Court File No. CV-25-00003076-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

THE TORONTO-DOMINION BANK

Applicant

\- and -

2454934 ONTARIO INC. operating as OLYMPIC ROADSIDE, 2675287 ONTARIO LTD., and GURDEV SINGH TAMBER also known as RICKY TAMBER

Respondents

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

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FACTUM OF THE RECEIVER
(Returnable July 3, 2026)

June 23, 2026

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PART I - INTRODUCTION

1. On the application of The Toronto-Dominion Bank ("**TD**") pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and section 101 of the *Courts of Justice Act* (Ontario) (the "**CJA**"), the Honourable Justice Wilkinson of the Ontario Superior Court of Justice (the "**Court**") made an Order on September 11, 2025 (the "**Appointment Order**") appointing msi Spergel inc. ("**Spergel**") as Court-appointed receiver and manager (in such capacities, the "**Receiver**") of all of the assets, undertakings, and properties of 2454934 Ontario Inc. operating as Olympic Roadside ("**Olympic**") and 2675287 Ontario Ltd. ("**267**", and together with Olympic, the "**Debtors**") acquired for, or used in relation to, the business carried on by the Debtors (collectively, the "**Property**"), including, without limitation, the real property municipally known as 5156 Ninth Line, Beeton, Ontario [PIN 58152-0060 (LT)] (the "**Real Property**").[1]

2. Capitalized terms not defined herein have the meanings ascribed to them in the First Report of the Receiver dated June 16, 2026 (the "**First Report**").

3. At the time of the issuance of the Appointment Order, the Debtors' primary assets consisted of the Real Property, owned by 267, and certain property of Olympic, including a 2023 Freightliner M2 flatbed tow truck, bearing VIN 3ALACXFD8PDNX3944, equipped with the new Vulcan VUL-12LCG rollback carrier identified in the Vehicle Schedule (as defined in the First Report) (the "**Olympic Vehicle**"). The Olympic Vehicle is the only Olympic asset currently in the Receiver's possession and control and available to be sold by the Receiver.[2]

[1] First Report of msi Spergel inc. dated June 16, 2026 at paras 1, 3 and 5, Appendix "1"; Tab 2 of the Motion Record of the Receiver, dated June 22, 2026 (the "**First Report**").
[2] First Report at paras 3, 20-21, 32 and 57.

The Real Property

4. Following its appointment, the Receiver took possession of the Real Property and initiated a structured sale process, as authorized under the Appointment Order. The Receiver retained Avison Young Commercial Real Estate Services, LP, Brokerage (the "**Listing Broker**") under a Multiple Listing Service ("**MLS**") listing agreement dated February 6, 2026 (the "**Listing Agreement**").[3] The Receiver selected the Listing Broker for its favourable commission structure, relevant experience, and strong market knowledge to maximize recovery.[4]

5. The Listing Broker marketed the Real Property through a commercially reasonable process, generating interest from six interested parties, five of whom executed confidentiality agreements and were granted access to the virtual data room, and resulting in two offers following a marketing period of approximately 60 days.[5]

6. Following completion of the sale process, the Receiver (in such capacity, the "**Vendor**") entered into an agreement of purchase and sale dated March 11, 2026 (the "**Sale Agreement**") with OVC Armour Coating Inc. (in such capacity, the "**Proposed Purchaser**") in respect of the Real Property.[6] The Receiver determined this was the best available and executable transaction, considering market exposure, interest, and the estate's circumstances, subject to Court approval.[7]

The Olympic Vehicle

7. Separately, the Receiver entered into an auction services agreement dated April 30, 2026 (the "**Auction Agreement**") with Ritchie Bros. Auctioneers (Canada) Ltd. (the "**Auctioneer**") for

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[3] First Report at paras 39-40, Appendix "3".
[4] First Report at para 40.
[5] First Report at paras 42-45.
[6] First Report at paras 46-47, Appendix "4".
[7] First Report at paras 48-53.

the proposed marketing and sale of the Olympic Vehicle by way of an unreserved public auction, subject to Court approval (the "**Auction**").[8]

8. The Auction Agreement is conditional upon the issuance of an approval and vesting order, pursuant to which all of Olympic's right, title and interest, if any, in and to the Olympic Vehicle purchased at the Auction will vest absolutely in the purchaser at the Auction (the "**Auction Purchaser**") free and clear of claims and encumbrances, with such claims and encumbrances attaching to the net proceeds from the sale of the Olympic Vehicle payable to the Receiver from the Auction in accordance with their existing priorities.[9]

