

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

*In the matter of an Application under Section 243(1) of the Bankruptcy and Insolvency Act (Canada), R.S.C. 1985, C. B-3, as am.; and Section 101 of the Courts of Justice Act (Ontario), R.S.O. 1990, C. C.43, as am.*

**RIOCAN REAL ESTATE INVESTMENT TRUST, RIOCAN HOLDINGS INC.,  
RIOCAN HOLDINGS (OAKVILLE PLACE) INC., RIOCAN 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., and 2681842  
ONTARIO INC**

Respondents

**OXFORD PROPERTIES GROUP SUBMISSIONS ON COSTS**

March 13, 2026

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Lawyers for Oxford Properties

1. Oxford seeks \$707,229.66 in costs,<sup>1</sup> payable by the Receiver, for successfully opposing the Receiver’s motion for approval of a sublease at Yorkdale.<sup>2</sup> Oxford’s costs are fair, reasonable and appropriate given the factors in Rule 57.01 and Oxford’s offer to settle made November 25, 2025 (the “**Offer**”).<sup>3</sup> Alternatively, Oxford seeks \$558,187.26 in partial indemnity costs.

2. The issues in dispute were of paramount importance to Oxford given the size and significance of the former HBC premises at Yorkdale, Oxford’s “crown jewel”. Oxford succeeded despite the unfair process undertaken by the Receiver to impose a sublease that lacked “commercial soundness” or “any rational or independent explanation” other than its “hold up value” – being the “leverage that is created by the court’s intervention.”<sup>4</sup>

**Rule 57.01(1)(c-d): Importance of the Issues and the Complexity of the Proceeding**

3. The result on this motion was of the utmost importance to Oxford. The premises is 300,000 square feet of “prime retail space in the top shopping mall in Canada”.<sup>5</sup> The parties considered the matters in dispute to involve “hundreds of millions of dollars” in value.<sup>6</sup>

4. The motion was complex. The analysis involved contractual interpretation and the application and interplay of the *Commercial Tenancies Act* (“**CTA**”) and the *BIA*.<sup>7</sup> The motion was brought by a court officer pursuant to an unfair process that did not meet *Soundair* principles.

5. The Receiver’s arguments evolved over time. It initially relied only on s.23(2) of the *CTA*.<sup>8</sup> In its Factum, the Receiver expanded its arguments to insolvency law concepts that it

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<sup>1</sup> A copy of Oxford’s Costs Outline delivered on January 16, 2026 is attached at **Tab A**. An analysis showing the breakdown of Category 2 of the Costs Outline based on pre- and post-offer date on a partial and substantial indemnity basis resulting in a total of \$707,229.66 can be found at **Tab B**.

<sup>2</sup> *Riocan Real Estate Investment Trust v 2455034 Ontario Limited Partnership*, [2026 ONSC 733](#) (“**Reasons**”). Capitalized terms not otherwise defined herein have the meaning given to them in the Reasons.

<sup>3</sup> A copy of Oxford’s Rule 49 offer to settle is attached at **Tab C**.

<sup>4</sup> Reasons [at paras 100, 102 and 106](#).

<sup>5</sup> Reasons [at paras 68 and 106](#).

<sup>6</sup> Reasons [at paras 15 and 45](#).

<sup>7</sup> Reasons [at paras 29-30](#).

<sup>8</sup> Notice of Motion at Case Center [E1835](#).

asserted by analogy.<sup>9</sup> In oral argument, it relied on further provisions of the *BIA* (not raised in its Factum or its Notice of Motion) and the *HBC Lease Decision* (issued months earlier).<sup>10</sup>

6. The complexity of the motion is evident from the scope of the Court’s analysis: a factual determination that Oxford did not exercise its contractual rights unreasonably; an assessment of whether the Court could nevertheless grant the motion having regard to the policy objectives of insolvency law, whether s.84.1 of the *BIA* was applicable, and the *Soundair* test; and the ultimate conclusion that it would not be just or convenient to grant the motion having regard to the “unfairness in the working out of the [Receiver’s] process” and the impact on Oxford’s interests.<sup>11</sup>

**Rule 57.01(1)(e-g): Conduct of the Receiver on the Motion**

7. The parties filed voluminous materials, tendered expert reports, and conducted cross-examinations. Oxford was required to respond to the materials of two opposing parties, including improper reply evidence by the Receiver and RioCan resulting in an adjournment of the first hearing date and an Endorsement permitting the filing of sur-reply materials.<sup>12</sup>

8. The Receiver adopted an adversarial position from the outset despite the fiduciary duties it owed to Oxford as a stakeholder. The Receiver refused to provide a copy of the sublease until compelled to by the Court.<sup>13</sup> The Receiver refused to answer reasonable requests for the Ailes Operating Information.<sup>14</sup> Oxford had to undertake its own investigation at significant cost.

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<sup>9</sup> Receiver’s Factum at paras 38-46, Case Center [E3282-E3284](#).

<sup>10</sup> Reasons at paras 78 and 88.

<sup>11</sup> Reasons at paras 71-75, 84, 106 and 112.

<sup>12</sup> *In re RioCan Real Estate Investment Trust* (25 November 2025), Court File No. CV-25-00744295-00CL (ONSC), Endorsement of Osborne J. at para 10, Case Center [F2900](#).

<sup>13</sup> Email from counsel for the Receiver to counsel for Oxford dated August 18, 2025, Case Center [F2278](#); *RioCan Real Estate Investment Trust et al v RioCan-HBC Limited Partnership et al* (19 August 2025), Court File No. CV-25-00744295-00CL (ONSC), Endorsement of Osborne J. at para 14, Case Center [F2303](#).

<sup>14</sup> Reasons at para 106.

9. Oxford successfully defended against unproven allegations that it withheld its consent for a collateral purpose,<sup>15</sup> which is an allegation that Oxford failed to exercise its contractual obligations in good faith. It was reasonable for the Receiver to expect Oxford to vigorously defend against such unfounded allegations especially when made by a court officer in the context of an unfair process.<sup>16</sup> Parties who advance unfounded allegations of improper conduct that are seriously prejudicial to a party's character and reputation may be held liable to pay costs on a higher scale.<sup>17</sup>

#### **Oxford Achieved a Result More Favourable than its Offer**

10. Oxford made an offer to pay \$5 million before cross-examinations, or \$2.5 million after, if the Receiver ended the litigation between the parties by terminating the Head Lease and abandoning its motion. Further, accepting the Offer would have avoided the payment of approximately \$970,000 in further rent,<sup>18</sup> hundreds of thousands of dollars in professional fees, and the costs of this motion. The Receiver made no counter-offer.

11. The motion involved a binary outcome – either the proposed Sublease would be approved, or it would not. The Receiver did not accept the Offer that would have delivered immediate value and certainty to the estate. It instead pursued a transaction that generated no cash value and that would “continue to cost YSS 1 money it does not have.”<sup>19</sup> Following this Court's decision, the Receiver terminated the Head Lease on March 4, 2026 effective as of April 3, 2026.

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<sup>15</sup> Reasons [at para 71](#).

<sup>16</sup> *Mathieson v Scotia Capital Inc.*, 2010 ONSC 368 at [para 27](#); *Future Health Inc. v General Accident Assurance et al.*, 2016 ONSC 4834 at [para 12](#).

<sup>17</sup> *Annabelle Tingas-Demetriou v Max Dublin et al*, 2016 ONSC 3414 at [para 23](#); *Apotex Inc. v Abbott Laboratories*, 2013 ONSC 2958 at [para 23](#). As the real estate arm of OMERS which has a fiduciary obligation to 600,000 pension plan members, such allegations against Oxford are foreseeable as particularly inappropriate and prejudicial, Affidavit of Nadia Corrado sworn November 13, 2025 at para 9, [Case Center F1829](#).

<sup>18</sup> This figure is calculated using 2025 net rent of \$2.8 million, or \$53,846.15 per week, multiplied by 18 weeks for the period from November 25, 2025 to April 3, 2026 (effective date of termination), totaling \$969,230.70.

<sup>19</sup> Reasons at [para 104](#).

12. The Offer is consistent with Rule 49, being that “where a party seeks to reasonably resolve a matter with an offer and beats that offer, the other side should have to pay elevated costs because they have wasted everyone’s time.”<sup>20</sup> The Court may consider *any* offer when determining costs and should give “considerable weight” to offers that comply with the spirit and intent of Rule 49.<sup>21</sup>

13. The Receiver’s failure to accept the Offer justifies a higher scale of costs from the date the Offer was made. The Offer was made more than seven weeks before the hearing, remained open for acceptance until after the hearing began, and represented a materially better outcome for the Receiver than what it achieved in pursuing its motion. Parties to disputed, high stakes litigation ought to be incentivized to make meaningful efforts to settle, with cost consequences that follow.

#### **The Receiver Should Pay Oxford’s Costs Forthwith**

14. The “loser pays” costs rule applies to motions brought by a receiver. Receivers are not immune to cost awards, they are just ordinarily entitled to indemnity from the estate or a creditor.<sup>22</sup> The Receiver recently distributed approximately \$20 million to RioCan in connection with a transaction that closed during the receivership.<sup>23</sup> It was clear throughout the pursuit of the sublease transaction that RioCan was the stakeholder that sought to create leverage against Oxford through the court proceeding, and filed materials on this motion and relied on the fact that it was funding the Receiver in all respects. That fact is relevant to a cost award.

#### **The Quantum of Costs is Reasonable and Proportionate**

15. The fees incurred by Oxford were within the reasonable expectation of the Receiver. The Receiver’s Cost Outline discloses that its senior counsel charged at rates nearly double that of

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<sup>20</sup> *Zanini v DiPasquale*, 2025 ONSC 2694 at [para 15](#).

<sup>21</sup> *Elbakhiet v Palmer*, 2014 ONCA 544 at [para 33](#); *Debren v Debren*, 2024 ONSC 4878 at [para 13](#).

<sup>22</sup> *Re: 144 Park Ltd*, 2015 ONSC 6864 at [para 11](#), per Newbould J; *Haunert-Fara v Faga*, 2013 ONSC 1581 at [paras 12-16](#), per DM Brown J.

<sup>23</sup> Third Report of the Receiver dated September 15, 2025 at paras 19 and 49, Case Center [E283](#) and [E293](#).

Oxford's senior counsel.<sup>24</sup> The disparity in the costs claimed by the parties is explained because the Receiver: (a) relied extensively on evidence tendered by RioCan, who did not submit a cost outline; (b) omitted claims relating to the time of one of its counsel; (c) did not include any time for the preparation of the Receiver's reports; and (d) did not include any time for responding to written interrogatories or attendances at case conferences in connection with the motion. In doing so, the Receiver has artificially depressed what a court may regard as reasonable costs by omitting from its Cost Outline whole categories of billed services and counsel involved.

16. An award of costs in insolvency litigation recognizes the intended objectives of encouraging parties in future cases of being thoughtful about litigation strategies, embracing and fully exploring alternatives to litigation and making concerted efforts to resolve disputes consensually via settlement. The fact that the quantum of costs requested is high, or even "unprecedented," (which is not the case here), is not a reason to decline to award costs in significant amounts.<sup>25</sup>

17. Courts have recognized that insolvency litigation can legitimately generate and attract significant costs. In *Unique Broadband Systems, Inc. (Re)*, Mesbur J. noted that both sets of fees were extremely high and neither side could be particularly surprised by the magnitude of the other's, such that an unsuccessful party could reasonably expect to pay substantial indemnity costs in the range sought and ordered.<sup>26</sup>

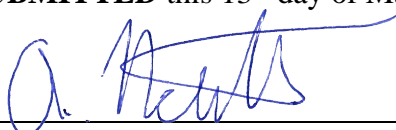
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<sup>24</sup> Costs Outline of the Receiver dated January 16, 2026, a copy of which is attached at **Tab D**.

<sup>25</sup> *In re Hudson's Bay Company*, 2026 ONSC 1331 at para 23, a copy of which is attached at **Tab E**.

<sup>26</sup> *Re UBS* (08 December 2014), Court File No. CV-11-9283-00CL (ONSC), Endorsement of Mesbur J. at para 4. A copy of the December 8, 2014 Endorsement is attached at **Tab F**.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of March, 2026.



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Lawyers for Oxford Properties Group, *et al.*

**TAB A**

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

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

**COSTS OUTLINE**

The Respondent Oxford Properties Group and related Oxford entities (collectively referred to as “Oxford”) provides the following outline of the submissions to be made at the hearing in support of the costs the party will seek if successful:

	<b>Partial</b>	<b>Substantial</b>	<b>Actual</b>
<b>Fees (as detailed below – excluding HST)</b>	\$450,028.50	\$675,042.75	\$750,047.50
<b>HST on Fees</b>	\$58,503.71	\$87,755.56	\$97,506.18
<b>Estimated lawyer’s fee for appearance (inclusive of HST)</b> (D.J. Miller - \$1,100.00 x 6.5 hours) (Deborah E. Palter \$965.00 x 6.5 hours) (Andrew Nesbitt - \$470.00 x 6.5 hours)	\$11,171.75	\$16,757.62	\$18,619.01
<b>Disbursements</b> (Court Fees - Filing of Motion Record \$339.00) (Retail Expert - \$28,687.50)	\$38,483.30	\$38,483.30	\$38,483.30

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(Searches - \$721.80)  
 (Arbitration Place – Reporter – Cross-Examinations - \$8,735.00)

**Total**    \$558,187.26    \$818,039.23    \$904,655.99

The following points are made in support of the costs sought with reference to the factors set out in subrule 57.01(1):

- the experience of the party’s lawyers

<b>PERSONS</b>	<b>YEAR OF CALL</b>	<b>ACTUAL HOURLY RATE</b>
D.J. Miller	1993	\$1,100.00
Deborah E. Palter	1996	\$965.00
Alexander Soutter	2017	\$740.00
Andrew Nesbitt	2024	\$470.00
Corrina Macdonald	Law Clerk	\$335.00
Victoria Kowalik	Law Clerk	\$335.00

- the hours spent, the rates sought for costs and the rate actually charged by the party’s lawyer

<b>FEE ITEM</b>	<b>PERSONS</b>	<b>HOURS</b>	<b>PARTIAL INDEMNITY RATE</b>	<b>SUBSTANTIAL INDEMNITY RATE</b>	<b>ACTUAL RATE*</b>
<b>1.</b> To the preparations for and attendance at the August 19, 2025, Case Conference; preparation of Aide Memoire and all related meetings and correspondence;	D.J. Miller	5	\$3,300.00	\$4,950.00	\$5,500.00
	Deborah E. Palter	3.3	\$1,910.70	\$2,866.05	\$3,184.50
	Alexander Soutter	1.3	\$577.20	\$865.80	\$962.00
	Andrew Nesbitt	4.3	\$1,212.60	\$1,818.90	\$2,021.00
<b>Subtotal:</b>		<b>13.9</b>	<b>\$7,000.50</b>	<b>\$10,500.75</b>	<b>\$11,667.50</b>

FEE ITEM	PERSONS	HOURS	PARTIAL INDEMNITY RATE	SUBSTANTIAL INDEMNITY RATE	ACTUAL RATE*
<p>2. To receipt and review of the Receiver's Motion Record, receipt and review of RioCan's Affidavit; to preparation of Oxford's Responding Motion Record including the Affidavit of N. Corrado and C. Macdonald and all related meetings and correspondence; to receipt and review of Receiver's Reply Motion Record and RioCan's Reply Motion Record; preparation of Sur-Reply Affidavit of N. Corrado; to preparation for and attendance at Case Conferences on October 14, 2025 and November 24, 2025; preparation of Aide Memoire; and all related meetings and correspondence;</p>	D.J. Miller	125.3	\$82,698.00	\$124,047.00	\$137,830.00
	Deborah E. Palter	94.5	\$54,715.50	\$82,073.25	\$91,192.50
	Alexander Soutter	68.8	\$30,547.20	\$45,820.80	\$50,912.00
	Andrew Nesbitt	142.8	\$40,269.60	\$60,404.40	\$67,116.00
	Corrina Macdonald	6	\$1,206.00	\$1,809.00	\$2,010.00
<b>Subtotal:</b>		<b>437.40</b>	<b>\$209,436.30</b>	<b>\$314,154.45</b>	<b>\$349,060.50</b>

FEE ITEM	PERSONS	HOURS	PARTIAL INDEMNITY RATE	SUBSTANTIAL INDEMNITY RATE	ACTUAL RATE*
<b>3.</b> To preparation for and attendance at the cross-examinations of all deponents, to conducting the cross-examination of D. Blasutti and J. Tate, to attending the cross examination of N. Corrado and S. Lee, to reviewing answers to undertakings of D. Blasutti, and all related meetings and correspondence;	D.J. Miller	61.8	\$40,788.00	\$61,182.00	\$67,980.00
	Deborah E. Palter	70.5	\$40,819.50	\$61,229.25	\$68,032.50
	Alexander Soutter	50.4	\$22,377.60	\$33,566.40	\$37,296.00
	Andrew Nesbitt	54.3	\$15,312.60	\$22,968.90	\$25,521.00
	Corrina Macdonald	3.4	\$683.40	\$1,025.10	\$1,139.00
	Victoria Kowalik	2.7	\$542.70	\$814.05	\$904.50
<b>Subtotal:</b>		<b>243.10</b>	<b>\$120,523.80</b>	<b>\$180,785.70</b>	<b>\$200,873.00</b>
<b>4.</b> To the receipt and review of the Receiver's and RioCan's Factums, to researching, drafting and finalizing Oxford's Responding Factum; to all related meetings and correspondence;	D.J. Miller	43.2	\$28,512.00	\$42,768.00	\$47,520.00
	Deborah E. Palter	24.9	\$14,417.10	\$21,625.65	\$24,028.50
	Alexander Soutter	47.76	\$21,205.44	\$31,808.16	\$35,342.40
	Andrew Nesbitt	54.4	\$15,340.80	\$23,011.20	\$25,568.00
	Victoria Kowalik	3.8	\$763.80	\$1,145.70	\$1,273.00
<b>Subtotal:</b>		<b>130.1</b>	<b>\$60,032.40</b>	<b>\$90,048.60</b>	<b>\$100,054.00</b>

FEE ITEM	PERSONS	HOURS	PARTIAL INDEMNITY RATE	SUBSTANTIAL INDEMNITY RATE	ACTUAL RATE*
5. To all other preparations for the Motion Hearing; preparation of Oral Hearing Compendium and to all related meetings and correspondence;	D.J. Miller	41.9	\$27,654.00	\$41,481.00	\$46,090.00
	Deborah E. Palter	23.1	\$13,374.90	\$20,062.35	\$22,291.50
	Andrew Nesbitt	38.3	\$10,800.60	\$16,200.90	\$18,001.00
	Victoria Kowalik	6	\$1,206.00	\$1,809.00	\$2,010.00
<b>Subtotal</b>		<b>107.8</b>	<b>\$53,035.50</b>	<b>\$79,553.25</b>	<b>\$88,392.50</b>

**LAWYER'S CERTIFICATE**

I CERTIFY that the hours claimed have been spent, that the rates shown are correct and that each disbursement has been incurred as claimed.

