Court File No.: CV-26-00016314-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

NIAGARA COUNTERTOPS LTD.

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
(Application to Appoint Receiver Returnable October 30, 2026)

October 22, 2026

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Thomas Gertner (LSO#: 67756S)
Tel: 416-369-4618
Email: thomas.gertner@gowlingwlg.com

Namya Tandon (LSO#: 93814R)
Tel: 416-369-7262
Email: namya.tandon@gowlingwlg.com

Lawyers for the Applicant

TO: THE SERVICE LIST

I. INTRODUCTION

1. This Factum is filed in support of an application by Royal Bank of Canada ("**RBC**" or the "**Bank**") for an Order (the "**Appointment Order**") appointing msi Spergel inc. ("**Spergel**") as receiver and manager (in such capacity, the "**Receiver**"), under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "**CJA**") and section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"), over all of the assets, undertakings and properties of Niagara Countertops Ltd. (the "**Company**"), including the lands and premises municipally known as 268 Plymouth Road, Welland, Ontario (the "**Plymouth Property**", and collectively, the "**Property**").

2. The Company has experienced mounting financial strain and is not in a position to repay the Bank.

3. As of October 16, 2026, the Company owes RBC $5,322,239.38, plus interest, fees and costs, including legal fees (the "**Indebtedness**").[1]

4. On May 19, 2026, RBC demanded repayment from the Company and issued a notice of intention to enforce security under section 244 of the BIA (the "**NITES**").[2]

5. The Security and the Forbearance Agreement grant RBC a contractual right to the appointment of a receiver, and the Company consented to the appointment of a receiver by this Court.[3]

---

[1] O'Gorman Affidavit at para 17.
[2] O'Gorman Affidavit at para 8.
[3] O'Gorman Affidavit at paras 11, 19.

6. For the reasons set out in this Factum, the appointment of the Receiver is just and convenient in the circumstances.

II. SUMMARY OF FACTS

7. The facts relevant to this Application are briefly summarized below and are set out in more detail in the Affidavit of Philip O'Gorman sworn October 19, 2026 (the "**O'Gorman Affidavit**"). Capitalized terms used but not otherwise defined in this Factum have the meanings given to them in the O'Gorman Affidavit.

A. The Parties

8. RBC is a "Schedule I" bank regulated under the *Bank Act*, S.C. 1991, c. 46.[4]

9. The Company specializes in fabricating and installing countertops and operates from the Plymouth Property.[5]

B. The Loan and Security Agreements

10. RBC and the Company are parties to a credit facilities letter agreement dated July 7, 2025 (the "**Credit Agreement**"), establishing: (a) a revolving demand facility in the principal amount of $900,000.00 (the "**Revolving Facility**"); (b) a non-revolving term loan in the principal amount of $4,500,000.00; and (c) a credit card facility to a maximum amount of $100,000.00.[6]

11. On August 27, 2025, the Company granted RBC a general security agreement over all of

[4] O'Gorman Affidavit at para 4.
[5] O'Gorman Affidavit at para 5.
[6] O'Gorman Affidavit at para 1.

its present and after-acquired personal property (the "**GSA**").[7]

12. The Company also granted RBC a collateral charge/mortgage against the Plymouth Property in the principal amount of $4,500,000.00 (the "**Mortgage**" and together with the GSA, the "**Security**").[8]

13. RBC registered its security interest in the Company's personal property under the *Personal Property Security Act*, R.S.O. 1990, c. P.10.[9]

14. RBC also registered the Mortgage against the Plymouth Property with the applicable Land Registry Office in Ontario.[10]

C. Financial Issues of the Company

15. The Company has been experiencing mounting financial strain.[11]

16. In April 2026, the Company's account was transferred to RBC's Special Loans & Advisory Services Group because of concerns about the Company's inability to meet its covenants and other obligations and changes in its financial performance.[12]

17. At around this time, it also came to the Bank's attention that the Company failed to keep current its obligations to the Canada Revenue Agency, including employee source deductions and harmonized sales tax, and had incurred realty tax arrears owing to the City of Welland in respect

[7] O'Gorman Affidavit at para 2.
[8] O'Gorman Affidavit at para 3.
[9] O'Gorman Affidavit at para 4.
[10] O'Gorman Affidavit at para 5.
[11] O'Gorman Affidavit at para 6.
[12] O'Gorman Affidavit at para 6.

of the Plymouth Property.[13]

18. On May 19, 2026, RBC issued the Demand and the NITES to the Company requiring repayment in full.[14]

19. After the Demand and NITES expired, RBC agreed at the Company's request to forbear on the terms of a forbearance agreement made as of July 10, 2026 (the "**Forbearance Agreement**").[15]