Scope of Relief

9. Accordingly, the Receiver brings this motion for, *inter alia*, the following relief:

(a) an order, substantially in the form of the draft Approval and Vesting Order (the "**OVC AVO**") contained at Tab 5 of the Motion Record, among other things:

(i) approving the Sale Agreement;

(ii) authorizing the Receiver to take all steps necessary to complete the sale transaction contemplated under the Sale Agreement (the "**Transaction**"); and

(iii) vesting in the Proposed Purchaser all of 267's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), including the

[8] First Report at paras 27-31, Appendix "2".
[9] First Report at paras 21-24 and 31; Draft Auction AVO at paras 3-4.

Real Property, free and clear of any claims and encumbrances, other than the permitted encumbrances identified in the Sale Agreement;

(b) an order, substantially in the form of the draft Approval and Vesting Order (the "**Auction AVO**") contained at Tab 3 of the Motion Record, among other things:

(i) approving the Receiver's engagement of the Auctioneer and approving the Auction Agreement, which is appended as Appendix "2" to the First Report;

(ii) authorizing the Receiver and the Auctioneer to perform their respective obligations under the Auction Agreement and to take such additional steps and execute such additional documents as may be necessary or desirable to give effect to the Auction Agreement, including authorizing the Auctioneer to conduct the Auction;

(iii) vesting in the Auction Purchaser all of Olympic's right, title and interest, if any, in and to the Olympic Vehicle free and clear of any claims and encumbrances, with such claims and encumbrances to attach to the net proceeds of sale of the Olympic Vehicle with the same priority as they had against the Olympic Vehicle immediately prior to its sale; and

(iv) authorizing and empowering the Receiver and/or the Auctioneer, as applicable, to execute and file all such releases, discharges and other documents as may be necessary or desirable to discharge or remove any registrations against the Olympic Vehicle under the *Personal Property Security Act* ("**PPSA**") and the *Repair and Storage Liens Act* ("**RSLA**"), or any other applicable personal property registry, following completion of the sale of the Olympic Vehicle and delivery of the applicable bill of sale or other similar evidence of purchase and sale;

(c) an order, substantially in the form of the draft Ancillary Relief Order (the "**Ancillary Relief Order**") contained at Tab 7 of the Motion Record, among other things:

(i) if necessary, abridging the time for service and filing of this Notice of Motion and the Motion Record or, in the alternative, dispensing with same;

(ii) approving the First Report, and the actions, conduct, and activities of the Receiver described therein;

(iii) sealing the Confidential Appendices (as defined in the First Report) until the earlier of the closing of the Transaction or further Order of the Court;

(iv) approving the fees and disbursements of the Receiver and the Receiver's independent legal counsel, Aird & Berlis LLP ("**A&B**"), as set out in the fee affidavits appended to the First Report;

(v) approving the Receiver's interim statement of receipts and disbursements for the period ending April 30, 2026; and

(vi) approving the Receiver's proposed distributions from the proceeds of sale of the Real Property, as described in the First Report (the "**Proposed Distributions**").

PART II - SUMMARY OF FACTS

10. Olympic, a Canadian-owned private corporation incorporated under the laws of Ontario and operating in Bolton, provided towing and roadside assistance services.[10] 267, a Canadian-owned private corporation incorporated under the laws of Ontario, did not actively carry on business and was strictly a holding company for the Real Property.[11]

11. The Receiver understands that Gurdev Singh Tamber, also known as Ricky Tamber ("**Ricky**"), is the sole director of each of the Debtors.[12]

12. At the time of the Receiver's appointment, Olympic had ceased carrying on business operations. The remaining assets of Olympic were limited and consisted primarily of the Olympic Vehicle, which is subject to security interests granted in favour of Royal Bank of Canada ("**RBC**") and TD. The other Olympic assets identified in the First Report as the Excluded Assets were not in the possession or control of the Receiver.[13]

13. The Real Property owned by 267 constitutes the principal realizable asset in the receivership. The Real Property includes both residential and commercial structures and was subject to a first mortgage in favour of TD.[14]

14. Following its appointment, the Receiver took possession of the Real Property and the Olympic Vehicle, and undertook the activities and administrative actions described in the First Report.[15]

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[10] First Report at para 2.
[11] First Report at paras 3 and 32.
[12] First Report at para 4.
[13] First Report at paras 19-24 and 57.
[14] First Report at paras 32-33 and 60-66.
[15] First Report at paras 18, 21 and 57.

