

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

B E T W E E N:

**EXPORT DEVELOPMENT CANADA**

Applicant

and

**AXIOS MOBILE ASSETS CORP.; AXIOS MOBILE ASSETS INC.; AXIOS MOBILE  
ASSETS, INC.; AXIOS LOGISTICS SOLUTIONS INC.**

Respondents

**APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990,  
C. C.43, AS AMENDED, AND SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY  
ACT*, R.S.C. 1985, C. B-3 AS AMENDED**

**FACTUM OF  
THE APPLICANT**

February 23, 2017

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Court File No.

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**PART I - OVERVIEW**

1. This Application is made by Export Development Canada (“**EDC**”), for an order (the “**Appointment Order**”) appointing A. Farber & Partners Inc. (“**Farber**”) as receiver and manager (the “**Receiver**”), without security, (i) over the assets, undertakings, and properties of Axios Mobile Assets Inc. (“**Axios Canada**”) pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario) (the “**CJA**”), and (ii) over the assets, undertakings, and properties of Axios Mobile Assets Corp.

(“**Axios Corp.**”), Axios Mobile Assets, Inc. (“**Axios USA**”), and Axios Logistics Solutions Inc. (“**Axios Logistics**”) pursuant to section 101 of the CJA.

2. Axios Canada, Axios Corp, Axios USA, and Axios Logistics (collectively, the “**Companies**”), together with related entities Axsense Inc., Axios Mobile Assets Inc. (Nevada) (“**Axios Nevada**”), and Mobius Logistics Solutions Inc. (“**Mobius**”) (collectively, the “**Axios Group**” or “**Axios**”), are a supply chain logistics company that produces and supplies an “environmentally friendly” structural and trackable technology enabled mobile asset platform (or pallet) made from composite material as an alternative to the traditional shipping options, such as wooden pallets. The Axios Group is headquartered in Mississauga, Ontario and services customers based primarily in the United States.

3. EDC is a commercial lender owned by the Government of Canada and acts as the Government’s export credit agency. Its mandate is to assist Canada’s export trade by helping Canadian companies to respond to international business opportunities. EDC is Axios Canada’s senior secured lender. EDC has extended credit facilities to Axios Canada pursuant to two loan agreements (together, the “**EDC Loan Agreements**”), which are guaranteed by Axios Corp., Axios USA, and Axios Logistics (collectively, the “**EDC Guarantors**”).

4. Axios has been experiencing financial difficulties for some time. Most recently, despite efforts to raise additional financing, Axios announced that it has begun to shut down its operation due to a substantial exhaustion of its cash and credit resources, and has terminated all of its employees other than the Chief Executive Officer of Axios Corp, Mr. Richard MacDonald. As a result of the substantial cessation of its operations, there are approximately 80,000 pallets that are currently stranded across the United States, with the vast majority located at 30 retail

distribution centres located in central and eastern United States. If the pallets are not retrieved soon, they are at significant risk of being sold, destroyed or otherwise disposed of by owners of the distribution centres.

5. The Companies are in default of their obligations to EDC pursuant to the EDC Loan Agreements and guarantees, respectively, and such defaults are continuing. Currently, in excess of \$5,000,000 is due and owing by the Companies to EDC, and the Companies are unable to make payment or raise more financing. EDC seeks the appointment of the Receiver over the Companies in order to secure and preserve the property of the Respondents while the Receiver determines, among other things, asset ownership as between the Axios Group entities, asset location, creditor constituencies, and establishes a going-forward strategy to maximize value for stakeholders. Axios Canada has consented to the appointment of the Receiver, and none of the Companies opposes the appointment of the Receiver.

6. As a result of the foregoing, the appointment of Farber as Receiver is just and convenient in the circumstances.

## **PART II – FACTS**

7. The facts relevant to this Application are set out in detail in the affidavit of Geoff Bleich sworn February 23, 2017 (the “**Bleich Affidavit**”). Below is a brief summary of those facts.

### **(a) *The Axios Group***

8. The Axios Group is headed by Axios Corp., which, until recently, was a publicly traded company which was listed on the TSX Venture Exchange.

9. Axios Corp. is an Ontario corporation headquartered in Mississauga, Ontario, with its registered office being its legal counsel Fogler, Rubinoff LLP located in Toronto, Ontario. Until recently, Axios Corp. was publicly traded on the TSX Venture Exchange under the trading symbol “AXA”, and as a result of falling below the TSX Venture Exchange’s listing standards, has now been moved to the NEX board, a separate board of the TSX Venture Exchange for companies that have a low level of activity or have ceased to carry on active business.

Bleich Affidavit at para 6-7.

