

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI,  
HBC CANADA PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2 INC.,  
HBC BAY HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY HOLDINGS ULC,  
HBC CENTERPOINT GP INC., HBC HOLDINGS GP INC., SNOSPMIS LIMITED, 2472596  
ONTARIO INC., and 2472598 ONTARIO INC.**

(Applicants)

**FACTUM OF THE APPLICANTS  
(Re: YM and IC Lease Assignments and Stay Extension)  
(Returnable July 31, 2025)**

July 30, 2025

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**TO: THE SERVICE LIST**

## PART I – OVERVIEW<sup>1</sup>

1. The Applicants sought and obtained protection under the CCAA on March 7, 2025.<sup>2</sup>
2. At the hearing of the Comeback Motion on March 21, 2025, the Applicants sought various orders to assist with the monetization of the Applicants' assets, including: (a) the SISP Order which approved the SISP and authorized the Applicants and Reflect to conduct the SISP under the supervision of the Monitor. The SISP Order was amended on April 24, 2025, to remove the Company's Art Collection from the Property available for sale pursuant to the SISP; (b) the Liquidation Sale Approval Order which authorized the Applicants to commence the Liquidation Sale at all but six of Hudson's Bay's 96 stores across Canada. On April 25, 2025, the remaining six stores entered the Liquidation Sales; and (c) the Lease Monetization Order which approved the retainer of Oberfeld as the Broker responsible for assisting in the marketing of Leases; and authorized the Applicants and the Broker to conduct the Lease Monetization Process to market Hudson's Bay Canada's Leases under the supervision of the Monitor.<sup>3</sup>
3. The Applicants in the current motion seek approval of two agreements resulting from the Lease Monetization Process. Following a review of the bids received under the Lease Monetization Process, the Applicants, in consultation with the Monitor, Oberfeld, and certain of the Company's secured lenders, declared YM's bid, being the YM Lease Assignment Agreement, to be the Successful Bid in respect of the YM Leases and IC's bid, being the IC Lease Assignment Agreement, to be the Successful Bid in respect of the IC Lease.<sup>4</sup>
4. The execution of the IC and YM Lease Assignment Agreement represents the culmination of extensive solicitation efforts undertaken pursuant to the Lease Monetization Process, which

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<sup>1</sup> Capitalized terms used herein and not otherwise defined have the meanings ascribed to such terms in the Affidavit of Franco Perugini sworn July 25, 2025 (the "**Perugini Affidavit**").

<sup>2</sup> Perugini Affidavit at para 8, Motion Record of the Applicants dated July 25, 2025 ("**Motion Record**") at Tab 2.

<sup>3</sup> Perugini Affidavit at para 9, Motion Record at Tab 2.

<sup>4</sup> *Ibid* at para 10.

broadly canvassed the market of parties potentially interested in the IC and YM Leases pursuant to reasonable timelines.<sup>5</sup>

5. The consideration paid by YM for the assignment of the YM Leases represents the highest and best offers received within the marketing process for the YM Leases, and the relief sought is not opposed by the YM Landlords, each of whom consented to the assignment of the YM Leases to YM by entering into Landlord Waivers with YM.<sup>6</sup> Further, while the consideration payable under the IC Lease Assignment Agreement is nominal, the IC Transaction will result in cost savings to the Applicants' estate, is fair and reasonable<sup>7</sup>, and the relief sought is supported by the IC Landlord, who is affiliated with IC.<sup>8</sup>

6. This factum is filed in support of the Applicants' motion for approval of, among other things: (a) the YM Approval and Vesting Order which approves the YM Lease Assignment Agreement and the YM Transactions contemplated thereunder; (b) the IC Approval and Vesting Order which approves the IC Lease Assignment Agreement and the IC Transaction contemplated thereunder; (c) sealing the Confidential Appendix A to the Seventh Report of the Monitor (the "**Confidential Appendix**"); (d) an order extending the stay period until and including October 31, 2025, and (e) approving the Monitor's Reports and the activities of the Monitor referred to therein.

## PART II – THE FACTS

7. The facts with respect to this motion are more fully set out in the Perugini Affidavit and Monitor's Seventh Report. Since the Filing Date of March 7, 2025, and since the granting of the last stay extension request on May 13, 2025, the Applicants have been working on a variety of Monetization efforts and other activities.

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<sup>5</sup> *Ibid* at paras 59 and 67.

<sup>6</sup> *Ibid* at para 71.

<sup>7</sup> *Ibid* at para 63.

<sup>8</sup> *Ibid* at para 67.

8. In addition to the work outlined below in the various Monetization Processes, the Applicants have (a) continued to communicate with secured lenders and their advisors about the Company's cash flows, Liquidation Sale, and CCAA Proceedings; (b) issued sixty-two lease disclaimers to conserve cash (c) reviewed and disclaimed certain non-lease contracts as needed; (d) collaborated with Saks Global to create a shared services protocol for reconciliation, intercompany obligations, data retention, and winding up the CCAA Proceedings; (e) engaged with the Pension Administrator in respect of the Pension Plans, pension surplus matters including assisting with various information requests; and (e) responded to numerous creditor and stakeholder enquiries regarding these CCAA Proceedings.<sup>9</sup> The Applicants have been acting in good faith and with due diligence throughout these proceedings.

9. The Applicants' work in these proceedings is not complete and further time is required to permit the Applicants to address a number of important workstreams including: (a) continue to develop and conduct the Art Collection Auction; (b) attend to a motion with respect to hardship funds; (c) pursue pension surplus matters under further guidance of the Court; (d) finalize Share Services arrangements; and (e) complete various CCAA administrative matters, including secure document and data retention matters.<sup>10</sup>

#### **A. Liquidation Sale Update**

10. The Liquidation Sales continued through June 1, 2025, as contemplated under the Liquidation Sale Approval Order.<sup>11</sup> Hudson's Bay and Reflect continue to coordinate the FF&E removal directly and in consultation with the Landlords.<sup>12</sup> External Signage Removal also remains outstanding, however efforts to remove signage have been paused as a result of demands by the FILO Agent, and issues raised in the FILO Motion.

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<sup>9</sup> *Ibid* at para 70.

<sup>10</sup> *Ibid* at para 75.

<sup>11</sup> *Ibid* at para 15.

<sup>12</sup> *Ibid* at para 16.

## **B. SISP Update**

11. The Bid Deadline under the SISP was April 30, 2025. Following a review of the bids received (in consultation with the Monitor, Reflect, and certain secured lenders), the Applicants declared Canadian Tire's bid to be the Successful Bid in respect of the Company's intellectual property portfolio.<sup>13</sup>

12. On June 3, 2025, the Court, approved the Canadian Tire APA entered into between The Bay Holdings, by its general partner, The Bay Holdings, and Canadian Tire, and the transactions contemplated therein, pursuant to the CTC AVO.<sup>14</sup> The CTC AVO was subsequently amended on June 23, 2025, to address name change requirements for the Applicants.<sup>15</sup>

13. The CTC transaction closed on June 25, 2025.<sup>16</sup>

## **C. Update on the Art Collection Auction**

14. On April 24, 2025, the Court granted the A&R SISP Order, which among other things: (a) removed the Company's Art Collection from the Property available for sale pursuant to the SISP; and (b) approved the engagement of Heffel Gallery Limited as Auctioneer to conduct the Art Collection Auction.<sup>17</sup>

15. Following the issuance of the A&R SISP Order, the Applicants and the Auctioneer, in consultation with Reflect and the Monitor, have developed a comprehensive catalogue of the Art Collection, and have facilitated access to the collection for Interested Parties who requested the opportunity to inspect selected pieces or to provide feedback regarding their potential value, cultural significance, sensitivity, or suitable alternate locations in anticipation of the Applicants' departure from their premises.<sup>18</sup>

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<sup>13</sup> *Ibid* at para 20.

<sup>14</sup> *Ibid* at para 21.

<sup>15</sup> *Ibid* at para 22.

<sup>16</sup> *Ibid* at para 21.

<sup>17</sup> *Ibid* at para 30.

<sup>18</sup> *Ibid* at paras 31 and 32.

16. The Applicants, Reflect and the Monitor are in the process of developing the Art Auction Procedures with the Auctioneer to govern the conduct of the Art Collection Auction and intend to share the draft procedures with those Interested Parties who have executed an NDA and seek their input before returning to Court seeking approval of those procedures.<sup>19</sup>

#### **D. Update on the Receivership over the JV Entities**

17. RioCan-Hudson's Bay JV (the "**JV**") was the Company's primary real estate subsidiary. The JV, together with the other JV Entities, own twelve separate freehold or head leasehold interests in Canadian real property rights which, with one exception, represents all of the Applicants' freehold and real property interests and head leasehold interests (other than the Company's retail store leases which are held directly by the Company).<sup>20</sup>

18. The Company's interest in the JV as well as the JV Entities' assets were marketed by Reflect through the SISP. Ultimately, no bids were submitted for any of the Company's interest or JV Entities' assets. Accordingly, the Company issued disclaimers in respect of seven of the twelve Leases with the JV. At the request of RioCan, and pursuant to an agreement negotiated between the Company and RioCan, the Company has deferred disclaiming the remaining five Leases.<sup>21</sup>

19. On June 3, 2025, the Court granted an Order appointing FTI Consulting Canada Inc. as Receiver of the JV Entities, which includes certain former Applicants and Non-Applicant Stay Parties in these CCAA Proceedings.<sup>22</sup> The Applicants have worked with FTI since its appointment to assist with transition matters.

#### **E. Update Regarding Employee Matters / ERC / WEPPA and Hardship Funds**

20. The Applicants sought the appointment of ERC for current and former non-unionized employees with continuing entitlements from the Applicants as at the Filing Date and retirees.

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<sup>19</sup> *Ibid* at para 33.

<sup>20</sup> *Ibid* at para 26.

<sup>21</sup> *Ibid* at para 28.

<sup>22</sup> *Ibid* at para 29.

Pursuant to the ERC Appointment Order dated May 5, 2025, Represented Employees who did not wish to be represented by ERC were required to deliver an “Opt-Out Notice” in the form appended to the ERC Appointment Order. To date 14,598 letters were sent to employees, and in total, 90 Opt-Out Notices were received.<sup>23</sup>

21. On June 3, 2025, the Applicants sought and obtained the WEPPA Declaration Order, effective June 21, 2025, to assist eligible terminated employees of the Applicants in accessing payments in respect of eligible wages under WEPPA. The Monitor and the ERC are working to identify all employees that may be eligible for payments under the WEPPA (estimated to be in excess of 9,000 employees) and administer information packages to assist eligible employees in making submissions to Service Canada. Represented Employees will have 56 days from September 30, 2025, to apply for WEPP benefits, making the deadline for WEPP applications November 25, 2025.<sup>24</sup>

22. The Applicants and their counsel also continue to work closely with and support ERC across a range of matters, including WEPPA issues, termination notices, post-retirement and LTD benefits, potential hardship funds, SERP matters, and retiree-related concerns.<sup>25</sup>

23. The Applicants and ERC have also been in discussions regarding the potential of implementing forms of hardship funds to assist former Hudson’s Bay’s employees.<sup>26</sup> ERC anticipated bringing a motion to address the hardship funds on July 15, 2025, however the motion was adjourned on consent while discussions with the secured lenders continued.

24. Upon the request of ERC, and with the consent of the Monitor and certain of the Applicants’ secured lenders, on or about June 10, 2025, Hudson’s Bay extended the payment of LTD benefits to affected employees and former employees until July 15, 2025. The LTD benefits

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<sup>23</sup> *Ibid* at paras 34 -35.

<sup>24</sup> *Ibid* at paras 37 and 40.

<sup>25</sup> *Ibid* at para 39.

<sup>26</sup> *Ibid* at para 42.



were further extended, with the consent of certain of the Applicants' secured lenders, to August 15, 2025, to permit further negotiations toward the potential establishment of hardship funds.<sup>27</sup>

#### **F. Update on Central Walk Transactions**

25. On June 23, 2025, the Court approved the Affiliate Lease Assignment Agreement, and the transactions contemplated therein. Pursuant to the Affiliate Lease Assignment Agreement, upon closing of the transactions contemplated therein, the Company's right, title, and interest in and to the three CW Leases would vest in Central Walk, free of and clear from any and all encumbrances. The transactions contemplated under the Affiliate Lease Assignment Agreement closed on June 26, 2025.<sup>28</sup>

26. In addition to the Affiliate Lease Assignment Agreement, Hudson's Bay has also entered into the Central Walk APA with Central Walk, which contemplates the assignment of an additional 25 CW Leases to Central Walk.<sup>29</sup>

27. On July 8, 2025, Hilco served the Hilco Motion returnable July 15, 2025. Among other things, Hilco sought an order authorizing and directing the Monitor to cause the Company to terminate the Central Walk APA. Pursuant to the Endorsement of the Honourable Mr. Justice Osborne dated July 22, 2025, His Honour set a schedule for the exchange of materials and examinations and directed that both motions be heard on August 28, and if necessary, August 29, 2025.<sup>30</sup> The Applicants have been working to complete the motion materials in respect of the August motions in compliance with the Court-set schedule.

#### **G. Update on the Lease Monetization Process<sup>31</sup>**

28. The Applicants, with the assistance of Oberfeld and under the supervision of the Monitor,

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<sup>27</sup> *Ibid* at paras 43 and 45.

<sup>28</sup> *Ibid* at para 25.

<sup>29</sup> *Ibid* at para 46.

<sup>30</sup> *Ibid* at paras 48 - 49.

<sup>31</sup> All capitalized terms used in this section and not otherwise defined have the meanings given to them in the Lease Monetization Process.

conducted the Lease Monetization Process.<sup>32</sup> In accordance with the Lease Monetization Process, commencing on March 24, 2025, Oberfeld emailed the Teaser Letter to approximately 60 potentially interested parties, 31 of which executed an NDA and were provided with access to an electronic data room to conduct due diligence.<sup>33</sup>

29. As of the Phase 1 Bid Deadline, 18 parties submitted an LOI (including certain Landlords), expressing interest in a total of 65 individual Leases. Pursuant to the Lease Monetization Process, the Applicants, in consultation with the Broker and the supervision of the Monitor, determined that there was a reasonable prospect of obtaining Qualified Bids. Accordingly, the Lease Monetization Process continued and each party that submitted an LOI was invited to participate in Phase 2.<sup>34</sup>

30. The Qualified Bid Deadline for submission of binding bids to be considered for the sale of Leases was May 1, 2025. As of the Qualified Bid Deadline, 12 parties submitted a Qualified Bid (including bids submitted in the SISP that included Leases), bidding on a total of 39 individual Leases. Multiple Qualified Bids included the same location(s) such that there was overlap of locations across multiple bids, and no Qualified Bid was submitted for 62 Leases.<sup>35</sup>

31. Following the Qualified Bid Deadline, the Applicants, in consultation with Oberfeld, the Monitor, the FILO Agent, and the Pathlight Agent, and with the assistance of their advisors: (a) reviewed, considered, and discussed each bid received; and (b) engaged in numerous discussions with bidders to seek and obtain clarification in respect of their bids and sought and obtained modifications to improve them where possible.<sup>36</sup>

32. After careful consideration of all factors, the Company's board of directors, in consultation with its legal counsel, Oberfeld, and the Monitor, exercised its reasonable business judgment and

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<sup>32</sup> Perugini Affidavit at para 50, Motion Record at Tab 2.

<sup>33</sup> *Ibid* at para 51.

<sup>34</sup> *Ibid*.

<sup>35</sup> *Ibid*.

<sup>36</sup> *Ibid* at para 52.

determined that the IC Bid was the most favourable bid for the IC Lease and declared the IC Bid as the Successful Bid for the IC Lease, and that the YM Bid was the most favourable bid for the YM Leases and declared the YM Bid as the Successful Bid for the YM Leases.<sup>37</sup>

**i. The YM Lease Assignment Agreement**

33. The current, as amended, YM Lease Assignment Agreement is summarized below<sup>38</sup>:

Key Terms	YM Lease Assignment Agreement												
Assignor	Hudson's Bay Company ULC												
Assignee	YM Inc. (Sales)												
Premises and Landlords	<p>The leased premises being assigned are located in:</p> <ul style="list-style-type: none"> <li>• Toronto Premium Outlets in Halton Hills, Ontario;</li> <li>• CrossIron Mills in Rocky View, Alberta;</li> <li>• Vaughan Mills in Vaughan, Ontario;</li> <li>• Outlet Collection Winnipeg in Winnipeg, Manitoba; and</li> <li>• Tanger Outlet in Kanata, Ontario.</li> </ul> <p>The leased premises for which no Landlord Waiver could be obtained and are not being assigned are located in:</p> <ul style="list-style-type: none"> <li>• Pickering Town Center in Pickering, Ontario;</li> <li>• Skyview Power Centre in Edmonton, Alberta; and</li> <li>• Midtown Plaza in Saskatoon, Saskatchewan.</li> </ul>												
Consideration	<p>\$5,025,000 in aggregate for the assignment of the five YM Leases, in which the total Consideration is distributed as follows:</p> <table border="1"> <thead> <tr> <th>Shopping Centre</th><th>Consideration</th></tr> </thead> <tbody> <tr> <td>Toronto Premium Outlets</td><td>\$175,000</td></tr> <tr> <td>CrossIron Mills</td><td>\$550,000</td></tr> <tr> <td>Vaughan Mills</td><td>\$2,100,000</td></tr> <tr> <td>Outlet Collection</td><td>\$2,100,000</td></tr> <tr> <td>Tanger Outlet</td><td>\$100,000</td></tr> </tbody> </table>	Shopping Centre	Consideration	Toronto Premium Outlets	\$175,000	CrossIron Mills	\$550,000	Vaughan Mills	\$2,100,000	Outlet Collection	\$2,100,000	Tanger Outlet	\$100,000
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<sup>37</sup> *Ibid* at paras 53 and 65.

<sup>38</sup> *Ibid* at para 57.

Deposit	<p>Deposit: \$502,500 (and prior to the termination of the three YM Leases not being assigned, \$602,500).</p> <p>Second Deposit: \$4,522,500), representing the balance of the Consideration to be released on a <i>pro-rata</i> basis on the applicable Closing Date with respect to the relevant YM Lease.</p>
Assigned Interest	<p>The Assignor assigns and transfers to the Assignee, as of the Closing Date for each Lease, all of the Assignor's obligations, rights, title and interest, both at law and at equity, in and to each Assigned Lease, the Assigned Premises, and at no additional cost to the Assignee, the FF&amp;E and Trade Fixtures that the Assignor, in its sole and absolute discretion, leaves in the Assigned Premises on the applicable Closing Date, and all related rights, benefits and advantages, including the residue of the term of the Lease, any rights of renewal and/or extension, any rights of first refusal, rights of first offer and similar pre-emptive rights, and rights to purchase, if any, contained in the Lease.</p>
Excluded Property	<p>The Assigned Interest shall not include any intellectual property rights owned by the Assignor or any FF&amp;E, Trade Fixtures, and personal property in the Assigned Premises that are not owned by the Assignor.</p>
Structure of Agreement	<p>The Lease Assignment Agreement in effect constitutes five (5) separate agreements, being separate agreements for an assignment in respect of each individual YM Lease being assigned. If the Agreement terminates in respect of any Assignment, it will remain valid and in full force and effect for the other Assignments.</p>
Cure Costs	<p>The Assignor shall be responsible for any costs which may be necessary to cure any monetary Tenant defaults under any Assigned Lease existing as of the applicable Closing Date for such Assigned Lease and which relate solely to the period prior to the applicable Closing Date for such Assigned Lease.</p> <p>The Assignee will be responsible for the obligations for any costs related to non-monetary defaults under the Assigned Leases, save and except for any non-monetary default arising by reason of the CCAA Proceedings or the insolvency of the Assignor.</p>
Other	<p>Assignee shall cause all Assignor-related signage at the Assigned Premises (both interior and exterior) to be removed from the Assigned Premises by no later than August 31, 2025.</p>
Key Condition to Closing	<p>Court granting the Approval and Vesting Order.</p>

Outside Date for Closing	September 30, 2025.
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## ii. The IC Lease Assignment Agreement

34. The IC Lease Assignment Agreement is summarized below<sup>39</sup>:

Key Terms	IC Lease Assignment Agreement
Assignor	Hudson's Bay Company ULC
Assignee	Ivanhoe Realties Inc.
Landlord	Ivanhoe Cambridge II Inc.
Premises and Landlords	The leased premises being assigned is located at Metrotown in Burnaby, British Columbia.
Consideration	\$20,000 for the assignment of the IC Lease.
Other Considerations	<p>The IC Lease Assignment Agreement provides additional benefits for Hudson's Bay which include:</p> <ul style="list-style-type: none"> <li>• Assignor is not responsible for any Rent accruing and payable under the IC Lease from and after June 15, 2025;</li> <li>• Assignor will not incur any costs associated with removing the FF&amp;E; and</li> <li>• Assignee will remove all external signage.</li> </ul>
Deposit	Deposit: \$1,000.
Assigned Interest	The Assignor assigns and transfers to the Assignee, as of the Closing Date all of the Assignor's obligations, rights, title and interest, both at law and at equity, in and to the Assigned Lease, the Assigned Premises and at no additional cost to the Assignee, the FF&E that the Assignor, in its sole and absolute discretion, leaves in the Assigned Premises on the Closing Date, and all related rights, benefits and advantages, including the residue of the term of the Lease, any rights of renewal and/or extension, any rights of first refusal, rights of first offer and similar pre-emptive rights, and rights to purchase, if any, contained in the Lease.

<sup>39</sup> *Ibid* at para 66.

Excluded Property	The Assigned Interest shall not include any intellectual property rights owned by the Assignor or any FF&E and personal property in the Assigned Premises that are not owned by the Assignor.
Cure Costs	No cure costs.
Key Condition to Closing	Court granting the Approval and Vesting Order.
Outside Date for Closing	August 29, 2025.

### **PART III – ISSUES**

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

- (a) grant the YM Approval and Vesting Order and approve the YM Transactions contemplated therein;
- (b) grant the IC Approval and Vesting Order and approve the IC Transaction contemplated therein;
- (c) seal the Confidential Summary to the Seventh Report of the Monitor;
- (d) extend the Stay Period until and including October 31, 2025; and
- (e) approve the Monitor's Reports, and Activities.

### **PART IV – LAW & ARGUMENT**

#### **A. The YM Approval and Vesting Order Should Be Granted**

##### **i. This Court Has Jurisdiction to Approve the Transactions and Vest the YM Leases in YM**

36. Section 36 of the CCAA provides that a debtor company may sell assets outside of the ordinary course of business if authorized to do so by the Court. Section 36(3) sets out the following factors for the Court to consider when determining whether to authorize a sale of assets by a

debtor company in a CCAA proceeding. The Court must look at the proposed transaction as a whole and decide whether it is appropriate, fair and reasonable, in reference to the following non-exhaustive criteria:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.<sup>40</sup>

37. The factors listed are not exhaustive or a mandatory checklist for every CCAA sale.<sup>41</sup>

38. In *Canwest*, Justice Pepall held that the criteria enumerated in section 36(3) of the CCAA largely overlapped with the traditional common law criteria established in *Royal Bank v Soundair Corp.* (“**Soundair**”) for approval of a sale of assets in an insolvency scenario and remain relevant

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<sup>40</sup> *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (“**CCAA**”) at s. 36(3); *Nelson Education Limited (Re)*, 2015 ONSC 5557 at para 38 (“**Nelson**”); *Bloom Lake, q.p.l. (Arrangement relatif à)*, 2015 QCCS 1920 at paras 25-26. (“**Bloom Lake**”).

