

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

**B E T W E E N:**

**NATIONAL BANK OF CANADA**

Applicant

- and -

**AXIOM REAL-TIME METRICS INC.**

Respondent

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C43, AS AMENDED

**COST SUBMISSIONS OF NATIONAL BANK OF CANADA**

1. National Bank of Canada (“NBC”), seeks costs against Andrew Schachter on a full indemnity scale in connection with his opposition to the Receiver’s motion originally returnable on Friday, July 11, 2025, adjourned by Justice Kimmel to Tuesday, July 15, 2025, seeking approval of the Sitero Transaction<sup>1</sup>, as follows:

- Norton Rose Fulbright Canada LLP - \$14,391.68 (including HST).<sup>2</sup>

**Mr. Schachter’s Opposition to the Sale Approval Motion**

2. NBC relies on the submissions made by KSV Restructuring Inc. (the “**Receiver**”), in its capacity as receiver and manager of the assets, property and undertaking of the Respondent. Additionally,

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<sup>1</sup> Capitalized terms not defined herein have the meaning defined in the cost submissions of the Receiver dated August 28, 2025 (the “**Receiver’s Cost Submissions**”).

<sup>2</sup> See summary of dockets attached hereto as **Appendix A**. NBC seeks a cost award on a full indemnity basis, or alternatively, on a substantial indemnity basis in the amount of \$11,990.43(including HST).

- (a) Despite having been aware of a process for the sale of the Respondent, Mr. Schachter waited until hours prior to the motion for approval of the Sitero Transaction to oppose and raise a potential alternative bid;
- (b) Significant time was incurred after the initial return of the motion over the weekend and up to the motion the following week including time spent diligencing the allegations made by Mr. Schachter and his bid; and
- (c) After indicating that funds were available for coverage of the cash burn and deposit, Mr. Schachter failed to abide by the commitments he had made the previous Friday.<sup>3</sup>

### **Scale and Scope of Costs to be Awarded**

3. Pursuant to Section 131 of the Courts of Justice Act, R.S.O. 1990, c. C-43, costs are in the discretion of the court.<sup>4</sup> Cost awards on a full indemnity basis are warranted in situations involving sanction-worthy behaviour by the losing party.<sup>5</sup>

4. Substantial indemnity costs is the elevated scale of costs normally resorted to when the Court wishes to express its disapproval of the conduct of a party to the litigation. It follows that conduct worthy of sanction would have to be especially egregious to justify the highest scale of full indemnity costs.<sup>6</sup>

5. NBC is the only economic stakeholder in this matter. NBC's counsel was forced to incur considerable additional cost in a situation where it already stands to experience a material loss on its debt for no purpose and which amounts are otherwise unrecoverable. Mr. Schachter's actions also presented risk to the Sitero Transaction and the preservation of the Respondent's business.

6. Alternatively, NBC seeks a cost award on a substantial indemnity basis.

7. The Receiver's Cost Submissions sets out scenarios in which orders have been awarded to include time and disbursements incurred by court officers (above and beyond its legal costs) in various cases based on conduct by a party that caused the court officer to needlessly incur costs. NBC submits that a similar rationale should be applied to NBC – among other things:

- (a) NBC's application for appointment of the Receiver was done for the principal purpose of completing the Sitero Transaction on an immediate and urgent basis given the negative cash flow of the Respondent;
- (b) NBC is the only economic stakeholder in this receivership and is expected to experience a material shortfall in its recovery; and

<sup>3</sup> [Endorsement of Justice Cavanagh dated July 15, 2025](#), Ontario Superior Court of Justice (Commercial List), *National Bank of Canada v. Axiom Real-Time Metrics Inc.*, Court File No. CV-25-00746939-00CL.

<sup>4</sup> *Courts of Justice Act*, R.S.O. 1990, c. C-43, s. 131.

<sup>5</sup> *Davies v. Clarington (Municipality) et al.*, 2009 ONCA 722 at paras 28-29.

<sup>6</sup> *Net Connect Installation Inc. v. Mobile Zone Inc.*, 2017 ONCA 766 at para 8.

- (c) The delay in the motion resulted additional cost that is otherwise likely unrecoverable.

8. For the reasons described above, NBC respectfully submits that a cost award in respect of the additional costs incurred by its counsel is appropriate in these circumstances.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 2nd day of September, 2025



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Lawyers for National Bank of Canada

APPENDIX A – NRF COST OUTLINE

Court File No.: CV-25-00746939-00CL

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**COSTS OUTLINE**

Norton Rose Fulbright Canada LLP provides the following summary of its dockets between July 11 and 15, 2025 attributable to the opposition by Andrew Schachter to the Receiver's motion originally returnable on Friday July 11, 2025, adjourned by Justice Kimmel to Tuesday, July 15, 2025.

	<b>Partial indemnity</b>	<b>Substantial indemnity</b>	<b>Full indemnity</b>
<b>Fees</b>	\$6,366.20 plus HST	\$10,611 plus HST	\$12,736 plus HST
<b>Total</b>	\$7,193.80	\$11,990.43	\$14,391.68

Costs are claimed for the following lawyers:

Jennifer Stam – 23 years – Hourly rate: \$995/ SI \$829/ PI \$497.5

Date	Lawyer	Docket	Hours	Rate
7/11/25	JLS	Reviewing offer regarding Schachter and affidavit; considering same; Preparing for and attending receivership application and sale motion; several follow up discussions re same with Chaitons, KSV, NBC and other; correspondence regarding same; considering next steps regarding same	5.3	Partial: \$2,636.75 Substantial: \$4,393.70 Full: \$5,273.50
7/12/25	JLS	Reviewing Schachter offer and considering same; correspondence regarding same	.9	Partial: \$447.50 Substantial: \$746.10 Full: \$895.50
7/13/25	JLS	Correspondence re A. Schachter offer and next steps; reviewing documents regarding same	.8	Partial: \$398 Substantial: \$663.20 Full: \$796.00
7/14/25	JLS	Discussion with S. de Lorenzi regarding status and options; considering same; conference call with KSV, S. de Lorenzi regarding status; follow up regarding same; reviewing materials regarding same; correspondence regarding same and discussion with G. Benchetrit regarding same; preparing for court hearing	2.9	Partial: \$1442 Substantial: \$2404.10 Full: \$2885.50

Date	Lawyer	Docket	Hours	Rate
7/15/25	JLS	Preparing for and attending court hearing regarding sale motion; several discussions and correspondence regarding same; follow up regarding next steps to close and receivership matters	2.9	Partial: \$1442 Substantial: \$2404.10 Full: \$2885.50

\* Specify the rate being charged to the client for each person identified in column 2. If there is a contingency fee arrangement, state the rate that would have been charged absent such arrangement.

- any other matter relevant to the question of costs

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LAWYER'S CERTIFICATE

I CERTIFY that the hours claimed have been spent, that the rates shown are correct and that each disbursement has been incurred as claimed.

Date: September 2, 2025

  
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Signature of lawyer

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Court File No.: CV-25-00746939-00CL

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Proceedings commenced at TORONTO

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**COST SUBMISSIONS OF**  
**NATIONAL BANK OF CANADA**

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