

**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
HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI, HBC
CANADA PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2 INC., HBC BAY
HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY HOLDINGS ULC, HBC
CENTERPOINT GP INC., HBC YSS 1 LP INC., HBC YSS 2 LP INC., HBC HOLDINGS GP
INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., and 2472598 ONTARIO INC.**

(Applicants)

**FACTUM OF THE APPLICANTS
(Returnable April 24, 2025)**

April 22, 2025

Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Ashley Taylor LSO#: 39932E
Email: ataylor@stikeman.com
Tel: +1 416-869-5236

Elizabeth Pillon LSO#: 35638M
Email: lpillon@stikeman.com
Tel: +1 416-869-5623

Maria Konyukhova LSO#: 52880V
Email: mkonyukhova@stikeman.com
Tel: +1 416-869-5230

Philip Yang LSO#: 82084O
Email: pyang@stikeman.com
Tel: +1 416-869-5593

Brittney Ketwaroo LSO#: 89781K
Email: bketwaroo@stikeman.com
Tel: +1 416-869-5524

Lawyers for the Applicants

TO: THE SERVICE LIST

CONTENTS

PART I – OVERVIEW	1
PART II – THE FACTS	2
A. Overview of the Applicants’ Employees and Employee Benefits.....	2
B. Changes in Employee Headcount and Benefits	4
D. Amended and Restated SISP	6
PART III – ISSUES	7
PART IV – LAW & ARGUMENT	8
A. Overview of Applicable Law on CCAA Representative Counsel Orders.....	8
(i) Vulnerable Group	11
(ii) Benefit to the Applicants	12
(iii) Social Benefit	12
(iv) Streamlined Process and Avoidance of a Multiplicity of Retainers	12
PART V – ORDER SOUGHT	17
List of Authorities	1
STATUTES	3

PART I – OVERVIEW¹

1. This factum is filled in support of the Applicants' motion seeking issuance of the Employee Representative Counsel Order and the Amended and Restated SISP Order.
2. The Employee Representative Counsel Order, among other things:
 - (a) appoints Ursel Philips Fellows Hopkinson LLP ("**Ursel Phillips**") as Employee Representative Counsel to represent the interests of all the Applicants' current and former employees with continuing entitlements as at the Filing Date and retirees, who are not represented by a union or were not represented by a union at the time of their separation from employment (the "**Current and Former Employees**"), and any person claiming an interest under or on behalf of a Current or Former Employee, including, beneficiaries and surviving spouses, but excluding directors and officers of the Applicants (collectively, with the Current and Former Employees, the "**Represented Employees**"), with Susan Ursel acting as senior counsel;
 - (b) amends the Initial Order to include the Employee Representative Counsel as a beneficiary of the Administration Charge to secure its professional fees and disbursements, to a maximum of \$100,000.
3. The Company, in consultation with the Monitor, believes that the appointment of the Employee Representative Counsel at this stage of the CCAA Proceedings will ensure counsel's participation in key milestones and the effective representation of the Represented Employees.
4. After seeking proposals from various potential groups, the Company is proposing the appointment of Ursel Phillips as Employee Representative Counsel. Susan Ursel and Ursel

¹ Capitalized terms used in this factum that are not otherwise defined have the meanings given to them in the Affidavits of Jennifer Bewley sworn April 17, 2025 (the "**Third Bewley Affidavit**") and the Affidavit of Adam Zalev sworn April 17, 2025 (the "**Zalev Affidavit**").

Phillips are well known to the Court, and have experience in representing other employee groups, including in other large retail CCAA Proceedings such as Nordstrom and Sears.

5. The Amended and Restated SISP Order, among other things:

- (a) Amends the SISP granted by this Court on March 21, 2025 (the “**SISP**”), to remove the Company’s art and artifact collection (the “**Art Collection**”) from the Property available for sale under the SISP; and
- (b) approves the engagement of the Auctioneer to conduct a separate auction for the sale of the Art Collection.

6. As Reflect Advisors, LLC, (“**Reflect**”) and the Monitor have become increasingly aware that the Art Collection has important historical and cultural significance for many stakeholders, the Applicants, Reflect and the Monitor are of the view that the sale of the Art Collection by a separate auction process may be most appropriate at this time.

