

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE BANK OF NOVA SCOTIA

Applicant

- and -

UPPER CANADA GROWERS LTD. and UCG LAND INC.

Respondent

**AND IN THE MATTER OF AN 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**

**FACTUM OF BDO CANADA LIMITED,
IN ITS CAPACITY AS RECEIVER AND MANAGER
(Returnable October 23, 2025)**

October 14, 2025

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UCG Land Inc.*

TO: **SERVICE LIST**

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PART I - INTRODUCTION

1. On the application of The Bank of Nova Scotia (“**BNS**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c C.43 (the “**CJA**”), the Ontario Superior Court of Justice (the “**Court**”) made an Order on May 15, 2025 (the “**Appointment Order**”) appointing BDO Canada Limited (“**BDO**”) as receiver and manager (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties of Upper Canada Growers Ltd. (“**UCG OpCo**”) and UCG Land Inc. (“**LandCo**” together with UCG OpCo, the “**Companies**”).¹

2. The Companies had previously filed Notices of Intention to Make a Proposal (the “**NOI**”), and BDO was appointed as the Licensed Insolvency Trustee (the “**Proposal Trustee**”) under the NOI filings (the “**NOI Proceedings**”).²

3. During the NOI Proceedings, the Proposal Trustee assisted the Companies with various financial and operational activities, including conducting a Sale and Investment Solicitation Process (“**SISP**”), which did not yield any reasonable offers.³

4. Following its appointment, the Receiver continued the marketing and sale of the real properties of the Companies.⁴

5. On September 10, 2025, the Receiver entered into an Agreement of Purchase and Sale (the “**Sale Agreement**”) with Bonnefield Canadian Farmland LP V Master, by its general partner Bonnefield GP V Inc. (“**Bonnefield**”) for the purchase and sale of Joe’s Orchard (as defined below)

¹ First Report of BDO Canada Limited dated October 14, 2025 at para 2 [“**Receiver’s Report**”].

² Receiver’s Report at para 1.

³ Receiver’s Report at paras 49, 52.

⁴ Receiver’s Report at para 35.

and certain pieces of equipment that Bonnefield had been renting pursuant to a service agreement dated May 29, 2025 (the “**Bonnefield Service Agreement**”).⁵

6. The Sale Agreement is conditional upon the issuance of an approval and vesting order (the “**AVO**”) and the closing of the transaction contemplated by the Sale Agreement (the “**Transaction**”). The AVO must vest the Purchased Assets (as defined in the Sale Agreement) in the Purchaser free and clear of all encumbrances, other than those specifically itemized in the AVO as permitted encumbrances.⁶

7. Accordingly, the Receiver brings this motion for:

(a) the AVO which, among other things:

- (i) approves the Transaction contemplated in the Sale Agreement between the Receiver and Bonnefield (in such capacity, the “**Purchaser**”), and authorizing the Receiver to complete the Transaction; and
- (ii) upon execution and delivery of a certificate by the Receiver containing confirmation of the closing of the Transaction (the “**Receiver’s Certificate**”), vests in the Purchaser all of the Companies’ right, title, benefit, and interest in and to the Purchased Assets free and clear of and from any and all security interests, liens, executions, levies, charges, or other financial or monetary claims;

(b) an Order (the “**Ancillary Relief Order**”) which, among other things:

⁵ Receiver’s Report at para 53.

⁶ Receiver’s Report at para 54.

- (i) approves the First Report of the Receiver dated October 14, 2025 (the “**First Report**”), and the actions, conduct, and activities of the Receiver described therein;
- (ii) approves the Receiver entering into the Minutes of Settlement and the Easement Agreement (each as herein defined), and approving and authorizing the granting, conveyancing and transfer of the Oxley Easement (as herein defined);
- (iii) seals the Confidential Appendices to the First Report until the closing of the Transaction or further Order of this Court;
- (iv) approves the Receiver’s interim statement of receipts and disbursements from the date of the Appointment Order to October 4, 2025; and
- (v) approves the fees and disbursements of the Receiver, as set out in the Affidavit of Clark Lonergan sworn October 14, 2025 (the “**BDO Fee Affidavit**”), and the fees and disbursements of the Receiver’s counsel, Aird & Berlis LLP (“**A&B**”), as set out in the Affidavit of Ian Aversa, sworn October 9, 2025 (the “**A&B Fee Affidavit**”).⁷

PART II - SUMMARY OF FACTS

The Companies:

8. UCG OpCo operated a nursery and orchard business in Ontario, with its primary business activities being the acquisition and multiplication of disease-free rootstock for resale to fruit farmers in Canada and the United States of America, and the development and maintenance of fruit orchards for the purpose of harvesting and selling the fruit to the Ontario wholesale market.⁸

9. LandCo operated as a real estate holding company, whose holdings comprised:

⁷ Receiver’s Report at para 3.

