

**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 2675970 ONTARIO INC., 2733181  
ONTARIO INC., 2385816 ALBERTA LTD., 2161907 ALBERTA  
LTD., 2733182 ONTARIO INC., 2737503 ONTARIO INC.,  
2826475 ONTARIO INC., 14284585 CANADA INC., 2197130  
ALBERTA LTD., 2699078 ONTARIO INC., 2708540 ONTARIO  
CORPORATION, 2734082 ONTARIO INC., TS WELLINGTON  
INC., 2742591 ONTARIO INC., 2796279 ONTARIO INC.,  
10006215 MANITOBA LTD., AND 80694 NEWFOUNDLAND &  
LABRADOR INC.**

**TRANSCRIPTS BRIEF OF THE APPLICANTS  
(RE: FURTHER ARIO)**

October 8, 2024

**RECONSTRUCT LLP**  
Richmond-Adelaide Centre  
120 Adelaide Street West, Suite 2500  
Toronto, ON M5H 1T1

**William Main** LSO No. 70969C  
Tel: 416.613.8285  
Email: [wmain@reconllp.com](mailto:wmain@reconllp.com)

**Gabrielle Schachter** LSO No. 80244T T  
416.613.4881  
Email: [gschachter@reconllp.com](mailto:gschachter@reconllp.com)

Fax: 416.613.8290

**Lawyers for the Applicants**

**TO: THE SERVICE LIST**

**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 2675970 ONTARIO INC., 2733181  
ONTARIO INC., 2385816 ALBERTA LTD., 2161907 ALBERTA  
LTD., 2733182 ONTARIO INC., 2737503 ONTARIO INC.,  
2826475 ONTARIO INC., 14284585 CANADA INC., 2197130  
ALBERTA LTD., 2699078 ONTARIO INC., 2708540 ONTARIO  
CORPORATION, 2734082 ONTARIO INC., TS WELLINGTON  
INC., 2742591 ONTARIO INC., 2796279 ONTARIO INC.,  
10006215 MANITOBA LTD., AND 80694 NEWFOUNDLAND &  
LABRADOR INC.**

**SERVICE LIST  
(as at September 17, 2024)**

<p><b>RECONSTRUCT LLP</b> Richmond-Adelaide Centre 120 Adelaide Street West, Suite 2500 Toronto, ON M5H 1T1</p> <p><b>Caitlin Fell</b> cfell@reconllp.com Tel: 416.613.8282</p> <p><b>Sharon Kour</b> skour@reconllp.com Tel: 416.613.8288</p> <p><b>Jessica Wuthmann</b> jwuthmann@reconllp.com Tel: 416.613.8283</p> <p><b>Counsel to the Applicant Companies</b></p>	<p><b>ALVAREZ &amp; MARSAL CANADA INC.</b> Royal Bank Plaza, South Tower 200 Bay Street, Suite 3501 Toronto, ON M5J 2J1</p> <p><b>Josh Nevsky</b> jnevsky@alvarezandmarsal.com Tel: 416.847.5161</p> <p><b>Skylar Rushton</b> srushton@alvarezandmarsal.com Tel: 416.847.5204</p> <p><b>Mitchell Binder</b> mbinder@alvarezandmarsal.com Tel: 416.847.5202</p> <p><b>The Monitor</b></p>
<p><b>STIKEMAN ELLIOTT LLP</b> 5300 Commerce Court West, 199 Bay St. Toronto, ON M5L 1B9</p>	

**Maria Konyukhova**  
mkonyukhova@stikeman.com  
Tel: 416.869.5230

**Lee Nicholson**  
leenicholson@stikeman.com  
Tel: 416.869.5604

**Philip Yang**  
pyang@stikeman.com  
Tel: 416.869.5593

**Rania Hammad**  
rhammad@stikeman.com  
Tel: 416.869.5578

**Counsel to the Monitor**

**SECURED PARTIES**

<p><b>OSLER, HOSKIN &amp; HARCOURT LLP</b>  1 First Canadian Place  100 King St West, Suite 6200  P.O. Box 50  Toronto, ON M5X 1B8</p> <p><b>Mark Wasserman</b>  mwasserman@osler.com  Tel: 416.862.4908</p> <p><b>Martino Calvaruso</b>  mcalvaruso@osler.com  Tel: 416.862.6665</p> <p><b>Counsel to TS Investments Corp.</b></p>	<p><b>AIRD &amp; BERLIS LLP</b>  Brookfield Place  181 Bay Street, Suite 1800  Toronto, ON M5J 2T9</p> <p><b>Kyle Plunkett</b>  kplunkett@airdberlis.com  Tel: 416.865.3406</p> <p><b>Steven Graff</b>  sgraff@airdberlis.com  Tel: 416.865.7726</p> <p><b>Adrienne Ho</b>  aho@airdberlis.com  Tel: 416.637.980</p> <p><b>Samantha Hans</b>  shans@airdberlis.com  Tel : 437.880.6105</p> <p><b>Lawyers for Bank of Montreal</b></p>
<p><b>DAK CAPITAL INC.</b>  PO BOX 310, Edmonton Main  Edmonton, AB T5J 2J6</p>	<p><b>ADAIR GOLDBLATT BIEBER LLP</b>  401 Bay St. Suite 3200  Toronto, ON M5H 2Y4</p> <p><b>Simon Bieber</b>  sbieber@agbllp.com  Tel: 416.351.2781</p> <p><b>Sean Blakeley</b>  sblakeley@agbllp.com  Tel: 416.583.1675</p> <p><b>Lawyers for DAK Capital Inc.</b></p>
<b>UNSECURED PARTIES</b>	
<p><b>CASSELS BROCK &amp; BLACKWELL LLP</b>  Bay Adelaide Centre – North Tower  40 Temperance St, Suite 3200  Toronto, ON M5H 0B4</p>	<p><b>CANOPY GROWTH CORPORATION</b>  1 Hershey Drive  Smith Falls, ON K7A 0A8</p>

<p><b>Natalie Levine</b> nlevine@cassels.com Tel: 416.860.6568</p> <p><b>Colin Pendrith</b> cpendrith@cassels.com Tel: 416.860.6765</p> <p><b>Lawyers for Canopy Growth Corporation</b></p>	
<b>LANDLORDS / FRANCHISEES</b>	
<p><b>CAMELINO GALESSIERE LLP</b> 65 Queen St W, Suite 440 Toronto, ON M5H 2M5</p> <p><b>Linda Galessiere</b> lgalessiere@clegal.ca Tel: 416.306.3827</p> <p><b>Counsel for RioCan, SmartCentres, Morguard, and Salthill (for PTC Ownership Inc.)</b></p>	<p><b>PRIMARIS REIT</b> Brookfield Place 181 Bay St, Suite 2720 Toronto, ON M5J 2T3</p> <p><b>Elina Towie</b> etowie@primarisreit.com Tel: 416.642.7819</p>
<p><b>TORYS LLP</b> 79 Wellington St W, Suite 3300 Toronto, ON M5K 1N2</p> <p><b>David Bish</b> dbish@torys.com Tel: 416.865.7353</p> <p><b>Counsel for The Cadillac Fairview Corporation Limited and its affiliates</b></p>	<p><b>MILLER THOMSON LLP</b> One London Place 255 Queens Avenue, Suite 2010 London, ON N6A 5R8</p> <p><b>Tony Van Klink</b> tvanklink@millerthomson.com Tel: 519.931.3509</p> <p><b>Counsel to Rock Developments (St. Thomas) Inc.</b></p>
<p><b>DAOUST VUKOVICH LLP</b> 20 Queen Street West, Suite 3000 Toronto, ON M5H 3R3</p> <p><b>Brian Parker</b> bparker@dv-law.com Tel: 416.591.3036</p> <p><b>Gasper Galati</b> ggalati@dv-law.com Tel: 416.598.7050</p>	<p><b>FIRST CAPITAL REIT</b> 85 Hanna Avenue, Suite 400 Toronto, ON M6K 3S3</p> <p><b>Kirryn Hashmi</b> kirryn.hashmi@fcr.ca Tel: 416.216.2083</p>

<p><b>SOTOS LLP</b> 180 Dundas St. W., Suite 1200 Toronto, ON M5G 1Z8</p> <p><b>Maria Arabella Robles</b> mrobles@sotos.ca Tel: 416.572.7309</p> <p><b>Adrienne Boudreau</b> aboudreau@sotos.ca Tel: 416.572.7321</p> <p><b>Counsel for certain Franchisees</b></p>	<p><b>Brenden Hewko</b> brendenhewko@gmail.com Tel: 416.999.8751</p> <p><b>Landlord, TS219 - 1303 Queen Street East</b></p>
<p><b>SCHWAB HOLDINGS</b> Box 1555 Battleford, SK S0M 0E0</p> <p><b>Ray Schwab</b> rays.elec.mtr@sasktel.net Tel: 306.481.6566</p> <p><b>Landlord, Meadow Lake Tokyo Smoke</b></p>	
<b>OTHER</b>	
<p><b>NATIONAL CANNABIS DISTRIBUTION</b> 6th Floor 905 West Pender St Vancouver, BC V6C 1L6</p> <p><b>Kelly Abbott</b> kelly@ncdcanada.ca Tel: 778.237.5212</p>	
<b>GOVERNMENT ENTITIES</b>	
<p><b>HEALTH CANADA</b> Controlled Substances and Cannabis Branch 150 Tunney's Pasture Driveway Ottawa, ON K1A 0K9</p> <p><b>Licensing and Security Division</b> licensing-cannabis-licenses@hc-sc.gc.ca</p> <p><b>Collections</b> collections-recouvrement@hc-sc.gc.ca</p>	<p><b>CANADA REVENUE AGENCY</b> 1 Front Street West Toronto, ON M5J 2X6</p> <p><b>Pat Confalone</b> pat.confalone@cra-arc.gc.ca Tel: 416.954.6514 Fax: 416.964.6411</p>

<p><b>ATTORNEY GENERAL OF CANADA</b>  Department of Justice Canada  Ontario Regional Office, Tax Law Section  120 Adelaide Street West, Suite 400  Toronto, ON M5H 1T1</p> <p>AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca  Fax: 416.973.0810</p>	<p><b>MINISTRY OF FINANCE (ONTARIO)</b>  Legal Services Branch  777 Bay Street, 11th Floor  Toronto, ON M5G 2C8</p> <p>insolvency.unit@ontario.ca</p>
<p><b>ALCOHOL AND GAMING COMMISSION OF ONTARIO</b>  90 Sheppard Avenue East  Suite 200-300  Toronto, ON M2N 0A4</p> <p>customer.service@agco.ca</p>	<p><b>ALBERTA MINISTRY OF JUSTICE</b>  Bowker Building  2nd Floor - 9833 109 Street NW  Edmonton, AB T5K 2E8</p> <p>jsg.servicehmk@gov.ab.ca  Tel: 780.427.2711</p>
<p><b>GOVERNMENT OF NEWFOUNDLAND &amp; LABRADOR</b>  Health and Community Services  P.O. Box 8700  1st Floor, West Block, Confederation Building  St. John's, NL A1B 4J6</p>	<p><b>NEWFOUNLAND AND LABRADOR LIQUOR CORPORATION (NLC)</b>  PO Box 8750, Station A  90 Kenmount Road  St. John's, NL A1B 3V1</p> <p>info@nlliquor.com</p>
<p><b>NEWFOUNDLAND &amp; LABRADOR DEPARTMENT OF FINANCE</b>  P.O. Box 8700  Main Floor, East Block Confederation Building  St. John's, NL A1B 4J6</p>	<p><b>LIQUOR, GAMING &amp; CANNABIS AUTHORITY OF MANITOBA</b>  1055 Milt Stegall Drive  Winnipeg, MB R3G 0Z6</p> <p>investigations@LGCamb.ca</p>
<p><b>GOVERNMENT OF MANITOBA DEPARTMENT OF FINANCE TAXATION DIVISION</b>  101 - 401 York Avenue  Winnipeg, MB R3C 0P8</p>	<p><b>SASKATCHEWAN LIQUOR AND GAMING AUTHORITY</b>  PO Box 5054  2500 Victoria Ave.  Regina, SK S4P 3M3</p> <p>inquiry@slga.com</p>
<p><b>SASKATCHEWAN FINANCE</b>  2350 Albert Street  Regina, SK S4P 4A6</p>	

## Email List

cfell@reconllp.com; skour@reconllp.com; jwuthmann@reconllp.com;  
jnevsky@alvarezandmarsal.com; srushton@alvarezandmarsal.com;  
mbinder@alvarezandmarsal.com; mkonyukhova@stikeman.com; leenicholson@stikeman.com;  
pyang@stikeman.com; rhammad@stikeman.com; mwasserman@osler.com;  
mcalvaruso@osler.com; [kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com); sgraff@airdberlis.com; aho@airdberlis.com;  
shans@airdberlis.com; sbieber@agbllp.com; sblakeley@agbllp.com; nlevine@cassels.com;  
cpendrith@cassels.com; lgalessiere@cglegal.ca; etowie@primarisreit.com; dbish@torys.com;  
tvanklink@millerthomson.com; bparker@dv-law.com; ggalati@dv-law.com;  
kirryn.hashmi@fcr.ca; mrobles@sotos.ca; aboudreau@sotos.ca; brendenhewko@gmail.com;  
rays.elec.mtr@sasktel.net; kelly@ncdcanada.ca; [licensing-cannabis-licenses@hc-sc.gc.ca](mailto:licensing-cannabis-licenses@hc-sc.gc.ca)  
collections-recouvrement@hc-sc.gc.ca; pat.confalone@cra-arc.gc.ca;  
AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; insolvency.unit@ontario.ca;  
customer.service@agco.ca;  
jsg.servicehmk@gov.ab.ca; info@nliquor.com; investigations@LGCamb.ca; inquiry@slga.com

**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 2675970 ONTARIO INC., 2733181  
ONTARIO INC., 2385816 ALBERTA LTD., 2161907 ALBERTA  
LTD., 2733182 ONTARIO INC., 2737503 ONTARIO INC.,  
2826475 ONTARIO INC., 14284585 CANADA INC., 2197130  
ALBERTA LTD., 2699078 ONTARIO INC., 2708540 ONTARIO  
CORPORATION, 2734082 ONTARIO INC., TS WELLINGTON  
INC., 2742591 ONTARIO INC., 2796279 ONTARIO INC.,  
10006215 MANITOBA LTD., AND 80694 NEWFOUNDLAND &  
LABRADOR INC.**

**INDEX**

<b>TAB</b>	<b>DOCUMENT</b>	<b>PG. NO.</b>
1.	Transcript of the Cross-Examination of Dave Paterson on October 3, 2024	001
2.	Transcript of the Cross-Examination of Andrew Williams on October 4, 2024	035

# TAB 1

Court File No. CV-24-00726584-00CL  
ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,  
RSC 1985, c B-3, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 2675970 ONTARIO INC., 2733181  
ONTARIO INC., 2385816 ALBERTA LTD., 2161907  
ALBERTA LTD., 2733182 ONTARIO INC., 2737503  
ONTARIO INC., 2826475 ONTARIO INC., 14284585  
CANADA INC., 2197130 ALBERTA LTD., 2699078  
ONTARIO INC., 2708540 ONTARIO CORPORATION,  
2734082 ONTARIO INC., TS WELLINGTON INC.,  
2742592 ONTARIO INC., 2796279 ONTARIO INC.,  
10006215 MANITOBA LTD., AND 80694 NEWFOUNDLAND &  
LABRADOR INC.,

-----

--- This is the Cross-Examination of DAVE PATERSON  
on his Affidavit sworn September 28, 2024, taken via  
videoconference through the offices of Network  
Reporting & Mediation, on the 3rd day of October,  
2024.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

WITNESS: DAVE PATERSON

PAGE

CROSS-EXAMINATION BY MR. MAIN. . . . 4 - 32

\*\*The following list of undertakings, advisements  
and refusals is meant as a guide only for the  
assistance of counsel and no other purpose\*\*

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T  
and appear on the following pages: NONE.

