

COURT FILE NO: CV-26-00003039-0000

SUPERIOR COURT OF JUSTICE – ONTARIO
7755 Hurontario Street, Brampton ON L6W 4T6

RE: CANADIAN IMPERIAL BANK OF COMMERCE, **Applicant**

AND

16261311 CANADA INC., **Respondent**

BEFORE: Fowler Byrne J.

COUNSEL: FISHER, HEATHER, for the **Applicant**
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SYED, Abid Hussain., for the **Respondent**
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SRIKARUNA, Shurabhi, for the Interim Receiver
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HEARD: **April 30, 2026, by videoconference**

ENDORSEMENT

1. The Applicants seeks a final receivership order.
2. This matter was before Justice Wilkinson last week. That attendance was as the result of an urgent application by the Applicant. The Respondent was offside on their credit facility. The Applicant demanded that it be corrected. Promises were made but the over-extension was not remedied. More urgent was the fact that the Respondent (which is an operating gas station and convenience store) was representing to its customers that is debit/credit facilities were not working and was accepting cash only. In fact, the credit/debit facilities were fully operational. The impact of that was that money was not being deposited into the Respondent's bank account with the Applicant, but that the cash was diverted to

another bank account that the Respondent had opened with another bank. This is contrary to the credit agreement between the parties. The Applicant has made a demand on the entire credit facility. The proper notices were served under the *BIA* and the Applicant waited the appropriate time before starting this Application.

3. When the matter was before Justice Wilkinson last week, the principal of the Respondent attended and asked for an adjournment to retain counsel. Given the diversion of cash, Justice Wilkinson granted a short adjournment and made it peremptory to the Respondent. She also made an order appointing an interim receiver so that records could be gathered and steps taken to remedy the situation. She also set a strict deadline for the filing of any responding materials (April 28, 2026).
4. Unfortunately, the Respondent's conduct did not improve. The Receiver has filed a First Report, dated April 29, 2026.
5. In the First Report, it states that the interim receiver made multiple attempts to meet with the principal of the Respondent, requested that "cash only" signs on the debt/credit machines be removed, and that all banking be transitioned back to the Applicant and that the Respondent provide all bank statements from the other bank. The receiver also requested payroll records, CRA information and other operational information. Unfortunately, nothing was provided, despite numerous requests in this week. Also, the principal, Mr. Vargas agreed to meet the receiver on the premises on two separate occasions, and on both occasions, failed to attend. The Receiver also saw indications that the business was not operating at full capacity – diesel was not available, the convenience store was minimally stocked and no lottery or cigarettes were available for sale. The "cash only" signs were gone, but one pump indicated that the customer had to pay inside first.
6. The matter was returned before me today. Counsel appeared on behalf of the Respondents. He was just retained. He managed to serve responding materials

last night (thus late) and uploaded them to Case Centre. It is anticipated that the filing will be rejected due to being beyond the time provide by Justice Wilkinson. I remind counsel that nothing should be uploaded to Case Centre unless it has been accepted for filing, without express permission of the court.

7. Today, the Respondents seek a further 10 days to bring its over-extension up to date, and to deal with their taxes and insurance. They argue that a debt of approximately \$50,000 should not result in a receivership and loss of equity in the business. Their proposal is to allow them to get current, and then they will continue to run the business. There is no proposal of how it will deal with the demand on the entire debt.
8. My authority to appoint a receiver is grounded in s. 243(1) of the *BIA* and s.101(1) of the *Courts of Justice Act*. I may appoint a receiver if I determine it is “just or convenient” to do so. In determining whether it is just or convenient, I must consider all the circumstances of the case, and in particular, the nature of the property and the rights and interests of all the parties. Whether the Applicant has the right under its security to appoint a receiver is an important factor to be considered, but also, in the circumstances, is whether or not an appointment by the Court is necessary to enable the receiver-manager to carry out its work and duties more efficiently: *Bank of Nova Scotia v. Freure Village of Clair Creek* 1996 CanLII 8258 (Ont.S.C.) at para 10.
9. When there is a right of appointment, as there is here, irreparable harm need not be demonstrated: *RBC v Peace Bridge Duty Free Inc.* 2025 ONSC 7339 at par. 35.
10. In determining this matter, I have considered the following factors:
 - a. The Respondent is indebted to the Applicant in the approximate sum of \$4.2 million;

