

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

B E T W E E N :

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 OF THE RECEIVER
(Motion Returnable August 11, 2026)**

August 7, 2026

AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Kyle Plunkett (LSO # 61044N)
Tel: (416) 865-3406
Email: kplunkett@airdberlis.com

Shaun Parsons (LSO # 81240A)
Tel: (416) 637-7982
Email: sparsons@airdberlis.com

Jaclyn Tarola (LSO # 89915Q)
Tel: (416) 865-4636
Email: jtaraola@airdberlis.com

*Lawyers for AlixPartners
Restructuring, Inc., in its capacity
as the Receiver of the Respondents*

PART I - NATURE OF THE MOTION

1. This is a motion by AlixPartners Restructuring, Inc. (“**AlixPartners**”) in its capacity as the Court-appointed Receiver (the “**Receiver**”), appointed pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 21, 2026 (the “**Appointment Order**”)¹ of the Property (as defined below) of 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. (collectively, the “**Debtors**”), for, *inter alia*, the following relief:

- (a) an Approval and Vesting Order, substantially in the form of the draft Approval and Vesting Order (the “**AVO**”) contained at Tab 3 of the Receiver’s Motion Record dated August 4, 2026 (the “**Motion Record**”), *inter alia*:
 - (i) approving the auction (the “**Auction**”) contemplated in the liquidation services agreement (the “**LSA**”) between AlixPartners, in its capacity as Receiver, and Infinity Assets Solutions Inc. (“**Infinity**”) dated July 29, 2026, together with the schedules thereto, and authorizing Infinity to complete the Auction; and
 - (ii) upon: (a) Infinity completing a sale to a purchaser (each, a “**Purchaser**”) of one or more pieces of Equipment (as defined below), (b) receipt by Infinity from such Purchaser of the purchase price determined at the Auction or the

¹ First Report of the Receiver dated August 4, 2026, Motion Record of the Receiver dated August 4, 2026, Tab 2 (“**First Report**”), [Appendix “A”](#).

time of sale, and (c) delivery by the auctioneer to such Purchaser of a bill of sale (each, a “**Bill of Sale**”), vesting absolutely in the Purchaser all of the Debtors’ and the Receiver’s right, title, and interest in and to the Equipment purchased by such Purchaser at the Auction or the time of sale and described in such Bill of Sale, free and clear of and from any and all security interests, liens, executions, levies, charges, or other financial or monetary claims;

(b) an Ancillary Order, substantially in the form of the draft Ancillary Order contained at Tab 5 of the Motion Record (the “**Ancillary Order**”), *inter alia*:

- (i) approving the First Report of the Receiver dated August 4, 2026 (the “**First Report**”) and the actions, conduct, and activities of the Receiver described therein;
- (ii) authorizing and directing the Receiver to make certain distributions from the net sale proceeds of the Auction to Bank of Montreal (“**BMO**”), subject to any holdbacks the Receiver believes are required to complete these proceedings or which may be owing to other creditors with a prior-ranking interest in the proceeds;
- (iii) ordering and declaring that the Receiver shall not incur any liability under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), the *Taxation Act*, 2007, S.O. 2007, c. 11, Sch. A, the *Excise Tax Act*, R.S.C. 1985, c. E-15, the *Employment Insurance Act*, S.C. 1996, c. 23, the *Retail Sales Tax Act*, R.S.O. 1990, c. R.31, the *Corporations Tax Act*, R.S.O. 1990, c. C.40 or any other similar applicable federal, provincial or territorial tax legislation

(collectively, the “**Statutes**”), for facilitating any of the Distributions (as defined below) as contemplated by and in accordance with the Ancillary Order, and that the Receiver shall not have any liability for any of the Debtors’ tax liabilities under the Statutes in respect of such Distributions, regardless of how or when such liabilities may have arisen; and

- (iv) sealing the confidential appendices to the First Report (the “**Confidential Appendices**”) until the closing of the Auction or further order of this Court.

PART II - SUMMARY OF FACTS

A. Background and Appointment of the Receiver

2. The relevant facts in connection with this motion are more fully set out in the First Report and the appendices thereto. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the First Report.²

3. On May 21, 2026, on the application of BMO, this Court granted the Appointment Order that, *inter alia*, appointed AlixPartners as Receiver, without security, of all the assets, undertakings, and properties (the “**Property**”) of the Debtors acquired for, or used in relation to, the Debtors’ business operations.

4. As of May 12, 2026, the Respondents were indebted to BMO in the amount of approximately \$18.5 million, plus accruing fees, costs, and interest.³ BMO is the Debtors’ principal secured creditor.⁴

² First Report at [para 1.0\(1\)](#).

