

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

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

16261311 CANADA INC.

Respondent

**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 THE RECEIVER

September 9, 2026

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PART I - OVERVIEW

1. BDO Canada Limited (the “**Receiver**”), in its capacity as Court-appointed receiver and manager of 16261311 Canada Inc. (the “**Company**”), brings this motion for two orders:
(a) an Approval, Vesting and Distribution Order approving the sale of the Company’s real property municipally known as 2301 Benedet Drive, Mississauga, Ontario (the “**Property**”) to 1001713370 Ontario Inc. (the “**Purchaser**”), vesting the Property in the Purchaser, sealing the Confidential Supplement to the Receiver’s First Report, and authorizing a distribution to Canadian Imperial Bank of Commerce (“**CIBC**”); and (b) an Ancillary Relief and Discharge Order approving the Receiver’s reports, activities, receipts and disbursements and professional fees, authorizing certain remaining steps in the administration, providing for the Receiver’s discharge and release upon completion of certain outstanding matters and filing of the Receiver’s Discharge Certificate.¹
2. The relief sought is appropriate. The Receiver conducted an open and comprehensive marketing process with Avison Young Commercial Real Estate Services, LP, Brokerage (“**Avison Young**”), which generated significant market interest and five offers for the sale of the Property. Following its review of the offers received, the Receiver selected the Purchaser’s offer and entered into an unconditional agreement of purchase and sale, subject only to Court approval. The Receiver considers the proposed transaction to represent the best available outcome and recommends its approval.²

¹ First Report of the Receiver dated September 4, 2026 (the “**First Report**”) at paras. 1.2.2 and 1.3.1.

² First Report at paras. 3.4.1-3.6.2.

3. The proposed distribution to CIBC is also appropriate. Counsel to the Receiver, Thornton Grout Finnigan LLP (“**TGF**”), including through retained real estate counsel, has reviewed CIBC’s mortgage and general security agreement and has provided an opinion that, subject to the assumptions and qualifications contained therein, the CIBC Security is valid and enforceable in accordance with its terms. CIBC’s indebtedness will exceed the net proceeds from the sale of the Property, such that CIBC will suffer a shortfall and no proceeds will be available to subordinate secured or unsecured creditors.³
4. The Receiver has acted reasonably and prudently throughout the administration. The activities described in the First Report were undertaken pursuant to the Appointment Order (as defined below) and were directed toward preserving the Property, addressing operational and regulatory issues, obtaining third-party records, marketing and selling the Property, and completing the receivership efficiently. The Receiver therefore requests that the Court grant the proposed orders.

PART II - THE FACTS

Appointment and Background

5. Pursuant to an order of the Honourable Justice Fowler Byrne dated April 30, 2026 (the “**Appointment Order**”), the Receiver was appointed, without security, as receiver and manager of all of the Property of the Company. Prior to that appointment, BDO had been

³ First Report at paras. 4.1.1-4.3.4.

appointed as interim receiver pursuant to an order of Justice Wilkinson dated April 23, 2026.⁴

6. The Company operated an Esso-branded gas bar and convenience store from the Property. The gas station includes four fuel pumps, eight dispensers and three underground storage tanks.⁵
7. When the Receiver attended the Property following its appointment, the fuel pumps were shut down because fuel volumes were below the minimum level required for operation.⁶
8. The Receiver considered the operational requirements and costs associated with restarting the gas station, including recommissioning equipment, restocking fuel and convenience-store inventory, retaining a third-party operator and the additional costs of Receiver oversight. The Receiver determined that the Property was expected to generate negative cash flow in the short term and, with CIBC's support, did not restart operations.⁷

The Sale Process

9. The Appointment Order authorizes the Receiver to market the Property, advertise and solicit offers, negotiate terms of sale and seek a vesting order. Given the nature of the Property, the Receiver determined that it was important to expose the Property to the market in order to maximize realizations for stakeholders.⁸ The Receiver also

⁴ First Report at paras. 1.1.1-1.1.3.

⁵ First Report at para. 1.2.2.

⁶ First Report at para. 2.3.1.

⁷ First Report at para. 2.3.8.

