

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

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3,  
AS AMENDED**

Court File No.: BK-26-03382861-0032  
Estate No.: 32-3382861

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
FIELD AVIATION COMPANY INC.**

Court File No.: BK-26-03382853-0032  
Estate No.: 32-3382853

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
FIELD AVIATION EAST LTD.**

**FACTUM OF FIELD AVIATION COMPANY INC. AND  
FIELD AVIATION EAST LTD.**

June 10, 2026

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## PART I - OVERVIEW

1. Field Aviation Canada Inc. (“**Field Canada**”) and Field Aviation East Ltd. (“**Field East**”) and together with Field, the “**Field Entities**”) are insolvent Canadian aerospace and engineering companies that have defaulted under their senior credit facility and have each filed a Notice of Intention to Make a Proposal pursuant to the BIA (the “**NOI Proceedings**”). AlixPartners Restructuring, Inc. (formerly KSV Restructuring Inc.) is the proposal trustee in the NOI Proceedings (in such capacity, the “**Proposal Trustee**”).
2. The Field Entities are seeking various relief that will provide them with the breathing space and liquidity necessary to pursue a value-maximizing stalking horse sale and investment solicitation process (the “**SISP**”) for the benefit of their stakeholders.<sup>1</sup> Each aspect of the relief on this motion was diligently advanced by the Field Entities in good faith and is supported by the sole secured lender to the Field Entities, who has agreed to provide the interim financing necessary to fund the NOI Proceedings, and the Proposal Trustee.
3. At a high level, the Field Entities seek approval of an extension of time to file a proposal, interim financing, a stalking horse bid, and related relief necessary to continue operations and implement the SISP. This will allow them to continue limited operations, complete and return certain customer aircraft currently under modification, preserve employment, and realize value from the Field Entities' specialized assets—all for the benefit of the Field Entities' stakeholders. It would also provide a baseline recovery sufficient to repay their secured lender through the Stalking Horse Agreement, or a superior transaction.

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings ascribed thereto in the Affidavit of John W. Mactaggart sworn June 6, 2026 (the “**Mactaggart Affidavit**”), Motion Record of the Field Entities dated June 6, 2026, Tab 1.

4. As such, on this motion, the Field Entities seek the following:
- (a) an order (the “**DIP Approval and Extension Order**”), among other things:
    - (i) extending the time to file a proposal with the Official Receiver, and the attendant stay of proceedings, by 45 days, up to and including August 19, 2026 (the “**Stay Extension**”) pursuant to s. 50.4(9) of the BIA;
    - (ii) administratively consolidating the NOI Proceedings of Field Canada and Field East;
    - (iii) authorizing Field Canada to continue to utilize the central cash management system currently in place, as described herein, or to replace it with another substantially similar cash management system, and authorizing the financial institutions providing such cash management services to continue doing so in the ordinary course without incurring liability in connection therewith;
    - (iv) approving (i) the DIP Term Sheet dated June 5, 2026 (the “**DIP Term Sheet**”) between Field Canada, as borrower, Field East, ASES, LLC (“**ASES**”) and Field Aerospace, Inc. (“**Field Parent**”) as guarantors, Wells Fargo Capital Finance Corporation Canada (“**Wells Capital**” and in such capacity, the “**DIP Lender**”), as interim lender and Wells Fargo Bank, National Association (“**Wells Bank**”, and together with Wells Capital, “**Wells**”) as agent; and (ii) the sixth amendment and forbearance agreement dated June 5, 2026 between Field Canada and ASES, as co-borrowers, Field Parent, as guarantor, and Wells, as lender (the “**Sixth Amendment and Forbearance**”);

- (v) approving the Draken Accommodation Agreement and Data Transfer Agreement and granting limited sealing relief in connection therewith;
  - (vi) approving, *nunc pro tunc*, the engagement of Riveron Management Services, LLC as Field Canada's chief restructuring officer (the "**CRO**");
  - (vii) approving Field Canada's key employee retention plan (the "**KERP**"), providing for retention bonuses in favour of certain key personnel, and a sealing order in respect thereof;
  - (viii) granting the Administration Charge, DIP Lender's Charge, Directors' Charge, and KERP Charge (collectively, the "**Charges**") on the assets, undertakings and properties of the Field Entities (the "**Property**") in the amounts and priority set out in the DIP Approval and Extension Order;
- (b) an order (the "**SISP Order**"), among other things:
- (i) approving and authorizing the Proposal Trustee, with the assistance of the Field Entities and CRO, to implement and conduct the proposed SISP;
  - (ii) approving a binding stalking horse asset purchase agreement dated June 5, 2026 (the "**Stalking Horse Agreement**") between the Field Entities, as sellers, and De Havilland Aircraft of Canada Limited and PAL Aerospace Ltd., (together, the "**Stalking Horse Bidders**") as purchasers, solely for the purpose of serving as the Stalking Horse Bid (as defined in the SISP) under the SISP; and
  - (iii) approving the Break Fee and Expense Reimbursement Fee payable to the Stalking Horse Bidders pursuant to the terms of the Stalking Horse

Agreement and granting an associated charge (the “**Transaction Charge**”) in favour of the Stalking Horse Bidders.

## **PART II - THE FACTS**

5. Field Canada carries on business as an aerospace engineering and modification company that designs, integrates and certifies aircraft systems and structural modifications for government and commercial aircraft operators. Substantially all of Field Canada’s physical operations take place at a 40,000 square foot hangar located next to Toronto Pearson Airport.<sup>2</sup> The other moving party, Field East, is a wholly-owned subsidiary of Field Canada with no employees or operations of its own. Field East’s only material assets are certain Supplemental Type Certificates (“**STCs**”), which are regulatory approvals issued by Transport Canada Civil Aviation for changes to aircraft modification designs.<sup>3</sup>
6. Both Field Canada and Field East are governed by the laws of the Province of Alberta and are owned (directly or indirectly) by Field Parent, a U.S. holding company that also carries on a complementary business in the U.S. through ASES, a Delaware corporation, that is wholly-owned by Field Aviation, Inc. (“**Field US**”), an Ohio corporation that is owned by the Field Parent.
7. Field Canada has experienced financial distress in recent years, contending with an array of negative business impacts flowing from the COVID-19 pandemic, costly litigation, rent increases and employee attrition. These challenges led to liquidity constraints and breaches of Field Canada’s borrowing base covenants under a credit agreement dated January 29,

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<sup>2</sup> Mactaggart Affidavit, paras 3 and 8.

