

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**THE TORONTO-DOMINION BANK**

Applicant

- and -

**1000120501 ONTARIO INC., 1951831 ONTARIO INC., 1858212 ONTARIO LTD.,  
2866388 ONTARIO INC., and 2866414 ONTARIO INC.**

Respondents

**APPLICATION UNDER SUBSECTION 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**

**FACTUM OF THE APPLICANT, THE-TORONTO-DOMINION BANK  
(returnable January 30, 2025)**

January 20, 2025

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*Lawyers for The Toronto-Dominion Bank*

## PART I – NATURE OF THE APPLICATION

1. The Applicant, The Toronto-Dominion Bank (“**TD**”), makes an application for an Order (the “**Receivership Order**”), in substance, appointing msi Spergel inc. (“**Spergel**”) as receiver (in such capacity, the “**Receiver**”), without security, of all the assets, properties and undertakings of each of 1000120501 Ontario Inc. (“**100 ONT**”), 1951831 Ontario Inc. (“**195 ONT**”), 1858212 Ontario Ltd. (at this time, limited solely to its beneficial ownership interest in the Barton Real Property (as herein defined), “**185 ONT**”), 2866388 Ontario Inc. (“**388 ONT**”), and 2866414 Ontario Inc. (“**414 ONT**”) and, together with 100 ONT, 195 ONT, 185 ONT, and 388 ONT, the “**Debtors**”), acquired for, or used in relation to the businesses carried on by the Debtors and all proceeds thereof (collectively, the “**Property**”), including, without limitation, each of the real properties municipally known as (i) 189 King Street East, Hamilton, Ontario (the “**189 King Real Property**”), (ii) 304-315 Barton Street East, Hamilton, Ontario (the “**Barton Real Property**”), (iii) 219-221 King Street West, Hamilton, Ontario (the “**219 King Real Property**”), and (iv) 215-217 King Street West, Hamilton, Ontario (the “**215 King Real Property**” and, together with the 189 King Real Property, the Barton Real Property, and the 219 King Real Property, the “**Real Properties**”).

2. The Debtors are each real property holding companies, which collectively owe TD more than \$4.3 million. TD holds security over the assets of the Debtors, including general security agreements and charges over the Real Properties, which give TD the right to apply to court for the appointment of a receiver.

3. Matthew J. Christie (“**Mr. Christie**”) is the sole director of all of the Debtors except for 195 ONT, which, as described below, is a joint borrower with 185 ONT.

4. TD made formal demand on the Debtors on August 29, 2024, which demand has not been honoured. Instead, TD has been subjected to never-ending delay. As such, TD is justified in having lost confidence in the Debtors and their management, and it is respectfully submitted that it is just and convenient for the Receiver to be appointed.

## PART II – SUMMARY OF FACTS

5. The Debtors are each a privately-owned Ontario corporation. Mr. Christie is the sole director of each of the Debtors except for 195 ONT, of which Sasha M. High (“**Ms. High**”) is the sole director and an officer, and Krishna Menon (“**Mr. Menon**”) is also an officer.

Affidavit of Kathryn Furfaro sworn January 13, 2025 [Furfaro Affidavit] at [paras. 3-5](#), Tab 4 of TD’s Application Record dated January 13, 2025 [Application Record].

6. Each of the Debtors is either a registered or beneficial owner of one of the Real Properties.

Furfaro Affidavit, *supra* at [paras. 6-7](#).

7. The Debtors are indebted to TD in connection with certain credit facilities (the “**Credit Facilities**”) made available to the Debtors by TD pursuant to and under the following agreements (collectively, and each as amended, replaced, restated or supplemented from time to time, the “**Credit Agreements**”):

- (a) the letter of agreement dated March 3, 2022 between TD and 100 ONT (the “**100 Credit Agreement**”);
- (b) the letter of agreement dated December 27, 2019 between TD, 185 ONT and 195 ONT (the “**185/195 Credit Agreement**”);
- (c) the letter of agreement dated September 23, 2021 between TD and 388 ONT (the “**388 Credit Agreement**”); and
- (d) the letter of agreement dated October 13, 2021 between TD and 414 ONT (the “**414 Credit Agreement**”).

