

Court File No. CV-26-00102797-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE
(EAST REGION COMMERCIAL LIST)**

B E T W E E N:

CAISSE DESJARDINS ONTARIO CREDIT UNION INC.

Applicant

and

METAMORE INC., JASON BEANGE, THE ESTATE OF JASON
COUGHLIN, JEREMY JAMES ALLAN STEEVES, LAURIE JOAN
CONSITT AND SHAWN ANTHONY BEATTIE

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)

February 6, 2026

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
One Main Street West
Hamilton, ON L8P 4Z5
Tel: 905-528-8208

Bart Sarsh (LSO No. 59208N)

Tel: 905-540-3242
Bart.Sarsh@gowlingwlg.com

Lawyers for the Applicant

TO: THE SERVICE LIST

THE SERVICE LIST
(as at January 29, 2026)

<p>GOWLING WLG (CANADA) LLP One Main Street West Hamilton, ON L8P 4Z5</p> <p>Bart Sarsh (LSO No. 59208N) Tel: 905-540-3242 Email: bart.sarsh@gowlingwlq.com</p> <p>Lawyers for the Applicant</p>	
<p>METAMORE INC. 2672 Scotchline Rd, Perth, ON K7C 3C5</p> <p>Email: metamore.inc@gmail.com</p> <p>Attention: Jason Beange, Estate of Jason Coughlin, Jeremy Steeves, Laurie Consitt and Shawn Beattie Respondent</p>	<p>Jason Beange 120 Sunset Drive, Port Elgin, ON N0H 2C5</p> <p>Email : jabeange@hotmail.com</p> <p>Respondent / Guarantor</p>
<p>Estate of Jason Coughlin 606 Glen Miller Rd, Trenton, ON K8V 5P8</p> <p>Respondent / Guarantor</p>	<p>Jeremy Steeves 507 Whitewater Lane, McDonald's Corners, ON K0G 1M0</p> <p>Email: jeremy@perthbrewery.ca</p> <p>Respondent / Guarantor</p>
<p>Laurie Consitt 2672 County Rd 10 RR3, Perth, ON K7H 3C5</p> <p>Email: ljconsitt@yahoo.ca</p> <p>Respondent / Guarantor</p>	<p>Shawn Beattie 627 Davis Drive Apt. 1, Kingston, ON K7M 7Y6</p> <p>Email: shawn_beattie@hotmail.com</p> <p>Respondent / Guarantor</p>

<p>MSI SPERGEL INC. 21 King Street West, Suite 1602 Hamilton, ON L8P 4W7</p> <p>Trevor Pringle Tel: 905-527-2227 Email: tpringle@spergel.ca</p> <p>Proposed Receiver</p>	<p>ROBINS APPLEBY LLP 120 Adelaide Street West, Suite 2600 Toronto, ON M5H 1T1</p> <p>Dominique Michaud (LSO No. 56871V) Tel: 416-360-3795 Email: dmichaud@robapp.com</p> <p>Lawyers for Receiver</p>
GOVERNMENT	
<p>Town of Greater Napanee 99-A Advance Avenue Napanee, ON K7R 3Y5 Phone: (613) 354-3351</p> <p>Email: info@greaternapanee.com</p>	<p>Town of Deseronto 331 Main Street, Deseronto P.O Box 310 K0K 1X0 613-396-2440</p> <p>Email: _vthompson@deseronto.ca</p>
<p>ATTORNEY GENERAL OF CANADA Department of Justice Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1</p> <p>Email: agc-pgc.toronto-tax-fiscal@justice.gc.ca</p>	
<p>OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY CANADA 151 Yonge Street, 4th Floor Toronto, ON M5C 2W7</p> <p>Email: osbservice-bsfservice@ised-isde.gc.ca</p>	<p>ONTARIO MINISTRY OF FINANCE (INSOLVENCY UNIT) Legal Services Branch 33 King Street West, 6th Floor Oshawa, ON L1H 8H5</p> <p>Email: insolvency.unit@ontario.ca</p>

