



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00744295-00CL

HEARING DATE: May 04, 2026

NO. ON LIST: 3

TITLE OF PROCEEDING: RIOCAN REAL ESTATE INVESTMENT TRUST et al. v. RIOCAN-HBC LIMITED PARTNERSHIP et al.

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
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D. J. Miller	Lawyer for the Respondent, Oxford Properties Group	djmillert@tgf.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Sara-Ann Wilson	Lawyer for the Purchaser, 2808771 Ontario Limited	sara.wilson@dentons.com

Trevor Curtis	Lawyer for the Lender, Desjardins	tcourtis@mccarthy.ca
Jennifer L. Caruso	Lawyer for the Lender, Royal Bank of Canada	jcaruso@fasken.com
Liz Pillon	Lawyer for Hudson's Bay Company ULC	lpillon@stikeman.com

ENDORSEMENT OF JUSTICE KIMMEL:

[1] FTI Consulting Canada Inc., the court- appointed receiver and manager (the "Receiver") of the assets, properties and undertakings of 2681842 Ontario Limited Partnership ("Ottawa LP"), 2681842 Ontario Inc. ("Ottawa GP") and 2681845 Ontario Inc. ("Ottawa Nominee"), among others, seeks an Order:

- (a) approving the proposed sale of the Ottawa Real Property (as defined below) (the "Ottawa Transaction") to 2808771 Ontario Limited (the "Purchaser") pursuant to an agreement of purchase and sale dated March 19, 2026 between the Receiver and the Purchaser (the "Ottawa APS"); (
- (b) authorizing the Receiver to pay to CBRE Limited ("CBRE"), from the proceeds of the Ottawa Transaction, the fees and disbursements payable in respect thereof;
- (c) increasing the current aggregate limit on borrowings by the Receiver from \$20.0 million to \$30.0 million; and
- (d) Sealing the confidential appendices (together, the "Confidential Appendices") to the Sixth Report of the Receiver dated April 27, 2026 (the "Sixth Report").

[2] There were twelve properties in the receivership. Some involve freehold and some involve leasehold interests. Some of those interests have been disposed of already, some are under contract and will be the subject of a future approval motion in the near term (scheduled for 90 minutes commenced at 11:00 a.m. on May 25, 2026), and some the Receiver is still working on.

Approval of the Sale of the Ottawa Real Property and the Ottawa Transaction

[3] The Ottawa Transaction follows the well-known and highly publicized marketing process for the assets of Hudson's Bay Company ULC and its affiliates ("HBC"), and a comprehensive marketing process by CBRE, as agent for the Receiver. The Receiver believes the Ottawa Transaction is the highest and best transaction for this asset and is the result of a fair, transparent and appropriate sale process. No stakeholder, including the first ranking mortgage holder on the Ottawa Property that is anticipated to suffer a shortfall in its recoveries, opposes the requested relief.

[4] The Ottawa Real Property has been substantially vacant since mid-June 2025. The costs of maintaining, insuring and safeguarding the Ottawa Real Property while vacant are substantial. Following consultation with relevant stakeholders and several other real estate brokerages, the Receiver engaged a local team of real estate experts from CBRE to act as its listing agents for the Ottawa Real Property. They were chosen because of their depth of expertise, familiarity with the Ottawa market, their national and international reach

and competitive commission rates, which were within the range expected by the Receiver. This process came after the failed HBC Sale Process, in which the Ottawa Real Property was also marketed.

