

**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)

**SUPPLEMENTARY FACTUM OF THE APPLICANTS
(Approval of the Updated Charter Auction Process)
(Returnable November 21, 2025)**

November 19, 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

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

PART I – OVERVIEW¹

1. This supplementary factum is meant to supplement and be read in conjunction with the Applicants' factum filed on September 25, 2025 (the "**Initial Charter Factum**"), in support of the Applicants' motion seeking issuance of the updated Charter Auction Process Order, which, among other things:

- a) Approves the Updated Charter Auction Process for the Charter Auction in the form attached as Schedule "A" to the updated Charter Auction Process Order; and
- b) Authorizes Reflect to conduct the Charter Auction in accordance with the Updated Charter Auction Process.

PART II – THE FACTS

2. Background information leading up to the Joint Bid is more fully set out in the Seventh Zalev Affidavit and summarized in the Initial Charter Factum and is not repeated herein. All references to currency in this factum are references to Canadian dollars, unless otherwise indicated. Defined terms not defined herein shall have the meanings ascribed to such terms in the Seventh Zalev Affidavit and the Supplemental Zalev Affidavit.

A. Joint Bid from DKRT and Wittington

3. On the evening of Sunday, September 28, 2025, the day prior to the rescheduled hearing for approval of the Charter Auction Process, the Applicants received an unsolicited Joint Proposal from Wittington and DKRT. In light of this development, the Applicants requested that the Charter Auction Process approval motion be adjourned in order that the

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**") and the Supplemental Affidavit of Adam Zalev sworn November 14, 2025 ("**Supplemental Zalev Affidavit**").

Applicants could assess appropriate next steps.²

4. Both Wittington and DKRT had previously entered into non-disclosure agreements with the Applicants,³ with DKRT also executing a binding commitment letter wherein DKRT irrevocably committed, offered and agreed to: (a) participate in any Court-approved process to sell the Charter; (b) submit an opening bid of no less than \$15 million in the Charter Auction Process on terms consistent with those set out in the DKRT Responding Motion Record; and (c) not directly or indirectly discuss or cooperate with or offer to any person any position (debt, equity, co-purchaser, co-investor, joint venture or otherwise) or other form of direct or indirect participation in the Charter Auction Process or the acquisition of the Charter without the prior written consent of the Applicant and the Monitor. DKRT executed the DKRT Commitment Letter on September 16, 2025.⁴ The Applicants maintain that, under these agreements, neither Wittington nor DKRT were permitted to submit a joint bid without the prior consent of both the Applicants and the Monitor. Both Wittington and DKRT dispute the Applicants' interpretation of these agreements.⁵

5. The proposed Charter Auction Process contemplated that Reflect and the Monitor had the authority to permit Qualified Bidders to act in concert. In the time since receipt of the Joint Proposal, the Applicants, Reflect and the Monitor engaged in meaningful discussions with Wittington and DKRT, the FILO Agent and Pathlight regarding the Joint Proposal. In their discussions, the Applicants sought to ensure that any potential transaction would safeguard the Charter's historical significance, protect the integrity of the Court process, and maximize value for the estate.⁶

6. These discussions ultimately culminated in the Joint Bidders delivering a binding

² Supplemental Zalev Affidavit at para 13.

³ *Ibid* at para 14.

⁴ *Ibid* at para 10.

⁵ *Ibid* at para 14.

⁶ *Ibid* at para 15.

Joint Commitment Letter dated November 14, 2025, pursuant to which the Joint Bidders agreed, among other things, to submit a joint bid of at least \$18 million in a Court-approved auction process for the Charter.⁷

7. The Applicants remain committed to running a robust Charter Auction process, substantially similar to the Charter Auction Process that the Applicants originally intended to seek approval of at the motion scheduled for September 29, 2025, to determine whether a superior offer may be obtained.⁸

PART III – ISSUES

8. This supplementary factum addresses the sole issue of whether the proposed Updated Charter Auction Process, including the Joint Bid constituting the opening bid in the Charter Auction, satisfies the applicable legal test for approval of a sales process and should be read in conjunction with the Initial Charter Factum.

PART IV – LAW & ARGUMENT

A. The Updated Charter Auction Process Should be Approved

9. The remedial nature of the CCAA⁹ 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.¹⁰ Courts have frequently exercised this jurisdiction in the context of retail insolvencies.¹¹

10. In *Nortel*,¹² the Court identified several factors to be considered in determining

⁷ *Ibid* at para 16.

⁸ *Ibid* at para 18.

