

No. S-236214
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

1392752 B.C. LTD.

PETITIONER

AND:

SKEENA SAWMILLS LTD.
SKEENA BIOENERGY LTD. and
ROC HOLDINGS LTD.

RESPONDENT

WRITTEN SUBMISSIONS OF THE ATTORNEY GENERAL OF CANADA

Counsel for the Attorney General of Canada on behalf of His Majesty the King in right of Canada as represented by the Minister of National Revenue	DATE, TIME, PLACE OF APPLICATION:
ATTORNEY GENERAL OF CANADA Department of Justice Canada British Columbia Regional Office National Litigation Sector 900 – 840 Howe Street Vancouver, BC V6Z 2S9 Per: Aminollah Sabzevari Tel: 587-930-5282 Email: aminollah.sabzevari@justice.gc.ca	Date: April 2-4, 2024 Time: 10:00 am Place: 800 Smithe St, Vancouver, BC Time estimate: 3 days

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I. OVERVIEW

1. At common law, a debtor may negotiate with its creditors but cannot force the release of its unwanted liabilities. Via the bankruptcy and insolvency power, Parliament legislated the proposal system under the *Bankruptcy and Insolvency Act* ("BIA") to provide a court-regulated pathway to reduce or remove the liabilities of an insolvent debtor. The rules and requirements for proposals result from the careful balancing by Parliament of the need for a statutory mechanism to bind all creditors with the need to protect dissenting creditors. Courts have repeatedly confirmed that strict compliance is required with the statutory framework because proposals significantly interfere with the rights of creditors.
2. A Reverse Vesting Order ("RVO") is simply an extreme form of a proposal that seeks to shed a debtor's liabilities. The use of the obfuscating term RVO instead of 'proposal without a vote' does not avoid the reality that a forced release of the debtor's liabilities is only provided for in the BIA under the proposal system. The RVO sought in this proceeding seeks the benefits of proposals without shouldering the accompanying burdens. It would not pass a vote of the unsecured creditors because it provides no value to them, let alone achieve court approval given the failure to meet the rules and requirements for an approved proposal.
3. There is no jurisdiction to impose an RVO outside of the statutory scheme for proposals. To permit otherwise would lead to an alternative proposal scheme created by insolvency practitioners rather than Parliament, one that is by its very nature attractive to powerful secured creditors who seek to maximize their returns at the expense of the other creditors. Parliament balanced the rights of all creditors in developing the proposal system as a regulated form of creditor democracy. This balance and the integrity of the insolvency system are critically undermined via the increasing pursuit of RVOs in proceedings that are untethered from the statutory framework for proposals, opening a Pandora's box

of issues that impermissibly place courts in the role of legislator as they attempt to fill the resulting vacuum.

II. SUMMARY OF FACTS

4. The RVO sought in this receivership seeks to remove all liabilities from the debtor corporations (as “Excluded Liabilities”) except for any “Retained Liabilities” that remain with the debtor corporations.¹
5. The RVO seeks to release the debtor corporations, Cui Holdings (“the direct or indirect owner of the debtor corporations”), and the receiver from any and all claims arising from the Excluded Liabilities.²
6. The RVO seeks to incorporate a residual corporation (“ResidualCo”) that is to be assigned into bankruptcy within 30 days of the closing date under the RVO. The RVO seeks to “vest” the Excluded Liabilities with this corporation.³ The RVO states that “[n]either the Companies nor Cui Holdings, nor any person appointed by the Companies or Cui Holdings to be a director of ResidualCo, shall be liable for any obligations of ResidualCo, including in their capacities as direct or indirect shareholders of ResidualCo, as directors or otherwise.⁴
7. The purchase price under the RVO is comprised of a credit bid based on amounts owing under promissory notes, amounts advanced to the receiver by way of the receiver’s borrowing, amounts sufficient to pay claims ranking in priority to the petitioner, \$400,000 for work in progress inventory, and \$30,000 for fees and expenses related to the intended bankruptcy of ResidualCo.⁵

¹ Receiver’s Notice of Application, Part 1; Receiver’s fourth report, summary of key terms at 7.8.

