

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

1626177 ONTARIO LIMITED

Respondent

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, ROYAL BANK OF CANADA**  
(Returnable November 27, 2025)

November 20, 2025

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**TO: THE SERVICE LIST**

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**FACTUM OF THE APPLICANT, ROYAL BANK OF CANADA**

**PART I – NATURE OF THE APPLICATION**

1. The Applicant, Royal Bank of Canada (“**RBC**”), makes an application for an Order (the “**Appointment Order**”) appointing msi Spergel inc. (“**Spergel**”) as receiver and manager (in such capacity, the “**Receiver**”) of all of the assets, undertakings, and properties of the Respondent (the “**Property**”) operating as “Ferro Mechanical” (the “**Company**”).
2. As of October 7, 2025, the Company owes the bank over \$2.2 million on a secured basis in connection with the Credit Agreement (as defined below).
3. The terms of the GSA (as defined below) in favour of RBC include a contractual right to the appointment of a receiver.
4. There has been an irreparable breakdown in the relationship between RBC and the Company.
5. It is respectfully submitted that such appointment is just and convenience in this case.

6. Capitalized terms used herein and not otherwise defined have the meanings given to them in the Affidavit of Peter Gordon, sworn October 10, 2025 (the “**Gordon Affidavit**”).

## **PART II – SUMMARY OF FACTS**

### ***RBC’s Arrangements with the Company***

7. The Company is indebted to RBC with respect to a revolving facility and credit card facility advanced pursuant to a credit agreement dated as of May 28, 2024 (the “**Credit Agreement**”).<sup>1</sup>
8. To secure its obligations to RBC, the Company granted RBC a general security interest over all its personal property pursuant to a general security agreement dated May 29, 2024 (the “**GSA**”).<sup>2</sup> RBC registered its security under the Ontario PPSA.<sup>3</sup>

### ***Defaults and Demands***

9. The Company failed to uphold its obligations under the Credit Agreement and the defaults thereunder are fully set out in the Gordon Affidavit.<sup>4</sup>
10. The Company failed to provide interim financial reporting and refusal to engage directly with RBC.<sup>5</sup>
11. Michael Filippo (“**Mr. Filippo**”), the Company’s sole director and President, directed that all communications to RBC be handled by counsel.<sup>6</sup>
12. Despite counsel-to-counsel communications, Mr. Filippo did not provide the requested reporting.<sup>7</sup>

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<sup>1</sup> Affidavit of Peter Gordon sworn October 10, 2025, at para 7 [*Gordon Affidavit*].

<sup>2</sup> Gordon Affidavit, at para 8.

<sup>3</sup> Gordon Affidavit, at para 9-10.

<sup>4</sup> Gordon Affidavit, at paras 11-23.

<sup>5</sup> Gordon Affidavit, at para 11.

<sup>6</sup> Gordon Affidavit, at paras 6, 12.

<sup>7</sup> Gordon Affidavit, at paras 13-15.

13. On August 8, 2025, RBC proceeded to make formal written demand to the Company (the “**Demand Letter**”) demanding repayment of all amounts owing to RBC. The Demand Letter was accompanied by a notice of intention to enforce security (the “**NITES**”) pursuant to subsection 244 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “**BIA**”).<sup>8</sup>
14. Despite the issuance of the Demand Letter and the NITES, the Company has failed to honour the Demand Letter or make satisfactory arrangements with RBC to repay, or enter into an agreement to satisfy, amounts owing under the Credit Agreement.<sup>9</sup> The Company did not deliver the requested financial information, did not adhere to visibility and refinancing timeline requests, did not execute a proposed forbearance agreement, and failed to provide annual financial statements.<sup>10</sup>
15. Pursuant to the Credit Agreement, the Company is directly indebted to RBC as of October 7, 2025, in the amount of \$2,285,530.10, not including legal fees (the “**Indebtedness**”).<sup>11</sup>
16. At this stage, the relationship between RBC and the Company has broken down, and RBC lacks visibility into the Company’s financial condition and operations.<sup>12</sup> The Indebtedness remains outstanding and the BIA notice period has expired.<sup>13</sup> RBC considers that the only reasonable and prudent path forward is to take any and all steps necessary to protect the Property by having a receiver appointed, and it is within RBC’s rights under the GSA to do so.<sup>14</sup> Spergel, a Licensed Insolvency Trustee, has consented to act as Receiver, should the Court so appoint it.<sup>15</sup>

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<sup>8</sup> Gordon Affidavit, at para 16.

<sup>9</sup> Gordon Affidavit, at para 17.

