

**IN THE COURT OF KING'S BENCH  
OF NEW BRUNSWICK**

**TRIAL DIVISION**

**JUDICIAL DISTRICT OF SAINT JOHN**

**BETWEEN:**

**M & F LEBLANC OIL LTD.**

**APPLICANT**

**and**

**DELOITTE RESTRUCTURING INC., and**

**THE TORONTO-DOMINION BANK**

**RESPONDENTS**

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**PRE HEARING BRIEF OF M & F LEBLANC OIL LTD.  
ON BOTH APPLICATIONS**

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**SOLICITOR FOR THE APPLICANT**

MICHEL C. POIRIER, ESQ.

**SOLICITORS FOR THE RESPONDENTS**

GEORGE COOPER, KC  
SIMON PIERRE GODBOUT  
FOR DELOITTE RESTRUCTURING INC.

STEPHEN KINGSTON  
BEN DURNFORD  
FOR THE TORONTO DOMINION BANK

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## **PART I - STATEMENT OF FACTS**

1. M & F LEBLANC OIL LTD. is a body corporate duly incorporated under the laws of the Province of New Brunswick, Canada on or about April 13<sup>th</sup>, 2000.
2. The LeBlanc family was been in the oil business since 1921.
3. DELOITTE RESTRUCTURING INC. is a body corporate duly incorporated under the laws of the Canada.
4. THE TORONTO-DOMINION BANK is a bank under the Laws of Canada under the Bank Act.
5. The Applicant M & F LEBLANC OIL LTD. currently has 10 Employees - 4 Delivery Truck Drivers and 6 Office Employees.
6. The Applicant M & F LEBLANC OIL LTD. delivers fuel and oil to customers in Eastern New Brunswick, including the following:
  - Residence au Benaise, Nursing Home
  - Retail Gas Stations, Including Papa Joe's, Mirimachi, JRC Convenience, Saint Louis, Lakeville Convenience, Lakeville
  - Mic Mac Industries, *Elsipogtog First Nation*
  - Indian Island , Gas Bar
  - Hilltop Variety, St. Paul
  - Local Fishing Industry
  - Individual Residential Customers
7. The Nursing home and *Elsipogtog First Nation will run out of fuel in*

*the next 24 hours without delivery of new products.*

8. The Customers of M & F LEBLANC OIL LTD. require fuel and oil regularly, with many customers on “auto-fill” programs. In addition, it is still cold winter conditions in New Brunswick and customers need to maintain their ability to heat their buildings uninterrupted.
9. The Respondent The Toronto-Dominion Bank is a creditor of Applicant M & F LEBLANC OIL LTD.
10. The Applicant M & F LEBLANC OIL LTD. has current Accounts Receivable for customer deliveries in the amount of \$13,508,581.96. The Financial Statements of M & F LEBLANC OIL LTD. for the fiscal year ending April 30<sup>th</sup>, 2024 and April 30<sup>th</sup>, 2025 as well as a Account Receivable Report of M & F LEBLANC OIL LTD. are before the Court.
11. The Applicant M & F LEBLANC OIL LTD. current line of credit with the Respondent The Toronto-Dominion Bank is owing \$7,500,000.00, with \$680,000.00 owing on the Collateral Mortgage on the Building and security on vehicles.
12. The Applicant M & F LEBLANC OIL LTD. is not aware of any arrears in payments to the Respondent The Toronto-Dominion Bank.
13. The Respondent The Toronto-Dominion Bank is not responsive to

- attempts to communicate with Martin LeBlanc, President and sole shareholder of the Applicant M & F LEBLANC OIL LTD. Mr. Martin LeBlanc has E-Mailed and telephoned his account manager Jeff Davies at many times since March 27<sup>th</sup>, 2026 with no reply.
14. The Respondent The Toronto-Dominion Bank is not communicating with the Applicant M & F LEBLANC OIL LTD. with respect to their alleged default of the loans of M & F LEBLANC OIL LTD.
  15. On March 31<sup>st</sup>, 2026, the Respondent The Toronto-Dominion Bank appointed the Respondent DELOITTE RESTRUCTURING INC., as **Receiver Manager** of the Applicant M & F LEBLANC OIL LTD. hand delivered to Mr. Martin LeBlanc on March 31<sup>st</sup>, 2026 by James Foran, of the Respondent DELOITTE RESTRUCTURING INC.
  16. On March 31<sup>st</sup>, 2026, the Respondent The Toronto-Dominion Bank halted access to the bank accounts of the Applicant M & F LEBLANC OIL LTD., to make payments from the accounts.
  17. At approximately 8:00 AM, on March 31<sup>st</sup>, 2026 James Foran, of the Respondent DELOITTE RESTRUCTURING INC. appeared at the operations of the Applicant M & F LEBLANC OIL LTD. and immediately requested to Martin LeBlanc, President of M & F LEBLANC OIL LTD., that the company immediately cease all fuel deliveries.