³ First Report at [para 2.0\(4\)](#).

⁴ First Report at [para 3.0\(1\)](#).

5. Historically, the Respondents operated landscaping, excavation, and grading businesses, which operations have now ceased.⁵ The Debtors lease three equipment yards located at (i) 90 Shamrock Road, London, Ontario; (ii) 984 Farewell Street, Oshawa, Ontario; and (iii) 11904 Woodbine Avenue, Whitchurch-Stouffville, Ontario (collectively, the “**Equipment Yards**”).⁶

6. The primary purpose of these receivership proceedings is to locate, secure, and realize upon the Property, which is largely comprised of excavating and landscaping equipment and dump trucks (collectively, the “**Equipment**”).

7. Immediately following the granting of the Appointment Order, the Receiver noted that numerous pieces of Equipment were missing (the “**Missing Equipment**”). The Receiver undertook efforts to locate the Missing Equipment and recovered certain of the Missing Equipment from various job sites across southern Ontario. The Receiver took possession of the recovered Missing Equipment, which were returned to the Equipment Yards for preservation and realization.⁷

B. The Sale Process and Auction

8. On June 29, 2026, the Receiver solicited proposals from eight liquidators and advised of the opportunity to sell the Equipment on behalf of the Receiver and requested the receipt of auction proposals by no later than 5:00 p.m. (Toronto time) on July 16, 2026 (the “**Sale Process**”). The Receiver provided each liquidator with a detailed inventory of the Equipment and, between July 1

⁵ First Report at [para 2.0\(1\)](#).

⁶ First Report at [paras 2.0\(6\)-\(7\)](#).

⁷ First Report at [para 2.0\(7\)](#).

and July 16, 2026, facilitated the liquidators' due diligence, including allowing each of them to attend the Debtors' premises to physically inspect the Equipment.⁸

9. On July 16, 2026, the Receiver received five offers, with the best offer submitted by Infinity, which provides for the greatest recovery available in the circumstances.⁹ Among other terms, the LSA contains a net minimum guarantee (the "**Guaranteed Amount**") and provides that, following recovery by Infinity of the Guaranteed Amount and its costs, the Receiver is entitled to 85% of all sale proceeds realized from the Equipment.¹⁰

PART III - ISSUES

10. The substantive issues to be adjudicated by the Court on the Receiver's motion are, *inter alia*:

- (a) the approval of the Auction contemplated in the LSA;
- (b) the approval of the First Report and the actions, conduct, and activities of the Receiver referred to therein;
- (c) the authorization of the Receiver to make the Distributions to BMO;
- (d) the approval of the protections and releases relating to the implementation of the Distributions, including shielding the Receiver from liability under the Statutes; and
- (e) the sealing of the Confidential Appendices to the First Report.

⁸ First Report at [paras 4.0\(1\)-\(2\)](#).

⁹ First Report at [para 4.0\(3\)](#).

¹⁰ First Report at [para 4.1\(1\)](#).

PART IV - STATEMENT OF LAW & AUTHORITIES

A. The Auction and LSA Should Be Approved, and the AVO Should Be Granted

11. The Appointment Order empowers and authorizes the Receiver to sell, convey, transfer, lease, or assign the Property with the approval of the Court in respect of any transaction exceeding \$250,000.¹¹ Additionally, section 100 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”), authorizes this Court to grant an order vesting “in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed”.¹² As such, this Court has jurisdiction to grant the proposed AVO.

12. The Receiver believes that the LSA is fair and reasonable and that it is in the best interests of the Debtors’ stakeholders to enter into the Auction. Further marketing efforts are unlikely to result in a superior transaction and would diminish value through ongoing occupancy costs at the Equipment Yards, insurance costs, and other carrying costs.¹³

13. The following criteria are to be considered by the Court when asked to approve a sale of assets in a receivership context, as articulated by the Court of Appeal for Ontario in *Royal Bank of Canada v. Soundair Corp.* (“*Soundair*”): (i) whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently; (ii) the interests of all parties; (iii) the efficacy and integrity of the process by which offers were obtained; and (iv) whether there has been unfairness in the working out of the process.¹⁴

¹¹ Appointment Order at [para 3\(k\)\(ii\)](#).

¹² *Courts of Justice Act*, [R.S.O. 1990, c. C.43, s. 100](#).

¹³ First Report at [para 4.3\(1\)](#).

¹⁴ *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#) at [para 16](#).

