

**ONTARIO
SUPERIOR COURT OF JUSTICE
(EAST REGION COMMERCIAL LIST)**

**IN THE MATTER OF THE NOTICES OF INTENTION
TO MAKE A PROPOSAL OF 1382769 ONTARIO
LIMITED AND 1622356 ONTARIO LIMITED**

FACTUM

(Returnable October 5, 2026)

October 1, 2026

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Limited and 1622356 Ontario Limited

TO: SERVICE LIST

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PART I - OVERVIEW

1. This motion is brought by Albert Gelman Inc. (“**AGI**”) in its capacity as proposal trustee (in such capacity, the “**Trustee**” of 1382769 Ontario Limited operating as Kelsey’s Gardiners Restaurant (“**KelseyCo**”) and 1622356 Ontario Limited operating as Montana’s Restaurant (“**MontanaCo**”) (collectively, the “**Companies**”).
2. As is detailed in the fifth report of the Trustee dated September 29, 2026 (the “**Fifth Report**”), the Companies executed a stalking-horse asset purchase agreement (defined below as the Stalking Horse APA) and conducted a sale and investment solicitation process (“**SISP**”) under the supervision of this Court. The transaction underpinning the Stalking Horse APA was subsequently approved by order of this Court. That transaction closed on September 14, 2026. The proceeds of that transaction must now be delivered to the Companies’ creditors. This motion addresses how that will happen.
3. This Factum is filed in support of the Trustee’s motion for an order:
 - (a) authorizing and directing the Trustee to pay to the Canada Revenue Agency (the “**CRA**”), from the Net Proceeds (as defined below), the Deemed Trust Distribution (as defined below), in the amounts described in the Fifth Report of the Trustee, dated September 29, 2026 (the “**Fifth Report**”);
 - (b) allocating the Net Proceeds (defined below) evenly among the two Companies (the “**Allocation**”);

- (c) terminating the period for the Companies to make proposals pursuant to subsection 50.4(11) of the *Bankruptcy and Insolvency Act*¹, effective upon the filing by the Trustee with the Court of the Trustee's Distribution Certificate (as defined below), such that the Companies are deemed to have made assignments in bankruptcy pursuant to subsection 50.4(8) of the BIA, with AGI as trustee in bankruptcy of each of the Companies, and discharging AGI as Trustee of each of the Companies upon the Official Receiver issuing a certificate of assignment for each of the Companies, as contemplated by paragraph 50.4(8)(b.1) of the BIA;
- (d) discharging the Administration Charge (defined below) upon payment of the amounts secured by it;
- (e) granting AGI, in its capacity as trustee in bankruptcy of each of the Companies, and its counsel a first-ranking charge on the property of each of the Companies in the bankruptcies to secure their reasonable fees and disbursements incurred in the bankruptcies, ranking in priority to all other claims and interests in such property (the **"Bankruptcy Charge"**);
- (f) approving the Fifth Report and the actions, activities and conduct of the Trustee described herein; and
- (g) approving the fees and disbursements of the Trustee and its counsel, as set out in the Fee Affidavits (defined below), including, for certainty, the Fee Accruals (as defined below).

¹ [R.S.C. 1985, c. B-3 \(the "BIA"\)](#).

PART II - FACTS

4. A complete background of these proceedings is set out in the Fifth Report. Capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Fifth Report.

A. Background

5. The Companies filed Notices of Intention to Make Proposals (the “**NOIs**”) on May 1, 2026 (the “**Filing Date**”). The Trustee was appointed as proposal trustee pursuant to the NOIs. The NOI proceedings of the Companies are referred to herein as the “**NOI Proceedings**”.²
6. Pursuant to two orders made July 13, 2026 (a) the Court approved a sale and investment solicitation process (the “**SISP**”) and the stalking horse asset purchase agreement dated June 16, 2026 between the Companies, as vendors, and 7055579 Canada Inc. (the “**Original Purchaser**”), as purchaser (the “**Stalking Horse APA**”), including the bid protections thereunder; and (b) the Court granted a charge over the Companies’ present and future property, assets and undertakings in the amount of \$200,000 (the “**Administration Charge**”) to secure the fees and disbursements of the Trustee, its counsel and counsel to the Companies (collectively, the “**Professionals**”); and (c) the time for the Companies to make a proposal was extended to and including August 28, 2026.³
7. Pursuant to an approval and vesting order dated September 9, 2026 (the “**Approval and Vesting Order**”), the transaction of purchase and sale contemplated by the Stalking Horse APA (the “**Transaction**”) was approved and the Companies’ right, title and interest in and to the Purchased Assets was ordered to vest in the 15870437 Canada Inc. (the

² Fifth Report of the Trustee, being Tab 2 of the Motion Record, dated September 29, 2026 (the “**Fifth Report**”) at para 1.

³ Fifth Report at para 3(ii).

“**Purchaser**”), free and clear of all Claims and Encumbrances, upon delivery of the Trustee’s Certificate.⁴

8. Pursuant to a further order dated September 9, 2026, the maximum amount of the Administration Charge was increased from \$200,000 to \$300,000, and the Fourth Report, the activities of the Trustee described therein and the fees and disbursements of the Trustee and its counsel for the periods described therein were approved.⁵

B. The Transaction and the Proceeds

9. The Transaction closed on September 14, 2026 (the “**Closing Date**”), as further described in the Fifth Report. Following the Closing Date, the Companies no longer carry on business, no longer have any employees, and their remaining property consists principally of the proceeds of the Transaction.⁶
10. The gross proceeds of the Transaction are \$2,300,000.⁷ The Trustee has consulted with the Companies on the most efficient manner of delivering the proceeds to the Companies’ creditors. The Stalking Horse APA provided for a “**Completion Amount**” to satisfy the estimated fees and disbursements of the Trustee, its counsel, and counsel to the Companies required to complete the NOI Proceedings following Closing, in an amount to be determined by the Trustee, in its sole discretion, prior to the Closing. The Trustee determined that amount to be \$100,000.⁸

⁴ Fifth Report at paras 3(ii)-(iii).

⁵ Fifth Report at para 3(v).

⁶ Fifth Report at para 4.

⁷ Fifth Report at para 16.

⁸ Fifth Report at para 15.

C. Companies' Creditors and Priorities

11. As described in the Fifth Report, the Companies' largest creditor is the CRA, due to both deemed trust source deduction amounts and due to other tax arrears, including HST and corporate taxes.⁹
12. The CRA has filed proofs of claim in respect of each of the Companies (the "**CRA Proofs of Claim**"). The CRA Proofs of Claim indicate that MontanaCo owes the CRA \$133,793.12 in unpaid source deductions, constituting a deemed trust (defined below as the "**ITA Deemed Trust**"). The CRA Proofs of Claim indicate that KelseyCo does not owe any unpaid source deductions to the CRA, meaning that there is no deemed trust with respect to KelseyCo.¹⁰ There are also amounts owed to the CRA for unpaid HST arrears, and for interest and penalties on the unpaid source deductions and HST arrears.
13. The Companies also owe the following for accrued vacation pay (together, the "**Accrued Vacation Pay**")¹¹:
 - (a) KelseyCo owes its former employees \$36,969.32 for pre-NOI accrued vacation pay (the "**KelseyCo Pre-NOI Vacation Pay**"), and a further \$3,763.24 for post-NOI accrued vacation pay (the "**KelseyCo Post-NOI Vacation Pay**"); and
 - (b) MontanaCo owes its former employees \$50,671.78 for pre-NOI accrued vacation pay (the "**MontanaCo Pre-NOI Vacation Pay**"), and a further \$832.52 for post-NOI accrued vacation pay (the "**MontanaCo Post-NOI Vacation Pay**").

⁹ Fifth Report at para 31.

¹⁰ Fifth Report at para 31.

¹¹ Fifth Report at para 22.

14. The CRA is the only creditor that has filed proofs of claim. The Trustee understands that the Companies' former landlords, and the sole PPSA registrant, their former Franchisor, are not owed any money.¹²
15. The Trustee, in consultation with the Companies, is of the view that the most efficient and cost-effective manner of delivering those net proceeds to the Companies' creditors is (i) a distribution authorized by this Court to CRA of the Deemed Trust Amount (the "**Deemed Trust Distribution**"), and (ii) the termination of the period for the Companies to make proposals pursuant to subsection 50.4(11) of the BIA, such that the Companies are deemed to have made assignments in bankruptcy and the balance of the net proceeds can be administered and distributed in the Companies' bankruptcies in accordance with the BIA.
16. Prior to making these distributions the Companies, through the sale proceeds held by the Trustee, will pay all outstanding professional fees secured by the Administration Charge.
17. Upon making the Deemed Trust Distribution the Trustee will file the Trustee's Distribution Certificate attached as Schedule "A" to the draft Distribution and Bankruptcy Order. Upon filing the Trustee's Distribution Certificate the Companies will be automatically bankrupted. As discussed below, and in the Fifth Report, a bankruptcy is a more efficient avenue for distributing the balance of the net proceeds of the Transaction (the "**Net Proceeds**") than a proposal or further distribution orders.

¹² Fifth Report at para 19.

PART III - ISSUES

18. The issues before this Court are as follows:

- (a) Whether the Deemed Trust Distribution should be approved;
- (b) Whether the Allocation should be approved;
- (c) Whether the time to make proposals should be terminated, such that the Companies are deemed to have made assignments into bankruptcy;
- (d) Whether the Administration Charge should be discharged;
- (e) Whether the Bankruptcy Charge should be granted; and
- (f) Whether the Fifth Report and the Trustee's activities and fees should be approved, including the Fee Accruals.

PART IV - LAW AND ARGUMENT

A. Court May and Should Approve the Distribution

19. Courts regularly make distribution orders in NOI proceedings where priority claims are clearly established and the proposal trustee recommends the distribution.¹³

¹³ See, *inter alia*, *OEM Automotive*, Ont. S.C.J. No. BK-23-03025642-0033, [Order dated May 28, 2024 \[MacLeod R.S.J.\]](#), paras. 2-6; *Azure Publishing*, Ont. S.C.J. No. BK-25-03270451-0031, [Order dated December 5, 2025 \[Cavanagh J.\]](#), paras. 7-12; *3MotionAI Inc.*, Ont. S.C.J. No. BK-25-03267656-0032, [Order dated November 19, 2025 \[Steele J.\]](#), paras. 6-12; *Webooooo Information Technology Ltd.*, Ont. S.C.J. No. BK-25-03237660-0031, [Order dated August 22, 2025 \[Black J.\]](#), paras. 8-17; *Brands International Corp.*, Ont. S.C.J. No. BK-24-031696618-0031, [Order dated April 14, 2025 \[Dietrich J.\]](#), paras. 4-7; *BRR Logistics Ltd.*, Ont. S.C.J. No. 31-3038619, [Order dated February 27, 2024 \[Conway J.\]](#), para. 14; *Paris Kitchens*, Ont. S.C.J. No. BK-22-02835198-0031, [Order dated September 23, 2022 \[Osborne J. \(as he then was\)\]](#), para. 6; *Dove Cleaners*, Ont. S.C.J. No. 31-2803414, [Order dated June 22, 2022 \[Osborne J. \(as he then was\)\]](#), para. 2; *TKC Metal*, Ont. S.C.J. No. 32-3109134, Order dated October 1st, 2024 [Goodman J.], para. 4; and *MRP Retail*, Ont. S.C.J. No. 31-2205065, [Order dated March 13, 2017 \[Newbould J.\]](#), para. 5.

20. Section 227(4.1) of the *Income Tax Act*¹⁴ (the “**ITA**”) provides that (i) any person who deducts or withholds amounts pursuant to the ITA – which includes, *inter alia*, employee source deductions (“**ITA Deductions**”), is, notwithstanding any security interest, deemed to hold that amount in trust for the Crown; and (ii) where the person fails to remit ITA Deductions to CRA, the entire property of the person is, notwithstanding any security interest, deemed, up to the unremitted amount, to be held in trust for the Crown and “*the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.*” This is referred to as the “**ITA Deemed Trust.**”
21. Unlike the CRA’s claim for ITA Deductions, the CRA’s proof of claim for *Excise Tax Act*¹⁵ (the “**ETA**”) arrears related to unpaid HST is asserted on an unsecured basis. While the ETA does provide for a deemed trust¹⁶, the CRA has chosen not to assert one here.
22. The Trustee expects that the CRA has not asserted a deemed trust here because, by operation of sections 67(2) and 86(1) of the BIA, in either a bankruptcy or after filing a proposal, an ETA deemed trust is “not...regarded as held in trust for [His] Majesty” and “rank as unsecured claims” in either a proposal or a bankruptcy. As a result, while the ETA deemed trust would formally survive until a bankruptcy or a proposal occurs, in practice, once an NOI is filed a company must either become bankrupt or make a proposal –rendering the ETA deemed trust unsecured. The CRA knows this, and so it likely chose to simplify its processes by classifying the ETA arrears as unsecured, rather than asserting a deemed trust that would be collapsed by operation of law.

¹⁴ *Income Tax Act* (R.S.C., 1985, c. 1 (5th Supp.)).

¹⁵ *Excise Tax Act* (R.S.C., 1985, c. E-15).

¹⁶ See section 222 of the ETA.

23. In this case, the Companies are on the brink of bankruptcy. As is set out in the Fifth Report, they do not intend to file proposals and thus cannot qualify for further extensions of the stay period.¹⁷
24. At this stage, the ITA Deemed Trust can either be repaid now, with immediate effect, automatically stopping additional penalties and interest to accrue, or it can be repaid after a bankruptcy is commenced, administered, and a creditor meeting is held. That delay will cause additional interest and penalties to be incurred, diluting the recovery for other creditors. As a result, it would benefit all of the Companies' other creditors if the ITA Deemed Trust is paid now via the Deemed Trust Distribution.

B. Purchase Price Allocation

25. The Net Proceeds should be allocated equally between KelseyCo and MontanaCo. The Companies operated as one going concern, with employees and back office operations shared between the two Companies. They were, functionally, one business unit.
26. This Court's authority to allocate the purchase price is based in Section 183 of the BIA, which vests the Superior Court with "original, auxiliary and ancillary" jurisdiction at law and in equity within BIA proceedings.¹⁸
27. Courts routinely exercise jurisdiction in BIA proceedings to grant relief necessary to advance restructuring proceedings.¹⁹ This jurisdiction has been used where: (a) there is a

¹⁷ Fifth Report at 51.

¹⁸ BIA at s. 183.

¹⁹ *Kingsway General Insurance Company v Residential Warranty Company of Canada Inc (Trustee of)*, [2006 ABCA 293](#) ("*Residential Warranty*") at [paras 19-21](#); see also *Business Development Bank of Canada v Astoria Organic Matters Ltd*, [2019 ONCA 269](#) at [para 64](#).

functional gap in the BIA; (b) there is no other alternative available; (c) it is necessary to promote the objects of the BIA and to accomplish what justice and practicality require.²⁰

28. Allocating the purchase price among the two Companies will assist in the efficient administration of their bankruptcy estates. The Trustee notes that the two Companies have a similar set of creditors – former employees with Accrued Vacation Pay claims and the CRA. As a result, it is difficult to see how the allocation would result in any prejudice to any creditor. Allowing the Allocation to proceed would ensure that the BIA’s object of efficiently distributing value to creditors in a bankruptcy is preserved.

C. Time to Make Proposal Should be Terminated and AGI Should be Appointed as Trustee in Bankruptcy

29. Pursuant to Section 50.4(11) of the BIA, the Court may, on application of the Trustee, declare NOI proceedings terminated prior to the expiration of the stay period if the Court is satisfied that, *inter alia*, either (1) the insolvent person will not likely be able to make a proposal before the expiration of the stay period that will be accepted by the creditors or (2) the insolvent person will not likely be able to make a viable proposal before the expiration of the stay period.²¹
30. As is set out at paragraphs 51 through 55 of the Fifth Report, the Companies have advised the Trustee that they do not intend to file proposals.²² As a result, there is no basis for the stay period to continue following the Deemed Trust Distribution and the filing of the Trustee’s Distribution Certificate.

²⁰ *Residential Warranty* at para 21.

²¹ BIA, s. 50.4(11).

²² Fifth Report at paras 51-55.

31. The effect of a termination of the stay period under Section 50.4(11) of the BIA is that, per Section 50.4(8) of the BIA, the “insolvent person” is deemed to have made an assignment in bankruptcy.²³ AGI is prepared to continue to act as the Companies’ trustee in bankruptcy.²⁴
32. As discussed in the Fifth Report, bankrupting the Companies is a more efficient route to address claims ranking below the Deemed Trust Amount and the Administration Charge. In particular, a bankruptcy avoids the need to draft a proposal, solicit votes, conduct a meeting of creditors to vote on the proposal, and then seek the Court’s approval. It also removes the need for further involvement by the Companies’ counsel, thus reducing professional fees. The Companies also do not intend to continue to operate, thus obviating the need for a rehabilitation.²⁵

D. Administration Charge Should be Discharged

33. The Trustee intends to satisfy all remaining claims against the Administration Charge immediately prior to the Deemed Trust Distribution and the bankruptcies of the Companies.²⁶ As a result of (i) all claims being paid out and (ii) the imminent bankruptcies, there will be no further need for the Administration Charge. As a result, it should be discharged upon the payments being made.

E. Bankruptcy Charge Should be Granted

34. The Trustee seeks the granting of the Bankruptcy Charge to ensure that it is sufficiently funded to administer the Companies’ bankruptcies.

²³ BIA, s. 50.4(8).

²⁴ Fifth Report at para 54.

²⁵ Fifth Report at para 49.

²⁶ Fifth Report at para 56.

35. The Bankruptcy Charge is necessary for several reasons. A bankruptcy trustee would typically hold a retainer or other security for its fees in a bankruptcy. In this case, AGI is not holding a retainer. The funds remaining after the Deemed Trust Distribution (the “**Remaining Proceeds**”) are the only available source of funding for these bankruptcies.
36. Additionally, a bankruptcy does not affect the rights of secured creditors, in this case being Recipe Brands International, the Companies’ former franchisor (the “**Franchisor**”). Bankruptcy costs of administration rank below valid secured claims against the bankrupt’s property.²⁷ Although the Franchisor advised, at the closing of the Transaction, that there were no arrears owing by the Companies,²⁸ the Franchisor could, nonetheless, assert a secured claim against the Remaining Proceeds. Doing so would “scoop” the Remaining Proceeds from the bankruptcy estate and leave a bankruptcy trustee with no source of funding for its statutory obligations.
37. A bankruptcy trustee will be administering the bankruptcy estates for the benefit of all creditors, including former employees with Accrued Vacation Pay claims. The bankruptcy trustee’s efforts for doing so should be borne equally by all of the beneficiaries of the bankruptcy estates.
38. This Court has the jurisdiction to grant the Bankruptcy Charge pursuant to Section 64.2(a) of the BIA as the charge will be in favour of the bankruptcy trustee and its counsel in respect of the performance of its duties under the BIA.²⁹ The Court’s original and inherent

²⁷ BIA s. 136(1).

²⁸ Fifth Report at para 20.

²⁹ BIA at s 64.2(a).

jurisdiction flowing from Section 183 also provides a basis for granting the Bankruptcy Charge.

39. When determining whether to grant a priming charge for fees, charge, the Court will consider the following non-exhaustive factors:
- (a) the size and complexity of the business being restructured;
 - (b) the proposed role of the beneficiaries of the charge;
 - (c) whether there is an unwarranted duplication of roles;
 - (d) whether the quantum of the proposed charge appears to be fair and reasonable;
 - (e) the position of the secured creditors likely to be affected by the charge; and
 - (f) the position of the proposal trustee.³⁰
40. Courts have held that the process under the BIA is reasonably complex and the assistance of professional advisors is self-evidently necessary to navigate to completion.³¹
41. In these circumstances, it is respectfully submitted that the proposed Bankruptcy Charge should be approved on the grounds that it will ensure that the Companies' bankruptcy trustee is able to efficiently administer the bankruptcy estates without risk of being scooped by the Franchisor or otherwise left without funding.

³⁰ *Canwest Publishing Inc.*, [2010 ONSC 222](#) at [para 54](#).

³¹ *In re. Mustang GP Ltd.*, [2015 ONSC 6562](#) at [para 33](#).

F. Approval of Trustee Activities and Fees

42. The Trustee seeks the approval of the Fifth Report and the activities described therein. These activities are appropriate and are in the best interest of the stakeholders.
43. In considering whether to approve fees and disbursements, the court has regard to the “overriding principle of reasonableness,” and does not engage in a docket-by-docket or line-by-line assessment of the accounts.³² Instead, the court should assess (i) the nature, extent and value of the assets being handled; any complications and difficulties encountered; the degree of assistance provided by the company, its officers or its employees; the Trustee’s knowledge, experience and skill, diligence displayed and responsibilities assumed; the results achieved, and the cost of comparable services when performed in a prudent and commercial manner.³³
44. As the parties do not expect that a further hearing will occur in these proposal proceedings, they seek approval of a “Fee Accrual” covering professional fees from September 29, 2026 to the termination of these NOI proceedings. The Fee Accrual is in a fixed amount and will only cover fees actually incurred between September 29, 2026 and the NOI termination.³⁴
45. The rates and fees charged by the Trustee and its counsel are reasonable and market for insolvency proceedings of similar complexity. Furthermore, the Trustee believes that the fees and disbursements incurred as described in the Fee Affidavits (as defined in the Fifth Report), are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the BIA and the orders of the Court in these proceedings.³⁵

³² *Nortel Networks Inc.*, [2022 ONSC 668](#) at [para 10](#) [“*Nortel*”].

³³ *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) at [para 33](#); *Nortel* at [para 11](#).

³⁴ Fifth Report at para 66.

³⁵ Fifth Report at para 66.

PART V - ORDERS SOUGHT

46. For each of the foregoing reasons, the Trustee respectfully requests that this Honourable Court grant the Distribution and Bankruptcy Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of October 2026.

Date October 1, 2026



Matthew Cressatti

SCHEDULE A – AUTHORITIES

1. *OEM Automotive*, Ont. S.C.J. No. BK-23-03025642-0033, [Order dated May 28, 2024 \[MacLeod R.S.J.\]](#),
2. *Azure Publishing*, Ont. S.C.J. No. BK-25-03270451-0031, [Order dated December 5, 2025 \[Cavanagh J.\]](#)
3. *3MotionAI Inc.*, Ont. S.C.J. No. BK-25-03267656-0032, [Order dated November 19, 2025 \[Steele J.\]](#)
4. *Weboook Information Technology Ltd.*, Ont. S.C.J. No. BK-25-03237660-0031, [Order dated August 22, 2025 \[Black J.\]](#)
5. *Brands International Corp.*, Ont. S.C.J. No. BK-24-031696618-0031, [Order dated April 14, 2025 \[Dietrich J.\]](#)
6. *BRR Logistics Ltd.*, Ont. S.C.J. No. 31-3038619, [Order dated February 27, 2024 \[Conway J.\]](#)
7. *Paris Kitchens*, Ont. S.C.J. No. BK-22-02835198-0031, [Order dated September 23, 2022 \[Osborne J. \(as he then was\)\]](#),
8. *Dove Cleaners*, Ont. S.C.J. No. 31-2803414, [Order dated June 22, 2022 \[Osborne J. \(as he then was\)\]](#)
9. *MRP Retail*, Ont. S.C.J. No. 31-2205065, [Order dated March 13, 2017 \[Newbould J.\]](#)
10. *Kingsway General Insurance Company v Residential Warranty Company of Canada Inc (Trustee of)*, [2006 ABCA 293](#)
11. *Business Development Bank of Canada v Astoria Organic Matters Ltd*, [2019 ONCA 269](#)
12. *Canwest Publishing Inc*, [2010 ONSC 222](#)
13. *In re. Mustang GP Ltd.*, [2015 ONSC 6562](#)
14. *Nortel Networks Inc.*, [2022 ONSC 668](#)
15. *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#)

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date October 1, 2026



Matthew Cressatti

SCHEDULE B – STATUTES

[Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3](#)

Subsection 50.4(8)

- **Where assignment deemed to have been made**

(8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under [subsection 62\(1\)](#) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

- **(a)** the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;
- **(b)** the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;
- **(b.1)** the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under [section 49](#); and
- **(c)** the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under [section 102](#), at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

Subsection 50.4(11)

- **Court may terminate period for making proposal**

(11) The court may, on application by the trustee, the interim receiver, if any, appointed under [section 47.1](#), or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

- **(a)** the insolvent person has not acted, or is not acting, in good faith and with due diligence,
- **(b)** the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,
- **(c)** the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or

- **(d)** the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

Subsection 64.2

Court may order security or charge to cover certain costs

- **64.2 (1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under [section 50.4](#) or a proposal is filed under [subsection 62\(1\)](#) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of
 - **(a)** the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
 - **(b)** any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and
 - **(c)** any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

- **Priority**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

- **Individual**

(3) In the case of an individual,

- **(a)** the court may not make the order unless the individual is carrying on a business; and
- **(b)** only property acquired for or used in relation to the business may be subject to a security or charge.

subsection 67(2)

Property of bankrupt

- **67 (1)** The property of a bankrupt divisible among his creditors shall not comprise
 - **(a)** property held by the bankrupt in trust for any other person;
 - **(b)** any property that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides;
 - **(b.1)** goods and services tax credit payments that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b);
 - **(b.2)** prescribed payments relating to the essential needs of an individual that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b); or

- **(b.3)** without restricting the generality of paragraph (b), property in a *registered retirement savings plan*, a *registered retirement income fund* or a *registered disability savings plan*, as those expressions are defined in the *Income Tax Act*, or in any prescribed plan, other than property contributed to any such plan or fund in the 12 months before the date of bankruptcy,

but it shall comprise

- **(c)** all property wherever situated of the bankrupt at the date of the bankruptcy or that may be acquired by or devolve on the bankrupt before their discharge, including any refund owing to the bankrupt under the *Income Tax Act* in respect of the calendar year — or the fiscal year of the bankrupt if it is different from the calendar year — in which the bankrupt became a bankrupt, except the portion that
 - **(i)** is not subject to the operation of this Act, or
 - **(ii)** in the case of a bankrupt who is the judgment debtor named in a garnishee summons served on Her Majesty under the [Family Orders and Agreements Enforcement Assistance Act](#), is garnishable money that is payable to the bankrupt and is to be paid under the garnishee summons, and
- **(d)** such powers in or over or in respect of the property as might have been exercised by the bankrupt for his own benefit.

- **Deemed trusts**

(2) Subject to subsection (3), notwithstanding any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a bankrupt shall not be regarded as held in trust for Her Majesty for the purpose of paragraph (1)(a) unless it would be so regarded in the absence of that statutory provision.

- **Exceptions**

(3) Subsection (2) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, [subsection 23\(3\)](#) or [\(4\)](#) of the [Canada Pension Plan](#) or [subsection 86\(2\)](#) or [\(2.1\)](#) of the [Employment Insurance Act](#) (each of which is in this subsection referred to as a “federal provision”) nor in respect of amounts deemed to be held in trust under any law of a province that creates a deemed trust the sole purpose of which is to ensure remittance to Her Majesty in right of the province of amounts deducted or withheld under a law of the province where

- **(a)** that law of the province imposes a tax similar in nature to the tax imposed under the *Income Tax Act* and the amounts deducted or withheld under that law of the province are of the same nature as the amounts referred to in subsection 227(4) or (4.1) of the *Income Tax Act*, or
- **(b)** the province is a *province providing a comprehensive pension plan* as defined in [subsection 3\(1\)](#) of the [Canada Pension Plan](#), that law of the province establishes a *provincial pension plan* as defined in that subsection and the amounts deducted or withheld under that law of the province are of the same nature as amounts referred to in [subsection 23\(3\)](#) or [\(4\)](#) of the *Canada Pension Plan*,

and for the purpose of this subsection, any provision of a law of a province that creates a deemed trust is, notwithstanding any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as the corresponding federal provision.

Subsection 86(1)

Status of Crown claims

- **86 (1)** In relation to a bankruptcy or proposal, all provable claims, including secured claims, of Her Majesty in right of Canada or a province or of any body under an Act respecting workers' compensation, in this section and in [section 87](#) called a "workers' compensation body", rank as unsecured claims.

- **Exceptions**

(2) Subsection (1) does not apply

- (a) to claims that are secured by a security or charge of a kind that can be obtained by persons other than Her Majesty or a workers' compensation body
 - (i) pursuant to any law, or
 - (ii) pursuant to provisions of federal or provincial legislation, where those provisions do not have as their sole or principal purpose the establishment of a means of securing claims of Her Majesty or of a workers' compensation body; and
- (b) to the extent provided in [subsection 87\(2\)](#), to claims that are secured by a security referred to in [subsection 87\(1\)](#), if the security is registered in accordance with that subsection.

- **Exceptions**

(3) Subsection (1) does not affect the operation of

- (a) subsections 224(1.2) and (1.3) of the *Income Tax Act*;
- (b) any provision of the [Canada Pension Plan](#) or of the [Employment Insurance Act](#) that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or
- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum
 - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or
 - (ii) is of the same nature as a contribution under the [Canada Pension Plan](#) if the province is a **province providing a comprehensive pension plan** as defined in [subsection 3\(1\)](#) of the *Canada Pension Plan* and the provincial legislation establishes a **provincial pension plan** as defined in that subsection,

and for the purpose of paragraph (c), the provision of provincial legislation is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as subsection 224(1.2) of the *Income Tax Act* in respect of a sum referred to in subparagraph (c)(i), or as [subsection 23\(2\)](#) of the [Canada Pension Plan](#) in respect of a sum referred to in subparagraph (c)(ii), and in respect of any related interest, penalties or other amounts.

Subsection 136(1)

Priority of claims

- **136 (1)** Subject to the rights of secured creditors, the proceeds realized from the property of a bankrupt shall be applied in priority of payment as follows:
 - (a) in the case of a deceased bankrupt, the reasonable funeral and testamentary expenses incurred by the legal representative or, in the Province of Quebec, the successors or heirs of the deceased bankrupt;
 - (b) the costs of administration, in the following order,
 - (i) the expenses and fees of any person acting under a direction made under [paragraph 14.03\(1\)\(a\)](#),
 - (ii) the expenses and fees of the trustee, and
 - (iii) legal costs;
 - (c) the levy payable under [section 147](#);
 - (d) the amount of any wages, salaries, commissions, compensation or disbursements referred to in [sections 81.3](#) and [81.4](#) that was not paid;
 - (d.01) the amount equal to the difference a secured creditor would have received but for the operation of [sections 81.3](#) and [81.4](#) and the amount actually received by the secured creditor;
 - (d.02) the amount equal to the difference a secured creditor would have received but for the operation of [sections 81.5](#) and [81.6](#) and the amount actually received by the secured creditor;
 - (d.1) claims in respect of debts or liabilities referred to in [paragraph 178\(1\)\(b\)](#) or (c), if provable by virtue of [subsection 121\(4\)](#), for periodic amounts accrued in the year before the date of the bankruptcy that are payable, plus any lump sum amount that is payable;
 - (e) municipal taxes assessed or levied against the bankrupt, within the two years immediately preceding the bankruptcy, that do not constitute a secured claim against the real property or immovables of the bankrupt, but not exceeding the value of the interest or, in the Province of Quebec, the value of the right of the bankrupt in the property in respect of which the taxes were imposed as declared by the trustee;
 - (f) the lessor for arrears of rent for a period of three months immediately preceding the bankruptcy and accelerated rent for a period not exceeding three months following the bankruptcy if entitled to accelerated rent under the lease, but the total amount so payable shall not exceed the realization from the property on the premises under lease, and any payment made on account of accelerated rent shall be credited against the amount payable by the trustee for occupation rent;
 - (g) the fees and costs referred to in [subsection 70\(2\)](#) but only to the extent of the realization from the property exigible thereunder;
 - (h) in the case of a bankrupt who became bankrupt before the prescribed date, all indebtedness of the bankrupt under any Act respecting workers' compensation, under any Act respecting unemployment insurance or under any provision of the *Income Tax Act* creating an obligation to pay to Her Majesty amounts that have been deducted or withheld, rateably;
 - (i) claims resulting from injuries to employees of the bankrupt in respect of which the provisions of any Act respecting workers' compensation do not apply, but

- only to the extent of moneys received from persons guaranteeing the bankrupt against damages resulting from those injuries; and
- (j) in the case of a bankrupt who became bankrupt before the prescribed date, claims of the Crown not mentioned in paragraphs (a) to (i), in right of Canada or any province, rateably notwithstanding any statutory preference to the contrary.

Section 183

Courts vested with jurisdiction

(1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

(a) in the Province of Ontario, the Superior Court of Justice;

Excise Tax Act (R.S.C., 1985, c. E-15)

Trust for amounts collected

222 (1) Subject to subsection (1.1), every person who collects an amount as or on account of tax under Division II is deemed, for all purposes and despite any security interest in the amount, to hold the amount in trust for Her Majesty in right of Canada, separate and apart from the property of the person and from property held by any secured creditor of the person that, but for a security interest, would be property of the person, until the amount is remitted to the Receiver General or withdrawn under subsection (2).

Amounts collected before bankruptcy

(1.1) Subsection (1) does not apply, at or after the time a person becomes a bankrupt (within the meaning of the [*Bankruptcy and Insolvency Act*](#)), to any amounts that, before that time, were collected or became collectible by the person as or on account of tax under Division II.

Withdrawal from trust

(2) A person who holds tax or amounts in trust by reason of subsection (1) may withdraw from the aggregate of the moneys so held in trust

- **(a)** the amount of any input tax credit claimed by the person in a return under this Division filed by the person in respect of a reporting period of the person, and
- **(b)** any amount that may be deducted by the person in determining the net tax of the person for a reporting period of the person,

as and when the return under this Division for the reporting period in which the input tax credit is claimed or the deduction is made is filed with the Minister.

Extension of trust

(3) Despite any other provision of this Act (except subsection (4)), any other enactment of Canada (except the [Bankruptcy and Insolvency Act](#)), any enactment of a province or any other law, if at any time an amount deemed by subsection (1) to be held by a person in trust for Her Majesty is not remitted to the Receiver General or withdrawn in the manner and at the time provided under this Part, property of the person and property held by any secured creditor of the person that, but for a security interest, would be property of the person, equal in value to the amount so deemed to be held in trust, is deemed

- (a) to be held, from the time the amount was collected by the person, in trust for Her Majesty, separate and apart from the property of the person, whether or not the property is subject to a security interest, and
- (b) to form no part of the estate or property of the person from the time the amount was collected, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to a security interest

and is property beneficially owned by Her Majesty in right of Canada despite any security interest in the property or in the proceeds thereof and the proceeds of the property shall be paid to the Receiver General in priority to all security interests.

Meaning of security interest

(4) For the purposes of subsections (1) and (3), a security interest does not include a prescribed security interest.

[Income Tax Act \(R.S.C., 1985, c. 1 \(5th Supp.\)\)](#)

Section 227(4.1)

(4.1) Notwithstanding any other provision of this Act, the [Bankruptcy and Insolvency Act](#) (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

- (a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and
- (b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and

apart from the estate or property of the person and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF 1382769
ONTARIO LIMITED AND 1622356 ONTARIO LIMITED**

Court File No. 33-3368241

ONTARIO
SUPERIOR COURT OF JUSTICE
(EAST REGION COMMERCIAL LIST)

Proceeding commenced at Ottawa

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