

2023 01G 0841

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF an application of
Rambler Metals and Mining Canada
Limited and 1948565 Ontario Inc.

AND IN THE MATTER OF the *Companies'*
Creditors Arrangement Act, R.S.C. 1985,
c. C-36, as amended ("**CCAA**")

SUMMARY OF CURRENT DOCUMENT	
Court File Number:	2023 01G 0841
Date of Filing Document:	April 5, 2023
Name of Party Filing or Person:	Rambler Metals and Mining Canada Limited
Application to which Document being filed relates:	Application for a declaration pursuant to section 5(5) of the <i>Wage Earner Protection Program Act</i> , SC 2005, c 47, s 1 and for other relief
Statement of Purpose in filing	To support the application

MEMORANDUM OF FACT AND LAW OF THE APPLICANTS

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TO: Counsel and others listed in the Service List at Schedule A to the Application

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OVERVIEW

1. Rambler Metals and Mining Canada Limited ("Rambler Canada") seeks an order:
 - (a) abridging the notice periods pursuant to Section 11 of the CCAA and the *Rules of the Supreme Court, 1986*, Rule 3.03(1), Rule 6.04(2) and Rule 6.06;
 - (b) pursuant to Section 11 of the CCAA, directing that the service on the service list set out in **Schedule A** to the Interlocutory Application is sufficient for the purposes of this application;
 - (c) pursuant to section 5(5) of the *Wage Earner Protection Program Act*, SC 2005, c 47, s 1 ("WEPPA") that:

- (i) as of February 27, 2023, Rambler Canada was the subject of proceedings under the CCAA;
- (ii) as of March 30, 2023, Rambler Canada had terminated most of its employees in Canada, other than any retained to wind down its business operations and to put the mine in care and maintenance mode;
- (iii) Rambler Canada therefore meets the criteria under section 5(5) such that WEPPA applies to the former employees of Rambler Canada;
- (d) such further and other relief as counsel may advise and this Court deems just.

FACTS

2. For the purpose of this application, Rambler Canada relies on:
 - (a) the Bradbury Affidavit, sworn February 22, 2023, and previously filed with the Court;
 - (b) the Proposed Monitor's Pre-Filing Report, dated February 23, 2023;
 - (c) the Monitor's First Report, dated March 3, 2023;
 - (d) the Monitor's Second Report, dated March 13, 2023;
 - (e) the Monitor's Third Report, dated April 5, 2023.
3. Rambler Canada had, until very recently, employed over 200 employees.
4. In its Third Report, the Monitor reported on a "material adverse change" notice, dated April 3, 2023, with respect to non-payment of funds expected from Rambler Canada's exclusive customer, Transamine Trading S.A. ("**Transamine**").

5. Following the last hearing in this proceeding on March 15, 2023, Transamine advised Rambler Group and the Monitor that it:
 - (a) Would not return USD\$500,000 already set off against an earlier invoice; and
 - (b) claimed a right to set off the USD\$1.78 million owing to Rambler Group pursuant to an invoice dated March 7, 2023 and payable on March 30, 2023.
6. Further, on March 21, 2023, Rambler delivered a provisional invoice for weekly copper production to Transamine in the amount of approximately USD\$882,000, due and payable on March 23, 2023. That invoice was also not paid.
7. Without that anticipated revenue, Rambler Group was forced to cease active operations on March 28, 2023.
8. The revenue shortfalls due to Transamine's claims to set-off and refusal to pay, in the Monitor's opinion, constitute a "material adverse change" under section 23(1)(d)(i) of the CCAA.
9. On March 30, 2023, Rambler Canada terminated the employment of 173 employees.
10. At the date of this filing, Rambler Canada has retained 39 employees in order to transition the mine to "warm idle" mode, where operations will be focused on care and maintenance rather than production.

