CITATION: One Bloor West Toronto Group (The One) Inc. (Re), 2026 ONSC 1854
COURT FILE NO.: CV-25-00740512-00CL
DATE: 20260320

SUPERIOR COURT OF JUSTICE – ONTARIO (COMMERCIAL LIST)

RE: IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ONE BLOOR WEST TORONTO GROUP (THE ONE) INC. AND ONE BLOOR WEST TORONTO COMMERCIAL (THE ONE) GP INC.

BEFORE: KIMMEL J.

COUNSEL: *Brendan O'Neill, Mark Dunn and Jennifer Linde*, for the Monitor, Alvarez & Marsal Canada Inc.

Jeremy Dacks and Michael De Lellis, for the Secured Lenders

Ryan Hauk, for SKYGRiD Construction Inc.

David Im, Aviva Insurance Company of Canada

Gush Minhas, for CERIECO

Adam Slavens, for Tarion Warranty Corporation

Michaell Hochberg, for Core Architects Inc.

Jeffery A.L. Kriwetz, for Chateau Yorkville Corp.

HEARD: February 3, 2026 With Supplementary Written Submissions provided February 27, 2026

ENDORSEMENT
(SKYGRID HOLDBACK RELEASE ORDER)

The Motion

[1] Alvarez & Marsal Canada Inc. ("A&M"), in its capacity as Court-appointed monitor (in such capacity, the "Monitor") of One Bloor West Toronto Group (The One) Inc., One Bloor West Toronto Commercial (The One) GP Inc. and One Bloor West Toronto Commercial (The One) LP (collectively, the "Companies"), brought a motion returnable on February 3, 2026, seeking two orders:

a. an Order (the "Stay Extension Order"), among other things, (i) extending the Stay Period to and including September 25, 2026, (ii) approving the Third Report of the Monitor dated January 23, 2026 and the activities of the Monitor

described therein, (iii) approving the fees of the Monitor and its counsel, and (iv) approving the Gamma Settlement ; and

b. an Order (the "SKYGRiD Holdback Release Order"), among other things, authorizing the Companies to pay the SKYGRiD Holdback Amount (as defined below) to SKYGRiD Construction Inc. ("SKYGRiD"), the former interim construction manager for the Project.

[2] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Monitor's Factum dated January 29, 2026 and Supplementary Factum dated February 26, 2026 filed in support of this motion.

[3] The Monitor served this motion on a service list that was expanded to include known contractors and subcontractors not on the regular service list. Canada Revenue Agency, the Department of Justice Tax Law Section, and the Ministry of Finance (Ontario) Insolvency Unit were all served with the Monitor's motion materials, including the SKYGRiD Holdback Release Order. None of them, nor any other stakeholder, indicated any opposition to either of the orders sought by the Receiver prior to the hearing, and no one appeared at the hearing to raise any objections or concerns.

[4] The Stay Extension Order was granted, for reasons outlined in a short endorsement dated February 4, 2026.

[5] The court requested further submissions in relation to certain aspects of the SKYGRiD Holdback Release Order, therefore that aspect of the motion was taken under reserve pending the court's receipt of those further written submissions. Those submissions have now been received in the Monitor's Supplementary Factum. This endorsement provides the reasons for the court's decision to grant the SKYGRiD Holdback Release Order, with some modifications to the specific language proposed in paragraphs 6 and 8 of the Monitor's draft order.

The Context for the SKYGRiD Holdback Release Order

[6] The Monitor's original factum filed for this motion provided the background and context for the requested SKYGRiD Holdback Release Order, which is as follows:

a. A&M was appointed as Receiver by Order dated October 18, 2023. The Receiver's core mandate (which has continued since A&M's transition to Monitor) was to facilitate construction of the Project to maximize stakeholder recoveries.

b. In early 2024, the Receiver had determined that Mizrahi Inc. ("MI"), the Project's developer and general contractor at the time and related party to one of the Project's two equity owners, should be replaced. However, a new general contractor could not be engaged at that time because the Receiver planned to conduct a sale and investment solicitation process in respect of the Project (the "SISP") and it was important that a new purchaser or developer have the flexibility required to self-perform construction work or hire its preferred general

contractor. The Receiver therefore sought to engage a new construction manager to replace MI on an interim basis.

c. SKYGRiD was ultimately selected by the Receiver to act as interim construction manager. By agreeing to work on the Project on an interim basis without any certainty that it would complete the Project, SKYGRiD allowed the Receiver to facilitate ongoing construction with improved construction management processes, while retaining the flexibility required to conduct the SISP.

d. SKYGRiD acted as construction manager from March 13, 2024, to April 30, 2025 (the "SKYGRiD Era"), pursuant to a CCDC 5B 2010 Construction Management Contract - for Services and Construction between SKYGRiD and the Receiver dated June 5, 2024 (the "SKYGRiD CMA").

e. The SISP culminated in a transaction with Tridel Builders Inc. and certain of its affiliates (collectively, "Tridel"). To implement this transaction, in April 2025, among other things, the Receivership Proceedings were transitioned to proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") (the "CCAA Proceedings"), the Receiver was discharged (except for the performance of certain Receiver Incidental Matters), A&M was appointed as Monitor, and FAAN Advisors Group Inc. ("FAAN") was appointed as Chief Restructuring Officer ("CRO").

