

Court File No. CV-25-00005748-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CAISSE DESJARDINS ONTARIO CREDIT UNION INC.

Applicant
and

MATS MOY and TYMECA CHANELLE MOY

Respondents

APPLICATION UNDER SECTION 243(1) OF *THE BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C.C.43, AS AMENDED

APPLICANT'S FACTUM
(Appointment of Receiver)

November 19, 2025

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TABLE OF CONTENTS

	Page No.
PART I - OVERVIEW	1
PART II - FACTS	1
PART III - ISSUES	7
PART IV - THE LAW AND ANALYSIS	8
PART V - RELIEF SOUGHT	15

PART I - OVERVIEW

1. The Applicant, Caisse Desjardins Ontario Credit Union Inc. (the “**Caisse**”) seeks an order (the “**Appointment Order**”) appointing msi Spergel Inc. (“**Spergel**”) as receiver and manager (in such capacity, the “**Receiver**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act*¹ (the “**BIA**”) and section 101 of the *Courts of Justice Act*² (the “**CJA**”) without security, over all assets, undertakings, and properties of Mats Moy and Tymeca Chanelle Moy (the “**Debtors**”), acquired for, or used in relation to, the Debtors’ right, title and interest in and to all of the property including leases described in **Schedule “A” of the Appointment Order** (the “**Property**”). The scope of the receivership is limited to the Property.

2. As of June 9, 2025, the aggregate indebtedness due and owing by the Debtors to the Caisse was \$355,667.86 in addition to ongoing accrual of interest as set out in the Loan Agreement or Amendment excluding professional fees, disbursements and HST.³

PART II – FACTS

I. THE PARTIES

3. The Caisse is a credit union established under the *Credit Unions and Caisses Populaires Act*, 1994, S.O. 1994, c. 11.⁴

4. Mats Moy (“**Mats**”) is an individual residing in Brampton and the first of two

¹ [Bankruptcy and Insolvency Act](#), RSC 1985, c B-3, [“**BIA**”] [Section 243](#)

² [Courts of Justice Act](#), RSO 1990, c C43, [“**CJA**”], [Section 101](#)

³ Affidavit of Yoan Bouchard affirmed October 8, 2025, Application Record, Tab B (“**Bouchard Affidavit**”), [para 15](#)

⁴ [Bouchard Affidavit](#), [para 3](#)

borrowers of the loan issued by the Caisse.⁵

5. Tymeca Chanelle Moy (“**Tymeca**”) is an individual residing in Brampton and the second of two borrowers of the loan issued by the Caisse.⁶

II. LOAN NO. 0725657-PR-1 re 328 Melvin Avenue, Sudbury ON P3C 4X3;

6. The Caisse (as lender) and Mats and Tymeca (as borrowers), entered into a Loan Agreement on June 1, 2023 (the “**328 Melvin Loan Agreement**”).⁷

7. Pursuant to the 328 Melvin Loan Agreement, the Caisse advanced a loan in the total principal amount of \$356,000.00, for a term of twelve (12) months, from the date of disbursement together with interest at a rate of 6.290% per annum and calculated monthly and not in advance. The loan was disbursed on November 18, 2023.⁸

Security

8. The Caisse holds security against the Debtors as follows:

(a) a Charge/Mortgage registered on June 7, 2023 as Instrument No.

SD476939 over lands municipally known as 328 Melvin Avenue, Sudbury, Ontario, P3C 4X3 (the “**328 Melvin Collateral Mortgage**”);⁹ and

(b) an Assignment of Rents in respect of 328 Melvin Avenue, Sudbury, Ontario, P3C 4X3 (the “**328 Melvin Assignment of Rents**”) registered on title on

⁵ **Bouchard Affidavit**, [para 4](#)

⁶ **Bouchard Affidavit**, [para 5](#)

⁷ **Bouchard Affidavit**, [para 6](#); **328 Melvin Loan Agreement**, [Exhibit 1](#)

⁸ **Bouchard Affidavit**, [para 7](#)

⁹ **Bouchard Affidavit**, [para 8\(a\)](#); **328 Melvin Collateral Mortgage**, [Exhibit 2](#); **Parcel Register**, [Exhibit 3](#)

