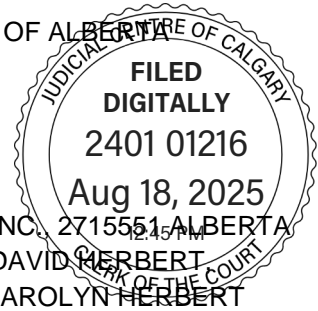


Clerk's stamp:

COURT FILE NUMBER	2401-01216
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	ATB FINANCIAL
RESPONDENTS	APEX NUTRI-SOLUTIONS INC., 2715551 ALBERTA LTD., STEVEN HERBERT, DAVID HERBERT MURRAY HERBERT AND CAROLYN HERBERT



**DOCUMENT**

**APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Dentons Canada LLP  
Bankers Court  
15<sup>th</sup> Floor, 850 - 2<sup>nd</sup> Street S.W.  
Calgary, Alberta T2P 0R8  
Attn: Derek Pontin  
Ph. (403) 268-6301 Fx. (403) 268-3100  
Email: derek.pontin@dentons.com  
File No.: 141950-262/292

**NOTICE TO RESPONDENTS: Service List attached as Schedule "A"**

This application is made against you. You are a 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: August 25, 2025  
Time: 2:00 PM  
Where: Calgary Courts Centre  
Before Whom: Honourable Justice C. Simard

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

**REMEDY CLAIMED OR SOUGHT:**

1. The Applicant, ATB Financial ("**ATB**") respectfully seeks an Order, substantially in the form attached hereto as **Schedule "C"**:

- (a) confirming the indebtedness owing, inclusive of all interest and costs, to ATB by the Respondents in connection the judgment granted in favour of ATB on February 20, 2025 and directing payment of such amount to ATB from funds held in trust by counsel for the Respondents;
- (b) directing the judgment debtor, David Herbert, to provide to ATB a duly completed and sworn financial statement of debtor, by no later than September 10, 2025, and to attend questioning in aid of enforcement on September 23, 2025, or such other dates as may be reasonably agreed by counsel of record for David Herbert and ATB;
- (c) granting such further and other relief as this Honourable Court deems just and appropriate.

**GROUND FOR MAKING THIS APPLICATION:**

- 2. ATB was awarded summary judgment against the Respondents, including Murray and Carolyn Herbert, and David Herbert.
- 3. The judgment included all interest, at contractual rates, up to the date of judgment, and judgment interest thereafter.
- 4. ATB concurrently applied for receivership in respect of the corporate respondents. Receivership orders were granted by the Court and therein ATB Financial was awarded its costs, including full indemnity for its solicitor and client costs, in keeping with its financing and security documentation.
- 5. Certain lands owned by Murray and Carolyn Herbert were sold. Proceeds in the amount of \$1,543,797.75 were paid to ATB and \$267,354.58 (the "**Holdback**") held in trust by the Herberts' legal counsel. The Holdback was held upon agreement of the parties that the costs of ATB Financial would be assessed by the Court. ATB agreed to the Holdback in order to ensure the sale was able to proceed, but advised the Herberts its agreement was under protest, as ATB was (and remains) of the view that its judgment, interest and costs have all already been approved by this Honourable Court.
- 6. Following judgment, ATB requested from David Herbert a financial statement of debtor, in keeping with the Alberta *Civil Enforcement Act* and regulation. ATB requested agreement to a date for David Herbert to attend at questioning in aid of enforcement. No financial statement of debtor was delivered and no questioning has been agreed to.
- 7. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**MATERIAL OR EVIDENCE TO BE RELIED ON:**

8. The Affidavit of Terry Trojanoski, dated August 18, 2025.
9. The pleadings and proceedings herein, including the judgment and receivership orders, as granted.
10. Such further and other material or evidence as counsel may advise and this Honourable Court may permit.

