

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ROYAL BANK OF CANADA

Applicant

- and -

AHM TRANSPORT INC., AISHKA EXPRESS 2016 INC., AISHKA EXPRESS
INC., AISHKA RECYCLING INC. and TANUSH TRANSPORT INC.

Respondents

FACTUM OF THE RECEIVER
(Receiver's Motion returnable May 4, 2026)

April 17, 2026

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TO: SERVICE LIST

PART I – NATURE OF MOTION

1. This is a motion by msi Spergel inc. ("**Spergel**"), in its capacity as court-appointed Receiver (in such capacity, the "**Receiver**"), appointed pursuant to an Order of the Honourable Justice Peter Osborne dated September 16, 2024 (the "**Receivership Order**") of the Property (as defined in the Receivership Order) of the Respondents, AHM Transport Inc. ("**AHM**"), Aishka Express 2016 Inc. ("**Aishka 2016**"), Aishka Express Inc. ("**Aishka Express**"), Aishka Recycling Inc. ("**Aishka Recycling**"), and Tanush Transport Inc. ("**Tanush**") (collectively, the "**Debtors**") for, *inter alia*, the following relief:
 - a) A Contempt Order, among other things:
 - (i) Ordering and declaring that the Debtors and the Principals are compelled to deliver to the Receiver any and all assets, property, or undertakings of the Debtors, including the Missing Property (as defined herein);
 - (ii) Ordering and declaring that the Debtors and the Principals (as defined herein) breached the Receivership Order and the Asset Recovery Order of the Honourable Justice Conway issued May 22, 2025 (the "**Asset Recovery Order**", and together with the Receivership Order, the "**Orders**");
 - (iii) Ordering and declaring that the Debtors and the Principals have acted in criminal and/or civil contempt of court for their breach of the Orders;
 - (iv) Ordering that the Principals be incarcerated for such period of time and on such terms as this Honourable Court deems just;
 - (v) Ordering that a Warrant of Committal be issued against the Principals to enforce the order for imprisonment against them; and,
 - b) An Ancillary Order, among other things:
 - (i) Abridging and validating (if necessary) the times for service and filing of this Notice of Contempt Motion, the Motion Record filed by the Receiver

on the Contempt Motion, and any other materials filed in respect of the Contempt Motion; and,

- (ii) Approving the Second Report of the Receiver dated February 20, 2026 (the “**Second Report**”), and the activities and conduct of the Receiver set out therein provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the Second Report.
2. It is the Receiver’s position that the actions (or inactions) of the Debtors and the Principals in the face of the Orders, the terms of which are clear and unambiguous, demonstrate a deliberate misconduct that appears to the Receiver to be calculated and premeditated.
3. The Receiver sees that a Contempt Order is necessary and in the interests of justice as the Debtors and Principals have intentionally defied the Orders of this Court. As McLachlin C.J. wrote for the majority in *United Nurses of Alberta v. Alberta (Attorney General)*:¹

The rule of law is at the heart of our society; without it there can be neither peace, nor order nor good government. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect.
4. The Receiver submits that if social and civil order is to be maintained, the Court is entitled to expect that its orders will be complied with and that anyone who wilfully fails to obey a court order ought to expect serious consequences.²

¹ at [p. 931 f-g](#).

² *1180554 Ontario Limited v. CBJ Developments Inc. et al.*, 2025 ONSC 2456 (CanLII) at [para 25](#); *Canadian Western Bank v. Canadian Motor Freight Ltd.*, 2025 ONCA 263 at [para 22](#).

PART II – THE FACTS

The Debtors and the Receiver

5. Each of the Debtors are incorporated under the Ontario Business Corporations Act, with a registered head office at the property municipally known as 290 Vellore Woods Boulevard, Vaughn, Ontario, L4H 2T5 (the “**Head Office**”).³
6. Puvanenthiran Jeyabalasingam (“**Puvanenthiran**”) is the director of Aishka 2016 and Tanush. Jeyabalasingam Puvanenthiran (“**Jeyabalasingam**”) is the director of Aishka Recycling. Thushitha Puvanenthiran (“**Thushitha**”, and collectively with Puvanenthiran, Jeyabalasingam and Thushitha, the “**Principals**”) is the director of AHM. Thushitha and Thusitha Puvanenthiran (“**Thusitha**”,) are the directors of Aishka Express.⁴
7. Thushitha and Puvanenthiran are the registered owners of the Head Office.⁵
8. On application by the Royal Bank of Canada (“**RBC**”), Spergel was appointed as Receiver on such terms as outlined in the Receivership Order.⁶
9. The Debtors have been represented by counsel since at least August 21, 2024,⁷ and have opposed the Receivership Order and other motions brought by the Receiver in these proceedings.⁸

The Missing Property

10. As detailed in the Receiver’s First Report to the Court dated April 24, 2025 (the “**First Report**”), the Receiver, upon its appointment, commenced its efforts to take possession of the Property (as defined in the Receivership Order). The Receiver

³ Second Report of the Receiver to the Court dated February 20, 2026 [*Second Report*], at para 6.

