

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND 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.**

**SUPPLEMENTARY FACTUM OF THE MONITOR
SKYGRiD Holdback Release
(Returnable February 3, 2026)**

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PART I. OVERVIEW

1. Section 11 of the *CCAA*¹ confers “broad” and “vast” discretion on this Court to make *any* order that it considers appropriate in the circumstances.² This discretion, and the flexibility that it permits, allows court officers and other stakeholders to solve complicated problems that would be difficult or impossible to solve outside of a court-supervised insolvency process. It similarly allows stakeholders to obtain the certainty of a Court order approving these solutions which they can rely on going forward.
2. In many cases, this problem solving process requires altering, modifying, suspending, or overriding rights that are granted by provincial and federal statutes. This is common, and essential to a properly functioning insolvency system.
3. In this case, the Companies seek to make payment of the SKYGRiD Holdback Amount to SKYGRiD – a critical participant in these proceedings – without undue delay. This payment will align the treatment of SKYGRiD with the treatment of subcontractors in the case and encourage SKYGRiD (and other contractors) to provide similar services in the future. The SKYGRiD Holdback Release Order is not opposed by any party despite an expanded Service List being served with the motion.

¹ All capitalized terms used herein and not otherwise defined have the meanings given to them in the Initial Order of the Court dated April 22, 2025 (the “**Initial Order**”), or the Third Report of the Monitor dated January 23, 2026 (the “**Third Report**”).

² 9354-9186 *Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#) at para. 48 [*Callidus*]; *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#) at para. 19 [*Century Services*]; *Canada v. Canada North Group Inc.*, [2021 SCC 30](#) at para. 21 [*Canada North*].

4. The basis for the SKYGRiD Holdback Release Order is set out in the Monitor’s Factum filed on January 29, 2026 (the “**Monitor’s Factum**”). In this Supplementary Factum, the Monitor has expanded on the basis for:
 - (a) paragraph 7 of the SKYGRiD Holdback Release Order (“**Paragraph 7**”), which deems the Construction Management Agreement pursuant to which SKYGRiD performed its services on the Project (the “**SKYGRiD CMA**”) to be complete, with the result that SKYGRiD’s lien rights, as well as subcontractor lien rights against the SKYGRiD Holdback Amount, have expired³; and
 - (b) paragraph 8 of the SKYGRiD Holdback Release Order (“**Paragraph 8**”), which shields the Monitor and the CRO from potential personal liability that could arguably be imposed under certain tax statutes (collectively, the “**Tax Statutes**”).
5. With respect to Paragraph 7, the uncontested evidence shows that SKYGRiD completed its scope of work under the SKYGRiD CMA more than 250 days ago. According to the relevant statutory language and the jurisprudence interpreting it, SKYGRiD’s lien rights, and subcontractor lien rights relating to the SKYGRiD Holdback Amount, expired 45 days after SKYGRiD completed its scope of work. To the extent that this Court determines that subcontractor lien rights may not have expired, the Court should in any event exercise its jurisdiction to authorize the release of the SKYGRiD Holdback Amount in accordance with terms of the proposed SKYGRiD Holdback Release Order pursuant to Section 11 of the *CCAA*.

³ As discussed below, the Monitor is proposing a simplified version of Paragraph 7.

6. With respect to Paragraph 8, 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 (which are based on judicially approved provincial model orders) – 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.
7. Paragraph 8 provides specific protections as relates to the Tax Statutes because they are arguably broad enough to impose personal liability on the Monitor or the CRO if the SKYGRiD Holdback Amount is distributed without obtaining a clearance certificate (which is not practical for a court officer to obtain each time it is distributing money in accordance with a Court order) and it turns out that the Companies owe certain tax debts (which would make obtaining a clearance certificate impossible in any event). This relief is routinely granted, and is appropriate in this case.
8. In the alternative, if the Court is not satisfied that it should grant specific relief relating to the Tax Statutes, then this Court should find that distributing funds to SKYGRiD in accordance with the terms of the SKYGRiD Holdback Release Order is neither wilful misconduct nor gross negligence. This will shield the Monitor and the CRO from any potential personal liability without ordering specific relief relating to the Tax Statutes.

PART II. FACTS

A. Background

9. The relevant background is set out in the Monitor’s Factum at paragraphs 9–16 and 28–32. Certain specific facts relevant to the issues addressed in this Supplementary Factum are set out below.
10. This case involves the construction of one of Canada’s most complex and significant mixed-use residential developments. The Project faced very significant difficulty when the Receiver was appointed. As Osborne, J. (as he then was) found when he appointed the Receiver on October 18, 2023, the situation “cries out for the stability, transparency and orderly process that must be the hallmarks of a court-appointed receivership.”⁴ His Honour also found that the Receivership Order was required to ensure that the Project was not undermined by “disruption of current contractual relationships or potential litigation.”⁵
11. As part of its successful effort to ensure the stability and ongoing construction of the Project, the Receiver sought and obtained a series of orders (collectively, the “**Construction Orders**”) that, taken together, provide an orderly framework to address the rights of contractors working on the Project in the context of a Court-supervised restructuring proceeding. Specifically, this Court granted:
- (a) the “**Construction Continuance Order**” dated March 7, 2024, that facilitated a smooth transition of construction management from MI to SKYGRiD by, among other things, delineating the respective obligations and liabilities of MI and

⁴ *KEB Hana Bank as Trustee et al. v. Mizrahi Commercial (The One) LP et al.*, [2023 ONSC 5881](#) at para. 46 [*KEB Hana*].