18. The is approximately \$140,000.00 worth of fuel products currently in 4 delivery trucks of M & F LEBLANC OIL LTD. ready for delivery.
19. Uninterrupted delivery service to the customers of the Applicant M & F LEBLANC OIL LTD. is essential to maintain the value of the Accounts Receivable of the Applicant, and the customer base of the Applicant.
20. The Respondents the Toronto-Dominion Bank and DELOITTE RESTRUCTURING INC., are not acting in good faith or in a commercially reasonable manner.
21. The Respondents The Toronto-Dominion Bank and DELOITTE RESTRUCTURING INC., are not communicating with the Applicant M & F LEBLANC OIL LTD. to work things out.
22. The Applicant M & F LEBLANC OIL LTD. is currently working with several brokers and financial lenders to refinance the debt of the Applicant M & F LEBLANC OIL LTD. to pay out the Respondent The Toronto-Dominion Bank. It is anticipated that this process will require 60 days to be completed.
23. THAT the case management conference with Justice Stephenson was held on April 7<sup>th</sup>, 2026 where the hearing of the Applicant's Application was scheduled for April 17<sup>th</sup>, 2026 @1:30 PM.

24. THAT at approximately 3:35 PM, on April 7<sup>th</sup>, 2026 shortly after the Hearing, James Foran, of the Respondent DELOITTE RESTRUCTURING INC. called Martin LeBlanc by telephone and stated the following:
- a. That he was arriving tomorrow morning (Wednesday April 8<sup>th</sup>, 2026) at 8:00AM and will immediately do the following:
    - i. Terminate all employees of M & F LeBlanc Oil Ltd;
    - ii. Contact all customers of M & F LeBlanc Oil Ltd.; and
    - iii. Contact the Province of New Brunswick to have them cancel the fuel distributor licence of M & F LeBlanc Oil Ltd.
25. THAT these actions are inconsistent with the tenor of the case management Conference in which the parties indicated willingness to cooperate in the period leading up to the Hearing date of April 17<sup>th</sup>, 2026.
26. The actions of The Respondents The Toronto-Dominion Bank and DELOITTE RESTRUCTURING INC., are in clear breach of their good faith obligations and duty to act in a commercially reasonable manner, if allowed to continue, will cause irreparable harm to the Applicant M & F LEBLANC OIL LTD. including irreparably damaging its reputation and forcing it to go out of business.

## **PART II - ISSUES**

27. The issues to be argued at the Application Hearing will be as follows:
1. Is the Applicant entitled to injunctive the relief requested?
  2. Should Toronto Dominion Bank Application for a Court Appointed Receiver be granted, and if so, what limitations should be placed upon the Receiver?

## **PART III - ARGUMENT**

### **Is the Applicant entitled to injunctive the relief requested?**

28. The Personal Property Security Act provides as follows:

#### **CHAPTER P-7.1 Personal Property Security Act**

##### **Supervisory powers of the Court**

**63(1)**In this section

“secured party” includes a receiver.

**63(2)**On application by a debtor, a creditor of a debtor, a secured party, a sheriff or any person with an interest in the collateral, the Court may

- (a) make any order, including a binding declaration of a right and injunctive relief, that is necessary to ensure compliance with this Part or sections 17, 36, 37 and 38,
  - (b) give directions to any person regarding the exercise of rights or the discharge of obligations under this Part or sections 17, 36, 37 and 38,
  - (c) relieve a person from compliance with the requirements of this Part or sections 17, 36, 37 and 38,
  - (d) stay enforcement of rights provided in this Part or sections 17, 36, 37 and 38,
- or

(e) make any order necessary to ensure protection of the collateral or of the interest of any person in the collateral.

### **Receiverships**

**64(1)**A security agreement may provide for the appointment of a receiver and, except as provided in this or any other Act, may provide for the receiver's rights and duties.

