



COURT FILE NUMBER B301 - 223290  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PROCEEDING IN THE MATTER OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, RSC 1985, c B-3, as amended  
AND IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF CATALX CTS LTD.

COM  
Jan 6, 2026

APPLICANT ALBERTA SECURITIES COMMISSION  
RESPONDENTS CATALX CTS LTD and HYUK JAE PARK  
DOCUMENT **REPLY BRIEF OF THE RESPONDENTS**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

MILLER THOMSON LLP  
Barristers and Solicitors  
525-8<sup>th</sup> Avenue SW, 43<sup>rd</sup> Floor  
Calgary, AB, Canada T2P 1G1

Attention: James W. Reid  
Telephone: 403-298-2418  
Email: [jwreid@millerthomson.com](mailto:jwreid@millerthomson.com)

File No. 0291254.0001

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## I. INTRODUCTION

1. This Reply Brief is submitted on behalf of CatalX CTS Ltd. (“**CatalX**”) and its only remaining director, Hyuk Jae Park (“**Mr. Park**”).
2. This Reply Brief is filed in response to the application of the Alberta Securities Commission (the “**ASC**”) filed October 29, 2025, for an Order declaring that the releases (the “**Releases**”) granted by this Court in favour of CatalX and Mr. Park do not prohibit the ASC from continuing with securities regulatory proceedings (“**ASC Proceedings**”) pursuant to the ASC’s Notice of Hearing<sup>1</sup> dated July 11, 2025.
3. The application brought by the ASC is contrary to the clear and unambiguous wording of the Proposal (as defined below) and the Order granted by this Court approving same. The investigation that had been initiated by the ASC a year and a half before the filing of the Proposal was at the forefront of the factual circumstances at each application heard by the Court.
4. Multiple members of ASC staff (“**Staff**”) were on the service list, and Staff had counsel in attendance at each Court application. The Releases were granted on notice to, and with Senior Legal Counsel for the ASC in attendance, in person, at Court.
5. Although the ASC investigation had been predominantly carried out a full year before the Proposal was filed, Staff waited until the Proposal was being implemented, and all appeal periods had passed before it issued the Notice of Hearing.
6. Despite the clear wording and intention of the Releases to stay proceedings before the ASC as against CatalX and Mr. Park, on September 15, 2025, Staff proceeded with a hearing before a panel at the ASC (the “**ASC Panel**”). The ASC Panel refused to hear Staff’s application due to its concern surrounding the unambiguous terms of the Releases that expressly stay administrative hearings by securities commissions and requested that Staff return the matter before Justice Neufeld for clarification.
7. Staff subsequently brought its application to retroactively reverse the effects of the Release. The ASC cannot however reverse the Proposal, which was implemented on the condition that the Releases were granted.

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<sup>1</sup> *Re CatalX Ltd*, 2025 ABASC 98 (the “**Notice of Hearing**”) [Tab 1].

8. Four months after the Court approved the Proposal, and five months after having been served with the Proposal, the ASC is now for the first time raising legal and policy arguments as to why the Releases should not have been granted. It cannot now reverse the effects of its failure to raise its issues with the Releases before the Proposal was approved and implemented. The Releases are effective and binding on the ASC.

## II. **FACTS**

9. The facts in this matter are largely not in dispute. However, in making its arguments, the ASC has left out many important details which distinguish the legal and policy grounds on which its application is based.
10. The nuanced timeline and facts are critical to the legal issues in this matter and are therefore set out in detail below.

### A. **Background on CatalX and the Commencement of the ASC Investigation in 2023**

11. CatalX operated an internet-based platform for the trading of crypto assets, which enabled its customers to buy, sell, hold, deposit, and withdraw crypto assets such as Bitcoin, Ether, and anything commonly considered to be a crypto asset, digital or virtual currency, or digital or virtual token (collectively, “**Crypto**”).<sup>2</sup>
12. Mr. Park is the Chief Executive Officer of CatalX and is now the only remaining officer and sole director of CatalX.<sup>3</sup>
13. Until December 22, 2023, upon CatalX accepting his resignation, Jae Ho Lee (“**Mr. Lee**”) was a director and the Chief Financial Officer of CatalX. Mr. Lee was the only person that had access to the digital wallets and accounts at Bittrex Global GmbH (“**Bittrex Global**”) that held CatalX’s Crypto and the Crypto held on behalf of CatalX’s customers (the “**CatalX Wallets**”).<sup>4</sup>

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<sup>2</sup> Affidavit of Hyuk Jae Park sworn January 10, 2024 filed in Court File No. 2401 - 00457 (the “**Park Receivership Affidavit**”) at para 3, attached as Exhibit I to the Affidavit of Regie Agcaoili sworn October 24, 2025 (“**Agcaoili Affidavit**”) [A0244]; Note: square-bracketed numbers with the prefix “A” refer to the Bates numbering of the Agcaoili Affidavit and those with the prefix “C” refer to the Bates numbering of the Ceko Affidavit.

<sup>3</sup> Park Receivership Affidavit, *ibid*, at para 8 [A0246].

<sup>4</sup> *Ibid* at para 9 [A0246].

14. CatalX operated the trading of Crypto through its platform-support supplier, Bittrex Global, which served as custodian for the Crypto of CatalX's clients.<sup>5</sup>
15. On November 20, 2023, without notice to CatalX, Bittrex Global publicly announced its decision to wind-down its operations and cease the provision of all trading services effective as of December 4, 2023. At the same time, Bittrex Global also requested that all of its customers login to their Bittrex Global accounts and withdraw the customer's assets.<sup>6</sup>
16. CatalX determined it was not feasible for it to continue to operate its platform without the required technological and liquidity support from Bittrex Global.<sup>7</sup>
17. CatalX had previously applied to the ASC to become a licensed securities exchange in Alberta. As part of that application, CatalX provided the ASC with a Pre-Registration Activities Undertaking (the "**Undertaking**").<sup>8</sup> On December 4, 2023, CatalX notified the ASC that it was withdrawing its application to become a licensed securities exchange.<sup>9</sup>
18. On November 24, 2023, Mr. Park attended a meeting with Mr. Lee at Mr. Lee's lawyer's office. During the meeting, information about the state of CatalX's finances was disclosed to Mr. Park, which Mr. Park had to verify. Mr. Park immediately began making internal inquiries, including from Mr. Lee, as to the status of the CatalX Wallets in order to gather and secure relevant records and information. Mr. Park concurrently took steps to seek professional advice from counsel.<sup>10</sup>
19. Shortly after the November 24, 2023 meeting, Mr. Park was advised that CatalX had ceased allowing withdrawals of customer deposits, which process had been overseen by Mr. Lee.<sup>11</sup>
20. By mid-December, it became evident that Mr. Lee was no longer performing his duties as CFO and Mr. Park requested from Mr. Lee the login information to the CatalX Wallets and CatalX's banking information.<sup>12</sup>

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<sup>5</sup> *Ibid* at para 12 [A0247].

<sup>6</sup> *Ibid* at para 14 [A0247].

<sup>7</sup> *Ibid* at para 15 [A0247].

<sup>8</sup> Agcaoili Affidavit, at Exhibit L [A0413].

<sup>9</sup> Park Receivership Affidavit, *supra* note 2 at para 16 [A0247] and Exhibit D [A0266].

<sup>10</sup> *Ibid* at para 17 [A0247].

<sup>11</sup> *Ibid* at paras 18, 20, and 21 [A0248].

<sup>12</sup> *Ibid* at para 21 [A0248] and Exhibit E [A0269].

21. After not receiving responses to several follow up demands for access to the CatalX Wallets and banking information, on December 21, 2023, counsel to CatalX wrote to the ASC, advising it of the situation, including that the balances of customer funds in the CatalX Wallets appeared to have been withdrawn or transferred out of the accounts. CatalX also advised that it was in the process of engaging Deloitte LLP to investigate the transaction history that had taken place in the CatalX Wallets.<sup>13</sup>
22. Following receipt of the December 21, 2023 letter, on December 21, 2023, the ASC granted an interim cease trade order advising that the ASC had commenced an investigation respecting, among others, CatalX, and ordering, among other things, that CatalX cease trading in or purchasing any securities or derivatives.<sup>14</sup>
23. On January 5, 2024, the ASC issued an interim order extending the December 21, 2023 interim cease trade order to January 5, 2025.<sup>15</sup> The basis on which the extension was sought was Staff's allegation that CatalX had breached the Undertaking, constituting a *prima facie* violation s 93.2 of the *Securities Act*.<sup>16</sup> In its reasons for decision, the ASC agreed that the evidence before it established that the Undertaking was breached on a *prima facie* basis.<sup>17</sup>

**B. CatalX's Engagement of Deloitte**

24. On December 22, 2023, Mr. Park caused CatalX to engage Deloitte LLP to provide independent and impartial forensic and investigative services in connection to the tracing of Crypto and location(s) of the Crypto that were to be held by CatalX on behalf of CatalX's customers.<sup>18</sup>
25. On December 28, 2023, CatalX issued a press release announcing that there had been a potential security breach, a loss of Crypto, and that CatalX had engaged Deloitte LLP to provide certain independent and impartial forensic and investigative services in connection with CatalX's investigation.<sup>19</sup>

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<sup>13</sup> *Ibid* at paras 22 – 24 [A0248] and Exhibits F, G, H. [A0271, A0274, A0281].

<sup>14</sup> *Ibid* at para 25 [A0249] and Exhibit I [A0296].

<sup>15</sup> *Ibid* at para 26 [A0249] and Exhibit J [A0299].

<sup>16</sup> *Securities Act*, RSA 2000, c S-4 [Tab 2].

<sup>17</sup> *Re CatalX CTS Ltd*, 2024 ABASC 23 at paras 3 and 26 [Tab 3].

<sup>18</sup> Park Receivership Affidavit, *supra* note 2 at para 27 [A0249].

<sup>19</sup> *Ibid* at para 29 [A0249] and Exhibit K [A302].

