

CITATION: In Re Hudson's Bay Company, 2026 ONSC 1331
COURT FILE NO.: CV-25-00738613-00CL
DATE: 20260310

SUPERIOR COURT OF JUSTICE – ONTARIO (COMMERCIAL LIST)

RE:

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.

IN WRITING: KIMMEL J.

COUNSEL: *Ashley Taylor, Elizabeth Pillon, Maria Konyukhova, Philip Yang and Brittney Ketwaroo* for the Applicants

Graham Phoenix and Jayson Thomas for Ruby Liu Commercial Investment Corp.

Jeremy Dacks, Marc Wasserman and David Rosenblat for Pathlight Capital LP

Matthew Lerner, Brian Kolenda, Christopher Yung and Julien Sicco for ReStore Capital LLC, the FILO Agent

Jeremy Opolsky, David Bish, Alec Angle and Alina Butt for The Cadillac Fairview Corporation

Matthew Gottlieb, Andrew Winton and Annecy Pang for KingSett Capital Inc.

D. J. Miller and Andrew Nesbitt for Oxford Properties Group

James Bunting, Anna White and Alycia Noë for Ivanhoe Cambridge Inc.

Brendan Jones and John Wolf for QuadReal Property Group and Primaris Management Inc.

Angela Hou and Emily Fan for TELUS Health, HBC Pension Administrator

Linda Galessiere for Ivanhoe Cambridge II Inc. and Morguard Investments Limited, both as Agents for certain Landlords, and Westcliff Management Ltd.

Sean Zweig, Thomas Gray and Preet Gill for Alvarez & Marsal Canada Inc., the Court-appointed Monitor

COSTS ENDORSEMENT: CENTRAL WALK APA AND LEASE ASSIGNMENTS

The Lease Assignment Decision

[1] On October 24, 2025, Osborne J. (as he then was) released a decision declining to approve the assignment by the applicants of 25 Hudson's Bay Company ("HBC") Department Store leases for locations across Canada to a new tenant: see *In Re Hudson's Bay Company*, 2025 ONSC 5998 (the "Lease Assignment Decision").

[2] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Lease Assignment Decision.

[3] In very general terms the context and background that led to the contested Lease Assignment Decision were as follows:

- a. HBC is insolvent and owes its creditors hundreds of millions of dollars. At present, it would appear unlikely that those creditors will be repaid in full.
- b. HBC entered into the Central Walk APA on May 23, 2025 that contemplated the assignment (subject to court approval) of up to 25 Leases in Ontario, Alberta, and British Columbia to the Purchaser (or a permitted assignee thereof, which would be a corporation controlled by Ms. Liu) to operate a national department store chain under the "Ruby Liu" banner. HBC brought a motion seeking the court's approval of the Central Walk APA and the contemplated assignment of the Leases.
- c. One secured creditor who, in the waterfall of recoveries, would likely have benefitted most from any realization of value from these leases (Pathlight Capital LP) supported the proposed assignment.
- d. One of HBC's senior secured creditors, ReStore Capital, LLC, in its capacity as FILO Agent and on behalf of the FILO Lenders, opposed the proposed assignment and brought its own (amended) motion for relief, part of which was described in the Lease Assignment Decision to be "almost completely inconsistent with the relief sought on HBC's motion".
- e. Aside from the one landlord that was affiliated with the Purchaser, all of HBC's other landlords that were the counterparties to the contested assignment of Leases opposed HBC's motion (the "Opposing Landlords", defined below).
- f. One of those Opposing Landlords, Ivanhoe Cambridge ("IC"), also opposed the additional relief sought by HBC (sought to satisfy one of the conditions of the Central Walk APA) that would, if the court approved the assignment of certain of its leases (the "IC Leases"), declare unenforceable certain provisions of those IC Leases with the practical effect of amending the terms of these IC Leases by deleting those clauses.

[4] The Lease Assignment Decision required the court to consider s. 11.3(1) of the CCAA. That section provides that, on application by a debtor company and on notice to every party to an agreement and the Monitor, the court may make an order assigning the rights and obligations of the company under an agreement to any person who is specified by the court and agrees to the assignment.

