

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

B E T W E E N:

RIOCAN REAL ESTATE INVESTMENT TRUST, RIOCAN HOLDINGS INC.,  
RIOCAN HOLDINGS (OAKVILLE PLACE) INC., RIO CAN PROPERTY  
SERVICES TRUST, RC HOLDINGS II LP, RC NA GP 2 TRUST and RIOCAN  
FINANCIAL SERVICES LIMITED

Applicants

- and -

2455034 ONTARIO LIMITED PARTNERSHIP, 2455034 ONTARIO INC.,  
2491815 ONTARIO LIMITED PARTNERSHIP, 2491815 ONTARIO INC.,  
2491816 ONTARIO LIMITED PARTNERSHIP, 2491816 ONTARIO INC.,  
2681842 ONTARIO LIMITED PARTNERSHIP, 2681845 ONTARIO INC.,  
2681842 ONTARIO INC.

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 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

**CASE CONFERENCE BRIEF OF THE RECEIVER**

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Lawyers for FTI Consulting Canada Inc.,  
as Receiver

TO: THE SERVICE LIST

## **CASE CONFERENCE BRIEF OF THE RECEIVER**

1. The Receiver's reply record consists of three pieces:
  - (a) a supplemental report of the Receiver;
  - (b) a responding expert report of James Tate; and
  - (c) a three-paragraph affidavit of Ian Putnam, HBC's former President and CEO.
2. Oxford asserts that approximately 5 paragraphs of Mr. Tate's report and the entirety of Mr. Putnam's three-paragraph affidavit are improper reply. The Receiver disagrees. The material is all proper reply.

### **The Tate Report is Proper Reply**

3. The Receiver's moving record did not include any expert evidence. Oxford included an expert report from Scott Lee in its responding record which addressed 14 different issues. Plainly, the Receiver is entitled to reply to this expert report.
4. Among the issues addressed by the Lee Report were: (i) the impacts of an unsuitable anchor tenant on a shopping centre; (ii) different "tiers" of anchor tenants and their impacts on the value of a shopping centre; (iii) the defining features of the Bay, Sears, Nordstroms and others stores as of 2002; and (iv) changes to department store operations since 2002.
5. As per Rule 53.03(2.1)(4), an expert's report is required to set out "each issue in the proceeding to which the opinion relates." Mr. Lee's report fails to include this information. However, it is evident that the opinions in Mr. Lee's report described above are intended to assist Oxford in arguing that: (i) Fairweather's Ailes store is an unsuitable anchor tenant for Yorkdale; and (ii) the Ailes store is not a department store for the purposes of the Yorkdale lease.

6. The portions of Mr. Tate's report to which Oxford objects directly respond to these precise issues. Using the same chart as Oxford employs in its submissions:

Paragraphs 1-3, the last sentence of paragraph 6, and the last paragraph in the section entitled " <i>The Proposed Ailes Store is Not an Unsuitable Tenant</i> "	This section of Mr. Tate's report responds to Mr. Lee's opinions concerning the impacts of an unsuitable tenant on a shopping centre and the impacts of different "tiers" of tenants on shopping centres. Mr. Tate compares the proposed Ailes store to existing Yorkdale tenants and concludes that Ailes is not unsuitable.
The last paragraph in the section entitled " <i>Ailes is a Department Store in the Yorkdale Context</i> "	This section of Mr. Tate's report responds to Mr. Lee's opinions concerning the defining characteristics of department stores in 2002 and their evolution since that time. Mr. Tate considers the modern retail landscape in Canada and concludes that Ailes qualifies as a department store.

7. The fact that Mr. Tate adopted slightly different approaches to these issues than did Mr. Lee does not mean that his report is improper reply. The Receiver was entitled to respond to the issues and opinions set out in Mr. Lee's report. Mr. Tate's report does precisely that.

8. Oxford also asserts that Mr. Tate relies upon facts that were introduced by RioCan as improper reply. The Receiver understands that RioCan will respond to the assertion that it has delivered improper reply evidence. However, to the extent that Mr. Tate required additional evidence to provide his opinion (for example, examples of brands that Ailes will carry), it is proper for the Receiver to obtain that evidence to permit Mr. Tate to reply to Mr. Lee.

#### **The Putnam Affidavit is Proper Reply**

9. A key issue for the Court to consider in this motion is whether Oxford's reasons for objecting to the proposed sublease are well-founded.

10. Until delivery of Oxford's record, the Receiver had little insight into the reasons for Oxford's position. Oxford had not previously set out the reasons for its refusal, leaving the Receiver and RioCan to assemble a record that they expected would respond to unarticulated concerns.

11. Oxford's response relies heavily on the allegation that Yorkdale is focused on high-end and luxury retailers and that Fairweather's merchandise is too down-market, particularly for an anchor tenant space. The Putnam affidavit directly replies to Oxford's assertion, disclosing that Oxford had previously advised that Walmart would be a satisfactory tenant for the HBC premises at Yorkdale. Walmart is obviously not a high-end, luxury retailer. This evidence calls Oxford's position into doubt.

12. Oxford also asserts that Mr. Putnam's affidavit reveals discussions that are subject to settlement privilege but does so without any evidence (or even any asserted facts) to support its privilege claim. Mr. Putnam's affidavit was prepared in conjunction with HBC's counsel at Stikeman Elliott, who raised no concern about settlement privilege. Oxford's unparticularized objection is not a basis to strike the affidavit.

13. Mr. Putnam's affidavit is three paragraphs long. The first paragraph contains nothing but biographical details. It is proper reply and, to the extent Oxford believes it necessary to adduce sur-reply, it can easily do so prior to the scheduled cross-examinations.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 24th day of November, 2025.



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