Reference: Monitor's Third Report, dated April 5, 2023

ISSUES

11. The issue on this application is as follows:
 - (a) Does WEPPA apply to the former employees of Rambler Canada?

LAW AND ARGUMENT

12. As a result of the revenue shortfalls described in the Monitor's Third Report, Rambler Canada caused the termination of substantially all of its employees in Canada, with the exception of a small number of employees who have been retained to assist in winding down operations and transitioning the mine to care and maintenance.
13. The terminations are considered final.
14. Section 5(1) of the *Wage Earner Protection Program Act* sets out the conditions of eligibility:

An individual is eligible to receive a payment if

(a) the individual's employment ended for a reason prescribed by regulation;

(b) one of the following applies:

(i) the former employer is bankrupt,

(ii) the former employer is subject to a receivership,

(iii) the former employer is the subject of a foreign proceeding that is recognized by a court under subsection 270(1) of the Bankruptcy and Insolvency Act and

(A) the court determines under subsection (2) that the foreign proceeding meets the criteria prescribed by regulation, and

(B) a trustee is appointed, or

(iv) the former employer is the subject of proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act and a court determines under subsection (5) that the criteria prescribed by regulation are met; and

(c) the individual is owed eligible wages by the former employer. [Emphasis added.]

Reference: Section 5(1), *Wage Earner Protection Program Act*, SC 2005, c 47 ("WEPPA"), Memorandum of Fact and Law of the Applicants, Tab 1

15. Rambler Canada submits with respect to the factors in section 5(1) of WEPPA regarding its former employees:

- (a) The employment of Rambler Canada's former employees ended as a result of terminations effected March 30, 2023, as prescribed by section 3(b) of the *Wage Earner Protection Programs Regulations*, SOR/2008-222 ("**WEPPA Regulations**");

An individual's employment has ended for the purposes of paragraph 5(a) of the Act if it has ended for any of the following reasons:

...

(b) the individual's employment has terminated...

Reference: Section 3(b), *Wage Earner Protection Programs Regulations*, SOR/2008-222, Memorandum of Fact and Law of the Applicants, Tab 2

- (b) Rambler Canada was held to be a "debtor company" under the CCAA by order dated February 27, 2023. Therefore, Rambler Canada is a former employer subject to proceedings under the CCAA in accordance with section 5(1)(b)(iv) of WEPPA; and

- (c) The former employees are owed eligible wages by Rambler Canada. Eligible wages are defined in section 2(1):

(a) wages other than termination pay and severance pay that were earned during the longer of the following periods:

(i) the six-month period ending on the date of the bankruptcy or the first day on which there was a receiver in relation to the former employer,

(ii) the period beginning on the day that is six months before one of the following days and ending on the date of the bankruptcy or the first day on which there was a receiver in relation to the former employer:

(A) the day on which a proposal is filed by or in respect of the employer under Division I of Part III of the Bankruptcy and Insolvency Act or, if a notice of intention to make a proposal is filed by or in respect of the employer under that Division, the day on which the notice of intention is filed,

(B) the day on which the most recent proceedings under the Companies' Creditors Arrangement Act are commenced, and

(iii) the period beginning on the day that is six months before one of the following days and ending on the day on which a court makes a determination under subsection 5(5):

(A) the day on which a proposal is filed by or in respect of the employer under Division I of Part III of the Bankruptcy and Insolvency Act or, if a notice of intention to make a proposal is filed by or in respect of the employer under that Division, the day on which the notice of intention is filed,

(B) the day on which the most recent proceedings under the Companies' Creditors Arrangement Act are commenced; and

(b) termination pay and severance pay that relate to employment that ended

(i) during the period referred to in paragraph (a), or

(ii) during the period beginning on the day after the day on which the period referred to in paragraph (a) ends and ending on the day on which the trustee is discharged or the receiver completes their duties, as the case may be.

Reference: Section 2(1), WEPPA, Memorandum of Fact and Law of the Applicants, Tab 1

16. Section 5(5) of WEPPA authorizes this Court to determine that a former employer meets the criteria prescribed by the WEPPA Regulations.

Reference: Section 5(5), WEPPA, Memorandum of Fact and Law of the Applicants, Tab 1

17. Section 3.2 of the WEPPA Regulations outlines the eligibility criteria to be met:

For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.

Reference: Section 3.2, WEPPA Regulations, Memorandum of Fact and Law of the Applicants, Tab 2

18. Substantially all of Rambler Canada's employees were terminated on March 30, 2023.
19. The only employees that have been retained were necessary to wind down Rambler Canada's operations from active mining to "warm idle"/care and maintenance mode until the conclusion of the SISP or other termination of the CCAA proceeding.
20. Therefore, Rambler Canada submits that it meets the criteria outlined in the WEPPA Regulations and WEPPA should apply to the former employees of Rambler Canada.