[5] In the Lease Assignment Decision the court found that:

- a. The mandatory technical requirements under s. 11.3 had been met: The motion was brought on notice to all contractual counterparties and the Monitor; and all monetary defaults, other than those arising by reason only of the company's insolvency, the commencement of these proceedings or the company's failure to perform, and non-monetary obligations, would be remedied under the terms of the Central Walk APA, if approved.
- b. While the Monitor's approval is not required for the court to make an assignment under s. 11.3(3)(a), the Monitor's approval of the proposed assignment is a relevant consideration. Here, the Monitor declined to approve the proposed assignment.
- c. The Monitor had expressed numerous concerns about the ability of the Purchaser to satisfy the non-monetary obligations under the Leases to be assigned. These concerns were elaborated upon and supported by two expert reports filed by the Objecting Landlords.
- d. The Monitor's concerns were well founded, and the court noted other concerns as well. Specifically, the court was also concerned that the financial obligations under the assigned Leases would be very material and would need to be performed continuously for decades; however, the Purchaser itself was effectively a shell company incorporated for the purposes of the proposed Transaction with no assets, no history of operations or earnings and, on its own, was unable to meet a reasonableness standard in demonstrating an ability to meet the financial obligations under the subject Leases.
- e. The \$375 million equity commitment from Ms. Liu was made exclusively to the Purchaser, another entity controlled by Ms. Liu, and was not enforceable by any of the contractual counterparties.
- f. Section 11.3(3)(b) of the CCAA requires consideration of whether the assignee would be able to perform the obligations under the Leases. In considering that section, the court concluded that the Applicants and the Purchaser fell well short of establishing, on any reasonableness standard, the availability of funds to back up the equity commitment and the one-year rent guarantee, based on the identified operational concerns alone.
- g. In terms of the appropriateness of the assignment to be considered under s. 11.3(3)(c), in addition to the overlapping considerations with those under s. 11.3(3)(b), the court also considered that the Leases were not being assigned as part of a broader acquisition of assets or of a business, and the proposed assignments

were not part of a broader transaction that would be affected by the decision to not approve them. The proposed Lease assignments were not being sought in pursuit of a going concern transaction to maintain and continue an operating business.

- h. Rather, the proposed assignments were proposed simply to pay a secured creditor. As the court noted, at paras. 131 and 133 of the Lease Assignment Decision:

[131] Put simply, the reality here is that the net proceeds of the Transaction, if approved, would be paid exclusively to some combination of two secured creditor groups: the FILO Agent and Pathlight. As fully set out in the Monitor's Reports, the FILO Agent is the first ranking secured creditor with respect to most of the assets of HBC. However, if ironically, Pathlight has first ranking security on a majority of the 25 Leases proposed to be assigned as part of the Transaction.

[133] For the purposes of this motion, I observe only the simple yet indisputable fact that the net proceeds of the Transaction, if approved, would be used to pay a secured creditor. Accordingly, in the absence of any prospect of a going concern outcome for HBC, the analysis boils down, in practical terms, to the question of which stakeholder group's interests ought to be prioritized: one of the secured creditors, or the Opposing Landlords.

- [6] The court concluded, at para. 142 of the Lease Assignment Decision:

[142] Considering all of the circumstances of this unique case, granting the relief sought would, in my view, represent an extraordinary exercise of the discretion of the court to affect rights of private parties for almost a century, pursuant to what is already an extraordinary power under s. 11.3 of the *CCAA*.

[7] The court further concluded that the two provisions of the IC Leases (ss. 3.05 and 3.05(A)) that the Applicants and the Purchaser asked to be declared void and unenforceable as *ipso facto* clauses because they violate the common law anti-deprivation rule and s. 34 of the *CCAA*, were not, in fact, *ipso facto* clauses. If the court had approved the proposed Lease assignments, it would have declined to declare these clauses to be void and unenforceable. The anti-deprivation rule and s. 34 of the *CCAA* are triggered only when existing rights are taken away because of an insolvency, which was found not to be the effect of the impugned IC Lease provisions. Rather, these provisions addressed circumstances that may or may not arise in the future that could have consequences for the continuation of the assigned Leases on their existing or original terms.

