

**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
(Approval of the Charter Auction Process)
(Returnable September 29, 2025)**

September 25, 2025

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TO: THE SERVICE LIST

PART I – OVERVIEW¹

1. Hudson's Bay was established by Royal Proclamation in 1670 by King Charles II pursuant to the Royal Charter of 1670 (the "**Charter**").²
2. The Charter is a foundational document that is critical to the historical narrative of Canada as a nation and holds significant importance for First Nations, Inuit, and Métis people.³ Since Hudson's Bay filed for CCAA protection, a number of parties have approached the Applicants expressing an interest in purchasing the Charter and immediately donating it to a Canadian public institution or museum.
3. This factum is filled in support of the Applicants' motion seeking issuance of the Charter Auction Process Order which, among other things:
 - a) approves the Charter Auction Process for the Charter Auction in the form attached as Schedule "A" to the Charter Auction Process Order, with such non-material amendments as the Applicants, Reflect, and the Monitor may agree; and
 - b) authorizes Reflect to conduct the Charter Auction in accordance with the Charter Auction Process.

PART II – THE FACTS

4. The facts with respect to this motion are set out in the Seventh Zalev Affidavit. All references to currency in this factum are references to Canadian dollars, unless otherwise indicated.

¹ Capitalized terms used in this factum that are not otherwise defined have the meanings given to them in the Affidavit of Adam Zalev sworn September 19, 2025, concerning the Charter Auction Process (the "**Seventh Zalev Affidavit**").

² Seventh Zalev Affidavit at para 6, Motion Record of the Applicants dated September 19, 2025 ("**AMR**"), Tab 2.

³ Seventh Zalev Affidavit at para 21, AMR, Tab 2.

A. Background

5. In furtherance of the Applicants' efforts to identify a going-concern solution for all or a portion of the Business, the Applicants sought and obtained the SISP Order on March 21, 2025.⁴ The SISP, which has since been completed, initially provided that Qualified Bidders could submit bids for some or all of the property, assets, and undertakings of the Applicants and the Non-Applicant Stay Parties, which included, among other things, the Art Collection and the Charter.⁵

6. Appreciating the historical significance of the Art Collection and the Charter, as well as the need to maximize value while respecting public interests, the Applicants and Reflect, together with the Monitor, determined that the SISP was not the most appropriate process for selling the Art Collection or the Charter.⁶ Instead, the Applicants decided that a separate, dedicated auction process would provide the most fair, transparent, and effective means to market and sell these culturally and historically important items.⁷

7. On April 24, 2025, the Applicants sought and obtained the A&R SISP Order, which, among other things, removed the Art Collection and the Charter from the Property available for sale pursuant to the SISP.⁸

8. Following the Court's approval of the A&R SISP Order, the Applicants, Reflect and the Monitor received numerous letters, emails and calls from government entities, public institutions, Indigenous groups and other interested parties expressing concern regarding the preservation, safeguarding and future accessibility of the Charter.⁹

9. Initially, it was the Company's intention to include the Charter as part of the Art Collection Auction and develop the Art Collection Auction Procedures in a manner that

⁴ *Ibid* at para 10.

⁵ *Ibid* at para 11.

⁶ *Ibid* at para 12.

⁷ *Ibid* at para 13.

⁸ *Ibid*.

⁹ *Ibid* at para 20.

addressed concerns related to the Charter.¹⁰

10. On or about June 18, 2025, the Company received an unsolicited offer from Wittington to purchase the Charter for \$12.5 million. Wittington committed to immediately donate the Charter to the Canadian Museum of History following the purchase of the Charter, where, after a robust and extensive consultation process, it would be shared with museums and Indigenous groups across Canada, prioritizing the long-term preservation of the Charter.¹¹

11. Following receipt of the Wittington Offer and consultation with the Monitor, Reflect and the Auctioneer, and with the consent of the FILO Agent, the Applicants withdrew the Charter from the Art Collection Auction and filed motion materials seeking approval of the sale of the Charter pursuant to the Wittington Offer, which was scheduled to be heard on September 9, 2025.¹²

12. Recognizing the Charter's profound historical and cultural significance, the Applicants wished to give all interested parties adequate time to review and consult on the proposed sale. In response, at the Company's request, the Court issued an Endorsement on July 31, 2025, requiring any party wishing to submit materials regarding the Charter Motion to do so by August 21, 2025.¹³

13. On August 21, 2025, the Company received a Responding Motion Record from DKRT. As part of its responding materials, DKRT, among other things, objected to the selection of Wittington to purchase the Royal Charter for \$12.5 million and indicated that it was willing to provide an 'opening bid' of at least \$15 million if the Charter was sold by way

¹⁰ *Ibid* at para 23.

¹¹ *Ibid* at para 24.

¹² *Ibid* at para 25.