² Receiver’s fourth report at 7.2, 7.8.

³ Receiver’s Notice of Application, Part 1; Receiver’s fourth report, summary of key terms at 7.8.

⁴ Para 10 of the draft order, at Schedule C of the Receiver’s Notice of Application.

⁵ Receiver’s Notice of Application at para 9; Notice of Application, Part 1; Receiver’s fourth report, summary of key terms at 7.8

III. ISSUE

8. There is no jurisdiction to impose an RVO in a receivership.

IV. POINTS OF ARGUMENT

There is no jurisdiction to impose an RVO in a receivership

9. A textual, contextual, and purposive analysis of the *BIA*'s relevant schemes and statutory provisions within them confirms the only route to impose an RVO is pursuant to the proposal system provided by Parliament.⁶
10. The *BIA* provides for three general schemes: proposals (Division I and II), bankruptcies, and receiverships. A transparent and prescribed mechanism is provided for insolvent corporations under Division I proposals to re-organize and continue to operate in a manner acceptable to the creditors and the court.⁷
11. For bankruptcy, the debtor may make a voluntary assignment into bankruptcy or a creditor may apply to put the debtor into bankruptcy, with corporate debtors being unable to receive a discharge from bankruptcy without fully satisfying the claims of the creditors in full.⁸ Receiverships may only be initiated by a secured creditor of the debtor.⁹ A receiver has standing under section 50(1)(b) of the *BIA* to initiate a proposal on behalf of an insolvent debtor.¹⁰
12. The RVO in this case falls within the proposal scheme, as it seeks to force the removal of the liabilities of the corporate debtors, which can only be done under

⁶ *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 26 (The words of the Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, object of the act, and intention of Parliament).

⁷ *Schultz (Re)*, 2014 ABQB 432 at para 10.

⁸ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 169(4).

⁹ *BIA* s 243(1).

¹⁰ *BIA* s 50(1)(b)

a Division I proposal. If this relief is sought in a receivership, it must be initiated by the receiver pursuant to subsection 50(1)(b) and comply with the statutory requirements for proposals.¹¹

Proposals provide the sole route to release the debtor's liabilities under the BIA and require strict compliance with the BIA

13. At common law, a debtor may seek to negotiate with its creditors but cannot force the release of its valid but unwanted liabilities. Via the bankruptcy and insolvency power, Parliament has provided the proposal framework under the *BIA* for a path to reduce or remove liabilities owed by an insolvent debtor which may be enforced against all its creditors as long as the proposal is approved in a vote by a sufficient majority of creditors and approved by the Court.¹² This statutory framework results from Parliament's balancing of the need for a statutory mechanism to bind dissenting creditors with the need to provide protection for dissenting creditors.¹³
14. The definition for a proposal under the *BIA* is non-exhaustive and includes a proposal for a composition, for an extension of time, or for a scheme of arrangement.¹⁴ A composition is usually understood to mean an arrangement whereby creditors agree to accept less than full repayment of what is owing to them in full satisfaction of their claims and the debtor retains control of its assets, while a scheme of arrangement usually implies a more elaborate proposal, possibly involving a restructuring of the classes of creditors and equity holders in

¹¹ *Ibid.*

¹² The general process for seeking a proposal was recently summarized in *Gaum v Grant Thornton Limited*, 2023 NSCA 5 at para 43. See also, Professor Lund at page 707 (Stephanie Ben-Ishai & Thomas G. W. Telfer, eds, *Bankruptcy and Insolvency Law in Canada, Cases, Materials and Problems*, 1st ed (Toronto, ON: Irwin Law Inc., 2019).

