Court File No. CV-26-0001912-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CAISSE DESJARDINS ONTARIO CREDIT UNION INC.

Applicant

and

3S INTERNATIONAL INC., YYZ LIGHTING INC. and
SAJEEB KOYA KUNJU

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

APPLICANT'S FACTUM
(Appointment of Receiver)

June 26, 2026

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(as at June 26, 2026)	
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SAJEEB KOYA KUNJU 3335 Hollywood Court Pickering, ON L1X 0A3 Email: sajeeb@3SLight.com Respondent	
PROPOSED RECEIVER	

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PART I - OVERVIEW

1. The Applicant, Caisse Desjardins Ontario Credit Union Inc. (the “**Caisse**”), seeks an order (the “**Appointment Order**”) appointing Albert Gelman Inc. (“**AGI**”) as receiver and manager (in such capacity, the “**Receiver**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “**CJA**”) without security, over all of the properties, assets and undertakings of 3S International Inc. (“**3S**” or the “**Borrower**” or the “**Debtor**”) acquired for, or used in relation to, the business carried on by the Debtor including all proceeds thereof (the “**Property**”).

2. The table below contains a summary of key information:

Applicant	Caisse Desjardins Ontario Credit Union Inc. (the “**Caisse**”)
Debtor	3S International Inc.
Security	General Security Agreements granting first-ranking security interests on all present and after-acquired personal property of 3S registered in Ontario, Guarantees, a guarantee from Export Development Canada and assignments of insurance. The personal property security in favour of the Caisse registered on August 26, 2024 against 3S as related to the applicable personal property of 3S in the provincial registry maintained under the *Personal Property Security Act (Ontario)*, R.S.O. 1990, c P.10 (the “**PPSA**”) under File No. 508547196 and Registration No. 20240826 1440 1590 5797
Outstanding Balance to the Caisse	$4,044,329.33 as of April 7, 2026
Events of Default	Failure to make prompt payment of the amounts due under the Loan Agreements

Demand and 244 BIA Notice	Demand Letter issued April 9, 2026 (through Gowlings) for total indebtedness owing as of April 7, 2026, plus interest and legal costs BIA s. 244 Notice of Intention to Enforce Security issued April 9, 2026 Payment deadline: April 20, 2026 Statutory notice period has expired without repayment
Proposed Receiver	Article 4.1(l)(i) to (v) of the GSA at Exhibit I of the Application Record provides for the appointment of a Receiver AGI is qualified to act under s. 243(4) of the BIA and has consented to act per Consent at Tab 2 Exhibit T of Application Record.
Jurisdiction generally	Jurisdiction for receivership application derives from s. 243(5) of the BIA and the definition of "locality of the debtor" in s. 2 of the BIA Rule 13.1.01(2) of the *Rules of Civil Procedure* (effective February 1, 2026) requires that proceedings be commenced in a court location with which there is a rational connection and the Superior Court of Justice at Oshawa has a rational connection as 3S's registered office is located in Pickering.
Basis for Oshawa Jurisdiction	The Debtor carries out business which is located in Pickering, Ontario and within the jurisdiction of the Superior Court of Justice at Oshawa. The locality of the Debtor is Oshawa, Ontario, as required under s. 243(5) of the BIA and the analysis of "locality of the debtor" under s. 2 of the BIA.

Reasons for Appointment	Debtor is unable to pay the Indebtedness. Debtor cannot fund ongoing loan payments, eroding the Caisse's security position through continued accrual of unpaid amounts. Ongoing Canada Revenue Agency arrears form a priority, diluting the Caisse's secured position. The Caisse has suffered and will continue to suffer substantial prejudice from the Debtor's failure to repay. Appointment is necessary to preserve the value of the Caisse's security position. Receiver will assess 3S and determine a recovery strategy for the benefit of all stakeholders. This is a standard commercial debtor-creditor relationship in which there is default, demand for payment, requisite notices have been served, notice periods have expired, and defaults remain uncured. The Caisse is not required to establish irreparable harm or urgency; evidence that a creditor's attempts to privately enforce its security will be delayed or otherwise fail can warrant receivership appointment. While the appointment of a receiver is normally "an extraordinary remedy", in a case such as this where the secured creditor is seeking the appointment of a receiver and its credit documents specifically afford it the right to appoint a receiver, the appointment of a receiver is not an "extraordinary remedy".

