

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

EQUITABLE BANK

Applicant

-and-

ASHCROFT HOMES – CAPITAL HALL INC.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**MEMORANDUM OF LAW OF THE RECEIVER
SEALING ORDER
(Returnable October 24, 2025 at 1:00 p.m.)**

October 23, 2025

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in its capacity as Court-appointed Receiver

1. Pursuant to s. 137(2) of the *Courts of Justice Act*, R.S.O. c. C.43, the Receiver requests that the Confidential Settlement¹ and the Reporting Letter, being Confidential Appendices “1” and “2”, respectively, to the Second Report, be treated as confidential and sealed, and not form part of the public record.² It is an express term of the Confidential Settlement that it not be disclosed (with certain exceptions) other than to the Court, and Northbridge is not prepared to proceed with the Confidential Settlement if the Confidential Appendices are not sealed.³

2. The test for a sealing Order was established by the Supreme Court in *Sierra Club*, and subsequently recast in *Sherman Estate*. The test requires the Court to consider whether:⁴

- a. Court openness poses a serious risk to an important public interest;
- b. the Order sought is necessary to prevent this serious risk to the identifiable interest because reasonable alternative measures will not prevent this risk; and,
- c. as a matter of proportionality, the benefits of the Order outweigh its negative effects.

3. Each of these considerations support the proposed sealing Order:

- a. **Public Interest:** The maximization of recovery in insolvency has been found to constitute an important public interest for the purpose of obtaining a sealing Order, as has the promotion of settlements. The granting of a sealing Order in respect of commercially sensitive information is therefore “standard practice” in insolvency proceedings.⁵ Courts have approved sealing orders where they are required to protect commercially sensitive

¹ Capitalized terms not defined have the same meaning as in the Second Report of the Receiver dated October 16, 2025 (the “**Second Report**”).

² Second Report, at paras 3.2.1 – 3.2.3.

³ Second Report, para 3.2.1.

⁴ *Sherman Estate v. Donovan*, [2021 SCC 25](#), at [para. 38](#).

⁵ *Yukon (Government of) v. Yukon Zinc Corporation*, [2022 YKSC 2](#) (YT. S.C.), at [para. 39](#).

information,⁶ including terms of settlement,⁷ and the Supreme Court has recognized the potential need for a sealing order where the parties have agreed to a confidentiality provision.⁸ In the case at bar, the Receiver and Northbridge agreed to keep the Settlement Agreement confidential, and but for the requirement of the Receiver to seek Court approval of the settlement, the need for public access would not have arisen. The public interest in knowing the terms of the Confidential Settlement does not outweigh the public interest in preserving the privilege and confidentiality of settlement,⁹ and to the extent there is a public interest in knowing the amount of a settlement, “it is very modest”.¹⁰ The sealing of the confidential information in this case is necessary to ensure that recoveries in these receivership proceedings are maximized.

b. **Lack of a Reasonable Alternative:** Courts in insolvency proceedings have found that there is no reasonable alternative to a sealing order in circumstances where declining to grant the proposed order would materially impair the maximization of asset value for the benefit of stakeholders.¹¹ In the present case, there are no reasonable alternatives to a sealing order which would prevent the risks to the stakeholders outlined above.

⁶ *Danier Leather Inc., Re*, [2016 ONSC 1044](#) (Ont. S.C.J. – Commercial List), at [para. 84](#); *Elleway Acquisitions Limited v. 4358376 Canada Inc. (“Elleway Acquisitions”)*, [2013 ONSC 7009](#) (Ont. S.C.J. – Commercial List), at [para 48](#).

⁷ *Royal Bank of Canada v. Distinct Infrastructure Group Inc., (“RBC v Distinct Infrastructure”)* [2022 ONSC 5878](#) (Ont. S.C.J. – Commercial List) at [para 20](#), *Danier Leather Inc., Re*, [2016 ONSC 1044](#) (Ont. S.C.J. – Commercial List), at [para. 84](#); *Elleway Acquisitions Limited v. 4358376 Canada Inc. (“Elleway Acquisitions”)*, [2013 ONSC 7009](#) (Ont. S.C.J. – Commercial List), at [para 48](#).

⁸ *Union Carbide Canada Inc. v. Bombardier Inc.*, [2014 SCC 35](#), at [para 49](#), as cited in *Original Traders Energy Ltd. (Re)*, (“*Original Traders*”), [2023 ONSC 753](#) (Ont. S.C.J. – Commercial List) at [para 60](#).

⁹ *Sidhu v Hiebert*, [2023 BCSC 436](#) (B.C.S.C.) at [para. 34](#).

¹⁰ *Schuringa v Trent Lakes (Municipality)*, [2016 ONSC 7882](#) (Ont. S.C.J.) at [para 52](#).

¹¹ *Original Traders* at [paras. 60-62](#).

c. **Proportionality:** The benefits of the proposed sealing Order greatly exceed any disadvantages. No party will be prejudiced by the sealing of the commercially sensitive information, no stakeholder opposes the request for the sealing Order. No public interest will be served if the confidential information is made public, and publication would prejudice stakeholder recoveries in the process. Further, the sealing Order is not absolute. It remains subject to further order of the Court.

4. In these circumstances, the important public interest in promoting settlements outweighs any negative effects of the sealing Order on the open Court principal.¹²

¹² *RBC v. Distinct Infrastructure*, at [para 24](#).

Court File No. CV-25-00098805-0000

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