- [5] The marketing process for the Ottawa Real Property commenced on October 27, 2025 and ran for 143 days. Following completion of the marketing process, the Receiver determined that the Ottawa Transaction was the highest and best offer and transaction for the Ottawa Real Property available at this time. It was the product of CBRE's robust marketing and solicitation process under the Receiver's supervision, and the product of an arm's length negotiation with the purchaser. The Receiver is of the view that further marketing is unlikely to result in a superior transaction. The Receiver is concerned about the mounting costs to continue to hold this vacant property. The Receiver is of the view that the interests of all stakeholders are served by approval of the Ottawa APS and the transaction contemplated therein.
- [6] Having considered the factors established in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727, I am satisfied that they support the exercise of the court's discretion and the approval of the Ottawa Transaction and the marketing process for the Ottawa Real Property, for the reasons detailed in the Receiver's factum (see for example paragraphs 22 to 32) and the Receiver's Sixth Report.
- [7] The proposed approval and vesting order is consistent with the Commercial List Model Order, with some specific provisions to deal with unique issues associated with the Ottawa Property that are appropriate to deal with in this context, such as:
- (a) The transfer and vesting of leasehold interests and ancillary agreements to the purchaser in respect of other properties, free and clear of any encumbrances against those transferred interests (with the other landlords' consents); and
 - (b) The discharge of certain leases registered on title that were: entered into between 1965 and 1977; relate to municipal addresses different from the Ottawa Real Property; and are with parties who have no activities at the Ottawa Real Property, and in [all but one of the] cases have no known remaining business operations in Ottawa at all based upon the Receiver's review.
- [8] None of the affected stakeholders objected to these provisions of the proposed order (at paragraphs 4 and 5 of the draft, and identified encumbrances in Schedules B and B1). The secured creditors were consulted by the Receiver and support the approval of the Ottawa Transaction and ancillary relief that has been requested.

Authorization to Pay CBRE Brokerage Fees

- [9] The Receiver seeks the court's authorization to pay CBRE's brokerage fees in connection with the Ottawa Transaction from the proceeds of sale. In the Receiver's view, CBRE's fees are reasonable and consistent with market rates. CBRE's engagement was the result of a competitive process in which various alternative brokers' proposals and credentials were properly considered, and CBRE's fees were incurred in furtherance of maximizing value for the various properties. The Receiver considers their commission rates to be competitive and within the range expected by the Receiver
- [10] I accept the Receiver's views and recommendation and authorize the payment of CBRE's brokerage fees in connection with the Ottawa Transaction.

Sealing of Confidential Appendices

- [11] The Confidential Appendices that Receiver has asked be sealed are:
- (a) An unredacted Ottawa APS and the unredacted purchase agreements for certain other properties for which the Receiver intends to seek approval in the future (the 'Additional Real Estate Transactions');

- (b) summaries of confidential bids received for each of the Ottawa Real Property and the Additional Real Estate Transactions; and
- (c) unredacted engagement letters entered into between CBRE and the Receiver in connection with the marketing of the Ottawa Real Property and the properties subject of the Additional Real Estate Transactions.

[12] Subject to the minimum caveat that any sealing order be subject to further court order, the Receiver only seeks to seal the first two Confidential Appendices pending the closing of the relevant transactions (in this case, not only the Ottawa Transaction, but transactions involving properties in Vancouver, Calgary, Windsor and Montreal as well). While the transactions are pending, and until they have closed, there always remains the risk that the subject properties will have to be remarketed. Preservation of the confidentiality of information in the context of a sale process is recognized as meeting the requirements of the test for sealing court documents in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 85 when limited to only that material that contains the confidential and sensitive information and only for as long as may be necessary.

[13] The Receiver contends that the disclosure of unredacted fee information in the CBRE engagement letters could negatively impact receivers' abilities to negotiate optimal terms in future engagements, which, in turn, could also be detrimental to recoveries for stakeholders in future cases. While this is a laudable objective, it is not a typical request; in other words, Receiver's and/or brokers do not routinely ask for this sealing, which calls into question its necessity. That, combined with the fact that, even if not public, the Receiver and its counsel in this case will already know this information when they come to negotiate terms for future engagements undermines the argument to some extent.