¹³ *Ibid* at para 26.

of an auction.¹⁴

14. DKRT's opening bid represents an increase of \$2.5 million over the offer submitted by Wittington Investments, Limited. Consistent with the terms of the Wittington Offer, DKRT has committed, in the event that its offer is accepted, to permanently donate the Charter forthwith to the Archives of Manitoba. Furthermore, DKRT has committed to endow a minimum of \$2 million to the Archives for the purpose of facilitating consultation with Indigenous communities; fostering collaborative initiatives with museums, archives, and other cultural organizations; and promoting the broad dissemination of the Charter throughout Canada in order to optimize public accessibility.¹⁵

15. While no other parties submitted formal responses, Reflect initiated a series of discussions with representatives from several major Canadian cultural institutions and other Interested Parties, disclosing a strong interest in acquiring the Charter and a willingness among these parties to participate if the Charter were to be offered for sale through an auction process.¹⁶

16. Recognizing the growing interest from various stakeholders, Reflect and the Applicants' counsel engaged with representatives from both DKRT and Wittington to discuss their respective offers and the potential for an auction. To ensure a fair and transparent process, the Applicants secured a binding commitment from DKRT to participate in any Court-approved auction and to submit an initial bid of at least \$15 million, consistent with the terms outlined in DKRT's Responding Motion Record. Wittington is still considering whether it will join the Charter Auction.¹⁷

17. After careful review and consultation with the Monitor, Reflect, the FILO Lenders, and Pathlight, the Applicants concluded that a competitive auction, with tailored restrictions

¹⁴ *Ibid* at para 27.

¹⁵ *Ibid* at para 28.

¹⁶ *Ibid* at para 29.

¹⁷ *Ibid* at para 30.

on participation to guarantee the Charter's preservation and sharing, would best serve the public interest.¹⁸

18. In light of these developments, the previously scheduled hearing to approve the Charter's sale to Wittington, originally scheduled for September 9, was adjourned on September 5, 2025. Working in consultation with Reflect, the Monitor and its senior Lenders, the Company has developed a Charter Auction Process, with the dual objectives of protecting the Charter's historical legacy and maximizing value for the estate.¹⁹

PART III – ISSUES

19. The issue to be determined on this motion is whether the proposed Charter Auction Process should be approved.

PART IV – LAW & ARGUMENT

A. The Charter Auction Process Should be Approved

20. The remedial nature of the CCAA²⁰ confers broad powers on Courts to facilitate restructurings, including the power to approve a sale process in relation to a CCAA debtor's business and assets, prior to or in the absence of a plan of compromise and arrangement.²¹ Courts have frequently exercised this jurisdiction in the context of retail insolvencies.²²

21. In *Nortel*,²³ the Court identified several factors to be considered in determining

¹⁸ *Ibid* at para 31.

¹⁹ *Ibid* at para 32.

²⁰ *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("CCAA").

²¹ See i.e. *Grant Forest Products Inc (Re)*, 2013 ONSC 5933 at para 44; *Indalex Ltd (Re)*, 2011 ONCA 265 at para 180.

²² See i.e. *Danier Leather Inc (Re)*, 2016 ONSC 1044 at paras 10, 27; *Comark Holdings Inc (Re)*, (January 17, 2025), Ont SCJ [Commercial List], Court File No CV-25-00734339-00CL (*Endorsement of Justice Cavanagh*) ("Comark") at para 5.

²³ *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ONSC) at paras 47-48 ("Nortel").

whether to approve a sales process, which have since been consistently applied:²⁴

- a) Is a sale warranted at this time?
- b) Will the sale be of benefit to the whole "economic community"?
- c) Do any of the debtors' creditors have a bona fide reason to object to a sale of the business?
- d) Is there a better viable alternative?²⁵

22. This Court has noted that Section 36 of the CCAA²⁶ directly applies only in the context of the approval of a sale, not of a sales process.²⁷ However, the *Nortel* criteria for approving a sales process should be evaluated in light of the considerations that may ultimately apply when seeking approval for a concluded sale under Section 36 of the CCAA.²⁸

23. Therefore, this Court is entitled to consider whether the proposed Charter Auction Process is likely to satisfy the requirement that the process is fair and that the best price will be obtained, whether the Monitor supports the proposed Charter Auction Process, as well as the extent to which creditors were consulted and other relevant factors.

24. In other CCAA cases, courts have also considered the following factors:

- a) The fairness, transparency and integrity of the proposed process;
- b) The commercial efficacy of the proposed process in light of the specific circumstances; and

²⁴ *Comark* at [para 5](#); *Nordstrom Canada Retail Inc.* (April 20, 2023) Ont SCJ [Commercial List] Court File No. CV-23-00695619-00CL ([Endorsement](#)), at paras 6–13; *Bed Bath & Beyond Canada Ltd.*, (February 21, 2023) Ont SCJ [Commercial List] Court File No. CV-23-00694493-00CL ([Endorsement](#)), at paras 7–9; *Target Canada Co. (Re)* (February 5, 2015) Ont SCJ [Commercial List] Court File No. CV-15-10832-00CL ([Endorsement](#)), at para 3; *Green Growth Brands, (Re)*, [2020 ONSC 3565](#) at [para 61](#).

