

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

ADRIEL ORTINO CORP.; ADD EQUIPMENT CORP.; ADEN DISPOSAL CORP.; AE3
EXCAVATING CORP.; AEON LANDSCAPING CORP.; ALL SEASONS GARDENING &
MAINTENANCE LTD.; ANTHONY'S EXCAVATING AND GRADING LTD; HC & C
CONTRACTING INC.; AND SHILSON EXCAVATION & TRUCKING INC.

Respondents

**FACTUM
(Receivership Appointment)**

May 19, 2026

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Lawyers for the Applicant

TO: THE SERVICE LIST

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I. OVERVIEW

1. This Factum is filed in support of an Application by Bank of Montreal ("**BMO**") for an Order (the "**Appointment Order**"), among other things,

- (a) appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacity, the "**Receiver**"), without security, of all of the property, assets and undertakings (collectively, the "**Property**") of Adriel Ortino Corp. ("**Adriel**"), ADD Equipment Corp. ("**ADD Equipment**"), Aden Disposal Corp. ("**Aden**"), AE3 Excavating Corp. ("**AE3**"), AEON Landscaping Corp. ("**AEON**"), All Seasons Gardening & Maintenance Ltd. ("**All Seasons**"), Anthony's Excavating and Grading Ltd ("**Anthony's**"), HC & C Contracting Inc. ("**HC & C**") and Shilson Excavation & Trucking Inc. ("**Shilson**", and together with Adriel, ADD Equipment, Aden, AE3, AEON, All Seasons, Anthony's and HC&C, the

“**Borrowers**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada)¹ (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario);²

- (b) authorizing the Receiver to enter into transaction(s) with third parties (each a “**Purchaser**”) in respect of certain landscaping equipment and ancillary construction equipment (the “**Equipment**”) used in the Borrowers business, provided that the aggregate consideration for all such transactions does not exceed the amount of \$2,000,000, and, in the case of any individual transaction (a) the consideration for such transaction is less than \$250,000; and (b) any party the Receiver believes is asserting a valid purchase-money security interest (“**PMSI**”) over the Equipment subject to that transaction consents to the transaction (each an “**Eligible Transaction**”); and
- (c) vesting all of the applicable Borrower’s right, title and interest in and to the Equipment subject to an Eligible Transaction in the applicable Purchaser free and clear of and from any and all security interests, liens, encumbrances, charges or other claims upon the Receiver delivering to the Purchaser a “**Sale Certificate**” in the form attached as Schedule “B” to the Appointment Order.

II. FACTS

2. The facts with respect to this Application are only briefly recited herein and are set out in more detail in the Affidavit of Michaela Wolf sworn May 16, 2026 (the “**Wolf Affidavit**”).³ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Wolf Affidavit.

¹ [Bankruptcy and Insolvency Act](#), RSC, 1985, c B-3 [the “**BIA**”]

² [Courts of Justice Act](#), RSO 1990, c C43 [the “**CJA**”]

³ [Affidavit of Michaela Wolf sworn May 16, 2026](#), Application Record of Bank of Montreal dated May 16, 2026, Tab 2 [the “**Wolf Affidavit**”]

Background of the Borrowers' Business and BMO Loans

The Borrowers and the BMO Loans

3. The Borrowers historically operated a landscaping, excavation and grading business through various private and closely held corporations. Operations are now largely inactive and the Borrowers are no longer booking new business.⁴

4. BMO has extended joint and several credit facilities (collectively, the “**Loans**”) to the Borrowers under the terms and subject to the conditions of the Term Sheet.⁵

5. As of May 12, 2026, BMO was owed approximately \$18,498,786.30 in respect of the Demand Facilities (the amount owing from time to time by the Borrowers to BMO, the “**Indebtedness**”).⁶

6. As security for the Indebtedness and liability owing to BMO pursuant to the Term Sheet, among other things, the Borrowers provided BMO with general security agreement(s) in respect of all of the personal property of each of the Borrowers (collectively, the “**GSAs**”).⁷

7. BMO has registered its security interest over all of the personal property of the Borrowers pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”). Several other secured creditors have also registered their security interest (including PMSIs) against certain of the Borrowers. Certain of these registrations pre-date BMO’s PPSA registration, and relate to, among other things, the servicing, leasing or financing of specific equipment or motor vehicles.⁸