<sup>41</sup> *Target Canada Co. (Re)*, (April 2, 2015), Court File No. CV-15-10832-00CL, Ont. S.C.J. [Commercial List] at para 15.

when considering the statutory test:

- (a) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers have been obtained; and
- (d) whether there has been unfairness in the working out of the process.<sup>42</sup>

39. A court should also give effect to the business judgement rule, which affords deference to the exercise of the commercial and business judgement of the debtor company in the context of an asset sale where the marketing and sale process was fair, reasonable, transparent and efficient.<sup>43</sup>

40. The foregoing factors have been applied by this Court recently in similar retail CCAA proceedings where a debtor company sought approval of agreements assigning the right, title, and benefit under certain lease agreements to third parties.<sup>44</sup> The Court in these CCAA Proceedings looked to these same factors in addressing approval of the Affiliate Lease Assignments and the Canadian Tire APA.<sup>45</sup>

## ii. The YM Lease Assignment Agreement and the YM Transactions Satisfy the Requirements of Section 36(3) of the CCAA

41. The process undertaken by the Applicants to identify the highest offer for the YM Leases

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<sup>42</sup> CCAA, s. 36(3); *Canwest Global Communications Corp.*, 2010 ONSC 2870 at [para 13](#); *Royal Bank v Soundair Corp.* (1991), 83 D.L.R. (4th) 76 (Ont. C.A.) at [para 16](#); *Nelson* at paras [37-38](#).

<sup>43</sup> *Bloom Lake*, at [para 28](#).

<sup>44</sup> *Bed Bath & Beyond Canada Ltd. (Re)*, 2023 ONSC 2308 at [paras. 10-11](#) and *Nordstrom Canada Retail Inc.*, 2023 ONSC 4199 at [paras. 16-18](#).

<sup>45</sup> *In the Matter of Hudson's Bay Company ULC et al* (June 25, 2025), Court File No. CV-25-00738613-00CL Ont. S.C.J. [Commercial List] ([Affiliate Lease Assignment Order Endorsement](#)) at para 15; *In the Matter of Hudson's Bay Company ULC et al* (June 3, 2025), Court File No. CV-25-00738613-00CL Ont. S.C.J. [Commercial List] ([Approval and Vesting Order Endorsement](#)) at para 19.



satisfies the requirements of section 36(3) of the CCAA and the *Soundair* principles. The consideration under the YM Lease Assignment Agreement is the highest and best offer in respect of the YM Leases.<sup>46</sup> Each of the relevant criteria enumerated in section 36(3) of the CCAA and the *Soundair* principles are reviewed below.

- (a) ***The process leading up to the execution of the YM Lease Assignment Agreement was reasonable in the circumstances and there is no concern as to its efficacy and integrity. The Applicants and their advisors undertook significant efforts to obtain the best price and have not acted improvidently.***

42. The YM Lease Assignment Agreement is the result of extensive solicitation efforts undertaken pursuant to the Lease Monetization Process with the assistance of Oberfeld and the supervision of the Monitor. The Lease Monetization Process broadly canvassed the market of parties potentially interested in the YM Leases pursuant to reasonable timelines.<sup>47</sup>

43. The Lease Monetization Process was conducted in a fair and transparent manner, in consultation with the Monitor and certain secured lenders at relevant times.<sup>48</sup> The Lease Monetization Process sought Sale Proposals from Qualified Bidders with the intention to implement one or a combination of bids in respect of the Leases, which implementation included sales, dispositions, assignments, surrender (if acceptable by the applicable landlord), or other transaction forms.<sup>49</sup>

44. The Lease Monetization Process was extensive, canvassing approximately 60 potentially interested parties, which list was developed by Oberfeld based on its market expertise and its consideration of parties that may have an interest in the Leases, with input from the Applicants

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<sup>46</sup> Perugini Affidavit at para 71, Motion Record at Tab 2. Seventh Report of the Monitor dated July 29, 2025 (the “**Seventh Report**”) at paras. 6.6 and 6.8 and Confidential Appendix “A” to the Seventh Report.

<sup>47</sup> *Ibid* at para 59.

<sup>48</sup> *Ibid* at paras 10 and 70.

<sup>49</sup> *Ibid* at para 51.

and the Monitor.<sup>50</sup>

**(b) The Monitor supports the conduct of the Lease Monetization Process.**

45. The Monitor is of the view that the Lease Monetization Process was a thorough Court-approved process that was conducted by the Applicants and Oberfeld with the supervision of the Monitor, and canvassed a targeted group of potentially interested parties based on Oberfeld's market expertise and its consideration of parties that may have an interest in the YM Leases, with input from the Applicants and the Monitor.<sup>51</sup> The Monitor supports the approval of the YM Lease Assignment Agreement.<sup>52</sup>

**(c) Creditors were adequately consulted, the interests of all parties have been considered, and there has been no unfairness in the conduct of the Lease Monetization Process.**

46. Throughout the Lease Monetization Process, the Applicants have engaged with certain of their secured lenders, such as the Pathlight Agent and the FILO Agent, in accordance with the terms of the Lease Monetization Process, as appropriate, and kept them informed on the progress of the Lease Monetization Process.<sup>53</sup>

47. After careful consideration of all factors, including support from the FILO Agent and the Pathlight Agent in favour of entering into the YM Bid, the Company's board of directors, in consultation with its legal counsel, Oberfeld, and the Monitor, exercised its reasonable business judgement and determined that the YM Bid was the most favourable bid for the YM Leases.<sup>54</sup>

**(d) The Transactions are a positive development for the Applicants' stakeholders.**

48. As set out above, the YM Transactions represent the highest and best offers received within the marketing process for the YM Leases. If the YM Lease Assignment Agreement is

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<sup>50</sup> *Ibid.*

<sup>51</sup> Seventh Report at para 6.8(a).

<sup>52</sup> *Ibid* at para. 6.10.

<sup>53</sup> Perugini Affidavit at para 52, Motion Record at Tab 2.

