

COURT FILE NUMBER 1803-21971
COURT COURT OF KING’S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE BANKRUPTCY
AND INSOLVENCY OF 1119658 ALBERTA
LTD. and 101285461 SASKATCHEWAN LTD.

PLAINTIFF BUSINESS DEVELOPMENT BANK OF
CANADA

DEFENDANTS 1119658 ALBERTA LTD. and 101285461
SASKATCHEWAN LTD.

APPLICANT BDO CANADA LIMITED. (formerly HARDIE
& KELLY INC). in its capacity as the Court-
appointed Receiver of 1119658 ALBERTA
LTD.

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT CARON & PARTNERS LLP
Barristers & Solicitors
Fifth Avenue Place – West Tower
2120, 237 – 4th Avenue S.W.
Calgary, Alberta T2P 4K3
Phone: 403-770-4023
Fax: 403-237-0111
Attention: Dean A. Hutchison
Solicitors for BDO Canada Limited

NOTICE TO RESPONDENT(S):

This application is made against you. You are the respondent.

You have the right to state your side of this matter before the Judge.

To do so, you must be in Court when the application is heard as shown below:

Date: Tuesday, February 14, 2023
Time: 11:00 a.m.
Where: Court of King’s Bench of Alberta, Edmonton Law Courts,
1A Sir Winston Churchill Square, Edmonton, Alberta
Before Whom: The Honourable Mr. Justice D.R Mah – Via WebEx
(Booked on the Commercial List)

Go to the end of this document to see what else you can do and when you must do it.

Remedy Claimed or Sought:

1. An abridgement, if necessary, of the time for service of this Application and materials in support thereof, and an Order declaring service of same to be good and sufficient.
2. An Order substantially in the form attached hereto as **Schedule “A”**:
 - (a) amending sub-paragraph 3(1)(i) of the Amended Receivership Order granted in the within proceedings on December 5, 2018 (the “**Receivership Order**”) by deleting the words “\$150,000” and replacing it with the words “\$225,000”;
 - (b) approving the actions of the Receiver in these receivership proceedings since the date of the Receiver's Third Report dated March 1, 2021 (the “**Receiver’s Third Report**”), as set out in the Receiver’s Fourth Report dated February 6, 2023 (the “**Receiver’s Fourth Report**”) and as set out in the Confidential Supplement to the Receiver's Fourth Report dated February 6, 2023 (the “**Confidential Supplement**”) and
 - (c) approving the statement and receipts for 1119658 Alberta Ltd. (“**1119 AB**”) for the period of December 5, 2018 to January 31, 2023 (the “**1119 SRD**”) as attached as Appendix “E” to the Receiver’s Fourth Report.
3. An Order substantially in the form attached hereto as **Schedule “B”** approving the sealing of the Confidential Supplement until the earlier of one (1) month following the closure of the sale of the Bonnyville Lands (as defined below) has closed, or until further Order of this Honourable Court (the “**Restricted Court Access Order**”).
4. An Order granting leave to the Receiver to apply to this Court for advice and directions as may be necessary to carry out the terms of any Order granted at the within application.
5. An Order granting such other and further relief as the circumstances may require and as this Honourable Court shall deem appropriate.

Grounds for Making the Application:

- A. **Amending the Receivership Order and History of the Bonnyville Lands**

- (a) On December 5, 2018, Hardie & Kelly Inc. was appointed the receiver and manager of over all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the “**Property**”) of 1119 AB and 10128541 Saskatchewan Limited (“**1012 SK**”) by the Receivership Order granted in these proceedings.
- (b) Paragraph 3 of the Receivership Order sets out the “Receiver’s Powers”. Sub-paragraph 3(l) addresses the Receiver’s powers to sell, convey, lease or assign the Property or any parts thereof out of the ordinary course of business; and sub-paragraph 3(l)(i) provides that the Receiver may sell the Property without Court approval in respect of any transaction not exceeding \$150,000, provided that the aggregate consideration of all such transactions does not exceed \$500,000.
- (c) 1119 AB was in the business of owning and operating a hotel known as the Westwood Inn located on lands which are situated in the Town of Drayton Valley, in the Province of Alberta (collectively, the “**Alberta Hotel and Lands**”). 1012 Sask. was in the business of owning and operating a hotel known as the Quality Inn & Suites - Yorkton located on the Lands which are situated in the City of Yorkton, in the Province of Saskatchewan (the “**Saskatchewan Hotel and Lands**”).
- (d) By an Order granted August 8, 2019 by the Honourable Mr. Justice J.J. Gill in Court File Number BK03-1160629 (the “**Bankruptcy Proceedings**”), 1119 AB was adjudged bankrupt and Hardie & Kelly Inc. was appointed as the trustee in bankruptcy of 1119 AB.
- (e) By a Sale Approval and Vesting Order (Sale by Receiver) granted August 8, 2019 by the Honourable Mr. Justice J.J. Gill in the within proceedings, the sale of the Alberta Hotel and Lands was approved by this Honourable Court, and such sale closed on or about September 3, 2019.
- (f) By a Sale Approval and Vesting Order (Sale by Receiver) granted October 2, 2019 by the Honourable Mr. Justice J.S. Little in the within proceedings, the sale of the Saskatchewan Hotel and Lands was approved by this Honourable Court, and such sale closed on or about October 17, 2019.

- (g) On June 30, 2022, pursuant to a merger of Hardie & Kelly Inc. and BDO Canada Limited, Madam Justice K.M. Horner of this Honourable Court granted an order substituting BDO Canada Limited for Hardie & Kelly Inc. in its capacity as receiver, with the effect that references to the term “**Receiver**” herein shall refer to both Hardie & Kelly Inc. and BDO Canada Limited in its capacity as the Court-appointed receiver and manager of the Property of each of 1119 AB and 1012 SK.
- (h) By a Consent Order granted by the Honourable Mr. Justice M.J. Lema in the Bankruptcy Proceeding on March 16, 2020 (the “**Bonnyville Lands Order**”), this Honourable Court ordered, *inter alia*, the Registrar of Land Titles of Alberta to cancel the then existing title of the following lands and issues a new title of such lands in the name of 1119 AB:

Plan 1622416
 Block 21
 Lot 1
 Excepting Thereout All Mines and Minerals

And

Plan 9520604
 Area 4
 Containing 1.54 Hectares (3.81 Acres) More or Less
 Excepting Thereout: Hectares (Acres) More or Less
 A) Plan 1622416 Subdivision 0.623 1.54
 Excepting Thereout All Mines and Minerals

(collectively, the “**Bonnyville Lands**”).

- (i) New certificates of title respecting the Bonnyville Lands in the name of 1119 were issued in accordance with the Bonnyville Lands Order on April 2, 2020.
- (j) The Bonnyville Lands are two vacant parcels of land bearing the civic addresses of 5101-54 Avenue, Bonnyville, Alberta and 5201-54 Avenue, Bonnyville, Alberta.
- (k) As described in both the Receiver's Fourth Report and the Confidential Supplement, given the pandemic and the relative inactivity in real estate markets in locations such

as Bonnyville, Alberta, upon discussions with stakeholders, the Receiver initially deferred listing the Bonnyville Lands for sale in a depressed market.

- (l) In or around February 2021, the Receiver sought out listing proposals for the Bonnyville Lands, and in April 2021 executed a listing agreement with Re/Max Bonnyville Realty (the “**Listing Agent**”) to list the Bonnyville Lands for sale. Such listing agreement was extended on two occasions, with the most recent listing expiring in November 2022. Further details regarding the history of the listing of the Bonnyville Lands with the Listing Agent are set out in the Confidential Supplement.
- (m) Following the expiry of the listing with the Listing Agent without any of sale of the Bonnyville Lands having occurred, upon discussion with the fulcrum secured creditor of 1119 AB, the Business Development Bank of Canada (“**BDC**”), the Receiver sought listing proposals from two auctioneers to market and sell the Bonnyville Lands. The Receiver has selected a proposal from Ritchie Bros Auctioneer (“**Ritchie Bros**”) and intends on marketing and selling the Bonnyville Lands by way of public auction.
- (n) As set out in more detail in the Confidential Supplement, on the advice of Ritchie Bros and with the support of BDC, the Receiver believes that it will be more practical and efficient, and will ultimately lead to better recoveries for stakeholders, if the Receivership Order is amended to increase the sale threshold to allow the Receiver to conduct individual sale transactions of up to \$225,000 without further approval of the Court.
- (o) The Receiver is of the view that the Bonnyville Lands have been exposed for sale to the market for a significant amount of time and that the auction marketing and sales process described in the Receiver’s Fourth Report and the Confidential Supplement (for which the sought amendment to the Receivership Order is requested), will lead to the highest realization value to stakeholders that is available in the circumstances.