PART II – FACTS

I. THE PARTIES

3. The Caisse is a credit union established under the *Credit Unions and Caisses Populaires Act*, 1994, S.O. 1994, c. 11.[1]

4. 3S is a company incorporated pursuant to the laws of Ontario, with a registered office in Pickering, Ontario.[2]

5. YYZ Lighting Inc. ("**YYZ**") is a company incorporated pursuant to the laws of Ontario, with a registered office in Pickering, Ontario. YYZ provided a limited personal guarantee of certain credit facilities, described below (a "**Guarantor**"), issued by the Caisse to 3S.[3]

6. Sajeeb Koya Kunju ("**Kunju**") is an individual residing in Pickering, Ontario and is the director of 3S and YYZ. Kunju provided a limited personal guarantee of certain credit facilities, described below (a "**Guarantor**"), issued by the Caisse to 3S. [4]

7. YYZ and Kunju are named in the Application to facilitate co-operation with the Receiver, once appointed. [5]

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[1] Affidavit of Olivier Ludger Ménard affirmed June 25, 2026, Application Record, Tab 2 ("**Ménard Affidavit**"), para 3

[2] **Ménard Affidavit**, para 4; **Corporate Profile Report 3S,** Exhibit A

[3] **Ménard Affidavit**, para 5; **Corporate Profile Report YYZ**, Exhibit B

[4] **Ménard Affidavit**, para 6

[5] **Ménard Affidavit**, para 7

II. CREDIT FACILITIES

8. The Caisse (as lender), 3S (as borrower), and YYZ and Kunju (as guarantors) entered into two separate Variable Credit Agreements each on July 17, 2024 (the "**Loan Agreements**"). The Loan Agreements were renewed on October 10, 2025.[6]

9. Pursuant to the first Loan Agreement signed on July 17, 2024, the Caisse advanced variable credit in the total principal amount of $4,000,000.00. The amounts advanced would bear interest, calculated monthly at the Caisse's prime rate increased by 1.00% per annum. At the time that the Loan Agreement was signed, the Caisse's prime rate was 6.950%.[7]

10. Pursuant to the second Loan Agreement also signed on July 17, 2024, the Caisse advanced variable credit in the total principal amount of $1,000,000.00. The amounts advanced would bear interest, calculated monthly at the Caisse's prime rate increased by 1.00% per annum. At the time that the Loan Agreement was signed, the Caisse's prime rate was 6.950%. [8]

11. On August 23, 2024, 3S, YYZ, and Kunju signed an Acknowledgment re. Cross-Default in favour of the Caisse (the **"Acknowledgment"**). The Acknowledgment relates to the two Loan Agreements—a loan designated as the "One Million Loan" and a loan designated the "Four Million Loan." [9]

[6] **Ménard Affidavit**, para 8; **Loan Agreements and renewal agreement**, Exhibit C
[7] **Ménard Affidavit**, para 9
[8] **Ménard Affidavit**, para 10
[9] **Ménard Affidavit**, para 11; **Acknowledgmen**t, Exhibit D

12. To secure the Loan Agreements, 3S, YYZ, and Kunju provided the Caisse with substantially identical security packages (collectively, the **"One Million Security Documents"** and the **"Four Million Security Documents,"** respectively), including General Security Agreements granting first-ranking security interests on all present and after-acquired personal property of 3S registered in Ontario, the Guarantees, a guarantee from Export Development Canada, assignments of insurance, and related ancillary documents.[10]

13. The Acknowledgment was executed by Kunju as authorized signing officer of 3S, by Sabitha Sajeeb as president of YYZ, and by Kunju in his personal capacity. [11]

14. Pursuant to the Acknowledgment, the undersigned confirmed that:

(a) the One Million Security Documents shall stand as security for both the One Million Loan and the Four Million Loan, and reciprocally, that the Four Million Security Documents shall stand as security for both the Four Million Loan and the One Million Loan.

(b) any default under either the One Million Loan or the Four Million Loan, or under any security provided to the Lender thereunder — including but not limited to the One Million Security Documents and the Four Million Security

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[10] **Ménard Affidavit**, para 12; **Security Documents**; Exhibit E
[11] **Ménard Affidavit**, para 13

Documents — shall, at the sole discretion of the Caisse, constitute concurrent default under any or all of the loans.[12]

15. The Acknowledgment provides that the Caisse is entitled at all times to proceed against all or any portion of the security it holds, in such order and manner as it shall in its sole discretion deem fit, without waiving any of its rights with respect to the remaining security, and that the exercise of any such remedies shall in no way affect or diminish the Borrower's liability under the remaining security. The terms and obligations of the One Million Offer and the Four Million Offer otherwise continue in full force and effect. [13]

16. The personal property security in favour of the Caisse was registered on August 26, 2024, against 3S as related to the applicable personal property of 3S in the provincial registry maintained under the *Personal Property Security Act (Ontario)*, R.S.O. 1990, c P.10 (the "**PPSA**") under File No. 508547196 and Registration No. 20240826 1440 1590 5797.[14]