<sup>54</sup> *Ibid* at para 53.

approved, the YM Transactions will also result in a reduction of Landlord claims against the estate of the Company that would otherwise arise from the disclaimer of the YM Leases.<sup>55</sup>

49. The Monitor is of the view that the YM Transactions maximize value for the benefit of the Applicants' stakeholders, as they provide greater value than any other bid identified in the Lease Monetization Process for the YM Leases, and do not result in prejudice to any stakeholder.<sup>56</sup>

**(e) *The Consideration to be received is fair and reasonable.***

50. As stated above, The Applicants believe that the consideration paid by YM for the assignment of the YM Leases is fair and reasonable and represents the highest and best offers received within the marketing process for the YM Leases.<sup>57</sup>

51. The Monitor is of the view that the consideration under the YM Lease Assignment Agreement is fair and reasonable in the circumstances.<sup>58</sup>

**iii. The IC Approval and Vesting Order Should Be Granted**

52. For the same reasons as set out above, the process undertaken by the Applicants to identify the highest offer for the IC Lease satisfies the requirements of section 36(3) of the CCAA and the *Soundair* principles.

53. The execution of the IC Lease Assignment Agreement represents the culmination of extensive solicitation efforts in respect of the IC Lease pursuant to the Lease Monetization Process.<sup>59</sup>

54. After careful consideration of all factors, and receiving no other bids for the IC Lease, the

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<sup>55</sup> *Ibid* at paras 71-72.

<sup>56</sup> Seventh Report at para 6.8(b) and (e).

<sup>57</sup> Perugini Affidavit at para 71, Motion Record, Tab 2.

<sup>58</sup> Seventh Report at para 6.8(f).

<sup>59</sup> Perugini Affidavit at para 67, Motion Record, Tab 2.

Company's board of directors, in consultation with its legal counsel, Oberfeld, and the Monitor, exercised its reasonable business judgement and determined that the IC Bid was the most favourable bid for the IC Lease.<sup>60</sup>

55. The Landlord under the IC Lease is affiliated with IC, and as such, the approval of the IC Lease Assignment Agreement is supported by the IC Landlord.<sup>61</sup> The IC Transaction will also result in a reduction of the Landlord's claim against the estate of the Company that would otherwise arise from the disclaimer of the IC Lease.<sup>62</sup>

56. While the consideration payable under the IC Lease Assignment Agreement is nominal, the IC Transaction will result in the Company incurring savings in FF&E removal costs which would be incurred if the IC Lease was disclaimed by the Company. In addition, the IC Lease Assignment Agreement provides that IC is responsible for all rent accruing and payable from and after June 15, 2025, as well as removal of external signage, resulting in further costs savings to the Company.<sup>63</sup> The Applicants believe that the IC Transaction, when considering the total costs savings to the Applicants' estate set out above, is fair and reasonable and thus, in the best interests of the Applicants and their stakeholders.<sup>64</sup>

57. The Monitor is of the view that the consideration under the IC Lease Assignment Agreement (which includes the savings on rent and FF&E removal) is fair and reasonable in the circumstances<sup>65</sup> and that the IC Transaction maximizes value for the benefit of the Applicants' stakeholders.<sup>66</sup>

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<sup>60</sup> *Ibid* at para 65.

<sup>61</sup> *Ibid* at para 67.

<sup>62</sup> *Ibid* at para 74.

<sup>63</sup> *Ibid* at paras 63-64.

<sup>64</sup> *Ibid* at para 73.

<sup>65</sup> Seventh Report at para 7.6(f).

<sup>66</sup> *Ibid* at para 7.6(b).

## **B. The Confidential Appendix Should be Sealed**

58. As part of the YM Approval and Vesting Order, the Applicants are seeking to seal the Confidential Appendix which contains a summary of the bids received during the Lease Monetization Process for the YM Leases.

59. Section 137(2) of the *Courts of Justice Act* provides this Court with the discretion to order that any document filed in a civil proceeding, including in the insolvency context, be treated as confidential, sealed, and not part of the public record.<sup>67</sup>

60. The test to determine if a sealing order should be granted is set out in *Sierra Club*, as re-framed by the Supreme Court of Canada in *Sherman Estate v. Donovan*: (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>68</sup>

61. Although the Supreme Court was considering issues of personal privacy in *Sherman Estate*, it noted in citing *Sierra Club* that the term “important interest” can capture a broad array of public objectives including commercial interests.<sup>69</sup>

62. Courts have applied the *Sierra Club* and *Sherman Estate* tests in the insolvency context and authorized sealing orders over confidential or commercially sensitive documents to protect the interests of debtors.<sup>70</sup> Courts have also recently granted sealing orders in respect of a confidential summary of bids received, which is substantially the same in all material respects to

<sup>67</sup> *Courts of Justice Act*, R.S.O. 1990, c. C. 43 at s 137(2).

<sup>68</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para 53; *Sherman Estate v. Donovan*, 2021 SCC 25 at paras 38 and 43 (“*Sherman Estate*”).

<sup>69</sup> *Sherman Estate*, at para 41.

<sup>70</sup> *Danier Leather Inc. (Re)*, 2016 ONSC 1044 at para 82; *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347 at paras 23-28.

the confidential summary of bids in the Confidential Appendix that the Applicants are seeking a sealing order in respect of (including the prior confidential summary of bids that was sealed pursuant to the CTC AVO).<sup>71</sup> This Court also previously granted a sealing order in respect of a confidential summary of bids.<sup>72</sup>

63. The proposed sealing order is supported by considerations of: (a) the public interest, being the serious risk that public disclosure of the confidential summary of offers could impair any efforts to remarket the purchased assets if the YM Transactions do not close;<sup>73</sup> and (b) lack of a reasonable alternative to a sealing order to mitigate the aforementioned risks.<sup>74</sup>

64. The Monitor is of the view that the limited sealing request – until the YM Transactions close – is not prejudicial to stakeholders and is appropriate in the circumstances.<sup>75</sup>

## **B. The Stay Extension Should be Granted**

65. The current Stay Period expires on July 31, 2025. Pursuant to s. 11.02 of the CCAA, the court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the court that it has acted, and is acting, in good faith and with due diligence.<sup>76</sup>

66. In *Century Services Inc. v. Canada (Attorney General)*, the Supreme Court of Canada held that in assessing whether a stay extension is appropriate in the circumstances, the Court ought

<sup>71</sup> See: *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314, at para 39; *Plan of Arrangement of Fire & Flower Holdings Corp. et al.*, 2023 ONSC 4934 at paras 35-36; *Ontario Securities Commission v Bridging Finance Inc.*, 2022 ONSC 1857 at paras 50-54; *Attorney General of Canada v Silicon Valley Bank*, 2023 ONSC 4703 at para 28-33; *Hudson's Bay Company ULC et al. (Re)*, *Approval and Vesting Order* dated June 3, 2025 at para.12.

