ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

# ENDORSEMENT

**COURT FILE NO.: CV-25-00738613-00CL** **DATE: November 30, 2025**

**NO. ON LIST: 1**

**TITLE OF PROCEEDING: In Re HUDSON'S BAY COMPANY**

**BEFORE: JUSTICE OSBORNE**

## PARTICIPANT INFORMATION

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## ENDORSEMENT OF JUSTICE OSBORNE:

[1] The Applicants (collectively for the purposes of this Endorsement, "HBC" or "The Hudson's Bay Company") seek an order approving a proposed auction process for the Royal Proclamation Charter (the "Charter").

[2] To say that the Charter has significance to stakeholders in this *CCAA* Proceeding as well as to other stakeholders who are not directly involved in matters arising out of the insolvency of HBC would be a gross understatement. It has profound historical and cultural significance to Canada and its people.

[3] The Charter was granted by King Charles II in 1670. It established HBC and granted the Company a trade monopoly over what was then known as Rupert's Land and which encompasses what is today a significant part of Canadian territory. In addition, it granted to HBC the power to make certain laws, build forts and administer justice. Until HBC sought protection from its creditors under the *CCAA*, it was the oldest continuously operating company in North America.

[4] Defined terms in this Endorsement have the meaning given to them in the Motion Record of HBC and/or the Ninth Report of the Monitor and the Supplement thereto, unless otherwise stated.

[5] As is common in *CCAA* proceedings, I previously approved a SISP Order in this Proceeding to set out the framework of the process for soliciting interest in and selling assets of HBC to maximize recoveries for stakeholders.

[6] Clearly, however, it was necessary to consider next steps regarding the Charter differently and separately from both the general assets of HBC and also from its Art Collection (which is the subject of separate auctions). There has been significant public interest in the Charter, a number of stakeholders have expressed an interest in the process by which it is to be managed, and numerous other parties and groups have contacted the Monitor to express their views.

[7] Beyond certain export restrictions related to Canadian cultural property (discussed further below), there is very little law governing the disposition and stewardship of a document such as the Charter.

[8] Accordingly, one of the challenges for this Court is to balance the objective in an insolvency proceeding such as this to maximize recoveries from all assets of a debtor company for the benefit of creditors and other stakeholders against the imperative of ensuring that a document such as the Charter is addressed in a manner that reflects its relevance and importance to Canada, its history and all of its peoples.

[9] The motion today is not opposed by any party. It is supported by the Joint Bidders, the first Senior Secured Lender, the FILO Agent, and is not opposed by the second Senior Secured Lender, Pathlight. It is recommended by the Court-appointed Monitor.

[10] In addition to the Department of Justice (Canada) on behalf of the Department of Canadian Heritage (among others), the Department of Justice (Manitoba), numerous Indigenous groups, museums, archives, and other public institutions have expressed views with respect to the Charter.

[11] Having reviewed all of the materials and heard the submissions of all parties who wished to make them, I granted the order, albeit with numerous revisions. I indicated at the conclusion of the hearing that reasons would follow. These are those reasons.

[12] In June, 2025, HBC received an unsolicited offer from Wittington Investments Limited to purchase the Charter for $12.5 million. Wittington is the private holding company of a prominent Canadian family. The offer included a commitment to immediately donate the Charter to the Canadian Museum of History where, after a robust and extensive consultation process, it would be shared with museums and Indigenous groups across Canada, prioritizing the long-term preservation of the Charter.

[13] In the summer of 2025, HBC brought a motion seeking approval to sell the Charter pursuant to the Wittington offer. I scheduled that motion for September 9, 2025. While many steps in an insolvency proceeding are undertaken in "real-time" or on short notice, given the Charter's profound historical and cultural significance, I directed that the motion for an order approving the sale of the Charter should not be rushed, in order that all interested parties and other stakeholders could have an adequate opportunity to consider the issues.

[14] At the (very appropriate) request of HBC, I directed that any party wishing to submit materials in respect of the motion do so no later than August 21, 2025, in order that all interested stakeholders could have an

opportunity to consider not only the motion materials of HBC, but the submissions made by any other party who intended to take a position on the motion.

[15] By that deadline, HBC had received one responding motion record from DKRT Family Corp. DKRT is the private holding company of another prominent Canadian family. DKRT opposed the approval of the sale of the Charter pursuant to the Wittington offer and submitted that the Charter should be the subject of an open auction, albeit with conditions. DKRT advised the Company that it was prepared and willing to provide an opening bid of at least $15 million if the Charter were auctioned.

[16] HBC, Reflect and the Monitor had numerous discussions with other Interested Parties, including representatives of major Canadian cultural institutions. There were several expressions of interest in the acquisition of the Charter were it to be made available through an auction process.

