

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

BETWEEN:

AMERICAN GENERAL LIFE INSURANCE COMPANY and NATIONAL UNION FIRE  
INSURANCE COMPANY OF PITTSBURGH, PA.

Applicants

- and -

VICTORIA AVENUE NORTH HOLDINGS INC. and THE PARTIES LISTED ON  
SCHEDULE "A"

Respondents

**APPLICATION UNDER section 243 of the Bankruptcy and Insolvency Act, R.S.C. 1985,  
c. B-3, as amended, and under section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43**

**FACTUM OF THE RECEIVER  
(Sale Approval and Ancillary Matters)  
Returnable October 14, 2022**

October 11, 2022

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers and Solicitors  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, Ontario M5L 1A9

**Pamela L.J. Huff**, LSO #27344V  
Tel: 416-863-2958  
Email: [pamela.huff@blakes.com](mailto:pamela.huff@blakes.com)

**Aryo Shalviri**, LSO #63867A  
Tel: 416-863-2962  
Email: [aryo.shalviri@blakes.com](mailto:aryo.shalviri@blakes.com)

**Chris Burr**, LSO #55172H  
Tel: 416-863-3261  
Email: [chris.burr@blakes.com](mailto:chris.burr@blakes.com)

**Alexia Parente**, LSO #81927G  
Tel: 416-863-2417  
Fax: 416-863-2653  
Email: [alexia.parente@blakes.com](mailto:alexia.parente@blakes.com)

Lawyers for the Receiver

**TO: SERVICE LIST**

## SCHEDULE "A"

<b>Individuals</b>
Allan Gross
Errol Yim and Andrea Yim, jointly
Ava Gross
Karen Nakagawa and Calvin Nakagawa, jointly
Carol Jaxon
Carole Kai Onouye
Diane Curtis
Dwight Otani and Theresa Otani, jointly
Edward Bugarin
Ellen Fleishman
Gemie Arakawa
George Tamashiro
Guy Pace and Caroline Berdusco, jointly
Heidi Berger
Henry Ko
Hongwei Su
James Brand
Janis L. Lai Trustee
Jean Morel
Jian Zhang
Johann Strasser
John Dattomo and Daniela Dattomo
Kelly Ann Hiraki and Jonathan Wah Hee, jointly
Randall Y.C. Ho
Robert Atkinson
Roberta Sunahara and Paul Sunahara, jointly
Seymour Kazimirski
Stanley Salcedo

<b>Trusts</b>
Charlyn Shizue Honda Masini Trust, by and through its trustee(s)
Fleishman Family Trust, by and through its trustee(s)
J. Zachery Jones Trust, by and through its trustee(s)
Jane Shigeta Revocable Living Trust, by and through its trustee(s)
Jasen Takei Revocable Living Trust, by and through its trustee(s)
Melvin Shigeta Revocable Living Trust, by and through its trustee(s)
Ruth Hisaye Honda Trust, by and through its trustee(s)
S. Bucky Revocable Living Trust & Bruce E. Bucky Revocable Living Trust, by and through its trustee(s)
Wallace K. Tsuha Trust, by and through its trustee(s)
<b>Corporations / Partnerships</b>
1236068 Ontario Limited
1649750 Ontario Inc.
1818019 Ontario Limited
Citydrill Inc.
Gross Capital Inc.
Dirk and Dale IRA LLC
Gross Medical Opportunities Fund LP
Hybrid Activities Inc.
Mark Craig Gross Holdings Inc.
Randy 88, LLC
Rastogi Medicine Professional Corporation
RMK IRA LLC

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**PART I - OVERVIEW**

1. This factum is filed in support of a motion by KPMG Inc., in its capacity as Court-appointed receiver and manager (the "**Receiver**"), without security, of (i) all of the assets, undertakings and properties of Victoria Avenue North Holdings Inc. (the "**Legal Owner**") acquired for, or used in relation to the Legal Owner's business (collectively, the "**Legal Owner's Property**"), and (ii) all right, title and interest of any beneficial owners (the "**Beneficial Owners**") and together with the Legal Owner, the "**Debtors**") in and to the Legal Owner's Property and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or

for others (collectively, and together with the Legal Owner's Property, the "**Property**"), seeking Orders:<sup>1</sup>