**C. The Appointment of the Receiver**

26. On December 24, 2023, to fund CatalX's retention of Deloitte LLP, Mr. Park provided a senior secured loan to CatalX of \$800,000 (the "**Loan**"). The Loan was necessary to fund the investigation to determine the whereabouts of the missing Crypto.<sup>20</sup>
27. On January 11, 2024, CatalX filed an application, returnable January 19, 2024, to appoint Deloitte Restructuring Inc. as receiver-manager over CatalX. The receivership application was brought jointly by CatalX and Mr. Park pursuant to the *Judicature Act* (Alberta) and *Business Corporations Act* (Alberta) under Court File Number 2401 – 00457 (the "**Receivership Proceeding**").
28. The commencement of the ASC investigation was discussed in a full section of Mr. Park's affidavit in support of the Receivership Proceeding,<sup>21</sup> the Bench Brief,<sup>22</sup> and it was referenced in the Proposed Receiver's Report prepared by Deloitte Restructuring Inc. for the January 19, 2024 application.<sup>23</sup>
29. On January 19, 2024, Justice Neufeld of the Court granted a Receivership Order (the "**Receivership Order**") appointing Deloitte Restructuring Inc. as receiver-manager over CatalX (in such capacity, the "**Receiver**").<sup>24</sup>
30. One of the express reasons cited in the application materials for the appointment of the Receiver was due to "the ongoing ASC investigation and the Interim Cease Trade Order, a Court-appointed receiver-manager would ensure that [CatalX is] operated and managed by an independent third-party approved by the Court".<sup>25</sup>
31. Counsel to the ASC was served with the application materials in support of the Receivership Order and had counsel in attendance at the application.<sup>26</sup>
32. In the Court's reasons for decision in granting the Receivership Order, the Court commended Mr. Park for his expedient action and for providing the funding for Deloitte

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<sup>20</sup> *Ibid* at para 33 [A0250] and Exhibits N, O, P [A0313, A0333, A0336].

<sup>21</sup> *Ibid* at paras 22 – 26 and Exhibits H, I, J [A0281, A0296, A0299].

<sup>22</sup> Affidavit of Marica Ceko, sworn November 28, 2025 (the "**Ceko Affidavit**") at Exhibit B [C021].

<sup>23</sup> *Ibid* at Exhibit C [C037].

<sup>24</sup> *Ibid* at Exhibit A [C005].

<sup>25</sup> Park Receivership Affidavit, *supra* note 2 at para 37(b) [A0251]; Ceko Affidavit at Exhibit B, at para 53 [C033] and Exhibit C, para 16(d) [C042].

<sup>26</sup> Ceko Affidavit at Exhibit D [C050]; Transcript of Proceedings, January 19, 2024 ("**Receivership Application Transcript**") at 1, line 14, attached as Exhibit E to the Ceko Affidavit [C087].

LLP's investigation. In its decision, the Court found it was "incumbent on the Court to support that sort of proactive approach".<sup>27</sup>

33. The Court further notes in its decision that the information gathered from CatalX and Mr. Park's proactive actions could be of assistance to the ASC, with avoiding similar situations in the future, and to mitigate the impacts of the situation.<sup>28</sup>

**D. The Findings from Deloitte LLP's Investigation**

34. On May 21, 2024, the Receiver filed an application in the Receivership Proceeding returnable May 28, 2024, for approval of its activities, fees and disbursements.<sup>29</sup>
35. In the First Report of the Receiver dated May 21, 2024 (the "**First Report**"), filed in support of the Receiver's application, the Receiver makes numerous references to Deloitte LLP's communications with the ASC. The First Report also included a full section discussing the ASC investigation. The Receiver reported on Deloitte LLP's own investigation findings, which included that CatalX "suffered from a deficiency" in financial controls and failure to implement governance procedures. The "lack of oversight" granted Mr. Lee the ability to use customer assets at his discretion without any checks and balances in place.<sup>30</sup>
36. The ASC was served with the Receiver's application materials, including the First Report.<sup>31</sup>
37. At the hearing, counsel for CatalX and Mr. Park advised the Court of the ongoing investigations of the ASC and Royal Canadian Mounted Police.<sup>32</sup>
38. In granting the Receiver's application, the Court again commended Mr. Park for the proactive steps he had taken and noted "that Mr. Park in particular has stepped up here when many would not".<sup>33</sup>

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<sup>27</sup> Receivership Application Transcript at 8, lines 19-23 [C094].

<sup>28</sup> *Ibid* at 8, lines 25-28 [C094].

<sup>29</sup> Ceko Affidavit at Exhibit F [C101].

<sup>30</sup> Agcaoili Affidavit at Exhibit J, paras 55 – 61 [A0350].

<sup>31</sup> Ceko Affidavit at Exhibit G [C109].

<sup>32</sup> *Ibid* at Exhibit H at 6, lines 19-22 [C139].

<sup>33</sup> *Ibid* at Exhibit H at 6, lines 28-30 [C139].



**E. The ASC Investigation**

39. The ASC commenced its investigation on December 21, 2023, immediately after being notified by CatalX of the unauthorized transactions in the CatalX Wallet by Mr. Lee.<sup>34</sup>
40. Over the course of its investigation, the ASC and British Columbia Securities Commission<sup>35</sup> conducted 37 interviews of 24 different people. 10 of these 37 interviews were of Mr. Park. 36 of 37 of the interviews by the securities commissions occurred between December 2023 and June 2024, a full year before the filing of the Proposal (defined below). Only one interview, which was a follow up interview of Mr. Park, occurred in March 2025, still a full two months before the Proposal was filed.<sup>36</sup>

**F. The Proposal**

41. On May 14, 2025, CatalX filed a Division I proposal (the “**Proposal**”) pursuant to Part III Division I of the BIA<sup>37</sup> with Deloitte Restructuring Inc. acting as proposal trustee (in such capacity, the “**Proposal Trustee**”).<sup>38</sup>
42. The Creditors Package from the Proposal Trustee included a copy of the Proposal at Appendix A, and a Proposal Trustee’s Report to Creditors at Appendix C (the “**Trustee’s Report**”).<sup>39</sup>
43. The Trustee’s Report advises of the ASC investigation.<sup>40</sup>
44. Section 2.4 of the Trustee’s Report noted the conditions precedent to the Proposal, which included that the Court approves the Releases. The Trustee’s Report speaks to the Releases and their broad range. In its conclusion, the Proposal Trustee states that the “[p]roposal provides the comprehensive Releases for CatalX and the Participating

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<sup>34</sup> Agcaoili Affidavit at Exhibit J, paras 11 and 46 [A0345 and A0349].

<sup>35</sup> Some of the interviews were conducted by the British Columbia Securities Commission as part of the ASC investigation.

<sup>36</sup> Ceko Affidavit at paras 16-17 [C002], Exhibit O [C494].

<sup>37</sup> *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3 [BIA] [Tab 4].

<sup>38</sup> Creditors Package dated May 15, 2025 (“**Creditors Package**”) attached as Exhibit A to the Agcaoili Affidavit [A0005].

<sup>39</sup> *Ibid* at [A0008 and A0033].

<sup>40</sup> *Ibid* at [A0035].

Directors, covering a wide range of claims, both known and unknown, related to CatalX's business and affairs before the Implementation Date".<sup>41</sup>

45. The creditors package was served on the ASC by counsel to the Proposal Trustee and Receiver on May 26, 2025. On May 26, 2025, counsel to the Proposal Trustee and Receiver also advised that a proposal approval hearing was scheduled for 2:00 pm on Friday, June 20, 2025.<sup>42</sup>
46. On June 2, 2025, a meeting of creditors was held and the Proposal was approved by the required majority of creditors in attendance and voting on the Proposal.<sup>43</sup>

**G. The June 20, 2025 Hearing**

47. On June 9, 2025, counsel to the Proposal Trustee and the Receiver served materials on, among others, the ASC, for two applications to be heard concurrently before Justice Neufeld of the Court on Friday, June 20, 2025 (the "**June 20 Applications**").<sup>44</sup> One set of application materials was in the Receivership Proceeding for the discharge of the Receiver, and the other set of application materials was for Court approval of the Proposal.<sup>45</sup>
48. In the Second and Final Report of the Receiver dated June 6, 2025 (the "**Second Report**"), the Receiver discusses Deloitte LLP's collaboration with the ASC regarding, among other things, investigation efforts, and advises that Deloitte LLP will continue to cooperate with the ASC, other judicial bodies, and law enforcement where it is necessary and appropriate to do so.<sup>46</sup>
49. The Second Report discussed in detail the Proposal, and notes that it "provides comprehensive Releases for CatalX and Participating Directors".<sup>47</sup>
50. At the June 20 Applications, Justice Neufeld advised counsel to the Receiver and Proposal Trustee that he was familiar with the matter from having presided over the previous

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<sup>41</sup> *Ibid* at [A0038].

<sup>42</sup> Affidavit of Justin Dunphy sworn October 10, 2025 (the "**Dunphy Affidavit**") at para 7 and Exhibit B.

<sup>43</sup> Agcaoili Affidavit at Exhibit B [A0085].

<sup>44</sup> Dunphy Affidavit at para 8 and Exhibit C.

<sup>45</sup> Ceko Affidavit at Exhibit J [C370].

<sup>46</sup> *Ibid* at Exhibit I, paras 23(d), and 24 – 26 [C151].

<sup>47</sup> *Ibid* at Exhibit I, para 37(e) [C153].

applications.<sup>48</sup> In its submissions to the Court, counsel to the Receiver and Proposal Trustee advise that the Proposal was brought in good faith and that the director, “Mr. Park, in particular, has stuck around for a year and a half” rather than “walked away”. The Court specifically notes that in return the Participating Directors are receiving a release.<sup>49</sup>

51. In making its decision to approve the Proposal with the comprehensive Releases, the Court determined it was made in good faith and that Mr. Park in particular “stepped up” and “acted in good faith”. The Court specifically notes that the Proposal “carves out the liability exception” for Mr. Lee who “is at fault for the defalcation here and is a person to whom these funds were directed” and that the ASC “can pursue potential remedies and redress against, in particular, Mr. Lee”.<sup>50</sup>
52. The Court granted the Proposal Trustee’s and the Receiver’s applications and issued the Order (Approval of Proposal) (the “**Proposal Approval Order**”) without any changes to the terms of the “comprehensive Releases”.<sup>51</sup>
53. Counsel to the ASC attended the June 20 Hearing.<sup>52</sup>

#### **H. The Notice of Hearing and September 15 ASC Hearing**

54. On July 15, 2025, Staff served, among other things, a Notice of Hearing, where for the first time the ASC advised it would be pursuing remedies against Mr. Park.<sup>53</sup> Prior to the Notice of Hearing, all ASC hearings and orders (other than the summons to act as a witness) had been against CatalX and Mr. Lee only.<sup>54</sup>
55. In its enclosure letter, Staff advise that the ASC Panel will convene on September 15, 2025, to hear an application by Staff to set a date or dates for a conduct hearing regarding the allegations in the Notice of Hearing.<sup>55</sup>

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<sup>48</sup> Transcript of Proceedings, June 20, 2025 (the “**Proposal Approval Transcript**”), attached as Exhibit K to the Ceko Affidavit at 3 [C377].

<sup>49</sup> *Ibid* at 7, lines 41 to 8, lines 1-4; 8, lines 41-40 [C382].

