

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

KENSINGTON PRIVATE EQUITY FUND

Applicant

- and -

BOLD CANINE INC.

Respondent

**IN THE MATTER OF SECTIONS 47(1) AND 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)
Returnable July 6, 2026**

July 5, 2026

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TO: SERVICE LIST

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PART I - OVERVIEW

1. On June 25, 2026, pursuant to an application by Kensington Private Equity Fund (“**Kensington**”) under section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (“**CJA**”), the Honourable Justice Dunphy of the Ontario Superior Court of Justice (Commercial List) issued an order (the “**Interim Receivership Order**”), *inter alia* (i) appointing TDB Restructuring Limited (“**TDB**”) as interim receiver (in such capacity, the “**Interim Receiver**”), without security, over the

property, assets, and undertakings (the “**Property**”), excluding certain assets,¹ of the Respondent, Bold Canine Inc. (“**Bold Canine**”); (ii) appointing an interim chief restructuring officer; and (iii) authorizing the Interim Receiver to borrow from Kensington up to \$350,000 to fund the interim receivership proceedings and approving a corresponding charge over the Property and Excluded Assets in priority to all other security interests.

2. The Interim Receiver was appointed until the earliest of (the “**Interim Receivership Period**”): (A) the taking of possession by a receiver, within the meaning of subsection 243(2), of the Property over which the Interim Receiver was appointed; (B) the taking of possession by a trustee of the Property over which the Interim Receiver was appointed; and (C) the expiry of 30 days after the day on which the Interim Receiver was appointed or of any period specified by the court.

3. On June 23, 2026, when Kensington brought its application to seek the Interim Receivership Order it also sought a proposed full receivership order, returnable on a later date and on notice to all secured creditors. Kensington limited its initial request at the June 25, 2026, hearing to urgent interim relief, while expressly indicating that it would imminently seek further relief, including the appointment of a Receiver.

4. The Applicant, Kensington, now seeks an order (the “**Receivership Order**”), *inter alia*:

- (a) appointing TDB as receiver and manager (in such capacity the “**Receiver**”), without security, over the Property;
- (b) appointing Wholeframe Inc. as chief restructuring officer (in such capacity, the “**CRO**”);

¹ Due to the nature of the inventory and raw food products, the proposed orders does not require the Receiver to take possession and control of the inventory and fresh food (the “**Excluded Assets**”).

- (c) authorizing the payment of the Receiver and its counsel and approving a corresponding charge (the “**Receiver’s Charge**”) on the Property and Excluded Assets as security for such amounts;
- (d) authorizing the Receiver to borrow from the Applicant an amount not to exceed in aggregate \$1,100,000 to fund the exercise of the Receiver’s powers and approving a corresponding charge (the “**Receiver’s Borrowing Charge**”) over the Property and Excluded Assets; and
- (e) approving a sale and solicitation process (the “**SISP**”) and authorizing the Receiver to conduct the SISP.

5. Kensington relies on its application record dated June 23, 2026 (the “**Application Record**”), including the Affidavit of Thomas Kennedy sworn June 23, 2026 (the “**Kennedy Affidavit**”) contained at Tab 2 of the Application Record. Kensington also relies on the First Report of the Interim Receiver dated July 5, 2025 (the “**First Report**”). The facts underlying this application are more fully set out in the Kennedy Affidavit.

PART II – THE FACTS

A. BACKGROUND

6. Bold Canine is an Ontario corporation governed by the *Business Corporations Act* (Ontario). Bold Canine was founded by Caroline Bolduc and David Herz (collectively, the “**Founders**”).²

7. Bold Canine manufactures frozen raw food for dogs and cats under the brand “Bold by Nature.” Bold Canine receives raw ingredients, including various meats at its plant in Ontario (the “**Plant**”) and manufactures the food using these ingredients. Bold Canine uses specialized and

² Kennedy Affidavit, paras. [13-14](#).

sophisticated equipment for the manufacturing process. For example, Bold Canine uses a specialized machine to create its unique food patties, as well as a specialized liquid nitrogen machine for freezing and cooling the food products.³ All equipment is leased.⁴

8. At the time of the granting of the Interim Receivership Order, Bold Canine employed approximately 50 employees, including the Founders and a general manager. Bold Canine does not have a chief financial officer and the financial function is performed by the controller and the Founders.⁵