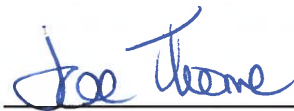
RELIEF SOUGHT

21. Rambler Canada therefore requests an order:
- (a) abridging the notice periods pursuant to Section 11 of the CCAA and the *Rules of the Supreme Court, 1986*, Rule 3.03(1), Rule 6.04(2) and Rule 6.06;
 - (b) pursuant to Section 11 of the CCAA, directing that the service on the service list set out in **Schedule A** of the application is sufficient for the purposes of this application;
 - (c) for a declaration that WEPPA applies to Rambler Canada's former employees; and
 - (d) for such further and other relief as counsel may advise and this Court deems just.

[signature page to follow]

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

DATED at St. John's, Newfoundland and Labrador, this 5th day of April, 2023.



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**Solicitors for the Applicants, Rambler
Metals and Mining plc, and Rambler Mines
Limited**

**TO: Counsel and others listed in the Service List at Schedule A to the
Application**

LIST OF AUTHORITIES

	TAB
Excerpts from <i>Wage Earner Protection Program Act</i> , SC 2005, c 47, s 1	1
Excerpts from <i>Wage Earner Protection Programs Regulations</i> , SOR/2008-222	2

TAB 1



CANADA

CONSOLIDATION

CODIFICATION

Wage Earner Protection Program Act

Loi sur le Programme de protection des salariés

S.C. 2005, c. 47, s. 1

L.C. 2005, ch. 47, art. 1

NOTE

[Enacted by section 1 of chapter 47 of the Statutes of Canada, 2005, in force July 7, 2008, *see* SI/2008-78.]

NOTE

[Édictée par l'article 1 du chapitre 47 des Lois du Canada (2005), en vigueur le 7 juillet 2008, *voir* TR/2008-78.]

Current to March 20, 2023

À jour au 20 mars 2023

Last amended on November 20, 2021

Dernière modification le 20 novembre 2021



S.C. 2005, c. 47, s. 1

L.C. 2005, ch. 47, art. 1

An Act to establish a program to provide for payments to individuals in respect of wages owed to them by employers who are insolvent

Loi établissant un programme prévoyant le versement de prestations aux personnes physiques titulaires de créances salariales sur un employeur qui est insolvable

[Assented to 25th November 2005]

[Sanctionnée le 25 novembre 2005]

Short Title

Titre abrégé

Short title

1 This Act may be cited as the *Wage Earner Protection Program Act*.

Titre abrégé

1 *Loi sur le Programme de protection des salariés.*

Interpretation

Dispositions interprétatives

Definitions

2 (1) The following definitions apply in this Act.

Board means the Canada Industrial Relations Board established by section 9 of the *Canada Labour Code*. (*Conseil*)

eligible wages means

(a) wages other than termination pay and severance pay that were earned during the longer of the following periods:

(i) the six-month period ending on the date of the bankruptcy or the first day on which there was a receiver in relation to the former employer,

(ii) the period beginning on the day that is six months before one of the following days and ending on the date of the bankruptcy or the first day on which there was a receiver in relation to the former employer:

(A) the day on which a proposal is filed by or in respect of the employer under Division I of Part III of the *Bankruptcy and Insolvency Act* or, if a notice of intention to make a proposal is filed by

Définitions

2 (1) Les définitions qui suivent s'appliquent à la présente loi.

Conseil Le Conseil canadien des relations industrielles constitué par l'article 9 du *Code canadien du travail*. (*Board*)

salaire Sont assimilés au salaire les gages, la commission, la rémunération pour services fournis, l'indemnité de vacances, l'indemnité de préavis, l'indemnité de départ et toute autre somme prévue par règlement. (*wages*)

salaire admissible

a) Le salaire — autre que l'indemnité de préavis et l'indemnité de départ — qui a été gagné au cours de la plus longue des périodes suivantes :

(i) la période de six mois se terminant à la date de la faillite ou de l'entrée en fonctions du séquestre,

(ii) la période se terminant à la date de la faillite ou de l'entrée en fonctions du séquestre et commençant :

or in respect of the employer under that Division, the day on which the notice of intention is filed,

(B) the day on which the most recent proceedings under the *Companies' Creditors Arrangement Act* are commenced, and

(iii) the period beginning on the day that is six months before one of the following days and ending on the day on which a court makes a determination under subsection 5(5):

