

**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

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

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December 10, 2025

**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
Ontario Regional Office  
120 Adelaide Street West  
Suite 400  
Toronto, Ontario  
M5H 1T1

**Per:** Asad Moten (LSO# 63785G)  
Walter Kravchuk (LSO# 57160U)

**Tel:** (437) 423-6426 / (365) 375-2752

**Email:** [Asad.Moten@justice.gc.ca](mailto:Asad.Moten@justice.gc.ca)  
[walter.kravchuk@justice.gc.ca](mailto:walter.kravchuk@justice.gc.ca)

**TO: THE SERVICE LIST**

## I. OVERVIEW

1. The Applicants seek, among other things, an order (the “**Charter Approval and Vesting Order**”) approving the sale of the 1670 Royal Charter (the “**Royal Charter**”) to Wittington Investments, Limited and DKRT Family Corp in accordance with a joint commitment letter dated November 14, 2025 (the “**Transaction**”). The Transaction contemplates an immediate donation of the Royal Charter to four reputable, Canadian public institutions. The Attorney General of Canada (“**AGC**”), on behalf of the Canadian Museum of History (“**CMH**”), supports the Applicants’ motion on the basis that the Transaction, if approved, would protect and safeguard the Royal Charter for the benefit of the Canadian public.
2. The Royal Charter is a foundational Canadian document with profound significance to both the history of Canada and for Indigenous peoples. It is one-of-a-kind; an invaluable piece of history. Given its significance, the Court must give significant weight to the effects of the proposed Transaction on other interested parties (e.g. the Canadian public) when considering the factors under section 36(3) of the *Companies’ Creditors Arrangement Act* (“**CCAA**”).<sup>1</sup>
3. The donation of the Royal Charter to, collectively, the Archives of Manitoba, the Manitoba Museum, the Royal Ontario Museum, and CMH (the “**Public Custodians**”) ensures that the Royal Charter will remain in Canada. The Public Custodians have committed to, and are capable of, stewarding the Royal Charter, including through preservation, engagement with Indigenous and other voices, sharing, and enabling public access. The Transaction further contemplates a donation of \$5 million (the “**Stewardship Funds**”) to support these stewardship efforts.
4. The Charter Approval and Vesting Order should be granted because the Transaction and ongoing stewardship by the Public Custodians, will have a protective and positive effect on the public’s interest in the Royal Charter.

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<sup>1</sup> *Companies’ Creditors Arrangement Act* R.S.C. 1985, c. C-36 (“**CCAA**”) at s.[36\(3\)](#).

## II. FACTS

5. Except where otherwise provided, the AGC repeats and relies upon the facts as described in the Applicants' factum dated December 8, 2025 (the "**Applicants' Factum**").

## III. ISSUES

6. The issues to be determined on this motion are whether the Court should:
- a) grant the Charter Approval and Vesting Order;
  - b) extend the stay period (as defined in the Applicants' motion materials) until and including March 31, 2026; and,
  - c) approve the Monitor's Reports (as defined in the Applicants' Factum) and the activities of the Monitor described therein.
7. The AGC takes no position on the relief sought in respect of (b) and (c) above.

## IV. LAW AND ARGUMENT

### A. The public's interest in the Transaction is an important consideration

1. *Section 36 of the CCAA and the Soundair principles are broad*
8. Section 36 of the *CCAA* permits an applicant that is subject to *CCAA* protection to sell assets outside of the ordinary course of business if authorized to do so by the Court. In approving such a transaction, the Court considers the criteria set out in section 36(3) of the *CCAA*. The criteria reflect similar considerations developed in case law pre-dating section 36 of the *CCAA*.<sup>2</sup>
9. In the context of *CCAA* proceedings, the Court must ensure that, on the whole, a proposed transaction is appropriate, fair and reasonable.<sup>3</sup> This is affirmed when reviewing the criteria outlined in section 36(3) of the *CCAA* and cases like *Royal Bank of Canada v. Soundair*

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<sup>2</sup> *Nelson Education Limited (Re)* [2015 ONSC 5557](#) at ¶¶ 37-38.

