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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

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., 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

FACTUM OF THE RECEIVER

(Motion returnable July 24, 2026)

July 22, 2026

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7

Orestes Pasparakis LSO#36851T
Tel: +1 416.216.4815
orestes.pasparakis@nortonrosefulbright.com

Evan Cobb LSO#: 55787N
Tel: +1 416.216.1929
evan.cobb@nortonrosefulbright.com

Counsel to the Receiver, FTI Consulting Canada Inc.

TO: THE SERVICE LIST

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TABLE OF CONTENTS

PART I - INTRODUCTION

1. This factum is filed in support of a motion by FTI Consulting Canada Inc., as court-appointed receiver and manager (the “**Receiver**”) of the assets, properties and undertakings of: (i) 2455034 Ontario Limited Partnership and 2455034 Ontario Inc. (collectively, “**RC-HBC**”), and (ii) 2681842 Ontario Limited Partnership, 2681842 Ontario Inc. and 2681845 Ontario Inc. (collectively, “**RC-HBC Ottawa**”), among others, (the “**JV Entities**”) for Orders:

(a) authorizing and directing the Receiver to make distributions to senior secured creditors (the “**Distributions**”) of the net proceeds of sale of the Ottawa Real Property, the Devonshire Real Property, the Vancouver Real Property and the Calgary Real Property (each as defined below) as further described in the Seventh Report of the Receiver dated July 17, 2026 (the "**Seventh Report**"), subject to such holdbacks and reserves as the Receiver deems appropriate; and

(b) Sealing the Confidential Appendix “I” (the “**Confidential Appendix**”) to the Seventh Report.

PART II - FACTS

Background

2. The Receiver was appointed pursuant to an Order dated June 3, 2025 in these proceedings (the “**Receivership Order**”).[1]

[1] Receiver's Motion Record dated July 17, 2026 (the "**Motion Record**"), Tab 2, Seventh Report of the Receiver (the "**Seventh Report**"), Appendix "A" (Receivership Order dated June 3, 2025), p. 027

3. The Receiver was appointed in respect of a number of real properties of the JV Entities at which Hudson's Bay Company stores operated. Those retail operations ceased shortly following the date of the Receivership Order, and the JV Entities' real property assets were then substantially vacated. A primary objective of these proceedings was the realization upon those JV Entities' real property interests, and the distribution of the proceeds of those realizations in accordance with legal priorities.[2]

4. The background facts in these proceedings are further set out in the Seventh Report.[3]

Real Property Transactions

5. The Receiver has now completed, or is in the process of completing, transactions for the sales of the following real property assets of the JV Entities:

(a) 73, 85 and 87 Rideau Street, Ottawa, Ontario (the "**Ottawa Real Property**") completed pursuant to an Approval and Vesting Order dated May 4, 2026 (the "**Ottawa AVO**");[4]

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[2] Motion Record, Tab 2, Seventh Report at paras. 1 to 4

[3] Motion Record Tab 2, Seventh Report at paras. 1 to 12

[4] Motion Record Tab 2, Seventh Report, Appendix "B" (Ottawa AVO), p. 61

(b) 3030 Howard Street, Windsor, Ontario (the “**Devonshire Real Property**”) completed pursuant to an Approval and Vesting Order dated May 25, 2026 (the “**Devonshire AVO**”); [5]

(c) 674 Granville Street, Vancouver, British Columbia (the “**Vancouver Real Property**”) completed pursuant to an Approval and Vesting Order dated May 25, 2026 (the “**Vancouver AVO**”); and[6]

(d) 200 8th Avenue S.W., Calgary, Alberta (the “**Calgary Real Property**”) expected to be completed in the upcoming days pursuant to an Approval and Vesting Order dated May 25, 2026 (the “**Calgary AVO**”).[7]

Remaining Receivership Assets

6. The only remaining material assets of the JV Entities are:

(a) the Calgary Real Property and the net proceeds of that property upon completion of its sale (the “**Calgary Net Proceeds**”), the net proceeds of the Devonshire Real Property (the “**Devonshire Net Proceeds**”), the net proceeds of the Ottawa Real Property (the “**Ottawa Net Proceeds**”) and the net proceeds of the Vancouver Real Property (the “**Vancouver Net Proceeds**”) (collectively, the “**Net Proceeds**”); and

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[5] Motion Record Tab 2, Seventh Report, Appendix “C” ("Devonshire AVO), p. 77.

