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COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, RSC 1985, c. C-36, AS AMENDED

IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF WALLACE & CAREY INC., LOUDON
BROS. LIMITED and CAREY MANAGEMENT INC.

APPLICANT

KSV RESTRUCTURING INC., in its capacity as court-
appointed monitor of Wallace & Carey Inc., Loudon Bros.
Limited and Carey Management Inc.

DOCUMENT

**Bench Brief of 7-Eleven Canada, Inc. and 7-Eleven
Distribution Canada Corporation re Assignment of the
DigiFlex License Agreements**

Application – November 27, 2025 at 10:00 a.m.

DLA Piper (Canada) LLP

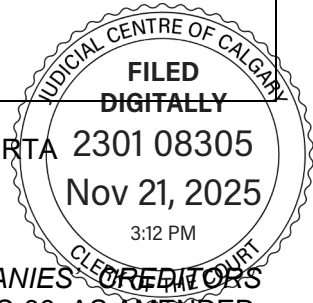
Suite 1000, 250 2 Street SW
Calgary, Alberta T2P 0C1

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Lawyer: Carole J. Hunter
Phone Number: (403) 698 8782
Fax Number: (403) 697 6600
Email Address: carole.hunter@ca.dlapiper.com

File No. 036250-00322

Clerk's Stamp:



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I. INTRODUCTION

1. KSV Restructuring Inc., in its capacity as court-appointed monitor (the “**Monitor**”) of Wallace & Carey Inc. (“**W&C**”), Loudon Bros. Limited (“**Loudon**”) and Carey Management Inc. (“**CMI**”) and together with W&C and Loudon, the “**Companies**”) brought an application, pursuant to section 11.3 of the *Companies’ Creditors Arrangement Act*,¹ for approval of the assignment of the following license agreements from W&C and/or Loudon to 7-Eleven Distribution Canada Corporation (“**SEDCC**”):
 - a. ProCLASS/LAZER/NEXUS Software License Agreement between DigiFlex Information Systems Inc. (“**DigiFlex**”) and W&C executed on March 9, 2000;
 - b. CLASS Software License Agreement between DigiFlex and W&C executed by DigiFlex on June 27, 2003 and W&C on August 12, 2003;
 - c. ProCLASSB1 Business Intelligence Suite Software License Agreement between DigiFlex and W&C entered into on or about April 23, 2012 (according to Mohamad Mardukhi’s November 14, 2025 Affidavit (the “**MM Affidavit**”)) and executed by DigiFlex on August 19, 2013 (per copy in W&C files);
 - d. ProCLASS/CLASS/LAZER Software License Agreement between DigiFlex and Loudon entered into on February 18, 2013 (per MM Affidavit);
 - e. ProCLASS/CLASS Software License Agreement Addendum between DigiFlex and Loudon dated May 8, 2014; and
 - f. ProCLASS/CLASS Software License Agreement Addendum between DigiFlex and Loudon dated June 6, 2014,(collectively, the “**DigiFlex License Agreements**”).
2. This bench brief is filed by 7-Eleven Canada, Inc. (“**SEC**”) and SEDCC in support of the Monitor’s application, given that SEC and SEDCC are the primary beneficiaries of the relief being sought in the application.

¹ [*Companies’ Creditors Arrangement Act*](#), RSC 1985, c C-36 (“**CCAA**”), s. 11.3.

II. FACTS

A. Background

3. Pursuant to an order (the “**Initial Order**”) granted by the Court of King’s Bench of Alberta (the “**Court**”) on June 22, 2023 (the “**Filing Date**”), the Companies were granted protection under the CCAA, and KSV Restructuring Inc. (“**KSV**”) was appointed monitor of the Companies (the “**Monitor**”).
4. On June 28, 2023, as required under the CCAA, the Monitor sent a notice (the “**CCAA Notice**”) to all known creditors of the Companies, including DigiFlex.
5. On June 30, 2023, the Court granted an Amended and Restated Initial Order (the “**ARIO**”).
6. Pursuant to an order granted by the Court on August 23, 2023, the Companies carried out a sale and investment solicitation process that resulted in a transaction (the “**SEC Transaction**”) between the Companies and SEC that was approved by the Court on November 17, 2023 pursuant to an approval and vesting order (the “**SEC Transaction Approval and Vesting Order**”) and other orders (together with the SEC Transaction Approval and Vesting Order, the “**SEC Transaction Orders**”).
7. Pursuant to the SEC Transaction Orders, the Court, among other things:
 - a. approved a sale of certain of the Companies’ property, assets and undertakings to SEC, primarily fixed assets and real property; and
 - b. approved a transition services agreement dated November 20, 2023 (the “**TSA**”) among the Monitor, SEC, CMI, and Wallace & Carey (CMI and Wallace & Carey are referred to as the “**Debtors**” in the TSA).
8. On December 17, 2024, following a dispute with DigiFlex over its requirement to continue to provide of the enterprise resource planning software (the “**ERP Software**”) to the Debtors, the Monitor obtained a Court order by consent (the “**DigiFlex Order**”), among other things, requiring DigiFlex to continue to provide access to the ERP Software and related services until the later of:
 - a. the expiration of the stay under the ARIO, as may be extended by the Court; and
 - b. the expiration of the TSA term for the Western Business (as defined below).

9. On February 21, 2025, the Court issued:
 - a. an approval and vesting order approving the sale of certain additional assets of Wallace & Carey to SEDCC (a subsidiary of SEC), including accounts receivable, inventory, and certain equipment, furniture, and fixtures located at warehouses in Saskatchewan and Manitoba (the “**SEDCC Transaction**”); and
 - b. an order, among other things extending the stay of proceedings (the “**Stay**”) under the ARIO to and including August 20, 2025.
9. The Stay and the TSA have been extended to February 15, 2026 pursuant to Orders of this Court dated August 18, 2025 and September 19, 2025.

B. Logistics Business

10. CMI is an Alberta corporation and the sole shareholder of W&C, which is the sole shareholder of Loudon. Prior to the Filing Date, W&C and Loudon collectively operated one of Canada’s largest independent wholesale distribution and logistics businesses (the “**Logistics Business**”) servicing more than 7,000 customers across Canada. The Companies’ largest customer, by far, was SEC.
11. SEC and SEDCC carry on the 7-Eleven retail business (the “**7-Eleven Business**”) across Canada. SEC and SEDCC collectively have more than 8,950 employees, including more than 450 which SEDCC hired from W&C following the closing of the SEC Transaction. SEC was reliant on the Logistics Business including the ERP Software provided by DigiFlex which was specifically developed for the Logistics Business. The Logistics Business involves the picking, packing, and delivery on a daily basis of over 5,000 products from approximately 240 suppliers so that the 7-Eleven Business operates without disruption in British Columbia, Alberta, Saskatchewan, Manitoba, and Ontario. The 7-Eleven Business is complex given, *inter alia*, the large number of stores it operates and products it sells, as well as the different tax regimes in each province in which SEC and SEDCC operate. The 7-Eleven Business operates on a near just-in-time basis. One of the most important operational metrics in the 7-Eleven Business is “fill rates”, which requires a store to always carry a full range of inventory. Without reliable ERP software, SEC and SEDCC’s Canadian business is at risk.

C. TSA

12. Pursuant to the terms of the SEC Transaction Approval and Vesting Order and the TSA, the Debtors were required to continue operating the Logistics Business for the benefit of SEC under

CCAA protection. The purpose of the TSA was for the Debtors to continue to provide certain services to SEC, while the Logistics Business was transferred to SEC. As provided in the TSA, and subject to the terms and conditions of the TSA, from and after 12:01 a.m. on November 19, 2023 (the “**Effective Closing Time**”), SEC is responsible for funding substantially all post-Effective Closing Time costs of the Debtors’ operations and is entitled to any revenue resulting therefrom.

13. The Debtors, at the cost of SEC, were to continue to employ certain warehouse, logistics, administrative, and managerial staff to operate the Logistics Business and provide the services described in the TSA in order to facilitate the wind-down and the transition of the Logistics Business to SEC and/or SEDCC (the “**Transition**”). The Debtors are required under the TSA to provide SEC with information technology and data-related services during the term of the TSA (as amended and extended, the “**TSA Term**”), including:

- a. assisting SEC with integrating any of Debtors’ information technology systems and source code into SEC’s environment, including by providing all records, reports, documentation, and information that a reasonably skilled programmer would require to complete such integration and maintain such systems going forward without assistance from the Debtors;
- b. maintain SEC’s access to Debtors’ information technology systems (including the ERP Software); and
- c. assisting with data migration,

(collectively, the “**IT Transition Services**”).

14. Pursuant to the terms of the TSA, the initial TSA Term was 15 months for the W&C business in Alberta and British Columbia (the “**Western Business**”) and nine months for the W&C business east of Alberta (the “**Eastern Business**”) from November 21, 2023 (the “**TSA Effective Date**”), subject in each case to two 90-day extensions, at the option of SEC. SEC exercised both 90-day extensions for the Eastern Business and Western Business.

a. TSA Amendments

15. On February 7, 2025, the Debtors, SEC, and the Monitor entered into an amendment to the TSA (the “**First TSA Amendment**”), which aligned the TSA termination date for the Western

Business and Eastern Business to August 20, 2025, unless the parties agreed to a further extension.

16. In late-May 2025, representatives of SEC advised the Monitor that it would require continued use of the ERP Software past August 20, 2025 to complete the transition of the Logistics Business to SEDCC. Pursuant to the Second TSA Amendment Order, the Monitor, the Debtors, and SEC entered into the second amendment to the TSA dated August 18, 2025 (the “**Second TSA Amendment**”), which extended the TSA from August 20, 2025 to September 30, 2025.
17. On September 30, 2025, pursuant to the Third TSA Amendment Order, the Monitor, on behalf of the Debtors, and SEC entered into the third amendment to the TSA (the “**Third TSA Amendment**”), which extended the TSA from September 30, 2025 to February 15, 2026.
18. Each of the amendments was sought because SEC has experienced delays implementing a new ERP for its business.

D. DigiFlex Application and Proposed Assignments

19. DigiFlex and W&C have a long-standing business relationship spanning approximately 24 years, whereby DigiFlex licenses to W&C and Loudon the ERP Software and provides it with maintenance and help desk support in respect of the ERP Software. To the best of SEDCC and the Monitor’s knowledge, Mohamad Mardukhi is the controlling mind of DigiFlex.

a. ERP Software

20. DigiFlex designed and maintains the ERP Software. The ERP Software is required for supply chain management, financial reporting, and operational reporting. Without use of the ERP Software, it would be impossible for SEC and SEDCC to continue operating the Logistics Business.
21. Notwithstanding its importance to the Logistics Business, the ERP Software is outdated. Accordingly, SEDCC has been developing customized integration software (the “**Integration Software**”) to enable data to be moved from the Debtors’ systems to the SEC/SEDCC systems. SEC and SEDCC are working to have the Integration Software fully operational by no later than the end of February 2026.

22. The key terms of the DigiFlex License Agreements include the following:
- a. W&C and/or Loudon were granted a perpetual license to use the software subject to the DigiFlex License Agreements (the “**Perpetual License**”) following the payment of the amounts required under the DigiFlex License Agreements. SEC, SEDCC and the Monitor understand that all amounts owing under the DigiFlex License Agreements were paid in full by W&C and/or Loudon at the time they were entered into, and no monetary defaults exist under the DigiFlex License Agreements;
 - b. there is no set term or expiration date for the DigiFlex License Agreements;
 - c. the DigiFlex License Agreements are not otherwise saleable to any third-party; and
 - d. the DigiFlex License Agreements could be assigned upon obtaining written consent of the other party, and such consent is not to be unreasonably withheld.
23. Further, the ERP Software is maintained and supported by:
- a. Maintenance Agreements attached to each of the DigiFlex License Agreement as Schedule “A” (collectively, the “**Maintenance Agreements**”), wherein W&C and Loudon agreed to pay, in advance, an annual fee for maintenance services related to the ERP Software (the “**Maintenance Services**”); and
 - b. general IT help desk support services provided by DigiFlex which, pursuant to the MM Affidavit, were not tied to the ERP Software but were for general IT issues (the “**Help Desk Services**”). Help Desk Support Services are not subject to a written agreement and paid upfront on an annual basis.
24. All rates specified in the DigiFlex License Agreements (including the Maintenance Services fee payable under the Maintenance Agreements) are fixed for the first 12-month period (starting in August 2013), after which DigiFlex may increase the price payable upon providing at least 30 days advance written notice to W&C and/or Loudon. The percentage increase is not to exceed the Consumer Price Index for that period as published by Statistics Canada for the City of Calgary, or in the alternative, the province of Alberta or Canada. Under the TSA, in support of SEC/SEDCC, W&C and Loudon continue to use and pay for the Maintenance Services (in accordance the Maintenance Agreements) and the Help Desk Services.

b. Payments to DigiFlex During the TSA

25. Pursuant to the DigiFlex Order, DigiFlex is required to provide the ERP Software and related services until the later of: (i) the expiration of the Stay; and (ii) the expiration of the TSA for the Western Business. Pursuant to the DigiFlex Order, the Maintenance Services and Help Desk Services provided by DigiFlex have been renewed and paid by W&C and/or Loudon as follows²:

Help Desk Services

Invoice	Period	Amount (\$)	Daily (\$)	Increase
2795	Feb 1, 2024 to Jan 31, 2025	94,374.00	257.85	-
2828	Feb 1, 2025 to Jan 31, 2026	192,000.00	526.03	104.00%
		286,374.00		

Maintenance Services (Wallace & Carey)

Invoice	Period	Amount (\$)	Daily (\$)	Increase
2799	Mar 12, 2024 to Mar 12, 2025	153,175.20	418.51	-
2834	Mar 13, 2025 to Sep 12, 2025	84,250.80	457.88	9.41%
2844	Sep 13, 2025 to Sep 30, 2025	9,436.21	524.23	14.49%
2847	Oct 1, 2025 to Feb 15, 2025	72,344.29	524.23	0.00%
		319,206.50		

Maintenance Services (Loudon Bros)

