

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

B E T W E E N:

EXPORT DEVELOPMENT CANADA

Applicant

- and -

SYNAPTIVE MEDICAL INC.

Respondent

AND IN THE MATTER OF AN APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended, and section 101 of the *Courts of Justice Act*, RSO 1990, c C.43, as amended

**FACTUM OF THE APPLICANT, EXPORT DEVELOPMENT CANADA
(Appointing Receiver)**

April 27, 2026

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TO: **THE SERVICE LIST**

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PART I - OVERVIEW¹

1. The applicant, Export Development Canada (“**EDC**”), brings this application on consent for an order (the “**Receivership Order**”), among other things:

- (a) appointing Richter Inc. (“**Richter**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings, and properties of Synaptive Medical Inc. (“**Synaptive**”) acquired for, or used in relation to a business carried on by Synaptive, including all proceeds thereof (collectively, the “**Property**”), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*² (the “**BIA**”) and section 101 of the *Courts of Justice Act*³ (the “**CJA**”); and
- (b) authorizing the Receiver to file an assignment in bankruptcy on behalf of Synaptive or to consent to a bankruptcy order against Synaptive, and to act as the trustee in bankruptcy of Synaptive.

2. As of April 16, 2026, Synaptive is indebted to EDC in the amount of USD \$6,392,000 under the Senior Note and USD \$12,166,512.12 under the Junior Note (collectively, the “**Indebtedness**”). Fees, costs, expenses and interest for which Synaptive is liable have accrued and will continue to accrue until the Indebtedness is paid in full.⁴

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

² RSC 1985, c B-3.

³ RSO 1990, c C.43.

⁴ Affidavit of Jessica Markic sworn April 24, 2026 [“**Markic Affidavit**”] at para 4, Application Record of Export Development Canada dated April 24, 2026 [“**AR**”], Tab 2.

3. On April 17, 2026, EDC's external legal counsel, Fasken Martineau DuMoulin LLP ("**Fasken**") made demand upon Synaptive for repayment in full of the Indebtedness and delivered to Synaptive Notices of Intention to Enforce a Security (the "**244 Notices**").⁵

4. On April 23, 2026, Synaptive waived the ten (10) day notice period described by section 244 of the BIA and provided EDC with an executed consent to appoint a receiver over the Property ("**Consent to Receivership**").⁶

5. EDC is entitled to appoint a Receiver over the Property. In addition to the Consent to Receivership, the Notes and GSAs provide that, upon the occurrence of an event of default, EDC is entitled to seek the appointment of a receiver over the Property.⁷

6. The urgent appointment of the Receiver is just and convenient in the circumstances of this case. Synaptive is facing an urgent liquidity crisis and the imminent resignation of its last remaining director. The appointment of the Receiver is necessary to protect and preserve the value of the Property for the benefit of all stakeholders, including by preserving the chance of a going-concern transaction under a Court-supervised realization process.⁸ A realization through a receivership is expected to result in greater value for stakeholders than compared to a liquidation scenario.⁹

⁵ Markic Affidavit at paras 8, 58 and Exhibit "M", AR, Tab 2.

⁶ Markic Affidavit at paras 8, 59 and Exhibit "N" and "O", AR, Tab 2.

⁷ Markic Affidavit at para 9, 46 and Exhibits "G", "H", "I", and "J", AR, Tab 2.

⁸ Markic Affidavit at paras 7, 9, 63-64, AR, Tab 2.

⁹ Markic Affidavit at para 63, AR, Tab 2.

PART II - FACTS

A. Synaptive

7. Synaptive is a Canadian medical technology company specializing in neuro-imaging and precision intervention, including products focused on surgical planning and navigation, robotic digital microscopy and magnetic resonance imaging. Synaptive is a privately held corporation under the *Business Corporations Act* (Ontario) with its registered head office in Mississauga, Ontario.¹⁰ Eric Schultz is currently the sole director of Synaptive.¹¹

8. As of April 17, 2026, Synaptive issued furlough notices to 90 hourly and salaried employees across Canada, the United States and other countries, leaving 4 remaining employees.¹²

9. Synaptive's assets include a global intellectual property ("IP") portfolio made up of patents, licenses, trademarks and trade secrets, consisting of over 1,275 patent applications in various jurisdictions.¹³

10. Synaptive's operations are subject to significant regulatory oversight. In Canada, Synaptive's products cannot be sold without Health Canada approvals and related licenses, while in the U.S., Synaptive's products and operations are regulated by the Food and Drug Administration.¹⁴

¹⁰ Markic Affidavit at paras 10, 15 and Exhibit "A", AR, Tab 2.

