

COURT FILE NUMBER 1803-21971
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON



IN THE MATTER OF THE BANKRUPTCY
AND INSOLVENCY OF 1119658 ALBERTA
LTD. and 101285461 SASKATCHEWAN LTD.

PLAINTIFF BUSINESS DEVELOPMENT BANK OF
CANADA

DEFENDANTS 1119658 ALBERTA LTD. and 101285461
SASKATCHEWAN LTD.

APPLICANT BDO CANADA LIMITED. (formerly HARDIE
& KELLY INC). in its capacity as the Court-
appointed Receiver of 1119658 ALBERTA
LTD.

DOCUMENT APPLICATION

ADDRESS FOR SERVICE CARON & PARTNERS LLP
AND Barristers & Solicitors
CONTACT INFORMATION Fifth Avenue Place – West Tower
OF 2120, 237 – 4th Avenue S.W.
PARTY FILING THIS Calgary, Alberta T2P 4K3
DOCUMENT Phone: 403-770-4023
Fax: 403-237-0111
Attention: Dean A. Hutchison
Solicitors for BDO Canada Limited

NOTICE TO RESPONDENT(S):

This application is made against you. You are the respondent.

You have the right to state your side of this matter before the Judge.

To do so, you must be in Court when the application is heard as shown below:

Date: Tuesday, October 17, 2023
Time: 10:00 a.m.
Where: Court of King's Bench of Alberta, Edmonton Law Courts,
1A Sir Winston Churchill Square, Edmonton, Alberta
Before Whom: The Honourable Mister Justice G.D. Dunlop – Via WebEx
(Booked on the Commercial List)

Go to the end of this document to see what else you can do and when you must do it.

Remedy Claimed or Sought:

1. An abridgement, if necessary, of the time for service of this Application and materials in support thereof, and an Order declaring service of same to be good and sufficient.
2. An Order substantially in the form attached hereto as **Schedule “A”**:
 - (a) approving the fees, receipts and disbursements of BDO Canada Limited, formerly Hardie & Kelly Inc. (the **“Receiver”**) in its capacity as the Court-appointed receiver of 1119658 Alberta Ltd. (**“1119 AB”**), and those of the Receiver’s legal counsel as it relates to the receivership of 1119 AB, as set out in the Receiver’s Fifth Report dated October 10, 2023 (the **“Receiver’s Fifth Report”**);
 - (b) approving the actions of the Receiver and those of the Receiver’s legal counsel in these receivership proceedings since the date of the Receiver’ Fourth Report dated February 6, 2023 (the **“Receiver’s Fourth Report”**), as set out in the Receiver’s Fifth Report;
 - (c) approving the Receiver’s Final Statement of Receipts and Disbursements concerning the receivership of 1119 AB attached as Appendix “A” to the Receiver’s Fifth Report (the **“Final R&D”**) and authorizing the Receiver to distribute funds with respect to the receivership of 1119 AB in the manner proposed in the Receiver’s Fifth Report;
 - (d) authorizing the Receiver to distribute the books and records of each of 1119 AB and 1012854561 Saskatchewan Ltd. (**“1012 SK”**) to any party who makes a written request of the Receiver for the said books and records within thirty (30) days of the date of the Order, and authorizing the Receiver to dispose of and destroy the books and records of 1119 AB and 1012 SK should no one make a written request for the books and records, and retrieve the said book and records from the Receiver, within the said thirty (30) day period;
 - (e) discharging and relieving BDO Canada Limited from its obligations, liabilities, responsibilities and duties in its capacity as the receiver of 1119 AB in these

proceedings upon the performance of the duties incidental to the completion of these proceedings as it relates to the receivership of 1119 AB as described in the Receiver's Fifth Report, and upon the Receiver filing a certificate of completion / discharge certificate substantially in the form attached to the Receiver's Fifth Report (the "**Certificate of Completion**").

3. An Order granting leave to the Receiver to apply to this Court for advice and directions as may be necessary to carry out the terms of any Order granted at the within application.
4. An Order granting such other and further relief as the circumstances may require and as this Honourable Court shall deem appropriate.

