

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**IN THE MATTER OF THE NOTICES OF INTENTION
TO MAKE A PROPOSAL TO CREDITORS OF
11449346 CANADA INC. o/a P3 PANEL COMPANY
AND 12574764 CANADA LTD. o/a UNITED EDGE
STRUCTURAL COMPONENTS**

FACTUM OF THE PROPOSAL TRUSTEE

July 28, 2025

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TO: Service List

PART I. OVERVIEW

1. On April 3, 2025, 11449346 Canada Inc. (“**P3 Panels**”) and 12574764 Canada Ltd. (“**United Edge**” and, together with P3 Panels, “**Companies**”) each filed a Notice of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act* (“**BIA**”).
2. The Companies operate a truss and roof construction business in Smith Falls, Ontario.
3. In these proceedings, the Companies and their proposal trustee, Albert Gelman Inc. (the “**Proposal Trustee**”) have worked to maximize the value of the Companies for their stakeholders by, among other things, completing a sales and investment solicitation process and negotiating an asset purchase agreement (“**APA**”) with a prospective purchaser (the “**Purchaser**”).
4. The Companies are now seeking an Order to approve the APA and the transaction contemplated therein (the “**Transaction**”), which will allow the Companies and the Purchaser to close the Transaction.
5. To ensure that the Professionals (as defined below) are adequately funded to complete this further work for the benefit of the Companies’ stakeholders, the Proposal Trustee seeks an Order increasing the Administration Charge (as defined below) on the Companies’ assets from \$250,000 to \$350,000.
6. Additionally, the Proposal Trustee seeks:

- (a) An Order authorizing the Proposal Trustee to make distributions to the Professionals and the Interim Lender (as defined below) from the proceeds of the Transaction; and
- (b) An Order abridging the require length of notice of the Proposal Trustee's Motion and validating service of the Proposal Trustee's Notice of Motion.

PART II. FACTS

A. Background and Initial Order

7. On April 3, 2025, the Companies each filed notices of intention (the "**NOIs**") to make a proposal pursuant to s. 50.4(1) of the *Bankruptcy and Insolvency Act*. The NOIs named Albert Gelman Inc. as Trustee in connection with these proceedings.¹

8. On April 9, 2025, the Honourable Justice Kershman made an Order granting, among other things:

- (a) A first priority charge on the property of the Companies in the amount of \$250,000 (the "**Administration Charge**"), securing the professional fees of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Companies (collectively, the "**Professionals**"); and
- (b) A second priority charge in the amount of \$1,000,000 (the "**Interim Financing Charge**"), securing the Companies' indebtedness to Phoenix

¹ First Supplement to the Fourth Report of Albert Gelman Inc. [**First Supplement**] at para. 1, p. 3.

Building Components Inc. (the “**Interim Lender**”) in connection with an interim financing facility (the “**Interim Financing Facility**”).²

B. The SISP

9. On April 29, 2025, to facilitate the sale of the Companies’ assets on a going-concern basis for the benefit of the Companies’ stakeholders, the Honourable Justice Kershman made an Order (the “**SISP Order**”) approving a sales and investment solicitation process in respect of the Companies (the “**SISP**”).³

10. The SISP contemplated the marketing of the Companies for sale from May 1 to June 30, 2025 and the selection of the Successful Bid (as this term is defined in the SISP) shortly thereafter.⁴

11. As contemplated by the SISP Order, the Proposal Trustee diligently marketed the Companies’ assets, in consultation with the Companies.⁵

12. As a result of the SISP, the Companies entered into the APA for the sale of substantially all of the Companies’ assets, which Transaction is scheduled to close following this Court granting an Approval and Vesting Order in respect of the Transaction.⁶

² First Supplement at para. 16, p. 5 & para. 21, p. 6.

³ Court Order of Justice Kershman dated April 29, 2025 at para. 2, Appendix C to the Fourth Report of Albert Gelman Inc., p. 39 [“**Fourth Report**”].

⁴ Court Order of Justice Kershman dated April 29, 2025 at Schedule A, paras. 18, 35-39, Appendix C to the Fourth Report, pp. 47, 52.

⁵ Court Order of Justice Kershman dated April 29, 2025 at Schedule A, para. 20, Appendix C to the Fourth Report, p. 47.

⁶ Asset Purchase Agreement at s. 2.1, Appendix E to the Fourth Report, p. 75.

C. Liquidity Issues

13. During the week of July 21, 2025, the Companies suffered a liquidity crisis which resulted in the Companies being unable to fully fund their payroll obligations, which came due on July 25, 2025. The Companies subsequently funded their payroll obligations on July 25, 2025 with funds advanced by the Purchaser under the APA Amendment (as defined below), which is further described below.⁷

14. Management of the Companies provided the Proposal Trustee with the following explanation for their liquidity issues:

- (a) Some customers have failed to pay the Companies in accordance with contractual obligations, agreements and representations without advance notice to the Companies or to the Proposal Trustee;
- (b) There have been delays in new projects starting and in existing projects progressing due to municipal permit issues and various issues related to other trades and contractual counter-parties including upstream trades causing delays on jobsites, Acts of God and accidents in relation to these other trades;
- (c) Customers denied that contracts were entered into or re-contracted work to competitors due to misapprehensions about and the stigma associated with the NOI Proceedings;

⁷ First Supplement at para. 8, p. 4.

- (d) New work and contracts taking longer to negotiate or failing to close for similar reasons;
- (e) Some customers directly paid sub-contractors rather than to the Companies. In some instances, these payments were made to pre-NOI-Filings creditors not accounted for in the April 3 Cash Flow Forecast and therefore represent a permanent reduction in cash available to the Companies. In other instances, the Companies had forecasted cash disbursements to those sub-contractors, so there was a net-neutral impact on the Companies' overall cash flow; and
- (f) Temporary issues with supply of materials preventing work on projects which have since been resolved.⁸

15. As a result of the foregoing, and to obtain urgent liquidity to fund its ongoing operations, on July 25, 2025, the Companies and the Purchaser entered into an amending agreement to the APA (the "**APA Amendment**") which provided for an advance of \$85,000 to the Companies, which amount will be deducted from the Purchase Price under the APA.⁹

16. The Proposal Trustee understands that the conditions to the APA Amendment have been satisfied and/or waived by the Purchaser and that sufficient funds have been

⁸ First Supplement at para. 9, p. 4.

⁹ First Supplement at para. 10, p. 4.

advanced to the Companies in order to fund the unpaid payroll obligations of the Companies as at July 25, 2025.¹⁰

17. The Proposal Trustee is of the view that the APA Amendment is in the best interests of the stakeholders of the Companies as it provides urgently needed liquidity to the Companies which will allow them to continue to operate until the Transaction closes.¹¹

D. Professional Fees

18. Since the Companies commenced these proceedings, the Professionals have been working diligently to, among other things, facilitate a going concern sale of the Companies for the benefit of the Companies' stakeholders, as contemplated by the SISP.¹²

19. To date, the Professionals have accrued significant unpaid professional fees, which have remained unpaid because of insufficient cash flow from the Companies' operations. The existing Administration Charge of \$250,000 has enabled the Professionals to continue working for the benefit of the Companies' stakeholders despite this fact. However, this quantum has been quickly consumed as the Professionals have completed necessary work for the SISP and as the Professionals have, in large part, gone unpaid.

20. The Proposal Trustee, in consultation with counsel to the Companies, has determined that the current quantum of the Administration Charge will be insufficient to

¹⁰ First Supplement at para. 11, p. 5.

¹¹ First Supplement at para. 12, p. 5.

¹² First Supplement at para. 17, p. 5.

ensure that the Professionals' fees are protected and that they are compensated for the critical professional services they are providing to these restructuring proceedings.