¹¹ Markic Affidavit at para 11, AR, Tab 2.

¹² Markic Affidavit at paras 7, 12, AR, Tab 2.

¹³ Markic Affidavit at para 16, AR, Tab 2.

¹⁴ Markic Affidavit at para 17, AR, Tab 2.

B. The CCAA Proceedings

11. On March 19, 2025, Synaptive was granted protection under the *Companies' Creditors Arrangement Act* (Canada) (the “**CCAA**” and such proceedings being the “**CCAA Proceedings**”). Richter was appointed as monitor.¹⁵

12. At that time, EDC was the senior secured creditor of Synaptive pursuant to the following:

- (a) a loan facility and security agreement with Espresso Capital Ltd., which was assigned to EDC on August 30, 2023 (the “**Espresso Facility**”); and
- (b) a series of 75 convertible promissory notes issued by Synaptive between November 1, 2022 and December 23, 2024 to various investors in an aggregate amount of USD \$49,684,800 (the “**EDC Convertible Notes**”) under which EDC acted as lead investor.¹⁶

13. In the CCAA Proceedings, the Court approved an Approval and Reverse Vesting Order that, among other relief, approved a share subscription agreement (the “**Subscription Agreement**”) and the transaction contemplated therein (the “**Transaction**”).¹⁷

14. The Subscription Agreement provided that Synaptive shall issue the following new promissory notes, in accordance with the terms outlined under the Subscription Agreement:

¹⁵ Markic Affidavit at para 18 and Exhibits “B” and “C”, AR, Tab 2.

¹⁶ Markic Affidavit at para 20, AR, Tab 2.

¹⁷ Markic Affidavit at para 30 and Exhibit “F”, AR, Tab 2.

- (a) the senior rollover note in the principal amount of USD \$6,000,000, issued to EDC in satisfaction of all amounts outstanding under the senior-ranking Espresso Facility; and
- (b) the junior rollover notes in the principal amount of USD \$14,000,000, issued to holders of the second-ranking EDC Convertible Notes in satisfaction of all amounts outstanding under such notes.¹⁸

15. The Transaction closed on June 26, 2025, at which time Synaptive was removed as an applicant in the CCAA Proceedings.¹⁹ Synaptive is no longer a party to the CCAA Proceedings.

C. EDC Loan Documents

16. Pursuant to the terms of a senior secured promissory note (the “**Senior Note**”) and a junior secured promissory note (the “**Junior Note**”) and together with the Senior Note, the “**Notes**”) between Synaptive and EDC, Synaptive agreed to pay EDC the principal amount of USD \$6,000,000, and USD \$11,420,380.87, respectively, with interest at a rate equal to 8.00% per annum, compounded yearly, in accordance with the terms of the respective Note.²⁰

17. The Notes provide that upon the occurrence or existence of any Event of Default (as defined therein) and at any time thereafter during the continuance of such Event of Default, EDC may, by written notice to Synaptive, declare the aggregate outstanding Obligations (as defined therein) immediately due and payable and may exercise any other right, power, or remedy

¹⁸ Markic Affidavit at para 29 and Exhibit “E”, AR, Tab 2.

¹⁹ Markic Affidavit at para 33, AR, Tab 2.