⁸ First Report at paras. 3.1.1-3.1.2.

commissioned an appraisal of the Property from Antec Appraisal Group Inc. (the “Appraisal”).⁹

10. The Receiver obtained listing proposals from four brokerages with experience in commercial real estate and the gas-station market. After considering the proposed marketing strategies, commission structures and the circumstances of the Property, the Receiver retained Avison Young pursuant to a listing agreement dated July 13, 2026 and determined that the Property should be marketed on an unpriced basis.¹⁰
11. Avison Young conducted a thorough and intensive marketing process. Among other things, it listed the Property on MLS and its own website, prepared and circulated a marketing brochure, established an electronic data room, conducted e-mail blasts, circulated flyers, posted the Property on multiple commercial and real-estate platforms, marketed directly to its client and contact database, coordinated tours and responded to inquiries.¹¹
12. Thirty parties inquired about the opportunity, thirteen parties executed non-disclosure agreements to obtain access to the data room, and five offers were submitted by the bid deadline communicated by Avison Young to interested parties, using either the Receiver’s template purchase and sale agreement or standard OREA forms.¹²

⁹ First Report at para. 3.2.1.

¹⁰ First Report at paras. 3.3.1 and 3.3.3-3.3.4.

¹¹ First Report at para. 3.4.1.

¹² First Report at paras. 3.4.2-3.4.3.

The Sale Transaction

13. Following its review and assessment of the offers received, and in consultation with CIBC, the Receiver selected the offer to purchase the Property submitted by Abdul Jabbar in trust to form a corporation (the “**Sale Transaction**”). The Receiver entered into an agreement of purchase and sale dated August 4, 2026 (the “**Sale Agreement**”).¹³ Pursuant to an assignment and assumption agreement dated September 4, 2026, the Sale Agreement has been assigned to the Purchaser.
14. The Purchaser has paid a deposit equal to 10% of the purchase price. The Sale Agreement is unconditional and subject only to Court approval. Closing is scheduled for the 14th day following the granting of the Approval, Vesting and Distribution Order, and in any event no later than 45 days after the granting of that order.¹⁴
15. The Receiver believes that the sale process, as orchestrated by Avison Young and in consultation with CIBC, provided appropriate and sufficient exposure to the market and resulted in a robust canvassing of prospective purchasers. In particular, (i) the Property was marketed openly and transparently, (ii) CIBC supports the Sale Transaction, (iii) there is no reason to conclude that further marketing would generate a higher purchase price, (iv) the purchase price is fair based on the Sale Process undertaken, and (v) the transaction represents the best value available based on the offers received.¹⁵

¹³ First Report at paras. 1.3.1(ii)(f), 3.5.1. and 3.5.6.

¹⁴ First Report at paras. 3.5.3-3.5.4.

¹⁵ First Report at para. 3.6.1.

CIBC and the Proposed Distribution

16. CIBC advanced credit facilities to the Company under a credit agreement dated July 18, 2025, accepted July 24, 2025 and amended October 10, 2025. CIBC's security includes a collateral charge/mortgage over the Property in the principal amount of \$4 million, registered August 26, 2025, and a general security agreement dated July 24, 2025 (collectively, the "**CIBC Security**").¹⁶ As at September 4, 2026, the Company was indebted to CIBC in the amount of \$4,458,176.91, plus applicable costs, expenses, fees, and interest, which are accruing.¹⁷
17. TGF, including through retained real estate counsel, reviewed the CIBC Security and provided the Receiver with an opinion that, subject to the assumptions and qualifications contained therein, the CIBC Security is valid and enforceable in accordance with its terms.¹⁸
18. The Receiver anticipates that the proceeds of the Sale Transaction, after payment of or reservation for real-estate commissions, closing costs, holding costs through Closing, the fees of the Receiver and TGF and applicable closing adjustments (the "**Net Sale Proceeds**"), will be less than CIBC's outstanding indebtedness. CIBC will therefore suffer a shortfall, and no proceeds will be available for distribution to subordinate secured creditors or unsecured creditors.¹⁹

¹⁶ First Report at paras. 4.2.1-4.2.2.

¹⁷ First Report at para. 4.2.4.

¹⁸ First Report at para. 4.2.3.

