

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
1242939 B.C. UNLIMITED LIABILITY COMPANY, 1241423 B.C. LTD., 1330096 B.C. LTD.,
1330094 B.C. LTD., 1330092 B.C. UNLIMITED LIABILITY COMPANY, 1329608 B.C.
UNLIMITED LIABILITY COMPANY, 2745263 ONTARIO INC., 2745270 ONTARIO INC.,
SNOSPMIS LIMITED, 2472596 ONTARIO INC., AND 2472598 ONTARIO INC.**

Applicants

**FACTUM OF THE APPLICANTS
(Re: Charter Sale and Stay Extension)
(Returnable December 11, 2025)**

December 8, 2025

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TO: THE SERVICE LIST

PART I – OVERVIEW¹

1. Hudson's Bay was the oldest continuously operating company in North America, having been established by Royal Proclamation in 1670 by King Charles II pursuant to the Royal Charter of 1670 (the "**Charter**").
2. Unable to successfully restructure their operations, or secure replacement financing or investment outside of formal insolvency proceedings, the Applicants sought and were granted protection under the CCAA by the Court on March 7, 2025. At the Comeback Motion which commenced March 21, 2025, the Applicants sought and obtained various orders which authorized, among other things, the Liquidation Sale, the marketing of Hudson's Bay Canada's Leases, and the SISP (which was subsequently amended to remove the Company's Art Collection and Charter from the Property available pursuant to the SISP).
3. Following an approximately eight-month period marked by extensive solicitation efforts by Reflect, comprehensive negotiations and consultations with key stakeholders by the Applicants, Reflect, and the Monitor, and significant notice provided to potentially interested parties with respect to the opportunity to acquire the Charter, the Applicants sought and obtained Court approval for the Updated Charter Auction Process on November 21, 2025. Among other things, the Updated Charter Auction Process contemplated that the Joint Bid for \$18 million submitted by the Purchasers (Wittington and DKRT) would serve as the opening bid at the Charter Auction.
4. No Bid Proposals were received by the Bid Deadline, and no parties requested additional time to submit a Bid Proposal. In accordance with the Updated Charter Auction Process, the Charter Auction was held on December 3, 2025, and the Joint Bid was declared the Successful Bid.
5. Accordingly, this factum is filed in support of the Applicants' motion for approval of the Charter Approval and Vesting Order which, among other things, approves the sale of the Charter to the Purchasers on an "as is, where is" basis in accordance with the Joint Bid, free and clear of all encumbrances.
6. The sale of the Charter to the Purchasers is the best possible outcome in the circumstances for the Applicants, their stakeholders, and the public generally. In addition to the

¹ Capitalized terms used herein and not otherwise defined have the meanings ascribed to such terms in the affidavits of Adam Zalev sworn November 14, 2025 (the "**Eighth Zalev Affidavit**") and December 5, 2025 (the "**Ninth Zalev Affidavit**") and the affidavit of Franco Perugini sworn December 5, 2025 (the "**Sixth Perugini Affidavit**").

Transaction being the highest and best offer for the Charter which, if approved and closed, would generate significant recoveries for the benefit of the Applicants' creditors, the Transaction also appropriately addresses the profound historical and cultural significance of the Charter to Canada and its peoples. The Charter will be donated to four highly respected Canadian public institutions, and the Purchasers will provide a \$5 million donation to fund stewardship, consultation, education, public access related to the Charter, and consultations with First Nations, Inuit, and Métis communities and organizations, museums, universities, archives, subject matter experts and the public, committed to the preservation and interpretation of the Charter and its accessibility.

7. This factum is also filed in support of the Stay Extension and Approval of Monitor's Reports Order which, among other things, extends the Stay Period until and including March 31, 2026. The extension of the Stay Period will permit the Applicants to, among other things, assist in the sale of the remaining Art Collection to be sold online, close the sale of the Charter (if such sale is approved by the Court), complete the removal and/or sale of remaining FF&E and signage, attend to Hardship Fund and Pension surplus matters as applicable, complete WEPPA matters, finalize shared services arrangements, and address document and data retention matters, all in order to maximize the value of the Applicants' remaining assets for the benefit of their stakeholders and advance the orderly winddown of the Applicants.

PART II – THE FACTS

8. The facts with respect to this motion are more fully set out in the Eighth Zalev Affidavit, the Ninth Zalev Affidavit, and the Sixth Perugini Affidavit.

A. The Charter Auction

(i) Process Leading up to the Joint Bid

9. Since the Court's approval of the SISP on March 21, 2025, Reflect, working closely with the Applicants and under the Monitor's supervision, has actively sought out potential interest in the Charter.²

10. On April 24, 2025, in consideration of the historical significance of the Charter, the Applicants sought and obtained the A&R SISP Order which, among other things, authorized the removal of the Charter from the Property subject to sale under the SISP. At that time, it was the

² Ninth Zalev Affidavit at para. 9.