14. Courts will generally defer to a court-appointed receiver's business expertise in reviewing a sale and will not second-guess their recommendation absent exceptional circumstances.¹⁵ Where a receiver has acted reasonably, prudently, and not arbitrarily, the court will not conduct a detailed review of each aspect of the procedure by which a receiver's decision was made with respect to a sales process.¹⁶

15. It is respectfully submitted that the *Soundair* test is readily met on the facts of this case and that the Court should grant the AVO for the following reasons:

- (a) **The marketing and sale process was reasonable and not unfair:** The Receiver conducted a competitive process by soliciting liquidation proposals from eight liquidators regarding the manner in which the Equipment could be realized upon. Each liquidator was provided with a detailed inventory of the Equipment and was afforded an opportunity to conduct due diligence, including site inspections of the Equipment. The Receiver received five offers and, ultimately, Infinity emerged as the best offer.¹⁷
- (b) **Creditors were consulted:** All known creditors received notice of the Receiver's motion. The Receiver is not aware of any objecting party to the LSA or the Auction contemplated therein;¹⁸
- (c) **The uncontested evidence is supportive of the LSA and Auction:** In support of the LSA and the Auction contemplated therein, the Receiver filed the First Report.

¹⁵ *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, [2021 ONCA 375](#) at [para 15](#) citing *Regal Constellation Hotel Ltd., Re.*, 2004 CanLII 206 (ONCA) at [para 23](#).

¹⁶ *Bank of Montreal v. Dedicated National Pharmacies Inc. et al*, 2011 ONSC 4634 at [para 43](#).

¹⁷ First Report at [paras 4.0\(1\)-\(3\)](#).

¹⁸ First Report at [para 4.3\(1\)](#).

The Receiver is of the view that the offer submitted by Infinity provides for the greatest recovery available in the circumstances. The economic terms of the LSA, including the Guaranteed Amount and the Receiver's entitlement to 85% of proceeds realized above the amounts recoverable by Infinity, are fair and reasonable and maximize value for the Debtors' stakeholders. There are no exceptional circumstances here that would warrant Court intervention in the Auction;¹⁹ and

- (d) **Purchase price is fair and reasonable:** The Auction will involve broad marketing of the Equipment to promote competitive bidding and maximize realizations. The Guaranteed Amount provides certainty of recovery and mitigates downside risk to the Debtors' estate, while the proceeds-sharing structure incentivizes Infinity to achieve the highest possible realizations from the Auction for the benefit of stakeholders.²⁰

16. This Court has granted similar relief in comparable receivership proceedings.²¹ The granting of the AVO is a condition of the Auction and, based on the foregoing, it is the informed business judgment of the Receiver that the LSA and the Auction contemplated therein are in the best interests of the Debtors and their stakeholders. In the absence of any indication that the Receiver has acted improvidently, that business judgment is entitled to deference by this Court.

¹⁹ First Report at [para 4.3\(1\)](#).

²⁰ First Report at [paras 4.1\(1\)](#) and [4.3\(1\)](#).

²¹ [Order of Justice J. Dietrich](#) dated December 29, 2025 in *The Toronto-Dominion Bank v. Port Whitby Village Inc.*, CL-25-00753593-0000.

B. The Ancillary Order Should Be Granted

(i) The First Report and the Activities of the Receiver Should Be Approved

17. This Court has inherent jurisdiction to review and approve the activities of a court-appointed receiver where the receiver has met the objective test that it has acted reasonably, prudently, and not arbitrarily.²²

18. In this case, the Receiver submits that all of its activities as described in the First Report were necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Appointment Order, and in each case were in the best interests of the Debtors' stakeholders, generally.²³ The proposed Ancillary Order appropriately limits the effects of that approval so that only the Receiver, in its personal capacity and only with respect to its own personal liability, may rely on it.²⁴

(ii) The Distributions Should be Approved

19. Subject to the completion of the Auction, the Receiver intends to distribute to BMO the net proceeds realized from the sale of Equipment over which BMO holds a senior-ranking security interest (the "**Distributions**").

20. Distributions are frequently authorized in insolvency proceedings under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C. B-3, as amended (the "**BIA**").²⁵ The power to authorize a court-appointed receiver to make distributions is "implicit in the BIA", "practically necessary for

²² *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, [2014 BCSC 1855](#) at [para 54](#).

²³ First Report at [para 6.0\(1\)](#).

²⁴ Draft Ancillary Order at para 3, Tab 5 to the Motion Record; *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at [paras 24-26](#).