⁴ *Second Report*, *supra* note 3 at para 7.

⁵ *Second Report*, *supra* note 3 at para 8 and Appendix 6 thereto.

⁶ *Second Report*, *supra* note 3 at para 4 and Appendices 4 and 5 thereto.

⁷ *Second Report*, *supra* note 3 at para 12 and Appendices 1 and 2 thereto.

⁸ *Second Report*, *supra* note 3 at paras 12 and 14 and Appendices 2, 5 and 10 thereto.

contacted and met with the Principals on several occasions for this purpose and in order to advance its mandate.⁹

11. Through the administration of the receivership, the Receiver discovered that various equipment that are subject to a Master Lease Agreement dated July 8, 2019, between RBC and Aishka Express were unaccounted for, not available to the Receiver and whose whereabouts were unknown (collectively, the “**Missing Property**”).¹⁰
12. Despite efforts from the Receiver to solicit information from the Debtors and the Principals in respect of the Missing Property, the Debtors and the Principals refused or otherwise neglected to provide any such details, contrary to their obligations under the Receivership Order.¹¹ As a result, the Receiver was obligated to seek recourse from this Court in order to advance its mandate.¹²

The Receiver’s Missing Property Motion and the Asset Recovery Order

13. On April 24, 2025, the Receiver issued and filed the First Report in support of the Receiver’s motion seeking, among other things, an Order:
 - a) Compelling the Debtors and the Principals to disclose to the Receiver the location of the Missing Property (as defined in the First Report and herein) within a specified time frame; and,
 - b) Compelling the Debtors and the Principals to deliver the Missing Property (as defined in the First Report and herein) to the Receiver and/or to permit the Receiver to take possession and exercise control over the Missing Property within a specified time frame(the “**Receiver’s Missing Property Motion**”).¹³

⁹ *Second Report*, *supra* note 3 at para 26.

¹⁰ *Second Report*, *supra* note 3 at paras 27 and 28.

¹¹ *Second Report*, *supra* note 3 at paras 12, 13, 16 and 30 and Appendix 7 thereto.

¹² *Second Report*, *supra* note 3 at paras 12, 13, 16 and 30 and Appendices 7, 11 and 12 thereto.

¹³ *Second Report*, *supra* note 3 at para 11 and Appendix 7 thereto.

14. The Receiver's Missing Property Motion was originally returnable on May 6, 2025.¹⁴ The Receiver agreed to the Debtor's request for an adjournment based on the Debtors' representations to the Receiver that they were going to facilitate the delivering up of possession of the Missing Property to the Receiver.¹⁵
15. It was not until the morning of May 21st, the day before the return of the Receiver's Missing Property Motion, that counsel for the Debtors provided two locations (an Ontario address and a Quebec address) at which the Missing Property could be found; however, there was no indication as to which of the assets were at either of these locations.¹⁶
16. At 4:44pm and 5:57pm on May 21st, counsel for the Debtors advised that only a handful of the Missing Property were situated in Ontario, and that the balance was likely in Quebec and supposedly not available to or in the care and control of the Debtors.¹⁷
17. These late stage developments were provided to the Court by the Receiver's Supplemental Report to the First Report and submissions from the Receiver's counsel.¹⁸ As the Missing Property remained at large, the Honourable Madam Justice Conway did issue the Asset Recovery Order, which ordered, *inter alia*, that the Debtors and the Principals assist the Receiver in implementing the Receivership Order and to provide the Receiver information regarding the location of the Missing Property.¹⁹

The Misspelling of Thushitha

18. The Asset Recovery Order states "any terms in this Order not otherwise defined herein shall have the same meaning set out in the First Report".²⁰

¹⁴ *Second Report*, *supra* note 3 at Appendix 10.

¹⁵ *Second Report*, *supra* note 3 at Appendix 10.

¹⁶ *Second Report*, *supra* note 3 at para 16 and Appendix 12 thereto.

¹⁷ *Second Report*, *supra* note 3 at Appendix 15 thereto.

¹⁸ *Second Report*, *supra* note 3 at Appendix 11 and 14 thereto.