7. The Auctioneer’s marketing of the Art Collection will preserve the cultural and historical significance of the Art Collection while also creating a platform for the Company to ensure that the consideration to be received for the assets is reasonable and fair taking into account their market value and any applicable legislation regarding the sale of the Art Collection.

PART II – THE FACTS

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

A. Overview of the Applicants’ Employees and Employee Benefits

9. Immediately prior to the commencement of the CCAA Proceedings the Applicants employed approximately 9,364 people at 96 stores across Canada, who all generally fall into three categories: (a) corporate employees; (b) employees at Hudson’s Bay’s retail stores; and (c)

employees at the four Distribution Centres.² There are currently approximately 3,000 in-payment retirees.³

10. The Applicants received Court approval to begin their liquidation process in all but six of its 96 stores across Canada, conduct the SISP, and conduct the Lease Monetization Process. The SISP provides for a Bid Deadline of April 30, 2025 for bids to be provided in respect of potential purchase, investment and/or restructuring proposals.⁴

11. While the Company continues to liquidate its inventory and work towards a potential restructuring and/or going concern transaction, planning was also underway for potential future reductions in the number of employees to reflect the liquidation sale and the likely reduction in the number of operating store locations and required employee positions.⁵

12. Approximately 647 of the Applicants' employees are subject to collective bargaining agreements, which are applicable to employees working in five of Hudson's Bay's retail stores, three of Hudson's Bay's Distribution Centres, and for certain other employees working in Ontario.⁶

13. Hudson's Bay also sponsored 3 partially funded or unfunded SERPs under which a total of 304 employees and former employees participated.⁷ The Company also offered PRBs in the form of health and dental benefits, and life insurance policies to approximately 2000 retirees.⁸ Hudson's Bay also offered LTD Benefits on an administrative service only basis to approximately 183 employees, 93 of which are still currently employed with the Company.⁹

² Third Bewley Affidavit at paras 4, 12 and 14, Motion Record of the Applicants dated April 17, 2025 ("**Motion Record**"), Tab 2.

³ Second Report of the Monitor Alvarez & Marsal Canada Inc. dated April 22, 2025 ("**Second Monitor's Report**") at para 3.1.

⁴ Third Bewley Affidavit at para 5, Motion Record at Tab 2.

⁵ *Ibid* at para 8.

⁶ *Ibid* at para 15

⁷ *Ibid* at paras 16 and 21.

⁸ *Ibid* at para 17.

⁹ *Ibid*.

B. Changes in Employee Headcount and Benefits

14. While the Company continues its efforts through the SISP to seek a restructuring and/or going concern transaction that will result in the continuation of the Applicants' stores, the Applicants are also proactively evaluating all available measures to support their employees and minimize the impact of any headcount reductions as a result of any future store closures.¹⁰

15. Throughout the CCAA Proceedings, the Company has undertaken the difficult but necessary steps in reducing their workforce, including having:

- (a) terminated the employment of approximately 272 corporate employees;
- (b) for all 304 SERP beneficiaries, as applicable: (i) terminated SERP benefit payments from general revenue; and (ii) notified the trustee that any SERP trust is automatically terminated in accordance with the terms of the trust agreement and that Hudson's Bay will not make any further contributions to or payments in respect of any trust;
- (c) terminated salary continuation arrangements for employees terminated prior to the commencement of the CCAA Proceedings; and
- (d) provided notice of termination to PRB recipients notifying them that their PRBs will be terminated effective April 30, 2025.¹¹

C. Employee Representative Counsel Selection Process

16. While it may be possible that future payments will be available to the Applicants' employees through WEPPA or in the event that recoveries from the liquidation sales, Lease Monetization Process, and SISP are sufficient to result in distributions to unsecured creditors, the

¹⁰ *Ibid* at para 19.

¹¹ *Ibid* at paras 18-23; Second Monitor's Report at para 3.6.

