

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**THE BANK OF NOVA SCOTIA**

Applicant

- and -

**UPPER CANADA GROWERS LTD. and UCG LAND INC.**

Respondents

**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**

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**FACTUM OF BDO CANADA LIMITED,  
IN ITS CAPACITY AS RECEIVER AND MANAGER  
(Returnable January 29, 2026)**

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January 20, 2026

**AIRD & BERLIS LLP**  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Ian Aversa** (LSO #55449N)  
Tel: (416) 865-3082  
Email: [iaversa@airdberlis.com](mailto:iaversa@airdberlis.com)

**Matilda Lici** (LSO #79621D)  
Tel: (416) 865-3428  
Email: [mlici@airdberlis.com](mailto:mlici@airdberlis.com)

*Lawyers for BDO Canada Limited, in its  
capacity as receiver and manager of Upper  
Canada Growers Ltd. and UCG Land Inc.*

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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* and section 101 of the *Courts of Justice Act* (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. and UCG Land Inc. (collectively, the “**Debtors**”), acquired for, or used in relation to, a business carried on by the Debtors (collectively, the “**Property**”).<sup>1</sup>

2. Since the issuance of the First Report of the Receiver dated October 14, 2025, the Receiver began to wind-down the operations of the Debtors, including reducing expenses and cancelling expenses that were no longer necessary, and making arrangements for the marketing and sale of the Debtors’ remaining equipment assets (the “**Equipment**”).<sup>2</sup>

3. The Receiver solicited and received auction proposals for the Equipment from two auctioneers, Canam-Appraiz Inc. (“**Canam**”) and Leveredge Asset Solutions Inc. (“**Leveredge**”).<sup>3</sup>

4. The Receiver reviewed and considered each of the key terms of the auction proposals delivered by Canam and Leveredge and accepted the auction proposal delivered by Leveredge (the “**Leveredge Proposal**”) as the best available proposal to sell the remaining Equipment and maximize value for the benefit of the Debtors’ creditors and other stakeholders.<sup>4</sup>

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<sup>1</sup> Second Report of BDO Canada Limited dated January 19, 2026 at para 2 [“**Second Report**”].

<sup>2</sup> Second Report at para 9.

<sup>3</sup> Second Report at para 33.

<sup>4</sup> Second Report at para 35.

5. Further to the Leveredge Proposal, the Receiver proposes to enter into an auction services agreement (the “**Auction Agreement**”) with Leveredge for the purpose of conducting a sale of the Equipment via auction (the “**Auction**”).

6. The Auction Agreement is conditional upon the issuance of an approval and vesting order (the “**AVO**”).<sup>5</sup>

7. Accordingly, the Receiver brings this motion for:

(a) the AVO which, among other things:

- (i) approves the Receiver’s engagement of Leveredge and authorizes the execution of the Auction Agreement between the Receiver and Leveredge regarding the sale of the Equipment;
- (ii) authorizes the Receiver to perform its obligations under the Auction Agreement and to take such additional steps and execute such additional documents as may be necessary or desirable to give effect to the Auction Agreement and conduct the Auction pursuant to the Auction Agreement; and
- (iii) vests in each purchaser at such Auction (each a “**Purchaser**”) the Debtors’ right, title and interest in and to the Equipment purchased by such respective Purchaser at the Auction (in each case, the “**Purchased Assets**”), free and clear of any claims and encumbrances; and

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<sup>5</sup> Second Report at para 42.

- (b) an Order (the “**Ancillary Relief Order**”) which, among other things:
- (i) approves the Second Report of the Receiver dated January 19, 2026 (the “**Second Report**”), and the actions, conduct, and activities of the Receiver described therein;
  - (ii) approves the fees and disbursements of the Receiver and those of its independent legal counsel, Aird & Berlis LLP (“**A&B**”), as set out in the Receiver’s and A&B’s respective fee affidavits;
  - (iii) approves the Receiver’s interim R&D statement to December 31, 2025; and
  - (iv) seals the Confidential Appendices to the Second Report until further Order of this Court.<sup>6</sup>

## **PART II - SUMMARY OF FACTS**

8. During these Receivership Proceedings, the Receiver sold 45 pieces of the Equipment of the Debtors, and subsequently released its interest in all other financed and leased Equipment which the Receiver determined were not profitable to buy out and sell.<sup>7</sup>

9. The Receiver believes the best course of action for maximizing realizations and reducing insurance-related costs is to pursue the Auction for the remaining Equipment.<sup>8</sup>

10. Both Canam and Leveredge have the experience and capability to liquidate the Equipment. The Receiver previously engaged Leveredge to appraise the Debtors’ Equipment, and Leveredge delivered an equipment appraisal dated May 28, 2025.<sup>9</sup>

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<sup>6</sup> Second Report at para 6.

