Court File No.: CL-26-00000173-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE RECEIVERSHIP OF

1001665935 ONTARIO INC.

of the City of Toronto, in the Province of Ontario

APPLICATION UNDER s 243(1) of the *Bankruptcy and Insolvency Act,* RSC 1985, c B-3, as amended, and s 101 of the *Courts of Justice Act,* RSO 1990, c C.43, as amended

FACTUM OF THE RECEIVER
(MOTION FOR DISTRIBUTION AND DISCHARGE ORDER)

October 20, 2026

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TO: **THE SERVICE LIST**

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PART I - INTRODUCTION

1. Richter Inc. ("**Richter**"), in its capacity as Court-appointed receiver and manager (the "**Receiver**") of 1001665935 Ontario Inc. (the "**Debtor**" or "**ResidualCo**"), brings this motion for (i) an amendment to the distribution and claims procedure order granted in this proceeding dated July 10, 2026 (the "**Distribution and Claims Procedure Order**") (the amended and restated order being the "**A&R Distribution Order**"), clarifying that the amount to be distributed in priority to Export Development Canada ("**EDC**") under a senior secured promissory note (the "**Senior Note**") shall include certain enforcement costs incurred by EDC, which form part of the obligations owing to EDC under the Senior Note, and (ii) an order (the "**Distribution and Discharge Order**"), among other things:

(a) approving the first supplement to the Second Report of the Receiver dated July 8, 2026 (the "**First Supplement**") and the Third Report of the Receiver dated October 15, 2026 (the "**Third Report**"), and the activities described therein;

(b) approving the fees and disbursements of the Receiver and those of its counsel, McMillan LLP ("**McMillan**"), including all remaining fees and disbursements;

(c) declaring that certain claims asserted by Pacer Air Freight Ltd. ("**Pacer**") against the former debtor in this proceeding, Synaptive Medical Inc. ("**Synaptive**") were transferred to the Debtor pursuant to the Approval and Reverse Vesting Order granted in this proceeding dated July 10, 2026 (the "**ARVO**"), such that the claims asserted against Synaptive are properly asserted, if at all, against the Debtor;

(d) authorizing various distributions from the Receivership estate;

(e) authorizing and directing the Receiver to assign the Debtor into bankruptcy;

(f) discharging the Receiver as the receiver and manager of the Debtor; and

(g) releasing Richter from any and all liability in relation to its role as Receiver, save and except for any gross negligence or wilful misconduct on the Receiver's part.

2. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Third Report.

PART II - SUMMARY OF FACTS

3. Synaptive is a privately held medical device and technology company specializing in hardware and software products focused on surgical planning and navigation, robotic digital microscopy, and magnetic resonance imaging. Synaptive's business and the history of these proceedings are set out more fully in the Pre-Filing Report of the Proposed Receiver dated April 27, 2026 (the "**Pre-Filing Report**"), the First Report of the Receiver dated May 7, 2026 (the "**First Report**"), the Second Report of the Receiver dated June 30, 2026 (the "**Second Report**"), and the Third Report.[1]

4. This receivership proceeding was commenced by Synaptive's senior secured creditor, Export Development Canada ("**EDC**") following certain defaults. On April 28, 2026, this Court granted an order appointing Richter as receiver and manager, without security, of all of the assets, undertakings and properties of Synaptive Medical Inc. ("**Synaptive**" or the "**Company**").[2]

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[1] Pre-Filing Report of the Proposed Receiver dated April 27, 2026 ("**Pre-Filing Report**"), paras 9-12; First Report of the Receiver dated May 7, 2026 ("**First Report**"), paras 2 and 11-17; Third Report, para 2.
[2] Order of Dietrich J dated April 28, 2026 [Receivership Order]; Third Report, para 1.