**APPLICABLE RULES:**

11. Such Rules as counsel may advise and this Honourable Court may permit.

**APPLICABLE ACTS AND REGULATIONS:**

12. Such Acts and Regulations as counsel may advise and this Honourable Court may permit.

**HOW THE APPLICATION IS PROPOSED TO BE HEARD OR CONSIDERED:**

13. Via Web-Ex, before the Honourable Justice Simard.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what it wants 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 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" TO THE APPLICATION

**Service List**

COURT FILE NUMBER	2401-01216
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFFS	<b>APEX NUTRI-SOLUTIONS INC., 2175551 ALBERTA LTD., STEVEN HERBERT, DAVID HERBERT, MURRAY HERBERT AND CAROLYN HERBERT</b>
DEFENDANT/PLAINTIFF BY COUNTERCLAIM	<b>ATB FINANCIAL</b>
DEFENDANTS BY COUNTERCLAIM	<b>APEX NUTRI-SOLUTIONS INC., 2175551 ALBERTA LTD., DAVID HERBERT, MURRAY HERBERT AND CAROLYN HERBERT</b>
DOCUMENT	<b>SERVICE LIST</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT:	Dentons Canada LLP Bankers Court 15th Floor, 850 - 2nd Street S.W. Calgary, Alberta T2P 0R8 Attn: Derek M. Pontin Ph. (403) 268-6301/7086 Fx. (403) 268-3100 File No.: 141950-262/292

*Updated July 31, 2025*

<b>Party &amp; Contact Information</b>	<b>Status</b>	<b>Method of Service</b>
<b>Dentons Canada LLP</b> 15th Floor, 850 - 2nd Street S.W. Calgary, Alberta T2P 0R8  Attention: Derek Pontin  Email: <a href="mailto:derek.pontin@dentons.com">derek.pontin@dentons.com</a>	Counsel to Defendant / Plaintiff by Counterclaim - ATB Financial	Email
<b>Apex Nutri-Solutions Inc.</b> 5016 - 52 Street Camrose, AB T4V 1V7	Defendant	In care of Counsel

<p><b>2175551 Alberta Ltd.</b> 5016 - 52 Street Camrose, AB T4V 1V7</p>	Defendant	In care of Counsel
<p><b>Steven Herbert</b> PO Box 73 Edberg, AB T0B 1J0</p>	Defendant	In Care of Counsel
<p><b>David Herbert</b> PO Box 94 Edberg, AB T0B 1J0</p>	Defendant	In care of Counsel
<p><b>Murray Herbert</b> PO Box 88 Edberg, AB T0B 1J0</p>	Defendant	In care of Counsel
<p><b>Carolyn Herbert</b> PO Box 88 Edberg, AB T0B 1J0</p>	Defendant	In care of Counsel
<p><b>Snyder &amp; Associates LLP</b> #3500 Manulife Place, 10180 – 101 Street Edmonton, AB, T5J 3S4</p> <p>Attention: Stephen Snyder Email: <a href="mailto:ssnyder@snyder.ca">ssnyder@snyder.ca</a></p>	<p>Counsel to Plaintiffs/ Defendants by Counterclaim: Apex Nutri- Solutions Inc., 2175551 Alberta Ltd., Steven Herbert, David Herbert, Murray Herbert and Carolyn Herbert</p>	Email
<p><b>BDO Canada Limited</b> 903 8th Avenue Southwest Suite 620 Calgary, AB T2P 0P7</p> <p>Attention: Kevin Meyler and Breanne Scott Email: <a href="mailto:kmeyler@bdo.ca">kmeyler@bdo.ca</a> and <a href="mailto:brscott@bdo.ca">brscott@bdo.ca</a></p>	<p>Receiver (2175551 Alberta Ltd.) and Interim Receiver (Apex Nutri-Solutions Inc.)</p>	Email
<p><b>MLT Aikins</b> 2100 Livingston Place, 222 3rd Avenue SW, Calgary, AB T2P 0B4</p> <p>Attention: Ryan Zahara Email: <a href="mailto:rzahara@mltaikins.com">rzahara@mltaikins.com</a></p>	<p>Counsel to Receiver (2175551 Alberta Ltd.) and Interim Receiver (Apex Nutri-Solutions Inc.)</p>	Email
<p><b>Canada Revenue Agency</b> Surrey National Verification and Collections Centre 9755 King George Boulevard Surrey, British Columbia V3T 5E1</p>	Canada Revenue Agency	Courier

