

**CITATION:** *Guttin. v. Creber et al.*, 2025 ONSC 5008  
**COURT FILE NO.:** CV-19- 82291  
**DATE:** 2025/09/22

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**BETWEEN:** Kirk Guttin, Applicant  
And  
Brian W. Creber, B-Con Engineering Inc., Pufferfish Inc. and BCE Realty Ltd., Respondents

**BEFORE:** Justice A. Doyle

**COUNSEL:** Patrick Snelling and Jackson Kohne, Counsel for the Applicant  
Pierre Champagne and Emmanuelle Champagne, Counsel for the Respondents, B-Con Engineering Inc., Pufferfish Inc. and BCE Realty Ltd.  
Kevin Caron, Counsel for the Respondent Brian W. Creber

**HEARD:** August 27, 2025 at Ottawa

**ENDORSEMENT**

[1] The applicant, Kirk Gutting, moves for the following relief:

- Consolidation of this 2019 application with an application commenced under court file CV-23-91904;
- An Order compelling the respondents to comply with court orders related to the production of audited financial statements within 30 days;
- Reimbursement of his deposit for the audited financial statements;
- Setting a timetable for the remaining steps in the proceeding; and
- An Order that parties provide written submissions on the issue of the oppression and the appointment of a receiver.

[2] The respondent corporations B-Con Engineering Inc. (“B-Con”), Pufferfish Inc. (“Pufferfish”) and BCE Realty Ltd. (“BCE”), and respondent, Brian W. Creber, oppose the motion.

They argue that the applications should be heard together and not consolidated to protect their rights to argue defences, including the lapse of a prescription period.

[3] They submit that the applicant is responsible for the delay in the production of audited financial statements.

[4] The parties agree that a timetable should be ordered but do not agree on the terms.

### **Background**

[5] In 2019, the applicant brought an application seeking relief from oppression under s. 248 of the *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16 (“*OBCA*”). Mr. Guttin alleges that the respondents have engaged in financial impropriety including unauthorized payment of dividends, concealment of the respondent corporations’ financial position, and a disregard for the interests of Mr. Guttin as a minority shareholder. (2019 application)

[6] Mr. Guttin is seeking a wind-up of the respondent corporations and an appointment of a receiver to oversee the wind-up.

[7] Mr. Guttin and the respondent Mr. Creber are shareholders of the respondent corporations through their interests held by their respective numbered companies.

[8] The common share structures of the companies are as follows:

B-Con	100 shares held by 1230320 Ontario Inc. (Mr. Creber’s company, hereinafter referred to as 1230320)
	70 shares held by 1259086 Ontario Inc. (Mr. Guttin’s company, hereinafter referred to as 1259086)
BCE	58.8 Common shares held by 2047023 Ontario Inc. (Mr. Creber’s company, hereinafter referred to as 2047023)
	41.2 Common Shares held by 2047458 Ontario Inc. (Mr. Guttin’s holding company, hereafter referred to as 2047458)

Pufferfish 290,000 shares held by Mr. Creber

210,000 shares held by Mr. Guttin

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[9] Mr. Guttin brought motions before me in April 2023 to request audited financial statements of the respondent corporations in order to determine their true financial positions. The complete background is set out in my previous ruling at 2023 ONSC 2707.

[10] At the motion, the parties agreed to an order for the appointment of Welch LLP Chartered Accountants (“Welch”) as auditor of B-Con’s 2022 financial statement, with costs to be borne by B-Con.

[11] The court found that since Mr. Guttin was not a shareholder of BCE, he did not have the right to demand an audited financial statement pursuant to the *OBCA*.

[12] The court ordered that the respondents arrange for an audited financial statement for BCE for the year 2022 to be prepared by Welch provided that, within 90 days from the date of the endorsement, Mr. Guttin would pay for the cost in advance.

[13] After the motion was heard before me in 2023, the applicant commenced another application naming his numbered companies, 1259086 and 2047458, as applicants who are shareholders of the respondent corporations. (2023 application)

[14] The respondents in the 2023 application are the same respondents in the 2019 application (except Pufferfish), and all have served Notices of Appearance.

[15] The factual allegations and the relief sought in the 2023 application are similar to the allegations and the relief sought in the 2019 application including:

- A Declaration that Mr. Creber did not act honestly and in good faith with a view to the best interests of B-Con and BCE, and that he engaged in conduct that is oppressive, unfairly prejudicial to and which unfairly disregards the interests of the applicants;

- An interim and interlocutory Order restraining the respondent Creber from issuing cheques upon, withdrawing money from, or in any way dealing with BCE or B-Con bank accounts;
- An Order removing Mr. Creber as a Director and/or Officer of B-Con and BCE;
- An Order directing that Mr. Creber sell his shares to the applicants;
- An Order for an accounting of all amounts transferred from B-Con and/or BCE to Mr. Creber;
- Restitution and damages;
- An interim and interlocutory Order appointing a Receiver or Receiver-Manager to manage the affairs of B-Con and BCE pending the final disposition of this Application by the Court;
- In the alternative, an Order winding up B-Con and BCE; and
- An independent valuation of B-Con and BCE.

[16] The same lawyers are involved in both applications.

[17] The issues for this motion are:

1. Should the court consolidate the 2019 application and the 2023 application or hear them together?
2. Should the court compel the respondents to comply with court orders related to the production of audited financial statements?
3. What timetable should the court set?

**Issue #1 – Should the court consolidate the two applications or hear them together?**

*Position of the Parties*

[18] Mr. Guttin submits that given the significant overlapping facts, legal issues and evidence in the two applications, there is a significant risk of inconsistent findings. A consolidation would

reduce the parties' expenses, promote an expeditious determination of the applications, and take into account judicial economy and avoid multiplicity of hearings.

[19] Contrary to the respondents' arguments, the applicant is not required to bring a motion to add applicants. This is distinguishable from *Maynes v. Allen-Vanguard Technologies Inc. (Med-Eng Systems Inc.)*, 2011 ONCA 125, 274 O.A.C. 229, as that case dealt with adding defendants.

[20] The respondents submit that the two applications should be heard together. They allege that the commencement of another application is an abuse of process as the applicant commenced a new proceeding to solely bring non-parties within the litigation, rather than seeking a motion requesting an amendment: *Attayee v. City of Pickering*, 2015 ONSC 7701; *SIF Solar Energy Income & Growth Fund v. Aird & Berlis LLP*, 2024 ONCA 946.

[21] In addition, they wish to argue the limitation period as against the applicants of the second action, and it could be confusing and cumbersome if the two applications were argued together.

### *Decision*

[22] The applicants in both applications are seeking oppression remedies.

[23] When a court consolidates two applications, it is essentially ordering that they be heard together and that the two cases merge because they are sufficiently connected. The basis for consolidation is rooted in the court's inherent jurisdiction to control its own process, as well as specific procedural rules.

[24] Rule 6.01(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, provides that:

Where two or more proceedings are pending in the court and it appears to the court that,

- a) they have a question of law or fact in common;
- b) the relief claimed in them arises out of the same transaction or occurrence or series of transactions or occurrences; or
- c) for any other reason an order ought to be made under this rule,

the court may order that,

d) the proceedings be consolidated, or

heard at the same time or one immediately after the other; or

e) any of the proceedings be,

i) stayed until after the determination of any other of them, or

ii) asserted by way of counterclaim in any other of them.

[25] The factors that the court must consider include judicial efficiency, consistency of results, costs savings and fairness.

[26] On a motion to consolidate, the court must first ascertain whether the moving party has satisfied one of the gateway criteria set out in rule 6.01(a),(b) or (c), and then consider s. 138 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, which directs that the court avoid a multiplicity of proceedings wherever possible as an exercise of the court's direction: see *Yellow Cedar Investments v. Di Toro*, 2020 ONSC 4303, at para. 25.

[27] The 2019 and 2023 application raise common issues of fact and law and arise from the same series of occurrences.

[28] The 2019 application seeks relief from oppression on behalf of the applicant, Mr. Guttin, in his personal capacity as a former director and officer of the respondent corporations. The 2023 application seeks relief from oppression on behalf of Mr. Guttin's companies 2047458 and 1259086 in their capacity as shareholders of the respondent corporations.

[29] Rule 5.04(2) of the *Rules of Civil Procedure* provides for adding a party unless prejudice would result that could not be compensated by costs or an adjournment, and Rule 26.10 provides that the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.

[30] One form of non-compensable prejudice is the expiry of a limitation period. The recent Court of Appeal for Ontario decision of *Lagana v. 2324965 Ontario Inc.*, 2025 ONCA 607,

confirms that obligations imposed on corporations and others by the *OBCA* are a claim to remedy a loss and therefore subject to the limitation period: at para. 25. A party cannot amend their pleading to add additional claims after the expiry of the relevant limitation period: *Frohlick v. Pinkerton Canada Ltd.*, 2008 ONCA 3, 88 O.R. (3d) 401, at para. 24.

[31] Therefore, section 4 of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, may be a defence to the respondents in the 2023 application.

[32] In *Maynes*, the defendants refused to consent to adding other defendants and, instead of proceeding to a motion, the plaintiffs issued a new statement of claim as against the additional defendant and then sought to consolidate. The Court of Appeal stated that by starting a new action, the plaintiffs “circumvented the court’s jurisdiction to: (1) assess whether the defendants would be prejudiced by an amendment and to determine whether that prejudice can be compensated for by costs; (2) to impose costs in favour of the defendants for granting the amendment; and (3) to impose other terms that are just”: at para. 39.

[33] I do not find that it was necessary for the applicant to first request an amendment of the application before commencing a new application. The applicants are not adding new defendants but rather applicants.

[34] Nevertheless, it is significant that there are limitation period arguments being advanced by the respondents, who are arguing that the claims set out in 2023 application are statute barred. That is, the allegations set out in 2019 application predate that application and the respondents argue then that these same events would be statute barred in the 2023 application.

[35] In addition, the amended title of proceedings could be confusing as the respondents are suggesting the lapse of limitation periods only against the numbered companies.

[36] However, it is still possible for the respondents to bring a motion to strike the 2023 application on the grounds that the claims are statute-barred and constitute an abuse of process.

[37] I agree that those defences should not be lightly interfered with by consolidating the two applications.

[38] Since the applicants have different interests arising from the same factual background, the available remedies may be different for directors and shareholders. Therefore, the legal issues do not fully overlap.

[39] Consequently, rather than consolidation, the applications should be heard at the same time so the same judicial officer will have the ability to hear both applications and avoid inconsistent rulings.

[40] Accordingly, the court orders that the 2019 and 2023 applications be heard together.

**Issue #2 – Should the respondents be compelled to comply with the court orders relating to the production of the audited financial statements?**

BCE audited financial statement

*Events from May 2023 to date*

[41] The detailed history of the auditor's involvement since the May 2023 order is set out in the affidavit of John Saikaly dated July 11, 2025.

[42] Mr. Saikaly, who works with Welch, has been the accountant for B-Con and BCE for a number of years.

[43] He has had many discussions with Mr. Guttin and Mr. Creber and has prepared the financial statements of both corporations on a Notice to Reader basis every year.

[44] He received the letter of respondent corporation counsel, Mr. Champagne, dated May 9, 2023, indicating that there was a court order requesting that he prepare an audited financial statement for both corporations. He responded on May 10, 2023, with the quote for the BCE audited financial statement of \$20,000 plus HST.

[45] On June 14, 2023, Mr. Guttin indicated he was not paying for an audited financial statement and, consequently, Mr. Saikaly proceeded to prepare and file his usual Notice to Reader financial statement for BCE which was due on June 30, 2023.

[46] On June 25, 2023, he received a letter from Mr. Champagne stating that they wished to proceed with an audited financial statement. He understood that the parties had agreed that the B-Con audited financial statement would be completed after the BCE's financial statement.

[47] By October 5, 2023, he had arranged for an accountant to attend at the offices to do the audit.

[48] On October 13, 2023, Welch sent an engagement letter to BCE for the BCE audit.

[49] The engagement letter contains the standard clauses one would expect when an accounting firm is engaged to complete an audit of a corporation. More details will be provided below.

[50] On October 31, 2023, Mr. Saikaly spoke to Mr. Guttin who stated that he wanted to settle the matter, and they along with Mr. Creber agreed to meet on November 3, 2023, at Welch's offices.

[51] The meeting took place but there was no resolution.

[52] Mr. Champagne sent a letter dated November 14, 2023, to Mr. Saikaly to follow up and attached a letter from Mr. Snelling.

[53] In response to correspondence from Mr. Champagne dated December 15, 2023, he indicated that the audit would be completed by the new year.

[54] The interim invoice for 50% of the BCE audit costs was paid in early February 2024.

[55] In response to Mr. Champagne's request of February 26, 2024, Mr. Saikaly indicated that the work should take three to four weeks to finalize if he received answers to outstanding questions.

[56] On March 26, 2024, Mr. Saikaly advised Mr. Champagne that the audit was in quality control review.

[57] On March 27, 2024, the shareholder loan balances for the shareholders of BCE were sent to Mr. Guttin and he was asked to approve his own shareholder loan balance. Mr. Creber approved his balance.

[58] On April 8, 2024, Mr. Saikaly sent the draft 2022 BCE financial statement to Mr. Guttin and Mr. Creber, but he still had not received Mr. Guttin's approval of the shareholder loan account.

[59] He stated that he could not complete the audited financial statements without Mr. Guttin's approval of the shareholder loan account.

[60] In Mr. Snelling's letter dated October 23, 2024 to Mr. Champagne, he explained that Mr. Guttin was not prepared to approve this account as he indicated that the shareholder accounts are "deeply intertwined with the subject matter of the litigation".

[61] Mr. Saikaly indicated that Welch was completing the audited statements independently from any of the parties.

[62] Mr. Saikaly explained that the opening shareholder loan account for 2047458 was not a new figure as it had previously existed, and that the second shareholder loan balance for 2047458 was related to the payment of the loan by Mr. Creber's corporation.

[63] In November 2024, Mr. Guttin set out his concerns with the audit and Mr. Saikaly advised him that his requests asking for justification for every line item in the audit were not part of the audit and not within the scope of what they had agreed they would do.

### *Findings*

[64] I find that the respondents cooperated in ensuring that the audited financial statements were completed. The record is rife with correspondence to Welch to arrange the process, regular follow ups with Welch and requests for updates as requested by Mr. Guttin's counsel.

[65] The applicant cooperated with providing the requested deposit of \$22,600.

[66] The record indicates that the reason for the failure for Welch to provide a financial statement was Mr. Guttin's refusal to "sign off" on the shareholder account.

[67] In his affidavit, Mr. Saikaly refers to Mr. Guttin and Mr. Creber as shareholders.

[68] It is not clear whether he is aware that Mr. Guttin was a former director of BCE in 2022, and whether he believes he may be entitled to make these inquiries. There was no cross-examination of Mr. Saikaly on his affidavit.

[69] Mr. Guttin refuses to cooperate with the request regarding confirmation of the Shareholder Loan Account which would mean that he is acknowledging and agreeing to the recorded balance as accurate as of December 31, 2022 (year-end). This also has implications for third parties, such as the Canada Revenue Agency, and on whether the company owes him that sum of money which can impact further legal proceedings.

[70] It confirms that the company's books reflect the true amount either way. By signing off, directors and shareholders confirm accuracy and reduce the risk of later disputes. Auditors request this confirmation to ensure there is no dispute about related-party balances.

[71] The applicant refuses to provide a response to this request to sign off on the shareholder account as he indicates that there were several anomalies in the draft audited financial statement of BCE for 2022, including:

- a) The lack of explanation for the sum of \$114,745.00, reflecting an increase of more than 600% in the amount of professional fees being charged to BCE on a year-over-year basis, where the company generated only \$122,550.00 in revenue;
- b) The failure to account or explain the basis for the \$200,000.00 charge registered on the title to 14 Capella Court in favour of Gowlings WLG as of November 29, 2022;
- c) The lack of explanation for the increase of \$196,783 in pro gratia transfers to B-Con on a year-over-year basis;
- d) The absence of any accounting of BCE's municipal tax liability, the arrears balance of which has steadily increased and has since caused a tax arrears certificate to be registered by the City of Ottawa against the title of 14 Capella Court with a balance owing in the amount of \$286,315.46 as of December 31, 2023. He had since been advised that an arrears balance in the amount of \$369,498.92 remained outstanding as of September 25, 2024; and
- e) The numbers attributed to *all* the shareholder loan accounts.

*Does Mr. Guttin, as a former director have a right to demand answers from the auditors at this stage?*

[72] Mr. Guttin would have been a director/officer in 2022 until he was removed from the BCE Board on August 16, 2022.

[73] Mr. Guttin submits that he has an interest in protecting his interests and those of the shareholders. Directors have an obligation to the shareholders of BCE.

[74] It may be that ordinarily a director no longer has the right to access information once the individual ceases to be a director but when the actions of the director are called into question, there is no basis to deny him access to the information he would have had access to during that period of time.

[75] In addition, where the parties are locked in a dispute, there are new disclosure obligations in relation to proving or disproving facts in dispute.

[76] If material is relevant and in the possession, power or control of a party, it must be produced (upon demand in the case of this application) unless it is privileged. The respondents have not argued that a privilege exists.

[77] Mr. Guttin has brought an oppression remedy on the basis that his reasonable expectations were violated by Mr. Creber's conduct and that Mr. Guttin is entitled to request the broad equitable powers under the *OBCA*. In this application, the court will interfere as little as possible and only to the extent necessary to redress any unfairness. The court will limit its remedies to rectify the matters complained of.

[78] The heart of Mr. Guttin's application is that the shareholders were unfairly prejudiced, and due to Mr. Creber's conduct as outlined in the application, their reasonable expectations were not met.

[79] Given that context, does Mr. Guttin, as a former director, have a responsibility to the shareholders for the year 2022?

[80] In determining this question, the court will briefly review the provisions of the *OBCA* and the terms of Welch's engagement letter in the context of oppression remedy litigation.

[81] The *OBCA* imposes duties on directors:

134 (1) Every director and officer of a corporation in exercising his or her powers and discharging his or her duties to the corporation shall,

- a) act honestly and in good faith with a view to the best interests of the corporation; and
- b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Every director and officer of a corporation shall comply with this Act, the regulations, articles, by-laws and any unanimous shareholder agreement.

[82] Section 121 deals with the removal or resignation of a director and subsection (2) states that:

(2) A resignation of a director becomes effective at the time a written resignation is received by the corporation or at the time specified in the resignation, whichever is later.

[83] The duties of a director are further elaborated in s. 135(4):

(4) A director is not liable under section 130 and has complied with his or her duties under subsection 134 (2) if the director exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances, including reliance in good faith on:

- a) financial statements of the corporation represented to him or her by an officer of the corporation or in a written report of the auditor of the corporation to present fairly the financial position of the corporation in accordance with generally accepted accounting principles;

- b) an interim or other financial report of the corporation represented to him or her by an officer of the corporation to present fairly the financial position of the corporation in accordance with generally accepted accounting principles;
- c) a report or advice of an officer or employee of the corporation, where it is reasonable in the circumstances to rely on the report or advice; or
- d) a report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by any such person.

[84] In their engagement letter, Welch sets out their duties and responsibilities for the preparation and fair presentation of the Company's financial statements in accordance with Canadian accounting standards for private enterprises. It emphasized the need for completeness of information.

[85] In its engagement letter, Welch stated it would examine the company's records and issue an audit report stating whether the statements fairly present the financial position, in accordance with accounting standards.

[86] The engagement letter includes clauses dealing with the responsibilities of management. There is an expectation that management will cooperate and provide information to assist in the performance of the audit.

[87] There are further provisions in the engagement letter which oblige management to provide disclosure and information about claims and other liabilities and contingent gains or losses.

[88] Mr. Guttin, as a director in 2022 had responsibilities with respect to the audit.

[89] The company's shareholders expect the respondent corporations who are the subject of this litigation to cooperate with this audit and fulfil its role as set out in the *OBCA* and engagement letter.

*Can Mr. Guttin demand answers to what he perceives as anomalies?*

[90] As a director prior to his removal, Mr. Guttin had broad rights to access company information including financial records, books, and communications with auditors, and was responsible for approving audited financial statements before they are released to shareholders.

[91] At the time the 2022 financial statements were being prepared and audited, he would normally have had the right to question and review the draft statements before approval.

[92] Once finalized and approved by the board, the audited financial statements are circulated to shareholders (usually before the annual general meeting).

[93] Generally, shareholders only receive the finalized audited financial statements at the annual meeting. They do not have the right to examine drafts line by line or demand auditor explanations.

[94] If a shareholder suspects misrepresentation, oppression, or mismanagement, they may be able to apply to the court for disclosure or other remedies (e.g. oppression remedy under the *OBCA/CBCA*).

[95] However, here the process of these audited financial statement has been ordered in an oppression remedy context.

[96] Since Mr. Guttin is pursuing an oppression remedy under the *OBCA*, the court has discretion to order access to company records (including draft financials) if it is relevant to the claim. Courts often grant broader disclosure in oppression cases because the essence of oppression is about fairness and protecting reasonable expectations.

[97] Mr. Guttin brought this application alleging various improprieties of Mr. Creber, personally and through his corporations, and framed his application around his obligations as a director under the *OBCA*.

[98] In his 2019 application, he states that s. 134(2) imposes personal liability on the directors for the companies' failure to meet their obligations under s. 15 and his failure to object to improper financial transactions and mismanagement by the board of directors.

[99] Directors have much stronger inspection rights than shareholders.

[100] He now has concerns in relation to the finances in 2022 that had surfaced in the draft audited financial statement.

[101] He is entitled to answers to his inquires before the audited financial statement is completed.

[102] Therefore, I order that within 30 days, the respondents, as the current directors of BCE, provide answers to the questions and queries made by Mr. Guttin in writing as set out above. I also direct BCE to request Welch to assist in their responses. If necessary, supporting documentation should be provided.

[103] Any extra cost associated with answering these questions will be an issue for determination of the Judge hearing the application. In the meantime, Mr. Guttin will have to bear these extra costs, if any, pending the final determination.

[104] The BCE audited financial statements must be completed within 60 days.

[105] I also order that, within 30 days, Mr. Guttin provide a satisfactory answer to Welch's question asking him to confirm his shareholder loan account as of December 31, 2022. That response must be such that it allows Welch to complete the audited financial statement.

#### B-Con Financial Statement

[106] Regarding the 2022 B-Con audited financial statement, Welch was under the impression that these statements would be completed after the completion of the 2022 BCE financial statement.

[107] Correspondence from Mr. Champagne indicate this postponement was proposed to Mr. Snelling, but Mr. Snelling did not confirm in writing that he agreed with this proposal.

[108] Mr. Champagne advised the auditor that he assumed that this was the order of the preparation of the audited statements; that is, the B-Con financial statement would be started after the BCE financial statement was completed.

