

COURT FILE NUMBER 25-2831494

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PROCEEDINGS IN THE MATTER OF THE BANKRUPTCY OF RBEE
AGGREGATE CONSULTING LTD.

APPLICANT **FTI CONSULTING CANADA INC. SOLELY IN ITS
CAPACITY AS LICENSED INSOLVENCY TRUSTEE OF
THE BANKRUPT ESTATE OF RBEE AGGREGATE
CONSULTING LTD.**

DOCUMENT **BRIEF OF THE TRUSTEE**

PARTY FILING THIS DOCUMENT **FTI CONSULTING CANADA INC. SOLELY IN ITS
CAPACITY AS LICENSED INSOLVENCY TRUSTEE OF
THE BANKRUPT ESTATE OF RBEE AGGREGATE
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I. INTRODUCTION

1. FTI Consulting Canada Inc. ("**FTI**"), in its capacity as licensed insolvency trustee (the "**Trustee**") of the bankrupt estate of RBee Aggregate Consulting Ltd. ("**RBee**"), submits this Brief in support of its application for advice and directions (the "**Application**") concerning the distribution of funds (the "**Funds**") received by the Trustee pursuant to a settlement agreement and mutual release made effective November 12, 2025 (the "**Settlement**").

2. Among other things, the Settlement fully and finally resolved the Trustee's application to set aside certain transactions on the basis that they were preferential and contrary to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**"); the Fraudulent Preferences Act, RSA 2000, c F-24; and/or the Statute of Elizabeth, 1571 (UK), 13 Eliz 1, c 5 (the "**Preferences Application**"). Neither the *BIA* nor the case law provides direct guidance regarding to whom the Funds should be distributed in these circumstances. Accordingly, the Trustee seeks advice and directions from this Court regarding the appropriate distribution of the Funds.

3. The Trustee also seeks an Order (the "**Sealing Order**") sealing the Confidential Supplement to the Second Report.

II. BRIEF SUMMARY OF THE FACTS

A. The Receivership Proceedings

4. RBee was an Alberta corporation incorporated on or around September 13, 2017. Its primary business was the operation of gravel crushing plants in various pits and construction sites across Alberta and British Columbia. By the end of 2021, RBee's operations were shut down, and the majority of its employees were laid off. RBee did not secure operating contracts for the 2022 construction season.¹

5. On March 11, 2022 (the "**Appointment Date**"), Crown Capital Partner Funding, LP ("**Crown LP**"), by its manager, Crown Private Credit Partners Inc. (together with Crown LP, "**Crown Capital**"), obtained a receivership order (the "**Receivership Order**", and the proceedings

¹ First Report of the Trustee dated March 21, 2025 (the "**First Report**") at paras 1-2; Second Report of the Trustee dated March 9, 2026 (the "**Second Report**") at para 2.

thereunder, the "**Receivership Proceedings**") of this Court appointing FTI as receiver of all the assets, undertakings and property (the "**Property**") of RBee (in such capacity, the "**Receiver**").²

6. As of the Appointment Date, RBee owed approximately \$34.4 million to three secured creditors:

- (a) approximately \$8.7 million plus accrued interest and legal costs was owed to Canadian Western Bank ("**CWB**"), RBee's senior secured first lien creditor;
- (b) approximately \$22.7 million plus accrued interest and legal costs was owed to Crown LP, its senior secured second lien creditor; and
- (c) approximately \$3 million was owed to a secured equipment lender in respect of secured equipment financing facilities.³

7. RBee also reported approximately \$3.4 million of unremitted source deductions and outstanding GST remittances due to the Canada Revenue Agency. In addition, RBee owed approximately \$7.7 million to various unsecured creditors (the "**Unsecured Creditors**").⁴

8. In the Receivership Proceedings, the Receiver obtained this Court's approval to undertake a comprehensive solicitation process seeking offers for the Property of RBee (the "**Sale Process**"). Although the Sale Process generated significant proceeds to the estate of RBee, these recoveries were insufficient to repay all RBee's creditors. The proceeds of the Sale Process were sufficient to pay the outstanding remittances owed to the Canada Revenue Agency in full. The Receiver was also able to repay in full the secured debt of CWB and the security equipment lender. The Receiver was able to make partial distributions to Crown LP, but the proceeds were insufficient to repay Crown LP in full. Approximately \$20.7 million in secured debt owing to Crown LP was not repaid, and there were no funds available to make any distributions to Unsecured Creditors.⁵

² First Report at para 3; Second Report at para 3.

