Court Administration

JUN 23 2026

Halifax, N.S.

2026 Hfx No.554688

Supreme Court of Nova Scotia
In Bankruptcy and Insolvency

IN THE MATTER OF: The Receivership of Kooshie Cushions of Canada Limited

Between:

Business Development Bank of Canada

Applicant

And

Kooshie Cushions of Canada Limited

Respondent

BRIEF OF THE RESPONDENT

Overview

1. The Respondent does not say that a court can never appoint a receiver under Bankruptcy and Insolvency Act, RSC 1985, c B-3, s 243. The Respondent says only that on this record, it is not just or convenient to appoint Deloitte Restructuring Inc. specifically, and the Application should be dismissed, adjourned, or narrowed.
2. Business Development Bank of Canada (BDC) relies on a contested enforcement record, an internally inconsistent demand package, and a preferred receiver of its own choosing. The Court should be slow to grant this relief without a fuller evidentiary record, especially where less intrusive alternatives remain available.

Issues

3. Has BDC shown that appointment of Deloitte, specifically, is just or convenient?
4. Should the Court decline relief because the demand and notice package was materially defective or at least genuinely disputed?
5. Should the Court instead adjourn, narrow relief, or appoint an alternate neutral receiver?

Governing principles

6. Under *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 243, the Court may appoint a receiver where it considers it "*just or convenient*" to do so. Nova Scotia courts consider a non-exhaustive list of factors, including the nature of the property, the conduct of the parties, the risk to the security holder, the balance of convenience, and whether there are less drastic alternatives.
7. The remedy is discretionary and fact-specific. Even where a secured creditor has contractual rights, the Court retains the supervisory role of deciding whether the proposed appointment and the proposed receiver are appropriate in the circumstances.

Argument

A. The Court should not appoint Deloitte on the present record

8. The Applicant asks not merely for a receivership order, but for the appointment of a particular receiver. That distinction matters. The Court is not bound to accept the creditor's chosen professional simply because the applicant prefers it.
9. Deloitte's appointment should be scrutinized because it is the Applicant's selected receiver in a contested enforcement setting. Where the process is disputed, the Court should prefer a neutral and proportionate solution over immediate endorsement of the creditor's choice.

B. The enforcement process is disputed and materially imperfect

10. The Respondent promptly objected to the April 7, 2026 demand package by letter dated May 6, 2026. That letter identified two significant issues:
    a. inconsistent interest rates in the demand package; and
    b. a corporate demand that was addressed to Mark Shelley personally rather than clearly to the Respondent.
11. Those objections matter because the purpose of the notice regime is to inform the debtor clearly of what is demanded and to permit an informed response before enforcement proceeds. The letter shows that the Respondent did not acquiesce; it challenged the package as soon as it was reviewed.

12. This dispute does not have to establish final invalidity to be relevant. It is enough that the enforcement record is contested and not cleanly established, which weighs against immediate appointment of Deloitte on an abridged record.

C. the Court has less intrusive alternatives

13. Even if the Court is concerned about the debt or default, receivership is an extraordinary remedy and should be used cautiously. Alternatives include:

    a. a brief adjournment;
    b. directions requiring fuller disclosure;
    c. a narrower preserving order;
    d. appointment of a different receiver; or
    e. interim protections short of confirming Deloitte.

14. These alternatives would preserve value while respecting the debtor's opportunity to test the applicant's case.

D. Deloitte's appointment is not necessary to protect value on this record

15. BDC asserts default and declining value, but the Respondent's position is that the business and assets should not be placed under the control of the creditor's preferred receiver before the Court has heard full evidence on the defects raised.

16. The Court should be careful not to let speed substitute for proof. If there is a genuine dispute about the enforceability and clarity of the demand package, immediate confirmation of Deloitte may be premature.

Relief requested

17. The Respondent requests an order:

    a. dismissing the Application;
    b. alternatively, adjourning the hearing and directing further disclosure;
    c. alternatively, declining to appoint Deloitte and appointing a neutral alternate receiver if the Court considers receivership necessary;
    d. alternatively, narrowing the mandate and preserving the status quo pending further directions; and
    e. awarding costs as the Court considers just.

Authorities

18. The Applicant's own materials rely on the standard receivership authorities, including *R.E. Lister Ltd. v. Dunlop Canada Ltd.*, [1982] 1 S.C.R. 726, *Enterprise Cape Breton Corp. v. Crown Jewel Resort Ranch Inc.*, 2014 NSSC 128, *Royal Bank of Canada v. Eastern Infrastructure Inc., Bank of Nova Scotia v. Freure Village on Clair Creek, Romspen Investment Corp. v. 1514904 Ontario Ltd.*, 2010 ONSC 832, and *First National Financial GP Corp. v. 3291735 Nova Scotia Ltd.*, 2018 NSSC 19.

19. Those cases support the proposition that the Court has discretion and must assess what is just and convenient in the circumstances. The Respondent relies on that discretion to resist the appointment of Deloitte specifically.

All of which is respectfully submitted this 23rd day of June 2026.

Richard A. Bureau
Solicitor for the Respondent