⁸ Receiver’s Report at para 7.

- (a) the main operating facility situated located at 1110 Ridge Road, Town of Essex, Ontario, which consists of approximately 26 acres of land on which are built: two (2) commercial greenhouses; a high-tech laboratory; a climate-controlled warehouse (cooler); and an office building with attached storage facility (collectively, the “**Home Farm**”);
- (b) a plot of farmland of approximately 110 acres located at V/L County Road 50 N/S & Schiller Beach Road Row, Harrow, Town of Essex, Ontario (“**County Road 50**”);
- (c) a plot of farmland of approximately 45 acres located at V/L Ferriss Road E/S (part of lot 16), Harrow, Town of Essex, Ontario (“**Ferriss Road**”); and
- (d) an 18-acre apple orchard located at V/L Ferriss Road W/S (part of lot 58), Harrow, Town of Essex, Ontario (“**Joe’s Orchard**”),

(collectively, the “**Real Properties**”).⁹

Marketing Efforts and Sale Agreement:

10. During the SISP, the assets of the Companies, including the Real Properties, were canvassed broadly to 68 strategic buyers and 106 financial buyers.¹⁰

11. The Appointment Order, *inter alia*, granted to the Receiver the power to market the Real Properties, including advertising and soliciting offers and negotiating terms of sale.¹¹

⁹ Receiver’s Report at paras 8, 14.

¹⁰ Receiver’s Report at para 52.

¹¹ Receiver’s Report, Appendix A at para 4.

12. Following its appointment, the Receiver engaged Avison Young Commercial Real Estates Services, LP to market the Real Properties for sale.¹²

13. Each of the Real Properties were listed on MLS with asking prices of \$1 to generate interest. The Receiver did not receive any reasonable offers and, on July 17, 2025, the Home Farm, County Road 50 and Ferriss Road were subsequently re-listed on the Multiple Listings Service at \$9.25 million, \$2.775 million and \$1.125 million, respectively.¹³

14. The marketing process has allowed the Receiver to expose the Real Properties broadly and provide any information to interested parties that they may need in connection with this opportunity.

15. As a result of the Receiver's marketing efforts, the Receiver negotiated and entered into the Sale Agreement with Bonnefield for Joe's Orchard and certain equipment (collectively, the "**Purchased Assets**").

16. The Transaction is conditional on the issuance of the AVO.¹⁴

Oxley Easement:

17. Oxley Wind Farm Inc. ("**Oxley**") and Potentia Renewables Inc. ("**Potentia**") operate a wind farm located primarily on certain lands that are adjacent to land owned by LandCo (the "**UCG Lands**").¹⁵

¹² Receiver's Report at paras 47-48.

¹³ Receiver's Report at para 49.

¹⁴ Receiver's Report at para 54.

¹⁵ Receiver's Report at para 71.

18. In connection with the operation of the windmills, there exist certain subsurface facilities, including buried cables owned and operated by Oxley, which are located along the easterly lot line of the UCG Lands.¹⁶

19. Oxley, Henry Verhoeven (“**Verhoeven**”) and LandCo are parties to an Amended and Restated Windplant Easement Agreement dated July 26, 2019, as amended, which was originally entered into between Oxley, Verhoeven, Mori Essex Nurseries Inc. (“**Mori Essex**”), and Leno Mori (“**Mori**”) and was subsequently assigned from Mori and Mori Essex to LandCo on July 26, 2019 (the “**Windplant Lease**”).¹⁷