<sup>72</sup> See for example, *In the Matter of Hudson's Bay Company ULC et al* (June 23, 2025), Court File No. CV-25-00738613-00CL Ont. S.C.J. [Commercial List] (*Affiliate Lease Assignment Order*) at para 10; *In the Matter of Hudson's Bay Company ULC et al* (June 3, 2025), Court File No. CV-25-00738613-00CL Ont. S.C.J. [Commercial List] (*Approval and Vesting Order*) at para 12.

<sup>73</sup> See for example, *Springer Aerospace Holdings Ltd.*, 2022 ONSC 6581 at paras 29-30; *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354, at para 72.

<sup>74</sup> *Original Traders Energy Ltd. (Re)*, (January 30, 2023), Court File No. CV-23-00693758-00CL Ont. S.C.J. [Commercial List] (*Endorsement*) at para 62.

<sup>75</sup> Seventh Report at para 6.7.

<sup>76</sup> CCAA, s. 11.02(2) and (3).

to inquire whether the extension advances the remedial purpose of the CCAA.<sup>77</sup> CCAA Proceedings involving coordinated liquidation steps (liquidating CCAA) have been found to satisfy such remedial purposes, as a means to avoid the social and economic cost attendant upon an insolvency.<sup>78</sup>

67. When granting an extension, it is a prerequisite for the petitioner to provide evidence of what it intends to do in order to demonstrate to the court and stakeholders that extending the proceedings will advance the purpose of the CCAA.<sup>79</sup> The Applicants have done so in this case.

67. The Applicants are seeking to extend the Stay Period from August 1, 2025, to and including October 31, 2025. The Stay Extension is appropriate in the circumstances. An extension of the Stay Period will allow the Applicants to:

- (a) close the YM Transactions and the IC Transaction;
- (b) finalize motion materials and seek approval of the Central Walk APA;
- (c) continue to develop and conduct the Art Collection Auction;
- (d) complete removal and/or sale of FF&E remaining at the Stores;
- (e) complete WEPPA matters;
- (f) attend to a motion with respect to hardship funds;
- (g) pursue pension surplus matters under further guidance of the Court;
- (h) finalize Share Services arrangements;
- (i) complete various CCAA administrative matters, including secure document and data retention matters; and
- (j) continue to advance the maximization of the value of their estate for the benefit of their stakeholders and winding up the Applicants.<sup>80</sup>

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<sup>77</sup> *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para 70.

<sup>78</sup> *8640025 Canada Inc. (Re)*, 2018 BCCA 93 at para 45.

<sup>79</sup> *Re North American Tungsten Corp.*, 2015 BCSC 1376 at para 26.

<sup>80</sup> Perugini Affidavit at para 75, Motion Record at Tab 2.

68. The Applicants have and continue to act in good faith and with due diligence. Among other things the Applicants have:

- (a) concluded the Liquidation Sale at all Stores;
- (b) conserved cash by issuing sixty-two additional lease disclaimers;
- (c) undertook a review of contracts to determine which should be disclaimed, and issued several disclaimers in connection therewith;
- (d) engaged in discussions with Landlords, certain secured creditors and counsel to Central Walk with respect to the Central Walk APA;
- (e) engaged in discussions with Landlords, certain secured creditors and counsel to YM with respect to the YM Lease Assignment Agreement;
- (f) engaged in discussions with Landlords, certain secured creditors and counsel to IC with respect to the IC Lease Assignment Agreement;
- (g) undertook review and reconciliation of consultant's budgets in respect of the Liquidation Sale;
- (h) coordinated ongoing efforts with respect to the potential sale and removal of remaining FF&E;
- (i) continued their efforts to monetize remaining redundant assets;
- (j) responded to creditor and stakeholder enquiries regarding these CCAA Proceedings;
- (k) worked with Receiver appointed over the JV Entities on transaction activities;
- (l) responded to the Hilco Motion;
- (m) worked with Saks Global in preparing a shared services protocol to address reconciliation and intercompany obligations for shared services, data retention, and shared services requested for the wind-up of the CCAA Proceedings;



- (n) engaged in various discussions with the Pension Administrator, TELUS, and assisted with, among other things, information requests;
- (o) initiated discussions regarding the Pension surplus, and advised TELUS that the Company is asserting a claim of an interest in the pension surplus for the benefit of its creditors;
- (p) engaged in various discussions with Heffel and Interest Parties regarding the sale of the Art Collection;
- (q) attended case conferences and responded to various communications in respect of, among other things, a right of first refusal related to a certain Lease and the litigation timetable with respect to the Central Walk APA; and
- (r) engaged in numerous communications with secured lenders and their advisors in respect of the Company's cash flows, Liquidation Sale, and CCAA Proceedings generally.<sup>81</sup>

69. The Monitor is of the view that the Applicants have acted, and continue to act, in good faith and with due diligence to advance the CCAA Proceedings.<sup>82</sup>

70. No creditors are expected to suffer material prejudice as a result of the extension of the Stay Period to October 31, 2025.<sup>83</sup>

71. The Monitor supports the proposed extension of the Stay Period to and including October 31, 2025, and has filed an Updated Cash Flow Forecast showing the Applicants have sufficient liquidity to operate through the proposed extension.<sup>84</sup>

### **C. The Monitor's Report and Activities Should be Approved**

72. A request to approve a monitor's report is not unusual.<sup>85</sup> There are policy and practical

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<sup>81</sup> Perugini Affidavit at para 70, Motion Record, Tab 2.

<sup>82</sup> Seventh Report at para 8.4(b).

<sup>83</sup> *Ibid* at para 77.

<sup>84</sup> *Ibid*; Seventh Report at para 8.4 and Appendix J.