**64(2)**A receiver shall

(a) take custody and control of the collateral in accordance with the security agreement or order under which the receiver was appointed, but unless appointed a receiver-manager or unless the Court orders otherwise, shall not carry on the business of the debtor,

(b) as soon as possible and not later than ten days after becoming a receiver, register a notice in the Registry in accordance with the regulations disclosing the appointment and specifying an office in the Province where the records referred to in paragraph (d) shall be maintained,

(c) open and maintain, in the receiver's name as receiver, one or more accounts at a bank, credit union or similar financial institution for the deposit of all money coming under the receiver's control as receiver,

(d) keep records, in accordance with accepted accounting practices, of all receipts, expenditures and transactions involving collateral or other property of the debtor,

(e) unless a different interim period is ordered by the Court, prepare at least once in every six-month period after the date of the appointment financial statements of the receivership administration,

(f) indicate on every business letter, invoice, contract or similar document used or executed in connection with the receivership that the receiver is acting as a receiver,

(g) on completion of the receiver's duties as receiver, prepare a final report and final statements of the financial accounts of the receivership administration and send copies immediately to the debtor and, if the debtor is a body corporate, to the directors of the debtor, and

(h) on termination of the receivership, discharge the registration under paragraph (b).

**64(3)**The debtor, and if the debtor is a body corporate, a director of the debtor, or the authorized representative of any of them, may require the receiver, by a demand in writing delivered to the receiver, to make available for inspection the records referred to in paragraph (2)(d) during regular business hours at the office of the receiver specified in accordance with paragraph (2)(b).

**64(4)**The debtor, and if the debtor is a body corporate, a director of the debtor, a sheriff, a person with an interest in the collateral in the custody or control of the receiver, or the authorized representative of any of them, may require the receiver, by a demand in writing delivered to the receiver, to provide copies of the financial statements referred to in paragraph (2)(e) or the final report and final statements of the financial accounts referred to in paragraph (2)(g) or to make them available for inspection during regular business hours at the office of the receiver specified in accordance with paragraph (2)(b).

**64(5)**The receiver shall comply with a demand under subsection (3) or (4) within ten days after receipt of the demand.

**64(6)**The receiver may require the payment in advance of a fee in the amount prescribed for each demand, but the sheriff and the debtor, or if the debtor is a body corporate, a director of the debtor, are entitled to inspect or to receive a copy of the financial statements and final account without charge.

**64(7)**On application by an interested person, the Court may

(a) appoint a receiver,

(b) remove, replace or discharge a receiver, whether appointed by the Court or in accordance with a security agreement,

(c) give directions on any matter relating to the duties of a receiver,

(d) approve the accounts and fix the remuneration of a receiver,

(e) notwithstanding anything contained in a security agreement or other document providing for the appointment of a receiver, make an order requiring a receiver or a person by or on behalf of whom the receiver is appointed to make good a default in connection with the receiver's custody, management or disposition of the collateral of the debtor or to relieve the person from any default on such terms as the Court thinks fit, and

(f) exercise with respect to receivers appointed in accordance with a security agreement the jurisdiction that it has over receivers appointed by the Court.

**64(8)**The powers referred to in subsection (7) and in section 63 are in addition to any other powers the Court may exercise in its jurisdiction over receivers.

**64(9)**Unless the Court orders otherwise, a receiver is required to comply with sections 59 and 60 only when the receiver deals with or disposes of the collateral other than in the course of operating the business of a debtor.

1994, c.22, s.13

## VI

### GENERAL AND MISCELLANEOUS

#### **Supplementary law and duties of good faith and commercial reasonableness**

**65(1)**The principles of the common law, equity and the law merchant, except insofar as they are inconsistent with the provisions of this Act, supplement this Act and continue to apply.

**65(2)**All rights and obligations arising under a security agreement, under this Act or under any other applicable law shall be exercised and discharged in good faith and in a commercially reasonable manner.

**65(3)**A person does not act in bad faith merely because the person acts with knowledge of the interest of some other person.

29. The *Judicature Act* provides as follows:

#### **Judicial review, injunctions and receivers**

**33**An order on judicial review or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it appears to the Court to be just or convenient that the order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court thinks just; and if an injunction is asked, either before or at or after the hearing of any cause or matter, to prevent a threatened or apprehended waste or trespass, such injunction may be granted, if the Court thinks fit, whether the person against whom the injunction is sought is, or is not, in possession under any claim of title or otherwise, or, if out of possession, does or does not claim under any colour of title a right to do the act sought to be restrained, and whether the estates claimed by both or either of the parties are legal or equitable. R.S., c.120, s.35; 1981, c.6, s.1; 1986, c.4, s.28; 2024, c.18, s.24

### **Issue #1 - Is the Applicant entitled to injunctive the relief requested?**

30. The test for granting an injunction in the case of halting creditor enforcement actions was reviewed by the New Brunswick Court of Appeal in *M R Martin*

*Construction Inc. v. Bryn Holdings Ltd., Kitchen and Killam*, 2010 NBCA 48 as follows:

[19] ... an interlocutory injunction based on the application of the three-part test found in the Supreme Court case of *RJR- MacDonald Inc.*, which has consistently been applied by our Court. This test consists of the following three questions:

- (1) Does the action commenced by M R Martin against Bryn raise one or more serious triable issues?
- (2) If the “injunction” were not granted, would M R Martin suffer irreparable harm?
- (3) Which party would suffer the greater harm from the granting or refusal of the interlocutory injunction pending a determination on the merits?

