

Reference for the Conduct of a Sale as an Alternative to Sheriff's Sale for the Enforcement of a Money Judgment Against Real Property

Todd R. Christensen*

Overview: Attached as Appendix 1 is an article by the author on this topic published on February 21, 2016 in *The Lawyers Weekly*, “Better enforcement option for judgment creditors”.¹ This paper was prepared for “The Six-Minute Debtor-Creditor and Insolvency Lawyer 2016” Continuing Professional Development course to be held October 17, 2016 to support a presentation on the topic “How Do I Sell Land under a Writ of Seizure and Sale when the Sheriff Refuses to Do So? (Canaccede International case)”. Please start by reading the article at Appendix 1 (reproduced with permission). This paper will then provide some additional context to Justice Broad’s decision in *Canaccede International Acquisitions Ltd. v. Abdullah*,² lay out the *Canaccede* process supplying precedents for each step, and finally comment on Justice Gray’s reasons for decision in *Luu v. Abuomar*,³ the first reported case to consider *Canaccede*.

A. Additional Context

In 2008 I was again pondering the accepted practice in Ontario of enforcing money judgments against real property of filing a writ of seizure and sale against property and “sitting on it.” I had observed that an increasing number of judgment debtors were neither selling their properties nor refinancing with a new lender, thus avoiding paying out the executions against

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¹ (Feb. 2016) 35 Lawyers Wkly. No. 39, 14

² 2015 ONSC 5553, 2015 CarswellOnt 13623, 127 O.R. (3d) 779, 61 R.P.R. (5th) 327 (Ont. S.C.J.) [*Canaccede*]

³ 2016 ONSC 4299 (Ont. S.C.J.) [*Luu*]

them and obviating this file-a-writ-and-sit-on-it enforcement method. In querying why creditors rarely sought to enforce a judgment by directing the sheriff (colloquial term for the Superior Court enforcement office) to enforce a writ of seizure and sale against land, I noted two things. First, the sheriff requires a large deposit up front. For our local sheriff, the deposit required at the time was \$7,000 to fund hiring its own lawyer to direct the sale-at-auction process and to advertise the auction. Second, I confirmed that the sheriff has sole discretion as to whether to accept a bid and carry out the sale, meaning that even if a bid was sufficient to pay out execution creditors (the property is sold encumbered), the sheriff could decline to accept the bid if it felt that the yield for the debtor was insufficient. The sheriff could say, “That bid represents only 80 percent of the appraised value. I know this will pay out the execution creditors, but I don’t feel the debtor is treated fairly with a bid that low.” There is no appeal from the sheriff’s decision. As the deposit is in practice always depleted, the judgment creditor is out its \$7,000 and has no option but to pony up another \$7,000 and start again.

These factors prompted me to look for an alternative to the traditional sheriff’s auction that, in my view, was restricting access to justice for judgment creditors. I found it through a discussion with a litigator in British Columbia, George Richards of the firm Richards & Richards. He referred me to the 1998 decision of Justice Burnyeat in *Instafund Mortgage Management Corp. v. 379100 British Columbia Ltd.*⁴ and shared with me a set of precedents for the process as carried out in British Columbia. This was the catalyst that eventually led to Justice Broad’s decision in *Canaccede* that is the subject of the article at Appendix 1.

⁴ 1998 CarswellBC 2450, [1998] B.C.J. No. 2381, 84 A.C.W.S. (3d) 91 (B.C. S.C. [In Chambers] [*Instafund*])

B. Process and Precedents

The precedents appended to this paper (see the table below) and Justice Broad's decision establish the steps in the *Canaccede* process, which are:

1. Move from within a Superior Court proceeding or apply from a Small Claims Court proceeding on notice to the judgment debtors and all persons with an interest in the property including any mortgagees for an order directing a reference to determine issues relating to the conduct of a sale of real property to enforce a money judgment. Serve all who were served with the notice of motion or notice of application with the above order along with a notice of hearing for directions, which is the initial "show cause" hearing in the *Canaccede* process..
2. Attend the "show cause" hearing where (a) the judgment debtor and any other party may show cause why it would be unjust or inequitable to sell the judgment debtor's property or interest in it, and (b) the referee may identify the property or interest in the lands that is liable to be sold and the manner in which the proceeds of any sale should be distributed. If the judgment debtor(s) and any mortgagees do not attend or attend and do not provide mortgage discharge statements necessary to establish the quantum of mortgages registered against the property, the referee orders the mortgagee(s) to provide the discharge statement within 30 days, failing which the mortgagee(s) lose their priority to execution creditors. In that order, the referee sets a return date for the judgment creditor to present a draft interim report on reference to be settled on that date.
3. Attend the hearing for the settling of the interim report on reference. The interim report is settled on that date and confirmed automatically by effluxion of time or before a judge if a party objects to it. The interim report on reference declares whether it would be "just and equitable" to order a sale and if it is orders the sale, defines the interest or property to be sold; quantifies

encumbrances; and comprises orders authorizing the judgment creditor to list the interest or property for sale with a real estate broker, show the property to prospective buyers during specified hours, present offers to the referee for approval (any party may present offers for approval) and, upon approval, carry out the sale and pay the proceeds into court.

<u>Location</u>	<u>Description of Precedent</u>
Appendix 2	Materials for motion within a Superior Court proceeding for an order for a reference for the conduct of a sale of real property to enforce a Superior Court judgment (motion record, factum)
Appendix 3	Materials for application in Superior Court to for an order for a reference for the conduct of a sale of real property to enforce a Small Claims Court judgment (application record, factum)
Appendix 4	Order for a reference for motion procedure
Appendix 5	Order for a reference for application procedure
Appendix 6	Notice of initial hearing for motion procedure
Appendix 7	Notice of initial hearing for application procedure
Appendix 8	Order made by the referee at an initial hearing for motion procedure compelling production of mortgage discharge statements
Appendix 9	Order made by the referee at an initial hearing for application procedure compelling production of mortgage discharge statements
Appendix 10	Interim report on reference for motion procedure
Appendix 11	Interim report on reference for application procedure

C. Comments on Justice Gray’s Reasons for Decision in *Luu v. Abuomar*

In his reasons for decision in *Luu* released June 2016, Justice Gray gives the first reported treatment of Justice Broad’s decision in *Canaccede* by a judge of coordinate jurisdiction.

Interestingly, the editors at Westlaw cite that treatment as “followed”,⁵ though on the face of them Justice Gray’s comments appear critical of Justice Broad’s decision in *Canaccede*.

After his perhaps-critical comments, at paragraph 71 Justice Gray states, “In any event, what was on foot in *Canaccede* is not analogous to what is requested here,” qualifying his comments as *obiter dicta*. Being familiar with both the submissions Justice Broad considered in *Canaccede* and the issues raised by him in requesting further written submissions from applicant’s counsel before making his decision, I read Justice Gray’s comments as expressing perplexity on topics Justice Gray did not rely on in his decision in *Luu*, and thus he did not go beyond confessing having difficulty with Justice Broad’s analysis.

The comments that follow are my attempt, based on my familiarity with Justice Broad’s analysis and the facts in *Canaccede*, to address Justice Gray’s expressed concerns.

Difficulty with Justice Broad’s Analysis

At paragraph 62 of *Luu*, Justice Gray says “I confess to some difficulty with the analysis of Justice Broad in *Canaccede*. It seems to me that a sale of property can be effected only where a statute authorizes it, or a recognized principle of law or equity authorizes it.” He then says in paragraph 62, “With respect, I do not necessarily see how the principles surrounding equitable receivers can be translated into a power in the court to order a judicial sale of property simply because it seems convenient.”

It appears to me that Justice Gray is confusing Justice Broad’s authority cited for ordering a reference for the conduct of a sale – the inherent jurisdiction of the court – with the principles of equity Justice Broad suggested should guide the court’s discretion as to when that authority should be exercised.

⁵ *Canaccede International Acquisitions Ltd. v. Abdullah*, 2015 CarswellOnt 13623, “Citing References”

In paragraphs 9 through 17 in *Canaccede*, Justice Broad notes that the court's inherent jurisdiction "provides all of the powers that are necessary to do justice between the parties. Except where provided specifically to the contrary, the court's jurisdiction is unlimited and unrestricted in substantive law in civil matters" (paragraph 9, quoting from the Court of Appeal's decision in *80 Wellesley St. East Ltd. v. Fundy Bay Builders Ltd.*⁶). He concludes that since there is no statutory or common law bar to so doing, it is within the court's authority to order a reference for the conduct of a sale, as provided for in rr. 54.02(2)(b) and 55.06 of the *Rules of Civil Procedure*, to enforce a money judgment.

In paragraph 18, Justice Broad states that conclusion, then segues to considering equitable principles by saying, "Having found that the sheriff's sale process provided by the *Execution Act* is not the exclusive process for the enforcement of money judgments, I turn now to a consideration of the circumstances under which the court may or should follow an alternative process to a sheriff's sale, and whether the process proposed by the applicant in these proceedings is appropriate in the circumstances of the cases before the court."

I suggest that Justice Broad then considered the equitable principles governing the appointment of an equitable receiver in order to assist him, and subsequent judges, in determining "whether the process proposed by the applicant in these proceedings is appropriate in the circumstances of the cases before the court." This understanding of how Justice Broad is seeking to apply principles of equity is supported by considering that he sought and considered "written submissions addressing . . . what principles ought to guide the court in ordering a judicially-supervised sale of real property to enforce a money judgment" (para. 6). It is further supported by his statements that, "Although the applicant does not seek the appointment of a receiver by way of equitable execution over the subject properties, in my view, it is appropriate

⁶ [1972] 2 O.R. 280 (Ont. C.A.)

to employ the principles governing equitable execution in considering whether to follow an alternative process to a sheriff's sale for the enforcement of money judgments against land" (para. 21) and ". . . the utilization of the alternate process would be just and convenient by preserving the right of the judgment debtors, and other parties with interests in the properties, to show cause why it would be unjust or inequitable to require the sale of the properties" (para. 22).

I respectfully suggest that Justice Gray's perplexity at Justice Broad's analysis can be resolved by understanding the two steps Justice Broad took and not conflating them: Step one, the court has inherent jurisdiction to do justice between the parties, and as there is no statutory or common law bar to so doing, a justice of the superior court has authority to order a reference for the conduct of a sale to enforce a money judgment. Step two, to guide the court in deciding whether it should exercise that authority in adopting the proposed alternative process generally, Justice Broad considered equitable principles and concluded that the process is acceptable as it "preserv[es] the right of the judgment debtors, and other parties with interests in the properties, to show cause why it would be unjust or inequitable to require the sale of the properties" (para. 22) in each individual case.

Stare Decisis

In *McNaughton Automotive Ltd. v. Co-operators General Insurance Co.*,⁷ the Ontario Court of Appeal held that it is not appropriate to second-guess a judge by reviewing the submissions she considered or the record of the proceeding; that deference must be given to the judge's decision and statements of principle without second-guessing what happened in the proceeding. I have refrained from directly sharing my knowledge that comes from having been

⁷ 2005 CarswellOnt 2500, 23 C.C.L.I. (4th) 191, 199 O.A.C. 266, 19 M.V.R. (5th) 205, 255 D.L.R. (4th) 633, 15 C.P.C. (6th) 1, 76 O.R. (3d) 161 (Ont. C.A.) at para. 113

counsel for the applicant in *Canaccede* and have based my comments solely on Justice Broad's reasons for decision. The principles of *stare decisis* and judicial comity require that whatever difficulty a judge may have with the analysis of another judge in a precedential decision, unless that decision was made without considering relevant binding authority at the time or has since been overtaken by "significant developments in the law or evidence that fundamentally shifts the parameters of the debate",⁸ that precedential decision ought to be followed.

Justice Gray moved his comments into *obiter* by distinguishing the situation in *Luu* from that in *Canaccede* and thus arguably, as the editors at Westlaw concluded, followed *Canaccede*. Had he not done so, I suggest his expressed difficulty with the analysis in *Canaccede* would not change his obligation to follow it.

How *Canaccede* Could Have Applied in *Luu*

Justice Gray is correct "that an execution creditor does not have the right to apply under the *Partition Act* for a sale of land, where the land is owned jointly by the execution debtor and another person: see *Ferrier v. Civiero* (2001), 147 O.A.C. 196 (Ont. C.A.)"⁹ (*Ferrier*). Given that the applicant in *Luu* "request[ed] an order requiring a judicial sale of the property" relying on *Canaccede* (para. 61), the applicant was indeed *prima facie* seeking a remedy beyond the authority provided by Justice Broad's decision in *Canaccede* and contrary to the Court of Appeal's decision in *Ferrier*.

However, had the applicant sought a different remedy than "an order requiring a judicial sale of the property", it would be incorrect to presume that *Canaccede* would not have applied. In *Canaccede*, the remedy sought and granted was not "an order requiring a judicial sale of the

⁸ *Holmes v. Jarrett* (1993), 68 O.R. (3d) 667 (Ont. Gen. Div.) at 675-677; *R. v. Kehler*, 2009 MBPC 29, 2009 CarswellMan 315 (MB Prov. Ct.) at paras. 42-45; *Bedford v. Canada (Attorney General)*, 2013 SCC 72, 2013 CarswellOnt 17681, 2013 CarswellOnt 17682, [2013] 3 S.C.R. 1101 at paras 37-47

⁹ *Luu*, *supra* note 3 at para. 72

property”. In paragraphs 7 and 8 of *Canaccede*, Justice Broad lays out the relief sought and the two-step process for obtaining it:

7 The sale process which the applicant proposes involves two steps. The applicant seeks firstly an order on each application pursuant to rule 54.02(2)(b) of the *Rules of Civil Procedure* directing a reference to inquire into and determine all issues relating to the conduct of the sale of the property of each respondent, as described in the respective application record in each file, as a prerequisite to seeking an order for sale. The applicant proposes that the reference hearing perform the following functions:

- *determine what property or interest in the lands is liable to be sold under the judgment;*
- determine who has interests in the lands;
- define those interests and determine their priority;
- determine how the proceeds of a sale should be distributed; and
- allow an opportunity for the respondent or any interested party in each case to show cause why it would be unjust or inequitable to require the sale of the respondent’s property or interest in the lands.

8 Once the initial reference hearing has been completed, if the referee has determined that the respondents have interests in the lands that may be sold to satisfy the judgment debt against them, the applicant will return to the court with the referee’s report and move for an order for sale by private contract pursuant to rule 55.06(1) [emphasis added].

The applicant in *Luu* would have fallen four-square within *Canaccede* if she had asked for the remedy requested and granted in *Canaccede*. In my view, she may also have qualified to use the better-than-a-sheriff’s-sale alternative process from *Canaccede* if she had asked Justice Gray for an order requiring a judicial sale of Mohamed’s *interest* in the property. Justice Gray could have performed Justice Broad’s required case-specific equitable-principles test of whether it would be just and equitable to sell Mohamed’s interest in the property and gone directly to step two in the *Canaccede* process and granted “an order for sale by private contract pursuant to rule 55.06(1)” of Mohamed’s interest.

The Ontario Court of Appeal has held that a judgment creditor may purchase a judgment debtor's interest in land and thus gain standing to apply for an order of partition and sale under the *Partition Act*.¹⁰ Consequently, if the applicant in *Luu* had obtained a step-two *Canaccede* order from Justice Gray, she would then have been in a position to either, (a) purchase Mohamed's interest and then apply for a partition and sale order, or (b) sell the interest to another party, whichever was more advantageous.

Canaccede Process More Expeditious

As my final comment, I feel obliged to respectfully question Justice Gray's suggestion in *Luu* that "A judicial sale is actually a rather cumbersome and expensive process, probably more so than a sale under the *Execution Act*" (para. 68).

The point is currently moot as a sheriff's sale under the *Execution Act* is effectively unavailable as discussed in the article at Appendix 1—the Royal Bank of Canada has gone to the Supreme Court of Canada to challenge the emasculating of sheriff's sales by the Ontario Court of Appeal's interpretation of federal privacy legislation. Even if the sheriff's sale process were more expeditious and less expensive than a judicial sale, the *Canaccede* judicially-supervised sale process is the only one currently effectively available.

However, two sources indicate that the *Canaccede* process is more expeditious, less expensive and gives better yields than a sheriff's sale. The first is British Columbia's experience as suggested by Justice Burnyeat in *Instafund* and relied on by Justice Broad in *Canaccede* (at para. 28). At paragraph 7 in *Instafund* Justice Burnyeat states:

The practical reasons for making an order in that form is that it allows a listing with a real estate agent and a realistic and active marketing of the property instead of the

¹⁰ R.S.O. 1990, c. P.4; *Luu*, *supra* note 3 at para. 74; *Warzecha v. Phillips*, 1998 CarswellOnt 3365 (Gen. Div.), *aff'd* 2000 CarswellOnt 251, 128 O.A.C. 398 (Ont. C.A.)

ineffective marketing of the property which results from an auction by the sheriff. As well, the additional cost of a second auction which is created if the offers received are not in accordance with the sheriff's view as to what the property is worth can be avoided.

The second source is the *Appellant's Factum* in the Royal Bank of Canada's (RBC's) appeal of the Ontario Court of Appeal's decision in *Royal Bank of Canada v. Trang*.¹¹ In paragraph 9,¹² the appellant RBC sets out the six onerous and expensive steps required to obtain a mortgage discharge statement in the sheriff's sale process as currently interpreted by the Ontario Court of Appeal where judgment debtors refuse to meet their obligations under the rules of court and court orders. In contrast, under the *Canaccede* process, an order compelling the mortgagee to provide the discharge statement is obtained in two steps.¹³ Furthermore, as RBC points out in paragraph 10 of its *Appellant's Factum*, the six onerous steps in the sheriff's sale process are before the sheriff even begins its sale process. The two steps in obtaining the discharge statement under the *Canaccede* process are also the first two steps in a judicially-supervised sale process comprised of as little as four steps to reach the point where the sale can be completed and the proceeds paid into court.¹⁴

¹¹ 2014 ONCA 883, 2014 CarswellOnt 17254, [2014] O.J. No. 5873, 123 O.R. (3d) 401 [*Trang*], appeal heard April 27, 2016 with judgment reserved

¹² *Appellant's Factum*, attached as Appendix 12 at para. 9 [*Appellant's Factum*]

¹³ *Motion for Leave to Intervene Canaccede International Acquisitions Ltd.*, attached as Appendix 13 at p. 3, para. 8 [*Intervention Motion*]

¹⁴ *Intervention Motion*, *supra* note 14 at p. 8 paras. 4-10

Appendix 1

Focus REAL PROPERTY

Better enforcement option for judgment creditors

Court paves the way for the alternative process of judicially supervised sales



Todd Christensen

In September 2015, Justice D.A. Broad of the Ontario Superior Court of Justice released his decision in *Canaccede International Acquisitions Ltd. v. Abdullah* [2015] ONSC 5553, creating what he called “an evolution and improvement in the common law” by approving an alternative enforcement avenue against real property to replace the ineffective sheriff’s sale process that was rendered inoperable by the Ontario Court of Appeal’s decisions in *Citi Cards Canada Inc. v. Pleasance* [2011] ONCA 3, and *Royal Bank of Canada v. Trang* [2014] ONCA 883.

In those decisions, the Ontario Court of Appeal held that federal privacy legislation (PIPEDA) prevented a mortgagee from providing a mortgage discharge statement to the enforcement office, colloquially known as “the sheriff,” without a court order requiring it. The Royal Bank of Canada (RBC) has appealed the *Trang* decision to the Supreme Court of Canada. That appeal is scheduled to be heard on April 27.

As the Privacy Commissioner points out in his factum in that appeal, RBC “twice ignor[ed] express instructions from the Court of Appeal concerning how to obtain an order for production of a Statement.”

Reviewing RBC’s appellant’s factum suggests it did so because



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[The] decision improves access to justice for all judgment creditors by providing a long-needed, more effective alternative to sheriff’s sales ...

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the Court of Appeal’s interpretation of PIPEDA and recommended procedure creates a heavy procedural burden of up to six separate steps, “all of which take place after the creditor has already won its judgment—before the sheriff could even begin the process of seizing and selling the debtor’s real property.” (Emphasis in the original.)

While RBC chose to challenge the Ontario Court of Appeal’s interpretation of PIPEDA and procedural instructions with respect to sheriff’s sales, *Canaccede International Acquisitions Ltd.* (Canaccede) found and persuaded the Ontario Superior Court to adopt an alternative process to sheriff’s sales. This process provides a procedurally

efficient method for obtaining the required court order. It also corrects flaws that made sheriff’s sales ineffective even before PIPEDA came along.

In *Canaccede*, Justice Broad approved the use of the long-standing, judicially supervised sale process traditionally used in family, power-of-sale and property-specific proceedings to enforce money judgments against real property. The judgment creditor obtains an order for a reference for the conduct of a sale from a judge and then a judicial officer presides over a reference that carries out the sale in a two-step process. The first step is a show-cause hearing where interests in the property are determined and any party can show cause why it would be inequitable or unjust for the property to be sold. It is at this stage that the court orders production of the mortgage discharge statement. If the court officer determines the sale should proceed, the second step is for the sale to be carried out by private contract under court supervision. As Justice Broad indicates in his reasons in *Canaccede*, the solution is one that has been in use in British Columbia since 1998 and is more efficient and effective than sheriff’s sales:

“The applicant points to the British Columbia case of *Instafund Mortgage Management Corp. v. 379100 British Columbia Ltd.*, [1998] Carswell BC 2450 as providing support for the utilization of the process which it proposes. In that case, Burnyeat, J. noted the finding of the British Columbia Court of Appeal in *First Western Capital Ltd. v. Wardle* [1984], 59 B.C.L.R. 309 (B.C.C.A.) that the British Col-

umbia *Court Order Enforcement Act*, which only provided for enforcement of judgment debts against the interest of judgment debtors in land by way of sheriff’s auction, was not a complete code and that the court retained jurisdiction over the conduct of the sale. Justice Burnyeat ordered in *Instafund* that the sale of the judgment debtor’s property proceed under the supervision of the court rather than by sheriff’s auction, for the practical reasons that the process would allow a listing with a real estate agent in the realistic and active marketing of the property instead of the ineffective marketing of the property which results from an auction by the sheriff, and that the additional cost of a second auction which is created if the offers received are not in accordance with the sheriff’s view as to what the property is worth can be avoided.”

Justice Broad’s decision improves access to justice for all judgment creditors by providing a long-needed, more effective alternative to sheriff’s sales that also resolves the initially negative impact of PIPEDA as interpreted by the Court of Appeal.

Unless the Supreme Court obviates it in how it determines the *Trang* appeal, there’s a new sheriff’s sale in town in Ontario: an order for a reference for the conduct of a sale.

Todd Christensen is the principal of Christensen Law Firm, Cambridge, Ont. with a practice restricted to unsecured debt collection. He represented Canaccede both before Justice Broad and at the SCC in a motion for leave to intervene in the Trang appeal.

Flexibility: The fact that AAs are self financing is seen as a big plus

Continued from page 13

operation and management and may appoint up to 49 per cent of the board members, the real decision making authority for the AA lies exclusively with its board of directors. In this sense, they function similarly to Public Private Partnerships, though with a greater degree of government oversight.

One of the key benefits of utilizing AAs, from the government’s perspective, is that they are self-financed by fees collected from the businesses or professions which they regulate and are intended to operate on a cost-recovery basis. In an age of defi-

cits in our society, this makes them a particularly attractive regulatory system for governments. It is expected that the Condo Authority will be primarily financed from a monthly fee per condo unit (hoped to be in the range of \$1) collected by the corporation as part of its annual operating expenses. There will also be a user fee for those who wish to pursue disputes before the tribunal and access the condo registry data. The CMLA will be financed by licensing fees.

In addition to reducing expenditures, AAs have demonstrated that they can deliver services more efficiently, utiliz-

ing the industry-specific expertise of its board members. This board is more likely to be able to make appropriate risk-based assessments, unlike a government office where management decisions are made at a greater distance.

Though the first AAs were created in Ontario in 1976 (the Board of Funeral Services and Tarion Warranty Corporation), their use was limited until the passage of the *Safety and Consumer Statutes Administration Act* in 1996 allowing the Lieutenant Governor in Council to delegate its powers and duties to authorities in order to admin-

ister certain statutes. Since that time, a number of new AAs have been created, including the Electrical Safety Authority (ESA), the Technical Standards and Safety Authority (TSSA), TICO (tourism) and recently, the Ontario Film Authority. This growth in the use of the AA model reflects a broader government trend toward their use as specialized regulatory bodies for specific industries.

Given the financial benefits and governance flexibility that AAs provide, the government has signalled greater use of AAs is to be expected in the future. The two AAs being created in

response to the passage of Bill 106 reflect a newer approach to governing that is intended to be both cheaper and more efficient. Given the rapid change in the Ontario condominium industry over the past two decades and the continuing evolution of Ontario’s housing industry, the use of AAs to oversee this sector, and the flexibility this is intended to provide, is a welcome development.

Armand Conant is a partner and the head of the Condominium Law Group and Joel Berkovitz is an associate in the Condominium Law Group at Shibley Righton LLP.

Appendix 2

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CAPITAL ONE BANK (CANADA BRANCH)

Plaintiff

-and-

CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

Defendant

NOTICE OF MOTION

The plaintiff will make a motion to the judge on May 9, 2013, at 10:00 AM, or as soon after that time as the motion can be heard, at 20 Weber Street East, Kitchener, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An order directing a reference to inquire into and determine all issues relating to the conduct of the sale of the defendant's property known municipally as 12861 Westbrook Avenue, Fort Erie, Ontario, L0S 1S0, legal description: LT 12 PL 343 WILLOUGHBY ; FORT ERIE ("the lands") as a prerequisite to seeking an order for sale, including:

- a. the nature and the particulars of the interest of the defendant in the lands and of the defendant's title thereto;
- b. the judgments and writs of execution and that bind the lands as well as the other secured and unsecured interests that form a lien or charge against the lands and the priorities between them;
- c. the property or interest in the lands that is liable to be sold under the judgment;

- d. any reason why it would be unjust or inequitable to require the sale of the defendant's property or interest in the lands; and
 - e. the manner in which the proceeds of a sale of the lands should be distributed.
2. An order that the parties may apply to this court of further direction from time to time.
 3. An order directing the referee to report the findings at the reference to the Court.
 4. An order fixing the costs of this motion, including the reference, payable by the defendant forthwith.
 5. An order granting such further relief as this Honourable Court deems just or that counsel may advise.

THE GROUNDS FOR THE MOTION ARE:

1. The plaintiff obtained judgment against the defendant in the amount of \$28,666.13 on or about April 20, 2011 and the judgment remains unpaid. The defendant owns real property set out in paragraph 1 of this notice of motion. The plaintiff had a writ of seizure and sale issued under this judgment on May 11, 2011 and filed on May 25, 2011.
2. An order for the payment or recovery of money may be enforced by a method provided by law that is not codified in rule 60 of the *Rules of Civil Procedure*.
Rule 60.02(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
3. A judge may at any time in a proceeding direct a reference to determine an issue relating to the conduct of a sale.
Rule 54.02(2)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
4. Where a sale is ordered, the referee may cause the property to be sold by private

contract.

Rule 55.06(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

5. The court has inherent jurisdiction to order a judicially supervised sale.

6. It is equitable, proper, just and reasonable for the plaintiff to ascertain the nature and value of the defendant's interest in the lands before taking steps to have the defendant's lands sold to satisfy the judgment debt and to allow the defendant or any other interested party to show cause why the lands ought not to be sold. Doing so will ensure that any enforcement proceeds in the most just, expeditious and cost-effective manner.

Rule 1.04(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Plaintiff's Claim issued February 17, 2011;
2. Judgment dated April 20, 2011;
3. Writ of Seizure and sale dated May 11, 2011;
4. Affidavit of Leigh Bartels Sworn January 4, 2013; and
5. Such further and other material as counsel may advise and this Honourable Court permit.

Date: January 4, 2013

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CAPITAL ONE BANK (CANADA BRANCH) v. CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT KITCHENER

NOTICE OF MOTION

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ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CAPITAL ONE BANK (CANADA BRANCH)

Plaintiff

-and-

CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

Defendant

AFFIDAVIT OF LEIGH BARTELS

I, Leigh Bartels, of the City of Cambridge in the Regional Municipality of Waterloo, MAKE OATH AND SAY:

1. I am a law clerk at Christensen Law Firm responsible for providing support services to the plaintiff's lawyers in this proceeding. I have reviewed the file in this matter and as such have the knowledge of the matters to which I hereinafter depose except those facts stated to be based on information and belief, which I verily believe to be true.
2. I am authorized to make this affidavit on behalf of the plaintiff judgment creditor.
3. Attached marked "Exhibit A" is a true copy of the judgment obtained in this proceeding in favour of the plaintiff dated April 20, 2011 in the amount of \$28,666.13 plus costs. We are advised by the plaintiff that no payments have been made on the judgment since it was granted. As set out in the calculation schedule attached marked "Exhibit B," the balance due and owing to the plaintiff is the sum of \$40,954.87 as of January 4, 2013.
4. Attached marked "Exhibit C" is a true copy of the writ of seizure and sale issued under this judgment on May 11, 2011 and filed on May 25, 2011.

5. Attached marked "Exhibit D" is a true copy of the parcel register of the property that is the subject of this motion showing the defendant and the other parties who have an interest in the property known municipally as 12861 Westbrook Avenue, Fort Erie, Ontario, L0S 1S0, legal description: LT 12 PL 343 WILLOUGHBY ; FORT ERIE.

6. This affidavit is sworn in support of a motion for an order for a reference hearing to be held to determine the interest in the land and for no other or improper purpose.

SWORN BEFORE ME in the Township)
of Puslinch, in the County of Wellington,)
this 4th day of January, 2013.)
)
)
)
)

Leigh Bartels

A Commissioner, etc.

CAPITAL ONE BANK (CANADA BRANCH) v. CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT KITCHENER

AFFIDAVIT OF LEIGH BARTELS
SWORN JANUARY 4, 2013

Christensen Law Firm
6616 Ellis Road
PO Box 29064
Cambridge, Ontario, N3C 0E6

Menachem M. Fellig, LSUC No. 54257B
Tel: 519 654 7350 ext. 3400
Fax: 519 658 2499

Lawyers for the Plaintiff (Moving Party)

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CAPITAL ONE BANK (CANADA BRANCH)

Plaintiff

-and-

CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

Defendant

FACTUM OF THE PLAINTIFF (MOVING PARTY)

Prepared January 4, 2013

I. INTRODUCTION AND FACTS

1. The plaintiff seeks an order for a reference hearing to inquire into and determine all issues relating to the conduct of the sale of the defendant's property known municipally as 12861 Westbrook Avenue, Fort Erie, Ontario, L0S 1S0, legal description: LT 12 PL 343 WILLOUGHBY ; FORT ERIE ("the lands") as a prerequisite to seeking an order for sale. The reference hearing will determine what property or interest in the lands is liable to be sold under the judgment, determine who has interests in the lands, define those interests, determine their priority and determine how the proceeds of a sale should be distributed and allow an opportunity for the defendant or any interested party to show cause why it would be unjust or inequitable to require the sale of the defendant's property or interest in the lands. Once this initial "show cause" reference hearing is complete, if the referee has determined the defendant has an interest in lands that may be sold to satisfy the judgment debt, the plaintiff will return to the court with the referee's report and move for an order for sale by private contract under rule 55.06(1).

Notice of Motion, Motion Record Tab 1

2. The plaintiff was awarded judgment against the defendant in this proceeding dated April

20, 2011 in the sum of \$28,666.13 plus costs and on May 25, 2011 filed a writ of seizure and sale against the defendant's lands securing an interest against them for the judgment amount. The defendant has made no payments on the judgment since it was granted and the balance due and owing to the plaintiff is \$28,666.13 as of April 20, 2011 plus post-judgment interest and the costs of enforcement.

Affidavit of Leigh Bartels sworn January 4, 2013, Motion Record Tab 2, p. 1, para. 3

3. The defendant owns real property in the town of Fort Erie in the Regional Municipality of Niagara at Welland ("the lands.")

Affidavit of Leigh Bartels sworn January 4, 2013, Motion Record Tab 2, p. 2, para. 4

II. POINTS IN ISSUE

4. Does the court have authority to order to direct a reference to determine the interests in a property to facilitate the sale of the property to satisfy a judgment debt?

5. Should the court exercise its authority to direct a reference in this case?

III. LAW AND ARGUMENT

Authority to Direct a Reference

Explicit Authority in the Rules of Civil Procedure

6. A judge may at any time in a proceeding direct a reference to determine an issue relating to the conduct a sale.

Rule 54.02(2)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

7. Where a sale is ordered, the referee may cause the property to be sold by private contract.

Rule 55.06(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

Inherent Jurisdiction

8. "As a superior Court of general jurisdiction, the [Ontario Superior Court of Justice] . . . has all of the powers that are necessary to do justice between the parties. Except where provided

specifically to the contrary, the Court's jurisdiction is unlimited and unrestricted in substantive law in civil matters.”

80 Wellesley St. East Ltd. v. Fundy Bay Builders Ltd., 1972 CarswellOnt 1010 at para. 9, [1972] 2 O.R. 280, 25 D.L.R. (3d) (C.A.), Book of Authorities of the Moving Party Tab 1

Should the Court Exercise its Authority to Direct a Reference?

9. At this stage, the plaintiff is seeking a reference hearing to gather information to assess the viability of enforcing its judgment by way of forced sale of the defendant's interest in the real property and to allow the defendant an opportunity to “show cause” why the property ought not be sold. Should the referee's report indicate that a sale is viable, the plaintiff intends to seek an order for sale by way of private contract. The plaintiff has been unable to find an instance where an order for the payment of money has been enforced in Ontario in this manner outside of mortgage enforcement, family law and other litigation with respect to a specific property. However, the plaintiff has also been unable to find any statutory or common law that “provides to the contrary.” Rather, there is authority to support this method of enforcing a money judgment as being a method provided by law.

10. First, rule 60.02(1) is worded inclusively, stating: “In addition to any other method of enforcement provided by law, an order for the payment of money may be enforced by . . .,” and then listing writ of seizure and sale, garnishment, writ of sequestration and the appointment of a receiver. This is authority for the court to apply the plain meaning of rules 54 and 55 cited above and to exercise its inherent jurisdiction.

Rule 60.02(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

11. Second, in mortgage actions, family law, and other litigation with respect to a specific property, this court regularly orders the judicially supervised sale of real property by way of private contract with the services of professional realtors to market the properties on a commission basis, supporting that the requested method of enforcement is one “provided by law.” Cited below are three examples.

CIBC Mortgage Corp. v. 379680 Ontario Ltd., 2003 CarswellOnt 4611 (S.C.J.),
Book of Authorities of the Moving Party Tab 2

McCord v. Robinson, 2005 CarswellOnt 2257 (S.C.J.), Book of Authorities of the
Moving Party Tab 3

Business Development Bank of Canada v. 683032 Ontario Inc. 1999 CarswellOnt
4120 (S.C.J.), Book of Authorities of the Moving Party Tab 4

12. Third, this method of enforcement was established as one provided by law in British Columbia in 1998. In *Instafund Mortgage Management Corp. v. 379100 British Columbia Ltd.*, 1998 CarswellBC 2450 (B.C.S.C.), Justice Burnyeat of the British Columbia Supreme Court set out the practical reasons for allowing judgment creditors to enforce against the interests in land of judgment debtors by way of judicial sale rather than by sheriff's auction as follows:

“The practical reasons for making an order in that form is that it allows a listing with a real estate agent and a realistic and active marketing of the property instead of the ineffective marketing of the property which results from an auction by the sheriff. As well, the additional cost of a second auction which is created if the offers received are not in accordance with the sheriff's view as to what the property is worth can be avoided.”

That case indicates that the British Columbia's *Court Order Enforcement Act* only provided for enforcement of judgment debts against the interest of judgment debtors in land by way of sheriff's auction. Justice Burnyeat cited a British Columbia Court of Appeal case as authority for the proposition that the *Court Order Enforcement Act* was not a complete code and that he had inherent jurisdiction at common law to order a judicially supervised sale conducted by listing the lands in question with a real estate agent.

Instafund Mortgage Management Corp. v. 379100 British Columbia Ltd., 1998
CarswellBC 2450 (B.C.S.C.) at paras. 6-9, Book of Authorities of the Moving
Party Tab 5

13. It is in the interest of justice for the court to direct the requested reference as a key step in the sale of the defendant's lands to enforce the rights granted to the plaintiff as a judgment

creditor.

Conclusion

14. The court directing a reference hearing as requested would permit the plaintiff to determine the defendant's interest, as well as that of other parties, in the lands prior to a sale and establish whether the sale would enable the plaintiff to realize on its judgment in the most just, expeditious and least expensive manner. In addition, it would provide the defendant and other interested parties an opportunity to show cause why it would be unjust or inequitable to require the sale of the defendant's property or interest in the lands.

IV. ORDER SOUGHT

15. The plaintiff respectfully seeks an order directing a reference to inquire into and determine all issues relating to the conduct of a sale including:
- a. the nature and the particulars of the interest of the defendant in the lands and of the defendant's title thereto;
 - b. the judgments and writs of execution and that bind the lands as well as the other secured and unsecured interests that form a lien or charge against the lands and the priorities between them;
 - c. the property or interest in the lands that is liable to be sold under the judgment;
 - d. any reason why it would be unjust or inequitable to require the sale of the defendant's property or interest in the lands;
 - e. the manner in which the proceeds of a sale of the lands should be distributed;
 - f. an order that the parties may apply to this court of further direction from time to time;
 - g. an order directing the referee to report the findings at the reference to the court;
 - h. an order fixing the costs of this motion, including the reference, payable by the defendant forthwith; and
 - i. an order granting such further relief as this Honourable Court deems just or that

counsel may advise.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Menachem M. Fellig, LSUC No. 54257B
Lawyer for the Plaintiff (Moving Party),
CAPITAL ONE BANK (CANADA BRANCH)

SCHEDULE A

List of Authorities Referred To

1. *80 Wellesley St. East Ltd. v. Fundy Bay Builders Ltd.*, 1972 CarswellOnt 1010 at para. 9, [1972] 2 O.R. 280, 25 D.L.R. (3d) (C.A.), Book of Authorities of the Moving Party Tab 1
2. *CIBC Mortgage Corp. v. 379680 Ontario Ltd.*, 2003 CarswellOnt 4611 (S.C.J.), Book of Authorities of the Moving Party Tab 2
3. *McCord v. Robinson*, 2005 CarswellOnt 2257 (S.C.J.), Book of Authorities of the Moving Party Tab 3
4. *Business Development Bank of Canada v. 683032 Ontario Inc.*, 1999 CarswellOnt 4120 (S.C.J.), Book of Authorities of the Moving Party Tab 4
5. *Instafund Mortgage Management Corp. v. 379100 British Columbia Ltd.*, 1998 CarswellBC 2450 (B.C.S.C.) at paras. 6-9, Book of Authorities of the Moving Party Tab 5

SCHEDULE B

Text of Relevant Provisions

Rule 54.02(2)(b) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194

WHERE REFERENCE MAY BE DIRECTED

Reference of Whole Proceeding or Issue

54.02 (1) Subject to any right to have an issue tried by a jury, a judge may at any time in a proceeding direct a reference of the whole proceeding or a reference to determine an issue where,

(a) all affected parties consent;

(b) a prolonged examination of documents or an investigation is required that, in the opinion of the judge, cannot conveniently be made at trial; or

(c) a substantial issue in dispute requires the taking of accounts. R.R.O. 1990, Reg. 194, r. 54.02 (1).

Reference of Issue

(2) Subject to any right to have an issue tried by a jury, a judge may at any time in a proceeding direct a reference to determine an issue relating to,

(a) the taking of accounts;

(b) the conduct of a sale;

(c) the appointment by the court of a guardian or receiver, or the appointment by a person of an attorney under a power of attorney;

(d) the conduct of a guardianship or receivership or the exercise of the authority of an attorney acting under a power of attorney; or

(e) the enforcement of an order. R.R.O. 1990, Reg. 194, r. 54.02 (2); O. Reg. 69/95, s. 7.

Rule 55.06(1) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194

REFERENCE FOR CONDUCT OF SALE

Method of Sale

55.06 (1) Where a sale is ordered, the referee may cause the property to be sold by public auction, private contract or tender, or partly by one method and partly by another. R.R.O. 1990, Reg. 194, r. 55.06 (1).

Rule 60.02(1) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194

ENFORCEMENT OF ORDER FOR PAYMENT OR RECOVERY OF MONEY

General

60.02 (1) In addition to any other method of enforcement provided by law, an order for the payment or recovery of money may be enforced by,

(a) a writ of seizure and sale (Form 60A) under rule 60.07;

(b) garnishment under rule 60.08;

(c) a writ of sequestration (Form 60B) under rule 60.09; and

(d) the appointment of a receiver. R.R.O. 1990, Reg. 194, r. 60.02 (1).

