

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 APPLICANT
(Receivership Order and Approval and Vesting Order)**

January 29, 2026

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TABLE OF CONTENTS

	Page No.
PART I - OVERVIEW	1
PART II - SUMMARY OF FACTS	3
A. THE PARTIES.....	4
B. THE LOAN AND SECURITY DOCUMENTS	5
1. THE LOAN AGREEMENT AND GUARANTEES.....	5
2. THE PERSONAL PROPERTY SECURITY.....	5
3. THE REAL PROPERTY SECURITY	6
4. THE RECEIVER'S SECURITY REVIEW	7
C. THE DEFAULTS, FORBEARANCE, AND EVENTUAL DEMANDS.....	7
1. THE INITIAL DEFAULTS AND FORBEARANCE AGREEMENT	7
2. DEFAULTS UNDER THE BONDED CONTRACTS	8
3. NBC'S DEMANDS AND THE 244 NOTICES	9
D. THE MARKETING PROCESS AND EVENTS LEADING TO THE PURCHASE AGREEMENT	9
1. BROOK'S INFORMAL MARKETING PROCESS.....	9
2. THE PURCHASE AGREEMENT	11
PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES	11
PART IV - LAW AND ARGUMENT	12
A. DELOITTE SHOULD BE APPOINTED AS RECEIVER.....	12
1. IT IS JUST AND CONVENIENT TO APPOINT DELOITTE AS RECEIVER	13
a) The Security Documents Contemplate the Relief Sought	13
b) The Receivership will Preserve and Maximize the Value of the Property	14
c) The Receivership Order Will Facilitate the Duties of the Receiver	15
2. THE TERMS OF THE RECEIVERSHIP ORDER ARE APPROPRIATE.....	16
B. THE APPROVAL AND VESTING ORDER SHOULD BE GRANTED.....	17
C. THE SEALING ORDER SHOULD BE GRANTED	22
D. THE RECEIVER SHOULD BE AUTHORIZED TO ASSIGN THE RESPONDENTS IN BANKRUPTCY	24
PART V - ORDERS REQUESTED	25

PART I - OVERVIEW¹

1. The Applicant, National Bank of Canada (“**NBC**”),² brings this application for, among other relief, an Order (the “**Receivership Order**”):

- (a) appointing Deloitte Restructuring Inc. (“**Deloitte**”) as receiver (in such capacity, the “**Receiver**”) over the property of Brook Restoration Ltd. (“**Brook**”), E G 869 Rest Acres Ltd. (“**Rest Acres**”), and Swinfin Properties Inc. (“**Swinfin**”, and together, the “**Respondents**”), and all proceeds thereof, described in the Appendix to this factum and Schedule “A” of the proposed Receivership Order; and,
- (b) authorizing the Receiver to make an assignment in bankruptcy of the Respondents or to consent to a bankruptcy order against the Respondents.

2. If Deloitte is appointed as Receiver, NBC also seeks an approval and vesting order (“**Approval and Vesting Order**”), among other relief:

- (a) approving an asset purchase agreement dated as of January 7, 2026 (the “**Purchase Agreement**”) between the Respondents, as vendor (the “**Vendor**”), and Atwill-Morin Structure Inc., as purchaser (the “**Purchaser**”, or “**Atwill-Morin**”); and,
- (b) sealing the Confidential Information in the Proposed Receiver’s Report.

3. Brook is a construction company specializing in restoration projects. Rest Acres and Swinfin are two related guarantor holding companies (together, the “**Guarantors**”) that own the Real Property used in connection with Brook’s business operations.

¹ Capitalized terms used but not defined in this section are defined below.

² On February 1, 2025, NBC completed the acquisition of Canadian Western Bank (“**CWB**”) and on March 1, 2025, CWB and NBC amalgamated and continued as one bank under the name NBC. The reference to NBC in this factum, to the extent it refers to the period prior to the amalgamation, shall be a reference to CWB.

4. Brook has been in default of its obligations owing to NBC since early 2024. Despite an extended period of forbearance, Brook continued to default on its obligations owing to NBC. Brook is now facing a significant liquidity crisis. Brook has defaulted on its obligations under its Bonded Contracts and has been replaced by the Purchaser under those contracts, further jeopardizing the value of NBC's collateral.

5. As of December 2, 2025, the Respondents are indebted to NBC in the total amount of \$27,800,887.65, including interest accrued to such date (but excluding all fees, costs, and expenses) (the "**Indebtedness**"). Fees, costs, expenses and interest for which the Respondents are liable have accrued and will continue to accrue until the Indebtedness is paid in full.

6. NBC is seeking the appointment of the Receiver over the Property for the primary purpose of implementing the Transaction and subsequently distributing the proceeds of sale after closing. The Property is identical to the Purchased Assets under the Purchase Agreement.

7. The appointment of the Receiver is just and convenient in the circumstances of this case, and will facilitate the orderly implementation of the Transaction. NBC is entitled to appoint a receiver in respect of the Property, including the Real Property, pursuant to the terms of the GSAs and the Mortgages. NBC has made demand on the Respondents to repay the Indebtedness and has delivered Notices of Intention to Enforce a Security under section 244 of the BIA (the "**244 Notices**"). The 10-day notice period under section 244 of the BIA has expired, and NBC's security against the Respondents is enforceable. Each of the Respondents has consented to the appointment of the Receiver.

8. Moreover, this Court should grant the Approval and Vesting Order and approve the transaction contemplated by the Purchase Agreement. While NBC recognizes that it will suffer a significant shortfall on the Indebtedness, the Purchase Agreement and the Transaction contemplated therein remains the best option for NBC to realize upon its collateral in the present circumstances. Leading up to the execution of the Purchase Agreement, Brook conducted an approximately six-month informal marketing process, which generated interest from three parties and non-binding offer from two of those parties, including the Purchaser. Atwill-Morin remains the only logical purchaser for the Purchased Assets, as Liberty has selected Atwill-Morin to replace Brook under the Bonded Contracts. The proposed Receiver also recommends that this Court approve the Transaction.

9. Finally, sealing of the Confidential Information is necessary in order to protect important commercial interests and maximize recoveries to stakeholders in the context of these proceedings. The benefits of the sealing order, which is both time-limited and narrow, outweigh any negative effects.

PART II - SUMMARY OF FACTS

10. The complete factual basis for this application is set forth in the Affidavit of Vera Watson, sworn January 23, 2026, and the Pre-Filing Report of Deloitte in its capacity as Proposed Receiver dated January 28, 2026 (the “**Pre-Filing Report**”).³ A summary of the relevant facts is set out below.