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are  
noted by U/A and appear on the following pages:  
NONE.

INDEX OF REFUSALS

The questions/requests refused are noted by R/F  
and appear on the following pages: 15

1 -- Upon commencing at 10:00 a.m.

2 DAVE PATERSON; AFFIRMED

3 CROSS-EXAMINATION BY MR. MAIN:

4 1 Q. Can you please state your name for  
5 the record?

6 A. I am Dave Paterson.

7 2 Q. Mr. Paterson, you have been affirmed  
8 to tell the truth today?

9 A. I have.

10 3 Q. You're the president of Canopy  
11 Growth Corporation?

12 A. Correct.

13 4 Q. For the purposes of this exam I'm  
14 just going to refer to Canopy Growth Corporation as  
15 "Canopy" for shorthand, okay?

16 A. Understood.

17 5 Q. You have sworn an affidavit in the  
18 proceeding bearing Court File No.  
19 CV-24-00726584-00CL; is that right?

20 A. I have.

21 6 Q. Do you have a copy of that affidavit  
22 in front of you?

23 A. I do, sir.

24 7 Q. And you swore your affidavit --

25 A. Would you like to see it?

1 8 Q. Pardon me? Very good. You swore  
2 your affidavit on September 28, 2024?

3 A. Correct.

4 9 Q. Your affidavit was true when you  
5 swore it?

6 A. Correct.

7 10 Q. It remains true today?

8 A. Correct.

9 11 Q. You swore your affidavit in the  
10 context of a motion by the applicants to expand the  
11 CCAA stay of proceedings to include a non-applicant  
12 entity called DAK Capital Incorporated, right?

13 A. Correct.

14 12 Q. You swore your affidavit in support  
15 of Canopy's position on that motion?

16 A. I did.

17 13 Q. You sought to include relevant  
18 information within your knowledge in the affidavit?

19 A. I did.

20 14 Q. Where you were sourcing information  
21 for your affidavit from other people you indicated  
22 that in your affidavit?

23 A. Correct.

24 15 Q. Do you have any notes in front of  
25 you, Mr. Paterson?

1 A. I do not.

2 16 Q. The copy of the affidavit that you  
3 have with you today, does it have any notes on it?

4 A. It does not.

5 17 Q. If I can, Mr. Paterson, I'm going to  
6 share my screen and I'm going to show you your  
7 affidavit, but if you prefer to follow along in the  
8 version you have in front of you, you can do that as  
9 well but just for the benefit of everybody watching  
10 and to make sure we're all looking at the same  
11 thing.

12 A. Okay.

13 MR. MAIN: Can we go off the record?

14 -- OFF THE RECORD --

15 BY MR. MAIN:

16 18 Q. Mr. Paterson, I'm showing you page 1  
17 of the responding motion record of Canopy Growth  
18 Corporation in respect of the Applicants' motion for  
19 a stay of proceedings against DAK Capital returnable  
20 October 18th, 2024. Does this appear to be your  
21 affidavit?

22 A. It does.

23 19 Q. I'm going to take you to paragraph  
24 19 of your affidavit.

25 Just for the avoidance of any ambiguity

1 here, when you refer to the SPA in this paragraph  
2 that's the Share Purchase Agreement?

3 A. Correct.

4 20 Q. I'm going to use "SPA" for  
5 shorthand. The SPA was heavily negotiated?

6 A. To my knowledge, yes. I was not  
7 involved in the negotiations.

8 21 Q. Who was involved on the Canopy side?

9 A. It was prior to me joining Canopy so  
10 I can't say.

11 22 Q. When did you join Canopy?

12 A. September 6th, 2022.

13 23 Q. So you say here in the first  
14 sentence of paragraph 19:

15 "It is my understanding that the SPA was  
16 heavily negotiated by the parties with the  
17 assistance of their respective counsel, and the  
18 scope and nature of DAK Capital's Guaranteed  
19 Obligations were areas of intensive negotiation."

20 So you got that information from other  
21 people?

22 A. Correct.

23 24 Q. The scope and nature of DAK's  
24 alleged Guarantee Obligations were areas of  
25 intensive negotiation, is that fair?

1 A. It is fair.

2 25 Q. But again you'd have that  
3 information secondhand from other people at Canopy?

4 A. Correct.

5 26 Q. Canopy chose DAK Capital as  
6 guarantor for certain obligations under the SPA?

7 A. To my knowledge, yes.

8 27 Q. Canopy believed DAK was an entity  
9 with sufficient assets to cover the guarantees it  
10 was requesting?

11 A. That is my understanding.

12 28 Q. Canopy understood that DAK was  
13 somehow corporately related to the Purchaser?

14 A. To my understanding, yes.

15 29 Q. I'm going to scroll down to  
16 paragraph 20, Mr. Paterson.

17 As per the first sentence of paragraph  
18 20, Canopy received the closing cash consideration  
19 from the Purchaser?

20 A. That's my understanding, yes.

21 30 Q. That was consideration provided for  
22 under the SPA?

23 A. Yes.

24 31 Q. I just want to make sure I have your  
25 earlier evidence correct. Did you say that you

1 don't know who was predominantly involved in  
2 negotiating the SPA on the Canopy side?

3 A. That is correct.

4 32 Q. Who did you go to or rely on for  
5 information about the negotiation of the SPA if you  
6 don't know who was involved in negotiating?

7 A. I had been given the information --  
8 I didn't go anywhere looking for information. As  
9 this proceeding started I was informed of the  
10 negotiations were intense.

11 33 Q. Who informed you of that?

12 A. I don't recall.

13 34 Q. Do you recall when you were informed  
14 of that?

15 A. Not specifically, no.

16 35 Q. And does that go for any of your  
17 evidence relating to the negotiation of the SPA?

18 A. That's correct.

19 36 Q. I'll take you back to paragraph 11  
20 of your affidavit.

21 You state here that: "The Purchaser has  
22 failed to pay all amounts owing under the SPA as  
23 consideration for the purchase of 142 Canada." Do  
24 you see that?

25 A. Yes, I do.

1 37 Q. If I have your evidence correctly, I  
2 think you told me a moment ago that Canopy did  
3 receive the closing cash consideration from the  
4 Purchaser, right?

5 A. That's correct.

6 38 Q. So that's an amount owing under the  
7 SPA's consideration for the purchase of 142 Canada?

8 A. We received initial payment upon  
9 closing, yes.

10 39 Q. Right. And that payment was an  
11 amount that's owing under the SPA?

12 A. I don't understand.

13 40 Q. What I'm trying to get at --

14 MR. PENDRITH: Counsel, just to assist,  
15 I don't think there's a dispute on the facts that  
16 the closing payment was made. I think maybe the  
17 issue is amounts owing because the closing payment  
18 is no longer owing.

19 I think it's clear what's being  
20 discussed as far as outstanding amounts owing is the  
21 \$3,000,000.00 anniversary payment as well as the  
22 deferred compensation.

23 MR. MAIN: I appreciate that. I'm just  
24 trying to reconcile paragraphs 20 and paragraphs 11  
25 of the affidavit.

1 Paragraph 20 says that the closing cash  
2 consideration was paid, and Mr. Paterson confirmed  
3 that, and confirmed that that is an amount that was  
4 owing under the SPA; yet in paragraph 11 it says the  
5 purchasers failed to pay all amounts owing under the  
6 SPA as consideration for the purchase of 142 Canada.

7 So I take it this first sentence of  
8 paragraph 11 is not accurate, Mr. Paterson.

9 MR. PENDRITH: I don't think it's  
10 inaccurate. I don't think that that amount is owing  
11 anymore; it was owing. So it's a matter of tense.  
12 But I think you understand the facts, counsel.

13 BY MR. MAIN:

14 41 Q. Mr. Paterson, I'm showing you  
15 another document. This is the Supplementary and  
16 Reply Motion Record of the Applicants. Can you see  
17 that on your screen?

18 A. I can.

19 42 Q. So I'm going to take you to the SPA,  
20 which was Exhibit A to the September 26 affidavit of  
21 Andrew Williams. I just want to look at sub article  
22 2.7 of the SPA, the Post-Closing Deferred  
23 Consideration Calculation and Payment. Can you see  
24 that on your screen?

25 A. I can.

1 43 Q. So this section reads: "As  
2 additional consideration for the Purchased Shares,  
3 within 30 days following the conclusion of each  
4 Calculation Period, Purchaser, or at the direction  
5 of the Purchaser, the Corporation or another  
6 designee of the Purchaser so long as Purchaser  
7 remains an obligor thereof, shall pay to the Vendors  
8 with respect to each Calculation Period an amount,  
9 if any (each, a 'Deferred Consideration Payment'..."  
10 defined term "...and collectively, the 'Deferred  
11 Consideration')...", defined term, "...equal to the  
12 sum of the following:" Do you see that?

13 A. I do.

14 44 Q. And then in the subparagraphs that  
15 have Roman numerals (i) to (v) there are five  
16 subcalculations, do you see that?

17 A. I do.

18 45 Q. The deferred consideration payment  
19 is equal to the sum of those five subcalculations,  
20 right?

21 A. Yes.

22 MR. PENDRITH: Sorry, are you asking him  
23 to interpret the Agreement?

24 MR. MAIN: I don't think there's much of  
25 an interpretation. I just would like his evidence

1 as to whether that is what --

2 MR. PENDRITH: Well, the Agreement  
3 speaks for itself, counsel.

4 BY MR. MAIN:

5 46 Q. I'm showing you Article 9 of the SPA  
6 Mr. Paterson. Can you see that?

7 A. I can.

8 47 Q. Starting from the beginning of  
9 9.1(a): "Payment Guarantor hereby unconditionally  
10 and irrevocably guarantees to the Vendors, and  
11 covenants and agrees to be jointly and severally  
12 liable with the Purchaser, as principal obligor for,  
13 the due and punctual payment of...", do you see  
14 that?

15 A. I do.

16 48 Q. And if we skip ahead to Roman  
17 numeral (iii) talking about deferred consideration  
18 it says: "The Deferred Consideration referred to in  
19 Sections 2.7(a)(ii), 2.7(a)(iii) and 2.7(a)(v)", do  
20 you see that?

21 A. I do.

22 49 Q. Section 2.7(a)(i) is not included  
23 here in the Guarantee section.

24 A. Is that a question or statement?

25 50 Q. It's a question. I would like to

1 know if you agree with that?

2 MR. PENDRITH: The contract speaks for  
3 itself.

4 MR. MAIN: Sure. I'm going to come back  
5 to Mr. Paterson's affidavit and ask him a question  
6 about something he says in his affidavit regarding  
7 Deferred Consideration.

8 So to be fair, Mr. Pendrith, I'm just  
9 trying to be fair to the witness and give him the  
10 relevant context in the Agreement.

11 BY MR. MAIN:

12 51 Q. Mr. Paterson, do you agree that  
13 2.7(a)(v) is not included in this Guarantee?

14 MR. PENDRITH: Again, counsel, if you're  
15 asking questions about what's encompassed in the  
16 Guarantee, the contract speaks for itself. The  
17 witness can't add words or take away words.

18 BY MR. MAIN:

19 52 Q. I'm looking at your affidavit again,  
20 Mr. Paterson. I'm showing you paragraph 15. Can  
21 you see that?

22 A. I can.

23 53 Q. So in the last sentence of paragraph  
24 15 you state: "The Guaranteed Obligations included  
25 payment of the Up-Front Consideration and the

1           Deferred Consideration." Can you see that?

2                   A. If you give me a minute, I'm reading  
3           it. Yes.

4   54           Q. Based on the sections of the SPA we  
5           just looked at I'm going to put to you that to the  
6           extent this suggests that DAK has guaranteed all the  
7           deferred consideration payment, that that is not  
8           accurate?

9           R/F           MR. PENDRITH: That's a legal  
10          interpretation. It calls for a legal answer.

11                  MR. MAIN: Ordinarily I think I'd agree  
12          with you, counsel, but to be fair this witness talks  
13          at length about the various provisions of the SPA in  
14          his affidavit.

15                  MR. PENDRITH: Well, he reproduces them.

16                  MR. MAIN: I believe he goes further  
17          than that but we can agree to disagree.

18                  MR. PENDRITH: I'm not sure it gets you  
19          anywhere, counsel. It's a legal argument, and what  
20          this witness has to say about what those sections  
21          happen to say or not say I don't think changes  
22          anything.

23                  MR. MAIN: We can also agree to disagree  
24          on that. Is that a refusal to my question, counsel?

25                  MR. PENDRITH: Oh, sorry, I thought that

1 was clear before. It's a refusal on the basis that  
2 it calls for a legal interpretation.

3 BY MR. MAIN:

4 55 Q. Mr. Paterson, I'm showing you a  
5 Notice of Arbitration. Can you see that?

6 A. Yes.

7 MR. PENDRITH: Counsel, just --

8 MR. MAIN: Do you want to go off the  
9 record?

10 MR. PENDRITH: We should go off the  
11 record because you're showing a document that's  
12 confidential.

13 MR. MAIN: Let's go off the record,  
14 madam reporter.

15 -- OFF THE RECORD DISCUSSION --

16 BY MR. MAIN:

17 56 Q. Mr. Paterson, I'm back in your  
18 affidavit here. I'm going to take you to paragraph  
19 17. Can you see that?

