

COURT FILE NUMBER 1801-08521

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS INNOVATION CREDIT UNION and
CONCENTRA BANK

DEFENDANTS 1885731 ALBERTA LTD., OSTRANDER FAMILY
HOLDINGS LTD., PHILIP KRAHN, and BRIAN
OSTRANDER

DOCUMENT **APPLICATION**
(Approval of Receiver's Fees and Disbursements,
Approval of Receiver's Activities, Final
Distribution and Discharge of Receiver)

ADDRESS FOR SERVICE **Osler, Hoskin & Harcourt LLP**
AND CONTACT Barristers and Solicitors
INFORMATION OF Suite 2700, Brookfield Place
PARTY FILING THIS 225 – 6th Avenue S.W.
DOCUMENT Calgary, AB T2P 1N2

Solicitors: Emily Paplawski
Phone: 403.260.7071
Fax: 403.260.7024
Email: EPaplawski@osler.com
Matter: 1212420

NOTICE TO RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the application is heard as shown below:

Date: May 9, 2022

Time: 3:00 p.m.

Where: Calgary Courts Centre (BY WEBEX)

Before Whom: The Honourable Madam Justice Romaine

Entered

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May 9 2022

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

Orders Sought:

1. Deloitte Restructuring Inc. (“**Deloitte**”), in its capacity as receiver and manager (the “**Receiver**”) of 1885731 Alberta Ltd. (“**188**”) is seeking an Order (the “**Distribution and Discharge Order**”) substantially in the form attached hereto as Schedule “A” hereto:

- (a) declaring that this Application is properly returnable today and that further service of this Application other than to those listed on the Service List established in these proceedings is hereby dispensed with;
- (b) approving the actions, conduct and activities of the Receiver as described in the Third Report of the Receiver, dated May 2, 2022 (the “**Third Report**”);
- (c) approving the Receiver’s accounts and the accounts of its legal counsel, Osler, Hoskin & Harcourt LLP (“**Osler**”), inclusive of accrual and payment of all estimated fees and disbursements of the Receiver and its legal counsel to be incurred in connection with the completion of these proceedings, all as set out in the Third Report;
- (d) approving the Receiver’s Final Statement of Receipts and Disbursements for the period from July 22, 2020 to April 28, 2022, as set out in the Third Report;
- (e) directing and authorizing the Receiver to distribute all remaining funds in the 188 estate, less the amount required to pay all fees and disbursements of the Receiver and Osler (the “**Remaining Funds**”), to Innovation Credit Union (“**Innovation**”);
- (f) in the alternative, in the event of any priority dispute between Canada Revenue Agency (“**CRA**”) and Innovation, approving the Receiver’s payment of the Remaining Funds to the Alberta Court of Queen’s Bench to be held pending further Order of the Court determining entitlement to the Remaining Funds;

- (g) declaring that the Receiver has duly and properly discharged its duties, responsibilities, and obligations as Receiver;
- (h) upon the filing of the Receiver's Certificate attached at Schedule "A" to the Distribution and Discharge Order (the "**Receiver's Certificate**"), discharging and releasing the Receiver from any and all further obligations as Receiver and any and all liability in respect of the discharge of the Receiver's duties as court-appointed receiver of 188, save and except for any liability arising out of fraud or gross negligence or wilful misconduct on the part of the Receiver;
- (i) authorizing the Receiver to destroy the books and records of 188 that are not claimed and return courier paid for by the former directors of 188 within 30 days of the filing of the Receiver's Certificate; and
- (j) granting such further and other relief as counsel may request and this Honourable Court may deem just.

Grounds for making this application:

2. On July 22, 2020, Deloitte was appointed Receiver, without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever and wherever situate, including all proceeds thereof, of 188 (the "**Receivership Order**").

3. The realization of the Property (as that term is defined in the Receivership Order) is complete. Apart from attending to minor administrative matters, including final payment of all the Receiver's and Osler's fees and disbursements, preparation and filing of a final statutory report with the Office of the Superintendent of Bankruptcy, and other minor administrative matters, the Receiver has performed its mandate as Receiver under the Receivership Order. It is appropriate that Deloitte be discharged as Receiver of 188 upon filing of the Receiver's Certificate.

