

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*,  
R.S.O. 1990, C. C-43, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
VICTORIAN ORDER OF NURSES FOR CANADA, VICTORIAN ORDER OF  
NURSES FOR CANADA – EASTERN REGION AND VICTORIAN ORDER OF  
NURSES FOR CANADA – WESTERN REGION

Applicants

**RESPONDING MOTION RECORD  
(Returnable January 7, 2016)**

December 30, 2015

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## TAB 1

**ONTARIO  
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**Applicants**

**AFFIDAVIT OF JO-ANNE POIRIER  
(sworn December 30, 2015)**

I, Jo-Anne Poirier, of the City of Ottawa, in the Province of Ontario, MAKE OATH  
AND SAY:

1. I am the President and Chief Executive Officer of Victorian Order Of Nurses  
For Canada ("**VON Canada**") as well as its four separately incorporated regional operating  
entities:

- (a) Victorian Order Of Nurses For Canada – Eastern Region ("**VON East**");
  - (b) Victorian Order Of Nurses For Canada – Western Region ("**VON West**");
  - (c) Victorian Order Of Nurses For Canada – Ontario Branch ("**VON Ontario**");
- and

- (d) Victorian Order Of Nurses For Canada Nova Scotia Branch ("**VON Nova Scotia**").

VON Canada, VON East, VON West, VON Ontario and VON Nova Scotia are referred to herein, collectively, as the "**VON Group**" and VON Canada, VON East and VON West are referred to herein as the "**Applicants**".

2. I have held that position since January 2, 2014. As such, I have personal knowledge of the matters to which I hereinafter depose, except where otherwise stated. In preparing this affidavit I have also consulted, where necessary, with other members of VON Group's management team. Where I have relied upon other sources of information, I have stated the source of that information and believe such information to be true.

3. This affidavit is sworn in response to a motion by the Ministry of Health and Long-Term Care (together with the Local Health Integration Networks and the Community Care Access Centres, the "**Ministry**") returnable January 7, 2016 (the "**Ministry Motion**").

4. All capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the Affidavit of Phil Graham, sworn December 22, 2015 (the "**Graham Affidavit**").

#### **I. MINISTRY'S CONCERNS**

5. The Ministry's motion raises a number of concerns regarding the operation of the Ministry's agreements with VON Ontario and, to a limited degree, VON Canada and the use of funding provided by the Ministry under those agreements.

6. The Ministry's motion also raises concerns about the limited stay of proceedings provided under the First Amended and Restated Initial Order granted in these proceedings (the "**Initial Order**").

7. The Ministry's Notice of Motion and the Graham Affidavit explain:
- (a) The Ministry wishes to ensure that the moneys as funded are used for the purposes set out in the Funding Agreements and do not fall into the estate of VON Canada, VON East or VON West for distribution among their creditors;
  - (b) Ontario has never agreed to fund applicants to these proceedings, or any other affiliated or associated entity of VON for any purpose other than as stated in the specific program delivery terms, conditions and budgets set out in the Ministry's funding agreements; and
  - (c) The court lacked jurisdiction to grant a stay in favour of non-applicant entities.
8. The concerns raised in the Ministry's motion are based upon factual misunderstandings that this Affidavit seeks to resolve.

## **II. THE APPLICANTS DO NOT HAVE MATERIAL DEALINGS WITH THE MINISTRY**

9. The Ministry's motion often refers simply to VON, being the entire VON Group. However, the distinction between the various VON Group entities is essential to understanding both the response to the Ministry's Motion and the rationale for this restructuring process as a whole.

10. The vast majority of the Ministry's service agreements with the VON Group are with VON Ontario, which is not an Applicant in these proceedings.

11. No business dealings exist between either of VON East or VON West and the Ministry. VON East and VON West operated entirely outside of Ontario.

12. Very limited business dealings exist between VON Canada and the Ministry. These dealings involve:

- (a) the Nurse Practitioner-Led Clinic at Belle River;

- (b) the Nursing Graduate Guarantee Initiative; and
  - (c) the 9000 Nurses Initiative
- (the "VON Canada Agreements").