⁵ *KEB Hana*, [2023 ONSC 5881](#) at para. 64.

SKYGRiD towards the subcontractors and other suppliers required to continue supplying goods and/or services to the Project pursuant to the Receivership Order;

- (b) the “**Lien Regularization Order**” dated March 7, 2024, that established a Court-supervised streamlined process to replace the technical requirements for preserving and perfecting a lien under the *Construction Act* (Ontario) as it existed immediately prior to July 1, 2018 (the “**Provincial Lien Legislation**”).⁶ Among other things, this avoided 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 granted by the Provincial Lien Legislation;
- (c) the “**Holdback Release Order**” dated June 24, 2024, which authorized the Receiver to pay certain holdback amounts owing to subcontractors relating to the period MI served as general contractor of the Project, as well as any additional holdback amounts owing to a subcontractor who completed its scope of work in relation to the Project. The Holdback Release Order 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; and

⁶ *Construction Act*, [R.S.O. 1990, c. C.30 \(as it existed immediately prior to July 1, 2018\)](#) [Provincial Lien Legislation].

- (d) the “**Lien Claims Resolution Order**” dated August 9, 2024, that established a procedure for resolving lien claims asserted pursuant to the Lien Regularization Order.
12. Taken together, the Construction Orders provided the procedural scaffolding required to ensure that the substantive rights of subcontractors and suppliers were preserved without 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.
13. Upon the transition of the Receivership Proceedings to the *CCAA* Proceedings in April 2025, the Construction Orders were continued in the *CCAA* Proceedings pursuant to the terms of the Initial Order, and they each remain in force.

PART III. ISSUES AND THE LAW

A. The Court Has Jurisdiction to Grant the SKYGRiD Holdback Release Order

14. The Court’s jurisdiction to grant the SKYGRiD Holdback Release Order, including Paragraph 7 and Paragraph 8, rests on Section 11 of the *CCAA*:

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, **the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.** [emphasis added]⁷

⁷ *Companies’ Creditors Arrangement Act*, [R.S.C. 1985, c. C-36, s. 11](#) [*CCAA*].

15. According to the Supreme Court of Canada, Section 11 of the *CCAA* grants a “broad” and “vast” discretionary power on the Court. 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.⁸ The core question is whether the order sought will “usefully further efforts to achieve the remedial purpose of the *CCAA*.”⁹
16. The broad discretion granted by Section 11 of the *CCAA* (and Section 243 of the *Bankruptcy and Insolvency Act*¹⁰) allows the Court to make a wide variety of orders to solve complex problems that can arise in court-supervised insolvency proceedings.
17. In many cases, orders granted pursuant to the *CCAA*, including under Section 11, modify or override rights granted pursuant to other statutes. A stakeholder with a statutory right to commence a claim against a debtor company’s directors and officers cannot assert that right without leave.¹¹ This Court often imposes third party releases as part of *CCAA* plans and transactions, eliminating statutory liabilities.¹² A person with a first-ranking charge registered under the *Land Titles Act* or the *Personal Property Security Act* can be subordinated to *CCAA* priority charges granted in favour of DIP lenders and professionals, among others.¹³ These, and other orders routinely granted in *CCAA* proceedings, rely on

⁸ *Callidus*, [2020 SCC 10](#) at paras. 67–70.

⁹ *Century Services*, [2010 SCC 60](#) at para. 70.

¹⁰ *Bankruptcy and Insolvency Act*, [R.S.C. 1985, c. B-3](#).

¹¹ The model *CCAA* [Initial Order](#) approved by the Commercial List Users’ Committee (“**Model Order**”).

¹² See e.g., *Metcalf & Mansfield Alternative Investments II Corp. (Re)*, [2008 ONCA 587](#) [*Metcalf*].

¹³ [Model Order](#) at paras. 21, 31 and 35.

the broad discretion granted to Courts in *CCAA* proceedings to facilitate a successful restructuring.¹⁴

18. Appellate courts, including the Supreme Court of Canada, have repeatedly affirmed that orders granted pursuant to the *CCAA* can affect rights granted by other statutes:

- (a) in *Sun Indalex Finance, LLC v. United Steelworkers*,¹⁵ the Supreme Court of Canada held that a Court-ordered DIP financing charge had priority over a deemed trust established under provincial legislation to protect employee pensions;
- (b) in *Century Services Inc. v. Canada (Attorney General)*,¹⁶ the Supreme Court of Canada held that the deemed trust established by the *Excise Tax Act* was not enforceable in the debtor's *CCAA* proceedings, and that maintaining the *CCAA* stay of such claim was an appropriate exercise of judicial discretion;
- (c) in *Canada v. Canada North Group Inc.*,¹⁷ the Supreme Court of Canada held that the judge supervising *CCAA* proceedings had jurisdiction to grant a super-priority charge that ranks ahead of deemed trusts created by Section 227(4.1) of the *Income Tax Act* (the "*ITA*"); and
- (d) in *Metcalf & Mansfield Alternative Investments II Corp. (Re)*,¹⁸ the Ontario Court of Appeal used the judicial discretion granted by the *CCAA* to require that

¹⁴ While the authority to grant some of this relief has now been expressly codified in the *CCAA*, prior to the 2009 amendments to the *CCAA* coming into force, Courts routinely relied on their authority under Section 11 to grant this relief.