<sup>50</sup> *Ibid* at 21, lines 33-41; 20, lines 34-41 [C394].

<sup>51</sup> Ceko Affidavit at Exhibit L [C400].

<sup>52</sup> Transcript of Proceedings, September 15, 2025 (the “**ASC Hearing Transcript**”) attached as Exhibit M to Ceko Affidavit at 21, lines 1-12; 24, line 15 to 25, line 16 [C454 and C457].

<sup>53</sup> Ceko Affidavit at Exhibit N [C490].

<sup>54</sup> See eg Park Receivership Affidavit, *supra* note 2 at Exhibit I [A0244].

<sup>55</sup> Ceko Affidavit at Exhibit N [C490].

56. In response to the Notice of Hearing, on August 19, 2025, counsel to CatalX and Mr. Park for the Receivership Proceedings and Proposal (“**Insolvency Counsel**”) advised that Staff’s application before the ASC Panel was contrary to the clear terms of the Proposal Approval Order.<sup>56</sup>
57. On September 5, 2025, ASC counsel advised that Staff did not agree that the Proposal Approval Order had any effect on it and that Staff would proceed with its application.<sup>57</sup>
58. On September 15, 2025, Staff brought an application before the ASC Panel (the “**September 15 ASC Hearing**”).<sup>58</sup>
59. At the September 15 ASC Hearing, in response to Staff’s application, Insolvency Counsel advised the ASC Panel of the Proposal Approval Order and directed the ASC Panel to the Order’s key terms, definitions and the Releases.<sup>59</sup>
60. In reply, Staff argued that the Proposal Approval Order did not impact its proceeding against CatalX and Mr. Park.<sup>60</sup>
61. The ASC Panel confirmed with Staff that the Proposal Approval Order was circulated to the ASC who was given an adequate opportunity to make comments on the contents of the Order.<sup>61</sup>
62. After reviewing the terms of the Proposal Approval Order, the ASC Panel determined it would not proceed with the September 15 ASC Hearing and adjourned the Hearing *sine die* to allow Staff to bring its application before Justice Neufeld.<sup>62</sup>
63. In determining it had to adjourn the September 15 ASC Hearing, the ASC Panel took notice that the Proposal Approval Order had gone so far as to specifically “name the Securities Commission as an affected party”.<sup>63</sup>

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<sup>56</sup> Dunphy Affidavit at Exhibit F.

<sup>57</sup> *Ibid* at Exhibit G.

<sup>58</sup> ASC Hearing Transcript, *supra* note 52 at 5, lines 2-3 [C438].

<sup>59</sup> *Ibid* at 10-20 [C443].

<sup>60</sup> *Ibid* at 23, lines 4-5 [C456].

<sup>61</sup> *Ibid* at 25, lines 7 to 26, line 2 [C458].

<sup>62</sup> *Ibid* at 42, lines 10-23 [C475].

<sup>63</sup> *Ibid* at 36, lines 7-8 [C469].

### III. ISSUE

64. The parties agree as to the issue before the Court. The issue is whether the Releases prohibit the ASC from proceeding with its prosecution of the allegations against CatalX and/or Mr. Park.

### IV. LAW AND ARGUMENT

#### A. The Releases are Clear and Unambiguous in their Application to the ASC

65. To understand the effect of the Releases in barring and staying the ASC proceedings against CatalX and Mr. Park, the Court only needs to review the clear and unambiguous wording in the Proposal Approval Order. Upon reviewing this language, the ASC Panel concluded that the September 15 ASC Hearing should not proceed despite the objections of ASC Staff.<sup>64</sup>
66. Paragraph 1 of the Proposal Approval Order provides that capitalized terms used in the Order and not otherwise defined have the meanings ascribed to them in the Proposal. Paragraph 5 of the Proposal Approval Order provides:<sup>65</sup>

The Proposal attached hereto as Schedule "A", is hereby approved and sanctioned, is effective in accordance with its terms and is binding upon and enures to the benefit of the Company, its directors, officers and Creditors, and all other Persons and parties named or referred to in, affected by, or subject to the Proposal ... as provided in the Proposal, and in this Order.

67. Paragraph 11 provides the release as against CatalX as follows:

11. Without limiting anything in the Proposal or the BIA:

(a) all Claims are forever barred and extinguished, and the Corporation is discharged and released from any and all Claims of any nature or in accordance with the Proposal, the ability of any Person to proceed against the Corporation in respect of or relating to any Claims is forever discharged and restrained and all proceedings with respect to, in connection with or relating to such Claims are permanently stayed; and

(b) the right to commence, take apply for, issue or continue any and all steps and proceedings, including but not limited to administrative hearings and orders, declarations or assessments commenced, taken or proceeded with or that may be commenced, taken or proceeded wit against the Corporation in respect of any and all Claims be and is hereby stayed, suspended and forever extinguished...

(the "**CatalX Release**").

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<sup>64</sup> *Ibid* at 42, lines 10-23 [C475].

<sup>65</sup> Ceko Affidavit at Exhibit L [C402].

68. Paragraph 12 provides the release as against Mr. Park as follows:

12. Upon implementation of the Proposal and subject to Section 10.5 of the Proposal, each Participating Director shall be released and discharged from and by all Persons including Creditors and holders of Unsecured Claims, from any and all demands, claims, actions, causes of actions, counterclaims, suits, debts, orders, penalties, sums of money, accounts, covenants, damages, judgements, expenses, executions, charges and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any person may be entitled to assert, including, without limitation, any and all Claims or contingent Claims of any securities commission, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, relating to, arising out of or in connection with any Claims, the business and affairs of the Corporation and Participating Directors, whenever and however conducted, including the Proposal and the Receivership Proceedings...

(the “**Park Release**”).

69. The Park Release has the usual carve out for misrepresentations or wrongful or oppressive conduct.
70. At paragraph 23, the Court requests the aid and recognition of any court or any judicial, regulatory or administrative body having jurisdiction in Canada to give effect to the Proposal Approval Order and the Proposal.
71. The Proposal is at Schedule A to the Proposal Approval Order.
72. The Proposal defines what constitutes a “Claim” for the purposes of the Releases, and it specifically includes any penalty, of any kind, of any Person, “whether or not reduced to judgment”, by “regulatory order”, whether existing at present or commenced in the future “based in whole or in part on facts which existed prior to or as of the Filing Date”.<sup>66</sup>
73. “Person” is defined to include any “commission or any agency or instrumentality thereof”.
74. Importantly, both the CatalX Release and Park Release are supplemental to the release provision in the Proposal at Article 10.5, which was described in the Proposal Trustee Report in detail, and which make it abundantly clear that any future steps by the ASC as against CatalX and Mr. Park are extinguished. Article 10.5 provides as follows:<sup>67</sup>

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<sup>66</sup> *Ibid* at Exhibit L, Schedule A at Article 1.1(j) [C411].

<sup>67</sup> *Ibid* at Article 10.5 [C423].

### 10.5 Releases

Subject to Article 10.6, on the Implementation Date, the Debtor, and the Participating Directors (the “Released Parties”) shall be released and discharged from and by all Persons including Creditors and holders of Unsecured Claims, from any and all demands, claims, actions, causes of action, counterclaims, suits debts, orders, penalties, sums of money, accounts, covenants, damages, judgments, expenses, executions, charges and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any person may be entitled to assert, including, without limitation, any and all Claims or contingent Claims of any securities commission, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, relating to, arising out of or in connection with any Claims, the business and affairs of the Debtor and Participating Directors, whenever and however conducted, including this Proposal and the Receivership Proceedings.

75. In previous cases where Courts have been tasked with interpreting an existing court order, Courts have held that context and judicial intent are important considerations.
76. In *Delta 9 Cannabis Inc*, this Court held that orders “should be interpreted by reading them as a whole, in the context of the pleadings, the arguments made by the parties, the factual and legal context in which the order was made, and the intention of the court that granted the order”.<sup>68</sup>
77. In *Der v Hlookoff*,<sup>69</sup> the British Columbia Court of Appeal held that “in interpreting an order a court is to examine the pleadings of the action in which it is made, the language of the order itself, and the circumstances in which the order was granted”.<sup>70</sup> The Court further held that reasons for judgment formed part of the relevant surrounding circumstances, noting that a court’s reasons will often be the strongest indicator of the objective meaning of the order.<sup>71</sup>
78. The ASC investigation and the grounds upon which it now is pursuing its claims against CatalX and Mr. Park was a central focal point at every application. The ASC investigation was discussed in all of the Court materials that were before Justice Neufeld in the June 20 Applications and the previous hearings before the Court in the Receivership Proceeding.

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<sup>68</sup> *Delta 9 Cannabis Inc (Re)*, 2024 ABKB 657 at para 54 [Tab 5].

<sup>69</sup> *Der v Hlookoff*, 2025 BCCA 193 at para 30 [Tab 6].

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

79. During the June 20 Applications, the topics of Mr. Park's conduct, the proposed Releases, and the status of the ASC investigation were all known and discussed on the record. The June 20 Applications followed over 18 months of investigation into CatalX by the ASC, and was a full year after the bulk of the ASC investigation interviews had concluded.
80. In the Court's reasons for decision in granting the Proposal Approval Order and the Releases, the Court commended Park for taking the unusual step of funding the appointment of a receiver whose mandate was to oversee the forensic examination into CatalX's lost funds. In granting the Releases, this Court specifically made note of the ASC complaint and ASC proceedings that were ongoing at that time:<sup>72</sup>
- Mr. Park took an unusual step at that time and he, in his personal capacity, funded the appointment of a receiver, whose mandate was twofold. One was to oversee a forensic examination of the company's book, find out what had gone on and, to put it bluntly, where the money was. There had already been an ASC complaint and the ASC had an investigation underway. And two, based on that, to see if there were any funds that would be available for distribution to investors, of which he was one, along with family members.
81. In granting the Releases, Justice Neufeld noted that the Releases did not apply to Mr. Lee<sup>73</sup> and contained exceptions for wrongful conduct and misrepresentations in alignment with the BIA.<sup>74</sup>
82. In approving the Releases, the Court had clearly considered the ASC proceedings. Justice Neufeld expressly noted the proceedings in his reasons for granting the Proposal Approval Order. The ASC Staff attended the hearings before the Court for the approval of the Proposal and the Receivership Proceeding. It was apparent to the Court that the Releases had broad application and were intended to apply to any ASC proceedings. It was understood that the ASC did not oppose the Releases since they explicitly excluded Mr. Lee, who up until that point had been the subject of the ASC orders.
83. These facts distinguish the case at bar from *Taiga*, which is cited at paras 80-81 of the ASC brief.<sup>75</sup> *Taiga* concerned an application for a Court declaration that it had no obligation

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<sup>72</sup> Proposal Approval Transcript, *supra* note 48 at 19, lines 7-12 [C393].