20 A. I can.

21 57 Q. So you state here: "Notably, DAK  
22 Capital also agreed that its obligations would  
23 remain in force and not be released or discharged in  
24 the event of the Purchaser's voluntary or  
25 involuntary...", and you have open quotes,

1 'receivership, insolvency, bankruptcy assignment for  
2 the benefit of creditors, reorganization,  
3 composition, or other similar proceeding affecting  
4 the Purchaser'". Do you see that?

5 A. I do.

6 58 Q. I'm just going to scroll down into  
7 the next paragraph where you have an excerpt from  
8 Section 9.1 of the SPA and 9.2 of the SPA. Do you  
9 see that?

10 A. I do.

11 59 Q. And in 9.2(a) we see starting from  
12 the second sentence the language:

13 "Payment Guarantor's obligations under  
14 this Guarantee shall, without limitation, constitute  
15 a guarantee of payment and related performance,  
16 binding upon Payment Guarantor and its successors  
17 and permitted assigns and irrevocable, and remain in  
18 force until all Guaranteed Obligations have been  
19 paid or performed in full and shall not be released  
20 or discharged notwithstanding:...", and if we go  
21 down to Roman number (vii):

22 "The voluntary or involuntary  
23 receivership, insolvency, bankruptcy, assignment for  
24 the benefit of creditors, reorganization,  
25 composition, or other similar proceeding affecting

1 the Purchaser." Do you see that?

2 A. I do.

3 60 Q. Where you have quotations in  
4 paragraph 17, "receivership, insolvency, bankruptcy  
5 assignment for the benefit of creditors,  
6 reorganization, composition, or other similar  
7 proceeding affecting the Purchaser", is that a  
8 quotation from 9.2(a)(vii)?

9 A. Yes.

10 61 Q. I'm scrolling down to paragraph 34  
11 of your affidavit. Can you see that?

12 A. I can.

13 62 Q. You say: "Canopy would be  
14 prejudiced by the stay of proceedings against DAK  
15 Capital because that stay interferes with precisely  
16 with Canopy bargained for as part of the  
17 transaction: An enforceable guarantee obligation  
18 against a solvent entity that would not be impaired  
19 by the Purchaser's insolvency." Is this also a  
20 reference to 9.2(a)(vii)?

21 A. Yes.

22 63 Q. We just looked at that provision  
23 9.2(a)(vii) and there's no language, at least in the  
24 excerpt from your affidavit, and I'm happy to turn  
25 up the full version in the SPA if that would be

1 helpful, but there's no language in there about the  
2 Guarantee being impaired, is that fair?

3 A. That's fair.

4 64 Q. In fact Article 9 -- I'm going to  
5 put to you that Article 9 doesn't mention the word  
6 "impair" or "impaired" anywhere.

7 MR. PENDRITH: If that's the case that's  
8 the case. The contract will speak for itself.

9 The point here, counsel, is there's a  
10 guarantee that we would like to enforce and the CCAA  
11 says you can't stay Guarantee Claims, and that's  
12 precisely what's happening.

13 BY MR. MAIN:

14 65 Q. Mr. Paterson, do you appreciate that  
15 the applicants' and DAK's position is that the  
16 claims against DAK should be stayed pending the  
17 conclusion of the CCAA process?

18 A. Could you rephrase the question,  
19 please?

20 66 Q. Do you appreciate or understand that  
21 it's the position of the applicants and DAK that  
22 Canopy's claims against DAK should be stayed only  
23 pending the conclusion of the CCAA process involving  
24 the applicants?

25 A. No, I don't agree.

1 67 Q. You don't understand that?

2 A. I don't -- from my understanding  
3 you're saying that the DAK Guarantee should be  
4 stayed within the CCAA proceedings, and if that is  
5 the way I understand it I don't agree to it.

6 68 Q. I'm showing you another document,  
7 Mr. Paterson. This is the motion record of the  
8 applicants in this proceeding SISP approval and  
9 Stalking Horse approval returnable September 18,  
10 2024 dated September 12, 2024. Do you see that?

11 A. I do.

12 69 Q. This was the initial motion record  
13 that Canopy was responding to when they delivered  
14 their responding motion record, right?

15 A. It is.

16 70 Q. It contains your affidavit  
17 responding with Canopy's evidence on the motion?

18 A. Correct.

19 71 Q. This motion record contains at tab 1  
20 the applicants' Notice of Motion. Do you see that?

21 A. I do.

22 72 Q. I'm showing you the Notice of Motion  
23 now. Had you read this document when you prepared  
24 your affidavit?

25 A. I have.

1 73 Q. Looking at paragraph 33 of the  
2 Notice of Motion it states:

3 "The applicants also seek an amendment  
4 to the ARIO...", amended and restated original  
5 Order, "...to grant the Related Proceeding Stay.  
6 The Related Proceeding Stay being sought is until  
7 December 6, 2024 which is less than three months  
8 from the date of this affidavit." Do you see that?

9 A. I do.

10 74 Q. So do you understand reading this  
11 that the applicants are merely seeking a stay of  
12 those claims until December 6, 2024?

13 A. Understood.

14 75 Q. That is that the claims against DAK  
15 by Canopy can proceed after that stay is lifted?

16 A. Understood.

17 MR. PENDRITH: Sorry, counsel, I don't  
18 want to be seen to be interfering here, but that's  
19 on the presumption that there's no request for a  
20 further stay.

21 BY MR. MAIN:

22 76 Q. Sure. Do you understand, Mr.  
23 Paterson, that DAK and the applicants are not  
24 seeking to release or discharge DAK from its  
25 obligations indefinitely?

1           A. I'm not sure that's stated anywhere.  
2           What I'm referencing is the term "indefinitely".

3   77           Q. It says here the related stay that's  
4           being sought on this motion is to December 6, 2024.  
5           That's a date that's now just over two months away,  
6           right?

7           A. Understood.

8   78           Q. So you understand that that's a  
9           temporary stay of those claims and they're not  
10          seeking a permanent discharge or release of those  
11          claims, right?

12          A. That's not the way I read it.

13   79          Q. You understand that now?

14          A. I do based on your commentary.

15   80          Q. Turning back to your affidavit,  
16          paragraph 17, you say: "Notably, DAK Capital also  
17          agreed that its obligations would remain in force  
18          and not be released or discharged in the event of  
19          the Purchaser's voluntary or involuntary  
20          receivership, insolvency, bankruptcy, assignment for  
21          the benefit of creditors, reorganization,  
22          composition, or other similar proceeding affecting  
23          the Purchaser."

24                 Do you understand now that DAK Capital  
25                 is not seeking to have its obligations released or

1 discharged?

2 A. Understood.

3 MR. PENDRITH: Not permanently.

4 Temporarily, yes.

5 BY MR. MAIN:

6 81 Q. Mr. Paterson, you have no  
7 information to indicate that DAK will be in less of  
8 a position to satisfy its alleged guarantee  
9 obligations after a delay of seven weeks?

10 A. I have no information, that's  
11 correct.

12 82 Q. You say in your affidavit, I'll take  
13 you to it, paragraph 33:

14 "It is Canopy's intention to prosecute  
15 the Arbitration against DAK Capital expeditiously."  
16 Can you see that?

17 A. I can.

18 83 Q. DAK has not agreed that the  
19 arbitration should proceed expeditiously, right?

20 A. Correct.

21 84 Q. No timetable has been agreed in the  
22 arbitration?

23 A. Not that I'm aware.

24 MR. MAIN: Can we go off the record.

25 -- OFF THE RECORD at 10:40 a.m.

1 -- UPON RESUMING (10:51 a.m.)

2 BY MR. MAIN:

3 85 Q. Mr. Paterson, prior to the break I'd  
4 asked you some questions about your understanding of  
5 what the applicants were seeking with this motion,  
6 and initially you told me that what I had put to you  
7 just on the record was not your understanding; what  
8 was your understanding of what the applicants were  
9 trying to accomplish with this motion?

10 A. My understanding is they're looking  
11 to have until December 6th and -- which would be a  
12 stay I believe in a legal term.

13 86 Q. Canopy delivered a Notice of  
14 Arbitration dated March 8th, 2024, right?

15 A. Correct.

16 87 Q. And as you discuss in your  
17 affidavit, one of the issues raised in that Notice  
18 of Arbitration is alleged deferred consideration  
19 payments owing under the SPA, right?

20 A. Correct.

21 88 Q. And another issue raised in that  
22 Notice of Arbitration is alleged anniversary  
23 payments, or anniversary payment, that's said to be  
24 owed, right?

25 A. Correct.

1 89 Q. Your evidence is that the deferred  
2 consideration payments first became due on March  
3 31st, 2023, right?

4 A. Correct.

5 90 Q. And the anniversary payments first  
6 became due on December 30, 2023, right?

7 A. Correct.

8 91 Q. Do you understand that the return of  
9 this motion -- the hearing for this motion is going  
10 to be October 18th, there's no adjournments?

11 A. That's my understanding.

12 92 Q. So that's more than a year  
13 and-a-half after Canopy says the deferred  
14 consideration payments became due and were not paid?

15 A. Understood.

16 93 Q. And you understand now that Canopy  
17 is -- sorry, not Canopy, the applicants are seeking  
18 seven weeks of a stay so they can complete the CCAA  
19 restructuring and SISP process?

20 A. I understand.

21 94 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]















1           -- Whereupon this cross-examination adjourned at at  
2           11:00 a.m.

3

4

-----

5

6

REPORTER'S CERTIFICATE:

7

8

I hereby certify the foregoing to be a true and  
9 accurate transcription of my shorthand notes taken  
10 to the best of my skill and ability.

11

12

\_\_\_\_\_  
LAUREEN METZ, CSR

13

14

Certified Shorthand Reporter

15

16

Reproductions of this transcript are in direct  
17 violation of O.R. 587/91 Administration of Justice  
18 Act January 1, 1990, and are not certified without  
19 the original signature of the Court Reporter.

20

21

22

23

24

25

# TAB 2

Court File No. CV-24-00726584-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,  
RSC 1985, c B-3, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 2675970 ONTARIO INC., 2733181  
ONTARIO INC., 2385816 ALBERTA LTD., 2161907  
ALBERTA LTD., 2733182 ONTARIO INC., 2737503  
ONTARIO INC., 2826475 ONTARIO INC., 14284585  
CANADA INC., 2197130 ALBERTA LTD., 2699078  
ONTARIO INC., 2708540 ONTARIO CORPORATION,  
2734082 ONTARIO INC., TS WELLINGTON INC.,  
2742592 ONTARIO INC., 2796279 ONTARIO INC.,  
10006215 MANITOBA LTD., AND 80694 NEWFOUNDLAND &  
LABRADOR INC.,

-----  
EVIDENCE OF ANDREW WILLIAMS  
-----

This is the Cross-Examination of ANDREW WILLIAMS on his Affidavits sworn August 28, 2024, September 3, 2024, September 12, 2024 and September 26, 2024, taken via videoconference through the offices of Network Reporting & Mediation, on the 4th day of October, 2024.

A P P E A R A N C E S :

WILLIAM MAIN ) Lawyers for the Applicants  
GABRIELLE SCHACHTER)

COLIN PENDRITH ) Lawyers for Canopy Growth  
SHAYNE KUKULOWICZ ) Corporation  
KATE BYERS )

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

WITNESS: ANDREW WILLIAMS

PAGE

CROSS-EXAMINATION BY MR. PENDRITH. . . . 5 - 80

\*\*The following list of undertakings, advisements  
and refusals is meant as a guide only for the  
assistance of counsel and no other purpose\*\*

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T  
and appear on the following pages: NONE.

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are  
noted by U/A and appear on the following pages:  
8, 19, 24, 25, 35, 48, 51, 53, 54, 65, 69, 71, 72,  
79, 79

INDEX OF REFUSALS

The questions/requests refused are noted by R/F  
and appear on the following pages: 28, 28, 30, 31,  
38, 39, 40, 77, 78

1	INDEX OF EXHIBITS		
2			
3	NUMBER	DESCRIPTION	PAGE NO.
4			
5	1	Notice of Examination of	13
6		Andrew Williams.	
7			
8	A	(For Identification)	72
9		Email exchange between	
10		Sarah Eskandari and	
11		Colleen Cebuliak.	
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 -- Upon commencing at 10:00 a.m.

2 ANDREW WILLIAMS, AFFIRMED

3 EXAMINATION BY MR. PENDRITH:

4 1 Q. Good morning, Mr. Williams.

5 A. Good morning.

6 2 Q. I'm just going to ask you to state  
7 your full name for the record, please.

8 A. Andrew John Williams.

9 3 Q. Thank you. And you were just sworn  
10 in a moment ago? Sorry, I didn't hear, was that a  
11 "yes"?

12 A. Yes, yes.

13 4 Q. Thank you. Just by way of  
14 background, my name is Colin Pendrith. I'm counsel  
15 for the Canopy Growth Corporation and during our  
16 questioning today I may say "Canopy" and if I say  
17 "Canopy" you'll know that means Canopy Growth  
18 Corporation? You'll have that understanding, sir?

19 A. Yes. Sorry, yes.

20 5 Q. Thank you. And if I refer to DAK  
21 Capital Inc. as simply "DAK" you'll understand what  
22 I'm referring to?

23 A. Yes.

24 6 Q. Perfect. And then also there's an  
25 applicant that's a numbered company, it's 2675970

1 Ontario Inc. By way of shorthand I may call that  
2 "267", and if I say "267" you'll understand what I'm  
3 talking about?

4 A. Yes.

5 7 Q. Perfect. Sir, you understand today  
6 that you're here to be cross-examined on your  
7 affidavits. You've sworn four affidavits in the  
8 context of the CCAA?

9 A. Yes.

10 8 Q. Just by way of brief identification,  
11 there's one on August the 28th, 2024, that's the  
12 initial order affidavit; then there's a September  
13 3rd affidavit in support of the ARIIO; a September  
14 12th affidavit on the motion to extend the stay; and  
15 then a reply affidavit September 26th, 2024 also on  
16 the motion to extend the stay. You swore all of  
17 those affidavits, sir?

18 A. Correct, yes.

19 9 Q. You reviewed them before you swore  
20 them?

21 A. Yes.

22 10 Q. And they were correct and accurate  
23 when you swore them?

24 A. To the best of my knowledge, yes.

25 11 Q. And does that remain the case today?

1 A. Yes.

2 12 Q. You're not aware of any corrections  
3 that need to be made to your affidavits?

4 A. No.

5 13 Q. Sir, did you receive a Notice of  
6 Examination in advance of today's attendance?

7 MR. MAIN: We received it, counsel, and  
8 we discussed the request for documents with  
9 Mr. Williams.

10 BY MR. PENDRITH:

11 14 Q. Understood. Sir, did you bring any  
12 documents in response to our Notice of Examination,  
13 which -- actually I'll share my screen so you can  
14 see what I'm talking about so there's no  
15 misunderstanding here.

16 I'm sharing my screen now and you'll see  
17 a Notice of Examination to Andrew Williams, that's  
18 you, requiring you to attend today at 10:00, and do  
19 you see there's a request, you're required to  
20 produce at the examination the following documents  
21 and things: All documents referenced in your  
22 affidavit or relied upon when swearing your  
23 affidavits other than those already appended to your  
24 affidavits.

25 Did you bring any documents in response

1 to that request?

2 A. I have the affidavits, yes.

3 15 Q. Did you bring any documents in  
4 addition to the affidavit?

5 A. Yes.

6 16 Q. What are those documents?

7 A. It's supporting documents for the  
8 affidavits.

9 17 Q. Okay. Could you please provide a  
10 copy of those documents to me?

11 A. Yes.

12 U/A MR. MAIN: I'm not sure what documents  
13 he's referring to. We're going to have to review  
14 those.

15 BY MR. PENDRITH:

16 18 Q. Okay. Well, I would appreciate  
17 receiving those as soon as possible. Clearly, the  
18 witness has brought something in response. Do you  
19 have those documents in front of you, sir?

20 A. I have printouts here, yes.

21 19 Q. I'd like a copy of those printouts,  
22 please.

23 A. Yes.

24 MR. PENDRITH: Counsel, what is the  
25 basis for not providing those documents right now?

1                   MR. MAIN: I don't know what documents  
2 Mr. Williams is referring to and I'm going to review  
3 those documents before we agree to turn them over.  
4 They may be privileged.

5                   BY MR. PENDRITH:

6    20               Q. Sir, you haven't discussed these  
7 documents with your counsel?

8                   A. We've reviewed the affidavits.

9    21               Q. I understand that. The additional  
10 documents that you brought --

11                   A. No, no.

12   22               Q. -- you've not taken the opportunity  
13 to review those with your counsel?

14                   A. The affidavits I've discussed with  
15 my counsel.

16   23               Q. Right, but I'm talking about the  
17 additional documents that are not in your affidavit.

18                   A. No.

19   24               Q. Okay. Why didn't you review those  
20 with your counsel?

21                   A. It was just to familiarize myself  
22 with the background of what we're going to be  
23 talking about today given the time that's elapsed  
24 between the SPA and the subsequent events, so I was  
25 familiarizing myself with that detail.

1 25 Q. And those documents were necessary  
2 to inform your testimony today?

3 A. They were needed to remind me.  
4 Given everything that's going on at the moment, I  
5 needed to remind myself of some of the detail.

6 26 Q. In the absence of those documents,  
7 do you have independent knowledge of the facts  
8 deposed to in your affidavit?

9 A. Well, sorry, could you clarify that?  
10 What does that mean?

11 27 Q. I'm trying to understand the extent  
12 to which you're relying on these documents when  
13 you're swearing your affidavits and ascertain how  
14 much of what's in your affidavits is independently  
15 in your mind, meaning you don't need your memory  
16 refreshed, and how much is relied up in the  
17 documents to tell you what happened.

18 A. It would be a combination.

19 28 Q. It would be a combination. Okay.  
20 What were the particular areas where you needed to  
21 refresh your memory?

22 A. The details around the SPA at the  
23 time, and the nature of the deferred --

24 29 Q. What details are those that you  
25 refreshed your memory on? What did you --

1 A. Well --

2 MR. MAIN: Counsel, can you -- sorry,  
3 Andy. Counsel, could you please let the witness  
4 finish their answer.

5 MR. PENDRITH: Sorry, I thought you had  
6 finished. Please continue.

7 THE DEPONENT: I'm sorry, can you ask  
8 the question again, Colin?

9 BY MR. PENDRITH:

10 30 Q. So I'm just trying to understand  
11 what are the particular areas that you refreshed  
12 your memory on?

13 A. The events that happened over two  
14 years ago, or two years ago around the Agreement at  
15 the time when the SPA was negotiated. For context,  
16 I'd just joined the business. I've been with the  
17 business two years, so it was to familiarize myself  
18 with the background.

19 31 Q. So is it fair to say that you were  
20 not involved in the negotiation of the SPA?

21 A. I was involved in the follow-up to  
22 the signature of the SPA in terms of the commercial  
23 implementation, but not to the negotiation of the  
24 terms.

25 32 Q. What was the date that you joined

1 the applicants?

2 A. I joined the business in late August  
3 2022.

4 33 Q. Understood. So you were there for  
5 the pre-closing period?

6 A. Briefly.

7 MR. PENDRITH: Counsel, I may have  
8 questions arising from the documents that I'm  
9 expecting the witness to produce but I'll have to  
10 hold off on those until I see them but I'll continue  
11 for now.

12 BY MR. PENDRITH:

13 34 Q. In terms of the affidavits that  
14 you've sworn, two of them were specifically sworn in  
15 support of a motion that the applicants are bringing  
16 in order to extend the stay of proceedings to  
17 include DAK, correct?

18 A. Correct.

19 35 Q. Okay. Am I correct that the only  
20 claim against DAK that the applicants are seeking to  
21 stay is an arbitration commenced by Canopy?

22 A. To my understanding, yes.

23 36 Q. Are you aware of any other  
24 litigation that DAK is involved in?

25 Sorry, I didn't catch the answer there.

1 I'm not sure if it's my end or your end.

2 A. "No" is the answer.

3 37 Q. Thank you. And so you'll agree that  
4 this motion to extend the stay is uniquely targeted  
5 at one creditor, namely Canopy?

6 A. To my understanding, yes.

7 38 Q. Are you able to speak on behalf of  
8 DAK?

9 I'm sorry, for some reason I'm not  
10 picking that up. Is anyone else -- can we go off  
11 the record actually for a moment.

12 -- OFF THE RECORD DISCUSSION --

13 MR. PENDRITH: If we could mark the  
14 Notice of Examination as Exhibit 1, please.

15 --- EXHIBIT 1: Notice of Examination of Andrew  
16 Williams.

17 BY MR. PENDRITH:

18 39 Q. I'm not sure we picked up your  
19 answer but before we took a quick break, Mr.  
20 Williams, I'd asked if you were able to speak on  
21 behalf of DAK and I believe you said no; is that  
22 correct?

23 A. No. That is correct.

24 40 Q. So you can't provide a position on  
25 behalf of DAK, can you?

1                   A. Inasmuch as I don't work for them,  
2                   no, I can't.

3     41                   Q. And so you can't advise then whether  
4                   DAK intends to seek a release or a permanent stay of  
5                   claims in Canopy's arbitration?

6                   A. No, I can't speak to that.

7     42                   Q. The length of the stay which is  
8                   being sought in your motion is until December the  
9                   6th of this year; is that correct?

10                   A. To my understanding.

11     43                   Q. Do you agree that it's quite  
12                   possible that an extension of that stay could be  
13                   sought subsequently?

14                   A. Given the process that we're in with  
15                   CCAA, I don't think we can guarantee any particular  
16                   dates. We're working through, as you're aware, the  
17                   SISP process. We hope to have it finalized by that  
18                   date, but sitting here today we can't -- I can't  
19                   guarantee that, no.

20     44                   Q. And I'm not being critical. It's  
21                   very common, as you may know, to have dates within  
22                   CCAAs be extended. But in the event that the CCAA  
23                   is not concluded by December the 6th, isn't it the  
24                   applicants' intention to seek to extend the stay?

25                   A. The applicant -- sorry, Colin, to

1 clarify, the applicant is DAK, correct?

2 45 Q. No. Sorry, when I say "the  
3 applicants", and perhaps I should clarify that, I  
4 mean the CCAA applicants, so that would be 267 and  
5 the various other numbered companies that make up  
6 the CCAA applicants.

7 A. Right. So the question again,  
8 please?

9 46 Q. Well, it's your motion, the  
10 applicants' motion to extend the stay to include  
11 DAK.

12 A. Yes.

13 47 Q. And what I'm asking is in the event  
14 that the CCAA carries on beyond December 6th, isn't  
15 it the applicants' intention to seek to extend the  
16 stay?

17 A. Well, potentially. Yeah, I cannot  
18 speak to that today but potentially, yes, that could  
19 be a scenario if we're still in CCAA and the work  
20 that's required to manage the CCAA process, correct.

21 48 Q. The applicants, and here I'm talking  
22 about the CCAA applicants, their business is owning  
23 and operating and franchising retail cannabis  
24 dispensaries?

25 A. Primarily, yes.

1 49 Q. Would you describe the applicants as  
2 sophisticated, commercial actors?

3 A. Define "sophisticated" for me.  
4 It's -- I would say cannabis is one of the less  
5 sophisticated retail businesses I've been involved  
6 in.

7 50 Q. But in terms of -- let's talk about  
8 the management. Is management sophisticated?

9 A. Those of us who are here are  
10 knowledgeable of the industry, for sure.

11 51 Q. And you would bring that knowledge  
12 to the processes that you implement when running the  
13 business, is that fair?

14 A. That is fair.

15 52 Q. Do you agree that part of that  
16 sophisticated knowledge would include tracking  
17 inventory that gets sold in stores?

18 A. No. I think you have to  
19 differentiate here between the systems and the  
20 people, the individuals.

21 So I think the individual expertise is  
22 there. Our systems are, to a point, good but there  
23 is a lot of manual input required to refine  
24 information, so I think -- if that answers your  
25 question.

1 53 Q. Do you agree with me that you, I  
2 said "you" I mean the applicants, track inventory  
3 that is sold in the stores? Does that occur or not  
4 occur?

5 A. Yes, that does occur.

6 54 Q. Okay. And there are records that  
7 are maintained that would show those sales?

8 A. Yes. The reason I hesitate when I  
9 say that is the records for the majority of the  
10 business are good.

11 The Canopy stores that we acquired in  
12 the Prairies we have no sales information of any  
13 quality prior to the acquisition.

14 55 Q. Okay. But I'm talking about -- and  
15 I should clarify the date range.

16 From the date of the acquisition onwards  
17 you maintained records that tracked inventory and  
18 what was being sold, correct?

19 A. Yes.

20 56 Q. What level does that tracking occur?  
21 Is it at the store level and also in the aggregate?

22 A. It's store level by SKU, by unit, by  
23 product, and it can be aggregated, yes.

24 57 Q. And how is that information housed?  
25 Is it in a spreadsheet or a database?

1 A. Primarily in spreadsheets.

2 58 Q. Have you ever requested those  
3 spreadsheets to look at them?

4 A. Yes.

5 59 Q. And how long did it take you to get  
6 those spreadsheets?

7 A. It took, depending on the complexity  
8 of what you're asking for and the time scales  
9 involved, it can vary. I can see yesterday's sales  
10 pretty quickly. As we go further back there's  
11 more -- more rework required.

12 So I can't give you a firm definite  
13 timing on that, Colin, but it varies by the  
14 complexity of what we're being asked to review.

15 60 Q. Okay. And to be clear, I'm not  
16 asking for how long it would take you to review data  
17 that may be there. I'm just talking about the  
18 process of data retrieval. How long does that take?

19 I presume you tell someone, "Go get me a  
20 spreadsheet showing X, Y, and Z", and they'll go and  
21 retrieve that for you and put it on your desk or it  
22 pops in your Inbox?

23 A. Within days I would get that  
24 information. It wouldn't be immediate.

25 61 Q. And who would be the person that

1 would perform that retrieval task?

2 A. It would be primarily Greg Bedford,  
3 the CFO.

4 62 Q. Greg Bedford. Is that something  
5 Mr. Bedford would delegate to someone to do the  
6 actual manual retrieval process, or is Mr. Bedford  
7 the one who's going into the document and --

8 A. He would primarily do a lot of that  
9 himself.

10 63 Q. Okay.

11 A. To my understanding. I don't do  
12 Greg's job but that's my understanding of how he  
13 would pull the data.

14 64 Q. Could you ask Mr. Bedford if he  
15 could delegate that task to someone?

16 U/A MR. MAIN: I'm going to take that under  
17 advisement.

18 MR. PENDRITH: Okay.

19 THE DEPONENT: Sorry, I'm not familiar  
20 with that process. What do we mean by that?

21 MR. MAIN: It means I'm taking it away,  
22 Andy, and you're not to answer.

23 THE DEPONENT: Okay.

24 MR. PENDRITH: Thank you.

25 BY MR. PENDRITH:

1 65 Q. So is it fair to say that you don't  
2 know sitting here today how long any particular  
3 request for documents might take?

4 A. I would need to understand the full  
5 detail of what was being requested and it will vary,  
6 but, no, I can't give you a definitive timeline.

7 66 Q. And do you know what documents would  
8 be required for DAK to defend its position in  
9 response to Canopy's arbitration?

10 A. We have an idea, yes, around the  
11 deferred --

12 67 Q. What are those documents?

13 A. They would primarily be, as I  
14 understand it, the information required for the  
15 deferred payments.

16 68 Q. Anything else?

17 A. Not to my knowledge.

18 69 Q. Okay. Do you know how long it would  
19 take to get that information?

20 A. It would take a period of time  
21 because there are some complexity around the  
22 guarantee elements of DAK to that deferred payments.

23 So we pull the information at an  
24 aggregate level and then within that there are  
25 different subsections for which DAK is a guarantor;

1           that would take a degree of complexity and a degree  
2           of time to pull that information.

3       70                   Q.   And how much time would that be?

4           A.   I don't know.  It's a pretty big  
5           exercise.  I can't give you a definitive timing on  
6           that one.

7       71                   Q.   Do you have any sense at all?

8           A.   It would be a lot of work.  That's  
9           all I know.

10      72                   Q.   But I'm trying to understand what "a  
11           lot of work" means.  Is that hours?  Is it days?  Is  
12           it months?  Is it years?  Is it --

13           A.   It's not years.  It would be -- if  
14           we were not going through the process we're going  
15           through at the moment, I would expect that to be an  
16           exercise that would take weeks.

17                           That said, given where we are and given  
18           what we're going through as a business, I would have  
19           to probably speak to Greg and understand how we  
20           would delegate that, you know, allocate that time  
21           within the other work that we have currently going  
22           on.

23      73                   Q.   So I take it when you say you would  
24           expect ordinarily it would take weeks, you're  
25           speculating on that; is that fair?

1                   A. It's a -- yeah, I do not know the  
2 exact detail of the work that would be required, but  
3 a top-line view when I look at the nature of the  
4 Agreement, there are pullouts and there are some  
5 complexity around the rates, the stores are  
6 included. It would require a considerable amount of  
7 rework, but I'm not -- I wouldn't want to speak on  
8 Greg's behalf but I think there is a significant  
9 amount of work required to do that.

10       74            Q. And all of this information comes  
11 from the database though. It's just a matter of  
12 selecting the appropriate data to pull out, is that  
13 fair?

