Court File No. CL-26-00000153-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

NOVO PLASTICS INC. and 2139654 ONTARIO LIMITED

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

FACTUM OF THE APPLICANT, THE TORONTO-DOMINION BANK (Returnable September 15, 2026)

September 4, 2026

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PART I – NATURE OF THE APPLICATION

1. The Applicant, The Toronto-Dominion Bank ("**TD Bank**"), makes application for an Order (the "**Receivership Order**") appointing Deloitte Restructuring Inc. ("**Deloitte**") as receiver (in such capacity, the "**Receiver**"), without security, of all the assets, properties and undertakings of Novo Plastics Inc. ("**Novo**") and 2139654 Ontario Limited ("**213**" and, together with Novo, the "**Debtors**"), acquired for, or used in relation to any business(es) carried on by the Debtors and all proceeds thereof (collectively, the "**Property**"), including, without limitation, the real property municipally known as 388 Markland Street, Markham, Ontario and legally described under PIN 03047-0057 (LT) (the "**Real Property**").

2. The Debtors owe TD Bank more than CAD $30 million and USD $300,000.

3. TD Bank holds security over the assets of the Debtors, including general security agreements and a charge over the Real Property, which give TD Bank the right to appoint a receiver.

4. TD Bank first demanded repayment from the Debtors on June 19, 2025. Since that time, TD Bank has provided generous forbearance terms to support the Debtors' efforts to refinance. All such accommodations have now expired.

5. On July 17, 2026, the Debtors executed and delivered to TD Bank consents to the Receivership Order (the "**Consents**"), to be effective immediately should the Debtors fail to indefeasibly repay TD Bank in full by August 31, 2026.

6. As of the date of this factum, TD Bank has not been repaid in full (and, indeed, has not received any payments at all), and the Consents are now effective against the Debtors.

7. TD Bank respectfully requests that this Court grant the Receivership Order.

PART II – SUMMARY OF FACTS

8. The Debtors are incorporated under Ontario's *Business Corporations Act* with their registered head office at the Real Property. Baljit Sierra ("**Mr. Sierra**") is the sole director and officer of each of the Debtors.[1]

9. Novo is an operating company which, according to the *About Us* page of its website, manufactures plastic components and products for various industries including "automotive, packaging, consumer goods, industrial applications, and more."[2]

10. 213 is the registered owner of the Real Property from which Novo operates.[3]

11. It is believed that Novo has between 30 and 100 employees and that such employees are not unionized. It is believed that 213 does not have any employees.[4]

12. The Debtors are indebted to TD Bank in connection with certain credit facilities (the "**Credit Facilities**") made available to the Debtors pursuant to and under the terms of the credit agreement entered into between TD Bank and the Debtors dated December 19, 2024 (as may have been amended, replaced, restated or supplemented from time to time, the "**Credit Agreement**").[5]

13. The Credit Facilities under the Credit Agreement include, without limitation, the following:

(a) operating facilities in CAD and USD (the "**Operating Facilities**");

(b) term facilities (the "**Term Facilities**");

(c) a credit card facility (the "**VISA Facility**"); and

(d) an equipment finance facility (the "**TDEF Facility**").

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[1] Affidavit of Sicheng Lou sworn April 10, 2026 (the "**TD Affidavit**") at para 3 and Exhibit "A", Tab 4 of TD Bank's Application Record dated April 14, 2026.
[2] TD Affidavit at para 4 and Exhibit "B".
[3] TD Affidavit at para 6.
[4] TD Affidavit at paras 5 and 7.
[5] TD Affidavit at para 8 and Exhibit "D".

14. The Debtors are cross-guaranteed pursuant to the following (together, the "**Guarantees**"):

(a) the unlimited guarantee granted by 213 in favour of TD Bank dated June 20, 2025 regarding the obligations of Novo to TD Bank; and

(b) the unlimited guarantee granted by Novo in favour of TD Bank dated January 6, 2023 regarding the obligations of 213 to TD Bank.[6]

15. To secure their respective obligations to TD Bank, the Debtors provided security to TD Bank (collectively, the "**Security**"), including, without limitation:

(a) the general security agreement dated January 6, 2022 granted by Novo in favour of TD Bank[7] (the "**Novo GSA**"), registration in respect of which was made under the *Personal Property Security Act* (Ontario) (the "**PPSA**"), and which grants TD Bank, among other things, a security interest in any and all of Novo's assets, undertakings and property;

(b) the general security agreement dated January 6, 2022 granted by 213 in favour of TD Bank[8] (together with the Novo GSA, the "**GSAs**"), registration in respect of which was made under the PPSA, and which grants TD Bank, amongst other things, a security interest in any and all of 213's assets, undertakings and property; and

(c) the charge/mortgage in the principal amount of $26,500,000 granted by 213 in respect of the Real Property, which was registered on title as Instrument No. YR3514237 on January 10, 2023[9] (as amended by Instrument Nos. YR3665823 and YR3774016).