20. Under the Forbearance Agreement, among other things: (a) RBC agreed to forbear until the earlier of September 17, 2026 (the "**Outside Date**") and the occurrence of an Event of Default; (b) the Company acknowledged that demand had been validly made; (c) the Company agreed to bring current all priority payables, including amounts owing to CRA for source deductions and harmonized sales tax; and (d) the Company agreed to deliver by August 15, 2026 a firm and binding commitment for a refinancing, sale or similar transaction capable of closing by the Outside Date, and to close that transaction and repay the Revolving Facility in full by the Outside Date.[16]

21. The Company also executed and delivered to RBC a consent to the immediate appointment by court order of a receiver or receiver and manager of the Company's assets, property and undertakings (the "**Consent to Receivership**").[17]

---

[13] O'Gorman Affidavit at para 7.
[14] O'Gorman Affidavit at para 8.
[15] O'Gorman Affidavit at para 9.
[16] O'Gorman Affidavit at para 10.
[17] O'Gorman Affidavit at para 11.

22. The Company did not repay the Revolving Facility, close a refinancing transaction, or bring current its priority payables by the Outside Date. The Forbearance Period expired and Events of Default occurred under the Forbearance Agreement.[18]

23. Around the expiry of the Forbearance Period, the Company asked for additional time to complete a refinancing with a Takeout Lender. RBC requested financial statements, an appraisal of the Plymouth Property, and confirmation of the Company's property tax and CRA obligations, in order to consider the same, but none of that information was provided.[19]

24. On October 5, 2026, the Company's counsel advised RBC's counsel that the Takeout Lender would not proceed in light of the Company's CRA obligations and property tax arrears. The Company's counsel further advised that there was no sustainable path forward to satisfy the arrears, repay RBC and maintain ongoing operations, and that the Company would "cooperate fully with RBC to facilitate an orderly wind-down of the business."[20]

III. STATEMENT OF ISSUES

25. The sole issue is whether it is just or convenient for the Court to appoint Spergel as Receiver over the Property.

[18] O'Gorman Affidavit at para 12.
[19] O'Gorman Affidavit at para 13.
[20] O'Gorman Affidavit at para 14.

IV. LAW & AUTHORITIES

A. The Technical Requirements to Appoint a Receiver Have Been Met

26. Section 101(1) of the CJA and section 243(1) of the BIA give the Court jurisdiction to appoint a receiver where it is "just or convenient to do so".

27. Section 243(1) of the BIA provides that:[21]

> **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:

28. The technical requirements for the appointment of a receiver under the BIA are satisfied:

(a) RBC is a secured creditor of the Company and is therefore entitled to bring an application under section 243 of the BIA;

(b) RBC delivered the NITES in accordance with section 244 of the BIA, and the 10-day notice period required by subsection 243(1.1) of the BIA has expired;[22] and

(c) Spergel, a Licensed Insolvency Trustee, is qualified to act as Receiver and has consented to act if appointed.[23]

B. The Proposed Appointment is Both Just and Convenient

29. In determining whether it is just or convenient to appoint a receiver under the CJA and/or the BIA, the Court must consider "all of the circumstances, but in particular the nature of the

---

[21] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s. 243.
[22] O'Gorman Affidavit at paras 8, 18.
[23] O'Gorman Affidavit at para 20.

property and the rights and interests of all parties in relation thereto".[24] These circumstances include the rights of the secured creditor under its security.[25] In assessing whether an appointment is just or convenient, courts have considered numerous factors, including:[26]

(a) a lender's loss of confidence in the debtor's management;

(b) the balance of convenience to the parties;

(c) the conduct of the parties; and

(d) whether the lender has a contractual right to the receiver's appointment.

30. The existence of a contractual right to appoint a receiver is a particularly important factor. While the appointment of a receiver is generally an extraordinary remedy, it is not extraordinary where the secured creditor's credit documents expressly provide for that appointment.[27] As Justice Morawetz (as he then was) explained in *Sherco Properties*, in such circumstances "the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties".[28] There must be a good reason to deprive a secured creditor of a bargained-for contractual right to appoint a receiver.[29]

31. The Security and the Forbearance Agreement provide for the appointment of a receiver, and the Company consented to the appointment of a receiver by this Court.[30]

---

[24] *Metropolitan Partners Group Administration, LLC v International Credit Experts Inc*, 2024 ONSC 4601 at para 21.
[25] *Metropolitan Partners Group Administration, LLC v International Credit Experts Inc*, 2024 ONSC 4601 at para 21.
[26] *Metropolitan Partners Group Administration, LLC v International Credit Experts Inc,* 2024 ONSC 4601 at paras 23 and 36.
[27] *Bank of Montreal v Sherco Properties Inc*, 2013 ONSC 7023 (Commercial List) at para 42.
[28] *Bank of Montreal v Sherco Properties Inc*, 2013 ONSC 7023 (Commercial List) at para 42; *Elleway Acquisitions Limited v The Cruise Professionals Limited*, 2013 ONSC 6866 at para 27.
[29] *Romspen Investment Corporation v Atlas Healthcare (Richmond Hill) Ltd et al*, 2018 ONSC 7382 at para 100.
[30] O'Gorman Affidavit at paras 11, 19.