4. The Receiver is currently holding approximately \$2.57 million which is available for distribution to 188's creditors. The Receiver is of the view that, for the reasons detailed in the Third Report, the entirety of the Remaining Funds should be distributed to Innovation. However, in the event Innovation or CRA disputes either the Receiver's view of their respective priorities or the proper allocation of funds for distribution purposes, the Receiver seeks to pay the Remaining Funds into Court and obtain its discharge as there is no continuing benefit to the estate for the Receiver's involvement in a priority dispute between creditors.

5. Such further and other grounds as counsel may recommend and this Honourable Court may permit.

Affidavit or other Evidence and Materials to be used in Support of this Application:

6. The Third Report of the Receiver, dated May 2, 2022.

7. First and Second Reports of the Receiver previously filed in this action.

8. Such further and other evidence or materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

9. The Alberta *Rules of Court*, Alta Reg. 124/2010.

Applicable Acts and Regulations:

10. The *Bankruptcy and Insolvency Act*, RSC 1985, chap. B-3, as amended.

11. The *Judicature Act*, RSA 2000, c J-2, as amended.

Any Irregularity Complained of or Objection Relied On:

12. None.

How the Application is Proposed to be Heard or Considered:

13. By Webex at Virtual Courtroom link:

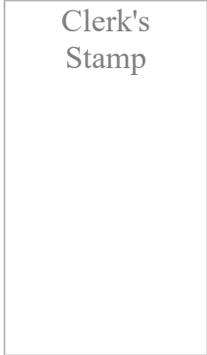
<https://albertacourts.webex.com/meet/virtual.courtroom60>

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want 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 at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

COURT FILE NUMBER 1801-08521
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFFS INNOVATION CREDIT UNION and CONCENTRA BANK
DEFENDANTS 1885731 ALBERTA LTD., OSTRANDER FAMILY HOLDINGS LTD., PHILIP KRAHN, and BRIAN OSTRANDER



DOCUMENT **ORDER**
(Approval of Receiver's Fees and Disbursements, Approval of Receiver's Activities, Final Distribution and Discharge Of Receiver)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Osler, Hoskin & Harcourt LLP
Barristers and Solicitors
Suite 2700, Brookfield Place
225 – 6th Avenue S.W.
Calgary, AB T2P 1N2

Solicitors: Emily Paplawski
Phone: 403.260.7071
Fax: 403.260.7024
Email: EPaplawski@osler.com
Matter: 1212420

DATE ON WHICH ORDER WAS PRONOUNCED: May 9, 2022

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Madam Justice Romaine

UPON THE APPLICATION of Deloitte Restructuring Inc., in its capacity as receiver and manager (the “**Receiver**”) of 1885731 Alberta Ltd. (the “**Debtor**”); **AND UPON** reviewing the Third Report of the Receiver, dated May 2, 2022 (the “**Third Report**”); **AND UPON** hearing from counsel for the Receiver and counsel for any other interested party appearing at the hearing of the Application; **AND UPON** reviewing the Affidavit of Service of _____, sworn May ____, 2022; **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given.

APPROVAL OF RECEIPTS, DISBURSEMENTS AND ACCOUNTS

2. The Receiver's accounts and the accounts of its independent counsel, Osler Hoskin & Harcourt LLP ("**Osler**"), as set out in the Third Report, are hereby approved.

3. The Receiver's Statement of Receipts and Disbursements, as set out in the Third Report, is hereby approved.

4. The Receiver is authorized and directed to distribute all remaining funds to Innovation Credit Union ("**Innovation**") in the approximate amount of \$2.57 million, less an amount to cover unbilled fees of the Receiver and Osler and all final fees and costs to complete the Receivership, as described in the Third Report.