10. Axios Corp. wholly-owns five direct subsidiaries:

- (i) **Axios Canada:** Axios Canada is an Ontario corporation with its registered office located in Mississauga, Ontario.
- (ii) **Axsense Inc.:** Axsense Inc. is an Ontario corporation with its registered office located in Mississauga, Ontario.
- (iii) **Axios USA:** Axios USA is a Michigan corporation with its registered office located in Detroit, Michigan.
- (iv) **Axios Logistics:** Axios Logistics is a Delaware corporation with its registered office in Wilmington, Delaware.
- (v) **Axios Nevada:** Axios Nevada is Nevada Corporation with it registered office located in Reno, Nevada.

Bleich Affidavit at para 8.

11. Mobius is a Delaware Corporation with a registered office in Wilmington, Delaware. Mobius is a wholly-owned subsidiary of Axios Logistics.

Bleich Affidavit at para 9.

12. EDC does not have any direct business dealings with Mobius, and has been advised by Axios management that Axios Nevada and Axsense are dormant companies. Accordingly, it is not seeking to have Farber appointed as Receiver over these members of the Axios Group at this time.

Bleich Affidavit at para 10.

(b) ***Business Operations of the Axios Group***

13. The Axios Group is an integrated supply chain logistics business that offers technologically advanced shipping pallets primarily to the perishable food industry. Its main source of revenue is from the rental of its technology advanced pallets and related transportation services it provides its customers, which are predominantly egg suppliers and producers in the United States.

14. Primary management and business operations of the Axios Group are conducted from its head office in Mississauga (the “**Mississauga Head Office**”). The Head Office acts as the “nerve centre” of the business in that all accounting functions, strategic decision-making, communication functions, marketing and pricing decisions and other key functions are coordinated and/or managed from its head office. The Axios Group also has small satellite offices in Detroit, Michigan (operated through Axios USA) and Ithaca, New York (operated

through Axios Logistics) primarily used to provide logistics services to customers in the United States.

Bleich Affidavit at para 13.

15. Each of the Companies maintains a bank account with HSBC in Toronto, and are migrating their U.S. dollar bank accounts to HSBC as well to streamline their banking activities.

Bleich Affidavit at para 19.

16. The Axios Group distribution system consists of the following steps:

- (i) The Axios pallet components are manufactured at a factory owned by a third party in Buffalo, New York, and assembled by third parties at a factory in Guelph, Ontario;
- (ii) After manufacture, the pallets are shipped to sanitization facilities (or “wash hubs”) in Ohio and Pennsylvania where the pallets are sanitized. Axios Logistics owns the “wash hub” equipment at the Pennsylvania facility; however, the Ohio wash hub is owned and operated by a third party.
- (iii) Following sanitization, the pallets are then shipped on trucks and trailers to customers, who then use the pallets to transport their product to regional retail distribution centres owned by Wal-Mart Stores, Inc.
- (iv) Once a customer’s product is delivered to the applicable distribution centre, the pallets are retrieved from the distribution centre and returned to a sanitization facility for washing before their next deployment.
- (v) Pallets that are not in use are warehoused at leased premises.

Bleich Affidavit at para 15.

17. At any point in time, the Axios Group's pallets are located with its customers, at its leased wash hub facilities, or at retail distribution centres. Presently, there are approximately 80,000 pallets in circulation with the vast majority located at 30 retail distribution centres located in central and eastern United States.

Bleich Affidavit at para 17.

18. Given the integrated nature of the business operations of the Companies, at the time of this application, the precise ownership of assets among the Companies is not entirely clear to EDC.

(c) ***Financing Provided by EDC***

19. The Companies are indebted to EDC in the aggregate amount of \$5,040,455.00 pursuant to EDC Loan Agreements. The indebtedness is unconditionally guaranteed by the EDC Guarantors by way of guarantees made by each EDC Guarantor in favour of EDC on November 25, 2015 (the "**2015 EDC Guarantees**"), and August 19, 2016 (the "**2016 EDC Guarantees**"), and together with the 2015 EDC Guarantees, the "**EDC Guarantees**").

Bleich Affidavit at paras 32 and 37.

20. Pursuant to each EDC Loan Agreements, Axios Canada delivered to EDC a general security agreement, each of which granted an exclusive first ranking priority security interest over all of Axios Canada's present and after-acquired personal and movable property (the "**GSAs**"). The EDC Guarantees are unsecured and thus EDC does not have security with respect to the collateral of the EDC Guarantors.

Bleich Affidavit at paras 33 and 38.



