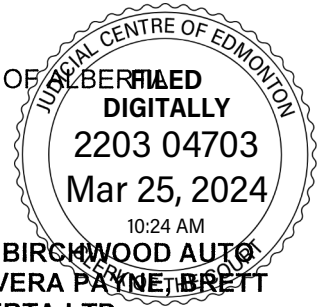


Clerk's Stamp:

COURT FILE NUMBER	2203 04703
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFF	<b>BANK OF MONTREAL</b>
DEFENDANTS	<b>608772 ALBERTA LTD. o/a BIRCHWOOD AUTO BODY, DARRELL PAYNE, VERA PAYNE, BRETT PAYNE, and 1943969 ALBERTA LTD.</b>



DOCUMENT	<b><u>APPLICATION</u></b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Dentons Canada LLP 2500 Stantec Tower 10220 – 103 Avenue NW Edmonton, Alberta T5J 0K4 Ph. (780) 423-7284 Fx. (780) 423-7276 File No.: 528401-24 Attention: Dean A. Hitesman / Kurtis P. Letwin

**NOTICE TO RESPONDENTS**

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

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

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

Date	April 4, 2024
Time	10:00 a.m.
Where	Edmonton Law Courts Building 1A Sir Winston Churchill Square Edmonton, Alberta Virtual Courtroom 86 <a href="https://albertacourts.webex.com/meet/virtualcourtroom86">https://albertacourts.webex.com/meet/virtualcourtroom86</a>
Before Whom	The Honourable Justice J. Little

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

**Remedy claimed or sought:**

1. An Order:
  - (a) abridging the time for service of notice of this Application to the time actually given and an Order deeming service upon the parties served as good and sufficient notice, if necessary;
  - (b) approving and ratifying the actions taken by Receiver, as defined herein, as set out in the Receiver's Second Report filed with the Court (the "**Second Report**");

- (c) approving and ratifying the Statement of Receipts and Disbursements as set out in the Second Report;
- (d) approving the proposed interim distribution of funds to the Canada Revenue Agency (“**CRA**”);
- (e) approving the proposed distribution of funds to the Bank of Montreal (“**BMO**”) in respect to the amount(s) owed to BMO in respect of the Receiver’s borrowings;
- (f) approving the proposed distribution of funds to BMO in respect to the amount(s) owed to BMO as the Debtor’s primary secured creditor;
- (g) approving the Holdback (as defined in the Second Report) of the Receiver; and
- (h) approving the passing of accounts for the fees and disbursements of the Receiver and its independent legal counsel, Dentons Canada LLP (“**Dentons**”), incurred as outlined in the Second Report;

in accordance with the proposed form of Order attached as Schedule “A” hereto.

2. Such further and other relief as may be sought and this Honourable Court deems just and appropriate.

**Grounds for making this application:**

1. MNP Ltd., as the successor to The Bowra Group Inc., (the “**Receiver**”) was appointed receiver of 608772 Alberta Ltd. o/a Birchwood Auto Body and 1943969 Alberta Ltd.’s (collectively, the “**Debtor**”) current and future assets, undertakings, and properties of every nature and kind whatsoever, and where situate, including all proceeds thereof by Order of this Honourable Court dated May 3, 2022 (the “**Receivership Order**”).
2. The Second Report sets out the activities of the Receiver since the Receiver’s First Report dated January 8, 2024, and sets out the Receiver’s manner of dealing with the Receivership. The Receiver seeks the approval of the Court for its activities set out in the Second Report.
3. The Receiver has completed realizing upon all the undertakings, properties, and assets of the Debtor.
4. The Receiver has substantially completed the administration of the Debtor’s estate and seeks to make an interim distribution as outlined herein.
5. Attached as Exhibit “A” to the Affidavit of Kristin Gray are details of the Receiver’s fees and expenses along with the Receiver’s time docket. The Receiver believes that the accounts are fair and reasonable, taking into consideration the services that were provided, and seeks approval and a passing of these accounts in accordance with the terms of the Receivership Order.
6. Attached as Exhibit “B” to the Affidavit of Kristin Gray is a summary of the invoices submitted by the Receiver’s independent legal counsel, Dentons, for legal services. The Receiver believes that the accounts are fair and reasonable, taking into consideration the services that were provided,

and seeks approval and a passing of these accounts in accordance with the terms of the Receivership Order.

**Allocation of the Purchase Price**

7. As outlined in the Second Report, the Receiver has sold the Property (as defined in the Second Report).
8. As part of the sale of the Property (as defined in the Second Report), limited tools and equipment were included in the sale.
9. The Receiver, through its ROP process (as discussed in the First Report), previously received an offer for 23 of the 34 pieces of equipment included in the sale of the Property (as defined in the Second Report) in the amount of \$14,000.00.
10. The Receiver held discussions with auctioneers and received estimates of \$4,000.00-\$6,000.00 for the remaining items.
11. As such, the Receiver is of the opinion that a reasonable allocation of the proceeds from the sale of the Property (as defined in the Second Report) related to the personal property included in the sale is \$20,000.00.

**Canada Revenue Agency**

12. CRA submitted a balance owing for payroll source deductions to the Receiver in respect to unpaid source deductions by the Debtor in the amount of \$307,027.00.
13. CRA submitted a balance owing for GST in respect to unpaid GST by the Debtor in the amount of \$13,609.49.
14. The Receiver is of the view that CRA's deemed trust source deduction claim and deemed trust GST claim is valid and appropriate.
15. However, there is a potential priority dispute as between CRA and BMO as outlined in the Second Report.