³ First Report, Appendix "A" at paras 8-9; First Supplemental Report of the Trustee dated April 17, 2025 (the "**First Supplemental Report**") at para 12.

⁴ First Report, Appendix "A" at paras 8-9; First Supplemental Report at para 12.

⁵ First Report at paras 39-43, 50, and Appendix "A" at paras 19 to 22; First Supplemental Report at paras 12 and 14-16.

B. The Bankruptcy Proceedings and the Preferences Application

9. On May 18, 2022 (the "**Bankruptcy Date**"), this Court granted an Order adjudging RBee bankrupt and appointing FTI as Trustee (the "**Bankruptcy Order**"). At the first meeting of RBee's creditors on June 7, 2022, Crown LP's managing director, Tim Oldfield, was appointed as inspector of the estate (the "**Inspector**"). In accordance with the Inspector's resolution dated August 17, 2023, the Trustee conducted a review of RBee's historic intercompany transactions with certain related parties (the "**Related Parties**"). A detailed chart of the relationships between RBee and the Related Parties can be found in the First Report of the Trustee.⁶

10. Based on its review of said records, the Trustee's view was that certain transactions between RBee and the Related Parties totaling approximately \$6 million (the "**Related Party Transactions**") (a) were made with a view to giving the Related Parties a preference over RBee's other creditors, (b) had the effect of giving the Related Parties a preference over RBee's other creditors, or (c) were made with the intent to defraud, hinder, or delay RBee's creditors, and that the Related Party Transactions had that intended effect.⁷

11. Accordingly, on August 17, 2023, the Trustee filed the Preferences Application, seeking to set aside the Related Party Transactions for the reasons set out above. Between August 17, 2023 and November 12, 2025, the Trustee, the Related Parties, and Crown LP advanced the Preferences Application by filing the First Report, the Supplemental Report, exchanging affidavits, conducting cross-examinations, exchanging undertaking responses, and exchanging briefs of law, among other things.⁸

C. The Settlement

12. On November 12, 2025, the Trustee, Crown LP and the Related Parties entered into the Settlement. Pursuant to the Settlement, the Related Parties paid the Funds to counsel to the Trustee in full and final settlement of the issues arising from the Preferences Application, among other things. In the Trustee's view, the Settlement was an appropriate, efficient, and proportional resolution to the Preferences Application for the benefit of the estate of RBee. The terms of the Settlement are confidential.⁹

⁶ First Report at paras 4-5, 15 and 22; Second Report at para 4.

⁷ First Report at paras 15-16 and 26; Second Report at para 5.

⁸ Application (Reviewable Transactions) filed by FTI Consulting Canada, Inc. on August 17, 2023; Second Report at para 6.

⁹ Second Report at para 8; Confidential Supplement at paras 8-9.

13. On February 10, 2026, this Court granted a consent dismissal order (the "**Dismissal Order**") dismissing the Preferences Application without costs. The Dismissal Order contained a provision that the dismissal shall have the same force and effect as if it had been pronounced as a decision of the Court after a full and complete hearing.¹⁰

14. As of the date of the Dismissal Order (and the date of the Second Report), Crown LP had not been repaid in full. There had been no distributions to the Unsecured Creditors.

III. ISSUE

15. The Trustee seeks advice and direction from this Honourable Court concerning a single question: should the Funds (net of the professional fees and disbursements of the Trustee and its legal counsel and the levy of the Office of the Superintendent of Bankruptcy) be distributed to Crown LP in partial satisfaction of its secured claim, or to the general body of Unsecured Creditors on a *pari passu* basis?

IV. LAW AND ARGUMENT

A. The *BIA*'s Distribution Scheme is "Subject to the Rights of Secured Creditors"

16. The *BIA* establishes a clear distribution scheme for proceeds realized from the property of a bankrupt at section 136, which includes the order of payment of certain priority claims. That distribution scheme is "[s]ubject to the rights of secured creditors."¹¹

17. In these circumstances, RBee has only one secured creditor, who has not been repaid in full, with an accepted secured claim and whose security would be sufficiently broad enough to attach to the Funds, Crown LP. The proceeds in question – the Funds – are proceeds of the Settlement, which fully and finally resolved the Preferences Application, among other things. The limited existing case law is highly fact-dependent and does not provide any guidance about how the Funds should be distributed.

B. The Case Law is Highly Fact-Specific

18. There is case law indicating both that proceeds of a successful preferences application are subject to the security interests of secured creditors and that such proceeds should be

¹⁰ Second Report at para 9.