20. Prior to the Appointment Date, LandCo commenced a proceeding against Oxley and its predecessor, Potentia, Mori Essex, and Mori in the Ontario Superior Court of Justice, bearing Court File No. CV-22-00683950-0000, alleging a breach of the Windplant Lease. Oxley, Mori Essex and Mori subsequently counterclaimed and cross-claimed against various of the parties involved (collectively, the “**Oxley Proceedings**”).¹⁸

21. The Receiver, Oxley, Potentia, Mori Essex, Mori and Verhoeven have agreed to fully and finally resolve the Oxley Proceedings in accordance with the following terms:

- (a) the Receiver grants to Oxley an easement (the “**Oxley Easement**”) pursuant to an easement agreement (“**Easement Agreement**”);
- (b) within 10 business days of the registration of the Oxley Easement on title to the UCG Lands, Oxley shall pay \$40,000 to the Receiver;

¹⁶ Receiver’s Report at para 73.

¹⁷ Receiver’s Report at para 72.

¹⁸ Receiver’s Report at paras 74-76.

- (c) any associated vesting order in respect of the sale of the UCG Lands shall include the Oxley Easement and the Easement Agreement as permitted encumbrances;
- (d) the Receiver, Oxley, Potentia, Mori Essex and Mori will execute minutes of settlement (the “Minutes of Settlement”), pursuant to which they shall execute a mutual release and shall consent to an Order dismissing the Oxley Proceedings with prejudice and without costs.¹⁹

22. Court approval of the granting of the Oxley Easement pursuant to the Easement Agreement is a term of the Easement Agreement.²⁰

PART III - ISSUES

23. The issues to be determined on this motion are whether this Court should:
- (a) grant the AVO to, among other things, authorize and approve the Transaction contemplated in the Sale Agreement;
 - (b) authorize and direct the Receiver to enter into the Easement Agreement and the Minutes of Settlement, and grant the Oxley Easement;
 - (c) grant a sealing order in respect of the Confidential Appendices; and
 - (d) approve the activities and fees of the Receiver and its counsel.

¹⁹ Receiver’s Report at para 77.

²⁰ Receiver’s Report at para 78.

PART IV - STATEMENT OF ISSUES, LAW & AUTHORITIES

Sale Agreement Should be Approved:

24. The Sale Agreement is conditional on the granting of the AVO.
25. When considering whether to approve a sale transaction involving an insolvent debtor, courts have relied on the factors set out by the Ontario Court of Appeal in *Royal Bank of Canada v. Soundair Corp.*,²¹ 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 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.²²
26. The Receiver submits that the *Soundair* principles are satisfied:
- (a) **The marketing process was reasonable and not unfair:** Assessing the reasonableness of a sale process does not require the Court to examine in minute detail all of the circumstances leading up to the acceptance of a particular offer.²³ The Court should be satisfied overall that the Receiver has not acted improvidently. The Purchased Assets, among other property of the Companies, were broadly

²¹ *Royal Bank of Canada v. Soundair Corp.* (1991), [1991 CarswellOnt 205](#) (ONCA).

²² *Royal Bank of Canada v. Soundair Corp.* (1991), [1991 CarswellOnt 205](#) at [para 16](#) (ONCA); see also *Canwest Global Communications Corp.*, 2010 ONSC 2870 at [para 13](#).

²³ *Royal Bank of Canada v. Soundair Corp.* (1991), [1991 CarswellOnt 205](#) at [paras 48-49](#) (ONCA).

marketed during the SISP undertaken by the Companies during their NOI Proceedings and through the Receiver's own marketing efforts following its appointment. The marketing process provided sufficient time for prospective bidders to conduct due diligence and adequately assess the sale opportunity. Joe's Orchard was listed on the MLS for approximately 18 weeks. The marketing methodology employed by Avison Young is consistent with customary ways in which real estate is marketed and sold in insolvency proceedings. Further, the Sale Agreement is the product of negotiations undertaken between the Receiver and the Purchaser. Extending the marketing process for the Purchased Assets is not recommended due to the low prospect of identifying any new prospective purchasers;

- (b) **Receiver filed a report:** In support of the relief sought in this motion, the Receiver has filed the First Report.
- (c) **Creditors were consulted:** All known creditors received notice of the Receiver's motion. To date, the Receiver is not aware of any opposition to the relief sought;
- (d) **Purchase price is fair and reasonable:** To establish this criterion, the Receiver must demonstrate that sufficient effort has been made to obtain the best price and that the Receiver 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

²⁴ *Terrance Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#) at [paras 50-55](#).

evidence of imprudence or unfairness.²⁵ After approximately 18 weeks on the market, the Receiver is of the view that the purchase price contemplated in the Sale Agreement for Joe's Orchard is superior to the other offers received for it and is reasonable in the circumstances.²⁶ The Sale Agreement does not contain terms and conditions that are, in the Receiver's opinion, either not commercially reasonable or not viable within the context of a receivership.