f. The SKYGRiD CMA allowed the Receiver to terminate SKYGRiD on notice, a right that was ultimately exercised by the Receiver to facilitate the transaction with Tridel. The termination of the SKYGRiD CMA became effective on the Effective Date of May 1, 2025.

g. Tridel took over as project manager, construction manager and sales manager, effective May 1, 2025 (the "Effective Date"), and construction has continued uninterrupted during the CCAA Proceedings.

h. During the SKYGRiD Era, a total of $1,387,952.94 (exclusive of HST) (the "SKYGRiD Holdback Amount") was retained from SKYGRiD in accordance with the SKYGRiD CMA and the Provincial Lien Legislation (defined below). The SKYGRiD Holdback Amount only includes amounts that have been retained from SKYGRiD specifically in connection with the SKYGRiD CMA, and does not include any amounts that have been retained in respect of subcontractors and/or suppliers engaged on the Project during the SKYGRiD Era.

i. SKYGRiD played an important role in the Receivership Proceedings by accepting a mandate on an interim basis and moving the Project forward. The progress of the Project, and by extension stakeholder recoveries, would likely have been impaired if SKYGRiD (or a similarly qualified construction firm) had not been willing and able to serve as interim construction manager.

j. Permitting the timely release of the SKYGRiD Holdback Amount will recognize this contribution and the important work that SKYGRiD has completed, and

potentially incentivize and encourage other contractors to accept similar insolvency mandates.

k. The SKYGRiD Holdback Amount relates solely to amounts paid to SKYGRiD in relation to work performed by its own forces or in relation to its fees as construction manager. Accordingly, the Monitor does not believe that other subcontractors or suppliers could reasonably claim against the SKYGRiD Holdback Amount. Moreover, SKYGRiD's work on the Project ended more than 250 days prior to this motion and neither the Monitor nor SKYGRiD is aware of any parties that seek (or could seek) to assert a claim against the SKYGRiD Holdback Amount. Furthermore, notice of the motion for approval of the release of the SKYGRiD Holdback Amount has been given to all known subcontractors, suppliers and lien claimants on the Project and no one opposes the granting of this relief.

l. Without the proposed SKYGRiD Holdback Release Order, SKYGRiD will likely not be paid in full for its work on the Project for several years.

[7] Pursuant to the proposed SKYGRiD Holdback Release Order, the Companies seek the authority to release the SKYGRiD Holdback Amount. Such release, if authorized, will be subject to the execution of such documentation by SKYGRiD as may be requested by the Monitor, including a holdback release agreement in form and substance satisfactory to the Monitor.

Specific Provisions of the Proposed SKYGRiD Holdback Release Order

[8] Most of the provisions of the proposed order are standard and non-controversial. Paragraphs 7 and 8 deal with matters that have been questioned in recent cases dealing with similar provisions. At the court's invitation, these have been elaborated upon in the Monitor's Supplementary Factum.

Construction Lien Considerations

[9] Following the hearing on February 3, 2026, the Monitor proposed simplified language for paragraph 7 of the Proposed SKYGRiD Holdback Release Order, as follows:

> 7. THIS COURTS ORDERS that, upon execution of the Holdback Release Agreement between the Companies and SKYGRiD, the SKYGRiD CMA shall be deemed to have been complete pursuant to the Provincial Lien Legislation as of the Effective Date and any lien rights of SKYGRiD or any other person relating to the SKYGRiD Holdback Amount shall be deemed to have expired.

[10] The SKYGRiD Holdback Release Order is being sought to solve a problem that arises because of the length of construction of the Project and the version of the *Construction Act*,

R.S.O., c. C.30, that was in force when the first contract relating to the Project was executed in 2014 and therefore applies to this Project (the "Provincial Lien Legislation"[1]).

[11] This earlier version of the Provincial Lien Legislation authorizes, under s. 26, the release of holdback after all liens that may be claimed against that holdback have expired or been satisfied, discharged or otherwise provided for. Pursuant to s. 31(3), the lien rights available to a subcontractor and/or supplier expire at the conclusion of the 45-day period following, among other things, publication of the certificate of substantial performance of the underlying contract (i.e., the SKYGRiD CMA) or, where no such publication has occurred, the date on which they last supplied services or materials.

[12] One of the issues that this order seeks to resolve is that, even though the SKYGRiD CMA has been terminated in accordance with its terms, substantial performance (within the meaning of the Provincial Lien Legislation) related to the SKYGRiD CMA will not be achieved until the overall Project is substantially complete and ready for use, which is not expected to occur until early 2028. Further, many of the subcontractors and suppliers who supplied services and materials during the SKYGRiD Era continue to supply services and materials in connection with the construction of the Project on an ongoing basis.

[13] This means that the statutory requirements under the Provincial Lien Legislation for the release of the SKYGRiD Holdback Amount that was retained from SKYGRiD in accordance with the SKYGRiD CMA have not technically been satisfied. That said, SKYGRiD's work was completed around the Effective Date, many more than 45 days prior to this motion, and its lien rights have expired. Importantly, the SKYGRiD Holdback Amount relates solely to work performed by SKYGRiD's own forces and SKYGRiD will be paid in full once the SKYGRiD Holdback Amount is released to it.

