

CV13-10046-0002
Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

FREEPORT FINANCIAL LLC

Applicant

- and -



PRACS INSTITUTE CANADA B.C. LTD.

Respondent

APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, RSO 1990, c C43, AS AMENDED and SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on March 22, 2013, at 10:00 a.m. at 330 University Ave, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date March 22, 2013

Issued by 
Local registrar

Address of 330 University Avenue, 7th Floor
court office Toronto, ON M5G 1R7

TO: Guy P. Martel
Stikeman Elliott LLP
1155 René-Lévesque Blvd. West, Suite 4000
Montréal, QC H3B 3V2

Counsel for the Respondent

APPLICATION

1. The applicant makes application for an Order substantially in the form attached hereto as Schedule "A", *inter alia*:

- (a) Abridging, or if necessary, dispensing with service of this Notice of Application and Application Record and stating that the Application is properly returnable today, and that all parties entitled to service of the Notice of Application have been duly served and that further service on any other parties be dispensed with;
- (b) Appointing PricewaterhouseCoopers Inc. ("**PwC**") as receiver, without security, of all of the assets, undertakings and properties (collectively, the "**Property**") of the respondent, PRACS Institute Canada B.C. Ltd ("**PRACS Canada**" or the "**Debtor**") pursuant to section 243 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended (the "**CJA**") (in such capacities, the "Receiver"); and
- (c) Such other relief as to this Honourable Court may seem just.

The grounds for the application are:

- (a) The Debtor is a wholly owned subsidiary of PRACS Institute Holdings, LLC (the "**Holding Company**"), the holding company for the PRACS Institute group of companies (the "**PRACS Institute**");
- (b) By way of a credit agreement dated June 20, 2012, the Holding Company, PRACS Canada and their direct and indirect subsidiaries entered into a credit agreement, (as amended, restated, modified or supplemented, the "**Credit Agreement**") with the financial institutions party thereto as lenders (the "**Lenders**"), and Freeport Financial LLC, as agent (in such capacity, the "**Agent**");

- (c) Pursuant to the Credit Agreement, the Lenders extended (i) a \$20,000,000 Revolving Loan (which was partially drawn on the Closing Date, and has since been fully drawn), (ii) a \$15,300,000 US Term Loan A, (iii) a \$5,000,000 US Term Loan B, (iv) a \$31,000,000 US Term Loan C, and (v) a \$4,000,000 Canadian Term Loan C;
- (d) The Canadian Term Loan C and the other obligations of PRACS Canada under the Credit Agreement are secured by first priority liens and security interests granted pursuant to a security agreement, dated as of June 20, 2012 (the "**Security Agreement**"), by and among the Agent and the PRACS Institute entities other than PRACS Canada;
- (e) The Debtor has reached its maximum borrowing and the Lenders are not willing to provide additional financing;
- (f) On March 22, 2013 the Debtor's parent, PRACS Holdings, made a voluntary Chapter 7 filing;
- (g) All of the Debtor's employees have been terminated and the board of directors has, or is about to, resign;
- (h) The appointment of a receiver is necessary to preserve what value remaining on the Property and to facilitate a prompt sale of the Debtor's assets;
- (i) The Debtor has consented to the appointment of a receiver;
- (j) Such appointment is in the interest of all stakeholders;
- (k) PwC has consented to act as receiver;
- (l) Those grounds as set out in the affidavit of Anthony Marino, sworn March 22, 2013 (the "**Marino Affidavit**") and the exhibits thereto;
- (m) Section 243 of the BIA;

- (n) Section 101 of the CJA;
- (o) Rules 3.02, 16.08 and 41 of the *Rules of Civil Procedure*; and
- (p) Such other grounds as counsel may advise and this Honourable Court may permit.

2. The following documentary evidence will be used at the hearing of the application:

- (a) The Marino Affidavit;
- (b) The consent of PwC to act as receiver; and
- (c) Such other material as counsel may advise and this Honourable Court may permit.

March 22, 2013

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Lawyers for the Applicant

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Proceeding commenced at Toronto

NOTICE OF APPLICATION

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