¹⁹ *Second Report*, *supra* note 3 at paras 17 and 19 and Appendices 13 and 14 thereto.

²⁰ *Second Report*, *supra* note 3 at para 9 and Appendix 13 thereto.

19. In the First Report, the Receiver indicated that the director of AHM and Aishka Express is Thushutha Puvanenthiran (“**Thushutha**”), which was a misspelling of Thushitha. The First Report defines “Principals” as including Thushutha (with this name in error), Puvanenthiran and Jeyabalasingam.²¹
20. Based on the information contained in the affidavit of service of Corey Taylor (as further detailed and described herein), the Receiver has confirmed that Jeyabalasingam and Puvanenthiran are the same person, and that Thushitha is the spouse of Jeyabalasingam a.k.a. Puvanenthiran.²²
21. The Receiver sees that the misspelling of Thushitha in the First Report as Thushutha (with this name in error) has not mislead or otherwise caused prejudice to the Debtors or the Principals nor reduced any of the obligations owed by all or either of them to the Receiver in these proceedings.²³
22. In fact, the Principals often adopt spelling variations of their own names, as demonstrated by each Jeyabalasingam and Puvanenthiran being directors of certain of the Debtors, despite being one and the same person;²⁴ and Thushitha and Thusitha both being listed as a director of Aishka Express.²⁵
23. It is the Receiver's position that the Debtors and the Principals, regardless of the misspelling of Thushitha's name as Thushutha (with this name in error), are aware and have been put on due notice of the Orders and their obligations thereunder.²⁶

²¹ *Second Report, supra* note 3 at para 9 and Appendix 7 thereto.

²² *Second Report, supra* note 3 at para 38 and Appendix 19 thereto.

²³ *Second Report, supra* note 3 at para 10.

²⁴ *Second Report, supra* note 3 at Appendix 19 thereto.

²⁵ *Second Report, supra* note 3 at para 10.

²⁶ *Second Report, supra* note 3 at para 40 and Appendix 19 thereto.

The Receiver's Activities

24. As detailed in the Second Report, since the Asset Recovery Order, the Receiver's activities, directly or through its independent counsel, have concentrated on, among other things:
- a) Communicating with the Debtors and the Debtors' counsel directly or through the Receiver's counsel in relation to, among other things, obtaining possession of the Missing Property; and,
 - b) Communicating with Canada Revenue Agency with respect to, among other things, the HST refunds filed by the Debtors and documents provided in support of same.²⁷

The Debtors and Principals' Contempt of the Asset Recovery Order

25. Counsel did attend the May 22nd hearing at which the Asset Recovery Order was issued.²⁸ The Debtors and the Principals are aware and well advised of the Orders and of their obligations thereunder.
26. Promptly after the Asset Recovery Order was issued, the Receiver's counsel attempted to confirm with the Debtors when the Missing Property situated in Ontario would be delivered to the Receiver, and the circumstances surrounding the apparent abandonment of the Missing Property situated in Quebec.²⁹ Ultimately, the Debtors failed to provide any additional information in respect of the Missing Property to the Receiver.³⁰
27. The Missing Property remains at large, and the Receiver has no particulars as to the whereabouts, condition or possession of the Missing Property.³¹

²⁷ *Second Report, supra* note 3 at para 25.

²⁸ *Second Report, supra* note 3 at para 31.

²⁹ *Second Report, supra* note 3 at para 33 and Appendix 16 thereto.

³⁰ *Second Report, supra* note 3 at para 34 thereto.

³¹ *Second Report, supra* note 3 at para 34 thereto.

28. As a result of the Debtor's defiance of the Orders, the Receiver did serve a demand upon each of the Debtors and the Principals on August 21, 2025, by way of email to counsel for the Debtors, which included at Schedule "A" a true copy of the Asset Recovery Order and at Schedule "B" a list of the Missing Property (the "**First Demand**").³² The First Demand provided a ten (10) day deadline for compliance forthwith.³³
29. The First Demand was wilfully ignored or otherwise neglected by the Debtors and the Principals, and not responded to.³⁴
30. The Receiver next personally served a demand on each of the Debtors and on Puvanenthiran, Jeyabalasingam and Thushutha (with this name in error) dated September 24, 2025, at the Head Office, which included at Schedule "A" a true copy of the Asset Recovery Order (the "**Second Demand**").³⁵ Enclosed with the Second Demand was a true copy of the First Demand, and a true copy of the email correspondence between the Receiver and counsel for the Debtors from April 24 to June 5, 2025.³⁶
31. In his affidavits of service in respect of the Second Demand, Corey Taylor, a process server, provided to the Receiver with the following evidence:
- a) Jeyabalasingam is one and the same person as Puvanenthiran;
 - b) Jeyabalasingam acknowledged himself to be a director of Aishka 2016 and Tanush; and,
 - c) Jeyabalasingam accepted service on behalf of Thushutha (with this name in error), who is his spouse.³⁷

³² *Second Report, supra* note 3 at para 35 and Appendix 17 thereto.