³ [Affidavit of Vera Watson, sworn January 23, 2026](#) [“**Watson Affidavit**”], Application Record of National Bank of Canada dated January 23, 2026 [“**AR**”], Tab 2; Pre-Filing Report of Deloitte Restructuring Inc. in its capacity as Proposed Receiver dated January 28, 2026 [“**Pre-Filing Report**”].

A. THE PARTIES

11. Brook is a construction company specializing in building and public infrastructure restoration contracting.⁴ Brook is based in Toronto and has restoration projects in various municipalities in Ontario.⁵ Brook was founded by Geoffrey Grist (“**Mr. Grist**”), who is the current sole director and officer of Brook. Brook’s assets consist substantially of owned or leased construction equipment, including but not limited to scaffolding, fencing, construction tools, and wood, roofing and other restoration materials, motorized vehicles, and trailers (collectively, the “**Equipment**”).⁶

12. The Guarantors are related holding companies that own real property used in connection with Brook’s business operations.⁷ Rest Acres is the owner of the real property municipally known as 869 Rest Acres, Brantford (Paris), Ontario (“**869 Rest Acres**”).⁸ The current active directors and officers of Rest Acres are Mr. Grist and Edward Welch.

13. Swinfin is the registered owner of the real property municipally known as 21 Kelfield Street, Toronto, Ontario (“**21 Kelfield**”), and together with 869 Rest Acres, the “**Real Property**”).⁹ The current sole director and officer of Swinfin is Pauline Grist (“**Ms. Grist**”), who is the separated spouse of Mr. Grist.

14. The Guarantors do not otherwise have active business operations.¹⁰

⁴ Watson Affidavit at [para 18](#), AR, Tab 2.

⁵ Watson Affidavit at [para 18](#), AR, Tab 2.

⁶ Watson Affidavit at [para 22](#), AR, Tab 2.

⁷ Watson Affidavit at [para 23](#), AR, Tab 2.

⁸ Watson Affidavit at [para 25](#), AR, Tab 2.

⁹ Watson Affidavit at [para 28](#), AR, Tab 2.

¹⁰ Watson Affidavit at [paras 26 & 29](#), AR, Tab 2.

B. The Loan and Security Documents

1. The Loan Agreement and Guarantees

15. NBC is the primary secured creditor of Brook pursuant to a commitment letter dated as of July 13, 2022, as acknowledged and agreed to on July 27, 2022 by Brook and the Guarantors, among others, and as amended from time to time pursuant to nine amending agreements (collectively, the “**Loan Agreement**”).¹¹ NBC advanced a total of seven (7) Loan Segments to Brook, consisting of credit facilities and business credit cards.¹²

16. In connection with the Loan Agreement, each of the Guarantors executed guarantee agreements in favour of NBC each dated as of August 30, 2022 (collectively, the “**Guarantees**”).¹³ Pursuant to the Guarantees, the Guarantors, among other things, unconditionally and irrevocably guaranteed the payment by Brook to NBC of all the debts and liabilities, present and future, direct or indirect, absolute or contingent, matured or not, owing by Brook to NBC up to an unlimited amount, together with interest thereon and costs provided for therein.¹⁴

2. The Personal Property Security

17. As security for the payment and satisfaction of any and all obligations, indebtedness, and liability to NBC, each of the Respondents executed general security agreements in favour of NBC (collectively, the “**GSAs**”).¹⁵ Pursuant to the GSAs, each of the Respondents, among other things, granted to NBC a continuing security interest in all of the respective grantor’s

¹¹ Watson Affidavit at [para 33](#), AR, Tab 2.

¹² Watson Affidavit at [para 33](#), AR, Tab 2.

¹³ Watson Affidavit at [para 35](#) & [Exhibit “G”](#), AR, Tabs 2 & 2G.

¹⁴ Watson Affidavit at [para 36](#), AR, Tab 2.

¹⁵ Watson Affidavit at [para 39](#) & [Exhibit “I”](#), AR, Tabs 2 & 2I.

present and after acquired personal property and charged the grantor's real, immovable, and leasehold property, and all interests therein as and by way of a floating charge in favour of NBC.¹⁶ The GSAs also expressly give NBC the right to, among other remedies, appoint a receiver upon default of the Respondents.¹⁷

18. NBC's security interests against the Respondents are perfected by registration under the Ontario *Personal Property Security Act*.¹⁸

3. The Real Property Security

19. In addition to the personal property security, NBC has also been granted security in the Real Property. Rest Acres granted in favour of NBC a first-ranking charge/mortgage in the principal amount of \$13,402,500 and a second-ranking charge/mortgage in the principal amount of \$28,000,000 in respect of 869 Rest Acres (the "**Rest Acres Mortgages**").¹⁹ Swinfin has also granted in favour of NBC a first-ranking charge/mortgage in the principal amount of \$13,402,500 and a second-ranking charge/mortgage in the principal amount of \$28,000,000 in respect of 21 Kelfield (the "**Kelfield Mortgages**" and together with the Rest Acres Mortgages, the "**Mortgages**").²⁰ The Mortgages are registered on title to their respective Real Properties.²¹ Each of the Mortgages expressly grants NBC the right to appoint a receiver upon default of the respective grantor.²²

¹⁶ Watson Affidavit at [para 41](#), AR, Tab 2.

¹⁷ Watson Affidavit at [para 42](#), AR, Tab 2.

¹⁸ Watson Affidavit at [para 44](#), AR, Tab 2.

¹⁹ Watson Affidavit at [para 52](#) & [Exhibit "Q"](#), AR, Tabs 2 & 2Q.

²⁰ Watson Affidavit at [paras 54, 56](#) & [Exhibits "R"- "S"](#), AR, Tabs 2 & 2R-2S.

²¹ Watson Affidavit at [paras 54, 56](#) & [60](#), AR, Tab 2.

²² Watson Affidavit at [para 58](#), AR, Tab 2.