- (a) an Approval and Vesting Order (the "**Vesting Order**"):
  - (i) approving the asset purchase agreement dated September 1, 2022 (the "**APA**") among the Debtors (by the Receiver) and 1000301029 Ontario Limited (the "**Purchaser**") and the proposed transaction contemplated thereby (the "**Proposed Transaction**");
  - (ii) authorizing and directing the Receiver to take such steps as necessary to complete the Proposed Transaction; and
  - (iii) upon the Receiver filing a certificate confirming among other things, the completion of the Proposed Transaction, vesting title in and to the Purchased Assets in the Purchaser, free and clear of all liens, claims and encumbrances, except certain permitted encumbrances;
- (b) authorizing the Receiver to pay the Commission of its real estate broker, CBRE Limited ("**CBRE**") from the net proceeds of the Proposed Transaction (the "**Net Proceeds**"), upon closing of the Proposed Transaction;
- (c) approving the extension of the term sheet among the Applicants and the Receiver dated as of July 9, 2021 (as amended, the "**Receiver Term Sheet**") pursuant to which the Receiver has borrowed certain amounts to fund these receivership proceedings (the "**Proceedings**");

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<sup>1</sup> Capitalized terms used in this paragraph and not otherwise defined shall have the meanings given to them further below in this Factum.

- (d) authorizing the Receiver to repay the Receiver's borrowings (including accrued interest thereon) pursuant to the Receiver's Term Sheet, from the Net Proceeds;
- (e) approving the activities of the Receiver (the "**Activity Approval**") as set out in the Receiver's Supplement to the Third Report to the Court dated May 20, 2022 (the "**Supplemental Report**") and the Receiver's Fourth Report to the Court dated October 4, 2022 (the "**Fourth Report**", and together with the Supplemental Report, the "**Reports**"); and
- (f) sealing Confidential Appendix "A" and Confidential Appendix "B" to the Fourth Report (collectively, the "**Confidential Appendices**"), pending further Order of the Court.

2. This factum will address the requested relief in connection with: (a) the Proposed Transaction and the Vesting Order, (b) the payment of the Commission to CBRE, (c) the Activity Approval, and (d) sealing of the Confidential Appendices. The relief requested in connection with the extension of the Receiver's Term Sheet and the Receiver's borrowings will be addressed in a separate factum filed by the Receiver's independent counsel, Norton Rose Fulbright Canada LLP.

## **PART II - FACTS**

### **Background**

3. Pursuant to the Appointment Order of the Ontario Superior Court of Justice [Commercial List] (the "**Court**") granted on August 3, 2021 (the "**Appointment Order**"), KPMG Inc. was appointed as Receiver of the Property, which primarily consists of interests in two (2) medical office buildings, located at 304 Victoria Avenue North in Hamilton, Ontario (the "**304 Victoria Building**") and 414 Victoria Avenue North in Hamilton, Ontario (together with the 304 Victoria

Building, the “**Buildings**”) and their related real property leases (collectively, the “**Real Property Assets**”).

Fourth Report at paras 1 to 2.

4. On October 29, 2021, the Court granted an order (the “**Sale Process Order**”) approving, among other things:

- (a) the broker listing agreement dated October 20, 2021 (the “**Broker Engagement Agreement**”) and the engagement of CBRE as exclusive real estate broker for the Real Property Assets; and
- (b) a sale process for the Real Property Assets, as appended to the Sale Process Order (the “**Sale Process**”).

Fourth Report at para 6.

5. On June 29, 2021, KPMG Inc. was appointed as receiver and manager of, among other things, the properties of Southmount Healthcare Centre Inc. and certain other entities (“**Southmount Et Al.**”) pursuant to an order of this Court. The primary assets of the respondents in the Southmount Et Al. receivership proceedings were seven (7) medical office buildings in the same asset class as the Buildings subject to these Proceedings (the “**Southmount Et Al. Real Property Assets**”). Southmount Et Al. are affiliated with the Legal Owner, and they are all indirect subsidiaries of Gross Capital Inc., which was assigned into bankruptcy on June 25, 2021.

Fourth Report at para 7.

6. On October 29, 2021, the Court also granted an order approving a substantially similar sale process for, and the engagement of CBRE in respect of, the Southmount Et Al. Real Property Assets, which were marketed by CBRE and the Receiver alongside the Real Property Assets that are the subject of these Proceedings.

Fourth Report at para 8.

## **The Sale Process**

7. Details of the conduct of the Sale Process by the Receiver and CBRE are set out in the Third Report of the Receiver dated May 13, 2022 (the “**Third Report**”). A summary of key facts as they relate to the Sale Process are set out in this section.