[14] The holdback amounts relating to work performed by subcontractors during the SKYGRiD Era have and will continue to be maintained in accordance with the Provincial Lien Legislation, unless released to a subcontractor in accordance with the Holdback Release Order, once a subcontractor has completed its scope of work, or otherwise in accordance with the Provincial Lien Legislation (or any applicable amendments thereto). From a practical perspective, there is little to no risk that a subcontractor will assert a claim against the SKYGRiD Holdback Amount. The SKYGRiD Era ended more than 250 days ago and no subcontractor has asserted a lien claim in that period. All of the potentially affected subcontractors were served with the motion for approval of the SKYGRiD Holdback Release Order and none have objected or taken any position.

[15] The Legislature has amended the *Construction Act* to address the very issues that SKYGRiD faces in this case by permitting the release of holdback on an annual or phased basis. Unfortunately, these amendments do not apply to the Project because it began in 2014, but the

[1] The relevant parts of this legislation were amended on July 1, 2018.

proposed SKYGRiD Holdback Release Order seeks to accomplish the same objective that the amendments achieve.

[16] Earlier in this same proceeding, on June 11, 2024, this court granted a similar Holdback Release Order, which permitted the release of holdbacks to subcontractors: see *KEB Hana Bank v. Mizrahi Commercial (The One) LP et al.*, 2024 ONSC 3739, 14 C.B.R. (7th) 373, at paras. 1, 5, 29-34, and 118. As is now the case with the SKYGRiD Holdback Release Order, the original Holdback Release Order similarly authorized the release of certain holdback amounts owing to subcontractors relating to the period MI served as general contractor of the Project without technical compliance with the applicable statutory requirements for doing so under the Provincial Lien Legislation because there was no certificate of substantial completion and some subcontractors were continuing to supply services and materials to the Project.

[17] The Holdback Release order was also not opposed by any party on the service list and was supported by the senior secured lenders. The terms of the now proposed SKYGRiD Holdback Release Order are substantially similar to those of the Holdback Release Order, subject to certain conforming changes to reflect the transition in this case from a Receivership to CCAA Proceedings and the fact that holdback is being released to a contractor rather than a subcontractor.

[18] Osborne J.'s rationale for granting the original Holdback Release Order was based on the then Receiver's recommendation, and summarized as follows:

a. Since its appointment, the Construction Manager had been meeting with trades and suppliers to transition their contracts previously held with the Former Developer, to new subcontracts with the Construction Manager. Certain subcontractors required that their proportional entitlement to the statutory holdback under the Provincial Lien Legislation be released, as a condition to executing new subcontracts with SKYGRiD. The holdback amount was approximately $13 million (the "Initial Subcontract Holdback Amount") for work performed prior to the Effective Date.

b. The order authorized the Receiver to pay the Holdback Parties their proportionate share of the Initial Subcontract Holdback Amount in accordance with the Holdback Schedule, as well as to pay any post Effective Date holdback amounts owing to subcontractors where such Holdback Party had fully completed its scope of work and was not required for continued construction.

c. The proposed order would facilitate the entry by the Construction Manager into new sub-contracts and otherwise contribute to the continuation of the construction of the Project for the benefit of stakeholders. In the court's view, disruption to or suspension of construction was to be avoided, if at all possible.

[19] The operative (now slightly simplified) version of paragraph 7 of the SKYGRiD Holdback Release Order deems the SKYGRiD CMA to be complete as of the Effective Date upon the signing of the SKYGRiD Holdback Release Agreement, and deems any lien rights of SKYGRiD or any other person relating to the SKYGRiD Holdback Amount to have expired.

[20] This is intended to satisfy the requirements of ss. 26 and 31(3) of the Provincial Lien Statute to allow the release of the SKYGRiD Holdback Amount to SKYGRiD, even though (as described above): (i) there has been no publication of the certificate of substantial performance because the Project is continuing under the new general contractor, Tridel; and (ii) some of the same subcontractors that had previously supplied services or materials to the Project under the SKYGRiD CMA have continued to do so under their contracts with Tridel and their lien rights in respect of the Project have not expired.

[21] Notably,

a. any other potential lien claimants continue to have whatever lien rights they have in respect of the services and materials that they supplied and they have not objected to the proposed SKYGRiD Holdback Release Order;

b. the SKYGRiD Holdback Amount is only in respect of SKYGRiD's own work, and its lien rights have expired, its contract has been terminated, and it is not continuing to perform any work.

[22] In these circumstances, the Monitor and SKYGRiD, supported by the secured lenders and others, and without any opposition, asks this court to exercise its jurisdiction under s. 11 of the CCAA to authorize the release of the SKYGRiD Holdback Amount in accordance with terms of paragraph 7 of the proposed SKYGRiD Holdback Release Order.

[23] The CCAA grants broad discretion to the supervising court. Section 11 of the CCAA confers "broad" and "vast" discretion on this Court to make any order that it considers appropriate in the circumstances: see *9354-9186 Québec inc. v. Callidus Capital Corp*., 2020 SCC 10, [2020] 1 S.C.R. 521, at para. 48; *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379, at para. 19; *Canada v. Canada North Group Inc.*, 2021 SCC 30, [2021] 2 S.C.R. 571, at para. 21. That discretion is constrained only by restrictions set out in the CCAA itself, and the requirement that the order made must further the remedial objectives of the CCAA and be guided by the baseline considerations of appropriateness, good faith, and due diligence: *Callidus*, at paras. 67-70. The court will specifically consider whether the order sought will "usefully further efforts to achieve the remedial purpose of the CCAA": *Century Services*, at para. 70.