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[6] TD Affidavit at para 9 and Exhibit "E".
[7] TD Affidavit at Exhibit "F".
[8] TD Affidavit at Exhibit "F".
[9] TD Affidavit at Exhibit "G".

16. The parcel register for the Real Property reflects that TD Bank is the only secured creditor with a charge registered on title to the Real Property.[10]

17. The PPSA search results for the Debtors as of March 18, 2026 reflect 32 different registration families in the aggregate, in each case including, without limitation, a PPSA registration in favour of TD Bank against all collateral classifications other than consumer goods (the "**General TD Registration**"). Each of the other PPSA registrations against Novo and/or 213 appear to be limited on its face to certain equipment/motor vehicles, some of which are also registered after the applicable General TD Registration.[11]

Defaults, Demands, Forbearance; More Defaults and More Demands

18. The Operating Facilities, VISA Facility and TDEF Facility are repayable on demand.[12]

19. In addition, one or more Event of Default (as defined in the Credit Agreement) has also occurred, including, without limitation, those certain defaults set out in default letters issued to the Debtors dated May 5, 2025, May 23, 2025 and June 17, 2025 (collectively, the "**May/June Default Letters**").[13]

20. More specifically, the May/June Default Letters specify, *inter alia*, the following defaults under the Credit Agreement:

(a) failure to maintain the requisite Debt Service Coverage ("**DSC**") Ratio under the Credit Agreement of not less than 120% for the period ending March 31, 2025, at which time the DSC was calculated to be 0.75x;

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[10] TD Affidavit at para 11 and Exhibit "C".
[11] TD Affidavit at para 12 and Exhibit "I".
[12] Credit Agreement at pp 7 and 22, Exhibit "D" to TD Affidavit.
[13] TD Affidavit at para 13 and Exhibit "J".

(b) failure to comply with the borrowing base calculation under the Credit Agreement, which is tested on a monthly basis, for the periods ending April, May, June, July, August and September 2024, and March and April 2025. As at April 30, 2025, the borrowing base shortfall was calculated to be $1,080,000; and

(c) payment defaults for the month of May 2025 totalling $499,704.42, as follows:

(i) arrears of $132,632.65 and $7,410.98 in respect of certain of the Term Facilities;

(ii) arrears of $2,239.73 in respect of one of the Operating Facilities;

(iii) arrears of $29,325.54 in respect of the TDEF Facility; and

(iv) arrears of $328,095.52 in respect of the VISA Facility.[14]

21. Furthermore, the Credit Agreement requires the Debtors to "maintain all operating accounts with TD" and to provide certain monthly reporting.[15] As of the date of this factum, the Debtors have not met such obligations for over a year.

22. On June 19, 2025, TD Bank proceeded to make formal written demand on the Debtors for payment of the amounts owed to TD Bank under the Credit Agreement and the Guarantees, as applicable (collectively, the "**June Demand Letters**"). Notices of intention to enforce security (the "**June BIA Notices**") pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") accompanied the June Demand Letters.[16]

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[14] TD Affidavit at para 14 and Exhibit "J".
[15] Credit Agreement at p 10, Exhibit "D" to TD Affidavit.
[16] TD Affidavit at para 15 and Exhibit "K".

23. Later on June 19, 2025, TD Bank entered into a forbearance agreement with the Debtors and Mr. Sierra (the "**Forbearance Agreement**"). Upon confirming that the Forbearance Agreement had been fully executed and was in effect, TD Bank revoked the June Demand Letters and confirmed as such to the Debtors through Mr. Sierra.[17]

24. The essential terms of the Forbearance Agreement were that (i) the Debtors acknowledged the existing defaults as set out in the May/June Default Letters; (ii) the Debtors acknowledged the indebtedness, the Credit Agreement, the Security and the Guarantees; (iii) in addition to other reporting obligations, the Debtors were to deliver to TD Bank by no later than July 15, 2025 a fully executed commitment letter evidencing sufficient funding to repay the indebtedness in full on or before the end of the Forbearance Period (as defined by the Forbearance Agreement, being August 15, 2025); and (iv) certain amendments were made to the Credit Agreement including the closure of certain Credit Facilities.[18]

25. As particularized in more detail in the Forbearance Agreement, CAD $28,423,264.25 plus USD $305,971.05 was owing by the Debtors to TD Bank for principal and interest as of June 17, 2025, plus accruing interest and costs.[19]

26. Among numerous other defaults under the Forbearance Agreement, contrary to section 5.1(d) of the Forbearance Agreement, TD Bank did not receive by July 15, 2025 a fully executed commitment letter evidencing sufficient funding to repay the indebtedness in full on or before the end of the Forbearance Period. As a result, on July 16, 2025, TD Bank issued to the Debtors a notice of default and reservation of rights (the "**July Default Letter**") requiring the Debtors to rectify the defaults set out therein by July 23, 2025.[20]

[17] TD Affidavit at para 16 and Exhibit "L".
[18] TD Affidavit at para 17 and Exhibit "L".
[19] TD Affidavit at para 18 and Exhibit "L".
[20] TD Affidavit at para 19 and Exhibit "M".

27. In addition to the foregoing, the July Default Letter also identifies, *inter alia*, the following defaults under the Credit Agreement and the Forbearance Agreement:

(a) as of July 14, 2025, 213's account was overdrawn by $274,337.20;

(b) the 13 week cash flow projection due July 8, 2025 had not been received by TD Bank contrary to section 5.1(a) of the Forbearance Agreement;

(c) the written confirmation regarding the status of any and all SRED claims due July 8, 2025 had not been received by TD Bank contrary to section 5.1(b) of the Forbearance Agreement;

(d) the monthly aged accounts receivable and aged accounts payable listing and inventory listing for Novo for the month of May 2025, all due by June 25, 2025, had not been received by TD Bank such that the borrowing base calculation could not be completed contrary to the Credit Agreement; and

(e) updated EDC policy documents and information relating thereto had not been received by TD Bank contrary to sections 3.1(a) of the Forbearance Agreement.[21]

28. The Debtors failed to rectify the defaults as set out in the July Default Letter. Nevertheless, and notwithstanding TD Bank's entitlement to do so, TD Bank did not terminate the Forbearance Agreement before its outside date of August 15, 2025.[22]

29. On August 15, 2025, the Forbearance Agreement expired in the ordinary course without repayment of the indebtedness in full.[23]

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[21] TD Affidavit at para 20 and Exhibit "M".
[22] TD Affidavit at para 21.
[23] TD Affidavit at para 22.

30. On August 27, 2025, with the Forbearance Agreement no longer in effect and the indebtedness remaining outstanding and continuing to accrue interest and costs, TD Bank proceeded to issue fresh formal written demands on the Debtors for the payment of the amounts owed to TD Bank under the Credit Agreement and the Guarantees, as applicable (collectively, the "**August Demand Letters**"). Fresh notices of intention to enforce security (the "**August BIA Notices**") pursuant to subsection 244(1) of the BIA accompanied the August Demand Letters.[24]

31. In addition, TD Bank received from a creditor a notice of garnishment dated September 18, 2025 in the amount of $71,968.35. This further reflects the deteriorating circumstances of the Debtor.[25]

Receivership Application, Forbearance Extension and Forbearance Expiration

32. On October 1, 2025, TD Bank issued a notice of application (the "**October NOA**") for the Court-appointment of a receiver over the Debtors.[26]

33. On October 3, 2025, TD Bank's legal counsel sent a courtesy copy of the October NOA to the Debtors' solicitors via email. This email advises that TD Bank will take steps to serve the Debtors directly; asks whether the Debtors' solicitors will accept service; and asks about counsel's availability to attend a scheduling appointment before the Court.[27]

34. Also on October 3, 2025, TD Bank's counsel sent a copy of the October NOA to Mr. Sierra via email and, as a courtesy, advised him that a process server would be attending at the Real Property on the morning of October 6, 2025 to effect personal service on the Debtors.[28]

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[24] TD Affidavit at para 23 and Exhibit "N".
[25] TD Affidavit at para 24 and Exhibit "O".
[26] TD Affidavit at para 25 and Exhibit "P".
[27] TD Affidavit at para 26 and Exhibit "Q".
[28] TD Affidavit at para 27 and Exhibit "R".