[6] Motion Record, Tab 2, Seventh Report, Appendix D (Vancouver AVO), p. 98

[7] Motion Record, Tab 2, Seventh Report, Appendix E (Calgary AVO), p. 115

(b) a remaining real property asset in Montreal that is currently the subject of a marketing process and a mortgage in favour of the Royal Bank of Canada. [8]

Senior Secured Creditors

7. The primary pre-filing secured creditors on each of the Ottawa Real Property, the Devonshire Real Property, the Vancouver Real Property and the Calgary Real Property are:

(a) Desjardins Financial Security Life Insurance Company (the "**Ottawa Senior Secured Creditor**");

(b) RioCan Property Services Trust (the "**Devonshire Senior Secured Creditor**");

(c) Royal Bank of Canada, as agent (the "**Vancouver Senior Secured Creditor**"); and

(d) Bank of Montreal, as agent (the "**Calgary Senior Secured Creditor**")

(collectively, the "**Senior Secured Creditors**").[9]

8. Each of the Senior Secured Creditors faces a significant shortfall in recoveries ranging from an estimated 48% to 93% based upon the Net Proceeds available from the respective property in which they have an interest. [10]

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[8] Motion Record, Tab 2, Seventh Report, at para. 12

[9] Motion Record, Tab 2, Seventh Report, at para. 17

[10] Motion Record, Tab 2, Seventh Report, at para. 18

Review of Security

9. The Receiver has obtained an independent legal opinion from its counsel, Norton Rose Fulbright Canada LLP (“**NRF**”), with respect to the validity and enforceability of the security interests of the Senior Secured Creditors as against the Ottawa Real Property, the Devonshire Real Property, the Vancouver Real Property and the Calgary Real Property under the laws of the jurisdiction where the relevant property is located.[11]

10. In each case, subject to customary qualifications, assumptions and limitations, NRF is of the opinion that the Senior Secured Creditors hold valid mortgages and charges with first in time registrations against the applicable real property assets and, in the case of the Ottawa Senior Secured Lender, the Vancouver Senior Secured Lender and the Calgary Senior Secured Lender, such parties also hold valid and perfected security interests on related personal property.[12]

11. Each of the Ottawa AVO, the Devonshire AVO, the Vancouver AVO and the Calgary AVO include customary provisions such that encumbrances held by a Senior Secured Creditor attach to the respective Net Proceeds from the sale of that Senior Secured Creditor’s collateral.[13]

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[11] Motion Record, Tab 2, Seventh Report, at para. 22.

[12] Motion Record, Tab 2, Seventh Report at para. 24

[13] Motion Record, Ottawa AVO, Tab 2, p. 061; Devonshire AVO, Tab 2, p. 077; Vancouver AVO, Tab 2, p. 098; and Calgary AVO, Tab 2, p. 115

Distributions

12. The Receiver believes it is appropriate at this time to proceed with distributions of the Ottawa Net Proceeds, the Devonshire Net Proceeds, the Vancouver Net Proceeds and the Calgary Net Proceeds to the applicable Senior Secured Creditor for each property, who face significant shortfalls in their recoveries.[14]

13. The Receiver intends to retain sufficient reserves to: (i) satisfy foreseeable claims ranking in priority to the Senior Secured Creditor claims; and, (ii) satisfy the estimated remaining costs of these proceedings.[15]

Sealing of Confidential Appendix

14. The Receiver requests that Confidential Appendix "I" to the Seventh Report remain sealed until the completion of the sale of the Calgary Real Property. That appendix contains confidential information regarding the purchase price for the Calgary Real Property. The disclosure of the purchase price would materially prejudice any remarketing process for the Calgary Real Property in the unlikely event the Court-approved sale transaction does not close. [16]

[14] Motion Record, Tab 2, Seventh Report, at para. 30

[15] Motion Record, Tab 2, Seventh Report, at para. 31

[16] Motion Record, Tab 2, Seventh Report, at para. 44; Confidential Appendix "I".

