



**ONTARIO SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**ENDORSEMENT**

**COURT FILE NO.: CV-25-00738613-00CL**

**DATE: JUNE 3, 2025**

**NO. ON LIST: 2**

**TITLE OF PROCEEDING:**

**In Re: HUDSON'S BAY COMPANY**

**BEFORE: JUSTICE OSBORNE**

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## **ENDORSEMENT OF JUSTICE OSBORNE:**

### **The Motions**

- [1] Hudson's Bay (or, collectively with the other Applicants, the "Applicants"), seek four orders today.
- [2] First, approval is sought of the asset purchase agreement (the "APA") dated as of May 15, 2025 between The Bay LP and Canadian Tire Corporation, and the transactions contemplated by that APA. The assets consist largely of intellectual property of Hudson's Bay, including its iconic stripes and logos, together with related assets and rights. The first two are related to one another.
- [3] Second, a sealing order is sought in respect of the Confidential Appendix to the Fourth Report of the Monitor dated May 29, 2025. The Confidential Appendix includes a summary of the economic terms of the bids received for these assets as part of the SISP.
- [4] Third, Hudson's Bay seeks an order terminating the stay of proceedings in favour of the JV Entities and terminating the CCAA Proceedings with respect to two entities: HBC YSS 1 LP Inc. and HBC YSS 2 LP Inc. The terminations are to be effective concurrently with the appointment of the Receiver over the JV Entities.
- [5] The appointment of a Receiver over the JV Entities is the subject of a separate but related Application (CV-25-00744295-00 CL) commenced by RioCan Real Estate Investment Trust and related entities. That Application was heard today concurrently with, and immediately following these motions. This Endorsement, to the extent it relates to the termination of the stay of proceedings and the CCAA Proceedings as noted above, should be read in conjunction with my Endorsement of today's date made in the RioCan Application.
- [6] Fourth, the Applicants seek a declaration pursuant to the *Wage Earner Protection Program Act* ("WEPPA"), effective June 3, 2025 to the effect that the Applicants meet the criteria prescribed by section 3.2 of the *WEPPA Regulation* (SOR/2008-222).
- [7] The Applicants rely upon the affidavit of Michael Culhane sworn May 26, 2025 and the Fourth Report. Defined terms in this Endorsement have the meaning given to them in the motion materials and/or the Fourth Report, unless otherwise stated.
- [8] The Service List has been served. The relief sought today is unopposed. It is supported by the FILO Agent and recommended by the Court-appointed Monitor.
- [9] I note that the Notice of Motion returnable today included requested relief in the form of an assignment order relating to the Pendleton Agreements. However, as the relevant counterparties have consented to the assignment of the Pendleton Agreements, no assignment order is sought or granted pursuant to section 11.3 of the CCAA.

[10] The background for and context of this motion is fully set out in the materials.

### **The Canadian Tire Purchase of Intellectual Property**

[11] I will address the Canadian Tire APA first.

[12] I authorized the SISP, by order dated March 21, 2025, to enable the Applicants to solicit interest in, and opportunities for, one or more sales or partial sales of all or portions of the Property and/or Business of Hudson's Bay, and/or investments in, recapitalizations of or refinancing of the Business. In short, the SISP was designed and approved to provide maximum flexibility to generate offers and expressions of interest of almost any type.

[13] Teaser letters and draft non-disclosure agreements were sent to approximately 407 potential interested parties. 57 parties executed an NDA upon which they were provided with the Confidential Information Memorandum and access to an electronic data room to conduct due diligence. Five parties met with senior management of Hudson's Bay, the Financial Advisor and the Court-appointed Monitor.

[14] 17 bids were received by the Bidding Phase Bid Deadline, 13 of which were bids for the intellectual property.

[15] Ultimately, and after careful consideration, the Board of Directors of Hudson's Bay, in consultation with counsel, Reflect (the Court-appointed Financial Advisor) and the Monitor, exercised their business judgement and determined that the bid submitted by Canadian Tire was the most favourable bid for the intellectual property of the Company, including the iconic HBC Stripes and other brand assets.

[16] Accordingly, the Canadian Tire bid was declared to be the Successful Bid. The APA was executed on May 15, 2025. The key terms of the APA are fully summarized in the (public) materials. In short, the Purchased Assets include the HBC Stripes and Hudson's Bay trademarks and related rights, in exchange for which the Purchase Price is \$30,001,670.

[17] This Court has jurisdiction to approve the APA and contemplated sale pursuant to section 36 of the *CCAA*. Subsection 36(3) sets out the non-exhaustive factors that the Court is required to consider in deciding whether to authorize such a sale. Those include:

- 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;

- 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 fair market value.

[18] These factors are neither exhaustive nor do they constitute a mandatory checklist for every sale within a *CCAA* proceeding.

[19] Those factors dovetail with the criteria established in the case law colloquially referred to as the Soundair Principles: *Royal Bank of Canada v. Soundair Corp.* (1991), 4 OR (3d) 1 (C.A.), at para. 16:

- 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.

