

SUPREME COURT OF NOVA SCOTIA

**IN THE MATTER OF THE RECEIVERSHIP OF ANNAPOLIS MANAGEMENT, INC.,
RUBY LLP, BSL HOLDINGS LIMITED, 3337151 NOVA SCOTIA LIMITED and 4551650
NOVA SCOTIA LIMITED**

Between:

**DOURO CAPITAL LIMITED, GRAYSBROOK CAPITAL LIMITED, LEAGUE SAVINGS
AND MORTGAGE COMPANY, ATLANTIC CREDIT, ASSUMPTION MUTUAL LIFE
INSURANCE COMPANY, and 3046475 NOVA SCOTIA LIMITED**

Applicants

And:

**ANNAPOLIS MANAGEMENT, INC., RUBY, LLP, BSL HOLDINGS LIMITED, 3337151
NOVA SCOTIA LIMITED and 4551650 NOVA SCOTIA LIMITED**

Respondents

**AFFIDAVIT OF SERVICE
DARREN D. O'KEEFE**

I make oath and give evidence as follows:

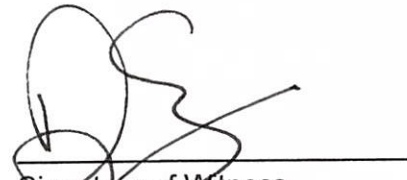
- 1. I am co-counsel for the Applicants.**
- 2. I make this affidavit to confirm email service of the affidavit of Charle Ackerman dated 21 January 2025.**
- 3. At 5:23 p.m. AST on 21 January 2025, I served an electronic copy of the affidavit of Charles Ackerman on the email Service List. A copy of that email is attached hereto as Exhibit "A".**
- 4. I did not receive any bounce back or notices that this email was not received. On that basis, I verily believe that all persons contained in the email received a copy of the affidavit of Charles Ackerman at the time and date as set out above.**

Sworn to before me
on January 22, 2025,
at St. John's, NL



Signature of authority

MELISSA De CARIA
A Commissioner for Oaths in and for
the Province of Newfoundland
and Labrador.
Commission expires December 31, 2028



Signature of Witness
Print Name: Darren O'Keefe

EXHIBIT "A"

Darren O'Keefe

From: Darren O'Keefe
Sent: January 21, 2025 5:53 PM
To: 'Marc Dunning'; tcgillis@yahoo.ca; mcaron@cua.com; mhorne@aclsm.ca; Andre.belanger@assumption.ca; louis@sonicentertainmentgroup.com; Megan Taylor; Phil.Clarke@doane.gt.ca; Liam.Murphy@doane.gt.ca; skour@reconllp.com; JSantimaw@boyneclarke.ca; Stephane.peladeau@cibc.ca; bkofman@ksvadvisory.com; isutherland@stewartmckelvey.com; Stephen.Kingston@mcinnescooper.com; frontdesk@parkerplumbing.ca; Mike.maclean@cra-arc.gc.ca; mbeaubien@coxandpalmer.com; Lauriecaryi76@gmail.com
Subject: RE: Application for Receivership Order - Annapolis Management, Inc., Ruby, LLP, BSL Holdings Ltd., 3337151 Nova Scotia Limited and 4551650 Nova Scotia Limited
Attachments: Affidavit of Charles Ackerman [SIGNED] 21 Jan 25 (002).pdf

To the Service List:

Please find a copy of the affidavit of Charles Ackerman attached hereto. The original will be filed with the Court tomorrow a.m.

Regards,

Darren D. O'Keefe

Partner, Lawyer | O'Keefe & Sullivan

P 709 800 6536 | C 709 699 3002

E dokeefe@okeefesullivan.com

80 Elizabeth Ave., Suite 202, St. John's, NL A1A 1W7

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From: Marc Dunning <mdunning@bwblp.ca>
Sent: January 21, 2025 4:54 PM
To: tcgillis@yahoo.ca; mcaron@cua.com; mhorne@aclsm.ca; Andre.belanger@assumption.ca; louis@sonicentertainmentgroup.com; Darren O'Keefe <dokeefe@okeefesullivan.com>; Megan Taylor <mtaylor@okeefesullivan.com>; Marc Dunning <mdunning@bwblp.ca>; Phil.Clarke@doane.gt.ca; Liam.Murphy@doane.gt.ca; skour@reconllp.com; JSantimaw@boyneclarke.ca; Stephane.peladeau@cibc.ca; bkofman@ksvadvisory.com; isutherland@stewartmckelvey.com; Stephen.Kingston@mcinnescooper.com; frontdesk@parkerplumbing.ca; Mike.maclean@cra-arc.gc.ca; mbeaubien@coxandpalmer.com; Lauriecaryi76@gmail.com
Subject: Application for Receivership Order - Annapolis Management, Inc., Ruby, LLP, BSL Holdings Ltd., 3337151 Nova Scotia Limited and 4551650 Nova Scotia Limited

