

**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 May 25, 2026)

May 22, 2026

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Inc.

TO: THE SERVICE LIST

PART I - INTRODUCTION

1. This factum is filed in support of a motion by FTI Consulting Canada Inc., as court-appointed receiver and manager of the assets, properties and undertakings of 2455034 Ontario Limited Partnership (“**RC-HBC LP**”) and 2455034 Ontario Inc. (“**RC-HBC GP**”) and, together with RC-HBC LP, “**RC-HBC**”), among others (the “**Receiver**”) and by 1242939 B.C. Unlimited Liability Company (“**HBC**”), for Orders:
 - (a) approving the proposed sale of the Calgary Real Property, the Devonshire Real Property and the Vancouver Real Property, (each, as defined below) (collectively, the “**Transactions**”) to Astra Real Estate Corp. (the “**Calgary Purchaser**”), Circle Retail Properties LP (the “**Devonshire Purchaser**”), and Onni Development Capital Corp. (the “**Vancouver Purchaser**”), or their respective assignees, pursuant to agreements of purchase and sale dated: (i) February 18, 2026 between the Receiver and the Calgary Purchaser (the “**Calgary APS**”); (ii) April 13, 2026 between the Receiver and the Devonshire Purchaser (the “**Devonshire APS**”); and (iii) April 23, 2026 between the Receiver and the Vancouver Purchaser (the “**Vancouver APS**”);
 - (b) approving certain Nominee Transfer Agreements, to be entered into between HBC or Snospmis Limited (“**Snospmis**”) (each as nominee title holder), the Receiver and either (i) the Calgary Purchaser, (ii) the Devonshire Purchaser, or (iii) the Vancouver Purchaser, respectively (collectively, the “**Nominee Transfer Agreements**”);
 - (c) authorizing the Receiver to pay to CBRE Limited (“**CBRE**”), from the proceeds of the Transactions, the fees and disbursements payable in respect thereof; and
 - (d) approving the fees and disbursements of the Receiver and its counsel.

2. The Transactions relate to the former HBC store premises located in downtown Vancouver, downtown Calgary and adjacent to the Devonshire Mall in Windsor, Ontario (the “**Real Properties**”).
3. The Transactions follow the well-known and highly publicized marketing process for the assets of HBC, and comprehensive marketing processes by CBRE, as agent for the Receiver.
4. The Receiver, following consultation with stakeholders including the first ranking mortgage holders on the properties, believes the Transactions are the highest and best transactions for these assets and are the result of fair, transparent and appropriate sale processes.

PART II - FACTS

Background

5. On March 7, 2025, HBC, Snospmis and certain of their affiliates sought and were granted protection under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) by the Court.
6. The Receiver was appointed pursuant to an Order dated June 3, 2025 in these proceedings (the “**Receivership Order**”).
7. The background facts in these proceedings are set out in the Sixth Report of the Receiver, dated April 27, 2026 and the Supplement to the Sixth Report of the Receiver, dated May 19, 2026.

The Real Properties

8. The Real Properties are located in Vancouver, Calgary and Windsor.¹
9. Pursuant to Nominee Agreements, HBC is the registered title holder of the Calgary Real Property, the Vancouver Real Property and a portion of the Devonshire Real Property. Snospmis is the registered title holder of a portion of the Devonshire Real Property. Each of HBC and Snospmis act as nominal title holder for RC-HBC, without any beneficial right, beneficial ownership or beneficial interest in and to the Real Properties.²
10. The Calgary Real Property, Devonshire Real Property and Vancouver Real Property were substantially vacant in mid-June 2025.³

Sale Process for the Real Properties

11. The costs of maintaining, insuring and safeguarding the Real Properties while vacant are substantial. Accordingly, in consultation with relevant stakeholders, the Receiver determined that marketing of the Real Properties for sale was prudent and appropriate.⁴
12. In accordance with the Receivership Order and following consultation with relevant stakeholders and several other real estate brokerages, the Receiver engaged local teams of real estate experts from CBRE to act as its listing agents for the Real Properties. The Receiver's decision was primarily based on the following factors:

¹ Sixth Report of FTI Consulting Canada Inc., in its capacity as receiver and manager, dated April 27, 2026 (the "**Sixth Report**") at para.11., Motion Record of FTI Consulting Canada Inc. ("**Motion Record**"), [Tab 2, p. 21.](#)

² Sixth Report at para 13, Motion Record, [Tab 2, p. 21.](#)

³ Sixth Report at para 15, Motion Record, [Tab 2, p. 22.](#)

⁴ Sixth Report at para 15, Motion Record, [Tab 2, p. 22.](#)

- (a) the ability of a brokerage with national coverage and international reach to deploy a dedicated and respected local team;
 - (b) the depth and breadth of the local CBRE team's credentials and experience executing significant transactions in the commercial real estate market surrounding the property; and
 - (c) CBRE's competitive commission rates, which were within the range expected by the Receiver, and
 - (d) the nature and condition of the specific asset to be marketed.⁵
13. CBRE, with oversight from the Receiver and following the Receiver's consultation with key stakeholders, undertook steps to prepare the Real Properties to go to market. This included development of tailored marketing and disposition strategies to maximize returns for the estate, preparation of confidential information memoranda, virtual data rooms and other marketing materials, and identification of prospective purchasers who may be interested in the properties, are active participants in the relevant markets and have the financial wherewithal and sophistication to execute a transaction.⁶
14. The marketing processes for the Calgary Real Property and the Devonshire Real Property commenced in October 2025. The marketing process for the Vancouver Real Property commenced in December 2025. At those times, the confidential data site for each property was opened to interested parties who signed non-disclosure agreements. Site visits were arranged for interested parties. Non-binding letters of intent were requested in: (i) December 2025 for the Calgary Real Property; (ii) January 2026 for the Devonshire Real

⁵ Sixth Report at para 18, Motion Record, [Tab 2, p. 22](#).

⁶ Sixth Report at para 20. Motion Record, [Tab 2, p. 23](#).

Property; and (iii) March 2026 for the Vancouver Real Property. The deadlines for binding bids were (i) February 18th for the Calgary Real Property; (ii) February 26th for the Devonshire Real Property and (iii) April 23rd for the Vancouver Real Property. From commencement to the binding bid deadline, the processes ran for periods from 117 days to 140 days.⁷

15. CBRE's marketing approaches for the Real Properties were national campaigns and, in the case of the Calgary Real Property and the Vancouver Real Property also included an international component. This included mass scale marketing, and a more targeted approach to between 50 and 80 parties. Non-disclosure agreements were signed by 16 parties for the Calgary Real Property, 19 parties for the Devonshire Real Property, and 32 parties for the Vancouver Real Property to review confidential information about the opportunity.⁸

The Transactions

16. Following completion of the marketing processes, the Receiver determined that the Transactions were the highest and best offers for the respective Real Properties.⁹
17. The Calgary APS, the Devonshire APS and the Vancouver APS are each based on the template form of agreement of purchase and sale prepared by the Receiver. The transactions are to proceed on an '*as is, where is*' basis and are subject to Court approval. Each purchaser has provided a cash deposit in accordance with the purchase agreement.¹⁰

⁷ Sixth Report at para 22. Motion Record, [Tab 2, p. 24](#).

⁸ Sixth Report at para 25. Motion Record, [Tab 2, p. 26](#).

⁹ Sixth Report at para 49. Motion Record, [Tab 2, p. 31](#).

¹⁰ Sixth Report at para 27. Motion Record, [Tab 2, pp. 26-27](#).