Company, in consultation with its counsel and the Monitor, believe that the appointment of the Employee Representative Counsel will substantially benefit the Represented Employees with dealing with the potential future impacts of these CCAA Proceedings.¹²

17. In order to ensure a fair selection of the best situated firm to act as representative counsel, on April 7, 2025, counsel for Hudson's Bay issued requests for written proposals to five law firms for such firms to act as the Employee Representative Counsel.¹³

18. On April 10, 2025, the Company received an additional inquiry from a sixth law firm inquiring about information on the Employee Representative Counsel role. After consulting with its counsel and the Monitor, the Company issued a request for a written proposal to the sixth law firm with a deadline of April 11, 2025, at 12:00 PM to submit a proposal. The Company received a total of five responses, including a proposal from this sixth law firm. Clarification was sought in respect of certain of the proposals that were submitted.¹⁴

19. Based on its review of the written proposals and the clarifications obtained, Hudson's Bay determined that it would recommend to the Court that Ursel Phillips should be appointed as the Employee Representative Counsel, with Susan Ursel acting as senior counsel.¹⁵

20. In arriving at the selection of Ursel Phillips, the Company, and with the assistance of the Monitor, considered a number of factors including: the nature and completeness of the proposal received, Ursel Phillips' prior experience acting as representative counsel for non-union employees in CCAA Proceedings and in particular retail insolvencies, the overall proposed budget and cost structure outlined within their proposal(s), and potential conflicts with prior or existing mandates.¹⁶

¹² *Ibid* at para 20.

¹³ *Ibid* at para 28.

¹⁴ *Ibid* at para. 31.

¹⁵ *Ibid* at paras 31 and 32.

¹⁶ *Ibid* at para 33.

21. As Hudson's Bay recognizes that the employees are an important stakeholder group and deserve adequate and meaningful representation in the CCAA Proceedings, the fees and expenses associated with the proposed Employee Representative Counsel will come at no expense to the Represented Employees.¹⁷ It is also proposed that the Employee Representative Counsel will be added as a beneficiary of the Administration Charge to secure its fees and disbursements, to a maximum of \$100,000.¹⁸

D. Amended and Restated SISP

22. 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, 2025.¹⁹ The SISP currently provides that Qualified Bidders may submit bids for some or all of the property, assets, and undertakings of the Applicants and the Non-Applicant Stay Parties, which includes, among other things, the Art Collection.²⁰

23. The same SISP procedures and deadlines applicable to the Company's business assets currently also apply to the Company's Art Collection, which is comprised of more than 1,700 pieces of art and more than 2,700 artifacts that reflect the rich heritage and cultural legacy of the Company — dating back to its founding in 1670.²¹

24. While a number of parties have expressed interest in the Art Collection during the course of the SISP, several parties also expressed their interest and concern in ensuring the transparency in respect of the sale of the Art Collection and that all laws and regulations in respect of Canadian heritage and cultural property are adhered to as they relate to the Art Collection.²²

25. Acknowledging the historical and cultural significance for the Art Collection, the Applicants,

¹⁷ *Ibid* at para 41.

¹⁸ *Ibid* at para 43.

¹⁹ Zalev Affidavit at para 4, Motion Record at Tab 3.

²⁰ *Ibid* at para 11.

²¹ *Ibid* at para 12.

²² *Ibid* at paras 13 and 14.

Reflect, and the Monitor are of the view that conducting the Art Collection Auction separate from the sale of the Applicants' business assets in the SISP is the most transparent, fair and efficient approach to monetize the Art Collection while recognizing and protecting its cultural and historical significance and ensuring compliance with any applicable legislation regarding the sale of the Art Collection.²³

26. The Applicants seek to amend the SISP to provide as follows:

- (a) the Art Collection will be removed from the Property subject to the general procedures in the SISP;
- (b) potential bidders interested in the Art Collection are requested to submit a non-binding letter of interest by April 30, 2025, indicating their interest in participating in the Art Collection Auction;
- (c) the Company, Reflect, and the Auctioneer, in consultation with the Monitor, shall develop procedures which will govern the Art Collection Auction, which procedures may include requirements for who may attend and participate at the Art Collection Auction (the "**Art Collection Auction Procedures**"); and
- (d) Reflect shall advise all potential bidders of the Art Collection Auction Procedures by no later than fifteen (15) days before the scheduled date for the Auction.²⁴

27. Further, Reflect, in consultation with the Monitor, has contacted three leading art auction houses in North America to prepare the Art Collection for sale and conduct a transparent auction consistent with the manner in which collections such as this are typically sold.²⁵

PART III – ISSUES

28. The issues to be determined on this motion are whether this Court should:

²³ *Ibid* at para 18.