¹⁹ First Report at paras. 4.1.2 and 4.2.4.

The Ancillary Relief

19. The Receiver seeks approval of the First Report and Interim Report, the activities described therein, and the interim statement of receipts and disbursements for the period April 30 to August 31, 2026 (the “**Interim R&D**”). The Receiver also seeks approval of the fees and disbursements of the Receiver and TGF, together with estimated fees for the work in connection with the approval hearing, closing of the Sale Transaction and the remaining administration.²⁰

20. Following completion of the Sale Transaction, the Receiver will have largely completed its mandate, subject to the Outstanding Matters as defined and identified in the First Report. Those matters include (i) paying final expenses and professional fees, (ii) making the distribution to CIBC, (iii) filing required government-related returns, (iv) issuing the Receiver’s final report and statement of receipts and disbursements under section 246(3) of the BIA, (v) determining whether an assignment in bankruptcy is necessary or advisable, and (vi) completing incidental matters required to conclude the receivership.²¹

PART III - THE ISSUES

21. The issues on this application are as follows:
 - (a) whether this Court should grant the Approval, Vesting and Distribution Order; and
 - (b) whether this Court should grant the Ancillary Relief and Discharge Order.

²⁰ First Report at paras. 1.3.1(i) and 5.1.1-5.1.6.

²¹ First Report at paras. 6.1.1-6.1.4.

PART IV - THE LAW

ISSUE 1: The Court should grant the Approval, Vesting and Distribution Order

(a) The Sale Transaction should be approved

22. Section 100 of the *Courts of Justice Act* authorizes the Court to grant an order vesting “in any person an interest in real or personal property that the Court has authority to order be disposed of, encumbered or conveyed.”²²
23. Similarly, subsection 243(1) of the *Bankruptcy and Insolvency Act* authorizes the Court to appoint a receiver and empowers the receiver, where authorized by the Court, to take possession and control of property and “take any other action that the court considers advisable.”²³
24. Paragraph 3(1) of the Appointment Order empowers and authorizes the Receiver to “apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property.”²⁴
25. In assessing whether to approve a proposed sale of assets by a Court-appointed receiver, Ontario courts have consistently applied the criteria identified by the Ontario Court of Appeal in *Royal Bank v Soundair Corp*,²⁵ encompassing:

²² *Courts of Justice Act*, R.S.O. 1990, c. C.43, [section 100](#).

²³ *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, [section 243\(1\)](#).

²⁴ First Report, Appendix “A” para 3(1).

²⁵ [1991 CanLII 2727 \(ONCA\)](#), 1991 CarswellOnt 205 [*Soundair*].

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) the efficacy and integrity of the process by which offers are obtained;
- (c) whether there has been unfairness in the working out of the process; and
- (d) the interests of all parties.²⁶

26. In making this assessment, the Court must also uphold the business judgment of the receiver and should be “loathe to interfere with the business judgment of a Receiver and refuse to approve a transaction recommended by the Receiver acting properly in the fulfillment of its obligations as an officer of the court.”²⁷

27. The *Soundair* test has been met. The Receiver engaged an experienced commercial brokerage, obtained four listing proposals, selected an unpriced marketing strategy, and exposed the Property broadly to the market for 25 days through MLS, multiple commercial platforms, direct marketing, a data room and site tours. The process resulted in 30 inquiries, 13 executed NDAs and five offers. There is no suggestion of irregularity or unfairness in the process.²⁸

28. The Receiver then assessed the offers received and selected the Sale Agreement as the best transaction in consultation with CIBC. The Sale Agreement is unconditional other than

²⁶ *Ibid*, at para [16](#).

²⁷ *Morganite Canada Corp v Wolfhollow Properties Inc*, 2003 CanLII 7759 (ONSC) at para [7](#); See also *Eddie Bauer of Canada, Inc (Re)*, 2009 CanLII 48527 (ONSC) at para [22](#).

²⁸ First Report at paras. 3.3.1-3.4.3.

