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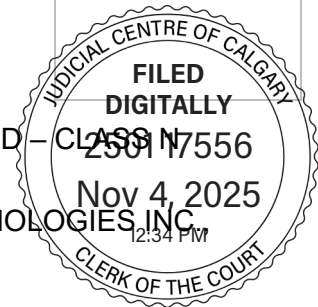
COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT NBIMC QUANTITATIVE STRATEGIES FUND – CLASS N

RESPONDENTS EXRO TECHNOLOGIES INC., DPM TECHNOLOGIES INC.
and CELLEX ENERGY INC.

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DOCUMENT **BENCH BRIEF OF THE APPLICANT
IN SUPPORT OF THE RECEIVERSHIP APPLICATION**

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**Hearing via Webex before the Honourable Justice J.S. Little
on the Commercial List, on November 14, 2025, commencing at 10:00AM**

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I. INTRODUCTION

1. This is the Brief of Law of NBIMC Quantitative Strategies Fund – Class N ("**NBIMC**" or the "**Lender**"), in support of its application (the "**Application**") to appoint FTI Consulting Canada Inc. ("**FTI**") as the receiver and manager (the "**Receiver**") of all of the current and future assets, undertakings and property (collectively, the "**Property**") of Exro Technologies Inc. ("**Exro Canada**"), DPM Technologies Inc. ("**DPM**"), and Cellex Energy Inc. ("**Cellex**") (collectively, the "**Debtors**" or the "**Exro Cdn Entities**").
2. NBIMC extended credit facilities and related services to the Debtors (collectively, the "**Loans**") pursuant to, among others, a loan agreement dated May 15, 2025, in the principal amount of USD \$30,000,000 between the Exro Group, as borrowers, and the Lender, as lender (the "**Interim Facility**").¹
3. As further described below, the Applicant is a secured creditor of the Exro Cdn Entities and the Exro Foreign Entities (defined below). The Applicant is also a shareholder of Exro Canada, holding approximately 43,969,013 Common Shares and 13,710,506 Preferred Shares and 21,038,282 Common Share purchase warrants.²
4. As at October 30, 2025, the total amounts outstanding under the Interim Facility was USD\$12,863,578.06 inclusive of principal, interest and certain other fees, costs and expenses, which continue to accrue (the "**Indebtedness**").³
5. The terms of the Security (as defined below) include the right to appoint or apply to this Honourable Court to appoint a receiver and manager.⁴
6. The Debtors have consented to the appointment of a Receiver.⁵
7. FTI is qualified, prepared and has consented to act as Receiver.⁶
8. As the Indebtedness is payable on demand and the Debtors are in default of its obligations to the Lender under both the Loan Agreement and the Security, the Lender seeks to enforce its contractual right to appoint a Receiver, and it is just and convenient to do so.

¹ Affidavit No. 1 of Mark Holleran sworn November 3, 2025 (the "**Holleran Affidavit**") at para 26.

² Holleran Affidavit at para 12.

³ Holleran Affidavit at para 26.

⁴ Holleran Affidavit at para 34.

⁵ Holleran Affidavit at para 37.

⁶ Holleran Affidavit at para 40.

II. ISSUE

9. There is one issue in this application, namely should this Honourable Court appoint a receiver in respect of the Debtors?

III. THE LENDER'S POSITION

10. The appointment of a receiver over the Debtors is a contractual remedy that is available to the Lender and the Lender respectfully submits that it is just and convenient to appoint a Receiver over the Debtors' Property in the present circumstances.

IV. FACTUAL BACKGROUND

11. The facts in support of the Lender's application are further set forth in the Holleran Affidavit and summarized below.⁷
12. The Debtors are corporations incorporated under the laws of British Columbia and have their head offices located in Alberta.⁸ Exro Canada is also extra-provincially registered in Alberta.