Company's intention to include the Charter as part of a separate Art Collection Auction and to develop the Art Collection Auction Procedures in a manner that also addressed concerns related to the Charter. However, as the process evolved, the Applicants received extensive interest from parties expressing interest in acquiring the Charter. In addition, Reflect received substantial comments from various groups who shared concerns about the manner by which this important document was being contemplated to be monetized. These factors prompted a reassessment of the contemplated process.³

11. On July 26, 2025, following consultations with the Monitor, Reflect, and the Auctioneer (Heffel), and having obtained the consent of the FILO Agent, with Pathlight raising no objection, the Applicants elected to withdraw the Charter from the Art Collection Auction in order to pursue the Wittington Offer. The Wittington Offer, among other things, contemplated the sale of the Charter to Wittington for \$12.5 million followed by an immediate donation of the Charter to the Canadian Museum of History, along with a \$1 million donation to support the consultation process and facilitate sharing of the Charter.⁴

12. On August 21, 2025, DKRT filed responding materials objecting to the sale of the Charter to Wittington, instead proposing that it would submit an opening bid of at least \$15 million if the Charter was auctioned. If selected as the Successful Bidder, DKRT indicated that it intended to donate the Charter to a suitable organization (it suggested the Archives of Manitoba) and to provide a \$2 million donation in connection therewith.⁵

13. Reflect and the Applicants' counsel engaged with DKRT's and Wittington's advisors to discuss their respective offers and the potential for an auction. Following careful consideration and after consulting with the Monitor, Reflect, the FILO Agent and Pathlight, the Applicants determined that a competitive, focused auction process, with certain restrictions on participation to ensure the preservation and sharing of the Charter, was most appropriate in the circumstances.⁶

14. On the evening of Sunday, September 28, 2025, the Applicants received the unsolicited Joint Proposal from the Purchasers. In light of this development, the Applicants requested that the Charter Auction Process approval motion, which was scheduled for September 29, 2025, be

³ Ninth Zalev Affidavit at para. 10.

⁴ Ninth Zalev Affidavit at para. 11; Eleventh Report of the Monitor dated December 8, 2025 (the "**Eleventh Report**") at para 6.4.

⁵ Ninth Zalev Affidavit at para. 12.

⁶ Ninth Zalev Affidavit at paras. 14-15.

adjourned in order for the Applicants to determine appropriate next steps.⁷ The Charter Auction Process was ultimately adjourned on an unopposed basis.

(ii) The Joint Bid

15. Following receipt of the Joint Proposal, the Applicants, Reflect and the Monitor engaged in meaningful discussions with the Joint Bidders, the FILO Agent and Pathlight regarding the Joint Proposal. In their discussions, the Applicants sought to ensure that any potential transaction would safeguard the Charter's historical significance, protect the integrity of the Court process, and maximize value for the estate.⁸

16. On November 14, 2025, following these discussions, the Joint Bidders executed the binding Joint Commitment Letter, pursuant to which the Joint Bidders agreed to participate in and bid at least \$18 million in a Court-approved process to auction the Charter and immediately donate it, under a shared public custodianship model, to four prominent Canadian institutions: the Archives of Manitoba, the Manitoba Museum, the Canadian Museum of History, and the Royal Ontario Museum (together, the "**Public Custodians**").⁹

17. The Applicants and the Monitor, after consultation with Reflect, the FILO Agent and Pathlight, agreed to allow Wittington and DKRT to act jointly and accepted the Joint Bid given, among other reasons, the materially increased consideration as compared to the DKRT Bid and the Wittington Offer, the Joint Bidders' commitment to participate in the Charter Auction, the Joint Bidders' commitment to donate the Charter and \$5 million to the Public Custodians, and the experience of the Public Custodians.¹⁰

18. Accordingly, on November 21, 2025, the Applicants sought and obtained Court approval for the Updated Charter Auction Process which contemplated, among other things, that the Joint Bid would serve as the opening bid at the Charter Auction.¹¹

(iii) Conduct of the Updated Charter Auction Process

19. In terms of additional outreach efforts in connection with the Updated Charter Auction Process, Reflect, among other things: (a) compiled a list of potential qualified purchasers who

⁷ Ninth Zalev Affidavit at para. 16.

⁸ Ninth Zalev Affidavit at para. 17.

⁹ Ninth Zalev Affidavit at para. 18.

¹⁰ Ninth Zalev Affidavit at para. 19.

¹¹ Ninth Zalev Affidavit at para. 20.

may wish to participate in the Charter Auction (many of whom Reflect had already communicated with in the context of the SISP and/or the Art Collection Auction commencing in March 2025) and provided each potential qualified purchaser with the Charter Teaser Letter, including details of the Charter Auction; (b) issued a press release regarding the Updated Charter Auction Process on November 17, 2025; and (c) conducted calls with potential qualified purchasers. In addition, the Monitor posted the press release, Charter Teaser Letter, and auction procedures to its website following Court approval of the Updated Charter Auction Process.¹²

20. Any party who wished to participate in the Charter Auction was required to submit a Bid Proposal to Reflect and the Monitor by no later than 5:00 p.m. on November 28, 2025. No Bid Proposals were received by the Bid Deadline, and no parties requested additional time to submit a Bid Proposal. In accordance with the Updated Charter Auction Process, the Charter Auction was held on December 3, 2025, and the Joint Bid was declared the Successful Bid.¹³

B. Update on the Applicants' Activities

(i) Lease Monetization and Lease Disclaimer Update

21. On October 24, 2025, the Court rendered its decision in respect of the Central Walk Motion and the related FILO Motion (which was heard on the same date). Among other things, the Court declined to compel the assignment of the CW Leases to Central Walk. On October 28, 2025, following discussions with the Company's senior lenders and Central Walk, the Company issued notices of disclaimer for the remaining 25 CW Leases.¹⁴

22. In accordance with the terms of the Central Walk APA, the Applicants entered into an agreement with Central Walk terminating the Central Walk APA and providing for the return of the \$9.4 million Deposit to Central Walk. The Deposit has since been returned.¹⁵

(ii) Liquidation Sale Update

23. FF&E removal has been completed at all but one of the locations which were not subject to the Central Walk Transaction. The final location is a property which is subject to the separate Receivership proceedings. The Company and Monitor have been in consultation with FTI, as

¹² Ninth Zalev Affidavit at para. 22.

