spanish-type onions used for onion rings, green peas, peppers, pumpkin and squash or tomatoes. ("légumes") R.R.O. 1990, Reg. 440, s. 1; O. Reg. 554/99, s. 1 (1); O. Reg. 247/04, s. 1; O. Reg. 424/11, s. 1 (1); O. Reg. 193/13, s. 1; O. Reg. 250/14, s. 1.

- (2) A person who brines cucumbers to extend their storage life so they may be sold for processing, but who does not do to cucumbers anything else described in the definition of "processing" in subsection (1), is not considered to be a processor of cucumbers for the purposes of this Regulation. O. Reg. 554/99, s. 1 (2).
 - (3) If a person is both a processor and a green shipper of cucumbers,
 - (a) the person is deemed not to be a green shipper of cucumbers for the purposes of this Regulation; and
 - (b) all purchases or sales of cucumbers carried out by the person, whether for processing or green shipping purposes, shall be deemed to be purchases or sales carried out by a processor for the purposes of this Regulation. O. Reg. 424/11, s. I (2).
 - (4) If a person is both a processor and a green shipper of peppers,
 - (a) the person is deemed not to be a green shipper of peppers for the purposes of this Regulation; and
 - (b) all purchases or sales of peppers carried out by the person, whether for processing or green shipping purposes, shall be deemed to be purchases or sales carried out by a processor for the purposes of this Regulation. O. Reg. 424/11, s. I (2).

2. This Regulation provides for the control and regulation in any or all respects of the producing and marketing within Ontario of vegetables, including the prohibition of such producing and marketing in whole or in part. R.R.O. 1990, Reg. 440, s. 2

LICENCES

- 3. (1) No person shall commence or continue to engage in the processing of vegetables except under the authority of a licence from the Commission and except in compliance with the terms and conditions of the licence. R.R.O. 1990, Reg. 440, s. 3. (1).
 - (2) A licence expires on the date set out in the licence as the expiry date. O. Reg. 811/93, s. 1.
- (2.1) If any expiry date is not set out in a licence, the licence expires when the licensee ceases to engage in the processing of vegetables. O. Reg. 811/93, s. 1.
- (3) Where the Commission issues a licence to a processor, the Commission shall not charge a licence fee to the processor. R.R.O. 1990, Reg. 440, s. 3 (3).
 - 4. The Commission may refuse to grant a licence or may suspend or revoke a licence,
 - (a) where the applicant or licensee is not qualified by experience or equipment to properly engage in the business for which the application was made or the licence granted; or
 - (b) where the applicant or licensee has failed to comply with or has contravened the Act, the regulations, the plan or any order or direction of the Commission, R.R.O. 1990, Reg. 440, s. 4; O. Reg. 167/92, s. 1; O. Reg. 811/93, s. 2.
- 5. The Commission may impose such terms and conditions upon a licence as the Commission considers proper. R.R.O. 1990, Reg. 440, s. 5.
- 6. Where, after a hearing, the Commission is of the opinion that the applicant or licensee has failed to comply with or has contravened any term or condition of the licence or the Act, the regulations, the plan or any order or direction of the Commission, the Commission may impose a penalty on the applicant or licensee. R.R.O. 1990, Reg. 440, s. 6.
- 7. (1) The Commission may require that a processor furnish security or a performance bond that shall not exceed 50 per cent of the price payable to producers for vegetables processed during the immediately preceding twelve-month period or proposed to be processed in the ensuring twelve-month period by the processor. O. Reg. 811/93, s. 3; O. Reg. 424/11, s. 2 (1).
- (2) The Commission may determine that the security or performance bond is forfeited when the processor who furnished the security or bond fails to comply with or contravenes any term or condition of the processor's licence or the Act, the regulations, the plan or any order or direction of the Commission. O. Reg. 811/93, s. 3; O. Reg. 424/11, s. 2 (2).
- 8. (1) If a penalty is imposed under section 6 or security or a performance bond is forfeited under subsection 7 (2), the Commission shall pay the penalty or the proceeds of the security or performance bond to the local board for distribution proportionately among the producers of vegetables who sold vegetables to the processor and who did not receive the minimum price for the vegetables, to the extent of the money owing to them. O. Reg. 811/93, s. 3; O. Reg. 424/11, s. 3.
- (2) If there are no producers as described in subsection (1) or if there is an excess balance of penalty or proceeds, the Commission shall pay the penalty, proceeds or excess balance into the Consolidated Revenue Fund. O. Reg. 811/93, s. 3.

POWERS OF LOCAL BOARD

- 9. The Commission delegates to the local board the power,
- (a) to require persons engaged in producing or marketing vegetables to register their names, addresses and occupations with the local board;
- (b) to require persons engaged in producing or marketing vegetables to furnish such information relating to the production or marketing of vegetables, including the completing and filing of returns, as the local board determines:
- (c) to appoint persons to inspect the books, records, documents, lands and premises and any vegetables of persons engaged in producing or marketing vegetables;
- (d) to appoint persons to enter on lands or premises used for the producing of vegetables and measure the area of land used to produce vegetables;
- (e) to stimulate, increase and improve the marketing of vegetables by such means as it considers proper;
- (f) to co-operate with a marketing board, local board, marketing commission or marketing agency of Canada or of any province in Canada for the purpose of marketing vegetables; and
- (g) to do such acts and make such orders and issue such directions as are necessary to enforce the due observance and carrying out of the Act, the regulations and the plan. R.R.O. 1990, Reg. 440, s. 9.
- 10. The Commission delegates to the local board its powers to make regulations with respect to vegetables,

- (a) providing for the licensing of any or all persons before commencing or continuing to engage in the producing or marketing of vegetables;
- (b) prescribing or providing for classes of licences and the imposition of terms and conditions on any class of licence;
- (c) prohibiting persons from engaging in the producing or marketing of vegetables except under the authority of a licence and except in compliance with the terms and conditions of the licence;
- (d) providing for the refusal to grant or renew a licence or for the suspension or revocation of a licence,
 - (i) where the applicant or licensee is not qualified by experience, financial responsibility or equipment to properly engage in the business for which the application was made or the licence granted, or
 - (ii) where the applicant or licensee has failed to comply with or has contravened the Act, the regulations, the plan or any order or direction of the Commission, Director or local board or of a marketing agency of Canada;
- (e) providing for the imposition, amount, disposition and use of penalties where, after a hearing, the local board is of the opinion that the applicant or licensee has failed to comply with or has contravened any term or condition of the licence or the Act or the regulations, the plan or any order or direction of the local board;
- (f) providing for the fixing of licence fees and the payment thereof by any or all persons who are engaged in the producing or marketing of vegetables and the collecting of the licence fees and their recovery by suit in a court of competent jurisdiction;
- (g) prescribing the form of licences;
- (g.1) providing for the exemption from any or all of the regulations, orders or directions under the plan of any class, variety, grade or size of vegetables, or any person or class of persons engaged in the producing or marketing of vegetables or any class, variety, grade or size of vegetables;
- (h) authorizing the fixing of prompt payment discounts, delayed payment penalties and interest on licence fees and service charges owing by any producer or processor or by any person engaged in the marketing of vegetables;
- (i) providing for the control and regulation of the producing or marketing of vegetables, including the times and places at which vegetables may be produced or marketed;
- providing for the control and regulation of agreements entered into by producers of vegetables with persons engaged in marketing or processing vegetables and the prohibition of any provision or clause in such agreements;
- (k) requiring any person who produces and processes vegetables to furnish to the local board statements of the amounts of vegetables that he produced in any year and used for processing;
- requiring that no charges, costs or expenses relating to the production or marketing of a vegetable shall be made other than such charges, costs or expenses as are provided in the agreement or award or renegotiated agreement or award in force for the marketing of the vegetable;
- (m) requiring any person who produces vegetables to offer to sell and to sell the vegetables through the local board;
- (n) prohibiting any person from processing, packing or packaging any vegetables that have not been sold by or through the local board;
- (o) requiring any person who receives vegetables to deduct from the money payable for the vegetables, any licence fees payable to the local board by the person from whom the vegetables are received, and to forward the licence fees to the local board; and
- (p) requiring and providing for the furnishing of security or proof of financial responsibility or of a performance bond by persons engaged as green shippers in the marketing of cucumbers or peppers and providing for the administration, forfeiture and disposition of any money or securities so furnished and the proceeds therefrom. R.R.O. 1990, Reg. 440, s. 10; O. Reg. 27/93, s. 1; O. Reg. 554/99, s. 2; O. Reg. 424/11 s. 4; O. Reg. 18/13, s. 1.
- 11. The local board may impose such terms and conditions upon a licence as the local board considers proper. R.R.O. 1990, Reg. 440, s. 11.
- 12. The Commission limits the powers of the local board under clause 10 (j) to matters that are not inconsistent with terms, conditions and forms of agreement settled under clause 18 (b) by a negotiating agency or awarded under subsection 21 (10) by an arbitration board. R.R.O. 1990, Reg. 440, s. 12; O. Reg. 177/91, s. 1.
- 13. (1) The Commission authorizes the local board to use any class of licence fees, service charges and other money payable to it, for the purposes of paying the expenses of the local board, carrying out and enforcing the Act and the regulations and carrying out the purposes of the plan. R.R.O. 1990, Reg. 440, s. 13 (1).
- (2) The Commission authorizes the local board to establish a fund in connection with the plan for the payment of any money that may be required for the purposes mentioned in subsection (1). R.R.O. 1990, Reg. 440, s. 13 (2).
- 14. The Commission authorizes the local board to require the price or prices payable or owing to the producers for vegetables to be paid to or through the local board. R.R.O. 1990, Reg. 440, s. 14.

