

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

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as
amended*

BETWEEN:

NATIONAL BANK OF CANADA

Applicant

- and -

COMMCACHE ASSET MANAGEMENT INC. and 52 LACROIX INC.

Respondents

**FACTUM OF THE RECEIVER
(returnable August 5, 2025)**

July 25, 2025

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

John Salmas (LSO # 42336B)
Tel: 416-863-4737
john.salmas@dentons.com

Sara-Ann Wilson (LSO # 56016C)
Tel: 416-863-4402
sara.wilson@dentons.com

Birpal Benipal (LSO # 89984B)
Tel: 416-862-3471
birpal.benipal@dentons.com

*Lawyers for BDO Canada Limited in its capacity
as court-appointed receiver of Commcache Asset
Management Inc. and 52 Lacroix Inc.*

TO: SERVICE LIST

**Service List
as at July 21, 2025**

TO:	<p>THORNTON GROUT FINNIGAN LLP TD West Tower, Toronto-Dominion Centre 100 Wellington Street West, Suite 3200 Toronto, ON M5K 1K7 Tel: (416) 304-1616</p> <p>Puya Fesharaki pfesharaki@tgf.ca</p> <p>Derek Harland धारलंद@tgf.ca</p> <p><i>Lawyers for the Applicant, National Bank of Canada</i></p>
AND TO:	<p>COMMCACHE ASSET MANAGEMENT INC. 3665 Maple Grove Road Innisfil, ON L9S 3B1</p> <p>Benjamin Oakes (Director & Officer) boakes@dominionlending.ca</p> <p><i>Respondent</i></p>
AND TO:	<p>52 LACROIX INC. 3665 Maple Grove Road Innisfil, ON L9S 3B1</p> <p>Benjamin Oakes (Director & Officer) boakes@dominionlending.ca</p> <p><i>Respondent</i></p>
AND TO:	<p>DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1</p> <p>John Salmas Tel: 416-863-4737 john.salmas@dentons.com</p> <p>Sara-Ann Wilson Tel: 416-863-4402 sara.wilson@dentons.com</p> <p>Birpal Benipal Tel: 416-862-3471 birpal.benipal@dentons.com</p> <p><i>Lawyers for BDO Canada Limited in its capacity as court-appointed receiver of Commcache Asset Management Inc. and 52 Lacroix Inc.</i></p>

AND TO:	<p>BDO CANADA LIMITED 222 Bay Street, Suite 2200 Toronto, ON M5K 1H1 Adam Boettger Tel: 905-633-4926 aboettger@bdo.ca Josie Parisi JParisi@bdo.ca <i>Court-appointed receiver of Commcache Asset Management Inc. and 52 Lacroix Inc.</i></p>
AND TO:	<p>WELLENREITER LLP 280 Plains Road West Burlington, ON L7T 1G4 Richard A. Wellenreiter Tel: (905) 529-4520 rwellenreiter@wellenreiterllp.ca <i>Lawyers for 2689918 Ontario Inc., second mortgagee with respect to the property municipally known as 199-215 John Str. East, Blenheim</i></p>
AND TO:	<p>JOSHUA REAGAN c/o MAND RAI LLP 155 Rexdale Blvd., Suite 400 Toronto, ON M9W 5Z8 Amandip Singh Sahi Tel: (416) 740-2000 asahi@mandlaw.com <i>PPSA registrant and third mortgagee with respect to the property municipally known as 199-215 John Str. East, Blenheim</i></p>
AND TO:	<p>ROBERT O'NEILL 26 Richler Cres. Barrie, ON L4N 6E6 robertcboneill1984@gmail.com <i>Second mortgagee with respect to the property municipally known as 52 Lacroix Str., Chatham</i></p>
AND TO:	<p>COINAMATIC CANADA INC. 301 Matheson Blvd. West Mississauga, ON L5R 3G3 Monique Koppens MKoppens@coinamatic.com <i>Postponing Lessee under a Notice of Lease with respect to the property municipally known as 800 Howard Ave., Windsor</i></p>