¹³ Ninth Zalev Affidavit at para. 23.

¹⁴ Sixth Perugini Affidavit at para. 17.

¹⁵ Sixth Perugini Affidavit at para. 18.

Receiver over the JV Entities, in respect of the status of FF&E removal in this final location.¹⁶

24. Given the Court's decision on the Central Walk Approval Motion, the Company, with the assistance of Reflect, has coordinated removal of FF&E from the premises of the 25 CW Leases, including: (a) continuing to engage in discussions with Landlords to coordinate FF&E removal; (b) obtaining competitive quotes from external contractors; and (c) engaging third-party vendors to remove FF&E at no cost to the Applicants. FF&E removal is complete at all but three of the 25 CW Lease locations. FF&E removal at these three stores is expected to be completed in the coming weeks.¹⁷

25. The Company and Reflect engaged in extensive discussions with the FILO Agent regarding the FILO Agent's initial position that the Company should incur no costs and take no actions to remove signage. Ultimately, the FILO Agent advised that it would not take steps to have the issue of signage removal addressed by the Court if the estimated costs to remove signage remained below a certain agreed upon amount. The Company, with the assistance of Reflect and the Monitor, successfully sought updated estimates in respect of the removal of signage for those locations where signage remains the Company's obligation. The Company also re-engaged with the Landlords to coordinate signage removal efforts.¹⁸

(iii) Art Collection Update

26. On September 25, 2025, the Applicants sought and obtained an Order approving the Art Collection Auction Procedures pursuant to which the Auctioneer would conduct the Art Collection Auction and vest the individual Lots constituting the Art Collection in the Buyers at the Art Collection Auction free and clear of all claims and encumbrances.¹⁹

27. In-person viewings of the Art Collection items to be auctioned live occurred at Heffel Gallery Limited from November 11 through November 18, 2025. The live auction took place in Toronto at the Auctioneer's gallery on November 19, 2025, with all pieces of art in the live auction catalogue being sold in excess of the estimates set by the Auctioneer.²⁰

28. With respect to the online auction, individual items are made available for auction in

¹⁶ Sixth Perugini Affidavit at para. 21.

¹⁷ Sixth Perugini Affidavit at para. 22.

¹⁸ Sixth Perugini Affidavit at paras. 26-27.

¹⁹ Sixth Perugini Affidavit at para. 28.

²⁰ Sixth Perugini Affidavit at para. 29.

batches. The first batch of items auctioned in this format went live for bidding on November 12, 2025, with final bids closing on December 4, 2025. It is anticipated that additional online auction dates will be announced in the coming weeks, with the second online auction anticipated to open for bidding in January 2026.²¹

(iv) Update on Employee Matters

29. As of November 30, 2025, approximately 5,400 WEPP applications have been submitted by former employees to Service Canada and of those submitted, Service Canada has processed approximately 5,310 applications.²²

30. In order to permit further negotiations regarding the potential establishment of hardship programs, the LTD benefits were further extended, with the consent of certain of the Applicants' secured lenders, through to December 15, 2025.²³

31. The ERC has continued discussions with the FILO Agent, Pathlight, Manulife, and the Company regarding the potential implementation of the hardship programs. The Company has been kept apprised of these discussions and is working with the ERC, the FILO Agent, and Pathlight.²⁴

32. On October 20, 2025, FSRA issued an Order to wind up the Pension Plan effective September 1, 2025, which provides the Chief Executive Officer appointed under the *Financial Services Regulatory Authority of Ontario Act*, with the authority to wind up a pension plan if all or substantially all of the members of the pension plan cease to be employed by the employer. Telus has issued direct communications to former employees for the purpose of providing updates regarding the wind-up of the Pension Plan.²⁵

33. The Company has been in consultation with the FILO Agent, Pathlight, the Monitor and the Pension Administrator in respect of a formal process required to determine the parties' respective interests in any Pension Plan surplus.²⁶

²¹ Sixth Perugini Affidavit at para. 30.

²² Sixth Perugini Affidavit at para. 37.

²³ Sixth Perugini Affidavit at para. 40.

²⁴ Sixth Perugini Affidavit at para. 41.

²⁵ Sixth Perugini Affidavit at para. 43.

²⁶ Sixth Perugini Affidavit at para. 44.

PART III – ISSUES

34. The issues to be determined on this motion are whether this Court should:
- (a) approve the sale of the Charter to the Purchasers on an “as is, where is” basis in accordance with the Joint Bid;
 - (b) extend the Stay Period until and including March 31, 2026; and
 - (c) approve the Monitor’s Reports (as defined herein) and the activities of the Monitor described therein.

PART IV – LAW & ARGUMENT

A. The Charter Approval and Vesting Order Should be Granted

(i) This Court Has Jurisdiction to Approve the Transaction and Vest the Charter in the Purchasers Free and Clear

35. Beyond certain export restrictions related to Canadian cultural property, there is limited law governing the disposition and stewardship of a document such as the Charter.²⁷ As the Charter is proposed to remain in Canada, the provisions of the CCAA and the common law govern the Court’s analysis to be undertaken in determining whether the Court should approve the Transaction.

36. Section 36 of the CCAA provides that a debtor company may sell assets outside of the ordinary course of business if authorized to do so by the Court. Section 36(3) sets out the following factors for the Court to consider when determining whether to authorize a sale of assets by a debtor company in a CCAA proceeding:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;

²⁷ *Hudson’s Bay Company (Re)*, 2025 ONSC 6764 at para. 7.

- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.²⁸

37. The factors listed above are non-exhaustive and the Court must look at the proposed Transaction as a whole and decide whether it is appropriate, fair and reasonable.²⁹

38. In *Canwest*, Justice Pepall held that the criteria enumerated in section 36(3) of the CCAA largely overlapped with the traditional common law criteria established in *Royal Bank v Soundair Corp.* (“**Soundair**”) for approval of a sale of assets in an insolvency scenario and remain relevant when considering the statutory test:

- (a) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers have been obtained; and
- (d) whether there has been unfairness in the working out of the process.³⁰

39. A court should also give effect to the business judgement rule, which affords deference to the exercise of the commercial and business judgement of the debtor company in the context of an asset sale where the marketing and sale process was fair, reasonable, transparent and

²⁸ *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (“**CCAA**”) at s. 36(3); *Nelson Education Limited (Re)*, 2015 ONSC 5557 at para 38 (“**Nelson**”); *Bloom Lake, g.p.l. (Arrangement relatif à)*, 2015 QCCS 1920 at paras. 25-26. (“**Bloom Lake**”).

²⁹ *Target Canada Co. (Re)*, (April 2, 2015), Court File No. CV-15-10832-00CL, Ont. S.C.J. [Commercial List] at para 15 (**Endorsement**).

³⁰ CCAA, s. 36(3); *Canwest Global Communications Corp.*, 2010 ONSC 2870 at para 13; *Royal Bank v Soundair Corp.* (1991), 83 D.L.R. (4th) 76 (Ont. C.A.) at para 16; *Nelson* at paras 37-38.

efficient.³¹

(ii) The Joint Bid and the Transaction Satisfies the Requirements of Section 36(3) of the CCAA and the Common Law

40. The process undertaken by the Applicants to identify a purchaser for the Charter, and the terms of the Joint Bid and the Transaction itself, satisfies the requirements of section 36(3) of the CCAA and the *Soundair* principles. The Joint Bid and the Transaction contemplated therein represents the best possible outcome in the circumstances for the Applicants, their stakeholders, and the public generally.³² Each of the criteria enumerated in section 36(3) of the CCAA and the *Soundair* principles are reviewed in turn.

(A) The Applicants and Reflect properly considered the unique nature of the Charter and its cultural and historical significance to Canada and its peoples in the process leading up to the declaration of the Joint Bid as the Successful Bid for the Charter. The process was reasonable in the circumstances and there is no concern as to its efficacy and integrity. The Applicants and Reflect undertook significant efforts to obtain the best price and have not acted improvidently.

41. As this Court recognized, one of the challenges with approving a process to market and sell the Charter, which has a profound historical and cultural significance to Canada and its peoples, is to “balance the objective in an insolvency proceeding such as this to maximize recoveries from all assets of a debtor company for the benefit of creditors and other stakeholders against the imperative of ensuring that a document such as the Charter is addressed in a manner that reflects its relevance and importance to Canada, its history and all of its peoples.”³³

42. Having regard to the foregoing, given the extensive negotiations and consultations with key stakeholders on the part of the Applicants, Reflect, and the Monitor, the process leading up to the proposed Transaction was reasonable in the circumstances. The process was conducted with integrity and effectiveness and produced the best available price in the circumstances. Among other things:

³¹ *Bloom Lake*, at [para 28](#).

³² Ninth Zalev Affidavit at para. 27.

³³ *Hudson's Bay Company (Re)*, 2025 ONSC 6764 at [para. 8](#).

- (a) recognizing the historical significance of the Charter, the Applicants sought and obtained the A&R SISP Order which, among other things, authorized the removal of the Charter from the Property subject to sale under the SISP³⁴;
- (b) the Applicants pursued the Wittington Offer which contemplated significant proceeds of \$12.5 million and a donation to the Canadian Museum of History, but in recognition of the Charter's cultural and historical significance, sought to ensure that all interested parties were afforded ample notice and adequate time to review the proposed sale and seek advice as appropriate by serving materials on July 30, 2025, for a motion to approve the Wittington Offer on September 9, 2025³⁵;
- (c) following receipt of DKRT's responding motion record delivered on the deadline for responding materials to be filed of August 21, 2025, pursuant to which DKRT indicated that it would submit an opening bid of at least \$15 million if the Charter was auctioned, Reflect engaged in numerous discussions with other Interested Parties, including representatives of several major Canadian cultural institutions³⁶;
- (d) the Applicants ensured appropriate protections were in place by obtaining the binding DKRT Commitment Letter from DKRT wherein, among other things, DKRT irrevocably committed, offered, and agreed to participate in any Court-approved sale process to sell the Charter and submit an opening bid of no less than \$15 million³⁷;
- (e) following careful consideration and after consulting with the Monitor, Reflect, the FILO Agent, and Pathlight, the Applicants developed a competitive, focused auction process, with certain restrictions on participation to ensure the preservation and sharing of the Charter³⁸;
- (f) following receipt of the Joint Proposal on September 28, 2025, the Applicants, Reflect and the Monitor engaged in meaningful discussions with the Joint Bidders, the FILO Agent and Pathlight regarding the Joint Proposal. In their discussions, the Applicants sought to ensure that any potential transaction would safeguard the

³⁴ Ninth Zalev Affidavit at para. 10.

³⁵ Ninth Zalev Affidavit at para. 11.

³⁶ Ninth Zalev Affidavit at paras. 12-13.

³⁷ Ninth Zalev Affidavit at para. 14.

³⁸ Ninth Zalev Affidavit at para. 15.