<sup>3</sup> Mactaggart Affidavit, paras 9 and 17.

2021 (as amended from time to time, including most recently pursuant to the Sixth Amendment and Forbearance, the “**Credit Agreement**”) between, among others: (i) Wells Bank, as Agent and U.S. lender; (ii) Wells Capital, as Canadian lender; (iii) Field Canada, as Canadian Borrower; (iv) ASES, as U.S. Borrower (liable on a joint and several basis with Field Canada); and (v) each of Field East, Field Parent and Field US, as guarantors.<sup>4</sup>

8. On April 6, 2026, Wells Capital delivered a notice of default to Field Canada under the Credit Agreement and began conducting daily cash sweeps of Field Canada’s accounts to lower its overadvance position.<sup>5</sup> This prevented Field Canada from using collections from its accounts receivable to fund ordinary-course operating expenses, including payroll, supplier payments and other working capital requirements.<sup>6</sup>
9. This liquidity crisis had immediate repercussions. Field Canada immediately froze its operations and temporarily laid off substantially all its employees.<sup>7</sup> Field Canada and Wells Capital then began the process of negotiating a path forward.
10. Pursuant to an Overadvance Agreement dated April 16, 2026, Wells Bank, for itself and on behalf of Wells Capital, agreed to permit a temporary overadvance of up to US\$1.5 million to fund Field Canada’s accrued payroll and certain professional costs. Wells Bank continued to fund Field Canada's limited operations pursuant to weekly budgets and cash flow reporting requirements while the parties continued negotiating longer-term

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<sup>4</sup> Mactaggart Affidavit, paras 44-56.

<sup>5</sup> Mactaggart Affidavit, paras 27 and 56.

<sup>6</sup> Mactaggart Affidavit, para 58.

<sup>7</sup> Mactaggart Affidavit, paras 58 and 62.

arrangements.<sup>8</sup> Among other conditions, the Overadvance Agreement required Field Canada to engage Riveron as CRO, who was retained on April 21, 2026.

11. Such restructuring efforts culminated in the execution of the Sixth Amendment and Forbearance and DIP Term Sheet on June 5, 2026. Among other things, these agreements, subject to Court approval: (i) provide for a temporary forbearance from Wells Capital exercising enforcement remedies until after July 31, 2026, in exchange for certain accommodations including enhanced reporting, strict compliance with the DIP Budget attached thereto, and certain commitment and exit fees payable;<sup>9</sup> and (ii) establish a framework pursuant to which (a) Field Canada will be funded through a proposed revolving DIP Facility (as defined below), providing Field Canada with the time and liquidity necessary to pursue a sale process in the NOI Proceedings and complete the Draken Program (as defined below), and (b) ASES will continue to be funded through the U.S. Facility provided in the Credit Agreement, in each case.<sup>10</sup>
12. Also on June 5, 2026, the Field Entities entered into the Stalking Horse Agreement with the Stalking Horse Bidders, which provides an aggregate US\$6.5 million purchase price for the assets listed therein.<sup>11</sup> This provides a baseline floor against which any other Qualified Bid will be compared. It also contemplates a Break Fee and Expense Reimbursement Fees payable to the Stalking Horse Bidders, on the terms set out therein if

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<sup>8</sup> Mactaggart Affidavit, para 66.

<sup>9</sup> The DIP Term Sheet provides for a commitment fee and exit fee payable, each in the amount of US\$41,250. The Sixth Amendment and Forbearance provides for an amendment and forbearance fee in the amount of US\$200,000.

<sup>10</sup> Mactaggart Affidavit, para 68.

<sup>11</sup> Mactaggart Affidavit, para 89 and Exhibit "P".

not the Successful Bidder, in the aggregate amount of US\$260,000 (the “**Bid Protections**”).<sup>12</sup>

13. Further, on June 5, 2026, Field Canada and Wells Bank entered into an Accommodation Agreement with FR Aviation Limited, trading as Draken Europe (“**Draken**”) (the “**Draken Accommodation Agreement**”), pursuant to which Draken has agreed to fund the operating costs and disbursements of Field Canada (including shared services payable to ASSES) in order to enable Field Canada to complete its modification of Draken’s aircraft pursuant to the Draken Contract (the “**Draken Program**”), along with completion bonuses payable to those key personnel that have been recalled to work on the Draken Program.<sup>13</sup> On the same date, the parties entered into a data transfer agreement (the “**Data Transfer Agreement**”) pursuant to which Draken will pay to Field Canada US\$800,000 for the transfer of certain intellectual property including data, designs and drawings, currently held by Field Canada related solely to the Draken Program.<sup>14</sup>

### **PART III - THE ISSUES**

14. The issues on this motion are whether the Court should:
- (a) grant the DIP Approval and Extension Order, including approval of, among other things, the: (i) proposed administrative consolidation; (ii) cash management system; (iii) engagement of the CRO; (iv) Draken Accommodation Agreement and Data Transfer Agreement; (v) DIP Term Sheet and Sixth Amendment and Forbearance; (vi) KERP; (vii) Charges; and (viii) Stay Extension; and

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<sup>12</sup> Mactaggart Affidavit, para 89.

<sup>13</sup> Mactaggart Affidavit, paras 74-76.

<sup>14</sup> Mactaggart Affidavit, para 78.

- (b) grant the SISP Order, including approval of (i) the proposed SISP; (ii) Stalking Horse Agreement; and (iii) authorization to pay the Bid Protections.

#### PART IV - LAW & ANALYSIS

##### A. The NOI Proceedings Should be Administratively Consolidated

15. Field Canada and Field East seek an administrative consolidation of the NOI Proceedings. The Court has the authority to grant this order under section 183(1) of the BIA, among other sources.<sup>15</sup>
16. Administrative consolidation allows closely related proposal proceedings to be managed together while the estates remain separate.<sup>16</sup> Among other benefits, administrative consolidation avoids a multiplicity of proceedings and the related administrative burden on the proposal trustee, Court, parties, creditors and other stakeholders.<sup>17</sup>
17. The criteria used to assess whether to administratively consolidate a proceeding include, among other things: (i) the degree of integration between the debtors; (ii) whether there exists an owner-subsidary relationship; (iii) the degree of overlap sought by the debtors in the proposal proceedings; (iv) whether the debtors have substantially the same creditors; and (iv) any prejudice occasioned by the administrative consolidation.<sup>18</sup>
18. Each factor supports administrative consolidation of the NOI Proceedings. Field East is a non-operating legacy subsidiary of Field Canada, with the same directors and officers.