PART III - ISSUES

15. The issues to be addressed on this motion are:

(a) whether the Distributions, net of the proposed holdbacks and reserves, should be approved;

(b) whether the protections provided to the Receiver in the proposed form of Order are appropriate and should be approved; and

(c) whether the Confidential Appendix to the Seventh Report should be sealed.

PART IV - LAW AND ANALYSIS

Approval of the Distributions, Net of Reserves and Holdbacks

16. The Receiver is seeking authorization to make the Distributions as set out in the Seventh Report from the Vancouver Net Proceeds, the Calgary Net Proceeds, the Devonshire Net Proceeds and the Ottawa Net Proceeds in accordance with legal entitlements. Orders granting such distributions are routinely granted by Canadian courts in insolvency proceedings, including receiverships.[17]

17. The rationale for such orders in circumstances similar to the current case was set out below in *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*:

> Given that upon the closing of the sale to G-3 the Receiver will have completed most of its work, I considered reasonable its request for authorization to make an interim distribution of funds upon the closing…. [The Receiver] reported that it had

[17] *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, [2024] ONSC 7127 at para. 43

> received an opinion from its counsel about the validity, perfection and priority of the GE security, and it had concluded that GE was the only secured creditor with an economic interest in the receivership. In light of those circumstances, I accepted the Receiver's request that, in order to maximize efficiency and to avoid the need for an additional motion to seek approval for a distribution, authorization should be given at this point in time to the Receiver to pay out of the sale proceeds the priority claims and a distribution to GE, subject to the Receiver maintaining sufficient reserves to complete the administration of the receivership. [18]

18. In the current case, the Receiver has sought and obtained independent security opinions supporting the enforceability and priority of the claims of the Senior Secured Creditors against their respective collateral and the proceeds thereof. Each of the Senior Secured Creditors holds a first in time mortgage and charge that was registered against title to the applicable real property.[19]

19. The Receiver has further determined that each of the Senior Secured Creditor is the only pre-filing secured party with an economic interest in their respective collateral and the proceeds thereof.

20. While the sale of the Calgary Real Property is not yet completed, as stated in the *GE Real Estate Financing* case, the pending completion of the transaction is not an impediment to approval of distribution of proceeds of that transaction at this time.

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[18] *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, [2014] ONSC 1173 at para. 53.

[19] *Land Title Act*, RSBC 1996 c 250 at s. 28; *Land Titles Act*, RSA 2000, c L14 at s. 14; *Land Titles Act*, R.S.O. 1990, c. L.5 at s. 78(5).

21. Finally, these proceedings are sufficiently advanced that the Receiver can conclude it is retaining sufficient reserves to satisfy any foreseeable claims ranking in priority to the Senior Secured Creditors and sufficient reserves to satisfy the remaining estimated costs of these proceedings.

22. Distributions at this time will not prejudice any stakeholders in the receivership and will benefit the Senior Secured Creditors whose respective shortfalls continue to grow through the passage of time.

Distribution Order Terms

23. The requested form of Order approving the proposed distributions states that the Receiver will make these distributions: "without personal or corporate liability to any person or entity, including without limitation any governmental body or taxation authority".

24. The Receiver submits that this Order does not prejudice any foreseeable claimants:

(a) all taxation authorities in relevant jurisdictions have been provided notice of this motion;

(b) the Receiver has not identified any registered prior ranking claims against the proceeds to be distributed;

(c) the JV Entities have no employees who may assert statutory priority claims for unpaid wages;

(d) the Receiver is not aware of the JV Entities, as real estate holding companies, conducting any business that could result in priority claims under BIA Sections 81.1 (30-day goods), 81.2 (farmers, fishermen, aquaculturists), 81.5 or 81.6 (prescribed pension plans);

(e) the proposed distributions will not be made to parties outside of Canada; and

(f) the Receiver has received no notice of any unpaid sales tax amounts owing by the JV Entities, and all necessary sales tax returns are up to date.

25. Similar orders have been granted by the Ontario court in a number of other receivership proceedings.[20] Such an Order provides finality and certainty to the Receiver and to recipients of the proposed Distributions that is desirable the circumstances.