AND TO:	AUTO ONE GROUP LIMITED 150 Oakdale Road Toronto, ON M3N 1V9 hello@autoone.ca <i>PPSA registrant with respect to Commcache Asset Management Inc.</i>
AND TO:	CANADA REVENUE AGENCY 1 Front Street West Toronto, ON M5J 2X6 AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca
AND TO:	MINISTER OF FINANCE INSOLVENCY UNIT 6th Floor, 33 King Street West Oshawa, ON L1H 8H5 Insolvency Unit insolvency.unit@ontario.ca
AND TO:	VELLANI LAW 436 Aberdeen Avenue Hamilton, ON L8P 2S2 Inayat Vellani Tel: 905-929-0757 inayat@vellanilaw.ca <i>Lawyers for the Purchaser of 52 Lacroix Property</i>
AND TO:	CANADA MORTGAGE AND HOUSING CORPORATION 900 - 2590 Laurier Blvd, Tour Belle Cour Québec, QC G1V 4C8 Nicolas Rousseau (Specialist Prevention and Default Management) nroussea@cmhc-schl.gc.ca
AND TO:	DESMARIS, KEENAN LLP 15 MacKenzie Street, Sudbury, ON P3C 4Y1 J. Robert LeBlanc Tel: 705-675-7521 ext. 251 leblanc@dklawyers.ca <i>Lawyers for the Purchaser of King Street Property and the Hartman Property</i>

Email List

john.salmas@dentons.com; sara.wilson@dentons.com; birpal.benipal@dentons.com;
pfesharaki@tgf.ca; धारलंद@tgf.ca; boakes@dominionlending.ca; aboettger@bdo.ca;
JParisi@bdo.ca; rwellenreiter@wellenreiterllp.ca; asahi@mandlaw.com;
MKoppens@coinamatic.com; hello@autoone.ca; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca;
insolvency.unit@ontario.ca; inayat@vellanilaw.ca; nroussea@cmhc-schl.gc.ca;
robertcboneill1984@gmail.com; leblanc@dklawyers.ca

Table of Contents

Part 1 – Overview	1
Part II – The Facts	1
Background.....	1
Part III – The Issues	4
Part IV – Law & Argument	4
The Sale Agreement Should be Approved.....	4
The <i>Soundair</i> Principles are Met	6
(A) The Receiver made a Sufficient Effort to get the Best Price and Has Not Acted Improvidently.....	6
(B) The Sale Agreement is in the Interests of All Parties.....	8
(C) The Efficacy and Integrity of the Process	9
(D) No Unfairness in the Working Out of the Process	10
Interim Distributions.....	10
Professional Fees	11
Sealing Order	13
Part V – Order Sought	14
Schedule “A” List of Authorities	15
Schedule “B” Statutes and Regulations	16

PART 1 – OVERVIEW

1. BDO Canada Limited (“**BDO**”), in its capacity as the court-appointed receiver (the “**Receiver**”) of certain assets, undertakings and properties (the “**Property**”) of Commcache Asset Management Inc. (“**Commcache**”) and 52 Lacroix Inc. (“**52 Lacroix**”) submits this factum in support of its motion returnable August 5, 2025, for the following relief, among other things:

- (a) an Approval and Vesting Order, among other things, approving the sale transaction (“**Transaction**”) contemplated by the Agreement of Purchase and Sale, dated July 9, 2025 (the “**Sale Agreement**”), between the Receiver and Sudbury Rentals Limited (the “**Purchaser**”), and vesting Commcache’s right, title and interest to the Hartman Property (as defined below) in and to the Purchaser;
- (b) approving the proposed interim distributions to the National Bank of Canada (“**National Bank**”), the first mortgagee on the Hartman Property and the King Street Property (as defined below);
- (c) approving the fees and disbursements of the Receiver and its counsel, as detailed in the Third Report to the Court dated July 24, 2025 (the “**Third Report**”); and
- (d) sealing the Confidential Appendices to the Third Report.