(1) Serious triable issue

[20] The first part of the three-part test is the determination of whether M R Martin’s action against Bryn raises one or more serious triable issues. As Richard J.A. states in *Leby Fixtures*:

It is not the function of the Court at this stage to determine whether Leby Fixtures might succeed in its action. The threshold has been described as a low one (see *St. Anne-Nackawic Pulp Co. (Bankrupt), Re* (2005), 286 N.B.R. (2d) 19, [2005] N.B.J. No. 203 (QL), 2005 NBCA 54 (CanLII), at para. 14 and the cases cited therein). In *Canada East Manufacturing* this Court described the first stage of the test in the following words (at para. 9):

There is no requirement that a reasonable prospect of succeeding be established ... In *RJR - MacDonald Inc.*, the Supreme Court of Canada stated at 337-38:

What then are the indicators of “a serious question to be tried”? There are no specific requirements which must be met in order to satisfy this test. The threshold is a low one. The judge on the application must make a preliminary assessment of the merits of the case....

Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at trial. A prolonged examination of the merits is generally neither necessary nor desirable.

[para. 32]

- [21] According to M R Martin, the affidavit evidence filed by the parties in support of their respective positions, as well as the pleadings in the action it commenced against Bryn, reveal several triable issues, including the breach of a mortgage, breach of written and oral terms of the Change of Terms Agreement, negligent misrepresentation, unjust enrichment, and estoppel by conduct. M R Martin submits that the evidence respecting the representations of Kitchen, Killam and Bryn stands uncontradicted. At the hearing of the motion, Bryn could have obtained evidence directly from both Kitchen and Killam. Bryn did not, and, as a result, M R Martin submits that an adverse inference should have been drawn against Bryn. Furthermore, M R Martin submits the action is neither frivolous nor vexatious.
- [22] For its part, Bryn submits that the evidence filed by M R Martin in support of its position does not reveal a “serious triable issue” and that the motion judge made findings of fact which led him to conclude that there was no serious issue to be tried through the action filed by M R Martin.
- [23] In my view, the evidence adduced by the parties in support of their respective positions reveals a serious triable issue. The motion judge misapprehended the record in concluding otherwise, thereby committing reversible error.

(2) Irreparable Harm

- [24] The second part of the test requires the Court to determine whether the party applying for the injunction would suffer irreparable harm if the relief sought is not granted. In *Leby Fixtures*, Richard J.A. says:

In *RJR-MacDonald*, the term “irreparable” is said to refer to “the nature of the harm suffered rather than its magnitude.” The Supreme Court explains at para. 59 that “[i]t is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other.” [para. 38]

- [25] In the case before us, M R Martin alleges that the property in question is the only asset of Bryn. Furthermore, according to M R Martin, it has invested both substantial time as well as 1.6 million dollars in the property to date. If Bryn is permitted to continue with its power of sale, and if M R Martin’s action is successful, it is possible that Bryn’s sole asset could be dissipated before M R Martin could satisfy its judgment. Bryn did not dispute the assertion that the land in question is its sole asset. Therefore, it appears to be obvious from the materials filed, that M R Martin would risk suffering irreparable harm if the mortgage sale were allowed to proceed. This type of harm is one that, in our view, the Supreme Court had in mind when it created the second part of the three-part test. In coming to the opposite conclusion, the motion judge misapprehended the record.

(3) Balance of Convenience

- [26] Although M R Martin has met the first two prongs of the three part test the jurisprudence of this Court suggests that one should proceed to the third stage of the analysis. In *Imperial Sheet Metal Ltd. v. Landry* (2007), 315

N.B.R. (2d) 328, [2007] N.B.J. No. 226 (QL), 2007 NBCA 51 (CanLII), Robertson J.A. states:

In summary, so long as motion judges are not imposing a threshold test with respect to the question of whether the plaintiff will suffer irreparable harm and so long as they are prepared to proceed to the third stage of the tri-partite analysis, and assess the potential harm to the defendant, no one can complain that the principles in *RJR-MacDonald* have not been respected. Whether the case for irreparable harm to the plaintiff is weak or strong, it is still necessary to turn to the third step in the analysis.  
[para. 30]

[27] In *Leby Fixtures*, Richard J.A. discusses how to approach the third part of the test as delineated in *RJR - MacDonald*:

In *RJR - MacDonald*, the Supreme Court said this about the third stage of the three-stage test (at paras. 62-63):

The third test to be applied in an application for interlocutory relief was described by Beetz J. in *Metropolitan Stores* at p. 129 as: "a determination of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits". In light of the relatively low threshold of the first test and the difficulties in applying the test of irreparable harm in *Charter* cases, many interlocutory proceedings will be determined at this stage.