²⁰ Markic Affidavit at paras 36, 38 and Exhibits “G” and “H”, AR, Tab 2.

granted to EDC under the Notes, the GSAs (defined below), or otherwise permitted to be exercised by EDC by applicable law.²¹

18. The Junior Note also provides that:
- (a) additional promissory notes having the terms substantially identical to the Junior Note would be issued by Synaptive to the investors listed in Schedule A thereunder (the “**Investors**”), with the aggregate initial principal amount of all such notes (including the Junior Note) to be USD \$14,000,000;²²
 - (b) upon the occurrence or existence of any Event of Default, unless waived in writing by a Required Majority (defined below), EDC, with the prior written consent of the Required Majority, may by written notice declare the aggregate outstanding Obligations (as defined therein) to be immediately due and payable;²³
 - (c) EDC may, with the prior written consent of the Required Majority, exercise any other right, power or remedy granted to EDC under the Junior Note, the Junior Note GSA (defined below), or otherwise permitted by applicable law;²⁴ and
 - (d) a Required Majority means the Investors holding at least 50% of the aggregate outstanding principal amount of the Notes, which must include EDC for so long as it remains collateral agent under the Junior Note GSA (defined below).²⁵

²¹ Markic Affidavit at paras 37, 39, and Exhibits “G”, s. 5, and “H”, s. 5, AR, Tab 2.

²² Markic Affidavit at para 39 and Exhibit “H”, s. 1, AR, Tab 2.

²³ Markic Affidavit at para 40 and Exhibit “H”, s. 5(a), AR, Tab 2

²⁴ Markic Affidavit at para 40 and Exhibit “H”, s. 5(b), AR, Tab 2

²⁵ Markic Affidavit at para 41 and Exhibit “H”, Schedule “B”, AR, Tab 2.

19. EDC holds over 50% of the outstanding principal amount of the Notes and thus did not require any further consents to exercise its default rights under the Junior Note.²⁶

20. The Notes each provide that an Event of Default occurs where, among other events:

- (a) Synaptive becomes insolvent or admits in writing its inability to pay its Indebtedness (as defined under the Notes) generally as it becomes due; and
- (b) Synaptive ceases or threatens to cease to carry on all or a substantial part of its business.²⁷

21. As security for the Obligations under the Senior Note and Junior Note, Synaptive executed a senior general security agreement (the “**Senior Note GSA**”) and a subordinate general security agreement (the “**Junior Note GSA**”) in favour of EDC, respectively, each dated as of June 26, 2025 (collectively, the “**GSAs**”).²⁸

22. Pursuant to the terms of the GSAs:

- (a) Synaptive, among other things, mortgaged, charged, and granted to EDC a security interest in all of Synaptive’s present and after-acquired personal property; and

²⁶ Markic Affidavit at para 41, AR, Tab 2.

²⁷ Markic Affidavit at para 42, Exhibit “G”, Schedule “B” and Exhibit “H”, Schedule “B”, AR, Tab 2.

²⁸ Markic Affidavit at paras 5, 43-44 and Exhibits “J” and “K”, AR, Tab 2.

- (b) EDC has the right, among other remedies, to appoint a receiver upon the occurrence of an Event of Default (as defined therein).²⁹

23. EDC's security interests are perfected by registrations under the Ontario *Personal Property Security Act* ("PPSA").³⁰

24. Synaptive, EDC in its capacity as holder of the Senior Note, and EDC in its capacity as collateral agent for the Subordinate Parties (as defined therein) are also parties to a subordination, intercreditor, and collateral agency agreement dated as of June 26, 2025 (the "**Subordination Agreement**").³¹ The Subordination Agreement appoints EDC as the subordinate collateral agent for the Investors and provides that all Junior Note obligations, liens, and collateral are fully postponed, subordinated, and junior to the obligations under the Senior Note and its related security.³²

D. Synaptive's Defaults and Demands

25. Synaptive continued to face cash flow issues after its exit from the CCAA Proceedings.³³ Over the last several months, Synaptive's liquidity challenges have reemerged.

26. In early April, certain investors came forward with a proposal to inject additional equity into Synaptive. This equity injection was contemplated in the context of a further CCAA proceeding, either to be funded by EDC or to be funded by the investors through debtor-in-

²⁹ Markic Affidavit at paras 45-46, Exhibit "J", ss. 2.1, 6.2 and Exhibit "K", ss. 2.1, 6.2, AR, Tab 2.