⁹ *Companies' creditors Arrangement Act*, RSC 1985, c C-36 ("CCAA").

¹⁰ See i.e. *Grant Forest Products Inc (Re)*, 2013 ONSC 5933 at para 44; *Indalex Ltd (Re)*, 2011 ONCA 265 at para 180.

¹¹ 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.

¹² *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:¹³

- 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?¹⁴

11. This Court has noted that Section 36 of the CCAA¹⁵ directly applies only in the context of the approval of a sale, not of a sales process.¹⁶ However, the *Nortel* criteria for approving a sales process should be evaluated in light of the considerations that the Court may ultimately apply when approval of a sale under Section 36 of the CCAA is sought.¹⁷

12. In *Canwest*, Justice Pepall held that the criteria enumerated in Section 36(3) of the CCAA largely overlapped with the traditional common law criteria established in *Royal Bank v Soundair Corp.* for approval of a sale of assets in an insolvency scenario and remain relevant when considering the statutory test:

- a) Whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;
 - b) The interests of all parties;
 - c) The efficacy and integrity of the process by which offers have been obtained;
- and

¹³ *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](#).

¹⁴ *Nortel* at para. 49.

¹⁵ CCAA s. 36.

¹⁶ *Brainhunter Inc. (Re)*, [2009 CanLII 72333 \(ONSC\)](#) at [para 17](#). (“*Brainhunter*”).

¹⁷ *Brainhunter*, at [para 16-17](#).

d) Whether there has been unfairness in the working out of the process.¹⁸

13. Following consideration of the above criteria and factors, the Updated Charter Auction Process should be approved for the reasons set forth in the Initial Charter Factum and as set forth below:

i. The Charter Auction is Warranted at this Time

14. It is important to the Applicants and their creditors that the Charter Auction take place before the end of the year. Both the DKRT Bid and the Joint Bid expire on December 31, 2025.¹⁹

15. Reflect had previously reached out to and engaged in discussions with a list of potential qualified purchasers and prepared a teaser document regarding the Charter. Since receipt of the Joint Proposal and negotiation of the Joint Bid, and in light of the revised timetable contemplated by the Updated Charter Auction Process, which provides for a period of slightly less than two weeks between the Court's approval of the Charter Auction Process and the commencement of the Charter Auction, Reflect has been diligently following up with its list of potential qualified purchasers and has provided or will provide each potential qualified purchaser with the teaser document.²⁰ Although this interval is marginally shorter than originally contemplated in September, it remains sufficient for Potential Bidders to review the finalized Charter Auction Process, which will be posted in a dedicated and easily accessible tab on the Monitor's website upon approval, seek clarifications, and prepare for meaningful participation.²¹

16. The Updated Charter Auction Process has been, and will continue to be, widely

¹⁸ CCAA, s. 36(3); *Canwest Global Communications Corp.*, 2010 ONSC 2870 at para 13; *Royal Bank v Soundair Corp.* (1991), 83 D.L.R. (4th) 76 (Ont. C.A.) at para 16; *Nelson Education Limited (Re)*, 2015 ONSC 5557 at paras 37-38.

¹⁹ Supplemental Zalev Affidavit at paras 16 and 20.

²⁰ *Ibid* at para 22.

²¹ *Ibid* at para 23; Ninth Supplemental Monitor Report at para 3.11.

publicized, and these CCAA Proceedings and the potential disposition of the Charter have garnered significant media attention.²² The Company issued a press release regarding the proposed auction, and the Updated Charter Auction Process has been posted on the Monitor's website.²³ As stated in the Supplement to the Ninth Report, the Monitor is of the view that the Updated Charter Auction Process will be well-publicized and the Monitor believes that the revised timetable "allows for sufficient time for potentially interested parties to receive notice of the Charter Auction and determine whether they will submit a Bid Proposal."²⁴

17. The Applicants have worked hard through the marketing of the Charter conducted by Reflect and through their negotiations with the Joint Bidders to ensure that any interested party has an equal opportunity to submit a bid in the Charter Auction and the best possible price for the Charter is obtained.

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

18. The Joint Bid offers a materially higher purchase price of \$18 million, than both the DKRT Bid (\$15 million) and the Wittington Offer (\$12.5 million), thereby enhancing recoveries available to the Applicants' creditors.²⁵ The Joint Bid also exceeds the offer contemplated by the Joint Proposal (\$16 million).²⁶ In addition, the Joint Bid contemplates an enhanced donation to the Public Institutions of \$5 million compared with the DKRT Bid (\$2 million) and the Wittington Offer (\$1 million).²⁷

19. The Joint Bidders have formalized their commitment through execution of the Joint Commitment Letter, confirming that the Joint Bid will serve as the opening bid in a

²² Supplemental Zalev Affidavit at para 24; Ninth Supplemental Monitor Report at para 3.11.