¹³ *Metcalfe & Mansfield Alternative Investments II Corp. (Re)*, 2008 ONCA 587 at para 68 (discussed in the context of CCAA proceedings, but the same logic applies to proposals).

¹⁴ *BIA* s 2; Professor Torrie at page 509 (Stephanie Ben-Ishai & Thomas G. W. Telfer, eds, *Bankruptcy and Insolvency Law in Canada, Cases, Materials and Problems*, 1st ed (Toronto, ON: Irwin Law Inc., 2019).

the debtor corporation coupled with a reduction in the amount that is repayable and the period in which it must be paid.¹⁵ There is great flexibility for the potential terms in a proposal, as long as it complies with the requirements of the *BIA* and is acceptable to the creditors and the Court.¹⁶

15. Since proposals substantially interfere with the rights of creditors, in order for a proposal to be binding on creditors, the provision of the *BIA* must be strictly complied with.¹⁷ There are mandatory notice and minimum time standards set for proposals to ensure adequate notice and participation of the impacted creditors.¹⁸ As noted by the Court of Appeal, the terms of proposals should be given a plain and ordinary meaning comprehensible to creditors who may not have the benefit of sophisticated legal advice.¹⁹ Courts have repeatedly emphasized that to approve a proposal, the formalities of the *BIA* must be

¹⁵ *Mutual Trust Co v Scott, Pichelli & Graci Ltd.*, 1999 CarswellOnt 2190, [1999] O.J. No. 2659 at para 1; Professor Torrie at page 509 (Stephanie Ben-Ishai & Thomas G. W. Telfer, eds, *Bankruptcy and Insolvency Law in Canada, Cases, Materials and Problems*, 1st ed (Toronto, ON: Irwin Law Inc., 2019); Professor Lund at page 707 (Stephanie Ben-Ishai & Thomas G. W. Telfer, eds, *Bankruptcy and Insolvency Law in Canada, Cases, Materials and Problems*, 1st ed (Toronto, ON: Irwin Law Inc., 2019).

¹⁶ The Honourable Mr. Justice Lloyd W. Houlden, Mr. Justice Geoffrey B. Morawetz & Dr. Janis P. Sarra, "Bankruptcy and Insolvency Law of Canada" 4th Edition, § 4.11 Terms of Proposal – Generally", online: (Proview) Thomson Reuters Canada.

¹⁷ *Re: Davis* (1924), 5 CBR 182 (Ont SC) (As the object is to bind all creditors whether or not they provide their claims and whether or not they consent, it is absolutely necessary to strictly follow the procedure under the Act and Court only has the power to condone mere irregularities capable of amendment); *Schultz (Re)*, 2014 ABQB 432 at paras 10, 15 (Parliament chose to enact a distinct and more stringent regime to address the more serious matters failing under Division I and it requires strict compliance with the provisions of the *BIA* and compliance with the type of monitoring expressly set out in the *BIA*) ; *Re Garrity (Proposal)*, 2006 ABQB 238 at para 23; *Re Wandler (Proposal)*, 2007 ABQB 153 at paras 10, 37 (A laudable objective such as promoting proposals over bankruptcies cannot override Parliament's directives regarding the proposal process).

¹⁸ *BIA* s 51(1)(a) – notice must be provided to every known creditor and to the official receiver at least ten days before the meeting of creditors; *BIA* s 58(b) – notice of the hearing of the application for court approval of a proposal must be provided at least 15 days before the date of the hearing to every creditor who has proved a claim, whether secured or unsecured.