Furfaro Affidavit, *supra* at [para. 8](#).

8. To secure their obligations to TD, the Debtors provided security to TD (the “**Security**”), including, without limitation:

(a) in the case of 100 ONT:

- (i) the general security agreement dated March 9, 2022 (the “**100 GSA**”), registration in respect of which was made under the *Personal Property Security Act* (Ontario) (the “**PPSA**”);
- (ii) the first charge/mortgage in the principal amount of \$500,000 in respect of the 189 King Real Property, which was registered on title as Instrument No. WE1589792 on March 11, 2022 (the “**189 King Mortgage**”); and
- (iii) the general assignment of rents and leases registered on title to the 189 King Real Property as Instrument No. WE1589793 on March 11, 2022 (the “**189 King GAR**”);

(b) in the case of 195 ONT:

- (i) the general security agreement dated June 29, 2017 (the “**195 GSA**”), registration in respect of which was made under the PPSA;
- (ii) the first charge/mortgage in the principal amount of \$935,000 in respect of the Barton Real Property, which was registered on title as Instrument No. WE1218200 on June 30, 2017 (the “**Barton Mortgage**”); and
- (iii) the general assignment of rents and leases registered on title to the Barton Real Property as Instrument No. WE1218201 on June 30, 2017 (the “**Barton GAR**”);

- (c) in the case of 185 ONT:
  - (i) the general security agreement dated June 28, 2017 (the “**185 GSA**”), registration in respect of which was made under the PPSA; and
  - (ii) by virtue of the beneficial owner agreement regarding the Barton Real Property dated February 21, 2020 between 195 ONT and 185 ONT, the Barton Mortgage and the Barton GAR; and
- (d) in the case of 388 ONT:
  - (i) the general security agreement dated October 1, 2021 (the “**388 GSA**”), registration in respect of which was made under the PPSA;
  - (ii) the first charge/mortgage in the principal amount of \$1,250,000 in respect of the 219 King Real Property, which was registered on title as Instrument No. WE1551623 on October 6, 2021 (the “**219 King Mortgage**”);
  - (iii) the general assignment of rents and leases registered on title to the 219 King Real Property as Instrument No. WE1551624 on October 6, 2021 (the “**219 King GAR**”); and
  - (iv) the assignment of term deposits and credit balances registered in the name of 388 ONT in the amount of \$150,000; and
- (e) in the case of 414 ONT:

- (i) the general security agreement dated October 13, 2021 (the “**414 GSA**” and, together with the 100 GSA, the 185 GSA, the 195 GSA, and the 388 GSA, the “**GSAs**”), registration in respect of which was made under the PPSA;
- (ii) the first charge/mortgage in the principal amount of \$1,650,000 in respect of the 215 King Real Property, which was registered on title as Instrument No. WE1554680 on October 20, 2021 (the “**215 King Mortgage**” and, together with the 189 King Mortgage, the Barton Mortgage, and the 219 King Mortgage, the “**Mortgages**”); and
- (iii) the general assignment of rents and leases registered on title to the 215 King Real Property as Instrument No. WE1554681 on October 21, 2021 (the “**215 King GAR**” and, together with the 189 King GAR, the Barton GAR, and the 219 King GAR, the “**GARs**”).

Furfaro Affidavit, *supra* at paras. [7](#) and [10](#).

9. Mr. Christie, Ms. High, and Mr. Menon also provided certain personal guarantees of the Mortgages, as applicable (the “**Personal Guarantees**”).

Furfaro Affidavit, *supra* at [para. 14](#).

10. Other than the PPSA registrations made by TD, including, without limitation, TD’s registrations against each of the Debtors covering all collateral classifications other than consumer goods (each a “**General TD Registration**”), all of the other registrations against the Debtors, if any, is either limited on its face to certain property and/or is registered after the General TD Registration against each Debtor.

Furfaro Affidavit, *supra* at [para. 16](#).

11. In addition to TD's Mortgages, which are first charges on the Real Properties, the parcel registers for the 219 King Real Property, the 215 King Real Property, and the Barton Real Property reflect subsequent-ranking mortgages in favour of other stakeholders. All mortgagees registered on the Real Property have been served with this application.