14                   A. But you would have to pull it out --  
15 so a lot of it is within, as I said earlier, would  
16 be within Excel. We would have to -- you know, I'm  
17 thinking through the detail of what would be  
18 required here.

19                   There's a lot of work in terms of  
20 defining the pull-outs within the database, because  
21 it's individual store level detail we're looking at  
22 here, and particularly around particular timings and  
23 on particular SKUs, and there are exclusions within  
24 the Agreement which we'd have to then take out.

25                   So I think it would require a

1 significant amount of work to do that. It's  
2 available in the database, but it's extracting it  
3 which would be the challenge.

4 75 Q. The database could be made available  
5 to DAK, correct?

6 A. Yes.

7 76 Q. Is there any reason DAK couldn't  
8 hire a service provider to pull the required  
9 information from the database?

10 A. I would probably have to defer that  
11 to DAK. I don't know.

12 77 Q. You can't think of any reason  
13 sitting here right now?

14 A. As I said, I'd want DAK to answer  
15 that question.

16 78 Q. So would I.

17 A. They primarily rely on us with our  
18 knowledge of the products within the team to pull  
19 that in an accurate manner.

20 I think if you used -- my personal view  
21 is if you use an outside consultant to pull that  
22 information, we would need to validate it very  
23 carefully regardless because it is pretty complex  
24 when I look at what's required and the levels which  
25 we would need to pull the information to be

1                   confident that it was accurate.

2       79                   Q.   Confident that the accurate  
3                   information had been pulled from the database?

4                   It's not a matter of validating the  
5                   information, it's a matter of pulling the correct  
6                   information from the database, right?

7                   A.   Sorry, can you say that again,  
8                   Colin?  What do you mean?

9       80                   Q.   Well, I'm trying to understand.  You  
10                   made a comment about validating information and I'm  
11                   trying to understand.  Are you talking about  
12                   actually validating the data, or are you talking  
13                   about validating that the correct data from the  
14                   database has been pulled?

15                   A.   The last one.  The second point you  
16                   made.

17       81                   Q.   Right.  Has the Deferred  
18                   Consideration under the Share Purchase Agreement  
19                   ever been calculated?

20                   A.   It's been calculated at a top-line  
21                   level to my knowledge to the end of the last  
22                   financial year.

23       82                   Q.   Could you provide that calculation,  
24                   please?

25                   U/A               MR. MAIN:  I'll take it under

1           advisement.

2                           BY MR. PENDRITH:

3    83                   Q.   Who instructed that that occur?

4                   A.   It would have been normal run of  
5   business I think when we were trading with CTC in  
6   the old times.

7    84                   Q.   So, it was being calculated on a  
8   quarterly basis as was required under the Share  
9   Purchase Agreement; is that right?

10                   A.   That's my understanding, yes.

11   85                   Q.   Okay. But you didn't provide that  
12   calculation to Canopy, did you?

13                   A.   To my knowledge I don't -- that I  
14   don't know. I don't know the answer to that  
15   question.

16   86                   Q.   Who would know?

17                   A.   Probably Greg, Greg Bedford.

18   87                   Q.   Would you ask Mr. Bedford (a),  
19   whether that information was provided to Canopy and  
20   (b), why not?

21   U/A                   MR. MAIN: I'll take it under  
22   advisement.

23                   MR. PENDRITH: Thank you.

24                   BY MR. PENDRITH:

25   88                   Q.   You're familiar, obviously, with the

1 Notice of Arbitration. It's appended to your  
2 affidavit, correct?

3 A. Yes.

4 89 Q. It's your understanding that the  
5 only claims that Canopy is currently advancing in  
6 the arbitration is the Guarantee Claim against DAK,  
7 correct?

8 A. That is my understanding, yes.

9 90 Q. And DAK is the payment guarantor  
10 under the SPA, that's your understanding of what  
11 they are?

12 A. For relevance of the agreement, yes.

13 91 Q. And you understand that the claims  
14 that Canopy is asserting as against DAK as a payment  
15 guarantor concerns something that I'm going to call  
16 the "anniversary payment" as well as the "deferred  
17 consideration" we've been talking about.

18 When I say the "anniversary payment", do  
19 you know what that is?

20 A. Yes, I'm familiar with that.

21 92 Q. That's a \$3,000,000.00 payment that  
22 was supposed to have been made one year following  
23 the closing?

24 A. Yes.

25 93 Q. And it's your understanding that the

1 anniversary payment is part of the purchase price?

2 A. I can't comment. I don't know.

3 94 Q. You're not sure?

4 A. I'm not sure.

5 95 Q. What did you think it was on account  
6 of if not the purchase price?

7 A. It was part of the Agreement --  
8 well, it's part of the way the deal was structured,  
9 as I understand it.

10 96 Q. And I'm not trying to trick you on  
11 anything but I'll pull the Agreement up so you can  
12 take a look at what it says just so that we're  
13 talking about the same thing.

14 A. Okay.

15 97 Q. I'll share my screen. Okay. We're  
16 looking here at section 2.10 of the Share Purchase  
17 Agreement, Payment of Purchase Price.

18 A. Right.

19 98 Q. And you see it says: "The Purchase  
20 Price (as adjusted according to this Article 2 and  
21 Article 8) will be paid and satisfied subject to an  
22 adjustment in accordance with this Article 2 as  
23 follows:", and there's a number of items here. Do  
24 you see subsection (b)?

25 A. Yes.

1 99 Q. "Twelve months following the Closing  
2 Date, the Purchaser shall pay to the Vendors the  
3 remaining \$3,000,000.00...", it's defined as the  
4 Anniversary Cash Consideration, "...of the Up-Front  
5 Consideration". Do you see that?

6 A. Yes, I see it.

7 100 Q. Okay. And so with that context, my  
8 understanding is that the \$3,000,000.00 anniversary  
9 cash consideration, or the anniversary payment,  
10 whatever we're calling it, is part of the purchase  
11 price for the business, is that fair?

12 R/F MR. MAIN: Counsel, I'm going to step  
13 in. The contract speaks for itself. The witness  
14 isn't here to interpret the Agreement.

15 MR. PENDRITH: Thank you for that.

16 BY MR. PENDRITH:

17 101 Q. Has that \$3,000,000.00 payment been  
18 made?

19 R/F MR. MAIN: I'm going to step in again.  
20 That's an issue at play in the arbitration.

21 MR. PENDRITH: Okay. So we're talking  
22 about the arbitration. He swore in an affidavit  
23 that references the arbitration. You're looking to  
24 stay a claim that has to do with that. I can't ask  
25 whether the payment has been made, is that actually

1 your position, counsel?

2 MR. MAIN: Yes, it is. There's no  
3 dispute that that is an issue in the arbitration and  
4 that's the extent of what is relevant on this motion  
5 and this witness is not here to speak to the merits  
6 of the arbitration.

7 MR. PENDRITH: I'm not asking to speak  
8 to the merits of arbitration for the sake of the  
9 arbitration. I'm asking about it because he talks  
10 about these things in his affidavit.

11 When you put something within the four  
12 corners of your affidavit it's fair game for  
13 questioning. The law is very clear on that. You're  
14 going to refuse this question?

15 MR. MAIN: Yes, I am counsel. Thank you  
16 for the lesson.

17 MR. PENDRITH: Do you have any better  
18 reason aside from you don't want to answer it?

19 MR. MAIN: It's privileged.

20 MR. PENDRITH: It's privileged? The  
21 fact of -- excuse me. The fact of whether a  
22 \$3,000,000.00 payment was made or not made is a  
23 privileged -- calls for a privileged answer. Am I  
24 understanding you correctly?

25 MR. MAIN: Counsel, you're aware that

1 DAK, a related company, and indeed the Tokyo  
2 entities, are engaged in litigation with your client  
3 on these very issues.

4 I'm not going to allow this  
5 cross-examination to become an effort to pry into  
6 the specifics of the defences that are going to be  
7 raised in that arbitration. That material remains  
8 protected by litigation as solicitor-client  
9 privileged and all questions are going to be  
10 refused.

11 MR. PENDRITH: So litigation privilege  
12 speaks to documents, counsel, not facts. Whether  
13 you paid money or didn't pay money isn't a legal  
14 opinion you've received from a lawyer. There is no  
15 basis to refuse this question.

16 I'm going to let your objection stand on  
17 the record. I know you're not going to allow the  
18 witness to answer it, but it makes utterly no sense.

19 MR. MAIN: Okay. Thank you for your  
20 opinion, counsel.

21 BY MR. PENDRITH:

22 102 Q. I'm putting it to you that nobody  
23 has paid this anniversary cash consideration, do you  
24 agree?

25 R/F MR. MAIN: Refused.

1 BY MR. PENDRITH:

2 103 Q. The deferred consideration that's  
3 owing, that hasn't been paid either, has it?

4 R/F MR. MAIN: Refused.

5 MR. PENDRITH: On the same basis as  
6 articulated previously, counsel?

7 MR. MAIN: Yes.

8 MR. PENDRITH: Thank you.

9 BY MR. PENDRITH:

10 104 Q. 267 is a non-operating holding  
11 company?

12 A. I don't understand the question, I'm  
13 sorry. What do you mean by that?

14 105 Q. Is 267 -- you understand the entity  
15 I'm talking about?

16 A. Yes.

17 106 Q. Is it a non-operating holding  
18 company?

19 A. I'm not -- well, I would assume not.  
20 I'm not really that familiar with the company  
21 structures. It houses the Tokyo Smoke business,  
22 clearly.

23 107 Q. So you don't know if that's correct  
24 or incorrect?

25 A. No, not at this stage.

1 108 Q. Okay. I'm going to take you to your  
2 August 28th affidavit. This is the first page.  
3 This was the affidavit you swore on August the 28th.  
4 Do you see that?

5 A. Yes.

6 109 Q. Okay. I'm going to scroll down to  
7 paragraph 14. Do you see where it says --

8 A. I see, yes.

9 110 Q. -- "2675970 Ontario Inc. is a  
10 non-operating holding company." Do you see that,  
11 sir?

12 A. Yes.

13 111 Q. You wrote those words?

14 A. They were written on my behalf, yes.

15 112 Q. You swore that they were true?

16 A. Yes.

17 113 Q. Do you know if that's true sitting  
18 here today --

19 A. Yes, yes, yes. Yes, it's --

20 114 Q. So when I asked you about 30 seconds  
21 ago if that was correct and you said you didn't  
22 know, why is it that you know now, sir?

23 A. Because you've refreshed my memory.  
24 It's here.

25 115 Q. I refreshed your memory that you

1 wrote it previously so now you know it to be true?

2 MR. MAIN: You have his answer.

3 BY MR. PENDRITH:

4 116 Q. What is the basis for the statement  
5 that 267 is a non-operating holding company? Where  
6 did you get that information from?

7 A. I can't answer that question.

8 117 Q. Sir, are you the president of 267?

9 A. Yes, I am.

10 118 Q. Why do you not know if it's a  
11 non-operating holding company or not? How do you  
12 not know that?

13 A. I'm directly involved in the  
14 commercial running of the day-to-day business. I'm  
15 not an expert on legal structures.

16 119 Q. But you felt comfortable putting  
17 that statement in your affidavit?

18 A. Yes. Upon advice, yes.

19 120 Q. What advice?

20 A. By our -- our legal advice.

21 121 Q. Are there other aspects of the  
22 affidavits that you swore that you don't really know  
23 and it was just legal advice that you parroted?

24 A. No. Not to my knowledge, no.

25 122 Q. So it's just this? Nothing other

1 than this; is that right, Mr. Williams?

2 A. To my knowledge, Colin, yes.

3 123 Q. Thank you. Can you explain the  
4 corporate relationship between 267 and DAK?

5 A. Well, DAK is the guarantor, as you  
6 know, for the BMO loan, and is the guarantor beyond  
7 elements of the SPA, and it provides certain  
8 management services to the Group, to 267.

9 124 Q. Okay. I should clarify my question.  
10 So those are contractual relations not a corporate  
11 relation. So what I'm trying to understand is does  
12 DAK own 267? Does 267 own DAK? Are they both owned  
13 by the same entity? What is the corporate  
14 relationship amongst --

15 A. That I can't -- yeah, I can't answer  
16 that question. I do not know.

17 125 Q. Is there any relationship between  
18 them?

19 A. I have no relationship with DAK  
20 Capital.

21 126 Q. Okay. So appreciating that you  
22 personally have no relationship with DAK Capital, I  
23 just want to know, is DAK a related company to 267  
24 in the sense of corporate ownership?

25 A. Within -- to my understanding yes,

1 it's within the same corporate ownership.

2 127 Q. Okay. What is the basis of that  
3 knowledge?

4 A. From interactions I've had within  
5 the business, overall structure charts I've seen.

6 128 Q. Can you describe the interaction  
7 within the business that informed you that there was  
8 a relationship of a corporate perspective between  
9 267 and DAK?

10 A. When -- in terms of the -- I've seen  
11 structure charts relating to the relationships  
12 between DAK and 267.

13 129 Q. Could you produce those charts,  
14 please?

15 U/A MR. MAIN: I'll take it under  
16 advisement.

17 MR. PENDRITH: Thank you. And he's  
18 clearly testified in his multiple affidavits that  
19 these are related corporations. The fact that he  
20 doesn't actually seem to know right now but he's  
21 testified to that fact, so I think it's fair to  
22 explore.

23 MR. MAIN: Well, I don't agree that he  
24 doesn't know. I think he's confirmed that he does  
25 have that belief, but I'll take your request under

1           advisement.

2                           BY MR. PENDRITH:

3   130                   Q.   Sorry, to clarify, because your  
4           counsel has suggested that you do know, Mr.  
5           Williams, do you know that DAK and 267 are related  
6           entities? Do you know --

7                           A.   Yes, I know they're related  
8           entities. I can't give you a detailed structure  
9           chart of that relationship, but I know they're  
10          related entities.

11   131                   Q.   Understood. Thank you for that  
12          clarification. Who are DAK's officers?

13                           A.   I don't know. I don't know.

14   132                   Q.   Do you know whose DAK's directors  
15          are?

16                           A.   Well, obviously Daryl but I don't  
17          know -- I have an idea who's involved but I don't --  
18          I wouldn't want to confirm that in this meeting  
19          because I have very little interactions with DAK  
20          Capital, very little.

21   133                   Q.   Understood. Who is Daryl?

22                           A.   Daryl Katz.

23   134                   Q.   Daryl Katz. And "DAK", that stands  
24          for Daryl A. Katz, or something to that effect?

25                           A.   I'm not sure.

1 135 Q. Do you know who Jurgen Schreiber is?

2 A. Yes.

3 136 Q. Who is he relative to DAK?

4 A. I don't believe he has a  
5 relationship to DAK. He's my direct boss, CEO of  
6 OEG.

7 137 Q. I'm going to take you to some  
8 sections in your most recent affidavit. This is the  
9 September 26th affidavit. Can you see that?