¹⁹ *Dav-Jor Contracting Ltd. Bankruptcy (Re)*, 2006 BCCA 330 at paras 7, 18, cited in *Re Wandler (Proposal)*, 2007 ABQB 153 at para 12.

complied with and the required terms in the *BIA* must be included in the proposal.²⁰

16. If a proposal fails to pass the vote of the creditors, there is a deemed assignment into bankruptcy.²¹ If a proposal does pass with the required number of votes, it is still subject to court approval. There are mandatory payment terms for certain claims that must be complied with in every proposal before the Court can approve the proposal.²²
17. A proposal passing the vote of the creditors may be rejected by the court if the terms are not reasonable or are not calculated to benefit the general body of creditors.²³ A proposal should make the creditors better off than in a bankruptcy.²⁴ The court's refusal to approve a proposal results in a deemed assignment into bankruptcy.²⁵ Amongst the situations where courts have refused to approve a proposal include: (1) where the amount offered to unsecured creditors was minimal and the shares they were to receive in a limited company in settlement of their claims were worthless²⁶ and (2) where the proposal unduly

²⁰ *Wiivv Wearables Inc. (Re)*, 2021 BCSC 511 at para 50; *Magnus One Energy Corporation*, 2009 ABQB 200 at para 12; *Proposition de Liquid Nutrition Franchising Corporation*, 2017 QCCS 1928 at paras 77-78.

²¹ *BIA* s 57(a).

²² *BIA* s 60.

²³ *BIA* s 59(2). Considerations may include not only the wishes and interest of the creditors, but also the conduct and interest of the debtor, the interest of the public and future creditors, and whether the proposal meets the requirements of commercial morality and maintains the integrity of the bankruptcy system (*Magnus One Energy Corporation*, 2009 ABQB 200 at para 11).

²⁴ *Pateman, Re*, 1991 CanLII 12054 (MBKB), cited in *Alternative Fuel Systems Inc. v Remington Development Corp.*, 2004 ABCA 31 at para 29.

²⁵ The various ways that a failed proposal results in a deemed assignment in bankruptcy illustrates that Parliament was not trying to avoid bankruptcy at all costs in designing Division I. It also reflects a key point of an approved proposal in that it should make the creditors better off than in a bankruptcy.

²⁶ *Re First Toronto Mining Corp.*, 1991 CarswellOnt 172, 3 C.B.R. (3d) 246 at para 15.

favoured the parent company, as well as its directors and officers, with next to nothing going to the general body of creditors.²⁷

18. There is no provision in the *BIA* that permits the court to approve a proposal without the proposal first being placed to a vote. Conversely, subsection 50(12) permits an application to be brought prior to the first meeting of the creditors (i.e. prior to any vote) for the proposal to be deemed refused on various grounds, including if it is not likely to be accepted by the creditors.²⁸
19. After an approved proposal is fully performed, a certificate of performance is provided that has the same impact as a discharge from bankruptcy for any liabilities that are released by the proposal.²⁹

RVO is functionally a proposal and must meet the requirements of proposals to release the debtor's liabilities

20. An RVO is a “relatively new tool” used by insolvency practitioners to “shed” the unwanted liabilities of a debtor company.³⁰ The apparent “vesting” of these liabilities with a worthless residual corporation that is created solely for an imminent assignment into bankruptcy does not overcome the fact that the debtor’s liabilities have been forcefully removed under an RVO.³¹ In seeking to force the shedding of liabilities from the debtor corporations in this proceeding, the RVO requests the benefits of an approved proposal under the *BIA* but

²⁷ *Proposition de Liquid Nutrition Franchising Corporation*, 2017 QCCS 1928 at paras 79-80. The court noted that one party (the director), appeared to be driving the matter to obtain a substantial financial advantage not otherwise available to him, in the form of a release of liability for him and his wife.

²⁸ *BIA* s 50(12); *Gaum v Grant Thornton Limited*, 2023 NSCA 5 at paras 35-37.

²⁹ *BIA* s 65.3 (certificate where proposal performed).

³⁰ Janis Sarra, “Reverse Vesting Orders – Developing Principles and Guardrails to Inform Judicial Decisions”, 2022 CanLII Docs 431 (“Dr. Sarra Article”) at page 1, cited in *PaySlate Inc. (Re)*, 2023 BCSC 608 at para 1.

