No. S245481
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985 c. C-36, AS AMENDED

AND

IN THE MATTER OF THE COOPERATIVE ASSOCIATION ACT, S.B.CC. 1999, c. 28

AND

IN THE MATTER OF BC TREE FRUITS COOPERATIVE, BC TREE FRUITS INDUSTRIES LIMITED and GROWERS SUPPLY COMPANY LIMITED

PETITIONER

NOTICE OF APPLICATION

Name of applicant: Steve Day, in his capacity as the representative of the former voting members of the BC Tree Fruits Cooperative (the "**Former Members**").

To: The parties identified on the Service List enclosed as Schedule "A"

TAKE NOTICE that an application will be made by the applicant to the presiding judge or associate judge at the courthouse at 800 Smithe Street, Vancouver BC on October 3, 2025 at 10:00 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take two (2) hours.

__ This matter is within the jurisdiction of the associate judge.

X This matter is not within the jurisdiction of an associate judge: the Honourable Justice Gropper is seized of this matter.

Part 1: ORDERS SOUGHT

1. A declaration pursuant to s. 156(1)(a) of the *Cooperative Association Act* (the "***Act***") that the affairs of the BC Tree Fruits Cooperative (the "**Cooperative**") are being conducted in a manner oppressive to the Former Members.

2. A declaration pursuant to s. 156(1)(b) of the *Act* that the special resolution (the "**Special Resolution**") proposed in the members' requisition delivered to the directors of the Cooperative on July 9, 2025 (the "**Members' Requisition**") is unfairly prejudicial to the Former Members.

3. A declaration pursuant to s. 157(2)(a) of the *Act* that the action proposed in the Special Resolution would be a contravention by the current voting members of the Cooperative (the "**Current Members**") and by the Cooperative of the *Act* and the Cooperative's bylaws, last revised November 16, 2021 (the "**Rules**").

4. A declaration pursuant to s. 157(2)(b) of the *Act* that the action proposed in the Special Resolution would constitute a failure by the Cooperative to fulfill its obligations under the *Act* and the Rules.

5. Orders pursuant to ss. 156(3) and/or 157(2)(c) and (d) of the *Act*:

   (a) Prohibiting or restraining the directors of the Cooperative from convening a special general meeting to consider the Special Resolution; and

   (b) Directing Alvarez & Marsal Canada Inc. (the "**Receiver**") to comply with the existing Rule 125 in making any future distributions of surplus funds to Current and Former Members.

Part 2: FACTUAL BASIS

I. Overview

1. This is an application to compel the Cooperative to live up to its commitments to Former Members under the Rules, and to prevent Current Members from causing the Cooperative to act in an oppressive and unfairly prejudicial manner to Former Members.

2. Rule 125 was the product of considerable deliberation at the time of the 2008 amalgamation. Both Current and Former Members joined and contributed to the Cooperative – complying with their obligations under the Rules – on the understanding that if they fell within Rule 125, they would share in any surplus funds on a winding up. Rule 125 has not been changed in any way since it was adopted by the Cooperative in 2008.

3. Now, the Current Members seek to arbitrarily deprive the Former Members of their just entitlement to approximately 32% of the remaining surplus funds the Receiver will distribute in accordance with the Rules. They do so on a thin and faulty rationale of blaming certain unnamed Former Members for the financial circumstances the Cooperative found itself in.

4. That blame is unfounded and contrary to the uncontradicted evidence led by the Cooperative in seeking relief under the *Companies' Creditors Arrangement Act*. In any event, it affords no justification for a threatened action that is plainly oppressive and unfairly prejudicial.

5. To prevent such an outcome, it is appropriate for this Court to exercise its discretion to restrain the Directors from convening a special meeting to consider the Special Resolution, and to require that the Receiver comply with the existing Rule 125 in making future distributions of surplus funds.

II. Factual Background

Background to Rule 125

6. The Cooperative's assets are the product of contributions of original fruit grower cooperatives' members since 1936. They were built over many decades by generations of farmers.

Affidavit #1 of Douglas Pankiw made August 12, 2024 ("**Pankiw #1**") at para. 12

Affidavit #1 of Steve Day made September 10, 2025 ("**Day Affidavit**") at paras. 2-5

7. Effective June 2, 2008, four packing house cooperatives amalgamated into the entity now known as the Cooperative (then known as the Okanagan Tree Fruit Cooperative): Okanagan Similkameen Cooperative Growers Association, B.C. Fruit Packers Cooperative ("**BC Fruit Packers**"), Sun Fresh Cooperative Growers and Okanagan North Growers Cooperative.

Day Affidavit at para. 5, Exhibit A

8. In the discussions around the amalgamation, there was considerable deliberation regarding what would become Rule 125. B.C. Fruit Packers had a similar clause in their bylaws. Some Board members believed a timeframe longer than 6 years was appropriate, while others felt differently.

Day Affidavit at paras. 9-13

9. The following emerged from those discussions as the rationale for Rule 125:

(a) The other bylaws of the Cooperative provided active growers with the ability to offer new growers membership for no charge other than a $1 share fee and a minimal production requirement;

(b) Rule 125 provided assurance to exiting members (those who retired or left for any other reason) that they will retain a six-year stake in the Cooperative's equity, which they had contributed to;

(c) Six years was viewed as a reasonable amount of time such that growers would receive their fair share of equity; and

(d) Rule 125 was intended to prevent the current growers from deciding to cash out the remaining equity in the Cooperative for themselves.

Day Affidavit at paras. 10-14

Pankiw #1 at para. 21

10. Growers who were members as of 2008 voted to approve the bylaws that included Rule 125.

Day Affidavit at para. 15

11. Since 2008, all new members joined with knowledge of Rule 125, and all members as of 2008 continued their membership in the Cooperative with knowledge of Rule 125. That includes every member who signed the Members' Requisition proposing the Special Resolution.

Affidavit #3 of Jordan Beaulieu made July 16, 2025 ("**Beaulieu #3**"), Exhibit A

Affidavit #4 of Amarjit Singh Lalli made July 15, 2025 ("**Lalli #4**"), Exhibit C

12. The language of Rule 125 has not changed since 2008, including through multiple revisions to the Rules that required ratification of the Rules as a whole. The first time any member took issue with Rule 125 was in the Members' Requisition proposing the Special Resolution.

Day Affidavit at paras. 16-17

The oppressive and unfairly prejudicial nature of the Special Resolution

13. Rule 125 currently provides:

> After setting aside the amount required as a reserve and paying any dividend permitted by these Rules, the Association must, but only in the year in which it intends to permanently cease operations,

> distribute the whole of its then accumulated surplus, including all amounts realized from the sale or other disposition of its assets (but after setting aside an amount equal to the aggregate paid up capital of all its outstanding shares), to the members **and former members** of the Association (including the heirs, executors, administrators, successors and assigns) in the same proportion that the tonnage of tree fruits accepted by the Association from each of them (or from the grower through whom the member **or former member** derives or derived membership) in the previous 6 years bears to the total tonnage of tree fruits accepted by the Association from all its growers during those same 6 years. [emphasis added.]

Pankiw #1, Exhibit D (p. 66)

Lalli #4, Exhibit C (p. 47)

14. The Special Resolution proposes to strike the emphasized language above, removing Former Members' entitlement to any of the Cooperative's remaining funds after payments to creditors. The Current Members' representative, Amarjit Lalli, admits the Special Resolution is targeted solely at Former Members:

> The Members wish to exercise their rights to vote on a Rules amendment that would remove Former Members from any distribution of surplus BCTFC funds.

Lalli #4 at para. 18

15. There are clear and significant financial consequences associated with the Special Resolution. In the Monitor's 13th report, the Monitor writes (at p. 6):

> 6.6 Based on the Projected Distribution, the Current Members and Former Members are entitled to 68% and 32% of the Surplus Funds, respectively.

Thirteenth Report of the Monitor dated July 9, 2025 at para. 6.6 (p. 6)

16. The Receiver expects there to be approximately $15.1M in surplus funds following the "First Payments" (as that is defined in the Monitor's 14th Report). The Receiver identifies approximately $3.2M in disputed claims and additional restructuring claims.

Fourteenth Report of the Monitor dated August 25, 2025 at para. 9.4 (p. 14)

17. If there is $12.0M in surplus funds, Former Members stand to lose $3.84M if the Special Resolution is permitted to proceed and passes. They stand to lose even more depending on resolution of the disputed and additional claims.

18. The Special Resolution is targeted solely at the Former Members and is oppressive and unfairly prejudicial. The Receiver has already reported on the prejudicial nature of the proposed amendment to the Rules:

> The Monitor is of the view that the Former Members, being a group of significant stakeholders, should be represented in the CCAA Proceedings, particularly given the expectation that the Current Members may seek to amend the Rules in a manner prejudicial to the Former Members. In particular, the Monitor is of the view that it would be appropriate for the Former Members to be represented so that they might be properly advised and given the opportunity to appear through counsel to make such submissions should they wish to oppose any steps proposed to be taken by the Current Members' Representative to eliminate their entitlement to share in the Surplus Funds.

Thirteenth Report of the Monitor at para. 6.11 (p. 7)

The Current Members' erroneous rationale for the Special Resolution

19. The lone rationale for the Special Resolution is in Lalli #4:

> 19. The Members believe the departure of Former Members from BCTFC was a significant factor in the financial collapse of the co-op. The Former Members left BCTFC on their own accord. Amongst other things, the departure of Former Members decreased revenues for BCTFC, increased overhead costs for the remaining Members, and in many cases, involved Former Members breaching their fruit supply agreements with BCTFC. As such, many Members believe that Former Members should not participate in any distribution of surplus BCTFC funds.

20. Mr. Lalli does not identify the information in support of his stated beliefs. For example:

(a) Which Members hold this belief about departures being a significant factor in the financial collapse? His affidavit made in support of being appointed as the Current Members' representative identified a group of 98 growers (or approximately 56% of the voting membership) who signed a letter in support.

(b) Who are the "many Members" that believe Former Members should not participate in any distribution of Surplus Funds? The Members' Requisition is signed by 30 individuals who say they are members.

(c) What source of information is Mr. Lalli relying on for the stated decrease in revenue and how much decline in revenue did departures cause? As described below, that assertion is inconsistent with the record in this proceeding and it omits

Current Growers' significant involvement in the financial collapse of the Cooperative.

(d) Which instances involved departing Former Members breaching their supply agreements and what impact did that have? Mr. Lalli makes no comment on whether any Current Growers breached their supply agreements and what impact those breaches had.

Affidavit #1 of Amarjit Singh Lalli made August 21, 2024 at para. 4

Lalli #4, Exhibit C

21. The information in this proceeding provided by the Monitor (now Receiver) wholly undermines the stated rationale for the Special Resolution. Douglas Pankiw, the interim CEO and the CFO as of August 2024, identified the following factors as leading to the financial collapse of the Cooperative:

(a) membership discord associated with proposed property sales and governance changes, which caused delays in property divestments resulting in increased interest costs and decreased returns on property sales (associated with the declining real estate market);

(b) the unexpected and significant crop reduction caused by unusually severe weather patterns in 2024;

(c) declining apple volumes in preceding years, especially the staggering 50% reduction in projected apple volumes for 2024 versus 2023 (apples are the largest commodity of the Cooperative, comprising 89% of the 2023 crop); and

(d) increased competition from independent packers and Washington State farmers.

Pankiw #1 at paras. 7-8, 32 and 92

Petition to the Court filed August 12, 2024 ("**Petition**") at paras. 5-8, 32-33

22. The "staggering" drop in apple volumes **was the result of Current Members withholding their crop estimates** in protest of the leadership being provided by directors of the Cooperative. This made it impossible to budget and plan for the 2024 year.

Day Affidavit at paras. 23-25

Pankiw #1, Exhibits E and G

23. Mr. Lalli blames Former Members for the decline in revenue. However, a significant proportion of Current Members have also seen their contributions of tree fruit volumes

decline between 2018 and 2023, including most of the Current Members who signed the Members' Requisition.

Day Affidavit at paras. 29-31

Beaulieu #3, Exhibit A

24. The calculation mechanism in Rule 125 already accounts for any conduct by Current and Former members to reduce the volume of fruit they contributed to the Cooperative. Distributions are based on the total tonnage of tree fruits accepted by the Cooperative from the grower in the past 6 years. If a grower has chosen to contribute less fruit, they will receive a lower surplus fund distribution.

Day Affidavit at para. 32

25. What the Special Resolution proposes to do is arbitrarily cut off Former Members' just entitlement to surplus funds. It does so in a discriminatory fashion.

26. The Special Resolution will have the effect of, for example, depriving two Former Members of any distribution of funds despite the Former Members contributing 2.15% (grower 539, which is Mr. Day's family farm corporation) and 1.78% (grower 40) of overall crop volume in the past six years, respectively – the largest contributions of any Current or Former Members – while entitling Current Members who contributed as little as 0.02% (grower 28), or in the case of Mr. Lalli, 0.16% (grower 500), or who joined the Cooperative in its last year of operations (growers 748, 1476 and 1544) to a proportionately higher distribution.

Day Affidavit at paras. 33-34

27. Further, Current Members have already benefited from Cooperative equity through the receipt of returns under the Apple Quality Income Assurance Program (the "**AQ Program**") for the 2023 year, which was funded in part by debt or proceeds from real estate sales.

Petition at para. 36

Day Affidavit at para. 26

Pankiw #1 at paras. 50-51

28. There was no discussion of a change to Rule 125 until it became clear that there would be surplus funds to distribute after payment of creditors in this proceeding.

Day Affidavit at para. 17

Part 3: LEGAL BASIS

Relief is appropriate under ss. 156 and 157 of the *Act*

29. This Court has jurisdiction under ss. 156 and 157 to prohibit the Cooperative from proceeding with the special general meeting at which the Special Resolution will be presented to the membership.

30. Section 156 allows a member, investment shareholder or "any other person who, in the discretion of the court, is a proper person to make an application" to apply to the court for an order remedying oppressive or unfairly prejudicial conduct by an association. Section 156 provides:

> 1) Despite the rules of an association, but subject to subsection (2), a member or investment shareholder of the association may apply to the court for an order on the ground that
>
> (a) the affairs of the association are being conducted, **or the powers of the directors of the association are being exercised, in a manner oppressive to one or more of the members or investment shareholders, including the applicant**, or
>
> (b) **an act of the association** has been done, or **is threatened, or a resolution of the members has been passed or is proposed, that is unfairly prejudicial to one or more of the members or investment shareholders, including the applicant**.
>
> ...
>
> (5) For the purposes of this section, a reference to a "member" or an "investment shareholder" must be read as including
>
> (a)a beneficial owner of a membership share or an investment share in the association, and
>
> **(b)any other person who, in the discretion of the court, is a proper person to make an application under this section.**
>
> [Emphasis added.]

31. The proposed Special Resolution falls squarely within this provision.

32. On an application under s. 156, the court has a "high degree of discretion" to make an interim or final order it considers appropriate to bring to an end or remedy the matters complained of. That includes (s. 156(3)):

> (a) direct or prohibit any act or cancel or vary any transaction or resolution,
>
> (b) regulate the conduct of the association's affairs in future,
>
> ...
>
> (i) order the association to compensate an aggrieved person...

Potter v. Vancouver East Cooperative Housing Association, 2020 BCSC 361 at para. 37 (“***Potter #2***”)

33. In ordering relief under s. 156(3), the court applies the principles governing the oppression remedy in the corporate context. The purpose of the remedy is corrective, and the order should go no further than necessary to correct the injustice or unfairness between parties.

Potter #2 at paras. 38-39, citing *Wilson v. Alharayeri*, 2017 SCC 39 at paras. 49, 53-55 and 57

Calgary Co-operative Association Limited v. Federated Co-operatives Limited, 2025 ABCA 142 at paras. 62 -63 (“***Calgary Co-op***”)

34. Section 157 empowers the court to require compliance with the Act and Rules. A proper complainant under s. 157 includes a member, investment shareholder or “other person the court considers a proper person to make an application under this section” (s. 157(1)(a)). On being satisfied there is **or will likely be** (s. 157(2)):

> (a) a contravention by an association or any other person, of this Act or the regulations or of an association's memorandum or rules, or
>
> (b) a failure by an association to fulfill its obligations under this Act or the association's memorandum or rules,
>
> may make an interim or final order it considers appropriate and, without limiting the generality of that power, the court may grant an injunction
>
> (c) restraining the association or any other person from continuing or committing the contravention, or
>
> (d) requiring the association to fulfill its obligations.

35. The Former Members are proper persons to make an application under ss. 156 and 157 of the *Act*. They are not current members but by virtue of their dealings with the Association since 2018 (the earliest year in which tonnage contributed is taken into account under Rule 125), Former Members have an interest that is not dissimilar to that of a member

> when it comes to the distribution of surplus funds on a winding up. They also have a direct financial interest in the Cooperative's affairs and are in a position analogous to that of a minority shareholder in that they have no legal right to influence or change what they see as abuses of management or conduct contrary to the Cooperative's interest. They have a written entitlement to surplus funds under the Rules and engaged with the Cooperative on the basis of mutual compliance with the Rules.

R.B.L. Management Inc. v. Royal Island Development Ltd., 2007 BCSC 960 at paras. 11-17

Cote v. Milltown Marina & Boatyard Ltd., 2015 BCSC 2033 at paras. 53-57

Buckley v. British Columbia Teachers' Federation, [1990] B.C.J. No. 491 at paras. 12-15 (S.C.), aff'd [1992] B.C.J. No. 587 at para. 40 (C.A.)

36. It is well established that the relationship between a society and its members is essentially contractual. The same should be true in the cooperative context. Entitlements promised to former members under the Rules should be viewed through this contractual lens.

Sidhu v. Kalgidhar Darbar Sahib Society, 2024 BCCA 402 at para. 37, citing *Farrish v. Delta Hospice Society*, 2020 BCCA 312 at para. 46

The Members' Requisition and Special Resolution meet the test for oppressive or unfairly prejudicial conduct.

37. In *Potter v. Vancouver East Cooperative Housing Association*, 2019 BCSC 871, Justice Marzari confirmed similar principles apply to the oppression remedy in the cooperative setting, as apply in the corporate setting, but with appropriate regard for the particular cooperative setting:

> [91] Overall, the authorities establish that the legal test for relief under s. 156(1) of the *Act* should be informed by the same legal framework as the reasonable expectations test for oppression and unfair prejudice under the *BCA* and *CBCA*, with appropriate regard to the housing cooperative context.

See also *Potter* at para. 119; *Calgary Co-op* at para. 39; and *Collins Barrow Vancouver v Collins Barrow National Cooperative Incorporated*, 2015 BCSC 510, paras. 108, 109 ("***Collins Barrow***"), 45 BLR (5th) 269, aff'd 2016 BCCA 16

38. In *Potter* at para. 93, this Court applied the two-step test from *BCE Inc v 1976 Debentureholders,* 2008 SCC 69:

    (a) Does the evidence support the reasonable expectation asserted by the claimant?

(b) Does the evidence establish that the reasonable expectation was violated by conduct falling within the terms "oppression", "unfair prejudice" or "unfair disregard" of a relevant interest?

39. Relevant factors in considering reasonable expectations include:

> ...the purpose and nature of the Co-op is a significant factor, as is the relationship between the parties, past practices of the Co-op, and representations to and agreements with various members.
>
> *Potter* at para. 98

40. Relevant factors also include:

> ...general commercial practice, the nature of the corporation or cooperative, the relationship between the parties, past practice, steps the claimant could have taken to protect itself, representations and agreements, and the fair resolution of conflicting interests between stakeholders...
>
> *Collins Barrow* at para. 116

41. In a case that pits certain member interests against others, the fair resolution of conflicting interest between stakeholders is a significant factor in defining reasonable expectations. Here, consideration must be given to the full context, including the need to weigh competing interests, while fulfilling a mandate to provide a fair distribution to stakeholders in the context of a winding up.

Potter at paras. 99 and 119

42. Under the second prong of the test, the applicant must establish a harmful effect or prejudicial consequences (or a threatened act that will have those consequences) on their own particular interests that has been caused by the breach of a reasonably held expectation.

43. In *Potter*, the court summarized the oppressive and unfairly prejudicial thresholds as follows:

> [103] Oppressive conduct has been variously described as conduct that is coercive or abusive; **"burdensome, harsh, and wrongful";** a "visible departure from standards of fair dealing"; or an abuse of power: see *BCE* at para. 92. **Unfair prejudice requires less; it is generally concerned with what is unfair or inequitable.** The key case on the meaning of "unfairly prejudicial" in British Columbia is *Diligenti v. RWMD Operations Kelowna Ltd.*, 1976 CanLII 238 (BC

> SC), [1976] B.C.J. No. 38, 1 B.C.L.R. 36 (S.C.), in which Justice Fulton applied dictionary definitions and noted that they supported the "**instinctive reactions that what is unjust and inequitable is obviously also unfairly prejudicial**" (at para. 23).
>
> [104] Examples of unfair prejudice or unfair disregard in the corporate context include: squeezing out a minority shareholder, preferring some shareholders with management fees, paying directors' fees higher than the industry norm, favouring a director, improperly reducing a shareholder's dividend, et cetera: see *BCE* at paras. 93-94.
>
> [Emphasis added.]

See to similar effect *Scipio v. False Creek Housing Co-operative Housing Association*, 2012 BCSC 1339 at para. 29.

44. In the leading case of *Diligenti v. RWMD Operations Kelowna Ltd.*, 1976 CanLII 238 at paras. 25-26 (B.C.S.C.), this Court adopted the following meaning of unfair prejudice:

> [25] There has been no interpretation, in this context, of the words "unfairly prejudicial". Turning to the dictionaries for assistance, I find the following definitions in the Shorter Oxford English Dictionary, 3rd ed.:
>
> "Prejudice ... I. Injury, detriment, or damage, caused to a person by judgment or **action in which his rights are disregarded**; hence, injury to a person or thing likely to be the consequence of some action ...
>
> "Prejudicial ... I. Causing prejudice; detrimental, damaging (to rights, interests, etc.) ...
>
> "Unfair ... **Not fair or equitable; unjust ... Hence, unfairly**."
>
> [26] It is significant that the dictionary definitions support the instinctive reactions that what is unjust and inequitable is obviously also unfairly prejudicial.
>
> [Emphasis added.]

45. Both prongs of the *BCE* test are met in this case.

46. The nature and purpose of the Cooperative was summarized in Pankiw #1 (at paras. 13 and 20):

> BCTFC currently consists of approximately 290 local fruit grower and orchardist families (the "**Growers**") that work together as part of a larger community. Each grower nurtures their orchards to create the best possible fruit, and is responsible for the care, picking of, and transporting the fruit to BCTFC. In return, BCTFC provides expertise in receiving and storage, sorting and packing, marketing and then transporting the product to customers...
>
> ...
>
> BCTFC constantly works to improve the quality of the fruit the Growers produce. This includes assistance with sales, marketing, accounting, technology, shipping and regulation compliance. BCTFC ensures that the Growers have state of the art equipment, are replacing tress and varieties when needed, and taking active steps to better serve its customers.

47. Section 8 of the *Act* further expands upon the nature and purpose of any cooperative association in British Columbia, including: membership in a "non-discriminatory manner to persons who can use the services of the association and are willing and able to accept the responsibilities of membership", members receive limited or no return on capital subscribed to as a condition of membership, and permissible use of surplus funds arising from the association's operations are limited to the purposes identified in s. 8(2)(e).

48. Mr. Day also gives evidence of the nature of the Cooperative, and its originating cooperatives, over the past 3+ decades (at para. 35):

> Since 1985, I have experienced the cooperative to be premised on mutual understanding and respect between members. We made decisions that were designed to benefit the membership as a whole, and to recognize the contributions of former members in a fair manner. The Special Resolution contemplates current members benefiting at the expense of former members, which is completely at odds with how we tried to operate the cooperative in my 36 years of involvement.

49. As with any cooperative association, the Cooperative gave growers the option of organizing their economic lives according to democratic principles. Profit is distributed to members through patronage returns, which vary depending on how much business the member did with a cooperative. These returns exemplify the philosophy that a cooperative is not intended to profit off its members, but to increase their collective economic well-being. Fairness and equity between cooperative members are cornerstones of association.

Anna J Lund, "Cooperative Difference in Insolvency Proceedings : Pre-Pack Sales, Fiduciary Duty and the Oppression Remedy" 68:2 McGill LJ 161 at 164 and 174-175

Act, s. 1 "patronage return" and s. 9

Calgary Co-op at para. 40

50. Similar to what was found in *Calgary Co-op* (at paras. 59-61), the Special Resolution is designed to give an unearned windfall to growers who happened to be Current Members when the bell was rung. There is no legitimate business purpose to the Special Resolution – the Cooperative has ceased carrying on business. The Special Resolution is designed to leave Former Members who contributed to the growth and operation of the Cooperative with nothing.

51. The Former Members had a reasonable expectation that the Cooperative would comply with Rule 125 upon a winding up. At least as of 2008, the Cooperative turned its mind to how it would deal with funds on a winding up. Rule 125 reflects the agreement between members and former members, as well as the Cooperative, as to how their interests would be dealt with on a winding up. The proposed changes cannot be said to be in the best interests of the Cooperative nor to reflect a fair resolution of conflicting interests.

Potter at para. 212

52. A version of Rule 125 existed prior to the 2008 Amalgamation in the rules of the BC Fruit Packers. Rule 125 was voted upon and approved in 2008, and every member since 2008 has either joined the Cooperative with actual or constructive knowledge of Rule 125 or maintained their membership with that knowledge. Rule 125 has been repeatedly ratified through member votes on revisions to the Rules since that time, including most recently in November 2021.

53. Between 2018 and 2023, growers contributed tree fruit to the Cooperative on the understanding they were entitled to certain rights and interests, including those in Rule 125. The Special Resolution stands to eliminate those rights and interests.

54. The Special Resolution contemplates an arbitrary, harsh and wrongful change to Rule 125, which wholly eliminates any entitlement of Former Members to surplus funds. It does so without any ability of Former Members to participate in the vote and without any recognition of their contribution to the Cooperative's remaining equity.

55. The Special Resolution is proposed in circumstances where the factors contributing to the Cooperative's financial decline fall significantly at Current Members' feet and where current members have already benefited from a return of Cooperative equity when the Cooperative had insufficient operating income to pay the 2023 returns and funded those returns using debt or proceeds from real estate sales.

56. It is appropriate for this Court to correct this injustice and unfairness by enforcing the existing Rule 125. Rule 125 already balances the interests of conflicting stakeholders – current and former members – in a fair manner. It provides a return of a portion of the Cooperative equity that former members contributed to, while recognizing a reasonable time limit on how far back contributions to the Cooperative should be recognized.

Relief under s. 157 is also appropriate as the Members' Requisition and Special Resolution contravene the *Act*

57. The *Act* requires that, on a winding up:

(a) the Cooperative must cease to carry on its business except insofar as, in the opinion of the liquidator, is required for its beneficial winding up (s. 194.24(1)(a)); and

(b) the property of the Cooperative must be distributed "according to their rights and interests in the [Cooperative]" (s. 194.24(1)(d)).

58. There is no basis on which it can be said the proposed Special Resolution is "required for [the Cooperative's] beneficial winding up". The Cooperative has no further business to conduct and there is no purpose in holding the special general meeting except to manipulate the distribution of remaining assets. Current Members seek a windfall, while leaving Former Members with nothing despite their contributions to the growth and operation of the Cooperative over the past six years.

59. More generally, the *Act* requires that the association not exercise (a) a power that it is restricted from exercising by its memorandum, or (b) any of its powers in a manner inconsistent with the restrictions in its memorandum (s. 20(2)).

60. The *Act* does not afford scope – in the context of an imminent distribution of the remaining surplus funds to wind up the association – for the Cooperative to rewrite its Rules to prefer the Current Members over the Former Members. There is no scope for a windfall return to Current Members.