**Bank of Montreal**

16. BMO provided the Receiver's borrowings in the amount of \$100,000.00 to the Receiver pursuant to the Receivership Order.
17. BMO is the primary secured creditor of the Debtor and the Receiver proposes to distribute funds in the amount of \$765,000.00 to BMO as the Debtor's primary secured creditor.
18. Dentons, independent legal counsel for the Receiver, has opined that the security granted by the Debtor to BMO is valid and enforceable.
19. The approximate debt owing to BMO is in excess of \$2.5 million.

20. As such, the Receiver is of the view that the interim distribution to BMO, as the Debtor's primary secured creditor, in the amount of \$765,000.00 is just and appropriate.

**Proposed Actions**

21. As outlined in the Second Report, the Receiver proposes to make the following interim distributions:
- (a) Receiver's fees and disbursements up to and including February 29, 2024 and legal fees and disbursements of the Receiver's legal counsel, Dentons, up to and including February 29, 2024;
  - (b) \$138,574.00 to CRA in respect of CRA's deemed trust source deduction claim;
  - (c) To holdback \$182,062.49 pending further Court order relating to the potential priority dispute as between CRA and BMO;
  - (d) \$100,000.00, plus any and all accrued interest thereon, as payment to BMO for the Receiver's borrowings; and
  - (e) \$765,000.00, as payment to BMO as the primary secured creditor of the Debtor.
- (collectively, the "**Proposed Interim Distributions**").
22. Based on the opinions provided to the Receiver by its independent legal counsel, Dentons Canada LLP, the Receiver recommends that the Court approve the Proposed Interim Distributions.
23. Such further and other grounds as counsel for the Receiver may advise.

**Material or evidence to be relied on:**

- 1. The First Report of the Receiver, dated January 8, 2024.
- 2. The Second Report of the Receiver, dated March 25, 2024.
- 3. The Affidavit of Kristin Gray, filed.
- 4. The pleadings and documents in this Action.
- 5. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

**Applicable Rules:**

- 1. Rules 6.3 and 13.5(2) of the *Alberta Rules of Court*, Alta Reg 124/2010, as amended.
- 2. *Bankruptcy and Insolvency General Rules*, CRC c 368.
- 3. Such further and other Rules as counsel may advise and this Honourable Court may permit.

**Applicable Acts and Regulations:**

1. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended.
2. Such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

1. None.

**How the Application is proposed to be heard or considered:**

1. Via Webex in Virtual Courtroom 86 before the Honourable Justice J. Little, accessible at the link <https://albertacourts.webex.com/meet/virtual.courtroom86>

**WARNING**

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 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"**

**FORM OF ORDER**

See attached

Clerk's stamp:

COURT FILE NUMBER	2203 04703
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFF	<b>BANK OF MONTREAL</b>
DEFENDANTS	<b>608772 ALBERTA LTD. o/a BIRCHWOOD AUTO BODY, DARRELL PAYNE, VERA PAYNE, BRETT PAYNE, and 1943969 ALBERTA LTD.</b>
DOCUMENT	<b>ORDER FOR INTERIM DISTRIBUTION, APPROVAL OF RECEIVER'S FEES AND DISBURSEMENTS, AND APPROVAL OF RECEIVER'S ACTIVITIES</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Dentons Canada LLP Barristers & Solicitors 2500 Stantec Tower 10220 – 103 Avenue NW Edmonton, Alberta T5J 0K4 Ph. (780) 423-7284 Fx. (780) 423-7276 File No.: 528401-24 Attention: Dean A. Hitesman / Kurtis P. Letwin

DATE ON WHICH ORDER WAS PRONOUNCED: April 4, 2024

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Justice J. Little

UPON THE APPLICATION of MNP Ltd. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of 608772 Alberta Ltd. o/a Birchwood Auto Body and 1943969 Alberta Ltd. (collectively, the "**Debtor**") for an Order for an interim distribution of proceeds, approval of the Receiver's fees and disbursements, and approval of the Receiver's activities; AND UPON having read the Receiver's Second Report dated March 25, 2024 (the "**Receiver's Second Report**") and the Affidavit of Kristin Gray; AND UPON hearing submissions from counsel for the Receiver and such other parties as may be present in person or by counsel; AND UPON being satisfied that it is appropriate to do so; IT IS HEREBY ORDERED THAT:

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.
2. The Receiver's activities as set out in the Receiver's Second Report and in all of its other reports filed herein, including the proposed Statement of Receipts and Disbursements, as attached to the Receiver's Second Report, are hereby ratified and approved.
3. The Personal Property Allocation (as defined in the Receiver's Second Report) is hereby ratified and approved.

4. The Receiver's accounts for fees and disbursements, as set out in Exhibit "A" to the Affidavit of Kristin Gray, are hereby approved without the necessity of a formal passing of its accounts.
5. The accounts for fees and disbursements of the Receiver's legal counsel, Dentons Canada LLP, as set out in Exhibit "B" to the Affidavit of Kristin Gray, are hereby approved without the necessity of a formal assessment of their respective accounts.
6. The Receiver is hereby authorized to withhold the amount of \$182,062.49 pending further Order of this Honourable Court.
7. The Receiver is authorized and directed to make the following interim distributions:
  - (a) Receiver's fees and disbursements up to and including February 29, 2024 and the legal fees and disbursements of the Receiver's legal counsel, Dentons Canada LLP, up to and including February 29, 2024 as outlined in the Receiver's Second Report;
  - (b) \$138,574.00 to CRA in respect of CRA's deemed trust source deduction claim;
  - (c) \$100,000.00, plus any and all accrued interest thereon, as payment to BMO for the Receiver's borrowings; and
  - (d) \$765,000.00, as payment to BMO as the primary secured creditor of the Debtor.
8. This Order must only be served 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 next business day following the transmission or delivery of such documents.

---

Justice of the Court of King's Bench of Alberta