ERC Positions on Distribution of the HBC Main SERP and HBC Additional SERP - Royal Trust Motion on the Distribution of SERP Funds to SERP Members

Background

On February 13, 2026, Royal Trust Corporation of Canada ("Royal Trust") filed a notice of motion (the "RT Motion") seeking directions on twelve questions related to four retirement compensation arrangements ("RCAs") related to various Supplementary Employee Retirement Plans ("SERPs") created for the benefit of executive employees of 1242939 B.C. ULC, formerly known as Hudson's Bay Company (the "Company"). The RT Motion is currently scheduled to be heard on September 25, 2026.

In its motion, Royal Trust posed twelve questions for which it required the Court’s advice and direction, to enable it to proceed with distribution of the assets in the RCAs related to various HBC SERPs.

The majority of those questions deal with the distribution of assets in two RCAs, the HBC Main RCA and the HBC Additional RCA. In consultation with the Company, the Monitor and Royal Trust, Employee Representative Counsel (“ERC”) has developed answers for those questions based on the evidence and the law, and the Company is largely aligned with those answers as well. Royal Trust as the trustee, takes no position on its questions. These questions will be dealt with by the Court on **September 25, 2026.**

There is one set of questions regarding the existence of certain promissory notes and whether those notes should be enforced. This set of questions is expected to be contested by the Company and the ERC. A separate date will be set to deal with that set of questions.

ERC Position on the September 25 Questions

The ERC’s positions on the HBC Main RCA and HBC Additional RCA questions are set out in its factum (written legal arguments) which is available on this website under the Related Documents heading to the right. These arguments can be summarized as follows:

HBC Main RCA and HBC Main SERP Plan

The HBC Main RCA is the trust account with Royal Trust where monies for paying benefits under the HBC Main SERP Plan have been held since January 2006.

The HBC Main SERP Plan is the plan that describes, among other things, the benefits to be paid to Members of the plan.

Participants in the HBC Main SERP Plan have historically been paid their benefits out of the HBC Main RCA for benefits earned between 1999 and 2005. Members of the HBC Main SERP Plan were historically paid their benefits directly by the Company for benefits earned after 2005 (with the exception of the members of the HBC Additional RCA as described below).

The HBC Main RCA has only ever received monies deposited to it in respect of benefits earned between 1999 and 2005, and the Trust Agreement that created this RCA reflects that fact, as do the financial records of that account.

Royal Trust has raised a question with respect to whether the distribution of assets from the HBC Main RCA should be made based on all service accrued by Main SERP Participants, or only service accrued up to November 10, 2005. This question relates to the purpose of the monies in the HBC Main RCA. ERC has reviewed the financial records, the Trust Agreement governing the HBC Main RCA, the practice of the parties in paying benefits and the law governing benefit plans and trusts. ERC has concluded that the monies on deposit in the HBC Main RCA were in respect of benefits earned by Members between 1999 and 2005 only. ERC accordingly takes the position that the monies in the HBC Main RCA should be used to pay Members for benefits earned between 1999 and 2005 only.

Timing of Distribution of HBC Main RCA Assets in relation to the RPP Surplus

Payment out of the HBC Main RCA associated with the Main HBC SERP is subject to a set-off which requires any monies received by a Main SERP Participant from the surplus in the Hudson's Bay Company Pension Plan (the "Registered Pension Plan" or "RPP") be set-off against money the Main SERP Participant would received from the HBC Main SERP. In accordance with the terms of the HBC Main SERP Plan, any monies not spent from the HBC Main RCA because of this set-off would revert to the Company, according to the terms of the HBC Main SERP plan.

To give effect to these provisions in the HBC Main SERP Plan would in the normal course require Main SERP Participants to wait until the RPP Surplus is determined before they could receive any money from the HBC Main RCA.

ERC does not believe Main SERP Participants should have to wait for the RPP Surplus issue to be finally determined to receive a distribution of assets from the HBC Main RCA.

ERC proposes that Main SERP Participants entitled to monies from the HBC Main RCA and from the HBC Additional RCA should be paid these monies before the RPP Surplus issue is determined.

In order to do this, ERC proposes that no monies from the RPP Surplus be paid to Main SERP Participants entitled to payments from these RCAs until a determination has been made of the amount that would have been set-off, and that amount is paid to the Company, as it would have been in the normal course.

HBC Additional RCA

There is an HBC Additional RCA supported by its own trust agreement (the Additional Trust Agreement). That Additional Trust Agreement stipulates that two executives are the beneficiaries of the trust. This Additional Trust Agreement was created pursuant to specific employment agreements with the two executives which provided for this additional security for their HBC Main SERP benefits.

The HBC Additional RCA provides security for these two executives with respect to their earned benefits including between 2005 and 2008, and 2005 and 2010 respectively.

ERC takes the position that the monies in the HBC Additional RCA should be used for the purpose set out in the Additional Trust Agreement, and are intended to provide additional security to the two executives only, for their benefits under the HBC Main SERP Plan.

Other Questions Posed by Royal Trust

ERC takes the position that other questions posed by Royal Trust about the actuarial assumptions to be used in connection with calculating the entitlements of Members, and the payments from the two RCAs in question, should be based on the Canadian Institute of Actuaries' Standards of Practice.

Questions Not Being Heard on September 25, 2026

There are a set of questions not being heard on September 25, 2026 which deal with promissory notes required by the Company to be issued by Royal Trust, in favour of the Company, in two other executive retirement arrangements. The two other arrangements are the Retirement Allowance Arrangement for executives with service prior to 1999, and the Woodwards SERP which covers both Woodwards and Zellers executives.

The main question about these promissory notes is whether the Company should be able to insist on their performance, such that any remaining assets in the accounts for these two plans, including CRA tax credit refunds, should go to the Company and not the members of these two arrangements.

ERC takes the position that the Company should not be able to insist on the performance of these promissory notes and that any assets remaining in these two arrangements should be used for the benefit of their members respectively.

ERC expects these questions to be contested by the Company at a later hearing of these questions.

ERC Position on Each Question as Posed by Royal Trust

ERC's position on each of the particular questions posed by Royal Trust is set out in the table below.

Question:	**Follow-up Question(s)**	**ERC Response**
1. Can interim distributions be made from the HBC Main RCA prior to a final determination of what amounts, if any, the Main SERP Participants are entitled to from the Pension Plan surplus, on the basis that recoveries of overpayments (if any) as a result thereof will be deducted from wind-up distributions of the Pension Plan surplus, if any, to each Main SERP Participant?	**If the answer to this question is 1 "no":** Can interim distributions be made from the HBC Main RCA prior to a final determination of what amounts, if any, the Main SERP Participants are entitled to from the Pension Plan surplus, on another basis, and if so on what basis should that be? *If the answer to the follow-up question above is also "no", such that no interim distributions can be made from the HBC Main RCA prior to a determination of what amounts, if any, the Main SERP Participants are entitled to from the Pension Plan surplus, the Trustee still requests that the remaining questions posed be answered by the Court as these questions require answers regardless of the timing of the distributions from the HBC Main RCA.*	Yes, and therefore it is unnecessary to answer the follow-up question. The parties expect to be in a position to propose a mechanism to protect any interest of the Company in relation to art. 7.08 of the HBC Main SERP Plan, and the reversionary interest in excess assets under art. 7.07 by way of court order and/or letters of commitment executed by Main SERP Participants which will ensure that appropriate calculations are conducted and any amounts owing to the Company are paid from the Main SERP recipients' distribution from the registered pension plan surplus.

1(A) Could there be any excess assets under the HBC Main RCA (with or without taking into account surplus distributions under the Pension Plan) in respect of which, pursuant to section 7.07 of the HBC Main SERP plan text and section 8.3 of the trust agreement, the Company could claim a reversionary interest? If so, what is the Company's reversionary interest in any excess assets under the HBC Main RCA?		Yes, there could be excess assets over which the Company could claim a reversionary interest, however determination of that reversionary interest cannot be made until the Actuary has conducted its calculations following the Court's directions.
2. Should the Termination Liability for each Main SERP Participant be limited to benefits accrued prior to November 10, 2005?	**If the answer to this question 2 "no":** Should the Termination Liability for each Main SERP Participant be calculated based on benefits accrued to the termination date of the HBC Main RCA?	We believe that this question is meant to clarify whether <u>the application of the assets</u> of the HBC Main RCA should be limited to benefits accrued prior to November 10, 2005. If so, the answer is yes. However, the actual Termination Liability itself (which encompasses all the obligations of the Main SERP to its members) should be calculated as the Plan requires. The payment to each Main SERP Participant should be limited to benefits accrued up to November 10, 2005 and should be payable only to those Main SERP Participants with benefits accrued up to November 10, 2005.

Question:	**Follow-up Question(s)**	**ERC Response**
3. Is the date of termination of the **HBC SERPs March 26, 2025?**	**If the answer to this question 3 "no":** What is the date of termination of the HBC SERPs?	No. The Termination Date is March 7, 2025.
4. Can the Trustee and Mercer assume that there is no plan text for the HBC Additional SERP?	**If the answer to this question 4 is "no":** What additional steps should the Trustee take to obtain a plan text or what terms of the HBC Additional SERP plan text should the Trustee assume exist?	Yes. There is no HBC Additional SERP plan text.
5. Are the benefits payable to the Additional SERP Participants, including any Termination Liability, to be determined in accordance with the terms of the HBC Main SERP Plan?	**If the answer to this question 5 is "no":** On what basis are the benefits payable to the Additional SERP Participants to be determined?	Yes, the Additional SERP Participants' entitlements should be determined under the HBC Main SERP Plan.
6. Are the Additional SERP Participants entitled to *security* in excess of what the HBC Main RCA provides, which was provided by the HBC Additional RCA?		Yes, the HBC Additional RCA is intended to provide additional security to the Additional SERP Participants. In connection with this answer, please also see the response to Question 9 below.

Question:	**Follow-up Question(s)**	**ERC Response**
7. Should the Additional SERP Participants have priority entitlement to the HBC Additional RCA Trust Fund?	**If the answer to this question 7 is “no”:** Should the HBC Additional RCA Trust Fund be considered as one fund with the HBC Main RCA Trust Fund for the purposes of making termination payments to the Main & Additional SERP Participants?	Yes, the Additional SERP Participants have priority entitlement to the assets in the HBC Additional RCA. In connection with this answer, please also see the response to Question 9 below.
8. If the Court determines the Additional SERP Participants have priority entitlement to the HBC Additional RCA Trust Fund (i.e., if the answer to question 7 is “yes”), should the methodology for allocating the remaining assets under the HBC Additional RCA include only the Additional SERP **Participants’ Termination Liability**	**If the answer to this question 8 is “yes”:** Should the Additional SERP Participants’ Termination Liability used in the calculation for allocating both the HBC Main RCA and the HBC Additional RCA include all benefits accrued under the HBC Main SERP (i.e., the benefits paid under the HBC Additional RCA should not be excluded when determining the asset allocation for the HBC Main RCA and vice versa)?	Yes, the remaining assets under the HBC Additional RCA should be allocated based on <u>only</u> the Additional SERP Participants’ Termination Liability and paid only to those Additional SERP Participants. Consistent with the proposed responses to Questions 2, 6 and 7 above, the Additional SERP Participants’ Termination Liability should be calculated to account for benefits accrued up to November 10, 2005 from the HBC Main RCA, and to account for benefits accrued after November 10, 2005 from the HBC Additional RCA.

Question:	Follow-up Question(s)	Proposed Response
9. Should the aggregate amount payable to an Additional SERP Participant from both the HBC Main RCA and HBC Additional RCA be limited to 100% of their Termination Liability?	If the answer to this question 9 is "yes": If the aggregate amount payable to an Additional SERP Participant from both the HBC Main RCA and HBC Additional RCA is greater than 100% of the Additional SERP Participant's Termination Liability, should the termination payment to that Additional SERP Participant from the HBC Main RCA Trust Fund be reduced to ensure that the Additional SERP Participant's aggregate amount payable from both the HBC Main RCA and HBC Additional RCA is no greater than their Termination Liability? Should the excess assets remaining in the HBC Main RCA Trust Fund after reducing the amount payable to the Additional SERP Participant(s) from the HBC Main RCA Trust Fund be allocated among the other HBC Main Participants based on a *pro rata* of their Termination Liability?	**This issue may be contested separately at a later date after the Actuary has conducted its calculations following the Court's directions, if necessary.** While it is agreed that the Additional SERP Participants have no entitlement over and above 100% of their Termination Liability, there may be disputes as to the appropriate calculation thereof and the interaction of an excess in one trust fund with a shortfall in another. These potential disputes as to the interpretation of the trust agreements and the HBC Main SERP Plan may or may not arise, and should be deferred pending calculation of the Additional SERP Participants' entitlements under the HBC Main RCA and the HBC Additional RCA and be decided only if necessary. To protect the potential interest of the Company to any excess, the Order should direct that the assets in the HBC Additional RCA cannot be distributed unless (a) there is no excess, (b) there is an agreement between the Company and the Additional SERP Participants regarding the excess amounts; or (c) further order of the Court following determination of Question 9.

Question:	**Follow-up Question(s)**	**Proposed Response**
10 Should the methodology set out at paragraph 172[1] be used to calculate the Termination Liability pursuant to the HBC Main SERP Plan?	**If the answer to this question 10 is "no"**: What methodology should be used to calculate the Termination Liability pursuant to the HBC Main SERP Plan?	Yes.
11 Should the actuarial assumptions in accordance with the CIA Recommendation be used to complete the Conversion Calculation for each DC Active and Deferred Main SERP Participant in determining the Basic Plan Offset Pension and the RAA Offset Pension?	**If the answer to this question 11 is "no":** What methodology should be used to complete the Conversion Calculation for each DC Active and Deferred Main SERP Participant in determining the Basic Plan Offset Pension? What methodology should be used to complete the Conversion Calculation for each DC Active and Deferred Main SERP Participant in determining the RAA Offset Pension?	Yes.
12 Should the outstanding RAA Loans and Zellers Loans be repaid to HBC out of the Trust Funds available in the HBC RAA RCA and Zellers RCA, respectively?	This is a threshold question as it relates to the RAA RCA and Zellers RCA as there are insufficient funds in each of the related Trust Funds to make any further distributions to the participants of such RCAs if such loans are repaid to HBC.	**This issue will be contested separately.**

Additional Questions		
A. Should the Proposed Cost Allocation Methodology as outlined in paragraph 189[2] be adopted?	If the answer to this question 13 is “no”, what methodology should be adopted?	Yes.
B. Can any excess assets remaining in the Trust Funds be paid to the Company?		Yes but only after the issue of the Pension Surplus has been conclusively dealt with.
C. Should RT be required to deliver a signed promissory note to the Company in respect of the February 27, 2025 RAA Loan and February 27, 2025 Zellers Loan?		**This issue will be contested separately.**

1 **Paragraph 172:** At article 2.39, the HBC Main SERP Plan describes the methodology to be used to calculate the Termination Liability, as follows, assuming the HBC SERPs’ termination date is in March 2025: (i) Employment of all Main SERP Participants is assumed to be terminated as of the date of termination of the HBC Main SERP Plan; (ii) The commuted value of each Main SERP Participant’s HBC Main SERP benefits will be determined based on section 3500 – Pension Commuted Values of the Canadian Institute of Actuaries’ Standards of Practice (the **“CIA Recommendation”)** applicable for March 2025; and (iii) The interest rates to be used to determine this commuted value will be one-half of the interest assumed under the CIA Recommendation, (being 1.80% per annum for the first 10 years and 2.25% per annum thereafter).

2 **Paragraph 189:** 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 (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. 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 ratably based on quantum of assets in such HBC RCA Trust Fund (inclusive of Refundable Tax) (the ~~**“Proposed Cost Allocation**~~ **Methodology**”).