13. The VON Canada Agreements account for approximately \$4 million of the approximately \$145 million in aggregate funding provided by the Ministry to the VON Group in 2015. Any funding provided by the Ministry to the VON Group and not provided under the VON Canada Agreements is provided directly to VON Ontario.

14. Even under the VON Canada Agreements, VON Ontario, or in one case another non-Applicant entity, is the ultimate service provider. VON Canada is the administrative conduit through which funds pass from the Ministry.

15. All services under the Ministry's agreements with VON Ontario and under the VON Canada Agreements are provided in the Province of Ontario.

16. VON Ontario is a core operating entity of the VON Group. It is not intended that VON Ontario will undertake any financial or operational restructuring in these proceedings and will continue operating in the ordinary course. A primary goal of the restructuring process of VON Canada, VON East and VON West was to maintain business as usual for VON Ontario. For this reason, except in connection with the limited stay in paragraph 25 of the Initial Order, VON Ontario operates entirely outside of these proceedings.

17. Since the commencement of these proceedings by the Applicants, VON Ontario has continued to service its contracts and the VON Canada Agreements with the Ministry in the ordinary course. I am not aware of any material concerns raised by the Ministry regarding the service levels received from VON Ontario.

### III. MINISTRY FUNDING TO VON ONTARIO AND VON CANADA

18. The Ministry provides funding for the services provided by VON Ontario in advance of the provision of those services. Funding is provided in accordance with approved budgets that are agreed to by the Ministry and VON Ontario or, in the case of the VON Canada Agreements, the Ministry and VON Canada.

19. At the end of a particular funding year, which runs annually from April 1<sup>st</sup> to March 31<sup>st</sup>, a reconciliation is undertaken to determine if the services provided in connection with each particular service agreement exceeded or were less than the services that were reflected in the approved budgets. If the funding provided by the Ministry has not been fully spent during the funding year, the Ministry may demand the return of the unspent funding or adjust the amount of any further instalments of funding accordingly. While in some cases excess funding has been returned to the Ministry by VON Ontario, in most cases excess funding has been carried forward as a credit against prepayments in the following year.

20. No trust arrangement has ever been imposed in the past in connection with funds provided by the Ministry to either VON Ontario or VON Canada and no trust arrangement has ever been agreed to by VON Ontario or VON Canada.

### IV. APPLICANTS' FUND SEGREGATION PROCESS

21. Following the granting of the Initial Order in these proceedings on November 25, 2015, the existing cash management system of the VON Group was replaced with a new modified cash management arrangement (the "**Modified Cash Management System**").

22. Under the Modified Cash Management System, the Applicants established an arrangement pursuant to which a consolidated cash position of the Applicants would be



maintained and VON Canada, VON East and VON West could continue to utilize the consolidated cash balance held by those entities, collectively.

23. This Modified Cash Management System was implemented to ensure that no funds, other than ordinary course overhead payments (described below), were transferred from the non-Applicant entities in the VON Group to the Applicants.

24. Under the Modified Cash Management System there is no commingling of VON Ontario's funds with the funds of any Applicant.

25. The Modified Cash Management System has been implemented with The Bank of Nova Scotia.

#### **V. INDIRECT PAYMENTS BY THE MINISTRY TO VON CANADA**

26. The only funds that possibly could be considered as "funded indirectly" from the Ministry to any Applicant are those funds paid over by VON Ontario to VON Canada to compensate VON Canada for the overhead functions provided by VON Canada for the benefit of VON Ontario (the "**Overhead Payments**").

27. VON Canada is the administrative centre of the VON Group. The administrative and overhead related functions of the VON Group are performed by VON Canada. VON Canada also owns the intellectual property of the VON Group, which is licensed to VON Ontario, among others. VON Canada provides necessary back office support, senior management oversight, payroll services and quality control and training of front line staff for the operations undertaken by VON Ontario, among others.

28. The Overhead Payments are ordinary course payments that took place prior to the commencement of these proceedings and have continued following the commencement

of these proceedings. The Overhead Payments are a commercially reasonable arrangement pursuant to which VON Ontario receives value from VON Canada and compensates VON Canada accordingly.

29. While the timing of the Overhead Payments has been modified in the post-filing period for cash management reasons, the overall quantum of these payments has not increased.