26. This Order is being sought on notice to all known potential secured creditors and tax authorities.

Sealing of Confidential Appendix

27. The Receiver seeks an Order sealing Confidential Appendix "I" to the Seventh Report, which includes the proposed distribution to the Calgary Senior Secured

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[20] *Nuance Pharma Ltd. v. 1001138302 Ontario Inc. (formerly Antibe Therapeutics Inc., in receivership)* Court File No. CV-24-00719237-00CL, Order dated April 3, 2025 https://cfcanada.fticonsulting.com/antibe/docs/CV-24-00719237-00CL%20Nuance%20Pharma%20&%20Antibe%20Int%20Dist%20Order%20Apr%203%2025.pdf; *National Bank of Canada v. Delviro Inc.* Court File No. CV-25-00740078-00CL, Order dated June 26, 2025 https://documentcentre.ey.com/api/Document/download?docId=42395&language=EN; *CMLS Financial Ltd. v. Ashcroft Urban Developments Inc.* Court File No. CV-25-0098804-0000, Order dated July 14, 2026, www.ksvadvisory.com/docs/default-source/insolvency-case-documents/ashcroft/receivership-proceedings/court-orders/distribution-and-ancillary-relief-order-dated-july-14-2026.pdf?sfvrsn=bb551b52_1

Creditor. That distribution calculation discloses the purchase price for the Calgary Real Property, which purchase has not yet been completed.

28. In *Sherman Estate v Donovan*, the Supreme Court of Canada held that a party requesting a court exercise its discretion in a way that limits the 'open court' principle must establish: (i) a serious risk to an important interest of the public; (ii) the order sought is necessary to prevent this serious risk to the identified interest as reasonable alternative measures will not prevent that risk; and (iii) the benefits of the order outweigh the negative effects.[21]

29. Sealing of the Calgary Senior Secured Creditor purchase price information until the completion of the sale of the Calgary Real Property or further Order of the Court is necessary to maximize recoveries in these proceedings. The disclosure of the purchase price would materially prejudice any remarketing process for the Calgary Real Property in the unlikely event the transaction does not close.

30. There are no alternatives to sealing this confidential information that would appropriately respond to these concerns. The beneficial effects of sealing this information outweigh any detriment to stakeholders and the public. This information would be unsealed upon completion of the Calgary Real Property sale.

PART V - ORDER REQUESTED

31. The Receiver respectfully requests that the Court grant the requested orders approving the proposed Distributions, net of holdbacks and reserves, as well as

[21] *Sherman Estate v Donovan*, 2021 SCC 25 at para. 38.

certain protections for the Receiver and sealing of Confidential Appendix “I” to the Seventh Report.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of July, 2026.

NORTON ROSE FULBRIGHT CANADA LLP
Counsel to the Receiver, FTI Consulting Canada Inc.

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Kingsett Mortgage Corporation v. Churchill Lands United Inc*., [2024] ONSC 7127.

2. *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, [2014] ONSC 1173.

3. *Nuance Pharma Ltd. v. 1001138302 Ontario Inc. (formerly Antibe Therapeutics Inc., in receivership)* Court File No. CV-24-00719237-00CL, Order dated April 3, 2025

4. *National Bank of Canada v. Delviro Inc.* Court File No. CV-25-00740078-00CL, Order dated June 26, 2025.

5. *CMLS Financial Ltd. v. Ashcroft Urban Developments Inc.* Court File No. CV-25-0098804-0000, Order dated July 14, 2026,

6. *Sherman Estate v Donovan*, [2021] SCC 25.

