Court File No. 33-3368241

ONTARIO
SUPERIOR COURT OF JUSTICE
(EAST REGION COMMERCIAL LIST)

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF 1382769 ONTARIO LIMITED AND 1622356 ONTARIO LIMITED

FACTUM
(Approval and Vesting Order)

September 6, 2026

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TO: THE SERVICE LIST

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I. RELIEF SOUGHT

1. This is a motion by 1382769 Ontario Limited and 1622356 Ontario Limited (together, the "**Companies**") for:

a. an approval and vesting order in the form of the draft order appended at tab 3[1] of the Companies' motion record (the "**AVO**"),

i. approving the transaction (the "**Transaction**") contemplated in the stalking horse asset purchase agreement dated June 17, 2026 (the "**APA**" or the "**Stalking Horse Bid**") between the Companies, as vendors, and an arm's length third party, 7055579 Canada Inc. (the "**Stalking Horse Bidder**" or the "**Purchaser**"), as purchaser, and authorizing the Companies to complete the Transaction in accordance with the APA and the AVO, under the supervision of the proposal trustee, Albert Gelman Inc. (in such capacity, the "**Proposal Trustee**"); and

ii. vesting the purchased assets in and to the Purchaser, free and clear of encumbrances, upon delivery of a certificate of the Proposal Trustee certifying that the Transaction closed (the "**Closing Certificate**");

b. an order (the "Ancillary Order") in the form appended at tab 5[2] of the Companies' motion record,

i. increasing the maximum amount of the Administration Charge (as that term

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[1] Motion record of the Companies delivered on September 2, 2026 (the "**Motion Record**"), tab 3 (page 116).
[2] Motion Record, tab 5 (page 136).

is defined below) from $200,000 to $300,000; and

ii. approving the Proposal Trustee's activities and the Proposal Trustee's fees and disbursements, as described in the fourth report of the Proposal Trustee dated September 4, 2026 (the "**Fourth Report**").

2. The Proposal Trustee supports the relief sought. The Proposal Trustee and the Companies are not aware of opposition, including from the only creditor, Canada Revenue Agency ("**CRA**").[3]

II. KEY FACTS

A. The Stalking Horse Bid is the Successful Bid in the SISP

3. On July 13, 2026, the Honourable Justice Perron granted an order (the "**SISP and SHAPA Approval Order**") approving a sale and investment solicitation process for the Companies' businesses and assets (the "**SISP**") and approving the APA for purposes of constituting the Stalking Horse Bid in the SISP.[4]

4. CRA did not oppose the SISP and SHAPA Approval Order. CRA advised the Proposal Trustee that the SISP was acceptable to CRA and that the Transaction would provide greater recovery to CRA than bankruptcy.[5]

5. The SISP & SHAPA Approval Order authorized and directed the Proposal Trustee to perform the SISP, with the assistance of the Companies. Pursuant to the SISP & SHAPA Approval

[3] Fourth Report of the Proposal Trustee dated September 4, 2026 (the "**Fourth Report**"), paras. 5, 29(ii).
[4] A copy of the SISP & SHAPA Approval Order is Exhibit "A" to the affidavit of Timothy Lloyd sworn September 2, 2026 (page 20 of Motion Record) (the "**Lloyd September Affidavit**").
[5] Fourth Report, para. 29(ii).

Order, the Stalking Horse Bid shall be the successful bid in the SISP unless a party made a superior offer by the bid deadline, namely, August 20, 2026.[6]

6. As described in further detail below, the Proposal Trustee performed the SISP in accordance with the SISP & SHAPA Approval Order, and while several parties performed due diligence, no party submitted an offer by the bid deadline. Pursuant to the SISP & SHAPA Approval Order, the Stalking Horse Bid is therefore the successful bid in the SISP.[7]

B. Key Terms of SISP and Proposal Trustee's Performance of SISP

7. As further described in the law section below, the Court, in deciding whether to grant the AVO, must consider, among other things, whether the process leading to the Transaction, namely the SISP, was reasonable in the circumstances.[8] The key terms of the SISP and a summary of the Proposal Trustee's performance thereof are summarized below.

