

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

B E T W E E N:

NATIONAL BANK OF CANADA

Applicant

- and -

**BROOK RESTORATION LTD., E G 869 REST ACRES LTD., and SWINFIN
PROPERTIES 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**

FACTUM OF THE RECEIVER

February 26, 2026

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TO: THE SERVICE LIST

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PART I - OVERVIEW

1. On February 3, 2026, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43 (“**CJA**”), the Ontario Superior Court of Justice (the “**Court**”) granted an order (the “**Receivership Order**”) appointing Deloitte Restructuring Inc. (“**Deloitte**”) as receiver of the property expressly listed in Schedule “A” of the Receivership Order and all proceeds thereof (the “**Property**”) of Brook Restoration Ltd., (“**Brook**”), E G 869 Rest Acres Ltd., and Swinfin Properties Inc. (the latter two parties, the “**Corporate Guarantors**”, and together with Brook, the “**Debtors**”).
2. The Receiver brings this motion for an order (the “**Distribution and Discharge Order**”), among other things:¹
 - (i) approving the First Report of the Receiver dated February 23, 2026 (the “**First Report**”) and the actions and activities of the Receiver described herein and that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the First Report;
 - (ii) approving the Receiver’s interim statement of receipts and disbursements of the Debtors for the period February 3, 2026, to February 20, 2026 (the “**Interim R&D**”);

¹ First Report of the Receiver dated February 23, 2026, para 6 [“**First Report**”].

- (iii) authorizing and directing distributions to National Bank of Canada (“NBC”) up to the full amount of the NBC Indebtedness (as defined below);
 - (iv) approving the fees and disbursements of the Receiver and its legal counsel, Thornton Grout Finnigan LLP (“TGF”), for the periods referenced in the fee affidavits plus an accrual in the aggregate amount of \$50,000 for fees (plus disbursements and HST) to be incurred by the Receiver and TGF to the completion of these receivership proceedings (the “**Fee Accrual**”);
 - (v) approving and authorizing the Receiver to pay the Fee Accrual from the available cash on hand without further approval of the Court; and
 - (vi) authorizing the Receiver to transfer up to the approximate amount of \$314,000 to the bankruptcy estates of the Debtors.
3. Capitalized terms not defined herein shall have their meaning in the First Report.

PART II - FACTS

Background

4. Brook was a construction company specializing in building and public infrastructure restoration contracting. It undertook construction projects across Ontario, including in Toronto, the Greater Toronto Area (the “GTA”) and Ottawa.² The Corporate Guarantors are holding companies which owned real property used in the business of the Debtors.³

² First Report, para 10.

³ First Report, para 12.

5. Prior to the Transaction, Brook managed 14 bonded contracts throughout the GTA ranging from \$50-60 million in total revenues and 4 smaller contracts for which no surety bonds had been posted.⁴
6. On February 3, 2026, pursuant to the Receivership Order, Deloitte was appointed as Receiver under section 101 of the CJA⁵, as amended, and section 243(1) of the BIA.⁶
7. On the same date, the Court granted an Approval and Vesting Order approving a sale transaction (the “**Transaction**”) pursuant to an Asset Purchase Agreement dated January 7, 2026, and the Transaction closed thereafter.⁷

Indebtedness to NBC and Proposed Distribution

8. As at December 2, 2025, the Debtors were indebted to NBC in the total amount of \$27,800,887.65 (the “**NBC Indebtedness**”).⁸ TGF, on behalf of the Receiver, received the closing proceeds from the Transaction in the amount of \$10,015,134.⁹

Bankruptcy of the Debtors

9. On February 6, 2026, pursuant to paragraph 4(j) of the Receivership Order, the Receiver filed assignments in bankruptcy on behalf of each of the Debtors. Prior to distributing the proposed distribution to NBC, the Receiver intends to transfer approximately \$314,000 (the “**Bankruptcy Reserve**”) to fund the bankruptcies of the Debtors.¹⁰

⁴ First Report, para 11.

⁵ CJA, s. [101](#).

⁶ BIA, s. [243\(1\)](#); First Report, para 1; See Receivership Order dated February 3, 2026 [“**Receivership Order**”].