<sup>73</sup> *Ibid* at 20, lines 34-41 [C394].

<sup>74</sup> *Ibid* at 20, lines 34-41 [C394]; *Ibid* at 21, lines 26-31 [C395].

<sup>75</sup> Brief of Argument of the Alberta Securities Commission, October 27, 2025 ("**ASC Brief**") at paras 80-81; *Arrangement relatif à 9526-1624 Québec inc.*, 2025 QCCS 3490 [*Taiga*] [**Tab 7**].



to comply with an investigation by the securities regulator of Quebec (“**AMF**”) due to release language in a reverse vesting order (“**RVO**”) granted in its CCAA<sup>76</sup> proceedings.<sup>77</sup>

84. The RVO had the following release provisions:<sup>78</sup>
- (a) Release of Taiga Motors from any responsibility related to . . . any related Claim (as defined in the RVO) concerning Taiga’s activities prior to the issuance of the Monitor’s Certificate; and
  - (b) Release of Taiga Motors’ directors . . . from any and all present and future claims whatsoever . . . in respect of [Taiga] . . . or their assets, business, or affairs . . .
85. The RVO definition of “Claim” included any claim, investigation, or proceeding before any person, including governmental agency, or commission exercising administrative functions related to securities market regulation.<sup>79</sup> AMF was served with the materials for the RVO in advance of the application but did not attend the hearing.
86. The Court declined to grant a declaration that Taiga Motors had no obligation to comply with the AMF investigation for the reasons that, *inter alia*, the scope of the releases were not brought to the Court’s attention at the RVO application.<sup>80</sup>
87. In determining that the outcome of the AMF investigation should be brought to its conclusion before determining whether the RVO prohibits any future sanction, the Court cited the decision of *Green Relief*:
- “[68] My inclination is not to define the scope of the section or the release in a vacuum. Both the release and section 5.1 (2) are better interpreted in light of a specific claim in the context of the circumstances existing if and when any such claim arises”.<sup>81</sup>
88. Unlike *Taiga*, the scope of the Releases in this case need not be defined “in a vacuum”. The factual context surrounding the language of the Releases makes it abundantly clear that they clearly and unambiguously were meant to apply to the ASC. Also unlike *Taiga*,

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<sup>76</sup> *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 [**CCAA**].

<sup>77</sup> *Taiga*, *supra* note 75 at para 22 [**Tab 7**].

<sup>78</sup> *Ibid* at para 17. Note: This Brief of Law relies on an unofficial translation of *Taiga* completed by Calgary Translation Services.

<sup>79</sup> *Ibid* at para 26.

<sup>80</sup> *Ibid* at paras 103-104.

<sup>81</sup> *Ibid* at para 68, citing *Re Green Relief Inc*, 2020 ONSC 6837 at para 68 [*Green Relief*] [**Tab 8**].

CatalX and Mr. Park were actively assisting in the ASC investigation, conduct which was “incumbent on the Court to support that sort of proactive approach”.<sup>82</sup>

89. The ASC investigation was launched a year and a half before the Proposal was filed. In granting the Releases, Justice Neufeld advised of his familiarity with the case, and that the benefit of the Proposal to the directors is the Releases. Further, the factual grounds upon which the Notice of Hearing is based were known and described in the materials before the Court, and in particular the First Report that was filed a full year before the Proposal.
90. Both a plain and contextual reading of the Releases and Article 10.5 of the Proposal are clear that the Releases do, and were meant to, apply to the ASC.

**B. The Court Had Jurisdiction to Grant the Releases**

The Court had jurisdiction to grant the Park Release under section 50(13)

91. Releases of directors are permitted in the BIA for claims with respect to pre-filing obligations for which directors are liable at law in their capacity as directors.<sup>83</sup> Certain types of claims otherwise falling within this category are expressly excluded, including claims relating to the contractual rights of creditors, claims based on allegations of misrepresentation to creditors, and claims based on wrongful or oppressive conduct.<sup>84</sup>
92. Releases of directors and officers were added to the BIA with the express purpose of encouraging directors to stay at their posts throughout the insolvency process. Indeed, the prevailing notion underscoring legislative amendments expressly allowing for the compromise of claims against directors was that removing the risk of personal liability for directors would diminish the incentive to “[leave] sinking ships” and to promote decision-making that would help rescue businesses.<sup>85</sup>
93. The CCAA contains an analogous provision regarding releases of directors in section 5.1(1).<sup>86</sup> This provision has been interpreted to have been drafted permissively in that it

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<sup>82</sup> Receivership Application Transcript, *supra* note 26 at 8, lines 22-23 [C094].

<sup>83</sup> BIA, *supra* note 37 at s 50(13) [Tab 4].

<sup>84</sup> *Ibid*, s 50(14).

<sup>85</sup> See *eg*, House of Commons, Standing Committee on Industry, *Evidence*, 35-2, No 25 (3 October 1996) [Tab 9].

<sup>86</sup> CCAA, *supra* note 76 s 5.1(1) [Tab 10].

does not limit the overall jurisdiction of the court under section 11 of the CCAA to make any order that it considers appropriate in the circumstances.<sup>87</sup>

94. Likewise, section 50(13) of the BIA does not limit the Court's broad authority granted by section 183(1) of the BIA, which has been interpreted as empowering the Court to exercise its "inherent jurisdiction to control its own processes in order to promote the objectives of the BIA".<sup>88</sup>
95. In the spirit of these statutory amendments, courts have approved director releases which cover a broad variety of claims. These include claims for negligence related to company mismanagement and actions in oppression against shareholders (as discussed more fully below).
96. Even so, such releases are the exception rather than the rule, and ought to be provided to directors as an incentive to go beyond their fiduciary duties, and in exchange for substantive and meaningful contributions towards a successful restructuring.<sup>89</sup>
97. The specific allegations set out in the Notice of Hearing are reproduced below:

34.1 Lee breached section 93(1)(b) of the Act by directly or indirectly engaging or participating in an act, practice or course of conduct relating to a security or a derivative that he knew or ought to have perpetrated a fraud on clients;

34.2 Catalyx breached section 93.2 of the Act by failing to comply with a written undertaking to the Commission to promptly report a material breach of the PRU to the Commission; and

34.3 Catalyx breached section 93.2 of the Act by failing to comply with a written undertaking to the Commission to establish and maintain and apply policies and procedures that managed and mitigated custodial risks, including but not limited to, an effective system of controls and supervision to safeguard clients' crypto assets.

35. Park authorized, permitted or acquiesced to the breaches of undertaking as set out in subparagraphs 34.2 and 34.3.<sup>90</sup>

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<sup>87</sup> *Green Relief*, *supra* note 81 at para 25 [Tab 8].

<sup>88</sup> *Re Pope & Talbot Ltd*, 2009 BCSC 1552 at paras 123-26 [*Pope & Talbot*] [Tab 11].

<sup>89</sup> *Allen-Vanguard Corporation (Re)*, 2011 ONSC 5017 [*Allen-Vanguard*] at para 61 [Tab 12]; Morin, Luc and Arad Mojtahedi, "Catch Me If You Can: Third-Party Releases Under the Companies' Creditors Arrangement Act," 2021 19 Annual Review of Insolvency Law, 2021 CanLII Docs 13544 [Tab 13].

<sup>90</sup> Dunphy Affidavit at Exhibit A.

98. Section 93.2 of the *Securities Act*<sup>91</sup> states: “A person or company that gives a written undertaking to the Commission or the Executive Director shall comply with the undertaking.”
99. The ASC’s allegations against Mr. Park as set out in the Notice of Hearing are allegations with respect to pre-filing obligations for which Mr. Park was liable in his capacity as a director of CatalX vis-à-vis the Undertaking. The allegations against Mr. Park are in respect of an obligation of CatalX to promptly report breaches and maintain certain risk management policies. These were not obligations of Mr. Park in his personal capacity, but purely due to his role as director of CatalX.
100. The Undertaking is addressed to the ASC from CatalX.<sup>92</sup> It obliges CatalX to comply with the provisions of the Undertaking. It does not oblige anything of Mr. Park. But for Mr. Park’s role as director of CatalX, he would not be facing potential sanction by the ASC for CatalX’s alleged breaches of the Undertaking.
101. The Park Release is consistent with the legislative purpose of section 50(13) in that it incentivised Mr. Park to not “flee the sinking ship”, but instead Mr. Park, unlike Mr. Lee, remained active and available to the Receiver and the ASC throughout the Receivership Proceeding and investigative processes. The Court noted that the Releases were in exchange for Mr. Park’s substantive and meaningful contributions,<sup>93</sup> which went above and beyond the standard duties of a director, when granting the Releases.
102. In *Callidus*, the Supreme Court of Canada held that the applicant bears the burden of demonstrating: (1) that the order sought is appropriate in the circumstances, and (2) that the applicant has been acting in good faith and (3) with due diligence.<sup>94</sup>
103. In order for the Court to grant the Park Release, it was satisfied that Mr. Park acted in good faith and with due diligence. In the Court’s reasons for decision, Justice Neufeld noted “I have no reason to conclude other than that [Mr. Park] is acting in good faith and that the proposal is made in good faith . . .”.<sup>95</sup>

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<sup>91</sup> *Securities Act*, *supra* note 16 at s 93.2 [Tab 2].

<sup>92</sup> Agcaoili Affidavit, Exhibit L [A0413].

<sup>93</sup> Proposal Approval Transcript, *supra* note 48 at 8, lines 40-41 [C382]; 21, lines 34-41 [C395].

<sup>94</sup> 9354-9186 *Québec inc v Callidus Capital Corp*, 2020 SCC 10 at para 49 [*Callidus*] [Tab 14] citing *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 [*Century Services*], at paras 69-70 [Tab 15].

<sup>95</sup> Proposal Approval Transcript, *supra* note 48 at 21, lines 39-40 [C3795].

104. The ASC's argument that the Court could not release Mr. Park from the ASC proceedings fails in three respects. First, Mr. Park's alleged breaches in the Notice of Hearing stem from obligations of CatalX for which Mr. Park is being pursued solely in his capacity as director of CatalX. This brings him squarely within section 50(13) of the BIA. Secondly, the Park Release is consistent with the legislative purposes and intention of the section. Third, the good faith and due diligence requirements for granting the Park Release were satisfied.