4. The Receiver's Security Review

20. The Receiver's legal counsel has reviewed the personal property and real property security granted in favour of NBC and opined that, subject to customary assumptions and qualifications, the security is valid and enforceable.²³

C. The Defaults, Forbearance, and Eventual Demands

1. The Initial Defaults and Forbearance Agreement

21. In or around early 2024, Brook began to default on its obligations owing to NBC under the Loan Agreement. Brook was unable to rectify those defaults.²⁴ Subsequently, on May 2, 2024, Brook and the Guarantors, among others, entered into a forbearance agreement with NBC, which was subsequently amended by three amended and restated forbearance agreements, as well as an amending and waiver agreement to a third amended and restated forbearance agreement (the “**Amending and Waiver Agreement**” and, altogether, the “**Forbearance Agreement**”).²⁵

22. Pursuant to the Forbearance Agreement, NBC agreed, among other things, to forbear from enforcing its rights and remedies under the Loan Agreement and the Forbearance Agreement arising as a result of the Existing Defaults (as defined therein), subject to the terms and conditions thereof.²⁶ Under the Amending and Waiver Agreement, NBC confirmed that it terminated its forbearance against Ms. Grist and Swinfin as a result of certain additional events of default committed by Ms. Grist, and agreed to continue to forbear against, among others, Brook

²³ Pre-Filing Report at para 54.

²⁴ Watson Affidavit at [para 64](#), AR, Tab 2.

²⁵ Watson Affidavit at [para 66](#) & [Exhibit “V”](#), AR, Tabs 2 & 2V.

²⁶ Watson Affidavit at [para 68](#), AR, Tab 2.

and Rest Acres, up to and including April 30, 2025, plus an extension of two additional thirty day periods (the “**Forbearance Period**”).²⁷

2. Defaults under the Bonded Contracts

23. Pursuant to the *Construction Act* (Ontario), Brook is required to maintain surety bonds in respect of its restoration contracts.²⁸ Liberty has issued a number of performance bonds and labour and materials bonds in respect of certain restoration contracts held by Brook (the “**Bonded Contracts**”).²⁹ The Bonded Contracts make up substantially all of Brook’s business.³⁰

24. Brook ultimately became unable to pay certain sub-contractors and suppliers in respect of its Bonded Contracts, which put Liberty at an increased risk of demands under its surety bonds.³¹ In or around April 2025, Liberty and NBC began discussions regarding the status of Brook’s operations, including regarding Brook’s defaults in its obligations owing to NBC and Liberty’s growing concerns that Brook was unable to fulfil its obligations under the Bonded Contracts.³² Liberty had also advised Brook that that it intended to substitute Brook as the existing contractor under the Bonded Contracts.

25. On September 8, 2025, Liberty and NBC entered into a standstill agreement to allow each party to consider its position and determine the best viable path forward for Brook.³³ In late November 2025, towards the end of the standstill period, Liberty entered into an agreement

²⁷ Watson Affidavit at [para 74](#), AR, Tab 2.

²⁸ Watson Affidavit at [para 80](#), AR, Tab 2.

²⁹ Watson Affidavit at [para 80](#), AR, Tab 2.

³⁰ Watson Affidavit at [para 7](#), AR, Tab 2.

³¹ Pre-Filing Report at para 22.

³² Watson Affidavit at [para 81](#), AR, Tab 2.

³³ Watson Affidavit at [para 81](#), AR, Tab 2.

with Atwill-Morin for it to step in and replace Brook as contractor under the Bonded Contracts.³⁴

On December 1, 2025, Liberty delivered Bond Default Letters on behalf of Brook to the project owners under the Bonded Contracts.³⁵

3. NBC's Demands and the 244 Notices

26. On December 2, 2025, Fasken issued a demand letter to Brook, on behalf of NBC, demanding repayment of the Indebtedness under the Loan Agreement and enclosing a 244 Notice (the “**Brook Demand Letter**”).³⁶ In addition to issuing the Brook Demand Letter, Fasken issued demand letters to each of the Guarantors, on behalf of NBC, demanding repayment of the Indebtedness pursuant to the Guarantees and enclosing the 244 Notices (together with the Brook Demand Letter, the “**Demand Letters**”).³⁷

27. To date, the Respondents have not repaid the Indebtedness.³⁸ Each of the Respondents has delivered a consent to the order appointing the Receiver.³⁹

D. The Marketing Process and Events Leading to the Purchase Agreement

1. Brook's Informal Marketing Process

28. Beginning in June 2025, Brook began an informal process to canvass interest in potential sales of its assets and/or business, including the prospect of a going-concern sale, while simultaneously seeking to identify a potential replacement contractor under the Bonded

³⁴ Watson Affidavit at [para 84](#), AR, Tab 2.

³⁵ Watson Affidavit at [para 84](#), AR, Tab 2.

³⁶ Watson Affidavit at [para 85](#) & [Exhibit “AA”](#), AR, Tabs 2 & 2AA.

³⁷ Watson Affidavit at [para 86](#) & [Exhibit “BB”](#), AR, Tabs 2 & 2BB.

³⁸ Watson Affidavit at [para 88](#), AR, Tab 2.

³⁹ Watson Affidavit at [para 78](#) & [Exhibit “X”](#), AR, Tabs 2 & 2X.

Contracts.⁴⁰

29. During the course of the informal marketing process:

- (a) Brook canvassed its network in the construction and restoration industry for interest in a potential transaction.⁴¹
- (b) Three third-parties, including the Purchaser (the “**Interested Parties**”), contacted Brook to express their interest in a transaction.⁴²
- (c) Each of the Interested Parties were provided with the opportunity to conduct due diligence, including visiting Brook’s various job sites.⁴³
- (d) In early September 2025, the Purchaser delivered a letter of intent to Brook that loosely set forth the Purchaser’s proposed transaction in respect of Brook’s assets and contracts (the “**LOI**”).⁴⁴
- (e) In early October 2025, NBC, Brook, and Liberty received a proposal from one of the Interested Parties who was not the Purchaser (the “**Proposal**”).
- (f) Around that same time, the remaining Interested Party expressed it was no longer interested in a potential sale as they were unable to access bonding capacity.

30. Brook and the Financial Advisor engaged in discussions with the two remaining Interested Parties regarding the LOI and the Proposal.⁴⁵ Subsequently, in late November 2025, Brook and NBC received a non-binding offer from the Purchaser and a revised non-binding letter

⁴⁰ Watson Affidavit at [para 89](#), AR, Tab 2; Pre-Filing Report at para 24.

⁴¹ Watson Affidavit at [para 90](#), AR, Tab 2; Pre-Filing Report at para 24.

⁴² Watson Affidavit at [para 90](#), AR, Tab 2.

⁴³ Watson Affidavit at [para 90](#), AR, Tab 2; Pre-Filing Report at para 26.

⁴⁴ Watson Affidavit at [para 91](#), AR, Tab 2.