9. In 2020, Kensington, a private equity fund based in Toronto, invested approximately \$7.1 million in Bold Canine in exchange for preferred shares.⁶

10. On March 17, 2025, Bold Canine issued a secured promissory note (the “**Promissory Note**”) in favour of Kensington. Bold Canine has drawn on the Promissory Note from time to time and as of June 16, 2026, the total amount owing under the Promissory Note is \$4,827,000.⁷

11. Also on March 17, 2025, Bold Canine executed a general security agreement in favour of Kensington (the “**Kensington GSA**”). Pursuant to the Kensington GSA, Bold Canine granted Kensington security in all of its present and future assets, undertakings, and property. Kensington registered a financing statement against Bold Canine under the *Personal Property Security Act* (Ontario) to perfect its security interest in respect of Bold Canine’s assets.⁸

12. In addition to Kensington, Bold Canine owes various amounts to several other secured creditors:

³ Kennedy Affidavit, paras. [14-16](#).

⁴ Kennedy Affidavit, para. [15](#).

⁵ Kennedy Affidavit, para. [17](#).

⁶ Kennedy Affidavit, paras. [18-19](#).

⁷ Kennedy Affidavit, para. [20](#).

⁸ Kennedy Affidavit, paras. [21-22](#).

- (a) Bank of Montreal is owed approximately \$525,000, which amounts are secured pursuant to a general security agreement;⁹
- (b) Business Development Bank of Canada is owed approximately \$69,000, which amounts are secured pursuant to a general security agreement;¹⁰ and
- (c) various equipment financiers who have registered financing statements against certain Bold Canine equipment and/or motor vehicles.¹¹

13. Bold Canine also owes additional amounts to other creditors, including:

- (a) Canada Revenue Agency is owed approximately \$490,000 in respect of unremitted HST;¹²
- (b) Saugeen Economic Development Corporation is owed approximately \$300,000;¹³
- (c) the federal government is owed approximately \$1,375,000 in connection with an agreement whereby the federal government provided funding for the expansion of the Plant to assist Bold Canine with accessing market opportunities outside of Canada;¹⁴ and
- (d) various trade creditors, including freight carriers, meat vendors and waste service providers are owed approximately \$2,100,000.¹⁵

B. BOLD CANINE EXPERIENCES FINANCIAL CRISIS

14. Bold Canine had been unprofitable for several years due to, among other things, poor financial management, equipment breakdowns, and failed expansion initiatives. In an effort to

⁹ Kennedy Affidavit, paras. [27-30](#).

¹⁰ Kennedy Affidavit, paras. [32-35](#).

¹¹ Kennedy Affidavit, para. [38](#).

¹² Kennedy Affidavit, para. [39](#).

¹³ Kennedy Affidavit, paras. [41-42](#).

¹⁴ Kennedy Affidavit, para. [43](#).

¹⁵ Kennedy Affidavit, para. [44](#).

temporarily ease cash flow pressure, Bold Canine entered into the aforementioned Promissory Note in March 2025.¹⁶

15. At the start of 2026, Kensington worked with Bold Canine to informally solicit buyers interested in purchasing the Bold Canine business. Ultimately, these prospective buyers were dissuaded by Bold Canine's significantly overleveraged position and poor performance over an extended period of time, and no offers were submitted.¹⁷

16. Bold Canine failed to repay the amounts owing to Kensington under the Promissory Note by the maturity date of March 17, 2026,¹⁸ and was unable to meet its payroll obligations in May 2026.¹⁹ The Founders were forced to advance funds on an unsecured basis to cover payroll.²⁰ At this point, it became abundantly clear that the Founders were unable to run the business in a financially sound way and Domagoj Karadjole, principal at Wholeframe Inc. ("**Wholeframe**"), was engaged to work with Bold Canine and Kensington engaged with TDB to explore restructuring options.²¹

17. On June 12, 2026, the landlord of the Plant, 2847159 Ontario Limited (the "**Landlord**"), terminated the lease for the Plant because Bold Canine owed five months of unpaid rent. The Landlord also locked Bold Canine out of the Plant. As a result, Bold Canine was unable to continue manufacturing its products and the business was effectively paused.²²

18. To reopen the Plant on an expedited basis, Kensington entered into a lease reinstatement agreement with the Landlord and Bold Canine effective June 12, 2026 (the "**Lease Reinstatement Agreement**"), and was required to provide funding to Bold Canine under the

¹⁶ Kennedy Affidavit, paras. [46-49](#).