²⁵ *Bankruptcy and Insolvency Act*, [R.S.C. 1985, c. B-3, s. 243\(1\)\(c\)](#).

the accomplishment of the objectives of the legislation”, and frequently incorporated in receivership orders, as it is here.²⁶

21. The Receiver will retain any proceeds where (i) there is uncertainty regarding BMO’s priority with respect to the Equipment; and (ii) another secured creditor has priority. The Receiver will also retain sufficient funds to pay the fees and costs associated with these proceedings.²⁷

22. When determining whether to authorize a distribution to a senior-ranking secured creditor, Courts have considered, among other things: (i) the validity and enforceability of such creditor’s security; (ii) whether the debtor or estate will have sufficient liquidity subsequent to the distribution; (iii) the economy to be achieved by the proposed distribution; and (iv) whether any objecting creditor has an economic interest in the assets that gave rise to the proceeds to be distributed.²⁸ Each of these considerations support the approval of the Distributions.

23. The Receiver obtained a legal opinion from its counsel, Aird & Berlis LLP, confirming that, subject to customary assumptions and qualifications contained therein, the security granted by the Debtors to BMO constitutes valid and enforceable security, creates a valid security interest in the applicable collateral, and has been properly perfected or otherwise evidenced by the required registrations.²⁹

24. The Receiver respectfully submits that the proposed Distributions are appropriate and should be authorized in accordance with the draft Ancillary Order.

²⁶ *Forjay Management Ltd. v. 625536 B.C. Ltd.*, [2019 BCCA 368](#) at [paras 26](#) and [31](#); *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, [2024 ONSC 7127](#) at [para 43](#).

²⁷ First Report at [paras 5.0\(2\)](#) and [\(4\)](#).

²⁸ *AbitibiBowater inc. (Arrangement relatif à)*, [2009 QCCS 6461](#) at [paras 70-75](#); *Kingsett* at [paras 43-44](#).

²⁹ First Report at [para 5.0\(3\)](#).

(iii) The Receiver Should Be Shielded from Liability Under the Statutes

25. Subsection 243(1) of the BIA provides supervising judges with the broadest possible authority in insolvency proceedings to enable them to react to the unique circumstances of each case and to do what “justice dictates” and “practicality demands”.³⁰ By implication, the broad powers conferred under subsection 243(1) extend beyond those expressly granted to include all powers that are practically necessary for the accomplishment of the purpose of a receivership, namely, to enhance and facilitate the preservation and realization of assets for the benefit of creditors, or that are essential to the receivership.³¹

26. As made clear in *One Bloor West Toronto Group (The One) Inc. (Re)* (“**The One**”), the “broad discretion” conferred under section 11 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”), vests this Court with jurisdiction to “shield its officers from statutory liability that they might otherwise face”, including protection that “extends beyond the general shield of liability of its court officers”.³²

27. Before *The One*, in *Comerica Bank v. Dragonwave Inc.* (“**Dragonwave**”) and *Re: 1000156489 Ontario Inc.* (“**489**”), this Court declined to expressly relieve a Court-appointed receiver and a Court-appointed monitor, respectively, from liability that could arise under the Statutes in connection with Court-approved distributions. In neither case did the Court conclude that it lacked jurisdiction to grant such relief. In *Dragonwave*, the Court declined the relief without

³⁰ *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) [“**Third Eye**”] at [paras 52, 72](#).

³¹ *Peace River Hydro Partners v. Petrowest Corp.*, [2022 SCC 41](#) at [para 148](#); *Third Eye* at [paras 72-73](#) and [76-77](#); *Business Development Bank of Canada v. Astoria Organic Matters Ltd.*, [2019 ONCA 269](#) at [paras 50-51](#).

³² *One Bloor West Toronto Group (The One) Inc. (Re)*, [2026 ONSC 1854](#) [“**The One**”] at [paras 53](#) and [61](#); CCAA, [s.11](#).

prejudice and required comprehensive factums; in 489, the Court declined the relief on the record before it and permitted the issue to be revisited on notice to the taxation authorities.³³

28. These concerns are addressed here. The Receiver has provided comprehensive submissions on the source and scope of this Court's jurisdiction, the requested protection is narrowly limited to potential personal liability arising from the Court-authorized Distributions, the Receiver proposes to maintain reserves for any claim ranking in priority to BMO, and the requested protection does not affect any obligation or claim of the Debtor under the Statutes. The relevant taxation authorities have also been served with the Motion Record, including the proposed Distribution Order.³⁴

29. In *The One*, the Court held that statutory personal-liability provisions can impede a Court officer from paying a secured creditor even where that creditor ranks ahead of the relevant tax authority. The Court also observed that, although certain of the Statutes exempt a trustee in bankruptcy from their clearance certificate requirements, that exemption does not appear in every Statute or every potentially applicable provision and therefore does not eliminate the uncertainty facing a Court-appointed receiver.³⁵

³³ *Comerica Bank v. Dragonwave Inc.*, [2017 ONSC 6104](#) at paras 9-12; *Re: 1000156489 Ontario Inc.*, [2026 ONSC 610](#) at paras [7-10](#) and [13-16](#).

