

Action No.: B301-191521  
E-File Name: CVK25WOLVERINE  
Appeal No.: \_\_\_\_\_

IN THE COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF CALGARY

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,  
RSC 1985 c B-3, AS AMENDED

AND IN THE MATTER OF THE BANKRUPTCY OF  
WOLVERINE ENERGY AND INFRASTRUCTURE INC.

Action No.: B301-191522

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,  
RSC 1985 c B-3, AS AMENDED

AND IN THE MATTER OF THE BANKRUPTCY OF  
WOLVERINE EQUIPMENT INC.

Action No.: B301-191523

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,  
RSC 1985 c B-3, AS AMENDED

AND IN THE MATTER OF THE BANKRUPTCY OF  
WOLVERINE CONSTRUCTION INC.

Action No.: B301-191524

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,  
RSC 1985 c B-3, AS AMENDED

AND IN THE MATTER OF THE BANKRUPTCY OF  
WESTERN CANADIAN MULCHING LTD.

Action No.: B301-191525

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,  
RSC 1985 c B-3, AS AMENDED

AND IN THE MATTER OF THE BANKRUPTCY OF  
LIBERTY ENERGY SERVICES LTD.

Action No.: B301-191526

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT,  
RSC 1985 c B-3, AS AMENDED

AND IN THE MATTER OF THE BANKRUPTCY OF  
HD ENERGY RENTALS LTD.

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P R O C E E D I N G S

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Calgary, Alberta  
November 21, 2025

Transcript Management Services  
Suite 1901-N, 601 – 5th Street SW  
Calgary, Alberta T2P 5P7  
Phone: (403) 297-7392  
Email: TMS.Calgary@just.gov.ab.ca

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1 Proceedings taken in the Court of King's Bench of Alberta, Courthouse, Calgary, Alberta

2

3

4

5 November 21, 2025

Morning Session

6

7 The Honourable

Court of King's Bench of Alberta

8 Justice C.D. Simard (remote appearance)

9

10 K. Kashuba (remote appearance)

For FTI Consulting Inc.

11 B. Qureshi (remote appearance)

For FTI Consulting Inc.

12 T.A. Henschel (remote appearance)

For 1586329 Alberta Ltd., Wolverine  
Management Services Inc., and Jesse Douglas

13  
14 L.M. Williams (remote appearance)

For Fiera Private Debt Fund V LP and Fiera  
Private Debut Fund VI LP

15  
16 J. Stopforth

Court Clerk

17

18

19

20 THE COURT:

Good morning, everyone. Mr. Kashuba, Mr.

21 Henschel, you can hear me?

22

23 UNIDENTIFIED SPEAKER:

Yes, Sir.

24

25 THE COURT:

Sorry about the misfire last week, everyone. I

26 just thought I'd be ready to have this decision, but I was not quite, so thanks for the extra  
27 week.

28

29 Mr. Henschel, it looks like you maybe had to get up early somewhere to get ready for a  
30 conference call, but you're back safely from your vacation, in your office, I see.

31

32 MR. HENSCHEL:

Yes, Sir. That's correct.

33

34 **Decision**

35

36 THE COURT:

Okay. Okay. Great.

37

38 So, I'm going to give you this decision orally. I'm not going to issue it in a written form  
39 because I wanted to get it to the parties, and it would've taken a lot longer to issue it in  
40 writing, so what I will do is read it now. Obviously, if anyone wants to order a transcript,  
41 those transcripts come to me in advance, and I vet them just for grammar, spelling, and

1 nits. I would not change anything substantively. It's fairly lengthy. I suspect it will take the  
2 better part of an hour. Unless there's anything preliminary from anyone, though, I'll just  
3 jump right into it? Okay.

4  
5 This is an application by FTI Consulting Canada Inc. who is the trustee in bankruptcy -- I'll  
6 just call them "the trustee" -- of Wolverine Energy and Infrastructure Inc., who I will refer  
7 to as "WEI," and a number of other related groups, related entities whom are referred to  
8 collectively by the parties as "the Wolverine Group."

9  
10 The trustee seeks to recover three impugned payments, a July 5th, 2023, payment by WEI  
11 to Wolverine Management Services Inc. -- I'll call that entity "WMSI" -- in the amount of  
12 \$486,950; a July 20th, 2023, payment by WEI to 1586329 Alberta Ltd., whom I will refer  
13 to as "158," in the amount \$500,000; and then the next day, July 21st, 2023, a payment by  
14 WEI to 158 in the amount of \$25,000.

15  
16 WMSI and 158 are solely owned by Jesse Douglas, who is the founder of WEI and its  
17 affiliates. When the payments were made, he was a director and the executive chairman of  
18 WEI. He had previously been the president and CEO until 2021, when he resigned from  
19 those positions and became executive chair.

20  
21 The trustee says these payments are reviewable transactions and that the amounts should  
22 be returned to the estate. It seeks orders against both WMSI, 158, and also against Mr.  
23 Douglas personally.

24  
25 So, the issues I have to decide in this application is whether the trustee has proven that the  
26 payments should be repaid on one or more of the following bases, all of which are pleaded  
27 by the trustee:

28  
29 First, were these payments preferences under section 95 of the *Bankruptcy and Insolvency*  
30 *Act* (or the *BIA*)? Were they fraudulent preferences, contrary to the *Fraudulent Preferences*  
31 *Act* of Alberta? Were they fraudulent transfers made contrary to the *Statute of Elizabeth*?  
32 Were they transfers at undervalue under section 96 of the *BIA*? Or were they unjust  
33 enrichments of the recipients?

34  
35 To decide whether Mr. Douglas is personally liable, I also have to consider the issues of  
36 whether I should pierce the corporate veils of WMSI and/or 158 or whether he's liable as a  
37 director of WEI pursuant to section 101 of the *BIA*.

38  
39 So, turning to my analysis.

40  
41 The different remedies sought by the trustee are set out in the *BIA* or the provincial or

1 English legislation or common law or equity. There's a different test for each one. I'll go  
2 through those at the end, but there are a number of common or similar factors that arise in  
3 these legal tests and that the trustee has to establish to prove an entitlement, so these  
4 common factors are, first, whether the payor, WEI, and the payees, WMSI and 158, were  
5 at arm's length when the payments were made. Second common issue is WEI was insolvent  
6 at the time; third, whether it intended to prefer WMSI or 158 over its over creditors or to  
7 delay, hinder, or defraud its other creditors by making the payments; and the fourth and  
8 final common issue is whether WEI received consideration for the payments, and if so,  
9 what was the value of that consideration. So, I've found it to be most efficient to address  
10 those common factors first, and I'll do that now -- or do that in a moment.

11  
12 The evidence that I had before me on the application was the following from the trustee. It  
13 filed on August 29, 2025, its first report. One of the appendices to its report was a  
14 November 30th, 2023, affidavit sworn by Russell French. I'll call that "the French  
15 affidavit." He's an officer of Fiera, one of the lenders to WEI. In the French affidavit,  
16 reference was also made to the November 29, 2023, affidavit of Shannon Ostapovich, who  
17 was then the president of WEI. That affidavit was filed in support of WEI's own CCAA  
18 application.

19  
20 And the evidence from the respondents were two affidavits, both sworn on October 28th,  
21 2025, one from Nikolaus Kiefer and the other from Mr. Douglas.

22  
23 There were no cross-examinations on any of this evidence. However, the parties confirmed  
24 they were all prepared to proceed on the basis of the evidence as I have described it subject  
25 to a couple of exceptions that I'll mention now.

26  
27 The respondents objected to the trustee relying on the French affidavit for two reasons.  
28 First, they say it violated the implied undertaking rule, and second, they say it was  
29 immunized from cross-examination, being an attachment to the trustee's report.

30  
31 I disagree with those objections, and I've concluded that I can rely on the French affidavit.  
32 Reliance on it in this application, first of all, does not violate the implied undertaking rule.  
33 That is a common law rule. It's now also at least partially codified in this province in rule  
34 5.33 of the *Rules of Court*. Generally, the rule is that a party who receives information  
35 through discovery or cross-examination of an opposing party can only use that information  
36 in the same action in which it received the information without the agreement of the parties  
37 or without court order. The rule does not cover affidavits. It only covers transcripts of cross-  
38 examination on them or documents obtained in cross-examination or discovery. The  
39 French affidavit was filed in the action that CWB, another of WEI's lenders, filed seeking  
40 a receivership of the Wolverine Group, so the affidavit was not obtained through discovery  
41 or cross-examination, and the implied undertaking rule does not apply.

1  
2 I also disagree that the French affidavit was immunized from cross-examination. It's a  
3 sworn affidavit that the trustee said it was relying on in support of its application. It also  
4 mentions that affidavit in its brief. The respondents had a prima facie right to cross-examine  
5 on it under Rule 6.7. However, as their counsel confirmed when I asked him during the  
6 hearing, they did not ask to cross-examine Mr. French. Even though WEI's estate is now  
7 being administered in a bankruptcy, its insolvency proceeding started under the CCAA,  
8 then transitioned to a receivership, then transitioned to the current bankruptcy. That is not  
9 uncommon. Each of those proceedings was a separate formal legal action in this court, but  
10 I am satisfied I can consider both the French affidavit and the Ostapovich affidavit. Even  
11 though they were filed in earlier formal different actions, they were all part of the  
12 Wolverine Group's continuous insolvency proceedings.

13  
14 So, that's the evidence, and I'll turn to the first common issue now: Was WEI at arm's  
15 length from WMSI and 158 when the payments were made?

16  
17 There are two ways the trustee could prove that WEI was not acting at arm's length.

18  
19 First, parties who fall within the definition of related persons in section 4(2) of *BIA* are  
20 deemed not to deal with each other at arm's length. However, for corporations, control is  
21 required to meet the definition of related persons, and in this case, 158 and WMSI owned  
22 less than 50 percent of the shares of the WEI, so they did not have control, so that first path  
23 cannot be established by the trustee.

24  
25 The second path is under section 4(4) of the *BIA*: The trustee can prove that as a matter of  
26 fact WEI and the two payee corporations were not acting at arm's length. The trustee has  
27 not proven this on the evidence before me. At all material times, WEI had an independent  
28 board of directors, and as I will describe later, the independent board of directors was  
29 involved to some extent in the payments. Mr. Kiefer, who was the CFO of WEI from July  
30 2020 to March 2023, testified in his affidavit that he, other officers, and the audit committee  
31 of the board of WEI worked on reconciling the amounts that WEI owed to WMSI and to  
32 158 in January 2022, over a year before the payments were made. Mr. Douglas has also  
33 provided a July 20, 2023, email from Darryl Peterson, one of the independent board  
34 members, telling Ms. Cowie, the CFO -- that's Alison Cowie, the CFO of WEI at the  
35 time -- that the board supported a one-time payment of \$500,000 that was made on July  
36 20th, so there's that evidence of the board's involvement in the payments, and I'll deal with  
37 it in more detail later. There's no evidence that the board did not exercise all the normal  
38 powers of a board of directors vis-à-vis WEI at the relevant times, so because of the  
39 involvement of the independent board, I find that WEI was acting at arm's length from  
40 WMSI and 158 at least at the time the payments were made and with respect to the  
41 payments.

1  
2 Next common issue is insolvency. Section 95 only applies to a transaction carried out by a  
3 party that was insolvent at the time -- or was an insolvent person, rather. The *Fraudulent*  
4 *Preferences Act* of Alberta has a similar requirement as does one prong of the test under  
5 section 96 of the *BIA*.

6  
7 An insolvent person is defined in section 2(1) of the *BIA* as someone who, first, is unable  
8 to meet their obligations as they generally become due; second, who has ceased paying  
9 their current obligations in the ordinary course of business as they generally become due;  
10 or third, the aggregate of whose property is not, at a fair valuation sufficient or, if disposed  
11 of at a fairly conducted sale under legal process, sufficient to enable payment of all their  
12 obligations due and accruing due. The first two tests are ways to measure cash flow  
13 insolvency, and the third is referred to as balance sheet insolvency.

14  
15 I have concluded on the evidence that the trustee has failed to establish that WEI met the  
16 test for balance sheet insolvency in July 2023. However, the trustee has proven that WEI  
17 was insolvent on a cash flow basis at that time, and I'll explain my reasons for that now.

18  
19 First, with respect to balance sheet insolvency, the evidence I had about the value of WEI's  
20 assets and liabilities was as follows:

21  
22 There were unaudited financial statements as at June 30th, 2023. They showed asset value  
23 of over 115 million and total liabilities of 105 million. That asset value was estimated based  
24 on the company's accounting policies as described in its financial statements, so it was not  
25 a measure of fair market value. Then, in December 2023, Ernst & Young Inc., who was  
26 WEI's CCAA monitor, carried out a desktop appraisal in which it determined that the  
27 forced liquidation value of WEI's assets was 30.9 million and the orderly liquidation value  
28 was 39.9 million. And then in early 2024, FTI, who was then the receiver, carried out a  
29 SISF that generated gross proceeds of 24.2 million from WEI's assets.

30  
31 From that evidence, from those data points, I cannot determine what the fair market value  
32 of WEI's assets were at the time the payments were made in July 2023, so necessarily, I  
33 can't decide if that fair market value exceeded the company's liabilities. The type of  
34 evidence I would've needed to determine the fair market value as at July 2023 would be an  
35 expert report in which a qualified expert opined or extrapolated from these data points what  
36 the fair market value was at that time. There was no such evidence before me, and I cannot  
37 infer from the evidence I did have what that fair market value might have been at that time.  
38 That would be speculation.

39  
40 So, turning to cash flow insolvency, the evidence before me on that point was as follows:  
41

1 WEI owed about \$70 million to its secured creditors in July of 2023, approximately \$55  
2 million to Fiera and about \$15 million to CWB. It also owed AIMCo \$10 million, although  
3 it appears that that debt was unsecured.  
4

5 WEI's financial statements disclosed consistent and substantial operating losses in every  
6 quarter between September 2022 and June 2023. This included a net loss of \$65 million in  
7 the 3 months ended June 30th, 2023. As at June 30th, 2023, WEI had about \$2.4 million in  
8 cash and \$9 million of other current assets, which included accounts receivable. It also had  
9 some relatively liquid long-term assets valued at \$48 million, primarily shares and  
10 investments in other companies. It was in breach of its financial covenants to Fiera  
11 throughout this period, although the parties dispute whether Fiera waived those breaches,  
12 and I'll address that issue later.  
13

14 On April 27th, 2023, CWB sent a letter to WEI in which it advised WEI to make  
15 arrangements to repay CWB's indebtedness in full by July 31st. CWB said that this letter  
16 was expressly not a demand for payment, but it reserved its right to issue a formal demand.  
17 So, the full \$15 million that WEI owed to CWB was not due and owing on July 31st, but  
18 WEI knew that absent a successful renegotiation or forbearance, it would become due soon.  
19

20 WEI admitted in its March 31st, 2023, year-end audited financial statements, which were  
21 issued on July 27th, that it was renegotiating with its lenders. After WEI issued those  
22 audited financial statements, its financial situation deteriorated rapidly.  
23

24 Fiera says it discovered in the audited financials that WEI was falsely claiming that Fiera  
25 had waived covenant breaches past September 2022 and also that WEI had committed other  
26 breaches that it had not reported to Fiera.  
27

28 Less than a week after the financial statements were released, on August 2nd, Fiera  
29 appointed FTI as its financial advisor vis-à-vis WEI. Just over a month later, on September  
30 6th, WEI presented a deleveraging plan to Fiera that Fiera found unsatisfactory. They  
31 started negotiating a potential forbearance agreement that was never ultimately agreed to,  
32 and WEI also started negotiating a potential forbearance agreement with CWB in  
33 September, the same month, but they ultimately never reached an agreement either.  
34

35 Two months after the July 31st soft repayment deadline, CWB did do what it had  
36 foreshadowed. It made a formal demand for repayment on October 2nd.  
37

38 WEI admitted it was insolvent in its November 30th CCAA filing on the basis that it could  
39 not meet its obligations as they fell due. This was about 4 months after the payments were  
40 made in July.  
41

1 Mr. Ostapovich explained in his November 29th affidavit that WEI's financial difficulties  
2 had been somewhat longstanding, and I will read a long quote from his affidavit: (as read)

3  
4 The Wolverine Group's business is cyclical in nature. The  
5 Wolverine Group is exiting its slow season, with operations  
6 beginning to pick up and anticipated to peak in January/February  
7 2024. Normally, the Wolverine Group can weather the slow  
8 seasons through management of its capital structure, monitoring,  
9 and reviewing actual and forecasted cash flows, and maintaining  
10 credit facilities to ensure there are available cash resources to meet  
11 its liquidity needs. However, knock-on effects of pre-COVID  
12 expansion, rising interest rates, ongoing legal disputes, costs  
13 related to an acquisition of a non-viable business based on alleged  
14 misrepresentations, work disruption due to natural disasters, and a  
15 limited market for currently held third-party securities and slowing  
16 economic conditions in combination with the Wolverine Group's  
17 slow season has resulted in the Wolverine Group being unable to  
18 meet their obligations as they fall due.

19  
20 That WEI was in a seasonal cash flow lull in July 2023 when the payments were paid is  
21 also evident from its financial statements. On March 31st, 2023, it had cash of \$2.4 million  
22 and accounts receivable of \$17 million, but by June 30th, 2023, it had cash of \$2.4 million  
23 but accounts receivable of only \$7.4 million so less than half of the amount in March.

24  
25 Based on this evidence, I'm satisfied that the trustee has proven that WEI was insolvent on  
26 a cash flow basis when it made the payments in July 2023. The principle enunciated by the  
27 Ontario Superior Court in *Stelco*, 2004 CanLII 24933, applies equally in this case. To  
28 paraphrase that decision, on July 5th and 21st, 2023, when it made the payments, WEI was  
29 financially troubled corporation that would reasonably have expected to run out of liquidity  
30 within a reasonable proximity of time as compared with the time reasonably required to  
31 implement a restructuring.

32  
33 I'll now turn to address the Fiera waiver issue.

34  
35 WEI's financial situation in July 2023 was even worse than proven by the evidence I have  
36 discussed so far when the Fiera waiver issue is taken into account. As background to this  
37 issue, the trustee and Fiera say that in November 2022 Fiera had given WEI a waiver for  
38 its breaches of financial covenants under the Fiera loan documents but only for the quarter  
39 ended September 30th, 2022. When WEI was finalizing its year-end audit in July 2023  
40 around the time the payments were made, WEI sent two documents to its auditors, who  
41 were Deloitte and Touche -- or sorry. It's just Deloitte now, I think -- a November 3rd,

1 2022, letter, which was purportedly from Fiera, granting waivers of WEI's covenant  
2 defaults for all the fiscal quarters from September 2022 until March 2024. I'll refer to that  
3 as "the waiver letter." And the second thing it sent to a Deloitte was a November 4, 2022,  
4 email, purportedly sent from Fiera to Mr. Douglas, waiving the same covenant defaults for  
5 the same 18-month period. I'll call that "the waiver email."  
6

7 The trustee alleged that Fiera never provided the waiver letter or the waiver email to WEI.  
8 It says the waiver email was a manipulated version of a more limited waiver email that  
9 Fiera sent to WEI in November 4, 2022. I'll call that version of the email, the one that  
10 trustee says was manipulated, "the Fiera email." In its brief of argument, the trustee  
11 characterizes Mr. Douglas's conduct regarding the waiver letter and the waiver email as  
12 "fraudulent or improper" and asks me to infer from the evidence that Mr. Douglas was  
13 personally responsible for the alleged document manipulation.  
14

15 The respondents argue that the trustee has failed to prove these allegations and, indeed, that  
16 it could not prove these allegations in this forum with the evidence before me, for the  
17 following reasons. First, this is in essence a summary judgment application, and the trustee  
18 is impermissibly relying on hearsay evidence. Second, I cannot make findings of fraud or  
19 dishonesty based only on written affidavits with no cross-examination or viva voce  
20 testimony because I would have to determine credibility to do that, and third, there's no  
21 expert evidence providing opinions about the veracity of the emails and the waiver letter,  
22 which would be required.  
23

24 This is not a summary judgment application. This trustee is empowered under the *BIA* to  
25 apply for this relief summarily. However, I agree with the respondents that my ability to  
26 decide credibility contests and to make findings about parties' actual intent is limited when  
27 I only have written evidence, so now I'll address the law on how I can address and decide  
28 conflicting written evidence.  
29

30 Sometimes conflicting affidavit evidence cannot be resolved without the Court making  
31 credibility findings, but not always. In *Liberty Mortgage v. Shaw*, 2024 ABKB 92 at  
32 paragraphs 41 to 44, Justice Aloneissi described the circumstances in which findings of  
33 fact may be made despite conflicting affidavit evidence. I will not repeat his comprehensive  
34 discussion here, but one principle is that I'm required to look at all the evidence in context.  
35 I can find that not all affidavit evidence is equally weighty. I can give less weight to  
36 particular affidavit evidence if, among other things, it is not consistent with other evidence  
37 and known circumstances or it is general, vague, superficial, self-serving or otherwise  
38 unsupported. Same cases describe this type of evidence as a bare denial, a bald assertion,  
39 or having no air of reality.  
40

41 So, what I have to do is look at the conflicting evidence very carefully, first to determine

1 what is contested, the magnitude of that conflict, and then whether I can resolve it just on  
2 the written evidence that I have, so I'll go through that exercise now focusing on two  
3 specific questions.

4  
5 The first question: Did Mr. Douglas falsify or manipulate the waiver letter or the waiver  
6 email?

7  
8 Regarding that question, Mr. Douglas swore as follows in his affidavit: (as read)

9  
10 The allegation that I manipulated, falsified, or fabricated the  
11 waivers granted by WEI's lender is very serious, completely  
12 baseless, and vehemently denied.

13  
14 The trustee has not submitted any evidence positively stating that Mr. Douglas did this.  
15 Rather, the trustee argues that I should infer this from the fact that Mr. Douglas played a  
16 central role in the email communications with Fiera in November 2022 and also internally  
17 with various people in WEI and the auditors in July of 2023.

18  
19 I cannot make that inference from this evidence. Mr. Douglas's denial is clear and  
20 unambiguous. He was not cross-examined on it, and I have not observed him testify.  
21 Therefore, I cannot conclude that his denial of his personal involvement is not credible.

22  
23 The second specific question is this: Did Fiera send the waiver letter, the waiver email, or  
24 grant the waiver described in those documents?

25  
26 On the one hand, I have direct personal evidence from Mr. French in the French affidavit.  
27 He was a purported signatory of the waiver letter. In his affidavit, he swore to the following:

28  
29 On November 4th, 2022, Fiera only waived WEI's covenant  
30 breaches with respect to the fiscal quarter ended September 30th,  
31 2022. Next, Fiera never granted the waivers that were reported in  
32 WEI's March 31, 2023, financial statements for the later periods,  
33 which were up to and including March 31st, 2024.

34  
35 Fiera considered this statement in the financials to be a material misstatement in WEI's  
36 public disclosure, and Mr. French said he made numerous requests of Mr. Douglas to prove  
37 evidence of these purported covenant waivers, but as of November 30th, 2023, when he  
38 swore his affidavit, none had been provided.

39  
40 Mr. Douglas's evidence in response to these allegations was -- and I'm going to paraphrase  
41 his evidence by using the defined terms I have stated, "waiver email," "waiver letter,"

1 "Fiera email." So, what he said was this: (as read)

2  
3 The fact is that the waivers in question were granted as shown in  
4 the waiver email and the waiver letter, both of which I believe I  
5 received. I do not believe I received the Fiera email purportedly  
6 sent at 2:23 PM.  
7

8 So, Fiera says it never granted the extensive waiver that WEI reported in its year-end  
9 financial statements and it never sent the waiver letter or the waiver email. Mr. Douglas  
10 says the waiver was granted, but his only support for that assertion is the waiver letter and  
11 the waiver email themselves.  
12

13 To counter Mr. French's statement that Fiera never sent those documents, Mr. Douglas said  
14 that he "believes he received them." That is not a strong or definitive rebuttal. By saying  
15 that he believes he received the documents, Mr. Douglas is implicitly allowing for the  
16 possibility that he did not. This equivocation on his part means that on this question, there  
17 is a partial conflict in the evidence. On this point, I also characterize Mr. Douglas's  
18 evidence at best as general, vague, superficial, and a bald assertion with no backup. As  
19 well, when the entirety of the other evidence is considered, I am satisfied that his response  
20 has no air of reality. I will summarize that other evidence now. It comes from emails  
21 submitted by both the trustee and the respondents. Other than the Fiera email and the waiver  
22 email, neither side contests the authenticity of these other emails that they both put into  
23 evidence.  
24

25 On November 4, 2022, Nelson Penelas of Fiera sent what I have defined above as "the  
26 Fiera email," and in that email, he said Fiera waived the financial covenant breaches for  
27 September. There was no discussion of the later periods.  
28

29 In July 2023, WEI's auditors, Deloitte, were working on the year-end audit.  
30

31 On July 10th, 2023, Mr. Douglas sent an email to Alison Cowie, who was WEI's CFO,  
32 forwarding the waiver email, which, as I said, was a November 4th, 2022, email,  
33 purportedly also from Mr. Penelas, in which it waived all the breaches for September,  
34 January, and the March financial covenants. In his forwarding cover email, Mr. Douglas  
35 said to Ms. Cowie: (as read)  
36

37 This is what I have from Nelson, no formal letter from what I can  
38 see.  
39

40 The trustee obtained this waiver email from WEI's server.  
41

1 And a side note about the two emails before I go on with the narrative, both the Fiera email  
2 and the waiver email say they were sent at 12:23 on November 4th, 2022. In their argument,  
3 the respondent suggested that there could've been two emails sent at two different times  
4 because the Fiera email had a time stamp of 2:23 PM and the waiver email had a time  
5 stamp of 12:23 PM. I disagree with that. The inference that I make from those different  
6 time stamps is that the email was saved in Fiera's server, that is, the Fiera email, with an  
7 eastern time zone time stamp, and the waiver email was saved in WEI's server with a  
8 mountain time zone time stamp. Mr. Penelas has a Toronto area code in his signature block.  
9 The text between the two emails differs in a few ways but most notably that the Fiera email,  
10 as I said, only waived covenant defaults for September 2022, and the waiver email waives  
11 them for that quarter and a number of quarters going forward.

12  
13 So, back to the narrative. So, on July 10th, Mr. Douglas forwarded that to Ms. Cowie. On  
14 the same day, Ms. Cowie forwarded it to Chris Gill at Deloitte. On July 12th, Mr. Gill  
15 wrote back to Mr. Douglas and Mr. Cowie, saying that it would be helpful to have Fiera  
16 provide a former letter confirming the waiver of covenant defaults for March 31, 2023, as  
17 well as all the quarters up to March 31, 2024.

18  
19 On July 17th, Jacquelyn Colville, who was a director of WEI and the chair of its audit  
20 committee, sent an email to Mr. Douglas, Ms. Cowie, and two other directors. She  
21 confirmed that Deloitte needed written, formal confirmation that Fiera had waived the  
22 financial covenants as at March 31, 2023. She said that if this formal waiver was not  
23 obtained, Deloitte would have to disclose in the audited financial statements that WEI was  
24 not a going concern, which would have the effect that the Fiera debt would have to be  
25 reported as current debt as at March 31st, 2023. So, that was July 17th.

26  
27 On July 19th, Mr. Douglas sent an email to Ms. Cowie, asking: (as read)

28  
29 Can you have a read and make sure this works, please?

30  
31 Attached to his email was the waiver letter, and it is a letter on Fiera letterhead. It's dated  
32 November 3rd, 2022, and it says, among other things, that Fiera would waive all of WEI's  
33 forward covenant breaches until March 31st, 2024, so for 18 months going forward. That  
34 letter had signatures from Russell French and another officer of Fiera.

35  
36 So, on July 27th, WEI did release its audited financials for March 31, 2023, and those  
37 financials contained the statement that: (as read)

38  
39 The company is not compliant with its covenants and has obtained  
40 waivers from the lender up to March 31, 2024. The company is  
41 currently renegotiating with them to better align with Wolverine's

1 current business.

2  
3 Mr. French swore that when Fiera saw these statements, it was surprised because it had  
4 never granted a waiver past September 2022, and so it asked for proof of the purported  
5 waiver, which WEI never provided. Mr. Douglas denies that Mr. French ever asked him  
6 for this, so I cannot resolve that conflict in the evidence without cross-examination or viva  
7 voce evidence, and therefore, I'm unable to decide if Mr. French did or did not ask for the  
8 proof of the waiver as he claims.

9  
10 However, FTI, who is now the trustee, was appointed by Fiera as its financial advisor in  
11 August 2023. In that role, it requested evidence of the covenant waivers reported in the  
12 financial statements. It requested this proof, it says, because Fiera told it that it had never  
13 waived the covenants. In his evidence, although Mr. Douglas denied getting any incoming  
14 requests for proof from Mr. French, he does not dispute that FTI asked for this information,  
15 so that evidence is uncontested.

16  
17 FTI goes on to say it had not received any evidence of the covenant waivers or any proof  
18 by the time WEI filed for CCAA protection on November 30th, 2023, and it was only after  
19 the CCAA proceedings commenced and FTI provided its information request to Ernst &  
20 Young, the CCAA monitor, that it got responses. Ernst & Young facilitated responses, and  
21 on December 3rd, 2023, Ms. Cowie provided a copy of the waiver letter to FTI. FTI sent  
22 that waiver letter to Fiera, and Fiera told it that it had never issued that letter.

23  
24 So, back to the evidence. Mr. Douglas's vague response that he believed he received the  
25 waiver letter and the waiver email could give rise to two inferences. Either he did or he  
26 didn't. Considering all the surrounding evidence I've just described, I conclude that the  
27 better inference is that he did not receive the waiver letter and the waiver email. In the  
28 circumstances, the inference that he did has no air of reality.

29  
30 If WEI had received the waiver letter from Fiera, that would've happened either in  
31 November 2022, when the initial email was sent, or later in July 2023, when Deloitte made  
32 the request for a formal letter. Mr. Douglas was the point person communicating with Fiera.  
33 If WEI had received the waiver letter in November 2022, why did he say to Ms. Cowie on  
34 July 10th, when he forwarded the waiver email, that all he had from Nelson was the email  
35 and no formal letter?

36  
37 Conversely, if WEI received the waiver letter in July 2023 after Deloitte had identified the  
38 need for it, why is there no email on WEI's server or in Mr. Douglas's possession or any of  
39 the other officers' possession showing Fiera sending it as an attachment?

40  
41 Why did WEI not respond promptly to FTI's requests for proof until December, when its

1 CCAA monitor finally intervened? Between August and November 2023 was obviously a  
2 crucial time period for WEI as it was trying to negotiate forbearance agreements and  
3 repayment plans with its secured lenders. If it had an email from Fiera attaching the waiver  
4 letter, producing it could've created very important goodwill at this important time.  
5 However, the silence from WEI on the request from FTI was deafening. That makes the  
6 inference that Mr. Douglas received the waiver letter from Fiera extremely implausible.

7  
8 In argument, respondent's counsel claimed that Mr. Douglas had no access to WEI's records  
9 or the relevant emails. That assertion is belied by the fact that Mr. Douglas attached to his  
10 own affidavit other emails from July 2023 that were exchanged between board members  
11 and officers of WEI. Also, the assertion that Mr. Douglas did not have access to records  
12 was not in evidence, which respondents' counsel acknowledged when I asked him about it.  
13 If Mr. Douglas decided that he needed more evidence to rebut the trustee's allegations,  
14 which he received in early September 2025 with their materials, he could've asked the  
15 trustee for records, he could've asked to cross-examine Mr. French, he could've asked to  
16 put written interrogatories to the trustee, which is a commonly permitted practice in this  
17 jurisdiction. He did none of those things but rather filed his own affidavit almost a full 2  
18 months after he received the trustee's materials.

19  
20 So, in conclusion, I find as a fact that WEI did not have a waiver from Fiera of its covenant  
21 defaults as at March 31, 2023. I find that Fiera did not send the waiver letter or the waiver  
22 email. Had the true situation been known by WEI's auditors in July 2023, WEI would've  
23 had to report a going concern note in its year-end financial statements released on July 27.  
24 This would likely have accelerated its financial decline, and this further reinforces my  
25 finding that WEI was insolvent in July 2023 when the payments were made. However, to  
26 be clear, I make no finding about how the waiver email and the waiver letter were created,  
27 when, or by whom, so I am not making the finding requested by the trustee that Mr.  
28 Douglas was personally responsible for those things. I'm only making the finding that those  
29 documents were not authentic and they did not come from Fiera.

30  
31 So, next common issue is an intention to prefer and an intention to defraud, defeat, or delay  
32 other creditors of WEI.

33  
34 The Supreme Court recently discussed how to correctly infer the intention of a corporation  
35 in the context of reviewable transaction applications like this one in *Aquino v. Bondfield*,  
36 2024 SCC 31. Corporations can only act through individuals, so the Court must identify  
37 who was the directing mind of the corporation regarding any particular decision. The next  
38 question is whether the intention of the directing mind can be attributed to the corporation.

39  
40 On the first point, who was WEI's directing mind regarding the payments?  
41

1 The July 20th email from Mr. Peterson that Mr. Douglas has put into evidence establishes  
2 that the board approved a \$500,000 payment to be made to Mr. Douglas or to one of his  
3 companies, so I find that the board was directing mind regarding the July 20th and 21  
4 payments.

5  
6 However, there is no evidence of any similar approval regarding the July 5 payment. No  
7 authorizing communication was put into evidence, so I don't know if the board approved  
8 that payment or an officer of WEI did or someone else. I can't determine who was the  
9 directing mind of WEI regarding that first payment.

10  
11 The next question is, What was the intention of those directing minds in making the  
12 payments?

13  
14 As I noted, the July 20th email from Mr. Peterson says the board supported the \$500,000  
15 payment to Mr. Douglas or one or more of his entities as a settlement of all the amounts he  
16 said WEI owed him and those entities. That is some evidence of the board's intention in  
17 approving the last two payments, but it's not the totality of the evidence. I will weigh that  
18 evidence in considering WEI's intention.

19  
20 There's no direct evidence from anyone who was involved in approving or making the  
21 payments on behalf of WEI that speaks to the intention behind making the payments.  
22 There's no evidence at all, no affidavits from any of the people who were officers or  
23 directors of WEI at the time the payments were made.

24  
25 Mr. Keifer swore that the payments were not made with the intention to prefer the payees  
26 over other creditors. However, I give that evidence no weight. Mr. Keifer ceased being  
27 CFO in March 2023. He was not on the scene when the payments were made in July 2023.  
28 The most that I can infer from his evidence is that the board carried out a reconciliation in  
29 January 2022, 18 months before the payments, on the basis of which Mr. Keifer believed  
30 that WEI owed Mr. Douglas and his companies \$1.3 million. I will say more about that  
31 reconciliation later.

32  
33 Mr. Douglas also has no admissible evidence on this point of intention. While he was a  
34 director of WEI at the time of the payments, he says he took no part in the decision to make  
35 the payments. He testified: (as read)

36  
37 I do not believe WEI had any intent to prefer me. I understand that  
38 at the time the two payments were made, all contractors paid in  
39 this way were also brought current.

40  
41 The first sentence is a bare assertion, and it's hearsay. The second sentence is so vague that

1 it is really of no use to me in deciding this point. I don't know who he was referring to as  
2 "all contractors" nor what mode of payment he meant when he said "all contractors paid in  
3 this way," so his evidence doesn't assist on the intention point either.  
4

5 Because there is no direct evidence about WEI's intention in making the payments, I must  
6 infer its intention from examining possible badges of fraud. As explained by the Supreme  
7 Court in *Aquino* at paragraphs 44 to 46: (as read)  
8

9           Badges of fraud are suspicious circumstances from which a court  
10           may infer the debtor's intent to defraud, defeat, or delay a creditor.  
11

12 The evidence establishes the following badges of fraud:  
13

14 These payments were made when WEI was clearly in financial distress, as I've explained  
15 already. They were made just prior to a repayment deadline from CWB, although not a  
16 formal demand, that WEI could not satisfy.  
17

18 The payments were very large. \$1 million represented a very large percentage of WEI's  
19 current assets, which as at June 30th were estimated to be \$11 million, including only \$2.4  
20 million in cash.  
21

22 The payments were made with haste. They were paid 1 day after the invoices were issued.  
23 The trustee says that regarding the aging of accounts payable, when it was appointed as  
24 receiver on December 8th, 80 percent of WEI's trade payables had been outstanding for  
25 more than 60 days, and it points to that aging as evidence of hasty payment of these invoices  
26 in July. Mr. Douglas swore that: (as read)  
27

28           I understand that at the time the two payments were made, all  
29           contractors paid in this way were also being brought current.  
30

31 As I said, that evidence is too vague to be probative of anything, and I don't have evidence  
32 as to the aging of the accounts payable in July 2023. There's no discussion of aging in the  
33 financial statements, so I can't judge the relative haste with which these payments were  
34 made, but I do note that they were made almost immediately.  
35

36 The payments were made in the absence of any formal approval such as board minutes  
37 or resolutions. That's a badge of fraud.  
38

39 Unlike the *Piikani Energy* case that was put forward by the respondents, there's no evidence  
40 in this case that WEI had entered agreements with WMSI and 158 that obligated it to make  
41 these payments, so if these were payments to contractors, there was no contract. The trustee

1 found a draft January 1st, 2018, executive management services agreement between 158  
2 and WEI; however, it was merely a draft. It was unsigned. It had no schedule of executive  
3 services nor any schedule of fees. This was in the trustee's materials, and Mr. Douglas did  
4 not reply in his evidence to provide any executed agreements or any statement that there  
5 were executed agreements. In fact, it is unclear whether WEI had a legal obligation to make  
6 the payments at all or what the proper amounts of the claims were.

7  
8 Ms. Colville, the chair of the audit committee, sent an email on July 5th, 2023, to other  
9 board members in which she asked a number of questions about the quantum of Mr.  
10 Douglas's salary as president and CEO prior to 2022 and after that as executive chair. That  
11 email contradicts Mr. Keifer's assertion that the amounts owing to Mr. Douglas and his  
12 companies was fully reconciled in January 2022. Rather, Ms. Colville at that time was  
13 asking for proof and backup. She essentially states that there's no evidence that WEI agreed  
14 to pay Mr. Douglas the \$240,000 a year salary that he claimed as executive chair (he and  
15 Ms. Cowie), nor was there any evidence of a \$144,000 cash bonus they claimed he was  
16 owed, nor was there backup for \$643,000 that Ms. Cowie said he was owed for personal  
17 Visa payments made by him. Ms. Colville is also clear that the claimed amounts put  
18 forward by Ms. Cowie are contingent on this sufficient backup being provided.

19  
20 There's no evidence that her questions were ever answered or that this backup was ever  
21 provided to the board. That is the kind of thing that one would expect in a public company  
22 and would expect to be produced before the board approves making of payments like this  
23 in the face of what are fairly skeptical questions in Ms. Colville's email, again, the chair of  
24 the audit committee.

25  
26 The punch line of her email was that if it turned out that there was proper backup or proof,  
27 the reconciliation from Ms. Cowie showed that Mr. Douglas was owed of salary of  
28 \$428,000 and he was owed \$643,000 for Visa payments he made personally. The July 5th  
29 payment of \$463,000 plus GST to total \$486 was made immediately thereafter to WMSI.  
30 There's no evidence of anyone authorizing this payment, and it's unclear whether this was  
31 intended to be payment for the salary or the Visa items or something else entirely. Mr.  
32 Douglas's evidence seems to suggest that this first July 5th payment was for the salary  
33 claim. It was close to but not exactly the same amount as the salary amount cited in Ms.  
34 Colville's July 5th email. And then on July 20th, Mr. Douglas emailed Ms. Cowie and said  
35 this: (as read)

36  
37 Hi, Alison. I've reviewed the amounts owing with the independent  
38 directors and come to a total of \$2,697,000 plus GST before the  
39 last salary payment was made. I have agreed with them that all  
40 amounts owing up to the end of June 2023 would be clear with  
41 payment of wages already made and a one-time payment of

1           \$500,000 plus GST. I've attached an invoice.

2  
3           From the statements "before the last salary payment was made" and the "payment of wages  
4           already made," I infer that the July 5th payment was for the salary portion of his claims  
5           against WEI that was identified in Ms. Colville's July 5th email.

6  
7           But in summary, the payments were documented in an extremely unusual and illogical  
8           manner, inconsistent with the characterization that the participants put on the payments.  
9           This was not a small private company. It was a relatively large public company. The  
10          confusion and the casual informality surrounding these payments and the lack of backup is  
11          somewhat shocking given the context of a public company.

12  
13          So, considering all these badges of fraud and all the circumstances, I conclude that WEI  
14          did intend to prefer Mr. Douglas and/or his companies over other creditors when it made  
15          these payments in July 2023, and also, it intended to defraud, defeat, or delay WEI's other  
16          creditors. One of the company's two main secured creditors had signalled that it would  
17          require repayment very soon. These payments were made to parties who were, at the  
18          highest and ignoring the lack of any clear legal justification for their claims, unsecured  
19          creditors. Agreeing to pay them at that time and in those circumstances necessarily meant  
20          preferring them over other creditors, notably the large secured creditor who'd made a soft  
21          demand, and hindering the company's other creditors.

22  
23          When I consider the board's approval of the July 20 and 21 payments, I also cannot ignore  
24          the fact that the directors gave this approval apparently unaware that the waiver letter was  
25          not authentic. I must take this as a fact known to WEI: That it did not have a waiver from  
26          Fiera for the March 31, 2023, covenant breaches and that its year-end financial statements  
27          would therefore have properly needed to include a going concern note, greatly amplifying  
28          the risk of imminent insolvency. While the directors may not have known that, someone at  
29          the company did, so that is also a very significant badge of fraud.

30  
31          Moving to the next common issue, the value of consideration received for the payments.

32  
33          Putting the evidence at its highest, the payments reimbursed Mr. Douglas and/or his  
34          companies for goods and services they had provided in prior periods. As I noted, Ms.  
35          Colville had sought proof or backup for these historical claimed amounts. There's no  
36          evidence that that was ever provided, but for the sake of this analysis, I will assume that all  
37          the amounts claimed were validly owed.

38  
39          The problem is that at the time the payments were made in July 2023, WEI was insolvent  
40          and unable to pay its secured creditors. There is no evidence that it received any present or  
41          future consideration for the payment of those old, unsecured, at their best, obligations.

1 There's no evidence suggesting, for example, that WEI thought it had to make these  
2 payments to stay in business. There's no evidence from the respondents or from anyone at  
3 all about what would've happened if WEI did not make these payments in July 2023.  
4 Therefore, I find that at the time WEI made the payments, it received no present valuable  
5 consideration in exchange for the payments. I agree with the trustee's opinion that the value  
6 received by the trustee was zero.

7  
8 So, having decided those common issues, I'll now turn to the different forms of relief sought  
9 by the trustee. The first is section 95 preferences under the *BIA*. Because I have found that  
10 the payor and the payee companies were operating at arm's length, the payments therefore  
11 had to have been made within the 3-month look-back period. The parties agree that the date  
12 of the initial bankruptcy event was November 3rd, 2023, when WEI filed for CCAA  
13 protection. Because the payments are outside the look-back period, they cannot be  
14 preferences under section 95.

15  
16 I find, turning to the provincial *Fraudulent Preferences Act*, that the trustee has satisfied  
17 all the elements under section 2 of that *Act*. The payments were payments of property,  
18 namely money. They were made by a person, WEI, at a time that it was in insolvent  
19 circumstances or unable to pay its debts in full or knew that it was on the eve of insolvency,  
20 and the payments were made to or for a creditor with intent to give that creditor preference  
21 over the other creditors or the debtor or over any one or more of them, so the claim under  
22 the *Fraudulent Preferences Act* is established.

23  
24 Turning to the *Statute of Elizabeth*, the elements are also all satisfied here. First, there must  
25 be a conveyance of real or personal property -- which there was -- for no or nominal  
26 consideration -- that is satisfied -- with intent to defraud, delay, or hinder creditors. I have  
27 found that that is satisfied. And the party challenging the conveyance must be someone  
28 who was a creditor at the time of the conveyance or someone with a legal or equitable right  
29 to claim against the transferor. The trustee brought to my attention case law, which I accept,  
30 that the trustee, as the representative of all creditors, does have standing to bring actions  
31 and make claims under not only the *BIA* but the provincial *Fraudulent Preferences Act* and  
32 the *Statute of Elizabeth*. And then the final element under the *Statute of Elizabeth* that is  
33 satisfied is that the conveyance had the intended effect. It did prefer the payees over other  
34 creditors.

35  
36 Turning to transfers at undervalue under section 96, the elements are all satisfied here as  
37 well. A transfer at undervalue: The payments were a disposition of property or provision  
38 of services for which no consideration was received by the debtor or for which the  
39 consideration received by the debtor, WEI, is conspicuously less than the fair market value  
40 of the consideration given by the debtor. As stated above, I agree with the trustee's opinion  
41 that this was paying old claims, and I agree with the trustee that the present value of the

1 consideration received by WEI was nil.

2  
3 The next element under transfers that undervalue, WEI was dealing at arm's length with  
4 WMSI and 158, but the transfer occurred within the 1-year look-back period. WEI was  
5 insolvent at the time it made the transfer, and as I found, it did intend to defraud, defeat, or  
6 delay other creditors, so these payments were transfers at undervalue.

7  
8 I have found that the elements necessary to make out a claim in unjust enrichment are not  
9 satisfied. The first two are. It was an enrichment of the payees. There was a corresponding  
10 deprivation of WEI. But the third element is the absence of a juristic reason for the  
11 enrichment. While I have found in considering the badges of fraud that there was a lack of  
12 any clear justification for the payments and they were made in a dubious manner, which  
13 led to my conclusion on the badges of fraud, the trustee has not established on a balance of  
14 probabilities that there was a complete lack of legal justification for the payments. That  
15 would require probably a great deal of forensic investigation into the history of WEI and  
16 the accounts, and I don't have that evidence, so there's no claim made out in unjust  
17 enrichment.

18  
19 So, those are the claims against the payees. Turning next to the trustee's assertions against  
20 Mr. Douglas.

21  
22 The first is that I should pierce the corporate veils of 158 and WMSI to find him personally  
23 liable for the amounts. The parties put before me the Ontario Court of Appeal in *Chevron*,  
24 2018 ONCA 472 at paragraph 65. In that case, the Court clarified that the courts cannot  
25 ignore corporate veils on an equitable result-oriented basis but rather only in three limited  
26 circumstances: First, when the court is construing a statute, contract, or other document.  
27 That doesn't apply in this case. Second, when the court is satisfied that a company is a mere  
28 facade concealing the true facts. Third, when it can be established that the company is an  
29 authorized agent of its controllers or its members, corporate or human.

30  
31 The trustee says I should pierce the corporate veil for two reasons:

32  
33 First, because if I do not, the WEI estate will likely not recover these funds. I refuse to  
34 pierce the corporate veil on that basis. That is exactly the kind of ends-driven equitable  
35 approach that the Ontario Court of Appeal rejected.

36  
37 The trustee's second argument is that these companies WMSI and 158 were mere facades  
38 of Mr. Douglas. However, to pierce the corporate veil on the mere facade basis, as the  
39 Ontario Court explained in *Chevron*, I must be satisfied that there's complete control of the  
40 subsidiary so that it's the mere puppet of its shareholder, in this case Mr. Douglas. I have  
41 to find that it was incorporated for a fraudulent or improper purpose or used as a shell for

1 improper activity. Mr. Keifer's and Mr. Douglas's evidence is that WMSI and 158 were  
2 incorporated for legitimate business reasons. That evidence is uncontradicted, so I find that  
3 I cannot pierce the corporate veil on the mere facade basis.  
4

5 Then the third path is authorized agency. There is very little discussion of this path to  
6 piercing the corporate veil in the case law. There's a great deal of discussion focusing on  
7 the concepts of sham or alter ego, but those are not the same as agency. However, agency  
8 is a well-understood legal principle. I'll quote an oft-cited definition of agency from  
9 *1196303 Ontario Inc.*, another Ontario Court of Appeal case, reported at 2015 ONCA 580  
10 at paragraph 69: (as read)

11  
12 Agency is the relationship that exists between two persons when  
13 one, called the agent, is considered in law to represent the other,  
14 called the principal, in such a way as to be able to affect the  
15 principal's legal position by the making of contracts or the  
16 disposition of property.  
17

18 So, the question is, Did WMSI and 158 act in such a way as to legally affect the principals,  
19 here Mr. Douglas's legal position? I find that the answer is yes regarding these payments  
20 for the following reasons.  
21

22 WMSI and 158 acted as Mr. Douglas's agents. He treated them as his agents, and WEI  
23 treated them as his agents. WEI made the payments to WMSI and 158 to pay claims against  
24 it by those two companies, by Mr. Douglas personally, and possibly also by other  
25 companies. Both sides to the payments considered that WEI paying those two companies  
26 altered the legal rights, in other words, the claims, of that much larger group of persons,  
27 including Mr. Douglas. In other words, all the parties treated WMSI and 158 as receiving  
28 agents who had the legal authority to receive payments owed to themselves and others,  
29 including Mr. Douglas personally. This is clear from the evidence about the nature of the  
30 claims that Mr. Douglas and the two companies made against WEI and the payments that  
31 WEI made to those two companies. This evidence comes from Mr. Kiefer's and Mr.  
32 Douglas's affidavit.  
33

34 Mr. Kiefer swore that there was a January 2022 reconciliation as a result of which 1.266  
35 million was owed to 158 and WMSI. Exhibit A to his affidavit shows how he got this  
36 number. That net number was a reconciliation between three shareholder loan accounts.  
37 The first one was for Wolverine Management, whom WEI owed \$4.842 million. The line  
38 items in the backup ledger to this shareholder's loan account suggest that Wolverine  
39 Management was WMSI. The next shareholder loan account was Wolverine Group, who  
40 owed \$4.490 million to WEI. That exact entity is not identified anywhere in the documents,  
41 although there is suggestion elsewhere there that's an entity called Wolverine Group Inc.

1 And then the third shareholder loan was the personal shareholder loan account of Mr.  
2 Douglas, who WEI said it owed \$914,000 to.

3  
4 So, in the reconciliation, Mr. Kiefer netted these three sums, one credit and two debits from  
5 the perspective of the company, to get the net amount that he says was owed to 158 and  
6 WMSI. This netting exercise showed that WEI through its then-CFO, Mr. Kiefer, ignored  
7 the separate legal existence of the two companies and Mr. Douglas at least to come up with  
8 a single net amount that was owed by WEI. The ledgers showing the backup for the one  
9 credit and the two debit shareholder loan accounts also demonstrate that WEI considered  
10 that it could discharge claims that it owed to one party by paying an affiliate. For example,  
11 the WMSI shareholder loan account describes many transfers between its and WEI's bank  
12 accounts and also WMSI paying WEI expenses from its bank account. As noted, the  
13 conclusion was that WEI owed WMSI \$4.82 million for these transactions.

14  
15 The third shareholder loan, as I said, was for the Wolverine Group. While Mr. Kiefer did  
16 not identify this company, the ledger shows many transfers between its bank accounts and  
17 WEI's bank accounts. Mr. Kiefer didn't explain why or how Wolverine Group Inc.'s  
18 shareholder loan could be netted versus the other two shareholder loan accounts to come  
19 up with net sums that he says are owed to 158 and WMSI.

20  
21 And the personal shareholder loan account of Mr. Douglas with a debit of \$914,000  
22 contains multiple transactions in the line items where Mr. Douglas paid personally WEI's  
23 RBC Visa debts from his personal bank account. However, WEI did not repay those  
24 amounts to him personally. Rather, it repaid those amounts to "Jesse's management co," a  
25 company that's not identified. In other words, WEI received funds from Mr. Douglas or  
26 received the benefit of his personal funds, and it repaid those claims, his personal claims,  
27 to one of his companies. It's not clear who the shareholder is in this account, whether it's  
28 158 or Mr. Douglas personally. Either way, Jesse's management company received  
29 payments that legally discharged debts or WEI thought legally discharged debts that it  
30 owed to Mr. Douglas personally.

31  
32 Mr. Douglas's evidence about the role the companies played took the same approach. He  
33 swore that WMSI had paid for leases of equipment used by WEI and previously paid WEI's  
34 corporate staff. He said that his compensation was comprised of two components, a  
35 consulting fee paid to 158 and a bonus payable to WMSI. As I noted, he did not submit  
36 any evidence of any agreements by which WEI was obligated to pay him through these  
37 two entities.

38  
39 The lease and expense claims he describes WMSI holding does accord conceptually with  
40 Mr. Kiefer's 2022 reconciliation. The other claims he describes do not. There's no  
41 description in the shareholder loan accounts making up Mr. Kiefer's total of \$1.266 million

1 of a consulting fee or bonus, and that may be -- it's not clear. That may be because those  
2 just didn't get reported in the shareholder loan accounts and those amounts are separate,  
3 and it appears to be that that could be the explanation given the next piece of evidence,  
4 which is Ms. Colville's July 5th, 2023, email. A different reconciliation was attached to  
5 that email. That's a reconciliation of a Mr. Douglas's CEO salary "as management fee" and  
6 executive chair salary "as management fee." The reconciliation shows that Mr. Douglas  
7 was owed \$487,000 for those two forms of personal compensation. As I mentioned earlier,  
8 Ms. Colville was just reconciling numbers in this email. At the same time, she was  
9 questioning the lack of backup, and she also cited separately from the salary and the  
10 bonus -- sorry -- the CEO salary and the executive chair salary, she also cited a \$643,000  
11 amount that Mr. Douglas claimed was owed to him personally for Visa payments he made  
12 for the benefit of the company.