<sup>7</sup> Second Report at paras 29-31.

<sup>8</sup> Second Report at para 32.

<sup>9</sup> Second Report at para 33.

11. As compared to the proposal submitted by Canam, the Leveredge Proposal provides:
  - (a) a higher net minimum guarantee (“**NMG**”); and
  - (a) lower commission costs (inclusive of commission, advertising and administrative expenses).<sup>10</sup>
  
12. Further to the Leveredge Proposal, the Receiver proposes to enter into the Auction Agreement with Leveredge.
  
13. The Auction Agreement provides, among other things:
  - (a) the Liquidation Period (as defined in the Auction Agreement) shall run for a maximum of 75 days;
  - (b) the Equipment is provided to Leveredge on an “as is, where is” basis; and
  - (c) Leveredge shall prepare and lot the Equipment and conduct the Auction in a commercially reasonable manner.<sup>11</sup>
  
14. Subject to this Court’s approval, the Receiver intends to engage Leveredge to conduct the Auction pursuant to, and in accordance with, the Auction Agreement.<sup>12</sup>

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<sup>10</sup> Second Report at para 36.

<sup>11</sup> Second Report at para 39.

<sup>12</sup> Second Report at para 44.

### **PART III - ISSUES**

15. 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 Receiver entering into the Auction Agreement and completing the Auction contemplated in the Auction Agreement;
  - (b) grant a sealing order in respect of the Confidential Appendices to the Second Report; and
  - (c) approve the activities and fees of the Receiver and its counsel.

### **PART IV - STATEMENT OF LAW & AUTHORITIES**

#### **Auction Agreement Should be Approved:**

16. Pursuant to section 3(d) of the Appointment Order, the Receiver is empowered to engage, *inter alios*, agents to assist with the exercise of the Receiver's powers and duties.<sup>13</sup>
17. The Receiver seeks approval to engage Leveredge and enter into the Auction Agreement further to the Leveredge Proposal and in accordance with the terms of the Auction Agreement.
18. The Auction Agreement is conditional on the granting of the AVO.
19. 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*

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<sup>13</sup> Second Report, Appendix A, Appointment Order of Justice Bordin dated May 15, 2025 at s. 3(d).

*v. Soundair Corp.*,<sup>14</sup> 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.<sup>15</sup>

20. The Receiver submits that the *Soundair* principles are satisfied:

- (a) Assessing the reasonableness of a process does not require the Court to examine in minute detail all of the circumstances leading up to the acceptance of a particular offer.<sup>16</sup> The Court should be satisfied overall that the Receiver has not acted improvidently. The process for selecting the auctioneer was fair, transparent, and reasonable in the circumstances. The Receiver solicited auction proposals from two auctioneers, both of whom provided proposals after having an opportunity to assess the Equipment;<sup>17</sup>
- (b) 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

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<sup>14</sup> *Royal Bank of Canada v. Soundair Corp.* (1991), [1991 CarswellOnt 205](#) (ONCA).

<sup>15</sup> *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](#).

<sup>16</sup> *Royal Bank of Canada v. Soundair Corp.* (1991), [1991 CarswellOnt 205](#) at [paras 48-49](#) (ONCA).

<sup>17</sup> Second Report at paras 33-34.

information available at the time the offer is accepted.<sup>18</sup> The decision to accept a particular offer is a matter of business judgment that should not be interfered with lightly in the absence of evidence of imprudence or unfairness.<sup>19</sup> Leveredge has the requisite knowledge and experience to conduct the Auction, and, in the Receiver's view, the Auction Agreement provides the best potential recovery for stakeholders from the sale of the Equipment. The Auction Agreement offers the highest NMG for the Equipment and lower commission costs (inclusive of commission, advertising and administrative expenses);<sup>20</sup>

- (c) All known stakeholders received notice of the Receiver's motion. BNS, as the senior secured creditor, supports the Receiver entering into the Auction Agreement;<sup>21</sup> and
- (d) In support of the relief sought in this motion, the Receiver has filed the Second Report.