8. The SISP was developed by the Companies in consultation with the Proposal Trustee and was approved by the Court upon being satisfied that the SISP was fair, reasonable, and met the criteria for approval.[9] The Proposal Trustee supported the approval of the SISP and neither CRA, the Companies' only creditor, nor the Companies' franchisor, Recipe Unlimited Corporation (the "**Franchisor**"), opposed the SISP & SHAPA Approval Order.[10]

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[6] SISP & SHAPA Approval Order, Exhibit "A" to the Lloyd September Affidavit (page 20 of Motion Record), para. 9, and appended SISP terms, para. 28.
[7] *Id.*
[8] *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"), s. 65.13(4).
[9] Endorsement of Perron J. dated July 13, 2026. Such criteria include, among others, whether a sale is likely to benefit the whole "economic community," whether any of the debtor's creditors have a *bona fide* reason to object to a sale, and whether there is a better viable alternative. See *Danier Leather Inc. (Re)*, 2016 ONSC 1044 [Penny J.] ("***Danier Leather***"), paras. 20-23.
[10] Fourth Report, para. 29(ii).

9. The purpose of the SISP was to canvass the market for offers for all or part of the property, assets, business and/or shareholding of one or both Companies in order to confirm whether the Stalking Horse Bid is the best transaction opportunity.[11]

10. In accordance with the SISP & SHAPA Approval Order, the SISP was performed by the Proposal Trustee, with the assistance of the Companies as requested by the Proposal Trustee from time to time. Among other things, the Proposal Trustee set up a virtual data room, actively marketed the opportunity – including direct outreach to potentially interested parties identified by the Proposal Trustee and the Companies – and assisted with the due diligence process.[12]

11. Pursuant to the SISP & SHAPA Approval Order, the bid deadline occurred on August 20, 2026. While several parties performed due diligence, no party submitted any offer by the bid deadline or indicated an intent to do so if the bid deadline were extended.[13] The Proposal Trustee believes the market has been appropriately canvassed and that extending the bid deadline was unlikely to yield any offers. Accordingly, the Proposal Trustee declared the Stalking Horse Bid to be the successful bid pursuant to the SISP & SHAPA Approval Order.[14]

C. Key Terms of APA[15]

12. As further described in the law section below, the Court, in deciding whether to grant the AVO, must consider, among other things, whether the terms of the proposed Transaction are fair and reasonable.[16] The key terms of the APA are summarized below.

[11] Affidavit of Timothy Lloyd sworn July 8, 2026, Exhibit "B" to the Lloyd September Affidavit (page 42 of Motion Record) (the "**Lloyd July Affidavit**"), para. 22.
[12] Fourth Report, paras. 18, 19.
[13] Fourth Report, para. 19.
[14] Fourth Report, para. 25.
[15] A copy of the APA is Exhibit "C" to the Lloyd September Affidavit (page 62 of Motion Record).
[16] BIA, s. 65.13.

13. The APA is the result of arm's length negotiations between the Companies and the Purchaser, whose principal operates several restaurant franchises with the same Franchisor. Negotiations began in 2025, when the Purchaser approached the Companies to discuss an acquisition.[17]

14. Upon receiving notice that CRA would commence enforcement measures imminently, the Companies filed notices of intention ("**NOIs**") on May 1st, 2026. The filings were done to preserve, *inter alia*, the opportunity to complete a going concern transaction with the Purchaser, including pursuant to a Court-approved sale and investment solicitation process wherein such transaction could constitute the "stalking horse" bid.[18]

15. Shortly after the filing date, the Companies and the Purchaser successfully negotiated the APA, pursuant to which the Transaction would constitute the Stalking Horse Bid in the SISP. During negotiations, the Companies consulted the Franchisor and the Proposal Trustee, both of whom approved the APA and the Transaction.[19] The key terms of the APA are summarized below.

a. <u>Nature of transaction</u>: going-concern, all-cash, "as is where is" asset transaction.

b. <u>Purchase Price (Section 4)</u>: $2,300,000, plus any HST/transfer taxes.

c. <u>Deposit Paid (Section 2.2)</u>: 5% ($115,000).

d. <u>Purchased Assets (Section 1.1, definition of same)</u>: all assets used in the Companies' business.

[17] Lloyd September Affidavit, para. 4.
[18] Lloyd September Affidavit, para. 7.
[19] Lloyd July Affidavit, paras. 11, 12.

e. Treatment of Employees (Section 7.4): Purchaser shall offer employment to all employees whom the Purchaser wishes to employ post-closing, on terms substantially identical to their current terms of employment. It is anticipated that all the Companies' employees will receive offers.

f. Closing Conditions (Article 8): the only material conditions to closing are (i) that the Stalking Horse Bid be the winning bid in the SISP; and (ii) the Court's issuance of the AVO.