61. Instead, in the ordinary course, the directors of the Cooperative would be obliged to refuse to call the requisitioned general meeting on one or more of the following grounds (s. 151(2)(b)):

> (b) refuse to call the requisitioned general meeting on one or more of the following grounds:
>
> > (i) it clearly appears that the proposal is submitted by the members for the purposes of enforcing a personal claim or redressing a personal grievance against the association or its

> officers, or primarily for the purpose of promoting causes that are extraneous to the purposes of the association;
>
> ...
>
> (iii) the business of the requisitioned general meeting as stated in the requisition includes a matter outside the powers of the members.

62. Rule 41(1) of the Rules, incorporates the language of s. 151(2)(b) of the *Act*.

63. Mr. Lalli's evidence establishes that the Special Resolution is submitted primarily for the purpose of promoting a cause that is extraneous to the purposes of the Cooperative, namely rewarding some growers over others.

64. A remedy under s. 157 restraining the Cooperative from holding the special general meeting and requiring it to fulfill its obligations under Rule 125 remedies the proposed contravention of the *Act* and failure to fulfill the Cooperative's obligations under Rule 125.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Steve Day, made on September 10, 2025;
2. Thirteenth Report of the Monitor dated July 9, 2025;
3. Fourteenth Report of the Monitor dated August 25, 2025;
4. Affidavit #1 of Douglas Pankiw made August 12, 2024;
5. Affidavit #3 of Douglas Pankiw made August 23, 2024;
6. Affidavit #1 of Amarjit Singh Lalli made August 21, 2024;
7. Affidavit #4 of Amarjit Singh Lalli made July 15, 2025;
8. Affidavit #3 of Jordan Beaulieu made July 16, 2025;
9. Petition to the Court filed August 12, 2024;
10. Order Made After Application of the Honourable Justice Gropper, entered July 31, 2025; and
11. Such further and other material as counsel may advise and this Honourable Court deems admissible.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

(a) file an application response in Form 33,

(b) file the original of every affidavit, and of every other document, that

(i) you intend to refer to at the hearing of this application, and

(ii) has not already been filed in the proceeding, and

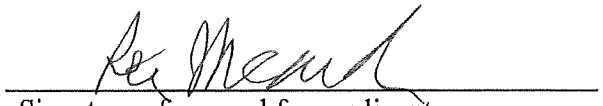
(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

(i) a copy of the filed application response;

(ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under 9-7(9).

Date: 11/SEP/2025



Signature of counsel for applicant
Peter J. Reardon & Kayla K. Strong

THIS NOTICE OF APPLICATION is prepared by Peter J. Reardon and Kayla K. Strong of the firm of Nathanson, Schachter & Thompson LLP whose place of business and address for service is 750 – 900 Howe Street, Vancouver, B.C. V6Z 2M4, telephone (604) 662-8840 and whose email address for service is preardon@nst.ca and kstrong@nst.ca with a copy to rpearson@nst.ca and aardeleanu@nst.ca.

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs _____ of Part 1 of this notice of application

☐ with the following variations and additional terms:	
_____	
_____	
_____	
Dated: _____ *[dd/mmm/yyyy]*	_____
	Signature of
	☐ Judge ☐ Associate Judge

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

_ discovery: comply with demand for documents

_ discovery: production of additional documents

_ extend oral discovery

_ other matter concerning oral discovery

_ amend pleadings

_ add/change parties

_ summary judgment

_ summary trial

_ service

_ mediation

_ adjournments

_ proceedings at trial

_ case plan orders: amend

__ case plan orders: other

__ experts

X none of the above

Schedule A

SERVICE LIST

No. S245481
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985 c. C-36, AS AMENDED

AND

IN THE MATTER OF THE COOPERATIVE ASSOCIATION ACT, S.B.CC. 1999, c. 28

AND

IN THE MATTER OF BC TREE FRUITS COOPERATIVE, BC TREE FRUITS INDUSTRIES LIMITED and GROWERS SUPPLY COMPANY LIMITED

PETITIONER

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