EMAIL SERVICE LIST

bart.sarsh@gowlingwlg.com; metamore.inc@gmail.com; jabeange@hotmail.com;
jeremy@perthbrewery.ca; liconsitt@yahoo.ca; shawn_beattie@hotmail.com;
tpringle@spergel.ca; dmichaud@robapp.com; info@greaternapanee.com;
vthompson@deseronto.ca; customerservice@northbay.ca; agc-pgc.toronto-tax-fiscal@justice.gc.ca; osbservice-bsfservice@ised-isde.gc.ca;
insolvency.unit@ontario.ca

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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*, R.S.C., 1985, c. B-3 (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “**CJA**”) without security, over all of the properties, assets and undertakings of Metamore Inc. (“**Metamore**” or the “**Borrower**” or the “**Debtor**”) acquired for, or used in relation to, the Debtor’s right, title and interest in and to all of the property including leases described in Schedule “A” of the Appointment Order including proceeds with respect to 146 Dundas Street, Deseronto, Ontario, K0K 1X0 and 353 Dundas Street West, Napanee, Ontario, K7R 2B5 (the “**Property**”). The scope of the receivership is limited to the Property.

2. As of December 4, 2025, the aggregate indebtedness of the Debtor due and owing to the Caisse was \$2,549,873.44 for the 146 Dundas Collateral Mortgage (Loan No. 84209 PR-1) and \$3,000,424.10 for the 353 Dundas Collateral Mortgage (Loan No. 84209 PR-2) in addition to ongoing accrual of interest as set out in the Loan Agreement excluding professional fees, disbursements and HST.¹

¹ Application Record, Affidavit of Olivier Ludger Ménard affirmed February 2, 2026, Tab B (“**Ménard Affidavit**”), para 32

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. 11.²

4. Metamore is a company incorporated pursuant to the laws of the Province of Ontario, with a registered office in the City of Napanee, Ontario.³

5. Shawn Anthony Beattie (“**Shawn**”) is an officer and director of the Debtor, holding the position of President. Shwan provided a limited personal guarantee of certain loans, described below (a “**Guarantor**”), issued by the Caisse to the Debtor.⁴

6. Jeremy James Allan Steeves (“**Jermey**”) is a director of the Debtor. Jermey provided a limited personal guarantee of certain loans, described below (a “**Guarantor**”), issued by the Caisse to the Debtor.⁵

7. Laurie Joan Consitt (“**Laurie**”) is an officer and director of the Debtor, holding the positions of Treasurer and Secretary. Laurie provided a limited personal guarantee of certain loans, described below (a “**Guarantor**”), issued by the Caisse to the Debtor.⁶

8. Jason Beange (“**Jason B.**”) provided a limited personal guarantee of certain loans,

² **Ménard Affidavit**, para 3

³ **Ménard Affidavit**, para 4; **Corporate Profile Report**, Exhibit 1

⁴ **Ménard Affidavit**, para 5;

⁵ **Ménard Affidavit**, para 6;

⁶ **Ménard Affidavit**, para 7;

described below (a “**Guarantor**”), issued by the Caisse to the Debtor.⁷

9. Jason Coughlin, (“**Jason C.**”) provided a limited personal guarantee of certain loans, described below (a “**Guarantor**”), issued by the Caisse to the Debtor. Jason C. passed away on September 22, 2024.⁸

10. Jason B., the Estate of Jason C., Jeremy, Laurie and Shawn are named in the Application to facilitate co-operation with the Receiver, once appointed.⁹

II. **LOAN NO. 84209 PR-1; re 146 Dundas Street, Deseronto, ON K0K 1X0**

11. The Caisse (as lender), Metamore (as borrower), Jason B., Jason C., Jeremy, Laurie and Shawn (as guarantors) entered into a Loan Agreement on February 21, 2023 (the “**146 Dundas Loan Agreement**”).¹⁰

12. Pursuant to the 146 Dundas Loan Agreement, the Caisse advanced a loan in the total principal amount of \$2,600,000.00, for a term of sixty (60) months, from the date of disbursement together with interest at a rate of 5.930% per annum and calculated monthly and not in advance. The loan was disbursed on June 30, 2023.¹¹

Security

13. The Caisse holds security against the Debtor as follows:

- (a) a Charge/Mortgage registered on March 3, 2023, as Instrument No. HT326978 over lands municipally known as at 146 Dundas Street,