32. A secured creditor seeking a receivership order need not establish that it will suffer irreparable harm if a receiver is not appointed, nor must the Court find that the appointment is necessary to preserve the property from depreciating in value.[31]

33. Where a debtor's own conduct has led to a receivership application, the Court should give little or no weight to the debtor's objections to the receivership.[32] That is the case here. The Company accepted RBC's forbearance terms and then failed to comply with them: it did not repay the Revolving Facility, close a refinancing transaction, or bring current its priority payables. The Company's counsel subsequently admitted that there was no sustainable path forward to satisfy the CRA and property tax arrears, repay RBC and maintain ongoing operations. Those priority arrears prejudice RBC's collateral. In these circumstances, it does not lie with the Company to object to the appointment of the Receiver.[33]

34. Applying these principles, it is plainly just and convenient to appoint Spergel as Receiver because:

(a) The Bank has been incredibly patient with the Company. The Company has had since May 19, 2026 to repay the Indebtedness. The Bank agreed to forbear until September 17, 2026, and thereafter afforded the Company further time to pursue a refinancing. Ultimately, the Company has failed to repay the Bank and does not appear to have any plan in place to repay the Bank in the near term;[34]

---

[31] *Bank of Montreal v Carnival National Leasing Ltd*., 2011 ONSC 1007 at para 28-29.
[32] *GE Commercial Distribution Finance Canada v Sandy Cove Marine Company Limited*, 2011 ONSC 3851, para 23; *Metropolitan Partners Group Administration, LLC v International Credit Experts Inc,* 2024 ONSC 4601 at para 26.
[33] O'Gorman Affidavit at paras 10, 12, 14.
[34] O'Gorman Affidavit at paras 8, 10.

(b) RBC has justifiably lost confidence in the Company, given its counsel's admission that there is no sustainable path forward and the Company's failure to comply with the Forbearance Agreement;[35]

(c) Given the Company's counsel admission that there is no sustainable path forward, it is not unreasonable for RBC to be able to select its preferred realization method, in an attempt to limit its potential loss in the circumstances;[36]

(d) Other secured creditors have registered security interests against the Company, and CRA and the City of Welland may have claims relating to the Company's obligations and property taxes. A court-supervised receivership will provide an orderly and transparent process for reviewing competing interests for the benefit of all stakeholders;[37] and

(e) The Security and the Forbearance Agreement expressly entitle RBC to seek the appointment of a receiver, and the Company consented to that appointment. RBC is asking the Court to enforce the bargain reflected in those agreements.[38]

V. ORDER REQUESTED

35. RBC requests that the Court grant the Appointment Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of October, 2026.

[35] O'Gorman Affidavit at para 14.
[36] O'Gorman Affidavit at para 14.
[37] O'Gorman Affidavit at para 21.
[38] O'Gorman Affidavit at paras 11, 19.



Thomas Gertner

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Thomas Gertner (LSO#: 67756S)
Tel: 416-369-4618
Email: thomas.gertner@gowlingwlg.com

Namya Tandon (LSO#: 93814R)
Tel: 416-369-7262
Email: namya.tandon@gowlingwlg.com

Lawyers for the Applicant

SCHEDULE "A"

LIST OF AUTHORITIES

Publicly Available Authorities

1. *Metropolitan Partners Group Administration, LLC v International Credit Experts Inc*, 2024 ONSC 4601

2. *Bank of Montreal v Sherco Properties Inc*, 2013 ONSC 7023 (Commercial List)

3. *Elleway Acquisitions Limited v The Cruise Professionals Limited*, 2013 ONSC 6866

4. *Romspen Investment Corporation v Atlas Healthcare (Richmond Hill) Ltd., et al*, 2018 ONSC 7382

5. *Bank of Montreal v Carnival National Leasing Ltd*., 2011 ONSC 1007

6. *GE Commercial Distribution Finance Canada v Sandy Cove Marine Company Limited*, 2011 ONSC 3851

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: October 22, 2026

Signature

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Courts of Justice Act, RSO 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

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

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Definitions

2 In this Act,

….

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due

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.

Court File No.: CV-26-00016314-0000

ROYAL BANK OF CANADA -and- **NIAGARA COUNTERTOPS LTD.**

Applicant

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

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Welland

FACTUM OF THE APPLICANT

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Thomas Gertner (LSO#: 67756S)
Tel: 416-369-4618
Email: thomas.gertner@gowlingwlg.com

Namya Tandon (LSO#: 93814R)
Tel: 416-369-7262
Email: namya.tandon@gowlingwlg.com

Lawyers for the Applicant