27. Based on the foregoing, it is the informed business judgment of the Receiver that the Sale Agreement is in the best interests of the Companies and their stakeholders. In the absence of any indication that the Receiver has acted improvidently, that business judgment is entitled to deference by this Court.

AVO Should be Granted:

28. The Receiver seeks an AVO to grant the Purchased Assets free and clear of any claims and encumbrances, other than the permitted encumbrances set out in the AVO.

29. The Court has the power to grant approval and vesting orders pursuant to section 100 of the CJA,²⁷ which provides that:

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.²⁸

²⁵ *Royal Bank of Canada v. Soundair Corp.* (1991), [1991 CarswellOnt 205](#) at [paras 21](#) and [30-31](#) (ONCA); *Terrance Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#) at [paras 45](#) and [52-54](#).

²⁶ Receiver's Report at para 56.

²⁷ *Courts of Justice Act*, R.S.O. 1990, c. C.4.

²⁸ *Courts of Justice Act*, R.S.O. 1990, c. C.4, s. 100.

30. Vesting orders are a routine part of insolvency practice.²⁹ As set out by the Ontario Court of Appeal in *Third Eye Capital Corporation v. Resources Dianor Inc./Dianor Resources Inc.*,³⁰ 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 court, or through prior agreement.³¹ If these factors proved inconclusive, the court can engage in a consideration of equities to determine if a vesting order is appropriate.³²

31. Specifically, the proposed AVO seeks to extinguish the following interests registered on title to the Real Property:

- (a) a charge in the amount of \$20,000,000 granted by LandCo in favour of BNS, registered as instrument CE1161676 on November 30, 2023; and
- (b) a Notice Of Assignment Of Rents-General, registered as instrument CE1161677 on November 30, 2023.³³

32. As is customary with vesting orders of this nature, the proposed form of the AVO specifically extinguishes *Personal Property Security Act* (Ontario) registrations.

33. The Receiver believes it is appropriate for the Court to issue the proposed form of AVO.

²⁹ *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) at [para 106](#).

³⁰ *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#).

³¹ *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) at [paras 103-106](#).

³² *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) at [para 110](#).

³³ Draft Approval and Vesting Order at Tab 3 of Motion Record.

Easement Agreement, Minutes of Settlement and Oxley Easement Should be Approved:

34. The Appointment Order, *inter alia*, granted to the Receiver the powers to (a) settle, extend or compromise any indebtedness owing to the Companies, and (b) settle or compromise any proceedings instituted with respect to the Companies, their property or the Receiver.³⁴

35. The Receiver seeks this Court's approval to enter into the Minutes of Settlement and the Easement Agreement and to grant, conveyance and transfer the Oxley Easement.

36. There is an overriding public interest that favours the settlement of disputes. Courts encourage and facilitate such settlements because it is sound judicial policy which contributes to the effective administration of justice.³⁵

37. In determining whether to approve a settlement in the context of a receivership, the Court generally considers:

- (a) whether the settlement is fair and reasonable;
- (b) whether the settlement provides substantial benefits to other stakeholders; and
- (c) whether the settlement is consistent with the purpose and spirit of the relevant legislation.³⁶

38. Further, in receiverships, the Court frames the test for settlement approval through the lens of the long-established *Soundair* principles set out at paragraph 25 above. To satisfy the *Soundair* criteria in the settlement context, a receiver must consider the available information and use its

³⁴ Receiver's Report, Appendix A at para 4.

³⁵ *Sable Offshore Energy Inc. v. Ameron International Corp.*, [2013 SCC 37](#) at [para 11](#).