June 7, 2023 as Instrument No. SD476940.¹⁰

9. The personal property security of the Caisse was registered on June 18, 2025 against the Debtors as related to the applicable personal property in the provincial registry maintained under the *Personal Property Security Act (Ontario)*, R.S.O. 1990, c P.10 (the “**Ontario PPSA**”) under File No. 517438548 and Registration No. 20250618 1605 1590 5476 with respect to the 328 Melvin Assignment of Rents.¹¹

Amendment to Loan Agreement

10. The 328 Melvin Loan Agreement was amended effective as of June 7, 2024 whereby the interest rate was set to the Prime Rate + 0.450% per annum calculated monthly and not in advance, and the term of the mortgage was revised to a twelve (12) month term with a maturity date of June 6, 2025.¹²

11. On March 31, 2025, a Notice of Non-Renewal was sent to the Debtors advising that due to the history related to the repayment of the loan, the Cassie would not be renewing the mortgage.¹³

III. DEFAULTS, DEMANDS, AND NOTICE OF INTENTION TO ENFORCE AND TO DISPOSE

12. Numerous events of default have occurred under the 328 Melvin Collateral Mortgage.

¹⁰ Bouchard Affidavit, [para 8\(b\)](#); 328 Melvin Assignment of Rents, [Exhibit 4](#)

¹¹ Bouchard Affidavit, [para 9](#); Ontario PPSA Registration, [Exhibit 5](#)

¹² Bouchard Affidavit, [para 10](#); 328 Melvin Amended Loan Agreement, [Exhibit 6](#)

¹³ Bouchard Affidavit, [para 11](#); Notice of Non-Renewal, [Exhibit 7](#)

13. The Debtors' defaults are existing and continuing, including, but not limited to the defaults described below:

- (a) they have failed to make prompt payment of the amounts due under the 328 Melvin Collateral Mortgage; and
- (b) they have failed to repay the loan in accordance with the 328 Melvin Loan Agreement and the 328 Melvin Amended Loan Agreement.¹⁴

14. On June 12, 2025, Gowling WLG (Canada) LLP ("Gowlings") acting on behalf of the Caisse issued the following to the Debtors:

- (a) a demand for payment (the "**Demand Letter**") of the total indebtedness owing as of June 9, 2025, plus interest and legal costs to the Caisse as set out in Schedule "B" to the Demand Letter by the deadline of June 23, 2025; and
- (b) a Notice of Intention to Enforce Security on the property of Mats and Tymeca pursuant to section 244(1) of the BIA (the "**BIA 244 Notice**").¹⁵

IV. NEED FOR A RECEIVER

15. As of June 9, 2025, the aggregate indebtedness of the Debtors due and owing to the Caisse was \$355,667.86 for the 328 Melvin Collateral Mortgage (Loan No. 0725657-PR-1), in addition to ongoing accrual of interest as set out in the Loan Agreement and Amendment excluding professional fees, disbursements and HST (the

¹⁴ **Bouchard Affidavit**, [para 13](#)

¹⁵ **Bouchard Affidavit**, [para 14](#); **Demand Letter and BIA 244 Notice**, [Exhibit 8](#)

“**Indebtedness**”).¹⁶

16. As indicated above, certain events of default have occurred under the 328 Melvin Collateral Mortgage which are ongoing and outstanding.¹⁷

17. The Debtors are not able to pay the Indebtedness owing.¹⁸

18. The statutory notice period provided for under the Demand Letter and BIA 244 Notice has expired.¹⁹

19. The Caisse has lost confidence in the Debtors' management for all of the reasons detailed in this affidavit.²⁰

20. The Debtors do not have the ability to fund ongoing mortgage payments, and this is eroding the value of the Caisse's security position due to the accrual of the Indebtedness without meaningful repayment of the loan.²¹

21. The 328 Melvin Collateral Mortgage matured on June 6, 2025 and to date, the Caisse has not been repaid the Indebtedness. There is also a residential tenant at the Property as evidenced by occupancy checks that were completed on July 29, 2025 and August 21, 2025.²²

22. The Caisse has suffered and is expected to continue to suffer substantial prejudice

¹⁶ **Bouchard Affidavit**, [para 15](#)