Invoice	Period	Amount (\$)	Daily (\$)	Increase
2813	Sep 1, 2024 to Feb 28, 2025	10,663.00	58.91	-
2835	Mar 1, 2025 to Aug 31, 2025	11,200.80	60.87	3.33%
2843	Sep 1, 2025 to Sep 30, 2025	2,092.02	69.73	14.55%
2848	Oct 1, 2025 to Feb 15, 2025	9,623.29	69.73	0.00%
		33,579.11		

26. In addition to the fees paid for the Help Desk Services and Maintenance Services noted above, SEC, SEDCC and the Monitor understand that W&C and Loudon have paid DigiFlex for certain miscellaneous support services on an hourly basis totaling approximately \$116,733.75 (excluding GST).
27. Based on the above, during the TSA Term, DigiFlex has been paid \$755,593.39 (excluding GST) by W&C / Loudon for the continued use, maintenance, and support of the ERP Software, at rates which are greater than what is prescribed under the Maintenance Agreements. Further, all amounts owing under the DigiFlex License Agreements were paid in full by W&C and/or Loudon at the time they were entered into, and no monetary defaults exist under the DigiFlex License Agreements or the Maintenance Agreements. As a result, to the best of SEC, SEDCC and the Monitor's knowledge, W&C and/or Loudon hold the Perpetual License and as noted

² Amounts included in the table below exclude GST.

below, no prejudice to DigiFlex exists as a result of the potential assignment of the DigiFlex License Agreements.

III. ISSUE

28. This application raises the issues of whether this Honourable Court should approve the assignment of DigiFlex License Agreements to SEDCC pursuant to section 11.3 of the CCAA.

IV. LAW AND ARGUMENT

A. Section 11.3 Allows Assignment of Agreements without Counterparty Consent

29. Pursuant to Section 11.3 of the CCAA, the Court may make an order assigning the rights and obligations of the Debtors under an agreement to any person who agrees to the assignment, provided that all monetary defaults in relation to the agreement will be remedied.
30. In deciding whether to order an assignment under section 11.3, the Court is to consider:
- (a) whether the Monitor approved the proposed assignment;
 - (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
 - (c) whether it would be appropriate to assign the rights and obligations to that person.³
31. Section 11.3(2) sets out exceptions to this grant of jurisdiction, none of which are relevant to this motion.⁴ The DigiFlex License Agreements are commercial contracts capable of being assigned.⁵ All monetary defaults in relation to the DigiFlex License Agreements (other than those arising only by reason of the Debtors' insolvency, the commencement of CCAA Proceedings, or the company's failure to perform a non-monetary obligation) have already been paid W&C and Loudon.⁶
32. Section 11.3 allows this Court to order an assignment of an agreement even where the terms of the agreement place restrictions on assignment, including a prohibition on assignment without the counterparty's consent. In fact, the entire purpose of section 11.3 is to provide a mechanism

³ CCAA, [s. 11.3\(3\)](#).

⁴ These include collective agreements, eligible financial contracts or contracts entered into post-filing.

⁵ CCAA, [s. 11.3\(2\)](#).

⁶ Eighteenth Report of the Monitor dated November 20, 2025 (the "**Eighteenth Report**") at page 9, para 4.

for assignment to recover value for the insolvent estate, even where a counterparty may not consent to the assignment.⁷

33. Courts applying section 11.3 of the CCAA and its counterpart, section 84.1 of the *Bankruptcy and Insolvency Act*,⁸ have recognized that the interests of creditors and contract counterparties may diverge in insolvency proceedings where long-term, below-market contracts are at stake. In such cases, as Justice Dunphy observed in *Dundee*, the insolvency of the CCAA debtor is a “godsend” and an “unexpected windfall” to the counterparties looking to get freed up from the contracts at the expense of the debtors’ creditors.⁹
34. In *Ford Credit*, the Alberta Court held that Parliament’s intention behind section 84.1 of the BIA was to “protect and enhance the assets of the estate of a bankrupt by allowing the assignment of existing agreements to third parties for value.”¹⁰ Upholding this decision, the Alberta Court of Appeal further elaborated that the clear intent of Parliament was to address the vulnerability of a bankrupt estate losing the benefit of a contract if a counterparty objected to the assignment.¹¹ The purpose underlying section 84.1 of the BIA, as outlined in *Ford Credit*, should inform the analysis under section 11.3.¹²
35. Prior to the enactment of section 11.3, in *Playdium*,¹³ the Court ordered the assignment of a key contract to a new entity over the opposition of the counterparty, pursuant to its broad statutory jurisdiction under the CCAA. *Playdium* illustrates several key principles regarding forced assignments:
 - (a) assignment of a contract should be ordered when it is consistent with the purpose and spirit of the CCAA and carries potential benefits for stakeholders including the debtor’s employees and members of the public;¹⁴
 - (b) assignment may be ordered even where the counterparty’s refusal to consent is reasonable;¹⁵

⁷ *Hudson’s Bay Company (Re)*, 2025 ONSC 5998 (“*Hudson’s Bay*”) at para 43.

⁸ *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”), s. 84.1.

⁹ *Dundee Oil and Gas Limited (Re)*, 2018 ONSC 3678 (“*Dundee*”) at para. 28.

¹⁰ *Ford Credit Canada Limited v. Welcome Ford Sales Ltd.*, 2010 ABQB 798 at para. 48 (“*Ford Credit*”).

¹¹ *Ford Credit Company of Canada, Limited v. Welcome Ford Sales Ltd.*, 2011 ABCA 158 at paras. 37-39.

¹² *8640025 Canada Inc. (Re)*, 2018 BCCA 93 at para. 45; *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 24.

¹³ *Playdium Entertainment Corp., Re*, 2001 CanLII 28281 (ONSC) (“*Playdium*”).

¹⁴ *Playdium* at para 23.

¹⁵ *Playdium* at para 22.

- (c) the possibility that the assignee will default on the contract post-CCAA should not be a bar to the assignment, where the counterparties retain their right to seek relief for such default;¹⁶ and
 - (d) refusal to consent because of better opportunities available to the counterparties (such as, in the present case, the opportunity for Digiflex to charge exorbitant license and maintenance fees to SEC¹⁷) should not carry any weight in the analysis.¹⁸
36. The authorities under section 11.3, most notably *Dundee*, *UrtheCast*¹⁹, and *Donnelly*²⁰, have further established the following principles:
- (a) The Court must determine on a reasonableness standard whether the purchaser is an appropriate assignee who would be able to perform the obligations under the contract. An “ironclad guarantee of success going forward” is not required;²¹
 - (b) The emphasis is on the assignee’s financial strength, including the resources the assignee has already committed to the transaction and the ability and commitment to pay cure costs;²² and
 - (c) The counterparty is not entitled to improve its condition or “demand the receipt of financial covenants or assurances that it did not previously enjoy under the contract it originally negotiated with the debtor.”²³ Determining whether “the assignee is a reasonably fit and proper one should not morph into an exercise in patching up contracts previously negotiated by requiring financial covenants and safeguards never before required.”²⁴

¹⁶ *Playdium* at [para 29-30](#).

¹⁷ MM Affidavit, paras 64 and 86.

¹⁸ In *Urbancorp Cumberland 1 GP Inc. (Re)*, 2020 ONSC 7920 (“*Urbancorp*”), the Court confirmed the jurisdiction to grant an assignment order in a receivership. The Court accepted the argument of the receiver that the jurisdiction to make the order existed, even where the contract in question allowed the counterparty to act unreasonably in determining whether to consent to an assignment: see [paras. 13, 35, 41-44](#), and [54](#).

¹⁹ *In the Matter of a Plan of Arrangement of UrtheCast Corp.*, 2021 BCSC 1819 (“*UrtheCast*”).

²⁰ *Donnelly Holdings Ltd. (Re)*, 2024 BCSC 275 (“*Donnelly*”).

²¹ *Dundee* at [para. 30](#); *Donnelly* at [para 66](#).

²² *Dundee* at [para. 8\(b\)](#); *UrtheCast* at [para. 50](#).

²³ *Dundee* at [para. 30](#).

²⁴ *Dundee* at [para. 38](#).

37. More recently, the court in *Hudson's Bay* considered the decisions in *Urbancorp*, *Donnelly*, and *Urthecast* and noted that the following helpful principles emerge:
- (a) the burden is on the party seeking the assignment;
 - (b) compliance with the mandatory requirements of s. 11.3 must be demonstrated (i.e., the payment of cure costs in accordance with s. 11.3(4));
 - (c) the standard is reasonableness;
 - (d) the analysis is fact-specific;
 - (e) there must be an evidentiary basis in the record for a finding of fact that the proposed assignee would be able to perform the obligations, to the reasonableness standard;
 - (f) the s. 11.3(3) factors are neither mandatory nor exhaustive. They inform the analysis and are to be considered together with other factors that may be relevant to the particular circumstances of the case;
 - (g) if the proposed assignment is (as it usually will be) part of an asset sale, the factors set out in s. 36(3) of the CCAA together with the *Soundair Principles* must also be considered, notwithstanding that there may be some overlap with a consideration of the s. 11.3 factors;
 - (h) if the proposed assignment is the result of a court-approved sales process conducted by a court officer (i.e., a monitor or receiver), compliance with that process will usually be a relevant factor;
 - (i) the consent to the proposed assignment of the contractual counterparty or lack thereof is irrelevant to the analysis. Section 11.3 permits the court to approve the assignment of a contract, whether the counterparty has consented to the assignment or not;
 - (j) it follows that, where the counterparty has not consented to the assignment (and even if it has a contractual right to do so), the issue of whether that refusal to consent was reasonable or unreasonable is also not relevant to the analysis;
 - (k) a consideration of whether the assignee would be able to perform the obligations (s. 11.3(3)(b)) may involve both monetary and non-monetary factors. The consideration is

not limited only to the questions of whether the assignee has demonstrated sufficient financial resources;

- (l) demonstrating that the assignee would be able to perform the obligations does not require a guarantee of such performance: the contractual counterparty ought not to be able to improve its position or require greater certainty of performance by the assignee than that to which it was entitled under the original contract with the debtor;
- (m) the remaining term of the contract (including renewal terms, particularly if such renewals are at the option of the assignee) will usually be a relevant factor in the analysis. A consideration of the ability of the assignee to perform is inherently different if, for example, the contract is for the purchase and sale of an asset where the performance obligation is limited to a single requirement to pay, as opposed to a long-term lease with ongoing monetary and non-monetary performance obligations; and
- (n) a consideration of whether the proposed assignment would be appropriate (s.11.3(3)(c)) includes a consideration of:
 - i. what would be just and equitable in all the circumstances;
 - ii. the interests of all stakeholders, including the debtor, the proposed assignee, the contractual counterparty, and secured and unsecured creditors;
 - iii. whether the proposed assignment is in furtherance of a going concern outcome with the attendant preservation of a business enterprise, customer and supplier relationships and jobs for employees, or whether it is in the furtherance of an asset sale in a liquidating proceeding;
 - iv. the relative importance and materiality of the proposed assignment to the overall restructuring or liquidation; and
 - v. whether the contract is proposed to be assigned without amendments, thereby preserving the rights and obligations of the assignor (the debtor) and assignee at the date of the proposed assignment, or whether the assignment is proposed to be effected subject to amendments to the contract.²⁵

²⁵ *Hudson's Bay* at [para 43](#).

38. SEC and SEDCC submit that the principles summarized in *Hudson's Bay* have been satisfied in this case and the assignment of the DigiFlex License Agreements should be approved for the following reasons (some of which are discussed in further detail below):

- (a) The SEC Transaction (including the TSA) was approved by this Court following a court-supervised sales and investment solicitation process which widely canvassed the market for potential purchasers;²⁶
- (b) The Monitor supported the SEC Transaction and believed that “the Transaction is, by far, the best outcome of the business and its stakeholders in the circumstances, and is intended to maximize value”;²⁷
- (c) SEDCC has the ability to perform the obligations under the DigiFlex License Agreements;²⁸
- (d) Although the DigiFlex License Agreements are perpetual, SEDCC does not anticipate requiring the use of such licenses beyond February 2026;
- (e) The assignment of the DigiFlex License Agreements ensures the continuation of the SEC and SEDCC business in Canada preserving the employment of the W&C employees and continued relationships with W&C’s vendors;²⁹
- (f) The SEC Transaction was the only viable transaction that arose from the SISP and absent the completion of the SEC Transaction, it is likely that the going concern operations of W&C would have been terminated almost two years ago;³⁰
- (g) SEDCC is not requesting any amendments to the DigiFlex License Agreements and as such all rights of the assignor and assignee will be preserved as of the date of the assignment; and
- (h) DigiFlex has been paid in full for the DigiFlex License Agreements and has during the course of the CCAA proceedings been paid over \$750,000 for the services provided under the Maintenance Agreements and for Help Desk Services.³¹

²⁶ Eighteenth Report, Appendix B at page 26, para 1 (a)-(b).

²⁷ Eighteenth Report, Appendix B at page 26, para 1 (a)-(h).

²⁸ Eighteenth Report at page 15, para 1(k)iv.

²⁹ Eighteenth Report, Appendix B at page 26, para 1 (g)-(h).

³⁰ Eighteenth Report, Appendix B at page 26, para 1 (c)-(e).

³¹ Eighteenth Report at page 14, para 1(i)i-ii.

B. The Test under Section 11.3 of the CCAA is Met

Section 11.3(3)(a) - Monitor Has Approved the Proposed Assignment

39. The TSA created an obligation for the Debtors to provide certain services to SEC, while SEC consider if and how to operate the Logistics Business. This was an essential feature of the SEC Transaction which was approved by this Court.
40. The Debtor has ongoing obligations under the TSA and the continued access to the ERP Software is essential to the orderly and uninterrupted transition of the business to SEC and SEDCC.
41. The revocation of the DigiFlex License Agreements would (i) make it impossible for the Monitor, on behalf of the Debtors, to fulfill their obligations under the TSA, (ii) jeopardize SEC's business, and (iii) undermine the SEC Transaction approved by this Court.
42. There is no prejudice to DigiFlex given that all amounts owing under the DigiFlex License Agreement have been paid in full and DigiFlex is being paid for services under the Maintenance Agreements at rates higher than those provided in those agreements.
43. For these reasons, among others outlined in the Eighteenth Report, the Monitor approves the Proposed Assignment.