⁴⁵ Watson Affidavit at [para 91](#), AR, Tab 2.

of intent from the other Interested Party.⁴⁶ The offer from the other Interested Party was not acceptable to Liberty because the offer did not encompass all of the Bonded Contracts and Liberty was concerned with the Interested Party's qualifications.⁴⁷ Shortly thereafter, Liberty made arrangements for the Purchaser to step in and replace Brook under the Bonded Contracts.⁴⁸

2. The Purchase Agreement

31. After receiving the Purchaser's non-binding offer and having been advised that Liberty had arranged for the Purchaser to complete Brook's obligations under the Bonded Contracts, NBC, the Purchaser, and the Vendor began to negotiate definitive documents in respect of the Transaction, ultimately resulting in the Purchase Agreement.⁴⁹ The Purchased Assets are the Property set forth under the Appendix to this factum. The other key terms of the Purchase Agreement are summarized in the Pre-Filing Report.⁵⁰

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

32. The four central issues on this application are:

- (a) Should Deloitte be appointed as Receiver of the Property?
- (b) If Deloitte is appointed as Receiver, should this Court grant the Approval and Vesting Order approving the Purchase Agreement and authorizing the Receiver to execute the Purchase Agreement and implement the Transaction?
- (c) Should the Confidential Information be sealed?

⁴⁶ Watson Affidavit at [para 92](#), AR, Tab 2.

⁴⁷ Watson Affidavit at [para 92](#), AR, Tab 2.

⁴⁸ Watson Affidavit at [para 92](#), AR, Tab 2; Pre-Filing Report at para 31.

⁴⁹ Watson Affidavit at [para 95](#) & [Exhibit "CC"](#), AR, Tabs 2 & 2CC.

⁵⁰ Pre-Filing Report at para 37.

(d) Should the proposed Receiver be authorized to make assignments in bankruptcy on behalf of the Respondent?

33. NBC submits that the answer to each of the above questions is “yes”.

PART IV - LAW AND ARGUMENT

A. Deloitte Should be Appointed as Receiver

34. NBC seeks the appointment of the Receiver pursuant to subsection 243(1) of the BIA and section 101 of the CJA.

35. NBC has complied with the technical requirements of section 244 of the BIA. NBC has delivered the 244 Notices and waited the prescribed 10-day notice period.⁵¹ The Respondents have also consented to the appointment of the Receiver.⁵² Further, Deloitte is a trustee within the meaning of the BIA and has consented to its appointment as Receiver.⁵³

36. Both section 243 of the BIA and section 101 of the CJA permit the Court to appoint a receiver where it is “just or convenient to do so.”⁵⁴ In determining what is just or convenient, the Court must consider all of the circumstances, but give particular attention to the nature of the property and the rights and interests of all parties in relation thereto, including the rights of the secured creditor under its security.⁵⁵ There are no preconditions for the exercise of the Court’s

⁵¹ Watson Affidavit at [paras 85-87](#) & [Exhibits “AA”-“BB”](#), AR, Tabs 2 & 2AA-2BB.

⁵² Watson Affidavit at [para 78](#) & [Exhibit “X”](#), AR, Tabs 2 & 2X.

⁵³ Watson Affidavit at [para 105](#) & [Exhibit “DD”](#), AR, Tabs 2 & 2DD.

⁵⁴ *Bankruptcy and Insolvency Act*, [RSC 1985, c B-3](#) [BIA], [s 243](#); *Courts of Justice Act*, [RSO 1990, c C.43](#) [CJA], [s 101](#).

⁵⁵ *Bank of Nova Scotia v Freure Village on the Clair Creek* (1996), [1996 O.J. No. 5088](#) (SCJ) at [para 10](#);

discretion to appoint a receiver. Factors to consider in determining whether it is appropriate to appoint a receiver include, among others:

- (a) the fact that the creditor has the right to appoint a receiver under the loan documentation;
- (b) the likelihood of preserving and maximizing return to the parties; and
- (c) the goal of facilitating the duties of the receiver.⁵⁶

37. These factors are not a checklist, but a collection of considerations, to be viewed holistically, to determine whether, in the circumstances, the appointment of a receiver is just or convenient.⁵⁷

1. It is Just and Convenient to Appoint Deloitte as Receiver

a) The Security Documents Contemplate the Relief Sought

38. The appointment of a receiver is less extraordinary in nature where the lender has a contractual right to appoint a receiver under its security.⁵⁸ Similarly, where a creditor's security provides for the appointment of a receiver, there is no requirement for the applicant to establish that it will suffer irreparable harm if the proposed receiver is not appointed.⁵⁹ Courts do not regard the nature of the remedy as so extraordinary where the relevant security permits the appointment

⁵⁶ *Romspen Investment Corporation v Tung Kee Investment Canada Ltd. et al*, [2023 ONSC 5911](#) [Romspen] at [para 32](#).

⁵⁷ Romspen at [para 33](#).

⁵⁸ *Bruce Community Futures Development Corporation v Future Health Technologies Inc.*, [2025 ONSC 5206](#) at [para 42](#).

⁵⁹ Romspen at [para 32](#).

because the applicant is merely seeking to enforce a term of an agreement already made by the parties.⁶⁰

39. The appointment of a receiver is also less extraordinary when dealing with a default under a mortgage.⁶¹

40. In this case, the relevant security documents expressly provide for the appointment of a court-appointed receiver over the Property in the present circumstances. The GSAs and the Mortgages each provide that, upon the occurrence of an event of default thereunder, NBC may appoint a receiver of the Property.⁶² The relief that NBC seeks is therefore not extraordinary. Rather, it is contractual in nature and expressly contemplated in these circumstances.

41. In addition, each of the Respondents has consented to the appointment of the Receiver.

b) The Receivership will Preserve and Maximize the Value of the Property

42. Despite the extended Forbearance Period, Brook's financial circumstances have continued to significantly deteriorate. Brook has been under an extended period of financial distress, has lost money on its various contracts, and has been unable to pay certain sub-contractors and suppliers.⁶³ Most recently, Brook defaulted on its obligations owing under its Bonded Contracts and Liberty has replaced Brook with the Purchaser to complete those contracts.⁶⁴ NBC

⁶⁰ *Elleway Acquisition Ltd v Cruise Professionals Ltd.*, [2013 ONSC 6866](#) [Elleway] at [para 27](#).

⁶¹ *Canadian Western Bank v 2563773 Ontario Inc*, [2023 ONSC 4766](#) at [para 8](#).

⁶² Watson Affidavit at [paras 42, 58](#), & [Exhibits “I”, “Q”-“S”](#), AR, Tabs 2, 2I, & 2Q-2S.

⁶³ Pre-Filing Report at paras 20 & 22.