<p><b>Doug Herbert</b> 7232 33 Ave NW Edmonton, AB T6K 1K3</p>	<p>Mortgagee on 4;20;43;24;NE (Registration number 092 110 163)</p>	<p>Courier</p>
<p><b>Calidon Financial Services Inc.</b> 10 - 3903 Millar Ave Saskatoon, SK S7P 0C1  Email: <a href="mailto:absecparties@avssystems.ca">absecparties@avssystems.ca</a></p>	<p>Secured party registered in PPR against Carolyn Herbert and Murray Herbert</p>	<p>Email &amp; Courier</p>
<p><b>Canadian Canola Growers Association</b> 600-1661 Portage Ave Winnipeg, MB R3J 3T7  Email: <a href="mailto:securityconfirmations@ccga.ca">securityconfirmations@ccga.ca</a></p>	<p>Secured party registered in PPR against Murray Herbert</p>	<p>Email &amp; Courier</p>
<p><b>Email List:</b></p>		
<p><a href="mailto:derek.pontin@dentons.com">derek.pontin@dentons.com</a>; <a href="mailto:ssnyder@snyder.ca">ssnyder@snyder.ca</a>; <a href="mailto:kmeyler@bdo.ca">kmeyler@bdo.ca</a>; <a href="mailto:brscott@bdo.ca">brscott@bdo.ca</a>; <a href="mailto:rzahara@mltaikins.com">rzahara@mltaikins.com</a>; <a href="mailto:absecparties@avssystems.ca">absecparties@avssystems.ca</a>; <a href="mailto:securityconfirmations@ccga.ca">securityconfirmations@ccga.ca</a></p>		
<p><b>Courier List:</b></p>		
<p>Canada Revenue Agency Surrey National Verification and Collections Centre 9755 King George Boulevard Surrey, British Columbia V3T 5E1</p> <p>Doug Herbert 7232 33 Ave NW Edmonton, AB T6K 1K3</p> <p>Calidon Financial Services Inc. 10 - 3903 Millar Ave Saskatoon, SK S7P 0C1</p> <p>Canadian Canola Growers Association 600-1661 Portage Ave Winnipeg, MB R3J 3T7</p>		

SCHEDULE "B" TO APPLICATION

**Web-Ex Details**

## Trojanoski, Terry

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**From:** Elvina Hussein <ehussein@mltaikins.com>  
**Sent:** Thursday, August 14, 2025 5:43 PM  
**To:** Elvina Hussein  
**Subject:** FW: WEBEX CONFIRMATION - 2401 01216 - APEX NUTRI-SOLUTIONS INC v. ATB FINANCIAL - Aug 25, 2025 02:00 PM - SIMARD, J - Confirmed

**Elvina Hussein**  
**Legal Assistant**

(403) 768-5921 | ehussein@mltaikins.com | Calgary  
Assistant to: R. Zahara, E. Carrasco and J. Eeles

---

**From:** CommercialCoordinator KBJCalgary <[CommercialCoordinator.KBJCalgary@albertacourts.ca](mailto:CommercialCoordinator.KBJCalgary@albertacourts.ca)>  
**Sent:** Wednesday, July 9, 2025 1:56 PM  
**To:** Paul Olfert <[polfert@mltaikins.com](mailto:polfert@mltaikins.com)>  
**Cc:** Ryan Zahara <[RZahara@mltaikins.com](mailto:RZahara@mltaikins.com)>; [kmeyley@bdo.ca](mailto:kmeyley@bdo.ca); Jarrett Tilley <[jtilley@snyder.ca](mailto:jtilley@snyder.ca)>; [ssnyder@snyder.ca](mailto:ssnyder@snyder.ca); Pontin, Derek <[derek.pontin@dentons.com](mailto:derek.pontin@dentons.com)>; Simminie Mykytyzyn <[smykytyzyn@mltaikins.com](mailto:smykytyzyn@mltaikins.com)>  
**Subject:** WEBEX CONFIRMATION - 2401 01216 - APEX NUTRI-SOLUTIONS INC v. ATB FINANCIAL - Aug 25, 2025 02:00 PM - SIMARD, J - Confirmed

**[EXTERNAL MESSAGE]**

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The above booking is Confirmed  
File #(s) : 2401 01216  
Style of Cause: APEX NUTRI-SOLUTIONS INC v. ATB FINANCIAL

Date/Duration:  
Aug 25, 2025 02:00 PM  
Total: 150 Minute(s)  
Booking Type/List: Commercial  
Purpose of Hearing: Commercial Hearing  
Counsel: Ryan Zahara;Derek Murray Pontin;Jarrett Arthur Cole Tilley; Paul Olfert  
Special Requirements:  
Requirements: Courtroom Required  
Equipment: Video Conferencing

**Counsel: Please ensure that all relevant parties have received Webex information.**

**Virtual Courtroom 60** has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom60>

## Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

For more information relating to Webex protocols and procedures, please visit: <https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the "Cisco Webex Meetings" App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

Thank you,

---

**Court of King's  
Bench of Alberta**

**Cour du Banc du  
Roi de l'Alberta**

**Corbyn Burik**  
Commercial Duty Coordinator

[commercialcoordinator.kbjcalgary@albertacourts.ca](mailto:commercialcoordinator.kbjcalgary@albertacourts.ca)

Court of King's Bench of Alberta  
Calgary Courts Centre  
601 5 Street SW  
Calgary, Alberta T2P 5P7

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SCHEDULE "C" TO APPLICATION

**Form of Order**

Clerk's stamp:

COURT FILE NUMBER 2401-01216  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANT ATB FINANCIAL  
RESPONDENTS APEX NUTRI-SOLUTIONS INC., 2175551 ALBERTA LTD.,  
STEVEN HERBERT, DAVID HERBERT, MURRAY HERBERT AND  
CAROLYN HERBERT  
DOCUMENT **ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Dentons Canada LLP  
Bankers Court  
15th Floor, 850 - 2nd Street S.W.  
Calgary, Alberta T2P 0R8  
Attention: Derek Pontin  
Email: [derek.pontin@dentons.com](mailto:derek.pontin@dentons.com)  
Ph. (403) 268-6301 Fx. (403) 268-3100  
File No.: 141950-262

DATE ON WHICH ORDER WAS PRONOUNCED	August 25, 2025
LOCATION WHERE ORDER WAS PRONOUNCED	Calgary, Alberta
NAME OF APPLICATIONS JUDGE WHO MADE THIS ORDER	The Honourable Justice C.D. Simard

UPON the application of ATB Financial ("**ATB**"); AND UPON having read the Affidavit of Terry Trojanoski sworn August 18, 2025, the Order for Summary Judgment in favour of ATB dated February 20, 2025, and the receivership orders made in these proceedings; AND UPON having read the Affidavit of Service of Terry Trojanoski, dated August 18, 2025; AND UPON hearing counsel for ATB Financial and counsel for other interested parties;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

1. ATB Financial is granted its costs in this action on a solicitor and client, full indemnity basis.
2. The fees and disbursements of Dentons Canada LLP, as counsel for ATB Financial, are approved and payable as set out in the ATB Financial Bill of Costs. The Respondents are directed to pay the said fees and disbursements forthwith.

3. The Respondents are directed to additionally pay forthwith the sum of \$\_\_\_\_\_, in respect of the fees and disbursements of ATB Financial incurred in connection with this application.
4. David Herbert is directed to provide to counsel for ATB Financial a duly executed and sworn financial statement of debtor, by no later than September 10, 2025.
5. David Herbert is directed to attend for a judgment debtor examination on September 23, 2025, at such place and time as counsel for ATB Financial may direct, or on such other date as counsel for ATB Financial and David Herbert may reasonably agree.

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Justice of the Court of King's Bench of Alberta