[17] HBC, Reflect and the Monitor then initiated discussions with Wittington and DKRT, together their respective advisors, to further discuss their offers and the path forward. To ensure appropriate protections were in place, HBC obtained a binding commitment letter from DKRT to participate in any Court-approved auction process, to submit an opening bid of not less than $15 million on terms consistent with those set out in the DKRT Responding Motion Record, and other terms.

[18] Accordingly, HBC, in consultation with the Monitor, Reflect, the FILO Agent and Pathlight, determined that a competitive auction process, with conditions, was appropriate.

[19] On September 28, 2025, HBC received an unsolicited Joint Bid from Wittington and DKRT (the "Joint Bidders") together.

[20] On November 14, 2025, the Joint Bidders executed a Joint Commitment Letter pursuant to which they agreed to participate in a Court-approved auction if so authorized and bid at least $18 million for the Charter. That Joint Commitment Letter has been made publicly available. HBC and the Monitor, following consultation with Reflect, that FILO Agent and Pathlight, agreed to permit the Joint Bidders to act together, and accepted the Joint Bid.

[21] With the minimum price represented by the Joint Bid, HBC now seeks approval of an (updated and revised) Charter Auction Process.

[22] The Court has broad discretion under the *CCAA* to facilitate restructurings, and in the course of so doing to approve a sales process in relation to a debtor's business and/or assets, prior to or in the absence of a plan of compromise and arrangement: *Grant Forest Products Inc (Re)*, 2013 ONSC 5933 at para 44; and *Indalex Ltd (Re)*, 2011 ONCA 265 at para 180.

[23] In *Nortel Networks Corporation (Re),* 2009 CanLII 39492 (ONSC) at paras 47-48, the court identified several factors to be considered in determining whether to approve a sales process:

(a) is a sale warranted at this time?

(b) will the sale be of benefit to the whole economic community?

(c) do any of the debtor's creditors have a *bona fide* reason to object to a sale?; and

(d) is there a better viable alternative?.

[24] These factors have been consistently applied in numerous subsequent cases, including in particular retail insolvencies: *Nordstrom Canada Retail Inc.* (April 20, 2023) Ont SCJ [Commercial List] Court File No. CV-23-00695619-00CL (Endorsement), at paras 6−13; *Bed Bath & Beyond Canada Ltd.,* (February 21, 2023) Ont SCJ [Commercial List] Court File No. CV-23-00694493-00CL (Endorsement), at paras 7−9; *Target Canada Co. (Re)* (February 5, 2015) Ont SCJ [Commercial List] Court File No. CV-15-10832-00CL (Endorsement), at para 3; and *Green Growth Brands, (Re),* 2020 ONSC 3565 at para 61.

[25] Further, and while the factors set out in section 36 of the *CCAA* have direct applicability to a sale approval rather than approval of a sales process, this Court has held in several cases that the *Nortel* factors should be evaluated in light of the considerations that may ultimately apply to a subsequent sale approval motion pursuant to section 36: *Brainhunter Inc. (Re)*, 2009 CanLII 72333 (ONSC) at para 17.

[26] In *CanWest Global Communications Corp.*, 2010 ONSC 2870 at para 13, Justice Pepall held that the criteria enumerated in Section 36(3) of the *CCAA* largely overlapped with the common law criteria established in *Royal Bank v. Soundair Corp.* (1991), 83 D.L.R. (4th) 76 (Ont. C.A.) at para 16 (commonly referred to as the *Soundair Principles*) for approval of a sale of assets in an insolvency scenario and remain relevant when considering the statutory test:

(a) whether sufficient effort has been made to obtain the best price and whether the debtor has acted improvidently;

(b) the interests of all parties;

(c) the efficacy and integrity of the process by which offers have been obtained the me: and

(d) whether there has been any unfairness in the working out of the process.

[27] I am satisfied that a consideration of all of these factors justifies approval of the Charter Auction Process at this time.

[28] The restructuring efforts of HBC have resulted in the liquidation of many of its assets. No party takes the position that the Charter is not an asset of HBC. HBC submits, and the Monitor agrees, that the Auction is expected to maximize monetization recoveries from the Charter for the benefit of creditors.

[29] The potential sale of the Charter has been known to all stakeholders (and the general public, given the significant media interest) for many months. I am satisfied that the proposed timelines in the Charter Auction Process will provide an opportunity for any Potential Bidder to familiarize themselves with the finalized

process (if not done already), make inquiries of the Monitor, and prepare to participate in the auction if so desired.

[30] Importantly, in this unique case, the proposed Charter Auction Process has been structured to benefit not only the broader economic community, but the broader community of Canada and its peoples as well. Put simply, the objective is to maximize the value for stakeholders, but to do so while safeguarding the Charter's unique cultural and historical significance and ensure its future preservation in public trust.