Date: January 16, 2026

  
D.J. Miller

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Lawyers for Oxford Properties Group, *et al.*

TO: **THE SERVICE LIST**

**RIOCAN REAL ESTATE INVESTMENT TRUST et al.**  
Applicant

and

**2455034 ONTARIO LIMITED PARTNERSHIP et al.**  
Respondents

Court File No. CL-25-00744295-00CL

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

Proceeding commenced at **Toronto**

**COSTS OUTLINE OF OXFORD PROPERTIES GROUP**

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Lawyers for Oxford Properties Group *et al.*

**TAB B**

## Oxford Properties Group Submissions on Costs

Fee Item: As described on Costs Outline dated January 16, 2026	Actual Rate: As outlined on the Costs Outline dated January 16, 2026	Partial Indemnity Rate fees as outlined on the Costs Outline dated January 16, 2026	Time up to November 25, 2025 at Partial Indemnity Rate	Time after November 25, 2026 at Substantial Indemnity Rate	
1	\$11,667.50	\$7,000.50	\$7,000.50		
2	\$349,060.50	\$209,436.30	\$189,122.63	\$30,470.51	
3	\$200,873.00	\$120,523.80		\$180,785.70	
4	\$100,054.00	\$60,032.40		\$90,048.60	
5	\$88,392.50	\$53,035.50		\$79,553.25	
<b>Subtotals</b>	\$750,047.50	\$450,028.50	\$196,123.13	\$380,858.06	
<b>Total Partial Indemnity Fees to November 25, 2025 and Substantial Indemnity Fees Thereafter (\$196,123.13 + \$380,858.06)</b>					\$576,981.19
HST on Fees	\$97,506.18	\$58,503.71			\$75,007.55
Attendance Fees - Actual Rate	\$18,619.01				
Attendance Fees - Partial Indemnity Rate		\$11,171.75			
Attendance Fees at Substantial Indemnity Rate					\$16,757.62
Disbursements	\$38,483.30	\$38,483.30			\$38,483.30
<b>TOTAL ACTUAL COSTS:</b>	<b>\$904,655.99</b>				
<b>TOTAL PARTIAL INDEMNITY COSTS:</b>		<b>\$558,187.26</b>			
<b>TOTAL PARTIAL INDEMNITY COSTS TO NOVEMBER 25, 2025 AND SUBSTANTIAL INDEMNITY COSTS THEREAFTER:</b>					<b>\$707,229.66</b>

**TAB C**

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

*In the matter of an Application under 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*

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SERVICES TRUST, RC HOLDINGS II LP, RC NA GP 2 TRUST and RIOCAN  
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Applicants

- and -

**RIOCAN-HBC LIMITED PARTNERSHIP, RIOCAN-HBC GENERAL PARTNER INC.,  
HBC YSS 1 LIMITED PARTNERSHIP, HBC YSS 1 LP INC., HBC YSS 2 LIMITED  
PARTNERSHIP, HBC YSS 2 LP INC., RIOCAN-HBC OTTAWA LIMITED  
PARTNERSHIP, RIOCAN-HBC (OTTAWA) HOLDINGS INC., and RIOCAN-HBC  
(OTTAWA) GP, INC.**

Respondents

**OFFER TO SETTLE  
(Rule 49 Offer)**

WHEREAS, FTI Consulting Canada Inc., in its capacity as court-appointed receiver of 2455034 Ontario Limited Partnership (formerly RioCan-HBC Limited Partnership) et al. (the “**Receiver**”) in this proceeding has brought a motion returnable December 16, 2025 (the “**Receiver’s Motion**”) for an Order approving a proposed sublease with Fairweather Ltd. dated August 12, 2025 as amended, for premises formerly occupied by Hudson Bay Company (“**HBC**”) at Yorkdale shopping centre (the “**Yorkdale Premises**”), as set out in the Receiver’s Motion Record dated October 11, 2025;

AND WHEREAS RioCan Real Estate Investment Trust, together with its affiliates (all of which are collectively referred to herein as, “**RioCan**”) filed affidavits of Dennis Blasutti sworn October 12, 2025 and November 21, 2025 in support of the Receiver’s Motion, and has asserted various rights in respect of the Yorkdale Premises;

AND WHEREAS Yorkdale Shopping Centre Holdings Inc. by its manager, OPGI Management GP Inc., as general partner of OPGI Management Limited Partnership (“**Oxford**”) is the landlord of the Yorkdale Premises, and opposes the Receiver’s Motion;

NOW THEREFORE, Oxford hereby offers to settle the Receiver’s Motion and all rights, claims and interests that could be asserted by any person or entity, whether directly, or through the Receiver in respect of, or relating in any way to the Yorkdale Premises, including any rights, claims or interest that could be asserted by RioCan, the Receiver, RC Finance Trust, RioCan Financial Services Limited, HBC or anyone claiming through any of those parties, in respect of the Yorkdale Premises, on the following terms:

1. In consideration for all of the terms of this Offer to Settle, the Receiver shall deliver to Oxford a full and irrevocable surrender of the Head Lease<sup>1</sup>, disclaimer of the Existing HBC Sublease, a termination of the conditional sublease to Fairweather Ltd. and a termination, release and discharge of all claims, interests, instruments or agreements affecting or relating to the Yorkdale Premises in favour of any party<sup>2</sup>, including pursuant to the Order described below.

---

<sup>1</sup> All capitalized terms used in this Offer to Settle and not otherwise defined, are as defined in the Affidavit of Nadia Corrado sworn November 13, 2025.

<sup>2</sup> Including all agreements through which RioCan seeks to asserts any rights, whether the Loan Purchase Agreement with RBC dated October 23, 2025 (and all documents referenced therein, including the Leasehold Lender Agreement) or otherwise.

2. Oxford shall pay to the Receiver:

(a) the total sum of **CDN \$5 million** inclusive of any harmonized sales tax (“**HST**”), if this offer is accepted in writing by each of the Receiver and RioCan by no later than the commencement of the first examination of any party’s witness or expert in respect of the Receiver’s Motion; **OR**

(b) the total sum of **CDN \$2.5 million** inclusive of any HST, if this offer is accepted in writing by each of the Receiver and RioCan after the commencement of the first examination of any party’s witness or expert but within five (5) minutes following the commencement of the hearing of the Receiver’s Motion.

3. If this offer to settle is accepted as set out herein, then there will be no costs sought by Oxford in respect of the Receiver’s Motion.

4. The parties (Oxford, RioCan and the Receiver) shall execute a full and final mutual release in a form satisfactory to the parties and their counsel acting reasonably. Oxford will consider a release by court Order in place of a contractual release, provided same is in all respects a fulsome release of all matters relating to the settlement described herein.

5. The Receiver and Oxford shall execute a “Surrender and Termination of Leases and Related Agreements” in a form satisfactory to the parties and their counsel, acting reasonably, to reflect the surrender and termination of all leases and related agreements in respect of the Yorkdale Premises. The Receiver and RioCan will take all steps as may be necessary to obtain from HBC any approval or signatures to execute an agreement in a form satisfactory to the parties and their counsel, acting reasonably, to surrender, terminate, disclaim, or otherwise resile any and all rights,

title, and interest in and to the Head Lease and the Yorkdale Premises, including without limitation any encumbrances, agreements, leases, notices, or other instruments.

6. The parties shall consent to, and the Receiver shall obtain, an Order dismissing the Receiver's Motion on a "with prejudice, without costs" basis, the form of the Order being satisfactory to the parties and their counsel acting reasonably. Such Order shall include that no party is entitled to assert any claim, directly or indirectly, against Oxford relating in any way to the Yorkdale Premises or the Receiver's Motion.

7. All instruments registered on title to the real property or relating in any way to the Head Lease and the Yorkdale Premises (whether encumbrances, agreements, leases, notices or otherwise), whether relating to the Tenant Department Store (as defined in the Head Lease) or the Yorkdale Premises or granting rights in favour of any party shall be removed from title by the Receiver pursuant to the Order dismissing the Receiver's Motion.

8. Unless previously withdrawn in writing, this Offer to Settle shall remain open for acceptance until five (5) minutes after the commencement of the hearing of the Receiver's Motion, at which time this Offer to Settle shall automatically expire.

November 25, 2025

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Lawyers for Oxford Properties Group, et al.

TO: Norton Rose Fulbright Canada LLP, counsel to the Receiver

AND TO: Goodmans LLP, counsel to RioCan Real Estate Investment Trust

**TAB D**

**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

**COSTS OUTLINE**

The Applicant provides the following outline of the submissions to be made at the hearing in support of the costs the party will seek if successful:

	<u>PARTIAL</u>	<u>SUBSTANTIAL INDEMNITY</u>	<u>ACTUAL</u>
TOTAL FEES:	\$140,030.10	\$210,045.15	\$233,383.50
TOTAL TAXABLE DISB:	\$45,706.45	\$45,706.45	\$45,706.45
TOTAL NON-TAXABLE DISB:	\$339.00	\$339.00	\$339.00
<b>SUBTOTAL:</b>	<b>\$186,075.55</b>	<b>\$256,090.60</b>	<b>\$279,428.95</b>
Taxes (13%):	\$24,145.75	\$33,247.71	\$36,281.69
<b>TOTAL AMOUNT CLAIMED:</b>	<b>\$210,221.30</b>	<b>\$289,338.31</b>	<b>\$315,710.64</b>

The following points are made in support of the costs sought with reference to the factors set out in subrule 57.01(1):

- the amount claimed and the amount recovered in the proceeding

- the complexity of the proceeding

- the importance of the issues

- the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding

- whether any step in the proceeding was improper, vexatious or unnecessary or taken through negligence, mistake or excessive caution

- a party's denial of or refusal to admit anything that should have been admitted

- the experience of the party's lawyer

Person	Year of Call	Partial Rate <sup>1</sup>	Substantial Rate <sup>2</sup>	Actual Rate
Orestes Pasparakis	1995	\$1,140.00	\$1,710.00	\$1,900.00
James Renihan	2009	\$531.00-\$597.00	\$796.50-\$895.50	\$885.00-\$995.00
Nadine Tawdy	2022	\$339.00-\$435.00	\$508.50-\$652.50	\$565.00-\$725.00

- the hours spent, the rates sought for costs and the rate actually charged by the party's lawyer

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<sup>1</sup> Adjusted according to the Bank of Canada's inflation calculator.

<sup>2</sup> Substantial Indemnity rate multiplied by 1.5.

FEE ITEM	PERSONS	HOURS	PARTIAL INDEMNITY RATE	SUBSTANTIAL INDEMNITY RATE	ACTUAL RATE*
Preparing motion materials, including factum, motion records, preparing for and attending cross-examinations.	O. Pasparakis	24.0	\$27,360.00	\$41,040.00	\$45,600.00
	J. Renihan	108.8	\$59,502.00	\$89,253.00	\$99,170.00
	N. Tawdy	104.3	\$35,357.70	\$53,036.55	\$58,929.50
<b>Subtotal</b>			<b>\$122,219.70</b>	<b>\$183,329.55</b>	<b>\$203,699.50</b>

FEE ITEM	PERSONS	HOURS	PARTIAL INDEMNITY RATE	SUBSTANTIAL INDEMNITY RATE	ACTUAL RATE*
Attending hearing of full day motion on January 14, 2026	O. Pasparakis	8.2	\$9,348.00	\$14,022.00	\$15,580.00
	J. Renihan	8.2	\$4,895.40	\$7,343.10	\$8,159.00
	N. Tawdy	8.2	\$3,567.00	\$5,350.50	\$5,945.00
<b>Subtotal</b>			<b>\$17,810.40</b>	<b>\$26,715.60</b>	<b>\$29,684.00</b>

\* Specify the rate being charged to the client for each person identified in column 2. If there is a contingency fee arrangement, state the rate that would have been charged absent such arrangement.

- any other matter relevant to the question of costs

<i>Item</i>	<i>Cost</i>
<b><i>Non-Taxable Disbursements</i></b>	
Notice of Motion to Strike Statement of Defence and Counterclaim	\$339.00
<b>Total Non-Taxable</b>	<b>\$339.00</b>
<b><i>Taxable Disbursements</i></b>	
Court Reporter	\$575.50
Transcripts	\$1,449.70
Expert Reports	\$43,681.25
<b>TOTAL Taxable:</b>	<b>\$45,706.45</b>

LAWYER'S CERTIFICATE

I CERTIFY that the hours claimed have been spent, that the rates shown are correct and that each disbursement has been incurred as claimed.

Date: January 16, 2026



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James Renihan

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Receiver

**TO: THE SERVICE LIST**

RIOCAN REAL ESTATE INVESTMENT TRUST, et al.  
Applicants

-and- 2455034 ONTARIO LIMITED PARTNERSHIP, et al.  
Respondents

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

PROCEEDING COMMENCED AT  
TORONTO

**COSTS OUTLINE**

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Counsel for FTI Consulting Canada Inc., as Receiver

# T A B E

**CITATION:** In Re Hudson's Bay Company, 2026 ONSC 1331  
**COURT FILE NO.:** CV-25-00738613-00CL  
**DATE:** 20260310

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

**RE:**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND**

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1242939 B.C. UNLIMITED LIABILITY COMPANY, 1241423 B.C. LTD., 1330096 B.C. LTD., 1330094 B.C. LTD., 1330092 B.C. UNLIMITED LIABILITY COMPANY, 1329608 B.C. UNLIMITED LIABILITY COMPANY, 2745263 ONTARIO INC., 2745270 ONTARIO INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., AND 2472598 ONTARIO INC.**

**IN WRITING:** KIMMEL J.

**COUNSEL:** *Ashley Taylor, Elizabeth Pillon, Maria Konyukhova, Philip Yang and Brittney Ketwaroo* for the Applicants

*Graham Phoenix and Jayson Thomas* for Ruby Liu Commercial Investment Corp.

*Jeremy Dacks, Marc Wasserman and David Rosenblat* for Pathlight Capital LP

*Matthew Lerner, Brian Kolenda, Christopher Yung and Julien Sicco* for ReStore Capital LLC, the FILO Agent

*Jeremy Opolsky, David Bish, Alec Angle and Alina Butt* for The Cadillac Fairview Corporation

*Matthew Gottlieb, Andrew Winton and Annecy Pang* for KingSett Capital Inc.

*D. J. Miller and Andrew Nesbitt* for Oxford Properties Group

*James Bunting, Anna White and Alycia Noë* for Ivanhoe Cambridge Inc.

*Brendan Jones and John Wolf* for QuadReal Property Group and Primaris Management Inc.

*Angela Hou and Emily Fan* for TELUS Health, HBC Pension Administrator

*Linda Galessiere* for Ivanhoe Cambridge II Inc. and Morguard Investments Limited, both as Agents for certain Landlords, and Westcliff Management Ltd.

*Sean Zweig, Thomas Gray and Preet Gill* for Alvarez & Marsal Canada Inc., the Court-appointed Monitor

## **COSTS ENDORSEMENT: CENTRAL WALK APA AND LEASE ASSIGNMENTS**

### **The Lease Assignment Decision**

[1] On October 24, 2025, Osborne J. (as he then was) released a decision declining to approve the assignment by the applicants of 25 Hudson’s Bay Company (“HBC”) Department Store leases for locations across Canada to a new tenant: see *In Re Hudson's Bay Company*, 2025 ONSC 5998 (the “Lease Assignment Decision”).

[2] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Lease Assignment Decision.

[3] In very general terms the context and background that led to the contested Lease Assignment Decision were as follows:

- a. HBC is insolvent and owes its creditors hundreds of millions of dollars. At present, it would appear unlikely that those creditors will be repaid in full.
- b. HBC entered into the Central Walk APA on May 23, 2025 that contemplated the assignment (subject to court approval) of up to 25 Leases in Ontario, Alberta, and British Columbia to the Purchaser (or a permitted assignee thereof, which would be a corporation controlled by Ms. Liu) to operate a national department store chain under the “Ruby Liu” banner. HBC brought a motion seeking the court’s approval of the Central Walk APA and the contemplated assignment of the Leases.
- c. One secured creditor who, in the waterfall of recoveries, would likely have benefitted most from any realization of value from these leases (Pathlight Capital LP) supported the proposed assignment.
- d. One of HBC’s senior secured creditors, ReStore Capital, LLC, in its capacity as FILO Agent and on behalf of the FILO Lenders, opposed the proposed assignment and brought its own (amended) motion for relief, part of which was described in the Lease Assignment Decision to be “almost completely inconsistent with the relief sought on HBC’s motion”.
- e. Aside from the one landlord that was affiliated with the Purchaser, all of HBC’s other landlords that were the counterparties to the contested assignment of Leases opposed HBC’s motion (the “Opposing Landlords”, defined below).
- f. One of those Opposing Landlords, Ivanhoe Cambridge (“IC”), also opposed the additional relief sought by HBC (sought to satisfy one of the conditions of the Central Walk APA) that would, if the court approved the assignment of certain of its leases (the “IC Leases”), declare unenforceable certain provisions of those IC Leases with the practical effect of amending the terms of these IC Leases by deleting those clauses.

[4] The Lease Assignment Decision required the court to consider s. 11.3(1) of the CCAA. That section provides that, on application by a debtor company and on notice to every party to an agreement and the Monitor, the court may make an order assigning the rights and obligations of the company under an agreement to any person who is specified by the court and agrees to the assignment.

[5] In the Lease Assignment Decision the court found that:

- a. The mandatory technical requirements under s. 11.3 had been met: The motion was brought on notice to all contractual counterparties and the Monitor; and all monetary defaults, other than those arising by reason only of the company's insolvency, the commencement of these proceedings or the company's failure to perform, and non-monetary obligations, would be remedied under the terms of the Central Walk APA, if approved.
- b. While the Monitor's approval is not required for the court to make an assignment under s. 11.3(3)(a), the Monitor's approval of the proposed assignment is a relevant consideration. Here, the Monitor declined to approve the proposed assignment.
- c. The Monitor had expressed numerous concerns about the ability of the Purchaser to satisfy the non-monetary obligations under the Leases to be assigned. These concerns were elaborated upon and supported by two expert reports filed by the Objecting Landlords.
- d. The Monitor's concerns were well founded, and the court noted other concerns as well. Specifically, the court was also concerned that the financial obligations under the assigned Leases would be very material and would need to be performed continuously for decades; however, the Purchaser itself was effectively a shell company incorporated for the purposes of the proposed Transaction with no assets, no history of operations or earnings and, on its own, was unable to meet a reasonableness standard in demonstrating an ability to meet the financial obligations under the subject Leases.
- e. The \$375 million equity commitment from Ms. Liu was made exclusively to the Purchaser, another entity controlled by Ms. Liu, and was not enforceable by any of the contractual counterparties.
- f. Section 11.3(3)(b) of the CCAA requires consideration of whether the assignee would be able to perform the obligations under the Leases. In considering that section, the court concluded that the Applicants and the Purchaser fell well short of establishing, on any reasonableness standard, the availability of funds to back up the equity commitment and the one-year rent guarantee, based on the identified operational concerns alone.
- g. In terms of the appropriateness of the assignment to be considered under s. 11.3(3)(c), in addition to the overlapping considerations with those under s. 11.3(3)(b), the court also considered that the Leases were not being assigned as part of a broader acquisition of assets or of a business, and the proposed assignments

were not part of a broader transaction that would be affected by the decision to not approve them. The proposed Lease assignments were not being sought in pursuit of a going concern transaction to maintain and continue an operating business.

- h. Rather, the proposed assignments were proposed simply to pay a secured creditor. As the court noted, at paras. 131 and 133 of the Lease Assignment Decision:

[131] Put simply, the reality here is that the net proceeds of the Transaction, if approved, would be paid exclusively to some combination of two secured creditor groups: the FILO Agent and Pathlight. As fully set out in the Monitor's Reports, the FILO Agent is the first ranking secured creditor with respect to most of the assets of HBC. However, if ironically, Pathlight has first ranking security on a majority of the 25 Leases proposed to be assigned as part of the Transaction.

[133] For the purposes of this motion, I observe only the simple yet indisputable fact that the net proceeds of the Transaction, if approved, would be used to pay a secured creditor. Accordingly, in the absence of any prospect of a going concern outcome for HBC, the analysis boils down, in practical terms, to the question of which stakeholder group's interests ought to be prioritized: one of the secured creditors, or the Opposing Landlords.

- [6] The court concluded, at para. 142 of the Lease Assignment Decision:

[142] Considering all of the circumstances of this unique case, granting the relief sought would, in my view, represent an extraordinary exercise of the discretion of the court to affect rights of private parties for almost a century, pursuant to what is already an extraordinary power under s. 11.3 of the *CCAA*.

[7] The court further concluded that the two provisions of the IC Leases (ss. 3.05 and 3.05(A)) that the Applicants and the Purchaser asked to be declared void and unenforceable as *ipso facto* clauses because they violate the common law anti-deprivation rule and s. 34 of the *CCAA*, were not, in fact, *ipso facto* clauses. If the court had approved the proposed Lease assignments, it would have declined to declare these clauses to be void and unenforceable. The anti-deprivation rule and s. 34 of the *CCAA* are triggered only when existing rights are taken away because of an insolvency, which was found not to be the effect of the impugned IC Lease provisions. Rather, these provisions addressed circumstances that may or may not arise in the future that could have consequences for the continuation of the assigned Leases on their existing or original terms.

### **The Requests for Costs Arising Out of the Lease Assignment Decision and Summary of Outcome**

[8] Following the release of the Lease Assignment Decision, the participating parties exchanged written cost submissions that were sent to the court, as follows:

- a. The “Opposing Landlords” (The Cadillac Fairview Corporation Limited, Oxford Properties Group, IC, Westcliff Management Ltd., Morguard Investments Limited, Primaris Management Inc., QuadReal Property Group, and KingSett Capital Inc.) provided Cost Submissions dated November 14, 2025 seeking costs in the aggregate amount of approximately \$2.4 million<sup>1</sup> on a partial indemnity scale.
- b. IC Cost Submissions Re: *Ipsa Facto* Relief dated November 14, 2025 seeking partial indemnity costs of \$144,908.09.
- c. The Applicants’ Cost Submissions dated November 28, 2025 opposing the Landlords’ request for costs.
- d. The FILO Agent’s Cost Submissions dated December 5, 2025 opposing the Landlords’ request for it to fund the payment of any costs awarded against the Applicants and requesting, as alternative relief, that if any costs award is made in favour of the Opposing Landlords that those costs be ordered payable by Pathlight. Specifically, that: “If the Court is inclined to grant a right to the Landlords to priority payment of costs, those costs should be borne not by the Applicants or the FILO Lenders, but instead by the only parties who stood to gain economically from the Central Walk Transaction: the Pathlight Lenders”.
- e. Pathlight Capital LP’s Cost Submissions dated December 5, 2025 supporting the Applicants’ opposition to the requests for costs and opposing the request made by the FILO Agent for “alternative relief” against Pathlight.
- f. Opposing Landlords’ Joint Reply Cost Submissions dated December 12, 2025.

[9] Osborne J.A. was appointed to the Court of Appeal for Ontario on December 16, 2025. I have assumed responsibility for case managing this CCAA proceeding and related proceedings involving HBC. The parties asked that the costs be determined by the court on the basis of their written cost submissions. I have read and considered the Lease Assignment Decision and the parties’ written cost submissions and, taking all of that into consideration and for the reasons generally outlined in this endorsement, I have decided that:

- a. The Opposing Landlords, as the successful party on this motion, are entitled to a partial indemnity award of their costs from the Applicants.

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<sup>1</sup> The aggregate amount claimed in the Opposing Landlords’ Cost Submissions is \$2,386,399.29, comprised of partial indemnity fees stated to add up to \$1,866,965.59 plus the expert costs of \$512,096.48, shared between the Opposing Landlords, and minor disbursements for printing, translation, agency costs, etc. The court has not been able to entirely reconcile this total amount against the Costs Outlines/Bills of Costs provided but the difference is not material. The amount awarded is intended to correspond with the certified partial indemnity fees, plus disbursements and applicable taxes claimed by the Opposing Landlords in their respective Costs Outlines/Bills of Cost.

- b. The amounts of costs claimed by the Opposing Landlords appear to be fair, reasonable, and proportionate and are supported by the Costs Outlines and Bills of Costs submitted. I fix their aggregate partial indemnity costs in the amounts they have claimed (inclusive of partial indemnity fees, plus both expert and non-expert disbursements and applicable taxes).
- c. This costs award is stayed and shall not be paid until the costs, expenses, claims, and priorities have been established in this proceeding, recognizing that the costs may not end up being paid if the assets are not sufficient to pay claims that are determined to have priority over the costs. All of that is left to another day to be determined.

### **Principles Governing Costs in CCAA Proceedings**

[10] Costs are not typically sought under the CCAA because, as the court explained in *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 5478, 93 C.B.R. (6th) 154, at para. 9, a restructuring is often not a “classic adversarial civil proceeding”, and the CCAA is intended to provide a “forum for stakeholder views to be brought forward, considered, and taken into account”.

[11] However, the court has discretion to award costs in appropriate CCAA cases. CCAA Applicants are not immune from costs awards. There is no general principle that costs should not be awarded in CCAA proceedings, and there are examples of cases in which the normal rule that costs follow the event has been applied. Costs have been ordered payable out of the debtors’ estate either directly by the applicants or as a result of an award made against the Monitor: see, for example, *Urbancorp Toronto Management Inc. (Re)*, 2019 ONCA 757, 74 C.B.R. (6th) 23, at paras. 80, 82; *Silver Streams Homes Inc. (Re)*, 2017 ONSC 314, at paras. 13-21; *Return On Innovation Capital Ltd. v. Gandi Innovations Ltd.*, 2011 ONSC 7465, 88 C.B.R. (5th) 320, at paras. 5-7, 14-15; *Re Calpine Canada Energy Ltd.*, 2008 ABQB 537, 46 C.B.R. (5th) 243, at para. 1; and *Jackpine Forest Products Ltd., Re*, 2004 BCSC 20, 27 B.C.L.R. (4th) 332, at para. 35.