A. Borrower Security

13. In connection with the Interim Facility, each the Debtors granted, among others:
- (a) a general security agreement in favour of the Lender representing a first priority charge against each of their present and after acquired personal property; and
 - (b) an intellectual property security agreement in favour of the Lender,
- (collectively, the "**Security**").⁹
14. Where necessary, the Security has been registered at the Alberta Personal Property Registry.¹⁰

⁷ Capitalized terms not otherwise defined herein have the meaning set forth in the Holleran Affidavit, the Lender's Statement of Claim or the Lender's Application, as applicable.

⁸ Holleran Affidavit at para 5.

⁹ Holleran Affidavit at para 29.

¹⁰ Holleran Affidavit at para 30.

B. Defaults and Demand

15. The amounts due under the Interim Facility are repayable on demand. In addition, the loans were in default pursuant to the terms of the Interim Facility Agreement and the Security.¹¹
16. As a result, on or about September 28, 2025, the Lender issued notices of default and demands for payment to the Exro Group (collectively, the "**Demands**" and each, a "**Demand**") and concurrently delivered notices of its intention to enforce its security (each a "**244 Notice**") pursuant to section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**")¹²
17. Despite the Demands for repayment of amounts owing under the Interim Facility by the Lender, the Debtors have failed or neglected, and continue to fail or neglect to repay the Indebtedness, and they are in default of their obligations under the Loan Agreement, the Guarantees and the Security.¹³

V. LAW AND ARGUMENT

A. The Lender is Entitled to Appoint a Receiver

18. The Lender satisfied the procedural prerequisite to the appointing the Receiver in September 2025 when it served the 244 Notice on the Debtors.
19. Each of section 243 of the *BIA*, section 13(2) of the *Judicature Act* and section 65(7)(a) of the *PPSA* vest this Honourable Court with the authority to appoint a Receiver where it is just and convenient to do so.¹⁴
20. The Lender respectfully submits that this Honourable Court ought to exercise its discretion to appoint a Receiver over the Property, because it is just, convenient and otherwise appropriate in the circumstances and would be in accordance with the contractual terms agreed upon by the Lender and the Debtors under the Security.

¹¹ Holleran Affidavit at para 31.

¹² Holleran Affidavit at para 32.

¹³ Holleran Affidavit at para 33.

¹⁴ *BIA* at s. 243; *Judicature Act*, RSA 2000 c J-2, as amended (the "**Judicature Act**") at s. 13(2); *Personal Property Security Act*, RSA 2000 c P-7 ("**PPSA**") at s. 65(7)(a).

B. Considerations when Appointing a Receiver

21. In considering whether it is just and convenient to appoint a receiver, Alberta courts often cite and consider a non-exhaustive set of factors, as described in *Bennett on Receiverships* when deciding whether or not to appoint a receiver, including:¹⁵
- (a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
 - (b) the risk to the security holder, taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
 - (c) the nature of the property;
 - (d) the apprehended or actual waste of the debtor's assets;
 - (e) the preservation and protection of the property pending judicial resolution;
 - (f) the balance of convenience to the parties;
 - (g) the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
 - (h) the enforcement of rights under a security instrument where the securityholder encounters or expects to encounter difficulty with the debtor and others;
 - (i) the principle that the appointment of a receiver is extraordinary relief, which should be granted cautiously and sparingly;
 - (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;
 - (k) the effect of the order upon the parties;

¹⁵ See *Paragon Capital Corporation Ltd. v Merchants & Traders Assurance Company*, [2002 ABQB 430](#) [**Paragon**]; See also, *Bank of Nova Scotia v Smiling Simba Learning Academy Inc.*, [2025 ABKB 11](#) [**Smiling Simba**]; *Servus Credit Union Ltd. v Proform Management Inc.*, [2020 ABQB 316](#) [**Proform**].

- (l) the conduct of the parties;
- (m) the length of time that a receiver may be in place;
- (n) the cost to the parties;
- (o) the likelihood of maximizing return to the parties;
- (p) the goal of facilitating the duties of the receiver; and
- (q) the secured creditor's good faith, commercial reasonableness of the proposed appointment and questions of equity.

22. Where a debtor agrees to a consent receivership, additional considerations are engaged. These considerations were summarized by Justice Lema in *Proform*:¹⁶

[60] On how to approach a consent order, the guiding principles are as follows:

- the Court is not obliged, from the mere fact of consent, to grant a consent order; and
- the Court must be satisfied (at minimum) that:
 - o it has the jurisdiction to grant the order;
 - o if it has the jurisdiction, any preconditions (statutory or common law) to the exercise of its jurisdiction are met;
 - o consent has actually been provided;
 - o the consent is not the product of fraud, duress, or undue influence or otherwise tainted;
 - o where the consent was provided on a conditional basis (e.g. order not to be entered unless certain conditions are satisfied), the condition(s) are satisfied;
 - o the proposed relief does not exceed that consented to; and
 - o consent aside, the ordered relief is warranted in the circumstances.

[61] The level of scrutiny required depends on the circumstances. The onus to raise a concern rests with the consenting (or ostensibly consenting) party. If that party is present at the application for the order and raises no concerns, or if it is content to allow the other party (or parties) to appear at the application and relay the "we have consented" message, the Court can usually proceed on the basis that all of these elements are satisfied... [*Emphasis Added*].

¹⁶ *Proform* at [paras 60-61](#) and *Smiling Simba*.

23. The Lender respectfully submits that it is just and convenient to appoint FTI as Receiver over the Property for, among others, the following reasons:
- (a) the Debtors have committed numerous defaults under the Security and the Interim Facility Agreement;
 - (b) it is an express term of the Security that, upon default, one of the remedies available to the Lender is the appointment of a receiver;
 - (c) the Debtors have consented to FTI's appointment as Receiver;
 - (d) the immediate appointment of a receiver is necessary to protect the Lender's interests (including the preservation of the remaining assets of the Debtors);
 - (e) the Lender believes that the Lender's collateral is at risk unless a receiver is immediately appointed;
 - (f) no viable alternative is presently available to the Lender;
 - (g) a Receivership Order would place all creditors and stakeholders of the Debtors on a level and transparent playing field under the administration of this Honourable Court to ensure the consistent and lawful treatment of all stakeholders;
 - (h) the Lender is acting in good faith and in a commercially reasonable manner in respect of the appointment of the Receiver;
 - (i) there are no compelling commercial or other reasons to not appoint FTI as receiver;
 - (j) the receivership of the Exro Cdn Entities represents a continuation of the broader wind down of the Exro Group's global operations.
24. The Lender respectfully submits that it is just and convenient to appoint the Receiver over the entirety of the Property to ensure that the Receiver has full authority over the Debtors' business and to maximize recovery for stakeholders.

VI. CONCLUSION

25. For the reasons set forth above, the Lender seeks a Receivership Order, substantially in the form appended as Schedule "A" to the Application in order to maximize value for all of the Debtors' stakeholders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4TH DAY OF NOVEMBER, 2025.

BURNET, DUCKWORTH & PALMER LLP

Per: 

David LeGeyt
Solicitors for the Lender

TABLE OF AUTHORITIES

TAB	DOCUMENT
1.	<i>Bankruptcy and Insolvency Act</i>, RSC 1985, c B-3.
2.	<i>Judicature Act</i>, RSA 2000, c J-2.
3.	<i>Personal Property Security Act</i>, RSA 2000 c P-7.
4.	<i>Paragon Capital Corporation Ltd. v. Merchants & Traders Assurance Company</i>, 2002 ABQB 430
5.	<i>Bank of Nova Scotia v Smiling Simba Learning Academy Inc.</i>, 2025 ABKB 11
6.	<i>Servus Credit Union Ltd v Proform Management Inc.</i>, 2020 ABQB 316