15. The Commission authorizes the local board to prohibit the marketing locally within Ontario of any class, variety, grade or size of vegetables. R.R.O. 1990, Reg. 440, s. 15.

FUND

- 15.1 The local board shall establish a fund with the money transferred to it under Ontario Regulation 672/92 and shall administer the fund in accordance with the following terms:
 - 1. The capital may be invested in securities referred to in section 26 of the *Trustee Act*, other than first mortgages, charges or hypothecs upon real estate in Canada.
 - 2. The capital of the fund shall not be spent.
 - 3. The income of the fund may be spent for purposes of research, market development and education relating to vegetables.
 - 4. The fund shall be audited annually and the auditor's report shall be submitted to the Commission as part of the audit of the accounts of the local board. O. Reg. 673/92, s. 1.

NEGOTIATING AGENCIES

- 15.2 Every year, negotiating agencies shall be established in accordance with this Regulation to adopt or settle the following matters by agreement:
 - 1. Minimum prices for vegetables, including any class, variety, grade or size of vegetables.
 - 2. Terms, conditions and forms of agreements relating to the producing and marketing of vegetables.
 - 3. Any charges, costs or expenses relating to the production or marketing of vegetables. O. Reg. 424/11, s. 5.
 - 15.3 (1) For the purposes of adopting or settling by agreement matters described in section 15.2, every year,
 - (a) there shall be at least one round of negotiations conducted in accordance with sections 16 to 16.2; and
 - (b) there may be a second round of negotiations conducted in accordance with sections 17 and 18 and an additional round of negotiations conducted in accordance with section 19. O. Reg. 424/11, s. 5.
 - (2) Negotiating agencies shall be established for the purposes of each round of negotiations in the following manner:
 - 1. The Association and the local board shall establish negotiating agencies for the purposes of the first round of negotiations in accordance with sections 16 and 16.1.
 - 2. Negotiating agencies are constituted for the purposes of the second round of negotiations under section 17 and any additional round of negotiations under section 19. O. Reg. 424/11, s. 5.
 - 15.4 (1) A negotiating agency for a vegetable shall be composed of the following parties:
 - 1. The local board.
 - 2. Every processor or green shipper of the vegetable that,
 - i. has been appointed by the Association under section 16 or by the local board under section 16.1 as a party to the negotiating agency for the purposes of the first round of negotiations, or
 - ii. is constituted as a party to the negotiating agency under section 17 or 19 for the purposes of the second round of negotiations or an additional round of negotiations. O. Reg. 424/11, s. 5.
- (2) Subject to subsection (12), the parties to a negotiating agency shall appoint members to the agency who shall negotiate the matters described in section 15.2 on behalf of the parties. O. Reg. 424/11, s. 5.
 - (3) There shall be no more than 20 members of each negotiating agency and the members shall be appointed as follows:
 - 1. A maximum of 10 individuals shall be appointed by the local board.
 - 2. A maximum of 10 individuals shall be appointed either,
 - i. by the processor or green shipper, if only one processor or green shipper is a party to the agency, or
 - ii. jointly by the processors, if any, who are parties to the agency and the green shippers, if any, who are parties to the agency. O. Reg. 424/11, s. 5.
- (4) The members of a negotiating agency shall be appointed within the time frame required for each round of negotiations under subsection 16.2 (1), 18 (1) or 19 (4), as the case may be. O. Reg. 424/11, s. 5.
- (5) The parties who appoint the members to a negotiating agency shall give the Commission written notice of the appointments within the time frames referred to in subsection (4) and the notice shall include, for each appointee,
 - (a) his or her name; and

- (b) his or her business address and phone number or, if there is no business address and phone number, his or her personal address and phone number. O. Reg. 424/11, s. 5.
- (6) If members are appointed jointly to a negotiating agency under subparagraph 2 ii of subsection (3), the notice requirements in subsection (5) are met if notice is given jointly by the processors, if any, who are parties to the agency and the green shippers, if any, who are parties to the agency. O. Reg. 424/11, s. 5.
- (7) If the local board or the other parties to a negotiating agency fail to appoint members to the agency or to give the Commission notice of the appointments within the time frame referred to in subsection (4), the Commission shall appoint such members as it deems appropriate to represent the local board or the other parties, as the case may be. O. Reg. 424/11, s. 5.
- (8) The members of a negotiating agency appointed under this section shall be individuals and shall not be corporations or other entities. O. Reg. 424/11, s. 5.
- (9) A member of a negotiating agency appointed under this section shall hold office from the time of his or her appointment until the earlier of,
 - (a) the day a successor is appointed; or
 - (b) January 15 of the year following the year in respect of which he or she was appointed. O. Reg. 424/11, s. 5.
- (10) If a member appointed to a negotiating agency becomes unable or unwilling to act before negotiations end under subsection 16.2 (2), 18 (5) or 19 (6), as the case may be, the party or parties who appointed the member under subsection (3) shall, no later than the seventh day after the vacancy arises,
 - (a) appoint an individual as a replacement; and
 - (b) give written notice to the Commission of,
 - (i) the replacement's name, and
 - (ii) the replacement's business address and phone number or, if he or she does not have a business address and phone number, his or her personal address and phone number. O. Reg. 424/11, s. 5.
- (11) If the Commission does not receive notice of a replacement within the time specified under subsection (10), the Commission may appoint the replacement. O. Reg. 424/11, s. 5.
- (12) The parties to a negotiating agency constituted for the purposes of the second round of negotiations are not required to appoint members to the agency if they opt not to negotiate their own agreement under subsection 17 (3). O, Reg. 424/11, s. 5.

FIRST ROUND OF NEGOTIATIONS

- 16. (1) For the purpose of the first round of negotiations of agreements relating to the producing and marketing of vegetables in any given year, the Association may establish the following number of negotiating agencies on or before the date specified in subsection (5):
 - 1. One negotiating agency for each vegetable, subject to paragraphs 2 and 3.
 - 2. A maximum of two negotiating agencies for cauliflowers and for peppers.
 - 3. A maximum of three negotiating agencies for tomatoes. O. Reg. 424/11, s. 6.
- (2) In establishing a negotiating agency for a vegetable, the Association shall determine which processors and green shippers of the vegetable to appoint as parties to the agency. O. Reg. 424/11, s. 6.
 - The Association may appoint as parties to a negotiating agency,
 - (a) in the case of a negotiating agency for a vegetable other than cucumbers or peppers, one or more processors of the vegetable; and
 - (b) in the case of a negotiating agency for cucumbers or peppers,
 - (i) one or more processors, but no green shippers,
 - (ii) one or more green shippers, but no processors, or
 - (iii) a combination of one or more processors and one or more green shippers of the vegetable. O. Reg. 424/11, s. 6.
 - (4) On or before the date specified in subsection (5) in any given year, the Association shall,
 - (a) give the local board and the Commission written notice of every negotiating agency that it has established for the year, together with the name and business address and phone number of each processor and green shipper that it has appointed as a party to the agency; and

- (b) give written notice of their appointment to each processor and green shipper appointed as a party to a negotiating agency in the year, together with the name and business address and phone number of any other processor and green shipper appointed as a party to the same negotiating agency. O. Reg. 424/11, s. 6.
- (5) The Association shall establish negotiating agencies under this section and give the notices required under subsection (4),
 - (a) in the case of a negotiating agency established for cucumbers, on or before October 1 of any given year; and
 - (b) in the case of any other negotiating agency, on or before November 23 of any given year. O. Reg. 424/11, s. 6.
- 16.1 (1) After the Association has established negotiating agencies for a given year under section 16, the local board may establish in accordance with this section additional negotiating agencies for the purposes of the first round of negotiations of agreements relating to the producing and marketing of vegetables for the same year. O. Reg. 424/11, s. 6.
- (2) Any processor or green shipper of a vegetable that has not been appointed as a party to a negotiating agency established by the Association under section 16 may be appointed by the local board as a party to a negotiating agency. O. Reg. 424/11, s. 6.
 - (3) For each negotiating agency that it establishes, the local board may appoint as parties to the agency no more than,
 - (a) in the case of a negotiating agency for a vegetable other than cucumber and peppers, a single processor; and
 - (b) in the case of a negotiating agency for cucumbers or peppers.
 - (i) a single processor, or
 - (ii) a single green shipper. O. Reg. 424/11, s. 6.
 - (4) On or before the date specified in subsection (5) in any given year, the local board shall,
 - (n) give the Association and the Commission written notice of every negotiating agency that it has established for the year, together with the name and business address and phone number of each processor and green shipper that it has appointed as a party to the agency; and
 - (b) give written notice of their appointment to each processor and green shipper appointed as a party to a negotiating agency in the year. O. Reg. 424/11, s. 6.
 - (5) The local board shall establish negotiating agencies and give the notices required under subsection (4),
 - (a) in the case of a negotiating agency established for cucumbers, on or before October 22 of any given year; and
 - (b) in the case of any other negotiating agency, on or before December 15 of any given year. O. Reg. 424/11, s. 6.
- 16.2 (1) The parties to a negotiating agency established under section 16 or 16.1 shall appoint the members to conduct negotiations on their behalf on or before,
 - (a) in the case of a negotiating agency for cucumbers, November 15 of each year; and
 - (b) in the case of a negotiating agency for any other vegetable, January 15 of each year. O. Reg. 424/11, s. 6.
 - (2) The first round of negotiations ends,
 - (a) at 4:00 p.m. on the day set out in Column II of the Schedule to this Regulation or at 4:00 p.m. on an alternate day agreed to by the parties that is parties advise the Commission in writing of the alternate day by 12:00 p.m. on the day set out in Column II of the Schedule; or
 - (b) at any earlier time at which an agreement is reached. O. Reg. 309/15, s. 1.