10 A. Yes.

11 138 Q. I'm going to take you now to  
12 paragraph 18. It states:

13 "Without any intention to waive any  
14 applicable privilege, I am advised by Mr. Schreiber  
15 that DAK intends to pursue all substantive avenues  
16 to defend the claims made against it, including but  
17 not limited to the defences going to the  
18 enforceability of the guarantee."

19 So the source of that information is Mr.  
20 Schreiber who has no involvement with DAK?

21 A. I do not believe he's an officer of  
22 DAK.

23 139 Q. Aside from what Mr. Schreiber told  
24 you, do you have any information about what DAK  
25 intends to do or not do in the arbitration?

1                   A. I've been informed by Mr. Schreiber  
2                   what we intend to do, or what DAK intends to do.  
3                   Beyond that, no.

4   140               Q. Give me the totality of what Mr.  
5                   Schreiber told you.

6                   A. We intend to defend the case based  
7                   on some issues we had upon acquiring the business  
8                   back in 2022.

9   141               Q. When you say "we" who do you mean?  
10                  DAK?

11                  A. Tokyo Smoke. We uncovered a number  
12                  of issues with the business which my understanding  
13                  it's DAK's view that that falls into question the  
14                  nature of some of the payments, hence the need for  
15                  the arbitration.

16   142               Q. So, to clarify, DAK -- Mr. Schreiber  
17                  has told you that DAK intends to defend the  
18                  arbitration based on things that happened to Tokyo  
19                  Smoke which is not DAK; is that correct?

20                  R/F           MR. MAIN: Again, we're getting into  
21                  further details on the issues and anticipated  
22                  defences in the arbitration.

23                               The evidence that we're leading on this  
24                               is in the affidavit and we're not going to allow  
25                               this to become an exercise of exploring the defences

1 led in the arbitration, so that question's refused.

2 MR. PENDRITH: Sorry, you're not going  
3 to allow this to become an exercise in  
4 cross-examining on the statements that your witness  
5 made in the affidavit?

6 Counsel, you put this squarely in issue.  
7 You can't go and say something in an affidavit and  
8 then not allow questioning on it. That's one of the  
9 first principles of cross-examination. It's in an  
10 affidavit, you get to cross on it. You put it in  
11 the affidavit. It's a totally improper refusal.

12 MR. MAIN: Okay. I have your view.  
13 Thank you. You have my refusal.

14 BY MR. PENDRITH:

15 143 Q. What else did Mr. Schreiber tell you  
16 about the arbitration?

17 R/F MR. MAIN: Refused.

18 BY MR. PENDRITH:

19 144 Q. Did Mr. Schreiber tell you anything  
20 in writing?

21 A. I do not recollect. It's possible  
22 but I cannot recollect it. It's mostly been a  
23 verbal conversation.

24 145 Q. Would you review your records and  
25 produce any documents where Mr. Schreiber explained

1 to you about DAK's position in the arbitration?

2 R/F MR. MAIN: Refused.

3 BY MR. PENDRITH:

4 146 Q. Paragraph 20 states: "I am advised  
5 by Mr. Schreiber that DAK will need to rely on the  
6 TS Management Team to effectively respond to the  
7 Canopy Claimants' claims, and to defend itself in  
8 the arbitration."

9 And then it continues to say: "DAK will  
10 need to obtain information, documents, and evidence  
11 from the TS Management Team as DAK does not have any  
12 separate internal sources for such information,  
13 documents, and evidence."

14 That information was conveyed to you by  
15 Mr. Schreiber, correct?

16 A. Yes, yes.

17 147 Q. And is that the totality of what he  
18 told you on that topic, or did he tell you something  
19 additional?

20 A. No, that's the totality.

21 148 Q. Do you know what steps Mr. Schreiber  
22 took to inform himself when he was advising you of  
23 this information?

24 A. Sorry, can you clarify the question?  
25 What do you mean by that?

1 149 Q. So Mr. Schreiber's telling you some  
2 things, and I want to understand, do you know what  
3 Mr. Schreiber did to validate that the things he was  
4 telling you were true, or do you not know?

5 A. I do not know.

6 150 Q. You don't actually know that these  
7 things are true, do you?

8 A. I know that DAK does not have the  
9 necessary resource without our input given the  
10 nature of the interactions between Canopy and Tokyo  
11 Smoke, which lies at the heart of the current  
12 negotiation and arbitration. They will require a  
13 significant amount of input from ourselves around a  
14 number of the interactions and some of the data you  
15 referred to just now around the deferred payment.

16 There are also other pieces at play that  
17 will require validation and input from the Trading  
18 Team and the Tokyo Smoke team to support them.

19 They do not have that level of knowledge  
20 of our business that would be required to build a  
21 necessary case without our input.

22 151 Q. What are those pieces of information  
23 you referred to?

24 A. So we touched on the deferred  
25 consideration, they would need our input there for

1           sure to calculate that accurately.

2                       There is a number of claims that we've  
3           made against Canopy regarding the state in which the  
4           business was left - pricing, stock levels,  
5           promotions. They would require our validation and  
6           confirmation that that information remains accurate.  
7           Um --

8   152                       Q. Why do you say --

9                       MR. MAIN: Counsel, let him finish his  
10          answer.

11                       BY MR. PENDRITH:

12   153                       Q. Sorry, I may have jumped in too  
13          early. Did you have anything further to add?

14                       A. No.

15   154                       Q. Do you say that DAK is able to  
16          assert claims in regards to what 267, who is the  
17          purchaser, got as part of the SPA? Are those things  
18          DAK can assert?

19                       A. I'm sorry, can you ask the question  
20          again, Colin, so I can understand what you're  
21          asking.

22   155                       Q. You talked about -- you used the  
23          word "we", and when you say "we" I'm presuming you  
24          mean we/267 as purchaser?

25                       A. Yes, yes.

1 156 Q. You have some issues with what you  
2 got on the transaction.

3 A. That is correct.

4 157 Q. And in broad strokes those issues  
5 were there was some pre-closing discounting of  
6 merchandise, that's one issue in broad strokes;  
7 fair?

8 A. Yes.

9 158 Q. And the inventory levels were lower  
10 than you anticipated them to be?

11 A. Yes. And there were irregular --  
12 there was irregular price activity over and above  
13 promotions.

14 159 Q. Right. I've lumped that into  
15 discounts. The gist of those things is that the  
16 price of the products was lower than you thought it  
17 should have been?

18 A. Yes. And the product levels, the  
19 stock levels were lower than we anticipated.

20 160 Q. Okay. And who is it that was the  
21 buyer in this deal? It was 267, right?

22 A. Yes, correct.

23 161 Q. It wasn't DAK? Sorry, I didn't hear  
24 your answer.

25 A. I said no.

1 162 Q. So I'm trying to understand, why do  
2 you think it is that DAK can assert those claims in  
3 respect of inadequate inventory levels or  
4 pre-closing price adjustments?

5 A. So my understanding is that the  
6 payment schedule was based on us being left with a  
7 business, or inheriting a business, "we" being 267,  
8 inheriting a business that was fully operational;  
9 that was not the case, and, as such, it calls into  
10 question the nature of the guaranteed payments.  
11 That is my understanding.

12 163 Q. Is that your complete understanding?

13 A. As it stands, yes. Yes.

14 164 Q. And where do you get that  
15 understanding from?

16 A. From my interactions with the  
17 business. I was with the business at that stage and  
18 was involved in calculating -- helping calculate  
19 some of the issues that we found in understanding  
20 the financial implications to the Group, to 267, as  
21 a consequence of what we inherited.

22 165 Q. Who is the decisionmaker at DAK that  
23 gives instructions regarding how to prosecute or  
24 defend the arbitration?

25 A. I don't know.

1 166 Q. Are you aware that DAK has not  
2 defended the arbitration yet?

3 A. I'm aware that the dates were put in  
4 the diary and we were unable to meet -- to start the  
5 process prior to CCAA.

6 167 Q. How is it that you know how DAK  
7 intends to plead its case if you don't even know who  
8 the decisionmaker is at DAK?

9 A. I was advised by Mr. Schreiber that  
10 DAK intends to argue the issue at hand.

11 168 Q. But you don't know the source of Mr.  
12 Schreiber's information?

13 A. Upon which -- I do not  
14 understand the -- I do not know the internal  
15 structuring of the DAK company, so no.

16 169 Q. DAK has no employees?

17 A. I don't know.

18 170 Q. You're not sure about that fact?

19 A. I'm not sure, no.

20 171 Q. Looking at paragraph 5 of your  
21 affidavit it says: "DAK, an affiliate of the  
22 applicants, has no employees." You wrote that on --  
23 or you swore that on September 26th.

24 A. Yeah.

25 172 Q. Are you now refreshed --

1 A. Yes.

2 173 Q. -- that DAK has no employees?

3 A. Yes. I'm refreshed, yes.

4 174 Q. Did you just forget that fact a

5 minute ago?

6 A. I was unclear but you've refreshed

7 my memory.

8 175 Q. How do you know it has no employees?

9 A. I've taken it under advice from the

10 business that it has no employees.

11 176 Q. Who's the business?

12 A. It would be Jurgen and other

13 management within the team.

14 177 Q. Who else?

15 A. Legal, legal counsel.

16 178 Q. Who is legal counsel?

17 A. Our internal legal team.

18 179 Q. Your internal legal team at what

19 entity?

20 A. At OEG.

21 180 Q. What is the relationship between OEG

22 and DAK?

23 A. That I don't know.

24 181 Q. Okay. Are you aware whether DAK has

25 always had no employees or is this a new thing, do

1           you have any idea?

2                   A. I've been with the business for two  
3           years so beyond that I can't -- I can't comment.

4   182            Q. Is it fair to say that during your  
5           two-year tenure at the business, and by that to  
6           clarify I mean the applicants, that during that  
7           period of time to your knowledge DAK has had no  
8           employees?

9                   A. To my knowledge, yes.

10   183           Q. Do you understand that DAK is a  
11           holding company, it's not an operating company?

12                   A. Yes.

13   184           Q. Okay. It's in the business of  
14           owning other businesses, right?

15                   A. Yes.

16   185           Q. Not operating businesses?

17                   A. That is correct.

18   186           Q. And as a result of not having any  
19           employees, is it the case that DAK doesn't have the  
20           human resources that are necessary to operate or  
21           manage a business?

22                   A. They rely on the management teams  
23           within each respective business to support them, is  
24           my understanding.

25   187           Q. Understood. Management occurs at

1 the subsidiary level?

2 A. Yes.

3 188 Q. Can you explain to me why it is that  
4 the applicants paid DAK for management services?

5 A. No.

6 189 Q. Could you produce the Management  
7 Services Agreement referenced in your affidavits?

8 U/A MR. MAIN: I'll take it under  
9 advisement.

10 BY MR. PENDRITH:

11 190 Q. It's a document that's referenced in  
12 your affidavits. I can take you to it if there's  
13 any confusion about that.

14 Counsel, do you want me to take you to  
15 that so that we know what we're talking about?

16 MR. MAIN: No. No confusion.

17 MR. PENDRITH: Okay. So I'm asking for  
18 production of those because they're specifically  
19 referred to. I think I'm entitled to them under  
20 Rule 30.03(2) and just based on the case law that  
21 says if you reference a document in an affidavit you  
22 get to see it and ask questions about it.

23 MR. MAIN: Given that basis, please  
24 identify the paragraphs you're referring to.

25 MR. PENDRITH: And what's the basis for

1 taking the question under advisement?

2 MR. MAIN: Because this is a  
3 cross-examination on an affidavit not a discovery.  
4 So I'm going to assess the totality of the  
5 undertakings that are being sought and make an  
6 assessment as to whether they're reasonable and  
7 whether you're entitled to them.

8 MR. PENDRITH: So is it based on  
9 relevance or something -- something else?

10 MR. MAIN: It's based on the case law  
11 that says the scope for undertakings on a  
12 cross-examination is limited.

13 MR. PENDRITH: So there's a lot of cases  
14 that speak to this, so I'll point you to one,  
15 Friends of Landsdowne in Ottawa, it's a Master  
16 MacLeod decision from 2011.

17 Paragraph 28: "When dealing with  
18 documents referred to in affidavits, it is not  
19 necessary to consider relevance to the questions in  
20 issue. A party which tenders evidence is open to  
21 being examined on that evidence." And what you've  
22 done is you've put that evidence on the record by  
23 referring to the Management Agreements in Mr.  
24 Williams' affidavits. So I think it's completely  
25 fair. I don't understand your objection. You

1 should produce the documents.

2 MR. MAIN: Thank you, counsel. I have  
3 your position. I'm familiar with the Master's case.  
4 As you know, there's a lot of case law that goes  
5 both ways on these issues. I will take your request  
6 under advisement.

7 MR. PENDRITH: I look forward to hearing  
8 that case law that goes against the proposition that  
9 when you refer to a document you have to produce it.  
10 There's a rule and there's a ton of cases that say  
11 that, but we can debate that later.

12 I put that on the record only to show  
13 that this should be granted now.

14 BY MR. PENDRITH:

15 191 Q. DAK is paid for the management  
16 services that it provides to the applicants; is that  
17 correct, sir? That was a yes?

18 A. Yes, that was a yes.

19 192 Q. Can you describe exactly what it is  
20 that DAK is doing pursuant to those management  
21 services agreements?

22 A. Not at the moment, no.

23 193 Q. Do you know who it is at DAK that's  
24 providing those management services?

25 A. No.

1 194 Q. In your affidavit of August the 28th  
2 you refer to a Guarantee Fee Agreement.

3 A. Can you put it up, please?

4 195 Q. Sure. Paragraph 111:

5 "In consideration for RelatedCo...",  
6 which is DAK, "...guaranteeing the obligations of  
7 the borrowers under the BMO Credit Agreement,  
8 ParentCo, LicenseCo, FranchiseCo, 2733182 Ontario  
9 Inc., and LeaseCo entered into a Guarantee Fee  
10 Agreement dated February 28th, 2020 with  
11 RelatedCo...", and it continues. Are you familiar  
12 with that Agreement?

13 A. I am.

14 196 Q. Would you please produce it?

15 U/A MR. MAIN: I'll take that under  
16 advisement.

17 And, counsel, with respect to your last  
18 request for production of an Agreement, I'd ask for  
19 identification of the paragraphs in which the  
20 Agreement or Agreements you're referring to are  
21 identified. Could you please provide that?

22 MR. PENDRITH: Sure. I can take you  
23 there. Let's go to -- it's referenced in multiple  
24 spots but let's go to paragraph 50.