**Furfaro Affidavit, *supra* at [paras. 17-18](#).**

**[Affidavit of Service of Alex Bernicchia-Freeman sworn January 8, 2025.](#)**

12. Numerous Events of Default (as defined in the Credit Agreements and/or the Security, as applicable) have occurred and are continuing, including, without limitation: (i) the failure by the Debtors to repay TD by the Final Extension Date (as defined below); (ii) certain Debtors granting or permitting another encumbrance on the Real Properties without the prior written consent of TD; (iii) the failure by the Debtors to comply with their respective reporting obligations under the Credit Agreements; and (iv) the failure by the Debtors to remain current in respect of property taxes.

**Furfaro Affidavit, *supra* at [paras. 19](#) and [25](#).**

13. On August 2, 2023, TD issued notices of default to the Debtors, citing various Events of Default, none of which have been waived. Five months later, on December 13, 2023, TD, through its lawyers, issued default and exit letters (the “**Default & Exit Letters**”) requiring each of the Debtors to make immediate arrangements to refinance and/or repay TD in full by no later than March 30, 2024 (the “**Original Repayment Date**”). The Original Repayment Date was further extended to July 31, 2024 (the “**Final Extension Date**”), yet the Debtors did not honour the Default & Exit Letters by that date.

**Furfaro Affidavit, *supra* at [paras. 20-22](#).**

14. As a result of the Debtors' non-compliance, on August 29, 2024, TD made formal written demand on each of the Debtors, Mr. Christie, Ms. High and Mr. Menon for the payment of the amounts owed to TD under the Credit Agreements, the Mortgages, and the Personal Guarantees, as applicable (collectively, the "**Demand Letters**"). Notices of intention to enforce security (the "**BIA Notices**") pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") accompanied the Demand Letters sent to the Debtors.

Furfaro Affidavit, *supra* at [para. 23](#).

*Bankruptcy and Insolvency Act* (Canada) [BIA], [s. 244\(1\)](#).

15. As particularized in more detail in the Demand Letters, as of August 27, 2024, the amounts owing to TD for principal and interest, plus accruing interest and costs (collectively, the "**Indebtedness**") comprised (i) \$501,558.71 owing by 100 ONT, (ii) \$1,295,219.90 owing by 185 ONT and 195 ONT, jointly, (iii) \$1,162,091.24 owing by 388 ONT, and (iv) \$1,579,225.59 owing by 414 ONT, respectively.

Furfaro Affidavit, *supra* at [para. 24](#).

16. In October and November 2024, the Debtors' counsel (Scalzi Caplan LLP, referred to herein as "**SC Law**") repeatedly assured TD that the Debtors would be in a position to fully repay the Indebtedness by November 15, 2024, with funds to be sourced from the sale of unrelated real property (referred to herein as "**232 Elm**") and multiple refinancings.

Furfaro Affidavit, *supra* at [para. 26](#).



17. The first of the refinancings was to occur on October 25, 2024. That date came and went without any acknowledgement from SC Law until November 5, 2024, when SC Law reaffirmed that TD would be fully repaid by November 15, 2024.

**Furfaro Affidavit, *supra* at [para. 27](#).**

18. On the anticipated payout date, November 15, 2024, SC Law advised that the sale of 232 Elm was proceeding that day, but that certain of the refinancings had been pushed to November 22, 2024. SC Law also advised, for the first time, that the Debtors had separate counsel acting on the transaction, being Nekzai Law.

**Furfaro Affidavit, *supra* at [para. 28](#).**

19. Nekzai Law confirmed that payout would occur on November 22, 2024, and also confirmed that the sale of 232 Elm had closed, on November 15, 2024, with funds to be released on November 18 or 19, 2024.

**Furfaro Affidavit, *supra* at [para. 30](#).**

20. On November 19, 2024, Nekzai Law confirmed that \$150,000 from the sale proceeds from 232 Elm were to be provided to TD as a partial paydown in respect of the mortgage on the 189 King Real Property. However, to date, the funds from the sale of 232 Elm were never received by TD, and the whereabouts of the funds are unknown as the Debtors' counsel repeatedly ignored TD's inquiries in respect thereof.