The Guarantees

17. YYZ signed a General Guarantee and Postponement of Claim in favour of the Caisse securing the amount of $5,000,000.00 together with all fees and interest in respect of all indebtedness, liabilities and obligations of 3S (the "**YYZ Guarantee**").[15]

18. Kunju signed a General Guarantee and Postponement of Claim in favour of the

[12] **Ménard Affidavit**, para 14
[13] **Ménard Affidavit**, para 15
[14] **Ménard Affidavit**, para 16; **PPSA search results**, Exhibit F
[15] **Ménard Affidavit,** para 17; **YYZ Guarantee**, Exhibit G

Caisse securing the amount of $1,250,000.00 together with all fees and interest in respect of all indebtedness, liabilities and obligations of 3S (the "**Kunju Guarantee**") (the YYZ Guarantee and the Kunju Guarantee are collectively referred to as the "**Guarantees**"). [16]

19. Pursuant to the terms of the Guarantees (in conjunction with the Loan Agreements), both YYZ and Kunju unconditionally guaranteed to the Caisse the immediate payment of the Indebtedness subject to the limits stipulated in each Guarantee plus applicable interest, costs and expenses as set out in each of the Guarantees (the "**Guaranteed Amount**") upon written demand for payment from the Caisse. [17]

20. 3S signed a General Security Agreement dated August 23, 2024.[18]

III. DEFAULTS, DEMANDS, AND NOTICE OF INTENTION TO ENFORCE

21. Numerous events of default under the Loan Agreements have occurred.[19] The Debtor's defaults are existing and continuing including but not limited to the defaults described below:

(a) 3S has failed to make prompt payment of the amounts due under the Loan Agreement and this is an event of default under paragraph 16(i) of the Loan Agreement because 3S "fails to respect any of the obligations provided for herein, under any offer to finance having resulted in this agreement, in any

[16] **Ménard Affidavit,** para 18; **Kunju Guarantee**, Exhibit H
[17] **Ménard Affidavit,** para 19;
[18] **Ménard Affidavit,** para 20; **General Security Agreement,** Exhibit I
[19] **Ménard Affidavit**, para 21

security agreement, in any other related document, and any other credit or security agreement signed with the Financial Institution".

(b) 3S's bank account is in overdraft of $12,667.57 as of April 7, 2026 and this default is ongoing;

(c) There are interest arrears of $44,329.33 due under the Loan Agreement as of April 7, 2026 and such interest arrears are ongoing;

(d) 3S has failed to provide the documents for the monthly borrowing base for February 2026 and March 2026;

(e) There are 32 NSF charges in 2026 as of April 1, 2026;

(f) 3S's landlord has declared default and terminated the commercial lease of the business premises and 3S has stopped operating its business;

(g) 3S is in arrears of its payroll obligations to the Canada Revenue Agency;

(h) 3S has failed to hold its main operating account at the Caisse and carry out all of its transactions through that account in accordance with paragraph 5 of the Loan Agreement.[20]

22. On April 9, 2026, Gowling WLG (Canada) LLP (**"Gowlings"**) acting on behalf of the Caisse issued the following to 3S, YYZ and Kunju as the Guarantors

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[20] **Ménard Affidavit**, para 22; **Landlords Notice;** Exhibit J

(a) a demand for payment (the "**Demand Letter**") of the total indebtedness owing as of April 7, 2026 plus interest and legal costs to the Caisse as set out in Schedule "B" to the Demand Letter by the deadline of April 20, 2026; and

(b) a Notice of Intention to Enforce Security on the property of 3S pursuant to section 244(1) of the BIA (the "**BIA 244 Notice**").[21]

IV. CORRESPONDENCE WITH 3S

23. On April 6, 2026, Kunju sent an email to the Caisse advising that the current geo-political issues and war scenario in the Middle East had affected 3S's cash flow and stated that he was left with no option but to close the facility and honour his personal guarantee. He further advised that he had listed his property for sale, with proceeds to go towards fulfilling the personal guarantee and that he had retained lawyer Tariq Shah ("**Mr. Shah**") at Shah & Shah Lawyers.[22]

24. On April 6, 2026, the Caisse emailed Kunju advising that the file had been transferred to the special loans department and requesting a virtual meeting to discuss, among other things, the current situation, the company's assets, and a potential forbearance agreement. On April 7, 2026, Kunju confirmed his availability and a Microsoft Teams meeting was scheduled for April 8, 2026, with both parties' counsel in

[21] **Ménard Affidavit**, para 23; **Demand Letter and BIA 244 Notice**, Exhibit K
[22] **Ménard Affidavit,** para 24; **April 6, 2026 Email from Kunju**, Exhibit L

attendance.[23]

