



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CL-26-00000372-0000

DATE: August 28, 2026

NO. ON LIST: 2

TITLE OF PROCEEDING: De Cloet Greenhouse Mfg. Ltd. et al.

BEFORE: JUSTICE S. DUNPHY

PARTICIPANT INFORMATION

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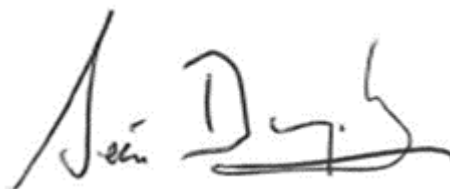
ENDORSEMENT OF JUSTICE:

- [1] On August 19, 2026 I issued a stay of proceedings in favour of the applicant De Cloet Greenhouse Mfg. Ltd. (De Cloet) in anticipation of the present application to recognize the Chapter 11 proceedings then in the process of being commenced involving De Cloet and various related parties in a consolidated filing in Delaware.
- [2] The Chapter 11 proceedings are now underway and the “Day 1” orders in connection with them have been made. This application seeks to recognize the Chapter 11 proceedings as the “Foreign Main” proceedings, the applicant as the “Foreign Representative”, to recognize the various “Day 1” orders made in the United States proceeding as well as various ancillary orders made in connection with such proceedings under Part IV of the CCAA. These goals are accomplished via two orders proposed for my signature, the “Initial Recognition Order” and the “Supplemental Order”.
- [3] The procedure and jurisdiction for granting these requested orders arises from Part IV of the CCAA. Justice Hainey reviewed in detail the jurisdictional requirements that must be satisfied in applying these provisions in *Hollander Sleep Products, LLC et al., Re*, 2019 ONSC 3238 (CanLII) and I have reviewed those reasons in considering the present application.
- [4] I am satisfied that the pending Chapter 11 proceedings in Delaware are a “foreign proceeding” and that the applicant De Cloet is a “foreign representative” as defined by s 45(1) of the CCAA. There is no question that Chapter 11 proceedings under the United States Bankruptcy Code are qualifying proceedings under s. 45(1) and the applicant De

Cloet has been specifically declared by the US Bankruptcy Court to be a foreign representative for this purpose.

- [5] I am also satisfied that the Chapter 11 proceedings involving the applicant are the “foreign main proceeding” since the evidence establishes that the Centre of Main Interest of the applicant is in the United States and within the jurisdiction of its bankruptcy court. The applicant, while registered in Canada, is part and parcel of an integrated group of companies under common control in the United States and who are now subject to the Chapter 11 proceedings referenced above. The business of the Canadian entity is very closely integrated with its United States parent and sister companies both in terms of corporate financing but also operations with a shared customer base and a Canadian business that depends on United States sales to that shared customer base for a very substantial share of its business. The Canadian entity is heavily reliant on its parent and related companies for its cash management, accounting, management and other key functions.
- [6] Having been satisfied of these facts, this Court’s role is intended by Part IV to be largely secondary. In effect, where an insolvency proceeding is being supervised by a court applying principles and statutes that have repeatedly been found to be broadly similar to the rules and goals of Canadian law, our role is not to seek to micromanage the foreign proceeding in every instance where its practices or procedures do not precisely match our own. Rowing any boat across the always-choppy waters of insolvency requires coordination if it is not to turn in circles and founder on the rocks. Comity is knowing when to let someone else row or steer where all sides share the same broad goals. This is such a case.
- [7] The applicant has sought an Initial Recognition Order which closely follows the model order this court has circulated. I have walked through all of the variations proposed with counsel and found them all consistent with the objectives of Part IV of the CCAA. The Supplemental Order too is quite entirely consistent with the well-developed policies of the Commercial Court in recognizing and assisting such foreign proceedings. The “First Day Orders” being recognized, while voluminous to be sure, are broadly similar to our own model first day order in CCAA proceedings. Similar need not imply identical, but the broad goals being pursued by such orders are readily discernible to and readily recognizable by any practitioner familiar with our own Day 1 practices in domestic CCAA proceedings.
- [8] Among other orders sought is the appointment of Alix Partners as the “Information Officer” in these proceedings. The Information Officer is a frequently resorted-to office in cases such as these and is broadly similar to a Monitor in CCAA proceedings. The Court has broad jurisdiction to make such an appointment. Experience has demonstrated the utility of Information Officers to the smooth running of a cross-border restructuring process in cases such as this. The proposed Information Officer has all the necessary experience and expertise to fulfill this role and has demonstrated both with its exhaustive and helpful Report in advance of today’s hearing.

- [9] There is always a particularly acute degree of attention paid to the treatment of taxation claims made by authorities on either side of the border. The evidence before me is that the applicant is remarkably current on its Canadian Excise and Income Tax obligations. CRA has been served with this motion but, not unexpectedly, has not yet made an appearance. The Information Officer is keenly aware of the sensitivity of these issues and the DIP loan secured provides financing to continue to make ordinary course tax payments. In my view the issue appears to be quite well in hand but should CRA have concerns that they are not able to satisfy after discussions with the Information Officer, an application to this court for relief may be made.
- [10] The proposed orders include an administration charge of \$450,000. This ceiling has been closely negotiated (as is invariably the case) with, among others, the DIP lender whose security ranks behind. I am satisfied that the charge is conceptually within my jurisdiction, is consistent with the practice and policy objectives of this court in such proceedings and is reasonable in amount. The same comments apply to the (smaller) \$210,000 D&O Charge.
- [11] The applicant is already liable as a borrower and guarantor under the consolidated pre-filing corporate finance structure of the consolidated group of companies from which it has benefitted and upon which it was dependent pre-filing. The post-filing DIP arrangements are not identical but they are conceptually a continuation of the pre-filing corporate finance arrangements. Comity and the evidence before me concur in suggesting that the DIP arrangements including the security therefor approved on an interim basis in the United States should be recognized and approved here.
- [12] Finally, the interim stay of proceedings I granted on August 19 ought appropriately to be replaced by what I would describe as the “usual” Part IV stay.
- [13] In the result, I shall be signing clean copies of both orders presented with minor amendments discussed in court with the parties.



Date: Aug 28, 2026

Sean Dunphy