⁷ **Ménard Affidavit**, para 8; **Death Certificate**, Exhibit 2

⁸ **Ménard Affidavit**, para 9;

⁹ **Ménard Affidavit**, para 10;

¹⁰ **Ménard Affidavit**, para 11; **146 Dundas Loan Agreement**, Exhibit 3

¹¹ **Ménard Affidavit**, para 12

Deseronto, ON K0K 1X0 (the “**146 Dundas Collateral Mortgage**”);¹² and

- (b) an Assignment of Rents in respect of 146 Dundas Street, Deseronto, ON K0K 1X0 (the “**146 Dundas Assignment of Rents**”) on March 3, 2023, as Instrument No. HT326979.¹³

14. The personal property security of the Caisse was registered on March 3, 2023, against Metamore as related to the applicable personal property of the Debtor in the provincial registry maintained under the *Personal Property Security Act*, R.S.O. 1990, c P.10 (the “**PPSA**”) under File No. 791200233 and Registration No. 20230303 1243 1590 3458.¹⁴

The Guarantee

15. Jason B., Jason C., Jeremy, Laurie and Shawn each provided a personal guarantee in favour of the Caisse dated February 21, 2023 in the limited amount of \$2,600,000.00, plus interest, costs and expenses in respect of all indebtedness, liabilities and obligations of the Debtor (the “**General Guarantee**”).¹⁵

16. Jason B., Jason C., Jeremy, Laurie and Shawn each provided an undertaking to cover any shortfall in debt with respect of all indebtedness, liabilities and obligations of the Debtor (the “**Undertaking**”).¹⁶

III. LOAN 84209 PR-2; re 353 Dundas Street, Napanee, ON K7R 2B5;

17. The Caisse (as lender), Metamore (as borrower), Jason B., Jason C., Jeremy,

¹² **Ménard Affidavit**, para 13(a); **Charge**, Exhibit 4

¹³ **Ménard Affidavit**, para 13(b); **146 Dundas Assignment of Rents**, Exhibit 5; **Notice of Assignment of Rents**, Exhibit 6; **Parcel Register**, Exhibit 7

¹⁴ **Ménard Affidavit**, para 14; **Ontario PPSA search**, Exhibit 8

¹⁵ **Ménard Affidavit**, para 15; **General Guarantee**, Exhibit 9

¹⁶ **Ménard Affidavit**, para 16; **Undertaking**, Exhibit 10

Laurie and Shawn (as guarantors) entered into a Loan Agreement on July 5, 2023 (the “**353 Dundas Loan Agreement**”).¹⁷

18. Pursuant to the 353 Dundas Loan Agreement, the Caisse advanced a loan in the total principal amount of \$3,010,000.00, for a term of sixty (60) months, from the date of disbursement together with interest at a rate of 6.430% per annum and calculated monthly and not in advance. The loan was disbursed on December 31, 2023.¹⁸

Security

19. The Caisse holds security against the Debtor as follows:

- (a) a Charge/Mortgage registered on July 18, 2023, as Instrument No. LX121469 over lands municipally known as at 353 Dundas Street, Napanee, ON K7R 2B5 (the “**353 Dundas Collateral Mortgage**”);¹⁹
- (b) an Assignment of Rents in respect of 353 Dundas Street, Napanee, ON K7R 2B5; (the “**353 Dundas Assignment of Rents**”) registered July 18, 2023, as Instrument No. LX121470;²⁰ and
- (c) General Security Agreement dated July 5, 2023.²¹

20. The personal property security of the Caisse was registered on March 3, 2023, against Metamore as related to the applicable personal property of the Debtor in the provincial registry maintained under the *Personal Property Security Act*, R.S.O. 1990, c P.10 (the “**PPSA**”) under File No. 791200233 and Registration No. 20230303 1243 1590 3458.²²

¹⁷ **Ménard Affidavit**, para 17; **353 Dundas Loan Agreement**, Exhibit 11

¹⁸ **Ménard Affidavit**, para 18

¹⁹ **Ménard Affidavit**, para 19(a); **Charge**, Exhibit 12

²⁰ **Ménard Affidavit**, para 19(b); **353 Dundas Assignment of Rents**, Exhibit 13; **Notice of Assignment of Rents**, Exhibit 14; **Parcel Register**, Exhibit 15

²¹ **Ménard Affidavit**, para 19(c); **GSA**, Exhibit 16

²² **Ménard Affidavit**, para 20; **Ontario PPSA search**, Exhibit 8

The Guarantee

21. Jason B., Jason C., Jeremy, Laurie and Shawn each provided a personal guarantee in favour of the Caisse dated in the limited amount of \$5,600,000.00, plus interest, costs and expenses in respect of all indebtedness, liabilities and obligations of the Debtor (the “**General Guarantee**”).²³

22. Jason B., Jason C., Jeremy, Laurie and Shawn each provided an undertaking to cover any shortfall in debt with respect of all indebtedness, liabilities and obligations of the Debtor (the “**Undertaking**”).²⁴

IV. DEFAULTS, DEMANDS, AND NOTICE OF INTENTION TO ENFORCE

23. Numerous events of default have occurred under the 146 Collateral Mortgage and 353 Collateral Mortgage. The Debtor’s defaults are existing and continuing including but not limited to the defaults described below²⁵:

- (a) The Debtor has failed to make prompt payment of the amounts due under the 146 Collateral Mortgage such that there were arrears of \$99,844.56;
- (b) The Debtor has failed to make prompt payment of the amounts due under the 353 Collateral Mortgage such that there were arrears of \$121,153.68;
- (c) The Debtor has failed to make prompt payment of the amount due for property taxes and utility arrears for 146 Dundas Street, Deseronto, ON K0K 1X0. As of August 27, 2025, the amount of \$18,017.20 for property taxes and \$3,410.80 for utility arrears was outstanding related to the year 2025;²⁶
- (d) The Debtor has failed to make prompt payment of the amount due for property taxes 353 Dundas Street W, Napanee, ON K7R 2B5. As of

²³ **Ménard Affidavit**, para 21; **General Guarantee**, Exhibit 17

²⁴ **Ménard Affidavit**, para 22; **Undertaking**, Exhibit 18

²⁵ **Ménard Affidavit**, para 23 and 24

²⁶ **Ménard Affidavit**, para 24 (c); **Tax Certificate**, Exhibit 19

August 26, 2025, the amount of \$9,947.37 for property taxes was outstanding related to the year 2025;²⁷

- (e) The Debtor has failed to provide ongoing financial disclosure in accordance with paragraph 7 of the Loan Agreements;
- (f) The Debtor caused a second mortgage to be registered in favour of Evangelos Mamas, Angela Mamas and Constantinos Mamas for \$1,600,000.00 without the prior consent of the Lender and contrary to Section 1.9 Special Facility conditions confirming the conditions applicable to financing of assets in the Loan Agreement where the Borrower agreed to not further mortgage on 146 Dundas Street, Deseronto, ON K0K 1X0 without the Lender's prior consent;
- (g) The Debtor Caused a second mortgage to be registered in favour of Evangelos Mamas, Angela Mamas and Constantinos Mamas for \$1,600,000.00 without the prior consent of the Lender and contrary to Section 1.9 Special Facility conditions confirming the conditions applicable to financing of assets in the Loan Agreement where the Borrower agreed to not further mortgage 353 Dundas Street W, Napanee, ON K7R 2B5 without the Lender's prior consent;
- (h) The Debtor has failed to repay the loan in accordance with the 146 Dundas Loan Agreement; and
- (i) The Debtor has failed to repay the loan in accordance with the 353 Dundas Loan Agreement.

24. On December 5, 2025, Bart Sarsh of Gowling WLG (Canada) LLP ("**Gowlings**") acting on behalf of the Caisse issued the following to the Debtor and to Jason B., Jason C., Jeremy, Laurie and Shawn as the Guarantors:

- (a) A demand for payment (the "**Demand Letter**") of the total indebtedness owing as of December 4, 2025 plus interest and legal costs as set out in Schedule "B" to the Demand Letter by the deadline of December 16, 2025; and
- (b) A Notice of Intention to Enforce Security on the property of Metamore pursuant to section 244(1) of the BIA (the "**BIA 244 Notice**").²⁸

²⁷ **Ménard Affidavit**, para 24 (d); **Tax Certificate**, Exhibit 20

²⁸ **Ménard Affidavit**, para 25; **Demand Letter and BIA 244 Notice**, Exhibit 21

V. CORRESPONDENCE WITH ENGINEERED RETRUNS

25. On December 9, 2025, Bruce Cowle (“**Mr. Cowle**”) of Cowle Law, the solicitor for the Debtor, advised that the Debtor wished to enter into a standstill agreement. Mr. Sarsh, of Gowlings, the Caisse’s legal counsel, responded to Mr. Cowle by listing the conditions required to proceed.²⁹

26. Between December 9, 2025 and December 18, 2025 Mr. Sarsh exchanged emails with Mr. Cowle regarding updates and further required documents.³⁰

27. On January 5, 2026, Sabina Mirza, a law clerk at Gowlings on behalf of the Caisse, sent an email to Mr. Cowle requesting a status update regarding the outstanding documents. Mr. Cowle responded that he would follow up with the Debtor.³¹

28. On January 8, 2026, Mr. Sarsh emailed Wade Ennis of Metamore providing the list of requested documents from Mr. Sarsh’s email of December 9, 2025. Mr. Ennis responded, indicating that a reply would be provided shortly.³²

29. On January 22, 2026, Mr. Ennis emailed to advise that Jason Coughlin had passed away. The Caisse, having been unaware of this fact, requested additional documents pertaining to the Estate. Mr. Ennis provided the Death Certificate on January 23, 2026.³³

²⁹ **Ménard Affidavit**, para 26; **Email dated December 9, 2025**, Exhibit 22

³⁰ **Ménard Affidavit**, para 27; **Email exchange between December 9-18, 2025**, Exhibit 23

³¹ **Ménard Affidavit**, para 28; **Email dated January 5, 2026**, Exhibit 24

³² **Ménard Affidavit**, para 29; **Email dated January 8, 2026**, Exhibit 25

³³ **Ménard Affidavit**, para 30; **Emails dated January 22 and 23, 2026**, Exhibit 26

VI. NEED FOR A RECEIVER

30. As of December 4, 2025, the aggregate indebtedness of the Debtor due and owing to the Caisse was \$2,549,873.44 for the 146 Dundas Collateral Mortgage (Loan No. 84209 PR-1) and \$3,000,424.10 for the 353 Dundas Collateral Mortgage (Loan No. 84209 PR-2) in addition to ongoing accrual of interest as set out in the 146 Dundas Loan Agreement and 353 Dundas Loan Agreement excluding professional fees, disbursements and HST (the “**Indebtedness**”).³⁴

31. As indicated above, certain events of default have occurred under the 146 Dundas Collateral Mortgage and the 353 Dundas Collateral Mortgage, which are ongoing and outstanding.³⁵

32. The Debtor is not able to pay the Indebtedness owing. The statutory notice period provided for under the Demand Letter and BIA 244 Notice has expired.³⁶

33. The Caisse has lost confidence in the management of the Debtor for all of the reasons detailed in the affidavit.³⁷

34. The Debtor does not have the ability to fund ongoing mortgage payments or property taxes, and this is eroding the value of the Caisse’s security position due to the accrual of the Indebtedness without repayment.³⁸

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

³⁴ **Ménard Affidavit**, para 32

³⁵ **Ménard Affidavit**, para 33

³⁶ **Ménard Affidavit**, para 34; **Demand Letter and BIA 244 Notice**, Exhibit 21

³⁷ **Ménard Affidavit**, para 35

³⁸ **Ménard Affidavit**, para 36

as a result of the Debtor's failure to repay the Indebtedness. The Caisse has no current information about the status of the residential leases. The 353 Dundas Loan Agreement references 24 residential leases while the 146 Dundas Loan Agreement lists 24 residential leases and a commercial lease. The Caisse has no current information about any of this.³⁹

36. Upon appointment, the Receiver will assess the state of the 3 Property and determine a strategy for recovery for the benefit of all stakeholders, including communicating directly with all affected parties.⁴⁰

37. The Loan Agreements at Article 4 states⁴¹:

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.

38. Paragraph 38 of the Caisse's Standard Charge Terms filed as number 201909 provides for the appointment of a Receiver.⁴²

³⁹ **Ménard Affidavit**, para 37

⁴⁰ **Ménard Affidavit**, para 38

⁴¹ **Ménard Affidavit**, para 39; **146 Dundas Loan Agreement**, Exhibit 3; **353 Dundas Loan Agreement**, Exhibit 11

⁴² **Ménard Affidavit**, para 40; **Standard Charge Terms**, Exhibit 27, 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.

39. If this Honourable Court sees fits 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.⁴³

⁴³ **Ménard Affidavit**, para 41; **Consent to Act**, Exhibit 28

PART III – ISSUES

40. Is it just and convenient to appoint Spergel as Receiver over the Property?

PART IV - THE LAW AND ANALYSIS

A. Jurisdiction and Forum Shopping

41. Rule 13.1.01(2) of the *Rules of Civil Procedure* effective as of February 1, 2026 replaces the existing freedom that plaintiffs and applicants have to choose a court location (unless a statute or rule provides otherwise) with a new requirement for the plaintiff or applicant to commence their proceeding in a court location with which there is a rational connection, on the basis of factors set out in existing Rule 13.1.02(2)(b).

42. 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.

43. This case law in part originates from Justice Firestone’s endorsement in [The Other End](#)⁴⁴ with the issue initially raised by Justice Leach in the same case.⁴⁵

44. Decisions have been reported in Milton and London. In Milton, Justice Kurz rendered two decisions: one in [Getz](#)⁴⁶ and one in [Gill](#).⁴⁷ Justice Mills addressed the same issue in [Ang](#).⁴⁸ In London, Justice Leach issued companion decisions in [Leasing Inc.](#)⁴⁹

⁴⁴ [Toronto-Dominion Bank v The Other End Inc. et al.](#), 2025 ONSC 85, [“The Other End”]

⁴⁵ [Toronto-Dominion Bank v The Other End Inc.](#), 2024 ONSC 5377

⁴⁶ [BFT Mortgage Services Inc. v Getz](#), 2025 ONSC 2908, [“Getz”]

⁴⁷ [RBC v Gill](#), 2025 ONSC 3095, [“Gill”]

⁴⁸ [Business Development Bank of Canada v Ang](#), 2025 ONSC 1752, [“Ang”]

⁴⁹ [Canadian Equipment Finance & Leasing Inc. v 8777691 Canada Inc. et al.](#), 2025 ONSC 4514 [“Leasing Inc”]

and [Iknight Entertainment](#).⁵⁰ Justice Bordin has commented on the issue in [Old Green Inc.](#)⁵¹ in Hamilton.

45. 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](#)⁵² contains a relevant analysis to receivership applications where jurisdiction is specified under section 243(5) of the BIA⁵³ and the same type of analysis as in a bankruptcy applications must be done as it relates to evaluating the "locality of the debtor".

46. The term "locality of the debtor" is defined in section 2 of the BIA⁵⁴.

47. 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;

48. The locality of the debtor is established by providing factual evidence of one of the

⁵⁰ [BMW Group Financial Services Canada v Iknight Entertainment Inc. et al.](#), 2025 ONSC 4494 [["Iknight Entertainment"](#)]

⁵¹ [The Bank of Nova Scotia v Old Green Inc.](#), 2025 ONSC 6191 [["Old Green Inc."](#)]

⁵² [Re Nuvoola Inc.](#), 2025 ONSC 1257 [["Nuvoola"](#)]

⁵³ BIA, [Section 243\(5\)](#)

⁵⁴ BIA. [Section 2](#)

three criteria listed above.⁵⁵

49. 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.⁵⁶

50. Bankruptcy courts have the flexibility to assess businesses which may span multiple jurisdictions.⁵⁷

51. The BIA's national framework ensures that orders made in one province are enforceable across Canada.⁵⁸

B. The Court's Authority to Appoint a Receiver

52. Courts can appoint a receiver over a debtor upon application by a secured creditor pursuant to subsection 243(1) of the BIA⁵⁹ and/or subsection 101 of the CJA.⁶⁰ 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

⁵⁵ [Sam Lévy & Associés Inc. v Azco Mining Inc.](#), 2001 SCC 92 ["Azco"] at para. 76

⁵⁶ [Nuvoola](#) at para 26

⁵⁷ [Azco](#) at paras 27-28; [Solid Holdings Ltd. v Grant Thornton Limited](#), 2019 BCCA 231 at para 22

⁵⁸ [Azco](#) at para 25

⁵⁹ [BIA](#), Section 243(1)

⁶⁰ [CJA](#), Section 101(1)

receivership order is being sought is Ontario (s. 243(5) of the BIA).

53. 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.

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

54. As of December 4, 2025, the aggregate indebtedness of the Debtor due and owing to the Caisse was \$2,549,873.44 for the 146 Dundas Collateral Mortgage (Loan No. 84209 PR-1) and \$3,000,424.10 for the 353 Dundas Collateral Mortgage (Loan No. 84209 PR-2) in addition to ongoing accrual of interest as set out in the 146 Dundas Loan Agreement and 353 Dundas Loan Agreement excluding professional fees, disbursements and HST.⁶¹

55. The Caisse has satisfied the technical requirements for the appointment of a receiver under the BIA. The Caisse is a secured creditor of the Debtor 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, the Caisse issued the BIA 244 Notice and the notice period has expired without repayment of the Indebtedness.⁶²

56. 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.⁶³

57. The Debtor is a company incorporated pursuant to the laws of the Province of

⁶¹ **Ménard Affidavit**, para 32

⁶² **BIA**, [Section 244](#); **Ménard Affidavit**, para 25; **BIA 244 Notice**, Exhibit 21

⁶³ **BIA**, [Section 243\(4\)](#); **Ménard Affidavit**, para 41; **Spergel's Consent to Act**, Exhibit 28

Ontario, with a registered office in the City of Napanee, Ontario.⁶⁴

58. The Debtor holds real property that is the subject of the proposed receivership that is located in Napanee Ontario and Deseronto, Ontario.⁶⁵

59. This Application is properly brought before the Superior Court of Justice, East Region Commercial List as the locality of the Debtor is Ottawa, Ontario and it involves matters coming within the scope of the East Region Commercial List as required under s. 243(5) of the BIA and the analysis respecting the term “locality of the debtor” as defined in s. 2 of the BIA.⁶⁶

60. The Debtor has carried on business in Napanee, Ontario during the year immediately preceding this receivership application as confirmed by the location of the Debtor’s registered office on file with the Ministry as 824 Palace Road, Napanee, Ontario and the greatest proportion of the Debtor’s property is located within the territorial jurisdiction of the Superior Court of Justice, East Region Commercial List.⁶⁷

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

61. 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

⁶⁴ **Ménard Affidavit**, para 4, **Corporate Profile Report**, Exhibit 1

⁶⁵ **Ménard Affidavit**, para 13; **Parcel Register**, Exhibit 7; para 19; **Parcel Register**, Exhibit 15;

⁶⁶ **BIA**, [Section 243\(5\)](#)

⁶⁷ **Ménard Affidavit**, para 4; **Corporate Profile Report**, Exhibit 1; para 13; **Parcel Register**, Exhibit 7; para 19; **Parcel Register**, Exhibit 15

includes a secured creditor under its security.⁶⁸

62. 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 security-holder encounters or expects to encounter difficulties with the debtor;
- (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 receiver to carry out its duties efficiently;
- (k) the effect of the order upon the parties;
- (l) the length of time that a receiver may be in place;
- (m) the cost to the parties;
- (n) the likelihood of maximizing return to the parties; and

⁶⁸ [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"](#)]

- (o) the goal of facilitating the duties of the receiver.⁶⁹

63. 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”.⁷⁰

64. 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.⁷¹

65. The Caisse is also not required to establish that it will suffer irreparable harm or 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.⁷²

66. The appointment of the Receiver will also allow any assets of the Debtor to be

⁶⁹ [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

⁷⁰ [Elleway Acquisitions Limited v The Cruise Professionals Limited](#), 2013 ONSC 6866 (Commercial List), para 27 [“[Elleway](#)”]; [Metropolitan Partners](#), at para 22

⁷¹ [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 [“[ATB Financial](#)”]

⁷² [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

preserved and placed under the stewardship of a court-appointed officer while the parties' rights are being determined.⁷³

