

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

9052526 CANADA INC.

Respondent

**PRELIMINARY REPORT OF THE PROPOSED RECEIVER, dated June 23, 2022
(re: Applicant's Motion returnable June 24, 2022 at 9:45am via "ZOOM")**

June 23, 2022

LOOPSTRA NIXON LLP
135 Queens Plate Drive – Suite 600
Toronto, ON M9W 6V7

R. Graham Phoenix (LSO No.: 52650N)
Tel: (416) 748-4776
Fax: (416) 746-8319
Email: gphoenix@loonix.com

Sarah White (LSO No.: 82985M)
Tel: (416) 748-6545
Fax: (416) 746-8319
Email: swhite@loonix.com

Lawyers for BDO Canada Limited

TO: THE ATTACHED SERVICE LIST

SERVICE LIST

TO: **BDO CANADA LIMITED**
25 Main Street West, Suite 805
Hamilton, ON L8P 1H1

Attention: Christopher Mazur
Tel: (905) 524-1008
Email: cmazur@bdo.ca

Receiver

AND

TO: **LOOPSTRA NIXON LLP**
135 Queens Plate Drive, Suite 600
Toronto, ON M9W 6V7

Attention: R. Graham Phoenix (LSO #52650N)
Sarah White (LSO #82985M)
Tel: 416-748-4776
Fax: 416-746-8319
Email: gphoenix@loonix.com
swhite@loonix.com

Lawyers for the Receiver

AND

TO: **NANDA & ASSOCIATES LAWYERS PROFESSIONAL CORPORATION**
2980 Drew Road, Unit 228
Mississauga, ON L4T 0A7

Attention: Kristine Holder (LSO #46900E)
Tel: 905-364-3240
Fax: 905-362-1732
Email: k.holder@nanda.ca

Lawyers for the Respondent

AND

TO: **SAD ALAM SHEIKH**
3098 Merritt Ave.
Mississauga, ON L4T 1P3

AND

TO: **ABU YOUSUF**
97 Patterson Ave.
Scarborough, ON M1L 3Y1

AND

TO: **TOYOTA INDUSTRIES COMMERCIAL FINANCE CANADA, INC.**
401 The West Mall # 630
Etobicoke, ON M9C 5J5

AND

TO: **TRAVELERS LEASING LTD.**
800-9900 King George Blvd.
Surrey, BC V3T 0K7

AND

TO: **ADD CAPITAL CORP.**
500 Cochrane Drive, Unit 2
Markham, ON L3R 8E2

AND

TO: **CANADA REVENUE AGENCY**
c/o Department of Justice
Ontario Regional Office
120 Adelaide St. W., Suite 400
Toronto, ON M5H 1T1

Attention: Rakhee Bhandari

Tel: (416) 952-8563

Email: rakhee.bhandari@justice.gc.ca

AND

TO: **HER MAJESTY THE QUEEN IN RIGHT
OF ONTARIO AS REPRESENTED BY
THE MINISTRY OF FINANCE**
Revenue Collections Branch – Insolvency Unit
33 King Street W., P.O. Box 627
Oshawa, ON L1H 8H5
Email: insolvency.unit@ontario.ca

Email Service List

cmazur@bdo.ca, gphoenix@loonix.com, swhite@loonix.com, k.holder@nanda.ca,
rakhee.bhandari@justice.gc.ca, insolvency.unit@ontario.ca

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

9052526 CANADA INC.

Respondent

**IN THE MATTER OF AN APPLICATION PURSUANT TO 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**

**PRELIMINARY REPORT TO COURT SUBMITTED BY
BDO CANADA LIMITED
IN ITS CAPACITY AS PROPOSED RECEIVER OF
9052526 CANADA INC.**

June 23, 2022

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1.0 INTRODUCTION AND PURPOSE OF REPORT

1.0 Corporate Overview

1.0.1 9052526 Canada Inc. (the “**Debtor**”) is a federal corporation with its registered office located at 6800 Rexwood Road, Mississauga, Ontario. The Debtor concurrently operates out of another location in Units 30, 40, and 42 at 760 Birchmount Road, Scarborough, Ontario (“**760 Birchmount**”). The Debtor operates primarily as a food wholesaler.