Grounds for Making the Application:

A. Approval of Activities of the Receiver and Professional Fees in Respect of the Receivership of 1119 AB

- (a) All of the actions of the Receiver and its legal counsel in the course of the administration of the receivership of 1119 AB, including those actions of the Receiver and its legal counsel since the date of the Receiver's Fourth Report, are reasonable and appropriate in the circumstances.
- (b) All of the actions in respect of the fees and disbursements incurred by the Receiver and its legal counsel during the course of the administration of the receivership of 1119 AB to date are reasonable and have been validly incurred in connection with the conduct of the Receiver's obligations.

B. Approval of the Final R&D and the Proposed Final Distribution in Respect of the Receivership of 1119 AB

- (c) All of the receipts and disbursements of the Receiver in its capacity as the receiver of 1119 AB as set in in the Final R&D, are reasonable, having been validly incurred in connection with the conduct of the Receiver's obligations.
- (d) The Receiver, in its capacity as the receiver of 1119 AB, has reviewed the known indebtedness of 1119 AB to its creditors. The Receiver has also had independent

legal counsel conduct a review of the security of the Business Development Bank of Canada (“BDC”), which review has determined that the security of BDC against 1119 AB is valid and enforceable.

- (e) It is appropriate in the circumstances to approve the Final R&D and to authorize a final distribution of proceeds regarding 1119 AB in the manner proposed by the Receiver in the Receiver’s Fifth Report.

C. Books and Records

- (f) The Receiver currently holds certain books and records of each of 1119 AB and 1012 SK. As the Receiver’s administration of the receivership estate of 1012 SK has completed and the Receiver has been discharged in relation to the estate 1012 SK, and as the Receiver’s administration of the receivership estate of 1119 AB has reached completion and the Receiver is seeking its discharge in relation to the estate of 1119 AB, the Receiver no longer requires the books and records of each of 1119 AB and 1012 SK
- (g) The Receiver proposes that any party seeking to obtain the said books and records of 1119 AB and or 1012 SK may do so by contacting the Receiver, in writing, requesting the said books and records and make arrangements satisfactory to the Receiver to retrieve such books and records, within thirty (30) days from the date the requested Order is posted on the Receiver’s website in accordance with the service provisions of the said Order. If the books and records of 1119 AB and 1012 SK have not been claimed and retrieved within such thirty (30) day period, the Receiver shall be authorized to dispose of and destroy the said books and records in any manner the Receiver deems fit.
- (h) It is appropriate in the circumstances that the Receiver be authorized to deal with the books and records of each of 1119 AB and 1012 SK in this matter as the said books and records are no longer required by the Receiver, and the Receiver should not be put to the expense of having to store the books and records.

D. Discharge of the Receiver

- (i) Upon the distribution of the remaining funds of the estate of 1119 AB as described in the Receiver's Fifth Report, the Receiver is not aware of any reason they should be required for any further purposes in these proceedings as it relates to the receivership of 1119 AB, and therefore should be discharged as receiver of 1119 AB upon the filing of the Certificate of Completion as proposed.
- (j) The discharge of the Receiver as receiver of 1119 AB as proposed is just, appropriate, and in the best interest of the administration of the receivership estate of 1119 AB and the stakeholders affected thereby.
- (k) Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or Evidence To Be Relied Upon:

- (a) This notice of Application, filed;
- (b) The Receiver's Fifth Report dated October 10, 2023, filed;
- (c) The Affidavit of Kevin Meyer sworn October 5, 2023, filed;
- (d) The Amended Receivership Order granted by the Honourable Mr. Justice S.D. Hillier on December 5, 2018, filed;
- (e) All pleadings, Affidavits and other materials filed in this action, including all Reports of the Receiver and Confidential Supplements thereto;
- (f) The inherent jurisdiction of this Honourable Court to control its own process; and
- (g) Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Rules:

- (a) Rules 6.9, 6.10, 6.47 (a), (c) (d), (e) and (f), 11.27 and 13.5 of the Alberta *Rules of Court*.