PART III - ISSUES

15. The issues to be determined on this motion are whether this Court should:

(a) grant the OVC AVO to, among other things, authorize and approve the Receiver entering into the Sale Agreement and completing the Transaction;

(b) grant the Auction AVO to, among other things, authorize and approve the Receiver entering into the Auction Agreement and the sale of the Olympic Vehicle by Auction;

(c) grant a sealing order in respect of the Confidential Appendices;

(d) approve the First Report and the actions, conduct and activities of the Receiver referred to therein;

(e) approve the fees and disbursements of the Receiver and its legal counsel;

(f) approve the Receiver's interim statement of receipts and disbursements for the period ending April 30, 2026; and

(g) authorize the Proposed Distributions.

PART IV - STATEMENT OF LAW & AUTHORITIES

A. The Sale Agreement and Auction Agreement Merit Approval

(i) *The Legal Framework*

16. Pursuant to paragraph 3(d) of the Appointment Order, the Receiver is empowered to engage, *inter alia*, agents to assist with the exercise of the Receiver's powers and duties.[16]

17. When considering whether to approve a sale transaction involving an insolvent debtor, courts have relied on the factors set out by the Court of Appeal for Ontario in *Royal Bank of Canada v. Soundair Corp.*, which were written to specifically address sales by receivers of a debtor's assets: (a) whether the receiver has made a sufficient effort to get the best price and has

[16] First Report, Appendix "1", Appointment Order of Justice Wilkinson dated September 11, 2025 at para 3(d).

not acted improvidently; (b) whether the interests of all parties have been considered; (c) the integrity and efficacy of the process for obtaining offers; and (d) whether there has been unfairness in the working out of the process.[17]

18. 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.[18] 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.[19]

(ii) *The Soundair Principles Are Satisfied*

19. The Receiver seeks approval of both the Sale Agreement for the Real Property and the Auction Agreement for the Olympic Vehicle. The Sale Agreement is conditional on the granting of the OVC AVO, and the Auction Agreement is conditional on Court approval and the issuance of the Auction AVO.[20]

20. The Receiver submits that the Sale Agreement and Auction Agreement each satisfy the *Soundair* principles:

(a) **The Real Property sale process was fair, transparent, and commercially reasonable:** Assessing the reasonableness of a process does not require the Court to examine in minute detail all of the circumstances leading up to the acceptance of

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[17] *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA) at para 16; see also *Canwest Global Communications Corp.*, 2010 ONSC 2870 at para 13.
[18] *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375 at para 15, citing *Regal Constellation Hotel Ltd., Re.*, 2004 CanLII 206 (ON CA) at para 23; *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857 at paras 43-45.
[19] *Bank of Montreal v. Dedicated National Pharmacies Inc. et al.*, 2011 ONSC 4634 at para 43.
[20] First Report at paras 27, 31, 47 and 53.

a particular offer; the Court should be satisfied overall that the Receiver has not acted improvidently.[21] The Receiver retained an experienced listing broker through a proposal process and implemented a broad marketing campaign, including an MLS listing, targeted outreach, email distributions, a comprehensive marketing brochure, on-site signage, use of the Listing Broker's professional website and social media platforms, and a virtual data room.[22] The process resulted in six interested parties, five confidentiality agreements and two offers after approximately 60 days of market exposure, indicating that the market was adequately canvassed.[23]

(b) **The Sale Agreement represents the best executable transaction for the Real Property:** To establish this criterion, the Receiver must demonstrate that sufficient effort has been made to obtain the best price and that it has not acted improvidently based on the information available at the time the offer is accepted.[24] The decision to accept a particular offer is a matter of business judgment that should not be interfered with lightly in the absence of evidence of imprudence or unfairness.[25] The Receiver is of the view that the Sale Agreement represents the best executable offer received during the Sale Process.[26] In the Receiver's view, approval of the Sale Agreement provides the best opportunity to maximize recovery for