³⁰ Markic Affidavit at para 47 and Exhibit "K", AR, Tab 2.

³¹ Markic Affidavit at para 50 and Exhibit "L", AR, Tab 2.

³² Markic Affidavit at para 51 and Exhibit "L", ss. 3, 25, AR, Tab 2.

³³ Markic Affidavit at para 52, AR, Tab 2.

possession financing that would rank in priority to the indebtedness owing under the Notes. EDC, however, was not prepared to finance further CCAA proceedings or to have its interests subordinated in the manner proposed above. The lack of funding was one of the reasons the investors were no longer prepared to proceed with their proposed equity injection.³⁴

27. Synaptive is now facing an urgent liquidity crisis. In April 2026, Synaptive defaulted on its obligations to EDC by, among other things, becoming insolvent, admitting in writing its inability to pay its indebtedness generally as it becomes due, and threatening to cease to carry on all or a substantial part of its business, each of which is an Event of Default under the Notes, as shown by the following events:

- (a) Synaptive delivered a cash flow forecast to EDC on March 26, 2026 that projected that Synaptive will deplete its cash reserves in or around the week of April 17, 2026;
- (b) on or around April 16, 2026, Synaptive admitted in writing that it would be unable to meet its ongoing payroll obligations and would furlough the majority of its employees by April 17, 2026;
- (c) on or around April 17, 2026, Synaptive furloughed all but 4 employees; and
- (d) since that time, all but one of Synaptive's directors have resigned, and EDC has been advised by Synaptive's legal counsel that the remaining director intends to resign imminently (together, the "**Defaults**").³⁵

³⁴ Markic Affidavit at para 55, AR, Tab 2.

³⁵ Markic Affidavit at paras 7, 56, AR, Tab 2.

28. EDC understands that, in the absence of a receivership, the last director will assign Synaptive into bankruptcy before he resigns.

29. On April 17, 2026, Fasken issued separate demand letters to Synaptive, on behalf of EDC, notifying Synaptive of certain Defaults, demanding repayment of the Indebtedness owing under the Senior Note and the Junior Note, and enclosing 244 Notices (the “**Demand Letters**”).³⁶

30. Synaptive has waived the ten (10) day notice period prescribed by the 244 Notices and has consented to the issuance of the Receivership Order.³⁷

31. EDC has been advised that, since delivering the Demand Letters and 244 Notices, certain of Synaptive’s employees have come forward with a potential transaction that would result in an equity injection into Synaptive of approximately USD \$6,000,000. The employees are working with Richter to determine the terms of the potential transaction.³⁸

PART III - ISSUES

32. The issues on this application are:

- (a) Does this Court have jurisdiction to appoint the Receiver?
- (b) Is it just or convenient to appoint the Receiver?
- (c) Are the terms of the requested order appropriate?

³⁶ Markic Affidavit at para 58 and Exhibit “M”, AR, Tab 2.

³⁷ Markic Affidavit at para 59 and Exhibit “N” and “O”, AR, Tab 2.

³⁸ Markic Affidavit at para 60, AR, Tab 2.

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

PART IV - LAW AND ARGUMENT

A. This Court has the Jurisdiction to Appoint the Receiver

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

35. EDC has complied with the technical requirements of section 244 of the BIA by sending the 244 Notices to Synaptive, and Synaptive has waived the prescribed 10-day notice period.³⁹ Synaptive has also consented to the appointment of the Receiver.⁴⁰

36. Richter is a trustee within the meaning of the BIA and has consented to its appointment as Receiver.⁴¹

B. It is Just and Convenient to Appoint the Receiver Without Further Delay

37. Section 243(1) of the BIA and section 101 of the CJA each provide this Court with the authority to appoint a receiver if the Court determines it is “just or convenient”.⁴²

38. In determining what is just or convenient under section 243(1) of the BIA and section 101 of the CJA, the Court must consider all of the circumstances, but should pay particular attention to the nature of the property and the rights and interests of all parties in relation thereto,

³⁹ Markic Affidavit at paras 58-59 and Exhibits “M”, “N”, AR, Tab 2.