⁶⁴ Watson Affidavit at [paras 7, 9 & 84](#), AR, Tab 2.

is no longer willing to advance funds to Brook and it is unlikely that Brook could sustain itself in the present circumstances or that Brook would have sufficient funds to close the Transaction.⁶⁵

43. The purpose of the receivership is to permit the Receiver to implement the Transaction and distribute the proceeds of sale after closing.⁶⁶ The Transaction maximizes recoveries to NBC, the Respondents' senior secured creditor. Although NBC will suffer a significant shortfall on the Indebtedness, the Transaction is the best available option in the current circumstances.⁶⁷ If Deloitte is appointed as Receiver, it will take steps to implement the Transaction, if approved, on the terms and conditions set out therein. The receivership is therefore necessary to both preserve and maximize the value of the Property.

44. The appointment of the Receiver and the issuance of the Approval and Vesting Order are conditions precedent in the Purchase Agreement and are required for the parties to close the Transaction.⁶⁸

c) The Receivership Order Will Facilitate the Duties of the Receiver

45. The appointment of Deloitte as Receiver is the best way to facilitate the work of the Receiver. The Receivership Order would appoint the Receiver over the Property, which is identical to the Purchased Assets under the Purchase Agreement, and empower the Receiver to implement the Transaction, subject to the protections afforded under the BIA and the Receivership Order.

⁶⁵ Watson Affidavit at [para 100\(a\)](#), AR, Tab 2.

⁶⁶ Watson Affidavit at [paras 12 & 97](#), AR, Tab 2.

⁶⁷ Watson Affidavit at [para 100](#), AR, Tab 2.

⁶⁸ Watson Affidavit at [para 96](#), AR, Tab 2.

46. Moreover, as an officer of the Court, Deloitte will be obliged to act in a fiduciary capacity to all parties, ensuring that the Transaction will be implemented in a fair and equitable manner that considers the interests of all stakeholders.

2. The Terms of the Receivership Order are Appropriate

47. The proposed Receivership Order is based upon the Model Receivership Order of the Commercial List User Committee of the Superior Court (Commercial List), subject to changes to address the scope of this proposed receivership.⁶⁹

48. The proposed Receivership Order provides for a charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person, subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA (the “**Receiver’s Charge**”).⁷⁰

49. The proposed Receivership Order also provides that the Receiver, if appointed, will have the power to borrow up to \$500,000 (the “**Receiver’s Borrowings**”) for the purpose of funding the exercise of the powers and duties conferred on the Receiver by the Order, including interim expenditures and the fees and expenses of the Receiver and its counsel. The repayment of the Receiver’s Borrowings will be secured by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**” and together with the Receiver’s Charge, the “**Charges**”) in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any

⁶⁹ See the [Blackline of the Draft Receivership Order to the Model Receivership Order](#), AR, Tab 4.

⁷⁰ Draft Receivership Order at [para 19](#), AR, Tab 3.

Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.⁷¹

50. The Charges are necessary and appropriate in the circumstances because:

- (a) the Receiver is essential to the proposed process and to implementing the Transaction, and the Receiver's Charge will secure the payment of the Receiver and its counsel's fees incurred in the course of these proceedings;
- (b) it is anticipated that there will be expenditures associated with closing the Transaction. It is therefore appropriate for this Court to authorize the Receiver to borrow funds on a priority basis under Receiver's certificates to fund the costs of the receivership, subject to the monetary limit set forth therein;⁷² and
- (c) the Receivership Order also provides transparency to stakeholders regarding the receivership costs by requiring that the Receiver pass its accounts before the Court.

51. The Charges will rank ahead of NBC's security interest. NBC has served notice of this application on January 23, 2026 on the parties with financing statements registered against the Respondents under the *Personal Property Security Act* (Ontario). At this time, those parties have not objected to the requested relief.

B. The Approval and Vesting Order Should be Granted

52. Should the Receivership Order be granted, NBC is also seeking the issuance of the Approval and Vesting Order approving the Purchase Agreement and the Transaction thereunder. This is colloquially referred to as a "quick flip" transaction, in which a party, immediately upon

⁷¹ Draft Receivership Order at [para 22](#), AR, Tab 3.

⁷² Watson Affidavit at [para 106](#), AR, Tab 2.

the appointment of a receiver, seeks Court approval of a pre-packaged sale transaction pursuant to an already-negotiated agreement.⁷³ In certain circumstances, a quick flip transaction may represent the best or only available commercial alternative to a liquidation.⁷⁴ In *Tool-Plas Systems Inc., Re.*, the Honourable Justice Morawetz, as he then was, observed that:

A ‘quick flip’ transaction is not the usual transaction. In certain circumstances, however, it may be the best, or the only, alternative. In considering whether to approve a ‘quick flip’ transaction, the Court should consider the impact on various parties and assess whether their respective positions and the proposed treatment that they will receive in the ‘quick flip’ transaction would realistically be any different if an extended sales process were followed.⁷⁵

53. In reviewing quick flip transactions, the Court considers the well-settled principles set out by the Court of Appeal for Ontario in *Royal Bank of Canada v Soundair* (“**Soundair**”):

- (a) whether the party seeking sale approval has made a sufficient effort to obtain the best price and to not act improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which the party obtained offers; and,
- (d) whether the working out of the process was unfair.⁷⁶

⁷³ *Montrose Mortgage Corp. v Kingsway Arms Ottawa Inc.*, [2013 ONSC 6905](#) [Montrose] at [para 10](#). For unreported orders and endorsements (where available) approving quick flip transactions, see: *Bank of Montreal v Brant Instore Corporation* (20 December 2022), Toronto CV-22-00691546-00CL ([Order \(appointing Receiver and Manager\)](#) and [Approval and Vesting Order](#)); *The Toronto-Dominion Bank v Kivuto Solutions Inc.* (7 February 2023), Toronto CV-23-00693569-00CL ([Order \(appointing Receiver\)](#), [Approval and Vesting Order](#), and [Endorsement \(Justice McEwan\)](#)).

⁷⁴ Montrose at [para 10](#).

⁷⁵ *Tool-Plas Systems Inc., Re* ([2008](#)), [48 CBR \(5th\) 91](#) (Ont SCJ) at [para 15](#). See also *9-Ball Interests Inc. v Traditional Life Sciences Inc.*, [2012 ONSC 2788](#) at [para 27](#).

⁷⁶ *Royal Bank of Canada v Soundair Corp.*, [\[1991\] 46 OAC 321](#) [Soundair] at [para 16](#) (CA); *Elleway Acquisitions Limited v 4358376 Canada Inc.*, [2013 ONSC 7009](#) [Elleway #2] at [para 31](#); Montrose at [para 10](#); Romspen at [para 49](#).

