

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

BETWEEN:

**405 ST. DAVID STREET INVESTMENTS INC.**

Applicant

- and -

**2750876 ONTARIO INC.**

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND  
INSOLVENCY ACT, R.S.C. 1985, c.B-3, AS AMENDED AND SECTION 101 OF  
THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

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**FACTUM OF TDB RESTRUCTURING LIMITED,  
IN ITS CAPACITY AS RECEIVER  
(Returnable October 3, 2025)**

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September 24, 2025

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

**Steven L. Graff** (LSO# 31871V)  
Tel: (416) 865-7726  
Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

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

*Counsel for TDB Restructuring Limited, in its  
capacity as court-appointed receiver of  
2750876 Ontario Inc.*

TO: **SERVICE LIST**

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## **PART I - INTRODUCTION**

1. Pursuant to an application made by 405 St. David Street Investments Inc. (“**St. David Investments**”), the Ontario Superior Court of Justice (the “**Court**”) made an Order on March 3, 2025 (the “**Appointment Order**”) appointing TDB Restructuring Limited (“**TDB**”) as receiver (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties of 2750876 Ontario Inc. acquired for, or used in relation to a business carried on by the Debtor, including, but not limited to, the real property legally described as follows known municipally as 405 St. David Street (Vacant Land), Lindsay, Ontario (collectively, the “**Real Property**”).<sup>1</sup>

2. Following its appointment, the Receiver engaged Dan Plowman Team Realty Inc. (“**Dan Plowman**”) to assist with the marketing and sale of the Real Property.<sup>2</sup>

3. The Multiple Listing Service (“**MLS**”) listing went live on May 15, 2025.<sup>3</sup> Despite an extensive marketing process, no offers were received for the Real Property.<sup>4</sup>

4. The Receiver (in such capacity, the “**Vendor**”) entered into an Agreement of Purchase and Sale (the “**Credit Bid APS**”) dated September 3, 2025 and accepted September 10, 2025 in respect of the Real Property with St. David Investments (in such capacity, the “**Purchaser**”).<sup>5</sup>

5. The Credit Bid APS is conditional upon the issuance of an approval and vesting order (the “**AVO**”) and closing of the transaction contemplated by the Credit Bid APS (the “**Transaction**”).

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<sup>1</sup> First Report of TDB Restructuring Limited dated September 16, 2025 at para 1 [“**First Report**”].

<sup>2</sup> First Report at para 5.

<sup>3</sup> First Report at para 13.

<sup>4</sup> First Report at para 20.

<sup>5</sup> First Report at para 5.

The AVO must vest the assets of the Debtor in the Purchaser free and clear of all encumbrances, other than those specifically itemized in the Credit Bid APS as permitted encumbrances.<sup>6</sup>

6. Accordingly, the Receiver brings this motion for:

(a) the AVO which, among other things:

- (i) approves the Receiver's engagement of Dan Plowman pursuant to a listing agreement dated May 15, 2025 for the marketing and sale of the Real Property;
- (ii) approves the Transaction contemplated by the Credit Bid APS and authorizes the Receiver to complete the Transaction; and
- (iii) upon execution and delivery of a certificate by the Receiver containing confirmation of the closing of the Transaction (the "**Receiver's Certificate**"), vests in the Purchaser all of the Debtor's right, title, benefit, and interest in and to the Real Property free and clear of and from any and all security interests, liens, executions, levies, charges, or other financial or monetary claims;

(b) an Order (the "**Ancillary Relief Order**") which, among other things:

- (i) approves the First Report of the Receiver dated September 16, 2025 (the "**First Report**"), and the actions, conduct, and activities of the Receiver described therein;

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<sup>6</sup> First Report at para 22.

- (ii) seals the Confidential Supplement to the First Report (the “**Confidential Supplement**”), and each appendix appended thereto, until the closing of the Transaction or further Order of this Court;
- (iii) approves the fees and disbursements of the Receiver, as set out in the Affidavit of Bryan A. Tannenbaum sworn September 15, 2025, and the fees and disbursements of the Receiver’s counsel, Aird & Berlis LLP (“**A&B**”), as set out in the Affidavit of Steven L. Graff, sworn September 11, 2025;
- (iv) approves the Receiver’s estimate of the costs expected to accrue to close the Transaction and complete the administration of the receivership estate (the “**Remaining Fees and Disbursements**”);
- (v) authorizes and directs the Receiver to make (or cause to be made) a distribution to, as applicable, The Corporation of the City of Kawartha Lakes or A. O. Shingler & Co. Ltd. in respect of property taxes owing on the Real Property;
- (vi) authorizes the Receiver to maintain such reserves as the Receiver deems appropriate for, inter alia, the administration of the receivership estate; and
- (vii) discharges the Receiver upon the filing of a certificate certifying that the Receiver has completed all outstanding receivership matters in connection with its appointment as Receiver in these proceedings.<sup>7</sup>

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

7. The Real Property consists of three adjoining parcels of undeveloped, vacant land in the City of Kawartha Lakes.<sup>8</sup>

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<sup>7</sup> First Report at para 5.

<sup>8</sup> First Report at paras 9-10.

8. The Appointment Order, *inter alia*, granted to the Receiver the power to market the Real Property, including advertising and soliciting offers and negotiating terms of sale.<sup>9</sup> The Receiver engaged Dan Plowman to market the Real Property for sale by listing it on the MLS and perform all other normal marketing activities for such a property, including establishing a website to advertise the Real Property for sale.<sup>10</sup>

9. The marketing process has allowed the Receiver to expose the Real Property to all parties looking to purchase such a property and provide any information to interested parties that they may need in connection with this opportunity.

10. As a result of the marketing efforts, the Receiver received a total of twenty (20) inquiries from real estate agents and principals, including eleven (11) signed Confidentiality Agreements by prospective purchasers or brokers, all of whom were given access to the electronic data room.<sup>11</sup>

11. Notwithstanding the marketing efforts undertaken by the Receiver, no formal offers were received for the Real Property.<sup>12</sup>

12. Considering the absence of an acceptable third-party offer and following discussions with St. David Investments, the Receiver accepted the Credit Bid APS presented by St. David Investments.

13. St. David Investments is a secured creditor of the Debtor, that sold the Real Property to the Debtor pursuant to a vendor-take-back mortgage agreement on or around May 28, 2021 for the

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<sup>9</sup> First Report, Appendix A.

<sup>10</sup> First Report at para 18.

<sup>11</sup> First Report at para 19.

<sup>12</sup> First Report at para 20.

principal amount of \$9,860,000.<sup>13</sup> The Debtor subsequently defaulted on its obligations under the vendor-take-back mortgage, which led to the appointment of the Receiver on the application of St. David Investments.

14. The Transaction is conditional on the issuance of the AVO.<sup>14</sup>

### **PART III - ISSUES**

15. The issues to be determined on this motion are whether this Court should:

- (a) grant the AVO to, among other things, authorize and approve the Transaction contemplated in the Credit Bid APS;
- (b) grant a sealing order in respect of the Confidential Supplement; and
- (c) approve the activities and fees of the Receiver and its counsel.

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

#### **A. The Credit Bid APS Should be Approved:**

16. The Credit Bid APS is conditional on the granting of the AVO.

17. When considering whether to approve a sale transaction involving an insolvent debtor, courts have relied on the factors set out by the Ontario Court of Appeal in *Royal Bank of Canada v. Soundair Corp.*,<sup>15</sup> which were written to specifically address sales by receivers of a debtor's assets:

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<sup>13</sup> First Report at para 11.

<sup>14</sup> First Report at para 22.

<sup>15</sup> *Royal Bank of Canada v. Soundair Corp.* (1991), [1991 CarswellOnt 205](#) (ONCA).

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) whether the interests of all parties have been considered;
- (c) the integrity and efficacy of the process for obtaining offers; and
- (d) whether there has been unfairness in the working out of the process.<sup>16</sup>

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

- (a) **The marketing process was reasonable and not unfair:** Assessing the reasonableness of a sale process does not require the Court to examine in minute detail all of the circumstances leading up to the acceptance of a particular offer.<sup>17</sup> The Court should be satisfied overall that the Receiver has not acted improvidently. The Receiver understands from Dan Plowman that the Real Property was broadly marketed on the MLS over the span of over three months. The Real Property was advertised extensively through a digital campaign that included a professionally produced marketing video, and targeted promotions on LinkedIn, Google, and YouTube.<sup>18</sup> The marketing methodology employed by Dan Plowman is consistent with customary ways in which real estate is marketed and sold in insolvency proceedings. The marketing process provided sufficient time for prospective bidders to conduct due diligence and adequately assess the sale opportunity. Further, the Credit Bid APS is the product of negotiations undertaken between the

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<sup>16</sup> *Royal Bank of Canada v. Soundair Corp.* (1991), [1991 CarswellOnt 205](#) at [para 16](#) (ONCA); see also *Canwest Global Communications Corp.*, 2010 ONSC 2870 at [para 13](#).

<sup>17</sup> *Royal Bank of Canada v. Soundair Corp.* (1991), [1991 CarswellOnt 205](#) at [paras 48-49](#) (ONCA).

<sup>18</sup> First Report at para 18.

Receiver and the Purchaser. Extending the marketing process for the Real Property is not recommended due to the low prospect of identifying any new prospective purchasers;

- (b) **Receiver filed a report:** In support of the relief sought in this motion, the Receiver has filed the First Report. Based on consultations with multiple real estate professionals active in the market for comparable properties, the Receiver is of the view that the purchase price contemplated in the Credit Bid APS represents fair market value;<sup>19</sup>
- (c) **Creditors were consulted:** All known creditors received notice of the Receiver's motion. To date, the Receiver is not aware of any opposition to the relief sought;
- (d) **Purchase price is fair and reasonable:** To establish this criterion, the Receiver must demonstrate that sufficient effort has been made to obtain the best price and that the Receiver has not acted improvidently based on the information available at the time the offer is accepted.<sup>20</sup> The decision to accept a particular offer is a matter of business judgment that should not be interfered with lightly in the absence of evidence of imprudence or unfairness.<sup>21</sup> After over three months on the market, the Credit Bid APS was the sole offer received, and does not contain terms and conditions that are, in the Receiver's opinion, either not commercially reasonable or not viable within the context of a receivership.

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<sup>19</sup> Confidential Supplement to the First Report at para 17.

<sup>20</sup> *Terrance Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#) at [paras 50-55](#).

<sup>21</sup> *Royal Bank of Canada v. Sundair Corp.* (1991), [1991 CarswellOnt 205](#) at [paras 21](#) and [30-31](#) (ONCA); *Terrance Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#) at [paras 45](#) and [52-54](#).

19. Based on the foregoing, it is the informed business judgment of the Receiver that the Credit Bid APS is in the best interests of the Debtor and its stakeholders. In the absence of any indication that the Receiver has acted improvidently, that business judgment is entitled to deference by this Court.

**The AVO Should be Granted:**

20. The Receiver seeks an AVO to grant the Real Property free and clear of any claims and encumbrances, other than the permitted encumbrances set out in the Credit Bid APS.

21. The Court has the power to grant approval and vesting orders pursuant to section 100 of the *Courts of Justice Act* (Ontario) (the “CJA”)<sup>22</sup>, which provides that:

**100.** A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.<sup>23</sup>

22. Vesting orders are a routine part of insolvency practice.<sup>24</sup> As set out by the Ontario Court of Appeal in *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*,<sup>25</sup> the court will adopt a rigorous cascade analysis. It will consider the nature and strength of the interest that is proposed to be extinguished, which can be determinative. The court can also consider if the parties have consented to the vesting of the interest at the time of sale before the court, or through prior agreement.<sup>26</sup> If these factors proved inconclusive, the court can engage in a consideration of equities to determine if a vesting order is appropriate.<sup>27</sup>

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

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

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

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

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

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

23. Specifically, the proposed AVO seeks to extinguish the following interests registered on title to the Real Property:

- (a) a transfer in the amount of \$17,000,000 granted by St. David Investments to the Debtor, registered as instrument KL177751 on May 28, 2021;
- (b) a charge in the amount of \$9,860,000 granted by the Debtor in favour of 405 St. David Street Investments Inc., registered as instrument KL177752 on May 28, 2021; and
- (c) the Appointment Order, registered as instrument KL224278 on March 6, 2025.<sup>28</sup>

24. As is customary with vesting orders of this nature, the proposed form of the AVO specifically extinguishes *Personal Property Security Act* (Ontario) registrations. The Receiver is not aware of any registrations registered against the Debtor.<sup>29</sup>

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

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<sup>28</sup> First Report, Appendix B.

<sup>29</sup> First Report, Appendix F.

**The Sealing Order Should be Granted:**

26. The Receiver is seeking a sealing order in respect of the Confidential Supplement to the First Report, which details the various opinions as to value for the Real Property and the purchase price set out in the Credit Bid APS, until the Transaction closes or further Order of this Court.

27. The sealing order is sought pursuant to subsection 137(2) of the CJA.<sup>30</sup> Subsection 137(2) of the CJA provides this Court with the statutory jurisdiction to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.

28. The test for a sealing order was established by the Supreme Court in *Sierra Club of Canada v. Canada (Minister of Finance)*,<sup>31</sup> and subsequently recast in *Sherman Estate v. Donovan*.<sup>32</sup> The test requires the court to consider whether:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>33</sup>

29. All three elements are prerequisites for a sealing order to be granted.<sup>34</sup>

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<sup>30</sup> [Courts of Justice Act](#), R.S.O. 1990, c. C.4, s. 137(2).

<sup>31</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#).

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

<sup>33</sup> *Sherman Estate v. Donovan*, [2021 SCC 25](#) at [para 38](#).

<sup>34</sup> *Sherman Estate v. Donovan*, [2021 SCC 25](#) at [para 38](#).

30. At the second step of the test, courts must consider whether any alternative measures, short of a sealing order, can reasonably protect the interest at stake and, if not, how the court may limit the scope of the sealing order to only the specific information that is necessary to be sealed.<sup>35</sup>

31. The impact on public interest in the open-court system and public confidence in the administration of justice must be weighed against the commercial benefits of sealing the information.<sup>36</sup> Where the sealing order is restricted to a few technical documents that the public is unlikely to be interested in, the negative effects regarding the open-court system will be reduced.<sup>37</sup>

32. It is common practice in the insolvency context for information in relation to the sale of the assets of an insolvent corporation to be kept confidential until after the sale is completed pursuant to a Court order. In *Look Communications Inc. v. Look Mobile Corporation*,<sup>38</sup> Justice Newbould explained the reasons for such confidentiality:

It is common when assets are being sold pursuant to a court process to seal the Monitor's report disclosing all of the various bids in case a further bidding process is required if the transaction being approved falls through. Invariably, no one comes back asking that the sealing order be set aside. That is because ordinarily all of the assets that were bid on during the court sale process end up being sold and approved by court order, and so long as the sale transaction or transactions closed, no one has any further interest in the information. In *8857574 Ontario Inc. v. Pizza Pizza Ltd*, (1994), 23 B.L.R. (2nd) 239, Farley J. discussed the fact that valuations submitted by a Receiver for the purpose of obtaining court approval are normally sealed. He pointed out that the purpose of that was to maintain fair play so that competitors or potential bidders do not obtain an unfair advantage by obtaining such information while others have to rely on their own resources. In that context, he stated that he thought the most appropriate sealing order in a court approval sale situation would be that the supporting valuation materials remain sealed until such time as the sale transaction had closed.<sup>39</sup>

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<sup>35</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) at [para 62](#).

<sup>36</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) at [paras 74-76](#).

<sup>37</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) at [para 78](#).

<sup>38</sup> *Look Communications Inc. v. Look Mobile Corporation* (2009), [2009 CanLII 71005](#) (Ont Sup Ct J).

<sup>39</sup> *Look Communications Inc. v. Look Mobile Corporation* (2009), [2009 CanLII 71005](#) at [para 17](#) (Ont Sup Ct J).

33. The Receiver submits that the test is satisfied in this case. The Confidential Supplement to the First Report includes commercially sensitive terms relating to the marketing and sale of the Real Property which, if publicly disclosed, could materially and negatively impair the ability of the Receiver to market the Real Property to other interested parties and obtain the highest and best price if the Credit Bid APS is not approved or the Transaction does not close. Granting a time-limited sealing order maintains public confidence in the efficacy of the insolvency regime, which is an important public interest to protect.

34. The proposed sealing order is the least restrictive and prejudicial alternative to prevent the dissemination of commercially sensitive information. There is no reasonable alternative to the sealing order that would adequately protect the confidentiality of the information that is sought to be kept confidential.

35. Overall, the salutary effects of the sealing order, which will maintain confidentiality over a party's legitimate commercial interests, outweigh the deleterious effects of restricting the accessibility of court proceedings.

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

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

37. The approval of a court officer's activities and reports is relief that is "routinely granted".<sup>40</sup> The Receiver seeks this Court's approval of its activities and conduct, as set out in the First Report.

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<sup>40</sup> *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at [paras 2](#) and [23](#).

38. The activities of the Receiver described in the First Report were all necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Appointment Order, and were, in each case, in the best interests of the Debtor and its stakeholders generally.

39. The approval language in the proposed draft Order makes clear that the approval is only for the Receiver personally and is not intended to create rights or impose obligations for any other party.<sup>41</sup>

40. The jurisdiction of this Court to pass the accounts of the Receiver and its counsel is confirmed in the Receivership Order, which directs that: “the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Ontario Superior Court of Justice”.<sup>42</sup>

41. On a motion to pass accounts, the Court must consider the “overriding principle of reasonableness”, focusing on the overall value contributed by the Receiver and its counsel.<sup>43</sup> The Court does not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of a professional services may not be instructive when looked at in isolation.<sup>44</sup> In *Bank of Nova Scotia v. Diemer*,<sup>45</sup> the Ontario Court of Appeal stated “the focus of the fair and reasonable assessment should be on what was accomplished, and not how much time it took.”<sup>46</sup>

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<sup>41</sup> Draft Ancillary Relief and Discharge Order at para 2, Motion Record of TDB Restructuring Limited at Tab 5.

<sup>42</sup> Receivership Order of Justice Steele dated March 3, 2025 at para 18, Appendix A of the First Report.

<sup>43</sup> *Nortel Networks Inc.*, [2022 ONSC 6680](#) at [para 10](#).

<sup>44</sup> *Nortel Networks Inc.*, [2022 ONSC 6680](#) at [para 10](#).

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

<sup>46</sup> *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) at [para 45](#).

42. The Receiver and its counsel have charged standard hourly rates that are consistent with market rates for insolvency services of this nature rendered by other firms in Toronto and the Greater Toronto Area. Those rates have been approved by this Court in numerous other matters.

**PART V - RELIEF REQUESTED**

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

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 24<sup>th</sup> day of September 2025.



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Steven L. Graff / Matilda Lici

**AIRD & BERLIS LLP**

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

**Steven L. Graff** (LSO# 31871V)

Tel: (416) 865-7726  
Email: [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)

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

Tel: (416) 865-3428  
Email: [mlici@airdberlis.com](mailto:mlici@airdberlis.com)

*Counsel for TDB Restructuring Limited, in its  
capacity as court-appointed receiver of  
2750876 Ontario Inc.*

## SCHEDULE “A”

### LIST OF AUTHORITIES

1. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#).
2. *Canwest Global Communications Corp.*, [2010 ONSC 2870](#).
3. *Look Communications Inc. v. Look Mobile Corporation* (2009), [2009 CanLII 71005](#) (Ont Sup Ct J).
4. *Nortel Networks Inc.*, [2022 ONSC 6680](#).
5. *Royal Bank of Canada v. Soundair Corp.* (1991), [1991 CarswellOnt 205](#) (ONCA).
6. *Sherman Estate v. Donovan*, [2021 SCC 25](#).
7. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#).
8. *Target Canada Co. (Re)*, [2015 ONSC 7574](#).
9. *Terrance Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#).
10. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#).

## **SCHEDULE “B”**

### **TEXT OF STATUTES, REGULATIONS & BY-LAWS**

*Courts of Justice Act, [R.S.O. 1990, c. C.43](#)*

#### **Vesting orders**

**100** A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

#### **Documents public**

**137** (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

#### **Sealing documents**

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

**405 ST. DAVID STREET INVESTMENTS INC.**  
Applicant

and

**2750876 ONTARIO INC.**  
Respondent

Court File No. CV-24-00733110-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**FACTUM OF THE MOVING PARTY,  
TDB RESTRUCTURING LIMITED  
(Motion returnable October 3, 2025)**

**AIRD & BERLIS LLP**

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

**Steven L. Graff** (LSO# 31871V)

Tel: (416) 865-7726

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

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

Tel: (416) 865-3428

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

Counsel for TDB Restructuring Limited, in its  
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