³³ *Second Report, supra* note 3 at para 35 and Appendix 17 thereto.

³⁴ *Second Report, supra* note 3 at para 36.

³⁵ *Second Report, supra* note 3 at para 37 and Appendices 18 and 19 thereto.

³⁶ *Second Report, supra* note 3 at para 37 and Appendices 15, 16 and 17 thereto.

³⁷ *Second Report, supra* note 3 at para 38 and Appendix 19 thereto.

32. It is the Receiver's position that the Debtors and the Principals, regardless of the misspelling of Thushitha's name as Thushutha (with this name in error), have been put on due notice and are aware of the Receivership Order and the Asset Recovery Order and their obligations thereunder; at minimum by their retention of counsel, and certainly by their being personally served with the Second Demand at the Head Office which is owned jointly by Thushitha and Puvanenthiran.³⁸
33. Despite the foregoing, the Receiver has received no response to the First Demand or the Second Demand, nor any information in respect of the Missing Property in addition to that received on May 21, 2025, and the Missing Property remains unaccounted for.³⁹

The Debtors' Outstanding Obligations to the Canada Revenue Agency

34. In addition to the Debtors' and Principals' wilful breach of the Receivership Order and the Asset Recovery Order, the Canada Revenue Agency has completed its audit with respect to HST filings of the Debtors, which has concluded that the Debtors collectively owe over \$26,000,000.⁴⁰

PART III – ISSUES

35. The issues before the Court on this motion are:
- a) Whether to hold the Debtors and the Principals in criminal contempt of court; or
 - b) If not, whether to hold the Debtors and the Principals in civil contempt of court.
36. Both civil and criminal contempt of court must be proven beyond a reasonable doubt.⁴¹
37. It is the Receiver's position that there is no doubt that the Debtors and Principals' defiance of the Orders amounts to civil contempt of this Court; and therefore, that the question is whether the misconduct amounts to a criminal contempt.

³⁸ *Second Report*, *supra* note 3 at paras 8 and 40 and Appendices 6 and 19 thereto.

³⁹ *Second Report*, *supra* note 3 at para 41.

⁴⁰ *Second Report*, *supra* note 3 at para 43 and Appendix 20 thereto.

⁴¹ *United Nurses of Alberta v. Alberta (Attorney General)*, 1992 CanLII 99 (SCC) [*United Nurses*] at [p. 933 a-b](#); *Carey v. Laiken*, 2015 SCC 17 (CanLII) [*Laiken*] at paras [32](#) and [38](#).

38. The Receiver also seeks to approval of its activities and conduct as outlined in the Second Report.

PART IV – LAW AND ARGUMENT

39. The question of whether an incident of contempt attracts civil or criminal liability is determined by looking to the public dimension of the defiance at issue.⁴² As McLachlin C.J. reasoned in *United Nurses of Alberta v. Alberta Attorney General*, writing for the majority:⁴³

A person who simply breaches a court order, for example by failing to abide by visiting hours stipulated in a child custody order, is viewed as having committed civil contempt. However, when the element of public defiance of the court's process in a way calculated to lessen societal respect for the courts is added to the breach, it becomes criminal.

40. Cory J. in *United Nurses of Alberta v. Alberta Attorney General*, while dissenting, agreed with the majority that:⁴⁴

The purpose of the criminal law is to protect society whereas the civil law regulates and facilitates private relationships. The sole reason for the existence of a separate category of criminal contempt is to answer the need to discourage and to punish those acts which occasion serious injuries to the public interest. Where the injury caused by disobedience to an order is private in nature, the civil contempt powers suffice.

41. Receivership proceedings differ from ordinary civil litigation between two private parties. They take place under the auspices of the *Bankruptcy and Insolvency Act*⁴⁵

⁴² *Laiken*, *supra* note 41 at [para 31](#); *United Nurses*, *supra* note 41 at [p. 931 d-e](#).

⁴³ at [p. 931 h-j](#).

⁴⁴ at [p. 911 f-h](#).

⁴⁵ R.S.C., 1985, c. B-3.