SECOND ROUND OF NEGOTIATIONS

- 17. (1) After the end of the first round of negotiations, the local board, together with each processor and each green shipper of a vegetable that was not a party to a negotiating agency established for that vegetable for the purposes of the first round of negotiations, is constituted as a separate negotiating agency for that vegetable for the purposes of the second round of negotiations. O. Reg. 424/11, s. 7.
- (2) On or before the day specified for the relevant vegetable in Column III of the Schedule to this Regulation, the local board shall send one of the following documents to every processor and green shipper who is a party to a negotiating agency constituted under subsection (1):
 - 1. A proposed agreement relating to the producing or marketing of the relevant vegetable.
 - 2. A notice of intent to negotiate. O. Reg. 424/11, s. 7.
- (3) On or before the day specified for the relevant vegetable in Column IV of the Schedule to this Regulation, a processor or green shipper of a vegetable who receives a document from the local board under subsection (2) shall reply to the local board in one of the following ways:

- 1. By sending the local board and the Commission a written notice of intent to negotiate.
- 2. By advising the local board in writing of its agreement to be bound by one of the agreements that are or will be concluded, or one of the awards that are or will be made, as the case may be, for the relevant vegetable in the first round of negotiations.
- 3. If the document received was a proposed agreement, by signing and returning the agreement to the local board. O. Reg. 424/11, s. 7.
- (4) Paragraph 2 of subsection (3) does not apply to processors of tomatoes. O, Reg. 424/11, s. 7.
- 18. (1) If a processor or green shipper of a vegetable gives the local board a notice of intent to negotiate under paragraph 1 of subsection 17 (3), the local board and either the processor or green shipper, as the case may be, shall appoint members to the agency in accordance with section 15.4 within two days after the applicable day set out in Column IV of the Schedule to this Regulation. O. Reg. 424/11, s. 7.
- (2) If a processor or green shipper of a vegetable has received a document from the local board under subsection 17 (2) and fails to reply to it in accordance with subsection 17 (3), the local board may impose on the processor or green shipper one of the agreements that are or will be concluded, or one of the awards that are or will be made, as the case may be, for the relevant vegetable in the first round of negotiations. O. Reg. 424/11, s. 7.
- (3) An agreement or award imposed under subsection (2) is not valid unless the local board notifies the processor or green shipper of the agreement or award not later than three days before the day set out in Column V of the Schedule to this Regulation. O. Reg. 424/11, s. 7.
- (4) An agreement or award adopted under paragraph 2 of subsection 17 (3) or imposed under subsection (2) shall be deemed to be an agreement or award for the purposes of subsection 7 (4) of the Act. O. Reg. 424/11, s. 7.
- (5) The second round of negotiations ends at 4:00 p.m. on the day set out in Column V of the Schedule to this Regulation or such earlier time at which an agreement is reached. O. Reg. 424/11, s. 7.

ADDITIONAL NEGOTIÁTIONS

- 19. (1) If a processor or green shipper of a vegetable was not a party to a negotiating agency for that vegetable for the purposes of the first or second round of negotiations after the day set out in Column V of the Schedule to this Regulation, the local board shall,
 - (a) impose an agreement or award for that vegetable on the processor or green shipper; or
 - (b) notify the processor or green shipper and the Commission in writing of its intention to negotiate. O. Reg. 424/11, s. 8.
- (2) If a processor or green shipper receives a notice of intent to negotiate from the local board, the local board and either the processor or green shipper, as the case may be, are constituted as a negotiating agency for that vegetable for the purposes of the additional round of negotiations for the year in question. O. Reg. 424/11, s. 8.
- (3) The parties to a negotiating agency constituted under subsection (2) shall appoint members to the agency in accordance with section 15.4. O. Reg. 424/11, s. 8.
- (4) The parties to a negotiating agency constituted under subsection (2) shall determine the following deadline dates and notify the Commission in writing of the deadline dates:
 - 1. The date by which the parties to a negotiating agency must appoint members to the agency under subsection (3).
 - 2. The date by which negotiations must be concluded by the negotiating agency. O. Reg. 309/15, s. 2 (1).
- (4.1) If the Commission does not receive written notice of the deadline dates under subsection (4) within three business days after the day the notice of intent to negotiate was received by the processor or green shipper under subsection (2), the Commission shall establish the deadline dates, O, Reg. 309/15, s. 2 (1)
- (5) An agreement or award imposed under clause (1) (a) shall be deemed to be an agreement or award for the purposes of subsection 7 (4) of the Act. O. Reg. 424/11, s. 8.
 - (6) A round of negotiations under this section ends,
 - (a) at 4:00 pm on the day determined by the negotiating agency under paragraph 1 of subsection (4) or determined by the Commission under subsection (4.1); or
 - (b) at such earlier time at which an agreement is reached. O. Reg. 309/15, s. 2 (2),

CONCILIATION AND ARBITRATION

- 20. (1) A negotiating agency for a vegetable may refer matters to conciliation in accordance with this section at any time,
- (a) in the case of a negotiating agency established for the purposes of the first round of negotiations, before the date determined under clause 16.2 (2) (a);

- (b) in the case of a negotiating agency constituted for the purposes of the second round of negotiations, before the date set out in Column V of the Schedule to this Regulation; and
- (c) in the case of a negotiating agency constituted for any additional round of negotiations, before the date for conclusion of negotiations determined by the negotiating agency under paragraph 1 of subsection 19 (4) or by the Commission under subsection 19 (4,1). O. Reg. 424/11, s. 9 (2); O. Reg. 309/15, s. 3.
- (2) The Commission shall appoint a conciliator acceptable to all members of the negotiating agency. O. Reg. 424/11, s. 9 (2).
 - (3) The negotiating agency shall submit to the conciliator a statement of matters in dispute. O. Reg. 46/91, s. 4.
 - (4) The conciliator shall,
 - (a) endeayour to effect agreement on any matter referred to the conciliator under subsection (3); and
 - (b) recommend adoption of any agreement effected under clause (a) to the negotiating agency. O. Reg. 46/91, s. 4.
- 21. (1) A negotiating agency shall immediately notify the Commission in writing if the negotiating agency has not arrived at a comprehensive settlement of matters set out in section 15.2,
 - (a) in the case of a negotiating agency established for the purposes of the first round of negotiations, by 4:00 p.m. on the date determined under clause 16.2 (2) (a);
 - (b) in the case of a negotiating agency constituted for the purposes of the second round of negotiations, by 4:00 p.m. on the date set out in Column V of the Schedule to this Regulation; and
 - (c) in the case of a negotiating agency constituted for any additional round of negotiations, by 4:00 p.m. on the date determined by the negotiating agency under paragraph 1 of subsection 19 (4) or by the Commission under subsection 19 (4.1). O. Reg. 424/11, s. 10 (1); O. Reg. 309/15, s. 4.
 - (2) The notice referred to in subsection (1) shall be accompanied by,
 - (a) one or more statements of the matters in dispute;
 - (b) a statement of the final position of the members of the negotiating agency who were appointed by the local board; and
 - (c) a statement of the final position of the members of the negotiating agency who were appointed under paragraph 2 of subsection 15.4 (3). O. Reg. 424/11, s. 10 (1).
 - (3) The Commission shall refer the matters in dispute to arbitration. O Reg. 46/91, s. 5.
 - (4) The arbitration shall be conducted by an arbitration board consisting of,
 - (a) three members, if all the members of the negotiating agency consent; and
 - (b) one member, in every other case. O. Reg. 46/91, s. 5; O. Reg. 233/94, s. 6 (1).
- (5) If more than one arbitration is required for the same vegetable, the same arbitration board shall conduct the arbitrations. O. Reg. 46/91, s. 5.
- (6) The members of a negotiating agency that requires arbitration shall appoint the member or members of the arbitration board. O. Reg. 46/91, s. 5.
- (7) If the members of a negotiating agency cannot agree on the members of the arbitration board within 48 hours after the relevant deadline date set out in subsection (1), the Commission shall appoint the arbitration board. O. Reg. 424/11, s. 10 (2).
- (8) If a member of an arbitration board dies, resigns or becomes unable to act before the arbitration board has made an award, the vacancy shall be filled by the Commission and the arbitration shall be continued and completed by the arbitration board as newly constituted. O. Reg. 424/11, s. 10 (2).
- (9) An arbitration board shall not make an award on a matter until at least three days after the hearing has been completed. O. Reg. 48/97, s. 1.
- (9.1) If the parties to an arbitration reach agreement on a matter before an award on the matter is made, the agreement forms part of the arbitration board's award. O. Reg. 48/97, s. 1.
 - (9.2) If the parties to an arbitration reach an agreement on all matters before an award is made,
 - (a) the arbitration board shall not make an award; and
 - (b) the agreement reached by the parties to the arbitration shall be deemed to be an agreement for the purposes of subsection 7 (4) of the Act. O. Reg. 424/11, s. 10 (3).
- (10) Subject to subsection (9.1), an arbitration board shall, in making an award, select without modification one of the statements of final position filed with the Commission under subsection (2), except that, if the parties to an arbitration agree, the arbitration board may make individual awards with respect to one or more matters in dispute by selecting the position set out on the matter or matters in one of the statements of final position. O. Reg. 424/11, s. 10 (4).