³⁴ Affidavit of Service of Jaclyn Tarola sworn August 5, 2026 at para 2 and Exhibit "B".

³⁵ *The One* at [paras 35-41](#); *Corporations Tax Act*, [R.S.O. 1990, c. C.40](#), [ss. 107\(1\)-\(3\)](#); *Employment Insurance Act*, [S.C. 1996, c. 23](#), [ss. 86\(3\)-\(4\) and \(7\)](#); *Excise Tax Act*, [R.S.C. 1985, c. E-15](#), [ss. 81\(1\)-\(2\)](#) and [270\(1\)-\(4\)](#); *Income Tax Act*, [R.S.C. 1985, c. 1 \(5th Supp.\)](#), [ss. 159\(2\)-\(3\)](#); *Retail Sales Tax Act*, [R.S.O. 1990, c. R.31](#), [ss. 22\(1\), \(5\)-\(6\)](#); *Taxation Act*, [2007, S.O. 2007, c. 11, Sch. A](#), [s. 117\(1\)](#).

30. Although *The One* was a proceeding under the CCAA, this Court has noted that similar considerations are applicable in receivership proceedings.³⁶ In doing so, this Court has granted similar relief in comparable receivership proceedings.³⁷

31. This Court’s jurisdiction to protect its own officers is well-established. As the Court of Appeal for Ontario has affirmed, a receiver “is not a legitimate target” for dissatisfied creditors. Providing a limited liability shield allows for the proper and orderly conduct of the insolvency proceeding and avoids unnecessary and unjustified proceedings.³⁸

32. General releases in favour of court officers: (i) ensure the proper and orderly conduct of a receivership and the execution of a receiver’s duties; (ii) avoid unnecessary and unjustified proceedings; (iii) shield the receiver from claims incidental to the performance of its court-authorized duties; and (iv) provide finality.³⁹ The same rationale supports this Court’s jurisdiction to grant specific releases in respect of the Statutes.

33. In addition to being satisfied regarding its jurisdiction to shield the Receiver from liability under the Statutes in connection with the Distributions, this Court must be satisfied that it is appropriate in the circumstances to do so.⁴⁰

34. The Receiver submits that the requested protection is appropriate because: (i) it does not extinguish or vary any obligation of the Debtor under the Statutes; (ii) the Receiver may establish

³⁶ [Endorsement of Justice J. Dietrich](#) dated July 23, 2026 in *Bank Of China (Canada) v. 13995291 Canada Inc.*, CV-24-00723994-00CL.

³⁷ [Order of Justice J. Dietrich](#) dated July 23, 2026 in *Bank Of China (Canada) v. 13995291 Canada Inc.*, CV-24-00723994-00CL.

³⁸ *The One* at [paras 43-44](#); *Potentia Renewables Inc. v. Deltro Electric Ltd.*, [2019 ONCA 779](#) [*“Potentia”*] at paras [48-50](#).

³⁹ *Potentia* at [paras 48-50](#); *Pinnacle v. Kraus*, [2012 ONSC 6376](#) at [para 47](#); *The One* at [para 44](#).

⁴⁰ *The One* at [paras 29-30](#) and [50-52](#).

and maintain certain reserves for any claim that benefits from an applicable priority; (iii) it protects the Receiver only from potential personal liability for making Distributions specifically authorized by this Court; (iv) it does not make declarations regarding whether the Receiver is a “representative” or “legal representative” of the Debtor or is making “distributions” or “distributing” within the respective meanings of those terms in the Statutes; and (v) it is consistent with section 142 of the CJA, which provides that a person is not liable for any act done in good faith in accordance with an order or process of an Ontario court.⁴¹

(iv) The Sealing Order Should Be Granted

35. The Receiver requests that the Confidential Appendices to the First Report be sealed until completion of the Auction or further order of this Court. The Confidential Appendices contain commercially sensitive information, including the purchase price of the Assets (as defined in the LSA) and detailed offer information, the disclosure of which could prejudice the Receiver’s ability to re-market and sell the Assets should the Auction not be completed, to the detriment of the Debtors’ stakeholders.