16. Pursuant to the SISP & SHAPA Approval Order, the Court approved the APA as the Stalking Horse Bid in the SISP upon being satisfied that the Transaction met the applicable criteria.[20] The SISP & SHAPA Approval Order was supported by the Proposal Trustee and was not opposed by CRA, who had confirmed to the Proposal Trustee that the Transaction would provide greater recovery than bankruptcy.[21] The Franchisor and the Proposal Trustee continue to approve and support the Transaction.[22]

D. Progress Towards Closing

17. Since the completion of the SISP, the Companies, the Purchaser and the Franchisor, under the supervision of the Proposal Trustee, have been diligently advancing the Transaction towards closing. The closing date is set for September 14, 2026, subject to the Court granting the AVO.[23]

18. Among other things, the Companies and the Purchaser, in consultation with the Proposal Trustee, exchanged a closing agenda and key closing documents. Additionally, the Franchisor

[20] Endorsement of Perron J. dated July 13, 2026. Such criteria include whether the Transaction is *prima facie* fair and reasonable and capable of satisfying the criteria set out in Section 65.13 of the BIA. See *Danier Leather*, paras. 35, 40.
[21] Fourth Report, para. 29(ii).
[22] Lloyd September Affidavit, para. 17; Fourth Report, para. 29.
[23] Lloyd September Affidavit, para. 16.

provided the parties with the documents which the Franchisor requires in the normal course of its business for franchise transfers. Such documents are being reviewed by the parties and may or will be executed in escrow by the hearing date on this motion.[24]

19. At this time, no Court order for the assignment of contracts is necessary or requested. Presently, the parties are satisfied that counterparties have agreed, or are expected to agree, to continue supplying the businesses post-closing. This is due, *inter alia*, to the fact that the Companies are current in their pre- and post-filing obligations to suppliers, and the fact that most going-concern supply agreements are arranged or facilitated by the Franchisor. Among other post-closing arrangements, agreements are in place among the Companies' landlords, the Franchisor (who is the tenant under the applicable leases) and the Purchaser, who will substitute the Companies as new subtenant after closing.[25]

20. Accordingly, the parties expect that, by the hearing date on this motion, the only remaining condition to closing pursuant to the APA shall be the Court's issuance of the AVO.

E. Post-Closing Steps and Distribution

21. Upon closing the Transaction, the Companies and the Proposal Trustee intend to distribute the net proceeds of the Transaction to CRA, the only known creditor of the Companies.[26] The Companies and the Proposal Trustee are considering two efficient and cost-effective distribution methods, namely, a distribution order or a proposal to creditors.[27] After completing the distribution, the Companies will likely be assigned in bankruptcy and subsequently dissolved.

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[24] Lloyd September Affidavit, para. 18; Fourth Report para. 28.
[25] Lloyd September Affidavit, para. 19.
[26] Lloyd September Affidavit, para. 8; Fourth Report, para. 5.
[27] Fourth Report, para. 15.

F. Increase of Maximum Amount of Administration Charge

22. As part of the SISP & SHAPA Order, Perron J. granted a first-ranking charge in the maximum amount of $200,000 (the "**Administration Charge**") over the Companies' property as security for the Companies' payment of the professional fees and disbursements of the Proposal Trustee, the Proposal Trustee's independent counsel, and counsel to the Companies (collectively, the "**Professionals**").[28] On this motion, the Companies request an increase in the maximum amount of the Administration Charge by one third, from $200,000 to $300,000.

23. At this time, the Professionals have exhausted retainer amounts and extended significant credit to the Companies.[29] The Professionals are only able to continue to work on a credit basis if the maximum amount of the Administration Charge is appropriate and sufficient to ensure that restructuring costs will be paid from Transaction proceeds. This includes fees incurred in connection with, among other things, the drafting and delivery of materials in support of this motion, preparing for and attending the motion, completing the Transaction – including all steps and documents required by the Franchisor – and reviewing CRA's proofs of claims.

24. Following the Proposal Trustee's allowance or disallowance of CRA's proofs of claim in whole or in part, the Companies will seek to effect a distribution and conclude these proceedings in an efficient and cost-effective manner. This may include a distribution order, a proposal to creditors and/or an assignment in bankruptcy, all of which require the continued involvement of the Professionals.

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[28] SISP & SHAPA Approval Order, Exhibit "A" to the Lloyd September Affidavit (page 20 of Motion Record), paras. 10-17; Endorsement of Perron J. dated July 13, 2026.
[29] Lloyd September Affidavit, para. 25.

25. It is currently anticipated that the initial amount of the Administration Charge may not be sufficient to secure restructuring costs incurred and to be incurred, particularly if any delay or unexpected complication occur, including any additional Court appearance that may be required.

III. ISSUES

26. The issues on this motion are whether the Court shall (A) approve the Transaction and order that the purchased assets shall vest in and to the Purchaser free and clear of encumbrances upon delivery of the Closing Certificate by the Proposal Trustee; (B) increase the maximum amount of the Administration Charge; and (C) approve the Proposal Trustee's fees and activities set out in the Fourth Report.

IV. LAW AND ARGUMENT

A. The Court Should Grant the AVO

27. The Court may approve the Transaction pursuant to Section 65.13(1) of the BIA, and the Court may vest the purchased assets in the Purchaser free and clear of encumbrances pursuant to Section 65.13(7) of the BIA.[30] Section 65.13(4) provides that, in deciding whether to grant approval and vesting orders, the Court must consider, among other things, the following criteria, which are met for the reasons outlined below, among others.

a. Whether the process leading to the proposed transaction was reasonable – The SISP was approved by the Court upon being satisfied that the SISP was a fair, reasonable, transparent, and commercially efficacious process that met the criteria for approval.[31]

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[30] BIA, s. 65.13.
[31] Fourth Report, para. 29; Endorsement of Perron J. dated July 13, 2026. Criteria include, among others, whether a sale is like to benefit the whole "economic community," whether any of the debtor's creditors have a *bona fide* reason to object to a sale, and whether there is a better viable alternative. See *Danier Leather*, paras. 20-23.

b. Whether the trustee approved the process – The Proposal Trustee approved the SISP and supported the SISP & SHAPA Approval Order.[32]

c. Whether the trustee filed 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 – The Proposal Trustee does so at paragraph 29(vi) of the Fourth Report.[33]

d. The extent to which creditors were consulted – The Proposal Trustee consulted the only known creditor of the Companies, CRA, in connection with the SISP & SHAPA Approval Order, and CRA confirmed it did not oppose the SISP or the Stalking Horse Bid considering they are more beneficial to CRA than a bankruptcy.[34]

e. The effects of the proposed sale or disposition on the creditors and other interested parties – The Transaction is beneficial to stakeholders. It enables the Companies' businesses to continue as going concerns, preserving employment as well as valuable economic relationships, including for suppliers, landlords, and the Franchisor, among others.[35]

f. Whether the consideration to be received is reasonable and fair – The purchase price payable pursuant to the APA, including $2.3 million cash plus HST/GST, is fair and reasonable and optimizes CRA's recovery in the circumstances. Among other things, the SISP confirmed that the Stalking Horse Bid is the best transaction opportunity.[36]

[32] Fourth Report, para. 29(v).
[33] Fourth report, para. 29(vi).
[34] Fourth Report, para. 29(ii).
[35] Fourth Report, para. 29(iii).
[36] Fourth Report, para. 29(iv).

28. For avoidance of doubt, the AVO's vesting provisions create no prejudice and extinguish no claim or priority, including any priority that may be claimed by CRA[37] or by the Franchisor, who is the only party to have registered a security interest pursuant to the *Personal Property Security Act*.[38] Rather, the AVO, in accordance with Section 65.13(7) and this Court's Model Approval and Vesting Order, provides that all encumbrances vested away from the purchased assets shall automatically attach to the net proceeds of the Transaction with the same priority as they had with respect to the purchased assets immediately prior to the sale.[39]

29. For those reasons, among others, the Court may approve the Transaction and order that the purchased assets shall vest in the Purchaser free and clear of encumbrances upon delivery of the Closing Certificate by the Proposal Trustee.

B. The Court Should Increase the Maximum Amount of the Administration Charge

30. This Honourable Court granted the Administration Charge upon being satisfied that the applicable criteria were met.[40] Such criteria include, *inter alia*, the size and complexity of the businesses being restructured, whether the quantum of the proposed charge appears to be fair and reasonable, the position of the secured creditors likely to be affected by the charge, and the position of the proposal trustee.[41]

31. With regard to the quantum of administration charges, Courts acknowledge that estimating the maximum amount of the charge is "*an inexact exercise*." In considering requests to increase

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[37] While CRA filed unsecured proofs of claims, the Proposal Trustee reports that a portion of CRA's claims may be secured: Fourth Report, para. 5.
[38] Fourth Report, para. 14.
[39] AVO, tab 3 (page 116) of Motion Record, para. 3.
[40] Endorsement of Perron J. dated July 13, 2026; BIA, s. 64.2.
[41] See *Canwest Publishing Inc*, 2010 ONSC 222 [Pepall J.], para. 54.

the maximum amount of the charge, Courts consider the proposed quantum fair and reasonable where it is supported by the proposal trustee and where it does not appear disproportionate to the value of the business, the contemplated transactions or the restructuring process as a whole.[42]

32. It is respectfully submitted that the proposed increase of the maximum amount of the Administration Charge, from $200,000 to $300,000, is reasonable, necessary and appropriate in the circumstances. The SISP & SHAPA Approval Order expressly provides that the maximum amount of the Administration Charge may be increased by further order of the Court.[43]

33. The Professionals are presently working on a credit basis, which should only be required if the maximum amount of the Administration Charge is appropriate and sufficient to ensure that restructuring costs will be satisfied from Transaction proceeds. Notably, the SISP & SHAPA Approval Order and the *Bankruptcy and Insolvency Act* provide that the Professionals may require immediate payment for their services and are not required to extend credit.[44]

34. The Companies rely on and require the assistance of the Professionals to complete the Transaction, review CRA's proofs of claims, and effect a distribution whether pursuant to a distribution order or a proposal to creditors. The Professionals have contributed and will continue to contribute significant value to stakeholders, including, but not limited to, CRA.

35. The maximum amount of the Administration Charge, if increased to $300,000, would represent approximately 13% of the cash purchase price payable pursuant to the APA, which is

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[42] See *Springer Aerospace Holdings Limited*, 2022 ONSC 6581 [Penny J.], para. 19 and *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ON SC) [Pepall J.], para. 40.
[43] SISP & SHAPA Approval Order, Exhibit "A" to the Lloyd September Affidavit (page 20 of Motion Record), para. 12.
[44] BIA, s. 65.1(4); SISP & SHAPA Approval Order, Exhibit "A" to the Lloyd September Affidavit (page 20 of Motion Record), para. 10.

approximately the same proportion as any HST/GST payable. The proposed quantum of the Administration Charge was established with the Proposal Trustee, who supports the proposed increase.[45] It is respectfully submitted that the increased amount of the Administration Charge is not disproportionate to the value of the Transaction.

36. Increasing the maximum amount of the Administration Charge does not necessarily mean that creditor distributions will be reduced by that amount. Only restructuring costs actually incurred are secured by the Administration Charge. Moreover, nothing in the Ancillary Order dispenses with the Proposal Trustee and its counsel's obligation to pass their accounts before a judge of this Court.[46]

37. Increasing the maximum amount of the Administration Charge at this time is the simplest, most practical and most cost-effective option to ensure payment of restructuring costs until the completion of the Companies' insolvency proceedings. Among other things, doing so on this motion eliminates the time and costs of a further motion and allows these proceedings to be completed in an efficient manner.

38. CRA was properly served with all materials in respect of this motion, and there is no known opposition. CRA also did not oppose the Administration Charge.

39. For those reasons, the Court may increase the maximum amount of the Administration Charge to $300,000.

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[45] Fourth Report, paras. 32-34.
[46] See the SISP & SHAPA Approval Order, Exhibit "A" to the Lloyd September Affidavit (page 20 of Motion Record), para. 11.

C. The Court May Approve the Proposal Trustee's Reports, Fees and Activities

40. The Fourth Report and the Proposal Trustee's activities since the last Court approval on August 24, 2026 are beneficial, timely, and in the interest of stakeholders.[47] The professional fees are properly incurred and supported by detailed fee affidavits including true copies of invoices.[48] Accordingly, the Court may grant those approvals.

RELIEF REQUESTED

41. The Companies therefore request the orders described at paragraph 1.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of September, 2026.

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[47] See *Target Canada Co. (Re)*, 2015 ONSC 7574 [Morawetz R.S.J. (as he then was)], spec. para. 23.
[48] See *Coast Automotive Group Inc (Re)*, 2026 ABCA 123, para. 8; Fourth Report, Appendices "E" and "F".

SCHEDULE "A"
LIST OF AUTHORITIES

1.	*Danier Leather Inc. (Re)*, 2016 ONSC 1044 [Penny J.]
2.	*Canwest Publishing Inc*, 2010 ONSC 222 [Pepall J.]
3.	*Springer Aerospace Holdings Limited*, 2022 ONSC 6581 [Penny J.]
4.	*Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ON SC) [Pepall J.]
5.	*Target Canada Co. (Re)*, 2015 ONSC 7574 [Morawetz R.S.J. (as he then was)]
6.	*Coast Automotive Group Inc (Re)*, 2026 ABCA 123

SCHEDULE "B"
RELEVANT STATUTES

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.

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

Restriction on disposition of assets

65.13 (1) An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) 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.

(3) An insolvent person who applies to the court for an authorization shall give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

(4) 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 trustee approved the process leading to the proposed sale or disposition;

(c) whether the trustee 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.

(7) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the insolvent person or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

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ONTARIO
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Proceeding commenced at Ottawa

FACTUM
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