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<sup>15</sup> *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, [s 183\(1\)](#) [BIA]; Endorsement of Justice Steele dated March 14, 2024, *Re Organic Garage (Canada) Ltd*, Court File No. BK-24-03051650-0031 at [paras 19-20](#) [*Organic Garage*].

<sup>16</sup> *Re Mustang GP Ltd*, 2015 ONSC 6562 at [para 25](#) [*Mustang GP*]; *Re Electro Sonic Inc*, 2014 ONSC 942 at [para 4](#) [*Electro Sonic*].

<sup>17</sup> *Mustang GP*, [para 25](#); *Organic Garage*, [para 21](#).

<sup>18</sup> *Mustang GP*, [para 25](#); *Electro Sonic*, [paras 5-6](#); *Nautican v Dumont*, 2020 PESC 15 at [para 9](#).

Field East does not have any distinct operations, employees or creditors and is under common control and management with Field Canada.<sup>19</sup> Field East intends to market the STCs held by Field East through the same SISP (and the STCs are also subject to the Stalking Horse Agreement), administered by the same Proposal Trustee, as Field Canada, which is appropriate given the significant overlap in the nature of their respective assets.

**B. The Court should appoint Riveron as CRO, *nunc pro tunc***

19. Courts have inherent jurisdiction to approve the engagement of a CRO,<sup>20</sup> and have previously granted this relief within NOI proceedings.<sup>21</sup> As articulated by the Court in *Nanopay*, CROs can “enure to the benefit of the relevant economically affected stakeholders and maximize the efficiency of the [debtor company’s] operations” during proposal proceedings.<sup>22</sup>
20. When considering whether to approve CRO appointments in other insolvency proceedings, this Court has considered the following factors: (i) whether the appointment of the CRO would be beneficial to the restructuring; (ii) whether the proposed engagement terms for the CRO are reasonable in the circumstances; (iii) the experience and qualifications of the proposed CRO; and (iv) whether the court officer supports the CRO appointment.<sup>23</sup>
21. The foregoing factors militate in favour of approving Field Canada’s engagement of the CRO. The appointment has and will continue to benefit the restructuring efforts of the Field

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<sup>19</sup> Mactaggart Affidavit, paras 3, 9, 23, Exhibit “B” and Exhibit “C”.

<sup>20</sup> *Re Earth Boring Co Ltd*, 2025 ONSC 2422 at [para 70](#) [*Earth Boring*].

<sup>21</sup> *Re Nanopay Corporation*, 2023 ONSC 4061 at [para 10](#) [*Nanopay*]; Order of Justice Michelin dated May 23, 2024, *Re A&D Prévost Inc*, Court File No. 500-11-064117-241 at [paras 25-31](#) [*A&D Prévost*]; Order of Justice Corriveau dated November 12, 2019, *Re Bouclair Inc*, Court File No. 500-11-057470-193 at [paras 5-16](#) [*Bouclair*].

<sup>22</sup> *Nanopay*, [para 10](#).

<sup>23</sup> *Earth Boring*, [para 71](#).

Entities, as the CRO is highly qualified and its appointment was an express requirement of Wells' support, without which the Field Entities could not pursue a restructuring.<sup>24</sup> The CRO has provided significant assistance to the Field Entities in their pre-filing process, such as with reviewing financial forecasts, cash flow projections, borrowing base reporting and liquidity forecasts, and assisting with communications with key stakeholders.<sup>25</sup> The terms of the CRO's engagement are reasonable, as its remuneration is built into the DIP Budget as approved by Wells, the mandate is circumscribed and within the CRO's area of expertise and the terms are supported by the Proposal Trustee.<sup>26</sup>

**C. The Court Should Authorize the Field Entities to Use the Cash Management System**

22. Courts frequently authorize debtors to continue using their cash management system during insolvency proceedings, including NOI proceedings, to ensure that the debtor can continue to efficiently collect, manage and disperse cash.<sup>27</sup>
23. The Field Group, including the Field Entities, relies on an integrated Cash Management System that diverts customer collections to Wells Bank before Wells Capital advances funds to the Field Group's operating accounts. As the Field Group's Canadian and U.S. operations share a common borrowing base comprised primarily of accounts receivable and inventory, the Cash Management System is integral to the collection and funding mechanism supporting the Field Entities' liquidity needs.<sup>28</sup> The Court should preserve this

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<sup>24</sup> Mactaggart Affidavit, paras 65, 68 and 100.

<sup>25</sup> Mactaggart Affidavit, paras 67 and 95.

<sup>26</sup> Mactaggart Affidavit, para 101; First Report of the Proposal Trustee dated June 10, 2026 (the "**First Report**"), para 6.9.

<sup>27</sup> Order of Justice Cavanagh dated August 31, 2023, *Re Whyte's Foods Inc.*, Court File No. BK-23-02978830-0031 at [para 5](#). This language is also in the Model CCAA Initial Order.

<sup>28</sup> Mactaggart Affidavit, paras 85-88. First Report, para 6.10.

*status quo* by authorizing the Field Entities to continue using their existing Cash Management System during the NOI Proceedings.