We represent the Applicant creditors in this proceeding who are seeking a Court-appointed receiver over all of the assets of Annapolis Management, Inc., Ruby, LLP, BSL Holdings Ltd., 3337151 Nova Scotia Limited and 4551650 Nova Scotia Limited.

The application is scheduled for Friday January 24, 2025 at 9:30 a.m. at the Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia (Tel: 902-424-4900).

The following documents supporting the application were filed with the Court today are hereby served on you by this email:

- Supplemental Pre-Filing Report of Grant Thornton Limited, attached
- Memorandum of Fact and Law, attached
- Book of Authorities, attached

Regards,

BURCHELL WICKWIRE BRYSON ^{LLP}
lawyers | avocats

Marc Dunning, P.Eng.

he/him | Partner

1900 - 1801 Hollis Street, Halifax, NS B3J 3N4

T (902) 482-7017 | F (902) 420-9326 | www.bwbllp.ca

Moving Notice: *Please note our new address for mail and deliveries: 1900 – 1801 Hollis Street, Halifax, NS B3J 3N4*

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Form 39.08

2025

Hfx. No.

SUPREME COURT OF NOVA SCOTIA

**IN THE MATTER OF THE RECEIVERSHIP OF ANNAPOLIS MANAGEMENT, INC.,
RUBY LLP, BSL HOLDINGS LIMITED, 3337151 NOVA SCOTIA LIMITED and 4551650
NOVA SCOTIA LIMITED**

Between:

**DOURO CAPITAL LIMITED, GRAYSBROOK CAPITAL LIMITED, LEAGUE SAVINGS
AND MORTGAGE COMPANY, ATLANTIC CREDIT, ASSUMPTION MUTUAL LIFE
INSURANCE COMPANY, and 3046475 NOVA SCOTIA LIMITED**

Applicants

And:

**ANNAPOLIS MANAGEMENT, INC., RUBY, LLP, BSL HOLDINGS LIMITED, 3337151
NOVA SCOTIA LIMITED and 4551650 NOVA SCOTIA LIMITED**

Respondents

Affidavit of Charles Ackerman

I make oath and give evidence as follows:

1. I am the President and Director of Douro Capital Limited, formerly 4518276 Nova Scotia Limited ("DCL"), and as such I have personal knowledge of the evidence sworn to in this affidavit except where otherwise stated to be on information and belief.
2. I state in this affidavit the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
3. This affidavit is delivered in support of an application brought by the Applicants for an appointment of a receiver pursuant to s.243 of the BIA and s. 43(9) of the *Judicature Act*.

I. OVERVIEW

4. DCL is a secured creditor of the CCAA Applicant 455 NSL by way of a mortgage (the **"Mortgage"**) against title to the **"Sonic Building"** and a general assignment of rents and leases (the **"Assignment of Rents and Leases"**), which is one of three buildings upon which there is a proposed multi-residential real estate development construction project situate between Barrington and Hollis Street in Halifax, Nova Scotia (the **"Halifax Club Site"**).
5. In addition to the Mortgage and Assignment of Rents and Leases, DCL holds the following security:
 - (a) A loan agreement dated 16 October 2023 (the **"Loan Agreement"**);
 - (b) A term promissory note in the amount of \$1,800,000.00 dated 16 October 2023 (the **"Note"**);
 - (c) A general security agreement dated 16 October 2023 executed by 455 NSL in favour of DCL (the **"DCL GSA"**);
 - (d) A general security agreement dated 16 October 2023 executed by Annapolis in favour of DCL (the **"Annapolis GSA"**);
 - (e) A general security agreement dated 16 October 2023 executed by Ruby in favour of DCL (the **"Ruby GSA"**);
 - (f) An assignment of insurance dated 16 October 2023 executed by 455 NSL in favour of DCL (the **"Assignment of Insurance"**);
 - (g) A guarantee of indebtedness from Stephen Caryi for the full balance of the outstanding Loan (the **"Caryi Guarantee"**); and
 - (h) Corporate guarantees from each of Ruby LLP (the **"Ruby Guarantee"**) and Annapolis Management Inc. (the **"Annapolis Guarantee"**) for the full balance of the outstanding Loan.