8. Following the issuance of the Sale Process Order, the Receiver, with the assistance of CBRE, took a number of steps to implement and advance the Sale Process, including distributing interest solicitation emails to in excess of 2,100 potential interested parties.

Third Report at para 19.

9. The initial bid deadline under the Sale Process was extended due to significant demand from potential purchasers for physical inspections and site tours at the Buildings.

Third Report at para 23.

10. After receiving twelve (12) non-binding letters of intent and binding offers from ten (10) separate bidders, the Receiver selected the highest offer for the Real Property Assets and entered into an asset purchase agreement in respect thereof (the transaction contemplated by such asset purchase agreement, being the “**May 24 Transaction**”).

Third Report at paras 24 to 29.

## **The previously approved May 24 Transaction and the Proposed Transaction**

11. At a hearing before the Court on May 24, 2022 (the “**May 24 Hearing**”), the Court granted an approval and vesting order in respect of the May 24 Transaction, which transaction was subject to a due diligence condition in favour of the relevant purchasers.

Fourth Report at para 22.

12. Subsequent to the May 24 Hearing and prior to the expiry of their due diligence period, the May 24 Transaction purchasers declined to waive their due diligence condition and proceed towards closing the May 24 Transaction on the terms approved at the May 24 Hearing.



Fourth Report at para 23.

13. The May 24 Transaction purchase agreement was terminated and shortly thereafter, the Receiver pursued further marketing efforts in respect of the Real Property Assets. These efforts included re-engaging with other parties which had previously submitted bids for the Real Property Assets during the Sale Process or who had otherwise expressed interest in the Real Property Assets (collectively, the “**Prior Interested Parties**”).

Fourth Report at para 25.

14. Taking into account the following factors in consultation with CBRE and the Applicants: (i) the level of interest expressed by the Prior Interested Parties upon re-engagement with CBRE, and (ii) general real estate market conditions (including rising interest rates) since the commencement of the Sale Process, the Receiver also re-marketed the Buildings on the Multiple Listing Service on an un-priced basis and CBRE sent a new email to the broader distribution list previously utilized during the Sale Process, advertising the Real Property Assets. These efforts ultimately resulted in the Receiver receiving a firm offer in respect of the 304 Victoria Building.

Fourth Report at paras 26-27.

15. On September 1, 2022, following more than six (6) weeks of the Real Property Assets being re-marketed, the Receiver entered into the APA with the Purchaser in respect of the 304 Victoria Building, the real property leases related thereto and certain other ancillary assets related thereto, all as set out in greater detail in the APA (collectively, the “**Purchased Assets**”).

Fourth Report at para 28 and 33.

16. Prior to the APA being executed, only one other offer was received for the Real Property Assets that the Receiver, in consultation with CBRE, viewed as competitive, being an offer for both of the Buildings (the “**Victoria Portfolio Offer**”). The Victoria Portfolio Offer was subject

to a due diligence condition for a period of time following execution of an asset purchase agreement in respect of same.

Fourth Report at paras 29.

17. The Receiver, in consultation with CBRE and the Applicants, engaged in discussions with the party that submitted the Victoria Portfolio Offer to determine if its due diligence condition could be removed from its offer.

Fourth Report at paras 30.

18. Concurrently with these efforts and in order to lock in transaction certainty and also preserve optionality in the event that a superior offer in respect of the Real Property Assets was identified, the Receiver, in consultation with CBRE and the Applicants, negotiated the inclusion of a termination right in the APA, which would, subject to certain conditions, allow the Receiver to pursue an Alternative Transaction (as defined in APA) within 30 days of execution of the APA (the “**Optionality Period**”).

Fourth Report at paras 30.

19. As at the date hereof, the party that submitted the Victoria Portfolio Offer has indicated that it does not wish to proceed with a transaction and the Optionality Period has expired with the Receiver not having received any potential Alternative Transaction.

Fourth Report at para 31.

### **Activity Approval**

20. Those activities outlined in the Reports have been, in the Receiver’s view, necessary and appropriate, with a view to maximizing value from the Real Property Assets.

### **PART III - ISSUES**

21. The following issues are before the Court on this Motion:

(a) Should the Proposed Transaction be approved and the Vesting Order be granted?

- (b) Should the Receiver be authorized to pay CBRE its Commission?
- (c) Should this Court grant the requested Activity Approval?
- (d) Should a sealing order be granted in respect of the Confidential Appendices, pending further Order of the Court?