**D. The Court Should Approve the Sixth Amendment and Forbearance, DIP Term Sheet and DIP Lender’s Charge**

24. Pursuant to the DIP Term Sheet, Wells Capital has agreed to provide Field Canada with a revolving interim financing facility up to the maximum amount of US\$2.5 million, subject to Availability (as defined in the DIP Term Sheet, and including a permitted Overadvance under the Credit Agreement of US\$4.3 million in the aggregate) (the “**DIP Facility**”).<sup>29</sup> The DIP Facility will fund Field Canada’s payroll obligations, professional costs and other working capital requirements during these NOI Proceedings, allowing the Field Entities to carry out the SISP and pursue a sale transaction for the benefit of all stakeholders.<sup>30</sup> Pursuant to the DIP Term Sheet, post-filing receipts will first be applied to repay the Canadian Revolving Loans, secondly to the repayment of the US Revolving Loans<sup>31</sup> and lastly to the DIP Obligations (each term as defined therein).<sup>32</sup>
25. The DIP Lender’s commitment is conditional on, among other things, the Court approving the DIP Term Sheet, granting the proposed DIP Lender’s Charge and relief sought in the SISP Order.<sup>33</sup>
26. The Field Entities are seeking the proposed DIP Lender’s Charge up to the maximum principal amount outstanding under the DIP Term Sheet, plus interest, fees, costs and

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<sup>29</sup> Mactaggart Affidavit, para 79.

<sup>30</sup> Mactaggart Affidavit, paras 82 and 84.

<sup>31</sup> Field Canada is jointly and severally liable for all obligations owing under the US Revolving Loans.

<sup>32</sup> First Report, para 4.5(6).

<sup>33</sup> Mactaggart Affidavit, paras 69, 80 and 83.

expenses, which will outrank all other secured claims against the Field Entities except for the Administration Charge.<sup>34</sup>

27. The Court has jurisdiction to approve the DIP Term Sheet and grant the DIP Lender's Charge under section 50.6(1) of the BIA.<sup>35</sup> Section 50.6(3) further provides the Court with the authority to order that the DIP Lender's Charge rank in priority over the claim of any secured creditor of the Field Entities.<sup>36</sup> Section 50.6(5) sets out criteria the Court may consider when determining whether to approve the DIP Term Sheet and DIP Lender's Charge, including: (a) the period during which the debtor is expected to be subject to the proposal proceedings; (b) how the debtor's business and financial affairs are to be managed during the proceedings; (c) whether the debtor's management has the confidence of its major creditors; (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor; (e) the nature and value of the debtor's property; (f) whether any creditor would be materially prejudiced as a result of the security or charge; and (g) whether the Proposal Trustee supports the DIP Lender's Charge.<sup>37</sup>
28. The factors militate in favour of approval of the DIP Term Sheet and DIP Lender's Charge:
- (a) Wells supports management's efforts to restructure the affairs of the Field Entities;
  - (b) Without the DIP Facility, the Field Entities would not have sufficient liquidity to operate and would immediately cease all operations and restructuring efforts and would be unable to conduct the proposed SISF;<sup>38</sup>

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<sup>34</sup> Mactaggart Affidavit, para 83.

<sup>35</sup> BIA, [s 50.6\(1\)](#).

<sup>36</sup> BIA, [s 50.6\(3\)](#).

<sup>37</sup> BIA, [s 50.6\(5\)](#).

<sup>38</sup> Mactaggart Affidavit, paras 81-84.

- (c) The Field Entities' business and financial affairs will be closely monitored by the Proposal Trustee, CRO and Wells, to ensure no substantial deviations from the agreed-upon DIP Budget;
- (d) There are no secured creditors being primed by the DIP Lender's Charge;<sup>39</sup> and
- (e) The Proposal Trustee supports the DIP Term Sheet and the DIP Lender's Charge.<sup>40</sup>

29. Finally, the limited 'creeping roll-up' aspect of the DIP Term Sheet is appropriate. Wells will apply post-filing receipts to repay the pre-filing secured indebtedness. Under the equivalent provision of the CCAA, this Court has approved similar interim financing arrangements that use the debtor's post-filing receipts to repay pre-filing obligations to the DIP lender, noting that no other creditor will be prejudiced by these terms where the DIP lender is the debtor's senior secured creditor and the DIP charge does not secure a pre-filing obligation,<sup>41</sup> as is the case here. Further, the Proposal Trustee has obtained an independent security opinion that Wells' pre-filing security is valid and enforceable.<sup>42</sup>

**E. The Court Should Grant the Administration Charge**

30. The Field Entities are seeking an Administration Charge in favour of the Proposal Trustee, counsel for the Proposal Trustee, the CRO and counsel for the Field Entities in the maximum amount of \$300,000. The DIP Approval and Extension Order contemplate that

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<sup>39</sup> Mactaggart Affidavit, para 24. It is noted that other than VW Credit Canada Inc., an automotive financier, has a registration against Field Canada in the amount of \$151,747.30 with respect to a leased vehicle paid in the ordinary course.

<sup>40</sup> Mactaggart Affidavit, paras 7 and 80; First Report, paras 4.4(5)-4.4(8).

<sup>41</sup> *BZAM Ltd. Plan of Arrangement*, 2024 ONSC 1645 at [paras 56-57](#).

<sup>42</sup> First Report, para 3.3(3).

the Administration Charge will outrank all secured claims against the Field Entities, including any other Court-ordered charges in these NOI Proceedings.<sup>43</sup>

31. Section 64.2 of the BIA provides the Court with the jurisdiction to grant a super-priority charge for the purpose of securing the fees and expenses of a trustee, its counsel, the debtor's counsel, and financial experts engaged by the debtor, that may rank in priority over the claim of any secured creditor of the Field Entities.<sup>44</sup> Administration charges or similar charge may extend to the CRO, including in NOI proceedings.<sup>45</sup> This Court has previously granted administration charges in circumstances where: (a) the proposed services are essential both to a successful NOI proceeding, as well as for the conduct of a court-approved SISP; (b) the quantum of the proposed charge is appropriate given the complexity of the debtor's business and the nature of the proposed SISP; and (c) the administration charge will not prejudice any known secured creditor of the debtor.<sup>46</sup>
32. The Court should grant Administration Charge, as the Field Entities require the expertise, knowledge, and continued participation of the proposed beneficiaries of the Administration Charge throughout the NOI Proceedings as well as the proposed SISP, who are each contributing valuable services.<sup>47</sup> Further, the quantum of the proposed Administration Charge is supported by the Proposal Trustee and Wells.<sup>48</sup>

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<sup>43</sup> Mactaggart Affidavit, para 102.

<sup>44</sup> BIA, [s 64.2](#).

<sup>45</sup> *A&D Prévost*, [paras 23-24](#); *Bouclair*, [paras 15 and 22](#); *PricewaterhouseCoopers Inc. v MJardin Group, Inc.*, 2022 ONSC 3603 at [para 12](#).