25. On April 7, 2026, Export Development Canada ("**EDC**") contacted the Caisse regarding EDC Claim 260639 concerning 3S as the insured, with the buyer being Branch of Sinohydro Corporation Limited. EDC advised that it was reviewing a claim and, given that there was a direction to pay attached to 3S's policy, requested confirmation of whether claim payments and recoveries should be sent to 3S or to the Caisse.[24]

26. On April 14, 2026, Mr. Shah emailed Gowlings advising that 3S had laid off almost all of its employees due to financial difficulties, that Kunju was not in a position to provide all of the documents and information requested in the demand of April 9, 2026, but that he would make every effort to provide what he could by the end of the month. Mr. Shah also attached the landlord's notice of termination of the commercial lease referred to above.[25]

27. On April 16, 2026, Gowlings sent an Authorization and Direction to Kunju and Mr. Shah requesting that it be signed so that the Caisse could communicate with EDC regarding the insurance policy. On April 20, 2026, Kunju returned the signed Authorization and Direction. [26]

28. No further communication has taken place.

[23] **Ménard Affidavit,** para 25; **April 6-7, 2026 Email Chain**, Exhibit M
[24] **Ménard Affidavit,** para 26; **March 30 to April 7, 2026 Email Chain,** Exhibit N
[25] **Ménard Affidavit,** para 27; **April 14, 2026 Email**, Exhibit O
[26] **Ménard Affidavit,** para 28; **April 16-20, 2026 Email Chain**, Exhibit P

29. On May 29, 2026, Gowlings on behalf of the Caisse issued a Statement of Claim.[27]

V. NEED FOR A RECEIVER

30. As of April 7, 2026, the aggregate indebtedness of 3S due and owing to the Caisse was $4,044,329.33 in addition to ongoing accrual of interest as set out in the Loan Agreements excluding professional fees, disbursements and HST (the "**Indebtedness**"), which amount is accruing.[28]

31. As indicated above, certain events of default have occurred which are ongoing and outstanding.[29]

32. The Debtor is not able to pay the Indebtedness owing. The statutory notice period provided for under the Demand Letter and BIA 244 Notice has expired.[30]

33. The Caisse has lost confidence in the management of 3S for all of the reasons detailed in the affidavit.[31]

34. The ongoing accrual of the Indebtedness without meaningful repayment, combined with the cessation of 3S's business operations, is actively eroding the value of the Caisse's security position. Furthermore, 3S's arrears to the Canada Revenue Agency give rise to a risk of deemed trust claims under the *Income Tax Act* and the *Excise Tax Act* that could prime the Caisse's registered security interests, further diminishing the

[27] **Ménard Affidavit,** para 30; **Issued Statement of claim**, Exhibit Q
[28] **Ménard Affidavit,** para 31
[29] **Ménard Affidavit,** para 32
[30] **Ménard Affidavit**, para 33 and 34; **Demand Letter and BIA 244 Notice**, Exhibit K
[31] **Ménard Affidavit**, para 35

recoverable value of the collateral.[32]

35. The Caisse has suffered and is expected to continue to suffer substantial prejudice as a result of 3S's defaults. The appointment of the Receiver is necessary to preserve the value of the Property and the Caisse's collateral, and to take immediate steps to identify, secure, and realize upon the Debtor's assets for the benefit of all stakeholders.[33]

36. According to 3S's Inventory Report as of December 31, 2025, 3S held total inventory valued at $6,204,819.00 (CAD), comprised of $6,018,219.00 in finished goods and $186,600.00 in raw materials. Notably, approximately $4,210,577.00 (67.9%) of the total inventory is located outside of Canada, which raises significant concerns regarding the Caisse's ability to realize on this collateral and the practical challenges a Receiver may face in identifying, securing, and liquidating these assets across jurisdictions. Only $1,994,242.00 of the inventory is located in Canada. [34]

37. According to 3S's Accounts Receivable Aged Summary as at December 31, 2025, 3S had total accounts receivable outstanding of $9,726,555.00 (CAD), with a bad debts reserve of only $323,483.00, resulting in net accounts receivable of $9,403,072.00. Of particular concern, $3,712,021.00 (approximately 38.2% of total receivables) are aged over 90 days, suggesting a significant risk of collectability. A substantial portion of the receivables are owed by customers located in the United Arab Emirates and other

[32] **Ménard Affidavit**, para 36
[33] **Ménard Affidavit**, para 37
[34] **Ménard Affidavit**, para 38; **Inventory Report**; Exhibit R

international jurisdictions, which presents additional challenges for collection and enforcement. [35]

38. Upon appointment, the Receiver will assess the state of 3S and determine a strategy for recovery of the assets for the benefit of all stakeholders, including communicating directly with all affected parties.[36]

39. The Loan Agreements at Articles 16 and 14 state[37]:

> If the Borrower is in default, the Financial Institution may, subject to its other rights and remedies, demand full and immediate repayment of the amounts loaned, interest accrued and any other amount payable by the Borrower hereunder and by virtue of any credit contract signed with the Financial Institution. Failure by the Financial Institution to avail itself of any of these rights will not be interpreted as a waiver of such rights.