[21] *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA) at paras 48-49.
[22] First Report at para 42.
[23] First Report at paras 43-45.
[24] *Terrace Bay Pulp Inc. (Re)*, 2012 ONSC 4247 at paras 50-55.
[25] *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA) at paras 21 and 30-31; *Terrace Bay Pulp Inc. (Re),* 2012 ONSC 4247 at paras 45 and 52-54.
[26] First Report at para 50.

stakeholders, while minimizing further professional fees, carrying costs and administrative expenses.[27]

(c) **The Auction Agreement is a commercially reasonable method of disposition for the Olympic Vehicle:** The same legal principles of reasonableness, sufficient effort and business judgment apply to the Auction Agreement.[28] The Receiver entered into the Auction Agreement with the Auctioneer, subject to Court approval, for the sale of the Olympic Vehicle by public unreserved auction. The Receiver believes that the rates and commissions provided in the Auction Agreement are fair and reasonable. The Receiver further believes that a public unreserved auction is a commercially reasonable method for disposing of the Olympic Vehicle given, among other things, the disadvantageous economies of scale that would result if the Receiver were to conduct its own sale process for the Olympic Vehicle.[29]

(d) **Stakeholders' interests have been considered:** All parties with registered interests in the Real Property and the Olympic Vehicle will be served with the Receiver's Motion Record. TD, as the appointing creditor and first ranking secured creditor with respect to the Real Property, was consulted regarding the Transaction and supports completion of the Sale Agreement and the ancillary relief sought by the Receiver.[30] RBC, as the secured creditor with a purchase money security interest ("**PMSI**") in the Olympic Vehicle, will also receive notice of the Receiver's

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[27] First Report at paras 50-51.
[28] *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA) at paras 21, 30-31 and 48-49; *Terrace Bay Pulp Inc. (Re),* 2012 ONSC 4247 at paras 45 and 50-55.
[29] First Report at paras 27-28.
[30] First Report at paras 6, 52, 60 and 65.

motion in respect of the Auction Agreement and the proposed sale of the Olympic Vehicle.[31]

(e) **The Receiver filed evidence in support of the relief sought:** In support of the relief sought in this motion, the Receiver has filed the First Report.

21. Based on the foregoing, it is the Receiver's business judgment that the Sale Agreement and Auction Agreement are in the best interests of the Debtors and their stakeholders. In the absence of any indication that the Receiver acted improvidently, that business judgment is entitled to deference by this Court, and the Receiver recommends that both agreements be approved.

B. The OVC AVO and Auction AVO Should Be Granted

(i) *The Legal Framework*

22. The Court has the power to grant approval and vesting orders pursuant to section 100 of the CJA, which provides that "[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."[32]

23. Vesting orders are a routine part of insolvency practice.[33] As set out by the Court of Appeal for Ontario in *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, the court will adopt a rigorous cascade analysis. It will consider the nature and strength of the interest that is proposed to be extinguished, which can be determinative. The court can also consider if the parties have consented to the vesting of the interest at the time of sale before the

[31] First Report at paras 21-24, 52, 54-59 and 70.
[32] *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 100.
[33] *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 at para 106.

court, or through prior agreement.[34] If these factors prove inconclusive, the court can engage in a consideration of equities to determine if a vesting order is appropriate.[35]

24. As is customary with vesting orders of this nature, the proposed forms of the OVC AVO and Auction AVO extinguish the claims and encumbrances identified therein to the extent set out in those orders.

(ii) *The OVC AVO for the Real Property Should Be Granted*

25. The Receiver seeks the OVC AVO to vest the Real Property in the Proposed Purchaser free and clear of any claims and encumbrances, other than the Permitted Encumbrances set out in the Sale Agreement. The Sale Agreement provides for the sale of the Purchased Assets, as defined therein, including the Real Property.

26. The Receiver seeks to vest out the following interests registered against the Real Property:

(a) Instrument No. SC1911788, being a Charge in favour of TD in the principal amount of $1,115,000, registered on July 6, 2022;

(b) Instrument No. SC1911789, being a Notice of Assignment of Rents-General in favour of TD, registered on July 6, 2022; and

(c) Instrument No. SC2170082, being the Court Order appointing the Receiver, registered on November 7, 2025.[36]

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[34] *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 at paras 103-106.
[35] *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 at para 110.
[36] First Report at paras 60-69; Draft OVC AVO, Schedule "C".