(d) ***The Companies' financial difficulties and Defaults under the EDC Loan Agreements***

21. Despite growth in sales and revenue, the Axios business is not profitable, and its net losses have continued to increase over recent years. According to the September 2016 Financial Statements, Axios had a net loss of approximately \$10,835,000 in the nine-month period ended September 30, 2016. In previous fiscal years, Axios had net losses (before taxes) of approximately \$3,100,000 and \$9,108,000 in the 2014 and 2015, respectively.

Bleich Affidavit at para 54.

22. Most recently, on February 10, 2017, Axios Corp. announced that it has begun to shut down its operation effective immediately due to a substantial exhaustion of its cash and credit resources and has laid off a majority of its employees. EDC understands that presently only the Chief Executive Officer of Axios Corp., Mr. Richard MacDonald, remains employed at the Companies.

Bleich Affidavit at para 4.

23. In light of the foregoing, EDC has delivered written demands to the Companies, and notice under section 244 of the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**") has been delivered to Axios Canada. To date, the amounts owing to EDC have not been repaid. Accordingly, EDC seeks the appointment of Farber as Receiver of the Companies.

Bleich Affidavit at para 60.

24. It is intended that the Receiver will do an initial investigative stage before recommending a realization strategy, once the assets have been secured and additional information obtained.

### **PART III – ISSUES**

25. The following issues are to be resolved in this Application:
- A. Does this Court have jurisdiction to appoint the Receiver over the Companies?
  - B. Is it just or convenient for the Court to appoint a Receiver over the assets, undertakings and properties of the Companies?
  - C. If a Receiver is appointed, are the terms of the order requested appropriate?

### **PART IV – ARGUMENT**

#### **A. This Court has Jurisdiction over Axios Canada and the EDC Guarantors**

26. EDC seeks the appointment of Farber as Receiver under both federal and provincial legislation. With respect to Axios Canada, EDC is a “secured creditor” within the meaning of the BIA and accordingly applies pursuant to subsection 243(1) of the BIA and s. 101 of the CJA. With respect to the EDC Guarantors, EDC is not a secured creditor and accordingly applies only under section 101 of the CJA. In both circumstances, this Court has jurisdiction, and ought, to grant the proposed Appointment Order sought by EDC.

##### ***(a) Jurisdiction to Appoint s. 243 Receiver over Axios Canada***

27. Subsection 243(5) of the BIA specifies that an application under subsection 243(1) of the BIA is to be filed in a court having jurisdiction in the judicial district of the “locality of the debtor”.

28. Section 2 of the BIA defines the “locality of the debtor” to mean the principal place:

- (i) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event;

- (ii) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy even, or
- (iii) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated.

BIA, s. 2 & s. 243(5); Schedule B to this Factum.

29. Axios Canada is an Ontario corporation with a registered head office in Toronto, Ontario. Its Head Office, which is the primary centre for Axios Group management and business operations, is located in Mississauga, Ontario. Accordingly, it is submitted that this Court has jurisdiction to appoint a receiver over Axios Canada pursuant to the BIA.

BIA, s. 2 & s. 243(5); Schedule B to this Factum.

(b) ***Jurisdiction to Appoint s. 243 and s. 101 Receiver over Axios Canada and the EDC Guarantors***

30. As a superior court of general jurisdiction, the Superior Court has all of the powers that are necessary to do justice between the parties. Specifically, the jurisdiction to appoint a receiver is found in section 101 of the CJA. Each of the Companies has assets in Ontario.

*WestLB AG v Rosseau Resort Developments Inc* (2009), 181 ACWS (3d) 472 at para 37 (Ont Sup Ct J (Commercial List)) [***Rosseau***], Book of Authorities, Tab A.  
Bleich Affidavit at para 19.

31. Unlike the BIA, the ability to appoint a receiver under section 101 of the CJA is not restricted to secured creditors. It is well-established that in the appropriate circumstances any party (even an unsecured creditor) may apply for an appointment of a receiver under the CJA.

*Rosseau*, *supra* para 29 at para 40; *Re Tool-Plas Systems Inc*, [2008] OJ No 4218 (Ct J (Commercial List)), Book of Authorities, Tab B; *Re Graceway Canada*, 2011 ONSC 6292 (Commercial List), Book of Authorities, Tab C; *Redstone Investment Corporation* (8 August 2014), Toronto CV-14-10495CL (Ont Sup Ct J (Commercial List)), Book of Authorities, Tab D.

**B. It is Both Just and Convenient to Appoint a Receiver**

(a) ***Just and Convenient to Appoint a Receiver over the Companies***

32. Subsection 243(1) of the BIA is clear that where it is “just or convenient” to do so, the court may appoint a receiver. Similarly, the CJA enables the court to appoint a receiver where such appointment is “just or convenient”.

