Court File No.: CV-25-00736577-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

MIZUE FUKIAGE, AKIKO KOBAYASHI, YOSHIKI FUKIAGE, KOBAYASHI KYOHODO CO., LTD., TORU FUKIAGE, and KWANG-CHENG (TONY) WEI, IN HIS PERSONAL CAPACITY AS A TAIWANESE INVESTOR AND IN HIS CAPACITY AS AGENT FOR THE OTHER TAIWANESE INVESTORS

Applicants

- and -

CLEARVIEW GARDEN ESTATES INC., TALBOT CROSSING INC., NIAGARA ESTATES OF CHIPPAWA II INC., LONDON VALLEY INC., LONDON VALLEY II INC., LONDON VALLEY III INC., LONDON VALLEY IV INC., LONDON VALLEY V INC., FORT ERIE HILLS INC., 2533430 ONTARIO INC., CGE CAPITAL MANAGEMENT INC., TGP-TALBOT CROSSING INC., NEC II CAPITAL MANAGEMENT INC., LV CAPITAL MANAGEMENT INC., LV II CAPITAL MANAGEMENT INC., LV III CAPITAL MANAGEMENT INC., LV IV CAPITAL MANAGEMENT INC., LV V CAPITAL MANAGEMENT INC., and FORT ERIE HILLS CAPITAL MANAGEMENT INC., HALTON PARK INC., NIAGARA FALLS PARK INC., TSI-HP INTERNATIONAL CANADA INC., and TSI INTERNATIONAL-GRANDTAG A2A NIAGARA IV INC.

Respondents

FACTUM OF GOWLING WLG (CANADA) LLP, IN ITS CAPACITY AS COURT-APPOINTED REPRESENTATIVE COUNSEL

(Returnable June 15, 2026)

June 11, 2026

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In its capacity as Representative Counsel pursuant to the Order of the Honourable Justice Steele dated October 23, 2025

TO: THE SERVICE LIST

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PART I - OVERVIEW

1. This is a motion by Gowling WLG (Canada) LLP, in its capacity as Representative Counsel. Unless indicated otherwise, capitalized but undefined terms are defined in the First Report of Representative Counsel dated June 5, 2026, contained at Tab 2 of the Motion Record (the "**First Report**").

2. On October 23, 2025, this Court issued: (i) the Representative Counsel Order, which appointed Representative Counsel in these receivership proceedings (the "**Receivership Proceedings**"); (ii) the ARRO, which expanded the scope of the Receiver's appointment to additional "nominee" and "operator" entities; and (iii) a Claims Process and Interest Holdings Identification Order (the "**Claims Process Order**"), which established the Claims Process. Since that time, Representative Counsel has worked with the Receiver to locate and identify Co-Owners and assist in the administration of the Claims Process.[1]

3. Through the Claims Process, Representative Counsel and the Receiver identified additional groups of Co-Owners who participated in the same Land Banking Program, but through entities which are not subject to the Receivership Proceedings. These entities are the Nominees and Operators.[2]

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[1] First Report of Gowling WLG (Canada) LLP, in its capacity as court-appointed Representative Counsel dated June 5, 2026 at paras 7-12, contained at Tab 2 of the Motion Record dated June 5, 2026 [First Report]; Sixth Report of AlixPartners Restructuring, Inc. dated June 9, 2026 at paras 3.1-3.2 [Receiver's Sixth Report].

[2] First Report at para 8; Receiver's Sixth Report at para 3.2.

4. Representative Counsel's review determined that GVE II and Lyons Creek continue to hold title to the GVE II Property and the Lyons Creek Property, respectively. Representative Counsel also identified potential recovery opportunities relating to the GVE VTB, which remains the subject of funds currently held in trust by counsel to a third party pending further direction of the Court.[3]

5. Representative Counsel therefore seeks the Second ARRO Order expanding these Receivership Proceedings to include the relevant assets of the additional Nominees and Operators. Representative Counsel also seeks the ARRCAO extending its mandate to Co-Owners with claims relating to the Additional Property and an increase to the Representative Counsel Charge.[4]

6. The relief sought is unopposed. The Receiver supports the proposed expansion and is of the view that the affected Co-Owners would benefit from a court-supervised claims process and the orderly administration of their interests through these Receivership Proceedings.[5]

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[3] First Report at paras 44, 63, 71(c).

[4] First Report at paras 1, 71-75.

[5] Receiver's Sixth Report at para 3.5.

PART II – FACTS

a) Background

7. The Land Banking Program utilized “nominee” and “operator” entities to acquire, hold, manage, and dispose of real property for the benefit of Co-Owners who acquired fractional beneficial ownership interests in those properties.[6]

8. On March 6, 2025, KSV Restructuring Inc., now known as AlixPartners Restructuring, Inc., was appointed as Receiver over the Respondents, being entities involved in the Land Banking Program. On October 23, 2025, this Court granted Orders which expanded these Receivership Proceedings to include additional “nominee” and “operator” entities, appointed Representative Counsel, and established the Claims Process.[7]

9. During the Claims Process, Co-Owners associated with the Nominees and Operators contacted Representative Counsel and the Receiver.[8]

10. Representative Counsel reviewed the available records relating to those entities and determined that the individuals reflected in their corporate records include persons already involved in the Land Banking Program and litigation commenced by the

[6] First Report at paras 2-3, 17-19.

[7] First Report at paras 4, 7; Receiver’s Sixth Report at paras 1.1-1.3.

[8] First Report at para 8; Receiver’s Sixth Report at para 3.2.

Receiver.[9] Representative Counsel also obtained affidavits from Co-Owners who invested through those entities.[10]

11. The investment documents for GVE, GVE II, and Lyons Creek are substantially similar to the investment documents already before this Court that relate to the other nominees and operator entities. Similarly, Co-Owners of GVE, GVE II, and Lyons Creek acquired fractional beneficial ownership interests in the applicable real property, legal title was held by the nominee entity, and property dispositions required Co-Owner approval.[11]

b) The Real Properties

12. Representative Counsel's review identified transactions involving the GVE Property, GVE II Property, and Lyons Creek Property that do not appear to have been disclosed to, or authorized by, affected Co-Owners.[12]

13. In the case of the GVE Property, Co-Owners approved a sale of the property. However, following the June Transaction which involved a change of control over the Land Banking Program, the GVE Property was sold for almost a million dollars less than approved by the Co-Owners involving a vendor take-back mortgage (i.e., the GVE VTB), without any evidence that the revised transaction was approved by Co-Owners.

[9] First Report at paras 11-13.

[10] Affidavit of Yuta Suzuki, affirmed on May 28, 2026, contained at Tab 3 of the Motion Record dated June 5, 2026 [Suzuki Affidavit]; Affidavit of Kunihiro Ishii, affirmed on May 27, 2026, contained at Tab 4 of the Motion Record dated June 5, 2026 [Ishii Affidavit].

[11] First Report at paras 15-22, 42; Suzuki Affidavit at paras 2-4; Ishii Affidavit at paras 3-5.

[12] First Report at paras 27-70.

The GVE VTB was subsequently transferred to Tiberis Capital Corp., an entity controlled by Vincent Salvatore.[13]

14. Representative Counsel was independently contacted by McKenzie Lake LLP, counsel to the purchaser in the GVE transaction. McKenzie Lake advised that it currently holds approximately $309,375 in GVE VTB proceeds in trust after its client grew concerned whether the sale and transfer of the GVE VTB had been properly authorized by Co-Owners.[14]

15. In the case of the GVE II Property, Co-Owners approved a sale that was never completed and the property remains unsold. Following the June Transaction, a blanket mortgage in the amount of $110 million was registered against title by an entity controlled by Vincent Salvatore. Representative Counsel is unaware of any evidence that Co-Owners were notified of, or consented to, that mortgage.[15]

16. In the days leading up to this motion, Representative Counsel learned that Vincent Salvatore may have been taking steps to market or sell the GVE II Property. In response, Representative Counsel delivered correspondence demanding that such efforts cease and registered a caution against title pending the determination of this motion.[16]

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[13] First Report at paras 28-42; Ishii Affidavit.

[14] First Report at paras 52-56.

[15] First Report at paras 43-51, 59-61; Ishii Affidavit at paras 18-19.

[16] Supplement to the First Report of Gowling WLG (Canada) LLP, in its capacity as court-appointed Representative Counsel dated June 11, 2026 at paras 4-10.

17. Lyons Creek continues to hold title to the Lyons Creek Property. That property also appears to be subject to the same blanket mortgage registered against the GVE II Property and that was registered against other properties administered in these Receivership Proceedings. Representative Counsel is unaware of any evidence that Co-Owners were notified of, or consented to, that mortgage.[17]

18. While the GVE Property was sold prior to the commencement of these proceedings, the GVE II Property and the Lyons Creek Property remain capable of being preserved and administered through these Receivership Proceedings. Representative Counsel also understands that the Receiver is well positioned to investigate and take appropriate recovery steps in respect of the GVE VTB and related proceeds.[18]

PART III – ISSUES & LEGAL ARGUMENT

19. The issues on this motion are whether:

    (a) Representative Counsel has standing to bring this motion;

    (b) it is just or convenient for the Court to expand the scope of the Receiver's appointment to include the Additional Property; and

    (c) the ARRCAO should be granted.

[17] First Report at paras 63, 65; Suzuki Affidavit at paras 10-11.
[18] First Report at paras 44, 63, 71(c).

a) Representative Counsel Has Standing to Bring Motion

20. The Representative Counsel Order was drafted in consultation with the Receiver and contemplates the relief sought on this motion.

21. Specifically, the Representative Counsel Order authorizes Representative Counsel to: (1) file and prepare materials and advance submissions in motions brought in these proceedings; (2) bring any motion required to advance the interests of investors, including motions seeking to further expand the scope of the Receiver's mandate in connection with the Land Banking Program; and (3) perform such other actions as may be necessary or desirable to fulfill its mandate as Representative Counsel.[19] The relief sought on this motion falls within the mandate contemplated by the Representative Counsel Order.

22. Moreover, the *CJA* does not limit applicants strictly to creditors or require the filing of a bankruptcy or a finding of insolvency as a prerequisite to the appointment of a receiver or receiver-manager. Canadian courts have found that an applicant need only be a "major stakeholder" or have a "sufficient interest" to have standing to bring an application for a receivership. There are no preconditions to the appointment of a receiver under section 101 of the *CJA*.[20]

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[19] Representative Counsel Order, paras 4(g), (i), (j).

[20] *Star America DPGI Acquisition Company, Inc v Demand Power Group Inc.* (Court file no. CV-23-00709164-00CL, Endorsement of the Honourable Justice Kimmel dated November 22, 2023) at paras 11, 14; *Hands-On Capital Investments Inc v DMCC Holdings Inc*, 2023 ONSC 2417 at para 75; *King (Township) v Rolex Equipment Co*, 90 DLR (4th) 442 at para 22 (ON SC Gen Div).

23. Having acquired beneficial ownership interests in the Real Properties, Mr. Suzuki, Mr. Ishii, and the other Co-Owners who invested through the Nominees and Operators have a sufficient interest in the Additional Property.[21]

24. Accordingly, Representative Counsel has standing to bring this motion.

b) It is Just or Convenient to Appoint the Receiver Over the Additional Property

25. Subsection 101(1) of the *CJA* enables the Court to appoint a receiver and manager where it is "just or convenient".[22]

26. In determining whether it is just or convenient to do so, courts "must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto."[23]

27. Courts have considered numerous factors in this analysis, including:

(a) whether irreparable harm might be caused if no order is made;

(b) the nature of the property;

(c) the apprehended or actual waste of the debtor's assets;

[21] Suzuki Affidavit at paras 1-4, 9; Ishii Affidavit at paras 1-8, 15.
[22] *Bank of Nova Scotia v Freure Village of Clair Creek,* 1996 CanLII 8258 at para 10 (Ont SCJ) [*Freure*].
[23] *Freure* at para 10.

(d) the preservation and protection of the property pending judicial resolution;

(e) the balance of convenience to the parties;

(f) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;

(g) the effect of the order upon the parties;

(h) the conduct of the parties;

(i) the cost to the parties;

(j) the likelihood of maximizing return to the parties; and

(k) the goal of facilitating the duties of the receiver.[24]

28. It is not essential that the moving party establish, prior to the appointment of a receiver, that it will suffer irreparable harm or that the situation is urgent.[25]

29. Representative Counsel submits that it is just or convenient to expand the appointment of KSV as Receiver to include the Additional Property, including for the following reasons:

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[24] *RioCan REIT v RioCan HBC LP*, 2025 ONSC 3642 at para 6.

[25] *Canadian Equipment Finance and Leasing Inc v The Hypoint Company Limited*, 2022 ONSC 6186 at para 26.

(a) Expanding the receivership is necessary to protect the interests of the Co-Owners who invested in the Real Properties. The undisclosed and unauthorized transactions appear to have been carried out for the benefit of the individuals managing the Land Banking Program, including the Nominees and Operators, and to the detriment of the relevant Co-Owners. Without oversight from a court-appointed receiver, monies that belong to those Co-Owners will likely be further mismanaged and they will suffer additional harm. The Additional Property is at substantial risk of continued dissipation, including through the expiration of applicable limitation periods;[26]

(b) Because the GVE Property has been conveyed away from GVE, the Second ARRO is narrowly confined to the personal property of GVE and the GVE Operator directly related to the business they carried on, as well as all choses in action and related interests. The Court is not being asked to determine the existence or validity of those interests or entitlements at this time. Rather, the Receiver will be empowered to review and determine what investigatory and recovery efforts in respect of the GVE VTB, or undisclosed and unauthorized transactions are appropriate to preserve, protect, and realize on the Additional Property in the interim**,** pending entitlement determination at a future stage;[27]

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[26] First Report at paras 27-70; 71(a), (b), (d).

[27] First Report at paras 1(a)(1), 1(iv), 71(c).

(c) The conduct of the Nominees, the Operators, and their principals has led Mr. Ishii and Mr. Suzuki to lose confidence in those actors' ability or willingness to appropriately manage the Real Properties and related assets in the Co-Owners' best interests.[28] Representative Counsel understands that the broader group of Co-Owners is largely unaware of the transactions and dealings that occurred in respect of the Real Properties;[29]

(d) Representative Counsel believes that the Co-Owners that invested in the Real Properties are a similar base of disparate, foreign individuals. Commencing and undertaking a complex litigation or pursuing private enforcement proceedings on their own will be cost-prohibitive. They require this Court's equitable intervention to protect their rights;[30]

(e) It would be appropriate and efficient to expand the receivership to include the Additional Property. The Receiver is already familiar with the structure of the Land Banking Program, the relevant participants, and the assets involved. Its mandate over the Additional Property would therefore be complementary to its existing mandate and avoid unnecessary duplication. The Receiver would also be well positioned to administer a claims process in respect of the Nominees

[28] Suzuki Affidavit at paras 11-13; Ishii Affidavit at paras 17-19; First Report at para 8; Receiver's Sixth Report at paras 3.2-3.3.

[29] Suzuki Affidavit at paras 11-13; Ishii Affidavit at paras 17-19; First Report at para 8; Receiver's Sixth Report at paras 3.2-3.3.

[30] First Report at paras 2, 71(f), Appendix "I" at paras 15-16.

and Operators, similar to the Claims Process currently being conducted in these proceedings;[31]

(f) This Court has already granted and expanded the scope of these Receivership Proceedings on largely similar facts as pertain to this motion. The Second ARRO is consistent with the Court's prior orders and would extend the existing court-supervised framework to additional Co-Owners, entities, and property associated with the Land Banking Program;[32]

(g) Expanding these proceedings would also provide clarity to Dancor with respect to the proper recipient of the GVE VTB payments currently being held in trust by McKenzie Lake;[33] and

(h) The Receiver, Mr. Ishii, Mr. Suzuki, and the other Co-Owners with whom Representative Counsel has communicated support the expansion of these Receivership Proceedings as contemplated by the Second ARRO.[34]

[31] Receiver's Sixth Report at paras 3.1-3.5; First Report at para 71(a), (c), (g).

[32] *Fukiage, Mizue et al v Clearview Garden Estates Inc et al*, Court File No. CV-25-00736577-00CL, Endorsement of the Honourable Justice Steele dated March 6 and 7, 2025; *Fukiage et al v Clearview Garden Estates Inc et al*, Court File No. CV-25-00736577-00CL, Endorsement of the Honourable Justice Steele dated October 23, 2025.

[33] First Report at para 71(e).

[34] Suzuki Affidavit at paras 14-15; Ishii Affidavit at paras 20-21.

c) The ARRCAO Should be Granted

30. The benefits and protections afforded by the Representative Counsel Order should be extended to the Co-Owners who invested in the Real Properties.

31. Subrule 10.01(1) of the *Rules* gives courts the authority to appoint a person to represent a class of persons who are unascertained or who have a present, future, contingent or unascertained interest in or may be affected by a proceeding and who cannot be readily ascertained, found or served, where, among other things, it appears necessary or desirable.

32. Two primary rationales for the appointment of representative counsel in insolvency proceedings are to: (i) provide effective communication with stakeholders and ensure that their interests are brought to the attention of the Court and other participants; and (ii) bring increased efficiency and cost effectiveness to the proceeding as a whole.[35]

33. Generally, in determining whether a representation order is appropriate, courts apply the *Canwest* factors, which include:

(a) the vulnerability and resources of the group sought to be represented;

(b) any benefit to the debtor company;

(c) any social benefit to be derived from representation of the group;

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[35] *Quadriga Fintech Solutions Corp (Re)*, 2019 NSSC 65 at para 9 [*Quadriga*].

(d) the facilitation of the administration of the proceeding and efficiency;

(e) the avoidance of multiplicity of legal retainers;

(f) the balance of convenience and whether it is fair and just including to the creditors of the estate;

(g) whether representative counsel has already been appointed for those who have similar interests to the group seeking representation and who is prepared to act for the group seeking the order; and

(h) the position of other stakeholders and the court-appointed officer.[36]

34. The issue of whether to appoint representative counsel is one of equity and, therefore, the above listed factors can be informative but "there can be no hard and fast rules governing any particular case".[37]

35. Representative Counsel submits it is appropriate to extend the protections under the Representative Counsel Order to the Co-Owners who invested in the Real Properties and grant the ARRCAO for the following reasons:

(a) Gowling WLG (Canada) LLP is already acting as Representative Counsel for Co-Owners with claims against the Respondents. The Co-Owners who

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[36] *Canwest Publishing Inc*, 2010 ONSC 1328 at para 21 [*Canwest Publishing*]; *In the Matter of the Proposal of Metroland Media Group Ltd*, 2023 ONSC 5805 at para 18.

[37] *Urbancorp Inc (Re)*, 2016 ONSC 5426 at para 12.

invested in the Real Properties have substantially similar interests to those already represented by Representative Counsel. Representative Counsel would continue to engage with the Receiver on critical matters but for this subset of Co-Owners, communicate with these Co-Owners and provide them with updates, and assist them with filing claims in any future claims process. Extending the Representative Counsel Order would therefore promote efficiency and avoid the need for separate representation of stakeholders with aligned interests;[38]

(b) Mr. Ishii and Mr. Suzuki are not proficient in English and reside outside Canada. They are not professional or institutional investors and have limited ability to independently access information concerning the Land Banking Program and these proceedings. Access to centralized communications and representation is therefore important to enable them to protect their interests and make informed decisions. Both support the extension of Representative Counsel's mandate to Co-Owners with interests in the Real Properties. Representative Counsel understands that many of the other Co-Owners who invested in the Real Properties likely face similar challenges;[39]

(c) Requiring these Co-Owners to individually retain legal counsel in Canada would be cost prohibitive. It would also be repetitive and inefficient given the

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[38] First Report at paras 15-26, 73, Appendix "C"; *Fukiage et al v Clearview Garden Estates Inc et al*, Court File No. CV-25-00736577-00CL, Endorsement of the Honourable Justice Steele dated October 23, 2025.

[39] Suzuki Affidavit at paras 14, 16; Ishii Affidavit at paras 20-22; First Report at paras 2-3.

similarity in interests between them and the Co-Owners already represented by Representative Counsel; and

(d) The Receiver is supportive of the ARRCAO.[40]

36. Representative Counsel also seeks an increase to the Representative Counsel Charge from $250,000 to $450,000, exclusive of HST and disbursements.

37. Representative Counsel expects that the expansion of these proceedings will result in increased correspondence with Co-Owners and the likely implementation of a further claims or interest identification process in respect of the Nominees, the Operators and Real Properties.

PART IV – ORDERS REQUESTED

38. In light of the foregoing, it is respectfully requested that this Court grant the Second ARRO and the ARRCAO.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of June, 2026.

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GOWLING WLG (CANADA) LLP, in its capacity as Representative Counsel pursuant to the Order of the Honourable Justice Steele dated October 23, 2025

[40] Receiver's Sixth Report at para 3.5.

SCHEDULE "A" – LIST OF AUTHORITIES

1. *Star America DPGI Acquisition Company, Inc v Demand Power Group Inc.* (Court file no. CV-23-00709164-00CL, Endorsement of the Honourable Justice Kimmel dated November 22, 2023)
2. *Hands-On Capital Investments Inc v DMCC Holdings Inc*, 2023 ONSC 2417
3. *King (Township) v Rolex Equipment Co*, 90 DLR (4th) 442 (ON SC Gen Div)
4. *Bank of Nova Scotia v Freure Village of Clair Creek*, 1996 CanLII 8258 (Ont SCJ)
5. *RioCan REIT v RioCan HBC LP*, 2025 ONSC 3642
6. *Canadian Equipment Finance and Leasing Inc v The Hypoint Company Limited*, 2022 ONSC 6186
7. *Fukiage, Mizue et al v Clearview Garden Estates Inc et al*, Court File No. CV-25-00736577-00CL, Endorsement of the Honourable Justice Steele dated March 6 and 7, 2025
8. *Fukiage et al v Clearview Garden Estates Inc et al*, Court File No. CV-25-00736577-00CL, Endorsement of the Honourable Justice Steele dated October 23, 2025
9. *Quadriga Fintech Solutions Corp (Re)*, 2019 NSSC 65
10. *Canwest Publishing Inc*, 2010 ONSC 1328
11. *In the Matter of the Proposal of Metroland Media Group Ltd*, 2023 ONSC 5805
12. *Urbancorp Inc (Re)*, 2016 ONSC 5426

PATRYK SAWICKI

I am satisfied as to the authenticity of every authority cited in the factum.

SCHEDULE "B" – TEXT OF STATUTES

***Courts of Justice Act*, R.S.O. 1990, c. C.43**

Interlocutory Orders

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

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

Rule 10 Representation Order

Representation of an Interested Person Who Cannot Be Ascertained

Proceedings in which Order may be Made

10.01 (1) In a proceeding concerning,

(a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;

(b) the determination of a question arising in the administration of an estate or trust;

(c) the approval of a sale, purchase, settlement or other transaction;

(d) the approval of an arrangement under the *Variation of Trusts Act*;

(e) the administration of the estate of a deceased person; or

(f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served.

Court File No.: CV-25-00736577-00CL

MIZUE FUKIAGE et al - and - CLEARVIEW GARDEN ESTATES INC. et al

Applicants Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

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(Returnable June 15, 2026)

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In its capacity as Representative Counsel pursuant to the Order of the Honourable Justice Steele dated October 23, 2025