Federal Court of Appeal | Cour d'appel fédérale

Date: 20260209

Docket: A-144-24

Citation: 2026 FCA 25

CORAM: **WEBB J.A.**
LOCKE J.A.
MACTAVISH J.A.

BETWEEN:

THE TORONTO-DOMINION BANK
(TD CANADA TRUST)

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Vancouver, British Columbia, on September 9, 2025.

Judgment delivered at Ottawa, Ontario, on February 9, 2026.

REASONS FOR JUDGMENT BY: WEBB J.A.

CONCURRED IN BY: LOCKE J.A.
MACTAVISH J.A.

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REASONS FOR JUDGMENT

WEBB J.A.

[1] This is an appeal from the Order of the Federal Court answering two questions posed on a motion brought under Rule 220 of the *Federal Courts Rules*, SOR/98-106. The two questions related to the application of the deemed trust provisions in section 227 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (ITA). The deemed trust arises when an employer deducts or withholds amounts from the salary or wages paid to employees. The two questions were:

A. Do the deemed trust provisions in section 227 of the ITA apply to unsecured creditors?

B. Can unsecured creditors rely on the *bona fide* purchaser for value defence to defend against a deemed trust claim?

[2] The Federal Court Judge found that the answer to the first question was yes and that the answer to the second question was no (2024 FC 441).

[3] For the reasons that follow, I would allow this appeal and set aside the answers provided by the Federal Court.

[4] The two questions that were submitted on the Rule 220 motion are related to an underlying action between the parties. The first question does not accurately reflect the underlying dispute between the parties. The second question, with some modifications, is the relevant question.

[5] The underlying dispute arises in the following context. An employer has failed to remit to the Receiver General all the amounts deducted from wages paid to employees. The employer sells its property and, instead of paying the unremitted source deductions, uses the proceeds from that sale to pay an amount owing to an unsecured creditor who does not have any notice of the failure of the employer to remit the required source deductions. The amount of the proceeds paid to the unsecured creditor exceeds the amount of the unremitted source deductions.

[6] The relevant question in the underlying dispute is whether, in these circumstances, the Crown can recover from that unsecured creditor an amount equal to the unremitted source deductions. This question is directly linked to whether the *bona fide* purchaser for value defence (which will be referred to herein also as the *bona fide* purchaser defence) is available to an unsecured creditor who has received proceeds from an employer who has unremitted source deductions. This is not a situation where the priority of the Crown with respect to unremitted source deductions is to be determined before the funds arising from the sale of property are dispersed. Rather this situation arises where the proceeds from the sale of property are in the hands of an unsecured creditor.

[7] In my view, for the reasons that follow, the answer to the second question is:

> An unsecured creditor can rely on the *bona fide* purchaser for value defence to defend against a claim by the Crown for the unremitted source deductions of an employer who paid proceeds from the sale of their property to the unsecured creditor.

[8] The first question that was posed, as noted below, is too broad and, not only does not accurately reflect the question arising in the dispute between the parties, but also, in my view, is not one for which there is a “yes” or “no” answer. Therefore, the focus in these reasons will be on the second question.

I. Background

[9] The questions arose as a result of a claim by the Crown against the Toronto-Dominion Bank (TD Canada Trust) (TD Bank) for source deductions that H.N.J. Enterprises Ltd. (the Debtor) deducted from the amounts it paid to its employees but failed to remit to the Crown. The parties submitted an Agreed Statement of Facts at the Federal Court hearing. The Federal Court Judge set out the relevant facts in paragraph 5 of his reasons.

[10] The Debtor operated a restaurant business from June 2000 to October 2015. For the years 2013 to 2015, the Debtor withheld certain amounts from the wages paid to its employees. The Debtor remitted some of the amounts so deducted but failed to remit all the withheld amounts as required by the ITA.

[11] In the Agreed Statement of Facts, the parties stipulated that:

> 4. In total, $36,250.86 of the Payroll Source Deductions were for employee CPP/EI contributions and employee federal/provincial income taxes and therefore are subject to a deemed trust in favour of the Crown pursuant to s. 222 and 227 of the *ITA*.

[12] Although the parties stated that the deemed trust provisions of the ITA apply to unremitted CPP and EI contributions, the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (CPP) has its own requirements to remit contributions deducted from amounts paid to employees (section 21) and deemed trust provisions (subsections 23(3) and (4)), which are substantially similar to the deemed trust provisions in the ITA. Similarly, the *Employment Insurance Act*, S.C. 1996, c.

23 (EI Act) has its own requirements to remit premiums deducted from amounts paid to employees (section 82) and deemed trust provisions (subsections 86(2) and (2.1)), which are substantially similar to the deemed trust provisions in the ITA.

[13] The parties stated that the source deductions to which the deemed trust provisions of the ITA would apply were $36,250.86. However, since this amount includes amounts that were to be remitted under the CPP and the EI Act, it is not clear what portion of this amount reflects the amount that should have been remitted under the ITA. In any event, this is an appeal of an Order issued on a Rule 220 Motion to determine a question of law. It is not an appeal of a judgment determining the obligation of the TD Bank to pay the unremitted source deductions of the Debtor. As well, since the parties only referred to the deemed trust provisions of the ITA, these reasons will also only refer to these deemed trust provisions.

[14] In October 2015, the Debtor ceased carrying on business and sold the assets of the business for $100,000.

[15] The TD Bank was an unsecured creditor of the Debtor as a result of various overdrafts in the Debtor's account with the TD Bank. The transactions among the Debtor, the Director of the Debtor (who had a Personal Account with the TD Bank) and the TD Bank following the sale of the assets of the Debtor are set out in paragraph 5 F of the reasons of the Federal Court Judge:

> F. The timeframe most material to the questions posed to the Court is October 13, 2015 to January 6, 2016:
>
> i. During this period, a total of 92 separate transactions were processed on the Corporate Account. In early October 2015, the sale of the

Business netted the Debtor proceeds (after deductions) of $89,500.00 [the Proceeds]. At that time, the Bank had no knowledge of the Debtor's sale of the Business or the source of the Proceeds.

ii. On October 13, 2015, the Director deposited the Proceeds into the Corporate Account and used those funds to pay the existing overdraft of $11,344.88. The Director then transferred $69,500.00 of the Proceeds to the Personal Account. After a series of transactions on October 13, 2015, the closing balance of the Corporate Account on that day was an overdraft of $6,450.19.

iii. On October 15, 2015, the Director transferred $6,730.48 from the Personal Account to the Corporate Account to cover the overdraft of $6,450.19. The balance of the Corporate Account at the end of the day on October 15, 2015, was $280.29.

iv. Between October 15, 2015 and January 6, 2016, the Bank advanced funds to the Debtor in the form of overdrafts and the Director transferred funds from the Personal Account to the Corporate Account to pay off the Debtor's overdrafts.

v. In total, the Bank received $37,595.07 from the Debtor between October 13, 2015 and January 6, 2016. None of these transactions were a result of any demand for payment by the Bank or the exercise of any form of security.

[16] The total amount received by the TD Bank from the Debtor ($37,595.07) exceeded the amount of the source deductions to which the deemed trust in section 227 of the ITA would apply.

[17] The Canada Revenue Agency notified the TD Bank on January 8, 2018 that it was claiming $36,250.86 plus interest for the unremitted source deductions of the Debtor. Prior to January 8, 2018, the TD Bank was not aware that the Debtor had failed to remit the required source deductions.

II. Subsections 227(4) and (4.1) of the ITA

[18] The relevant provisions of the ITA are subsections 227(4) and (4.1):

(4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.	**(4)** Toute personne qui déduit ou retient un montant en vertu de la présente loi est réputée, malgré toute autre garantie au sens du paragraphe 224(1.3) le concernant, le détenir en fiducie pour Sa Majesté, séparé de ses propres biens et des biens détenus par son créancier garanti au sens de ce paragraphe qui, en l'absence de la garantie, seraient ceux de la personne, et en vue de le verser à Sa Majesté selon les modalités et dans le délai prévus par la présente loi.
(4.1) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed	**(4.1)** Malgré les autres dispositions de la présente loi, la *Loi sur la faillite et l'insolvabilité* (sauf ses articles 81.1 et 81.2), tout autre texte législatif fédéral ou provincial ou toute règle de droit, en cas de non-versement à Sa Majesté, selon les modalités et dans le délai prévus par la présente loi, d'un montant qu'une personne est réputée par le paragraphe (4) détenir en fiducie pour Sa Majesté, les biens de la personne, et les biens détenus par son créancier garanti au sens du paragraphe 224(1.3) qui, en l'absence d'une garantie au sens du même paragraphe, seraient ceux de la personne, d'une valeur égale à ce montant sont réputés :
(a) to be held, from the time the amount was deducted or withheld by the person, separate and apart	**a)** être détenus en fiducie pour Sa Majesté, à compter du moment où le montant est déduit ou retenu,

from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and	séparés des propres biens de la personne, qu'ils soient ou non assujettis à une telle garantie;
(b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest	**b)** ne pas faire partie du patrimoine ou des biens de la personne à compter du moment où le montant est déduit ou retenu, que ces biens aient été ou non tenus séparés de ses propres biens ou de son patrimoine et qu'ils soient ou non assujettis à une telle garantie.
and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.	Ces biens sont des biens dans lesquels Sa Majesté a un droit de bénéficiaire malgré toute autre garantie sur ces biens ou sur le produit en découlant, et le produit découlant de ces biens est payé au receveur général par priorité sur une telle garantie.

[19] The Crown relies on the obligation to pay the proceeds arising from a sale of property to the Receiver General found in the closing words of subsection 227(4.1) of the ITA:

> the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

III. Decision of the Federal Court

[20] The Federal Court Judge noted, in paragraph 13 of his reasons, that the first question posed by the parties did not precisely capture the issue between the parties. He suggested, at paragraph 20, that it should perhaps be re-framed. However, the parties indicated that they were content with the question as posed, "on the understanding that the question did not necessarily

require a ‘yes’ or ‘no’ answer, but rather could if necessary be answered in a nuanced manner that addresses the point in dispute”.

[21] The point in dispute between the parties is whether an unsecured creditor — who receives a payment from the proceeds of disposition of property of a person who, unbeknownst to the unsecured creditor, has failed to remit the required source deductions for that person’s employees — would be required to pay an amount to the Receiver General from such proceeds.

[22] The Federal Court Judge acknowledged that the questions posed raise questions of law as they relate to the interpretation of the relevant provisions of the ITA. The Federal Court Judge acknowledged that this required a textual, contextual, and purposive analysis. Neither party disputed the interpretive principles applicable in this case.

[23] After reviewing the submissions of the TD Bank and the Crown, the Federal Court Judge concluded that the decisions that were “most instructive in considering the application of the statutory obligation are” the decision of the Federal Court in *Canada v. Toronto-Dominion Bank*, 2018 FC 538 (*TD Bank FC*) and the decision of this Court on the appeal of that decision — *Toronto-Dominion Bank v. Canada*, 2020 FCA 80 (*TD Bank FCA*). The Federal Court in *TD Bank FC* and this Court in *TD Bank FCA* both referred to the decision of the Supreme Court of Canada in *First Vancouver Finance v. Canada (Minister of National Revenue)*, 2002 SCC 49 (*First Vancouver*).

[24] In *TD Bank FC* (and *TD Bank FCA*), an individual was carrying on a business as a sole proprietor. The individual failed to remit the goods and services tax (GST) that he had collected from his customers. The TD Bank was a secured creditor of the individual as it held a mortgage on his house. When the individual sold his house, he used the proceeds to repay the debt to the TD Bank. The amount paid to the TD Bank exceeded the amount of the unremitted GST.

[25] The Canada Revenue Agency issued a demand letter to the TD Bank on the basis that the deemed trust provisions of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (ETA) applied to the proceeds that were paid to the TD Bank and that it was required to pay the amount of the unremitted GST. The deemed trust provisions under the ETA are substantially similar to the deemed trust provisions under the ITA.

[26] The Federal Court in *TD Bank FC* and this Court in *TD Bank FCA* found that, as a result of the deemed trust provisions of the ETA, the TD Bank, as a secured creditor of the individual, was required to pay an amount equal to the unremitted GST to the Receiver General. Both the Federal Court and this Court also found that the *bona fide* purchaser defence was not available to a secured creditor. This Court agreed with the Federal Court that to find that the *bona fide* purchaser defence was available to secured creditors would defeat the purpose of ensuring that the unremitted GST was to be paid in priority to all other debts.

[27] This Court also cited paragraph 43 from *First Vancouver* in concluding that the *bona fide* purchaser defence was not available to a secured creditor:

> [75] Second, while in *First Vancouver* the question of the priority of secured creditors was not before the Court (reasons, paragraph 39) Justice Iacobucci wrote at paragraph 43:
>
> > Although it would be open to Parliament to extend the trust to property alienated by the tax debtor, such an interpretation is simply not supported by the language of the ITA. It is significant in this regard that purchasers for value are not included in ss. 227(4) and 227(4.1) whereas secured creditors are.
>
> [76] While finding that *bona fide* purchasers for value were not caught by the deemed trust, the Court noted that secured creditors were. This is consistent with the conclusion that secured creditors cannot avail themselves of the *bona fide* purchaser for value defence.

[28] In the appeal that is before us, the Federal Court Judge followed the reasoning in *TD Bank FC* and *TD Bank FCA* applicable to secured creditors and found that there was no reason to distinguish between secured and unsecured creditors. As a result, the Federal Court Judge found that the answer to the first question was yes and the answer to the second question was no.

IV. Issue and standard of review

[29] The motion before the Federal Court was brought under Rule 220, which provides, in part, that:

220 (1) A party may bring a motion before trial to request that the Court determine	**220 (1)** Une partie peut, par voie de requête présentée avant l'instruction, demander à la Cour de statuer sur :
(a) a question of law that may be relevant to an action;	**a)** tout point de droit qui peut être pertinent dans l'action;
[…]	[…]

[30] The first question posed by the parties for determination under Rule 220 is:

> [d]o the deemed trust provisions in section 227 of the ITA apply to unsecured creditors?

[31] As noted by the Federal Court Judge, this question is very broad and does not reflect the particular dispute between the parties. There is no dispute that if the Debtor, after selling the property, had sought to determine to whom the proceeds should have been paid, the answer would have been that the proceeds would first have to be paid to the Receiver General as payment of the unremitted source deductions and any balance remaining would be paid to the other creditors.

[32] As a result, as a general question, there is a situation in which the deemed trust provisions in section 227 of the ITA apply to unsecured creditors. However, the dispute between the parties is whether the deemed trust provisions would permit the Crown to recover unremitted source deductions of a tax debtor from an unsecured creditor who is a *bona fide* purchaser.

[33] The relevant question, therefore, for the purposes of the Rule 220 motion, is the second question. As a result, the focus in this appeal will be on the answer to the second question.

[34] The question of whether the *bona fide* purchaser defence is available to an unsecured creditor who has received proceeds from a person who has failed to remit the required source deductions under the ITA is a question of law. Therefore, the standard of review is correctness (*Housen v. Nikolaisen*, 2002 SCC 33).

V. Analysis

[35] As noted above, when an employer pays salary, wages or other remuneration to employees, the employer is required to deduct certain amounts from the amounts paid to employees and remit such amounts to the Receiver General (subsection 153(1) of the ITA). Subsection 227(4) of the ITA deems the amounts so deducted to be held in trust for the Crown. The Rule 220 question arises in a situation where an employer who has failed to remit the amounts deducted from employees to the Receiver General, sells its property and uses the proceeds to pay a debt owing to an unsecured creditor.

[36] The question is whether the unsecured creditor can rely on the *bona fide* purchaser defence to a claim by the Crown for payment of the unremitted source deductions.

[37] The *bona fide* purchaser defence is described by the Supreme Court in *i Trade Finance Inc. v. Bank of Montreal*, 2011 SCC 26:

> [60] Traditionally, the fact that a party is a *bona fide* purchaser for value without notice has been an equitable defence. Professor Smith describes this defence as follows:
>
> > The full name of the equitable defence is 'bona fide purchase of a legal interest for value without notice of a pre-existing equitable interest.' The effect of the defence is to allow the defendant to hold its legal proprietary rights unencumbered by the pre-existing equitable proprietary rights. In other terms, where the defence operates, the pre-existing equitable proprietary rights are stripped away and lost in the transaction by which the defendant acquires its legal proprietary rights.
> >
> > (L. Smith, *The Law of Tracing* (1997), at p. 386 (footnote omitted))

[38] In *Waters' Law of Trusts in Canada* (Donovan W.M. Waters, Mark R. Gillen and Lionel D. Smith, *Waters' Law of Trusts in Canada*, 5th ed (Toronto: Thomson Reuters Canada, 2021), the authors confirm that a *bona fide* purchaser for value will be able to defeat a claim related to the property received from a trustee, in circumstances where the trustee transferred the property in breach of the terms of the trust:

> Similarly, it may be said that tracing ends when the property is acquired by a *bona fide* purchaser of a legal interest for value without notice of the trust. This is not, however, really a question of tracing. Tracing is about substitutions. This is a case in which the property in question is followed to a new party, but that new party has a defence which defeats the plaintiff's rights. The property is perfectly identifiable, as a matter of tracing and following; it is the claim which is defeated.
>
> The *bona fide* purchaser for value is immune from a claim that he or she holds the property in trust….
>
> [26.III The Principles of Tracing – 2. – *Bona Fide* Purchase]

[39] The Crown, in paragraph 26 of its memorandum, submits that because the *bona fide* purchaser defence is only available as a defence against an equitable claim, it is not applicable in this appeal since the Crown's claim is under the deemed trust provisions of the ITA. The Crown submits that:

> The only way the defence would be available against a statutory deemed trust claim is if Parliament actively imported the defence, which is contrary to both Parliament's intent regarding the collection of source deductions via the deemed trust and the text of subsection 227(4.1) of the ITA.

[40] In *John M.M. Troup Ltd. v. Ontario (Attorney-General)*, [1962] S.C.R. 487, a builder, who received a holdback payment, deposited the amount in its bank account. The bank used the

funds to pay down an overdraft in the account. There were unpaid subcontractors of the builder. *The Mechanics' Lien Act*, R.S.O. 1950, c. 227 stipulated that a builder who receives a payment holds such amount in trust for any unpaid subcontractors. The unpaid subcontractors commenced an action against the bank on the basis that they were the beneficiaries of the amount received by the builder. The Supreme Court found that the bank did not participate in a breach of trust because the bank acted in good faith and had no knowledge of the breach of trust by the builder.

[41] In the concurring reasons of Martland and Ritchie JJ. in *John M.M. Troup Ltd.*, Martland J. stated, at page 505, in relation to a trust created under *The Mechanics' Lien Act*:

> Although the trust is created by statute, it thereupon becomes subject to the application of the rules of equity applicable to trusts.

[42] Although this statement only appears in the concurring reasons, it supports the view that the rules of equity (including the *bona fide* purchaser defence) can apply to a statutory trust.

[43] The characterization of the particular statutory trust in issue in this appeal has been considered by the Supreme Court in *First Vancouver* and *Canada v. Canada North Group Inc.*, 2021 SCC 30 (*Canada North*).

[44] In *First Vancouver*, the Supreme Court found that even though the deemed trust in subsections 227(4) and (4.1) of the ITA applied to after-acquired property (whereby the common law requirement of certainty of subject matter would not be satisfied), Parliament could characterize the trust as it chooses:

> [34] I find no contradiction in coming to the conclusion that after-acquired property can be subject to the trust even though the trust reaches back in time to a point before the acquisition of the property by the tax debtor. This is because the property so acquired will presumably have been taken in exchange for property of equal value which the debtor has disposed of. Thus, the acquired property can simply be viewed as replacing the initial subject matter of the trust. Moreover, since the trust is a deemed statutory trust, it is not governed by common law requirements, and, in this regard, the ongoing acquisition of trust property does not present a conceptual difficulty. I emphasize that it is open to Parliament to characterize the trust in whatever way it chooses; it is not bound by restraints imposed by ordinary principles of trust law.

[45] The Supreme Court in *First Vancouver* found, at paragraph 40, that "the deemed trust is in principle similar to a floating charge over all the assets of the tax debtor".

[46] In *Canada North*, Côté J. (writing on behalf of Wagner C.J. and Kasirer J.) and Karakatsanis J. (writing on behalf of Martin J.) found that the deemed trust provisions of subsections 227(4) and (4.1) of the ITA did not create a "true" trust (paragraphs 46 to 55 and 118 to 133). Brown and Rowe JJ., in their dissenting reasons at paragraph 192, concurred with the conclusion that the deemed trust provisions of the ITA do not create a "true" trust.

[47] Even though the deemed trust arising under subsections 227(4) and (4.1) of the ITA may not be a "true" trust at common law, the question of whether the *bona fide* purchaser defence will nonetheless be available to unsecured creditors will depend on the interpretation of the relevant provisions of the ITA. Parliament chose to use the language of a trust and is presumed to know the meaning of the words that it chooses and "the legal context in which it legislates":

> [20] When Parliament uses a term with a legal meaning, it intends the term to be given that meaning. Words that have a well-understood legal meaning when

> used in a statute should be given that meaning unless Parliament clearly indicates otherwise. This principle has been applied in a number of cases such as *Will-Kare Paving & Contracting Ltd. v. Canada*, 2000 SCC 36, [2000] 1 S.C.R. 915, at paras. 29-30; *Townsend v. Kroppmanns*, 2004 SCC 10, [2004] 1 S.C.R. 315, at para. 9; *A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)*, 2007 SCC 42, [2007] 3 S.C.R. 217, at paras. 8-23 and 48-49. Most recently in *R. v. Summers*, 2014 SCC 26, [2014] 1 S.C.R. 575, the Court noted that "Parliament is presumed to know the legal context in which it legislates" and that it is "inconceivable" that Parliament would intend to disturb well-settled law without "explicit language" or by "relying on inferences that could possibly be drawn from the order of certain provisions in the *Criminal Code*": paras. 55-56.
>
> [*R. v. D.L.W.*, 2016 SCC 22]

[48] There is no express language in subsections 227(4) and (4.1) of the ITA that would preclude the availability of the *bona fide* purchaser defence. The reference to “[n]otwithstanding … any other law” at the beginning of subsection 227(4.1) of the ITA, in my view, refers to the formation of the trust and the holding of the trust property. With respect to the obligation to pay the proceeds arising from the sale of property found in the closing words of subsection 227(4.1) of the ITA, the notwithstanding clause would simply mean that the proceeds are to be paid to the Receiver General even if some other law might dictate otherwise. However, where the proceeds are not actually paid to the Receiver General, the question will still remain whether the Crown can recover those proceeds from an unsecured creditor who is a *bona fide* purchaser.

[49] In *First Vancouver*, the Supreme Court did not specifically refer to the *bona fide* purchaser defence, but it did find that the deemed trust provisions did not apply to a sale of assets by the tax debtor in the ordinary course of its business:

> [40] In my view, the scheme envisioned by Parliament in enacting ss. 227(4) and 227(4.1) is that the deemed trust is in principle similar to a floating charge over all the assets of the tax debtor in the amount of the default. As noted above, the trust

> has priority from the time the source deductions are made, and remains in existence as long as the default continues. However, the trust does not attach specifically to any particular assets of the tax debtor so as to prevent their sale. As such, the debtor is free to alienate its property in the ordinary course, in which case the trust property is replaced by the proceeds of sale of such property.

[50] In *First Vancouver*, Great West Transport Ltd. was in the transportation business. It entered into a factoring agreement with First Vancouver Finance, whereby Great West Transport sold its accounts receivable to First Vancouver Finance at a discount. Great West Transport was in default of remitting its source deductions to the Receiver General. The Supreme Court held that the Crown did not have an interest in the accounts receivable sold to First Vancouver Finance, and in particular in the accounts receivable payable by Canada Safeway:

> [46] In summary, the deemed trust does not operate over assets which a tax debtor has sold in the ordinary course to third party purchasers. As such, once the Canada Safeway invoices had been factored to First Vancouver, the Minister was prevented from asserting its interest in these invoices.

[51] *First Vancouver* dealt with a sale of property in the ordinary course for proceeds that replaced such property. In the context of the Rule 220 question in the appeal that is before us, the question is whether the *bona fide* purchaser defence will be available if the proceeds arising from the sale of a tax debtor's property are used to pay a debt owing to an unsecured creditor. As a result of the payment of the debt, the debt would be discharged but the tax debtor would not receive any property to replace the payment made to the unsecured creditor, thus depleting the assets held by the tax debtor.

[52] In *Waters' Law of Trusts in Canada*, the authors confirm that the *bona fide* purchaser defence is available to a creditor who receives payment from trust funds in breach of the terms of the trust:

> It is easy to think that if the trustee uses trust property to pay a debt which he or she owes, there is an end to tracing. The money seems to be gone. Nevertheless, it should not be forgotten that the money received by the creditor is trust property. In most cases, it is true, this person is a *bona fide* purchaser, for value, of a legal interest in the money, and is without notice of the breach of trust; so he or she is immune to any claim.
>
> [26III, The Principles of Tracing, 3.- Tracing into the Payment of a Debt]

[53] This paragraph refers to footnote 105 which elaborates on the meaning of value in relation to the *bona fide* purchaser defence:

> Value, within the meaning of the Equitable defence of a bona fide purchase for value without notice, and also within the common law version of the defence which applies to money and negotiable instruments, includes the discharge of a pre-existing debt. For the Equitable defence, see *Taylor v. Blakelock* (1886), 32 Ch. D. 560 (Eng. Ch.); for cases involving good faith acquisition of money, see *Cohen v. Mahlin* (1926), [1927] 1 W.W.R. 162, [1927] 1 D.L.R. 577 (Alta. C.A.) at 167-68 [W.W.R.], 581-82 [D.L.R.]; *Law Society of Upper Canada v. Mazzucco*, 2009 CarswellOnt 3437, 49 E.T.R. (3d) 61 (Ont. S.C.J.). Note however that in Equity it does *not* include a promise to repay, as where the transaction creates, rather than discharges, a debt: see *supra*, note 20 and chapter 11, Part II A.
>
> [Emphasis in original]

[54] As a result, the payment of a debt could satisfy the requirement for value within the *bona fide* purchaser defence. The issue to be addressed in this appeal is whether Parliament intended that this defence be available when an unsecured creditor receives, as payment of an amount

owing to that unsecured creditor, an amount from the proceeds (arising from the sale of the tax debtor's property) that would be deemed to be held in trust for the Crown.

[55] The majority of the Supreme Court in *Piekut v. Canada (Minister of National Revenue)*, 2025 SCC 13, reiterated, at paragraph 43, that "[t]he modern principle requires a court to interpret statutory language 'according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole'" (citing *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10; *R. v. Downes*, 2023 SCC 6, at para. 24). The majority also noted:

> [45] As a result, 'plain meaning alone is not determinative and a statutory interpretation analysis is incomplete without considering the context, purpose and relevant legal norms' (*Alex* [*R. v. Alex*, 2017 SCC 37], at para. 31; see also *La Presse* [*La Presse inc. v. Quebec*, 2023 SCC 22], at para. 23; *Vavilov* [*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65], at para. 118). At the same time, 'just as the text must be considered in light of the context and object, the object of a statute and that of a provision must be considered with close attention always being paid to the text of the statute, which remains the anchor of the interpretative exercise' (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43, at para. 24).

[56] Subsection 227(4.1) of the ITA is therefore to be interpreted based on a textual, contextual and purposive analysis.

A. *Textual analysis*

[57] The relevant part of subsection 227(4.1) of the ITA is the closing part of this subsection:

> the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

[58] In my view, this obligation to pay is part of the deemed statutory trust as the proceeds are part of the property of the deemed statutory trust. The obligation simply mandates the payment of such trust property to the beneficiary of the trust — the Receiver General on behalf of the Crown.

[59] The closing words of subsection 227(4.1) of the ITA identify what is to be paid to the Receiver General ("the proceeds of such property"). The language is also clear that "the proceeds of such property" are to be "paid to the Receiver General in priority to all such security interests". In *TD Bank FCA*, this Court confirmed that where the proceeds arising from the sale of property by a tax debtor have been paid to a secured creditor, the secured creditor is required to pay the amounts so received, to the extent that the amount does not exceed the unremitted source deductions, to the Receiver General.

[60] While the language of subsection 227(4.1) of the ITA identifies what is to be paid to the Receiver General, the words do not indicate who is required to pay the proceeds arising from the sale of the property of the tax debtor to the Receiver General. The closing words of this subsection — "the proceeds of such property shall be paid to the Receiver General in priority to

all such security interests" — simply stipulate that the proceeds are to be paid in priority to all such security interests. The question that arises is what are the consequences if, instead of paying the proceeds to the Receiver General, the tax debtor pays the proceeds to an unsecured creditor?

[61] To determine whether Parliament intended that unsecured creditors could rely on the *bona fide* purchaser defence (and hence not be required to forfeit any proceeds received by them) it is necessary to consider the context and purpose of the deemed trust provisions in the ITA.

B. *Contextual Analysis*

[62] Section 227 is contained in the ITA. Under the ITA there may be consequences that would arise if a particular creditor were to receive an amount of money. There is no distinction drawn in subsection 227(4.1) of the ITA among persons who may be classified as unsecured creditors. The distinction is drawn between secured creditors and unsecured creditors but there is nothing to indicate that any particular unsecured creditor would be treated differently from any other unsecured creditor. The provisions apply equally to all secured creditors, and they also apply equally to all unsecured creditors.

[63] If an employer has sufficient funds and pays all its debts, including amounts owing to the Crown, there is no issue concerning the application of the deemed trust provisions. The issue of unremitted source deductions (and the application of the deemed trust rules) would generally arise when an employer is in financial difficulty. An employer who is in financial difficulty may well have employees who are owed remuneration by the tax debtor and therefore would be

unsecured creditors. How the deemed trust provisions would apply to amounts paid to such employees from the proceeds arising from the sale of the tax debtor's property is particularly relevant, in my view, in determining whether Parliament intended the *bona fide* purchaser defence to be available to unsecured creditors.