BIA, s. 243(1) and CJA, s. 101, Schedule B to this Factum.

33. In *Bank of Nova Scotia v Freure Village on Clair Creek*, Blair J. (as he then was) described the basic principles governing the judicial appointment of a receiver as follows:

The Court has the power to appoint a receiver or receiver and manager where it is “just or convenient” to do so [citation omitted]. In deciding whether or not to do so, it must have regard to all of the circumstances but in particular, the nature of the property and the rights and interests of all parties in relation thereto. The fact that the moving party has a right under its security to appoint a receiver is an important factor to be considered, but so, in such circumstances, is the question of whether or not an appointment by the Court is necessary to enable the receiver-manager to carry out its work and duties more efficiently [citations omitted]. It is not essential that the moving party, a secured creditor, establish that it will suffer irreparable harm if a receiver-manager is not appointed [citation omitted].

*Bank of Nova Scotia v Freure Village on Clair Creek*, 1996 CarswellOnt 2328 at para 11 (Ct J (Gen Div - Commercial List)), Book of Authorities, Tab E; *1529599 Ontario Ltd v Dalcour Inc*, 2012 ONSC 5707 at para 40 (Commercial List), Book of Authorities, Tab F.

34. Where the security document between a borrower and secured creditor grants the secured creditor the right to appoint a receiver, the burden of proof on the secured creditor is relaxed, as the Court is simply giving effect to a term of the contractual relationship agreed to by both parties.

*Textron Financial Canada Ltd v Chetwynd Motels Ltd*, 2010 BCSC 477 at paras 50 and 75, Book of Authorities, Tab G.

35. Courts have also found it “just and convenient” to appoint a receiver where there is an imminent risk that Companies’ assets may dissipate in order to preserve and protect the property and maximize return for creditors.

*Enterprise Cape Breton Corporation v Crown Jewel Resort Ranch*, 2014 NSSC 128 at para 34, Book of Authorities, Tab H.

36. Furthermore, in the case of the failure of a corporate family, Courts have found the appointment of one receiver “convenient” (even where the creditor does not have security over the entire corporate group) where the companies’ operations and obligations are “intricately connected, intertwined and inter-dependent”.

*Rosseau*, *supra* para 29; *Romspen Investment Corporation v Hargate Properties Inc*, 2011 ABQB 759 at paras 16-21, Book of Authorities, Tab I.

37. In the present case, having regard to all of the circumstances, it is both just and convenient for this Court to appoint the Receiver over the property of Companies for the following reasons:

- (i) The Companies are indebted to EDC in excess of \$5 million pursuant to the EDC Loan Agreements and EDC Guarantees, events of default have occurred and are continuing, and, after demand for repayment, the Companies are unable to satisfy their financial obligations to EDC;
- (ii) As the major creditor of the Companies, EDC has the primary economic interest in the Companies and has agreed to fund the initial investigative state of the proposed Receivership;
- (iii) The GSAs, entered into by Axios Canada in favour of EDC, include an express agreement to the appointment of a receiver in these circumstances;
- (iv) A court-appointed receiver is necessary to prevent further erosion of the value of the Companies’ assets, including taking protective steps to preserve the

Companies' assets for the benefit of all creditors, which are at imminent risk of being destroyed or disposed of;

- (v) The operations of Axios Canada are intricately connected, intertwined, and interdependent with those of the EDC Guarantors. A court-appointed receiver over all Companies provides a convenient forum for determining asset ownership among the Companies, creditor constituencies, and develop an appropriate going forward strategy; and
- (vi) Axios Canada has consented to the appointment of a Receiver, and none of the Companies opposes the appointment of the Receiver.

Bleich Affidavit at paras 6-24, 33-41, 59-61, 65.

### **C. The Terms of the Application Order Sought are Appropriate**

38. The terms of the proposed Appointment Order include: (i) authorizations with respect to the engagement of counsel to the Receiver, and (ii) a mechanism for the Receiver to borrow money to fund its professional costs and those of its advisors and consultants in the proposed proceedings, and court-ordered priority charges for certain obligations. It is submitted that such relief is appropriate for the reasons that follow.

#### ***(a) Authorization to retain Applicant counsel & independent counsel***

39. To minimize costs associated with the proposed enforcement, the proposed Appointment Order expressly authorizes the Receiver to retain counsel to the Applicant, Blake, Cassels & Graydon LLP ("**Blakes**"), as its counsel to advise and represent it in these proceedings, save and except for circumstances where the Receiver requires independent legal advice, in which case, the proposed Appointment Order also authorizes the Receiver to consult with its independent counsel, Aird & Berlis LLP.