The Requests for Costs Arising Out of the Lease Assignment Decision and Summary of Outcome

[8] Following the release of the Lease Assignment Decision, the participating parties exchanged written cost submissions that were sent to the court, as follows:

- a. The “Opposing Landlords” (The Cadillac Fairview Corporation Limited, Oxford Properties Group, IC, Westcliff Management Ltd., Morguard Investments Limited, Primaris Management Inc., QuadReal Property Group, and KingSett Capital Inc.) provided Cost Submissions dated November 14, 2025 seeking costs in the aggregate amount of approximately \$2.4 million¹ on a partial indemnity scale.
- b. IC Cost Submissions Re: *Ipsa Facto* Relief dated November 14, 2025 seeking partial indemnity costs of \$144,908.09.
- c. The Applicants’ Cost Submissions dated November 28, 2025 opposing the Landlords’ request for costs.
- d. The FILO Agent’s Cost Submissions dated December 5, 2025 opposing the Landlords’ request for it to fund the payment of any costs awarded against the Applicants and requesting, as alternative relief, that if any costs award is made in favour of the Opposing Landlords that those costs be ordered payable by Pathlight. Specifically, that: “If the Court is inclined to grant a right to the Landlords to priority payment of costs, those costs should be borne not by the Applicants or the FILO Lenders, but instead by the only parties who stood to gain economically from the Central Walk Transaction: the Pathlight Lenders”.
- e. Pathlight Capital LP’s Cost Submissions dated December 5, 2025 supporting the Applicants’ opposition to the requests for costs and opposing the request made by the FILO Agent for “alternative relief” against Pathlight.
- f. Opposing Landlords’ Joint Reply Cost Submissions dated December 12, 2025.

[9] Osborne J.A. was appointed to the Court of Appeal for Ontario on December 16, 2025. I have assumed responsibility for case managing this CCAA proceeding and related proceedings involving HBC. The parties asked that the costs be determined by the court on the basis of their written cost submissions. I have read and considered the Lease Assignment Decision and the parties’ written cost submissions and, taking all of that into consideration and for the reasons generally outlined in this endorsement, I have decided that:

- a. The Opposing Landlords, as the successful party on this motion, are entitled to a partial indemnity award of their costs from the Applicants.

¹ The aggregate amount claimed in the Opposing Landlords’ Cost Submissions is \$2,386,399.29, comprised of partial indemnity fees stated to add up to \$1,866,965.59 plus the expert costs of \$512,096.48, shared between the Opposing Landlords, and minor disbursements for printing, translation, agency costs, etc. The court has not been able to entirely reconcile this total amount against the Costs Outlines/Bills of Costs provided but the difference is not material. The amount awarded is intended to correspond with the certified partial indemnity fees, plus disbursements and applicable taxes claimed by the Opposing Landlords in their respective Costs Outlines/Bills of Cost.

- b. The amounts of costs claimed by the Opposing Landlords appear to be fair, reasonable, and proportionate and are supported by the Costs Outlines and Bills of Costs submitted. I fix their aggregate partial indemnity costs in the amounts they have claimed (inclusive of partial indemnity fees, plus both expert and non-expert disbursements and applicable taxes).
- c. This costs award is stayed and shall not be paid until the costs, expenses, claims, and priorities have been established in this proceeding, recognizing that the costs may not end up being paid if the assets are not sufficient to pay claims that are determined to have priority over the costs. All of that is left to another day to be determined.

Principles Governing Costs in CCAA Proceedings

[10] Costs are not typically sought under the CCAA because, as the court explained in *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 5478, 93 C.B.R. (6th) 154, at para. 9, a restructuring is often not a “classic adversarial civil proceeding”, and the CCAA is intended to provide a “forum for stakeholder views to be brought forward, considered, and taken into account”.

[11] However, the court has discretion to award costs in appropriate CCAA cases. CCAA Applicants are not immune from costs awards. There is no general principle that costs should not be awarded in CCAA proceedings, and there are examples of cases in which the normal rule that costs follow the event has been applied. Costs have been ordered payable out of the debtors’ estate either directly by the applicants or as a result of an award made against the Monitor: see, for example, *Urbancorp Toronto Management Inc. (Re)*, 2019 ONCA 757, 74 C.B.R. (6th) 23, at paras. 80, 82; *Silver Streams Homes Inc. (Re)*, 2017 ONSC 314, at paras. 13-21; *Return On Innovation Capital Ltd. v. Gandi Innovations Ltd.*, 2011 ONSC 7465, 88 C.B.R. (5th) 320, at paras. 5-7, 14-15; *Re Calpine Canada Energy Ltd.*, 2008 ABQB 537, 46 C.B.R. (5th) 243, at para. 1; and *Jackpine Forest Products Ltd., Re*, 2004 BCSC 20, 27 B.C.L.R. (4th) 332, at para. 35.