Rule 1.04(1) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194

INTERPRETATION

General Principle

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits. R.R.O. 1990, Reg. 194, r. 1.04 (1).

CAPITAL ONE BANK (CANADA BRANCH) v. CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT KITCHENER

FACTUM OF THE PLAINTIFF (MOVING PARTY)

Christensen Law Firm
6616 Ellis Road
Cambridge, Ontario, N3C 2V4

Menachem M. Fellig, LSUC No. 54257B
Tel: 519 654 7350 ext. 3400
Fax: 519 658 2499

Lawyers for the Plaintiff (Moving Party)

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CAPITAL ONE BANK (CANADA BRANCH)

Plaintiff

-and-

CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

Defendant

FACTUM OF THE PLAINTIFF (MOVING PARTY)

Date: January 4, 2013

Christensen Law Firm
6616 Ellis Road
Cambridge, Ontario, N3C 2V4

Menachem M. Fellig, LSUC No. 54257B
Tel: 519 654 7350
Fax: 519 658 2499

Lawyers for the Plaintiff (Moving Party)

TO: Mr. Charles Kirk Anderson
2861 Westbrook Avenue
Stevensville, ON L0S 1S0

Tel: 905-382-2491

Defendant (Responding Party)

AND Ms. Gail Anderson
TO: 2861 Westbrook Avenue
Stevensville, ON L0S 1S0

AND Niagara Credit Union Limited
TO: 75 Corporate Park Drive
St. Catharines, ON L2S 3W3
Attn: Legal Department

AND Canadian Tire Bank
TO: C/O Small Matters
26 Queen Street, 2nd Floor PO Box 157
St. Catharines, ON L2R 6S

- b. the judgments and writs of execution and that bind the lands as well as the other secured and unsecured interests that form a lien or charge against the lands and the priorities between them;
 - c. the property or interest in the lands that is liable to be sold under the judgment;
 - d. any reason why it would be unjust or inequitable to require the sale of the defendant's property or interest in the lands; and
 - e. the manner in which the proceeds of a sale of the lands should be distributed.
2. **THIS COURT ORDERS** that the parties may apply to this court for further direction from time to time.
 3. **THIS COURT ORDERS** the Registrar to report the findings at the reference to the Court.
 4. **THIS COURT ORDERS** that the defendant (responding party) pay to the plaintiff (moving party) forthwith the costs of this motion fixed in the amount of \$_____, and if it remains unpaid, the costs of this motion shall be paid from the proceeds of the sale.
-

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT KITCHENER

ORDER

Christensen Law Firm
6616 Ellis Road
Cambridge, Ontario, N3C 2V4

Menachem M. Fellig, LSUC No. 54257B
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Lawyers for the Plaintiff (Moving Party)

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CAPITAL ONE BANK (CANADA BRANCH)

Plaintiff

-and-

CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

Defendant

Motion Record

Date: January 4, 2013

Christensen Law Firm
6616 Ellis Road
Cambridge, ON, N3C 2V4

Menachem M. Fellig, LSUC No. 54257B
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Lawyers for the Plaintiff (Moving Party)

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Defendant (Responding Party)

AND Ms. Gail Anderson
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Stevensville, ON L0S 1S0

AND Niagara Credit Union Limited
TO: 75 Corporate Park Drive
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Attn: Legal Department

AND Canadian Tire Bank
TO: C/O Small Matters
26 Queen Street, 2nd Floor PO Box 157
St. Catharines, ON L2R 6S

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CAPITAL ONE BANK (CANADA BRANCH) v. CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at KITCHENER

MOTION RECORD

Christensen Law Firm
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Cambridge, ON, N3C 2V4

Menachem M. Fellig, LSUC No. 54257B
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Lawyers for the Plaintiff (Moving Party)

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CAPITAL ONE BANK (CANADA BRANCH)

Plaintiff

-and-

CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

Defendant

**Plaintiff's (Moving Party) Book of
Authorities**

Date: January 4, 2013

Christensen Law Firm
6616 Ellis Road
Cambridge, ON, N3C 2V4

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Tel: 905-382-2491

Defendant (Responding Party)

AND Ms. Gail Anderson
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Stevensville, ON L0S 1S0

AND Niagara Credit Union Limited
TO: 75 Corporate Park Drive
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Attn: Legal Department

AND Canadian Tire Bank
TO: C/O Small Matters
26 Queen Street, 2nd Floor PO Box 157
St. Catharines, ON L2R 6S

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<i>CIBC Mortgage Corp. v. 379680 Ontario Ltd.</i> , 2003 CarswellOnt 4611 (S.C.J.)	2
<i>McCord v. Robinson</i> , 2005 CarswellOnt 2257 (S.C.J.), including Notice of Application	3
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CAPITAL ONE BANK (CANADA BRANCH) v. CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at KITCHENER

**PLAINTIFF'S (MOVING PARTY) BOOK OF
AUTHORITIES**

Christensen Law Firm
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Cambridge, ON, N3C 2V4

Menachem M. Fellig, LSUC No. 54257B
Tel: 519 654 7350
Fax: 519 658 2499

Lawyers for the Plaintiff (Moving Party)

Appendix 3A

FC

Court File No. C-375-15

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CANACCEDE INTERNATIONAL ACQUISITIONS LTD

Applicant

-and-

SHABBIR ABDULLAH

Respondent

Application Record

Date: April 23, 2015

Christensen Law Firm
6616 Ellis Road
Cambridge, ON, N3C 2V4

Todd R. Christensen, LSUC No. 340780
Tel: 519 654 7350
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Lawyers for the Applicant

TO: Mr. Shabbir Abdullah
899 Golden Farmer Way
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Respondent

AND Royal Bank of Canada
TO: 180 Wellington Street West
Toronto, ON M1J 1J1
Attn: Legal Department

AND Household Realty Corporation Limited
TO: 17 Ray Lawson Blvd. #17
Brampton, ON L6Y 3L4
Attn: Legal Departmenr

AND HSBC Bank Canada
TO: C/O Fluxgold, Izsak, Jaeger
100 York Blvd., Suite 220
Richmond Hill, ON L4B 1J8

AND The Toronto-Dominion Bank
TO: C/O Jocelyn R. Edwards, Brown Beattie O'Donovan LLP
1600-380 Wellington Street
London, ON N6A 5B5

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ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF an application pursuant to Rules 14.05(3)(d)(h), 54.02 and
66.01(1) of the Rules of Civil Procedure

BETWEEN:

CANACCEDE INTERNATIONAL ACQUISITIONS LTD

Applicant

-and-

SHABBIR ABDULLAH

Respondent

AMENDED
NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant.
The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on ~~Thursday, May 28,~~
2015 Thursday, June 25, 2015, at 10:00 am, at 85 Frederick Street, Kitchener
Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any
step in the application or to be served with any documents in the application, you or
an Ontario lawyer acting for you must forthwith prepare a notice of appearance in
Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's

17th DAY OF May 2015
AMENDED THIS DAY OF
MOONÉ CE
PURNANT TO RÈGLE
CONJONCTIVE
LOCAL REGISTRIAN, SUPERIOR COURT OF JUSTICE
GREFFIER LOCAL, COUR SUPÉRIEURE DE JUSTICE

file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, AN ORDER MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: April 27, 2015

Issued By: _____ "P. Arrowsmith"
Local Registrar

Address of court office: 85 Frederick Street
Kitchener, ON
N2H 0A7

TO: Mr. Shabbir Abdullah
899 Golden Farmer Way
Mississauga, ON L5W 1A8

Respondent

AND TO: Royal Bank of Canada
188 Wellington Street West
Toronto, ON M1J 1J1
Attn: Legal Department

AND TO: Household Realty Corporation Limited
17 Ray Lawson Blvd. #17
Brampton, ON L6Y 3:4
Attn: Legal Department

AND TO: HSBC Bank Canada
C/O Fluxgold, Izsak, Jaeger
100 York Blvd., Suite 220
Richmond Hill, ON L4B 1J8

AND TO: The Toronto-Dominion Bank
C/O Jocelyn R. Edwards, Brown Beattie
1600-380 Wellington Street
London, ON N6A 5B5

THE APPLICATION IS FOR:

1. An order directing a reference to inquire into and determine all issues relating to the conduct of the sale of the respondent's property known municipally as 899 GOLDEN FARMER WAY, MISSISSAUGA ONTARIO L5W 1A8, legal description: PT LT 79, PL 43M1246, DES PT 17, PL 43R22985, MISSISSAUGA. S/T RIGHT IN FAVOUR OF TARMAC CANADA INC., UNTIL PL 43M1246 HAS BEEN FINALLY ACCEPTED BY THE MUNICIPALITY, AS IN LT1770376 ("the lands") as a prerequisite to an order for sale, including:

- a. the nature and the particulars of the interest of the respondent in the lands and of the respondent's title thereto;
- b. the judgments and writs of execution and that bind the lands as well as the other secured and unsecured interests that form a lien or charge against the lands and the priorities between them;
- c. the property or interest in the lands that is liable to be sold under the judgment;
- d. any reason why it would be unjust or inequitable to require the sale of the respondent's property or interest in the lands; and
- e. the manner in which the proceeds of a sale of the lands should be distributed.

2. An order that the parties may apply to this court of further direction from time to time.
3. An order fixing the costs of this application, including the reference, payable by the respondent forthwith.
4. An order granting such further relief as this Honourable Court deems just or that counsel may advise.

THE GROUNDS FOR THE APPLICATION ARE:

1. The relief sought involves the declaration of the nature and extent of interests in land and their priorities and it is unlikely that there will be any material facts in dispute.

Rules 14.05(3)(e) and (h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

2. The applicant obtained judgment against the respondent in the amount of \$27,205.27 on or about September 20, 2011 and the judgment remains unpaid. The respondent owns real property set out in paragraph 1 of this notice of application. The applicant had a writ of seizure and sale issued under this judgment on November 9, 2011 and filed on December 5, 2011.

3. The relief sought is not within the jurisdiction of the Small Claims Court to grant.

4. An order for the payment or recovery of money may be enforced by a method provided by law that is not codified in rule 60 of the *Rules of Civil Procedure*.

Rule 60.02(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

5. A judge may at any time in a proceeding direct a reference to determine an issue relating to the conduct of a sale.

Rule 54.02(2)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

6. Where a sale is ordered, the referee may cause the property to be sold by private contract.

Rule 55.06(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

7. The court has inherent jurisdiction to order a judicially-supervised sale.

8. It is equitable, proper, just and reasonable for the applicant to ascertain the nature and value of the respondent's interest in the lands before taking steps to have the respondent's lands sold to satisfy the judgment debt and to allow the respondent or any other interested party to show cause why the lands ought not to be sold. Doing so will ensure that any enforcement proceeds in the most just, expeditious and cost-effective manner.

Rule 1.04(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the application:

1. Plaintiff's Claim issued June 27, 2011;
2. Judgment dated September 20, 2011;
3. Writ of Seizure and sale dated November 9, 2011;
4. Affidavit of Sarah Fast sworn April 23, 2015; and
5. Such further and other material as counsel may advise and this Honourable Court permit.

Date: April 23, 2015

Christensen Law Firm
6616 Ellis Road
Cambridge, Ontario, N3C 2V4

Todd R. Christensen, LSUC No. 340780
Tel: 519 654 7350
Fax: 519 658 2499

Lawyers for the Applicant

CANACCEDE INTERNATIONAL ACQUISITIONS LTD v. SHABBIR ABDULLAH

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT KITCHENER

AMENDED
NOTICE OF APPLICATION

Christensen Law Firm
6616 Ellis Road
Cambridge, Ontario, N3C 2V4

Todd R. Christensen, LSUC No. 340780
Tel: 519 654 7350
Fax: 519 658 2499

Lawyers for the Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CANACCEDE INTERNATIONAL ACQUISITIONS LTD

Applicant

-and-

SHABBIR ABDULLAH

Respondent

AFFIDAVIT OF SARAH FAST

I, Sarah Fast, of the City of Cambridge in the Regional Municipality of Waterloo, MAKE OATH AND SAY:

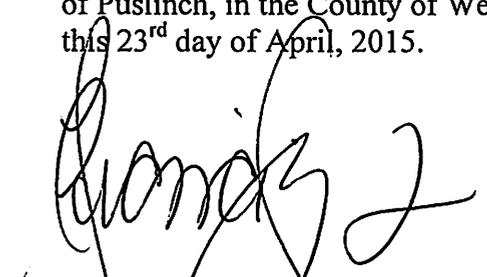
1. I am a law clerk at Christensen Law Firm responsible for providing support services to the applicant's lawyers in this proceeding. I have reviewed the file in this matter and as such have the knowledge of the matters to which I hereinafter depose except those facts stated to be based on information and belief, which I verily believe to be true.
2. I am authorized to make this affidavit on behalf of the applicant judgment creditor.
3. Attached marked "Exhibit A" is a true copy of the judgment obtained in this proceeding in favour of the applicant dated September 20, 2011 in the amount of \$27,205.27 plus costs. We are advised by the applicant that no payments have been made on the judgment since it was granted. As set out in the calculation schedule attached marked "Exhibit B," the balance due and owing to the applicant is the sum of \$39,112.26 as of April 23, 2015.

4. Attached marked "Exhibit C" is a true copy of the writ of seizure and sale issued under this judgment on November 9, 2011 and filed on December 5, 2011.

5. Attached marked respectively "Exhibit D" and "Exhibit E" are true copies of the parcel register of the property that is the subject of this application and an execution search showing the respondent and the other parties who have an interest in the property known municipally as 899 GOLDEN FARMER WAY, MISSISSAUGA ONTARIO L5W 1A8, legal description: PT LT 79, PL 43M1246, DES PT 17, PL 43R22985, MISSISSAUGA. S/T RIGHT IN FAVOUR OF TARMAC CANADA INC., UNTIL PL 43M1246 HAS BEEN FINALLY ACCEPTED BY THE MUNICIPALITY, AS IN LT1770376.

6. This affidavit is sworn in support of an application for an order for a reference hearing to be held to determine the interest in the land and for no other or improper purpose.

SWORN BEFORE ME in the Township)
of Puslinch, in the County of Wellington,)
this 23rd day of April, 2015.)
)
)
)
)
)
)
)


A Commissioner, etc.
Fiona Star Snyder,
a Commissioner etc.,
Province of Ontario,
for Christensen Law Firm.
Expires September 18, 2016



Sarah Fast

CANACCEDE INTERNATIONAL ACQUISITIONS LTD v. SHABIBR ABDULLAH

Court File No. C-375-15

<p>ONTARIO SUPERIOR COURT OF JUSTICE PROCEEDING COMMENCED AT KITCHENER</p>	<p>AFFIDAVIT OF SARAH FAST SWORN APRIL 23, 2015</p>	<p>Christensen Law Firm 6616 Ellis Road Cambridge, Ontario, N3C 2V4 Todd R. Christensen, LSUC No. 340780 Tel: 519 654 7350 Fax: 519 658 2499 Lawyers for the Applicant</p>
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ONTARIO

Superior Court of Justice
Cour supérieure de justice

Default Judgment
Jugement par défaut

Form / Formule 11B Ont. Reg. No. / Régl. de l'Ont. : 258/98

Sea / Mer

Brampton Small Claims Court

SC - 11 - 4147 - 00

Small Claims Court / Cour des petites créances de

Claim No. / N° de la demande

**7755 Hurontario Street
Brampton, ON, L6W 4T1**

This is Exhibit A referred to in the affidavit of Sarah Fast

Address / Adresse

Sworn before me this 23rd day of April, 2015.

(905) 456 - 4700

Phone number / Numéro de téléphone

A Commissioner, etc.

Plaintiff No. 1 / Demandeur n° 1

Additional plaintiff(s) listed on attached Form 1A.

Le ou les demandeurs additionnels sont mentionnés sur la formule 1A ci-jointe.

Fiona Star Snyder,
Commissioner etc.,

Last name, or name of company / Nom de famille ou nom de la compagnie CANACCEDE INTERNATIONAL ACQUISITIONS LTD		
First name / Premier prénom n/a	Second name / Deuxième prénom n/a	Also known as / Également connu(e) sous le nom de n/a
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité) P.O. Box 9, Station B		
City/Town / Cité/Ville London	Province ON	Phone no. / N° de téléphone (519) 266-3130
Postal code / Code postal N6A 4V3		Fax no. / N° de télécopieur (416) 800-8753
Representative / Représentant(e)		LSUC # / N° du BHC
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité)		
City/Town / Cité/Ville	Province	Phone no. / N° de téléphone
Postal code / Code postal		Fax no. / N° de télécopieur

Defendant No. 1 / Défendeur n° 1

Additional defendant(s) listed on attached Form 1A.

Le ou les défendeurs additionnels sont mentionnés sur la formule 1A ci-jointe.

Last name, or name of company / Nom de famille ou nom de la compagnie Abdullah		
First name / Premier prénom Shabbir	Second name / Deuxième prénom n/a	Also known as / Également connu(e) sous le nom de n/a
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité) 899 Golden Farmer Way		
City/Town / Cité/Ville Mississauga	Province ON	Phone no. / N° de téléphone n/a
Postal code / Code postal L5W 1A8		Fax no. / N° de télécopieur n/a
Representative / Représentant(e)		LSUC # / N° du BHC
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité)		
City/Town / Cité/Ville	Province	Phone no. / N° de téléphone
Postal code / Code postal		Fax no. / N° de télécopieur

**NOTICE TO THE DEFENDANT(S):
AVIS AU(X) DÉFENDEUR(S) :**

(Check one box only. / Cochez une seule case.)

You have been noted in default according to Rule 11.01.
vous avez été constaté(e) en défaut aux termes de la règle 11.01.

You have defaulted in your payment according to Rule 9.03(2)(b), pursuant to
vous n'avez pas effectué vos paiements aux termes de l'alinéa 9.03 (2) b), conformément à/au

_____ dated _____, 20 ____ ,
(Name of document / Titre du document) daté(e) du

and 15 days have passed since you were served with a Notice of Default of Payment (Form 20L).
et 15 jours se sont écoulés depuis qu'un avis de défaut de paiement vous a été signifié (formule 20L).

**DEFAULT JUDGMENT IS GIVEN against the following defendant(s):
UN JUGEMENT PAR DÉFAUT EST RENDU contre le ou les défendeurs suivants :**

Last name, or name of company / <i>Nom de famille ou nom de la compagnie</i> Abdullah		
First name / <i>Premier prénom</i> Shabbir	Second name / <i>Deuxième prénom</i> n/a	Also known as / <i>Également connu(e) sous le nom de</i> n/a

Last name, or name of company / <i>Nom de famille ou nom de la compagnie</i>		
First name / <i>Premier prénom</i>	Second name / <i>Deuxième prénom</i>	Also known as / <i>Également connu(e) sous le nom de</i>

Last name, or name of company / <i>Nom de famille ou nom de la compagnie</i>		
First name / <i>Premier prénom</i>	Second name / <i>Deuxième prénom</i>	Also known as / <i>Également connu(e) sous le nom de</i>

Additional defendant(s) listed on attached page (*list in same format*).
Défendeur(s) additionnel(s) mentionné(s) sur une feuille annexée (énumérez-les en suivant le même format).

**THE DEFENDANT(S) MUST PAY to the plaintiff(s) the following sums:
LE OU LES DÉFENDEURS DOIVENT VERSER au(x) demandeur(s) les sommes suivantes :**

(A) DEBT (principal amount claimed minus any payments received since the plaintiff's claim was issued) \$ 22,734.31 \$
LA CRÉANCE (somme demandée moins tout paiement reçu depuis la délivrance de la demande du demandeur)

(B) PRE-JUDGMENT INTEREST calculated
LES INTÉRÊTS ANTÉRIEURS AU JUGEMENT calculés
on the sum of \$ 22,734.31 at the rate of 11.99 %
sur la somme de \$ au taux de pour cent
per annum from February 27, 20 10, to September 15, 20 11,
par an du au
being 565 days.
soit jours. \$ 4,219.46 \$

(C) COSTS to date (including the cost of issuing this judgment)
LES DÉPENS à ce jour (dont les frais afférents à la prononciation du présent jugement)

\$ 251.50 \$

TOTAL \$ 27,205.27 \$

This judgment bears post-judgment interest at 11.99 % per annum commencing this date.
Le présent jugement porte des intérêts postérieurs au jugement calculés au taux annuel de pour cent à partir de la date du présent jugement.

SEP 20 2011 , 20

(Signature of clerk / Signature du greffier)

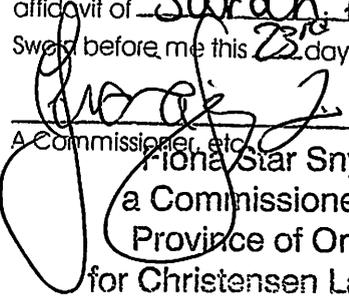
CAUTION TO DEFENDANT:	YOU MUST PAY THE AMOUNT OF THIS JUDGMENT DIRECTLY TO THE PLAINTIFF(S) IMMEDIATELY. Failure to do so may result in additional post-judgment interest and enforcement costs.
AVERTISSEMENT AU DÉFENDEUR :	VOUS DEVEZ VERSER DIRECTEMENT AU(X) DEMANDEUR(S) LE MONTANT D'U AUX TERMES DU PRÉSENT JUGEMENT IMMÉDIATEMENT, à défaut de quoi d'autres intérêts postérieurs au jugement et dépens de l'exécution forcée pourront vous être imputés.

Pay-out Statement

Canaccede International Acquisitions Ltd v. Shabbir Abdullah

Pay-out date	23-Apr-15
Judgment and cost order date	20-Sep-11
Enforcement costs date	09-Nov-11
Post-judgment interest rate	11.99%
Days of interest for judgment and costs	1,311
Days of interest for enforcement costs	1,261
Judgment amount excluding costs	\$ 26,953.77
Costs fixed at judgment	<u>251.50</u>
Total judgment and costs	\$ 27,205.27
Post-judgment interest	<u>11,716.07</u>
Sub-total	\$ 38,921.34
Enforcement costs	\$ 135.00
Post-judgment interest	<u>55.92</u>
Sub-total	\$ 190.92
Fee to prepare pay-out and lift writ	<u>-</u>
Total Amount Owing as of Pay-out Date	<u><u>\$ 39,112.26</u></u>
<i>Per diem</i> interest	\$ 12.8481

This is Exhibit B referred to in the
affidavit of Sarah Fast
Sworn before me this 23rd day of April, 2015.


A Commissioner, etc.

Fiona Star Snyder,
a Commissioner etc.,
Province of Ontario,

for Christensen Law Firm.

Expires September 18, 2016

ONTARIO
Superior Court of Justice
Cour supérieure de justice

Writ of Seizure and Sale of Land
Bref de saisie-exécution de biens-fonds
 Form / Formule 20D Ont. Reg. No. / Régl. de l'Ont. : 258/98

Brampton Small Claims Court

SC- 11 - 4147 - 00

Small Claims Court / Cour des petites créances de

Claim No. / N° de la demande

7755 Hurontario Street
Brampton, ON, L6W 4T1

Address / Adresse

(905) 456-4700

Phone number / Numéro de téléphone

This is Exhibit C referred to in the

affidavit of

Sarah Fast

Sworn before me this 23rd day of April, 2015.

Seal / Sceau

Creditor No. 1 / Créancier n° 1

Additional party(ies) listed on attached Form 1A.

La ou les parties additionnelles sont mentionnées sur la formule 1A ci-jointe.

Last name, or name of company / Nom de famille ou nom de la compagnie CANACCEDE INTERNATIONAL ACQUISITIONS LTD		
First name / Premier prénom n/a	Second name / Deuxième prénom n/a	Also known as / Également connu(e) sous le nom de n/a
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité) P.O. Box 9, Station B		
City/Town / Cité/Ville London	Province ON	Phone no. / N° de téléphone (519) 266-3130
Postal code / Code postal N6A 4V3		Fax no. / N° de télécopieur (416) 800-8753
Representative / Représentant(e)		LSUC # / N° du BHC
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité)		
City/Town / Cité/Ville	Province	Phone no. / N° de téléphone
Postal code / Code postal		Fax no. / N° de télécopieur

Additional party(ies) listed on attached Form 1A.

La ou les parties additionnelles sont mentionnées sur la formule 1A ci-jointe.

Debtor No. 1 / Débiteur n° 1

Last name, or name of company / Nom de famille ou nom de la compagnie Abdullah		
First name / Premier prénom Shabbir	Second name / Deuxième prénom n/a	Also known as / Également connu(e) sous le nom de n/a
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité) 899 Golden Farmer Way		
City/Town / Cité/Ville Mississauga	Province ON	Phone no. / N° de téléphone n/a
Postal code / Code postal L5W 1A8		Fax no. / N° de télécopieur n/a
Representative / Représentant(e)		LSUC # / N° du BHC
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité)		
City/Town / Cité/Ville	Province	Phone no. / N° de téléphone
Postal code / Code postal		Fax no. / N° de télécopieur

NOTE:

THIS WRIT REMAINS IN FORCE FOR SIX YEARS after the date of its issue and for a further six years after each renewal. The writ may be renewed before it expires by filing a Request to Renew a Writ of Seizure and Sale (Form 20N) with the sheriff (enforcement office.)

REMARQUE :

LE PRÉSENT BREF RESTE EN VIGUEUR PENDANT SIX ANS après la date de sa délivrance ou après chaque renouvellement. Le bref peut être renouvelé avant qu'il n'expire en déposant une demande de renouvellement du bref de saisie-exécution (formule 20N) auprès du shérif (bureau de l'exécution).

TO THE SHERIFF OF Regional Municipality of Peel

AU SHÉRIF DE

(Name of county/region in which the enforcement office is located / Nom du comté/de la région où est situé le bureau de l'exécution)

Under an order of this court made on September 20, 20 11, in favour of
En vertu d'une ordonnance rendue par ce tribunal le , en faveur de

CANACCEDE INTERNATIONAL ACQUISITIONS LTD

(Name of creditor(s) / Nom du/de la/des créancier(s)/créancière(s))

YOU ARE DIRECTED to seize and sell the real property of
NOUS VOUS ENJOIGNONS de saisir les biens immeubles de

Last name, or name of company / Nom de famille ou nom de la compagnie

Abdullah

First name / Premier prénom

Shabbir

Second name / Deuxième prénom

N/A

Third name / Troisième prénom

N/A

Additional debtor(s) and also known as names listed on attached Form 1A.1.
Le ou les débiteurs additionnels et le ou les noms sous lesquels ils sont également connus sont mentionnés sur la formule 1A.1 ci-jointe.

situated within your jurisdiction and to realize from the seizure and sale the following sums:
qui se trouvent dans votre ressort et de procéder à leur vente pour réaliser les sommes suivantes :

(A) AMOUNT OF JUDGMENT (debt and pre-judgment interest) \$ 26,953.77
MONTANT DU JUGEMENT (créance et intérêts antérieurs au jugement) \$

(B) COSTS to date of judgment \$ 251.50
LES DÉPENS à la date du jugement \$

(C) TOTAL AMOUNT OF PAYMENTS RECEIVED FROM DEBTOR after judgment (if any) \$ 0.00
LE MONTANT TOTAL DES PAIEMENTS REÇUS DU DÉBITEUR après le jugement (le cas échéant) \$

Post-judgment interest continues to accrue
Les intérêts postérieurs au jugement continuent à courir

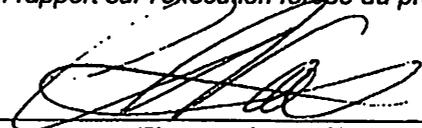
at the rate of 11.99 % per annum from September 20, 20 11
au taux de % par an à compter du

(D) SUBSEQUENT COSTS incurred after judgment (including the cost of issuing this writ) \$ 35.00
LES DÉPENS SUBSÉQUENTS engagés après le jugement (y compris le coût de délivrance du présent bref) \$

(E) Your fees and expenses in enforcing this writ.
Les honoraires et frais qui vous sont dus pour l'exécution forcée du présent bref.

YOU ARE DIRECTED to calculate the amount owing at the time of enforcement and pay out the proceeds according to law and to report on the execution of this writ if required by a party who filed this writ.
ET NOUS VOUS ENJOIGNONS de calculer la somme due au moment de l'exécution forcée et de verser le produit de la vente conformément à la loi et de faire un rapport sur l'exécution forcée du présent bref si la partie qui l'a déposé l'exige.

November 9, 20 11


(Signature of clerk / Signature du greffier)

Filed in the court of the Regional Municipality of Peel
Déposé aux bureaux du shérif de la municipalité régionale de Peel

DEC 5 2011

553023



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 1 OF 3
 PREPARED FOR Christensen
 ON 2015/02/13 AT 11:24:01

12213-1396 (LT)

LAND
 REGISTRY
 OFFICE #43

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: FT LT 79, PL 43M1246, DES ET 17, PL 43R22985, MISSISSAUGA. S/T RIGHT IN FAVOUR OF PARKAC CANADA INC., UNTIL PL 43M1246 HAS BEEN FINALLY ACCEPTED BY THE MUNICIPALITY, AS IN LT1770376.

PROPERTY REMARKS:
 RECENTLY:
 DIVISION FROM 13213-0751
 CAPACITY SHARE
 BENO

PLN CREATION DATE:
 1998/10/23

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHRD
EFFECTIVE 2008/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1996/03/10 ON THIS PIN						
WAS REPLACED WITH THE "PIN CREATION DATE" OF 1998/10/23						
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE: 1998/10/23 **						
V5248789	1973/02/12	NOTICE				C
REMARKS: AMENDMENT OF TORONTO-WALTON AIRPORT ZONING REGULATIONS LTR48789 AMENDED TO READ 248788VS 95/11/14 PATHY POMER						
43R18644	1991/07/11	PLAN REFERENCE				C
LT1610636	1996/01/08	NOTICE				C
LT1767050	1997/10/01	NOTICE		TARVAC CANADA INC.	THE CORPORATION OF THE CITY OF MISSISSAUGA	C
LT1767481	1997/10/01	APL ANNEX REST COV		TARVAC CANADA INC.	THE CORPORATION OF THE CITY OF MISSISSAUGA AND THE REGIONAL MUNICIPALITY OF PEEL	C
REMARKS: FOR TEN (10) YEARS FROM 97 10 01, OR UNTIL COMPLETE ACCEPTANCE OF PLAN 43M1246 BY THE CORPORATION OF THE CITY OF MISSISSAUGA.						
LT1770376	1997/10/15	TRANSFER		*** COMPLETELY DELETED *** TARVAC CANADA INC.	NATIONAL HOMES (MEADOWVALE) INC.	C
LT1770433	1997/10/15	CHARGE		*** COMPLETELY DELETED *** NATIONAL HOMES (MEADOWVALE) INC.	ZANCOR HOMES (MEADOW) LTD.	C
REMARKS: COMPLETELY DELETED BY JLAJLONDE ON 2004/01/14						
LT1770434	1997/10/15	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** ZANCOR HOMES (MEADOW) LTD.	CANADIAN IMPERIAL BANK OF COMMERCE	C
REMARKS: LT1770433						
LT1770435	1997/10/15	CHARGE		*** DELETED AGAINST THIS PROPERTY *** NATIONAL HOMES (MEADOWVALE) INC.	THE MUTUAL TRUST COMPANY	C

This is Exhibit D referred to in the
 affidavit of Sarah Fast
 sworn before me this 23rd day of April, 2015.
 A Commissioner etc.
 Fiona Star Snyder,
 a Commissioner etc.,
 Province of Ontario,
 for Christensen Law Firm.
 Expires September 18, 2016

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
 NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



LAND
REGISTRY
OFFICE #43

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 3
PREPARED FOR Christenson
ON 2015/02/13 AT 11:24:01

13213-1396 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHGD
LT1843154	1998/06/29	BY-LAW		THE CORPORATION OF THE CITY OF MISSISSAUGA		C
		REMARKS: BY-LAW 304-98 RE: PLANNING ACT				
43R22985	1998/07/07	PLAN REFERENCE		*** COMPLETELY DELETED *** THE MUTUAL TRUST COMPANY		C
LT1898166	1998/12/17	DISCH PART CHARGE		*** COMPLETELY DELETED *** CANADIAN IMPERIAL BANK OF COMMERCE		
		REMARKS: RE: LT1770435				
LT1898167	1998/12/17	DISCH PART CHARGE		*** COMPLETELY DELETED *** NATIONAL HOMES (MEADOWVALE) INC.	BAIARDO, MARIA	
		REMARKS: RE: LT1770433				
LT1898168	1998/12/17	TRANSFER		*** COMPLETELY DELETED *** BAIARDO, MARIA	BANK OF MONTREAL	
LT1898169	1998/12/17	CHARGE		HER MAJESTY THE QUEEN IN RIGHT OF THE DEPARTMENT OF TRANSPORT CANADA		C
LT2057426	2000/03/27	NOTICE				
		REMARKS: PEARSON AIRPORT ZONING REGULATION				
PR303552	2002/08/27	TRANSFER		*** COMPLETELY DELETED *** BAIARDO, MARIA	BEDI, SUKHDEV BEDI, SANJOGTA	
PR303556	2002/08/27	CHARGE		*** COMPLETELY DELETED *** BEDI, SUKHDEV BEDI, SANJOGTA	CIBC MORTGAGES INC. TRADING AS FIRSTLINE MORTGAGES	
PR331359	2002/10/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** BANK OF MONTREAL		
		REMARKS: RE: LT1898169				
PR700136	2004/08/18	TRANSFER	\$290,000	BEDI, SANJOGTA BEDI, SUKHDEV	ABDULLAH, SHABBIR	C
PR700137	2004/08/18	CHARGE	\$283,938	ABDULLAH, SHABBIR	ROYAL BANK OF CANADA	C
PR720066	2004/09/17	DISCH OF CHARGE		*** COMPLETELY DELETED *** CIBC MORTGAGES INC. TRADING AS FIRSTLINE MORTGAGES		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



ServiceOntario

LAND
REGISTRY
OFFICE #43

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 3 OF 3

PREPARED FOR Christensen
ON 2015/02/13 AT 11:24:01

13213-1396 (LT)

CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT • SUBJECT TO RESERVATIONS IN CROWN GRANT •

REG. NDM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHRD
PR1093342	2006/07/06	CHARGE	\$34,130	ABDULLAH, SHABIR	HOUSEHOLD REALTY CORPORATION LIMITED	C
REMARKS: RE: PR03556						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



EXECUTION CERTIFICATE / CERTIFICAT D'EXÉCUTION FORCÉE

SHERIFF OF / SHÉRIF DE : REGIONAL MUNICIPALITY OF PEEL (BRAMPTON)

CERTIFICATE # / N° DE CERTIFICAT : 25134473-4854346B

DATE OF CERTIFICATE / DATE DU CERTIFICAT : 2015-FEB-13

This is Exhibit E referred to in the affidavit of Sarah Fast sworn before me this 13th day of April, 2015.

A Commissioner, etc.

Fiona Star Snyder,

SHERIFF'S STATEMENT

THIS CERTIFIES THAT LISTED BELOW ARE ALL WRITS OF EXECUTION, ORDERS AND CERTIFICATES OF LIEN FILED AND ENTERED INTO THE ELECTRONIC DATABASE MAINTAINED BY THIS OFFICE IN ACCORDANCE WITH SECTION 110 OF THE EXECUTION ACT AT THE TIME OF SEARCHING AGAINST THE REAL AND PERSONAL PROPERTY OF [Redacted] Law Firm.

Expires September 18, 2016

DÉCLARATION DU SHÉRIF

LE PRÉSENT CERTIFICAT ATTESTE QUE TOUTES LES ORDONNANCES ET TOUS LES BREFS D'EXÉCUTION FORCÉE ET CERTIFICATS DE PRIVILÈGE ÉNUMÉRÉS CI-DESSOUS ONT ÉTÉ DÉPOSÉS ET INSCRITS DANS LA BASE DE DONNÉES ÉLECTRONIQUE MAINTENUE PAR CE BUREAU AUX TERMES DE L'ARTICLE 10 DE LA LOI SUR L'EXÉCUTION FORCÉE AU MOMENT DE LA RECHERCHE VISANT LES BIENS MEUBLES ET IMMEUBLES DE :

NAME SEARCHED / NOM RECHERCHÉ

Table with 2 columns: PERSON OR COMPANY / PERSONNE OU SOCIÉTÉ, NAME OR SURNAME, GIVEN NAME(S) / NOM OU NOM DE FAMILLE, PRÉNOM(S). Row 1: PERSON / PERSONNE, ABDULLAH, SHABBIR

SEARCH RESULTS / RÉSULTATS DE LA RECHERCHE

Table with 2 columns: EXECUTION # / N° D'EXÉCUTION FORCÉE, DEBTOR NAME(S) / NOM(S) DU(DES) DÉBITEUR(S). Rows: 09-0007019* ABDULLAH, SHABBIR; 10-0002143* ABDULLAH, SHABBIR; 11-0006877* ABDULLAH, SHABBIR

CAUTION TO PARTY REQUESTING SEARCH:

- 1. IT IS THE RESPONSIBILITY OF THE REQUESTING PARTY TO ENSURE THAT THE NAME SEARCHED IS CORRECT.
2. WRITS, ORDERS OR CERTIFICATES OF LIEN MAY BE REMOVED FROM THE SHERIFF'S INDEX ANYTIME AFTER THIS SEARCH AND THEREFORE MAY NOT APPEAR ON A SUBSEQUENT SEARCH FOR THE SAME NAME ON THIS DATE OR IN FUTURE.
3. WRITS FILED WITH THE SHERIFF DO NOT BECOME EFFECTIVE WITHIN THE WRITS SYSTEM UNTIL THE FOLLOWING BUSINESS DAY.

AVERTISSEMENT À LA PARTIE QUI DEMANDE LA RECHERCHE :

CERTIFICATE # / N° DE CERTIFICAT: 25134473-4854346B

1. IL INCOMBE À LA PARTIE QUI DEMANDE LA RECHERCHE DE S'ASSURER QUE LE NOM RECHERCHÉ EST EXACT.
2. LES BREFS D'EXÉCUTION FORCÉE, LES ORDONNANCES OU LES CERTIFICATS DE PRIVILÈGE PEUVENT ÊTRE RETIRÉS DU RÉPERTOIRE DU SHÉRIF EN TOUT TEMPS APRÈS CETTE RECHERCHE ET, PAR CONSÉQUENT, ILS PEUVENT NE PAS APPARAÎTRE LORS D'UNE RECHERCHE SUBSÉQUENTE VISANT LE MÊME NOM À CETTE DATE OU À L'AVENIR.
3. LES BREFS D'EXÉCUTION FORCÉE DÉPOSÉS AUPRÈS DU SHÉRIF NE PRENNENT EFFET DANS LE SYSTÈME DE BREFS QUE LE PROCHAIN JOUR OUVRABLE

CHARGE FOR THIS CERTIFICATE CDN 11.00
/ FRAIS POUR CE CERTIFICAT :

SEARCHER REFERENCE / 553023abdu
REFERENCE CONCERNANT
L'AUTEUR DE LA DEMANDE :

(*) WRIT REGISTERED AT LAND TITLES / BREF ENREGISTRÉ AU BUREAU D'ENREGISTREMENT DES DROITS IMMOBILIERS



WRIT DETAILS REPORT / RAPPORT DES DÉTAILS DU BREF

SHERIFF OF / SHÉRIF DE : REGIONAL MUNICIPALITY OF PEEL (BRAMPTON)

CERTIFICATE # / N° DE CERTIFICAT : 25134490-4574810B

DATE OF CERTIFICATE / DATE DU CERTIFICAT : 2015-FEB-13

SHERIFF'S STATEMENT

IT IS HEREBY CERTIFIED THAT THE INFORMATION CONTAINED BELOW IS A TRUE REPRESENTATION OF INFORMATION WITHIN THE ELECTRONIC DATABASE MAINTAINED BY THIS OFFICE IN ACCORDANCE WITH SECTION 10 OF THE EXECUTION ACT, AT THE TIME OF THE REPORT REQUEST.

DÉCLARATION DU SHÉRIF

IL EST CERTIFIÉ, PAR LA PRÉSENTE, QUE LES RENSEIGNEMENTS CI-APRÈS REPRODUISENT EXACTEMENT L'INFORMATION CONTENUE DANS LA BASE DE DONNÉES ÉLECTRONIQUE MAINTENUE PAR CE BUREAU AUX TERMES DE L'ARTICLE 10 DE LA LOI SUR L'EXÉCUTION FORCÉE AU MOMENT DE LA DEMANDE DE RAPPORT.

FILE DETAILS / DÉTAILS DU DOSSIER

EXECUTION # / N° D'EXÉCUTION FORCÉE : 09-0007019
ISSUE DATE / DATE DE DÉLIVRANCE : 2009-NOV-24
EFFECTIVE DATE / DATE DE PRISE D'EFFET : 2009-NOV-25
COURT FILE OR REFERENCE # / N° DE DOSSIER DU TRIBUNAL OU DE RÉFÉRENCE : CV-09-096850-SR
COURT TYPE / TYPE DE TRIBUNAL : SCJ - CIVIL
JURISDICTION / TERRITOIRE DE COMPÉTENCE : NEWMARKET

DEBTOR SEARCH NAME(S) / NOM(S) DU(DES) DÉBITEUR(S) RECHERCHÉ(S)

#	DEBTOR TYPE / TYPE DE DÉBITEUR	DEBTOR NAME(S) / NOM(S) DU(DES) DÉBITEUR(S)
1.	PERSON / PERSONNE	ABDULLAH, SHABBIR

PARTY DETAILS / COORDONNÉES DES PARTIES

DEFENDANT / DÉFENDEUR

1.	NAME / NOM	ABDULLAH, SHABBIR
----	------------	-------------------

CREDITOR / CRÉANCIER

C/O LAWYER/AGENT / A/S PROCUREUR/AGENT

1.	COMPANY / SOCIÉTÉ	HSBC BANK CANADA
	ADDRESS / ADRESSE :	5100 SHERBROOKE STREET EAST, SUITE 100, MONTREAL, QUEBEC, H1V 3R9

LAWYER/AGENT / PROCUREUR/AGENT SAME AS FIRST CREDITOR / MÊME QUE LE PREMIER CRÉANCIER

NAME / NOM	IZSAK, ROBERT
FIRM NAME / NOM DE L'ENTREPRISE	FLUXGOLD, IZSAK, JAEGER
ADDRESS / ADRESSE	100 YORK BOULEVARD, SUITE 220 RICHMOND HILL ONTARIO L4B 1J8 TEL: 9057633770 FAX: 9057633772 RIZSAK@FIJLAW.COM

JUDGMENT/COST DETAILS (FROM ORIGINAL WRIT) / DÉTAILS DU JUGEMENT/DÉPENS (DU BREF ORIGINAL)

#	JUDGMENT OR COSTS / JUGEMENT OU DÉPENS	AMOUNT / MONTANT	INTEREST RATE / TAUX D'INTÉRÊT	START DATE / DATE DE DÉBUT
1.	JUDGMENT / JUGEMENT	CDN 16,858.12	6.2500%	2009-NOV-20
	COSTS / DÉPENS	CDN 1,208.00	6.2500%	2009-NOV-20
	AGAINST DEBTORS / CONTRE LES DÉBITEURS	ABDULLAH, SHABBIR		

FINANCIAL TRANSACTIONS / OPÉRATIONS FINANCIÈRES

#	FEE OR PAYMENT / FRAIS OU PAIEMENT	TRANSACTION DATE / DATE D'OPÉRATION	AMOUNT / MONTANT	REFERENCE OR NOTES / RÉFÉRENCE OU NOTES
1.	FEE / FRAIS	2009-NOV-24	CDN 186.45	REMOTE FILING

COMMENTS / REMARQUES

ISSUED & FILED BY ROBERT IZSAK ON NOV 24, 2009 02:24 PM REMOTELY

CAUTION:

ENSURE THAT THE NAME AND EXECUTION# (NUMBER) MATCH YOUR REQUEST.

AVERTISSEMENT :

ASSUREZ-VOUS QUE LE NOM ET LE NUMÉRO DU DOSSIER D'EXÉCUTION FORCÉE SONT LES MÊMES QUE CEUX QUI SE TROUVENT DANS VOTRE DEMANDE.

CHARGE FOR THIS REPORT / FRAIS POUR CE RAPPORT : CDN 6.00

REQUESTER REFERENCE / REFERENCE CONCERNANT L'AUTEUR DE LA DEMANDE : 553023abdu



WRIT DETAILS REPORT / RAPPORT DES DÉTAILS DU BREF

SHERIFF OF / SHÉRIF DE : REGIONAL MUNICIPALITY OF PEEL (BRAMPTON)

CERTIFICATE # / N° DE CERTIFICAT : 25134497-1471764B

DATE OF CERTIFICATE / DATE DU CERTIFICAT : 2015-FEB-13

SHERIFF'S STATEMENT

IT IS HEREBY CERTIFIED THAT THE INFORMATION CONTAINED BELOW IS A TRUE REPRESENTATION OF INFORMATION WITHIN THE ELECTRONIC DATABASE MAINTAINED BY THIS OFFICE IN ACCORDANCE WITH SECTION 10 OF THE EXECUTION ACT, AT THE TIME OF THE REPORT REQUEST.

DÉCLARATION DU SHÉRIF

IL EST CERTIFIÉ, PAR LA PRÉSENTE, QUE LES RENSEIGNEMENTS CI-APRÈS REPRODUISENT EXACTEMENT L'INFORMATION CONTENUE DANS LA BASE DE DONNÉES ÉLECTRONIQUE MAINTENUE PAR CE BUREAU AUX TERMES DE L'ARTICLE 10 DE LA LOI SUR L'EXÉCUTION FORCÉE AU MOMENT DE LA DEMANDE DE RAPPORT.

FILE DETAILS / DÉTAILS DU DOSSIER

EXECUTION # / N° D'EXÉCUTION FORCÉE : 10-0002143
 ISSUE DATE / DATE DE DÉLIVRANCE : 2010-APR-20
 EFFECTIVE DATE / DATE DE PRISE D'EFFET : 2010-APR-21
 COURT FILE OR REFERENCE # / N° DE DOSSIER DU TRIBUNAL OU DE RÉFÉRENCE : 71/2010SR
 COURT TYPE / TYPE DE TRIBUNAL : SCJ - CIVIL
 JURISDICTION / TERRITOIRE DE COMPÉTENCE : LONDON

DEBTOR SEARCH NAME(S) / NOM(S) DU(DES) DÉBITEUR(S) RECHERCHÉ(S)

#	DEBTOR TYPE / TYPE DE DÉBITEUR	DEBTOR NAME(S) / NOM(S) DU(DES) DÉBITEUR(S)
1.	PERSON / PERSONNE	ABDULLAH, SHABBIR

PARTY DETAILS / COORDONNÉES DES PARTIES

DEFENDANT / DÉFENDEUR

1.	NAME / NOM	ABDULLAH, SHABBIR
----	------------	-------------------

CREDITOR / CRÉANCIER

C/O LAWYER/AGENT / A/S PROCUREUR/AGENT

1.	COMPANY / SOCIÉTÉ	THE TORONTO-DOMINION BANK
	ADDRESS / ADRESSE :	3500 STEELES AVE E, TOWER 1 - LEVEL 4, MARKHAM, ONTARIO, L3R 0X1

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LAWYER/AGENT / PROCUREUR/AGENT SAME AS FIRST CREDITOR / MÊME QUE LE PREMIER CRÉANCIER

NAME / NOM	EDWARDS, JOCELYN R.
FIRM NAME / NOM DE L'ENTREPRISE	BROWN BEATTIE O'DONOVAN LLP
ADDRESS / ADRESSE	1600-380 WELLINGTON ST, LONDON ONTARIO N6A 5B5 TEL: 5196790400 FAX: 5196796350

JUDGMENT/COST DETAILS (FROM ORIGINAL WRIT) / DÉTAILS DU JUGEMENT/DÉPENS (DU BREF ORIGINAL)

#	JUDGMENT OR COSTS / JUGEMENT OU DÉPENS	AMOUNT / MONTANT	INTEREST RATE / TAUX D'INTÉRÊT	START DATE / DATE DE DÉBUT
1.	JUDGMENT / JUGEMENT	CDN 30,887.10	24.7500%	2010-APR-19
	COSTS / DÉPENS	CDN 0.00	0.0000%	
	AGAINST DEBTORS / CONTRE LES DÉBITEURS	ABDULLAH, SHABBIR		
2.	JUDGMENT / JUGEMENT	CDN 2,321.05	21.0000%	2010-APR-19
	COSTS / DÉPENS	CDN 810.00	21.0000%	2010-APR-19
	AGAINST DEBTORS / CONTRE LES DÉBITEURS	ABDULLAH, SHABBIR		

FINANCIAL TRANSACTIONS / OPÉRATIONS FINANCIÈRES

#	FEE OR PAYMENT / FRAIS OU PAIEMENT	TRANSACTION DATE / DATE D'OPÉRATION	AMOUNT / MONTANT	REFERENCE OR NOTES / RÉFÉRENCE OU NOTES
1.	FEE / FRAIS	2010-APR-20	CDN 186.45	REMOTE FILING

COMMENTS / REMARQUES

ISSUED & FILED BY NANCY SCANLAN ON APR 20, 2010 03:27 PM REMOTELY

CAUTION:

ENSURE THAT THE NAME AND EXECUTION# (NUMBER) MATCH YOUR REQUEST.

AVERTISSEMENT :

ASSUREZ-VOUS QUE LE NOM ET LE NUMÉRO DU DOSSIER D'EXÉCUTION FORCÉE SONT LES MÊMES QUE CEUX QUI SE TROUVENT DANS VOTRE DEMANDE.

CHARGE FOR THIS REPORT / FRAIS POUR CE RAPPORT : CDN 6.00

REQUESTER REFERENCE / REFERENCE CONCERNANT L'AUTEUR DE LA DEMANDE : 553023abdu

ONTARIO

Superior Court of Justice
Cour supérieure de justice

Plaintiff's Claim
Demande du demandeur

Form / Formule 7A Ont. Reg. No. / Règl. de l'Ont. : 258/98



Brampton Small Claims Court

Small Claims Court / Cour des petites créances de

7755 Hurontario Street
Brampton, ON, L6W 4T1

Address / Adresse

905-456-4700

Phone number / Numéro de téléphone

SC-11-4147-00
Claim No. / N° de la demande

Plaintiff No. 1 / Demandeur n° 1

Additional plaintiff(s) listed on attached Form 1A.
Le ou les demandeurs additionnels sont mentionnés
sur la formule 1A ci-jointe.

Under 18 years of age.
Moins de 18 ans.

Last name, or name of company / Nom de famille ou nom de la compagnie CANACCEDE INTERNATIONAL ACQUISITIONS LTD		
First name / Premier prénom n/a	Second name / Deuxième prénom n/a	Also known as / Également connu(e) sous le nom de n/a
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité) P.O. Box 9, Station B		
City/Town / Cité/ville London	Province ON	Phone no. / N° de téléphone (519) 266-3130
Postal code / Code postal N6A 4V3		Fax no. / N° de télécopieur (416) 800-8753
Representative / Représentant(e)		LSUC # / N° du BHC
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité)		
City/Town / Cité/ville	Province	Phone no. / N° de téléphone
Postal code / Code postal		Fax no. / N° de télécopieur

Defendant No. 1 / Défendeur n° 1

Additional defendant(s) listed on attached Form 1A.
Le ou les défendeurs additionnels sont mentionnés
sur la formule 1A ci-jointe.

Under 18 years of age.
Moins de 18 ans.

Last name, or name of company / Nom de famille ou nom de la compagnie ABDULLAH		
First name / Premier prénom SHABBIR	Second name / Deuxième prénom n/a	Also known as / Également connu(e) sous le nom de n/a
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité) 899 Golden Farmer Way		
City/Town / Cité/ville Mississauga	Province ON	Phone no. / N° de téléphone n/a
Postal code / Code postal L5W 1A8		Fax no. / N° de télécopieur n/a
Representative / Représentant(e)		LSUC # / N° du BHC
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité)		
City/Town / Cité/ville	Province	Phone no. / N° de téléphone
Postal code / Code postal		Fax no. / N° de télécopieur

REASONS FOR CLAIM AND DETAILS / MOTIFS DE LA DEMANDE ET PRÉCISIONS

Explain what happened, including where and when. Then explain how much money you are claiming or what goods you want returned.

Expliquez ce qui s'est passé, en précisant où et quand. Ensuite indiquez la somme d'argent que vous demandez ou les biens dont vous demandez la restitution, explication à l'appui.

If you are relying on any documents, you **MUST** attach copies to the claim. If evidence is lost or unavailable, you **MUST** explain why it is not attached.

Si vous vous appuyez sur des documents, vous DEVEZ en annexer des copies à la demande. Si une preuve est perdue ou n'est pas disponible, vous DEVEZ expliquer pourquoi elle n'est pas annexée.

What happened? See attached Schedule "A"

Where?

When?

Que s'est-il

passé?

Où?

Quand?

How much? \$ 22,734.31
Combien? (Principal amount claimed / Somme demandée) \$

ADDITIONAL PAGES ARE ATTACHED BECAUSE MORE ROOM WAS NEEDED.
DES FEUILLES SUPPLÉMENTAIRES SONT ANNEXÉES EN RAISON DU MANQUE D'ESPACE.

The plaintiff also claims pre-judgment interest from February 27, 2010 under:
Le demandeur demande aussi des intérêts antérieurs au jugement de (Date) conformément à :

(Check only one box / Cochez une seule case)
the Courts of Justice Act / la Loi sur les tribunaux judiciaires
an agreement at the rate of 11.99 % per year / un accord au taux de % par an

and post-judgment interest, and court costs.
et des intérêts postérieurs au jugement, ainsi que les dépens.

Prepared on: June 23, 20 11
Fait le :

(Signature of plaintiff or representative / Signature du demandeur/de la demanderesse ou du/de la représentant(e))

Issued on: June 27, 20 11
Délivré le :

Jonah Parkin
(Signature of clerk / Signature du greffier)

CAUTION TO DEFENDANT: IF YOU DO NOT FILE A DEFENCE (Form 9A) with the court within twenty (20) calendar days after you have been served with this Plaintiff's Claim, judgment may be obtained without notice and enforced against you. Forms and self-help materials are available at the Small Claims Court and on the following website: www.ontariocourtforms.on.ca.
AVERTISSEMENT AU DÉFENDEUR: SI VOUS NE DÉPOSEZ PAS DE DÉFENSE (formule 9A) auprès du tribunal au plus tard vingt (20) jours civils après avoir reçu signification de la présente demande du demandeur, un jugement peut être obtenu sans préavis et être exécuté contre vous. Vous pouvez obtenir les formules et la documentation à l'usage du client à la Cour des petites créances et sur le site Web suivant : www.ontariocourtforms.on.ca.

SCHEDULE "A"

1. The Plaintiff Claims:
 - a. Principal claim amount of **\$22,734.31**
 - b. Pre-Judgment interest on the principal sum of **\$22,734.31** at the rate of **11.99%** per annum **February 27, 2010**, to the date of payment or Judgment herein or in the alternative pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended to the date of Judgment;
 - c. Post-Judgment interest at the rate of **11.99%** per annum, or in the alternative pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - d. Disbursements of this action pursuant to Rule 19.01 of the Small Claims Court, plus **\$100.00** for preparation and pleadings pursuant to Rule 19.03, and costs of this action pursuant to section 29 of the Courts of Justice Act and whatever further relief this Honourable Court deems just.
2. The Plaintiff, Canaccede International Acquisitions Ltd., is a company duly incorporated pursuant to the laws of the State of Delaware, in the United States of America, and is registered to carry on business in the Province of Ontario.
3. The Defendant, Shabbir Abdullah is an individual residing in Mississauga, in the Province of Ontario.
4. The Plaintiff states that this claim is pursuant to two (2) agreements between MBNA Canada Bank and the Defendant whereby credit services were extended to the Defendant through the use of credit cards on **August 14, 2006** for the account #1 and for the account #2 on **November 27, 2006**. Hereinafter referred to as the "credit card accounts".
5. The Plaintiff states that the last payment date on the credit card account #1 was **July 10, 2009** in the amount of **\$224.00**. The Plaintiff states that the last payment date on the credit card account #2 was **July 10, 2009** in the amount of **\$80.00**
6. Interest continued to accrue on the credit cards accounts until the account #1 was charged off by MBNA Canada Bank on **February 27, 2010** in the amount of **\$12,037.68** and the account #2 was charged off by MBNA Canada Bank on **February 27, 2010** in the amount of **\$10,696.63**. The balance on both credit card accounts total **\$22,734.31**
7. The Plaintiff states that the Defendant's debt was originally with MBNA Canada Bank. The accounts were subsequently sold to the Plaintiff, Canaccede International Acquisitions Ltd., on or about for both accounts on **March 15, 2010** a copy of the Bills of Sale forms part of this claim.
8. The Defendant was sent a notice advising of the assignment and payment has been demanded by the Plaintiff. The Plaintiff states that the balance remains outstanding.

ONTARIO
Superior Court of Justice
Cour supérieure de justice

Writ of Seizure and Sale of Land
Bref de saisie-exécution de biens-fonds
 Form / Formule 20D Ont. Reg. No. / Régl. de l'Ont. : 258/98

Brampton Small Claims Court
 Small Claims Court / Cour des petites créances de

SC- 11 - 4147 - 00
 Claim No. / N° de la demande

7755 Hurontario Street
Brampton, ON, L6W 4T1

Address / Adresse

(905) 456-4700

Phone number / Numéro de téléphone

Seal / Sceau

Additional party(ies) listed on attached Form 1A.
 La ou les parties additionnelles sont mentionnées sur
 la formule 1A ci-jointe.

Creditor No. 1 / Créancier n° 1

Last name, or name of company / Nom de famille ou nom de la compagnie CANACCEDE INTERNATIONAL ACQUISITIONS LTD		
First name / Premier prénom n/a	Second name / Deuxième prénom n/a	Also known as / Également connu(e) sous le nom de n/a
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité) P.O. Box 9, Station B		
City/Town / Cité/Ville London	Province ON	Phone no. / N° de téléphone (519) 266-3130
Postal code / Code postal N6A 4V3		Fax no. / N° de télécopieur (416) 800-8753
Representative / Représentant(e)		LSUC # / N° du BHC
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité)		
City/Town / Cité/Ville	Province	Phone no. / N° de téléphone
Postal code / Code postal		Fax no. / N° de télécopieur

Additional party(ies) listed on attached Form 1A.
 La ou les parties additionnelles sont mentionnées sur
 la formule 1A ci-jointe.

Debtor No. 1 / Débiteur n° 1

Last name, or name of company / Nom de famille ou nom de la compagnie Abdullah		
First name / Premier prénom Shabbir	Second name / Deuxième prénom n/a	Also known as / Également connu(e) sous le nom de n/a
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité) 899 Golden Farmer Way		
City/Town / Cité/Ville Mississauga	Province ON	Phone no. / N° de téléphone n/a
Postal code / Code postal L5W 1A8		Fax no. / N° de télécopieur n/a
Representative / Représentant(e)		LSUC # / N° du BHC
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité)		
City/Town / Cité/Ville	Province	Phone no. / N° de téléphone
Postal code / Code postal		Fax no. / N° de télécopieur

NOTE: THIS WRIT REMAINS IN FORCE FOR SIX YEARS after the date of its issue and for a further six years after each renewal. The writ may be renewed before it expires by filing a Request to Renew a Writ of Seizure and Sale (Form 20N) with the sheriff (enforcement office.)
REMARQUE : LE PRÉSENT BREF RESTE EN VIGUEUR PENDANT SIX ANS après la date de sa délivrance ou après chaque renouvellement. Le bref peut être renouvelé avant qu'il n'expire en déposant une demande de renouvellement du bref de saisie-exécution (formule 20N) auprès du shérif (bureau de l'exécution).

TO THE SHERIFF OF **Regional Municipality of Peel**

AU SHÉRIF DE (Name of county/region in which the enforcement office is located / Nom du comté/de la région où est situé le bureau de l'exécution)

Under an order of this court made on **September 20**, 20 **11**, in favour of
En vertu d'une ordonnance rendue par ce tribunal le , en faveur de

CANACCEDE INTERNATIONAL ACQUISITIONS LTD
(Name of creditor(s) / Nom du/de la/des créancier(s)/créancière(s))

YOU ARE DIRECTED to seize and sell the real property of
NOUS VOUS ENJOIGNONS de saisir les biens immeubles de

Last name, or name of company / Nom de famille ou nom de la compagnie		
Abdullah		
First name / Premier prénom	Second name / Deuxième prénom	Third name / Troisième prénom
Shabbir	N/A	N/A

Additional debtor(s) and also known as names listed on attached Form 1A.1.
Le ou les débiteurs additionnels et le ou les noms sous lesquels ils sont également connus sont mentionnés sur la formule 1A.1 ci-jointe.

situated within your jurisdiction and to realize from the seizure and sale the following sums:
qui se trouvent dans votre ressort et de procéder à leur vente pour réaliser les sommes suivantes :

(A) **AMOUNT OF JUDGMENT** (debt and pre-judgment interest) \$ 26,953.77
MONTANT DU JUGEMENT (créance et intérêts antérieurs au jugement) \$

(B) **COSTS** to date of judgment \$ 251.50
LES DÉPENS à la date du jugement \$

(C) **TOTAL AMOUNT OF PAYMENTS RECEIVED FROM DEBTOR** after judgment (if any) \$ 0.00
LE MONTANT TOTAL DES PAIEMENTS REÇUS DU DÉBITEUR après le jugement (le cas échéant) \$

Post-judgment interest continues to accrue
Les intérêts postérieurs au jugement continuent à courir

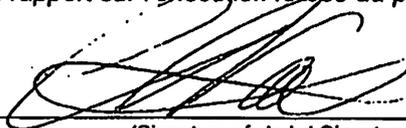
at the rate of 11.99 % per annum from September 20, 20 11
au taux de % par an à compter du

(D) **SUBSEQUENT COSTS** incurred after judgment (including the cost of issuing this writ) \$ 35.00
LES DÉPENS SUBSÉQUENTS engagés après le jugement (y compris le coût de délivrance du présent bref) \$

(E) Your fees and expenses in enforcing this writ.
Les honoraires et frais qui vous sont dus pour l'exécution forcée du présent bref.

YOU ARE DIRECTED to calculate the amount owing at the time of enforcement and pay out the proceeds according to law and to report on the execution of this writ if required by a party who filed this writ.
ET NOUS VOUS ENJOIGNONS de calculer la somme due au moment de l'exécution forcée et de verser le produit de la vente conformément à la loi et de faire un rapport sur l'exécution forcée du présent bref si la partie qui l'a déposé l'exige.

November 9, 20 11


(Signature of clerk / Signature du greffier)

Filed for the Court of the Regional Municipality of Peel
Déposé aux bureaux du shérif de la municipalité régionale de Peel

DEC - 5 2011

Shabbir

heures

CANACCEDE INTERNATIONAL ACQUISITIONS LTD v. SHABBIR ABDULLAH

Court File No: C-375-15

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at KITCHENER

APPLICATION RECORD

Christensen Law Firm
6616 Ellis Road
Cambridge, ON, N3C 2V4

Todd R. Christensen, LSUC No. 340780
Tel: 519 654 7350
Fax: 519 658 2499

Lawyers for the Applicant

Appendix 3B

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CANACCEDE INTERNATIONAL ACQUISITIONS LTD

Applicant

-and-

SHABBIR ABDULLAH

Respondent

FACTUM OF THE APPLICANT

Date: April 23, 2015

Christensen Law Firm
6616 Ellis Road
Cambridge, Ontario, N3C 2V4

Todd R. Christensen, LSUC No. 340780
Tel: 519 654 7350
Fax: 519 658 2499

Lawyers for the Applicant

TO: Mr. Shabbir Abdullah
899 Golden Farmer Way
Mississauga, ON L5W 1A8
(Respondent)

AND Royal Bank of Canada
TO: 180 Wellington Street West
Toronto, ON M1J 1J1
Attn: Legal Department

AND Household Realty Corporation Limited
TO: 17 Ray Lawson Blvd. #17
Brampton, ON L6Y 3L4
Attn: Legal Department

AND HSBC Bank Canada
TO: C/O Fluxgold, Izsak, Jaeger
100 York Blvd., Suite 220
Richmond Hill, ON L4B 1J8

AND The Toronto-Dominion Bank
TO: C/O Jocelyn R. Edwards, Brown Beattie O'Donovan LLP
1600-380 Wellington Street
London, ON N6A 5B5

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CANACCEDE INTERNATIONAL ACQUISITIONS LTD

Applicant

-and-

SHABBIR ABDULLAH

Respondent

FACTUM OF THE APPLICANT

Prepared April 23, 2015

I. INTRODUCTION AND FACTS

1. The applicant seeks an order for a reference hearing to inquire into and determine all issues relating to the conduct of the sale of the respondent's property known municipally as 899 GOLDEN FARMER WAY, MISSISSAUGA ONTARIO L5W 1A8, legal description: PT LT 79, PL 43M1246, DES PT 17, PL 43R22985, MISSISSAUGA. S/T RIGHT IN FAVOUR OF TARMAC CANADA INC., UNTIL PL 43M1246 HAS BEEN FINALLY ACCEPTED BY THE MUNICIPALITY, AS IN LT1770376 ("the lands") as a prerequisite to an order for sale. The reference hearing will determine what property or interest in the lands is liable to be sold under the judgment, determine who has interests in the lands, define those interests, determine their priority and determine how the proceeds of a sale should be distributed and allow an opportunity for the respondent or any interested party to show cause why it would be unjust or inequitable to require the sale of the defendant's property or interest in the lands. Once this initial "show cause"

reference hearing is complete, if the referee has determined the respondent has an interest in lands that may be sold to satisfy the judgment debt, the applicant will seek an order for sale by private contract under rule 55.06(1) by way of confirmation of the referee's report.

Notice of Application, Application Record Tab 1

2. The applicant was awarded judgment against the respondent in this proceeding dated September 20, 2011 in the sum of \$27,205.27 plus costs and on December 5, 2011 filed a writ of seizure and sale against the respondent's lands securing an interest against them for the judgment amount. The respondent has made no payments on the judgment since it was granted and the balance due and owing to the applicant is \$27,205.27 as of September 20, 2011 plus post-judgment interest and the costs of enforcement.

Affidavit of Sarah Fast sworn April 23, 2015, Application Record Tab 2, p. 1, para. 3

3. The respondent owns real property in the City of Mississauga in the Regional Municipality of Peel ("the lands").

Affidavit of Sarah Fast sworn April 23, 2015, Application Record Tab 2, p. 2, para. 4

II. POINTS IN ISSUE

4. Does this court have authority to order a reference to determine the interests in a property to facilitate the sale of the property to satisfy a Small Claims Court judgment debt?

5. Should the court exercise its authority to direct a reference in this case?

III. LAW AND ARGUMENT

Jurisdiction of Superior Court to Enforce a Small Claims Court Judgment by Way of Application

6. A proceeding may be commenced in Superior Court by application where the relief sought involves the declaration of the nature and extent of interests in land and their priorities and also where it is unlikely that there will be any material facts in dispute.

Rules 14.05(3)(e) and (h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

7. Although the judgment that is the subject of this application is of the Small Claims Court, the enforcement method sought is available only in Superior Court. A judicially-supervised sale conducted by way of a reference comprises procedures and equitable relief available only in Superior Court.

Courts of Justice Act, R.S.O. 1990, c. C.43, s. 96(3)

Hodgins v. Grover, 2011 ONCA 72, 2011 CarswellOnt 336 at para. 49, Book of Authorities of the Applicant, Tab 1.

Hradecky v. Hydro One Networks Inc. 2014 CarswellOnt 3316, at paras. 8-13, Book of Authorities of the Applicant, Tab 2.

“Interim Report on Reference” - Re Capital One Bank (Canada Branch) v. Charles Kirk Anderson aka Kirk K. Anderson, (October 8, 2013), Kitchener 11-4120-SR, Book of Authorities of the Applicant Tab 3.

8. Rule 20 of the *Small Claims Court Rules* provides that judgments of that court may be enforced by the methods listed therein “In addition to any other method of enforcement provided by law” authorizing enforcement of judgments of that division of this court by this court.

Rule 20.03 of the *Small Claims Court Rule*, Ont. Reg. 258/98

Authority to Direct a Reference to Satisfy a Judgment Debt

Explicit Authority in the Rules of Civil Procedure

9. A judge may at any time in a proceeding direct a reference to determine an issue relating to the conduct of a sale.

Rule 54.02(2)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

10. Where a sale is ordered, the referee may cause the property to be sold by private contract.

Rule 55.06(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

Inherent Jurisdiction

11. “As a superior Court of general jurisdiction, the [Ontario Superior Court of Justice] . . . has all of the powers that are necessary to do justice between the parties. Except where provided specifically to the contrary, the Court's jurisdiction is unlimited and unrestricted in substantive law in civil matters.”

80 Wellesley St. East Ltd. v. Fundy Bay Builders Ltd., 1972 CarswellOnt 1010 at para. 9, [1972] 2 O.R. 280, 25 D.L.R. (3d) (C.A.), Book of Authorities of Applicant Tab 4.

12. Rule 60.02(1) provides for enforcement methods under the *Rules of Civil Procedure* and is worded inclusively, stating: “In addition to any other method of enforcement provided by law, an order for the payment of money may be enforced by . . .,” and then goes on to list writ of seizure and sale, garnishment, writ of sequestration and the appointment of a receiver. This rule is additional authority for the court to apply the plain meaning of rules 54 and 55 cited above and to exercise its inherent jurisdiction to order a judicially supervised sale of land to enforce an order for the payment of money.

Rule 60.02(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

Approach Pioneered in British Columbia and Adopted in Ontario

13. At this stage, the applicant is seeking a reference hearing to gather information to assess the viability of enforcing its judgment by way of forced sale of the respondent's interest in the real property and to allow the respondent an opportunity to "show cause" why the property ought not be sold. Should the referee's report indicate that a sale is viable, the applicant intends to seek an order for sale by way of private contract by way of confirmation of the referee's report.

14. This method of enforcement was established as one provided by law in British Columbia in 1998. In *Instafund Mortgage Management Corp. v. 379100 British Columbia Ltd.*, 1998 CarswellBC 2450 (B.C.S.C.), Justice Burnyeat of the British Columbia Supreme Court set out the practical reasons for allowing judgment creditors to enforce against the interests in land of judgment debtors by way of judicial sale rather than by sheriff's auction as follows:

"The practical reasons for making an order in that form is that it allows a listing with a real estate agent and a realistic and active marketing of the property instead of the ineffective marketing of the property which results from an auction by the sheriff. As well, the additional cost of a second auction which is created if the offers received are not in accordance with the sheriff's view as to what the property is worth can be avoided."

That case indicates that the British Columbia's *Court Order Enforcement Act* only provided for enforcement of judgment debts against the interest of judgment debtors in land by way of sheriff's auction. Justice Burnyeat cited a British Columbia Court of Appeal case as authority for the proposition that the *Court Order Enforcement Act* was not a complete code and that he had inherent jurisdiction at common law to order a judicially supervised sale conducted by listing the lands in question with a real estate agent.

Instafund Mortgage Management Corp. v. 379100 British Columbia Ltd., 1998 CarswellBC 2450 (B.C.S.C.) at paras. 6-9, Book of Authorities of the Applicant Tab 5.

15. This court adopted the approach of Justice Burnyeat in *Instafund* by the decisions of Justice Gordon and Justice G.A. Campbell cited below, confirming that a judicially-supervised sale of land is an acceptable method of enforcing a money judgment.

Capital One Bank (Canada Branch) v. Ludvik Lecek and Janice Lecek, (April 4, 2013), Kitchener 07-4342-SR (Ont. Sup. Ct.), Book of Authorities of the Applicant Tab 6.

Capital One Bank (Canada Branch) v. Charles Kirk Anderson aka Kirk K. Anderson, (May 9, 2013), Kitchener 11-4120-SR (Ont. Sup. Ct.), Book of Authorities of the Applicant Tab 7.

Directing a reference is appropriate in this case

16. This court has authority to direct a reference as requested and doing so will permit the applicant to determine the respondent's interest, as well as that of other parties, in the lands prior to a sale and establish whether the sale would enable the applicant to realize on its judgment in the most just, expeditious and least expensive manner. It will also provide the respondent and other interested parties an opportunity to show cause why it would be unjust or inequitable to require the sale of the respondent's property or interest in the lands.

IV. ORDER SOUGHT

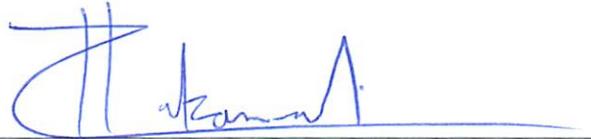
17. The applicant respectfully seeks an order directing a reference to inquire into and determine all issues relating to the conduct of a sale including:

- a. the nature and the particulars of the interest of the respondent in the lands and of the respondent's title thereto;
- b. the judgments and writs of execution and that bind the lands as well as the

other secured and unsecured interests that form a lien or charge against the lands and the priorities between them;

- c. the property or interest in the lands that is liable to be sold under the judgment;
- d. any reason why it would be unjust or inequitable to require the sale of the respondent's property or interest in the lands;
- e. the manner in which the proceeds of a sale of the lands should be distributed;
- f. an order that the parties may apply to this court of further direction from time to time;
- g. an order fixing the costs of this motion, including the reference, payable by the respondent forthwith; and
- h. an order granting such further relief as this Honourable Court deems just or that counsel may advise.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Per: Todd R. Christensen, LSUC No. 340780
Lawyer for the Applicant
CANACCEDE INTERNATIONAL ACQUISITIONS LTD

SCHEDULE A

List of Authorities Referred To

1. *Hodgins v. Grover*, 2011 ONCA 72, 2011 CarswellOnt 336
2. *Hradecky v. Hydro One Networks Inc.* 2014 CarswellOnt 3316
3. “Interim Report on Reference” - *Re Capital One Bank (Canada Branch) v. Charles Kirk Anderson aka Kirk K. Anderson*, (October 8, 2013), Kitchener 11-4120-SR
4. *80 Wellesley St. East Ltd. v. Fundy Bay Builders Ltd.*, 1972 CarswellOnt 1010 at para. 9, [1972] 2 O.R. 280, 25 D.L.R. (3d) (C.A.)
5. *Instafund Mortgage Management Corp. v. 379100 British Columbia Ltd.*, 1998 CarswellBC 2450 (B.C.S.C.) at paras. 6-9.
6. *Capital One Bank (Canada Branch) v. Ludvik Lecek and Janice Lecek*, (April 4, 2013), Kitchener 07-4342-SR (Ont. Sup. Ct.)
7. *Capital One Bank (Canada Branch) v. Charles Kirk Anderson aka Kirk K. Anderson*, (May 9, 2013), Kitchener 11-4120-SR (Ont. Sup. Ct.)

SCHEDULE B

Text of Relevant Provisions

Section 96(3) of the Courts of Justice Act, R.S.O. 1990, c. C.43

96(3) Only the Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may grant equitable relief, unless otherwise provided.

Rule 20.03 of the Small Claims Court Rules Ont. Reg. 258/98

General

20.03 In addition to any other method of enforcement provided by law,

(a) an order for the payment or recovery of money may be enforced by,

(i) a writ of seizure and sale of personal property (Form 20C) under rule 20.06,

(ii) a writ of seizure and sale of land (Form 20D) under rule 20.07, and

(iii) garnishment under rule 20.08; and

(b) a further order as to payment may be made under subrule 20.10 (7). O. Reg. 258/98, r. 20.03.

Rule 14.05(3) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194

APPLICATIONS — BY NOTICE OF APPLICATION

Application Under Rules

14.05(3) A proceeding may be brought by application where these rules authorize the commencement of a proceeding by application or where the relief claimed is,

(a) the opinion, advice or direction of the court on a question affecting the rights of a person in respect of the administration of the estate of a deceased person or the execution of a trust;

(b) an order directing executors, administrators or trustees to do or abstain from doing any particular act in respect of an estate or trust for which they are responsible;

(c) the removal or replacement of one or more executors, administrators or trustees, or the fixing of their compensation;

- (d) the determination of rights that depend on the interpretation of a deed, will, contract or other instrument, or on the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
- (e) the declaration of an interest in or charge on land, including the nature and extent of the interest or charge or the boundaries of the land, or the settling of the priority of interests or charges;
- (f) the approval of an arrangement or compromise or the approval of a purchase, sale, mortgage, lease or variation of trust;
- (g) an injunction, mandatory order or declaration or the appointment of a receiver or other consequential relief when ancillary to relief claimed in a proceeding properly commenced by a notice of application;
- (g.1) for a remedy under the *Canadian Charter of Rights and Freedoms*; or
- (h) in respect of any matter where it is unlikely that there will be any material facts in dispute. R.R.O. 1990, Reg. 194, r. 14.05 (3); O. Reg. 396/91, s. 3.

Rule 54.02(2)(b) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194

WHERE REFERENCE MAY BE DIRECTED

Reference of Whole Proceeding or Issue

54.02 (1) Subject to any right to have an issue tried by a jury, a judge may at any time in a proceeding direct a reference of the whole proceeding or a reference to determine an issue where,

- (a) all affected parties consent;
- (b) a prolonged examination of documents or an investigation is required that, in the opinion of the judge, cannot conveniently be made at trial; or
- (c) a substantial issue in dispute requires the taking of accounts. R.R.O. 1990, Reg. 194, r. 54.02 (1).

Reference of Issue

(2) Subject to any right to have an issue tried by a jury, a judge may at any time in a proceeding direct a reference to determine an issue relating to,

- (a) the taking of accounts;
- (b) the conduct of a sale;

- (c) the appointment by the court of a guardian or receiver, or the appointment by a person of an attorney under a power of attorney;
- (d) the conduct of a guardianship or receivership or the exercise of the authority of an attorney acting under a power of attorney; or
- (e) the enforcement of an order. R.R.O. 1990, Reg. 194, r. 54.02 (2); O. Reg. 69/95, s. 7.

Rule 55.06(1) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194

REFERENCE FOR CONDUCT OF SALE

Method of Sale

55.06 (1) Where a sale is ordered, the referee may cause the property to be sold by public auction, private contract or tender, or partly by one method and partly by another. R.R.O. 1990, Reg. 194, r. 55.06 (1).

Rule 60.02(1) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194

ENFORCEMENT OF ORDER FOR PAYMENT OR RECOVERY OF MONEY

General

60.02 (1) In addition to any other method of enforcement provided by law, an order for the payment or recovery of money may be enforced by,

- (a) a writ of seizure and sale (Form 60A) under rule 60.07;
- (b) garnishment under rule 60.08;
- (c) a writ of sequestration (Form 60B) under rule 60.09; and
- (d) the appointment of a receiver. R.R.O. 1990, Reg. 194, r. 60.02 (1).

Rule 1.04(1) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194

INTERPRETATION

General Principle

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits. R.R.O. 1990, Reg. 194, r. 1.04 (1).

CANACCEDE INTERNATIONAL ACQUISITIONS LTD v. SHABBIR ABDULLAH

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT KITCHENER

FACTUM OF THE APPLICANT

Christensen Law Firm
6616 Ellis Road
Cambridge, Ontario, N3C 2V4

Todd R. Christensen, LSUC No. 340780
Tel: 519 654 7350
Fax: 519 658 2499

Lawyers for the Applicant

Appendix 4

CT

Court File No. 07-4342-SR

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE Mr Justice Gordon ; April 4, 2013

BETWEEN:



CAPITAL ONE BANK

Plaintiff

-and-

LUDVIK LECEK

-and-

JANICE LECEK

Defendants

ORDER

THIS MOTION, made by the plaintiff on notice for a reference hearing to determine all issues relating to the conduct of the sale of the defendants' property, located in the town of Whitby in the Regional Municipality of Durham, known municipally as 12 Deerfield Court, Whitby, Ontario, legal description: PCL 43-1, SEC M958; LT 43, PL M958 ; S/T CO212986, LTC34838 WHITBY ("the lands") was heard this day at Kitchener.

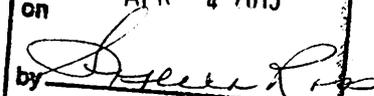
ON READING the Motion Record, Factum of the Moving Party, and Book of Authorities of the Moving Party, and on hearing the submissions of counsel for the parties,

1. **THIS COURT ORDERS** that a reference be held to inquire into and determine all issues relating to the conduct of the sale of the lands, including,

- a. the nature and the particulars of the interests of the defendants in the lands and of the defendants' title thereto;
- b. the judgments and writs of execution and that bind the lands as well as the other secured and unsecured interests that form a lien or charge against the lands and the priorities between them;
- c. the property or interest in the lands that is liable to be sold under the judgment;
- d. any reason why it would be unjust or inequitable to require the sale of the defendants' property or interests in the lands; and
- e. the manner in which the proceeds of a sale of the lands should be distributed.

2. **THIS COURT ORDERS** that the parties may apply to this court for further direction from time to time.
3. **THIS COURT ORDERS** the Registrar to report the findings at the reference to the Court.
4. **THIS COURT ORDERS** that the defendants (responding parties) pay to the plaintiff (moving party) forthwith the costs of this motion fixed in the amount of \$ 370.65, and if it remains unpaid, the costs of this motion shall be paid from the proceeds of the sale.

16 -


Gordon J.
ENTERED AT KITCHENER
in Book No. 6C
as Document No. 214
on APR - 4 2013
by 

CAPITAL ONE BANK v. LUDVIK LECEK et al.

Court File No. 07-4342-SR

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT KITCHENER

ORDER

Christensen Law Firm
6616 Ellis Road
Cambridge, Ontario, N3C 2V4

Menachem M. Fellig, LSUC No. 54257B
Tel: 519 654 7350
Fax: 519 658 2499

Lawyers for the Plaintiff (Moving Party)

Appendix 5

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE
D.A. Broad

)
)
)

September 9, 2015

BETWEEN:

CANACCEDE INTERNATIONAL ACQUISITIONS LTD

Applicant

-and-

SHABBIR ABDULLAH

Respondent

JUDGMENT

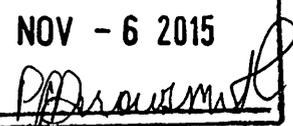
THIS APPLICATION, made by the applicant on notice for a reference hearing to determine all issues relating to the conduct of the sale of the respondent's property, located in the City of Mississauga, in the Regional Municipality of Peel, known municipally as 899 GOLDEN FARMER WAY, MISSISSAUGA ONTARIO L5W 1A8 legal description: PT LT 79, PL 43M1246, DES PT 17, PL 43R22985, MISSISSAUGA. S/T RIGHT IN FAVOUR OF TARMAC CANADA INC., UNTIL PL 43M1246 HAS BEEN FINALLY ACCEPTED BY THE MUNICIPALITY, AS IN LT1770376 ("the lands") was heard June 25, 2015 at Kitchener in the presence of the lawyers for the Applicant, with no one appearing for the Respondent although properly served as appears from the Affidavit of Sarah Fast sworn May 12, 2015.

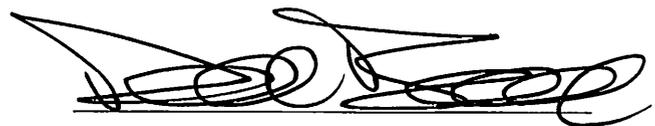
ON READING the Application Record, Factum of the Applicant, and Applicant's Book of Authorities, and on hearing the submissions of counsel for the Applicant and reading their additional written submissions,

1. **THIS COURT ORDERS AND ADJUGES** that a reference be held to inquire into and determine all issues relating to the conduct of the sale of the lands, including,
 - a. the nature and the particulars of the interest of the respondent in the lands and of the respondent's title thereto;
 - b. the judgments and writs of execution and that bind the lands as well as the other secured and unsecured interests that form a lien or charge against the lands and the priorities between them;
 - c. the property or interest in the lands that is liable to be sold under the judgment;
 - d. any reason why it would be unjust or inequitable to require the sale of the respondent's property or interest in the lands; and
 - e. the manner in which the proceeds of a sale of the lands should be distributed.

THIS COURT ORDERS that the parties may apply to this court for further direction from time to time.

THIS COURT ORDERS that the respondent pay to the applicant the costs of this application fixed in the amount of \$725.42, and if it remains unpaid, the costs of this application shall be paid from the proceeds of the sale.

ENTERED AT KITCHENER
in Book No. 8C
As Document No. 2270
on NOV - 6 2015
by 


Justice D.A. Broad

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT KITCHENER

JUDGMENT

Christensen Law Firm
6616 Ellis Road
Cambridge, Ontario, N3C 2V4

Todd R. Christensen, LSUC No. 340780
Zameer N. Hakamali, LSUC No. 57124F
Tel: 519 654 7350
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Lawyers for the Applicant

Appendix 6

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CAPITAL ONE BANK (CANADA BRANCH)

Plaintiff

-and-

CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

Defendant

NOTICE OF HEARING FOR DIRECTIONS

By order of the court, a copy of which is served with this notice, a reference was directed for the purpose of determining all issues relating to the conduct of the sale of the lands, including,

- a. the nature and the particulars of the interest of the defendant in the lands and of the defendant's title thereto;
- b. the judgments and writs of execution and that bind the lands as well as the other secured and unsecured interests that form a lien or charge against the lands and the priorities between them;
- c. the property or interest in the lands that is liable to be sold under the judgment;
- d. any reason why it would be unjust or inequitable to require the sale of the defendant's property or interest in the lands; and
- e. the manner in which the proceeds of a sale of the lands should be distributed.

The plaintiff has obtained an appointment with Mr. Stevens on Tuesday, July 16, 2013, at 9:30, at Waterloo Region Courthouse, 85 Frederick Street, Kitchener, Ontario, N2H 0A7 for a hearing to consider directions for the conduct of the reference in this proceeding.

IF YOU FAIL TO ATTEND, in person or by an Ontario lawyer acting for you, directions may be given and the reference may proceed in your absence and without further notice to you, and you will be bound by any order made in the proceeding.

June 14, 2013

Todd R. Christensen
6616 Ellis Road
Cambridge, Ontario N3C 2V4
519 654 7350

TO:

Mr. Charles Kirk Anderson
2861 Westbrook Avenue
Stevensville, ON L0S 1S0

Tel: 905-382-2491

Defendant (Responding Party)
Ms. Gail Anderson
2861 Westbrook Avenue
Stevensville, ON L0S 1S0

Niagara Credit Union Limited
75 Corporate Park Drive
St. Catharines, ON L2S 3W3
Attn: Legal Department

Canadian Tire Bank
C/O Small Matters
26 Queen Street, 2nd Floor PO Box 157
St. Catharines, ON L2R 6S

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR

THURSDAY MAY 9, 2013

JUSTICE G. A. CAMPBELL
BETWEEN:

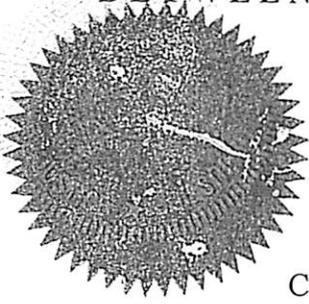
CAPITAL ONE BANK (CANADA BRANCH)

Plaintiff

-and-

CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

Defendant



ORDER

THIS MOTION, made by the plaintiff on notice for a reference hearing to determine all issues relating to the conduct of the sale of the defendant's property, located in the town of Fort Erie in the Regional Municipality of Niagara at Welland, known municipally as 2861 Westbrook Avenue, Fort Erie, Ontario, L0S 1S0, legal description: LT 12 PL 343 WILLOUGHBY ; FORT ERIE ("the lands") was heard this day at Kitchener.

ON READING the Motion Record, Factum of the Moving Party, and Book of Authorities of the Moving Party, and on hearing the submissions of counsel for the plaintiff, parties, no one appearing for the defendant,

1. THIS COURT ORDERS that a reference be held to inquire into and determine all issues relating to the conduct of the sale of the lands, including,
 - a. the nature and the particulars of the interest of the defendant in the lands and of the defendant's title thereto;

- b. the judgments and writs of execution and that bind the lands as well as the other secured and unsecured interests that form a lien or charge against the lands and the priorities between them;
- c. the property or interest in the lands that is liable to be sold under the judgment;
- d. any reason why it would be unjust or inequitable to require the sale of the defendant's property or interest in the lands; and
- e. the manner in which the proceeds of a sale of the lands should be distributed.
2. **THIS COURT ORDERS** that the parties may apply to this court for further direction from time to time.
3. **THIS COURT ORDERS** the Registrar to report the findings at the reference to the Court.
4. **THIS COURT ORDERS** that the defendant (responding party) pay to the plaintiff (moving party) forthwith the costs of this motion fixed in the amount of \$ 2345.80, and if it remains unpaid, the costs of this motion shall be paid from the proceeds of the sale.

G. A. Campbell

G A CAMPBELL

ENTERED AT KITCHENER
In Book No. 6C.
As Document No. 425
on MAY - 9 2013
by <i>[Signature]</i>

CAPITAL ONE BANK (CANADA BRANCH) v. CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT KITCHENER

ORDER

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Menachem M. Fellig, LSUC No. 54257B
Tel: 519 654 7350
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Lawyers for the Plaintiff (Moving Party)

Appendix 7

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CANACCEDE INTERNATIONAL ACQUISITIONS LTD.

Applicant

-and-

SHABBIR ABDULLAH

Respondent

NOTICE OF HEARING FOR DIRECTIONS

By order of the court, a copy of which is served with this notice, a reference was directed for the purpose of determining all issues relating to the conduct of the sale of the lands, including,

- a. the nature and the particulars of the interest of the respondent in the lands and of the respondent's title thereto;
- b. the judgments and writs of execution and that bind the lands as well as the other secured and unsecured interests that form a lien or charge against the lands and the priorities between them;
- c. the property or interest in the lands that is liable to be sold under the judgment;
- d. any reason why it would be unjust or inequitable to require the sale of the respondent's property or interest in the lands; and
- e. the manner in which the proceeds of a sale of the lands should be distributed.

The plaintiff has obtained an appointment with Mr. Stevens on Tuesday, April 12, 2016, at 9:30 a.m., at Waterloo Region Courthouse, 85 Frederick Street, Kitchener, Ontario, N2H 0A7 for a hearing to consider directions for the conduct of the reference in this proceeding.

IF YOU FAIL TO ATTEND, in person or by an Ontario lawyer acting for you, directions may be given and the reference may proceed in your absence and without further notice to you, and you will be bound by any order made in the proceeding.

March 18, 2016

CHRISTENSEN LAW FIRM

Todd R. Christensen, LSUC No.: 340780
Zameer N. Hakamali, LSUC No.: 57124F
6616 Ellis Road
Cambridge, Ontario N3C 2V4

Tel: 519-654-7350
Fax: 519-658-2499

Lawyers for the Applicant

TO: Mr. Shabbir Abdullah
899 Golden Farmer Way
Mississauga, ON L5W 1A8

Respondent

AND TO: Royal Bank of Canada
188 Wellington Street West
Toronto, ON M1J 1J1
Attn: Legal Department

AND TO: HSBC Bank Canada
C/O Fluxgold, Izsak, Jaeger
100 York Blvd., Suite 220
Richmond Hill, ON L4B 1J8

AND TO: The Toronto-Dominion Bank
C/O Jocelyn R. Edwards, Brown Beattie
1600-380 Wellington Street
London, ON N6A 5B5

AND TO: Household Realty Corporation Limited
17 Ray Lawson Blvd. #17
Brampton, ON L6Y 3L4
Attn: Legal Department

CANACEDE INTERNATIONAL ACQUISITIONS
Applicant

v.

SHABBIR ABDULLAH
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at KITCHENER

NOTICE OF HEARING FOR DIRECTIONS

Christensen Law Firm
6616 Ellis Road
Cambridge, ON, N3C 2V4

Todd R. Christensen, LSUC No.: 340780
Zameer N. Hakamali, LSUC No.: 57124F
Tel: 519 654 7350
Fax: 519 658 2499

Lawyers for the Applicant

Appendix 8

ONTARIO
SUPERIOR COURT OF JUSTICE

reference
REGISTRAR ROBERT STEVENS

16^{at}
) JULY 16, 2013
)

BETWEEN:

CAPITAL ONE BANK (CANADA BRANCH)

Plaintiff

-and-

CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

Defendant



ORDER

IN ACCORDANCE with the order directing a reference dated May 9, 2013, a hearing to consider directions for the conduct of the reference in this proceeding to determine all issues relating to the conduct of the sale of the defendant's property, located in the town of Fort Erie in the Regional Municipality of Niagara at Welland, known municipally as 12861 Westbrook Avenue, Fort Erie, Ontario, L0S 1S0, legal description: LT 12 PL 343 WILLOUGHBY; FORT ERIE ("the lands") was heard this day at Kitchener.

ON READING the order directing the reference, and on hearing the submissions of counsel for the plaintiff, no one appearing for the defendant, Ms. Gail Anderson, Niagara Credit Union Limited, and Canadian Tire Bank although properly served as appears from the affidavits of service filed,

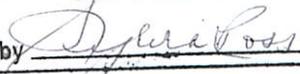
1. THIS COURT ORDERS and directs that Niagara Credit Union Limited provide to the plaintiff within 30 days of being served with this order a statement of the current balance owing on any charge registered by it against the lands failing which the claims of execution creditors shall take priority over its charge or charges against the lands.

2. THIS COURT ORDERS and directs that Global Investment Holdings Inc. is added as a party to this reference as a respondent and that the plaintiff serve it with a copy of this order, together with a copy of the order directing the reference and a notice to party added on reference (Form 55B).
3. THIS COURT ORDERS and directs that within 30 days of being served in accordance with paragraph 2, Global Investment Holdings Inc. shall provide to the plaintiff a statement of the current balance owing on any charge registered by it against the lands failing which the claims of execution creditors shall take priority over its charge or charges against the lands.
4. THIS COURT ORDERS and directs that the plaintiff shall prepare a draft report and the report shall be settled on October 8, 2013. The plaintiff shall serve a copy of the draft report along with notice of the date for settling the report on all parties at least 10 days before the date.
5. THIS COURT ORDERS that the defendant pay to the plaintiff forthwith the costs of this hearing fixed in the amount of \$750.00, and if it remains unpaid, the costs of this motion shall be paid from the proceeds of the sale.





Referee

ENTERED AT KITCHENER	
in Book No.	8C
As Document No.	786
on	JUL 16 2013
by	

Court File No. 11-4120-SR

CAPITAL ONE BANK (CANADA BRANCH) v. CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT KITCHENER

ORDER

Christensen Law Firm
6616 Ellis Road
Cambridge, Ontario, N3C 2V4

Todd R. Christensen, LSUC No. 340780

Tel: 519 654 7350
Fax: 519 658 2499

Lawyers for the Plaintiff

Appendix 9

ONTARIO
SUPERIOR COURT OF JUSTICE

REFEREE ROBERT STEVENS

) April 12, 2016
)

B E T W E E N:

CANACCEDE INTERNATIONAL ACQUISITIONS LTD.

Applicant

-and-

SHABBIR ABDULLAH

Respondent



ORDER

IN ACCORDANCE with the order directing a reference dated September 9, 2015 a hearing to consider directions for the conduct of the reference in this proceeding to determine all issues relating to the conduct of the sale of the respondent's property, located the City of Mississauga, in the Regional Municipality of Peel, known municipally as 899 GOLDEN FARMER WAY, MISSISSAUGA ONTARIO L5W 1A8 legal description: PT LT 79, PL 43M1246, DES PT 17, PL 43R22985, MISSISSAUGA. S/T RIGHT IN FAVOUR OF TARMAC CANADA INC., UNTIL PL 43M1246 HAS BEEN FINALLY ACCEPTED BY THE MUNICIPALITY, AS IN LT1770376 ("the lands") was heard this day at Kitchener.

ON READING the order directing the reference, and on hearing the submissions of counsel for the applicant, C. Internicola for TD Bank appearing, and no other interested persons appearing although properly served as appears from the affidavits of service filed,

1. THIS COURT ORDERS and directs that Royal Bank of Canada provide to the applicant within 30 days of being served with this order a statement of the current balance owing on any charge registered by it against the lands failing which the

claims of execution creditors shall take priority over its charge or charges against the lands.

2. THIS COURT ORDERS and directs that Household Realty Corporation Limited provide to the applicant within 30 days of being served with this order a statement of the current balance owing on any charge registered by it against the lands failing which the claims of execution creditors shall take priority over its charge or charges against the lands.
3. THIS COURT ORDERS and directs that the applicant shall prepare a draft report and the report shall be settled on June 14, 2016^{30 days}. The applicant shall serve a copy of the draft report along with notice of the date for settling the report on all parties at least 10 days before the date.
4. THIS COURT ORDERS that the respondent pay to the applicant forthwith the costs of this hearing fixed in the amount of \$ 462.41, and if it remains unpaid, the costs of this hearing shall be paid from the proceeds of the sale.

ENTERED AT KITCHENER
in Book No. <u>3C</u>
As Document No. <u>501</u>
on APR 13 2016
by <u>Mona Goodwin</u>



Robert Stevens
ROBERT STEVENS

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT KITCHENER

ORDER

Christensen Law Firm
6616 Ellis Road
Cambridge, Ontario, N3C 2V4

Todd R. Christensen, LSUC No. 340780
Zameer N. Hakamali, LSUC No. 37124F
Tel: 519 654 7350
Fax: 519 658 2499

Lawyers for the Applicant

Appendix 10

FL

Court File No. 11-4120-SR

ONTARIO
SUPERIOR COURT OF JUSTICE

ROBERT STEVENS
REFEREE

)
)

OCTOBER 8TH, 2013

B E T W E E N:

CAPITAL ONE BANK (CANADA BRANCH)

Plaintiff

-and-

CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

Defendant

INTERIM REPORT ON REFERENCE

IN ACCORDANCE WITH the Order of Justice G. A. Campbell on May 9, 2013 of this Court on Motion directed a reference to be held to determine all issues relating to the conduct of the sale of the defendant's property located in the town of Fort Erie in the Regional Municipality of Niagara at Welland, known municipally as 2861 Westbrook Avenue, Fort Erie, Ontario L0S 1S0, legal description: LT 12 PL 343 WILLOUGHBY ; FORT ERIE ("the lands");

AND IN ACCORDANCE WITH the Notice of Hearing for Directions and the hearing which took place on July 16, 2013;

1. The following parties were served with the order directing a reference and a notice of hearing for directions:

Charles Kirk Anderson aka Kirk K. Anderson,

Gail Anderson,

Niagara Credit Union Limited, and

Canadian Tire Bank.

2. The following parties were added on the reference and were served with a notice to party added on reference:

Global Investment Holdings Inc.

3. The following parties did not attend on the reference:

Charles Kirk Anderson aka Kirk K. Anderson,

Gail Anderson,

Niagara Credit Union Limited,

Canadian Tire Bank, and

Global Investment Holdings Inc.

4. The following parties provided to the plaintiff a statement of the current balance owing any charge registered by it against the lands, which are attached as Exhibits 1 and 2:

Niagara Credit Union Limited, and

Global Investment Holdings Inc.

5. The following party provided the plaintiff a statement of the current balance owing under any execution filed by it against the defendant, which are attached as Exhibit 3:

Canadian Tire Bank.

AND HAVING READ the exhibits,

1. **FINDING NO REASON** why it would be unjust or inequitable to require the sale of the lands, I direct that upon confirmation of this report by motion to Justice G.A. Campbell who ordered this reference, that the lands be sold.
2. I **DIRECT THAT** the lands be sold by private contract and that the plaintiff shall have exclusive conduct of the sale and may list the lands for sale with a licensed real estate broker and to do all things reasonably incidental thereto including paying to any real estate agent or broker that arranges a sale of the lands from the proceeds of the sale a commercially reasonable commission.
3. I **DIRECT THAT** the plaintiff may sign any and all documents, listing agreements, offers, agreements of purchase and sale and any and all closing sale documents to give effect to and necessary to carry out the sale.
4. I **DIRECT THAT** any person or persons in possession of the lands, including any tenant or tenants, forthwith and until further order of the court permit any duly authorized agent on behalf of the plaintiff to inspect, appraise or show to any prospective purchaser of the lands, including the interior of the lands, between 10:00 a.m. and 8:00 p.m. Monday through Sunday inclusive but excluding statutory holidays and to post signs on the lands stating that the lands are offered for sale.
5. I **DIRECT THAT** all costs of the sale, including the reference, be payable by the defendant to the plaintiff on a substantial indemnity scale and be paid from the proceeds of the sale.
6. I **DIRECT THAT** any offer received by the plaintiff shall be copied as soon as possible to only those parties to this action who have appeared personally or through counsel or have filed appropriate material setting out their claims herein.

7. I DIRECT THAT any party wishing to apply to me for acceptance of an offer do so in a summary or informal manner after giving notice to only the parties to this action who have appeared personally or through counsel or have filed appropriate material setting out their claims herein. Upon my approval of an offer, the plaintiff may accept it and carry out the sale.
8. I DIRECT THAT the monies received upon the sale of the lands be paid into court.
9. I DIRECT THAT the secured parties have the following priority: 1) Global Investment Holdings Inc., and 2) Niagara Credit Union Limited.
10. I DIRECT THAT the execution creditors shall share the remaining net proceeds of the sale on a *pro rata* basis.
11. I DIRECT THAT the manner in which the proceeds of the sale should be distributed shall be determined once the sale has been completed and set out in the Final Report on Reference.
12. I DIRECT that a copy of this report be served on all parties.



ASSESSMENT OFFICER



Exhibit 1 to the Interim Report on Reference

October 8, 2013

Exhibit 2 to the Interim Report on Reference

October 8, 2013

Exhibit 3 to the Interim Report on Reference

October 8, 2013

(E) POST-JUDGMENT INTEREST	
Sum on which post-judgment interest is calculated	8349.91
Rate of post-judgment interest	25.89%
Start date	22-Jan
Start date - year	11
End date	16-Jul
End date - year	13
Number of days	756
Post-judgment interest amount	4474.36
(F) SUBSEQUENT COSTS incurred after judgment:	
including the cost of issuing this writ	135.00
TOTAL DUE:	12924.17

Court File No. 11-4120-SR

CAPITAL ONE BANK (CANADA BRANCH) v. CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT KITCHENER

INTERIM REPORT ON REFERENCE

Christensen Law Firm
6616 Ellis Road
Cambridge, Ontario, N3C 2V4

Todd R. Christensen, LSUC No. 340780

Tel: 519 654 7350
Fax: 519 658 2499

Lawyers for the Plaintiff

Appendix 11

ONTARIO
SUPERIOR COURT OF JUSTICE

Robert Stevens
Referee

)
)

June 14, 2016

BETWEEN:

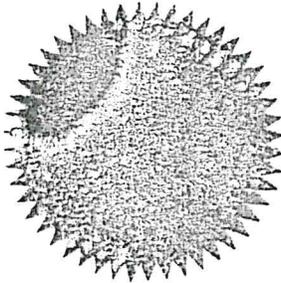
CANACEDE INTERNATIONAL ACQUISITIONS LTD.

Applicant

-and-

SHABBIR ABDULLAH

Respondent



INTERIM REPORT ON REFERENCE

IN ACCORDANCE WITH the Order of Justice Broad on September 9, 2015 of this Court on Motion directed a reference to be held to determine all issues relating to the conduct of the sale of the defendant's property in the City of Mississauga, in the Regional Municipality of Peel, known municipally as 899 GOLDEN FARMER WAY, MISSISSAUGA ONTARIO L5W 1A8 legal description: PT LT 79, PL 43M1246, DES PT 17, PL 43R22985, MISSISSAUGA. S/T RIGHT IN FAVOUR OF TARMAC CANADA INC., UNTIL PL 43M1246 HAS BEEN FINALLY ACCEPTED BY THE MUNICIPALITY, AS IN LT1770376 ("the lands");

AND IN ACCORDANCE WITH the Notice of Hearing for Directions and the hearing which took place on April 12, 2016;

1. The following parties were served with the order directing a reference and a notice of hearing for directions:

Shabbir Abdullah
HSBC Bank Canada
The Toronto-Dominion Bank
Household Realty Corporation Limited

2. The following parties did not attend on the reference:

Shabbir Abdullah
Royal Bank of Canada
HSBC Bank Canada
The Toronto-Dominion Bank
Household Realty Corporation Limited

3. The following parties were served with the April 12, 2016 order of Referee Robert Stevens:

Shabbir Abdullah
Royal Bank of Canada
HSBC Bank Canada
The Toronto-Dominion Bank
Household Realty Corporation Limited

4. The following parties provided to the plaintiff a statement of the current balance owing any charge registered by it against the lands: Royal Bank of Canada (May 27, 2016) and Household Realty Corporation Limited (June 10, 2016).

5. The following party provided the plaintiff a statement of the current balance owing under any execution filed by it against the defendant:

AND HAVING READ the exhibits if any,

1. FINDING NO REASON why it would be unjust or inequitable to require the sale of the lands, I direct that the lands be sold.
2. I DIRECT THAT the lands be sold by private contract and that the plaintiff shall have exclusive conduct of the sale and may list the lands for sale with a licensed real estate broker and to do all things reasonably incidental thereto including

paying to any real estate agent or broker that arranges a sale of the lands from the proceeds of the sale a commercially reasonable commission.

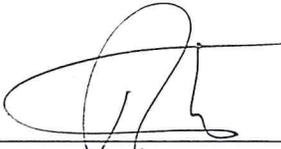
3. I DIRECT THAT the plaintiff may sign any and all documents, listing agreements, offers, agreements of purchase and sale and any and all closing sale documents to give effect to and necessary to carry out the sale.
4. I DIRECT THAT any person or persons in possession of the lands, including any tenant or tenants, forthwith and until further order of the court permit any duly authorized agent on behalf of the plaintiff to inspect, appraise or show to any prospective purchaser of the lands, including the interior of the lands, between 10:00am and 8:00pm. Monday through Sunday inclusive but excluding statutory holidays and to post signs on the lands stating that the lands are offered for sale.
5. I DIRECT THAT all costs of the sale, including the reference, be payable by the defendant to the plaintiff on a substantial indemnity scale and be paid from the proceeds of the sale.
6. I DIRECT THAT any offer received by the plaintiff shall be copied as soon as possible to only those parties to this action who have appeared personally or through counsel or have filed appropriate material setting out their claims herein.
7. I DIRECT THAT any party wishing to apply to me for acceptance of an offer do so in a summary or informal manner after giving notice to only the parties to this action who have appeared personally or through counsel or have filed appropriate material setting out their claims therein. Upon approval of an offer, the plaintiff may accept it and carry out the sale.
8. I DIRECT THAT the monies received upon the sale of the lands to be paid into court.

9. I DIRECT THAT the secured parties have the following priority: 1) Royal Bank of Canada, 2) Household Realty Corporation Limited.

10. I DIRECT THAT the execution creditors shall share the remaining net proceeds of the sale on a *pro rata* basis.

11. I DIRECT THAT the manner in which the proceeds of the sale should be distributed shall be determined once the sale has been completed and set out in the Final Report on Reference.

12. I DIRECT THAT a copy of this report be served on all parties.



Robert
Assessment Officer

ROBERT STEVENS

Exhibit 1 to the Interim Report on Reference

June 14, 2016



RBC Financial Group
RBC Groupe Financier

FAX\Télécopie

Date : Friday, May 27, 2016 1:46:36 PM

To\Destinataire: Todd R. Christensen

From\Expéditeur: Statements

Tel.\Tél.:

Tel.\Tél.:

Fax\Télec. : 5196582499

Fax\Télec.:

Number of pages\Nombre de pages: 04 Including coverpage\Incluant la présente

Message: Included below (mandatory), is a list of the documents you will find enclosed in this fax:

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ROYAL BANK OF CANADA
 TOR ON METRO/ON MTG CENTRE #4
 10 YORK MILLS RD-3RD FLR
 TORONTO ON M2P 0A2

Royal Bank of Canada
**Mortgage
 Payout Statement**

TODD R. CHRISTENSEN
 BARRISTERS & SOLICITORS

Mortgage Number: 21311295-001 (08943)
 SRF Number: 850656224
 Issue Date: MAY 27, 2016
 How to reach us: 1-800-974-1163

FAX NUMBER: 519-658-2499

Payout Statement for Mortgage 21311295-001

Client(s): SHABBIR ABDULLAH

Property Address: 899 GOLDEN FARMER WAY , MISSISSAUGA ON L5W1A8

This statement sets out the amount required to pay Mortgage 21311295-001 in full on the requested payout date of MAY 27, 2016. The amount to be paid, an explanation of any charges and instructions for making payment are detailed below. If payment is not received by the statement expiry date of JUNE 1, 2016 a new Mortgage Payout Statement will be required, and any prepayment charges may change.

Total Amount Due for Payout on MAY 27, 2016	\$183,587.70
Interest per diem	\$11.94
HomeProtector insurance premium per diem	\$0.00

Balances are based on the assumption that all regular scheduled payments are made including HomeProtector® insurance premiums, if any, up to but not including MAY 27, 2016. If a scheduled payment is not made, for any reason, the missed payment must be paid (together with any additional interest) before the mortgage will be discharged.

Payment Instructions

1. Payment in full must be received by us no later than 3:00 p.m. on the requested payout date of MAY 27, 2016. If funds are not received by 3:00 p.m., interest per diem of \$11.94 and HomeProtector insurance premium per diem of \$0.00 must be added to the "Total Amount Due for Payout", for each additional day, including the payout date, to a maximum of 5 calendar days after the requested payout date. If funds have not been received by the 5th calendar day after the requested payout date, this statement will be null and void and a new payout statement must be obtained.
2. To ensure that there are funds to cover scheduled payments due before the payout date (in the event these are returned to us unpaid for any reason), please retain an amount equivalent to the "Total Regular Payment" indicated below. Unless otherwise instructed by RBC Royal Bank®, this amount may be released 10 business days after the "Total Amount Due for Payout" has been paid.
3. Ensure any correspondence includes the mortgage number and is forwarded to the above address.

Details for Mortgage 21311295-001

Term	060 (MONTHS)
Maturity Date	FEBRUARY 16, 2021
Interest Rate Type	VARIABLE
Interest Rate	2.400000% (PRIME RATE -0.300000%)
Payment Frequency	MONTHLY
Principal & Interest Payment	\$1,369.62
Tax Payment	\$0.00
HomeProtector Insurance Premium	\$0.00
Total Regular Payment	\$1,369.62
Annual Prepayment Option Anniversary Date	FEBRUARY 16, 2017

Explanation of Balances and Charges

Mortgage Balance **\$182,013.48**

This is the principal amount and interest owing on the mortgage up to the date of the last regularly scheduled payment date before the requested payout date.

Accrued Interest **\$107.42**

This is the amount of interest that will accrue between the last regularly scheduled payment date and the requested payout date.

HomeProtector Insurance Premium Due **\$0.00**

This is the amount of HomeProtector insurance premium due for the period from the last regularly scheduled payment date until the requested payout date.

For information on your insurance coverage, please call the Insurance Service Centre at 1-800-769-2523.

Administration Fee **\$0.00**

A fee of \$0.00 will be charged for the preparation of the documents required to switch the mortgage to another lender.

Registration Fee **\$374.72**

A fee of \$374.72 will be charged to register the discharge of the mortgage.

Prepayment Charge **\$1,092.08**

This is a "closed" mortgage, which means that a prepayment charge may be applicable when prepaying all or part of the principal amount before the maturity date.

The chart below shows the method used to calculate the prepayment charge and the components used in the calculation. Please see the final section of this document for further information on how prepayment charges are calculated and how these charges may change over time.

Prepayment Charge Method	THREE MONTHS' INTEREST
Balance Used To Calculate Prepayment Charge	\$182,013.48
Interest Rate	2.400000%
Prepayment Charge Calculated	\$1,092.08

Additional Information about Prepayment Charges

The interest rate type for this mortgage is variable, which means the prepayment charge is calculated using the **Three Months' Interest method**. This is based on the interest due for a three month period on the "Balance Used To Calculate Prepayment Charge" at the current interest rate for the mortgage.

If the remaining term is less than three months, the prepayment charge is based on the interest due for the length of the remaining term at the current interest rate for the mortgage.

The charge applied for the requested payout date may change over time due to several factors:

- For variable rate mortgages, the prepayment charge will increase or decrease as our prime rate increases or decreases.
- As the outstanding balance reduces the prepayment charge could change. The mortgage agreement sets out what options are available for reducing the balance faster. These options may include increasing the amount or frequency of regularly scheduled payments or making an additional payment. Some of these options can only be exercised annually, so we have provided the "Annual Prepayment Option Anniversary Date" in the mortgage details section above.

RBC Royal Bank provides online calculators to estimate how much a prepayment charge will be based on the different variables (such as the length of remaining term). Please refer to http://www.rbcroyalbank.com/products/mortgages/mortgage_calculators.html to access the calculator. You can also contact us at 1-800-974-1163 or visit your local branch to discuss what options may be available to reduce the amount of the prepayment charge.

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Exhibit 2 to the Interim Report on Reference

June 14, 2016



To:
Company: CHRISTENSEN LAW
Fax: 15196582499

From: Coveyduck, Caroline
Fax:
Phone:

NOTES:

HSBC Bank Canada - HOST

Fax: 1-877-790-2120
Phone: 1-888-318-0271
Email: ca_csc_payouts@hsbc.ca

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Date and time of transmission: 13:04 06/10/2016
Number of pages including this cover sheet: 2

MORTGAGE PAYOUT STATEMENT

DATE: 10-Jun-16 REQUESTOR: CHRISTENSEN LAW FIRM

Attention: ZAMEER

Account #: 742 120406 850
Property: 899 GOLDEN FARMER WAY , MISSISSAUGA , ON
Name: SHABBIR ABDULLAH

PRINCIPAL BALANCE AS AT:	<u>1-Jun-16</u>	<u>\$32,075.95</u>
INTEREST TO:	<u>10-Jun-16</u>	<u>\$121.25</u>
SUBTOTAL:		<u>\$32,197.20</u>
PREPAYMENT PENALTY:		<u>\$0.00</u>
SERVICE FEE: Discharge or Electronic Registration Authorization		<u>\$250.00</u>
FOREX:		<u>\$0.00</u>
NON SUFFICIENT FUNDS (NSF)		<u>\$0.00</u>
INSURANCE:		<u>\$0.00</u>
APPLICATION FEE REBATED (If applicable):		<u>\$0.00</u>
TOTAL:		<u>\$32,447.20</u>

This statement is given with the understanding that required payments made up to and including 1-Jun-16 are honoured.

PLEASE NOTE: If funds are not received by HSBC Finance Mortgages Inc. on the date of payout before 12:00 noon it will be necessary to pay additional interest of \$13.48 per day thereafter.

This statement will be provided to the customer, the customer's lawyer or financial institution ONLY.

The prepayment penalty and/or service fee are payable pursuant to the terms of your Mortgage entered

Please make cheques payable to: HSBC Finance Mortgages Inc.

Prepared by: Caroline Coveyduck

IMPORTANT: IN ORDER TO EXPEDITE THE DISCHARGE PLEASE SEND DISCHARGE DOCUMENTS TO 2001 MCGILL COLLEGE, SUITE 610, MONTREAL, QC, H3A 1G1, OR FAX TO 877-556-0448, OR BY EMAIL TO ca.csc.admin.mailbox@us.hsbc.com.

SEND PAYMENT TO:

HSBC Finance Mortgage Inc.
Lending Administration Centre
2001 McGill College, Suite 610
Montreal, Qc
H3A 1G1

Appendix 12

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

BETWEEN:

ROYAL BANK OF CANADA

Appellant
(Appellant)

and

PHAT TRANG AND PHUONG TRANG A.K.A. PHUONG THI TRANG

Respondents
(Respondents)

and

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Respondent
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PART I - OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. This case exposes a very practical access to justice problem. Almost five years ago the Appellant Royal Bank of Canada (“RBC”) obtained a judgment against the Respondents Phat and Phuong (Thi) Trang (the “Trangs”) for \$26,122.76. To effectively enforce that judgment against the Trangs’ only known asset, their real property, RBC needed a single item of the Trangs’ personal information: the balance remaining on the Trangs’ mortgage with the Respondent Bank of Nova Scotia (“Scotiabank”). RBC attempted to conduct three examinations in aid of execution, two of the Trangs (who failed to appear at either), and one of Scotiabank. RBC brought three motions, one to obtain an order that the Trangs appear at their second examination in aid of execution, and two seeking an order that Scotiabank produce the information RBC needed to enforce its judgment. The majority in the court below held that in light of the Trangs’ right under the federal private sector privacy statute, the *Personal Information Protection and Electronic Documents Act* (“PIPEDA”), to withhold their consent to disclosure of their personal information, RBC would need to bring yet another motion against Scotiabank to compel an examination in aid of execution before Scotiabank could fit within an exception in PIPEDA allowing it to produce the information without the Trangs’ consent.

Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5
[PIPEDA]

2. This case requires consideration of the appropriate balance between: (a) the right of a judgment creditor to obtain information necessary to enforce its judgment; and (b) the privacy rights of judgment debtors. To date, the debtors have successfully stymied the administration of justice. They refused to participate at all in the legal or enforcement proceedings against them, including by ignoring their duty under the *Rules of Civil Procedure* to produce information about their assets.

Rules of Civil Procedure, R.R.O. 1990, Reg. 194, rr. 30.01(1)(b), 34.10(2)(b),
34.10(3), 34.15, 60.18(2) [Rules]

3. Privacy rights in financial information are deservedly strong, and are carefully preserved by RBC and other financial institutions. However, the court below has interpreted privacy legislation as if Parliament’s intention was to protect judgment debtors and prevent judgment

creditors from indirectly obtaining information that the debtor has an obligation, but fails, to provide directly. It is a disservice to legitimate privacy rights, and the purposes of PIPEDA, to apply the consent principle in this manner. The consent principle is intended to protect autonomy, not to assist individuals in shirking their legal obligations.

4. In many cases, real property owned by the judgment debtor will be the only realizable asset known to the judgment creditor from public searches. If a judgment debtor fails to cooperate with an examination and/or refuses to disclose information in respect of assets of the judgment debtor available for enforcement of a judgment, the provincial land registry is generally the creditor's best source of information about the debtor's assets.

5. A judgment creditor cannot execute against a judgment debtor's real property in Ontario without first providing the sheriff with a mortgage "discharge" statement. This statement discloses the amount that is required for the mortgagor to discharge the mortgage on his or her property, leaving the equity available for judgment creditors. The provincial land registry makes public a great deal of information about a property and its owners, including the identity of the owners, the identity of any mortgagees, and the principal amount and other terms of any mortgages. However, the current amount owing on a mortgage is not publicly available. The sheriff requires this information to determine the equity in the property. If there is not enough equity, the sheriff will not execute a writ of seizure and sale.

6. In circumstances where a writ of seizure and sale has been issued in favour of RBC and filed with the sheriff, a reasonable person would consider it appropriate that the mortgagee provide a mortgage discharge statement to the execution creditor, given that the rights as between those parties depends upon the amount of the debtor's equity of redemption in the property as set out in that statement. From the mortgagee's perspective, the disclosure is so that it can collect the remaining debt owed to it, upon the sale by the sheriff.

7. Moreover, the Ontario *Rules of Civil Procedure* require judgment debtors, once served with a notice of examination, to attend an examination in aid of execution, at which they may be examined in relation to property and other debts owed. The debtors must also bring copies of documents requested in the notice of examination that are in their power (including documents they are entitled to obtain from their mortgagee), which in this case included mortgage

statements. If the debtors attend but refuse to provide a mortgage statement or mortgage discharge statement, the court can order the debtors to do so. In this case, if the Trangs had attended either of the examinations in aid of execution scheduled by RBC, they would have been obliged to produce a current Scotiabank mortgage statement. This appeal raises the question of whether PIPEDA inhibits RBC's ability to obtain the same information from Scotiabank.

Rules, rr. 30.01(1)(b), 34.10(2)(b), 34.10(3), 34.15, 60.18(2)

8. According to the majority of the court below, the mortgagee's, and even the superior court's, power to assist a judgment creditor in these circumstances is severely curtailed by PIPEDA. Given that the Ontario Court of Appeal was being asked to reconsider its recent decision in *Citi Cards Canada Inc. v. Pleasance*, the court below sat as a panel of five judges. The panel split three-to-two, with the majority holding that PIPEDA limits the courts' jurisdiction to order production of personal information, and prevents the courts from considering the interests of any party other than the individual and the organization from which disclosure is sought. As a result, according to the majority, *Citi Cards* was correct in holding that the only way a court can order a judgment debtor's mortgagee to provide the necessary discharge statement is if the judgment creditor follows a circuitous path through the *Rules of Civil Procedure*. Notably, the dissenting judges of the court below found the majority's approach to "fly in the face of increasing concerns about access to justice in Canada" by being "unnecessarily complex and rule-focused" and allowing "[f]orm [to] triumph over substance."

Citi Cards Canada Inc. v. Pleasance, 2011 ONCA 3, 103 O.R. (3d) 241 [*Citi Cards*], Appellant's Book of Authorities [BA], Tab 12 (Vol. I); *Rules*, rr. 34.10(2)(b), 34.10(3), 60.18(6)(a); and Reasons for Judgment of the Ontario Court of Appeal, dated December 9, 2014, Docket C57306, 2014 ONCA 883, Appellant's Record, Tab 15 [ONCA Reasons], at paras. 113-114, *per* Hoy A.C.J.O., dissenting

9. If the debtor attends a judgment debtor examination, as he or she is legally required to do, the debtor must provide relevant information about his or her property, including a current mortgage statement or mortgage discharge statement. Yet, if the debtor does not attend, to obtain the very same information, the judgment of the court below would require the judgment creditor to follow all of the following steps to obtain the statement from the mortgagee:

- (i) Schedule the judgment debtor examination, incurring costs for personal service on the judgment debtor, a certified court reporter, counsel and potentially for the venue;
- (ii) If the debtor does not attend the examination, file a certificate of non-attendance and move for an order under Rule 34.15 of the *Rules of Civil Procedure* requiring the debtor's attendance at a second judgment debtor examination, which order presumably would not be on consent and so would require a court attendance;
- (iii) Schedule a second examination, incurring costs for personal service on the judgment debtor, a certified court reporter, counsel and potentially for the venue – again;
- (iv) If the debtor does not attend the second examination, request production of the discharge statement from the mortgagee, which the mortgagee is required by the Ontario Court of Appeal's decision in *Citi Cards* to refuse to produce;
- (v) Move specifically under Rules 60.18(6)(a) and 34.10 for an order compelling the mortgagee to attend a third party examination in aid of execution, which requires establishing that: (a) the court has jurisdiction to order production; (b) the ambiguous "difficulty" requirement of Rule 60.18(6)(a) has been satisfied; and (c) the court should exercise its discretion to grant the order. Under the Court of Appeal's decision, a court has no jurisdiction to straightforwardly order the mortgagee to produce the statement to the judgment creditor, which would be much more efficient for both the mortgagee (a third party from which a single document is sought) and the judgment creditor. Moreover, under the Court of Appeal's decision, if the mortgagee voluntarily appears at the examination in aid of execution, it cannot provide the statement; the judgment creditor must bring a motion ordering attendance at the examination, using court resources to obtain information that the judgment debtor has already twice been obliged, but failed, to produce;

- (vi) Schedule the compelled examination of the mortgagee, which involves inconvenience for the mortgagee and a further set of costs for the judgment creditor, and receive the discharge statement at the examination.

ONCA Reasons, at paras. 9, 77-81; and *Rules*, rr. 34.10(2)(b), 34.10(3), 34.10(4), 34.15, 60.18(2), 60.18(6)(a), 60.18(7)

10. The judgment creditor would need to complete most or all of these six separate steps – all of which take place after the creditor has already won its judgment – before the sheriff could even begin the process of seizing and selling the debtor’s real property.

11. The dissenting judges of the court below were correct that the privacy interests of judgment debtors are not elevated to such a point that a judgment creditor is forced to take these myriad of steps simply to find out how much the mortgagee is owed. Properly interpreted, PIPEDA does not place a debtor who refuses to attend his scheduled examination in a better position than one who attends and thus must provide the relevant information at the examination. This Court has recently emphasized the importance of a *foreign* judgment creditor being able to “obtain its due” without being hindered by unnecessary motions and other dilatory tactics. A *domestic* judgment creditor is equally entitled to “obtain its due” without excessive cost and delay.

Chevron Corp. v. Yaiguaje, 2015 SCC 42, 388 D.L.R. (4th) 253, Appellant’s BA, Tab 11 (Vol. I), at paras. 1 and 69 [*Chevron*]

12. While in this case the innocent party seeking to enforce its judgment is a bank suing to recover on a defaulted loan, the principles at issue apply equally to any party who seeks to enforce an award he or she has won. This is true whether the award stems from: an action in contract, tort or restitution; a proceeding for child or spousal support; a proceeding before the human rights tribunal, landlord and tenant board, or another administrative body; a private arbitration; or another quasi-judicial process.

13. RBC respectfully requests that this appeal be allowed, and the Trangs’ mortgagee, Scotiabank, be ordered to provide RBC with the mortgage discharge statement it needs in order to enforce the award at issue in the underlying proceedings.

B. Statement of Facts

14. In 2007, the Trangs borrowed approximately \$35,000 from RBC. By 2010, their loan was in default. RBC sued the Trangs, and, on December 17, 2010, won default judgment in the amount of \$26,122.76, plus interest and costs. The Trangs never defended the lawsuit or appeared in court.

Default Judgment of the Ontario Superior Court of Justice, dated December 17, 2010, Court File No. 6464/10, Appellant's Record, Tab I1; and ONCA Reasons, at para. 9 (note that the ONCA Reasons, *ibid.*, misidentify the address of the property at issue: see Final Order of the Ontario Superior Court of Justice, dated June 18, 2013, Court File No. 6464/10, Appellant's Record, Tab I4)

15. As indicated on the public land registry, a first mortgage in favour of Scotiabank was registered against the Trangs' property in 2005 in the maximum principal amount of \$262,500.

ONCA Reasons, at para. 9

16. In order to enforce its judgment, RBC filed a writ of seizure and sale against that property with the sheriff of the City of Toronto. In order for the sheriff to enforce the writ of seizure and sale, the sheriff advised RBC that it would need a discharge statement from Scotiabank disclosing the balance owing to Scotiabank under the first mortgage. The sheriff refused to proceed to execute the writ without the discharge statement.

ONCA Reasons, at para. 2; *Execution Act*, R.S.O. 1990, c. E.24, s. 28; and *Rules*, r. 60.07

See also Ministry of the Attorney General, *After Judgment: Guide to Getting Results* (2015), online: <https://www.attorneygeneral.jus.gov.on.ca/english/courts/guides/After_Judgement_Guide_to_Getting_Results_EN.pdf>, Appellant's BA, Tab 43 (Vol. III), for a succinct explanation of the process aimed at non-lawyer judgment creditors

17. A mortgage discharge statement can be produced by a mortgagee at any time. It identifies the property's owners and the mortgagee, and sets out the principal amount of the mortgage – all of which is also publically available on the land titles registry – as well as quantifying the amount (including interests and costs) that is required to discharge the mortgage. That information allows the sheriff to assess whether there would be any equity left after paying the mortgagee the amount required to satisfy the prior mortgage. In the case-at-bar, that prior mortgage is in favour of Scotiabank.

SCJ 2012 Reasons, *infra*, at para. 13; and *Execution Act*, s. 28

See *Electronic Registration*, O. Reg 19/99, s. 6 for the types of information that must be provided when a charge is registered with the public land titles registry

18. RBC scheduled a judgment debtor examination, pursuant to Ontario's *Rules of Civil Procedure*, in order to obtain a discharge statement from the Trangs. RBC served the Trangs with the appropriate Notices of Examination. RBC arranged for a venue, paid for legal counsel to attend and hired a court reporter to attend the examination. Had the Trangs attended, as was their legal obligation, they would have been required to provide RBC with a discharge statement from Scotiabank. Rule 60.18(2) of the *Rules of Civil Procedure*, which governs the judgment debtor examination process, provides that a creditor may examine the debtor in relation to, *inter alia*, "the debtor's income and property," "the debts owed to and by the debtor" and "the debtor's present, past and future means to satisfy the order."

19. The Notices of Examination specifically required the Trangs to bring with them and produce at their examination "all documents relating to [their] assets." Rules 34.10(2)(b) and (3) of the *Rules of Civil Procedure* require a person being examined under Rule 60.18(2) to bring to the examination and produce for inspection "all documents and things in his or her possession, control or power that are not privileged and that the notice of examination or summons to witness requires the person to bring." Under Rule 30.01(1) of the *Rules of Civil Procedure*, the Trangs are deemed to have power over any document for which they are entitled to obtain the original or a copy, where RBC is not so entitled.

Notices of Examination, dated March 4, 2011, and Affidavits of Service, dated March 8, 2011, being Exhibit "B" to the Affidavit of Justin Winch, sworn May 3, 2013 [Winch Affidavit], Appellant's Record, Tab III1B; and *Rules*, rr. 30.01(1), 34.10(2)(b), 34.10(3), 60.18(2)

20. Despite being properly served, the Trangs did not attend the judgment debtor examination.

Certificate of Non-Attendance, dated April 5, 2011, being Exhibit "C" to the Winch Affidavit, Appellant's Record, Tab III1C

21. RBC then sought a copy of the mortgage discharge statement from Scotiabank. Even though the Trangs would have been required to provide the same information if they had complied with their obligation to appear at their debtor examination, Scotiabank refused to

disclose the statement, citing the Ontario Court of Appeal's interpretation of PIPEDA in *Citi Cards*, which prohibited it from providing a mortgage discharge statement to RBC without either the Trangs' consent or a court order.

ONCA Reasons, at para. 9; and *Citi Cards*, *supra*

22. RBC then moved for an order requiring the Trangs' attendance at a second judgment debtor examination. RBC was required to use up court time by moving to obtain this order. After it obtained the order, RBC served the Trangs personally with the Order and the Notices of Examination requiring them to bring and produce, *inter alia*, "mortgage statements." Once again, RBC arranged for a venue, paid for legal counsel to attend and hired a court reporter to attend the examination. The Trangs again did not attend, despite the court's order requiring their attendance.

Rules, r. 34.15(1)(d); Attendance Order of the Ontario Superior Court of Justice, dated January 5, 2012, Court File No. 6464/10, Appellant's Record, Tab II2; Notices of Examination, dated January 24, 2012, and Affidavits of Service, dated February 2, 2012, being Exhibit "E" to the Winch Affidavit, Appellant's Record, Tab III1E; and Certificate of Non-Attendance, dated February 17, 2012, being Exhibit "F" to the Winch Affidavit, Appellant's Record, Tab III1F

23. RBC then moved for an order requiring Scotiabank to provide a copy of the statement to RBC.

C. Judicial History

1. Superior Court of Justice, 2012 ONSC 3272

24. In May 2012, the Court heard RBC's motion to compel Scotiabank to produce a discharge statement. No one appeared at the motion on behalf of either the Trangs or Scotiabank.

Reasons for Judgment of the Ontario Superior Court of Justice, dated June 6, 2012, Court File No. 6464/10, 2012 ONSC 3272, Appellant's Record, Tab I2, at paras. 1, 55 [SCJ 2012 Reasons]

25. In his June 6, 2012 reasons, Gray J. found that discharge statements had been provided almost as a matter of course before PIPEDA came into effect. He described the typical scenario that a judgment creditor or subsequent mortgagee faces today as follows:

In some cases ... statements of this sort will be sought without the express consent of the mortgagor. Examples include sales under power of sale by a second or subsequent mortgagee, and, as in this case, sales by execution creditors. In such cases, the express consent of the mortgagor is unlikely to be obtained for obvious reasons, since provision of consent will facilitate enforcement and it is not in the interest of the mortgagor to assist. Nevertheless, enforcement cannot proceed without obtaining the required information from the prior mortgagee. As noted earlier, the problem really comes up only where the prior mortgage is in good standing. Where the prior mortgage is not in good standing the mortgagee will take its own enforcement proceedings. [Emphasis added.]

SCJ 2012 Reasons, at para. 12; see also *ibid.*, paras. 10-11, 13-14

26. Gray J. noted that where a prior mortgagee takes its own enforcement proceedings, subsequent encumbrancers are entitled to notice and the right to redeem, and are therefore entitled to the information at issue. This would include execution creditors. Section 31(1) of the *Mortgages Act* provides:

A mortgagee shall not exercise a power of sale unless a notice of exercising the power of sale in the Form to this Act has been given by the mortgagee to the following persons, other than the persons having an interest in the mortgaged property prior to that of the mortgagee and any other persons subject to whose rights the mortgagee proposes to sell the mortgaged property:

1. Where the mortgaged property is registered under the *Land Titles Act*, to every person appearing by the parcel register and by the index of executions to have an interest in the mortgaged property.

The Form for that notice includes the amount due under the mortgage.

SCJ 2012 Reasons, at para. 5; and *Mortgages Act*, R.S.O. 1990, c. M.40, ss. 31(1), 33(2), Form

27. Gray J. expressed sympathy for RBC's position, but held that the Court of Appeal's decision in *Citi Cards* prohibited him from making the requested order. Under his interpretation of *Citi Cards*, PIPEDA prohibits disclosure of a mortgage discharge statement without the debtor's consent, and the courts cannot order the mortgagee to disclose it to assist an execution creditor. Gray J. noted that there is a "strong argument" that there is implied consent by a mortgagor to disclosure of the state of a mortgage account to a third party whose right to enforce a judgment is governed by that information. Gray J. was also persuaded that there is a "strong argument" that the rights of an execution creditor under the *Execution Act* entitle it, in law, to be informed of the amount of the equity of redemption that it has the express right to sell, and

require a mortgagee to disclose that information to the execution creditor as a subsequent encumbrancer. Nevertheless, he concluded that *Citi Cards* did not leave that interpretation open to him. He also, in *obiter*, expressed the view that a mortgagee would not be able to provide mortgage discharge information at a third party examination in aid of execution under Rule 60.18(6)(a), because a procedural rule could not override the substantive provisions of PIPEDA.

SCJ 2012 Reasons, at paras. 16-22, 27-28, 44-45

28. Gray J. was critical of *Citi Cards*. It made the rights of execution creditors under the *Execution Act* “somewhat illusory.” He held that, while protecting personal information is important:

In the narrow circumstance, however, where an individual has been adjudged, by a court of competent jurisdiction, to owe a defined amount of money to someone, it may seem greatly disproportionate to prevent a creditor from having access to a small piece of the information in the possession of that enterprise where access to the information is to allow enforcement of the judgment. In such a circumstance it is legitimate to ask whether the real purpose of non-disclosure is to protect a legitimate right of privacy, or, instead to allow a judgment debtor to shelter behind the legislation to avoid or at least frustrate the lawful enforcement of the debt. If the latter, it may be legitimate to prefer an interpretation of the legislation that would avoid such a result. [Emphasis added.]

SCJ 2012 Reasons, at paras. 36, 48

29. Nevertheless, Gray J. held that he did “not have the luxury of declining to follow a decision of the Ontario Court of Appeal. Whether I might have decided the case differently is beside the point. The decision is binding on me, and I must follow it.” Accordingly, he dismissed RBC’s motion.

SCJ 2012 Reasons, at para. 53

2. Court of Appeal for Ontario, 2012 ONCA 902

30. An appeal of the decision of Gray J. was quashed by the Court of Appeal on the grounds that it was an interlocutory decision. The unanimous court complimented Gray J.’s “thoughtful discussion” of implied consent, but held that RBC could seek to examine a representative under Rule 60.18(6)(a) of the *Rules of Civil Procedure*, and so the issue of whether RBC could obtain an order that Scotiabank provide the discharge statement had not been finally determined. None of the respondents appeared at the hearing.

Endorsement of the Ontario Court of Appeal, dated December 21, 2012, Docket C55684, 2012 ONCA 902, Appellant's Record, Tab I3, at paras. 3, 7

31. Following the Court of Appeal's decision, RBC conducted an examination of a representative of Scotiabank. Scotiabank attended voluntarily, but again refused to produce a discharge statement, on the grounds that it was prohibited by PIPEDA from doing so.

ONCA Reasons, at para. 9; and Transcript of the examination in aid of execution of Lynne Vicars on behalf of Scotiabank, dated February 21, 2013, being Exhibit "I" to the Winch Affidavit, Appellant's Record, Tab IIII, at 6-7

3. Superior Court of Justice, 2013 ONSC 4198

32. RBC brought a further motion before Gray J. to compel Scotiabank to produce the necessary mortgage discharge statement. Again, none of the respondents appeared. The motion, heard on June 13, 2013, was dismissed. Gray J. held that the examination of Scotiabank did not add to the substantive argument that RBC was entitled to a discharge statement. He concluded:

PIPEDA either prohibits the disclosure of the requested information or it does not. The fact that it is requested through an examination does not change the legal analysis: if PIPEDA prohibits the disclosure of the information, it cannot be obtained through an examination any more than it can be obtained in response to a letter asking for it.

He maintained that *Citi Cards* precluded the release of the requested information, and concluded that only an appellate court had the power to overrule that precedent.

Reasons for Judgment of the Ontario Superior Court of Justice, dated June 18, 2013, Court File No. 6464/10, 2013 ONSC 4198, Appellant's Record, Tab I4, at paras. 12-13

4. Court of Appeal for Ontario, 2014 ONCA 883

33. On appeal from the second decision of Gray J. in the matter, RBC argued, *inter alia*, that *Citi Cards* had been wrongly decided, or that it was distinguishable.

ONCA Reasons, at para. 3

34. Justice Laskin (Cronk and Blair JJ.A. concurring) dismissed RBC's appeal and affirmed the approach in *Citi Cards*. He held that PIPEDA prevented the discharge statement from being disclosed without the Trangs' consent, unless RBC brought yet another motion, under Rule 60.18(6)(a) of the *Rules of Civil Procedure*, which permits the court to order an examination of a

third party in aid of execution “[w]here any difficulty arises concerning the enforcement of an order [and] the court is satisfied [the third party] may have knowledge of the [relevant] matters.” Scotiabank would then have been required by Rules 34.10(2)(b) and (3) to “bring to the examination and produce for inspection” a copy of the discharge statement.

Rules, rr. 34.10(2)(b), 34.10(3), 60.18(6)(a); and ONCA Reasons, at paras. 77-89

35. Laskin J.A. held that RBC would be able to show “difficulty” for purposes of Rule 60.18(6)(a) given that the Trangs had failed to appear at two judgment debtor examinations and Scotiabank had already refused to produce the discharge statement. Since RBC had not followed this path precisely – Scotiabank attended the Rule 60.18 examination voluntarily rather than being ordered to do so – RBC was not entitled to an order for production. In the opinion of the majority, had RBC obtained an order under Rules 60.18(6)(a) and 34.10, Scotiabank would have been required to disclose the mortgage discharge statement to RBC without the Trangs’ consent, so as to comply with an order made by the court.

ONCA Reasons, at paras. 79-80, 82, 86

36. Unlike her colleagues, Associate Chief Justice Hoy (Sharpe J.A. concurring) would have overruled *Citi Cards*. She found a court order to be unnecessary, because the Trangs impliedly consented to the disclosure of the discharge statement. PIPEDA allows for implied consent for “less sensitive” information, if disclosure accords with the reasonable expectations of the person to whom the information belongs. She held:

The fact that all the details of the Trangs’ mortgage – the principal amount, the rate of interest, the payment periods and the due date – were made publicly available when the mortgage was registered makes the current balance outstanding on that mortgage “less sensitive” personal information. ... The current mortgage balance is generally no more sensitive than the amount of the mortgage publically disclosed at the time that the mortgage was registered. [Emphasis added.]

PIPEDA, Sch. 1, cl. 4.3.6; and ONCA Reasons, at paras. 116-118

37. She noted that if the mortgagee initiates its own enforcement proceedings, execution creditors must be notified, including revealing the details of the mortgage.

ONCA Reasons, at para. 119

38. The Associate Chief Justice held that, even if the outstanding balance on the Trangs' mortgage was "sensitive" personal information, it became "less sensitive" when RBC won its judgment against them and scheduled a judgment debtor examination. Had they attended as they were obligated to do, the Trangs would have been required to disclose the information to RBC at that time. In any event, she held that:

It would be unreasonable for the mortgagor to think that any privacy rights he or she might enjoy in the information as to the current state of the mortgage could stand in the way of creditors enforcing their legal rights. ... [A] reasonable mortgagor would certainly consider it appropriate that his or her mortgagee provide a Statement to his or her "creditor" ... once that creditor scheduled an examination of the mortgagor in aid of execution[.]

ONCA Reasons, at paras. 121, 123-124

39. Hoy A.C.J.O. further held that, even if there were no implied consent, a court may order a mortgagee to produce the discharge statement without reference to a specific law. She considered the following process to be sufficient for a court to exercise this jurisdiction:

- a) The judgment creditor makes a written request to the debtor, asking the debtor to sign a form consenting to the mortgagee providing a discharge statement. She held, "it should not be necessary for the creditor to seek to examine the judgment debtor and any co-mortgagor before bringing a motion for an order requiring the mortgagee to disclose the Statement;" and
- b) Upon receiving no response, the judgment creditor serves the mortgagee, the debtor and any co-mortgagor(s) with a motion to compel the mortgagee to provide the discharge statement. Hoy A.C.J.O. found that "it should not matter whether the execution creditor purports to move under rule 60.18(6)(a), or simply asks for an order requiring the mortgagee to disclose the Statement."

ONCA Reasons, at paras. 92, 101, 107

40. The order made using this procedure would satisfy the "order made by a court" exception in s. 7(3)(c) of PIPEDA, allowing the mortgagee to disclose the mortgage discharge statement without consent. Hoy A.C.J.O. rejected the conclusion in *Citi Cards* that such an approach is circular. Whether the information is sought through an order under Rule 60.18(6)(a) or an order

based upon the inherent jurisdiction of the court, it will be an order not yet made at the time that the order is sought. Instead, the relevant question is whether an order to disclose the mortgage discharge statement is justified. Any such order constitutes “an order made by a court” for purposes of s. 7(3)(c) of PIPEDA.

ONCA Reasons, at paras. 92, 108-111, citing *Citi Cards, supra*, at paras. 22, 25, 33

41. Finally, Hoy A.C.J.O. held that the process propounded by the majority was unnecessarily complex and limiting: “It would fly in the face of increasing concerns about access to justice in Canada to dismiss this appeal and require RBC to bring yet another motion.” Hoy A.C.J.O.’s dissent would have allowed the appeal, and ordered Scotiabank to provide the discharge statement to RBC. Indeed, she found that “Scotiabank was (and is) entitled to provide a Statement to RBC without the necessity of an order.”

ONCA Reasons, at paras. 110-114, 136

PART II - QUESTIONS IN ISSUE

42. The issues that arise in this appeal are as follows:

- a) How is implied consent under PIPEDA assessed?
- b) In this case, can the consent of the Trangs to disclosure of their discharge statement to RBC be implied:
 - i) after a writ of seizure and sale was issued in favour of RBC and filed with the sheriff; or
 - ii) after the Trangs failed to attend an examination at which they were required to produce that personal information to RBC?
- c) Given the exception in s. 7(3)(i) of PIPEDA for disclosure without consent where “required by law”, and the exception in s. 7(3)(b) for disclosure “for the purpose of collecting a debt owed by the individual to the organization,” could Scotiabank have disclosed a mortgage discharge statement to RBC after RBC filed its writ of seizure and sale, given that Scotiabank had a right to be repaid the mortgage owed by the Trangs to it from that sale?

- d) Given the required by law exception in s. 7(3)(i), could Scotiabank have disclosed the discharge statement to RBC without consent after the Trangs failed to attend an examination at which they were required by the *Rules of Civil Procedure* to produce that personal information to RBC?
- e) What effect, if any, does s. 7(3)(c) of PIPEDA have on the power of the courts to issue orders for production of personal information?
- f) Could the court below have issued an order that Scotiabank produce the mortgage discharge statement?

43. RBC submits that a mortgagee can disclose a mortgage discharge statement to a judgment creditor upon proof that the creditor has filed a writ of seizure and sale (making it an execution creditor entitled to sell the mortgaged property). In such circumstances, the debtor's consent to disclosure:

- a) Can be implied, as the information is "less sensitive" within the meaning of PIPEDA;
- b) Is not needed, because the mortgagee is disclosing the personal information "for the purpose of collecting a debt owed by the individual to the organization" within the meaning of s. 7(3)(b) of PIPEDA. From the mortgagee's perspective, the purpose of the disclosure is so that it will collect the correct amount owed to it by the debtor, from the proceeds of the sale; or
- c) Is not needed, because the disclosure is, by necessary implication, "required by law" within the meaning of s. 7(3)(i) of PIPEDA, as a judgment creditor's right to sell under the *Execution Act* must include a requirement that it be informed of the amount of the proceeds of sale due to the mortgagee.

Accordingly, Scotiabank would have been permitted by PIPEDA to disclose the Trangs' mortgage discharge statement upon proof by RBC of the judgment and filing of the writ.

44. In the alternative, RBC submits that a mortgagee can disclose a mortgage discharge statement to a judgment creditor upon proof that a judgment debtor has failed to attend an examination in aid of execution. In such circumstances, the debtor's consent to disclosure:

- a) Can be implied, as the judgment debtor's failure to appear at an examination at which the debtor was required by the *Rules of Civil Procedure* to produce that information renders the information "less sensitive" within the meaning of PIPEDA; or
- b) Is not necessary, because the debtor was "required by law" to produce that information, such that the s. 7(3)(i) exception in PIPEDA applies.

Accordingly, Scotiabank would have been permitted by PIPEDA to disclose the Trangs' mortgage discharge statement upon proof by RBC of service of the Notice of Examination on the Trangs and a certified court reporter's Certificate of Non-Attendance.

45. In the further alternative, RBC submits that the motions judge had inherent jurisdiction to grant the production order that it sought, and such an order would qualify for the exemption from consent in s. 7(3)(c) of PIPEDA. As the dissent in the court below found, a judgment creditor should be able to obtain such an order immediately after the judgment debtor fails to respond to a written request seeking consent to disclosure. Alternatively, RBC submits that the creditor should be able to obtain such an order after the debtor's first non-attendance at an examination. Two failed judgment debtor examinations and a prior refusal of the mortgagee to produce the statement (because it viewed itself as legally obligated to refuse) should not be necessary.

46. A chart summarizing RBC's position regarding the effect of PIPEDA, and the conclusions of the majority and dissent in the court below, is attached as Schedule A.

PART III - STATEMENT OF ARGUMENT

A. PIPEDA Must be Interpreted with "Flexibility, Common Sense and Pragmatism"

47. The privacy of personal information is an important value, and RBC takes seriously the duty that it and other financial institutions have to protect clients' financial and other personal information from unlawful disclosure.

48. That said, privacy rights should not overrule the equally important rights of a judgment creditor to enforce against assets of the judgment debtor. Privacy rights frequently conflict with equally important interests. As this Court noted in *Edmonton Journal v. Alberta (Attorney General)*, “While the Court in these cases has recognized the need to protect privacy, it has also consistently stressed that ‘[c]laims to privacy must, of course, be balanced against other societal needs, and in particular law enforcement.’”

Edmonton Journal v. Alberta (Attorney General), [1989] 2 S.C.R. 1326 at 1363, [1990] 1 W.W.R. 577, Appellant’s BA, Tab 18 (Vol. II)

49. As the Federal Court of Appeal has observed in *Englander v. TELUS Communications Inc.*, PIPEDA must be interpreted with “flexibility, common sense and pragmatism”:

[E]ven though Part 1 [which includes s. 7(3)] and Schedule 1 of the Act purport to protect the right of privacy, they also purport to facilitate the collection, use and disclosure of personal information by the private sector. In interpreting this legislation, the Court must strike a balance between two competing interests. Furthermore, because of its non-legal drafting, Schedule 1 does not lend itself to typical rigorous construction. In these circumstances, flexibility, common sense and pragmatism will best guide the Court. [Emphasis added.]

Englander v. TELUS Communications Inc., 2004 FCA 387, [2005] 2 F.C.R. 572, Appellant’s BA, Tab 20 (Vol. II), at para. 46 [*Englander*]

50. Schedule 1 of PIPEDA reproduces the Standards Council of Canada’s 1996 *Model Code for the Protection of Personal Information*. The principles contained in that voluntary code were developed by a committee of consumer, business, government, labour and professional representatives. After consultations and calls to make the *Model Code* mandatory for all organizations, PIPEDA was passed with the *Model Code* reproduced at Schedule 1.

Parliamentary Information and Research Service, *Legislative Summary – Bill S-4: An Act to amend the Personal Information Protection and Electronic Documents Act and to make a consequential amendment to another Act* (Publication No. 41-2-S4-E) by Dara Lithwick (Ottawa: Library of Parliament, 2014), Appellant’s BA, Tab 47 (Vol. III) at §1.1 (Bill S-4 was passed in June 2015 as the *Digital Privacy Act*, and resulted in several amendments to PIPEDA: S.C. 2015, c. 32)

National Standard of Canada, *Model Code for the Protection of Personal Information* (CAN/CSA-Q830-96), Etobicoke, ON: CSA, 1996, Appellant’s BA, Tab 46 (Vol. III)

51. As testified to at committee, Schedule 1 “represent[s] a consensus as to the kinds of circumstances that may come up in businesses’ dealings with Canadians and Canadians’ dealings with businesses.” Indeed, the government intent that PIPEDA not unduly effect commerce was specifically noted by the Minister of Industry, who, in his presentation to the House of Commons at second reading of PIPEDA, said:

Bill C-54 also has the great advantage that it builds upon the existing CSA voluntary measures [the *Model Code*]. It is designed [to] provide a regime that is simple, yet effective, consumer friendly, not overly burdensome for industry, especially small and medium sized enterprises, cost-efficient and with a minimal administrative burden, and, in conformity with Canada’s international agreements and trade obligations.

Canada needs new legislation to protect privacy. Legislation must strike a balance between the right of individuals to have some control over their personal information and to have access to avenues for effective redress, and the need of industry to collect and use personal information as a vital component of success in the information economy. [Emphasis added.]

House of Commons Standing Committee on Industry, 36th Parl., 1st Sess., No. 101 (17 March 1999), Appellant’s BA, Tab 38 (Vol. III) at §1625 (Mairi MacDonald, Member of the Information Technology and Law Reform Steering Committee, Canadian Bar Association); and *House of Commons Debates*, 36th Parl., 1st Sess., No. 137 (19 October 1998), Appellant’s BA, Tab 37 (Vol. III) at 9076 (Hon. John Manley, Minister of Industry)

52. In response to testimony from Canadian companies that asked for further clarity, the Parliamentary committee chose to reiterate the importance of organizations’ ability to collect, use or disclose personal information for reasonable purposes by passing an amendment that changed section 3 (the purpose section) of PIPEDA. The committee’s amendment, as compared to the original version of section 3, reads in relevant part:

[At first reading:] The purpose of this Part is to provide Canadians with a right of privacy with respect to their personal information that is collected, used or disclosed by an organization....

[Committee amendment:] The purpose of this Part is to establish ... rules to govern the collection, use and disclosure of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances. [Emphasis added.]

The committee amendment was adopted by Parliament, and remains unchanged in section 3 of PIPEDA today.

House of Commons Standing Committee on Industry, Fifteenth Report (25 March 1999), Appellant's BA, Tab 40 (Vol. III) at cl. 3 (Chair: Susan Whelan) (the omitted portion, which references the current technological context of PIPEDA, was unchanged in both versions of section 3)

See also *House of Commons Standing Committee on Industry, 36th Parl., 1st Sess., No. 104 (23 March 1999), Appellant's BA, Tab 39 (Vol. III) at §1145 (Sue Barnes, Member of Parliament and Government Committee Member) ("This amendment does several things. ... It recognizes the right to privacy and business needs, both of those. ... It provides a balance – we suggest the right balance – and sets the right context. I think our stakeholders' interests are better balanced or more fairly balanced by the revision of this clause.")*

1. Interpreting PIPEDA as Enhancing, Rather than Impeding, Access to Justice

53. Properly interpreted, PIPEDA protects Canadians' legitimate privacy interests, while also allowing for access to a justice system that enforces Canadians' legal rights. Access to justice requires: "timeliness of relief;" "that the claimant be permitted to pursue its chosen remedy directly and, to the greatest extent possible, without procedural detours;" and "access to just results, not simply to process for its own sake."

May v. Ferndale Institution, 2005 SCC 82, [2005] 3 S.C.R. 809, Appellant's BA, Tab 24 (Vol. II), at para. 70; Canada (A.G.) v. TeleZone Inc., 2010 SCC 62, [2010] 3 S.C.R. 585, Appellant's BA, Tab 9 (Vol. I), at para. 19; and AIC Limited v. Fischer, 2013 SCC 69, [2013] 3 S.C.R. 949, Appellant's BA, Tab 3 (Vol. I), at para. 56 [AIC Limited]

54. As this Court recently recognized in *Hryniak v. Mauldin*, in no uncertain terms:

Ensuring access to justice is the greatest challenge to the rule of law in Canada today. ... Most Canadians cannot afford to sue when they are wronged or defend themselves when they are sued, and cannot afford to go to trial. Without an effective and accessible means of enforcing rights, the rule of law is threatened.

This Court recognized the growing support for alternative adjudication of disputes. It also recognized that:

This requires a shift in culture. The principal goal remains the same: a fair process that results in a just adjudication of disputes. A fair and just process must permit a judge to find the facts necessary to resolve the dispute and to apply the relevant legal principles to the facts as found. However, that process is illusory unless it is also accessible – proportionate, timely and affordable. The proportionality

principle means that the best forum for resolving a dispute is not always that with the most painstaking procedure. ... If the process is disproportionate to the nature of the dispute and the interests involved, then it will not achieve a fair and just result. [Emphasis added.]

Hryniak v. Mauldin, 2014 SCC 7, [2014] 1 S.C.R. 87, Appellant's BA, Tab 22
(Vol. II), at paras. 1 and 27-29

55. As the dissent in the court below observed, the process adopted by the majority is disproportionate:

It would fly in the face of increasing concerns about access to justice in Canada to ... require RBC to bring yet another motion. A legal system which is unnecessarily complex and rule-focused is antithetical to access to justice. RBC has brought two motions and made two trips to this court over a several year period – simply to discern how much remains outstanding on the Trangs' mortgage to enforce a valid judgment. The principal amount of this judgment is only \$26,122.76.

My colleague would require RBC to bring yet another motion. I cannot agree. Form should not triumph over substance. Many creditors are not as sophisticated as RBC, and can ill-afford the expense of being in and out of court to enforce a valid judgment for a relatively modest amount. [Emphasis added.]

ONCA Reasons, at paras. 113-114

56. Said differently, “access to justice” must mean something more than “access to a courtroom.” Real justice requires the courts to help wronged parties be made right – to help them convert their paper judgments into realized awards. Real property may be the only realizable asset known to the judgment creditor if a judgment debtor fails to appear at an examination and/or refuses to disclose information in respect of any other assets. The land registry becomes the primary source of information about the debtor's assets in such circumstances. The decision of the court below creates a labyrinthine, unclear and confusing process (with significant attendant costs) in order for judgment creditors to obtain the one piece of information that they are unable to obtain publicly from the land registry. Save for the one piece of information, the remainder is ascertainable from the land registry to enforce their judgment.

57. The court below interpreted privacy legislation as if Parliament intended it to shield judgment debtors from their obligation to pay and to stymie the collection remedies of their

creditors. This hinders, rather than promotes, access to justice. As Justice Jackson and Professor Sarra have noted, “In the past 25 years, we have seen a burgeoning interest in the judicial role in the economy. The resolution of commercial disputes through judicial pronouncements has facilitated commercial activity in Canadian society, and the courts’ willingness to recognize the need for practical, effective and expeditious proceedings has been a hallmark of recent developments.”

Madam Justice Georgina R. Jackson (Alta. C.A.) & Dr. Janis P. Sarra,
“Selecting the Judicial Tool to get the Job Done: An Examination of Statutory Interpretation, Discretionary Power and Inherent Jurisdiction in Insolvency Matters” (2007) Ann. Rev. Insolv. Law 3, Appellant’s BA, Tab 42 (Vol. III) at 1 (WL) [Jackson & Sarra]

See also *Pro Swing Inc. v. Elta Golf Inc.*, 2006 SCC 52, [2006] 2 S.C.R. 612, Appellant’s BA, Tab 26 (Vol. II), at para. 1 (“Modern-day commercial transactions require prompt reactions and effective remedies.”)

58. As the dissent in the court below held, Parliament could not have intended PIPEDA to impede a judgment creditor from enforcing its judgment through an “unnecessarily complex and rule-focused” enforcement process that allows “[f]orm to triumph over substance,” resulting in the elevation of a debtor’s presumed privacy interests above all other considerations. The majority’s approach increases uncertainty about when and how enforcement may proceed. This not only impedes the predictability and clarity needed for parties to be able to plan their affairs, but it also serves to “disappoint or frustrate[] the reasonable expectations of both borrowers and lenders.”

ONCA Reasons, at paras. 113-114, 131 (*per* Hoy A.C.J.O., dissenting)

59. The majority of the court below dismissed such concerns by concluding: “[a] motion under rule 60.18(6)(a) undoubtedly would increase RBC’s cost and inconvenience in enforcing its judgment,” but this is “a small price to pay for protecting the Trangs’ privacy rights.” Since RBC is “hardly ... unsophisticated,” it can follow the six-step process required by the majority.

ONCA Reasons, at paras. 86-87

60. However, the sophistication of the party in this particular appeal should have no bearing on the principle at issue, which is binding on all parties (whether sophisticated or not) seeking to collect debts (whether large or small) pursuant to a court judgment. This Court’s decision in this appeal will set a precedent that will apply not only to awards that issue from the superior court,

but also to any awards capable of execution against real property, including orders of small claims, provincial and family courts, administrative boards and tribunals, arbitration panels, and even some negotiated settlements. It will also apply to municipalities that seek to enforce monetary penalties made against those who violate the *Provincial Offences Act* or *Highway Traffic Act*.

See e.g. *Family Responsibility and Support Arrears Enforcement Act, 1996*, S.O. 1996, c. 31, s. 42; *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, s. 19; *Arbitration Act, 1991*, S.O. 1991, c. 17, s. 50(1), (3)-(4), (8); *Rules*, r. 49.09; *Provincial Offences Act*, R.S.O. 1990, c. P.33, s. 68(1); and *Highway Traffic Act*, R.S.O. 1990, C. H.8, s. 21.1(11)

61. These orders are enforceable as if they were orders of the superior court, and are for modest amounts of money. In 2012-13, 66,059 new proceedings were commenced in the Small Claims Court, where the monetary jurisdiction is \$25,000 or less. Similarly, a review of Ontario's Human Rights Tribunal jurisprudence suggests that damages awards in the range of \$500 to \$15,000 are typically being awarded.

Ministry of the Attorney General, *Court Services Division Annual Report 2012-13*, online: <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/courts_annual_12/Court_Services_Annual_Report_FULL_EN.pdf>, Appellant's BA, Tab 44 (Vol. III) at 30 and 36 (in comparison 80,566 new proceedings were commenced in the Superior Court); and Andrew Pinto, *Report of the Ontario Human Rights Review 2012*, submitted to the Honourable John Gerretsen, Attorney General of Ontario, November 2012, online: <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/human_rights/Pinto_human_rights_report_2012-ENG.pdf>, Appellant's BA, Tab 34 (Vol. III) at 72

62. As recognized by the dissent in the court below, “[m]any creditors are not as sophisticated as RBC, and can ill-afford the expense of being in and out of court to enforce a valid judgment for a relatively modest amount.” In any event, no party should be required to follow a legal process that is so costly that only large judgment debts are economical to enforce. Enforcement of a judgment for a small amount should be accessible to the judgment creditor.

ONCA Reasons, at para. 114 (*per* Hoy A.C.J.O., dissenting)

63. Moreover, inefficient and unnecessarily costly enforcement processes, which create delay and increase delay tactics, risk increasing the costs of credit for both responsible and irresponsible borrowers.

Canadian Imperial Bank of Commerce v. Prasad, 2010 ONSC 320, 184 A.C.W.S. (3d) 67, Appellant's BA, Tab 10 (Vol. I), at para. 16 ("It is in everyone's interest that debt enforcement be time- and cost-efficient" and not have negative "consequences for the general costs of credit")

64. The majority of the Court of Appeal suggested an untenable solution for the judgment creditor's dilemma. It held that RBC could have avoided the problem by obtaining the Trangs' express consent – at the time of contracting their loan – to allow RBC to obtain a discharge statement from their mortgagee if they defaulted. However, such a solution can only be prospective, and does not account for the body of existing loans that do not include express consent provisions. Further, such a solution is entirely illusory for any judgment creditor who does not have a contractual relationship with the debtor, and so had no means of obtaining express consent as part of a contractual negotiation, such as successful plaintiffs in tort cases and those seeking to enforce family support orders.

ONCA Reasons, at para. 76

65. The decision below will also add to the overburdening of the civil justice system and waste scarce judicial resources. The protocol it established requires at least two motions for the judgment creditor to obtain one document. Given how busy Canadian courts already are with a plethora of motions – they presided over 464,872 motions or motion-type hearings in 2012-13 – the approach mandated by the court below will only serve to further clog the judicial system.

Statistics Canada, *Civil Court Survey: Number of Events in Active Civil Court Cases*, Table 259-0014, 4 April 2014, online: <<http://www5.statcan.gc.ca/cansim/a26?lang=eng&retrLang=eng&id=2590014&tabMode=dataTable&srchLan=-1&p1=-1&p2=35>>, Appellant's BA, Tab 48 (Vol. III)

66. Parliament should not be presumed to have intended to throw a wrench in civil enforcement processes as legislated by the provinces, within their competency. It is more consistent with cooperative federalism to interpret the implied consent provision in clause 4.3.6 of Schedule 1 of PIPEDA, and the exceptions from the consent requirement in ss. 7(3)(b), (c) and (i) as acknowledging and facilitating provincial civil enforcement regimes. The courts below were concerned about interpreting provincial procedural rules in a manner that would override substantive federal privacy laws. To the contrary, it is consistent with both cooperative federalism and access to justice for this Court to interpret PIPEDA as incorporating by reference

provincial laws and procedural rules for collection, use and disclosure of information for purposes of civil litigation and enforcement.

See e.g. SCJ 2012 Reasons, at para. 22

Quebec (Attorney General) v. Canada (Attorney General), 2015 SCC 14, [2015] 1 S.C.R. 693, Appellant's BA, Tab 27 (Vol. III), at paras. 17 (*per* Cromwell and Karakatsanis JJ.) and 148 (*per* LeBel, Wagner and Gascon JJ., dissenting)

67. In other contexts, PIPEDA has been interpreted in a manner that avoids a significant impact on civil litigation. In *State Farm*, the Federal Court held that a defendant's collection of evidence about a plaintiff for purposes of mounting a defence to a civil tort action falls outside of PIPEDA, even where the evidence is collected by an investigator or attorney that is engaged in a commercial activity. Similarly, in *Ferenczy*, the Ontario Superior Court of Justice concluded that it should interpret PIPEDA in a manner that avoids transforming civil and criminal litigation into something very different than had previously been conducted.