40. It is submitted that appointing Blakes as counsel will assist to maximize the efficiency of the Receiver's mandate, while retaining the ability of the Receiver to seek independent advice where it sees fit, and accordingly, is appropriate in the circumstances.

(b) ***Receiver's Charge, Receiver's Borrowings Charge and Priority***

41. Pursuant to subsection 243(6) of the BIA, if the Receiver is appointed under subsection 243(1), the Court may make an order respecting the payment of fees and disbursements of the Receiver, including one that gives the Receiver a charge, ranking ahead of any secured creditors, over all or part of the debtors' property, but only if this Court is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

BIA, s. 243(6), Schedule B to this Factum.

42. In addition, section 101(2) of the CJA provides that any order under section 101(1) of the CJA may include such terms as are considered just.

43. The proposed Appointment Order provides for a "**Receiver's Charge**" to secure the reasonable fees and disbursements of the Receiver and its counsel, in each case at their standard rates and charges, and a "**Receiver's Borrowings Charge**" (together with the Receiver's Charge, the "**Charges**") to secure monies borrowed by the Receiver up to \$300,000. The purpose of funding is to cover the costs of the Receiver during the initial investigative stage, including its fees and disbursements, and the fees and disbursements of its counsel and any consultant or agent retained by the Receiver.

44. It is anticipated that the professional costs of the receivership will be funded entirely through borrowings by the Receiver from EDC, secured by the Receiver's Borrowings Charge.

45. The Appointment Order specifically provides that the Charges will not have priority over any security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of a secured party who was not given notice of this Application. Notice of this application has been provided to counsel to the party who holds subordinated debentures of Axios Corp.

46. EDC accordingly submits that the Charges do not prime or prejudice any parties who do not have notice of these proceedings, and they are therefore both appropriate in the circumstances and within the Court's statutory jurisdiction to grant.

#### **PART V – CONCLUSION**

47. For the reasons stated herein, it is both just and convenient to appoint Farber as Receiver of the assets, undertakings and properties of the Companies in the circumstances.

48. Accordingly, it is respectfully submitted that the relief requested by EDC ought to be granted, and the Appointment Order granted on the terms proposed.



**PART VI – ORDER REQUESTED**

49. EDC seeks orders substantially in the forms attached at Tab 3 (the Appointment Order) to its Application Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 23<sup>rd</sup> day of February, 2017.

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Linc Rogers/ Kelly Peters / Juliene Cawthorne-Hwang  
Lawyers for the Applicant

**SCHEDULE “A”**  
**LIST OF AUTHORITIES**

<b><u>Cases</u></b>	
A	<i>WestLB AG v Rosseau Resort Developments Inc</i> (2009), 181 ACWS (3d) 472 (Ont Sup Ct J (Commercial List)).
B	<i>Re Tool-Plas Systems Inc</i> , [2008] OJ No 4218 (Ct J (Commercial List)).
C	<i>Re Graceway Canada</i> , 2011 ONSC 6292 (Commercial List).
D	<i>Redstone Investment Corporation</i> (8 Aug 2014), Toronto CV-14-10495CL (Ont Sup Ct J (Commercial List)).
E	<i>Bank of Nova Scotia v Freure Village on Clair Creek</i> , 1996 CarswellOnt 2328 (Ct J (Gen Div – Commercial List)).
F	<i>1529599 Ontario Ltd v Dalcour Inc</i> , 2012 ONSC 5707 (Commercial List).
G	<i>Textron Financial Canada Ltd v Chetwynd Motels Ltd</i> , 2010 BCSC 477.
H	<i>Enterprise Cape Breton Corporation v Crown Jewel Resort Ranch</i> , 2014 NSSC 128.
I	<i>Romspen Investment Corporation v Hargate Properties Inc</i> , 2011 ABQB 759.

**SCHEDULE “B”**  
**RELEVANT STATUTES**

**Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3: Section 2**

*Definitions*

In this Act,

...

“*locality of a debtor*”

“locality of a debtor” means the principal place

- (a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,
- (b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or
- (c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated;

...

**Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3: Section 243**

*Court may appoint receiver*

(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.

**Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3: Section 244**

*Advance notice*

(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, R.S.O. 1990, c. C.43: Section 101**

*Injunctions and receivers*

(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.

APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS  
AMENDED, AND SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3 AS  
AMENDED

Court File No: CV-17-11710-00CL

Export Development Canada and Axios Mobile Assets Corp. et al.  
Applicant Respondents

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

**FACTUM OF THE APPLICANT**  
**(Appointment of Receiver)**

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