

--	--

<b>TO:</b>	<b>CHAIR AND MEMBERS STRATEGIC PRIORITIES AND POLICY COMMITTEE MEETING ON JUNE 9, 2015</b>
<b>FROM:</b>	<b>MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER</b>
<b>SUBJECT</b>	<b>ORCHESTRA LONDON BANKRUPTCY</b>

<b>RECOMMENDATION</b>
-----------------------

That, on the recommendation of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer, the following actions BE TAKEN with respect to the Assignment in bankruptcy filed by Orchestra London Canada Inc. on May 22, 2015:

“For the matter of the bankruptcy of Orchestra London Canada Inc. Christene A. Scrimgeour, CPA, CA, BA be named as the nominee of the Corporation of the City of London for election as an inspector for the estate of Orchestra London Canada Inc. at the first meeting of creditors.”

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
--

Orchestra London Loan Guarantee – BC – December 10, 2008

Orchestra London – FAC – January 19, 2011

Orchestra London – 2010-2011 Financial Results – FAC – November 16, 2011  
<http://council.london.ca/meetings/Archives/Agendas/FAC%20Agendas/FAC%20Agendas%2011/2011-11-16%20Agenda/Finance%20and%20Administration%20Committee%20Agenda.pdf.pdf>

Orchestra London – IEPC – January 23, 2012  
<http://sire.london.ca/cache/2/fzc1mj45pkzb1oafx5o3gj55/2344106042015034117712.PDF>

Orchestra London 2011-2012 Financial Results – IEPC – January 28, 2013  
<http://sire.london.ca/cache/2/fzc1mj45pkzb1oafx5o3gj55/8189406042015033956825.PDF>

Orchestra London – IEPC – March 31, 2014  
<http://sire.london.ca/cache/2/fzc1mj45pkzb1oafx5o3gj55/1327380604201503385418.PDF>

Orchestra London Credit Guarantee – IEPC – August 27, 2014  
<http://sire.london.ca/cache/2/fzc1mj45pkzb1oafx5o3gj55/150232060420150333302.PDF>

Orchestra London – Additional Grant Request – SPPC - December 18, 2014  
<http://sire.london.ca/cache/2/fzc1mj45pkzb1oafx5o3gj55/16833006042015033103407.PDF>

<b>BACKGROUND</b>
-------------------

Orchestra London Canada Inc. (Orchestra London) filed an Assignment in bankruptcy on May 22, 2015. Adamson & Associates Inc. has been appointed as Trustee of the estate of Orchestra London. As a creditor of Orchestra London, the City has received a Notice of Bankruptcy and First Meeting of Creditors. A copy of the Notice is attached as Schedule “A”. The first meeting of the creditors is scheduled for June 12, 2015.

--	--

Orchestra London is indebted to the City for the following amounts:

1. \$556,000 related to the Guarantee of the TD Bank Loan

On September 2, 2014, Municipal Council authorized the City to provide a guarantee to the TD Bank Group (TD Bank) for the obligations of Orchestra London to the TD Bank in an amount not to exceed \$500,000. On January 15, 2015, TD Bank called the Guarantee and the City released payment in the amount of \$500,000 to the TD Bank as required under the Guarantee. The source of funding for such payment was authorized by resolution of Municipal Council dated December 18, 2014. The City has taken an assignment of the debt owed by Orchestra London to the TD Bank and an assignment of TD Bank's security over the assets of Orchestra London pledged as security for payment of the debts. The total amount under the assignment is \$556,000 which includes the full amount that Orchestra London was indebted to the TD Bank.

2. \$49,793.45 for outstanding invoices for Centennial Hall

The outstanding invoices represent the rental fees for Centennial Hall for the months of October, November and December, 2014 in the amount of \$49,793.45.

The City will be filing a Proof of Claim for the above noted amounts and sending a representative to attend the meeting of the creditors on June 12, 2015.

The *Bankruptcy Act* places administrative control of an estate in the hands of the creditors. This control is exercised at the first meeting of creditors, when the creditors:

- confirm the Trustee's appointment;
- provide the Trustee with directions; and
- appoint a board of inspectors.

Civic Administration is recommending that the City seek to nominate Christene A. Scrimgeour, CPA, CA, BA, as an inspector of the estate of Orchestra London. It is usual for larger creditors to participate in the administration of the estate by acting as an inspector. Ms. Scrimgeour obtained her CPA designation in 1984. She has extensive experience with municipal, health care and charity audits. She is currently the auditor of twelve municipalities in Southwestern Ontario and for over fifty not-for profit organizations. The costs for the role of inspector will be billed on a per hourly basis and will be accommodated within the City's approved operating budget.

The inspectors are appointed as representatives of all creditors and occupy positions of trust. They are expected to assist the Trustee by virtue of their experience and are required to supervise certain aspects of the Trustee's administration of the estate.

The responsibilities of inspectors are set out in the *Bankruptcy Act*. Generally, inspectors give direction and advice to the Trustee regarding specific actions to be taken in the administration of the estate. They also supervise the Trustee's administration and ensure the Trustee acts in accordance with their directions.

Inspectors are expected to oversee the adequacy of the Trustee's administration by examining certain documents and accounts. The *Bankruptcy Act* enables the inspectors to carry out this function by giving them access to the estate's books and records. Such access may provide an opportunity for the City to gain further insight into the causes of the bankruptcy and what assets may be available.

--	--

It should be noted that inspectors do not represent their employers and must perform their duties in the best interests of all creditors. Inspectors must not act for their personal advantage and must make full and complete disclosure to the Trustee and co-inspectors of their personal position any time there is a possible conflict of interest.

At the first meeting of creditors, the creditors will be asked for nominations to the board of inspectors. The appointment of inspectors is decided by a vote of the creditors calculated by one vote for each dollar of every claim of the creditors.

This report was prepared with the assistance of Jennifer Smout, Solicitor, City Solicitor's Office.

<b>PREPARED BY:</b>	<b>RECOMMENDED BY:</b>
<b>ROBIN ARMISTEAD MANAGER, CULTURE</b>	<b>MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER</b>

Attachment: Notice of Bankruptcy and First Meeting of Creditors