⁷ First Report, para 2; See Approval and Vesting Order dated February 3, 2026.

⁸ First Report, para 14.

⁹ First Report, para 15.

¹⁰ First Report, para 16.

Receivership Termination and Discharge

10. The remaining activities are administrative in nature, including any tax filings, payment of final expenses, distribution to NBC, transfer of the Bankruptcy Reserve, issuance of the final statement of receipts and disbursements, and filing of the Termination Certificate.¹¹ Therefore, the Receiver is of the view that now is the appropriate time to seek an order, that among other things, distributes the proceeds of sale, terminates these proceedings and discharges the Receiver upon the filing of the Termination Certificate.

PART III - ISSUES

11. The questions to be decided on this motion are whether this Court should:
- a) approve the Receiver's activities, its Interim R&D, and its fees and those of its counsel all as described in the First Report and enclosed fee affidavits (it should);
 - b) approve the proposed distribution from the proceeds of the Transaction to NBC, up to the NBC Indebtedness (it should); and
 - c) discharge and release the Receiver (it should).

PART IV - LAW AND ARGUMENT

A. The Receiver's Activities Should be Approved.

12. The Receiver seeks approval of its activities as set out in the First Report. It is common practice for court officers in insolvency proceedings, including receivers, to seek court

¹¹ First Report, para 24.

approval of their reports and their activities as described therein.¹² As this Court reiterated in Churchill Lands:

*Court approval, among other things, allows the court officer to bring its activities before the court and presents an opportunity to address concerns of stakeholders, while enabling the court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner.*¹³

13. The Court has the inherent jurisdiction to review and approve the activities of a Court-appointed receiver as described in its reports.¹⁴ It should not be a novel concept that the activities of any Court officer can and should be considered by the Court as against the mandate, powers and authority of that officer.¹⁵
14. Moreover, there are good policy and practical reasons to grant such approvals. In Target Canada¹⁶, Morawetz RSJ (as he then was) accepted that the approval of a monitor's activities,
 - a. allows all stakeholders to move forward confidently with next steps in the proceeding;
 - b. brings their activities before the court, "allowing an opportunity for the concerns of the court or stakeholders to be addressed, and any problems to be rectified in a timely way;"

¹² *Laurentian University of Sudbury*, [2022 ONSC 2927](#), paras 13-14 [**"Laurentian"**].

¹³ *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, [2024 ONSC 7127](#), para 45 [**"Churchill Lands"**]; see also *KEB Hana as Trustee v. Mizrahi Commercial (THE ONE) LP et al.*, 2024 ONSC 1678, para [40](#).

¹⁴ *Bank of America Canada v. Willann Investments Ltd.*, [1996 CanLII 2782](#), para 3.

¹⁵ *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400, para [66](#) [**"Triple-I Capital"**].

¹⁶ *Re Target Canada Co*, 2015 ONSC 7574, paras [12](#), [22](#) & [23](#) [**"Target Canada"**].

- c. provides certainty and finality, as all parties have an opportunity to raise specific objections and concerns;
 - d. enables the court to satisfy itself that the monitor's activities have been conducted prudently and diligently;
 - e. provides for protection for the monitor not otherwise offered by statute; and
 - f. protects creditors from delay in distribution that would be caused by the re-litigation of steps taken to date and/or potential indemnity claims by the monitor.
15. The same principles apply in a receivership.¹⁷
16. The activities of the Receiver described in the First Report were undertaken in good faith and in furtherance of the Receiver's mandate. The activities of the Receiver were necessary to monetize the Debtor's Property and were undertaken pursuant to the Receiver's duties and powers as set out in the Receivership Order.¹⁸
17. Accordingly, the Court should approve the First Report and the Receiver's activities and conduct described therein. In connection with such approval, the Receiver asks that this Court approve of its Interim R&D, which totals \$10,046,099, and is currently being held in the Receiver's trust account.¹⁹

¹⁷ *Hanfeng Evergreen Inc (Re)*, 2017 ONSC 7161, para [15](#).

¹⁸ Receivership Order, para [4](#).

¹⁹ First Report, para 17.

