

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

and

PEACE BRIDGE DUTY FREE INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY
ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE
ACT, R.S.O. 1990, c. C.43, AS AMENDED

RESPONDING MOTION RECORD
(Returnable 25 July 2023)

21 July 2023

GOWLING WLG (CANADA) LLP

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Lawyers for Buffalo and Fort Erie Public Bridge
Authority

TO: THE SERVICE LIST

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**SERVICE LIST
(as at 6 October, 2022)**

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AND TO:	<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto, ON, M5C 3G5</p> <p>David T. Ullmann (LSO #423571) Email: dullmann@blaney.com</p> <p>John Wolf (LSO #30165B) Email: jwolf@blaney.com</p> <p>Lawyers for the Respondent</p>
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AND TO:	<p>PEACE BRIDGE DUTY FREE INC. 1 Peace Bridge Plaza Fort Erie, ON L2A 5N1</p> <p><i>Respondent</i></p>
AND TO:	<p>GOWLING WLG 100 King St. W., Suite 1600 Toronto, ON M5X 1G5</p> <p>Christopher Stanek (LSO# 45127K) Tel: (416) 862-4369 Fax: (416) 862-7661 Email: christopher.stanek@gowlingwlg.com</p> <p>E. Patrick Shea (LSO# 39655K) Email: patrick.shea@gowlingwlg.com</p> <p><i>Lawyers for Buffalo and Fort Erie Public Bridge Authority</i></p>
AND TO:	<p>THORNTON GROUT FINNIGAN LLP 100 Wellington Street West Toronto-Dominion Centre, Suite 3200 Toronto, ON M5K 1K7</p> <p>Leanne Williams Tel: (416) 304-0060 Fax: (416) 304-1313 Email: lwilliams@tgf.ca</p> <p><i>Lawyers for the Monitor</i></p>

AND TO:	ATTORNEY GENERAL OF CANADA Department of Justice Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON Diane Winters Tel: (647) 256-7459 Email: diane.winters@justice.gc.ca
AND TO:	MINISTRY OF FINANCE (ONTARIO) Legal Services Branch 6 th Floor – 33 King Street WestOshawa, ON L1H 8H5 Email: insolvency.unit@ontario.ca
<p style="text-align: center;">EMAIL ADDRESS LIST</p> <p> smitra@airdberlis.com; lwilliams@tgf.ca; christopher.stanek@gowlingwlg.com; diane.winters@justice.gc.ca; insolvency.unit@ontario.ca; mmanchanda@spergel.ca; dullmann@blaney.com; jwolf@blaney.com; </p>	

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1	Affidavit of Ron Rienas sworn 21 July 2023
A	Minutes from 30 April 2021 (redacted)
B	Minutes from 28 May, 8 October and 19 November 2021 (redacted)

TAB 1

Court File No. CV-21-00673084-00CL

**ONTARIO
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ACT, R.S.O. 1990, c. C.43, AS AMENDED

AFFIDAVIT OF RON RIENAS
(Sworn 21 July 2023)

I, RON RIENAS of the City of Port Colborne, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am the General Manager of Buffalo and Fort Erie Public Bridge Authority (the "**Authority**") and, as such, have personal knowledge of the matters herein deposed save and except where I rely on information and belief, in which cases I identify the source of that information and verily believe it to be true.
2. I am swearing Affidavit in response to a Motion brought by Peace Bridge Duty Free Inc. ("**PBDF**") seeking (further) disclosure from the Authority.
3. It is my understanding, based on my review of PBDF's Motion Record dated 19 July 2023, that on 25-26 July 2023, PBDF is going to be asking the Court to order that the Authority disclose:

- (a) the minutes for the executive sessions of the board meetings held on 30 April, 28 May, 8 October and 19 November 2021¹ redacted only for privilege;
- (b) all written communications, including but not limited to, letters, faxes, emails and text messages sent or received by the Authority's board members for the period January 2020 to December 2021 relating to the Lease, Art 18.07, rent abatement, rent relief, and/or any other similar form of relief for either PBDF or the operator of the US duty free store; and
- (c) unredacted copies of the lease and rent relief agreements as between the Authority and the operator of the US duty free store.

Minutes

- 4. There were three (3) substantive matters addressed at the meeting on 30 April 2021: (a) approval to negotiate a new rent deferral agreement with the operator of the US duty free—Duty Free Americas, Inc. (“DFA”)²; (b) a privileged discussion concerning PBDF; and (c) negotiations concerning the sale of a property owned by the Authority that includes pricing. Attached as **Exhibit “A”** is a copy of the Minutes from 30 April 2021 redacted to remove the privileged portion as well as the identity of the property involved in the sale and the pricing.
- 5. The only substantive matters addressed at the meetings on 28 May, 8 October and 19 November 2021 are matters over which the Authority asserts privilege insofar as they involve legal advice provided to the Authority or requests for legal advice. Attached as

¹ There is a typo in both the Notice of Motion and the Affidavit of Cristina Fulop sworn 19 July 2023. The meeting in November of 2021 was held on 19 November 2021.

² The lease is technically with AMMEX Tax and Duty Free Shops, Inc.

Exhibit “B” are copies of the minutes from those meetings redacted to remove only the portion over which the Authority claims privilege.

Communications with Directors

6. The Authority does not communicate with directors *via* letter, fax or text message. All communications with the directors is via e-mail.
7. Ms Costa and I conducted searches of our current and archived e-mails from 2020 and 2021 to identify relevant e-mails. In addition, we conducted “word-specific” searches. In a 23 June 2023 letter from Gowling to Blaney, the Authority offered to conduct further “word-specific” searches. PBDF did not ask that the Authority conduct any additional “word-specific” searches.
8. The concern raised by Chistina Fulop in her Affidavit sworn 19 July 2023 is that the searches conducted by Ms Costa and I would not have identified communications: (a) between the directors and operational staff; or (a) between the directors, that was not copied to either Ms Costa or I.
9. It is correct that the searches that Ms Costa and I conducted would not have identified any e-mails between the directors and operational staff that was not copied to either Ms Costa or I. However, the Authority’s board is what would be described as a “governance” or “oversight” board. All of the directors are independent and none of them has any role in the conduct of the Authority’s day-to-day business.
10. The flow of information between the directors and the Authority is through me and, on financial matters, Ms. Costa. None of the Authority’s operational employees have direct engagement with the directors at all, let alone concerning legal issues. The Authority has

about 80 full- and part-time employees and to conduct a search all of their current and archived e-mails over a two-year period would be time-consuming and expensive.

11. With respect to any communications between the directors themselves, the Authority does not provide the directors with Authority-owned e-mail accounts, smart phones or computers. The directors, who include a number of lawyers, the Commissioner of the New York State Transportation Authority and an Assistant Attorney General in Charge at the Office of the New York State Attorney General, use their personal or business e-mail accounts, computers and smart phones. I note that Tim Clutterbuck has recently retired and his e-mails from 2020 and 2021 would, assuming they were archived, be in the possession and under the control of his former employer.
12. I have no knowledge of any communications between directors discussing PBDF or DFA and no knowledge of any communications between the directors and the Authority involving PBDF other than those involving Ms Costa and/or me, which communications were identified based on the searches that Ms Costa and I undertook.
13. I made inquiries of the current directors and each has confirmed to me: (a) they do not recall having had any communications with the Authority that did not involve Ms Costa and/or me; and (b) they do not recall having had any written exchanges with another director or directors concerning the situation involving PBDF or DFA.
14. Assuming it were possible for the Authority to secure access to the e-mail accounts, computers and smart phones used by the directors to conduct the type of (presumably word-specific) searches that PBDF is asking the Court to order, the exercise would be time-consuming and expensive. I have no idea how many e-mails and text messages each of the directors might have sent and received between January of 2020 to December of 2021, but I expect that the global number is large and some process would need to be

put in place—likely a third-party—to ensure that privileged and/or sensitive e-mails are not accessible to the Authority as it searches for communications that almost certainly do not exist.

US Lease and Related Documents

15. The Authority does not believe that the lease and other agreements with DFA are relevant to the interpretation or application of Art 18.07 of the Lease.
16. The lease for the US duty free (the “**US Lease**”) was negotiated in 1995 and includes nothing comparable to Art 18.07 of the Lease. In fact, there is little resemblance between the US Lease and the Lease.
17. Unlike PBDF, the US duty free remained open throughout the COVID pandemic. During the COVID pandemic, the Authority entered into two (2) rent deferrals with DFA. DFA complied with its obligations under each of those agreements. The Authority has entered into a rent abatement agreement with DFA to address how DFA will pay the deferred rent, just as it has offered to do with PBDF.
18. The speculation in the Cross-Motion that the Authority has agreed to accept percentage rent only from DFA on a permanent basis and defer all arrears is not factually correct. As noted in paragraph 40 of my Affidavit sworn 22 November 2022:

*40. In paragraphs 101 to 104 of his Affidavit Mr. Pearce asserts that: (a) the operator of the US duty free was, in 2021, paying only percentage rent; and (b) the Authority has given preferential treatment to the operator of the US duty free by requiring that PBDF pay the base rent required by the Lease. This is unfair. The Authority negotiated an agreement with the operator of the US duty free that contemplated the **temporary** deferral of rent in 2021 similar to what was provided for in the First Rent Deferral. There is now an agreement in place with the operator of the US duty free that provides for a much smaller rent abatement than has been offered to PBDF and the deferred rent owing by the operator of the US duty free is being repaid, with interest.*

19. The rent abatement agreement with DFA. That agreement contemplates a 20% abatement—as opposed to the 100% abatement demanded by PBDF and the 50% abatement offered to PBDF by the Authority. Provided that 80% of the rent arrears that were deferred, plus interest, are paid by December of 2027 and there are no defaults under the lease, the Authority will forgive the remaining 20%. DFA has been repaying the deferred rent as required.
20. While, the Authority does not believe the documents relating to the US duty free are relevant, it takes no position as to whether the Court should make an order requiring the Authority to disclose: (a) unredacted copies of the US Lease and the rent deferral agreements; (b) any reports to the board supporting the rent deferral agreements with DFA; and (c) the agreement giving DFA a rent abatement described above. The Authority's only issue with releasing these documents—aside from the fact that they are not relevant—is that they include information that DFA might consider confidential and DFA should have an opportunity to address any concerns it might have. In that regard, I note that rather than serve DFA with a copy of its Motion Record, PBDF appears to have sent an e-mail to what appears to be a “generic” e-mail account on 19 July 2023 attaching its Motion Record. On 20 July 2023, I provided a copy of PBDF's Motion Record to the Authority's contact at DFA via e-mail.

Additional Disclosure by PBDF

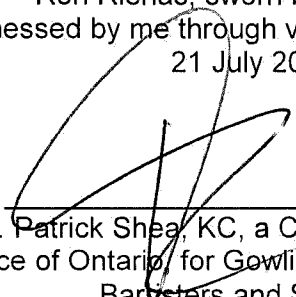
21. On 23 June 2023, Blaney sent a letter to Gowling indicating that PBDF had identified at least 6,800 e-mails from an e-mail account belonging to Greg O'Hara that had not been previously identified or disclosed. To date there have been no additional disclosures from PBDF and PBDF has refused to answer any questions concerning these e-mails or the process that resulted in them being “discovered”.

SWORN BEFORE ME remotely at the City of Port Colborne and the City of Toronto, in the Province of Ontario, this 21st day of July, 2023
In accordance with O. Reg. 431/20
Administering Oath or Declaration Remotely

A COMMISSIONER FOR TAKING AFFIDAVITS

RON RIENAS

This is **Exhibit "A"** to the affidavit of
Ron Rienas, sworn before me and
witnessed by me through videoconferencing on
21 July 2023.



E. Patrick Shea, KC, a Commissioner, etc.,
Province of Ontario, for Gowling WLG (Canada) LLP,
Barristers and Solicitors.

CONFIDENTIAL

At the Regular Board Meeting
Executive Session
Via Zoom Video Conference
April 30, 2021

1. CALL TO ORDER

The Chairman called Executive Session to order at 8:39 AM.

2. ROLL CALL

Present

T. Clutterbuck, Chair
 F. Cirillo
 L. Holloway
 K. Manning
 J. Persico
 P. Robson
 M. Russo
 D. Zimmerman

Absent

A. Masiello (*with regrets*)

Staff Present

R. Rienas, General Manager
 K. Costa, Chief Financial Officer
 T. Boyle, Chief Operating Officer
 K. Kaiser, Executive Assistant

3. CONFLICTS OF INTEREST

None

4. ADOPTION OF MINUES

Moved by J. Persico
 Seconded by K. Manning

"THAT the Board approve the minutes of the Regular Board Meeting Executive Session dated March 26, 2021."

CARRIED

5. NEW BUSINESS

a) Duty Free Americas (U.S.) – Report No. 934/21

Moved by M. Russo
 Seconded by L. Holloway

"THAT a new rent deferral agreement be negotiated with Duty Free Americas."