¹¹ *Bankruptcy and Insolvency Act*, [RSC 1985, c B-3](#) (the "*BIA*") at s. [136](#).

distributed to the general body of unsecured creditors. A leading Ontario case that surveyed both lines of case law, *Tucker v Aero Inventory (UK) Ltd*, held that once a transaction is determined to be void on the basis that it is preferential, the issue of whether the proceeds are available to a secured creditor or the trustee (for distribution to unsecured creditors) will depend on the security interests and assets in question. In that case, the Court held that the proceeds of a preferences application may not be subject to the rights of a secured creditor if the security interest is a floating charge, or if the transferor was entitled to freely dispose of the collateral or asset at issue.¹²

19. In *Tucker*, the Ontario Court noted that jurisprudence about how proceeds of a preferences application should be treated is "unclear and inconsistent" across the Commonwealth.¹³ The balance of jurisprudence had held that property recovered from a successful preferences application, and particularly money, is usually not the "same" property that was transferred, but simply a recovery in specie. Thus, the proceeds would become part of the general assets of the estate and would not be subject to floating charges. Secured creditors could only assert their priority over these proceeds in circumstances where specifically identified property was subject to a particular charge and was then subsequently recovered.¹⁴

20. The Ontario Court confirmed that the proceeds recovered by a Trustee from a preferences application are brought into the estate and must be distributed pursuant to the priority scheme in the *BIA*. However, that distribution remains "subject to the rights of recovery of secured creditors". In its analysis, the Ontario Court noted that "if the debtor was in a position to lawfully dispose of the collateral free and clear of the security interest, and has done so, it could very well be that the only recovery for the secured creditor would be to participate in a distribution to unsecured creditors under s. 136 of the *BIA*" [emphasis added].¹⁵ Ultimately, Justice Morawetz (as he then was) determined that the first issue will be determining whether a transaction is void on the basis that it is preferential. Once that is determined, the Court must then determine whether the proceeds of the preferences application should be provided to the trustee for distribution to unsecured creditors or to a secured creditor.¹⁶ That analysis will also engage principles of property law.¹⁷

¹² *Tucker v Aero Inventory (UK) Ltd*, [2011 ONSC 4223](#) ("*Tucker*") at paras 125–134.

¹³ *Tucker* at para 98.

¹⁴ *Tucker* at paras 86–87 and 89.

¹⁵ *Tucker* at para 150.

¹⁶ *Tucker* at para 167.

¹⁷ *Tucker* at para 98.

21. Although *Tucker* summarizes the state of the law and creates a two-part analytical framework, it does not have analogous facts. Specifically, the Funds in question on this application are not proceeds of a successful preferences application, but rather are settlement funds where no admission or finding of liability has been made. There is no case that the Trustee was able to uncover that assists in determining the appropriate approach to the current facts.

C. There is no Precedent on Point to the Present Facts

22. The two-step analysis that Justice Morawetz established in *Tucker* cannot be applied to the present facts, as it is impossible in the circumstances to determine the first issue. The Funds are proceeds of a settlement agreement.

23. Further, the Dismissal Order, by its terms, stated that the dismissal therein shall have the same force and effect as if it had been pronounced as a decision of the Court after a full and complete hearing. In other words, there was no finding (or admission) that the Related Party Transactions were preferential and there will not be any such findings in the future. The first step in the *Tucker* analytical framework cannot be completed.

24. If the necessary findings had been made in the first step, the next stage of analysis would be to consider the specific rights of the secured creditors. The case law indicates that if a party could lawfully dispose of the collateral free and clear of the security interest, that interest may have detached and may not re-attach to the recovered collateral.

25. In the present case, Crown LP had a security interest over all present and after-acquired property of RBee, including RBee's money and accounts as well as proceeds thereof. Crown LP's general security agreement permitted RBee to make payments in the ordinary course of its business free and clear of Crown LP's security interest. The *Tucker* analysis would require the Court to consider whether the Related Party Transactions were ordinary course transactions and, therefore, whether Crown LP's security interest detached from the funds. That issue would assist the Court in determining whether the Funds should be distributed to Crown LP, as secured creditor, or to the general body of Unsecured Creditors.¹⁸

26. Whether the Related Party Transactions were ordinary course transactions was an issue raised in the Preferences Application.¹⁹ As a result of the Settlement, there was no determination

¹⁸ *Tucker* at para 167.