PART II – THE FACTS

Background

2. Upon the application of National Bank, pursuant to the Order of the Honourable Justice Conway of the Ontario Superior Court of Justice (Commercial List), dated August 14, 2024 (the “**Receivership Order**”), BDO was appointed as the Receiver of the Property.

Receivership Order, dated August 14, 2024, Appendix “A” to the Third Report, Receiver’s Motion Record (“MR”) Tab 2.

3. At the date of the Receivership Order, the Property consisted primarily of five residential, multi-plex apartment buildings located in various cities in Ontario (the “**Real Property**”).

Third Report of the Receiver, dated July 24, 2025, para 8, MR, Tab 2 [Third Report].

4. Pursuant to Approval and Vesting Orders issued by this Honourable Court, the Receiver sold two of the buildings, including the real property municipally known as 220-222 King Street, Sudbury, Ontario (the “**King Street Property**”).

Third Report, paras 9-12.

5. One of the Real Properties was refinanced, and currently, the following two Real Properties remain subject to the receivership proceedings:

- (a) a 2.5-story, twelve (12) unit apartment building located at the municipal address 45 Hartman Avenue, Sudbury, ON (the “**Hartman Property**”); and
- (b) a 3.5-story, eighteen (18) unit apartment building located at the municipal address 800 Howard Avenue and 581 Cataraqui, Windsor, Ontario (the “**Windsor Property**”).

Third Report, paras 8, 13.

6. The Hartman Property and the Windsor Property are both owned by Comcache .

Schedule “A” of Receivership Order, dated August 14, 2024, Appendix “A” to the Third Report.

7. National Bank made available certain credit facilities to the Debtors. Separate facilities were advanced with respect to each Real Property. As security for the advances, National Bank registered mortgages/charges and general assignments of rent against the Real Property.

Third Report, paras 32-34.

8. In respect of the Hartman Property, National Bank, the first mortgagee, holds a mortgage/charge in the principal amount of \$2,100,000¹ (the “**National Bank Charge**”) and a general assignment of rents (the “**GAR**”), both of which were registered against the Hartman Property on June 22, 2021.

Third Report, para 34.

¹ The amount of the charge in paragraph 34 of the Third Report was inadvertently incorrectly stated as \$1,575,000.

Hartman Property Sale Process

9. The Hartman Property is in need of substantial repairs, including a complete roof replacement and the remediation of significant mold and ceiling damage in certain units. Only four (4) of the twelve (12) units are currently occupied. The Receiver attempted to address these repairs prior to listing the property for sale. However, when it became apparent that the issues with the property and the costs of repairs were greater than originally contemplated, the Receiver determined that in order to prevent potential further deterioration to National Bank's recovery, it would be prudent to list the Hartman Property for sale.

Third Report, paras 16-19.

10. The Receiver solicited listing proposals from three (3) realty listing brokerages and on June 19, 2025, engaged Royal LePage North Heritage Brokerage ("**Royal LePage**") as the listing agent for the Hartman Property. The marketing of the Hartman Property commenced on or about June 23, 2025 and was conducted over an approximately 2-week period.

Third Report, paras 20-21.

11. Over that period, thirty-three (33) interested parties conducted site visits, and thirteen (13) offers were received for the Hartman Property. At the request of Royal LePage, seven offerors (7) presented revised "best and final offers".

Third Report, paras 21, 22, 25(a).

12. The Receiver reviewed the offers and entered into the Sale Agreement with the Purchaser, which represented the highest purchase price among all the offers received. The Sale Agreement contains standard limited conditions to closing for a receivership sale.

Third Report, paras 23, 24.

13. The Receiver is seeking approval of the Sale Agreement and the Transaction contemplated therein.

14. The Receiver also requests authority to make an interim distribution of the anticipated net sale proceeds of the Hartman Property to National Bank, the first mortgagee. Additionally, the Receiver requests authority to make a further distribution of the remaining net sale proceeds from the sale of the King Street Property, and authority to make further distributions without further Court order.