(the “*BIA*”), where the very nature of such proceedings engage the public interest in the administration of justice of an orderly insolvency regime.⁴⁶

42. It is the Receiver’s position that the contempt of the Debtors and Principals ought to attract criminal liability as their defiance is not only public in nature by the number of affected stakeholders and the publicity of these proceedings; but also by defying Orders made under the *BIA* and the authority of a court-appointed Receiver, which engages the public interest in the Canadian justice system as a whole.

A. The Debtors and the Principals are in Criminal Contempt of Court

43. As Conway J. held in *Castillo v. Xela Enterprises Ltd.*,⁴⁷ the *actus reus* and *mens rea* of criminal contempt must be proven beyond a reasonable doubt as follows:

- a) The *actus reus* is established by “proof that the accused defied or disobeyed a court order in a public way”; and,
- b) The *mens rea* is established by proof that the accused’s public defiance or disobedience of the court was done “with intent, knowledge, or recklessness as to the fact that the public disobedience will tend to depreciate the authority of the court”, and this *mens rea* may be inferred from the specific circumstances of the case.⁴⁸

a) The Debtors and Principals’ Conduct Satisfies the *Actus Reus* of Criminal Contempt of Court

44. The Debtors and the Principals breached the terms of the Receivership Order by failing or refusing to assist the Receiver in taking possession and exercising control over the Property, including the Missing Property. They have further breached the terms of the Asset Recovery Order, which states in relevant parts, without limitation, as follows (*emphasis added*):⁴⁹

⁴⁶ *Canadian Western Bank v. Canadian Motor Freight Ltd. et al* (December 13, 2024), Toronto CV-24-00728550-00CL (ONSC CL) at para 69, referenced in the Receiver’s Book of Authorities at Tab 1.

⁴⁷ [2022 ONSC 4006 \(CanLII\)](#).

⁴⁸ *Castillo v. Xela Enterprises Ltd.*, 2022 ONSC 4006 (CanLII) [*Castillo*] at [para 63](#).

⁴⁹ *Second Report*, *supra* note 3 at Appendix 13 thereto.

2. THIS COURT ORDERS that the Debtors and the Principals shall permit the Receiver to take possession and exercise control over the Property, and any and all proceeds, receipts and disbursements arising out of or from the Property, in accordance with the Receivership Order, including but not limited to, providing the Receiver with the location of the Missing Property.

3. THIS COURT ORDERS that the Debtors and the Principals shall be required to assist the Receiver in implementing the Receivership Order and to provide the Receiver or its agents and representatives or any other party authorized by the Receiver information regarding the location of the Property.

4. THIS COURT ORDERS that the Debtors and the Principals shall immediately disclose to the Receiver in writing their knowledge of the location of any of the Debtors' Property, as requested by the Receiver.

45. Upon request of the Receiver, the Debtors ignored and did not provide particulars as to which of the Missing Property were at either of the locations,⁵⁰ thereby leaving the Receiver with insufficient particulars to send an agent to retrieve same or with any evidence to support that such statements were true or accurate. The Receiver still does not know which of the Missing Property are located in Montreal, the reason that the Missing Property is not retrievable, whether the Missing Property are still located there and the overall condition of same.⁵¹
46. It is the Receiver's respectful submission that these actions (or inactions) of the Debtors and the Principals demonstrates beyond a reasonable doubt a defiance or disobedience of the Asset Recovery Order.
47. It is the Receiver's further respectful submission that this defiance or disobedience of the Debtors and the Principals' involves such a public dimension that the *actus reus* for criminal contempt has been proven.

⁵⁰ *Second Report, supra* note 3 at Appendices 12, 15 and 16 thereto.

⁵¹ *Second Report, supra* note 3 at Appendix 16 thereto.

48. In *Canada Transport Co. v. Alsbury*,⁵² Kellock J. for the majority found that the context in which the contemptuous conduct occurred involved such a large number of individuals in such a public manner, paired with the fact that there was no doubt the parties were acting in concert, that the conduct at issue was entirely criminal in character and involved a public injury that amounted to criminal contempt.⁵³
49. As required by paragraph 26 of the Receivership Order, and as is customary in receivership proceedings, the Receiver posts all materials filed with the Court in this proceeding to a page on its website dedicated to this proceeding. In this proceeding, the service list contains more than 40 recipients.⁵⁴
50. It is the Receiver's respectful position that if rule of law and the integrity of the insolvency regime under the *BIA*, a federal legislation, is to be upheld, the misconduct of the Debtors and Principals in the face of the Orders ought to be found to attract a such public dimension that the *actus reus* of criminal contempt is satisfied.

b) The Debtors and Principals' Conduct Satisfies the *Mens Rea* of Criminal Contempt of Court