The factors which must be considered in assessing the "balance of inconvenience" are numerous and will vary in each individual case. In *American Cyanamid*, Lord Diplock cautioned, at p. 408, that:

[i]t would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.

He added, at p. 409, that "there may be many other special factors to be taken into consideration in the particular circumstances of individual cases."

[para. 43]

31. The Appeal Court went on in *M R Martin Construction Inc. v. Bryn Holdings Ltd., Kitchen and Killam* to grant the injunction restraining the power of sale.

32. In *Evan Ross et al. v. The Toronto-Dominion Bank, et al.* 2016 NBQB 022 Justice Peter Glennie provided a further analysis of the test for granting an injunction in the case of halting a power of sale under the *Property Act* as follows:

#### **Analysis**

[19] In **Nash v. Canadian Imperial Bank of Commerce**, 1996 CanLII 4897 (NB QB) Justice Riordon quoted from **Calvert v. Municipal Mortgage Corp.** (1994), 147 N.B. (2d) 161 (C.A.) as follows:

10. The ordinary rule is that, except on terms of the mortgagor paying into court the sum sworn by the mortgagee to be due for principal, interest and costs, the mortgagee will not be restrained by an interlocutory injunction from selling under his power of sale. Provided he is acting bona fide and keeps within the terms of the power of sale and no case of fraud be made out, a mortgagee should only be restrained from selling the mortgaged premises if the principal monies due, interest and costs have been tendered by the mortgagor. See **Kerr on Injunctions** (6th Ed. 1927), page 523 et seq. and cases there cited.

11. So long as anything remains due on the mortgage security, a mortgagee may, as a general rule, pursue all his remedies concurrently. In **Falconbridge on Law of Mortgages**, it is said at page 659: “A mortgagee who has brought an action to recover the mortgage money and for possession of the mortgaged land may also exercise the power of sale. There is nothing inconsistent in the two proceedings. Possession will be needed in the event of a sale being made. The amount realized from the sale must be applied towards payment of the mortgage debt. If enough is realized from the sale, the claim upon the covenant to pay will be satisfied; if the proceeds of the sale are insufficient, the personal judgment for the unsatisfied amount will be needed (**Shields v. Shields**, 44 D.L.R. 763).”

12. The object of an interlocutory injunction is to preserve matters in status quo until the case can be tried. The jurisdiction to interfere is governed by equitable principles. A plaintiff asserting a right should, at least, show a strong prima facie case in support of that right. In considering whether an interlocutory injunction will be granted to a plaintiff, the court should have regard to the relief sought by the action.

[21] I now turn to an analysis of the three-part test to be applied by the Court in injunctive relief cases:

#### **Serious Question to be Tried**

[22] Applicants seeking injunctive relief must establish that there is a serious question to be tried. There are no specific requirements which must be met in order to satisfy this component of the test. The threshold is a low one.

[23] In **RJR MacDonald v. Canada (Attorney General)**, [1994] 1 SCR 311 the Supreme Court of Canada noted that the preliminary assessment of the merits of the case “... should be determined by a motions judge on the basis of common sense and an extremely limited review of the case on the merits.”

[24] Under this part of the test there is no requirement that a reasonable prospect of succeeding in the main action be established: **Canada East Manufacturing Inc. v. Harvey** 1996 CanLII 4872 (NB CA).

[25] In my opinion, there are serious issues to be tried in this case with respect to matters relating in particular to the banking relationship between the Applicants and TD Bank, including: Has TD Bank acted fairly and in good faith? Has TD Bank acted fairly and reasonably with the Applicants? Did TD Bank agree with the Applicants to forbear in July 2015 and give the Applicants time to refinance? Did TD Bank act improvidently on selling and assigning the mortgage for \$34,750.00 and refusing \$65,000.00 offered by Mr. Ross, and in failing to get an appraisal in 2015 before assigning the mortgage to Mr. Murphy's company?

[26] I find that there are serious questions to be tried and that the Applicants' action is neither frivolous nor vexatious.

### **Irreparable Harm**

[27] The next part of the test to be applied is whether there has been irreparable harm. In **RJR MacDonald** the Court explained:

Irreparable refers to the nature of the harm rather than its magnitude. It is a harm which either cannot be quantified in monetary terms or which cannot be cured usually because one party cannot collect damages from the other. (S.C.R. page 341, para 59)

[28] In the present case I am satisfied that if the Applicants are successful with their litigation against the Respondents, including TD Bank, there should be little difficulty in collecting those damages.