22. For the reasons that follow, the Receiver submits that these questions should be answered in the affirmative.

#### **PART IV - THE LAW AND DISCUSSION**

##### **A. The Proposed Transaction should be approved and the Vesting Order granted**

23. It is settled law that when asked to approve a transaction in a receivership context, a court is required to consider the factors set out in *Royal Bank of Canada v Soundair Corp*:

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

[\(1991\), 4 OR \(3d\) 1 \(ONCA\) \[Soundair\].](#)

24. Deference is to be afforded to a receiver respecting its proposed sale process. Absent a violation of the *Soundair* principles or other exceptional circumstances, the court should uphold the business judgment of the receiver, as its court officer.

[\*Crown Trust Co v Rosenberg\* \(1986\), 60 OR \(2d\) 87 \(HC\)](#) at para 83.

25. As set out in *Bank of Montreal v Dedicated National Pharmacies Inc.*:

Where a receiver or manager has acted reasonably, prudently and not arbitrarily, as is the case here, a court ought not to sit in appeal from a receiver or manager's decision or review in every detail every element of

the procedure by which the receiver or manager made its decision. To do so would be futile, duplicative and would neutralize the role of the receiver or manager.

[\*Bank of Montreal v Dedicated National Pharmacies Inc.\*, 20111 ONSC 4634](#) at para 43.

26. The Receiver submits that the *Soundair* test is readily met in respect of the Sale Process conducted in these Proceedings and the further marketing efforts leading up to the Proposed Transaction and that the Proposed Transaction should be approved, for the following reasons:

- (a) Efforts to Get the Best Price: The market was widely canvassed by the Receiver and CBRE in accordance with the terms of the comprehensive Sale Process, resulting in significant participation from potential purchasers and competition amongst same. The Proposed Transaction is the result of extensive negotiations with the Purchaser and its respective counsel, with input from CBRE, and represents the highest and best offer that is available for the Purchased Assets.
- (b) Interests of the Parties: The Sale Process was designed to ensure that the process would be robust and run with integrity, transparency and fairness, and notice of the Sale Process was given to the service list and other interested parties prior to the motion seeking its approval. Prior to entering into the Proposed Transaction, the Receiver consulted with the Applicants, being the senior secured creditors in these Proceedings who, based upon the terms of the offers received for the Real Property Assets, are the only parties anticipated to realize a recovery in these proceedings. Further, prior to entering into the May 24 Transaction (which as set out above, did not proceed to closing), the Receiver consulted with the other secured mortgagee of the Real Property Assets.

- (c) Efficacy and Integrity of the Process. The Court has already been satisfied with, and approved the Sale Process, which was implemented in accordance with the approved terms thereof. The Receiver has ensured that all procedural and process issues have been conducted with integrity. All interested parties have had ample opportunity to participate. No objections or concerns with the Sale Process have been brought to the Receiver's attention.
- (d) No Unfairness. In the Receiver's view, there has been no unfairness in the conduct of the Sale Process, no party has been prejudiced or excluded, and the range of offers received informs the Receiver's conclusion that the Proposed Transaction is the highest and best offer available for the Purchased Assets.

Fourth Report at para 34.

27. The Vesting Order sought by the Receiver is in the standard, model form (with changes thereto marked in blackline in the Receiver's motion record) and substantially in the form already granted by this Court in connection with the May 24 Transaction. The issuance of the Vesting Order is a requirement of the APA. The parties with registered interests being vested out by the proposed Vesting Order have been given notice of the Receiver's motion and the proposed Vesting Order provides that any interests that are vested out attach to the proceeds of sale in accordance with their respective priorities. Accordingly, the Receiver believes that the Vesting Order is fair, reasonable, and ought to be granted.

**B. Payment of the CBRE's commission should be authorized**

28. The Receiver entered into the Broker Engagement Agreement pursuant to its authority under the Appointment Order, and such Broker Engagement Agreement was expressly approved by the Court in the Sale Process Order.

29. CBRE has provided valuable services to the Receiver and materially assisted with the Sale Process. Further, CBRE has spent time and resources on the Sale Process and in the Receiver's view, has earned the commission due to it pursuant to the Court approved Broker Engagement Agreement (the "**Commission**"), which Commission is only due and payable should the Proposed Transaction close.

30. Accordingly, in the Receiver's view, the payment of the Commission to CBRE should be paid, as and when the Proposed Transaction closes.