[12] Costs awards are discretionary under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. Costs are typically considered in three stages: entitlement, scale, and quantum. There is no reason to deviate from that approach in this case. This case raises the additional question of who should pay the costs, if any are awarded, and when they should be paid.

#### *Entitlement to Costs*

[13] The court in *YG* recognized that, while not the norm, there are restructuring proceedings in which a classic adversarial dispute can arise between two competing creditor groups, and in such circumstances there is a recognized discretion in the court to award costs as between the parties with the economic interests in the outcome. Here, the court recognized the competing stakeholder groups with an economic interest in the Lease Assignment Decision to be the Opposing Landlords on the one hand and the secured creditors on the other.

[14] As the court observed (at para. 133 of the Lease Assignment Reasons): “[T]he analysis boils down, in practical terms, to the question of which stakeholder group’s interests ought to be prioritized: one of the secured creditors, or the Opposing Landlords.” The court explained, at para. 6 of the Lease Assignment Decision, that the fundamental question to be considered required the

court “to weigh legitimate but directly competing interests of stakeholders or groups of stakeholders, neither of which caused the present situation. Should a party to a contract that it entered into with an insolvent company be compelled to continue that contractual relationship with a new party in order to maximize recoveries for creditors of the insolvent company?”

[15] In that sense, the dispute about the approval of the assignment of the Leases was a “classic adversarial civil proceeding”. It went beyond the usual “forum for stakeholder views to be brought forward”—that is protected by the “practice in our Commercial Court of not awarding costs in restructuring matters”: *YG*, at paras. 7, 9.

[16] The interests ultimately lined up as the Applicants supported by Pathlight against the Opposing Landlords. The FILO Agent opposed the relief sought by the Applicants and sought specific relief against Pathlight. That introduces a slight complication into the alignment of adversarial stakeholder interests since the two secured creditors were not on the same side.

[17] Success is considered holistically. In this case, there is no doubt that the Opposing Landlords were the successful parties in the Lease Assignment Decision. In the adversarial context, the normal rule is that costs follow the event, with the “successful party” being entitled to some award of costs from the “losing party”.

[18] The Opposing Landlords had a lot at stake, faced with the prospect of having their long-term leases with HBC (or its affiliates) assigned to a third party with whom they had no prior dealings. The Opposing Landlords did not consider these proposed Lease assignments to be beneficial to them, even if it meant they would continue to receive rent for at least the short term (and maybe longer if the new tenant proved successful), when considered against the alternative of the Leases eventually being disclaimed.

[19] It was suggested by Pathlight that the Opposing Landlords should not be awarded any costs of this motion because “[a]n award of any costs to the Objecting Landlords, let alone the very large award that is sought, would set a precedent that would deter debtors from accessing the CCAA’s flexible remedies. It would have a chilling effect on debtors seeking to pursue creative solutions with a view to maximizing value for their stakeholders”.

[20] The Applicants made similar arguments, pointing out that they were pursuing the potential of \$50 million in additional recoveries for creditors in what the court described as an “unprecedented” transaction in its sheer scale and complexity, through relief that was described as “unique in a number of respects”.

[21] The court has been cautious about awarding costs against a debtor that was unsuccessful in pursuing a step in the restructuring process with a view to maximizing value for stakeholders: see e.g., *Edward Collins Contracting Limited (Re)*, 2024 NLSC 144, at paras. 17, 20; *Calpine*, at para. 1; *YG*, at paras. 9-10. But the issue here is for whose benefit was this step really being pursued.

[22] The “losing party” here was the Applicants (unsuccessful moving parties). The Central Walk Transaction and associated approval of lease assignments turned out to be a misguided attempt by the Applicants to recover some value from the long-term HBC Leases in many prime

shopping centers in Canada, for the benefit of some HBC secured creditors, and in this case, potentially improving the position of one of the secured creditors (Pathlight).

[23] I find the Opposing Landlords to be entitled to some costs as the successful party on this motion. Awarding costs to the Opposing Landlords in this case is not for the purpose of punishing the debtors or their secured creditors, but instead to recognize the intended objective of partial indemnity of the Opposing Landlords for the Applicants' failed attempt to avail themselves of the CCAA tools. Awarding costs encourages parties in future cases to be thoughtful about litigation strategies, to embrace and fully explore alternatives to litigation, and to make concerted efforts to resolve disputes consensually via settlement. The fact that the amount requested is unprecedented is not a reason to decline to award costs of this magnitude in an appropriate case, as this is

[24] I do agree, however, that the Opposing Landlords should not be paid their costs until the costs and expenses and priorities are sorted out at the end of the CCAA proceeding, in keeping with the logic and rationale of the court's determination in the Lease Assignment Decision not to grant the remainder of the FILO Agent's motion, for the reasons discussed in more detail in the next section of this endorsement. This deferral of payment of costs also recognizes that ordering the "losing party" (the Applicants) to pay the Opposing Landlord's costs now could create in inequity or unfairness to the FILO Lenders who are secured creditors.

#### *Who Should Pay the Opposing Landlords' Costs*

[25] Even though the FILO Lenders opposed the Applicants' motion and themselves brought a motion seeking the opposite relief, the Opposing Landlords are still asking that the FILO Lenders be ordered to pay any costs award directly to the Opposing Landlords, or to have it paid by the Applicants as a priority post-filing claim (with the result that it would still be funded, albeit indirectly, by the FILO Lenders through the erosion of their collateral in the HBC estate).

[26] On the first point, I do not agree that a costs award should be made directly against the FILO Lenders to pay the Opposing Landlords' costs now. The FILO Lenders were not the "losers" in the adversarial dispute with the Opposing Landlords.

[27] Furthermore, the FILO Lenders have already been compelled to fund the Applicants' pursuit of the Central Walk Transaction even though they (a) tried to prevent it from proceeding, (b) tried to expedite the hearing, and (c) ultimately opposed it. It is noted that the Applicants' refusal to settle (i.e., drop their motion and abandon the Central Walk Transaction) has already cost the estate approximately \$11 million in rent, common area maintenance, property taxes, and utilities paid to the Opposing Landlords pending the outcome of the Lease Assignment Motion, not including additional costs to remove FF&E and the significant professional fees to pursue the assignment motion, as well as the forfeiture of the Purchaser's deposit.

[28] Now, despite this, the Opposing Landlords seek to have the FILO Lenders further fund an adverse costs award against the Applicants.

[29] The Opposing Landlords alternative request for their costs to be paid now as a priority post-filing claim out of the HBC estate is also problematic from the perspective of overall fairness and reasonableness, even if it might be a theoretical option available to the court. Since I do not consider that to be a fair or reasonable outcome in this case, I do not need to decide whether, as a

general proposition, costs awards against an applicant debtor can be treated as a post-filing priority obligation. I note that the payment of post-filing costs awards is not specifically addressed in the CCAA or in the Amended and Restated Initial Order dated March 21, 2025, one way or the other.

[30] In terms of the overall fairness and reasonableness, the FILO Lenders point out that the funds in the HBC estate that will be available for distribution are limited. The court has acknowledged that it is not clear who the fulcrum creditor will be. If the costs award is granted and ordered to be paid now, it will effectively be paid from the FILO Lenders' collateral, and there is a significant risk that the FILO Lenders will never recover these amounts.

[31] In the particular circumstances of this case, to require the FILO Lenders to pay now (either directly or indirectly) for both the Applicants' and Landlords' costs would be unjust and contrary to the policy and remedial aims to the CCAA.

[32] The FILO Agent contends on behalf of the FILO Lenders that the true antagonists on this motion were the Opposing Landlords and Pathlight—the secured creditor that stood to benefit from the value to be achieved from the Central Walk Transaction and assignment of the Leases. The FILO Agent argues that Pathlight was the real “losing party” and the party that should pay the costs of the Opposing Landlords. The FILO Agent points to the choice that was made by the Applicants, at the urging and with the support of Pathlight, when the Purchaser did not fulfil its obligations to seek the consent of the Opposing Landlords under the Central Walk APA: Instead of relying on the protections in the Central Walk APA and keeping the deposit, the Applicants (and Pathlight) elected to proceed with an assignment motion. That is what put them in an adversarial position against the Opposing Landlords.

[33] Pathlight objects on a number of procedural and other grounds to any request that it pay the costs of the Opposing Landlords. It specifically objects to any characterization of it as a “party” to this dispute, sheltering itself behind the Applicants. Determining who the “parties” are to particular disputes in restructuring and insolvency proceedings can be tricky. Stakeholders often participate in motions and aspects of the applications on matters that are of interest to them, whether to raise them or oppose them. They may be considered “parties” to the particular dispute in that sense, even if not parties in the more traditional litigation sense.

[34] I do not need to decide the question of whether Pathlight should directly pay the costs of the Opposing Landlords as a “losing” party on this lease assignment dispute because there is a more fundamental issue in this case about acceding to the request of the FILO Agent to make an order now directly against Pathlight to pay any costs awarded to the Opposing Landlords.