¹⁷ **Bouchard Affidavit**, [para 16](#)

¹⁸ **Bouchard Affidavit**, [para 17](#)

¹⁹ **Bouchard Affidavit**, [para 18](#); **Demand Letter and BIA 244 Notice**, [Exhibit 8](#)

²⁰ **Bouchard Affidavit**, [para 19](#)

²¹ **Bouchard Affidavit**, [para 20](#)

²² **Bouchard Affidavit**, [para 21](#); **July 29, 2025 Occupancy Check Report**, [Exhibit 9](#); **August 21, 2025 Occupancy Check Report**, [Exhibit 10](#)

as a result of the Debtors' failure to repay the Indebtedness. With the Property being occupied by a residential tenant, the Caisse not having any information about the nature of the tenancy because the Debtors have stopped communicating with the Caisse, there are ongoing issues to address for collection of rent, payment of utilities to maintain adequate service for the residential tenant and landscaping, the appointment of the Receiver is necessary to preserve the value of the Property and the Caisse's collateral.²³

23. There is also a Building Code violation order registered on title to the Property on February 18, 2025 by the City of Greater Sudbury as Instrument No. SD51388 relating to an unsafe staircase and landing. This will need to be addressed by the Receiver, once appointed.²⁴

24. Upon appointment, the Receiver will assess the state of the Property and determine a strategy for recovery for the benefit of all stakeholders, including communicating directly with all affected parties.²⁵

25. The Loan Agreement at Article 13 states²⁶:

If the Borrower is in default, the Financial Institution may, subject to its other rights and remedies, demand full and immediate repayment of the amounts loaned, interest accrued and any other amount payable by the Borrower hereunder and by virtue of any credit contract signed with the Financial Institution. Failure by the Financial Institution to avail itself of any of these rights will not be interpreted as a waiver of such rights.

26. Paragraph 38 of the Caisse's Standard Charge Terms filed as number 201909 provides for the appointment of a Receiver.²⁷

²³ **Bouchard Affidavit**, [para 22](#)

²⁴ **Bouchard Affidavit**, [para 23](#); **Building Code Violation Order**, [Exhibit 11](#)

²⁵ **Bouchard Affidavit**, [para 24](#)

²⁶ **Bouchard Affidavit**, [para 25](#); **328 Melvin Loan Agreement**, [Exhibit 1](#)

²⁷ **Bouchard Affidavit**, [para 26](#); **Standard Charge Terms**, [Exhibit 12](#), [para 38](#)

38. RECEIVERSHIP OF MEMBER

Notwithstanding anything in this Charge, upon default of any of these provisions, the Financial Institution may, with or without entry into possession of the Lands, by instrument in writing appoint any person, whether an officer or an employee of the Financial Institution or not, to be a receiver of the Lands, and of the rents and profits with or without security, and may by similar writing remove any receiver and appoint another in its place and in making any such appointment or removal, the Financial Institution shall be deemed to be acting as the agent or attorney for the Member, but no such appointment shall be revocable by the Member. Upon the appointment of any such receiver the following provisions shall apply:

- (a) Every such receiver shall have unlimited access to the Lands as agent and attorney for the Member (which right of access shall not be revocable by the Member) and shall have full power and unlimited authority to:
 - (i) collect the rents and profits from tenancies or operation of the Lands whether created before or after the Charge;
 - (ii) rent or operate any portion of the Lands which may become vacant on such terms and conditions as the receiver considers advisable and enter into and execute leases, accept surrenders and terminate leases;
 - (iii) complete the construction of any building or other erections or improvements on the Lands left by the Member in an unfinished state or award the same to others to complete and purchase, repair and/or maintain any personal property including, without limitation, appliances and equipment necessary or desirable to render the premises operable or rentable, and take possession of and use or permit others to use all or any part of the Member's materials, supplies, plans, tools, appliances, equipment and property of every kind and description;
 - (iv) manage, operate, repair, alter or extend the Lands or any part thereof.

The Member undertakes to ratify and confirm whatever any such receiver or agent may do.