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date July 22, 2026

Signature

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY – LAWS

1 1. Bankruptcy and Insolvency Act, RSC 1985, c. B-3

- s. 81.1

Right of unpaid supplier to repossess goods

- **81.1 (1)** Subject to this section, if a person (in this section referred to as the "supplier") has sold to another person (in this section referred to as the "purchaser") goods for use in relation to the purchaser's business and delivered the goods to the purchaser or to the purchaser's agent or mandatary, and the purchaser has not fully paid for the goods, the supplier may have access to and repossess the goods at the supplier's own expense, and the purchaser, trustee or receiver, or the purchaser's agent or mandatary, as the case may be, shall release the goods, if
  - **(a)** the supplier presents a written demand for repossession to the purchaser, trustee or receiver, in the prescribed form and containing the details of the transaction, within a period of 15 days after the day on which the purchaser became bankrupt or became a person who is subject to a receivership;
  - **(b)** the goods were delivered within 30 days before the day on which the purchaser became bankrupt or became a person who is subject to a receivership;
  - **(c)** at the time when the demand referred to in paragraph (a) is presented, the goods
    - **(i)** are in the possession of the purchaser, trustee or receiver,
    - **(ii)** are identifiable as the goods delivered by the supplier and not fully paid for,
    - **(iii)** are in the same state as they were on delivery,
    - **(iv)** have not been resold at arms' length, and
    - **(v)** are not subject to any agreement for sale at arms' length; and
  - **(d)** the purchaser, trustee or receiver does not, forthwith after the demand referred to in paragraph (a) is presented, pay to the supplier the entire balance owing.
- **Where goods have been partly paid for**

(2) Where, at the time when the demand referred to in paragraph (1)(a) is presented, the goods have been partly paid for, the supplier's right to repossess under subsection (1) shall be read as a right

  - **(a)** to repossess a portion of the goods proportional to the unpaid amount; or
  - **(b)** to repossess all of the goods on paying to the purchaser, trustee or receiver an amount equal to the partial payment previously made to the supplier.

- **(3)** [Repealed, 1999, c. 31, s. 23]

- **If notice of intention or proposal was filed**

  (4) If a notice of intention under section 50.4 or a proposal was filed in respect of the purchaser after the delivery of the goods to the purchaser and before the purchaser became bankrupt or became a person who is subject to a receivership, the 30-day period referred to in paragraph (1)(b) is the 30-day period before the filing of the notice of intention or, if there was no notice of intention, the filing of the proposal.

- **Expiry of supplier's right**

  (5) A supplier's right to repossess goods under this section expires if not exercised within the 15-day period referred to in paragraph (1)(a), unless the period is extended before its expiry by the trustee or receiver, or by the court.

- **Ranks above other claims**

  (6) Notwithstanding any other federal or provincial Act or law, a supplier's right to repossess goods pursuant to this section ranks above every other claim or right against the purchaser in respect of those goods, other than the right of a *bona fide* subsequent purchaser of the goods for value without notice that the supplier had demanded repossession of the goods.

- **Application to court for directions**

  (7) The purchaser, trustee or receiver may apply to the court for directions in relation to any matter relating to this section, and the court shall give, in writing, such directions, if any, as it considers proper in the circumstances.

- **Supplier may appeal to court**

  (8) Where a supplier is aggrieved by any act, omission or decision of the purchaser, trustee or receiver, the supplier may apply to the court and the court may make such order as it considers proper in the circumstances.

- **Other rights saved**

(9) Nothing in subsection (7) or (8) precludes a person from exercising any right that the person may have under subsection 34(1) or section 37.

- **No payment**

  (10) A supplier who repossesses goods pursuant to this section is not entitled to be paid for those goods.

- **Provincial rights saved**

  (11) Nothing in this section precludes a supplier from exercising any right that the supplier may have under the law of a province.

- **Definitions**

  (12) The following definitions apply in this section.

  person who is subject to a receivership means a person in respect of whom any property is under the possession or control of a receiver. (*mise sous séquestre*)

  receiver means a receiver within the meaning of subsection 243(2). (*séquestre*)

- 1992, c. 27, s. 38
- 1999, c. 31, s. 23
- 2005, c. 47, s. 66

- s. 81.2

Special right for farmers, fishermen and aquaculturists

- **81.2 (1)** Where
  - **(a)** a farmer has sold and delivered products of agriculture, a fisherman has sold and delivered products of the sea, lakes and rivers, or an aquaculturist has sold and delivered products of aquaculture, to another person (in this section referred to as the “purchaser”) for use in relation to the purchaser’s business,
  - **(b)** the products were delivered to the purchaser within the fifteen day period preceding
    - **(i)** the day on which the purchaser became bankrupt, or
    - **(ii)** the first day on which there was a receiver, within the meaning of subsection 243(2), in relation to the purchaser,