¹⁷ Kennedy Affidavit, para. [52](#).

¹⁸ Kennedy Affidavit, para. [24](#).

¹⁹ Kennedy Affidavit, para. [54](#).

²⁰ Kennedy Affidavit, para. [54](#).

²¹ Kennedy Affidavit, paras. [24](#), & [54-55](#).

²² Kennedy Affidavit, para. [56](#).

Promissory Note to pay the rent arrears and guarantee amounts owing to the Landlord for capital improvements at the Plant.²³

19. Despite Kensington's efforts, including entering into the Lease Reinstatement Agreement, only a few days later, Bold Canine advised that (i) it was in a severe liquidity crisis, (ii) would not be able to make critical payments for raw meat, sanitation, and supplies crucial to the business like liquid nitrogen, and (iii) would not be able to pay payroll.²⁴ Bold Canine decided to shut down the Plant and halt manufacturing shortly thereafter.²⁵

C. BOLD CANINE DEFAULTS UNDER PROMISSORY NOTE

20. Pursuant to section 10 of the Promissory Note it is an "Event of Default" if (i) Bold Canine defaults in the payment or performance of its obligations under the Promissory Note if not remedied within 10 days of written notice of such default, (ii) there has occurred a material adverse change in the financial or any other condition of Bold Canine which is likely to result in the impairment of Bold Canine's ability to pay or perform its obligations under the Promissory Note, or (iii) Bold Canine ceases to carry on business or commits an act of bankruptcy.²⁶

21. Bold Canine's closure of the Plant, inability to pay suppliers and employees, and dire financial condition, including the \$4,827,000 that remains owing under the Promissory Note are Events of Default.²⁷

22. On June 17, 2026, Kensington delivered a demand letter and notice of intention to enforce security under section 244 of the BIA (the "**BIA Notice**") to Bold Canine.²⁸

²³ Kennedy Affidavit, para. [57](#).

²⁴ Kennedy Affidavit, para. [59](#).

²⁵ Kennedy Affidavit, para. [61](#).

²⁶ Kennedy Affidavit, para. [25](#).

²⁷ Kennedy Affidavit, para. [62](#).

²⁸ Kennedy Affidavit, para. [63](#).

D. THE INTERIM RECEIVERSHIP

23. A 13-week cashflow forecast (the “**Cash Flow Forecast**”) was developed by Wholeframe in consultation with TDB, which indicates that Bold Canine required urgent funding of approximately \$350,000 by June 26, 2026, to fund payroll, critical suppliers and professional fees.²⁹

24. Kensington was only prepared to provide additional funding to Bold Canine as part of a restructuring process that included the appointment of the CRO and TDB as receiver.³⁰

25. On June 25, 2026, pursuant to an application by Kensington, the Court issued the Interim Receivership Order.

26. Since the Interim Receivership Order, the CRO and Interim Receiver have taken various steps to stabilize the operations and preserve value, as described in the First Report.³¹

PART III – ISSUES, LAW & ARGUMENT

27. The issues on this application are:

- (a) whether TDB should be appointed as Receiver over Bold Canine’s Property pursuant to section 243(1) of the BIA;
- (b) whether Wholeframe should be appointed as CRO;
- (c) whether the charges are appropriate in the circumstances; and
- (d) whether the Receiver should be authorized to conduct the SISP.

²⁹ Kennedy Affidavit, para. [66](#), [67](#) & [69](#); Kennedy Affidavit, [Exhibit “N”](#).

³⁰ Kennedy Affidavit, para. [68](#).

³¹ First Report, para. [15](#).