³¹ The RVO not only seeks to remove liabilities from the debtor by “vesting” them with ResidualCo, but also attempts to provide a broad release for the director(s) of ResidualCo or other involved parties (paragraph 11 of the draft order at Schedule C of the Receiver’s Notice of Application).

attempts to avoid a vote of the creditors and other statutory requirements for an approved proposal.

21. An RVO is simply an extreme form of a proposal that removes the debtor's liabilities, falling under a composition or a complex scheme of arrangement. The use of the euphemistic RVO rather than the unpalatable 'proposal without a vote' does not avoid the reality that the forced release of the debtor's liabilities is only provided for in the *BIA* under the proposal system. This ability to reduce or remove a debtor's liabilities is a result of Parliament's careful balancing of the need for restructuring debtors against the rights of the debtor's creditors.
22. To achieve a forced release of a debtor's liabilities, an RVO must comply with the statutory scheme for proposals. To permit otherwise would be to create an alternative proposal scheme developed by insolvency practitioners that is by its very nature more appealing to powerful secured creditors who seek to maximize their returns at the expense of other creditors, particularly unsecured creditors.³² Parliament prudently balanced the rights of various creditors in developing the *BIA*'s proposal system requiring a majority of votes in number and value for each class of creditor.³³ The development and expansion of RVOs critically undermines this form of creditor democracy and the overall integrity of the proposal system.³⁴

No jurisdiction to impose an RVO under the *BIA*

23. RVOs were first introduced in proceedings under the *Companies' Creditors*

³² Dr. Sarra Article, *supra* note 30 at pages 2-4, 20.

³³ As noted in the Dr. Sarra Article at page 26 (in the context of CCAA plans of arrangement), "[t]his statutory framework represents a careful balancing of interests and prejudice, and gives voice and vote to the creditors that are the residual claimant to the value of the debtor company" and is aimed at mitigating the imbalance in power that secured creditors have in insolvency proceedings.

³⁴ Dr. Sarra Article at page 20; Daniel Alievsky, "Reverse Vesting Orders: Did We Forget About Creditor Democracy?" (September 2023) 12-7 Insolvency Inst Can at 5.

Arrangement Act ("CCAA").³⁵ If RVOs may be imposed in the CCAA over the objection of creditors, which unsettled law, it would only be via the authority provided by section 11 of the CCAA.³⁶

24. The *BIA* does not contain a provision equivalent to section 11 of the CCAA.³⁷
25. Section 183 of the *BIA* was briefly referred to as the basis for the RVO granted in *Peakhill*, a case that did not involve any creditor objecting to the RVO.³⁸ What jurisdiction section 183 may provide cannot extend to imposing an RVO over the objections of creditors, because section 183 does not provide jurisdiction to impose a proposal without a vote, to approve a proposal that has failed to meet the sufficient majority of votes (which results in a deemed assignment into bankruptcy), to approve a proposal that does not have the mandatory payment terms, or to impose a proposal that does not meet other requirements mandated by the *BIA*.

³⁵ *Companies' Creditors Arrangement Act*, RSC 1985, c C-36. Dr. Sarra's Article covers the history of RVOs under the CCAA, including the fact that most of the cases have been uncontested.

³⁶ Section 36 of the CCAA was also cited in several cases, but that provision provides for the vesting of assets in court supervised sales, not the "vesting" of liabilities, as noted in *Harte Gold Corp. (Re)*, 2022 ONSC 653 at para 36 and Dr. Sarra's Article at page 6. Section 11 is the provision referred to in most cases, although section 11 is subject to the restrictions of the CCAA and should be used to safeguard the creditor democracy the CCAA protects (9354-9186 *Québec inc. v Callidus Capital Corp.*, 2020 SCC 10 at paras 67, 78) rather than circumvent it. No appellate panel has yet to deal with, let alone approve, an RVO under the CCAA that is opposed by creditors challenging the jurisdiction to impose an RVO under the CCAA.

³⁷ Roderick J. Wood, "Come a Little Bit Closer": Convergence and its Limits in Canadian Restructuring Law" (2021) 10 J Insolvency Can at 12; Professor Lund at page 710 (Stephanie Ben-Ishai & Thomas G. W. Telfer, eds, *Bankruptcy and Insolvency Law in Canada, Cases, Materials and Problems*, 1st ed (Toronto, ON: Irwin Law Inc., 2019). Professor Lund provides a useful chart comparing the equivalent sections of Division I proposals under the *BIA* and plans under the CCAA before reaching this conclusion.

³⁸ *Peakhill Capital Inc. v Southview Gardens Limited Partnership*, 2023 BCSC 1476. The case is currently under appeal by the Province of British Columbia.

26. Inherent jurisdiction cannot be used to override a statute, whether the statute in question (*BIA*) or other federal or provincial statute.³⁹ Inherent jurisdiction cannot be used to bypass and undercut the existing proposal system created by Parliament to allow for the forced release of a debtor's liabilities.
27. Section 183 or inherent jurisdiction cannot be used to re-write the *BIA* and create an unsanctioned third division of proposals. If the current proposal regime is considered too onerous by some insolvency practitioners for the corresponding benefits that it provides, that is a matter for Parliament to consider and decide when contemplating future amendments to the *BIA*.

The many problems of RVOs reflect the impermissible detachment of RVOs from the proposal system

28. Throughout her article, Dr. Sarra noted various concerns regarding RVOs, including that they provide for overly broad releases of directors and other parties, they might be used to undercut environmental liabilities and obligations, they often do not provide any value for unsecured creditors, and they are often brought without notice to all impacted parties or on short notice when that notice is provided.⁴⁰
29. All the problems diagnosed by Dr. Sarra are symptoms of the root malady that RVOs were designed by insolvency practitioners as an attempt to bypass the statutory systems Parliament has provided for the forced release of a debtor's liabilities. With RVOs becoming detached from the statutory systems designed by Parliament, supervisory judges - often under enormous time pressure – have been forced to manage these issues in the resulting vacuum.

³⁹ *Baxter v Student Housing*, 1975 CanLII 164 (SCC) (Inherent jurisdiction cannot be exercised to conflict with a statute or rule; it is a special and extraordinary power to be exercised only sparingly and in a clear case).

⁴⁰ Dr. Sarra Article, *supra* note 30.

30. The general proposal scheme under the BIA is a comprehensive, rule-based scheme with many components and requirements that have been thoroughly considered by Parliament. There are provisions dealing with the compromise of claims against the directors of the insolvent corporation,⁴¹ the priority of environmental liabilities,⁴² the required notice for all known creditors,⁴³ the minimum timelines for providing notices to creditors for the required meeting and vote of the creditors,⁴⁴ and the procedure for negotiating the impact on collective agreements.⁴⁵ The untethering of RVOs from this system has opened a Pandora's box and forced courts into stepping in to deal with all these issues anew, falling into the role of legislator rather than interpreter of and decision maker under the existing statute.
31. The excessively broad releases sought for the directors and other parties in the present RVO, which resemble the wording used for a settlement agreement rather than a contested order, provides one example of this improper disconnect from what is provided for under the proposal system.⁴⁶ They go far beyond what may be provided in a proposal via s. 50(13) even after a successful vote.⁴⁷
32. The impermissible detachment from the proposal system also reflects why RVOs are incorrectly compared to approval and vesting orders even though the latter cannot provide the benefits that an RVO seeks. The appropriate comparison is to proposals that provide the release of the liabilities sought by the RVO, except they make the general body of creditors better off than an RVO. Restricting RVOs to Parliament's carefully designed proposal system puts the proper onus on the

⁴¹ BIA ss 50(13)-50(15).

