

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

N°: 500-11-057570-190

**SUPERIOR COURT**  
(Commercial Division)

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

**9348069 CANADA INC.**

-and-

**4295862 CANADA INC.**

-and-

**3441890 CANADA INC. (Formerly MOTOVAN  
CORPORATION)**

(hereafter referred to as “**MTV**”)

Debtors

-and-

**MONCY HOLDING COMPANY INC.**

-and-

**MONCY FINANCIAL SERVICES COMPANY INC.**

-and-

**NICHOLS MOTORCYCLE SUPPLY INC.**

-and-

**MONCY LLC**

-and-

**MOTORCYCLE TIRES & ACCESSORIES LLC;**

(hereafter referred to as “**MTA**”)

Mises en cause

(Debtors and the Mises en cause are collectively  
hereafter referred to as the « **CCAA  
Parties** »)

-and-

**BANK OF MONTREAL**

-and-

**INVESTISSEMENT QUÉBEC**

-and-

**EXPORT DEVELOPMENT CANADA**

-and-

**BDC CAPITAL INC.**

Secured Creditors

-and-

**KPMG INC.**

Monitor

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**MOTION FOR THE ISSUANCE OF (I) A DISTRIBUTION ORDER, (II) AN ORDER  
TERMINATING THE CCAA PROCEEDINGS AND (III) OTHER ANCILLARY ORDERS**

(Section 11 and *ff.* of the *Companies' Creditors Arrangement Act* "CCAA")

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN  
COMMERCIAL DIVISION FOR THE DISTRICT OF MONTREAL, THE CCAA PARTIES  
RESPECTFULLY SUBMIT THE FOLLOWING:**

**I. INTRODUCTION**

1. By the present motion (the "**Motion**"), the Monitor seeks from this Court the issuance of the following orders:
  - a) An order for the final distribution of the proceeds held by the Monitor resulting from the realization of the assets of MTV (the "**Distribution Order**");
  - b) An order declaring that the present proceedings under the CCAA with respect to the CCAA Parties (the "**CCAA Proceedings**") are terminated (the "**Termination Order**");
  - c) An order (i) discharging and terminating the charges established by this Court in the CCAA Proceedings, namely the CCAA Charges (as defined below), (ii) discharging the Monitor from any further obligations, duties, liabilities and responsibilities in its capacity as Monitor pursuant to the Initial Order and any

other orders issued in the context of these CCAA Proceedings, and (iii) authorizing MTV to make an assignment in bankruptcy pursuant to the BIA, and the Monitor to proceed with such assignment on behalf of MTV (the “**Ancillary Orders**”);

the whole as further detailed below.

## II. **THE CCAA PROCEEDINGS**

2. On December 2, 2019, an Initial Order was issued by this Court commencing these CCAA Proceedings pursuant to the CCAA in respect of the CCAA Parties, as appears from the Court record<sup>1</sup>;
3. Pursuant to the Initial Order, among other orders issued, the Court:
  - a) Ordered a stay of proceedings in favour of the CCAA Parties and their respective directors and officers and other general CCAA relief pursuant to, inter alia, sections 11, 11.02 and 11.03 (the “**Stay Period**”);
  - b) Appointed KPMG Inc. (“**KPMG**”) as Monitor pursuant to Section 11 of the CCAA;
  - c) Granted an administration charge to secure the Debtors’ obligations towards its legal advisors (BCF LLP), the Monitor (KPMG), the Monitor’s legal advisors (Norton Rose Fulbright Canada LLP) and the CCAA Parties’ advisers (KPMG Corporate Finance) (the “**Administration Charge**”); and
  - d) Granted a charge to secure the Debtors’ obligations towards its directors and officers in respect of potential liabilities that could arise after the Initial Order has been issued, to the extent that such potential liability is not covered by existing insurance policies (the “**D&O Charge**”, and collectively with the Administration Charge, the “**CCAA Charges**”);
4. On December 12, 2019, the Court issued an *Amended and Restated Initial Order* pursuant to which the Court:
  - a) Amended the Initial Order to increase the amount of the Administration Charge to \$500,000.00;
  - b) Approved the sale and investment solicitation process (“**SISP**”) proposed by the CCAA Parties;
5. The Stay Period was extended by orders of this Court from time to time until June 1, 2021, as appears from the Court record, and will have come to an end by the time this Motion is heard;
6. On February 19, 2020, following the completion of the SISP, the Court issued an *Approval and Vesting Order* pursuant to which the Court notably approved the sale of