[20] The Court should also give effect to the business judgement rule, and absent a good reason not to do so, afford deference to the exercise of the commercial and business judgement of the debtor company in the context of an asset sale where the process was fair, reasonable, transparent and efficient.

[21] I am satisfied that all of these factors have been met here. The process undertaken by the Applicants was carried out in accordance with the SISP Order. The resulting Canadian Tire APA for the Purchased Assets represents the highest and best available outcome for the sale of the intellectual property and for the stakeholders of the Applicants in the circumstances.

[22] The APA is the result of extensive solicitation efforts pursuant to which the market was broadly canvassed. The SISP was conducted in a fair and transparent manner, in consultation with, and under the supervision of, the Monitor, together with input from certain secured lenders. The range of transactions contemplated under the SISP was sufficiently broad so as to solicit both acquisition and investment transactions.

- [23] As noted above, the relief is supported by the Monitor. The basis for that support and recommendation is fully set out in the Fourth Report. In the opinion of the Monitor, the APA and corresponding Transactions represent recoveries that are superior to a bankruptcy and maximize value for the benefit of stakeholders.
- [24] I agree with that recommendation. The evidence establishes that the Canadian Tire Bid was the most favourable bid for the intellectual property portfolio and represents the highest and best offer in a competitive, open and transparent SISP.
- [25] Moreover, the APA will permit the Hudson's Bay brand to continue in Canada by allowing the iconic stripes, logos and intellectual property to be utilized by another well-known Canadian retailer in Canadian Tire, with a presence across the country and a long history of its own.
- [26] In considering whether the Canadian Tire APA ought to be approved, I did address two other factors with counsel.
- [27] First, I considered the fact that the SISP was designed and implemented to attract any and all interest in the assets and business of the Applicants, including offers for almost any combination of assets, including but not limited to the intellectual property that is the subject of this motion.
- [28] I wanted to be satisfied that the sale of the intellectual property did not foreclose or prevent the completion of any alternative transaction that would have provided for a going concern outcome, the continued operation of at least some stores in the continued employment of at least some employees (but which was dependent upon the intellectual property being part of such a broader transaction). I am satisfied that there is no such alternative more favourable possible transaction.
- [29] Second, the schedule to the Canadian Tire APA, which is also a schedule to the proposed approval and vesting order lists, among other things, the various trademarks to be transferred. Those include, among many others, the trademarks "Royal Charter" and "Hudson's Bay Royal Charter".
- [30] I stood down briefly the hearing of this motion in order that counsel for the Applicants and Canadian Tire could clarify and confirm that those trademarks did not and would not adversely affect the disposition of the Hudson's Bay Royal Charter signed by King Charles II in 1670, however and to whomever the Charter may be transitioned. That issue is not before the Court today.
- [31] Upon resuming, counsel for both the Applicants and for Canadian Tire clarified that the specific trademarks being transferred pursuant to the APA relate and are limited to the use of those marks in connection with the marketing and sale of coffee, brandy and whiskey and



as such have no impact on the ownership, possession or use of the Royal Charter or the process (yet to be determined) by which it is to be transferred. Counsel for each of the Department of Justice (Canada), the Assembly of Manitoba Chiefs, and the Department of Justice (Manitoba) on behalf of the Hudson's Bay Company Archives and Archivist of Manitoba (the repository of the Hudson's Bay Archive Collection previously donated) each confirmed that they had no concerns with the APA.

- [32] I am satisfied that the consideration to be received (in excess of \$30 million) is fair and reasonable in the circumstances.
- [33] For all of these reasons, the Canadian Tire APA and the Transactions contemplated thereby are approved.

### **The Sealing Order in Respect of the Bids**

- [34] I am also satisfied that the proposed sealing order should be granted. As noted above, the Applicants seek a sealing order in respect of the Confidential Appendix to the Fourth Report which contains a summary of the bids received during the SISP for the intellectual property and related assets that are the subject of this motion.
- [35] Subsection 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, provides for the Court's authority to grant a sealing order. It provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed and not part of the public record.
- [36] The Supreme Court of Canada in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 38, recast the test from *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41:

The test for discretionary limits on presumptive court openness has been expressed as a two-step inquiry involving the necessity and proportionality of the proposed order (*Sierra Club*, at para. 53). Upon examination, however, this test rests upon three core principles that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle. In order to succeed, the person asking the court to exercise discretion in a way that limits the open court presumption must establish that:

- a. court openness poses a serious risk to an important public interest;
- b. the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- c. as a matter of proportionality, the benefits of the order outweigh its negative effects.

Only where all of these prerequisites have been met can a discretionary limit on openness - for example, a sealing order, a publication ban, an order excluding the public from the hearing, or a redaction order - properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments (*Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41, [2005] 2 S.C.R. 188 at paras. 7 and 22).