DISCHARGE OF THE RECEIVER

5. As of the date of the Third Report and based on the evidence before this Honourable Court:

- (a) the Receiver has acted honestly and in good faith, and has dealt with the Property (as that term is defined in the Receivership Order of the Honourable Madam Justice Campbell, granted in these proceedings on July 22, 2020) in a commercially reasonable manner;
- (b) the actions and conduct of the Receiver are approved and the Receiver has satisfied all of its duties and obligations as receiver of the Property;
- (c) the Receiver shall not be liable for any act or omission pertaining to the discharge of the Receiver's duties as court-appointed receiver of the Property, save and except

for any liability arising out of fraud or gross negligence or wilful misconduct on the part of the Receiver; and

- (d) any and all claims against the Receiver arising from, relating to or in connection with the performance of the Receiver's duties and obligations as court-appointed receiver of the Property, save and except for claims based on fraud or gross negligence or wilful misconduct on the part of the Receiver, shall be forever barred and extinguished.

6. No action or proceeding arising from, relating to, or in connection with the performance of the Receiver's duties and obligations in respect of the Property may be commenced or continued without the prior leave of this Honourable Court, on notice to the Receiver and on such terms as this Honourable Court may direct.

7. The Receiver is hereby authorized and permitted to deliver to one or more of the former directors of the Debtor, upon the payment of all courier fees by such director(s), copies of any corporate records in the possession and control of the Receiver relating to the Debtor. In the event corporate records remain in the possession and control of the Receiver 30 days after the filing of the Receiver's Certificate, the Receiver is hereby authorized and directed to destroy or dispose of such records in whatever manner the Receiver deems appropriate.

8. Upon the filing of the Receiver's Certificate attached hereto as Schedule "A" confirming, among other things, that the Receiver has: (i) finalized payment of all Receivership costs and expenses as set out in the Third Report; (ii) distributed all remaining funds to Innovation; (iii) prepared and filed a final statutory report with the Office of the Superintendent of Bankruptcy in accordance with subsection 246(3) of the *Bankruptcy and Insolvency Act*; and (iv) completed all remaining minor administrative matters, the Receiver shall be absolutely and unconditionally discharged as Receiver of the Property and shall have no further duty, liability or obligation with respect to the Property, provided however, that notwithstanding its discharge, the Receiver shall:

- (a) remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership; and
- (b) shall continue to have the benefit of the provisions of this Order and all Orders granted in these proceedings, including all approvals, protections and stays of proceedings in favor of the Receiver in its capacity as Receiver.

MISCELLANEOUS

9. The Receiver has leave to reapply to this Honourable Court for such further advice and directions as may be necessary.

10. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.

11. Service of this Order on any party not attending this application is hereby dispensed with.

J.C.Q.B.A.

Schedule "A"

COURT FILE NUMBER 1801-08521

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS INNOVATION CREDIT UNION and CONCENTRA BANK

DEFENDANTS 1885731 ALBERTA LTD., OSTRANDER FAMILY HOLDINGS LTD., PHILIP KRAHN, and BRIAN OSTRANDER

DOCUMENT **RECEIVER'S CERTIFICATE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Osler, Hoskin & Harcourt LLP
Barristers and Solicitors
Suite 2700, Brookfield Place
225 – 6th Avenue S.W.
Calgary, AB T2P 1N2

Solicitors: Emily Paplawski
Phone: 403.260.7071
Fax: 403.260.7024
Email: EPaplawski@osler.com
Matter: 1212420

Clerk's Stamp

This Receiver's Certificate is the certificate referred to in paragraph 8 of the Order of the Honourable Madam Justice Romaine, granted May 9, 2022 (the "**Order**").

Capitalized terms not otherwise defined herein shall have the meanings given to those terms in the Order.

Deloitte Restructuring Inc., solely in its capacity as Court-appointed receiver and manager (the "**Receiver**") of the Property (as that term is defined in the Receivership Order) and not in its personal or corporate capacity, hereby certifies that:

1. All Receivership costs and expenses as set out in the Third Report have been paid.
2. All remaining funds have been distributed to Innovation.
3. The final statutory report has been filed with the Office of the Superintendent of Bankruptcy in accordance with subsection 246(3) of the *Bankruptcy and Insolvency Act*.

4. The administration of the receivership proceedings as described in the Third Report has been completed.

Dated this ___ day of _____, 2022.

Deloitte Restructuring Inc., in its capacity as Receiver of the undertakings, property and assets of 1885731 Alberta Ltd., and not in its personal capacity.

NAME:

TITLE: