

COURT FILE NO. 2503 11512

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COURT COURT OF KING'S BENCH  
OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF BUSINESS DEVELOPMENT BANK OF CANADA

DEFENDANTS 2358573 ALBERTA LTD., 2004736 ALBERTA LTD., 2004736 ALBERTA LTD.  
operating as CATCH OF THE WEEK, THOMAS YOK CHEUNG CHIU also known as  
THOMAS CHIU, ALLAN YOK LEN CHIU also known as ALLAN CHIU, MICHELLE  
HONG XIA TIAN also known as MICHELLE TIAN, and LUC GUY NOEL also known  
as LUC NOEL

DOCUMENT **BENCH BRIEF OF THE PLAINTIFF, BUSINESS DEVELOPMENT BANK OF  
CANADA**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
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DOCUMENT

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## PART 1 INTRODUCTION

1. This Brief of Law is submitted by Business Development Bank of Canada ("**BDC**") in support of an application (the "**Application**"), seeking an order (the "**Receivership Order**") appointing D. Manning & Associates Inc. ("**D. Manning**") as receiver and manager (when referred to in such capacity, the "**Receiver**") of 2358573 Alberta Ltd.'s (the "**Borrower**") current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"), section 49(2) of the *Law of Property Act*, RSA 2000 (the "**LPA**"), c. L-7, section 65(1) of the Alberta *Personal Property Security Act*, RSA 2000, c P-7 (the "**PPSA**"), and section 13(2) of the *Judicature Act*, R.S.A. 2000, c. J-2 (the "**Judicature Act**").
2. Any capitalized terms not defined herein shall have the same meaning given to them in the Affidavit of Hardeep Singh, sworn July 24, 2025, (the "**Singh Affidavit**").
3. The Borrower is in default under the Letters of Offer and the Security. BDC has lost faith in the Borrower's ability to repay the Loan which has now matured and seeks to preserve and protect its collateral. The appointment of a Receiver is just, convenient, necessary, and appropriate, in order to ensure the fair treatment of all stakeholders and to preserve and maximize the value of the Lands.
4. BDC files this Brief of Law to place before the Court the relevant legal authorities in support of its Application for the appointment of the Receiver.

## PART 2 FACTS

5. The facts are set out in comprehensive detail in the Singh Affidavit. The most pertinent facts to the argument herein are summarized as follows:
  - (a) The Borrower is the owner of a commercial building located in Edmonton.<sup>1</sup>
  - (b) BDC advanced \$4,500,000.00 to the Borrower. As continuing and collateral security for all of its obligations owing in respect of the Loan, the Borrower granted to BDC the Mortgage, the GSA, and the Assignment of Leases (collectively the "**Security**");<sup>2</sup>
  - (c) The Guarantors provided BDC Guarantees;<sup>3</sup>
  - (d) The Letters of Offer and Security entitle BDC to recover its enforcement costs against the Borrower on a solicitor and own client basis. Additionally, the terms of the Mortgage and GSA expressly provide that BDC is entitled to the appointment of a Receiver;<sup>4</sup>

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<sup>1</sup> Singh Affidavit, at para 20.

<sup>2</sup> Singh Affidavit, at paras 13, 17, 20 and 27.

<sup>3</sup> Singh Affidavit, at para 16.

<sup>4</sup> Singh Affidavit, at paras 18 and 20.

- (e) BDC issued a formal demand for payment and notice of its intention to enforce security pursuant to section 244 of the BIA to the Borrower on or about May 13, 2025;<sup>5</sup>
- (f) BDC commenced these proceedings by filing a Statement of Claim on June 10, 2025;<sup>6</sup>
- (g) On July 22, 2025, the Borrower filed a Statement of Defence;<sup>7</sup>
- (h) On July 22, 2025, Thomas, Allan and Michelle jointly filed a Statement of Defence;<sup>8</sup>
- (i) On July 22, 2025, Luc and 2004 jointly filed a Statement of Defence;<sup>9</sup>
- (j) The Borrower has failed to provide BDC with concrete evidence indicating that it is in the process of re-refinancing its indebtedness or that it has a pending sale of the Lands sufficient to repay BDC;
- (k) BDC has no confidence in the Borrower's ability or willingness to sell the Property or to obtain sufficient re-financing to retire the balance of the Loan;<sup>10</sup>
- (l) There is presently litigation as between the shareholders and directors, further eroding BDC's belief that the Borrower is able to carry on daily operations; and<sup>11</sup>
- (m) Exclusive of costs, the Loan's outstanding balance stood at \$4,236,722.02 as of July 18, 2025, plus ongoing interest.<sup>12</sup>

### **PART 3 ISSUES**

6. The issue to be determined on the within Application is whether it is just or convenient to appoint the Receiver over the Borrower.