[12] Costs awards are discretionary under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. Costs are typically considered in three stages: entitlement, scale, and quantum. There is no reason to deviate from that approach in this case. This case raises the additional question of who should pay the costs, if any are awarded, and when they should be paid.

Entitlement to Costs

[13] The court in *YG* recognized that, while not the norm, there are restructuring proceedings in which a classic adversarial dispute can arise between two competing creditor groups, and in such circumstances there is a recognized discretion in the court to award costs as between the parties with the economic interests in the outcome. Here, the court recognized the competing stakeholder groups with an economic interest in the Lease Assignment Decision to be the Opposing Landlords on the one hand and the secured creditors on the other.

[14] As the court observed (at para. 133 of the Lease Assignment Reasons): “[T]he analysis boils down, in practical terms, to the question of which stakeholder group’s interests ought to be prioritized: one of the secured creditors, or the Opposing Landlords.” The court explained, at para. 6 of the Lease Assignment Decision, that the fundamental question to be considered required the

court “to weigh legitimate but directly competing interests of stakeholders or groups of stakeholders, neither of which caused the present situation. Should a party to a contract that it entered into with an insolvent company be compelled to continue that contractual relationship with a new party in order to maximize recoveries for creditors of the insolvent company?”

[15] In that sense, the dispute about the approval of the assignment of the Leases was a “classic adversarial civil proceeding”. It went beyond the usual “forum for stakeholder views to be brought forward”—that is protected by the “practice in our Commercial Court of not awarding costs in restructuring matters”: *YG*, at paras. 7, 9.

[16] The interests ultimately lined up as the Applicants supported by Pathlight against the Opposing Landlords. The FILO Agent opposed the relief sought by the Applicants and sought specific relief against Pathlight. That introduces a slight complication into the alignment of adversarial stakeholder interests since the two secured creditors were not on the same side.

[17] Success is considered holistically. In this case, there is no doubt that the Opposing Landlords were the successful parties in the Lease Assignment Decision. In the adversarial context, the normal rule is that costs follow the event, with the “successful party” being entitled to some award of costs from the “losing party”.

[18] The Opposing Landlords had a lot at stake, faced with the prospect of having their long-term leases with HBC (or its affiliates) assigned to a third party with whom they had no prior dealings. The Opposing Landlords did not consider these proposed Lease assignments to be beneficial to them, even if it meant they would continue to receive rent for at least the short term (and maybe longer if the new tenant proved successful), when considered against the alternative of the Leases eventually being disclaimed.

[19] It was suggested by Pathlight that the Opposing Landlords should not be awarded any costs of this motion because “[a]n award of any costs to the Objecting Landlords, let alone the very large award that is sought, would set a precedent that would deter debtors from accessing the CCAA’s flexible remedies. It would have a chilling effect on debtors seeking to pursue creative solutions with a view to maximizing value for their stakeholders”.

[20] The Applicants made similar arguments, pointing out that they were pursuing the potential of \$50 million in additional recoveries for creditors in what the court described as an “unprecedented” transaction in its sheer scale and complexity, through relief that was described as “unique in a number of respects”.

[21] The court has been cautious about awarding costs against a debtor that was unsuccessful in pursuing a step in the restructuring process with a view to maximizing value for stakeholders: see e.g., *Edward Collins Contracting Limited (Re)*, 2024 NLSC 144, at paras. 17, 20; *Calpine*, at para. 1; *YG*, at paras. 9-10. But the issue here is for whose benefit was this step really being pursued.

[22] The “losing party” here was the Applicants (unsuccessful moving parties). The Central Walk Transaction and associated approval of lease assignments turned out to be a misguided attempt by the Applicants to recover some value from the long-term HBC Leases in many prime

shopping centers in Canada, for the benefit of some HBC secured creditors, and in this case, potentially improving the position of one of the secured creditors (Pathlight).

[23] I find the Opposing Landlords to be entitled to some costs as the successful party on this motion. Awarding costs to the Opposing Landlords in this case is not for the purpose of punishing the debtors or their secured creditors, but instead to recognize the intended objective of partial indemnity of the Opposing Landlords for the Applicants' failed attempt to avail themselves of the CCAA tools. Awarding costs encourages parties in future cases to be thoughtful about litigation strategies, to embrace and fully explore alternatives to litigation, and to make concerted efforts to resolve disputes consensually via settlement. The fact that the amount requested is unprecedented is not a reason to decline to award costs of this magnitude in an appropriate case, as this is

[24] I do agree, however, that the Opposing Landlords should not be paid their costs until the costs and expenses and priorities are sorted out at the end of the CCAA proceeding, in keeping with the logic and rationale of the court's determination in the Lease Assignment Decision not to grant the remainder of the FILO Agent's motion, for the reasons discussed in more detail in the next section of this endorsement. This deferral of payment of costs also recognizes that ordering the "losing party" (the Applicants) to pay the Opposing Landlord's costs now could create in inequity or unfairness to the FILO Lenders who are secured creditors.