⁴⁰ Markic Affidavit at para 59 and Exhibit “O”, AR, Tab 2.

⁴¹ Markic Affidavit at para 67 and Exhibit “P”, AR, Tab 2.

⁴² BIA, s [243](#); CJA, s [101](#).

which includes the rights of the secured creditor under its security.⁴³ There are no preconditions for the exercise of the Court’s discretion to appoint a receiver. Factors to consider in determining whether it is appropriate to appoint a receiver include, among others:

- (a) the fact that the creditor has the right to appoint a receiver under the loan documentation; and
- (b) the likelihood of preserving and maximizing return to the parties.⁴⁴

39. These factors are not a checklist, but considerations to be viewed holistically, to determine whether, in the circumstances, the appointment of a receiver is just or convenient.⁴⁵

(I) *The Consent to Receivership, the Notes and GSAs Contemplate the Relief Sought*

40. The appointment of a receiver is less extraordinary in nature where the lender has a contractual right to appoint a receiver under its security. Courts do not regard the nature of the remedy as so extraordinary where the relevant security permits the appointment because the applicant is merely seeking to enforce a term of an agreement already made by the parties.⁴⁶

41. In this case, Synaptive has provided a Consent to Receivership, and EDC is seeking approval of an order that is substantially in the form attached to the Consent to Receivership.⁴⁷

⁴³ *Bank of Nova Scotia v Freure Village on the Clair Creek* (1996), [1996 O.J. No. 5088](#) (SCJ) at [para 10](#).

⁴⁴ *Canadian Equipment Finance and Leasing Inc v The Hypoint Company Limited*, [2022 ONSC 6186](#) [*“Canadian Equipment Finance”*] at [paras 24-25](#).

⁴⁵ *Romspen Investment Corporation v Tung Kee Investment Canada Ltd. et al*, [2023 ONSC 5911](#) at [para 33](#).

⁴⁶ *Elleway Acquisition Ltd v Cruise Professionals Ltd.*, [2013 ONSC 6866](#) at [para 27](#); *RBC v Peace Bridge Duty Free Inc.*, [2025 ONSC 7339](#) [*“Peace Bridge”*] at [para 32](#).

⁴⁷ Markic Affidavit at para 59 and Exhibit “O”, AR, Tab 2.

Courts have held that, in the circumstances of negotiated consents to receivership orders, commercial certainty also supports the appointment of a receiver; parties should be able to expect courts to uphold their bargains, barring unforeseen or special circumstances.⁴⁸

42. Moreover, where a creditor's security provides for the appointment of a receiver, there is no requirement for the applicant to establish that it will suffer irreparable harm if the proposed receiver is not appointed.⁴⁹

43. The relevant security documents expressly provide for the appointment of a court-appointed receiver over the Property in the present circumstances. The GSAs and the Notes each provide that, upon the occurrence of an event of default thereunder, EDC may appoint a receiver of the Property.⁵⁰ The relief that EDC seeks is therefore not extraordinary. Rather, it is contractual in nature and expressly contemplated in these circumstances.

(II) The Receivership will Maximize Returns to the Parties

44. As noted above, Synaptive is facing an imminent liquidity crisis. The appointment of the Receiver is necessary to preserve and realize the value of the Property. The proposed receivership will maximize recoveries for the parties for the following reasons:

⁴⁸ *Peace Bridge* at [para 39](#); *ATB Financial v Mayfield Investments Ltd.*, [2024 ABKB 635](#) at para [40](#).

⁴⁹ *Canadian Equipment Finance* at [paras 25\(a\)-26](#).

⁵⁰ Markic Affidavit at para 46, Exhibits "G" to "J", AR, Tab 2.