36. Section 137(2) of the CJA gives this Court jurisdiction to grant the requested sealing order.⁴² The applicable test for granting a sealing order requires the party seeking such relief to establish that:

- (a) court openness poses a serious risk to an important public interest;

⁴¹ Draft Distribution Order at [paras 9-11](#), Tab 5 to the Motion Record; *The One* [paras 51](#), [53-57](#) and [60-61](#); *CJA* [s. 142](#).

⁴² *CJA*, [s. 137\(2\)](#).

- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.⁴³

37. This Court has granted sealing orders in circumstances where the disclosure of commercially sensitive information could prejudice a sale process if the proposed transaction fails to close and the assets must be remarketed.⁴⁴ This Court has also held that, in such circumstances, there is no reasonable alternative to a sealing order; stakeholders will not be materially prejudiced; and any deleterious effects are outweighed by the benefits of granting such relief.

38. Disclosure of the contents of the Confidential Appendices could adversely impact the Receiver's ability to re-market the Equipment in the event the Auction fails to close. Disclosure of this information could impact any future realizations in future sales processes, should that be required.

39. There is no reasonable alternative to the sealing order in these circumstances. No stakeholder would be materially prejudiced by sealing the Confidential Appendices and the salutary effects of granting the relief outweigh any deleterious effects. Additionally, the relief is temporally limited, pending completion of the Auction or further order of this Court.

⁴³ *Sherman Estate v. Donovan*, [2021 SCC 25](#) at [para 38](#).

⁴⁴ *Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.*, [2023 ONSC 5911](#) at [paras 104-107](#).

PART V - RELIEF SOUGHT

40. For the reasons set out above, the Receiver requests that this Court grant the proposed Orders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of August, 2026



AIRD & BERLIS LLP

Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Kyle Plunkett (LSO # 61044N)

Tel: (416) 865-3406

Email: kplunkett@airdberlis.com

Shaun Parsons (LSO # 81240A)

Tel: (416) 637-7982

Email: sparsons@airdberlis.com

Jaclyn Tarola (LSO # 89915Q)

Tel: (416) 865-4636

Email: jtarola@airdberlis.com

*Lawyers for AlixPartners Restructuring,
Inc., in its capacity as the Receiver of the
Respondents*

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#)
2. *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, [2021 ONCA 375](#)
3. *Regal Constellation Hotel Ltd., Re.*, [2004 CanLII 206 \(ON CA\)](#)
4. *Bank of Montreal v. Dedicated National Pharmacies Inc. et al.*, [2011 ONSC 4634](#)
5. [Order of Justice J. Dietrich](#) dated December 29, 2025 in *The Toronto-Dominion Bank v. Port Whitby Village Inc.*, CL-25-00753593-0000.
6. *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, [2014 BCSC 1855](#)
7. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
8. *Forjay Management Ltd. v. 625536 B.C. Ltd.*, [2019 BCCA 368](#)
9. *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, [2024 ONSC 7127](#)
10. *AbitibiBowater inc. (Arrangement relatif à)*, [2009 QCCS 6461](#)
11. *Peace River Hydro Partners v. Petrowest Corp.*, [2022 SCC 41](#)
12. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#)
13. *Business Development Bank of Canada v. Astoria Organic Matters Ltd.*, [2019 ONCA 269](#)
14. *One Bloor West Toronto Group (The One) Inc. (Re)*, [2026 ONSC 1854](#)
15. [Endorsement of Justice J. Dietrich](#) dated July 23, 2026 in *Bank Of China (Canada) v. 13995291 Canada Inc.*, CV-24-00723994-00CL
16. [Order of Justice J. Dietrich](#) dated July 23, 2026 in *Bank Of China (Canada) v. 13995291 Canada Inc.*, CV-24-00723994-[00CL](#)
17. *Comerica Bank v. Dragonwave Inc.*, [2017 ONSC 6104](#)
18. *Re: 1000156489 Ontario Inc.*, [2026 ONSC 610](#)
19. *Potentia Renewables Inc. v. Deltro Electric Ltd.*, [2019 ONCA 779](#)
20. *Pinnacle v. Kraus*, [2012 ONSC 6376](#)

21. *Sherman Estate v. Donovan*, [2021 SCC 25](#)
22. *Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.*, [2023 ONSC 5911](#)

Certificate of Authenticity

I, Shaun Parsons, am satisfied as to the authenticity of every authority cited in the factum, in accordance with Rule 4.06.1(2.1) of the *Rules of Civil Procedure*, R.R.O, 1990, Reg. 194.