27. The Real Property is also subject to property tax arrears owed to the Municipality of New Tecumseth in the approximate amount of $4,628.03, which the Receiver intends to pay as part of the closing of the Transaction.[37] The Receiver has also received a CRA deemed trust claim with respect to 267 for unpaid HST in the amount of $1,707.23, which relates to a period after the registration of the TD Mortgage (as defined in the First Report) and, accordingly, ranks subordinate to TD's security over the Real Property.[38]

(iii) ***The Auction AVO for the Olympic Vehicle Should Be Granted***

28. The Receiver seeks an Auction AVO to vest all of Olympic's right, title and interest, if any, in and to the Olympic Vehicle in the Auction Purchaser free and clear of claims and encumbrances upon completion of the Auction and delivery of a bill of sale or similar evidence of purchase and sale.

29. The Receiver seeks to vest out the following interests affecting the Olympic Vehicle:

(a) RBC's PMSI in the Olympic Vehicle under the MLA and Vehicle Schedule (each as defined in the First Report), with the amount identified by RBC as owing specifically in respect of Lease No. 201000069587 being approximately $120,000 as at May 29, 2026, based on indicative numbers provided by RBC;

(b) TD's security interest pursuant to a General Security Agreement, subject to RBC's priority position in respect of the Olympic Vehicle based on RBC's PMSI;

[37] First Report at para 66.
[38] First Report at para 71.

(c) a deemed trust claim in respect of unpaid Harmonized Sales Tax ("**HST**") in the amount of $114,538.47;

(d) a deemed trust claim in respect of unpaid source deductions in the amount of $46,562.40; and

(e) RBC's claim to any surplus pursuant to its General Security Agreement and any remaining indebtedness owing by Olympic to RBC.[39]

30. The Receiver believes it is appropriate for the Court to issue the proposed forms of the OVC AVO and the Auction AVO. Both the Sale Agreement and Auction Agreement were entered into following processes that meet the *Soundair* principles, and the proceeds provide for some realization to certain secured creditors.

C. The Receiver's First Report and Activities Should Be Approved

31. The Court has previously observed that periodic requests to approve reports of a monitor in a proceeding commenced under the *Companies' Creditors Arrangement Act*, or a receiver appointed pursuant to the BIA or the CJA, are appropriate as there are good policy and practical reasons to grant such approvals. Such reasons include permitting the Court officer to move forward with the next steps in the proceeding.[40]

32. The Receiver seeks this Court's approval for activities undertaken by the Receiver since the date of its appointment. The activities of the Receiver described in the First Report were all necessary and undertaken diligently and in good faith pursuant to the Receiver's duties and powers

[39] First Report at paras 21-24, 54-59 and 71.
[40] *Target Canada Co. (Re)*, 2015 ONSC 7574 at paras 2 and 23; *First Source Financial Management v. Chacon Strawberry Fields Inc.*, 2024 ONSC 7229 at para 55, citing *Hanfeng Evergreen Inc., (Re)*, 2017 ONSC 7161.

as set out in the Appointment Order, and were, in each case, in the best interests of the Debtors and their stakeholders generally.

33. The approval language in the proposed Ancillary Relief Order makes clear that the approval is granted only in respect of the Receiver's own conduct and activities, and is not intended to create rights or impose obligations for any other party.[41]

D. <u>The Sealing Order Should Be Granted</u>

34. The Receiver is seeking a sealing order, until the earlier of the closing of the Transaction or further Order of this Court, in respect of the Confidential Appendices to the First Report.

35. The sealing order is sought pursuant to subsection 137(2) of the CJA.[42] Subsection 137(2) of the CJA provides this Court with the statutory jurisdiction to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.

36. The test for a sealing order was established by the Supreme Court of Canada in *Sierra Club of Canada v. Canada (Minister of Finance)*,[43] and subsequently recast in *Sherman Estate v. Donovan*.[44] The test requires the court to consider whether: (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the 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. All three elements are prerequisites for a sealing order to be granted.[45]

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[41] Draft Ancillary Relief Order at para 3, Motion Record at Tab 7.
[42] *Courts of Justice Act,* R.S.O. 1990, c. C.43, s. 137(2).
[43] *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41.
[44] *Sherman Estate v. Donovan,* 2021 SCC 25.
[45] *Sherman Estate v. Donovan,* 2021 SCC 25 at para 38.