[24] The Holdback Release Order and various other Construction Orders were granted in 2024[2] to ensure that the substantive rights of subcontractors and suppliers were preserved without

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[2] The Construction Orders were continued in the CCAA Proceedings pursuant to the terms of the Initial Order granted in April 2025, and they each remain in force. They include:

a) March 7, 2024: a Construction Continuance Order (transitioning from MI to SKYGRiD) and a Lien Regularization Order (establishing a court-supervised streamlined process to replace the technical requirements for preserving and perfecting a lien under the Provincial Lien Legislation to, among other things, avoid the risk that liens registered on title to the Project would impact the Receiver's access to funding under the Receivership Funding Credit Agreement, without prejudicing the substantive lien rights

unduly interfering with the restructuring of the Project. This, in turn, facilitated the uninterrupted and expeditious construction on the Project for the benefit of stakeholders, all of whom have been able to rely on the certainty provided by the Construction Orders. All of these Construction Orders involved the court exercising its discretion under s. 11 of the CCAA to alter the statutory scheme and statutory requirements under the Provincial Lien Legislation. The SKYGRiD Holdback Release Order serves the same remedial objectives as those prior orders and there has been no suggestion that it prejudices any other stakeholder.

[25] Granting the relief in paragraph 7 of the SKYGRiD Holdback Release Order will facilitate the orderly payment of amounts due to a contractor that played a pivotal role in this restricting process, keeping it going while the Monitor found a new general contractor in 2025. This was a key objective of the Construction Orders that have governed these CCAA Proceedings.

[26] The need for certainty for contractors who step up and agree to become involved in a project that is subject to a court supervised restructuring is essential for a successful restructuring. They should not have to wait to be paid after their work is completed because of technical non-compliance with statutory requirements whose objectives are not being served in the restructuring context. This is the type of situation that the broad discretion granted to the court under s. 11 of the CCAA is intended to address.

[27] CCAA courts have previously exercised that same jurisdiction to fashion appropriate procedures and solutions governing the interplay between insolvency proceedings and the Provincial Lien Legislation: see, for example, the Lien Regularization Order; *Comstock Canada Ltd. (Re)* (7 August 2013), Toronto, CV-13-10181-00CL (Ont. S.C.); *Carillion Canada Inc. et al* (14 March 2018), Toronto, CV-18-590812-00CL (Ont. S.C.) (Lien Regularization Order) & *Carillion Canada Inc. et al* (23 May 2019), Toronto, CV-18-590812-00CL (Ont. S.C.) (Amended Lien Regularization Order).

[28] The broad discretion under s. 11 of the CCAA is exercised to facilitate successful restructurings. This tool has been and can be used by the court in appropriate cases to alter statutory rights and requirements affecting stakeholders and third parties, through lien regularization and holdback release orders (discussed above). It is also used in granting many examples of the relief contained in CCAA initial orders and amended and restated initial orders and discharge orders that prevent and/or release statutory and other claims (except certain ones that are expressly restricted from such relief), and alter the priorities of certain prior statutory

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granted by the Provincial Lien Legislation): see *KEB Hana as Trustee v. Mizrahi Commercial (THE ONE) LP et al.*, 2024 ONSC 1678 ("*Lien Regularization Order*").

b) June 24, 2024: Holdback Release Order: see *KEB Hana Bank v. Mizrahi Commercial (The One) LP et al.*, 2024 ONSC 3739, 14 C.B.R. (7th) 373.

c) August 12, 2024: Lien Claims Resolution Order (that established a procedure for resolving lien claims asserted pursuant to the Lien Regularization Order): see *KEB Hana Bank v. Mizrahi Commercial (The One) LP et al.*, 2024 ONSC 4488, 20 C.B.R. (7th) 385.

charges and liens (for example, through the approval of expanded stays of proceedings, common charges and releases).

[29] The ability to ask the court to exercise its discretion under s. 11 of the CCAA is not a licence to ignore the existing laws in insolvency and restructuring proceedings. In exercising its broad jurisdiction under the CCAA to make any order that is appropriate in the circumstances in furtherance of advancing a restructuring, the court must in each instance be satisfied that the order being made: (i) is not restricted by the CCAA itself, (ii) usefully furthers the remedial objectives of the CCAA, and (iii) is consistent with the baseline considerations of appropriateness, good faith, and due diligence: see *Callidus*, paras. 67-70; *Century Services*, at para. 70. I am satisfied that the simplified language proposed for paragraph 7 of the SKYGRiD Holdback Release Order meets these objectives and should be granted, for the reasons discussed above.

[30] I have spent some time addressing the court's jurisdiction under s. 11 of the CCAA to grant this type of order deeming compliance with statutory requirements that cannot be met due to constraints that are caused by the insolvency proceedings because this court's jurisdiction to do this has been questioned in some recent cases. I have determined that the jurisdiction exists where the court is satisfied that the case is an appropriate one in which to exercise its discretion, such as in this case. This could also have been a case in which the court might have resorted to its inherent jurisdiction and granted this order because the requirements of justice demanded it to address a gap in the legislation (which in the particular circumstances was subsequently addressed through legislative amendments). However, I need not rely on the court's inherent jurisdiction because I have determined that the relief is available through the exercise of the court's discretion under s. 11 of the CCAA.