[35] In the Lease Assignment Decision when the court addressed the FILO Agent's motion, the aspects of that motion that were seeking the opposite outcome of the relief sought by the Applicants were successful by virtue of the Applicants' motion being dismissed. However, other aspects of the FILO Agent's motion were not granted, and specifically those aspects by which the FILO Agent was asking for a court order requiring Pathlight to pay the costs associated with the Applicants' pursuit of the Central Walk Transaction from and after July 15, 2025, including fees of legal counsel. The FILO Agent did not appeal this decision. The reasons for not making that order, at paras. 205-208 of the Lease Assignment Decision, were that:

[205] Fundamentally, the complaints and concerns of the FILO Agent relate to costs generally and the allocation of costs in this *CCAA* proceeding. Those concerns may or may not be well-founded and they may or may not properly result in a disproportionate allocation of professional fees and other restructuring costs, awards of costs, and/or other relief. It is well established that this court has broad jurisdiction to allocate costs in a *CCAA* proceeding as among stakeholders both pursuant to s. 11 of the *CCAA* and as a result of the court's inherent and equitable jurisdiction. However, in my view, all of that is for another day.

[206] At this stage, it would be extraordinary in a *CCAA* proceeding, and in my view is inappropriate in the particular circumstances here, to grant an order requiring one creditor or group of creditors to pay ongoing costs and expenses of the Applicants (such as lease costs) on the basis that ultimate recoveries for creditors seeking that relief may be compromised or reduced, or on the basis that the present motion would, if successful, have generated recoveries to be distributed primarily to the benefit of another creditor.

[207] At least in large part, such an order here (i.e., an order requiring Pathlight to pay the costs under the CW Leases) would effectively be a predetermination of a number of issues: whether and to what extent the creditor rights of the FILO Agent rank in priority to those of Pathlight; over which assets; and whether either or both of those creditor groups will recover on proven claims and to what extent.

[208] These issues have not been finally determined. ... I am not persuaded that it would be fair or appropriate at this stage to allocate costs of one particular transaction or event in isolation, as opposed to allocating costs in a just and equitable manner considering all of the circumstances, typically at the end of the proceeding.

[36] The court was addressing a broader issue in this aspect of the Lease Assignment Decision dealing with the FILO Agent's motion, beyond just the matter of who should bear the responsibility for the costs incurred by the Applicants for their unsuccessful Lease Assignment Motion. The FILO Agent's motion was broad enough to encapsulate the issue that the court is now being asked to re-consider regarding who should bear the responsibility, and in what proportion, of any costs that the Applicants' may be ordered to pay to the Opposing Landlords. The same logic should therefore apply, which leads me to the same conclusion: "I am not persuaded that it would be fair or appropriate at this stage to allocate costs of one particular transaction or event in isolation, as opposed to allocating costs in a just and equitable manner considering all of the circumstances, typically at the end of the proceeding".

[37] The Opposing Landlords argue that the fact that the FILO Lenders never approved and never stood to benefit from the Central Walk Transaction are allocation issues that this court found are for another day, but that should not alter the costs analysis for this motion. I have difficulty

with this argument. Part of what the court is being asked to consider by the Opposing Landlords is whether an award of costs should be characterized as a post-filing obligation and paid now. That is, at least partially if not entirely, a priority issue that will have a direct impact on the eventual allocations and recoveries as between creditors.

[38] In all of these circumstances, I agree with Pathlight that the FILO Agent's fallback position is the one that should prevail, even if it does mean that the Objecting Landlords will not get paid anything right away and even if it means that in the end there might not be funds available to pay the costs awarded to the Opposing Landlords. All of that will be an issue for another day. At this time, I agree that the court should defer payment of any costs award until the end of the CCAA proceeding, or at least after any reallocation of costs generally. That is the best way in which to reconcile the requests for costs with the earlier determination of Osborne J. that it is premature to undertake an exercise allocating costs and expenses of the Applicants at this stage of the proceeding.

[39] I will deal briefly with one further argument that was raised as a ground for denying the Opposing Landlords their costs of this motion, which is that they benefitted from the Applicants' pursuit of the Central Walk Transaction. This is predicated on the fact that they received almost \$15 million in "dead rent" while the premises sat empty and the approval of the Central Walk Transaction was pursued (rent they would not have received if the Central Walk Transaction had not been pursued and their leases had been disclaimed, leaving them with unsecured claims for rent against the HBC estate).

[40] I do not agree that this is a reason to deny the Opposing Landlords their costs. The Applicants chose to retain the Leases despite the protestations of the Opposing Landlords, and despite the fact that they could have disclaimed them. The CCAA permitted the Applicants to preserve their option for a potential assignment under s. 11.3 of the CCAA if they kept the payments due under the Leases current, but the Applicants cannot now claim that the rent they paid constitutes a windfall to the Opposing Landlords. That said, the fact that the Opposing Landlords received these payments does soften the blow in terms of them being out of pocket for their costs of this motion pending further determinations of claims and priorities, since they received rent far in excess of the costs they are claiming.

#### *IC Costs Claimed for Ipso Facto Relief*

[41] The same principles and analysis as discussed above apply to the question of the entitlement of IC to the costs it has requested in respect of the *Ipso Facto* Relief that was sought in order to satisfy one of the conditions of the Central Walk Transaction. The *Ipso Facto* Relief was declined by the court not only on the basis that the Central Walk Transaction was not approved but also on the basis that the predicate upon which this relief was requested was not supportable or available. While, in contrast to the lease assignments, the Monitor did support this relief that the Applicants sought, that does not change the outcome-based analysis as to winners and losers. However, the Monitor's support does lend an air of reasonableness to the request even though it was not ultimately granted.

[42] Nonetheless, this relief was sought in the context of the broader adversarial dispute between the Applicants/Pathlight and the Opposing Landlords; it just affected one of those landlords specifically.

[43] IC proposed to the Monitor that the determination of the *Ipsa Facto* Relief be deferred until after the determination of the assignment relief, recognizing that if the assignment relief was not granted the *Ipsa Facto* Relief would become moot, as it in fact did. However, when the Monitor presented this proposal to the court, the Applicants opposed it, so the *Ipsa Facto* Relief was adjudicated in tandem with the assignment motion on an expedited schedule.

[44] IC is entitled to the incremental additional costs it incurred to successfully oppose the *Ipsa Facto* Relief for the same reasons as I have found the Opposing Landlords to be entitled to their costs of their successful opposition of the assignment relief. The payment of any such costs shall, similarly, be deferred until the end of the CCAA proceeding or at least after any reallocation of costs generally. That is the best way in which to reconcile the requests for costs with the determination already made by Osborne J. that it is premature to undertake an exercise allocating costs and expenses of the Applicants at this stage of the proceeding.

#### *Scale of Costs*

[45] On August 21, the day after the Monitor's Eighth Report, the Opposing Landlords offered to settle the assignment motion on the following terms:

- a. The Opposing Landlords would accept an immediate disclaimer of the leases with an effective date of September 15, 2025. Rent would only be payable to September 15, 2025, avoiding a 30-day disclaimer period.
- b. The Opposing Landlords would accept the premises with all FF&E (including signage) to be addressed at the landlords' cost.
- c. The assignment motion would be dismissed, with prejudice, and without costs.

[46] The Applicants' counter-offer to this was for the Opposing Landlords to accept immediate disclaimer with rent ended retroactively to August 15, 2025 and for the Landlords to pay cash of \$29 million to the Applicants.

[47] Neither of the "offers" qualify as an offer that attracts the mandatory cost consequences under r. 49.10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[48] This court has already concluded in the Lease Assignment Decision that the Applicants did not act in bad faith with respect to the Central Walk Transaction, and the Company was not faulted for having pursued this transaction, which arose out of a court-approved sale process. There is nothing else about the conduct of any of the parties that has been identified that would warrant an elevated scale of costs, beyond partial indemnity costs, which is the normal scale of costs that is awarded.

[49] Accordingly, the costs awards in favour of the Opposing Landlords, including IC's additional incremental costs in respect of the *Ipsa Facto* Relief, are awarded on a partial indemnity scale.

*The Quantum of Costs Claimed by the Opposing Landlords and Additional Costs Claimed by IC*

[50] The quantum of the costs sought by the Opposing Landlords is fair, reasonable, and proportionate in the circumstances, having regard to the importance, complexity, novelty, and compressed timeline of the motion, for the more detailed reasons they have outlined in their Joint Cost Submissions at paras. 24-34, including that:

- a. The assignment motion was of critical importance to the Opposing Landlords.
- b. The motions were unprecedented in scope and scale.
- c. The assignment motion was a significant undertaking in a compressed period.
- d. The eight Opposing Landlords took all steps available to streamline, coordinate, reduce duplication, and reduce costs.
- e. The complexity, timeline, and magnitude of work was all within the reasonable expectation of the Applicants.
- f. The fees incurred were within the expectations of the Applicants and are reasonable given the experience of counsel. All parties to the assignment motion were represented by senior Canadian insolvency and litigation counsel, whose rates are commensurate with their experience, the scale of the issues, and the complexity of the case, including the urgency imposed by the compressed timetable.
- g. Even if it did not warrant a higher scale of substantial indemnity costs, the Landlords made a settlement offer that would have provided a significant savings to the estate.

[51] None of the Applicants, the FILO Agent, nor Pathlight have provided costs outlines of their own that demonstrate that the Opposing Landlords' and IC's incremental costs were excessive. Having considered all of the above factors and reviewed the Bills of Costs/Costs Outlines submitted by the Opposing Landlords and IC, I find their costs to be fair, reasonable, and appropriate in the circumstances, and I see no reason to reduce the amounts they have claimed.

[52] The shared cost (disbursement) for the expert reports of the Opposing Landlords was also reasonably (jointly) incurred and is recoverable by them in their proportionate shares based on their agreed contributions. Undoubtedly, some expense was saved by the joint expert retainers.

[53] It was suggested by the Applicants that the court should award only nominal costs (\$25,000 per landlord), said to be consistent with the Court of Appeal for Ontario's guidance in *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, at para. 63, leave to appeal refused, [2022] S.C.C.A. No. 387, that courts should avoid unprecedented costs awards. The Applicants contend that there are no costs decisions in CCAA proceedings where the debtor like HBC, acting in good faith and

with due diligence, has been ordered to pay more than what they suggest as nominal costs. In fact, the FILO Agent suggested that the nominal costs should be no more than \$20,000 in the aggregate.

[54] As noted earlier, this was an unprecedented situation, and I consider an unprecedented costs award to be warranted. It may not result in recoveries for the winning parties because they did not succeed in their (also unprecedented) request for the court to order that their costs be paid now as a post-filing priority claim. However, for purposes of fixing their costs, the amounts are justified and nominal costs are not appropriate to serve the objectives (including indemnity) of making a costs award in these circumstances, even when balanced against the CCAA objectives which also must be considered.

### **Final Disposition**

[55] The Opposing Landlords are awarded their partial indemnity legal fees, plus expert costs of \$512,096.48 and non-expert disbursements.

[56] The partial indemnity costs for each of the Opposing Landlords, as certified in the respective Bills of Costs/Costs Outlines (including partial indemnity fees, non-expert disbursements and applicable taxes), is as follows:

- a. Cadillac Fairview: \$680,067.43
- b. IC: \$98,339.95
- c. Morguard Investments Limited: \$120,996.73
- d. Westcliff Management Ltd.: \$35,942.03
- e. QuadReal Property Group: \$41,917.01
- f. Primaris Management Inc.: \$209,388.44
- g. KingSett Capital Inc.: \$321,366.19
- h. Oxford Properties Group: \$387,216.14<sup>2</sup>

Total: \$1,887,877.65<sup>3</sup>

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<sup>2</sup> Oxford's costs properly include the fees it incurred in filing responding materials to preserve the Hillcrest Right of first refusal ("RFOR"). The Central Walk APA expressly sought to extinguish the Hillcrest ROFR. Oxford repeatedly sought a tolling of the Hillcrest ROFR pending the outcome of the approval motion, which would have avoided the necessity of filing materials on that issue. The Applicants triggered a notice period to expire prior to a determination of the approval motion, at the same time as (undisclosed to Oxford) stating that Ruby Liu was in default of the APA.

<sup>3</sup> The court notes that his amount is indicated to be \$1,866,965.59 in the Opposing Landlords' Joint Written Submissions. The discrepancy has not been reconciled but the amount awarded is intended to correspond with their Costs Outlines/Bills of Costs.

[57] IC is entitled to its further incremental partial indemnity costs of responding to the *Ipsso Facto* Relief, in the certified all-inclusive amount of \$144,908.09.

A handwritten signature in cursive script that reads "Kimmel J." is written above a horizontal line.

Kimmel J.

**Date:** March 10, 2026

**TAB F**

**CITATION:** Re UBS, 2014 ONSC 7104  
**COURT FILE NO.:** CV-11-9283-00CL  
**DATE:** 20141208

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

**IN THE MATTER OF *COMPANIES' CREDITORS ARRANGEMENT ACT,*  
R.S.C. 1985, c. C-36 AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
UNIQUE BROADBAND SYSTEMS, INC.**

**BEFORE:** MESBUR J.

**COUNSEL:** Gerald McGoey in person, and with leave of the court, on behalf of Jolian Investments Limited

*Clifford Cole, Benjamin Na and Joe Thorne* for Unique Broadband Systems, Inc.

**HEARD:** in writing

**SECOND DECISION ON COSTS**

[1] The trial decision in this case was appealed to the Court of Appeal. As a result of the appeal decision, the issue of costs of the trial has been referred back to me.

[2] At trial, I decided there should be no order as to costs since I determined success had been divided. The Court of Appeal's decision resulted in overall success for UBS. The Court of Appeal determined UBS is entitled to its costs of the trial and ordered "the parties may attend before the Trial Judge to fix the costs if the parties cannot agree on the scale and/or quantum of the costs."<sup>1</sup>.

[3] The parties have been unable to agree. Accordingly, I must decide both the scale and amount of costs, and how those costs should be apportioned between Mr. McGoey and Jolian Investments Limited, who were the unsuccessful parties.

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<sup>1</sup> Paragraph 6 of the order of the Court of Appeal dated July 10, 2014

[4] After the trial and the release of my judgment, the parties made costs submissions. Both sets of lawyers delivered costs outlines, setting out their actual fees, as well as what they claimed on both partial and substantial indemnity bases. In my costs decision following the trial, I found:

Both sets of fees are extremely high. Given the range of fees each side submits, it seems to me neither can be particularly surprised by the magnitude of the other's. Thus, if either is deemed to be "unsuccessful", each could reasonably expect to pay costs in this range...<sup>2</sup>

[5] Notwithstanding Mr. McGoey's new lengthy submissions on the quantum of costs and his review and comments on UBS' counsel's dockets I am not prepared to revisit my earlier finding of reasonableness regarding the costs claimed. I recognize Mr. McGoey now represents himself. That does not entitle him, however, to attack my earlier findings.

[6] I therefore conclude that UBS is entitled to either partial indemnity costs or substantial indemnity costs in the ranges submitted in its original costs outline. I reject Mr. McGoey's suggestion that UBS' costs should be assessed. The Court of Appeal expressly directed me to fix the trial costs. I do not see that direction permitting me to refer the issue to assessment.

[7] I must now determine whether UBS is entitled to substantial indemnity costs, as it requests, or simply to partial indemnity costs.

[8] UBS suggests that given the findings of the Court of Appeal confirming Mr. McGoey had breached his fiduciary duty to UBS, and its further finding that this breach constituted "cause" under the Jolian Management Services Agreement, the scale of costs should be substantial indemnity.

[9] I agree. The Court of Appeal held this serious breach of Mr. McGoey's fiduciary duty would logically meet the definition of serious misconduct that was materially injurious to UBS. The Court of Appeal effectively determined Mr. McGoey's conduct was analogous to the enumerated grounds of fraud, theft and misappropriation set out as "cause" in the Jolian Management Services Agreement.

[10] There is ample case law to support the proposition that costs should be awarded on a substantial indemnity basis in cases involving a breach of fiduciary duty, breach of trust, conspiracy, misrepresentation and other forms of similar reprehensible conduct. <sup>3</sup> The Court of Appeal determined that kind of conduct was present in Mr. McGoey's behavior, and was sufficient to deprive him of his contractual right to a "golden parachute".

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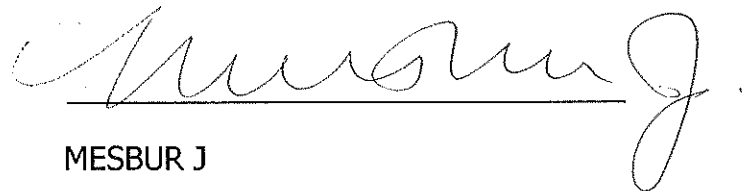
<sup>2</sup> Paragraph 9 of costs decision *Unique Broadband Systems, Inc. (Re)*, 2013 ONSC 5121

<sup>3</sup> See, for example, *Beaver Lumber Co. v. 222044 Ontario Ltd.*, [1996] O.J. No.3294 (Gen Div).

[11] Since I have already decided UBS's bill of costs is reasonable, I find Mr. McGoey and Jolian Investments Limited are liable to pay UBS's bill of costs on a substantial indemnity basis. UBS' costs outline shows actual fees incurred of \$1,170,894.25. In my view, 85% of that amount would represent a fair substantial indemnity award of costs. Accordingly, I fix UBS' substantial indemnity costs at \$995,000 (rounded) for fees, plus HST on that amount of \$129,350, and disbursements inclusive of HST of \$199,667 (rounded) all for a total of \$1,324,017 inclusive of fees, taxes and disbursements.

[12] The Court of Appeal apportioned costs of the appeal on a joint and several basis between Mr. McGoey and Jolian. If that was the appropriate apportionment on the appeal, which dealt with all aspects of the trial, I assume it must also be appropriate for the trial itself.

[13] Accordingly, Mr. McGoey and Jolian Investments Limited are jointly and severally liable for these costs, on a substantial indemnity basis, fixed at \$1,324,017 all inclusive.

  
MESBUR J

Released: 20141208

**RIOCAN REAL ESTATE INVESTMENT TRUST et al v. 2455034 ONTARIO LIMITED PARTNERSHIP et al**

Applicants

Respondents

Court File No.: CV-25-00744295-00CL

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

Proceeding commenced at Toronto

**COSTS SUBMISSIONS OF OXFORD PROPERTIES**  
**(YORKDALE SUBLEASE MOTION)**

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