Applicable Acts and Regulations:

- (a) The *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended;
- (b) The *Judicature Act*, R.S.A. 2000, c. J-2, as amended;
- (c) The *Business Corporations Act*, R.S.A. 2000, c. B-9, as amended;
- (d) The *Personal Property Security Act*, R.S.A. 2000, c. P-7, as amended;

How the Application is Proposed to be Heard or Considered:

- (a) Via WebEx before the Honourable Mister Justice G.D. Dunlop, in chambers.

WARNING TO THE RESPONDENT:

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

SCHEDULE "A"

COURT FILE NUMBER 1803-21971

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE BANKRUPTCY
AND INSOLVENCY OF 1119658 ALBERTA
LTD. and 101285461 SASKATCHEWAN LTD.

PLAINTIFF BUSINESS DEVELOPMENT BANK OF
CANADA

DEFENDANTS 1119658 ALBERTA LTD. and 101285461
SASKATCHEWAN LTD.

APPLICANT BDO CANADA LIMITED. (formerly HARDIE
& KELLY INC). in its capacity as the Court-
appointed Receiver of 1119658 ALBERTA
LTD. and 101285461 SASKATCHEWAN LTD.

DOCUMENT **ORDER FOR FINAL DISTRIBUTION,
APPROVAL OF RECEIVER'S FEES AND
DISBURSEMENTS, APPROVAL OF
RECEIVER'S ACTIVITIES and
DISCHARGE OF RECEIVER REGARDING
THE RECEIVERSHIP OF 1119658
ALBERTA LTD.**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT CARON & PARTNERS LLP
Barristers & Solicitors
Fifth Avenue Place – West Tower
2120, 237 – 4th Avenue S.W.
Calgary, Alberta T2P 4K3
Phone: 403-770-4023
Fax: 403-237-0111
Attention: Dean A. Hutchison
Solicitors for BDO Canada Limited

DATE ON WHICH ORDER WAS PRONOUNCED: Tuesday, October 17, 2023

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton Law Courts

NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Mr. Justice G.D. Dunlop

ORDER

UPON THE APPLICATION of BDO Canada Limited, formerly Hardie & Kelly Inc. (the “**Receiver**”) in its capacity as the Court-appointed receiver of all of the current and future assets, undertaking and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof of each of 1119658 Alberta Ltd. (“**1119 AB**”) and 101285461 Saskatchewan Ltd. (“**1012 SK**”) filed October 10, 2023, (the “**Application**”); **AND UPON HAVING** read all pleadings, proceedings, Orders and other materials filed in this Action, including the Receiver’s Fifth Report dated October 10, 2023 (the “**Receiver’s Fifth Report**”), the Affidavit of Kevin Meyler sworn October 5, 2023 (the “**Meyler Affidavit**”), and the Affidavit of Service of Lorraine Chanasyk sworn October __, 2023, all filed; **AND UPON IT** appearing that all interested and affected parties have been served with notice of the Application; **AND UPON HEARING** from counsel for the Receiver and all other interested parties present; **AND UPON BEING** satisfied that it is appropriate to do so;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of the Application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of the Application, and time for service of the Application is abridged to that actually given.

APPROVAL OF THE FEES AND DISBURSEMENTS OF THE RECEIVER AND ITS LEGAL COUNSEL

2. The Receiver's accounts for fees and disbursements as it relates to the receivership of 1119 AB, as set out in the Receiver’s Fifth Report and the Meyler Affidavit, are hereby approved without the necessity of the formal passing of its accounts.
3. The accounts of the Receiver's legal counsel, Caron & Partners LLP, as it relates to the receivership 1119 AB as set out in the Receiver’s Fifth Report and the Meyler Affidavit, are hereby approved without the necessity of a formal assessment of its accounts.

APPROVAL OF THE ACTIVITIES OF THE RECEIVER AND FINAL STATEMENT OF RECEIPTS AND DISBURSEMENTS

4. The activities of the Receiver as it relates to the receivership of 1119 AB as set out in the Receiver's Fifth Report and in all other reports filed herein, and the Final Statement of Receipts and Disbursements regarding the receivership of 1119 AB as set out in the Receiver's Fifth Report, are hereby ratified and approved.