**Furfaro Affidavit, *supra* at [paras. 31-32](#).**

21. On November 22, 2024, being the rescheduled payout date, Nekzai Law advised that the payout would need to be extended to November 25. On November 25, Nekzai Law advised that the closing was held up by a title insurance issue, and that another day was required. Two days later, on November 27, TD's counsel followed up, but did not receive a response until November 28, when Nekzai Law wrote that a day or two more would be required. TD's counsel followed up again on November 28, December 3, and December 4, but did not receive a response until December 5, 2024, when Nekzai Law advised that it had asked the lender to advance funds on at least one of the refinancings, if not all of them at once.

**Furfaro Affidavit, *supra* at [paras. 33-36](#).**

22. On December 13, 2024, Nekzai Law advised TD's counsel that funding would occur on December 16 to pay out a certain credit facility to which 185 ONT was the sole borrower (the “**535 King Payout**”). The refinancing closed on December 16, TD received the funds on December 17, and the 535 King Payout was completed. As this payout was completed prior to the commencement of these proceedings, details of the related credit agreement, security, demands and indebtedness are not outlined herein, and the Indebtedness as defined in paragraph 16, above, is net of the 535 King Payout.

**Furfaro Affidavit, *supra* at [para. 37](#).**

23. On December 19, 2024, Nekzai Law advised TD's counsel that it was seeking an update on the remaining two refinances.

**Furfaro Affidavit, *supra* at [para. 38](#).**

24. Unbeknownst to TD at the time, new charges had already been registered on the 215 King Real Property and the 219 King Real Property on December 16, 2024, without the prior written consent of TD. Such consent is expressly required under the Credit Agreements, and as such, the charges constitute defaults thereunder. Furthermore, TD did not receive any funds to pay down the Credit Facilities relating to these Real Properties.

**Furfaro Affidavit, *supra* at [para. 39](#).**

25. During the course of the above discussions, TD's counsel prepared and issued multiple rounds of payout letters to the Debtors based on the understanding that refinancings and payouts were imminent. Repeatedly, however, the anticipated payout date came and went without receipt of the promised funds, and sometimes without any forewarning that payout would not proceed as scheduled.

**Furfaro Affidavit, *supra* at [para. 40](#).**

**Furfaro Affidavit, *supra* at Exhibit "T", pp. [8](#), [22](#), [26](#), [35](#), and [37](#).**

26. Aside from the 535 King Payout, the Debtors have not honoured the Demand Letters and BIA Notices. The Indebtedness exceeds \$4.3 million, remains unpaid, and continues to accrue. The Debtors are in default of the terms of and their obligations under the Credit Agreements and the Security. As stated above, Default & Exit Letters were issued to the Debtors on December 13, 2023, and the Demand Letters and BIA Notices were issued on August 29, 2024. The Debtors have had ample time to repay their obligations to TD, or to enter into an arrangement acceptable to TD for the full repayment of the Indebtedness, yet have failed or refused to do so.

**Furfaro Affidavit, *supra* at [paras. 41-42](#).**

27. Based on the foregoing, TD has lost confidence in the Debtors' management to make the necessary arrangements to repay TD (and the property tax amounts ranking in priority thereto). At this stage, TD believes that the only reasonable and prudent path forward is to take any and all steps necessary to protect the Property by having the Receiver appointed. It is within TD's rights under its security to do so.

**Furffaro Affidavit, *supra* at [para. 43](#).**

28. The Debtors were served with TD's notice of application on January 7, 2025, and were served with TD's application record on January 13, 2025. No responding materials have been received as of the time of finalizing this factum on January 20, 2025.

***Rules of Civil Procedure (Ontario), [r 16.03](#).***

**Affidavit of Service of Saikat Das sworn January 7, 2025 re: [100 ONT](#).**

**Affidavits of Service of Saad Ahmad sworn January 7, 2025 re: [195 ONT](#); [185 ONT](#); [388 ONT](#); and [414 ONT](#).**

**[Affidavit of Service of Katie Bell sworn January 15, 2025.](#)**

### **PART III – ISSUE**

29. The sole issue to be determined on this application is whether it is just and convenient for this Court to appoint Spergel as Receiver over the Property.