<sup>3</sup> *Re Quest University* [2020 BCSC 1883](#) ("*Quest University*") at ¶ 177.

Corp.<sup>4</sup> The criteria are not exhaustive.<sup>5</sup> Germane to this motion, the Court must consider the effects of the proposed transaction on other interested parties.<sup>6</sup>

2. *The remedial objectives of the CCAA requires consideration of the public's interest*

10. Where appropriate, the Court's approval of a transaction pursuant to section 36 of the CCAA requires consideration of the public's interest in that transaction. In considering a sale approval, the Court should consider the appropriateness of the sale against the overall purpose of the CCAA. Appropriateness is assessed by examining whether the order sought advances the policy objectives of the CCAA, namely its remedial purpose of avoiding social and economic losses resulting from liquidation of an insolvent company.<sup>7</sup> The Supreme Court of Canada has identified one of the remedial objectives applicable to Canada's insolvency statutes as protecting the public interest.<sup>8</sup>
11. The court's ability to provide redress for these remedial objectives, including the public interest, is reflected in the flexibility afforded to supervising judges. The CCAA provides supervising judges with "broad discretion to make a variety of orders that respond to the circumstances of each case and "meet contemporary business and **social needs**"..."<sup>9</sup>
12. The Court's consideration of the interests of non-creditors in insolvency proceedings is not a new concept. The Supreme Court of Canada stated in *Century Services Inc. v. Canada (Attorney General)* that among the various interests at stake in a reorganization:<sup>10</sup>

...courts must recognize that on occasion the broader public interest will be engaged by aspects of the reorganization and may be a factor against which the decision of whether to allow a particular action will be weighed.
13. Even though section 36(3) of the CCAA does not explicitly include the broader public interest as a criteria for consideration, the criteria (a) includes the effect of the proposed transaction on other interested parties; and (b) is not exhaustive. It follows then, that in

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<sup>4</sup> *Royal Bank of Canada v. Soundair Corp.*, [1992] O.J. No 1137, [1991 CanLII 2727](#) (ONCA).

<sup>5</sup> *Target Canada Co. (Re)*, (April 2, 2015), Court File No. CV-15-10832-00CL, Ont. S.C.J. [Commercial List] at para 15 ([Endorsement](#)).

<sup>6</sup> CCAA at s. [36\(3\)\(e\)](#).

<sup>7</sup> *Pride Group Holdings Inc. et al*, [2024 ONSC 5908](#) at ¶ [13](#), citing *Century Services Inc. v. Canada (Attorney General)* [2010 SCC 60](#) ("*Century Services*") at ¶ [70](#).

<sup>8</sup> 9354-9186 *Que. v. Callidus Capital Corp.* [2020 SCC 10](#) ("*Callidus*") at ¶ [40](#).

<sup>9</sup> *Callidus* at ¶ [48](#) [emphasis added].

<sup>10</sup> *Century Services* at ¶ [60](#) [citations omitted].

light of the *CCAA*'s remedial objective of protecting the public interest, the Court must consider, where applicable, whether the broader public interest is furthered by the proposed transaction. Conversely, a proposed transaction in which an important public interest is at stake and in which that public interest is not considered as part of the Court's section 36(3) considerations cannot be appropriate, fair or reasonable.