Court approval, the Purchaser has provided a 10% deposit, and the Receiver considers the Sale Transaction to be the best available outcome. CIBC supports the transaction, and the Receiver and Avison Young have concluded that there is no reason to believe further marketing would generate a higher purchase price.²⁹

29. Courts have held that sale processes in the context of receiverships are not to be held to a standard of perfection. Rather, a receiver will be found to be acting properly and making an appropriate effort to get the best price if the receiver carefully considers the available information and uses its expertise to determine how best to maximize value in the particular circumstances.³⁰

30. The Receiver therefore respectfully submits that the Sale Agreement and the Transaction satisfy the *Soundair* criteria and should be approved.

(b) The Confidential Supplement should be sealed

31. The Receiver seeks an order sealing the Confidential Supplement to the First Report until Closing or further order of the Court. The Confidential Supplement contains the Appraisal, a summary of the listing proposals, a summary of the offers received and the unredacted Sale Agreement (which discloses the purchase price and deposit amount thereunder).

²⁹ First Report at paras. 3.4.3, 3.5.1-3.6.2.

³⁰ *1117387 Ontario Inc. v National Trust Company*, 2010 ONCA 340 at paras [44](#) and [50](#).

32. Courts have recognized that sealing orders may be appropriate in insolvency proceedings where disclosure of confidential commercial information could impair a receiver's ability to maximize realizations for stakeholders.³¹
33. In *Sherman Estate v Donovan*,³² the Supreme Court of Canada held that a party requesting that a court exercise its discretion in a way that limits the 'open court' presumption must establish that: (i) the openness poses a risk to an important interest to the public; (ii) the request sought is necessary to prevent the risk to the identified interest as reasonable alternative measures will not prevent said risk; and (iii) the benefits of the request outweigh the negatives as a matter of proportionality.³³
34. The three core principles established in *Sherman Estate* have been met. If the Sale Transaction does not close, public disclosure of the Appraisal, competing offer information and the purchase price in the unredacted Sale Agreement could prejudice a future marketing or sale process by revealing commercially sensitive valuation and pricing information. The sealing relief is limited in scope and duration because it expires upon Closing or further order of the Court.³⁴
35. The limited sealing relief sought is necessary to protect legitimate stakeholder interests and will facilitate the Receiver's efforts to maximize value for the estate.³⁵

³¹ *Romspen Investment Corporation v Hargate Properties Inc*, 2012 ABQB 412 at paras [2](#), [11](#) and [13](#).

³² [2021 SCC 25](#) [*Sherman Estate*].

³³ *Ibid*, at para [38](#).

³⁴ First Report at paras. 3.1.5-3.1.6.

³⁵ First Report at paras 3.1.5-3.1.6.

(c) The proposed distribution to CIBC should be approved

36. The Receiver seeks authorization to distribute the Net Sale Proceeds to CIBC, after payment of or reservation for real-estate commissions, closing costs, holding costs, professional fees, and applicable closing adjustments, up to the amount of CIBC's outstanding indebtedness.³⁶
37. The powers and abilities of a receiver are derived from the BIA and the order appointing it. Where the receiver's power to make distributions is not otherwise expressly addressed, it is "practically necessary for the accomplishment of the objectives of the legislation" for the receiver to obtain an order authorizing the proposed distribution. Such orders are routinely granted in the context of insolvency proceedings.³⁷
38. In granting orders approving distributions, receivership courts commonly consider certain factors favouring a distribution set out in *AbitibiBowater*, which include whether the payee's security is valid and enforceable and whether the distribution would result in interest savings.³⁸
39. Those factors support the proposed distribution. TGF, including through retained real estate counsel, has reviewed the CIBC Security and provided an opinion that, subject to the

³⁶ First Report at paras. 1.3.1(ii)(i), 4.1.1-4.1.2 and 4.3.4.

³⁷ *Forjay Management Ltd. v 625536 B.C. Ltd.*, 2019 BCCA 368 at [para. 26](#); *Re Windsor Machine & Stamping Ltd.*, 2009 CanLII 39772 (ONSC) at [para. 13](#); *AbitibiBowater Inc., (Re)*, 2009 QCCS 6461 at [paras 70-75](#) [*AbitibiBowater*]; *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, 2014 ONSC 1173 at [para 53](#); *Dorr Capital Corporation v. Highview Building Corp Inc.*, (September 29, 2023) Ont. S.C.J. [Commercial List], Court File No. CV-23-00698632-00CL (Endorsement of Justice Conway) at [para. 4](#); *Farm Credit Canada v. Whyte's Foods Inc./Les Ailments et. al.*, (November 6, 2023) Ont. S.C.J. [Commercial List], Court File No. CV-23-00707205-00CL (Endorsement of Justice Steele) at [paras. 19-21](#) [*Whyte's Food*].

³⁸ *AbitibiBowater*, at [paras 70-75](#). While *AbitibiBowater* was a CCAA proceeding, it has been cited by courts in the context of distributions under a receivership: see, for example, *Whyte's Food* at [paras. 19-21](#).

assumptions and qualifications therein, the CIBC Security is valid and enforceable in accordance with its terms. CIBC's indebtedness exceeds the Net Sale Proceeds and will continue to accrue interest. The proposed distribution will therefore reduce the secured indebtedness and the associated carrying cost of the receivership.³⁹

40. The proposed distribution will be made only after payment of or provision for the costs required to complete the Sale Transaction and the receivership administration. The Receiver is not aware, based on the information presently available, of any employee-related, CRA or other claims that would rank in priority to CIBC, other than the Receiver's Charge. CIBC will suffer a shortfall following the distribution, and no value is expected to be available to subordinate secured creditors or unsecured creditors.⁴⁰
41. Accordingly, there is no apparent prejudice to stakeholders from the proposed distribution, and the Approval, Vesting and Distribution Order should authorize the Receiver to distribute the Net Sale Proceeds to CIBC up to the amount of the indebtedness owing to it.

ISSUE 2: The Court should grant the Ancillary Relief and Discharge Order

(a) The First Report, Interim Report, activities and Interim R&D should be approved

42. The Court has the inherent jurisdiction to review and approve the activities of a court-appointed receiver as set out in the receiver's report.⁴¹ Where the report accurately reflects the receiver's activities, the Court may approve those activities.⁴²

³⁹ First Report at paras. 4.1.2 and 4.2.3-4.2.4.

⁴⁰ First Report at paras. 1.3.1(ii)(i), 4.1.2, 4.2.4-4.3.1 and 5.1.6.

⁴¹ *Bank of America Canada v Willann Investments Ltd.*, [1993] OJ No 1647, 20 CBR (3d) 223 at [para 3](#).

⁴² *Ibid.*

43. Where a court-appointed receiver demonstrates that it has acted reasonably, prudently, and not arbitrarily, this Court has the inherent jurisdiction to approve the receiver's activities as set out in its reports.⁴³
44. The activities described in the First Report and Interim Report were necessary and undertaken in good faith pursuant to the Receiver's duties and powers under the Appointment Order and Interim Receiver Appointment Order. Additionally, there have not been any objections raised by any interested party with respect to the activities described in the First Report and Interim Report.
45. The Receiver respectfully requests the Court's approval of the First Report, Interim Report, the activities described therein and the Interim R&D.

(b) The Receiver's and TGF's fees and disbursements should be approved

46. In *Confectionately Yours*, the Court of Appeal confirmed that the test for approving the fees and disbursements of a receiver and its counsel is whether they are fair and reasonable.⁴⁴ Further, the Court of Appeal held that the following factors may be considered in determining whether such fees and disbursements are fair and reasonable:
- (a) the work done;
 - (b) the responsibility imposed on the receiver;
 - (c) the time spent doing the work;
 - (d) the reasonableness of the time expended;

⁴³ *Lang Michener v. American Bullion Minerals Ltd.*, 2005 BCSC 684 at [para 21](#).

⁴⁴ *Confectionately Yours Inc. (Re)*, [2002] 36 CBR (4th) 200, 219 DLR (4th) 72 (Ont CA) at [para 42](#) [*Confectionately Yours*].