[14] The justification for the inclusion of this expanded and open-ended sealing is not compelling. The court raised this concern with the Receiver's counsel at the hearing when paragraph 9 of the proposed draft order was being discussed, but we did not come back to it before the hearing concluded. Upon further reflection, I am not satisfied that the open-ended aspect of this proposed provision in the draft sealing order meets the *Sherman Estate* test and I am only prepared to grant the sealing of the CBRE engagement letters (which could allow someone to extrapolate the sale price) until either a court order or the closing of all of the transactions. I have changed this aspect of the draft to extent the sealing to either the completion of the Ottawa Transaction, the Vancouver Transaction, the Calgary Transaction and the Devonshire Transaction, or further Order of the Court. If any party has a concern about this change that was not addressed at the hearing on May 4, 2026, a further case conference may be arranged before the order is issued.

[15] The sealing requests in respect of the purchase agreements and confidential bids are appropriately limited and otherwise meet the *Sherman Estate criteria* for the sealing order I am granting.

[16] With these changes, the amended proposed sealing order minimally intrudes upon the public interest in the openness of our courts. The proposed partial sealing order appropriately balances the open court principle and legitimate commercial requirements for confidentiality.

[17] I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC requirements, as modified by the reformulation of the test in *Sherman Estate v. Donovan*, 2021 SCC 25, at para 38. Preservation of the confidentiality of information in the context of a sale process is recognized as meeting the requirements of the test for sealing court documents in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 85 when limited to only that material that contains the confidential and sensitive information and only for as long as may be necessary.

[18] **Counsel for the Receiver is directed to ensure that the sealed Confidential Appendices are provided to the court clerk at the filing office in an envelope with a copy of this endorsement and the signed order with the relevant provisions highlighted so that the confidential schedule can be physically sealed. Counsel is further directed to apply, at the appropriate time, for an unsealing order.**

Increase in Borrowing Limit

- [19] The Receivership Order established two limits on the Receiver's borrowings. First, an aggregate borrowing limit of \$20 million was established, subject to further order of the Court. Second, a prescribed limit of borrowings secured against each property was established, with increases to that property-specific limit being subject to consent of the applicable secured lender on each property or further order of the court.
- [20] Based upon the Receiver's forecasts, the Receiver expects the aggregate borrowing limit of \$20 million to be exceeded in the near future. An increase of the aggregate limit to \$30 million should provide sufficient funding to significantly advance and ideally complete these proceedings. As reflected in the Receiver's reporting on receipts and disbursements, a substantial majority of the cash outflows to date relate to operational disbursements for the properties.
- [21] Based upon the Receiver's forecasts, the Revised Limit (of \$30 million) should provide sufficient funding to significantly advance and ideally complete these proceedings - assuming the estimates and assumptions utilized to determine the Revised Limit are reflective of actual events. Following closing of the proposed sale transactions, the Receiver expects on-going asset-related and receivership costs to decrease.
- [22] The Receiver intends to engage with the applicable secured lenders on each property regarding any increases to the property-specific borrowing limits. Those can be increased on consent without a further court order as long as any increases allow the Debtor to remain within the aggregate borrowing limit. The same logic and jurisdiction as was considered and applied when the borrowing limit was authorized and set for the Receiver earlier in these proceedings.

Order and Further Proceedings

- [23] The court requested the removal of extraneous "*nunc pro tunc*" language in paragraph 3 of the draft order. With that change now made [and with the added change the court made regarding the duration of one aspect of the sealing order (noted above) I have signed today the now revised order dated May 4, 2026, effective as of that day.
- [24] The material for the Receiver's May 25 approval motion will be filed in this Receivership proceeding court file. It is counsel's responsibility to ensure that all of the material served for this motion has been filed and uploaded into the May 25 hearing bundle in Case Center. The motion will also be brought in the HBC CCAA proceeding because of approvals that the Monitor needs. The Monitor will rely primarily upon the Receiver's motion material but may supplement that material as it deems appropriate.

Date: May 05, 2026



Jessica Kimmel