<sup>46</sup> *Re Danier Leather Inc.*, 2016 ONSC 1044 at [paras 57-58](#) [*Danier Leather*]; see also *Re Colossus Minerals Inc.*, 2014 ONSC 514 at [paras 11-15](#) [*Colossus*].

<sup>47</sup> Mactaggart Affidavit, paras 94-98.

<sup>48</sup> First Report, para 6.7(1); Mactaggart Affidavit, paras 7 and 69.

**F. The Court Should Grant the Directors' Charge**

33. The Court has authority to grant the Directors' Charge under section 64.1 of the BIA and may order that this charge rank in priority over the claim of any secured creditor of the Field Entities.<sup>49</sup> The proposed Directors' Charge in the amount of \$725,000 is proposed to rank behind the Administration Charge, DIP Lender's Charge, and all secured indebtedness owing to Wells Capital under the Credit Agreement.
34. The proposed Director's Charge is appropriate in the circumstances and should be granted given that the continued involvement of the remaining directors and officers, who provide highly specialized skillsets, is critical to a successful SISP or any proposal under the BIA,<sup>50</sup> and they are not prepared to continue to serve unless protected by the Directors' Charge.<sup>51</sup> The Proposal Trustee supports the proposed Directors' Charge and is satisfied that the amount of such charge is appropriate.<sup>52</sup> Further, the Court has routinely granted directors' charges in comparable circumstances.<sup>53</sup>

**G. The Court Should Approve the KERP and KERP Charge**

35. The Field Entities are seeking approval of the KERP developed in consultation with the Proposal Trustee. The KERP is designed to provide the necessary incentive for key personnel to remain in their current positions until an eventual sale transaction closes.<sup>54</sup>

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<sup>49</sup> BIA, [ss 64.1\(1\)](#) and [64.1\(2\)](#).

<sup>50</sup> Mactaggart Affidavit, para 103.

<sup>51</sup> Mactaggart Affidavit, para 106.

<sup>52</sup> First Report, para 6.7(5).

<sup>53</sup> See e.g. *In the Matter of the Notice of Intention to Make a Proposal of The Body Shop Canada Limited*, 2024 ONSC 1651 at [paras 57-65](#); *Colossus*, [paras 16-21](#).

<sup>54</sup> Mactaggart Affidavit, paras 109 and 112.

36. The proposed KERP would provide four beneficiaries (the “**KERP Beneficiaries**”) with a retention bonus equal to 25% of their respective salary, which only becomes payable if the beneficiary is actively employed with Field Canada on the date a successful sale transaction closes. The amount payable to the KERP Beneficiaries necessitates a corresponding KERP Charge. The KERP Charge would rank behind all other Charges and all secured indebtedness owing to Wells Capital under the Credit Agreement.<sup>55</sup>
37. The KERP is separate and apart from the Completion Bonuses that will become payable under the Draken Accommodation Agreement and relate to different personnel.<sup>56</sup>
38. This Court often approves key employee retention plans in NOI proceedings,<sup>57</sup> and the factors relied on in those cases militate in favour of the proposed KERP. The four KERP Beneficiaries are responsible for functions indispensable to closing an eventual sale transaction, including supporting diligence, facilitating asset and records transfers, maintaining IT infrastructure, continuing financial reporting and cash management, all with limited staff support.<sup>58</sup> Considering the NOI Proceedings and limited liquidity, the prospect of finding timely, suitable replacements for any of the KERP Beneficiaries is remote. Further, the Proposal Trustee supports the KERP and KERP Charge and believes that both are reasonable and appropriate in the circumstances.<sup>59</sup>

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<sup>55</sup> Mactaggart Affidavit, paras 112-114.

<sup>56</sup> First Report, para 6.8(2)

<sup>57</sup> See e.g. *Danier Leather*, [paras 72-78](#); Endorsement of Justice Osborne dated April 15, 2024, *Re The Body Shop Canada Limited*, Court File No. BK-24-03050418-0031 at [paras 23-25](#) [*The Body Shop*].

<sup>58</sup> Mactaggart Affidavit, para 111.

<sup>59</sup> Mactaggart Affidavit, para 109; First Report, para 6.8(4).

## **H. The Court Should Approve the Draken Accommodation Agreement and Data Transfer Agreement**

39. The Court should approve the Draken Accommodation Agreement, which was entered into on the filing date. In other NOI proceedings, this Court has approved arrangements whereby certain third-party funds are paid to the debtor post-filing to advance the debtor's restructuring efforts without any super-priority charge. The Court has approved comparable accommodation agreements where necessary to maximize the value of the debtor's assets, the proposal trustee supports the agreement, and no creditor would be prejudiced.<sup>60</sup> That is the case here.
40. The Draken Accommodation Agreement is a critical component of the Field Entities' restructuring plan and is the result of extensive negotiations between the Field Entities, Draken and Wells Bank. The Draken Accommodation Agreement will provide the funding necessary for Field Canada to complete a significant program for its only remaining active customer, maximizing the value of the Draken Program while ensuring the employment of program-specific personnel.<sup>61</sup> The Draken Accommodation Agreement is in the interests of the Field Entities' stakeholders, and Court approval will ensure an additional level of security for the parties' performance. The Proposal Trustee supports the Draken Accommodation Agreement.<sup>62</sup>

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<sup>60</sup> Endorsement of Justice Wilton-Siegel dated November 17, 2023, *Re Bad Boy Furniture Warehouse Limited*, Court File No. BK-23-03008133-0031 at [para 2](#).

<sup>61</sup> Mactaggart Affidavit, para 77; First Report, para 4.2(7).

<sup>62</sup> First Report, para 4.2(8).