PART III – THE ISSUES

15. The issues before this Honourable Court are whether to:

- (a) grant the Approval and Vesting Order in respect of the Hartman Property;
- (b) approve the interim distributions of the sale proceeds of the Hartman Property and the King Street Property;
- (c) approve the fees of the Receiver and its counsel, Dentons Canada LLP (“**Dentons**”); and
- (d) grant a sealing order in respect of the confidential appendices to the Third Report.

PART IV – LAW & ARGUMENT

The Sale Agreement Should be Approved

16. Pursuant to s. 243 of the BIA and s. 100 of the *Courts of Justice Act* (Ontario), the Receiver requests an Approval and Vesting Order approving the Sale Agreement and vesting the Hartman Property in and to the Purchaser.

[*Bankruptcy and Insolvency Act, RSC 1985, c B-3, s. 243.*](#)

[*Courts of Justice Act, RSO 1990, c C.43, s. 100.*](#)

17. Pursuant to the Receivership Order, among other things, the Receiver was authorized to:

- (a) engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver’s powers and duties;

- (b) market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may seem appropriate; and
- (c) 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 the Property or any parts or parts thereof.

Receivership Order, para 4.

18. The Courts place a large degree of confidence in the actions taken and in the opinions formed by their court-appointed receivers. They assume the receiver is acting properly unless the contrary is clearly shown, and are reluctant to second-guess the considered business decisions made by the receiver.

Royal Bank of Canada v. Soundair Corp., [1991 CanLII 2727 \(ON CA\)](#), para. 14 [Soundair].

19. The Court of Appeal summarized the principles to apply when reviewing a sale by a court-appointed receiver as follows:

Underlying these considerations are the principles the courts apply when reviewing a sale by a court-appointed receiver. They exercise considerable caution when doing so, and will interfere only in special circumstances -- particularly when the receiver has been dealing with an unusual or difficult asset. 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.

Regal Constellation Hotel Ltd., Re, 2004 CanLII 206 (ON CA), para [23](#).

20. It is the essence of a receiver's function to make business judgments based on the elements available to it. The Court should examine the conduct of a receiver in light of the information it had when making its decisions and should be very cautious before deciding that a receiver's conduct is improvident based upon information that comes to light after it makes its decision.

[Soundair](#), para. 21.

21. The Court grants considerable deference to the decisions and recommendations of court-appointed receivers. A receiver's decision will be supported so long as it is within the bounds of reasonableness and it proceeds fairly.

Marchant Realty Partners Inc. v. 2407553 Ontario Inc., 2021 ONCA 375, para [19](#).

Ravelston Corp. (Re), 2005 CanLII 63802 (ON CA), para [40](#).

[Soundair](#), para. 21.

The *Soundair* Principles are Met

22. The Courts consider the following principles to determine whether to approve a sale transaction in a receivership:

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

[Soundair](#), para. 16.

(A) The Receiver made a Sufficient Effort to get the Best Price and Has Not Acted Improvidently

23. The Receiver retained Royal LePage to list the Hartman Property for sale. Royal LePage broadly marketed the Hartman Property for approximately two weeks. The marketing process led by Royal LePage included the following:

- (a) advertising the Hartman Property as available for sale on multiple listing service (MLS) boards, specifically with associations in Sudbury regional real estate boards;
- (b) advertising the Hartman Property for sale on the local and national websites of Royal LePage;

- (c) advertising the Hartman Property as available for sale on social media forums relating to real estate advertising and investment;
- (d) directly contacting potential interested parties to solicit interest in the Hartman Property; and
- (e) coordinating 33 site visits with interested parties.

Third Report, para 21.

24. As noted above, initially, the Receiver intended to remedy the various issues with the Hartman Property. However, the cost of the necessary repairs is greater than initially anticipated, and the Receiver determined that the best course of action was to proceed with a quick sale to avoid any further deterioration, which may impact recovery.

Third Report, paras 16-19.

25. The marketing efforts resulted in thirteen (13) offers for the Hartman Property. The Receiver instructed Royal LePage to request that all thirteen offerors provide an offer which they consider to be their “best and final offer” by July 9, 2025.

Third Report, para 22.

26. Ultimately, seven (7) offerors presented revised “best and final offers” to the Receiver, which elicited offers higher in cash consideration than their respective initial offers. The Receiver ultimately accepted the offer from the Purchaser, which represented the highest purchase price among all the offers received.

Third Report, paras 22-23.

27. In light of the challenges with respect to the condition of the Hartman Property, the Receiver is of the view that the marketing process was commercially reasonable. It is evident from the receipt of thirteen (13) offers that the Hartman Property was exposed to the market for a sufficient period of time for prospective purchasers to make an offer. The best price and terms of sale were obtained in the circumstances.

Third Report, para 28.

28. At all relevant times, National Bank was kept apprised of the process and consulted as appropriate.

Third Report, paras 25(d), 28(d).

(B) The Sale Agreement is in the Interests of All Parties

29. The Sale Agreement and the Transaction contemplated therein are in the interests of all parties for the following reasons:

- (a) the purchase price is reasonable in the circumstances, is superior to the other twelve (12) offers received for the Hartman Property, and is commercially reasonable given the condition of the building;
- (b) the appraisal of the Hartman Property, although higher than the purchase price, relies on assumptions that are no longer applicable and does not provide an indication of the market value of the property, which is evident from the offers received;
- (c) National Bank, the first mortgagee, supports the Transaction even though it is expected to suffer a shortfall in recovery of its indebtedness in relation to the Hartman Property;
- (d) based on the marketing efforts and the seven “best and final” offers received, it is unlikely that additional marketing efforts would result in an offer that would repay National Bank in full;
- (e) the terms of the Transaction are typical for a sale by a receiver with respect to real property;
- (f) pursuant to the terms of the Sale Agreement, the Purchaser will assume all of the remaining leases/tenants of the Hartman Property; and
- (g) the Sale Agreement does not include any due diligence or other similar conditions that reduce the risk of the Transaction not being completed.

Third Report, paras 24, 25, 28.

(C) The Efficacy and Integrity of the Process

30. The Receiver solicited listing proposals from three (3) different realty brokerages to list the Hartman Property for sale. The Receiver engaged Royal LePage after comparing listing proposal terms, including property listing price, sales agent commission structure and estimated sales timeline.

Third Report, para 20.

31. The Receiver submits that the sales process conducted by Royal LePage, under the Receiver's supervision, was appropriate for a property of this nature under a court-supervised process. All interested parties were provided with an opportunity to conduct due diligence and conduct a site visit at the Hartman Property. Further, all interested parties were provided an opportunity to submit a bid for the property, and all bidders were given a chance to improve their offer.

Third Report, paras 21-22.

32. National Bank, the mortgagee, was consulted with respect to the offer from the Purchaser and is supportive of the Transaction.

Third Report, para 28(d).

33. Given the risk of further deterioration of the Hartman Property, any delay in closing the Transaction may jeopardize or further risk the recovery of National Bank of its direct indebtedness related to the Hartman Property.

Third Report, para 25(b), 25(c).

34. At this juncture, it would be time-consuming and expensive to carry out another sales process, and in the Receiver's view, the process is unlikely to identify any new prospective purchasers who would offer a superior offer than the one contemplated in the Sale Agreement.

Third Report, para 25(e).

(D) No Unfairness in the Working Out of the Process

35. The sale process was conducted by the listing agent and overseen by the Receiver. The Hartman Property was broadly exposed to the market, and all prospective purchasers had an equal opportunity to participate in the process and bid on the property. As such, there was no unfairness in the process.

Third Report, paras 20-21.

36. Accordingly, for the reasons discussed herein, the principles of *Soundair* have been met, and the Receiver respectfully requests the Court's approval of the Sale Agreement.

Interim Distributions

37. The Receiver seeks authority to make an interim distribution of the anticipated sale net proceeds from the Transaction to National Bank, as the first mortgagee.

Third Report, para 45.

38. Upon paying real estate commission fees, repayment of the Receiver's Borrowings, and municipal taxes, the Receiver expects to have sufficient cash on hand, less a reserve for any professional fees and receivership expenses, to make an interim distribution of \$650,000 to National Bank.

Third Report, para 45.

39. National Bank holds valid and enforceable security against the Hartman Property in the form of the National Bank Charge, and the GAR. The Receiver submits that the interim distribution is appropriate.

Third Report, paras 32-35, 48-49.

40. Pursuant to the Order of the Honourable Justice Steele, dated April 15, 2025, the Court authorized the Receiver to make an interim distribution of the net sale proceeds of the King Street Property to National Bank, first mortgagee on the King Street Property. The Receiver maintained a reserve, and now seeks authority to make a further interim distribution to National Bank in the amount of \$100,000 out of the remaining net sale proceeds from the King Street Property.

Third Report, paras 52-53.

41. It is expected that National Bank will suffer a shortfall on its indebtedness in relation to the King Street Property and the Hartman Property. In order to avoid the necessity of further Court appearances, the Receiver requests authority to make further interim distributions at its discretion.

Professional Fees

42. The role of the Court on a motion to pass accounts is to evaluate them on the basis of the overriding principle of reasonableness. The following factors set out by the Court of Appeal in *Confectionately Yours Inc. (RE)*, provide guidance on how to evaluate the quantum of fees:

- (a) the nature, extent and value of the assets handled;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the debtor company, its officers or its employees;
- (d) the time spent, the receiver's knowledge, experience and skill;
- (e) the diligence and thoroughness displayed;
- (f) the responsibilities assumed;
- (g) the results of the receiver's efforts; and
- (h) the cost of comparable services when performed in a prudent and economical manner.

Confectionately Yours Inc. (Re), 2002 ONCA 45059 at para [45](#).

43. Justice Osborne recently noted:

While the above factors, including time spent, should be considered, value provided should predominate over the mathematical calculation reflected in the hours times hourly rate equation. The focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took. The measurement of accomplishment may include consideration of

complications and in difficulties encountered in the receivership (*Diemer*, at para. 45).

Triple-I Capital Partners Limited v 12411300 Canada Inc., 2023 ONSC 3400 at para [26](#).

44. The Court has also recognized a presumption that court-appointed officers will be entitled to recover their actual costs, absent evidence of extraordinary circumstances.

Sub-Prime Mortgage Corp. v. Phoenix Apartments Ltd., 2010 ONSC 6535 at para. [17](#).

45. The activities of the Receiver described in the Third Report were necessary and undertaken in good faith pursuant to the Receiver's duties and powers, and in each case, were in the best interests of the stakeholders generally. The Receiver has, at all times, carried out its duties with appropriate care, skill, and diligence.

46. The Receiver, having assumed responsibility for the Real Property, has spent considerable time diligently and thoroughly managing the Real Property, including communicating with property managers, consulting with mortgagees, engaging sales agents to market the remaining Real Property, preparing for various court proceedings, closing transactions, and coordinating with contractors for repairs.

Third Report, paras 15-16, 20-21, 29-30.

47. The Receiver's diligence and efforts have resulted in an executed Sale Agreement for the Hartman Property, subject to the Court's approval. The Receiver has implemented and is currently overseeing a sale process for the Windsor Property.

Third Report, paras 19-21, 29-31.

48. As detailed in the Third Report, the Receiver has encountered challenges with respect to the Hartman Property, which it has efficiently and diligently managed considering the nature and condition of the assets under receivership.

Third Report, para 16-18.

49. The Receiver and its counsel have separately accounted for the fees and disbursements incurred in respect of Commcache and 52 Lacroix. The fees were incurred at the respective party's standard rates, with certain counsel charging discounted rates, and are fair, reasonable and justified

in the circumstances. Further, the fees and disbursements sought accurately reflect the work done by the Receiver and its counsel in connection with the receivership.

Third Report, paras 56-59

50. The Receiver respectfully submits that the Receiver's fees and disbursements and those of its legal counsel detailed in the Third Report should be approved.

Sealing Order

51. The test for a sealing order, as set out in the Supreme Court of Canada decision of *Sierra Club of Canada v. Canada (Minister of Finance)*, and modified in the decision of *Sherman Estate v. Donovan*, has been met.

Sierra Club of Canada v. Canada (Minister of Finance), [2002 SCC 41](#) (CanLII), para 53 [Sierra Club]

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

52. The information contained in the Confidential Appendices to the Third Report is commercially sensitive and, if publicly disclosed, could materially and negatively impair the ability of the Receiver to market the Hartman Property 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 that should be protected.

Third Report, para 64.

53. Protecting the commercially sensitive nature of the Confidential Appendices outweighs any deleterious effects of the sealing order, and no reasonable alternative measure is available. The benefits of a sealing order outweigh its negative effects.

Sierra Club, para [53](#).

54. Accordingly, the Receiver requests an order that the Confidential Appendices to the Third Report be sealed and kept confidential and not form part of the public record until the closing of the Transaction in respect of the Hartman Property or further order of this Honourable Court.

PART V – ORDER SOUGHT

55. The Receiver requests Orders granting the relief sought in its Notice of Motion, dated July 24, 2025.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

July 25, 2025

A handwritten signature in blue ink that reads "Dentons Canada LLP". The signature is written in a cursive, flowing style.

DENTONS CANADA LLP

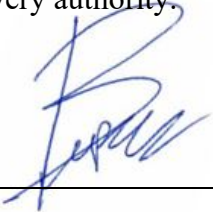
*Lawyers for BDO Canada Limited in its capacity as
court-appointed receiver of Commcache Asset
Management Inc. and 52 Lacroix Inc.*

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#)
2. *Regal Constellation Hotel Ltd., Re*, [2004 CanLII 206 \(ON CA\)](#)
3. *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, [2021 ONCA 375 \(CanLII\)](#)
4. *Ravelston Corp. (Re)*, [2005 CanLII 63802 \(ON CA\)](#)
5. *Confectionately Yours Inc. (Re)*, [2002 CanLII 45059 \(ON CA\)](#)
6. *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, [2023 ONSC 3400 \(CanLII\)](#)
7. *Sub-Prime Mortgage Corporation v. Phoenix Apartments Ltd.*, [2010 ONSC 6535 \(CanLII\)](#)
8. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41 \(CanLII\)](#)
9. *Sherman Estate v. Donovan*, [2021 SCC 25 \(CanLII\)](#)

I certify that I am satisfied as to the authenticity of every authority.

July 25, 2025



SCHEDULE “B”
STATUTES AND REGULATIONS

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

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

Definition of receiver

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
 - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of disbursements

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

[Courts of Justice Act, 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.

NATIONAL BANK OF CANADA

- and - COMMCACHE ASSET MANAGEMENT INC. and 52
LACROIX INC.

Applicant

Respondents

<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p>PROCEEDING COMMENCED AT TORONTO</p> <p>FACTUM OF THE RECEIVER</p> <p>DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1</p> <p>John Salmas (LSO # 42336B) Tel: 416-863-4737 john.salmas@dentons.com</p> <p>Sara-Ann Wilson (LSO # 56016C) Tel: 416-863-4402 sara.wilson@dentons.com</p> <p>Birpal Benipal (LSO # 89984B) Tel: 416-862-3471 birpal.benipal@dentons.com</p> <p><i>Lawyers for BDO Canada Limited in its capacity as court-appointed receiver of Commcache Asset Management Inc. and 52 Lacroix Inc.</i></p>	
--	--