²⁴ *Ibid* at para 20.

²⁵ *Ibid* at paras 23-24.

- (a) appoint Ursel Phillips as Employee Representative Counsel to represent the Represented Employees; and
- (b) amend the SISP to provide for separate procedures to govern the sale of the Art Collection.

PART IV – LAW & ARGUMENT

A. Overview of Applicable Law on CCAA Representative Counsel Orders

29. Pursuant to the proposed Employee Representative Counsel Order, the Applicants are seeking the appointment of Ursel Phillips as Employee Representative Counsel. The proposed Employee Representative Counsel is well known to the Court, having acted as Representative Counsel in a number of CCAA mandates, including large retail CCAA proceedings such as Nordstrom and Sears.

30. Section 11 of the CCAA and the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 confer broad jurisdiction on the Court to appoint representative counsel for vulnerable stakeholder groups such as employees.²⁶ In addition, Rule 10.01(f) of the Ontario *Rules of Civil Procedure* explicitly provides that “in a proceeding concerning any other matter where it appears necessary or desirable to make an order under this subrule, a judge may by order appoint one or more persons to represent any person or class of persons who... have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served.”²⁷

31. In *Nortel Networks Corporation (Re)*,²⁸ Justice Morawetz (as he then was) held that representative counsel should be appointed to allow vulnerable stakeholders (in that case,

²⁶ *Target Canada Co (Re)* 2015 ONSC 303 at para 61, citing *Nortel Networks Corp. (Re)*, 2009 CanLII 26603 (ONSC) (“*Nortel*”) at paras 10-12.

²⁷ *Rules of Civil Procedure*, RRO 1990, Reg. 194, Rule 10.01

²⁸ 2009 CanLII 26603 (ONSC).

employees and retirees) to participate in the CCAA proceedings:

“[I]t is submitted that employees and retirees are a vulnerable group of creditors in an insolvency because they have little means to pursue a claim in complex CCAA proceedings or other related insolvency proceedings. It was further submitted that the former employees of Nortel have little means to pursue their claims in respect of pension, termination, severance, and retirement payments and other benefit claims and that the former employees would benefit from an order appointing representative counsel. In addition, the granting of a representation order would provide a social benefit by assisting by assisting former employees and that representative counsel would provide a reliable resource for former employees for information about the process. The appointment of representative counsel would also have the benefit of streamlining and introducing efficiency to the process for all parties involved in Nortel’s insolvency. I am in agreement with these submissions.”²⁹

32. In *Canwest*, Justice Pepall (as she then was) summarized the appropriate factors to be considered in a determination of whether a representative counsel order is appropriate:

- (a) the vulnerability and resources of the group sought to be represented;
- (b) any benefit to the companies under CCAA protection;
- (c) any social benefit to be derived from representation of the group;
- (d) the facilitation of the administration of the proceeding and efficiency;
- (e) the avoidance of multiplicity of legal retainers;
- (f) the balance of convenience and whether it is fair and just including to the creditors of the estate;
- (g) whether representative counsel has already been appointed for those who have similar interests to the group seeking representation and who is also prepared to act for the group seeking the order; and
- (h) the position of other stakeholders and the Monitor.³⁰

²⁹ *Nortel* at paras 13-14.

³⁰ *CanWest Publishing Inc. (Re)*, 2010 ONSC 1328 (“*Canwest*”) at para 21.