¹⁵ *Sun Indalex Finance, LLC v. United Steelworkers*, [2013 SCC 6](#).

¹⁶ *Century Services*, [2010 SCC 60](#).

¹⁷ *Canada North*, [2021 SCC 30](#).

¹⁸ *Metcalf*, [2008 ONCA 587](#).

stakeholders release third parties, effectively eliminating the right to bring an action conferred by relevant provincial statutes.

19. This does not mean that insolvency is a license to ignore the rules.¹⁹ But this general principle does not limit this Court's broad jurisdiction under the *CCAA* to make any order that is appropriate in the circumstances in furtherance of advancing a restructuring.
20. Neither Paragraph 7 nor Paragraph 8 require a broad or unusual exercise of this discretion. Indeed, Paragraph 7 may not involve any discretionary relief at all.

B. Paragraph 7: The Court Has Jurisdiction to Authorize the Release of the SKYGRiD Holdback Amount, and Should Do So

(i) Revised Paragraph 7

21. Upon further review, and for clarity, the Monitor is now proposing a simplified version of Paragraph 7:

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, ~~and that all other requirements of sections 2(3), 31(2)(b) and 31(3)(b) of the Provincial Lien Legislation shall be deemed to have been complied with as of the Effective Date.~~

22. As set out below, the purpose of Paragraph 7 is to permit the release of the SKYGRiD Holdback Amount “without jeopardy” within the meaning of the Provincial Lien Legislation. This, in turn, requires that the potential lien rights relating to the SKYGRiD

¹⁹ See, for example, *Orphan Well Association v. Grant Thornton Ltd.*, [2019 SCC 5](#) at para. [163](#) and *Saskatchewan (A.G.) v. Lemare Lake Logging*, [2015 SCC 53](#) at para. [73](#).

Holdback Amount have expired. As set out below, all such lien rights either have expired or should be deemed to have expired.

23. The simplified version of Paragraph 7 proposed by the Monitor accomplishes this goal without the specific references to sections of the Provincial Lien Legislation that could potentially cause confusion.

(ii) Jurisdiction to Grant Paragraph 7

24. This Court has jurisdiction pursuant to Section 11 of the *CCAA* to authorize the release of the SKYGRiD Holdback Amount. As set out above, appellate courts have repeatedly affirmed that orders granted pursuant to Section 11 can affect rights granted by other statutes. These authorities establish that this Court can, where appropriate, override or modify rights granted by provincial legislation – including the lien rights established by the Provincial Lien Legislation.
25. In a number of recent cases, *CCAA* courts (as well as this Court in the Receivership Proceedings) have exercised their Section 11 jurisdiction to fashion appropriate procedures and solutions governing the interplay between insolvency proceedings and the Provincial Lien Legislation.²⁰
26. Accordingly, the question in this case is whether this Court should exercise that jurisdiction in the circumstances. The Monitor submits that it should because the requirements of the

²⁰ *CCAA*, s. 11. See also, for example, *KEB Hana Bank v. Mizrahi Commercial (The One) LP et al.* (22 June 2024), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-23-00707839-00CL ([Holdback Release Endorsement](#)); *KEB Hana Bank v. Mizrahi Commercial (The One) LP et al.* (7 March 2024), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-23-00707839-00CL ([Lien Regularization Order](#)); *Re Comstock Canada Ltd. et al.* (7 August 2013), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-13-10181-00CL ([Lien Regularization Order](#)); *Re Carillion Canada Inc. et al.* (14 March 2018), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-18-590812-00CL ([Lien Regularization Order](#)), and subsequent [Amended Lien Regularization Order](#) dated May 23, 2019).

Provincial Lien Legislation (and the jurisprudence interpreting it) have been satisfied. In the alternative, to the extent that limited relief from compliance with the Provincial Lien Legislation is required, that relief can and should be granted pursuant to Section 11.

(iii) Paragraph 7 Facilitates Distribution of the SKYGRiD Holdback Amount by Confirming Lien Rights Have Expired

27. The Provincial Lien Legislation requires that the owner of a Project (in this case, the Companies) hold back funds from payments made to contractors. It also defines when those holdback amounts can be released to contractors and subcontractors “without jeopardy”, namely, when all liens that may be claimed against that holdback have expired or been satisfied, discharged or otherwise provided for.²¹
28. In practice, Paragraph 7 of the SKYGRiD Holdback Release Order confirms that any lien rights held by SKYGRiD and its subcontractors in respect of the SKYGRiD Holdback Amount have expired. This expiry permits the release of the SKYGRiD Holdback Amount in accordance with the terms of the Provincial Lien Legislation.

(iv) SKYGRiD’s Lien Rights Have Expired

29. Paragraph 7 confirms that SKYGRiD’s lien rights have expired in accordance with the terms of the Provincial Lien Legislation. More specifically:
- (a) Subsection 2(3) of the Provincial Lien Legislation provides that a contract is deemed complete when the price of completing the work or correcting any defaults

²¹ Provincial Lien Legislation, [s. 26](#).

is less than 1% of the contract price or \$1,000. The uncontested evidence shows that SKYGRiD's work was completed on or around the Effective Date; and

(b) Subsection 31(2)(b) of the Provincial Lien Legislation provides that SKYGRiD's right to register a lien expired 45 days after it completed its contract. The Effective Date was more than 250 days ago. SKYGRiD's lien rights have therefore expired.

