

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

UBC SOLUTIONS INCORPORATED

Applicant

- and -

**1680 BRIMLEY LIMITED PARTNERSHIP, 2808908 ONTARIO INC. and BRIMLEY
PROGRESS DEVELOPMENTS INC.**

Respondents

APPLICATION UNDER SUBSECTION 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

**REDACTED COMPENDIUM OF 1680 BRIMLEY LIMITED PARTNERSHIP, 2808908
ONTARIO INC. & BRIMLEY PROGRESS DEVELOPMENTS INC.**
(Receiver's Sales Approval Hearing returnable on September 18th, 2026)

Date: September 17th, 2026

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Developments Inc.

To: SERVICE LIST

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TAB 1

Court File No. CV-25-00740765-00CL

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**RESPONSES TO FORMAL INTERROGATORIES DIRECTED TO THE RECEIVER,
TDB RESTRUCTURING INC.**

THE SALE PROCESS — LACK OF COURT APPROVAL

1. The Receiver stated in its Aide-Memoire that "approval of the sale process is not required," but is now seeking approval of "the remaining steps in the Receiver's ongoing sales process." What are the remaining steps in the Receiver's ongoing sales process for which the Receiver now seeks approval, and what does each such step entail?

Answer: At this stage, the remaining steps are to: (i) keep the listing active and carefully review any offers that may be received and should an offer be received, to then negotiate and if appropriate, enter into a binding agreement and seek Court approval of the transaction; or (ii) if appropriate, to reassess the market conditions and marketing approach for the property.

2. Please produce a copy of the confidential appendices from CBRE. The Respondents undertake to maintain their confidentiality.

Answer: Attached are the confidential appendices from CBRE.

3. Why is the Receiver now seeking approval of a sale process that does not include a bid deadline?

Answer: The Receiver is seeking approval of a sale process that does not include a bid deadline as a result of advice from CBRE and to address criticism from the Debtors' when an "offer not before date" term was previously included.

4. Is the Receiver prepared to seek approval of a sale process that includes a bid deadline and, if so, what bid deadline would the Receiver propose?

Answer: No, the Receiver is not prepared to seek approval of a sale process that includes a bid deadline.

5. Did UBC advise the Receiver, at any time, not to seek court approval of the sale process or that UBC did not support the Receiver's seeking such approval? If so, why? If not, why not?

Answer: No, UBC did not advise the Receiver, at any time, not to seek court approval of the sale process or that UBC did not support the Receiver's seeking such approval.

6. Did UBC provide any input in connection with discussions concerning the design, timing, or nature of the sale process? Please produce all communications relating to UBC's input concerning the sale process.

Answer: No, UBC did not provide any input in connection with discussions concerning the design, timing or nature of the sale process.

MARKETING DEFICIENCIES AND BROKER SELECTION

7. What considerations, including those provided by CBRE, led to the selection of March 26, 2026 as the "offer not before" date?

Answer: The March 26, 2026 "offer not before" date was selected based on the advice and recommendations provided by CBRE, taking into account its assessment of the market, the marketing timeline, and the time required to adequately expose the property to prospective purchasers.

8. Did UBC express any opinion concerning the bid deadline and, if so, what was that opinion?

Answer: No, UBC did not express any opinion concerning the offer not before date.

9. Did the Receiver hold discussions with CHMC or CBRE Capital surrounding how to effectively market the COIs?

Answer: No, the Receiver did not hold discussions with CHMC or CBRE Capital surrounding how to effectively market the COIs.

10. Did the Receiver consider a sale by way of a reverse vesting order structure and its potential impact on the COIs and the sale of the project? If not, why did the Receiver not do so?

Answer: At this stage it would be premature to consider a specific transaction structure, including a reverse vesting order structure. The Receiver's current focus is on conducting the sale process

and marketing the project. The appropriate transaction structure will depend on the proposal advanced by a prospective purchaser and the particular circumstances of any resulting transaction. As such, it is incumbent upon a potential purchaser to bring forward any proposed acquisition structure for consideration.

11. In the Receiver's view, would an RVO, which ordinarily would continue the legal entity of the debtor, permit the successful purchaser in the SISP to utilize the Respondents' COIs, even if a COI might otherwise be subject to conditions limiting the transfer of the COI?

Answer: Refused.

12. Did the Receiver consider seeking an order to stay or extend the termination of the COI, or seeking advice and directions from the Court, to enhance or ensure the availability of the COI to a potential purchaser?

Answer: No, the Receiver did not consider it appropriate to seek such relief. A non-binding COI is, by its nature, subject to the discretion of the parties involved, and the Receiver cannot compel a party to extend, maintain, or continue a non-binding expression of interest. As a result, seeking an order to stay or extend the termination of the COI would not have been an appropriate or effective means of preserving its availability to a potential purchaser.

13. Did UBC express a preference that CBRE be retained as broker and, if so, why?

Answer: Yes, UBC expressed a preference that CBRE be retained as broker following presentations from both [REDACTED] and CBRE. Based on those presentations, UBC's view was that CBRE would be more diligent in marketing the property and pursuing potential purchasers.

Notwithstanding UBC's preference, the decision to retain CBRE was ultimately made by the Receiver in the exercise of its judgment and discretion.

14. To what extent did an information barrier create difficulty in sharing information between CBRE Capital and CBRE in connection with the sale process?

Answer: It is not clear what information barrier is being referred to in the question. Accordingly, the Receiver is unable to comment on any alleged difficulty arising from such a barrier. If a specific information barrier or circumstance is identified, the Receiver can consider and respond to the question in that context.

LOSS OF CHMC FINANCING

15. The Receiver responded to a meeting request from Mr. Jain on November 6, 2025, stating: "Unless and until you have evidence of funds, ready to be wired to the Receiver, sufficient to pay out the debt, accumulated interest, and costs in full, the Receiver does not believe that there is any utility in having a meeting." Was preservation of a \$446 million financing instrument, in itself, sufficient "utility" to warrant a meeting?

Answer: No, in the Receiver's view, a meeting would not have resulted in the preservation of the COIs. The continuation or preservation of any COI was not dependent upon such a meeting, and the Receiver did not believe that a meeting, in and of itself, would have altered the status of the COIs. Accordingly, the Receiver did not consider the potential preservation of the financing instrument to be sufficient utility to warrant a meeting in the absence of evidence of funds available to satisfy the indebtedness outstanding to UBC, accrued interest thereon, and costs of the receivership administration in full.

16. During the Receivership, was payment the only requirement for keeping the COI in good standing?

Answer: No, payment was not the only requirement for keeping the COI in good standing. The status of the COI was subject to a variety of terms, conditions, and requirements established by the parties to the COI. The Receiver's reference to evidence of funds was made in the context of assessing whether there was a realistic prospect of satisfying the indebtedness and resolving the receivership proceedings, not as a statement that payment was the sole factor governing the continuation or validity of the COI.

17. Did the Receiver hold discussions with UBC concerning the realization of the property and, specifically, the value and importance of the COI?

Answer: Yes, the Receiver held discussions with UBC concerning the realization of the property, including discussions regarding the COI and its potential value and significance.

18. Did UBC express an interest in acquiring the COI as part of its intention to bid for the property or otherwise?

Answer: No, UBC did not express an interest in acquiring the COI, nor did it submit a bid for the property.

19. To the Receiver's knowledge, did UBC contract or meet with CHMC?

Answer: The Receiver is not aware of whether UBC contracted or met with CMHC. Any communications or meetings that may have occurred between UBC and CMHC would not

necessarily have involved the Receiver, and the Receiver is therefore not in a position to comment on them.

20. To the Receiver's knowledge, did UBC or the Receiver receive a favourable response from CHMC indicating that UBC would either qualify for, or be able to take an assignment of and continue to use, the COI? If not, why not?

Answer: The Receiver has no knowledge of any favourable response from CMHC indicating that UBC would qualify for or be able to take an assignment of and continue to use, the COI. The Receiver is therefore not in a position to comment on whether any such response was provided or, if not, the reasons why it was not provided.

21. Has the Receiver asked UBC about the various tender or architectural documents that UBC sent out to solicit trades in connection with the project?

Answer: At the outset of the receivership, UBC provided the Receiver with information and documents relating to the property that were contained in UBC's files and that, to the Receiver's understanding, had originally been obtained from Atria and/or Mr. Jain's offices. The Receiver reviewed and collected the information made available to it during the course of its administration and caused relevant materials to be made available in CBRE's data room for prospective purchasers. Accordingly, any tender, architectural, or other project-related documentation obtained by the Receiver was included in the materials made available to prospective purchasers through CBRE's data room, where appropriate.

22. Has the Receiver asked UBC about UBC's retention of CitiCore as construction manager for 1680 Brimley?

Answer: No. The Receiver did not specifically ask UBC about its retention of CitiCore as construction manager for 1680 Brimley. The Receiver's focus was on obtaining and reviewing information relevant to the property and the administration of the receivership, and it did not make specific inquiries regarding any decision by UBC to retain CitiCore.

UBC

23. Who are the current representatives of UBC who are providing instructions or comments to the Receiver?

Answer: Since the commencement of the receivership, the Receiver has dealt primarily with Broghan Masters, a partner with Rousseau Mazzuca LLP, the lawyers for UBC.

24. Have the UBC representatives providing instructions to the Receiver changed during the Receivership and, if so, who were the former representatives, who are the current representatives, and what were the reasons for the change?

Answer: No, UBC's representatives providing information to the Receiver have not changed during the Receivership.

25. Did the Receiver seek confirmation, at any time, as to whether UBC intended to be a bidder in the sale process, either before or after the Receiver shared bid information with UBC?

Answer: No, the Receiver did not seek confirmation from UBC as to whether it intended to participate as a bidder in the sale process, either before or after any bid-related information was shared.

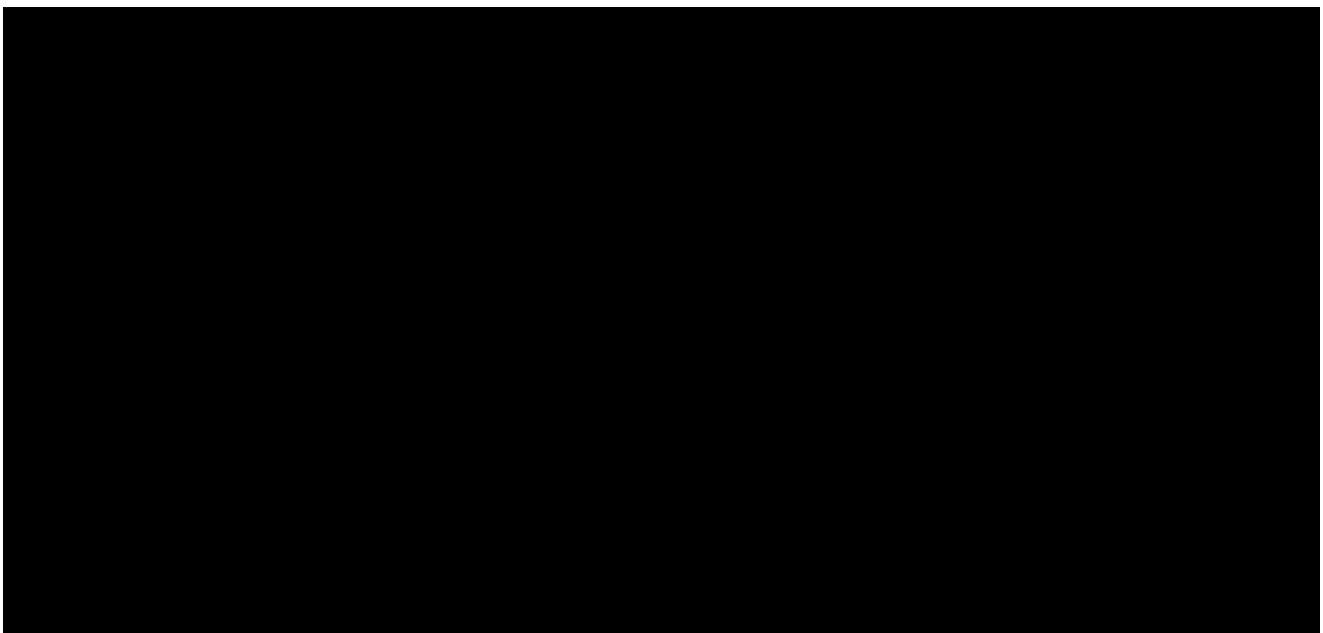
26. If UBC identified itself as a bidder, what steps did the Receiver take at that time and thereafter to isolate UBC from other bidding information?

Answer: Not applicable. UBC did not identify itself as a bidder in the sale process. Accordingly, the Receiver was not required to implement any measures to isolate UBC from bidding information on that basis, and no such steps were taken.

27. Did the Receiver inform potential bidders of UBC's interest in participating as a bidder? If not, why not? If so, how did the Receiver do so? Please produce any correspondence relating to this matter.

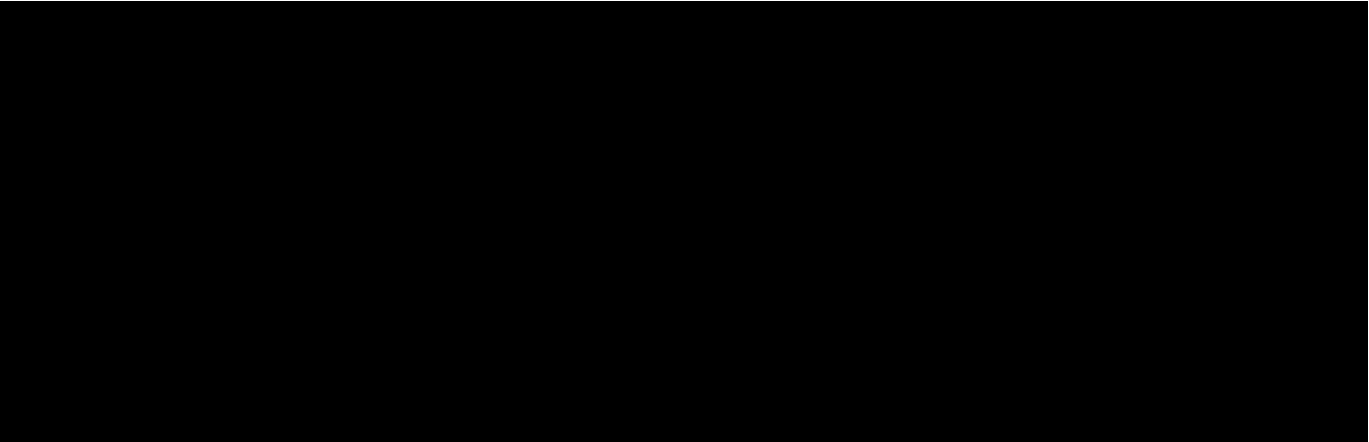
Answer: No, the Receiver did not inform potential bidders of any interest on the part of UBC or any other party in participating as a bidder because the Receiver does not disclose the identity of one bidder to another in the course of any sales process.

28. Why did UBC refuse to remain as guarantor with respect to the COI before completion of the sale process? In the Receiver's opinion, did that decision diminish the value of the COI or the project to arm's-length purchasers?





29. At the time of its appointment, or at any time thereafter, did the Receiver form a view as to whether the value of the property could be, or was, materially less than the debt owed to UBC? Did UBC ever express such a view to the Receiver? The Respondents are prepared to maintain the confidentiality of the response to the extent that it impacts the sale process.



30. When the Receiver commenced its sales process following its appointment, was it expected that UBC's acquisition of the project by way of a credit bid would be a likely outcome of the sale process? Did UBC ever express that this was the likely outcome of the sale process?

Answer: No, the Receiver did not commence the sale process on the expectation that UBC would acquire the project by way of a credit bid. The property was marketed and offered for sale through a competitive process on a best bid basis, with the objective of soliciting the highest and best available offers from the market.

UBC did express to the Receiver that, if the project could not be sold for an appropriate price, it would consider acquisition of the project by way of a credit bid. The Receiver proceeded on the basis that all interested parties would have the opportunity to participate in the sale process in accordance with the approved procedures.

31. If so, did that expectation of a credit bid, or the perception that the property was worth less than the debt, affect the design of the sale process? Did it affect what UBC advised was required, or was not required, to form part of the sale process?

Answer: Any expectation of a credit bid, or any perception that the value of the property was less than the amount of UBC's debt, did not affect the design of the sale process. The Receiver conducted the sale process based on the status of the project and market conditions with the objective of soliciting the highest and best available offers for the property and administered the process in accordance with its duties and the applicable Court orders.

The Receiver is also not aware of any instance in which UBC advised that any particular component should be included in, or excluded from, the sale process on the basis of an expectation of a credit bid or a view as to the value of the property relative to the indebtedness.

32. In the Receiver's view, have the apparent difficulties at UBC affected UBC's ability to focus on and/or submit a bid in the bid process?

Answer: The Receiver is not in a position to comment on UBC's internal affairs, operations, decision-making processes, or ability to participate in the bid process. Accordingly, the Receiver has no knowledge of whether any apparent difficulties at UBC affected its ability to focus on,

evaluate, or submit a bid in the sale process. Any such question would be more appropriately directed to UBC.

33. Has UBC's interest in either acquiring the property or participating in its sale diminished since the apparent difficulties at UBC came to light?

Answer: No, the Receiver has not observed any indication that UBC's interest in acquiring the property or otherwise participating in the sale process diminished as a result of any apparent difficulties at UBC.

34. Has it become more difficult for the Receiver to obtain UBC's attention or timely responses from UBC since the recent public disclosures concerning possible corruption at UBC?

Answer: No, the Receiver has not experienced any increased difficulty obtaining UBC's attention or receiving timely responses from UBC since the recent public disclosures concerning possible corruption at UBC.

35. Has the Receiver conducted a review of the debt and security held by UBC since the allegations of corruption became known?

Answer: Yes, the Receiver has reviewed the debt and security held by UBC since the allegations of corruption became known. The review did not reveal any issue that would cause the Receiver to question the validity or enforceability of the debt or security for the purposes of the receivership proceedings.

36. Has the Receiver conducted any independent investigation into the alleged corruption at UBC? Has the Receiver conducted any interviews or discussions with UBC or any parties

providing consultation or input to the Receiver in this regard? If so, who was interviewed and what was discovered through those discussions?

Answer: No, the Receiver has not conducted any independent investigation into the alleged corruption at UBC. The Receiver has not conducted any interviews or discussions with UBC or with any parties providing consultation or input to the Receiver for the purpose of investigating such allegations.

37. Has the Receiver conducted any investigation into the calculation of the debt alleged to be owed to UBC? If so, has the Receiver conducted any investigation into, or relied on any assumptions concerning, whether the debt claimed to be owing to UBC by the Respondents could be subject to set-off?

Answer: Not at this time. The Receiver has not conducted an investigation into the calculation of the debt alleged to be owed to UBC, nor has it conducted an investigation into whether any portion of the debt claimed by UBC may be subject to set-off.

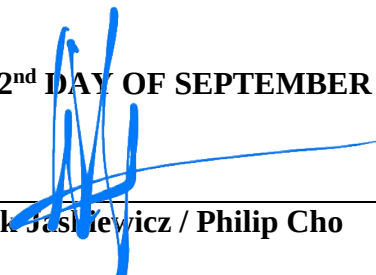
Accordingly, the Receiver has not formed any conclusions regarding the availability of set-off and has not relied on any assumptions concerning set-off in carrying out its duties or administering the receivership.

38. Did any change in UBC's interest in, or attention to, this matter affect the Receiver's realization plan for the property or the Receiver's decision to come before the Court to seek approval of a sale process? If not, what other circumstances account for the Receiver's decision to bring this motion at this time?

Answer: No, any change in UBC's level of interest in, or attention to, this matter did not affect the Receiver's realization plan for the property and did not impact the Receiver's decision to seek approval of the sale process.

The Receiver brought this motion at this time in response to the Debtor's request and allegations concerning the Receiver's conduct. In the Receiver's view, those allegations necessitated the Court's consideration of the issues raised and the approval of the Receiver's activities, including the sale process, in order to provide clarity and direction regarding the continued administration of the receivership estate.

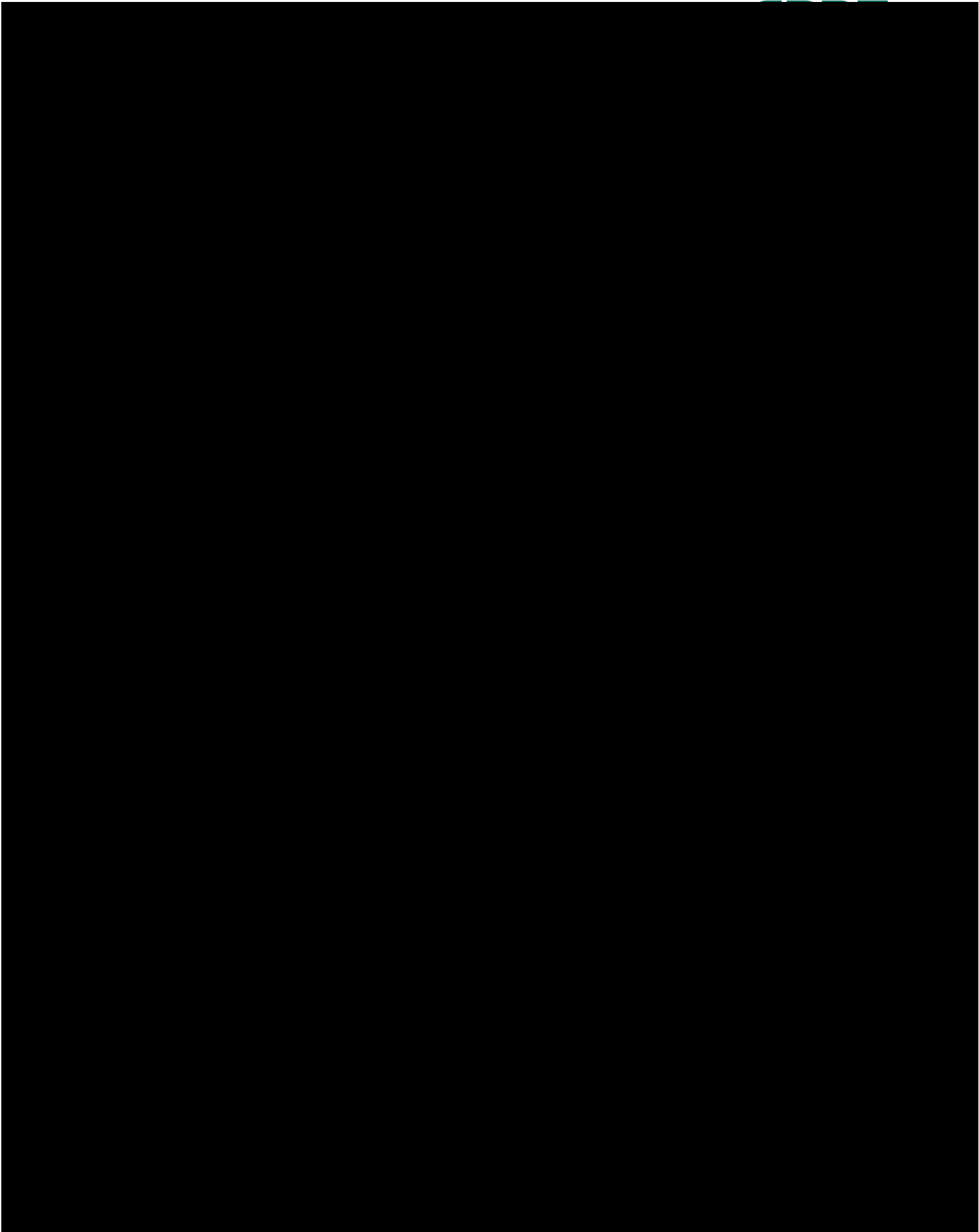
ALL OF WHICH IS HEREBY SUBMITTED THIS 2nd DAY OF SEPTEMBER 2026 BY:



Wojtek Jasiewicz / Philip Cho

CONFIDENTIAL

APPENDIX "1"



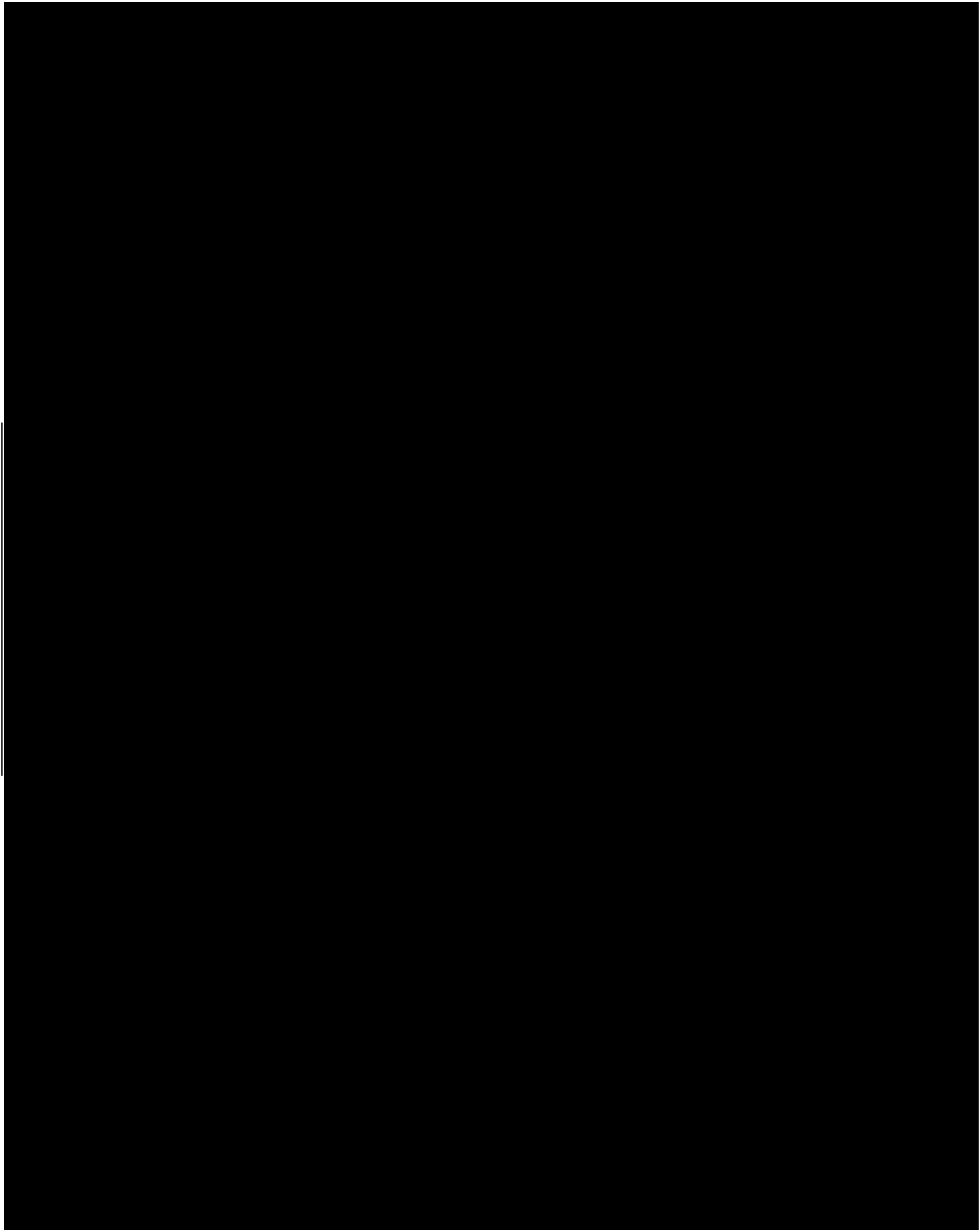
The first part of the paper discusses the importance of the research and the need for a new approach. It then presents a detailed description of the methodology used in the study. The results of the study are then presented, followed by a discussion of the implications of the findings. The paper concludes with a summary of the main points and a list of references.

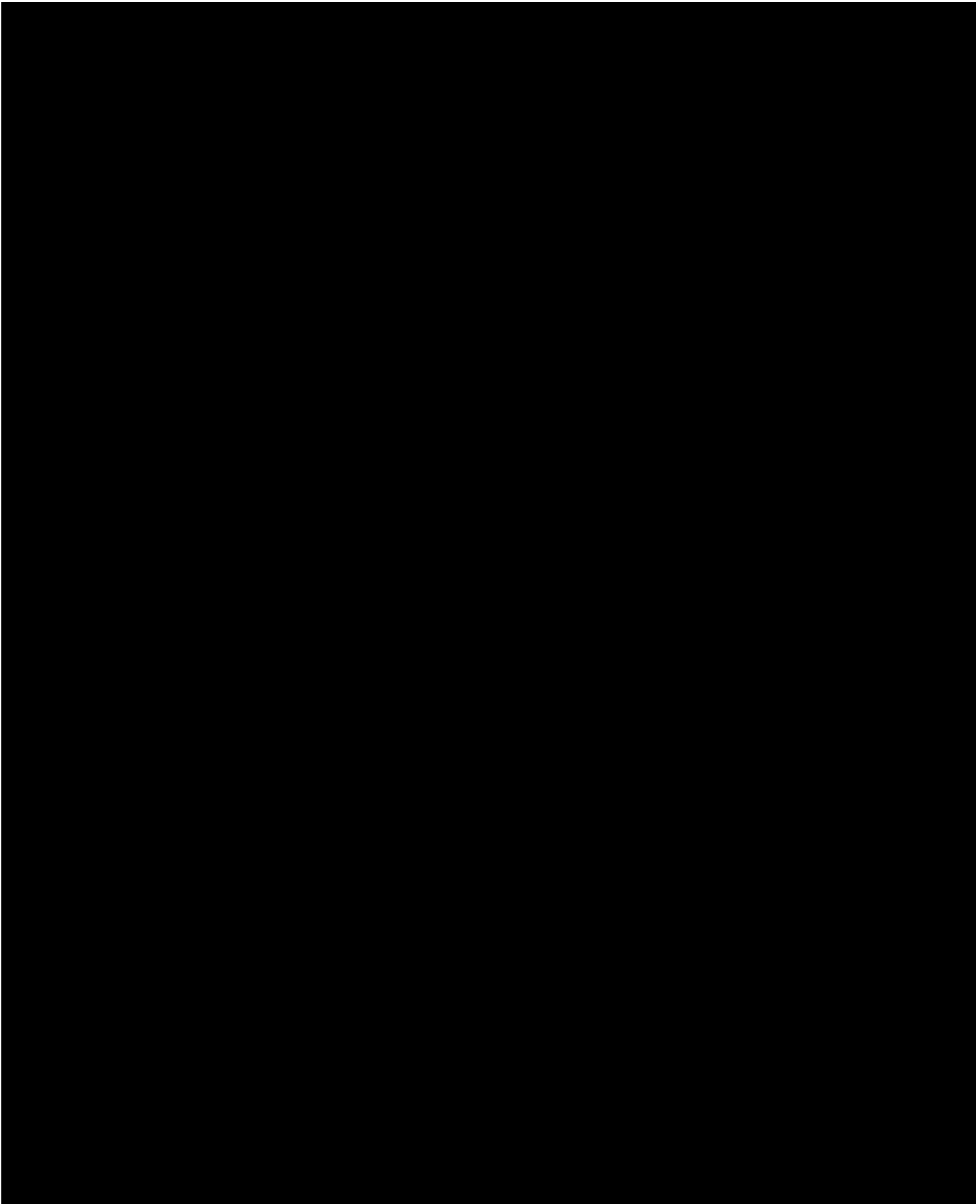
The research was conducted in a laboratory setting. The participants were all male, aged between 20 and 30 years. They were all students at a university in the United Kingdom. The study was approved by the local ethics committee. The participants were given a written consent form to sign before they took part in the study.

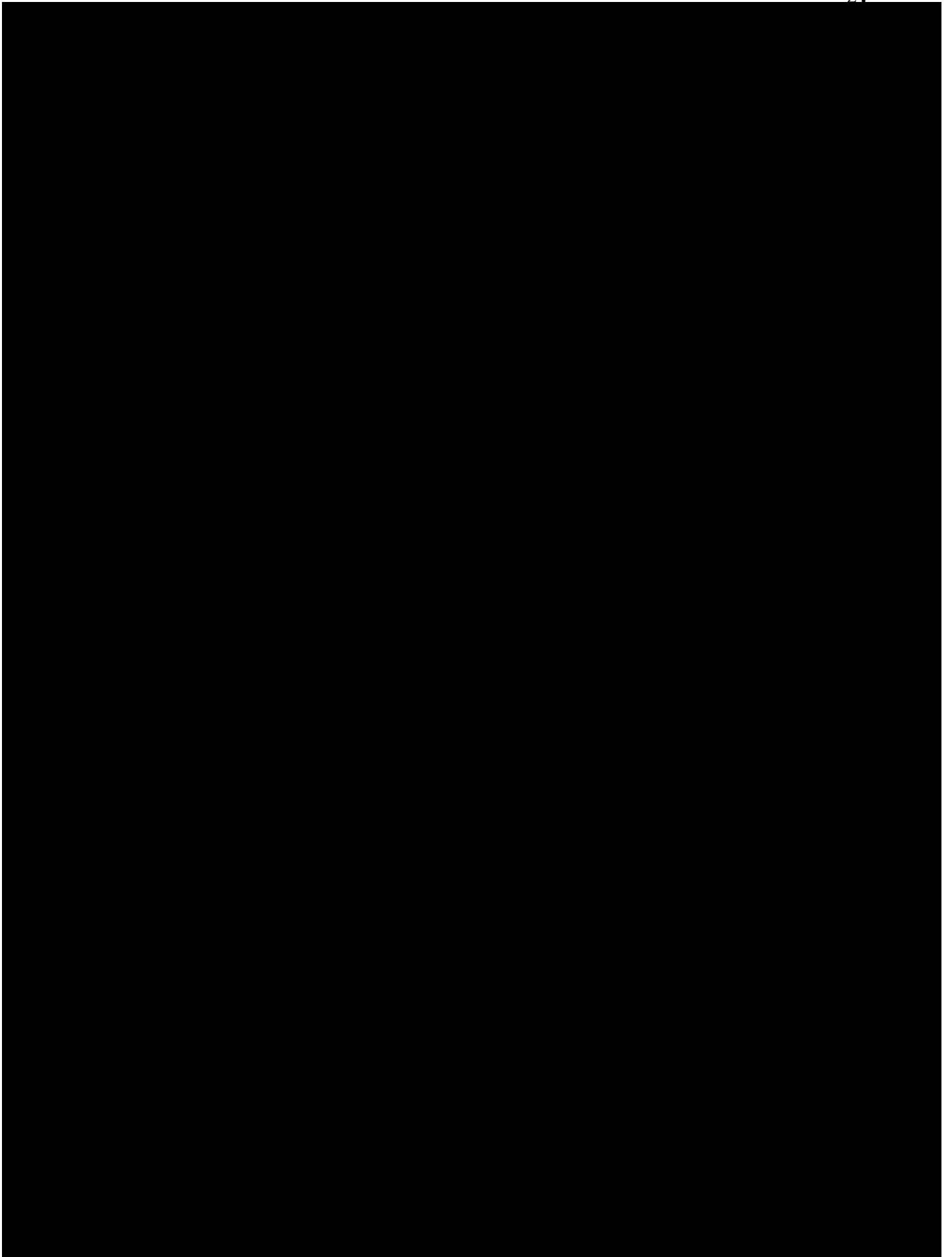
The study was designed to investigate the effects of a new treatment on a specific condition. The treatment was a combination of a drug and a physical therapy. The drug was a new formulation of a well-known drug. The physical therapy was a new type of exercise. The treatment was compared to a control group that received no treatment.

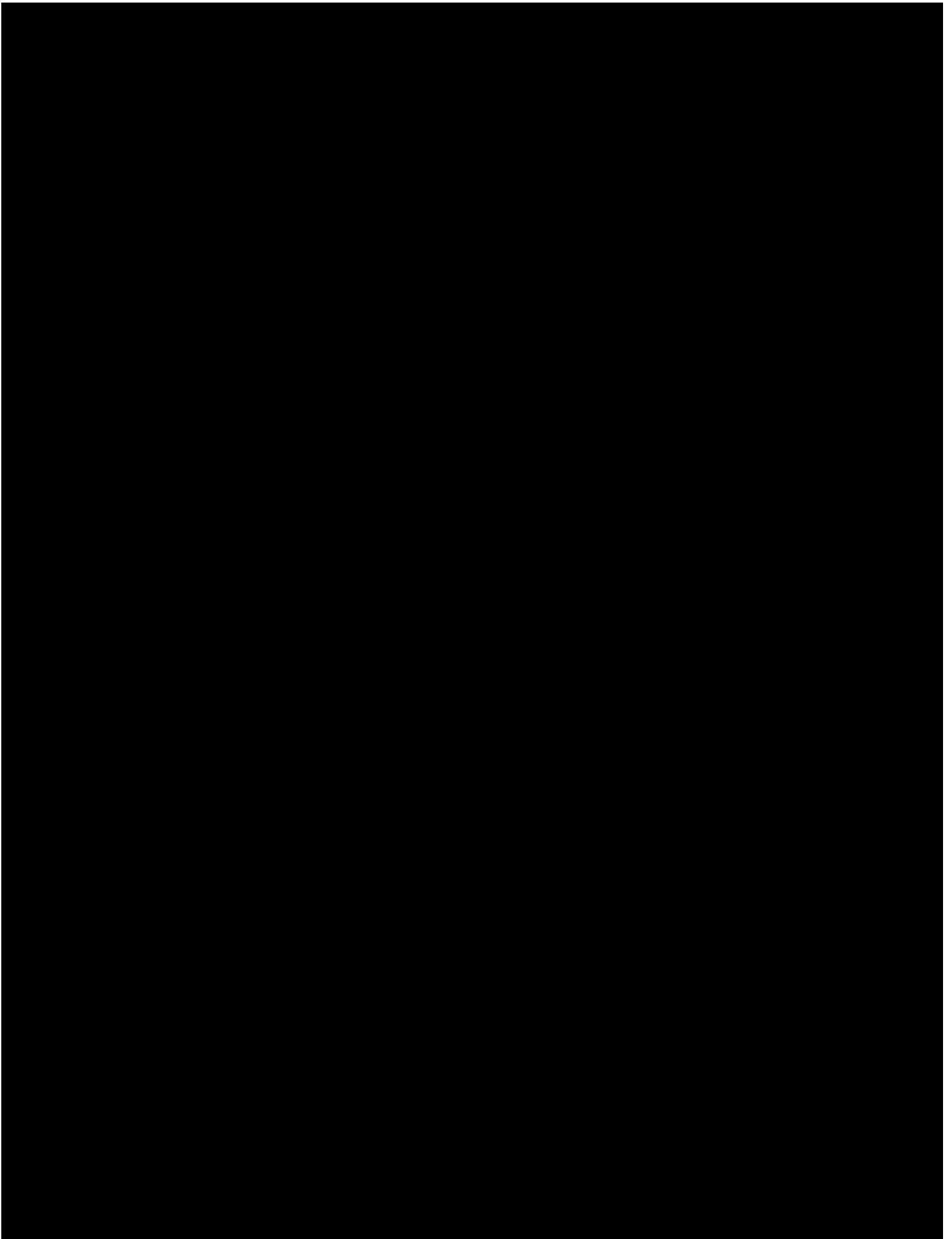
The results of the study showed that the treatment had a significant effect on the condition. The participants who received the treatment showed a significant improvement in their condition compared to the control group. The improvement was seen in all of the measures that were used to assess the condition.

The implications of the findings are that the treatment is effective for the condition. This suggests that the treatment could be used to treat other patients with the condition. Further research is needed to confirm these findings and to determine the long-term effects of the treatment.









UBC SOLUTIONS INCORPORATED
Applicant

and

1680 BRIMLEY LIMITED PARTNERSHIP, et al.
Respondents

Court File No. CV-25-00740765-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at **TORONTO**

ANSWERS TO FORMAL INTERROGATORIES
DIRECTED TO THE
RECEIVER, TDB RESTRUCTURING INC.

WEIRFOULDS LLP

Barristers and Solicitors

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Lawyers for the Receiver, TDB Restructuring Limited

TAB 2

Court File No. CV-25-00740765-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

UBC SOLUTIONS INCORPORATED

Applicant

- and -

**1680 BRIMLEY LIMITED PARTNERSHIP, 2808908 ONTARIO INC. and BRIMLEY
PROGRESS DEVELOPMENTS INC.**

Respondents

APPLICATION UNDER SUBSECTION 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

RESPONDING AFFIDAVIT OF HANS JAIN

I, **Hans Jain**, of the City of Toronto, in the Province of Ontario, **AFFIRM THAT:**

1. I swear this affidavit in response to the First Report of TDB Restructuring Limited (the “**Receiver**”) dated June 30, 2026 (the “**First Report**”), and the relief sought therein on the Receiver’s motion returnable September 18, 2026. I swear this affidavit in support of the Respondents’ position on that motion.
2. I am the sole officer and director of 2808908 Ontario Inc. (“**280**”) and Brimley Progress Developments Inc. (“**Brimley Inc.**”). 280 is the general partner of 1680 Brimley Limited Partnership (“**Brimley LP**”). I am also the President of Atria Development Corporation

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("Atria"), a real estate development company founded in 2000, and have been actively involved in its operations, management, and development activities since its inception

3. The Receiver was appointed, without security, over 280, Brimley LP and Brimley Inc. (collectively, the "**Respondents**" or the "**Respondents**"), pursuant to the order of Justice J. Dietrich dated September 10, 2025 (the "**Appointment Order**"), including over the real property legally identified as PIN 06000-0540 (LT) and municipally known as 1680 Brimley Road, Scarborough, Ontario, M1P 2B9 (the "**Property**").
4. I have personal knowledge of the matters to which I depose in this affidavit, except where I state that I have been informed of such matters by others, in which case I believe such information to be true.
5. In summary, the Respondents' position on the relief sought on this motion is as follows:
 - a) the Respondents do not oppose the imaging of hard drives and electronic devices or disclosing further books and records, sought by the Receiver, but given the facts set out herein with respect to co-mingling, the review of the imaged data should proceed under a court-approved protocol that addresses privileged, personal, and third-party information. If this can be agreed to in advance by the Receiver, the servers can be provided to such a party for imaging immediately and in any event in advance of the hearing of this motion;
 - b) the Respondents believe the Receiver's conduct in conducting the sale process without prior Court oversight was deficient, delayed and contributed to a material loss of value

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to the assets, in particular the loss of insured funding from Canada Mortgage and Housing Corporation (“**CMHC**”), in the amounts of \$446.3 million and \$376.7 million. As such, approval of that conduct should not be given at this time, pending further investigation into that conduct and its consequences;

- c) the Respondents do not believe that any money was transferred out of the Respondents’ account to Hansalex to the detriment of any of the Respondents’ creditors, and that the Receiver’s request for an order requiring repayment of the transferred funds is not appropriate and its allegations of fraud were not warranted;
- d) the Respondents do not agree with the Receiver’s proposed sale process and encourage the Court to consider the alternative sale process proposed herein, which is substantiated by experts. At a minimum, CBRE Limited (“**CBRE**”) should be dismissed as the listing brokerage both because of the appearance of conflict (or actual conflict) of interest and because they have failed to produce a viable buyer over their engagement; and
- e) the Respondents are concerned with the role played or to be played by UBC in these proceedings, given recent public reporting identifying serious concerns about possible corruption and financial mismanagement by UBC and its affiliates. There is a reasonable concern that its engagement with the Receiver throughout the process, including in relation to the treatment of other prospective bidders, warrants further inquiry, and that future engagement should be limited.

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6. The Respondents believe the approval of fees must wait for the conduct issues discussed herein to be resolved or commented on, and therefore that relief should be adjourned.
7. The Respondents are concerned about the increase in the borrowing charge and may make submissions on that issue at the hearing.
8. The Respondents have no position on the other relief being sought.

BACKGROUND

9. Atria is a vertically integrated condominium and purpose-built rental real estate development company active across the Greater Toronto Area and southern and central Ontario.
10. I bring over 30 years of real estate experience to my role as President of Atria, having been personally involved in all stages of the development life cycle: land acquisition and assembly; planning and approvals (including before the Committee of Adjustment and the Ontario Land Tribunal); financing; design, engineering, construction management; and sales and marketing; to occupancy, long-term leasing, and property management.
11. Through Atria, I led the regeneration of Toronto's Leslieville neighbourhood through the i- Zone and Garment Factory Lofts retrofit condominium projects and completed Parkwood Residences, the first condominium project in downtown Oshawa in nearly 20 years. Each project involved converting existing buildings into residential space.
12. More recently, I oversaw the ground-up construction of a new 239-unit modern purpose-built rental project and a second phase consisting of 370-units of mid-luxury purpose-built rentals at 80 and 100 Bond Street in Oshawa. In Peterborough, Atria retrofitted the historic YMCA built in 1895 into 136 loft-style apartments.

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13. Atria-owned and developed projects have closed nearly \$300,000,000 in CMHC-insured loans on rental projects located in Ontario, exclusive of the Brimley Project (as defined below), reflecting Atria's experience with CMHC's insured financing programs and long-standing relationship with CMHC.
14. The Brimley Project is a two-phase, four-tower development located on the southwest corner of Brimley Road and Progress Avenue, at 1680 Brimley Road, Scarborough, Ontario. Situated on approximately 4.4 acres, the greenfield site is zoned for 1591 residential units (but over 1,900 are expected to be approved via an application for Minor Variance) as well as ground-related retail (the "**Brimley Project**") over which the Receiver is appointed and is attempting to market.
15. The Brimley Project has Site Plan Approval, building permits in place, and significant development and construction work has already been undertaken. Upon completion, the Brimley Project will provide desperately needed rental housing for the residents of Toronto and Scarborough, and its construction will generate hundreds of jobs.
16. It is against this background, three decades of development experience and a demonstrated track record of completing complex residential projects, that I address the matters raised in the First Report concerning the Brimley Project.
17. I have also sought opinions from at least two well-known real estate brokerages with expertise comparable to my own and to that of CBRE, which share similar concerns regarding the marketing process. These two entities, Colliers International ("**Colliers**") and Avison Young ("**Avison**"), have each offered to provide written assessments of the sale process to date and

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have provided me with an outline of their concerns and comments. I will provide their comments and proposals to the Court by way of a supplemental affidavit to be delivered for consideration on the motion. Those opinions will be provided to the Receiver but will likely have to be sealed as they contain confidential business information and pricing.

ACTIVITIES OF THE RECEIVER AND COMMUNICATIONS WITH THE RESPONDENTS

18. The Receiver seeks an order approving its activities, conduct, and actions as described in the First Report, together with the remaining steps in its ongoing sale process. The Respondents and I are concerned about aspects of the Receiver's conduct thus far, as well as the fact that the First Report does not identify the “remaining steps” of the sale process for which approval is sought or respond to any of the Respondents' concerns that have been raised to the Receiver, and I ask that the Court consider these concerns.

19. On March 25, 2026, I wrote to the Receiver raising the concerns which underlie this motion.

A copy of my letter (the “**March 25 Letter**”) is attached as **Exhibit “A”**. The letter was not included in the Receiver's First Report. In my March 25 Letter, I raised concerns that:

- a) the Receiver was marketing the Property without Court approval or oversight;
- b) that there was a lack of consultation with myself or the Respondents, who were, prior to the receivership, developing the Brimley Project;
- c) that the Receiver's website had not been updated despite it being nine (9) months since its appointment;
- d) marketing materials were inadequate as they relate to the Brimley Project;

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- e) the Receiver had chosen an arbitrary deadline of March 25, 2026 for a bid deadline (which was not well publicized and not made known to me) which was set for after CHMC's insured-funding certificates of insurance were set to expire, and,
- f) despite my raising concerns about a potential conflict of interest, the Receiver engaged CBRE as the listing agent.

20. This is a complex project, unlike the sale of a vacant lot or a small residential property. This is a project with a cost of more than \$500,000,000 when built (for the first phase alone), intended to provide more than 900 units of important housing to the city. There had already been years of planning and related development work undertaken. The Brimley Project will involve complex, multi-stage financing and development, interaction with the city and other groups, and myriad other challenges common to a real estate project of this magnitude. Ensuring these various challenges are properly considered in the marketing process was, in my view, very important for securing the highest and best value for the Brimley Project.

21. Given the foregoing, I had expected, as I am advised now by my counsel, David Ullmann of Blaney McMurtry LLP ("**Blaney**"), that, as is very common, before the project was marketed, the Receiver would return to Court to advise of its proposed plans to market the property for sale and seek approval of same. However, it did not do so.

22. Atria related companies are also creditors of the Respondents and/or have material equity invested.

23. The marketing of the sale process was insufficient to reach my attention in a timely manner. Although I had heard, through secondary sources, that a broker had been chosen and that a sale process was being contemplated, I first learned that the Receiver had commenced a sale process

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for the Property from an industry professional who asked me for additional information because the marketing materials were inadequate. This happened after the listing was finally posted on the MLS on February 24, 2026, and the listing noted that bids must be received by March 25, 2026. I believe it was in early March 2026.

24. On April 7, 2026, the Receiver's counsel, WeirFoulds LLP ("**WeirFoulds**"), responded to my March 25 Letter (the "**April 7 Letter**"). Attached hereto as **Exhibit "B"** is a copy of the April 7 Letter.

25. The April 7 Letter did not address my concerns. It asserted that the Appointment Order required no further consultation or disclosure with the Respondents, that the Receiver was not obliged to obtain Court direction before marketing the Property and could market the Property as it saw fit, and that sale and marketing information was commercially sensitive and need not be shared with the Respondents.

26. At the time I wrote my March 25th letter, I had not retained counsel for this matter, and my letter misstated some aspects of how the Appointment Order operated, even if my underlying concerns were valid. I subsequently retained Blaney.

27. The Respondent's concerns were restated in correspondence from the Respondents' new counsel, Blaney, to WeirFoulds dated April 16, 2026 (the "**April 16 Letter**") and April 20, 2026 (the "**April 20 Letter**"), attached as **Exhibits "C" and "D"**, respectively

28. Among other concerns, my March 25 Letter and the April 16th Letter highlight that, despite my warnings to the Receiver, they failed to preserve the highly valuable CMHC's certificates of insurance ("**COIs**").

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29. John Cameron of CMHC, Specialist, Multi-Unit Housing Solutions, advised me that this would be the most expedient solution to retain the CMHC COIs.

30. I had previously written to the Receiver on this matter on September 24, 2025, issued a follow-up email on November 4, 2025, and urgently, as a deadline was approaching, on March 9, 2026. Copies of these communications are attached as **Exhibit “E”**. The Receiver’s failure to act on these warnings and the consequences are further described later in this affidavit.

PROPOSED SALE PROCESS

31. The Respondents do not agree with the Receiver’s proposed sale process. The Receiver has provided little to no new details on how the sale process should operate, and they are not interested in setting a bid deadline. The Receiver appears unconcerned with the failure to date to secure a purchaser.

32. The Respondents believe a clear process should be instituted in keeping with the usual process for a court-ordered sale and in line with my own and other professional real estate opinions, which I obtained and discuss below.

33. We propose the following process should be ordered instead. The Respondents propose a ninety (90) day sale process, commencing September 28, 2026, structured in two phases.

34. Phase 1 – Letter of Intent Phase: prospective purchasers will be invited to submit non-binding letters of intent, allowing the Receiver to identify parties with genuine capacity and interest in acquiring the Property. The Receiver will provide its shortlist of candidate purchasers to the Respondents so that they can consult, provide input, and identify additional parties.

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35. Phase 2 – Qualified Bid Phase: parties who submit a satisfactory letter of intent will be invited to submit binding, qualified bids within the balance of the 90-day period, on deposit, financing, and due diligence terms to be settled by the Receiver and approved by this Court.
36. A firm 90-day timeline will allow the Receiver to identify the best available bid and proceed promptly to a Court-supervised sale approval motion, while giving prospective purchasers the certainty needed to arrange financing and complete due diligence.
37. A second, independent listing brokerage, other than CBRE, should be retained to advise the Receiver on the marketing conducted to date and should be engaged as the listing agent in this proposed 90-day process.
38. We also have concerns about the role UBC is to play in any sale process, as further discussed below.
39. Based on my thirty years in the industry, I believe the Brimley Project should not be marketed without specific deadlines in place, clear evaluation criteria, and proper marketing materials.
40. From my experience, a firm bid deadline would provide prospective purchasers and financiers the certainty needed to arrange financing and conduct due diligence.

CBRE SHOULD BE DISMISSED

41. The Receiver retained CBRE as listing agent for the Property, selecting it "in consultation with UBC, the secured creditor and Applicant in these proceedings. The Respondents were not consulted.
42. CBRE is, in my view, in a position of conflict and should not have been selected.

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43. CBRE's conflict arises from its dual role. Before its retainer as listing agent, CBRE Capital (Canada) Inc. ("**CBRE Capital**"), a CBRE-affiliated entity, acted as the mortgage broker for the Respondents and UBC and was responsible for obtaining UBC's financial disclosure and corresponding with CMHC on the Project's CMHC-insured financing, the same financing whose loss during the receivership is at issue in this motion. Attached hereto as **Exhibit "F"** is a copy of the CHMC construction financing outline in relation to the Brimley Project between the Respondents and CBRE Capital.

44. CBRE Capital was a trusted advisor of Atria and the Respondents and, at a minimum, had access to confidential information about me, Atria and our business holdings and strategy. They needed access to this information to perform their engagement assisting us in securing the CMHC funding for the Brimley Project.

45. The Receiver now reports (I had no contemporaneous knowledge of this, or I would have objected) that it solicited proposals from five brokerages but selected CBRE in consultation with UBC. It does not appear that the potential conflict of interest was ever raised with the Receiver.

46. Under our engagement with CBRE Capital, they were entitled to a commission of 0.15% of the gross loan amount on the CMHC mortgage financing, which was material. Once CBRE became the broker on the land deal, they had split loyalty. They were no longer solely motivated to see the CMHC deal succeed. If that CMHC financing lapsed, as it ultimately did, they could still be paid solely from the sale of the land

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47. I certainly alerted CBRE and expressed my concerns about their apparent conflict, and contacted them by phone. My last conversations on this topic to them was in December 2025, with each of Peter Senst and or Jon Ramscar at CBRE on December 15th, 2025.

48. Had the Receiver notified me of its sale process or presented it to the Court for approval, I would have raised this issue immediately. At a minimum, it required consideration.

49. In addition, despite having provided services over several months, CBRE has failed to secure a viable buyer and has overseen or authored the inadequate marketing of the project.

50. Given the apparent conflict and the poor results, CBRE should be dismissed, and a new agent should be selected, in consultation with the Respondents and, for the reasons set out below, without further consultation with UBC.

LOSS OF CMHC FINANCING

51. Before addressing the loss of the CMHC financing, I will set out how it was obtained. As set out below, securing CHMC-insured funding is a material and complex undertaking, but the end result is highly valuable for a project of this nature. That value was squandered by the Receiver's inaction or actions, despite my repeated warnings.

52. The Brimley Project secured two COIs (in the amounts of \$376.7 million for the construction phase, and then this loan would be topped up to \$446.3 million upon stabilization).

53. The CMHC application, submitted before the June 18, 2024, deadline, allows the Respondents to make the application under the previous lending guidelines, such as no requirement for

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affordable units and therefore all units to be market and secure a 50-year amortization period with sub 4% interest rate (now 40 years). In addition, the lender's fee has doubled, and this would allow the highest possible loan given the parameters. Under today's guidelines, the loan amount would be 20-25% lower, requiring substantial additional equity injection, making the project less desirable and valuable. This also maximizes the value of a stabilized project.

54. The application proceeded through a Financial Capacity Review ("FCR") that typically takes about four months but took approximately nine months here — a delay CMHC attributed partly to the federal election, high application volume, and partly to UBC's delay in providing financial disclosure, which UBC did not deliver until October 31, 2024, over four months after submission.

55. CMHC confirmed approval of the Respondents' 2024 FCR application on May 14, 2025. On May 29, 2025, CBRE Capital, then as our broker under the engagement noted above, advised that the underwriter would recommend a loan of approximately \$434,000,000 (about 88% of the original loan-to-cost), that the project would require bonding, and that no rental achievement holdback would be recommended, all subject to final credit approval.

56. Immediately before the Receiver's appointment, CMHC issued the COIs described below, confirming the underwriting process had concluded successfully. Attached hereto as **Exhibit "G"** is an email from CBRE Capital advising me that they received the COIs. The Brimley Project had secured CMHC-insured financing of extraordinary value:

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- (a) COI# 68445958: a net insured loan of \$366,375,375 (gross \$376,704,741.93), with a ceiling rate of 4.00% and a first advance date of March 9, 2026; and
- (b) COI# 15460792: a net insured loan of \$444,361,728.93 (gross \$446,256,673.89).

57. The total committed CMHC-insured financing for the Brimley Project was the largest approved COI for the MLI Select program in 2025 in Canada, which took 15 months to obtain, a critical component of the Brimley Project's value and one of its most significant assets.

58. I made the Receiver aware of the March 9, 2026, date and the pending expiry of this financing. To my knowledge, the Receiver did not seek Court direction to preserve or extend the financing before it lapsed.

59. When the COIs were issued on September 5, 2025, CMHC and CBRE, identified to the Respondents and UBC, several outstanding items to be addressed before any advance, including: (a) written confirmation from UBC that it was proceeding with the joint venture; (b) written confirmation from UBC and the Respondents that the organizational chart previously provided was accurate; (c) UBC's 2023 and 2024 financial statements; and (d) Atria's 2024 financial statements for 280, Brimley LP, Brimley Inc., and HJ Family Holdings Inc. The COIs were also conditional on completing and registering the severance of the excess lands from the Property before any advance.

60. I have seen no evidence in the First Report that UBC, the Receiver, or CBRE took any steps after the Receiver's appointment to advise CMHC of the receivership, explore preserving or

- 15 -

restructuring the financing, or otherwise engage with CMHC on any outstanding conditions. On September 18, 2025, I wrote to CBRE Capital advising them of the receivership. CBRE Capital advised that they would notify CMHC of the receivership and sought the Receiver's permission to share the COI with me.

61. The Receiver's First Report makes only a single-sentence mention of the CMHC issue, and it does not refer to my correspondence to them at all. It has not explained to the Respondents despite requests: (a) what steps, if any, it took after its appointment to preserve or restructure the CMHC financing, including engaging with CMHC and CBRE Capital on the outstanding conditions; (b) whether the severance of the excess lands was completed and registered, and if not, why not; and (c) why it did not seek Court direction on this issue, given that the March 9, 2026 advance date was known from the outset of the receivership.
62. The Receiver did not act quickly to bring the Brimley Project to sale which would have been one way they could have preserved the COIs..
63. It has been brought to our attention by CMHC that at one point after the appointment of the Receiver, UBC attempted to take ownership of the COIs as part of its intent at that time to bid to acquire the project. They were evidently unsuccessful in this regard.
64. In its letter dated April 22, 2026 (the "**April 22 Letter**"), responding to our concerns, the Receiver's counsel stated: "Your allegation that the Receiver did not take steps to address the CMHC financing is simply wrong. Your client was aware of the efforts made by the Receiver and its correspondence with CMHC on this issue. The Receiver will report to the Court in due course, and any concerns can be addressed at that time."

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65. However, the First Report does not provide details of the efforts referenced in that letter, does not append correspondence with CMHC, and does not explain why those efforts did not preserve the financing.

66. The CMHC funding has lapsed as of March 9, 2026.

67. The CMHC financing was set to expire on March 9, 2026. The Receiver set a bid solicitation deadline after the CMHC financing had expired. At a minimum, the offer date should have been well before the CMHC funding expired.

68. The loss of the CMHC's COIs has materially diminished the Brimley Project's marketability and value. Any prospective purchaser developing the Property as a residential project would require construction and permanent financing, and CMHC-insured financing offers significantly lower rates and more favourable terms than conventional commercial financing. The loss of the existing COIs makes the Brimley Project significantly less attractive to prospective purchasers and developers

UBC'S INFLUENCE

69. UBC is the senior secured creditor. My previous affidavits, appended hereto, describe in detail the Respondent's dealings with UBC.

70. While a senior secured creditor would ordinarily seek the highest and best price for their asset and a robust sale process, I am advised by my counsel, David Ullmann, that that is not always the case. In some cases, secured creditors, either out of necessity due to concerns about loss or because they see long-term value, decided to acquire their borrower's property by means of a

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credit bid. Once a lender has decided they prefer that path, they are no longer motivated to have a robust sale process.

71. I am concerned that the poor quality of the sale process and the failure to bring this sale process to fruition and Court approval until the Respondents forced the issue by bringing their own motion, were because of the influence of UBC, which wished to acquire the project as the owner.

72. I am intending to conduct further investigation into this issue, but the following facts are known.

73. UBC has recently entered into a business partnership with Fierra Capital to acquire lands such as these for development.

74. [Fiera Capital Corporation](#) and the [Canadian District of the United Brotherhood of Carpenters and Joiners of America](#) (UBC) have launched the Canadian Built Opportunities Platform, aimed at generating attractive risk-adjusted returns on capital while supporting jobs for UBC members. The real asset investment strategy has a commitment of more than \$800 million, divided equally between real estate and infrastructure investments.

75. As noted above, UBC approached CMHC to attempt to acquire the CMHC funding for the project for itself as developer.

76. UBC has hired Construction Management Citi-Core, Tony Manocchio, Owner, to provide construction manager services to build out 1680 Brimley. He was one of three such contractors that UBC had retained Citi-Core as its construction manager..

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77. Citi-Core has forwarded tender documents and architectural plans to various “friendly” UBC trades to get pricing for the development of the project on behalf of UBC
78. For example, I was advised by a Masonry Contractor, who had received such a package from Citi-Core and was already in the process of pricing out the masonry work.
79. It is also the case that UBC has recently been publicly identified as an entity that has experienced and may be continuing to experience financial mismanagement and apparent corruption.
80. Globe and Mail reporting referenced in Blaney’s letter dated June 5, 2026 (the “**June 5 Letter**”) states that Carpenters’ Regional Council (“**CRC**”), which owns 100% of UBC, was placed under trusteeship by its U.S. parent organization due to concerns of corruption or financial malpractice, including an internal probe into the use of a numbered company to acquire multimillion-dollar homes for CRC executives, including Jason Rowe and Tom Cardinal, with whom I discussed this project and UBC’s financing. UBC also delayed providing its financial disclosure to CMHC until October 31, 2024 — more than four months after the CMHC application was submitted. A copy of the June 5 Letter with its attachments is attached hereto as **Exhibit “H”**.
81. As noted, UBC has engaged Fiera Capital to assist it in loaning funds to other developers for other projects. I understand that Fiera Capital has frozen lending of some of these funds (by issuing letters to rescind or freeze their commitments made) while the mismanagement issues are under review.

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82. In light of these revelations, I have also revisited the conduct of UBC in failing to provide the Respondent with funding that I previously attested they should have provided. I now suspect that their failure to act in a commercially reasonable manner and support my business may have been caused by these apparent internal corruption issues. I am discussing with my counsel whether or not it would be appropriate to bring a claim directly against UBC and its parent organization.¹

83. I do not know what influence, if any, UBC has had on the marketing of the Property or on the Receiver's decision not to seek Court approval of the sale process before now. The Receiver's First Report indicates there were consultations with UBC on at least some items.

84. I had hoped that the Receiver would advise as to what role UBC would play going forward in advising or participating in the sale process or report on some level of investigation into UBC in its First Report, but it has not done so.

85. In the circumstances, there is no reason why UBC should continue to have any role in the sale and marketing process in order to protect the integrity of the process. Any attempt by UBC to bid or credit-bid should be carefully scrutinized and, if necessary, precluded, depending on the extent of prior knowledge of previous bids already provided to UBC.

HANSALEX INTERCOMPANY TRANSFERS

86. In its First Report, the Receiver alleges that a total of \$24,941,549.49 was transferred from 280's TD Bank accounts to Hansalex Corp. ("Hansalex"), a related company, including

¹ It may be that this claim rests with the Receiver, in which case I may enter into discussions with the Receiver to pursue such a claim.

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\$15,618,037.97 during the week immediately preceding the Receiver's appointment on September 10, 2025. The Receiver characterizes these transfers as potentially fraudulent conveyances and seeks an order requiring Hansalex to repay these funds. I address these allegations below from the perspective of the Respondents.

87. Specifically, the Receiver's notice of motion states unequivocally:

The payment of \$24M to Hansalex is a fraudulent conveyance contrary to the Fraudulent Conveyances Act. [emphasis added]

88. The Receiver did not have a sufficient evidentiary basis upon which to make such a statement.

89. First, on June 5, 2026, the Receiver wrote to Jain raising questions regarding the Hansalex transfers and requesting further information. Importantly, in that letter, the Receiver stated that it did not understand the nature of the transfers. Attached hereto as **Exhibit "I"** is a copy of the letter.

90. In making its allegation, the Receiver attaches an out-of-context transaction chart which shows \$15,618,037.97 of cash transfers from the debtor to Hansalex in the immediate period before the receivership. I refer to the Schedule of Transfers in Appendix "M" to the First Report.

91. The bank transfers which the Receiver identified in that Appendix are for internal bookkeeping purposes, but for greater certainty, the Receiver's speculation about this account is incorrect, and no cash left the 280 as a result of those transfers.

92. The Receiver failed to include the cash balance of that account in its analysis. Had it done so, it would have been noticed that the opening cash balance as of August 31, 2025, was \$426.40,

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and the closing cash balance as of September 5, 2025, was \$26.40. Attached hereto as **Exhibit “J”** is a statement of account dated September 1, 2025, showing the closing cash balance as of August 31, 2025.

93. In other words, while the Receiver states that \$15,618,037.97 was transferred out of the account, it failed to account for the fact that \$15,618,037.97 was also transferred into the account for bookkeeping and accounting purposes. No new funds actually entered or left the account, as they were only bookkeeping entries. Attached hereto as **Exhibit “K”** is a statement of account dated September 24, 2025, of 280’s TD Bank account illustrating the bookkeeping entries.

94. As of February **2024**, more than a year before the receivership and after having received all the funds it would ever receive from UBC (despite promises from them), 280 had only received approximately \$15,180,000 in cash.

95. The Respondents then spent all of these funds, as previously documented to this Court, until they ran out of money. Then they borrowed from related parties to stay afloat until the Receiver was appointed. This is reflected in the attached document, which was also provided to UBC by our former counsel in May 2025. Attached is a summary illustrating the use of the proceeds from UBC and the loans from related companies as **Exhibit “L”**.

96. The net position of the project on the eve of the Receivership was that it owed related parties \$6,421,000, and it had no cash. There had not been UBC funds in the account for some time.

97. The Receiver should have known that it would have been impossible for a company with no cash to transfer away \$15,000,000 of cash on the eve of the receivership.

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98. As to the transfers to Hansalex, which make up the balance of the \$24,000,000 the Receiver raised, those were existing transfers that took place prior to 2023 and were in place when UBC provided its funding to the project in October 2023. UBC was aware of the Respondents' financial and cash position when it advanced its loan in 2023.

99. Despite this readily ascertainable financial information, which was available to the Receiver, the Receiver mischaracterized these transfers as fraudulent in its motion materials.

IMAGING HARD DRIVES AND BOOKS AND RECORDS

100. The Receiver seeks authorization to retain an IT specialist to image servers and electronic devices in the Respondents' possession or control. The Respondents do not oppose imaging of hard drives and devices relating to their books and records, and I will cooperate fully with a properly conducted process.

101. The Respondents do, however, object to the Receiver reviewing any imaged data before a Court-ordered protocol is established.

102. Atria is a vertically integrated real estate business with multiple related entities, including subsidiaries and affiliates that share premises, record storage, and computer systems. As is common in real estate development, separate corporations and limited partnerships are formed for each project, and Atria has many past and present projects with associated entities. The Respondents' records are therefore materially commingled with those of non-Respondent entities not subject to this receivership.

103. I am advised by my counsel, Blaney, that Blaney sent an email on May 7, 2026, to WeirFoulds advising of the co-mingling issue and identifying some of the companies that also

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have employees who operate out of the Atria head office, including the Respondents. This email does not identify all of the companies that operate. Attached hereto as **Exhibit “M”** is a copy of such email. This was also previously highlighted to the Receiver in the April 20 Letter.

104. I understand the Receiver seeks to image all electronic hard drives and servers at the Atria office and to review them for relevance. The Respondents do not agree with this approach, as advised in the April 20 Letter; instead, an independent third party should review the imaged drives for relevance before providing responsive records to the Receiver.

105. I therefore propose the following protocol for imaging and subsequent review.

106. The Receiver should retain a qualified, independent third-party forensic technology firm (the "**Imaging Firm**") to image the electronic devices. The Imaging Firm shall be agreed upon by the parties or, failing agreement, appointed by the Court, and must have no prior relationship with the Receiver, UBC, or the Respondents or their affiliates.

107. The Imaging Firm shall maintain a detailed chain-of-custody log for all devices imaged, return all original devices to me once imaging is complete, and store the imaged data in a secure, encrypted format pending further order of this Court.

108. The imaging shall encompass all hard drives, servers, and electronic storage devices in my possession or control that contain or may contain records of the Respondents (Brimley LP, 280, and Brimley Inc.), including devices at 276 Carlaw Avenue, Unit 301, Toronto, Ontario, and any other locations containing the Respondents' records.

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109. No party, including the Receiver and UBC, shall access the imaged data until the Court has approved a review protocol, whether at the September 18 motion or thereafter; the data shall be held in escrow by the Imaging Firm pending that determination.
110. The imaging shall be completed within fourteen (14) days of the Court's order, or as soon as reasonably practicable, and in any event before the September 18, 2026, motion date if the Receiver agrees.
111. As part of the protocol:
- (a) The parties shall agree on search terms and categories of documents relevant to the Respondents' books and records;
 - (b) Documents identified as potentially responsive shall be reviewed for privilege by a third party appointed by the Court;
 - (c) Privileged and irrelevant documents, including records of non-Respondent entities such as Atria Development Corporation and its other subsidiaries, shall be excluded from production; and
 - (d) Only documents determined to be relevant and non-privileged shall be produced to the Receiver.
112. Any disputes regarding privilege, relevance, or scope shall be referred to the Court for summary determination.
113. The costs of the Imaging Firm shall be shared equally between the receivership estate and the Respondents.

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114. I am advised by my counsel that this process was followed in another matter in which Blaney McMurtry and the Receiver were involved and that it was ordered in that matter by this Court to protect non party information from becoming receivership documents.
115. This proposed protocol reflects the Respondents' cooperation with the imaging process while addressing their own privacy concerns. Pending direction from the court on this issue, in the interim, to avoid any concerns regarding spoliation or delay, I am prepared to provide the servers for immediate imaging on the condition that the Receiver makes no use of that imaging and will be responsible and personally liable for any misuse or disclosure of that information pending the parties receiving a final order of the Court to determine its use.
116. Certain books and records of the Respondents are already in the possession of the Receiver as described in the April 20th letter. In that letter, we asked for further information as to what additional information was required. No such information was provided.
117. Regardless, the Respondents are prepared to allow supervised access to the Receiver to make copies of such books and records as the Receiver reasonably thinks belong to the Respondents. However, because of the co-mingling, the books and records copied in this fashion should also be reviewed in accordance with the same protocol set out above.

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114. I am advised by my counsel that this process was followed in another matter in which Blaney McMurtry and the Receiver were involved and that it was ordered in that matter by this Court to protect non party information from becoming receivership documents.
115. This proposed protocol reflects the Respondents' cooperation with the imaging process while addressing their own privacy concerns. Pending direction from the court on this issue, in the interim, to avoid any concerns regarding spoliation or delay, I am prepared to provide the servers for immediate imaging on the condition that the Receiver makes no use of that imaging and will be responsible and personally liable for any misuse or disclosure of that information pending the parties receiving a final order of the Court to determine its use.
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117. Regardless, the Respondents are prepared to allow supervised access to the Receiver to make copies of such books and records as the Receiver reasonably thinks belong to the Respondents. However, because of the co-mingling, the books and records copied in this fashion should also be reviewed in accordance with the same protocol set out above.

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CONCLUSION

118. For the reasons set out above, I ask this Court to approve the imaging of electronic devices subject to the protocol proposed herein, and to consider the Respondents' concerns regarding the CMHC financing and the sale process referenced above in determining the scope of any order approving the Receiver's conduct. I make this affidavit in good faith and for no other or improper purpose.

AFFIRMED REMOTELY BEFORE ME
by Hans Jain at the City of Toronto, in the
Province of Ontario, on this 17th day of July
2026, in accordance with *O. Reg. 431/20,*
Administering or Declaration Remotely.

nadavamar

Commissioner for Taking Affidavits
NADAV AMAR (LSO # 90638W)



Hans Jain (Jul 17, 2026 16:51:41 EDT)

HANS JAIN

This is Exhibit "A" referred to in the Affidavit of Hans Jain of the City of Toronto, in the Province of Ontario, this 17th day of July 2026 in accordance with *O. Reg. 431/20, Administering or Declaration Remotely*

nadavamar

Commissioner for Taking Affidavits (or as may be)

NADAV AMAR (LSO # 90638W)

1680 Brimley Limited Partnership
 2808908 Ontario Inc.
 Brimley Progress Developments Inc.
 276 Carlaw Avenue, Unit 301
 Toronto, ON M4M 3L1

March 25, 2026

Sent Via Email (btannenbaum@tdbadvisory.ca, adhanani@tdbadvisory.ca)

Bryan Tannenbaum, Managing Director
 Arif Dhanani, Managing Director
 TDB Restructuring Limited
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Dear Mr. Tannenbaum and Mr. Dhanani:

**RE: 1680 Brimley Road, Scarborough
 Demand for Immediate Cessation of Sale Activities**

We write on behalf of the Debtors and all affected stakeholders to demand the immediate cessation of all sale-related activities concerning 1680 Brimley Road. The Receiver's decision to publicly list the Property (*MLS No. E12816566*) and solicit bids by March 26, 2026, at 5:00 PM EST was undertaken without Court approval, without notice, and without prior communication with the Debtors. These actions constitute a direct breach of the Appointment Order dated September 10, 2025.

1. Unauthorized Sale Activities and Breach of the Appointment Order

The Receiver has initiated a sale process—including public listing, marketing, and bid solicitation—without seeking Court direction or providing notice to the Debtors or other interested parties. Section 4 of the Appointment Order defines the Debtors and their representatives as “Persons,” to whom the Receiver owes all duties under that Order, including transparency, communication, and prudence.

No consultation or disclosure occurred before the listing, and no justification has been provided. Proceeding in this manner exceeds the Receiver's authority and undermines the integrity of the receivership process.

Upon review of the Receiver's website ([1680 Brimley Limited Partnership, 2808908 Ontario Inc. and Brimley Progress Developments Inc. - TDB Advisory](#)), we note that there has been **no updates** to the documentation pertaining to *Initial Application and Subsequent Pleadings and Motions*, or *Orders and Endorsements of the Court*, since September 10, 2025.

2. Failure to Obtain an Updated Appraisal or Undertake Proper Valuation Work

Section 3(e) of the Appointment Order requires the Receiver to engage qualified consultants, appraisers, and real estate professionals where necessary. We have not received any of the following documents or communications necessary to fulfill the Receivers obligations, despite the Property having already been listed:

- no marketing or sales materials have been disclosed;
- no updated appraisal has been obtained or disclosed;
- no valuation analysis or market report has been provided;
- no supporting basis for the listing price has been shared.

Without an independently verified and current appraisal, the Receiver cannot demonstrate that the listing reflects fair market value or that the sale process is commercially reasonable. The absence of this foundational due diligence exposes the Property to undervaluation and is inconsistent with the Receiver's obligations to all Persons.

3. Deficiencies in the Marketing Plan and Sale Strategy

The Receiver has provided no information regarding:

- how the marketing plan was developed, and by whom;
- what professional advice, if any, was obtained;
- what valuation data or market assumptions were relied upon;
- the rationale for the current listing strategy;
- why an arbitrary March 26 bid deadline was imposed, and by whom;
- the basis for selecting CBRE as listing agent, including how conflicts of interest were addressed;
- the up-to-date land value, based on either residual land value analysis or any other methodology that is generally used for such land value calculations;
- whether the valuation has taken into consideration the work done on site, as well as permits and approvals received.

These omissions raise serious concerns that the Property is not being properly positioned or exposed to maximize value.

Given the absence of valuation work and lack of professional engagement, the Debtors require full disclosure of all marketing assumptions, decision-making processes, and the qualifications of any professionals involved.

4. Failure to Preserve the CMHC Certificate and Protect the Property's Value

The CMHC Certificates of Insurance, secured by CBRE—were critical to the Property's valuation, constructability, financing, and marketability—expired on March 9, 2026.

COI Number	COI Purpose	Gross Amount
CMHC COI # 68445958	Construction Loan	\$376,704,742
CMHC COI # 15460782	Permanent Loan	\$446,256,674

Collectively, these COIs represented the largest CMHC-insured construction and permanent loan facilities issued in Canada in 2025 under the MLI Select program, underscoring their exceptional importance to the Property and to any viable development, financing, or disposition strategy.

We provided multiple written notices, including our letter and supporting materials dated September 24, 2025, which your office acknowledged on September 25, 2025. On that same day, we requested an urgent meeting to determine the appropriate next steps and advised that we were assembling the information that your office requested.

A follow-up email was sent on November 4, 2025, which your office acknowledged two days later. We issued a formal correspondence as recently as of March 9, 2026, advising that, given the imminent expiry of the COIs, it was imperative that the Receiver take all necessary steps to secure an extension of the first draw date deadline.

The Receiver was fully aware of its existence and importance but allowed it to lapse without any renewal or extension.

This failure of the Receiver's actions directly compromised the value and marketability of the Property. No explanation was provided, and no steps were taken to preserve this essential protection. The Receiver must explain what analysis, if any, was undertaken before allowing the Certificate to expire and how this aligns with its obligation to safeguard the Property's value.

5. Lack of Required Communication, Absence of Court Approval, and Resulting Prejudice

Section 3(n) obligates the Receiver to meet with and report to affected Persons on matters relating to the Property. Since the Appointment Order was issued, the Receiver has not engaged in any substantive communication regarding its intentions to list the Property, the development of the marketing plan, selection of CBRE, valuation steps, or proposed sale timelines.

Further, under Section 3(l)(ii), any sale out of the ordinary course of business exceeding \$100,000 (provided the aggregate consideration does not exceed \$250,000) requires prior Court approval. Although the Property's value clearly exceeds this threshold, no motion has been filed, no Court approval has been sought, and no documentation appears on the TDB Restructuring website.

Taken together, these breaches demonstrate a pattern of non-compliance, lack of transparency, and disregard for Court-ordered obligations. The Receiver's actions have

caused significant prejudice to the Debtors and jeopardize the fairness and legitimacy of the receivership process.

Accordingly, the Debtors will be seeking:

1. the immediate cessation of all sale-related activities; and
2. appropriate relief and damage arising from the Receiver's violations of the Appointment Order dated September 10, 2025.

We intend to put this information in an affidavit and bring it to the attention of the Courts.

With Urgency,

1680 Brimley Limited Partnership

2808908 Ontario Inc.

Brimley Progress Developments Inc.



Hans Jain
President

This is Exhibit “B” referred to in the Affidavit of Hans Jain of the City of Toronto, in the Province of Ontario, this 17th day of July 2026 in accordance with *O. Reg. 431/20, Administering or Declaration Remotely*

nadavamar

Commissioner for Taking Affidavits (or as may be)

NADAV AMAR (LSO # 90638W)

April 7, 2026

VIA E-MAIL brett@moldaverbarristers.com

Brett Moldaver
1608-365 Bloor Street East
Toronto, ON M4W 3L4

Philip Cho
Partner
t. 416-619-6296
pcho@weirfoulds.com

File 25084.00002

Dear Mr. Moldaver:

Re: TDB Restructuring Limited re Receivership of 1680 Brimley Limited Partnership et al.

We enclose a copy of a letter dated March 25, 2026 send to our client, TDB Restructuring Limited in its capacity as the court-appointed receiver and manager (the “**Receiver**”) of the real property and assets of 1680 Brimley Limited Partnership, 2808908 Ontario Inc., and Brimley Progress Developments Inc. (the “**Debtors**”) by the Debtors. We confirm that you are counsel to the Debtors and as such, our response is being addressed to you. We trust that you will bring this response to the attention of your client, and in particular, Mr. Hans Jain, the author of the Debtors’ letter.

We start by reminding your client that the Receiver is an officer of the Court and allegations attacking the Receiver’s conduct should not be casually made. The Receiver takes these allegations seriously and urges the Debtors to exercise diligence in making themselves fully informed before drawing any conclusions from results that may not be favourable to the Debtors.

As a general remark, the Debtors’ interpretation of various parts of Justice Dietrich’s order of September 10, 2025 (the “**Appointment Order**”) are simply wrong. To the extent that the Debtors believe that the Receiver owes some sort of consultative or reporting duty to the Debtors, this too is wrong. We will address your client’s letter in the same order as set out in the March 25 letter.

1. Sale Activities

The Debtors allege the Receiver initiated a sale process without seeking Court direction or providing notice to the Debtors or other interested parties. As a preliminary comment, your clients’ interpretation of paragraph 4 of the Appointment Order in relation to the definition of “Persons” is inverted. It is not the Receiver that owes a duty to Persons, but that all Persons have a positive duty to the Receiver to advise as to the existence of any Property, to grant immediate and continued access to such Property to the Receiver, and deliver such Property to the Receiver upon the Receiver’s request. This duty has been the subject of some effort in relation to Mr. Jain’s obligation to turn over the Debtors’ books and records, which the Receiver is continuing its efforts.

With respect to the main complaint as the authorization of the Receiver to initiate marketing and offering the Property for sale, we refer your clients to paragraph 3(k) of the Appointment Order expressly empowering and authorizing the Receiver

*“to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale **as the Receiver in its discretion may deem appropriate**”* [emphasis added]

No further consultation or disclosure is required by the Appointment Order. The Receiver is not obliged to obtain Court direction before commencing a marketing process to solicit offers in respect of the Property.

With respect to the absence of any updates to the Receiver’s case website, there is no duty imposed on the Receiver to provide updates at any particular interval. When appropriate, the Receiver will make available updates on the case website.

2. Appraisal and Valuation

Your clients allege that the Receiver paragraph 3(e) obliges the Receiver to engage qualified consultants, appraisers and real estate professionals where necessary. Apparently, your clients infer that because they were not provided with any of documents of the sort described (marketing, appraisals, valuations or other supporting basis for the listing price), that the Receiver has not complied with its obligations.

First, paragraph 3(e) is permissive not prescriptive – there is no obligation for the Receiver to do any of the activities listed in this paragraph. Secondly, nothing in the Appointment Order, at law, or in equity requires the Receiver to share any such information with the Debtors.

Your clients are cautioned against making allegations as the Receiver’s conduct, particularly in relation to its exercise of powers conferred upon the Receiver by the Appointment Order based on inferences derived from a lack of information.

3. Marketing Plan and Sale Strategy

The Debtors complain that no information as to the marketing plan and sale strategy was disclosed. Such information is commercially sensitive and there is no obligation on the Receiver to share such information with the Debtors. Your client’s representative, Mr. Jain, has been fully aware that the Property was listed with CBRE and the marketing that has occurred.

As you will know, at the time of presenting a sale transaction to the Court for approval, the Receiver will provide disclosure of its efforts and the basis of recommending any such transaction, in accordance with the principles set out in *RBC v. Soundair Corp.*, 1991 CanLII 2727 (ON CA).

4. CMHC Certificate

Your clients allege that the Receiver “allowed [the COI’s] to lapse without any renewal or extension.” Your clients further allege that the Receiver’s actions “directly compromised the value and marketability of the Property”. These are serious allegations, again made by your clients without a proper evidentiary foundation.

As your clients will undoubtedly know, CMHC has its own terms and conditions in respect of the COI’s, which terms and conditions, as the Receiver understands, were in default prior to the Appointment Order. While there is no obligation on the Receiver to disclose its discussions with CMHC in relation to the COI’s, your clients should not presume that a lapse of the COI’s is a result of any failure or lack of diligence on the part of the Receiver. Moreover, as recently as March 9, Mr. Jain was provided with correspondence and information as to the results of efforts in this regard.

5. Communication, Court Approval and Alleged Prejudice

Once again, your clients misunderstand the provisions set out in paragraph 3 of the Appointment Order. The activities enumerated in paragraph 3 describe activities that the Receiver is empowered and authorized to do “where the Receiver considers it necessary or desirable”. Nothing in the Appointment Order can be interpreted as obliging the Receiver to do each activity enumerated in paragraph 3.

More importantly, the fact that the Receiver has not shared its efforts and activities with the Debtors cannot be interpreted as the Receiver having failed to carry out any such effort or activity.

Your clients refer to paragraph 3(l)(ii), requiring Court approval in respect of a sale exceeding \$100,000, as somehow requiring the Receiver to seek Court approval to list the Property for sale. This is plainly wrong. As noted above, if and only if, the Receiver has entered into an agreement of purchase and sale will the Receiver then bring a motion seeking the typical sale approval and vesting order. Having made the Property available for sale does not trigger any obligation to seek Court approval under paragraph 3(l)(ii).

Of great concern is your clients’ conclusion that the Receiver’s conduct “demonstrate a pattern of non-compliance, lack of transparency, and disregard for Court-ordered obligations” and have

“caused significant prejudice to the Debtors and jeopardize the fairness and legitimacy of the receivership process.” Reckless attacks on the integrity of a court-officer is a serious matter: *Kaptor Financial Inc. et al v SF Partnership, LLP et al*, [2016 ONSC 6607](#). We trust that you will advise your clients to exercise greater discretion in drawing conclusions and making unfounded allegations against the Receiver.

Please confirm whether your clients intend to bring a motion for the relief described at the conclusion of their letter so that we can seek a scheduling conference at an appropriate time.

Yours truly,

WeirFoulds LLP



Philip Cho
Partner

PC/fb

This is Exhibit “D” referred to in the Affidavit of Hans Jain of the City of Toronto, in the Province of Ontario, this 17th day of July 2026 in accordance with *O. Reg. 431/20, Administering or Declaration Remotely*

nadavamar

Commissioner for Taking Affidavits (or as may be)

NADAV AMAR (LSO # 90638W)

David T. Ullmann
D: 416-596-4289
dullmann@blaney.com

April 20th, 2026

SENT BY EMAIL TO pcho@weirfoulds.com

Mr. Philip Cho
WeirFoulds LLP
4100 – 66 Wellington Street West
TD Bank Tower
Toronto, ON, M5K 1B7

Dear Mr. Cho,

Re: TDB Restructuring Limited re Receivership of 1680 Brimley Limited Partnership et al.

In addition to our letter to you of April 16, 2026, we are writing to you on a separate issue.

We understand from our client that TDB Restructuring Limited, in its capacity as Receiver in the above-noted receivership, is seeking additional books and records from Mr. Jain and the debtor companies and has attempted to visit the business premises of my client and certain other entities in order to review same. We understand that the receiver, which has been appointed for some time, already has certain of these books and records from earlier in its engagement. It is not entirely clear to us what additional information is required or why it is being required now. That said, we are mindful of the document production obligations under Paragraph 5 of the Appointment Order of the Honourable Justice J. Dietrich dated September 10, 2025 (the “**Receivership Order**”), which presumably underlies your request.

As you are aware, the debtors are subsidiaries of Atria Development, a real estate development company with multiple active and completed development projects spanning various stages of entitlement, construction, and disposition. I understand that multiple business entities occupy the same premises and share record storage and possibly computer files or directories. Given the breadth of the debtors' operations and the volume of records generated across these projects, there is likely some material co-mingling of records, and considerable time and effort would likely be required to review and segregate the information.

As TDB Restructuring Ltd. will recall, as outlined in the attached endorsement of J. Penny, dated March 6, 2024, in which both our firms were involved, the court reiterated that there is a duty to ensure that production requests from a receiver (or a trustee in that matter)

must be considerate of these co-mingling issues and the rights of third parties. The endorsement is enclosed herein for your reference.

We request that the Receiver provide a written, itemized list of the specific categories of documents it seeks under Paragraph 5 of the Receivership Order. Upon receipt, we will promptly review the request with our client and respond. I do not think further visits to my client's business premises are the best way to proceed.

We are mindful of the powers of the receiver under the order, but given that this is not a simple matter to comply with, if we could better understand the scope of the request and its purpose, we can then advise you as to what we believe to be the best path to resolve the request.

We look forward to your response.

Blaney McMurtry LLP

A handwritten signature in dark ink, appearing to read 'DTU', with a stylized flourish at the end.

David T. Ullmann
DTU/ab

c.: Alexandra Teodorescu
Birpal Benipal

Enclosures: Endorsement of J. Penny dated March 6, 2024



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: BK-24-03003083-0031

DATE: March 6, 2024

NO. ON LIST: 6

TITLE OF PROCEEDING: IN THE MATTER OF THE BANKRUPTCY OF CREATIVE WEALTH MEDIA FINANCE CORP.

BEFORE: JUSTICE PENNY

PARTICIPANT INFORMATION**For Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
Michael Nowina	Counsel for the Trustee (TDB Restructuring Limited, previously known as RSM Canada Limited)	Michael.Nowina@bakermckenzie.com
Anton Rizor		Anton.Rizor@bakermckenzie.com
Arif Dhanani	Representative of the Trustee	adhanani@tdbadvisory.ca
Bryan Tannenbaum		btannenbaum@tdbadvisory.ca

For Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Robert Staley	Counsel for Creative Wealth Media Lending Inc.	staleyr@bennettjones.com
Michael Shakra		shakram@bennettjones.com
Andrew Sahai		sahaia@bennettjones.com

For Other:

Name of Person Appearing	Name of Party	Contact Info
Natalia Vandervoort	Counsel for Creative Wealth Media Lending Inc.	nvandervoort@blg.com
Philip Cho	Counsel for Premium Properties	pcho@weirfoulds.com
Wojtek Jaskiewicz		wjaskiewicz@weirfoulds.com
Anna White	Counsel for Catalyst Wealth Management Media Fund 1 and the Ad-Hoc Group	awhite@tyrllp.com
Jason Wadden		jwadden@tyrllp.com
David Ullmann	Counsel for Jason Cloth	dullmann@blaney.com
Elizabeth Ayo	Counsel for Bayshore Capital Advisors LLC, GCA Alternative	elizabeth@booklaw.ca

ENDORSEMENT OF JUSTICE PENNY (Released March 7, 2024):

- [1] In this motion, the Trustee in Bankruptcy of Creative Wealth Management Finance Inc. (“Finance”) seeks orders granting the Trustee access to the books and records of Finance and establishing protocols for the delivery of these books and records to the Trustee.
- [2] The substantive problem at the heart of the current dispute arises from the fact that Finance is one of several of Creative Wealth Management (CWM) affiliated companies. Only Finance is in bankruptcy. All of the CWM group share office space in Toronto and, more importantly, the books and records for the entire CWM group are, allegedly, intermingled. In these Reasons, I will use the term “Books and Records” to refer only to the books and records of Finance.
- [3] The central issues on this motion are:
- 1) who should separate out the Books and Records from the intermingled records of the CWM group, and how? and
 - 2) who should pay the cost of the unmingling exercise?
- [4] There are additional, collateral issues which I will address in the course of these Reasons.

Background

- [5] On October 27, 2023, Finance issued a notice of intention to make a proposal under the BIA. Finance was deemed to have filed an assignment bankruptcy on November 28, 2023. The initial trustee was not provided with access to the Books and Records of Finance.
- [6] The proposal trustee was replaced by the present Trustee at the first meeting of creditors on December 15, 2023. Beginning on January 3, 2024, the Trustee made repeated requests for access to Finance’s books and records, without avail. After weeks, on January 22, continuing on January 31, 2024, the Trustee was finally able to meet at the CWM business premises with Mr. Cloth, who is a shareholder and one of the officers and directors of Finance and other CMW companies.¹ He attended with his counsel, Mr. Ullman, and with in-house counsel for Creative Wealth Management Lending Inc (“Lending”).
- [7] The Trustee was advised at these meetings that: all of Finance’s Books and Records were stored online; the Books and Records were intermingled with the books and records of other CWM entities; CWM Lending, specifically, was asserting privilege; access to the Finance Books and Records would not be granted at that time; and, a letter would be forthcoming from Mr. Ullman setting out the position of the non-Finance CWM entities with respect to the Trustee’s access.

¹ I was advised that the two shareholder of the CWM group are Mr. Cloth and a Mr. Tennyson and that the directors and officers of the group were Mr. Cloth and Mr. McConnell.

- [8] Counsel for the Trustee followed up on February 6 and 19, 2024, requesting access to the Books and Records. Access was not forthcoming, nor was any plan or proposed protocol for granting access.
- [9] On February 23, 2024, the Trustee brought a motion, *ex parte*, for an order granting it access to the Books and Records. Justice Wilton-Siegal declined to grant any relief, other than an interim preservation order.
- [10] At the return of the motion on notice before me, Mr. Cloth filed no evidence or submissions, other than a brief “aide memoire” from his counsel. His counsel was in attendance and made submissions. Counsel for Lending filed evidence and a factum, and made submissions. Various creditors of Finance also filed material, were in attendance, and made brief submissions.
- [11] It became clear that the CWM group is involved in other insolvency proceedings in British Columbia, where it is in conflict with various creditors, and that there is other litigation extant, including against Mr. Cloth, initiated by CWM group creditors (including creditors of Finance). This provides context for the highly acrimonious and disputed nature of the relief sought on the motion.

The legal framework

- [12] The Trustee has a duty to the Finance’s creditors to obtain the greatest possible value for the bankrupt estate. Section 16(3) of the BIA provides that the Trustee must take possession of the bankrupt’s deeds, books, records, documents and all property. No person is entitled to withhold possession of the books of account belonging to the bankrupt or any papers or documents, including material in electronic form relating to the accounts or to any trade dealings of the bankrupt. The Trustee must take possession of the deeds, books, documents and assets as soon as possible after the bankruptcy.
- [13] Further, s. 158 of the BIA imposes a duty on a bankrupt to make discovery of and deliver to the Trustee all books, records, documents, writings and papers that in any way relate to the bankrupt’s property or affairs. The BIA requires a bankrupt and, where the bankrupt is a corporation, its officers or directors, to generally do all such acts and things in relation to Finance’s property and the distribution of that property among Finance’s creditors as may be reasonably required by the Trustee.
- [14] Section 167 of the BIA also requires any person who has or is believed or suspected to have any book, document or paper of any kind relating in whole or in part to the bankrupt or its dealings or property, to produce those documents. While s. 164 does not entitle the Trustee to seize the documents or property of a third party, the court has held that s. 167 includes a right of the Trustee to inspect such documents even where they are another person’s property, as long as they relate in whole or in part to the bankrupt, its dealings or its property. This inspection right does not abrogate the law of solicitor client privilege, however.
- [15] Mr. Ullman and others have suggested that the Trustee does not really need all the Books and Records and that there is no urgency because recovery on Finance’s accounts receivable is tied to royalty payments on movies and will take a long time. I utterly reject all such arguments. It is not for the bankrupt, its shareholders officers or directors, or anyone else for that matter, to tell the Trustee what it does and does not need, or when. There is no doubt that the Trustee is entitled to immediate access to the Books and Records. This is not in serious dispute.
- [16] Mr. Ullman also suggested that the process of separating the Books and Records from the rest of the CWM group’s records will be costly and is unnecessary. He says the request is “premature” and that the most important documents have already been provided. There was, among other things, a complete lack of any evidence to support these propositions.

- [17] By the end of submissions, it had become obvious that the necessary path forward is to extract the Books and Records from the intermingled records of the other CWM entities so that the Trustee will have unimpeded access to them. I will now turn to the two principal issues raised by this conclusion.

Who should separate out the Books and Records and how?

- [18] There is a serious dispute between the Trustee and Lending about by whom, and how, the CWM records should be reviewed and analyzed to separate out the Books and Records. The Trustee takes the position that, in view of the common ownership and common officers and directors, there can be no suggestion of adversity of interest between Finance and the other CWM entities, specifically Lending. As a result, the Trustee proposes to utilize its related forensic investigation enterprise, RSM Consulting's Digital Forensics and Incident Response Team.
- [19] I cannot agree. Once the Trustee was appointed, the fate of Finance was in the hands of the Trustee and the inspectors/creditors of Finance. Their interests are potentially adverse to the interests of the remaining members of the CWM group. Indeed, it seems almost certain to be so.
- [20] In my view, the required forensic investigation and unmingling of records must be conducted by an independent expert appointed by the court. To this end, the parties shall endeavor to agree on the appropriate choice of investigator. If they are unable to do so, they will each choose a preferred individual and provide me with: a) the CV of the proposed expert; a consent to act; confirmation they have no conflicts; and, confirmation that they understand the role of a court-appointed expert regarding independence and objectivity, similar in nature (with necessary modifications) to the declaration required of expert witnesses under the Rules of Civil Procedure. This may be accompanied by a brief submission, not to exceed one typed, double-spaced page, addressing why their proposed candidate is to be preferred over the other proposed candidate.
- [21] The protocols for the work of the investigator must include provisions to ensure preservation of CWM claims of solicitor client privilege. It shall also contain provisions which reflect the issues addressed in para. 6 of the Trustee's proposed draft order, starting at page E11 of the CaseLines in the March 6, 2024 bundle.
- [22] Any other issues which cannot be resolved between the parties may be spoken to at a case conference convened for that purpose.

Who should pay the cost of the unmingling exercise?

- [23] The Trustee maintains that because the CWM group saw fit to conduct its record keeping on an intermingled basis, it should pay the cost of unmingling Finance's Books and Records. Lending maintains that it was entitled to conduct its affairs as it saw fit and that it is Finance's estate which should pay the cost of satisfying the Trustee's need for the Books and Records.
- [24] I order that the cost of the court-appointed independent investigator shall, in the short run, be born equally (that is, on a 50/50 basis) by the Finance estate on the one hand and the remainder of the CWM group on the other. This shall be without prejudice to the right of either party to revisit this issue once the job is done. At this point, next to nothing is known about the extent, of, reasons for, and consequences of the intermingling of the CWM financial records. With the benefit of the work and findings of the independent investigator, there will be a more robust record to assess the need for all of this, its causes and consequences.

Costs of the motion

[25] Both the Trustee and Lending seek their costs of this motion. In light of my disposition, neither side was entirely successful. I make no order as to costs.

A handwritten signature in blue ink, appearing to read "Penny J.", followed by a period.

Penny J.

This is Exhibit “E” referred to in the Affidavit of Hans Jain of the City of Toronto, in the Province of Ontario, this 17th day of July 2026 in accordance with *O. Reg. 431/20, Administering or Declaration Remotely*

nadavamar

Commissioner for Taking Affidavits (or as may be)

NADAV AMAR (LSO # 90638W)

1680 Brimley Limited Partnership,
 2808908 Ontario Inc.
 Brimley Progress Development Inc.
 276 Carlaw Ave, Unit 304 Toronto, ON M4M 3L1

September 24, 2025

Sent Via E-mail (btannenbaum@tdbadvisory.ca, adhanani@tdbadvisory.ca)

Bryan Tannenbaum, Managing Director
 Arif Dhanani, Managing Director
TDB Restructuring Limited
 11 King St W, Suite 700
 Toronto, ON M5H 4C7

Dear Mr. Tannenbaum and Mr. Dhanani:

Re: UBC Solutions Incorporated vs. 1680 Brimley Limited Partnership

Attached here is my affidavit of September 9, 2025, that has been entered into the record of this matter on September 10, 2025. The said affidavit details that CMHC financing has been approved, and a Certificate of Insurance (COI) has been issued for a \$446.3 million construction loan. This is one of the largest CMHC COI issued in Canada in 2025. The CMHC funding is sufficient to construct both towers, which are 'permit released' by the City of Toronto, with construction having commenced on site.

Completing construction and rent stabilization of these two towers offers the highest and best use of the property, and according to Colliers, a value of \$570 million will be achieved at stabilization.

Moving immediately forward with the CMHC COI financing, completing construction, and rent stabilization will provide the highest returns to all stakeholders, which is the role of your company as the Court Appointed Receiver. Further, the applicant, UBC Solutions Incorporated, will be able to obtain 100% return of their claim, and will benefit all parties, including 1680 Brimley et.al. and all other creditors.

We strongly believe that a sales process in the property and development's current state and current market conditions will only derive a forced liquidation value to the detriment of all stakeholders, a result that a Court Appointed Receiver should avoid.

Furthermore, I spoke to Doug McCarron, the General President of the UBC, late as September 9, 2025. I informed him that we received approval for the \$446.3 million CMHC loan. On September 10, 2025, I sent Mr. McCarron, Mr. Jason Rowe, the International Vice President of UBC, Tom Cardinal, President of Carpenters' Regional Council & Chief of Staff, Pat Bono, Financial Secretary/ON Residential Coordinator an email, attached herein, sharing and confirmed receipt of the CMHC COI. We shared these with the intention of finding a workable solution in the face of the upcoming receivership hearing, specifically postponing the hearing to negotiate an agreeable solution to the benefit of all parties. We were unsuccessful in this endeavour, and surprised as UBC pushed for the receivership. Should the CMHC COI be cancelled, the repercussions would be financially disastrous for all stakeholders, including UBC and their members.

We would like to meet you and your team on an urgent basis to discuss in detail the above and see if there are opportunities to maximize returns for all stakeholders. Please provide your availability to meet. Thanks kindly.

With urgency,

A handwritten signature in black ink, appearing to be 'Hans Jain', with a stylized, cursive script.

Hans Jain

1680 Brimley Limited Partnership,
2808908 Ontario Inc. and Brimley
Progress Developments Inc.

Cc: Brett Moldaver
brett@moldaverbarristers.com



From: Hans Jain

Sent: Tuesday, 04 November 2025 18:17:55

To: Bryan Tannenbaum <btannenbaum@tdbadvisory.ca>; Arif Dhanani <adhanani@tdbadvisory.ca>

Cc: brett@moldaverbarristers.com <brett@moldaverbarristers.com>; Nisan Thurairatnam <nthurairatnam@tdbadvisory.ca>; pcho@weirfoulds.com <pcho@weirfoulds.com>;

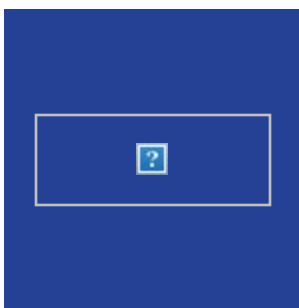
wjaskiewicz@weirfoulds.com <wjaskiewicz@weirfoulds.com>

Subject: Letter to Receiver - UBC Solutions Incorporated vs. 1680 Brimley Limited Partnership

Good afternoon Bryan,

Following up on the original email sent on September 24, 2025 and again on September 25, 2025 - please advise on an urgent basis when we are able to meet to discuss the best course of action to maximize the return to all parties given we have approved CMHC financing for both construction financing (\$366.4 million) and for the take out financing (\$446,2 million) at stabilization. You are in receipt of the actual CMHC Certificates of Insurance from CBRE on October 10, 2025. As you are aware these COI's took almost 16 months to procure, have favourable terms, and are one of the largest CMHC loans in Canada for 2025. Look forward to our meeting.

Regards,



Hans Jain, Hon. B.Sc.
President

☐ 416.567.9404

☐ atriadevelopment.ca

☐ 276 Carlaw Ave. Unit 301, Toronto, ON M4M 3L1

Executive Assistant: Hansa Jain

E: hansa.jain@atria.ca

C: 647.409.7459

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1680 Brimley Limited Partnership
 2808908 Ontario Inc.
 Brimley Progress Developments Inc.
 276 Carlaw Avenue, Unit 301
 Toronto, ON M4M 3L1

March 9, 2026

Sent Via Email (btannenbaum@tdbadvisory.ca, adhanani@tdbadvisory.ca)

Bryan Tannenbaum, Managing Director
 Arif Dhanani, Managing Director
 TDB Restructuring Limited
 11 King Street West, Suite 700
 Toronto, ON M5H 4C7

Dear Mr. Tannenbaum and Mr. Dhanani:

**RE: 1680 Brimley Road, Scarborough
 CMHC Certificates of Insurance**

I am writing on behalf of 1680 Brimley Limited Partnership, 2808908 Ontario Inc., and Brimley Progress Developments Inc. (collectively referred to as the "Owners"), in regard to the lands municipally known as 1680 Brimley Road. As you are aware, the following CMHC Certificates of Insurance (COIs) issued on September 9, 2025, expire today, March 9, 2026.

COI Number	COI Purpose	Gross Amount
CMHC COI # 68445958	Construction Loan	\$376,704,742
CMHC COI # 15460782	Permanent Loan	\$446,256,674

We provided multiple written notices, including our letter and supporting materials dated September 24, 2025, which your office acknowledged on September 25, 2025. On that same day, we requested an urgent meeting to determine the appropriate next steps and advised that we were assembling the information that your office requested.

A follow-up email was sent on November 4, 2025, which your office acknowledged two days later, and we have not received any communication on that matter since that day.

Given the expiry of the COIs, it is imperative that you take all necessary steps without delay to secure an extension of the first draw date deadline. Please provide immediate direction to Jessica Harland and Manish Jain in Debt & Structured Finance at CBRE Capital (Canada) Inc. to extend the first draw date deadline by six (6) months. As you are aware, failure to maintain the COIs jeopardizes the viability of the entire project and reduces its value to the detriment of all stakeholders.

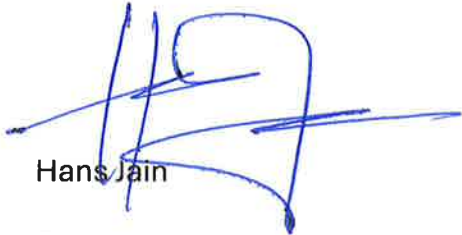
Given the urgency of this issue, we expect prompt confirmation of the actions taken and a comprehensive update on all outstanding matters.

With Urgency,

1680 Brimley Limited Partnership

2808908 Ontario Inc.

Brimley Progress Developments Inc.



Hans Jain

Cc: Brett Moldaver
Jon Ramscar
Krissy Fry
Jessica Harland
Manish Jain

- [17] By the end of submissions, it had become obvious that the necessary path forward is to extract the Books and Records from the intermingled records of the other CWM entities so that the Trustee will have unimpeded access to them. I will now turn to the two principal issues raised by this conclusion.

Who should separate out the Books and Records and how?

- [18] There is a serious dispute between the Trustee and Lending about by whom, and how, the CWM records should be reviewed and analyzed to separate out the Books and Records. The Trustee takes the position that, in view of the common ownership and common officers and directors, there can be no suggestion of adversity of interest between Finance and the other CWM entities, specifically Lending. As a result, the Trustee proposes to utilize its related forensic investigation enterprise, RSM Consulting's Digital Forensics and Incident Response Team.
- [19] I cannot agree. Once the Trustee was appointed, the fate of Finance was in the hands of the Trustee and the inspectors/creditors of Finance. Their interests are potentially adverse to the interests of the remaining members of the CWM group. Indeed, it seems almost certain to be so.
- [20] In my view, the required forensic investigation and unmingling of records must be conducted by an independent expert appointed by the court. To this end, the parties shall endeavor to agree on the appropriate choice of investigator. If they are unable to do so, they will each choose a preferred individual and provide me with: a) the CV of the proposed expert; a consent to act; confirmation they have no conflicts; and, confirmation that they understand the role of a court-appointed expert regarding independence and objectivity, similar in nature (with necessary modifications) to the declaration required of expert witnesses under the Rules of Civil Procedure. This may be accompanied by a brief submission, not to exceed one typed, double-spaced page, addressing why their proposed candidate is to be preferred over the other proposed candidate.
- [21] The protocols for the work of the investigator must include provisions to ensure preservation of CWM claims of solicitor client privilege. It shall also contain provisions which reflect the issues addressed in para. 6 of the Trustee's proposed draft order, starting at page E11 of the CaseLines in the March 6, 2024 bundle.
- [22] Any other issues which cannot be resolved between the parties may be spoken to at a case conference convened for that purpose.

Who should pay the cost of the unmingling exercise?

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- [24] I order that the cost of the court-appointed independent investigator shall, in the short run, be born equally (that is, on a 50/50 basis) by the Finance estate on the one hand and the remainder of the CWM group on the other. This shall be without prejudice to the right of either party to revisit this issue once the job is done. At this point, next to nothing is known about the extent, of, reasons for, and consequences of the intermingling of the CWM financial records. With the benefit of the work and findings of the independent investigator, there will be a more robust record to assess the need for all of this, its causes and consequences.

This is Exhibit “H” referred to in the Affidavit of Hans Jain of the City of Toronto, in the Province of Ontario, this 17th day of July 2026 in accordance with *O. Reg. 431/20, Administering or Declaration Remotely*

nadavamar

Commissioner for Taking Affidavits (or as may be)

NADAV AMAR (LSO # 90638W)

David T. Ullmann
D: 416-596-4289
dullmann@blaney.com

June 5th, 2026

SENT BY EMAIL TO pcho@weirfoulds.com

Mr. Philip Cho
WeirFoulds LLP
4100 – 66 Wellington Street West
TD Bank Tower
Toronto, ON, M5K 1B7

Dear Mr. Cho,

Re: TDB Restructuring Limited re Receivership of 1680 Brimley Limited Partnership et al. – Our Client File Number 208164-0001

We write further to the ongoing correspondence in this matter regarding the receivership of 1680 Brimley Limited Partnership, 2808908 Ontario Inc., and Brimley Progress Developments Inc. (collectively, the "**Debtors**").

It seems clear, from published reports in the Globe and Mail (attached), that there are serious concerns about the management and motivations of the Applicant in this matter, which are only now coming to light. The reports regarding the United Brotherhood of Carpenters and its affiliates, including the Carpenters' Regional Council, which is now under trusteeship by its U.S. parent organization following revelations of serious financial improprieties by its senior leadership. The leadership of the CRC, including its executive secretary-treasurer, Jason Rowe; its chief of staff, Tom Cardinal; and Ms. Stacey Rowe, has all resigned amid an internal investigation into the union's finances. According to the U.S. Department of Labour records, the CRC was previously placed under trusteeship in April 2022 to "correct corruption or financial malpractice". These concerns are directly relevant to the conduct of any sale process in this receivership, given UBC Solutions Incorporated's connection to the United Brotherhood of Carpenters, and our client's concern that the sale process be conducted with appropriate safeguards, transparency, and independence.

In these circumstances, this further amplifies the need for Court oversight in this sale process, especially if UBC or any of its management has been involved in the bidding process in any way, and/or if UBC might seek to be a bidder. UBC's conduct, along with its management, is in question, and as the senior secured creditor, there must be appropriate safeguards in place for this process to solicit the best available bid at the

highest possible price to ensure that the indebtedness owing to UBC is properly repaid, while ensuring that there is transparency and also no undue influence from UBC.

Separately and in the alternative, our client believes that the corruption at UBC likely impacted the entire decision-making process at UBC and impacted its ability to meet its obligations as a lender to the debtor. We also understand, albeit through second-hand information, that Fierra, which is administering a large UBC fund, has suspended all lending at this time while it reviews the propriety of the instructions received and the loans made or to be made. In the circumstances, our client is also considering an order to vary and set aside the receivership. Certainly, the Court did not have this information when it made its decision. To the extent the forbearance under which the consent to receivership was granted was executed under false pretenses or in bad faith by UBC, it would certainly cause the Court to reconsider the efficacy of the consent to receivership upon which the receivership was granted.

We have instructions to seek urgent Court attendance to schedule a motion, at which we intend to seek either to set aside the receivership or, if it is to continue, to regularize the sale process, place limits on the role allowed to UBC, and seek greater transparency in this process. Please advise your availability next week for a case conference on this matter.

Blaney McMurtry LLP



David T. Ullmann
DTU/ab

c.: Birpal Benipal

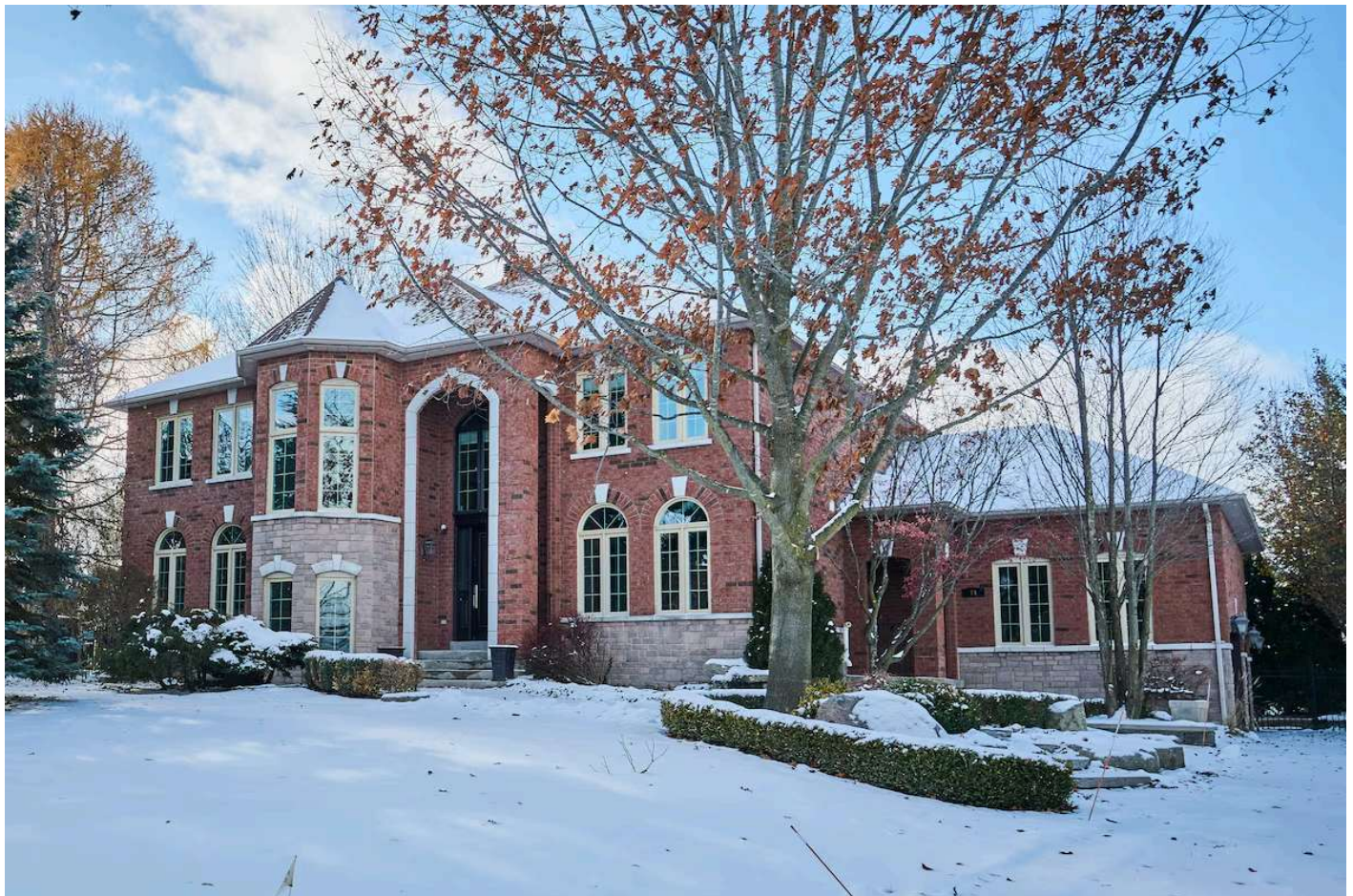
Enclosures: Globe Articles

Construction union faces internal probe over purchase of \$4-million Toronto-area house

JEFF GRAY > QUEEN'S PARK REPORTER

PUBLISHED MAY 7, 2026

FOR SUBSCRIBERS



An investigation by The Globe and Mail has found that the owner of a numbered company that bought this \$4-million property in Nobleton, Ont., was the Carpenters' Regional Council.

SAMMY KOGAN/THE GLOBE AND MAIL

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06:29

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The Carpenters’ Regional Council, one of Canada’s largest construction unions, has been placed under the supervision of its U.S. parent organization and will undergo an internal probe after The Globe and Mail reported that it had quietly purchased a \$4-million Toronto-area home for the use of its top official.

The CRC, which is based in Vaughan, Ont., and says it has 60,000 members in 30 locals across Ontario and Western Canada, is led by its executive secretary-treasurer, Jason Rowe. It oversees hundreds of millions in pension funds and has received millions from the federal and Ontario governments for skills-training programs.

A Globe investigation published last month revealed that in 2022, the union used a numbered company that listed Mr. Rowe and his spouse – who is also a union official – among its directors to buy a 4,400-square-foot home in Nobleton, Ont.

The union acknowledged that the couple lived in the five-bedroom, five-bathroom property for two years, from 2022 to 2024. The union’s executive board was not told about the house and its intended purpose and did not vote on the purchase, according to a source familiar with the union’s decision, as The Globe reported. The Globe did not name the source because they were not authorized to speak publicly about the union’s internal matters.

Now, according to a letter obtained by The Globe, the general president of the Washington-headquartered United Brotherhood of Carpenters and Joiners of America, Douglas McCarron, has announced a “voluntary trusteeship” for the CRC.

In the letter, signed by Mr. McCarron and dated May 5, the long-time American union leader says he met with the CRC’s executive board that day “to discuss a

recent article by the Globe and Mail that made accusations concerning the Executive Secretary-Treasurer of the CRC.”

The union leader, the numbered company and the \$4-million house

The document says the executive board, on a motion moved by Mr. Rowe and passed “without dissent,” agreed to invite the international union in for a voluntary trusteeship, so the U.S. parent could conduct “an independent investigation.”

The letter says the move cancels “all delegate meetings and elections” while the trusteeship is in place. And it says a union official named Dan Siverson would serve as the CRC’s supervisor.

In a letter to the CRC’s member locals, obtained by The Globe, Mr. Siverson says he is a 30-year member of the carpenters’ union and that he “will supervise the investigation.” He also said he plans “on keeping members informed on its progress as conclusions are reached.”

A copy of the motion passed by the CRC executive, also obtained by The Globe, is signed by eight members, including Mr. Rowe. It says the executive members “welcome and consent” to the trusteeship and “need independent supervision and oversight to promptly investigate the serious allegations made against the CRC’s leadership as set forth in The Globe and Mail article.”

It also says the probe may also look into other matters that the international union, known by the shortform the UBC, deems necessary. The motion says the executive members “need the UBC to take corrective actions to fix any problems found.”

A spokesman for the Carpenters’ Regional Council did not respond to a request for comment. Neither Mr. Rowe nor Mr. McCarron responded to requests for comment on Wednesday.



In 2022, the union used a numbered company that listed Jason Rowe and his spouse – who is also a union official – among its directors to buy this 4,400-square-foot home in Nobleton, Ont.

SAMMY KOGAN/THE GLOBE AND MAIL

The purchase of the \$4-million home for Mr. Rowe's use was itself related to a previous trusteeship imposed on the Ontario-based union by its international parent.

A numbered company, which the union says it owns, bought the property on Nov. 11, 2022. At the time, a trusteeship had left control of the CRC (then known as the Carpenters' District Council of Ontario) in the hands of Mr. Rowe, who is also the international's Canadian district vice-president, and a small group of trustees.

Neither the CRC nor its U.S. parent have answered questions about why this previous trusteeship was imposed.

According to a disclosure document filed with the U.S. Department of Labour, the April, 2022, trusteeship was imposed to "correct corruption or financial

malpractice.” The document provides no details of any allegations or what was done to address them at the time.

After first telling The Globe that the \$4-million home “was not purchased for the use of any one person,” the union said the house was needed, on a short-term basis, for Mr. Rowe, who lived in Manitoba before being brought in to lead a restructuring of the Ontario-based organization.

In an e-mailed statement last month, the union said the decision to purchase the house “was disclosed to members of our executive board” and “approved through our established governance processes, including oversight under the organization’s bylaws.” But the union did not directly answer questions on whether the executive board had voted on the purchase, or provide details of what it says was disclosed.

The statement also said the property was “acquired as part of a broader strategy to strengthen the organization’s long-term financial position” but was “also used as a short-term, employer-provided residence.”

The property in Nobleton was transferred to the union-owned Carpenters’ Regional Council Building Corp. for \$0 in May, 2024, for reasons the union has declined to explain. It had undergone \$290,000 in renovations, according to material provided by real estate agents when the union later listed it for sale at \$3.75-million. It has since been taken off the market, and is being rented out.

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Construction union facing probe bought second house for \$2.5-million



Construction union facing probe bought second house for \$2.5-million

JEFF GRAY > QUEEN'S PARK REPORTER

PUBLISHED MAY 22, 2026

UPDATED YESTERDAY

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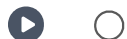


A view of the second house in Nobleton, Ont., purchased by the Carpenters' Regional Council for \$2.5-million. The property is now listed for sale.

SAMMY KOGAN/THE GLOBE AND MAIL

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05:00

1X

One of Canada's largest construction unions, which is facing an internal probe after The Globe and Mail revealed it had bought a \$4-million house north of Toronto for the use of its top official, also purchased a second home, for \$2.5-million, just minutes away.

The Carpenters' Regional Council (CRC) was placed under the supervision of its U.S.-based parent union earlier this month after The Globe reported that its executive secretary-treasurer, Jason Rowe, had lived in the \$4-million home for two years along with his wife, Stacey Rowe, who was also a senior union official.

Property records show that the same numbered company that purchased the first home in Nobleton, Ont., in November, 2022, also purchased another nearby house for \$2.489-million, in January, 2024. Mr. Rowe and his wife were both listed as directors of the numbered company at the time, and Mr. Rowe was listed as acting for the company on both transactions.

The two properties were transferred for \$0 to the Carpenters' Regional Council Building Corp. that year. The union has said it owns both that corporation and the numbered company, but has not explained the reason behind the transfers or the use of the numbered company.

The union leader, the numbered company and the \$4-million house

A spokesman for the CRC did not respond to e-mails this week asking questions about the second house – including who lived in the second

property, which is now listed for sale. According to the real-estate listing, it has four bedrooms, five bathrooms and a family room with a 20-foot ceiling.

Mr. Rowe could not be reached Friday.

The CRC, which is based in Vaughan, Ont., and says it has 60,000 members in 30 locals across Ontario and Western Canada, oversees hundreds of millions in pension funds and has received millions from the federal and Ontario governments for skills-training programs. Under Mr. Rowe's leadership, it endorsed Ontario Premier Doug Ford's Progressive Conservatives for the first time, just before the 2025 election.

Earlier this month, The Globe reported that the executive board of the CRC had voted to place itself under the supervision of its U.S. parent union, the United Brotherhood of Carpenters and Joiners.

In a letter to union leaders obtained by The Globe, the U.S. parent union's general president, Douglas McCarron, said the organization would conduct an internal probe into the newspaper's revelations about the Ontario-based branch's purchase of the \$4-million home. Mr. McCarron could not be reached Friday.

The union has acknowledged that Mr. Rowe and his wife lived in the \$4-million property from 2022 to 2024. It was later rented out.

The Globe reported last month that the union's executive board was not told about the house and its intended purpose and did not vote on the purchase, citing a source familiar with the union's decision-making. The Globe did not name the source because they were not authorized to speak publicly about the union's internal matters.

After first telling The Globe that the \$4-million home "was not purchased for the use of any one person," the CRC later said the house was needed, on a short-term basis, for Mr. Rowe, who lived in Manitoba before being brought in to lead a restructuring of the Ontario-based organization.

The CRC said the decision to purchase the first house “was disclosed to members of our executive board” and “approved through our established governance processes, including oversight under the organization’s bylaws.”

But the union did not directly answer questions on whether the executive board had voted on the purchase, or provide details of what it says was disclosed.

At the time of the purchase of this first house, the CRC was also under a form of supervision known as a trusteeship, imposed by its U.S. parent. This allowed for Mr. Rowe to be installed as executive secretary-treasurer and left control of the CRC with him and a handful of appointed trustees.

Neither the CRC nor its U.S. parent have answered questions about this previous trusteeship. According to a disclosure document filed with the U.S. Department of Labor, the April, 2022, it was imposed to “correct corruption or financial malpractice.” But the document provides no details of any allegations or what was done to address them at the time.

With research from Stephanie Chambers

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Construction union boss quits amid probe over \$4-million home

JEFF GRAY > QUEEN'S PARK REPORTER

PUBLISHED YESTERDAY

UPDATED 1 HOUR AGO



An investigation by The Globe and Mail found that the owner of a numbered company that bought this \$4-million property in Nobleton, Ont., was the Carpenters' Regional Council.

SAMMY KOGAN/THE GLOBE AND MAIL



The head of the Carpenters' Regional Council, one of Canada's largest construction unions, has resigned amid an internal probe prompted by a Globe and Mail investigation that revealed the organization had bought a \$4-million house that he and his wife lived in for two years.

According to staff e-mails seen by The Globe, the union's top official, executive secretary-treasurer Jason Rowe, and his wife, Stacey Rowe, also a senior union official, have left their posts. Tom Cardinal, the union's president and chief of staff, also resigned.

A spokesman for the CRC, which is headquartered in Vaughan, Ont., north of Toronto, did not respond to requests for comment. Mr. Rowe did not respond to messages asking for comment and Ms. Rowe and Mr. Cardinal could not be reached.

The CRC, which says it has 60,000 members in 30 locals across Ontario and Western Canada, oversees hundreds of millions in pension funds and has received millions from the federal and Ontario governments for skills-training programs.

The union leader, the numbered company and the \$4-million house

Earlier this month, The Globe reported that the CRC was placed under the supervision of its U.S.-based parent union, the United Brotherhood of Carpenters and Joiners of America, which launched an internal probe.

The move followed a Globe investigation, published in April, that revealed the union's purchase of the house, which Mr. Rowe and his wife lived in from 2022 to 2024.

The 2022 purchase of the \$4-million home in Nobleton, Ont., not far from the union's Vaughan headquarters, wasn't the only real estate transaction that has raised questions.

The Globe has also found that the union bought a second house in the same area in 2024, for \$2.5-million. The CRC did not respond to questions about why the second house was purchased or whether any senior union officials had lived in it.

Property records show that the same numbered company that purchased the first home also purchased the second. Mr. Rowe and his wife were both listed as directors of the numbered company at the time, and Mr. Rowe was listed as acting for the company on both transactions.



A view of the second house, purchased by the Carpenters' Regional Council for \$2.5-million.

SAMMY KOGAN/THE GLOBE AND MAIL

the numbered company but has not explained the reason behind the transfers or the use of the numbered company.

The second property is now listed for sale. According to the real estate listing, it has four bedrooms, five bathrooms and a family room with a 20-foot ceiling.

Earlier this month, the U.S. parent union's general president, Douglas McCarron, sent a letter to union leaders, obtained by The Globe, saying that his organization would investigate the newspaper's revelations about the Ontario-based branch's purchase of the \$4-million home.

Mr. McCarron did not respond to a request for comment.

The union has acknowledged that Mr. Rowe and his wife lived in the property from 2022 to 2024. It was later rented out.

The Globe reported that the union's executive board was not told about the first house and its intended purpose and did not vote on the purchase, citing a source familiar with the union's decision-making. The Globe did not name the source because they were not authorized to speak publicly about the union's internal matters.

Construction union facing probe bought second house for \$2.5-million

After first telling The Globe that the \$4-million home "was not purchased for the use of any one person," the CRC later said the house was needed, on a short-term basis, for Mr. Rowe, who lived in Manitoba before being brought in to lead a restructuring of the organization.

The CRC said the decision to purchase the first house "was disclosed to members of our executive board" and "approved through our established governance processes, including oversight under the organization's bylaws."

But the union did not directly answer questions on whether the executive board had voted on the purchase or provide details of what it says was

of supervision known as a trusteeship, imposed by its U.S. parent. This allowed for Mr. Rowe to be installed as executive secretary-treasurer and left control of the CRC with him and a handful of appointed trustees.

Neither the CRC nor its U.S. parent have answered questions about this previous trusteeship. According to a disclosure document filed with the U.S. Department of Labor in April, 2022, it was imposed to “correct corruption or financial malpractice.” But the document provides no details of any allegations or what was done to address them at the time.

Under Mr. Rowe’s leadership, the CRC endorsed Ontario Premier Doug Ford’s Progressive Conservatives for the first time, just before the 2025 election – after the union had received \$27-million from the province’s Skills Development Fund.

In pictures posted on the Premier’s Facebook page from a February, 2025, campaign event marking the endorsement, Mr. Ford can be seen shaking Mr. Rowe’s hand and applauding as he speaks to union members.

The CRC also endorsed Prime Minister Mark Carney’s Liberals before the federal election that year.

With research from Stephanie Chambers

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After organizing Victoria's Uber drivers, union officials hope to do the same across Canada 



Construction union faces internal probe over purchase of \$4-million Toronto-area house 

This is Exhibit "I" referred to in the Affidavit of Hans Jain of the City of Toronto, in the Province of Ontario, this 17th day of July 2026 in accordance with *O. Reg. 431/20, Administering or Declaration Remotely*

nadavamar

Commissioner for Taking Affidavits (or as may be)

NADAV AMAR (LSO # 90638W)

TDB Restructuring Limited
Licensed Insolvency Trustee

65 Queen St. West, Suite 605
Toronto, ON M5H 2M5
info@tdbadvisory.ca
416-575-4440
416-915-6228
tdbadvisory.ca

June 5, 2026

Via Email (hans.jain@atria.ca)

Mr. Hans Jain
1680 Brimley Limited Partnership,
2808908 Ontario Inc. and
Brimley Progress Developments Inc.
500 Yonge Street, Suite 1706
North York, ON M2N 7E9

Attention: Mr. Hans Jain

Dear Mr. Jain:

Re: TDB Restructuring Limited – Receivership of 1680 Brimley Limited

Pursuant to an order of the Ontario Superior Court of Justice dated September 10, 2025 (the “**Appointment Order**”), TDB Restructuring Limited was appointed receiver and manager (in such capacity, the “**Receiver**”) over the properties, undertakings and property (“**Property**”) of 1680 Brimley Limited Partnership, 2808908 Ontario Inc. and Brimley Progress Developments Inc. (the “**Debtors**”). A copy of the Appointment Order is enclosed. In reviewing the banking records of the Debtors, the Receiver has identified transfers from 2808908 Ontario Inc. to Hansalex Corp. that total over \$24 million between October 2023 and September 2025 (the “**Transfers**”).

The Receiver has been unable to obtain the complete books and records of the Debtors. As a result, the nature of the Transfers is not clear to the Receiver. Pursuant to the Appointment Order, any person with notice of the Appointment Order is required to advise the Receiver of the existence of any Property of the Debtors in such person’s possession or control and grant immediate and continued access to such Property. Additionally, all persons with notice of the Appointment Order are required to advise the Receiver of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, information and cloud-based data of any kind related to the business or affairs of the Debtors or the Property, including any data storage media containing such information (collectively, the “**Records**”).

As such, please provide the Receiver with copies of any agreements, memos, correspondence or other documents as between Hansalex Corp. and any of the Debtor companies, particularly Records that support the basis of the Transfers. The Receiver requests that you provide a response to this correspondence by June 12, 2026 to: (i) confirm receipt; (ii) provide a response as to what Records are in Hansalex Corp.'s control or possession; and (iii) arrange for copies of the Records to be provided to the Receiver.

Yours truly,

TDB RESTRUCTURING LIMITED, solely in its capacity
as Court appointed Receiver of the Debtors, and not in its
personal or corporate capacity



Per: Arif Dhanani, CPA, CA, CIRP, LIT
Managing Director

Encl.

Cc: Bryan Tannenbaum (btannenbaum@tdbadvisory.ca)
Nisan Thurairatnam (nthurairatnam@tdbadvisory.ca)

This is Exhibit “J” referred to in the Affidavit of Hans Jain of the City of Toronto, in the Province of Ontario, this 17th day of July 2026 in accordance with *O. Reg. 431/20, Administering or Declaration Remotely*

nadavamar

Commissioner for Taking Affidavits (or as may be)

NADAV AMAR (LSO # 90638W)

Account Name: 00241 5294219		Account: 5294219		Branch: 241	Currency: CAD
B/D	Description	Debit	Credit	Date	Balance
	Balance Forward			2025/08/01	\$5,955.76
GST	GST		\$323.56	2025/08/01	\$6,279.32
GST	GST		\$8,735.21	2025/08/05	
	WW233 Fr1246 5009730		\$4,223.31	2025/08/05	\$19,237.84
	SEND E-TFR *apK EXP	\$1,067.85		2025/08/18	\$18,169.99
	SEND E-TFR *Ktr EXP	\$180.80		2025/08/21	
	EFT Billing	\$25.00		2025/08/21	\$17,964.19
	250825B5599000RPW	\$6,802.75		2025/08/25	
	250825B5599100RPW	\$1,404.04		2025/08/25	
	250825B5612200RPW	\$3,215.00		2025/08/25	
	250825B5612300RPW	\$5,864.40		2025/08/25	\$678.00
	TOR HYD ELEC L5J7L6	\$234.40		2025/08/29	
	MONTHLY PLAN FEE	\$19.00		2025/08/29	
	Closing Balance			2025/08/31	\$424.60
Totals:		\$18,813.24	\$13,282.08		
Item Count:		9	3		

This is Exhibit “K” referred to in the Affidavit of Hans Jain of the City of Toronto, in the Province of Ontario, this 17th day of July 2026 in accordance with *O. Reg. 431/20, Administering or Declaration Remotely*

nadavamar

Commissioner for Taking Affidavits (or as may be)

NADAV AMAR (LSO # 90638W)



North York Commercial Banking Centre
1470 Don Mills Road, 3rd. Floor
Toronto, Ontario
M3B 2X9
Telephone No.: 416-484-3927
Fax No.: 416-445-6874

September 24th, 2025

2808908 ONTARIO INC.
5000 YONGE ST SUITE 1706
NORTH YORK, ON
M2N 7E9

Please find the enclosed account statement from September 2025.

CURRENT ACCOUNT – 52XXX19 0241

DATE	TRANS DESCRIPTION	TRANS AMOUNT	BALANCE
09/04/2025	IX414 To1246 5011530	400.00 DR	
09/04/2025	IX520 Fr1246 5011530	25.00 CR	
09/04/2025	IX535 To0241 5293425	25.00 DR	
09/04/2025	IY290 Fr0241 5293425	25.00 CR	
09/04/2025	IY301 To1246 5011530	25.00 DR	
09/04/2025	IY372 Fr0241 5293425	500,000.00 CR	
09/04/2025	IY372 To1246 5011530	500,000.00 DR	
09/04/2025	IY465 Fr0241 5271898	270,000.00 CR	
09/04/2025	IY465 To1246 5011530	270,000.00 DR	
09/04/2025	IY465 Fr0241 5272487	90,000.00 CR	
09/04/2025	IY465 To1246 5011530	90,000.00 DR	
09/04/2025	IY501 Fr0241 5269095	500,000.00 CR	
09/04/2025	IY501 To1246 5011530	500,000.00 DR	
09/04/2025	IY501 Fr0241 5269095	500,000.00 CR	
09/04/2025	IY501 To1246 5011530	500,000.00 DR	
09/04/2025	IY501 Fr0241 5269095	500,000.00 CR	

09/04/2025	IY501 To1246 5011530	500,000.00 DR	
09/04/2025	IY501 Fr0241 5269095	500,000.00 CR	
09/04/2025	IY501 To1246 5011530	500,000.00 DR	
09/04/2025	IY501 Fr0241 5269095	500,000.00 CR	
09/04/2025	IY501 To1246 5011530	500,000.00 DR	
09/04/2025	IZ051 Fr0241 5269095	500,000.00 CR	
09/04/2025	IZ051 To1246 5011530	500,000.00 DR	
09/04/2025	IZ051 Fr0241 5269095	500,000.00 CR	
09/04/2025	IZ051 To1246 5011530	500,000.00 DR	
09/04/2025	IZ052 Fr0241 5269095	500,000.00 CR	
09/04/2025	IZ052 To1246 5011530	500,000.00 DR	
09/04/2025	IZ052 Fr0241 5269095	500,000.00 CR	
09/04/2025	IZ052 To1246 5011530	500,000.00 DR	
09/04/2025	IZ052 Fr0241 5269095	500,000.00 CR	
09/04/2025	IZ052 To1246 5011530	500,000.00 DR	
09/04/2025	IZ052 Fr0241 5269095	500,000.00 CR	
09/04/2025	IZ052 To1246 5011530	500,000.00 DR	
09/04/2025	IZ000 Fr0241 5269095	303,024.45 CR	
09/04/2025	IZ000 To1246 5011530	303,024.45 DR	
09/04/2025	IZ000 Fr0241 5272487	179,049.00 CR	
09/04/2025	IZ000 To1246 5011530	179,049.00 DR	
09/04/2025	IZ161 Fr0241 5294219	400.00 CR	424.60
09/05/2025	JX014 To1246 5011530	400.00 DR	
09/05/2025	JX032 Fr1246 5011530	25.00 CR	
09/05/2025	JX041 To1246 5011530	25.00 DR	
09/05/2025	JX205 Fr0241 5269125	500,000.00 CR	
09/05/2025	JX205 To1246 5011530	500,000.00 DR	
09/05/2025	JX205 Fr0241 5269125	500,000.00 CR	

[illegible]



09/05/2025	JX201 To1246 5011530	500,000.00 DR	
09/05/2025	JX321 Fr0241 5269125	275,964.52 CR	
09/05/2025	JX321 To1246 5011530	275,964.52 DR	24.60
09/10/2025	HI105 To1246 5011530	24.60 DR	
09/10/2025	CLOSE ACCOUNT	0.00 DR	0.00

Best Regards,

Alliea Alli
Customer Service Officer

This information is given to you in confidence and for your exclusive use and may not be relied upon by any other party. The Bank shall incur no liability or obligations of any kind to any person including the addressee hereof in providing this letter. The Bank does not assume responsibility for updating the information contained in this letter as of any date subsequent to the date of this letter and assume no responsibility for advising you of any changes with respect to any matters described in this letter that may occur subsequent to the date of this letter.

This is Exhibit “L” referred to in the Affidavit of Hans Jain of the City of Toronto, in the Province of Ontario, this 17th day of July 2026 in accordance with *O. Reg. 431/20, Administering or Declaration Remotely*

nadavamar

Commissioner for Taking Affidavits (or as may be)

NADAV AMAR (LSO # 90638W)

Appendix A – Without Prejudice

USE OF SEVENTY MILLION (\$70,000,000) LOAN ADVANCE - 1680 BRIMLEY RD TORONTO PROJECT FROM OCTOBER 1, 2023 TO MARCH 31, 2025

Loan Advance - Tranche 1	10/3/2023	\$ 65,000,000.00	Credit Agreement with UBC
Less: KingSett First Mortgage Discharge	10/3/2023	(50,470,099.35)	Per Payout Statement
Less: Credit Fees	10/3/2023	(910,000.00)	Per Statement of Advance
Less: Title Insurance	10/3/2023	(26,654.40)	Per Statement of Advance
Less: Interest Reserve (6 months) Blocked Account	10/3/2023	(2,600,000.00)	Per Credit Agreement
Less: Holdback	10/3/2023	(122,927.00)	Soft Cost Holdback
Closing Cost - Lenders & Borrowers Legals	10/3/2023	(169,245.52)	Bennet & Bogart Legals for closing
Proceeds from First Tranche		10,701,073.73	

Loan Advance - Tranche 2	2/15/2024	5,000,000.00	Credit Agreement with UBC
Less: BLG LLP	2/15/2024	(20,725.63)	Per Statement of Advance
Less: Blocked Account	2/15/2024	(446,632.00)	Per Statement of Advance
Less: Lender Fees on Adv	2/15/2024	(50,000.00)	Per Statement of Advance
Less: Title Insurance	2/15/2024	(3,535.00)	Per Statement of Advance

Net Proceeds from Tranche 1 & Tranche 2	\$ 15,180,181.10	Funds Available
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Less Payments:

Geothermal	(4,854,070.27)	Exhibit 01
Excavation & Shoring	(2,900,786.00)	Exhibit 02
Interest & Fees paid to UBC (Mar 1, 2024 to May 31, 2024)	(516,666.66)	Exhibit 03
Building Permit & Municipal Fees	(968,330.02)	Exhibit 04
Site Super & Disbursements	(390,628.33)	Exhibit 05
Temp Service Connection	(259,061.00)	Exhibit 06
Remaining Division 1 Costs	(452,154.48)	Exhibit 07
Architects	(432,196.50)	Exhibit 08
Design Consultants (Remainder)	(732,106.99)	Exhibit 09
Insurance	(716,650.78)	Exhibit 10
Construction Management Fees	(1,983,333.38)	Exhibit 11
Development Management Fees	(1,625,000.00)	Exhibit 12
Remaining Division Costs	(118,700.95)	Exhibit 13
Marketing Expense & Bank Fees	(90,946.37)	Exhibit 14
Legal & Admin	(105,219.75)	Exhibit 15

Funding Shortfall / (Equity Injected by Atria)	\$ (965,670.38)	a
---	------------------------	----------

Equity from Atria in Brimley (unpaid to date)

Development Management Fee	Unpaid	(425,000.01)	Nov 2024 to January 2025 \$141,666.67 per month
Construction Management Fee	Unpaid	(625,000.00)	Nov 2024 to March 2025 \$125,000.00 per month
Site Labor	Estimated	(140,670.35)	Billing Pending to be recorded in Brimley
Project Manager	Estimated	(683,279.82)	Jan 2023 to March 2025
Assistant Site Super	Estimated	(126,533.30)	June 2024 to March 2025
Estimator	Estimated	(187,500.00)	Jan 2024 to Mar 2025
Legal & Accounting	Estimated	(300,000.00)	From Jan 2024 to March 2025

Equity from Atria in Brimley (unpaid to date)	(2,487,983.48)	b
--	-----------------------	----------

UBC agreed to the following reimbursements to Atria from Tranche 1 Proceeds:

6 Months Interest paid to KingSett Capital @ 8% from Apr 2023 to Sep 2023	(2,000,000.00)	On account of delay in funding by UBC.
Building Permit Fee - Paid in December 2022 by Atria	(968,330.00)	

Additional Equity owed to Atria	(2,968,330.00)	c
--	-----------------------	----------

Total Equity Injected (approximate) by Atria (a+b+c)	\$ (6,421,983.86)
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This is Exhibit "M" referred to in the Affidavit of Hans Jain of the City of Toronto, in the Province of Ontario, this 17th day of July 2026 in accordance with *O. Reg. 431/20, Administering or Declaration Remotely*

nadavamar

Commissioner for Taking Affidavits (or as may be)

NADAV AMAR (LSO # 90638W)



From: Birpal Benipal

Sent: May 7, 2026 6:35 PM

To: 'Wojtek Jaskiewicz' <wjaskiewicz@weirfoulds.com>; David T. Ullmann <DUllmann@blaney.com>

Cc: Philip Cho <pcho@weirfoulds.com>; Angela Jameer <ajameer@weirfoulds.com>; Alexandra Teodorescu <ATeodorescu@blaney.com>; Nisan Thurairatnam <nthurairatnam@tdbadvisory.ca>; Bryan A. Tannenbaum <btannenbaum@tdbadvisory.ca>; Arif Dhanani <adhanani@tdbadvisory.ca>

Subject: RE: TDB Restructuring Inc. re Receivership of 1680 Brimley Limited Partnership et al.

Wojtek,

The entities identified below operate from Atria's head office. These entities employ the individuals you would find at the head office, none of whom are employed by 1680 Brimley Limited Partnership, 2808908 Ontario Inc., or Brimley Progress Developments Inc. (the "**Receivership Entities**"). These entities are:

1. Janeric Engineering Inc.; and
2. Prism Property Management Inc.

These entities are disclosed to demonstrate that there are operating businesses operating from the premises. The premises therefore contain, at a minimum, employment & other records, as well as information about those businesses. It is our understanding that this information is also shared on the relevant computer servers with some of the Receivership Entities. In addition, there are further corporate entities which operate or have their registered head office at the same principal address and, we are advised, in some instances, share physical and digital infrastructure with the Receivership Entities. Those entities are also not subject to the receivership. There may also be personal information of Mr. Jain and others, also co-mingled, along with privileged communications with counsel prior to our firm's involvement in this matter and on other matters.

In the circumstances, if, after considering this letter, the Receiver continues to require access to this information and is prepared to bear the costs which will have to be incurred, we will recommend to our client that the Receiver hire an independent third party to sift through the commingled data to identify what is relevant. As I understand, it was done in the Jason Cloth matter; presumably, the information will not be able to be shared with the receiver, however, until the commingling exercise is complete and the non-receivership information is segregated and privileged has been considered.

TAB 3



TDB Restructuring Limited
Licensed Insolvency Trustee

65 Queen St. West, Suite 605
Toronto, ON M5H 2M5

info@tdbadvisory.ca
416-575-4440
416-915-6228

tdbadvisory.ca

IN THE MATTER OF THE RECEIVERSHIP OF
1680 BRIMLEY LIMITED PARTNERSHIP, 2808908 ONTARIO INC. AND
BRIMLEY PROGRESS DEVELOPMENTS INC.
FIRST REPORT OF THE RECEIVER

JUNE 30, 2026

Court File No.: CV-25-00740765-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

UBC SOLUTIONS INCORPORATED

Applicant

- and -

**1680 BRIMLEY LIMITED PARTNERSHIP, 2808908 ONTARIO INC. and BRIMLEY
PROGRESS DEVELOPMENTS INC.**

Respondents

substantial experience marketing development lands and real estate assets in Ontario.

41. The Receiver received proposals from each of the brokerages contacted. The proposals were reviewed by the Receiver and the Lender having regard to a variety of factors, including:
 - (a) the broker's experience marketing comparable development lands;
 - (b) the broker's understanding of the Real Property and the Brimley Project;
 - (c) the proposed marketing strategy;
 - (d) the broker's access to prospective purchasers;
 - (e) the proposed commission structure and terms of engagement;
 - (f) the broker's assessment of market conditions and anticipated purchaser interest; and
 - (g) the broker's experience working with Receivers and real estate assets in receivership.
42. Following its review of the proposals and discussions with the prospective brokerages, the Receiver, in consultation with the Lender, selected CBRE to act as listing agent for the Real Property.
43. A summary of the listing proposals received by the Receiver will be filed with the Court as **Confidential Appendix "1"**.
44. On January 16, 2026, the Receiver entered into a listing agreement with CBRE and thereafter worked closely with CBRE to develop marketing materials, establish a virtual data room and identify prospective purchasers.
45. Following its engagement, CBRE undertook an extensive marketing campaign for the Real Property. Among other things, CBRE prepared a confidential information package, established a marketing database, contacted prospective purchasers, developers and investors known to be active in the Greater Toronto Area development land market, facilitated access to the data room for parties that

executed a confidentiality agreement and responded to due diligence inquiries from interested parties.

46. Throughout the Sales Process, the Receiver maintained regular communication with CBRE and participated in weekly update calls to review purchaser interest, discuss due diligence requests, monitor market feedback and evaluate potential transaction opportunities.
47. Following discussions with CBRE, the Receiver established an "offer not before" deadline of March 26, 2026 for the submission of offers.
48. As a result of the marketing efforts undertaken by CBRE, the Receiver received multiple offers and expressions of interest in respect of the Real Property. A summary of the offers received will be filed with the Court as **Confidential Appendix "2"**.
49. The Receiver, together with CBRE and in consultation with the Lender, carefully reviewed each of the offers received. In assessing the offers, the Receiver considered, among other things:
 - (a) the purchase price offered;
 - (b) the nature and extent of the proposed conditions;
 - (c) the purchaser's financial capacity and ability to close;
 - (d) the timing of closing; and
 - (e) the amount of the secured indebtedness encumbering the Real Property.
50. Following its review, the Receiver determined, in consultation with the Lender, that none of the offers received to date were acceptable or represented the best available realization for the Real Property having regard to the circumstances of these proceedings and the amount of indebtedness secured against the Real Property. Accordingly, the Receiver has not, to date, entered into any agreement of purchase and sale in respect of the Real Property.

51. The Receiver is of the view that the Sales Process, to date, has been conducted in a commercially reasonable manner and has generated a degree of market interest in the Real Property.

4.2 Remaining Steps in the Sales Process

52. As no acceptable offer has been received to date, the Receiver believes that it is in the best interests of the receivership estate and its stakeholders to continue the Sales Process in order to solicit additional offers and maximize recoveries.
53. Accordingly, the Receiver respectfully requests that the Court approve the Sales Process described herein and authorize the Receiver to continue marketing the Real Property with CBRE.
54. Pending a decision on the motion scheduled for September 18, 2026, the Receiver has agreed that it will not enter into any agreement to sell the property. To the extent urgent relief in this regard is necessary, the Receiver's counsel will book a case conference through the Commercial List office in the normal course.

5.0 BOOKS AND RECORDS OF THE DEBTORS

55. Pursuant to paragraphs 4, 5 and 6 of the Appointment Order, the Debtors are required to provide the Receiver with immediate access to, and possession of, the Debtors' books and records.
56. Since its appointment, the Receiver has made repeated requests for access to and/or copies of the Debtors' books and records and attended at various locations identified by the Debtors and their representatives at such locations where the books and records were purportedly maintained. The Receiver's efforts in obtaining the Debtor's books and records are set out below.
57. On September 16, 2025, representatives of the Receiver attended at 6 Carlaw Avenue, Suite 200, Toronto, Ontario and 5000 Yonge Street, Suite 1706, Toronto, Ontario (collectively, the "**Initial Office Locations**"), which were identified in the Debtors' corporate profile reports as office locations associated with the Debtors. The purpose of the attendance was to locate and secure any books and records of the Debtors and to determine whether the Debtors continued to occupy such premises.

6.0 TRACING OF BANK ACCOUNTS

68. In its initial request for information following its appointment, the Receiver requested copies of the Debtors' bank statements, including statements for accounts maintained with RBC, TD, and Scotiabank.
69. The Scotiabank account had a nominal balance as of the date of the Receiver's appointment. The Receiver subsequently recovered the funds on deposit from Scotiabank in the approximate amount of \$1,392.
70. The Receiver reviewed the bank statements for the remaining accounts, with particular attention to withdrawals exceeding \$5,000. During its review, the Receiver identified a number of material disbursements from the TD bank accounts held by 280.
71. In total, approximately \$49.4 million was disbursed from two TD accounts between 2023 and the date of the Receiver's appointment. Of that amount, \$24,941,549.49 was transferred to Hansalex, including \$15,618,037.97 that was transferred during the week immediately preceding the Receiver's appointment. A copy of the schedule identifying the transfers to Hansalex is attached hereto as **Appendix "M"**.
72. On May 8, 2026, WeirFoulds obtained a corporate profile report for Hansalex, which indicates that Mr. Jain is the sole director of the corporation. A copy of Hansalex's corporate profile report is attached hereto as **Appendix "N"**.
73. On June 5, 2026, the Receiver wrote to Mr. Jain regarding the transfers and requested copies of any agreements, memoranda, correspondence, or other documents between Hansalex and any of the Debtors that would support the basis for the transfers totaling \$24 million (the "**June 5th Letter**"). The Receiver requested a response by June 12, 2026. To date, Mr. Jain has not responded to the Receiver's request or provided any documentation supporting the transfers. A copy of the June 5th Letter, without appendices, is attached hereto as **Appendix "O"**.
74. In light of the substantial transfers made to Hansalex, including transfers totaling \$15,618,037.97 during the week immediately preceding the Receiver's appointment, and in the absence of any explanation or supporting documentation despite the

Receiver's request, the Receiver seeks an Order directing Hansalex to repay to the Receiver the sum of \$24,941,549.49.

7.0 PROPOSED LIEN CLAIMS PROCESS

75. As described in the Chedas Affidavit, numerous construction liens have been registered against title to the Real Property. Since its appointment, the Receiver, with assistance of WeirFoulds, has reviewed the construction liens and the information publicly available in respect thereof. However, the Receiver has not been provided with sufficient books and records of the Debtors to independently determine the validity, quantum or priority of the lien claims asserted against the Real Property.
76. A summary of the construction liens registered against title to the Real Property as of the date of this First Report is set out in the table below:

Lien Claimant	Instrument No.	Registration Date	Amount Claimed (\$)
Astro shoring Inc.	AT6710220	December 2, 2024	\$ 875,597.45
Astro Excavating Inc.	AT6710235	December 2, 2024	2,188,373.82
A& Architects Inc.	AT6894477	September 2, 2025	407,135.18
Reimar Construction Corporation	AT6899428	September 10, 2025	363,005.96
Otis Canada, Inc.	AT7048362	April 21, 2026	282,500.00
Total			\$4,166,612.41

77. Based on its preliminary review, the Receiver understands that there are a number of issues that may require determination in connection with the registered lien claims, including, among other things:
- (a) the timeliness and preservation of the lien claims;
 - (b) the validity and quantum of the lien claims;
 - (c) the determination of the applicable statutory holdback; and
 - (d) such other issues as may arise under the *Construction Act* in connection with the lien claims asserted against the Real Property.

13.0 RECEIVER'S REQUEST OF THE COURT

113. Based on the foregoing, the Receiver respectfully requests that the Court grant the orders described in paragraph 10(k) above.

All of which is respectfully submitted to this Court as of this 30th day of June, 2026.

TDB RESTRUCTURING LIMITED, solely in its capacity as Court-appointed Receiver of the Debtors, and not in its personal or corporate capacity

Per:



Arif Dhanani, CPA, CA, CIRP, LIT
Managing Director

APPENDIX "A"



Court File No. CV-25-00740765-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	WEDNESDAY, THE 10TH
	)	
JUSTICE J. DIETRICH	)	DAY OF SEPTEMBER, 2025

UBC SOLUTIONS INCORPORATED

Applicant

- and -

1680 BRIMLEY LIMITED PARTNERSHIP, 2808908 ONTARIO INC. and BRIMLEY
PROGRESS DEVELOPMENTS INC.

Respondents

ORDER
(Appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing TDB Restructuring Limited ("**TDB**") as receiver and manager (in such capacity, the "**Receiver**") without security, of (i) the real property legally described in Schedule "A" hereto (the "**Real Property**"), and (ii) all of the assets, undertakings and properties of the Respondents, 1680 Brimley Limited Partnership, 2808908 Ontario Inc., and Brimley Progress Developments Inc. (the "**Debtors**"), acquired for, or used in relation to a business carried on by the Debtors (the "**Property**"), was heard this day in-person at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Stephen Chedas, affirmed May 12, 2025 and the exhibits attached thereto, the Application Record filed by the Applicant, the Responding Application Record filed by the Debtors, the Reply Record filed by the Applicant, the Factum filed by the Applicant, and the Factum filed by the Debtors, and on hearing the submissions of counsel for

the Applicant and submissions of counsel for the Debtors, and on reading the consent of TDB to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, TDB is hereby 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 all proceeds thereof, including the Property.

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage the Property, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, or incur any obligations

in the ordinary course of business and in connection with the Property, cease to carry on all or any part of the business, or cease to perform or disclaim any contracts of the Debtors in respect of the Property;

- (d) to trace, examine records and other financial documents and account for the monies allocated from the Debtors to third party entities and/or the Debtors' affiliate(s), including to Atriacon Management Inc. and/or its affiliate(s);
- (e) to engage consultants, appraisers, agents, real estate brokers, quantity surveyors, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets as necessary or desirable to preserve or maintain the Property or to continue the business of the Debtors or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors in connection with the Property and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (h) to settle, extend or compromise any indebtedness owing to the Debtors;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to

settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000.00, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, information, and cloud-based data of any kind related to

the business or affairs of the Debtors and/or the Property, and any computer programs, computer tapes, computer disks, cloud or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software, cloud and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer, in a cloud or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer, cloud or other system and providing the Receiver with any and all access codes, account names, account numbers, and account creating credentials that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or

with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or

such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in subsection 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all

such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act, 1999*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or

otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

24. THIS COURT ORDERS that the Consolidated Practice Direction – Toronto Region (https://www.ontariocourts.ca/scj/practice_directions/consolidated-practice-direction-toronto-region/) applies to this proceeding, that e-service of documents shall be valid and effective service and, subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure, service of documents in accordance with the Consolidated Practice Direction – Toronto Region will be effective on transmission. This Court further orders that a Case Website shall be established with the following URL: <https://tdbadvisory.ca/insolvency-case/1680-brimley-partnership-et-al/>.

25. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier,

personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

26. THIS COURT ORDERS that the Receiver may retain solicitors to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation, those conferred by this Order. The Receiver is specifically authorized and permitted to use the solicitors for the Applicant herein as its own counsel in respect of any matter where there is no conflict of interest. In respect of any legal advice or issue where a conflict may exist or arise in respect of the Applicant and the Receiver or a third party, the Receiver shall utilize independent counsel.

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

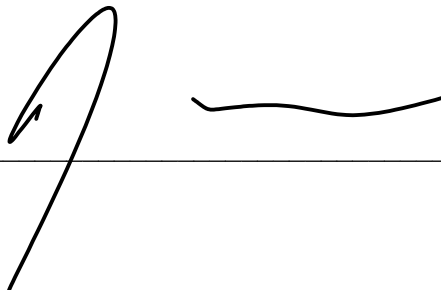
28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate and net realizations from the Property with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



SCHEDULE "A"

DESCRIPTION OF REAL PROPERTY

- 1. PIN 06000-0540 (LT)

Description: PART OF LOT 25 CONCESSION 2 SCARBOROUGH PARTS 1 AND 2, 66R33558; SUBJECT TO AN EASEMENT OVER PART 2, 66R33558 AS IN TB398371; SUBJECT TO AN EASEMENT AS IN AT6668619; CITY OF TORONTO

Address: 1680 Brimley Road, Scarborough, Ontario, M1P 2B9

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

THIS IS TO CERTIFY that TDB Restructuring Limited, the receiver (the "**Receiver**") of (i) the real property legally described in Schedule "A" hereto (the "**Real Property**"), and (ii) all of the assets, undertakings, and properties [of 1680 Brimley Limited Partnership, 2808908 Ontario Inc., and Brimley Progress Developments Inc. (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, 2025 (the "**Order**") made in an action having Court file number CV-25-00740765-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any

person other than the holder of this certificate without the prior written consent of the holder of this certificate.

The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

TDB Restructuring Limited, solely in its
capacity as Receiver of the Property, and not in
its personal capacity

Per: _____
Name:
Title:

UBC SOLUTIONS INCORPORATED

Applicant

1680 BRIMLEY LIMITED PARTNERSHIP *et al.*

Respondents

Court File No. CV-25-00740765-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER

ROUSSEAU MAZZUCA LLP
65 Queen Street West, Suite 1000
Toronto, ON, M5H 2M5

T: 416-304-9899
F: 437-800-1453

Broghan Masters (LSO 78063U)
broghan@rousseaumazzuca.com

Michael Mazzuca (LSO 56283V)
michael@rousseaumazzuca.com

Lawyers for the Applicant

APPENDIX "M"

**In the Matter of the Receivership of 1680 Brimley Limited Partnership,
2808908 Ontario Inc. and Brimley Progress Developments Inc.
Summary of Transfers to Hansalex Corp.
Last Updated June 27, 2026**

Account Number	Date	Info/Memo	Amount
XXX6474 0241	2023-10-03	WU470 TO 1246 5011530	269,666.67
XXX6474 0241	2023-10-04	HI573 TO 1246 5011530	2,065,000.00
XXX6474 0241	2023-10-10	WR522 TO 1246 5011530	150,000.00
XXX6474 0241	2023-10-11	HI393 TO 1246 5011530	100,000.00
XXX6474 0241	2023-12-19	WI304 TO 1246 5011530	400,000.00
XXX6474 0241	2023-12-22	JU334 TO 1246 5011530	30,000.00
XXX6474 0241	2023-12-22	J1154 TO 1246 5011530	75,000.00
XXX6474 0241	2023-12-22	JH424 TO 1246 5011530	55,000.00
XXX6474 0241	2023-12-27	HO313 TO 1246 5011530	50,000.00
XXX6474 0241	2023-12-27	HI133 TO 1246 5011530	60,000.00
XXX6474 0241	2024-01-18	IH071 TO 1246 5011530	160,000.00
XXX6474 0241	2024-01-23	WH120 TO 1246 5011530	35,000.00
XXX6474 0241	2024-02-01	IW404 TO 1246 5011530	125,000.00
XXX6474 0241	2024-02-20	WH332 246 5011530	151,000.00
XXX6474 0241	2024-02-22	IU441 TO 1246 5011530	200,000.00
XXX6474 0241	2024-02-22	IR451 TO 1246 5011530	15,344.85
XXX6474 0241	2024-02-23	JQ473 TO 1246 5011530	481,000.00
XXX6474 0241	2024-02-27	WU302 TO 1246 5011530	420,000.00
XXX6474 0241	2024-02-29	JT443 TO 1246 5011530	450,000.00
XXX6474 0241	2024-03-05	WR401 TO 1246 5011530	467,000.00
XXX6474 0241	2024-03-12	WI401 TO 1246 5011530	260,000.00
XXX6474 0241	2024-03-22	JT323 TO 1246 5011530	251,500.00
XXX6474 0241	2024-03-26	WT270 TO 1246 5011530	200,000.00
XXX6474 0241	2024-03-28	RX095 TO 1246 5011530	338,000.00
XXX6474 0241	2024-05-07	WQ332 TO 1246 5011530	40,000.00
XXX6474 0241	2024-06-03	RT592 TO 1246 5011530	50,000.00
XXX6474 0241	2024-06-04	WW305 T 1246 5011530	180,000.00
XXX6474 0241	2024-07-24	HQ434 TO 14246 5011530	25,000.00
XXX6474 0241	2024-07-26	JU104 TO 1246 5011530	45,000.00
XXX6474 0241	2024-07-30	WI371 TO 1246 5011530	115,000.00
XXX6474 0241	2024-10-25	JQ494 To1246 5011530	60,000.00
XXX6474 0241	2024-10-25	JQ402 To1246 5011530	50,000.00
XXX6474 0241	2024-11-01	JH102 Fr1246 5011530	50,000.00
XXX4219 0241	2025-05-12	RQ553 To1246 5011530	1,900,000.00
XXX4219 0241	2025-09-04	IZ000 To1246 5011530	179,049.00
XXX4219 0241	2025-09-04	IZ000 To1246 5011530	303,024.45
XXX4219 0241	2025-09-04	Iz052 To1246 5011530	500,000.00
XXX4219 0241	2025-09-04	Iz052 To1246 5011530	500,000.00

XXX4219 0241	2025-09-04	Iz052 To1246 5011530	500,000.00
XXX4219 0241	2025-09-04	Iz052 To1246 5011530	500,000.00
XXX4219 0241	2025-09-04	Iz051 To1246 5011530	500,000.00
XXX4219 0241	2025-09-04	Iz051 To1246 5011530	500,000.00
XXX4219 0241	2025-09-04	IY501 To1246 5011530	500,000.00
XXX4219 0241	2025-09-04	IY501 To1246 5011530	500,000.00
XXX4219 0241	2025-09-04	IY501 To1246 5011530	500,000.00
XXX4219 0241	2025-09-04	IY501 To1246 5011530	500,000.00
XXX4219 0241	2025-09-04	IY501 To1246 5011530	500,000.00
XXX4219 0241	2025-09-04	IY465 To1246 5011530	90,000.00
XXX4219 0241	2025-09-04	IY465 To1246 5011530	270,000.00
XXX4219 0241	2025-09-04	IY372 To1246 5011530	500,000.00
XXX4219 0241	2025-09-05	JX321 T0246 5011530	275,964.52
XXX4219 0241	2025-09-05	JX201 To1246 5011530	500,000.00
XXX4219 0241	2025-09-05	JX201 To1246 5011530	500,000.00
XXX4219 0241	2025-09-05	JX201 To1246 5011530	500,000.00
XXX4219 0241	2025-09-05	JX254 To1246 5011530	500,000.00
XXX4219 0241	2025-09-05	JX231 To1246 5011530	500,000.00
XXX4219 0241	2025-09-05	JX231 To1246 5011530	500,000.00
XXX4219 0241	2025-09-05	JX205 To1246 5011530	500,000.00
XXX4219 0241	2025-09-05	JX205 To1246 5011530	500,000.00
XXX4219 0241	2025-09-05	JX205 To1246 5011530	500,000.00
XXX4219 0241	2025-09-05	JX205 To1246 5011530	500,000.00
XXX4219 0241	2025-09-05	JX205 To1246 5011530	500,000.00
XXX4219 0241	2025-09-05	JX205 To1246 5011530	500,000.00
XXX4219 0241	2025-09-05	JX205 To1246 5011530	500,000.00
XXX4219 0241	2025-09-05	JX205 To1246 5011530	500,000.00
XXX4219 0241	2025-09-05	JX205 To1246 5011530	500,000.00
XXX4219 0241	2025-09-05	JX205 To1246 5011530	500,000.00
XXX4219 0241	2025-09-05	JX205 To1246 5011530	500,000.00
Total			24,941,549.49

APPENDIX "O"



TDB Restructuring Limited
Licensed Insolvency Trustee

65 Queen St. West, Suite 605
Toronto, ON M5H 2M5
info@tdbadvisory.ca
416-575-4440
416-915-6228
tdbadvisory.ca

June 5, 2026

Via Email (hans.jain@atria.ca)

Mr. Hans Jain
1680 Brimley Limited Partnership,
2808908 Ontario Inc. and
Brimley Progress Developments Inc.
500 Yonge Street, Suite 1706
North York, ON M2N 7E9

Attention: Mr. Hans Jain

Dear Mr. Jain:

Re: TDB Restructuring Limited – Receivership of 1680 Brimley Limited

Pursuant to an order of the Ontario Superior Court of Justice dated September 10, 2025 (the “**Appointment Order**”), TDB Restructuring Limited was appointed receiver and manager (in such capacity, the “**Receiver**”) over the properties, undertakings and property (“**Property**”) of 1680 Brimley Limited Partnership, 2808908 Ontario Inc. and Brimley Progress Developments Inc. (the “**Debtors**”). A copy of the Appointment Order is enclosed. In reviewing the banking records of the Debtors, the Receiver has identified transfers from 2808908 Ontario Inc. to Hansalex Corp. that total over \$24 million between October 2023 and September 2025 (the “**Transfers**”).

The Receiver has been unable to obtain the complete books and records of the Debtors. As a result, the nature of the Transfers is not clear to the Receiver. Pursuant to the Appointment Order, any person with notice of the Appointment Order is required to advise the Receiver of the existence of any Property of the Debtors in such person’s possession or control and grant immediate and continued access to such Property. Additionally, all persons with notice of the Appointment Order are required to advise the Receiver of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, information and cloud-based data of any kind related to the business or affairs of the Debtors or the Property, including any data storage media containing such information (collectively, the “**Records**”).

As such, please provide the Receiver with copies of any agreements, memos, correspondence or other documents as between Hansalex Corp. and any of the Debtor companies, particularly Records that support the basis of the Transfers. The Receiver requests that you provide a response to this correspondence by June 12, 2026 to: (i) confirm receipt; (ii) provide a response as to what Records are in Hansalex Corp.'s control or possession; and (iii) arrange for copies of the Records to be provided to the Receiver.

Yours truly,

TDB RESTRUCTURING LIMITED, solely in its capacity
as Court appointed Receiver of the Debtors, and not in its
personal or corporate capacity



Per: Arif Dhanani, CPA, CA, CIRP, LIT
Managing Director

Encl.

Cc: Bryan Tannenbaum (btannenbaum@tdbadvisory.ca)
Nisan Thurairatnam (nthurairatnam@tdbadvisory.ca)

TAB 4



TDB Restructuring Limited
Licensed Insolvency Trustee

65 Queen St. West, Suite 605
Toronto, ON M5H 2M5

info@tdbadvisory.ca
416-575-4440
416-915-6228

tdbadvisory.ca

IN THE MATTER OF THE RECEIVERSHIP OF
1680 BRIMLEY LIMITED PARTNERSHIP, 2808908 ONTARIO INC. AND
BRIMLEY PROGRESS DEVELOPMENTS INC.

SUPPLEMENT TO THE FIRST REPORT OF THE RECEIVER

JULY 27, 2026

Based on the information presently available to the Receiver, there does not appear to be any commercial or legal basis for the transfers to Hansalex. The Receiver therefore considers it appropriate and necessary for Hansalex to return the funds to the Receivership estate.

32. As stated above, the Receiver's position remains unchanged. The Receiver maintains that the funds transferred to Hansalex should be returned to the Debtors' estate and continues to seek an Order requiring that those funds be repaid to the Receiver for the benefit of the estate.

7.0 IMAGING OF THE DEBTORS' SERVERS

33. The Responding Materials note that the Debtors consent to the Receiver's request for an Order permitting the Receiver to image the Debtors' servers on the basis that a specific protocol for doing so be agreed upon in advance on the basis that the books and records on the servers is comingled with that of two other companies.
34. Exhibit M to the Jain Affidavit identifies Janeric Engineering Inc. and Prism Property Management Inc. as the entities that share the same servers as the Debtors. Copies of the corporate profile reports for Janeric Engineering Inc. and Prism Property Management Inc. are attached hereto as **Appendix "F"**. As reflected in those corporate profile reports, both corporations share the same directors and officers, namely Mr. Hans Jain and his brother, Mr. Vipin Jain.

8.0 SEALING

35. The Receiver respectfully requests that the Court seal Confidential Appendix 1 to this report, being the CBRE marketing report. Confidential Appendix 1 contains confidential commercial information, including marketing strategy, purchaser outreach, market feedback, offer information and other commercially sensitive information which, if publicly disclosed, could prejudice the ongoing marketing of the Real Property.
36. The Receiver believes that the information within the marketing report should be kept confidential until the completion of sale efforts with respect to the Real

Property, as disclosure of this information could negatively impact the Sale Process and the values of the Real Property.

9.0 RECEIVER'S REQUEST OF THE COURT

37. Based on the foregoing, the Receiver respectfully requests that the Court grant the relief set out in the Notice of Motion as well as the additional sealing order described herein.

All of which is respectfully submitted to this Court as of this 27th day of July, 2026.

TDB RESTRUCTURING LIMITED, solely in its capacity as Court-appointed Receiver and Manager of 1680 Brimley Limited Partnership, 2808908 Ontario Inc. and Brimley Progress Developments Inc. and not in its personal or corporate capacity

Per:



Arif Dhanani, CPA, CA, CIRP, LIT
Managing Director

CONFIDENTIAL
APPENDIX "1"

Duplicate
See Tab 1,
FN 14, Pg 16

APPENDIX "E"



RE: Letter to Receiver - UBC Solutions Incorporated vs. 1680 Brimley Limited Partnership

From Nisan Thuraiatnam <nthurairatnam@tdbadvisory.ca>

Date Mon 3/9/2026 3:55 PM

To Tara Connor <Tara.connor@atria.ca>; Hans Jain <hans.jain@atria.ca>

Cc Brett Moldaver <brett@moldaverbarristers.com>; jon.ramscar@cbre.com <jon.ramscar@cbre.com>; Krissy.Fry@cbre.com <Krissy.Fry@cbre.com>; jessica.harland@cbre.com <jessica.harland@cbre.com>; Jain, Manish @ CBRE Capital Markets <manish.jain@cbre.com>; Bryan A. Tannenbaum <btannenbaum@tdbadvisory.ca>; Arif Dhanani <adhanani@tdbadvisory.ca>; Philip Cho <pcho@weirfoulds.com>

19 attachments (90 KB)

image014.png; image015.png; image016.png; image017.png; image018.png; image019.png; image020.png; image021.png; image022.png; image023.png; image024.png; image025.png; image026.png; image027.png; image028.png; image029.png; image030.png; image031.jpg; 2026.03.09_B.Tannenbaum-CMHC COI Letter.pdf;

Mr. Jain,

I am responding to the attached letter the Receiver received today regarding the CMHC Certificate of Insurance (the “COI”).

The Receiver has had extensive communications, both by telephone and email, with CBRE Capital, specifically with Jessica Harland, whom you referenced in your letter. Manish Jain has also been included on those communications where the Receiver has been corresponding with Ms. Harland and CBRE Capital regarding the potential extension of the Certificate of Insurance.

For example, on February 25, Jessica Harland advised:

“As the Approved Lender, CBRE needs to be confident in the request being supportable, and CMHC will ask for a detailed reason why. Without a clear path to a resolution, timing of the resolution, confirmation there will not be other significant changes to the COI (budget, land valuation, borrowers, previously submitted rents and expenses), we are not certain that CBRE can support the extension. **We also do not expect that CMHC will agree that within an extension of 6 months (typical maximum extension period), any amendments are made, the receivership would be closed/discharged, and the necessary equity would be in place to allow the first draw.** The request for insurance will likely need to be completely resubmitted, with a new ownership structure with an update to the required documents. We are happy to chat further about this.”

The Receiver has acted responsibly and promptly in addressing this matter and has proactively engaged with CBRE Capital to explore whether an extension of the COI could be supported. Based on the feedback received from CBRE Capital, it appears that a simple extension may not be feasible and that a resubmission of the insurance request with updated documentation and ownership structure may ultimately be required.

I also note that both Jessica Harland and Manish Jain are copied on this email chain. While it is not necessary, should they wish to add any clarification regarding CBRE Capital’s position on the potential extension of the COI, they are of course welcome to do so.

Should you have any further questions, please do not hesitate to write back.

Regards,

Nisan



TDB Restructuring Limited
Licensed Insolvency Trustee

Nisan Thurairatnam, CPA

Senior Manager

✉ nthurairatnam@tdbadvisory.ca

☎ 365-297-4588

📠 416-915-6228

📍 65 Queen St. West, Suite 605
Toronto, ON M5H 2M5 **NEW ADDRESS**

tdbadvisory.ca

Integrity. Leadership. Excellence.

From: Bryan A. Tannenbaum <btannenbaum@tdbadvisory.ca >

Sent: Monday, March 9, 2026 2:56 PM

To: Tara Connor <Tara.connor@atria.ca >; Arif Dhanani <adhanani@tdbadvisory.ca >

Cc: Brett Moldaver <brett@moldaverbarristers.com >; jon.ramscar@cbre.com; Krissy.Fry@cbre.com; jessica.harland@cbre.com; Jain, Manish @ CBRE Capital Markets <manish.jain@cbre.com >; Hans Jain <hans.jain@atria.ca >; Nisan Thurairatnam <nthurairatnam@tdbadvisory.ca >

Subject: RE: Letter to Receiver - UBC Solutions Incorporated vs. 1680 Brimley Limited Partnership

Copying Nisan for response as he has been dealing with CBRE Capital.



TDB Restructuring Limited
Licensed Insolvency Trustee

Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT

Managing Director

✉ btannenbaum@tdbadvisory.ca

☎ 416-238-5055

📠 416-915-6228

📍 65 Queen St. West, Suite 605
Toronto, ON M5H 2M5 **NEW ADDRESS**

tdbadvisory.ca

Integrity. Leadership. Excellence.

From: Tara Connor <Tara.connor@atria.ca>

Sent: Monday, March 9, 2026 2:44 PM

To: Bryan A. Tannenbaum <btannenbaum@tdbadvisory.ca>; Arif Dhanani <adhanani@tdbadvisory.ca>

Cc: Brett Moldaver <brett@moldaverbarristers.com>; jon.ramscar@cbre.com; Krissy.Fry@cbre.com; jessica.harland@cbre.com; Jain, Manish @ CBRE Capital Markets <manish.jain@cbre.com>; Hans Jain <hans.jain@atria.ca>

Subject: RE: Letter to Receiver - UBC Solutions Incorporated vs. 1680 Brimley Limited Partnership

External sender

On Behalf of Hans Jain:

Dear Bryan and Arif,

Please find attached correspondence.

Best regards,

Tara Connor , MCIP, RPP

Director of Development



 [416.779.6457](tel:416.779.6457)

 atriadevelopment.ca

 [276 Carlaw Ave, Unit 301, Toronto, ON M4M 3L1](#)



CONFIDENTIALITY NOTICE: The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and any attachments. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited.

From: Bryan Tannenbaum <btannenbaum@tdbadvisory.ca>

Sent: November 6, 2025 3:38 PM

To: Hans Jain <hans.jain@atria.ca>; Arif Dhanani <adhanani@tdbadvisory.ca>

Cc: brett@moldaverbarristers.com; Nisan Thuraiatnam <nthurairatnam@tdbadvisory.ca>; pcho@weirfoulds.com; wjaskiewicz@weirfoulds.com

Subject: RE: Letter to Receiver - UBC Solutions Incorporated vs. 1680 Brimley Limited Partnership

Mr. Jain,

We acknowledge receipt of your email of November 4, 2025 below.

The certificates of insurance from CMHC are not sufficient by themselves to redeem the security.

Unless and until you have evidence of funds, ready to be wired to the Receiver, sufficient to pay out the debt, accumulated interest, and costs in full, the Receiver does not believe that there is any utility in having a meeting.

Regards,

Bryan



TDB Restructuring Limited

Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
Managing Director

✉ btannenbaum@tdbadvisory.ca

☎ 416-238-5055

📠 416-915-6228

📍 11 King St. West, Suite 700
Toronto, ON M5H 4C7

tdbadvisory.ca

Integrity. Leadership. Excellence.

From: Hans Jain <hans.jain@atria.ca>

Sent: Tuesday, November 4, 2025 6:18 PM

To: Bryan Tannenbaum <btannenbaum@tdbadvisory.ca>; Arif Dhanani <adhanani@tdbadvisory.ca>

Cc: brett@moldaverbarristers.com; Nisan Thuraiatnam <nthurairatnam@tdbadvisory.ca>; pcho@weirfoulds.com; wjaskiewicz@weirfoulds.com

Subject: Letter to Receiver - UBC Solutions Incorporated vs. 1680 Brimley Limited Partnership

External sender

Good afternoon Bryan,

156

Following up on the original email sent on September 24, 2025 and again on September 25, 2025 - please advise on an urgent basis when we are able to meet to discuss the best course of action to maximize the return to all parties given we have approved CMHC financing for both construction financing (\$366.4 million) and for the take out financing (\$446,2 million) at stabilization. You are in receipt of the actual CMHC Certificates of Insurance from CBRE on October 10, 2025. As you are aware these COI's took almost 16 months to procure, have favourable terms, and are one of the largest CMHC loans in Canada for 2025. Look forward to our meeting.

Regards,

Hans Jain , Hon. B.Sc.

President



 [416.567.9404](tel:416.567.9404)

 atriadevelopment.ca

 [276 Carlaw Ave, Unit 301, Toronto, ON M4M 3L1](#)

Executive Assistant: Hansa Jain

E: hansa.jain@atria.ca

C: 647.409.7459

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From: Hans Jain <hans.jain@atria.ca>
Sent: September 25, 2025 1:48 PM
To: Bryan Tannenbaum <btannenbaum@tdbadvisory.ca>; Arif Dhanani <adhanani@tdbadvisory.ca>
Cc: brett@moldaverbarristers.com; Nisan Thuraiatnam <nthurairatnam@tdbadvisory.ca>; pcho@weirfoulds.com; wjaskiewicz@weirfoulds.com
Subject: Re: Letter to Receiver - UBC Solutions Incorporated vs. 1680 Brimley Limited Partnership

Hello Bryan,

Please let me know your availability to meet on an urgent basis to discuss the best course of action.

We are assembling the information requested. Please note our controller has had to leave the country to deal with a family emergency. Notwithstanding, we are expecting to have information out by end of day tomorrow. Thanks kindly.

Regards,

Hans

Hans Jain , Hon. B.Sc.
President



	416.567.9404		416.645.2488
	atriadevelopment.ca		647.243.4318
	5000 Yonge St, Suite 1706 Toronto, ON M2N 7E9		

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From: Bryan Tannenbaum <btannenbaum@tdbadvisory.ca>
Sent: Thursday, September 25, 2025 11:57:08 AM
To: Hans Jain <hans.jain@atria.ca>; Arif Dhanani <adhanani@tdbadvisory.ca>
Cc: brett@moldaverbarristers.com<brett@moldaverbarristers.com>; Nisan Thuraiatnam

<nthurairatnam@tdbadvisory.ca>; pcho@weirfoulds.com<pcho@weirfoulds.com>;
wjaskiewicz@weirfoulds.com<wjaskiewicz@weirfoulds.com>

Subject: RE: Letter to Receiver - UBC Solutions Incorporated vs. 1680 Brimley Limited Partnership

Resending as Arif's address was wrong (typo) on original email from Mr. Jain.



TDB Restructuring Limited

Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
Managing Director

✉ btannenbaum@tdbadvisory.ca

☎ 416-238-5055

📠 416-915-6228

📍 11 King St. West, Suite 700
Toronto, ON M5H 4C7

tdbadvisory.ca

Integrity. Leadership. Excellence.

From: Bryan Tannenbaum <btannenbaum@tdbadvisory.ca>

Sent: Thursday, September 25, 2025 11:52 AM

To: Hans Jain <hans.jain@atria.ca>; adhani@tdsbadvisory.ca

Cc: brett@moldaverbarristers.com; Nisan Thuraiatnam <nthurairatnam@tdbadvisory.ca>; pcho@weirfoulds.com;
wjaskiewicz@weirfoulds.com

Subject: RE: Letter to Receiver - UBC Solutions Incorporated vs. 1680 Brimley Limited Partnership

Mr. Jain

We acknowledge your email below and we will review.

That said, we never heard back from you on our request of September 11, 2025 (a copy of which is attached for your convenience), other than your counsel indicating that we would have a response from you this week.

Please provide this information as soon as possible.

Bryan



TDB Restructuring Limited

Bryan A. Tannenbaum , FCPA, FCA, FCIRP, LIT
Managing Director

✉ btannenbaum@tdbadvisory.ca

☎ 416-238-5055

📠 416-915-6228

📍 11 King St. West, Suite 700
Toronto, ON M5H 4C7

tdbadvisory.ca

Integrity. Leadership. Excellence.

From: Hans Jain <hans.jain@atria.ca>

Sent: Wednesday, September 24, 2025 11:18 PM

To: Bryan Tannenbaum <btannenbaum@tdbadvisory.ca>; adhani@tdsbadvisory.ca

Cc: Hans Jain <hans.jain@atria.ca>; brett@moldaverbarristers.com

Subject: Letter to Receiver - UBC Solutions Incorporated vs. 1680 Brimley Limited Partnership

External sender

Hello Bryan and Arif,

Please see the attached Letter and corresponding material. Looking forward to meeting.

Regards,

Hans Jain , Hon. B.Sc.

President



 [416.567.9404](tel:416.567.9404)

 [atriadevelopment.ca](mailto:hansa.jain@atria.ca)

 [276 Carlaw Ave, Unit 304, Toronto, ON M4M 3L1](#)

Executive Assistant: Hansa Jain

E: hansa.jain@atria.ca

C: 647.409.7459

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TAB 5

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

UBC SOLUTIONS INCORPORATED

Applicant

- and -

**1680 BRIMLEY LIMITED PARTNERSHIP, 2808908 ONTARIO INC. and BRIMLEY
PROGRESS DEVELOPMENTS INC.**

Respondents

APPLICATION UNDER SUBSECTION 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

CONFIDENTIAL SUPPLEMENTARY RESPONDING AFFIDAVIT OF HANS JAIN

I, **Hans Jain**, of the City of Toronto, in the Province of Ontario, **AFFIRM THAT:**

1. I am the sole director of 2808908 Ontario Inc. (“**280**”) and Brimley Progress Developments Inc. (the “**Nominee**” and together with 1680 Brimley Limited Partnership (“**1680**”) collectively referred hereto as the “**Respondents**”), and as such, I have knowledge of the matters herein deposed.
2. I provide this affidavit as a supplement to my affidavit sworn on July 17th in this proceeding expressing, inter alia, my concerns about the motion being brought forward by TDB Restructuring Limited in its capacity as receiver of the Respondents (the “**Receiver**”).
3. Attached as **Confidential Exhibits “A” and “B”** respectfully are two reports, one from Colliers Project Consulting and Investment Group (“**Colliers**”) and one from Avison Young, Land

- 2 -

Services Group (“**Avison**”). Both entities are well known commercial real estate brokerages who, among other things, routinely engage in the marketing and sale of large real estate development projects such as the Brimley Project. Their respective credentials are set out in the Exhibits.

4. Given my concerns about the marketing undertaken to date by the Receiver, I reached out to each of these entities to ask that they provide these opinions to assist the Court in considering how a better sale process might be conducted.

5. I did not offer to either of Colliers or Avison the opportunity to sell the Brimley Project, since it is in receivership and that decision is up to the Court or the Receiver, but I believe they would both be interested in doing so if the Receiver or the Court accept my recommendation that CBRE be dismissed and a new agency engaged.

6. As these proposals contain important market information and opinions of value which might impact the sale of the property, it is my recommendation that these proposals be sealed. This affidavit will be served with the proposal redacted. An unredacted version will be served separately to the Court and the Receiver.

AFFIRMED REMOTELY BEFORE ME
by Hans Jain at the City of Toronto, in the
Province of Ontario, on this 20th day of July
2026, in accordance with *O. Reg. 431/20,*
Administering or Declaration Remotely.



Commissioner for Taking Affidavits
BIRPAL BENIPAL (LSO # 89984B)



Hans Jain (Jul 20, 2026 16:29:22 EDT)

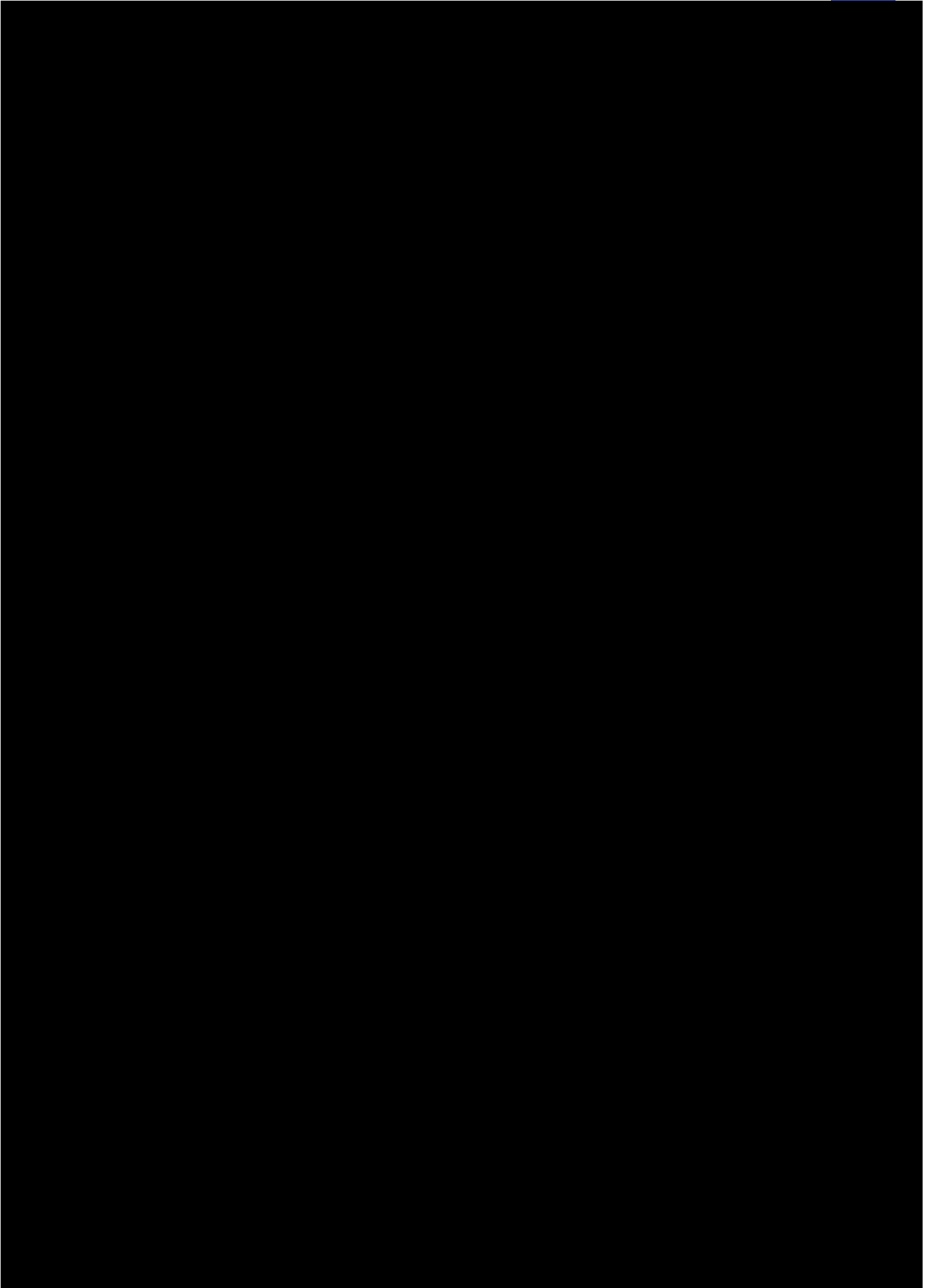
HANS JAIN

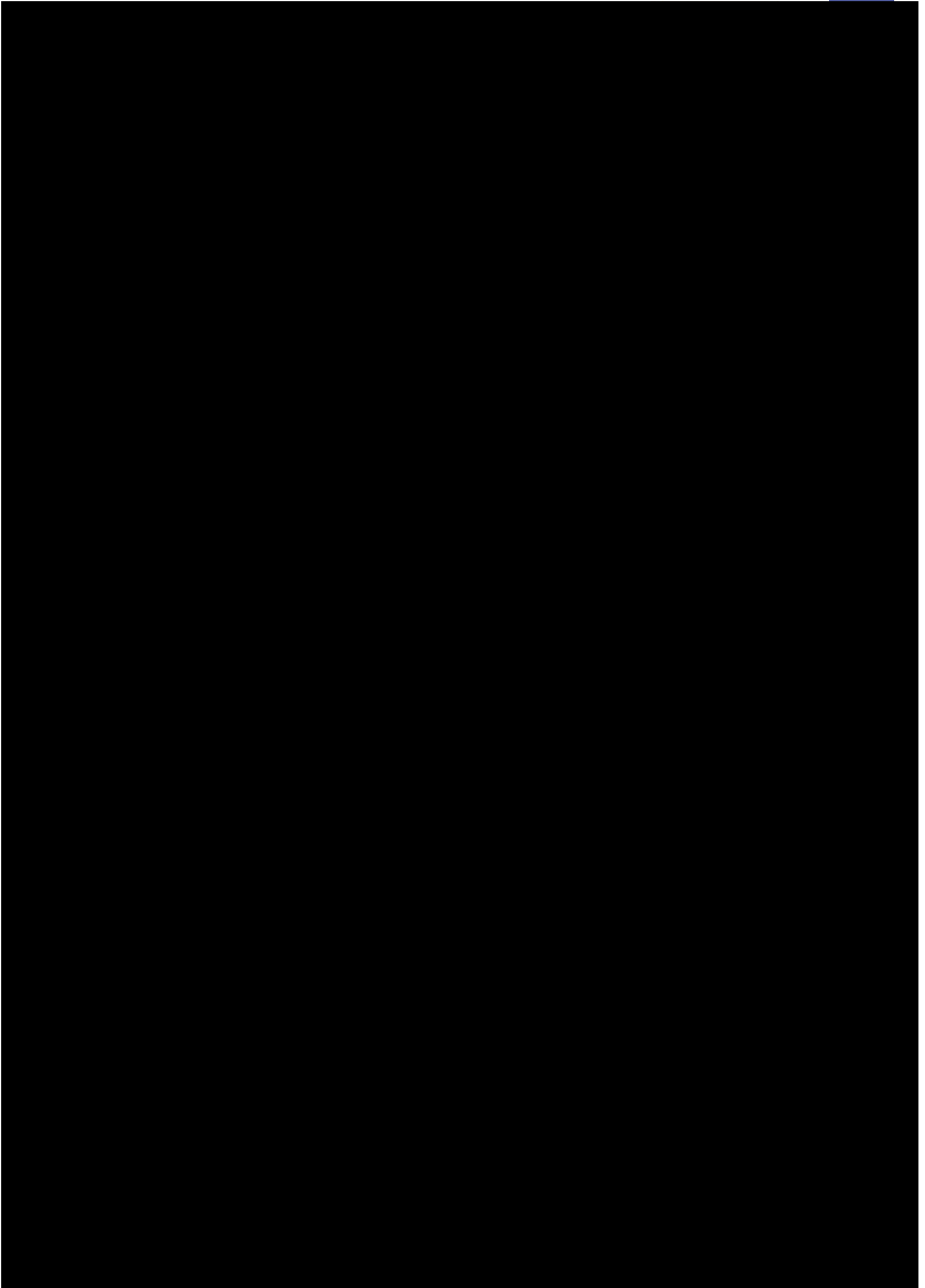
This is **CONFIDENTIAL** Exhibit “A” referred to in the Affidavit of Hans Jain of the City of Toronto, in the Province of Ontario, this 20th day of July 2026 in accordance with *O. Reg. 431/20, Administering or Declaration Remotely*

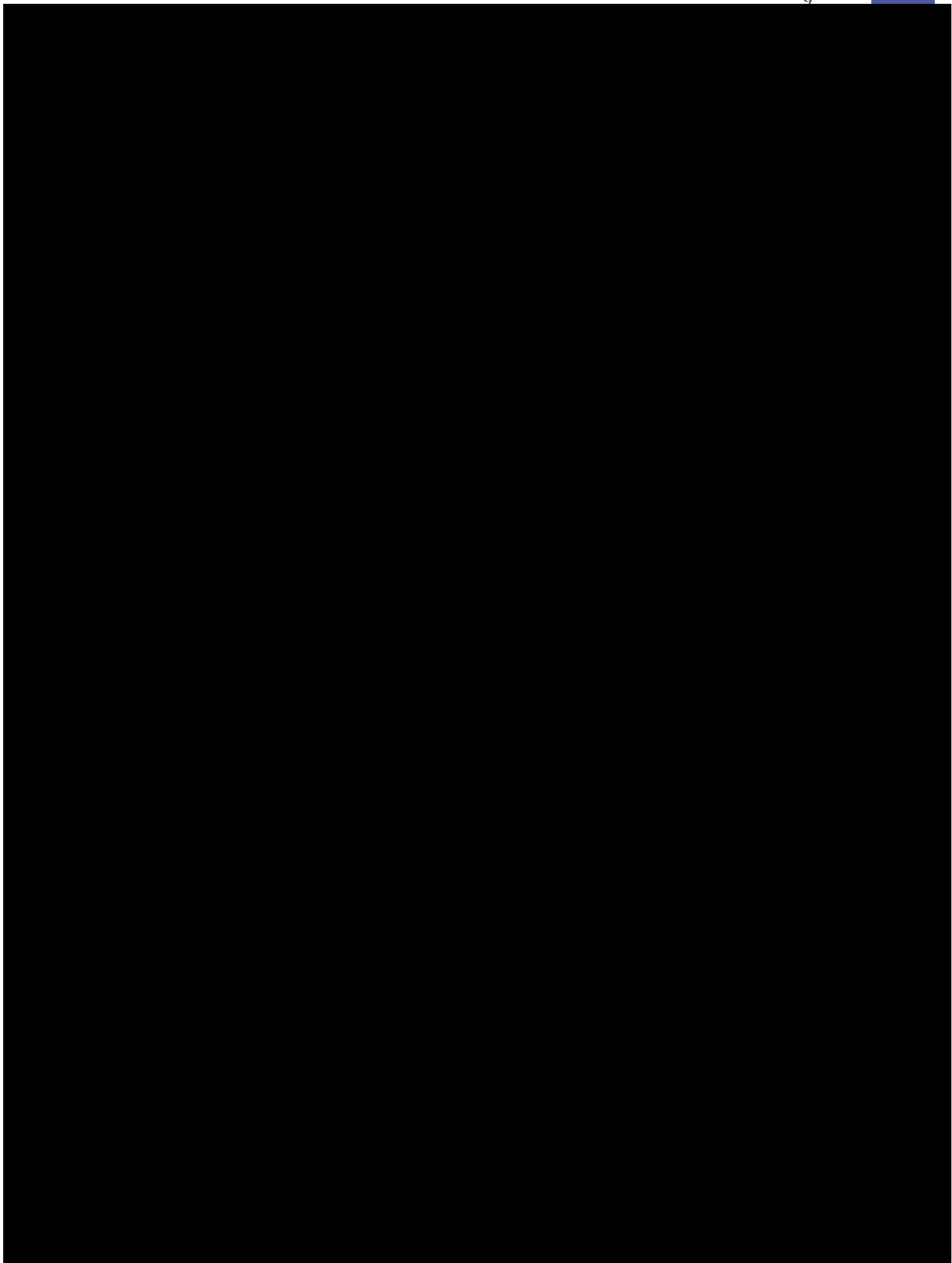


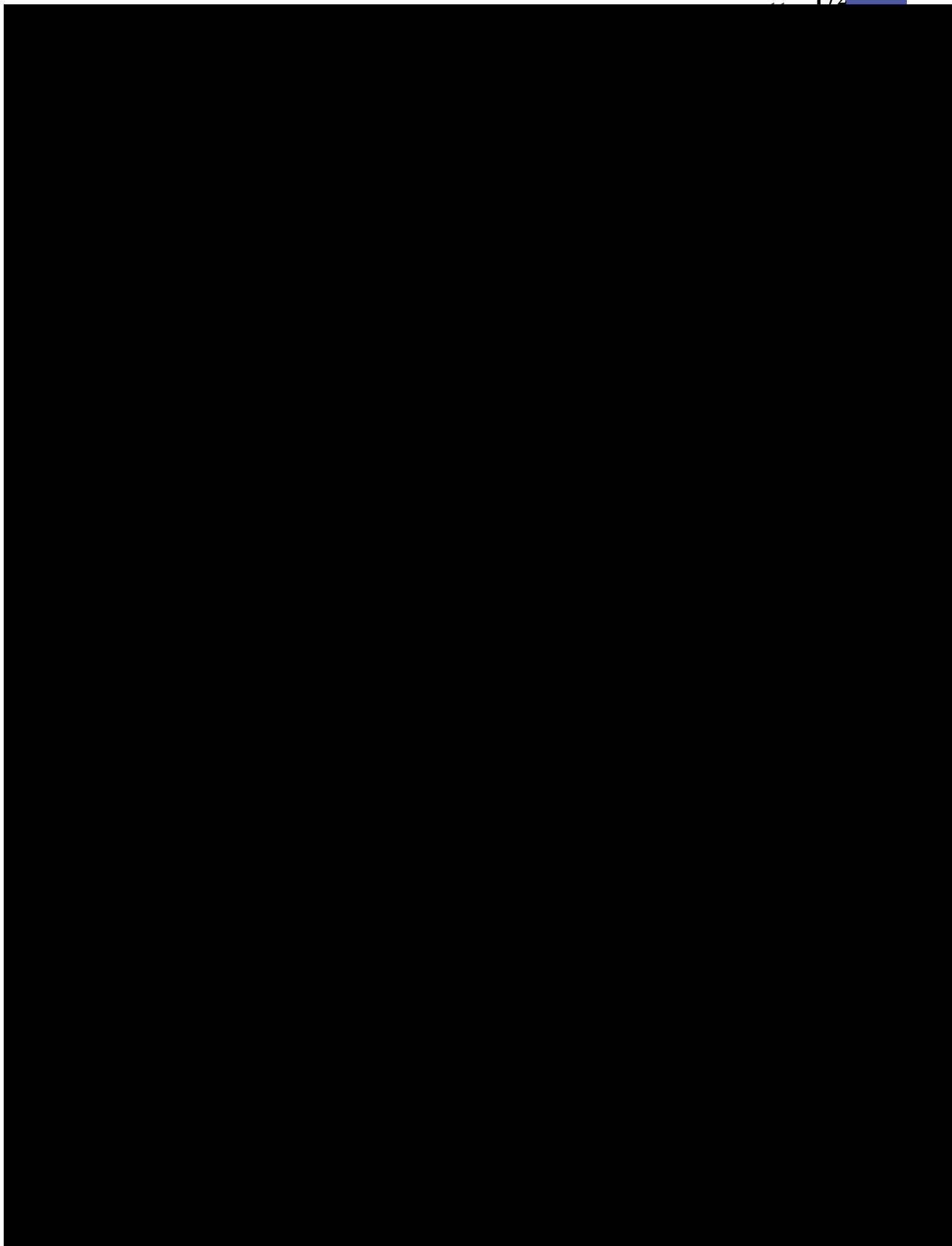
Commissioner for Taking Affidavits (or as may be)

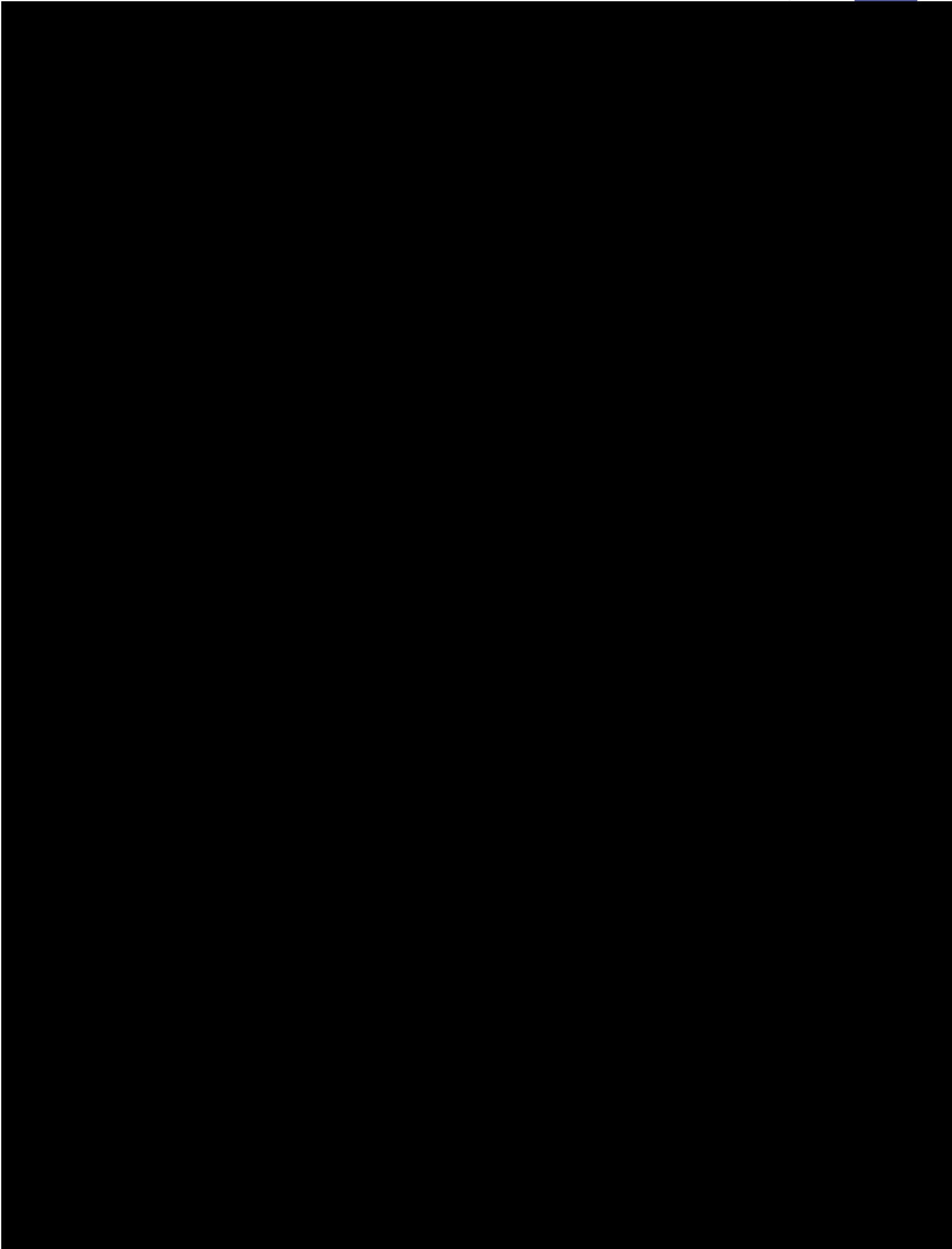
BIRPAL BENIPAL (LSO # 89984B)

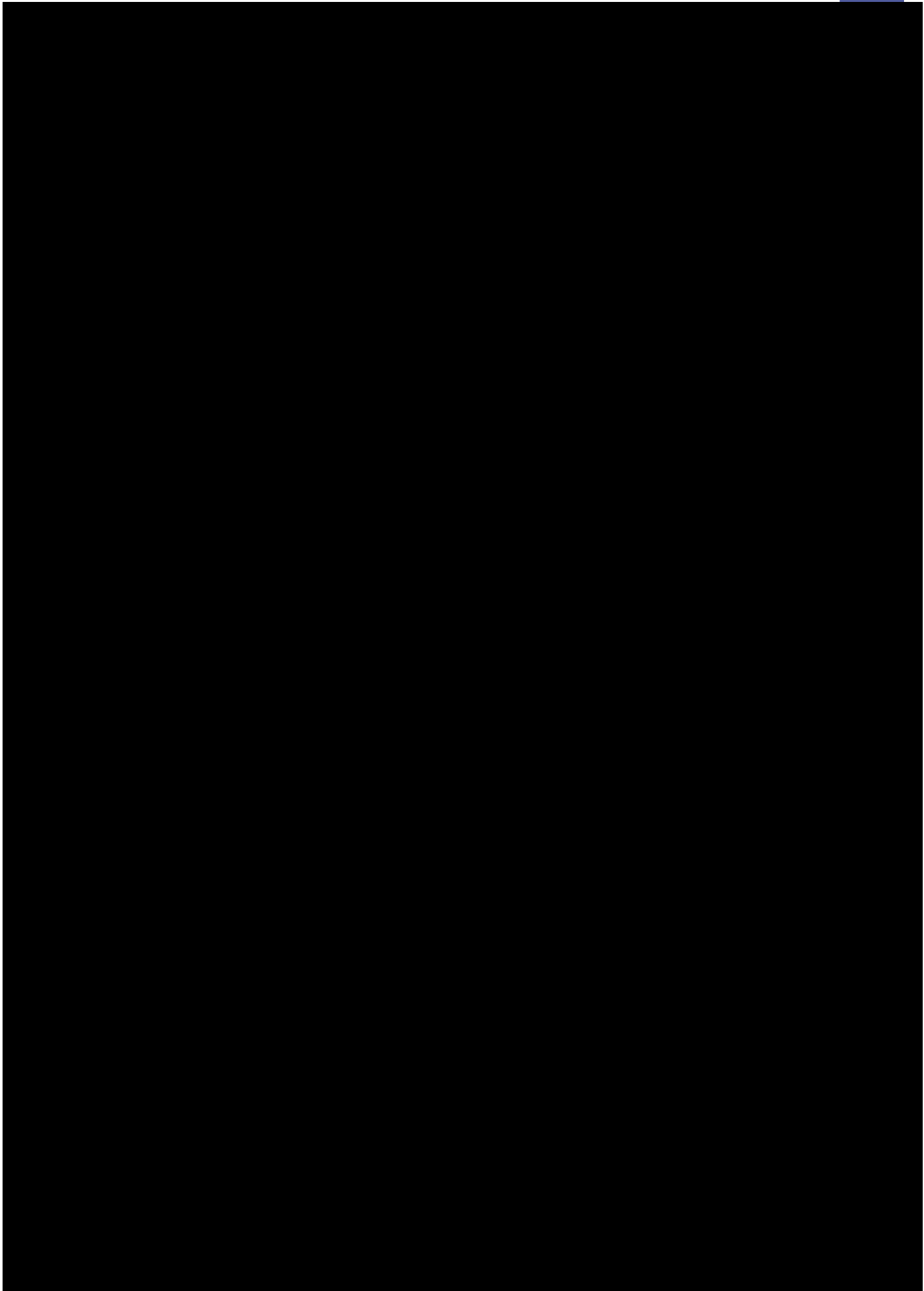


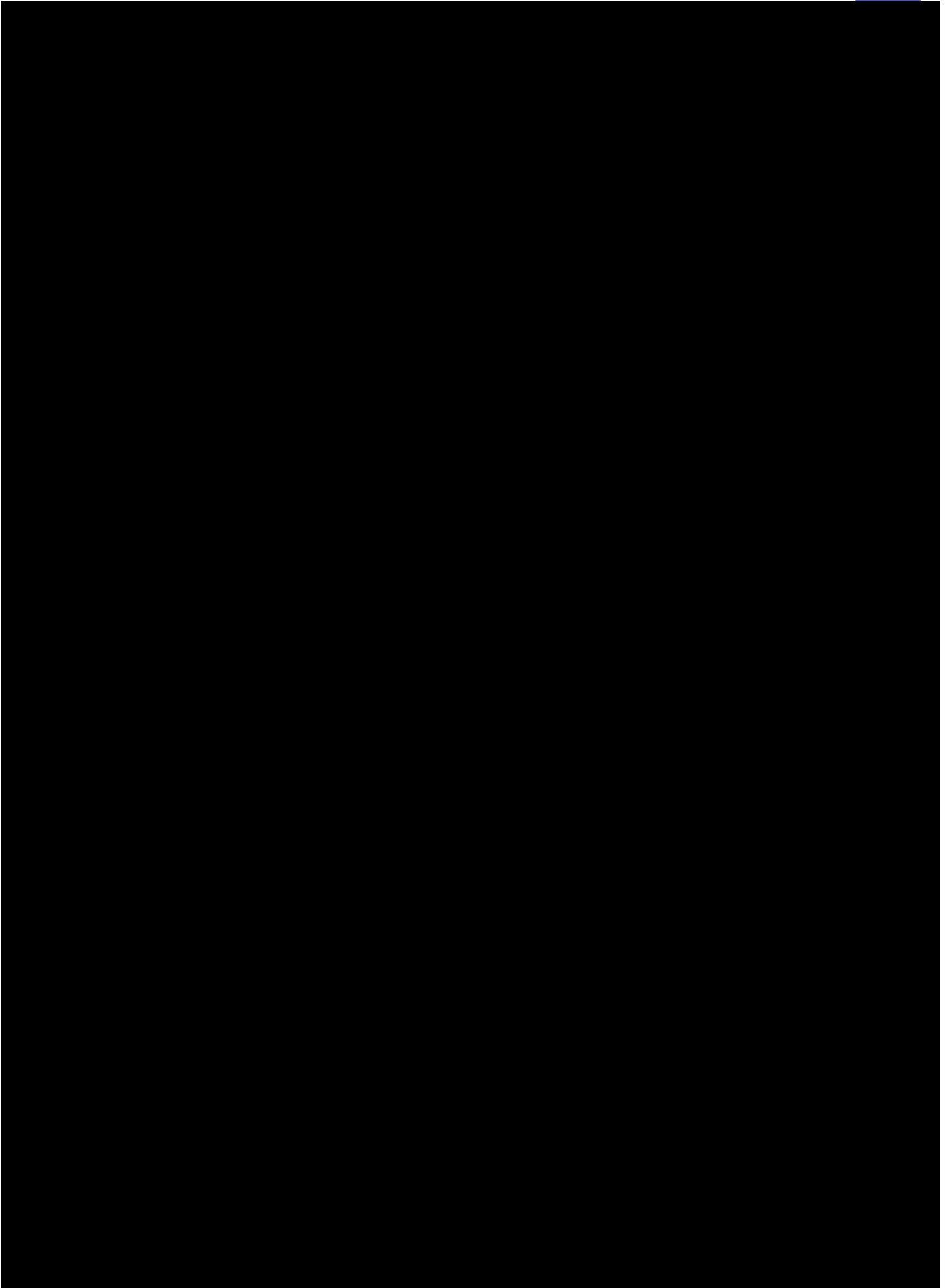


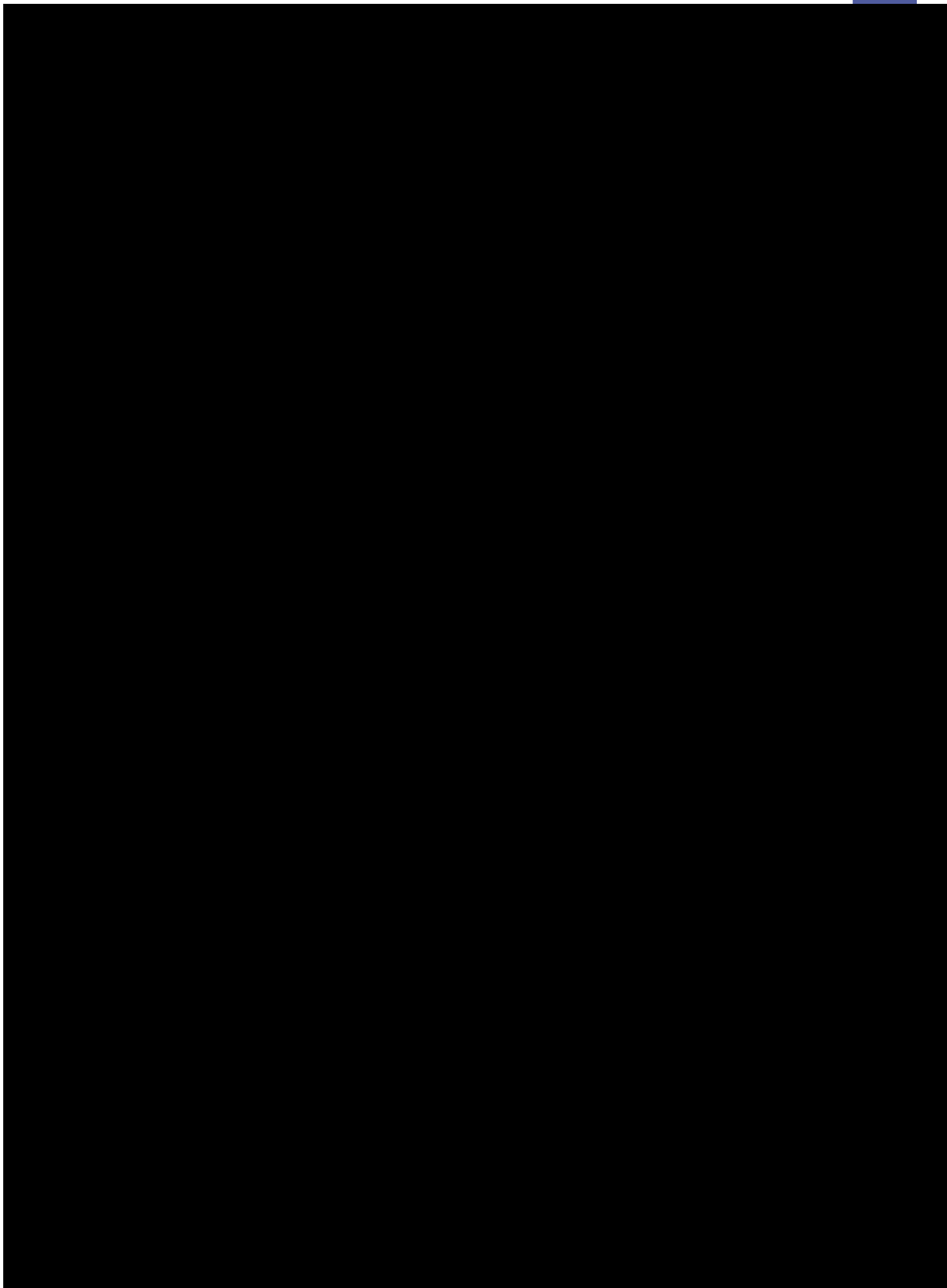


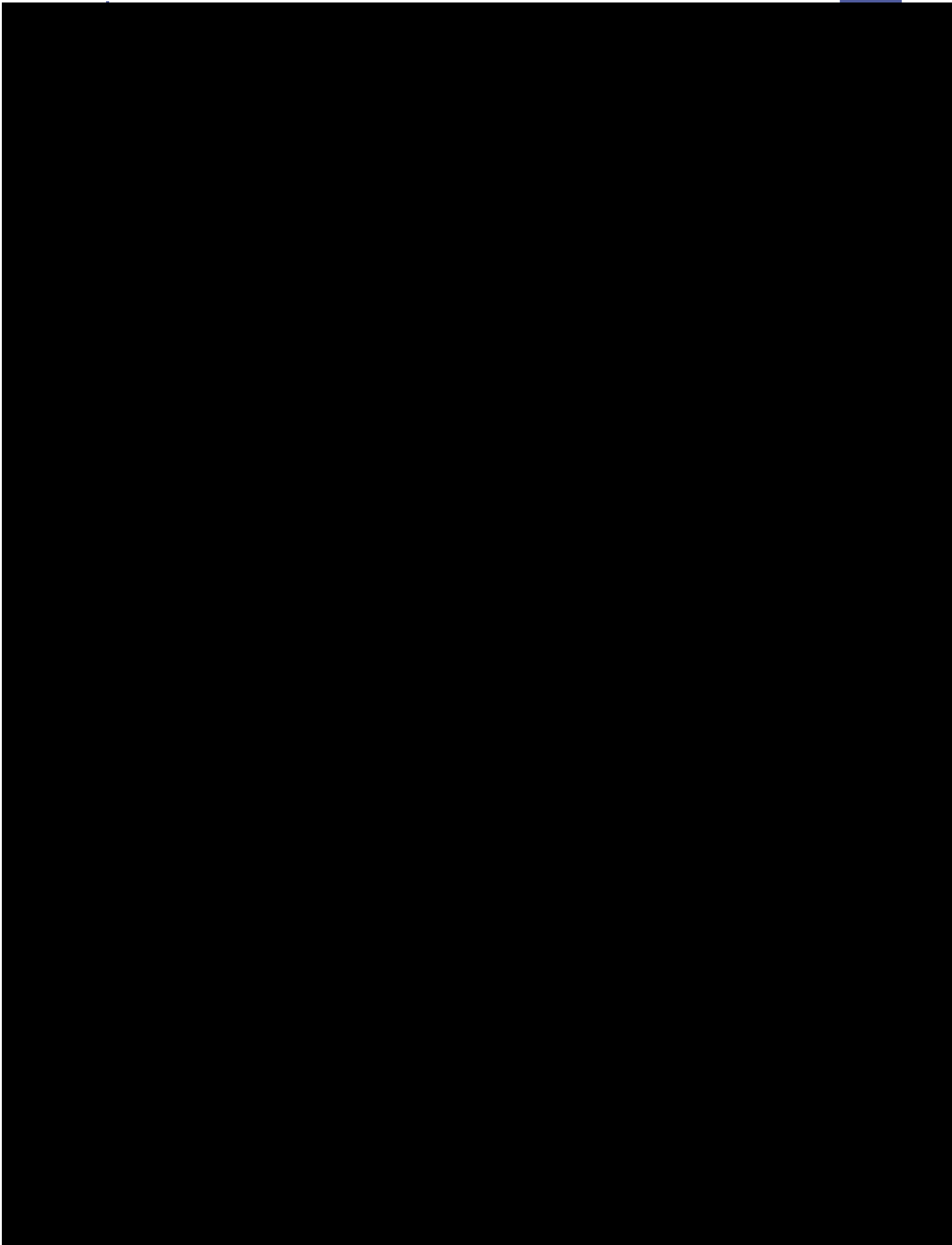


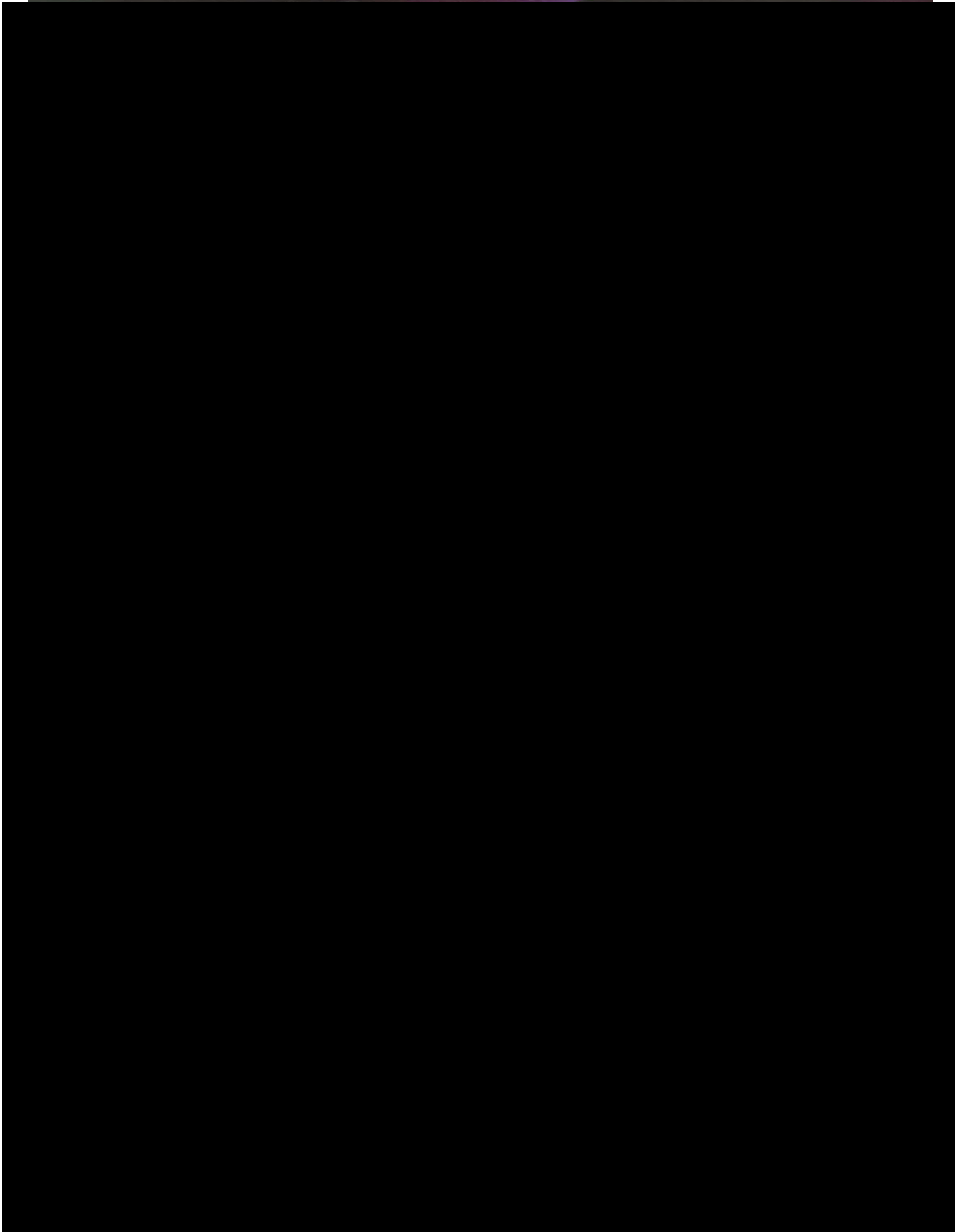


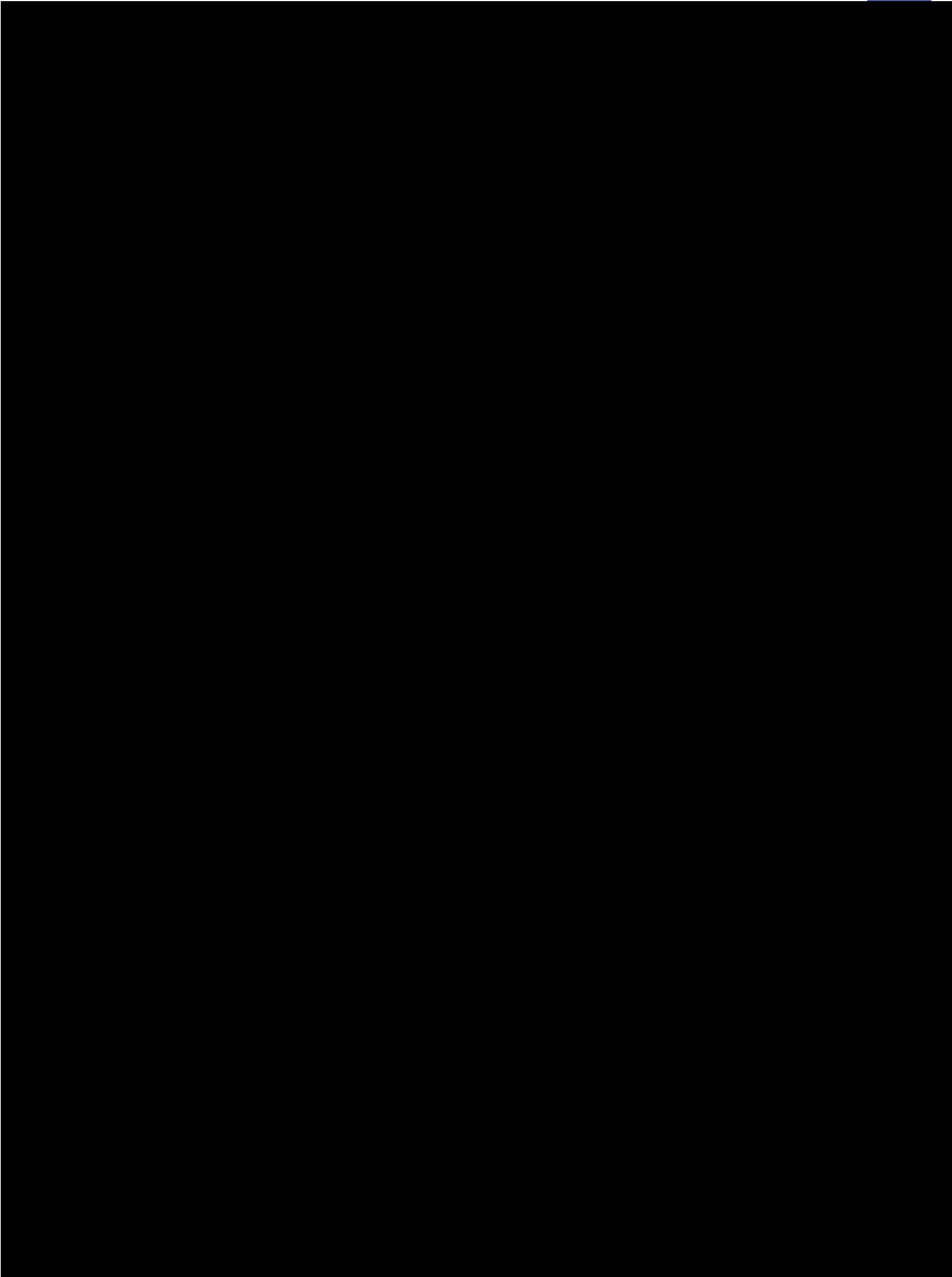


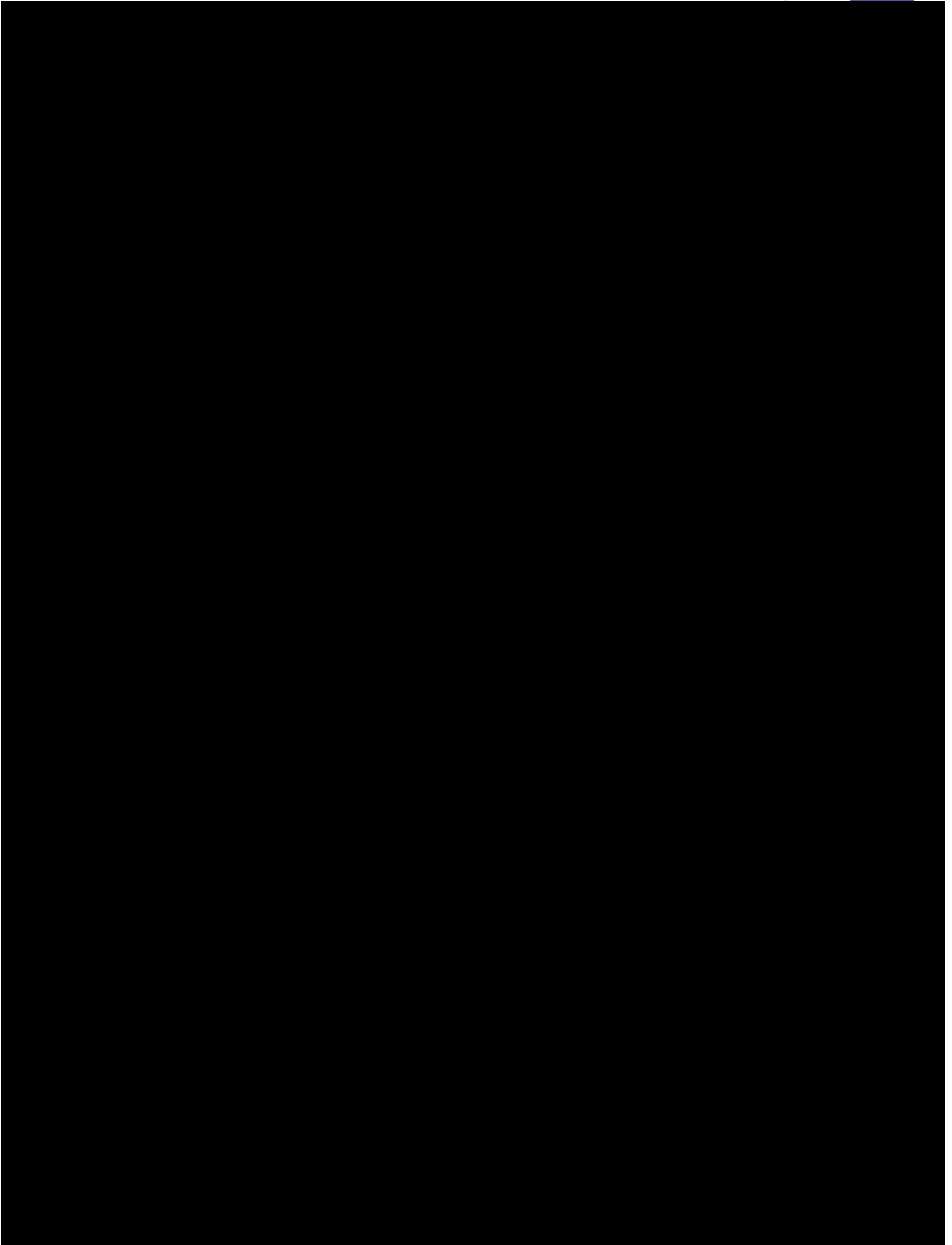


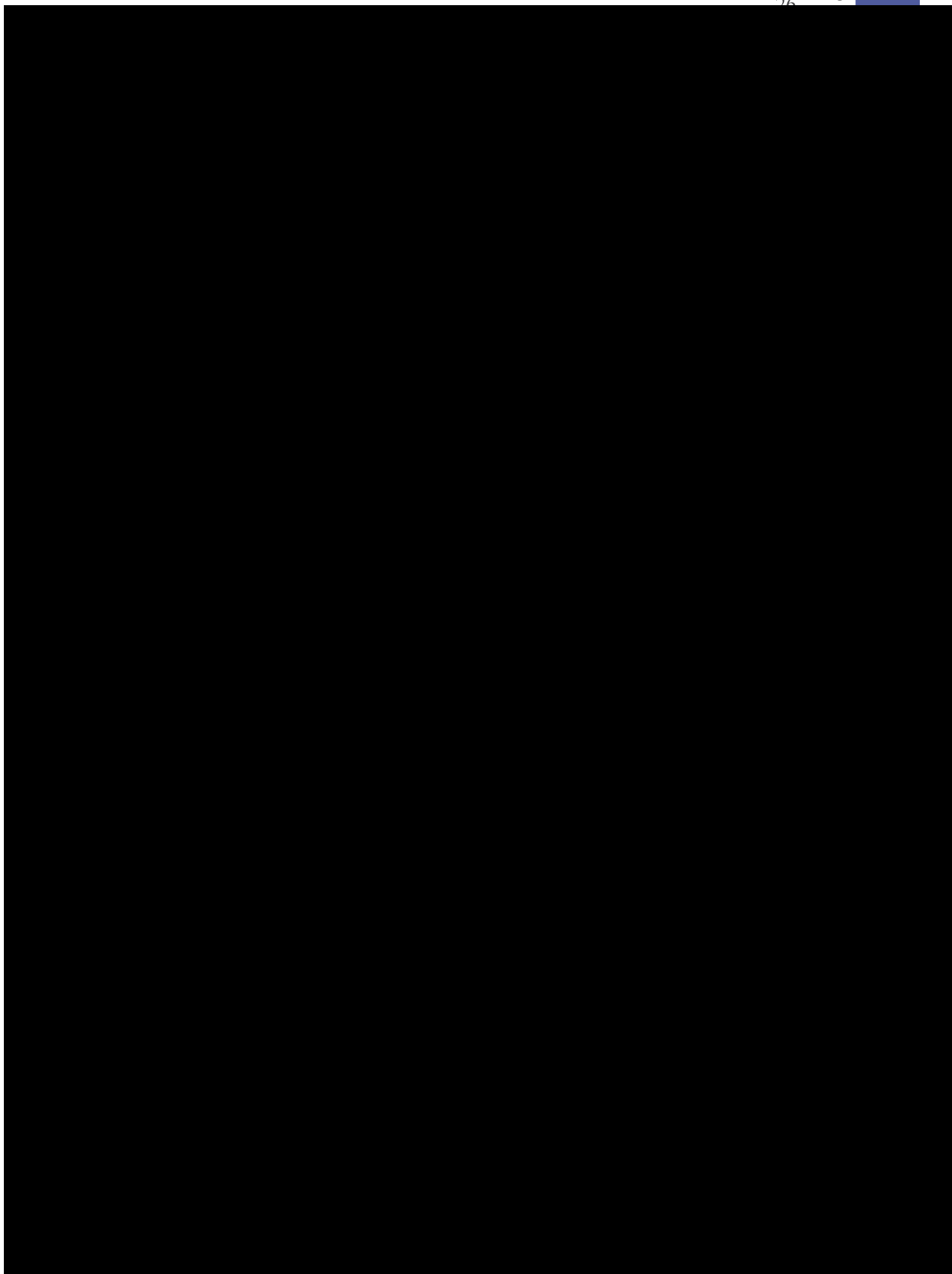


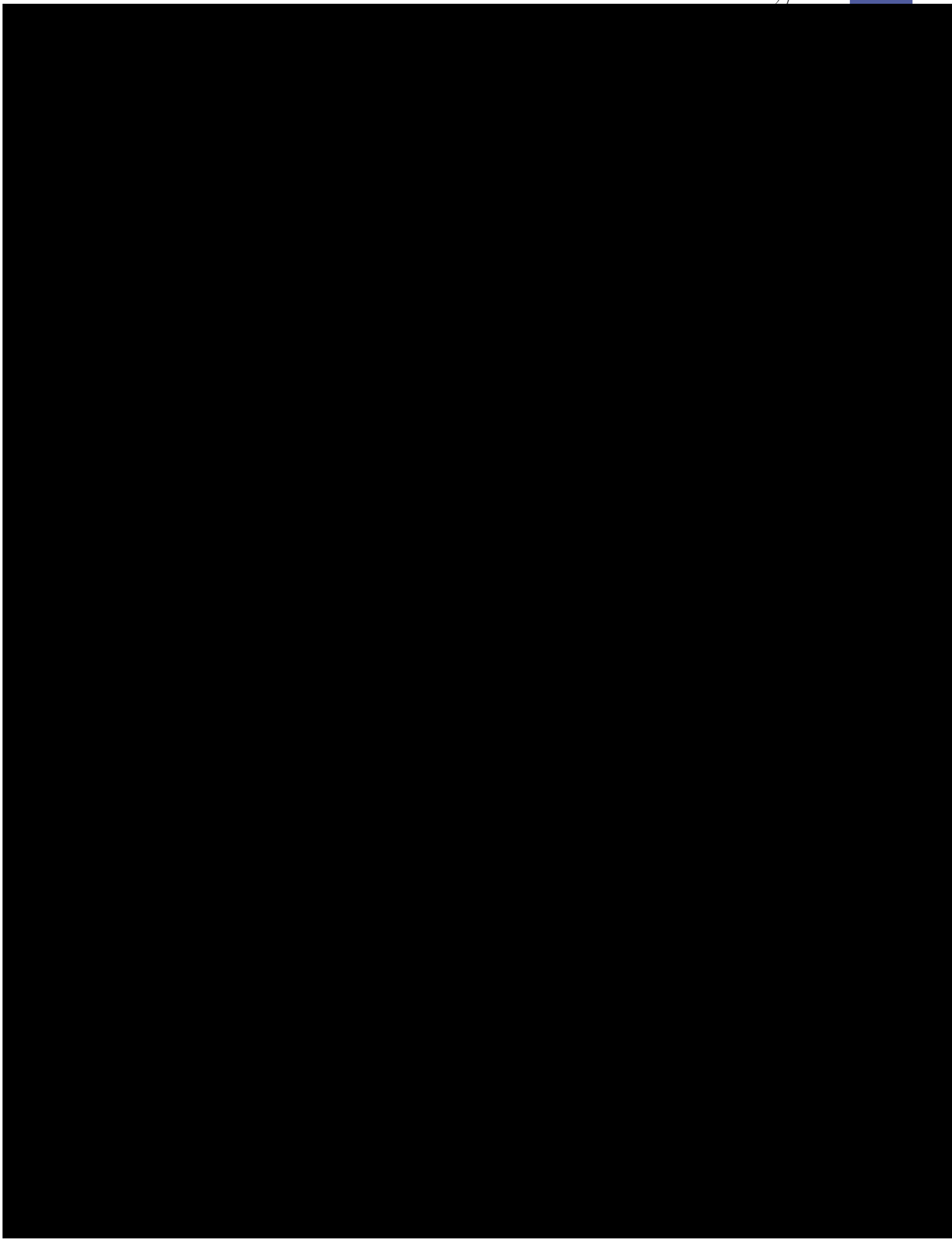


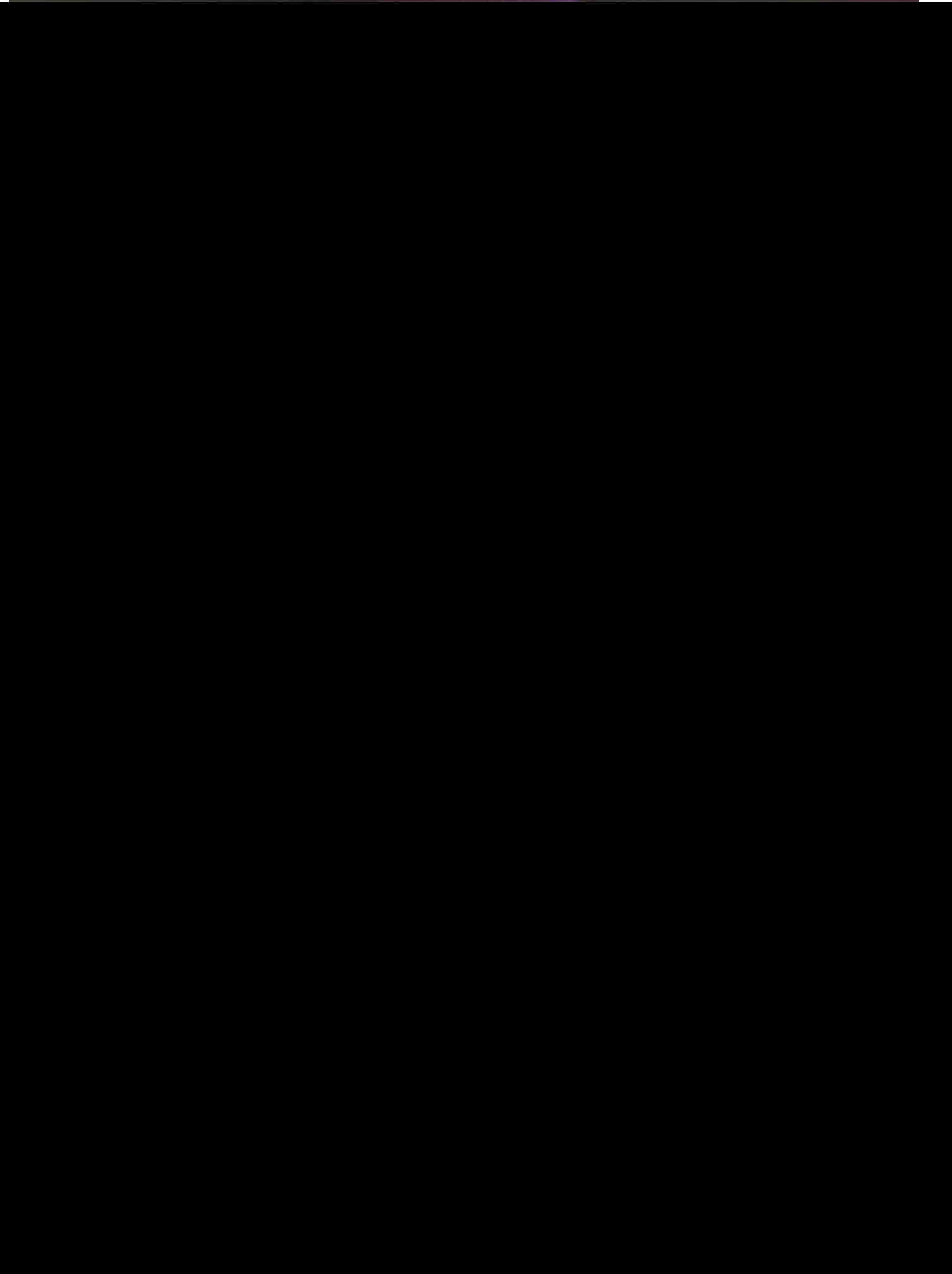


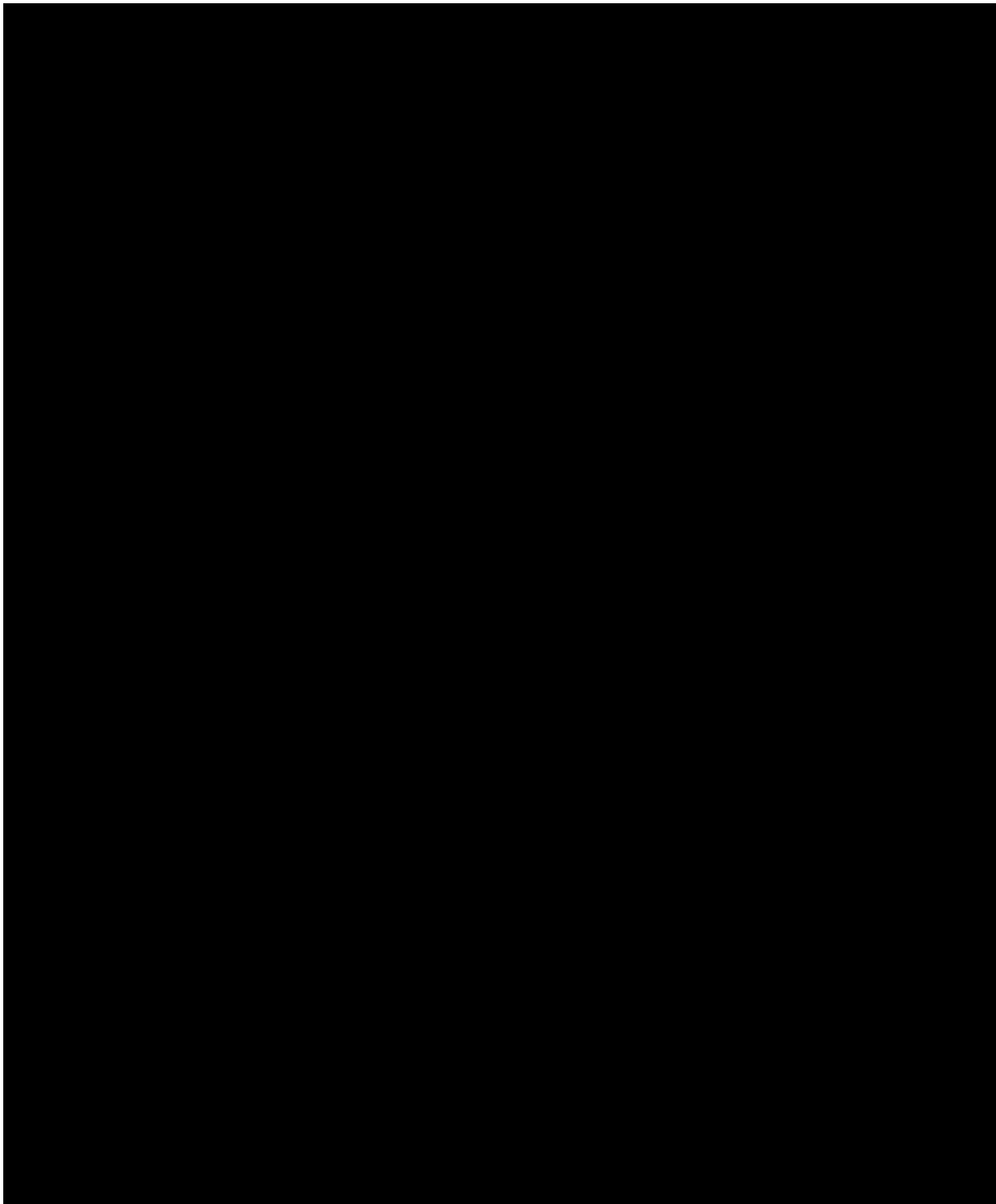


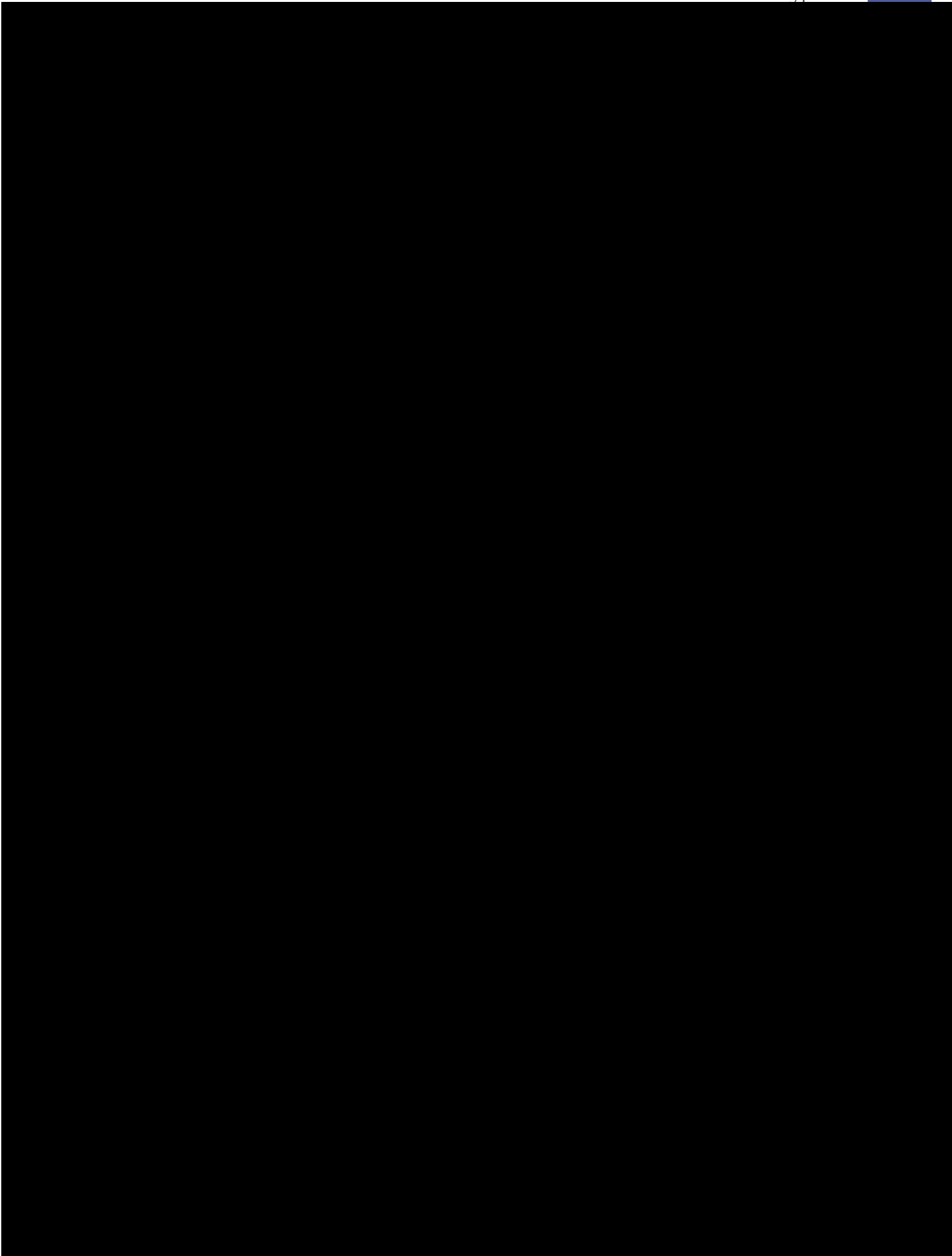


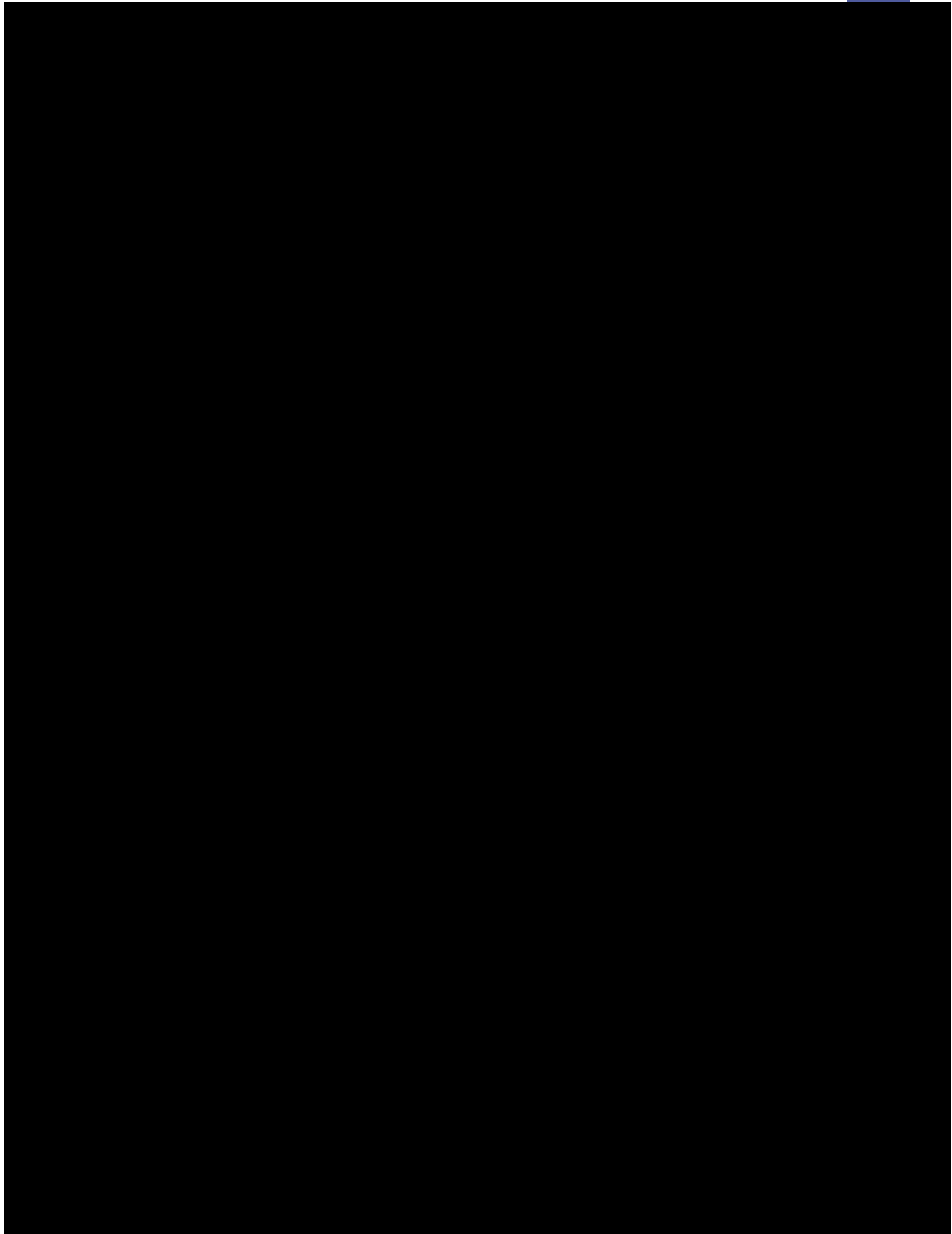


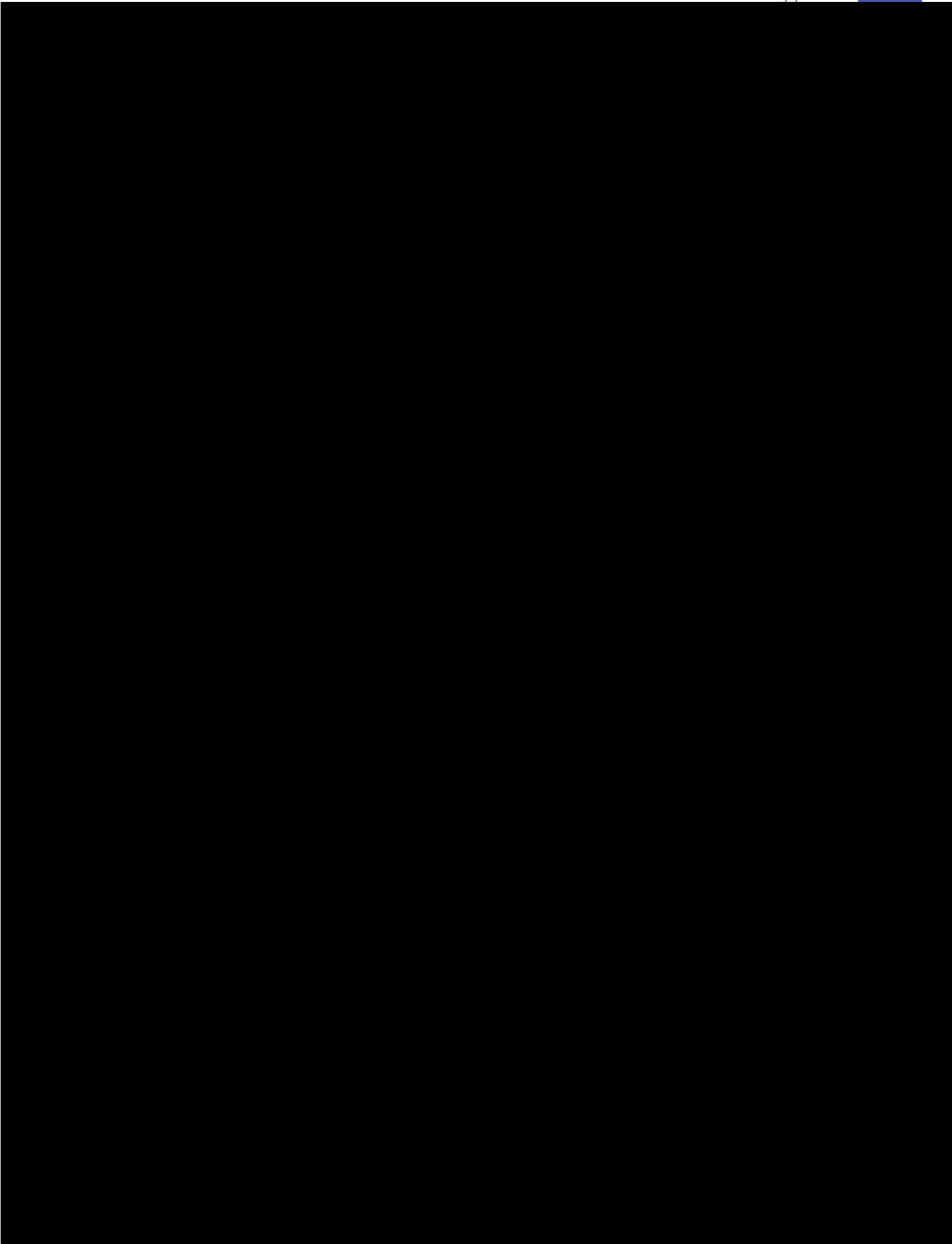


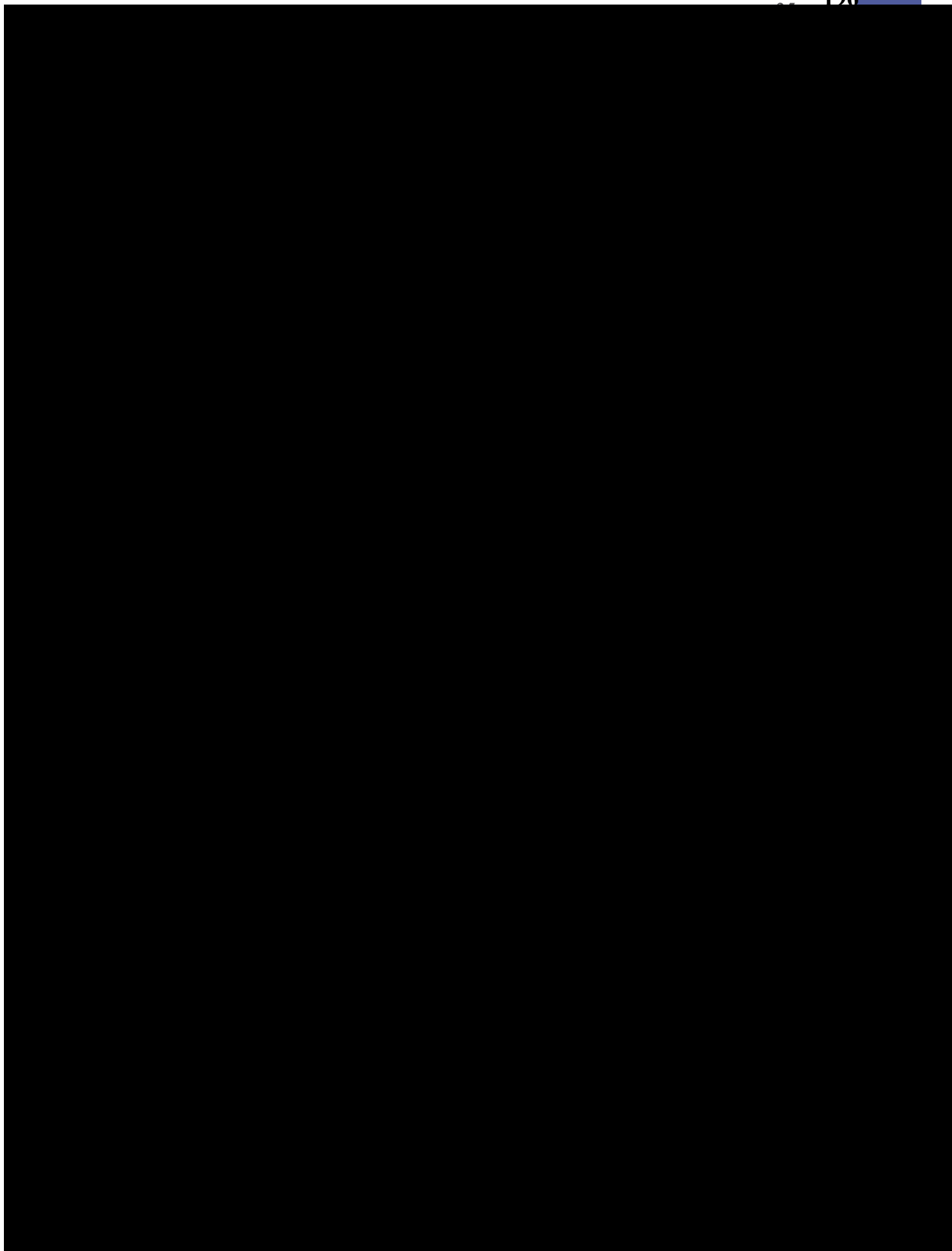




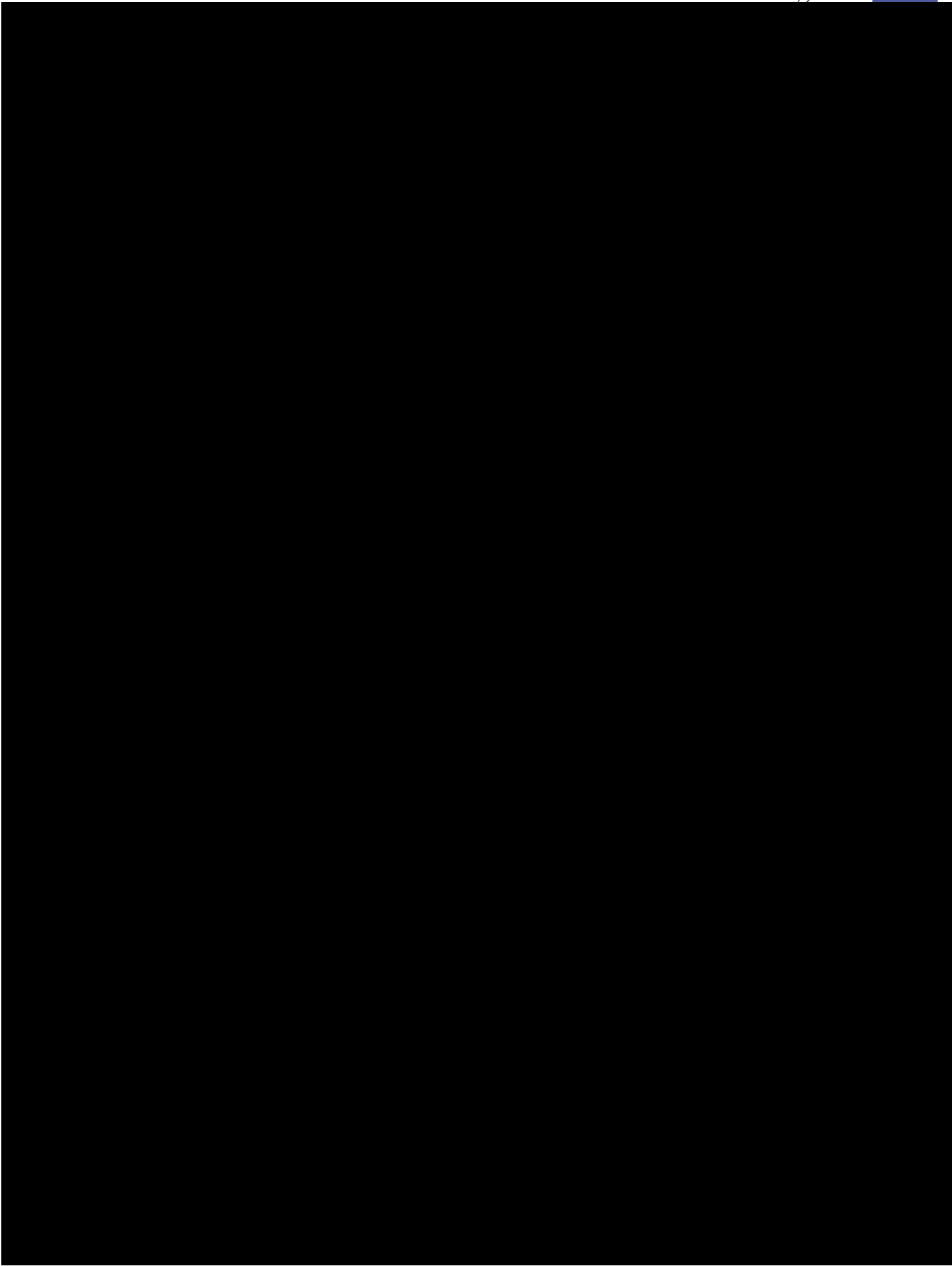


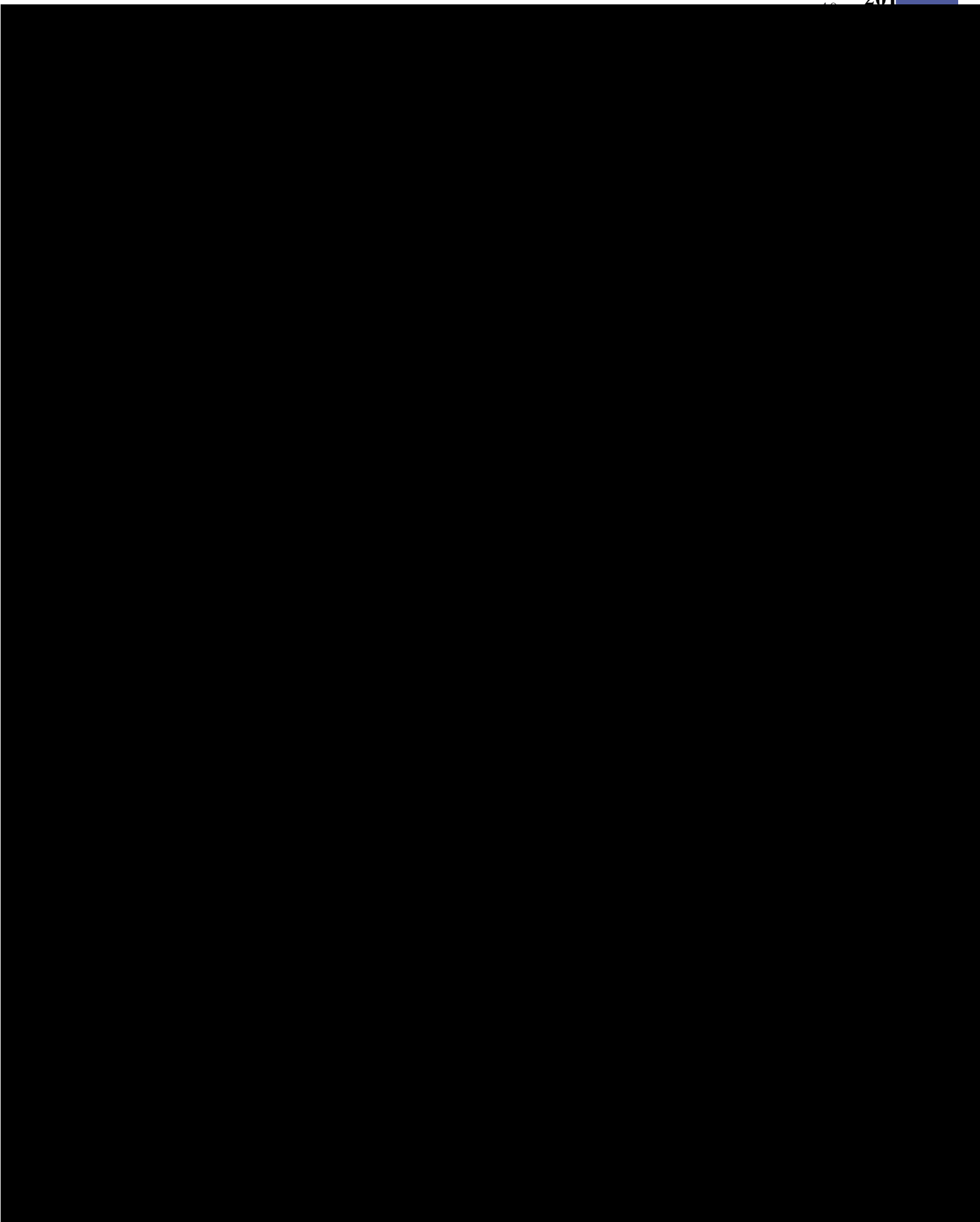


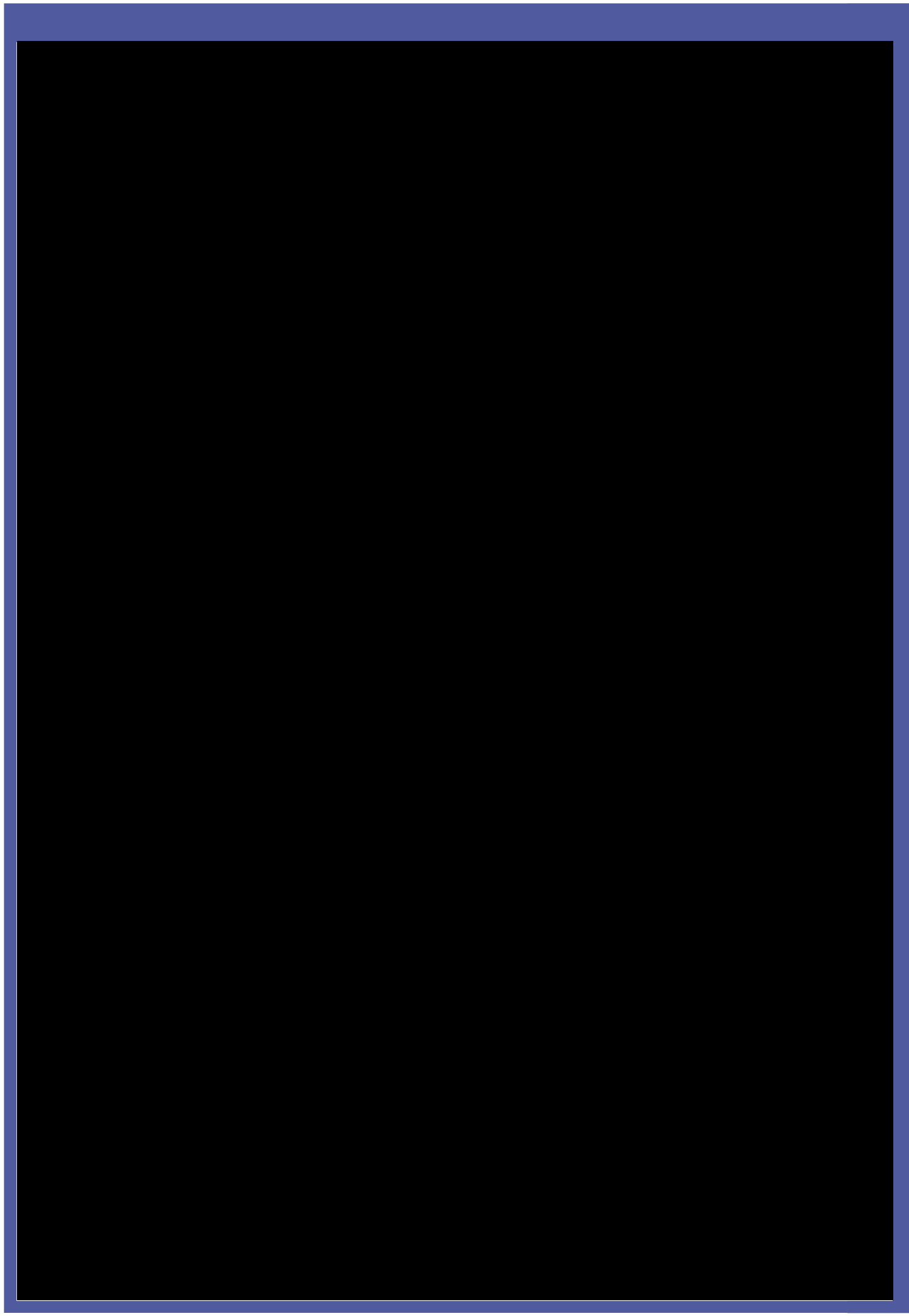










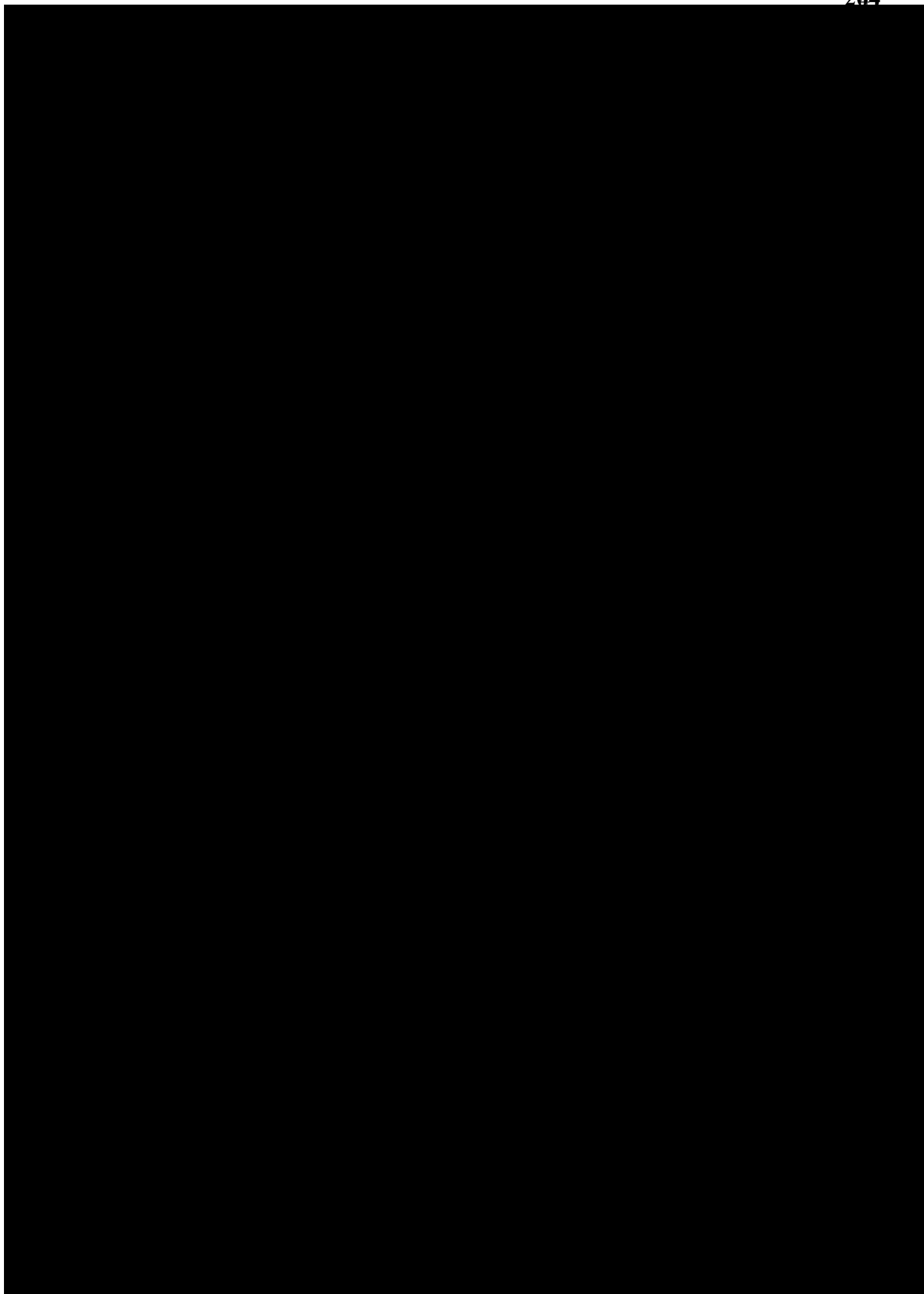


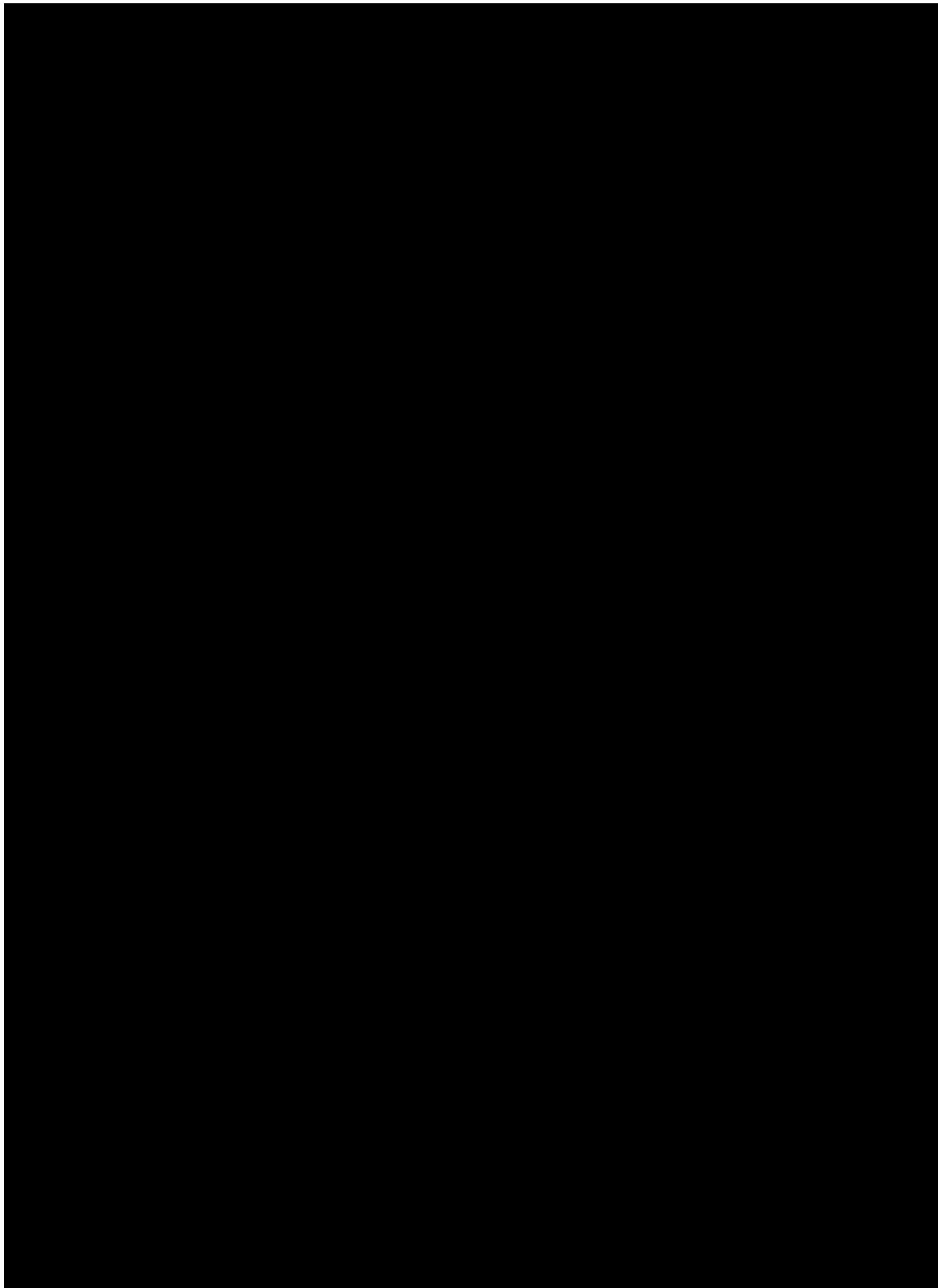
This is **CONFIDENTIAL** Exhibit “B” referred to in the Affidavit of Hans Jain of the City of Toronto, in the Province of Ontario, this 20th day of July 2026 in accordance with *O. Reg. 431/20, Administering or Declaration Remotely*

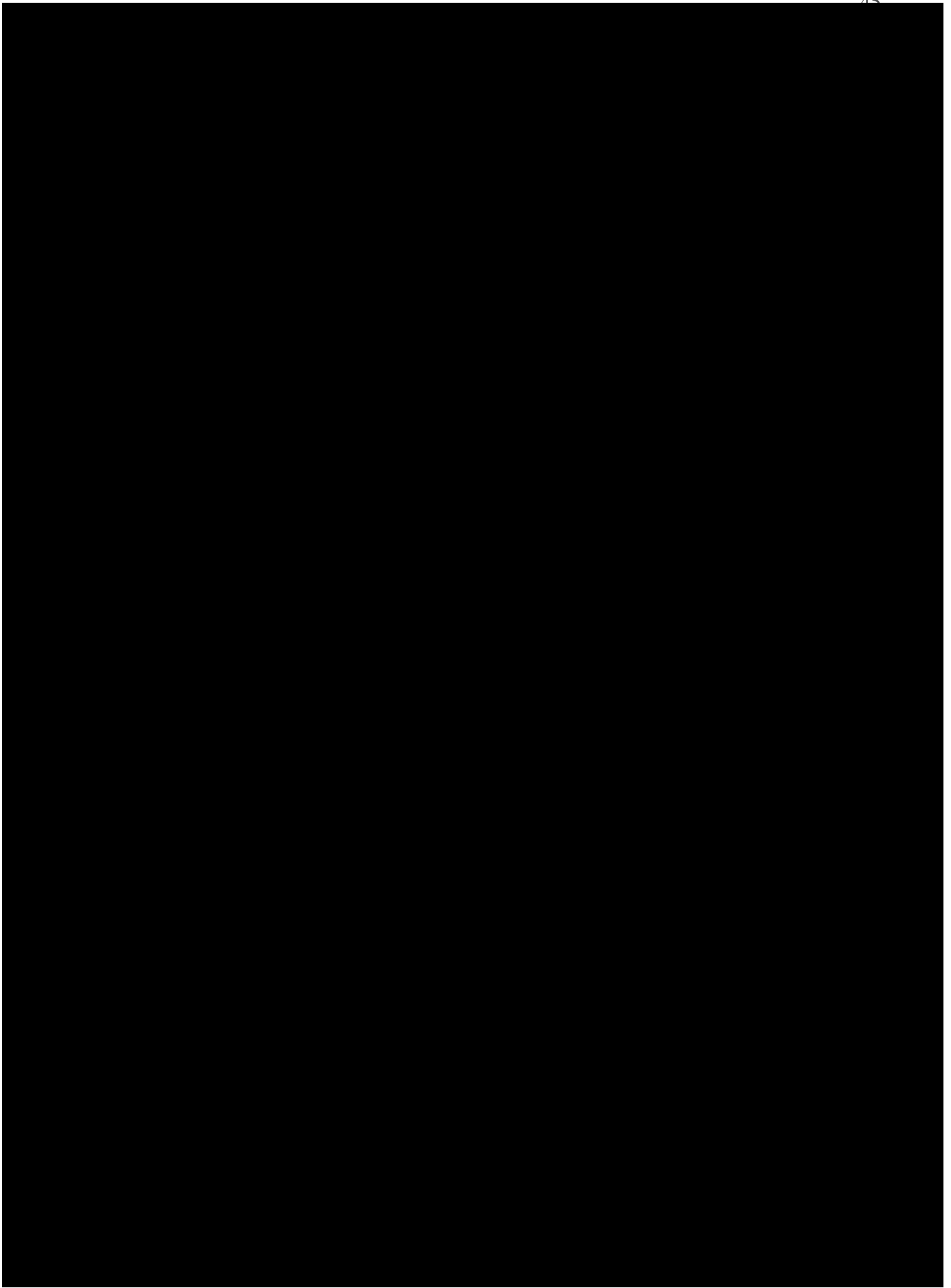


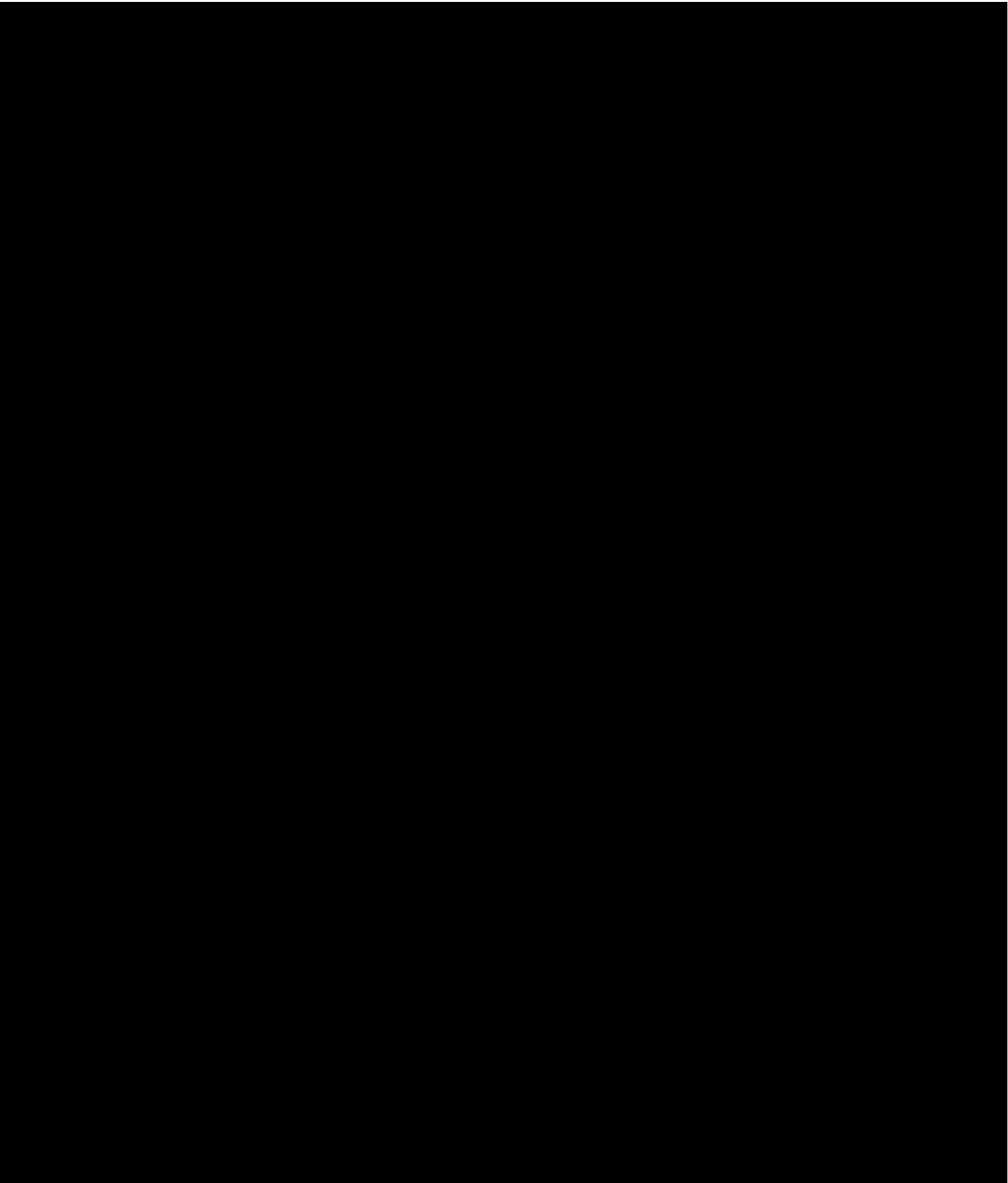
Commissioner for Taking Affidavits (or as may be)

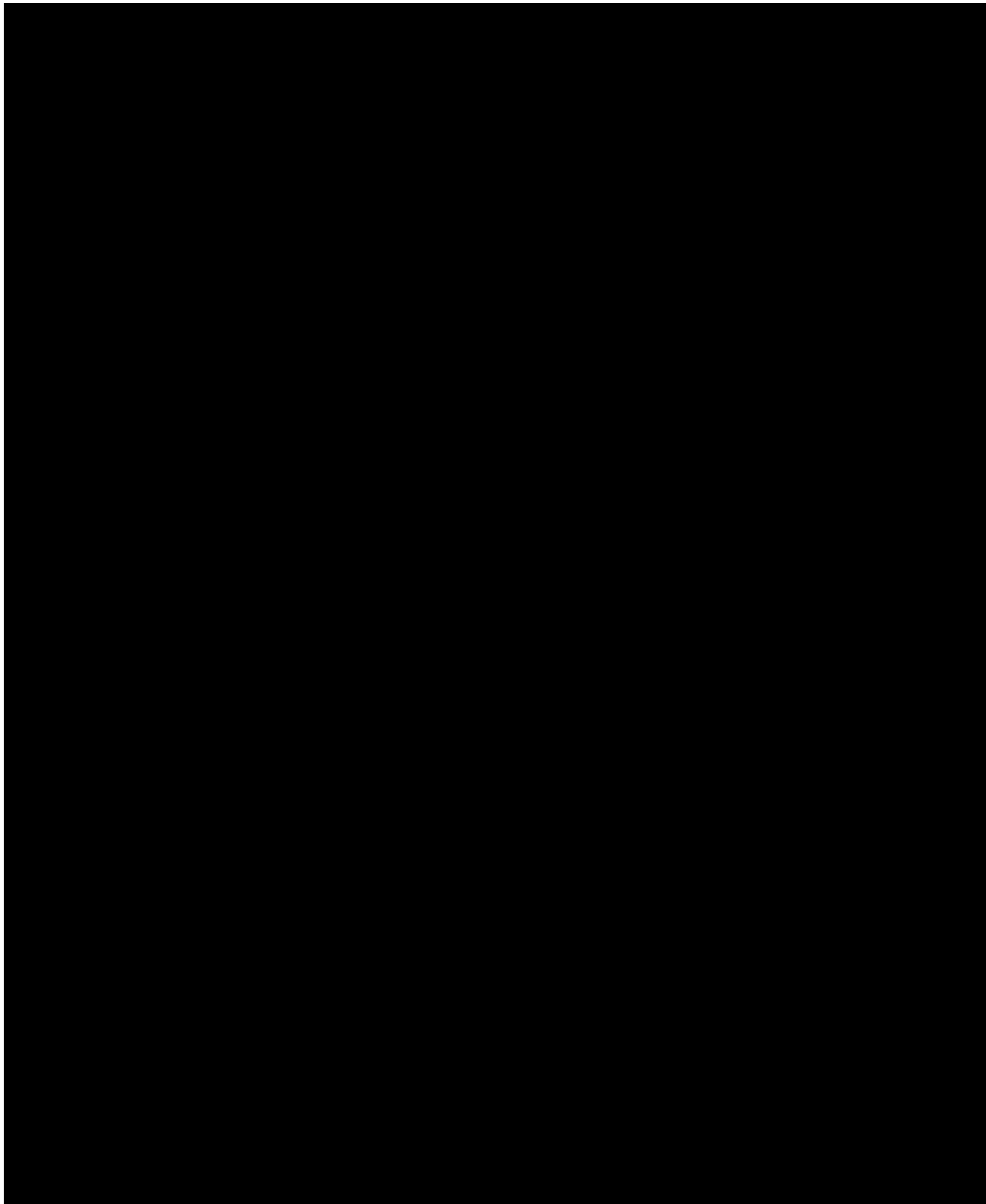
BIRPAL BENIPAL (LSO # 89984B)

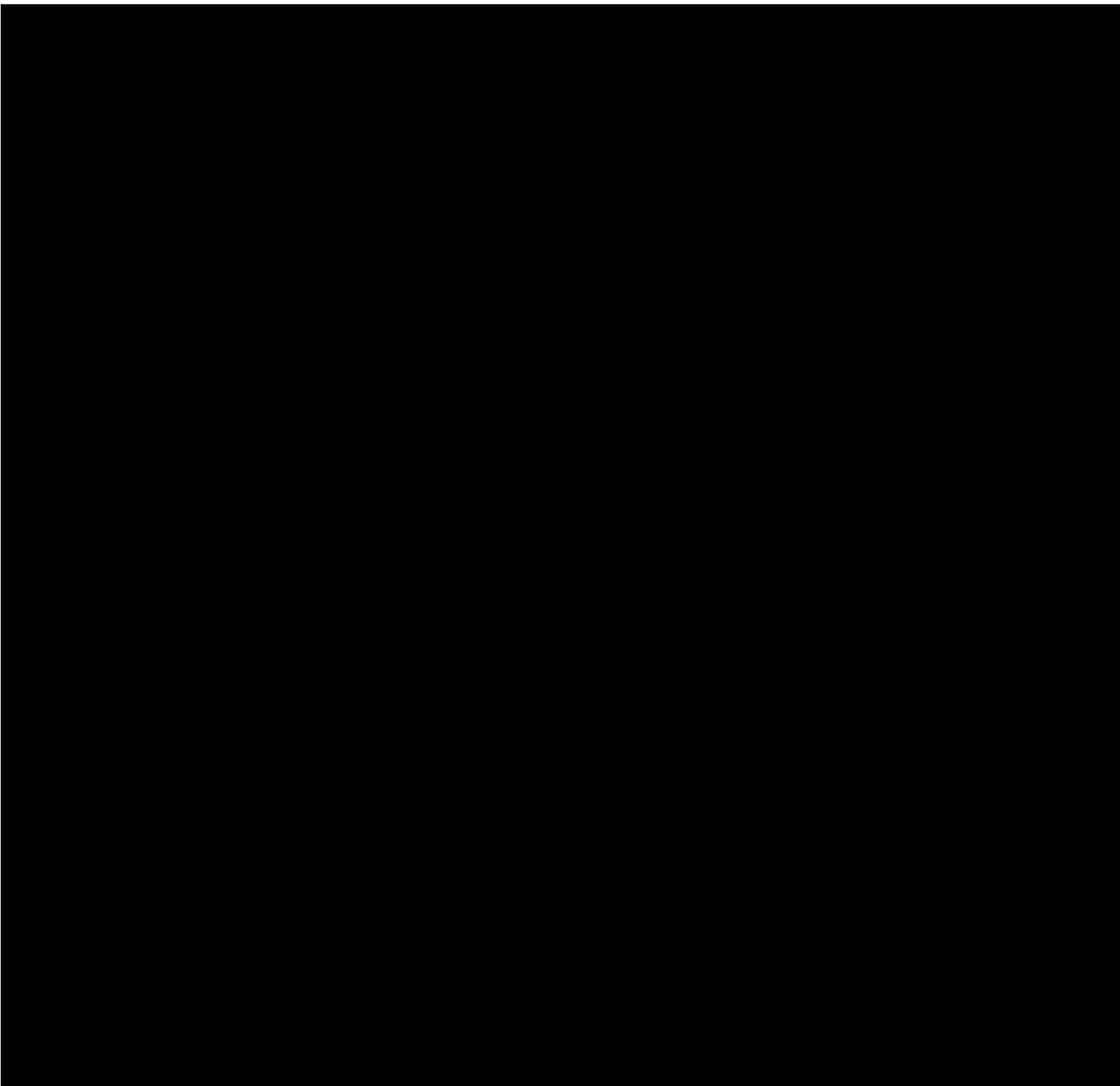


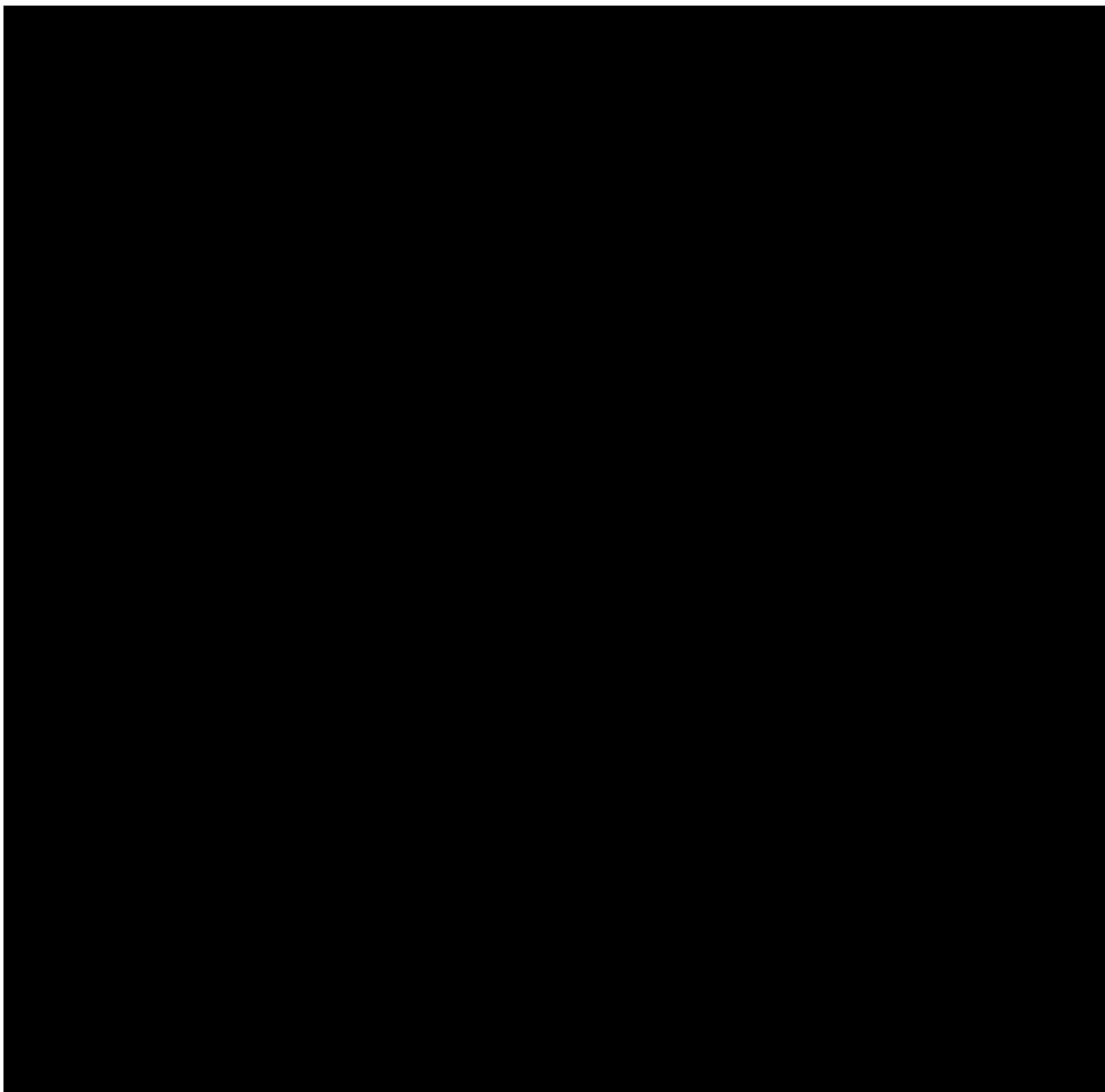












Court File No. CV-25-00740765-00CL

UBC SOLUTIONS INCORPORATED

And

1680 BRIMLEY LIMITED PARTNERSHIP, et al.

Applicant

Respondents

Service: To the Receiver and Court, Only

**ONTARIO
SUPERIOR COURT OF JUSTICE**Proceeding commenced at **TORONTO****CONFIDENTIAL SUPPLEMENTARY RESPONDING
AFFIDAVIT OF HANS JAIN****BLANEY MCMURTRY LLP**

Lawyers

2 Queen Street East, Suite 1500

Toronto, ON, M5C 3G5

David T. Ullmann (LSO # 423571)

Tel: (416) 596-4289

Email: dullmann@blaney.com**Birpal Benipal (LSO # 89984B)**

Tel: (437) 890-9324

Email: bbenipal@blaney.comLawyers for the Respondents, 1680 Brimley Limited
Partnership, 2808908 Ontario Inc. & Brimley Progress
Developments Inc.

TAB 6

[S.248](#) of the *Bankruptcy and Insolvency Act*, [RSC, 1985, c. B-3](#).

Powers of court

- **248 (1)** Where the court, on the application of the Superintendent, the insolvent person, the trustee (in the case of a bankrupt), a receiver or a creditor, is satisfied that the secured creditor, the receiver or the insolvent person is failing or has failed to carry out any duty imposed by [sections 244](#) to [247](#), the court may make an order, on such terms as it considers proper,
 - (a) directing the secured creditor, receiver or insolvent person, as the case may be, to carry out that duty, or
 - (b) restraining the secured creditor or receiver, as the case may be, from realizing or otherwise dealing with the property of the insolvent person or bankrupt until that duty has been carried out,

or both.

- **Idem**

(2) On the application of the Superintendent, the insolvent person, the trustee (in the case of a bankrupt) or a creditor, made within six months after the statement of accounts was provided to the Superintendent pursuant to [subsection 246\(3\)](#), the court may order the receiver to submit the statement of accounts to the court for review, and the court may adjust, in such manner and to such extent as it considers proper, the fees and charges of the receiver as set out in the statement of accounts.

- 1992, c. 27, s. 89

TAB 7

Royal Bank of Canada v. Soundair Corp., 1991 CanLII 2727 (ON CA)

Source: Court of Appeal for Ontario
Date: 1991-07-03
Other citations: 4 OR (3d) 1 — 83 DLR (4th) 76 — 46 OAC 321 — 7 CBR (3d) 1 — [1991] CarswellOnt 205 — [1991] OJ No 1137 (QL)
Citation: Royal Bank of Canada v. Soundair Corp., 1991 CanLII 2727 (ON CA), <<https://canlii.ca/t/1p78p>>, retrieved on 2026-09-15

Royal Bank of Canada v. Soundair Corp., Canadian Pension Capital Ltd. and Canadian Insurers Capital Corp.
Indexed as: Royal Bank of Canada v. Soundair Corp.
(C.A.)

4 O.R. (3d) 1
[1991] O.J. No. 1137
Action No. 318/91

ONTARIO
Court of Appeal for Ontario
Goodman, McKinlay and Galligan JJ.A.
July 3, 1991

Debtor and creditor -- Receivers -- Court-appointed receiver accepting offer to purchase assets against wishes of secured creditors -- Receiver acting properly and prudently -- Wishes of creditors not determinative -- Court approval of sale confirmed on appeal.

Air Toronto was a division of Soundair. In April 1990, one of Soundair's creditors, the Royal Bank, appointed a receiver to operate Air Toronto and sell it as a going concern. The receiver was authorized to sell Air Toronto to Air Canada, or, if that sale could not be completed, to negotiate and sell Air Toronto to another person. Air Canada made an offer which the receiver rejected. The receiver then entered into negotiations with Canadian Airlines International (Canadian); two subsidiaries of Canadian, Ontario Express Ltd. and Frontier Airlines Ltd., made an offer to purchase on March 6, 1991 (the OEL offer). Air Canada and a creditor of Soundair, CCFL, presented an offer to purchase to the receiver on March 7, 1991 through 922, a company formed for that purpose (the 922 offer). The receiver declined the 922 offer because it contained an unacceptable condition and accepted the OEL offer. 922 made a second offer, which was virtually identical to the first one except that the unacceptable condition had been removed. In proceedings before Rosenberg J., an order was made approving the sale of Air Toronto to OEL and dismissing the 922 offer. CCFL appealed.

Held, the appeal should be dismissed.

Per Galligan J.A.: When deciding whether a receiver has acted providently, the court should examine the conduct of the receiver in light of the information the receiver had when it agreed to accept an offer, and should be very cautious before deciding that the receiver's conduct was improvident based upon information which has come to light after it made its decision. The decision to sell to OEL was a sound one in the circumstances faced by the receiver on March 8, 1991. Prices in other offers received after the receiver has agreed to a sale have relevance only if they show that the price contained in the accepted offer was so unreasonably low as to demonstrate that the receiver was improvident in accepting it. If they do not do so, they should not be considered upon a motion to confirm a sale recommended by a court-appointed receiver.

I will deal with the two issues separately.

I. DID THE RECEIVER ACT PROPERLY IN AGREEING TO SELL TO OEL?

Before dealing with that issue there are three general observations which I think I should make. The first is that the sale of an airline as a going concern is a very complex process. The best method of selling an airline at the best price is something far removed from the expertise of a court. When a court appoints a receiver to use its commercial expertise to sell an airline, it is inescapable that it intends to rely upon the receiver's expertise and not upon its own. Therefore, the court must place a great deal of confidence in the actions taken and in the opinions formed by the receiver. It should also assume that the receiver is acting properly unless the contrary is clearly shown. The second observation is that the court should be reluctant to second-guess, with the benefit of hindsight, the considered business decisions made by its receiver. The third observation which I wish to make is that the conduct of the receiver should be reviewed in the light of the specific mandate given to him by the court.

The order of O'Brien J. provided that if the receiver could not complete the sale to Air Canada that it was "to negotiate and sell Air Toronto to another person". The court did not say how the receiver was to negotiate the sale. It did not say it was to call for bids or conduct an auction. It told the receiver to negotiate and sell. It obviously intended, because of the unusual nature of the asset being sold, to leave the method of sale substantially in the discretion of the receiver. I think, therefore, that the court should not review minutely the process of the sale when, broadly speaking, it appears to the court to be a just process.

As did Rosenberg J., I adopt as correct the statement made by Anderson J. in *Crown Trust Co. v. Rosenberg* (1986), 1986 CanLII 2760 (ON HCT), 60 O.R. (2d) 87, 39 D.L.R. (4th) 526 (H.C.J.), at pp. 92-94 O.R., pp. 531-33 D.L.R., of the duties which a court must perform when deciding whether a receiver who has sold a property acted properly. When he set out the court's duties, he did not put them in any order of priority, nor do I. I summarize those duties as follows:

1. It should consider whether the receiver has made a sufficient effort to get the best price and has not acted improvidently.
2. It should consider the interests of all parties.
3. It should consider the efficacy and integrity of the process by which offers are obtained.
4. It should consider whether there has been unfairness in the working out of the process.

I intend to discuss the performance of those duties separately.

1. Did the receiver make a sufficient effort to get the best price and did it act providently?

Having regard to the fact that it was highly unlikely that a commercially viable sale could be made to anyone but the two national airlines, or to someone supported by either of them, it is my view that the receiver acted wisely and reasonably when it negotiated only with Air Canada and Canadian Airlines International. Furthermore, when Air Canada said that it would submit no further offers and gave the impression that it would not participate further in the receiver's efforts to sell, the only course reasonably open to the receiver was to negotiate with Canadian Airlines International. Realistically, there was nowhere else to go but to Canadian Airlines International. In doing so, it is my opinion that the receiver made sufficient efforts to sell the airline.

When the receiver got the OEL offer on March 6, 1991, it was over ten months since it had been charged with the responsibility of selling Air Toronto. Until then, the receiver had not received one offer which it thought was acceptable. After substantial efforts to sell the airline over that period, I find it difficult to think that the receiver acted improvidently in accepting the only acceptable offer which it had.

On March 8, 1991, the date when the receiver accepted the OEL offer, it had only two offers, the OEL offer which was acceptable, and the 922 offer which contained an unacceptable condition. I cannot see how the receiver, assuming for the moment that the price was reasonable, could have done anything but accept the OEL offer.

When deciding whether a receiver had acted providently, the court should examine the conduct of the receiver in light of the information the receiver had when it agreed to accept an offer. In this case, the court should look at the receiver's conduct in the light of the information it had when it made its decision on March 8, 1991. The court should be very cautious before deciding that the receiver's conduct was improvident based upon information which has come to light after it made its decision. To do so, in my view, would derogate

The receiver studied the two offers. It compared them and took into account the risks, the advantages and the disadvantages of each. It considered the appropriate contingencies. It is not necessary to outline the factors which were taken into account by the receiver because the manager of its insolvency practice filed an affidavit outlining the considerations which were weighed in its evaluation of the two offers. They seem to me to be reasonable ones. That affidavit concluded with the following paragraph:

24. On the basis of these considerations the Receiver has approved the OEL offer and has concluded that it represents the achievement of the highest possible value at this time for the Air Toronto division of SoundAir.

The court appointed the receiver to conduct the sale of Air Toronto and entrusted it with the responsibility of deciding what is the best offer. I put great weight upon the opinion of the receiver. It swore to the court which appointed it that the OEL offer represents the achievement of the highest possible value at this time for Air Toronto. I have not been convinced that the receiver was wrong when he made that assessment. I am, therefore, of the opinion that the 922 offer does not demonstrate any failure upon the part of the receiver to act properly and providently.

It follows that if Rosenberg J. was correct when he found that the 922 offer was in fact better, I agree with him that it could only have been slightly or marginally better. The 922 offer does not lead to an inference that the disposition strategy of the receiver was inadequate, unsuccessful or improvident, nor that the price was unreasonable.

I am, therefore, of the opinion that the receiver made a sufficient effort to get the best price and has not acted improvidently.

2. Consideration of the interests of all parties

It is well established that the primary interest is that of the creditors of the debtor: see *Crown Trust Co. v. Rosenberg*, supra, and *Re Selkirk* (1986, Saunders J.), supra. However, as Saunders J. pointed out in *Re Beauty Counsellors*, supra, at p. 244 C.B.R., "it is not the only or overriding consideration".

In my opinion, there are other persons whose interests require consideration. In an appropriate case, the interests of the debtor must be taken into account. I think also, in a case such as this, where a purchaser has bargained at some length and doubtless at considerable expense with the receiver, the interests of the purchaser ought to be taken into account. While it is not explicitly stated in such cases as *Crown Trust Co. v. Rosenberg*, supra, *Re Selkirk* (1986, Saunders J.), supra, *Re Beauty Counsellors*, supra, *Re Selkirk* (1987, McRae J.), supra, and *Cameron*, supra, I think they clearly imply that the interests of a person who has negotiated an agreement with a court-appointed receiver are very important.

In this case, the interests of all parties who would have an interest in the process were considered by the receiver and by Rosenberg J.

3. Consideration of the efficacy and integrity of the process by which the offer was obtained

While it is accepted that the primary concern of a receiver is the protecting of the interests of the creditors, there is a secondary but very important consideration and that is the integrity of the process by which the sale is effected. This is particularly so in the case of a sale of such a unique asset as an airline as a going concern.

The importance of a court protecting the integrity of the process has been stated in a number of cases. First, I refer to *Re Selkirk* (1986), supra, where Saunders J. said at p. 246 C.B.R.:

In dealing with the request for approval, the court has to be concerned primarily with protecting the interest of the creditors of the former bankrupt. A secondary but important consideration is that the process under which the sale agreement is arrived at should be consistent with commercial efficacy and integrity.

In that connection I adopt the principles stated by Macdonald J.A. of the Nova Scotia Supreme Court (Appeal Division) in *Cameron v. Bank of N.S.* (1981), 1981 CanLII 4762 (NS SCAD), 38 C.B.R. (N.S.) 1, 45 N.S.R. (2d) 303, 86 A.P.R. 303 (C.A.), where he said at p. 11:

In my opinion if the decision of the receiver to enter into an agreement of sale, subject to court approval, with respect to certain assets is reasonable and sound under the circumstances at the time existing it should not be set aside simply because a later and higher bid is made. To do so would literally create chaos in the commercial world and receivers and purchasers would never be sure they had a finding agreement. On the contrary, they would know that other bids could be received and considered up until the application for court approval is heard -- this would be an intolerable situation.

While those remarks may have been made in the context of a bidding situation rather than a private sale, I consider them to be equally applicable to a negotiation process leading to a private sale. Where the

court is concerned with the disposition of property, the purpose of appointing a receiver is to have the receiver do the work that the court would otherwise have to do.

In *Salima Investments Ltd. v. Bank of Montreal* (1985), 1985 ABCA 191 (CanLII), 41 Alta. L.R. (2d) 58, 21 D.L.R. (4th) 473 (C.A.), at p. 61 Alta. L.R., p. 476 D.L.R., the Alberta Court of Appeal said that sale by tender is not necessarily the best way to sell a business as an ongoing concern. It went on to say that when some other method is used which is provident, the court should not undermine the process by refusing to confirm the sale.

Finally, I refer to the reasoning of Anderson J. in *Crown Trust Co. v. Rosenberg*, supra, at p. 124 O.R., pp. 562-63 D.L.R.:

While every proper effort must always be made to assure maximum recovery consistent with the limitations inherent in the process, no method has yet been devised to entirely eliminate those limitations or to avoid their consequences. Certainly it is not to be found in loosening the entire foundation of the system. Thus to compare the results of the process in this case with what might have been recovered in some other set of circumstances is neither logical nor practical.

(Emphasis added)

It is my opinion that the court must exercise extreme caution before it interferes with the process adopted by a receiver to sell an unusual asset. It is important that prospective purchasers know that, if they are acting in good faith, bargain seriously with a receiver and enter into an agreement with it, a court will not lightly interfere with the commercial judgment of the receiver to sell the asset to them.

Before this court, counsel for those opposing the confirmation of the sale to OEL suggested many different ways in which the receiver could have conducted the process other than the way which he did. However, the evidence does not convince me that the receiver used an improper method of attempting to sell the airline. The answer to those submissions is found in the comment of Anderson J. in *Crown Trust Co. v. Rosenberg*, supra, at p. 109 O.R., p. 548 D.L.R.:

The court ought not to sit as on appeal from the decision of the Receiver, reviewing in minute detail every element of the process by which the decision is reached. To do so would be a futile and duplicitous exercise.

It would be a futile and duplicitous exercise for this court to examine in minute detail all of the circumstances leading up to the acceptance of the OEL offer. Having considered the process adopted by the receiver, it is my opinion that the process adopted was a reasonable and prudent one.

4. Was there unfairness in the process?

As a general rule, I do not think it appropriate for the court to go into the minutia of the process or of the selling strategy adopted by the receiver. However, the court has a responsibility to decide whether the process was fair. The only part of this process which I could find that might give even a superficial impression of unfairness is the failure of the receiver to give an offering memorandum to those who expressed an interest in the purchase of Air Toronto.

I will outline the circumstances which relate to the allegation that the receiver was unfair in failing to provide an offering memorandum. In the latter part of 1990, as part of its selling strategy, the receiver was in the process of preparing an offering memorandum to give to persons who expressed an interest in the purchase of Air Toronto. The offering memorandum got as far as draft form, but was never released to anyone, although a copy of the draft eventually got into the hands of CCFL before it submitted the first 922 offer on March 7, 1991. A copy of the offering memorandum forms part of the record and it seems to me to be little more than puffery, without any hard information which a sophisticated purchaser would require in order to make a serious bid.

The offering memorandum had not been completed by February 11, 1991. On that date, the receiver entered into the letter of intent to negotiate with OEL. The letter of intent contained a provision that during its currency the receiver would not negotiate with any other party. The letter of intent was renewed from time to time until the OEL offer was received on March 6, 1991.

The receiver did not proceed with the offering memorandum because to do so would violate the spirit, if not the letter, of its letter of intent with OEL.

I do not think that the conduct of the receiver shows any unfairness towards 922. When I speak of 922, I do so in the context that Air Canada and CCFL are identified with it. I start by saying that the receiver acted reasonably when it entered into exclusive negotiations with OEL. I find it strange that a company, with which Air Canada is closely and intimately involved, would say that it was unfair for the receiver to enter into a time-limited agreement to negotiate exclusively with OEL. That is precisely the arrangement which

Air Canada insisted upon when it negotiated with the receiver in the spring and summer of 1990. If it was not unfair for Air Canada to have such an agreement, I do not understand why it was unfair for OEL to have a similar one. In fact, both Air Canada and OEL in its turn were acting reasonably when they required exclusive negotiating rights to prevent their negotiations from being used as a bargaining lever with other potential purchasers. The fact that Air Canada insisted upon an exclusive negotiating right while it was negotiating with the receiver demonstrates the commercial efficacy of OEL being given the same right during its negotiations with the receiver. I see no unfairness on the part of the receiver when it honoured its letter of intent with OEL by not releasing the offering memorandum during the negotiations with OEL.

Moreover, I am not prepared to find that 922 was in any way prejudiced by the fact that it did not have an offering memorandum. It made an offer on March 7, 1991, which it contends to this day was a better offer than that of OEL. 922 has not convinced me that if it had an offering memorandum its offer would have been any different or any better than it actually was. The fatal problem with the first 922 offer was that it contained a condition which was completely unacceptable to the receiver. The receiver properly, in my opinion, rejected the offer out of hand because of that condition. That condition did not relate to any information which could have conceivably been in an offering memorandum prepared by the receiver. It was about the resolution of a dispute between CCFL and the Royal Bank, something the receiver knew nothing about.

Further evidence of the lack of prejudice which the absence of an offering memorandum has caused 922 is found in CCFL's stance before this court. During argument, its counsel suggested, as a possible resolution of this appeal, that this court should call for new bids, evaluate them and then order a sale to the party who put in the better bid. In such a case, counsel for CCFL said that 922 would be prepared to bid within seven days of the court's decision. I would have thought that, if there were anything to CCFL's suggestion that the failure to provide an offering memorandum was unfair to 922, it would have told the court that it needed more information before it would be able to make a bid.

I am satisfied that Air Canada and CCFL have, and at all times had, all of the information which they would have needed to make what to them would be a commercially viable offer to the receiver. I think that an offering memorandum was of no commercial consequence to them, but the absence of one has since become a valuable tactical weapon.

It is my opinion that there is no convincing proof that if an offering memorandum had been widely distributed among persons qualified to have purchased Air Toronto, a viable offer would have come forth from a party other than 922 or OEL. Therefore, the failure to provide an offering memorandum was neither unfair nor did it prejudice the obtaining of a better price on March 8, 1991, than that contained in the OEL offer. I would not give effect to the contention that the process adopted by the receiver was an unfair one.

There are two statements by Anderson J. contained in *Crown Trust Co. v. Rosenberg*, supra, which I adopt as my own. The first is at p. 109 O.R., p. 548 D.L.R.:

The court should not proceed against the recommendations of its Receiver except in special circumstances and where the necessity and propriety of doing so are plain. Any other rule or approach would emasculate the role of the Receiver and make it almost inevitable that the final negotiation of every sale would take place on the motion for approval.

The second is at p. 111 O.R., p. 550 D.L.R.:

It is equally clear, in my view, though perhaps not so clearly enunciated, that it is only in an exceptional case that the court will intervene and proceed contrary to the Receiver's recommendations if satisfied, as I am, that the Receiver has acted reasonably, prudently and fairly and not arbitrarily.

In this case the receiver acted reasonably, prudently, fairly and not arbitrarily. I am of the opinion, therefore, that the process adopted by the receiver in reaching an agreement was a just one.

In his reasons for judgment, after discussing the circumstances leading to the 922 offer, Rosenberg J. said this [at p. 31 of the reasons]:

They created a situation as of March 8, where the receiver was faced with two offers, one of which was in acceptable form and one of which could not possibly be accepted in its present form. The receiver acted appropriately in accepting the OEL offer.

I agree.

The receiver made proper and sufficient efforts to get the best price that it could for the assets of Air Toronto. It adopted a reasonable and effective process to sell the airline which was fair to all persons who might be interested in purchasing it. It is my opinion, therefore, that the receiver properly carried out the mandate which was given to it by the order of O'Brien J. It follows that Rosenberg J. was correct when he confirmed the sale to OEL.

TAB 8

CCM Master Qualified Fund v. blutip Power Technologies, 2012 ONSC 1750 (CanLII)

Source: Ontario Superior Court of Justice
Date: 2012-03-15
File number: CV-12-9622-00CL
Other citation: 90 CBR (5th) 74
Citation: CCM Master Qualified Fund v. blutip Power Technologies, 2012 ONSC 1750 (CanLII), <<https://canlii.ca/t/fqlpb>>, retrieved on 2026-09-15

CITATION: CCM Master Qualified Fund v. blutip Power Technologies, 2012 ONSC 1750
COURT FILE NO.: CV-12-9622-00CL
DATE: 20120315

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

RE: CCM Master Qualified Fund, Ltd., Applicant

AND:

blutip Power Technologies Ltd., Respondent

BEFORE: D. M. Brown J.

COUNSEL: L. Rogers and C. Burr, for the Receiver, Duff & Phelps Canada Restructuring Inc.

A. Cobb and A. Lockhart, for the Applicant

HEARD: March 15, 2012

REASONS FOR DECISION

I. Receiver’s motion for directions: sales/auction process & priority of receiver’s charges

[1] By Appointment Order made February 28, 2012, Duff & Phelps Canada Restructuring Inc. (“D&P”) was appointed receiver of blutip Power Technologies Ltd. (“Blutip”), a publicly listed technology company based in Mississauga which engages in the research, development and sale of hydrogen generating systems and combustion controls. Blutip employs 10 people and, as the Receiver stressed several times in its materials, the company does not maintain any pension plans.

[2] D&P moves for orders approving (i) a sales process and bidding procedures, including the use of a stalking horse credit bid, (ii) the priority of a Receiver’s Charge and Receiver’s Borrowings Charge, and (iii) the activities reported in its First Report. Notice of this motion was given to affected persons. No one appeared to oppose the order sought. At the hearing today I granted the requested Bidding Procedures Order; these are my Reasons for so doing.

[3] The Applicant, CCM Master Qualified Fund, Ltd. (“CCM”), is the senior secured lender to Blutip. At present Blutip owes CCM approximately \$3.7 million consisting of (i) two convertible senior secured promissory notes (October 21, 2011: \$2.6 million and December 29, 2011: \$800,000), (ii) \$65,000 advanced last month pursuant to a Receiver’s Certificate, and (iii) \$47,500 on account of costs of appointing the Receiver (as per para. 30 of the Appointment Order). Receiver’s counsel has opined that the security granted by Blutip in favour of CCM creates a valid and perfected security interest in the company’s business and assets.

[4] At the time of the appointment of the Receiver Blutip was in a development phase with no significant sources of revenue and was dependant on external sources of equity and debt funding to operate. As noted by Morawetz J. in his February 28, 2012 endorsement:

In making this determination [to appoint a receiver] I have taken into account that there is no liquidity in the debtor and that it is unable to make payroll and it currently has no board. Stability in the circumstances is required and this can be accomplished by the appointment of a receiver.

[5] As the Receiver reported, it does not have access to sufficient funding to support the company’s operations during a lengthy sales process.

III. Sales process/bidding procedures

A. General principles

[6] Although the decision to approve a particular form of sales process is distinct from the approval of a proposed sale, the reasonableness and adequacy of any sales process proposed by a court-appointed receiver must be assessed in light of the factors which a court will take into account when considering the approval of a proposed sale. Those factors were identified by the Court of Appeal in its decision in *Royal Bank v. Soundair*: (i) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently; (ii) the efficacy and integrity of the process by which offers are obtained; (iii) whether there has been unfairness in the working out of the process; and, (iv) the interests of all parties.^[1] Accordingly, when reviewing a sales and marketing process proposed by a receiver a court should assess:

- (i) the fairness, transparency and integrity of the proposed process;
- (ii) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and,
- (iii) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

[7] The use of stalking horse bids to set a baseline for the bidding process, including credit bid stalking horses, has been recognized by Canadian courts as a reasonable and useful element of a sales process. Stalking horse bids have been approved for use in other receivership proceedings,^[2] BIA proposals,^[3] and CCAA proceedings.^[4]

[8] Perhaps the most well-known recent example of the use of a stalking horse credit bid was that employed in the Canwest Publishing Corp. CCAA proceedings where, as part of a sale and investor solicitation process, Canwest’s senior lenders put forward a stalking horse credit bid. Ultimately a superior offer was approved by the court. I accept, as an apt description of the considerations which a court should take into account when deciding whether to approve the use of a stalking horse credit bid, the following observations made by one set of commentators on the Canwest CCAA process:

To be effective for such stakeholders, the credit bid had to be put forward in a process that would allow a sufficient opportunity for interested parties to come forward with a superior offer, recognizing that a timetable for the sale of a business in distress is a fast track ride that requires interested parties to move quickly or miss the opportunity. The court has to balance the need to move quickly, to address the real or perceived deterioration of value of the business during a sale process or the limited availability of restructuring financing, with a realistic timetable that encourages and does not chill the auction process.^[5]

B. The proposed bidding process

B.1 The bid solicitation/auction process

[9] The bidding process proposed by the Receiver would use a Stalking Horse Offer submitted by CCM to the Receiver, and subsequently amended pursuant to negotiations, as a baseline offer and a qualified bid in

TAB 9

Fraudulent Conveyances Act, RSO 1990, c F.29

Current version: in force since 1990-12-31

Link to the latest version ①: <https://canlii.ca/t/2d7>

Stable link to this version ①: <https://canlii.ca/t/53w>

Citation to this version: Fraudulent Conveyances Act, RSO 1990, c F.29, <<https://canlii.ca/t/53w>> retrieved on 2026-09-15

Currency: Last updated from the e-Laws site on 2026-09-14

Fraudulent Conveyances Act

R.S.O. 1990, CHAPTER F.29

Consolidation Period: From December 31, 1990 to the [e-Laws currency date](#).

No amendments.

Definitions

1. In this Act,

“conveyance” includes gift, grant, alienation, bargain, charge, encumbrance, limitation of use or uses of, in, to or out of real property or personal property by writing or otherwise; (“cession”)

“personal property” includes goods, chattels, effects, bills, bonds, notes and securities, and shares, dividends, premiums and bonuses in a bank, company or corporation, and any interest therein; (“biens meubles”)

“real property” includes lands, tenements, hereditaments and any estate or interest therein. (“biens immeubles”) R.S.O. 1990, c. F.29, s. 1.

Where conveyances void as against creditors

2. Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns. R.S.O. 1990, c. F.29, s. 2.

Where s. 2 does not apply

3. Section 2 does not apply to an estate or interest in real property or personal property conveyed upon good consideration and in good faith to a person not having at the time of the conveyance to the person notice or knowledge of the intent set forth in that section. R.S.O. 1990, c. F.29, s. 3.

4. **Section 2** applies to every conveyance executed with the intent set forth in that section despite the fact that it was executed upon a valuable consideration and with the intention, as between the parties to it, of actually transferring to and for the benefit of the transferee the interest expressed to be thereby transferred, unless it is protected under **section 3** by reason of good faith and want of notice or knowledge on the part of the purchaser. R.S.O. 1990, c. F.29, s. 4.

When fraudulent conveyances declared void as against purchasers

5. Every conveyance of real property heretofore or hereafter made with intent to defraud and deceive the purchaser shall be deemed to be void only as against that person and the person's assigns and all persons lawfully claiming under that person or the person's assigns who have purchased or hereafter purchase for money or other good consideration the same real property or a part thereof. R.S.O. 1990, c. F.29, s. 5.

Where **s. 5 does not apply**

6. **Section 5** does not apply to and shall not be construed to impeach, defeat or make void a conveyance of real property made in good faith and for good consideration. R.S.O. 1990, c. F.29, s. 6.

Conveyances made revocable

7. (1) If a person makes a conveyance of real property with a clause, provision, article, or condition of revocation, determination or alteration at that person's will or pleasure, and after such conveyance bargains, sells, demises, grants, conveys or charges such real property or a part thereof to a person for money or other good consideration paid or given, such first conveyance not being revoked, made void or altered according to the power and authority so reserved or expressed therein, then such first conveyance as touching the real property so after bargained, sold, conveyed, demised or charged is void against the bargainees, vendees, lessees, grantees, their heirs, successors, and their assigns and against every person lawfully claiming under them. R.S.O. 1990, c. F.29, s. 7 (1).

Saving as to mortgages

(2) No lawful mortgage made in good faith, and without fraud or covin, and upon good consideration shall be impeached or impaired by force of this Act, but it has the like force and effect as if this Act had not been passed. R.S.O. 1990, c. F.29, s. 7 (2).

Validity of voluntary conveyance, etc., executed in good faith and duly registered

8. (1) Nothing in **section 5**, **6** or **7** extends to a conveyance that is executed in good faith and duly registered in the proper land registry office before the execution of the conveyance to, and before the creation of any binding contract for the conveyance to a subsequent purchaser from the same grantor of the same real property or a part thereof, nor is such a conveyance merely by reason of the absence of a valuable consideration void as against such purchaser or the heirs, executors, administrators or assigns of the purchaser or any person claiming by, from or under any of them. R.S.O. 1990, c. F.29, s. 8 (1).

Effect of subs. (1)

(2) Nothing in subsection (1) has the effect of making valid an instrument that is for any reason, other than or in addition to the absence of a valuable consideration, void under **section 5**, **6** or **7** or otherwise, nor has the effect of making valid an instrument as against a purchaser who had before the 28th day of February, 1868, entered into a binding contract for or received a conveyance upon such purchase. R.S.O. 1990, c. F.29, s. 8 (2).

TAB 10

6071376 Canada Inc. v. Khedmatgozar, 2024 ONCA 248 (CanLII)

Source: Court of Appeal for Ontario
Date: 2024-04-08
File number: COA-23-CV-0886
Citation: 6071376 Canada Inc. v. Khedmatgozar, 2024 ONCA 248 (CanLII),
<<https://canlii.ca/t/k3xlg>>, retrieved on 2026-09-15

COURT OF APPEAL FOR ONTARIO

CITATION: 6071376 Canada Inc. v. Khedmatgozar, 2024 ONCA 248
DATE: 20240408
DOCKET: COA-23-CV-0886

Pepall, Sossin and Dawe JJ.A.

BETWEEN

6071376 Canada Inc.

Applicant (Appellant)

and

Mahmood Khedmatgozar, 3966305 Canada Inc., Capital
Dentistry Group Limited, Demetrius Dalios, Mary
Beresford and John Doe

Respondents (Respondents)

G. James Thorlakson and Maggie Sullivan, for the appellant

Carolanne Cabana and Ian Houle, for the respondents Mahmood Khedmatgozar, 3966305
Canada Inc. and Mary Beresford

Alyssa Tomkins and Romina Hassanzadeh, for the respondents Capital Dentistry Group
Limited and Demetrius Dalios

Heard: March 12, 2024

On appeal from the judgment of Justice Heather J. Williams of the Superior Court of
Justice, dated July 10, 2023.

REASONS FOR DECISION

- b) their conduct is unlawful;
- c) their conduct is directed towards the plaintiff;
- d) the alleged conspirators “should know that, in the circumstances, injury to the [plaintiff] is likely to result”; and
- e) their conduct causes injury to the plaintiff.

[7] The application judge found that 607 had established the first element but had failed to establish any of the last four.

[8] On appeal, 607 argues that the application judge erred by finding that the transaction was not fraudulent and therefore not unlawful. 607 concedes that the application judge correctly set out the elements of unlawful conduct conspiracy, but argues that she “erred in law, or committed palpable and overriding error in her application of the ‘badges of fraud’ developed by the Court in determining whether an inference of intent to defraud should be drawn”. 607 lists a number of factors that it says supports its position that the transaction was fraudulent, which it contends the application judge “failed to properly consider”.

[9] As Laskin J.A. explained in *FL Receivables Trust 2002-A v. Cobrand Foods Ltd.*, 2007 ONCA 425, 85 O.R. (3d) 561, at paras. 39-40:

The crucial question in any fraudulent conveyance action is whether the plaintiff has proved the fraudulent intent of the debtor. While the legal burden to prove fraudulent intent remains on the plaintiff throughout the trial, the plaintiff can raise an inference of fraud sufficient to put a “burden of explanation” on the defendant debtor. The plaintiff typically raises an inference of fraud by putting forward “badges of fraud”. These “badges of fraud” vary from case to case. They are no more than typical and suspicious facts that may allow the court to make a finding of fraud absent an explanation from the debtor. See C.R.B. Dunlop, *Creditor-Debtor Law in Canada*, 2nd ed. (Toronto: Thomson Canada, 1995) at 613-15.

The court, however, is not compelled to draw this inference of fraudulent intent from badges of fraud pleaded by the plaintiff. See *Koop v. Smith* (1915), 1915 CanLII 26 (SCC), 51 S.C.R. 554, at pp. 558-59. The court may dismiss a fraudulent conveyance action because it has decided that the surrounding circumstances taken as a whole explain away the plaintiff's evidence.

[10] To the same effect, as noted in in *Montor Business Corporation v. Goldfinger*, 2016 ONCA 406, 351 O.A.C. 241, at para. 72, leave to appeal refused [2016] S.C.C.A. No. 361:

An inference of intent may arise from the existence of one or more badges of fraud. However, the presence of such indicia does not mandate a finding of intent. Whether the intent exists is a question of fact to be determined from all of the circumstances as they existed at the time of the conveyance: see *Re Fancy* (1984), 1984 CanLII 2031 (ON HCJ), 46 O.R. (2d) 153 (H. Ct. J.), at p. 159.

TAB 11

FL Receivables Trust 2002-A v. Cobrand Foods Ltd., 2007 ONCA 425 (CanLII)

Source: Court of Appeal for Ontario
Date: 2007-06-12
File number: C43408; C42354
Other citations: 85 OR (3d) 561 — 158 ACWS (3d) 792 — 46 CPC (6th) 23 — [2007] OJ No 2297 (QL)
Citation: FL Receivables Trust 2002-A v. Cobrand Foods Ltd., 2007 ONCA 425 (CanLII), <<https://canlii.ca/t/1rrrw>>, retrieved on 2026-09-15

**Prudential Securities Credit Corp., LLC in its Capacity as
Administrator of FL Receivables Trust 2002-A et al. v.
Cobrand Foods Ltd. et al.
[Indexed as: FL Receivables Trust 2002-A (Administrator
of) v. Cobrand Foods Ltd.]**

85 O.R. (3d) 561

**Court of Appeal for Ontario,
Laskin, Borins and Feldman JJ.A.
June 12, 2007**

Civil procedure -- Non-suit -- Defendant bringing motion for non-suit at close of plaintiff's case -- Trial judge erring in weighing competing inferences available from evidence to determine whether they rebutted plaintiff's prima facie case.

Civil procedure -- Trial -- Closing argument -- Defendant bringing motion for non-suit at close of plaintiff's case and electing to call no evidence -- Trial judge dismissing motion and then granting plaintiff judgment without giving defendant opportunity to make closing argument -- Opportunity to make closing argument constituting substantive right and trial judge erring in depriving defendant of that opportunity -- Error not resulting in miscarriage of justice -- Defendant fully arguing all defences that were available to him on non-suit motion -- Defendant failing to show that result would have been different had he been given opportunity to make closing argument.

Debtor and creditor -- Fraudulent conveyances -- Trial judge not being compelled to draw inference of fraudulent intent from badges of fraud pleaded by plaintiff so as to place burden of explanation on defendant -- Trial judge not erring in dismissing fraudulent conveyance action after deciding that surrounding circumstances taken as whole explained away plaintiff's evidence.

The plaintiff brought an action against R on his guarantee and against R and his wife A on the ground that R's transfer of his interest in two properties to A were fraudulent conveyances. At the end of the plaintiff's case, both R and A brought motions for a non-suit and elected to call no evidence. The trial judge dismissed R's motion and granted A's motion, with reasons to follow. Later, and without hearing further submissions, he delivered reasons granting the plaintiff judgment against R on his guarantee and dismissing the claim against A. R and the plaintiff both appealed.

Held, the appeals should be dismissed.

non-suit in a judge alone trial, a new trial is ordered. Prudential, however, does not want a new trial. Instead, it wants this court to decide whether the trial judge erred in concluding that it had not established that the transfers were fraudulent conveyances. Furthermore, although Prudential does request, in the alternative, that the case be sent back for a new trial, in my view, that remedy is not warranted as the trial judge's reasons provide a sufficient basis for this court to determine the merits of Prudential's action.

(2) Did the trial judge apply the wrong test for establishing a fraudulent conveyance claim?

[38] Prudential submits that by putting the onus on it to establish fraud on a balance of probabilities, the trial judge applied the wrong test. Prudential argues that the trial judge should have engaged in a two-step analysis. First, he should have concluded that the "badges of fraud", on which Prudential relied, gave rise to an inference of fraud and that that inference then put a "burden of explanation" on Angela Laba to show that her husband did not act with an intent to defeat his creditors. See *Rinaldo v. Rosenfeld (Trustee of)*, [2001] O.J. No. 4189 (C.A.). Second, as neither Robert nor Angela Laba put forward any evidence to meet their burden, the trial judge should have found that Prudential was entitled to a judgment against Angela Laba and declared the transfers void. I do not accept Prudential's submission.

[39] The crucial question in any fraudulent conveyance action is whether the plaintiff has proved the fraudulent intent of the debtor. While the legal burden to prove fraudulent intent remains on the plaintiff throughout the trial, the plaintiff can raise an inference of fraud sufficient to put a "burden of explanation" on the defendant debtor. The plaintiff typically raises an inference of fraud by putting forward "badges of fraud". These [page572] "badges of fraud" vary from case to case. They are no more than typical and suspicious facts that may allow the court to make a finding of fraud absent an explanation from the debtor. See C.R.B. Dunlop, *Creditor-Debtor Law in Canada*, 2nd ed. (Toronto: Thomson Canada, 1995) at 613-15.

[40] The court, however, is not compelled to draw this inference of fraudulent intent from badges of fraud pleaded by the plaintiff. See *Koop v. Smith* (1915), 1915 CanLII 26 (SCC), 51 S.C.R. 554, [1915] S.C.J. No. 34, at pp. 558-59 S.C.R. The court may dismiss a fraudulent conveyance action because it has decided that the surrounding circumstances taken as a whole explain away the plaintiff's evidence. It seems to me that is what the trial judge did in this case.

[41] It is clear from his reasons that the trial judge was well aware that it was within his discretion to draw an inference of fraudulent intent from Prudential's alleged badges of fraud. Unfortunately, the trial judge's reasons are not entirely clear on whether he drew this inference. One or two paragraphs in his judgment suggest that he did. On balance, however, on my reading of his reasons, it appears that the trial judge decided not to draw an inference of fraudulent intent and thus not to place the "burden of explanation" on Angela Laba. Instead, he decided Prudential's claim on the basis it had the burden of proof to establish a fraudulent conveyance on a balance of probabilities and did not have the benefit of an inference of fraudulent intent. He looked at all the circumstances surrounding the badges of fraud and drew inferences that explained away Prudential's evidence. He therefore concluded that Prudential had not made out its case.

[42] For example, at para. 69 of his reasons, in a passage I have already quoted, he said, "it is at least as likely" that the transfers were made to facilitate the RBC mortgage rather than to defeat his creditors. Implicitly, he concluded Prudential did not establish a fraudulent intent on a balance of probabilities. Also, at para. 71, he found, "the facts which the plaintiff submits represents badges of fraud do not, on a balance of probabilities, evidence fraud". Again, he determined that Prudential failed to meet its burden. And, more importantly, in several paragraphs, which I discuss below, the trial judge rejected a number of the badges of fraud alleged by Prudential. In my view, these passages demonstrate, as in *Rinaldo*, supra, that the trial judge concluded, in the circumstances before him, that Prudential had not met the threshold necessary to put the burden of explanation on Angela Laba. In my view, it was open to him to do so.

[43] In the next section of these reasons, I discuss the inferences that the trial judge did draw. On this ground of appeal, it is sufficient to say that the trial judge did not and was entitled not [page573] to draw the permissive inference of fraudulent intent. I am therefore not persuaded that he applied the wrong test for establishing a fraudulent conveyance.

(3) Did the trial judge fail to properly assess Prudential's evidence?

[44] Even accepting that it had the burden throughout to establish that the transfers were fraudulent on a balance of probabilities, Prudential contends that in finding against it the trial judge failed to properly assess the evidence. Central to this contention is Prudential's submission that, as the entire fraudulent conveyance case against Angela Laba was based on a written record, the principle of appellate deference to a trial judge's fact-finding and inference-drawing does not apply.

[45] The principle of deference means that an appellate court may substitute its own view of the evidence and draw its own inferences only if the trial judge committed a palpable and overriding error or made findings of fact or drew inferences that are unreasonable or unsupported by the evidence. See *H.L. v. Canada (Attorney General)*, 2005 SCC 25 (CanLII), [2005] 1 S.C.R. 401, [2005] S.C.J. No. 24, at para. 4. However,

TAB 12

Montor Business Corporation v. Goldfinger, 2016 ONCA 406 (CanLII)

Source: Court of Appeal for Ontario
Date: 2016-05-30
File number: C57879
Other citations: 351 OAC 241 — 58 BLR (5th) 243 — [2016] WDFL 3770 — 36 CBR (6th) 169
Citation: Montor Business Corporation v. Goldfinger, 2016 ONCA 406 (CanLII),
<<https://canlii.ca/t/grvfm>>, retrieved on 2026-09-15

COURT OF APPEAL FOR ONTARIO

CITATION: Montor Business Corporation v. Goldfinger, 2016 ONCA 406
DATE: 20160530
DOCKET: C57879

Cronk, Pepall and Lauwers JJ.A.

In the Matter of the Bankruptcy of Summit Glen Waterloo/2000 Developments Inc., of the
City of Toronto, in the Province of Ontario

BETWEEN

A. Farber & Partners Inc., the Trustee of the Bankruptcy Estate of
Montor Business Corporation, Annopol Holdings Limited and
Summit Glen Brantford Holdings Inc.

Applicant (Appellant/
Respondent by way of cross-appeal)

and

Morris Goldfinger, Goldfinger Jazrawy Diagnostic Services Ltd.,
Summit Glen Bridge Street Inc., Mahvash Lehcier-Kimel,
Annopol Holdings Limited and Summit Glen Brantford Inc.

Respondents (Respondents/Appellants by way of cross-appeal)

Patrick Shea and Brent Arnold, for the appellant/respondent by way of cross-appeal

Maurice J. Neirinck and Michael McQuade, for the respondents/appellants by way of cross-appeal

Heard: October 14 and 15, 2015

a position to pervert the ordinary rule of supply and demand and force the other to transact for a consideration which is substantially different than adequate, normal or fair market value, the transaction in question is not at arm's length.

[68] He also considered *Piikani Energy Corporation (Trustee of) v. 607385 Alberta Ltd.*, 2013 ABCA 293, 556 A.R. 200, which identified factors that provide guidance on non-arm's length analysis in the context of *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) jurisprudence. These factors, enumerated at para. 29 of *Piikani*, are: was there a common mind which directed the bargaining for both parties to a transaction; were the parties to the transaction acting in concert without separate interests; and was there *de facto* control?

[69] There was no common mind directing Goldfinger and Annopol or indeed, Kimel. They were adverse in interest and on the verge of litigation. The evidence also fails to suggest that they were acting in concert. As discussed, the trial judge did not fail to consider the parties' relationship at the time of the Payments. Nor did Goldfinger or Annopol exercise *de facto* control over the other.

[70] Goldfinger was never involved in the operation of the companies, had little information about their operation or finances, discovered Kimel had misled him and then threatened to sue. As mentioned, although Goldfinger and Kimel decided on the amount Goldfinger would be paid, the overall structure and details of the settlement were negotiated with the assistance of counsel.

[71] Farber argues that the Payments were the opposite of what one would expect from arm's length parties and that the trial judge erred in declining to draw certain inferences from the evidence. However, the trial judge is the fact finder, not this court, and he was not required to recite every piece of evidence in his 372 paragraphs of reasons. Moreover, there was a dearth of evidence suggesting that the parties were not at arm's length and the trial judge did not err in finding to the contrary. I would reject this argument.

(3) *Intention to Defraud, Defeat or Delay a Creditor*

[72] The burden was on Farber to establish the requisite intent under s. 96 of the *BIA*. An inference of intent may arise from the existence of one or more badges of fraud. However, the presence of such indicia does not mandate a finding of intent. Whether the intent exists is a question of fact to be determined from all of the circumstances as they existed at the time of the conveyance: see *Re Fancy* (1984), 1984 CanLII 2031 (ON HCJ), 46 O.R. (2d) 153 (H. Ct. J.), at p. 159.

[73] Case law has identified the following, non-exhaustive list of "badges of fraud" (see *DBDC Spadina v. Walton*, 2014 ONSC 3052, at para. 67; *Indcondo Building Corp. v. Sloan*,

TAB 13

Koop v. Smith, 1915 CanLII 26 (SCC), 51 SCR 554

Source:	Supreme Court of Canada
Date:	1915-05-18
Other citations:	25 DLR 355 — 8 WWR 1203 — [1915] CarswellBC 151 — [1915] SCJ No 34 (QL)
Citation:	Koop v. Smith, 1915 CanLII 26 (SCC), 51 SCR 554, < https://canlii.ca/t/21v7d >, retrieved on 2026-09-15

Supreme Court of Canada

Koop v. Smith, (1915) 51 S.C.R. 554

Date: 1915-05-18

Paul Koop (*Plaintiff*) *Appellant*;

and

Mabel Smith (*Defendant*) *Respondent*.

1915: May 6; 1916: May 18.

Present: Davies, Idington, Duff, Anglin and Brodeur JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA.

Bill of sale—Transfer between near relatives—Preferential assignment—Suspicious circumstances—Corroborative evidence—Bona fides—Practice.

Where a bill of sale made between near relatives is impeached as being in fraud of creditors and the circumstances attending its execution are such as to arouse suspicion the court may, as a matter of prudence, exact corroborative evidence in support of the reality of the consideration and the *bona fides* of the transaction.

Judgment appealed from (7 West. W.R. 416) reversed.

APPEAL from the judgment of the Court of Appeal for British Columbia^[1], reversing the judgment of Hunter C.J., at the trial, and dismissing the plaintiff's action with costs.

The action was brought to set aside a bill of sale executed in favour of the defendant by her brother, at a time when the latter was financially embarrassed, and to have the bill of sale declared void as a preferential assignment in fraud of the rights of the other creditors of the assignor.

The circumstances of the case which are material to the issues raised on the present appeal are stated in the judgments now reported.

[Page 555]

E. Lafleur K.C. for the appellant.

J. F. Orde K.C. for the respondent.

DAVIES J.—I think this appeal should be allowed and the judgment of the trial judge restored. He thought the circumstances under which the bill of sale was executed suspicious and declined to accept the uncorroborated testimony of the plaintiff's brother, who made the assignment to his sister now being impeached.

The Chief Justice of the Court of Appeal seems to have thought that although the trial judge did not accept the evidence of the defendant, Smith, still the burden of proof lay upon the plaintiff and that he had not discharged it.

The learned trial judge on the contrary found that the circumstances were so suspicious, connected with and surrounding the impeached bill of sale, as to throw the burden of proof of its *bona fides* upon the grantee, the plaintiff's sister. I agree with his findings in that regard. I think the rule laid down by the courts of Ontario with regard to assignments made between near relations and impeached by the creditors of the assignor as fraudulent is a salutary one, namely, that where it is accessible some corroborative evidence of the *bona fides* of the transaction should be given. No attempt was made by the defendant to act upon that rule in this case. Smith's evidence was not accepted and the trial judge pointed out many alleged facts which were accessible and could have been proved, if true, as corroborative evidence but were not. Under all the circumstances I think the learned trial

[Page 556]

judge was right and that the appeal should be allowed with costs and his judgment restored.

IDINGTON J.—This appeal presents a rather unsatisfactory case. The Court of Appeal in reversing the trial judgment proceeds upon the ground that the bill of sale attacked was not shewn to be void as against creditors on the ground of being preferential to the knowledge of the appellant. In that I quite agree if regard is had to the authorities relied upon by the majority of the Court of Appeal.

But the learned trial judge seems to have discredited the judgment debtor who had made the assignment and was the only witness called to support it.

I cannot say as matter of law that he erred in so finding. These cases of alleged fraudulent assignment must generally depend largely upon the view of the facts taken by the trial judge. It is quite competent for him, if impressed with the veracity of the assignor, to accept and act upon his unsupported statement. The transaction and established surrounding circumstances might be such as to justify his doing so. Or, on the other hand, they might be such as to render his doing so questionable.

In this case he has found the surrounding circumstances and the statements such as to call for corroboration, and that view is not attempted to be disputed and hence has not yet been reversed. The reversal of the judgment of the learned trial judge proceeding upon the question of a preferential assignment does not touch the want of *bona fides* in the transaction upon which he proceeded.

The pleadings, I suspect are partly responsible for this curious result.

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The pleader improperly blends, in almost every sentence that is essential to his pleadings, the two distinct grounds of complaint. Casually looked at one might say it was intended only to attack the transaction on the ground of the assignment being preferential.

The case I imagine must have been argued upon that assumption. There does not appear in the case any notice of appeal to the Court of Appeal or reasons for or against same to enlighten us as to how all this happened.

The appeal must be allowed.

DUFF J.—I think this appeal should be allowed and the judgment of the learned Chief Justice, who tried the action, restored. The majority of the Court of Appeal appear, if I may say so with respect, to have fallen into the error of treating the relationship of the parties to the impeached transaction as possessing no very material significance. The learned trial judge, on the other hand, treated the relationship as decisive in this sense that it determined the point of view from which the evidence was to be considered and the all important question of the onus of proof. The learned trial judge indeed appears to have laid it down as a proposition of law that a transaction of this kind between two near relatives, carried out in circumstances in themselves sufficient to excite suspicion, can only be supported (in an action brought to impeach it by creditors) if the reality or the *bona fides* of

it are established by evidence other than the testimony of the interested parties; and there is a series of authorities in the Ontario courts which has been supposed to decide that, and it may be that it is the settled law of Ontario to-day.

[Page 558]

I do not think the proposition put thus absolutely is part of the English law or of the law of British Columbia; but I think it is a maxim of prudence based upon experience that in such cases a tribunal of fact may properly act upon that when suspicion touching the reality or the *bona fides* of a transaction between near relatives arises from the circumstances in which the transaction took place then the fact of relationship itself is sufficient to put the burden of explanation upon the parties interested and that, in such a case, the testimony of the parties must be scrutinized with care and suspicion; and it is very seldom that such evidence can safely be acted upon as in itself sufficient. In other words, I think the weight of the fact of relationship and the question of necessity of corroboration are primarily questions for the discretion of the trial judge subject, of course, to review; and that any trial judge will in such cases have regard to the course of common experience as indicated by the pronouncements and practice of very able and experienced judges such as Chief Justice Armour and Vice-Chancellor Mowat and will depart from the practice only in very exceptional circumstances.

I may add that I think it doubtful whether the Ontario decisions when properly read really do lay it down as a rule of law that the fact of relationship is sufficient in itself to shift the burden of establishing the burden of proof in the strict sense. It may be that the proper construction of these cases is that the burden of giving evidence and not the burden of the issue is shifted. (As to this distinction see the admirable chapter IX., in Professor Thayer's "Law of Evidence.") In my own view, as indicated above, even this would be putting the matter just a little too high;

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I think the true rule is that suspicious circumstances coupled with relationship make a case of *res ipsa loquitur* which the tribunal of fact may and will generally treat as a sufficient *prima facie* case, but that it is not strictly in law bound to do so; and that the question of the necessity of corroboration is strictly a question of fact. Having examined the evidence carefully I am satisfied that the learned trial judge was entitled to take the course he did take and not only that the evidence, as I read it in the record, casts the burden of explanation upon the respondent, but that the testimony given by her brother ought not in the circumstances to be accepted as establishing either the actual existence of the debt or of the *bona fides* of the transaction.

ANGLIN J.—Having regard to the circumstances of the impeached transaction, as deposed to by the transferror, who is the defendant's brother, and was her only witness — the relationship between the parties to it, the making of the transfer while the entry of judgment on the plaintiff's claim was deferred to enable the brother to make an arrangement to meet it, the nature of the property transferred, and the brother's admission that a power of attorney to the defendant would have served his alleged purpose of realizing on the property — the burden rested on the defendant of establishing the rectitude of her bill of sale. Whether this transaction was *bonâ fide* was eminently a question for the trial judge, and he has found that,

the outstanding fact is that this story of this transfer is not supported *in any particular*.

It was, I think, clearly his view that no real debt from her brother to the defendant had been shewn to exist

[Page 560]

— that the purpose of the transfer was to protect the property covered by the bill of sale against his creditors, and that that purpose was sufficiently known to the defendant to involve her participation in it. After carefully considering the reasons given by the majority of the learned judges of the Court of Appeal and the argument presented on behalf of the respondent, I am, with respect, unable to

find any ground on which the reversal of the judgment of the learned Chief Justice of British Columbia can be supported. The only evidence of the existence of a legal debt owing to the defendant by her brother was the testimony of the latter, which the learned Chief Justice declined to accept. It is difficult to conceive what was his motive for transferring to his sister his only exigible property, if it were not to stave off the plaintiff and his other creditors. Her knowledge of his financial embarrassment would seem to be a fair inference from all the circumstances. Although loath to reverse a considered judgment of the Court of Appeal of British Columbia on a question of fact, I think this is a case in which the opinion of an able and experienced trial judge, in whose conclusions two members of the appellate court have agreed, must prevail.

I would allow the appeal with costs in this court and the Court of Appeal and restore the judgment of the Chief Justice of British Columbia.

BRODEUR J.—The plaintiff's action was for a declaration that the sale of the horses made by T. J. Smith to his sister the defendant respondent, was null and void under the provisions of the "Fraudulent Preference and the Fraudulent Conveyances Acts" of British Columbia (R.S.B.C., ch. 93, secs. 2 and 4, and ch. 94, sec. 3).

[Page 561]

The trial judge maintained the action on the ground that the conveyance was fraudulent. The Court of Appeal, by a judgment of three to two, reversed the finding of the trial judge.

The debtor, T. J. Smith, was very largely indebted and had given a confession of judgment in favour of the plaintiff, Koop, on the 13th of February, 1912, for the sum of \$63,000 and, on the 15th day of May following he sold the larger part of his assets to his sister.

He claimed, when under oath at the trial, that the consideration of that sale was the salary he owed to his sister. He said that she had been living with him for eight years and that he had always paid her a salary of \$1,500 a year.

That evidence was not corroborated and was not accepted by the trial judge.

It would have been very easy for Smith to shew by his books or by his cheques that the alleged salary had been paid; but he did not do so. The sister could have given evidence to corroborate her brother; but she would not do so, claiming she was too nervous to appear in public. It is in evidence, however, that she had been able to attend horse shows and to ride horses.

The decision of the trial judge in these circumstances should not have been disturbed. I am of opinion that his judgment should be restored and that the appeal should be allowed with costs of this court and of the Court of Appeal.

Appeal allowed with costs.

Solicitors for the appellant: Burns & Walkem.

Solicitors for the respondent: Russell, Macdonald & Hancox.

[1] 7 West. W.R. 416; [1914 CanLII 434 \(BC CA\)](#), 20 D.L.R. 440.

TAB 14

7032749 Canada Inc. v. 1998514 Ontario Inc., 2026 ONSC 3067 (CanLII)

Source: Ontario Superior Court of Justice
Date: 2026-05-26
File number: CV-24-719151-00CL
Citation: 7032749 Canada Inc. v. 1998514 Ontario Inc., 2026 ONSC 3067 (CanLII), <<https://canlii.ca/t/kl83b>>, retrieved on 2026-09-15

CITATION: 7032749 Canada Inc. v. 1998514 Ontario Inc., 2026 ONSC 3067

COURT FILE NO.: CV-24-719151-00CL

DATE: 20260526

SUPERIOR COURT OF JUSTICE – ONTARIO [Commercial List]

RE: 7032749 CANADA INC.

Applicant

AND:

1998514 ONTARIO INC., 5005070 ONTARIO INC., 5019233 ONTARIO LTD., 5026173 ONTARIO INC., 5032807 ONTARIO INC., 1937777 ONTARIO LTD., 1982360 ONTARIO INC., 1966708 ONTARIO INC., SANCOR HOLDINGS INC., LEADER MEDIA II LTD. AND CARLO LICONTI, ALSO KNOWN AS CARLO LAWRENCE LICONTI

Respondents

BEFORE: Justice Jana Steele

COUNSEL: *Domenico N. Magisano & Chelsea McKee*, for the Receiver, GlassRatner Restructuring Inc.

Gustavo F. Camelino, for the Creditor Peng Yu Fan

Peter Waldmann, for Alejandro Escobar

May Cheng, for Cinema Siete

Manish Kshatriya, Self-Represented

HEARD: January 13 and February 20, 2026, with supplemental written submissions March 6, 2026, and April 30, 2026

ENDORSEMENT

[1] The Receiver brings this motion seeking, among other things, a declaration that certain transfers that were made constitute transfers undervalue and an order that those transfers be repaid. Certain of the transfer recipients object to the Receiver's request for repayment of the transferred funds.

[2] Carlo Lawrence Liconti, and/or the various companies he controlled, caused certain payments to be made to the Transfer Recipients (defined below) following the issuance of a tax refund from Canada Revenue Agency to Family Corp. (defined below), one of the respondent companies. The transfers were made despite there being a court order in place that any tax refunds received were to be held in trust.

[3] The Transfer Recipients were arm's length from the respondents and were either creditors or service providers to some or all of the respondent entities.

[4] For the reasons set out below, I have determined that although the transfers were made at undervalue, the circumstances of this case are such that I should exercise my discretion and not require the Transfer Recipients to repay the transferred funds.

[5] The Receiver's request for approval of its Reports and professional fees is granted.

Background

[6] The Applicant, 7032749 Canada Inc., is the administrative agent for a group of lenders. The Applicant provides debt financing to film and television producers.

[7] The Applicant made loans to the Borrowers (defined below).

[8] Each of the Borrowers guaranteed the obligations of the others under a Cross Collateralization Security Agreement dated September 11, 2021 (the "Cross-Collateral Agreement").

[9] GlassRatner Restructuring Inc. (the "Receiver") was appointed receiver over the property of 1998514 Ontario Inc. ("Charity"), 5005070 Ontario Inc. ("Apprentice"), 5019233 Ontario Ltd. ("Bordello"), 5026173 Ontario Inc. ("Clive"), 5032807 Ontario Inc. ("Family Corp.", and together with Charity, Apprentice, Bordello, and Clive, the "Borrowers"), 1937777 Ontario Ltd. ("Skin"), 1982360 Ontario Inc. ("Perpetual"), 1966708 Ontario Inc. ("Beginner's", and together with Skin and Perpetual, the "Prior Borrowers"), Sancor Holdings Inc. ("Sancor"), and Leader Media II Ltd. ("Leader", and together with Sancor, the "Corporate Guarantors") pursuant to an Order of Black J., dated August 20, 2024 as amended and restated by the Order of Cavanagh J., dated December 23, 2024 (the "A&R Appointment Order").

[10] The Borrowers, Prior Borrowers and Corporate Guarantors were controlled by Carlo Liconti. Mr. Liconti was the sole officer and director of each of the Borrowers, Prior Borrowers and Corporate Guarantors.

[11] Mr. Liconti passed away on or about November 28, 2025.

[12] The Borrowers and Prior Borrowers were single purpose corporations that were engaged in the production of a film or television program.

[13] The Corporate Guarantors are engaged in the distribution of film and television productions.

[14] Prior to the Receiver being appointed, but following the commencement of the application, on or about May 6, 2024, the parties attended a chambers appointment to schedule the application. The court made the following Preservation Order at that appointment:

... in as much as the urgency from the applicant's side relates to the potentially pending tax credit payment from CRA, I also order if and when the payment is received (respondent's counsel advises that it has not yet been received) it is to be held in a trust account of the Oslers firm (counsel [at that time] to the respondents).

[15] On or about December 23, 2024, the Court granted a further Order (the "Ancillary Order") providing the Receiver with certain additional powers, including the ability to investigate and seek direction on certain transactions which could be considered transfers under value ("TUVs") or preferential payments under sections 95, 96, 98, 101, 163, and 164 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "BIA").

[16] The Receiver determined that \$525,150 of tax credit funds that were payable to Family Corp were delivered to certain third parties (the "Transfer Recipients")^[1] soon after the Preservation Order was made. The transfers were confirmed by Mr. Liconti, who provided the Receiver with a list of the Transfer Recipients and the amounts he transferred to each:

PAYEE	AMOUNT	FEE	TOTAL
Cinema Siete Inc.	\$150,000.00	\$50.00	\$150,050.00
Stephen Chung	\$40,000.00	\$50.00	\$40,050.00
Manish Kshatriya	\$75,000.00	-	\$75,000.00
Peng Yu (Robert) Fan	\$90,000.00	-	\$90,000.00

Alejandro Escobar	\$25,000.00	\$50.00	\$25,050.00
Gallo F	\$125,000.00	-	\$125,000.00
223649 ONT	\$20,000.00	-	\$20,000
	\$525,000.00	\$150.00	\$525,150.00

[17] The transfers to the Transfer Recipients were made in and around May 2024.

[18] The Receiver asked Mr. Liconti in an email dated October 1, 2024 to explain why the above payments were made “in the face of a court order that required [Mr. Liconti] to pay the full amount of the tax credit over to Osler’s trust account.” Mr. Liconti responded on the same day:

... I don’t want to explain it as it will seem to be contrived and slanted to make me appear right and not wrong. ... [P]lease look at the amounts that were dispersed and you’ll see I did not partake in the receipt of a single penny as I only cared that those few were compensated for approximately 3 years without their invested funds and in essence gave free labour to EPC.

[19] The Receiver’s position is that the above transfers were made in contravention of the Preservation Order.

[20] On or about February 14, 2025, the Receiver’s counsel wrote to each of the Transfer Recipients advising that it believed the Transfers were preferential payments pursuant to section 95 of the BIA and demanded repayment.

[21] The applicant is a secured creditor of Family Corp in the amount of approximately \$3.5 million, as set out in the Receiver’s First Report. The applicant is a collection of individual investors.

[22] Three Transfer Recipients, Peng Yu (Robert) Fan, Alejandro Escobar, and Manish Kshatriya filed materials in advance of the motion objecting to the Receiver’s request for the repayment of the transferred funds they had received. These Transfer Recipients appeared and made oral submissions to the court. They also filed written supplemental submissions at the court’s request.

[23] Another Transfer Recipient, Stephen Chung provided a letter in which he stated, among other things, that he requested a dismissal of the Receiver’s request for relief from him.

[24] At the appearance on January 13, 2026, Mr. Cristian de la Rosa, who indicated that he is the sole shareholder and director of Cinema Siete Inc. (“Cinema Siete”), attended and made brief oral submissions. After hearing from Mr. de la Rosa, I determined that evidence from Mr. de la Rosa was required. Accordingly, the motion was adjourned to February 10, 2026 to provide time for materials to be delivered. At the return, Cinema Siete was represented by counsel, and had filed materials.

[25] As noted by the Receiver, in its Second Report, certain of the Transfer Recipients responded to the Receiver’s demand. The Receiver stated: “While various issues were raised by the Transfer Recipients, a common theme in the responses was that Family Corp was not indebted to the Transfer Recipients, and that the Transfers were paid in settlement of obligations of other entities related to Liconti.”

Analysis

[26] A receiver is not routinely granted the wide investigative powers, rights, and remedies available to a BIA bankruptcy trustee. Cavanagh J., in granting the Ancillary Order, stated at para. 7 of his endorsement:

In a court-appointed receivership, a receiver is not routinely granted the investigative powers, rights and remedies available to a trustee in bankruptcy pursuant to the *BIA*. It is open to a receiver to seek expanded powers, and for the Court to grant expanded powers, where it is satisfied that such powers are reasonably necessary for the receiver to exercise its powers and authority and discharge its mandate under the existing appointment order.

[27] Cavanagh J. further indicated, at para. 9 of his endorsement, that he was satisfied “in these circumstances, based on the Receiver’s First Report” that the Receiver ought to be granted the expanded powers requested. Paragraph 2 of the Ancillary Order provides for the following expanded powers:

THIS COURT ORDERS that the Receiver shall be authorized, but not obligated to, exercise investigative powers, rights, and remedies available to a trustee in bankruptcy pursuant to the following sections of the *BIA*:

- a) Section 95 – Preferences;
- b) Section 96 – Transfers at undervalue;
- c) Section 98 – Recovering proceeds if transferred;
- d) Section 101 – Inquiry into dividends, redemption of shares or compensation;
- e) Section 163 – Examination of bankrupt and others by trustee; and
- f) Section 164 – Trustee may require books and property of bankrupt be produced.

Should the Court declare that the Transfers are void as against the Receiver and ought to be returned to the Receiver?

[28] Initially, as set out above, the Receiver had relied on both [sections 95](#) and [96](#) of the BIA. At the motion, the Receiver indicated that it was no longer relying on [section 95\[2\]](#) of the BIA.

[29] [Section 96\(1\)](#) of the BIA provides:

On application by the trustee, a court **may** declare that a transfer under value is void against, ..., the trustee – or order that a party to the transfer or any other person who is privy[3] to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor – if

- a) The party was dealing at arm’s length with the debtor and
 - i. The transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and that ends on the date of the bankruptcy,
 - ii. The debtor was insolvent at the time of the transfer or was rendered insolvent by it, and
 - iii. The debtor intended to defraud, defeat or delay a creditor; or
- b) The party was not dealing at arm’s length with the debtor and [...][4]

[Emphasis added.]

[30] As discussed further below, [s. 96](#) of the BIA grants the court the discretion to declare that a TUV is void, or order that the difference between the value of the consideration given and the value of the consideration received be repaid if certain conditions are met.

[31] I first consider whether there was a “transfer at undervalue” and whether the conditions set out in [s. 96](#) have been met. Second, I consider whether the court should exercise some discretion with respect to the Transfers.

Was there a “transfer at undervalue”?

[32] The Court must first ascertain whether there was a “transfer at undervalue.” The BIA defines “transfer at undervalue” to mean “a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor.” [s. 2](#), BIA.

[33] As stated by Myers J. in *National Telecommunications Inc. (Re)*, [2017 ONSC 1475](#), 45 C.B.R. (6th) 181, at para. 30, “the first question for resolution is whether the bankrupt disposed of property for no consideration or for conspicuously less than the fair market value of the property.”

[34] The Transfer Recipients were not creditors of Family Corp. Family Corp did not receive consideration for the transfers made to the Transfer Recipients. Accordingly, the transfers were at undervalue.

Did the Transfers occur during the period set out in [s. 96\(1\)\(a\)\(i\)](#)?

[35] In *Re National Telecommunications Inc.*, at para. 10, Myers J. held that the date of the initial bankruptcy event was the date that the application for receivership was brought.

TAB 15

Aquino v. Bondfield Construction Co., 2024 SCC 31 (CanLII)

Source:	Supreme Court of Canada
Date:	2024-10-11
File number:	40166
Other citations:	175 OR (3d) 400 — 496 DLR (4th) 613
Citation:	Aquino v. Bondfield Construction Co., 2024 SCC 31 (CanLII), < https://canlii.ca/t/k78zs >, retrieved on 2026-09-15
Most recent unfavourable mention	Scott v. Golden Oaks Enterprises Inc. , 2024 SCC 32 (CanLII) [...] Distinguished: Aquino v. Bondfield Construction Co. , 2024 SCC 31 ; Ridel v. Goldberg, 2019 ONCA 636 , 147 O.R. (3d) 23; considered: Meridian Global Funds Management Asia Ltd. v. Securities Commission, [1995] 2 A.C. 500 ; 373409 Alberta Ltd. (Receiver of) v. Bank of Montreal , 2002 SCC 81 , [2002] 4 S.C.R. 312 ; referred [...]]



SUPREME COURT OF CANADA

CITATION: Aquino v. Bondfield Construction Co., 2024 SCC 31

APPEAL HEARD: December 5, 2023
JUDGMENT RENDERED: October 11, 2024
DOCKET: 40166

BETWEEN:

**John Aquino, 2304288 Ontario Inc., Marco Caruso, Giuseppe Anastasio, also known as Joe Ana
and Lucia Coccia, also known as Lucia Canderle**
Appellants

and

**Ernst & Young Inc., in its capacity as Court-Appointed Monitor of Bondfield Construction
Company Limited, and KSV Kofman Inc., in its capacity as Trustee in Bankruptcy of 1033803
Ontario Inc. and 1087507 Ontario Limited**
Respondents

- and -

Attorney General of Ontario and Insolvency Institute of Canada
Interveners

CORAM: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Jamal and O'Bonsawin JJ.

REASONS FOR Jamal J. (Wagner C.J. and Karakatsanis, Côté, Rowe, Martin and O'Bonsawin
JUDGMENT: JJ. concurring)
(paras. 1 to 100)

NOTE: This document is subject to editorial revision before its reproduction in final form in the *Canada Supreme Court Reports*.

**John Aquino,
2304288 Ontario Inc.,
Marco Caruso,
Giuseppe Anastasio, also known as Joe Ana and
Lucia Coccia, also known as Lucia Canderle**
Appellants

v.

**Ernst & Young Inc., in its capacity as court-appointed
monitor of Bondfield Construction Company Limited, and
KSV Kofman Inc., in its capacity as Trustee in Bankruptcy
of 1033803 Ontario Inc. and 1087507 Ontario Limited**
Respondents

and

**Attorney General of Ontario and
Insolvency Institute of Canada**
Interveners

Indexed as: Aquino v. Bondfield Construction Co.

- Business Corporations Act*, R.S.A. 2000, c. B-9, s. 16(1).
- Business Corporations Act*, R.S.O. 1990, c. B.16, s. 15.
- Business Corporations Act*, R.S.P.E.I. 1988, c. B-6.01, s. 22(1).
- Business Corporations Act*, R.S.Y. 2002, c. 20, s. 18(1).
- Business Corporations Act*, S.B.C. 2002, c. 57, s. 30.
- Business Corporations Act*, S.N.B. 1981, c. B-9.1, s. 13(1).
- Business Corporations Act*, S.N.W.T. 1996, c. 19, s. 15(1)).
- Canada Business Corporations Act*, R.S.C. 1985, c. C-44, s. 15.
- Companies Act*, R.S.N.S. 1989, c. 81, s. 26(8).
- Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, s. 36.1.
- Corporations Act*, R.S.N.L. 1990, c. C-36, s. 27(1).
- The Business Corporations Act, 2021*, S.S. 2021, c. 6, s. 3-1(1).
- The Corporations Act*, C.C.S.M., c. C225, s. 15(1).

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- Wood, Roderick J. "Transfers at Undervalue: New Wine in Old Wineskins?", in Janis P. Sarra and Barbara Romaine, eds., *Annual Review of Insolvency Law 2017*. Toronto: Thomson Reuters, 2018, 1.

- (d) *The Debtor's Intent to Defraud, Defeat, or Delay a Creditor Can Be Proved Through Badges of Fraud*

[43] Section 96(1)(b)(ii)(B) of the *BIA* requires the party seeking to reverse a transfer at undervalue to prove the debtor's intent to defraud, defeat, or delay a creditor. This is a question of fact to be decided based on all the circumstances that existed at the time of the transfer (*Urbancorp*, at para. 53; *Montor Business Corp. (Trustee of) v. Goldfinger*, 2016 ONCA 406, 36 C.B.R. (6th) 169 (“*Montor CA*”), at para. 72).

[44] Because it is often difficult to adduce evidence of a debtor's subjective intent, the intent requirement is often proved through the evidentiary shortcut of badges of fraud. Badges of fraud are suspicious circumstances from which a court may infer the debtor's intent to defraud, defeat, or delay a creditor (*Urbancorp*, at para. 52; *Montor CA*, at para. 72; Wood (2018), at p. 24). The badges of fraud approach to inferring a debtor's intent to defraud creditors is of ancient vintage, dating back to *Twyne's Case* in 1601 (Wood (2018), at p. 24; *Twyne's Case* (1601), 3 Co. Rep. 80b, 76 E.R. 809).

[45] Case law has recognized the following non-exhaustive examples of badges of fraud: (a) the debtor had few remaining assets after the transfer; (b) the transfer was made to a non-arm's length party; (c) the debtor was facing actual or potential liabilities, was insolvent, or was about to enter a risky undertaking; (d) the consideration for the transaction was grossly inadequate; (e) the debtor remained in possession of the property for their own use after the transfer; (f) the deed of transfer had a self-serving and unusual provision; (g) the transfer was secret; (h) the transfer was made with unusual haste; and (i) the transaction was made despite an outstanding judgment against the debtor (*Montor CA*, at para. 73; see also Wood (2018), at p. 24; Wood (2015), at pp. 223-25 (in the fraudulent conveyance context)).

[46] A badge of fraud must be considered in the context of the surrounding circumstances and in relation to the question of the debtor's intention at the time of the transfer (*Urbancorp*, at para. 65). A court must avoid analyzing the debtor's actions with the benefit of hindsight; it “must resist the temptation to inject back into the circumstances surrounding the impugned transaction knowledge about how events unfolded after that time” (*Montor Business Corp. (Trustee of) v. Goldfinger*, 2013 ONSC 6635, 8 C.B.R. (6th) 200, at para. 272, aff'd 2016 ONCA 406, 36 C.B.R. (6th) 169). The presence of one or more badges of fraud does not require the court to infer an intent to defraud, defeat, or delay a creditor, nor does the absence of a particular badge of fraud prevent the court from inferring this intent (*Urbancorp*, at paras. 53 and 55; *Montor CA*, at para. 72; see also Wood (2018), at pp. 24-25).

[47] The application judge found that Bondfield and Forma-Con's payments under the false invoicing scheme involved several badges of fraud: the transfers were made between non-arm's length parties; Bondfield and Forma-Con received no value; the truth about the transfers was hidden behind phony invoices describing services that were never provided; the transfers were made with unusual haste when compared to Bondfield and Forma-Con's usual billing cycle; and at the time of the transfers the companies had significant long-term and off-balance sheet liabilities and potential liabilities as guarantors for other companies (paras. 157-58).

[48] Based on these badges of fraud, the application judge found that the evidence as a whole provided "a firm basis for finding that John Aquino, as principal and directing mind of [Bondfield] and Forma-Con, had fraudulent intent — an intent to defraud, defeat or delay creditors" (para. 160). She found that "[i]t was in no way reasonable for him to believe that, throughout the period of the impugned transactions, [Bondfield] and Forma-Con did not have long-term creditors, like lenders, . . . who would not be defeated or delayed by the draining of tens of millions of dollars from [Bondfield] and Forma-Con through the false invoicing schemes" (para. 160).

[49] Faced with these findings, the appellants contend that the application judge made an extricable error of law by concluding that Mr. Aquino intended to defraud, defeat, or delay Bondfield and Forma-Con's creditors when the record before the court did not allow it to determine the companies' true financial condition at the time of the transfers. They argue that a corporation's financial condition can be determinative on the question of intent, even in the presence of other badges of fraud, if there were enough assets remaining to pay creditors after the transfers at undervalue. The appellants note that Bondfield and Forma-Con "were paying their creditors in full and on time for most of the applicable review periods" (A.F., at para. 77). They ask this Court to remit the case to the application judge with instructions to determine the companies' financial condition at the time of the transfers.

[50] I would not give effect to this submission. The application judge did not misapply the badges of fraud approach to inferring fraudulent intent. It is no answer to an application under s. 96(1)(b)(ii)(B) of the *BIA* to say that the debtor was not insolvent and was paying its creditors in full and on time at the time of the transfers. The *BIA* is clear that insolvency is not a prerequisite to finding a debtor intended to defraud, defeat, or delay a creditor. Section 96(1)(b)(ii) is disjunctive: the debtor must *either* be insolvent at the time of the transfer (s. 96(1)(b)(ii)(A)) *or* intend to defraud, defeat, or delay a creditor (s. 96(1)(b)(ii)(B)). The appellants' argument would effectively introduce an insolvency requirement into the latter provision, contrary to Parliament's decision not to do so.

[51] The appellants' argument would also give a potentially determinative role to one factor, namely, the debtor's financial condition at the time of the transfer. Although the debtor's financial condition at the time of the transfer is one badge of fraud that may be relevant in inferring an intent to defraud, defeat, or

delay a creditor (*Urbancorp*, at para. 64), whether that intent exists must be determined based on all the circumstances. Again, the presence of a particular badge of fraud does not require a court to infer an intent to defraud, defeat, or delay a creditor, nor does the absence of a particular badge of fraud require the court to refrain from inferring that intent (*Urbancorp*, at paras. 53 and 55; *Montor CA*, at para. 72). A court may find that a debtor intended to defraud, defeat, or delay a creditor under s. 96(1)(b)(ii)(B) even if the debtor was not insolvent at the time of the transfer at undervalue.

[52] The application judge considered the financial condition of the debtor companies and rejected the appellants' argument that Mr. Aquino did not intend to defraud, defeat, or delay a creditor just because the transfers were made when Bondfield and Forma-Con could meet their liabilities as they became due. She found that Bondfield was already in a precarious financial position at the time of the transfers and noted Mr. Aquino's admission that he and another stakeholder routinely injected capital into Bondfield to mislead stakeholders about the company's financial condition (paras. 191-93). The application judge could not determine the companies' true financial condition because the companies' financial records contained deceptive accounting and were unreliable (para. 193). Ultimately, after considering the companies' financial condition and numerous other badges of fraud, the application judge saw "no innocent explanation for a false invoicing scheme" (para. 162). In these circumstances, the appellants cannot now reproach the court for being unable to draw precise conclusions about the companies' financial condition.

[53] I therefore see no basis to interfere with the application judge's conclusion that Mr. Aquino intended to defraud, defeat, or delay a creditor under the false invoicing scheme.

[54] Here, however, the debtors are Bondfield and Forma-Con, not Mr. Aquino. To satisfy s. 96(1)(b)(ii)(B), the trustee and monitor must show that Bondfield and Forma-Con intended to defraud, defeat, or delay a creditor. This requires showing that it is appropriate to attribute Mr. Aquino's fraudulent intent to Bondfield and Forma-Con. I address that issue next.

B. *When Can the Intent of the Directing Mind of a Corporation to Defraud, Defeat, or Delay a Creditor Be Attributed to the Corporate Debtor Under Section 96 of the BIA?*

[55] The appellants contend that even if Mr. Aquino intended to defraud, defeat, or delay a creditor, his intent cannot be attributed to Bondfield and Forma-Con under the corporate attribution doctrine. They invoke the fraud and no benefit exceptions to corporate attribution recognized in this Court's decisions in *Canadian Dredge*, *Livent*, and *DeJong*, and they note that the application judge found that Mr. Aquino intended to defraud both companies and the companies did not benefit from his fraud. The appellants say that this Court's jurisprudence imposes minimal criteria for corporate attribution that must be met in every case, regardless of the context, and that the courts below erred by reframing the corporate attribution doctrine to allow for attribution in this case.

TAB 16

Purcaru v Seliverstova et al., 2015 ONSC 6679 (CanLII)

Source: Ontario Superior Court of Justice
Date: 2015-10-29
File number: FS-10-16657-00
Other citation: 69 RFL (7th) 388
Citation: Purcaru v Seliverstova et al., 2015 ONSC 6679 (CanLII),
<<https://canlii.ca/t/gltc8>>, retrieved on 2026-09-15

CITATION: Purcaru v. Seliverstova et al., 2015 ONSC 6679
COURT FILE NO.: FS-10-16657-00
DATE: 20151029

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

FELICIA PURCARU

Applicant

Morris Cooper
for the applicant

- and -

ANNA SELIVERSTOVA, MARINA
SELIVERSTOVA, MIRCEA PURCARU,
REDINA INC., DARIBO CONSULTING
INC., and DAN PURCARU

Respondents

Gary S. Joseph
for the respondents Anna Seliverstova
and Marina Seliverstova,

HEARD: October 5-9 and 12-15, 2015

F.L. Myers J.

REASONS FOR DECISION

Background

[1] The applicant Felicia Vacaru, formerly Purcaru, is the ex-wife of the respondent Dan Purcaru. The respondent Marina Seliverstova is or was in a relationship with Dan Purcaru. They lived together from August, 2005 to April, 2007 at minimum. Felicia Vacaru and Marina Seliverstova agree on at least one thing in this trial:

Dan Purcaru is a bad man.

[2] He is worse than that. He has admitted to “egregious” breaches of several court orders that caused “serious prejudice” to his ex-wife and their two children.” *Purcaru v Purcaru*, 2010 ONCA 92 at para. 34. In the family law application, McWatt J. found Dan Purcaru in contempt of court due to some of his breaches of court orders. Dan Purcaru chose to serve four months in jail rather than fulfill his legal obligations to his ex-wife and to his children. *Purcaru v Purcaru*, 2011 ONSC 2320. Dan Purcaru still has not purged his contempt. In fact, Kelly J. struck Dan Purcaru’s pleadings in this application due to his continuing efforts to impede the course of justice for the applicant and their children. *Purcaru v Purcaru*, 2010 ONSC 4031 at paras. 83 to 87.

[3] By order dated May 6, 2009, Paisley J. granted a divorce to the applicant and Dan Purcaru. Mr. Justice Paisley held Dan Purcaru liable to the applicant for over \$1 million in arrears of support and for equalization of net family property. In addition, he ordered Dan Purcaru to pay the applicant costs of over \$400,000 plus ongoing child-support of \$7,534 per month.

[4] The Court of Appeal upheld the judgment in the decision referenced above. Other than for brief periods prior to court proceedings which he brought, Dan Purcaru has failed to pay the amounts he owes. He has refused to make proper disclosure and has hidden his assets in breach of court orders. His illegal acts have forced the applicant to bring proceedings to chase Dan Purcaru’s assets in order to obtain at least partial payment of the amounts to which she and the children are entitled.

[5] In this application, Felicia Vacaru asks the court to set aside a number of transactions in which Dan Purcaru is alleged to have fraudulently conveyed his assets so as to avoid his liability to her and to their children. In addition to suing Dan Purcaru, the applicant sues Marina Seliverstova, her daughter Anna Seliverstova, and Mircea Purcaru. Marina Seliverstova is said to be the recipient of much of Dan Purcaru’s property. Anna Seliverstova holds paper title to one property on behalf of her mother. Mircea Purcaru is Dan Purcaru’s brother. He is in Romania. Dan Purcaru sent him \$325,000 in a flagrant breach of at least two court orders. Mircea Purcaru has not responded to this proceeding despite service upon him of the notice of the proceeding by mail in accordance with the order Czutrin J. (as he then was) dated April 8, 2010. [1]

[6] The applicant initially sued two of Dan Purcaru’s corporations. However, the corporations were not parties to any of the specific transactions on which the applicant has now focused. Accordingly, the applicant withdrew her claims against the corporations. Nothing further will be said about them.

[7] The applicant brought this proceeding in the Family Court of the Superior Court of Justice pursuant to an order of Czutrin J. dated April 8, 2010. Under the *Family Law Rules*, O.Reg. 114/99, for proceedings in this court, the form of originating process is an application rather than an action. Under Rule 1(8.4), a consequence of striking a party’s pleadings is to allow an uncontested trial of the case without further participation by the party in default. Unlike Rule 19.02(1)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, in family law default proceedings, there is apparently no automatic deemed admission of the truth of the allegations made by an applicant. [2]

[8] Although Dan Purcaru attended this trial to hear the opening arguments and closing arguments of counsel, in accordance with Rule 1(8.4) and the decision of Kelly J., he did not ask to be heard as a party. During the trial, I ruled that the respondent Marina Seliverstova was entitled to call Dan Purcaru as a witness. Despite being a party, Dan Purcaru consented to an order excluding him from the courtroom as a witness until he gave his testimony.

[9] It is fundamentally important in this proceeding that the rights and obligations of the various parties be kept separate. There is no liability under our law for having a relationship with a dishonest person. Moreover, even dishonest people are only liable upon proof of facts that establish a recognized basis for imposing liability at law. While a person’s past dishonesty may be relevant in a number of ways during a civil trial, there is no tort liability for breach of a court order *per se*. While the recitals above concerning Dan Purcaru’s proven misconduct provide a necessary background for understanding this application, the burden is upon the applicant to establish her entitlement to relief against each respondent individually. I approach this proceeding on the basis that for the applicant to obtain relief against each of the respondents, she must meet her burden of proof for each element of the relief sought against each of them.

The Basic Legal Framework

[10] The applicant sues under the provisions of the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F-29. She asserted no other causes of action. Oversimplifying for the purpose of an introduction, the *Fraudulent Conveyances Act* provides that the court can declare a transfer of property void if the intention of the person who made the transfer was to defeat or delay his or her creditors. The statute is designed to stop a debtor from hiding assets from creditors by fraudulently transferring the assets to another person. If it is applicable, an order under the statute makes property that was fraudulently conveyed available for execution on behalf of the creditors of the transferor. In addition, if the transferred property has been disposed of prior to the

[11] It is very difficult for an applicant to prove a person's hidden intention to defraud creditors. Therefore, the law provides that the court can infer the existence of a transferor's fraudulent intention to defeat or delay creditors where there are recognized "badges of fraud" associated with a transaction. The badges of fraud are facts or fact patterns that courts have held to be indicative of fraudulent transactions. Facts such as: secrecy, transfer of property when an action or execution is pending, transfer of property to non-arm's-length parties, transfers made with undue haste, and transfers for a conspicuously insufficient price, are all recognized examples of badges of fraud. There are others such as the breach of family law orders requiring a party to preserve his or her assets pending a trial. If the court draws the inference of fraudulent intent due to the existence of badges of fraud, then an evidentiary burden will fall to the respondents to explain their conduct to try to rebut the inference of fraudulent intent. Of course the ultimate persuasive burden remains on the applicant throughout. *A&B Landscaping & Interlocking Ltd. v. Bradsil*, 1993 CarswellOnt 664 (Ont. Ct. Gen. Div.) at para 69. *Business Development Bank of Canada v. Samarsky*, [2012] ONSC 3002 at para 15. *Conte Estate v. Alessandro*, [2002] O.J. No. 5080 at para 21 and 22.

[12] The statute and the case law interpreting it also provide that where a purchaser or transferee has paid for property, it is not enough to prove that the seller had a fraudulent intention. Rather, to set aside a transaction where a buyer has paid for property, the applicant must also prove that by participating in the transaction the buyer too intended to defeat or delay the creditors of the seller.

[13] In this case, much of the testimony and argument of both sides was directed toward the issue of whether Marina Seliverstova violated any court orders that prohibited her from transferring or depleting property or whether she helped Dan Purcaru violate orders that she knew had been made against him. There was much tracing of timelines to contrast transaction dates with various court proceedings, all designed to show what Marina Seliverstova knew or did not know about various orders at the time of the impugned transactions. The relevancy of these facts stems from the applicant's argument that the court should infer that Marina Seliverstova had a fraudulent intent if she took part in a transaction that amounted to a breach of either an order that bound her or an order that, to her knowledge, bound Dan Purcaru. I will deal with some of those facts below. However, as an overview, I note that in my view, this issue was overstated to some degree and deflected the parties from other issues.

[14] Breach of interlocutory orders preventing a family law litigant from transferring assets relates to but one badge of fraud. There are many others that are as or more significant factors to assist the court determine whether to draw an inference of fraudulent intent. Notice of an order may be fleeting. In some cases, there are legal nuances as to the meaning of different orders. For example, an order prohibiting the depletion of assets does not have the same meaning or effect as an order preventing dissipation of assets. There is no blanket rule that the breach of an order necessarily leads to a finding of fraudulent intent or, conversely, that a transaction performed in the absence of notice of an order prohibiting it is necessarily valid. The court must consider the facts applicable to each challenged transaction and determine whether a case has made out on the totality of the evidence balancing all relevant facts and legal factors. *Bell v. Williamson*, 1945 CarswellOnt 40 (O.H.C.J.), at para 31.

Credibility and Reliability of the Evidence of the Parties

[15] Mr. Joseph argued strenuously that the applicant lied to the court and ought to be disbelieved. She said, for example, that her divorce trial started before Belobaba J. on June 2, 2008 and that Marina Seliverstova was present in court that day. It does not appear from the court record that a trial started on June 2, 2008. Marina Seliverstova presented evidence indicating that she was working from home that day. On June 10, 2008, Belobaba J. wrote an endorsement regarding an appearance on June 2 and again that day. In between, the applicant and Dan Purcaru had been closeted with Goodman J. holding an intensive settlement conference.

[16] The applicant also swore that she made an agreement with Marina Seliverstova to continue the order of Greer J., where it appears that the lawyers for the parties in fact made the opposite agreement. The applicant also asserts that Dan Purcaru made two payments to his brother each of more than \$300,000 where the common sense view of the financial records would seem to indicate that there was only one draw made by Dan Purcaru which was then moved around and ultimately forwarded to his brother. For these and other reasons, Mr. Joseph says that the court should disbelieve the "aura of deceit" painted on Marina Seliverstova's innocent countenance by the dishonest applicant.

[17] In my view, Mr. Joseph has confused the concepts of credibility and reliability. The applicant was a very difficult witness in cross-examination. She made allegations that she could not support. She assumed the worst in the absence of absolutely clear, independent, documentary proof of the opposite. Who wouldn't? The applicant has been subjected to over a decade of abuse. Apart from an ineffective, brief jail term, Dan Purcaru has evaded with impunity his moral responsibilities and his legal obligations as set out in multiple court orders. Who wouldn't be frustrated? Who wouldn't assume that someone is lying after all the lies and deceit that the applicant has endured?

[96] In August, 2010, shortly after Dan Purcaru's pleadings were struck in this proceeding, Marina Seliverstova commenced a lawsuit against the expert witnesses who testified for the applicant against Dan Purcaru at the family law trial in May, 2009. Marina Seliverstova sought damages against the experts for their testimony in the family law proceedings. The claim against the experts was struck out shortly after it was commenced. It is another basis to suggest that Marina Seliverstova remains in a relationship with Dan Purcaru and was actively helping him well after they would have the court believe that their relationship had ended. In fact, Dan Purcaru provided documents to Marina Seliverstova just weeks before this trial to assist her in her position. In 2009, Marina Seliverstova paid for a family membership at the YMCA in Dan Purcaru's name. In light of these facts, their foreign travel together, and continued movement of substantial amounts of money back and forth between them, I find that their relationship was, and remains a non-arm's length relationship. They do not function at arm's length like strangers transacting business in the commercial market place.

Law and Analysis

[97] Sections 2 and 3 of the *Fraudulent Conveyances Act*, R.S.O. 1990, c F.29 provide:

Where conveyances void as against creditors

2. Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns.

Where s. 2 does not apply

3. Section 2 does not apply to an estate or interest in real property or personal property conveyed upon good consideration and in good faith to a person not having at the time of the conveyance to the person notice or knowledge of the intent set forth in that section.

[98] Section 12 of the *Assignments and Preferences Act*, R.S.O. 1990, c. A.33 provides as follows:

Following proceeds of property fraudulently transferred

12. (1) In the case of a gift, conveyance, assignment or transfer of any property, real or personal, that is invalid against creditors, if the person to whom the gift, conveyance, assignment or transfer was made has sold or disposed of, realized or collected the property or any part thereof, the money or other proceeds may be seized or recovered in an action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, transfer, delivery or payment was made, and such right to seize and recover belongs not only to an assignee for the general benefit of the creditors of the debtor but, where there is no such assignment, to all creditors of the debtor.

Taking proceeds under execution

(2) Where there is no assignment for the benefit of creditors and the proceeds are of such a character as to be seizable under execution, they may be seized under the execution of any creditor and are subject to the *Creditors' Relief Act, 2010*.

[99] As averted to briefly above, under the applicable case law, where a person transfers property for no consideration, only the intention of the transferor is considered under s.2 of the statute. The transferor's intention to defraud creditors may be inferred upon proof that the transaction occurred in conjunction with one or more badges of fraud. In that case, an evidentiary burden to support the *bona fides* of the transaction will fall upon the respondents.

[100] Mr. Justice Brown (as he then was) described the operation of the statute as follows in *DBDC Spadina Ltd v. Walton*, 2014 ONSC 3052 at paras 66 and 67:

The decision of Anderson J. in *Re Fancy*[21] often is referred to as a classic enumeration of the badges of fraud. In the 1988 decision of *Ricchetti v. Mastrogiovanni* this Court dealt with *Re Fancy* as follows:

The law on the subject of fraudulent conveyances is accurately stated by Mr. Justice Anderson in *Re Fancy* (1984), 1984 CanLII 2031 (ON SC), 51 C.B.R. (N.S.) 29

The plaintiff must prove that the conveyance was made with the intent defined in that section [i.e. section 2 of the *Fraudulent Conveyances Act*]. Whether the intent exists is a question of fact to be determined from all of the circumstances as they existed at the

time of the conveyance. Although the primary burden of proving his case on a reasonable balance of probabilities remains with the plaintiff, the existence of one or more of the traditional "badges of fraud" may give rise to an inference of intent to defraud in the absence of an explanation from the defendant. In such circumstances there is an onus on the defendant to adduce evidence showing an absence of fraudulent intent. Where the impugned transaction was, as here, between close relatives under suspicious circumstances, it is prudent for the court to require that the debtor's evidence on bona fides be corroborated by reliable independent evidence.

The "badges of fraud" referred to by Mr. Justice Anderson are those et [sic] out in *Re Dougmor Realty Holdings Ltd.*, (1966), 1966 CanLII 214 (ON SC), 59 D.L.R. (2d) 432:

(1) Secrecy

(2) Generality of Conveyance

(3) Continuance in possession by debtor

(4) Some benefit retained under the settlement to the settlor.

The above passages set out the test to be applied. The badges of fraud alleged by the plaintiff are established.[22]

[67] The case law[23] has identified the following circumstances as constituting "badges of fraud" for purposes of ascertaining the intention of a debtor: (i) the transferor has few remaining assets after the transfer; (ii) the transfer was made to a non-arm's length person; (iii) there were actual or potential liabilities facing the transferor, he was insolvent, or he was about to enter upon a risky undertaking; (iv) the consideration for the transaction was grossly inadequate; (v) the transferor remained in possession or occupation of the property for his own use after the transfer; (vi) the deed of transfer contained a self-serving and unusual provision; (vii) the transfer was effected with unusual haste; or, (viii) the transaction was made in the face of an outstanding judgment against the debtor. As well, the effect of a transaction on creditors may provide evidence of the debtor's intent. For example, if the effect of a conveyance without adequate consideration is to defeat, hinder or delay creditors, then that effect may well justify an inference that, in making the conveyance, there was such an intention. The inference can be rebutted by cogent evidence that there was no such intention, but that the conveyance was made for an honest purpose.[24]

(notes omitted)

[101] In this case, all transactions between Dan Purcaru and Marina Seliverstova were non-arm's length transactions. While generally people do not have to tell the world about their transactions, at all material times Dan Purcaru was subject to disclosure obligations under the *Family Law Rules*. His breaches of disclosure orders and obligations have been documented by others judges previously. Secrecy was not just a badge of fraud. In this case his non-disclosure was outright illegal. While some disclosures concerning 37 and 30 Gloucester Street were made by Dan Purcaru and Marina Seliverstova in 2006, the bulk of the information that led to the tracing effort conducted for this trial was found later by the court appointed receiver. Dan Purcaru and Marina Seliverstova not only hid information, they disclosed untrue information until required to change their stories as further information was discovered on behalf of the applicant.

[102] In light of the holdings above concerning the advances of funds that preceded the purchase by Marina Seliverstova of units 1710 and 1809 of 30 Gloucester Street, it follows that I am satisfied that those advances were made by Dan Purcaru with the intention to defeat, hinder, delay, or defraud his creditors and are hence void as against those creditors. The respondents' explanations have already been found to be lacking of cogency and credibility. While unnecessary for these two transactions that were not supported by good consideration, I find that Marina Seliverstova shared Dan Purcaru's intention to defeat, hinder, delay, or defraud his creditors. There was no intention to make a gift to Marina Seliverstova claimed. The extensive efforts to which they went to launder Dan Purcaru's funds and hide the truth of the transactions that they conducted in light of the multiple badges of fraud surrounding the transactions, especially in light of Marina Seliverstova's knowledge of the divorce proceedings, leads me to readily conclude that Marina Seliverstova was an active and knowing participant in Dan Purcaru's effort to defeat the rights of the applicant.

[103] The granting of the mortgage to CIBC was not in itself a fraudulent conveyance. It is saved under ss.3 and 7(2) of the statute. However, the drawing of \$325,000 from the CIBC line of credit and the alleged loan to Dan Purcaru's brother in direct defiance of the orders of Herman and Belobaba JJ. was a fraudulent conveyance by Dan Purcaru and hence is void as against his creditors. I do not accept his evidence that he loaned the money to his brother. It was a non-arm's length transfer with no consideration, secrecy, haste and in knowing breach of orders of the court. I draw an adverse inference against the brother who declined to appear in this proceeding to try to establish the *bona fides* of the transaction. I infer and find that it was not a *bona fide* loan made on good consideration.

TAB 17

Purcaru v. Seliverstova, 2016 ONCA 610 (CanLII)

Source: Court of Appeal for Ontario
Date: 2016-08-04
File number: C61335
Other citations: 80 RFL (7th) 28 — 39 CBR (6th) 15
Citation: Purcaru v. Seliverstova, 2016 ONCA 610 (CanLII), <<https://canlii.ca/t/gss5w>>, retrieved on 2026-09-15

COURT OF APPEAL FOR ONTARIO

CITATION: Purcaru v. Seliverstova, 2016 ONCA 610

DATE: 20160804

DOCKET: C61335

Sharpe, Lauwers and Miller JJ.A.

BETWEEN

Felicia Purcaru

Applicant (Respondent)

and

Anna Seliverstova, Marina Seliverstova,
Mircea Purcaru, Redina Inc., Daribo Consulting Inc., and
Dan Purcaru

Respondents (Appellants)

Gary S. Joseph and Kenneth Younie, for the appellants

Morris Cooper, for the respondent

Heard: June 22, 2016

On appeal from the order of Justice F.L. Myers of the Superior Court of Justice, dated October 29, 2015, with reasons reported at [2015 ONSC 6679](#).

Miller J.A.:

Background

[1] This appeal is from an order awarding relief to the respondent under provisions of the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F-29. The respondent's ex-husband, Don Purcaru, and the appellant Marina Seliverstova, who had been in a relationship with Mr. Purcaru, were found to have acted in concert to convey property to Ms. Seliverstova with the intention of defeating Mr. Purcaru's creditors, chiefly the respondent.

[2] Mr. Purcaru's financial obligations to the respondent were a consequence of the end of their marriage. The respondent applied in 2004 for an order for divorce and corollary relief. After a trial in 2009, Mr. Purcaru was ordered by Paisley J. to pay the respondent in excess of \$1 million in arrears of spousal and child support and for equalization of net family property, in addition to on-going child support and awards of costs.

[3] In the current proceedings, the trial judge made an order voiding transfers of funds from Mr. Purcaru to Ms. Seliverstova that had enabled Ms. Seliverstova to purchase two residential condominium units in 2006 and 2008, one of which was purchased in the name of her daughter, the appellant Anna Seliverstova.

[4] For the reasons set out below, I would dismiss the appeal. The appeal is largely an attack on the trial judge's determinations of credibility and factual findings related to the impugned transactions. The trial judge rejected much of Ms. Seliverstova's testimony as "a pack of lies", found her explanations for the impugned transactions to be "lacking of cogency and credibility", and found that she shared Mr. Purcaru's intention to defeat, hinder, delay or defraud his creditors. These determinations of credibility and factual findings were open to the trial judge, are entitled to deference, and there is no basis upon which this court could interfere with them. These findings are dispositive of most of the appellants' four grounds of appeal, which are addressed below.

Ground 1: The trial judge shifted the burden of proof to the appellants

[5] The appellants argue that the trial judge erred by impermissibly shifting the burden of proof to them, requiring that they disprove the respondent's allegations. I do not accept this submission. The trial judge correctly stated the law with respect to burden of proof where there is an allegation of fraudulent conveyance. It is up to the challenger of a transaction to establish on a balance of probabilities that a conveyance was made with the intent to 'defeat, hinder, delay or defraud creditors or others', within the meaning of s. 2 of the *Fraudulent Conveyances Act*. Whether Mr. Purcaru had that intention is a question of fact, to be determined from the circumstances at the time of the transactions. If a challenger raises evidence of one or more 'badges of fraud' that can give rise to an inference of an intent to defraud, the evidential burden then falls on those defending the transaction to

adduce evidence showing the absence of fraudulent intent (*Re Fancy*, (1984), 1984 CanLII 2031 (ON H CJ), 46 O.R. (2d) 153 (H.C.J.)), *Nuove Ceramiche Ricchetti S.p.A. v. Mastrogiovanni*, [1988] O.J. No. 2569 (H.C.J.), pp. 4, 5).

[6] Among the badges of fraud identified by the trial judge in this case are: (1) the transactions between Mr. Purcaru and Ms. Seliverstova were not at arm's length, (2) the transactions were not only secretive, they were in violation of Mr. Purcaru's disclosure obligations under the *Family Law Rules*, and (3) the transactions were made without consideration.

[7] The evidential burden then fell on Ms. Seliverstova to adduce evidence to show that the purpose of the transactions was not to defeat Mr. Purcaru's creditors. Both Ms. Seliverstova and Mr. Pucaru testified at trial, and their explanations were found 'to be lacking in cogency and credibility.' Ms. Seliverstova's explanation of the transactions – that funds transferred to her from Mr. Purcaru were repayments of significant unsecured and undocumented loans that she had previously made to Mr. Purcaru – was rejected because it was not supported by documentary evidence and ran contrary to the evidence of how Ms. Seliverstova otherwise conducted her financial affairs. The trial judge found that she was very careful with her funds, moving funds around to take advantage of modest improvements in interest rates, borrowing from credit cards with low introductory rates, and protecting her financial interest by registering a mortgage from her daughter when she purchased a residence in her daughter's name. He therefore found it incredible that someone who was so careful and cautious in all her financial dealings, would make large, unsecured, and undocumented loans. The trial judge found the documentary evidence proffered by Ms. Seliverstova to be incomplete and unpersuasive. He did not believe the account she gave as to the source of the funds that she used for the purchases of the two condominiums, including her evidence that funds that she had received from a bank account in Cyprus originated with her mother in Russia, rather than Mr. Pucaru. He concluded that she was acting as a conduit to put Mr. Pucaru's assets beyond the reach of the respondent.

[8] In short, the trial judge found the transactions to have been fraudulent, based on inferences that he made from the factual record. As this court held in *FL Receivables Trust 2002-A (Administrator of) v. Corbrand Foods Ltd.*, 2007 ONCA 425, such findings are entitled to deference, and there is no basis upon which we could interfere with them. There was no reversal of the burden, as argued by the appellants, or requirement that they prove

a negative. The trial judge found facts that supported an inference of fraud. The explanations provided by the appellants were simply not believable.

Ground 2: The trial judge erred by not assessing the intent at the time of the transactions

[9] The appellants argue, rightly, that the requisite fraudulent intent is to be assessed at the time of the impugned transactions: *Business Development Bank of Canada v. Samarsky*, 2012 ONSC 3002, para. 22. They contend that the trial judge erred by attributing to the appellants knowledge, in 2006 and 2008, of the outcome of the family law proceedings between Mr. Purcaru and the respondent that culminated in the order of Paisley J. in 2009.

[10] The appellants argue that until that order was made, neither Ms. Seliverstova nor Mr. Purcaru could have known that Mr. Purcaru would have such a substantial liability to the respondent. Therefore, in 2006 and 2008 when the condominiums were purchased, they could not have formed the intent to defeat the claims of the respondent.

[11] I reject this argument for the reasons given by the trial judge, who found that 'once the applicant commenced her application for divorce and corollary relief, the applicant became a contingent creditor of Dan Purcaru with 100% likelihood of obtaining some award or settlement.' Additionally, the trial judge found, on the evidence, including Ms. Seliverstova's attendances in court during the proceedings, that Ms. Seliverstova also knew of the divorce proceedings at the time of the transactions and engaged in the transactions with the intent to defeat the respondent's claims against Mr. Purcaru:

The extensive efforts to which they went to launder Dan Purcaru's funds and hide the truth of the transactions that they conducted in light of the multiple badges of fraud surrounding the transactions especially, in light of Marina Seliverstova's knowledge of the divorce proceedings, leads me to readily conclude that Marina Seliverstova was an active and knowing participant in Dan Purcaru's effort to defeat the rights of the applicant.

[12] I reject this ground of appeal.

Ground 3: Trial judge erred by speculating and making impermissible inferences

[13] The appellant argues that the trial judge erred in law by engaging in speculation in order to make factual findings that were not supported by the evidence.

[14] I do not agree. The trial judge surveyed the records of the financial dealings of Mr. Purcaru and Ms. Seliverstova that were available to him. He did not, on his reckoning, have a complete picture of their dealings. He concluded that this was deliberate:

TAB 18

Target Canada Co. (Re), 2015 ONSC 7574 (CanLII)

Source: Ontario Superior Court of Justice
Date: 2015-12-11
File number: CV-15-10832-00CL
Other citation: 31 CBR (6th) 311
Citation: Target Canada Co. (Re), 2015 ONSC 7574 (CanLII), <<https://canlii.ca/t/gmp4d>>, retrieved on 2026-09-15

CITATION: Target Canada Co. (Re), 2015 ONSC 7574
COURT FILE NO.: CV-15-10832-00CL
DATE: 2015-12-11

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TARGET CANADA CO., TARGET CANADA HEALTH CO., TARGET CANADA MOBILE GP CO., TARGET CANADA PHARMACY (BC) CORP., TARGET CANADA PHARMACY (ONTARIO) CORP., TARGET CANADA PHARMACY CORP., TARGET CANADA PHARMACY (SK) CORP. AND TARGET CANADA PROPERTY LLC.**

BEFORE: Regional Senior Justice Morawetz

COUNSEL: *J. Swartz and Dina Milivojevic*, for the Target Corporation

Jeremy Dacks, for the Target Canada Entities

Susan Philpott, for the Employees

Richard Swan and S. Richard Orzy, for Rio Can Management Inc. and KingSett Capital Inc.

Jay Carfagnini and Alan Mark, for Alvarez & Marsal, Monitor

Jeff Carhart, for Ginsey Industries

Lauren Epstein, for the Trustee of the Employee Trust

Lou Brzezinski and Alexandra Teodescu, for Nintendo of Canada Limited, Universal Studios, Thyssenkrupp Elevator (Canada) Limited, United Cleaning Services, RPJ Consulting Inc., Blue Vista, Farmer Brothers, East End Project, Trans Source, E One Entertainment, Foxy Originals

Linda Galessiere, for Various Landlords

ENDORSEMENT

[1] Alvarez & Marsal Canada Inc., in its capacity as Monitor of the Applicants (the “Monitor”) seeks approval of Monitor’s Reports 3-18, together with the Monitor’s activities set out in each of those Reports.

[2] Such a request is not unusual. A practice has developed in proceedings under the Companies’ Creditors Arrangement Act (“CCAA”) whereby the Monitor will routinely bring a motion for such approval. In most cases, there is no opposition to such requests, and the relief is routinely granted.

[3] Such is not the case in this matter.

[4] The requested relief is opposed by Rio Can Management Inc. (“Rio Can”) and KingSett Capital Inc. (“KingSett”), two landlords of the Applicants (the “Target Canada Estates”). The position of these landlords was supported by Mr. Brzezinski on behalf of his client group and as agent for Mr. Solmon, who acts for ISSI Inc., as well as Ms. Galessiere, acting on behalf of another group of landlords.

[5] The essence of the opposition is that the request of the Monitor to obtain approval of its activities – particularly in these liquidation proceedings – is both premature and unnecessary and that providing such approval, in the absence of full and complete disclosure of all of the underlying facts, would be unfair to the creditors, especially if doing so might in future be asserted and relied upon by the Applicants, or any other party, seeking to limit or prejudice the rights of creditors or any steps they may wish to take.

[6] Further, the objecting parties submit that the requested relief is unnecessary, as the Monitor has the full protections provided to it in the Initial Order and subsequent orders, and under the CCAA.

[7] Alternatively, the objecting parties submit that if such approval is to be granted, it should be specifically limited by the following words:

“provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.”

[8] The CCAA mandates the appointment of a monitor to monitor the business and financial affairs of the company (section 11.7).

[9] The duties and functions of the monitor are set forth in Section 23(1). Section 23(2) provides a degree of protection to the monitor. The section reads as follows:

- (2) Monitor not liable – if the monitor acts in good faith and takes reasonable care in preparing the report referred to in any of paragraphs (1)(b) to (d.1), the monitor is not liable for loss or damage to any person resulting from that person’s reliance on the report.

[10] Paragraphs 1(b) to (d.1) primarily relate to review and reporting issues on specific business and financial affairs of the debtor.

[11] In addition, paragraph 51 of the Amended and Restated Order provides that:

... in addition to the rights, and protections afforded the Monitor under the CCAA or as an officer of the Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, including for great certainty in the Monitor’s capacity as Administrator of the Employee Trust, save and except for any gross negligence or wilful misconduct on its part.

[12] The Monitor sets out a number of reasons why it believes that the requested relief is appropriate in these circumstances. Such approval

- (a) allows the monitor and stakeholders to move forward confidently with the next step in the proceeding by fostering the orderly building-block nature of CCAA proceedings;
- (b) brings the monitor’s activities in issue before the court, allowing an opportunity for the concerns of the court or stakeholders to be addressed, and any problems to be rectified in a timely way;
- (c) provides certainty and finality to processes in the CCAA proceedings and activities undertaken (eg., asset sales), all parties having been given an opportunity to raise specific objections and concerns;
- (d) enables the court, tasked with supervising the CCAA process, to satisfy itself that the monitor’s court-mandated activities have been conducted in a prudent and diligent manner;
- (e) provides protection for the monitor, not otherwise provided by the CCAA; and
- (f) protects creditors from the delay in distribution that would be caused by:
 - a. re-litigation of steps taken to date; and
 - b. potential indemnity claims by the monitor.

[13] Counsel to the Monitor also submits that the doctrine of issue estoppel applies (as do related doctrines of collateral attack and abuse of process) in respect of approval of the Monitor's activities as described in its reports. Counsel submits that given the functions that court approval serves, the availability of the doctrine (and related doctrines) is important to the CCAA process. Counsel submits that actions mandated and authorized by the court, and the activities taken by the Monitor to carry them out, are not interim measure that ought to remain open for second guessing or re-litigating down the road and there is a need for finality in a CCAA process for the benefit of all stakeholders.

[14] Prior to consideration of these arguments, it is helpful to review certain aspects of the doctrine of *res judicata* and its relationship to both issue estoppel and cause of action estoppel. The issue was recently considered in *Forrest v. Vriend*, 2015 Carswell BC 2979, where Ehrcke J. stated:

25. “TD and Vriend point out that the doctrine of *res judicata* is not limited to issue estoppel, but includes cause of action estoppel as well. The distinction between these two related components of *res judicata* was concisely explained by Cromwell J.A., as he then was, in *Hoque v. Montreal Trust Co. of Canada* (1997), 1997 NSCA 153 (CanLII), 162 N.S.R. (2d) 321 (C.A.) at para. 21:

21 *Res judicata* is mainly concerned with two principles. First, there is a principle that “... prevents the contradiction of that which was determined in the previous litigation, by prohibiting the relitigation of issues already actually addressed.”: see Sopinka, Lederman and Bryant, *The Law of Evidence in Canada* (1991) at p. 997. The second principle is that parties must bring forward all of the claims and defences with respect to the cause of action at issue in the first proceeding and that, if they fail to do so, they will be barred from asserting them in a subsequent action. This “... prevents fragmentation of litigation by prohibiting the litigation of matters that were never actually addressed in the previous litigation, but which properly belonged to it.”: *ibid* at 998. Cause of action estoppel is usually concerned with the application of this second principle because its operation bars all of the issues properly belonging to the earlier litigation.

...

30. It is salutary to keep in mind Mr. Justice Cromwell's caution against an overly broad application of cause of action estoppel. In *Hoque* at paras. 25, 30 and 37, he wrote:

25. The appellants submit, relying on these and similar statements, that cause of action estoppel is broad in scope and inflexible in application. With respect, I think this overstates the true position. In my view, this very broad language which suggests an inflexible application of cause of action estoppel to all matters that “could” have been raised does not fully reflect the present law.

....

30. The submission that all claims that could have been dealt with in the main action are barred is not borne out by the Canadian cases. With respect to matter not actually raised and decided, the test appears to me to be that the party should have raised the matter and, in deciding whether the party should have done so, a number of factors are considered.

...

37. Although many of these authorities cite with approval the broad language of *Henderson v. Henderson*, *supra*, to the effect that any matter which the parties had the opportunity to raise will be barred, I think, however, that this language is somewhat too wide. The better principle is that those issues which the parties had the opportunity to raise and, in all the circumstances, should have raised, will be barred. In determining whether the matter should have been raised, a court will consider whether proceeding constitutes a collateral attack on the earlier findings, whether it simply asserts a new legal conception of facts previously litigated, whether it relies on “new” evidence that could have been discovered in the earlier proceeding with reasonable diligence, whether the two proceedings relate to separate and distinct causes of action and whether, in all the circumstances, the second proceeding constitutes an abuse of process.

[15] In this case, I accept the submission of counsel to the Monitor to the effect that the Monitor plays an integral part in balancing and protecting the various interests in the CCAA environment.

[16] Further, in this particular case, the court has specifically mandated the Monitor to undertake a number of activities, including in connection with the sale of the debtors assets. The Monitor has also, in its various Reports, provided helpful commentary to the court and to Stakeholders on the progress of the CCAA proceedings.

[17] Turning to the issue as to whether these Reports should be approved, it is important to consider how Monitor's Reports are in fact relied upon and used by the court in arriving at certain determinations.

[18] For example, if the issue before the court is to approve a sales process or to approve a sale of assets, certain findings of fact must be made before making a determination that the sale process or the sale of assets should be approved. Evidence is generally provided by way of affidavit from a representative of the applicant and supported by commentary from the monitor in its report. The approval issue is put squarely before the court and the court must, among other things conclude that the sales process or the sale of assets is, among other things, fair and reasonable in the circumstances.

[19] On motions of the type, where the evidence is considered and findings of fact are made, the resulting decision affects the rights of all stakeholders. This is recognized in the jurisprudence with the acknowledgment that res judicata and related doctrines apply to approval of a Monitor's report in these circumstances. (See: *Toronto Dominion Bank v. Preston Spring Gardens Inc.*, 2006 CanLII 15145 (ON SC), [2006] O.J. No. 1834 (SCJ Comm. List); *Toronto Dominion Bank v. Preston Spring Gardens Inc.*, 2007 ONCA 145 and *Bank of America Canada v. Willann Investments Limited*, [1993] O.J. No. 3039 (SCJ Gen. Div.)).

[20] The foregoing must be contrasted with the current scenario, where the Monitor seeks a general approval of its Reports. The Monitor has in its various reports provided commentary, some based on its own observations and work product and some based on information provided to it by the Applicant or other stakeholders. Certain aspects of the information provided by the Monitor has not been scrutinized or challenged in any formal sense. In addition, for the most part, no fact-finding process has been undertaken by the court.

[21] In circumstances where the Monitor is requesting approval of its reports and activities in a general sense, it seems to me that caution should be exercised so as to avoid a broad application of res judicata and related doctrines. The benefit of any such approval of the Monitor's reports and its activities should be limited to the Monitor itself. To the extent that approvals are provided, the effect of such approvals should not extend to the Applicant or other third parties.

[22] I recognized there are good policy and practical reasons for the court to approve of Monitor's activities and providing a level of protection for Monitors during the CCAA process. These reasons are set out in paragraph [12] above. However, in my view, the protection should be limited to the Monitor in the manner suggested by counsel to Rio Can and KingSett.

[23] By proceeding in this manner, Court approval serves the purposes set out by the Monitor above. Specifically, Court approval:

- (a) allows the Monitor to move forward with the next steps in the CCAA proceedings;
- (b) brings the Monitor's activities before the Court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;
- (e) provides protection for the Monitor not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay and distribution that would be caused by:
 - (i) re-litigation of steps taken to date, and
 - (ii) potential indemnity claims by the Monitor.

[24] By limiting the effect of the approval, the concerns of the objecting parties are addressed as the approval of Monitor's activities do not constitute approval of the activities of parties other than the Monitor.

[25] Further, limiting the effect of the approval does not impact on prior court orders which have approved other aspects of these CCAA proceedings, including the sales process and asset sales.

[26] The Monitor's Reports 3-18 are approved, but the approval the limited by the inclusion of the wording provided by counsel to Rio Can and KingSett, referenced at paragraph [7].

Regional Senior Justice G.B. Morawetz

Date: December 11, 2015

TAB 19



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-20-00640205-00CL

DATE: November 4, 2025

NO. ON LIST: 7

TITLE OF PROCEEDING: ONTARIO SECURITIES COMMISSION v. STABLEVIEW ASSET MANAGEMENT INC. et al

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant:

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

Name of Person Appearing	Name of Party	Contact Info
Peter Griffin	Self-Represented Respondent	pgriffin@litigate.com
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Jason Kanji Jonathan Krieger	Receiver – Grant Thornton	jason.kanji@doane.gt.ca jonathan.krieger@ca.gt.com

ENDORSEMENT OF JUSTICE STEELE:

Grant Thornton Limited (“GTL”), in its capacity as Court-appointed Receiver brought a motion returnable on November 4, 2025 for an order, *inter alia*, discharging and releasing GTL as Receiver of the Respondents.

On November 3, 2025, Peter Griffin, on his behalf as one of the Stableview unitholders, served and filed submissions, wherein Mr. Griffin advised that the certain shareholders of Voxtur Analytics Corp. ("**Voxtur**"), formerly unitholders in the Respondents' funds (collectively, the "**Shareholders**"), are exploring a potential claim against the Receiver for failure to monetize the Voxtur shares in reliance on the Standstill Agreement between the Respondents and Voxtur's predecessor and the matters referred to in paragraph 4 of the Order of the Honourable Justice Steele dated November 21, 2024 (the "**Claim**").

Leave to commence a proceeding against the Receiver is required.

The Shareholders and the Receiver have agreed that the Receiver's motion will be adjourned on the following terms:

- 1) The Shareholders, or any of them, have until January 5, 2026 to serve and file their motion for an order for leave to commence the Claim against the Receiver; and;
- 2) If the Shareholders, or any of them, fail to serve and file their motion by January 5, 2026 any Claim by the Shareholders against the Receiver shall be forever extinguished and barred.

A case conference has been scheduled for **10 am on January 8, 2026 (30 minutes)** for the purpose of either:

1. Setting a timetable for the hearing of the motion for leave; or
2. Scheduling the Receiver's discharge motion.



Date of Release: November 6, 2025

TAB 20

Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41 (CanLII), [2002] 2 SCR 522

Source:	Supreme Court of Canada
Date:	2002-04-26
File number:	28020
Other citations:	211 DLR (4th) 193 — 223 FTR 137 — 287 NR 203 — 113 ACWS (3d) 36 — AZ-50123071 — 44 CELR (NS) (2d) 161 — 18 CPR (4th) 1 — 20 CPC (5th) 1 — 40 Admin LR (3d) 1 — 93 CRR (2d) 219 — [2002] CarswellNat 822 — JE 2002-803 — [2002] FCJ No 42 (QL) — [2002] SCJ No 42 (QL) — [2002] ACS no 42
Citation:	Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41 (CanLII), [2002] 2 SCR 522, < https://canlii.ca/t/51s4 >, retrieved on 2026-09-15
Most recent unfavourable mention	Crocs Canada, Inc. v. Double Diamond Distribution Ltd. , 2022 FC 1445 (CanLII) [...]. None of the cases on which Double Diamond relies, however, applies the Sierra Club Test, and further, they are distinguishable , in my view. [...]

Sierra Club of Canada v. Canada (Minister of Finance), [2002] 2 S.C.R. 522, 2002 SCC 41

Atomic Energy of Canada Limited

Appellant

v.

Sierra Club of Canada

Respondent

and

The Minister of Finance of Canada, the Minister of Foreign Affairs of Canada, the Minister of International Trade of Canada and the Attorney General of Canada

Respondents

Indexed as: Sierra Club of Canada v. Canada (Minister of Finance)

Neutral citation: 2002 SCC 41.

File No.: 28020.

(3) Adapting the *Dagenais* Test to the Rights and Interests of the Parties

53 Applying the rights and interests engaged in this case to the analytical framework of *Dagenais* and subsequent cases discussed above, the test for whether a confidentiality order ought to be granted in a case such as this one should be framed as follows:

A confidentiality order under Rule 151 should only be granted when:

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

54 As in *Mentuck*, I would add that three important elements are subsumed under the first branch of this test. First, the risk in question must be real and substantial, in that the risk is well grounded in the evidence, and poses a serious threat to the commercial interest in question.

55 In addition, the phrase “important commercial interest” is in need of some clarification. In order to qualify as an “important commercial interest”, the interest in question cannot merely be specific to the party requesting the order; the interest must be one which can be expressed in terms of a public interest in confidentiality. For example, a private company could not argue simply that the existence of a particular contract should not be made public because to do so would cause the company to lose business, thus harming its commercial interests. However, if, as in this case, exposure of information would cause a breach of a confidentiality agreement, then the commercial interest affected can be characterized more broadly as the general commercial interest of preserving confidential information. Simply put, if there is no general principle at stake, there can be no “important commercial interest” for the purposes of this test. Or, in the words of Binnie J. in *F.N. (Re)*, [2000] 1 S.C.R. 880, 2000 SCC 35, at para. 10, the open court rule only yields “where the public interest in confidentiality outweighs the public interest in openness” (emphasis added).

TAB 21

Sherman Estate v. Donovan, 2021 SCC 25 (CanLII), [2021] 2 SCR 75

Source:	Supreme Court of Canada
Date:	2021-06-11
File number:	38695
Other citations:	458 DLR (4th) 361 — AZ-51772339 — 72 CR (7th) 223 — 66 CPC (8th) 1 — [2021] SCJ No 25 (QL) — [2021] ACS no 25
Citation:	Sherman Estate v. Donovan, 2021 SCC 25 (CanLII), [2021] 2 SCR 75, < https://canlii.ca/t/jgc4w >, retrieved on 2026-09-15
Most recent unfavourable mention	Canadian Pacific Kansas City Railway v Teamsters Canada Rail Conference , 2025 CanLII 41034 (CA LA) [...] CROA 4270 and 4679 were decided before Sherman Estate , so are distinguishable . [...]



SUPREME COURT OF CANADA

CITATION: Sherman Estate v. Donovan, 2021 SCC 25, [2021] 2 S.C.R. 75

APPEAL HEARD: October 6, 2020

JUDGMENT RENDERED: June 11, 2021

DOCKET: 38695

BETWEEN:

**Estate of Bernard Sherman and Trustees of the Estate and
Estate of Honey Sherman and Trustees of the Estate**
Appellants

and

**Kevin Donovan and
Toronto Star Newspapers Ltd.**
Respondents

- and -

**Attorney General of Ontario, Attorney General of British Columbia,
Canadian Civil Liberties Association, Income Security Advocacy Centre,
Ad IDEM/Canadian Media Lawyers Association, Postmedia Network Inc.,
CTV, a Division of Bell Media Inc., Global News, a division of Corus**

CORAM: Wagner C.J. and Moldaver, Karakatsanis, Brown, Rowe, Martin and Kasirer JJ.

REASONS FOR Kasirer J. (Wagner C.J. and Moldaver, Karakatsanis, Brown, Rowe and Martin JJ.
JUDGMENT: concurring)
(paras. 1 to 108)

**Estate of Bernard Sherman and Trustees of the Estate and
Estate of Honey Sherman and Trustees of the Estate**

Appellants

v.

**Kevin Donovan and
Toronto Star Newspapers Ltd.**

Respondents

and

**Attorney General of Ontario,
Attorney General of British Columbia,
Canadian Civil Liberties Association,
Income Security Advocacy Centre,
Ad IDEM/Canadian Media Lawyers Association,
Postmedia Network Inc., CTV, a Division of Bell Media Inc.,
Global News, a division of Corus Television Limited Partnership,
The Globe and Mail Inc., Citytv, a division of Rogers Media Inc.,
British Columbia Civil Liberties Association,
HIV & AIDS Legal Clinic Ontario,
HIV Legal Network and Mental Health Legal Committee**

Interveners

Indexed as: Sherman Estate v. Donovan

2021 SCC 25

File No.: 38695.

2020: October 6; 2021: June 11.

Present: Wagner C.J. and Moldaver, Karakatsanis, Brown, Rowe, Martin and Kasirer JJ.

aspects of individuals' personal lives that bear on their dignity is at serious risk by reason of the dissemination of sufficiently sensitive information. The question is not whether the information is "personal" to the individual concerned, but whether, because of its highly sensitive character, its dissemination would occasion an affront to their dignity that society as a whole has a stake in protecting.

[34] This public interest in privacy appropriately focuses the analysis on the impact of the dissemination of sensitive personal information, rather than the mere fact of this dissemination, which is frequently risked in court proceedings and is necessary in a system that privileges court openness. It is a high bar — higher and more precise than the sweeping privacy interest relied upon here by the Trustees. This public interest will only be seriously at risk where the information in question strikes at what is sometimes said to be the core identity of the individual concerned: information so sensitive that its dissemination could be an affront to dignity that the public would not tolerate, even in service of open proceedings.

[35] I hasten to say that applicants for an order making exception to the open court principle cannot content themselves with an unsubstantiated claim that this public interest in dignity is compromised any more than they could by an unsubstantiated claim that their physical integrity is endangered. Under *Sierra Club*, the applicant must show on the facts of the case that, as an important interest, this dignity dimension of their privacy is at "serious risk". For the purposes of the test for discretionary limits on court openness, this requires the applicant to show that the information in the court file is sufficiently sensitive such that it can be said to strike at the biographical core of the individual and, in the broader circumstances, that there is a serious risk that, without an exceptional order, the affected individual will suffer an affront to their dignity.

[36] In the present case, the information in the court files was not of this highly sensitive character that it could be said to strike at the core identity of the affected persons; the Trustees have failed to show how the lifting of the sealing orders engages the dignity of the affected individuals. I am therefore not convinced that the intrusion on their privacy raises a serious risk to an important public interest as required by *Sierra Club*. Moreover, as I shall endeavour to explain, there was no serious risk of physical harm to the affected individuals by lifting the sealing orders. Accordingly, this is not an appropriate case in which to make sealing orders, or any order limiting access to these court files. In the circumstances, the admissibility of the Toronto Star's new evidence is moot. I propose to dismiss the appeal.

A. *The Test for Discretionary Limits on Court Openness*

[37] Court proceedings are presumptively open to the public (*MacIntyre*, at p. 189; *A.B. v. Bragg Communications Inc.*, 2012 SCC 46, [2012] 2 S.C.R. 567, at para. 11).

[38] The test for discretionary limits on presumptive court openness has been expressed as a two-step inquiry involving the necessity and proportionality of the proposed order (*Sierra Club*, at para. 53).

Upon examination, however, this test rests upon three core prerequisites that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle. In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

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

Only where all three of these prerequisites have been met can a discretionary limit on openness — for example, a sealing order, a publication ban, an order excluding the public from a hearing, or a redaction order — properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments (*Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41, [2005] 2 S.C.R. 188, at paras. 7 and 22).

[39] The discretion is structured and controlled in this way to protect the open court principle, which is understood to be constitutionalized under the right to freedom of expression at s. 2(b) of the *Charter* (*New Brunswick*, at para. 23). Sustained by freedom of expression, the open court principle is one of the foundations of a free press given that access to courts is fundamental to newsgathering. This Court has often highlighted the importance of open judicial proceedings to maintaining the independence and impartiality of the courts, public confidence and understanding of their work and ultimately the legitimacy of the process (see, e.g., *Vancouver Sun*, at paras. 23-26). In *New Brunswick*, La Forest J. explained the presumption in favour of court openness had become “one of the hallmarks of a democratic society” (citing *Re Southam Inc. and The Queen (No.1)* (1983), 1983 CanLII 1707 (ON CA), 41 O.R. (2d) 113 (C.A.), at p. 119), that “acts as a guarantee that justice is administered in a non-arbitrary manner, according to the rule of law . . . thereby fostering public confidence in the integrity of the court system and understanding of the administration of justice” (para. 22). The centrality of this principle to the court system underlies the strong presumption — albeit one that is rebuttable — in favour of court openness (para. 40; *Mentuck*, at para. 39).

[40] The test ensures that discretionary orders are subject to no lower standard than a legislative enactment limiting court openness would be (*Mentuck*, at para. 27; *Sierra Club*, at para. 45). To that end, this Court developed a scheme of analysis by analogy to the *Oakes* test, which courts use to understand whether a legislative limit on a right guaranteed under the *Charter* is reasonable and demonstrably justified in a free and democratic society (*Sierra Club*, at para. 40, citing *R. v. Oakes*, 1986 CanLII 46 (SCC), [1986] 1 S.C.R. 103; see also *Dagenais*, at p. 878; *Vancouver Sun*, at para. 30).

UBC SOLUTIONS INCORPORATED

And

1680 BRIMLEY LIMITED PARTNERSHIP, et al.

Applicant

Respondents

Email addresses for parties to be served: See Service List

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at **TORONTO**

**REDACTED COMPENDIUM OF 1680 BRIMLEY
LIMITED PARTNERSHIP, 2808908 ONTARIO INC. &
BRIMLEY PROGRESS DEVELOPMENTS INC.**
(Receiver's Sales Approval Hearing returnable on September
18th, 2026)

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