- (b) The Financial Institution may in its sole discretion vest the receiver with all or any of the rights and powers of the Financial Institution.
- (c) The Financial Institution may fix the reasonable remuneration of the receiver who shall be entitled to deduct same out of the revenue or the sale proceeds of the Lands.
- (d) Every such receiver shall be deemed the agent or attorney of the Member and not, in any event, the agent of the Financial Institution. The Financial Institution shall not be responsible for the receiver's acts or omissions.
- (e) The appointment of any such receiver by the Financial Institution shall not result in or create any liability or obligation on the part of the Financial Institution to the receiver or to the Member or to any other person, and no appointment or removal of a receiver and no actions of a receiver shall constitute the Financial Institution a chargee in possession of the Lands.
- (f) No such receiver shall be liable to the Member to account for monies other than monies actually received by him in respect of the Lands, or any part thereof, and out of such monies so received every such receiver shall, in the following order, pay:
 - (i) the receiver's remuneration as aforesaid;
 - (ii) all costs and expenses of every nature and kind incurred by the receiver in connection with the exercise of his or her remedies, rights and powers available at law and authority hereby conferred;
 - (iii) interest, Principal and other money which may be or become Charged upon the Lands in priority to the Charge, including taxes;
 - (iv) to the Financial Institution all interest, Principal and other amounts due under the Charge to be paid in such order as the Financial Institution in its sole discretion shall determine;

Thereafter, every such receiver shall be accountable to the Member for any surplus.

The remuneration and expenses of the receiver shall be paid by the Member on demand and shall be a charge on the Lands and shall bear interest from the date of demand at the same Rate as applies to the Principal Amount secured by this Charge.

- (g) Save as to claims for accounting under sub-paragraph (f) of this paragraph, the Member hereby releases and discharges any such receiver from every claim of every nature, whether sounding in damages or not which arise or be caused to the Member or any person claiming through or under him or her by reason or as a result of anything done by such receiver unless such claim be the direct and proximate result of dishonesty or fraud.
- (h) The Financial Institution may, at any time, terminate any such receivership by notice in writing to the Member and to any such receiver.
- (i) The statutory declaration of an officer of the Financial Institution as to default under the provisions of the Charge and as to the due appointment of the receiver pursuant to the terms of this Charge shall be sufficient proof, as regards to such default and appointment.
- (j) The rights and powers conferred in respect of the receiver are supplemental to and not in substitution of any other remedies, rights and powers available at law which the Financial Institution may have.

27. If this Honourable Court sees fit to make such an appointment, Spergel has consented to act as Receiver. Spergel is a licensed insolvency trustee and has significant experience in mandates of this nature.²⁸

PART III - ISSUES

28. Is it just and convenient to appoint Spergel as Receiver over the Debtors?

²⁸ **Bouchard Affidavit, para 27; Spergel's Consent to Act, Exhibit 13**

PART IV - THE LAW AND ANALYSIS

A. Jurisdiction and Forum Shopping

29. Recent case law addressing forum shopping demonstrates that courts in London, Hamilton, Toronto and Milton have been strictly enforcing the requirement that a proceeding must have some connection to the issuing court.

30. This case law in part originates from Justice Firestone's endorsement in *The Other End*²⁹ with the issue initially raised by Justice Leach in the same case.³⁰

31. Decisions have been reported in Milton and London. In Milton, Justice Kurz rendered two decisions: one in *Getz*³¹ and one in *Gill*.³² Justice Mills addressed the same issue in *Ang*.³³ In London, Justice Leach issued companion decisions in *Leasing Inc.*³⁴ and *Iknight Entertainment*.³⁵ Justice Bordin has commented on the issue in *Old Green Inc.*³⁶ in Hamilton.