- (11) If only one statement of final position has been filed with the Commission under subsection (2), subsection (10) does not apply and the arbitration board shall select that statement as the award. O. Reg. 233/94, s. 6 (3); O. Reg. 424/11, s. 10 (5).
- 22. (1) For the purposes of sections 15.3 to 21, if something is required to be done on or before a day specified in this Regulation that is not a business day in a particular year, the thing must be done on or before the next business day. O. Reg. 424/11, s. 11.
 - (2) In this section,

"business day" means a day that is not,

- (a) Saturday, or
- (b) a holiday within the meaning of section \$8 of the Legislation Act, 2006. Q. Reg. 424/11, s. 11.

SCHEDULE

-			SCILEDUEL		
Item	Column I Vegetable	Column II Initial Round Deadline	Column III Local Board Offer Deadline	Column IV Processor or Green Shipper Determination Deadline	Column V Second Round Deadline
1.	Cucumbers (hand harvest)	December 15	December 20	December 31	January 7
1.1	Cucumbers (machine harvest)	March 15	March 22	March 29	April 5
2.	Peas	February 22	March 3	March 10	March 15
3.	Sweet Corn	February 27	March 10	March 20	March 25
4.	Tomatões	March 1	March 13	March 20	April I
5.	Carrots	March 6	March 13	March 23	March 29
6.	Cabbage	March 7	March 14	March 21	March 28
7.	Peppers	March 8	March 15	March 22	March 29
8.	Beets	March 19	March 26	April 2	April 9
9.	Cauliflower	March 19	March 26	April 2	! April 9
10.	Green and Waxed Beans	March 13	March 28	April 4	April 11
11.	Lima Beans	March 22	March 29	April 5	April 12
12.	Pumpkin and Squash	March 22	March 29	April 5	April 12
13.	Spanish-type onions used for onion rings	November 15	November 22	December 1	December 15

O. Reg. 424/11, s. 12; O. Reg. 18/13, s. 2; O. Reg. 193/13, s. 2; O. Reg. 309/15, s. 5.

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Back to top

This is Exhibit "...." referred to in the Affidavit of 70.777.5 CAACK sworn/affirmed before me this 20.17.

day of 20.17.

A COMMISSIONER FOR TAKING AFFIDAVITS

Suite 16B – 261 Martindale Road St. Catharines, Ontario, L2W 1A2

Tel: (905) 682-2775/Fax: (905) 682-2357 Toll Free: 1-888-722-4193 www.wilsonspurrlaw.ca

Robert A. Wilson rwilson@wilsonspurrlaw.ca Geoffrey P. Spurr gspurr@wilsonspurrlaw.ca

March 21, 2017

VIA COURIER

Ontario Farm Products Marketing Commission 1 Stone Road West, 5th Floor SW Guelph, ON N1G 4Y2

Attention: Mike Relf, Manager, OFPMC Secretariat

Dear Sir:

RE: Our Client: Ontario Processing Vegetable Growers

Re: Thomas Canning (Maidstone) Limited - Licence to Process under the

Farm Products Marketing Act

Our client, Ontario Processing Vegetable Growers ("OPVG") has referred to us for reply your correspondence dated February 13, 2017 to OPVG.

As illustrated by the attached Brief of Documents which sets out the chronology of this past processing season's events, Thomas Canning (Maidstone) Limited ("Thomas Canning") has failed to remain in compliance with the Regulations of the Ontario Processing Vegetable Growers as well as the provisions of the Agreement for Marketing the 2016 Crop of Tomatoes for Processing.

Those acts of non-compliance include:

- (i) failure to schedule deliveries of tomatoes;
- (ii) failure to receive contracted tomatoes;
- (iii) failure to maintain adequate and proper equipment to operate its processing facility;
- (iv) failure to pay for tomatoes purchased in accordance with the specified payment provisions:
- (v) failure to pay crop insurance premiums by the time specified;
- (vi) failure to deduct and remit grower licence fees on time,

Please see Tabs 14 to 17 in the Brief of Documents for the specific provisions which have been contravened. These breaches have been admitted by Thomas Canning and compensation for the growers involved has been offered in writing by Thomas Canning. Unfortunately, Thomas Canning has not yet been able to arrange or pay any such compensation. The unpaid growers have instituted legal proceedings against Thomas Canning demanding payment be made. Full particulars are set out in the Statement of Claim, a copy of which is enclosed.

Contraventions by Thomas Canning include:

- 1. OPVG's General Regulations:
 - (a) Section 20(b) Licence Fees
- 2. Agreement for Marketing the 2016 Crop of Tomatoes for Processing:
 - (a) Section 2(a) and (b)
 - (b) Section 3(b)
 - (c) Section 4(a) and (b)
 - (d) Section 5
 - (c) Section 6
 - (f) Section 9(a), (b), (c) and (e)
 - (g) Section 15
 - (h) Section 17(a)
 - (i) Section 25
- 3. Relevant provisions of Regulation 440:
 - (a) Section 3(1)
 - (b) Section 4(a) and (b)
 - (c) Section 5
 - (d) Section 6
 - (e) Section 7
 - (f) Section 8
- 4. Relevant provisions of the Farm Products Marketing Act:
 - (a) Section 7(1) 1, 2, 3, 4, 5, 6, 7, 8, 12
 - (b) Section 7(3)

In 2016, Thomas Canning did not fail to eventually pay growers for delivered tomatoes, which may be a more typical scenario faced by growers of some agricultural commodities in Ontario from time to time. Instead, Thomas Canning contracted with growers for delivery of tomatoes and then declined to arrange for such harvest and delivery, causing growers to simply leave the product in the ground to rot.

These growers were helpless in terms of having any viable remedy in the face of such unilateral and unscrupulous behaviour by Thomas Canning.

The Board and the Commission have a responsibility to try to maintain a level playing field among all Ontario processors and this obligation must be considered as part of any resolution of the Thomas Canning matter. All other licenced processors fully complied with the regulatory requirements last year.

In summary, there are four major issues outstanding with this Processor:

- (1) The failure to operate and receive contracted tomatoes at harvest in the contracted quantities;
- (2) The failure to pay for tomatoes purchased in accordance with the Agreement;
- (3) The failure to complete a settlement with growers for damages occasioned by the Processor's failure to accept contracted tomatoes;
- (4) The risk to growers choosing to contract with this Processor in 2017.

Dealing with the four major issues outstanding as set out above, OPVG requests the Commission consider exercising its authority to,

- Make it a term and condition of the 2017 processor licence that Thomas Canning demonstrate a business plan that would enable it to,
 - (a) meet its 2017 contracted commitments to receive and pay for contracted tomatoes on a timely basis;
 - (b) make settlement with the growers for the tomatoes not received or paid for in 2016, whether through a settlement agreement or as a result of litigation between Thomas Canning and its unpaid 2016 growers;
- Require a performance bond. Contracted tomato growers require the protection of a
 performance bond, to be posted in their favour (growers as beneficiaries) by Thomas
 Canning so that there will be sufficient monies available to fully compensate growers
 for their losses if Thomas Canning does any of the following:
 - (i) fails to pay for delivered tomatoes;
 - (ii) fails to arrange for the harvest/delivery of tomatoes;
 - (iii) refuses to accept delivery of tomatoes;
 - (iv) fails to grade delivered tomatoes; or
 - (v) any combination of (i) to (iv) above.

All of the foregoing acts or actions would constitute triggers for access to the performance bond.

The amount of the performance bond should be no less than 50 percent of the estimated value of the tomato crop contracted for in 2016 by Thomas Canning in accordance with the provisions of Ontario Regulation 440 and the Farm Products Marketing Act.

Pursuant to Ontario Regulation 440, the Commission may require a processor to furnish a performance bond and determine the basis for forfeiture of such performance bond.

3. Fix and impose a monetary penalty up to the maximum authorized by Section 7(3) of the Act, namely, 10 percent of the price payable to the producers for the regulated product or processed during the immediately preceding twelve month period. In this case, based on 2016 purchases of \$5,647,873.40, a penalty of \$564,787.34 should be imposed.

Yours truly,

WILSON, SPURR LLP

Robert A. Wilson

RAW/ss Encls.