- **(c)** as of the day referred to in subparagraph (b)(i) or (ii), the farmer, fisherman or aquaculturist has not been fully paid for the products, and
- **(d)** the farmer, fisherman or aquaculturist files a proof of claim in the prescribed form in respect of the unpaid amount with the trustee or receiver, as the case may be, within thirty days after the day referred to in subparagraph (b)(i) or (ii),

the claim of the farmer, fisherman or aquaculturist for the unpaid amount in respect of the products is secured by security on all the inventory of or held by the purchaser as of the day referred to in subparagraph (b)(i) or (ii), and the security ranks above every other claim, right, charge or security against that inventory, regardless of when that other claim, right, charge or security arose, except a supplier's right, under section 81.1, to repossess goods, despite any other federal or provincial Act or law; and if the trustee or receiver, as the case may be, takes possession or in any way disposes of inventory covered by the security, the trustee or receiver is liable for the claim of the farmer, fisherman or aquaculturist to the extent of the net amount realized on the disposition of that inventory, after deducting the cost of realization, and is subrogated in and to all rights of the farmer, fisherman or aquaculturist to the extent of the amounts paid to them by the trustee or receiver.

- **Definitions**

(2) In this section,

aquaculture means the cultivation of aquatic plants and animals; (*aquiculture*)

aquaculture operation means any premises or site where aquaculture is carried out; (*exploitation aquicole*)

aquaculturist includes the owner, occupier, lessor and lessee of an aquaculture operation; (*aquiculteur*)

aquatic plants and animals means plants and animals that, at most stages of their development or life cycles, live in an aquatic environment; (*organismes animaux et végétaux aquatiques*)

farm means land in Canada used for the purpose of farming, which term includes livestock raising, dairying, bee-keeping, fruit growing, the growing of trees and all tillage of the soil; (*ferme*)

farmer includes the owner, occupier, lessor and lessee of a farm; (*agriculteur*)

fish includes shellfish, crustaceans and marine animals; (*poisson*)

fisherman means a person whose business consists in whole or in part of fishing; (*pêcheur*)

fishing means fishing for or catching fish by any method; (*pêche*)

products of agriculture includes

- **(a)** grain, hay, roots, vegetables, fruits, other crops and all other direct products of the soil, and
- **(b)** honey, livestock (whether alive or dead), dairy products, eggs and all other indirect products of the soil; (*produits agricoles*)

products of aquaculture includes all cultivated aquatic plants and animals; (*produits aquicoles*)

products of the sea, lakes and rivers includes fish of all kinds, marine and freshwater organic and inorganic life and any substances extracted or derived from any water, but does not include products of aquaculture. (*produits aquatiques*)

- **Interpretation — products and by-products**

  (3) For the purposes of this section, each thing included in the following terms as defined in subsection (2), namely,

  - **(a)** “products of agriculture”,
  - **(b)** “products of aquaculture”, and
  - **(c)** “products of the sea, lakes and rivers”,

  comprises that thing in any form or state and any part thereof and any product or by-product thereof or derived therefrom.

- **Section 81.1 applies**

  (4) For greater certainty, “goods” in section 81.1 includes products of agriculture, products of the sea, lakes and rivers, and products of aquaculture.

- **Other rights saved**

  (5) Nothing in this section precludes a farmer, fisherman or aquaculturist from exercising

  - **(a)** the right that that person may have under section 81.1 to repossess products of agriculture, products of the sea, lakes and rivers, or products of aquaculture; or
  - **(b)** any right that that person may have under the law of a province.

- 1992, c. 27, s. 38
- 1997, c. 12, s. 72(F)
- 2004, c. 25, s. 49

- s. 81.5

Security for unpaid amounts re prescribed pensions plan — bankruptcy

- **81.5 (1)** If the bankrupt is an employer who participated or participates in a prescribed pension plan for the benefit of the bankrupt's employees, the following amounts that are unpaid on the date of bankruptcy to the fund established for the purpose of the pension plan are secured by security on all the assets of the bankrupt:
    - **(a)** an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund;
    - **(b)** if the prescribed pension plan is regulated by an Act of Parliament,
        - **(i)** an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and
        - **(i.1)** an amount equal to the sum of all special payments, determined in accordance with section 9 of the *Pension Benefits Standards Regulations, 1985*, that were required to be paid by the employer to the fund referred to in this section and section 81.6 to liquidate an unfunded liability or a solvency deficiency,
        - **(i.2)** any amount required to liquidate any other unfunded liability or solvency deficiency of the fund,
        - **(ii)** an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*,
        - **(iii)** an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*; and
    - **(c)** in the case of any other prescribed pension plan,
        - **(i)** an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer

would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament,

- **(i.1)** an amount equal to the sum of all special payments, determined in accordance with section 9 of the *Pension Benefits Standards Regulations, 1985*, that would have been required to be paid by the employer to the fund referred to in this section and section 81.6 to liquidate an unfunded liability or a solvency deficiency if the prescribed plan were regulated by an Act of Parliament,

