

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

ROYAL BANK OF CANADA

Plaintiff

- and -

2668144 ONTARIO INC., ASMINUR RAHAMAN and SHAKIVE RAHAMAN

Defendants

---

**FACTUM OF THE RECEIVER**

**(Motion returnable May 15, 2025)**

---

May 8, 2025

**HARRISON PENSA LLP**

Barristers & Solicitors  
130 Dufferin Avenue, Suite 1101  
London, ON N6A 5R2

**Timothy C. Hogan (LSO #36553S)**

Tel: (519) 679-9660  
Fax: (519) 667-3362  
Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Lawyers for the Receiver,  
msi Spergel inc.

TO: SERVICE LIST

## NATURE OF MOTION

1. This is a motion by msi Spergel inc. ("**Spergel**"), in its capacity as court-appointed Receiver (the "**Receiver**"), appointed pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated August 4, 2024 (the "**Appointment Order**") of the Property (as defined in the Appointment Order) of the Defendant, of 2668144 Ontario Inc. (the "**Debtor**") for, *inter alia*, an Order:
  - a) abridging the time for service, filing and confirmation of the Notice of Motion and the Motion Record, and validating service so that this motion is properly returnable on May 15, 2025;
  - b) approving the Second Report of the Receiver dated May 5, 2025 (the "**Second Report**") and the activities and conduct of the Receiver set out therein provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the Second Report;
  - c) approving the Receiver's Statement of Receipts and Disbursements as detailed in the Second Report;
  - d) approving the fees and disbursements of the Receiver, the fees and disbursements of its counsel (collectively, the "**Professional Fees**") and the Fee Accrual (as defined in the Second Report), and authorizing payment of same;
  - e) that upon payment of the amounts set out in paragraphs 1 ) d) hereof and upon the Receiver completing its remaining duties, as described in the Second Report, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Spergel in its capacity as Receiver; and,

- f) releasing Spergel as Receiver from liability for its actions while acting in such capacity, save and except for the Receiver's gross negligence or willful misconduct.
2. It is the position of the Receiver that the actions of the Receiver and its counsel, as well as the Receiver's borrowing charge, should be approved and the relief requested, including the Receiver's discharge, should be granted, for the following reasons:
- a) The Real Property, the only asset in the receivership, is a former gas station that is environmentally contaminated, and the Receiver and the Ministry of the Environment, Conservation and Parks ("**MECP**") are concerned as to the possible migration of contaminants onto an adjoining municipal roadway and neighbouring private land;
  - b) The Receiver has worked with environmental professionals to quantify the costs of remediation estimated at \$350,000. The Receiver has had substantial dialogue with the MECP and Royal Bank of Canada ("**RBC**") on the issue. In light of the environmental issues, including the costs of remediation and migration of contaminants, RBC has advised that it does not wish to expend any further resources with respect to the Real Property. RBC has advised the Receiver that arrangements are in place for RBC to sell and assign the security it holds from the Debtor and over the Real Property upon the Receiver being discharged;
  - c) The Receiver's actions were reasonable, and the Receiver, at all times, acted within its mandate in carrying out its actions, pursuant to the provisions of the Appointment Order;
  - d) The Fees and the Fee Accrual are reasonable in the circumstances, and should be approved; and
  - e) Following the payments as detailed in the Second Report, the Receiver will have completed its administration of the estate of the Debtor, and should be discharged as Receiver accordingly.

## THE FACTS

### Background

3. The facts are fully set out in the Second Report, and any capitalized terms herein that are not defined have the meaning ascribed to them in the Second Report.
4. Pursuant to an Order of this Court made on August 4, 2024 (the “**Appointment Order**”), Spergel was appointed by the Court as Receiver, without security, of certain assets of the Debtor, including, real property municipally known as 989 Ward Street, Bridgenorth, Ontario (the “**Real Property**”). The Debtor operated an Esso Gas Station from the Real Property.

***Second and Final Report to the Court of MSI Spergel Inc. in its capacity as Receiver of the Property of the Debtor dated May 5, 2025 (the “Second Report”), at paras 3-6 and Appendices “1” and “2” thereto.***

5. On March 20, 2024, the Receiver brought a motion to the Court for an order approving, among other things, the Sales Process, as detailed in the First Report of the Receiver dated February 26, 2024 (the “**First Report**”), in respect to the Real Property, and for an order for certain ancillary relief, including an increase in the Receiver’s Borrowing Charge (as defined in the Appointment Order).

***Second Report, at para 9 and Appendix “3” thereto.***

6. By order of the Honourable Justice J. Osborne dated March 20, 2024, (the “**March 20<sup>th</sup> Order**”), the Court approved the Sales Process and the ancillary relief sought by the Receiver.

