CITATION: Enlightened Funding Corporation v. Velocity Asset and Credit Corporation, 2026 ONSC 4592
COURT FILE NO.: CV-23-00707330-00CL
DATE: 20260810

ONTARIO SUPERIOR COURT OF JUSTICE

RE: ENLIGHTENED FUNDING CORPORATION,
Applicant

-and-

VELOCITY ASSET AND CREDIT CORPORATION AND 926749 ONTARIO LTD. O/A CLONSILLA AUTO SALES AND LEASING,
Respondents

BEFORE: FL Myers J

COUNSEL: *Scott McGrath, Rebecca Kennedy, and Derek Harland*, for Deloitte Restructuring Inc. in its capacity as Receiver of 926749 Ontario Ltd. operating as Clonsilla Auto Sales and Leasing

Haddon Murray, for the Peoples Trust Company as successor to the Applicant

Howard Manis and Daniel Litsos for Sara Waddell, Taylor Waddell, Meggan Waddell, Tom Sergeant, and Northbridge Estates Inc.

Yan David Payne and Pratik Batta for Rastislav Scasny

Nancy Waddell on her own behalf

Hugh Waddell on his own behalf prior to January 20, 2026

Ian M. Anderson on his own behalf on October 31, 2026

Gerald Shapiro on his own behalf

HEARD: October 31, 2025 and July 2, 2026

ENDORSEMENT

The Motion

[1] Pursuant to para. 9 of the order appointing the Receiver over all property, assets, and undertaking of Clonsilla Auto Sales and Leasing dated December 8, 2023, the Receiver exercises the authority of a trustee in bankruptcy for Clonsilla. Accordingly, where I use the term "Receiver" below in the context of proceedings in bankruptcy, the Receiver is for all intents and purposes the trustee in bankruptcy and properly authorized to bring the proceedings as such.

[2] The Receiver brought a motion under ss. 95 and 96 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, seeking repayment of preferences and funds allegedly transferred at undervalue to non-arm's length parties in the year prior to the initial bankruptcy event.

[3] The majority of the targets of the motion are close relatives of Mr. Hugh Waddell. Hugh Waddell is now bankrupt. Previously, he was the owner of the debtor Clonsilla.

[4] The hearing of the Receiver's motion commenced on October 31, 2025. The hearing did not finish that day. Several things happened that led to the completion of the hearing being deferred until July 2, 2026.

[5] After the October 31, 2025 hearing, Mr. Hugh Waddell delivered financial statements for Clonsilla. Prior to that time, the Receiver had been relying on financial statements of an affiliated company to submit by inference that Clonsilla was insolvent at the relevant times.

[6] It now appears that the Receiver had the versions of the financial statements produced by Mr. Waddell. They were buried in e-folders that the Receiver obtained from the debtor. The Receiver produced the files to the Waddells previously but, apparently, no one on either side recognized that the financial statements were there until recently.

[7] It would have been preferable had the Receiver recognized that it had the financial statement of course. Whether it is reasonable to expect a junior person reviewing files early-on to recognize the potential import of a single document for a hearing at a later date is perhaps an issue. On the other hand, it was a financial statement in a bankrupt estate notably lacking much meaningful financial information. It is an important document even if it is only a compilation report. As a compilation report, it contains the representations of the debtor and management to their bookkeeper/accountant.

[8] It would have been even more preferable had Mr. Hugh Waddell cooperated and produced an organized, meaningful. and complete set of financial documents for the debtor company as required by the receivership order. Similarly, the company's bookkeeper/accountant (who it turns out is a defrocked accountant) refused entreaties by the Receiver to assist.

[9] The next significant intervening event is that Hugh Waddell was adjudged bankrupt on January 20, 2026. He lacked standing thereafter to participate further in this proceeding. Mr. Waddell's trustee in bankruptcy took no part in this proceeding. However, Nancy Waddell has appeared purportedly on her own behalf and she has advanced positions with her husband's assistance.

[10] In addition, Mr. Ian Anderson appeared on his own behalf and completed his submissions on October 31, 2025. He has now passed away. I have signed an order to continue as asked by the Receiver. The issue was raised on July 2, 2026 without objection from anyone.

[11] Because the financial statement evidence changed amid stream, I asked all parties to provide me with a point form list of their issues to ensure that I was making reference to their final points rather than to spent positions.

Insolvency

[12] Much time was spent by counsel arguing about whether Clonsilla was insolvent at the relevant dates. However, under s. 96 (1)(b)(i) of the *BIA*, insolvency is not a required element of proof of a transfer at undervalue to a non-arm's length recipient. It is relevant, however, to proof of a preferential payment under s. 95 (1) of the statute.

[13] The parties agree that the relevant one-year period for reviewable transactions runs from October 6, 2022 until the date of the initial bankruptcy event on October 6, 2023.

[14] The Receiver refers to narrative evidence showing that Clonsilla needed $200,000 in May, 2023 or else it faced "collapse" according to a contemporaneous text message from Hugh Waddell. Mr. Scasny gave evidence that the company was always facing liquidity issues. Mr. Shapiro says that the company consistently needed short-term cash advances from him.

[15] The Receiver relies principally on the company's balance sheet for the year-ended January 31, 2023. I do not accept Mr. Manis's submission that the financial statement is not sufficient because it covers only part of the relevant period. It is sufficient to establish a *prima facie* case of insolvency as at its effective date. I deal with the rest of the period below.

[16] The Receiver notes that in the cover letter with the financial statement, Clonsilla's "accountant" stated that it was the obligation of Clonsilla to provide complete and accurate information. In addition, the accountant warned that because he just prepared a compilation of management information, the financial statement may not be prepared in accordance with GAAP.