CARRIED

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONFIDENTIAL

c) Sale of [REDACTED] – verbal

R. Rienas advised the purchaser countered with [REDACTED] in response to the Board's [REDACTED]. The offer was rejected.

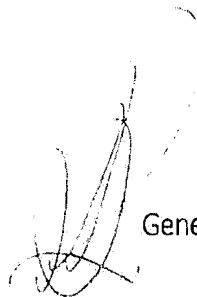
6. **RETURN TO REGULAR SESSION**

Moved by J. Persico

Seconded by K. Manning

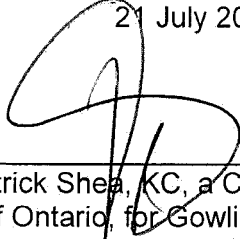
"THAT the meeting return to regular session."

CARRIED



Ron Rienas,
General Manager

This is **Exhibit "B"** to the affidavit of
Ron Rienas, sworn before me and
witnessed by me through videoconferencing on
21 July 2023.

A handwritten signature in black ink, appearing to be 'E. Patrick Shea', written over a horizontal line.

E. Patrick Shea, KC, a Commissioner, etc.,
Province of Ontario, for Gowling WLG (Canada) LLP,
Barristers and Solicitors.

CONFIDENTIAL

At the Regular Board Meeting
Executive Session
Via Zoom Video Conference
May 28, 2021

1. **CALL TO ORDER**

The Chairman called Executive Session to order at 8:38 AM.

2. **ROLL CALL**

Present

T. Clutterbuck, Chair
 F. Cirillo
 L. Holloway
 K. Manning
 T. Masiello
 M. Neubauer
 J. Persico
 P. Robson
 M. Russo
 D. Zimmerman

Staff Present

R. Rienas, General Manager
 K. Costa, Chief Financial Officer
 T. Boyle, Chief Operating Officer
 K. Kaiser, Executive Assistant

Others Present

C. Stanek, Gowling WLG

3. **CONFLICTS OF INTEREST**

None

4. **ADOPTION OF MINUES**

Moved by K. Manning
 Seconded by L. Holloway

"THAT the Board approve the minutes of the Regular Board Meeting Executive Session dated April 30, 2021."

CARRIED

[REDACTED]

■

[REDACTED]

CONFIDENTIAL

6. **RETURN TO REGULAR SESSION**

Moved by D. Zimmerman

Seconded by J. Persico

"THAT the meeting return to regular session."

A handwritten signature in ink, appearing to be "Ron Rienas", written in a cursive style.

CARRIED

Ron Rienas,
General Manager

CONFIDENTIAL

At the Regular Board Meeting
Executive Session
Via Zoom Video Conference
October 8, 2021

1. CALL TO ORDER

The Chairman called Executive Session to order at 9:03 AM.

2. ROLL CALL

Present

T. Clutterbuck, Chair
 F. Cirillo
 L. Holloway
 K. Manning
 A. Masiello
 M. Neubauer
 J. Persico
 P. Robson
 M. Russo
 D. Zimmerman

Staff Present

R. Rienas, General Manager
 K. Costa, Chief Financial Officer
 T. Boyle, Chief Operating Officer
 K. Kaiser, Executive Assistant

Also Present

C. Stanek, Esq., Gowlings
 P. Shay, Esq., Gowlings

3. CONFLICTS OF INTEREST

None

4.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

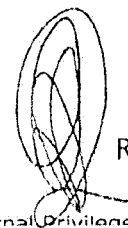
CARRIED

RETURN TO REGULAR SESSION

Moved by J. Persico
 Seconded by M. Russo

"THAT the meeting return to regular session."

CARRIED



Ron Rienas, General Manager

CONFIDENTIAL

At the Regular Board Meeting
Executive Session
Via Zoom Video Conference
November 19, 2021

1. CALL TO ORDER

The Chairman called Executive Session to order at 8:59 AM.

2. ROLL CALL

Present

T. Clutterbuck, Chair
 F. Cirillo
 L. Holloway
 K. Manning
 T. Masiello
 M. Neubauer
 J. Persico
 P. Robson
 M. Russo
 D. Zimmerman

Staff Present

R. Rienas, General Manager
 T. Boyle, Chief Operating Officer
 K. Costa, Chief Financial Officer
 K. Kaiser, Executive Assistant

Others Present

C. Stanek - Gowlings

3. CONFLICTS OF INTEREST

None

4.

[REDACTED]

5. RETURN TO REGULAR SESSION

Moved by P. Robson
 Seconded by D. Zimmerman

"THAT the meeting return to regular session."

CARRIED

Ron Rienas,
 General Manager

ROYAL BANK OF CANADA

Applicant

-and-

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SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

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(Sworn 21 July 2023)

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