1.0.2 The Toronto-Dominion Bank (“**TD**”) is the Debtor’s primary secured creditor and brought an application for the appointment of a receiver over the assets, properties and undertakings of the Debtor. This application was initially heard on June 9, 2022.

1.0.3 On June 9, 2022, the Honourable Madame Justice Dietrich issued an endorsement (the “**June 9th Endorsement**”) adjourning the receivership hearing to June 24, 2022, for the purpose of allowing the Debtor sufficient time to arrange replacement financing to repay TD in full and to provide TD with confirmation that the Debtor’s accounts with Canada Revenue Agency (“**CRA**”) for HST and employee deductions are current. A copy of the June 9th Endorsement is attached hereto as **Appendix “A”**.

1.1 Purpose of this Report

1.1.1 BDO Canada Limited has consented to act as the receiver in these proceedings, should one be appointed, and has prepared this preliminary report to the Court (the “**Pre-Receivership Report**”) at the request of TD and in its capacity as the proposed receiver (the “**Proposed Receiver**”).

1.1.2 The purpose of this report is to, *inter alia*, provide the Court with details of the Proposed Receiver’s site visit to 760 Birchmount conducted on June 21, 2022 at approximately 2:30 P.M.

1.1.3 The Proposed Receiver is advised by counsel to TD that, as of the time of writing this report, communications with the Debtor have ceased and there has been no indication given that alternate financing has been arranged.

1.1.4 The Proposed Receiver is also advised by TD that the Debtor has not provided confirmation that the Debtor is current in its filings with CRA.

1.2 Pre-Receivership Activities

1.2.1 On June 21, 2022, the Proposed Receiver attended 760 Birchmount to confirm the status of the Debtor's business operations.

1.2.2 Upon attending 760 Birchmount it appeared the business had ceased business operations with one of the units undergoing renovations and was being advertised as available for lease. A picture of the construction in process is attached hereto as **Appendix "B"**. The other two units at 760 Birchmount have loading docks from which it appeared that inventory was being loaded into personal vehicles. Pictures of this activity are attached hereto as **Appendix "C"**.

1.2.3 The Proposed Receiver had previously attended 760 Birchmount on February 24, 2021 and July 21, 2021. On each of these prior visits the Proposed Receiver observed an operating entity with substantial quantities of inventory being stored in the offices, walk-in freezer and warehouse.

1.3 Scope and Terms of Reference

1.3.1 This Pre-Receivership Report has been prepared for the use of this Court, to assist the Court in making a determination of whether to approve the relief currently being sought in these proceedings. Accordingly, the reader is cautioned that the Pre-Receivership Report may not be appropriate for any other purpose. The Proposed Receiver will not

assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of the Pre-Receivership Report different than the provisions of this paragraph.

All of which is respectfully submitted this 23rd day of June, 2022.

**BDO CANADA LIMITED,
in its capacity as PROPOSED COURT-APPOINTED RECEIVER OF
9052526 CANADA INC.,
and without personal or corporate liability**

A handwritten signature in black ink, appearing to read 'Chris Mazur', written over a horizontal line.

Per: Chris Mazur, CIRP, LIT
Senior Vice President

TAB 1A

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

9052526 CANADA INC.

Respondent

ENDORSEMENT

June 9, 2022

The Respondent is seeking refinancing to pay its indebtedness to the Applicant in full.

The Applicant's motion is adjourned to **June 24, 2022, at 9:45 am.**

In the event that the Respondent fails to pay its indebtedness to the Applicant in full, and the Applicant is provided evidence that the Respondent is current on filings and remittances with respect to its accounts with Canada Revenue Agency for HST and employee deductions at source (the "**CRA Evidence**") on or before June 23, 2022, at 4:00pm EDT, then the Order attached at Schedule "A" hereto shall issue.

