

**ONTARIO SUPERIOR COURT OF JUSTICE (TORONTO REGION)
CIVIL ENDORSEMENT FORM**
(Rule 59.02(2)(c)(i))

BEFORE	Judge/Associate Judge Justice Stevenson	Court File Number: CV-24-00713711-0000
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Title of Proceeding:

..... **1000171168 ONTARIO INC.** Plaintiff(s)
 -v-
 **PORT SEVERN HEIGHTS INC.** Defendant(s)

Case Management: **Yes** If so, by whom: _____ **No**

Participants and Non-Participants: *(Rule 59.02(2)(vii))*

Party	Counsel	E-mail Address	Phone #	Participant (Y/N)
1) Plaintiff	Michael Crampton	mcrampton@cpllp.com		Y
2) Defendant	Robert B. Cohen	rcohen@cassels.com		Y
4) TDB Restructuring Limited - Receiver: Bryan Tannenbaum		btannenbaum@tdbadvisory.ca		Y
5) TDB Restructuring Limited - Receiver: Jeff Berger		jberger@tdbadvisory.ca		Y

Date Heard: *(Rule 59.02(2)(c)(iii))* October 10, 2024

Nature of Hearing (mark with an "X"): *(Rule 59.02(2)(c)(iv))*

Motion
 Appeal
 Case Conference
 Pre-Trial Conference
 Application

Format of Hearing (mark with an "X"): *(Rule 59.02(2)(c)(iv))*

In Writing
 Telephone
 Videoconference
 In Person

If in person, indicate courthouse address:

Relief Requested: *(Rule 59.02(2)(c)(v))*

This attendance was to settle the form and content of the appropriate Order as contemplated by my Sept 24, 2024 endorsement.

Disposition made at hearing or conference (operative terms ordered): *(Rule 59.02(2)(c)(vi))*
An Order will issue in the form approved by counsel as amended to provide that: (a) Cassels cannot act for the receiver; and (b) the borrowing limit shall be \$250,000

Costs: On a **n/a** indemnity basis, fixed at \$ _____ are payable
by _____ to _____ [when] _____

Brief Reasons, if any: *(Rule 59.02(2)(b))*

My endorsement of Sept 24, 2024 allowed the motion by the Defendant (Port Severn), as mortgagee, to appoint a receiver over the Property (vacant land in the village of Port Severn) and enjoining the plaintiff 1000 (the borrower) from interfering with its sale.

This attendance was to settle the form and content of the appropriate Order as contemplated by my endorsement.

The only two (2) issues outstanding are in paragraphs 17 and 26 of the draft Receivership Order, summarized below:

1. Paragraph 17 – the maximum amount that the receiver is entitled to borrow at this stage (without having to come back for further court approval).
The receiver is requesting \$250,000, and the Chargor is requesting a limit of \$50,000; and
2. Paragraph 26 – whether the receiver may retain Cassels (lawyers for the Chargee) where there is no conflict in the receiver so retaining Cassels. The receiver requests this language, and the Chargor is disputing that the receiver should have this right in the Order.

The Chargor/plaintiff says that the Chargee Port Severn is not just realizing on its security but will use this receivership to protect the value of its adjacent property.

I accept that the receiver may decide to pursue some aspects of developing the Property in the course of its receivership. I also accept this must be for the benefit of the Property, not the benefit of the adjacent property. The Chargee wants its lawyer to act for the Receiver where there is no conflict. If there is a conflict it says another lawyer will be retained. However, the existence of a conflict will not necessarily be obvious and i.l.a. may presumptively be required on every question. If Cassels acts it will unnecessarily leave a cloud of alleged conflict over every decision even where none exists. That just invites further litigation.

The Receiver should retain separate counsel who may consult with Cassels to the extent they consider it appropriate.

On the question of whether borrowing should be permitted in excess of \$50k I see no reason why that lower limit should be imposed now. As noted above the receiver may decide to take some development steps to preserve value pending sale. The receiver wants to ensure preservation on an interim basis. It is concerned about a potential loss of site plan approval. The receiver as an officer of the court will I am sure act prudently. If that requires expenditure above \$50k but below \$250k it will still have to be approved ex post facto. The proposed \$250k limit is approved.

Additional pages attached: Yes No

October 10

, 20 **24**

Date of Endorsement (*Rule 59.02(2)(c)(ii)*)

Signature of Judge/Associate Judge (*Rule 59.02(2)(c)(i)*)