- **(i.2)** any amount required to liquidate any other unfunded liability or solvency deficiency of the fund,

- **(ii)** an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament, and

- **(iii)** an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the *Pooled Registered Pension Plans Act*.

- **Rank of security**

  (2) A security under this section ranks above every other claim, right, charge or security against the bankrupt's assets, regardless of when that other claim, right, charge or security arose, except

  - **(a)** rights under sections 81.1 and 81.2;
  - **(b)** amounts referred to in subsection 67(3) that have been deemed to be held in trust; and
  - **(c)** securities under sections 81.3 and 81.4.

- **Liability of trustee**

  (3) If the trustee disposes of assets covered by the security, the trustee is liable for the amounts referred to in subsection (1) to the extent of the amount realized on the disposition of the assets, and is subrogated in and to all rights of the fund established for the purpose of the pension plan in respect of those amounts.

- 2005, c. 47, s. 67
- 2012, c. 16, s. 80
- 2023, c. 6, s. 3

- s. 81.6

Security for unpaid amounts re prescribed pensions plan — receivership

- **81.6 (1)** If a person who is subject to a receivership is an employer who participated or participates in a prescribed pension plan for the benefit of the person's employees, the following amounts that are unpaid immediately before the first day on which there was a receiver in relation to the person are secured by security on all the person's assets:
    - **(a)** an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund;
    - **(b)** if the prescribed pension plan is regulated by an Act of Parliament,
        - **(i)** an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and
        - **(i.1)** an amount equal to the sum of all special payments, determined in accordance with section 9 of the *Pension Benefits Standards Regulations, 1985*, that would be required to be paid by the employer to the fund referred to in section 81.5 and this section to liquidate an unfunded liability or a solvency deficiency,
        - **(i.2)** any amount required to liquidate any other unfunded liability or solvency deficiency of the fund,
        - **(ii)** an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*,
        - **(iii)** an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*; and
    - **(c)** in the case of any other prescribed pension plan,
        - **(i)** an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer

would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament,

- **(i.1)** an amount equal to the sum of all special payments, determined in accordance with section 9 of the *Pension Benefits Standards Regulations, 1985*, that would have been required to be paid by the employer to the fund referred to in section 81.5 and this section to liquidate an unfunded liability or a solvency deficiency if the prescribed plan were regulated by an Act of Parliament,

- **(i.2)** any amount required to liquidate any other unfunded liability or solvency deficiency of the fund,

- **(ii)** an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament, and

- **(iii)** an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the *Pooled Registered Pension Plans Act*.

- **Rank of security**

  (2) A security under this section ranks above every other claim, right, charge or security against the person's assets, regardless of when that other claim, right, charge or security arose, except rights under sections 81.1 and 81.2 and securities under sections 81.3 and 81.4.

- **Liability of receiver**

  (3) If the receiver disposes of assets covered by the security, the receiver is liable for the amounts referred to in subsection (1) to the extent of the amount realized on the disposition of the assets, and is subrogated in and to all rights of the fund established for the purpose of the pension plan in respect of those amounts.

- **Definitions**

  (4) The following definitions apply in this section.

  person who is subject to a receivership means a person any of whose property is in the possession or under the control of a receiver. (*personne faisant l'objet d'une mise sous séquestre*)

  receiver means a receiver within the meaning of subsection 243(2) or an interim receiver appointed under subsection 46(1), 47(1) or 47.1(1). (*séquestre*)

- 2005, c. 47, s. 67
- 2007, c. 36, s. 39
- 2012, c. 16, s. 81
- 2023, c. 6, s. 4

2 Land Title / Land Titles Legislation

(a) Land Title Act, RSBC 1996, c. 250

- s. 28 (BC)

- **Priority of charges based on priority of registration**
- **28** If 2 or more charges appear entered on the register affecting the same land, the charges have, as between themselves, but subject to a contrary intention appearing from the instruments creating the charges, priority according to the date and time the respective applications for registration of the charges were received by the registrar, and not according to the respective dates of execution of the instruments.