**C. The Court should grant the requested Activity Approval**

31. In *Target Canada*, the Court noted that there are good policy and practical reasons to grant the approval of Monitor's reports and activities, including (a) allowing the Monitor to bring its activities before the Court; (b) allowing an opportunity for stakeholders' concerns to be addressed; (c) enabling the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners; (d) providing protection for the Monitor not otherwise provided by the *Companies' Creditors Arrangement Act*; and (e) protecting creditors from delay that may be caused by re-litigation of steps or potential indemnity claims by the Monitor.

[Re Target Canada Co., 2015 ONSC 7574 \[Target Canada\]](#) at paras 2, 22-23.

32. Recently, the principles set out in *Target Canada* were reaffirmed by Chief Justice Morawetz in *Laurentian University*.

[Re Laurentian University of Sudbury, 2022 ONSC 2927 \[Laurentian University\]](#) at paras 13-14;  
[Target Canada Co.](#) at paras 2, 22-23.

33. These comments and the policy considerations identified by the Court apply with equal force to receivership proceedings, and motions seeking approval of a receiver's report and activities described therein.

[Re Hanfeng Evergreen Inc., 2017 ONSC 7161](#) at para 15.

34. This Court has jurisdiction to review and approve the activities of a receiver. If the receiver has met the objective test of demonstrating that it has acted reasonably, prudently and not arbitrarily, the court may approve the activities set out in its report.

[\*Bank of America Canada v Willam Investments Ltd.\*, \[1993\] OJ No. 1647 \(Gen Div\) at paras 2-5, aff'd \[1996\] OJ No. 2806 \(CA\); \*Lang Michener v American Bullion Minerals Ltd.\*, 2005 BCSC 684 at para 21.](#)

35. The activities of the Receiver that are set out in the Reports were necessary, consistent with the Receiver's duties and powers in the Appointment Order and undertaken with efficiency and reasonableness in the interests of stakeholders generally. The Receiver therefore respectfully submits that the Activity Approval should be granted.

**D. The sealing order should be granted in respect of the Confidential Appendices**

36. In *Sierra Club of Canada v Canada (Minister of Finance)*, the Supreme Court of Canada ("SCC") held that courts should exercise their discretion to grant sealing orders where (a) the order is necessary to prevent a serious risk to an important interest, including a commercial interest, because reasonable alternative measures will not prevent the risk, and (b) the salutary effects of the order outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.

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

37. In *Sherman Estate v Donovan*, the SCC recast the test from *Sierra Club* differently, without altering its essence. According to *Sherman Estate*, a person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

- (i) court openness poses a serious risk to an important public interest;
- (ii) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (iii) as a matter of proportionality, the benefits of the order outweigh its negative effects.

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

38. Although the SCC was considering issues of personal privacy in *Sherman Estate*, it noted in citing *Sierra Club* that the term “important interest” can capture a broad array of public objectives including commercial interests.

[Sherman Estate](#) at para 41.

39. In the insolvency context, courts have commonly applied the *Sierra Club* test and granted sealing orders over confidential or commercially sensitive documents to protect the interests of debtors and other stakeholders.

[Elleway Acquisitions Ltd., v 4358376 Canada Inc., 2013 ONSC 7009](#) at paras 47-48; [GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc., 2014 ONSC 1173](#) at para 32; [Stelco Inc. \(Re\), 2006 CarswellOnt 394](#) at paras 2-5, [2006] OJ No. 275 (Ont SCJ); [Re Canwest Publishing Inc., 2010 ONSC 222](#) at paras 63-65.

40. The test for a sealing order as recast in *Sherman Estate* has similarly been recently employed in the insolvency context to authorize sealing orders over confidential or commercially sensitive documents.

[Ontario Securities Commission v Bridging Finance Inc., 2021 ONSC 4347](#) at paras 23-27; [Laurentian University of Sudbury, 2021 ONSC 4769](#) at paras 12-14.

41. The Confidential Appendices contain confidential and commercially sensitive information, including with respect to key economic terms of the Proposed Transaction. The Confidential Appendices are comprised of (a) a summary of the key economic terms redacted from the APA, and (b) a summary of the material terms of each binding offer received in respect of the 304 Victoria Building. The disclosure of the information contained in such documents would be prejudicial to, and negatively impact, (a) any future negotiations or marketing efforts in respect of the remaining Real Property Assets, should the Proposed Transaction be approved and close as anticipated, and (b) future negotiations or marketing efforts in respect of all of the Real Property Assets, should the Proposed Transaction not be approved or not close as anticipated.



