

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

BETWEEN:

PORTAGE CAPITAL NOMINEE CORP.

Applicant

- and -

R & B PROPERTIES (2011) INC.

Respondent

**APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended, and under section 101 of the *Courts
of Justice Act*, R.S.O. 1990, c C.43, as amended**

SUPPLEMENTARY FACTUM OF THE RECEIVER

March 18, 2026

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West,
199 Bay Street
Toronto, ON M5L 1B9

Maria Konyukhova LSO#: 52880V
Email: mkonyukhova@stikeman.com
Tel: +1 416-869-5230

Brittney Ketwaroo LSO#: 89781K
Email: bketwaroo@stikeman.com
Tel: +1 416-869-5524

Lawyers for the Receiver

PART I. OVERVIEW

1. On January 13, 2026, the Ontario Superior Court of Justice (the “**Court**”) granted an order (the “**Receivership Order**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager without security (in such capacity, the “**Receiver**”), of (i) the real property known as 761 Queen Street West, Toronto, Ontario¹ (the “**Real Property**”); (ii) all of the personal property of R&B Properties (2011) Inc. (the “**Debtor**”) which is located at or related to or used or acquired in connection with or arising from or out of the Real Property, and (iii) all proceeds thereof (together with the Real Property, the “**Property**”).

2. The Receiver brings this motion seeking an order directing the Debtor, R&B Properties (2011) Inc., and its principal and guarantor, Mr. Daniel Rumack, to remit to the Receiver the balance of the Termination Proceeds received from Brewers Retail Inc. (the “**Beer Store**”), including the Harmonized Sales Tax (“**HST**”) component in the amount of approximately \$143,000. This relief was adjourned from the return of the Sale Process Order on March 4, 2026.

3. The Receiver's position on this motion has been and remains clear: the HST component of the Termination Proceeds constitutes “Property” within the meaning of the Receivership Order and must be remitted to the Receiver forthwith. The Receivership Order defines Property broadly to include all personal property of the Debtor arising from or out of the Real Property and all proceeds thereof—a definition that unambiguously encompasses the HST collected in connection with the Beer Store lease termination. Both the Debtor and Mr. Rumack, as the Debtor's sole shareholder and controlling mind, are obligated under paragraph 4 of the Receivership Order to

¹ Legal Description: PIN 21243-0007 (LT) being Part of PCL 2-1 SEC AD120; LT 2 S/S QUEEN STREET WEST PL D120 TORONTO; LT 3 S/S QUEEN STREET WEST PL D120 TORONTO; LT 4 S/S QUEEN STREET WEST PL D120, Toronto, City of Toronto

deliver all Property to the Receiver upon demand. Their continued refusal to do so is a clear contravention of the terms of the Order.

4. Under subsection 266(2) of the Excise Tax Act, it is the Receiver, not the Debtor, who bears responsibility for the administration and remittance of HST in respect of Property subject to the receivership. In addition, the priority afforded to HST outside of insolvency proceedings does not carry over into insolvency, where certain secured debt takes precedence. The Receiver is the proper party to assess the priority of any CRA (as defined below) claims and administer such funds accordingly.

5. Accordingly, the Receiver seeks an order (the “**Ancillary Order**”), to, among other things:

- i. direct the Debtor to remit to the Receiver the balance of the Termination Proceeds, including the HST component in the amount of \$143,000; and
- ii. in the alternative, direct Mr. Daniel Rumack to personally reimburse the Receiver for any portion of the Termination Proceeds that has been remitted to the CRA or otherwise dissipated without the Receiver’s authorization within seven (7) days of the date of the Ancillary Order.

6. This factum is meant to supplement and be read in conjunction with the Factum of the Receiver dated March 3, 2026, in connection with the Sale Process Order (the “**Sale Process Factum**”).

PART II. FACTS

7. Background information on the Debtor and these Receivership Proceedings are more fully set out in the First Report of the Receiver dated February 25, 2026 (the “**First Report**”), and the

Factum of the Receiver dated March 3, 2026.² All capitalized terms used but not defined herein have the meanings ascribed to them in the First Report and the Supplemental First Report of the Receiver dated March 18, 2026.

8. R&B Properties (2011) Inc. (the "**Debtor**") is an Ontario corporation that owns the Real Property. The Debtor's shares are solely owned and controlled by Mr. Daniel Rumack, who also serves as the Debtor's principal and guarantor under the Loan.³

9. The Debtor's financial difficulties arise primarily from significant vacancy within the commercial building located on the Real Property, as described below.⁴

10. On August 10, 2021, the Debtor entered into a commitment letter with Portage, as amended on October 1, 2021 (the "**Commitment Letter**"). Pursuant to the Commitment Letter, Portage advanced a loan in the principal amount of \$15,500,000 (the "**Loan**").⁵ The Commitment Letter required that the principal be paid on October 1, 2023. The Debtor failed to repay the Loan on that date.

11. As of December 1, 2025, the total indebtedness owing by the Debtor to Portage, including principal and accrued interest, was approximately \$16,066,777.98 (the "**Portage Indebtedness**"). The Portage Indebtedness continues to accrue interest and costs.⁶

12. As a result of the Debtor's defaults under the Loan and its continued failure to repay the Portage Indebtedness, Portage applied for and obtained the appointment of a receiver over the

² First Report of KSV Restructuring Inc. as Receiver and Manager of Certain Property of R&B Properties (2011) Inc. dated February 25, 2025 ("**First Report**"), in the Motion Record of the Receiver dated February 25, 2025 ("**Receiver's MR**"), at Tab 2.

³ First Report at s. 2.0(1), Receiver's MR, at Tab 2.

⁴ *Ibid* at s. 2.0(3).

⁵ *Ibid* at s. 2.1(1).

⁶ *Ibid* at s. 2.1(2).

Debtor's property.⁷ On January 13, 2026, this Court issued the Receivership Order appointing KSV Restructuring Inc. as receiver and manager, without security, of the Property.⁸

A. The Beer Store Lease Termination

13. As noted above, the Debtor's financial difficulties are attributable primarily to significant vacancy within the commercial building on the Real Property. The larger unit was previously occupied by Anthropologie, which vacated in January 2025. The smaller unit was occupied by the Beer Store, which vacated in December 2025.⁹

14. On December 15, 2025, the Beer Store and the Debtor entered into a lease termination agreement (the "**Lease Termination Agreement**"). Pursuant to the Lease Termination Agreement, the Beer Store paid the Debtor an early termination fee of \$1,100,000 (the "**Termination Proceeds**") plus applicable harmonized sales tax.¹⁰

15. The Debtor received the Termination Proceeds prior to the issuance of the Receivership Order. However, following its appointment, the Receiver discovered that the Debtor had remitted only a portion of these funds to the Receiver.¹¹

16. On January 16, 2026, the Receiver received \$1,000,000 from the Debtor. Mr. Rumack advised that \$100,000 of the Termination Proceeds had been applied to property tax instalments. He further advised that the harmonized sales tax component of the Termination Proceeds, in the approximate amount of \$143,000 (the "**HST**"), had not yet been remitted to the Canada Revenue Agency (the "**CRA**"), but indicated his intention to do so.¹²

⁷ *Ibid* at s. 1.0(1).

⁸ *Ibid* at s. 1.0(1).

⁹ *Ibid* at 2.0(3).

¹⁰ *Ibid* at s. 3.0(1) and (2).

¹¹ *Ibid* at s. 3.0(3) and (4).

¹² *Ibid* at s. 3.0(4).

17. The Receiver demanded that the Debtor remit the full balance of the Termination Proceeds and the HST component. It is the Receiver's position that the entirety of the Termination Proceeds, including the HST, constitutes "Property" within the meaning of the Receivership Order and is therefore subject to the Receiver's exclusive control and administration.¹³

18. Notwithstanding the Receiver's demands and the clear terms of the Receivership Order, the Debtor has refused to remit the HST component.¹⁴

(i) The Colby Affidavit

19. On February 27, 2026, two days following service of the Receiver's motion record, counsel for the Debtor and its principal, Mr. Rumack, circulated an email to the service list, advising of Mr. Rumack's intention to oppose the relief sought in respect of the HST component, on the basis that such relief was unwarranted and not urgent, and further noting Mr. Rumack's unavailability for personal reasons.¹⁵

20. On March 1, 2026, counsel for the Receiver responded, indicating that while the Receiver was sympathetic to Mr. Rumack's personal circumstances, the Receiver was unable to consent to an adjournment of the relief regarding the HST remittance in the absence of further information. Later the same day, counsel for Mr. Rumack replied, alleging that the Receiver's First Report contained misleading statements concerning the parties' communications on the HST issue and reiterated their request to adjourn the motion. Despite not having received a response from the Receiver to the adjournment request, counsel for Mr. Rumack proceeded to serve the Affidavit of Courtney Colby sworn March 2, 2026 (the "**Colby Affidavit**").¹⁶

¹³ *Ibid* at s. 3.0(5)

¹⁴ *Ibid* at s. 3.0(5) – (8).

¹⁵ Supplement to the First Report of KSV Restructuring Inc. as Receiver and Manager of Certain Property of R&B Properties (2011) Inc. dated March 18, 2026 ("**Supplemental First Report**") at s. 2(1) in the Supplemental Motion Record of the Receiver dated March 18, 2026 ("**Receiver's SMR**"), at Tab 2.

¹⁶ Supplemental First Report at s. 2(2), Receiver's SMR, at Tab 2.

21. The Debtor's assertion regarding the HST communications, as set out in the Colby Affidavit, is based on a mischaracterization of the Receiver's position and a misinterpretation of the correspondence exchanged between counsel.¹⁷

22. At paragraphs 20 and 21 of the Colby Affidavit, Ms. Colby refers to, and attaches, counsel for the Receiver's letter dated February 6, 2026 (the "**February 6 Letter**").¹⁸ The Receiver did not intentionally omit the February 6 Letter. Any absence of the letter was inadvertent and not intended to mislead or obscure relevant facts for the Court. The February 6 Letter is also referenced in the First Report and forms part of the correspondence sequence appended thereto. The Debtor intentionally misstates the import of this correspondence.¹⁹

23. The sentence in question from the February 6 Letter states as follows:

"If your client does not remit the collected HST to the Receiver and/or remit it to CRA, the Receiver will seek a Court order requiring him to pay or repay that amount to the Receiver."²⁰

24. The Receiver's demand was for payment to be remitted to the Receiver for the benefit of the receivership estate. The demand is unambiguous: the HST is to be paid to the Receiver.²¹ The reference to the CRA was included solely to address the possibility that Mr. Rumack may have already remitted the HST to the CRA, in which case the Receiver would seek repayment of that amount from Mr. Rumack. At no point did counsel for the Receiver direct or suggest that Mr. Rumack pay the HST to the CRA instead of to the Receiver and the assertion that Mr. Rumack or

¹⁷ *Ibid* at s. 2(5).

¹⁸ Affidavit of Courtney Colby sworn March 2, 2026 (the "**Colby Affidavit**"), at paras 20-21.

¹⁹ Supplemental First Report at s. 2(6), Receiver's SMR, at Tab 2.

²⁰ Exhibit A referred to in the Colby Affidavit; see also the Exhibit A in the Affidavit of Daniel Rumack sworn March 11, 2026 (the "**Rumack Affidavit**") in the Responding Motion Record of R&B Properties and Mr. Daniel Rumack dated March 13, 2026 ("**RMR**") at Tab 1A.

²¹ Supplemental First Report at s. 2(7), Receiver's SMR, at Tab 2.

his counsel could have that interpretation in light of all the other written demands for the payment of the HST to the Receiver is disingenuous.²²

25. A plain reading of the February 6 Letter, in its full context, makes the Receiver's intention clear and does not support the interpretation advanced by the Respondent.²³

26. The Receiver's position has been clear and consistent throughout these proceedings: the unremitted HST, collected by the Debtor on account of the Beer Store lease termination fee, constitutes Property within the meaning of the Receivership Order and is to be paid into the receivership estate.²⁴

27. Notwithstanding the foregoing, and in recognition of Mr. Rumack's personal circumstances as described in the Colby Affidavit, the Receiver agreed to an adjournment of the relief sought with respect to the HST remittance to March 24, 2026, at 12:30 PM.²⁵

28. On March 13, pursuant to the direction in the March 4 Endorsement, the Respondents filed a responding motion record dated March 13, 2026, which contained the affidavit of Daniel Rumack sworn March 11, 2026 (the "**Rumack Affidavit**") along with the responding factum (the "**Respondent's Responding Factum**").²⁶

29. For clarity, contrary to the assertion at paragraph 2 of the Respondent's Responding Factum, although the parties agreed to adjourn the motion, neither the Receiver nor its counsel ever represented that the materials filed in support of the Sale Process Order addressed or resolved the HST remittance issue in their entirety.²⁷

²² *Ibid* at s. 2(8).

²³ *Ibid* at s. 2(9).

²⁴ *Ibid* at s. 2(10).

²⁵ *Ibid* at s. 2(11).

²⁶ *Ibid* at s. 2(12).

²⁷ *Ibid* at s. 2(13).

PART III. ISSUES

30. The sole issue to be determined in this motion is whether this Court should direct the Debtor and/or Mr. Rumack to remit the balance of the Termination Proceeds (including the HST Component) to the Receiver.

PART IV. LAW AND ANALYSIS

A. The Debtor Should Be Directed to Remit the Balance of the Termination Proceeds to the Receiver

(i) HST Constitutes Property Pursuant to the Receivership Order

31. As described above, the Debtor received the Termination Proceeds, including the HST component in the approximate amount of \$143,000, prior to the issuance of the Receivership Order.²⁸ Despite the Receiver's demands, the Debtor and Mr. Rumack have refused to remit the HST component to the Receiver, asserting instead that it should be remitted directly to the CRA. The Receiver submits that the Debtor and Mr. Rumack's position is without merit and that this Court should direct the Debtor to remit the full balance of the Termination Proceeds, including the HST component, to the Receiver.²⁹

32. The HST component of the Termination Proceeds constitutes "Property" within the meaning of the Receivership Order. The Receivership Order defines "Property" broadly to include all personal property of the Debtor located at, related to, used in connection with, or arising from or out of the Real Property, together with all proceeds thereof.³⁰ The Termination Proceeds, including the HST component, arose directly from the Lease Termination Agreement in respect of

²⁸ First Report at s. 3.0(2) and (3), Receiver's MR, at Tab 2.

²⁹ *Ibid* at s. 3.0(6)-(10).

³⁰ See the preamble of the Receivership Order.

the Real Property.³¹ Accordingly, the HST component forms part of the Property over which the Receiver was appointed and is subject to the Receiver's exclusive control and administration.

(ii) The Receivership Order Applies to Property in Existence Prior to the Date of the Order

33. At paragraphs 5 and 6 of the Respondent's Responding Factum, the Respondent's asserts that the Receivership Order is a "just and convenient" order, not a CCAA or BIA order, and that it "speaks only prospectively" such that it does not apply to property existing prior to its operative date. These assertions are without merit and are directly contradicted by the express language of the Receivership Order.

34. First, the Order was granted pursuant to section 243(1) of the *BIA*, and section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended. The Order is therefore expressly made under the *BIA*, contrary to Mr. Rumack's characterization.³²

35. Second, as set out below, the language of the Receivership Order unambiguously applies to Property in existence prior to its operative date; it is not limited to prospective property only. The preamble to the Receivership Order defines "Property" to include: (i) the Real Property; (ii) "all of the personal property of [the Debtor] which is located at or related to or used or acquired in connection with or arising from or out of the Real Property"; and (iii) "the proceeds of (i) and (ii)." Notably, this definition contains no temporal limitation. It encompasses all personal property "arising from or out of" the Real Property, which expressly includes the Termination Proceeds received by the Debtor prior to the issuance of the Order.³³

³¹ First Report at s. 3.0(1) and (2), Receiver's MR, at Tab 2.

³² Receivership Order.

³³ *Ibid* at the preamble of the Receivership Order.

36. Several provisions of the Receivership Order confirm that it applies to property in existence prior to its issuance. Paragraph 4 of the Receivership Order imposes a clear duty on the Debtor, its directors (including Mr. Rumack), and all persons having notice of the Order to "forthwith advise the Receiver of the existence of any Property in such Person's possession or control... and deliver all such Property to the Receiver upon the Receiver's request." The use of the phrase "the existence of any Property" confirms that the obligation extends to Property already in existence at the time of the Order.³⁴

37. Paragraph 3(h) of the Receivership Order empowers the Receiver "to receive and collect all monies and accounts now owed or hereafter owing to the Debtor."³⁵ The phrase "now owed" refers to amounts existing at the date of the Order. Similarly, paragraph 13 provides that the Receiver shall collect "any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence." This language unambiguously demonstrates that the Receivership Order was intended to capture property existing prior to the Order, not merely property arising thereafter.³⁶

38. Accordingly, as the Receivership Order expressly encompasses Property in existence prior to its operative date, the Termination Proceeds and the HST component received by the Debtor from the Beer Store prior to January 13, 2026, fall squarely within the purview of the Order. Mr. Rumack's assertion that the Order is prospective only is without foundation.

³⁴ *Ibid* at para 4.

³⁵ *Ibid* at para 3(h).

³⁶ *Ibid* at para 13.

(iii) As HST Constitutes Property, it Should be Remitted to the Receiver

39. The provisions of the *Excise Tax Act*,³⁷ as amended (the "**ETA**"), support the Receiver's position that it is the Receiver, not the Debtor or Mr. Rumack, who should be responsible for remitting the HST to the CRA.

40. Subsection 266(2)³⁸ of the *ETA* addresses the obligations of receivers in respect of GST/HST. It provides that where a receiver is vested with authority to manage, operate, liquidate, or wind up any business or property of a person, the receiver is deemed to be an agent of that person,³⁹ and the receiver and the person are jointly and severally liable for amounts payable or remittable under Division VII of the *ETA* to the extent that such amounts can reasonably be considered to relate to the relevant assets of the receiver.⁴⁰

41. Importantly, subsection 266(2)(d)(ii)⁴¹ of the *ETA* provides that "the person is not liable for the remittance of any tax collected or collectible by the receiver." This provision recognizes that once a receiver is appointed, it is the receiver who assumes responsibility for the collection and remittance of GST/HST in respect of the relevant assets. In other words, any such remittance obligation to the CRA is now the Receiver's responsibility under subsection 266(2) of the *ETA*.

42. Further, pursuant to the terms of the Receivership Order, the Debtor was required to deliver possession of all Property to the Receiver and was prohibited from disposing of or dealing with the Property without the Receiver's authorization or further order of this Court.⁴² In particular, paragraph 3(a) of the Receivership Order expressly empowers the Receiver "to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements

³⁷ [R.S.C. 1985, c. E-15](#)

³⁸ *ETA*, ss. [266\(2\)](#).

³⁹ *ETA* ss. [266\(2\)\(a\)](#).

⁴⁰ *ETA* ss. [266\(2\)\(d\)](#).

⁴¹ *ETA* ss. [266\(2\)\(d\)\(ii\)](#)

⁴² Receivership Order at para 3(a) and 4.

arising out of or from the Property."⁴³ Paragraph 4 of the Receivership Order imposes a corresponding obligation on the Debtor and all other persons having notice of the Order to "grant immediate and continued access to the Property to the Receiver, and deliver all such Property to the Receiver upon the Receiver's request."⁴⁴ As the HST component constitutes Property within the meaning of the Receivership Order, the Debtor is obligated to deliver such funds to the Receiver.

43. The Debtor's unilateral decision to remit or withhold the HST component without the Receiver's authorization is a direct contravention of the express terms of the Receivership Order. Neither the Debtor nor Mr. Rumack have any discretion to dispose of or deal with Property that is subject to the receivership without the Receiver's authorization or further order of this Court and cannot circumvent the Receivership Order by asserting that they are obligated to remit the HST directly to the CRA.

(iv) Mr. Rumack's Personal Liability is squarely within the Receivership Order

44. Paragraph 4 of the Receivership Order imposes an express obligation on all persons having notice of the Order, including Mr. Rumack as the sole shareholder, director, and controlling mind of the Debtor, to "grant immediate and continued access to the Property to the Receiver, and deliver all such Property to the Receiver upon the Receiver's request."⁴⁵ The Receiver has demanded that Mr. Rumack deliver the balance of the Termination Proceeds, including the HST component in the approximate amount of \$143,000, to the Receiver. Despite such demands, Mr. Rumack has failed and refused to deliver the HST component to the Receiver.⁴⁶ Moreover, Mr. Rumack does not assert that he has remitted the HST to the CRA, nor has he provided any

⁴³ *Ibid* at para 3(a)

⁴⁴ *Ibid* at para 4.

⁴⁵ *Ibid* at para 4.

⁴⁶ First Report at s. 3.0(11).

evidence that such payment has been made.⁴⁷ In the circumstances, Mr. Rumack is in clear breach of paragraph 4 of the Receivership Order.

45. In light of the foregoing, the Receiver seeks an order directing Mr. Rumack to personally reimburse the Receiver for the HST component in the event that such funds have been dissipated or remitted to the CRA without the Receiver's authorization. In the alternative, should this Court determine that the Debtor has already remitted the HST to the CRA, the Receiver seeks an order directing Mr. Rumack to personally reimburse the Receiver for any such amounts within seven (7) days of the date of the Ancillary Order.

B. Secured Debt Takes Priority Over Unremitted HST Under the BIA

46. Contrary to the assertions of the Respondents at paragraphs 9(b) and 10 of their Responding Factum, while the Receiver acknowledges that unremitted HST/GST is generally "deemed" to be held in trust for the CRA pursuant to the *ETA*, the priority of such deemed trust is subject to important statutory exceptions under the *BIA*. While this motion is not the appropriate forum to determine whether or not Portage's secured debt ranks in priority to the HST and that issue will be determined by the Receiver and CRA consensually or by this Court on a future motion on notice to CRA, it is the Receiver's position that the HST will be subordinate to the secured indebtedness of the Debtor and, therefore, does not need to be remitted to CRA.

47. Subsection 222(1) of the *ETA* provides that a person who collects GST/HST is deemed to hold those funds in trust for the Crown (which would include the CRA).⁴⁸ Subsection 222(3) of the *ETA* extends the trust created by subsection (1) to the property of the tax debtor and property of the tax debtor held by any secured creditor.⁴⁹ Together subsections 222(1) and (3) explicitly

⁴⁷ Supplemental First Report at s. 3(7), Receiver's SMR, at Tab 2.

⁴⁸ *ETA*, [ss. 222\(1\)](#)

⁴⁹ *ETA*, [ss. 222\(3\)](#).

override any "security interest". Critically, however, these general rules are subject to an exception under subsection 222(4)⁵⁰ and 222(1.1) of the *ETA*.⁵¹

48. As noted in *Toronto-Dominion Bank v Canada*,⁵² "Parliament considered the potential challenges posed by the deemed trust on secured lenders by providing a remedy in the form of a prescribed security interest under subsection 222(4) of the *ETA*."⁵³ The term "prescribed security interest" is defined in section 2 of the Security Interest (GST/HST) Regulations, S.O.R./2011-55⁵⁴ and includes a mortgage registered on a debtor's real property before a deemed trust arises. The effect of subsection 222(4), read together with the Security Interest (GST/HST) Regulations, is to provide protection to a secured creditor that lends money to a borrower and registers a real property mortgage at a time before the borrower collects, but fails to remit, GST/HST amounts.⁵⁵

49. In the present case, Portage registered a first charge/mortgage (the "**Mortgage**") over the Real Property on July 26, 2019 - well before the Beer Store vacated the premises in December 2025 and, critically, before any HST obligation arose in connection with the Lease Termination Agreement.⁵⁶ Accordingly, Portage's Mortgage constitutes a "prescribed security interest" within the meaning of the Regulations, thereby excluding it from the scope of the deemed trust provisions.

50. In addition, subsection 222(1.1) of the *ETA* expressly provides that the deemed trust under subsection (1) does not apply, at or after the time a person becomes a bankrupt within the meaning of the *BIA*, to any amounts that were collected or became collectible before that time as

⁵⁰ *ETA*, ss. 222(4).

⁵¹ *ETA*, ss. 222(1.1).

⁵² [2020 FCA 80](#) ("**Toronto Dominion Bank**").

⁵³ *Toronto Dominion Bank* at [para 16](#), quoting the decision of the [Federal Court 2018 FC 538](#) at [para 65](#).

⁵⁴ *Toronto Dominion Bank* at [para 46](#); see also [section 2 of the Security Interest \(GST/HST\) Regulations, S.O.R./2011-55](#).

⁵⁵ *Toronto Dominion Bank* at [para 47](#).

⁵⁶ First Report at s. 2.1(3)(a) and 3.0(1). See also the Affidavit of Andrew Jones sworn December 9, 2025, at para 35, located within the Application Record Appointing the Receiver brought by Portage Capital Nominee Corp., dated December 12, 2025.

or on account of tax under Division II.⁵⁷ This statutory exception contemplates that the deemed trust may be extinguished in certain bankruptcy proceedings, thereby subordinating the CRA's claim to that of secured creditors.

51. In *Callidus Capital Corporation v. Canada*, the Supreme Court of Canada held that because a debtor's bankruptcy triggers s. 222(1.1) of the ETA and extinguishes the s. 222(1) deemed trust for unremitted HST/GST, the super-priority granted to the CRA by s. 222 becomes ineffective as against a secured creditor in bankruptcy.⁵⁸ In other words, should the Debtor become bankrupt within the meaning of the *BIA*, subsection 222(1.1) of the *ETA* would extinguish the deemed trust, rendering the CRA's super-priority ineffective against Portage as a secured creditor.

52. The Receiver is authorized by Court order to assess the relative priorities before any remittance of the HST component to the CRA. Until such determination is made, it is neither appropriate nor permissible for the Debtor or Mr. Rumack to unilaterally remit the HST component to the CRA without the Receiver's authorization or Court order. The proper course is for the HST component to be delivered to the Receiver, who will administer such funds in accordance with the applicable statutory priorities, the terms of the Receivership Order, and with the consent of the CRA or pursuant to a further Court order.

PART V. REQUESTED RELIEF

53. For these reasons, the Receiver respectfully submits that this Court should direct the Debtor to remit the full balance of the Termination Proceeds, including the HST component in the approximate amount of \$143,000, to the Receiver forthwith.

⁵⁷ *ETA*, ss. 222(1.1)

⁵⁸ *Callidus Capital Corporation v. Canada*, 2017 FCA 162 at paras. 63, rev'd 2018 SCC 47, dissenting reasons of Pelletier J.A. adopted at para. 1.

54. The Receiver respectfully submits that the relief sought in this motion is justified under the present circumstances and requests that the Court grant the Ancillary Order in the form proposed. Furthermore, the Receiver asks that the Court issue an order awarding costs of this motion on a partial indemnity basis, or on such other basis as the Court considers appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18th DAY OF MARCH 2026

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Counsel for the Applicants

SCHEDULE "A"
LIST OF AUTHORITIES

1. [*Canada v. Callidus Capital Corporation*](#), 2017 FCA 162
2. [*Callidus Capital Corp. v. Canada*](#), 2018 SCC 47
3. *Portage Capital Nominee Corp v R&B Properties (2011) Inc.* (January 13, 2026) Ont. Superior Court of Justice [Commercial List], Court File No. CL-25-00753615-0000 ([Endorsement](#))
4. *Portage Capital Nominee Corp v R&B Properties (2011) Inc.* (January 13, 2026) Ont. Superior Court of Justice [Commercial List], Court File No. CL-25-00753615-0000 ([Receivership Order](#))
5. [*Toronto-Dominion Bank v. Canada*](#), 2020 FCA 80

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

Date March 18, 2026



Signature

**SCHEDULE “B”
RELEVANT LEGISLATION**

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

243 (1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

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

222 (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.

Extension of trust

222 (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

222(4) For the purposes of subsections (1) and (3), a security interest does not include a prescribed security interest.

Receivers

266 (2) For the purposes of this Part, where on a particular day a receiver is vested with authority to manage, operate, liquidate, or wind up any business or property, or to manage and care for the affairs and assets, of a person,

(a) the receiver shall be deemed to be an agent of the person and any supply made or received and any act performed by the receiver in respect of the relevant assets of the receiver shall be deemed to have been made, received or performed, as the case may be, by the receiver as agent on behalf of the person;

[...]

(d) the person and the receiver are jointly and severally, or solidarily, liable for the payment or remittance of all amounts that become payable or remittable by the person under this Part before or during the period during which the receiver is acting as receiver of the person to the extent that the amounts can reasonably be considered to relate to the relevant assets of the receiver or to the businesses, properties, affairs or assets of the person that would have been the relevant assets of the receiver if the receiver had

been acting as receiver of the person at the time the amounts became payable or remittable, as the case may be, except that

(i) the receiver is liable for the payment or remittance of amounts that became payable or remittable before that period only to the extent of the property and money of the person in possession or under the control and management of the receiver after

(A) satisfying the claims of creditors whose claims ranked, on the particular day, in priority to the claim of the Crown in respect of the amounts, and

(B) paying any amounts that the receiver is required to pay to a trustee in bankruptcy of the person,

(ii) the person is not liable for the remittance of any tax collected or collectible by the receiver, and

(iii) the payment or remittance by the person or the receiver of an amount in respect of the liability shall discharge their liability to the extent of that amount

Security Interest (GST/HST) Regulations SOR/2011-55

Prescribed Security Interest

2 (1) For the purpose of subsection 222(4) of the Act, a prescribed security interest, in relation to an amount deemed under subsection 222(1) of the Act to be held in trust by a person, is that part of a mortgage or hypothec securing the performance of an obligation of the person that encumbers land or a building, but only if the mortgage or hypothec is registered pursuant to the appropriate land registration system before the time the amount is deemed under subsection 222(1) of the Act to be held in trust by the person.

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

Proceeding commenced at Toronto

**SUPPLEMENTAL AND REPLY FACTUM OF THE
RECEIVER**

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Maria Konyukhova LSO#: 52880V
Email: mkonyukhova@stikeman.com
Tel: +1 416-869-5230

Brittney Ketwaroo LSO#: 89781K
Email: bketwaroo@stikeman.com
Tel: +1 416-869-5524

Lawyers for the Receiver