- b. This debt, which was obtained only in July 2025, was secured by a mortgage, a GSA, and a personal guarantee; in the event of default, the Applicant was entitled to seek the appointment of a receiver;
- c. In early March 2026, the Respondent borrowed over the limits by approximately \$25,000. Repayment was promised in 24 hours, but it was not; again, it was promised to be covered by March 12, 2026, and it was not;
- d. within 6 weeks, it was further extended to \$31,000;
- e. debit and credit receipts for the Respondent were deposited to their account with the Applicant; they decreased dramatically, starting on March 11, 2026;
- f. a visit to the gas station on March 19, 2026 showed no one working but the fuel pumps still operational;
- g. on March 20, 2026 it was discovered that the debit/credit card readers on the pumps had been covered with a sign that read “cash only”;
- h. a demand for payment and Notice under the BIA was sent on March 24, 2026;
- i. The Respondent listed the gas station for sale on March 27, 2026 and took down the listing on March 29, 2026;
- j. The “cash only” signs remained on April 8 and 9, 2026, but the debit/credit readers were actually fully operational;
- k. The Respondent claimed the debit/credit system was malfunctioning, but has provided no evidence of this, which evidence could include communications with the Applicant, or with any other party who could help with the situation;

- l. The Respondent admitted to intentionally changing their banking to Scotiabank and sought payment through cash, as they feared their accounts would be frozen;
- m. Since the appointment of the receiver, the Respondent has not returned the deposits to the Applicant and has not remedied the excess position; the Respondent is also in arrears of its municipal taxes in the sum of \$22,769;
- n. As indicated already, despite the court order appointing the interim receiver, which provided the receiver with the power to meet with the Respondent and collect information, the Respondent has been evading the interim receiver and has not provided any information that was requested;
- o. The Respondent pledges that it will pay off all excess within 10 days by incurring further debt from friends and family;
- p. The Respondent has no way of addressing the full amount owed, which has been demanded;
- q. The Respondent has made no proposal to show how they will be able to operate the business in such a way as to remain current with the Applicant;
- r. The Respondent states that it is not attempting to hide income, but has failed to provide the information requested;
- s. The issue of diverting sales receipts has been known to the Applicant since approximately mid-March, and the Respondent has been notified on numerous occasions to remedy that situation; despite many notices and service of a demand, six weeks have passed and the Respondent has done nothing to remedy the situation; and

- t. The Respondent did not retain counsel and file responding materials within the timeframe ordered by Justice Wilkinson, despite a peremptory adjournment.
11. When considering all the circumstances, including the Applicant's right to appoint a receiver, it appears evident that the appointment of a receiver-manager is required to enable it to carry out its work and duties more efficiently. The Respondent was given the opportunity to remedy the situation, and cooperate, by Justice Wilkinson. Instead of helping, the Respondent continued with evasive behaviour and the continued diversion of sales in the face of the interim receivership order.
12. While I acknowledge that a receivership is an order of last resort, I see no other alternative in this scenario. There is no plan forward. There is no plan of a sale. There is no plan as to how the situation will improve, other than to incur more debt. The Respondent's assurances of cooperation going forward are not reassuring given the previous six weeks of false promises and the active diversion of sales.
13. Accordingly,
 - a. Leave granted to the Applicant to file the Receiver's First Report, dated April 29, 2026;
 - b. Leave granted to the Respondents to file their Responding Application Record and Factum dated April 29, 2026;
 - c. Order to go appointing the receiver, as signed.



Fowler Byrne J.