A. Sales Process & ARVO transaction

5. In May 2026, this Court approved a sale and investment solicitation process in respect of Synaptive's business, which was carried out in May and June 2026. The process was very successful and resulted in multiple qualified bidders proceeding to an auction. The auction resulted in a successful bid that contemplated the acquisition of Synaptive through a reverse vesting order transaction.[3]

6. The Honourable Justice Dietrich granted an approval and reverse vesting order dated July 10, 2026 (the "**ARVO**") in respect of the successful bid. As is customary in a reverse vesting transaction, the ARVO provided for the issuance of new shares in Synaptive to the purchaser and the vesting of certain of its liabilities to ResidualCo. The ARVO transaction closed on August 4, 2026. The Receiver subsequently filed the certificate delivered under the ARVO to the Court on August 14, 2026. Following closing, Synaptive emerged from this receivership proceeding. ResidualCo remains subject to this receivership proceeding.[4]

B. The Distribution & Claims Procedure Order

7. The ARVO transaction was expected to generate significant proceeds, sufficient to pay out the priority claims against Synaptive's estate as well as all of its senior secured debt (owed to EDC) and part of its junior secured notes. Therefore, also on July 10, 2026, the Court granted the Distribution and Claims Procedure Order, which among other things: (i) established a negative notice claims procedure to identify and quantify claims of holders of the subordinated secured promissory notes issued by Synaptive on June 26, 2025 (the "**Junior Notes**"), (ii) set August 5, 2026 as the claims bar date (the "**Claims Bar Date**"), and (iii) authorized certain distributions from

[3] Third Report, paras 4-6.
[4] Third Report, paras 6 and 14.

the Receivership estate ranking in priority above the Junior Notes, but not the Junior Notes themselves.[5]

8. Through inadvertence, the form of Distribution and Claims Procedure Order that was granted by the Court did not expressly address one component of EDC's senior secured debt. Specifically, the General Security Agreement that secures the Senior Note in favour of EDC provides that EDC's enforcement costs, as well as interest accruing thereon, form part of the senior secured obligations.[6]

9. Pursuant to the Distribution and Claims Procedure Order, the Receiver implemented the Junior Claims Process and delivered Statements of Accepted Claim to each Junior Noteholder (as defined in the A&R Distribution Order) in accordance with the Court-approved process. The Receiver completed the notice process and no Notices of Dispute of Claim were received by the Claims Bar Date. Accordingly, the claims set out in the Statements of Accepted Claim are deemed to be accepted and constitute Proven Junior Noteholder Claims. The Receiver has therefore finalized the quantum of all Proven Junior Noteholder Claims and is in a position to proceed with distributions to Junior Noteholders in accordance with the priorities established by the Court.[7]

C. The Pacer Claim

10. Prior to the receivership, Synaptive had certain warehousing arrangements with Pacer Air Freight Ltd. ("**Pacer**"). Following the Court's granting of the ARVO, in September 2026, Pacer commenced an action before the Ontario Superior Court of Justice against Synaptive in respect of certain contractual claims allegedly arising prior to the ARVO (the "**Pacer Claim**"). The Receiver

[5] Third Report, para 7.
[6] Third Report, paras 73-74; Senior General Security Agreement (Exhibit "I" to Affidavit of Jessica Markic sworn April 24, 2026).
[7] Third Report, paras 56-58.

takes the view that the liabilities alleged in the Pacer Claim, if existing, were transferred from Synaptive to ResidualCo by operation of the ARVO.[8]

D. The BuildNS Funds

11. The Receiver previously reported to the Court that, immediately following its appointment, a payment in the amount of $302,742.72 was received in Synaptive's bank account from BuildNS (the "**BuildNS Funds**"), the owner of a health care project in Nova Scotia for which Synaptive installed certain MRI equipment as a contractor prior to the receivership. The funds represent a 10% statutory holdback under Nova Scotia's *Builder's Lien Act* (the "***Builder's Lien Act***") in favour of unpaid subcontractors.[9]

12. The Receiver is only aware of one subcontractor for the BuildNS project, being Health Care Solutions Inc. ("**HCS**"). HCS is owed over $1 million in respect of its subcontract for the project. It has provided the Receiver with a statutory declaration setting out its work completed on the project, the status of its accounts, and the absence of any other known subcontractor who might have a claim to such funds.[10]

E. The Federal Government's position on WEPPA entitlements

13. Many of Synaptive's employees were terminated immediately following the appointment of the Receiver. The Receiver promptly filed applications on their behalf with the relevant Federal Government agency for relief under the Wage Earner Protection Program ("**WEPP**"). Following a long delay in processing the claims, the relevant agency has denied the employees' WEPP claims. The basis of the Government's position appears to be that the ARVO had the effect of negating the

[8] Third Report, paras 46-55.
[9] Third Report, paras 67-68.
[10] Third Report, paras 69-70.

employees' entitlement based on the criteria set out under the *Wage Earner Protection Program Act*. Details of the Government's position are set out in correspondence with the Receiver included in the Third Report.[11]

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

14. The relief sought by the Receiver in this motion raises the following issues of law:

(a) Should the Distribution & Claims Procedure Order be amended to reflect EDC's enforcement costs?

(b) Is the Pacer claim subject to the terms of the ARVO?

(c) Should the BuildNS Funds be released to HCS?

(d) Should the distribution of the Receivership estate's funds be approved?

(e) Should the Third Report and the fees of the Receiver and McMillan be approved?

(f) Should Richter be discharged from its duties as Receiver and a release be granted?

A. The Distribution & Claims Procedure Order should be amended

15. The Distribution and Claims Procedure Order permitted the Receiver to pay out the obligations to EDC in priority to the Junior Notes, but did not expressly include the enforcement costs in the priority. The Receiver is satisfied that, as of July 10, 2026, EDC was owed $182,447.44 plus interest in respect of enforcement costs.[12] At the commencement of the Receivership, the Receiver obtained an opinion of its counsel, McMillan, which confirmed the validity of the security

[11] Third Report, paras 39-41.
[12] Third Report, paras 73-74, 78.

held by EDC. The Receiver therefore seeks an amendment of the Distribution and Claims Procedure Order to provide for such amount.

16. No party will be prejudiced by this amendment, as the enforcement amounts have always formed a valid component of EDC's senior secured debt. No proceeds have yet been distributed to EDC pursuant to the Distribution and Claims Procedure Order and no proceeds have been distributed to any creditor with a claim ranking junior in priority to EDC's.[13]

B. The Pacer Claim is subject to paragraph 7 of the ARVO

17. Paragraph 7 of the ARVO provides, among other things, that upon the filing of the Receiver's certificate in respect of the ARVO transaction, "*all of Synaptive's right, title in and to the Excluded Liabilities shall be channeled to, assumed by and vested absolutely and exclusively in ResidualCo, and all of the Retained Assets shall be and are hereby forever released and discharged from such Excluded Contracts and Excluded Liabilities*".[14] Despite paragraph 7 of the ARVO, the Pacer Claim seeks $3 million in damages against *Synaptive*, rather than ResidualCo, for claims arising before the receivership and the ARVO.

18. The Receiver seeks this Court's declaration that the claims pleaded in the Pacer Claim lie, if at all, exclusively against ResidualCo. A court may, in its discretion, grant a declaration where it has jurisdiction to hear the issue, where the dispute before the court is real and not theoretical, where the party raising the issue has a genuine interest in its resolution, and where the respondent has an interest in opposing the declaration sought.[15] In interpreting a judicial order, a court should consider the text, context and purpose of the order based on: (i) the express language of the order;

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[13] Third Report, para 74.
[14] Third Report, para 6.
[15] *Ewert v. Canada*, 2018 SCC 30, [2018] 2 S.C.R. 165 at para 81.

(ii) the purpose of the terms of the order; (iii) the authority to make the order, including the statutory context and procedural rules; (iv) the circumstances surrounding the making of the order, including the events leading to the order; (v) the resolution of apparent inconsistencies between different terms; and (vi) the application of accepted principles of statutory and contractual interpretation to ascertain the intent of the ordering judge.[16]

19. It is the Receiver's view that the Pacer Claim breaches the ARVO by asserting a claim directly against Synaptive rather than against ResidualCo. The Receiver is not a party to the Pacer Claim and therefore does not seek to strike the claim or similar direct relief, which is a matter for the parties thereto. However, the Receiver does have an interest in upholding the efficacy and integrity of the ARVO, and reverse vesting orders generally, which the Ontario Court of Appeal has described as the "holy grail" that allows modern restructurings to function and permits the maximization of recoveries.[17]

20. The Receiver is mindful of a provision that was included in the ARVO at Pacer's request, preserving "whatever lien rights [Pacer] may have" pursuant to a warehousing agreement with Synaptive and the *Repair and Storage Lien Act*.[18] However, the Pacer Claim is not an assertion of any alleged "lien right" that might have been preserved. It is not a request for *in rem* relief against liened property.[19] It is instead a claim for damages for breach of contract. While Pacer's Statement of Claim describes contractual and statutory lien rights, it does not seek to enforce through the

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[16] *Aizic v. Natcan Trust Company*, 2025 ONCA 719 at para 27; *Kuang v Young*, 2023 ONSC 2429 at para 7; *Chippewas of Saugeen First Nation v South Bruce Peninsula (Town)*, 2024 ONCA 884 at para 168.
[17] *Third Eye Capital Corporation v Dianor Resources Inc.*, 2019 ONCA 508 at para 27.
[18] Third Report, paras 46-47; Appendix "G" to the Third Report (Statement of Claim issued by Pacer Air Freight Ltd. against Synaptive Medical Inc.) [Pacer Statement of Claim].
[19] Pacer Statement of Claim at paras 1, 36-46.

action the remedies against property that are available to a lienholder. It only asks for damages, against Synaptive. Such claims are barred by the ARVO.

21. As of the date of this factum, Pacer has not responded to this motion or advised that it takes any position on the declaratory relief being sought.

C. The BuildNS Funds should be released to HCS

22. The Receiver requests the Court's permission and direction to pay the BuildNS Funds to HCS. The Receiver and its legal counsel are of the view that the funds are properly impressed with a statutory trust under the *Builder's Lien Act* and do not form part of the receivership estate. HCS has provided reasonable proof to the Receiver of its entitlement to such funds and no other party has asserted any claim to such funds.[20]

D. The Court should direct the Receiver to make priority payments to terminated employees directly

23. The Distribution & Claims Procedure Order already permits and directs the Receiver to make certain priority payments, including payments to terminated employees pursuant to section 81.4 of the BIA. Usually, such payments are facilitated by the Federal Government agency that administers the WEPP, and the priority amounts held by a receiver are paid to the Government to indemnify its payment at first instance.[21]

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[20] Third Report, paras 69-71.
[21] Third Report, paras 76-77.

24. In this case, the Government has denied the WEPP applications of employees terminated in the Receivership and taken the position that, due to the operation of the ARVO, such employees do not meet the entitlement criteria to receive WEPP.[22]

25. The Receiver strongly disagrees with the position taken by the Federal Government. One implication of its denial of WEPP entitlements is that the usual mechanism by which priority amounts under section 81.4 of the BIA are paid is not available in this case. Accordingly, the Receiver requests the Court's permission and direction to make such payments to affected employees directly without the involvement of Federal Government agencies.[23]

E. The final distributions should be approved

26. Following the distributions contemplated in the Amended & Restated Distribution and Claims Procedure Order, the Receiver requests that this Court authorize certain distributions in the Receivership estate, as described in further detail in the Third Report and the Notice of Motion.

27. Specifically, the Receiver seeks approval of the following distribution of the remaining funds in the estate: (i) the reservation of $45,000 for the Bankruptcy Reserve, and (ii) after accounting for customer reimbursements and the settlement of all administrative and operational costs of the Receivership, the distribution of all remaining funds first to satisfy the Receiver's Charge (including fees and disbursements of the Receiver and McMillan), and second, *pro rata* to the Junior Noteholders in partial satisfaction of the Proven Junior Noteholder Claims.[24]

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[22] Third Report, paras 38-40.
[23] Third Report, paras 76-78.
[24] Third Report, para 78; Distribution and Discharge Order, para 7; A&R Distribution Order, para 14.

28. The Receiver submits it is appropriate to seek this Court's approval of the foregoing distributions for the following reasons:

(a) the priority of all prior-ranking claims and charges has been established by prior orders of this Court, and the proposed distributions are consistent with those priorities;

(b) the Proven Junior Noteholder Claims (as defined in the A&R Distribution Order) have been finally and conclusively determined through the Court-approved claims procedure, with no outstanding disputes; and

(c) the proposed bankruptcy of ResidualCo will facilitate an efficient and orderly wind-down of the Debtor's remaining affairs, avoiding the need for further Court attendances.[25]

F. The First Supplement, the Third Report and Professional Fees Should be Approved

The First Supplement and the Third Report

29. The activities of the Receiver, as set out in detail in the First Supplement and the Third Report, were all necessary and undertaken in good faith in furtherance of the Receiver's duties and powers pursuant to the Receivership Order and the BIA. The Receiver submits that such activities should be approved by this Court.

Professional Fees

[25] Notice of Motion, paras 3(r)-(s).

30. The Receiver is seeking approval of its fees and disbursements for the period from April 22, 2026 to October 9, 2026 (the "**Richter Fee Period**"), and those of McMillan from April 22, 2026 to September 30, 2026 (the "**McMillan Fee Period**"), in connection with the performance of their duties during these proceedings.[26]

31. The total fees and disbursements of the Receiver during the Richter Fee Period amount to $354,990 and $2,223.70, respectively, each excluding sales tax. The affidavit of Karen Kimel sworn on October 14, 2026 includes details of the Richter accounts.[27]

32. The total fees and disbursements of McMillan during the McMillan Fee Period amount to $445,468.45 and $1,669.65, respectively, each excluding sales tax. The affidavit of Tushara Weerasooriya sworn on October 15, 2026 includes details of the McMillan accounts.[28]

33. In addition, the Receiver and McMillan will incur some additional fees and disbursements after the Richter Fee Period and the McMillan Fee Period in connection with ancillary matters that must be completed with respect to this proceeding. The Receiver estimates additional fees and disbursements of up to $60,000, and McMillan estimates additional fees and disbursements of up to $40,000, each excluding applicable taxes, for the period from their respective fee period end dates to the date of the Receiver's discharge.[29]

[26] Third Report, para 27.
[27] Third Report, para 28.
[28] Third Report, para 29.
[29] Third Report, paras 31-32.

34. The accounts of the Receiver and McMillan meet the technical requirements established by prior case law: [30]

(a) the accounts disclose in detail the name of each person who rendered services, the date on which the services were rendered, the time expended each day, the rate charged, and the total charges for each of the categories of services rendered can be easily discerned;

(b) notwithstanding the redaction of some entries for the preservation of solicitor-client privilege, the accounts are in a form that can be easily understood by those affected by the receivership or by the judicial officer required to assess the accounts; and

(c) the Receiver's and McMillan's accounts are verified by affidavits.

35. A Receiver is entitled to be paid its fees and disbursements, along with those of its counsel, where the amount charged is fair and reasonable in the circumstances. As set out in *Belyea v. Federal Business Development Bank*, courts will consider the following factors in making this determination: [31]

(a) the nature, extent and value of the assets handled;

(b) the complications and difficulties encountered;

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[30] *Confectionately Yours Inc., Re*, [2002] O.J. No. 3569 (C.A.) [*Confectionately Yours*] at paras 37-38; Affidavit of Karen Kimel, sworn October 14, 2026 (Appendix "C" to the Third Report); Affidavit of Tushara Weerasooriya, sworn October 15, 2026 (Appendix "D" to the Third Report).
[31] *Belyea v. Federal Business Development Bank*, [1983] N.B.J. No. 41 (C.A.) at para 9 [*Belyea*]; *Confectionately Yours* at 42.

(c) the degree of assistance provided by the company, its officers or its employees and the time spent;

(d) the Receiver's knowledge, expertise and skill;

(e) the diligence and thoroughness displayed;

(f) the responsibilities assumed;

(g) the results of the receiver's efforts; and

(h) the cost of comparable services when performed in a prudent and economical manner.

36. Any assessment of whether the Receiver's account is fair and reasonable must focus on the circumstances as they existed at the time the fees and disbursements were incurred, and not with the benefit of hindsight.[32]

37. The Receiver has acted in good faith and in the interest of the creditors of the Debtor. Over the course of the Receivership proceedings, the Receiver has exercised the reasonable care, supervision and control that an ordinary person would have given to Synaptive and ResidualCo if it were his or her own company.[33]

[32] *BT-PR Realty Holdings Inc. v Coopers & Lybrand*, [1997] O.J. No. 1097 (Sup. Ct. (Commercial List)) [*BT-PR Realty Holdings*] at para 22.
[33] *BT-PR Realty Holdings* at para 22; Third Report, paras 25-26.

38. The fees and disbursements of the Receiver and McMillan reflect the firms' standard billing rates (or below) and were validly incurred in accordance with the provisions of the Receivership Order.[34]

G. Richter Should be Discharged from its Duties as Receiver

39. Following the distribution of the proceeds of the estate as set out above, and activities ancillary thereto, there are no further steps necessary for the Receiver to have completed its mandate. The Receiver therefore seeks a discharge upon filing a certificate confirming the completion of its duties.

40. Richter also seeks a release from any and all liability that it now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Richter while acting in its capacity as Receiver of the Debtor and as Receiver of Synaptive, save and except for any gross negligence or wilful misconduct on Richter's part.

41. The release is a standard term in the Commercial List model discharge order. As Justice Pattillo held in *Pinnacle Capital Resources Ltd. v. Kraus Inc.*, "in the absence of any evidence of improper or negligent conduct, the release should issue".[35] Accordingly, Richter respectfully requests that the release be granted.

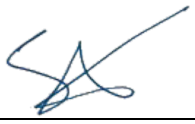
PART IV - ORDER REQUESTED

42. For the reasons set out above, the Receiver respectfully requests that the Court grant the relief sought on this motion.

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[34] Receivership Order, para 19; Affidavit of Karen Kimel, sworn October 14, 2026 (Appendix "C" to the Third Report); Affidavit of Tushara Weerasooriya, sworn October 15, 2026 (Appendix "D" to the Third Report).
[35] *Pinnacle v. Kraus*, 2012 ONSC 6376 (Commercial List) at para 47.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of October, 2026.



Tushara Weerasooriya/Stephen Brown-Okruhlik/Spencer Atin

SCHEDULE "A"

LIST OF AUTHORITIES

Case Law

1. *Aizic v. Natcan Trust Company*, 2025 ONCA 719
2. *Belyea v. Federal Business Development Bank*, [1983] N.B.J. No. 41 (C.A.)
3. *BT-PR Realty Holdings Inc. v Coopers & Lybrand*, [1997] O.J. No. 1097 (Sup. Ct. (Commercial List))
4. *Chippewas of Saugeen First Nation v South Bruce Peninsula (Town)*, 2024 ONCA 884
5. *Confectionately Yours Inc., Re*, [2002] O.J. No. 3569 (C.A.)
6. *Ewert v. Canada*, 2018 SCC 30, [2018] 2 S.C.R. 165
7. *Kuang v Young*, 2023 ONSC 2429
8. *Pinnacle v. Kraus*, 2012 ONSC 6376 (Commercial List)
9. *Third Eye Capital Corporation v. Dianor Resources Inc.*, 2019 ONCA 508

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 October 20, 2026

Signature

SCHEDULE "B"
RELEVANT STATUTES

1. *Courts of Justice Act*, R.S.O. 1990, c. C.43, s.101.

101(1) Injunctions and receivers
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.

2. *Bankruptcy and Insolvency Act*, s. 243.

243(1) Court may appoint receiver
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.

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Proceeding commenced at TORONTO

FACTUM OF THE RECEIVER
(Distribution and Discharge Motion)

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