Who Should Pay the Opposing Landlords' Costs

[25] Even though the FILO Lenders opposed the Applicants' motion and themselves brought a motion seeking the opposite relief, the Opposing Landlords are still asking that the FILO Lenders be ordered to pay any costs award directly to the Opposing Landlords, or to have it paid by the Applicants as a priority post-filing claim (with the result that it would still be funded, albeit indirectly, by the FILO Lenders through the erosion of their collateral in the HBC estate).

[26] On the first point, I do not agree that a costs award should be made directly against the FILO Lenders to pay the Opposing Landlords' costs now. The FILO Lenders were not the "losers" in the adversarial dispute with the Opposing Landlords.

[27] Furthermore, the FILO Lenders have already been compelled to fund the Applicants' pursuit of the Central Walk Transaction even though they (a) tried to prevent it from proceeding, (b) tried to expedite the hearing, and (c) ultimately opposed it. It is noted that the Applicants' refusal to settle (i.e., drop their motion and abandon the Central Walk Transaction) has already cost the estate approximately \$11 million in rent, common area maintenance, property taxes, and utilities paid to the Opposing Landlords pending the outcome of the Lease Assignment Motion, not including additional costs to remove FF&E and the significant professional fees to pursue the assignment motion, as well as the forfeiture of the Purchaser's deposit.

[28] Now, despite this, the Opposing Landlords seek to have the FILO Lenders further fund an adverse costs award against the Applicants.

[29] The Opposing Landlords alternative request for their costs to be paid now as a priority post-filing claim out of the HBC estate is also problematic from the perspective of overall fairness and reasonableness, even if it might be a theoretical option available to the court. Since I do not consider that to be a fair or reasonable outcome in this case, I do not need to decide whether, as a

general proposition, costs awards against an applicant debtor can be treated as a post-filing priority obligation. I note that the payment of post-filing costs awards is not specifically addressed in the CCAA or in the Amended and Restated Initial Order dated March 21, 2025, one way or the other.

[30] In terms of the overall fairness and reasonableness, the FILO Lenders point out that the funds in the HBC estate that will be available for distribution are limited. The court has acknowledged that it is not clear who the fulcrum creditor will be. If the costs award is granted and ordered to be paid now, it will effectively be paid from the FILO Lenders' collateral, and there is a significant risk that the FILO Lenders will never recover these amounts.

[31] In the particular circumstances of this case, to require the FILO Lenders to pay now (either directly or indirectly) for both the Applicants' and Landlords' costs would be unjust and contrary to the policy and remedial aims to the CCAA.

[32] The FILO Agent contends on behalf of the FILO Lenders that the true antagonists on this motion were the Opposing Landlords and Pathlight—the secured creditor that stood to benefit from the value to be achieved from the Central Walk Transaction and assignment of the Leases. The FILO Agent argues that Pathlight was the real “losing party” and the party that should pay the costs of the Opposing Landlords. The FILO Agent points to the choice that was made by the Applicants, at the urging and with the support of Pathlight, when the Purchaser did not fulfil its obligations to seek the consent of the Opposing Landlords under the Central Walk APA: Instead of relying on the protections in the Central Walk APA and keeping the deposit, the Applicants (and Pathlight) elected to proceed with an assignment motion. That is what put them in an adversarial position against the Opposing Landlords.

[33] Pathlight objects on a number of procedural and other grounds to any request that it pay the costs of the Opposing Landlords. It specifically objects to any characterization of it as a “party” to this dispute, sheltering itself behind the Applicants. Determining who the “parties” are to particular disputes in restructuring and insolvency proceedings can be tricky. Stakeholders often participate in motions and aspects of the applications on matters that are of interest to them, whether to raise them or oppose them. They may be considered “parties” to the particular dispute in that sense, even if not parties in the more traditional litigation sense.