(The Loan Agreement, Mortgage, Assignment of Rents and Leases, DCL GSA, Annapolis GSA, Ruby GSA, Assignment of Insurance, the Caryi Guarantee, the Ruby Guarantee, and the Annapolis Guarantee are collectively referred to in this affidavit as the **"DCL Security"**).
6. The documents comprising the DCL Security are attached hereto as **Exhibits "A" to "J"**.

7. Pursuant to the DCL Security, DCL has the contractual right to appoint a receiver over the assets and undertakings of 455 NSL in an event of default. As noted herein, 455 NSL, Caryi, Ruby, and Annapolis are currently in default of their obligations.
8. DCL opposes the CCAA Application and has the support of other secured creditors amongst the secured creditor group (the “Lenders”) as described herein to advance a competing application to appoint an interim receiver pursuant to s.47(1) of the BIA.

II. BACKGROUND

9. DCL was incorporated in May 2023 under the Nova Scotia *Corporations Act*. Its registered address is 14 Hampton Court, Fall River, Nova Scotia B2T 1E7.
10. DCL operates across Canada and is a federally registered corporation, extra-provincially registered in Nova Scotia. Attached hereto as **Exhibit “K”** is a copy of the corporate profile for DCL as registered with the Nova Scotia Registry of Joint Stock Companies and Corporations Canada.
11. DCL is in the business of private real estate financing across Canada and provides loans to mid-market developers, most often in the nature of short-term bridge financing for construction projects that are predominantly residential.
12. My partner, Tim Gillis, and I each own 50% of DCL’s shares and are jointly responsible for its management and day-to-day operations.
13. We are both Chartered Professional Accountants (CPA) by trade and have significant experience in real estate and private equity investment.

History of dealings with the Caryi Group

14. We were introduced to Steve Caryi through associates in the real estate financing industry. The Caryi Group owns various buildings in downtown Halifax and one in Charlottetown, Prince Edward Island. Most of the Caryi Group buildings are mid-construction although some are tenanted with residential and/or commercial tenants.
15. The Halifax Club is a historic building located in downtown Halifax and is operated by the Caryi Group as a private member social club.

16. In or about June 2023, Steve Caryi approached Tim and I to inquire about DCL financing his acquisition of the Sonic Building.
17. At the time, Steve Caryi already owned Granville Hall and the Halifax Club, two buildings adjacent to the Sonic Building, which he intended to redevelop the other two buildings into a multi-residential site.
18. DCL ultimately advanced a loan of \$1,800,000.00 for 455 NSL to acquire the Sonic Building in and around October 2023 (the "DCL Loan").
19. At the time the DCL Loan was advanced, DCL specifically negotiated with Steve Caryi that the borrower would have to be a single-purpose corporation insulated from the other entities in the Caryi Group, given our concerns about the seemingly complex corporate structure of the Caryi Group.
20. DCL required the Sonic Building to be acquired by a newly formed, standalone Nova Scotia corporation and not one integrated into the existing Caryi Group and exposed to the group's liabilities, primarily to ensure that there would be no issue enforcing against the collateral upon a default. In order to support the DCL Loan, we sought various personal and corporate guarantees which are described above.
21. The total amount outstanding to DCL is \$1,989,124.00, as reflected in the Statement of Funds dated 10 January 2025 attached hereto as Exhibit "L".

DCL Loan is in Default

22. Steven Caryi, the principal of the Caryi Group, unexpectedly passed away in December 2023, less than 90 days after the DCL Loan was advanced.
23. When Mr. Caryi passed away, his family and close associates, acting for his estate and thus on behalf of the Caryi Group (the "Estate") advised me that their plan was to undertake an orderly liquidation of certain Caryi Group properties including the Halifax Club Site, which would see our loan paid out in full.
24. In early 2024, we were advised that the Caryi Group had engaged Cushman Wakefield, an international real estate brokerage, to assist with marketing certain properties, including the Halifax Club Site.