The ASC proceeding is not subject to exception under section 50(14)

105. The ASC argues that Mr. Park's alleged conduct falls within the exception of BIA section 50(14)(b) for claims that "are based on allegations of misrepresentation made by directors to creditors or of wrongful or oppressive conduct by directors".<sup>96</sup>
106. The ASC cites *BlueStar*<sup>97</sup> for the position that wrongful conduct is conduct that is "tortious (or akin thereto)", and that section 50(14) should be read broadly.<sup>98</sup> This is not correct. Since *BlueStar*, courts in Canada have substantially narrowed the wrongful conduct exception.
107. The Ontario Superior Court in *Allen-Vanguard Corporation*<sup>99</sup> provided a much narrower interpretation of that section in light of the seminal Supreme Court of Canada decision in *Century Services*,<sup>100</sup> which endorsed broad principles of insolvency statutes and the discretion granted to insolvency courts.<sup>101</sup>
108. In analyzing the purpose of section 5.1(2), the CCAA equivalent to section 50(14) of the BIA, the Court in *Allen-Vanguard* stated it was noteworthy that the word "negligence" did not appear in section 5.1(2).<sup>102</sup> The Court also stated:

"[t]here would be little meaning left to s. 5.1 if all claims of negligence and wrongful conduct against directors for pre-filing activity could not be released and no need for the discretion provided for in s. 5.1 (3) for Court to override this compromise as not being fair or reasonable."<sup>103</sup>

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<sup>96</sup> BIA, *supra* note 37 at s 50(13)-(14) [Tab 4]; ASC Brief at para 102.

<sup>97</sup> *BlueStar Battery Systems International Corp*, Re, 2000 CanLII 22678 (ON SC) [*BlueStar*] [Tab 16].

<sup>98</sup> ASC Brief at paras 103-104, citing *BlueStar*, *ibid*, at para 14.

<sup>99</sup> *Allen-Vanguard*, *supra* note 89 at paras 80, 103-5 [Tab 12].

<sup>100</sup> *Century Services*, *supra* note 94 [Tab 15].

<sup>101</sup> *Allen-Vanguard*, *supra* note 89 at para 41 [Tab 12].

<sup>102</sup> *Ibid*, at para 51.

<sup>103</sup> *Ibid*, at para 80.

109. Ultimately the Court stayed the proposed actions against the former directors in negligence and misrepresentation but preserved the right of the plaintiffs to pursue claims of fraud, thus narrowing the previous *BlueStar* statutory interpretation of “wrongful”.<sup>104</sup>
110. In the Notice of Hearing, the ASC alleges Mr. Park acquiesced to CatalX not having reported a material breach in a timely fashion and for CatalX not having maintained adequate risk management policies.<sup>105</sup> The factual circumstances on which the allegations are based were well known to the Court when it granted the Park Release that specifically releases claims of securities commissions.
111. There is no allegation that Mr. Park benefitted from the alleged Undertaking breaches or stood to gain anything by not complying with the Undertaking. The opposite is true. The facts are well known that Mr. Park “stepped up” to fund Deloitte LLP’s forensic investigation into the lost customer funds<sup>106</sup> and cooperated fully with the investigations.
112. The Court turned its attention to the wrongful conduct issue at the approval hearing when it noted that the Releases did not apply to Mr. Lee who the Court notes is the person who “is at fault for the defalcation”.<sup>107</sup> This again distinguishes the case at bar from *Taiga*, where the Court declined to release the AFM’s claims in part because there was no factual foundation in front of it to sufficiently determine whether any fraudulent or willful misconduct had taken place.<sup>108</sup>
113. In this case, the facts forming the basis of ASC’s claim were before the Court in the Receiver’s reports as well as Mr. Park’s own affidavit evidence.
114. Consistent with the reasoning in *Allen-Vanguard*, the language of the Releases, as well as the clear intent and purpose of the Court in granting the Park Release, the allegations the ASC have brought against Mr. Park in the Notice of Hearing are not subject to the section 50(14) exception.

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<sup>104</sup> *Ibid*, at paras 103-5, 112.

<sup>105</sup> As defined in the Notice of Hearing, *supra* note 1 at paras 34.2, 34.3, 35 **[Tab 1]**.

<sup>106</sup> Ceko Affidavit at Exhibit H at 6, lines 29-30 [C139]; Proposal Approval Transcript, *supra* note 48 at 21, lines 34-41 [C395].

<sup>107</sup> Proposal Approval Transcript, *ibid* at 20, lines 34-41 [C394] and 21, lines 26-31 [C395].

<sup>108</sup> *Taiga*, *supra* note 75 at para 90 **[Tab 7]**.

**C. The ASC has a Claim Provable in Bankruptcy**

115. Even if the definition of “Claims” in the Proposal was ambiguous and did not expressly apply to “regulatory orders”, the ASC charges would still be claims provable in bankruptcy in the factual circumstances of this case.

116. Subsection 121(1) of the BIA establishes the criteria for a provable claim as follows:

121 (1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.<sup>109</sup>

117. Insolvency proceedings are unique in that they allow contingent claims to be asserted.<sup>110</sup> Contingent claims are claims which “may or may never ripen into a debt, according as some future event does or does not happen.”<sup>111</sup> The yardstick to determine whether a contingent claim may be made provable is whether the event that may or may not happen is too remote or speculative.<sup>112</sup>

118. Section 121(1) should be interpreted in light of the purposes of the BIA, which includes providing a fresh start from the burdens of pre-existing indebtedness.<sup>113</sup>

119. Regulatory claims and discretionary remedies may also be claims provable depending on their remoteness and the types of penalties contemplated.<sup>114</sup>

120. The *AbitibiBowater* decision held that financial regulatory charges are a provable claim if the following criteria are met: (1) there must be a debt, liability or obligation owed to a creditor; (2) which was incurred before the debtor became bankrupt; and (3) it must be possible to attach a monetary value to the debt, liability or obligation.<sup>115</sup>

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<sup>109</sup> *BIA*, *supra* note 37 at s 121 [Tab 4].

<sup>110</sup> *Chartered Professional Accountants of Alberta v Neilson*, 2018 ABQB 170 [Neilson] at para 34 [Tab 17], citing *Newfoundland and Labrador v AbitibiBowater Inc*, 2012 SCC 67 [AbitibiBowater] at para 34 [Tab 18].

<sup>111</sup> *Peters v Remington*, 2004 ABCA 5 at para 23 [Tab 19], cited in *AbitibiBowater*, *ibid*, at para 34.

<sup>112</sup> *Neilson*, *supra* note 110 at para 35 [Tab 17].

<sup>113</sup> *Neilson*, *ibid*, at para 33, citing *BIA*, *supra* note 37 at s 172 [Tab 4] and *Alberta (Attorney General) v Moloney*, 2015 SCC 51 at paras 36-38, 77-79 [Moloney] [Tab 120].

<sup>114</sup> *Neilson*, *supra* note 110 at paras 35-37 [Tab 17].

<sup>115</sup> *AbitibiBowater*, *supra* note 110 at para 26 [Tab 18].

121. The ASC's investigation was launched in December of 2023.<sup>116</sup> The ASC issued multiple cease trade orders based on the *prima facie* finding that CatalX was in breach of its obligations under the Act<sup>117</sup> and ordered CatalX to refrain from withdrawing any funds from certain bank accounts pursuant to Section 47 of the Act.<sup>118</sup>
122. In the course of its investigation, which included 37 interviews and multiple hearings and orders, the ASC incurred recoverable costs.
123. Costs are governed by Section 202 of the *Securities Act*<sup>119</sup> (emphasis added):

**Payment of costs**

202(1) If, after conducting a hearing in respect of the affairs of a person or company, the Commission or the Executive Director, as the case may be, is satisfied that the person or company has contravened Alberta securities laws or acted contrary to the public interest, the Commission or the Executive Director, as the case may be, may order the person or company to pay, subject to the regulations, costs of or related to the hearing or the investigation that led to the hearing, or both.

...

(4) The Executive Director may prepare and file with the clerk of the Court of King's Bench a certificate certifying the amount of the costs that the person or company is required to pay under subsection (1) or (3).

(5) A certificate filed under subsection (4) with the clerk of the Court of King's Bench has the same force and effect as if it were a judgment of the Court of King's Bench for the recovery of debt in the amount specified in the certificate together with costs of filing.

...

124. Administrative penalties are governed by Section 199 of the *Securities Act*.<sup>120</sup>

**Administrative penalty**

**199(1)** If the Commission, after a hearing,

(a) determines that

(i) a person or company has contravened or failed to comply with any provision of Alberta securities laws, or

(ii) a person or company authorized, permitted or acquiesced in a contravention or failure to comply with any provision of Alberta securities laws by another person or company,

and

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<sup>116</sup> *Re CatalX CTS Ltd*, 2023 ABASC 167 at para 1 [Tab 21].

<sup>117</sup> *Re CatalX CTS Ltd*, 2024 ABASC 178 at paras 1-3 [Tab 22].

<sup>118</sup> Section 47 Order to Hold Funds dated December 28, 2023, Alberta Securities Commission Docket ENF-013419 [Tab 23].

<sup>119</sup> *Securities Act*, *supra* note 16 at s 202 [Tab 2].

<sup>120</sup> *Ibid* at s 199.



(b) considers it to be in the public interest to make the order, the Commission may order the person or company to pay an administrative penalty of not more than \$1,000,000 for each contravention or failure to comply.

(2) The Commission may make an order pursuant to this section notwithstanding the imposition of any other penalty or sanction on the person or company or the making of any other order by the Commission related to the same matter.

125. The ASC argues that it cannot be a creditor since it has not yet issued a sanction. However, this Court in *Neilson* stated that there is no temporal requirement in the first stage of the *AbitibiBowater* analysis which requires a creditor to identify itself before the bankruptcy event, and in fact, such a requirement would undermine the inclusion of contingent claims.<sup>121</sup>
126. Given that the ASC had made out a *prima facie* case against CatalX in February 2024, it is almost certain that the ASC would seek to recuperate the costs of its investigation after the hearing, and probable that it would choose to impose administrative fines as a result of the breaches. It is not too remote or speculative that the ASC was a creditor with a contingent claim against CatalX at the time the Proposal was filed a year and a half later. This satisfies the first stage of *AbitibiBowater*.
127. The ASC notes that *Redwater*<sup>122</sup> stands for the proposition that where a regulator is acting in a bona fide regulatory capacity in the public interest and for the public good and does not stand to benefit financially, it will not be considered a creditor.
128. However, the Supreme Court made clear in *Redwater* that its statements did not overrule the first prong of the *AbitibiBowater* test such that a regulator could never be a creditor. It stressed that each case must be determined on its facts.<sup>123</sup>
129. On these facts, the ASC stands to benefit financially from the recuperation of its costs of the investigation and from any administrative fines issued. The ASC keeps the money collected from administrative fines, and it goes back into funding the ASC's operations. The Court in *Neilson* acknowledged that administrative fines could be claims provable if their imposition was not too remote or speculative.<sup>124</sup> This distinguishes the case at bar from *Redwater*, where the regulator was seeking to recover costs of environmental

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<sup>121</sup> *Neilson*, *supra* note 110 at paras 52 and 57 [Tab17].