[17] The Receiver has submitted a few adjustments that are required to bring the financial statement into harmony with the evidence now available. It corrected the value of long-term debt as at year-end. It corrected the value of lease receivables to remove duplicate leases, fraudulent leases, cross-funded leases, and cancelled leases. It removed an asserted income tax receivable that on its face lacked realizable value.

[18] The resulting figures establish that Clonsilla had no equity value as at January 31, 2023. Its liabilities exceeded the value of its assets on the balance sheet as adjusted. And that is without taking into account that the realizable or liquidation value of assets is well below the depreciated cost presentation basis of assets in a balance sheet.

[19] Mr. Manis submits that the Receiver must prove strictly that the debtor was insolvent on the date of each impugned transaction and that insolvency cannot be inferred at law. I do not accept either submission.

[20] In *Robinson v. Countrywide Factors Ltd.*, 1977 CanLII 175 (SCC), [1978] 1 SCR 753, the Supreme Court of Canada unanimously agreed on the relevant principles for proof of insolvency by a trustee. At p. 800 of the SCR report, Laskin CJC, (dissenting on other points) wrote:

> I am in agreement with the view expressed by Hall J.A. that although the burden is on the trustee to prove the insolvency of the debtor at the time of the transaction, as the burden is always upon the plaintiff to prove his case, the trustee may adduce such a *prima facie* case which will call upon the defendant to adduce evidence to rebut that *prima facie* evidence. It must be remembered that a trustee is often faced with a situation, which faced this trustee when he was not appointed until November 1968, where he had to go back into the past and establish an insolvency which he alleged

> had existed in November 1966. The trustee in such a situation must deal with records which are, in many cases, fragmentary and may well be intentionally deceptive. He has no means of checking the actual stock-in-trade which existed at that date, and sometimes can place little dependence upon the evidence of the debtor. In the particular case, I am of the opinion, as was Hall J.A. and MacPherson J., that the trustee as plaintiff, here appellant, had certainly shown such a *prima facie* case.

[21] Here the Receiver faced the same issues. It was appointed after the events and was met with fragmentary records at best. The law calls on it to establish a *prima facie* case that can satisfy the burden of proof on the balance of probabilities if left unrebutted. An evidentiary or practical burden then falls on the respondents to rebut the *prima facie* case with evidence to the contrary if they are able to do so. The legal burden never shifts away from the Receiver. But the burden is met by proof of a *prima facie* case unless rebutted.

[22] Moreover, Laskin CJC also approved the court inferring that the condition of insolvency continued through the ensuing period without daily proof. The inference could flow from things like a lack of evidence of a material improvement to the company's financial condition as established by narrative evidence and the lack of evidence of inflows of assets, recognition of new net income or growth to retained earnings, or a decrease of liabilities.

[23] In *Servus Credit Union v JRD Investments Inc*, 2020 ABQB 249 (CanLII), Goss J. confirmed that insolvency, like any other fact, can be established by a reasonable inference drawn from other admissible evidence. She wrote:

> [37] In order for a transaction to be impeached under the *FPA*, the debtor must have been either insolvent, on the eve of insolvency, unable to pay its debts in full in the ordinary course as they become due or knew that it was on the eve of insolvency, at the time that the transfer was made. Each are alternatives and not conjunctives. The burden of proving this rests with the applicant, who need only prove facts that will warrant a reasonable inference of insolvency, at which point the defendant would need to adduce evidence to rebut that prima facie evidence: ***Titan Investments Ltd Partnership, Re,*** 2005 ABQB 637 at para 15 ***[Titan];***

> ***Coopers & Lybrand Ltd y Alcan Canada Products Ltd*** (1982), 46 AR 32, 16 ACWS (2d) 4 (QB) at paras 15-17, citing from ***Kozan v Countrywide Factors Ltd***, [1978] 1 SCR 753.

[24] See also: Bank of Montreal v Pinder Bueckert & Associates Inc., Trustee of the Estate in Bankruptcy of Walter Frederick Haslliday, 2021 SKQB 276 at para 40.

[25] In my view, in the absence of further financial disclosure by Clonsilla, and in view of the narrative evidence discussed above, it is reasonable to infer that the company remained in a state of balance sheet insolvency throughout the period. I do draw that inference.

[26] Mr. Manis and Mr. Payne point to payments made by Clonsilla to the Applicant secured creditor to satisfy 2023 arrears as at July 5, 2023. Those arrears mounted in the main after the January 31, 2023. So, they worsened the financial situation until they were paid and returned the situation to where it was as reported at year-end.

[27] The insolvency finding sought by the Receiver is based on the balance sheet test under para (c) of the definition of "insolvent person" in s. 2 of the *BIA* as follows:

> ***insolvent person*** means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and
>
> **(a)** who is for any reason unable to meet his obligations as they generally become due,
>
> **(b)** who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
>
> **(c)** the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

[28] Mr. Manis and Mr. Payne are confusing the cash flow test in paras. (a) and (b) of the definition of "insolvent person" with the balance sheet test in para. (c) of the definition.

[29] Measuring the sufficiency of current cash flow is not the same as measuring the disposal or liquidation value of assets at the same day.

[30] Liabilities worsening and then returning to where they were does not undermine the insolvency calculated as at year-end with the Receiver's reasonable adjustments. Neither does cash flow utilization to pay the first secured creditor undermine the narrative evidence that the company remained in dire need of liquidity and was near collapse unless short-term advances were made to it by Messrs. Scasny, Shapiro, and others throughout 2023 until the receivership order dated October 26, 2023.

[31] The existence of cash flow payment priority being assigned by the debtor to payment of the highest priority creditor, family members, and a dear friend in Mr. Scasny, is not evidence that rebuts the state of balance sheet insolvency (liabilities exceeding realizable value of assets). Cash flow or revenue received is not equivalent to net income that can be available to add to the debtor's net assets. Even if the company amassed cash to pay off arrears and to pay Mr. Scasny (as discussed below) in June, 2023, that does not undermine or rebut the finding of balance sheet insolvency under para. (c) of the definition of "insolvent person."

[32] There is no evidence before me to undermine the finding above that at all material times throughout the review period, the value of the company's assets reported in its balance sheet on a cost basis were less than the value of its liabilities. There is no evidence of an increase in net assets, a decrease in total liabilities, or the recognition of net income between January 31, 203 and October 6 or 26, 2023. The company remained in distress throughout. *A fortiori*, the realizable value of the assets was less than the liabilities throughout.

[33] I find therefore that Clonsilla was insolvent on a balance sheet basis throughout the review period.

Payments to Waddell Family Members and Others

[34] No one disputes that Waddell family members are not at arm's length from Clonsilla. This is mandated by ss. 4 (2) and (3) of the *BIA*. Accordingly, if transfers made to them were gratuitous, as submitted by the Receiver, then they will be subject to being repaid under s. 96 (1) of the *BIA*. But, even if the transfers were *bona fide* loan repayments, as submitted by some of the family members below, the finding of insolvency renders the payments void as against the trustee in bankruptcy if the effect of the payments was to prefer the family members over other unpaid creditors (like the Applicant for example). No proof of an intention to prefer is required where the recipients are not at arms-length from the bankrupt.

Nancy Waddell

[35] Nancy Waddelll is the spouse of Hugh Waddell.

[36] Ms. Waddell confirms that she received $32,150 from Clonsilla during the review period. She attributes some of the payments to services rendered and some to income splitting by Hugh Waddell.

[37] In cross-examinations, Ms. Waddell confirmed that she did not keep track of the hours she says she worked for the business. She had no employment agreement. She could not point to any agreed payment terms (i.e. the rate per hour charged or paid for services rendered).

[38] Maryanne Jacobs managed the books for the business. She was unable to identify what Nancy Waddelll did for the company. She never saw any work product from Nancy Waddell.

[39] Mr. Scasny said that Nancy Waddell did not work for the business.

[40] Ms. Waddell testified that she was not paid regularly. She would tell her husband that she needed money to pay for groceries, food, or clothing and the company would send her money.

[41] Ms. Waddell objected to the vilification she feels is directed at her and her family. She asks that their family relationship not be used to substitute for proof of dishonesty. She criticizes the Receiver for its handling or mishandling of Clonsilla's books and records. She purports to challenge the Receiver's adjustments related to the insolvency finding discussed above.

[42] I agree with Ms. Waddell that a family relationship is not a basis for vilification of family members. The claims against each member of the family asserted by the Receiver must be proven individually based on evidence and not based on an inference of dishonesty drawn from their relationship to Hugh Waddell.

[43] Dishonesty forms no part of this analysis. The parties' relationships are relevant to determine which tests applies under ss. 95 and 96 of the *BIA*. The different tests are driven by the arm's length or non-arm's length nature of parties' relationships. But nothing else flows from that.

[44] In my view, Nancy Waddelll has not proved that she was employed on any set terms or that she was paid value for services actually rendered. There were no agreed payment terms. She could not say when she worked and how much she charged or was paid for such work.

[45] The reference to "income splitting" is meant to suggest that Mr. Waddell had Clonsilla pay to Ms. Waddell some funds that were otherwise due to him to reduce taxes on Mr. Waddell's income. Whether this is true and lawful for Mr. Waddell, it is plainly a gratuitous transfer from Ms. Waddell's perspective.

[46] I find that the Receiver has established that the funds paid to Ms. Waddell fall within the scope of s. 96 (1)(b)(i) of the BIA. Therefore, she is ordered to repay them to the Receiver as asked.

Meggan Waddell

[47] Meggan Waddell is a daughter of Hugh Waddell.

[48] Clonsilla paid $85,681 to Meggan Waddell during the review period.

[49] Meggan Waddell says she loaned $555,000 to Clonsilla in 2007, a further $388,000 in 2017, and $200,595 in 2018. There is no paper supporting these alleged loans. There is no evidence of agreement on interest rates or funds moving from her to Clonsilla.

[50] Meggan Waddell says that when she needed money for personal expenses, she would ask her father and the business would send it to her. She says that these payments from Clonsilla were payments on her unsecured loans to the company. But under cross-examination she stated that she cannot say with any certainty how much she loaned the company or how much she received back from it.

[51] Maryanne Jacobs testified that she questioned Hugh Waddell about the large amounts of money being paid out to his children's personal expenses (like Amazon purchases, dinner, heat, hydro, rent, phones etc.). She says she tracked the family members' loans. She questioned Hugh Waddell to ask him whether he owed the family members as much as they were taking from the company. She said Clonsilla paid around $4 million to the children over the two or three years before it failed.

[52] In my view, Meggan Waddell did not prove on a balance of probabilities that she loaned money to Clonsilla. If she loaned funds at some point, and if there were payment terms agreed, and if the limitation periods on the loans have not run, and if the money she was paid did not already repay her in full, then it is possible that on a full accounting she could be owed some money. Money is readily tracked in our financial system. Banking and other records exist. In my view, Meggan Waddell's uncorroborated oral statements about four advances without any support or any tracking are insufficient to show that the funds paid to her in the review period were *bona fide* repayment of outstanding debt.

[53] I therefore find the payments of $85,681 to Meggan Waddell to be gratuitous payments at undervalue. They must be repaid to the Receiver.