[34] I do not need to decide the question of whether Pathlight should directly pay the costs of the Opposing Landlords as a “losing” party on this lease assignment dispute because there is a more fundamental issue in this case about acceding to the request of the FILO Agent to make an order now directly against Pathlight to pay any costs awarded to the Opposing Landlords.

[35] In the Lease Assignment Decision when the court addressed the FILO Agent's motion, the aspects of that motion that were seeking the opposite outcome of the relief sought by the Applicants were successful by virtue of the Applicants' motion being dismissed. However, other aspects of the FILO Agent's motion were not granted, and specifically those aspects by which the FILO Agent was asking for a court order requiring Pathlight to pay the costs associated with the Applicants' pursuit of the Central Walk Transaction from and after July 15, 2025, including fees of legal counsel. The FILO Agent did not appeal this decision. The reasons for not making that order, at paras. 205-208 of the Lease Assignment Decision, were that:

[205] Fundamentally, the complaints and concerns of the FILO Agent relate to costs generally and the allocation of costs in this *CCAA* proceeding. Those concerns may or may not be well-founded and they may or may not properly result in a disproportionate allocation of professional fees and other restructuring costs, awards of costs, and/or other relief. It is well established that this court has broad jurisdiction to allocate costs in a *CCAA* proceeding as among stakeholders both pursuant to s. 11 of the *CCAA* and as a result of the court's inherent and equitable jurisdiction. However, in my view, all of that is for another day.

[206] At this stage, it would be extraordinary in a *CCAA* proceeding, and in my view is inappropriate in the particular circumstances here, to grant an order requiring one creditor or group of creditors to pay ongoing costs and expenses of the Applicants (such as lease costs) on the basis that ultimate recoveries for creditors seeking that relief may be compromised or reduced, or on the basis that the present motion would, if successful, have generated recoveries to be distributed primarily to the benefit of another creditor.

[207] At least in large part, such an order here (i.e., an order requiring Pathlight to pay the costs under the CW Leases) would effectively be a predetermination of a number of issues: whether and to what extent the creditor rights of the FILO Agent rank in priority to those of Pathlight; over which assets; and whether either or both of those creditor groups will recover on proven claims and to what extent.

[208] These issues have not been finally determined. ... I am not persuaded that it would be fair or appropriate at this stage to allocate costs of one particular transaction or event in isolation, as opposed to allocating costs in a just and equitable manner considering all of the circumstances, typically at the end of the proceeding.

[36] The court was addressing a broader issue in this aspect of the Lease Assignment Decision dealing with the FILO Agent's motion, beyond just the matter of who should bear the responsibility for the costs incurred by the Applicants for their unsuccessful Lease Assignment Motion. The FILO Agent's motion was broad enough to encapsulate the issue that the court is now being asked to re-consider regarding who should bear the responsibility, and in what proportion, of any costs that the Applicants' may be ordered to pay to the Opposing Landlords. The same logic should therefore apply, which leads me to the same conclusion: "I am not persuaded that it would be fair or appropriate at this stage to allocate costs of one particular transaction or event in isolation, as opposed to allocating costs in a just and equitable manner considering all of the circumstances, typically at the end of the proceeding".

[37] The Opposing Landlords argue that the fact that the FILO Lenders never approved and never stood to benefit from the Central Walk Transaction are allocation issues that this court found are for another day, but that should not alter the costs analysis for this motion. I have difficulty

with this argument. Part of what the court is being asked to consider by the Opposing Landlords is whether an award of costs should be characterized as a post-filing obligation and paid now. That is, at least partially if not entirely, a priority issue that will have a direct impact on the eventual allocations and recoveries as between creditors.

[38] In all of these circumstances, I agree with Pathlight that the FILO Agent's fallback position is the one that should prevail, even if it does mean that the Objecting Landlords will not get paid anything right away and even if it means that in the end there might not be funds available to pay the costs awarded to the Opposing Landlords. All of that will be an issue for another day. At this time, I agree that the court should defer payment of any costs award until the end of the CCAA proceeding, or at least after any reallocation of costs generally. That is the best way in which to reconcile the requests for costs with the earlier determination of Osborne J. that it is premature to undertake an exercise allocating costs and expenses of the Applicants at this stage of the proceeding.

