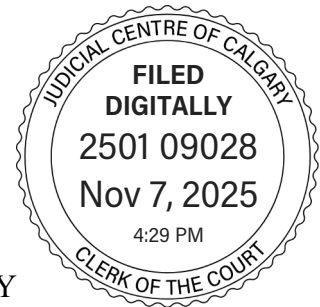


COURT FILE NUMBER 2501-09028

COURT COURT OF KING'S BENCH OF
ALBERTA

JUDICIAL CENTRE CALGARY



IN THE MATTER OF THE BANKRUPTCY
AND INSOLVENCY ACT, RSC 1985, C B-3, AS
AMENDED

AND IN THE MATTER OF THE
RECEIVERSHIP OF CLEO ENERGY CORP.

APPLICANT **UCAPITAL – ULOANS SOLUTIONS INC.**

RESPONDENT **CLEO ENERGY CORP.**

DOCUMENT **BENCH BRIEF OF LAW OF HIS MAJESTY THE KING IN RIGHT
OF CANADA AS REPRESENTED BY THE MINISTER OF
NATIONAL REVENUE, CREDITOR**

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PART I – INTRODUCTION AND RELIEF SOUGHT

1. This Bench Brief of Law is filed in support of the application of the Minister of National Revenue (the **Minister or Crown**) as represented by the Canada Revenue Agency (**CRA**) for an Order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property; and *directing* the Receiver to forthwith pay to the Receiver General of Canada \$899,907.51 to be applied to the deemed trust portion of Cleo's GST account.

PART II – FACTS

2. Cleo is a GST registrant.
3. From the GST period ending July 31, 2022 to the period ending December 8, 2024, Cleo collected GST from third parties and failed to remit it to the Minister as and when required.
4. The CRA filed a \$1,355,296.64 GST claim with the Receiver, of which \$899,907.51 is subject to a deemed trust. CRA also filed a claim for the payroll debt of Cleo of which \$70,347 was subject to the deemed trust in respect of unremitted employee source deductions.
5. The Receiver has already paid CRA's payroll deemed trust claim pursuant to subsection 227(4.1) of the *Income Tax Act*, RSC 1985 c 1 (5th Supp).
6. The Receiver's First Report filed within this proceeding did not address payment of the CRA's GST deemed trust, nor have they paid it.

PART III – ISSUE

7. Is the CRA is entitled to be paid their GST deemed trust claim in the amount of \$899,907.51 from the Sale Proceeds of Cleo's assets?

PART IV – LAW AND ARGUMENT

8. Parliament enacted legislation concerning GST registrants who fail to remit GST collected on behalf of the Crown.
9. Pursuant to the legislative scheme, GST registrants must collect GST in trust for the Crown and remit it to the Crown as required by law. If that does not happen, the statute extends the trust over all property of the registrant, up to the amount of GST collected, and required that proceeds from the sale of that property be remitted in priority to all other security interests.
10. Subsections 222(1) to (3) of the *Excise Tax Act*, [RSC 1985, c E-15](#), state:

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.

[emphasis added]

11. Similar legislation protects CRA's payroll deemed trust claim, which the Receiver has already paid pursuant to subsections 227(4) and (4.1) of the *Income Tax Act*, [RSC 1985 c 1 \(5th Supp\)](#):

Trust for moneys deducted

(4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of trust

(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.

12. CRA's priority to the proceeds of sale of the assets of Cleo in respect of the GST deemed trust is equivalent in terms of priority as that of the payroll deemed trust.
13. In *Toronto-Dominion Bank v Canada*, the Federal Court found, and the Federal Court of Appeal confirmed, CRA's super-priority over secured creditors for unremitted GST, even without notice¹.
14. Parliament's intention in enacting subsections 222(1) and (3) of the *Excise Tax Act* was to prioritize the deemed trust in respect of property that is also subject to a security interest, regardless of when the security interest arose in relation to the time the GST was collected. This flows from Parliament's use of the phrase "despite any security interest in the amount" in subsection 222(1) and (3).²
15. More recently, the Federal Court in *Canada v Toronto-Dominion Bank* also addressed the CRA's deemed trust powers under section 227 of the *Income Tax Act* and section 222 of the *Excise Tax Act*,³ reinforcing the CRA's ability to collect unremitted taxes by asserting deemed trust over funds. It underscored the super-priority of CRA's deemed trust claims, which can override even secured or unsecured creditor claims if tax obligations are unmet.
16. The deemed trust survives and applies in receivership proceedings until the debtor becomes bankrupt (per s. 222(1.1) of the *Excise Tax Act*).

¹ *Toronto-Dominion Bank v Canada*, [2020 FCA 80](#), paras. [16](#), [33](#), 39-40, leave to appeal to SCC ref'd 2021 CanLII 98077 (SCC).

² *Idem*, para. [33](#).

³ *Canada v Toronto-Dominion Bank*, 2024 FC 441, paras. 61-62.

17. The Supreme Court of Canada in *Canada v Callidus Capital Corporation* confirmed that a deemed trust is extinguished only upon bankruptcy, even if the secured creditor received proceeds before the bankruptcy.⁴
18. Cleo is not bankrupt; therefore, the GST deemed trust remains operative.
19. Moreover, [section 270](#) of the *Excise Tax Act* obliges receivers (both privately appointed and court appointed) to obtain a clearance certificate from the Minister confirming payment of all amounts payable for the current period and any previous period have been paid (or that security for those amounts has been accepted by the Minister).
20. The Receivership Order imposes a stay of collection actions on the creditors of CLEO. However, the stay of those creditor-initiated actions does not relieve the Receiver of its statutory obligation to remit to the Receiver General proceeds from the sale of Cleo's assets as mandated by ss. 222(3) of the ETA (and ss. 227(4) of the ITA). The Receivership Order specifically preserves the Receiver's ability (and obligation) to take steps to meet statutory obligations.
21. On that basis, the CRA is entitled to be paid by the Receiver its GST deemed trust amount of \$899,907.51 from the Sale Proceeds of the Respondent's assets.

Allocation of Receiver's Charge and Receiver's Borrowings Charge

22. The Minister seeks an Order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property such that any other net assets of Cleo are exhausted prior to depleting the Sale Proceeds.
23. According to paragraph 21 of the First Report of the Receiver, the June 2025 Transactions generated approximately \$2.1 million in sales proceeds (the **Sale Proceeds**).
24. The First Report of the Receiver indicates that the Receiver paid the court ordered charges from the Sale Proceeds even while there were other lines of assets available. In

⁴ *Canada v Callidus Capital Corporation*, 2018 SCC 47, para. 2.

paragraph 25, the Receiver indicates that they made the following payments (the **Priority Payments**) from the Sale Proceeds:

- a. \$101,391 to the Company's counsel, in full satisfaction of the amounts secured by the Administration Charge;
- b. \$89,076 to the Proposal Trustee, in full satisfaction of the amounts secured by the Administration Charge;
- c. \$25,968 to the Proposal Trustee's counsel, in full satisfaction of the amounts secured by the Administration Charge; and
- d. \$1,078,907 to uCapital, in repayment of all amounts borrowed under the Interim Financing Facility, together with accrued interest and costs, as secured by the Interim Lender's Charge. For certainty, uCapital was repaid in full on June 9, 2025, and no amounts remain outstanding under the Interim Financing Facility.

25. The Priority Payments total \$1,295,342, leaving approximately \$804,658 in Sale Proceeds unallocated.

26. In addition to the Sale Proceeds, the Receiver also received \$1,193,341 of Oil & Gas Revenue and \$43,501 of other income (the **Other Proceeds**).

27. As of the First Report of the Receiver, the Receiver had an ending cash balance of \$990,788. After accounting for the Sale Proceeds not explicitly allocated, the Receiver retained \$186,130 of the Other Proceeds.

28. As of the Second Report of the Receiver's, the Receiver retained an ending cash balance of \$791,396 as of October 31, 2025.

29. If the Revised RVO transaction closes, the Receiver will also have the Purchase Price paid by the purchaser (the **Purchase Proceeds**), the amount of which is currently in the confidential Appendix C to the First Report of the Receiver.

30. The Receiver's choice to make the Priority Payments from the Sale Proceeds, rather than exhausting the Other Proceeds first and then turning to the Purchase Proceeds limits the amount available to satisfy the CRA's GST deemed trust claim, while increasing the amount that will be available to transfer to ResidualCo. for the benefit of the unsecured creditors. Given the nature of CRA's GST deemed trust claim and its priority over unsecured creditors, the Minister requests that this Court allocate the Priority Payments to be made first from the Other Proceeds and then from the Purchase Proceeds before turning to the Sale Proceeds such that the Minister's GST deemed trust is remitted to the Receiver General as required by law prior to any funds being transferred to ResidualCo.

PART V – CONCLUSION

31. The Minister respectfully requests that this Court:

- (a) Order that the Receiver's Charge and Receiver's Borrowings Charge shall be reallocated first to the Other Proceeds, second to the Purchase Proceeds and then to the Sale Proceeds; and
- (b) Order that the Receiver pay to the Receiver General of Canada \$899,907.51, in satisfaction of Cleo's outstanding unremitted GST collected by Cleo and held in trust for the Minister, prior to the transfer of any assets of Cleo to ResidualCo.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 7TH DAY OF NOVEMBER, 2025.

Per:



Estimated time for argument: 30 minutes

ATTORNEY GENERAL OF CANADA

Per: Amy Reperto and Tristen Cones

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TABLE OF AUTHORITIES

1. *Excise Tax Act*, [RSC 1985, c E-15](#), ss. 222(1), (1.1), (2), (3), 270
2. *Income Tax Act*, [RSC 1985 c 1 \(5th Supp\)](#), s. 227(4)
3. *Toronto-Dominion Bank v Canada*, [2020 FCA 80](#)
4. *Canada v Toronto-Dominion Bank*, [2024 FC 441](#)
5. *Canada v Callidus Capital Corporation*, [2018 SCC 47](#)