[54] Even if there were loans outstanding as Meggan Waddell submits, the payments to her ahead of other creditors of the business had the effect of preferring her loans over others. As such, the payments are void as against the Receiver in any event.

<u>Sara Waddell</u>

[55] Sara Waddell is also a daughter of Hugh Waddell.

[56] Clonsilla paid $124,684 to Sara Waddell during the review period.

[57] Sara Waddell submits that the funds paid to her were repayments of her outstanding loans.

[58] The Receiver submits that Sara Waddell loaned $1,275,000 to her father Hugh Wadell on January 10, 2020. The loan is evidenced by a signed promissory note.

In cross-examination, Ms. Waddell acknowledged that the $1.275 million was the total indebtedness due to her at that time. The Receiver acknowledges that she disclosed later that she transferred another $65,000 to her father's bank account on August 23, 2023. Ms. Waddell says she loaned a further $190,000 to Clonsilla and received payments of only $25,290.

[59] Sara Waddell has disclosed prior promissory notes that do show Clonsilla as the borrower. It is not clear why the 2020 note names only her father. Moreover, the payments made to her during the review period by Clonsilla were made up of 44 payments of $2,349 each. She said these amounted to interest payments and she had been receiving them for years.

[60] The issue is not whether Hugh Waddell owed Sara Waddeell money but whether Clonsilla did or does. In my view Sara Waddell's evidence shows she made advances to Clonsilla (or as it directed) which carried interest that was being paid on a regular basis by Clonsilla. I do not therefore find the payments made to her to be payments at undervalue.

[61] But as with all the related parties, proof of loan payments made by the insolvent company had the effect of preferring Sara Waddell ahead of other creditors. As such, the payments are *prima facie* void as against the Receiver and must be repaid.

Taylor Waddell

[62] Taylor Waddell is the son of Hugh Waddell.

[63] Clonsilla paid $155,236 to Taylor Waddell during the review period.

[64] Taylor Waddell's situation is much like his mother and his sister Meggan. He says he did work for Clonsilla but he cannot say what he did with any particularity. He assisted collecting receivables, repossessing vehicles, and transporting vehicles. He was paid at the rate of $25 per hour. He was not on the company's payroll. He did not keep track of his hours or the payments for services rendered. He did not produce his tax returns to show that he declared income from Clonsilla.

[65] Taylor Waddell did not send any invoices to Clonsilla for his services rendered. Even if he relied on the company to keep records, it would have needed an invoice from him to create the records and to justify payment. In addition, Taylor Waddell says he made loans to Clonsilla. He produced a promissory note from Clonsilla dated November 3, 2017 evidencing a loan of $1 million. The loan terms provided that it was to be repaid in eight equal quarterly instalments commencing November 3, 2020 and being fully repaid a little over two years later. Taylor Waddell says that he loaned in excess of a further $200,000 to the company.

[66] Despite the repayment terms, Taylor Waddell says he was paid in many payments. His spouse had medical issues so he stayed at home caring for his family. He took money from Clonsilla to fund his family's expenses as he needed money.

[67] Taylor Waddell says he kept track of his loans and payments received on notepads. But he did not produce any.

[68] Repayment of loans and payments for services rendered would both be transfers for valuable consideration if proven. Repayments of loans, however, are preferences because Taylor Waddell is also a non-arm's length recipient of the payments when the debtor was insovent. Loan payments to him during the review period have the effect of preferring him ahead of other creditors.

[69] The difficulty is that Taylor Waddell is not able to differentiate which payments he received as payments for services and which were loan repayments.

[70] Parties who choose to live without keeping records of their financial transactions may be seeking optionality to minimize taxes or other purposes. But the price of that choice is that when called upon to prove the righteousness of their financial behaviour, they may be unable to do so. That is the risk they take.

[71] In my view, the Receiver cannot be reasonably expected to do more than point to the funds paid by Clonsilla and the absence of any apparent consideration received by the business. Taylor Waddell is not on the payroll records. If he chose to work as an independent contractor and his father agreed, there are no records of the terms or agreement or the payments made for time expended or tasks performed.

[72] Similarly, while it appears that there are records of Clonsilla agreeing to borrow money from Traylor Waddell, there are no records of advances or repayments. There are no calculations of interest or principal paid or due.

[73] In my view, the Receiver has established a *prima facie* case that the $155,236 paid to Taylor Waddell was either without consideration or preferential. Taylor Waddell had an evidentiary burden to establish the wages or income for services paid to him apart from loan repayments. He provided no basis to rebut or undermine the Receiver's *prima facie* case. Even accepting that Taylor Waddell did some jobs for the business, due to his own recordkeeping choices, he has not established that he received any funds in return for consideration during the review period.

[74] Accordingly, Taylor Waddell shall repay the Receiver the $155,236 as claimed.

<u>Northbridge Estates Inc</u>.

[75] Northbridge Estates Inc. is owned by Nancy Waddell. It owns and leases the land and premises occupied by Clonsilla as its business premises.

[76] Clonsilla paid $12,950 to Northbridge during the review period.

[77] Rent under the lease is $5,000 per month. In addition, Clonsilla pays the first mortgage payments due each month by Northbridge Estates to its mortgagee.

[78] During the pandemic, Northbridge agreed that Clonsilla could pay rent in amounts and at times determined by Hugh Waddell.

[79] The Receiver submits that in view of the concession made by the landlord, Clonsilla was not obliged to make payments during the review period. Therefore, the Receiver submits, the payments were made without consideration or they are preferential.

[80] I do not agree. While the parties were clearly not operating on an arm's length basis, there is nothing inherently illegal or suspect about a landlord telling a tenant to pay what it can during the pandemic. That does not relieve the tenant from paying rent in good faith. I accept that the payments were for rent and therefore they were not transfers at undervalue.

[81] The payments also did not confer a preference on the landlord. Rent payments are for current and ongoing use of the premises. They were not paying debt ahead of other creditors. If Clonsilla was paying its rent in full and then making payments towards arrears amassed during the pandemic, different considerations might apply.

[82] I do not give effect to this claim by the Receiver.

Sandi McDavid

[83] Sandi McDavid is Hugh Waddell's mother. She is not an arm's length creditor, therefore.

[84] Clonsilla paid $9,380.33 to Ms. McDavid during the review period.

[85] Ms. McDavid testifies that she loaned $35,000 to Clonsilla pursuant to a promissory note. The payments received, she says, were partial repayment of that debt.

[86] The promissory note relied upon by Ms. McDavid evidences her loan to:

> "2712697 Ontario Ltd. in partnership (asset holding account) with 926749 Ontario Ltd. (Clonsilla auto sales)."

[87] Hugh Waddell signed the note as guarantor of the debt. The signature of the borrower shown on the note is of a Mr. "Hollingsworth Auguste Taylor" as Chief Financial Officer of the combined borrower partnership.

[88] Ms. McDavid's cheque advancing the loaned funds was made out to High Waddell personally.

[89] Hollinsworth Auguste Taylor is a director of a company that is related to Clonsilla. There is no "G" in "Hollinsworth." Moreover, he goes by the last name Auguste. He does not use "Taylor."

[90] Mr. Auguste was shown a draft of the promissory note. He pointed out the errors with the spelling of his name. When shown the signed note, he denied that the signature was his and he denied having any knowledge of the note or the signature. He also agreed that he was never an employee of Clonsilla. Neither was he ever its CFO.

[91] In cross-examination, Hugh Waddell admitted that he signed the note in the (wrong) name of Mr. Auguste.

[92] The Receiver submits that there is no valid debt advanced to Clonsilla nor agreed upon by Clonsilla. The partnership identified as the borrower does not exist. The money just went to Hugh Waddell. The Receiver therefore submits that the payments by Clonsilla to Ms. McDavid were gratuitous transfers at undervalue.

[93] Like the payments to Sara Waddell, the payments to Sandi McDavid were regular monthly installments largely in the same amount. Although Hugh Waddell seemingly tried to create some kind of misleading impression regarding the note and the debt, as the owner of Clonsilla, it was open to him to have the company assume the debt presumably on receiving the advance or perhaps as a direction of funds due or to be due to him. That transaction could possibly be voidable if challenged. But that is more depth than a $9,000 claim is worth.

[94] As admitted by Hugh Waddell, the payments were repayment of a debt to a related person.

[95] I find that the payments made during the review period had the effect of preferring Ms. McDavid over other unpaid creditors of Clonsilla. As such, they are void as against the Receiver and must be repaid accordingly.

<u>Ian Andreson (Deceased)</u>

[96] Mr. Anderson was Hugh Waddell's brother.

[97] Clonsilla paid Mr. Anderson $21,070.98 during the review period.

[98] Mr. Anderson performed odd jobs for Clonsilla and was paid for doing so. He did some maintenance around the business premises. Ms. Jacobs said that he also did work for Hugh Waddell on his personal residence that was also paid for by Clonsilla.

[99] Mr. Anderson gave evidence that he invoiced Clonsilla for all maintenance and construction work that he performed at the business premises. He charged a fair market rate of $35 or $45 per hour depending on the scope of the work.

[100] Mr. Anderson also made oral submissions in court on October 31, 2025.

[101] In my view, Mr. Anderson successfully rebutted the Receiver's *prima facie* case. His evidence of work performed supported by hours and rates submitted contemporaneously establish that the payments to him were neither preferential nor payments at undervalue. They were payments made for proven services rendered.

Thomas Sargeant

[102] Thomas Sargeant is the spouse of Meggan Waddell.

[103] Clonsilla paid Mr. Sargeant $1,700 during the review period.

[104] Mr. Sargeant's uncontested evidence is that he attended the business premises and removed trees at Hugh Waddell's request.

[105] The Receiver submits that under the lease to the premises, the maintenance of the land was the obligation of the landlord Northbridge Estates Inc. Clonsilla therefore obtained no value for the work performed by Mr. Sargeant.

[106] I disagree. With the state of affairs between landlord and tenant being non-arm's length and subject to a special rental arrangement during the pandemic, there is nothing untoward about the tenant agreeing to remove trees at its own cost even if it could make the request to the landlord.

[107] Moreover, saying that the landlord has the obligation to maintain the lands does not necessarily answer the question of who should pay for this particular tree removal. Would the landlord, for example, be required to remove trees if it was done only because the tenant no longer liked the trees' appearance? Does the landlord's obligation to repair and maintain the land include incurring cost for cosmetic changes desired by the tenant?

[108] As the Receiver recognizes that the tree repairs were performed by Mr. Anderson,. I find that the payment of $1,700 to him was neither a transfer at undervalue nor preferential.

Gerald Shapiro, Marion Shapiro, and Glortran Consulting

[109] Mr. Shapiro worked for Clonsilla for 30 years. He retired around 2020.

[110] Clonsilla paid $3,800 to Mr. Shapiro, $37,853.14 to Marion Shapiro, and $20, 104 to Glortran Consulting during the review period.

[111] Mr. Shapiro was the General Manager of Clonsilla. He signed cheques at the request of Hugh Waddell or when Mr. Waddell was away.

[112] Mr. Shapiro was paid outside the company's payroll system. Because of his long tenure, Mr. Waddell paid Mr. Shapiro through his company Glortran.

[113] Mr. Shapiro and his spouse Marion Shapiro advanced loans to Clonsilla at different times over several years. Funds were advanced through Mr. Shapiro's credit cards. The amounts were never documented. This was because Mr. Shapiro regarded Mr. Waddell as a friend. He trusted Mr. Waddell.

[114] The practice developed that Clonsilla paid Mr. Shapiro a minimum payment of $400 per month on outstanding loans. If Mr. Waddell was not around, Mr. Shapiro would write the cheque to himself. Mr. Shapiro would give or direct the money to his spouse because she did the banking for the family.

[115] Because Mr. Shapiro had no records of loan amounts he also said that payments to him or his consultancy, if not loans, were akin to pension or retirement payments.

[116] Mr. Shapiro agreed that he would not have made the loans if he were not an employee of Clonsilla and but for his trust of Mr. Waddell.

[117] This makes them close. But, in my view, it does not undermine their independence. Non-arm's length parties act without independence. They engage in transactions that do not make economic sense for two objective, unrelated people. They often act together as a single entity in effect.

[118] Sloppiness borne of trust is not necessarily indicative of a non-arm's length relationship. People participate in Ponzi schemes due to misplaced trust and sloppiness. But they are not trying to help the schemer. They are trying to make money for themselves.

[119] Mr. Shapiro did not document his loans. He trusted and was sloppy in his recordkeeping. But there is no indication that he was doing anything other than advancing his own money to Mr. Waddell or the company in the expectation of repayment and profit

[120] I see no lack of independence in the relationship. I see no joint purpose or lack of a commercial purpose behind the loans and repayments. Moreover, if Clonsilla agreed to make payments to its 30-year General Manager in his retirement, that too is not proof of a non-arm's length relationship. It would have been preferable if the terms were more clearly spelled out and binding. But payments to retirees are generally perceived to be deferred compensation.

[121] In my view, the Receiver has not shown that Mr. Shapiro was not acting on an arm's length basis throughout. The lack of particulars and records of loans precluded family members from proving some of their claims above to rebut the Receiver's *prima facie* proof under ss. 95 and 96. But, with Mr. Shapiro, the analysis stops prior to the burden shifting. The Receiver bears the burden to show that Mr. Shapiro was acting in a non-arm's length relationship with Clonsilla. That is the only basis on which it makes its claims against him.

[122] As Mr. Shapiro is not related, proving a preference to him also requires proof of preferential intent by Clonsilla. There is no evidence to support that fact either.

[123] Accordingly, the Receiver did not make out its claim against Mr. Shapiro, Ms. Shairo, or the consultancy.

Ratislav Scasny

[124] Mr. Scasny was a salesperson for Clonsilla for at least 12 years. At different times, he discussed becoming a shareholder of the company with Mr. Waddell. But the transactions never proceeded.

[125] Clonsilla paid Mr. Scasny $330,931 during the review period. Of that amount, $93,862.37 is referable to a transaction with National Bank. $77,666.83 is claimed to be regular income provided to Mr. Scasny by Clonsilla that he did not declare on his taxes. Mr. Scasny says that the remaining payments totaling $159,401.80 were repayments of loans made by Mr. Scasny to Hugh Waddell or Clonsilla.

[126] The Receiver submits that Mr. Scasny was a non-arm's length party because Hugh Waddell was his mentor and like family to him; Mr. Scasny participated in one or more questionable transactions with Mr. Waddell; and Mr. Scasny tried to buy into Clonsilla at least twice.

[127] Mr. Scasny is said to have participated in a scheme to obtain a GM truck from another dealer using a friends and family discount but then pretended to have bought the truck at full price through Clonsilla. Mr. Scasny borrowed funds from National Bank to buy the truck. The money flowed through Clonsilla to Mr. Scasny to the GM dealer. That is the amount that the Receiver seeks to claw back.

[128] While it is possible that one or both of Mr. Scasny and Clonsilla could profit on this transaction by arbitraging, in effect, the friends and family discount of $8,000, Mr. Scasny still had to repay National Bank on his debt. There is another possible minor scheme involved whereby Clonsilla got a bonus from the bank on a sale it did not really make. But the full

amount of the loan was paid to Mr. Scasny to be paid to the GM dealer. The payment was neither a preference nor a transfer at undervalue. It was a transfer made in the course of Clonsilla's business with a shady element.

[129] On the income issue, Mr. Waddell told Mr. Scasny that starting at a certain date he would only be paid part of his remuneration through Clonsilla's payroll provider. The rest was provided by cheque with no withholding. Clonsilla would then save some payroll provider fees and pieces of the employer component of CPP and UI. The extra income amounts were paid regularly in a set amount in the main. Mr. Scasny ended up having to deal with CRA to resolve the under-reporting of his income by Clonsilla and by him.

[130] It is hard to see how this little piece of tax avoidance saved any significant money for anyone. It exposed both sides to liability. But it also involved both sides agreeing to lie to the government in their mutual interests with Clonsilla saving some fees and withholdings and Mr. Scasny cheating on his taxes.

[131] Mr. Scasny was more than the "mere salesman" as he portrays himself. He was close to the Waddells. He viewed Taylor Waddell as his best friend for a time. Hugh Waddell was his mentor and like family to Mr. Scasny.

[132] Mr. Scasny expressed a repeated desire to invest in the business. He got his father to loan $200,000 to the business in return for a mortgage on Hugh Waddell's house.

[133] Mr. Scasny entered into two agreements with Hugh Waddell to buy a piece of the business. The first agreement would have seen Mr. Scasny buy 20% of the business for over $500,000. The deal did not close because Mr. Scasny could not convince his father to make the investment. In the second agreement, Mr. Scasny agreed to buy 5% of the shares for a little more than $100,000. That deal did not close either. The agreement terminated in accordance with its terms.