[39] I will deal briefly with one further argument that was raised as a ground for denying the Opposing Landlords their costs of this motion, which is that they benefitted from the Applicants' pursuit of the Central Walk Transaction. This is predicated on the fact that they received almost \$15 million in "dead rent" while the premises sat empty and the approval of the Central Walk Transaction was pursued (rent they would not have received if the Central Walk Transaction had not been pursued and their leases had been disclaimed, leaving them with unsecured claims for rent against the HBC estate).

[40] I do not agree that this is a reason to deny the Opposing Landlords their costs. The Applicants chose to retain the Leases despite the protestations of the Opposing Landlords, and despite the fact that they could have disclaimed them. The CCAA permitted the Applicants to preserve their option for a potential assignment under s. 11.3 of the CCAA if they kept the payments due under the Leases current, but the Applicants cannot now claim that the rent they paid constitutes a windfall to the Opposing Landlords. That said, the fact that the Opposing Landlords received these payments does soften the blow in terms of them being out of pocket for their costs of this motion pending further determinations of claims and priorities, since they received rent far in excess of the costs they are claiming.

IC Costs Claimed for Ipso Facto Relief

[41] The same principles and analysis as discussed above apply to the question of the entitlement of IC to the costs it has requested in respect of the *Ipso Facto* Relief that was sought in order to satisfy one of the conditions of the Central Walk Transaction. The *Ipso Facto* Relief was declined by the court not only on the basis that the Central Walk Transaction was not approved but also on the basis that the predicate upon which this relief was requested was not supportable or available. While, in contrast to the lease assignments, the Monitor did support this relief that the Applicants sought, that does not change the outcome-based analysis as to winners and losers. However, the Monitor's support does lend an air of reasonableness to the request even though it was not ultimately granted.

[42] Nonetheless, this relief was sought in the context of the broader adversarial dispute between the Applicants/Pathlight and the Opposing Landlords; it just affected one of those landlords specifically.

[43] IC proposed to the Monitor that the determination of the *Ipsa Facto* Relief be deferred until after the determination of the assignment relief, recognizing that if the assignment relief was not granted the *Ipsa Facto* Relief would become moot, as it in fact did. However, when the Monitor presented this proposal to the court, the Applicants opposed it, so the *Ipsa Facto* Relief was adjudicated in tandem with the assignment motion on an expedited schedule.

[44] IC is entitled to the incremental additional costs it incurred to successfully oppose the *Ipsa Facto* Relief for the same reasons as I have found the Opposing Landlords to be entitled to their costs of their successful opposition of the assignment relief. The payment of any such costs shall, similarly, be deferred until the end of the CCAA proceeding or at least after any reallocation of costs generally. That is the best way in which to reconcile the requests for costs with the determination already made by Osborne J. that it is premature to undertake an exercise allocating costs and expenses of the Applicants at this stage of the proceeding.

Scale of Costs

[45] On August 21, the day after the Monitor's Eighth Report, the Opposing Landlords offered to settle the assignment motion on the following terms:

- a. The Opposing Landlords would accept an immediate disclaimer of the leases with an effective date of September 15, 2025. Rent would only be payable to September 15, 2025, avoiding a 30-day disclaimer period.
- b. The Opposing Landlords would accept the premises with all FF&E (including signage) to be addressed at the landlords' cost.
- c. The assignment motion would be dismissed, with prejudice, and without costs.

[46] The Applicants' counter-offer to this was for the Opposing Landlords to accept immediate disclaimer with rent ended retroactively to August 15, 2025 and for the Landlords to pay cash of \$29 million to the Applicants.

[47] Neither of the "offers" qualify as an offer that attracts the mandatory cost consequences under r. 49.10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[48] This court has already concluded in the Lease Assignment Decision that the Applicants did not act in bad faith with respect to the Central Walk Transaction, and the Company was not faulted for having pursued this transaction, which arose out of a court-approved sale process. There is nothing else about the conduct of any of the parties that has been identified that would warrant an elevated scale of costs, beyond partial indemnity costs, which is the normal scale of costs that is awarded.

[49] Accordingly, the costs awards in favour of the Opposing Landlords, including IC's additional incremental costs in respect of the *Ipsa Facto* Relief, are awarded on a partial indemnity scale.