³⁶ *Ontario Securities Commission v. Bridging Finance Inc.*, [2025 ONSC 539](#) at [para 13](#).

expertise to determine how to maximize the value of the rights subject to the settlement. When a receiver wishes to settle a claim for or against the receivership estate, it will meet its obligations so long as the proposed compromise is commercially reasonable.³⁷

39. Although the courts will carefully scrutinize the procedure followed by a receiver, they rely upon the expertise of their appointed receivers and are reluctant to second-guess the considered business decisions made by the receiver in arriving at its recommendations. The court will assume that the receiver is acting properly unless the contrary is clearly shown.³⁸

40. The Receiver submits that the Minutes of Settlement and the Easement Agreement are the product of extensive negotiations through counsel, spanning several months, and involved careful consideration of the competing interests involved. The Minutes of Settlement and the Easement Agreement provide a benefit to the receivership estate, and Court approval of same is sought on notice to interested stakeholders.

The Sealing Order Should be Granted:

41. The Receiver is seeking a sealing order, until the Transaction closes or further Order of this Court, in respect of the following:

- (a) Confidential Appendix “A” to the First Report, which contains an Equipment Appraisal completed by Leveredge Asset Solutions Inc. on May 28, 2025; and

³⁷ *IWHL Inc., Re*, [2011 ONSC 5672](#) at [para 6](#).

³⁸ *Regal Constellation Hotel Ltd., Re* (2004), [71 OR \(3d\) 355](#) at [para 23](#) (ONCA).

- (b) Confidential Appendix “B”, which contains a version of the Sale Agreement setting out the purchase price for the Purchased Assets and the amount of the deposit paid to the Receiver.

42. The sealing order is sought pursuant to subsection 137(2) of the CJA.³⁹ 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.

43. The test for a sealing order was established by the Supreme Court in *Sierra Club of Canada v. Canada (Minister of Finance)*,⁴⁰ and subsequently recast in *Sherman Estate v. Donovan*.⁴¹ 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.⁴²

44. All three elements are prerequisites for a sealing order to be granted.⁴³

³⁹ [Courts of Justice Act](#), R.S.O. 1990, c. C.4, s. 137(2).

⁴⁰ *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#).

⁴¹ *Sherman Estate v. Donovan*, [2021 SCC 25](#).

⁴² *Sherman Estate v. Donovan*, [2021 SCC 25](#) at [para 38](#).

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

45. 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.⁴⁴

46. 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.⁴⁵ 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.⁴⁶

47. It is common practice in the insolvency context for information in relation to the sale of the assets of an insolvent corporation to be kept confidential until after the sale is completed pursuant to a Court order. In *Look Communications Inc. v. Look Mobile Corporation*,⁴⁷ Justice Newbould explained the reasons for such confidentiality:

It is common when assets are being sold pursuant to a court process to seal the Monitor's report disclosing all of the various bids in case a further bidding process is required if the transaction being approved falls through. Invariably, no one comes back asking that the sealing order be set aside. That is because ordinarily all of the assets that were bid on during the court sale process end up being sold and approved by court order, and so long as the sale transaction or transactions closed, no one has any further interest in the information. In *8857574 Ontario Inc. v. Pizza Pizza Ltd*, (1994), 23 B.L.R. (2nd) 239, Farley J. discussed the fact that valuations submitted by a Receiver for the purpose of obtaining court approval are normally sealed. He pointed out that the purpose of that was to maintain fair play so that competitors or potential bidders do not obtain an unfair advantage by obtaining such information while others have to rely on their own resources. In that context, he stated that he thought the most appropriate sealing order in a court approval sale situation would be that the supporting valuation materials remain sealed until such time as the sale transaction had closed.⁴⁸

⁴⁴ *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) at [para 62](#).

⁴⁵ *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) at [paras 74-76](#).

⁴⁶ *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) at [para 78](#).

⁴⁷ *Look Communications Inc. v. Look Mobile Corporation* (2009), [2009 CanLII 71005](#) (Ont Sup Ct J).

⁴⁸ *Look Communications Inc. v. Look Mobile Corporation* (2009), [2009 CanLII 71005](#) at [para 17](#) (Ont Sup Ct J).

48. The Receiver submits that the test is satisfied in this case. The Confidential Appendices include commercially sensitive terms relating to the marketing and sale of the Purchased Assets which, if publicly disclosed, could materially and negatively impair the ability of the Receiver to market the Purchased Assets to other interested parties and obtain the highest and best price if the Sale Agreement is not approved or the Transaction does not close. Granting a time-limited sealing order maintains public confidence in the efficacy of the insolvency regime, which is an important public interest to protect.