⁴ [Wolf Affidavit, para 3, para 13](#)

⁵ [Wolf Affidavit, para 4](#)

⁶ [Wolf Affidavit, para 5](#)

⁷ [Wolf Affidavit, para 26](#)

⁸ [Wolf Affidavit, paras 27-29](#)

The Alleged Misappropriation Scheme

8. Around October 2023, all of the Former Bookkeepers of the Borrowers abruptly left en-mass. The Borrowers subsequently came to believe that their Former Bookkeepers had been misappropriating significant contract revenues through misleading bookkeeping practices and the use of fake invoices. At the same time, Unbilled Receivables were not invoiced nor collected, and the Borrowers were overcharged for amounts properly due to certain contractors, suppliers or other third parties providing services to the Borrowers.⁹

Borrowers Breach of the Term Sheet

9. Through the latter half of 2024, the Borrowers breached certain reporting requirements under the Term Sheet. BMO refrained from making demand on the Loans at this time in order to provide the Borrowers with the breathing room required to determine the financial impact of the Alleged Misappropriation Scheme, notwithstanding that it had become clear that the Borrowers' "borrowing base" had been significantly overstated, and that BMO's collateral was not sufficient to secure its indebtedness.¹⁰ By December of 2024, the Borrowers had gone into overdraft of certain Loans. These overdrafts were also tolerated by BMO in the circumstances.¹¹

10. In January 2025, the Borrowers once again breached the Term Sheet by exceeding the maximum total funded debt to EBITA ratio thereunder. As a result of this breach, BMO delivered a notice of covenant breach and reservation of rights letter to the Borrowers.¹²

⁹ [Wolf Affidavit, paras 31-32](#)

¹⁰ [Wolf Affidavit, paras 34-35](#)

¹¹ [Wolf Affidavit, para 37](#)

¹² [Wolf Affidavit, para 39](#)

11. In February 2025, BMO received the first of a number of garnishment notices and requirements to pay in respect of certain Borrowers issued by the CRA and other third-party creditors.¹³

12. By May 2025, and against the background of BMO continuing to remain patient and sympathetic to the Borrowers' circumstances, the Borrowers once again breached the Term Sheet for failing to deliver requisite financial reporting (audited annual consolidated financial statements, quarterly financial statements and a monthly borrowing base certificate) thereunder (collectively, the "**May Breaches**").¹⁴

13. BMO subsequently sent a default letter (the "**May Default Letter**") to the Borrowers, advising them of the May Breaches and that BMO had retained KSV as the bank's financial advisor for the purposes of monitoring the Borrowers' financial health and assessing the value of BMO's security. The May Default Letter additionally required the Borrowers to provide BMO with copies of all outstanding financial reporting required under the Term Sheet (the "**May Financial Reporting Requirements**"), together with current reporting on accounts receivable, accounts payable, holdbacks and a summary of all outstanding HST, GST and source deductions owing to the CRA.¹⁵ Ultimately, the Borrowers failed to address the May Financial Reporting Requirements on a timely basis.¹⁶

14. On May 22, 2025, BMO issued a demand letter to each of the Borrowers (the "**Demand Letter**") demanding repayment of the Indebtedness due and owing to BMO by no later than June 2, 2025. The Demand Letters enclosed notice(s) of intention to enforce security (collectively, the

¹³ [Wolf Affidavit, para 40](#)

¹⁴ [Wolf Affidavit, para 41](#)

¹⁵ [Wolf Affidavit, para 43](#)

¹⁶ [Wolf Affidavit, para 45](#)

“NITES”) for each of the Borrowers, delivered in accordance with the BIA.¹⁷ The notice period set out in the Demand Letter and NITES has long expired.