A. TDB SHOULD BE APPOINTED RECEIVER

(i) *The BIA Notice Period Has Expired*

28. Where a notice of intention to enforce security has been issued under section 244(1) of the BIA, section 243(1.1) of the BIA prohibits the court from appointing a receiver before the expiry of ten days following the date that the secured creditor sends the section 244(1) notice unless the insolvent person consents to an earlier enforcement or the court considers it appropriate to appoint a receiver before then. The BIA Notice was delivered to Bold Canine on June 17, 2026, and therefore, the 10-day notice period has now expired.³²

29. TDB is qualified and has consented to act as receiver³³ and Bold Canine has indicated that it will cooperate with and assist TDB if appointed receiver.³⁴

(ii) *Appointing TDB As Receiver Is Just and Convenient*

30. Section 101 of the CJA and subsection 243(1) of the BIA each permit the appointment of a receiver where it is “just or convenient to do so.”³⁵

31. In determining whether the appointment of a receiver is “just or convenient”, the Court must consider “all of the circumstances but in particular the nature of the property and the rights and interests of all relevant parties in relation thereto.”³⁶

³² Kennedy Affidavit, para. [63](#).

³³ First Report, paras. [41](#) & [44](#).

³⁴ Kennedy Affidavit, paras. [74](#) & [76](#).

³⁵ *Courts of Justice Act*, RSO 1990, c C-43, [s 101](#); *BIA*, [s 243\(1\)](#).

³⁶ *Bank of Nova Scotia v Freure Village on Clair Creek (1996)*, [40 CBR \(3d\) 274 \(Ont SCJ\)](#), para. [10](#) [*Freure Village*]. See also *C & K Mortgage et al. v 11282751 Canada Inc. et al.*, [2024 ONSC 1039](#), para. [16](#) [*C & K Mortgage*].

32. The discretionary factors historically considered in the determination of whether it is appropriate to appoint a receiver were cited by Justice Osborne in *C & K Mortgage* and include among others, the following factors:

- (a) if the creditor has the right to appoint a receiver under the loan documentation;
- (b) the nature of the property;
- (c) whether there would be irreparable harm if the receiver is not appointed;
- (d) the risk to the security holder;
- (e) the balance of convenience to the parties;
- (f) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously;
- (g) whether a court appointment is necessary to enable the receiver to efficiently carry out its duties; and
- (h) the conduct of the parties.³⁷

33. There is no “checklist but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient.”³⁸

34. Where the creditor’s security provides for the appointment of a receiver there is no requirement for the creditor to establish that it will suffer irreparable harm if the proposed receiver is not appointed.³⁹

³⁷ *C & K Mortgage*, para. 19, citing *Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited*, 2022 ONSC 6186. See also *KEB Hana Bank as Trustee et al v Mizrahi Commercial (The One) LP et al*, 2023 ONSC 5881, para. 38.

³⁸ *C & K Mortgage*, para. 20, citing *Pandion Mine Finance Fund LP v Otso Gold Corp.*, 2022 BCSC 136, para. 54; see also *Royal Bank of Canada v Ten 4 Systems Ltd., et al*, Court File No. CV-23-00705869-00CL (Ont Sup Ct J (Commercial List)) Endorsement dated October 18, 2023, paras. 10-11, leave to appeal refused 2023 ONCA 839.

³⁹ *Bank of Montreal v Carnival National Leasing Limited*, 2011 ONSC 1007, paras. 24 & 28, citing *Freure Village*, para. 10.

35. Considering the circumstances, it is just and convenient for this Court to appoint TDB as receiver over the Property for the following reasons, among others:

- (a) Bold Canine has defaulted under the Promissory Note;⁴⁰
- (b) pursuant to section 5.1 of the Kensington GSA, Kensington may institute proceedings to appoint a receiver upon the occurrence of an Event of Default which is continuing;⁴¹
- (c) Kensington is a secured creditor of Bold Canine that has made a demand for payment, put debtor on notice, and the 10-day statutory notice period has now expired;⁴²
- (d) oversight is required to protect the value of the Collateral (as defined in the Kensington GSA), which is perishable and can easily diminish in value;
- (e) Kensington has lost confidence in Bold Canine and its ability to perform its obligations under the Promissory Note, manage the business out of the financial crisis it is in while preserving value for stakeholders, and run an effective sale process for the business;⁴³
- (f) independent oversight is required to continue to stabilize the business, ensure that operations continue without significant disruption, and provide transparent reporting to Bold Canine's stakeholders;⁴⁴
- (g) while the Interim Receiver, in consultation with the CRO, has taken immediate steps to stabilize the business during the Interim Receivership Period, Bold Canine

⁴⁰ Kennedy Affidavit, para. [62](#).