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

- (a) The Caisse has lost faith in the Debtor's management regarding the Property and it is apparent that the Debtor will not be able to repay the Indebtedness owing to it. Accordingly, the Caisse bears an economic interest in the Debtor's insolvency.⁷⁴
- (b) The Debtor has no ability to fund ongoing mortgage payments and property taxes and this is eroding the value of Caisse's security position due to the accrual of the Indebtedness without meaningful repayment of the Loans.⁷⁵
- (c) The Caisse has suffered and is expected to continue to suffer substantial prejudice as a result of the Debtor's failure to repay the Indebtedness.
- (d) The appointment of the Receiver is necessary to preserve the value of the Property and the Caisse's collateral.⁷⁶

68. 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.⁷⁷

PART V - RELIEF SOUGHT

69. The Caisse requests that the Court grant the Appointment Order substantially in the form included at Tab C of the Application Record.

70. A version that is tracked to the Commercial List Model Receivership Order is

⁷³ **Ménard Affidavit**, para 38

⁷⁴ **Ménard Affidavit**, para 35 and para 36; [Rose-Isli Corp. v Smith](#), 2023 ONCA 548 at [para 9](#)

⁷⁵ **Ménard Affidavit**, para 36

⁷⁶ **Ménard Affidavit**, para 36 and para 37

⁷⁷ **Ménard Affidavit**, para 38

included at Tab D of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of February 2026.



Bart Sarsh

GOWLING WLG (CANADA) LLP

One Main Street West
Hamilton, ON L8P 4Z5

Tel: 905-540-8208

Bart Sarsh (LSO No. 59208N)

Tel: 905-540-3242
Bart.Sarsh@gowlingwlg.com

Lawyers for the Applicant

SCHEDULE "A"

LIST OF AUTHORITIES

1. [Toronto-Dominion Bank v The Other End Inc. et al.](#), 2025 ONSC 85
2. [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 February 6, 2026



Bart Sarsh

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Rules of Civil Procedure

Place of Commencement

Statute or Rule Governing Place of Commencement, Trial or Hearing

13.1.01(1) If a statute or rule requires a proceeding to be commenced, brought, tried or heard in a particular county, the proceeding shall be commenced at a court office in that county and the county shall be named in the originating process.

If No Statute or Rule

(2) If subrule (1) does not apply, the proceeding shall be commenced at a court office in a county with which there is a rational connection, as determined on the basis of the factors listed in clause 13.1.02 (2) (b), and that county shall be named in the originating process.

Transfer

Motion to Transfer to Another County

13.1.02 (1) If [subrule 13.1.01 \(1\)](#) applies to a proceeding but a plaintiff or applicant commences it in another place, the court may, on its own initiative or on any party's motion, order that the proceeding be transferred to the county where it should have been commenced.

(2) If subrule (1) does not apply, the court may, on any party's motion, make an order to transfer the proceeding to a county other than the one where it was commenced, if the court is satisfied,

(a) that it is likely that a fair hearing cannot be held in the county where the proceeding was commenced; or

(b) that a transfer is desirable in the interest of justice, having regard to,

(i) where a substantial part of the events or omissions that gave rise to the claim occurred,

(ii) where a substantial part of the damages were sustained,

(iii) where the subject-matter of the proceeding is or was located,

(iv) any local community's interest in the subject-matter of the proceeding,

(v) the convenience of the parties, the witnesses and the court,

(vi) whether there are counterclaims, crossclaims, or third or subsequent party claims,

(vii) any advantages or disadvantages of a particular place with respect to securing the just, most expeditious and least expensive determination of the proceeding on its merits,

(viii) whether judges and court facilities are available at the other county, and

(ix) any other relevant matter.

(3) If an order has previously been made under subrule (2), any party may make a further motion, and in that case subrule (2) applies with necessary modifications.

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.

CAISSE DESJARDINS ONTARIO CREDIT UNION INC.

- and - METAMORE INC. et al.

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(EAST REGION COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
OTTAWA

APPLICANT'S FACTUM
(Appointment of Receiver)

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
One Main Street West
Hamilton, ON L8P 4Z5
Tel: 905-528-8208

Bart Sarsh (LSO No. 59208N)

Tel: 905-540-3242
Bart.Sarsh@gowlingwlg.com

Lawyers for the Applicant

File Number: G1008448