(A) the day on which a proposal is filed by or in respect of the employer under Division I of Part III of the *Bankruptcy and Insolvency Act* or, if a notice of intention to make a proposal is filed by or in respect of the employer under that Division, the day on which the notice of intention is filed,

(B) the day on which the most recent proceedings under the *Companies' Creditors Arrangement Act* are commenced; and

(b) termination pay and severance pay that relate to employment that ended

(i) during the period referred to in paragraph (a), or

(ii) during the period beginning on the day after the day on which the period referred to in paragraph (a) ends and ending on the day on which the trustee is discharged or the receiver completes their duties, as the case may be. (*salaire admissible*)

wages includes salaries, commissions, compensation for services rendered, vacation pay, termination pay, severance pay and any other amounts prescribed by regulation. (*salaire*)

Precision

(1.1) For the purpose of the definition *eligible wages*, a proposal does not include a proposal for which a certificate is given under section 65.3 of the *Bankruptcy and Insolvency Act* and a notice of intention to make a proposal does not include a notice of intention in respect of a proposal for which such a certificate is given.

Meaning of trustee

(1.2) In this Act, **trustee** includes a *monitor* as defined in subsection 2(1) of the *Companies' Creditors Arrangement Act*.

(A) soit à la date précédant de six mois la date du dépôt d'une proposition concordataire visant l'employeur et faite au titre de la section I de la partie III de la *Loi sur la faillite et l'insolvabilité* ou, s'il y a dépôt d'un avis d'intention, au titre de cette section, visant l'employeur, la date précédant de six mois la date du dépôt de l'avis,

(B) soit à la date précédant de six mois la date de l'introduction de la plus récente procédure sous le régime de la *Loi sur les arrangements avec les créanciers des compagnies*,

(iii) la période se terminant à la date de la décision du tribunal visée au paragraphe 5(5) et commençant :

(A) soit à la date précédant de six mois la date du dépôt d'une proposition concordataire visant l'employeur et faite au titre de la section I de la partie III de la *Loi sur la faillite et l'insolvabilité* ou, s'il y a dépôt d'un avis d'intention, au titre de cette section, visant l'employeur, la date précédant de six mois la date du dépôt de l'avis,

(B) soit à la date précédant de six mois la date de l'introduction de la plus récente procédure sous le régime de la *Loi sur les arrangements avec les créanciers des compagnies*;

b) l'indemnité de préavis et l'indemnité de départ se rapportant à l'emploi qui a pris fin :

(i) soit au cours de la période visée à l'alinéa a),

(ii) soit au cours de la période commençant le jour suivant la date de la fin de la période visée à l'alinéa a) et se terminant à la date à laquelle le syndic est libéré ou à la date à laquelle le séquestre a complété l'exécution des fonctions dont il a été chargé, selon le cas. (*eligible wages*)

Précision

(1.1) Sont exclus de la définition de *salaire admissible*, les propositions qui font l'objet d'un certificat d'exécution intégrale remis en application de l'article 65.3 de la *Loi sur la faillite et l'insolvabilité* ainsi que les avis d'intention à l'égard des propositions qui font l'objet d'un tel certificat.

Sens de syndic

(1.2) Dans la présente loi, est assimilé au **syndic** le *contrôleur*, lequel s'entend au sens du paragraphe 2(1) de la *Loi sur les arrangements avec les créanciers des compagnies*.

Program Established

Establishment

4 The Wage Earner Protection Program is established to provide for payments to individuals in respect of wages owed to them by employers who are insolvent.

2005, c. 47, s. 1 «4»; 2018, c. 27, s. 628.

Eligibility for Payments

Conditions of eligibility

5 (1) An individual is eligible to receive a payment if

(a) the individual's employment ended for a reason prescribed by regulation;

(b) one of the following applies:

(i) the former employer is bankrupt,

(ii) the former employer is subject to a receivership,

(iii) the former employer is the subject of a foreign proceeding that is recognized by a court under subsection 270(1) of the *Bankruptcy and Insolvency Act* and

(A) the court determines under subsection (2) that the foreign proceeding meets the criteria prescribed by regulation, and

(B) a trustee is appointed, or

(iv) the former employer is the subject of proceedings under Division I of Part III of the *Bankruptcy and Insolvency Act* or under the *Companies' Creditors Arrangement Act* and a court determines under subsection (5) that the criteria prescribed by regulation are met; and

(c) the individual is owed eligible wages by the former employer.

