



SUPERIOR COURT OF JUSTICE  
**COUNSEL SLIP**

COURT FILE

NO.: CV-22-00685736-00CL

DATE: August 24, 2022

NO. ON LIST 3

TITLE OF  
PROCEEDING

PACE SAVINGS & CREDIT UNION LIMITED

BEFORE MADAM JUSTICE CONWAY

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**JUDICIAL NOTES:**

**Conway J. Endorsement**

**All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the factum of the Credit Union (through the Administrator) on the winding-up application.**

This is an application by the Credit Union, which is under the administration of the Administrator, for an order pursuant to s. 240 of the *CUCPA* winding up the Credit Union and appointing KPMG as liquidator of all remaining assets of the Credit Union following completion of the Alterna Sale Transaction.

The application was initially returnable before me on August 22, 2022. I adjourned the hearing to permit counsel to address concerns raised by the Recovery Litigation parties on the initial return date. When the matter resumed today, I was advised that those concerns have been addressed through amendments to the draft order. Accordingly, Mr. Weisz and Mr. Crawley, on behalf of their clients, took no position on the Application.

The winding-up order is sought pursuant to s. 240(1)(c) and (d) of the *CUCPA*, which provide:

240(1) A credit union may be wound up by order of the court if,

[...]

(c) it is proved to the satisfaction of the court that the credit union, though it may be solvent, cannot by reason of its liabilities continue its business and that it is advisable to wind it up; or

(d) in the opinion of the court it is just and equitable for some reason other than the bankruptcy or insolvency of the credit union that it should be wound up.

Based on the record before me, I am satisfied that the order should be granted. The Credit Union no longer has member deposits, employees, or branches. Substantially all of its assets have been sold to Alterna. The Remaining Assets and Liabilities consist of complex litigation and claims that cannot comprise the business of carrying on a credit union and are best overseen by a liquidator. There are no employees left to deal with those Remaining Assets and Liabilities. It is both advisable and just and equitable that it be wound up.

With reference to other caselaw that has applied the “just and equitable” principle on a proposed winding-up, this is a situation where the substratum of the Credit Union no longer exists, making it impossible for the Credit Union to carry on the business for which it was formed: *Hamilton Ideal Manufacturing Co. Limited, Rev* (1915), 23 D.L.R. 640 (Ont. S.C.); *Jury Gold Mine Development Co., Re*, [1928] 4 D.L.R. 735 (ONCA); *Dominion Steel Corp., Re*, [1927] 4 D.L.R. 337 at 349 (N.S. C.A.); *Columbia Gypsum Co., Re* (1958), 17 D.L.R. (2d) 280 at 283-4 (B.C.S.C.).

The order, as revised, is satisfactory to me. I add the following:

Mr. Swan, on behalf of Mr. Budd and who appeared having received a copy of the application materials last evening, expressed a concern that certain discretionary provisions of the proposed order may conflict with certain mandatory provisions of the *CUCPA*. The Liquidator will review the matter and return to court to address any discrepancies that it may identify. To the extent that any such conflict may exist between the order and the *CUCPA*, the provisions of the *CUCPA* will govern.

Further, nothing in the order shall affect the rights or arguments of parties who did not receive notice of the Application at a comeback hearing under section 29 of the order. Notwithstanding Mr. Swan's attendance at the hearing today, his client shall be treated for the purpose of any comeback motion as not having received notice of the application or attending.

Order to go as signed by me and attached to this endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", with a stylized flourish at the end.