## PART IV – LAW AND ARGUMENT

### *The Test for Appointing a Receiver*

30. TD seeks the appointment of a receiver pursuant to subsection 243(1) of the BIA and section 101 of the CJA. Both statutes enable the Court to appoint a receiver and manager where such appointment is “*just or convenient*.”

BIA, *supra* [s. 243\(1\)](#).

Courts of Justice Act (Ontario) [CJA], [s. 101](#).

31. In determining whether it is “*just or convenient*” to appoint a receiver under either the BIA or CJA, Ontario courts have applied the decision of The Honourable Mr. Justice Blair in *Freure Village*. In that case, His Honour confirmed that, in deciding whether the appointment of a receiver is just or convenient, the court “*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*,” which includes the rights of the secured creditor under its security.

*Bank of Nova Scotia v. Freure Village on Clair Creek*, [40 C.B.R. \(3d\) 274, \[1996\] O.J. No. 5088 at para. 10](#) (Gen. Div. [Comm. List]) [*Freure Village*].

32. When the rights of the secured creditor under its security include a specific right to the appointment of a receiver (as in the present case), the burden on the applicant seeking the relief is relaxed. Indeed, The Honourable Mr. Chief Justice Morawetz held in *Elleway Acquisitions* that:

... while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.

*Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, [2013 ONSC 6866 at para. 27](#) [*Elleway Acquisitions*].

33. More recently, The Honourable Mr. Chief Justice Morawetz's holding in *Elleway Acquisitions* was further affirmed in *iSpan Systems* by The Honourable Mr. Justice Osborne:

Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties [citations omitted].

*iSpan Systems LP*, [2023 ONSC 6912](#) at [para. 31](#) [*iSpan Systems*].

34. Furthermore, the appointment of a receiver becomes less extraordinary still when dealing with a default under a mortgage, as in the present case.

*BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*,  
[2020 ONSC 1953](#) at [paras. 43-44](#).

*It is Just and Convenient to Appoint the Receiver*

35. TD submits that the test for the appointment of a receiver is met. TD is contractually entitled to have a receiver appointed over the Debtors upon default. Such default has occurred and the appointment of Spergel as receiver is not an extraordinary remedy; it is simply the result of enforcing a contractual term that was mutually assented to by the Debtors and TD.

Furfaro Affidavit, *supra* at Exhibit "J", Standard Charge Terms 8520, [s. 8](#).

Furfaro Affidavit, *supra* at Exhibit "I", [100 GSA, s. 12\(a\)\(xii\)](#); [195 GSA, s. 12\(a\)\(xii\)](#); [185 GSA, s. 12\(a\)\(xii\)](#); [388 GSA, s. 12\(a\)\(xii\)](#); and [414 GSA, s. 12\(a\)\(xii\)](#).

36. TD has been extremely patient in dealing with these Debtors. It has been more than 17 months since the Debtors defaulted in respect of their obligations to TD.

Furfaro Affidavit, *supra* at [para. 20](#).

37. TD wishes to take any and all steps necessary to enforce its security and realize on same, and the appointment of Spergel as receiver is necessary for the protection of the Debtors' estates and the interests of TD as a secured creditor. The Debtors have had ample time to address their defaults with TD, but have instead perpetuated never-ending delay.

**Furfaro Affidavit, *supra* at paras. [43](#) and [47](#).**

38. Spergel is a licensed insolvency trustee and is familiar with the circumstances of the Debtors and their arrangements with TD. Spergel has consented to act as the Receiver should the Court so appoint it.

**Furfaro Affidavit, *supra* at para. [50](#).**

#### **PART V – RELIEF REQUESTED**

39. In light of the foregoing, it is respectfully submitted that this Court should grant the Receivership Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 20<sup>th</sup> day of January, 2025.




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**SCHEDULE “A”  
AUTHORITIES CITED**

Jurisprudence

1. *Bank of Nova Scotia v. Freure Village on Clair Creek*, [40 C.B.R. \(3d\) 274](#),  
[\[1996\] O.J. No. 5088](#) (Gen. Div. [Comm. List]).
2. *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge  
Inc.*, [2020 ONSC 1953](#).
3. *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, [2013 ONSC 6866](#).
4. *iSpan Systems LP*, [2023 ONSC 6212](#).