54. Courts applying the *Soundair* principles in the context of quick flip transactions will scrutinize with particular care the adequacy and fairness of the sale and marketing process,⁷⁷ and give “specific consideration to the economic realities of the business and the specific transactions in question.”⁷⁸ Courts have approved such transactions where, for example:

- (a) the marketing process was nonetheless fair and reasonable and the court was of the view that no purpose would be served by a further marketing process;⁷⁹
- (b) an immediate sale is the only realistic way to provide maximum recovery for a creditor who stands in a clear priority of economic interest to all others;⁸⁰ and,
- (c) delay in the transaction will erode the realization of the security of that creditor.⁸¹

55. Further, in reviewing a sale process, the Court defers to the business expertise of the receiver.⁸² It is only in “exceptional” circumstances that a Court will intervene and proceed contrary to the recommendations of a receiver.⁸³

56. In this case, the Purchase Agreement meets each of the *Soundair* principles. The Transaction represents the best viable transaction in respect of the Purchased Assets in the current circumstances for the following reasons:

- (a) *Atwill-Morin is the logical purchaser:* After Liberty selected Atwill-Morin to take over Brook’s obligations under the Bonded Contracts, Atwill-Morin remained the

⁷⁷ *Romspen* at [para 49](#); *Montrose* at [para 10](#).

⁷⁸ *Elleway* #2 at [para 33](#).

⁷⁹ *Romspen* at [paras 48, 55-56, 58](#).

⁸⁰ *Elleway* #2 at [para 33](#).

⁸¹ *Elleway* #2 at [para 33](#).

⁸² *Ontario Securities Commission v Bridging Finance Inc.*, [2022 ONSC 1857](#) at [para 43](#) [*Bridging Finance*].

⁸³ *Bridging Finance* at [para 45](#), citing *Soundair*.

only logical purchaser for Brook's assets *en bloc* and the Real Property used in connection with Brook's operations.⁸⁴

- (b) *The marketing process was fair and reasonable:* As described above, beginning in June 2025, Brook conducted an informal marketing process to canvass potential interest in a sale of its assets and/or business as a going concern, which included the opportunity to conduct due diligence. During that period, three Interested Parties expressed interest in such an opportunity, and Brook received offers from two of those parties, including the Purchaser. Further, 21 Kelfield had been listed for sale on the market since May 2024.⁸⁵ Only one independent offer was received for this property in December 2025, and the proposed purchase price in that offer was significantly below the appraised value of the property.⁸⁶ The proposed Receiver does not believe that there has been any unfairness in the marketing process undertaken by Brook.⁸⁷
- (c) *No further purpose would be served by a further marketing process:* Given the current weaknesses in the construction and real estate sectors, it is unlikely that waiting to sell the Purchased Assets in lots to other parties would yield a higher overall recovery than the Purchase Price, or otherwise reduce the costs incurred by NBC to conclude the Transaction.⁸⁸ As the proposed Receiver observed, it was timely and cost-effective to negotiate a universal purchase agreement with Atwill-Morin, particularly as it relates to Equipment situated on Bonded Contract sites.⁸⁹
- (d) *The Transaction obtains the best price in the circumstances:* The Purchase Price is greater than the liquidation value of the Purchased Assets.⁹⁰ While the other

⁸⁴ Watson Affidavit at [para 100\(e\)](#), AR, Tab 2; Pre-Filing Report at para 43.

⁸⁵ Watson Affidavit at [paras 93 & 100\(d\)](#), AR, Tab 2.

⁸⁶ Watson Affidavit at [paras 93 & 100\(d\)](#), AR, Tab 2.

⁸⁷ Pre-Filing Report at para 48.

⁸⁸ Pre-Filing Report at para 44.

⁸⁹ Pre-Filing Report at para 43.

⁹⁰ Watson Affidavit at [para 100\(b\)](#), AR, Tab 2; Pre-Filing Report at para 44.

Interested Party made an offer that would have resulted in a higher purchase price and that would have resulted in a higher overall recovery to NBC, Liberty had concerns with respect to this offer that were unable to be resolved, such that the offer was not actionable.⁹¹

- (e) *There is no realistic prospect of an additional marketing or sale process in respect of the Purchased Assets:* NBC is not willing to advance additional funds to Brook and Brook is unable to self-fund any further sale processes.⁹²
- (f) *The Transaction is in the best interests of the stakeholders:* The sale of Brook's assets to a third party other than the Purchaser would be challenging and likely prejudicial to other stakeholders affected by the Bonded Contracts because, among other reasons, attempting to sell the Property to a different purchaser would (i) require removing the assets located at the Bonded Contract sites, including assembled scaffolding surrounding the buildings on those premises, which would take at least five (5) weeks to disassemble and dismantle and a further five (5) weeks to re-assemble, (ii) cause further delays and inconvenience to the owners of the Bonded Contracts sites and, where applicable, their residents, (iii) likely increase the liquidated damages exposure of Brook and Liberty under the Bonded Contracts, and (iv) significantly impair Atwill-Morin's ability to step in and complete Brook's obligations under the Bonded Contracts and for Atwill-Morin to otherwise fulfil its obligations owing to Liberty in respect of the Bonded Contracts.⁹³
- (g) *Delay in closing the Transaction will further erode the value of NBC's collateral:* NBC's collateral has already been impaired by Brook's defaults under its Bonded Contracts. Implementing the Transaction imminently will also avoid the Respondents incurring additional risks and costs, including holding costs, in respect

⁹¹ Pre-Filing Report at paras 28-29.

⁹² Watson Affidavit at [para 100\(a\)](#), AR, Tab 2.

⁹³ Watson Affidavit at [para 100\(f\)](#), AR, Tab 2. See also Pre-Filing Report at para 47.

of the Purchased Assets.⁹⁴

57. NBC is supportive of the Transaction, notwithstanding that it will suffer a significant shortfall in respect of its Indebtedness.⁹⁵ Deloitte, in its capacity as Proposed Receiver, also recommends that the Court approve the Transaction.⁹⁶ As discussed above, the Respondents have each consented to the appointment of the Receiver and are supportive of the Transaction.

58. For these reasons, the Approval and Vesting Order should be granted.

C. The Sealing Order Should be Granted

59. NBC is seeking a sealing order with respect to the unredacted Purchase Agreement and the Property liquidation valuations appended to the Proposed Receiver's Report (together, the "**Confidential Information**"), until the earlier of: (a) the closing of the Transaction or (b) further order of the Court. Section 137(2) of the CJA grants the Court jurisdiction to order any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record.⁹⁷

60. In *Sherman Estate v Donovan* ("**Sherman Estate**"), the Supreme Court held that a person asking a court to exercise discretion in a way that limits the presumptive open court principle must establish that:

- (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,

⁹⁴ Watson Affidavit at [paras 7 & 104](#), AR, Tab 2.

⁹⁵ Watson Affidavit at [para 100](#), AR, Tab 2.

⁹⁶ Pre-Filing Report at para 55.

⁹⁷ CJA, [s 137\(2\)](#).

(c) as a matter of proportionality, the benefits of the order outweigh its negative effects.⁹⁸

61. In the insolvency context, courts have commonly granted sealing orders to protect from disclosure commercially sensitive information pending the closing of a sale transaction,⁹⁹ including in the context of quick flip sale transactions.¹⁰⁰

62. The application of the *Sherman Estate* test to the facts of this case similarly supports sealing the Confidential Information, for the following reasons:

- (a) *Court openness poses serious risks to the commercial interests at stake:* The Confidential Information represents sensitive commercial information regarding the Purchase Price and the liquidation values of the Property.¹⁰¹ The disclosure of the Confidential Information could reasonably be expected to prejudice future attempts to pursue alternative transactions in respect of the Property, should the Transaction fail to close.¹⁰²
- (b) *There are no reasonable alternatives to a sealing order that would prevent the risks described above:* The Purchase Agreement has been narrowly redacted to only protect from disclosure information concerning the Purchase Price and the requested sealing order is time-limited in nature.
- (c) *The benefits of the sealing order exceed any negative effects.* No party would suffer any prejudice as a result of temporarily sealing the Confidential Information.

⁹⁸ *Sherman Estate v Donovan*, [2021 SCC 25](#) at [para 38](#).

⁹⁹ *Ontario Securities Commission v Bridging Finance Inc.*, [2023 ONSC 4203](#) at [paras 29, 40](#); *First Source Financial Management v Chacon Strawberry Fields Inc.*, [2024 ONSC 7229](#) at [paras 51-53](#).

¹⁰⁰ *Elleway #2* at [para 48](#); *Montrose* at [para 13](#); *Romspen* at [paras 105-107](#).

¹⁰¹ *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41](#) at [para 53](#).

¹⁰² *Watson* Affidavit at [para 110](#), AR, Tab 2; Pre-Filing Report at para 51.

63. Deloitte also agrees that sealing the Confidential Information is necessary and appropriate in the circumstances, and recommends that the sealing order be granted.¹⁰³

D. The Receiver Should be Authorized to Assign the Respondents in Bankruptcy

64. Courts can authorize a receiver to file an assignment in bankruptcy on behalf of a debtor.¹⁰⁴ Courts have empowered receivers to file an assignment in bankruptcy on behalf of a debtor company for the purposes of, among other reasons, rendering statutory deemed trusts for HST inapplicable.¹⁰⁵ The Court of Appeal for Ontario has similarly confirmed that it is appropriate for a creditor to seek a bankruptcy order for the express purpose of altering priorities.¹⁰⁶

65. In this case, NBC is seeking to grant the Receiver the authority to make bankruptcy assignments. The bankruptcies will ensure that any assets that are not “Property” as defined in the Receivership Order will be administered by Deloitte in its capacity as proposal trustee and distributed to creditors in accordance with their priority, and will also have the effect of reversing the priority of the deemed trust for unpaid HST.¹⁰⁷ Brook has outstanding HST payments owing to the Canada Revenue Agency which, as at December 15, 2025, totals approximately \$4.3 million.¹⁰⁸ Any deemed trust for unremitted HST payments would not survive a bankruptcy.¹⁰⁹

¹⁰³ Pre-Filing Report at paras 50-53.

¹⁰⁴ *RBC v Gustin*, [2019 ONSC 5370](#) at [para 15](#); *CIBC v 1340182 Ontario Limited et al*, [2024 ONSC 3658](#) [*1340182 Ontario*] at [para 13](#).

¹⁰⁵ *2403177 Ontario Inc. v Bending Lake iron Group Limited*, [2016 ONSC 199](#) at paras [114-123](#). See also *1340182 Ontario* at [paras 14-15](#).

¹⁰⁶ *Grant Forest Products Inc. v The Toronto-Dominion Bank*, [2015 ONCA 570](#) at [para 118](#). See also *American General Life Insurance Company et al v Victoria Avenue North Holdings Inc. et al*, [2023 ONSC 3322](#) at [para 17](#) [*Victoria Avenue*].

¹⁰⁷ Watson Affidavit at [para 107](#), AR, Tab 2; Pre-Filing Report at para 49.

¹⁰⁸ Watson Affidavit at [para 107](#), AR, Tab 2.

¹⁰⁹ *Victoria Avenue* at [para 17](#).

66. The BIA also permits receivers appointed in respect of a debtor to act as a trustee in bankruptcy of the debtor, where, at the time of being appointed as trustee and at the first meeting of creditors, full disclosure of that fact and of the potential conflict of interest is disclosed.¹¹⁰ The practice of appointing a trustee who was appointed as receiver in respect of a debtor is routinely approved in insolvency proceedings encompassing both receiverships and bankruptcies.¹¹¹

67. The Receiver's counsel, Thornton Grout Finnigan LLP ("TGF") has independently reviewed the security granted by the Respondents to NBC. TGF has opined that NBC's security interests in the property of the Respondents are valid and enforceable against the Respondents.¹¹²

PART V - ORDERS REQUESTED

68. For the reasons outlined above, NBC respectfully requests that this Honourable Court grant the orders substantially in the form as the draft Receivership Order and the Approval and Vesting Order found at Tabs 3 and 5, respectively, of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of January, 2026.

Fasken Martineau DuMoulin LLP
Fasken Martineau DuMoulin LLP

¹¹⁰ BIA, [s 13.3\(2\)](#).

¹¹¹ *Proex Logistics Inc. (Re)*, [2025 ONCA 832](#) at [para 3](#); *Royal Bank of Canada v Galmar Electrical Contracting Inc. et al*, [2015 ONSC 5562](#) at [para 48](#).

¹¹² Pre-Filing Report at para 54.

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Lawyers for the Applicant, National Bank of Canada

APPENDIX DESCRIPTION OF THE PROPERTY

All property included in the definition of “Purchased Assets” under the Purchase Agreement,¹¹³ including but not limited to:

1. all construction equipment used in or related to the operation of the Purchased Business, including vehicles owned by the Vendor, located at the Real Property (defined below), the Leased Property, 94 Brockport Drive, Toronto, Ontario, or the Construction Sites and/or wherever else situated and listed on Schedule “D” to the Purchase Agreement;
2. the Real Property, defined as:
 - (a) the real property municipally known as 21 Kelfield, Toronto, Ontario, legally described as PT LT 21 CON 2 FTH ETOBICOKE AS IN TB884994; T/W & S/T TB884994; TORONTO (ETOBICOKE) ; CITY OF TORONTO (07424-0141 (LT)); and
 - (b) the real property municipally known as 869 Rest Acres, Brantford, Ontario, legally described as PT LT 11, CON 3, TWP OF BRANTFORD BEING PT 4 ON 2R6048; COUNTY OF BRANT; SUBJECT TO AN EASEMENT IN GROSS OVER PART 1 PL 2R7732 AS IN BC263479 (32275-0161 (LT)).
3. the contracts listed on Schedule “E” of the Purchase Agreement;
4. inventory;
5. all information technology equipment, hardware, and related tangible technology assets owned, leased or used by the Vendor in connection with the Purchased Business, including without limitation all computers, laptops, servers, networking equipment, storage devices, mobile devices, telecommunications equipment, point-of-sale hardware, peripherals, backup systems, and all other associated equipment, together with any related warranties, maintenance rights, service contracts, and licenses to embedded software; and,

¹¹³ Capitalized terms used in this Schedule but not otherwise defined have the meanings given to them in the Purchase Agreement.

6. the Books and Records.

SCHEDULE “A”
LIST OF AUTHORITIES

Statutes and Regulations

1. *Bankruptcy and Insolvency Act*, [RSC 1985, c B-3, s 13.3\(2\), s 243](#)
2. *Courts of Justice Act*, [RSO 1990, c C.43, s 101, s 137\(2\)](#)

Cases

1. *2403177 Ontario Inc. v Bending Lake iron Group Limited*, [2016 ONSC 199](#)
2. *9-Ball Interests Inc. v Traditional Life Sciences Inc.*, [2012 ONSC 2788](#)
3. *American General Life Insurance Company et al v Victoria Avenue North Holdings Inc. et al*, [2023 ONSC 3322](#)
4. *Bank of Montreal v Brant Instore Corporation* (20 December 2022), Toronto CV-22-00691546-00CL
5. *Bank of Nova Scotia v Freure Village on the Clair Creek* (1996), [1996 O.J. No. 5088](#) (SCJ)
6. *Bruce Community Futures Development Corporation v Future Health Technologies Inc.*, [2025 ONSC 5206](#)
7. *CIBC v 1340182 Ontario Limited et al*, [2024 ONSC 3658](#)
8. *Elleway Acquisition Ltd v Cruise Professionals Ltd.*, [2013 ONSC 6866](#)
9. *Elleway Acquisitions Limited v 4358376 Canada Inc.*, [2013 ONSC 7009](#)
10. *First Source Financial Management v Chacon Strawberry Fields Inc.*, [2024 ONSC 7229](#)
11. *Grant Forest Products Inc. v The Toronto-Dominion Bank*, [2015 ONCA 570](#)
12. *Montrose Mortgage Corp. v Kingsway Arms Ottawa Inc.*, [2013 ONSC 6905](#)
13. *Ontario Securities Commission v Bridging Finance Inc.*, [2023 ONSC 4203](#)
14. *Ontario Securities Commission v Bridging Finance Inc.*, [2022 ONSC 1857](#)
15. *Proex Logistics Inc. (Re)*, [2025 ONCA 832](#)
16. *Romspen Investment Corporation v Tung Kee Investment Canada Ltd. et al*, [2023 ONSC 5911](#)
17. *Royal Bank of Canada v Galmar Electrical Contracting Inc. et al*, [2015 ONSC 5562](#)

18. *Royal Bank of Canada v Soundair Corp.*, [\[1991\] 46 OAC 321](#)
19. *RBC v Gustin*, [2019 ONSC 5370](#)
20. *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41](#)
21. *Sherman Estate v Donovan*, [2021 SCC 25](#)
22. *The Toronto-Dominion Bank v Kivuto Solutions Inc.* (7 February 2023), Toronto CV-23-00693569-00CL
23. *Tool-Plas Systems Inc., Re* [\(2008\), 48 CBR \(5th\) 91](#)

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 January 29, 2026

Fasken Martineau DuMoulin LLP

Signature

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

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

Where trustee is not qualified to act

13.3 (1) Except with the permission of the court and on such conditions as the court may impose, no trustee shall act as trustee in relation to the estate of a debtor

- (a) where the trustee is, or at any time during the two preceding years was,
 - (i) a director or officer of the debtor,
 - (ii) an employer or employee of the debtor or of a director or officer of the debtor,
 - (iii) related to the debtor or to any director or officer of the debtor, or
 - (iv) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the debtor; or
- (b) where the trustee is
 - (i) the trustee under a trust indenture issued by the debtor or any person related to the debtor, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the Civil Code of Québec that is granted by the debtor or any person related to the debtor, or
 - (ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

Copy of application to Superintendent

(1.1) A trustee who applies for the permission of the court for the purposes of subsection (1) shall without delay send a copy of the application to the Superintendent.

Where disclosure required

(2) No trustee shall act as a trustee in relation to the estate of a debtor where the trustee is already

- (a) the trustee in the bankruptcy of, or in a proposal concerning, any person related to the debtor, or
- (b) the receiver, within the meaning of subsection 243(2), or the liquidator of the property of any person related to the debtor, without making, at the time of being

appointed as trustee in relation to the estate of the debtor and at the first meeting of creditors, full disclosure of that fact and of the potential conflict of interest.

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:

- (c) 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;
- (d) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (e) take any other action that the court considers advisable.

Restriction on appointment of receiver

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

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

Definition of receiver

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

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
 - (i) an agreement under which property becomes subject to a security (in this Part referred to as a "security agreement"), or
 - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

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

Trustee to be appointed

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

Place of filing

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

Orders respecting fees and disbursements

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

Meaning of disbursements

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

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

- (a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or
- (b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

Courts of Justice Act, RSO 1990, c C.43

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.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

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.

NATIONAL BANK OF CANADA

-and-

Applicant

BROOK RESTORATION LTD. ET AL

Respondents

Court File No. CL-26-00000027-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

FACTUM
(Receivership Order and Approval and Vesting Order)

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