30. The Monitor notes that SKYGRiD will be paid in full once the SKYGRiD Holdback Amount is released to it and SKYGRiD has consented to (and supports) the proposed SKYGRiD Holdback Release Order, including Paragraph 7.

(v) ***Subsection 31(3)(b) – Subcontractor Lien Rights Relating to the SKYGRiD Holdback Amount Have Expired or Should be Deemed to Have Expired***

31. Subsection 31(3)(b) of the Provincial Lien Legislation defines when subcontractor lien rights expire. It provides that the lien right of any "other person" (i.e., anyone other than a contractor, such as a subcontractor) expires 45 days from when the *subcontractor* last supplied services or materials to the improvement or when the *subcontract* is certified complete.

32. Many of the Project's subcontractors have continued to supply services and materials to the Project after SKYGRiD's termination. There is therefore at least a hypothetical possibility that such subcontractors could still assert a lien relating to the SKYGRiD Era.²² Importantly, the SKYGRiD Holdback Amount relates solely to work performed by SKYGRiD's own forces. The holdback amounts relating to work performed by

²² *Clarkway Construction Ltd. v. 2247129 Ontario Inc.*, [2016 ONSC 3991](#) [*Clarkway*]; *Cos Shore Inc. v. Unimac-United Mgmt. Corp.*, [2017 ONSC 4813](#) [*Cos Shore*].

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).

33. From a practical perspective, there is little or 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.
34. From a legal perspective, subcontractor lien rights have likely already expired. As Master Albert found in *Clarkway*, the 45-day period for a subcontractor to register a lien begins to run as soon as the *contractor's* contract is terminated.²³ *Clarkway* has been followed or cited with approval in other construction lien cases.²⁴ Applied to this case, *Clarkway* teaches that subcontractor lien rights against the SKYGRiD Holdback Amount expired 45 days after the termination of the SKYGRiD CMA on May 1, 2025 (*i.e.*, they expired on June 15, 2025).
35. The Monitor notes, however, that there are factual differences between *Clarkway* and this case. In *Clarkway*, Master Albert found that the subcontractor had no obligation to supply services and materials to the project after the main contract was terminated.²⁵ As a result, the post-termination supply was not a *bona fide* supply and did not extend the time to file

²³ *Clarkway*, [2016 ONSC 3991](#) at para. 18.

²⁴ See, for example, *Cos Shore*, [2017 ONSC 4813](#).

²⁵ *Clarkway*, [2016 ONSC 3991](#) at paras. 4–5.

a lien. In this case, several subcontractors working on the Project *do* have a continuing contractual obligation because their contracts were assumed by Tridel. A subcontractor could therefore argue that *Clarkway* does not apply and their lien rights against the SKYGRiD Holdback Amount survive. Importantly, however, none of the subcontractors served with the motion for approval of the proposed SKYGRiD Holdback Release Order have responded to assert this position despite being served more than 30 days ago with the Companies' motion record. Those subcontractors will also be served with this Supplementary Factum.

(vi) The Court's Jurisdiction Provides an Alternative Basis for Relief

36. To the extent that the Court is not satisfied that all subcontractor liens relating to the SKYGRiD Holdback Amount *have* expired as a matter of law, it can and should use the jurisdiction granted by Section 11 of the *CCAA* to authorize the release of the SKYGRiD Holdback Amount in any event, as it will provide certainty and finality to all stakeholders in these proceedings with respect to this issue.²⁶

37. As the authorities cited above demonstrate, this Court routinely exercises its discretion under Section 11 to override or modify statutory rights where doing so furthers the remedial purposes of the *CCAA*. This limited relief is appropriate in the circumstances: no subcontractor has objected despite notice of the relief being sought, the SKYGRiD Holdback Amount relates solely to SKYGRiD's own forces, and granting the relief will facilitate the orderly payment of amounts due to contractors – a key objective of the

²⁶ *CCAA*, [s. 11](#).

Construction Orders that have governed these proceedings – and assist in advancing these proceedings.

C. Paragraph 8: The Court Has Jurisdiction to Shield its Officers from Personal Liability, and Should Do So

(i) Jurisdiction to Grant Paragraph 8

38. The Court’s jurisdiction to shield its officers from personal liability is well established. This protection is a standard feature of *CCAA* Initial Orders and receivership orders and is essential to the orderly conduct of insolvency proceedings. As 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.”²⁷
39. The same broad discretion under Section 11 of the *CCAA* that permits the Court to affect rights granted by other statutes also permits the Court to shield its officers from liability that could otherwise be imposed by those statutes. The Initial Order in this case, like virtually every order appointing a court officer, already 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. Paragraph 8 extends this protection specifically to the Tax Statutes.

²⁷ *Potentia Renewables Inc. v. Deltro Electric Ltd.*, [2019 ONCA 779](#) at para. 48.

40. Paragraph 8 rests on two basic principles:

- (a) professionals appointed by this Court (and their advisors) are not exposed to personal liability, except for gross negligence or wilful misconduct; and
- (b) a person (and in particular a court officer) who takes a step that is specifically authorized by this Court cannot be liable for taking that step.