35. As advised, a process server attended at the Real Property on the morning of October 6, 2025 and effected personal service of the October NOA on the Debtors.[29]

36. TD Bank and Mr. Sierra then had a direct conversation about the status of the Debtors' refinancing efforts. Mr. Sierra assured TD Bank that a refinancing was imminent, with a closing date of November 1, 2025. Mr. Sierra requested that TD Bank abandon its October NOA so as not to prejudice the Debtors in their refinancing efforts.[30]

37. Based on the foregoing discussion, TD Bank, the Debtors and Mr. Sierra entered into a forbearance extension agreement dated October 10, 2025 (the "**Extension Agreement**").[31]

38. The essential terms of the Extension Agreement were that (i) the Forbearance Period was extended to an outside date of November 15, 2025, and (ii) TD Bank agreed to abandon the October NOA on the following terms, amongst others, all of which were agreed to by the Debtors:

(a) the abandonment is on a without-costs basis;

(b) the abandonment is without prejudice to TD Bank's rights to commence or re-commence an application for the appointment of a receiver against the Debtors and to pursue any other enforcement action against the Credit Parties;

(c) notwithstanding the abandonment, no final judgment or disposition was rendered based on the October NOA such that the doctrines of issue estoppel and *res judicata* shall not apply and the Credit Parties shall not be entitled to raise such arguments in any future proceedings instituted by TD Bank against the Credit Parties; and

(d) the August Demand Letters and August BIA Notices had been received by the Debtors and have not been withdrawn by TD Bank.[32]

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[29] TD Affidavit at para 28 and Exhibit "S".
[30] TD Affidavit at para 29.
[31] TD Affidavit at para 30 and Exhibit "T.
[32] TD Affidavit at para 31 and Exhibit "T".

39. Following execution of the Extension Agreement, and in accordance with the terms therein, TD Bank served and filed with the Court a notice of abandonment.[33]

40. On November 15, 2025, the Forbearance Period again expired without repayment of the indebtedness in full.[34]

41. In early December 2025, the Credit Parties' solicitors requested, and TD Bank's counsel provided a payout letter. Several emails relating to the purported payout were exchanged. Among other things:

(a) On December 8, 2025, the Debtors' solicitors advised that "*Parties are aiming to close this Wednesday*", being December 10;

(b) On December 10, 2025, the Debtors' solicitors advised that "*Closing will not occur today and we don't have an updated target closing date yet*";

(c) On Wednesday, December 17, 2025, the Debtors' solicitors wrote that they were "*hoping to potentially be in a position to close by the end of this week, but it may slip to next week*"; and

(d) On February 7, 2026, and again on February 26, 2026, TD Bank's counsel asked the Debtors' solicitors for an update on when the payout would occur. The Debtors' solicitors did not have a substantive update to share, merely stating that "*our client informs us that he is scheduled to speak with [TD] today and he will provide her with a direct update*."[35]

42. Mr. Sierra eventually admitted to TD Bank that a planned refinancing by Bank of Montreal was not proceeding.[36]

[33] TD Affidavit at para 32 and Exhibit "U".
[34] TD Affidavit at para 33.
[35] TD Affidavit at para 34.
[36] TD Affidavit at para 35.

The Last Chance

43. TD Bank commenced this Application on April 9, 2026 and served its Application Record on the Debtors on April 16, 2026.[37]

44. Since service of TD Bank's Application Record and the timetabling of this Application, the Debtors have continued to claim that a refinancing is imminent. The Debtors failed to serve any materials in response to TD Bank's Application.

45. In a final bid for an extension of time, the Debtors executed and delivered to TD Bank the Consents to the Receivership Order.[38] The Consents provide that the Debtors consent to the Receivership Order if TD Bank has not been indefeasibly repaid in full by August 31, 2026.

46. Following receipt of the Consents on July 17, 2026, TD Bank's counsel repeatedly followed up with the Debtors' counsel to seek updates on the status of the refinancing efforts.[39]

47. TD Bank heard nothing from the Debtors or their counsel until Saturday, August 29, 2026, at which time the Debtors' counsel requested a payout letter.[40]

48. TD Bank provided a payout letter, yet as of the date of this factum, no payment has been received. Accordingly, the Consents are now effective.[41]

49. As of August 31, 2026, the amounts owing by the Debtors to TD Bank for principal and interest (exclusive of accruing interest and costs) exceeded CAD $30 million plus USD $300,000.[42]

[37] Affidavits of Service of Lisa Maitman sworn April 17, 2026.
[38] Affidavit of Sicheng Lou sworn September 1, 2026 (the "**Supplementary TD Affidavit**") at para 3 and Exhibit "A", Tab 1 of TD Bank's Supplementary Application Record dated September 4, 2026.
[39] Supplementary TD Affidavit at para 6.
[40] Supplementary TD Affidavit at para 8 and Exhibit "B".
[41] Supplementary TD Affidavit at para 10.
[42] Supplementary TD Affidavit at para 9.