Tax Considerations

[31] Similar considerations arise in connection with paragraph 8 of the SKYGRiD Holdback Release Order, which shields the Monitor and the CRO from potential personal liability that could arguably be imposed under certain Federal and Provincial tax statutes (collectively, the "Tax Statutes" or "Statutes").

[32] The proposed paragraph 8 orders and declares that:

> a. neither the Monitor nor the CRO shall constitute a "legal representative", "representative" or a "responsible representative" of any of the Companies or "other person" for the purposes of Section 159 of the *Income Tax Act* (Canada),[3] section 117 of the *Taxation Act, 2007* (Ontario),[4] Section 270 of the *Excise Tax Act* (Canada),[5] Sections 46 and 86 of the *Employment Insurance Act* (Canada),[6]

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[3] R.S.C. 1985, c. 1 (5th Supp.) ("ITA").
[4] S.O. 2007, c. 11, Sch. A.
[5] R.S.C. 1985, c. E-15.
[6] S.C. 1996, c. 23.

Section 22 of the *Retail Sales Tax Act* (Ontario),[7] Section 107 of the *Corporations Tax Act* (Ontario),[8] or any other similar federal, provincial or territorial tax legislation (collectively, the "Statutes"); and

b. the Monitor and the CRO, in facilitating the payment of the SKYGRiD Holdback Amount by the Companies in accordance with this Order, are not "distributing", nor shall they be considered to have "distributed", such funds for the purposes of the Statutes;

c. the Monitor and the CRO shall not incur any liability under the Statutes for facilitating the payment of the SKYGRiD Holdback Amount in accordance with this Order, and the Monitor and the CRO shall not have any liability for any of the Companies' tax liabilities regardless of how or when such liabilities may have arisen; and

d. the Monitor and the CRO are hereby forever released, remised and discharged from any claims against them under or pursuant to the Statutes or otherwise at law arising as a result of the payment of the SKYGRiD Holdback Amount.

[33] Paragraph 8 provides specific protections in relation to the Tax Statutes because those statutes arguably include provisions that are broad enough to impose personal liability on the Monitor or the CRO if the SKYGRiD Holdback Amount is distributed without obtaining a clearance certificate. If the Companies have unpaid tax debts, this could result in the Monitor or CRO being exposed to liability if they implement the payment of the SKYGRiD Holdback Amount in accordance with the SKYGRiD Holdback Release Order.

[34] For example, section 159 of the ITA provides that any "legal representative" of a taxpayer, *other than a trustee in bankruptcy*, can be personally liable if it distributes property without first obtaining a clearance certificate from the CRA, to the extent of the value distributed. The definition of "legal representative" under s. 248 of the ITA is broad enough to capture the Monitor and CRO when dealing with a debtor's property. Each of the Tax Statutes includes a similar mechanism and risk of liability.

[35] Taken to its extreme, s. 159 of the ITA and similar provisions in other Tax Statutes could have the effect of frustrating distributions to secured creditors in CCAA and receivership proceedings, notwithstanding that the distributions have priority at law over the relevant tax authority. This is because these legal representatives would be concerned about the prospect of potential personal liability if they were to make a distribution.

[36] The CRA itself has recognized this issue, and stated the operation of subsections 159(2) and (3) of the ITA is not intended to give to the Crown a priority that it would not have otherwise: see CRA, Views - Internal Interpretation 2012-045725117, "Application of s. 159 to executor

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[7] R.S.O. 1990, c. R.31.
[8] R.S.O. 1990, c. C.40.

who distributes property" (27 March 2013); CRA, Directive RCD-01-01, "Person Acting for Another" (1 January 2001). However, these policy positions are not binding, with the result that the theoretical prospect of a taxing authority asserting personal liability against court officers remains.

[37] Obtaining a clearance certificate each time a court officer is distributing money in accordance with a court order is not a realistic solution to this problem in insolvency situations. Not only can they take a long time to obtain, but more importantly, debtor companies are very often in tax arrears, which would render a clearance certificate unavailable to a court officer. This creates a quandary if there are other creditors of the debtors whose claims have priority over any claims arising under the Tax Statutes.

[38] The Superior Court of Quebec grappled with this issue of the unavailability of a clearance certificate in *9210-6905 Québec inc. (Proposition de),* 2015 QCCS 6559. That case involved a proposed distribution by a trustee appointed to act as an interim receiver under s. 47(1) of the *Bankruptcy and Insolvency Act,* R.S.C. 1985, c. B-3 ("BIA"). The trustee was covered by the definition of legal representative under s. 248 of the ITA, but was not appointed or acting as a trustee in bankruptcy under s. 159(2) of the BIA: they were technically not exempt from the requirement to obtain a clearance certificate. Over the CRA's objection, the Quebec Superior Court concluded, at paras. 17-23, that since an interim receiver can only be authorized to perform its duties if they are a trustee (licensed or appointed as such under ss. 2 and 47 the BIA), and because s. 215 of the BIA gives them relative immunity in the performance of their duties (absent leave of the court), the further immunity for trustees in bankruptcy under s. 159(2) should be extended to interim receivers.