25 This is the September 12th affidavit.

1 "As detailed in my initial affidavit, DAK is a  
2 related party corporation. DAK provides two of the  
3 applicants, 2161907 Alberta Ltd. and 267 Ontario,  
4 with management services pursuant to Management  
5 Services Agreements."

6 So those are the Agreements that I'd  
7 like production of, the ones that you refer to in  
8 your affidavit, in support of the further amended  
9 and restated ARIO which is where you're trying to  
10 expand the scope of the stay to include the  
11 guarantee claim. I think that puts it squarely in  
12 issue. Wouldn't you agree?

13 MR. MAIN: Not necessarily, counsel.  
14 Thank you, I just wanted the paragraph numbers.  
15 Thank you.

16 MR. PENDRITH: And it's elsewhere. It's  
17 referred to in an earlier affidavit.

18 BY MR. PENDRITH:

19 197 Q. Back to the Guarantee Fee Agreement,  
20 DAK is paid 12 percent of the principal outstanding  
21 under the BMO credit facility pursuant to that  
22 Agreement; is that right?

23 A. Yes.

24 198 Q. Is that every year that payment is  
25 made or is that a one-time payment?

1                   A. I do not know the detail. My  
2                   assumption is it would be yearly.

3   199               Q. Do you know how much the applicants  
4                   have paid to DAK pursuant to this Agreement?

5                   MR. MAIN: Why is that relevant,  
6                   counsel?

7                   MR. PENDRITH: I'm asking about the  
8                   Agreement that's referred to in the affidavit and  
9                   I'm trying to understand, from a fairness  
10                  perspective, DAK is profiting from acting as a  
11                  guarantor and now it's simultaneously looking to put  
12                  off its guarantee obligations and the applicants are  
13                  looking to assist with that. And we're saying  
14                  that's not fair, it's not what was contracted for.  
15                  So I'm trying to understand the magnitude to which  
16                  DAK is profiting from it. It also goes to DAK's  
17                  financial condition which is relevant to the timing  
18                  of Canopy's claim.

19                  U/A           MR. MAIN: I'll take that under  
20                  advisement. I'm not sure it's relevant.

21                  MR. PENDRITH: Okay. And again I read  
22                  you the excerpt from the case before which says  
23                  relevance isn't the question when you put it in  
24                  issue in your affidavit, which has been done.

25                  BY MR. PENDRITH:

1 200 Q. Has DAK been paid on account of the  
2 guarantee that it provided to Canopy?

3 A. Can you ask the question again,  
4 please? Sorry.

5 201 Q. Have the applicants paid DAK in  
6 exchange for the guarantee that was provided to  
7 Canopy?

8 U/A MR. MAIN: Again, why is that relevant,  
9 counsel?

10 MR. PENDRITH: Again, it goes to the  
11 fairness of the situation. If you're looking to  
12 shirk obligations or put off obligations under a  
13 guarantee while simultaneously stripping money out  
14 of the applicant entities, that would seem to be  
15 unfair to certain creditors, specifically our  
16 client.

17 MR. MAIN: I haven't seen that  
18 considered as a factor for the applicable test so  
19 I'm going to take that under advisement.

20 MR. PENDRITH: You don't think fairness  
21 is a factor that the court will consider within the  
22 context of a CCAA?

23 MR. MAIN: As between the parties to the  
24 motion, I'm not sure it extends to considering  
25 commercial relationships involving third parties.

1 MR. PENDRITH: Okay. I'm going to go  
2 ahead and not agree on that point but we can debate  
3 that later.

4 BY MR. PENDRITH:

5 202 Q. The applicants have let a number of  
6 people go? I should clarify, employees have  
7 departed as a result of the CCAA?

8 A. Yes, that is correct.

9 203 Q. Approximately 102?

10 A. In that region, yes.

11 204 Q. Were any of those employees in  
12 finance or accounting?

13 A. No.

14 205 Q. If the Stalking Horse Agreement is  
15 successful, then in that case it may be that  
16 additional employees are terminated prior to the  
17 emergence from CCAA?

18 A. Specifically finance are you asking?

19 206 Q. In general.

20 A. It's not anticipated at the moment.

21 207 Q. It's not known either way?

22 A. No, it's not known.

23 208 Q. And you acknowledge that it's  
24 possible that the purchaser may not want to take all  
25 the employees?

1 A. Potentially.

2 209 Q. In which case what is contemplated  
3 is that those employees will be terminated prior to  
4 exit from CCAA?

5 A. Potentially. I guess it would be at  
6 the discretion of the purchaser.

7 210 Q. Right. So it's the purchaser's  
8 decision, but in the event that the purchaser says,  
9 "I don't want this particular slate of employees",  
10 they will be terminated prior to the exit from CCAA,  
11 correct?

12 A. I'm not an expert on the processes  
13 around CCAA, but if the purchaser upon acquiring the  
14 business has a different cost structure that negates  
15 the need for employees within the new business, my  
16 understanding would be that, yes, they would be  
17 terminated.

18 211 Q. Prior to the exit?

19 A. I'm not sure of the sequencing, how  
20 that would work. They may ask them to stay on  
21 post-CCAA for a period to manage the transition, but  
22 I'm speculating there.

23 212 Q. I'll just take you to your September  
24 3rd affidavit.

25 Can I go off the record. I just need to

1 locate a reference. Let's go off for five minutes  
2 if we could.

3 -- OFF THE RECORD (11:06 a.m.)

4 -- UPON RESUMING (11:11 a.m.)

5 BY MR. PENDRITH:

6 213 Q. So I'm looking at your September 3rd  
7 affidavit where you describe the Stalking Horse  
8 Agreement, paragraph 43, and you set out a chart  
9 describing the Stalking Horse Agreement. And do you  
10 see --

11 MR. MAIN: Can you refer to it? If you  
12 could just share your screen.

13 BY MR. PENDRITH:

14 214 Q. Oh, I'm sorry. I thought my screen  
15 was still being shared. I'll put that up for you.

16 So just for orientation, paragraph 43,  
17 the principal terms of the Stalking Horse Agreement  
18 are summarized below, and then there's a chart.

19 I'll take you down to the chart which  
20 talks about employees. It says:

21 "The Stalking Horse Bidder will  
22 determine which employees it will assume and  
23 continue to employ prior to closing." Do you see  
24 that?

25 A. Yes.

1 215 Q. And that was your understanding of  
2 the Stalking -- what was going to occur --

3 A. Well, the question I think you said  
4 if the buyer, and that may not necessarily be the  
5 stalking horse.

6 216 Q. Right, okay. So in the context of  
7 the Stalking Horse Bid you understand that that  
8 bidder, if successful, will determine which  
9 employees will stay or not stay?

10 A. Yes.

11 217 Q. And that would be the same for any  
12 other purchaser presumably, right?

13 A. Yes.

14 218 Q. And it states: "Employees that the  
15 Stalking Horse Bidder does not wish to retain are  
16 terminated prior to closing."

17 So as far as the sequencing of things,  
18 you understand that the termination will occur  
19 pre-closing?

20 A. Prior to closing.

21 219 Q. Okay. And so do you agree that it's  
22 possible that certain employees that may have  
23 relevant information to the arbitration could be let  
24 go as part of that process?

25 A. It's possible. I think highly

1           unlikely.

2   220                   Q.   Why do you say that?

3                   A.   Because we're a very, very small  
4           team, so I think it's unlikely that you would lose  
5           people with inside knowledge of the business going  
6           forward. For any buyer they need that level of  
7           continuity. I can't guarantee it of course but that  
8           would be my personal opinion.

9   221                   Q.   As a matter of practicality, does  
10          DAK have access to 267's documents?

11                   A.   I don't know.

12   222                   Q.   And what I'm getting at is does DAK  
13          need permission from 267, or from you or from Mr.  
14          Schreiber, to get access to documents, or can DAK  
15          say to you or Mr. Schreiber, "I'd like these  
16          documents", and you'll give them to DAK?

17                   A.   We would be asked to provide the  
18          documents, for sure. I'm not sure I follow your  
19          question in terms of --

20                   MR. MAIN: And, counsel, can you clarify  
21          if you mean "access" in a legal sense or a practical  
22          sense or any other sense?

23                   BY MR. PENDRITH:

24   223                   Q.   What I'm asking is really if a  
25          request is made are you going to say yes to it or

1 are you going to say no, you don't have the right to  
2 those documents? So I assume a practical sense.

3 A. In the majority of cases we would  
4 give access, yes.

5 224 Q. What would be the case that you  
6 wouldn't give access?

7 A. I'm trying to think. I don't think  
8 there would an instance where we wouldn't provide  
9 access. I think we would provide access upon  
10 request.

11 225 Q. Has DAK taken any steps to preserve  
12 documents that may be relevant in the arbitration,  
13 or do you know?

14 A. I don't know.

15 226 Q. Has 267 taken any steps to preserve  
16 documents that may be relevant in the arbitration?

17 A. We have our database records, which  
18 we touched on earlier, that are available.

19 227 Q. So that preservation step, is that  
20 something out of the ordinary course or is that  
21 something --

22 A. No.

23 228 Q. -- that's there and we don't delete  
24 sales records because of course we don't delete  
25 sales records?

1 A. It's all recourse.

2 229 Q. Understood. Have any documents that  
3 are relevant to the matters in issue in the  
4 arbitration been set aside or given to counsel, or  
5 anything to that effect?

6 A. Not to my knowledge.

7 MR. MAIN: Hold on. The "given to  
8 counsel" part I'm going to object to. The first  
9 part of your question he can answer.

10 MR. PENDRITH: How would giving  
11 documents to counsel be something that is not --  
12 there's no giving of legal advice there, and I'm not  
13 asking for what was communicated as far as advice  
14 goes. Just "did you give the documents to your  
15 counsel?" It's not privileged.

16 MR. MAIN: It is privileged. There's  
17 steps that are taken preparing to respond to the  
18 arbitration is privileged.

19 MR. PENDRITH: No, that's -- no. Steps  
20 taken is not legal advice. Legal advice is  
21 privileged. Things that you have done or not done  
22 are not privileged.

23 MR. MAIN: Things that are not done or  
24 done can implicitly reveal the litigation strategy  
25 and the content of legal advice relating to same.

1 I'm not going to debate you on the  
2 record, counsel. You have your views; you have my  
3 refusal.

4 MR. PENDRITH: I want to give you a full  
5 opportunity to put whatever you think is the basis  
6 on the record so I'm giving it to you.

7 MR. MAIN: You have my basis.

8 MR. PENDRITH: Okay. Thank you.

9 BY MR. PENDRITH:

10 230 Q. Who are the people at the  
11 applicants, so the individuals employed by the  
12 applicants, that have direct knowledge of Canopy's  
13 communications with the applicants in the month  
14 leading up to the closing of the SPA, who are those  
15 people?

16 A. It would be Jurgen Schreiber,  
17 myself, and Greg Bedford.

18 231 Q. Okay. And who are the people that  
19 have direct knowledge of the inventory on hand at  
20 closing?

21 A. It would be myself. Individuals who  
22 were closer to it and are no longer with the  
23 business, so it would be primarily myself.

24 232 Q. Who are those individuals that are  
25 no longer with the business?

1 A. The head of merchandising is no  
2 longer with the Group.

3 233 Q. Who's that?

4 A. His name is Sam Vanderveer.

5 234 Q. Was Sam Vanderveer let go as part of  
6 the CCAA?

7 A. No. He left of his own accord  
8 earlier in the year.

9 235 Q. Who are the people with direct  
10 knowledge of the pre-closing inventory markdowns?

11 A. It would have been myself. Who's  
12 still with the business you're asking I assume?

13 236 Q. Anyone else?

14 A. Some of the more junior members of  
15 the team would have had access to the numbers.

16 237 Q. Who are those people?

17 A. There's a lady called Krista  
18 Maitland.

19 238 Q. Anyone else?

20 A. Not to my knowledge.

21 239 Q. And Krista Maitland is still with  
22 the company?

23 A. Yes.

24 240 Q. And in respect of the people who you  
25 mentioned, am I correct that no efforts have to date

1           been made to preserve the documents that they may  
2           have in their possession that could be relevant to  
3           the arbitration?

4                     MR. MAIN:   Why is that relevant,  
5           counsel?

6                     MR. PENDRITH:  Because it goes to the  
7           prejudice that Canopy may suffer by waiting.  If  
8           documents are lost that can be problematic, as you  
9           may know.

10                    MR. MAIN:  Do you know the answer to the  
11           question, Andy?

12                    THE DEPONENT:  No documents have been  
13           deleted or filed subsequent to this -- that have  
14           been deleted, have been lost in the business.  
15           Everything should still be there.

16                    BY MR. PENDRITH:

17   241                Q.  And so that's a slightly different  
18           answer than my question.  My question is what  
19           efforts have been made to preserve the documents?

20                    So is there anything other than ordinary  
21           course deletion or non-deletion according to your  
22           protocols, whatever they may be?  Has anything  
23           changed as a result of the arbitration?

24                    A.  No.

25   242                Q.  Would you undertake to preserve all

1 relevant documents in 267's power, possession, and  
2 control?

3 U/A MR. MAIN: I'll take that under  
4 advisement.

5 BY MR. PENDRITH:

6 243 Q. Mr. Williams, before the CCAA, 267  
7 was involved in some settlement discussions with  
8 Canopy?

9 A. Correct.

10 244 Q. You're aware that a mediation was  
11 scheduled?

12 A. Yes.

13 245 Q. That was cancelled by DAK or 267?

14 A. No, it was never fully agreed  
15 because of the date. If you're referring to I think  
16 it was the 24th of June, which was the game 7 of the  
17 Stanley Cup running, so the management team would  
18 have been preoccupied with that. So I think -- it's  
19 my understanding that date was never finalized.

20 246 Q. My understanding is that the date  
21 was finalized and then subsequently cancelled as a  
22 result of management's advice that they would be  
23 busy with game 7. Is that your understanding?

24 A. My understanding is it was never  
25 fully agreed but I will take your -- your agreement

1 on that if you say it was subsequently cancelled.

2 My understanding is it was never fully  
3 confirmed because of that particular date.

4 247 Q. I'm going to show you a  
5 communication. I'll share my screen.

6 It begins with an email from ADR  
7 Chambers mediation support. Do you see that there's  
8 a booking here, June 24th, 2024, mediator Peter Roy?

9 MR. MAIN: Counsel, you're not sharing  
10 your screen I don't think.

11 BY MR. PENDRITH:

12 248 Q. Oh, I'm sorry. Can you see that  
13 now?

14 A. Yes.

15 249 Q. So it's a May 30th, 2024 email to  
16 your counsel explaining the location, the date, June  
17 24th, 2024, who the mediator is.

18 That mediation was scheduled for that  
19 day but subsequently cancelled. It was actually  
20 cancelled by me because we were hoping to convince  
21 your side to proceed with the mediation, but, in any  
22 event, it was cancelled on June 10th.