3. ***The public's interest is not limited to economic stakes***

14. In the context of insolvency proceedings, the Court's consideration of public interest has traditionally been concerned with protecting the integrity of the commercial chain in which the applicant is a link (eg. the supply of goods and services).<sup>11</sup> Courts have, however, previously considered a variety of broader, non-economic public interests in insolvency proceedings:
- a) In *Canadian Red Cross/Societe Canadienne de la Croix Rouge, Re*, this Court approved the sale and transfer of blood supply assets. The Court arrived at this conclusion having regard, among other things, to "...the public interest imperative which requires a Canadian Blood Supply with integrity and a seamless, effective and relatively early transfer of blood supply operations to the new agencies..."<sup>12</sup>
  - b) In *TLC (Re)*, the British Columbia Supreme Court approved a plan of compromise and arrangement for a non-profit charitable land trust charged with protecting certain lands with ecological, agricultural or cultural importance. Stating that "[t]his was not one of those cases where the Court has to speculate about what those broader interests might entail", the Court considered the input and involvement of community groups and government authorities, all of whom wanted to ensure the ongoing protection and preservation of the lands for the benefit of the public.<sup>13</sup>
  - c) In *Re Quest University* the British Columbia Supreme Court approved a reverse vesting transaction under section 36 of the *CCAA* in favour of Primacorp partly on the bases that (a) there was significant community and stakeholder involvement throughout the sales process; (b) the resulting going concern benefits the broader

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<sup>11</sup> See, for example *Century Services* at ¶ 18.

<sup>12</sup> *Canadian Red Cross/Societe Canadienne de la Croix Rouge, Re*, [1998] O.J. No 3306, [1998 CanLII 14907](#) (Ont. C.J. Gen Div) at ¶ 50.

<sup>13</sup> *TLC (Re)* [2015 BCSC 656](#) at ¶¶ 65-66.

stakeholder group including the community generally; and, (c) the broader stakeholder benefits were balanced against the impact on those who might be negatively affected by the transaction.<sup>14</sup>

- d) In *Vancouver Coastal Health Authority v. Seymour Health Centre Inc.*, the British Columbia Supreme Court granted the appointment of a receiver, acknowledging that unique situations require the Court to consider broader community interests.<sup>15</sup> In light of the risk of thousands of patients losing primary health care services, the court had no hesitation in “...finding that the broader community interests engaged here are an appropriate additional consideration in terms of the health care needs of thousands of British Columbians.”<sup>16</sup>
- e) In *Skydome Corp, Re*, this Court granted *CCAA* protection to allow continued operation of the Skydome. The Court noted that the public’s interest in a successful Skydome, including the interests of Blue Jays fans, cannot be ignored altogether, and are part of the “...broader public dimension which must be considered and weighed in the balance on this Application...”<sup>17</sup>

4. ***In this instance, the public’s interest is a significant factor***

- 15. While public interest or social stakeholder considerations should not detract from the statutory objectives of the *CCAA*,<sup>18</sup> the Court should not be shy in elevating the importance of the public’s interest as a consideration where appropriate. In *9354-9186 Que. v. Callidus Capital Corp.*, the Supreme Court of Canada confirmed that:<sup>19</sup>

Ultimately, the relative weight that the different objectives of the *CCAA* take on in a particular case may vary based on the factual circumstances, the stage of the proceedings, or the proposed solutions that are presented to the court for approval...

- 16. Thus, if the factual circumstances in a proceeding warrant a greater weighing of the public’s interest as an objective of the *CCAA*, the interests of the public and social stakeholders in a proposed transaction must be given greater consideration. In the current instance, the

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<sup>14</sup> *Quest University* at ¶ 178.

<sup>15</sup> *Vancouver Coastal Health Authority v. Seymour Health Centre Inc.*, [2023 BCSC 1158](#) (“*VCHA*”) at ¶ 3.

<sup>16</sup> *VCHA* at ¶ 75.

<sup>17</sup> *Skydome Corp., Re* 1998 CarswellOnt 5922 (OCJ Gen Div, Comm List) at ¶¶ 5-7, **Book of Authorities, Tab 1**.

<sup>18</sup> *Teal-Jones Group (Re)* [2025 BCSC 861](#) at ¶ 130.

<sup>19</sup> *Callidus* at ¶ 46.

public's interest in the outcome of the Transaction (i.e. the integrity, preservation, and accessibility of the Royal Charter) should be considered tantamount to the procedural and pecuniary criteria the Court traditionally considers under section 36(3) of the *CCAA*.