⁴¹ Kennedy Affidavit, para. [26](#).

⁴² Kennedy Affidavit, para. [63](#).

⁴³ Kennedy Affidavit, para. [71](#).

⁴⁴ Kennedy Affidavit, para. [72](#).

requires, among other things, the powers of a court-appointed receiver to continue operating its business and conduct the SISP;⁴⁵ and

- (h) Bold Canine requires additional funding, and Kensington's provision of this additional funding is contingent on the implementation of an organized restructuring process, including the appointment of TDB and the CRO to oversee the business and assist with restructuring efforts including ultimately a sales process.⁴⁶

36. Due to the nature of the inventory and raw materials, TDB has not and does not intend on taking possession and control of the Excluded Assets. Instead, Bold Canine will remain in possession and control of the Excluded Assets to ensure that there is no disruption to the business and that Bold Canine's experienced employees will continue to handle the inventory and raw materials.⁴⁷ This Court has previously ordered that certain excluded assets remain in a debtor's possession when appointing a receiver.⁴⁸ This treatment of the Excluded Assets mirrors the relief granted in the Interim Receivership Order.

37. While the Interim Receiver has made meaningful progress in stabilizing the business, Bold Canine remains in a transition period.⁴⁹ The appointment of the Receiver will provide continued stability and allow the Receiver and CRO to continue to operate and stabilize the business⁵⁰ and undertake meaningful restructuring steps including running the SISP to realize on Bold Canine's assets in an efficient, transparent and orderly manner for the benefit of all stakeholders of Bold Canine.⁵¹

⁴⁵ First Report, para. 38.

⁴⁶ Kennedy Affidavit, para. [68](#).

⁴⁷ Kennedy Affidavit, para. [77](#).

⁴⁸ [Order of Justice Penny](#) dated March 23, 2022 (CV-22-00678813-00CL), para. [4](#).

⁴⁹ First Report, para. 20.

⁵⁰ First Report, para. 38.

⁵¹ Kennedy Affidavit, para. [75](#).

B. APPOINTMENT OF A CRO IS NECESSARY AND APPROPRIATE

38. Section 101 of the CJA permits the granting of an order including appointment of a receiver where it is just and convenient to do so and section 243(1) of the BIA allows for powers of the receiver including permitting the receiver to take conservatory measures.

39. In insolvency cases, Courts often appoint CROs to manage a debtor's business and affairs and consider (i) whether the appointment of a CRO would be beneficial to the restructuring, (ii) whether the engagement terms are reasonable, and (iii) the CRO's experience and qualifications, in determining whether to appoint a CRO.⁵²

40. The Court has also approved the appointment of a chief restructuring officer in a receivership proceeding following a prior CCAA proceeding.⁵³

41. In addition to its general experience and qualifications, the CRO is familiar with Bold Canine's operations, having worked with them in recent months and during the Interim Receivership Period, and is well positioned to continue to assist the Receiver to bring stability to Bold Canine's operations. The Interim Receiver is of the view that the Bold Canine requires the continuation of the CRO to manage the business and Excluded Assets.⁵⁴

42. The appointment of the CRO and Receiver is warranted in these unique circumstances and is therefore just and convenient.⁵⁵ Bold Canine does not have the financial expertise to manage its business, and Kensington has lost faith in its ability to manage its financial affairs.⁵⁶

⁵² [Order of Justice Morawetz](#) dated September 14, 2011 (CV-11-9375-00CL), para. [25](#); *Re Earth Boring Co. Ltd.*, [2025 ONSC 2422](#), para. [71](#).

⁵³ [Order of Justice Morawetz](#) dated September 14, 2011 (CV-11-9375-00CL), para. [25](#).

⁵⁴ First Report, para. 38(a).

⁵⁵ Kennedy Affidavit, paras. [77](#), & [79-83](#).

⁵⁶ Kennedy Affidavit, paras. [51](#) & [55](#).