[29] In **Yule Inc. v. Atlantic Pizza Delight Franchise (1968) Ltd. et al.**, 1977 CanLII 1198 (ON SC) Justice Cory deals with the issue of irreparable harm as follows at page 509:

An argument was raised that the plaintiff had not established that it would suffer irreparable damage if the injunction was not granted. When considering that issue the essential question that the Court must ask itself is, "Is it just in all the circumstances that the plaintiff should be confined to a remedy in damages?"

[30] As the Court stated in **Allsco Building Products Ltd. v. United Food and Commercial Workers International Union, Local 1288P**, 1998 CanLII 14085 (NB CA): at this stage, only the harm to the applicant is relevant.

[31] In **Imperial Sheet Metal v. Landry** (2007), 315 N.B.R. (2) 328 NB CA, Justice Robertson writes at paragraph 26:

Only a few general comments are needed with respect to the types of loss that can properly give rise to irreparable harm to the plaintiff. If the failure to grant injunctive relief will put the plaintiff out of business or cause irreversible damage to his or her business reputation, irreparable harm will have been established.

## **Three Part Test for Injunctive Relief**

### **Serious Questions to Be Tried**

33. In the case at bar there are several serious issues to be tried in this Application.

34. The evidence on the motion record supports the Applicant's claim that there is are serious issues to be tried including as to whether the Respondents are acting in not in good faith, and not in a commercially reasonable manner.

35. In *Keough v. Sandfire Capital Limited Partnership* 2016 NBCA 50, the Court of Appeal affirmed the duty of mortgagees to act in good faith and not act to fraudulently or willfully or recklessly willfully sacrifice the mortgagor's interest in the exercise of a power of sale over property charged by a mortgage. [See paragraphs 73-82.

### **Will the Applicant be irreparably harmed if the relief is not granted?**

36. In *Gunning and Associates Marketing Inc. v. Kesler* [2005] O.J. No. 1059, (Ont. Sup. C. J.) , A. Karakatsanis J., found on the issue of irreparable harm and balance of convenience as follows:

**30** On the issue of whether damages will provide the plaintiff with an adequate remedy, the Court must consider the nature of the harm to be suffered rather than its magnitude. Loss of permanent market share or damage to business reputation has been found by the courts to be irreparable harm or harm that cannot be quantified. See R.J.R. MacDonald at pp. 405-406.

37. The Court of Appeal, in *Canada East Manufacturing Inc. v. Harvey and Maritime Wire Co. Ltd.* in addressing the second test for an interlocutory injunction, found as follows at p. 4 of the Quick Law Decision:

In *Yule Inc. v. Atlantic Pizza Delight Franchise (1968) Ltd. et al.* (1977), 17 O.R. (2d) 505 (H.C.J. (Div. Ct.)) at 510, Cory J., as he then was, says:

In this case, as in many others where injunctive relief is sought there are difficult questions to be decided at trial. Those questions clearly ought not and cannot be decided upon the conflicting evidence of affidavits and transcripts of cross-examinations, available upon a motion for interim injunction. In such a situation the result ought to be determined on the basis of what has been referred to as the balance of convenience. ...

The second test to be applied is generally referred to as the "irreparable harm" test. This expression is defined in *RJR-MacDonald Inc.* at 341:

"Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. ...

In *Yule Inc.*, at 509, Cory J. deals with this question in the following terms:

An argument was raised that the plaintiff had not established that it would suffer irreparable damage if the injunction was not granted. When considering that issue the essential question that the Court must ask itself is, "is it just in all the circumstances that the plaintiff should be confined to a remedy in damages?"

Reilly, J. in *Gould Outdoor Advertising* agrees at para. 22, stating:

"It is in posing this question that the issues of irreparable harm and balance of convenience merge."

38. In *Imperial Sheet Metal Ltd. et al v. Landry and Grey Metal Products Inc.* 2007 NBCA 51, Robertson, J.A. reviews the second part of the test for an injunction as follows:

### III Irreparable Harm a Threshold Test? What is Irreparable Harm?

[25] Irreparable harm refers to the nature of the harm and not its magnitude. Unlike the situation in England, irreparable harm to the defendant cannot be considered until the third and final stage. It is at that juncture that the court is required to assess the balance of inconvenience to the parties. This means that an assessment must be made as to which of the parties would suffer the greater harm, depending on whether the injunction issues or not, pending a final determination on the merits of the case. However, factors other than harm to the parties may be examined at this stage.