51. The Debtors and the Principals are aware and have been put on due notice of the Orders; at minimum by their retention of counsel who attended at the hearings at which the Receivership Order and the Asset Recovery Order were issued and who was served with the First Demand,⁵⁵ and by their being personally served with the Second Demand at the Head Office which is owned jointly by the Principals.⁵⁶
52. Beyond their awareness of the existence of the Orders, it is the Receiver's position that the Debtors and the Principals are well advised as to their substance, relevance and enforceability. The Debtors have retained experienced counsel who is no stranger to receivership proceedings, and it is therefore the Receiver's position that the Debtors and the Principals are fully informed about their liability to the Receiver and to this Court

⁵² 1953 CarswellBC 3, referenced in the Receiver's Book of Authorities at Tab 2.

⁵³ at paras 44-45, referenced in the Receiver's Book of Authorities at Tab 2.

⁵⁴ Motion Record of the Receiver dated February 20, 2026, at pp. 2-10.

⁵⁵ *Second Report*, *supra* note 3 at paras 31, 35 and 40 and Appendices 14 and 17 thereto.

⁵⁶ *Second Report*, *supra* note 3 at paras 8 and 40 and Appendices 6 and 19 thereto.

in respect of the Receivership Order and the Asset Recovery Order, as well as the available consequences of their non-compliance.⁵⁷

53. In the face of the Orders, the Debtors and the Principals have conducted themselves in such a way that demonstrates a lack of respect or care for the authority of this Court. Regardless of whether the contempt of the Debtors and Principals is intentional or reckless, the Receiver sees that the *mens rea* of criminal contempt has been proven beyond a reasonable doubt.

B. The Debtors and the Principals are in Civil Contempt of Court

54. If this Court does not find that the defiance of the Debtors and the Principals attracts a public dimension such that their conduct amounts to a criminal contempt, it is the Receiver's position that the Debtors and Principals have nonetheless committed civil contempt of court beyond a reasonable doubt which ought to attract consequences.

55. Civil contempt has three elements which must be established beyond a reasonable doubt:⁵⁸

- a) The order breached "must state clearly and unequivocally what should and should not be done";⁵⁹
- b) The party alleged to have breached the order must have had actual knowledge of it, and such knowledge may be inferred even by wilful blindness; and,
- c) The party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.

a) The Asset Recovery Order and the Receivership Order are Clear and Unequivocal

56. The requirement that the terms of the court order alleged to have been breached must be "clear and unequivocal" exists to avoid punishing people "who do not know what

⁵⁷ *Second Report*, *supra* note 3 at para 42; *Canadian Western Bank v. Canadian Motor Freight Ltd. et al* (December 13, 2024), Toronto CV-24-00728550-00CL (ONSC CL) at para 77, referenced in the Receiver's Book of Authorities at Tab 1.

⁵⁸ *Laiken*, *supra* note 41 at [paras 32-35](#).

⁵⁹ *Castillo*, *supra* note 48 at [para 45](#).

must be done to comply”; however, this branch of the contempt test “does not exist to provide an alleged contemnor with a technical means to disregard” a court order.⁶⁰

57. In assessing the clarity of the Orders, this Court ought to have regard to not only the specific provisions that have been breached, but also to the Orders as a whole while reading the provisions in light of the purpose and design of the Orders.⁶¹
58. The Receivership Order states in relevant parts, without limitation, as follows:⁶²

3. **THIS COURT ORDERS** that [...] the Receiver is hereby expressly empowered and authorized to do any of the following [...]:

(a) to take possession of and exercise control over the Property [...];

[...] to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of its current and former directors, officers, employees, agents [...], and (iii) all other individuals [...] having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) [...] shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

59. As outlined herein, the terms of the Asset Recovery Order require the Debtors and Principals to assist the Receiver in implementing the Receivership Order, and specifically to disclose any knowledge in respect of the Property to the Receiver upon the Receiver’s request.⁶³
60. The Receivership Order adopted the standard form of model order as developed and approved by the Commercial List Users’ Committee of the Ontario Superior Court of Justice, which was designed to promote, among other things, consistency and

⁶⁰ *Castillo, supra* note 48 at [para 45](#).

⁶¹ *Castillo, supra* note 48 at [para 45](#).

⁶² *Second Report, supra* note 3 at Appendix 4 thereto.

