

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

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

**COMMERCIAL PACKAGING SOLUTIONS INC. and
2777463 ONTARIO LTD.**

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3,
AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990 c. C.43, AS AMENDED**

STATEMENT OF LAW

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PART I – OVERVIEW

1. This motion is made by the Applicant, Royal Bank of Canada (“**RBC**”), for an order, among other things, lifting the stay of proceedings against Commercial Packaging Solutions Inc. (“**CPSI**”) imposed by the Order of Justice Black dated May 21, 2024 (the “**Receivership Order**”), and authorizing and directing Grant Thornton Limited (“**GTL**”), in its capacity as receiver and manager (in such capacity, the “**Receiver**”) of all of the assets, undertakings, and properties of CPSI, to file an assignment in bankruptcy on behalf of CPSI.

PART II – FACTS

2. The relevant facts in connection with this Application are more fully set out in the Affidavits of Jan Oros, sworn April 26, 2024, and March 31, 2025 (together, the “**Oros**”

Affidavits”). All capitalized terms herein not otherwise defined shall have the same meaning ascribed to them in the Oros Affidavits.

PART III – ISSUES

3. This motion requires a determination in respect of the following question: in the present circumstances, is it appropriate for this Court to lift the stay of proceedings to allow the Receiver to make an assignment in bankruptcy on behalf of CPSI?

PART IV – LAW AND ARGUMENT

4. RBC seeks to lift the stay of proceedings such that the Receiver may make an assignment in bankruptcy on behalf of CPSI. RBC seeks this relief in order to reverse the statutory priority under s. 222(1) of the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended (the “**ETA**”).

5. On a motion to lift the stay of proceedings that has been imposed by an order appointing of a Court-appointed receiver, the Court has broad discretion to determine whether the order sought is appropriate.¹

6. In making this determination, the Court may rely upon jurisprudence under s. 69.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). Section 69.4 governs motions to lift the statutory stay of proceedings that takes effects upon a debtor filing a notice of intention to make a proposal.²

7. On a motion pursuant to s. 69.4, the Court must be satisfied that the moving party has “established sound reasons” for the stay to be lifted and must consider the impact of lift-stay upon other stakeholders’ interests.³

8. Section 222(1) of the ETA establishes a deemed trust in favour of the Canada Revenue Agency (the “**CRA**”) for all amounts collected in respect of Harmonized Sales Tax (“**HST**”).⁴

¹ *Unity Health Toronto v. 2442931 Ontario Inc.*, 2024 ONSC 1333 at para. 43 [“**Unity Health**”].

² *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended [“**BIA**”], s. 69.4, Schedule B; *Romspen Investment Corporation v. Courtice Auto Wreckers Limited*, 2017 ONCA 301 at para. 30.

³ *Unity Health*, *supra* at paras. 41-42.

⁴ *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended [“**ETA**”], s. 222(1), Schedule B.

9. CPSI is in arrears of its HST obligations. As such, pursuant to s. 222(1) of the ETA, CRA has a priority claim in the amount of CPSI's HST arrears which ranks ahead of RBC's secured claim.⁵

10. In accordance with s. 222(1.1) of the ETA and s. 67(2) of the BIA, the s. 222(1) deemed trust for HST ceases to apply "at or after the time a person becomes bankrupt [...] to any amounts that, before that time, were collected or became collectible". Upon CPSI's assignment into bankruptcy, the priority in favour of the CRA would be reversed, and RBC would have first priority with respect to the proceeds from the sale of CPSI's equipment and inventory. This would more closely reflect the reality of CPSI's affairs.⁶

11. It is appropriate for a creditor to seek an assignment in bankruptcy for the purpose of reordering priorities, including to defeat a deemed trust regime.⁷

12. The Court has lifted a stay of proceedings to facilitate an assignment in bankruptcy for the purpose of reversing statutory priorities on several occasions. For example, in *Ivaco Inc., Re*, the Court of Appeal for Ontario upheld Justice Farley's decision to lift the stay in a proceeding under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended. The Court opined that the "[secured creditors'] desire to use the BIA to alter priorities [was] a legitimate reason to seek a bankruptcy order."⁸

13. In *Bank of Nova Scotia v. Huronia Precision Plastics Inc.*, Justice Morawetz (as he then was) relied upon the *Ivaco* ruling in the context of a receivership. Justice Morawetz granted the creditor's lift-stay motion, holding that it was not improper for a creditor to seek a bankruptcy for the purpose of reversing the CRA's statutory priority pursuant to s. 222(1.1) of the ETA.⁹

14. Recently, in *The Bank of Nova Scotia v. 55 Town Centre Holdings Ltd. et al.*, this Court granted the secured creditor's motion to lift the stay to permit the Court-appointed receiver to assign the debtor into bankruptcy for the purpose of reversing the CRA's priority in respect of

⁵ Second Report of the Receiver dated March 27, 2025 at paras. 42 & 84-85; ETA, s. 222(1).

⁶ ETA, s. 222(1.1), Schedule B; BIA, s. 67(2), Schedule B.

⁷ See e.g., *Grant Forest Products Inc. v. The Toronto-Dominion Bank*, 2015 ONCA 570 at para. 118.

⁸ *Ivaco Inc., Re*, 2006 CanLII 34551 (Ont. C.A.) at para. 76.

⁹ *Bank of Nova Scotia v. Huronia Precision Plastics Inc.*, 2009 CanLII 2319 (Ont. Sup. Ct.) at para. 13; see also *CIBC v. 1340182 Ontario Limited et al.*, 2024 ONSC 3658 at paras. 13-14.

unremitted HST arrears pursuant to s. 222(1.1) of the ETA and s. 67(2) of the BIA. The motion in *55 Town Centre* is substantially identical to the within motion.¹⁰

15. Although the CRA's priority will be extinguished upon CPSI's assignment in bankruptcy, the Court should not refuse to grant relief to prevent a perceived inequity resulting from the "scheme of distribution" under the BIA. To the extent that the CRA's interests will be impacted by the lift-stay, this is by function of the express provisions contemplating a reversal of priorities contained in both the ETA and the BIA.¹¹

16. For the foregoing reasons, RBC submits that the stay of proceedings should be lifted on the basis that (i) the reversal of priorities constitutes a legitimate purpose for the relief sought, and (ii) no stakeholder's interests will be unduly prejudiced by the lift-stay.

PART V – ORDER REQUESTED

17. RBC requests that this Court grant an order substantially in the form attached at Tab 3 to the Motion Record, (i) lifting the stay of proceedings against CPSI as imposed by the Receivership Order, and (ii) authorizing and directing the Receiver to file an assignment in bankruptcy on behalf of CPSI.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

April 3, 2025



Alex MacFarlane / Nick Hollard
Lawyers for the Applicant

¹⁰ *The Bank of Nova Scotia v. 55 Town Centre Holdings Ltd. et al.*, Ont. S.C.J. [Commercial List], CV-23-00701950-00CL, February 14, 2025 (unreported endorsement of Justice Cavanagh), Schedule C.

¹¹ *Bank of Montreal v. Scott Road Ent. Ltd.*, 1989 CanLII 2726 (B.C. C.A.) at para. 28.

SCHEDULE “A” – AUTHORITIES CITED

1. Unity Health Toronto v. 2442931 Ontario Inc., 2024 ONSC 1333
2. Romspen Investment Corporation v. Courtice Auto Wreckers Limited, 2017 ONCA 301
3. Grant Forest Products Inc. v. The Toronto-Dominion Bank, 2015 ONCA 570
4. Ivaco Inc., Re, 2006 CanLII 34551 (Ont. C.A.)
5. Bank of Nova Scotia v. Huronia Precision Plastics Inc., 2009 CanLII 2319 (Ont. Sup. Ct.)
6. CIBC v. 1340182 Ontario Limited et al., 2024 ONSC 3658
7. *The Bank of Nova Scotia v. 55 Town Centre Holdings Ltd. et al., Ont. S.C.J. [Commercial List], CV-23-00701950-00CL, February 14, 2025 (unreported endorsement of Justice Cavanagh).*
8. Bank of Montreal v. Scott Road Ent. Ltd., 1989 CanLII 2726 (B.C. C.A.)

CERTIFICATE OF AUTHENTICITY

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

Note: Under Rule 4.06.1(2.2) of the *Rules of Civil Procedure*, an authority that is published on a government website or otherwise by a government printer, on the Canadian Legal Information Institute website (CanLII), on a court’s website or by a commercial publisher of court decisions is presumed to be authentic for the purposes of subrule (2.1), absent evidence to the contrary.

April 3, 2025



Nick Hollard

SCHEDULE “B” – LEGISLATION CITED

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

Deemed trusts

67 (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.

Court may declare that stays, etc., cease

69.4 A creditor who is affected by the operation of sections 69 to 69.31 or any other person affected by the operation of section 69.31 may apply to the court for a declaration that those sections no longer operate in respect of that creditor or person, and the court may make such a declaration, subject to any qualifications that the court considers proper, if it is satisfied

(a) that the creditor or person is likely to be materially prejudiced by the continued operation of those sections; or

(b) that it is equitable on other grounds to make such a declaration.

Excise Tax Act, R.S.C., 1985, c. E-15, as amended

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.

SCHEDULE “C” – CASELAW



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00701950-00CL

DATE: 14 February 2025

NO. ON LIST: 4

TITLE OF PROCEEDING: **THE BANK OF NOVA SCOTIA v.
55 TOWN CENTRE HOLDINGS LTD. ET AL.**
BEFORE JUSTICE: **CAVANAGH**

PARTICIPANT INFORMATION

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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

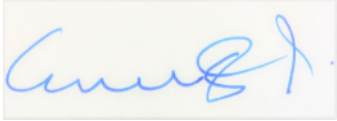
Name of Person Appearing	Name of Party	Contact Info
Thomas Masterson	Grant Thornton Limited	tmasterson@harrisonpensa.com

ENDORSEMENT OF JUSTICE P. CAVANAGH:

The Applicant, The Bank of Nova Scotia, moves to lift the stay of proceedings against 55 Town Centre Holdings Ltd. ("55 Town") in this receivership for the purpose of allowing Grant Thornton Limited as Receiver to file an assignment in bankruptcy of 55 Town.

The effect of a bankruptcy would be to reverse priority to the proceeds of sale as between BNS and the Crown. This is appropriate. See *Ivaco Inc., Re*, 2006 CanLII 34551 (On Ca).

Order to issue in form of Order signed by me today.

A handwritten signature in blue ink, appearing to be "Amrith", written on a light-colored rectangular background.

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

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PROCEEDING COMMENCED AT TORONTO

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