In addition, since the Receiver will not take possession of the Excluded Assets the appointment of the CRO to manage and handle the Excluded Assets is critical.⁵⁷

C. THE CHARGES SOUGHT ARE APPROPRIATE IN THE CIRCUMSTANCES

43. Kensington seeks charges (i) authorizing the payment of the Receiver, its counsel, and approving a corresponding charge on the Property and Excluded Assets as security for such amounts (the “**Receiver’s Charge**”), and (ii) authorizing the Receiver to borrow from Kensington, not to exceed an aggregate amount of \$1,100,000, to fund the exercise of the Receiver’s powers, including conducting the SISP, and approving the increase to the corresponding charge (the “**Receiver’s Borrowing Charge**”) over the Property and Excluded Assets.⁵⁸

44. Pursuant to s. 243(6) of the BIA, this Court has jurisdiction to make any order respecting the payment of fees and disbursements of a receiver that it considers proper, including one that grants a charge securing such receiver’s fees and disbursements where the Court is satisfied that materially affected secured creditors have been given reasonable notice and opportunity to make representations.

45. The Receiver’s Charge will ensure that TDB and its counsel are able to recover any fees and disbursements owed to them and provide protection in the event Bold Canine is unable to pay professional fees and costs during the proceedings. The Receiver’s Charge is reasonable and appropriate in the circumstances given the Cash Flow Forecast, Bold Canine’s lack of liquidity, and the services to be provided by the professionals involved in these proceedings.⁵⁹

⁵⁷ Kennedy Affidavit, para. [77](#).

⁵⁸ Kennedy Affidavit, paras. [67](#) & [87](#).

⁵⁹ Kennedy Affidavit, paras. [85-89](#).

46. Pursuant to s. 31(1) and s. 243(1)(c) of the BIA, this Court also has authority to authorize borrowing by a receiver and to grant such receiver security in priority to other secured creditors as recognized in *Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al.*⁶⁰

47. The Court in *Timminco Limited (Re)*, 2012 ONSC 948, found that it is “unrealistic” for a commercial lender to advance funds in a restructuring proceeding without receiving priority for such amounts.⁶¹ The Court also considered that there was no other “viable alternative” proposed other than the priority interim funding.⁶²

48. The Receiver’s Borrowing Charge is reasonable and appropriate, and, by securing funding required by the Receiver, will continue to allow for crucial stability to the business, maintain the status quo, and ensure there is no significant disruption to the business.⁶³

49. Bold Canine owes approximately \$490,000 to the Canada Revenue Agency for unremitted source deductions and HST (the “**CRA Trust Claim**”).⁶⁴ The Receiver’s Charge and Receiver’s Borrowing Charge would both prime the CRA Trust Claim.

50. In *Syndic de Chronometric Inc.*, 2023 QCCA 1295, the Quebec Court of Appeal confirmed that BIA courts have authority to grant super-priority charges that rank ahead of the Crown’s deemed trusts under s. 227(4.1) of the *Income Tax Act*.⁶⁵ Granting the court-ordered super-priority charges in this instance that prime the CRA Trust Claim is both legally authorized and practically necessary to achieve the BIA’s remedial objective of facilitating a viable restructuring and allow the Receiver to conduct the SISF.

⁶⁰ *Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al.*, [2024 ONSC 3507](#), para. 44.

⁶¹ *Timminco Limited (Re)*, [2012 ONSC 948](#), paras. 46-49 [*Timminco*].

⁶² *Timminco*, para. 49.

⁶³ Kennedy Affidavit, paras. 85-89.

⁶⁴ First Report, para. 14(e).

⁶⁵ *Syndic de Chronometric Inc.*, [2023 QCCA 1295](#), paras. 46-53, application for leave to appeal to the Supreme Court of Canada dismissed [*Syndic*].

D. THE RECEIVER SHOULD BE AUTHORIZED TO CONDUCT THE SISP

51. Section 243(1) of the BIA permits the Court broad discretion as to the powers it grants receivers to exercise control over the property of a company in a receivership proceeding and in making orders generally.

52. The Ontario Court of Appeal has recognized that the purpose of a receivership is to enhance and facilitate the preservation and realization of receivership assets for the benefit of creditors, and that this purpose is generally achieved through a liquidation of the debtor's assets.⁶⁶ Sale and investment solicitation processes are routinely approved in receivership proceedings to facilitate such sales.⁶⁷

53. In *Royal Bank of Canada v Soundair Corp.*, 1991 CanLII 2727, the Ontario Court of Appeal held that when deciding whether to approve the sale of property subject to a receivership a court should consider the following: (i) has the receiver has made sufficient efforts to secure the best price for the property and not acted improvidently; (ii) the efficacy and the integrity of the proposed sale process; (iii) the fairness and transparency of the proposed sale process; and (iv) the interests of all parties.⁶⁸

54. The proposed SISP is summarized in the First Report and is anticipated to run for approximately four weeks and will provide for the canvassing of strategic and financial parties who may be interested in the business.