[109] The 2023 orders do not provide for a timetable for the preparation of the 2022 B-Con audited financial statement yet in order for this application to be finalized, the statement must be completed in a timely fashion.

[110] B-Con was responsible for the payment of the audited financial statement of that corporation. All parties are to cooperate with the auditor in their preparation of the same.

[111] B-Con must produce the 2022 audited financial statement within 90 days.

### **#3 – What are the next steps?**

[112] The applicant is concerned with respect to the sale of the Capella property and the request of the applicant for a hearing to appoint a receiver.

[113] The appointment of a receiver is not properly before me as it was not requested as relief in the notice of motion.

[114] The Capella property is the only significant asset of the company BCE. B-Con rents the premises.

[115] The issue of the sale of Capella property is not new. It was mentioned in the affidavit of Mr. Creber filed in support of the 2023 motion.

[116] At this time with the looming power of sale initiated by the City of Ottawa on the outstanding municipal taxes, the parties have discussed that it would be more financially prudent that the parties take over control of the sale of the property where they can ensure they obtain fair market value. The parties agree that this is a better financial option than allowing the city of Ottawa to sell the property to recover its taxes.

[117] The applicant was prepared to agree that the parties would take over the sale provided that the mortgage held by 2047023, which took over the mortgage from RBC and collects interest at 11%, is not paid off but that the money to satisfy that mortgage be paid into court pending the determination of this application. The applicant is concerned as to the propriety of this mortgage and how it was assigned to Mr. Creber's corporation in what the respondents say was a forbearance

arrangement to avoid a foreclosure. The default of the original RBC loan and assumption by Mr. Creber's corporation was acknowledged in the 2023 affidavit of Mr. Guttin.

[118] There are many factual disputes which cannot be determined on the record before me.

[119] The appointment of a receiver is for another day.

[120] If there is an urgency regarding these issues, then the parties may make the request to the Local Administrative Judge – Civil to request the hearing of this matter on an urgent basis. He will determine if the issues merit early intervention by the court.

[121] With respect to the return of Mr. Guttin's deposit of \$22,600 for the BCE audited financial statement, the court sees no reason to revisit that issue at this time. The issue of costs will be dealt with at the completion of these applications.

### **Conclusion**

[122] Accordingly, the court orders the following:

[123] Within 30 days, Mr. Guttin must respond to Welch and confirm his view of his shareholder loan account for 2022 BCE audited financial statement such that it will allow Welch to complete the 2022 audited financial statement .

[124] Within 30 days, Mr. Creber and BCE will provide responses to the Mr. Guttin's requests as outlined above and request Welch to assist it. Any cost will be borne by Mr. Guttin.

[125] Within 60 days, the respondents will direct Welch to complete the 2022 audited BCE financial statement.

[126] Within 90 days, B-Con will produce the 2022 audited financial statement of B-Con.

[127] The 2019 and 2023 applications shall be heard together. A date should be set immediately, and the estimate is one day.

[128] The applications hearing date will be peremptory and cannot be adjourned except in extenuating or exceptional circumstances.

[129] The parties shall deliver any additional affidavit materials they intend to rely on;

[130] A timetable should be set for the cross-examination on the affidavits;

[131] If the parties cannot agree on the timetable with respect to filing of materials, cross-examinations or the date of the hearing, they are to attend a case conference with an Associate Justice.

[132] Regarding costs of this motion, there has been divided success. Parties have expended a considerable amount in legal fees since they last appeared before me.

[133] I am also mindful that there have been delays and that the allegations set out the two applications have not been proven.

[134] It is usually preferable to order costs with each event to bring home to the parties that litigation is expensive and encourage parties to attempt to resolve issues. However, given the above, I will leave the issue of costs to the application judge.

September 22, 2025

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Justice A. Doyle

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2025 ONSC 5008 (CanLII)

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

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**AND**

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**COUNSEL:** Patrick Snelling and Jackson Kohne,  
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Champagne, Counsel for the  
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**ENDORSEMENT**

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