25. The Cushman Wakefield marketing materials prepared by Cushman Wakefield for the Halifax Club Site are attached hereto as **Exhibit "M"**.
26. In the spring and summer of 2024, we had various discussions with the Estate's counsel, Marc Beaubien, at Cox & Palmer, and with Cushman Wakefield, during which we requested updates on the sale process.
27. Our objective throughout was to be amicable and patient given the situation with Mr. Caryi's passing given that the Estate's representatives were his widow and sister. We were not informed during this period of any significant progress or interest in purchasing the Halifax Club Site that had extended beyond due diligence.
28. At some point in 2024, we began to hear discussion amongst those in the Halifax real estate market that the lack of progress toward a sale was because the Estate had unrealistic price expectations.
29. This was confirmed by discussions with prospective buyers and real estate advisors, who indicated they found the Estate challenging to deal with on advancing sales prospects because of their unreasonable price expectations from legitimate potential purchasers interested in the Halifax Building Site.
30. The DCL Loan matured on October 16, 2024, and was not paid out as required pursuant to the Loan Agreement. Since that time the Caryi Group has ceased payments, causing further defaults under the DCL Security.
31. Leading up to the maturity date, we had continued corresponding with Mr. Beaubien, inquiring about having a conversation with the principals of the Estate, and inquiring about the Estate's intent with regard to the payout of the DCL Loan.
32. Discussions also took place between our counsel, Peter Zed at Cox & Palmer, and Mr. Beaubien, leading up to the loan maturity and subsequent thereto.
33. The Estate (via Mr. Beaubien) indicated that the Estate was continuing to work on things and trying to explore alternative options for a sale.

34. In an attempt to work with the Estate, we circulated a draft forbearance agreement in November 2024, which was never executed as the Estate did not ultimately agree to the terms.
35. Between November and December 2024, Steve Caryi's sister, Joanne Caryi, continued to give us the impression that the Estate was working toward a sale of the Halifax Club Site and other properties as an informal orderly liquidation.
36. We were aware that other lenders were also working cooperatively with the Caryi Group and Estate and had received similar messaging.
37. We were not alerted to any risk of an insolvency proceeding until after we had received communication indicating that Boyne Clarke LLP ("**Boyne Clarke**") and Deloitte were engaged by the Estate and Caryi Group on 04 December 2024, a copy of the correspondence from Josh Santimaw at Boyne Clarke is attached hereto as **Exhibit "N"**.
38. We were surprised to hear that the Estate and Caryi Group had retained restructuring professionals, as all indications prior had been that the Estate had been working on the liquidation of properties to pay out creditors.
39. It was not clear what the Estate and Caryi Group's restructuring plan was or could possibly be after the death of Steve Caryi, who to my knowledge had been solely responsible for managing the business prior to his death.
40. On 12 December 2024, I attended a virtual "Stakeholder Meeting" held by Boyne Clark as counsel for the Caryi Group.
41. Apart from DCL, I believe all other key secured lenders attended the virtual meeting: Graysbrook Capital, Assumption Life, Atlantic Credit Union League Savings and Mortgage and 3046475 Nova Scotia Limited, collectively holding mortgages of approximately \$45.7 million (96%) against the Caryi Group's real property.
42. During the Stakeholder Meeting, Deloitte and Boyne Clarke advised that they were interested in working with the Lenders.

