

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

**ONYXA CANADA INC., ONYXA HOLDING GROUP INC., and MOHSEN
JABBAR-POOR**

Respondents

FACTUM OF THE RECEIVER

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Court-Appointed Receiver**

TO: THE SERVICE LIST

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PART I – OVERVIEW

1. This Factum is filed by KPMG Inc. (“**KPMG**”), in its capacity as Court-appointed receiver and manager (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties of Onyxa Canada Inc. (“**Onyxa Canada**”) and Onyxa Holding Group Inc. (“**Holding**”, and together with Onyxa Canada, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors, including the real property municipally known as 157 Toryork Drive, Toronto, Ontario and legally described in PIN 10299-0107 (LT) (the “**Toryork Property**”), for an order (the “**Approval and Vesting Order**”), *inter alia*:

- (a) approving the sale transaction (the “**Transaction**”) contemplated by the agreement of purchase and sale dated September 14, 2026 (the “**APS**”) between the Receiver and Jands Investments Inc., for a corporation to be incorporated (the “**Purchaser**”),

and authorizing the Receiver to take such steps as are necessary or desirable to complete the Transaction; and

- (b) vesting title in and to the Toryork Property, free and clear of all liens, claims and encumbrances, except the encumbrances set out in Schedule “B” to the APS (the “**Permitted Encumbrances**”), with the Purchaser, upon the Receiver filing a certificate confirming, among other things, the completion of the Transaction (the “**Receiver’s Certificate**”).

2. The Receiver also seeks an order (the “**Distribution and Ancillary Relief Order**”), *inter alia*:

- (a) authorizing and directing the Receiver to make an interim distribution (the “**Interim Distribution**”) to Royal Bank of Canada (“**RBC**”), and such subsequent distributions to RBC as the Receiver may determine appropriate, subject to the limitations and reserves described in the Second Report of the Receiver dated September 28, 2026 (the “**Second Report**”);
- (b) approving the Second Report and the actions, conduct and activities of the Receiver described therein; and
- (c) sealing Confidential Appendices “1” and “2” to the Second Report (collectively, the “**Confidential Appendices**”) pending completion of the Transaction or further Order of the Court.

PART II – FACTS

Background and Appointment of the Receiver

3. Pursuant to the Order of the Honourable Justice Conway dated March 16, 2026 (the “**Appointment Order**”), KPMG was appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including the Toryork Property.¹

4. Holding is the registered owner of the Toryork Property.²

Sale and Marketing Process

5. The Receiver’s First Report dated May 21, 2026 (the “**First Report**”) described, among other things, the competitive process undertaken by the Receiver to select a commercial real estate broker to assist with the marketing and sale of the Toryork Property, which resulted in the selection of Avison Young Commercial Real Estate Services, LP (“**Avison Young**”).³

6. By Order dated June 4, 2026 (the “**Sale Process Order**”), this Court approved, among other things, the Receiver’s engagement of Avison Young, the Receiver’s proposed marketing and sale process for the Toryork Property (the “**Sale Process**”), and the activities of the Receiver described in the First Report.⁴

7. The Receiver, with the assistance of Avison Young, carried out the Sale Process in accordance with the Sale Process Order. The Sale Process included, among other things, establishing a virtual data room, preparing marketing materials, listing the Toryork Property on

¹ Second Report at para. 1; Appendix “A” to the Second Report.

² Appendix “D” to the Second Report at Schedule “A”.

³ First Report at paras. 60–63; Second Report at para. 22.

⁴ Second Report at para. 2; Appendix “B” to the Second Report.

Multiple Listing Services and the Toronto Real Estate Board system, conducting an email marketing campaign to approximately 858 potential buyers, undertaking direct outreach to approximately 103 potential buyers, and conducting site tours and inspections.⁵

8. The Receiver received four offers for the Toryork Property by the bid deadline. Following its review of those offers, Avison Young, in consultation with the Receiver, engaged in further discussions with the leading bidders with a view to maximizing recoveries for the estate. Those discussions resulted in revised offers reflecting improvements to the proposed purchase price and certain transaction terms.⁶

The Transaction

9. Following its review of the revised offers, the Receiver entered into the APS with the Purchaser.⁷

10. The material terms of the APS are summarized as follows. Capitalized terms used in the table below and not otherwise defined herein have the meanings ascribed to them in the APS⁸:

Purchase Price	Redacted
Deposit	Redacted
Purchased Assets	All of Holding's right, title and interest in the Toryork Property, the Fixtures and Chattels and the Assumed Contracts, as defined in the APS.
Assumed Liabilities	The Permitted Encumbrances and all Liabilities under the Assumed Contracts, as defined in the APS.
Closing Date	Ten (10) days immediately following the date on which the Approval and Vesting Order is granted, or such other date as

⁵ Second Report at para. 23.

