

**CITATION:** Littler v. CMC Credit Ltd. et al, 2025 ONSC 3194  
**COURT FILE NO.:** CV-25-00742313-00CL  
**DATE:** 20250529

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

**RE:** Harry Littler, Applicant

**AND:**

CMC Credit Ltd. and Michael Smith, Respondents

**BEFORE:** J. Dietrich, J.

**COUNSEL:** *Andrew Faith, Alexia Parente, Dayna Christy*, for the Applicant

*David Schatzker*, for the Respondent Michael Smith

**HEARD:** May 27, 2025

**REASONS FOR DECISION**

**Introduction**

- [1] The applicant, Harry Littler is a director of the respondent, CMC Credit Ltd. (“**CMC**”). Mr. Littler seeks an order directing the respondents make available for his review and examination, CMC’s books, and records.
- [2] Michael Smith, the only other director of CMC, objects to the relief sought by Mr. Littler claiming that to do so would violate the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 (“**PIPEDA**”) and should also be denied as Mr. Littler seeks access for an allegedly improper purpose.
- [3] For the reasons provided below, Mr. Littler’s application is granted.

**Background**

- [4] CMC was incorporated in June 2018 to facilitate a joint venture between Mr. Smith and the applicant’s father, Harry Littler Sr.
- [5] CMC is a consumer loan business. The income generated from these loans funds CMC’s operations and supports monthly interest and dividend payments to its shareholders.
- [6] CMC’s business model depends entirely on its ability to originate, administer, and collect on consumer loans. These loans are governed by individual loan agreements with third-party borrowers (the “**Loan Agreements**”). The Loan Agreements themselves form the

basis of CMC's income and are essential to understanding the company's financial performance.

- [7] On December 19, 2023, following his father's resignation, the applicant was appointed as a director of CMC by way of unanimous shareholders' resolution.
- [8] Following his appointment, the applicant requested information from Mr. Smith concerning the declining interest and dividend payments and the underlying financial position of CMC. He specifically sought information regarding how the initial capital (in the total amount of \$6 million) was being used and the current state of the loan portfolio.
- [9] Mr. Smith provided monthly financial reports to Mr. Littler, however, he failed to provide the underlying records or documentation supporting those reports, including the Loan Agreements that the applicant repeatedly requested.
- [10] In November 2024, the applicant identified a discrepancy of over \$2.4 million between the "loans receivable" recorded on CMC's June 30, 2024 balance sheet and the aggregate value of booked loan contracts reported in CMC's internal loan portfolio report. Mr. Littler became concerned that funds recorded as receivables were not actually supported by underlying Loan Agreements.
- [11] Mr. Smith told Mr. Littler that the funds were held in another entity, but no context was provided. In later email correspondence, Mr. Smith asserted that he could not share the Loan Agreements due to privacy obligations under PIPEDA.
- [12] As of February 2025, all interest and dividend payments to the shareholders stopped without warning or explanation.
- [13] On April 17, 2025, counsel for Mr. Littler issued a formal demand for access to CMC's corporate records under section 144 of the Ontario *Business Corporations Act*, RSO 1990, c B.16 "**OBCA**"). The request included CMC's general ledger, resolutions, communications, and the Loan Agreements.
- [14] The respondents have not provided the requested records.

### **Issue**

- [15] The only issue to be decided today is whether Mr. Littler as a director of CMC is entitled to examine CMC's books and records, including the Loan Agreements.

### **Analysis**

- [16] Section 144 of the OBCA provides:

Records open to examination by directors  
 144 (1) The records mentioned in sections 140 and 141 shall, during normal business hours of a corporation, be open to examination by

any director and shall, except as provided in sections 140 and 143 and in subsections (2) and (3) of this section, be kept at the registered office of the corporation. R.S.O. 1990, c. B.16, s. 144 (1).

- [17] Section 140 of the OBCA requires corporations to prepare and maintain a wide range of corporate documents at their registered office or such other place designated by the directors. These include the articles, by laws, unanimous shareholder agreements, minutes of meetings and resolutions of shareholders and directors, registers of directors and securities, registers of significant control, and adequate accounting records.
- [18] The case law supports a director’s unconditional right to inspect the books and records of the corporation – the director does not need to provide a reason for such inspection: see *Leggat v. Jennings*, 2013 ONSC 903 [*Leggat*] at paras 14-16.
- [19] The term adequate accounting records has been broadly defined to include not only financial statements, but the source documents that underlie them: see *Leggat* at para 20, 23 and the list of documents contained at Schedule A to that decision.
- [20] Mr. Smith argues that the books and records, as admitted by Mr. Littler, contain 1800-2000 personal customer files. These files, and the Loan Agreements, Mr. Smith argues contain personal information protected by PIPEDA and therefore should not be disclosed to Mr. Littler. I do not agree.
- [21] The disclosure of the documents sought is not to another ‘organization’ as contemplated by PIPEDA. Mr. Littler is a director of CMC, just as Mr. Smith is. In his material, Mr. Smith characterizes Mr. Littler as a non-operational director. No support for such distinction based on statute or case law was provided.
- [22] Mr. Smith relies on Schedule 1 to PIPEDA at section 4.7 which provides that personal information shall be protected by security safeguards appropriate to the sensitivity of the information. Section 4.7.3 of Schedule 1 goes on to provide that “The methods of protection should include...(b) organizational measures, for example, security clearances and limiting access on a “need-to-know” basis; ...”
- [23] Based on this provision, Mr. Smith says that Mr. Littler does not “need to know” the information contained in the Loan Agreements and therefore it would be a breach of PIPEDA to provide them. However, s. 5(2) of PIPEDA provides that when the word ‘should’ is used in Schedule 1, this indicates a recommendation and does not impose an obligation. Accordingly, s. 4.7.3 of Schedule 1 is a recommendation, not a requirement.
- [24] As well, s. 6.1 of PIPEDA provides that an individual will have validly consented to the disclosure of personal information where “it is reasonable to expect that an individual to whom the organization’s activities are directed would understand the nature, purpose and consequences of the collection, use or disclosure of the personal information to which they are consenting.” By providing personal information under a Loan Agreement to CMC, it would be reasonable for an individual would understand that such information could be

reviewed by the company's directors. Mr. Smith has led no evidence to suggest that the terms of the Loan Agreement or the reasonable expectations of the customers would be otherwise.

- [25] Even if Mr. Littler's access to the Loan Agreements and related files could be considered "disclosure" under PIPEDA, that Act expressly permits disclosure of personal information without the consent or knowledge of the individual where "disclosure...is required by law" (s. 7(3)(i) of PIPEDA). Here, s. 144 of the OBCA amounts to a disclosure that is required by law.
- [26] Accordingly, I am not persuaded that in these circumstances, the provisions of PIPEDA prevent disclosure of the Loan Agreements and related files to Mr. Littler as one of two directors of CMC.
- [27] Mr. Smith also argues that Mr. Littler's request for access to the corporate records is not grounded in a *bona fide* exercise of statutory inspection rights but appears instead to be part of a coordinated and improper litigation strategy.
- [28] For context, this application was heard in connection with a motion for production of certain documents in court file CV-24-00733914-00CL (the "**Allison Matter**"). In the Allison Matter, a motion was brought by the plaintiff, Jason Allison seeking production of certain financial documents from CMC Consumer Credit Limited ("**CMCL**"). CMCL is controlled by Mr. Smith. Mr. Allison invested at least \$5.3 million in CMCL and as explained in reasons for decision dated May 29, 2025, in the Allison Matter, Mr. Allison seeks production of documents to understand what happened to those funds. Mr. Allison is married to Mr. Littler's sister (i.e. they are brothers in law).
- [29] Mr. Smith alleges that Mr. Allison and Mr. Littler are 'colluding' for an improper purpose as a sentence in Mr. Allison's affidavit mistakenly referred to a meeting that was arranged by Mr. Littler (rather than Mr. Allison) with Mr. Smith. Based on this, Mr. Smith alleges that the purpose of the access request by Mr. Littler is not in good faith but rather a tool to leverage broader adversarial litigation which amounts to an abuse of process. I do not agree.
- [30] Mr. Smith has provided no evidence in this proceeding. There is nothing on the record which supports any improper purpose and counsel for Mr. Smith could not articulate what possible improper purpose could be in play.
- [31] Further, as noted above, a director does not need to provide a reason for inspection: see *Leggat* at paras 14-16.

### **Disposition**

- [32] For the reasons above, the application by Mr. Littler is granted.
- [33] As to the form of order, I am satisfied that the form of Order requested by Mr. Littler is appropriate. Mr. Smith requested that he be provided 60 days to provide access to Mr.

Littler (rather than the 5 days contained in the requested order). It is only access to the books and records which is sought – there is no need to create any records. Accordingly, I am not persuaded that additional time is required.

- [34] Fixing costs is a discretionary decision under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. In exercising my discretion, I may consider the result in the proceeding, any offer to settle or to contribute made in writing, and the factors listed in Rule 57.01. These factors include but are not limited to: (i) the result in the proceeding; (ii) the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer; (iii) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed; (iv) the amount claimed and the amount recovered in the proceeding; (v) the complexity of the proceeding; (vi) the importance of the issues; and (vii) the conduct of any party that tended to shorten or lengthen unnecessarily the duration of the proceeding. Rule 57.01(1)(f) provides that the court may also consider “any other matter relevant to the question of costs.”
- [35] In exercising my discretion to fix costs, I must consider what is fair and reasonable for the unsuccessful party to pay in this proceeding and balance the compensation of the successful party with the goal of fostering access to justice: *Boucher v Public Accountants Council (Ontario)* (2004), 71 O.R. (3d) 291 (C.A.) at paras. 26 and 37.
- [36] The applicant seeks costs on a substantial indemnity basis. I am not persuaded that Mr. Smith’s behaviour amounts to conduct which attracts costs at the higher scale. I fix the costs of the motion in the amount of \$30,000, inclusive of disbursements and Harmonized Sales Tax, and order that Mr. Smith is to pay that amount to the applicant within 30 days of the date of this order.
- [37] Counsel is to email a word version of the draft order to the Commercial List Office for my review and signature.

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The Honourable Justice J. Dietrich

**Date:** May 29, 2025