

COURT FILE NO. 24-2616200

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

Clerk's Stamp:

IN THE MATTER OF THE BANKRUPTCY OF TRI-AG IMPLEMENTS LTD.

DOCUMENT **Application by THE BOWRA GROUP INC. in its capacity as trustee in bankruptcy of TRI-AG IMPLEMENTS LTD.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McLENNAN ROSS LLP #600 McLennan Ross Building 12220 Stony Plain Road Edmonton, AB T5N 3Y4	Lawyer: Charles P. Russell, Q.C. Telephone: (780) 482-9115 Fax: (780) 733-9757 Email: crussell@mross.com File No.: 20201028
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NOTICE TO RESPONDENTS: See attached Service List

This application is made against you. You are a Respondent.

You have the right to state your side of this matter before the Justice in Chambers.

To do so, you must be in Court when the application is heard as shown below:

Date:	Friday, August 28, 2020
Time:	10:00 a.m.
Where:	Law Courts, 1A Sir Winston Churchill Square, Edmonton, AB T5J 0R2
Before Whom:	Justice J. Little

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. The Applicant, The Bowra Group Inc. (the "Trustee") in its capacity as trustee in bankruptcy of Tri-Ag Implements Ltd. ("Tri-Ag"), seeks an Order granting the following relief and directions:
 - (a) abridging, if necessary, the time for service of this Application and deeming service good and sufficient;

- (b) approving the Trustee's activities as reporting in the Trustee's Second Report to the Court ("the "Second Report");
 - (c) approving the Interim Statement of Receipts and Disbursements for the period February 10, 2020 to July 31, 2020 which is Appendix D to the Second Report;
 - (d) directing payment by CNH Industrial Capital Canada Ltd. ("CNH") to the Trustee, of amounts held by CNH's counsel which funds are in excess of the known secured liability of Tri-Ag to CNH, subject to direction that the Trustee hold sufficient funds to satisfy in full the anticipated claim of Canada Revenue Agency ("CRA") deemed trust claim;
 - (e) directing payment by Compass Credit Union Ltd. ("Encompass") to the Trustee, of amounts held by Encompass' counsel which funds are in excess of the known secured liability of Tri-Ag to Encompass, subject to direction that the Trustee hold sufficient funds to satisfy in full the anticipated claim of CRA deemed trust claim;
 - (f) approving and directing the Trustee to distribute the secured claims of Morris Industries Ltd. ("Morris"), STIHL Limited ("STIHL"), Wells Fargo Capital Finance Corporation Canada ("Wells Fargo") and De Lage Landen Financial Services Canada Inc. ("DLL") (solely with respect to the equipment serial number 40737AS-05 encumbered by DLL but inadvertently sold by the Trustee, in the amount of \$51,300) as set out in the Second Report; and
 - (g) such further and other relief as counsel may advise and as this Honourable Court may deem fit.
2. Such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.

Grounds for making this Application:

3. On February 10, 2020, Tri-Ag filed a Notice of Intention to Make a Proposal (the "NOI") pursuant to s. 50.4(1) of the *Bankruptcy and Insolvency Act* and Bowra consented to act as Licensed Insolvency Trustee in the Proposal proceedings.
4. There are certain funds remaining in the estate, which the Trustee intends on using to pay outstanding obligations of the estate and the estimated costs to complete the administration of the estate.
5. Counsel for Encompass and CNH hold certain funds surplus to the claim of Encompass and CNH which will be distributed by the Trustee to those parties holding security interests referenced above provided that:
- (a) From such funds and other funds recovered by the Trustee, the Trustee will hold back sufficient funds to satisfy the deemed trust claim of CRA; and
 - (b) Additional funds thereafter held by the Trustee shall be distributed in accordance with the priorities under s. 136 of the *Bankruptcy and Insolvency Act*, after payment of the Trustee's costs and those of its counsel.
6. DLL's security is valid, enforceable and properly registered, and a distribution to that creditor as set out and described in the Trustee's Second Report, is just and appropriate.

7. STIHL's security is valid, enforceable and properly registered, and a distribution to that creditor as set out and described in the Trustee's Second Report, is just and appropriate.
8. Encompass' security is valid, enforceable and properly registered, and a distribution to that creditor as set out and described in the Trustee's Second Report, is just and appropriate.
9. 2202133 Alberta Ltd.'s security is valid, enforceable and properly registered, and a distribution to that creditor as set out and described in the Trustee's Second Report, is just and appropriate.
10. Farm Credit Canada's security is valid, enforceable and properly registered, and a distribution to that creditor as set out and described in the Trustee's Second Report, is just and appropriate.
11. Morris' security is valid, enforceable and properly registered, and a distribution to that creditor as set out and described in the Trustee's Second Report, is just and appropriate.
12. Wells Fargo's security is valid, enforceable and properly registered, and a distribution to that creditor as set out and described in the Trustee's Second Report, is just and appropriate.
13. CNH's security is valid, enforceable and properly registered, and a distribution to that creditor as set out and described in the Trustee's Second Report, is just and appropriate.
14. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

15. All pleadings and proceedings filed in the within Action.
16. The Second Report of the Trustee, along with the previously filed report of the Trustee.
17. Such further and other material and evidence as counsel may advise and this Honourable Court may permit.

Applicable Rules:

18. Rules 1.3, 6.3(1), 6.11, 11.27, 11.29, 13.5 and Part 6, Division 4, of the Alberta Rules of Court, AR 124/2010 (as amended), and other Rules as counsel may advise and that this Honourable Court may permit.

Applicable Acts and Regulations:

19. The *Bankruptcy and Insolvency Act*, RSC 1985 c B-3, as amended;
20. The *Judicature Act*, RSA 2000, c J-2, as amended; and
21. Such other Rules, Acts and Regulations as counsel may advise and that this Honourable Court may permit.

Any Irregularity Complained of or Objection Relied On:

22. None.

How the Application is Proposed to be Heard or Considered:

23. Oral submissions by counsel at an Application before Justice J. Little at the Edmonton Law Courts, 1A Sir Winston Churchill Square, Edmonton, on Friday, August 28, 2020 at 10:00 a.m. or as soon thereafter as counsel may be heard.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the Applicants what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an Affidavit or other evidence with the Court and serving a copy of that Affidavit or other evidence on the Applicants a reasonable time before the application is to be heard or considered.