32. This case law applies to all creditor-led proceedings. However, receivership applications have their own analysis of jurisdiction. Justice Kershman's decision on a bankruptcy application in *Nuvoola*³⁷ contains a relevant analysis to receivership

²⁹ *The Toronto-Dominion Bank v The Other End Inc. et al.*, 2025 ONSC 85, [“*The Other End*”];

³⁰ *The Other End*, 2024 ONSC 5377

³¹ *BFT Mortgage Services Inc. v Getz*, 2025 ONSC 2908, [“*Getz*”];

³² *RBC v Gill*, 2025 ONSC 3095, [“*Gill*”];

³³ *Business Development Bank of Canada v Ang*, 2025 ONSC 1752, [“*Ang*”];

³⁴ *Canadian Equipment Finance & Leasing Inc. v 8777691 Canada Inc. et al.*, 2025 ONSC 4514, [“*Leasing Inc*”];

³⁵ *BMW Group Financial Services Canada v Iknight Entertainment Inc. et al.*, 2025 ONSC 4494, [“*Iknight Entertainment*”];

³⁶ *The Bank of Nova Scotia v Old Green Inc.*, 2025 ONSC 6191 [“*Old Green Inc.*”]

³⁷ *Re Nuvoola Inc.*, 2025 ONSC 1257 [“*Nuvoola*”];

applications where jurisdiction is specified under section 243(5) of the BIA³⁸ and the same type of analysis as in a bankruptcy application must be done as it relates to evaluating the “locality of the debtor”.

33. The term “locality of the debtor” is defined in section 2 of the BIA³⁹.

34. Courts have consistently interpreted the “locality of the debtor” within its statutory meaning under section 2 of the BIA. In this section, the locality of the 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;

35. The locality of the debtor is established by providing factual evidence of one of the three criteria listed above.⁴⁰

36. Evidence can include, but is not limited to, the debtor company’s address, the location of the debtor company’s internal accounting records, addresses listed on the debtor company’s letterhead, and where the debtor signed security or loan documents.⁴¹

37. Bankruptcy courts have the flexibility to assess businesses which may span multiple jurisdictions.⁴²

³⁸ [BIA, Section 243\(5\)](#)

³⁹ [BIA, Section 2](#)

⁴⁰ [Sam Lévy & Associés Inc. v Azco Mining Inc.](#), 2001 SCC 92 (“[Azco](#)”) at [para. 76](#)

⁴¹ [Nuvoola](#) at [para 26](#)

⁴² [Azco](#) at [paras 27-28](#); [Solid Holdings Ltd. v Grant Thornton Limited](#), 2019 BCCA 231 at [para 22](#)

38. The BIA's national framework ensures that orders made in one province are enforceable across Canada.⁴³

B. The Court's Authority to Appoint a Receiver

39. Courts can appoint a receiver over a debtor upon application by a secured creditor pursuant to subsection 243(1) of the BIA⁴⁴ and/or subsection 101 of the CJA.⁴⁵ In the case of the BIA, the secured creditor must bring an application under section 243 of the BIA, and satisfy certain conditions, including:

- (a) issuing a notice of intention to enforce security and allowing the 10 day statutory notice period to expire before obtaining an order to appoint a receiver pursuant to section 243(1.1) of the BIA;
- (b) putting forward a qualified person to act as a receiver and providing evidence that the qualified person has consented to act in that capacity (s. 243(4) of the BIA); and
- (c) satisfying the court that the locality of the debtor against whom the receivership order is being sought is Ontario (s. 243(5) of the BIA).

40. In the case of both the BIA and CJA, the court may grant an order appointing a receiver when it is "just and convenient" to do so.

⁴³ [Azco at para 25](#)

⁴⁴ [BIA, Section 243\(1\)](#)

⁴⁵ [CJA, Section 101\(1\)](#)

C. The Technical Requirements to Appoint a Receiver Under the BIA Have Been Met

41. As of June 9, 2025, the aggregate indebtedness of the Debtors due and owing to the Caisse was \$355,667.86 in addition to ongoing accrual of interest as set out in the Loan Agreement or Amendment excluding additional legal fees, disbursements and HST (the “**Indebtedness**”).⁴⁶

42. Caisse has satisfied the technical requirements for the appointment of a receiver under the BIA. Caisse is a secured creditor of the Debtors in respect of the Property and is therefore entitled to bring the Application under s. 243 of the BIA. As required under s. 243(1.1) of the BIA, Caisse issued the BIA 244 Notice and the notice period has expired without repayment of the Indebtedness.⁴⁷

43. Spergel is qualified to act as Receiver in accordance with the requirements of s. 243(4) of the BIA and has consented to serving as Receiver in these proceedings.⁴⁸