August 7, 2026

DATE



Shaun Parsons

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Courts of Justice Act, RSO 1990, c. C.43

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. R.S.O. 1990, c. C.43, s. 100

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Court lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see. R.S.O. 1990, c. C.43, s. 137.

Protection for acting under court order

142 A person is not liable for any act done in good faith in accordance with an order or process of a court in Ontario.

Bankruptcy and Insolvency Act, R.S.C., 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.

Orders respecting fees and disbursements

(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.

Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Corporations Tax Act, R.S.O. 1990, c. C.40

Payment of tax by receivers

107 (1) Every person required under subsection 75 (7) to deliver a return for a corporation for a taxation year shall, immediately on receipt of a notice of assessment or reassessment in respect of the taxation year, pay all taxes, interest, penalties and other amounts payable under this Act by or in respect of the corporation to the extent that the person has or had in the person's possession or control property belonging to the corporation or its estate, at any time since the taxation year, and the person shall thereupon be deemed to have made the payment on behalf of the corporation.

Certificate of tax paid

(2) Every assignee, liquidator, receiver, receiver-manager, and other agent, other than a trustee in bankruptcy, before distributing any property of the corporation under their control, shall obtain a certificate from the Minister certifying that all taxes, interest, penalties and other amounts payable by the corporation under this Act have been paid or that security for the payment thereof in a form acceptable to the Minister has been given under section 103.

Personal liability of receivers

(3) Any person referred to in subsection (2) who fails to obtain the certificate referred to therein shall be personally liable to Her Majesty in right of Ontario for an amount equal to the taxes, interest, penalties and other amounts payable under subsection (1) and such debt shall be deemed to be tax owing by such person under this Act and may be enforced in accordance with the provisions of this Act.

Employment Insurance Act, S.C. 1996, c. 23

Certificate before distribution

86 (3) Before distributing any property over which a responsible representative has control in that capacity, the responsible representative shall obtain a certificate from the Minister certifying the payment, or acceptance by the Minister of security for payment, of all amounts

- (a) for which an employer is liable under this Act up to and including the date of distribution; and
- (b) for the payment of which the responsible representative is or can reasonably be expected to become liable in that capacity.

Personal liability

(4) If the responsible representative distributes to one or more persons property over which the responsible representative has control in that capacity, without obtaining the certificate, the responsible representative is personally liable for the payment of the amounts to the extent of the value of the property distributed and the Minister may assess the responsible representative for the amounts in the same manner and with the same effect as an assessment made under section 85.

Definition of *responsible representative*

(7) For the purposes of this section, *responsible representative* means a person, other than a trustee in bankruptcy, who is an assignee, liquidator, receiver, receiver-manager, administrator, executor, liquidator of the succession or any other like person administering, winding up, controlling or otherwise dealing with a property, business or estate of another person.

Excise Tax Act, R.S.C. 1985, c. E-15

Certificate before distribution

81 (1) Every executor, liquidator of a succession, administrator, assignee, liquidator or other like person, other than a trustee in bankruptcy, shall, before distributing any assets under his control in that capacity, obtain a certificate from the Minister certifying that no tax, penalty, interest or other sum under this Act, other than Part I, chargeable against or payable by that person in that capacity or chargeable against or payable in respect of those assets, remains unpaid or that security for the payment thereof has, in accordance with section 80.1, been accepted by the Minister.

Personal liability

(2) Any person who distributes assets without a certificate as required by subsection (1) is personally liable to pay to Her Majesty an amount equal to the lesser of

- (a) the value of the assets so distributed, and
- (b) the amount of any tax, penalty, interest or other sum that remains unpaid and for the payment of which security has not been furnished to the Minister.

Definitions

270 (1) In this section,

receiver means a person who is a receiver within the meaning assigned by subsection 266(1); (séquestre)

representative means

(a) a person, other than a trustee in bankruptcy or a receiver, who is administering, winding up, controlling or otherwise dealing with any property, business, commercial activity or estate of a registrant, and

(b) a trustee of a trust that is a registrant. (représentant)

Certificates for receivers

(2) Every receiver shall, before distributing to any person any property or money under the control of the receiver in the receiver's capacity as receiver, obtain a certificate from the Minister certifying that all amounts that are, or can reasonably be expected to become, payable or remittable under this Part by the receiver in that capacity in respect of the reporting period during which the distribution is made, or any previous reporting period, have been paid or that security for the payment or remittance of the amounts has, in accordance with this Part, been accepted by the Minister.