[64] Subsection 5(1) of the ITA provides that any amount received as salary, wages or other remuneration from an office or employment is to be included in the income of the person who has received such amount:

5 (1) Subject to this Part, a taxpayer's income for a taxation year from an office or employment is the salary, wages and other remuneration, including gratuities, received by the taxpayer in the year.	**5 (1)** Sous réserve des autres dispositions de la présente partie, le revenu d'un contribuable, pour une année d'imposition, tiré d'une charge ou d'un emploi est le traitement, le salaire et toute autre rémunération, y compris les gratifications, que le contribuable a reçus au cours de l'année.

[65] Subsection 8(2) of the ITA provides a general limitation on deductions in computing income from employment:

(2) Except as permitted by this section, no deductions shall be made in computing a taxpayer's income for a taxation year from an office or employment.	**(2)** Seuls les montants prévus au présent article sont déductibles dans le calcul du revenu d'un contribuable tiré, pour une année d'imposition, d'une charge ou d'un emploi.

[66] Since the issue of how the deemed trust provisions would apply to employees as unsecured creditors was not addressed by the parties, the parties were asked to provide additional submissions on how subsections 5(1) and 8(2) of the ITA should be factored into the contextual and purposive analysis of subsection 227(4.1) of the Act in determining whether Parliament intended that unsecured creditors, who receive payments from the proceeds from the sale of a tax debtor's property, should subsequently be required to pay the amount received to the Receiver General.

[67] The Crown submitted that employees who receive payments from their employer as payment of salary or wages and who are subsequently required to pay an amount to the Receiver General on account of the unremitted source deductions of their employer, would not be required to include the amount received in their income under subsection 5(1) of the ITA. However, the cases cited by the Crown (*Ikea Ltd. v. Canada*, [1998] 1 S.C.R. 196; *Harnish v. Canada*, 2007 TCC 546; *Théberge v. Canada*, 2003 TCC 97; and *Lockhart v. Canada*, 2008 TCC 156) do not support this conclusion, but rather support the opposite conclusion.

[68] In *Ikea Ltd.*, the issue was whether a tenant inducement payment should be included in income in the year in which it was received or amortized over the term of the lease. This case did not involve a payment of salary or wages. The Supreme Court found that the tenant inducement payment was to be included in income in the year in which it was received:

> [37] …The tenant inducement agreement made it clear that the sole condition precedent to receipt of the payment was the assumption of Ikea's obligations under the lease agreement, and further stipulated that the payment was to be made within seven days of Ikea's commencing business in the premises, pursuant to the

> lease. Thus, Ikea's right to the payment became absolute at that time. There were no further strings attached such as to postpone actual realization or receipt into a subsequent taxation year, and the payment was received in full by Ikea in 1986. Therefore, I conclude that the entire amount was taxable in that year.

[69] In *Harnish*, the issue is set out in the first paragraph of the decision:

> [1] The issue in this case is whether the amount of $43,774.48 that was paid to the Appellant in 2004 by Sun Life Assurance Company of Canada ("Sun Life") under a long term disability plan should be included in the income of the Appellant in 2004 even though, at the time the amounts were paid, the Appellant was subject to a condition that the amounts may have to be repaid.

[70] The conclusion was that the amount was to be included in Mr. Harnish's income in the year in which it was received:

> [11] Based on the decision of Justice Archambault in *Théberge* and on my conclusion that the condition that was imposed by the Appellant in this case in relation to the repayment of the funds received from Sun Life was a condition subsequent which did not affect his ability to use the funds for any particular purpose or in any particular manner, the amount received by the Appellant from Sun Life in 2004 had the quality of income for the purposes of the Act and therefore was to be included in his income pursuant to paragraph 6(1)(*f*) of the Act.

[71] The Crown sought to distinguish *Harnish* on the basis that the condition in subsection 227(4.1) of the ITA that "the proceeds of such property shall be paid to the Receiver General in priority to all such security interests" creates a condition precedent and therefore the payment of such proceeds to employees would not have the quality of income for the purposes of the ITA. I do not agree.

[72] In my view, the condition in subsection 227(4.1) of the ITA creates an obligation on the tax debtor (or whoever is selling the tax debtor's property) to pay the proceeds arising from the sale of the tax debtor's property to the Receiver General. If, instead of paying such proceeds to the Receiver General the tax debtor uses the proceeds to pay outstanding salary or wages to employees, even though this payment is in breach of the obligation to pay the proceeds to the Receiver General, the employees who receive the amounts have nonetheless received the amounts as salary or wages.

[73] Since subsection 5(1) of the ITA stipulates that the income from employment is the salary or wages received by employees, the payment from the proceeds of disposition of the tax debtor's property results in the employees receiving the salary or wages owed to them and hence is income to those employees. Even if the Crown is able to subsequently recover such amounts from the employees, the employees would still have had the unfettered right to use such money from the time they received it until they were required to pay it to the Receiver General. In my view, the obligation in subsection 227(4.1) of the ITA to pay the proceeds to the Receiver General is not a condition precedent that would lead to a finding that employees who received payment of their salary or wages did not receive such salary or wages for the purposes of subsection 5(1) of the ITA.

[74] In *Lockhart*, the taxpayer received shares in a corporation as payment for past services. The amount equal to the fair market value of the shares was income in the year in which the shares were issued to the taxpayer:

> [9] I do not think that there can be any doubt that remuneration paid by an employer to an employee for past services is income from employment. It is certainly not a capital receipt or a windfall. Its value and the timing of its recognition as income are of course another matter. So far as timing is concerned income from employment is taxable when received and it must be recognized as income in the years in which the recipients' right to it is absolute and subject to no restrictions on its unfettered use and enjoyment. If there are any restrictions on its use and enjoyment this could affect either the question of its value or the question of its quality of income.