The Receivership Application and Forbearance Arrangements

15. BMO commenced this Receivership Application on June 17, 2025. Prior to the original return date for that Application, BMO considered whether an acceptable forbearance agreement could be negotiated with the Borrowers.¹⁸

16. On September 4, 2025, BMO and the Borrowers entered into a forbearance agreement, pursuant to which the Receivership Application was adjourned (the “**First Forbearance Agreement**”).¹⁹

17. Upon the expiration of the forbearance period under the First Forbearance Agreement, BMO and the Borrowers entered into a second forbearance agreement on February 2, 2026 (the “**Second Forbearance Agreement**”), pursuant to which BMO agreed to forbear from enforcing until May 31, 2026. The Second Forbearance Agreement was intended to provide the Borrowers with time to, among other things, market and sell the Equipment. Ultimately, little progress was made in this regard.²⁰

18. On April 30, 2026, BMO notified Mr. Ortino of a Liquidity Shortfall in the amount of \$60,000. The Family did not advance funds sufficient to address this Liquidity Shortfall within 5 business days, as required under the terms of the Second Forbearance Agreement. The failure of the Borrowers to address this Liquidity Shortfall constituted a terminating event under the Second

¹⁷ [Wolf Affidavit, para 46](#)

¹⁸ [Wolf Affidavit, paras 48-49](#)

¹⁹ [Wolf Affidavit, para 50](#)

²⁰ [Wolf Affidavit, paras 51-52](#)

Forbearance Agreement. As a result, on April 8, 2026, BMO advised the Borrowers that the Second Forbearance Agreement had been terminated by its terms.²¹

Equipment Sales

19. The Equipment represents an important source of recovery for BMO and the Borrowers other secured creditors.²²

20. In order to limit BMO's loss as much as possible, the Receiver intends to immediately move forward with marketing the Equipment for sale. It is anticipated that expressions of interest may be received by the Receiver for individual pieces of equipment.²³ BMO is not seeking authorization for the Receiver to make an *en bloc* sale of the Equipment to a third party at this time. Should the Receiver determine that such a sale will maximize recoveries, the Receiver will seek Court-approval for such a transaction.²⁴

21. The Appointment Order contemplates providing the Receiver with the power to enter into individual transactions for specific pieces of Equipment without further Court order, and, provided that such sale is an Eligible Transaction, to vest out liens and encumbrances upon the Receiver delivery a Sale Certificate to the applicable Purchaser.

PART III. ISSUES

22. The issues to be determined by the Court in respect of this Application are:

- (a) whether it is just or convenient for the Court to appoint KSV as Receiver over the Property;
- and

²¹ [Wolf Affidavit, paras 53-56](#)

²² [Wolf Affidavit, para 59](#)

²³ [Wolf Affidavit, para 61](#)

²⁴ [Wolf Affidavit, para 64](#)

- (b) whether the Receiver should be authorized to enter into Eligible Transaction(s) in respect of the Equipment and vest title to such Equipment free and clear of all liens and encumbrances to a Purchaser of such Equipment by delivering to a Purchaser a Sale Certificate in the form attached to the Appointment Order.

PART IV. THE LAW

Technical Requirements to Appoint a Receiver Have Been Met

23. BMO submits that the technical requirements for the appointment of a receiver under both the BIA and CJA have been met.

24. BMO is a secured creditor of the Borrowers in respect of the Property and is therefore entitled to bring an application under section 243 of the BIA.²⁵ As required under sub-section 243(1.1) of the BIA, BMO issued the Demand Letters and NITES.²⁶ The notice period under the NITES has expired.²⁷

25. KSV is qualified to act as Receiver in accordance with the requirements of sub-section 243(4) of the BIA and has consented to serving as Receiver in these proceedings.²⁸

It Is Just and Convenient To Appoint the Receiver

26. Pursuant to sub-section 243(1) of the BIA, the Court may, on application by a secured creditor, appoint a receiver where it considers it to be just or convenient to do so:

Court may appoint a receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or

²⁵ [BIA](#), *supra* note 1, [section 243](#); [Wolf Affidavit](#), [paras 26-27](#)

²⁶ [BIA](#), *supra* note 1, [sub-section 243\(1\)](#); [Wolf Affidavit](#), [para 46](#)

²⁷ [BIA](#), *supra* note 1, [sections 243 and 244](#); [Wolf Affidavit](#), [para 46](#), [para 65](#)

²⁸ [BIA](#), *supra* note 1, [sub-section 243\(4\)](#); [Wolf Affidavit](#), [para 70](#), [Exhibit "DD": KSV Consent to Act as Receiver](#)

convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.²⁹

27. Sub-section 101(1) of the CJA similarly provides for the appointment of a receiver by interlocutory order where the appointment is “just and convenient”:

Injunctions and receivers

101. (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.³⁰

28. In *Freure Village*, Justice Blair (as he was then), found that, in deciding if the appointment of a receiver is just or convenient, the Court must have regard to *inter alia* the nature of the property and the rights and interest of all parties in relation thereto, which includes a secured creditor under its security.³¹

29. Generally speaking, the appointment of a receiver is “an extraordinary remedy”. That being said, where a secured creditor is seeking the appointment of a receiver, and its credit documents specifically afford it the right to appoint a receiver the appointment of a receiver is not an “extraordinary remedy”. The rationale for this relaxed standard is that, in such circumstances, as

²⁹ [BIA](#), *supra* note 1, [section 243](#)

³⁰ [CJA](#), *supra* note 2, [sub-section 101\(1\)](#)

³¹ [Bank of Nova Scotia v Freure Village on Clair Creek](#), [1996] OJ No 5088 (QL), 40 CBR (3d) 274 (ONSC (Commercial List)) at [paras 10-12](#) [*“Freure Village”*].

Justice Morawetz (as he then was), remarked in *Sherco Properties*: “the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties”.³²

30. The GSAs delivered by the Borrowers to BMO explicitly provide for the appointment of a receiver. The GSAs state that: “Upon any default under this Security Agreement, the Bank may declare any or all of the Obligations to be immediately due and payable and may proceed to realize the security hereby constituted and to enforce its rights by...proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers...”.³³

31. Over and above the GSAs, the terms of the Second Forbearance Agreement, contemplate the appointment of KSV as Receiver upon the expiration of the Forbearance Period, including by the occurrence of a terminating event thereunder.³⁴

32. In *Atlas Healthcare*, this Court held that where a secured creditor has bargained for the contractual right to have a receiver and manager appointed, there must be a good reason to deprive the creditor of that contractual right.³⁵

33. BMO submits that in accordance with the test and factors outlined above, it is both just and convenient to appoint KSV as receiver over the Property, as:

- (a) the Borrowers have breached the Term Sheet. Demand has been made and the Borrowers have failed to repay the Indebtedness. Just under one year has passed since demand was made;³⁶

³² [Bank of Montreal v Sherco Properties Inc](#), 2013 ONSC 7023 (Commercial List) [“*Sherco Properties*”], at [para 42](#); [Elleway Acquisitions Limited v The Cruise Professionals Limited](#), 2013 ONSC 6866, at [para 27](#)

³³ [Wolf Affidavit](#), Exhibits “E”, “F”, “G”, “H”, “I”, “J”, “K”, “L” and “M”, [para 10](#)

³⁴ [Wolf Affidavit](#), Exhibit “CC”, [para 41](#)

³⁵ [Romspen Investment Corporation v Atlas Healthcare \(Richmond Hill\) Ltd et al](#), 2018 ONSC 7382 (Commercial List) [“*Atlas Healthcare*”], at [para 100](#).

³⁶ [Wolf Affidavit](#), [para 46](#)

- (b) the Borrowers have ceased all meaningful operations and are no longer booking new business.³⁷ Efforts made by the Borrowers to pay down the Bank in a material way have been largely unsuccessful. The appointment of the Receiver at this time, will allow the Receiver to immediately market the Borrowers' assets, property and undertakings with a view to maximizing recovery in an efficient and expeditious manner;
- (c) BMO's credit documents specifically provide BMO with the right to seek the appointment of the Receiver;³⁸ and
- (d) despite facing a material shortfall, BMO has provided the Borrowers with significant time and accommodations to deal with the financial impact of the Alleged Misappropriation Scheme and to attempt to paydown BMO's Indebtedness.³⁹ At this point however, BMO has rightly lost confidence in the Borrowers ability to do so. In the circumstances, the balance of convenience favours BMO being entitled to its preferred realization mechanism.

The Sale and Vesting Mechanism in the Appointment Order is Necessary and Appropriate

34. The proposed powers afforded to the Receiver under the Appointment Order to sell individual pieces of Equipment are in many ways consistent with the powers regularly granted by this Court to a Receiver upon appointment.⁴⁰ In this respect, the form of model receivership order established by the users committee of this Court, contemplates providing a receiver with the power to sell assets without further order of the Court subject to restrictions on the dollar amount of individual transactions as well as the dollar amount of all transactions in the aggregate.

³⁷ [Wolf Affidavit, para 68](#)

³⁸ [Wolf Affidavit](#), Exhibits "[E](#)", "[F](#)", "[G](#)", "[H](#)", "[I](#)", "[J](#)", "[K](#)", "[L](#)" and "[M](#)", para 10

³⁹ [Wolf Affidavit, para 35, 41, 49-52](#)

⁴⁰ [Application Record, Volume 3, Tab 3: Draft Receiver Appointment Order, paras 3\(k\), 25](#)

35. The only additional nuance to the Appointment Order, over and above this structure in the model receivership order, is to incorporate a means for the Receiver to vest out security interests and other claims to Equipment that may be sold under this power, if such proposed sale constitutes an Eligible Transaction (meaning that the consideration for such sale does not exceed \$250,000, that the aggregate consideration for all sales of Equipment does not exceed \$2,000,000, and that any party the Receiver believes to be asserting a PMSI over any Equipment being sold consents to the sale of that Equipment).⁴¹

36. In effect, the Appointment Order establishes a limited framework within which the Receiver may complete modest-value sales efficiently, subject to the safeguards set out in the Appointment Order.

37. The Court has jurisdiction to grant the vesting relief sought by BMO under the proposed Appointment Order. Section 243(1)(c) of the BIA authorizes the Court to appoint a receiver to “take any other action that the court considers advisable”, where the Court considers it just or convenient to do so.⁴² Section 100 of the CJA further provides that the Court may vest in any person an interest in real or personal property that the Court has authority to order be disposed of, encumbered or conveyed.⁴³

38. In *Dianor Resources Inc.*,⁴⁴ the Ontario Court of Appeal (“ONCA”) confirmed that section 243 of the BIA⁴⁵ provides jurisdiction to authorize a receiver to enter into an agreement to sell

⁴¹ [Application Record, Volume 3, Tab 3: Draft Receiver Appointment Order, para 26](#)

⁴² [BIA](#), *supra* note 1, [sub-section 243\(1\)\(c\)](#);

⁴³ [CJA](#), *supra* note 2, [section 100](#)

⁴⁴ [Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.](#), 2019 ONCA 508 [“*Dianor Resources Inc.*”]

⁴⁵ [BIA](#), *supra* note 1, [section 243](#)

property and, in furtherance of that power, to grant an order vesting the purchased property in the purchaser.⁴⁶

39. BMO submits that the proposed vesting mechanism contained in the Appointment Order is a practical and appropriate implementation of that jurisdiction in the circumstances. The Receiver anticipates receiving expressions of interest for individual pieces of Equipment.⁴⁷ Requiring the Receiver to bring multiple motions to Court for separate approval and vesting order(s) for each individual sale would impose significant costs and delay that is disproportionate to the anticipated value of individual Eligible Transactions.

40. The requested vesting relief under the Appointment Order is also narrowly defined. The Receiver may only complete a sale of Equipment where such sale constitutes an Eligible Transaction. Any transaction outside the parameters of an Eligible Transaction will require further Court approval.⁴⁸

41. The Appointment Order preserves the relative priorities of all security interests and other claims to the Equipment as part of the proposed vesting structure. The net proceeds from each Eligible Transaction will stand in the place and stead of the Equipment being sold, and all security interests, liens and claims will attach to those proceeds with the same priority as they had against the purchased Equipment immediately prior to the sale.⁴⁹ As a further safeguard to creditor interests, the proposed Appointment Order requires that if the Receiver is selling a piece of Equipment subject to a potential PMSI claim, it must obtain the consent of the potential PMSI holder.⁵⁰

⁴⁶ [Dianor Resources Inc.](#), *supra* note 44, paras 76-81

⁴⁷ [Wolf Affidavit](#), para 61

⁴⁸ [Wolf Affidavit](#), para 64

⁴⁹ [Application Record, Volume 3, Tab 3: Draft Receiver Appointment Order](#), para 28

⁵⁰ [Application Record, Volume 3, Tab 3: Draft Receiver Appointment Order](#), para 25

42. BMO submits that the sale and vesting mechanism contemplated under the proposed Appointment Order is necessary to maximize realizations in the circumstances. The Receiver expects that Purchasers of Equipment may require certainty that they are acquiring such Equipment free and clear of PPSA registrations, *Repair and Storage Liens Act* (Ontario)⁵¹ liens, and other encumbrances. Absent that certainty, Purchasers may decline to transact. The ability to deliver clear title on closing of any sale is therefore integral to the Receiver's ability to realize value for the benefit of BMO and the Borrowers' other stakeholders.

43. Where appropriate, this Court has previously pre-approved "rolling-vesting structures" in order to facilitate modest transactions without the need for further Court appearances.⁵²

44. BMO therefore submits that the sale and vesting provisions in the proposed Appointment Order are just, convenient and appropriate. They are commercially necessary to permit the Receiver to realize efficiently upon the Equipment, are limited by transaction thresholds and PMSI consent requirements, preserve claims against proceeds with existing priorities intact, and avoid unnecessary cost and delay to the receivership estate, should the Appointment Order be granted.

PART V. CONCLUSION AND RELIEF SOUGHT

45. For the reasons set out above, BMO requests that the Court grant the Receivership Order, substantially in the form included at Tab 3 of the Application Record.

⁵¹ *Repair and Storage Liens Act*, RSO 1990, c R25

⁵² *Enlightened Funding Corporation v Velocity Asset and Credit Corporation et. al.*, (January 19, 2024) Ont. SCJ [Commercial List] Court File No. CV-23-00707330-00CL ([Endorsement of Justice Conway](#)) at para 3; *In the Matter of a Plan of Compromise or Arrangement of World Wide Carriers Ltd. et. al.* (May 21, 2025) Ont. SCJ [Commercial List] Court File No. CV-25-00739519-00CL ([Endorsement of Justice Steele](#)) paras 25-28.

PURSUANT TO RULE 4.06(2.1), THE UNDERSIGNED certifies that they are satisfied as to the authenticity of every authority cited in this factum.



Katherine Yurkovich (LSO 80396R)

RESPECTFULLY SUBMITTED this 19th day of May, 2026.



Thomas Gertner / Katherine Yurkovich

Lawyers for the Applicant, Bank of Montreal

SCHEDULE "A"

LIST OF AUTHORITIES

1. [*Bank of Nova Scotia v. Freure Village on Clair Creek*](#), [1996] OJ No 5088 (QL), 40 CBR (3d) 274 (ONSC (Commercial List)).
2. [*Bank of Montreal v Sherco Properties Inc*](#), 2013 ONSC 7023 (Commercial List).
3. [*Elleway Acquisitions Limited v The Cruise Professionals Limited*](#), 2013 ONSC 6866.
4. *Enlightened Funding Corporation v Velocity Asset and Credit Corporation et. al.*, (January 19, 2024) Ont. SCJ [Commercial List] Court File No. CV-23-00707330-00CL ([Endorsement of Justice Conway](#))
5. *In the Matter of a Plan of Compromise or Arrangement of World Wide Carriers Ltd. et. al.* (May 21, 2025) Ont. SCJ [Commercial List] Court File No. CV-25-00739519-00CL ([Endorsement of Justice Steele](#))
6. [*Romspen Investment Corporation v Atlas Healthcare \(Richmond Hill\) Ltd et al*](#), 2018 ONSC 7382.
7. [*Royal Bank of Canada v. Soundair Corp.*](#), 1991 CanLII 2727 (ON CA)
8. [*Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*](#), 2019 ONCA 508

SCHEDULE “B”**TEXT OF STATUTES, REGULATIONS & BY-LAWS****Bankruptcy and Insolvency Act, RSC, 1985, c B-3****Court may appoint receiver**

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

243 (1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

Definition of receiver

243 (2) Subject to subsections (3) and (4), in this Part, receiver means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

243 (3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

243 (4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

243 (5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

243(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver’s claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of disbursements

243 (7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

- (3) This section does not apply, or ceases to apply, in respect of a secured creditor
- (a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or
 - (b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

Courts of Justice Act, RSO 1990, c C43

Vesting orders

100 A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

101 (2) An order under subsection (1) may include such terms as are considered just.

BANK OF MONTREAL

-AND- ADREIL ORTINO CORP., ET AL.

Respondents

Applicant

APPLICATION UNDER SECTION 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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

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