44. The Debtors are individuals who reside in Brampton Ontario.⁴⁹ The Debtors own a four unit residential property that is the subject to the proposed receivership and is located in Sudbury, Ontario.⁵⁰ This Application is properly brought before the Court, as the locality of the Debtor is Brampton, Ontario, as required under s. 243(5) of the BIA.⁵¹

⁴⁶ **Bouchard Affidavit**, [para 15](#)

⁴⁷ **BIA**, [Section 244](#); **Bouchard Affidavit**, [para 14](#); **BIA 244 Notice**, [Exhibit 8](#)

⁴⁸ **BIA**, [Section 243\(4\)](#); **Bouchard Affidavit**, [para 27](#); **Spergel's Consent to Act**, [Exhibit 13](#)

⁴⁹ **Bouchard Affidavit**, [paras 4-5](#)

⁵⁰ **Bouchard Affidavit**, [para 8](#); **Parcel Register**, [Exhibit 3](#)

⁵¹ **BIA**, [Section 243\(5\)](#)

D. Considerations in Respect of the Appointment of a Receiver & Application to the Facts

45. In *Freure Village*, Justice Blair (as he then was) stated that, in deciding if the appointment of a receiver is just or convenient, the Court must have regard to, *inter alia*, the nature of the property and the rights and interest of all parties in relation thereto, which includes a secured creditor under its security.⁵²

46. Among other things, the following is a list of factors which Courts have historically considered in determining whether or not it is just or convenient to appoint a receiver:

- (a) whether irreparable harm might be caused if no order is 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 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 a right to appointment under the loan documentation;
- (h) the enforcement of rights under a security instrument where the security holder encounters or expects to encounter difficulties with the debtors;
- (i) the principle that the appointment of a receiver should be granted cautiously;
- (j) the consideration of whether a court appointment is necessary to enable the

⁵² *Metropolitan Partners Group Administration, LLC v International Credit Experts Inc.*, 2024 ONSC 4601 at para 21 [“Metropolitan Partners”]; *Bank of Nova Scotia v Freure Village on Clair Creek*, 1996 CanLII 8258 (Commercial List), paras 12-13 [“Freure Village”]

receiver to carry out its duties efficiently;

- (k) the effect of the order upon the parties;
- (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; and
- (p) the goal of facilitating the duties of the receiver.⁵³

47. While the appointment of a receiver is normally “an extraordinary remedy”, in a case such as this where the secured creditor is seeking the appointment of a receiver and its credit documents specifically afford it the right to appoint a receiver, the appointment of a receiver is not an “extraordinary remedy”. The rationale for this relaxed standard is that, in such circumstances, as Justice Morawetz (as he then was) remarked in *Elleway*: “the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties”.⁵⁴

48. Commercial certainty requires that parties should expect courts to hold them to their agreements. More recently, in *JBT Transport*, the Court held that this expectation particularly arises where a creditor has allowed the debtor the opportunity to explore other options.⁵⁵

49. The Caisse is also not required to establish that it will suffer irreparable harm or

⁵³ *Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited*, 2022 ONSC 6186 at para 25; *Maple Trade Finance Inc. v CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para 25.

⁵⁴ *Elleway Acquisitions Limited v The Cruise Professionals Limited*, 2013 ONSC 6866 (Commercial List), para 27 (“Elleway”); *Metropolitan Partners*, *supra* note 49, para 22

⁵⁵ *Re JBT Transport Inc.*, 2025 ONSC 1436 at para 53-54 (“JBT Transport”); *ATB Financial v Mayfield Investments Ltd.*, 2024 ABKB 635 at para 40

that a situation is urgent. Instead, evidence suggesting that a creditor's attempts to privately enforce its security will be delayed or otherwise fail can warrant receivership appointment.⁵⁶

50. The appointment of the Receiver will also allow the Property to be preserved and placed under the stewardship of a court-appointed officer while the parties' rights are being determined.⁵⁷

51. In accordance with the test and factors outlined above, it is both just and convenient to appoint Spergel as Receiver because:

- (a) Caisse has lost faith in the Debtors' management regarding the Property and it is apparent that the Debtors will not be able to repay the Indebtedness owing to it. Accordingly, Caisse bears an economic interest in the Debtors' insolvency.⁵⁸
- (b) The Debtors have no ability to fund ongoing mortgage payments and this is eroding the value of Caisse's security position due to the accrual of the Indebtedness without meaningful repayment of the Loan.⁵⁹
- (c) Caisse has suffered and is expected to continue to suffer substantial prejudice as a result of the Debtors' failure to repay the Indebtedness. The appointment of the Receiver is necessary to preserve the value of the

⁵⁶ [*Business Development Bank of Canada v 170 Willowdale Investments Corp.*](#), 2023 ONSC 3230 at para 53; [*Bank of Montreal v Carnival National Leasing Ltd.*](#), 2011 ONSC 1007 at paras 24, 28-29.

⁵⁷ [*Bouchard Affidavit*](#), para 24

⁵⁸ [*Bouchard Affidavit*](#), para 19 and para 20; [*Rose-Isli Corp. v Smith*](#), 2023 ONCA 548 at para 9.

⁵⁹ [*Bouchard Affidavit*](#), para 20

Property and the Caisse's collateral.⁶⁰

52. Upon appointment, the Receiver will assess the state of the Property and determine a strategy for recovery for the benefit of all stakeholders, including communicating directly with all affected parties.⁶¹

PART V - RELIEF SOUGHT

53. Caisse requests that the Court grant the Appointment Order substantially in the form included at [Tab C](#) of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of November, 2025.



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⁶⁰ **Bouchard Affidavit**, [para 22](#)

⁶¹ **Bouchard Affidavit**, [para 24](#)

SCHEDULE “A”

LIST OF AUTHORITIES

1. Toronto-Dominion Bank v The Other End Inc. et al., 2025 ONSC 85
2. The Other End, 2024 ONSC 5377
3. BFT Mortgage Services Inc. v Getz, 2025 ONSC 2908
4. RBC v Gill, 2025 ONSC 3095
5. Business Development Bank of Canada v Ang, 2025 ONSC 1752
6. Canadian Equipment Finance & Leasing Inc. v 8777691 Canada Inc. et al., 2025 ONSC 4514
7. BMW Group Financial Services Canada v Iknight Entertainment Inc. et al., 2025 ONSC 4494
8. Re Nuvoola Inc., 2025 ONSC 1257
9. The Bank of Nova Scotia v Old Green Inc. et al., 2025 ONSC 6191
10. Sam Lévy & Associés Inc. v Azco Mining Inc. 2001 SCC 92 2001 SCC 92
11. Solid Holdings Ltd. v Grant Thornton Limited, 2019 BCCA 231
12. ATB Financial v Mayfield Investments Ltd., 2024 ABKB 635
13. Bank of Montreal v Carnival National Leasing Ltd., 2011 ONSC 1007
14. Bank of Nova Scotia v Freure Village on Clair Creek et al., 1996 CanLII 8258 (Commercial List)
15. Business Development Bank of Canada v 170 Willowdale Investments Corp., 2023 ONSC 3230
16. Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited, 2022 ONSC 6186
17. Elleway Acquisitions Ltd. v The Cruise Professionals Ltd., 2013 ONSC 6866 (Commercial List)
18. Metropolitan Partners Group Administration, LLC v International Credit Experts Inc., 2024 ONSC 4601 (Commercial List)
19. Re JBT Transport Inc., 2025 ONSC 1436

20. Rose-Isli Corp. v Smith, 2023 ONCA 548

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date November 19, 2025



Bart Sarsh

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3

Interpretation

Definitions

2 In this Act,

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; (localité)

Court may appoint receiver

243 (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

243 (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

243 (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)

243 (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

243 (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

243 (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

243(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

243 (7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

Advance notice

244 (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 S.O. 1990, c. C.43

Injunctions and receivers

101 (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

101 (2) An order under subsection (1) may include such terms as are considered just.

Court File No. CV-25-00005748-0000

CAISSE DESJARDINS ONTARIO CREDIT UNION INC.

Applicant

- and - MATS MOY and TYMECA CHANELLE MOY

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
BRAMPTON

APPLICANT'S FACTUM
(Appointment of Receiver)

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