40. Article 4.1(l)(i) to (v) of the GSA provides for the appointment of a Receiver.[38]

> (l) appoint, by an instrument in writing delivered to the Borrower, a Receiver of the Collateral, and remove any Receiver so appointed and appoint another or others in its stead, or institute proceedings in any court of competent jurisdiction for the appointment of a Receiver, it being understood and agreed that:
>
> (i) the Financial Institution may appoint any person, firm or corporation as Receiver;
>
> (ii) such appointment may be made at any time either before or after the Financial Institution shall have taken possession of the Collateral;
>
> (iii) the Financial Institution may from time to time fix the reasonable remuneration of the Receiver and direct the payment thereof out of the Collateral or any proceeds derived from a sale or other disposition or dealing thereof or therewith; and
>
> (iv) the Receiver shall be deemed to be the agent of the Borrower for all purposes and, for greater certainty, the Financial Institution shall not be in any way responsible for any actions, whether willful, negligent or otherwise, of any Receiver or for any tax liabilities arising from the use, sale or other disposition of the Collateral by the Receiver (unless all rights of ownership in the Collateral have been transferred to and vested in the Financial Institution prior to the use, sale or other disposition thereof by the Receiver), and the Borrower hereby agrees to indemnify and save harmless the Financial Institution from and against any and all claims, demands, actions, costs, damages, expenses or payments which the Financial Institution may hereafter suffer, incur or be required to pay as a result of, in whole or in part, any action taken by the Receiver or any failure of the Receiver to do any act or thing; and
>
> (v) the Receiver so appointed shall have the power to take possession of the Collateral or any part thereof and to carry on the business of the Borrower, and to borrow money required for the maintenance, preservation or protection of the Collateral or any part thereof or the carrying on of the business of the Borrower, and to further charge the Collateral in priority to the security constituted by this Agreement as security for the money so borrowed, and to sell, lease, or otherwise dispose of the whole or any part of the Collateral on such terms and conditions and in such manner as the Receiver shall determine;

41. If this Honourable Court sees fit to make such an appointment, AGI has consented

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[35] **Ménard Affidavit**, para 39; **Accounts receivable**; Exhibit S
[36] **Ménard Affidavit**, para 40
[37] **Ménard Affidavit**, para 41; **Loan Agreements**, Exhibit C
[38] **Ménard Affidavit**, para 42; **GSA**, Exhibit I

to act as Receiver. AGI is a licensed insolvency trustee and has significant experience in mandates of this nature.[39]

PART III – ISSUES

42. Is it just and convenient to appoint AGI as Receiver over the Property?

PART IV - THE LAW AND ANALYSIS

A. Jurisdiction and Forum Shopping

43. Rule 13.1.01(2) of the *Rules of Civil Procedure* effective as of February 1, 2026 replaces the existing freedom that plaintiffs and applicants have to choose a court location (unless a statute or rule provides otherwise) with a new requirement for the plaintiff or applicant to commence their proceeding in a court location with which there is a rational connection, on the basis of factors set out in existing Rule 13.1.02(2)(b).

44. Recent case law addressing forum shopping demonstrates that courts in London, Hamilton, Toronto and Milton have been strictly enforcing the requirement that a proceeding must have some connection to the issuing court.

45. This case law in part originates from Justice Firestone's endorsement in *The Other End*[40] with the issue initially raised by Justice Leach in the same case.[41]

46. Decisions have been reported in Milton and London. In Milton, Justice Kurz

[39] **Ménard Affidavit**, para 43; **Consent to Act**, Exhibit T
[40] ***Toronto-Dominion Bank v The Other End Inc. et al.***, 2025 ONSC 85, ["***The Other End***"]
[41] ***Toronto-Dominion Bank v The Other End Inc*****.,** 2024 ONSC 5377

rendered two decisions: one in *Getz*[42] and one in *Gill*.[43] Justice Mills addressed the same issue in *Ang*.[44] In London, Justice Leach issued companion decisions in *Leasing Inc.*[45] and *Iknight Entertaiment*.[46] Justice Bordin has commented on the issue in *Old Green Inc*.[47] in Hamilton.

47. This case law applies to all creditor-led proceedings. However, receivership applications have their own analysis of jurisdiction. Justice Kershman's decision on a bankruptcy application in *Nuvoola*[48] contains a relevant analysis to receivership applications where jurisdiction is specified under section 243(5) of the BIA[49] and the same type of analysis as in a bankruptcy applications must be done as it relates to evaluating the "locality of the debtor".