⁶ Second Report at paras. 26–28.

⁷ Second Report at para. 28.

⁸ Second Report at para. 30; Appendix "D" to the Second Report.

	may be agreed to by the Purchaser and the Receiver in writing.
Conditions	The Court granting the Approval and Vesting Order and the Approval and Vesting Order becoming Final, together with customary Vendor and Purchaser closing conditions.

11. The Receiver recommends approval of the APS and the Transaction. The Receiver is of the view that the Transaction represents the highest and best offer available for the Toryork Property in the circumstances, and RBC, as the primary economic stakeholder in the Toryork Property, supports the Transaction.⁹

Proposed Distributions to RBC

12. As of September 22, 2026, the indebtedness owing to RBC in respect of the Debtors, including accrued interest, fees and costs of enforcement, totalled approximately \$10.44 million (the “**RBC Secured Debt**”). The Receiver has obtained an independent legal opinion with respect to the validity and enforceability of the security granted in favour of RBC (the “**Security Opinion**”) which, subject to the qualifications, assumptions, limitations and discussions contained therein, provides that RBC’s security constitutes valid and enforceable security, creates valid security interests in the applicable collateral, and has been properly perfected or otherwise evidenced by the required registrations.¹⁰

13. Following closing of the Transaction, the Receiver intends to establish a reserve from the net sale proceeds (the “**Reserve**”) to address potential priority claims, the remaining costs of administering the receivership and unforeseen costs, liabilities, claims or expenses. The Receiver anticipates that the net proceeds of the Transaction, together with the guaranteed investment

⁹ Second Report at para. 33.

¹⁰ Second Report at paras. 34 and 36.

certificate held by RBC (the “**GIC**”), will be sufficient to satisfy the RBC Secured Debt in full, subject to the Reserve and the final determination of the amounts owing to RBC.¹¹

14. The Receiver seeks authority to make the Interim Distribution and such subsequent distributions to RBC as the Receiver may determine appropriate, provided that the aggregate distributions do not exceed the indebtedness owing to RBC and sufficient amounts are retained to address potential priority claims and the remaining costs and obligations of the receivership.¹²

The Confidential Appendices and Sealing

15. Confidential Appendix “1” to the Second Report contains a summary of the key terms and a comparison of the offers received in the Sale Process (the “**Toryork Offer Summary**”). Confidential Appendix “2” contains an unredacted copy of the APS.¹³

16. If the Transaction is not completed, the Receiver is of the view that efforts to remarket the Toryork Property may be impaired if the Toryork Offer Summary or unredacted APS are made public. Accordingly, the Receiver seeks to have Confidential Appendices “1” and “2” sealed pending completion of the Transaction or further Order of the Court.¹⁴

The Second Report and the Receiver’s Activities

17. The Second Report contains a detailed summary of the actions, conduct and activities of the Receiver since the First Report, including, among other things, administering and preserving

¹¹ Second Report at paras. 35 and 47–49.

¹² Second Report at paras. 6(f)(i) and 50–51.

¹³ Second Report at paras. 29 and 31.

¹⁴ Second Report at para. 32.

the Debtors' property, carrying out the Sale Process, evaluating offers received for the Toryork Property, and negotiating and executing the APS.¹⁵

PART III – ISSUES

18. The Receiver's motion raises the following main legal issues:

- (a) Should the Court approve the Transaction and grant the Approval and Vesting Order?
- (b) Should the Court seal Confidential Appendices "1" and "2" pending completion of the Transaction or further Order of the Court?
- (c) Should the Court approve the proposed distributions to RBC?
- (d) Should the Court approve the Second Report and the actions, conduct and activities of the Receiver described therein?

PART IV – LAW AND ARGUMENT

The Transaction Should Be Approved and the Approval and Vesting Order Should Be Granted

19. The Appointment Order empowers and authorizes the Receiver to market and sell the Debtors' property and to apply for a vesting order or other order necessary to convey such property to a purchaser free and clear of liens and encumbrances.¹⁶ Additionally, section 100 of the *Courts of Justice Act* (Ontario), as amended, authorizes this Court to grant an order vesting "in any person

¹⁵ Second Report at para. 11.

