



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: BK-25-03165297-0031

DATE: March 18, 2025

NO. ON LIST:2

TITLE OF PROCEEDING: KOGNITIV CORPORATION v. BDO CANADA LIMITED

BEFORE: JUSTICE J. DIETRICH

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

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**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
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**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
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## **ENDORSEMENT OF JUSTICE J. DIETRICH:**

### **Introduction**

- [1] Kognitiv Corporation (“**Kognitiv**”) filed of a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended (the “**BIA**”) on December 12, 2024. BDO Canada Limited was appointed as the Proposal Trustee.
- [2] Kognitiv filed a proposal on January 10, 2025 pursuant to s. 62 of the BIA. A first meeting of creditors was held on January 31, 2025 and was adjourned until March 3, 2025. The creditors in attendance at March 3, 2025 agreed to adjourn the meeting *sine die* with the Proposal Trustee to provide an update to the creditors on no later than April 3, 2025.
- [3] Terms not otherwise defined herein have the meaning provided for in the factum of Kognitiv filed on this motion.
- [4] Kognitiv originally sought two orders. An approval and vesting order, and an ancillary order granting a number of heads of relief. However, certain amendments are being contemplated in respect of the transaction for which the approval and vesting order was sought. Accordingly, the relief now requested today has been reduced to: granting an Administration Charge in the amount of \$500,000 to secure the fees and disbursements of the Proposal Trustee, the Proposal Trustee’s independent counsel and the Company’s counsel; and (ii) approving the fees and disbursements of the Proposal Trustee and its independent legal counsel as set out in the fee affidavits appended to the First Report.
- [5] Kognitiv's secured creditors have been served with the motion and the First Report and the remaining relief sought today is unopposed.

### **Background**

- [6] Kognitiv is a holding company, whose primary assets are its direct and indirect ownership interests in various subsidiaries. Primarily through its subsidiaries, Kognitiv is in the business of providing software and services to design, build and manage loyalty programs for a global customer base.
- [7] The purpose of filing the NOI and commencing these proceedings was to provide short-term stability to Kognitiv and a forum in which to pursue a restructuring of its subsidiaries to consolidate all of its contracts, business, operations and employees into a smaller group of subsidiaries, all with a view to conducting a sale of the consolidated operations and assets of Kognitiv for the benefit of all stakeholders.

- [8] The Kognitiv group has never been profitable operationally. Kognitiv has had to support significant historical losses from its subsidiaries through various inter-company loans, which have been funded, in large part, from corporate finance activities, including equity and debt (injected into the subsidiaries by Kognitiv). These loans have given rise to extensive debt levels that, absent additional funding, are not sustainable.
- [9] Registrations under the *Personal Property Security Act* in respect of Kognitiv have been made in favour of each of The Toronto-Dominion Bank, BDC Capital Inc. (“**BDCC**”), Guines LLC, Stephen Michael Watt, Aimia Inc. and Urbana Corporation.
- [10] In 2022, the Company raised approximately \$31,000,000 of secured convertible notes from various creditors. Some of these amounts were converted in 2023 pursuant to an equity conversion. Various priority agreements have been entered into among certain of the secured creditors.
- [11] Kognitiv has been carrying out a Sale Process with the assistance of Roystone Capital and the Proposal Trustee. The Sale Process was intended to solicit interest in, and opportunities for, a sale of all or part of Kognitiv’s assets and business operations, including its direct or indirect shares in various subsidiaries and business operations as a going concern or otherwise, or some combination thereof. A transaction was entered into as a result of the Sale Process for which the approval and vesting order was originally sought today. However, structural changes to that transaction are being discussed and approval is no longer sought for that transaction.

### **Administration Charge**

- [12] Kognitiv seeks a first-ranking Administration Charge on all of its property, in priority to all other charges, in the maximum amount of \$500,000, to secure the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee and counsel to Kognitiv incurred in connection with services rendered to Kognitiv both before and after the commencement of these proceedings.
- [13] Section 64.2 of the BIA provides for a super-priority charge to secure fees for needed professional services during a restructuring where an NOI or a proposal has been filed.
- [14] In *Canwest Publishing Inc. (Re)*, 2010 ONSC 222 at para 54, the Court identified six non-exhaustive factors that may be considered when determining whether to grant an administration charge: (i) the size and complexity of the business being restructured; (ii) the proposed role of the beneficiaries of the charge; (iii) whether there is an unwarranted duplication of roles; (iv) whether the quantum of the proposed charge appears to be fair and reasonable; (v) the position of the secured creditors likely to be affected by the charge; and (vi) the position of the monitor.
- [15] These factors were expressed in the context of the *Companies' Creditors Arrangement Act*, but are also applicable under s. 64.2 of the BIA. Having regard to these factors, it is

appropriate to approve the requested Administration Charge in these circumstances. There is no unwarranted duplication of roles and Kognitiv has worked with the Proposal Trustee and the other restructuring professionals to estimate the proposed quantum of the Administration Charge. The Proposal Trustee supports the granting of the Administration Charge and Kognitiv's secured creditors have been served with the motion materials and no objection to the limited relief sought today has been raised.

### **Approval of Fees and Disbursements**

[16] The fees and disbursements of the Proposal Trustee and its legal counsel, as set out in the First Report are also reasonable in the circumstances and are approved.

### **Further Hearing**

[17] Kognitiv requests a return date for the remaining relief. This relief includes the approval and vesting order in respect of the proposed transaction and other related matters, including approval of a success fee to Roystone Capital related to the transaction, approval of a KERP and approval of certain distributions. BDCC has advised that they oppose the fee proposed to be paid to Roystone Capital.

[18] **One hour on April 7, 2025 at 11:30 am** has been scheduled for a hearing of the remaining relief. However, unless the objection by BDC to the Roystone Capital fee and any relief related thereto has been resolved, that relief will need to be separately scheduled.

[19] As well, Ms. Levine from Cassels Brock & Blackwell LLP attended the hearing today but did not make any submissions. Should anyone from Cassels Brock & Blackwell LLP be making submissions at further hearings in this matter, counsel should advise the Commercial List Office in advance so those matters are not scheduled before me.

March 18, 2025

Justice J. Dietrich