21. Based on the foregoing, it is the informed business judgment of the Receiver that the Auction Agreement is in the best interests of the Debtors 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.

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<sup>18</sup> *Terrance Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#) at [paras 50-55](#).

<sup>19</sup> *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](#).

<sup>20</sup> Second Report at para 36.

<sup>21</sup> Second Report at para 35.

**AVO Should be Granted:**

22. The Receiver seeks an AVO to grant the Purchased Assets free and clear of any claims and encumbrances.

23. The Court has the power to grant approval and vesting orders pursuant to section 100 of the CJA,<sup>22</sup> 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.<sup>23</sup>

24. Vesting orders are a routine part of insolvency practice.<sup>24</sup> As set out by the Ontario Court of Appeal in *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*,<sup>25</sup> 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.<sup>26</sup> If these factors proved inconclusive, the court can engage in a consideration of equities to determine if a vesting order is appropriate.<sup>27</sup>

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

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

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<sup>22</sup> [Courts of Justice Act](#), R.S.O. 1990, c. C.4.

<sup>23</sup> [Courts of Justice Act](#), R.S.O. 1990, c. C.4, s. 100.

<sup>24</sup> *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) at [para 106](#).

<sup>25</sup> *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#).

<sup>26</sup> *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) at [paras 103-106](#).

<sup>27</sup> *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) at [para 110](#).

**The Sealing Order Should be Granted:**

27. The Receiver is seeking a sealing order, until further Order of this Court, in respect of Confidential Appendices “A” and “B” to the Second Report. Confidential Appendix “A” comprises a summary of the auction proposals and unredacted copies of the Leveredge Proposal and the auction proposal submitted by Canam. Confidential Appendix “B” consists of the unredacted copy of the Auction Agreement with Leveredge.

28. The sealing order is sought pursuant to subsection 137(2) of the CJA.<sup>28</sup> 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.

29. The test for a sealing order was established by the Supreme Court in *Sierra Club of Canada v. Canada (Minister of Finance)*,<sup>29</sup> and subsequently recast in *Sherman Estate v. Donovan*.<sup>30</sup> 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.<sup>31</sup>

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<sup>28</sup> [Courts of Justice Act](#), R.S.O. 1990, c. C.4, s. 137(2).

<sup>29</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#).

<sup>30</sup> *Sherman Estate v. Donovan*, [2021 SCC 25](#).

<sup>31</sup> *Sherman Estate v. Donovan*, [2021 SCC 25](#) at [para 38](#).

30. All three elements are prerequisites for a sealing order to be granted.<sup>32</sup>
31. 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.<sup>33</sup>
32. 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.<sup>34</sup> 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.<sup>35</sup>
33. 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*,<sup>36</sup> 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

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<sup>32</sup> *Sherman Estate v. Donovan*, [2021 SCC 25](#) at [para 38](#).

<sup>33</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) at [para 62](#).

<sup>34</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) at [paras 74-76](#).

<sup>35</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) at [para 78](#).

<sup>36</sup> *Look Communications Inc. v. Look Mobile Corporation* (2009), [2009 CanLII 71005](#) (Ont Sup Ct J).

situation would be that the supporting valuation materials remain sealed until such time as the sale transaction had closed.<sup>37</sup>

34. The Receiver submits that the test is satisfied in this case. The Confidential Appendices contain commercially sensitive terms relating to the marketing and sale of the Equipment by Leveredge as the auctioneer which, if publicly disclosed, could materially and negatively impair the ability of the Receiver to market the Equipment to other interested parties and obtain the highest and best price if the Auction Agreement is not approved or the Auction is not completed, and/or impair the auctioneer's ability to obtain market rates in other engagements.

35. The proposed sealing order conceals the NMG and other economic terms to ensure that the bids received for the Equipment are maximized.

36. Granting a time-limited sealing order maintains public confidence in the efficacy of the insolvency regime, which is an important public interest to protect.

37. 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.

38. 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.

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<sup>37</sup> *Look Communications Inc. v. Look Mobile Corporation* (2009), [2009 CanLII 71005](#) at [para 17](#) (Ont Sup Ct J).

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

**Activities of the Receiver Should be Approved:**

40. The Ontario Superior Court of Justice (Commercial List) has previously observed that periodic requests to approve reports of a monitor in a proceeding commenced under the *Companies' Creditors Arrangement Act*,<sup>38</sup> or a receiver appointed pursuant to the BIA or the CJA are appropriate as there are good policy and practical reasons to grant such approvals. Such reasons include permitting the Court officer to move forward with the next steps in the proceeding.<sup>39</sup>

41. The Receiver seeks this Court's approval of its activities and conduct, as set out in the Second Report.

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

43. 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.<sup>40</sup>

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<sup>38</sup> [R.S.C., 1985, c. C-36](#).

<sup>39</sup> *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at [paras 2](#) and [23](#).

<sup>40</sup> Draft Ancillary Relief Order at para 2, Motion Record of BDO Canada Inc. at Tab 5.

**Fees of the Receiver and its Counsel should be approved:**

44. The jurisdiction 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.”<sup>41</sup>

45. On a motion to pass accounts, the Court must consider the “overriding principle of reasonableness,” focusing on the overall value contributed by the court officer and its counsel. 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.<sup>42</sup> In *Bank of Nova Scotia v. Diemer*,<sup>43</sup> 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.”<sup>44</sup>

46. BDO 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 the City of Toronto. Those rates have been approved by this Court in these proceedings<sup>45</sup> and in other matters.<sup>46</sup> Furthermore, the fees and disbursements sought accurately reflect the work done by BDO and its counsel in connection with the monitorship and these receivership proceedings.

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<sup>41</sup> Order of Justice Bordin dated May 15, 2025 at para 20, Appendix A of the Second Report.

<sup>42</sup> *Nortel Networks Inc.* [2022 ONSC 6680](#) at para 10.

<sup>43</sup> *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#).

<sup>44</sup> *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) at para 45.

<sup>45</sup> See [Ancillary Relief Order of Justice Bordin dated October 23, 2025](#).

<sup>46</sup> See [Order of Justice Sweeny dated November 20, 2025](#) in re *Caisse Desjardins Ontario Credit Union Inc. v. 12905060 Canada Inc.*, CV-25-00089291-0000; [Sale Process and Sealing Order dated May 23, 2024](#) in re *KHL Investments USA Inc. v. 1160 Cranberry Investments GP Inc. et al.*, CV-23-00083660-0000.

**PART V - RELIEF REQUESTED**

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

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 20<sup>th</sup> day of January 2026.



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Matilda Lici

**AIRD & BERLIS LLP**

Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Ian Aversa** (LSO #55449N)

Tel: (416) 865-3082

Email: [iaversa@airdberlis.com](mailto:iaversa@airdberlis.com)

**Matilda Lici** (LSO #79621D)

Tel: (416) 865-3428

Email: [mlici@airdberlis.com](mailto:mlici@airdberlis.com)

*Lawyers for BDO Canada Limited, in its  
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## SCHEDULE “A”

### LIST OF AUTHORITIES

1. *Canwest Global Communications Corp.*, [2010 ONSC 2870](#).
2. *Look Communications Inc. v. Look Mobile Corporation* (2009), [2009 CanLII 71005](#) (Ont Sup Ct J).
3. *Royal Bank of Canada v. Soundair Corp.* (1991), [1991 CarswellOnt 205](#) (ONCA).
4. *Sherman Estate v. Donovan*, [2021 SCC 25](#).
5. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#).
6. *Target Canada Co. (Re)*, [2015 ONSC 7574](#).
7. *Terrance Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#).
8. *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.

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Applicant

and

**UPPER CANADA GROWERS LTD. et al.**  
Respondents

Court File No. CV-25-00090131-0000

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SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
HAMILTON

**FACTUM OF BDO CANADA LIMITED,  
IN ITS CAPACITY AS RECEIVER AND MANAGER  
(Returnable January 29, 2026)**

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Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Ian Aversa** (LSO #55449N)

Tel: (416) 865-3082

Email: [iaversa@airdberlis.com](mailto:iaversa@airdberlis.com)

**Matilda Lici** (LSO #79621D)

Tel: (416) 865-3428

Email: [mlici@airdberlis.com](mailto:mlici@airdberlis.com)

*Lawyers for BDO Canada Limited, in its capacity as receiver  
and manager of Upper Canada Growers Ltd. and UCG Land  
Inc.*