[134] The terminated agreements were spent long ago. Mr. Scasny is not a person "who has a right under a contract" to buy shares in Clonsilla for the purposes of s. 4 (3)(c) of the *BIA*.

[135] Mr. Scasny says he kept track of the loans and was repaid almost $160,000 shortly before Clonsilla failed. The question is whether Mr. Scasny dealt at arm's length with Clonsilla. If so, then proof of a preference requires proof of Clonsilla's intention to prefer Mr. Scasny. If,

like family members, the parties were not at arm's length then the loan repayments plainly had the effect of giving Mr. Scasny a preference over other creditors.

[136] Mr. Scasny's affidavits suggest he was simply a lender to the business. But his cross-examination evidence is quite different.

[137] The following is Mr. Scasny's evidence about his first advance of $75,000 to Mr. Waddell:

131. Q. So when did you give him the 75,000?
A. Maybe '22 -- '21 or '22.

132. Q. And how did you give it to him? Like what --
A. A draft. I actually remember 'cause I think he said he lost it, which was awesome. So I remember -- I don't remember if I then went to my bank and got it cancelled or that he found it. I actually don't remember which way it happened but I went to -- Either way he did. Like I cut him a draft for 75.

133. Q. Okay, and was it made out to him or to Clonsilla?
A. I think him, to be honest.

134. Q. Okay.
A. Yeah.

135. Q. And was there any paper, do you have anything in writing?
A. No. Because I'm stupid.

136. Q. Okay. And then did he start making payments back to you --
A. Not on that, no. No.

137. Q. So what was the agreement with him when you gave him the 75,000? What were you expecting?
A. I don't -- Again there was no real agreement with this -- to be honest, there was no real agreement with the 300 and he gave it back, so when I gave him the 75 I just kinda thought I would eventually get it back.
* * *

139. Q. For the 75 were you expecting to get a return on your investment or…
A. It wasn't -- that one wasn't really an investment, it was kind of like -- Again, when you work with someone for that long -- and really to be honest he did treat me well, he paid me well and I got to drive a lot car and those sort of things. You know, you -- It was available and he asked for it and you know, that turned out to not be a great situation but –

[138] Mr. Scasny then advanced another $80,000 to the business. Part of his evidence on that advance was as follows:

167 Q…So you gave another 80,000 –
A. M'hm.

168. Q. -- as well? When did you give that?
A. Like three days -- I remember it was Monday -- it was a Monday and he tells me he needs it for next year because, you know, the HST's close and all these other situations, and there's lending coming in and so on and so on. And again, I don't remember the exact points. At this point I'm just kind of, you know, "Maybe you're right," or maybe he is right. I really don't know now but, you know, if the HST comes in, everything's okay from what I understand about HST, which is not much. And you know, the money'll come back and I'll just keep working at the place I've been working at for twelve years.

[139] Mr. Scasny then testified about a smaller advance for $1,650 as follows:

334. Q. What would that one have been for?
A. Don't know what that would have been for, to be honest.

335. Q. The note says petty cash so --
A. Yeah, that's weird. You know what that was for? If I had cash -- I think -- You know what, I'm gonna guess, so if I'm wrong, I'm wrong. I think he couldn't clear money and so I think he wrote me a cheque for that and then I went and took it out in cash. Does that make sense? Like he needed cash, I think, and I don't know why -- I was again not the smartest about this -- but he needed cash, or maybe the business needed cash to pay for something, but his account would hold -- my -- my bank account wouldn't hold -- if you

write a cheque they'll hold it. I think that's -- If it wasn't this time this happened in a different situation.

336. Q. Okay, so he would -- Maybe it was this time, maybe it wasn't, but he would write you a cheque because he knew that the bank would hold –
A. His.

337. Q. -- his –
A. Not mine.

338. Q. -- but for you, you could just deposit it and then take the cash out.
A. Then it would clear two or three days later, it'd go into the account. And that's probably why it says petty cash, to be honest.

[140] The first loan had no agreed terms. It was advanced to Mr. Waddell and payments did not start on it right away. On the second loan, Mr. Scasny was bridging the company on its HST refund. Again, there were no loan terms agreed upon. There was no assurance of repayment through HST. But he had been there for 12 years and he knew he could keep working at the business.

[141] For third loan, Mr. Scasny was helping Mr. Waddell obtain cash that he could not get himself. Mr. Waddell couldn't cash a cheque without the bank holding it until it cleared. So, Mr. Scasny deposited the cheque and drew out his own free cash to give to Mr. Waddell. He would be repaid when the Clonsilla cheque cleared through his bank.

[142] None of this sounds like third party lending. It sounds much more like Mr. Scasny was investing in the business. He was not getting back any shares. But he also was not requiring lending terms. There was neither a due date nor demand terms. He just gave over money to Mr. Waddell to help the business meet its cash flow needs. He hoped he would get the money back if the business succeeded.

[143] He bridged the HST refund without any assignment or assurance of when or if it would come in. He even debated the risk with himself.

[144] The final advance was made to help Clonsilla obtain better banking terms than it could get from its own bank. He was, in effect, providing his personal credit to Mr. Waddell.

[145] This is not sloppy lending or lending on terms based on trust. A loan with no terms at all – no regular repayments, no due date, no demand right agreed upon, no interest rate, etc., does not look like a regular loan. As Mr. Scasny expressed it, he gave over money because he was grateful to Hugh Waddell for employing him for 12 years and treating him very well.

[146] The law may imply terms to make the loans effective. But the question is whether this course of behaviour is consistent with parties in an arm's length relationship.