(ii) *The Concern: The Tax Statutes Could Impose Personal Liability*

41. Absent Paragraph 8, if this Court grants the SKYGRiD Holdback Release Order, and the Monitor and/or CRO facilitate the payment of the SKYGRiD Holdback Amount in accordance with the SKYGRiD Holdback Release Order, each of the Tax Statutes includes provisions that could, potentially, impose personal liability on the Monitor or the CRO if the Companies have unpaid tax debts.

42. By way of example, Section 159 of the *ITA* provides that a “legal representative” 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” is arguably broad enough to capture the CRO and the Monitor.²⁸ There is therefore a risk that the Monitor and the CRO could face allegations of personal liability for facilitating the payment of the SKYGRiD Holdback Amount. Each of the Tax Statutes includes a similar mechanism and risk of liability.

43. A legal representative can shield itself from Section 159 liability by first obtaining a clearance certificate from the CRA confirming that the relevant company does not owe any

²⁸ *ITA*, [R.S.C. 1985, c. 1 \(5th Supp.\)](#), s. [159](#) & [248\(1\)](#).

tax debts. This solution does not, however, fit well with the practical realities of insolvency proceedings. Obtaining a clearance certificate can take significant time, which will delay the ability to make payments and progress the insolvency case. More fundamentally, many insolvent companies have outstanding tax debts. In such cases, no clearance certificate is available.

44. Taken to its extreme, Section 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 they hold priority at law over the relevant tax authority (as court officers would be concerned about the prospect of potential personal liability were they to make a distribution). 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.²⁹ However, these policy positions are not binding, with the result that the prospect of a taxing authority asserting personal liability against court officers remains.³⁰
45. This Court has already found that the Monitor and the CRO are only liable for gross negligence and wilful misconduct under the terms of the Initial Order and, accordingly, there should be no possibility of liability under the Tax Statutes for facilitating a Court-approved distribution. Paragraph 8 therefore serves an important role in ensuring court

²⁹ CRA Views, Interpretation – internal, 2012-0457251I7, Application of s. 159 to executor who distributes property, March 27, 2013 [Book of Authorities (“**BOA**”) **Tab 1**]; CRA Directives, RCD-01-01 -- Person Acting for Another. [**BOA Tab 2**]

³⁰ Canada Revenue Agency, the Department of Justice Tax Law Section and Ministry of Finance (Ontario) Insolvency Unit were all served with the Monitor’s motion materials, including the SKYGRiD Holdback Release Order. None of these agencies have taken a position on the motion, or contacted the Monitor.

officers are not held personally liable for fulfilling their mandate beyond those exceptions already set out by this Court.

(iii) Addressing Judicial Commentary: *Dragonwave* and 489 Ontario

46. This Court routinely grants relief substantially identical to Paragraph 8 when it authorises the distribution of funds. Such orders have been granted by virtually every judge that has served on the Commercial List, over the course of many years and in the most significant of cases.³¹
47. However, the Monitor is aware of two decisions from this Court that raise questions about Paragraph 8 or its equivalent. In *Comerica Bank v. Dragonwave Inc.*, RSJ Morawetz (as he then was) recognized that the relief sought was commonly granted but questioned the Court’s jurisdiction to do so. Justice Morawetz 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.”³² The moving party in *Dragonwave* does not appear to have brought the further motion it was invited to bring. Notably, Chief Justice Morawetz granted the relief sought in Paragraph 8 in a number of subsequent orders without articulating any concern.³³

³¹ See, for example, *Re Imperial Tobacco Canada Limited* (6 March 2025), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-19-616077-00CL ([CCAA Plan Administrator Appointment Order](#)) at para 20 [Imperial Tobacco Plan Administrator Order]; *Re Laurentian University of Sudbury* (5 October 2022), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-21-656040-00CL ([Plan Sanction Order](#)) at para 29 [Laurentian Plan Sanction Order]; *Re Contract Pharmaceuticals Limited Canada* (17 April 2024), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-23-711401-00CL ([Terminated Employee Fund Order](#)) at para 20; *KEB Hana Bank v. Mizrahi Commercial (The One) LP et al.* (6 June 2024), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-23-00707839-00CL ([Order \(Holdback Release\)](#)) at para 9; *Re LoyaltyOne, Co.* (5 July 2023), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-23-00696017-00CL ([Stay Extension and Distribution Order](#)) at para 15; *Re Nortel Networks Corporation* (24 January 2017), Toronto, Ont. Sup. Ct. J. [Commercial List] 09-CL-7950 ([Sanction Order](#)) at para 40; *Re Original Traders Energy Ltd.* (27 March 2024), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-23-00693758-00CL ([Distribution Order](#)) at para 6.

³² *Comerica Bank v. Dragonwave Inc.*, [2017 ONSC 6104](#) at para. 12 [*Dragonwave*].

³³ See for example, [Imperial Tobacco Plan Administrator Order](#); [Laurentian Plan Sanction Order](#).