23 "This email will serve as notification  
24 that this mediation date has been cancelled as per  
25 communication from Colin Pendrith."

1 MR. MAIN: Counsel, can you scroll the  
2 whole way through the document. I'm wondering if  
3 Mr. Williams appears anywhere on this thread.

4 MR. PENDRITH: He doesn't, and I'll come  
5 to that if you have concerns about the authenticity  
6 of this document.

7 MR. MAIN: Could you scroll the whole  
8 document, please?

9 MR. PENDRITH: Yes. Sorry. I'll scroll  
10 up to the top. Tell me how fast you'd like me to  
11 scroll, if that's fine, or if you need it faster or  
12 slower.

13 MR. MAIN: That's fine.

14 BY MR. PENDRITH:

15 250 Q. So the ultimate email in this email  
16 thread is a July 26th, 2024 email from  
17 Colleen Cebuliak to Sarah S. Eskandari.

18 Mr. Williams, were you a decisionmaker  
19 around this mediation, or no?

20 A. No.

21 251 Q. Sorry, I missed your answer.

22 A. No.

23 252 Q. Who was the decisionmaker or  
24 decision makers?

25 A. That I don't know. I'm not on this

1 email stream, am I? Like, I'm not sure. I don't  
2 know.

3 253 Q. You're not sure. Are you aware that  
4 on June the 24th Ms. Eskandari wrote asking to  
5 reschedule the mediation for July the 22nd?

6 A. I don't recollect that.

7 254 Q. You don't have a recollection of  
8 that. Are you aware that Ms. Eskandari received no  
9 response to her email and so she followed up on June  
10 the 27th: "Following up on my previous note below  
11 so we can get back to ADR Chambers as we are heading  
12 into a holiday weekend", and are you aware that  
13 there was no response to that email?

14 A. Sorry, did you not hear me? No.

15 255 Q. Oh, no, sorry, I did not hear you.

16 A. No. Okay.

17 256 Q. So your answer was no, I'm not  
18 aware?

19 A. No, I wasn't aware.

20 257 Q. Okay. And on July 19th Ms.  
21 Eskandari writes: "We have not received a response  
22 to my inquiries regarding rescheduling the mediation  
23 below."

24 Given that you don't have direct  
25 knowledge of this, would you please confirm with

1           either Colleen Cebuliak or Mark Cavdar, both of whom  
2           are on this email chain, that these emails were in  
3           fact sent and that there was no response prior to  
4           July 19th concerning rescheduling the mediation?

5           U/A           MR. MAIN: I'm going to take that under  
6           advisement.

7                       MR. PENDRITH: Thank you.

8                       BY MR. PENDRITH:

9   258                Q. At the top of the email chain  
10           there's an email from Ms. Cebuliak to Ms. Eskandari  
11           saying:

12                     "Sarah, thanks for your note. Canopy  
13                     (Dave Paterson) has already acknowledged that the  
14                     Tokyo Smoke proposal will be sent Monday. We expect  
15                     the business teams will want to discuss the business  
16                     details in the proposal before we re-engage more  
17                     formal discussions involving internal legal  
18                     counsel."

19                     Subsequent to this email you sent a  
20                     document to Dave Paterson, correct?

21                     MR. MAIN: Counsel, I've let you ask  
22                     these questions because the issue of what happened  
23                     with the mediation is squarely rebutted in  
24                     Mr. Williams' affidavit, but we're not going to get  
25                     into the blow-by-blow steps of the negotiations

1 including what proposals were and were not sent back  
2 and forth.

3 MR. PENDRITH: I agree with that, I'm  
4 not proposing to get into the blow-by-blow of what  
5 proposals were sent back and forth.

6 There's a very simple question that I'd  
7 like to ask and I first need to confirm that a  
8 document was in fact sent subsequent to this to  
9 Mr. Paterson and that Mr. Williams was the sender of  
10 that document.

11 I'm happy to pull it up in redacted form  
12 so that you know what I'm talking about.

13 MR. MAIN: Given the context in which  
14 this references documents as arising the question is  
15 refused.

16 MR. PENDRITH: I haven't even asked the  
17 question yet.

18 MR. MAIN: Well, you asked the question  
19 "this document's referred to", and there was a  
20 reference or a characterization as to what that  
21 document was in the email you just quoted from, and  
22 you're asking whether it was sent. That's a piece  
23 of a negotiation so it's covered by settlement  
24 privilege.

25 BY MR. PENDRITH:

1 259 Q. So I disagree with you. For  
2 something to be covered by settlement privilege  
3 there has to be a without prejudice offer of  
4 something.

5 So what I'm asking about has nothing to  
6 do with an offer. That's why I didn't characterize  
7 anything as "an offer". I characterized it as  
8 "communication", and if you wait for the question  
9 what I'm really asking is: Mr. Williams, did you  
10 send a communication where you wrote down what the  
11 deferred consideration was?

12 A. Yes.

13 260 Q. That number was calculated, or did  
14 you just make it up?

15 A. It was calculated.

16 261 Q. Would you provide me with the  
17 calculation, please?

18 U/A MR. MAIN: I'll take that under  
19 advisement.

20 MR. PENDRITH: So I don't even need to  
21 show you the document in order to -- we've dealt  
22 with that.

23 And, just for the record, I think we  
24 should mark the email exchange as, we'll call it as  
25 Exhibit "A" for identification, and we can call it

1 emails between Sarah Eskandari and Colleen Cebuliak.

2 MR. MAIN: No objection to it being  
3 marked for identification.

4 -- EXHIBIT A (For Identification):

5 Email exchange between Sarah  
6 Eskandari and Colleen Cebuliak.

7 BY MR. PENDRITH:

8 262 Q. And I think you have it already but  
9 I'd like you to confirm that the emails were in fact  
10 sent and received with the recipients of the emails  
11 and senders on the, I'll call it the case group end  
12 of things.

13 U/A MR. MAIN: I'll take that under  
14 advisement.

15 MR. PENDRITH: Thank you.

16 BY MR. PENDRITH:

17 263 Q. Mr. Williams, the issues that 267  
18 takes with what Canopy delivered under the Share  
19 Purchase Agreement, those were known about in  
20 January of 2023, is that fair?

21 A. By memory, yes, yes.

22 264 Q. And in your most recent affidavit,  
23 the September 26th affidavit, you actually append  
24 as, it looks like Exhibit "C", an email that  
25 concerns those claims. I can show it to you if

1 that's helpful.

2 MR. MAIN: Yes, please pull it up.

3 BY MR. PENDRITH:

4 265 Q. This is an email from Sunmeet  
5 Saroya, Denis Rozin and Stephen Glennie.

6 Mr. Rozin and Mr. Glennie are people at  
7 Canopy, as far as you know?

8 A. Yes.

9 266 Q. And this is addressing issues that  
10 were noted concerning the inventory levels and  
11 product pricing.

12 That was the intention of this document  
13 was to advise that 267 took issue with the inventory  
14 levels --

15 A. Yes.

16 267 Q. -- and the discounts that had been  
17 applied?

18 A. Yes.

19 268 Q. In order to write this email, some  
20 digging had to be done on 267's end to marshal the  
21 facts?

22 A. Correct.

23 269 Q. Inquiries were made in order to  
24 ensure that what was being communicated was  
25 accurate?

1 A. Yes.

2 270 Q. And subsequent to this a more formal  
3 Notice of Direct Claim was sent. You're familiar  
4 with that document?

5 A. Yes.

6 271 Q. And that's appended to your  
7 affidavit, I'm scrolling down to it. It's Exhibit  
8 "D" to your September 26th affidavit. Direct Claim  
9 Notice is what it's called, April 28th, 2023. Do  
10 you see that?

11 A. Yes, I see it.

12 272 Q. And this provides detail concerning  
13 the inadequate inventory levels as you characterize  
14 them, correct?

15 A. Correct.

16 273 Q. And also the pricing discounts and  
17 whether that's based on -- it's characterized two  
18 different ways, but essentially it's reducing the  
19 price of inventory preclosing.

20 You had enough information to make these  
21 complaints formally by April of 2023, right?

22 A. Sorry. Yes, yes. You're talking to  
23 me.

24 274 Q. Thank you. And DAK signed this  
25 document as well, correct?

1 A. Yes.

2 275 Q. So DAK had access to the information  
3 regarding the complaints made by 267 --

4 A. Yes.

5 276 Q. -- back in April of 2023, right?

6 A. Yes.

7 277 Q. What additional information does DAK  
8 need in order to defend Canopy's claim?

9 I'm just talking about the most basic  
10 step here which is pleading a Statement of Defence.  
11 What else does DAK need that's not in this document?

12 A. It will require a more detailed  
13 breakdown of the deferred payments. Where you saw  
14 what was shared was a total number in my notes of  
15 June/July, that has to be then refined further to  
16 understand DAK's exposure to that. Over and above  
17 this I think covers the rest.

18 278 Q. So it's really just the calculation  
19 of the deferred compensation, that's the missing  
20 piece?

21 A. Yes.

22 279 Q. And then DAK can defend its claim,  
23 the claim asserted by Canopy with that information?

24 A. Yes.

25 280 Q. Sorry, your answer was "yes" I

1 think.

2 A. Yes, yes, yes.

3 281 Q. Do you understand that the total  
4 calculation of the deferred compensation is made up  
5 of five buckets?

6 A. Yes.

7 282 Q. In order to calculate the total,  
8 don't you have to calculate the five buckets and add  
9 them up?

10 A. We calculate five, yes, of which  
11 three are DAK Capital -- three are outside of the  
12 guarantee.

13 283 Q. Right. Is there any reason why you  
14 couldn't just take the three which you say are  
15 subject to the guarantee and the two that are not  
16 and subtract two from three?

17 A. No, no. The way it's structured  
18 we'd have to go through by store again and validate  
19 those numbers.

20 We also, I think, would need to  
21 calculate the number post June the 30th, post the  
22 end of our financial year because that was not  
23 covered in my note to Dave Paterson.

24 284 Q. Right. You're saying that there's  
25 more liability within your crew --

1 A. There's a level of --

2 285 Q. -- (speaker overlap) of the Share  
3 Purchase Agreement?

4 A. There is -- if you wanted a full  
5 current update on the deferred payment, we've  
6 calculated the deferred payments as a total until  
7 the end of June. Nothing's been done subsequent to  
8 that. And then for the numbers within adding up to  
9 June, up until June, we would need to go back  
10 through and revalidate those numbers based on the  
11 way in which the Agreement is structured.

12 286 Q. And why is it that DAK needs to have  
13 the precise amount calculated to plead a defence?

14 A. Well, I assume you want accurate  
15 numbers.

16 287 Q. But isn't DAK's defence really that  
17 we don't have to pay any of this deferred  
18 compensation because we think 267 didn't get what it  
19 bargained for in the Agreement? Isn't that the  
20 defence, not that the numbers are wrong?

21 R/F MR. MAIN: Counsel, the extent of Mr.  
22 Williams' evidence on DAK's defences are set out in  
23 his affidavit. And, as I've told you before, we're  
24 not going to be digging further into what those  
25 defences are or are not going to be in this

1 examination.

2 BY MR. PENDRITH:

3 288 Q. Because you don't really know.

4 Isn't that the truth, Mr. Williams, you don't really  
5 know how DAK is going to defend itself?

6 R/F MR. MAIN: That question is also  
7 refused.

8 BY MR. PENDRITH:

9 289 Q. What are the steps in the  
10 arbitration that you are going to need to be  
11 involved in, do you know?

12 A. At this stage, no.

13 290 Q. And what about for Mr. Schreiber or  
14 Mr. Bedford?

15 A. I don't know.

16 MR. PENDRITH: I'm going to take five  
17 minutes and then I think I'm going to be just about  
18 done. So if we could go off the record for five  
19 minutes that would be great.

20 MR. MAIN: Sure thing. 11:43 we'll come  
21 back.

22 -- OFF THE RECORD (11:37 a.m.)

23 -- UPON RESUMING (11:43 a.m.)

24 BY MR. PENDRITH:

25 291 Q. Mr. Williams, do you know about

1 DAK's current financial condition?

2 A. No, I don't have that detail.

3 292 Q. You don't know if it's solvent or  
4 insolvent?

5 A. Well, I believe it's solvent because  
6 it stands guarantor for the BMO facility.

7 293 Q. You believe it is solvent?

8 A. I believe it is solvent, yes.

9 294 Q. Do you have any understanding as to  
10 whether DAK's solvency is improving or getting worse  
11 as a result of the CCAA?

12 A. I have no -- no, I don't know.

13 295 Q. Do you have the ability to ask for  
14 financial statements from DAK?

15 A. No.

16 U/A MR. MAIN: I'll take it under  
17 advisement.

18 MR. PENDRITH: I'd like you to produce  
19 DAK's financial statements for the last two years,  
20 and, in particular, the quarterly statements if  
21 that's within your power, possession or control.  
22 But if you don't have the ability to compel DAK to  
23 provide those to you, then your answer may be that I  
24 can't get them but I'd still like you to ask.

25 U/A MR. MAIN: Like to ask, okay. Under

1           advisement.

2                       MR. PENDRITH: Thank you. Subject to  
3 answers to undertakings, under advisements and  
4 refusals, those are my questions. Thank you, Mr.  
5 Williams, I appreciate it.

6                       MR. MAIN: And I have no re-examination.  
7 Mr. Williams, thanks very much for your time.  
8 You're free to go.

9  
10                      -- Whereupon this cross-examination adjourned at  
11 11:43 a.m.

12

13

14

15

-----

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

REPORTER'S CERTIFICATE:

I hereby certify the foregoing to be a true and accurate transcription of my shorthand notes taken to the best of my skill and ability.

---

LAUREEN METZ, CSR

Certified Shorthand Reporter

Reproductions of this transcript are in direct violation of O.R. 587/91 Administration of Justice Act January 1, 1990, and are not certified without the original signature of the Court Reporter.

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED**

Court File No. CV-24-00726584-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF 2675970 ONTARIO INC. et al.**

Applicants

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

Proceedings commenced at Toronto

**TRANSCRIPTS BRIEF OF THE APPLICANTS  
(RE: FURTHER ARIO)**

**RECONSTRUCT LLP**

Richmond-Adelaide Centre  
120 Adelaide Street West, Suite 2500  
Toronto, ON M5H 1T1

**William Main** LSO No. 70969C Tel:  
416.613.8285  
Email: [wmain@reconllp.com](mailto:wmain@reconllp.com)

**Gabrielle Schachter** LSO No. 80244T Tel:  
416.613.4881  
Email: [gschachter@reconllp.com](mailto:gschachter@reconllp.com)

Fax: 416.613.8290

**Lawyers for the Applicants**