- (a) Synaptive has advised that it has or will soon run out of cash and may imminently make an assignment in bankruptcy, which will likely eliminate the prospect of a going-concern sale and would erode the value of the Property.⁵¹
- (b) All directors except Mr. Schultz have resigned, and Mr. Schultz has indicated that he intends to resign imminently. The absence of any directors at Synaptive could deteriorate the value of the Property if, for example, there are no remaining directors or officers who can ensure that Synaptive's IP registrations do not lapse.⁵²
- (c) The Receiver can undertake a court-supervised sale process and determine the most beneficial and efficient process to maximize the return for all stakeholders, which will include further exploring the proposed transaction from certain employees of Synaptive and the equity injection contemplated therein.⁵³
- (d) A going-concern sale in the context of a receivership (if one materializes) will likely result in greater value for all stakeholders, compared to a liquidation scenario in a bankruptcy proceeding or otherwise. For reasons similar to those noted in the CCAA Proceedings, it is expected that a reverse vesting structure may be necessary to effect a going-concern solution in the proposed receivership proceedings, particularly in light of the multiple licenses held by Synaptive and to preserve Synaptive's tax attributes.⁵⁴

⁵¹ Markic Affidavit at paras 56, 63, AR, Tab 2.

⁵² Markic Affidavit at para 63, AR, Tab 2.

⁵³ Markic Affidavit at para 63, AR, Tab 2.

⁵⁴ Markic Affidavit at paras 61, 63, AR, Tab 2.

- (e) The Property is encumbered by the registered interests of other parties.⁵⁵ It would be beneficial to all parties for the Property to be sold in a transparent, court-supervised process.

C. The Terms of the Receivership Order are Appropriate

45. The proposed Receivership Order is based upon the Model Receivership Order of the Commercial List User Committee of the Superior Court (Commercial List), subject to minor changes reflecting the circumstances of this case.⁵⁶

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

47. The proposed Receivership Order also provides that the Receiver, if appointed, will have the power to borrow up to \$400,000 (the “**Receiver’s Borrowings**”) for the purpose of funding the exercise of the powers and duties conferred on the Receiver by the Receivership Order, including interim expenditures and the fees and expenses of the Receiver and its counsel. The repayment of the Receiver’s Borrowings will be secured by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) in priority to all security interests, trusts, liens, charges, and encumbrances, statutory or otherwise, in favour of any person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

⁵⁵ Markic Affidavit at para 48 and Exhibit “K”, AR, Tab 2.

⁵⁶ See the Blackline of the Draft Receivership Order to the Commercial List User Committee Model Receivership Order, AR, Tab 4.

48. The Receiver's Charge and Receiver's Borrowings Charge are necessary and appropriate in the circumstances because:

- (a) the Receiver is essential to the proposed process, and the Receiver's Charge will secure the payment of the fees of the Receiver and its counsel incurred in respect of these proceedings;
- (b) it is anticipated that the Receiver will not have sufficient funds in the estate to meet necessary, interim expenditures, including rent for May, costs associated with IP registrations and renewals, payments to independent contractors, and insurance premiums;⁵⁷
- (c) the monetary limit of \$400,000 is intended to maintain the status quo and preserve the opportunity for a going-concern sale during an anticipated three-week period, during which the Receiver will further explore the proposed transaction from certain employees of Synaptive;⁵⁸ and
- (d) the Receivership Order also provides transparency to stakeholders regarding the receivership costs by providing that the Receiver's accounts remain subject to a passing of accounts before the Court, as is the practice on the Commercial List.

49. All PPSA registrants and the landlords have been served with this Application and have not, at this time, objected to the requested relief.

⁵⁷ Markic Affidavit at para 70, AR, Tab 2.

⁵⁸ Markic Affidavit at para 71, AR, Tab 2.

50. The proposed Receiver and Synaptive support all of the relief sought by EDC on this application.

51. For these reasons, it is appropriate for this Court to authorize the Receiver to borrow funds on a priority basis under Receiver's certificates to fund the costs of the receivership, subject to the monetary limit set forth in the Receivership Order.

(III) The Receiver Should be Authorized to Assign Synaptive in Bankruptcy

52. The proposed Receivership Order empowers the Receiver, if appointed, to: (a) file an assignment in bankruptcy on behalf of Synaptive, or to consent to the making of a bankruptcy order against Synaptive, and (b) to act as the trustee in bankruptcy of Synaptive.