[147] In Canada *v McLarty*, 2008 SCC 26 (CanLII) the Supreme Court of Canada determined that all relevant factors must be considered to determine if parties operate at arm's length. The court said one should consider whether the parties were operating with a common mind. Did one control the other? Were they representing separate legal or economic interests? No single factor determines the outcome. The answers to these questions should take into account the entirety of the relationship.

[148] Similarly, in *Juhasz Estate v Cordeiro*, 2015 ONSC 1781 (CanLII), Wilton-Siegel J. wrote:

> Section 96 is directed at transfers by insolvent persons for a consideration that is materially or significantly less than the fair market value of the property. In this context, the concept of a non-arm's length relationship is one in which there is no incentive for the transferor to maximize the consideration for the property being transferred in negotiations with the transferee. It addresses situations in which the economic self-interest of the transferor is, or is likely to be, displaced by other non-economic considerations that result in the consideration for the transfer failing to reflect the fair market value of the transferred property.

[149] If Mr. Scasny made loans, they were made without any exercise of self-interest. They were made because his mentor, to whom he was grateful, asked. Giving over the money would keep him in a good job in a good place with a man whom he admired. Mr. Waddell told him the company needed money desperately. He gave Mr. Waddell money because the business needed it. Just handing over money to a business in that position is not an exercise of arm's length business judgment.

[150] Moreover, Mr. Waddell proposed and implemented a tax avoidance process to pay Mr. Scasny's wages that one would not be likely or able to propose or implement to an arm's length employee.

[151] While not family by blood, there is little difference between the loans advanced by Mr. Waddell's children and those advanced by Mr. Scasny. In fact, the children protected their personal interests more carefully in some cases.

[152] Similarly, there is not much difference between the repayments made by Clonsilla to Mr. Scasny and the payments to the children. Mr. Waddell paid what he wanted to pay when he wanted to pay without reference to any terms of agreement or legal obligations.

[153] The Receiver relies on the decision in *Nguyen (Re)*, 2024 ABKB 647 concerning the test for an arm's length relationship. At para. 41, the judge adopted the language of Pattillo J. in *National Telecommunications v. Stalt*, 2018 ONSC 1101 as follows:

> [41] Based on the above, therefore, I conclude that the finding of fact mandated by s. 4(4) of the *BIA* requires a determination, based on the totality of the evidence, of whether the transaction involved generally accepted commercial incentives such as bargaining and negotiation in an adversarial format and the maximizing of a party's economic self-interest. In the absence of any such indicia, the inference that arises is that the parties were not dealing at arm's-length.
>
> [42] In the present case, there is no evidence that the three transactions in issue displayed any of the characteristics of ordinary commercial incentives, regardless of whether the transactions were loans or an investment in a joint venture. In fact, the evidence in respect of the transactions is just the opposite. The evidence of the participants to the transactions provides different versions of what took place, none of which match the accounting or establish any form of bargaining or negotiation.

[154] There were no *indicia* of bargaining or negotiation between Mr. Scasny and Mr. Waddell or Clonsilla whereby the parties advanced independent interests or sought to maximize their own respective economic positions. There is no indication that the advances made by Mr. Scasny, whether debt or equity in nature, displayed normal commercial incentives. Rather, I find, on the totality of the circumstances, that Mr. Scasny and Clonsilla did not operate with separate interests in mind. They did not behave like independent parties. I find as a fact that their relationship was non-arm's length.

[155] The repayment of debt admitted by Mr. Scasny, in the amount of $159,401.80 had the effect of giving him a preference over other creditors. It is void as against the Receiver and is to be repaid on appropriate terms.

Order

[156] The court has discretion as to whether to order repayment of funds under ss. 95 and 96. These sections were substantially revised in 2007 to alter the prior treatment of reviewable transactions under the *BIA*. Prior to the amendments to ss. 95 and 96, preferences, in particular, had been singularly difficult to challenge under the *BIA* and the earlier *Bankruptcy Act*. Now, transfers at undervalue and preferences in fact in favour of non-arm's length parties made within set time periods prior to bankruptcy are voidable almost as of right.

[157] Parliament has chosen to enhance the *pari passu* sharing model of the *BIA* by clawing back improper payments to non-arm's length parties shortly before the initial bankruptcy event. By doing so, bankrupts' funds are shared ratably among all creditors rather than flowing to family and other non-arm's length recipients ahead of *bona fide* third-party creditors.

[158] It follows, in my view, that the discretion to relieve against preferences and transfers at undervalue ought to be exercised narrowly. Non-arm's length creditors who can prove their claims will still share ratably with all other recognized general creditors. But to allow the bankrupt to direct to friends and family scarce funds owing to creditors right before bankruptcy would undermine the intention of Parliament and favour inequitable treatment of creditors.

[159] Too readily relieving against preferences and transfers at undervalue would undermine the *pari passu* sharing model that is the foundation of the market's confidence in the fairness of the bankruptcy process. Relief must be premised on facts that are consistent with Parliament's intention and do not undermine the statutory scheme.

[160] None of the non-arm's length parties against whom I have granted relief provided evidence to support the exercise of equitable discretion in their favour. Messrs. Anderson and Shapiro made arguments appealing to equity because of their personal situations. But since I held that they each succeed on the merits, I do not need to deal with the precise nature of the equitable considerations that might lead the court to exercise its discretion in this case.

[161] Order to go on the terms set out above.

[162] Counsel should try to agree on terms of repayment if they can do so. In addition, they should try to agree on costs. If they cannot agree to the terms of an order (including costs) they may convene a case conference at which all outstanding issues will be settled under Rules 59 and 50.13 (6).

F L Myers J.

FL Myers J

Date: August 10, 2026

Justice FL Myers Digitally signed by Justice FL Myers
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