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<sup>1</sup> Except as otherwise provided for herein, all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in Initial Order.

MTV's assets and of certain assets of MTA (the "**Transaction**") and ordered the remittance of the sale proceeds to the Monitor;

7. On May 15, 2020, the Court issued (i) a *Re-Amended and Restated Initial Order*, and (ii) a *Distribution Order*, by which the Court notably:
  - a) Extended the Stay Period in order to allow the CCAA Parties to maximize the collection proceeds in the U.S. in relation to a liquidation process with respect to assets of MTA not part of the Transaction, and to pursue the collection of overpaid customs duties paid by MTV (the "**Duties**");
  - b) Allowed for the distribution of the sale proceeds held by the Monitor following the execution and closing of the Transaction;
8. On November 16, 2020, the Court issued (i) a *Re-Re-Amended and Restated Initial Order* (the "**ARIO**"), and (ii) a *Distribution Order*, by which the Court notably:
  - a) Extended the Stay Period in order to allow for the continuation of the collection of the Duties;
  - b) Granted powers to the Monitor in order to allow the Monitor to continue such collection of Duties on behalf of MTV, and for the filing of a motion for final decree in the Chapter 15 proceedings, which has been done since;
  - c) Allowed for a second interim distribution of proceeds held by the Monitor mainly as a result of the ongoing collection of Duties at that time (the "**Second Distribution**");
9. On January 29, 2021, the Court issued a last order extending the Stay Period until June 1, 2021, for the purposes of completing the collection of Duties with a view to bring an end the present CCAA Proceedings upon the final distribution of the remaining proceeds from the realization of the assets of MTV.

### III. UPDATE ON THE COLLECTION OF THE DUTIES

10. Since the efforts to collect the Duties were initiated during Fall 2020, a total amount of \$1,203,309 has been collected by the Monitor with the assistance of ALB Group ("**ALB**"), a company that specializes in customs duty reduction and recovery services, the whole with a view to maximize the realization of the assets of the CCAA Parties, as appears from the Court record.
11. An amount of \$385,500 representing such collected Duties has already been distributed in the context of the Second Distribution ordered by this Court on November 16, 2020.
12. The Monitor has continued the collection of the Duties after January 29, 2021, and has collected since then an amount of approximately \$294,000, as more detailed in the seventh report of the Monitor prepared in support of this Motion, communicated herewith as **Exhibit R-1** (the "**Seventh Report**").

13. The Duties have now been fully collected based on reports from ALB and the Canada Border Services Agency. Therefore, the Duties still held by the Monitor should now be distributed.

