

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

In the Matter of Express Gold Refinancing Ltd.  
Plaintiff(s)

AND

Defendant(s)

Case Management  Yes  No by Judge: McBWA

| Counsel                   | Telephone No: | Facsimile No: |
|---------------------------|---------------|---------------|
| <u>(see counsel slip)</u> |               |               |
|                           |               |               |

- Order
- Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

The Monitor seeks documentary disclosure made by the Canada Revenue Agency ("CRA") to the Applicant within the Applicant's appeal from GST/HST assessments and reassessments to the Tax Court of Canada ("TCC").

The CRA submits that this Court lacks jurisdiction to make such an order. It submits that

9 June 21  
Date

McBWA  
Judge's Signature

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the motion must be brought before the  
TTC.

For the reasons that follow, I  
disagree.

First, s. 11 of the CCAA provides this  
Court with broad jurisdiction and  
allows it to "make any order that  
it considers appropriate in the circumstances."

This is consistent with the purpose  
of the CCAA: see *Mattos of ITI /*  
*Imperial / RBH* 2019 ONSC 2222 paras 15-21.  
The CCAA <sup>im provides</sup> ~~allows~~ this Court, therefore,  
with jurisdiction to deal with  
proceedings other than those that arise  
before the Ontario Superior Court of  
Justice (see above case at para 19).

Second, I believe that CRA's  
submission is misplaced. Both the  
Applicant and CRA are significant  
parties / stakeholder in both actions.



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In both actions non-privileged relevant documentation has to be produced in fairness to the parties and to allow the Courts to fulfill their truth seeking function.

I see no tension between this Court and the TCC in this regard and respectfully believe there is no prejudice or harm to either proceeding by my accepting jurisdiction to order the production requested by the Monitor in the CCAA matter. Counsel for CRA could not identify any such concerns. Further, ~~both~~<sup>the</sup> implied undertaking rule offers protection in both actions.

I am further of the view that it is reasonable and necessary to order such production so that the CCAA process can be properly



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carried out. I say this for the following reasons:

- the Applicant consents to the Order sought by the Monitor and submits that the documents sought are critical to its right to defend CRA's accusations;
- the Monitor, at this stage, only seeks the exact same redacted documents that the CRA has already provided to the Applicant;
- the Monitor is prepared to agree to an extensive Production and Confidentiality Order;
- the Monitor requires the documents to fulfill its mandate and this Court cannot manage these CCAA proceedings in a vacuum;
- the Monitor is not a party to the ICC proceedings and may have issues with standing based on the



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caselaw provided by CRA at his motion,  
• para 24(e) of the Second Amended  
and Restated Initial Order allows for  
the production sought by the Monitor and  
CRA did not oppose that relief.

In addition to the above, the  
cases relied upon by the CRA are  
distinguishable and CRA concedes  
it has no caselaw directly on  
point that supports its position.

For example, in Silver Wheaton  
Group [2019] TST No 152 the party  
analogous to the Applicant objected to  
making production for reasons specific  
to that case. In *Tunan v. Doucette*  
[2008] 1 SCR 157 the court dealt  
with the issue of disclosing civil  
transcripts in a criminal proceeding -  
which raises much different  
concerns.



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For all of the reasons above I am satisfied that I have jurisdiction to order the documents currently sought by the Monitor in the TTC proceeding.

As noted at the hearing, at the request of CRA, I will now convene a hearing (if necessary and I urge the parties to attempt to work out this issue) to determine exactly what documents are to be produced and the form of the order.

I want to deal with this matter quickly.

Counsel are to provide me (in an email after consultation) with mutually agreeable dates for a 90 minute motion in June or July. If problems arise I can

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be spoken to at a case conference.

McInt