B. Approval of Activities of the Receiver and the 1119 SRD

- (p) All of the actions of the Receiver and its legal counsel since the date of the Receiver's Third Report to date in the course of the administration of the receivership of 1119 AB are reasonable and appropriate in the circumstances.
- (q) All of the receipts and disbursements of the Receiver in its capacity as the receiver of 1119 AB as set in in the 1119 SRD, are reasonable, having been validly incurred in connection with the conduct of the Receiver's obligations.

C. Sealing of Confidential Supplement

- (r) The Confidential Supplement contains confidential information with respect to the Receiver's expectations of value of, and detail of the sale process thus far for, the Bonnyville Lands. The Confidential Supplement thus contains commercially sensitive information and documentation.
- (s) There will be a negative impact and significant potential prejudice to stakeholders in the event such confidential information and documentation were disclosed to the public. Such negative impacts include prejudicing the auction sale process of the Bonnyville Lands as described in the Confidential Supplement.
- (t) The Restricted Court Access Order being sought is the least restrictive and prejudicial alternative to permit the dissemination of the said commercially sensitive information and documentation, such that it is fair and reasonable in the circumstances to restrict public access to such commercially sensitive information and documentation.
- (u) Counsel to the Receiver has completed and submitted a Notice to Media of Application to Restrict Access with respect to the Restricted Court Access Order being sought.
- (v) The terms as set out in the proposed form of Restricted Court Access Order attached hereto as Schedule "B" are necessary to effect the sealing of the Confidential Supplement.

- (w) Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or Evidence To Be Relied Upon:

- (a) This notice of Application, filed;
- (b) The Receiver's Fourth Report dated February 6, 2023, filed;
- (c) The Confidential Supplement the Receiver's Fourth Report dated February 6, 2022, to be filed subject to the terms of the Restricted Court Access Order sought;
- (d) The Amended Receivership Order granted by the Honourable Mr. Justice S.D. Hillier on December 5, 2018, filed;
- (e) The Order granted by the Honourable Mr. Justice J.J. Gill in Court File Number BK03-1160629 on August 8, 2019, filed;
- (f) The Consent Order granted by the Honourable Mr. Justice M.J. Lema in Court File Number BK03-1160629 on March 16, 2020, filed;
- (g) All pleadings, Affidavits and other materials filed in this action, including all Reports of the Receiver and Confidential Supplements thereto;
- (h) The inherent jurisdiction of this Honourable Court to control its own process; and
- (i) Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Rules:

- (a) Rules 6.32, 6.47 (c) (d), (e) and (f), 11.27 and 13.5 of the Alberta *Rules of Court*.

Applicable Acts and Regulations:

- (a) The *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended;
- (b) The *Judicature Act*, R.S.A. 2000, c. J-2, as amended;

(c) The *Business Corporations Act*, R.S.A. 2000, c. B-9, as amended;

(d) The *Personal Property Security Act*, R.S.A. 2000, c. P-7, as amended;

How the Application is Proposed to be Heard or Considered:

(a) Via WebEx before the Honourable Mr. Justice D.R. Mah, in chambers.

WARNING TO THE RESPONDENT:

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE “A”

COURT FILE NUMBER 1803-21971

COURT COURT OF KING’S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE BANKRUPTCY AND
INSOLVENCY OF 1119658 ALBERTA LTD. and
101285461 SASKATCHEWAN LTD.

PLAINTIFF BUSINESS DEVELOPMENT BANK OF CANADA

DEFENDANTS 1119658 ALBERTA LTD. and 101285461
SASKATCHEWAN LTD.

APPLICANT BDO CANADA LIMITED. (formerly HARDIE & KELLY
INC). in its capacity as the Court-appointed Receiver of
1119658 ALBERTA LTD.

DOCUMENT **ORDER AMENDING RECEIVERSHIP ORDER and
APPROVING RECIEVER’S ACTIVITIES and
STATEMENT OF RECEIPTS AND DISBURSEMENTS**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT CARON & PARTNERS LLP
Barristers & Solicitors
Fifth Avenue Place – West Tower
2120, 237 – 4th Avenue S.W.
Calgary, Alberta T2P 4K3
Phone: 403-770-4023
Fax: 403-237-0111
Attention: Dean A. Hutchison
Solicitors for BDO Canada Limited

DATE ON WHICH ORDER WAS PRONOUNCED: TUESDAY, FEBRUARY 14, 2023

LOCATION OF HEARING OR TRIAL: EDMONTON, ALBERTA

NAME OF JUDGE WHO MADE THIS ORDER: HONOURABLE MR. JUSTICE D.R. MAH

UPON THE APPLICATION of BDO Canada Limited in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of all of the current and future assets, undertaking, and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, of 1119658 Alberta Ltd., filed February 6, 2023 (the “**Application**”); **AND UPON HAVING READ** the Application, the Amended Receivership Order granted by the Honourable Mr. Justice S.D. Hillier on December 5, 2018 (the “**Receivership Order**”), filed, the Receiver's Fourth Report dated February 6, 2023 (the

“**Receiver’s Fourth Report**”), filed, and the Confidential Supplement to the Receiver's Fourth Report dated February 6, 2023 (the “**Confidential Supplement**”), and the Affidavit of Service of Tammy Boyechko sworn February __, 2023, filed; **AND UPON IT** appearing that all interested and affected parties have been served with notice of the Application; **AND UPON HEARING** the submissions of counsel for the Receiver and all other interested parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of the Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of the Application, and time for service of the Application is abridged to that actually given.

AMENDMENT OF RECEIVERSHIP ORDER

2. Paragraph 3(1)(i) of the Amended Receivership Order granted in these proceedings on December 5, 2018 by the Honourable Mr. Justice S.D. Hillier, is hereby amended by deleting the words “\$150,000” and replacing it with the words “\$225,000”.

APPROVAL OF THE ACTIVITIES OF THE RECEIVER

3. The activities of the Receiver as set out in the Receiver's Fourth Report and the Confidential Supplement, are hereby ratified and approved.

APPROVAL OF INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS OF THE RECEIVER

4. The interim statement of receipts and disbursements of the Receiver regarding 1119658 Alberta Ltd. attached as Appendix “E” to the Receiver's Fourth Report, is hereby ratified and approved.
5. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the day of the transmission or delivery of such documents.

6. Service of this Order on any party not attending the Application is hereby dispensed with.

The Honourable Mr. Justice D.R. Mah,
Justice of the Court of King's Bench of Alberta

SCHEDULE "B"

COURT FILE NUMBER	1803-21971
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY OF 1119658 ALBERTA LTD. and 101285461 SASKATCHEWAN LTD.
PLAINTIFF	BUSINESS DEVELOPMENT BANK OF CANADA
DEFENDANTS	1119658 ALBERTA LTD. and 101285461 SASKATCHEWAN LTD.
APPLICANT	BDO CANADA LIMITED. (formerly HARDIE & KELLY INC). in its capacity as the Court-appointed Receiver of 1119658 ALBERTA LTD.
DOCUMENT	RESTRICTED COURT ACCESS ORDER
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	CARON & PARTNERS LLP Barristers & Solicitors Fifth Avenue Place – West Tower 2120, 237 – 4th Avenue S.W. Calgary, Alberta T2P 4K3 Phone: 403-770-4023 Fax: 403-237-0111 Attention: Dean A. Hutchison Solicitors for BDO Canada Limited

DATE ON WHICH ORDER WAS PRONOUNCED: TUESDAY, FEBRUARY 14, 2023

LOCATION OF HEARING OR TRIAL: EDMONTON, ALBERTA

NAME OF JUDGE WHO MADE THIS ORDER: HONOURABLE MR. JUSTICE D.R. MAH

UPON THE APPLICATION of BDO Canada Limited in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of all of the current and future assets, undertaking, and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, of 1119658 Alberta Ltd., filed February 6, 2023 (the "**Application**"); **AND UPON HAVING READ** the Application, the Amended Receivership Order granted by the Honourable Mr. Justice S.D. Hillier on December 5, 2018 (the "**Receivership Order**"), filed, the Receiver's Fourth Report dated February 6, 2023, filed, the Confidential Supplement to the Receiver's Fourth Report dated February 6, 2023, and the Affidavit of

Service of Tammy Boyechko sworn February __, 2023, filed; **AND UPON IT** appearing that all interested and affected parties have been served with notice of the Application; **AND UPON HEARING** the submissions of counsel for the Receiver and all other interested parties present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of the Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of the Application, and time for service of the Application is abridged to that actually given.

SEALING OF DOCUMENTS

2. The Confidential Supplement to the Receiver's Fourth Report dated February 6, 2023 is hereby sealed by this Honourable Court until the earlier of:
 - (a) the Receiver filing with this Honourable Court a Receiver's Certificate substantially in the form attached hereto as Schedule "A", which the Receiver shall do within one (1) month from the closing of the sale of the Bonnyville Lands (as such term is defined in the Confidential Supplement of the Receiver's Fourth Report dated February 6, 2023); or
 - (b) further Order of this Honourable Court.

The Honourable Mr. Justice D.R. Mah,
Justice of the Court of King's Bench of Alberta

SCHEDULE "A"

Form of Receiver's Certificate

COURT FILE NUMBER	1803-21971
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY OF 1119658 ALBERTA LTD. and 101285461 SASKATCHEWAN LTD.
PLAINTIFF	BUSINESS DEVELOPMENT BANK OF CANADA
DEFENDANTS	1119658 ALBERTA LTD. and 101285461 SASKATCHEWAN LTD.
APPLICANT	BDO CANADA LIMITED. (formerly HARDIE & KELLY INC). in its capacity as the Court-appointed Receiver of 1119658 ALBERTA LTD.
DOCUMENT	RECEIVER'S CERTIFICATE
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	CARON & PARTNERS LLP Barristers & Solicitors Fifth Avenue Place – West Tower 2120, 237 – 4th Avenue S.W. Calgary, Alberta T2P 4K3 Phone: 403-770-4023 Fax: 403-237-0111 Attention: Dean A. Hutchison Solicitors for BDO Canada Limited

RECITALS

- A. Pursuant to an Amended Receivership Order of the Honourable Mr. Justice S.D. Hillier of the Court of King's Bench of Alberta (the "**Court**") dated December 5, 2018, Hardie & Kelly Inc. (now BDO Canada Limited) was appointed as the receiver and manager (the "**Receiver**") of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, of 1119658 Alberta Ltd.
- B. Pursuant to an Order of the Honourable Mr. Justice J.R. Mah of the Court dated February 14, 2023, the Court approved the sealing of the Confidential Supplement to the Fourth Report of the Receiver dated February 6, 2023 on certain terms.

THE RECEIVER CERTIFIES the following:

1. The sale of the Bonnyville Lands (as defined in the Confidential Supplement to the Fourth Report of the Receiver dated February 6, 2023), has been completed to the satisfaction of the Receiver.
2. That as a result of the satisfaction of the sale described in paragraph one, there is no longer any need for the Confidential Supplement to the Fourth Report of the Receiver dated February 6, 2023 to remain sealed.
3. This Certificate was delivered by the Receiver at _____ on the ____ day of _____, 2023.

BDO CANADA LIMITED in its capacity as Court-appointed Receiver of 1119658 Alberta Ltd., and not in its personal capacity.

Per: _____

Name:

Title: