Court File No. CV-25-00738613-00CL

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
(RE: Transition Order)
(Returnable July 27, 2026)

July 23, 2026

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TO: THE SERVICE LIST

PART I – OVERVIEW[1]

1. This factum is filed in support of the Applicants' motion seeking the Transition Order, which, would, among other things, enhances the powers of the Monitor as they relate to the Applicants to address remaining matters in these CCAA Proceedings, ensure an orderly transition of responsibilities, and facilitate the winding down of the Applicants.

2. The FILO Agent first sought to enhance the Monitor's powers in July 2025. The Applicants opposed the request as premature, and Justice Osborne dismissed the FILO Motion on October 24, 2025.

3. Since then, the CCAA Proceedings have advanced materially. In June 2026, the FILO Agent renewed its request with Pathlight's support. The Applicants are prepared to facilitate the request and work cooperatively with the Secured Creditors and the Monitor to implement enhanced Monitor powers in an orderly manner.

PART II – FACTS

4. The facts with respect to this motion are more fully set out in the Affidavit of Thomas Obersteiner sworn July 20, 2026.

A. Request for Enhanced Monitor Powers

5. In July 2025, the FILO Agent sought to enhance the Monitor's powers or appoint a "super monitor" and remove the Applicants' existing directors (the "**FILO Motion**"). At that time, the Company was in the midst of the Central Walk APA transaction and various other monetization efforts. The Applicants opposed the request, believing (amongst other factors) that the request

[1] Capitalized terms used in this factum that are not otherwise defined have the meanings given to them in the Affidavit of Thomas Obersteiner sworn July 20, 2026 (the "**Obersteiner Affidavit**"), in the Motion Record of the Applicants dated July 20, 2026 ("**AMR**") at Tab 2.

was premature.[2]

6. Justice Osborne dismissed the FILO Motion on October 24, 2025.[3]

7. Since then, the CCAA Proceedings and monetization efforts have advanced materially:

(a) the Central Walk APA transaction has concluded, with no appeals taken from the October 24 Endorsement;

(b) the Art Collection Auction has concluded, with one item remaining to be sold through Heffel's next general online auction;

(c) the Charter sale has closed;

(d) WEPPA matters for employees and former employees have been resolved;

(e) hardship fund and Employee Health Trust matters have been resolved, with this Court approving the Hardship Term Sheet on February 11, 2026;

(f) FF&E removal and demolition have been completed at all stores, including those under the RioCan JV receivership, and signage removal is complete at all former store locations; and

(g) a Pension Surplus recovery process has been initiated, including the appointment of Pension Plan Representative Counsel and a Court-appointed Mediator by Orders granted on June 26, 2026.[4]

8. In June 2026, the FILO Agent renewed its request for expanded Monitor powers, with Pathlight's support.[5]

9. The Applicants and their Board of Directors have acted in good faith and with due diligence throughout these proceedings. While management and consultants can continue to provide value and historical knowledge, the remaining issues are limited, and the Board supports administering

[2] Obersteiner Affidavit at para 6, AMR at Tab 2.
[3] *Ibid*.
[4] *Ibid* at para 7.
[5] *Ibid* at para 9.

these CCAA Proceedings in the most efficient and cost-effective manner.[6]

10. Accordingly, the Applicants are prepared to work cooperatively with the Secured Creditors and the Monitor to implement enhanced Monitor powers pursuant to an appropriate transition order and plan.[7]

B. Anticipated Scope and Role of the Monitor Under Enhanced Powers

11. The Transition Order would authorize and empower the Monitor to, among other things:

(a) exercise any powers that may be properly exercised by any board of directors of the Applicants;

(b) execute administrative filings as may be required on behalf of the Applicants;

(c) take all actions necessary to facilitate the Applicants' remaining obligations, the winding down of the Applicants, and the termination of these CCAA Proceedings;

(d) take any actions on its own behalf or on behalf of the Applicants respecting their pension and benefit plans, including participating in negotiations, litigation, and proceedings in connection therewith;

(e) initiate, prosecute, or continue any proceedings with respect to the Applicants;

(f) act as an authorized representative of the Applicants in respect of dealings with any taxing or regulatory authority;

(g) retain or terminate the services of any employee;

(h) engage, communicate, and negotiate on behalf of the Applicants with FTI Consulting Canada Inc. in its capacity as receiver and manager of certain RioCan-JV Entities;

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[6] *Ibid* at para 10.
[7] *Ibid* at para 11.

(i) designate an authorized representative to have the authority to act on behalf of the Applicants as an authorized signing authority; and

(j) apply to the Court for advice and directions or any further orders necessary or advisable to carry out the Monitor's powers and duties under the Transition Order, or any other order of the Court granted in these CCAA proceedings.[8]

12. The Transition Order also grants ancillary relief to facilitate the Monitor's effective exercise of these enhanced powers, approve standard protections in favour of the Monitor in connection with its exercise of the enhanced powers, and provide certain protections in favour of the Applicants' remaining directors.[9]

PART III – ISSUES

13. The issue on this motion is whether the Court should enhance the Monitor's powers to act on behalf of the Applicants.

PART IV – LAW AND ARGUMENT

A. The Monitor's Powers Should be Enhanced

14. The CCAA grants this Court broad discretion over the Monitor's functions. Section 23(1)(k) of the CCAA provides that the Monitor may "carry out any other functions in relation to the [debtor] company that the court may direct".[10] In addition, section 11 of the CCAA authorizes this Court to make any order that is necessary and appropriate in the circumstances.[11]

15. There are numerous examples of CCAA courts granting expanded powers to the Monitor

[8] *Ibid* at para 4.
[9] *Ibid* at para 5.
[10] CCAA at s. 23(1)(k).
[11] CCAA at s. 11.

where such relief is warranted in the circumstances.[12] For example, enhanced power orders have been granted in: *Nortel's* CCAA Proceedings,[13] and more recently in *The Body Shop*[14] *DCL Corporation,*[15] and *Accuride*.[16]

16. The Transition Order is intended to enhance the Monitor's powers to address remaining matters, ensure an orderly transition of responsibilities, and facilitate the winding down of the Applicants.

17. The Board supports administering these CCAA Proceedings in the most efficient and cost-effective manner.[17]

18. The Company and its counsel have worked diligently with the Monitor, and consulted with the FILO Lenders and Pathlight, to draft the Transition Order and implement a transition plan with the Monitor to facilitate the orderly transition of responsibilities following the granting of the Transition Order.[18]

19. In its enhanced role, the Monitor will be empowered to step into the shoes of the Company in respect of remaining open matters, including a) implementation of the Hardship Fund Term Sheet; b) the Royal Trust SERP Motion; and c) negotiations and potential mediation in respect of the Pension Surplus. Representative counsel have been appointed and are available to participate in each of those remaining matters.

20. In exercising these enhanced powers, the Monitor will be granted appropriate protections. As this Court has observed, it is well known that this Court has the jurisdiction to protect its officers

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[12] *Harte Gold Corp. (Re)*, 2022 ONSC 653 at paras. 91-92; *Mav Beauty Brands Inc. et al.* (December 19, 2023), Ontario Superior Court of Justice [Commercial List] (Endorsement).
[13] *Nortel Networks Corporation (Re)*, 2015 ONSC 2987 at para. 42.
[14] *The Body Shop Canada Limited* (December 14, 2024), Ontario Superior Court of Justice [Commercial List] at paras 37-38 (Endorsement).
[15] *DCL Corporation* (May 8, 2023) Ontario Superior Court of Justice [Commercial List] at para 7 (Endorsement).
[16] *Accuride Canada Inc. v Arcelormittal Dofasco GP et al.* (January 27, 2025) Ontario Superior Court of Justice [Commercial List] at paras 5(a), 8-9 (Endorsement).
[17] Obersteiner Affidavit at para 10, AMR at Tab 2.
[18] *Ibid* at para 14.

from liability, and that such protections promote proper and orderly conduct of an insolvency proceeding to avoid unnecessary and unjustified proceedings.[19]

21. The remaining employees and consultants currently retained by HBC will continue to be available to the Monitor to assist with the remaining matters. The current members of the Applicants' Board of Directors are prepared to tender their resignations immediately following the granting of the Transition Order.[20]

22. If requested by the Monitor to facilitate the remaining matters, Company representative may assist by way of being appointed as sole director and/or authorized representative, with necessary protections in the draft Transition Order.[21] As noted in the Monitor’s Seventeenth Report, Thomas Obersteiner has agreed to be appointed as a director and to act as an authorized signatory on a go-forward basis at the request of the Monitor to assist with its enhanced role.[22]

23. The Transition Order: (a) provides that each of the Applicants’ directors shall have no liability, obligation, or responsibility whatsoever with respect to any matter over which the Monitor or any other person exercises control in accordance with the Transition Order; and (b) authorizes the Applicants’ directors to retain counsel, and authorizes and directs the Applicants to pay the accounts of such counsel, subject to approval by the Monitor as to scope and reasonableness. The Monitor is of the view that this provides reasonable and appropriate protection in favour of the Applicants’ directors.[23]

24. The Monitor is prepared to exercise such an expanded role in accordance with the terms of the Transition Order.[24]

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[19] *One Bloor West Toronto Group (The One) Inc. (Re)*, 2026 ONSC 1854 at paras 43-44.
[20] Obersteiner Affidavit at paras 12-13.
[21] Seventeenth Report of the Monitor dated July 22, 2026 at s. 4.8.
[22] *Ibid*.
[23] *Ibid* at s. 4.10.
[24] Obersteiner Affidavit at para 18, AMR, at Tab 2; Seventeenth Report of the Monitor dated July 22,2026 at s.4.11.

PART V – ORDER SOUGHT

25. For the reasons set out above, the Applicants respectfully submit that the Court should grant the Transition Order substantially in the form attached to the Applicants' Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of July 2026.

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Accuride Canada Inc. v Arcelormittal Dofasco GP et al.* (January 27, 2025) Ontario Superior Court of Justice [Commercial List] (Endorsement).
2. *DCL Corporation* (May 8, 2023) Ontario Superior Court of Justice [Commercial List] (Endorsement).
3. *Harte Gold Corp. (Re)*, 2022 ONSC 653
4. *Mav Beauty Brands Inc. et al.* (December 19, 2023), Ontario Superior Court of Justice [Commercial List] (Endorsement).
5. *Nortel Networks Corporation (Re)*, 2015 ONSC 2987
6. *One Bloor West Toronto Group (The One) Inc. (Re)*, 2026 ONSC 1854
7. *The Body Shop Canada Limited* (December 14, 2024), Ontario Superior Court of Justice [Commercial List] (Endorsement).

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

Date July 23, 2026

B.Ketwaroo
Signature

SCHEDULE "B"
TEXT OF STATUTES AND REGULATIONS

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

Jurisdiction of Courts

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.

Monitors

Duties and functions

23 (1) The monitor shall

- (k) carry out any other functions in relation to the company that the court may direct.

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Proceeding commenced at Toronto

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