48. In *Re: 1000156489 Ontario Inc.*, Myers J. refused to grant relief equivalent to Paragraph 8. Justice Myers was concerned that the relief required findings of fact and mixed fact and law that were not available on the evidence. Importantly, however, Myers J. did not find that the Tax Statutes applied to the proposed distribution or that the Monitor should or would face personal liability for the distribution. Justice Myers affirmed that the Monitor was entitled to rely on other liability protections granted to it:

[16] Finally, I note that declining to provide the Monitor with extra exemptions from statutes of general application has no impact or prejudice upon the various protections that the Monitor already enjoys and continues to enjoy under the *CCAA* and its appointment orders.³⁴

49. In the result, Myers J. declined to grant a specific exemption from the Tax Statutes but did grant a broad liability release that shielded the Monitor from liability in connection with the distribution except for gross negligence or wilful misconduct:

13. **THIS COURT ORDERS** that in carrying out the terms of the Proposed Distribution Methodology and/or this Order, the Monitor: (a) shall have all the protections provided to it as an officer of the Court, including the protections granted pursuant to the *CCAA* and other Orders granted in the *CCAA* proceedings, including the stay of proceedings, in its favour; and (b) shall incur no liability or obligation as a result of carrying out any duties or work in connection with the Proposed Distribution Methodology and/or this Order, whether in its personal capacity or its capacity as Monitor, save and except for any gross negligence or willful misconduct on its part.³⁵

50. Neither *Dragonwave* nor *489 Ontario* precludes the relief sought. *Dragonwave* invited more fulsome submissions, which the Monitor is now providing in this matter. *489 Ontario*

³⁴ *Re: 1000156489 Ontario Inc.*, [2026 ONSC 610](#) at para. [16](#) [*489 Ontario*].

³⁵ *Re: 1000156489 Ontario Inc.* (30 January 2026), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-22-00691990-00CL ([Distribution Order](#)).

turned on an evidentiary issue, and, in any event, granted liability protection that achieves substantially the same result.

(iv) Quebec's Solution

51. In the interest of completeness, the Monitor notes that the issues addressed in Paragraph 8 were also addressed by the Quebec Superior Court in *Re 9210-6905 Québec Inc.*³⁶ Specifically, *Quebec Inc.* addressed the risk that the interim receiver, as a “legal representative” pursuant to the terms of the *ITA*, could face personal liability for distributions. The Court ultimately held that the *ITA*'s exemption for a “trustee in bankruptcy” was broad enough to include the interim receiver because it was a licensed trustee in bankruptcy.³⁷
52. This result speaks to the fact that courts have recognised the fundamental problem: insolvency professionals should not face personal liability for distributing funds in accordance with court orders and established priorities, yet the statutory framework creates the risk of such liability.
53. The Monitor submits that the exemption in the *ITA* should also extend to monitors under the *CCAA* since they too must be licensed insolvency trustees.³⁸ However, if this Court does not agree, the Court's inherent jurisdiction under Section 11 of the *CCAA* provides the appropriate mechanism to achieve the same practical result.

³⁶ *9210-6905 Québec inc. (Proposition de)*, [2015 QCCS 6559](#) [*Quebec Inc.*].

³⁷ *Quebec Inc.* at para. [26](#).

³⁸ Jean-Daniel Breton, “Distribution Certificates — Have We Found the Holy Grail?” (2016) Annual Rev. Insolvency L. 21 (WL Can.). [**BOA Tab 3**]

D. The Alternative: Modified Relief Instead of Paragraph 8

54. If this Court shares the jurisdictional concerns articulated in *Dragonwave* or *489 Ontario*, then the Monitor proposes, as an alternative to Paragraph 8, that the Court grant a simpler order that shields the Monitor and the CRO from liability in connection with the distribution of the SKYGRiD Holdback Amount. More specifically, if this Court is not prepared to grant Paragraph 8 then this Court should grant a modified version of Paragraph 6 of the Draft Order. Paragraph 6 is reproduced below, with the proposed amendments shown:

6. **THIS COURT ORDERS** that the Monitor, FAAN Advisors Group Inc., in its capacity as Chief Restructuring Officer of the Companies (in such capacity, the “**CRO**”), and A&M, in its capacity as former receiver and manager of the Companies (in such capacity, the “**Receiver**”), shall not incur any liability ~~in connection with~~ for facilitating the payment of the SKYGRiD Holdback Amount ~~contemplated herein in accordance with this Order, 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.~~

55. This approach is consistent with the result in *489 Ontario* and will achieve the same practical result as the primary relief. It is also consistent with section 142 of the *Courts of Justice Act* which provides that a person is not liable for any act done in good faith in accordance with an order or process of a Court in Ontario.³⁹ Although Myers J. refused to explicitly shield the Monitor from liability under the Tax Statutes, the Order granted (the “**489 Order**”) affirmed that the Monitor could only be liable for gross negligence or wilful misconduct. In practical terms, the *489 Order* nearly accomplishes the goal of Paragraph 8

³⁹ *Courts of Justice Act*, [R.S.O. 1990, c. C.43, s. 142](#).

by shielding the Monitor there from liability. The 489 Order does, however, leave open the possibility (however remote) that a taxing authority will assert that the distribution of funds pursuant to a Court order somehow constitutes gross negligence or wilful misconduct and seek to impose personal liability on that basis.

56. The Monitor respectfully submits that, on the specific facts of this case, it is appropriate to shield the Monitor and the CRO without a carve-out for gross negligence or wilful misconduct. No party has alleged that the Monitor or CRO would be engaging in gross negligence or wilful misconduct. The preservation of this theoretical carve-out therefore has no practical effect on any existing dispute. It is a precautionary measure only, included to address any residual concern the Court may have about granting broader relief. If the Monitor and the CRO are authorized to facilitate the distribution of the SKYGRiD Holdback Amount, then they will not commit gross negligence or wilful misconduct by doing so in accordance with the proposed Order. The Monitor served all affected parties, and none opposed the Order. The Monitor and the CRO should therefore not be exposed to the risk (however hypothetical) that some dissatisfied stakeholder will make unfounded gross negligence or wilful misconduct allegations against it at some later date.