[26] Only a few general comments are needed with respect to the types of loss that can properly give rise to irreparable harm to the plaintiff. **If the failure to grant injunctive relief will put the plaintiff out of business or cause irreversible damage to his or her business reputation, irreparable harm will have been established.** Loss of market share does not normally qualify as irreparable harm because it is simply a matter of the defendant rendering an accounting. What has to be established is “permanent” loss of market share before the argument of irreparable harm becomes credible: see *RJR MacDonald* at para. 59. On the facts of the present case, the latter point is significant.

[27] Just as it is proper to ask whether the elevated standard of *prima facie* case is a threshold test, so too may the question be asked in regard to the matter of irreparable harm to the plaintiff/applicant. Is a finding of irreparable harm to the plaintiff a condition precedent to the granting of injunctive relief and, hence, a threshold test? If the answer is “yes”, a second question follows: What is the threshold test: “serious issue”, “*prima facie* case”, “balance of probabilities” or “conclusive proof”? The motion judge and the parties have proceeded on the presumption that it is not a threshold test. The jurisprudence supports this presumption. Let me explain.

[28] A finding of irreparable harm to the plaintiff is not a condition precedent to the granting of injunctive relief. In other words, it is not a threshold test and, therefore, it is unnecessary to identify the appropriate standard of proof. In some cases, the evidence of harm may be overwhelming or unanswerable. In others, there may be a nagging doubt. In both circumstances, it is both wise and necessary to complete the tri-partite analysis. Paragraph 78 of *RJR-MacDonald* supports this approach: “Unless the case on the merits is frivolous or vexatious, or the constitutionality of the statute is a pure question of law, a judge on a motion for relief must, as a general rule, consider the second and third stages of the *Metropolitan Stores* test.” This passage suggests that once you get past the first stage in the analysis you should address both the second and third steps. The jurisprudence of this Court is consistent with this understanding: see *Canada East Manufacturing Inc. v. Harvey and Maritime Wire Co.* (1996), 183 N.B.R. (2d) 293 (C.A.), [1996] N.B.J. No. 552 (QL), and *Melanson v. New Brunswick (Attorney General)*, [2006] N.B.J. No. 555 (C.A.)(QL); see also Justice Sharpe’s text at page 2-35 and cases cited at notes 100 and 100a.

[29] I am not suggesting that an applicant who fails to establish irreparable harm (for example, on a balance of probabilities) retains a realistic chance of obtaining injunctive relief. Far from it. What you are more apt to find is conflicting evidence with respect to the financial impact on a party if the injunction is or is not granted. In some cases, motion judges have no difficulty in concluding that the plaintiff will not suffer irreparable harm if the injunction application were dismissed. In other cases, the conflicting affidavit evidence may raise a serious but nagging doubt over whether irreparable harm to the plaintiff/applicant will result. For example, in *Dominion Refuse Collectors v. Thompson*, [2003] N.B.R. (2d) (Supp.) No. 48 (Q.B.), [2003] N.B.J. No. 289 (QL), 2003 NBQB 305, the motion judge admitted that it was difficult to assess the former employer’s claim of irreparable harm. The motion judge concluded that there was a “possibility” of such and went on to consider the balance of convenience. Knowing that

courts in New Brunswick are going to be presented with conflicting affidavit evidence, carefully crafted having regard to the legal principles set out in the jurisprudence, it is both wise and necessary to proceed to the third stage in the analysis.

[30] In summary, so long as motion judges are not imposing a threshold test with respect to the question of whether the plaintiff will suffer irreparable harm and so long as they are prepared to proceed to the third stage of the tri-partite analysis, and assess the potential harm to the defendant, no one can complain that the principles in *RJR-MacDonald* have not been respected. Whether the case for irreparable harm to the plaintiff is weak or strong, it is still necessary to turn to the third step in the analysis.

39. The Applicant will suffer irreparable harm if it is improperly put out of business. The loss of profits, loss of reputation and loss of goodwill would be virtually impossible to quantify if the Applicant is put out of business.

40. The wrongful acts of the Respondents, if not stayed by the Court at this time, the Applicant will suffer irreparable harm, loss and damages.

41. Based on the foregoing, it is respectfully submitted that the Applicant has established that it will suffer irreparable harm if the requested injunction is not granted.

**Does the balance of convenience in favour of the Applicant?**

42. This third leg of the test essentially poses the following question: "Which one of the two parties will suffer the greater harm if the injunction is not granted?"

43. The evidence before this Honourable Court is that the proposed actions of the

Respondents will put the Applicant out of business and irreparable harm its reputation in the business community and with its customers and suppliers.