17. In the present case, the Honourable Court has already laid the groundwork for this elevated consideration, stating on various occasions:
- a) As is acknowledged by all stakeholders, the Royal Charter holds special significance as a foundational document in the history of Canada. It is not simply another asset of the Applicants to be monetized such that proceeds can be maximized. Accordingly, **next steps with respect to the Royal Charter must balance the objectives of maximizing recovery for stakeholders as against the special interests that relate to the Royal Charter, both monetary and non-monetary.**<sup>20</sup>
  - b) To say that the Charter has significance to stakeholders in this *CCAA* Proceeding as well as to other stakeholders who are not directly involved in matters arising out of the insolvency of HBC would be a gross understatement. **It has profound historical and cultural significance to Canada and its people.**<sup>21</sup>
  - c) Accordingly, one of the challenges for this Court 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.<sup>22</sup>
  - d) Importantly, in this unique case, the proposed Charter Auction Process has been structured to benefit not only the broader economic community, but the broader community of Canada and its peoples as well. Put simply, **the objective is to maximize the value for stakeholders, but to do so while safeguarding the Charter's** unique cultural and historical significance and ensure its future preservation in public trust.<sup>23</sup>
18. In light of the above, the Court must consider the proposed Transaction with significant and due regard to whether the Transaction would protect the public's interest in the Royal Charter. The foundational nature of the Royal Charter in Canadian history, and the parties' efforts to ensure it is kept intact, in Canada, for future generations, warrants the elevation of this important public interest as a criteria for this Court to consider.

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<sup>20</sup> *Hudson's Bay Company (Re)*, (September 29, 2025), Court File No. CV-25-00738613-00CL, Ont. S.C.J. [Commercial List] at ¶ 5 ([Endorsement](#)) [emphasis added].

<sup>21</sup> *Hudson's Bay Company (Re)* [2025 ONSC 6764](#) ("**HBC**") at ¶ 2 [emphasis added].

<sup>22</sup> *HBC* at ¶ 8.

<sup>23</sup> *HBC* at ¶ 30 [emphasis added].

**B. It is in the public's interest that the Transaction be approved**

19. The AGC supports the Transaction on the basis that its effect on the public's interest in the Royal Charter will be positive; the Transaction will ensure the preservation of and access to the Royal Charter for all Canadians. The AGC is further supportive of the Transaction given that CMH, as one of the Public Custodians, has a national reach and mandate. The AGC takes no position on the balance of the factors to be considered under section 36(3) of the *CCAA*.
20. The Transaction, as proposed, will affect the broader public interest in the Royal Charter in the following ways:
  - a) the Royal Charter, as a foundational Canadian document, will remain in Canada;<sup>24</sup>
  - b) the Royal Charter will be donated in equal parts to the four Public Custodians;<sup>25</sup>
  - c) the donation will be accompanied by the Stewardship Funds to be allocated among the Public Custodians to support stewardship, engagement with Indigenous and other stakeholders, education, and public access to the Royal Charter – for CMH as a federally funded institution, the Stewardship Funds will be used in accordance with its national mandate and will assist in defraying the taxpayer burden for these activities;
  - d) the Public Custodians have experience in the key aspects of custody the Royal Charter, including preservation of parchment material; engagement with Indigenous and other stakeholders; and, interpretation and exhibition of historical material – for example, CMH (a) holds in its collection others sensitive parchment material; (b) has engaged with Indigenous communities in the development and curation of its exhibits; and (c) has, as one of its core responsibilities, the exhibition, education and communication of Canada's history;<sup>26</sup>

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<sup>24</sup> Affidavit of Adam Zalev, sworn December 5, 2025 (the “**Ninth Zalev Affidavit**”) at Exhibit A, September 28, 2025 letter from Natasha MacParland to Adam Zalev.

<sup>25</sup> Ninth Zalev Affidavit at Exhibit A, Term Sheet dated September 28, 2025.