#### IV. FINAL DISTRIBUTION

14. Considering the foregoing, and as the present restructuring proceedings are completed and that Stay Period in the present proceedings is expiring, the Monitor now seeks from this Court the issuance of an order authorizing the Monitor to proceed to the final distribution of the remaining proceeds of the realization efforts with respect to the assets of MTV.
15. Such proceeds represent Duties and certain receivables collected.
16. The details of the final distribution contemplated are provided in the Seventh Report, **Exhibit R-1**.
17. As appears from the Court record in the context of the Second Distribution, a formal claims process was not deemed appropriate to be implemented in the present proceedings considering the absence of equity beyond the secured claims.
18. In the absence of a formal claim process, it is respectfully submitted that it is appropriate for this Court to issue a distribution order, which is included in the draft order communicated herewith as **Exhibit R-2** (the "**Draft Order**"), in order to allow the Monitor to distribute such remaining amounts.
19. With respect to MTV, the amount of BMO's outstanding secured claim is updated in the Seventh Report, **Exhibit R-2**.
20. The Monitor has obtained an independent security review from its counsels confirming the validity and enforceability of BMO's security interest.
21. That being said, with a view of facilitating the final distributions to take place in an efficient manner in the present insolvency proceedings, including in the eventual bankruptcy proceedings contemplated for MTV, the Monitor has determined in collaboration with the *Quebec Revenue Agency* ("**QRA**") the quantum of the claim of QRA in the present matter that represent an amount deemed to be held in trust in accordance with section 67(3) BIA for the Quebec Revenue Agency (the "**QRA Deemed Trust Amount**").
22. In collaboration with the QRA, the QRA Deemed Trust Amount was determined to be for an amount of \$12,170.93.
23. As such, the Monitor respectfully submits that from the amounts that are held in trust by the Monitor for purposes of distribution, an amount of \$12,170.93 should remain in trust with the Monitor for the purposes of being subsequently distributed by KPMG Inc. following its appointment as trustee to the bankruptcy

of MTV (and not personally) upon the assignment in bankruptcy of MTV as a result of the issuance of the orders sought in this Motion.

24. Such subsequent distribution would take place after the distribution to BMO contemplated herein.
25. BMO supports this position with respect to the QRA Deemed Trust Amount.
26. In abundance of caution, all secured creditors as well as the tax authorities are receiving notification of the present Motion and of the Draft Order (**Exhibit R-2**).

**V. TERMINATION OF THE CCAA PROCEEDINGS**

27. The collection of the Duties now being completed, the Stay Period will be expired by the time this Motion is heard, and the Monitor will have fulfilled its mandate pursuant to the ARIO once the distribution contemplated herein is effected.
28. Aside from the collection of the Duties, the activities of the Monitor since the last extension of the Stay Period on January 29, 2021 were limited to the payment of certain remaining invoices of the professionals involved in the proceedings, to the collection of isolated receivables, and to certain communications with a few creditors in the context of the upcoming Distribution, as appears from the Seventh Report, **Exhibit R-1**.
29. In mid-March 2021, the Monitor was informed by the Canada Revenue Agency (“**CRA**”) that a fraud was attempted against MTV with respect to an attempt to collect Covid-19 wage subsidies on behalf of the company. The fraudsters were able to change the corporate name at the federal registry. CRA has blocked the request for the wage subsidy and a complaint was filed with Corporations Canada on MTV’s behalf.
30. That said, no other events required a material involvement of the Monitor in the context of the CCAA Proceedings of MTV, as appears from the Seventh Report, **Exhibit R-1**.
31. Aside from the Distribution, all of the other actions of the Monitor, including issues such as the complaint to the CRA with respect to the Covid-19 wage subsidies, do not require to be handled within the CCAA Proceedings and should be managed within bankruptcy proceedings for MTV.
32. Indeed, MTV and MTA are no longer in operation since the Transaction, they have no more employees or assets, and the Monitor do not expect any cash inflows or cash outflows, as appears from the Seventh Report, **Exhibit R-1**.
33. For these reasons, and considering the additional powers that had been granted to the Monitor in the ARIO, it is respectfully submitted that the Court should terminate the present CCAA Proceedings, subject to the issuance of the ancillary

orders mentioned below, which will allow the insolvency proceedings of MTV to end in an orderly manner.