(b) Land Titles Act, RSA 2000, c. L-4

- s. 14 (Alberta)

- **Daily record**
- **14(1)** The Registrar shall keep a record that shall contain particulars of every instrument and caveat accepted by the Registrar for filing or registration.
- **(2)** The Registrar shall cause each instrument or caveat received by the Registrar for filing or registration to be examined and if it is found to be complete and in the proper form and fit for filing or registration, the Registrar shall endorse on the instrument or caveat the serial number assigned to it and the date on which the serial number is assigned.
- **(3)** For purposes of priority between mortgagees, transferees and others, the serial number assigned to the instrument or caveat shall determine the priority of the instrument or caveat filed or registered.
- **(4)** Notwithstanding subsections (2) and (3), instead of assigning a serial number to an instrument or caveat, the Registrar may identify the instrument or caveat by a means other than a serial number so long as that other means of identification

allows for the determination of priority between mortgagees, transferees and others.

- RSA 1980 cL-5 s16;1985 c48 s2(6);1988 c27 s7; 1994 cC-10.5 s134;1996 c32 s5(5);1999 c10 s3

- **Pending registration queue**
- **14.1(1)** Subject to the regulations, this section applies to instruments and caveats affecting a parcel of land to which a land identification number has been assigned under section 51.
- **(2)** The Registrar shall establish and maintain a pending registration queue.
- **(3)** The Registrar shall ensure that instruments and caveats are entered in the pending registration queue in an order acceptable to the Registrar.
- **(4)** Instruments and caveats in the pending registration queue must be examined and registered in accordance with section 14(2) in the order in which they are entered in the pending registration queue.
- **(5)** Notwithstanding subsection (4), the regulations may provide that instruments and caveats in the pending registration queue may be examined and registered in an order other than the order in which they are entered in the pending registration queue.
- **(6)** If an instrument or caveat in the pending registration queue is found to be incomplete, not in the proper form or not fit for registration, the Registrar may

  (a) return the instrument or caveat for correction, in which case the instrument or caveat shall,

  (i) if it is returned to the Registrar within the time prescribed by the regulations, retain its place in the pending registration queue, or

  (ii) if it is not returned to the Registrar within the time prescribed by the regulations, be removed from the pending registration queue,or

  (b) reject the instrument or caveat if, in the Registrar's opinion, it was submitted in bad faith or its defects are such that they cannot reasonably be corrected, in which case the instrument or caveat shall be removed from the pending registration queue.
- **(7)** Where, under a court order or enactment, an instrument or caveat must be registered within a specific period of time, the requirements of the court order or enactment with respect to the timing of registration are deemed to have been satisfied when the instrument or caveat is entered in the pending registration queue, unless the instrument or caveat is later removed from the pending registration queue under subsection (6)(a)(ii) or (b).

(c) Land Titles Act, R.S.O. 1990, c. L.5

- s. 78(5) (Ontario)

- **Priorities**
- (5) Subject to any entry to the contrary in the register and subject to this Act, instruments registered in respect of or affecting the same estate or interest in the same parcel of registered land as between themselves rank according to the order in which they are entered in the register and not according to the order in which they were created, and, despite any express, implied or constructive notice, are entitled to priority according to the time of registration. R.S.O. 1990, c. L.5, s. 78 (5).

RIOCAN REAL ESTATE INVESTMENT TRUST
Applicants

- and -

2455034 ONTARIO LIMITED PARTNERSHIP, ET AL.
Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

FACTUM OF THE RECEIVER
(Motion Returnable July 24, 2026)

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7

Orestes Pasparakis (LSO#36851T)
Tel: 416-216-4815
Email: orestes.pasparakis@nortonrosefulbright.com

Evan Cobb (LSO# 55787N)
Tel: 416-216-1929
Email: evan.cobb@nortonrosefulbright.com

Counsel to the Receiver, FTI Consulting Canada Inc.