48. The term "locality of the debtor" is defined in section 2 of the BIA[50].

49. Courts have consistently interpreted the "locality of the debtor" within its statutory meaning under section 2 of the BIA. In this section, the locality of the debtor means the principal place:

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42 ***BFT Mortgage Services Inc. v Getz***, 2025 ONSC 2908, ["***Getz***"]
43 ***RBC v Gill*****,** 2025 ONSC 3095, ["***Gill***"]
44 ***Business Development Bank of Canada v Ang***, 2025 ONSC 1752, ["***Ang***"]
45 ***Canadian Equipment Finance & Leasing Inc. v 8777691 Canada Inc. et al.***, 2025 ONSC 4514 ["***Leasing Inc***"]
46 ***BMW Group Financial Services Canada v Iknight Entertainment Inc. et al***., 2025 ONSC 4494 ["***Iknight Entertainment"***]
47 ***The Bank of Nova Scotia v Old Green Inc.***, 2025 ONSC 6191 ["***Old Green Inc.***"]
48 ***Re Nuvoola Inc.***, 2025 ONSC 1257 ["***Nuvoola***"]
49 BIA, Section 243(5)
50 BIA. Section 2

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated.

50. The locality of the debtor is established by providing factual evidence of one of the three criteria listed above.[51]

51. Evidence can include, but is not limited to, the debtor company's address, the location of the debtor company's internal accounting records, addresses listed on the debtor company's letterhead, and where the debtor signed security or loan documents.[52]

52. Bankruptcy courts have the flexibility to assess businesses which may span multiple jurisdictions.[53]

53. The BIA's national framework ensures that orders made in one province are enforceable across Canada.[54]

B. The Court's Authority to Appoint a Receiver

54. Courts can appoint a receiver over a debtor upon application by a secured creditor

[51] ***Sam Lévy & Associés Inc. v Azco Mining Inc.***, 2001 SCC 92 ["***Azco***"] at para. 76
[52] ***Nuvoola*** at para 26
[53] ***Azco*** at paras 27-28; ***Solid Holdings Ltd. v Grant Thornton Limited***, 2019 BCCA 231 at para 22
[54] *Azco* at para 25

pursuant to subsection 243(1) of the BIA[55] and/or subsection 101 of the CJA.[56] In the case of the BIA, the secured creditor must bring an application under section 243 of the BIA, and satisfy certain conditions, including:

(a) issuing a notice of intention to enforce security and allowing the 10 day statutory notice period to expire before obtaining an order to appoint a receiver pursuant to section 243(1.1) of the BIA;

(b) putting forward a qualified person to act as a receiver and providing evidence that the qualified person has consented to act in that capacity (s. 243(4) of the BIA); and

(c) satisfying the court that the locality of the debtor against whom the receivership order is being sought is Ontario (s. 243(5) of the BIA).

55. In the case of both the BIA and CJA, the court may grant an order appointing a receiver when it is "just and convenient" to do so.

C. The Technical Requirements to Appoint a Receiver Under the BIA Have Been Met

56. As of April 7, 2026, the aggregate indebtedness of the Debtor due and owing to the Caisse was $4,044,329.33 in addition to ongoing accrual of interest as set out in the Loan Agreement excluding professional fees, disbursements and HST.[57]

57. The Caisse has satisfied the technical requirements for the appointment of a receiver under the BIA. The Caisse is a secured creditor of the Debtor in respect of the Property and is therefore entitled to bring the Application under s. 243 of the BIA. As required under s. 243(1.1) of the BIA, the Caisse issued the BIA 244 Notice and the notice

[55] **BIA**, Section 243(1)
[56] **CJA,** Section 101(1)
[57] **Ménard Affidavit**, para 31

period has expired without repayment of the Indebtedness.[58]

58. AGI is qualified to act as Receiver in accordance with the requirements of s. 243(4) of the BIA and has consented to serving as Receiver in these proceedings.[59]

59. The Debtor is a company incorporated pursuant to the laws of Ontario, with a registered office in Pickering, Ontario.[60]

60. Section 243(5) of the BIA as it relates to "the judicial district of the locality of the debtor" as that phrase is defined in s. 2 of the BIA is Oshawa, Ontario in that 3S's registered office is within the territorial jurisdiction of this specific location of the Superior Court of Justice.[61]

D. Considerations in Respect of the Appointment of a Receiver & Application to the Facts

61. In *Freure Village*, Justice Blair (as he then was) stated that, in deciding if the appointment of a receiver is just or convenient, the Court must have regard to, *inter alia*, the nature of the property and the rights and interest of all parties in relation thereto, which includes a secured creditor under its security.[62]

62. Among other things, the following is a list of factors which Courts have historically considered in determining whether or not it is just or convenient to appoint a receiver:

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[58] **BIA**, Section 244; **Ménard Affidavit**, para 23; **BIA 244 Notice**, Exhibit K
[59] **BIA**, Section 243(4); **Ménard Affidavit**, para 43; **AGI's Consent to Act**, Exhibit T
[60] **Ménard Affidavit**, para 4, **Corporate Profile Report**, Exhibit A
[61] **Ménard Affidavit,** para 44
[62] ***Metropolitan Partners Group Administration, LLC v International Credit Experts Inc.***, 2024 ONSC 4601 at para 21 [*"**Metropolitan Partners**"*]; ***Bank of Nova Scotia v Freure Village on Clair Creek**,* 1996 CanLII 8258 (Commercial List), paras 12-13 ["***Freure Village***"]

(a) whether irreparable harm might be caused if no order is made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;

(b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;

(c) the nature of the property;

(d) the apprehended or actual waste of the debtor's assets;

(e) the preservation and protection of the property pending judicial resolution;

(f) the balance of convenience to the parties;

(g) the fact that the creditor has a right to appointment under the loan documentation;

(h) the enforcement of rights under a security instrument where the security security-holder encounters or expects to encounter difficulties with the debtor;

(i) the principle that the appointment of a receiver should be granted cautiously;

(j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;

(k) the effect of the order upon the parties;

(l) the length of time that a receiver may be in place;

(m) the cost to the parties;

(n) the likelihood of maximizing return to the parties; and

(o) the goal of facilitating the duties of the receiver.[63]

63. While the appointment of a receiver is normally "an extraordinary remedy", in a case such as this where the secured creditor is seeking the appointment of a receiver

[63] ***Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited***, 2022 ONSC 6186 at para 25; ***Maple Trade Finance Inc. v CY Oriental Holdings Ltd***., 2009 BCSC 1527 at para 25

and its credit documents specifically afford it the right to appoint a receiver, the appointment of a receiver is not an "extraordinary remedy". The rationale for this relaxed standard is that, in such circumstances, as Justice Morawetz (as he then was) remarked in *Elleway*: "the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties".[64]

64. Commercial certainty requires that parties should expect courts to hold them to their agreements. More recently, in *JBT Transport*, the Court held that this expectation particularly arises where a creditor has allowed the debtor the opportunity to explore other options.[65]

65. The Caisse is also not required to establish that it will suffer irreparable harm or that a situation is urgent. Instead, evidence suggesting that a creditor's attempts to privately enforce its security will be delayed or otherwise fail can warrant receivership appointment.[66]

66. The appointment of the Receiver will also allow any assets of the Debtor to be preserved and placed under the stewardship of a court-appointed officer while the parties' rights are being determined.[67]

67. In accordance with the test and factors outlined above, it is both just and

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[64] ***Elleway Acquisitions Limited v The Cruise Professionals Limited***, 2013 ONSC 6866 (Commercial List), para 27 ["***Elleway***"]; ***Metropolitan Partners***, at para 22

[65] ***Re JBT Transport Inc***, 2025 ONSC 1436 at para 53-54 ["***JBT Transport***"]; ***ATB Financial v Mayfield Investments Ltd.***, 2024 ABKB 635 at para 40 [**"*ATB Financial*"**]

[66] ***Business Development Bank of Canada v 170 Willowdale Investments Corp***., 2023 ONSC 3230 at para 53; ***Bank of Montreal v Carnival National Leasing Ltd.***, 2011 ONSC 1007 at paras 24, 28-29

[67] **Ménard Affidavit**, para 37

convenient to appoint AGI as Receiver because:

(a) The Caisse has lost confidence in 3S's management and it is apparent that the Debtor will not be able to repay the Indebtedness owing to it. Accordingly, the Caisse bears an economic interest in the Debtor's insolvency.[68]

(b) The Debtor has no ability to fund ongoing loan payments and the outstanding arrears to the Canada Revenue Agency are eroding the value of Caisse's security position due to the accrual of the Indebtedness without meaningful repayment of the Loan.[69]

(c) The Caisse has suffered and is expected to continue to suffer substantial prejudice as a result of the Debtor's failure to repay the Indebtedness.

(d) The appointment of the Receiver is necessary to preserve the value of the Property and the Caisse's collateral.[70]

68. Upon appointment, the Receiver will assess the state of 3S and determine a strategy for recovery of the assets for the benefit of all stakeholders, including communicating directly with all affected parties.[71]

PART V - RELIEF SOUGHT

69. The Caisse requests that the Court grant the Appointment Order substantially in the form included at Tab 3 of the Application Record.

70. A version that is tracked to the Commercial List Model Receivership Order is included at Tab 4 of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of June 2026.