41. The Court should likewise approve the Data Transfer Agreement and authorize Field Canada to perform its obligations thereunder. This Court has jurisdiction to approve the Data Transfer Agreement under section 65.13(1) of the BIA.<sup>63</sup>
42. Although there was no formal marketing process in respect of the data subject to the Data Transfer Agreement, the specified intellectual property thereunder only has value to Draken as it consists of data, designs, and drawings currently held by Field Canada that relate specifically to the modification of Draken’s C-604 aircraft.<sup>64</sup> Rather than expending further resources on soliciting an open-market sale that would be unlikely to yield any value, the Data Transfer Agreement will provide recoveries for Field Canada and its stakeholders.<sup>65</sup>
- I. The Court should seal the Unredacted KERP and Draken Accommodation Agreement**
43. The Court should seal (i) Confidential Exhibit “A” to the Mactaggart Affidavit, which contains the unredacted KERP showing personnel names and salaries, and (ii) Confidential Appendix “A” to the First Report, which contains the unredacted Draken Accommodation Agreement listing the employees working on the Draken Program and their respective salaries (together, the “**Confidential Documents**”). Both documents contain commercially sensitive information relating to employees and their compensation. The Court regularly seals the details of key employee retention plans that reveal sensitive personal information which if disclosed, cause harm to individual employees and to the debtor.<sup>66</sup>

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<sup>63</sup> BIA, [s 65.13\(1\)](#).

<sup>64</sup> Mactaggart Affidavit, para 78.

<sup>65</sup> Mactaggart Affidavit, para 78.

<sup>66</sup> *The Body Shop*, [paras 27-30](#); *Danier Leather*, [paras 79-83](#); *Organic Garage*, [paras 42-47](#).

44. Applying the test in *Sherman Estate*,<sup>67</sup> the Court should grant the sealing relief as (i) the Confidential Documents contain sensitive and confidential information which, if disclosed, may cause harm to individual key employees and the Court has accepted that these risks threaten “an important commercial interest that should be protected”;<sup>68</sup> (ii) the proposed sealing order is limited in scope insofar as it applies only to the specified list of employees and related salary information, and is subject to further order of the Court, and (iii) disclosing the Confidential Documents would negatively impact individual employees’ privacy interests, with little to no corresponding benefit for the public.<sup>69</sup>

**J. The Court Should Approve the SISP**

45. The Court regularly approves sale processes backstopped by a stalking horse bid in NOI proceedings.<sup>70</sup> When determining whether to approve a stalking horse sale process, the Court should consider whether: (i) a sale transaction is warranted at this time; (ii) the sale benefits the whole “economic community”; (iii) any of the debtors’ creditors have a *bona fide* reason to object to a sale of the business; and (iv) there exists a better viable alternative.<sup>71</sup> Taken together, these factors weigh in favour of approving the SISP.
46. First, there are no viable alternatives beyond the SISP. The Field Entities are insolvent and cannot continue operating in the ordinary course without the DIP Facility.<sup>72</sup> Entering into the Stalking Horse Agreement was an express requirement of Wells’ continued support.

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<sup>67</sup> *Sherman Estate v Donovan*, 2021 SCC 25 at [para 38](#).

<sup>68</sup> *The Body Shop*, [para 29](#).

<sup>69</sup> *Organic Garage*, [para 46](#).

<sup>70</sup> See e.g. *Danier Leather*, [paras 20-40](#); Endorsement of Justice J Dietrich dated July 22, 2025, *Re Buchephalas Stables Corp*, Court File No. BK-25-03244323-0031 at [paras 29-33](#) [*Buchephalas Stables*].

<sup>71</sup> *Danier Leather*, [para 23](#); *Buchephalas Stables*, [para 29](#).

<sup>72</sup> Mactaggart Affidavit, paras 22 and 82.

For this reason, it is critical that the Field Entities implement the SISP and complete a sale transaction to maximize value for all stakeholders, which was and remains the principal purpose for these NOI Proceedings.<sup>73</sup> In the absence of a sale transaction, the Field Entities will not have the liquidity to continue operations and will be forced into bankruptcy.

47. Second, the duration of the SISP is reasonable having regard to the Field Entities' financial circumstances and DIP Budget, including the timeline that Wells was willing to support. The relevant SISP Milestones are as follows, contemplating a single-phase 30-day period for prospective purchasers to submit bids:<sup>74</sup>

<b>Milestone</b>	<b>Date(s)</b>
Distribution of Teaser Letter to potentially interested parties, preparation of non-disclosure agreement and virtual data room	Starting no later than on June 12, 2026
Deadline to submit Bids	July 13, 2026 at 5:00 p.m.
Auction (if necessary)	July 15, 2026
Selection of Successful Bid	July 16, 2026, or in the case of no Auction July 14, 2026
Court Approval of Successful Bid	As soon as practicable and subject to Court availability, but no later than July 24, 2026
Outside Date	July 31, 2026

48. The SISP Milestones were developed based on the amount of funding under the DIP Facility and in consultation with Wells, the CRO and the Proposal Trustee.<sup>75</sup> The SISP Milestones strike an appropriate balance between canvassing the open market and

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<sup>73</sup> Mactaggart Affidavit, para 6

<sup>74</sup> Mactaggart Affidavit, para 96.

<sup>75</sup> Mactaggart Affidavit, para 96.

managing the Field Entities' fiscal constraints. In addition, the Court has previously approved single-phase SISPs on similar timelines, for example:

<b>Proceeding</b>	<b>Timeline</b>
JointCraft Inc. <sup>76</sup> (NOI)	<b>30 days</b> from SISP Order to bid deadline
Hempsana Inc. <sup>77</sup> (NOI)	<b>27 days</b> from SISP Order to bid deadline
Wholly Veggie <sup>78</sup> (NOI)	<b>30 days</b> from marketing commencement to bid deadline
Flowr Corporation <sup>79</sup> (CCAA)	<b>28 days</b> from SISP Order to bid deadline
Chalice Brands Ltd. <sup>80</sup> (CCAA)	<b>29 days</b> from SISP Order to bid deadline

49. Further, given the niche industry that the assets will be marketed in, there are specified key players that would have any interest in these assets and the Proposal Trustee, in consultation with the Field Entities, has already begun preparing a target list.<sup>81</sup>
50. Finally, the minimum overbid amount in the SISP is reasonable. To constitute a Qualified Bid in the SISP, that bid must provide for consideration of at least \$9,655,096, comprising the purchase price under the Stalking Horse Bid, plus the Break Fee and the Expense Reimbursement, plus a minimum overbid of \$300,000.<sup>82</sup> The minimum overbid amount is approximately 3.1% of the purchase price under the Stalking Horse Bid, falling within the

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<sup>76</sup> Order of Justice J Dietrich dated February 17, 2026, *Re JointCraft Inc*, Court File No. BK-26-003318323-0031 at [Schedule "A", para 7](#).