53. Courts can authorize a receiver to file an assignment in bankruptcy on behalf of a debtor.⁵⁹

54. The BIA also permits receivers appointed in respect of a debtor to act as a trustee in bankruptcy of the debtor, where, at the time of being appointed as trustee and at the first meeting of creditors, there is full disclosure of that fact and of the potential conflict of interest.⁶⁰ The practice of appointing a trustee who was appointed as receiver in respect of a debtor is routinely approved in insolvency proceedings encompassing both receiverships and bankruptcies.⁶¹

⁵⁹ *RBC v Gustin*, [2019 ONSC 5370](#) at [para 15](#); *CIBC v 1340182 Ontario Limited et al*, [2024 ONSC 3658](#) at [para 13](#).

⁶⁰ BIA, [s 13.3\(2\)](#).

⁶¹ *Proex Logistics Inc. (Re)*, [2025 ONCA 832](#) at [para 3](#); *Royal Bank of Canada v Galmar Electrical Contracting Inc. et al*, [2015 ONSC 5562](#) at [para 48](#).

55. In this case, in the absence of a transaction, the Receiver intends to pivot to a liquidation of the Property. A bankruptcy would facilitate the liquidation and minimize the costs associated therewith.⁶²

56. The Receiver's independent legal counsel, McMillan LLP, has reviewed EDC's security and issued an opinion, subject to the customary assumptions and qualifications, confirming the validity and enforceability of said security in accordance with its terms and the perfection of said security, as set forth in greater detail in the Pre-Filing Report of the Proposed Receiver, Richter Inc., to be filed.

PART V - ORDER REQUESTED

57. For the reasons outlined above, EDC respectfully requests that this Honourable Court grant an order substantially in the same form as the draft Receivership Order found at Tab 3 of the Application Record, and which is substantially the same as the form of order attached to the Consent to Receivership.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of April, 2026.

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⁶² Markic Affidavit at para 68, AR, Tab 2.

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SCHEDULE “A”

LIST OF AUTHORITIES

Statutes and Regulations

Bankruptcy and Insolvency Act, [RSC 1985, c B-3, s 13.3\(2\), s 243](#)

Courts of Justice Act, [RSO 1990, c C.43, s 101](#).

Cases

1. *Bank of Nova Scotia v Freure Village on the Clair Creek*, [1996 O.J. No. 5088](#) (SCJ)
2. *Canadian Equipment Finance and Leasing Inc v The Hypoint Company Limited*, [2022 ONSC 6186](#)
3. *Romspen Investment Corporation v Tung Kee Investment Canada Ltd. et al*, [2023 ONSC 5911](#)
4. *Elleway Acquisition Ltd v Cruise Professionals Ltd.*, [2013 ONSC 6866](#)
5. *RBC v Peace Bridge Duty Free Inc.*, [2025 ONSC 7339](#)
6. *Canadian Western Bank v 2563773 Ontario Inc.*, [2023 ONSC 4766](#)
7. *ATB Financial v Mayfield Investments Ltd.*, [2024 ABKB 635](#)
8. *RBC v Gustin*, [2019 ONSC 5370](#)
9. *CIBC v 1340182 Ontario Limited et al*, [2024 ONSC 3658](#)
10. *Proex Logistics Inc. (Re)*, [2025 ONCA 832](#)
11. *Royal Bank of Canada v Galmar Electrical Contracting Inc. et al*, [2015 ONSC 5562](#)

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

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date April 27, 2026



Julia Chung (LSO#: 90012D)

Signature

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

[Bankruptcy and Insolvency Act, RSC 1985, c B-3](#)

Where trustee is not qualified to act

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

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

Copy of application to Superintendent

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

Where disclosure required

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

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

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

...

Court may appoint receiver

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

- (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.

Advance notice

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

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

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

Period of notice

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

No advance consent

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

Exception

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

(a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

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

[Courts of Justice Act, RSO 1990, c C.43](#)

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

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

EXPORT DEVELOPMENT CANADA

-and- SYNAPTIVE MEDICAL INC.
Applicant

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

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

**Proceeding commenced at
Toronto**

**FACTUM OF THE APPLICANT, EXPORT
DEVELOPMENT CANADA
(Appointing Receiver)**

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