[39] The Quebec Superior Court avoided the jurisdictional concerns raised by the CRA in *9210-6905 Québec inc.* regarding the court's authority to exempt the applicant from the requirement of obtaining a clearance certificate to avoid personal liability: it concluded that it had the jurisdiction to interpret the term "trustee in bankruptcy" in s. 159(2) of the ITA broadly to include a trustee appointed to act as in interim receiver under s. 47(1) of the BIA. On that basis, the distribution was authorized without the requirement of a clearance certificate (which was not available because of taxes known to be owing).

[40] The same logic that was applied in *9210-6905 Québec inc.* could be applied and extended to the Monitor for purposes of its potential exposure to liability under the ITA. Section 11.7 of the CCAA requires that the Monitor must also be a person who is a trustee within the meaning of s. 2(1) of the BIA, which, in turn, must be someone who is licenced or appointed under the BIA. The Monitor has relative immunity in the performance of its duties (without leave of the court, with the exceptions only of wilful misconduct and gross negligence) by virtue of the provisions of the Initial Order granted under the CCAA by which it was appointed. Thus, the term "trustee in bankruptcy" in s. 159(2) of the ITA could also be held to include a trustee appointed to act as a Monitor under s. 11.7 of the CCAA. However, this analogy does not go far enough in this case because some of the other Tax Statutes covered by paragraph 8 of the

proposed order do not have the same exemptions for a trustee in bankruptcy.[9] Further, the analogy does not extend to the CRO since there is no requirement that a CRO be a trustee in bankruptcy.

[41] While I have spent some time discussing the Quebec approach, it does not assist the Monitor in getting to the specific language that is being sought in paragraph 8. What this approach does demonstrate is that the court is not adverse to incorporating language into its orders in appropriate circumstances to protect insolvency professionals carrying out court-approved distributions that have been found to be appropriate, having regard to the interests and relative priorities, rights and entitlements of all stakeholders.

[42] The court strives to exercise its discretion under s. 11 of the CCAA in a manner that is consistent with the recognized objective of the harmonious interpretation of insolvency statutes in furtherance of the remedial objectives of insolvency laws: see *Urbancorp Cumberland 1 GP Inc. (Re)*, 2020 ONSC 7920, 86 C.B.R. (6th) 125), at paras. 23-24.

[43] There is no question that this court has the jurisdiction to protect its officers from liability. The Initial Order in this case - like virtually every order appointing a court officer - provides that the Monitor and the CRO cannot be personally liable except for gross negligence or wilful misconduct. This eliminates liability under any statute or common law principle that does not involve gross negligence or wilful misconduct.

[44] The Court of Appeal noted (citing from the model receivership order), a court officer "is not a legitimate target" for dissatisfied creditors. This "limited liability shield" allows for the "proper and orderly conduct" of the insolvency proceeding and avoids "unnecessary and unjustified proceedings": see *Potentia Renewables Inc. v. Deltro Electric Ltd*., 2019 ONCA 779, 73 C.B.R. (6th) 165, at para. 48. Providing a limited liability shield against the potential for court officers incurring personal liability for carrying out court-approved actions is the rationale for this type of relief having been granted in other cases and the same rationale applies in this case.

[45] Examples of other cases in which orders contained language similar to paragraph 8 of the proposed SKYGRiD Holdback Release Order include: the CCAA Plan Administrator Appointment Order in *Re Imperial Tobacco Canada Limited* (6 March 2025), Toronto, CV-19-616077-00CL (Ont. S.C.), at para. 20; the Plan Sanction Order in *Re Laurentian University of Sudbury* (5 October 2022), Toronto CV-21-656040-00CL (Ont. Sup. Ct.), at para. 29; the Terminated Employee Fund Order in *Re Contract Pharmaceuticals Limited Canada* (17 April 2024), Toronto, CV-23-711401-00CL (Ont. S.C.), at para. 20; the Holdback Release Order in *KEB Hana Bank v. Mizrahi Commercial (The One) LP et al.* (6 June 2024), Toronto, CV-23-00707839-00CL (Ont. S.C.), at para. 9; the Stay Extension and Distribution Order in *Re LoyaltyOne, Co.* (5 July 2023), Toronto, CV-23-00696017-00CL (Ont. S.C.), at para. 15; the

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[9] Without getting too far into the detailed wording of these Tax Statutes, it would appear that an analogous approach to the interpretation of these Statutes might work for s. 117 of the *Taxation Act, 2007* (Ontario), s. 22(5) of the *Retail Sales Tax Act* (Ontario), and s. 107(2) of the *Corporations Tax Act* (Ontario). The analogy is not obvious based on the wording of the *Excise Tax Act* and the *Employment Insurance Act*.

Sanction Order in *Re Nortel Networks Corporation* (24 January 2017), Toronto, 09-CL-7950 (Ont. S.C.), at para. 40; the Distribution Order in *Re Original Traders Energy Ltd*. (27 March 2024), Toronto, CV-23-00693758-00CL (Ont. S.C.), at para. 6.