⁶³ *Second Report, supra* note 3 at Appendix 13 thereto.

transparency. It is the Receiver's position that there is no doubt that the terms of the Receivership Order are clear and unequivocal.⁶⁴

61. It is the Receiver's position that the terms of the Asset Recovery Order are similarly clear and unequivocal, the terms of which specifically provide, among other things, that the Debtors and Principals are required to assist the Receiver in implementing the Receivership Order.

b) The Debtors and Principals have Actual Knowledge of the Orders

62. As more fulsomely outlined in respect of the *mens rea* to satisfy criminal contempt, the Debtors and the Principals are aware and have been put on due notice of the Orders; at minimum by their retention of counsel,⁶⁵ who is experienced and no stranger to receivership proceedings,⁶⁶ and certainly by their being personally served with the Second Demand at the Head Office which is owned jointly by the Principals.⁶⁷
63. It is the Receiver's respectful submission that the Debtors and Principals are in no way confused or ignorant as to the Orders but rather have simply and patently chose to ignore their existence.

c) The Debtors and Principals Intentionally Failed to Comply with the Orders

64. In order for this Court to make a finding that the Debtors and Principals intended to fail to comply with the Orders, the Court is not required to find that the Debtors and Principals *intended* to disobey the Orders, as this would put the test "too high" and result in "mistakes of law [becoming] a defence to an allegation of civil contempt but not to a murder charge".⁶⁸

⁶⁴ *Canadian Western Bank v. Canadian Motor Freight Ltd.*, 2025 ONCA 263 (CanLII) at [para 18](#).

⁶⁵ *Second Report*, *supra* note 3 at paras 31, 35 and 40 and Appendices 14 and 17 thereto.

⁶⁶ *Second Report*, *supra* note 3 at para 42; *Canadian Western Bank v. Canadian Motor Freight Ltd. et al* (December 13, 2024), Toronto CV-24-00728550-00CL (ONSC CL) at para 77 referenced in the Receiver's Book of Authorities at Tab 1.

⁶⁷ *Second Report*, *supra* note 3 at paras 8 and 40 and Appendices 6 and 19 thereto.

⁶⁸ *Laiken*, *supra* note 41 at [para 38](#).

65. Cromwell J. writing for the majority in *Carey v. Laiken*⁶⁹ found that misinterpretation of a clear order, or mistake of law, is no defence to a finding of civil contempt, as any such defence would significantly undermine the authority of court orders.⁷⁰ Cromwell J. also found that a finding of contumacy or lack thereof is not required for the Court to make a finding that the Debtors and Principals intentionally failed to comply with the Orders.⁷¹
66. Instead, all this is required for this Court to make a finding that the Debtors and Principals “intended” to fail to comply with the Orders is for an act (or omission) that was required of them under the Orders was in fact committed (or omitted), regardless of the reasons for that conduct.⁷²
67. Similarly to the submissions in the above section and additionally relying on the fact that the Debtors are represented by experienced counsel, it is the Receiver’s position that the Debtors and Principals are in no way confused or ignorant as to the obligations imposed by the Orders, but rather have simply and patently chose to ignore their duties thereunder; and that this wanton disregard of the authority of this Court ought to attract serious consequences.

C. The Receiver’s Activities Should be Approved

68. The Receiver’s activities in these proceedings have been undertaken in furtherance of the Receiver’s duties and are consistent with the Receiver’s powers, as set out in the Receivership Order. The Receiver has acted reasonably and in the best interests of the Debtors’ stakeholders, and this Court has the inherent jurisdiction to approve such activities.⁷³

⁶⁹ [2015 SCC 17 \(CanLII\)](#).

⁷⁰ *Laiken*, *supra* note 41 at [para 42](#).

⁷¹ *Laiken*, *supra* note 41 at paras [29](#) and [47](#).

⁷² *Castillo*, *supra* note 48 at [para 59](#).

⁷³ *Bank of America Canada v. Willann Investments Ltd.*, (1993) 20 C.B.R. (3d) 223 (ONSC), at paras 3 and 4, referenced in the Receiver’s Book of Authorities at Tab 3.

69. All of the Receiver's activities were conducted within the ambit of its powers granted by the Receivership Order, and each of the activities were necessary to ensure that the proceedings were as orderly, effective and fair to all stakeholders as possible.
70. The Receiver therefore respectfully submits that the Second Report, and its activities to date as set out therein, should be approved by this Court.

ORDER REQUESTED

71. The Receiver respectfully requests a finding that the Debtors and Principals are in criminal or civil contempt of this Court, that this Court grant the draft Orders as filed with the Court in support of this motion, with the necessary amendments to the requested sanctions as counsel may advise and to this Honourable Court seems just.
72. It is the Receiver's position that 243(1)(c) of the *BIA* and Rule 60.11 of the *Rules of Civil Procedure* provides this Court with ample authority to make the requested Orders.⁷⁴

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of April, 2026.