¹⁶ Appointment Order at paras. 3(j)–(l).

an interest in real or personal property that the Court has authority to order be conveyed”.¹⁷ As such, this Court has jurisdiction to grant the proposed Approval and Vesting Order.

20. The following criteria are to be considered by the Court when asked to approve a sale of assets in a receivership context, as articulated by the Court of Appeal for Ontario in *Royal Bank of Canada v. Soundair Corp.* (“**Soundair**”):¹⁸

- (a) whether the party made a sufficient effort to obtain the best price and to not act improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which the party obtained offers; and
- (d) whether the working out of the process was unfair.

21. Deference is to be afforded to a receiver in respect of its proposed sale transaction. Absent a violation of the *Soundair* principles or other exceptional circumstances, the Court should give effect to the business judgment of the Receiver as an officer of the Court.¹⁹

22. It is respectfully submitted that the *Soundair* test is readily met on the facts of this case and that the Court should approve the Transaction and grant the Approval and Vesting Order for the following reasons:²⁰

¹⁷ [Courts of Justice Act](#), RSO 1990, c. C.43, s. 100.

¹⁸ [Royal Bank of Canada v. Soundair Corp. \(1991\)](#), 4 OR (3d) 1 at para. 16 (ONCA); [Elleway Acquisitions Limited v. 4358376 Canada Inc.](#), 2013 ONSC 7009 at para. 31.

¹⁹ [Crown Trust Co. et al. v. Rosenberg et al. \(1986\)](#), 60 OR (2d) 87 at paras. 83–84.

²⁰ Second Report at paras. 2, 23, 26–28 and 33; Appendix “B” to the Second Report.

- (a) the Sale Process was approved by this Court and was comprehensive, including a broad canvassing of the market that resulted in multiple parties expressing interest in the Toryork Property and four formal offers being submitted;
- (b) following the bid deadline, the Receiver and Avison Young engaged in further negotiations with the leading bidders with a view to maximizing recoveries, resulting in revised offers with improvements to the proposed purchase price and certain transaction terms;
- (c) the Transaction represents the highest and best offer available for the Toryork Property in the circumstances;
- (d) the APS provides for the sale of the Toryork Property on an “as is, where is” basis, free and clear of encumbrances other than the Permitted Encumbrances;
- (e) the APS is not subject to any financing, due diligence, environmental or other substantive purchaser condition, and the Receiver is not presently aware of any information suggesting that the Transaction will not close following issuance of the Approval and Vesting Order;
- (f) the Receiver and Avison Young have no reason to believe that continued marketing of the Toryork Property would result in a higher purchase price; and
- (g) RBC, the Applicant and primary economic stakeholder in the Toryork Property, supports the Transaction.

The Confidential Appendices Should Be Sealed

23. The Supreme Court of Canada has held that a sealing order may be granted:²¹

- (a) where it is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
- (b) where the salutary effects of the confidentiality outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.

24. In *Sherman Estate v. Donovan* (“***Sherman Estate***”), the Supreme Court of Canada held that a person asking a court to exercise discretion in limiting the ‘open court’ presumption must establish that:²²

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent the risk to the identified interest because reasonable alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

25. Confidential Appendix “1” contains the Toryork Offer Summary, which summarizes and compares the key economic and transaction terms of the offers received in the Sale Process. Confidential Appendix “2” contains the unredacted APS. If the Transaction is not completed,

²¹ [*Sierra Club of Canada v. Canada \(Minister of Finance\)*, 2002 SCC 41 at para. 45.](#)

²² [*Sherman Estate v. Donovan*, 2021 SCC 25 at para. 38.](#)

disclosure of that commercially sensitive information could impair the Receiver's ability to remarket the Toryork Property and negotiate with prospective purchasers.²³

26. The proposed sealing relief is narrowly tailored and limited in duration, as the Confidential Appendices will remain sealed only until completion of the Transaction or further Order of the Court. In the circumstances, the Receiver submits that the benefits of preserving the integrity of any further sale process outweigh the limited negative effects of the temporary sealing order.²⁴

27. Accordingly, the Receiver respectfully submits that the requested sealing relief is consistent with the principles articulated in *Sherman Estate* and that the Confidential Appendices should be sealed pending completion of the Transaction or further Order of the Court.