21. At the conclusion of this proceeding, the Professionals will have accrued unpaid fees that exceed the current Administration Charge. In particular, the Proposal Trustee estimates that the completion of the Transaction and these NOI proceedings may require the accrual of as much as \$350,000 in professional fees by the Professionals.¹³

22. Given the Companies' liquidity challenges, the Companies will not (and have not) be able to pay the Professionals' fees from operating cash flows during the NOI proceedings and the Professionals will only be able to obtain payment for the accrued and unpaid fees upon closing of the Transaction.¹⁴

23. In the Proposal Trustee's view, an increase in the Administration Charge up to \$350,000 will be accretive to the estates of the Companies because it will facilitate the completion of the Transaction as well as other work necessary to ensure the orderly and efficient distribution of the Transactions proceeds. Accordingly, an increase in the quantum of the Administration Charge to \$350,000 will increase the value of the Companies' respective estates.¹⁵

PART III. ISSUES

24. The Proposal Trustee adopts the submissions of the Companies as set out in their factum. This factum addresses only the following issues:

¹³ First Supplement at para. 18, p. 5.

¹⁴ First Supplement at para. 19, p. 5.

¹⁵ First Supplement at para. 20, p. 6.

- (a) Should the Administration Charge be increased to \$350,000?;
- (b) Should the Proposal Trustee be authorized to make a distribution to:
 - (i) the Interim Lender in respect of the Companies' indebtedness to the Lender under the Interim Financing Facility following closing of the Transaction; and
 - (ii) the Professionals in respect of their accrued and unpaid professional fees secured by the Administration Charge?;
- (c) Should service of the Proposal Trustee's Notice of Motion be regularized?;
and
- (d) Should the Supplemental Report and the activities of the Proposal Trustee and its counsel described therein be approved?

25. The Proposal Trustee submits that all of these issues should be answered in the affirmative.

A. The Administration Charge should be increased to \$350,000

26. Subsections 64.2(1) and (2) of the *BIA* provide that, on notice to potentially affected secured creditors, the Court may grant a charge that ranks in priority to the claim of any secured creditor in favour of, among others, the Proposal Trustee, legal counsel engaged by the Proposal Trustee in the performance of its duties, and legal counsel engaged by the debtor for the purposes of the notice of intention proceedings.¹⁶

¹⁶ *Bankruptcy and Insolvency Act*, [R.S.C., 1985, c. B-3](#), s. [64.2\(1\)\(2\)](#).

27. The Court has already granted the Professionals a charge on the property of the Debtors in the amount of \$250,000. Following the significant work completed by the Professionals to successfully administer the SISP for the benefit of the Companies' stakeholders, this quantum will be insufficient to fully secure the professional fees required to complete these proceedings.

28. The Companies are now at a pivotal moment in their restructuring. Subject to the Court granting the AVO, the Companies will be in a position to complete the Transaction, which represents the highest and best offer received following the Court-approved SISP.

29. To ensure that the Professionals are funded to complete the Transaction for the benefit of the Companies' stakeholders, and complete the other work required to conclude these proceedings, this Court should increase the quantum of the Administration Charge from \$250,000 to \$350,000 for the following reasons:¹⁷

- (a) **The increased Administration Charge is likely to benefit the Companies' secured creditors:** the requested increase to the Administration Charge ensures that the Professionals are fairly compensated for obtaining and closing the Transaction and moving to distribute the proceeds thereof. This is in the best interests of all stakeholders and, in particular, the Companies' secured creditors. While this proposed increase in first-priority indebtedness may impact secured creditor recovery in the event that the Transaction should fail to close, in this outcome, all stakeholders would suffer significant losses. Conversely,

¹⁷ The following factors track those cited as being relevant to whether an administration charge should be granted in an insolvency proceeding in *Canwest Publishing Inc.*, [2010 ONSC 222](#) at para. [54](#).

the requested increase to the Administration Charge ensures that the Professionals are funded to:

- (i) complete the Transaction, which represents the highest and best offer for the Companies' assets following the implementation of a Court-approved sales process; and
 - (ii) take appropriate steps to facilitate distribution of the proceeds of the Transaction, as the Proposal Trustee deems appropriate.
- (b) The value generated by this work will accrue directly and primarily to the benefit of the Companies' secured creditors
- (c) **The size and complexity of the business being restructured:** as increased, the Administration Charge would represent a small portion of the purchase price in the Transaction. The restructuring of the Companies has been a complicated endeavour that has required navigating a number of unforeseen developments including the Companies' liquidity challenges. Seen in this context, it is clear that the size of the requested increase to the Administration charge is proportionate to the nature and scale of the Companies' business;
- (d) **The proposed role of the beneficiaries of the charge:** The roles of the beneficiaries of the proposed Administration Charge are the debtors' counsel, the proposal trustee, and the proposal trustee's independent counsel. These are the core roles that are usual and necessary in a corporate restructuring;

- (e) **Whether there is any unwarranted duplication of roles:** as noted above, the only parties benefitting from the Administration Charge are the core roles that are usual and necessary in a corporate restructuring. Further, the Proposal Trustee notes that the Proposal Trustee and the Companies each have only one lawyer. The Proposal Trustee and Companies have staffed the Professionals so as to minimize the costs of these proceedings. The Professionals have, and will continue to, work to ensure that no unnecessary fees are incurred in administering these proceedings. The Professionals are committed to closing the Transaction and facilitating the distribution of its proceeds in the most cost efficient way possible;
- (f) **Whether the quantum of the Administration Charge appears to be fair and reasonable:** Courts acknowledge that estimating the quantum of an Administration Charge is “an inexact exercise.” An Administration Charge is considered fair and reasonable where its quantum is not, on a balance, disproportionate to the complexity of the business and restructuring.¹⁸ Here, the quantum of the Administration Charge is the product of consultation between the Companies and the Proposal Trustee, having regard to the fees accrued to date. Further, as noted above, the reasonability of the proposed increase to the Administration Charge is supported by the small size of Administration Charge in relation to the purchase price in the Transaction; and

¹⁸ See *Springer Aerospace Holdings Limited*, [2022 ONSC 6581](#) at para. [19](#) and *Canwest Global Communications Corp. (Re)*, [2009 CanLII 55114 \(ON SC\)](#) at para. [40](#).

- (g) **The position of the proposal trustee:** the Proposal Trustee supports the increase to the Administration Charge, for the above noted reasons.

B. The Proposal Trustee should be authorized to make distributions to the Professionals and the Interim Lenders

30. The Court routinely grants orders authorizing interim distributions to creditors in insolvency proceedings. In determining whether it is appropriate to authorize an interim distribution, this Court has considered:

- (a) whether the proposed recipient's security is valid and enforceable;
- (b) whether the amounts that are owed to the proposed recipient exceed the proposed interim distribution amount; and
- (c) whether the proposed interim distribution would result in interest savings.¹⁹

31. Considered together, the relevant factors in this case strongly support the proposed distributions:

- (a) The priority positions of the Administration Charge and Interim Financing Charge are established by Court-order – there is no question that they are both valid and enforceable security against the proceeds of the Companies' assets;

¹⁹ *First Source Financial Management v. Chacon Strawberry Fields Inc.*, [2024 ONSC 7229](#) at paras. [44-45](#), citing *Ontario Securities Commission v. Bridging Income Fund L.P.*, [2022 ONSC 4472](#) at paras. [8, 12](#).

- (b) Following completion of the Transaction, the Proposal Trustee anticipates that there will be sufficient funds to pay the amounts secured by these charges in full;
- (c) Payment of the Interim Financing Facility will stop interest from accruing. This will benefit all stakeholders of the Companies;
- (d) Facilitating the efficient payment of these secured claims will, generally, streamline these proceedings and save time and expense for all parties; and
- (e) The Proposal Trustee presently contemplates paying the entirety of the Professionals' fees secured by the Administration Charge and the entirety of the Interim Financing Facility (rather than a portion of these amounts). The Proposal Trustee is unaware of any prejudice that would be caused to any party through the full payment of these amounts.²⁰

C. The service of the Proposal Trustee's notice of motion should be regularized

32. The Proposal Trustee served its notice of motion on July 27, 2025, to be heard contemporaneously with the Companies motion returnable July 30, 2025. Service of this notice of motion did not strictly comply with the *Rules of Civil Procedure* (the "**Rules**"), which requires seven days' notice of a motion.²¹

²⁰ Jurisdiction to make such a complete distribution is supported by *Re Nortel Networks Corporation et al*, [2014 ONSC 4777](#) at para. [58](#).

²¹ *Rules of Civil Procedure*, [R.R.O. 1990, Reg. 194](#), r. [37.07\(6\)](#) [**"Rules"**].

33. However, Rule 3.02(1) provides the Court with discretion to abridge any time prescribed by the *Rules* and Rule 1.04(1) provides that the *Rules* shall be “liberally construed to secure the just, most expeditious and least expensive determination of every civil proceedings on its merits.”²²

34. Rule 16.08 provides that, where a document has been served in a manner other than one authorized by the *Rules*, the Court can make an order validating service of a document where it is satisfied that the document came to the notice of the person to be served.²³

35. In this case, the Court should exercise its discretion under these Rules to validate the service of the Proposal Trustee’s notice of motion and abridge the required length of notice for the following reasons:

(a) **No substantial prejudice:** the Court has considered motions made on short notice (and proceeded as if that motion had been delivered in a timely way) where the Court found that there was no substantial prejudice to other parties.²⁴ In this case, hearing the Proposal Trustee’s motion on July 30, 2025 would not cause substantial prejudice to any parties. The Proposal Trustee’s motion is:

(i) based on a short Supplemental Report;

²² *Rules*, rr. [1.04\(1\)](#), [3.02\(1\)](#).

²³ *Rules*, r. [16.08](#).

²⁴ *Quizno’s Canada Restaurant Corporation v. 1450987 Ontario Corp.*, [2009 CanLII 20708 \(ON SC\)](#) at paras. [33-36](#).

- (ii) being heard in conjunction with the Companies' pre-existing motion (which was made on one week's notice) and primarily addresses a record that was already before the parties and the Court; and
 - (iii) seeks relief that is not uncommonly sought in insolvency proceedings on short notice;

- (b) **Urgency and importance of relief sought:** the requested increase to the Administration Charge is required to ensure that the Professionals' fees are adequately protected in this critical stage of the restructuring of the Companies. It is in the interests of all stakeholders of the Companies to ensure that the Professionals are adequately funded to complete the Transaction and distribute its proceeds. In this regard, the Proposal Trustee notes that the critical and urgent need for this relief only became clear to the Proposal Trustee last week, when it learned that the Companies would be unable to make payroll without an urgent cash injection (which was obtained by the Companies in the form of an advance by the Purchaser). These factors support the exercise of the Court's discretion to regularize the service of the Proposal Trustee's notice of motion; and

- (c) **Efficiency of proceedings:** a core purpose of the *Rules* is to facilitate the efficient and cost-effective resolution of proceedings. The importance of this purpose is heightened in the context of insolvency proceedings, where there is often a limited pool of assets to be realized on and distributed to creditors. Granting the relief sought now, as opposed to in a future hearing, will fulfil this purpose by minimizing time in Court.

36. Accordingly, proceeding in this Motion as if the Proposal Trustee's notice of motion had been delivered in a timely way is consistent with the purpose of the *Rules* and the *BIA*. The Court should exercise its discretion to regularize the service of the Proposal Trustee's Notice of Motion.

D. The Supplemental Report should be approved

37. The Supplemental Report describes, among other things, activities that the Proposal Trustee has undertaken for the benefit of the Companies' stakeholders and which activities have been accretive to the Companies' estates.

38. Accordingly, the Court should make an Order approving the Supplemental Report and the Proposal Trustee's activities as defined therein.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th of July, 2025.



Ryan Shah

Schedule "A" – Authorities Cited

1. *Canwest Publishing Inc.*, [2010 ONSC 222](#).
2. *Springer Aerospace Holdings Limited*, [2022 ONSC 6581](#).
3. *Canwest Global Communications Corp. (Re)*, [2009 CanLII 55114 \(ON SC\)](#).
4. *First Source Financial Management v. Chacon Strawberry Fields Inc.*, [2024 ONSC 7229](#).
5. *Ontario Securities Commission v. Bridging Income Fund L.P.*, [2022 ONSC 4472](#).
6. *Re Nortel Networks Corporation et al*, [2014 ONSC 4777](#).
7. *Quizno's Canada Restaurant Corporation v. 1450987 Ontario Corp.*, [2009 CanLII 20708 \(ON SC\)](#).

I, Ryan Shah, counsel to the Proposal Trustee, affirm on this 28th day of July, 2025, that I am satisfied as to the authenticity of the above authorities.



Schedule “B” – Statutes and Regulations Cited

Bankruptcy and Insolvency Act, [R.S.C., 1985, c. B-3](#).

Court may order security or charge to cover certain costs

64.2 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under [section 50.4](#) or a proposal is filed under [subsection 62\(1\)](#) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee’s duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

Rules of Civil Procedure, [R.R.O. 1990, Reg. 194](#).

Interpretation

General Principle

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits. R.R.O. 1990, Reg. 194, r. 1.04 [\(1\)](#).

Extension or Abridgment

General Powers of Court

3.02 (1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just. R.R.O. 1990, Reg. 194, r. 3.02 [\(1\)](#).

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed. R.R.O. 1990, Reg. 194, r. 3.02 [\(2\)](#).

Validating Service

16.08 Where a document has been served in a manner other than one authorized by these rules or an order, the court may make an order validating the service where the court is satisfied that,

(a) the document came to the notice of the person to be served; or

(b) the document was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service. R.R.O. 1990, Reg. 194, r. 16.08.

Service of Notice

Required as General Rule

37.07 (1) The notice of motion shall be served on any party or other person who will be affected by the order sought, unless these rules provide otherwise. R.R.O. 1990, Reg. 194, r. 37.07 [\(1\)](#); O. Reg. 260/05, s. 9 (1).

Where Not Required

(2) Where the nature of the motion or the circumstances render service of the notice of motion impracticable or unnecessary, the court may make an order without notice. R.R.O. 1990, Reg. 194, r. 37.07 [\(2\)](#).

(3) Where the delay necessary to effect service might entail serious consequences, the court may make an interim order without notice. R.R.O. 1990, Reg. 194, r. 37.07 [\(3\)](#).

(4) Unless the court orders or these rules provide otherwise, an order made without notice to a party or other person affected by the order shall be served on the party or other person, together with a copy of the notice of motion and all affidavits and other documents used at the hearing of the motion. O. Reg. 219/91, s. 3; O. Reg. 260/05, s. 9 (2).

Where Notice Ought to Have Been Served

(5) Where it appears to the court that the notice of motion ought to have been served on a person who has not been served, the court may,

(a) dismiss the motion or dismiss it only against the person who was not served;

(b) adjourn the motion and direct that the notice of motion be served on the person; or

(c) direct that any order made on the motion be served on the person. R.R.O. 1990, Reg. 194, r. 37.07 [\(5\)](#).

Minimum Notice Period

(6) Where a motion is made on notice, the notice of motion shall be served at least seven days before the date on which the motion is to be heard. R.R.O. 1990, Reg. 194, r. 37.07 [\(6\)](#); O. Reg. 171/98, s. 12; O. Reg. 438/08, s. 33.

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FACTUM OF THE PROPOSAL TRUSTEE

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