- (e) the necessity of doing the work; and
- (f) the results obtained.⁴⁵

47. The Receiver submits that the fees and disbursements of the Receiver and TGF were incurred at rates that reflect the appropriate responsibility, scope, and complexity of the case. The time incurred is reasonable given that the fees and disbursements reflect approximately four months of work undertaken since the Receiver's appointment and was at all times necessary and consistent with the Receiver's duties under the Receivership Order. The Receiver also seeks approval of the estimated fees for the additional work required in connection with the approval hearing, to complete the Sale Transaction and finalize the administration, with any unused portion to be remitted to CIBC.
48. Having regard to the work performed, the responsibilities assumed, the results achieved and the supporting fee affidavits, the fees and disbursements of the Receiver and TGF, together with the estimate of fees to completion, are fair and reasonable and should be approved.
- (c) The Receiver should be authorized to make an assignment in bankruptcy on behalf of the Company**
49. The Receiver has not received the Company's books and records and is therefore unable to determine the full extent of the Company's liabilities or investigate specified transactions that may constitute transactions at undervalue or preferences. The Receiver accordingly seeks authority, but not a requirement, to make an assignment in bankruptcy

⁴⁵ *Ibid*, at [para 46](#).

on behalf of the Company if the Receiver determines that doing so is necessary or advisable, including so that a trustee in bankruptcy may use the investigative powers available under the BIA.⁴⁶

50. The Court has jurisdiction under section 243(1)(c) of the BIA to authorize a court-appointed receiver to make an assignment in bankruptcy on behalf of a debtor company. That jurisdiction which authorizes the receiver to take any action that the Court considers advisable, is well established and has been exercised by this Court in appropriate circumstances.⁴⁷
51. Courts have recognized that the need to investigate a debtor's affairs may justify authorizing a receiver to make an assignment in bankruptcy. In *Royal Bank v. Sun Squeeze Juices Inc.*, the Court held that the relevant inquiry is whether there is a "need" for a bankruptcy that outweighs any countervailing considerations.⁴⁸ In finding that bankruptcy was appropriate, the Court relied, among other things, on the trustee's ability to investigate suspicious transactions and determine whether certain payments constituted fraudulent preferences.⁴⁹ More recently, in *RBC v. Gustin*, the Court held that the receiver was not required to exhaust alternative remedies where doing so would be needlessly inefficient and expensive.⁵⁰

⁴⁶ First Report at para. 6.1.2.

⁴⁷ *Bank of Montreal v Owen Sound Golf and Country Club*, 2012 ONSC 557 at [para 7](#); *Royal Bank v Sun Squeeze Juices Inc.*, [1994 CarswellOnt 266](#), [1994] O.J. No. 567 (Gen. Div. [Commercial List]) at [paras 6-10](#) ["*Sun Squeeze*"], *aff'd* [1994 CanLII 8771 \(ONCA\)](#); *RBC v Gustin*, 2019 ONSC 5370 at [para 15](#) [*Gustin*].

⁴⁸ *Sun Squeeze*, *ibid*, at [para. 11](#).

⁴⁹ *Ibid*, at [para 14](#).

⁵⁰ *Gustin*, at paras. [8](#), [15](#) and [17](#).

52. Those considerations apply here. Despite the Receiver's requests, the Company has failed to provide its books and records. As a result, the Receiver does not presently have sufficient information to investigate transactions that may constitute preferences or transactions at undervalue. A bankruptcy would provide the trustee with additional statutory tools to investigate the Company's affairs, including the ability to compel the production of information and conduct examinations, and, where appropriate, to pursue remedies in respect of reviewable transactions under sections 95 and 96 of the BIA.
53. The Receiver does not seek an order requiring the Company to be assigned into bankruptcy at this time. Rather, it seeks discretionary authority to do so only if, following completion of the Sale Transaction and having regard to the information then available, the Receiver determines that a bankruptcy is necessary or advisable to investigate the Company's affairs and complete the administration efficiently. In the circumstances, the requested authority is appropriate and should be granted.

(d) The Receiver should be discharged and released

54. Following completion of the Sale Transaction, the Receiver will have largely completed its mandate, subject only to the Outstanding Matters identified in the First Report. The proposed Ancillary Relief and Discharge Order provides that, upon completion of those matters, the Receiver may file the Receiver's Discharge Certificate, upon which the receivership proceedings will terminate and the Receiver will be discharged and released.⁵¹

⁵¹ First Report at paras. 6.1.1-6.1.4.