<sup>122</sup> *Orphan Well Association v Grant Thornton Ltd*, 2019 SCC 5 [*Redwater*] [Tab 24].

<sup>123</sup> *Ibid*, at para 136.

<sup>124</sup> *Neilson*, *supra* note 110 at para 108 [Tab 17].

remediation – an undertaking which benefitted the public at large rather than the regulator itself.

130. The second branch of the test asks whether, at the date of the bankruptcy, the conditions were met to affirm that an obligation would probably be imposed.<sup>125</sup> This is satisfied in this case with respect to CatalX. At the time the Proposal was filed it was more than probable that the ASC would seek costs and seek to impose a sanction, likely including an administrative fine, against CatalX.
131. The third branch of the *AbitibiBowater* test is also satisfied in this case with respect to CatalX. Despite the amount of an administrative penalty being subject to the ASC's discretion, it is obvious that the liability to pay ASC's costs has been incurred, and probable that there will be an obligation to pay an administrative fine. Although the debt had not crystalized at the date of bankruptcy, the liability of CatalyX is not too remote or speculative to be considered a liability incurred and a claim provable in the bankruptcy. This factor is discussed in further detail below.

ASC's cases are distinguishable

132. The ASC has cited multiple cases in support of its position that the ASC charges are not claims provable in bankruptcy. However, these cases can be distinguished on their facts.
133. In *Thow*,<sup>126</sup> the bankrupt was a mutual fund salesperson who misappropriated millions of dollars of client funds. He was terminated in June 2005, at the same time the British Columbia Securities Commission ("**BCSC**") was starting to begin its investigation. The bankrupt filed a notice of intention to make a proposal on July 22, 2005. His proposal was rejected by the creditors and he was deemed to have made an assignment into bankruptcy July 22, 2005—only one month after the BCSC had commenced investigating.
134. Unlike in *Thow*, in the case of CatalX and Mr. Park, the ASC had carried out nearly 17 months of its investigation before the Proposal was filed. The majority of the interviews occurred a full year earlier. Further, unlike in *Thow*, the Proposal was accepted and approved by the Court, with a specific definition of its application to present or future "regulatory order[s]".<sup>127</sup>

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<sup>125</sup> *Chambre de la sécurité financière c Thibault*, 2016 QCCA 1691 [*Thibault*] at para 26 [**Tab 25**].

<sup>126</sup> *Thow (Re)*, 2009 BCSC 1176 [*Thow*] [**Tab 26**].

<sup>127</sup> Ceko Affidavit at Exhibit L, Schedule A at Article 1.1.(j) [C403]

135. Moreover, *Thow*, appears not to be good law in Alberta. As discussed in *Neilson*, below, the line of cases relied upon by Justice Sigurdson in *Thow* were wrongly decided<sup>128</sup> as the English case underlying them was subsequently overturned.<sup>129</sup>
136. In *Taiga*, the AMF's investigation was in its early stages when the RVO was granted. The AMF's requests were limited to asking for disclosures from the debtor, Taiga Motors, of documents in its possession in order to conduct its investigation. The Court notes that the AMF's investigation was at such an embryonic stage that it wasn't known if charges would be laid, who they would be against, or if sanctions would be pursued.<sup>130</sup> This is the opposite from the situation of CatalX where in February 2024, more than a year before the Proposal was filed, the ASC Panel had released a decision that had found a *prima facie* breach of the Undertaking by CatalyX.<sup>131</sup>
137. In *Wing*,<sup>132</sup> the bankrupt was convicted, fined, and issued a cease trade order for insider trading by the Ontario Securities Commission ("**OSC**") in 2015. He violated the cease trade order in August 2015, after which the OSC froze his assets and he entered into an agreement with the OSC that the freeze direction would continue until it was revoked by the OSC or the Court ordered otherwise. He filed a notice of intention to make a proposal in December of 2016, however, the proposal process was frustrated by the fact that the bankrupt failed to disclose various assets to the proposal trustee. The OSC commenced a proceeding regarding the breach of the cease trade order in May 2017. He was then deemed assigned into bankruptcy after the amended proposal was rejected. Ultimately, he settled with the OSC regarding the cease trade order violation and the OSC issued a monetary penalty.
138. *Wing* is again distinguishable from the case at bar. The conduct of the bankrupt in *Wing* before and during the insolvency proceeding was found to be hostile and selfish towards all parties. Such conduct involved insider trading, breaching an OSC cease trade order, and the proposal trustee reporting the false, evasive and misleading statements of the

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<sup>128</sup> *Neilson*, *supra* note 110 at para 64 [Tab 17].

<sup>129</sup> *Glenister v Rowe* (April 21, 1999), Butler-Sloss LJ, Mummery LJ, Thorpe LJ (Eng CA), overruled *Bloom v Pensions Regulator*, [2013] UKSC 52.

<sup>130</sup> *Taiga*, *supra* note 75 at paras 77-80 [Tab 7].

<sup>131</sup> *Re CatalX CTS Ltd*, 2024 ABASC 23 at para 26 [Tab 3].

<sup>132</sup> *Wing (Re)*, 2019 ONSC 4063 [*Wing*] [Tab 27].

debtor, as well as his failures to provide accurate information and disclosures.<sup>133</sup> Such conduct was appropriately not released. In *Wing*, the bankrupt's bad-faith conduct was a significant factor in the Court's analysis. The Court stated, in relation to sections 172 and 173 of the BIA:<sup>134</sup>

...the conduct of a bankrupt is an important element in determining whether he or she is entitled to receive a discharge. Financial rehabilitation is not without limits. Rehabilitation must be balanced against other factors, including confidence in the credit system, *Alberta (Attorney General) v. Moloney* 2015 SCC 51 at para 37. It is the "honest but unfortunate debtor" whom the BIA favours with a discharge subject to reasonable conditions.

139. In contrast to *Wing*, the Receiver, the Proposal Trustee and the Court were complementary and encouraging of CatalX and Mr. Park's conduct. Distinct from *Wing*, this Court found that in return for his actions, Mr. Park would receive the comprehensive Park Release.<sup>135</sup>
140. In *Neilson*, a case cited by the ASC, an accounting firm made a complaint to the Certified General Accountants' Association of Alberta (the "**CGAA**") alleging misconduct against Mr. Neilson who was a regulated member. The complaint was sent to Mr. Neilson, who assigned himself into bankruptcy ten days after receiving a copy of the complaint and before the deadline to respond.
141. Justice Eamon considered the Court's finding in *Thow* that discretionary decisions are not contingent liabilities until the sanction is actually imposed.<sup>136</sup> The Court noted at paragraphs 60-64 that the line of cases relied on by the Court in *Thow* for that proposition were wrongly decided and inconsistent with the principles as set out in *AbitibiBowater*.<sup>137</sup>
142. Ultimately Mr. Neilson entered into a sanction agreement on August 8, 2016 whereby he admitted to the allegations of unprofessional conduct and agreed to various monetary and non-monetary sanctions.<sup>138</sup> After agreeing to the sanctions, Mr. Neilson refused to pay upon demand by the CGAA and took the position that the monetary penalties and costs demanded by the CGAA were provable claims in the bankruptcy.<sup>139</sup>

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<sup>133</sup> *Ibid* at para 18.

<sup>134</sup> *Ibid* at para 17.

<sup>135</sup> Proposal Approval Transcript, *supra* note 48 at 21, lines 26-41 [C395].

<sup>136</sup> *Neilson*, *supra* note 110, at para 60 [**Tab 17**].

<sup>137</sup> *Ibid*, at paras 60-64.

<sup>138</sup> *Ibid*, at paras 17-18.

<sup>139</sup> *Ibid*, at paras 20-23.

143. The Court undertook an *AbitibiBowater* analysis to determine whether the costs and penalties were provable claims. As part of its analysis, this Court noted that there is nothing in the BIA that requires a creditor to identify itself before the bankruptcy event. In fact, such requirement would defeat the rehabilitative objectives of the BIA and conflict with the essence of contingent claims,<sup>140</sup> one of the contingencies of which may be the decision to enforce.<sup>141</sup> Eamon J. noted:

57 The only temporal requirement discussed by the Supreme Court of Canada in *AbitibiBowater* concerns the second part of the test - whether the liability was by reason of an obligation incurred before the debtor became bankrupt. Absent additional guidance from the Court, I see no reason why regulatory charges should be singled out for different treatment by requiring a contingent creditor in a regulatory context to have decided to actually advance its claim before the date of bankruptcy.

144. With respect to the third branch of the *AbitibiBowater* analysis, this Court rejected the CGAA's argument that administrative penalties imposed after the date of bankruptcy are too remote and speculative to be included as contingent provable claims. At para 61 Eamon J states (emphasis added):

61 In my view, the mere fact that fines or costs were imposed after bankruptcy does not necessarily disqualify the claim as provable in bankruptcy. Some discretionary decisions lead to provable claims. . . Others do not . . . Every case is a question of fact.

145. The Court went on to find that the CGAA's claim for costs of investigating the pre-filing breaches were provable in the bankruptcy, but the costs for investigating a post-filing breach and the administrative fine were not. This conclusion flowed from Eamon J finding that the incursion of costs by the CGAA was an obvious outcome of it responding to the complaint and conducting the investigation. However, whether or not the tribunal would impose a fine or incur costs to investigate conduct that hadn't occurred yet was too remote or speculative in the circumstances of that case.<sup>142</sup>

Discretionary claims can be provable

146. In cases with more analogous factual circumstances to those in *CatalX*, courts have reached the conclusion that prospective and discretionary claims are claims provable pursuant to section 121(1) of the BIA.

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<sup>140</sup> *Ibid*, at paras 51-52.

<sup>141</sup> *Ibid*, at para 53, citing *AbitibiBowater inc. (Arrangement relatif à)*, 2010 QCCS 1261.

<sup>142</sup> *Ibid* at paras 97-104 and 106-13.