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⁷⁴ *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 (CanLII) at [para 148](#).

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. [United Nurses of Alberta v. Alberta \(Attorney General\), 1992 CanLII 99 \(SCC\), \[1992\] 1 SCR 901](#)
2. [1180554 Ontario Limited v. CBJ Developments Inc. et al., 2025 ONSC 2456 \(CanLII\)](#)
3. *Canadian Western Bank v. Canadian Motor Freight Ltd. et al.*, (December 13, 2024), Toronto CV-24-00728550-00CL (ONSC CL)
4. [Carey v. Laiken, 2015 SCC 17 \(CanLII\), \[2015\] 2 SCR 79](#)
5. [Castillo v. Xela Enterprises Ltd., 2022 ONSC 4006 \(CanLII\)](#)
6. *Canada Transport Co. v. Alsbury*, 2951 CarswellBC 3, [1953] 1 S.C.R. 516
7. [Canadian Western Bank v. Canadian Motor Freight Ltd., 2025 ONCA 263 \(CanLII\)](#)
8. *Bank of America Canada v. Willann Investments Ltd.* (1993) 20 C.B.R. (3d) 223 (ONSC)
9. [Peace River Hydro Partners v. Petrowest Corp., 2022 SCC 41 \(CanLII\), \[2022\] 3 SCR 265](#)

SCHEDULE "B"
RELEVANT STATUTES

Rules 2.03, 3.02, 16.08 and 60.11, *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

COURT MAY DISPENSE WITH COMPLIANCE

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

EXTENSIONS OR ABRIDGMENT

General Powers of Court

3.02(1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

VALIDATING SERVICE

16.08 Where a document has been served in a manner other than one authorized by these rules or an order, the court may make an order validating the service where the court is satisfied that,

(a) The document came to the notice of the person to be served; or

(b) The document was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service.

Contempt Order

Motion for Contempt Order

- 60.11** (1) A contempt order to enforce an order requiring a person to do an act, other than the payment of money, or to abstain from doing an act, may be obtained only on motion to a judge in the proceeding in which the order to be enforced was made.
- (2) The notice of motion shall be served personally on the person against whom a contempt order is sought, and not by an alternative to personal service, unless the court orders otherwise.
- (3) An affidavit in support of a motion for a contempt order may contain statements of the deponent's information and belief only with respect to facts that are not contentious, and the source of the information and the fact of the belief shall be specified in the affidavit.

Warrant for Arrest

- (4) A judge may issue a warrant (Form 60K) for the arrest of the person against whom a contempt order is sought where the judge is of the opinion that the person's attendance at the hearing is necessary in the interest of justice and it appears that the person is not likely to attend voluntarily.

Content of Order

- (5) In disposing of a motion under subrule (1), the judge may make such order as is just, and where a finding of contempt is made, the judge may order that the person in contempt,
- (a) be imprisoned for such period and on such terms as are just;
 - (b) be imprisoned if the person fails to comply with a term of the order;
 - (c) pay a fine;
 - (d) do or refrain from doing an act;
 - (e) pay such costs as are just; and

(f) comply with any other order that the judge considers necessary,
and may grant leave to issue a writ of sequestration under rule 60.09 against the person's property.

Where Corporation is in Contempt

(6) Where a corporation is in contempt, the judge may also make an order under subrule (5) against any officer or director of the corporation and may grant leave to issue a writ of sequestration under rule 60.09 against his or her property.

Warrant of Committal

(7) An order under subrule (5) for imprisonment may be enforced by the issue of a warrant of committal (Form 60L).

Discharging or Setting Aside Contempt Order

(8) On motion, a judge may discharge, set aside, vary or give directions in respect of an order under subrule (5) or (6) and may grant such other relief and make such other order as is just.

Order that Act be done by Another Person

(9) Where a person fails to comply with an order requiring the doing of an act, other than the payment of money, a judge on motion may, instead of or in addition to making a contempt order, order the act to be done, at the expense of the disobedient person, by the party enforcing the order or any other person appointed by the judge.

(10) The party enforcing the order and any person appointed by the judge are entitled to the costs of the motion under subrule (9) and the expenses incurred in doing the act ordered to be done, fixed by the judge or assessed by an assessment officer in accordance with Rule 58.

ROYAL BANK OF CANADA
Applicant

v.

AHM TRANSPORT INC., et al.
Respondents

Court File No. CV-24-00725055-00CL

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

PROCEEDING COMMENCED AT
TORONTO, ONTARIO

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