(d) [Repealed, 2009, c. 2, s. 343]

Prescribed criteria — foreign proceeding

(2) On application by any person, a court may, in a proceeding under Part XIII of the *Bankruptcy and Insolvency Act*, determine that the foreign proceeding meets the criteria prescribed by regulation. If the court determines that the foreign proceeding meets the prescribed criteria, the court may appoint a trustee for the purposes of this Act.

Établissement du programme

Établissement

4 Est établi le Programme de protection des salariés prévoyant le versement de prestations aux personnes physiques titulaires de créances salariales sur un employeur insolvable.

2005, ch. 47, art. 1 « 4 »; 2018, ch. 27, art. 628.

Admissibilité aux prestations

Conditions d'admissibilité

5 (1) Toute personne physique est admissible au versement de prestations si les conditions suivantes sont réunies :

a) son emploi auprès d'un employeur a pris fin pour un motif prévu par règlement;

b) son ancien employeur, selon le cas :

(i) est en faillite,

(ii) fait l'objet d'une mise sous séquestre,

(iii) fait l'objet d'une instance étrangère reconnue par un tribunal au titre du paragraphe 270(1) de la *Loi sur la faillite et l'insolvabilité* et, à la fois :

(A) le tribunal décide, en vertu du paragraphe (2), que l'instance étrangère satisfait aux critères réglementaires,

(B) un syndic est nommé,

(iv) fait l'objet de procédures intentées au titre de la section I de la partie III de la *Loi sur la faillite et l'insolvabilité* ou sous le régime de la *Loi sur les arrangements avec les créanciers des compagnies* et le tribunal décide, en vertu du paragraphe (5), que les critères réglementaires sont satisfaits;

c) elle est titulaire d'une créance au titre du salaire admissible sur son ancien employeur.

d) [Abrogé, 2009, ch. 2, art. 343]

Critères réglementaires : instance étrangère

(2) À la demande de toute personne, le tribunal peut, dans le cadre d'une procédure visée à la partie XIII de la *Loi sur la faillite et l'insolvabilité*, décider que l'instance étrangère satisfait aux critères réglementaires. Dans l'affirmative, le tribunal peut nommer un syndic pour l'application de la présente loi.

Employment in Canada

(3) An individual who is eligible to receive a payment because of subparagraph (1)(b)(iii) is only eligible to receive a payment in respect of eligible wages earned for employment in Canada and termination pay and severance pay that relate to that employment.

Deemed bankruptcy

(4) For the purposes of this Act, if all of the conditions set out in subparagraph (1)(b)(iii) are met, the former employer is deemed to be bankrupt and the date of the bankruptcy is deemed to be the day on which all of those conditions are met.

Prescribed criteria — other proceedings

(5) On application by any person, a court may, in proceedings under Division I of Part III of the *Bankruptcy and Insolvency Act* or under the *Companies' Creditors Arrangement Act*, determine that the former employer meets the criteria prescribed by regulation.

2005, c. 47, s. 1 "5"; 2007, c. 36, s. 84; 2009, c. 2, s. 343; 2018, c. 27, s. 629.

Exceptions

6 An individual is not eligible to receive a payment in respect of any wages earned during, or that otherwise relate to, a period in which the individual

- (a)** was an officer or director of the former employer;
- (b)** had a controlling interest within the meaning of the regulations in the business of the former employer;
- (c)** occupied a managerial position within the meaning of the regulations with the former employer; or
- (d)** was not dealing at arm's length with
 - (i)** an officer or director of the former employer,
 - (ii)** a person who had a controlling interest within the meaning of the regulations in the business of the former employer, or
 - (iii)** an individual who occupied a managerial position within the meaning of the regulations with the former employer.

2005, c. 47, s. 1 "6"; 2007, c. 36, s. 85; 2009, c. 2, s. 344; 2018, c. 27, s. 630(F).

Emploi au Canada

(3) La personne physique admissible au versement de prestations au titre du sous-alinéa (1)b)(iii) ne peut recevoir de versement qu'à l'égard du salaire admissible gagné en cours d'emploi au Canada et qu'à l'égard de l'indemnité de préavis et de l'indemnité de départ se rapportant à cet emploi.

Faillite présumée

(4) Pour l'application de la présente loi, si toutes les conditions visées au sous-alinéa (1)b)(iii) sont réunies, l'ancien employeur est réputé en faillite et la date de la faillite est réputée être le jour où toutes ces conditions sont réunies.