147. In *Thibault*<sup>143</sup> the Quebec Court of Appeal considered whether a fine imposed by Quebec's Chambre de la sécurité financière—a self-regulating body whose mission is to protect the public—was a claim provable in bankruptcy despite being imposed after the date of the debtor's bankruptcy.<sup>144</sup>
148. In *Thibault*, a disciplinary complaint was lodged against the accused in March 2011. In November 2012, the accused filed a voluntary assignment into bankruptcy. In October 2013, the disciplinary committee found the accused guilty of some of the charges. A sanction hearing occurred in February 2014, and fines and suspensions were imposed in July 2014. In November 2014, the accused was discharged from bankruptcy.<sup>145</sup>
149. The lower court held that the accused's obligation to pay a fine that had not been administered at the time of his bankruptcy was a claim provable under section 121(1) and could be discharged.<sup>146</sup> The decision was upheld on appeal.<sup>147</sup>
150. In its decision, the Quebec Court of Appeal held that an inquiry should be made as to when the obligation was incurred. The Court noted "the long delay of the committee in rendering a decision finding [the accused] guilty and then imposing the monetary sanction" was relevant in determining that the fines imposed were claims provable.<sup>148</sup>
151. The Court referred to *AbitibiBowater* noting that the appropriate factual inquiry was whether, at the date of the bankruptcy, the conditions were met to affirm that a sanction would probably be imposed. In this case, despite the fine being discretionary, it was "probable or at least more than hypothetical" and thus the lower court's decision was upheld.<sup>149</sup>
152. In *Thibault*, the Quebec Court of Appeal also considered the impact on the accused arising from the delayed conviction of the disciplinary committee.<sup>150</sup> The Court cited *AbitibiBowater* in emphasizing: "The CCAA court does not review the regulatory body's exercise of discretion. Rather, it inquires into whether the facts indicate that the conditions

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<sup>143</sup> *Thibault*, *supra* note 125 [Tab 25].

<sup>144</sup> *Ibid*, at para 6.

<sup>145</sup> *Ibid*, at paras 1-12.

<sup>146</sup> *Ibid*, at paras 13-15.

<sup>147</sup> *Ibid*, at para 4.

<sup>148</sup> *Ibid*, at para 26.

<sup>149</sup> *Ibid*, at para 26.

<sup>150</sup> *Ibid*, at para 28.

for inclusion in the claims process are met”.<sup>151</sup> The cited paragraph from *AbitibiBowater* continued to state:

...For example, if activities at issue are ongoing, the CCAA court may well conclude that the order cannot be included in the insolvency process because the activities and resulting damages will continue after the reorganization is completed and hence exceed the time limit for a claim. If, on the other hand, the regulatory body, having no realistic alternative but to perform the remediation work itself, simply delays framing the order as a claim in order to improve its position in relation to other creditors, the CCAA court may conclude that this course of action is inconsistent with the insolvency scheme and decide that the order has to be subject to the claims process.

153. Using *AbitibiBowater* as an analogy, the Quebec Court of Appeal in *Thibault* held the accused should not be deprived of his discharge because the disciplinary committee delayed conviction and sentencing, when the matter “could and should have been disposed of in a more timely fashion which would have obviated the debate before us.”<sup>152</sup>
154. *Thibault* was cited by the Saskatchewan Court of King’s Bench in *James*<sup>153</sup> where that Court also considered whether statutory insurance claims imposed after the date of bankruptcy were claims provable, and came to the same result.<sup>154</sup>
155. In *James*, the Court determined that Mr. James would “probably be liable” at the date of bankruptcy.<sup>155</sup> The Court then proceeded to determine whether the claim was too remote or speculative to be included as a claim in the bankruptcy,<sup>156</sup> noting that there is no requirement for a claim to be valued prior to bankruptcy, and that section 135 of the BIA provides a process for the trustee to value future claims.<sup>157</sup> Although the debt had not crystallized at the date of bankruptcy, the liability had been incurred, and the debts were deemed claims provable.<sup>158</sup>
156. As this Court notes in *Neilson*, every case is a question of fact as to whether or not discretionary claims are too speculative to be claims provable in bankruptcy. *Thibault* and *James* show that claims not yet formalized prior to the date of bankruptcy can be

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<sup>151</sup> *Ibid*, at para 27, citing *AbitibiBowater supra* note 110 at para 37 [Tab 18].

<sup>152</sup> *Thibault, supra* note 125 at para 28 [Tab 25].

<sup>153</sup> *James Bankruptcy (Re)*, 2017 SKQB 370 [*James*] [Tab 28].

<sup>154</sup> *Ibid*, at para 93-94.

<sup>155</sup> *Ibid*, at para 90.

<sup>156</sup> *Ibid*, at para 91.

<sup>157</sup> *Ibid*, at para 92.

<sup>158</sup> *Ibid*, at paras 93-4.

considered claims provable under certain circumstances. These cases emphasize that the purpose of Section 121 of the BIA, as clarified in *Moloney*,<sup>159</sup> is to include every kind of claim, as far as possible, to provide the bankrupt a fresh start.<sup>160</sup>

ASC's claims were not too contingent or remote to be provable

157. The factual bases for the ASC's claims in the Notice of Hearing were known long before the Releases were approved. It was beyond hypothetical that the ASC had a contingent claim, and this probability was known a whole year before the Proposal was filed. The facts which the ASC bases the Notice of Hearing were before the Court at the early stages of the Receivership Proceeding. The ASC's claim was not too contingent or remote to avoid the clear intention and impact of the Releases.
158. The ASC waited until after the Proposal had been approved, the appeal periods had passed, and was in the process of being implemented by the Proposal Trustee to issue the Notice of Hearing. The ASC cannot rely on its lack of diligence and delays to avoid the fresh start objective of the BIA.

**D. The Releases Uphold the Public Interest**

ASC's mandate and the duty of good faith

159. The ASC makes much in their argument about its public interest mandate to protect investors and the integrity of capital markets.<sup>161</sup> CatalX and Mr. Park agree that this purpose is properly stated and the ASC's activities should not be unduly usurped by the Court. This is why the ASC was added to the service list and was provided with copies of the Proposal, the Proposal Trustee's Report, and draft copies of the Order sought well in advance of the June 20 Hearings.<sup>162</sup> This was to give the ASC an opportunity to comment and raise any issues it had prior to the Proposal and the Releases being approved by the Court.
160. In *Taber Water*,<sup>163</sup> this Court recently cited the good faith requirement imposed by section 4.2 of the BIA. In *Taber Water*, a third party asserted an ownership interest in a property

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<sup>159</sup> *Moloney*, *supra* note 113 at paras 36-38, 77-79 [Tab 20].

<sup>160</sup> *James*, *supra* note 153 at para 65 [Tab 28], citing *Thibault*, *supra* note 124 at para 21 [Tab 25].

<sup>161</sup> See eg ASC Brief at paras 11, 57, 62, and 107.

<sup>162</sup> Dunphy Affidavit at para 7 and Exhibit B; Creditors Package, *supra* note 38 at [A0038].

<sup>163</sup> *Taber Water Disposal Inc (Re)*, 2024 ABKB 680 [*Taber Water*] [Tab 27].



conveyed pursuant to a vesting order in an insolvency proceeding, after the order was granted.<sup>164</sup> This Court held that the duty of good faith imposed by the BIA required the third party to come forward with its claim at the asset vesting order application or before.<sup>165</sup> The silence of the third party was contrary to the interest of the debtor, creditors, and purchaser of the assets, and contrary to the efficiency of the insolvency process.<sup>166</sup>

161. The ASC was obligated by their duty of good faith to come forward with a claim and oppose the Releases at the Approval Hearing if they took issue with them being impacted by it. If the ASC had concerns that the Court was usurping its jurisdiction by releasing “any and all Claims or contingent Claims of any securities commission”, then the proper time to raise that issue was on or before the June 20 Hearing.
162. This obligation also relates to the third factor noted in *Callidus*—due diligence— which the Supreme Court of Canada held “discourages parties from sitting on their rights and ensures that creditors do not strategically manoeuvre or position themselves to gain an advantage... . A party’s failure to participate in CCAA proceedings in a diligent and timely fashion can undermine these procedures and, more generally, the effective functioning of the CCAA regime.”<sup>167</sup>
163. The same principles apply to BIA proceedings.<sup>168</sup> The ASC’s failure to bring timely claims against CatalX and Mr. Park or to oppose the Releases undermines the objectives of the regime of ensuring equitable distribution and a fresh start.
164. The Proposal and Releases did not hinder the public interest that the ASC seeks to protect. Quite the opposite. As Justice Neufeld noted, CatalX and Mr. Park’s proactive actions were of assistance to the ASC, with avoiding similar situations in the future, and to mitigate the impacts of the situation.<sup>169</sup> This is consistent with the ASC’s mandate.
165. The Deloitte LLP investigation resulted in \$264,166 being recovered from Mr. Lee and other sources, which funds were injected back into the Proposal.<sup>170</sup>

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<sup>164</sup> *Ibid* at para 1.

<sup>165</sup> *Ibid* at para 34.

<sup>166</sup> *Ibid* at para 34.

<sup>167</sup> *Callidus*, *supra* note 94 at para 51 [Tab 14].

<sup>168</sup> *Ibid* at para 74.

<sup>169</sup> Receivership Application Transcript, *supra* note 26 at 8, lines 19-28 [C094].

<sup>170</sup> Ceko Affidavit at Exhibit I, Appendix C [C360].

The objectives of the BIA are furthered by the Proposal

166. The BIA's purpose, affirmed in *Poonian*,<sup>171</sup> is to ensure equitable distribution of a bankrupt's assets among creditors, and the bankrupt's financial rehabilitation, such that honest but unfortunate debtors will be afforded a "fresh start".<sup>172</sup> The Proposal and its Releases are consistent with this purpose.
167. *Poonian* provides insight into the policy objectives of the BIA regime and how securities commission penalties are reconciled with the fresh start principle, even where the debtors are found guilty of serious misconduct.
168. In August 2014, the Poonians were found by the BCSC to have engaged in market manipulation contrary to British Columbia securities legislation.<sup>173</sup> The BCSC described the manipulation scheme as "serious misconduct" and as "elaborate, involving layers of deception...".<sup>174</sup> In 2015, the BCSC imposed administrative penalties and disgorgement orders against the Poonians which, after reassessment, exceeded \$19 million. In April 2018 the Poonians made voluntary assignments into bankruptcy and in 2020 they applied for a discharge, which was opposed by the BCSC.
169. *Poonian* centered on the interpretation of section 178(1) of the BIA, which contains exceptions to the types of claims which can be discharged (or in our case released) in furtherance of policy objectives.<sup>175</sup> In *Poonian*, the Supreme Court of Canada held that the administrative penalties imposed by the BCSC did not fall within the exceptions set out in sections 178(1)(a) or (e) of the BIA, and therefore such claims were able to be discharged in bankruptcy.<sup>176</sup> By contrast, the disgorgement orders imposed by the BCSC fell within the exception of 178(1)(e) of the BIA and were therefore not releasable.
170. The exception of BIA section 178(1)(e) operates to exclude from discharge "any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation".<sup>177</sup>

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<sup>171</sup> *Poonian v British Columbia (Securities Commission)*, 2024 SCC 28 [*Poonian*] [Tab 30].