²⁵ *Nortel* at para. 49.

²⁶ CCAA s. 36.

²⁷ *Brainhunter Inc. (Re)*, [2009 CanLII 72333 \(ONSC\)](#) at [para 17](#). (“*Brainhunter*”).

²⁸ *Brainhunter*, at [para. 16](#).

- c) Whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.²⁹

25. Applying the above criteria and factors, the Charter Auction Process should be approved for the following reasons:

i. The Charter Auction is Warranted at this Time

26. The Applicants' restructuring efforts have resulted in the liquidation of the Applicants' assets.³⁰ The Charter is one of the few remaining assets to be monetized. Conducting the Charter Auction is expected to maximize recoveries from the Charter for the benefit of the Applicants' creditors.³¹

27. The potential sale of the Charter has been well known for months. Reflect has reached out to and also heard from multiple parties potentially interested in acquiring the Charter and donating it to a Canadian public institution or museum. Additionally, the Applicants have structured the Charter Auction timeline such that there will be just over two weeks between the approval of the Charter Auction Process and the actual commencement of the Charter Auction.³² This interval provides ample opportunity for Potential Bidders to familiarize themselves with the finalized process which will be publicized by a press release and posted on the Monitor's Website once approved,³³ ask questions, and prepare for meaningful participation in the upcoming auction, all while also increasing the likelihood of fair market value. The Monitor also recommends that this Court approve the Charter Auction Process Order at this time.³⁴

²⁹ *Walter Energy Canada Holdings, Inc.*, 2016 BCSC 107 at paras. 20-21; *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750 at para 6.

³⁰ Seventh Zalev Affidavit at para 9, AMR, Tab 2.

³¹ Ninth Report of the Monitor dated September 22, 2025 ("Ninth Monitor's Report"), at s. 4.17(a).

³² Seventh Zalev Affidavit at para 34, AMR, Tab 2.

³³ Ibid at para 39.

³⁴ Ninth Monitor's Report at s. 4.17.

ii. The Proposed Charter Auction Process is Structured to Benefit the Broader Economic Community

28. The Charter Auction Process was designed to safeguard the Charter's unique cultural and historical significance and ensure its future preservation in public trust, while maximizing value for the estate.³⁵

29. The Applicants have secured a binding commitment letter from DKRT, ensuring that there will be at least one committed bidder participating in the Court-approved auction process, with an initial bid set at no less than \$15 million.³⁶ The DKRT Commitment Letter guarantees that, even if no additional bids are received, the Charter will be immediately and permanently donated to a public institution and a fair value will be secured. Furthermore, the donee institution will receive extra funding to support collaboration with Indigenous groups, foster partnerships with cultural organizations, and facilitate sharing of the Charter throughout Canada to ensure broad public access.³⁷

30. The Charter Auction Process has also been designed so that every Potential Bidder, with the approval of Reflect and the Monitor, must submit a minimum bid of \$15 million during the auction.³⁸ This approach is intentionally set to help maximize sale proceeds and ensure the greatest possible returns for the Company's creditors. To safeguard and share the Charter, all Potential Bidders are required to acquire the Charter and permanently donate it to a Canadian public institution or museum. The chosen institution must agree to collaborate with other Canadian public institutions and Indigenous groups, ensuring inclusive consultation and broad access.³⁹ This sharing may include joint exhibitions,

³⁵ Ninth Monitor's Report at s. 4.17(b).

³⁶ Seventh Zalev Affidavit at para 30, AMR, Tab 2.

³⁷ Ninth Monitor's Report at s. 4.17(c).

³⁸ Seventh Zalev Affidavit at para 34(c), AMR, Tab 2.

³⁹ Seventh Zalev Affidavit at paras 34(e)-(g), AMR, Tab 2.

providing high-quality digital images, and creating interactive educational initiatives.⁴⁰ Additionally, bidders must supply a letter from the selected institution confirming its willingness to accept the donation and outlining the agreed terms.⁴¹

iii. None of the Company's Creditors or Stakeholders have a Bona Fide Reason to Object to the Charter Auction Process

31. The Applicants' senior lenders are supportive of the Charter Auction Process. The Applicants are not aware of any creditor with a reasonable basis to object to the Charter Auction Process. The Monitor has also filed its Ninth Report stating that the Charter Auction Process was designed with the Charter's unique cultural and historical importance in mind, and contains appropriate safeguards to ensure, among other things, that the Charter remains in Canada and will be made publicly accessible.⁴² Further, the Monitor does not believe the granting of the Charter Auction Process Order will materially prejudice any of the Applicants' stakeholders.⁴³

iv. There is No Better Viable Alternative

32. The Applicants and Reflect, in consultation with the Monitor, thoroughly evaluated various approaches to the sale of the Charter and determined that the Charter Auction represents the best possible process under the circumstances.