50. More than a year after TD Bank first made demand on the Debtors, and despite extremely generous accommodations since that time, TD Bank has not received any payments whatsoever. The Debtors have invariably failed to meet their obligations and commitments. Accordingly, TD Bank has lost all confidence in the Debtors and their management.

Appointment of a Receiver

51. At this stage, TD Bank considers that the only reasonable and prudent path forward is to have a receiver appointed, and it is within TD Bank's rights under its Security to so do.[43]

52. In addition, a receiver is necessary for the protection of the Property and the interests of TD Bank and all stakeholders.[44]

53. Furthermore, the Court-appointment of a receiver is preferable to a private appointment in this case for the following reasons (among others):

(a) the nature of the business, being plastic-based manufacturing, would suggest the possibility of environmental issues such that a receiver may require the protections afforded to Court-appointed receivers in such circumstances;

(b) TD Bank is concerned about the infrequent, inconsistent and inaccurate reporting it has received (or not received) from the Debtors, such that the receiver may require enhanced powers to make inquiry or to follow assets; and

(c) if the receiver determines that there is a business worth preserving, a stay of proceedings would be required to prevent other creditors from causing the business to shutter, and thus protecting whatever chance there may be to preserve jobs.[45]

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[43] TD Affidavit at para 38.
[44] TD Affidavit at para 39.
[45] TD Affidavit at para 40.

PART III – ISSUE

54. The sole issue to be determined on this application is whether it is just or convenient for this Court to appoint Deloitte as Receiver over the Property.

PART IV – LAW AND ARGUMENT

55. On a demand loan (as in the case of the Operating Facilities, the VISA Facility and the TDEF Facility), "*the reasonable time to repay after demand is a very finite time measured in days, not weeks, and it is not 'open ended' beyond this by the difficulties that a borrower may have in seeking replacement financing, be it bridge or permanent*." Reasonable time is "*not encompassing anything approaching 30 days*."[46]

56. TD Bank seeks the appointment of a receiver pursuant to subsection 243(1) of the BIA and section 101 of the *Courts of Justice Act* (Ontario). Both statutes enable the Court to appoint a receiver where such appointment is just or convenient.

57. In determining whether it is "*just or convenient*" to appoint a receiver under either the BIA or CJA, Ontario courts have applied the decision of The Honourable Mr. Justice Blair in *Freure Village*. In that case, His Honour confirmed that, in deciding whether the appointment of a receiver is just or convenient, the court "*must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto*," which includes the rights of the secured creditor under its security.[47]

58. When the rights of the secured creditor under its security include a specific right to the appointment of a receiver (as in the present case), the burden on the applicant seeking the relief is relaxed. The Honourable Mr. Chief Justice Morawetz held in *Elleway Acquisitions* that:

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[46] *Bank of Montreal v Carnival National Leasing Limited*, 2011 ONSC 1007 at para 13 [*Carnival Leasing*].
[47] *Bank of Nova Scotia v. Freure Village of Clair Creek*, 40 C.B.R. (3d) 274, [1996] O.J. No. 5088 at para. 10 (Gen. Div. [Comm. List]) [*Freure Village*].

> *... while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties*.[48]

59. The appointment of a receiver becomes less extraordinary still when dealing with a default under mortgage security, as in the present case.[49]

60. Furthermore, as held by The Honourable Madam Justice Kimmel in *Peace Bridge*:

> *Commercial certainty also supports the appointment of the Receiver in this case where the Debtor consented to it in a negotiated arrangement while represented by counsel. Agreements to consent orders such as this are common in the insolvency practice and the parties should be able to expect the court to uphold their bargains, barring unforeseen or special circumstances* [citations omitted].[50]

61. Likewise, The Honourable Mr. Justice Myers recently held that "*While the court is not bound by the respondents' consents, they are important. They confirm that the debtors accepted that they had done all they could to preserve their equity*".[51]

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[48] *Elleway Acquisitions Limited v. The Cruise Professionals Limited*, 2013 ONSC 6866 at para. 27 [*Elleway Acquisitions*].
[49] *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, 2020 ONSC 1953 at paras. 43-44.
[50] *RBC v. Peace Bridge Duty Free Inc.*, 2025 ONSC 7339 [*Peace Bridge*] at para 39.
[51] *Royal Bank of Canada v. 12870428 Canada Inc., et al.*, Court File No. CV-25-00750706-00CL, Endorsement of Myers J. dated November 4, 2025 at para 10.