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[68] **Ménard Affidavit**, para 35; ***Rose-Isli Corp. v Smith***, 2023 ONCA 548 at para 9
[69] **Ménard Affidavit**, para 36
[70] **Ménard Affidavit**, paras 37,38 and 39
[71] **Ménard Affidavit**, para 40

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SCHEDULE “A”

LIST OF AUTHORITIES

1. *Toronto-Dominion Bank v The Other End Inc. et al.,* 2025 ONSC 85
2. 2024 ONSC 5377
3. *BFT Mortgage Services Inc. v Getz*, 2025 ONSC 2908
4. *RBC v Gill*, 2025 ONSC 3095
5. *Business Development Bank of Canada v Ang*, 2025 ONSC 1752
6. *Canadian Equipment Finance & Leasing Inc. v 8777691 Canada Inc. et al.,* 2025 ONSC 4514
7. *BMW Group Financial Services Canada v Iknight Entertainment Inc. et al*., 2025 ONSC 4494
8. *Re Nuvoola Inc*., 2025 ONSC 1257
9. *The Bank of Nova Scotia v Old Green Inc. et al.,* 2025 ONSC 6191
10. *Sam Lévy & Associés Inc. v Azco Mining Inc. 2001 SCC 92* 2001 SCC 92
11. *Solid Holdings Ltd. v Grant Thornton Limited,* 2019 BCCA 231
12. *ATB Financial v Mayfield Investments Ltd.*, 2024 ABKB 635
13. *Bank of Montreal v Carnival National Leasing Ltd.*, 2011 ONSC 1007
14. *Bank of Nova Scotia v Freure Village on Clair Creek et al*, 1996 CanLII 8258 (Commercial List)
15. *Business Development Bank of Canada v 170 Willowdale Investments Corp*., 2023 ONSC 3230
16. *Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited*, 2022 ONSC 6186
17. *Elleway Acquisitions Ltd. v The Cruise Professionals Ltd*., 2013 ONSC 6866 (Commercial List)
18. *Metropolitan Partners Group Administration, LLC v International Credit Experts Inc.,* 2024 ONSC 4601 (Commercial List)
19. *Re JBT Transport Inc*, 2025 ONSC 1436

20. *Rose-Isli Corp. v Smith*, 2023 ONCA 548

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

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date June 26, 2026

Bart Sarsh

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

<u>Rules of Civil Procedure</u>

Place of Commencement

Statute or Rule Governing Place of Commencement, Trial or Hearing

13.1.01(1) If a statute or rule requires a proceeding to be commenced, brought, tried or heard in a particular county, the proceeding shall be commenced at a court office in that county and the county shall be named in the originating process.

If No Statute or Rule

(2) If subrule (1) does not apply, the proceeding shall be commenced at a court office in a county with which there is a rational connection, as determined on the basis of the factors listed in clause 13.1.02 (2) (b), and that county shall be named in the originating process.

Transfer

Motion to Transfer to Another County

13.1.02 (1) If subrule 13.1.01 (1) applies to a proceeding but a plaintiff or applicant commences it in another place, the court may, on its own initiative or on any party's motion, order that the proceeding be transferred to the county where it should have been commenced.

(2) If subrule (1) does not apply, the court may, on any party's motion, make an order to transfer the proceeding to a county other than the one where it was commenced, if the court is satisfied,

> (a) that it is likely that a fair hearing cannot be held in the county where the proceeding was commenced; or
>
> (b) that a transfer is desirable in the interest of justice, having regard to,
>
>> (i) where a substantial part of the events or omissions that gave rise to the claim occurred,
>>
>> (ii) where a substantial part of the damages were sustained,
>>
>> (iii) where the subject-matter of the proceeding is or was located,
>>
>> (iv) any local community's interest in the subject-matter of the proceeding,

(v) the convenience of the parties, the witnesses and the court,

(vi) whether there are counterclaims, crossclaims, or third or subsequent party claims,

(vii) any advantages or disadvantages of a particular place with respect to securing the just, most expeditious and least expensive determination of the proceeding on its merits,

(viii) whether judges and court facilities are available at the other county, and

(ix) any other relevant matter.

(3) If an order has previously been made under subrule (2), any party may make a further motion, and in that case subrule (2) applies with necessary modifications.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3

Interpretation

Definitions

2 In this Act,

locality of a debtor means the principal place

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated; (localité)

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

243 (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

243 (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)

243 (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

243 (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

243 (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

243(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

243 (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.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

(a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

***Courts of Justice Act* S.O. 1990, c. C.43**

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

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

Court File No. CV-26-0001912-0000

CAISSE DESJARDINS ONTARIO CREDIT UNION INC. - and - 3S International Inc., et al.

Applicant Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OSHAWA

APPLICANT'S FACTUM
(Appointment of Receiver)

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