⁴² BIA ss 14.06(6)-(8).

⁴³ BIA s 51(1).

⁴⁴ BIA ss 51(1), 58(b).

⁴⁵ BIA s 65.12.

⁴⁶ Paragraphs 11, 13-14 of the draft order, at Schedule C of the Receiver's Notice of Application.

⁴⁷ BIA s 50(13) relates to directors and only for amounts that arose before the commencement of proceedings under the BIA. Justice Morawetz allowed releases for third parties provided for in a proposal in an unopposed motion after over 99% of creditors voted in favour of the proposal (*Kitchener Frame Limited (Re)*, 2012 ONSC 234 at paras 1, 15).

party making the proposal to establish how it makes the creditors better off, rather than on the creditors to establish why they are not worse off.

Receiverships are a further step removed from the proposal system and provide no authority to impose an RVO

33. The provincial *Law and Equity Act* was briefly cited in the receiver's notice of application but does not provide jurisdiction to impose the sought RVO. The authority to force a release of an insolvent debtor's liabilities must come from federal legislation based on the bankruptcy and insolvency power that is binding on all creditors, including the federal Crown.⁴⁸ While there is a decision in Alberta citing a combination of provincial statutes for approving an RVO, that case, like *Peakhill*, did not grapple with the key issue of jurisdiction to order the forced release of the debtor's liabilities.⁴⁹
34. Section 243 of the *BIA* provides for the appointment of a receiver to take possession of an insolvent debtor's property, exercise control over the property and business carried on by the debtor, and take any other action that the court considers advisable.⁵⁰ As noted by Dr. Sarra, there is nothing in section 243 that suggests the authority to bypass creditor rights and impose an RVO.⁵¹
35. The "simple and narrow purpose" for section 243 is to provide a national receivership and prevent the need to seek multiple receivers across different

⁴⁸ *BIA* s 4.1 explicitly binds the federal and provincial Crowns; *Lantheus Medical Imaging Inc. v. Atomic Energy of Canada Ltd.*, 2013 ONCA 264 at para 13 (A province cannot validly enact legislation affecting the federal Crown in a compulsory manner).

⁴⁹ *Forage Subordinated Debt LP v Enterra Feed Corporation*, 2023 ABQB KB (Unreported), filed May 10, 2023. The written endorsement focussed on tangential issues to the RVO structure without properly considering the critical issues (i.e. the jurisdiction for the forced release of the creditors' claims and the inability for provincial legislation to bind the federal Crown). Negotiations between the parties had preserved substantial tax credits for the residual corporation such that the federal creditor would be able to set-off its claim against the debtor in any event (at paras 10-11).

⁵⁰ *BIA* s 243(1).

⁵¹ Dr. Sarra Article at page 24.

jurisdictions in Canada.⁵² The other actions that may be ordered are commonly necessary in receiverships, such as those that are a necessary incident to a receiver's power to sell.⁵³

36. Subsection 243(1)(c) is also constrained by subsection 72(1) of the *BIA*, which preserves the substantive provisions of any other law (including common law) or statute relating to property and civil rights that are not in conflict with the *BIA*.⁵⁴ A RVO cannot be sought in a receivership in an attempt to manufacture a conflict with those rights via section 243. While the proposal system provided by Parliament provides a route for a forced release of the debtor's liabilities, and receivers may seek to access that system via subsection 50(1)(b), subsection 243(1) cannot be twisted so far away from its moorings to provide access to an alternative proposal scheme developed by insolvency practitioners.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Vancouver, the Province of British Columbia, this 27th day of March 2024.

per 

ATTORNEY GENERAL OF CANADA

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⁵² *Saskatchewan (Attorney General) v Lemare Lake Logging Ltd.*, 2015 SCC 53 at paras 1, 45-47, 50-51

⁵³ *Yukon (Government of) v Yukon Zinc*, 2021 YKCA 2 at paras 118-120, 135.