Charter's historical significance, protect the integrity of the Court process, and maximize value for the estate³⁹;

- (g) the Applicants and Reflect, in consultation with the Monitor, developed the Updated Charter Auction Process (which this Court approved on November 21, 2025), which required bidders to, among other things, acknowledge that the Charter is protected under the *Canadian Cultural Property Export and Import Act*, R.S.C., 1985, c. C-51, commit to permanently donate the Charter to one or more Canadian public institutions with the ability to preserve cultural property for the long term and make it accessible to the public⁴⁰; and
- (h) notwithstanding receipt of the Joint Bid, the Applicants remained committed to running a robust auction process to determine whether a superior offer could be obtained.⁴¹

43. The proposed sale of the Charter to the Purchasers represents the culmination of extensive solicitation efforts on the part of Reflect, which commenced in March 2025 and continued for approximately eight months through the CCAA Proceedings. During this period, Reflect reached out to approximately 150 potential bidders as part of its outreach strategy to ensure a broad canvassing of interested parties.⁴²

44. In addition, these CCAA Proceedings have been highly publicized, with significant notice being provided to stakeholders and potentially interested parties with respect to the potential to acquire the Charter through the service of Court materials, the posting of relevant materials on the Monitor's case website, and significant media coverage of the proceedings generally and the potential sale of the Charter specifically. The process undertaken in connection with the disposition of the Charter therefore resulted in a broad and robust canvassing of parties potentially interested in acquiring the Charter.⁴³

45. Given the significant notice being provided to stakeholders and the highly-publicized nature of these CCAA Proceedings, the timelines under the Court-approved Updated Charter Auction Process were reasonable and sufficient to allow all potentially interested parties to

³⁹ Ninth Zalev Affidavit at para. 17.

⁴⁰ Eighth Zalev Affidavit at para. 21; Ninth Zalev Affidavit at para. 20.

⁴¹ Eighth Zalev Affidavit at para. 18; Ninth Zalev Affidavit at para. 23.

⁴² Ninth Zalev Affidavit at para. 24.

⁴³ Ninth Zalev Affidavit at para. 25.

participate.⁴⁴ The Monitor supported the Updated Charter Auction Process, and is of the view that there has been significant formal and informal marketing of the Charter and that the timelines in the Updated Charter Auction Process allowed sufficient time for potentially interested parties to receive notice of the Charter Auction and determine whether they would submit a bid.⁴⁵

(B) The Monitor supports the conduct of the process leading up to the declaration of the Joint Bid as the Successful Bid for the Charter

46. Since the commencement of the CCAA Proceedings, the Monitor has been actively involved and consulted by the Applicants and Reflect with respect to the marketing and potential disposition of the Charter. Among other things, the Monitor:

- (a) participated in discussions with various experts and government entities who have an interest in preserving the legacy of the Charter and consulted on the decision by the Applicants to seek the A&R SISP Order which removed the Charter from the Property available for sale pursuant to the SISP⁴⁶;
- (b) was consulted on the Wittington Offer and the decision by the Applicants to seek to withdraw the Charter from the Art Collection Auction⁴⁷;
- (c) was consulted on DKRT's offer, engaged in discussions with the Applicants and DKRT to obtain the DKRT Commitment Letter, and consulted on the Applicants' decision to seek approval of a Court-approved auction process for the Charter following execution of the DKRT Commitment Letter⁴⁸;
- (d) engaged in discussions with the Applicants, Reflect, the FILO Agent, Pathlight, and the Joint Bidders following the submission of the Joint Proposal⁴⁹; and
- (e) consulted on the development of the Updated Charter Auction Process.⁵⁰

47. The Monitor supported approval of the Updated Charter Auction Process and was of the

⁴⁴ Ninth Zalev Affidavit at para. 26.

⁴⁵ Supplement to the Ninth Report of the Monitor dated November 17, 2025 (the "**Supplement to the Ninth Report**") at para. 3.9.

⁴⁶ Affidavit of Adam Zalev sworn April 17, 2025, at paras. 14 and 18.

⁴⁷ Ninth Report of the Monitor dated September 22, 2025 (the "**Ninth Report**") at para. 4.6.

⁴⁸ Ninth Report at paras. 4.5-4.6.

⁴⁹ Supplement to the Ninth Report at para. 3.4.

⁵⁰ Ninth Report at para. 4.9; Ninth Zalev Affidavit.

view that it was in the best interests of the Applicants and their creditors.⁵¹ The Monitor also opined that:

- (a) the Updated Charter Auction Process would provide for an open and transparent sale of the Charter during the Charter Auction in a value-maximizing manner;
- (b) the Updated Charter Auction Process was designed with the Charter's unique cultural and historical importance in mind, and contained appropriate safeguards to ensure, among other things, that any sale of the Charter was in accordance with applicable laws, and that the Charter remains in Canada and will be made publicly accessible;
- (c) the Joint Proposal ensured that even if no new bids were received, appropriate value would be received, the Charter would be donated to a public institution, and additional funds were committed to be provided to the donee institution to support consultation with Indigenous groups, collaborations with cultural institutions, and the sharing of the Charter across Canada to maximize public access; and
- (d) the timelines under the Updated Charter Auction Process were reasonable and the terms thereof would not materially prejudice any of the Applicants' stakeholders.⁵²

48. The Monitor is of the view that the proposed Transaction is a value-maximizing transaction resulting from a thorough marketing and transparent auction process and should be approved by the Court.⁵³

(C) The Transaction is the best possible outcome for the Applicants' stakeholders and the Canadian public

49. The sale of the Charter to the Purchasers and the immediate and irrevocable donation of the Charter to the Public Custodians is the best possible outcome in the circumstances for the Applicants, their stakeholders, and the public generally.