The Quantum of Costs Claimed by the Opposing Landlords and Additional Costs Claimed by IC

[50] The quantum of the costs sought by the Opposing Landlords is fair, reasonable, and proportionate in the circumstances, having regard to the importance, complexity, novelty, and compressed timeline of the motion, for the more detailed reasons they have outlined in their Joint Cost Submissions at paras. 24-34, including that:

- a. The assignment motion was of critical importance to the Opposing Landlords.
- b. The motions were unprecedented in scope and scale.
- c. The assignment motion was a significant undertaking in a compressed period.
- d. The eight Opposing Landlords took all steps available to streamline, coordinate, reduce duplication, and reduce costs.
- e. The complexity, timeline, and magnitude of work was all within the reasonable expectation of the Applicants.
- f. The fees incurred were within the expectations of the Applicants and are reasonable given the experience of counsel. All parties to the assignment motion were represented by senior Canadian insolvency and litigation counsel, whose rates are commensurate with their experience, the scale of the issues, and the complexity of the case, including the urgency imposed by the compressed timetable.
- g. Even if it did not warrant a higher scale of substantial indemnity costs, the Landlords made a settlement offer that would have provided a significant savings to the estate.

[51] None of the Applicants, the FILO Agent, nor Pathlight have provided costs outlines of their own that demonstrate that the Opposing Landlords' and IC's incremental costs were excessive. Having considered all of the above factors and reviewed the Bills of Costs/Costs Outlines submitted by the Opposing Landlords and IC, I find their costs to be fair, reasonable, and appropriate in the circumstances, and I see no reason to reduce the amounts they have claimed.

[52] The shared cost (disbursement) for the expert reports of the Opposing Landlords was also reasonably (jointly) incurred and is recoverable by them in their proportionate shares based on their agreed contributions. Undoubtedly, some expense was saved by the joint expert retainers.

[53] It was suggested by the Applicants that the court should award only nominal costs (\$25,000 per landlord), said to be consistent with the Court of Appeal for Ontario's guidance in *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, at para. 63, leave to appeal refused, [2022] S.C.C.A. No. 387, that courts should avoid unprecedented costs awards. The Applicants contend that there are no costs decisions in CCAA proceedings where the debtor like HBC, acting in good faith and

with due diligence, has been ordered to pay more than what they suggest as nominal costs. In fact, the FILO Agent suggested that the nominal costs should be no more than \$20,000 in the aggregate.

[54] As noted earlier, this was an unprecedented situation, and I consider an unprecedented costs award to be warranted. It may not result in recoveries for the winning parties because they did not succeed in their (also unprecedented) request for the court to order that their costs be paid now as a post-filing priority claim. However, for purposes of fixing their costs, the amounts are justified and nominal costs are not appropriate to serve the objectives (including indemnity) of making a costs award in these circumstances, even when balanced against the CCAA objectives which also must be considered.

Final Disposition

[55] The Opposing Landlords are awarded their partial indemnity legal fees, plus expert costs of \$512,096.48 and non-expert disbursements.

[56] The partial indemnity costs for each of the Opposing Landlords, as certified in the respective Bills of Costs/Costs Outlines (including partial indemnity fees, non-expert disbursements and applicable taxes), is as follows:

- a. Cadillac Fairview: \$680,067.43
- b. IC: \$98,339.95
- c. Morguard Investments Limited: \$120,996.73
- d. Westcliff Management Ltd.: \$35,942.03
- e. QuadReal Property Group: \$41,917.01
- f. Primaris Management Inc.: \$209,388.44
- g. KingSett Capital Inc.: \$321,366.19
- h. Oxford Properties Group: \$387,216.14²

Total: \$1,887,877.65³

² Oxford's costs properly include the fees it incurred in filing responding materials to preserve the Hillcrest Right of first refusal ("RFOR"). The Central Walk APA expressly sought to extinguish the Hillcrest ROFR. Oxford repeatedly sought a tolling of the Hillcrest ROFR pending the outcome of the approval motion, which would have avoided the necessity of filing materials on that issue. The Applicants triggered a notice period to expire prior to a determination of the approval motion, at the same time as (undisclosed to Oxford) stating that Ruby Liu was in default of the APA.

³ The court notes that his amount is indicated to be \$1,866,965.59 in the Opposing Landlords' Joint Written Submissions. The discrepancy has not been reconciled but the amount awarded is intended to correspond with their Costs Outlines/Bills of Costs.

[57] IC is entitled to its further incremental partial indemnity costs of responding to the *Ipsso Facto* Relief, in the certified all-inclusive amount of \$144,908.09.

A handwritten signature in cursive script that reads "Kimmel J." written over a horizontal line.

Kimmel J.

Date: March 10, 2026