B. The Fees and Disbursements of the Receiver and TGF Should be Approved

18. The Receiver seeks approval of the fees and disbursements set out in the fee affidavits appended to the First Report.
19. In *Laurentian*, Morawetz CJ accepted that on a motion for fee approval the “overriding principle” is reasonableness²⁰ with a focus on what was accomplished.²¹ Relevant factors include: (a) the nature, extent and value of the assets being handled; (b) the complications and difficulties encountered; (c) the degree of assistance provided by the company, its officers or its employees; (d) the time spent; (e) the court officer’s knowledge, experience and skill; (f) the diligence and thoroughness displayed; (g) the responsibilities assumed; (h) the results achieved; and (i) the cost of comparable services when performed in a prudent and economical manner.²²
20. The Court should not engage in a docket-by-docket or line by-line assessment of the accounts as minute details of each element of the professional services rendered may not be instructive when viewed in isolation. The focus should be on what was accomplished, and not how much time it took.²³
21. Applying these factors, it is submitted that the accounts of the Receiver and TGF are reasonable and appropriate in the circumstances.²⁴ The fees and disbursements incurred

²⁰ *Laurentian*, para. [9](#).

²¹ *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, para [45](#) [“**Diemer**”].

²² *Laurentian*, para [10](#).

²³ *Laurentian*, para [9](#) citing *Re Nortel Networks Corporation et al.*, [2017 ONSC 673](#) [“**Nortel**”] and *Diemer*, para [45](#).

²⁴ First Report, para 23.

were necessary in connection with the Receiver's mandate under the Receivership Order and the Approval and Vesting Order. These fees are reasonable and the Receiver and its counsel have provided essential services, which have resulted in closing of the Transaction to monetize the Debtors' Property.

22. Moreover, all work undertaken by the Receiver and TGF leading up to and since the Receiver's appointment has been necessary, and the Receiver has acted responsibly and conducted its activities in accordance with the provisions of the BIA, and in compliance with the Receivership Order.

C. The Court Should Approve the Proposed Distribution to NBC

23. The Receiver is seeking approval from the Court to distribute all amounts held by the Receiver net of the remaining costs of the Transaction, the costs of the Receivership Proceedings (and any used portion of the Fee Accrual) and the Bankruptcy Reserve to NBC, up to the amount of the NBC Indebtedness.²⁵
24. In granting orders approving distributions, courts commonly consider certain factors favouring a distribution as set out in *AbitibiBowater Inc, (Re)*,²⁶ including whether the payee's security is valid and enforceable, whether the distributions will leave the estate with sufficient liquidity, and whether the proposed interim distributions would result in interest savings.²⁷

²⁵ First Report, para 15.

²⁶ 2009 QCCS 6461, paras [75-80](#) [*"AbitibiBowater"*].

²⁷ *AbitibiBowater*, para [75](#); *First Source Financial Management v Chacon Strawberry Fields Inc.*, 2024 ONSC 7229, para [45](#).

25. In this case, NBC holds a valid and enforceable security interest against the Debtor and the Real Property, as confirmed by TGF and Robins Appleby LLP.²⁸ Brook's employees were paid through ADP through the date of their termination, including any vacation pay that was owed to them. The Receiver has been advised that employee source deductions are up-to-date and is not aware of any secured interests in the Debtors' assets in priority to NBC.²⁹ Further, the Receiver is seeking approval to pay any and all outstanding real property taxes owing in respect of the Debtors.
26. For these reasons, the Court should approve the proposed distribution to NBC.

D. The Receiver Should be Discharged and Released

27. The Receiver has substantially completed its mandate in this proceeding, including realizing upon all available assets of the Debtor. Accordingly, the Receiver respectfully submits that it should be discharged and released, following the filing of the Termination Certificate confirming that it has completed its remaining duties in respect of its administration of the receivership.
28. The Remaining Activities include:³⁰
- (a) corresponding with CRA and filing any outstanding income tax or HST returns required to be filed by the Receiver;
 - (b) paying the Fee Accrual, together with any final estate expenses;

²⁸ First Report, para 14; [Pre-filing Report of the Receiver dated January 28, 2026](#), para 54.

