Court File No. CV-25-00738613-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **1242939 B.C. UNLIMITED LIABILITY COMPANY, 1241423 B.C. LTD., 1330096 B.C. LTD., 1330094 B.C. LTD., 1330092 B.C. UNLIMITED LIABILITY COMPANY, 1329608 B.C. UNLIMITED LIABILITY COMPANY, 2745263 ONTARIO INC., 2745270 ONTARIO INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC.,** AND **2472598 ONTARIO INC.**

FACTUM OF ROYAL TRUST CORPORATION OF CANADA

July 31, 2026

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Aryo Shalviri, LSO #63867A
Tel: 416-863-2962
Email: aryo.shalviri@blakes.com

Jules Monteyne, LSO #72980C
Tel: 416-863-2513
Email: jules.monteyne@blakes.com

Lawyers for Royal Trust Corporation of Canada

TO: THE SERVICE LIST

PART I - OVERVIEW

1. Royal Trust Corporation of Canada ("**Royal Trust**") is the current trustee (in such capacity, the "**Trustee**") of four retirement compensation arrangement trusts pursuant to which current and former employees of Hudson's Bay Company ("**HBC**") are beneficiaries (collectively, the "**HBC RCAs**"), comprised of: (i) the trust established pursuant to and governed by the HBC Main Trust Agreement (the "**HBC Main RCA**"); (ii) the trust established pursuant to and governed by the HBC Additional Trust Agreement (the "**HBC Additional RCA**"); (iii) the trust established pursuant to and governed by the HBC RAA Trust Agreement (the "**HBC RAA RCA**"); and (iv) the trust established pursuant to and governed by the Zellers Trust Agreement (the "**Zellers RCA**").[1]

PART II - THE FACTS

Background

2. The following chart summarizes the assets of each of the HBC RCAs as at October 31, 2025.

RCA	Cash Balance (Held in Trust)	Refundable Tax Balance (Year)	Total Balance
Zellers RCA	$17,388.33	$126,298.46 (2023) **2024 Notice of Assessment pending*	$143,686.79
HBC RAA RCA	$13.00	$1,426,392.26 (2023) **2024 Notice of Assessment pending*	$1,426,405.26
HBC Additional RCA	$202,354.42	$252,307.54 (2024)	$454,661.96
HBC Main RCA	$34,153,331.28	$24,262,165.43 (2024)	$58,415,496.71

[1] Capitalized terms used but not otherwise defined herein have the meanings given to them in the Affidavit of Susannah B. Roth, sworn February 10, 2026 (the "**Roth Affidavit**").

3. Each HBC RCA represents the underlying asset base that is available for the payment of benefits under supplementary executive retirement plans (“**SERPs**”) which provide additional benefits to current and former employees of HBC.[2]

4. Following the commencement of insolvency proceedings under the CCAA, HBC notified the Trustee that it was terminating the HBC SERPs (as defined below), requiring the Trustee to wind up the HBC RCAs and pay out the assets therein in accordance with the requirements of each HBC RCA.[3]

5. To complete the actuarial calculations required to wind up the HBC RCAs, as contemplated in the HBC RCAs, the Trustee retained Mercer (Canada) Limited (“**Mercer**”) as actuary. Since being retained, Mercer has commenced its actuarial process, reviewing the HBC Main RCA, HBC Additional RCA and related HBC SERP documents to determine the actuarial basis for determining beneficiary entitlements. During this process, Mercer has identified a number of ambiguities in the HBC SERP documents related to the HBC Main RCA and HBC Additional RCA, that must be addressed before Mercer can complete its work and provide the Trustee with the calculations necessary to wind up the HBC Main RCA and HBC Additional RCA and distribute assets therein.[4]

6. In the ordinary course, these questions would be answered by HBC as administrator. However, as HBC is no longer the administrator of the SERPs and the Trustee’s role is

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[2] Roth Affidavit, at para 4.
[3] Roth Affidavit, at para 8.
[4] Roth Affidavit, at para 9.

limited to administering the HBC RCAs and does not include interpreting the terms of the HBC SERPs, neither Mercer nor the Trustee can advance the wind-up process any further until these questions are resolved.

7. Accordingly, the Trustee, in consultation with HBC and Ursel Phillips Fellows Hopkinson LLP, representative counsel for the non-unionized current employees employed by HBC as of March 7, 2025, former employees with continuing entitlements from HBC, and retirees of HBC (in such capacity, "**ERC**"), brought a motion on February 13, 2026, seeking advice and direction from the Court (the "**Advice and Directions Motion**") with respect to the HBC RCAs and related relief pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**"), the *Rules of Civil Procedure* and the *Trustee Act*, R.S.O. 1990, Chapter T.23 (the "**Trustee Act**").[5] [6] Since then, HBC and ERC have put forward a joint position on certain of the questions posed, as reflected in ERC's factum served on July 24, 2026 (the "**ERC Factum**"). The Trustee does not, nor would it be appropriate for it to, take a position on the responses posited therein.[7]

8. Mercer has not, to date, conducted the same review of the HBC RAA RCA and Zellers RCA and related HBC SERP documents. There is a threshold question as to whether certain loans from HBC to these two RCAs are payable from the HBC RAA RCA and Zellers RCA. If so, this will result in these two RCAs being in a negative funding position thereby obviating the need for any further costs to be incurred to determine beneficiary

[5] Roth Affidavit, at para 5.
[6] Roth Affidavit, at para 19.
[7] Roth Affidavit, at para 11.

entitlements thereunder.[8] This threshold question will be brought before the Court at a later hearing date.

Royal Trust's Costs

9. Since being instructed by HBC to wind up the HBC RCAs, the Trustee has incurred legal and actuarial fees and disbursements related to the management and wind-up of the HBC RCAs, including the Royal Trust Motion (collectively, the "**Costs**"). Pursuant to Section 7.6 of each RCA Trust Agreement, the Trustee is authorized to pay the Costs out of each HBC RCA Trust Fund.[9]

10. The Royal Trust Motion sets out the manner in which the Trustee proposes to allocate Costs as among each HBC RCA Trust Fund (the "**Proposed Allocation Methodology**"). Where fees and disbursements are incurred by the Trustee with respect to a specific HBC RCA, the Trustee proposes to apply those costs to the applicable HBC RCA Trust Fund, while costs related to general work covering all of the HBC RCAs will be distributed across all four HBC RCA Trust Funds rateably based on quantum of assets in such HBC RCA Trust Fund.[10]

11. The fees of Royal Trust and Mercer have been attributable to and billed specifically to each HBC RCA, while Royal Trust Counsel's fees have been largely more general covering all of the HBC RCAs and accordingly, are sought to be allocated pursuant the Proposed Cost

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[8] Roth Affidavit, at para 10.

[9] The Supplemental Affidavit of Susannah B. Roth, sworn July 24, 2026 (the "**Supplemental Roth Affidavit**"), at para 5.

[10] Supplemental Roth Affidavit, at para 6.

Allocation Methodology. The following chart summarizes the proposed allocation of Royal Trust Counsel's fees for the period of April 15, 2025 to May 31, 2026, among each of the HBC RCAs, based on the Proposed Cost Allocation Methodology:[11]

Relevant RCA	Total Assets as at October 31, 2025	Royal Counsel's Fees[12]
HBC Main RCA	$58,415,496.71	$243,605.24
HBC Additional RCA	$454,661.96	$13,984.67
HBC RAA RCA	$1,426,405.26	$8,698.50
Zellers RCA	$143,686.79	$856.89
		Total: $267,145.30

12. Further information on the Advice and Direction Motion, including the specific questions being put forward, can be found in the Roth Affidavit and the Supplemental Affidavit of Susannah B. Roth, sworn July 24, 2026 and in the ERC Factum.

PART III - ISSUES

13. The ERC Factum sets out the joint proposed responses of ERC and HBC for which advice and direction is being sought and, accordingly, this factum deals solely with (1) whether this Court has the authority to answer the questions posed in the Advice and Direction Motion, and (2) approval of the Proposed Cost Allocation Methodology.

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[11] Supplemental Roth Affidavit, at para 7, Exhibit "A".

[12] Fees are inclusive of disbursements, exclusive of HST.

PART IV - LAW & ARGUMENT

This Court has the discretion to make any order that it considers appropriate

14. Section 11 of the CCAA provides this Court the broad discretion to make any order that it considers appropriate in the circumstances, subject only to the restrictions set out in the CCAA.[13] This judicial discretion must be exercised in furtherance of the CCAA's remedial purpose.[14] When exercising its authority under the CCAA, the Court must always bear in mind the requirements of appropriateness, good faith, and due diligence.[15] Appropriateness under the CCAA is assessed by inquiring whether the order sought advances the policy objectives underlying the CCAA.[16] When the Court is dealing with residual assets, the objective of maximizing creditor recovery from those assets may take center stage.[17]

15. The winding up of the HBC RCAs is intrinsically connected to the CCAA Proceedings. The beneficiaries of the HBC RCAs are the former employees of HBC. HBC formed the HBC RCAs in connection with those beneficiaries' employment and administered them until the commencement of the CCAA Proceedings. It is a proper exercise of the Court's jurisdiction under Section 11 to assist the Trustee in the winding up of the HBC RCAs.

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[13] CCAA, s. 11.

[14] *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 [***Century Services***] at para 59; and *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 [***Callidus***] at para 49.

[15] *Century Services* at para 70; and *Callidus* at para 49.

[16] *Century Services* at para 70.

[17] *Alderbridge Way GP Ltd. (Re)*, 2023 BCSC 1718 at para 64; and *Callidus* at para 46.

The Trustee is able to ask the Court for Advice with respect to the HBC RCAs

16. Section 60 of the Trustee Act permits a trustee, without institution of an action, to apply to this Court for its opinion, advice or direction on any question respecting the management or administration of trust property.[18] The advice which the Court is authorized to give under Section 60 pertains to legal matters and legal difficulties arising in the discharge of a trustee's duties.[19]

17. The Trustee is faced with the interpretation of the HBC RCAs and the surrounding legal framework but lacks the authority to direct Mercer on the proper interpretation thereof. Much like in the estate law cases in which the principals of Section 60 have been developed, HBC is no longer the Administrator of the HBC RCAs and the Trustee is unable to speak for HBC. Section 60 allows the Court to step in and provide these interpretations. The Court is able to, and should, give answers to the questions posed in the Advice and Directions Motion.

The Court should approve the Trustee's fees and the Proposed Cost Allocation Methodology

18. The Trustee is explicitly authorized to pay the Costs out of each HBC RCA Trust Fund, pursuant to Section 7.6 of each RCA Trust Agreement.[20]

19. As noted in *Tepper Holdings Inc. (Re)*:

> The CCAA does not specifically provide for the review of remuneration claimed by professionals. However, the court is granted a broad discretion

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[18] Trustee Act, s. 60(1).
[19] *Re Fulford*, 1913 CanLII 515 at page 850, affirmed in *Kaptyn Estate (Re)*, 2009 CanLII 19933 at para 26.
[20] Supplemental Roth Affidavit, at para 5.

> under section 11 of the CCAA to make any order it considers appropriate. Proceedings under the CCAA primarily engage the court's supervisory powers. The court, in its supervisory role, has the inherent jurisdiction to approve or disapprove of any account during CCAA proceedings if it concludes that it is just and equitable to do so.[21]

20. The Court in *Tepper* goes on to list a number of factors to be considered including, "The time expended by counsel; The degree of skill and competence demonstrated by counsel; …The fund out of which the fees are to be paid; The circumstances and interest of the company;…The views of the monitor, the major creditors and the insolvent company."[22] *Re Nortel Networks Corporation et al* took a similar approach applying factors from *Federal Business Development Bank v. Belyea and Fowler*, including "the nature, extent and value of the assets; the complications and difficulties encountered; … the knowledge, experience and skill; the diligence and thoroughness displayed; the responsibilities assumed; … the cost of comparable services…."[23]

21. The time and skill in preparing materials is more fully set out in the Supplemental Roth Affidavit.[24] The Costs are necessary to effect the wind-up of each of the HBC RCAs, reflecting the knowledge, diligence and responsibilities of Royal Trust, Royal Trust Counsel, and Mercer. The Proposed Cost Allocation Methodology is fair and proportionate to the underlying assets of the HBC RCAs.

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[21] *Tepper Holdings Inc (Re)*, 2011 NBQB 311 [***Tepper Holdings***] at para 30.

[22] *Tepper Holdings* at para 36.

[23] *Re Nortel Networks Corporation et al,* 2017 ONSC 673 at para 14, citing *Federal Business Development Bank v. Belyea and Fowler*, 1983 CanLII 4086.

[24] Supplemental Roth Affidavit at Exhibit "A".

22. Further, neither HBC nor ERC take issue with the Costs or the Proposed Cost Allocation Methodology.

23. Accordingly, it is a proper exercise of the Court's jurisdiction under Section 11 to approve the Proposed Cost Allocation Methodology.

PART V - RELIEF REQUESTED

24. For the reasons set out above, the Court should approve the Proposed Cost Allocation Methodology and provide the advice and direction sought in the Advice and Direction Motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of July, 2026.

July 31, 2026

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Aryo Shalviri, LSO #63867A
Tel: 416-863-2962
Email: aryo.shalviri@blakes.com

Jules Monteyne, LSO #72980C
Tel: 416-863-2513
Email: jules.monteyne@blakes.com

Lawyers for Royal Trust Corporation of Canada

SCHEDULE "A"
LIST OF AUTHORITIES

1.	*Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60.
2.	*9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10.
3.	*Alderbridge Way GP Ltd. (Re)*, 2023 BCSC 1718.
4.	*Re Fulford*, 1913 CanLII 515.
5.	*Kaptyn Estate (Re)*, 2009 CanLII 19933.
6.	*Tepper Holdings Inc (Re)*, 2011 NBQB 311.
7.	*Re Nortel Networks Corporation et al,* 2017 ONSC 673.
8.	*Federal Business Development Bank v. Belyea and Fowler*, 1983 CanLII 4086.

CERTIFICATE

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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 July 31, 2026

Signature

SCHEDULE “B”
RELEVANT STATUTES

***Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36**

Jurisdiction of Courts: General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

***Trustee Act*, RSO 1990, c T.23**

Applications to Court for Advice: Trustee, etc. may apply for advice in management of trust property

60 (1) A trustee, guardian or personal representative may, without the institution of an action, apply to the Superior Court of Justice for the opinion, advice or direction of the court on any question respecting the management or administration of the trust property or the assets of a ward or a testator or intestate.

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Proceedings commenced at Toronto, Ontario

FACTUM OF ROYAL TRUST CORPORATION OF CANADA

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Aryo Shalviri, LSO #63867A
Tel: 416-863-2962
Email: aryo.shalviri@blakes.com

Jules Monteyne, LSO #72980C
Tel: 416-863-2513
Email: jules.monteyne@blakes.com

Lawyers for Royal Trust Corporation of Canada