<sup>26</sup> Eleventh Report of the Monitor dated December 8, 2025 at Appendix B, Appendix C, Appendix D; Affidavit of Caroline Dromaguet, sworn December 10, 2025 (“**Dromaguet Affidavit**”) at Exhibit A.



- e) the Public Custodians are required under the Transaction to enable access, meaning that the public will have greater access to the Royal Charter than the public had when it was in the custody of the Applicants – for example, CMH’s mandate includes access to its collections;<sup>27</sup>
  - f) researchers and historians will be able to continue their important work in respect of the Royal Charter – CMH, for example, undertakes collaborative research activities in Canadian history, Indigenous histories, art, cultures, archaeology, and cultural expression;<sup>28</sup> and,
  - g) the Public Custodians, as public institutions, have a responsibility to transparently and responsibly care for the Royal Charter.
21. As a result, the broader Canadian public would benefit from the Transaction because the Royal Charter would be preserved and accessible to the public for generations to come.

**V. ORDER SOUGHT**

22. The AGC respectfully requests that the Court grant the Applicants’ motion for the Charter Approval and Vesting Order in the form requested.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 10<sup>th</sup> day of December 2025.



**ATTORNEY GENERAL OF CANADA**

**Per:** Asad Moten / Walter Kravchuk

Counsel for the Attorney General of Canada

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<sup>27</sup> Dromaguet Affidavit at Exhibit A.

<sup>28</sup> Dromaguet Affidavit at Exhibit A; Eleventh Report of the Monitor at Appendix B, Appendix C, Appendix D.

**SCHEDULE “A”**  
**LIST OF AUTHORITIES**

1. *9354-9186 Que. v. Callidus Capital Corp.* [2020 SCC 10](#)
2. *Canadian Red Cross/Societe Canadienne de la Croix Rouge, Re*, [1998] O.J. No 3306, [1998 CanLII 14907](#) (Ont. C.J. Gen Div)
3. *Century Services Inc. v. Canada (Attorney General)* [2010 SCC 60](#)
4. *Hudson’s Bay Company (Re)*, (September 29, 2025), Court File No. CV-25-00738613-00CL, Ont. S.C.J. [Commercial List] at ¶ 5 ([Endorsement](#))
5. *Hudson’s Bay Company (Re)* [2025 ONSC 6764](#)
6. *Nelson Education Limited (Re)* [2015 ONSC 5557](#)
7. *Pride Group Holdings Inc. et al*, [2024 ONSC 5908](#)
8. *Re Quest University* [2020 BCSC 1883](#)
9. *Royal Bank of Canada v. Soundair Corp.*, [1992] O.J. No 1137, [1991 CanLII 2727](#) (ONCA)
10. *Skydome Corp., Re* 1998 CarswellOnt 5922 (OCJ Gen Div, Comm List)
11. *Target Canada Co. (Re)*, (April 2, 2015), Court File No. CV-15-10832-00CL, Ont. S.C.J. [Commercial List] ([Endorsement](#))
12. *Teal-Jones Group (Re)* [2025 BCSC 861](#)
13. *TLC (Re)* [2015 BCSC 656](#)
14. *Vancouver Coastal Health Authority v. Seymour Health Centre Inc.*, [2023 BCSC 1158](#)

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

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

**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,

- 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 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.

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

Proceedings Commenced at TORONTO

**FACTUM OF THE ATTORNEY  
GENERAL OF CANADA**

**ATTORNEY GENERAL OF CANADA**

Department of Justice  
Ontario Regional Office  
120 Adelaide Street West, Suite 400  
Toronto, Ontario, M5H 1T1

**Per: Walter Kravchuk (LSO# 57160U)**  
Tel: (365) 275-2752  
Email: [Walter.Kravchuk@justice.gc.ca](mailto:Walter.Kravchuk@justice.gc.ca)

**Per: Asad Moten (LSO# 63785G)**  
Tel : (437) 423-6426  
Email: [Asad.Moten@justice.gc.ca](mailto:Asad.Moten@justice.gc.ca)

Lawyers for the  
Attorney General of  
Canada