[75] The Crown submitted that subsection 227(4.1) of the ITA imposed a legal restriction on the disposition of the proceeds and that "[t]his legal restriction at the time of receipt parallels examples referred to by the TCC as limitations on the use of funds that prevent funds from possessing the quality of income under the ITA". The authority for this proposition was stated to be paragraph 19 of *Théberge* and, in particular, the reference to the creation of a trust:

> [19] This authority of the "quality of income" has been applied in a number of decisions in Canada including, in particular, *Rodgers v. Canada (Minister of National Revenue - M.N.R.)*, [1990] T.C.J. No. 1003; 91 DTC 129. In that case, at issue was whether severance pay in the amount of $120,000 paid by an employer on July 27, 1982, was "income" even though a few days later, in August 1982, the employer asked the taxpayer to recover the severance pay in light of new facts. On January 25, 1983, legal action was initiated against the taxpayer. Subsequently, in computing his income for the 1982 taxation year, the taxpayer deducted the amount of $120,000. At issue, then, was whether the uncertainty concerning the taxpayer's entitlement to retain the amount of $120,000 was sufficient to conclude that this amount no longer had the quality of income. Christie A.C.J. concludes as follows at page 4 (DTC: at page 131):
>
> > When the appellant received the $120,000 in 1982 it was not subject to specified conditions about its use or disposition. He was then in a position to use the money as he saw fit even though he might subsequently have to repay some or all of it. I believe that when Thorson J. spoke of "specific and unfulfilled conditions" and when Taschereau J. used the words "free of any restriction" they had in mind conditions and restrictions on the use of funds that arise, **for example, in the creation of a trust**. There specific equitable obligations exist at the time of receipt that are binding on the trustee in respect of the manner in which he deals with the trust property.

> Another example that comes to mind is when a taxpayer acts as an escrow agent in respect of money. Undoubtedly there are others.

[Underlining added by the Tax Court; I added the emphasis in bold]

[76] The reference by Christie A.C.J. to the "creation of a trust" would be a situation where the funds are paid to an employee to hold in trust. Where a tax debtor uses the proceeds realized from the sale of assets to pay the outstanding salary or wages to employees, the payment would be made to satisfy the obligation to pay employees the amounts that are payable to them for services rendered. There would presumably be no conditions imposed on the employees on their use of the money. The tax debtor would not be paying the amounts to the employees to hold in trust.

[77] In *Rodgers v. The Minister of National Revenue* (1990), 91 D.T.C. 129 (TCC) (cited in *Théberge*), Christie, A.C.J. stated, at paragraph 5:

> Assume that a taxpayer receives money from or belonging to another person and at the time of receipt there is a potential claim for its return or subsequently a demand is made for its return, which may or may not be reinforced by instituting legal proceedings, on the ground that the taxpayer was not lawfully entitled to receive the funds. To my mind none of these circumstances could of itself or in combination necessarily negate the conclusion that the money is to be regarded as having been received by the taxpayer for the purpose of computing his income in the year of receipt.

[78] *Harnish*, *Théberge* and *Rodgers* confirm that amounts are required to be included in the income of employees even though the employees may be required to repay the amounts and, as stated in *Rodgers*, even if "at the time of receipt there is a potential claim for its return or

subsequently a demand is made for its return, which may or may not be reinforced by instituting legal proceedings, on the ground that the taxpayer was not lawfully entitled to receive the funds".

[79] The Crown also submitted that if an employee receives a payment from a tax debtor (from proceeds arising from the sale of property) and a demand for payment of the unremitted source deductions in the same year, the employee would not be required to include the amount received in income. However, since subsection 5(1) of the ITA requires an employee to include an amount received as salary or wages in income, it is not clear on what basis the amount would not be included in the income of the employees. The employees would have received payment from their employer as payment of salary or wages owed by the employer. As noted in *Rodgers*, even a claim that the employees were not entitled to receive such payments does not preclude the amounts received from being included in income. Since no provision in section 8 of the ITA would allow the employee to claim a deduction for an amount paid to the Receiver General for unremitted source deductions, there would be no offsetting deduction. In any event, as illustrated by the underlying facts in this case, the demand for payment may well be in a subsequent taxation year.

[80] If employees are required to pay an amount to the Receiver General for the unremitted source deductions of their employer in a taxation year that is after the year in which the employees receive payment, the limitation in subsection 8(2) of the ITA will deny the employees a deduction for the amount then paid to the Receiver General. The Crown did not identify any provision of section 8 that would allow such a deduction. Instead, the Crown stated that "a payment made in a subsequent year should lead to a T1 adjustment request for the year of

receipt". However, in light of *Harnish*, *Théberge* and *Rodgers* what would be the basis for the adjustment for the year of receipt? These cases stand for the proposition that where the amount is received as employment income in a particular year, it is taxable in that year even though there may be a subsequent requirement to repay that amount.

[81] *Harnish, Théberge* and *Rodgers* are applicable to the situation that would arise if an employee were to receive payment for salary or wages from a tax debtor who uses the proceeds arising from the sale of assets to make such payment. If the *bona fide* purchaser defence is not available to such employees, they could be liable to subsequently pay the unremitted source deductions of the tax debtor, but the amounts received would have to be included in the income of the employees for the year in which the amounts were received.

[82] Since there is no provision in section 8 that would allow the employees to deduct any amount paid to the Receiver General for the unremitted source deductions of the employer, any employee who received payment of their remuneration from the proceeds arising on the sale of property by the employer would be required to include such amount in their income in the year in which it was so received, but would not be entitled to any deduction in the year in which the amounts were then subsequently paid to the Receiver General. In my view, this is a significant component of the context. It would lead to an interpretation that Parliament intended that unsecured creditors could rely on the *bona fide* purchaser defence so that amounts that are paid by an employer who is in default of remitting source deductions could not be recovered from employees who, as *bona fide* purchasers, receive payment of salary or wages owed to them.

[83] In its submissions with respect to subsection 5(1) and 8(2) of the ITA, the Crown stated:

> [10] The only potential impact would be in the *contextual* analysis of subsection 227(4.1) in the case of unpaid employees. While the purpose of subsection 227(4.1) requires creditors in competition with the Crown to pay proceeds received out of priority to the Receiver General, a court might find the impact of subsections 5(1) and 8(2) to be a relevant contextual factor in the case of unpaid employees.
>
> [Emphasis in original]

[84] This argument suggests that the contextual analysis of subsection 227(4.1) of the ITA in this appeal should not take into account how the interpretation of this provision might affect other unsecured creditors. I do not agree. As noted above, there is no distinction drawn between some unsecured creditors and other unsecured creditors nor is there any basis to find that some unsecured creditors would not be subject to subsection 227(4.1) but others would be subject to this provision. How the interpretation of subsection 227(4.1) of the ITA may affect other unsecured creditors (in particular employees) is a relevant factor to be considered as part of the contextual analysis that is necessary to determine the interpretation of this provision in this appeal.