State Farm Mutual Automobile Insurance Company v. Privacy Commissioner of Canada, 2010 FC 736, [2010] F.C.J. No. 889, Appellant's BA, Tab 31 (Vol. III), at paras. 97-112; and *Ferenczy v. MCI Medical Clinics* (2004), 70 O.R. (3d) 277, [2004] O.J. No. 1775, Appellant's BA, Tab 21 (Vol. II), at paras. 27-30 [*Ferenczy*]

2. Criticism of *Citi Cards* and the Decisions of the Courts Below

68. Ontario courts have criticized the Ontario Court of Appeal's decision in *Citi Cards* as creating such a technical, inefficient, and complex process that it "require[s] something approaching rocket science [to] recover[] the amount of a judgment, once it has been awarded" – a victory of form over substance. The result is a denial of "the substantive aspect of access to justice ... access to just results, not simply to process for its own sake."

EnerWorks Inc. v. Glenbarra Energy Solutions Inc., 2012 ONSC 748, 39 C.P.C. (7th) 190, Appellant's BA, Tab 19 (Vol. II), at para. 7, *per* Master Short; and *AIC Limited, supra*, at para. 56

See also *Easybank Inc. v. Spagnuolo Estate*, [2012] O.J. No. 6528, Appellant's BA, Tab 17 (Vol. II), at paras. 2, 4 (Sup. Ct.) (QL) [*Easybank*] (making an order for third party disclosure, without going through the *Citi Cards, supra* regime); and *Mountain Province Diamonds Inc. v. De Beers Canada Inc.*, 2014 ONSC 2026, 239 A.C.W.S. (3d) 226, Appellant's BA, Tab 25 (Vol. II), at paras. 58-61 [*Mountain Province*] (approving the interpretation of *Citi Cards, supra* in *Easybank, ibid.*, and finding that Gray J.'s stricter interpretation in the instant case was not the right approach)

69. One court went so far as to bypass the *Citi Cards* regime altogether, finding that PIPEDA represented such an impediment to the sheriff's sale process that a judicially supervised sale could be ordered instead.

Canaccede International Acquisitions Ltd. v. Abdullah, 2015 ONSC 5553,
[2015] O.J. No. 4635, Appellant's BA, Tab 8 (Vol. I), at paras. 25-29
[*Canaccede*]

70. The Ontario Court of Appeal's approach has been criticized elsewhere in Canada as well. For instance, Alberta courts have refused to follow the Ontario approach, even where the precise information (a mortgage discharge statement) was at issue, because "[t]he appropriateness of disclosure in these circumstances requires balancing a range of the debtor's rights and not just an abstract consideration of privacy rights."

Toronto Dominion Bank v. Sawchuk, 2011 ABQB 757, 86 C.B.R. (5th) 1,
Appellant's BA, Tab 32 (Vol. III), at para. 8 [*Sawchuk*]

See also *Aecon Industrial Western v. International Brotherhood of
Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local
Lodge No. 146*, 2013 ABQB 122, 558 A.R. 108, Appellant's BA, Tab 2 (Vol. I),
at paras. 10, 18 [*Aecon Industrial*]

B. The Dissent Below was Correct – The Trangs Impliedly Consented

71. In general, PIPEDA requires organizations that collect, use or disclose personal information for commercial purposes to obtain consent from the affected individual to disclosure. However, that consent can be implied in appropriate circumstances. Clause 4.3.6 of Schedule 1 of PIPEDA provides:

The way in which an organization seeks consent may vary, depending on the circumstances and the type of information collected. An organization should generally seek express consent when the information is likely to be considered sensitive. Implied consent would generally be appropriate when the information is less sensitive. ... [Emphasis added.]

PIPEDA, s. 7 and Sch. 1, cl. 4.3.6

72. Both the majority and the dissent in the court below held that in considering whether consent to disclosure can be implied, the sensitivity of the information and the reasonable expectations of the individual are relevant. However, they came to opposite conclusions in applying those factors. Respectfully, it was the dissent that was correct on these issues.

1. The Mortgage Discharge Statement is “Less Sensitive” Personal Information

73. The only personal information in issue in this appeal is a mortgage discharge statement – the statement of the current account of the Trangs’ mortgage balance.

74. As the dissent in the court below pointed out, the information at issue here is not by its nature especially sensitive. The mortgage owed at the commencement of the relationship between the individual and mortgagee is available to the world at large on the land registry. A copy of the registration document can be obtained from the registry, and lists “the principal amount or other obligations secured by the charge; the rate of interest and periods of payment under the charge; and the due date of the charge or a statement that the charge is payable on demand, whichever is the case.”

ONCA Reasons, at para. 118; and SCJ 2012 Reasons, at para. 30

The information that is placed onto the land registry in Ontario is governed by the *Land Registration Reform Act*, R.S.O. 1990, c. L.4, s. 3(1); *Form of Documents*, R.R.O. 1990, Reg. 688, s. 2(2); and *Electronic Registration*, O. Reg. 19/99, s. 6

75. Moreover, in the past, mortgage discharge statements were provided almost as a matter of course. They would not have been considered to be particularly sensitive at the time that the *Model Code* that was developed by consensus with industry was drafted. The availability of implied consent in appropriate circumstances under clause 4.3.6 of the *Model Code* (now Schedule 1 of PIPEDA) has not been varied by the text of the statute.

SCJ 2012 Reasons, at paras. 10, 13, 38; and *Sawchuk*, *supra*, at paras. 3, 20-21

76. Furthermore, PIPEDA is clear that sensitivity depends on context, not solely on the type of information at issue. Clause 4.3.4 of Schedule 1 to PIPEDA notes that “any information can be sensitive, depending on the context.” It is equally the case that information that will usually be sensitive may not be in an appropriate context.

77. The majority below erred in concluding that “context” for this purpose is limited to the context of the relationship between the individual to whom the personal information relates and the organization that is considering disclosing it, without regard to the identity of the potential recipient of the information, the purposes for which the disclosure is sought or the individual’s legal duty to disclose it. The majority held that in assessing the sensitivity of the information,

“the relationship between the Trangs and RBC has no role to play.” In restricting “context” in this manner, the majority followed the Court of Appeal’s prior conclusion in *Citi Cards* that PIPEDA “does not contemplate a balancing between the privacy rights of the individual and the interests of a third-party organization.”

ONCA Reasons, at paras. 26, 47, citing *Citi Cards, supra*, at para. 23

78. With respect, that interpretation is not supported by the language or purposes of PIPEDA. There is nothing in clause 4.3.4 of Schedule 1 that restricts “the circumstances” or “the context,” words that generally incorporate all relevant considerations, to the narrow question of the relationship between the individual and the organization from which disclosure is sought.

PIPEDA, Sch. 1, cl. 4.3.4

79. In *BMG Canada Inc. v. Doe*, a case in which the Federal Court of Appeal considered whether a *Norwich* order (a pre-action discovery mechanism to compel a third party to provide certain information) can be used to require an internet service provider to disclose subscriber information:

Privacy rights are significant and they must be protected. In order to achieve the appropriate balance between privacy rights and the public interest in favour of disclosure, PIPEDA provides protection over personal information that is collected, held and used by organizations and allows disclosure of such information only in certain circumstances, enumerated in subsection 7(3). [Emphasis added.]

BMG Canada Inc. v. Doe, 2005 FCA 193, [2005] 4 F.C.R. 81, Appellant’s BA, Tab 5 (Vol. I), at para. 38 [*BMG Canada*]

80. In PIPEDA, the balance between privacy rights and other public and private interests is struck largely through:

- a) the concept of implied consent, which will “generally be appropriate when the information is less sensitive;” and
- b) the exceptions in the Act, which allow collection, use and disclosure of personal information without the affected individual’s knowledge or consent, in recognition of competing interests.

PIPEDA, s. 7(3) and Sch. 1, cl. 4.3.6

81. The exceptions in s. 7(3) of PIPEDA allowing disclosure without the individual's knowledge or consent demonstrate that the Act requires balancing of interests far wider than merely the organization that originally collected the information, and the individual who provided it. Through those exceptions, PIPEDA recognizes and protects a broad range of public and private interests in disclosure, including those of third parties. The exceptions include:

- a) To litigants and the courts, if required under the rules of court;
- b) To anyone, including a third party, if a court or tribunal with the power to order production so orders;
- c) To an investigative body, for investigating the breach of an agreement or in respect of national security;
- d) To the government, for law enforcement or the conduct of international affairs;
- e) To anyone, including a third party, if the information is needed because of an emergency;
- f) To any organization, including a third party, for research, or historical conservation;
- g) To anyone, including a third party, if the information is public and disclosure is consistent with the Regulations; and
- h) To anyone, including a third party, if disclosure is required by law.

PIPEDA, s. 7(3)(a)-(h.2); further exceptions (s. 7(3)(c.1)(iv), (d.1)-(d.4), (e.1)-(e.2)) were added recently: see *Digital Privacy Act*, ss. 6(7), (10)-(11)

See also ONCA Reasons, at para. 104, *per* Hoy A.C.J.O., dissenting ("As the motion judge observed ... the state of account between a mortgagor and a mortgagee does not simply govern the rights between those parties. As he wrote, 'It also defines the value of the equity of redemption, and will affect priorities as among mortgagees and creditors.'")

82. More generally, and contrary to the conclusions of the majority in the court below and *Citi Cards*, the purpose clause of PIPEDA does not restrict the Act to a balancing solely of the

interests of the individual and the organization that first collects his or her information. Section 3 of PIPEDA provides:

The purpose of this Part is to establish, in an era in which technology increasingly facilitates the circulation and exchange of information, rules to govern the collection, use and disclosure of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances. [Emphasis added.]

83. A reasonable person would consider the potential recipient's purposes, in addition to the disclosing organization's purposes. In this case, both Scotiabank and RBC have an interest in the sheriff having accurate information about Scotiabank's interest in the property.

84. Although the balance of the mortgage remaining on a property is personal information, RBC submits that such information becomes less sensitive when a judgment creditor has filed a writ of seizure and sale with the sheriff, and thus has a right to sell the debtor's interest in the land, but will only recover on the judgment after the mortgagee is paid in full the amount owing to it.

85. As Gray J. astutely pointed out in his first decision in this case, the statement of account between a first mortgagee and mortgagor affects not only the relationship between them, but also the relationship between that mortgagee and all other creditors. It defines the priority and right to payment from the proceeds of sale that the first mortgagee can claim as against subsequent encumbrancers (which is the very reason that the sheriff requires such a statement before selling a property for which a subsequent encumbrancer has a right of sale). The mortgage discharge statement "is not something that is merely a private matter between the mortgagee and mortgagor, but rather is something on which the rights of others depend, and accordingly is something they have a right to know." This "context" must also be taken into account in assessing the sensitivity of the personal information that would be disclosed in the mortgage discharge statement provided to RBC, and weighs in favour of implying consent.

SCJ 2012 Reasons, at para. 29; see also *ibid.*, at paras. 30-36

Compare *Ferenczy, supra*, at para. 31 (the consent of a plaintiff in civil litigation to investigation by the defendant of the extent of the injuries alleged or veracity of the claims can be implied)

86. A mortgage discharge statement becomes even less sensitive when a debtor has a legal obligation to disclose it at a judgment debtor examination. If the Trangs had appeared at their examination in aid of execution, as the *Rules of Civil Procedure* required them to do even before RBC obtained an order requiring their attendance, they would have had to produce a mortgage statement or consent to RBC obtaining it from Scotiabank.

Rules, rr. 30.01(1), 34.10(2)(b)-(3), 60.18(2)

87. Neither the purposes of PIPEDA, nor access to justice or judicial economy, would be served if debtors were treated as having a PIPEDA right to withhold consent to disclosure of the very information, to the very creditor, to which they have a legal duty to disclose or provide consent to disclosure. In such circumstances, implying consent to disclosure by the mortgagee to a judgment creditor is appropriate and just.

2. The Reasonable Expectations of the Individuals are Consistent with Disclosure

88. The same factors influence the Trangs' reasonable expectations with respect to this disclosure. Reasonable expectations of privacy cannot be assessed properly without considering who will be receiving the information, and the purpose for which they are seeking it. The dissent quite appropriately took into account the fact that:

- a) the statement of an account between a mortgagee and mortgagor affects the rights of other creditors, and “a reasonable mortgagor would consider it appropriate that his or her mortgagee be entitled to provide a Statement to affected third parties”;
- b) detailed information about the mortgage was already publicly available; and
- c) if the Trangs had complied with their duty to appear for the examination in aid of execution, they would have been required to produce their discharge statement to RBC.

ONCA Reasons, at para. 123; see also *ibid.*, at paras 118-122, 124-125

89. As Associate Chief Justice Hoy (dissenting) noted in concluding that implied consent applied:

To conclude otherwise would accept that a *reasonable* mortgagor in a society governed by the rule of law intends to frustrate his or her creditors and to flout his or her obligations under the *Rules of Civil Procedure*. An unreasonable mortgagor might do so. A reasonable one would not. [Emphasis in original.]

ONCA Reasons, at para. 124

90. RBC submits that the dissent's contextual approach, specifically analyzing the reasonable privacy expectations of a mortgagor vis-à-vis a judgment creditor with respect to a discharge statement was correct, as was their conclusion that consent could be implied.

91. The Court of Queen's Bench of Alberta's decision in *Aecon Industrial Western* is also instructive. In that case, a judgment creditor sought employment information from a union that the debtor was required, but failed, to produce under the *Alberta Civil Enforcement Regulation*. The court held that disclosure by the union was not prohibited by Alberta's privacy legislation, which is substantially similar to PIPEDA. The debtor could not reasonably expect to withhold consent under the privacy legislation, where he was required to provide consent to disclosure of the same information by the *Civil Enforcement Regulation*:

It is difficult to see how an individual could 'reasonably be expected to withhold consent' to having the Union disclose this information in these circumstances, when this individual is not able to do so themselves. Intransigent and unlawful behavior is not consistent with the use or meaning of the word 'reasonable' in section 20(e) of our [*Personal Information Protection Act*].

Moreover, it cannot have been the intent of the *PIPA* to tie up information and thereby create a modern version of civil debtor's prison so as to frustrate an execution debtor's timely satisfaction of their debts. The purpose of the Act is to protect reasonable and legitimate expectations, not illegitimate ones.

Aecon Industrial, supra, at paras. 17-18 (the court was interpreting the "court order" exception at s. 20(e) of Alberta's privacy legislation, the *Personal Information Protection Act*, S.A. 2003, c. P-6.5, which legislation is substantially similar to PIPEDA and applies to provincially-regulated entities in that province in place of PIPEDA: *Organizations in the Province of Alberta Exemption Order*, SOR/2004-219, s. 1)

Civil Enforcement Regulation, Alta. Reg. 276/1995, ss. 35.09, 35.11-35.12, 35.17

3. Consent of the Trangs can be Implied

92. In light of the foregoing, RBC submits that consent could be implied:

- a) after RBC filed a writ of seizure and sale with the sheriff; or
- b) in the alternative, after the Trangs failed to attend an examination at which they were required to produce that personal information to RBC.

93. In either circumstance, there is no need to be concerned about how a mortgagee will determine that consent has been implied. If this Court agrees that consent to disclosure of a mortgage discharge statement can be implied when a judgment creditor files a writ of seizure and sale with the sheriff in respect of the relevant property, the mortgagee will be permitted by PIPEDA to disclose a mortgage discharge statement upon proof by the judgment creditor of the judgment and filing of the writ.

94. Alternatively, if this Court finds that consent to disclosure of a mortgage discharge statement can be implied after a judgment debtor fails to appear at an examination in aid of execution at which it was required by the *Rules of Civil Procedure* to produce that information, the mortgagee will be permitted by PIPEDA to disclose a mortgage discharge statement upon proof by the judgment creditor of service of the Notice of Examination and a certified court reporter's Certificate of Non-Attendance. It should not matter whether the examination was ordered by the Court under Rule 34.15(1)(d) of the *Rules of Civil Procedure* after failure of the debtor to attend a prior Rule 60.18(2) examination. At either examination, Rules 34.10(2)(b) and (3) would require production of all documents requested in the Notice of Examination.

C. Consent was not Required after Filing of the Writ of Seizure and Sale

95. In the alternative, even if consent to disclosure could not be implied upon filing of a writ of seizure and sale for the property in issue, consent was not required after that date, in light of ss. 7(3)(b) and (i) of PIPEDA, which provide:

7(3) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is: ...

(b) for the purpose of collecting a debt owed by the individual to the organization; ... or

(i) required by law.

96. As discussed above, in the context of a sheriff's sale pursuant to a writ of seizure and sale, the mortgage discharge statement establishes the amount of the proceeds of the sale to be paid to the mortgagee, to collect on the debtor's mortgage. Accordingly, from the perspective of the mortgagee, disclosure to an execution creditor for the sheriff is "for the purpose of collecting a debt [the mortgage] owed by the individual [the Trangs] to the organization [Scotiabank]."

97. By necessary implication, disclosure is also "required by law." Under the *Execution Act*, it is clear that land or its equity of redemption may be sold in order to satisfy a judgment. As Gray J. held below: "It seems to me that a strong argument can be made that the person entitled to sell land in order to enforce a judgment is entitled to obtain information in order to make the right to sell effective." Moreover, the sheriff and judgment creditor are required by law to ensure that the mortgagee is paid in full out of the proceeds of the sale before the judgment creditor receives any of the proceeds. This is the reason the sheriff demands a mortgage discharge statement setting out how much is owed to the mortgagee. It is unreasonable to read the *Execution Act* as providing a right to sell the land, a duty to pay the mortgagee first, but not to implicitly require that the mortgagee provide the sheriff and execution creditor with accurate information about the amount of its priority charge on the proceeds from the sale.

SCJ 2012 Reasons, at paras. 36, 45

Execution Act, s. 28(3); see also *ibid.*, ss. 9(1), 10(6), 13, 28(1)-(2), 28(4)-(6)

D. Consent was not Required, Because the Trangs were "Required by law" to Disclose the Same Personal Information in the Examination in Aid of Execution

98. As discussed above, the Trangs were required by Rules 34.10(2)(b), 34.10(3), and 60.18(2) to produce to RBC the very same personal information that RBC seeks from Scotiabank. RBC submits that even if consent cannot be implied, disclosure was "required by law" such that the s. 7(3)(i) exemption applies.

99. The disclosure being sought from Scotiabank is of the same personal information, to the same recipient (RBC), for the same purposes, as the Trangs are "required by law" to disclose

pursuant to the rules identified above. It is the very same “disclosure” that is exempted from the knowledge and consent requirements under s. 7(3)(i) of PIPEDA.

100. The intent of s. 7(3)(i) is clearly to ensure that, as important as privacy rights are, they do not stand as impediments to legally-required disclosures. This interpretation is consistent with the purpose section of the Act; production of personal information that is required by law to be disclosed is a disclosure “for purposes that a reasonable person would consider appropriate in the circumstances.”

PIPEDA, ss. 3, 7(3)(i)

101. To read PIPEDA otherwise, as was done in *Citi Cards* and followed in this case, serves only to assist individuals who are flouting their legal obligations. Individuals who fail to disclose personal information where they are “required by law” to do so, such as at a judgment debtor examination, have no right to withhold consent to disclosure of the same personal information, to the same recipient, given s. 7(3)(i) of PIPEDA.

E. PIPEDA Does Not Diminish the Courts’ Power to Order Production

102. This appeal also raises the question of the proper interpretation of s. 7(3)(c) of PIPEDA, which provides:

7(3) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is: ...

(c) required to comply with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information, or to comply with rules of court relating to the production of record[.] [Emphasis added.]

103. It is possible to interpret the effect of s. 7(3)(c) on the power of the courts to issue orders for production of personal information (in any context), in at least three ways:

- a) As Justice Perell of the Ontario Superior Court of Justice noted in *Mountain Province*, there have been “cases in which s. 7(3)(c) of PIPEDA seems to have been used by a court as a free-standing jurisdiction to authorize the disclosure of personal information in appropriate circumstances”;

- b) This exception is intended to facilitate compliance with any power of the courts (or other bodies) to compel the production of information, including the courts' inherent jurisdiction. On this interpretation, which RBC submits is the proper one, PIPEDA does not narrow the courts' authority to order production of personal information, it simply makes clear that the recipient of such an order is permitted to comply without first obtaining the consent of the individual whose personal information is in issue; or
- c) This exception restricts the power of the courts to issue orders for production of personal information to circumstances in which there is an express statute or rule of court authorizing the order. This was the interpretation adopted in *Citi Cards* and the court below.

Mountain Province, supra, at para. 62 (Perell J. does not adopt the “free-standing jurisdiction” approach he describes above, but does find that a court order for disclosure would satisfy s. 7(3)(c) of PIPEDA)

See also *Re Southlake Regional Health Centre Employees' Credit Union Ltd.*, 2012 ONSC 2530, 2012 CarswellOnt 5175, Appellant's BA, Tab 30 (Vol. III), at para. 13 (WL) (cited in *Mountain Province, ibid.*)

104. RBC does not seek an interpretation of s. 7(3)(c) of PIPEDA that would make it a new source of power to grant orders for production. This Court recently rejected a similar interpretation of s. 7(3)(c.1)(ii) in *R. v. Spencer*, finding that this PIPEDA exception permitting disclosure without consent to a government institution that has identified its lawful authority to obtain the information does not create a new, free-standing police search and seizure power.

R. v. Spencer, 2014 SCC 43, [2014] 2 S.C.R. 212, Appellant's BA, Tab 29 (Vol. III) at para. 71

105. However, RBC submits that s. 7(3)(c) of PIPEDA does not diminish the pre-existing powers of the courts to order production. Hoy A.C.J.O and Sharpe J.A., dissenting in the court below, were correct in finding that their inherent jurisdiction, or a purposive interpretation of their statutory jurisdiction, allowed them to directly order Scotiabank to disclose the Trangs' discharge statement, and that such an order satisfies the s. 7(3)(c) exception.

ONCA Reasons, at paras. 107-114; see also model vesting orders in Ontario, Quebec and British Columbia, all of which contemplate the court exercising discretion to authorize production of personal information under the applicable

insolvency statutes: *Approval and Vesting Order* (Ont.), Appellant's BA, Tab 35 (Vol. III), at para. 6, online: <<http://www.ontariocourts.ca/scj/files/forms/com/approval-and-vesting-order-EN.doc>>; *Approval and Vesting Order* (Que.), Appellant's BA, Tab 36 (Vol. III), at para. 27, online: <http://www.barreau.demontreal.qc.ca/sites/default/files/vesting_order_may2014.doc>; and *Model Approval and Vesting Order* (B.C.), Appellant's BA, Tab 45 (Vol. III), at para. 6 online: <http://www.courts.gov.bc.ca/supreme_court/practice_and_procedure/practice_directions/civil/PD%20-%2040%20-%20Model%20Approval%20and%20Vesting%20Order.pdf>

See also *Easybank*, *supra*, at paras. 2, 4; *Mountain Province*, *supra*, at para. 62; and *Canaccede*, *supra*, at paras. 24-29

106. This is in contrast to the highly technical approach of the majority below, who found that Rule 60.18 was the sole source of jurisdiction for an order that would satisfy PIPEDA.

107. The inherent powers of a superior court have developed over centuries. They are derived “not from any statute or rule of law, but from the very nature of the court as a superior court of law.” They enable “the judiciary to uphold, to protect and to fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner.”

I.H. Jacob, “The Inherent Jurisdiction of the Court”, 23 *Curr. Legal Probs.* 23 Appellant's BA, Tab 41 (Vol. III) at 27-28, cited in *R. v. Caron*, 2011 SCC 5, [2011] 1 S.C.R. 78, Appellant's BA, Tab 28 (Vol. III), at para. 24

See also *Jackson & Sarra*, *supra* at 19; *Cook v. Ip et al.* (1985), 52 O.R. (2d) 289 (C.A.), application for leave to appeal dismissed (1986), 55 O.R. (2d) 288 (S.C.C.), Appellant's BA, Tab 14 (Vol. I); *80 Wellesley St. East Ltd. v. Fundy Bay Builders Ltd.*, [1972] 2 O.R. 280 at 282, 25 D.L.R. (3d) 386 (C.A.), Appellant's BA, Tab 1 (Vol. I); and *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62, [2003] 3 S.C.R. 3, Appellant's BA, Tab 15 (Vol. II), at para. 71

108. The existence of a statutory scheme governing certain types of proceedings does not oust the court's inherent jurisdiction to control its own process. For instance, the *Alberta Workers' Compensation Act* did not oust the court's inherent jurisdiction to compel production of important medical reports in a personal injury case. Similarly, rules of court do not displace the inherent power of a court to govern its process. For example, the Saskatchewan rules of court—which provided only for examinations of “bodily injuries” of a personal injury plaintiff – did not preclude a court from relying on its inherent jurisdiction to order the plaintiff to submit to reasonable psychological examination.

Brett (Public Trustee of) v. Associated Cab (Red Deer) Ltd. (1991), 81 Alta. L.R. (2d) 94, 1991 CanLII 5862, Appellant's BA, Tab 6 (Vol. I), at paras. 5-8 (Q.B.); and *Workers' Compensation Act*, S.A. 1981, c. W-16, s. 142

Campagna v. Wong, 2002 SKQB 97, Sask. R. 142, Appellant's BA, Tab 7 (Vol. I), at paras. 13-15 (the court held that "bodily injuries" should be given a liberal interpretation to include psychological injuries, but: "Alternatively, I am satisfied that this court has the inherent jurisdiction to make [such] an order"); and *The Queen's Bench Act, 1998*, S.S. 1998, c. Q-1.01, s. 36(1)

109. The inherent jurisdiction of the courts will only be restricted or removed if there is express statutory language to this effect. This Court has recently had occasion to consider when statutory language becomes so explicit as to oust a court's inherent jurisdiction. At issue in *Conseil scolaire francophone de la Colombie -Britannique v. British Columbia* was whether two statutory provisions precluded the Supreme Court of British Columbia from admitting original documents, prepared in French, as exhibits. The first provision was an English law, which was received into British Columbia law and required "all Pleadings, Rules, Orders, Indictments, Informations, Inquisitions, Presentments" etc. to be in English. The second provision was contained in the provincial rules of court, and required "every document prepared for use in the court [to] be in the English language". The majority of this Court found these provisions to be clear enough to explicitly prohibit courts from relying on their inherent jurisdiction to admit original French documents as exhibits.

Conseil scolaire francophone de la Colombie -Britannique v. British Columbia, 2013 SCC 42, [2013] 2 S.C.R. 774, Appellant's BA, Tab 13 (Vol. I), at paras. 26, 63 (*per* Wagner J.) [*Conseil scolaire*]; *Act that all Proceedings in Courts of Justice within Part of Great Britain called England, and in the Court of Exchequer in Scotland, shall be in the English Language* (U.K.), 1731, 4 Geo. II, c. 26, Preamble; and *Supreme Court Civil Rules*, B.C. Reg. 168/2009, r. 22-3

110. However, when the clear language at issue in *Conseil scolaire*, specifically directing that documents be produced in English, is contrasted with s. 7(3)(c) of PIPEDA, it is apparent that neither the majority nor the dissent in *Conseil scolaire* would have found PIPEDA to contain language that ousts a court's inherent jurisdiction. Section 7(3)(c) is permissive; it allows disclosure under any "order made by a court, person or body with jurisdiction to compel the production of information." The source of that jurisdiction is not expressly or by implication limited to statutory jurisdiction.

Conseil scolaire, supra; see also *ibid.*, at paras. 83-84, 99, 104 (*per* Karakatsanis J., dissenting)

111. Given the absence of clear statutory language to the contrary, the inherent jurisdiction of the superior courts to order third party production in aid of execution continues to exist. If anything, a contextual reading of ss. 7(3)(c) and (i) of PIPEDA, which provide for disclosure pursuant to an order of a court “with jurisdiction to compel the production of information” or as “required by law”, demonstrate that PIPEDA preserves the statutory and inherent jurisdiction of courts to order the disclosure of personal information in appropriate circumstances.

112. The implications of holding otherwise could be very broad, given the wide array of circumstances in which superior courts rely on their inherent jurisdiction and broad powers at common law and in equity to order production of personal information. There are several examples of such powers being used, including *Norwich* orders for pre-action discovery that draw on the courts’ equitable jurisdiction to compel a third party to disclose personal information. Such orders, which have been found to satisfy the s. 7(3)(c) exception in PIPEDA, have been used to compel internet service providers to disclose the sources of allegedly defamatory emails or online copyright violations, as well as to compel banks to disclose personal information where the plaintiff wanted to trace and preserve funds that might have been misappropriated due to fraud or an executive having taken bribes.

York University v. Bell Canada Enterprises (2009), 99 O.R. (3d) 695, 311 D.L.R. (4th) 755, Appellant’s BA, Tab 33 (Vol. III), at para. 36 (Sup. Ct.); *Isofoton S.A. v. Toronto Dominion Bank* (2007), 85 O.R. (3d) 780, 282 D.L.R. (4th) 325, Appellant’s BA, Tab 23 (Vol. III), at para. 41 (Sup. Ct.); *Alberta Treasury Branches v. Leahy*, 2000 ABQB 575, 270 A.R. 1, Appellant’s BA, Tab 4 (Vol. I), at para. 105; *BMG Canada*, *supra*, at para. 42; and *Douglas v. Loch Lomond Ski Area*, 2010 ONSC 6483, [2010] O.J. No. 5212, Appellant’s BA, Tab 16 (Vol. I), at para. 18

113. Contrary to *Citi Cards*, the type of order sought by RBC in the courts below is not circular – it is not granted on the basis of s. 7(3)(c). Rather, it is based on inherent jurisdiction that exists independently of s. 7(3)(c), but is recognized and preserved therein. For the reasons set out above, such an order was not needed, given that consent to disclosure of a mortgage discharge statement can be implied, or the disclosure falls within the s. 7(3)(b) or (i) exemption. However, if this Court finds that the only means for a judgment creditor to obtain a mortgage discharge statement from the mortgagee is to bring a motion for a production order, RBC submits that the dissent in the court below was correct in holding that such an order can be made directly, without requiring the mortgagee to appear at an examination in aid of execution.

F. Conclusion

114. As this Court recently noted in *Chevron*: “Legitimate judicial acts should be respected and enforced, not sidetracked or ignored.” RBC obtained a judgment against the Trangs in December 2010. RBC has now been sidetracked for almost five years, its right to enforcement impeded, as a result of a non-purposive interpretation of PIPEDA. It is a disservice to the right to privacy to make it an unnecessary obstacle that obscures real access to justice for judgment creditors facing fugitive or recalcitrant debtors who flout their legal duty to provide relevant information about their real property assets. Properly interpreted, PIPEDA does not restrict the ability of the courts to control their process, or inhibit efficient and cost-effective enforcement of their judgments.

Chevron, supra, at para. 53

PART IV - SUBMISSIONS CONCERNING COSTS

115. Given the public interest in access to justice underlying this application, RBC does not request its costs and requests that no costs be awarded against it.

PART V - ORDER SOUGHT

92. RBC requests that its appeal be allowed, and Scotiabank be ordered to provide the Trangs’ mortgage discharge statement to RBC.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of November, 2015.

Catherine Beagan Flood

Peter W. Hogg, Q.C.

Pamela Huff

Nickolas Tzoulas

PART VI - TABLE OF AUTHORITIES

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<u>Secondary Sources</u>		
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PART VII - RELEVANT STATUTES AND REGULATIONS

1. ***Act that all Proceedings in Courts of Justice within that Part of Great Britain called England, and in the Court of Exchequer in Scotland, shall be in the English Language (U.K.), 1731, 4 Geo. II, c. 26, Preamble***

Whereas many and great mischiefs do frequently happen to the subjects of this kingdom from the proceedings in courts of justice being in an unknown language, those who are summoned and impleaded having no knowledge or understanding of what is alleged for or against them in the pleadings of their lawyers or attorneys, who use a character not legible to any but persons practicing the law: To remedy these great mischiefs, and to protect the lives and fortunes of the subjects of that part of Great Britain called England more effectually than heretofore from the peril of being ensnared or brought in danger by forms and proceedings in courts of justice in an unknown language, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons of Great Britain, in Parliament assembled, and by the authority of the same, that from and after the twenty fifth day of March one thousand seven hundred and thirty three, all writs, process, and returns thereof and proceedings thereon, and all pleadings, rules, orders, indictments, informations, inquisitions, presentments, verdicts, prohibitions, certificates, and all patents, charters, pardons, commissions, records, judgments, statutes, recognizances, bonds, rolls, entries, fines and recoveries, and all proceedings relating thereunto, and all proceedings of courts leet, courts baron, and customary courts, and all copies thereof, and all proceedings whatsoever in any courts of justice within that Part of Great Britain called England and in the Court of Exchequer in Scotland, and which concern the law and administration of justice, shall be in the English tongue and language only, and not in Latin or French, or any other tongue or language whatsoever, and shall be written in such a common legible hand and character as the Acts of Parliaments are usually ingrossed in, and the lines and words of the same to be written at least as close as the said Acts usually are, and not in any hand commonly called court-hand, and in words at length and not abbreviated, any law, custom or usage heretofore to the contrary thereof notwithstanding: and all and every person or persons offending against this Act shall for every such offence forfeit and pay the sum of fifty pounds to any person who shall sue for the same by action of debt, bull, plaint, or information in any of his Majesty's courts of records in Westminster Hall or Court of Exchequer in Scotland respectively, wherein no essoign, protection, or wager of law, or more than one imparlance shall be allowed.

2. *Arbitration Act, 1991, S.O. 1991, c. 17, ss. 50(1), (3)-(4), (8)* *Loi de 1991 sur l'arbitrage, L.O. 1991, ch. 17, ss. 50(1), (3)-(4), (8)*

50(1) A person who is entitled to enforcement of an award made in Ontario or elsewhere in Canada may make an application to the court to that effect.

50(1) Quiconque a droit à l'exécution d'une sentence rendue en Ontario ou ailleurs au Canada peut présenter une requête à cet effet au tribunal judiciaire.

...

...

(3) The court shall give a judgment enforcing an award made in Ontario unless,

(3) Le tribunal judiciaire rend un jugement mettant à exécution une sentence rendue en Ontario à moins, selon le cas :

(a) the thirty-day period for commencing an appeal or an application to set the award aside has not yet elapsed;

a) que le délai de trente jours imparti pour interjeter appel ou introduire une requête en annulation de la sentence ne soit pas encore écoulé;

(b) there is a pending appeal, application to set the award aside or application for a declaration of invalidity;

b) qu'un appel, une requête en annulation de la sentence ou une requête en vue d'obtenir une déclaration de nullité ne soit en instance;

(c) the award has been set aside or the arbitration is the subject of a declaration of invalidity; or

c) que la sentence n'ait été annulée ou que l'arbitrage ne fasse l'objet d'une déclaration de nullité;

(d) the award is a family arbitration award. 1991, c. 17, s. 50 (3); 2006, c. 1, s. 1 (8).

d) que la sentence ne soit une sentence d'arbitrage familial. 1991, chap. 17, par. 50 (3); 2006, chap. 1, par. 1 (8).

(4) The court shall give a judgment enforcing an award made elsewhere in Canada unless,

(4) Le tribunal judiciaire rend un jugement mettant à exécution une sentence rendue ailleurs au Canada à moins, selon le cas :

(a) the period for commencing an appeal or an application to set the award aside provided by the laws of the province or territory where the award was made has not yet elapsed;

a) que le délai pour interjeter appel ou introduire une requête en annulation de la sentence prévu par les lois de la province ou du territoire où a été rendue la sentence ne soit pas encore écoulé;

(b) there is a pending appeal, application to set the award aside or application for a declaration of invalidity in the province or territory where the award was made;

b) qu'un appel, une requête en annulation de la sentence ou une requête en vue d'obtenir une déclaration de nullité ne soit en instance dans la province ou le

(c) the award has been set aside in the province or territory where it was made or the arbitration is the subject of a declaration of invalidity granted there;

(d) the subject-matter of the award is not capable of being the subject of arbitration under Ontario law; or

(e) the award is a family arbitration award.

...

(8) The court has the same powers with respect to the enforcement of awards as with respect to the enforcement of its own judgments.

territoire où a été rendue la sentence;

c) que la sentence n'ait été annulée dans la province ou le territoire où elle a été rendue ou que l'arbitrage n'y fasse l'objet d'une déclaration de nullité;

d) que l'objet de la sentence ne puisse pas faire l'objet d'un arbitrage aux termes des lois de l'Ontario;

e) que la sentence ne soit une sentence d'arbitrage familial.

...

(8) Le tribunal judiciaire a les mêmes pouvoirs en ce qui concerne l'exécution des sentences qu'en ce qui concerne celle de ses propres jugements.

3. ***Civil Enforcement Regulation, Alta. Reg. 276/1995, ss. 35.09, 35.11-35.12, 35.17***

35.09 For the purposes of determining the ability of an enforcement debtor to satisfy the claims of enforcement creditors, an enforcement creditor may require the enforcement debtor to provide information in accordance with this Part.

...

35.11(1) On service of a written notice on an enforcement debtor by an enforcement creditor, the enforcement creditor may require the enforcement debtor to attend for questioning under oath by the enforcement creditor with respect to matters referred to in section

(2) A notice served on an enforcement debtor under subsection (1) must be served on the enforcement debtor at least 5 days before the day on which the enforcement debtor is required to attend for questioning.

(3) Once an enforcement creditor has questioned an enforcement debtor under subsection (1), that enforcement creditor may not, without an order of the Court, again question that enforcement debtor under subsection (1) until one year has elapsed from the day of that previous questioning.

35.12(1) An enforcement debtor may be questioned on matters in respect of the following:

(a) the property and financial means that the enforcement debtor had when the liability to which the judgment relates was incurred or, if the judgment is for costs only, when the proceedings were commenced;

(b) the property and financial means that the enforcement debtor presently has;

(c) any disposal of property made by the enforcement debtor since incurring the liability or, if the judgment is for costs only, since the proceedings were commenced;

(d) any matter relating to exemptions;

(e) where the enforcement debtor is a corporation, the name and address of, and any other pertinent information relating to, any director or officer or any former director or officer of the corporation.

(2) In addition to questioning an enforcement debtor in respect of matters referred to in subsection (1), where an enforcement debtor has provided a financial report under section 35.10, the enforcement creditor may, in conducting questioning under section 35.11, question the enforcement debtor respecting the financial report.

...

35.17 If a person who is required under this Part to provide a financial report, submit to questioning or provide a copy of a financial report fails to do so or fails to answer a question

that may properly be asked of that person, the Court may, on application, do one or more of the following:

- (a) direct that the person comply with the requirements under this Part or answer the question, as the case may be;
- (b) hold the person in civil contempt;
- (c) make any other order that the Court considers appropriate in the circumstances.

4. ***Digital Privacy Act, S.C. 2015, c. 32, ss. 6(7), (10)-(11)***

6(7) Paragraph 7(3)(c.1) of the Act is amended by striking out “or” at the end of subparagraph (ii), by adding “or” at the end of subparagraph (iii) and by adding the following after subparagraph (iii):

(iv) the disclosure is requested for the purpose of communicating with the next of kin or authorized representative of an injured, ill or deceased individual;

...

(10) Subsection 7(3) of the Act is amended by adding the following after paragraph (d):

(d.1) made to another organization and is reasonable for the purposes of investigating a breach of an agreement or a contravention of the laws of Canada or a province that has been, is being or is about to be committed and it is reasonable to expect that disclosure with the knowledge or consent of the individual would compromise the investigation;

(d.2) made to another organization and is reasonable for the purposes of detecting or suppressing fraud or of preventing fraud that is likely to be committed and it is reasonable to expect that the disclosure with the knowledge or consent of the individual would compromise the ability to prevent, detect or suppress the fraud;

(d.3) made on the initiative of the organization to a government institution, a part of a government institution or the individual’s next of kin or authorized representative and

(i) the organization has reasonable grounds to believe that the individual has been, is or may be the victim of financial

Loi sur la protection des renseignements personnels numériques, L.C. 2015, ch. 32, ss. 6(7), (10)-(11)

6(7) L’alinéa 7(3)c.1) de la même loi est modifié par adjonction, après le sous-alinéa (iii), de ce qui suit :

(iv) qu’elle est demandée afin d’entrer en contact avec le plus proche parent d’un individu blessé, malade ou décédé, ou avec son représentant autorisé;

...