¢.c.

Elmer Buchanan, Trustee, OPVG

Bill Thomas, Thomas Canning (Maidstone) Limited

This is Exhibit "" referred to in the
Affidavit of JATTIES CLARIC
sworn/affirmed before me this?
day of
A COMMISSIONER FOR TAKING AFFIDAVITS
A COMMISSIONER FOR TAKING AFFIDAVITS



ORDER MADE BY THE ONTARIO FARM PRODUCTS MARKETING COMMISSION UNDER THE FARM PRODUCTS MARKETING ACT

To:

Thomas Canning (Maidstone) Limited

RR #1 - 326 South Talbot Road

Maidstone, Ontario

NOR 1KO

Attn:

Mr. William Thomas

("Thomas Canning")

And To:

Ontario Processing Vegetable Growers

435 Consortium Crt London, Ontario

N6E 2S8

Attn:

7.

Mr. Elmer Buchanan

("OPVG")

Whereas, OPVG notified the Ontario Farm Products Marketing Commission (Commission) of alleged contraventions of the Farm Products Marketing Act (FPMA) by Thomas Canning and, in a letter dated March 21, 2017, requested that the Commission consider exercising its authority to:

- Make it a term and condition of the 2017 processor licence that Thomas Canning demonstrate a business plan to meet its 2017 contracted commitments and make settlement with the grower for the tomatoes not received or paid for in 2016;
- 2. Require a performance bond in the amount of no less than 50 percent of the estimated value of the tomato crop contracted for 2016 by Thomas Canning so that there will be sufficient monies available to fully compensate growers for their losses if Thomas Canning defaults; and,

3. Fix and impose a monetary penalty of, \$564,787.34.

And whereas, at a meeting on April 13, 2017, the Commission considered OPVG's request.

Now therefore, the Commission makes the following Order:

(a) Terms and Conditions of Licence

In accordance with s. 5 of Regulation 440 (Vegetables for Processing – Marketing) under the FPMA, the following terms and conditions are imposed on Thomas Canning's Licence as a Processor of Vegetables No. 1994-18:

- (i) Thomas Canning shall, by May 1, 2017, submit a business plan to the Commission and OPVG that demonstrates how Thomas Canning will:
 - a. Meet its 2017 contracted commitments to receive and pay for contracted tomatoes on a timely basis; and
 - Make settlement with the growers for the tomatoes not received or paid for in 2016, whether through agreement or through the litigation between Thomas Canning and its unpaid 2016 growers.
- (ii) Thomas Canning shall comply, in all material respects, with the business plan described above in clause (i);
- (iii) Thomas Canning shall comply, in all material respects, with the terms and conditions in its 2017 Agreement for the Marketing of the 2017 Crop of Tomatoes for Processing (2017 Agreement) with OPVG; and,
- (iv) Thomas Canning shall comply, in all material respects, with the terms and conditions in any agreements Thomas Canning enters into with tomato producers pursuant to the 2017 Agreement.

(b) Furnish Security of \$2.6 million (CDN)

In accordance with sections 7 and 8 of Regulation 440:

- (i) Thomas Canning shall provide the Commission with an irrevocable standby letter of credit in the amount of \$2.6 million (CDN). The \$2.6 million represents approximately 50 percent of the value of the price payable to producers for vegetables processed by Thomas Canning during the 2016 crop year.
- (ii) The letter of credit shall be in a form acceptable to the Commission. The letter of credit shall have an effective date of May 1, 2017 and an expiry date that is no earlier than November 30, 2017.
- (iii) The letter of credit will be forfeited in any circumstance where Thomas Canning fails to comply with or contravenes any term or condition of its licence.
- (iv) If the security is forfeited, the Commission shall pay the proceeds of the security to OPVG for distribution proportionately among the producers who sold vegetables to Thomas Canning and who did not receive the minimum price for vegetables, to the extent of the money owing to them.

Thomas Canning shall have until 4:00 p.m. on Monday, April 24, 2017 to make any written submissions that it wants the Commission to consider before the Order takes effect on May 1, 2017. The same opportunity to make submissions will be afforded to OPVG. OPVG will be asked to notify Thomas Canning's 2016 and 2017 growers of the Commission's actions should the growers also wish to make any submissions to the Commission on their own behalf. Written submissions should be filed with the Secretary to the Commission by delivering them to:

Ontario Farm Products Marketing Secretariat
1 Stone Rd. W, 5th Floor SW
Guelph, Ontario
N1G 4Y2

Or by email to: mike.relf@ontario.ca

Attention: Mike Relf, Secretary to the Commission

In accordance with section 4 of Regulation 440, if Thomas Canning does not provide the business plan required by item (a)(i) above or provide the security required under item (b) above by May 1, 2017, the Commission

will proceed to revoke Thomas Canning's processing licence for failure to comply with an Order of the Commission.

CHAIR

SECRETARY

Dated at Guelph, this 13th day of April, 2017 This is Exhibit "...." referred to in the Affidavit of James CAARK.

sworn/affirmed before me this 20.17.

day of 20.17.

A COMMISSIONER FOR TAKING AFFIDAVITS

Ontario Farm Products Marketing Commission

1 Stone Road West, 5th Floor SW Guelph, (Ontario) N1G 4Y2 Tel: (519) 826-4220 Fax: (519) 826-3400

Commission de commercialisation des produits agricoles de l'Ontario

1 Stone Road West, 5th Floor SW Guelph (Onlario) N1G 4Y2 Tél.: (519) 826-4220 Téléc.: (519) 826-3400



IN THE MATTER OF:

The Farm Products Marketing Act ("FPMA") and sections 3 to 8 of Regulation 440 (Vegetables for Processing - Marketing) made under the FPMA

AND IN THE MATTER OF:

An order of Ontario Farm Products Marketing Commission ("Commission") issued to Thomas Canning (Maidstone) Limited ("Thomas Canning")

dated April 13, 2017 ("Order")

AND IN THE MATTER OF:

A request from Thomas Canning to the Commission asking for an oral hearing dated April 24, 2017

AND IN THE MATTER OF:

The Commission's decision of April 27, 2017 to hold an oral hearing with respect to the Order ("Hearing").

AND IN THE MATTER OF:

A pre-hearing teleconference held on May 11, 2017 pursuant to Rule 5.0 of the Commission's Rules of Procedure.

BEFORE

Valerie Gilvesy, Commission Member

APPEARANCES BY TELECONFERENCE

Mr. David Ullman and Ms. Alexandra Teodorescu, Blaney McMurtry LLP, Counsel for Thomas Canning (Maidstone) Ltd.,

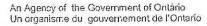
Mr. Sam Babe and Ken Rosenstein, Aird and Berlis, Counsel for Bridging Finance Inc.,

Mr. Sam Rappos, Chaitons LLP, Counsel for Richter Advisory Group Inc.,

Mr. Geoff Spurr, Wilson Spurr LLP, Counsel for the Ontario Processing Vegetable Growers (OPVG),

Mr. Jeffrey Hewitt, Counsel for the 2016 growers that are parties to the lawsuit against Thomas Canning,

Kevin McCormack, Counsel for Agricorp





Regrets: Mr. David Dick, Ontario Tomato Seedling Growers' Marketing Board

ALSO PRESENT

Jeff Schelling, Counsel to the Commission Michele Ireland, Counsel to the Commission Mike Relf, Secretary to the Commission Gordon Stock, Commission Staff Kelly McAslan, Commission Staff Magda Walanowska, Commission Staff

PRE-HEARING TELECONFERENCE

A pre-hearing teleconference was convened by the Commission on Thursday, May 11, 2017 from 10:00 a.m. to 11:20 a.m., pursuant to Rule 5.3 of the Commission's Rules of Procedure. The purpose of the pre-hearing conference was:

- 1. To set the date, time, duration and location for the Hearing which date shall be on or before May 31, 2017;
- To set a date for the disclosure and exchange of the information the parties intend to rely on at the Hearing, including the names of any witnesses the parties intend to call at the Hearing; and
- To identify parties and other interested persons and the scope of their participation at the Hearing.

RECORD OF DISCUSSION

During roll call, Mr. Jeffrey Hewitt, stated he may have a conflict of interest as he is also a Vice Chair of the Agriculture, Food and Rural Affairs Appeals Tribunal. Parties did not object to Mr. Hewitt's participation in the pre-hearing teleconference call. Mr. Ullmann reserved the right to raise the issue at a future date, as necessary. Mr. Hewitt confirmed that his participation in the hearing would be limited to his attendance at the pre-hearing teleconference and that he would likely make alternate arrangements for his client to be represented at the hearing.

- 1. (a) Setting the date, time, duration and location for the Hearing:
 - The Commission proposed:
 - May 24, 25, 30 or 31, 2017 as possible Hearing dates.
 - The Hearing would be scheduled for one day starting at 9:30 a.m. and conclude no later than 4:00 p.m.
 - o The Hearing would be held in Guelph, Ontario.