²⁹ First Report, para 15.

³⁰ First Report, para 24.

- (c) transferring the Bankruptcy Reserve to the Debtors' estates;
 - (d) making the proposed distribution to NBC as described above;
 - (e) issuing the Receiver's final statement of receipts and disbursements pursuant to s.246(3) of the BIA; and
 - (f) filing the Receiver's Termination Certificate.
29. To avoid the time and expense of another motion, the interests of efficiency militate in favour of granting the proposed Distribution and Discharge Order.³¹
30. The Receiver is also requesting a release from liability for any acts or omissions while acting in its capacity as Receiver, save and except for gross negligence and willful misconduct.
31. The Court has jurisdiction under section 101 of the CJA to supervise the receivership, approve the Receiver's conduct, and make such further terms as are just, including terms providing for the Receiver's discharge.³²
32. In *Pinnacle*, Pattillo J held that the release of a Receiver is a standard term in the Commercial List model order of discharge, and that a Receiver will be granted a release and discharge where there is no evidence of improper or negligent conduct on the part of the Receiver.³³ In the case at bar, there is no evidence of improper or negligent conduct on the part of the Receiver. A release is a standard term in the Commercial List model order

³¹ *Churchill Lands*, para 48; See [Endorsement from Madam Justice Kimmel dated September 21, 2022](#), *Corfinancial Corp. v. Rockwater on Main Inc.* (Court File No. CV-20-00653214-00CL), para 5.

³² CJA, s. 101.

³³ *Pinnacle v Kraus*, 2012 ONSC 6376, para 47 [“**Pinnacle**”].

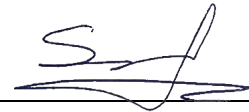
of discharge and should be issued absent evidence of improper or negligent conduct. A court officer is “entitled to close its file once and for all.”³⁴

33. Accordingly, the Receiver submits that it is fair and reasonable for the Court to discharge and release the Receiver.

PART V - ORDER REQUESTED

34. For all the reasons above, the Receiver respectfully requests, and recommends, that this Court make the proposed Distribution and Discharge Order in the form enclosed in the Receiver’s Notice of Motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of February, 2026.



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Restructuring Inc.

³⁴ *Pinacple*, para [47](#).

**SCHEDULE “A”
LIST OF AUTHORITIES**

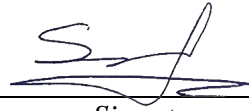
1. *Laurentian University of Sudbury*, [2022 ONSC 2927](#).
2. *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, [2024 ONSC 7127](#).
3. *KEB Hana as Trustee v. Mizrahi Commercial (THE ONE) LP et al.*, [2024 ONSC 1678](#).
4. *Bank of America Canada v. Willann Investments Ltd.*, [1996 CanLII 2782](#).
5. *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, [2023 ONSC 3400](#).
6. *Re Target Canada Co*, [2015 ONSC 7574](#).
7. *Hanfeng Evergreen Inc (Re)*, [2017 ONSC 7161](#).
8. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#).
9. *Re Nortel Networks Corporation et al.*, [2017 ONSC 673](#).
10. *AbitibiBowater inc. (Arrangement relatif à)*, [2009 QCCS 6461](#).
11. *Corfinancial Corp. v. Rockwater on Main Inc.* (Court File No. CV-20-00653214-00CL):
[Endorsement from Madam Justice Kimmel dated September 21, 2022](#).
12. *Pinacple v Kraus*, [2012 ONSC 6376](#).

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

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal

or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date February 26, 2026

A handwritten signature in blue ink, consisting of a large, stylized 'S' followed by a horizontal line and a vertical stroke that loops back to the right.

Signature

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY - LAWS

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

Section 243 - Secured Creditors and Receivers

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.

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.

Courts of Justice Act, R.S.O. 1990, c. C.43
R.R.O. 1990, Reg. 194: [RULES OF CIVIL PROCEDURE](#)

Section 101

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

NATIONAL BANK OF CANADA
Applicant

-and-

BROOK RESTORATION LTD. ET AL
Respondents

Court File No. CL-26-0000027-0000

ONTARIO
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(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

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