[46] The Holdback Release Order previously granted in this case also shields the Receiver, now Monitor, from liability in connection with the Tax Statutes, pursuant to relief that is substantially identical to the relief sought in Paragraph 8 of the proposed SKYGRiD Holdback Release Order.

[47] In *Comerica Bank v. Dragonwave Inc.*, 2017 ONSC 6104, at para. 12, Morawetz R.S.J. (as he then was) recognized that the similar relief sought in that case was commonly granted, but questioned the Court's jurisdiction to do so. Morawetz R.S.J. held that the moving party could seek relief from the Tax Statutes but would have to "bring this issue for determination in a more fulsome manner." The moving party in *Dragonwave* does not appear to have brought the further motion it was invited to bring. Notably, Morawetz R.S.J. granted equivalent relief to that sought in Paragraph 8 in a number of subsequent orders, without articulating any concern: see e.g. Plan Sanction Order in *Re Laurentian University of Sudbury*, at para. 29; CCAA Plan Administrator Appointment Order in *Re Imperial Tobacco Canada Limited*, at para. 20.

[48] At the hearing of this motion, the court invited counsel for the Monitor to provide submissions to allow the court to determine this issue in a more fulsome manner, and they did so by filing the Supplementary Factum. The court's request for this more fulsome briefing was in part due to a recent decision in which one of the other judges sitting on the Commercial List in Toronto once again raised the question of the court's jurisdiction to grant this type of order: see *Re: 1000156489 Ontario Inc*., 2026 ONSC 610 ("*489 Ontario*"). In *489 Ontario*, the court refused to grant relief equivalent to Paragraph 8 because of a concern that there was no evidence or law before the court to make the requested findings and orders. In that case, a question was also raised about paramountcy and the inability of the CCAA, federal legislation, to invalidate provincial tax laws or other federal (tax) laws without the consent of the Tax authorities overseeing the Taxation Statutes: at paras. 10-16.

[49] The concerns about the insufficiency of the evidence and the law that had been presented to the court in *489 Ontario* were case specific, and do not arise in this case. The evidence and law has been provided to satisfy the requirements for the court to exercise its discretion under s. 11 of the CCAA to grant protection under the SKYGRiD Holdback Release Order to the Monitor and the CRO from liability and exposure under the Tax Statutes.

[50] As described in the previous section of this endorsement dealing with the exercise of the court's broad jurisdiction under s.11 of the CCAA to grant the relief sought in paragraph 7 of the SKYGRiD Holdback Release Order, the court must in each instance of the exercise of this jurisdiction be satisfied that the order being made: (i) is not restricted by the CCAA itself, which this is not; (ii) usefully furthers the remedial objectives of the CCAA, and (iii) is consistent with the baseline considerations of appropriateness, good faith, and due diligence: see *Callidus*, at paras. 67-70; *Century Services*, at para. 70. The relief that paragraph 8 of the SKYGRiD Holdback Release Order seeks to achieve meets these objectives and should be granted.

[51] The relief sought is aligned with the Initial Order that already establishes that the Monitor and CRO can only be liable for wilful misconduct or gross negligence when carrying out their mandates authorized under the Initial Order. This is consistent with the generally accepted principle that insolvency professionals who take a step that is specifically authorized by this court should not be held personally liable for taking that step unless they commit gross negligence or wilful misconduct. Paragraph 8 therefore serves an important role in ensuring insolvency professionals are not held personally liable for paying the SKYGRiD Holdback Amount pursuant to the SKYRGiD Holdback Release Order, in circumstances where there is a statutory framework under the Tax Statutes that creates a risk of such liability. This protection is sought in good faith and is appropriate and consistent with the mandate and role of the Monitor. Section 11 of the CCAA is the appropriate tool to solve this.

[52] In terms of the appropriateness of the relief sought, there has been no suggestion that there would be any tax liability associated with the contemplated payment to SKYGRiD of the SKYGRiD Holdback Amount under the SKYGRiD Holdback Release Order. While the Taxation Authorities have not provided their consent to the SKYGRiD Holdback Release Order, the Canada Revenue Agency, the Department of Justice Tax, Law Section, and Ontario's Ministry of Finance, Insolvency Unit were all served with the Monitor's motion materials that were seeking the SKYGRiD Holdback Release Order. None of these agencies took a position on the motion, or contacted the Monitor, nor do they appear to have opposed requests for similar relief in other cases.

[53] The same broad discretion under s. 11 of the CCAA that permits the court to affect rights granted by other statutes (discussed in relation to the relief granted in paragraph 7 of the SKYGRiD Holdback Release Order, above) also permits the court to shield its officers from statutory liability that they might otherwise face. The court is not being asked here to extinguish the entitlement of the Tax Authorities to be paid taxes owing or to override either the provincial or federal Taxation Statutes. The court is simply being asked to shield the court-appointed Monitor and CRO from potential personal liability for not withholding tax when making a court-authorized distribution in respect of which no Tax Authority appeared to argue that tax should be withheld, nor raised any objection to the proposed order.

[54] In the circumstances, the court appointed Monitor and CRO facilitating the restructuring should not face even the prospect of personal liability for not withholding taxes. The court expects and demands a lot of these insolvency professionals and they are entitled to expect and demand protection from personal liability, or even the prospect of a future claim for such, when they are acting in good faith in performing their duties under a court order.

