

**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 4, 2026)

May 1, 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 2681842 Ontario Limited Partnership ("**Ottawa LP**"), 2681842 Ontario Inc. ("**Ottawa GP**") and 2681845 Ontario Inc. ("**Ottawa Nominee**"), among others (the "**Receiver**"), for Orders:
 - (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. The Ottawa Transaction relates to the former HBC store premises located in downtown Ottawa (the "**Ottawa Real Property**").
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.

4. The Receiver, following consultation with stakeholders including the first ranking mortgage holder on the property, 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.

PART II - FACTS

Background

5. The Receiver was appointed pursuant to an Order dated June 3, 2025 in these proceedings (the “**Receivership Order**”).
6. The background facts in these proceedings are set out in the Sixth Report.

Ottawa Real Property

7. The Ottawa Real Property is located on Rideau Street in Ottawa, Ontario.¹
8. Pursuant to a Nominee Agreement dated March 25, 2019 between the Ottawa LP and the Ottawa Nominee, the Ottawa Nominee, as registered title holder for the Ottawa Real Property, acts as nominal title holder for Ottawa LP without any beneficial right, beneficial ownership or beneficial interest in and to the Ottawa Real Property.²
9. The Ottawa Real Property was substantially vacant in mid-June 2025.³

Sale Process for the Ottawa Real Property

10. The costs of maintaining, insuring and safeguarding the Ottawa Real Property while vacant are substantial. Accordingly, in consultation with relevant stakeholders, the

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.14.](#)

² Sixth Report at para 12, Motion Record, Tab 2, [p.20.](#)

³ Sixth Report at para 15, Motion Record, Tab 2, [p.21.](#)

Receiver determined that marketing of the Ottawa Real Property for sale was prudent and appropriate.⁴

11. In accordance with the Receivership Order and 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. The Receiver's decision was primarily based on the following factors:
 - (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
12. CBRE, with oversight from the Receiver and following the Receiver's consultation with key stakeholders, undertook steps to prepare the Ottawa Real Property to go to market. This included development of a tailored marketing and disposition strategy to maximize returns for the estate, preparation of a confidential information memorandum, virtual data room and other marketing materials, and identification of prospective purchasers who may be

⁴ Sixth Report at para 15, Motion Record, Tab 2, [p.21](#).

⁵ Sixth Report at para 18, Motion Record, Tab 2, [p.21](#).

interested in the property, are active participants in the Ottawa real estate market and have the financial wherewithal and sophistication to execute a transaction.⁶

13. The marketing process for the Ottawa Real Property commenced on October 27, 2025, at which time the confidential data site for the 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 on or after January 21, 2026. The deadline for binding bids was March 19, 2026. From commencement to the binding bid deadline, the process ran for 143 days.⁷
14. CBRE's marketing approach was a national campaign with a focus on active participants in the Ottawa market. This included mass scale marketing to 1,400 parties and a more targeted approach to approximately thirty parties. Sixteen parties signed non-disclosure agreements to review confidential information about the opportunity.⁸

The Ottawa Transaction

15. Following completion of the marketing process, the Receiver determined that the Ottawa Transaction was the highest and best offer for the Ottawa Real Property.⁹
16. The Ottawa APS is based on the template form of agreement of purchase and sale prepared by the Receiver. The transaction is to proceed on an '*as is, where is*' basis and is subject to Court approval. The Purchaser has provided a cash deposit in accordance with the Ottawa APS.¹⁰

⁶ Sixth Report at para 20. Motion Record, Tab 2, [p.22](#).

⁷ Sixth Report at para 22. Motion Record, Tab 2, [p.23](#).

⁸ Sixth Report at para 25. Motion Record, Tab 2, [p.24](#).

⁹ Sixth Report at para 49. Motion Record, Tab 2, [p.30](#).

¹⁰ Sixth Report at para 27. Motion Record, Tab 2, [pp 25-26](#).

17. The Ottawa APS is conditional upon assignment of certain City of Ottawa lease-related agreements. The Receiver was informed that the Purchaser and the City of Ottawa have agreed on terms of assignment of the City of Ottawa lease-related agreements.¹¹

PART III - ISSUES

18. The issues to be addressed on this motion are:
- (a) whether the Ottawa Transaction and the Ottawa APS should be approved;
 - (b) whether the payment of the CBRE fees and disbursements in connection with the Ottawa Transaction should be approved;
 - (c) whether the requested increase to the Receiver's borrowing limit should be granted; and
 - (d) whether the confidential appendices to the Sixth Report should be sealed.

PART IV - LAW AND ANALYSIS

Approval of the Ottawa Transaction

19. 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 para 32. Motion Record, Tab 2, [p.27](#).

- (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

20. 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

21. The Receiver submits that the *Soundair* criteria have been satisfied by the Ottawa Transaction and the marketing process for the Ottawa Real Property.