13  
14 So, the first payment made on July 5th is consistent with the concept that WMSI was a  
15 receiving agent for the claims of others. The invoice that it issued was for \$463,000 plus  
16 5% percent GST for a total of \$486,950.35. It described the services as consulting services,  
17 and it also used the same phrase in the description for payment. There was no evidence of  
18 any consulting agreement, as I said. On the contrary, the trustee pointed out, WEI stated in  
19 its 2022 info circular that it had no contracts with external management companies.

20  
21 So, what claim was being repaid on July 5th? As I noted above, the evidence suggested  
22 that it was the salary claim, that is, the claim totalling \$487,000. I make that inference from  
23 Ms. Colville's email which came up with an amount fairly close to what was ultimately  
24 paid on July 5th and Mr. Douglas's statement on July 20th that I've cited already, speaking  
25 about the payment already made for wages. The problem is that this payment was made to  
26 WMSI for the invoice for consulting services. Mr. Kiefer's reconciliation showed that the  
27 only claims WMSI had were for expenses, not for salary as CEO or executive chair. Mr.  
28 Douglas's evidence was that the only compensation he received through WMSI was the  
29 bonus, but Ms. Colville's email and the reconciliation that she circulated on July 5th made  
30 no mention of a bonus payable.

31  
32 So, the conclusion is unavoidable that WEI paid WMSI for salaries it believed it owed, at  
33 best, to Mr. Douglas personally or potentially to 158 under a possible management fee  
34 agreement that was not proven in evidence pursuant to a contract that has not been proven  
35 to exist, so WEI made that payment to WMSI, but taking the evidence at its highest, there  
36 was no amount owed to WMSI for consulting services or for the reason they made that  
37 payment, so both WEI and Mr. Douglas treated WMSI as his agent to receive a payment  
38 intended for him personally or potentially for 158 if there was a management fee  
39 agreement.

40  
41 The second and third payments on July 20 and 21 continue the same pattern of agency. The

1 invoice that 158 issued to WEI for \$500,000 plus GST says it is for consulting services,  
2 and the description of the payment is settlement of wages and expenses. As I noted above,  
3 there's no evidence of any agreement. The evidence is also very unclear about what claims  
4 this payment was made for. Mr. Douglas says in his July 20th email that it was to settle  
5 what he says was owed by WEI, \$2.697 million, before the final salary payment was made  
6 on July 5th. The only claims that the evidence shows existed at that time were Mr. Kiefer's  
7 reconciliation I've described, the netting of the three shareholder loan accounts for about  
8 \$1.3 million, and then the \$643,000 claim that Mr. Douglas claimed personally for his Visa  
9 payments on behalf of the company.

10  
11 So, in response to all these claims and an undesignated and vague settlement of these  
12 claims, WEI paid \$500,000 plus GST to 158. The same conclusion follows. Both WEI and  
13 Mr. Douglas treated 158 as an agent to receive a payment intended for Mr. Douglas  
14 personally -- at least partially for Mr. Douglas personally, possibly also for WMSI and/or  
15 158 and maybe other entities as well, such as the Wolverine Group.

16  
17 So, in conclusion, WMSI and 158 acted as receiving agents for Mr. Douglas and potentially  
18 other entities as well whose claims were recorded, among other places, in Mr. Kiefer's 2022  
19 reconciliation. I find that this agency relationship justifies the piercing of the corporate veil.

20  
21 Turning to section 101 of the *BIA*, the trustee asked me to find that Mr. Douglas and  
22 potentially other directors should be personally liable to repay the payments under that  
23 section. To make that finding, I would have to find, among other things, that the directors  
24 did not have reasonable grounds to believe that the payment occurred at a time when the  
25 corporation was not insolvent, that it was not conspicuously over the fair market value of  
26 the consideration received, and that it was made in ordinary course of business.

27  
28 There's insufficient evidence about what the directors knew for me to make those findings  
29 under section 101, so I'm not going to order that relief, but in conclusion, for the reasons  
30 I've stated, I order that WMSI and 158 must repay the amounts that each of them received  
31 in July 2023 and that Mr. Douglas is also personally liable, via piercing of the corporate  
32 veil, for the total amount of those payments.

33  
34 Okay, counsel. That was a long recitation of my reasons. Anything arising from that?

35  
36 MR. KASHUBA: No, Sir. On behalf of the trustee, we will be  
37 requesting the transcripts, just more information to digest.

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39 Will you be speaking to costs?

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41 THE COURT: Do you want to speak to costs now?

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**Submissions by Mr. Kashuba (Costs)**

MR. KASHUBA: We did request the full repayment of the trustee's counsel's fees on a solicitor-client own basis. I would submit that we are predominantly successful today in the decision from the Court. We would thus request that those fees be paid in full. We can provide a breakdown of our invoices.

THE COURT: Okay. Mr. Henschel, in response to that request for full solicitor-and-client costs?

**Submissions by Mr. Henschel (Costs)**

MR. HENSCHEL: Thank you very much. My understanding is that solicitor-client full indemnity costs are related to litigation misconduct, and certainly that is not the basis for this. Talking about pre-litigation conduct. We would suggest that if costs are payable in this matter, Sir, that they be party-and-party costs on Column 4 pursuant to Schedule C of the *Rules of Court*.

**Ruling (Costs)**

THE COURT: Okay. Thank you, both.

Yeah. I agree with Mr. Henschel. Solicitor-and-client costs are to be awarded rarely. The case law does suggest it is either for litigation misconduct, but there is also -- there is also authority to grant it for pre-litigation misconduct or misconduct outside litigation. In this case, however, I did not agree with the trustee that it had proved any personal fraud or dishonesty by Mr. Douglas. That could be the type of conduct that might have justified solicitor-and-client costs.

And as all counsel know, although the tests describe various of these things as fraudulent preferences, the Courts have made clear that this is -- that does not imply or infer actual fraud, so essentially, this is a claim the trustee made. It was successful. It's a claim by the trustee to bring funds back into the estate. It was opposed unsuccessfully by the respondents, so costs should follow, but I agree with Mr. Henschel that nothing over and above Column 4 costs. I think Column 4 is where the amount of this claim puts us, so it'll just be Column 4 costs for all the steps taken in advancing this application, which was an application that took a half day to argue, I think, gentlemen -- either half day or day. You can confer among yourselves -- and it did require briefs, so those are the -- those are the right parameters for setting that amount of costs.

1 MR. KASHUBA: Thank you, Sir.

2

3 THE COURT: So, I'll leave it to you, Mr. Kashuba, to draft an  
4 order, run it past your friend, and then when it's in a form you both agree on, submit it to  
5 Mr. Burik, who will forward it to me.

6

7 MR. KASHUBA: We'll do that, Sir. Thank you, Justice Simard.

8

9 THE COURT: Okay. Okay. Thank you very much everyone.  
10 Have a good day.

11

12 MR. HENSCHERL: (INDISCERNIBLE), Justice Simard.

13

14 THE COURT: Bye-bye.

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18 PROCEEDINGS CONCLUDED

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I, John Stopforth, certify that this recording is the record made of the evidence in the proceedings in the Court of King's Bench held in courtroom 1103 at Calgary, Alberta, on the 21st day of November, 2025, and that I was the court official in charge of the sound-recording machine during the proceedings.

1 **Certificate of Transcript**

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I, Sandy Voga, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

Sandy Voga, Transcriber  
Order Number: TDS-1098010  
Dated: November 23, 2025