Critères réglementaires : autres procédures

(5) À la demande de toute personne, le tribunal peut, dans le cadre d'une procédure commencée au titre de la section I de la partie III de la *Loi sur la faillite et l'insolvabilité* ou sous le régime de la *Loi sur les arrangements avec les créanciers des compagnies*, décider que l'ancien employeur satisfait aux critères réglementaires.

2005, ch. 47, art. 1 « 5 »; 2007, ch. 36, art. 84; 2009, ch. 2, art. 343; 2018, ch. 27, art. 629.

Exceptions

6 La personne physique n'est pas admissible au versement de prestations à l'égard de tout salaire gagné au cours d'une période — ou qui s'y rapporte autrement — durant laquelle, selon le cas :

- a)** elle occupait un poste de dirigeant ou d'administrateur auprès de son ancien employeur;
- b)** elle avait une participation lui assurant le contrôle, au sens des règlements, dans les affaires de son ancien employeur;
- c)** elle occupait un poste de cadre, au sens des règlements, auprès de son ancien employeur;
- d)** elle avait un lien de dépendance avec une personne physique occupant un poste de dirigeant ou d'administrateur auprès de son ancien employeur, ou de cadre auprès de celui-ci au sens des règlements, ou avec une personne qui avait une participation lui assurant le contrôle, au sens des règlements, dans les affaires de son ancien employeur.

2005, ch. 47, art. 1 « 6 »; 2007, ch. 36, art. 85; 2009, ch. 2, art. 344; 2018, ch. 27, art. 630(F).

TAB 2



CANADA

CONSOLIDATION

CODIFICATION

Wage Earner Protection Program Regulations

Règlement sur le Programme de protection des salariés

SOR/2008-222

DORS/2008-222

Current to March 20, 2023

À jour au 20 mars 2023

Last amended on November 20, 2021

Dernière modification le 20 novembre 2021

OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (3) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

...

Inconsistencies in regulations

(3) In the event of an inconsistency between a consolidated regulation published by the Minister under this Act and the original regulation or a subsequent amendment as registered by the Clerk of the Privy Council under the *Statutory Instruments Act*, the original regulation or amendment prevails to the extent of the inconsistency.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

NOTE

This consolidation is current to March 20, 2023. The last amendments came into force on November 20, 2021. Any amendments that were not in force as of March 20, 2023 are set out at the end of this document under the heading "Amendments Not in Force".

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (3) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

[...]

Incompatibilité — règlements

(3) Les dispositions du règlement d'origine avec ses modifications subséquentes enregistrées par le greffier du Conseil privé en vertu de la *Loi sur les textes réglementaires* l'emportent sur les dispositions incompatibles du règlement codifié publié par le ministre en vertu de la présente loi.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

Cette codification est à jour au 20 mars 2023. Les dernières modifications sont entrées en vigueur le 20 novembre 2021. Toutes modifications qui n'étaient pas en vigueur au 20 mars 2023 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

Registration
SOR/2008-222 July 4, 2008

WAGE EARNER PROTECTION PROGRAM ACT

Wage Earner Protection Program Regulations

P.C. 2008-1317 July 4, 2008

Her Excellency the Governor General in Council, on the recommendation of the Minister of Labour, pursuant to section 41 of the *Wage Earner Protection Program Act*^a, hereby makes the annexed *Wage Earner Protection Program Regulations*.

Enregistrement
DORS/2008-222 Le 4 juillet 2008

LOI SUR LE PROGRAMME DE PROTECTION DES SALARIÉS

Règlement sur le Programme de protection des salariés

C.P. 2008-1317 Le 4 juillet 2008

Sur recommandation du ministre du Travail et en vertu de l'article 41 de la *Loi sur le Programme de protection des salariés*^a, Son Excellence la Gouverneure générale en conseil prend le *Règlement sur le Programme de protection des salariés*, ci-après.

^a S.C. 2005, c. 47, s. 1

^a L.C. 2005, ch. 47, art. 1

Wage Earner Protection Program Regulations

Interpretation

1 The following definitions apply in these Regulations.

Act means the *Wage Earner Protection Program Act*. (*Loi*)

Minister means the Minister of Labour. (*ministre*)

Wages

2 The following amounts are prescribed for the purposes of the definition **wages** in subsection 2(1) of the Act:

- (a) gratuities accounted for by the employer;
- (b) disbursements of a travelling salesperson properly incurred in and about the business of a bankrupt or the business of a person subject to a receivership; and
- (c) production bonuses and shift premiums.

