Court File No. CV-23-00082142-0000
Court File No. 32-3126798

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE BANKRUPTCY OF DOUGLAS GROZELLE, of the City of Hamilton, in the Province of Ontario

RESPONDING FACTUM OF THE TRUSTEE
(Motion for Directions)

September 17, 2025

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TO: SERVICE LIST

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I. OVERVIEW

1. This Responding Factum is filed by Grant Thornton Limited ("**Grant Thornton**") in its capacity as trustee in bankruptcy ("**Trustee**") of Douglas Grozelle ("**Grozelle**") in response to the factum filed by certain "net winners" in Grozelle's scheme ("**Respondents**").

2. In their Motion for Directions the moving parties make two central submissions:

   (i) First, that the administration of Grozelle's estate has been abused, manipulated, and otherwise tainted by intentional abuses of the applicants in Grozelle's insolvency proceedings ("**Applicants**"); and

   (ii) Second, that a defective insolvency process has generated a clawback motion that is fundamentally unfair because it has been designed and directed by the Applicants in order to favour their interests at the expense of the Net Winners.

3. There is no factual or legal basis for either of these assertions.

4. To the first point, as detailed in the Trustee's Third Report to Court dated August 29, 2025 ("**Third Report**"), and as explained again below, the bankruptcy administration has been regularly conducted and properly overseen and administered by the Trustee, this Court, and the Office of the Superintendent of Bankruptcy ("**OSB**") in accordance with the statutory scheme prescribed by the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B. 3, as amended ("***BIA***").

5. To the second point, there is nothing in the Clawback Motion that is novel or lacks jurisdiction. A nearly identical process was recently approved by the Honourable Justice Fitzpatrick, in *My Mortgage Auction Corp. (Re)*, 2025 BCSC 1520 ("***Martel***") and lauded as a "fair and reasonable way for *all* of the investors concerned including the Net Winners."[1]

6. Further, in Grozelle, no claims have as yet been allowed or disallowed for purposes of distribution. Going forward, the Applicants and all other investors in the Scheme ("**Investors**"), regardless of where they stand today, will be afforded the same benefits and protections of a robust Phase II process allowing for contested determinations of outcomes and recourse to the Court in the absence of agreement.

7. To the extent that the Respondents' submissions go beyond the two "central themes", they mirror the procedural objections put forward by net winners and considered and rejected by Justice Fitzpatrick in *Martel*. As in *Martel*, submissions to the effect that the Trustee ought to pursue those who benefited ("**Recipients**") on an individual, transaction-by-transaction basis, ought to be viewed as a "litigation strategy by certain Net Winners to delay and frustrate the recovery of funds for the Net Losers and avoid them having to repay any of the profits they received from the Scheme".[2]

8. The moving parties' arguments display a fundamental misunderstanding of the mechanics of the bankruptcy process as legislatively prescribed by the *BIA*. As a result of this misunderstanding, the Respondents are requesting that this Court issue an order

[1] *In the Matter of the Bankruptcy of My Mortgage Auction Corp. and Gregory Joseph Martel*, 2025 BCSC 1520 at para 144 ["***Martel***"].

[2] *In the Matter of the Bankruptcy of My Mortgage Auction Corp. and Gregory Joseph Martel*, 2025 BCSC 1520 at para 129.

that violates the clear statutory requirements of the legislation. There is no authority (or reason) for this Court to do so.

9. As a reminder, the Trustee's motion only seeks to "clawback" funds received by Recipients over and above the amounts they transferred to Grozelle ("**Excess Funds**") in order to mitigate the effects of the Scheme on those who suffered losses ("**Net Losers**"). It follows that the Recipients are actually being treated better than Net Losers because they are not being required to share *pro rata* in the losses suffered by Investors—merely to return funds that they received that were transferred into the Scheme by Net Losers and ultimately belong to Net Losers.

10. Once again, it bears repeating that it is a somewhat bizarre position for the Respondents to submit both that they are actually "Net Losers" and therefore ostensibly stand to benefit from any realizations made by the Trustee as a result of the Clawback Motion, and that that they want to delay or prevent the Trustee from making such realizations. The Respondents want the Court to accept both that they have been harmed by the Scheme and the Trustee's investigation of the Scheme, *and* that they do not want the Trustee's claims resolved on the merits so that they can receive distributions to be compensated for such harms.

11. The Trustee agrees with the Respondents that if they are actually Net Losers as determined through Phase II of the motion, they should not repay anything to the estate and the Respondents are entitled to their *pro rata* share of any distributions to creditors.

12. In *Martel*, Justice Fitzpatrick concluded that the "procedure proposed by the Trustee and the relief sought on this [motion] are the only realistic and viable option available to the Trustee to recover the Excess Funds"[3]. This is the case here as well.

II. FACTS

A. First Meeting of Creditors

13. On September 11, 2024, Grant Thornton, in its capacity as court-appointed receiver of Grozelle ("**Receiver**") assigned Grozelle into bankruptcy and Grant Thornton was appointed Trustee.[4]

14. The First Meeting of Creditors was well and properly noticed:

a. as prescribed by the *BIA*, within five days of the Trustee's appointment, the Trustee sent all known creditors of Grozelle, and the OSB a notice of the first meeting of creditors ("**Creditors Meeting**").[5]

b. as prescribed by the *BIA*, notice of the Creditors Meeting was published in the National Post on September 19, 2024;

c. along with the notice of the Creditors Meeting, the Trustee sent creditors a Notice of Bankruptcy, Proof of Claim Form, Proxy Form, Statement of Affairs, and Income and Expense Statement ("**Creditors Package**").[6]

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[3] *In the Matter of the Bankruptcy of My Mortgage Auction Corp. and Gregory Joseph Martel*, 2025 BCSC 1520 at para 136.

[4] Trustee's First Report to Court, dated November 29, 2024 ("**First Report**") at para 21, Trustee's Motion Record (Clawback Motion), dated November 29, 2024 ("**MR**") at Tab 2.

[5] Trustee's Third Report to Court, dated August 29, 2025 ("**Third Report**") at para 20, Trustee's Responding Motion Record (Motion for Directions), dated August 29, 2025 ("**Responding MR (Directions)**"), at Tab 1.

[6] Third Report at para 21, Responding MR (Directions) at Tab 1.

d. in its Third Report to Court, dated September 9, 2024 (“**Receiver’s Third Report**”), the Receiver advised that it intended to file an assignment in bankruptcy on behalf of Grozelle on or before September 9, 2024, and that Grant Thornton would assume the role of Grozelle’s trustee in bankruptcy.[7]

e. the Trustee also posted the Creditors Package on the webpage it maintains for the Grozelle bankruptcy and receivership proceedings (“**Case Webpage**”). The Creditors Package included notice of the Creditors’ Meeting.[8]

15. The purpose of the Creditors Meeting was to consider the affairs of the bankrupt, affirm the Trustee’s appointment, appoint inspectors, and for creditors to give directions to the Trustee.[9]

16. The Creditors Meeting was held on October 2, 2024, at the Trustee’s offices in Toronto, and virtually via Zoom video conference.

17. The meeting was chaired by the Official Receiver of the OSB—not the Trustee.[10] **(**The OSB had earlier contacted the Trustee and advised that the OSB would be exercising its discretion to chair the Creditors Meeting.[11])

[7] Third Report of the Receiver, dated September 9, 2024, at para 83.
[8] Third Report at para 22, Responding MR (Directions) at Tab 1.
[9] Third Report at para 23, Responding MR (Directions) at Tab 1.
[10] Third Report at para 24, Responding MR (Directions) at Tab 1.
[11] Third Report at para 25, Responding MR (Directions) at Tab 1.

18. Prior to the Creditors Meeting, the Trustee received 36 proofs of claim. The Trustee allowed 28 of these claims for voting purposes at the meeting and disallowed eight claims.[12]

19. The Trustee notified the eight persons whose proofs of claim were denied that the claims either did not contain any supporting documents, or that there was inadequate support such that the claims could not be admitted for voting purposes at the meeting. The eight claimants included both Recipients and Net Losers. The Trustee did not single out the proofs of claim filed by Recipients and hold them to a different standard.[13]

20. As is always the case, everyone with an interest in the bankruptcy proceedings was welcome to attend the Creditors Meeting—attendance was not limited to creditors. However, only those creditors whose claims had been admitted for voting purposes prior to the meeting could vote at the meeting.[14]

21. In all, 40 persons attended the Creditors Meeting. Attendees included: two OSB representatives, three Trustee representatives, the Trustee's legal counsel, counsel for Grozelle, a Recipient, and two persons whom the Trustee has identified as Net Losers who either did not file a claim before the meeting, or whose claim was not admitted because it lacked adequate documentation. While these persons attended the meeting, they were not allowed to—and did not vote—at the meeting.[15]

[12] Third Report at para 28, Responding MR (Directions) at Tab 1.
[13] Third Report at para 29, Responding MR (Directions) at Tab 1.
[14] Third Report at para 31, Responding MR (Directions) at Tab 1.
[15] Third Report at para 32, Responding MR (Directions) at Tab 1.

22. At the start of the meeting, the OSB declared that the Creditors Meeting was "legally constituted". The OSB also explained that any decisions made at the meeting may be appealed to the court.[16]

23. There were three motions made during the Creditors Meeting: (i) to affirm the appointment of the Trustee; (ii) to appoint inspectors; and (iii) to adjourn the meeting. These motions were brought by Dr. Erin Woodburn, who was subsequently appointed as an inspector of the bankruptcy estate.[17]

24. The motions were seconded by either Crystal Masterson (two motions), or Jonathan Williams (one motion). No creditors opposed.[18]

25. There were no formal votes counted at the meeting. The OSB, as chair, called for motions, which motions were seconded. The OSB asked if there were any objections to the motions. There was an opportunity provided for objections. No objections were raised. The OSB declared the motions passed.[19]

26. As the OSB chaired the Creditors Meeting, the Trustee could not have—and did not—provide any person, including the Applicants with the ability to control a vote, including the appointment of inspectors.[20]

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[16] Third Report at para 34, Responding MR (Directions) at Tab 1.
[17] Third Report at para 36, Responding MR (Directions) at Tab 1.
[18] Third Report at para 37, Responding MR (Directions) at Tab 1.
[19] Third Report at para 38, Responding MR (Directions) at Tab 1.
[20] Third Report at para 39, Responding MR (Directions) at Tab 1.

27. In addition to the three motions, there was a question and answer period during the Creditors Meeting. A total of eight persons asked questions during the meeting, including persons whose claims had not been admitted for voting purposes.[21]

28. During the meeting, Grozelle's creditors elected (by acclamation) Ms. Masterson, Mr. Williams, Dr. Erin Woodburn, Chelsea Prince, and Jeanine Garlow as inspectors of Grozelle's bankruptcy estate.[22]

29. There were no objections raised during the Creditors Meeting with respect to the election of the inspectors.[23]

30. There were no appeals from decisions made at the Creditors Meeting.[24]

31. Ms. Masterson, Mr. Williams, and Ms. Garlow subsequently resigned. There are currently two serving inspectors.[25]

32. As chair, the OSB prepared and circulated the minutes for the Creditors Meeting. These minutes were also attached to a May 22, 2025 letter from counsel for the Trustee to counsel for the Respondents.[26]

33. Immediately following the Creditors Meeting, the inspectors met to discuss the bankruptcy proceedings. During the meeting, the inspectors resolved, among other

[21] Third Report at para 40, Responding MR (Directions) at Tab 1.
[22] Third Report at para 41, Responding MR (Directions) at Tab 1.
[23] Third Report at para 42, Responding MR (Directions) at Tab 1.
[24] Third Report at para 35, Responding MR (Directions) at Tab 1.
[25] Third Report at para 60, Responding MR (Directions) at Tab 1.
[26] Third Report at para 44, Responding MR (Directions) at Tab 1.

things, that the Trustee should pursue the Clawback Motion. These minutes were attached as Appendix "H" to the Receiver's Fourth Report, dated October 21, 2024.[27]

34. The Creditors Meeting was nearly a year ago. At no point before serving their belated notice of motion on August 21, 2025, approximately eleven months after the meeting, did the Respondents pursue any relief in respect of the Creditors' Meeting. At no point did the Respondents appeal the Creditors' Meeting, or write to the Trustee and allege that the meeting was "improper and contrary to the *BIA*" and request that it be "set aside". To the best of the Trustee's knowledge, the Respondents also did not raise any concerns with the OSB in its capacity as chair of the meeting, or as the regulatory body that oversees the Trustee's conduct.[28]

B. Proofs of Claim (Voting and Distribution)

35. As of October 2, 2024, the date of the Creditors Meeting, 36 proofs of claim have been filed with the Trustee. Of those proofs of claim, the Trustee allowed 28 for voting purposes, and disallowed eight. [29]

36. No appeals were taken from the Trustee's determination of proofs of claim for voting purposes.[30]

37. The Trustee has not made any determinations in respect of proofs of claim for purposes of distribution.[31]

[27] Third Report at para 45, Responding MR (Directions) at Tab 1.
[28] Third Report at para 26, Responding MR (Directions) at Tab 1.
[29] Third Report at para 28, Responding MR (Directions) at Tab 1.
[30] Third Report at para 86, Responding MR (Directions) at Tab 1.
[31] Third Report at para 87, Responding MR (Directions) at Tab 1.

38. In the event that there are funds in the bankruptcy estate available for distribution, the Trustee will require every creditor to prove their claim pursuant to the requirements of the *BIA* and, where appropriate, by Court order.[32]

C. Identification of Creditors and Calculation of Excess Funds

39. In an effort to understand Investor outcomes, the Receiver created a record of each payment made by (or to) an Investor over time in a unique investor specific ledger.[33]

40. Investor specific ledgers are presented from the perspective of Grozelle's bank accounts in that transfers from Investors are debits. The ledgers also list all transfers of funds between Grozelle and a given Investor by each of Grozelle's bank accounts and in chronological order.[34]

41. The estimates of financial outcomes are necessarily focused on a person's bi-lateral or direct dealings with the bankrupt, rather than funds that may have been assembled by and flowed through third party aggregators, facilitators, or friends and family participants. The Trustee is Grozelle's bankruptcy trustee and is not mandated or empowered to review all bank account activity of every direct and indirect participant over the duration of the Ponzi scheme to try to determine whether such person solicited or dispersed funds from others in the course of their dealings with Grozelle. Such a broader exercise is unnecessary and presents an unending series of complexities that render it impracticable for the Trustee to attempt.[35]

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[32] Third Report at para 88, Responding MR (Directions) at Tab 1.
[33] Third Report at para 78, Responding MR (Directions) at Tab 1.
[34] Third Report at para 79, Responding MR (Directions) at Tab 1.
[35] Third Report at para 80, Responding MR (Directions) at Tab 1.

42. Only transactions that have been verified by source documents (i.e. bank drafts, copies of deposited cheques, wire transfer forms) provided by independent third-party financial institutions are included in an investor specific ledger.[36]

III. ISSUES

43. The issues on the motion for directions are whether:

a. the Trustee had proper authorization to proceed with the Clawback Motion; and

b. the Clawback Motion's proposed method of proceeding is appropriate in all of the circumstances.

IV. LAW AND ANALYSIS

A. Trustee has Authority to Pursue the Clawback Motion

i. Creditors Meeting was Validly Called and Constituted

44. Unlike receivership proceedings and *Companies' Creditors Arrangement Act* proceedings, the administration of a bankruptcy estate is comprehensively prescribed by the *BIA.*

45. The Respondents' arguments overlook the legal prescriptions of the BIA in relation to matters such as the conduct of creditors meetings and the appointment of inspectors.

46. For this reason it makes sense to set out applicable legislative provisions below.

[36] Third Report at para 81, Responding MR (Directions) at Tab 1.

47. Section 102(1) of the *BIA* prescribes who must be given notice of the first meeting of creditors: all creditors known to the Trustee. Section 102(1) provides:[37]

> **Administration of Estates**
> **Meetings of Creditors**
> **First meeting of creditors**
>
> **102 (1)** Subject to subsection (1.1), it is the duty of the trustee to inquire as to the names and addresses of the creditors of a bankrupt and, within five days after the date of the trustee's appointment, to send in the prescribed manner to the bankrupt, to every known creditor and to the Superintendent a notice in the prescribed form of the bankruptcy and of the first meeting of creditors, to be held within the twenty-one day period following the day of the trustee's appointment, at the office of the official receiver in the locality of the bankrupt, but the official receiver may, when the official receiver deems it expedient, authorize the meeting to be held at the office of any other official receiver or at such other place as the official receiver may fix.

48. Section 102(2) of the *BIA* stipulates what documents must accompany the notice of the meeting:[38]

> **Documents to accompany notice**
>
> **(2)** The trustee shall include with the notice referred to in subsection (1) a list of the creditors with claims amounting to twenty-five dollars or more and the amounts of their claims together with a proof of claim and proxy in the prescribed form but no name shall be inserted in the proxy before it is so sent.

49. Section 102(4) of the *BIA* further provides that the Trustee must publish notice of the meeting in a newspaper:[39]

> **Publication in local paper by trustee**
>
> **(4)** A notice in the prescribed form shall, as soon as possible after the bankruptcy and not later than five days before the first meeting of creditors, be published in a local newspaper by the trustee.

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[37] s 102(1), *BIA*.
[38] s 102(2), *BIA*.
[39] s 102(4), *BIA*.

50. The purpose of the meeting is also prescribed by section 102(5) of the *BIA*:[40]

> **Purpose of meeting**
>
> **(5)** The purpose of the first meeting of creditors shall be to consider the affairs of the bankrupt, to affirm the appointment of the trustee or substitute another in place thereof, to appoint inspectors and to give such directions to the trustee as the creditors may see fit with reference to the administration of the estate.

51. The procedure to be followed at a creditors meeting is similarly legislatively prescribed. Section 105(1) of the *BIA* provides:[41]

> **Procedure at Meetings**
> **Chair of first meeting**
>
> **105 (1)** The official receiver or his nominee shall be the chair at the first meeting of creditors and shall decide any questions or disputes arising at the meeting and from any such decision any creditor may appeal to the court.

52. Votes at the first meeting of creditors may only be cast by creditors entitled to vote at the meeting according to section 109(1) of the *BIA*:[42]

> **Procedure at Meetings**
> **Right of creditor to vote**
>
> **109 (1)** A person is not entitled to vote as a creditor at any meeting of creditors unless the person has duly proved a claim provable in bankruptcy and the proof of claim has been duly filed with the trustee before the time appointed for the meeting.

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[40] s 102(5), *BIA.*

[41] s 105(1), *BIA*.

[42] s 109(1), *BIA*.

53. Section 109(6) of the *BIA* dictates what happens if the chair of the meeting believes that the outcome of a vote was determined by the vote of a creditor not dealing at arm's length from the bankrupt:[43]

> **Vote of creditors not dealing at arm's length**
>
> **(6)** If the chair is of the opinion that the outcome of a vote was determined by the vote of a creditor who did not deal with the debtor at arm's length at any time during the period that begins on the day that is one year before the date of the initial bankruptcy event and that ends on the date of the bankruptcy, the chair shall redetermine the outcome by excluding the creditor's vote. The redetermined outcome is the outcome of the vote unless a court, on application within 10 days after the day on which the chair redetermined the outcome of the vote, considers it appropriate to include the creditor's vote and determines another outcome.

54. A "non-arm's length creditor" is not defined in the *BIA*. Instead, courts have looked to the definition in the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended ("***ITA***").[44] Section 251(1) of the *ITA* states that related persons do not deal with each other at arm's length.[45] Section 251(2) of the *ITA* states that related persons include:[46]

a. individuals connected by blood relationship, marriage or common-law partnership or adoption;

b. a corporation and

   i. a person who controls the corporation, if it is controlled by one person;

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[43] s 109(6), *BIA*. Even if the Respondents did appeal the redetermined outcome of the meeting within 10 days, there are additional legal hurdles they would have to surpass. See *FT ENE Canada Inc. (Re)*, 2019 ONSC 5793 at para 22 [Comm List].

[44] *FT ENE Canada Inc. (Re)*, 2019 ONSC 5793 at para 26.

[45] s 251(1), *ITA*.

[46] s 251(2), *ITA*.

ii. a person who is a member of a related group that controls the corporation, or;

iii. any person related to a person described in paragraphs (i) and (ii) above.

55. Section 114 of the *BIA* addresses the evidentiary status of minutes of a creditors' meeting:[47]

> **Procedure at Meetings**
> **Evidence of proceedings at meetings of creditors**
>
> **114 (1)** A minute of proceedings at a meeting of creditors under this Act signed at the same or the next ensuing meeting by a person describing himself as or appearing to be chair of the meeting at which the minute is signed shall be admitted in evidence without further proof.
>
> **Evidence of regularity**
>
> **(2)** Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been signed by the chair shall be deemed to have been duly convened and held and all resolutions passed or proceedings thereat to have been duly convened and held and to have been duly passed or had.

56. Section 105(5) of the *BIA* also provides what happens if a creditor does not receive notice of the meeting:[48]

> **Procedure at Meetings**
> **Non-receipt of notice by creditor**
>
> **(5)** Where a meeting of creditors is called, the proceedings had and resolutions passed at the meeting, unless the court otherwise orders, are valid, notwithstanding that some creditors had not received notice.

[47] s 114(2), *BIA*.

[48] s 105(5), *BIA*.

57. The Trustee complied with the *BIA* requirements for creditors meetings in all respects. The Trustee:

a. inquired as to the names and addresses of Grozelle's creditors;
b. by September 16, 2024, sent to Grozelle, every known creditor and the OSB, a notice in the prescribed form of the bankruptcy, and of the first meeting of creditors;
c. included with that notice was a list of the creditors with claims amounting to $25 or more and the amounts of their claims, together with a proof of claim and proxy form; and
d. advertised the meeting in the National Post.

58. The Receiver's Third Report also noticed that Grozelle was to be assigned into bankruptcy. Persons served with the report, including the Respondents, had notice that there would be a creditors meeting within three weeks of the assignment pursuant to the *BIA*.

59. The Creditors Meeting was chaired by the OSB. The OSB conducted and documented all aspects of the meeting. The Applicants did not and could not have had any control or influence over the Trustee and the proceedings at the meeting because it was chaired by the OSB.

60. The OSB declared that the meeting was legally constituted.

61. No one was excluded from attending the meeting. However, only those creditors with claims admitted for voting purposes were allowed to vote at the meeting. Some

creditors whom the Trustee has identified as Net Losers were allowed to attend the meeting and ask questions, but were not allowed to vote.

62. There were no formal votes counted at the meeting. The OSB, as chair, called for motions, which motions were seconded. The OSB then asked if there were any objections to the motions. There was an opportunity provided for objections. No objections were raised and the OSB declared the motions passed.

63. The meeting proceeded on the basis of consensus decision making, a process which is efficient and not at all uncommon.

64. There is no evidence that the Respondents raised their concerns regarding the meeting with the OSB in its capacity as chair of the Creditors Meeting as required under the *BIA*, or in its capacity as regulator of licensed insolvency trustees.

65. Neither Ms. Masterson nor Mr. Williams are related parties under the *ITA* definition of related parties. They are not related to Grozelle by blood or marriage and they do not control and are not related to anyone who controls Grozelle or Grozelle Enterprises.

66. Regardless, to address the counter-factual, even if Ms. Masterson and Mr. Williams should not have been permitted to "vote" at the meeting, and as a result their "votes" should now somehow be "set aside", it would have no impact on the outcome of the meeting because they were but two of the dozens of creditors present and there was no opposition or contest to the motions put forward.[49]

[49] *Casimir Capital Ltd., Re*, 2015 ONSC 2819 at para 44 [Comm List].

67. In all of the above circumstances there is no legal or practical for an order setting aside or otherwise directing a new first meeting of creditors.

ii. Inspectors Appointed are Appropriate and Properly Serving

68. As it does with creditors meetings, the *BIA* prescribes who may be inspectors of the bankruptcy estate, and their authority as such.

69. Section 116(1) of the *BIA* provides that at the first meeting of creditors, the creditors shall appoint up to five inspectors of the bankruptcy estate, or agree not to appoint any inspectors.[50]

70. An inspector need not be a creditor of a bankrupt.[51]

71. The only limiting requirement is that a person cannot be an inspector if they are "party to any contested action or proceeding by or against the estate of the bankrupt."[52]

72. The *BIA* provides that a defect or irregularity in the appointment of an inspector does not vitiate any act done by the inspector in good faith. Section 120(2) of the *BIA* provides:[53]

> **Administration of Estates**
> **Inspectors**
> **Formal defects**
>
> **(2)** No defect or irregularity in the appointment of an inspector vitiates any act done by him in good faith

[50] s 116(1), *BIA*.
[51] *Monahan, Re*, 2006 NBBR 386 at para 8 [Registrar].
[52] s 116(2), *BIA*.
[53] s 120(2), *BIA*.

73. Neither the Receiver nor the Trustee have taken instructions from or otherwise preferred the interests of the Applicant. While Ms. Masterson and Mr. Williams (in their capacity, briefly, as initial inspectors) approved the commencement of the Clawback Motion, at no point did they instruct or influence the scope of, the basis for, or the content of the motion.[54]

74. Further, regardless of the Respondents' allegations that the process leading to the appointment of the Receiver was an abuse of process,[55] they do not appear to be arguing that a receivership appointment by the court was inappropriate in the circumstances. Similarly, while they contend that the Trustee's appointment was a result of the alleged abuse of process in the receivership proceedings, they don't argue that Grozelle should not have been adjudged bankrupt on September 11, 2024.

75. There are currently two inspectors of the Grozelle bankruptcy estate. There is no suggestion that these inspectors they have not acted in good faith. A motion has not been brought pursuant to s. 116(5) of the *BIA* to revoke their appointments. These inspectors are not parties to claims against the estate or to claims by the estate. Consequently, they are properly appointed and serving inspectors.[56]

76. The allegation that Ms. Prince is not a creditor and therefore cannot be an inspector has no legal basis, and is factually wrong. As noted above, Inspectors do not need to be

[54] Third Report at para 65, Responding MR (Directions) at Tab 1.

[55] Moving Factum of the Respondents (Motion for Directions), dated September 10, 2025 ("**Moving Factum**") at para 59.

[56] Section 116(5) of the *BIA* provides: "The creditors may at any meeting and the court may on the application of the trustee or any creditor revoke the appointment of any inspector and appoint another in his stead."

creditors. Regardless, it is the Trustee's understanding that Ms. Roldan and Ms. Prince were in a common law partnership and that their funds were jointly contributed to Grozelle.

iii. Trustee has Authority to Pursue Clawback Motion

77. Unlike receivership proceedings, the Trustee derives its authority at first instance from the *BIA* and sometimes the authorizations of inspectors, not court orders. Section 30(1) of the *BIA* provides that a trustee, with permission of the inspectors, may, among other things:[57]

> **Administrative Officials**
> **Trustees**
> **Duties and Powers of Trustees**
> **Powers exercisable by trustee with permission of inspectors**
> **…**
> (d) bring, institute or defend any action or other legal proceeding relating to the property of the bankrupt;
>
> (e) employ a barrister or solicitor or, in the Province of Quebec, an advocate, or employ any other representative, to take any proceedings or do any business that may be sanctioned by the inspectors
> …
> (g) incur obligations, borrow money and give security on any property of the bankrupt by mortgage, hypothec, charge, lien, assignment, pledge or otherwise, such obligations and money borrowed to be discharged or repaid with interest out of the property of the bankrupt in priority to the claims of the creditors;
>
> (h) compromise and settle any debts owing to the bankrupt;
>
> (i) compromise any claim made by or against the estate;

78. If there are no inspectors, a trustee may do all or any of the things referred to in section 30(1).[58]

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[57] s 30(1), *BIA*.

[58] s 30(3), *BIA*.

79. In addition to chairing the first meeting of creditors, the OSB also oversees the licensing and conduct of licensed insolvency trustees. The OSB is responsible for, among other things, the administration of the *BIA*, the licensing and regulation of insolvency professionals (including the Trustee), and supervising stakeholder compliance with the insolvency process.[59]

80. In addition to being an officer of the court whose conduct is overseen by the Court, the Trustee is subject to OSB oversight.

81. In its capacity as court-appointed receiver, Grant Thornton's powers, duties, and authorities are prescribed by the relevant receivership order, and overseen by the Court.

82. In its capacity as trustee-in-bankruptcy, Grant Thornton's powers, duties and authorities are prescribed by the *BIA*, and overseen by the Court and the OSB.

83. The initiation of receivership proceedings by the Applicants does not render the Receiver beholden to the Applicants, or provide the Applicants with an ability to direct or control the Receiver. Once appointed, the Receiver is focused on maximizing realizations for the benefit of all creditors, using the authority granted to the Receiver pursuant to the receivership order, dated July 20, 2023.

84. Since its appointment as interim receiver on July 7, 2023, Grant Thornton has acted fairly and in good faith on behalf of all creditors. The suggestion that Grant Thornton has acted otherwise is completely baseless and so lacking in factual support or evidence that it is impossible to coherently address.

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[59] Office of the Superintendent of Bankruptcy Website, < https://ised-isde.canada.ca/site/office-superintendent-bankruptcy/en>, retrieved September 14, 2025.

85. Grant Thornton's activities as Receiver (and subsequently as Trustee) have been the subject of extensive written reporting and regular attendances in court. Between July 7, 2023 and June 11, 2025, Grant Thornton attended in court for no less than 17 hearings and case management appointments with written materials being filed with the court and uploaded to the Case Webpage in respect of each attendance.[60]

86. As a Licensed Insolvency Trustee and professional, Grant Thornton recognizes its obligation to act in the best interests of all creditors, irrespective of how its appointment was effected. Grant Thornton is tasked with administering the bankruptcy process fairly, transparently, and in compliance with the law, ensuring that all creditors are treated equitably.

87. The Honourable Justice Valente has echoed the Receiver's position regarding its impartiality. During the February 13, 2024 hearing for the appointment of a receiver over K&M Venture Capital Group Inc. ("**K&M**"), Justice Valente specifically commented on the Receiver's role as an impartial party and officer of the court in response to allegations during the hearing that the Receiver was somehow partial.[61]

88. Grant Thornton initiated the Clawback Motion in its capacity as Trustee. Its authority to do so is grounded in the *BIA*. After careful consideration the Trustee chose to bring the motion on the basis that it is in the collective creditor interest, and aligns with the objective of ensuring the fair and equitable treatment of all creditors in the bankruptcy process.[62]

[60] Third Report at para 51, Responding MR (Directions) at Tab 1.
[61] Third Report at para 53, Responding MR (Directions) at Tab 1.
[62] Third Report at para 54, Responding MR (Directions) at Tab 1.

89. Moreover, the Trustee is obliged under the *BIA* to investigate all preferences, transfers at undervalue, and other potential assets of the bankruptcy estate.[63]

90. It would be a dereliction of the Trustee's statutory obligations to *not* undertake the investigations that have been made to date.

91. The Respondents' contention that the Clawback Motion is somehow improperly commenced has been previously answered, but can be addressed yet again to ensure that no misunderstanding remains.

92. As noted, during the OSB-supervised Creditors Meeting, the creditors elected by acclamation five inspectors.

93. Subsequently, on October 21, 2024, the Respondents raised concerns that Ms. Masterson and Mr. Williams should not act as inspectors because of alleged conflicts of interest. In written submissions to the court, dated October 24, 2024, the Recipients expanded on these concerns to include Ms. Garlow and Ms. Prince.[64]

94. On October 29, 2024, counsel for the Applicants responded and advised that while the Applicants disagreed with the allegations in the October 21, 2024 letter and October 24, 2024 submissions, Ms. Masterson, Mr. Williams, and Ms. Garlow were all willing to step down as inspectors. The Trustee treated this letter as evidence of the resignation of these inspectors. Consequently, the only meeting that these inspectors participated in was the initial one on October 2, 2024.[65]

[63] Third Report at para 54, Responding MR (Directions) at Tab 1.
[64] Third Report at para 59, Responding MR (Directions) at Tab 1.
[65] Third Report at para 60, Responding MR (Directions) at Tab 1.

95. On April 22, 2025, the remaining inspectors (which did not include Masterson, Williams and Garlow) passed a further (second) resolution also authorizing the Trustee's continued prosecution of the Clawback Motion. This resolution was passed to confirm inspector authorization and approval without the participation of the inspectors who had resigned.[66]

96. On May 22, 2025, counsel for the Trustee wrote to counsel for the Respondents regarding their claims concerning the propriety of the inspectors and the Trustee's actions. In the letter, the Trustee's counsel noted that since its appointment as interim receiver, the Receiver has acted on behalf of all creditors and not just the Applicants (as is the nature of the mandate of a court-appointed officer). Counsel for the Trustee also reminded counsel for the Respondents of the statements regarding the role and impartiality of the Receiver made by this Court during the February 13, 2024 hearing for the appointment of a receiver over K&M. Included with the letter was a copy of the April 22, 2025 inspectors' resolution.[67]

97. The only creditors meeting that has been held is the one that was held on October 2, 2024.[68]

98. There have been two inspector meetings: one October 2, 2024, and the second was held via two phone calls: one on April 7, 2025, and one on April 14, 2025 (a separate

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[66] Third Report at para 61, Responding MR (Directions) at Tab 1.
[67] Third Report at para 62, Responding MR (Directions) at Tab 1.
[68] Third Report at para 63, Responding MR (Directions) at Tab 1.

telephone call with each inspector). The purpose of the second meeting was to seek a second inspectors' resolution affirming authorization of the Clawback Motion.[69]

99. Neither the Receiver nor the Trustee have taken instructions from or otherwise preferred the interests of the Applicants. While Ms. Masterson and Mr. Williams, in their capacity as initial inspectors of Grozelle's bankruptcy estate, initially approved the commencement of the Clawback Motion, at no point did they instruct or influence the scope of, the basis for, or the content of the motion.[70]

100. Estate inspectors play a consultative role and may be asked to authorize certain steps taken by a bankruptcy trustee. However, it bears noting that even if no inspectors are appointed the Trustee has the same powers and obligations as if inspectors were present. The Trustee must still perform its duties with the requisite care and in the best interests of the creditors. To this end, the BIA provides significant authority to bankruptcy trustees to operate independently when inspectors are absent, are not elected, or have resigned.

101. In the hypothetical scenario where the Grozelle bankruptcy estate did not have any inspectors, the Trustee would still have the authority to carry out all necessary actions pertaining to the bankruptcy process, including the pursuit of the Clawback Motion.

102. After careful consideration, the Receiver concluded in September 2024 that pursuing the Clawback Motion is essential for enhancing overall recovery prospects for

[69] Third Report at para 64, Responding MR (Directions) at Tab 1.
[70] Third Report at para 65, Responding MR (Directions) at Tab 1.

creditors, and represents the best chance for equitable outcomes for all involved in the bankruptcy process. The Trustee continues to believe that this is the case.

iv. Fees of the Trustee and Receiver Have Been Disclosed

103. The July 20, 2023 receivership order provides that "the Receiver and its legal counsel shall pass its accounts from time to time" to a judge of the Superior Court of Justice.[71]

104. The Receivership Order does not prescribe a time by which the Receiver is required to pass its accounts.

105. As with all matters in bankruptcy proceedings, the *BIA* stipulates how a trustee's accounts are approved.

106. As indicated in the Trustee's Fourth Report to Court dated September 5, 2025, the Trustee and its counsel have incurred substantial fees, the majority of which have not been billed.[72]

107. In these circumstances - where there is no ability to pay fees – the professional have not sought to have to have their accounts approved. At such time as the Receiver seeks approval of its accounts, the Service List (which includes the Respondents) will be on notice of the motion.

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[71] July 20, 2023 Order of the Honourable Justice Goodman.

[72] Trustee's Fourth Report to Court, dated September 5, 2025 at footnote 10, Reply Motion Record of the Trustee, dated September 5, 2025 ("**Reply MR**") at Tab 1.

108. In the case of the Trustee, as prescribed in the *BIA*, accounts are to be taxed at the end of the bankruptcy proceedings.[73]

109. The Trustee will follow the procedures provided in the *BIA* for approval of its accounts.

B. Clawback Motion: A Motion is Appropriate

i. Overview

110. The order sought by the Trustee is the most effective means for the bankruptcy estate to recover the Excess Funds, and is an order that this Court can and should grant.[74]

111. The order sought is not novel: there is ample legal support for this Court to grant the relief sought. This is not the first instance in which, in the context of a Ponzi scheme, an order has been sought and granted in an insolvency proceeding declaring payments to recipients void and directing repayment of "winnings" to the estate. A functionally identical order was recently granted in *Martel*.

112. There is a limited body of Ponzi clawback case law in Canada. The Trustee has prepared a "**Cheat Sheet**" (appended to this factum as Appendix "A") that summarizes all reported decisions. In the majority of the cases identified the relief sought by the creditor representative was by way of motion or application, and the creditor representative was successful.[75]

[73] s 39, *BIA*; r 18-25, *BIA Rules*.

[74] The Trustee has consistently maintained that a summary proceeding is appropriate, and has filed written submissions on this point as early as October 2024. See Appendix "B".

[75] Attached as Appendix "A" is a chart listing the Ponzi scheme case law in Canada located by the Trustee.

113. As with all Ponzi schemes, the issues raised by Grozelle's Scheme are presented to the court "after the scheme has collapsed and creditors seek recovery under bankruptcy legislation or provincial legislation dealing with fraudulent conveyances or preferences."[76] In this context, in *Kregman v Dill* ("***LSS America***"), the British Columbia Court of Appeal recognized the valid public policy purpose that "clawback" proceedings serve in the aftermath of the collapse of a Ponzi scheme:[77]

> [i]n my opinion, it would not shock the conscience of most Canadians to discover that an investor in a Ponzi scheme who has reaped hundreds of thousands of dollars in interest or commissions would be required to disgorge his earnings […] and to share in a pool with later "investors" who have lost their entire investments.

114. In this case, the approach proposed by the Trustee is guided by the same principles and objectives as were described by the British Columbia Court of Appeal in *LLS America* and Justice Fitzpatrick in *Martel*.[78]

115. While guided by the same principles and policy objectives affirmed in *LLS America* and *Martel*, the Trustee's Clawback Motion is premised on the right of a bankruptcy trustee "to recover assets used in a fraudulent scheme by [a] bankrupt".[79] In doing so, a trustee "may avail itself of all rights and remedies available at law in pursuing the recovery of property and may bring actions on behalf of the bankrupt's estate for the benefit of its

[76] *Kregman v Dill*, 2018 BCCA 86 ("***LLS America***") at para 14.
[77] *Kregman v Dill*, 2018 BCCA 86 at para 75.
[78] *In the Matter of the Bankruptcy of My Mortgage Auction Corp. and Gregory Joseph Martel*, 2025 BCSC 1520 at para 153.
[79] *Boale, Wood & Company Ltd. v. Whitmore*, 2017 BCSC 1917 at para 93.

creditors".[80] It may pursue actions against third parties based upon statute, common law, or equitable causes of action (including claims in unjust enrichment).[81]

116. In *LLS America*, the British Columbia Court of Appeal quoted with approval the from an American decision[82]

> The goal of avoiding a debtor's fraudulent transactions is not to punish those who received funds from the debtor. Instead, fraudulent transfers are avoided to benefit a debtor's creditors by bringing property back into the debtor's estate for distribution to creditors [emphasis in original].

117. In this case, the Trustee relies upon the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F. 29, as amended ("***FCA***")*, Assignments and Preferences Act*, R.S.O. 1990, c. A. 33, as amended ("***APA***"), and the doctrine of unjust enrichment in reclaiming the Excess Funds.

118. Grounded in these well-established statutory and common law doctrines, the Trustee's claims against the Recipients are limited to recovering the interest and profits received by the Recipients (and not their original principal investment).

119. The Respondents have asserted essentially two objections to the process proposed by the Trustee:

a. *First*, the Trustee must proceed by way of action, not motion.

b. *Second*, the Respondents contend that the Trustee must as another precondition to establishing liability prove its claims under the *APA*, the *FCA*, and unjust enrichment on a transaction-by-transaction basis. In other

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[80] *Boale, Wood & Company Ltd. v. Whitmore*, 2017 BCSC 1917 at para 93.
[81] *Boale, Wood & Company Ltd. v. Whitmore*, 2017 BCSC 1917 at paras 94 and 96.
[82] *Kregman v Dill*, 2018 BCCA 86 at para 26.

words, it is argued that the *APA*, the *FCA*, and the common law require a recipient-by-recipient, and transaction-by-transaction, review of Grozelle's financial dealings to establish liability. Here, the criticism is that the Trustee has not put forward the relevant transaction-by-transaction analysis.

120. These arguments have no merit. Each of them has been expressly considered and rejected by Canadian courts in the context of Ponzi scheme disputes, including most recently in *Martel*. They are not a basis for denying the Trustee the relief sought on the Clawback Motion.

ii. BIA and Single Proceeding Model Favours Trustee's Motion

121. Summary procedures are expressly authorized by the *BIA* and the *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368, as amended ("***BIA Rules***").

122. Pursuant to Rule 11 of the *BIA Rules*,[83]

> ***Motions***
>
> **11** Subject to these Rules, every application to the court must be made by motion unless the court orders otherwise.

123. Contrary to the Respondents' unsupported assertion, there is no requirement that only those applications that seek relief under the *BIA* may proceed by way of motion.

124. The Trustee acknowledges that a court may exercise its discretion toward determining that a summary procedure is not appropriate in the circumstances. The court may direct that the matter proceeds as a trial of the issue with pleadings and the usual

[83] r 11, *BIA Rules*.

trial procedures. Hybrid trial procedures may also be considered as a viable means to decide the issues.[84]

125. However, the court does not have to proceed via a *viva voce* trial. For example, in *National Telecommunications (Re)*, in the context of a proceeding to recover a transfer under value under the *BIA*, the Honourable Justice Myers discussed the intersection of Rule 11 and summary judgment under *Hyrniak v. Mauldin*:[85]

> I am not to be taken as finding that *Hyrniak* applies to a decision by the court under s. 96 of the *BIA*. Rather, I am cognizant that Rule 11 of the [*BIA Rules*] provides that while the general rule is that applications are to be brought as motions, the judge has discretion to order a trial where appropriate. In my view, *Hyrniak* provides an analogous circumstance where the court is directed to consider whether the use of a summary process will yield a fair result that serves the goals of timeliness, affordability, and proportionality and is therefore in the interest of justice. The goals identified in *Hyrniak* are equally the goals of the bankruptcy process.

126. In the case of Ponzi schemes specifically, the Court of Appeal for British Columbia has expressly acknowledged that there is nothing unconscionable about clawback proceedings being instituted in the aftermath of a Ponzi scheme—they serve a valid public purpose.[86]

127. In *Martel,* a case where a bankruptcy trustee brought a motion seeking substantially the same relief as that sought here (claims under the *Fraudulent*

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[84] *In the Matter of the Bankruptcy of My Mortgage Auction Corp. and Gregory Joseph Martel*, 2025 BCSC 1917 at para 89.

[85] *National Telecommunications (Re)*, 2017 ONSC 1475 at para 37 [Comm List].

[86] *Kregman v Dill*, 2018 BCCA 86 at para 75.

Conveyance Act, R.S.B.C. c. 163, as amended and unjust enrichment) against hundreds of investors in a Ponzi scheme, the Honourable Justice Fitzpatrick held that:[87]

> the Trustee has properly brought the motion before the Court by way of motion (or application) as required in proceedings under the *BIA*, rather than commencing separate actions against each investor.

128. In *Titan Investments Limited Partnership (Re)*, Davide Comte, the sole shareholder of the general partner in Titan Investments Limited Partnership ("**Titan**"), ran a Ponzi scheme. During the time Titan was operating, Mr. Comte represented Titan as an investment vehicle where investor funds were purported to be pooled for the purposes of trading in the futures and equities markets. In truth, other than one isolated exception, he had not made any trades in years.[88]

129. Mr. Comte informed investors that Titan would be wound up. He then paid out full or partial redemptions to 87 of Titan's investors. Thereafter, freeze orders were issued by the Alberta Securities Commission. Over 40 investors received no redemptions from Titan or received redemptions that were not sufficient to cover their initial investment.[89]

130. Titan's court-appointed receiver, and certain of Titan's unpaid investors, subsequently brought an application in the receivership proceeding for an order:

a. declaring that payments by Titan to the "winners" of a Ponzi scheme were void as fraudulent preferences;

[87] *In the Matter of the Bankruptcy of My Mortgage Auction Corp. and Gregory Joseph Martel*, 2025 BCSC 1917 at para 88.

[88] *Titan Investments Limited Partnership (Re)*, 2005 ABQB 637.

[89] *Titan Investments Limited Partnership (Re)*, 2005 ABQB 637 at para 12.

b. directing the "winners" to repay the full amount of the payments to the receiver; and

c. failing which the applicants would be entitled to judgment against those "winners" who had not paid.

131. In *Titan Investments* the Alberta Court of Queen's Bench (as it then was) first determined that the payments constituted fraudulent preferences under section 2 of Alberta's *Fraudulent Preferences Act*, R.S.A. 2000, c. F-24, as amended. It then directed the investors that had received payments to repay the full amount of those payments to the receiver, failing which the applicants would be entitled to judgment against those parties who had not repaid the full amount they had received.

132. In *Tron Construction & Mining Limited Partnership & Tron Construction Mining Inc.*, the Saskatchewan Court of King's Bench exercised its jurisdiction under s. 183(1) of the *BIA* to impose a claims process for determining liens against certain lands, rather than having those claims adjudicated in other civil proceedings in the usual fashion. The court relied on the single proceedings model and the benefits of a collective proceeding.[90]

133. The *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, ("***Rules of Civil Procedure***") also support the form of order sought. Rule 60.06(2) expressly contemplates that a person who is not named as a party to an action can, for enforcement purposes, be made subject to an Order in respect of the action.[91]

[90] *Tron Construction & Mining Limited Partnership & Tron Construction Mining Inc.*, 2022 SKKB 203 at paras 12, 16, and 22.

[91] r 60.06(2), *Rules of Civil Procedure*.

134. In addition, the procedural flexibility underpinning the relief (e.g. relief being sought in two phases) is reinforced by the very nature of the *Rules of Civil Procedure*, which are to "be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits."[92]

135. In addition to precedent and the *Rules of Civil Procedure*, the Supreme Court of Canada has held that procedural flexibility is a hallmark of insolvency law. In insolvency proceedings, it has become commonplace for "both the court *and* the parties [to] tailor proceedings to fit a particular case".[93] It is precisely the ability of insolvency law to allow debtors, creditors, and courts "to design a process and [an] outcome that is appropriate for individual […] cases", and to ensure the efficient conduct of insolvency proceedings, that makes it so valuable.[94]

136. The procedure employed by the Trustee is consistent with the single proceedings model, which has been repeatedly endorsed in Canadian insolvency proceedings.[95]

137. The procedure is an efficient and expedient means to resolve what can only be described as issues that are common issues as between all Recipients. It is undeniable that if the Trustee is required to undertake separate actions against all 120 Recipients, the cost of doing so would be exorbitant. The relief sought on this application is intended to provide a mechanism to permit the Trustee to pursue claims in a cost-effective manner.

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[92] r 1.04(1), *Rules of Civil Procedure*.
[93] *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 at paras 64, 66, and 73.
[94] *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 at para 66 (internal quotations omitted).
[95] *In the Matter of the Bankruptcy of My Mortgage Auction Corp. and Gregory Joseph Martel*, 2025 BCSC 1520 at para 124.

138. The Respondents' reliance on *A. Farber & Partners Inc. v. The James Boughner Foundation et al* is inapposite. First, the unpublished endorsement does not contain any facts or background information regarding the procedural posture in which the proceeding arose. Further, it appears that the Trustee's "application" was against a single respondent, not 120, as here. The same equitable considerations at play in this case would not be present in that case. Finally, contrary to the dated cited in the Respondents' factum, the endorsement was issued in 2013 and pre-dates the Court of Appeal's decision in *Mundo Media Ltd. (Re)*, discussed below, as well as many of the Ponzi scheme cases discussed herein.

139. The argument that the Trustee cannot rely on the *BIA Rules* because it is not asserting a cause of action under the *BIA* is also without merit. Section 98 of the *BIA* provides:[96]

> **Recovering proceeds if transferred**
>
> **98 (1)** If a person has acquired property of a bankrupt under a transaction that is void or voidable and set aside or, in the Province of Quebec, null or annullable and set aside, and has sold, disposed of, realized or collected the property or any part of it, the money or other proceeds, whether further disposed of or not, shall be deemed the property of the trustee.

140. In *Bankruptcy and Insolvency Law of Canada, 4th Edition*, Holden and Morawatz note that section 98 of the *BIA*:[97]

> deals with the situation where a person has acquired property from a bankrupt under a transaction that is void or voidable and has sold or disposed of the property. The section is not limited to settlements, preferences, *etc.*, that are void under the *Bankruptcy and Insolvency Act;* it encompasses all

[96] s 98, *BIA*; *In the Matter of the Bankruptcy of My Mortgage Auction Corp. and Gregory Joseph Martel*, 2025 BCSC 1520 at paras 86-88.

[97] § 5:555 Recovery of Property from Transferee from Bankrupt – Generally.

> transactions that are void or voidable, including those made void or voidable by provincial legislation.

141. Further, and as noted by the Court of Appeal, the provincial property statutes dealing with preferences and fraudulent transfers may be used by a Trustee when the time limits under the *BIA* have expired.[98] In this way, the two statutory causes of action are complimentary and there is no reason that the Trustee, whose authority derives from the *BIA*, and is acting in a bankruptcy proceeding, cannot rely on the *BIA Rules*.

142. The procedure proposed by the Trustee is also fair. This is so in the sense of allowing the affected Recipients to raise any legal or factual defences or issues pertaining first to liability (Phase I of this motion). If liability is found, the affected investors are also afforded a robust process to determine the amount of any Excess Funds, having further resort to court, if appropriate.

143. The Respondents suggest that the Investors should be dealt with individually on a case-by-case basis. This is precisely what the proposed order will facilitate, in an efficient manner that will save costs for all involved. The relief sought on this Clawback Motion is intended to provide a mechanism to permit the Trustee to pursue claims in a cost-effective manner while also preserving the rights of the Recipients. This preservation of rights is reflected in the provisions of the proposed order, including those allowing for the adjustment of amounts owing at Phase II of the process in appropriate circumstances.

144. The order sought also aligns with the single proceedings model, which has been repeatedly endorsed in Canadian insolvency proceedings. That model assists trustees in achieving the first purpose of bankruptcy (the equitable distribution of assets) by requiring

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[98] *Indcondo Building Corp. v Sloan*, 2010 ONCA 890 at para 9.

that all creditors of a bankrupt participate in one collective proceeding.[99] It is intended to "mitigate the inefficiency and chaos that would result if each stakeholder in an insolvency initiated a separate claim to enforce its rights. In other words, the single proceeding model protects the clear 'public interest in the expeditious, efficient and economical clean-up of the aftermath of a financial collapse'".[100]

145. While the single proceedings model "is typically used as a 'shield' to protect debtors from having to defend claims in multiple proceedings or jurisdictions" the Court of Appeal for Ontario, in *Mundo Media Ltd. (Re)*, expressly confirmed that there is "nothing in the jurisprudence precluding" the model's use "as a 'sword' to enable receivers [or trustees] to pursue claims against a third party […] to promote efficiency and maximize returns for creditors".[101]

146. The alternative to the order sought is that the Trustee claims, and potentially proceeds to trial, against each of the individual Recipients of the Excess Funds. This alternative is not workable. Such a procedure is anything but speedy and inexpensive; and it rarely results in resolution or justice for the Net Losers. It is a recipe for delay, and for funds to be spent on legal and professional fees, as opposed to being returned to the creditors of Grozelle.

147. In *Mundo Media*, the Court of Appeal noted that the motion judge had identified two decisions in which courts had invoked the single proceeding model to allow a claim by a debtor against a third party to be commenced in the jurisdiction where the bankruptcy

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[99] *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 at para 54; *Alberta (Attorney General) v Moloney*, 2015 SCC 51 at para 33.
[100] *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 at para 55.
[101] *Mundo Media Ltd. (Re)*, 2022 ONCA 607 at para 52.

occurred, *Re: Essar Steel Algoma Inc. Et al*[102] and *Montréal, Maine & Atlantic Canada Co*[103].[104] It ultimately dismissed the motion for leave to appeal, finding:[105]

> The motion judge's decision is also in keeping with the purpose of the single proceeding model as outlined by the Supreme Court in *Century Services*– to promote efficiency and maximize returns for creditors – and accords with the jurisprudence that parties should not be allowed to contract out of the single proceeding model where one party may make claims that will seriously adversely affect all creditors. <u>I see no principled reason for drawing the distinction</u> urged by the moving party [emphasis added].

148. Notably, the Trustee is not asking that the Recipients to share *pro rata* in the losses suffered by Net Losers in the Scheme. The Trustee is seeking to put the Investors in the position they would have been in had they not invested in the Scheme. Recovery is only sought of those amounts the Recipients received *over and above* the amounts they advanced to Grozelle—not the amounts they advanced. The Excess Funds the Recipients received are ultimately funds that belonged to Net Losers and the Trustee is attempting to return as much of those funds as possible to the Net Losers.

149. In this way, Recipients are actually being treated *better* than the Net Losers: the Trustee is not requesting that the Recipients share the Scheme's losses *pro rata* with the Net Losers, and the Net Winners will recover 100 cents on the dollar of all funds they advanced to Grozelle. The Net Losers will not.

150. The order sought by the Trustee is precisely the sort of pragmatic approach the *BIA* calls for. It is appropriate in these circumstances, where (i) 116 Net Losers have

[102] *Re: Essar Steel Algoma Inc. et al*, 2016 ONSC 595 at para 31 [Comm List].
[103] *Montréal, Maine & Atlantic Canada Co.*, 2013 QCCS 5194 at para 29.
[104] *Mundo Media*, 2022 ONCA 607 at paras 52,and 58.
[105] *Mundo Media*, 2022 ONCA 607 at para 52.

suffered millions of dollars in losses as a result of the Scheme, (ii) there are 120 Recipients, and (iii) there are limited funds remaining with which to pursue hundreds of Recipients. The order sought on this application is the only realistic opportunity the Trustee has to claw back the Excess Funds on behalf of the bankruptcy estate in a reasonable amount of time and without years of delay and incurring inordinate professional and legal fees.

iii. Alternative is not Workable

151. The Respondents suggest that the Trustee should pursue Recipients on an individual, transaction-by-transaction, basis. This approach is inconsistent with *Titan Investments* and the other authorities set out above. In addition, while some trustees in Canada have commenced claw-back proceedings individually against each of the net winners of a Ponzi scheme, it is clear that such a process is prohibitively expensive and time-consuming, and has had limited success in schemes involving dozens of investors, never mind hundreds.

152. For example, in *Jastram Properties Ltd. v. Tan*, the Tan family ran a Ponzi scheme through which they solicited investments for a non-existent enterprise in exchange for promissory notes that were not honoured ("**Tan Scheme**"). The Tans were declared bankrupt, and their estates were consolidated. The trustee pursued 19 separate actions against the net winners it had identified, whose winnings collectively exceeded $7.5 million. At the same time, two separate class actions were pursued by investors against the Tans and a financial institution, respectively, each of which was settled.[106] Years later, the settlement funds from the class action against the Tans were in trust, and a settlement

[106] *Jastram Properties Ltd. v Tan*, 2019 BCSC 475; *Jastram Properties Ltd. v Tan*, 2020 BCSC 1610; *Jastram Properties Ltd. v HSBC Bank Canada*, 2024 BCSC 1833.

administration plan was brought before the court for approval. At this point, the trustee had determined that, given the expected litigation costs, it was not “in a position to pursue the [individual] claims without funding”.[107] Given a class action had been settled, certain investors preferred to move on and obtain their share of the class action settlement proceeds now, rather than wait for an “uncertain amount of time” given how long litigation might take.[108]

153. In *Doyle Salewski Inc. v. Scott*, the bankruptcy of Golden Oaks Enterprises Inc. (“**Golden Oaks**”) and Jean-Claude Lacasse is an example of another Ponzi scheme where the trustee faced significant procedural difficulties in obtaining judgments against net winners. It took nearly a decade for the trustee to obtain a final judgment in a single, consolidated, summary trial proceeding against only a handful of the nearly 100 investors it originally pursued individual actions against.[109]

154. Golden Oaks was a rent-to-own business that became a Ponzi scheme. Publicly, it was an opportunity for individuals who did not qualify for a mortgage to buy a home. Less publicly, Golden Oaks was promoted as a means to turn a quick profit. Individuals were invited to loan Golden Oaks money to fund its operations. They were described as investors but were actually short-term investors who received a promissory note entitling them to a high rate of interest in return for the advance of their funds for a few weeks or months. Golden Oaks operated from 2009 until July 2013, when it collapsed. Over that time, it issued 504 promissory notes to 153 investors.[110]

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[107] *Jastram Properties Ltd. v Tan*, 2021 BCSC 2432 at paras 29, 30, and 35.
[108] *Jastram Properties Ltd. v Tan*, 2021 BCSC 2432 at para 32.
[109] *Doyle Salewski Inc. v Scott,* 2019 ONSC 5108, var’d on other grounds, 2022 ONCA 509.
[110] *Doyle Salewski Inc. v Scott,* 2019 ONSC 5108 at paras 2-6, var’d on other grounds, 2022 ONCA 509.

155. The trustee initially commenced 88 separate actions against Golden Oaks investors in 2015, 17 of which were consolidated and eventually heard together by way of a summary trial in *Golden Oaks (Scott),* which took place over the course of six days in December 2018. The trustee did not receive reasons in *Golden Oaks (Scott)* until nine months after the summary trial was held; it was wholly or partly successful against almost all named defendants in the 17 lawsuits, and was granted judgment for approximately $730,000 in total.[111]

156. That decision was appealed and cross appealed on a number of grounds. It was ultimately varied by the Ontario Court of Appeal in July 2022, nearly three years later.[112] There was then a further appeal to the Supreme Court of Canada, whose decision affirming the Court of Appeal's judgment was not issued until October 11, 2024.[113] It is unclear whether any of the remaining 71 claims commenced by the trustee in 2015 have been resolved.

157. Similarly, in *Samji (Re)* the trustee dealing with that Ponzi scheme attempted to enter into settlements with net winners, rather than pursuing costly litigation against all of them. It received a settlement proposal from two of the net winners of the scheme, which was opposed by four net losers. The court approved the proposal because, among other reasons:

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[111] *Doyle Salewski Inc. v Scott*, 2019 ONSC 5108 at paras 1 and 91; *Golden Oaks Enterprises Inc. (Trustee of) v Scott,* 2020 ONSC 195 at para 1.

[112] *Golden Oaks Enterprises Inc. (Trustee of) v. Scott,* 2022 ONCA 509.

[113] *Scott v. Golden Oaks Enterprises Inc.*, 2024 SCC 32.

a. a “strictly legalistic approach” to the *BIA* is unhelpful, and courts should take a “pragmatic problem-solving approach which is flexible enough to deal with unanticipated problems” in the context of insolvency proceedings;[114]

b. the trustee noted that costs associated with commencing actions against every net winner would be exorbitant;[115] and

c. Trustees should be allowed to enter into settlement discussions with investors because a trustee should not be “forced to commence multiple, potentially costly, civil actions against all of the investors who profited from the scheme”;[116]

158. Here, it is evident that there are insufficient resources to support efforts by the Trustee to pursue each Recipient individually. Recoveries have been extremely limited[117] The Trustee continues to finance the administration of Grozelle’s proceedings by deferring collection of fees.[118] The only viable option to facilitate any meaningful recovery for the Net Losers is to grant the Order sought by the Trustee.

159. If the Trustee is required to proceed against each Recipient separately, the process is simply unworkable and, given the lack of funds in the bankruptcy estate, not feasible. Such a scenario, even if it could be undertaken, would inevitably be characterized by delay and costs, all to the detriment of the bankruptcy estate and the potential distributions to Net Losers, whom many of the Respondents claim to be.

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114 *Samji (Re)*, 2013 BCSC 2101 at para 23.
115 *Samji (Re)*, 2013 BCSC 2101 at para 29.
116 *Samji (Re)*, 2013 BCSC 2101 at para 37.
117 Fourth Report at footnote 10, Reply MR at Tab 1.
118 Fourth Report at footnote 10, Reply MR at Tab 1.

160. To endorse such an approach would result in years, if not decades, of litigation with minimal recovery at the end of it all for the Net Losers. The objections raised to this collective procedure are no more than a litigation strategy by certain Recipients to delay and frustrate the recovery of funds for Net Losers and to avoid having to repay any of the profits some of the Respondents have admitted that they received from the Scheme.

iii. Trustee Need not Prove Excess Funds on a Transaction by Transaction Basis

161. The Respondents' contention that the Trustee is obliged to establish its claims on a transaction-by-transaction basis does not withstand scrutiny. Courts in Ontario, and other provinces, have repeatedly held that a trustee (or receiver) does not have to establish its claims on a transaction-by-transaction basis.

162. In *Martel*, Justice Fitzpatrick outright rejected an argument from certain net winners that the Trustee had to prove its claims on a transaction-by-transaction basis holding that "there is no merit to the submission of some Net Winners that the Trustee must establish MMAC's insolvency on a transaction-by-transaction basis."[119]

163. This Court has held that "a series of transactions as part of a general scheme to defraud creditors can also constitute a fraudulent conveyance".[120] The fact that transfers of funds were made over a period of years instead of in a single transaction is not relevant to the *FCA* analysis.[121]

[119] *In the Matter of the Bankruptcy of My Mortgage Auction Corp. and Gregory Joseph Martel*, 2025 BCSC 1520 at paras 167-169.

[120] *Conte v Pettle*, 2023 ONSC 3881 at para 87 (internal quotations and citations omitted), varied by 2024 ONCA 733.

[121] *Conte v Pettle*, 2023 ONSC 3881 at para 87, varied by 2024 ONCA 733.

164. The transaction-by-transaction argument appears to be based on a misunderstanding of the decisions in the *Golden Oaks* matter. Contrary to the Respondents' assertions the Honourable Justice Gomery (as Justice Gomery then was) does not hold that a trustee cannot proceed on other than a transaction-by-transaction basis in unjust enrichment claims. Instead, Justice Gomery held that in that case she did not accept the defendants' defence that the transactions they entered into with the bankrupt should be aggregated under a theory of equitable set off.[122] Justice Gomery did not find that the trustee could not proceed on an aggregated basis. Further, unlike here, there is no suggestion that the trustee in *Golden Oaks* was incapable of ascertaining discrete transactions between the bankrupt and "net winners".

165. Further, equitable set off is a claim that arises in *equity*. Equitable set off requires that a defendant establish that the relationship between the parties is such that "it would be unconscionable or inequitable not to permit a set off."[123] There is no equitable ground that would permit a beneficiary in a Ponzi scheme to keep their winnings. This is completely different from considering whether the Trustee should be allowed to pursue unjust enrichment, preference, or fraudulent conveyance claims in circumstances where it is impossible to discern discrete lending transactions.

166. Here, it would be inequitable to require the Trustee to establish its claims on a transaction-by-transaction basis when it is not possible to do so on account of the inadequacy of records—a point properly conceded by at least some of the Respondents.[124]

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[122] *Doyle Salewski Inc. v Scott,* 2019 ONSC 5108 at para 444, var'd on other grounds, 2022 ONCA 509.
[123] *Doyle Salewski Inc. v Scott,* 2019 ONSC 5108 at para 549, var'd on other grounds, 2022 ONCA 509.
[124] Fourth Report at para 52, Reply MR at Tab 1.

167. It would be an absurd result if a Trustee cannot recover claims for false profits distributed in a Ponzi scheme[125] simply because the person who ran the scheme was disorganized and did not record the scheme. Such a finding not only defies the nature of Ponzi schemes, but provides a roadmap for misfeasance and a way for a defendant to avoid liability even if aware of the Ponzi scheme. The Court should not give this argument any countenance.

168. In support of their argument that the Trustee should proceed on a transaction-by-transaction basis and that individual actions are more appropriate, the Respondents argue that claims under section 2 of the *FCA* and section 4 of the *APA* require that the Trustee prove that the recipients of fraudulent conveyances or preferences must have the intent to receive a preference. This is not the law.

169. The intent of a recipient to a fraudulent conveyance or a preference is an affirmative defence under both the *FCA* and the *APA.* It is not an element of a plaintiff's claim.[126] To successfully prove this defence, defendants must <u>also prove that they gave good consideration.</u>[127]

170. This principle is a complete response to the assertion, in certain clawback motion responses, that Recipients invested in the Scheme in good faith. While section 3 of the *FCA* provides that section 2 does not apply to a conveyance of property for good consideration and good faith, and section 5 of the *APA* similarly states that section 4 does not apply to an assignment or transfer of property for good consideration and good faith,

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125 Fourth Report at paras 48-49, Reply MR at Tab 1.

126 s 5, *APA*; s 3, *FCA*; *Stevens et al v Hutchens et al*, 2022 ONSC 1508 at para 35 [Comm List), appeal dismissed by 2022 ONCA 771.

127 s 5, *APA*; s 3, *FCA*; *Haag Capital, LLC v Correia*, 2010 ONSC 5339 at para 36.

this defence is not available to shield an investor in a Ponzi scheme from having to return sums received in excess of his or her investment.

171. To enforce a contract as to fictitious profits would only further the Grozelle fraudulent scheme. No one should profit from a fraudulent scheme at the expense of others. Every transfer prefers the transferee to those investors at the end of the line.

172. Because Excess Funds payments made by Grozelle can never represent "good consideration", due to the funds being the fruit of a Ponzi scheme, it would defy common sense to require that each of the 8,500 transactions comprising the Scheme be reviewed. This is a matter of logic. If a recipient of Excess Funds made in furtherance of a Ponzi scheme can never provide "good consideration" for the purpose of the *FCA*, then every such payment lacked "good consideration" and the intent of the recipient is irrelevant.[128]

C. Other Objections

i. Calculation Issues

173. The Respondents raise concerns regarding consolidation of amounts received by Investors and facilitation of loans from third parties by Investors.[129] As noted in the Trustee's Factum in support of the Clawback Motion, these are Phase II issues that need not be addressed on this motion.

174. Regardless, and as the Trustee has explained multiple times, including most recently in its Third Report, The Trustee chose to limit its calculation of funds received or lost by Investors to those funds that flowed through the Grozelle Accounts because:

(a) it accords with the Trustee's legal authority and obligations;

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[128] *Boale, Wood & Company Ltd. v Whitmore*, 2017 BCSC 1917 at para 70.

[129] Moving Factum at paras 42, and 48.

(b) the Trustee has confidence that the third-party independent source documentation such as wire transfer forms, bank drafts, and copies of deposited cheques ("**Source Documentation**") is reliable and accurate; and

(c) it is a logical given that there is no other clear demarcation of where the Scheme starts and ends (i.e. it is unknown how many Investors may have "consolidated" funds from other Investors to transfer to the Scheme, and how many of those other Investors also "consolidated" funds).

175. The Respondents point out that a few participants chose to act as "facilitators" or funds "consolidators" at points in time. To the extent that this gives rise to accounting issues that ought to be examined further, such matters can be addressed during Phase II of the motion.

176. The Trustee admits that some its preliminary determinations may be in error and that some of the amounts claimed by the Trustee may be less (or more) than what the Trustee has presently determined.[130] Nevertheless, any deficiencies that may exist in the Trustee's initial determinations may be addressed in Phase II of the Trustee's proposed process. Phase II of the proposed process creates a form of claims process that preserves the right to make such arguments.

177. Persons identified as having received Excess Funds can dispute the Trustee's calculations of the quantum of the Excess Funds. If a Recipient establishes that the quantum of the Excess Funds is not accurate, then that Recipient will only be liable for

[130] Fourth Report at para 55, Reply MR at Tab 1.

the corrected amount. If a Recipient establishes that she is a “net loser” rather than a “net winner”, then that Recipient will not only not be liable for any amount but will in fact share in any distributions alongside the “net losers”. For these reasons, no Recipient is prejudiced by the process established by the proposed order.

ii. Production of Documents

178. Earlier in this proceeding the Trustee, and this Court, devoted many hours to the Respondents’ expansive requests for the production of all Source Documentation and the entirety of the Trustee’s internal working papers, all apparently for the benefit of their accounting expert.

179. The Respondents claimed that such records were necessary, indeed essential, and that they could not proceed with their motion for directions until all such records were produced.

180. The Trustee negotiated and obtained a consent order that permitted the Respondents and their counsel to review everything requested.[131]

181. The Trustee created a virtual data room populated with the Source Documentation and the Trustee’s working papers and granted access to those Respondents who provided signed confidentiality undertakings.[132]

182. Despite the Respondents’ claims that such information was vital to their motion, their accounting expert, Peter McCaulay, did not file an expert report. Two accounting reports were filed by respondents, but the reports filed are specific to those respondents’

[131] Order of Justice Valente, dated March 27, 2025.
[132] Supplement to the Second Report of the Trustee, dated June 2, 2025, at para 10.

individual accounting issues, and did not rely upon the broader Source Documentation (i.e. for *all* Investors) and working papers produced by the Trustee.[133]

183. It now appears that the Respondents' document production demands (at least as far as all Investors' source documentation and all Trustee working papers are concerned) lacked specific intent and were simply exploratory. Rather than generating evidence for the motion, the Respondents' demands on the court officer served to prolong the process.

184. The Respondents now return to court seeking similarly expansive document production and disclosure from the Trustee on such matters as "all creditor communications in the bankruptcy", and all "communications between the Trustee (or its counsel) and [the Applicants]".

185. A court officer is only required to respond to parties *reasonable* requests for information.[134] The Respondents' latest documentary production requests are unreasonable and present as a strategy similar to their earlier document demands.

186. The production of communication between the Applicants and the court officer would not affect the outcome of this motion or provide any relevant evidence because it has no bearing on the matters properly under consideration in the Clawback Motion.

[133] Forensic Accounting Report, dated August 19, 2025, attached as Exhibit "H" to the Affidavit of John McMullan, sworn August 20, 2025; Letter from MNP LLP to Daniel Naymark, dated August 15, 2025, attached as Exhibit "E" to the Affidavit of Robyn Lee, sworn August 15, 2025, Motion Record and Responding Motion Record (Motion for Directions and Clawback Motion returnable September 26, 2025), at Tabs 3E, and 5H.

[134] See *4519922 Canada Inc., Re*, 2015 ONSC 6153 [Comm List] (holding that the Monitor did not have to produce the documents sought by certain creditors because the documents were not relevant to the determination of the creditors' claims).

187. In failing to use all parties' Source Documentation and Trustee working papers, and in bringing their motion for directions without reference to what was produced at great time and expense, the Respondents have showed their hand. They should not be permitted to again require the estate, and ultimately the Net Losers, to fund their fishing expedition for documents that are irrelevant to this motion and will never be used.

V. CONCLUSION

188. More than two years after its appointment as Receiver, the Trustee continues to try and recover funds for the benefit of the Net Losers. The Order sought would allow it to continue that work. Receivers, trustees, and most importantly victims of Ponzi schemes, should not be hindered by inflexible, expensive, and time-consuming court procedures that result in minimal or no resolution for victims of Ponzi schemes.

189. The Trustee has cited ample legislation and caselaw in support of its Clawback Motion. It requests that the Court grant an order that can effectively deal with the mess left in the wake of the Grozelle's bankruptcy.

AL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of September, 2025.

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Counsel for Grant Thornton Limited, in its capacity as Trustee in Bankruptcy of Douglas Grozelle

SCHEDULE "A"

LIST OF AUTHORITIES

1. *4519922 Canada Inc., Re*, 2015 ONSC 6153 [Comm List]
2. *Alberta* (*Attorney General*) v *Moloney*, 2015 SCC 51.
3. *Boale, Wood & Company Ltd. v. Whitmore*, 2017 BCSC 1917.
4. *Casimir Capital Ltd*., (Re), 2015 ONSC 2819 [Comm List].
5. *Conte v Pettle*, 2023 ONSC 3881.
6. *Conte v Pettle*, 2024 ONCA 733.
7. *Doyle Salewski Inc. v Scott*, 2019 ONSC 5108.
8. *FT ENE Canada Inc.* (*Re*), 2019 ONSC 5793 [Comm List].
9. *Golden Oaks Enterprises Inc. v. Scott*, 2019 ONSC 5108.
10. *Golden Oaks Enterprises Inc*. (*Trustee of*) v *Scott*, 2020 ONSC 195.
11. *Haag Capital, LLC* v *Correia*, 2010 ONSC 5339.
12. *Indcondo Building Corp. v Sloan*, 2010 ONCA 890.
13. *In the Matter of the Bankruptcy of My Mortgage Auction Corp. and Gregory Joseph Martel*, 2025 BCSC 1520.
14. *Jastram Properties Ltd. v HSBC Bank Canada*, 2024 BCSC 1833.
15. *Jastram Properties Ltd. v Tan*, 2019 BCSC 475.
16. *Jastram Properties Ltd. v Tan*, 2020 BCSC 1610.
17. *Jastram Properties Ltd. v Tan*, 2021 BCSC 2432.
18. *Kregman v Dill*, 2018 BCCA 86.
19. *Monahan* (*Re*), 2006 NBBR 386.
20. *Montréal, Maine & Atlantic Canada Co*., 2013 QCCS 5194.
21. *Mundo Media Ltd*. (*Re*), 2022 ONCA 607.

22. *National Telecommunications* (*Re*), 2017 ONSC 1475 [Comm List].

23. *Peace River Hydro Partners v. Petrowest Corp*., 2022 SCC 41.

24. *Re*: *Essar Steel Algoma Inc*. *et al*, 2016 ONSC 595 [Comm List].

25. *Samji* (*Re*), 2013 BCSC 2101.

26. *Scott* v *Golden Oaks Enterprises Inc*., 2024 SCC 32.

27. *Stevens et al*. v *Hutchens et al*., 2022 ONSC 1508.

28. *Stevens v Hutchens*, 2022 ONCA 771.

29. *Titan Investments Limited Partnership (Re)*, 2005 ABQB 637

30. *Tron Construction & Mining Limited Partnership & Tron Construction Mining Inc*., 2022 SKKB 203.

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

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date September 17, 2025

David S Ward

Signature

SCHEDULE “B”

LIST OF STATUTES

***Assignment and Preferences Act*, R.S.O. 1990, c. A. 33**

Assignments for benefit of creditors and good faith sales, etc., protected

5 (1) Nothing in section 4 applies to an assignment made to the sheriff for the area in which the debtor resides or carries on business or, with the consent of a majority of the creditors having claims of $100 and upwards computed according to section 24, to another assignee resident in Ontario, for the purpose of paying rateably and proportionately and without preference or priority all the creditors of the debtor their just debts, nor to any sale or payment made in good faith in the ordinary course of trade or calling to an innocent purchaser or person, nor to any payment of money to a creditor, nor to any conveyance, assignment, transfer or delivery over of any goods or property of any kind, that is made in good faith in consideration of a present actual payment in money, or by way of security for a present actual advance of money, or that is made in consideration of a present actual sale or delivery of goods or other property where the money paid or the goods or other property sold or delivered bear a fair and reasonable relative value to the consideration therefor.

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3**

30 (1) The trustee may, with the permission of the inspectors, do all or any of the following things:

> **(a)** sell or otherwise dispose of for such price or other consideration as the inspectors may approve all or any part of the property of the bankrupt, including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt, by tender, public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
>
> **(b)** lease any real property or immovable;
>
> **(c)** carry on the business of the bankrupt, in so far as may be necessary for the beneficial administration of the estate of the bankrupt;
>
> **(d)** bring, institute or defend any action or other legal proceeding relating to the property of the bankrupt;
>
> **(e)** employ a barrister or solicitor or, in the Province of Quebec, an advocate, or employ any other representative, to take any proceedings or do any business that may be sanctioned by the inspectors;
>
> **(f)** accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations as to security and otherwise as the inspectors think fit;

(g) incur obligations, borrow money and give security on any property of the bankrupt by mortgage, hypothec, charge, lien, assignment, pledge or otherwise, such obligations and money borrowed to be discharged or repaid with interest out of the property of the bankrupt in priority to the claims of the creditors;

(h) compromise and settle any debts owing to the bankrupt;

(i) compromise any claim made by or against the estate;

(j) divide in its existing form among the creditors, according to its estimated value, any property that from its peculiar nature or other special circumstances cannot be readily or advantageously sold;

(k) elect to retain for the whole part of its unexpired term, or to assign, surrender, disclaim or resiliate any lease of, or other temporary interest or right in, any property of the bankrupt; and

(l) appoint the bankrupt to aid in administering the estate of the bankrupt in such manner and on such terms as the inspectors may direct.

If no inspectors

30 (3) If no inspectors are appointed, the trustee may do all or any of the things referred to in subsection (1).

Remuneration of Trustee

To be voted by creditors

39 (1) The remuneration of the trustee shall be such as is voted to the trustee by ordinary resolution at any meeting of creditors.

Not to exceed 7½ per cent

(2) Where the remuneration of the trustee has not been fixed under subsection (1), the trustee may insert in his final statement and retain as his remuneration, subject to increase or reduction as hereinafter provided, a sum not exceeding seven and one-half per cent of the amount remaining out of the realization of the property of the debtor after the claims of the secured creditors have been paid or satisfied.

For carrying on debtor’s business or in case of a proposal

(3) Where the business of the debtor has been carried on by the trustee or under his supervision, he may be allowed such special remuneration for such services as the creditors or the inspectors may by resolution authorize, and, in the case of a proposal, such special remuneration as may be agreed to by the debtor, or in the absence of agreement with the debtor such amount as may be approved by the court.

Successive trustees

(4) In the case of two or more trustees acting in succession, the remuneration shall be apportioned between the trustees in accordance with the services rendered by each, and in the absence of agreement between the trustees the court shall determine the amount payable to each.

Court may increase or reduce

(5) On application by the trustee, a creditor or the debtor and on notice to such parties as the court may direct, the court may make an order increasing or reducing the remuneration.

Recovering proceeds if transferred

98 (1) If a person has acquired property of a bankrupt under a transaction that is void or voidable and set aside or, in the Province of Quebec, null or annullable and set aside, and has sold, disposed of, realized or collected the property or any part of it, the money or other proceeds, whether further disposed of or not, shall be deemed the property of the trustee.

Trustee may recover

(2) The trustee may recover the property or the value thereof or the money or proceeds therefrom from the person who acquired it from the bankrupt or from any other person to whom he may have resold, transferred or paid over the proceeds of the property as fully and effectually as the trustee could have recovered the property if it had not been so sold, disposed of, realized or collected.

Operation of section

(3) Notwithstanding subsection (1), where any person to whom the property has been sold or disposed of has paid or given therefor in good faith adequate valuable consideration, he is not subject to the operation of this section but the trustee's recourse shall be solely against the person entering into the transaction with the bankrupt for recovery of the consideration so paid or given or the value thereof.

Trustee subrogated

(4) Where the consideration payable for or on any sale or resale of the property or any part thereof remains unsatisfied, the trustee is subrogated to the rights of the vendor to compel payment or satisfaction.

Meetings of Creditors

First meeting of creditors

102 (1) Subject to subsection (1.1), it is the duty of the trustee to inquire as to the names and addresses of the creditors of a bankrupt and, within five days after the date of the trustee's appointment, to send in the prescribed manner to the bankrupt, to every known creditor and to the Superintendent a notice in the prescribed form of the bankruptcy and of the first meeting of creditors, to be held within the twenty-one day period following the day of the trustee’s appointment, at the office of the official receiver in the locality of the bankrupt, but the official receiver may, when the official receiver deems it expedient, authorize the meeting to be held at the office of any other official receiver or at such other place as the official receiver may fix.

Documents to accompany notice

(2) The trustee shall include with the notice referred to in subsection (1) a list of the creditors with claims amounting to twenty-five dollars or more and the amounts of their claims together with a proof of claim and proxy in the prescribed form but no name shall be inserted in the proxy before it is so sent.

Publication in local paper by trustee

(4) A notice in the prescribed form shall, as soon as possible after the bankruptcy and not later than five days before the first meeting of creditors, be published in a local newspaper by the trustee.

Purpose of meeting

(5) The purpose of the first meeting of creditors shall be to consider the affairs of the bankrupt, to affirm the appointment of the trustee or substitute another in place thereof, to appoint inspectors and to give such directions to the trustee as the creditors may see fit with reference to the administration of the estate.

Procedure at Meetings

Chair of first meeting

105 (1) The official receiver or his nominee shall be the chair at the first meeting of creditors and shall decide any questions or disputes arising at the meeting and from any such decision any creditor may appeal to the court.

Non-receipt of notice by creditor

(5) Where a meeting of creditors is called, the proceedings had and resolutions passed at the meeting, unless the court otherwise orders, are valid, notwithstanding that some creditors had not received notice.

Right of creditor to vote

109 (1) A person is not entitled to vote as a creditor at any meeting of creditors unless the person has duly proved a claim provable in bankruptcy and the proof of claim has been duly filed with the trustee before the time appointed for the meeting.

Vote of creditors not dealing at arm's length

(6) If the chair is of the opinion that the outcome of a vote was determined by the vote of a creditor who did not deal with the debtor at arm's length at any time during the period that begins on the day that is one year before the date of the initial bankruptcy event and that ends on the date of the bankruptcy, the chair shall redetermine the outcome by excluding the creditor's vote. The redetermined outcome is the outcome of the vote unless a court, on application within 10 days after the day on which the chair redetermined the outcome of the vote, considers it appropriate to include the creditor's vote and determines another outcome.

Evidence of regularity

114 (2) Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been signed by the chair shall be deemed to have been duly convened and held and all resolutions passed or proceedings thereat to have been duly convened and held and to have been duly passed or had.

Resolution respecting inspectors

116 (1) At the first or a subsequent meeting of creditors, the creditors shall, by resolution, appoint up to five inspectors of the estate of the bankrupt or agree not to appoint any inspectors.

Persons not eligible

(2) No person is eligible to be appointed or to act as an inspector who is a party to any contested action or proceedings by or against the estate of the bankrupt.

Formal defects

120(2) No defect or irregularity in the appointment of an inspector vitiates any act done by him in good faith.

***Bankruptcy and Insolvency General Rules*, C.R.C., c.368**

Motions

11 Subject to these Rules, every application to the court must be made by motion unless the court orders otherwise.

Costs and Taxation

18 All bills of costs for legal services – other than those that do not exceed $2,500 in aggregate, excluding applicable federal and provincial taxes – must be taxed by the taxing officer.

19 A bill of costs must describe, in a fair, reasonable and detailed manner, the nature of the legal services rendered.

20 The bill of costs shall not be taxed unless the trustee is represented at the taxation or the bill of costs has attached to it a declaration, signed by the trustee, stating that

> **(a)** [Repealed, SOR/2009-218, s. 3]
>
> **(b)** the services have been duly authorized and duly rendered; and
>
> **(c)** the charges are reasonable in the trustee's opinion.

21 In determining the amount of costs to be allowed, the taxing officer shall determine whether

> **(a)** the legal services have been duly rendered;
>
> **(b)** the charges are reasonable and, if applicable, are in accordance with the tariff;
>
> **(c)** the legal services rendered are accounted for, and are not services that should have been rendered by the trustee; and
>
> **(d)** the legal services have been authorized and approved in accordance with the Act, if the Act so requires.

22 When a bill of costs has been taxed, the taxing officer shall make a statement to that effect on the bill and shall sign that statement, and a bill of costs so signed has the same effect as a judgment of the court and may be enforced in the same manner as a judgment.

23 The court may, on *ex parte* application by a trustee, order a barrister or solicitor or, in the Province of Quebec, an advocate to submit a bill of costs to the trustee, or to bring the bill of costs into court to be taxed, and, if the barrister, solicitor or advocate fails to comply, the court may, on *ex parte* application by the trustee, order that the trustee distribute the proceeds of the estate that the trustee possesses without regard to the barrister, solicitor or advocate's bill of costs.

24 (1) The barrister or solicitor or, in the Province of Quebec, the advocate shall give to the trustee, to any other person who is liable for payment of the bill of costs and, on request, to the Division Office, a notice of the time and place of the taxation, at least 10 days before the day set for the taxation.

(2) A certified copy of the bill of costs to be presented for taxation must be attached to the notice referred to in subsection (1).

25 (1) A decision of a taxing officer on the taxation of a bill of costs may be appealed to the court if a notice stating the grounds of appeal is given to the opposite party and the Division Office within 10 days after the day of the decision.

(2) The judge who hears the appeal may retax the bill of costs as if it were being taxed for the first time.

***Fraudulent Conveyances Act,* R.S.O. 1990, c.F29**

Where s. 2 does not apply

3. Section 2 does not apply to an estate or interest in real property or personal property conveyed upon good consideration and in good faith to a person not having at the time of the conveyance to the person notice or knowledge of the intent set forth in that section.

Income Tax Act, R.S.C. 1985, c. 1

Arm's length

251 (1) For the purposes of this Act,

(a) related persons shall be deemed not to deal with each other at arm's length;

(b) a taxpayer and a personal trust (other than a trust described in any of paragraphs (a) to (e.1) of the definition ***trust*** in subsection 108(1)) are deemed not to deal with each other at arm's length if the taxpayer, or any person not dealing at arm's length with the taxpayer, would be beneficially interested in the trust if subsection 248(25) were read without reference to subclauses 248(25)(b)(iii)(A)(II) to (IV); and

(c) in any other case, it is a question of fact whether persons not related to each other are, at a particular time, dealing with each other at arm's length.

Definition of *related persons*

251 (2) In this Act, words referring to

(a) a parent of a taxpayer include a person

(i) whose child the taxpayer is,

(ii) whose child the taxpayer had previously been within the meaning of paragraph 252(1)(b), or

(iii) who is a parent of the taxpayer's spouse or common-law partner;

(b) a brother of a taxpayer include a person who is

(i) the brother of the taxpayer's spouse or common-law partner, or

(ii) the spouse or common-law partner of the taxpayer's sister;

(c) a sister of a taxpayer include a person who is

(i) the sister of the taxpayer's spouse or common-law partner, or

(ii) the spouse or common-law partner of the taxpayer's brother;

(d) a grandparent of a taxpayer include a person who is

(i) the grandfather or grandmother of the taxpayer’s spouse or common-law partner, or

(ii) the spouse or common-law partner of the taxpayer’s grandfather or grandmother;

(e) an aunt or uncle of a taxpayer include the spouse or common-law partner of the taxpayer’s aunt or uncle, as the case may be;

(f) a great-aunt or great-uncle of a taxpayer include the spouse or common-law partner of the taxpayer’s great-aunt or great-uncle, as the case may be; and

(g) a niece or nephew of a taxpayer include the niece or nephew, as the case may be, of the taxpayer’s spouse or common-law partner.

R.R.O. 1990, Reg. 194: Rules of Civil Procedure

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.

Enforcement by or against a Person not a Party

60.06 (2) An order that may be enforced against a person who is not a party may be enforced against that person in the same manner as if the person were a party.

APPENDIX “A”

Table of Claw Back Proceedings – Trustee's Cheat Sheet

Case Name and Citation	Originating Party and Procedure	Ground for Clawing Back	Amounts Sought	Result	Authority for these Legal Propositions
***My Mortgage Auction Corp. (Re),* 2025 BCSC 1520**	Brought by: Trustee in Bankruptcy by way of application	• *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3), section 95(1)(a) • *Fraudulent Conveyance Act*, [RSBC 1996] Chapter 163 • Unjust Enrichment	• Excess payments paid to the Net Winners • Payments made to Preference Recipients within three months of MMAC's bankruptcy	• BIA: Court found the transfers were void and required to be repaid to the Estate pursuant to s. 95(1)(a) • FCA: Court found the transfers were void as fraudulent conveyances and must be repaid to the Estate • Unjust Enrichment: The defendants were unjustly enriched by the funds transferred and must be returned to the Estate	• The Scheme perpetrated by MMAC and Martel bears all the hallmarks of a Ponzi scheme: no legitimate investment activity, investors wee promised an investment generating high returns with little risk, focus on attracting new money, including through close connections and significant funds flowed through Martel's accounts [paras 58-71] • Adopted the single proceedings model [paras 117-118, 125] • Referred to and applied *LLS America* – once a Ponzi scheme fails, the process of retracting the perpetrator's steps begins, as does the more difficult process of balancing the competing claims and interests of all involved [para 5]; clawbacks and consolidation in the context of Ponzi schemes are not unconscionable [paraa 148-151] • Referred to and applied *Whitmore* – Definition of Ponzi scheme (also affirmed in *LLS America*) [para 57]; An intention to defraud creditors may be inferred from that fact that a debtor is operating a Ponzi scheme, as no other reasonable inference is possible [para 181]; unjust enrichments can arise in the context of Ponzi schemes [para 221]

Case Name and Citation	Originating Party and Procedure	Ground for Clawing Back	Amounts Sought	Result	Authority for these Legal Propositions
					• Referred to and applied *Whitmore* and *Golden Oakes* – it is open to the Trustee to commence separate actions against all Net Winners and Preference Recipients, however, there is nothing to support that the Trustee must proceed by filing individual actions to be adjudicated on a transaction-by-transaction basis [paras 110-113] • Referred to and applied *Peace River* – The single proceeding model protects the clear 'public interest in the expeditious, efficient and economical clean-up of the aftermath of a financial collapse' [para 113]; procedural flexibility is a hallmark of insolvency law [para 116] • Referred to and applied *Tron Construction* - Court reliance on single proceedings model [para 114] • Referred to and applied *Mundo Media* – single proceedings model can be used as a "sword" to enable trustees and receivers to pursue claims against third parties, promote efficiency and maximize returns for creditors [para 115] • Referred to and applied *Titan Investments* – similar relief sought and no party contended that each "winner" had to be sued separately [paras 121-123, 133]

Case Name and Citation	Originating Party and Procedure	Ground for Clawing Back	Amounts Sought	Result	Authority for these Legal Propositions
					• Referred to *Golden Oakes* – using a transaction-by-transaction approach to litigation rather than the single transaction model resulted in delay and significant cost [para 132]; payments from the Ponzi scheme made shortly before bankruptcy are unfair preferences [para 155] • Referred to and applied *Merill v Abbott* – Adopted American approach that Ponzi schemes are insolvent from inception [para 166] • Referred to and applied Canadian authorities outlining that Ponzi schemes are insolvent from inception: *Titan Investments, Zayed, Den Haag, Whitmore, LLS America* • Referred to and applied *Abakhan* – the FCA must be construed liberally, consistent with its remedial nature to protecting creditors [para 191]; An intent to put one's assets beyond the reach of creditors is all that is required to void a transaction [para 196] • Referred to and applied *Whitmore* and *IE CA 3 Holdings Ltd* – fraudulent intent can be inferred where "badges of fraud" exist [para 203] • Referred to and applied *Whitmore* and *Haag Capital* – the perpetrator of a Ponzi scheme does not receive "value" or "good

Case Name and Citation	Originating Party and Procedure	Ground for Clawing Back	Amounts Sought	Result	Authority for these Legal Propositions
					consideration" for payments made to investors in excess of their principal investment. Such payments are merely used to perpetrate and continue the fraud and are not profits from a legitimate enterprise [para 208]; The "good faith and for value" defence is not available to shield an investor in a Ponzi scheme from having to return sums received in excess of their investment because one does not provide "value" in exchange for "profit" in a Ponzi scheme [para 211]; the law of unjust enrichment requires the return of profits that were paid only by reason of Ponzi scheme, regardless of the innocence of the recipient [para 223] • Referred to and applied *Garland* and *Moore* – test for unjust enrichment [paras 215, 218] • Referred to and applied *Moore*– two steps in the juristic reason analysis within the test for unjust enrichment. If an established category exists to deny recovery, the analysis ends [para 217] • Referred to and applied *Whitmore, Titan Investments* and *Haag Capital* – the defence of hardship or change of position is not available in the context of a Ponzi scheme and the excess profits received [para 231]

Case Name and Citation	Originating Party and Procedure	Ground for Clawing Back	Amounts Sought	Result	Authority for these Legal Propositions
***Re Titan Investments Limited Partnership, (Judicature Act)*, 2005 ABQB 637**	Brought by Receiver by way of application	• *Fraudulent Preferences Act RSA 2000, c F-24*, sections 2 and 3 • *Statute of Fraudulent Conveyances, 1571 (U.K.)*, 13 Eliz., c. 5 (the *"Statute of Elizabeth"*) • *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3), section 95	• The full amount paid back to the "net winner" investors (i.e.- both principal and profit payments)	• FPA sections 2 and 3: Court found the transfers were void per the FPA • *Statute of Elizabeth*: This statute did not apply as the company making payments did not benefit from the transfer • BIA: Due to a standing issue, the application of the BIA was not examined	• Adopted American approach that Ponzi schemes are insolvent from inception [para 16] • Underpaid investors who are induced by fraud to invest have entered into voidable contracts, and the fraudster can be liable in equity to the underpaid investors to the extent of the investor's investment of principle under s. 2 of the FPA [para 23] • A deliberate decision to ignore the requests of certain investors for redemption of the funds (net losers) and instead to pay full redemptions to investors who had not made such requests (net winners) can be evidence of a decision to fraudulently prefer overpaid investors under s. 2 of the FPA [para 27] • Investors that have received fraudulent preferences per ss. 2 and 3 of the FPA can be ordered to repay the full amount of those payments to the receiver, failing which the applicants may be entitled to judgment against those parties who had not repaid the full amount they had received [para 48] • Referred and applied *Titan Investments* – Ponzi insolvent from beginning

Case Name and Citation	**Originating Party and Procedure**	**Ground for Clawing Back**	**Amounts Sought**	**Result**	**Authority for these Legal Propositions**
***Zayed v Cook*, 2009 CarswellOnt 8079 (ON SC)**	Brought by Receiver by way of application	• *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3), sections 268(1), 269 and 270	• NA	• BIA: The Court granted the order recognizing as a "foreign proceeding" an insolvency action in the United States District Court for the District of Minnesota, and the Receivership Order in that proceeding, and recognized the appointment of R. J. Zayed as a foreign representative in that proceeding under ss. 269 and 270 of the BIA	• Affirmed Ponzi's are insolvent from inception [para 10] • Those behind Ponzi schemes are inherently insolvent because they make promises to investors that cannot possibly be honoured [para 10]
***Haag Capital, LLC v Correia*, 2010 ONSC 5339**	Brought by: Corporate debtor A motion for summary judgment in an action	• *Assignments and Preferences Act*, R.S.O. 1990, c. A.33 • Unjust Enrichment	• Only excess payments or net winnings	• APA: The net winnings were in violation of the APA • Unjust enrichment: The defendants were unjustly enriched by the funds transferred	• The "good faith and for value" defence is not available to shield an investor in a Ponzi scheme from having to return sums received in excess of their investment because one does not provide "value" in exchange for "profit" in a Ponzi scheme [para 36] • Referred to and applied *Titan Investments* – Ponzi insolvent from beginning [para 65] • Referred to and applied *Zayed v Cook* – ponzi schemes are insolvent from inception [para 65]

Case Name and Citation	Originating Party and Procedure	Ground for Clawing Back	Amounts Sought	Result	Authority for these Legal Propositions
					• Referred to and applied *Garland* –test for unjust enrichment [paras 68-69] • The law of unjust enrichment requires the return of Ponzi profits when all three elements of the test (an enrichment of the defendant; a corresponding deprivation of the plaintiff; and an absence of juristic reason for the enrichment) are made out, regardless of the innocence of the recipient [paras 68-69] • Referred to and applied *Garland v Consumers Gas Co* – the test for unjust enrichment can be applied to ponzi schemes, as can the change of position defence [paras 68-69] • A defendant who receives funds from a ponzi scheme / fraud may not be entitled to rely on a defence of change of position to retain the benefit, even if they acted in good faith, where allowing such would be inequitable [para 70]
***Harry Snoek Limited Partnership (Re)*, 2011 ONSC 6667**; appeal to the Ontario Court of Appeal **(*Harry Snoek Limited Partnership (Re)*, 2012 ONCA 765)** dismissed	Brought by: Trustee in bankruptcy A motion to set aside security held by groups of creditors	• *Assignments and Preferences Act*, R.S.O. 1990, c. A.33, section 4	• The total value of security that had been granted to the “net winner” creditors	• APA section 4: The security granted was void as a fraudulent preference	• Favouring certain creditors over other, similarly situated creditors who were making equal demands and applying equal pressure for repayment can constitute an improper preference [para 42] • Referred and applied *Titan Investments* –a deliberate decision to ignore the requests of certain investors for redemption of their funds while paying others is evidence of a decision to prefer [para 42]

Case Name and Citation	Originating Party and Procedure	Ground for Clawing Back	Amounts Sought	Result	Authority for these Legal Propositions
***Boale, Wood & Company Ltd. v Whitmore*, 2017 BCSC 1917**	Brought By: Trustee in bankruptcy An action commenced and proceeded to trial	• *Fraudulent Conveyance Act,* [RSBC 1996] Chapter 163 • *Fraudulent Preference Act*, [RSBC 1996] Chapter 164 • Money Had and Received • Unjust Enrichment	• Only excess payments or net winnings	• The Trustee was successful on all grounds except the FPA because the FPA had required evidence that the defendant Net Winners intended to receive the preference they received, which was not found	• Definition of Ponzi scheme [para 45] • Referred to and applied *Merrill v Abbott* - An intention to defraud creditors may be inferred from that fact that a debtor is operating a Ponzi scheme, as no other reasonable inference is possible [para 50] • Referred to and applied *Titan Investments* – Ponzi scheme is insolvent from its inception [paras 49, 82] • Referred to and applied *Haag Capital* – Ponzi scheme is insolvent from its inception [para 82] • Referred to and applied *Haag Capital* – the perpetrator of a Ponzi scheme does not receive “reasonably equivalent value” or “good consideration” for payments made to investors that are in excess of the investors’ capital investment because there is no provision of “value” in exchange for “profit” nor any consideration in a Ponzi scheme. Such payments are merely used to perpetrate and continue the fraud and are not profits from a legitimate enterprise [paras 59, 60, 70-71] • Referred to and applied *Haag Capital* and *Titan Investments* - the defence of change of position in inapplicable to over-paid investors in a Ponzi scheme [para 124]

Case Name and Citation	Originating Party and Procedure	Ground for Clawing Back	Amounts Sought	Result	Authority for these Legal Propositions
					• Where a disposition or excess is not lawfully transferred to a party by nature of being part of a Ponzi scheme, it is fraudulent and not saved by s. 2 of the FCA [paras 73-74, 79] • Where a disposition or excess is not lawfully transferred to a party by nature of being part of a Ponzi scheme, it is fraudulent and not saved by s. 2 of the FCA [paras 73-74, 79] • Referred to and applied *Golden Oaks* - Trustees may avail themselves of all rights and remedies available at law in pursuing recovery of property, and may pursue actions against third parties based on statute, common law or equitable causes of action [paras 93- 94] • Referred and applied *Garland v Consumers' Gas Co* – the test for unjust enrichment can be applied to Ponzi schemes [para 97]
In re LLS America **[*Kriegman v Dill,* 2018 BCCA 86]**	Brought by: trustee in bankruptcy	• TBD	• TBD	• TBD	• Referred to and applied *Whitmore*'s definition of Ponzi scheme [para 11] • Referred to and applied *Whitmore* as a recent case in which the *FCA* was applied in a Ponzi scheme and acknowledged that *Whitmore* adopted the reasoning in *Titan Investments* "that a Ponzi scheme is insolvent from its commencement". References *Haag Capital* on this point as well [para 13]

Case Name and Citation	Originating Party and Procedure	Ground for Clawing Back	Amounts Sought	Result	Authority for these Legal Propositions
					• Winners are obligated to share with losers [para 14] • Court recognized the valid public policy purpose that clawback proceedings serve in aftermath of Ponzi Scheme, noting that to require an investor in a Ponzi scheme to disgorge their earnings and to share in the pool with later investors who have lost earnings would not be morally repugnant [para 75]
***Doyle Salewski Inc. v Scott*, 2019 ONSC 5108**, appeal to the Supreme Court of Canada **(*Scott v Golden Oaks Enterprises Inc.*, 2024 SCC 32)** dismissed	Brought by: Trustee in bankruptcy Commenced by way of action and proceeded to trial	• *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3), section 95 • *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3), section 96 • Unjust Enrichment	• Only excess payments or net winnings (the interest payments made on promissory notes lent by the Net Winner creditors were the subject of the claw back)	• BIA section 95: The Trustee was partially successful, with some findings of non-arms length transactions warranting BIA application and others not • BIA Section 96: Insufficient facts had been pled to find a transfer at undervalue pursuant to section 96 • Unjust Enrichment: The Trustee was successful against all	• Referred to and applied *Whitmore*'s and *Titan Investment*'s definitions of Ponzi scheme [ONSC, paras 100-101] • Referred to and applied *Whitmore* and *Titan Investment* – Ponzi schemes are insolvent from inception [ONSC, para 104] • Preferences occur when a debtor with insufficient assets to satisfy all creditors pays one preferentially over the others – payments are unfair because they undermine the scheme of distribution that would otherwise prevail in bankruptcy [SCC, para 125] • Referred to and applied *Montor Business Corp. (Trustee of) v Goldfinger* – criteria examined by courts when determining whether unrelated persons are dealing at arm's length in the context of preference claims under

Case Name and Citation	Originating Party and Procedure	Ground for Clawing Back	Amounts Sought	Result	Authority for these Legal Propositions
				defendants on this ground	bankruptcy and insolvency proceedings [ONSC paras 203-210; SCC, para 127] • Referred to and applied *Whitmore* – a trustee may pursue actions against third parties based on equitable causes of action [para 389] • Referred to and applied *Haag Capital* – a company whose directing mind has used it to operate a Ponzi scheme may, following a change of control, make equitable claims [para 395] • Referred and applied *Garland v Consumers' Gas Co* – the test for unjust enrichment can be applied to Ponzi schemes [paras 437-440, 453-454, 457, 472] • Referred to and applied *Whitmore* and *Haag Capital* – nothing in these cases to suggest that a court could not allow a claim that defendant disgorge all payments received in a Ponzi scheme, rather than merely the excess [para 449]

APPENDIX “B”

ONTARIO
SUPERIOR COURT OF JUSTICE

MICHAEL FOLEY, JONATHAN WILLIAMS,
WILLIAMS VENTURE CAPITAL INC. and CRYSTAL MASTERSON

Applicants

- and -

DOUGLAS GROZELLE
and DOUGLAS GROZELLE o/a GROZELLE ENTERPRISES

Respondents

APPLICATION UNDER SECTION 101 OF THE
***COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED**

LEGAL SUBMISSIONS ON PROCEDURE

A. BIA Encourages Summary Processes: Default Proceeding Under the BIA is a Motion

1. The *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("**BIA**") is a statute aimed specifically at business persons, with a clear focus on efficiency and affordability.[1] Economy of litigation is favoured. Bankruptcy courts recognize a responsibility to resolve disputes efficiently and in a timely manner, considering proportionality and the relevant interests at stake, while ensuring procedural fairness is maintained.[2]

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[1] *Estate of Gavin v Gavin*, 2023 PECA 8 at para 26.
[2] *MNP Ltd (Eco-Industrial Business Park Inc) v Symmetry Asset Management Inc*, 2023 ABKB 429 at para 21.

2. Provincial statutes that govern fraudulent conveyances and preferences in the context of insolvent persons are also remedial in nature, warranting the same considerations of efficiency.[3]

3. Based on the underlying principles of the BIA, lengthy and expensive litigation should be avoided when issues can be resolved through more summary processes.[4] Unnecessary trial procedures should be discouraged to streamline the resolution of disputes.[5]

4. It is in furtherance of these goals that Rule 11 of the *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368, as amended, provides that every application made to the court must be made by motion, *unless* the court orders otherwise.[6]

5. Motion procedures contribute to a litigation economy, allowing for faster and more cost-effective resolutions of disputes.[7] The default requirement to proceed by way of motion is essential for maintaining the efficiency of court proceedings—a core function of the BIA process.

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[3] MNP Ltd (Eco-Industrial Business Park Inc) v Symmetry Asset Management Inc, 2023 ABKB 429 at para 30.
[4] *MNP Ltd (Eco-Industrial Business Park Inc) v Symmetry Asset Management Inc*, 2023 ABKB 429 at para 21.
[5] *MNP Ltd (Eco-Industrial Business Park Inc) v Symmetry Asset Management Inc*, 2023 ABKB 429 at para 29.
[6] *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368, R 11.
[7] *Royal Bank of Canada v Racher*, 2017 ABQB 181 at para 13.

B. Circumstances in Which a Motion Procedure is Appropriate in BIA Proceedings

6. Courts have granted summary judgement on a written record in a number of cases involving fraudulent conveyances, transfers at undervalue and preferential payments.[8]

7. The overarching principle is that the record before a court should permit the motions judge to fairly and justly adjudicate the dispute in a timely, affordable, and proportionate manner.[9]

8. When determining the appropriateness of proceeding by way of motion, a court will consider the completeness of the evidentiary record before it. The evidentiary record presented should be sufficient for the court to make the necessary findings of fact.[10] The court must be able to weigh the evidence, evaluate credibility (where called for), and draw necessary inferences based on the written record.[11]

9. Further, where there will be no additional material evidence made available during a trial, courts are more likely to proceed by way of motion.[12]

10. Where the issues for resolution are narrowly defined, courts have generally held that the matter should proceed summarily.[13]

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[8] *Truestar Investments Ltd v Baer*, 2018 ONSC 3158 at paras 16 and 27; *Juhasz (Trustee of) v. Cordeiro*, 2015 ONSC 178; *National Telecommunications Inc, Re*, 2017 ONSC 1475 at paras 34-38; *Estate of Gavin v Gavin*, 2023 PECA 8 at para 20; *Albert Gelman Inc v 1529439 Ontario Limited*, 2020 ONSC 7917 at para 33; *MNP Ltd (Eco-Industrial Business Park Inc) v Symmetry Asset Management Inc*, 2023 ABKB 429 at para 26; and *Zeifman Partners Inc. v Baldassare*, 2020 ONSC 3023 at para 17.

[9] *Truestar Investments Ltd v Baer*, 2018 ONSC 3158 at para 27.

[10] *Albert Gelman Inc v 1529439 Ontario Limited*, 2020 ONSC 7917 at para 33.

[11] *Albert Gelman Inc v 1529439 Ontario Limited*, 2020 ONSC 7917 at para 33.

[12] *Royal Bank of Canada v Racher*, 2017 ABQB 181 at para 7.

[13] *National Telecommunications Inc, Re*, 2017 ONSC 1475 at para 39.

11. A respondent's inability to specifically demonstrate ways in which it would be prejudiced by proceeding with a motion, while merely arguing for and relying on the utility of a trial, has generally led to the courts adopting a summary procedure.[14]

12. The absence of contested factual or material credibility issues necessitating a trial will also lead the courts to favor proceeding by way of motion.[15] It should be noted, however, that the mere presence of conflict within the written materials does not mandate a trial in every situation[16]——the aforementioned principles must still be considered.

C. It is Fair and Appropriate that the Claw Back Claims be Adjudicated Summarily

13. The proposed Claw Back Claims may be appropriately decided in a motion process for the following reasons:

(a) **The legal and factual issues on the claw-back motion are narrow**;

(i) Unlike in some other fraudulent conveyances and preferences matters, the unique factual matrix of the Ponzi scheme operated by Grozelle negates the need to prove fraudulent intent. This significantly narrows both the factual and legal determinations that must be made on the record.

[14] *Estate of Gavin v Gavin*, 2023 PECA 8 at para 23.
[15] *National Telecommunications Inc, Re*, 2017 ONSC 1475 at paras 38 and 39
[16] *Royal Bank of Canada v Racher*, 2017 ABQB 181 at para 13; *Sandhu v Siri Guru Nanak Sikh Gurdwara of Alberta*, 2015 ABCA 101 at para 79 and *MNP Ltd (Eco-Industrial Business Park Inc) v. Symmetry Asset Management Inc*, 2023 ABKB 429 at para 28.

(b) **<u>There will be a complete evidentiary record available for the court to make its determination</u>**;

(i) The Receiver/Trustee has documented, traced and organized over 8,500 transactions to trace the flow of funds in the Grozelle investment scheme.

(ii) The promissory notes and Grozelle's financial record-keeping (such as it was) are available for presentation in the evidentiary record, although, it should be noted that this documentation is limited due to the poor record-keeping practices of Grozelle.

(iii) The Receiver has made broad disclosure of its findings and the supporting evidence for its findings over the course of the last 15 months (since its appointment).

(iv) Should any responding party wish to refute the evidence presented by the Receiver, a motion procedure allows said persons to supplement the evidence available to increase the completeness of the record.

(c) **<u>At present, there is an absence of material issues of credibility and contested factual issues necessitating a trial</u>**;

(i) Grozelle has been cooperating with the Receiver/Trustee and does not dispute the central elements of the Claw Back Motion.

(ii) The factual background as to what has transpired is largely uncontested by victims, creditors, and participants.

(iii) Although there may be minor inconsistencies in the evidence, there is no reason to believe that the essential facts are in serious dispute.

(iv) It is open for the court to apply summary judgment principles. This includes: (1) the court is to presume that the best evidence from both sides is before the court, and (2) self-serving evidence does not give rise to a triable issue.

(d) **A summary proceeding will otherwise provide the most expeditious and just result**.

(i) As this court and creditors are well aware, there have unfortunately been no material recoveries for the creditors throughout these proceedings This is notwithstanding the cooperation of the bankrupt. The availability of appropriately designed summary proceedings (which the BIA encourages) will conserve estate resources whilst potentially increasing the pool of funds available for distribution to the general creditor pool. A summary process will not undermine the ability to achieve a just outcome, as it still provides the opportunity to proceed through a properly planned motion procedure.

IN THE MATTER OF THE BANKRUPTCY OF DOUGLAS GROZELLE, of the City of Hamilton, in the Province of Ontario

Civil Court File No.: CV-23-00082142-0000
Court File No.: 32-3126798

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Hamilton

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