Section 11.3(3)(b) – The Assignee Can Perform the Obligations

44. SEC has been funding the payment of the monetary obligations by W&C and Loudon under the DigiFlex License Agreements since the closing of the TSA in November 2023. In addition, SEC has funded the increased payment amounts demanded by DigiFlex for renewal of the Maintenance Agreements and Help Desk Services.³² The total amounts funded by SEC in respect of the services provided by DigiFlex since November 2023 are \$755,593,39 (exclusive of GST).³³
45. SEC only expects to utilize the DigiFlex License Agreements until February 2026 and has already funded the costs related to the services to be provided by DigiFlex in relation to the DigiFlex License Agreements until that time.³⁴

³² Eighteenth Report at page 11, para 1.

³³ Eighteenth Report at page 12, para 3.

³⁴ *Supra* note 25.

46. There are no monetary defaults under the Digiflex License Agreements.³⁵

Section 11.3(3)(c) *The Proposed Assignment is Appropriate*

47. The third element of the test requires a consideration of what is appropriate. The Supreme Court of Canada in *Century Services*, observed the following:

Appropriateness under the CCAA is assessed by inquiring whether the order sought advances the policy objectives underlying the CCAA. The question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA – avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that the appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successfully reorganizations are enhanced where participants achieve common ground and all stakeholders are treated advantageously and fairly as circumstances permit.³⁶

48. The W&C APA (which included the TSA) was approved by order of this Court on November 17, 2023. The TSA was structured to allow for the orderly transition of W&C's business to SEDCC, an affiliate of SEC that was incorporated to operate the Canadian logistics business.³⁷
49. SEC has been responsible for funding substantially all of the Debtors' operational costs, including employee costs, real property and personal property leases and other contracts since the closing of the transaction on November 21, 2023.
50. The SEC Transaction was the only viable transaction that arose from the sale and investment solicitation process and it has resulted in the preservation of approximately 450 jobs for the Debtors' former employees, the assignment of several contracts with W&C's other service providers and the assumption of lease obligations with W&C's landlords.³⁸
51. The SEC Transaction was estimated to generate total proceeds of \$59.7 to \$67.1 million and resulted in the repayment of the Lender Priority Charge in the amount of \$31.8 million and the CIBC Pre-Filing Security in the approximate amount of \$5.6 million and a partial repayment of the amount owing under the Tobacco Tax Charge. In short, the Transaction generated significant value for the Debtors' stakeholders.³⁹

³⁵ Eighteenth Report at page 14, para 1(i)i.

³⁶ *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 ("**Century Services**") at para 70.

³⁷ Affidavit of Joshua Buchanan sworn September 8, 2025 (the "**JB Affidavit**") at para 10.

³⁸ Eighteenth Report, Appendix B.

³⁹ *Ibid.*

52. The Debtors are obligated (subject to SEC's compliance with its funding obligations) to provide SEC with information technology and data-related services during the TSA term, which currently expires February 15, 2026. These obligations include the provision of various IT transition services, including the continued operation of W&C's enterprise resource planning system and related software, particularly those governed by the DigiFlex License Agreements.
53. If the assignment of the DigiFlex License Agreements is not approved and DigiFlex is permitted to terminate the DigiFlex License Agreements, the significant benefits and value creation that resulted from the SEC Transaction and the TSA will be lost – not only for SEC and SEDCC but also for the 450 former employees, approximately 240 suppliers and landlords of the Debtors. There will be a loss of 540 7-Eleven retail locations in five provinces across Canada and yet another insolvent retailer.⁴⁰

C. The Objections of DigiFlex are Advanced for Ulterior Motives

54. W&C had been a customer of DigiFlex since March 9, 2000⁴¹ but in 2021 was advised by W&C that it would be transitioning to a new ERP system.⁴² As a result, DigiFlex was aware that it would be losing W&C as a customer for at least two years prior to the commencement of the Debtors' CCAA proceedings. If not for the SEC Transaction, it is likely that the assets and property of the Debtors would have simply been liquidated and DigiFlex would have ceased receiving any payments over two years ago.
55. Despite assertions to the contrary,⁴³ DigiFlex was informed of the CCAA proceedings in June 2023 as it was a creditor of W&C when the CCAA proceedings commenced.⁴⁴
56. DigiFlex continued, without complaint, to provide services to the Debtors until July 2024 when W&C requested certain changes to the company name in the ERP system and when DigiFlex realized that the new company would be SEDCC.⁴⁵ Until this time, DigiFlex had been providing maintenance and helpdesk services to W&C and/or Loudon related to the DigiFlex License Agreements for \$163,838 and \$94,374 per year, respectively.⁴⁶ Thereafter DigiFlex demanded payments of over \$188,945 per year for maintenance services and \$192,000 per year for

⁴⁰ JB Affidavit at paras 12 and 20.