44. The Respondent The Toronto-Dominion Bank holds a 1<sup>st</sup> charge security on the assets of the Applicant which will remain in place as this matter proceeds.

45. Any further delay in having the return of business as usual will cause the Applicant irreparable harm.

46. Based on the foregoing, and applying the facts of the case at bar to the jurisprudence reviewed above, is respectfully submitted that the balance of convenience favours the Applicant.

**Should Toronto Dominion Bank Application for a Court Appointed Receiver be granted, and if so, what limitations should be placed upon the Receiver?**

47. The Applicant M & F LeBlanc Oil Ltd. respectfully submits that it opposes the Respondent Toronto Dominion Bank's Application for a Court appointed receiver, and repeats the facts arguments as set out above.

48. M & F LeBlanc Oil Ltd. respectfully requests that this Honourable Court, if it grants their application, limit any Court Appointed Receiver to monitoring the business for the first 60 days, and to managing the business of M & F LeBlanc Oil Ltd. to collect the Accounts Receivable to pay down the Respondent Toronto Dominion Bank in a manner that preserves and protects the additional value and equity in the Business.

49. M & F LeBlanc Oil Ltd. based upon its Financial Statements filed with this Court establish that M & F LeBlanc Oil Ltd. has current Accounts Receivable in excess of \$13 Million, plus further value in Fuel Delivery Trucks and Land. The Toronto Dominion Bank is owed only \$8 Million. M & F LeBlanc Oil Ltd. respectfully submits that an orderly collection of accounts receivable for the next 60 days would be a good faith and commercially reasonable approach, providing M & F LeBlanc Oil Ltd. time to put in place alternative financing to pay out any remaining debt owed the Toronto Dominion Bank.

## **PART V - REMEDY SOUGHT**

50. The Applicant seeks an order as follows:

The Applicant M & F LEBLANC OIL LTD. is granted the following immediate interim injunctive relief against pending further Order by this Honourable Court:

- (a) **THAT** The Respondents The Toronto-Dominion Bank and DELOITTE RESTRUCTURING INC. are enjoined from interrupting the business operations and deliveries of the Applicant M & F LEBLANC OIL LTD. until further Order of this Court;
- (b) **THAT** The Respondents The Toronto-Dominion Bank and DELOITTE RESTRUCTURING INC. reactivate the banking accounts of the Applicant M & F LEBLANC OIL LTD. until further Order of this Court;
- (c) **THAT** The Toronto-Dominion Bank and DELOITTE RESTRUCTURING INC immediately take steps to communicate with and engage the Applicant M & F LEBLANC OIL LTD. in good faith and in a commercially

reasonable manner to work through the financial issues of the Applicant M & F LEBLANC OIL LTD.; and

- (c) Such further remedy as this Honourable Court deems just.

**AND IN THE ALTERNATIVE**, if the Court grants the Respondent Toronto Dominion Bank application,

- (d) **THAT** the Court Appointed Receiver is limited to monitoring the business of M & F LeBlanc Oil Ltd. and the orderly collection of the Accounts Receivable of M & F LeBlanc Oil Ltd. for the next 60 days, to pay down the Respondent Toronto Dominion Bank in a manner that preserves and protects the additional value and equity in the Business, and;
- (e) Such further remedy as this Honourable Court deems just

All of which is respectfully submitted.

**DATED** at Moncton, New Brunswick, this 14<sup>th</sup> day of April A.D., 2026.

Michel Poirier

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## V. AUTHORITIES

### Case Law

M R Martin Construction Inc. v. Bryn Holdings Ltd., Kitchen and Killam, 2010 NBCA 48 (CanLII), <<https://canlii.ca/t/2bd0k>>

Evan Ross et al. v. The Toronto-Dominion Bank, et al., 2016 NBQB 22 (CanLII), <<https://canlii.ca/t/gnft7>>

Keough v. Sandfire Capital Limited Partnership, 2016 NBCA 50 (CanLII), <<https://canlii.ca/t/gtqq4>>

*Gunning and Associates Marketing Inc. v. Kesler* [2005] O.J. No. 1059, (Ont. Sup. C. J.)

*Canada East Manufacturing, Inc. v. Harvey*, 1996 CanLII 4872 (NB CA), <<https://canlii.ca/t/1m3ng>>

Imperial Sheet Metal Ltd. et al. v. Landry and Gray Metal Products Inc., 2007 NBCA 51 (CanLII), <<https://canlii.ca/t/1rvkt>>

### Statutes

*Personal Property Security Act*, including sections 63, 64, and 65.

*Judicature Act*, including section 33

### Rules

*New Brunswick Rules of Court*, including Rules 37, 38, 39 and 40.