⁵⁴ *Yukon (Government of) v Yukon Zinc*, 2021 YKCA 2 at paras 123, 131

V. LIST OF AUTHORITIES

	Caselaw
1.	<i>9354-9186 Québec inc. v Callidus Capital Corp.</i> , 2020 SCC 10
2.	<i>Alternative Fuel Systems Inc. v Remington Development Corp.</i> , 2004 ABCA 31
3.	<i>Baxter v Student Housing</i> , 1975 CanLII 164 (SCC)
4.	<i>Bell ExpressVu Limited Partnership v Rex</i> , 2002 SCC 42
5.	<i>Dav-Jor Contracting Ltd. Bankruptcy (Re)</i> , 2006 BCCA 330
6.	<i>Forage Subordinated Debt LP v Enterra Feed Corporation</i> , 2023 ABQB KB (Unreported), filed May 10, 2023
7.	<i>Gaum v Grant Thornton Limited</i> , 2023 NSCA 5
8.	<i>Harte Gold Corp. (Re)</i> , 2022 ONSC 653 at para 36
9.	<i>Kitchener Frame Limited (Re)</i> , 2012 ONSC 234
10.	<i>Lantheus Medical Imaging Inc. v. Atomic Energy of Canada Ltd.</i> , 2013 ONCA 264
11.	<i>Magnus One Energy Corporation</i> , 2009 ABQB 200
12.	<i>Metcalfe & Mansfield Alternative Investments II Corp. (Re)</i> , 2008 ONCA 587
13.	<i>Mutual Trust Co v Scott, Pichelli & Graci Ltd.</i> , 1999 CarswellOnt 2190, [1999] O.J. No. 2659
14.	<i>Pateman, Re</i> , 1991 CanLII 12054 (MBKB)
15.	<i>PaySlate Inc. (Re)</i> , 2023 BCSC 608
16.	<i>Peakhill Capital Inc. v Southview Gardens Limited Partnership</i> , 2023 BCSC 1476
17.	<i>Proposition de Liquid Nutrition Franchising Corporation</i> , 2017 QCCS 1928
18.	<i>Re: Davis</i> (1924), 5 CBR 182 (Ont SC)

19.	<i>Re First Toronto Mining Corp.</i> , 1991 CarswellOnt 172, 3 C.B.R. (3d) 246
20.	<i>Re Garrity (Proposal)</i> , 2006 ABQB 238
21.	<i>Re Wandler (Proposal)</i> , 2007 ABQB 153
22.	<i>Saskatchewan (Attorney General) v Lemare Lake Logging Ltd.</i> , 2015 SCC 53
23.	<i>Schultz (Re)</i> , 2014 ABQB 432
24.	<i>Wiivv Wearables Inc. (Re)</i> , 2021 BCSC 511
25.	<i>Yukon (Government of) v Yukon Zinc</i> , 2021 YKCA 2
	Legislation
26.	<i>Bankruptcy and Insolvency Act</i> , RSC 1985, c B-3, ss 2, 4.1, 14.06(6)-(8), 50(1)(b), 50(12), 50(13)-50(15), 51(1), 57(a), 58(b), 59(2), 60, 65.3, 65.12, 72(1), 169(4), 183 and 243(1)
27.	<i>Companies' Creditors Arrangement Act</i> , RSC 1985, c C-36, ss 11, 36
	Secondary Source
28.	Daniel Alievsky, "Reverse Vesting Orders: Did We Forget About Creditor Democracy?" (September 2023) 12-7 Insolvency Inst Can at 5
29.	Janis Sarra, "Reverse Vesting Orders – Developing Principles and Guardrails to Inform Judicial Decisions", 2022 CanLIIDocs 431
30.	Roderick J. Wood, "Come a Little Bit Closer": Convergence and its Limits in Canadian Restructuring Law" (2021) 10 J Insolvency Can at 12
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