55. The Receiver is also requesting a release from any and all liability for any acts or omissions while acting in its capacity as Receiver, save and except for gross negligence and willful misconduct.
56. In *Pinnacle v Kraus*, Justice Pattillo held that a Receiver will be granted a release and discharge where there is no evidence of improper or negligent conduct on the part of the Receiver.⁵²
57. In the case at bar, there is no evidence of improper or negligent conduct on the part of the Receiver. The Receiver submits that it is fair and reasonable for the Court to discharge and release the Receiver.

PART V - RELIEF REQUESTED

58. For all these reasons, the Receiver respectfully requests that this Court grant the Approval, Vesting and Distribution Order and the Ancillary Relief and Discharge Order in the forms sought.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of September, 2026.

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⁵² *Pinnacle v Kraus*, 2012 ONSC 6376 at [para 47](#).

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**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *1117387 Ontario Inc. v National Trust Company*, [2010 ONCA 340](#).
2. *AbitibiBowater Inc. (Re)*, [2009 QCCS 6461](#).
3. *Bank of America Canada v Willann Investments Ltd.*, [\[1993\] OJ No 1647, 20 CBR \(3d\) 223](#).
4. *Bank of Montreal v Owen Sound Golf and Country Club, Limited*, [2012 ONSC 557](#).
5. *Confectionately Yours Inc. (Re)*, [2002 CanLII 45059](#) (ONCA), (2002), 36 CBR (4th) 200, 219 DLR (4th) 72.
6. *Dorr Capital Corporation v Highview Building Corp Inc.*, endorsement dated September 29, 2023, Court File No. CV-23-00698632-00CL.
7. *Eddie Bauer of Canada, Inc (Re)*, [2009 CanLII 48527 \(ONSC\)](#).
8. *Farm Credit Canada v Whyte’s Foods Inc./Les Aliments Whyte’s Inc. et al.*, endorsement dated November 6, 2023, Court File No. CV-23-00707205-00CL.
9. *Forjay Management Ltd. v 625536 B.C. Ltd.*, [2019 BCCA 368](#).
10. *GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.*, [2014 ONSC 1173](#).
11. *Lang Michener v. American Bullion Minerals Ltd.*, [2005 BCSC 684](#).
12. *Morganite Canada Corp v Wolfhollow Properties Inc.*, [2003 CanLII 7759](#) (ONSC).
13. *Pinnacle Capital Resources Limited v Kraus Inc.*, [2012 ONSC 6376](#).
14. *RBC v Gustin*, [2019 ONSC 5370](#).
15. *Romspen Investment Corporation v Hargate Properties Inc.*, [2012 ABQB 412](#).
16. *Royal Bank of Canada v Soundair Corp*, [1991 CanLII 2727](#) (ONCA), [1991 CarswellOnt 205](#).
17. *Royal Bank of Canada v Sun Squeeze Juices Inc.*, [1994 CarswellOnt 266](#), [1994] OJ No 567, aff’d [1994 CanLII 8771](#) (ONCA).
18. *Sherman Estate v Donovan*, [2021 SCC 25](#).
19. *Windsor Machine & Stamping Ltd. (Re)*, [2009 CanLII 39772](#) (ONSC).

I certify that every authority cited in the factum is authentic and every quotation from an authority that appears in the factum accurately reproduces the text of the authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date: September 9, 2026



Shurabi Srikaruna (LSO # 90908K)

SCHEDULE “B” RELEVANT STATUTES

Bankruptcy and Insolvency Act, RSC 1985, c B-3

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.

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Receiver’s final report and statement of accounts

(3) A receiver shall, forthwith after completion of duties as receiver, prepare a final report and a statement of accounts, in the prescribed form and containing the prescribed information relating to the receivership, and shall forthwith provide a copy thereof to the Superintendent and

- (a) to the insolvent person or the trustee (in the case of a bankrupt); and
- (b) to any creditor of the insolvent person or the bankrupt who requests a copy at any time up to six months after the end of the receivership.

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

Vesting Orders

100 A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

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

CANADIAN IMPERIAL BANK OF COMMERCE
Applicant

- and -

16261311 CANADA INC.

Respondent

Court File No.: CV-26-00003039-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
BRAMPTON

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