

**Form 6-5**  
(Subrule 6-5(1))

**COURT FILE NUMBER**                      **QB No 1038 of 2021**

**COURT OF QUEEN'S BENCH FOR SASKATCHEWAN**  
**IN BANKRUPTCY AND INSOLVENCY**

**JUDICIAL CENTRE**                      **SASKATOON**

**APPLICANT**                              **BANK OF MONTREAL**

**RESPONDENT**                            **NORMAN PRIOR NODWELL**

**IN THE MATTER OF THE INTERIM RECEIVERSHIP OF NORMAN PRIOR NODWELL**

**NOTICE OF APPLICATION**

**NOTICE TO RESPONDENT**

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Where	Court House, 520 Spadina Crescent East Saskatoon, Saskatchewan
Date	November 12, 2021
Time	10:00 am

Due to the health risks posed by the COVID-19 pandemic, all chambers applications will be heard by telephone unless the presiding judge has decided otherwise. To confirm the telephone number where you can be reached on the date of the application, you must immediately contact the office of the local registrar at (306) 933-5135 and provide your telephone number. You must remain available by telephone at that number on that date until your matter is heard.

*(Read the Notice at the end of this document to see what else you can do and when you must do it.)*

**Remedy claimed or sought:**

1. An Amended and Restated Interim Receivership Order pursuant to section 47(3)(b) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") extending the appointment of Deloitte Restructuring Inc. as interim receiver (the "**Interim Receiver**") of all of the livestock (including cattle and bison) and all forage and feed owned by the Respondent, Norman Prior Nodwell (the "**Debtor**"), from November 13, 2021 to December 13, 2021 at 11:59 p.m. (Saskatchewan time).
2. An Order pursuant to section 47(3)(b) of the BIA extending the Interim Receiver's ancillary power to enter upon, occupy, and use real property owned or leased by the Debtor, or real property to which the

Debtor has access over or which the Debtor has control (collectively, the “**Real Property**”) including, without limitation:

- (a) those portions of the Real Property comprising or containing livestock corrals, livestock chutes or pens or livestock handling facilities;
- (b) those portions of the Real Property comprising pasture(s) and pastureland; and
- (c) those portions of the Real Property comprising co-operative pastures, feedlots or livestock handling facilities (whether owned by the Debtor or third parties) in which livestock owned by the Debtor are located or contained

for the purpose of taking possession, exercising control, receiving, preserving, protecting, and maintaining control of the Debtor’s livestock and forage and feed including, without limitation, using the Real Property for grazing of the Debtor’s livestock, from November 13, 2021 to December 13, 2021 at 11:59 p.m. (Saskatchewan time); and

- 3. Such further and other relief as counsel may request and this Honourable Court may allow.

**The material facts and the applicant’s grounds for making this application are:**

Background and the Initial Interim Receivership Order

- 4. The Debtor carries on business as a grain farmer and livestock rancher in the vicinity of Biggar, Saskatchewan. The Debtor owns approximately 150 head of cattle that are located at a community co-operative pasture near Biggar, Saskatchewan and owns approximately 450 head of bison that are located at a barn site and two pastures owned by the Debtor near Biggar, Saskatchewan.
- 5. Pursuant to a Letter of Agreement dated March 6, 2018 between Bank of Montreal (“**BMO**”) and the Debtor and a Borrower Request for Loan Advance dated March 14, 2018 (collectively, the “**Credit Agreement**”), BMO made credit available and advanced certain funds to the Debtor.
- 6. The Debtor’s obligations to BMO pursuant to the Credit Agreement are secured by, among other security, a section 427 *Bank Act* (Canada) Security Agreement dated March 21, 2018, granting to BMO a security interest in all of the Debtor’s livestock and forage and feed, and an All Indebtedness Mortgage dated March 14, 2018, granting to BMO a security interest in the Debtor’s farm and pasture land.
- 7. The Debtor defaulted on his obligations to BMO under the Credit Agreement in the Fall of 2020. BMO demanded repayment of the indebtedness owed by the Debtor to BMO by way of demand letters and statutory notices dated April 14, 2021, including a Notice of Intention to Enforce Security under section 244 of the BIA dated April 14, 2021.

8. On or about September 24 2021, Animal Protection Services Branch of the Government of Saskatchewan (“APS”) issued a Corrective Action Order under section 3(d) of the *Animal Protection Act, 2018*, SS 2018, c A-21.2, requiring the Debtor to provide his livestock with supplemental feed to improve the livestock’s body condition, requiring the Debtor to provide severely distressed livestock with veterinary care or to humanely euthanize the distressed livestock, and providing that the Debtors’ livestock would be taken into the custody of APS if the Debtor’s livestock remained in distress after October 1, 2021.
9. On or about September 29, 2021, APS advised BMO of the Corrective Action Order issued against the Debtor. BMO subsequently confirmed APS’ conclusion that the Debtor’s livestock was in distress through conversations with the Debtor and independent investigations conducted by BMO. BMO also discovered that the Debtor was in the process of liquidating his livestock in extreme haste and for amounts which appeared to be below market value to purchasers from the United States of America.
10. BMO determined that its security was at immediate risk as a result of the Debtor’s failure, refusal, or neglect to care for his livestock and the Debtor’s liquidation of his livestock at below market value. Accordingly, BMO applied for the appointment of an interim receiver over the Debtors’ livestock and forage and feed on October 12, 2021. As at October 12, 2021, the Debtor’s indebtedness to BMO under the Credit Agreement totalled \$2,179,555.01.
11. On October 13, 2021, the Debtor consented to the appointment of an interim receiver over the Debtor’s livestock and forage and feed.
12. On October 14, 2021, the Honourable Mr. Justice G.A. Meschishnick granted an order appointing the Interim Receiver over the livestock and forage and feed of the Debtor and providing the Interim Receiver with the ancillary power to enter upon and use the Real Property of the Debtor for the purpose of taking possession, exercising control, receiving, preserving, protecting, and maintaining control of the livestock and forage and feed of the Debtor.

The Interim Receiver and Debtor’s Activities Following the Initial Interim Receivership Order

13. Immediately upon its appointment on October 14, 2021, the Interim Receiver attended the Debtor’s farm to take an inventory of the Debtor’s livestock and forage and feed. The Interim Receiver concluded that:
  - (a) the Debtor’s bison herd totalled 450 head of bison, with 40 distressed bison located in a corral near the Debtor’s barn site, 110 bison located in a large paddock near the Debtor’s barn site, 205 bison located in an eight quarter section pasture owned by the Debtor, and 95 bison located in a seven quarter section pasture owned by the Debtor; and

(b) the Debtor had approximately 45 hay bales located at the Debtor's barn site and approximately 1,250 bushels of feed pellets located in a grain bin near the Debtor's residence.

The Interim Receiver did not take an inventory of the Debtor's cattle herd as the Debtor's cattle herd was located in a 20 quarter section community co-operative pasture comprised of rough terrain and interspersed with the cattle herds of two other members of the cooperative.

14. The Interim Receiver did not take possession of the Debtor's livestock or forage and feed on its attendance at the Debtor's farm on October 14, 2021 (and has not taken possession of the Debtor's livestock or forage and feed to date).
15. On or about October 14, 2021, the Interim Receiver retained the services of JAG Investigations & Bailiff Services to attend the Debtor's farm on a daily basis to witness and report to the Interim Receiver on the condition of the Debtor's livestock, the Debtor's feeding of his bison herd, and on the Debtor's inventory of feed.
16. On or about October 14, 2021, the Interim Receiver began to organize the financing, sourcing, purchasing, and delivery of feed for the Debtor's livestock.
17. On October 18, 2021, the Debtor advised the Interim Receiver that he only had \$491.95 of funds available to him.
18. On October 18, 2021, APS attended the Debtor's farm with a veterinarian to inspect the condition of the Debtor's bison herd and to assess the Debtor's compliance with the Corrective Action Order issued by APS against the Debtor. APS ordered the Debtor to, among other things, provide the Debtor's bison herd with quality feed in the amount of 2.5% of the bison's body weight per day, to supply the bison with good quality hay, and to provide an injured bison bull with veterinary care for its feet. The Debtor agreed to provide APS with a proposal for the voluntary liquidation of his livestock.
19. On or about October 21, 2021, 38 large square alfalfa bales sourced and purchased by the Interim Receiver were delivered to the Debtor's farm for the Debtor's livestock. Two additional loads of 38 large square alfalfa bales sourced and purchased by the Interim Receiver were delivered to the Debtor's farm on or about October 26, 2021 and October 27, 2021 respectively.
20. On October 28, 2021, a veterinarian retained by the Interim Receiver attended the Debtor's farm to assess the Debtor's bison herd. The veterinarian recommended that the bison bull identified by APS be culled for slaughter due to its foot injury and noted a general improvement in the Debtor's bison's body condition.



21. On October 29, 2021, the Debtor put forward a proposal to APS and the Interim Receiver to voluntarily liquidate his livestock through the auction of his saleable bison herd by Vold, Jones, Vold Auctions at Ponoka, Alberta on November 20, 2021 and through the sale of his cattle to Miller Livestock in Grandora, Saskatchewan (with the details of the cattle sale to be determined at a future date). The Interim Receiver has been in contact with Vold, Jones, Vold Auctions and Miller Livestock.
22. On November 2, 2021, APS attended the Debtor's farm to inspect the condition of the Debtor's bison herd. APS ordered the Debtor to, among other things, provide the Debtor's bison with free choice hay, to provide the Debtor's bison with pellet ration, and to provide the Debtor's bison with straw bedding. APS also ordered that the 40-50 head of bison in poor condition located in the corrals at the Debtor's barn site be held back from the sale on November 20, 2021.

#### Extension of Interim Receivership

23. The Debtor demonstrated a failure to care for and properly maintain his livestock prior to the appointment of the Interim Receiver. The Debtor's failure to care for his livestock was exacerbated by his inability to source and finance the purchase of feed. The Debtor's inability to source feed and failure to care for his livestock diminished the value of BMO's security through the livestock's diminished body condition and, in the case of those bison which the Debtor was required to euthanize, caused a complete loss of BMO's security.
24. The sale of a significant portion of the Debtor's bison is scheduled for November 20, 2021. The Debtor's bison must be provided with feed until November 20, 2021 to ensure that the body condition of the bison does not deteriorate. The Debtor is not capable of financing or purchasing feed for his livestock, having only \$491.95 of funds available to him on October 18, 2021.
25. The Interim Receiver has sourced, financed, and purchased feed for the Debtor's livestock and has monitored the Debtor on a daily basis to ensure that he has been properly maintaining his livestock. The condition of the Debtor's livestock has improved since the appointment of the Interim Receiver. The extension of the appointment of the Interim Receiver is necessary to ensure that there are sufficient funds available to purchase feed to maintain the body condition the Debtor's livestock until those animals can be sold and, thereby, to prevent erosion of the value of BMO's security.
26. The Debtor attempted to resolve his animal livestock issues by liquidating his livestock through high-risk transactions at prices below market-value to purchasers from the United States of America prior to the appointment of the Interim Receiver. Such sales exposed BMO to loss of its security without adequate recourse against the Debtor or the purchaser.
27. The Interim Receiver has been in correspondence with Vold, Jones, and Vold Auctions and Miller Livestock regarding the Debtor's sale of the livestock. The extension of the appointment of the Interim

Receiver is necessary to ensure that the Debtor conducts the sale of BMO's security on commercially reasonable terms.

28. The Interim Receiver has expressed its views that granting BMO an extension of the interim receivership is appropriate and has consented to continue to act as interim receiver.
29. By reason of the facts and matters described above, BMO has a reasonable apprehension that its security in the Debtor's livestock will be in jeopardy if an extension of the appointment of the Interim Receiver over the Debtor's livestock, including cattle and bison, and forage and feed from November 13, 2021 to December 13, 2021 is not granted.

**Material or evidence to be relied on:**

30. This Notice of Application, with proof of service;
31. First Report of the Interim Receiver dated November 8, 2021;
32. Draft Interim Receivership Order;
33. Redline of Draft Interim Receivership Order to Saskatchewan Template Receivership Order; and
34. Such further and other materials as counsel may advise and this Honourable Court may allow.

**Applicable rules:**

35. None.

**Applicable Acts and regulations:**

36. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 47.

DATED at Saskatoon, Saskatchewan, this 8th day of November, 2021.

**MLT AIKINS LLP**

Per: 

Jeffrey M. Lee, Q.C. and Shay Brehm, Solicitors for  
the Applicant, Bank of Montreal

## NOTICE

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

### CONTACT INFORMATION AND ADDRESS FOR SERVICE

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