[31] I am also satisfied that, as part of the Charter Auction Process, the Joint Bid should be approved as a Qualified Bid. The Joint Bid has terms that ensure that there will be at least one committed bidder in the Auction. Even if there are no other bids, the terms of the Joint Bid, within the context of the proposed Charter Auction Process, contain sufficiently robust safeguards to further ensure that the Charter remains in Canada and is made accessible to the public.

[32] Specifically, the Joint Bid contemplates a donation in equal parts, utilizing a shared public custodianship model, to a consortium comprised of the Archives of Manitoba, the Manitoba Museum, the Canadian Museum of History and the Royal Ontario Museum (collectively, the "Public Custodians"). The Joint Bidders have, as noted above, irrevocably committed to participating in the auction and placing a minimum opening bid of $18 million.

[33] In addition, and if the Joint Bid is ultimately selected as the Successful Bid and approved by the Court, the Joint Bidders have also committed to provide a $5 million donation to the Public Custodians to fund stewardship, consultation, education in public access related to the Charter. They have advised the Monitor that this contemplated donation is intended to facilitate public engagement that will:

(a) involve consultations with First Nations, Inuit and Métis communities and organizations, as well as other relevant organizations and the broader Canadian public;

(b) promote sharing of the Charter with institutions across Canada for public display;

(c) support the Public Custodians' educational programs and outreach efforts in connection with the Charter; and

(d) ensure that the Charter remains in Canada, as well as its preservation, stewardship and continuing accessibility for all Canadians.

[34] I also note that:

(a) the Public Custodians are not bound by the Joint Bid and are free to accept a donation from any other Qualified Bidders; and

(b) the Charter will remain in Canada and is in any event subject to export restrictions as set out in the *Cultural Property Export and Import Act*.

[35] The terms of the Charter Auction Process provide that any Potential Bidder must irrevocably commit to permanently donating the Royal Charter, immediately upon closing of the purchase, to one or more Canadian public institutions that are equipped to preserve cultural property for the long term, and ensure public access through exhibitions, programming, publications, research or online platforms, including but not limited to museums or archives. Specifically, the Terms of the Charter Auction Process provide that any Potential Bidder must, in order to be qualified as such, submit a proposal that includes the following:

(a) a commitment, in form and substance, to bid no less than $18.5 million;

(b) an acknowledgement that the Charter is of outstanding significance, high national importance, and is protected under the *Cultural Property Export and Import Act;*

(c) confirmation that the Potential Bidder is considering the acquisition of the Charter for its own account and is irrevocably committing to permanently donate, immediately after purchase, the Charter to one or more Canadian public institutions with the ability to preserve cultural property for the long term and make it accessible to the public through exhibitions, programming, publication, research or online, and which includes a museum or archives;

(d) details of the donation, including the quantum, if any, that the Potential Bidder will donate to the proposed Public Institution to support a consultation process, sharing of the Charter or other Charter-related activities; and a letter from the Public Institution to which the Charter is proposed to be donated indicating that it will accept the donation, and the terms thereof, and which sets out the capacity of that Public Institution to ensure the continued preservation of the Charter, its plan to conduct a consultation process with respect to chairing the Royal Charter with other Public Institutions and Indigenous groups, and other particulars.

[36] The specific mechanics, steps and timing for the Charter Auction Process are set out in motion materials of HBC and the Ninth Report of the Monitor and the Supplement thereto, all of which are in the public Court file and also publicly available on the website of the Court-appointed Monitor.

[37] Finally, any sale of the Charter to the Successful Bidder (whether the Joint Bidders or other Qualified Bidders) following the Auction is subject to the approval of this Court, to be sought on notice to all stakeholders.

[38] I am satisfied that none of the Company's creditors or stakeholders have a *bona fide* reason to object to the Charter Auction Process, and I am reinforced in this conclusion by the fact that, following a lengthy notice period well in excess of that required by the Rules, no creditor or stakeholder opposes approval of the Charter Auction Process. The Senior Lenders of HBC are supportive of the relief sought, and it is recommended by the Monitor.

[39] I am satisfied that approval of the Charter Auction Process will not materially prejudice any stakeholders of the Applicants and that there is no better, viable alternative. Put simply, the historical and cultural significance of the Charter is such that a more typical SISP, designed with the exclusive objective of maximizing monetary proceeds, is not appropriate here.

[40] The Applicants and Reflect, in consultation with the Monitor, evaluated numerous alternative approaches to the disposition of the Charter and determined that the proposed Charter Auction Process represents the best possible process in the circumstances. I agree.

[41] For all of these reasons, the Charter Auction Process, including the Joint Bid for the purposes thereof, is approved.

[42] Order to go in accordance with these reasons.



Date: November 21, 2025

Peter J. Osborne