49. 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.

50. 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.

51. The Receiver submits that the sealing order is appropriate in the circumstances and ought to be granted.

Fees and Activities of the Receiver Should be Approved:

52. The approval of a court officer's activities and reports is relief that is "routinely granted".⁴⁹ The Receiver seeks this Court's approval of its activities and conduct, as set out in the First Report.

⁴⁹ *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at [paras 2](#) and [23](#).

53. The activities of the Receiver described in the First Report were all necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Appointment Order, and were, in each case, in the best interests of the Companies and their stakeholders generally.

54. The approval language in the proposed draft Order makes clear that the approval is only for the Receiver personally and is not intended to create rights or impose obligations for any other party.⁵⁰

55. The jurisdiction of this Court 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”.⁵¹

56. On a motion to pass accounts, the Court must consider the “overriding principle of reasonableness”, focusing on the overall value contributed by the Receiver and its counsel.⁵² 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 a professional services may not be instructive when looked at in isolation.⁵³ In *Bank of Nova Scotia v. Diemer*,⁵⁴ the Ontario Court of Appeal stated “the focus of the fair and reasonable assessment should be on what was accomplished, and not how much time it took.”⁵⁵

⁵⁰ Draft Ancillary Relief Order at para 2, Motion Record of BDO Canada Limited at Tab 5.

⁵¹ Appointment Order of Justice Bordin dated May 15, 2025 at para 20, Appendix A of the First Report.

⁵² *Nortel Networks Inc.*, [2022 ONSC 6680](#) at [para 10](#).

⁵³ *Nortel Networks Inc.*, [2022 ONSC 6680](#) at [para 10](#).

⁵⁴ *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#).

⁵⁵ *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) at [para 45](#).

57. The Receiver and its counsel have charged standard hourly rates that are consistent with market rates for insolvency services of this nature rendered by other firms in Toronto and the Greater Toronto and Hamilton Area. Those rates have been approved by the Court in numerous other matters.⁵⁶

PART V - RELIEF REQUESTED

58. The Receiver requests that this Court grant the proposed form of AVO and the Ancillary Relief Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of October 2025.



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⁵⁶ See [Order of Justice Bordin dated May 15, 2025](#) in The Matter of the Notice of Intention to Make a Proposal of UCG Land Inc. (Court File No. BK-25-03175819-0032) and in The Matter of the Notice of Intention to Make a Proposal of Upper Canada Growers Ltd. (Court File No. BK-25-03175820-0032).

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#).
2. *Canwest Global Communications Corp.*, [2010 ONSC 2870](#).
3. *IWHL Inc., Re*, [2011 ONSC 5672](#).
4. *Look Communications Inc. v. Look Mobile Corporation* (2009), [2009 CanLII 71005](#) (Ont Sup Ct J).
5. *Nortel Networks Inc.*, [2022 ONSC 6680](#).
6. *Ontario Securities Commission v. Bridging Finance Inc.*, [2025 ONSC 539](#).
7. *Regal Constellation Hotel Ltd., Re* (2004), [71 OR \(3d\) 355](#) (ONCA).
8. *Royal Bank of Canada v. Soundair Corp.* (1991), [1991 CarswellOnt 205](#) (ONCA).
9. *Sable Offshore Energy Inc. v. Ameron International Corp.*, [2013 SCC 37](#).
10. *Sherman Estate v. Donovan*, [2021 SCC 25](#).
11. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#).
12. *Target Canada Co. (Re)*, [2015 ONSC 7574](#).
13. *Terrance Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#).
14. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#).

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

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.

THE BANK OF NOVA SCOTIA
Applicant

and

UPPER CANADA GROWERS LTD. et al
Respondents

Court File No. CV-25-00090131-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
HAMILTON

**FACTUM OF THE MOVING PARTY,
BDO CANADA LIMITED
(Motion returnable October 23, 2025)**

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Counsel for BDO Canada Limited in its capacity as court-appointed receiver and manager of the assets, undertakings and properties of Upper Canada Growers Ltd. and UCG Land Inc.