50. In addition to the significant proceeds of \$18 million that the Transaction will generate for the Applicants' secured creditors, the Transaction will result in several benefits to the Applicants'

⁵¹ Supplement to the Ninth Report at paras. 3.9 and 3.13.

⁵² Supplement to the Ninth Report at para. 3.13.

⁵³ Eleventh Report at para. 6.17(b).

broader stakeholder groups and the public generally, including, among others:

- (a) *Donation to Public Custodians.* The Transaction contemplates a donation in equal parts, using a shared public custodianship model, to a consortium made up of four highly respected Canadian public institutions, being the Archives of Manitoba, the Manitoba Museum, the Canadian Museum of History, and the Royal Ontario Museum;
- (b) *Funding Donation.* The Joint Bid requires the Purchasers to provide a \$5 million donation to the Public Custodians to fund stewardship, consultation, education, and public access related to the Charter. This donation is intended to facilitate a multi-faceted public engagement initiative that will: (i) involve consultations with First Nations, Inuit, and Métis communities and organizations, as well as other relevant organizations and the broader public; (ii) promote sharing of the Charter with institutions across Canada for public display; (iii) support the Public Custodians' educational programs and outreach efforts in connection with the Charter; and (iv) ensure that the Charter remains in Canada as well as its preservation, stewardship, and continuing accessibility for all Canadians;
- (c) *Preservation and Conservation.* Recognizing the Charter's fragility, its ongoing care and preservation for both current and future generations are of utmost importance. The Joint Bid provides that any exhibition or movement of the Charter will be conducted in accordance with the highest standards of conservation, under the supervision of the Public Custodians, who are committed to ensuring its long-term preservation;
- (d) *Experienced and Responsible Custodianship.* The Public Custodians are highly respected institutions with demonstrated expertise in the preservation, care, and dissemination of significant artefacts. The consortium is well suited to ensure thoughtful consultation, stewardship, access, sharing, and interpretation of the Charter, including through collaboration with Indigenous groups and implementation of national sharing mechanisms;
- (e) *Alignment with Public Interest and Reputational Considerations.* As recognized by this Court, the Charter has profound historical and cultural significance to Canada and its people. The Charter is particularly significant to First Nations, Inuit, and

Métis peoples. The proposed donation to the Public Custodians ensures that the Charter will remain in Canada and be managed transparently and responsibly in the public interest, thereby mitigating reputational and stakeholder risks associated with this important piece of Canadian heritage;

- (f) *Indigenous Consultation and National Sharing.* The consultation process contemplated by the Joint Bid will provide meaningful and ongoing consultations with First Nations, Inuit, and Métis communities and organizations, museums, universities, archives, subject matter experts and the public, committed to the preservation and interpretation of the Charter and its accessibility; and
- (g) *Limited Post-Closing Risk to the Applicants.* The Purchasers agreed to bear all risks, costs and expenses associated with storing, securing, preserving, and handling the Charter following closing, including all risks, costs and expenses associated with transferring the Charter from its storage location. Closing is expected to occur five business days after Court approval.⁵⁴

(D) The consideration to be received is fair and reasonable

51. As set out above, the proposed sale of the Charter represents the culmination of extensive solicitation efforts over the period of approximately eight months in these highly-publicized CCAA Proceedings. The Transaction, if approved, will generate proceeds of \$18 million, which is materially higher than the DKRT Bid (\$15 million) and the Wittington Offer (\$12.5 million), and as noted above, no further offers were received through the Charter Auction.⁵⁵

52. The Monitor is of the view that the Transaction is a value-maximizing transaction.⁵⁶ In addition, Reflect and the Applicants consulted and engaged with the FILO Agent and Pathlight, the Company's two senior secured creditors and material economic stakeholders, regarding the purchase price contemplated by the Joint Bid prior to its acceptance.⁵⁷

(E) The Applicants engaged in robust consultations with their creditors and other stakeholders, and properly considered the interests of all parties

⁵⁴ Ninth Zalev Affidavit at para. 27.

⁵⁵ Ninth Zalev Affidavit at paras. 24 and 27.

⁵⁶ Eleventh Report at para. 6.17(b).

⁵⁷ Ninth Zalev Affidavit at paras. 17, 19, and 29.

53. The Applicants consulted and engaged with their two senior secured creditors, the FILO Agent and Pathlight, throughout the process to market and sell the Charter.⁵⁸ Instances where the FILO Agent and Pathlight were consulted throughout the process include, among other examples:

- (a) the FILO Agent consented and Pathlight raised no objection to the Applicants' election to withdraw the Charter from the Art Collection Auction in order to pursue the Wittington Offer⁵⁹;
- (b) the FILO Agent and Pathlight were consulted on the Applicants' decision that a focused auction process, with certain restrictions on participation to ensure the preservation and sharing of the Charter, was most appropriate in the circumstances following receipt of DKRT's motion record proposing to submit an opening bid of at least \$15 million if the Charter was auctioned⁶⁰; and
- (c) the FILO Agent and Pathlight were consulted regarding the terms of the Joint Proposal and the Applicants' decision to accept the Joint Bid, such that the FILO Agent and Pathlight either support approval of the Transaction or take no position.⁶¹

54. The Applicants, Reflect, and the Monitor, as applicable, also engaged in several discussions and negotiations with other stakeholders. Among other examples, the Applicants participated in discussions with various experts and government entities who have an interest in preserving the legacy of the Charter,⁶² and Reflect engaged in numerous discussions with other Interested Parties, including representatives of several major Canadian cultural institutions.⁶³

55. As set out above, the Applicants also appropriately considered the interests of the Canadian public generally throughout the process. Without repeating all of the instances described above where the Applicants carefully considered the cultural and historical significance of the Charter and its impact on the public generally through the process, the Applicants removed the Charter from the Property subject to sale under the SISP, provided ample notice and time for stakeholders to review the proposed sale to Wittington by serving materials more than a month in

⁵⁸ Ninth Zalev Affidavit at para. 29.

⁵⁹ Ninth Zalev Affidavit at para. 11.

⁶⁰ Ninth Zalev Affidavit at para. 15.

⁶¹ Ninth Zalev Affidavit at paras. 17, 19, and 29.

⁶² Affidavit of Adam Zalev sworn April 17, 2025, at paras. 14 and 18.

⁶³ Ninth Zalev Affidavit at para. 13.

advance of the proposed motion date, and implemented appropriate safeguards to ensure that the Charter remains in Canada and will be made publicly accessible when designing the prior auction process to sell the Charter and the Updated Charter Auction Process.⁶⁴

(F) The Monitor believes that the Transaction is more beneficial to creditors than a sale or disposition under bankruptcy

56. Although less relevant in the context of a CCAA asset sale (and in circumstances where it is anticipated that there will be no funds available for distribution to unsecured creditors), the Monitor is of the view that the Transaction represents a superior outcome compared to a sale in a bankruptcy process (which would, among other things, necessitate the payment of a levy to the Superintendent of Bankruptcy).⁶⁵

B. The Stay Extension Should be Granted

57. The current Stay Period expires on December 12, 2025. Pursuant to s. 11.02 of the CCAA, the court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the court that it has acted, and is acting, in good faith and with due diligence.⁶⁶

58. As summarized above and described in the Sixth Perugini Affidavit, since the granting of the last order extending the Stay Period, the Applicants have acted in good faith and with due diligence in addressing a variety of issues and continuing to diligently pursue various efforts to maximize value for the benefit of their stakeholders.⁶⁷ Among other things, the Applicants have:

- (a) developed and conducted the Updated Charter Auction Process;
- (b) issued notices of disclaimer for the remaining 25 CW Leases;
- (c) prepared and submitted responding costs submissions in connection with the Central Walk Approval Motion;
- (d) coordinated removal of FF&E at the premises for the 25 CW Leases, with FF&E removal being complete at all but three of the CW Lease locations;

⁶⁴ Ninth Zalev Affidavit at paras. 10-11, and 15; Supplement to the Ninth Report at para. 3.13.

⁶⁵ Ninth Zalev Affidavit at para. 28; Eleventh Report at para. 6.17(c).

⁶⁶ CCAA, s. 11.02(2) and (3).

⁶⁷ Sixth Perugini Affidavit at para. 47.

- (e) engaged with the FILO Agent, the Landlords, and various contractors regarding signage removal;
- (f) continued discussions regarding the potential implementation of the hardship programs and a process to address the Pension surplus;
- (g) continued discussions with Saks Global with respect to cost allocations for shared services and advanced the shared services protocol to address shared services and data retention matters in connection with the wind-up of the CCAA Proceedings;
- (h) continued to undertake a review of contracts to determine which should be disclaimed, and issued disclaimers in connection therewith; and
- (i) responded to and continued to work to address all creditor and stakeholder enquiries and matters regarding these CCAA Proceedings.⁶⁸

59. The Applicants are seeking to extend the Stay Period from December 12, 2025, until and including March 31, 2026. The proposed extension to the Stay Period will allow the Applicants to, among other things:

- (a) assist in the sale of the remaining Art Collection to be sold online as part of the Art Collection Auction;
- (b) close the sale of the Charter to the Purchaser (if approved by the Court);
- (c) pursue Pension surplus matters in consultation with the Monitor, the FILO Agent, Pathlight, Cadillac Fairview, and the Pension Administrator in anticipation of a Pension surplus process proposal in the near term;
- (d) finalize Shared Services arrangements;
- (e) continue to assist the Monitor with WEPPA matters;

⁶⁸ Sixth Perugini Affidavit at paras. 17, 19, 22, 27; 41, 44 and 45; Ninth Zalev Affidavit at paras. 18-23.

- (f) assist the ERC with respect to developing and implementing the hardship programs and participate in any motion with respect to the proposed hardship programs;
- (g) complete arrangements with the Archives of Manitoba regarding the donation of corporate documents;
- (h) complete removal and/or sale of FF&E and signage remaining at Stores;
- (i) complete various CCAA administrative matters, including document and data retention matters; and
- (j) continue to advance the maximization of the value of their estate for the benefit of their stakeholders and winding up the Applicants.⁶⁹

60. The proposed extension of the Stay Period will not materially prejudice any of the Applicants' stakeholders.⁷⁰

61. The Monitor supports the proposed extension of the Stay Period and the Seventh Cash Flow demonstrates the Applicants have sufficient liquidity to operate through the proposed extension of the Stay Period.⁷¹

C. The Monitor's Reports and the Activities of the Monitor Should be Approved

62. The Applicants are seeking to approve the Monitor's Eighth Report, the Ninth Report, the Supplement to the Ninth Report, the Monitor's Tenth Report, and the Eleventh Report (collectively, the "**Monitor's Reports**") and the conduct and activities of the Monitor referred to therein.

63. A request to approve a monitor's report is not unusual, and such requests are routinely granted in CCAA proceedings.⁷² There are policy and practical reasons for the Court to approve the Monitor's activities and provide a level of protection for the Monitor during the CCAA Proceedings. Specifically, as this Court has recognized, court approval:

⁶⁹ Sixth Perugini Affidavit at para. 46.

⁷⁰ Sixth Perugini Affidavit at para. 48; Eleventh Report at para. 7.5(d).

