

**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

SUPPLEMENTAL FACTUM OF BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY

(Motion returnable 9 December 2022)

Date: 28 November 2022

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Christopher Stanek (LSO# 45127K)

Tel: 416-862-4369

Fax: 416-862-7661

E. Patrick Shea (LSO# 39655K)

Tel: 416-369-7399

Fax: 416-862-7661

Lawyers for the Authority

TO: THE SERVICE LIST

SUPPLEMENTAL FACTUM
(Motion Returnable 9 December 2022)

1. Article 2.17 of the Lease says:

2.17 Amendment and Waiver

No supplement, modification, amendment, waiver, discharge or termination of this Lease is binding unless it is executed in writing by the party to be bound. No waiver of, failure to exercise, or delay in exercising, any provision of this Lease constitutes a waiver of any other provision (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

2. This clause prevents PBDF from relying on estoppel by convention or waiver based on the fact that the Authority did not immediately and aggressively seek to enforce its right to receive minimum rent. [See *KL Solar Projects LP v. Independent Electricity System Operator*, [2019 ONSC 6501](#) (CanLII) aff'd, *Grasshopper Solar Corporation v. Independent Electricity System Operator*, [2020 ONCA 499](#) (CanLII), *Roberts v ZoomerMedia Limited*, [2016 ONSC 1567](#) (CanLII) aff'd, [2017 ONCA 327](#) (CanLII) and *Susin v. TD Waterhouse Discount Brokerage*, [2020 ONSC 959](#) (CanLII)]

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of November 2022.

E. Patrick Shea

E. Patrick Shea
GOWLING WLG (CANADA) LLP
Lawyers for Buffalo and Fort Erie Public Bridge Authority

SCHEDULE A

**KL Solar Projects LP v. Independent Electricity System Operator, 2019 ONSC 6501 (CanLII) aff'd,
Grasshopper Solar Corporation v. Independent Electricity System Operator, 2020 ONCA 499 (CanLII)**

Roberts v ZoomerMedia Limited, 2016 ONSC 1567 (CanLII) aff'd, 2017 ONCA 327 (CanLII)

Susin v. TD Waterhouse Discount Brokerage, 2020 ONSC 959 (CanLII)

SCHEDULE B

ROYAL BANK OF CANADA
Applicant

-and-

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

PEACE BRIDGE DUTY FREE INC.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**SUPPLEMENTAL FACTUM OF
BUFFALO & FORT ERIE PUBLIC BRIDGE AUTHORITY**

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Fax: 416-862-7661

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