33. The factors listed above are neither exhaustive nor mandatory. Factors not enumerated in *Canwest* may be relevant to the analysis in a particular case, and each and every one of the *Canwest* factors need not be satisfied before the court can conclude that the appointment of representative counsel may be appropriate. Rather, as Pepall J. stated, the factors enumerated are considerations in what is to be a holistic analysis informed by the particular circumstances of each case.³¹

34. The ability for representative counsel to provide for effective communication and efficiency within the proceedings have been highlighted as particularly important factors.³²

35. In addition, this Court has held that it is preferable to grant a representation order early in a CCAA Proceeding, both for the parties to be represented and for the CCAA Applicants, and despite the possibility “that the individuals in issue may be unsecured creditors whose recovery expectation may prove to be non-existent and that ultimately there may be no claims process for them.”³³

36. Exercising their broad jurisdiction, this Court has previously appointed representative counsel in CCAA proceedings. For example, courts have granted such orders in the following CCAA proceedings:

- (a) *Target Canada Co.*: representative counsel was appointed for all employees other than officers and directors;³⁴
- (b) *Nordstrom Canada*: representative counsel was appointed for all store-level employees, all non-store level employees, other than non-store level employees

³¹ *In the Matter of the Body Shop Canada Limited*, 2024 ONSC 3871, at [para 24](#).

³² *Quadriga Fintech Solutions Corp (Re)*, 2019 NSSC 65 at [para 9](#).

³³ *Canwest* at [para 24](#).

³⁴ *Target Canada Co.*, (January 15, 2015) Ont SCJ [Commercial List], Court File No CV-15-10832-00CL ([Initial Order](#)).

eligible for a KERP Payment, directors and officers of the Nordstrom Canada Entities, and the Senior Vice President, Regional Manager for Canada;³⁵

- (c) *Sears Canada*: representative counsel was appointed for non-unionized active and former employees³⁶
- (d) *Nortel Networks Corp.*: representative counsel was appointed for all former employees and pensioners;³⁷
- (e) *Fraser Papers Inc.*: representative counsel was appointed for former unionized members and non-unionized active and retired members;³⁸ and
- (f) *Canwest*: representative counsel was appointed for non-unionized salaried employees and retirees.³⁹

37. As set out below, the applicable factors from the relevant caselaw support the appointment of Ursel Phillips as the Employee Representative Counsel in this case.

B. Employee Representative Counsel Should be Appointed

(i) Vulnerable Group

38. Courts have historically recognized that employees and retirees are a vulnerable group of creditors in an insolvency proceeding, given among other reasons:

- (a) employees may have minimal and disparate means to pursue a claim, and unlike other creditors, the consequences of the actions taken by debtor companies affect them in a personal way – impacting their jobs, their benefits, and financial securities; and

³⁵ *Nordstrom Canada* (March 2, 2023) Ont SCJ [Commercial List] Court File No CV-23-00695619-00CL ([Initial Order](#)).

³⁶ *Sears Canada* (July 13, 2017) Ont SCJ [Commercial List] Court File No. CV-17-11846-00CL ([Employee Representative Counsel Order](#)).

³⁷ *Nortel Networks Corp. (Re)*, (July 22, 2009) Ont SCJ [Commercial List] Court File No. 09-CL-7950 ([Order](#)).

³⁸ *Fraser Papers Inc. (Re)*, (September 17, 2009) Ont SCJ [Commercial List] Court File No. CV-09-8241-00CL ([Order appointing Davies Ward Phillips & Vineberg as certain employees' representative](#)).

³⁹ *Canwest, Publishing Inc. (Re)*, (March 5, 2010) Ont SCJ [Commercial List] Court File No. CV-10-8533-00CL ([Representative Counsel Order](#)).

- (b) retired employees may face challenges in understanding and protecting their interests during restructuring without professional and legal resources.⁴⁰

(ii) Benefit to the Applicants

39. The appointment of Employee Representative Counsel provides a benefit to the Applicants by assisting with cost savings and streamlining the CCAA Proceedings by being the single point of contact for thousands of employees, the Applicants, the Monitor and the Court.⁴¹

(iii) Social Benefit

40. The appointment of the Employee Representative Counsel will provide a social benefit by providing a reliable resource for information about the CCAA Proceedings to Represented Employees, the majority of whom might otherwise be unable to be represented due to a lack of financial means. The Employee Representative Counsel can advocate on behalf of the Represented Employees in the negotiation of any potential plan of arrangement or transaction that may impact the Represented Employees and can address with the Court any issues that may impact the Represented Employees' interests.