### **PART 4 LAW**

#### **Subsection 243(1) of the BIA Provides Jurisdiction to Appoint the Receiver**

7. Section 243 of the BIA contemplates the appointment of a receiver by a secured creditor and states, in pertinent part:

Court may appoint receiver

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<sup>5</sup> Singh Affidavit, at para 29.

<sup>6</sup> Singh Affidavit, at para 32.

<sup>7</sup> Singh Affidavit, at para 33.

<sup>8</sup> Singh Affidavit, at para 34.

<sup>9</sup> Singh Affidavit, at para 35.

<sup>10</sup> Singh Affidavit, at paras 37-39.

<sup>11</sup> Singh Affidavit, at para 38.

<sup>12</sup> Singh Affidavit, at para 31.

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.<sup>13</sup>

**Subsection 13(2) of the *Judicature Act* Provides Jurisdiction to Appoint the Receiver**

8. Subsection 13(2) of the *Judicature Act* grants this Honourable Court the appointment of a receiver and states, in pertinent part:

Part performance

(2) An order in the nature of a mandamus or injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it appears to the Court **to be just or convenient that the order should be made**, and the order may be made either unconditionally or on any terms and conditions the Court thinks just.<sup>14</sup>

**Subsection 49(1) of the LPA Provides Jurisdiction to Appoint the Receiver**

9. Subsection 49(1) of the *Judicature Act* also contemplates the appointment of a receiver over mortgaged, non-farm real property:

**49(1)** Notwithstanding section 40, after the commencement of an action on

(a) a mortgage of land other than farm land, or

(b) an agreement for sale of land other than farm land,

to enforce or protect the security or rights under the mortgage or the agreement for sale the Court may do one or both of the following:

(c) appoint, with or without security, a receiver to collect rents or profits arising from the land;

(d) empower the receiver to exercise the powers of a receiver and manager.

**(2)** If

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<sup>13</sup> BIA, ss. 243(1) [emphasis added] [Book of Authorities ("BOA") **TAB 1**]

<sup>14</sup> *Judicature Act* at s. 13(2) [emphasis added] [BOA **TAB 2**]

(a) a mortgage of land or an agreement for sale referred to in subsection (1) is in default, and

(b) rents or profits are arising out of the land that is subject to that mortgage or agreement for sale,

the Court shall, on application by the mortgagee or vendor, appoint a receiver where the Court considers it just and equitable to do so.<sup>15</sup>

### **Subsections 65(1) and (7) of the PPSA Provides Jurisdiction to Appoint the Receiver**

10. Subsection 65(1) and (7) of the PPSA also contemplate the appointment of a receiver and states, in pertinent part:

65(1) A security agreement may provide for the appointment of a receiver and, except as provided in this or any other Act, the receiver's rights and duties.

...

(7) On the application of any interested person, the Court may

(a) appoint a receiver;<sup>16</sup>

## **PART 5 ARGUMENT**

### **The Statutory Prerequisites to the Appointment of the Receiver Have Been Met**

11. All statutory prerequisites for the appointment of the Receiver have been met. The Demand Letter and the 244 Notices were delivered to the Borrower on or about May 13, 2025. The requirement for a ten (10) day notice period, pursuant to subsection 243(1) of the BIA, is more than satisfied.
12. Additionally, a close reading of BIA section 243 shows that that section only applies to insolvent or bankrupt debtors. *Per* the definition of "insolvent person" in the BIA, an entity will be insolvent for the purposes of that statute if it satisfies any of three disjunctive criteria:

***insolvent person*** means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

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<sup>15</sup> LPA at s 49 [emphasis added] [BOA **Tab 3**]

<sup>16</sup> PPSA at s 65(1) and (7) [emphasis added] [BOA **Tab 4**]

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due<sup>17</sup>

13. It is inarguable that the Borrower is an insolvent person. The Borrower has remained in default of its obligations owing to BDC, and has provided BDC with no evidence speaking to its ability to repay that indebtedness.