37. At the second step of the test, courts must consider whether any alternative measures, short of a sealing order, can reasonably protect the interest at stake and, if not, how the court may limit the scope of the sealing order to only the specific information that is necessary to be sealed.[46]

38. The impact on public interest in the open-court system and public confidence in the administration of justice must be weighed against the commercial benefits of sealing the information.[47] Where the sealing order is restricted to a few technical documents that the public is unlikely to be interested in, the negative effects regarding the open-court system will be reduced.[48]

39. Courts commonly seal commercially sensitive bid, valuation and sale-process materials in insolvency sale approvals until closing, particularly where disclosure could prejudice a further sale process if the approved transaction does not close. Such sealing protects fair play by preventing competitors or potential bidders from obtaining an unfair advantage from confidential sale information.[49]

40. The Receiver submits that the test is satisfied in this case. The Confidential Appendices contain commercially sensitive information, including appraisals of the Real Property, sale and marketing proposals received by the Receiver, information regarding the sale process and bids received in respect of the Real Property, and the unredacted Sale Agreement. Public disclosure of this information could materially impair the Receiver's ability to maximize value for the Real Property in the event that the Transaction does not close. The proposed sealing order is limited in duration until the earlier of the closing of the Transaction or further Order of the Court.[50]

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[46] *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para 62.
[47] *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at paras 74-76.
[48] *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para 78.
[49] *Look Communications Inc. v. Look Mobile Corporation*, 2009 CanLII 71005 (ON SC) at para 17.
[50] First Report at paras 72-73.

41. The proposed sealing order is the least restrictive and prejudicial alternative to prevent the dissemination of commercially sensitive information. There is no reasonable alternative to the sealing order that would adequately protect the confidentiality of the information that is sought to be kept confidential.

42. Overall, the salutary effects of the sealing order, which will maintain confidentiality over a party's legitimate commercial interests, outweigh the deleterious effects of restricting the accessibility of court proceedings. The Receiver submits that the sealing order is appropriate in the circumstances and ought to be granted.

E. The Fees and Disbursements of the Receiver and its Counsel, and the Interim Statement of Receipts and Disbursements, Should Be Approved

43. The First Report encloses the fee affidavits of the Receiver and its counsel in respect of their fees and disbursements.[51] As required by the Appointment Order and prevailing insolvency practice, the Receiver seeks approval of its fees and disbursements and those of its counsel.

44. The First Report and the fee affidavits appended thereto accurately reflect the activities, fees and disbursements of the Receiver and its counsel.

45. The jurisdiction to pass the accounts of the Receiver and its counsel is confirmed in the Appointment Order, which directs that: "the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Ontario Superior Court of Justice."[52]

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[51] First Report at para 76, Appendix "9"; First Report at para 79, Appendix "10".
[52] Appointment Order at para 20, Appendix "1" to the First Report.

46. On a motion to pass accounts, the Court must consider the "overriding principle of reasonableness," focusing on the overall value contributed by the court officer and its counsel. The Court does not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of professional services may not be instructive when looked at in isolation.[53] In *Bank of Nova Scotia v. Diemer*, the Court of Appeal for Ontario stated "[t]he focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took."[54]

47. The Receiver respectfully submits that the fees of the Receiver and its counsel are reasonable and justified in the circumstances and that no other party has indicated opposition to their approval. They accurately reflect the work done in these proceedings thus far and were incurred in accordance with the Receiver's duties under the Appointment Order.

48. The Receiver also seeks approval of its interim statement of receipts and disbursements for the period from the issuance of the Appointment Order to April 30, 2026. The Receiver submits that the receipts and disbursements are reasonable and should be approved.[55]

F. <u>The Proposed Distributions Should Be Authorized</u>

49. The Receiver seeks authorization to make the Proposed Distributions as set out in the First Report.[56] Orders granting interim distributions are routinely granted by Canadian courts in insolvency proceedings, including receiverships.[57]

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[53] *Nortel Networks Inc.*, 2022 ONSC 6680 at paras 10-11; *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at para 33.
[54] *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at para 45.
[55] First Report at para 81, Appendix "11".
[56] First Report at paras 88-89.
[57] *Ontario Securities Commission v. Bridging Income Fund L.P.*, 2022 ONSC 4472 at paras 8 and 12; *First Source Financial Management v. Chacon Strawberry Fields Inc.*, 2024 ONSC 7229 at para 44.