## VI. ANCILLARY ORDERS SOUGHT

34. The Monitor respectfully submits that in the context of the termination of the CCAA Proceedings, it is appropriate to issue the following Ancillary Orders, the whole as provided in the Draft Order, **Exhibit R-2** :
  - a) An order discharging and terminating the charges established by this Court in the CCAA Proceedings, namely an administration charge for the benefit of certain professionals involved in the present matter, for an amount of \$500,000, and a directors and officers charge in the amount of \$723,000 (the "**CCAA Charge**");
  - b) An order discharging the Monitor from any further obligations, duties, liabilities and responsibilities in its capacity as Monitor pursuant to the ARIO and any other orders issued in the context of these CCAA Proceedings; and
  - c) An order authorizing MTV to make an assignment in bankruptcy pursuant to the BIA, and authorizing the Monitor to proceed with such assignment on behalf of MTV.
35. The termination and the discharge of the CCAA Charge is appropriate considering that the work of the professionals which benefited from this charge will be completed by the time this Motion is heard, and the payment of their fees will have been provided for as well.
36. As for the directors and officers, their assistance is not required anymore, considering the termination of the CCAA Proceedings that is contemplated.
37. Moreover, once the final distribution contemplated by this Motion will be completed, there will be no assets remaining to provide for the CCAA Charges.
38. As such, the CCAA Charge should be discharged and terminated in accordance with the Draft Order, **Exhibit R-2**.
39. As well, the Monitor has acted and fulfilled its duties at all times in accordance with the ARIO and the various orders issued in this file, with diligence. The Monitor is respectfully submitted that it is appropriate that a release be issued in favour of the Monitor in accordance with the terms of the Draft Order, **Exhibit R-2**.
40. Finally, upon termination of the CCAA Proceedings, the CCAA Parties, and particularly MTV will not hold any asset and will remain inactive. However, MTV remains indebted towards its creditors and remains insolvent.

41. As result, it is respectfully submitted that it is appropriate and in accordance with the proper administration of justice to authorize MTV to file an assignment in bankruptcy upon the termination of the present CCAA Proceedings, and to further authorize the Monitor to proceed with such filings on behalf of MTV upon completion of the Distribution.
42. The issuance Ancillary Orders are appropriate in order to bring proper closure to the present CCAA Proceedings.

**VII. CONCLUSION**

43. Since the issuance of the Initial Order, the CCAA Parties and the Monitor have acted, and continue to act, in good faith and with due diligence;
44. BMO supports the present Motion;
45. It is respectfully submitted that the Draft Order, **Exhibit R-2**, should be issued, and that the present Motion is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present Motion;

**DECLARE** that sufficient prior notice of the presentation of the Motion has been given to interested parties;

**ISSUE** an order substantially in the form of the draft Order (**Exhibit R-2**) communicated in support hereof;

**THE WHOLE WITHOUT COSTS**, save and except in case of contestation.

Montréal, June 1, 2021

*Norton Rose Fulbright  
Canada LLP*

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**NOTICE OF PRESENTATION**

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**TO: THE ATTACHED SERVICE LIST**

**TAKE NOTE** that the present *Motion for the issuance of (i) a distribution order, (ii) an order terminating the ccaa proceedings and (iii) other ancillary orders* will be presented before the honourable judge Marie-Anne Paquette, j.c.s., or before one of the honourable judges of the Superior Court sitting in commercial division and for the district of Montreal, on **June 10, 2021**, at **14h15** (Montreal time), in room **16.04**.

**DO GOVERN YOURSELF ACCORDINGLY.**

Montréal, June 1, 2021

*Norton Rose Fulbright  
Canada LLP*

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**NO:** 500-11-057570-190

**SUPERIOR COURT  
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**IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS  
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and  
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**BANK OF MONTREAL et als.** Secured Creditors

and  
**KPMG INC.** Monitor

**MOTION FOR THE ISSUANCE OF (I) A DISTRIBUTION  
ORDER, (II) AN ORDER TERMINATING THE CCAA  
PROCEEDINGS AND (III) OTHER ANCILLARY ORDERS  
AND NOTICE OF PRESENTATION**

**ORIGINAL**

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