33. Following initial consultations and discussions with interested parties, the Applicants—together with Reflect and the Monitor—determined that the SISP was not the most appropriate process for selling the Charter and subsequently removed it from the Property available under the SISP.⁴⁴

⁴⁰ *Ibid* at para 31.

⁴¹ *Ibid* at para 34(g).

⁴² Ninth Monitor's Report, s. 4.17(b).

⁴³ *Ibid*, s. 4.17 (d).

⁴⁴ Seventh Zalev Affidavit at paras 12-13, AMR, Tab 2.

34. Following removal from the SISP, the Applicants initially intended to include the Charter in the Art Collection Auction. Upon receiving the Wittington Offer, the Applicants withdrew the Charter from the Art Collection Auction and sought Court approval for the Wittington Offer. Prior to Court approval, DKRT submitted a competitive bid for the Charter, offering an opening bid of at least \$15 million if the Charter was auctioned.⁴⁵ Faced with multiple compelling offers and strong interest in public stewardship, the Applicants determined that a competitive, focused auction process, with certain restrictions on participation to ensure the preservation and sharing of the Charter, was the most appropriate option in these circumstances.⁴⁶

35. The Charter Auction Process was designed not only to secure optimal financial recovery for the Company's lenders but also to provide a clear avenue for the Charter to be donated to a public institution and establish sharing arrangements, in line with the core commitments proposed by both DKRT and Wittington. This dual approach ensures that the Charter's cultural and historical significance is safeguarded through potential public stewardship, while the competitive nature of the Charter Auction maximizes its overall value for stakeholders.

36. To ensure appropriate protections were in place, the Applicants also obtained a binding commitment letter from DKRT, which, as mentioned previously, ensures that, even if no new bids are received, appropriate value will be achieved, the Charter will be donated to a public institution and additional funds have been committed to be provided to the donee institution to support sharing arrangements with Indigenous groups and Canadian public and cultural institutions.⁴⁷ The Charter Auction Process not only ensures the Charter's enduring protection and public accessibility, but also strikes a thoughtful balance between advancing

⁴⁵ *Ibid* at paras 23-25, 27.

⁴⁶ *Ibid* at para 31.

⁴⁷ Ninth Monitor's Report, s. 4.17(c).

the public interest and meeting the financial objectives of the estate.

PART V – ORDER SOUGHT

37. For the foregoing reasons, the Applicants respectfully submit that this Court grant the Charter Auction Process Order substantially in the form of the draft order attached at Tab 3 to the Applicants' motion record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of September, 2025.

Stikeman Elliott LLP

Stikeman Elliott LLP

Lawyers for the Applicants

LIST OF AUTHORITIES

1. *Bed Bath & Beyond Canada Ltd.*, (February 21, 2023) Ont SCJ [Commercial List] Court File No. CV-23-00694493-00CL ([Endorsement](#))
2. *Brainhunter Inc. (Re)*, [2009 CanLII 72333 \(ONSC\)](#)
3. *CCM Master Qualified Fund v blutip Power Technologies*, [2012 ONSC 1750](#)
4. *Comark Holdings Inc (Re)*, (January 17, 2025), Ont SCJ [Commercial List], Court File No. CV-25-00734339-00CL ([Endorsement of Justice Cavanagh](#))
5. *Danier Leather Inc (Re)*, [2016 ONSC 1044](#)
6. *Grant Forest Products Inc (Re)*, [2013 ONSC 5933](#)
7. *Green Growth Brands, (Re)*, [2020 ONSC 3565](#)
8. *Indalex Ltd (Re)*, [2011 ONCA 265](#)
9. *Nordstrom Canada Retail Inc.* (April 20, 2023) Ont SCJ [Commercial List] Court File No. CV-23-00695619-00CL ([Endorsement](#))
10. *Nortel Networks Corporation (Re)*, [2009 CanLII 39492 \(ONSC\)](#)
11. *Target Canada Co. (Re)* (February 5, 2015) Ont SCJ [Commercial List] Court File No. CV-15-10832-00CL ([Endorsement](#))
12. *Walter Energy Canada Holdings, Inc.*, [2016 BCSC 107](#)

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

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2))

Date: September 25, 2025

B. Ketwaroo

Signature

STATUTES

Companies' Creditors Arrangement Act, RSC 1985, c C-36

Restriction on disposition of business assets

Factors to be considered

36(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.

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Proceeding commenced at Toronto

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