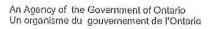
Discussion

	Party	Response
1.	Thomas Canning (Maidstone) Ltd.	Asked that the hearing be held at the end of June to allow for the conclusion of negotiations with respect to Thomas Canning's financial circumstances anticipated to be concluded by June 15, 2017. Legal Counsel for Thomas Canning advised that the outcome of these negotiations would have a bearing on Thomas Canning's ability to meet the terms of the Order.
2.	Bridging Finance Inc.	Agreed with Thomas Canning that hearing should be held at the end of June. Counsel reserved the right to seek to enforce a stay in accordance with the May 1, 2017 order with respect to the appointment of a Monitor for Thomas Canning should an earlier date be set.
• 3.	Richter Advisory Group Inc.	Agreed with Thomas Canning with respect to the Hearing being held at the end of June.
4.	Ontario Processing Vegetable Growers	Available May 24 and 25. Can be available May 30 and 31 but prefer the earlier dates. Available in late June. Raised a concern that the request to delay until June should not be used to draw the process out and prevent parties from responding to the OPVG's concerns.
5,	2016 Growers that are parties to the lawsuit against Thomas Canning - Jeffrey Hewitt	May 31 is good. Could have someone available for other dates in May. Also available late June, Advised that earlier dates were preferable to give 2017 growers some certainty.
6.	Agricorp	Agricorp does not plan to participate as an active party to this hearing moving forward and does not plan to make submissions.

- All parties were agreeable of the time and location proposed by the Commission.
- 1. (b) With respect to submissions, parties were asked whether they intend to make oral or written submissions at the hearing and how long they would need to make oral submissions.

Discussion

	Party	Response		
1.	Thomas Canning (Maidstone) Ltd.	Oral; 45 minutes		
2.	Bridging Finance Inc.	Oral; 25 minutes		





3.	Richter Advisory Group Inc.	Written
4.	Ontario Processing Vegetable Growers	Oral; 45 minutes (possible written submission to supplement)
5.	2016 Growers that are parties to the lawsuit against Thomas Canning - Jeffrey Hewitt	Oral; 20 minutes
6.	Agricorp	No submissions

- Setting the date for the disclosure and exchange of the information the parties intend to rely on at the Hearing, including the names of any witnesses the parties intend to call on at the hearing:
 - Given the short time frame and the limited scope of the hearing, the Commission proposed that all parties submit their materials at the same time, one week prior to the date of the Hearing.

Discussion

	Party	Response
1.	Thomas Canning (Maidstone) Ltd.	One week prior to the Hearing is fine for a June date. Could not comply with this requirement if Hearing is held in May.
2.	Bridging Finance Inc.	Lagreed with Commission's proposal.
3.	Richter Advisory Group Inc.	Agreed with Commission's proposal.
4,	Ontario Processing Vegetable Growers	Agreed with Commission's proposal.
5.	2016 Growers that are parties to the lawsuit against Thomas Canning - Jeffrey Hewitt	Agreed with Commission's proposal.
6.	Agricorp	No submissions

- Identifying parties and other interested persons and the scope of their participation at the Hearing;
 - At this time the Commission is not aware of any other interested parties or interested persons to this hearing.
 - Parties were asked in turn if they have knowledge of other interested parties or interested persons to this hearing.



Discussion

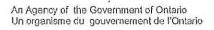
	Party	Response
1.	Thomas Canning (Maidstone) Ltd.	None
2.	Bridging Finance Inc.	None
3.	Richter Advisory Group Inc.	None
4.	Ontario Processing Vegetable Growers	None
5.	2016 Growers that are parties to the lawsuit against Thomas Canning - Jeffrey Hewitt	None
6.	Agricorp	None

4. Additional matters:

 The Commission gave participants the opportunity to raise any additional matters of which they thought the Commission should be aware.

Discussion

	Party	Response		
1.	Thomas Canning (Maidstone) Ltd.	Expressed optimism at the company's prospects for refinancing and continuance and submitted the Commission should assist in the process by allowing the company more time before holding a hearing.		
		Affirmed that discussions underway with 2017 growers include assurances that they will be paid.		
2.	Bridging Finance Inc.	A hearing in late May or in June would not address the concerns 2017 growers are facing right now.		
		Bridging Finance is currently assessing the operating needs of Thomas Canning for 2017 and is in a position to provide a negotiated amount of security to 2017 growers, but wishes to confirm that the processing licence will continue if that security is granted.		
3.	Richter Advisory Group Inc.	None		
4.	Ontario Processing Vegetable Growers	There is an issue of timing as producers are making planting decisions at this time. A hearing held in June would be of little value and may		





		represent more of a "rubber stamp" or "academic" exercise.
		If OPVG feels that the 2017 growers are satisfied, the board would likely support the continuation of Thomas Canning's processor licence.
5.	2016 Growers that are parties to the lawsuit against Thomas Canning - Jeffrey Hewitt	None
6.	Agricorp	Agricorp restated that it does not plan to participate as an active party to this hearing moving forward and does not plan to make submissions.

Next Steps

Parties were invited to make brief written submissions to address the Commission's concern that 2017 growers contracting with Thomas Canning have adequate financial assurances of payment pending a hearing in late June, should the Commission agree to the timing for a hearing date requested by Thomas Canning and Bridging Finance.

- Written submissions are due no later than end of day May 12, 2017.
- OPVG will have until May 15, 2017 at 10:00 a.m., if it wishes to make a submission in response to the submissions made by the other parties.
- The Commission will consider next steps at its meeting on Wednesday, May 17, 2017.
- A hearing date will be communicated via a Notice of Hearing, to be issued after May 17, 2017.

Signed:

Valerie Gilvesy

Member

Dated at Guelph, Ontario

May 17, 2017



TO:

Thomas Canning (Maidstone) Ltd.

c/o Mr. David Ullmann Blaney McMurtry LLP

2 Queen Street East, Suite 1500

Toronto ON M5C 3G5 dullmann@blaney.com

AND TO:

Bridging Finance Inc. c/o Mr. Sam Babe Aird and Berlis LLP

181 Bay Street, Suite 1800, Box 754

Brookfield Place Toronto, ON M5J 2T9 sbabe@airdberlis.com

AND TO:

Richter Advisory Group Inc.

c/o Sam Rappos Chaitons LLP

5000 Yonge Street, 10th Floor

Toronto, ON M2N 7E9 samr@cahitons.com

AND TO:

OPVG

c/o Mr. Geoff Spurr

Wilson, Spurr

261 Martindale Road Unit 16B St. Catharines, ON L2W 1A2 gspurr@wilsonspurrlaw.ca

AND TO:

David Dick

Ontario Tomato Seedling Growers' Marketing Board

16 Talbot Street East Leamington, ON N8H 1L2

dvd5@bell.net

AND TO:

Jeffrey Hewitt, Lawyer

13300 Tecumsel Road East, Suite 340

Windsor, ON N8N 4R8 jeff@hewittlaw.ca

AND TO:

Agricorp

c/o Kevin McCormack

1 Stone Road West, 5th Floor SW

Guelph, ON N1G 4Y2

kevin.mccormack@agricorp.com

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Good Things Grow in Ontario À bonne terre, bons produits



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Ontario Farm Products Marketing Commission

1 Stone Road West, 5th Floor SW Guelph, (Ontario) N1G 4Y2 Tel: (519) 826-4220 Fax: (519) 826-3400 Commission de commercialisation des produits agricoles de l'Ontario

1 Stone Road West, 5th Floor SW Guelph (Ontario) N1G 4Y2 Tél.: (519) 826-4220 Téléc.: (519) 826-3400



IN THE MATTER OF:

The Farm Products Marketing Act ("FPMA") and

sections 3 to 8 of Regulation 440 (Vegetables for Processing – Marketing) made under the FPMA

AND IN THE MATTER OF:

An order of Ontario Farm Products Marketing Commission ("Commission") issued to Thomas Canning (Maidstone) Limited ("Thomas Canning")

dated April 13, 2017 ("Order")

AND IN THE MATTER OF:

A request from Thomas Canning to the Commission

asking for an oral hearing dated April 24, 2017

AND IN THE MATTER OF:

The Commission's decision of April 27, 2017 to hold

an oral hearing with respect to the Order

AND IN THE MATTER OF:

A pre-hearing teleconference held on May 11, 2017

pursuant to Rule 5.0 of the Commission's Rules of

Procedure.

DECISION OF THE ONTARIO FARM PRODUCTS MARKETING COMMISSION

BACKGROUND

The Commission administers six processor and dealer licensing programs under the FPMA including the licensing of vegetable processors in accordance with Regulation 440 (Vegetables for Processing – Marketing). Thomas Canning currently holds a Commission issued processing licence (Licence No. 1994-18).

Under Regulation 440, the Commission may impose terms and conditions on a processor's licence and may require a processor to furnish security. If the Commission requires a processor to furnish security, the amount of security shall not exceed 50 per cent of the price payable to producers for vegetables processed during the immediately

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preceding twelve-month period or proposed to be processed in the ensuing twelvemonth period by the processor.

If security is forfeited, the Commission pays the proceeds to the local board for distribution proportionately among unpaid producers who sold vegetables to the licensed processor.