Efforts to Obtain the Best Price

22. Following the prior process conducted in HBC's CCAA proceedings (the "**HBC Sale Process**"), CBRE conducted a robust marketing process for the Ottawa Real Property 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 opportunity for the Ottawa Real Property, the results of the HBC Sale Process, and the outcome of negotiations between the Purchaser and the Receiver, the Receiver is of the view that further marketing is unlikely to result in a superior transaction.¹⁴

23. The Receiver notes that the costs of insurance, maintenance, tax and other holding costs are substantial for the Ottawa Real Property.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.29](#).

¹⁵ Sixth Report at para 48. Motion Record, Tab 2, [p.29](#).

24. In the Receiver's view, the Ottawa Transaction represents the highest and best transaction available at this time, which transaction was obtained following extensive and competitive arm's length negotiations with logical acquirers.¹⁶

The Interests of All Parties

25. The Receiver consulted with and considered the interests of key stakeholders in respect of the Ottawa Transaction, including:

(a) the senior secured lender on the Ottawa Real Property; and

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

26. The senior secured lender on the Ottawa Real Property will realize a significant shortfall and has consented to the Ottawa Transaction.¹⁸

27. As at the date of this Sixth Report, the Receiver is not aware of any affected stakeholder objecting to, or likely to object to, the Ottawa Transaction.¹⁹

28. 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.²⁰

29. The Receiver notes that the proposed form of approval and vesting order provides for the discharge of certain leases entered into between 1965 and 1977. Those leases relate to municipal addresses different from the Ottawa Real Property, and are with parties who

¹⁶ Sixth Report at para 49. Motion Record, Tab 2, [p.30](#).

¹⁷ Sixth Report at para 55. Motion Record, Tab 2, [pp.31-32](#).

¹⁸ Sixth Report at para 56. Motion Record, Tab 2, [p.32](#).

¹⁹ Sixth Report at para 57. Motion Record, Tab 2, [p.32](#).

²⁰ Sixth Report at para 58. Motion Record, Tab 2, [p.32](#).

have no activities at the Ottawa Real Property, and in many cases no known remaining business operations in Ottawa at all based upon the Receiver's review.

Efficacy and Integrity of the Process and Fairness

30. As noted above, the Ottawa Real Property was previously included in the HBC Sale Process
31. All parties with a potential interest in the Ottawa Real Property 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 process was a two-stage bid process with non-binding letters of intent followed by a binding agreement of purchase and sale commonly used in the Receiver's experience.²²

CBRE Payment

33. 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.²³

²¹ Sixth Report at para 50. Motion Record, Tab 2, [p.30](#).

²² Sixth Report at para 26. Motion Record, Tab 2, [p.25](#).

²³ Sixth Report at para 59. Motion Record, Tab 2, [p.32](#).

Sealing of Confidential Appendices

34. The Receiver seeks an Order sealing the confidential appendices to the Sixth Report. Those appendices include:
- (a) 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.²⁴
35. 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.²⁵
36. Sealing of the unredacted purchase agreements and the confidential bid summary until the completion of the relevant transactions or further Order of the Court is necessary to maximize recoveries in these proceedings. The disclosure of the purchase price and competing transaction terms would materially prejudice any remarketing process for the relevant properties if the transactions do not close.²⁶

²⁴ Sixth Report at para 61. Motion Record, Tab 2, [p.33](#).

²⁵ *Sherman Estate v Donovan*, [2021 SCC 25](#) at para. [38](#).

²⁶ Sixth Report at para 62. Motion Record, Tab 2, [p.33](#).

37. The disclosure of unredacted fee information in the CBRE engagement letters could negatively impact receivers' abilities to negotiate optimal terms in future engagements. That outcome would also be detrimental to recoveries for stakeholders in future cases.
38. 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. Confidential information regarding competing bids and the sale transaction terms would be unsealed upon completion of the sale transactions.

Increase to Receiver's Borrowing Limit

39. 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.²⁷
40. Based upon the Receiver's forecasts, the Receiver expects the aggregate borrowing limit 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.²⁸

²⁷ Sixth Report at para 76. Motion Record, Tab 2, [p.38](#).

²⁸ Sixth Report at para. 77 and 78. Motion Record, Tab 2, [p.38](#).

41. At this time, the Receiver is not seeking the court's authorization to increase the property-specific borrowing limit on any property. The Receiver intends to engage with the applicable secured lenders on each property regarding any increases to the property-specific borrowing limits.

PART V - ORDER REQUESTED

42. The Receiver respectfully requests that the Court grant the requested orders approving the Ottawa Transaction, the payment of the CBRE fees and disbursements in connection with the Ottawa Transaction, increasing the aggregate borrowing limit, and granting the requested sealing orders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of May 2026.

Evan Cobb

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

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

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 May 4, 2025)

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