SOR/2016-258, s. 1.

Termination of Employment

3 An individual's employment has ended for the purposes of paragraph 5(a) of the Act if it has ended for any of the following reasons:

- (a) the individual resigned or retired;
- (b) the individual's employment has terminated; or
- (c) the term of the individual's employment has expired.

2009, c. 2, s. 348.

Foreign Proceedings

3.1 For the purposes of subsection 5(2) of the Act, a court may determine whether the foreign proceeding is in respect of a former employer that has terminated all of its employees in Canada other than any retained to wind down its business operations.

SOR/2021-196, s. 1.

Règlement sur le Programme de protection des salariés

Définitions

1 Les définitions qui suivent s'appliquent au présent règlement.

Loi La Loi sur le Programme de protection des salariés. (*Act*)

ministre Le ministre du Travail. (*Minister*)

Salaire

2 Pour l'application de la définition de **salaire** au paragraphe 2(1) de la Loi, les sommes ci-après sont assimilées au salaire :

- a) les pourboires comptabilisés par l'employeur;
- b) les sommes régulièrement déboursées par le voyageur de commerce pour l'entreprise du failli ou de la personne faisant l'objet d'une mise sous séquestre ou relativement à cette entreprise;
- c) les primes de rendement et les primes de quart.

DORS/2016-258, art. 1.

Fin d'emploi

3 Pour l'application de l'alinéa 5a) de la Loi, les motifs pour lesquels l'emploi d'une personne prend fin sont les suivants :

- a) sa démission ou sa retraite;
- b) son licenciement ou congédiement;
- c) la fin de son emploi à durée déterminée.

2009, ch. 2, art. 348.

Instances étrangères

3.1 Pour l'application du paragraphe 5(2) de la Loi, le tribunal peut décider si l'instance étrangère vise un ancien employeur qui a congédié ou licencié tous ses employés au Canada, à l'exception de ceux dont les services

Proceedings Under Bankruptcy and Insolvency Act or Companies' Creditors Arrangement Act

3.2 For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.

SOR/2021-196, s. 1.

Controlling Interest

4 For the purpose of paragraph 6(b) of the Act, an individual had a controlling interest in the business of their former employer if the individual owned

- (a) more than 40% of the voting shares in the business;
- (b) a block of voting shares that is large enough such that no one shareholder or coalition of shareholders can block a motion; or
- (c) enough shares in the business to control the business's policy.

Excluded Managers

5 For the purpose of paragraph 6(c) of the Act, an individual occupied a managerial position with their former employer if the responsibilities of the individual included making binding

- (a) financial decisions affecting the business of the former employer; or
- (b) decisions with respect to the payment or the non-payment of wages by the former employer.

sont retenus pour cesser progressivement ses activités commerciales.

DORS/2021-196, art. 1.

Procédures visées par la Loi sur la faillite et l'insolvabilité ou par la Loi sur les arrangements avec les créanciers des compagnies

3.2 Pour l'application du paragraphe 5(5) de la Loi, le tribunal peut décider si l'ancien employeur est l'ancien employeur dont tous les employés ont été congédiés ou licenciés au Canada, à l'exception de ceux dont les services sont retenus pour cesser progressivement ses activités commerciales.

DORS/2021-196, art. 1.

Participation assurant le contrôle

4 Pour l'application de l'alinéa 6b) de la Loi, une personne avait une participation lui assurant le contrôle dans les affaires de son ancien employeur, si elle détenait dans celles-ci :

- a) plus de 40 % des actions avec droit de vote;
- b) un bloc d'actions comportant un droit de vote suffisamment important pour qu'aucun actionnaire ou coalition d'actionnaires ne puisse faire opposition à une motion;
- c) un nombre suffisant d'actions pour exercer un contrôle sur les politiques.

Postes de cadre exclus

5 Pour l'application de l'alinéa 6c) de la Loi, une personne occupait un poste de cadre auprès de son ancien employeur si, dans l'exercice de ses fonctions, elle pouvait prendre des décisions exécutoires :

- a) soit qui sont d'ordre financier et qui influent sur les affaires de son ancien employeur;
- b) soit qui portent sur le paiement ou le non-paiement de salaires par son ancien employeur.