<sup>85</sup> Target Canada Co. (Re), 2015 ONSC 7574 at para 2.

reasons for the Court to approve the Monitor's activities and provide a level of protection for the Monitor during the CCAA Proceedings. Specifically, Court approval:

- (a) Allows the Monitor to move forward with next steps in the CCAA Proceedings;
- (b) Brings the Monitor's activities before the Court;
- (c) Allows an opportunity for concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) Enables the Court to satisfy itself that the Monitor's activities have been conducted in a prudent and diligent manner;
- (e) Provides protection for the Monitor not otherwise provided by the CCAA; and
- (f) Protects the creditors from the delay and distribution that would be caused by:
  - (a) re-litigation of steps taken to date, and
  - (b) potential indemnity claims by the Monitor.<sup>86</sup>

73. The form of the proposed order, with respect to approval of the Monitor's Reports and the Monitor's activities described therein, is consistent with the language used in *Target*<sup>87</sup> and subsequent proceedings.<sup>88</sup>

74. In the present case, the Monitor's Reports and the conduct and activities of the Monitor referred to therein should be approved.

75. The Monitor has acted responsibly and carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the ARIO. The Monitor and its counsel have provided invaluable assistance to the Applicants in the CCAA Proceedings.<sup>89</sup> It is respectfully submitted that in the circumstances, the Court should respect the good faith decisions

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<sup>86</sup> *Ibid* at para 22.

<sup>87</sup> *Ibid* at paras 7 and 26.

<sup>88</sup> See, for example: *Re Clover Leaf Foods* (29 September 2020), Court File No. CV-20-00641220-00CL Ont. S.C.J. [Commercial List] ( [\*Order Re Approval of Monitor's Activities and Fees and for Stay Extension\*](#)) at para 3.

<sup>89</sup> Periguni Affidavit at para 79, Motion Record, Tab 2.

of the Monitor, and its legal counsel related to the CCAA Proceedings.

**PART V – ORDER SOUGHT**

76. The Applicants therefore request that the Court grant the YM Approval and Vesting Order, the IC Approval and Vesting Order and the Order extending the Stay Period until and including October 31, 2025, and approving the Monitor's Reports and activities of the Monitor referred to therein in the forms requested.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 30<sup>th</sup> day of July 2025.

*Stikeman Elliott LLP*

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**Stikeman Elliott LLP**  
Lawyers for the Applicants

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314
2. *Attorney General of Canada v Silicon Valley Bank*, 2023 ONSC 4703
3. *Bed Bath & Beyond Canada Ltd. (Re)*, 2023 ONSC 2308
4. *Bloom Lake, g.p.l. (Arrangement relatif à)*, 2015 QCCS 1920
5. *Canwest Global Communications Corp.*, 2010 ONSC 2870
6. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60
7. *Danier Leather Inc. (Re)*, 2016 ONSC 1044
8. *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354
9. *In the Matter of Hudson’s Bay Company ULC et al* (June 3, 2025), Court File No. CV-25-00738613-00CL Ont. S.C.J. [Commercial List] ([Approval and Vesting Order](#))
10. *In the Matter of Hudson’s Bay Company ULC et al* (June 3, 2025), Court File No. CV-25-00738613-00CL Ont. S.C.J. [Commercial List] ([Approval and Vesting Order Endorsement](#)) at para 19.
11. *In the Matter of Hudson’s Bay Company ULC et al* (June 23, 2025), Court File No. CV-25-00738613-00CL Ont. S.C.J. [Commercial List] ([Affiliate Lease Assignment Order](#))
12. *In the Matter of Hudson’s Bay Company ULC et al* (June 25, 2025), Court File No. CV-25-00738613-00CL Ont. S.C.J. [Commercial List] ([Affiliate Lease Assignment Order Endorsement](#)) at para 15.
13. *Nelson Education Limited (Re)*, 2015 ONSC 5557
14. *Nordstrom Canada Retail Inc.*, 2023 ONSC 4199
15. *Ontario Securities Commission v Bridging Finance Inc.*, 2022 ONSC 1857
16. *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347
17. *Original Traders Energy Ltd. (Re)*, (January 30, 2023), Court File No. CV-23-00693758-00CL Ont. S.C.J. [Commercial List] ([Endorsement](#))
18. *Plan of Arrangement of Fire & Flower Holdings Corp. et al.*, 2023 ONSC 4934
19. *Re Canada North Group Inc.*, 2017 ABQB 508
20. *Re Clover Leaf Foods* (29 September 2020), Court File No. CV-20-00641220-00CL Ont. S.C.J. [Commercial List] ( [Order Re Approval of Monitor’s Activities and Fees and for Stay Extension](#))

21. Re North American Tungsten Corp., 2015 BCSC 1376
22. Royal Bank v Soundair Corp. (1991), 83 D.L.R. (4th) 76 (Ont. C.A.)
23. Sherman Estate v. Donovan, 2021 SCC 25
24. Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41
25. Springer Aerospace Holdings Ltd., 2022 ONSC 6581
26. Target Canada Co. (Re), (April 2, 2015), Court File No. CV-15-10832-00CL, Ont. S.C.J. [Commercial List] (Endorsement)
27. Target Canada Co. (Re), 2015 ONSC 7574
28. 8640025 Canada Inc. (Re), 2018 BCCA 93

**SCHEDULE “B”  
TEXT OF STATUTES AND REGULATIONS**

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

**General power of court**

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

**Stays, etc. - initial application**

**11.02 (1)** A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Stays, etc. - other than initial application**

**(2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

### **Burden of proof on application**

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

### **Assignment of agreements**

**11.3 (1)** On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

### **Factors to be considered**

(3) In deciding whether to make the order, the court is to consider, among other things,

(a) whether the monitor approved the proposed assignment;

(b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and

(c) whether it would be appropriate to assign the rights and obligations to that person.

[...]

### **Restriction on disposition of business assets**

**36 (1)** A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

## **Notice to creditors**

**(2)** A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

## **Factors to be considered**

**(3)** In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

## **Courts of Justice Act, R.S.O. 1990, c. C. 43**

### **Sealing Documents**

**137** (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

[...]



**Business Corporations Act, R.S.O. c. B. 16****Change of Name**

**171(3)** No corporation shall change its name if, (a) the corporation is unable to pay its liabilities as they become due; or (b) the realizable value of the corporation's assets is less than the aggregate of its liabilities.

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

Proceeding commenced at Toronto

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