In the event that the Respondent pays its indebtedness to the Applicants in full and the Applicant is provided the CRA Evidence, then the within motion and application shall be withdrawn on a without cost basis and the Appointment Order of this Court dated June 20, 2021 shall be of no force and effect.



Madam Justice Dietrich, Ontario Superior Court of
Justice (Commercial List)

SCHEDULE "A"

Court File No. CV-21-00667820-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THURSDAY, THE 24TH DAY
JUSTICE DIETRICH) OF JUNE, 2022
)

B E T W E E N

THE TORONTO-DOMINION BANK

Applicant

-and-

9052526 CANADA INC.

Respondent

ORDER

THIS MOTION, made by the Applicant, was heard this day by Judicial teleconference via Zoom at 330 University Avenue, Toronto, Ontario, Ontario.

ON READING the Motion Record of the Applicant dated May 31, 2022, the Appointment Order of the Honourable Justice Cavanagh dated September 20, 2021 (the "**Appointment Order**") appointing BDO Canada Limited as Receiver over all Property (as defined in the Appointment Order) of the Respondent, the Ancillary Order of the Honourable Justice Cavanagh dated September 20, 2021, the Affidavit of Sanjay Kansal, sworn August 21, 2021, and the Exhibits thereto, the Affidavit of Sanjay Kansal, sworn September 17, 2021, and the Exhibits thereto, the Affidavit of Sanjay Kansal, sworn May 30, 2022, and the Exhibits thereto, the Factum of the Applicant dated June 7, 2022, and on hearing the submissions of counsel for the Applicant and all other parties in attendance, all properly served as it appears from the Affidavits of Service of Lindsay Ferguson dated May 31, 2022 and June 7, 2022, filed,

1. **THIS COURT ORDERS** that the Appointment Order in the herein Application be and is effective as against the Respondent, 9052526 Canada Inc., as at June 24, 2022.

Justice, Ontario Superior Court of Justice
Commercial List

THE TORONTO-DOMINION BANK

v.

9052526 CANADA INC.

Applicant

Respondent

Court File No. CV-21-00667820-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ORDER

HARRISON PENZA LLP

Barristers & Solicitors

130 Dufferin Avenue, Suite 1101

London, Ontario N6A 5R2

Timothy C. Hogan (LSO #36553S)

Robert Danter (LSO #698060)

Tel: (519) 679-9660

Fax: (519) 667-3362

Email: thogan@harrisonpensa.com

rdanter@harrisonpensa.com

Solicitors for the Applicant,
The Toronto-Dominion Bank

THE TORONTO-DOMINION BANK

v.

9052526 CANADA INC.

Applicant

Respondent

Court File No. CV-21-00667820-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ENDORSEMENT

HARRISON PENZA LLP

Barristers & Solicitors

130 Dufferin Avenue, Suite 1101

London, Ontario N6A 5R2

Timothy C. Hogan (LSO #36553S)

Robert Danter (LSO #698060)

Tel: (519) 679-9660

Fax: (519) 667-3362

Email: thogan@harrisonpenza.com

rdanter@harrisonpenza.com

Solicitors for the Applicant,
The Toronto-Dominion Bank

TAB 1B

Appendix B



TAB 1C

Appendix C



THE TORONTO-DOMINION BANK

v.

9052526 CANADA INC.

Applicant

Respondent

Court File No.: CV-21-00667820-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**PRELIMINARY REPORT OF THE PROPOSED
RECEIVER**

LOOPSTRA NIXON LLP

Barristers and Solicitors
135 Queens Plate Drive, Suite 600
Toronto, ON M9W 6V7

R. Graham Phoenix (LSO No.: 52650N)

gphoenix@loonix.com
Tel: 416.748.4776
Fax: 416.746.8319

Sarah White (LSO No.: 82985M)

swhite@loonix.com
Tel: 416.748.6545
Fax: 416.746.8319

Lawyers for BDO Canada Limited