18. As registered title to each of the Real Properties is held by HBC or Snospmis, the Nominee Transfer Agreements are required to complete the Transactions pursuant to which each of HBC and Snospmis transfer their right, title and interest in the Real Properties to the applicable purchaser.¹¹

PART III - ISSUES

19. The issues to be addressed on this motion are:
- (a) whether the Transactions, the Calgary APS, the Devonshire APS, the Vancouver APS and the Nominee Transfer Agreements should be approved;
 - (b) whether the payment of the CBRE fees and disbursements in connection with the Transactions should be approved; and
 - (c) whether the fees and disbursements of the Receiver and its counsel should be approved.

PART IV - LAW AND ANALYSIS

Approval of the Transactions

20. Courts are to consider the following factors established in *Royal Bank of Canada v Soundair Corp.* on a sale approval motion in a receivership:
- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
 - (b) the interests of all parties;

¹¹ Sixth Report at paras 13 and 14. Motion Record, [Tab 2, p. 21](#).

- (c) the efficacy and integrity of the process by which offers were obtained; and
- (d) whether there has been any unfairness in the working out of the process.¹²

21. The receiver's business judgment in selection of a sale transaction is essential to a receiver's function and deference to that judgment is appropriate in all but the most exceptional circumstances.¹³

22. The Receiver submits that the *Soundair* criteria have been satisfied by the Transactions and the marketing process for the Real Properties.

Efforts to Obtain the Best Price

23. Following the prior process conducted in HBC's CCAA proceedings (the "**HBC Sale Process**"), CBRE conducted robust marketing processes for the Real Properties under the direct oversight of the Receiver and in consultation with key economic stakeholder(s), which included solicitation of a comprehensive list of potential purchasers. Given the depth and breadth of CBRE's solicitation efforts, the general existing market awareness surrounding opportunities for the Real Properties, the results of the HBC Sale Process, and the outcome of negotiations, the Receiver is of the view that further marketing is unlikely to result in superior transactions.¹⁴

24. The Receiver notes that the costs of insurance, maintenance, tax and other holding costs are substantial for the Real Properties.¹⁵

¹² *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727](#).

¹³ *Crown Trust Co. et al. v. Rosenberg et al.*, [1986 CanLII 2760](#).

¹⁴ Sixth Report at para 47. Motion Record, [Tab 2, p. 30](#).

¹⁵ Sixth Report at para 48. Motion Record, [Tab 2, p. 30](#).

25. In the Receiver's view, the Transactions represent the highest and best transactions available at this time, which transactions were obtained following extensive and competitive arm's length negotiations with logical acquirers.¹⁶

The Interests of All Parties

26. The Receiver consulted with and considered the interests of key stakeholders in respect of the Transactions, including:

(a) the senior secured lender on each of the Real Properties; and

(b) RioCan, as Applicant in these proceedings.¹⁷

27. The senior secured lenders on the Real Properties will realize a significant shortfall and have consented to the Transactions.¹⁸

28. The Receiver is not aware of any affected stakeholder objecting to, or likely to object to, the Transactions.¹⁹

29. The Receiver is of the view that the interests of all stakeholders are served by approval of the Calgary APS, the Devonshire APS and the Vancouver APS and the transaction contemplated therein.²⁰

Efficacy and Integrity of the Process and Fairness

30. As noted above, the Real Properties were previously included in the HBC Sale Process

¹⁶ Sixth Report at para 49. Motion Record, [Tab 2, p. 31](#).

¹⁷ Sixth Report at para 55. Motion Record, [Tab 2, p. 32](#).

¹⁸ Sixth Report at para 56. Motion Record, [Tab 2, p. 33](#).

¹⁹ Sixth Report at para 57. Motion Record, [Tab 2, p. 33](#).

²⁰ Sixth Report at para 58. Motion Record, [Tab 2, p. 58](#).