The Proposed Distributions to RBC Should Be Approved

28. The Appointment Order provides that funds received or collected by the Receiver, including proceeds from the sale of the Debtors' property, are to be held and paid in accordance with the Appointment Order or further Order of this Court.²⁵

29. The Receiver recommends approval of the Interim Distribution and subsequent distributions to RBC. The Receiver has obtained an independent Security Opinion which provides, subject to the qualifications, assumptions, limitations and discussions contained therein, that RBC's security is valid and enforceable, creates valid security interests in the applicable collateral and has been properly perfected or otherwise evidenced by the required registrations.²⁶

²³ Second Report at paras. 29 and 31–32.

²⁴ Second Report at para. 32.

²⁵ Appointment Order at para. 13.

²⁶ Second Report at paras. 34 and 36.

30. The proposed distributions appropriately protect potential priority claims and the remaining obligations of the receivership. Prior to making the Interim Distribution, the Receiver will establish the Reserve to fund, among other things, unpaid and anticipated professional costs, potential priority claims and unforeseen costs, liabilities, claims and expenses associated with completing the administration of the receivership. The Receiver anticipates that the net proceeds of the Transaction, together with the GIC, will be sufficient to satisfy the RBC Secured Debt in full, subject to the Reserve and the final determination of the amounts owing to RBC.²⁷

31. Further, the proposed Distribution and Ancillary Relief Order provides that the aggregate distributions to RBC cannot exceed the indebtedness owing to RBC under the applicable loan and security documents and requires the Receiver to retain sufficient amounts to address potential claims ranking in priority to RBC's security and the remaining costs and obligations of the receivership. Accordingly, the Receiver respectfully submits that the proposed distributions to RBC should be approved.²⁸

The Second Report and the Receiver's Activities Should Be Approved

32. The Court has inherent jurisdiction to review and approve the activities of a court-appointed receiver as described in its reports.²⁹

33. Court approval affords the court officer an opportunity to bring its activities before the Court and stakeholders, provides stakeholders with an opportunity to raise concerns, and permits the Court to satisfy itself that the Receiver's activities have been conducted in a prudent and diligent manner.³⁰

²⁷ Second Report at paras. 47–49.

²⁸ Second Report at para. 51.

²⁹ [*Bank of America Canada v. Willann Investments Ltd.* \(1996\), 1996 CanLII 2782 \(ONCA\).](#)

³⁰ [*Target Canada Co. \(Re\)*, 2015 ONSC 7574 at para. 23; *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400 at paras. 65–66.](#)

34. The activities described in the Second Report were undertaken by the Receiver in connection with the performance of its duties and the exercise of its powers under the Appointment Order, including the administration and preservation of the Debtors' property, the realization of their assets, the Sale Process and the Transaction. The Receiver respectfully submits that those activities were necessary, undertaken in good faith and in the interests of the Debtors' stakeholders.³¹

35. Accordingly, the Receiver respectfully submits that the Second Report and the actions, conduct and activities of the Receiver described therein should be approved.

PART V – RELIEF SOUGHT

36. The Receiver respectfully requests that the Court grant the relief sought on this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of October, 2026.



CHAITONS LLP
*Lawyers for the Court-Appointed Receiver,
KPMG Inc.*

³¹ Second Report at para. 11.

SCHEDULE “A”

TABLE OF AUTHORITIES

Case law

1	<u>Bank of America Canada v. Willann Investments Ltd. (1996), 1996 CanLII 2782 (ONCA).</u>	
2	<u>Crown Trust Co et al v Rosenberg et al, 60 OR (2d) 87</u>	83- 84
3	<u>Elleway Acquisitions Limited v 4358376 Canada Inc, 2013 ONSC 7009</u>	31
4	<u>Royal Bank of Canada v Soundair Corp, 4 OR (3d) 1</u>	16
5	<u>Sherman Estate v Donovan, 2021 SCC 25</u>	38
6	<u>Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41</u>	45
7	<u>Target Canada Co (Re), 2015 ONSC 7574</u>	23
8	<u>Triple-I Capital Partners Limited v. 12411300 Canada Inc., 2023 ONSC 3400</u>	65-66

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 October 19, 2026



Signature

SCHEDULE “B”
STATUTORY AUTHORITIES

Courts of Justice Act, RSO 1990, c C.43

Vesting orders

100 A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed. R.S.O. 1990, c. C.43, s. 100.

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