

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

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

DISTINCT INFRASTRUCTURE GROUP INC., DISTINCT INFRASTRUCTURE GROUP WEST INC., DISTINCTTECH INC., IVAC SERVICES INC., IVAC SERVICES WEST INC., and CROWN UTILITIES LTD.

Respondents

MOTION RECORD OF THE RECEIVER AND THE APPLICANT

November 29, 2019

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Lawyers for the Receiver

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1.	Notice of Motion
2.	Special Report of the Receiver dated November 28, 2019 (<i>filed separately</i>)

TAB 1

**ONTARIO
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Respondents

NOTICE OF MOTION

DELOITTE RESTRUCTURING INC. (“**Deloitte**”), in its capacity as court-appointed receiver and manager (the “**Receiver**”) of Distinct Infrastructure Group Inc. (“**DIG**”), Distinct Infrastructure Group West Inc., DistinctTech Inc., iVac Services Inc., iVac Services West Inc. and Crown Utilities Ltd. (collectively, the “**Respondents**”) will make a motion to a Judge presiding over the Commercial List on a date to be set following a 9:30 scheduling appointment scheduled for December 2, 2019 at 330 University Avenue, Toronto, Ontario.

ROYAL BANK OF CANADA INC. (the “**Bank**”) will make a motion to a Judge presiding over the Commercial List on a date to be set following a 9:30 scheduling appointment scheduled for December 2, 2019 at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: These Motions are to be heard orally.

THE RECEIVER’S MOTION IS FOR:

1. An Order:
 - (a) if necessary, abridging the time for service of this Notice of Motion and the materials filed in support of its motion and dispensing with further service thereof;
 - (b) requiring certain former executives (namely Joe Lanni (“**Lanni**”) and Alex Agius (“**Agius**” and together with Lanni, the “**Former CEOs**”)) to repay amounts to the Receiver, for the benefit of the Respondents’ creditors, incurred by the Former CEOs as expenses on corporate credit cards for personal benefit, in the following amounts:
 - (i) Lanni to repay \$69,623; and
 - (ii) Agius to repay \$172,064; and

THE BANK’S MOTION IS FOR:

2. An Order:

- (a) if necessary, abridging the time for service of this Notice of Motion and the materials filed in support of its motion and dispensing with further service thereof;
- (b) directing that a Statement of Claim to be issued by Royal Bank of Canada (the “**Bank**”) against the Former CEOs and attached hereto as **Schedule “A”** be issued by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), and be case managed by Justice Hainey as the supervising judge overseeing this receivership proceeding.

THE GROUNDS FOR THE MOTIONS are as follows:

Receiver’s Motion: Reimbursement of Personal Expenses

- 3. By Order of the Court dated March 11, 2019 (the “**Appointment Order**”), Deloitte was appointed as Receiver of the assets, undertakings and properties (collectively, the “**Property**”) of the Respondents pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”);
- 4. The application for the appointment of the Receiver was brought by Royal Bank of Canada (the “**Bank**”) in respect of a secured indebtedness owing by the Respondents of approximately CDN\$53 million plus USD\$8,000 as at that time;

5. Deloitte had been previously engaged by the Bank as its consultant to review issues of concern and conduct a business review in December, 2018;
6. During Deloitte's engagement as the Bank's consultant, financial irregularities were discovered and a special committee of the board of directors (the "**Special Committee**") was formed to investigate;
7. In the course of their investigations, the Special Committee analyzed the expense accounts of the Former CEOs, and determined that a substantial number of the expenses did not appear to be for the benefit of the Respondents;
8. The employment of the Former CEOs was terminated by the Special Committee on behalf of the Respondents on February 18, 2019 for various stated grounds including for "Misuse of company funds for personal gain";
9. The Respondents demanded that the Former CEOs reimburse them for all expenses the Respondents deemed as personal by email dated February 26, 2019;
10. Following its appointment, the Receiver also demanded that the Former CEOs satisfy the Respondents' demands by letter dated April 2, 2019;
11. To date the Former CEOs have not made any payments pursuant to the demands nor given good reasons for their failure to do so;

12. The Receiver agrees with the Respondents' assessment on certain of the personal expenses of the Former CEOs, and seeks repayment for those expenses that do not appear to have been incurred for any legitimate business purposes;
13. The Receiver is of the view that the Respondents' creditors should not be put to undue expense, and their recoveries should not be further diminished by the incurring of significant expense by the Receiver in obtaining reimbursement of amounts due and owing by the Former CEOs to the Respondents;

The Bank's Motion: Claim by the Bank against the Former CEOs

14. The Bank has advised the Receiver that it intends to bring a claim against the Former CEOs seeking damages of \$519,765.28 against each of the Former CEOs;
15. The claim arises out of the repayment by DIG of promissory notes held by each of the Former CEOs. The Bank claims that such repayment was in breach of a postponement agreement between the Former CEOs, DIG and the Bank;
16. The Receiver is of the view that such claim ought to be issued on the Commercial List, to be case managed by the same supervising Judge as manages the receivership;
17. It would be the most efficient and cost effective means of advancing the litigation and avoiding a multiplicity of proceedings that are not coordinated and managed efficiently;
18. It would be in the best interests of the Respondents and their creditors;

19. The Receiver supports the Bank's request for the claim to be issued by the Commercial Court, to be case-managed by Justice Hainey; and
20. such other grounds as counsel may advise and this Honourable Court may deem just.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this application:

1. Special Report of the Receiver dated November 28, 2019 (filed separately); and
2. such further and other evidence as counsel may advise and this Honourable Court may permit.

November 29, 2019

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(as at November 29, 2019)

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Court File No. CV-19-00615270-00CL

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