

CITATION: Xiwang Iovate Holdings Company Limited et al, 2026 ONSC 676
COURT FILE NO.: BK-25-03268936-0031
DATE: 20260203

SUPERIOR COURT OF JUSTICE – ONTARIO [COMMERCIAL LIST]

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF XIWANG IOVATE HOLDINGS COMPANY LIMITED, IOVATE HEALTH
SCIENCES INTERNATIONAL INC., IOVATE HEALTH SCIENCES U.S.A.
INC., IOVATE HEALTH SCIENCES AUSTRALIA PTY LTD, and NORTHERN
INNOVATIONS HOLDING CORP.

Applicants

BEFORE: S.F. Dunphy J.

COUNSEL: *Laura Culleton, Michael DeLelli and Marc Wasserman*, for the Monitor

Harvey Chaiton, for the Canadian Applicants

Sean Zweig for the Majority Shareholders

Evan Cobb, for the Board of Directors Xiwang Iovate Holdings

Chris Burr, for the Royal Bank of Canada Administrative Agent to Lenders

Zacchariah Martin for Orgain (creditor)

HEARD at Toronto: February 2, 2026

REASONS FOR DECISION- Sealing Order

[1] On February 2, 2026, I heard the Monitor's application for, among other things, an order approving certain employee incentive payments and a Key Employee Retention Plan for employees of the Applicants. I granted the requested order but limited the requested sealing order to a period of 30 days to permit me to take the requested sealing order under reserve for further consideration.

[2] I have now considered the matter further and I am satisfied that the requested order should be made on a permanent basis subject of course to further order of the court should circumstances

warrant. Accordingly, I am directing that paragraph 5 of my February 2, 2026 order entitled “ORDER (Incentive Payments, KERP and Sealing Order)” shall be deleted and replaced with the following:

5. *THIS COURT ORDERS that, subject to further order of this court on notice, Confidential Appendix 1 to the Third Report shall be sealed and shall not form part of the public record of this matter.*

[3] By way of brief background, the motion arose in the course of the CCAA proceedings of the Applicant. Approximately 6 weeks ago, the CEO of the Applicants resigned and the Monitor assumed an additional supervisory and oversight role. The Applicants are currently in the process of conducting a SISP under the supervision of the Monitor which, it is hoped, will result in appropriate bids being received to enable a sale of the going concern business and maximize recoveries for stakeholders. The restructuring is a relatively complex one given the integrated international scope of its operations.

[4] In connection with that process, and after consultation with stakeholders, the Monitor recommended the implementation of a program to make certain Incentive Payments as well as a Key Employee Retention Plan affecting certain named employees of the Applicants. The goal of the program was to stabilize the business during the sales process by making offering the described payments to certain employees to incent or secure their retention.

[5] The origins and outline of the program was described in the Monitor’s Third Report. The public portion of that Report described the intent, design and background to the proposed program. It provided information about the number of affected employees, the aggregate proposed payments and a description of how the proposed payments were arrived at. A confidential appendix, Appendix 1, contained a list of each of the affected employees, their 2025 bonus amounts, the payments proposed to be made and under which of the two programs proposed (the Incentive Payment program or the KERP) among other details.

[6] In my view, the general public description provided by the Monitor was more than sufficient to satisfy the open court principle. The granular data provided was clearly in the nature of private information that engaged serious privacy issues. None of the employees in question consented to disclosure of their personal information and none of them were even aware of their inclusion in the confidential appendix. Disclosure of such personal information could make similar retention programs more difficult to implement in CCAA restructuring proceedings and jeopardize the restructuring process. The data was included in the confidential appendix out of an abundance of caution – primarily to enable me to be satisfied of a negative face (i.e. that the payments to each had been consistently calculated). The basis for the approval sought was completely and comprehensively disclosed in the public Monitor’s Third Report.

[7] After having taken the matter under reserve, a colleague helpfully pointed me to the decision of Koehnen J. in *Just Energy Group Inc. et al.*, 2021 ONSC 7630 at para. 26-29 succinctly analyzed this precise issue in the context of the applicable Supreme Court of Canada jurisprudence.

I set these paragraphs in full as they describe quite precisely my conclusion in relation to the question of sealing of this category of information and the reasons for it (footnotes omitted):

[27] In *Sherman Estate v. Donovan*,² the Supreme Court of Canada held at para. 38 that an applicant for a sealing order must establish that:

- (i) court openness poses a serious risk to an important public interest;
- (ii) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
- (iii) as a matter of proportionality, the benefits of the order outweigh its negative effects.

[28] All 3 factors are satisfied here. The documents the applicants seek to seal contain the names of the KERP recipients and the amounts each will receive. Publicly disclosing employee compensation violates the privacy interest of those employees. The employees themselves have not initiated any court proceeding that would require production of that information. Broad publication of confidential income data could create risks for employee retention in this and other CCAA proceedings.

[29] In *Ontario Securities Commission v. Bridging Finance Inc.*³ Chief Justice Morawetz recently granted a sealing order over the details of a KERP in similar circumstances. I am satisfied that it is equally appropriate to make that order here. The limitation on the open courts principle is minimal. The order is proportional. It benefits in protecting privacy interests of non-party employees outweigh the very limited impact on the open courts principle.

[8] Sealing orders may be by their nature limited in time or without time limit. In all cases, I think that it goes without saying (although I have written it into my order above) that any sealing order is always “subject to further order of the court”.

S.F. Dunphy J.

Date: February 3, 2026