On April 13, 2017, the Commission issued an Order to Thomas Canning that required the following:

- .º made it a term and condition of Thomas Canning's licence that it have a business plan in place that demonstrates how it will meet its 2017 commitments, and make settlement with growers for tomatoes not received or paid for in 2016 and that Thomas Canning comply with that business plan; and,
- Thomas Canning was to put in place an irrevocable standby letter of credit in the amount of \$2.6 million (CDN), to be forfeited in any circumstance where Thomas Canning fails to comply with or contravenes any term or condition of its licence.

The Commission set the amount of security at the maximum amount allowable under Regulation 440 to protect the interests of both 2016 and 2017 growers.

The Commission provided Thomas Canning with an opportunity to make written submissions for consideration before the Order was to take effect on May 1, 2017.

On April 24, 2017, Thomas Canning asked the Commission to suspend the Order pending a hearing on the terms of the Order. After considering the submission, the Commission decided to afford Thomas Canning an opportunity for an oral hearing and suspended the Order pending the outcome of the hearing. Subsequent to making the decision to hold a hearing, the Commission became aware of two court orders which disclosed:

- the financial status of Thomas Canning and its dealings with Bridging Finance Inc. ("BFI"), Thomas Canning's primary secured lender;
- that Richter Advisory Group Inc. ("Richter") had been appointed as interim receiver for Thomas Canning and that the appointment was subsequently discharged; and
- that Richter continues to act as court appointed monitor of the financial affairs of Thomas Canning.



PRE-HEARING CONFERENCE

The Commission held a pre-hearing teleconference on Thursday, May 11, 2017 to determine procedural matters including the hearing date.

During the teleconference, Thomas Canning's counsel requested that the Commission hold the hearing at the end of June to allow time for negotiations to conclude with respect to Thomas Canning's financial circumstances and possible opportunities to refinance. Legal counsel for BFI and Richter supported Thomas Canning's request for a June hearing date.

Legal counsel for OPVG and Mr. Hewitt were in favour of a May hearing date. They raised concerns that the request to delay until June should not be used by the parties to draw the process out and that an earlier date would provide 2017 growers with some certainty in their dealings with Thomas Canning.

The Commission invited the parties to make brief written submissions outlining the financial assurances they were prepared to offer 2017 growers contracting with Thomas Canning should the hearing date be moved to June.

SUBMISSIONS OF THE PARTIES WITH RESPECT TO PROTECTION FOR 2017 GROWERS TO SUPPORT A JUNE HEARING DATE

On May 12, 2017, the Commission received written submissions from counsel for Thomas Canning and BFI.

Thomas Canning's counsel advised that all growers considering contracting with Thomas Canning for 2017 are aware of the Commission's process with regard to the company's licence. Subject to the approval of BFI, Thomas Canning will only contract with farmers for the 2017 season upon reaching an arrangement to provide for such security as may be reasonably requested by those growers on such terms as are negotiated among the parties.

Counsel for BFI advised that it has the financial resources and is prepared to fund Thomas Canning for security which may be negotiated between Thomas Canning and the 2017 growers subject to the following terms and conditions:

- the proposed growing contracts shall be for an amount of product and on terms and conditions acceptable to BFI;
- the proposed security or deposits shall be reasonable in both quantum and structure; and

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the Commission must confirm that if any such security is put in place or any such deposits made, it will continue to provide a licence to Thomas Canning or any purchaser of the business in order that they may be in a position to take delivery and make payment in full for such product.

OPVG's counsel advised that its position was that the Commission could confirm continuation of Thomas Canning's licence subject to the following conditions being met:

- the growers contracting with Thomas Canning this year agree on appropriate security that will protect the growers in the event of a breach of contract by Thomas Canning whether that breach relates to a non-payment for product received or a refusal to receive product in that regard; and
- the growers and Thomas Canning must directly advise the Commission that the security is reasonable and has been accepted by all parties and properly documented in that regard.

Counsel for the 2016 growers advised that they agreed with the submissions of OPVG and added that the interests of the 2016 growers need to be protected as contemplated in the Commission's Order.

COMMISSION'S DECISION

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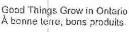
The Commission agrees to the request from counsel for Thomas Canning, BFI and Richter to hold the hearing at the end of June.

The June hearing will focus on the original terms set out in the Order, including:

- Thomas Canning's business plan that demonstrates how Thomas Canning will meet its 2017 contracted commitments to receive and pay for contracted tomatoes on a timely basis; and make settlement with the growers for tomatoes not received or paid for in 2016, whether through agreement or through the litigation between Thomas Canning and its unpaid 2016 growers; and
- The provision to the Commission of an irrevocable standby letter of credit in the amount of \$2.6 million (CDN).

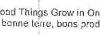
If BFI funds Thomas Canning for security between Thomas Canning and the 2017 growers, the Commission confirms the continuation of Thomas Canning's processing licence through the 2017 growing season subject to the following conditions:

1. Any growers contracting with Thomas Canning for the 2017 crop year will agree on appropriate financial security in a form acceptable to them, such as a letter of credit or surety, that will protect the growers in the event of a breach of contract by









Thomas Canning, whether that breach relates to a non-payment for product received or a refusal to receive product in that regard;

- 2. Any grower contracting with Thomas Canning for the 2017 crop year and Thomas Canning will advise the Commission directly and as applicable that:
 - (a) the grower believes the security is reasonable:
 - (b) the security has been accepted by all parties; and
 - (c) the security has been properly documented to reflect the agreement of the parties.
- 3. One week in advance of the hearing. Thomas Canning shall submit its business plan for making settlement with all growers for tomatoes not received or paid for in 2016 and those growers and OPVG shall be prepared to advise the Commission at the hearing with respect to:
 - (a) whether they believe the business plan is reasonable; and
 - (b) whether the business plan is acceptable to them, acting reasonably.
- 4. Thomas Canning, BFI and Richter shall each provide the Commission with a written undertaking that they will advise the Commission immediately of any material change in Thomas Canning's financial status, including paying out any of the pledged security to 2017 growers, or its ability to accept delivery of and process the 2017 crop.

BFI has asked the Commission to commit to providing a licence to any purchaser of Thomas Canning's business in order that they may be in a position to take delivery and make payment in full for such product. A vegetable processing licence issued by the Commission is not transferable. In the event that Thomas Canning's business is sold to a new legal entity, that entity may apply to the Commission for a processing licence. The Commission's licensing criteria is set out in Regulation 440.

The Commission relied on the following factors in coming to this decision:

- Ensuring that 2017 growers are financially protected puts them in a better position to make planting decisions for 2017.
- OPVG has indicated in writing that it is willing to support the continuation of Thomas Canning's processing licence if certain conditions are met. The Commission has required that those conditions be met.
- 2016 growers seeking payment from Thomas Canning have advised that they support OPVG's position, although they wish to ensure their interests are considered as well.



- Thomas Canning has represented that it will not have the information it needs to be able to respond to the Commission's Order until after June 15th, 2017 and that additional time will afford them an opportunity to refinance and continue its business through the 2017 season and beyond enabling it to respond to its creditors, including 2016 growers that remain unpaid.
- Delaying the hearing until the end of June does not significantly prejudice the position of the 2016 unpaid growers.
- All parties indicated they are available for a hearing at the end of June.

NEXT STEPS

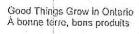
The Commission will issue a notice of hearing to be held at the end of June 2017. All parties affected by conditions 1 to 4 above, shall take all necessary steps to comply with those conditions as soon as possible.

CHAIR

SECRETARY

Dated at Guelph this 18th day of May, 2017







TO:

Thomas Canning (Maidstone) Ltd.

c/o Mr. David Ullmann Blaney McMurtry LLP

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AND TO:

Bridging Finance Inc. c/o Mr. Sam Babe Aird and Berlis LLP

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Brookfield Place Toronto, ON M5J 2T9 sbabe@airdberlis.com

AND TO:

Richter Advisory Group Inc.

c/o Sam Rappos Chaitons LLP

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Toronto, ON M2N 7E9 samr@chaitons.com

AND TO:

OPVG

c/o Mr. Geoff Spurr

Wilson, Spurr

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AND TO:

David Dick

Ontario Tomato Seedling Growers' Marketing Board

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dvd5@bell.net

AND TO:

Jeffrey Hewitt, Lawyer

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AND TO:

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Ontario Farm Products Marketing Commission

1 Stone Road West, 5th Floor SW Guelph, (Ontario) N1G 4Y2 Tel: (519) 826-4220 Fax: (519) 826-3400

Commission de commercialisation des produits agricoles de l'Ontario

1 Stone Road West, 5th Floor SW Guelph (Ontario) N1G 4Y2 Tél.: (519) 826-4220 Téléc.: (519) 826-3400



NOTICE OF HEARING

IN THE MATTER OF:

The Farm Products Marketing Act ("FPMA") and sections 3 to 8 of Regulation 440 (Vegetables for Processing – Marketing) made under the FPMA

AND IN THE MATTER OF:

An order of Ontario Farm Products Marketing Commission ("Commission") issued to Thomas Canning (Maidstone) Limited ("Thomas Canning") dated April 13, 2017 ("Order")

AND IN THE MATTER OF:

A request from Thomas Canning to the Commission asking for an oral hearing dated April 24, 2017

AND IN THE MATTER OF:

A pre-hearing teleconference held on May 11, 2017 pursuant to Rule 5.0 of the Commission's Rules of Procedure.