¹⁹ See, for example, the Brief of Argument of the Trustee in support of the Preferences Application filed April 23, 2025, at para 116.

of that issue, and it is subject to the Dismissal Order, so no finding can now be made. Thus, it is impossible to apply the *Tucker* framework to the present circumstances.

27. There is also case law indicating that settlement proceeds are subject to the security interests of secured creditors. For example, in *Re ASI Acoustical Supplies*, a customer purchased inventory from the bankrupt on the eve of its bankruptcy but refused to pay the account receivable for that inventory. During the bankruptcy, the trustee alleged that this transaction was preferential. The customer eventually settled the matter and paid a settlement to the trustee.²⁰ The Registrar concluded that these settlement monies were not an asset of the estate because they were accounts receivable and thus subject to the secured creditors' security interests.²¹ The Registrar said "the fact that [...] the claim was eventually paid because the trustee alleged that there was a fraudulent preference, does not convert this asset into some other kind of asset not subject to the security interest."²² The trustee appealed the decision to the Supreme Court of British Columbia.²³ That Court upheld the Registrar's decision, stating that "[i]n any event the fact that only a Trustee can make a claim alleging a fraudulent preference does not change the priority position of a secured creditor."²⁴

28. In *Tucker*, Justice Morawetz emphasized that the Court in *ASI* recognized "in the circumstances of that case, the fact that a fraudulent preference action had commenced [sic], did not preclude the ability of a secured creditor to realize on security or to follow the proceeds from security in accordance with the specific security agreement" [emphasis added].²⁵ While the trustee in *ASI* alleged that the transaction was preferential, it did not file a preference application. In *ASI*, the trustee did, however, inform the Registrar that "the matter was settled on the basis that the purchase of inventory was a fraudulent preference."²⁶ In the present case, the Preferences Application was filed, but the basis for the Settlement, as demonstrated by the Dismissal Order, did not include any admission or finding of liability. Although *ASI* provides useful guidance, it is not directly analogous to the present facts.

²⁰ *ASI Acoustical Supplies Inc, Re*, [2000 BCSC 1466](#) at paras 10-12.

²¹ *ASI Acoustical Supplies Inc, Re*, [2000 BCSC 1466](#) at paras 9 and 14.

²² *ASI Acoustical Supplies Inc, Re*, [2000 BCSC 1466](#) at para 14.

²³ *ASI Acoustical Supplies Inc, Re* [2000 BCSC 1838](#) ("*ASI*")

²⁴ *ASI* at paras 8 and 20.

²⁵ *Tucker* at para 123.

²⁶ *ASI* at paras 2 and 10.

29. The Trustee was unable to find any cases with analogous facts to guide how the Funds should be distributed. Given the lack of guidance for present circumstances, and considering the distribution scheme in the *BIA*, the Trustee identified two potential options for distribution, discussed below.

D. Distribution Options in the Current Circumstances

30. There are two options to distribute the Funds (in both cases net of the professional fees and disbursements of the Trustee and its legal counsel and the levy of the Office of the Superintendent of Bankruptcy):

- (a) to Crown LP, as senior secured creditor, in partial repayment of its approximately \$20.7 million in secured debt; or
- (b) to the general body of Unsecured Creditors on a *pari passu* basis.²⁷

31. Having considered the *BIA*'s treatment of secured parties, the interests of all parties to the proceedings, and the equities in these specific circumstances, the Trustee's view is that it is appropriate to distribute the net Funds to Crown LP for the reasons set out below.

i. Crown LP's Security Interest is Likely to Still Apply to the Funds

32. As noted in *Tucker*, property recovered from a preferences application is not the same property that was transferred. The Funds are *not* property recovered from the Preferences Application. They are proceeds of the Settlement. No finding was made that the Related Party Transactions were preferential and, as a result of the Dismissal Order, no such finding will be made.

33. Crown LP holds security over all present and after-acquired property of RBee, including money, accounts, and proceeds thereof. Pursuant to section 136 of the *BIA*, any distribution would ordinarily be subject to Crown LP's security interest.²⁸ Crown LP could reasonably argue that the Funds simply represent ordinary proceeds subject to its security interest. Thus, it is more likely than not that the Funds are subject to Crown LP's security interest.

34. As a result, the Trustee's view is that it should distribute the Funds to Crown LP. This reflects the ordinary distribution scheme under section 136 of the *BIA*, aligns with stakeholders'

²⁷ Second Report at para 22.

²⁸ *BIA*, s. 136 and *Tucker* at para 150.

reasonable expectations, and treats the Funds consistently with settlement proceeds from any other kind of litigation.

ii. Distribution to Unsecured Creditors Raises Issues of Unfairness

35. In the absence of any findings about the nature of the Related Party Transactions, there is no clear legal basis to treat the Funds as recoveries of the Preferences Application rather than ordinary settlement proceeds, and thus no basis to disregard Crown LP's priority security interest.

36. Even if the Funds were characterized as recoveries from the Preferences Application, the *Tucker* framework would require consideration of whether Crown LP's security interest would attach. Given Crown LP's broad security over all present and after-acquired property, there is no clear basis to conclude its security interest would not attach to the Funds even if they were recoveries from a preferences application.

37. The Related Parties are themselves creditors of RBee, and three of the four Related Parties are Unsecured Creditors based on the books and records of RBee.²⁹ If the Funds were distributed to the general body of Unsecured Creditors, the Related Parties would likely receive their pro rata share,³⁰ thus reducing both the effective quantum of the settlement Funds and the overall distribution to arm's length unsecured creditors, including Crown LP.

E. The Confidential Supplement Should be Sealed

38. Details of the Settlement are disclosed at the Confidential Supplement to the Second Report. Given the privileged and confidential nature of the Settlement, the Trustee seeks an Order sealing the Confidential Report.

39. In *Sierra Club of Canada v Canada (Minister of Finance)*, the SCC held that courts should exercise their discretion to grant sealing orders where (i) the order is necessary to prevent a serious risk to an important interest, including a commercial interest, and (ii) the salutary effects of the order outweigh its deleterious effects.³¹

²⁹ First Report at para 18 and Appendix "A" at paras 13-14, Second Report at para 32.

³⁰ Second Report at paras 33-34.

³¹ *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41](#) at para 53.

40. In *Sherman Estate v Donovan*, the SCC applied the test from *Sierra Club*. As provided in *Sherman Estate*, an applicant requesting a court to exercise discretion in a way that limits the open court presumption must establish that:³²

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

41. The SCC has clarified that a party's legitimate commercial interests constitute an "important public interest" for the purposes of this test.³³

42. The Confidential Supplement contains sensitive and confidential information, which is subject to settlement privilege jointly held by RBee, the Related Parties and Crown LP. This includes confidential and settlement privileged information about certain matters unrelated to the Preferences Application.³⁴

43. A sealing order is necessary to prevent the Confidential Supplement from being publicly disclosed. Public disclosure of the information in the Confidential Supplement would breach the parties' settlement privilege. Disclosure of such information would cause a serious risk of harm to an important public interest.

44. Furthermore, the scope of the sealing order is limited to the Confidential Supplement. The information in the Confidential Supplement would otherwise be protected by settlement privilege. The proposed sealing order is the least restrictive means to prevent disclosure of the privileged information contained in the Confidential Supplement. The salutary effects of sealing the Confidential Supplement outweigh the deleterious effects of not doing so.

45. Accordingly, this Honourable Court should exercise its discretion to seal the Confidential Supplement.

³² *Sherman Estate v Donovan*, [2021 SCC 25](#) at para 38 ("***Sherman Estate***").

³³ *Sherman Estate* at para 41.

³⁴ Confidential Supplement to the Second Report at para 7 and Appendix "A".

V. RELIEF REQUESTED

46. Based on the foregoing, the Trustee seeks the Court's advice and directions in the circumstances as to whether, absent clear and direct case law on point, the general scheme of distribution under section 136 of the *BIA* governs and the Funds should be distributed to Crown LP in partial satisfaction of its secured claims against RBee, net of professional fees of the Trustee and its legal counsel and the levy payable to the Office of the Superintendent of Bankruptcy, as described in the Second Report.

47. The Trustee also respectfully requests that this Court grant the Sealing Order substantially in the form attached to the within Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of March 2026.



Kelly Bourassa / Clinton Slogrove
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TABLE OF AUTHORITIES

Tab	Authority
1.	<i>Bankruptcy and Insolvency Act</i> , RSC 1985, c B-3 .
2.	<i>Tucker v Aero Inventory (UK) Ltd</i> , 2011 ONSC 4223 .
3.	<i>ASI Acoustical Supplies Inc, Re</i> , 2000 BCSC 1466 .
4.	<i>ASI Acoustical Supplies Inc, Re</i> 2000 BCSC 1838 .
5.	<i>Sierra Club of Canada v Canada (Minister of Finance)</i> , 2002 SCC 41 .
6.	<i>Sherman Estate v Donovan</i> , 2021 SCC 25 .