C. *Purposive Analysis*

[85] There is no dispute that the purpose of the deemed trust provisions is to provide the Crown with priority over secured creditors for unremitted source deductions. There is also no dispute that in determining the priority of claims for the proceeds arising from the disposition of

property, while the proceeds are still held by the tax debtor or on behalf of the tax debtor, the Crown would be paid in priority to both secured and unsecured creditors.

[86] However, in those situations where the funds arising from the sale of property of the tax debtor are paid to unsecured creditors who do not have knowledge of the unremitted source deductions, in my view, the text and context would not require such unsecured creditors to forfeit such amounts so received, even though such unsecured creditors would not have received the amounts if the determination of the priorities of the parties would have been made before the payments were dispersed. The *bona fide* purchaser defence would be available to unsecured creditors.

[87] Although the Supreme Court in *First Vancouver* did not specifically refer to this defence, the Supreme Court confirmed that the deemed trust provisions did not apply to property of the tax debtor sold in the ordinary course.

[88] The conclusion that the *bona fide* purchaser defence is available to unsecured creditors is also consistent with the *obiter dicta* comments of the Federal Court in *TD Bank FC* in paragraphs 47 to 52 of the reasons of the Federal Court Judge.

[89] This Court, in *TD Bank FCA*, noted the following submissions:

> [83] The Bank posits three hypothetical examples that are said to reflect the "absurdity" of the interpretation adopted by the Federal Court. The intervener makes a number of policy arguments including that:

- Unless a secured creditor is entitled to receive ordinary course payments from its borrower unencumbered by the deemed trust, a secured creditor will be unlikely to give credit for any cheques or cash deposits made by a tax debtor or to provide a discharge of its security on payment without continuous confirmation from the Canada Revenue Agency that all deemed trust amounts have been paid.

- It is anomalous and illogical that a secured creditor receiving proceeds of property of the tax debtor in the ordinary course is personally liable to pay the Crown the unpaid amount of GST when there is no such liability imposed upon a lender providing an unsecured credit facility, or any other unsecured creditor whose claim ranks subordinate to the secured creditor.

- The interpretation of the Federal Court promotes liquidation and bankruptcy over restructuring alternatives that may preserve going concern value, employment and other benefits for shareholders.

[Emphasis added]

[90] In responding to these submissions, this Court noted:

> [84] In my view, the answer to these concerns is that Parliament made a considered policy choice to prioritize protection of the fisc over the interests of secured creditors. Parliament tempered the potential harshness of this choice by providing for prescribed security interests and by waiving the Crown's deemed trust rights in cases of bankruptcy and arrangements under the *Companies' Creditors Arrangement Act*.
>
> [85] Moreover, secured lenders are not without some ability to manage the risk posed by deemed trusts. For example, they may identify higher-risk borrowers (which might include persons operating sole proprietorships), require borrowers to give evidence of tax compliance, or require borrowers to provide authorization to allow the lender to verify with the Canada Revenue Agency whether there are outstanding GST liabilities then known to the Agency.

[91] Finding that the *bona fide* purchaser defence is available to unsecured creditors is not inconsistent with “the policy choice to prioritize protection of the fisc over the interests of secured creditors” (paragraph 84 of *TD Bank FCA*).

[92] As noted in the submissions made to this Court in *TD Bank FCA* it is “anomalous and illogical” that the *bona fide* purchaser defence would be available to an unsecured creditor, but the same defence would not be available to a secured creditor. In response, this Court noted that secured creditors are in a better position to manage the risk of being exposed to a claim for unremitted source deductions than unsecured creditors would be.

[93] It should also be noted that the number of instances where the defence would be available are likely to be rare. The deemed trust applies to the amounts deducted and withheld under the ITA (subsection 227(4) of the ITA) and where the amounts so deducted are not remitted to the Receiver General, property of the tax debtor equal in value to the unremitted amounts (subsection 227(4.1) of the ITA). If a tax debtor sells some of their property and the value of the remaining assets is equal to or exceeds the amount of the unremitted deductions, the remaining property held by the tax debtor (including property subject to a security interest) that is equal in value to the unremitted source deductions is deemed to be held in trust under subsection 227(4.1) of the ITA.

[94] The question of the application of the *bona fide* purchaser defence would presumably arise when a tax debtor liquidates all their assets, and the proceeds are disbursed. Allowing the defence of *bona fide* purchaser to be available to unsecured creditors still allows the Crown to claim priority over the claims of secured creditors and priority over the proceeds arising from a sale of property while the proceeds are still held by the tax debtor. For large enterprises with a significant number of employees (and perhaps a significant amount of unremitted source deductions) there would generally be secured creditors, and the assets would usually be liquated

by a receiver or trustee in bankruptcy. In disbursing the proceeds arising from a liquidation of assets, the Crown's priority would result in the unremitted source deductions being paid in priority to all other claims (except those permitted by subsection 227(4.1) of the ITA).

[95] Presumably having priority over the claims of secured creditors and priority with respect to undisbursed proceeds arising from the sale of a tax debtor's property would generally be sufficient to satisfy the claims of the Crown for unremitted source deductions and it would only be a rare occasion when the proceeds arising from the sale of a tax debtor's property are paid to an unsecured creditor who can rely on the *bona fide* purchaser defence.

VI. Conclusion

[96] As a result, I would allow the appeal and set aside the Order issued by the Federal Court. I would provide the following answer to the Rule 220 questions:

> An unsecured creditor can rely on the *bona fide* purchaser for value defence to defend against a claim by the Crown for the unremitted source deductions of an employer who paid proceeds from the sale of their property to the unsecured creditor.

[97] The parties submitted that they had agreed upon the sum of $1,400 for the successful party in this appeal. I would therefore award $1,400 in costs to the TD Bank. Since the parties in at the Federal Court hearing had agreed upon the sum of $1,700 for the successful party before

the Federal Court and since I would set aside the Order issued by the Federal Court, I would award the TD Bank $1,700 as its costs at the Federal Court.

"Wyman W. Webb"
J.A.

"I agree.
George R. Locke J.A."

"I agree.
Anne L. Mactavish J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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