



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

COUNSEL SLIP/ ENDORSEMENT FORM

**COURT FILE
NO.:**

CV-25-00750251-00CL

DATE: August 27, 2025

NO. ON LIST: 3

**TITLE OF
PROCEEDING:**

THE TORONTO-DOMINION BANK v. 1322297 ONTARIO INC.

BEFORE:

JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Danish Afroz	Lawyer for proposed Receiver	Dafroz@chaitons.com

ENDORSEMENT OF JUSTICE OSBORNE:

- [1] The Applicant, TD, moves for the appointment of a receiver over the property of the Debtor (Respondent).
- [2] All parties are represented today by counsel. While the Respondent was short served, the relief sought today is unopposed. Discussions between the parties continue with respect to various issues.
- [3] The basis for the Application is fully set out in the materials and particularly in the affidavit of Ms. Kathryn Furfaro, on which the Applicant, TD, relies. Defined terms in this Endorsement have the meaning given to them in the Application materials unless otherwise stated.
- [4] The test for the appointment of a receiver pursuant to section 243 of the *BIA* or section 101 of the *CJA* is not in dispute. Is it just or convenient to do so?
- [5] In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, 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. These include the rights of the secured creditor pursuant to its security: *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258 (“*Freure Village*”)
- [6] 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: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 at para. 27. However, the presence or lack of such a contractual entitlement is not determinative of the issue.
- [7] How are these factors to be applied? The British Columbia Supreme Court put it, I think, correctly: “these factors are not a checklist but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient: *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136 at para. 54).
- [8] It is not essential that the moving party establish, prior to the appointment of a receiver, that it will suffer irreparable harm or that the situation is urgent. However, where the evidence respecting the conduct of the debtor suggests that a creditor’s attempts to privately enforce its security will be delayed or otherwise fail, a court-appointed receiver may be warranted: *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 at paras. 24, 28-29. See also *Freure Village* at para. 10.
- [9] Accordingly, is it just or convenient to appoint a receiver in the particular circumstances of this case?
- [10] In my view, it is.
- [11] The Debtor is a toy, game and gift distributor headquartered in Lancaster, Ontario. As of August 20, 2025, it was indebted to TD for approximately USD \$16,015,726 and CDN \$2,760,133.23 plus interest and fees.
- [12] TD is the senior secured creditor and holds the general security interest over all of the property of the Debtor.

- [13] The chronology of events essentially since February 2025 is set out in the materials. There was a covenant default in February, a demand to repay Indebtedness originally in April, and that demand was subsequently extended.
- [14] There is no issue today about the Credit Agreement - a demand operating facility agreement executed on February 29, 2024. As noted above, the Debtor does not oppose the receivership today.
- [15] I am satisfied that the appointment of a receiver is just or convenient. I am also satisfied that the proposed Receiver, Spergel Inc., is an appropriate Receiver and is qualified to fulfil that role.
- [16] I am also satisfied that the form and content of the proposed receivership order is appropriate and consistent with the Model Order of the Commercial List. That, too, has been agreed by the parties.
- [17] The parties have jointly requested that I include the following language in this Endorsement:
The relief is being granted on short notice, and on the basis that the debtor does not dispute that the Applicant is entitled, in the circumstances, to the appointment of a receiver. The Debtor reserves its right to dispute the facts set out in the Bank's record at a later date and does not consent to the appointment of a receiver, but is unopposed to the granting of the appointment order. The relief is therefore granted today without prejudice to any future evidentiary or other positions the parties may wish to advance in this or other subsequent litigation and the court today is making no findings in respect of the conduct, knowledge or state of mind of the parties in the course of their dealings.
- [18] The parties are continuing cooperative discussions about various issues, including access to the Debtor's server room, which apparently supports this business as well as other unrelated businesses, issues of confidentiality of information, and access to inventory, which is warehoused at multiple locations across various jurisdictions in Canada and the United States.
- [19] Order to go in the form signed by me today which has immediate effect and without the necessity of issuing and entering.

A handwritten signature in green ink, appearing to read "Osamu I.", with a comma at the end.