43. Following that Stakeholder Meeting, we received correspondence from Boyne Clarke on 18 December 2024, indicating that the Caryi Group was proposing to file for CCAA protection and to run a Sales and Investment Solicitation Process (“SISP”).
44. The purported need for a CCAA proceeding was puzzling to DCL given how recently we had been working toward a forbearance agreement and orderly plan to sell the properties, or at least the Halifax Club Site, and we had been told that other Lenders had similarly been cooperating with the Estate and Caryi Group and were also working toward an informal sale of the properties.
45. After the Stakeholder Meeting referred to above, I became aware through discussions with other secured creditors of the Caryi Group that the Lenders as a whole had concerns about the significant cost of the CCAA proceeding as they were projected in the December 2024 letter (which only projected costs for the first 90 days) and the lack of transparency and consultation by Deloitte and Boyne Clarke with the Lenders in developing the recommendation that the Caryi Group enter CCAA proceedings.
46. According to the Proposed Monitor’s Pre-Filing Report, the Caryi Group currently has outstanding mortgages of approximately \$46.7 million secured primarily by real property in Atlantic Canada.
47. The loans secured against the Halifax Club Site amount to approximately \$10.9 million (approximately 25% of the total secured debt outstanding), owed to DCL the other lenders on the Halifax Club Site.
48. I received notice of the CCAA Application filing by email on 08 January 2025. Notwithstanding that the Caryi Group had the ears of the Lenders and their cooperation, the Applicants filed a precipitous CCAA Application.
49. The Estate and Caryi Group had been in discussions with DCL since before the maturity of the DCL Loan, and certainly DCL had offered forbearance and had not served demands or Notices of Intention to Enforce under Section 244 of the *Bankruptcy and Insolvency Act*, in a gesture of good faith and cooperation with the Estate and Caryi group.

50. Upon receipt of the CCAA Application, on January 11, 2025, DCL prepared and served Notices of Intention to Enforce under Section 244 of the *BIA*, copies of which are attached as Exhibit "O".
51. The CCAA Application was set to be heard on January 14, 2025. I did not have confidence in the ability of the current management of the Caryi Group to carry out a debtor-driven CCAA restructuring process, so I instructed counsel to oppose the CCAA and bring a motion to appoint an interim receiver instead.
52. My concerns and my reasons for opposing the CCAA were expressed in my previous affidavit as follows:
 - a. The Estate representatives, Mr. Caryi's widow, Laurie Caryi, and sister, Joanne Caryi, who are managing the Caryi Group, are unsophisticated and do not have relevant backgrounds or experience to run the affairs of the Caryi Group.
 - b. As far as I am aware, neither of these individuals had a role in the businesses when Mr. Caryi was alive.
 - c. Before we connected with them via the Estate's legal counsel in the fall of 2024, I had no prior dealings with either of them in the course of our dealings with the Caryi Group (which were singularly through Mr. Caryi).
 - d. I understand that Joanne Caryi has no construction development experience or direct familiarity with the Caryi Group operations and properties, and that Laurie Caryi may have had only superficial, indirect knowledge of the business through Mr. Caryi.
 - e. In addition, I have reviewed the cost projections associated with the CCAA Proceeding from the 18 December 2024 correspondence, the Proposed Monitor's Pre-Filing Report and the CCAA Application materials.
 - f. As noted above, Tim Gillis and I are both very experienced in this area and it is our opinion that the proposed costs are excessive for what amounts to a liquidation of real estate.
 - g. The professionals listed in the Pre-Filing Report include:

- Deloitte as proposed monitor;
 - Steward McKelvey as counsel to the proposed monitor;
 - a Chief Restructuring Officer earning a "success fee"; and
 - counsel to the Caryi Group.
- h. Based on rough calculations, it appears as though the cost of a CCAA proceeding vs. a receivership proceeding will be at least \$500,000.00 higher in a CCAA proceeding during the first 13 weeks. It is our expectation that this cost difference will track over the course of the proceeding such that for the full 40-week sale period the additional cost of a CCAA proceeding over a receivership proceeding will be a minimum of \$1,500,000.00.
- i. The assets of the Caryi Group are real estate, many of which are vacant and pre-development.
- j. The Caryi Group has no ability to support the cost of a CCAA proceeding without DIP financing, which is described in the Pre-Filing Report as being used mainly to pay professional fees and "capex", which is not clearly defined in the Pre-Filing Report.
- k. Accordingly, it appears to me that the Caryi Group is borrowing at high rates of interest and seeking large court-ordered charges that prime existing secured creditors in order to conduct a liquidation, which is what DCL and other secured creditors can do themselves more cheaply and efficiently.
- l. Based on the materials submitted by the Caryi Group, including the draft Cashflow, it appears that the Caryi Group will not be able to service its debts during the proposed sale period, meaning the Lenders security position will continue to be eroded during the 40-week period.
- m. In addition, based on the Cashflow, it appears as though the Caryi Group intend on borrowing to advance this proceeding, and priming all assets of the Caryi Group under the terms of a proposed Debtor in Possession Loan ("DIP Loan"). The Term Sheet for this proposed DIP Loan has not been provided to the Lenders, despite our request that a copy be sent to us.

- n. It appears as though the Caryi Group are intending to prime all assets of the Estate, including our secured property, to pay outstanding claims against other properties in which we do not have an interest.
- o. Based on my experience, the lack of information from the Caryi Group, and discussion from prospective buyers over the past six months, I do not believe that significant equity exists in the real estate and potentially some secured creditors may suffer shortfalls upon liquidation of the real estate.
- p. The Caryi Group claim they have a "liquidity crisis" but I do not accept that as an adequate explanation of their current financial troubles. Even if the Caryi Group was totally liquid, it does not appear that they would have enough funds to subsidize property operations and repay all their secured debt.
- q. The Caryi Group has not provided any evidence of the value of their properties, including that no appraisals have been provided to demonstrate what their liquidity position would be following a sale of the properties.
- r. Furthermore, the Caryi Group has not provided us with any financial statements as required by the CCAA, so therefore we are unable to obtain a full picture of what their financial position is.
- s. The lack of appraisals and full transparency on the financial statements only adds to our serious concerns about the lack of transparency displayed by the current management of the Caryi Group.
- t. Accordingly, the Estate (in its capacity as direct and indirect shareholder of the Caryi Group) does not have any economic interest in the real property.
- u. As such it is unclear why it benefits any secured party to have the Estate control a restructuring process under the leadership of inexperienced individuals, with the assistance of a bloated professional team at such a significant financial detriment to the Lenders given the erosion to their security.
- v. It appears to me that the only persons who stand to benefit from a CCAA proceeding are those professionals who are earning fees in the proceeding. There

does not appear to be any benefit for the Estate, and it is clear there is no restructuring proposed here, just a straight liquidation.

- w. It is therefore my view that the granting of the relief sought by the CCAA Applicants would cause considerable unnecessary expense and inconvenience to DCL and the other secured creditors for no benefit.

- 53. Following our opposition, the CCAA Application was withdrawn on the evening of 13 January 2025 and we proceeded to court on the Interim Receivership Motion.

14 January 2025 Hearing

- 54. I attended at the hearing with DCL's counsel. We did not receive an order for Interim Receivership. It was my understanding that the parties agreed that DCL would withdraw that Motion and that the Applicants now listed as parties would bring this Receivership Application, to be heard on 24 January 2025.
- 55. Between the date of the hearing and 20 January 2025, our counsel and counsel for other creditors collaborated on preparing their s. 244(1) Notices and our Receivership Application and supporting materials.
- 56. I learned from my counsel on 20 January 2025 that 455 NSL had filed a Notice of Intention under s. 50.4 and that this was done just before our s. 244(1) Notices became effective. I also learned that there were numerous errors contained within the Form 78 and other aspects of the NOI. I learned on 21 January 2025 that the other members of the Caryi Group subject to this Application had also filed NOIs. The forms that we received from the OSB confirming this are attached as **Exhibits "P", "Q", "R", "S" and "T"**.
- 57. This action confirms my concerns about the Caryi Group's actions and intentions – being that they are not acting in good faith or with due diligence and for some inexplicable reason are attempting to obstruct this proceeding. It is my understanding that these concerns and beliefs are shared by the other Applicants.

Proposed Receivership

- 58. DCL and the other Applicants are seeking the appointment of a receiver and proposes that Grant Thornton Limited ("GTL") be appointed as receiver (the **"Proposed Receiver"**) over

the assets of the Caryi Group pursuant to section 243(1) of the BIA. The Proposed Receiver's Pre-Filing and Supplemental Reports are attached as Exhibits "U" and "V".

59. It is our opinion that the Proposed Receiver is qualified and capable of running a cost effective and efficient process which will maximize value for the Applicants and broader group of creditors and stakeholders, and that this is preferable to any alternative option, including administration within a bankruptcy.

III. CONCLUSION


60. I make this affidavit in support of DCL and the broader Applicant group's Receivership Application, and for no improper purpose.

Sworn to before me
on January 21 2025,
at Halifax, Nova Scotia



Signature of authority

ANTHONY W. SCOTT
A Barrister of the Supreme
Court of Nova Scotia



Signature of Witness
Print Name: Charles Ackerman

Exhibits omitted for the purpose of the
Affidavit of Service of Darren D. O'Keefe dated 22 January 2025.