42. In the circumstances, the sealing order sought, which seals the Confidential Appendices pending further order of the Court, is the least restrictive means to maintain the confidentiality of this commercially sensitive and confidential information, as the balance of the terms of the APA have been made available to all stakeholders on an unredacted basis. Accordingly, the Receiver submits that the salutary effects of the sealing order outweigh the deleterious effects of restricting access to the Confidential Appendices, and that the requested sealing order is therefore appropriate.

**PART V - CONCLUSION**

43. For the reasons set out above, the Receiver respectfully requests that this Court:

- (a) approve the Proposed Transaction and grant the Vesting Order;
- (b) authorize the payment of the commission to CBRE upon closing of the Proposed Transaction;
- (c) grant the requested Activity Approval; and
- (d) seal the Confidential Appendices.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 11<sup>th</sup> day of October 2022



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Aryo Shalviri/Alexia Parente  
Lawyers for the Receiver

## SCHEDULE "A"

### LIST OF AUTHORITIES

<u>Case</u>	
1.	<a href="#"><i>Royal Bank of Canada v Soundair Corp.</i>, 1991 CarswellOnt 205, 91 CBR (5th) 285 (Ont CA)</a>
2.	<a href="#"><i>Crown Trust Co v Rosenberg</i> (1986), 60 OR (2d) 87 (HC)</a>
3.	<a href="#"><i>Bank of Montreal v Dedicated National Pharmacies Inc.</i>, 2011 ONSC 4634</a>
4.	<a href="#"><i>Re Target Canada Co</i>, 2015 ONSC 7574</a>
5.	<a href="#"><i>Re Laurentian University of Sudbury</i>, 2022 ONSC 2927</a>
6.	<a href="#"><i>Re Hanfeng Evergreen Inc.</i>, 2017 ONSC 7161</a>
7.	<a href="#"><i>Bank of America Canada v Willann Investments Ltd.</i>, [1993] OJ No. 1647 (Gen Div) aff'd [1996] OJ No. 2806 (CA)</a>
8.	<a href="#"><i>Lang Michener v American Bullion Minerals Ltd.</i>, 2005 BCSC 684</a>
9.	<a href="#"><i>Sierra Club of Canada v Canada (Minister of Finance)</i>, 2002 SCC 41</a>
10.	<a href="#"><i>Sherman Estate v Donovan</i>, 2021 SCC 25</a>
11.	<a href="#"><i>Elleway Acquisitions Ltd v 4358376 Canada Inc.</i>, 2013 ONSC 7009</a>
12.	<a href="#"><i>GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.</i></a>
13.	<a href="#"><i>Stelco Inc. (Re)</i>, 2006 CarswellOnt 394</a>
14.	<a href="#"><i>Re Canwest Publishing Inc.</i>, 2010 ONSC 222</a>
15.	<a href="#"><i>Ontario Securities Commission v Bridging Finance Inc.</i>, 2021 ONSC 4347</a>
16.	<a href="#"><i>Laurentian University of Sudbury</i>, 2021 ONSC 4769</a>

## SCHEDULE "B"

### RELEVANT STATUTES

#### Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3: Section 243

*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.

#### Bankruptcy and Insolvency General Rules, C.R.C., c. 368: Section 3

##### **General**

3 In cases not provided for in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules.

#### Rules of Civil Procedure, R.R.O., 1990, Reg 194: Rule 1.04

##### **Interpretation**

###### *General Principle*

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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Proceeding Commenced at Toronto

**FACTUM OF THE RECEIVER  
(Sale Approval and Ancillary Matters)**

**BLAKE, CASSELS & GRAYDON LLP**

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

**Pamela L.J. Huff**, LSO #27344V

Tel: 416-863-2958

Email: [pamela.huff@blakes.com](mailto:pamela.huff@blakes.com)

**Aryo Shalviri**, LSO #63867A

Tel: 416-863-2962

Email: [aryo.shalviri@blakes.com](mailto:aryo.shalviri@blakes.com)

**Chris Burr**, LSO #55172H

Tel: 416-863-3261

Email: [chris.burr@blakes.com](mailto:chris.burr@blakes.com)

**Alexia Parente**, LSO #81927G

Tel: 416-863-2417

Fax: 416-863-2653

Email: [alexia.parente@blakes.com](mailto:alexia.parente@blakes.com)

Lawyers for the Receiver