30. These Overhead Payments are reflected in the approved budgets that are agreed between the Ministry and VON Ontario or, in the case of the VON Canada Agreements, VON Canada.

31. Without these Overhead Payments and VON Canada's continued freedom to use the funds transferred through these Overhead Payments, VON Canada would not be fairly compensated for the services and benefits it provides, VON Canada would cease to operate, the proposed restructuring of VON Canada would fail, and VON Ontario and VON Nova Scotia would no longer receive necessary administrative support from VON Canada.

## **VI. STAY OF PROCEEDINGS**

32. The stay of proceedings that affects VON Ontario is contained in paragraph 25 of the Initial Order. Paragraph 25 of the Initial Order states:

THIS COURT ORDERS that, without limiting Paragraphs 14 through 19 hereof with respect to the Applicants, during the Stay Period, no Funder (as defined in the Poirier Affidavit) shall:

- a) discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by Victorian Order Of Nurses For Canada Nova Scotia Branch or Victorian Order Of

Nurses For Canada – Ontario Branch (collectively, the “Non-Applicant Entities”); or

- b) have any rights to accelerate, amend, declare in default or enforce on any contract, agreement, instrument or other document,

in each case, due to the Applicants being parties to this proceeding, having made an Application to this Court pursuant to the CCAA and the Courts of Justice Act (Ontario) including any declarations of insolvency contained therein in respect of the Applicants or the Non-Applicant Entities, the appointment of a receiver in respect of the Applicants, or taking any steps in furtherance thereof, or complying with the terms of any Order granted in these CCAA proceedings or under the Courts of Justice Act (Ontario), except with the written consent of the Applicants, Chief Restructuring Officer and the Monitor, or leave of this Court. [emphasis added]

33. I am not aware that the Ministry has sought to or intends to take any steps to alter or interfere with any agreements to which VON Ontario is a party or that would otherwise be stayed by the provisions of Paragraph 25 of the Initial Order.

34. A copy of the Initial Order is attached hereto as Exhibit “A”.

## **VII. MINISTRY HAS NO PRACTICAL CONCERNS WITH RESPECT TO FUNDING OR STAY OF PROCEEDINGS**

35. The relief sought by the Ministry with respect to VON Ontario’s and VON Canada’s cash management is both (i) unnecessary given the Modified Cash Management System and the manner in which the Ministry funds VON Ontario; and (ii) if imposed, would be prejudicial to the Applicants’ restructuring efforts.

36. The Ministry seeks to impose a trust upon all funds directly or indirectly provided by the Ministry to the Applicants or VON Ontario. This request appears to be based upon a misunderstanding of the facts:

- (a) The funds provided by the Ministry to VON Ontario are not transferred to the Applicants, except in connection with the Overhead Payments that are made in the ordinary course for valuable services provided by and costs incurred by VON Canada for the benefit of VON Ontario.
- (b) The Overhead Payments cannot be impressed with a trust as requested by the Ministry as (i) the funds that are the subject of the Overhead Payments were not intended to be used directly to provide health care services; (ii) the Overhead Payments are necessary to fund VON Canada's liquidity needs; and (iii) VON Canada must be able to fund those liquidity needs in order to continue operating and to hopefully restructure for the benefit of VON Ontario and its funders and the other continuing entities in the VON Group.

37. The Ministry seeks an order requiring that unspent funds provided by the Ministry to VON Ontario be returned to the Ministry unless otherwise agreed in writing. This is my understanding of the arrangement that currently exists, and always has existed, between VON Ontario and the Ministry. This arrangement has consistently functioned to the satisfaction of VON Ontario and, to my knowledge, to the Ministry's satisfaction as well, without the need for any court order to this effect.

38. The VON Group understands that, as set out in their Motion, the Ministry is concerned that their funding does not fall into the estate of VON Canada, VON East or VON West for distribution among their creditors and understands that the Ministry never agreed to fund the Applicants in these proceedings. However, for the reasons set out above, the VON Group believes that these are not practical concerns in the current circumstances.

39. The Ministry's request with respect to the limited stay of proceedings in favour of VON Ontario also seems to be based upon a misunderstanding of the scope of that stay.

As stated above, I am not aware of any steps that the Ministry intends to take that would be in any way restricted by the limited stay of proceedings.

### **VIII. PREJUDICE TO VON GROUP**

40. The Ministry states that it wishes to continue funding under its various agreements with VON Ontario and VON Canada, and consequently the Ministry wishes to maintain its existing commercial relationship with VON Ontario. However, the relief sought by the Ministry on its motion would materially modify that commercial relationship and consequently result in an arrangement that would have significant negative implications for both VON Canada and VON Ontario.

41. To the extent the Ministry seeks to restrict the Overhead Payments made by VON Ontario to VON Canada in the ordinary course, VON Canada would no longer be able to provide necessary overhead functions to VON Ontario or to any other VON Group entities. In such a case, the operations of VON Ontario and the other VON Group entities that remain active would be placed at risk.

42. To the extent the Ministry seeks to segregate funds within VON Ontario or place any restrictions on VON Ontario's ordinary course dealings with its funds, this too would have a negative impact on VON Ontario's ability to continue operating in the ordinary course, particularly given the very limited liquidity with which VON Ontario operates. Such an arrangement would also be unworkable given: (i) the number of contracts that VON Ontario and the Ministry have, the cash flows of which would need to be separately identified and segregated; (ii) the fact that VON Ontario's current cash management processes and liquidity needs would not support such strict segregation, which the Ministry has not sought to impose in the past dealings with VON Ontario and its affiliates, which began several years ago; and (iii) the fact that the funds in the VON Ontario bank account, along with other assets

of VON Ontario, serve as collateral for any borrowings by VON Nova Scotia or VON Ontario under their existing credit facility with The Bank of Nova Scotia.

**IX. PURPOSE OF AFFIDAVIT**

43. This affidavit is sworn in response to the Ministry Motion and for no improper purpose.

SWORN BEFORE ME at the City of  
Ottawa, Province of Ontario, on  
December 30, 2015)



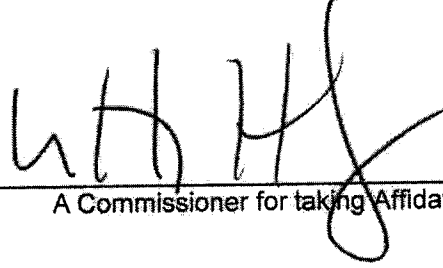
Commissioner for Taking Affidavits

"MATTHEW HALPIN"

  
Jo-Anne Poirier

**TAB A**

Attached is **Exhibit "A"** referred to in  
The affidavit of Jo-Anne Poirier  
Sworn before me on December 30, 2015

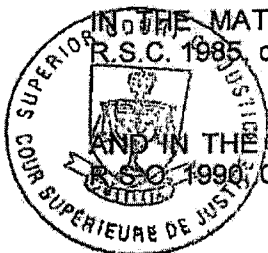
A handwritten signature in black ink, consisting of stylized initials and a surname, positioned above a horizontal line.

A Commissioner for taking Affidavits



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR ) WEDNESDAY, THE 25TH  
JUSTICE PENNY )  
DAY OF NOVEMBER, 2015



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
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AND IN THE MATTER OF SECTION 101 OF THE COURTS OF JUSTICE ACT,  
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NURSES FOR CANADA – WESTERN REGION

**Applicants**

**FIRST AMENDED AND RESTATED INITIAL ORDER**

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Jo-Anne Poirier sworn November 24, 2015 (the "Poirier Affidavit") and the Exhibits thereto and on hearing the submissions of counsel for the Applicants, Collins Barrow Toronto Limited (as the proposed Monitor), the Board of Directors of the Applicants and Bank of Nova Scotia, no one else appearing although duly served as appears from the affidavit of service of Evan Cobb sworn November 25, 2015 and on reading the

consent of Collins Barrow Toronto Limited to act as the Monitor,

#### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

#### **APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

#### **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan"). The Bank of Nova Scotia shall be treated as unaffected in any Plan.

#### **POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court and subject to Paragraph 11 hereof, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "Business") and Property. The Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants shall be entitled to establish and utilize the Modified Cash Management System (as defined in the Poirier Affidavit and as described in the Poirier Affidavit) or replace it with another substantially similar central cash management system (the "Cash Management System") and that The Bank of Nova Scotia, or any other present or future bank, providing the Cash Management System shall not be

under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System. For greater certainty, and without limiting the generality of the foregoing, the Applicants and The Bank of Nova Scotia are authorized to terminate the Existing Mirror Netting Agreement (as defined in the Poirier Affidavit) and the existing cash management system as described in the Poirier Affidavit.

6. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses, and volunteer and director expense reimbursements, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges;
- (c) the fees and disbursements of the Monitor, counsel to the Monitor, the Chief Restructuring Officer, the Applicants' counsel and counsel to the boards of directors of the Applicants; and
- (d) liabilities for charges incurred on credit cards issued to the Applicants.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order,

monthly in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business. Notwithstanding the foregoing, the termination of the Existing BNS Facility (as defined in the Poirier Affidavit) is hereby approved and Victorian Order Of Nurses For Canada is authorized to enter into the BNS Guarantee (as defined in the Poirier Affidavit), perform its obligations thereunder, and grant security over its Property as security for its obligations to The Bank of Nova Scotia.

**RESTRUCTURING**

11. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and
- (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

12. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes an Applicant's entitlement to remove any such

fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If an Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to that Applicant's claim to the fixtures in dispute. For greater certainty, and without limiting any other provisions of this Order, nothing in this Order shall restrict the Applicants or their employees from retrieving and removing from any leased premises any medical records or personal property of employees and former employees.

13. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

14. THIS COURT ORDERS that until and including February 26, 2016, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants, the Chief Restructuring Officer or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants, the Chief Restructuring Officer and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the

Business or the Property are hereby stayed and suspended pending further Order of this Court.

15. THIS COURT ORDERS that, notwithstanding paragraphs 14 and 17 herein, nothing herein will prevent The Bank of Nova Scotia from enforcing its rights against any cash collateral or other security held by The Bank of Nova Scotia in connection with any letters of credit or credit cards issued by The Bank of Nova Scotia in connection with, or for the benefit of, any of the Applicants.

16. THIS COURT ORDERS that upon (i) the occurrence of an event that would permit demand and enforcement by The Bank of Nova Scotia under the BNS Guarantee and any related security and (ii) granting of an Order of this Court, granted on 2 business days' notice to the Applicants and the Monitor, approving the exercise of such rights and remedies, The Bank of Nova Scotia shall be entitled to exercise any and all of its rights and remedies against the Victorian Order Of Nurses For Canada or its Property under and pursuant to the BNS Guarantee and related security.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

17. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants, the Chief Restructuring Officer or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants, the Chief Restructuring Officer and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

18. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

19. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names, information technology support and data processing services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

20. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

21. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of any of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of any of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.



## **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

22. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$750,000, as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 herein.

24. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

## **PROTECTIONS FOR NON-APPLICANT ENTITIES**

25. THIS COURT ORDERS that, without limiting Paragraphs 14 through 19 hereof with respect to the Applicants, during the Stay Period, no Funder (as defined in the Poirier Affidavit) shall:

- (a) discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by Victorian Order Of Nurses For Canada Nova Scotia Branch or Victorian Order Of Nurses For Canada – Ontario Branch (collectively, the "Non-Applicant Entities"); or
- (b) have any rights to accelerate, amend, declare in default or enforce on any contract, agreement, instrument or other document,

in each case, due to the Applicants being parties to this proceeding, having made an Application to this Court pursuant to the CCAA and the *Courts of Justice Act* (Ontario)

including any declarations of insolvency contained therein in respect of the Applicants or the Non-Applicant Entities, the appointment of a receiver in respect of the Applicants, or taking any steps in furtherance thereof, or complying with the terms of any Order granted in these CCAA proceedings or under the *Courts of Justice Act (Ontario)*, except with the written consent of the Applicants, Chief Restructuring Officer and the Monitor, or leave of this Court.

**APPOINTMENT OF MONITOR**

26. THIS COURT ORDERS that Collins Barrow Toronto Limited is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their members, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

27. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicants in their development of any Plan and any amendments to such Plan;
- (d) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or members' meetings for voting on any Plan;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

28. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

29. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

30. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

31. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

32. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Chief Restructuring Officer (as defined below), counsel to the Applicants and counsel to the boards of directors of the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, the Chief Restructuring Officer, counsel for the Applicants and counsel to the boards of directors of the Applicants on a weekly basis.

33. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

34. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Chief Restructuring Officer, the Applicants' counsel and counsel to the boards of directors of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 39 and 41 hereof.

#### **APPOINTMENT OF CHIEF RESTRUCTURING OFFICER**

35. THIS COURT ORDERS that Victorian Order Of Nurses For Canada is authorized to engage March Advisory Services Inc. as Chief Restructuring Officer (in such capacity, the "Chief Restructuring Officer") on the terms and conditions set out in the form of CRO Engagement Letter (as such term is defined in the Poirier Affidavit). The Chief Restructuring Officer shall not be engaged by, and shall not be deemed to have been engaged by,

Victorian Order Of Nurses For Canada – Eastern Region or Victorian Order Of Nurses For Canada – Western Region.

36. THIS COURT ORDERS Victorian Order Of Nurses For Canada is authorized to enter into the CRO Engagement Letter and Victorian Order Of Nurses For Canada is authorized to perform its obligations thereunder.

37. THIS COURT ORDERS that any obligations of Victorian Order Of Nurses For Canada under the CRO Engagement Letter for payment of fees and expenses shall be entitled to the benefit of the Administration Charge and any obligations of Victorian Order Of Nurses For Canada under the CRO Engagement Letter for payment of indemnities shall be entitled to the benefit of the Directors' Charge.

38. THIS COURT ORDERS that any claims of the Chief Restructuring Officer under the CRO Engagement Letter shall be treated as unaffected in any Plan.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

39. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$250,000); and

Second – Directors' Charge (to the maximum amount of \$750,000).

40. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge or the Administration Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

41. THIS COURT ORDERS that each of the Directors' Charge and the Administration Charge (each as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

42. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge or the Administration Charge, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

43. THIS COURT ORDERS that the Directors' Charge and the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds any of the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which any Applicant is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicants pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

44. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

### **KEY EMPLOYEE RETENTION PLAN**

45. THIS COURT ORDERS that the payments to be made pursuant to the Key Employee Retention Plan (as such terms are defined in the Poirier Affidavit), which is attached as a confidential exhibit to the Poirier Affidavit, are hereby approved and the Applicants are authorized and directed to make payments in accordance with the terms of such Key Employee Retention Plan.

### **SEALING**

46. THIS COURT ORDERS that Confidential Exhibits "K" and "L" to the Poirier Affidavit be and are hereby sealed pending further Order of the Court and shall not form part of the public record.

### **SERVICE AND NOTICE**

47. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in either the National Post (national edition) or the Globe and Mail (national edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, by ordinary mail, a notice to every known creditor who has a claim against any of the Applicants of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available.

48. THIS COURT ORDERS the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol

with the following URL: [www.collinsbarrow.com/en/cbn/restructuring-and-recovery-engagements/v-o-n](http://www.collinsbarrow.com/en/cbn/restructuring-and-recovery-engagements/v-o-n) (the "Website").

49. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

50. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "Service List"). The Monitor shall post the Service List, as may be updated from time to time, on the Website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

#### GENERAL

51. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

52. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants (or any of them), the Business or the Property.

53. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the



Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

54. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

55. THIS COURT ORDERS that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

56. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

DEC 09 2015

*"Randy J."*  
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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Court File No: CV-15-11152-00CL

AND IN THE MATTER OF SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF VICTORIAN ORDER OF NURSES FOR CANADA, VICTORIAN ORDER OF NURSES FOR CANADA – EASTERN REGION AND VICTORIAN ORDER OF NURSES FOR CANADA – WESTERN REGION

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FIRST AMENDED AND RESTATED INITIAL ORDER**

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Lawyers for the Applicants

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985,  
c. C-36, AS AMENDED

Court File No: CV-15-11192-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF VICTORIAN  
ORDER OF NURSES FOR CANADA

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**AFFIDAVIT OF JO-ANNE POIRIER  
(Sworn December 30, 2015)**

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
VICTORIAN ORDER OF NURSES FOR CANADA

Court File No. CV-15-11192-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD  
(returnable January 7, 2016)**

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