(10) Le paragraphe 7(3) de la même loi est modifié par adjonction, après l’alinéa d), de ce qui suit :

(d.1) elle est faite à une autre organisation et est raisonnable en vue d’une enquête sur la violation d’un accord ou sur la contravention au droit fédéral ou provincial qui a été commise ou est en train ou sur le point de l’être, s’il est raisonnable de s’attendre à ce que la communication effectuée au su ou avec le consentement de l’intéressé compromettrait l’enquête;

(d.2) elle est faite à une autre organisation et est raisonnable en vue de la détection d’une fraude ou de sa suppression ou en vue de la prévention d’une fraude dont la commission est vraisemblable, s’il est raisonnable de s’attendre à ce que la communication effectuée au su ou avec le consentement de l’intéressé compromettrait la capacité de prévenir la fraude, de la détecter ou d’y mettre fin;

(d.3) elle est faite, à l’initiative de l’organisation, à une institution gouvernementale ou à une subdivision d’une telle institution, au plus proche parent de l’intéressé ou à son représentant autorisé, si les conditions ciaprès sont remplies:

(i) l’organisation a des motifs

abuse,

(ii) the disclosure is made solely for purposes related to preventing or investigating the abuse, and

(iii) it is reasonable to expect that disclosure with the knowledge or consent of the individual would compromise the ability to prevent or investigate the abuse;

(d.4) necessary to identify the individual who is injured, ill or deceased, made to a government institution, a part of a government institution or the individual's next of kin or authorized representative and, if the individual is alive, the organization informs that individual in writing without delay of the disclosure;

(11) Subsection 7(3) of the Act is amended by adding the following after paragraph (e):

(e.1) of information that is contained in a witness statement and the disclosure is necessary to assess, process or settle an insurance claim;

(e.2) of information that was produced by the individual in the course of their employment, business or profession and the disclosure is consistent with the purposes for which the information was produced;

raisonnables de croire que l'intéressé a été, est ou pourrait être victime d'exploitation financière,

(ii) la communication est faite uniquement à des fins liées à la prévention de l'exploitation ou à une enquête y ayant trait,

(iii) il est raisonnable de s'attendre à ce que la communication effectuée au su ou avec le consentement de l'intéressé compromettrait la capacité de prévenir l'exploitation ou d'enquêter sur celle-ci;

(d.4) elle est nécessaire aux fins d'identification de l'intéressé qui est blessé, malade ou décédé et est faite à une institution gouvernementale ou à une subdivision d'une telle institution, à un proche parent de l'intéressé ou à son représentant autorisé et, si l'intéressé est vivant, l'organisation en informe celui-ci par écrit et sans délai;

(11) Le paragraphe 7(3) de la même loi est modifié par adjonction, après l'alinéa e), de ce qui suit :

e.1) il s'agit d'un renseignement contenu dans la déclaration d'un témoin et dont la communication est nécessaire en vue de l'évaluation d'une réclamation d'assurance, de son traitement ou de son règlement;

e.2) il s'agit d'un renseignement produit par l'intéressé dans le cadre de son emploi, de son entreprise, ou de sa profession, et dont la communication est compatible avec les fins auxquelles il a été produit;

5. ***Electronic Registration, O. Reg. 19/99, s. 6***

6. In addition to the matters set out in section 4, a charge submitted for electronic registration shall contain,

- (a) a statement of the principal amount or other obligation secured by the charge;
- (b) the rate of interest and periods of payment under the charge;
- (c) the due date of the charge or a statement that the charge is payable on demand, whichever is the case;
- (d) a statement of the interest or estate charged;
- (e) the filing number of standard charge terms included in the charge, if any;
- (f) a statement that the chargor charges the land that it affects;
- (g) unless the chargor is a corporation, a statement by the chargor that the chargor is at least 18 years old;
- (h) unless the chargor is a corporation, a statement of spousal status under the Family Law Act by the chargor; and
- (i) a statement that the chargor acknowledges receipt of a copy of the charge.

6. **Execution Act, R.S.O. 1990, c. E.24, ss. 9(1), 10(6), 13, 28**

9(1) The sheriff to whom a writ of execution against lands is delivered for execution may seize and sell thereunder the lands of the execution debtor, including any lands whereof any other person is seized or possessed in trust for the execution debtor and including any interest of the execution debtor in lands held in joint tenancy.

...

10(6) Subject to section 11 and the Land Titles Act, a writ of execution, a renewal of it or a certificate of lien under the Bail Act binds the lands against which it is issued from the effective date of the writ, renewal or certificate noted in the electronic database maintained by the sheriff as the index of writs of execution.

...

13 Subject to the Courts of Justice Act and the rules of court, land and other hereditaments and real estate belonging to any person indebted are liable to and chargeable with all just debts, duties and demands of whatsoever nature or kind owing by any such person to Her Majesty or to any of her subjects and are assets for the satisfaction thereof and are subject to the like remedies, proceedings and process for seizing, selling or disposing of them towards the satisfaction of such debts, duties and demands, and in like manner as personal estate is seized, sold or disposed of.

...

Exécution Forcée (Loi sur l'), L.R.O. 1990, ch. E.24, ss. 9(1), 10(6), 13, 28

9(1) Le bref d'exécution forcée visant des biens-fonds, remis au shérif aux fins d'exécution forcée, permet à celui-ci de saisir et de vendre les biens-fonds du débiteur saisi, y compris tout bien-fonds dont une autre personne est saisie ou a la possession en qualité de fiduciaire pour le compte du débiteur saisi, ainsi que tout intérêt de ce dernier sur des biens-fonds détenus en copropriété avec gain de survie.

...

10(6) Sous réserve de l'article 11 et de la Loi sur l'enregistrement des droits immobiliers, un bref d'exécution forcée, son renouvellement ou un certificat de privilège visé par la Loi sur la mise en liberté sous caution grève les biens-fonds qu'il vise à compter de sa date de prise d'effet, laquelle est notée dans la base de données électronique que maintient le shérif à titre de répertoire des brefs d'exécution forcée.

...

13 Sous réserve de la Loi sur les tribunaux judiciaires et des règles de pratique, les biens-fonds ainsi que les autres héritages et biens immeubles d'un débiteur sont susceptibles d'être grevés par les dettes, les obligations et les demandes, et d'être affectés au paiement de celles-ci, quelles qu'en soient la nature et l'espèce, à Sa Majesté ou à l'un de ses sujets. La saisie, la vente ou autre forme d'aliénation de ces biens effectuées en vue d'acquitter les dettes, les obligations et les demandes s'effectuent par voie des mêmes recours, instances et actes de procédure et de la même manière qu'à l'égard des biens meubles.

...

28(1) Where the word “mortgagor” occurs in this section, it shall be read and construed as if the words “the mortgagor’s heirs, executors, administrators or assigns, or person having the equity of redemption” were inserted immediately after the word “mortgagor”.

(2) The sheriff to whom an execution against the lands and tenements of a mortgagor is directed may seize, sell and convey all the interest of the mortgagor in any mortgaged lands and tenements.

(3) The equity of redemption in freehold land is saleable under an execution against the lands and tenements of the owner of the equity of redemption in the owner’s lifetime, or in the hands of the owner’s executors or administrators after the owner’s death, subject to the mortgage, in the same manner as land and tenements may now be sold under an execution.

(4) Where more mortgages than one of the same lands have been made to the same mortgagee or to different mortgagees, subsections (2) and (3) apply, and the equity of redemption is saleable under an execution against the lands and tenements of the owner, subject to the mortgages, in the same manner as in the case of land subject to one mortgage only.

(5) The effect of the seizure or taking in execution, sale and conveyance of mortgaged lands and tenements is to vest in the purchaser, the purchaser’s heirs and assigns, all the interest of the mortgagor therein at the time the execution was placed in the hands of the sheriff, as well as at the time of the sale, and to vest in the purchaser, the purchaser’s heirs and assigns, the same rights as the mortgagor would have had if the sale had not taken place, and the purchaser, the purchaser’s heirs or assigns, may pay, remove or satisfy any mortgage,

28(1) Dans le présent article, l’expression «débiteur hypothécaire» s’interprète comme si elle était suivie des termes «ses héritiers, exécuteurs testamentaires, administrateurs ou ayants droit, ou le titulaire du droit de rachat».

(2) Le shérif à qui est délivré le bref d’exécution forcée visant des biens-fonds et tènements d’un débiteur hypothécaire peut saisir, vendre et céder tout l’intérêt du débiteur hypothécaire sur les biens-fonds et tènements hypothéqués.

(3) Sous réserve de l’hypothèque, le droit de rachat des biens-fonds en tenure franche peut être vendu aux termes d’une exécution forcée visant les biens-fonds et tènements qui appartiennent au titulaire du droit de rachat, du vivant de ce dernier, ou qui sont entre les mains de ses exécuteurs testamentaires ou de ses administrateurs après son décès, de la même manière que les biens-fonds et tènements peuvent maintenant être vendus aux termes d’une exécution forcée.

(4) Si plusieurs hypothèques sur les mêmes biens-fonds sont consenties au même créancier hypothécaire ou à des créanciers hypothécaires distincts, les paragraphes (2) et (3) s’appliquent et le droit de rachat, sous réserve des hypothèques, peut être vendu aux termes d’une exécution forcée visant les biens-fonds et tènements du titulaire du droit de rachat, comme s’il s’agissait d’un bien-fonds grevé d’une seule hypothèque.

(5) La saisie, la vente et la cession des biens-fonds et tènements hypothéqués ont pour effet d’investir l’adjudicataire, ses héritiers et ayants droit de tout intérêt qu’y possède le débiteur hypothécaire au moment de la remise au shérif du bref d’exécution forcée ainsi qu’au moment de la vente, et d’investir l’adjudicataire, ses héritiers ou ayants droit des mêmes droits qu’aurait eus le débiteur hypothécaire si la vente n’avait

charge or lien that at the time of the sale existed upon the lands or tenements so sold in like manner as the mortgagor might have done, and thereupon the purchaser, the purchaser's heirs and assigns, acquire the same estate, right and title as the mortgagor would have acquired in case the payment, removal or satisfaction had been effected by the mortgagor.

(6) A mortgagee of land, or the executors, administrators or assigns of a mortgagee, being or not being the execution creditor, may be the purchaser at the sale and acquire the same estate, interest and rights thereby as any other purchaser, but in that event the mortgagee or the executors, administrators or assigns of the mortgagee shall give to the mortgagor a release of the mortgage debt, and if another person becomes the purchaser, and, if the mortgagee, the mortgagee's executors, administrators or assigns enforce payment of the mortgage debt by the mortgagor, the purchaser shall repay the debt and interest to the mortgagor, and, in default of payment thereof within one month after demand, the mortgagor may recover the debt and interest from the purchaser, and has a charge therefor upon the mortgaged land.

pas eu lieu. L'adjudicataire, ses héritiers ou ayants droit peuvent satisfaire à l'hypothèque, à la charge ou au privilège qui grèvent, au moment de la vente, les biens-fonds et tènements ainsi vendus comme aurait pu le faire le débiteur hypothécaire. L'adjudicataire, ses héritiers et ayants droit acquièrent le même domaine, le même droit et le même titre qu'aurait acquis le débiteur hypothécaire si c'était lui qui avait satisfait à l'hypothèque.

(6) Le créancier hypothécaire d'un bien-fonds, ou ses exécuteurs testamentaires, administrateurs ou ayants droit, qu'il soit ou non le créancier saisissant, peut se porter adjudicataire lors de la vente et acquérir ainsi le même domaine, le même intérêt et les mêmes droits que tout autre adjudicataire. Toutefois, il est tenu, dans ce cas, de donner au débiteur hypothécaire mainlevée de la dette hypothécaire. Si une autre personne se porte adjudicataire, et que le créancier hypothécaire, ses exécuteurs testamentaires, administrateurs ou ayants droit exigent du débiteur hypothécaire le paiement de la dette hypothécaire, l'adjudicataire rembourse à ce dernier le montant de la dette, majoré des intérêts, dans le mois qui suit la demande. Si l'adjudicataire ne verse pas le montant précité dans le délai précisé, le débiteur hypothécaire peut recouvrer de celui-ci le montant de la dette et les intérêts, et est titulaire d'une charge sur le bien-fonds hypothéqué.

7. *Family Responsibility and Support Arrears Enforcement Act, 1996, S.O. 1996, c. 31, s. 42* *Loi de 1996 sur les obligations familiales et l'exécution des arriérés d'aliments, L.O. 1996, ch. 31, s. 42*

42. (1) A support order may be registered in the proper land registry office against the payor's land and on registration the obligation under the order becomes a charge on the property.

(2) A charge created by subsection (1) may be enforced by sale of the property against which it is registered in the same manner as a sale to realize on a mortgage.

(3) A court may order the discharge, in whole or in part, or the postponement, of a charge created by subsection (1), on such terms as to security or other matters as the court considers just.

(4) An order under subsection (3) may be made only after notice to the Director, if the support order or a related support deduction order is filed with the Director's office for enforcement.

42. (1) L'ordonnance alimentaire peut être enregistrée au bureau d'enregistrement immobilier compétent sur les biens-fonds du payeur. L'obligation découlant de l'ordonnance constitue une charge sur les biens dès que l'ordonnance est enregistrée.

(2) La charge constituée aux termes du paragraphe (1) peut être réalisée par la vente des biens sur lesquels celle-ci est enregistrée comme s'il s'agissait de l'exercice du droit de vente afin de réaliser une hypothèque.

(3) Le tribunal peut ordonner la mainlevée, même partielle, ou la cession du rang de la charge constituée aux termes du paragraphe (1) aux conditions qu'il estime équitables, notamment en ce qui a trait aux sûretés.

(4) L'ordonnance prévue au paragraphe (3) ne peut être rendue qu'après que le directeur en a été avisé, si l'ordonnance alimentaire ou une ordonnance de retenue des aliments connexe est déposée au bureau du directeur aux fins d'exécution.

8. ***Form of Documents, R.R.O. 1990, Reg. 688, s. 2(2)***

2(2) A charge submitted for registration under the Registry Act or for registration in a non-electronic format under the Land Titles Act shall be in the form that is entitled “Charge/Mortgage of Land”, “Acte de charge (hypothèque)” or “Charge/Mortgage of Land / Acte de charge (hypothèque)” and dated September 1, 2011, as it appears on the Government of Ontario website.

Formulaires de Documents, R.R.O. 1990, Reg. 688, s. 2(2)

2(2) La charge qui est présentée à l’enregistrement en vertu de la Loi sur l’enregistrement des actes ou qui est présentée à l’enregistrement sous forme non électronique en vertu de la Loi sur l’enregistrement des droits immobiliers est rédigée selon le formulaire intitulé «Acte de charge (hypothèque)», «Charge/Mortgage of Land» ou «Charge/Mortgage of Land / Acte de charge (hypothèque)» portant la date du 1er septembre 2011 qui se trouve sur le site Web du gouvernement de l’Ontario.

9. ***Highway Traffic Act, R.S.O. 1990, c. H.8, s. 21.1(11)*** ***Code de la route, L.R.O. 1990, ch. H.8, s. 21.1(11)***

21.1(11) If a person fails to pay an administrative penalty in accordance with the terms of the order imposing the penalty, the Minister may file the order with the Superior Court of Justice and the order may be enforced as if it were an order of the court.

21.1(11) Si une personne ne paie pas une pénalité administrative conformément aux conditions de l'ordonnance qui l'impose, le ministre peut déposer l'ordonnance auprès de la Cour supérieure de justice et l'ordonnance peut être exécutée comme s'il s'agissait d'une ordonnance du tribunal.

10. ***Land Registration Reform Act, R.R.O. 1990, Reg. 688, s. 3(1)***

3(1) A document shall not be registered under the *Land Titles Act* or the *Registry Act*, or deposited under Part II of the *Registry Act*, unless,

(a) its form and manner of completion and execution comply with this Part and the regulations; or

(b) it is attached to a document whose form and manner of completion and execution comply with this Part and the regulations.

Loi portant réforme de l'enregistrement immobilier, R.R.O. 1990, Règ. 688, s. 3(1)

3(1) Un document n'est pas enregistré en vertu de la *Loi sur l'enregistrement des droits immobiliers* ou de la *Loi sur l'enregistrement des actes*, ni déposé en vertu de la partie II de la *Loi sur l'enregistrement des actes*, à moins que l'une ou l'autre des exigences suivantes ne soient respectées :

a) il est rédigé et souscrit conformément à la présente partie et aux règlements;

b) il est joint à un document qui est rédigé et souscrit conformément à la présente partie et aux règlements.

11. ***Organizations in the Province of Alberta
Exemption Order, SOR/2004-219, s. 1***

1. An organization, other than a federal work, undertaking or business, to which the *Personal Information Protection Act*, S.A. 2003, c. P-6.5, of the Province of Alberta, applies is exempt from the application of Part 1 of the *Personal Information Protection and Electronic Documents Act*, in respect of the collection, use and disclosure of personal information that occurs within the Province of Alberta.

***Décret d'exclusion visant des organisations
de la province d'Alberta, SOR/2004-219,
s. 1***

1. Toute organisation, autre qu'une entreprise fédérale, qui est assujettie à la loi de la province d'Alberta intitulé *Personal Information Protection Act*, S.A. 2003, ch. P-6.5, est exclue de l'application de la partie 1 de la *Loi sur la protection des renseignements personnels et les documents électroniques* à l'égard de la collecte, de l'utilisation et de la communication de renseignements personnels qui s'effectuent à l'intérieur de la province d'Alberta.

12. *Personal Information Protection Act, S.A. 2003, c. P-6.5, s. 20(e)*

20. An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable:

...

(e) the disclosure of the information is for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction to compel the production of information or with a rule of court that relates to the production of information;

13. ***Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5, ss. 3, 7 and Schedule 1, cl. 4.3.4, 4.3.6***

3. The purpose of this Part is to establish, in an era in which technology increasingly facilitates the circulation and exchange of information, rules to govern the collection, use and disclosure of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

...

7. (1) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may collect personal information without the knowledge or consent of the individual only if

(a) the collection is clearly in the interests of the individual and consent cannot be obtained in a timely way;

(b) it is reasonable to expect that the collection with the knowledge or consent of the individual would compromise the availability or the accuracy of the information and the collection is reasonable for purposes related to investigating a breach of an agreement or a contravention of the laws of Canada or a province;

(b.1) it is contained in a witness statement and the collection is necessary to assess, process or settle an insurance claim;

b.2) it was produced by the individual in

Loi sur la protection des renseignements personnels et les documents électroniques, L.C. 2000, ch. 5, ss. 3, 7 et Annexe 1, cl. 4.3.4, 4.3.6

3. La présente partie a pour objet de fixer, dans une ère où la technologie facilite de plus en plus la circulation et l'échange de renseignements, des règles régissant la collecte, l'utilisation et la communication de renseignements personnels d'une manière qui tient compte du droit des individus à la vie privée à l'égard des renseignements personnels qui les concernent et du besoin des organisations de recueillir, d'utiliser ou de communiquer des renseignements personnels à des fins qu'une personne raisonnable estimerait acceptables dans les circonstances.

...

7. (1) Pour l'application de l'article 4.3 de l'annexe 1 et malgré la note afférente, l'organisation ne peut recueillir de renseignement personnel à l'insu de l'intéressé ou sans son consentement que dans les cas suivants :

a) la collecte du renseignement est manifestement dans l'intérêt de l'intéressé et le consentement ne peut être obtenu auprès de celui-ci en temps opportun;

b) il est raisonnable de s'attendre à ce que la collecte effectuée au su ou avec le consentement de l'intéressé compromette l'exactitude du renseignement ou l'accès à celui-ci, et la collecte est raisonnable à des fins liées à une enquête sur la violation d'un accord ou la contravention au droit fédéral ou provincial;

b.1) il s'agit d'un renseignement contenu dans la déclaration d'un témoin et dont la collecte est nécessaire en vue de l'évaluation d'une réclamation d'assurance, de son

the course of their employment, business or profession and the collection is consistent with the purposes for which the information was produced;

(c) the collection is solely for journalistic, artistic or literary purposes;

(d) the information is publicly available and is specified by the regulations; or

(e) the collection is made for the purpose of making a disclosure

(i) under subparagraph (3)(c.1)(i) or (d), or

(ii) that is required by law.

(2) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may, without the knowledge or consent of the individual, use personal information only if (a) in the course of its activities, the organization becomes aware of information that it has reasonable grounds to believe could be useful in the investigation of a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed, and the information is used for the purpose of investigating that contravention;

(b) it is used for the purpose of acting in respect of an emergency that threatens the life, health or security of an individual;

(b.1) the information is contained in a witness statement and the use is necessary to assess, process or settle an insurance claim;

(b.2) the information was produced by the individual in the course of their employment, business or profession and the use is consistent with the purposes for which the information was produced;

traitement ou de son règlement;

b.2) il s'agit d'un renseignement produit par l'intéressé dans le cadre de son emploi, de son entreprise ou de sa profession, et dont la collecte est compatible avec les fins auxquelles il a été produit;

c) la collecte est faite uniquement à des fins journalistiques, artistiques ou littéraires;

d) il s'agit d'un renseignement réglementaire auquel le public a accès;

e) la collecte est faite en vue :

(i) soit de la communication prévue aux sous-alinéas (3)c.1)(i) ou d)(ii),

(ii) soit d'une communication exigée par la loi.

(2) Pour l'application de l'article 4.3 de l'annexe 1 et malgré la note afférente, l'organisation ne peut utiliser de renseignement personnel à l'insu de l'intéressé ou sans son consentement que dans les cas suivants :

a) dans le cadre de ses activités, l'organisation découvre l'existence d'un renseignement dont elle a des motifs raisonnables de croire qu'il pourrait être utile à une enquête sur une contravention au droit fédéral, provincial ou étranger qui a été commise ou est en train ou sur le point de l'être, et l'utilisation est faite aux fins d'enquête;

b) l'utilisation est faite pour répondre à une situation d'urgence mettant en danger la vie, la santé ou la sécurité de tout individu;

b.1) il s'agit d'un renseignement contenu dans la déclaration d'un témoin et dont l'utilisation est nécessaire en vue de l'évaluation

(c) it is used for statistical, or scholarly study or research, purposes that cannot be achieved without using the information, the information is used in a manner that will ensure its confidentiality, it is impracticable to obtain consent and the organization informs the Commissioner of the use before the information is used;

(c.1) it is publicly available and is specified by the regulations; or

(d) it was collected under paragraph (1)(a), (b) or (e).

(3) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is

(a) made to, in the Province of Quebec, an advocate or notary or, in any other province, a barrister or solicitor who is representing the organization;

(b) for the purpose of collecting a debt owed by the individual to the organization;

(c) required to comply with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information, or to comply with rules of court relating to the production of records;

(c.1) made to a government institution or part of a government institution that has

d'une réclamation d'assurance, de son traitement ou de son règlement;

b.2) il s'agit d'un renseignement produit par l'intéressé dans le cadre de son emploi, de son entreprise ou de sa profession, et dont l'utilisation est compatible avec les fins auxquelles il a été produit;

c) l'utilisation est faite à des fins statistiques ou à des fins d'étude ou de recherche érudites, ces fins ne peuvent être réalisées sans que le renseignement soit utilisé, celui-ci est utilisé d'une manière qui en assure le caractère confidentiel, le consentement est pratiquement impossible à obtenir et l'organisation informe le commissaire de l'utilisation avant de la faire;

c.1) il s'agit d'un renseignement réglementaire auquel le public a accès;

d) le renseignement a été recueilli au titre des alinéas (1)a, b) ou e).

(3) Pour l'application de l'article 4.3 de l'annexe 1 et malgré la note afférente, l'organisation ne peut communiquer de renseignement personnel à l'insu de l'intéressé ou sans son consentement que dans les cas suivants :

a) la communication est faite à un avocat — dans la province de Québec, à un avocat ou à un notaire — qui représente l'organisation;

b) elle est faite en vue du recouvrement d'une créance que celle-ci a contre l'intéressé;

c) elle est exigée par assignation, mandat ou ordonnance d'un tribunal, d'une personne ou d'un organisme ayant le pouvoir de contraindre à la production de renseignements ou exigée par des règles de procédure se rapportant à la production de

made a request for the information, identified its lawful authority to obtain the information and indicated that

(i) it suspects that the information relates to national security, the defence of Canada or the conduct of international affairs,

(ii) the disclosure is requested for the purpose of enforcing any law of Canada, a province or a foreign jurisdiction, carrying out an investigation relating to the enforcement of any such law or gathering intelligence for the purpose of enforcing any such law,

(iii) the disclosure is requested for the purpose of administering any law of Canada or a province, or

(iv) the disclosure is requested for the purpose of communicating with the next of kin or authorized representative of an injured, ill or deceased individual;

(c.2) made to the government institution mentioned in section 7 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act as required by that section;

(d) made on the initiative of the organization to a government institution or a part of a government institution and the organization

(i) has reasonable grounds to believe that the information relates to a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed, or

(ii) suspects that the information relates to national security, the defence of Canada or the conduct of international affairs;

(d.1) made to another organization and is

documents;

c.1) elle est faite à une institution gouvernementale — ou à une subdivision d'une telle institution — qui a demandé à obtenir le renseignement en mentionnant la source de l'autorité légitime étayant son droit de l'obtenir et le fait, selon le cas :

(i) qu'elle soupçonne que le renseignement est afférent à la sécurité nationale, à la défense du Canada ou à la conduite des affaires internationales,

(ii) que la communication est demandée aux fins du contrôle d'application du droit canadien, provincial ou étranger, de la tenue d'enquêtes liées à ce contrôle d'application ou de la collecte de renseignements en matière de sécurité en vue de ce contrôle d'application,

(iii) qu'elle est demandée pour l'application du droit canadien ou provincial,

(iv) qu'elle est demandée afin d'entrer en contact avec le plus proche parent d'un individu blessé, malade ou décédé, ou avec son représentant autorisé;

c.2) elle est faite au titre de l'article 7 de la Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes à l'institution gouvernementale mentionnée à cet article;

d) elle est faite, à l'initiative de l'organisation, à une institution gouvernementale ou une subdivision d'une telle institution et l'organisation :

(i) soit a des motifs raisonnables de croire que le renseignement est afférent à une contravention au droit fédéral, provincial ou étranger qui a été commise ou est en train ou sur le point de l'être,

(ii) soit soupçonne que le renseignement

reasonable for the purposes of investigating a breach of an agreement or a contravention of the laws of Canada or a province that has been, is being or is about to be committed and it is reasonable to expect that disclosure with the knowledge or consent of the individual would compromise the investigation;

(d.2) made to another organization and is reasonable for the purposes of detecting or suppressing fraud or of preventing fraud that is likely to be committed and it is reasonable to expect that the disclosure with the knowledge or consent of the individual would compromise the ability to prevent, detect or suppress the fraud;

(d.3) made on the initiative of the organization to a government institution, a part of a government institution or the individual's next of kin or authorized representative and

(i) the organization has reasonable grounds to believe that the individual has been, is or may be the victim of financial abuse,

(ii) the disclosure is made solely for purposes related to preventing or investigating the abuse, and

(iii) it is reasonable to expect that disclosure with the knowledge or consent of the individual would compromise the ability to prevent or investigate the abuse;

(d.4) necessary to identify the individual who is injured, ill or deceased, made to a

est afférent à la sécurité nationale, à la défense du Canada ou à la conduite des affaires internationales;

d.1) elle est faite à une autre organisation et est raisonnable en vue d'une enquête sur la violation d'un accord ou sur la contravention au droit fédéral ou provincial qui a été commise ou est en train ou sur le point de l'être, s'il est raisonnable de s'attendre à ce que la communication effectuée au su ou avec le consentement de l'intéressé compromettrait l'enquête;

d.2) elle est faite à une autre organisation et est raisonnable en vue de la détection d'une fraude ou de sa suppression ou en vue de la prévention d'une fraude dont la commission est vraisemblable, s'il est raisonnable de s'attendre à ce que la communication effectuée au su ou avec le consentement de l'intéressé compromettrait la capacité de prévenir la fraude, de la détecter ou d'y mettre fin;

d.3) elle est faite, à l'initiative de l'organisation, à une institution gouvernementale ou à une subdivision d'une telle institution, au plus proche parent de l'intéressé ou à son représentant autorisé, si les conditions ci-après sont remplies :

(i) l'organisation a des motifs raisonnables de croire que l'intéressé a été, est ou pourrait être victime d'exploitation financière,

(ii) la communication est faite uniquement à des fins liées à la prévention de l'exploitation ou à une enquête y ayant trait,

(iii) il est raisonnable de s'attendre à ce que la communication effectuée au su ou avec le consentement de l'intéressé compromettrait la capacité de prévenir l'exploitation ou d'enquêter sur celle-ci;

government institution, a part of a government institution or the individual's next of kin or authorized representative and, if the individual is alive, the organization informs that individual in writing without delay of the disclosure;

(e) made to a person who needs the information because of an emergency that threatens the life, health or security of an individual and, if the individual whom the information is about is alive, the organization informs that individual in writing without delay of the disclosure;

(e.1) of information that is contained in a witness statement and the disclosure is necessary to assess, process or settle an insurance claim;

(e.2) of information that was produced by the individual in the course of their employment, business or profession and the disclosure is consistent with the purposes for which the information was produced;

(f) for statistical, or scholarly study or research, purposes that cannot be achieved without disclosing the information, it is impracticable to obtain consent and the organization informs the Commissioner of the disclosure before the information is disclosed;

(g) made to an institution whose functions include the conservation of records of historic or archival importance, and the disclosure is made for the purpose of such conservation;

(h) made after the earlier of

(i) one hundred years after the record containing the information was created, and

(ii) twenty years after the death of the individual whom the information is about;

d.4) elle est nécessaire aux fins d'identification de l'intéressé qui est blessé, malade ou décédé et est faite à une institution gouvernementale ou à une subdivision d'une telle institution, à un proche parent de l'intéressé ou à son représentant autorisé et, si l'intéressé est vivant, l'organisation en informe celui-ci par écrit et sans délai;

e) elle est faite à toute personne qui a besoin du renseignement en raison d'une situation d'urgence mettant en danger la vie, la santé ou la sécurité de toute personne et, dans le cas où la personne visée par le renseignement est vivante, l'organisation en informe par écrit et sans délai cette dernière;

e.1) il s'agit d'un renseignement contenu dans la déclaration d'un témoin et dont la communication est nécessaire en vue de l'évaluation d'une réclamation d'assurance, de son traitement ou de son règlement;

e.2) il s'agit d'un renseignement produit par l'intéressé dans le cadre de son emploi, de son entreprise, ou de sa profession, et dont la communication est compatible avec les fins auxquelles il a été produit;

f) la communication est faite à des fins statistiques ou à des fins d'étude ou de recherche érudites, ces fins ne peuvent être réalisées sans que le renseignement soit communiqué, le consentement est pratiquement impossible à obtenir et l'organisation informe le commissaire de la communication avant de la faire;

g) elle est faite à une institution dont les attributions comprennent la conservation de documents ayant une importance historique ou archivistique, en vue d'une telle conservation;

h) elle est faite cent ans ou plus après la constitution du document contenant le renseignement ou, en cas de décès de

(h.1) of information that is publicly available and is specified by the regulations; or

(h.2) [Repealed, 2015, c. 32, s. 6]

(i) required by law.

(4) Despite clause 4.5 of Schedule 1, an organization may use personal information for purposes other than those for which it was collected in any of the circumstances set out in subsection (2).

(5) Despite clause 4.5 of Schedule 1, an organization may disclose personal information for purposes other than those for which it was collected in any of the circumstances set out in paragraphs (3)(a) to (h.1).

...

SCHEDULE 1

...

4.3.4

The form of the consent sought by the organization may vary, depending upon the circumstances and the type of information. In determining the form of consent to use, organizations shall take into account the sensitivity of the information. Although some information (for example, medical records and income records) is almost always considered to be sensitive, any information can be sensitive, depending on the context. For example, the names and addresses of subscribers to a newsmagazine would generally not be considered sensitive information. However, the names and addresses of subscribers to some special-interest magazines might be considered

l'intéressé, vingt ans ou plus après le décès, dans la limite de cent ans;

h.1) il s'agit d'un renseignement réglementaire auquel le public a accès;

h.2) [Abrogé, 2015, ch. 32, art. 6]

i) la communication est exigée par la loi.

(4) Malgré l'article 4.5 de l'annexe 1, l'organisation peut, dans les cas visés au paragraphe (2), utiliser un renseignement personnel à des fins autres que celles auxquelles il a été recueilli.

(5) Malgré l'article 4.5 de l'annexe 1, l'organisation peut, dans les cas visés aux alinéas (3)a à h.1), communiquer un renseignement personnel à des fins autres que celles auxquelles il a été recueilli.

...

ANNEXE

...

4.3.4

La forme du consentement que l'organisation cherche à obtenir peut varier selon les circonstances et la nature des renseignements. Pour déterminer la forme que prendra le consentement, les organisations doivent tenir compte de la sensibilité des renseignements. Si certains renseignements sont presque toujours considérés comme sensibles, par exemple les dossiers médicaux et le revenu, tous les renseignements peuvent devenir sensibles suivant le contexte. Par exemple, les nom et adresse des abonnés d'une revue d'information ne seront généralement pas considérés comme des renseignements sensibles. Toutefois, les nom et adresse des abonnés de certains périodiques spécialisés

sensitive.

pourront l'être.

...

...

4.3.6

4.3.6

The way in which an organization seeks consent may vary, depending on the circumstances and the type of information collected. An organization should generally seek express consent when the information is likely to be considered sensitive. Implied consent would generally be appropriate when the information is less sensitive. Consent can also be given by an authorized representative (such as a legal guardian or a person having power of attorney).

La façon dont une organisation obtient le consentement peut varier selon les circonstances et la nature des renseignements recueillis. En général, l'organisation devrait chercher à obtenir un consentement explicite si les renseignements sont susceptibles d'être considérés comme sensibles. Lorsque les renseignements sont moins sensibles, un consentement implicite serait normalement jugé suffisant. Le consentement peut également être donné par un représentant autorisé (détenteur d'une procuration, tuteur).

14. ***Provincial Offences Act, R.S.O. 1990, c. P.33, s. 68(1)***

68. (1) When the payment of a fine is in default, the clerk of the court may complete a certificate in the prescribed form as to the imposition of the fine and the amount remaining unpaid and file the certificate in a court of competent jurisdiction and upon filing, the certificate shall be deemed to be an order or judgment of that court for the purposes of enforcement.

Loi sur les infractions provinciales, L.R.O. 1990, ch. P.33, s. 68(1)

68. (1) S'il y a défaut de paiement d'une amende, le greffier du tribunal peut remplir un certificat rédigé selon la formule prescrite à l'égard de l'amende imposée et du montant impayé, et déposer ce certificat auprès d'un tribunal compétent. Aux fins d'exécution, le certificat est réputé, dès son dépôt, être une ordonnance ou un jugement de ce tribunal.

15. **Rules of Civil Procedure, R.R.O. 1990, Reg. 194, rr. 30.01(1), 34.10, 34.15, 49.09, 60.07(13), 60.18(2), (6)-(7)**

30.01 (1) In Rules 30.02 to 30.11,

(a) “document” includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account, and data and information in electronic form; and

(b) a document shall be deemed to be in a party’s power if that party is entitled to obtain the original document or a copy of it and the party seeking it is not so entitled.

...

34.10 (1) Subrule 30.01 (1) (meaning of “document”, “power”) applies to subrules (2), (3) and (4).

(2) The person to be examined shall bring to the examination and produce for inspection,

(a) on an examination for discovery, all documents in his or her possession, control or power that are not privileged and that subrule 30.04 (4) requires the person to bring; and

(b) on any examination, including an examination for discovery, all documents and things in his or her possession, control or power that are not privileged and that the notice of examination or summons to witness requires the person to bring.

(3) Unless the court orders otherwise, the notice of examination or summons to witness may require the person to be examined to bring to the examination and produce for inspection,

Règles de Procédure Civile, R.R.O. 1990, Règ. 194, rr. 30.01(1), 34.10, 34.15, 49.09, 60.07(13), 60.18(2), (6)-(7)

30.01 (1) Dans les Règles 30.02 à 30.11:

a) le terme «document» s’entend en outre d’enregistrements sonores, de bandes magnétoscopiques, de films, de photographies, de tableaux, de graphiques, de cartes, de plans, de levés, de registres comptables, ainsi que de données et renseignements qui se présentent sous forme électronique;

b) un document est réputé placé sous la garde d’une partie si celle-ci a le droit d’en obtenir l’original ou une copie et que la partie qui désire l’obtenir n’a pas ce droit.

...

34.10 (1) Le paragraphe 30.01 (1) (définition de «document» et de «garde») s’applique aux paragraphes (2), (3) et (4).

(2) La personne qui doit être interrogée apporte à l’interrogatoire et produit, à des fins d’examen :

a) lors d’un interrogatoire préalable, tous les documents non privilégiés qui se trouvent en sa possession, sous son contrôle ou sous sa garde et qu’elle est tenue d’apporter en application du paragraphe 30.04 (4);

b) lors d’un interrogatoire, y compris un interrogatoire préalable, tous les documents et objets non privilégiés qui se trouvent en sa possession, sous son contrôle ou sous sa garde et qu’elle est tenue d’apporter en vertu de l’avis d’interrogatoire ou de l’assignation.

(3) Sauf ordonnance contraire du tribunal, l’avis d’interrogatoire ou l’assignation peut exiger que la personne qui doit être interrogée apporte à l’interrogatoire

(a) all documents and things relevant to any matter in issue in the proceeding that are in his or her possession, control or power and are not privileged; or

(b) such documents or things described in clause (a) as are specified in the notice or summons.

(4) Where a person admits, on an examination, that he or she has possession or control of or power over any other document that is relevant to a matter in issue in the proceeding and is not privileged, the person shall produce it for inspection by the examining party forthwith, if the person has the document at the examination, and if not, within two days thereafter, unless the court orders otherwise.

...

34.15 (1) Where a person fails to attend at the time and place fixed for an examination in the notice of examination or summons to witness or at the time and place agreed on by the parties, or refuses to take an oath or make an affirmation, to answer any proper question, to produce a document or thing that he or she is required to produce or to comply with an order under rule 34.14, the court may,

(a) where an objection to a question is held to be improper, order or permit the person being examined to reattend at his or her own expense and answer the question, in which case the person shall also answer any proper questions arising from the answer;

(b) where the person is a party or, on an examination for discovery, a person examined on behalf or in place of a party, dismiss the party's proceeding or strike out

et produire, à des fins d'examen :

a) soit tous les documents et objets non privilégiés qui sont pertinents à l'égard d'une question en litige dans l'instance et qui se trouvent en sa possession, sous son contrôle ou sous sa garde;

b) soit les documents ou objets visés à l'alinéa a) et qui sont précisés dans l'avis ou l'assignation.

(4) Sauf ordonnance contraire du tribunal, si une personne reconnaît, au cours d'un interrogatoire, qu'un document non privilégié qui est pertinent à l'égard d'une question en litige dans l'instance se trouve en sa possession, sous son contrôle ou sous sa garde, elle le produit, à des fins d'examen par la partie interrogatrice, immédiatement, si elle l'a avec elle et sinon, dans un délai de deux jours.

...

34.15 (1) Si une personne ne se présente pas à l'heure, à la date et au lieu fixés pour un interrogatoire dans l'avis d'interrogatoire ou l'assignation ou à l'heure, à la date et au lieu convenus par les parties, ou qu'elle refuse de prêter serment, de faire une affirmation solennelle, de répondre à une question légitime, de produire un document ou un objet qu'elle est tenue de produire ou de se conformer à une ordonnance rendue en application de la règle 34.14, le tribunal peut:

a) en cas d'objection jugée injustifiée à une question, ordonner ou permettre à la personne interrogée de se présenter à nouveau, à ses propres frais, pour répondre à la question, auquel cas elle doit répondre aussi aux autres questions légitimes qui découlent de sa réponse;

b) rejeter l'instance ou radier la défense, selon le cas, si cette personne est une partie

the party's defence;

(c) strike out all or part of the person's evidence, including any affidavit made by the person; and

(d) make such other order as is just.

(2) Where a person does not comply with an order under rule 34.14 or subrule (1), a judge may make a contempt order against the person.

...

49.09 Where a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may,

(a) make a motion to a judge for judgment in the terms of the accepted offer, and the judge may grant judgment accordingly; or

(b) continue the proceeding as if there had been no accepted offer to settle.

...

60.07(13) Where an order may be enforced by a writ of seizure and sale, a creditor who has filed a writ of seizure and sale with a sheriff may file with the sheriff a copy of the order as entered, together with a direction to enforce (Form 60F) setting out,

(a) the date of the order and the amount awarded;

(b) the rate of postjudgment interest payable;

(c) the costs of enforcement to which the creditor is entitled under rule 60.19;

ou, dans le cas d'un interrogatoire préalable, une personne interrogée à la place ou au nom d'une partie;

c) radier, en totalité ou en partie, la déposition de cette personne, y compris un affidavit;

d) rendre une autre ordonnance juste.

(2) Un juge peut déclarer coupable d'outrage au tribunal la personne qui ne se conforme pas à l'ordonnance rendue en application de la règle 34.14 ou du paragraphe (1).

...

49.09 Si une partie à une offre acceptée n'en observe pas les conditions, l'autre partie peut :

a) soit demander à un juge, par voie de motion, de rendre jugement suivant les conditions de l'offre acceptée, et le juge peut rendre un jugement en conséquence;

b) soit continuer l'instance comme s'il n'y avait jamais eu d'offre de transaction.

...

60.07(13) Si une ordonnance peut être exécutée au moyen d'un bref de saisie-exécution, le créancier qui a déposé auprès d'un shérif un bref de saisie-exécution peut déposer auprès du shérif une copie de l'ordonnance qui a été inscrite, ainsi qu'un ordre d'exécution (formule 60F) énonçant :

a) la date de l'ordonnance et le montant adjugé;

b) le taux exigible des intérêts postérieurs au jugement;

c) les dépens de l'exécution forcée auxquels le créancier a droit en application

(d) the date and amount of any payment received since the order was made; and

(e) the amount owing, including postjudgment interest,

and directing the sheriff to enforce the writ for the amount owing, subsequent interest and the sheriff's fees and expenses....

...

60.18 (2) A creditor may examine the debtor in relation to,

(a) the reason for nonpayment or nonperformance of the order;

(b) the debtor's income and property;

(c) the debts owed to and by the debtor;

(d) the disposal the debtor has made of any property either before or after the making of the order;

(e) the debtor's present, past and future means to satisfy the order;

(f) whether the debtor intends to obey the order or has any reason for not doing so; and

(g) any other matter pertinent to the enforcement of the order. R.R.O. 1990, Reg. 194, r. 60.18 (2).

(6) Where any difficulty arises concerning the enforcement of an order, the court may,

(a) make an order for the examination of any person who the court is satisfied may have knowledge of the matters set out in subrule (2); and

de la règle 60.19;

d) la date et le montant des paiements reçus depuis que l'ordonnance a été rendue;

e) le montant qui reste dû, y compris les intérêts postérieurs au jugement,

et enjoignant au shérif d'exécuter le bref pour le montant dû, plus les intérêts postérieurs et ses propres droits et dépenses.

...

60.18 (2) Le créancier peut interroger le débiteur sur les points suivants :

a) la raison de son défaut de payer ou de se conformer à l'ordonnance;

b) le montant de ses revenus et la valeur de ses biens;

c) ses créances et ses dettes;

d) toute aliénation de ses biens avant ou après le moment où l'ordonnance a été rendue;

e) ses ressources présentes, passées et futures pour exécuter l'ordonnance;

f) son intention d'obéir à l'ordonnance et ses motifs de ne pas y obéir;

g) les autres questions pertinentes à l'égard de l'exécution forcée de l'ordonnance. R.R.O. 1990, Règl. 194, par. 60.18 (2).

(6) Si l'exécution forcée d'une ordonnance présente des difficultés, le tribunal peut :

a) rendre une ordonnance prescrivant l'interrogatoire d'une personne si le tribunal est convaincu qu'elle peut savoir quelque chose sur les points énumérés au paragraphe

(b) make such order for the examination (2);
of any other person as is just.

(7) Despite clause 34.04 (1) (a) (service
on lawyer), a party who is to be examined in
aid of execution shall be served with a notice
of examination personally or by an
alternative to personal service.

b) rendre une autre ordonnance juste
prescrivant l'interrogatoire d'une autre
personne.

(7) Malgré l'alinéa 34.04 (1) a)
(signification à l'avocat), l'avis
d'interrogatoire d'une partie à l'appui d'une
exécution forcée lui est signifié à personne
ou selon un autre mode de signification
directe.

16. ***Statutory Powers Procedure Act, R.S.O. 1990, c. S.22, s. 19***

19. (1) A certified copy of a tribunal's decision or order in a proceeding may be filed in the Superior Court of Justice by the tribunal or by a party and on filing shall be deemed to be an order of that court and is enforceable as such.

(2) A party who files an order under subsection (1) shall notify the tribunal within 10 days after the filing.

(3) On receiving a certified copy of a tribunal's order for the payment of money, the sheriff shall enforce the order as if it were an execution issued by the Superior Court of Justice.

Loi sur l'exercice des compétences légales, L.R.O. 1990, ch. S.22, s. 19

19. (1) Une copie certifiée conforme d'une décision ou d'une ordonnance définitives d'un tribunal dans le cadre d'une instance peut être déposée auprès de la Cour supérieure de justice par le tribunal ou par une partie et, dès le dépôt, elle est réputée une ordonnance de ce tribunal et peut être exécutée à ce titre.

(2) La partie qui dépose une ordonnance en vertu du paragraphe (1) en avise le tribunal dans les 10 jours qui suivent le dépôt.

(3) Sur réception d'une copie certifiée conforme d'une ordonnance de paiement d'une somme d'argent, le shérif exécute l'ordonnance comme s'il s'agissait d'un bref d'exécution délivré par la Cour supérieure de justice.

17. ***Supreme Court Civil Rules, B.C. Reg. 168/2009, r. 22-3***

22-3(1) The forms in Appendix A or A.1 must be used if applicable, with variations as the circumstances of the proceeding require, and each of those forms must be completed by including the information required by that form in accordance with any instructions included on the form.

(2) Unless the nature of the document renders it impracticable, every document prepared for use in the court must be in the English language, legibly printed, typewritten, written or reproduced on 8 1/2 inch x 11 inch durable white paper or durable off-white recycled paper.

(3) Transcripts of oral evidence must conform to subrule (2).

(4) The first page of each document prepared for use in a proceeding must contain a blank area extending at least 5 centimetres from the top of the page and at least 5 centimetres from the left edge of the page.

(5) A document prepared for use in a proceeding must be headed with the style of proceeding set out on the most recent originating pleading to be filed in that proceeding, but in a document, other than an order or a document that starts a proceeding, if there is more than one party to the proceeding identified as a plaintiff or as any other classification of party, the style of proceeding may be abbreviated to show the name of the first party listed in that classification, followed by the words “and others”.

(5.1) Subrule (5) does not apply to notices under Rule 25-2 (3) in Form P1.

(6) The style of proceeding for a proceeding must include the words "Brought under the Class Proceedings Act" immediately below the listed parties if

(a) it is intended, at the start of the proceeding, that a certification order will be sought in respect of the proceeding under the Class Proceedings Act, or

(b) in any other case, a certification order is subsequently granted in respect of the proceeding, unless and until a certification order is refused in respect of the proceeding or the proceeding is decertified.

18. ***The Queen's Bench Act, 1998, S.S. 1998, c. Q-1.01, s. 36(1)*** ***Loi de 1998 sur la Cour du Banc de la Reine, S.S. 1998, c. Q-1.01, s. 36(1)***

36(1) In an action brought to recover damages or other compensation with respect to bodily injuries sustained by any person, a judge may order the injured person to be examined by one or more duly qualified medical practitioners who are not being called by a party as witnesses at the trial of the action.

36(1) Dans toute action en recouvrement de dommages-intérêts ou de toute autre indemnité pour dommage corporel subi par une personne, le juge peut ordonner que la personne blessée soit examinée par un ou plusieurs médecins dûment qualifiés; il ne peut cependant s'agir de médecins qui sont témoins de l'une ou l'autre des parties au procès de l'action.

19. ***Workers' Compensation Act, S.A. 1981, c. W-16, s. 142***

142. When compensation payments have been made by the Board to a worker beyond the period of the worker's disability or to a worker or dependant in an amount in excess of that to which the worker or dependant is entitled, the amount of the overpayment may be recovered by the Board as a debt due to the Board.

Appendix 13

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

-and-

PHAT TRANG AND PHUONG TRANG A.K.A. PHUONG THI TRANG

Respondents

MOTION FOR LEAVE TO INTERVENE
CANACCEDE INTERNATIONAL ACQUISITIONS LTD.,
PROPOSED INTERVENER
(Pursuant to Rule 55 of the *Rules of the Supreme Court of Canada*)

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**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

-and-

PHAT TRANG AND PHUONG TRANG A.K.A. PHUONG THI TRANG

Respondents

**NOTICE OF MOTION FOR INTERVENTION
CANACCEDE INTERNATIONAL ACQUISITIONS LTD.,
PROPOSED INTERVENER
(Pursuant to Rule 55 of the *Rules of the Supreme Court of Canada*)**

TAKE NOTICE that the Proposed Intervener, Canaccede International Acquisitions Ltd. applies to a judge of this court pursuant to Rules 55 and 56 of the *Rules of the Supreme Court of Canada*, for an order:

- (a) granting the Proposed Intervener leave to intervene in this appeal;
- (b) permitting the intervener to file a factum not exceeding 10 pages;
- (c) permitting the intervener to present oral argument;
- (d) that no costs be awarded for or against the intervener; and
- (d) any further order the judge may deem appropriate.

AND FURTHER TAKE NOTICE that the motion shall be made on the following grounds:

(Note that the Appendix of Defined Terms attached applies to these motion materials.)

Canaccede's Interest in the Appeal

1. The Proposed Intervener Canaccede International Acquisitions Ltd. ("Canaccede") on September 9, 2015 received a ruling by Justice D.A. Broad of the Ontario Superior Court of Justice allowing Canaccede to enforce money judgments against the real property of its judgment debtors by way of a judicially-supervised sale as an alternative to a sheriff's sale.

Canaccede International Acquisitions Ltd. v. Abdullah, 2015 ONSC 5553, [2015] O.J. No. 4635, Appellant's BA, Tab 8 (Vol. I) (*Canaccede*)

2. Justice Broad's decision followed the precedents set by the orders of Justice D.A. Gordon and Justice G.A. Campbell of the same court in *Lecek* and *Anderson* on respectively April 4, 2013 and May 9, 2013. These three judges approved of and gave orders giving effect to an alternative enforcement method to directing the sheriff to enforce a writ of seizure and sale. Neither Justice Gordon nor Justice Campbell gave reasons for judgment, but Justice Broad did. Taken together, the orders and reasons in *Lecek*, *Anderson* and *Canaccede* lay out an enforcement method against real property that is less costly, more efficient and more effective than sheriff's auctions and solves the sheriff's-sale-specific privacy and access-to-justice issues that are the subject of this appeal.

3. First noting that Canaccede supports the interpretation of PIPEDA the appellant is advocating, Canaccede respectfully suggests that the appellant has not fully apprehended the import of Justice Broad's decision. In its factum, the appellant states of *Canaccede*, "One court went so far as to bypass the *Citi Cards* regime altogether, finding that PIPEDA represented such an impediment to the sheriff's sale process that a judicially supervised sale could be ordered instead."

Appellant's Factum at para. 69

4. While it is true that Justices Gordon, Campbell and Broad "went so far as to bypass the *Citi Cards* regime altogether" and adopt an alternative method to sheriff's sales for the enforcement of money judgments against land as "an evolution and improvement in the common law," the appellant missed one of the main points of *Canaccede*.

Canaccede, supra, at paras. 25 and 29

5. Justice Broad explicitly cites the practical benefits of a judicially-supervised sale process over sheriff's sales in paragraphs 11 and 29 of *Canaccede*. The main point the appellant missed is that implicit in paragraph 25 is that the judicial sale process comprises a solution to the privacy conundrum within the *Citi Cards* regime.

Canaccede, supra, at paras. 11 and 29

6. The appellant's factum and the reasons for decision in the courts below are based on the premise that a sheriff's sale is the only procedural avenue for enforcing a money judgment against real property. The import of *Canaccede* is that this premise is incorrect.

7. This point is not easily discernible for one not familiar with the details of the judicial sale process as applied by Justices Gordon, Campbell and Broad ("*Canaccede* process") to the enforcement of a money judgment where the judgment debtors have not given their consent to the disclosure of a mortgage discharge statement.

8. In paragraph 9 of the appellant's factum, the appellant sets out the six onerous and expensive steps required to obtain a mortgage discharge statement under the *Citi Cards* regime where judgment debtors refuse to meet their obligations under the rules of court and court orders. Under the *Canaccede* process, an order compelling the mortgagee to provide the discharge statement is obtained in two steps. Furthermore, as the appellant points out in paragraph 10 of its factum, the six *Citi Cards* steps are before the sheriff even begins its sale process. The two steps in obtaining the discharge statement under the *Canaccede* process are also the first two steps in a judicially-supervised sale process comprised of as little as four steps to reach the point where the sale can be completed and the proceeds paid into court.

Appellant's Factum at paras. 9 and 10; Affidavit of Sarah Humphries at paras. 4-10

9. In its factum, the appellant accepts the premise underlying the proceedings in the courts below that a sheriff's sale is the only available method for enforcing money judgments against real property. The import of the *Canaccede* decision is that this premise is incorrect. *Canaccede* respectfully suggests that the tension between privacy rights and access to justice addressed in the appellant's factum cannot be addressed only by judicial interpretation of PIPEDA but also with the procedural options comprised in the *Canaccede* process which the parties and the courts below did not consider.

10. Canaccede has invested in crafting and obtaining court approval in published reasons for decision for “an evolution and improvement in the common law” that both overcomes the shortcomings of sheriff’s auctions and solves the *Citi Cards* privacy conundrum precipitated by PIPEDA. This procedural innovation is beneficial to Canaccede as it provides an efficient, expeditious, low cost way to enforce its money judgments against real property where before not only were sheriff’s sales expensive, slow, and ineffective but were rendered inoperable by the Court of Appeal for Ontario’s interpretation of PIPEDA in *Citi Cards* and *Trang*. This beneficial innovation may be unknowingly and unintentionally adversely affected by a decision in this appeal without Canaccede’s assistance to the court in understanding the *Canaccede* process.

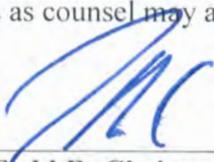
Interests of Others in Canaccede Intervening in the Appeal

11. Canaccede respectfully submits that every execution creditor in Ontario, and those in other jurisdictions across the country that rely on sheriff’s auctions to enforce money judgments against real property, share’s Canaccede’s interest in preserving the solutions comprised in the *Canaccede* process. If granted leave to intervene, Canaccede suggests its assistance to the court through its submissions would protect and further the interests of these execution creditors as well and contribute a procedural-innovation perspective to the submissions considered by this court as it determines this appeal.

Others Grounds

12. Such further and other grounds as counsel may advise and this court may permit.

SIGNED BY: _____


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NOTICE TO THE RESPONDENT TO THE MOTION: A respondent to the motion may serve and file a response to this motion within 10 days after service of the motion. If no response is filed within that time, the motion will be submitted for consideration to a judge or the Registrar, as the case may be.

Appendix of Defined Terms

1. “**Canaccede**” means Canaccede International Acquisitions Ltd.
2. “**Canaccede**” means *Canaccede International Acquisitions Ltd. v. Abdullah*, 2015 ONSC 5553, [2015] O.J. No. 4635, Appellant’s BA, Tab 8 (Vol. I)
3. “**Canaccede process**” means the judicial sale process adopted by Justices Gordon, Campbell and Broad as described in Justice Broad’s reasons for judgment in *Canaccede* and set out in the Affidavit of Sarah Fast and its exhibits.
4. “**PIPEDA**” means the *Personal Information and Electronic Documents Act*
5. “**Citi Cards**” means *Citi Cards Canada Inc. v. Pleasance*, 2011 ONCA 3, 103 O.R. (3d) 241, Appellant’s Book of Authorities [BA], Tab 12 (Vol. I)
6. “**Lacek**” means the unreported decision of Justice Gordon cited in *Canaccede* as *Capital One Bank (Canada Branch) v. Ludvik Lacek and Janice Lacek* [sic], (April 4, 2013) Kitchener 07-4342-SR (Ont. S.C.J.)
7. “**Anderson**” means the unreported decision of Justice Campbell cited in *Canaccede* as *Capital One Bank (Canada Branch) v. Charles Kirk Anderson aka Kirk K. Anderson*, (May 9, 2013) Kitchener 11-4120-SR (Ont. S.C.J.)

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

-and-

PHAT TRANG AND PHUONG TRANG A.K.A. PHUONG THI TRANG

Respondents

AFFIDAVIT OF SARAH HUMPHRIES

I, Sarah Humphries, of the City of Cambridge in the Regional Municipality of Waterloo,
MAKE OATH AND SAY:

1. I am a law clerk at Christensen Law Firm responsible for providing support services to the Proposed Intervener's counsel and have been personally involved in each of the proceedings referred to in this affidavit. I have reviewed the files for these proceedings and as such have the knowledge of the matters to which I hereinafter depose except those facts stated to be based on information and belief, which I verily believe to be true.
2. I am authorized to make this affidavit on behalf of the Proposed Intervener.
3. The Appendix of Defined Terms appended to the notice of motion in the accompanying motion materials applies to this affidavit.
4. Attached marked "Exhibit A" is a true copy of one of the five identically-worded orders signed by Justice Broad in *Canaccede*.

5. Attached marked “Exhibit B” is a true copy of the order signed by Justice Gordon in *Lecek*.
6. Attached marked “Exhibit C” is a true copy of the order signed by Justice Campbell in *Anderson*.
7. Attached marked “Exhibit D” is a true copy of the notice of hearing in *Anderson*.
8. Attached marked “Exhibit E” is a true copy of the order made by the referee at the initial hearing in *Anderson* compelling production of mortgage discharge statements.
9. Attached marked “Exhibit F” is a true copy of the interim report on reference in *Anderson*.
10. The aforementioned exhibits and *Canaccede* establish that Justices Gordon, Campbell and Broad signed similarly-worded orders ordering a reference for the conduct of a sale of real property and the steps in the *Canaccede* process which are:
 - (a) Move from within a Superior Court proceeding or apply from a Small Claims Court proceeding on notice to the judgment debtors and all persons with an interest in the property including any mortgagees for an order for a reference for the conduct of a sale of real property to enforce a money judgment. Serve all who were served with the notice of motion or notice of application with the order along with a notice of hearing for the initial “show cause” hearing in the reference process.
 - (b) Attend the “show cause” hearing. If the judgment debtor(s) and any mortgagees do not attend or attend and do not provide mortgage discharge statements necessary to establish the quantum of mortgages registered against the property, the referee orders the mortgagee(s) to provide the discharge statement within 30 days failing which the mortgagee(s) lose their priority to execution creditors. In that order, the referee sets a return date for the judgment creditor to present a draft interim report on reference to be settled on that date.
 - (c) Attend the hearing for the settling of the interim report on reference. The interim report is settled on that date and confirmed automatically by effluxion of time or before a judge if a party objects to it. The interim report on reference comprises orders authorizing the judgment creditor to list the property for sale with a real

estate broker, show the property to prospective buyers during specified hours, present offers to the referee for approval (any party may present offers for approval) and upon approval carry out the sale and pay the proceeds into court.

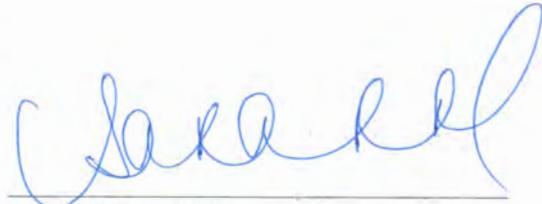
11. I make this affidavit in support of the Proposed Intervener seeking leave to intervene an application for an order for a reference hearing to be held to determine the interest in the land and for no other or improper purpose.

SWORN BEFORE ME in the Township)
of Puslinch, in the County of Wellington,)
this 11th day of December, 2015)
)
)
)
)
)
)



A Commissioner, etc.

Zameer N. Hakanalr
LSUC 57124F



Sarah Humphries

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE
D.A. Broad

)
)
)

September 9, 2015
This is Exhibit A referred to in the
affidavit of Sarah Humphries
Sworn before me this 11 day of Dec, 20 15


A Commissioner, etc.
Zameer N. Hakeem - Li L500 57124F

BETWEEN:

CANACCEDE INTERNATIONAL ACQUISITIONS LTD

Applicant

-and-

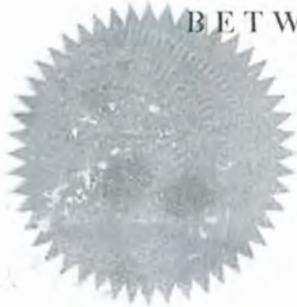
SHABBIR ABDULLAH

Respondent

JUDGMENT

THIS APPLICATION, made by the applicant on notice for a reference hearing to determine all issues relating to the conduct of the sale of the respondent's property, located in the City of Mississauga, in the Regional Municipality of Peel, known municipally as 899 GOLDEN FARMER WAY, MISSISSAUGA ONTARIO L5W 1A8 legal description: PT LT 79, PL 43M1246, DES PT 17, PL 43R22985, MISSISSAUGA. S/T RIGHT IN FAVOUR OF TARMAC CANADA INC., UNTIL PL 43M1246 HAS BEEN FINALLY ACCEPTED BY THE MUNICIPALITY, AS IN LT1770376 ("the lands") was heard June 25, 2015 at Kitchener in the presence of the lawyers for the Applicant, with no one appearing for the Respondent although properly served as appears from the Affidavit of Sarah Fast sworn May 12, 2015.

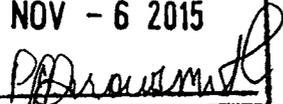
ON READING the Application Record, Factum of the Applicant, and Applicant's Book of Authorities, and on hearing the submissions of counsel for the Applicant and reading their additional written submissions,

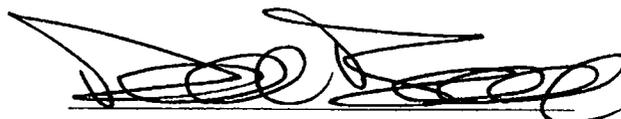


1. **THIS COURT ORDERS AND ADJUGES** that a reference be held to inquire into and determine all issues relating to the conduct of the sale of the lands, including,
 - a. the nature and the particulars of the interest of the respondent in the lands and of the respondent's title thereto;
 - b. the judgments and writs of execution and that bind the lands as well as the other secured and unsecured interests that form a lien or charge against the lands and the priorities between them;
 - c. the property or interest in the lands that is liable to be sold under the judgment;
 - d. any reason why it would be unjust or inequitable to require the sale of the respondent's property or interest in the lands; and
 - e. the manner in which the proceeds of a sale of the lands should be distributed.

THIS COURT ORDERS that the parties may apply to this court for further direction from time to time.

THIS COURT ORDERS that the respondent pay to the applicant the costs of this application fixed in the amount of \$725.42, and if it remains unpaid, the costs of this application shall be paid from the proceeds of the sale.

ENTERED AT KITCHENER
in Book No. 8C
As Document No. 2270
on NOV - 6 2015
by 



Justice D.A. Broad

CANACCEDE INTERNATIONAL ACQUISITIONS LTD v. SHABIB ABDULLAH

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT KITCHENER

JUDGMENT

Christensen Law Firm
6616 Ellis Road
Cambridge, Ontario, N3C 2V4

Todd R. Christensen, LSUC No. 340780
Zameer N. Hakamali, LSUC No. 57124F
Tel: 519 654 7350
Fax: 519 658 2499

Lawyers for the Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE Mr Justice Gordon)

April 4, 2013
This is Exhibit B referred to in the
affidavit of Sarah Humphries
Sworn before me this 11 day of Dec, 2015.

BETWEEN:



CAPITAL ONE BANK

Zameer N. Akmal
A Commissioner, etc.
LSUC 57124F
Plaintiff

-and-

LUDVIK LECEK

-and-

JANICE LECEK

Defendants

ORDER

THIS MOTION, made by the plaintiff on notice for a reference hearing to determine all issues relating to the conduct of the sale of the defendants' property, located in the town of Whitby in the Regional Municipality of Durham, known municipally as 12 Deerfield Court, Whitby, Ontario, legal description: PCL 43-1, SEC M958; LT 43, PL M958 ; S/T CO212986, LTC34838 WHITBY ("the lands") was heard this day at Kitchener.

ON READING the Motion Record, Factum of the Moving Party, and Book of Authorities of the Moving Party, and on hearing the submissions of counsel for the parties,

1. THIS COURT ORDERS that a reference be held to inquire into and determine all issues relating to the conduct of the sale of the lands, including,

- a. the nature and the particulars of the interests of the defendants in the lands and of the defendants' title thereto;
 - b. the judgments and writs of execution and that bind the lands as well as the other secured and unsecured interests that form a lien or charge against the lands and the priorities between them;
 - c. the property or interest in the lands that is liable to be sold under the judgment;
 - d. any reason why it would be unjust or inequitable to require the sale of the defendants' property or interests in the lands; and
 - e. the manner in which the proceeds of a sale of the lands should be distributed.
2. **THIS COURT ORDERS** that the parties may apply to this court for further direction from time to time.
 3. **THIS COURT ORDERS** the Registrar to report the findings at the reference to the Court.
 4. **THIS COURT ORDERS** that the defendants (responding parties) pay to the plaintiff (moving party) forthwith the costs of this motion fixed in the amount of \$ 3470.65, and if it remains unpaid, the costs of this motion shall be paid from the proceeds of the sale.

16 -

Gordon J.

ENTERED AT KITCHENER	
In Book No.	60
as Document No.	214
on	APR - 4 2013
by	<i>[Signature]</i>

CAPITAL ONE BANK v. LUDVIK LECEK et al.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT KITCHENER

ORDER

Christensen Law Firm
6616 Ellis Road
Cambridge, Ontario, N3C 2V4
Menachem M. Fellig, LSUC No. 54257B
Tel: 519 654 7350
Fax: 519 658 2499
Lawyers for the Plaintiff (Moving Party)

Court File No. 11-4120-SR

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR
JUSTICE G.A. CAMPBELL
BETWEEN:

THURSDAY MAY 9, 2013
This is Exhibit C referred to in the
affidavit of Sarah Humphries
Sworn before me this 11 day of Dec, 2015
[Signature]
Commissioner, etc
Zameer N. Hakeemali LSO# 57124F
Plaintiff

CAPITAL ONE BANK (CANADA BRANCH)

-and-

CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

Defendant

ORDER

THIS MOTION, made by the plaintiff on notice for a reference hearing to determine all issues relating to the conduct of the sale of the defendant's property, located in the town of Fort Erie in the Regional Municipality of Niagara at Welland, known municipally as 2861 Westbrook Avenue, Fort Erie, Ontario, L0S 1S0, legal description: LT 12 PL 343 WILLOUGHBY ; FORT ERIE ("the lands") was heard this day at Kitchener.

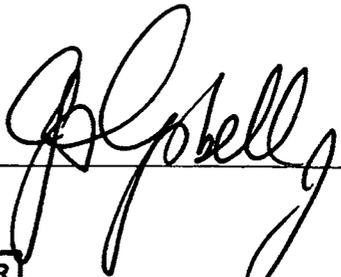
ON READING the Motion Record, Factum of the Moving Party, and Book of Authorities of the Moving Party, and on hearing the submissions of counsel for the plaintiff, parties, no one appearing for the defendant,

1. THIS COURT ORDERS that a reference be held to inquire into and determine all issues relating to the conduct of the sale of the lands, including,
 - a. the nature and the particulars of the interest of the defendant in the lands and of the defendant's title thereto;



- b. the judgments and writs of execution and that bind the lands as well as the other secured and unsecured interests that form a lien or charge against the lands and the priorities between them;
- c. the property or interest in the lands that is liable to be sold under the judgment;
- d. any reason why it would be unjust or inequitable to require the sale of the defendant's property or interest in the lands; and
- e. the manner in which the proceeds of a sale of the lands should be distributed.

2. **THIS COURT ORDERS** that the parties may apply to this court for further direction from time to time.
3. **THIS COURT ORDERS** the Registrar to report the findings at the reference to the Court.
4. **THIS COURT ORDERS** that the defendant (responding party) pay to the plaintiff (moving party) forthwith the costs of this motion fixed in the amount of \$ 2345.80, and if it remains unpaid, the costs of this motion shall be paid from the proceeds of the sale.



G.A. CAMPBELL

ENTERED AT KITCHENER
In Book No. <u>60</u>
As Document No. <u>425</u>
on <u>MAY - 9 2013</u>
by <u>[Signature]</u>

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT KITCHENER

ORDER

Christensen Law Firm
6616 Ellis Road
Cambridge, Ontario, N3C 2V4

Menachem M. Fellig, LSUC No. 54257B
Tel: 519 654 7350
Fax: 519 658 2499

Lawyers for the Plaintiff (Moving Party)

ONTARIO
SUPERIOR COURT OF JUSTICE

This is Exhibit 13 referred to in the
affidavit of Sarah Humphries
Sworn before me this 11 day of Dec, 2015
[Signature]
A Commissioner, etc.
Zameer N. Hakamali
LSUC 57124F

BETWEEN:

CAPITAL ONE BANK (CANADA BRANCH)

Plaintiff

-and-

CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

Defendant

NOTICE OF HEARING FOR DIRECTIONS

By order of the court, a copy of which is served with this notice, a reference was directed for the purpose of determining all issues relating to the conduct of the sale of the lands, including,

- a. the nature and the particulars of the interest of the defendant in the lands and of the defendant's title thereto;
- b. the judgments and writs of execution and that bind the lands as well as the other secured and unsecured interests that form a lien or charge against the lands and the priorities between them;
- c. the property or interest in the lands that is liable to be sold under the judgment;
- d. any reason why it would be unjust or inequitable to require the sale of the defendant's property or interest in the lands; and
- e. the manner in which the proceeds of a sale of the lands should be distributed.

The plaintiff has obtained an appointment with Mr. Stevens on Tuesday, July 16, 2013, at 9:30, at Waterloo Region Courthouse, 85 Frederick Street, Kitchener, Ontario, N2H 0A7 for a hearing to consider directions for the conduct of the reference in this proceeding.

IF YOU FAIL TO ATTEND, in person or by an Ontario lawyer acting for you, directions may be given and the reference may proceed in your absence and without further notice to you, and you will be bound by any order made in the proceeding.

June 14, 2013

Todd R. Christensen
6616 Ellis Road
Cambridge, Ontario N3C 2V4
519 654 7350

TO:

Mr. Charles Kirk Anderson
2861 Westbrook Avenue
Stevensville, ON L0S 1S0

Tel: 905-382-2491

Defendant (Responding Party)
Ms. Gail Anderson
2861 Westbrook Avenue
Stevensville, ON L0S 1S0

Niagara Credit Union Limited
75 Corporate Park Drive
St. Catharines, ON L2S 3W3
Attn: Legal Department

Canadian Tire Bank
C/O Small Matters
26 Queen Street, 2nd Floor PO Box 157
St. Catharines, ON L2R 6S

Court File No. 11-4120-SR

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE

JUSTICE
BETWEEN:

MR

G. A. CAMPBELL

THURSDAY MAY 9, 2013

CAPITAL ONE BANK (CANADA BRANCH)

Plaintiff

-and-

CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

Defendant

ORDER

THIS MOTION, made by the plaintiff on notice for a reference hearing to determine all issues relating to the conduct of the sale of the defendant's property, located in the town of Fort Erie in the Regional Municipality of Niagara at Welland, known municipally as 2861 Westbrook Avenue, Fort Erie, Ontario, L0S 1S0, legal description: LT 12 PL 343 WILLOUGHBY ; FORT ERIE ("the lands") was heard this day at Kitchener.

ON READING the Motion Record, Factum of the Moving Party, and Book of Authorities of the Moving Party, and on hearing the submissions of counsel for the ^{plaintiff,} parties, *no one appearing for the defendant,*

1. **THIS COURT ORDERS** that a reference be held to inquire into and determine all issues relating to the conduct of the sale of the lands, including,
 - a. the nature and the particulars of the interest of the defendant in the lands and of the defendant's title thereto;

- b. the judgments and writs of execution and that bind the lands as well as the other secured and unsecured interests that form a lien or charge against the lands and the priorities between them;
- c. the property or interest in the lands that is liable to be sold under the judgment;
- d. any reason why it would be unjust or inequitable to require the sale of the defendant's property or interest in the lands; and
- e. the manner in which the proceeds of a sale of the lands should be distributed.
2. **THIS COURT ORDERS** that the parties may apply to this court for further direction from time to time.
3. **THIS COURT ORDERS** the Registrar to report the findings at the reference to the Court.
4. **THIS COURT ORDERS** that the defendant (responding party) pay to the plaintiff (moving party) forthwith the costs of this motion fixed in the amount of \$ 2345.80, and if it remains unpaid, the costs of this motion shall be paid from the proceeds of the sale.

ENTERED AT KITCHENER
in Book No. <u>6C</u>
As Document No. <u>425</u>
on <u>MAY - 9 2013</u>
by <u>[Signature]</u>

[Signature]
G A CAMPBELL

<p><i>ONTARIO</i> SUPERIOR COURT OF JUSTICE PROCEEDING COMMENCED AT KITCHENER</p>	<p>ORDER</p> <p>Christensen Law Firm 6616 Ellis Road Cambridge, Ontario, N3C 2V4</p> <p>Menachem M. Fellig, LSUC No. 54257B Tel: 519 654 7350 Fax: 519 658 2499</p> <p>Lawyers for the Plaintiff (Moving Party)</p>
---	--

ONTARIO
SUPERIOR COURT OF JUSTICE

Court File No. 11-4120-SRE referred to in the
affidavit of Sarah Hemphries
Sworn before me this 11 day of Dec, 2015

reference
REGISTRAR ROBERT STEVENS

) JULY ~~16~~ 2013 *Hukamali*
) A Commissioner, etc.
Zameer N. Hukamali
LSUC 57124F

BETWEEN:

CAPITAL ONE BANK (CANADA BRANCH)

Plaintiff

-and-

CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

Defendant

ORDER

IN ACCORDANCE with the order directing a reference dated May 9, 2013, a hearing to consider directions for the conduct of the reference in this proceeding to determine all issues relating to the conduct of the sale of the defendant's property, located in the town of Fort Erie in the Regional Municipality of Niagara at Welland, known municipally as 12861 Westbrook Avenue, Fort Erie, Ontario, L0S 1S0, legal description: LT 12 PL 343 WILLOUGHBY; FORT ERIE ("the lands") was heard this day at Kitchener.

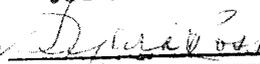
ON READING the order directing the reference, and on hearing the submissions of counsel for the plaintiff, no one appearing for the defendant, Ms. Gail Anderson, Niagara Credit Union Limited, and Canadian Tire Bank although properly served as appears from the affidavits of service filed,

1. THIS COURT ORDERS and directs that Niagara Credit Union Limited provide to the plaintiff within 30 days of being served with this order a statement of the current balance owing on any charge registered by it against the lands failing which the claims of execution creditors shall take priority over its charge or charges against the lands.



2. THIS COURT ORDERS and directs that Global Investment Holdings Inc. is added as a party to this reference as a respondent and that the plaintiff serve it with a copy of this order, together with a copy of the order directing the reference and a notice to party added on reference (Form 55B).
3. THIS COURT ORDERS and directs that within 30 days of being served in accordance with paragraph 2, Global Investment Holdings Inc. shall provide to the plaintiff a statement of the current balance owing on any charge registered by it against the lands failing which the claims of execution creditors shall take priority over its charge or charges against the lands.
4. THIS COURT ORDERS and directs that the plaintiff shall prepare a draft report and the report shall be settled on October 8, 2013. The plaintiff shall serve a copy of the draft report along with notice of the date for settling the report on all parties at least 10 days before the date.
5. THIS COURT ORDERS that the defendant pay to the plaintiff forthwith the costs of this hearing fixed in the amount of \$750.00, and if it remains unpaid, the costs of this motion shall be paid from the proceeds of the sale.


Referee

ENTERED AT KITCHENER	
in Book No.	82
As Document No.	786
on	JUL 16 2013
by	

CAPITAL ONE BANK (CANADA BRANCH) v. CHARLES KIRK ANDERSON aka KIRK K. ANDERSON
Court File No. 11-4120-SR

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT KITCHENER

ORDER

Christensen Law Firm
6616 Ellis Road
Cambridge, Ontario, N3C 2V4

Todd R. Christensen, LSUC No. 340780

Tel: 519 654 7350
Fax: 519 658 2499

Lawyers for the Plaintiff

Court File No. 11-4120-SR

ONTARIO
SUPERIOR COURT OF JUSTICE

ROBERT STEVENS
REFEREE

)
)

OCTOBER 8TH, 2013
This is Exhibit F referred to in the
affidavit of Sarah Humphries.
Sworn before me this 11 day of Dec, 2015

BETWEEN:

CAPITAL ONE BANK (CANADA BRANCH)

Zameer N. Hukumali
Commissioner, etc
500 57124F
Plaintiff

-and-

CHARLES KIRK ANDERSON aka KIRK K. ANDERSON

Defendant

INTERIM REPORT ON REFERENCE

IN ACCORDANCE WITH the Order of Justice G. A. Campbell on May 9, 2013 of this Court on Motion directed a reference to be held to determine all issues relating to the conduct of the sale of the defendant's property located in the town of Fort Erie in the Regional Municipality of Niagara at Welland, known municipally as 2861 Westbrook Avenue, Fort Erie, Ontario L0S 1S0, legal description: LT 12 PL 343 WILLOUGHBY ; FORT ERIE ("the lands");

AND IN ACCORDANCE WITH the Notice of Hearing for Directions and the hearing which took place on July 16, 2013;

- 1. The following parties were served with the order directing a reference and a notice of hearing for directions:

Charles Kirk Anderson aka Kirk K. Anderson,

Gail Anderson,

Niagara Credit Union Limited, and

Canadian Tire Bank.

2. The following parties were added on the reference and were served with a notice to party added on reference:

Global Investment Holdings Inc.

3. The following parties did not attend on the reference:

Charles Kirk Anderson aka Kirk K. Anderson,

Gail Anderson,

Niagara Credit Union Limited,

Canadian Tire Bank, and

Global Investment Holdings Inc.

4. The following parties provided to the plaintiff a statement of the current balance owing any charge registered by it against the lands, which are attached as Exhibits 1 and 2:

Niagara Credit Union Limited, and

Global Investment Holdings Inc.

5. The following party provided the plaintiff a statement of the current balance owing under any execution filed by it against the defendant, which are attached as Exhibit 3:

Canadian Tire Bank.

AND HAVING READ the exhibits,

1. FINDING NO REASON why it would be unjust or inequitable to require the sale of the lands, I direct that upon confirmation of this report by motion to Justice G.A. Campbell who ordered this reference, that the lands be sold.
2. I DIRECT THAT the lands be sold by private contract and that the plaintiff shall have exclusive conduct of the sale and may list the lands for sale with a licensed real estate broker and to do all things reasonably incidental thereto including paying to any real estate agent or broker that arranges a sale of the lands from the proceeds of the sale a commercially reasonable commission.
3. I DIRECT THAT the plaintiff may sign any and all documents, listing agreements, offers, agreements of purchase and sale and any and all closing sale documents to give effect to and necessary to carry out the sale.
4. I DIRECT THAT any person or persons in possession of the lands, including any tenant or tenants, forthwith and until further order of the court permit any duly authorized agent on behalf of the plaintiff to inspect, appraise or show to any prospective purchaser of the lands, including the interior of the lands, between 10:00 a.m. and 8:00 p.m. Monday through Sunday inclusive but excluding statutory holidays and to post signs on the lands stating that the lands are offered for sale.
5. I DIRECT THAT all costs of the sale, including the reference, be payable by the defendant to the plaintiff on a substantial indemnity scale and be paid from the proceeds of the sale.
6. I DIRECT THAT any offer received by the plaintiff shall be copied as soon as possible to only those parties to this action who have appeared personally or through counsel or have filed appropriate material setting out their claims herein.

7. I DIRECT THAT any party wishing to apply to me for acceptance of an offer do so in a summary or informal manner after giving notice to only the parties to this action who have appeared personally or through counsel or have filed appropriate material setting out their claims herein. Upon my approval of an offer, the plaintiff may accept it and carry out the sale.
8. I DIRECT THAT the monies received upon the sale of the lands be paid into court.
9. I DIRECT THAT the secured parties have the following priority: 1) Global Investment Holdings Inc., and 2) Niagara Credit Union Limited.
10. I DIRECT THAT the execution creditors shall share the remaining net proceeds of the sale on a *pro rata* basis.
11. I DIRECT THAT the manner in which the proceeds of the sale should be distributed shall be determined once the sale has been completed and set out in the Final Report on Reference.
12. I DIRECT that a copy of this report be served on all parties.

ASSESSMENT OFFICER

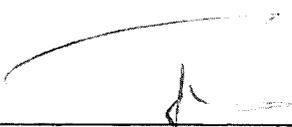

Handwritten signature

Exhibit **1** to the Interim Report on Reference

October 8, 2013

Exhibit 2 to the Interim Report on Reference

October 8, 2013

Exhibit 3 to the Interim Report on Reference

October 8, 2013

PRE-JUDGMENT INTEREST	
Sum on which pre-judgment interest is calculated	8349.84
Rate of pre-judgment interest	25.00%
Start date - year	22-Jan
End date - year	17
End date - day	16-Jul
Number of days	43
Pre-judgment interest amount	766
Pre-judgment interest amount	4474.36
POST-JUDGMENT COSTS incurred after judgment:	
Including the cost of issuing this writ	136.00
TOTAL DUE:	12924.17

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT KITCHENER**

INTERIM REPORT ON REFERENCE

Christensen Law Firm
6616 Ellis Road
Cambridge, Ontario, N3C 2V4
Todd R. Christensen, LSUC No. 340780
Tel: 519 654 7350
Fax: 519 658 2499
Lawyers for the Plaintiff