- [37] Under the first branch of the three-part test, an “important commercial interest” is one that can be expressed in terms of the public interest in confidentiality: *Sherman Estate*, at para. 41.
- [38] Canadian courts, including this Court, have granted in many cases, sealing orders in respect of a confidential summary of bids received in the context of a sale process. See, for example: *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314, at para. 39; *Plan of Arrangement of Fire & Flower Holdings Corp. et al.*, 2023 ONSC 4934, at paras. 35-36; *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857, at paras. 50-54; and *Attorney General of Canada v. Silicon Valley Bank*, 2023 ONSC 4703, at paras. 28-33.
- [39] I am also satisfied that the second requirement is met since the order sought is necessary to prevent the risks identified above. This is an important public interest because reasonably alternative measures will not prevent the risk. Disclosure of the competing bids, while the process is incomplete, could and very likely would impair both the integrity of the process and the result.
- [40] The third requirement is also met. While the Confidential Appendix containing the summaries of bids would be kept confidential on a temporary basis, the balance of the materials on the motion (which includes the Canadian Tire APA and further includes the clearly disclosed purchase price) would not be sealed, and are available to the public.
- [41] The sealing order is to have effect only until the Transactions contemplated by the APA have closed. If for whatever reason the Transactions did not close and the assets had to be remarketed and sold pursuant to a subsequent process, that process would be materially and likely irrevocably compromised by the premature disclosure of the competing bids, all to the detriment of the stakeholders and the objective of maximizing recoveries for their benefits.
- [42] On balance, I am satisfied that the benefits of the requested order outweigh its negative effects. The small amount of information over which confidentiality is sought to be maintained is discrete, proportional and limited.
- [43] Counsel for the Monitor are directed to file a physical copy of the Confidential Appendix to the Fourth Report with the Commercial List Office in a sealed envelope marked: “confidential and sealed by Court order; not to form part of the public record”. This will ensure completeness of the Record.

### **WEPPA Benefits Declaratory Relief for Employees**

- [44] Next, I will address the proposed *WEPPA* declaration. *WEPPA* permits, in section 5, eligible former employees of the company subject to the *CCAA* to collect certain benefits, including termination and severance pay, if certain criteria are met. Those criteria are set out in section 3.2 of the *WEPPA Regulations*. That provision gives this Court the discretion to determine whether the former employer of the terminated employees (in this case, Hudson's Bay) is the former employer, all of whose employees in Canada have been terminated other than any retained to wind down its business operations.
- [45] I am satisfied that the proposed declaration should be issued here. The employer of record here for the employees was Hudson's Bay or The Bay Holdings (other than with respect to seven employees in the United States). Given that, regrettably, all stores have now closed pursuant to the Liquidation Sale and the majority of retail employees employed at those locations have been terminated, the Company will have terminated approximately 89% of the employees who were employed at the commencement of the *CCAA* Proceedings, with further employee reductions expected on or around June 15, 2025. Those remaining will assist with windup activities.
- [46] The declaration will assist eligible terminated employees, such that they may submit claims and seek to receive benefits under *WEPPA* following the *WEPPA* Effective Date. This will in turn minimize the hardship experienced by these employees and their families (of which this Court is acutely aware) resulting from the termination of their employment and the inability of the Applicants to pay them any termination and severance pay.
- [47] I have requested that Employee Representative Counsel and the Monitor liaise with Service Canada to maximize the efficiency and minimize the administrative burden and delay on affected eligible employees with respect to the submission of *WEPPA* claims.

### **RioCan Receivership Application and JV Entity Stay**

- [48] Finally, I address the motion for the termination of the stay of proceedings provided for in the ARIO in favour of the JV Entities and the termination of the *CCAA* Proceedings with respect to HBC YSS 1 LP Inc. and HBC YSS 2 LP Inc.
- [49] I granted the receivership Application commenced by RioCan today in respect of the RioCan-HBC Limited Partnership (the "JV"). The JV is the Company's primary real estate subsidiary which, together with other JV Entities, owned 12 separate freehold or leasehold interests in Canadian real property rights. The Company, indirectly, owns a 78.0136% interest as a limited partner in the JV, and RioCan owns the remaining 21.9864% interest.
- [50] The JV Entities and their assets were marketed through the SISP and the Lease Monetization Process. No bids were received for any assets of the JV Entities. The Company has issued

disclaimers in respect of seven of the twelve lease agreements with the JV and reached an agreement with RioCan with respect to the remaining five lease agreements.

[51] The agreement between the Company and RioCan permitted, among other things, RioCan to proceed with the receivership Application. I have granted that Application today for the reasons set out in my Endorsement of today's date made in that proceeding.

[52] As a result, that Company and the Monitor submit, and I agree, that the Stay in respect of the JV Entities granted in this *CCAA* Proceeding is no longer required. Accordingly, that stay of proceedings is terminated on the terms set out in the Notice of Motion and draft order. The Monitor is discharged with respect to those entities that are no longer Applicants in this proceeding.

### **Result and Disposition**

[53] For all of these reasons, the motions of the Applicants are granted. The Approval and Vesting Order in respect of the Canadian Tire APA, the Receivership Companion Order in respect of the JV Entities, and the *WEPPA* Order are granted. All three orders have immediate effect without the necessity of issuing and entering.

A handwritten signature in green ink, appearing to read "Osamu I.", is located in the lower right portion of the page.