[55] All of that said, the devil is in the detail. There is a simpler and more direct way to achieve the objective that the Monitor seeks to achieve through paragraph 8 of the SKYGRiD Holdback Release Order. The fact that the proposed language for this order has been approved in many prior cases (which were not opposed and that did not have the benefit of the more fulsome briefing received in this case) is not a reason to adopt it in this case or for all cases going forward.

[56] I am focused in particular on the opening language in paragraph 8 of the proposed order, which seeks to have the court declare that neither the Monitor nor the CRO shall constitute a "legal representative", "representative" or a "responsible representative" of the Companies under

the Tax Statutes and that they are not "distributing" funds for purposes of the Tax Statutes. This is not necessary to achieve the desired objective here, reflected in the words that follow this opening language in paragraph 8 of the proposed SKYGRiD Holdback Release Order.

[57] In my view, the desired objective can and should be accomplished through the following modified wording of paragraph 8:

> [8] **THIS COURT ORDERS AND DECLARES THAT**:
>
> a. the Monitor and FAAN Advisors Group Inc., in its capacity as Chief Restructuring Officer of the Companies (in such capacity, the "CRO"), shall not incur any liability under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.); the *Taxation Act, 2007*, S.O. 2007, c. 11, Sch. A; the *Excise Tax Act*, R.S.C. 1985, c. E-15; the *Employment Insurance Act*, S.C. 1996, c. 23; the *Retail Sales Tax Act*, R.S.O. 1990, c. R.31; the *Corporations Tax Act*, R.S.O. 1990, c. C.40; or any other similar federal, provincial, or territorial tax legislation (collectively, the "Statutes") for facilitating the payment of the SKYGRiD Holdback Amount as contemplated by and in accordance with this Order, and the Monitor and the CRO shall not have any liability for any of the Companies' tax liabilities under the Tax Statutes in respect of this payment, regardless of how or when such liabilities may have arisen; and
>
> b. the Monitor and the CRO are hereby forever released, remised and discharged from any claims against them under or pursuant to the Statutes or otherwise at law arising as a result of the payment of the SKYGRiD Holdback Amount.

[58] Paragraph 6 of the draft SKYGRiD Holdback Release Order provides that the Monitor, the CRO or the Receiver (prior to being appointed as Monitor) "shall not incur any liability in connection with the payment of the SKYGRID Holdback Amount contemplated herein, save and except for liability arising from any gross negligence or wilful misconduct on the part of the Monitor, the CRO and/or the Receiver with respect to such party alone, as determined pursuant to a final order of this Court that is not subject to appeal or other review and all rights to seek any such appeal or other review shall have expired".

[59] It was pointed out in the Monitor's Supplementary Factum, through the alternative relief it proposed by a modification of paragraph 6, that there may be some overlap in the protections afforded under proposed paragraphs 6 and 8. Considering paragraph 6 in light of the narrower version of paragraph 8 that the court has indicated above puts a finer focus on the redundancies and overlap between these provisions of the draft order and the continuing protection that is afforded to the Monitor and the CRO under the Initial Order. It is my view that paragraph 6 does not add anything and should be removed from the draft order. If the Monitor and/or the CRO disagree and wish to keep it in they can send me two versions of the revised form of order to sign, one without paragraph 6 and one with paragraph 6 to be accompanied by an explanation of what it is adding to the protections already provided in the Initial Order and now revised paragraph 8 of the SKYGRiD Holdback Release Order.

[60] I do not consider the granting of the relief contained in the proposed revised paragraph 8 of the SKYGRiD Holdback Release Order to directly engage paramountcy issues or constitutional questions. Nor do I read the decision of this court in *489 Ontario* to go so far as to say that there is no jurisdiction to grant the requested order. It simply questioned that jurisdiction and raised some possible points for consideration with the benefit of more fulsome evidence and submissions. The parties did not provide further evidence or submissions in *489 Ontario*, but they have in this case.

[61] With the benefit of the further submissions and the record before the court here, I have concluded that the court does have jurisdiction to grant an order that extends beyond the general shield of liability of its court officers (in the Initial Order) to the specific shield of liability and release for a specific step that will be carried out in accordance with the court's direction and pursuant to the court's authorization, which could otherwise potentially attract specific statutory liability.

Final Disposition

[62] This endorsement focusses on two aspects of the relief sought by the SKYGRiD Holdback Release Order that have been questioned in other cases and in respect of which the court has now had the benefit of the Monitor's Supplemental Factum and a more fulsome briefing. Those submissions have assisted the court in coming to a reasoned determination that the jurisdiction exists for the court to exercise its discretion to grant the specific relief in paragraphs 7 and revised paragraph 8 of the SKYGRiD Holdback Release Order, in appropriate cases. I am satisfied that it is fair and appropriate to grant the order in this case.

[63] I have considered and approved the other provisions contained in this draft order, which are consistent with the Commercial List practice and have not been questioned by the court or anyone else, and thus need not be addressed specifically in this endorsement.

[64] I will sign the revised draft SKYGRiD Holdback Release Order, reflecting the revisions indicated above to paragraph 8 and the removal of paragraph 6 upon receipt of that revised draft from counsel for the Monitor together with a blackline to show the amendments that have been made to the most recent draft submitted with the Monitor's Supplementary Factum.

Kimmel J.

Date: March 20, 2026