

COURT FILE NUMBER

BK01 095639-095640-095641

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF/APPLICANT

NBIMC QUANTITATIVE STRATEGIES FUND – CLASS N

DEFENDANT/RESPONDENT

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

DOCUMENT

BRIEF OF LAW OF THE APPLICANT



Burnet, Duckworth & Palmer LLP

2400, 525 – 8th Avenue SW

Calgary, AB T2P 1G1

Lawyers: David LeGeyt

Ryan Algar

Jessica MacKinnon

Phone Number: (403) 260-0210 / 0126 / 0112

Fax Number: (403) 260-0332

Email Address: dlegeyt@bdplaw.com

ralgar@bdplaw.com

jmackinnon@bdplaw.com

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

File No. 79864-1

Stewart McKelvey

Queen's Marquee

600 – 1741 Lower Water Street

Halifax, NS B3J 0J2

Lawyers: Maurice Chiasson, K.C.

Alanna Waberski

Phone Number: (902) 420-3300 / (506) 632-2792

Fax Number: (902) 420-1417

Email Address: mchiasson@stewartmckelvey.com

awaberski@stewartmckelvey.com

**Hearing via Webex before the Honourable Justice G.S. Dunlop
on the Commercial List, on May 29, 2026, commencing at 2:00PM**

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL BACKGROUND.....	1
III.	ISSUES.....	1
IV.	LAW AND ARGUMENT.....	1
	A. The Bankruptcy Application	1
V.	CONCLUSION	3
	LIST OF AUTHORITIES	5

I. INTRODUCTION

1. This is the Brief of Law of the Applicant, Vestcor Inc (the "**Lender**" or the "**Applicant**") in support of its application for a bankruptcy order (the "**Bankruptcy Application**") adjudging Exro Technologies Inc., DPM Technologies Inc. and Cellex Energy Inc. (collectively, the "**Debtors**" or the "**Bankrupts**") bankrupt and appointing FTI Consulting Canada Inc. ("**FTI**") as the Licenced Insolvency Trustee of the Bankrupts (FTI in such capacity, the "**Trustee**").

2. The Bankrupts have defaulted in their obligations to the Applicant, and have been subject to a receivership order since November 2025. The Applicant therefore seeks to petition the Bankrupts into bankruptcy.

II. FACTUAL BACKGROUND

3. The facts in support of RBC's application are set out in the Affidavit of Peter Syroid, sworn May 19, 2026 (the "**Syroid Affidavit**").¹

4. The Applicant is a creditor in respect of the Bankrupts. Despite having security against the assets of the Bankrupts, the Applicant is now effectively an unsecured creditor of the Bankrupts as all their valuable property has been liquidated and the Bankrupts remain significantly indebted to the Applicant.

III. ISSUES

5. The only issue before the Court in this Application is whether or not this Honourable Court should grant the Bankruptcy Order.

IV. LAW AND ARGUMENT

The Bankruptcy Application

6. Under s. 43 of the BIA, any creditor may bring an application for a Bankruptcy Order once it establishes the debt owing to the creditor amounts to at least \$1,000 and the debtor has committed an "act of bankruptcy", as defined in s. 42, within the six months preceding the filing of the application.²

¹ Unless otherwise indicated, capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Syroid Affidavit.

² [Bankruptcy and Insolvency Act](#), RSC 1985, c B-3, ("**BIA**"), at [s.43](#)

Only the Debtors have standing to oppose the Bankruptcy Application.

7. The BIA does not provide a mechanism for any party other than the Debtors to oppose a bankruptcy application. Courts have held that the BIA and the Bankruptcy General Rules do not provide for intervention status, and a creditor does not have status to intervene because they would be adversely affected by the order.³

8. In *Ivaco*, Justice Farley considered when a bankruptcy order ought to be granted. He noted the following:

...Once a creditor has established the technical requirements of s. 42 of the BIA for granting a bankruptcy order and the debtor is unable to show why a bankruptcy order ought not to be granted, a bankruptcy order should be made: see *Kenwood Hills Development Inc., Re* (1995), 30 C.B.R. (3d) 44 (Ont. Bkcty.). A court has the discretion to refuse such an order pursuant to s. 43(7) with the onus being on the debtor to show sufficient cause why the order ought not to be granted.⁴ [emphasis added]

Calgary is the Locality of the Debtor

9. Section 43(5) provides that a bankruptcy application shall be filed in the court having jurisdiction in the judicial district of the locality of the debtor. "Locality of the Debtor" is defined in the BIA as the principal place where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event. Each of the Debtors' principal place of business prior to the Receivership Proceedings was Calgary, Alberta.

The Bankrupts owe the Applicant a debt in excess \$1,000

10. The Indebtedness exceeds \$1,000 which the Bankrupts has been unwilling, unable or otherwise refused to satisfy.

The Bankrupts have ceased to meet their liabilities as they generally become due

11. The Debtors were placed into receivership and FTI, in its capacity as Receiver of the Debtors, have sold all or substantially all of their assets.

³ Ristimaki, Re, [2000 CanLII 22486 \(ON SC\)](#).

⁴ *Ivaco Inc., Re*, [\[2005\] OJ No 3337 \(ONSC\)](#) ("*Ivaco*") at para 13; see also *ATB Financial v Coredent Partnership*, [2020 ABQB 587](#)

12. The Lender is the largest creditor in respect of the Bankrupts. As at November 14, 2025, the Debtors had approximately \$125 million of secured debt and \$8.5 million of unsecured debt. The Receiver has not made any payments to creditors.

13. As such, the Bankrupts have committed an act of bankruptcy within the six months preceding the filing of this Application.

14. The Applicant is not seeking the Bankruptcy Application for an improper purpose and has satisfied the requirements of s. 42 of the BIA.

15. Accordingly, the Applicant has established a *prima facie* case and the Bankruptcy Application should succeed.

FTI should be appointed as Trustee of the Bankrupts

16. Should the Debtors be adjudged bankrupt, the Applicant respectfully requests that FTI be appointed as trustee of the Bankrupts.

17. Section 43(9) of the BIA provides that:

"On a bankruptcy order being made, the court shall appoint a licensed trustee as trustee of the property of the bankrupt, having regard, as far as the court considers just, to the wishes of the creditors."⁵

18. The Lender is the largest creditor in respect of the Bankrupts and is satisfied with FTI 's appointment as trustee of the Bankrupts.

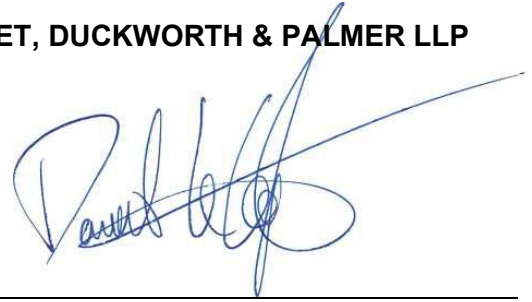
V. CONCLUSION

19. For the reasons set forth above, this Honourable Court ought to grant the Application in its entirety, as it meets the requirements of s. 43 of the BIA.

⁵ BIA, [s. 43\(9\)](#).

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 19th DAY OF MAY, 2026.

BURNET, DUCKWORTH & PALMER LLP

A handwritten signature in blue ink, appearing to be 'David LeGeyt' or 'Jessica MacKinnon', written over a horizontal line.

Per:

David LeGeyt/Jessica MacKinnon
Solicitors for Vestcor Inc.

LIST OF AUTHORITIES

TAB	DOCUMENT
1.	<u>Bankruptcy and Insolvency Act, RSC 1985, c B-3, as amended</u>
2.	<u>Ristimaki, Re, 2000 CanLII 22486 (ON SC)</u>
3.	<u>Ivaco Inc., Re, [2005] OJ No 3337 (ONSC)</u>
4.	<u>Re Okoakih, 2013 ONSC 7492</u>
5.	<u>ATB Financial v Coredent Partnership, 2020 ABQB 587</u>