***Second Report, at para 10 and Appendices “4” and “5” thereto.***

### Receiver’s Activities

7. The Receiver’s activities since the March 20<sup>th</sup> Order have concentrated on, *inter alia*:

- a) Engaging in discussions with the MECP regarding the environmental issues at the Real Property;
- b) Obtaining, at the request of the MECP, a Supplemental Delineation Report from A&A Environmental Consultants Inc. ("**A&A**");
- c) Requesting and obtaining a supplemental quote from A&A for the remediation of the environmental impacts on the Real Property, which quote estimated the cost of the remediation to be approximately \$350,00000, exclusive of Harmonized Sales Tax;
- d) Obtaining the TSSA Report, that contains work orders to be completed; and
- e) Discussing the environmental concerns and costs in relation to the Real Property with RBC. RBC has advised that it does not wish to expend any further resources with respect to the Real Property.

***Second Report, at paras 15-27 and Appendices "6" through to "12" thereto.***

Environmental Issues with the Real Property

- 8. On October 30, 2023, a Phase II Environmental Site Assessment for the Real Property was provided by A&A, revealing exceedances in both soil and groundwater samples (the "**ESA Report**"). On January 9, 2024, A&A provided the Receiver with a delineation assessment report, which confirmed the contamination at the Real Property.

***Second Report, at paras 16 and 17.***

- 9. On March 20, 2024, the MECP expressed its concerns to the Receiver with respect to the ESA Report and the possible migration of contaminants onto an adjoining municipal roadway and a neighbouring private property. Accordingly, the Receiver obtained a quote from A&A to specifically investigate the area on the Real Property adjacent to the municipal roadway.

***Second Report, at paras 19-21 and Appendices "6" through to "9" thereto.***

10. On April 22, 2024, in light of the additional environmental issues, a conference call was held with the MECP, the Receiver, the Receiver's Counsel and A&A to discuss what steps and costs would be necessary to remediate the Real Property (the "**Conference Call**").

***Second Report, at paras 22.***

11. Following the Conference Call and at the MECP's request, A&A was engaged to test the drinking well on the Real Property, and to conduct additional investigations of the surrounding municipal properties to determine whether any contaminants had in fact migrated. In addition, the MECP agreed to conduct its own testing of the residential wells in the areas surrounding the Real Property.

***Second Report, at paras 23-24.***

12. On or around August 21, 2024, A&A's Supplemental Delineation Report confirmed the migration of contaminants onto the surrounding properties. Accordingly, the Receiver sought and obtained a Revised Remediation Quote for the Real Property, which estimated the remediation to cost approximately \$350,000 exclusive of HST (the "**Remediation Cost**")

***Second Report, at paras 24-25 and Appendices "10" and "11" thereto.***

13. In addition to the Remediation Cost, the Technical Standards and Safety Authority has issued several work orders for the Real Property that must be completed between June 2, 2025 and January 28, 2026 (the "**Work Orders**").

***Second Report, at paras 26 and Appendix "12" thereto.***

14. The Receiver has discussed the environmental concerns and its expenditures thus far with RBC, and understands that RBC does not wish to expend any further resources with respect to the Real Property as costs are likely to exceed expectations.

***Second Report, at paras 27.***

15. The Appointment Order empowers, but does not obligate, the Receiver to sell the Real Property. The Receiver has determined that due to the Remediation Costs and the Work Orders, the uncertainty of marketing a real property that is contaminated, and the absence of resources to cover said marketing, that it is appropriate to seek its discharge. RBC supports the Receiver's discharge.

***Second Report, at paras 27 and Appendix "2" thereto.***

16. RBC, as senior creditor of the Debtor, has advised that arrangements are in place for RBC to sell and assign the security it holds from the Debtor and over the Real Property.

***Second Report, at para 27.***

17. As the Real Property was the only asset subject to the Appointment Order, there is nothing further for the Receiver to administer with respect to the Debtor's estate. No claims have been filed with the Receiver by Canada Revenue Agency. The debtor had no employees at the date of the Receivership Order. On the discharge of the Receiver, the receivership administration will end, and the holder of the RBC security will then have rights to deal with the Real Property.

***Second Report, at para 28.***

18. The Receiver understands that its discharge will not alter priorities or prejudice the rights of any stakeholders having an interest in Real Property. The Receiver therefore recommends that this Honourable Court approve its discharge.

***Second Report, at para 29.***

#### Professional Fees and Disbursements

19. The fees and disbursements of Spergel, in its capacity as Receiver, for the period to and including February 28, 2025, inclusive of HST, are \$40,551.63 as detailed in the Second Report in relation to the Debtor.

***Second Report, at para 30 and Appendix "13" thereto.***

20. The current fees and disbursements of Harrison Pensa LLP, as counsel for the Receiver, for the period up to and including May 1, 2025, including HST and disbursements, are \$21,224.70

***Second Report, at para 31 and Appendix "14" thereto.***

21. It is the position of the Receiver that such fees and disbursements as set out above are reasonable and necessary and should be approved by this Honourable Court.