(iv) Streamlined Process and Avoidance of a Multiplicity of Retainers

41. The Company believes that it is appropriate to commence with the appointment of one Employee Representative Counsel, as opposed to multiple retainers, given among other things:

- (a) Appointing one employee representative counsel as opposed to a multiplicity of retainers creates a unified voice for all Represented Employees.
- (b) It prevents employees from filing inconsistent claims, ensures consistent communication with all groups involved and ensures that any claims or other

⁴⁰ *Canwest Global Communications Corp.*, (October 27, 2009) Ont SCJ [Commercial List] Court File No. CV-09-8396-OOCL (Endorsement of Justice Pepall re Appointing Representative Counsel) at para 14.

⁴¹ Third Bewley Affidavit at para 39, Motion Record at Tab 2.

matters arising within the CCAA proceedings are advanced in a timely and efficient manner; and

- (c) There is no material conflict existing between the interests of the different groups of the Represented Employees at this time

42. As Justice Morawetz noted in the Nortel decision, it is appropriate to consider the commonality of interests. “It seems to me that the primary emphasis should be placed on ensuring that the arguments of employees are placed before the court in the most time efficient and cost effective way possible.”⁴² The Applicants, Monitor, Representative Counsel and the Court can revisit the need for additional representative counsel should conflicts be identified at a future date.

43. Where Representative Counsel is not appointed, the Monitor is often faced with being a main point of contact for employees. While the Monitor may assist from an information perspective, given the Monitor’s independence in the process, the Current and Former Employees cannot look to the Monitor for all of their information and representation in the CCAA Proceedings.

(v) Balance of Convenience

44. The benefits of the appointment of the Employee Representative Counsel outweigh any perceived or alleged prejudice, as it will contribute to overall costs savings and a streamlining of the CCAA Proceedings by serving as a single point of contact between thousands of employees, the Applicants, the Monitor, and the Court.⁴³

C. It is Appropriate to Appoint Ursel Phillips as Employee Representative Counsel

45. The Applicants submit that the above factors indicate that this Court should approve Ursel Phillips as the Employee Representative Counsel. Namely:

⁴² *Nortel* at para 53.

⁴³ Third Bewley Affidavit at para 39, Motion Record at Tab 2.

- (a) Ursel Phillips has extensive experience representing and advising large groups of employees and former employees in matters involving employment-based claims in respect of termination entitlements and benefits in insolvency matters;⁴⁴
- (b) The Monitor supports the appointment of Ursel Phillips as the Employee Representative Counsel;⁴⁵
- (c) In co-operating with the Company, counsel for the Applicants, and the Monitor, Ursel Phillips developed the scope of Employee Representative Counsel's role in order to ensure adequate and efficient representation of the Represented Employees;⁴⁶
- (d) Ursel Phillips does not have any potential conflicts of interest, including no current or prior mandates or prior relationships with the Applicants or other stakeholders; and
- (e) Courts have previously appointed Ursel Phillips as representative counsel in other CCAA proceedings and restructurings, including:
 - i. Nordstrom Canada (2023-2024);
 - ii. Sears Canada (2017-2022);
 - iii. Silicon Valley Bank's Canada Branch (2023-205);
 - iv. Essar Steel Algoma (2015-2018); and
 - v. Air Canada (2003-2004).⁴⁷

46. Furthermore, any individual Represented Employee who does not wish to be represented by Employee Representative Counsel in the CCAA Proceedings may deliver an Opt-Out Notice

⁴⁴ *Ibid* at para 34.

⁴⁵ Second Monitor's Report at para 3.18

⁴⁶ Third Bewley Affidavit at para 40.

⁴⁷ *Ibid* at para 34.

and shall thereafter not be bound by the actions of the Employee Representative Counsel.⁴⁸

D. The SISP Should be Amended

47. The CCAA 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.⁴⁹ Courts have frequently exercised this jurisdiction in the context of retail insolvencies.⁵⁰ When considering the approval of a sale processes, the Court typically applies the criteria set out in *Nortel*:⁵¹

- (a) is a sale transaction warranted at this time?
- (b) will the sale benefit the whole economic community?
- (c) do any of the debtors' creditors have a *bona fide* reason to object to a sale?
- (d) is there a better viable alternative?⁵²

48. Courts have also evaluated proposed retail realization processes in light of the criteria set out in s. 36(3) of the CCAA,⁵³ namely:

- (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;

⁴⁸ *Ibid* at para 37(c).

⁴⁹ See i.e. *Grant Forest Products Inc (Re)*, [2013 ONSC 5933](#) at para 44; *Indalex Ltd (Re)*, [2011 ONCA 265](#) at para 180.

⁵⁰ 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.

⁵¹ *Nortel* at para 49; *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.

⁵² *Comark* at para 6.

⁵³ *Ted Baker Canada Inc. et al* (May 3, 2024) Ont SCJ [Commercial List] Court File No. CV-24-00718993-00CL ([Endorsement](#)) at para 14.

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

49. The Applicants previously satisfied this Court that the SISP, Lease Monetization Process, and liquidation sale were appropriate in the circumstances, having regard to the above-noted considerations. For the same reasons set out in the Applicants' factum dated as of March 16, 2025, as well as the below noted additional factors it is appropriate in the circumstances to amend the SISP to provide for a separate Art Collection Auction for the sale of the Art Collection:

- (a) the Art Collection Auction coupled with the liquidation of the Property available for sale and the opportunity for an investment in the Business of the Applicants will assist in maximizing recoveries for creditors⁵⁴;
- (b) the Auctioneer's marketing of the Art Collection will preserve the cultural and historical significance of the Art Collection while also creating a platform for the Company to ensure that the consideration to be received for the assets is reasonable and fair taking into account their market value and any applicable legislation regarding the sale of the Art Collection;⁵⁵

⁵⁴ Zalev Affidavit at para 22, Motion Record at Tab 3.

⁵⁵ *Ibid* at para 18.

- (c) Reflect has consulted with the Monitor, the Company and its counsel, along with Qualified Bidders already part of the SISP process to notify them that, subject to Court approval, the Art Collection Auction would take place;⁵⁶ and
- (d) the Monitor supports the proposed amendments to the SISP.⁵⁷

50. In addition, the Amended and Restated SISP Order contemplates that certain pieces of the Art Collection sold at the Art Collection Auction may be ‘vested’ in a purchaser ‘free and clear’ without the need to return to the Court seeking approval of such sale. This Court has broad jurisdiction to grant such order under section 11 of the CCAA.⁵⁸

51. This Court recently granted similar relief in *Joriki*, wherein this Court approved a liquidation and auction for the sale of the debtors’ assets, with the assets sold by the liquidator being ‘vested’ in a purchaser on a ‘free and clear’ basis without the need for further Court approval.⁵⁹

PART V – ORDER SOUGHT

52. The Applicants therefore request that the Court grant the Employee Representative Counsel Order and the Amended and Restated SISP Order substantially in the forms included at Tabs 4 and 5 of the Motion Record, respectively.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22 day of April 2025.

Stikeman Elliott LLP

Stikeman Elliott LLP
Lawyers for the Applicants

⁵⁶ *Ibid* at paras 15 and 17.

⁵⁷ Second Monitor’s Report at para 4.7.

⁵⁸ CCAA, s. 11.

⁵⁹ See *Joriki Topco Inc., Re* (January 29, 2025) Ont SCJ [Commercial List] Court File No. CV-25-00735458-00CL (Endorsement) and (Auction and Liquidation Approval Order).

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. *Canwest Global Communications Corp.*, (October 27, 2009) Ont SCJ [Commercial List] Court File No. CV-09-8396-00CL ([Endorsement of Justice Pepall re Appointing Representative Counsel](#))
3. [*CanWest Publishing Inc. \(Re\)*](#), 2010 ONSC 1328
4. *Canwest, Publishing Inc. (Re)*, (March 5, 2010) Ont SCJ [Commercial List] Court File No. CV-10-8533-00CL ([Representative Counsel Order](#))
5. *Comark Holdings Inc.* (January 17, 2025) Ont SCJ [Commercial List] Court File No. 25-00734339-00CL ([Endorsement](#))
6. *Danier Leather Inc (Re)*, [2016 ONSC 1044](#)
7. *Fraser Papers Inc. (Re)*, (September 17, 2009) Ont SCJ [Commercial List] Court File No. CV-09-8241-00CL ([Order appointing Davies Ward Phillips & Vineberg as certain employees' representative](#))
8. *Grant Forest Products Inc (Re)*, [2013 ONSC 5933](#)
9. [*In the Matter of the Body Shop Canada Limited*](#), 2024 ONSC 3871
10. *Indalex Ltd (Re)*, [2011 ONCA 265](#)
11. *Nordstrom Canada* (March 2, 2023) Ont SCJ [Commercial List] Court File No CV-23-00695619-00CL ([Initial Order](#))
12. *Nordstrom Canada Retail Inc.* (April 20, 2023) Ont SCJ [Commercial List] Court File No. CV-23-00695619-00CL ([Endorsement](#))
13. *Nortel Networks Corp. (Re)*, (July 22, 2009) Ont SCJ [Commercial List] Court File No. 09-CL-7950 ([Order](#))
14. [*Nortel Networks Corp. \(Re\)*](#), 2009 CanLII 26603 (ONSC)
15. [*Quadriga Fintech Solutions Corp \(Re\)*](#), 2019 NSSC 65
16. *Sears Canada* (July 13, 2017) Ont SCJ [Commercial List] Court File No. CV-17-11846-00CL ([Employee Representative Counsel Order](#))
17. See *Joriki Topco Inc., Re* (January 29, 2025) Ont SCJ [Commercial List] Court File No. CV-25-00735458-00CL ([Endorsement](#)) and ([Auction and Liquidation Approval Order](#))
18. [*Target Canada Co \(Re\)*](#) 2015 ONSC 303

19. *Target Canada Co.*, (January 15, 2015) Ont SCJ [Commercial List], Court File No CV-15-10832-00CL ([Initial Order](#))
20. *Target Canada Co. (Re)* (February 5, 2015) Ont SCJ [Commercial List] Court File No. CV-15-10832-00CL ([Endorsement](#))
21. *Ted Baker Canada Inc. et al* (May 3, 2024) Ont SCJ [Commercial List] Court File No. CV-24-00718993-00CL ([Endorsement](#))

STATUTES

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

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

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.

Ontario Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Representation of an Interested Person Who Cannot Be Ascertained

Proceedings in which Order may be Made

10.01 (1) In a proceeding concerning,

- (a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;

- (b) the determination of a question arising in the administration of an estate or trust;
- (c) the approval of a sale, purchase, settlement or other transaction;
- (d) the approval of an arrangement under the [*Variation of Trusts Act*](#);
- (e) the administration of the estate of a deceased person; or
- (f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served. R.R.O. 1990, Reg. 194, r. 10.01 [\(1\)](#).

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED, AND IN THE MATTER OF HUDSON'S BAY COMPANY
ULC et al.

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

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

Proceeding commenced at Toronto

**FACTUM OF THE APPLICANT
(RE: Appointing Employee Representative Counsel and
Approving Amended SISP)**

STIKEMAN ELLIOTT LLP

Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Ashley Taylor LSO#: 39932E
Email: ataylor@stikeman.com
Tel: +1 416-869-5236

Elizabeth Pillon LSO#: 35638M
Email: lpillon@stikeman.com
Tel: +1 416-869-5623

Maria Konyukhova LSO#: 52880V
Email: mkonyukhova@stikeman.com
Tel: +1 416-869-5230

Philip Yang LSO#: 82084O
Email: PYang@stikeman.com
Tel: +1 416-869-5593

Brittney Ketwaroo LSO#: 89781K
Email: bketwaroo@stikeman.com
Tel: +1 416-869-5524

Lawyers for the Applicants