⁷¹ Sixth Perugini Affidavit at paras. 47-48; Eleventh Report at para. 7.5(c).

⁷² *Target Canada Co. (Re)*, 2015 ONSC 7574 ("**Target**") at para 2.

- (a) allows the Monitor to move forward with next steps in the CCAA Proceedings;
- (b) brings the Monitor's activities before the Court;
- (c) allows an opportunity for concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the Monitor's activities have been conducted in a prudent and diligent manner;
- (e) provides protection for the Monitor not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay that would be caused by re-litigation of steps taken to date and potential indemnity claims by the Monitor.⁷³

64. The form of the proposed order, with respect to approval of the Monitor's Reports and the Monitor's activities described therein, is consistent with the language used in *Target*⁷⁴ and subsequent proceedings, including this Court's prior approval of the Monitor's reports and activities referred to therein in July 2025.⁷⁵

65. The Monitor has acted responsibly and carried out its activities in good faith and with due diligence, in a manner consistent with the provisions of the CCAA and in compliance with the ARIO.⁷⁶ Among other activities, the Monitor has:

- (a) engaged in discussions and negotiations with key service providers to facilitate ongoing service and/or termination of services, and reconcile and settle all outstanding post-filing obligations;
- (b) monitored cash receipts and disbursements and coordinated with management in preparing weekly cash flow variance reporting;
- (c) participated in the contested Central Walk Approval Motion, including review of materials filed in connection therewith, organization of and attendance at

⁷³ *Target* at para 22; *Hudson's Bay Company (Re)*, 2025 ONSC 4535 at paras. 22-23.

⁷⁴ *Target* at paras 7 and 26; *Hudson's Bay Company (Re)*, 2025 ONSC 4535 at paras. 22-23.

⁷⁵ See, for example: *Re Clover Leaf Foods* (29 September 2020), Court File No. CV-20-00641220-00CL Ont. S.C.J. [Commercial List] (*Order Re Approval of Monitor's Activities and Fees and for Stay Extension*) at para 3; and *Re Hudson's Bay Company ULC et al.* (31 July 2025), Court File No. CV-25-00738613-00CL Ont. S.C.J. [Commercial List] (*Order Re Stay Extension and Approval of Monitor's Reports*) at para. 4.

⁷⁶ Sixth Perugini Affidavit at para. 49.

examinations, and prepared for and participated in the two-day hearing regarding same;

- (d) assisted in the conduct of the Art Collection Auction;
- (e) assisted in the development of the process to auction the Charter and the Updated Charter Auction Process;
- (f) assisted in coordination of FF&E removal;
- (g) liaised with the Applicants, the ERC, and Service Canada in relation to the WEPP process;
- (h) prepared estimates of eligible employee claims that may be owed to individual employees under WEPP, prepared and mailed Information Packages sent to former employees, and submitted TIFs on behalf of each of the former employees for WEPP purposes;
- (i) engaged in discussions to develop a process to address the Pension surplus;
- (j) assisted in preparing updated cash flow forecasts with respect to the Applicants, including the Seventh Cash Flow and consideration of an estimated reserve to fund the remaining costs of the wind-down and CCAA Proceedings thereafter;
- (k) assisted the Applicants in termination of a service agreement and the orderly wind-down of an entity affiliated with the Company based in India that provided administrative support services to the Company; and
- (l) responded to a high volume of enquiries from stakeholders.⁷⁷

66. The Applicants respectfully submit that in the circumstances, the Court should respect the good faith decisions of the Monitor in these CCAA Proceedings and approve the Monitor's Reports and the activities of the Monitor referred to therein.

⁷⁷ Ninth Report at para. 7.2; Eleventh Report at para. 10.1.

PART V – ORDER SOUGHT

67. The Applicants therefore request that the Court grant the Charter Approval and Vesting Order and the Stay Extension and Approval of Monitor's Reports Order in the forms requested.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of December 2025.

Stikeman Elliott LLP

Stikeman Elliott LLP
Lawyers for the Applicants

SCHEDULE "A"
LIST OF AUTHORITIES

Hudson's Bay Company (Re), 2025 ONSC 6764

Nelson Education Limited (Re), 2015 ONSC 5557

Bloom Lake, g.p.l. (Arrangement relatif à), 2015 QCCS 1920

Target Canada Co. (Re), (April 2, 2015), Court File No. CV-15-10832-00CL, Ont. S.C.J. [Commercial List] (Endorsement)

Canwest Global Communications Corp., 2010 ONSC 2870

Royal Bank v Soundair Corp. (1991), 83 D.L.R. (4th) 76 (Ont. C.A.)

Target Canada Co. (Re), 2015 ONSC 7574

Hudson's Bay Company (Re), 2025 ONSC 4535

Re Clover Leaf Foods (29 September 2020), Court File No. CV-20-00641220-00CL Ont. S.C.J. [Commercial List] (Order Re Approval of Monitor's Activities and Fees and for Stay Extension)

Re Hudson's Bay Company ULC et al. (31 July 2025), Court File No. CV-25-00738613-00CL Ont. S.C.J. [Commercial List] (Order Re Stay Extension and Approval of Monitor's Reports)

I certify that I am satisfied as to the authenticity of every authority.

Date December 8, 2025



Signature

**SCHEDULE “B”
TEXT OF STATUTES AND REGULATIONS**

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

- (c) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (d) whether the monitor approved the process leading to the proposed sale or disposition;
- (e) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (f) the extent to which the creditors were consulted;
- (g) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (h) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED, AND IN THE MATTER OF 1242939 B.C. UNLIMITED
LIABILITY COMPANY et al.

Court File No. CV-25-738613-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

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