**SCHEDULE “B”**  
**TEXT OF STATUTES, REGULATIONS & BY-LAWS**

**Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended, s. 243**

**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**

(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.

### **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.

### **Courts of Justice Act, R.S.O. 1990, c. C-34, as amended, s. 101**

### **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.

**Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended, r. 16.03**

**16.03** (1) Where these rules or an order of the court permit service by an alternative to personal service, service shall be made in accordance with this rule. R.R.O. 1990, Reg. 194, r. 16.03 (1).

**Acceptance of Service by Lawyer**

(2) Service on a party who has a lawyer may be made by leaving a copy of the document with the lawyer or an employee in the lawyer's office, but service under this subrule is effective only if the lawyer endorses on the document or a copy of it an acceptance of service and the date of the acceptance. O. Reg. 575/07, s. 17.

(3) By accepting service the lawyer shall be deemed to represent to the court that the lawyer has the authority of his or her client to accept service. R.R.O. 1990, Reg. 194, r. 16.03 (3); O. Reg. 575/07, s. 1.

**Service by Mail to Last Known Address**

(4) Service of a document may be made by sending a copy of the document together with an acknowledgment of receipt card (Form 16A) by mail to the last known address of the person to be served, but service by mail under this subrule is only effective as of the date the sender receives the card. O. Reg. 24/00, s. 3.

**Service at Place of Residence**

(5) Where an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by,

(a) leaving a copy, in a sealed envelope addressed to the person, at the place of residence with anyone who appears to be an adult member of the same household; and

(b) on the same day or the following day mailing another copy of the document to the person at the place of residence,

and service in this manner is effective on the fifth day after the document is mailed. R.R.O. 1990, Reg. 194, r. 16.03 (5).

**Service on a Corporation**

(6) Where the head office, registered office or principal place of business of a corporation or, in the case of an extra-provincial corporation, the attorney for service in Ontario cannot be found at the last address recorded with the Ministry of Public and Business Service Delivery, service may be made on the corporation by mailing a copy of the document to the corporation or to the attorney for service in Ontario, as the case may be, at that address. R.R.O. 1990, Reg. 194, r. 16.03 (6); O. Reg. 170/14, s. 4; O. Reg. 520/22, s. 2.

**Crown in Right of Ontario, Attorney General**

(7) Service of a document on the Crown in right of Ontario or on the Attorney General of Ontario may be made by e-mailing a copy of the document in accordance with subrule 16.06.1 (1) to the e-mail address for service specified for the Crown or the Attorney General, as the case may be, on the website of the Ministry of the Attorney General. O. Reg. 107/21, s. 2.

#### **Children's Lawyer**

(8) Service of a document on the Children's Lawyer, and any service of a document that involves leaving a copy with the Children's Lawyer, may be made with respect to the Children's Lawyer by e-mailing a copy of the document in accordance with subrule 16.06.1 (1) to the e-mail address for service specified for the Children's Lawyer on the website of the Ministry of the Attorney General. O. Reg. 107/21, s. 2.

#### **Public Guardian and Trustee**

(9) Service of a document on the Public Guardian and Trustee, and any service of a document that involves leaving a copy with the Public Guardian and Trustee, may be made with respect to the Public Guardian and Trustee by e-mailing a copy of the document in accordance with subrule 16.06.1 (1) to the e-mail address for service specified for the Public Guardian and Trustee on the website of the Ministry of the Attorney General. O. Reg. 107/21, s. 2.

#### **Deemed Service, E-mail**

(10) Where service is made by e-mail under subrule (7), (8) or (9) between 4 p.m. and midnight, it is deemed to have been made on the following day. O. Reg. 107/21, s. 2.

**THE TORONTO-DOMINION BANK**

- and -

**1000120501 ONTARIO INC., 1951831 ONTARIO INC., 1858212 ONTARIO LTD., 2866388 ONTARIO INC., and 2866414 ONTARIO INC.**

Applicant

Respondents

Court File No. CV-24-00088415-0000

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**Proceedings commenced at Hamilton**

**FACTUM OF THE APPLICANT**  
**(returnable January 30, 2025)**

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