²³ Supplemental Zalev Affidavit at para 23; Ninth Supplemental Monitor Report at para 3.11

²⁴ Ninth Supplemental Monitor Report at paras 3.9 and 3.11.

²⁵ Supplemental Zalev Affidavit at para 17(a).

²⁶ *Ibid* at para 13.

²⁷ *Ibid* at para 17(d).

competitive, Court-supervised auction process.²⁸

20. Notwithstanding receipt of the Joint Proposal and acceptance of the Joint Bid, the Applicants remain steadfast in their commitment to conducting a robust, competitive auction process, with the objective of maximizing the recovery for the Applicants' creditors.²⁹

21. In addition, this process has been specifically designed with the Charter's exceptional cultural and historical significance in mind and incorporates robust protections to guarantee, among other things, that the Charter remains in Canada and is made accessible to the public. Under the Updated Charter Auction Process, any prospective purchaser must irrevocably commit to permanently donating the Charter, immediately upon closing of the purchase, to one or more Canadian public institutions that are equipped to preserve cultural property for the long term and ensure public access through exhibitions, programming, publications, research, or online platforms, including but not limited to museums or archives.³⁰ The Joint Bid incorporates the type of sharing among Canadian institutions that the process was designed to encourage.³¹

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

22. The FILO Agent and Pathlight Agent were consulted throughout the process leading up to and including acceptance of the Joint Bid. The FILO Agent supports the Joint Bid and approval of the Updated Charter Auction Process. The Pathlight Agent does not object to the Joint Bid or the process.³² The Monitor is of the opinion that granting the Order approving the Updated Charter Auction Process will not result in material prejudice to any of

²⁸ *Ibid* at paras 16 and 17(b).

²⁹ *Ibid* at para 18.

³⁰ Supplemental Zalev Affidavit at paras 21(c) – (e).

³¹ *Ibid* at paras 17(c) – (e).

³² Ninth Supplemental Monitor Report at para 3.13(d).

the Applicants' stakeholders.³³

23. Importantly, the Charter Auction Process contemplates a competitive auction process to maximize value for the Applicants' creditors. The requirements to participate in the Charter Auction are structured to protect the Charter's unique cultural and historical importance and will be equally applied to all potential bidders.

iv. There is No Better viable Alternative

24. The proposed Charter Auction Process contemplated that Qualified Bidder might be permitted to bid jointly with the consent of Reflect and the Monitor. After receipt of the Joint Proposal, the Applicants and Reflect, in consultation with the Monitor, thoroughly evaluated various approaches to the sale of the Charter and determined that acceptance of the Joint Bid and the sale of the Charter through the Charter Auction pursuant to the Updated Charter Auction Process represents the best possible outcome under the circumstances.³⁴

25. The Updated Charter Auction Process not only protects the cultural and historical significance of the Charter through the stewardship of the Public Institutions, but it optimizes the financial recovery of the Applicants' creditors regardless of the outcome of the Charter Auction.³⁵

³³ *Ibid* at para 3.13 (e)

³⁴ Supplemental Zalev Affidavit at paras 7-12.

³⁵ *Ibid* at para 17.

PART V – ORDER SOUGHT

26. For the foregoing reasons, the Applicants respectfully requests that this Court grant the Updated Charter Auction Process Order substantially in the form of the draft order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of November, 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. *Canwest Global Communications Corp.*, [2010 ONSC 2870](#)
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. *Nelson Education Limited (Re)*, [2015 ONSC 5557](#)
10. *Nordstrom Canada Retail Inc.* (April 20, 2023) Ont SCJ [Commercial List] Court File No. CV-23-00695619-00CL ([Endorsement](#))
11. *Nortel Networks Corporation (Re)*, [2009 CanLII 39492 \(ONSC\)](#)
12. *Target Canada Co. (Re)* (February 5, 2015) Ont SCJ [Commercial List] Court File No. CV-15-10832-00CL ([Endorsement](#))
13. *Royal Bank v Soundair Corp.* [\(1991\), 83 D.L.R. \(4th\) 76 \(Ont. C.A.\)](#)

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: November 19, 2025



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.

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

Proceeding commenced at Toronto

SUPPLEMENTARY FACTUM OF THE APPLICANTS

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

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