<sup>172</sup> ASC Brief at para 97.

<sup>173</sup> *Poonian*, *supra* note 171 at para 7 [Tab 30].

<sup>174</sup> *Ibid* at para 9.

<sup>175</sup> *Ibid* at para 2.

<sup>176</sup> *Ibid* at para 6;

<sup>177</sup> BIA, *supra* note 37 at s 178(1)(e) [Tab 4].

171. The ASC's accusations against CatalX and Mr. Park in the Notice of Hearing do not allege that either acted fraudulently or engaged in conduct that would justify a disgorgement order. The penalties contemplated by the allegations in the Notice of Hearing would not survive bankruptcy and are therefore releasable.<sup>178</sup>
172. The main difference for CatalX and Mr. Park is the timing of the administrative penalties. In *Poonian*, the administrative penalties occurred before the bankruptcy, whereas the ASC waited until the Proposal was implemented to move forward with its claim.
173. If the timing of when the ASC brings charges based on known facts distinguishes when an administrative penalty can or cannot be released, this would create an absurd result. The effect would be that regulatory bodies will be motivated to delay the imposition of administrative penalties in the context of bankruptcy proceedings to ensure that their administrative penalties will not be considered claims provable.
174. Such timing factors would encourage regulatory bodies to wait in the weeds, which is contrary to the duties of good faith and due diligence.
175. The ASC is correct that the two regimes can operate harmoniously, but this is predicated on all parties acting without unreasonable delay. Where that is not the case, there is potential for the regimes to conflict, as the insolvency regime requires expediency<sup>179</sup> and transparency.<sup>180</sup>
176. As outlined above, the Notice of Hearing was not brought on an expeditious timeline. The Releases were approved 16 months after the ASC found a *prima facie* case against CatalX.<sup>181</sup> At that time a merits hearing had not been scheduled and the charges against Mr. Park had yet to be brought, despite the ASC's investigation against Mr. Park being substantially complete long before the Proposal was filed.<sup>182</sup>
177. By the ASC having delayed bringing charges against Mr. Park until the Proposal was being implemented, it unduly creates a conflict between the purposes and policy objectives of the BIA and *Securities Act* when otherwise none would exist. The late issuance of the

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<sup>178</sup> *Poonian*, *supra* note 171 at para 54 [Tab 30].

<sup>179</sup> *Arrangement relatif à 9550-1714 Québec inc*, 2025 QCCS 3840 at paras 89-90 [Tab 31].

<sup>180</sup> *Peace River Hydro Partners v Petrowest Corp.*, 2022 SCC 41 at para 55 [Tab 32].

<sup>181</sup> *Re CatalX CTS Ltd*, 2024 ABASC 23 at para 26 [Tab 3].

<sup>182</sup> Ceko Affidavit at Exhibit O [C494].

Notice of Hearing simply undermines the single proceeding model, which serves the public interest.

178. Further, the delay has prejudiced CatalX and Mr. Park in a similar manner to the accused in *Thibault*,<sup>183</sup> as funds have been expended based on the Releases.

**E. The Actions of the ASC constitute a Collateral Attack**

179. The ASC decided to continue with the September 15 Hearing despite receiving a request to adjourn and seek direction from this Court. The choice to continue with the September 15 ASC Hearing prior to seeking direction from this Court constitutes a collateral attack.
180. A collateral attack is “an attack on an order ‘made in proceedings other than those whose specific object is the reversal, variation or nullification of the order’”.<sup>184</sup> An order issued by a court must be obeyed unless it is set aside in a proceeding taken for that purpose.<sup>185</sup> The rationale behind the rule against collateral attack is to maintain the rule of law and preserve the reputation of the administration of justice.<sup>186</sup>
181. The ASC argues that aspects of the Proposal Approval Order are contrary to subsection 72(1) of the BIA.<sup>187</sup> However, the Court in *Litchfield* held that the orderly administration of justice “requires that court orders be considered final and binding unless they are reversed on appeal.”<sup>188</sup>
182. If the ASC believed that the Proposal Approval Order was invalid for being contrary to the BIA, the proper forum to address that issue was during the hearing for the Proposal Approval Order, or to appeal the Order within the appeal period.
183. Instead, the ASC Staff proceeded ahead with the September 15 ASC Hearing. Only after the ASC Panel adjourned its application did the ASC come back before this Court to seek a declaration that the Releases do not apply to it. The actions of the ASC constitute a collateral attack and its application should be dismissed to maintain the rule of law and preserve the reputation of the administration of justice.

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<sup>183</sup> *Thibault*, *supra* note 125 at para 28 [Tab 25].

<sup>184</sup> *R v Bird*, 2019 SCC 7 [Bird] at para 21 [Tab 33].

<sup>185</sup> *Ibid.*

<sup>186</sup> *R v Litchfield*, [1993] 4 SCR 333, 1993 CanLII 44 (SCC) [Litchfield] at 349 [Tab 34].

<sup>187</sup> ASC Brief at para 113.

<sup>188</sup> *Litchfield*, *supra* note 186 at 349 [Tab 34].

**F. Conclusion**

184. The facts of this case, and in particular, the prospective ASC administrative order, were well known by Justice Neufeld in granting the Proposal Approval Order with the comprehensive Releases. The factual circumstances for the Court granting the Releases are unique.<sup>189</sup> As stated by this Court in *Neilson*, every case is a question of fact.
185. After discovering Mr. Lee's wrongdoing, Mr. Park reported to the ASC and cooperated with its lengthy investigation attending 10 interviews. Mr. Park funded a third-party investigation into the missing CatalX funds, he remained on as director throughout the Receivership Proceedings and funded the Proposal.
186. The status of the ASC investigation and *prima facie* case was at the forefront of each hearing before the Court, with senior counsel for the ASC in attendance. The ASC received the same information as every other creditor, including draft copies of the Releases sought. In discussing Mr. Park's conduct, the Court expressly noted that the benefit of the Proposal to Mr. Park was the Park Release.
187. The ASC's claims were not too remote or speculative to have been released by the Court. The ASC had completed the majority of its investigation a year before the Proposal was filed, and the factual bases of its claim were set out before the Court in the reports of the Court's officer.
188. This exceptional factual context, as well as the governing principles of the BIA, support the broad application of the Releases to stay the proceedings by the ASC. The ASC's application should be dismissed.

**V. RELIEF REQUESTED**

189. That this Honourable Court dismiss the ASC's application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 28<sup>th</sup> DAY OF NOVEMBER 2025.

**MILLER THOMSON LLP**

Per:



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James W. Reid  
Counsel for CatalX CTS & Hyuk Jae Park

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<sup>189</sup> Proposal Approval Transcript, *supra* note 48 at 19, lines 14-21; 21, lines 33-41 [C393].

## TABLE OF AUTHORITIES

TAB NO.	AUTHORITY
1	<a href="#"><i>Re CatalX Ltd</i></a> , 2025 ABASC 98
2	<a href="#"><i>Securities Act</i></a> , RSA 2000, c S-4, excerpts of
3	<a href="#"><i>Re CatalX CTS Ltd</i></a> , 2024 ABASC 23
4	<a href="#"><i>Bankruptcy and Insolvency Act, RSC 1985, c B-3</i></a> , excerpts of
5	<a href="#"><i>Delta 9 Cannabis Inc (Re)</i></a> , 2024 ABKB 657
6	<a href="#"><i>Der v Hlookoff</i></a> , 2025 BCCA 193
7	<a href="#"><i>Arrangement relatif à 9526-1624 Québec inc</i></a> , 2025 QCCS 3490
8	<a href="#"><i>Re Green Relief Inc</i></a> , 2020 ONSC 6837
9	<a href="#"><i>House of Commons, Standing Committee on Industry, Evidence, 35-2, No 25 (3 October 1996)</i></a>
10	<a href="#"><i>Companies' Creditors Arrangement Act, RSC 1985, c C-36</i></a> , excerpts of
11	<a href="#"><i>Re Pope &amp; Talbot Ltd</i></a> , 2009 BCSC 1552
12	<a href="#"><i>Allen-Vanguard Corporation (Re)</i></a> , 2011 ONSC 5017
13	Morin, Luc and Arad Mojtahedi, <a href="#"><i>"Catch Me If You Can: Third-Party Releases Under the Companies' Creditors Arrangement Act."</i></a> 2021 19 Annual Review of Insolvency Law, 2021 CanLIIDocs 13544
14	<a href="#"><i>9354-9186 Québec inc v Callidus Capital Corp</i></a> , 2020 SCC 10
15	<a href="#"><i>Century Services Inc v Canada (Attorney General)</i></a> , 2010 SCC 60
16	<a href="#"><i>BlueStar Battery Systems International Corp., Re</i></a> , 2000 CanLII 22678 (ON SC)
17	<a href="#"><i>Chartered Professional Accountants of Alberta v Neilson</i></a> , 2018 ABQB 170
18	<a href="#"><i>Newfoundland and Labrador v AbitibiBowater Inc</i></a> , 2012 SCC 67
19	<a href="#"><i>Peters v Remington</i></a> , 2004 ABCA 5
20	<a href="#"><i>Alberta (Attorney General) v Moloney</i></a> , 2015 SCC 51
21	<i>Re CatalX CTS Ltd</i> , 2023 ABASC 167
22	<a href="#"><i>Re CatalX CTS Ltd</i></a> , 2024 ABASC 178

23	Section 47 Order to Hold Funds dated December 28, 2023, Alberta Securities Commission Docket ENF-013419
24	<a href="#"><i>Orphan Well Association v Grant Thornton Ltd</i></a> , 2019 SCC 5
25	<a href="#"><i>Chambre de la sécurité financière c Thibault</i></a> , 2016 QCCA 1691
26	<a href="#"><i>Thow (Re)</i></a> , 2009 BCSC 1176
27	<a href="#"><i>Wing (Re)</i></a> , 2019 ONSC 4063
28	<a href="#"><i>James Bankruptcy (Re)</i></a> , 2017 SKQB 370
29	<a href="#"><i>Taber Water Disposal Inc (Re)</i></a> , 2024 ABKB 680
30	<a href="#"><i>Poonian v British Columbia (Securities Commission)</i></a> , 2024 SCC 28
31	<a href="#"><i>Arrangement relatif à 9550-1714 Québec inc</i></a> , 2025 QCCS 3840
32	<a href="#"><i>Peace River Hydro Partners v Petrowest Corp</i></a> , 2022 SCC 41
33	<a href="#"><i>R v Bird</i></a> , 2019 SCC 7
34	<a href="#"><i>R v Litchfield</i></a> , 1993 CanLII 44 (SCC), [1993] 4 SCR 333