Certificates for representatives

(3) Every representative of a registrant shall, before distributing to any person any property or money under the control of the representative in the representative's capacity as the representative, obtain a certificate from the Minister certifying that

(a) all amounts that are payable or remittable by the registrant under this Part in respect of the reporting period during which the distribution is made, or any previous reporting period, and

(b) all amounts that are, or can reasonably be expected to become, payable or remittable under this Part by the representative in that capacity in respect of the reporting period during which the distribution is made, or any previous reporting period,

have been paid or that security for the payment or remittance of the amounts has, in accordance with this Part, been accepted by the Minister.

Liability for failure to obtain certificate

(4) Any

(a) receiver who distributes property or money without obtaining a certificate as required by subsection (2) in respect of the amounts referred to in that subsection, or

(b) representative who distributes property or money without obtaining a certificate as required by subsection (3) in respect of the amounts referred to in that subsection

is personally liable for the payment or remittance of those amounts to the extent of the value of the property or money so distributed.

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)

Certificate before distribution

159 (2) Every legal representative (other than a trustee in bankruptcy) of a taxpayer shall, before distributing to one or more persons any property in the possession or control of the legal representative acting in that capacity, obtain a certificate from the Minister, by applying for one in prescribed form, certifying that all amounts

(a) for which the taxpayer is or can reasonably be expected to become liable under this Act at or before the time the distribution is made, and

(b) for the payment of which the legal representative is or can reasonably be expected to become liable in that capacity

have been paid or that security for the payment thereof has been accepted by the Minister.

Personal liability

(3) If a legal representative (other than a trustee in bankruptcy) of a taxpayer distributes to one or more persons property in the possession or control of the legal representative, acting in that capacity, without obtaining a certificate under subsection (2) in respect of the amounts referred to in that subsection,

(a) the legal representative is personally liable for the payment of those amounts to the extent of the value of the property distributed;

(b) the Minister may at any time assess the legal representative in respect of any amount payable because of this subsection; and

(c) the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, to an assessment made under this subsection as though it had been made under section 152 in respect of taxes payable under this Part.

Retail Sales Tax Act, R.S.O. 1990, c. R.31

Trust for money collected

22 (1) Any amount collected or collectable as or on account of tax under this Act by a vendor shall be deemed, despite any security interest in the amount so collected or collectable, to be held in trust for the Crown in right of Ontario and separate and apart from the vendor's property and from

property held by any secured creditor that but for the security interest would be the vendor's property and shall be paid over by the vendor in the manner and at the time provided under this Act and the regulations.

Minister's certificate

(5) Every person who, as assignee, liquidator, administrator, receiver, receiver-manager, secured or unsecured creditor or agent of the creditor, trustee or other like person, other than a trustee appointed under the Bankruptcy and Insolvency Act (Canada), takes control or possession of the property of any vendor shall, before distributing such property or the proceeds from the realization thereof under that person's control, obtain from the Minister a certificate that the amount deemed by subsection (1) to be held in trust, including any interest and penalties payable by the vendor, has been paid or that security acceptable to the Minister has been given.

No distribution without Minister's certificate

(6) Any person described in subsection (5) who distributes any property described in that subsection or the proceeds of the realization thereof without having obtained the certificate required by that subsection is personally liable to the Crown in right of Ontario for an amount equal to the amount deemed by subsection (1) to be held in trust, including any interest and penalties payable by the vendor.

Taxation Act, 2007, S.O. 2007, c. 11, Sch. A

Returns, payments and interest

117 (1) Subsections 70 (2) and 104 (2), paragraph 104 (23) (d), sections 158 and 159, subsections 160.1 (1), (3) and (4), 161 (1), (2), (2.2), (4), (4.01), (4.1), (5), (6), (6.1), (6.2), (7) and (11) and sections 161.2 and 161.3 of the Federal Act apply for the purposes of this Act.

BANK OF MONTREAL

ADRIEL ORTINO CORP. et al

Applicant

- and -

Respondents

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

Proceeding commenced at TORONTO

FACTUM OF THE RECEIVER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Kyle Plunkett (LSO # 61044N)
Tel: (416) 865-3406
Email: kplunkett@airdberlis.com

Shaun Parsons (LSO # 81240A)
Tel: (416) 637-7982
Email: sparsons@airdberlis.com

Jaclyn Tarola (LSO # 89915Q)
Tel: (416) 865-4636
Email: jtaraola@airdberlis.com

*Lawyers for AlixPartners Restructuring, Inc., in its capacity as the
Receiver of the Respondents*