31. All parties with a potential interest in the Real Properties were given a reasonable opportunity to submit a proposal. CBRE's process was fully open, conducted publicly, and accessible to all interested parties.²¹
32. The processes were two-stage bid processes with non-binding letters of intent followed by a binding agreement of purchase and sale commonly used in the Receiver's experience.²²

Nominee Transfer Agreements

33. HBC and Snospmis are currently the subject of proceedings under the CCAA.
34. To complete the Transactions, registered title to the Real Properties must be transferred by HBC and Snospmis, respectively, concurrent with the transfer of RC-HBC's beneficial interest in those properties.
35. HBC and Snospmis require court authorization to proceed with these transfers pursuant to the terms of the orders granted in their CCAA proceedings and pursuant to Section 36 of the CCAA.
36. Section 36 of the CCAA establishes certain factors for the Court to consider in connection with approval of a sale of assets outside the ordinary course of business by a debtor company. As the interests of HBC and Snospmis in the Real Properties is limited to their nominee interest, and does not include any beneficial interest, the Receiver submits that most factors set out in Section 36 of the CCAA are not applicable to the current circumstances.²³ The Receiver submits that to the extent applicable those factors are satisfied:

²¹ Sixth Report at para 50. Motion Record, [Tab 2, p. 31](#).

²² Sixth Report at para 22. Motion Record, [Tab 2, p. 24](#).

²³ *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, at s. 36.

(a) for the reasons set out above, the processes leading to the proposed Transactions were reasonable in the circumstances.

(b) Stakeholders of HBC and Snospmis were consulted in a reasonable manner regarding these Transactions; and

(c) The Transactions have no economic effect on creditors or other interested parties of HBC or Snospmis. The transfer of these nominee interests with no consideration to HBC and Snospmis is reasonable, appropriate and consistent with the terms of the nominee arrangements entered into between HBC, Snospmis and RC-HBC.

CBRE Payment

37. The Receiver seeks the Court's authorization to pay CBRE's brokerage fees in connection with the Transactions 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.²⁴

Receiver's and Counsel's Fees and Disbursements

38. Pursuant to paragraph 28 of the Receivership Order, the Receiver and its legal counsel are to pass their accounts from time to time. The accounts of the Receiver and its legal counsel are referred to the Court for approval.

39. Throughout these proceedings, the Receiver has updated the secured lenders on each applicable property on all costs incurred, including professional fees, on a monthly basis

²⁴ Sixth Report at para 59. Motion Record, [Tab 2, p. 33](#).

pursuant to paragraph 21 of the Receivership Order. In that process, the Receiver has not been advised of any objections to its or to NRFC's fees and disbursements during these proceedings.²⁵

40. The Receiver respectfully submits that the respective fees and disbursements of the Receiver (in the amount of \$4,275,905.06) and the Receiver's counsel (in the amount of \$1,653,498.01), in each case for the period up to April 30, 2026, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Orders issued in these proceedings. Accordingly, the Receiver respectfully seeks the approval of its fees and disbursements and the fees and disbursements of its counsel.²⁶

PART V - ORDER REQUESTED

41. The Receiver respectfully requests that the Court grant the requested orders approving the Transactions, the Nominee Transfer Agreements and the fees and disbursements of the Receiver and its counsel.

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

Evan Cobb

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

²⁵ Supplement to the Sixth Report of the Receiver, dated May 19 2026 ("**Supplemental Report**"), at para 18. Motion Record, [Tab 3, p. 286](#)

²⁶ Supplemental Report at paras 16 and 17. Motion Record, [Tab 3, p. 286](#).

**SCHEDULE “A”
LIST OF AUTHORITIES**

Case Law

1. *Royal Bank of Canada v. Soundair Corp.* [1991] CanLII 2727 (Ont. C.A.).
2. *Crown Trust Co. et al. v. Rosenberg et al.* [1986] CanLII 2760 (Ont. S.C.)

SCHEDULE “B” RELEVANT STATUTES

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or

(c) take any other action that the court considers advisable.

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under [paragraphs 6\(5\)\(a\)](#) and [\(6\)\(a\)](#) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

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PARTNERSHIP, ET AL.
Respondents

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

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Proceeding commenced at TORONTO

FACTUM OF THE RECEIVER
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