55. The proposed SISP is consistent with the *Soundair* principles. In particular, the proposed SISP:

⁶⁶ *Third Eye Capital Corp v Dianor Resources Inc*, [2019 ONCA 508](#), para. 73.

⁶⁷ *2056706 Ontario Inc v Pure Global Cannabis Inc*, [2021 ONSC 5533](#), para. 11.

⁶⁸ *Royal Bank of Canada v Soundair Corp.*, [1991 CanLII 2727](#), para. 16.

- (a) provides sufficient time to find the best available value of the assets
- (b) is a fair process to obtain bids that does not prefer the interests of any party;
- (c) is consistent with sale processes approved by this Court in other insolvency proceedings;⁶⁹ and
- (d) stipulates that the sale transaction is subject to the approval of this court.

56. For the reasons set out above, Kensington submits that the Court should approve the SISP in the form attached at Schedule “B” of the proposed Receivership Order.

PART IV – ORDER REQUESTED

57. Kensington respectfully requests that this Court grant the order appointing TDB as Receiver included at Tab 4 of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of July 2026.



CASSELS BROCK & BLACKWELL LLP

⁶⁹ [Order of Justice Osborne](#) dated August 21, 2026, (CV-25-00743485-00CL); [Order of Justice Cavanagh](#) dated January 6, 2022, (CV-21-00674530-00CL).

SCHEDULE "A"

LIST OF AUTHORITIES

1. *2056706 Ontario Inc v Pure Global Cannabis Inc*, [2021 ONSC 5533](#)
2. *Bank of Montreal v Carnival National Leasing Limited*, [2011 ONSC 1007](#)
3. *Bank of Nova Scotia v Freure Village on Clair Creek* (1996), 40 CBR (3d) 274 (Ont SCJ)
4. *C & K Mortgage et al. v 11282751 Canada Inc. et al.*, [2024 ONSC 1039](#)
5. *Cameron Stephens Mortgage Capital Ltd. v 2011836 Ontario Corp. et al.*, [2024 ONSC 3507](#)
6. *Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited*, [2022 ONSC 6186](#)
7. [Endorsement of Justice Osborne](#) dated May 16, 2025 (CV-25-00743234-00CL)
8. *KEB Hana Bank as Trustee et al v Mizrahi Commercial (The One) LP et al*, [2023 ONSC 5881](#)
9. [Order of Justice Morawetz](#) dated September 14, 2011 (CV-11-9375-00CL)
10. [Order of Justice Penny](#) dated March 23, 2022 (CV-22-00678813-00CL)
11. *Pandion Mine Finance Fund LP v Otso Gold Corp.*, [2022 BCSC 136](#)
12. *Re Earth Boring Co. Ltd.*, [2025 ONSC 2422](#)
13. *Royal Bank of Canada v Ten 4 Systems Ltd., et al*, [Court File No. CV-23-00705869-00CL](#) (Ont Sup Ct J (Commercial List)), leave to appeal refused [2023 ONCA 839](#)
14. *Royal Bank of Canada v Soundair Corp.*, [1991 CanLII 2727](#)
15. *Syndic de Chronometric Inc.*, [2023 QCCA 1295](#)
16. *Third Eye Capital Corp v Dianor Resources Inc*, [2019 ONCA 508](#)
17. *Timminco Limited (Re)*, [2012 ONSC 948](#)

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

Date July 5, 2026


Eva-Louise Hyderman

SCHEDULE "B"

TEXT OF RELEVANT STATUTES AND REGULATIONS

[Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3](#)

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) 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

(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.

Period of notice

244 (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.

[Courts of Justice Act, R.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.

KENSINGTON PRIVATE EQUITY FUND

- and - BOLD CANINE INC.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE APPLICANT
(Appointment of Receiver)
Returnable July 6, 2026**

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