62. It is not essential that the applicant establish, prior to the appointment of a receiver, that it will suffer irreparable harm or that the situation is urgent.[52]

It is Just and Convenient to Appoint the Receiver, Without Further Delay

63. More than a reasonable time for the Debtors to repay TD Bank has elapsed since issuance of the June BIA Notices on June 19, 2025 and the August BIA Notices on August 27, 2025.[53] The scheduled hearing date for this Application is more than a year after the issuance of the August BIA Notices, and exactly 10 months since expiry of the Forbearance Extension, which period far exceeds that which is considered reasonable.[54]

64. TD Bank submits that the test for the appointment of a receiver is met. TD Bank is contractually entitled to have a receiver appointed over the Debtors under the Security.[55]

65. Furthermore, the Debtors consented to such relief by executing and delivering the Consents via counsel.[56] The Debtors clearly acknowledge that they have done all they could to repay TD Bank.

66. The appointment of Deloitte as Receiver is therefore not an extraordinary remedy; it is simply the result of enforcing a contractual term that was mutually assented to by the Debtors and TD Bank.

67. TD Bank wishes to take any and all steps necessary to enforce its Security and realize on same, and the appointment of Deloitte as receiver is necessary for the protection of the Debtors' estate and the interests of TD Bank as a secured creditor.

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[52] *Carnival Leasing, supra* at paras 24 and 28-29.
[53] TD Affidavit at para 15.
[54] *Carnival Leasing*, *supra* at para 13.
[55] GSAs at s 12, TD Affidavit at Exhibit "F"; Standard Charge Terms 8520 at s 8, TD Affidavit at Exhibit "G".
[56] Supplementary TD Affidavit at Exhibit "A" and Exhibit "B".

68. Deloitte is a licensed insolvency trustee and is familiar with the circumstances of the Debtors and their arrangements with TD Bank. Deloitte has consented to act as the Receiver should the Court so appoint it.[57]

PART V – RELIEF REQUESTED

69. In light of the foregoing, it is respectfully submitted that this Court should grant the Receivership Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of September, 2026.

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[57] TD Affidavit at para 44 and Exhibit “W”.

SCHEDULE "A"
AUTHORITIES CITED

Jurisprudence

1. *Bank of Montreal v Carnival National Leasing Limited*, 2011 ONSC 1007.

2. *Bank of Nova Scotia v Freure Village of Clair Creek*, 40 C.B.R. (3d) 274, [1996] O.J. No. 5088 (Gen. Div. [Comm. List]).

3. *BCIMC Construction Fund Corporation et al. v The Clover on Yonge Inc.*, 2020 ONSC 1953.

4. *Elleway Acquisitions Limited v The Cruise Professionals Limited*, 2013 ONSC 6866.

5. *RBC v. Peace Bridge Duty Free Inc.,* 2025 ONSC 7339.

6. *Royal Bank of Canada v. 12870428 Canada Inc., et al.,* Court File No. CV-25-00750706-00CL, Endorsement of Myers J. dated November 4, 2025.

Certificate of Authenticity

I, Calvin Horsten, am satisfied as to the authenticity of every authority cited in this factum and that every quotation from an authority appearing in this factum accurately reproduces the text of the authority, in accordance with Rule 4.06.1(2.1) of the *Rules of Civil Procedure*, R.R.O, 1990, Reg. 194.

September 4, 2026	
Date	**Calvin Horsten**

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY-LAWS

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, s. 243**

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

(a) the insolvent person consents to an earlier enforcement under subsection 244(2); or

(b) the court considers it appropriate to appoint a receiver before then.

Definition of receiver

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

(a) is appointed under subsection (1); or

(b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a "security agreement"), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of disbursements

(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

(a) the inventory,

(b) the accounts receivable, or

(c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

***Courts of Justice Act*, R.S.O. 1990, c. C-34, as amended, s. 101**

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

THE TORONTO-DOMINION BANK - and - **NOVO PLASTICS INC. and 2139654 ONTARIO LIMITED**

Applicant Respondents

Court File No. CL-26-00000153-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

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