APPROVAL OF FINAL DISTRIBUTION BY THE RECEIVER

5. The Receiver is hereby authorized and directed to distribute funds regarding the estate of 1119 AB in the manner proposed in the Receiver's Fifth Report.

BOOKS AND RECORDS

6. Any party seeking any books and records of 1119 AB and or 1012 SK that are currently in the possession of the Receiver, may make a written request to the Receiver for such books and records within thirty (30) days of the date a copy of this Order is posted on the Receiver's website in accordance with paragraph 10 of this Order. Upon the expiry of the said thirty (30) day period, the Receiver is authorized to dispose of and destroy any unclaimed books and records of 1119 AB and 1012 SK in such manner as the Receiver deems fit.

DISCHARGE OF THE RECEIVER

7. On the evidence before the Court, the Receiver, with respect to its appointment by this Honourable Court as the receiver of 1119 AB, has satisfied its obligations under and pursuant to the terms of the Orders granted in the within proceedings up to and including the date hereof, and the Receiver shall not be liable for any act or omission on its part including, without limitation, any act or omission pertaining to the discharge of its duties in the within proceedings as it relates to the receivership of 1119 AB, save and except for any liability arising out of any fraud, gross negligence or willful misconduct on the part of the Receiver as it relates to the receivership of 1119 AB, or with leave of the Court. Subject to the foregoing, any claims against the Receiver in connection with the

performance of its duties as the Court-appointed receiver of 1119 AB, are hereby stayed, extinguished and forever barred.

8. No action or other proceedings shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as receiver of 1119 AB, except with prior leave of this Court on notice to the Receiver, and upon such terms as this Court may direct.
9. Upon the Receiver filing with the Clerk of the Court an executed Certificate of Completion in the form attached hereto as **Schedule "A"**, then the Receiver shall be discharged as receiver of 1119 AB, provided however, that notwithstanding its discharge herein:
 - (a) the Receiver shall remain receiver of 1119 AB for the performance of such incidental duties as may be required to complete the administration of the receivership of 1119 AB herein; and
 - (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stay of proceedings in favour of the Receiver in its capacity as receiver of 1119 AB.
10. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the day of the transmission or delivery of such documents. A copy of this Order shall also be posted on the Receiver's website at www.bdo.ca/services/financial-advisory-services/business-restructuring-turnaround-services/current-engagements/1119658-alberta-ltd.
11. Service of this Order on any party not attending the Application is hereby dispensed with.

Justice of the Court of King's Bench of Alberta

SCHEDULE "A"

COURT FILE NUMBER	1803-21971
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY OF 1119658 ALBERTA LTD. and 101285461 SASKATCHEWAN LTD.
PLAINTIFF	BUSINESS DEVELOPMENT BANK OF CANADA
DEFENDANTS	1119658 ALBERTA LTD. and 101285461 SASKATCHEWAN LTD.
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	CARON & PARTNERS LLP Barristers & Solicitors Fifth Avenue Place – West Tower 2120, 237 – 4th Avenue S.W. Calgary, Alberta T2P 4K3 Phone: 403-770-4023 Fax: 403-237-0111 Attention: Dean A. Hutchison

CERTIFICATE OF COMPLETION / DISCHARGE CERTIFICATE

The undersigned hereby certifies for the purposes of the Order made on the 17th day of October, 2023 by the Honourable Mister Justice G.D. Dunlop (the “**Discharge Order**”) in the matter of the receivership of 1119658 Alberta Ltd. under Court File No.: 1803-21971 (the “**Receivership Proceedings**”), that the net proceeds of the receivership estate of 1119658 Alberta Ltd. have been distributed in accordance with the terms of the Discharge Order as approved by the Court of King's Bench of Alberta; and

The undersigned is now discharged as the Receiver of 1119658 Alberta Ltd.

Dated this ___ day of _____, 2023

**BDO Canada Limited, in its capacity as Court-appointed Receiver of
1119658 Alberta Ltd, and not in its personal capacity.**

Per: _____

Name:

Title: