

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

BANK OF MONTREAL

Applicant

- and -

17447124 CANADA INC., EGLINTON FUELS INC., and 17919310 CANADA INC.

Respondents

APPLICATION UNDER SECTION 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
(Appointment of Receiver)**

October 16, 2026

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OVERVIEW

1. Bank of Montreal (the “**Bank**”) brings this application for the appointment of BDO Canada Limited (“**BDO**”) as receiver and manager of the assets, undertaking, and property of 17447124 Canada Inc. (“**174 Canada**”), Eglinton Fuels Inc. (“**Eglinton Fuels**”), and 17919310 Canada Inc. (“**179 Canada**”, collectively, the “**Debtors**”).
2. The Debtors own and formerly operated an Ultramar gas station in Toronto, Ontario (the “**Gas Station**”).
3. Several events prompt this application, including serious, substantial, and ongoing defaults that have caused the Bank to lose confidence in the Debtors’ management and to fear that its collateral is at significant risk of diminution in value. Among other things, it appears that the Debtors and their principal were part of an approximately \$1.32 million cheque kiting scheme, and that the Debtors have abandoned their operating business.
4. As of September 16, 2026, 174 Canada owed the Bank \$5,624,393.47, plus accruing interest and costs, under the LOA (as defined below).
5. The Bank holds security over substantially all of the Debtors’ assets, including a mortgage over the real property from which the Debtors operated, for the amounts advanced under the LOA.
6. The Debtors are in default of their obligations to the Bank. The Bank demanded repayment in September 2026, and its security is now enforceable.

7. It is just or convenient to appoint BDO as receiver. A court-supervised receivership will facilitate the realization of the Debtors' assets in a stabilized environment. The availability of a vesting order will give prospective purchasers confidence that they may acquire the assets, including the real property and Gas Station, with clear title, and the receivership process will ensure that competing stakeholder claims are addressed in an orderly and transparent manner.

PART I - FACTS

A. Parties

8. The Bank is a Schedule I bank under the *Bank Act*, S.C. 1991, c. 46, as amended.¹

9. 174 Canada is a Canadian corporation that operated a gas station at the property municipally known as 2610 Eglinton Avenue East, Toronto, Ontario (the "**Real Property**").²

10. Eglinton Fuels is a Canadian corporation and is the registered owner of the Real Property.³

11. 179 Canada is a Canadian corporation.⁴

¹ Affidavit of Leo Chun, sworn October 15, 2026 ("**Chun Affidavit**") at para 11, Application Record of the Bank of Montreal, dated October , 2026 ("**AR**") at Tab 2.

² Chun Affidavit at paras 4 and 12, AR at Tab 2.

³ Chun Affidavit at para 13, AR at Tab 2.

⁴ Chun Affidavit at para 14, AR at Tab 2.

12. MacBeth Abraham Vargas ("**Vargas**") is the principal of the Debtors, and personally guaranteed the amounts owed to the Bank under the Credit Facilities (as defined below).⁵

13. The Bank made three credit facilities totalling \$4,687,000 available to 174 Canada principally to finance 174 Canada's acquisition of the shares of Eglinton Fuels (the "**Credit Facilities**"). At closing of the financing, 174 Canada did not own the Real Property. Eglinton Fuels was, and remains, its registered owner. Under the terms of the financing, 174 Canada and Eglinton Fuels were to amalgamate following closing; counsel for 174 Canada provided an undertaking to complete the amalgamation.⁶ The amalgamation steps required Eglinton Fuels to continue federally, becoming 179 Canada, which would then amalgamate with 174 Canada, with 174 Canada as the continuing entity.⁷

14. Debtors' counsel made a typographical error in the amalgamation documents. In particular, the Articles of Continuance continuing Eglinton Fuels as 179 Canada misstated its name as "Egling~~g~~ton Fuels Inc." (the "**Amalgamation Issue**"). The Debtors' counsel has filed a Request for Correction with Corporations Canada to resolve the Amalgamation Issue. As of the date of the October 15, 2026, the error has not been corrected.⁸

B. Credit Facilities

15. In early 2026, the Bank extended the Credit Facilities totalling \$4,687,000 to 174 Canada under a Letter of Agreement, dated December 18, 2025 (the "**Letter of**

⁵ Chun Affidavit at para 17, AR at Tab 2.

⁶ Chun Affidavit at paras 4, 15, 18-19, AR at Tab 2.

⁷ Chun Affidavit at paras 4 and 15, AR at Tab 2.

⁸ Chun Affidavit at para 16, AR at Tab 2.

Agreement”), consisting of a \$4,517,000 real estate acquisition loan, a \$40,000 BMO Corporate Mastercard, and a \$130,000 overdraft lending facility.⁹

16. The Letter of Agreement was amended by a Letter of Agreement-Amendment, dated January 8, 2026, to add as additional security for the Credit Facilities a general security agreement over all of Eglinton Fuels’ personal property, and a first-ranking charge over its machinery and equipment, accounts receivable, and inventory (together with the Letter of Agreement, the “**LOA**”).¹⁰

17. The Credit Facilities are repayable on demand.

18. As security for the obligations and indebtedness of 174 Canada under the Credit Facilities, the Bank holds the following security (collectively, the “**Security Documents**”):¹¹

- a. a general security agreement dated January, 2026 (the “**174 GSA**”) over all of the assets, undertakings, and properties of 174 Canada (the “**174 Property**”);
- b. a general security agreement dated January, 2026 (the “**Eglinton Fuels GSA**”) over all of the assets, undertakings, and properties of Eglinton Fuels (the “**Eglinton Property**” and, collectively with the Real Property and the 174 Property, the “**Property**”);

⁹ Chun Affidavit at para 19, AR at Tab 2.

¹⁰ Chun Affidavit at para 20, AR at Tab 2.

¹¹ Chun Affidavit at para 24, AR at Tab 2.

- c. a first-ranking \$4,687,000 charge over the Real Property registered February 25, 2026 (the “**Mortgage**”); and
- d. a General Assignment of Leases and Rents from Eglinton Fuels, dated February 25, 2026.

19. Under the Security Documents, the Bank has a security interest in all present and after-acquired personal property, assets, and undertakings of 174 Canada and Eglinton Fuels, and a first-ranking charge over the Real Property.¹²

20. Vargas guaranteed payment to the Bank of the Credit Facilities under a Guarantee for Indebtedness of an Incorporated Company, dated January, 2026.¹³

C. Creditors

21. Based on searches conducted under the *Personal Property Security Act* (Ontario) and a review of the parcel register for the Real Property, the only other secured creditor of the Debtors is Ijaz Ahmad, the vendor of the shares of Eglinton Fuels, who holds a registration on title to the Real Property.¹⁴

D. Cheque Kiting Scheme

22. The Bank maintains two bank accounts for 174 Canada, one bank account for Eglinton Fuels, and one bank account for 2362054 Ontario Inc. (“**236 Ontario**”)

¹² Chun Affidavit at paras 24-27, AR at Tab 2.

¹³ Chun Affidavit at para 23, AR at Tab 2.

¹⁴ Chun Affidavit at paras 28-29, AR at Tab 2.

(collectively, the “**Vargas Accounts**”). Vargas is the sole director and officer each Vargas Account holder.¹⁵

23. On September 2, 2026, the Bank learned that 174 Canada, Eglinton Fuels, 236 Ontario, and Vargas appeared to have engaged in a cheque kiting scheme the last weekend of August 2026. Between August 28 and September 1, 2026, approximately \$1.32 million in cheques were deposited into the Vargas Accounts. With one exception, the cheques were drawn on a Scotiabank account belonging to 2701163 Ontario Inc. (“**270 Ontario**”), another corporation of which Vargas is the sole director and officer.¹⁶

24. The cheques appear to have been signed by Vargas and were deposited into the Vargas Accounts. All of the cheques were subsequently returned for insufficient funds.¹⁷

25. Before the cheques had cleared or were returned for insufficient funds, the funds provisionally credited to the Vargas Accounts were rapidly transferred or spent, including through Mastercard payments, Interac e-Transfers, consumer purchases, and transfers between related corporate accounts.¹⁸

26. On September 28, 2026, the Bank commenced an action against, among others, the Debtors, Vargas, 270 Ontario, and 236 Ontario seeking to recover \$1,040,344.62 in damages arising from the apparent cheque kiting scheme (the “**Action**”).¹⁹

¹⁵ Chun Affidavit at paras 30-31, and Exhibit “A”, AR at Tabs 2, and 2A.

¹⁶ Chun Affidavit at paras 6 and 34-35, AR at Tab 2.

¹⁷ Chun Affidavit at paras 36-37 and Exhibit “R”, AR at Tab 2.

¹⁸ Chun Affidavit at para 38, AR at Tab 2.

¹⁹ Chun Affidavit at para 39, AR at Tab 2.

27. On October 2, 2026, in connection with the Action, Cavanagh, J granted an *ex parte Mareva* injunction over, among other things, the Debtors' assets, including the Vargas Accounts (the "**Mareva Order**"). Following the comeback hearing on October 13, 2026, Cavanagh, J continued the *Mareva* Order until trial in respect of the Debtors, among others.²⁰

28. On October 6, 2026, a process server retained by the Bank attended at the Real Property and observed that the store was closed and its lights were off, the shelves were not fully stocked, and notices had been placed on the gas pumps stating that the card readers were not working. A representative of the proposed receiver, BDO, also attended at the Real Property that day. The Gas Station is no longer operating and the Real Property appears to have been abandoned.²¹

E. Demand and Default

29. As noted above, the Credit Facilities are repayable on demand.

30. After discovering the cheque kiting scheme, on September 16, 2026, the Bank demanded from 174 Canada payment of the Credit Facilities in full and gave notice of its intention to enforce its security under section 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"). On the same date, the Bank also demanded payment from Vargas as guarantor. Neither 174 Canada nor Vargas has responded to the demands.²²

²⁰ Chun Affidavit at paras 40-42, AR at Tab 2.

²¹ Chun Affidavit at paras 8 and 43, AR at Tab 2.

²² Chun Affidavit at paras 44-46, AR at Tab 2.

31. Despite demand, the Credit Facilities have not been repaid. As a result, the Debtors are in default of the LOA and the Security Documents. The Debtors are also in default of the LOA and the Security Documents because of the apparent cheque kiting scheme and their ceasing to operate the Gas Station.²³

32. In these circumstances, the Bank has lost all confidence in the Debtors' management and believes that a receiver should be appointed at this time.²⁴

PART II – ISSUES PRESENTED

33. The issue on this application is whether BDO should be appointed receiver over the Debtors' property: The Applicant respectfully submits that BDO should be appointed.

PART III – LAW AND ARGUMENT

A. It is Just or Convenient to Appoint a Receiver Over the Debtors

34. On application by a secured creditor under section 243(1) of the BIA, a court may, if it considers it just or convenient to do so, appoint a receiver to take possession of the accounts, inventory, and other property of an insolvent person and exercise control over that person's property and business.²⁵

35. Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43 (the "**CJA**") provides that the Court may grant an interlocutory order appointing a receiver and manager where it appears to a judge to be "just or convenient" to do so.²⁶

²³ Chun Affidavit at paras 46 and 53, AR at Tab 2.

²⁴ Chun Affidavit at paras 47 and 55, AR at Tab 2.

²⁵ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 243; *Bank of Montreal v Carnival National Leasing Limited*, [2011 ONSC 1007 \(CanLII\)](#) at para 23.

²⁶ *Courts of Justice Act*, RSO 1990, c C-43, s 101.

36. In determining whether it is “just or convenient” to appoint a receiver, 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 relevant parties in relation thereto.”²⁷ Among other factors, a court should consider:²⁸

- a. the nature of the property;
- b. the rights and interests of the parties to the property;
- c. whether the lender’s security is at risk of deteriorating;
- d. whether there is a need to stabilize and preserve the business;
- e. whether there is a loss of confidence in the debtor’s management; and
- f. the positions and interests of other creditors.

37. While the appointment of a receiver is generally an extraordinary equitable remedy, courts do not regard the remedy as extraordinary where the relevant security document permits the appointment and, as a result, the applicant is merely seeking to enforce a term of an agreement already agreed to by both parties.²⁹

38. The appointment of a receiver is even less extraordinary when dealing with a default under a mortgage.³⁰

²⁷ *Bank of Nova Scotia v Freure Village on Clair Creek*, [1996 CanLII 8258 \(ON SC\)](#) at para [10](#).

²⁸ *Meridian v Okje Cho & Family Enterprise Ltd.*, [2021 ONSC 3755](#) at para [20](#); see also *Canadian Western Bank v 2563773 Ontario Inc.*, [2023 ONSC 4766](#) at para [9](#).

²⁹ *Elleway Acquisitions Ltd. v Cruise Professionals Ltd.*, [2013 ONSC 6866 \(CanLII\)](#) at para [27](#); *Bank of Montreal v Sherco Properties Inc.*, [2013 ONSC 7023 \(CanLII\)](#) at para [42](#).

³⁰ *Canadian Western Bank v 2563773 Ontario Inc.*, [2023 ONSC 4766](#) at para [8](#).

39. If the security held by the secured creditor seeking the appointment of a receiver by the court provides for the appointment of a receiver, the issue is essentially whether it is preferable to have a court-appointed receiver rather than a privately appointed receiver.³¹

40. To obtain the appointment of a receiver and manager, there is no requirement that the secured creditor demonstrate irreparable harm or that there is an actual and immediate danger of assets being dissipated.³²

41. The Bank submits that it is just and convenient for a receiver to be appointed here for the following reasons:

- a. *the Bank's security is at risk of deterioration*: the Debtors have abandoned the Gas Station;
- b. *the Debtors are in default*: 174 Canada and Eglinton Fuels are in default of the LOA and related Security Documents as a result of their failure to repay the Credit Facilities on demand, the cheque kiting scheme, and the abandonment of the Gas Station;
- c. *the Bank has a contractual right to the appointment of a private receiver*: the 174 GSA, the Eglinton Fuels GSA, and the Mortgage provide that, upon default by 174 Canada and Eglinton Fuels, the Bank may appoint a private receiver; and may also apply for the appointment of a receiver by the court;

³¹ See *Bank of Montreal v Carnival National Leasing Limited*, 2011 ONSC 1007 (CanLII) at para 36.

³² *Bank of Montreal v Carnival National Leasing Limited*, 2011 ONSC 1007 (CanLII) at paras 24 and 28.

- d. *there is a need to stabilize the Debtors' assets*: a court-supervised receivership will facilitate the realization of the Debtors' assets in a stabilized environment;
- e. *a Court-appointed receiver is likely to maximize asset value*: the availability of a vesting order will give prospective purchasers confidence that they will obtain clear title to purchased assets, including the Real Property, and avoid discounting of the purchase price;
- f. *the Bank has lost confidence in the Debtors' management* as a result of the apparent cheque kiting scheme and the abandonment of the Gas Station;
- g. *a receiver will protect the rights of the Bank and other creditors*: a court-supervised receivership will ensure the Debtors' assets are realized upon and administered in accordance with the rights of the Bank and other stakeholders; and
- h. *the proposed receiver is a licensed insolvency trustee*: BDO is a licensed insolvency trustee and has consented to act as receiver and manager if appointed.

42. Even if this Court were to conclude that, because of the Amalgamation Issue, the Bank has no contractual right to the appointment of a receiver over Eglinton Fuels or 179 Canada, it is nevertheless just or convenient to appoint a receiver under section 101 of the *CJA*. The Bank and the Debtors shared a clear and consistent commercial intention that the Bank would have the right to appoint a receiver over the Debtors. The LOA, the

Security Documents, and the amalgamation materials prepared and submitted by the Debtors' counsel all demonstrate that:

- a. the Credit Facilities were advanced to finance the acquisition of the shares of Eglinton Fuels and, through it, the Gas Station;
- b. 174 Canada and Eglinton Fuels intended that the Real Property would stand as security in favour of the Bank; and
- c. the parties contemplated that the interests, assets, liabilities, and obligations of the three Debtors would ultimately be consolidated through amalgamation into a single borrowing entity, 174 Canada.

43. The Debtors received and retained the benefit of the Credit Facilities on the understanding that the Property would secure the Bank's advances. The Bank respectfully submits that equity and commercial common sense support giving effect to that understanding, notwithstanding a clerical defect in the amalgamation documentation. The Bank advanced substantial funds in reliance on the security arrangement that all parties intended to create, and that arrangement should not be defeated by an inadvertent drafting error.

44. In these circumstances, the Bank submits that a court-appointed receiver is required to take control of the Debtors, prevent the further deterioration of the Debtors' assets, and preserve the value of those assets for all of the Debtors' stakeholders.

PART IV – ORDER REQUESTED

45. The Bank respectfully requests an order appointing BDO as receiver and manager on the terms of the model order approved for use on the Toronto Commercial List of the Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of October 2026.



MILLER THOMSON LLP
Patrick Corney/Erin Craddock
Lawyers for the Applicant

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Bank of Montreal v. Carnival National Leasing Limited*, [2011 ONSC 1007 \(CanLII\)](#).
2. *Bank of Nova Scotia v. Freure Village on Clair Creek*, [1996 CanLII 8258 \(ON SC\)](#).
3. *Elleway Acquisitions Ltd. v. The Cruise Professionals Ltd.*, [2013 ONSC 6866 \(CanLII\)](#).
4. *Bank of Montreal v. Sherco Properties Inc.*, [2013 ONSC 7023 \(CanLII\)](#).
5. *Canadian Western Bank v. 2563773 Ontario Inc.*, [2023 ONSC 4766 \(CanLII\)](#).
6. *Meridian v. Okje Cho & Family Enterprise Ltd.*, [2021 ONSC 3755 \(CanLII\)](#).

I certify that I am satisfied as to the authenticity of every authority.



October 16, 2026

Date

Erin Craddock

SCHEDULE “B” RELEVANT STATUTES

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 67(2) & (3), 86(1) & (3), 243(1)

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.

Courts of Justice Act, R.S.O. 1990, c. C-43, Section 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.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

BMO (BANK OF MONTREAL)
Applicant

-and-

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