PART IV. CONCLUSION

57. For the reasons set out herein, in the Monitor's Factum, and in the Third Report, the Monitor respectfully requests that this Court grant the proposed SKYGRiD Holdback Release Order.

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

Goodmans LLP

GOODMANS LLP

Lawyers for Alvarez & Marsal Canada Inc., in
its capacity as Monitor

SCHEDULE A
LIST OF AUTHORITIES

1. *9354-9186 Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#)
2. *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#)
3. *Canada v. Canada North Group Inc.*, [2021 SCC 30](#)
4. *KEB Hana Bank as Trustee v. Mizrahi Commercial (The One) LP*, [2023 ONSC 5881](#)
5. *Metcalf & Mansfield Alternative Investments II Corp., (Re)*, [2008 ONCA 587](#)
6. *Sun Indalex Finance, LLC v. United Steelworkers*, [2013 SCC 6](#)
7. *Orphan Well Association v. Grant Thornton Ltd.*, [2019 SCC 5](#)
8. *Saskatchewan (A.G.) v. Lemare Lake Logging*, 2015 SCC 53
9. *KEB Hana Bank v. Mizrahi Commercial (The One) LP* (22 June 2024), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-23-00707839-00CL ([Holdback Release Endorsement](#))
10. *KEB Hana Bank v. Mizrahi Commercial (The One) LP* (7 March 2024), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-23-00707839-00CL ([Lien Regularization Order](#))
11. *Re Comstock Canada Ltd.* (7 August 2013), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-13-10181-00CL ([Lien Regularization Order](#))
12. *Re Carillion Canada Inc.* (14 March 2018), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-18-590812-00CL ([Lien Regularization Order](#), and subsequent [Amended Lien Regularization Order](#) dated May 23, 2019)
13. *Clarkway Construction Ltd. v. 2247129 Ontario Inc.*, [2016 ONSC 3991](#)
14. *Cos Shore Inc. v. Unimac-United Mgmt. Corp.*, [2017 ONSC 4813](#)
15. *Potentia Renewables Inc. v. Deltro Electric Ltd.*, [2019 ONCA 779](#)
16. *Re Imperial Tobacco Canada Limited* (6 March 2025), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-19-616077-00CL ([CCAA Plan Administrator Appointment Order](#))
17. *Re Laurentian University of Sudbury* (5 October 2022), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-21-656040-00CL ([Plan Sanction Order](#))
18. *Re Contract Pharmaceuticals Limited Canada* (17 April 2024), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-23-711401-00CL ([Terminated Employee Fund Order](#))
19. *KEB Hana Bank v. Mizrahi Commercial (The One) LP* (6 June 2024), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-23-00707839-00CL ([Order \(Holdback Release\)](#))

20. *Re LoyaltyOne, Co.* (5 July 2023), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-23-00696017-00CL ([Stay Extension and Distribution Order](#))
21. *Re Nortel Networks Corporation* (24 January 2017), Toronto, Ont. Sup. Ct. J. [Commercial List] 09-CL-7950 ([Sanction Order](#))
22. *Re Original Traders Energy Group Ltd.* (27 March 2024), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-23-00693758-00CL ([Distribution Order](#))
23. *Comerica Bank v. Dragonwave Inc.*, [2017 ONSC 6104](#)
24. *Re: 1000156489 Ontario Inc.*, [2026 ONSC 610](#)
25. *Re: 1000156489 Ontario Inc.* (30 January 2026), Toronto, Ont. Sup. Ct. J. [Commercial List] CV-22-00691990-00CL ([Distribution Order](#))
26. *Re: 9210-6905 Québec inc. (Proposition de)*, [2015 QCCS 6559](#)
27. Jean-Daniel Breton, "[Distribution Certificates — Have We Found the Holy Grail?](#)" (2016) Annual Rev. Insolvency L. 21 (WL Can.)

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

Date: February 26, 2026



Signature

**SCHEDULE B
STATUTORY REFERENCES**

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, s. 243

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

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

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

Definition of receiver

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

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

Definition of *receiver* — subsection 248(2)

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

Trustee to be appointed

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

Place of filing

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

Orders respecting fees and disbursements

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

Meaning of *disbursements*

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

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)

Person acting for another

159 (1) For the purposes of this Act, where a person is a legal representative of a taxpayer at any time,

(a) the legal representative is jointly and severally, or solidarily, liable with the taxpayer

(i) to pay each amount payable under this Act by the taxpayer at or before that time and that remains unpaid, to the extent that the legal representative is at that time in possession or control, in the capacity of legal representative, of property that belongs or belonged to, or that is or was held for the benefit of, the taxpayer or the taxpayer's estate, and

(ii) to perform any obligation or duty imposed under this Act on the taxpayer at or before that time and that remains outstanding, to the extent that the obligation or

duty can reasonably be considered to relate to the responsibilities of the legal representative acting in that capacity; and

(b) any action or proceeding in respect of the taxpayer taken under this Act at or after that time by the Minister may be so taken in the name of the legal representative acting in that capacity and, when so taken, has the same effect as if it had been taken directly against the taxpayer and, if the taxpayer no longer exists, as if the taxpayer continued to exist.