**It Is Just and Convenient to Appoint the Receiver**

14. It is just and convenient or equitable for this Honourable Court to exercise its discretion to appoint the Receiver over the Property.
15. Subsection 243(1) of the BIA and subsection 13(2) of the *Judicature Act* each authorize this Honourable Court to appoint a receiver where it is "just or convenient" to do so. Section 49(2) of the LPA authorizes this Honourable Court to appoint a receiver where it is "just and equitable" to do so.
16. *In Paragon Capital Corporation Ltd. v Merchants & Traders Assurance Co.* ("**Paragon**"), the Honourable Justice B.E.C. Romaine set out a non-exhaustive list of factors that the Court ought to consider in determining whether it is just or convenient to appoint a receiver:

"[27] The factors a court may consider in determining whether it is appropriate to appoint a receiver include the following:

- a) whether irreparable harm might be caused if no order were 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 the 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 the right to appoint a receiver under the documentation provided for the loan;

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<sup>17</sup> BIA, at s 2, [BOA **TAB 1**]

- h) the enforcement of rights under a security instrument where the securityholder encounters or expects to encounter difficulty with the debtor and others;
- i) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously and sparingly;
- j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its' duties more efficiently;
- k) the effect of the order upon the parties;
- l) the conduct of the parties;
- m) the length of time that a receiver may be in place;
- n) the cost to the parties;
- o) the likelihood of maximizing return to the parties;
- p) the goal of facilitating the duties of the receiver.

Bennett, Frank, *Bennett on Receiverships*, 2nd edition, (1995), Thompson Canada Ltd., page 130 (cited from various cases)" 18 19 20 21

17. In assessing Paragon factors:

- (a) the "factors are not a checklist but are to be viewed holistically" to determine whether it is just or convenient to appoint the receiver;<sup>22</sup>
- (b) "[i]n cases where the security documentation provides for the appointment of a receiver," as in the present circumstances, "the extraordinary nature of the remedy sought is less essential to the inquiry;" and <sup>23</sup>
- (c) "the real inquiry is whether a court appointment is the "preferable" option – not the "essential" one."<sup>24</sup>

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<sup>18</sup> *Paragon Capital Corporation Ltd. v Merchants & Traders Assurance Co.*, 2002 ABQB 430 at paras. 27 – 28 [**Paragon**] [BOA **TAB 5**].

<sup>19</sup> The superior courts of other provinces have adopted the same test as in *Paragon*: *Textron Financial Canada Limited v Chetwynd Motels Ltd.*, 2010 BCSC 477 at paras. 50 – 52, 55. [BOA **TAB 6**]

<sup>20</sup> *Affinity Credit Union 2013 v Vortex Drilling Ltd.*, 2017 SKQB 228 at para. 19. [BOA **TAB 7**]

<sup>21</sup> *Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited*, 2022 ONSC 6186 at paras. 24 – 25. [BOA **TAB 8**]

<sup>22</sup> *Vancouver Coastal Health Authority v Seymour Health Centre Inc.*, 2023 BCSC 1158 at para. 53. [BOA **TAB 9**]

<sup>23</sup> *Paragon* at para. 28. [BOA **TAB 5**]

<sup>24</sup> *Pillar Capital Corp. v Harmon International Industries Inc.*, 2020 SKQB 19, at para 39. [BOA **TAB 10**]