TAKE NOTICE of the hearing in this matter to be held by the Commission on June 28, 2017, commencing at 9:30 a.m. in the Agriculture, Food and Rural Affairs Appeal Tribunal hearing room, Ontario Government Building, 1 Stone Road West, Ground Floor, Guelph, Ontario. The hearing is open to the public.

AND FURTHER TAKE NOTICE THAT the purpose of the hearing will be for the parties to make submissions with respect to the terms set out in the Order.

AND FURTHER TAKE NOTICE THAT if a party does not attend the hearing, the Commission may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding.

AND FURTHER TAKE NOTICE THAT:

1) By Wednesday, June 21, 2017 at 4:00 p.m., the parties are to deliver to each other party one copy of all relevant documentary evidence and other materials of any kind whatsoever intended to be relied upon at the hearing including a list of any witnesses the party intends to call to give oral evidence at the hearing. The

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presentation of the party may be included if desired. In addition to any other materials Thomas Canning may choose to submit, Thomas Canning's materials shall include its business plan for making settlement with all growers for tomatoes not received or paid for in 2016.

2) By Wednesday, June 21, 2017 at 4:00 p.m., each party is to deliver to the Commission eight copies of all relevant documentary evidence and other materials of any kind whatsoever the party intends to rely upon at the hearing including a list of any witnesses the party intends to call to give oral evidence at the hearing. The presentation of the party may be included if desired.

AND FURTHER TAKE NOTICE THAT the hearing room is wheelchair accessible. If you are a participant in the proceeding and have specific accommodation needs due to a disability, please contact the Secretary by telephone at (519) 826-5199 or by e-mail at mike.relf@ontario.ca at least five days prior to the hearing.

AND FURTHER TAKE NOTICE THAT any party may have a representative at the hearing.

If you wish to be a party to this proceeding and have not been named on the last two pages of this notice or if you have any questions concerning this notice, please contact the Secretary by telephone at (519) 826-5199 or by e-mail at mike.relf@ontario.ca.

Mike Relf Secretary Ontario Farm Products Marketing Commission

Dated at Guelph, Ontario May 24, 2017



TO:

Thomas Canning (Maidstone) Ltd.

c/o Mr. David Ullmann Blaney McMurtry LLP

2 Queen Street East, Suite 1500

Toronto ON M5C 3G5 dullmann@blaney.com

AND TO:

Bridging Finance Inc. c/o Mr. Sam Babe

Aird and Berlis LLP

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AND TO:

Richter Advisory Group Inc.

c/o Sam Rappos Chaitons LLP

5000 Yonge Street, 10th Floor

Toronto, ON M2N 7E9 samr@chaitons.com

AND TO:

OPVG

c/o Mr. Rob Wilson Wilson, Spurr

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AND TO:

David Dick

Ontario Tomato Seedling Growers' Marketing Board

16 Talbot Street East Leamington, ON N8H 1L2

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AND TO:

Jeffrey Hewitt, Lawyer

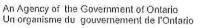
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Windsor, ON N8N 4R8 jeff@hewittlaw.ca



AND TO (FOR INFORMATION ONLY):

Greg Meredith, Deputy Minister
Ontario Ministry of Agriculture, Food and Rural Affairs
1 Stone Road West, 2nd Floor
Guelph ON N1G 4Y2
greg.meredith@ontario.ca





This is Exhibit "....! " referred to in the Affidavit of TAMES CLARK sworn/affirmed before me this 30 day of 20.17.

A COMMISSIONER FOR TAKING AFFIDAVITS

Suite 16B – 261 Martindale Road St. Catharines, Onlario, L2W 1A2 Tel: (905) 682-2775/Fax: (905) 682-2357 Toll Free: 1-688-722-4193 www.wilsonspurrlaw.ca

Robert A. Wilson nvilson@wilsonspurdaw.ca Geolfrey P. Spair gspuri@wilsonspurrlaw.ca

June 19, 2017

Via Email

Ontario Farm Products Marketing Commission I Stone Road West, 5th Floor SW Guelph, ON NIG 4Y2

Attention: Mike Relf, Manager, OFPMC Secretariat

Dear Sir:

RE: Thomas Canning (Maidstone) Limited ("Thomas Canning")
Motion and Applicable returnable June 21, 2017

As you are aware, we are lawyers for Ontario Processing Vegetable Growers ("OPVG"). OPVG has been served with the Return Application and Motion Record of Bridging Finance Inc. ("Bridging") and the Motion Record of the Interim Receiver and the Monitor, Richter Advisory Group Inc. ("Richter"), which motion and application are both returnable on June 21, 2017.

Bridging and Richter collectively are seeking orders that will appoint Richter as Receiver of Thomas Canning (Maidstone) Limited and 692194 Ontario Limited (collectively, "Thomas Canning"); approve an asset purchase agreement made between Bridging and a company owned by Santokh Mahal ("the purchaser"); vest in the purchaser Thomas Canning's right, title and interest in the assets described in the purchase agreement free and clear of any claims and then terminate the receivership.

In the reasons for its decision dated May 18, 2017, the Commission decided to hold the hearing at the end of June and that the hearing would,

"focus on the original terms set out in the Order, including:

Thomas Canning's business plan that demonstrates how Thomas Canning will meet its 2017 contracted commitments to receive and pay for contracted tomatoes on a timely basis; and make settlement with the growers for tomatoes not received or paid for in 2016, whether through agreement or through the litigation between Thomas Canning and its unpaid 2016 growers; and

The provision to the Commission of an irrevocable standby letter of credit in the amount of \$2.6 million (CDN)."

The Commission further ordered that Thomas Canning would submit its business plan "for making settlement with all growers for tomatoes not received or paid for in 2016" one week before the hearing, and those growers were required to advise the Commission regarding the reasonableness and acceptability of that business plan.

Critically, the Commission's decision of May 18, 2017 also contemplated the possibility of a transfer of Thomas Canning's business to a new entity. In that respect, the Commission addressed the processing license as follows:

"[Bridging] has asked the Commission to commit to providing a licence to any purchaser of Thomas Canning's business in order that they may be in a position to take delivery and make payment in full for such product. A vegetable processing licence issued by the Commission is not transferable. In the event that Thomas Canning's business is sold to a new legal entity, that entity may apply to the Commission for a processing licence. The Commission's licensing criteria is set out in Regulation 440." [emphasis added]

Despite the foregoing language, the asset purchase agreement made between the Receiver and the purchaser purports to include, on Schedule B of the purchased assets, the "Ontario Farm Products Marketing Commission procurement licence #1944-18". This is the processing licence issued by the Commission to Thomas Canning.

In our submission, the request for a transfer of the existing licence gives rise to a number of inquiries in that regard and it is our request that the Commission address these to the Court on June 21, 2017:

- 1. If, in fact, an exception is being contemplated and the licence is transferable to the purchaser, do the conditions currently attached to the licence (specifically the requirements regarding posting financial security and submitting a business plan relative to the 2016 unpaid growers) remain in effect and become the obligations of the purchaser?
- 2. If the answer to question number 1 is in the affirmative, then is the hearing scheduled for June 28, 2017 still proceeding?
- 3. If the licence is not transferable to the purchaser and it remains the Commission's position that the purchaser must apply for a processing licence in accordance with the provisions of Regulation 440, then is the Commission prepared to attach conditions to that licence, if issued, in order to preserve the conditions that are currently attached to the Thomas Canning licence?

In the event the ultimate outcome is item number 3 above, we anticipate that it will be OPVG's position that any licence issued to the purchaser should be conditional on the posting of sufficient financial security and reasonably addressing the issue of the unpaid 2016 growers.

In the absence of any knowledge regarding the purchaser and its ability to carry on business as a processor of tomatoes, we are not able to comment further at this time in relation to whether the purchaser would satisfy the Commission in terms of having the appropriate experience and equipment to properly engage in the business of processing tomatoes in the manner contemplated by Section 4(a) of Ontario Regulation 440.

Finally, if it is the intention that with the transfer of licence to the purchaser the purchaser is not independently required to satisfy the requirements of Regulation 440 but also is able to avoid the conditions in relation to the 2016 growers currently attached to the Thomas Canning licence, then we would submit that the administration of the licensing regime by the Commission and the integrity of that process will have been nullified, which we would submit would be an outcome contrary to public policy.

Thank you for your consideration of these submissions.

Yours truly,

WILSON, SPURR LL

Geoffey P. Spurr GPS/ss

c.c. Elmer Buchanan, Trustee, OPVG

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Sam Babe, Aird & Berlis LLP Sam Rappos, Chaitons LLP

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Lawyers for Canada Revenue Agency

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE PO Box 620 33 King Street West, 6th Floor Oshawa, ON L1H 8E9

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As agent for SPROTT BRIDGING INCOME FUND LP BRIDGING FINANCE INC., v. THOMAS CANNING (MAIDSTONE) LIMITED and 692194 ONTARIO LIMITED

Applicant

Respondents

Court File No: CV-17-11773-00CL

ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

Proceedings Commenced in Toronto

RESPONDING RECORD OF THE ONTARIO FARM PRODUCTS MARKETING COMMISSION

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Counsel for the Ontario Farm Products
Marketing Commission