Certificate before distribution

159(2) Every legal representative (other than a trustee in bankruptcy) of a taxpayer shall, before distributing to one or more persons any property in the possession or control of the legal representative acting in that capacity, obtain a certificate from the Minister, by applying for one in prescribed form, certifying that all amounts

(a) for which the taxpayer is or can reasonably be expected to become liable under this Act at or before the time the distribution is made, and

(b) for the payment of which the legal representative is or can reasonably be expected to become liable in that capacity have been paid or that security for the payment thereof has been accepted by the Minister.

Personal liability

159(3) If a legal representative (other than a trustee in bankruptcy) of a taxpayer distributes to one or more persons property in the possession or control of the legal representative, acting in that capacity, without obtaining a certificate under subsection (2) in respect of the amounts referred to in that subsection,

(a) the legal representative is personally liable for the payment of those amounts to the extent of the value of the property distributed;

(b) the Minister may at any time assess the legal representative in respect of any amount payable because of this subsection; and

(c) the provisions of this Division (including, for greater certainty, the provisions in respect of interest payable) apply, with any modifications that the circumstances require, to an assessment made under this subsection as though it had been made under section 152 in respect of taxes payable under this Part.

Definitions

248 (1) In this Act,

legal representative of a taxpayer means a trustee in bankruptcy, an assignee, a liquidator, a curator, a receiver of any kind, a trustee, an heir, an administrator, an executor, a liquidator of a succession, a committee, or any other like person, administering, winding up, controlling or otherwise dealing in a representative or fiduciary capacity with the property that belongs or

belonged to, or that is or was held for the benefit of, the taxpayer or the taxpayer's estate; (représentant légal)

Courts of Justice Act, R.S.O. 1990, c. C.43, s. 142

Protection for acting under court order

142 A person is not liable for any act done in good faith in accordance with an order or process of a court in Ontario.

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Construction Act, R.S.O. 1990, c. C.30 (as it existed immediately prior to July 1, 2018)

Payment where subcontract certified complete

25 Where a subcontract has been certified complete under section 33, each payer upon the contract and any subcontract may, without jeopardy, make payment reducing the holdbacks required by this Part to the extent of the amount of holdback the payer has retained in respect of the completed subcontract, where all liens in respect of the completed subcontract have expired or been satisfied, discharged or otherwise provided for under this Act.

Payment of basic holdback

26 Each payer upon the contract or a subcontract may, without jeopardy, make payment of the holdback the payer is required to retain by subsection 22 (1) (basic holdback), so as to discharge all claims in respect of that holdback, where all liens that may be claimed against that holdback have expired or been satisfied, discharged or otherwise provided for under this Act.

Expiry of liens

31 (1) Unless preserved under section 34, the liens arising from the supply of services or materials to an improvement expire as provided in this section.

Contractor's liens

(2) Subject to subsection (4), the lien of a contractor,

(a) for services or materials supplied to an improvement on or before the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the forty-five-day period next following the occurrence of the earlier of,

(i) the date on which a copy of the certificate or declaration of the substantial performance of the contract is published as provided in section 32, and

(ii) the date the contract is completed or abandoned; and

(b) for services or materials supplied to the improvement where there is no certification or declaration of the substantial performance of the contract, or for services or materials supplied to the improvement after the date certified or declared to be the date of substantial performance, expires at the conclusion of the forty-five-day period next following the occurrence of the earlier of,

(i) the date the contract is completed, and

(ii) the date the contract is abandoned.

Liens of other persons

(3) Subject to subsection (4), the lien of any other person,

(a) for services or materials supplied to an improvement on or before the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the forty-five-day period next following the occurrence of the earliest of,

(i) the date on which a copy of the certificate or declaration of the substantial performance of the contract is published, as provided in section 32, and

(ii) the date on which the person last supplies services or materials to the improvement, and

(iii) the date a subcontract is certified to be completed under section 33, where the services or materials were supplied under or in respect of that subcontract; and

(b) for services or materials supplied to the improvement where there is no certification or declaration of the substantial performance of the contract, or for services or materials supplied to the improvement after the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the forty-five-day period next following the occurrence of the earlier of,

(i) the date on which the person last supplied services or materials to the improvement, and

(ii) the date a subcontract is certified to be completed under section 33, where the services or materials were supplied under or in respect of that subcontract.

Separate liens when ongoing supply

(4) Where a person has supplied services or materials to an improvement on or before the date certified or declared to be the date of the substantial performance of the contract and has also

supplied, or is to supply, services or materials after that date, the person's lien in respect of the services or materials supplied on or before the date of substantial performance expires without affecting any lien that the person may have for the supply of services or materials after that date.

Declaration of last supply

(5) Where a person who has supplied services or materials under a contract or subcontract makes a declaration in the prescribed form declaring,

(a) the date on which the person last supplied services or materials under that contract or subcontract; and

(b) that the person will not supply any further services or materials under that contract or subcontract,

then the facts so stated shall be deemed to be true against the person making the declaration.

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

Court File No. CV-25-00740512-00CL

**AND 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.**

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**SUPPLEMENTARY FACTUM OF THE MONITOR
(SKYGRiD Holdback Amount Release)
Returnable February 3, 2026**

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