18. That the Borrower has filed a Statement of Defence to BDC's Statement of Claim in these proceedings is no impediment to this Honourable Court appointing the Receiver. In *Paragon*, this Court granted an order appointing a receiver notwithstanding the fact that the borrower had filed a statement of defence to the applicant's statement of claim.<sup>25</sup>
19. It is just and convenient to appoint the Receiver as the Paragon factors strongly militate towards granting such relief. Specifically:
- (a) **Nature of Property and Maximizing Returns.** The Borrower's Property, being a commercial building occupied by multiple tenants pursuant to commercial lease agreements, will be difficult if not impossible to sell in conventional mortgage enforcement proceedings. Proceeding by mortgage enforcement would be further complicated by the existence of the Borrower's multiple leasing relationships. In the event that a tenant of the Borrower is in default or in the event that one of the commercial units of which the Lands are comprised is unoccupied, it may be advisable or necessary to re-let a portion of the Lands to a third-party tenant. Only the appointment of Receiver can ensure that the Borrower's leasing relationships are managed to fully realize all amounts owing to the Borrower by the Borrower's tenants and that the Lands are sold in a transparent and competitive sales process maximizing returns to the Borrower's Receivership estate;
  - (b) **Risk to the Property and the Lender.** The Borrower has not only defaulted on obligations owing to BDC, but also in respect of financial obligations owing in connection with the Lands, including failure to make monthly payment. The Borrower's inability to make payments indicates that it lacks the resources, ability, or intent to incur necessary expenditures relating to the Lands including, without limitation, maintenance costs and potentially insurance premiums. Leaving the Lands in the Borrower's hands thus presents an unacceptable risk to the BDC, the Borrower's tenants and other stakeholders, and the Borrower itself;
  - (c) **Balance of Convenience.** The Borrower's business appears to solely entail ownership and operation of the Lands as leasable commercial space. Appointing a Receiver will be minimally disruptive, if not beneficial, to such operations. More to the point, the appointment of a Receiver must be balanced against the available alternatives, which are effectively limited to more intrusive, less flexible, and potentially value-limiting enforcement action through foreclosure against the Lands and enforcement of the GSA and Mortgage;
  - (d) **Length of Proceedings.** There is no reasonably foreseeable reason for the Receiver to delay the commencement of a sales process following its appointment. Accordingly, this Court may reasonably expect that the Receivership proceedings will take no longer than the time required to commence and complete a sales process and thereafter distribute proceeds.
  - (e) **Necessity of a Court Appointment.** A private receivership is not sufficient in the circumstances. A Court-appointment is required to ensure an orderly and fair marketing process for the Lands. Finally, a court-approved vesting order will likely be necessary to convey the Lands to any third-party purchaser(s) and maximize value. The authority to be provided under the Receivership Order is necessary to enable the Receiver to carry out its duties efficiently, and likely, at all;

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<sup>25</sup> *Paragon*, at para 19. [BOA TAB 5]

- (f) **Effect of the Order Upon the Parties.** The Receiver is a neutral third party and best placed to maximize the value of the Lands. Appointing the Receiver will allow an experienced court officer to seek the highest and best offers available in the circumstances;
  - (g) **Cost to the Parties.** The costs of receivership proceedings are justifiable and proportionate given that the balance of the Loan stands at over \$4.2 million; and
  - (h) **Irreparable Harm and Extraordinary Relief.** This Court has held that “the extraordinary nature of the remedy sought is less essential to the inquiry” and that it need not determine that there exists a risk of irreparable harm when a debtor has expressly consented to the appointment of a receiver.<sup>26</sup> The GSA and the Mortgage specifically authorize BDC to seek appointment of a Receiver upon the Borrower’s default. There is no question that the Borrower has been in material default of its obligations owing to BDC.
20. In sum, the appointment of the Receiver is to the benefit of BDC and the Borrower’s other creditors, tenants, and stakeholders, as it will: (i) permit the Receiver to take possession and control of the Lands and preserve the same; (ii) allow the Receiver to conduct a court-supervised sales process with the benefit of authority to apply for vesting orders, sealing orders, and such other relief as may be necessary or desirable to obtain the highest and best offer(s) in respect of the Lands, along with the “breathing room” provided by a stay of proceedings to enable an orderly process; and (iii) ensure that the proceeds of the Lands, following realization, are distributed in accordance with legal rights and entitlements of the Borrower’s creditors.

## **PART 6 CONCLUSION**

21. BDC respectfully submits that it is just, convenient, and equitable to appoint the Receiver over the Borrower.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at the City of Edmonton, in the Province of Alberta, this 11<sup>th</sup> day of August, 2025.

**MCLENNAN ROSS LLP**



Per: \_\_\_\_\_

Ryan Trainer  
Counsel for the Plaintiff, Business Development  
Bank of Canada

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<sup>26</sup> *Paragon*, at para 28. [BOA **TAB 5**]

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