⁴¹ MM Affidavit, para 27.

⁴² MM Affidavit, para 34.

⁴³ MM Affidavit, para. 45.

⁴⁴ Eighteenth Report at page 1, para 2.

⁴⁵ MM Affidavit, paras. 46-54.

⁴⁶ Eighteenth Report at page 11, para 1.

helpdesk services.⁴⁷ These increases far exceed the percentage increases set out in the agreements between W&C and Loudon and DigiFlex.⁴⁸

57. In addition, despite the original modest license fees (\$34,000-\$300,000) charged to the Debtors for the DigiFlex License Agreements and the acknowledgment that the Debtors had grown their business for annual sales of \$200 million to over \$2 billion⁴⁹, DigiFlex demanded that SEDCC pay a license fee of \$3,391,500 (over 10 times higher than that charged to W&C) and annual maintenance fees of \$847,875 (over 4 times higher than that charged to W&C) for the continued use of the ERP software based on annual sales of \$600 million (significantly less than the volume of sales that W&C was generating).⁵⁰
58. DigiFlex has provided no evidence to support that the license and maintenance fees which were quoted and then invoiced to SEC are standard for the product as opposed to just being a windfall for a company that is losing a 25 year business relationship with the Debtors.⁵¹ In addition, the maintenance and helpdesk fees are significantly higher than those charged to W&C for a logistics business which is now significantly smaller.
59. DigiFlex has complained that extending the TSA has left its owner in a “constant state of uncertainty”⁵² but the reality is that DigiFlex has been paid for all services provided since the commencement of the CCAA proceedings and following the closing of the TSA. All funding has been provided by a financially secure counterparty. In addition, DigiFlex has continued to be paid for services which, in all likelihood, would have ended without the benefit of the SEC Transaction and the TSA or in any event if W&C had been able to avoid the CCAA proceedings and transition to another ERP provider as planned.
60. It is clear that what DigiFlex really wants is a ransom payment from SEC and it willing to put SEC and SEDCC’s business in Canada at risk to get it. DigiFlex believes that SEC will be unable to transition to another ERP system before the end of the current expiry of the TSA and DigiFlex wants almost \$5 million to continue to work with SEC and SEDCC.⁵³ DigiFlex is attempting to extract a windfall from SEC and SEDCC at the expense of the other stakeholders of the Debtors, namely the employees, suppliers and landlords.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ MM Affidavit, paras 25 and 39 and Exhibits B-E.

⁵⁰ MM Affidavit, paras. 64 and 86

⁵¹ MM Affidavit, paras. 104–107.

⁵² MM Affidavit, para. 98.

⁵³ MM Affidavit, paras. 105 and 107.

61. In these circumstances, the statutory criteria for approval of an assignment under section 11.3 of the CCAA are plainly met. DigiFlex should not be permitted to block the assignments which represent the best possible outcome for the stakeholders and allow W&C fulfill its obligations under the TSA (which was approved by this Honourable Court) so that it can receive an unexpected windfall at the expense of the Debtors' employees, suppliers and landlords. The Court should accordingly exercise its discretion to approve the proposed assignment as a measure that maximizes value and advances the remedial objectives of the CCAA.

VI. RELIEF REQUESTED

35. SEC and SEDCC respectfully request that this Honourable Court grant the relief sought in the Monitor's Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 21st DAY of NOVEMBER, 2025



DLA Piper (Canada) LLP
Carole J. Hunter
Counsel for 7-Eleven Canada, Inc. and
7-Eleven Distribution Canada
Corporation

TABLE OF AUTHORITIES

1. [Companies' Creditors Arrangement Act](#), RSC 1985, c C-36, s. 11.3, 11.3(2) and 11.3(3).
2. [Hudson's Bay Company \(Re\)](#), 2025 ONSC 5998.
3. [Bankruptcy and Insolvency Act](#), R.S.C. 1985, c. B-3, s. 84.1.
4. [Dundee Oil and Gas Limited \(Re\)](#), 2018 ONSC 3678.
5. [Ford Credit Canada Limited v. Welcome Ford Sales Ltd.](#), 2010 ABQB 798 .
6. [Ford Credit Company of Canada, Limited v. Welcome Ford Sales Ltd.](#), 2011 ABCA .
7. [8640025 Canada Inc. \(Re\)](#), 2018 BCCA 93.
8. [Playdium Entertainment Corp., Re](#), 2001 CanLII 28281 (ONSC).
9. [Urbancorp Cumberland 1 GP Inc. \(Re\)](#), 2020 ONSC 7920.
10. [In the Matter of a Plan of Arrangement of UrtheCast Corp.](#), 2021 BCSC 1819.
11. [Donnelly Holdings Ltd. \(Re\)](#), 2024 BCSC 275.
12. [Century Services Inc. v. Canada \(Attorney General\)](#), 2010 SCC 60.