<sup>77</sup> Order of Justice Cavanagh dated April 9, 2024, *Re Hemsana Inc*, Court File No. BK-24-03054351-0031 at [Schedule "B", para 3](#).

<sup>78</sup> Order of Justice Cavanagh dated August 26, 2024, *Re Wholly Veggie Inc*, Court File No. BK-24-03115669-0031 at Schedule "A", [para 11](#).

<sup>79</sup> Order of Justice Cavanagh dated October 28, 2022, *Re Flowr Corporation*, Court File No. CV-22-00688966-00CL at [Schedule "A", para 6](#).

<sup>80</sup> Order of Justice Kimmel dated June 1, 2023, *Re Chalice Brands Ltd*, Court File No. CV-23-00699872-00CL at Schedule "A", [para 3](#).

<sup>81</sup> First Report, para 6.3(4).

<sup>82</sup> First Report, para 6.3(6).

range of reasonable overbid amounts this Court has approved in other NOI proceedings, and will ensure that any costs to enter into and approve a superior transaction are covered.<sup>83</sup>

51. The Stalking Horse Bid will establish a floor price for the SISP, thereby guaranteeing some recovery for the Field Entities' stakeholders. At the same time, the SISP will subject the Field Entities to an open marketing process that permits higher and better offers to replace the Stalking Horse Bid. The SISP will also allow Field Canada employees to maintain their employment working on the Draken Program,<sup>84</sup> while leaving open the possibility of a going concern transaction that preserves jobs moving forward. The Proposal Trustee, CRO and Wells support all aspects of the SISP.<sup>85</sup>

**K. The Court should approve the Stalking Horse Agreement**

52. When determining whether to approve a stalking horse agreement as part of a SISP, courts often consider: (i) the fairness, transparency and integrity of the proposed process; (ii) the commercial efficacy of the proposed process in light of the circumstances; and (iii) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.<sup>86</sup> Taken together, these factors militate in favour of approving the Stalking Horse Agreement.
53. The Stalking Horse Agreement is integral to the SISP, establishing a price floor for substantially all the Field Entities' assets while leaving the door open for superior bids. The Stalking Horse Agreement was negotiated at arm's length between sophisticated parties

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<sup>83</sup> See e.g. *Re MPH Graphics Inc*, 2014 ONSC 947 at [paras 2-4](#), where the Court approved an overbid amount (\$100,000) representing approximately 5.67% of the purchase price (\$1.765M).

<sup>84</sup> Mactaggart Affidavit, paras 76-77.

<sup>85</sup> Mactaggart Affidavit, para 99. First Report, para 6.4.

<sup>86</sup> *Royal Bank of Canada v 2668144 Ontario Inc*, 2024 ONSC 1680 at [para 9](#).

each represented by counsel,<sup>87</sup> with a purchase price that is expected to satisfy all indebtedness owing to Wells (including under the proposed DIP Facility).<sup>88</sup>

***The Bid Protections are appropriate***

54. The Court frequently approves break fees and expense reimbursements in favour of a stalking horse bidder in insolvency proceedings.<sup>89</sup> In this case, the Stalking Horse Agreement contemplates aggregate Bid Protections in the aggregate amount of US\$260,000, representing 4% of the purchase price under the Stalking Horse Agreement, payable in accordance with the Stalking Horse Agreement.
55. These amounts are reasonable in the circumstances. Break fees represent “the price of stability” in a stalking horse sales process, thereby justifying a premium over and above the stalking horse bidder’s expenses.<sup>90</sup> This Court has previously approved break fees around and above this percentage as falling within the range of reasonableness for stalking horse agreements, including within NOI proceedings.<sup>91</sup> The proposed Bid Protections are an appropriate price to pay for the guarantee of the monetization of the Field Entities’ specialized assets, and are supported by the Proposal Trustee.<sup>92</sup>
56. The Stalking Horse Agreement and proposed SISP Order contemplate that the Stalking Horse Bidders will be granted a Transaction Charge on the Property of the Field Entities

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<sup>87</sup> Mactaggart Affidavit, para 92.

<sup>88</sup> Mactaggart Affidavit, para 92.

<sup>89</sup> *Danier Leather*, [para 41](#).

<sup>90</sup> *Danier Leather* at [para 41](#); *In The Matter of A Plan of Compromise or Arrangement of Green Growth Brands Inc*, 2020 ONSC 3565 at [para 52](#).

<sup>91</sup> *Danier Leather*, [paras 42-45](#); see First Report, para 6.2(1)(e) and Appendix “C”.

<sup>92</sup> First Report, paras 6.2(1)(d)-(e) and 6.2(2).

up to the full amount of the Bid Protections. The Transaction Charge will rank behind all other Charges and Wells Capital's pre-filing secured indebtedness.<sup>93</sup> The Court has previously approved such transaction charges in circumstances where, as here, the bid protections are appropriate, and the relative priority of the Transaction Charge has the support of all affected parties.<sup>94</sup> The Proposal Trustee supports the Transaction Charge.<sup>95</sup>

**L. The Court should extend the time for the Field Entities to file proposals**

57. The Field Entities seek to extend the time to file a proposal with the Official Receiver, and the attendant stay of proceedings, by 45 days, up to and including August 19, 2026, pursuant to section 50.4(9) of the BIA. The court may extend the time if it is satisfied that: (a) the insolvent person has acted, and is acting, in good faith and with due diligence; (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and (c) no creditor would be materially prejudiced if the extension being applied for were granted.<sup>96</sup>
58. As held in *DecisionOne*, the “provision of additional time for a court-approved sale process to be completed is an appropriate basis for an extension.”<sup>97</sup>
59. The Field Entities have acted in good faith and with due diligence to advance their restructuring process from the time Wells Capital delivered its notice of default, aligning the interlocking pieces within their broader restructuring puzzle. Without the Stay

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<sup>93</sup> Mactaggart Affidavit, para 95.

<sup>94</sup> *BZAM Ltd Plan of Arrangement*, 2024 ONSC 1685 at [paras 12](#) and [20](#).

<sup>95</sup> First Report, paras 5.2(1)(e) and 5.2(2).