***Second Report, at para 32.***

22. The Receiver recommends that a Fee Accrual not exceeding the sum of \$75,000.00 (including taxes and disbursements), should be held for the final fees and expenses of the Receiver and the Receivers counsel to complete the Receivership, including the discharge of the Receiver.

***Second Report, at para 33.***

#### Statement of Receipts and Disbursements

23. The Receiver's Statement of Receipts and Disbursements to March 31, 2025 (the "Interim R&D") are detailed in the Second Report, and it is the Receiver's position that such receipts and disbursements are reasonable and should be approved.

***Second Report, at para 34 and Appendix "15" thereto.***

#### Receiver's Borrowing Charge

24. Pursuant to paragraph 21 of the Appointment Order, the Receiver is empowered to borrow by way of a revolving credit or otherwise such monies from time to time as it may considers necessary or desirable up to \$200,000, without further approval of the Court, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by the Receivership Order, including interim expenditures.

***Second Report, at para 35.***



25. The March 20<sup>th</sup> Order, in addition to other relief, provided for an increase to the Receiver's borrowing power from \$200,000 to \$500,000.

***Second Report, at para 35 and Appendices "4" and "5" thereto.***

26. The Receiver has borrowed monies from RBC in the principal amount of \$260,000 (the "**Current Borrowings**") to fund its activities in these proceedings and has issued a certificate representing the Current Borrowings (the "**Receiver's Certificate**").

***Second Report, at para 36 and Appendix "16" thereto.***

27. Pursuant to Paragraph 21 of the Appointment Order, the Receiver's Certificate creates a charge on the Real Property, by way of a fixed and specific charge (the "**Receiver's Borrowing Charge**") as security for the repayment of the monies borrowed, together with interest and charges thereon, in priority to security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (as defined in the Appointment Order), but subordinate to the Receiver's Charge, and the charges set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

***Second Report, at para 37.***

#### Discharge

28. Following the resolution of the remaining outstanding matters, as detailed in the Second Report, the Receiver will have completed the administration of the estate of the Debtor, and as such requests its discharge, following the filing of the Receiver's Certificate of Discharge.

***Second Report, at paras 27-29, 41.***

### **ISSUES, LAW AND ARGUMENT**

#### **The Court's Procedural Powers**

29. The Court may, by order, extend or abridge any time prescribed by the Rules on such terms as are just. Further, the Court may dispense with compliance with any Rule at

any time where and as necessary in the interest of justice. Finally, the Court may dispense with service where it is impractical to effect prompt service and/or it may validate service where it is satisfied that the document came to the notice of the person to be served.

[Rules 2.03, 3.02, 16.04 and 16.08, Rules of Civil Procedure, R.R.O. 1990, Reg. 194](#)

### **The Receiver's Activities**

30. The Receiver's activities in these proceedings have been undertaken in furtherance of the Receiver's duties and are consistent with the Receiver's powers, as set out in the Appointment Order. The Receiver has acted reasonably and in the best interests of the Debtor's stakeholders, and this Court has the inherent jurisdiction to approve such activities.

***Bank of America Canada v. Willann Investments Ltd. (1993) 20 C.B.R. (3d) 223 (ONSC), at paras 3 and 4, as referenced in the Receiver's Book of Authorities at Tab 1.***

31. All of the Receiver's activities were conducted within the ambit of its powers granted by the Appointment Order and each of the activities were necessary to ensure that the proceedings were as orderly, effective and fair to all stakeholders as possible.
32. The Receiver therefore respectfully submits that the Second Report and the Receiver's activities to date as set out therein, should be approved by this Court.

### **The Fees and Disbursements of the Receiver and the Receiver's Counsel Should Be Approved**

33. The Receiver respectfully submits that the professional fees of the Receiver and the Receiver's counsel, as detailed in the Second Report, should be approved.
34. In determining whether to approve the fees of a receiver and its counsel, the Court should consider whether the remunerations and disbursements incurred in carrying out the receivership were fair and reasonable and take into consideration the following factors, which constitute a useful guideline, but are not exhaustive:

- a) the nature, extent and value of the assets;
- b) the complications and difficulties encountered;
- c) the degree of assistance provided by the debtor;
- d) the time spent;
- e) the Receiver's knowledge, experience and skill;
- f) the diligence and thoroughness displayed;
- g) the responsibilities assumed;
- h) the results of the receiver's efforts; and,
- i) the cost of comparable services when performed in a prudent and economical manner.

***Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) (CanLII), at [paras. 33](#) and [45](#).**

- 35. It is the Receiver's view that it and its counsel's fees and disbursements were incurred at the respective party's standard rates and charges, and are fair, reasonable and justified in the circumstances. Further, the fees and disbursements sought accurately reflect the work done by the Receiver and by its counsel in connection with the receivership.
- 36. The Receiver has received no objections to the Professional Fees and Disbursements, including from RBC as senior secured creditor.

**The Discharge of the Receiver and the Release of the Receiver Should be Approved**

- 37. After the completion of the matter as set out above and in the Second Report, and any other residual and/or administrative matters, the Receiver will have substantially completed its mandate as contemplated by the Appointment Order and the *Bankruptcy and Insolvency Act*, and respectfully submits that it is appropriate to discharge the Receiver upon the filing of its discharge certificate.
- 38. The Receiver also seeks a release from any and all liability that it now has or may hereafter have by reason of, or in any way arising out of, the act or omissions of the

Receiver while acting in its capacity as Receiver, save and except for any gross negligence or wilful misconduct on the part of the Receiver.

39. The Receiver submits that it is appropriate to grant a release in its favour. In *Pinnacle v. Kraus*, this Court granted an Order discharging and releasing a court-appointed receiver. In doing so, the Court noted that such a release is expressly contemplated by the Commercial List Model Discharge Order and, in the absence of improper or negligent conduct on the part of the Receiver, such releases should be granted.

*Pinnacle v. Kraus*, [2012 ONSC 6376](#) at para [47](#).

40. Throughout these proceedings, the Receiver has acted prudently and the Receiver's activities have been thoroughly disclosed. Accordingly, the Receiver respectfully submits that the requested release is reasonable in the circumstances, will provide the Receiver with finality, and should be granted.

#### **ORDER REQUESTED**

41. The Receiver requests the relief as set forth in the Notice of Motion and the related Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of May, 2025.



---

**HARRISON PENSA LLP**  
Barristers & Solicitors  
130 Dufferin Avenue, Suite 1101.  
London, ON N6A 5R2

**Timothy C. Hogan (LSO #36553S)**  
Tel: (519) 679-9660  
Fax: (519) 667-3362  
Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Lawyers for the Receiver,  
msi Spergel inc.

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *Bank of America Canada v. Willann Investments Ltd.* (1993) 20 C.B.R. (3d) 223 (ONSC)
2. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 (CanLII)
3. *Pinnacle v. Kraus*, 2012 ONSC 6376

**SCHEDULE “B”  
RELEVANT STATUTES**

**Rules 2.03, 3.02, 16.04 and 16.08, *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.**

**COURT MAY DISPENSE WITH COMPLIANCE**

**2.03** The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

**EXTENSIONS OR ABRIDGMENT**

***General Powers of Court***

**3.02(1)** Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

***Times in Appeals***

(3) An order under subrule (1) extending or abridging a time prescribed by these rules and relating to an appeal to an appellate court may be made only by a judge of the appellate court.

***Consent in Writing***

(4) A time prescribed by these rules for serving, filing or delivering a document may be extended or abridged by filing a consent.

**SUBSTITUTED SERVICE OR DISPENSING WITH SERVICE**

***Where Order May be Made***

**16.04** (1) Where it appears to the court that it is impractical for any reason to effect prompt service of an originating process or any other document required to be served personally or by an alternative to personal service under these rules, the court may take an order for substituted service or, where necessary in the interest of justice, may dispense with service.

***Effective Date of Service***

(2) In an order for substituted service, the court shall specify when service in accordance with the order is effective.

(3) Where an order is made dispensing with service of a document, the document shall be deemed to have been served on the date of the order for the purpose of the computation of time under these rules.

**VALIDATING SERVICE**

**16.08** Where a document has been served in a manner other than one authorized by these rules or an order, the court may make an order validating the service where the court is satisfied that,

(a) The document came to the notice of the person to be served; or

(b) The document was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service.

**Section 78(5), *Land Titles Act*, RSO 1990, c L.5.**

**Priorities**

(5) Subject to any entry to the contrary in the register and subject to this Act, instruments registered in respect of or affecting the same estate or interest in the same parcel of registered land as between themselves rank according to the order in which they are entered in the register and not according to the order in which they were created, and, despite any express, implied or constructive notice, are entitled to priority according to the time of registration. R.S.O. 1990, c. L.5, s. 78 (5).

ROYAL BANK OF CANADA

v.

2668144 ONTARIO INC., et al

Plaintiff

Defendants

Court File No. CV-23-00702043-00CL

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

PROCEEDING COMMENCED AT  
TORONTO, ONTARIO

**FACTUM OF THE RECEIVER**

**HARRISON PENZA <sup>LLP</sup>**

Barristers & Solicitors

130 Dufferin Avenue, Suite 1101

London, Ontario N6A 5R2

**Timothy C. Hogan (LSO #36553S)**

Tel : (519) 679-9660

Fax: (519) 667-3362

Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)

Lawyers for the Receiver,  
msi Spergel inc.