50. The Receiver proposes to make distributions from the proceeds of sale of the Real Property, including payment of the Receiver's borrowings, the real estate commission payable under the Listing Agreement, outstanding property taxes in respect of the Real Property as at closing of the Transaction, and amounts owing to TD, all as more particularly described in the First Report.[58] The Receiver also proposes to maintain a reserve of $100,000 from the proceeds of sale of the Real Property pending completion of the remaining administration of the receivership estate.[59]

51. In determining whether it is appropriate to authorize an interim distribution, the court may consider: (a) whether the proposed recipient's security is valid and enforceable; (b) whether the amounts that are owed to the proposed recipient exceed the proposed distribution amount; and (c) whether the proposed interim distribution would result in interest savings.[60]

52. The Receiver borrowed funds from TD in the amount of $55,000 to fund disbursements during the receivership proceedings. Pursuant to the Appointment Order, the Receiver's Borrowings Charge ranks in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but is subordinate to the Receiver's Charge and the statutory charges identified in the Appointment Order.[61]

53. A&B, as independent legal counsel, reviewed the security granted by the Debtors in respect of TD's indebtedness, including against the Real Property, and provided the Receiver with an

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[58] First Report at para 88.
[59] First Report at para 89.
[60] *First Source Financial Management v. Chacon Strawberry Fields Inc.*, 2024 ONSC 7229 at para 45, citing *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6461.
[61] First Report at paras 82-84.

opinion that, subject to standard assumptions and qualifications, TD has valid security interests and/or charges, as applicable, against the Property to be sold pursuant to the Transaction.[62]

54. The Proposed Distributions are to be made from the proceeds of sale of the Real Property. The Receiver anticipates that TD will suffer a material shortfall and, accordingly, that no funds will be available for distribution to any other stakeholders.[63]

55. The Receiver respectfully submits that the Proposed Distributions are appropriate and should be authorized pursuant to the proposed Ancillary Relief Order.[64]

PART V - RELIEF REQUESTED

56. The Receiver requests that this Court grant the proposed forms of the OVC AVO, the Auction AVO, and the Ancillary Relief Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of June 2026.

Alex Bernicchia-Freeman

June 23, 2026

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in its capacity as Court-appointed Receiver

[62] First Report at para 86.
[63] First Report at para 88.
[64] First Report at paras 86-89.

SCHEDULE “A”

LIST OF AUTHORITIES

1. *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6461.
2. *Bank of Montreal v. Dedicated National Pharmacies Inc. et al.*, 2011 ONSC 4634.
3. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851.
4. *Canwest Global Communications Corp.*, 2010 ONSC 2870.
5. *First Source Financial Management v. Chacon Strawberry Fields Inc.*, 2024 ONSC 7229.
6. *Hanfeng Evergreen Inc., (Re)*, 2017 ONSC 7161.
7. *Look Communications Inc. v. Look Mobile Corporation*, 2009 CanLII 71005 (ON SC).
8. *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375.
9. *Nortel Networks Inc.*, 2022 ONSC 6680.
10. *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857.
11. *Ontario Securities Commission v. Bridging Income Fund L.P.*, 2022 ONSC 4472.
12. *Regal Constellation Hotel Ltd., Re.*, 2004 CanLII 206 (ON CA).
13. *Royal Bank of Canada v. Soundair Corp*., 1991 CanLII 2727 (ON CA).
14. *Sherman Estate v. Donovan*, 2021 SCC 25.
15. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41.
16. *Target Canada Co. (Re)*, 2015 ONSC 7574.
17. *Terrace Bay Pulp Inc. (Re)*, 2012 ONSC 4247.
18. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508.

PURSUANT TO RULE 4.06.1(2.1), THE UNDERSIGNED certify that they are satisfied as to the authenticity of every authority cited in this factum.

June 23, 2026	A Freeman
DATE	Alex Bernicchia-Freeman

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY-LAWS

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3**

PART XI

Secured Creditors and Receivers

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

(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

(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)

(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

(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

(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

(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

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

***Courts of Justice Act*, R.S.O. 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.

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.

THE TORONTO-DOMINION BANK and **2454934 ONTARIO INC. operating as OLYMPIC ROADSIDE et al.**

Applicant | Respondents

Court File No. CV-25-00003076-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT BRAMPTON

FACTUM OF THE RECEIVER
(Returnable July 3, 2026)

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