<sup>96</sup> BIA, [s 50.4\(9\)](#).

<sup>97</sup> Endorsement of Justice Penny dated June 5, 2023, *Re DecisionOne Corporation*, Court File No. BK-23-02946538-0031 at [page 4](#); see also *Mustang GP*, [para 41](#).

Extension, the Field Entities will be unable to implement the SISP before being deemed bankrupt. This result should be avoided.<sup>98</sup> No creditor would be materially prejudiced by the Stay Extension, and same is supported by the Proposal Trustee and Wells.<sup>99</sup>

**PART V - RELIEF REQUESTED**

60. For all the above reasons, the Court should grant the DIP Approval and Stay Extension Order and the SISP Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 10<sup>th</sup> day of June, 2026.

June 10, 2026



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<sup>98</sup> Endorsement of Justice Kimmel dated November 21, 2023, *Re 2164705 Ontario Inc*, Court File No BK-23-02984375-0031 at [para 17](#).

<sup>99</sup> Mactaggart Affidavit, paras 4, 7 and 99; First Report, para 6.5.

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. Endorsement of Justice Steele dated March 14, 2024, *Re Organic Garage (Canada) Ltd.*, [Court File No. BK-24-03051650-0031](#).
2. *Re Mustang GP Ltd.*, [2015 ONSC 6562](#).
3. *Re Electro Sonic Inc.*, [2014 ONSC 942](#).
4. *Nautican v Dumont*, [2020 PESC 15](#).
5. *Re Earth Boring Co Ltd.*, [2025 ONSC 2422](#).
6. *Re Nanopay Corporation*, [2023 ONSC 4061](#).
7. Order of Justice Michelin dated May 23, 2024, *Re A&D Prévost Inc.*, [Court File No. 500-11-064117-241](#).
8. Order of Justice Corriveau dated November 12, 2019, *Re Bouclair Inc.*, [Court File No. 500-11-057470-193](#).
9. Order of Justice Cavanagh dated August 31, 2023, *Re Whyte’s Foods Inc.*, [Court File No. BK-23-02978830-0031](#).
10. *BZAM Ltd. Plan of Arrangement*, [2024 ONSC 1645](#).
11. *PricewaterhouseCoopers Inc v MJardin Group, Inc.*, [2022 ONSC 3603](#).
12. *Re Danier Leather Inc.*, [2016 ONSC 1044](#).
13. *Re Colossus Minerals Inc.*, [2014 ONSC 514](#).
14. *In the Matter of the Notice of Intention to Make a Proposal of The Body Shop Canada Limited*, [2024 ONSC 1651](#).
15. Endorsement of Justice Osborne dated April 15, 2024, *Re The Body Shop Canada Limited*, [Court File No. BK-24-03050418-0031](#).
16. Endorsement of Justice Wilton-Siegel dated November 17, 2023, *Bad Boy Furniture Warehouse Limited v KSV Restructuring Inc.*, [Court File No. BK-23-03008133-0031](#).
17. *Sherman Estate v Donovan*, [2021 SCC 25](#).
18. Endorsement of Justice J Dietrich dated July 22, 2025, *Re Buchephalas Stables Corp.*, [Court File No. BK-25-03244323-0031](#).

19. Order of Justice J Dietrich dated February 17, 2026, *Re JointCraft Inc*, [Court File No. BK-26-003318323-0031](#).
20. Order of Justice Cavanagh dated April 9, 2024, *Re Hempsana Inc*, [Court File No. BK-24-03054351-0031](#).
21. Order of Justice Cavanagh dated August 26, 2024, *Re Wholly Veggie Inc*, [Court File No. BK-24-03115669-0031](#).
22. Order of Justice Cavanagh dated October 28, 2022, *Re Flowr Corporation*, [Court File No. CV-22-00688966-00CL](#).
23. Order of Justice Kimmel dated June 1, 2023, *Re Chalice Brands Ltd*, [Court File No. CV-23-00699872-00CL](#).
24. *Re MPH Graphics Inc*, [2014 ONSC 947](#).
25. *Royal Bank of Canada v 2668144 Ontario Inc*, [2024 ONSC 1680](#).
26. *In The Matter of A Plan of Compromise or Arrangement of Green Growth Brands Inc*, [2020 ONSC 3565](#).
27. *BZAM Ltd Plan of Arrangement*, [2024 ONSC 1685](#).
28. Endorsement of Justice Penny dated June 5, 2023, *Re DecisionOne Corporation*, [Court File No. BK-23-02946538-0031](#).
29. Endorsement of Justice Kimmel dated November 21, 2023, *Re 2164705 Ontario Inc*, [Court File No BK-23-02984375-0031](#).

I certify that I am satisfied as to the authenticity of every authority listed above.

*Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).*

Date June 10, 2026



\_\_\_\_\_  
Rachel Nicholson

**SCHEDULE “B”  
RELEVANT STATUTES**

***Bankruptcy and Insolvency Act, RSC 1985, c B-3***

**Extension of time for filing proposal**

**50.4 (9)** The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

**Order — interim financing**

**50.6 (1)** On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor’s property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor’s cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

**Priority**

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

**Factors to be considered**

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

- (a) the period during which the debtor is expected to be subject to proceedings under this Act;

- (b) how the debtor's business and financial affairs are to be managed during the proceedings;
- (c) whether the debtor's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;
- (e) the nature and value of the debtor's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

### **Security or charge relating to director's indemnification**

**64.1 (1)** On application by 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) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the property of the person is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the person to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.

### **Priority**

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

### **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.

## 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.

(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.

## Courts vested with jurisdiction

**183 (1)** The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

- (a) in the Province of Ontario, the Superior Court of Justice;
- (b) [Repealed, 2001, c. 4, s. 33]
- (c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;
- (d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;
- (e) in the Province of Prince Edward Island, the Supreme Court of the Province;

**(f)** in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;

**(g)** in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and

**(h)** in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF FIELD AVIATION COMPANY INC.**

Court File No.: BK-26-03382861-0032  
Estate No.: 32-3382861

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF FIELD AVIATION EAST LTD.**

Court No. BK-26-03382853-0032  
Estate No.:32-3382853

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

Proceedings commenced at **Toronto**

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**FACTUM OF THE FIELD ENTITIES**

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