<sup>10</sup> Gordon Affidavit, at paras 18-22, 24.

<sup>11</sup> Gordon Affidavit, at para 25.

<sup>12</sup> Gordon Affidavit, at para 23.

<sup>13</sup> Gordon Affidavit, at para 26.

<sup>14</sup> Gordon Affidavit, at paras 27-28.

<sup>15</sup> Gordon Affidavit, at para 29.

### **PART III – ISSUE**

17. 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**

18. RBC seeks the appointment of a receiver pursuant to subsection 243(1) of the BIA and section 101 of the *Courts of Justice Act* (Ontario) (the “CJA”). Both statutes enable the Court to appoint a receiver and manager where such appointment is “just or convenient”.<sup>16</sup>
19. In determining whether it is “just or convenient” to appoint a receiver under either the BIA or the CJA, Ontario courts have applied the decision of *Freure Village*. In that case, the Honourable Mr. Justice Blair 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.<sup>17</sup>
20. When the rights of a 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.<sup>18</sup> In these circumstances, the applicant is considered to be merely seeking to enforce a term of an agreement already made by both parties.<sup>19</sup>
21. The discretionary factors considered in the determination of whether it is “just or convenient” to appoint a receiver include, among others:

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<sup>16</sup> BIA, subsection 243(1); CJA, section 101.

<sup>17</sup> [Bank of Nova Scotia v Freure Village of Clair Creek \(1996\)](#), 40 C.B.R. (3d) 274, [1996] O.J. No. 5088, at para 10.

<sup>18</sup> [Elleway Acquisitions Limited v The Cruise Professionals Limited](#), 2013 ONSC 6866 [Comm. List], at para 27.

<sup>19</sup> [iSpan Systems LP](#), 2023 ONSC 6212 [Comm. List], at para 31.

- a. whether irreparable harm might be caused if no order were made (although it is not essential to establish irreparable harm where there is a contractual right to the appointment of a receiver);
- b. the nature of the property;
- c. the balance of convenience to the parties;
- d. the fact that the creditor has the right to appoint a receiver under the loan documentation;
- e. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently; and
- f. the conduct of the parties.<sup>20</sup>

22. This is 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”.<sup>21</sup>

23. RBC submits that the test for the appointment of a receiver is met in the present case, for the following reasons:

- a. The Company has been provided with ample opportunities and accommodations to repay the Indebtedness;
- b. The statutory notice period provided for under the BIA and the NITES has expired. More than a reasonable amount of time has lapsed since the issuance of the Demand Letter and NITES for the Company to repay or make arrangements to repay RBC;

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<sup>20</sup> [\*C & K Mortgage et al. v. 11282751 Canada Inc. et al.\*, 2024 ONSC 1039 at para 19 \[C & K\]; \*Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.\*, 2009 BCSC 1527 at para 25.](#)

<sup>21</sup> [\*C & K\*, at para 20.](#)

- c. RBC has lost confidence in the Company's ability to repay the Indebtedness. Appointing a receiver appears to be the only viable option remaining to ensure that the Indebtedness is paid; and
- d. The GSA provides for the appointment of a receiver in the event of default. In the present case, monetary default has occurred under the Credit Agreement and the appointment of a receiver is no longer an extraordinary remedy; it is simply the result of enforcing a contractual term that was mutually assented to by the Company and RBC.

24. RBC wishes to take any and all steps necessary to enforce the security and realize on same, and the appointment of Spergel as Receiver is necessary for the protection of the interests of RBC as a secured creditor.

**PART V – RELIEF REQUESTED**

25. In light of the foregoing, it is respectfully submitted that the Court should grant the Appointment Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 20th day of November, 2025.



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## **SCHEDULE “A”**

### **LIST OF AUTHORITIES**

1. [\*Bank of Nova Scotia v Freure Village of Clair Creek \(1996\)\*, 40 C.B.R. \(3d\) 274, \[1996\] O.J. No. 5088](#)
2. [\*Elleway Acquisitions Limited v The Cruise Professionals Limited\*, 2013 ONSC 6866 \[Comm. List\]](#)
3. [\*iSpan Systems LP\*, 2023 ONSC 6212 \[Comm. List\]](#)
4. [\*C & K Mortgage et al. v. 11282751 Canada Inc. et al.\*, 2024 ONSC 1039](#)
5. [\*Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.\*, 2009 BCSC 1527](#)

## **SCHEDULE “B”**

### **TEXT OF STATUTES, REGULATIONS & BY - LAWS**

#### **Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended, s. 243-244**

##### **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.

### **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, 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.

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Proceeding commenced at Newmarket

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