

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

**IN THE MATTER OF THE WINDING UP OF
OXFORD ADVANCED IMAGING INC.**

**APPLICATION UNDER SECTION 207 OF THE
BUSINESS CORPORATIONS ACT, R.S.O. 1990, c. B.16**

**SECOND REPORT OF KPMG INC. in its capacity as
SALES OFFICER OF OXFORD ADVANCED IMAGING INC.**

April 26, 2019

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INTRODUCTION AND SUMMARY OF PROCEEDINGS

1. The Toronto-Dominion Bank (“**TD Bank**”) filed an application (the “**Application**”) before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for interim relief pursuant to sections 207 and 209 of the *Business Corporations Act*, (Ontario) for among other things, an order for the sale of the assets and business of Oxford Advanced Imaging Inc. (“**OAI**”) and for the appointment of KPMG Inc. (“**KPMG**”) as Sales Officer (as defined below).
2. The Application was heard on August 29, 2018 and on the same date, the Court granted an order (the “**Sales Process Order**”) which, among other things, appointed KPMG as the sales officer (the “**Sales Officer**”) to carry out a process (the “**Sales Process**”) for the sale of the assets and business of OAI (the “**Property**”).
3. The Property consists of all the assets, undertakings and properties acquired for, or used in relation to, OAI’s diagnostic imaging clinics. The operations of OAI consist of two clinics, one is located in Mississauga, Ontario and the other one is located in Ajax, Ontario.
4. The Sales Officer issued its first report to the Court on November 12, 2018 (the “**First Report**”). A copy of the First Report is attached as **Appendix “A”** herein (without appendices). As detailed in the First Report, the Sales Officer brought a motion returnable on November 20, 2018 seeking an Approval and Vesting Order (the “**Approval and Vesting Order**”) approving: (a) the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement between the Sales Officer and 2659428 Ontario Inc. o/a Greater Niagara Medical Imaging (the “**Purchaser**”) dated October 25, 2018, as amended by an amendment agreement dated November 19, 2018 (collectively, the “**Asset Purchase Agreement**”) and vesting in the Purchaser, OAI’s right, title and interest in and to the assets described in the Asset Purchase Agreement; and (b) the Sales Officer’s activities as set forth in the First Report. A copy of the redacted Asset Purchase Agreement is attached as **Appendix “B”** herein.
5. On November 20, 2018, the Court granted the Approval and Vesting Order. A copy of the Approval and Vesting Order is attached as **Appendix “C”** herein.

PURPOSE OF THIS SECOND REPORT

6. The purpose of the Sales Officer's second report dated April 26, 2019 (the "**Second Report**") is to:
 - (a) Update this Honourable Court with respect to the status of the Transaction and the Application for Consent to Transfer a License to be obtained from the Ministry of Health and Long-Term Care (the "**MoH**") with respect to OAI's Independent Health Facility Licences (the "**IHF Licenses**");
 - (b) Provide this Honourable Court with the details of certain amendments to the Asset Purchase Agreement (the "**Second Amendment**");
 - (c) Provide this Honourable Court with the necessary information to support an Order:
 - (i) approving and authorizing the Second Amendment; and
 - (ii) approving the activities of the Sales Officer as set out in the Second Report, and approving the fees and disbursements of the Sales Officer and the Sales Officer's legal counsel, Dentons Canada LLP ("**Dentons**"), for the period up to January 30, 2019.
7. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.
8. The information contained in this Second Report has been obtained from the books and records and other information of OAI. The accuracy and completeness of the financial information contained herein has not been audited or otherwise verified by the Sales Officer, and the Sales Officer does not express an opinion or provide any other form of assurance with respect to the information presented herein or relied upon by the Sales Officer in preparing this Second Report.

UPDATE ON THE STATUS OF THE TRANSACTION

9. Since the granting of the Approval and Vesting Order, the Sales Officer has been working diligently with the Purchaser, the MoH and OAI to close the Transaction. Specifically, the Sales Officer has been: (a) working with the MoH and the Purchaser through the IHF License transfer approval process; and (b) working with the Purchaser and OAI through certain pre-closing and transition matters.

License Transfer Approval Process

10. On November 21, 2018, the Sales Officer received correspondence from the MoH advising that the Director of Independent Health Facilities had granted a conditional consent (the “**Conditional Consent**”) to the transfer of OAI’s IHF Licences to the Purchaser. The consent was conditional on: (a) the Purchaser entering into a new funding agreement with the MoH (the “**New Funding Agreement**”); (b) the wind-up of OAI’s existing funding agreement (the “**Old Funding Agreement**”); and (c) certain other administrative matters consisting of the submission of registration packages in respect of each IHF License and payment of the associated registration fee.
11. Shortly after the Conditional Consent was delivered to the Purchaser:
 - (a) the Purchaser submitted the required registration packages and paid the associated registration fees to the MoH; and
 - (b) The Sales Officer commenced regular discussions with the MoH regarding the status of the license transfer process and in particular, the MoH’s timing in delivering the New Funding Agreement to the Purchaser. In the course of those discussions, the MoH advised that they were unable to provide any specific timeline with respect to the delivery of the New Funding Agreement, only that the New Funding Agreement was going through the MoH’s internal review and approval process.

12. On January 28, 2019, the MoH advised the Sales Officer that they had received an internal approval on the draft form of the New Funding Agreement but were still awaiting a further internal approval to allow for the delivery of the initial draft of the New Funding Agreement to the Purchaser for review and comments.
13. On March 18, 2019, the MoH advised the Sales Officer that they had obtained the necessary approvals to release the draft of the New Funding Agreement to the Purchaser and since that time, the Purchaser and the MoH have had various discussions regarding the terms of the New Funding Agreement.
14. The Purchaser has now advised the Sales Officer that the Purchaser and MoH have settled and finalized the form of the New Funding Agreement.
15. The Sales Officer and MoH are currently addressing the wind-up process for the Old Funding Agreement. The Sales Officer anticipates finalizing any steps required to wind-up the Old Funding Agreement in the near future.

Pre-Closing and Transition Matters

16. The Sales Officer and its counsel have been working with the Purchaser and its counsel through the various pre-closing and transition matters, including the assignments of leases and contracts and the transfer of certain patient data that is required to occur prior to closing pursuant to the IHF regulations. The Sales Officer continues to liaise with OAI in respect of these matters, as required.

AMENDMENTS TO THE ASSET PURCHASE AGREEMENT

17. The Closing Date, as defined in the Asset Purchase Agreement, is:

“Closing Date” means the earlier of: (i) five (5) Business Days following the date of the receipt of an Unconditional Consent by the Purchaser, (ii) five (5) Business Days following the waiver of conditions pursuant to section 5.03 of this Agreement, and (iii) thirty (30) Business Days following the date of the receipt of a Conditional Consent by the Purchaser, or such other date as may be agreed to between the parties.
18. As a result of the Conditional Consent being delivered, the Closing Date has lapsed, subject to the parties agreeing to a later Closing Date.

19. The Sales Officer is of the view that the delay in completing the New Funding Agreement has been primarily caused by the various internal approvals that were required at the MoH and as a result, the satisfaction of the conditions contained in the Conditional Consent has until recently been outside the Purchaser's control.
20. The Sales Officer is therefore of the view that extending the Closing Date to allow the Transaction to close is appropriate, and still represents the highest and best recovery for the stakeholders as a whole. Terminating the Asset Purchase Agreement would introduce uncertainty and delay, as any new purchaser would have to go through the same lengthy approval process with the MoH.
21. The Sales Officer and the Purchaser have entered into the Second Amendment, which amends certain terms of the Asset Purchase Agreement. A copy of the Second Amendment is attached as **Appendix "D"** to this Second Report. The key terms of the Second Amendment are as follows:
 - (a) the definition of "Closing Date" is amended to mean May 30, 2019, or such other date as may be agreed to between the parties, and certain consequential amendments arising from that amendment;
 - (b) a "material breach" by the Purchaser is extended to include undertakings given by the Purchaser to meet its privacy obligations in relation to patient data being transferred prior to closing;
 - (c) the Purchaser is required to deliver an additional deposit (the "**Additional Deposit**"), to be held with the initial Deposit on the same terms and conditions applicable thereto; and
 - (d) the Second Amendment is conditional upon, *inter alia*, approval by this Honourable Court.
22. The Sales Officer is of the view that, in the circumstances, the Transaction will close on or before May 30, 2019. The Purchaser has also paid the Additional Deposit to the Sales

Officer pending approval of the Second Amendment, demonstrating the Purchaser's commitment to close the Transaction.

SALES OFFICER'S OTHER ACTIVITIES

23. Pursuant to the Sales Process Order, in addition to the activities undertaken by the Sales Officer in respect of the Transaction described herein, the Sales Officer has continued to review and monitor the cash receipts and disbursements of OAI.
24. On a weekly basis, OAI continues to provide the Sales Officer with a list of proposed disbursements and related supporting documentation for the Sales Officer's review prior to those disbursements being issued. OAI also continues to provide the Sales Officer with the details of the actual receipts and disbursements for the prior week.
25. All disbursements made by OAI since the date of the First Report have been made in compliance with the terms of the Sale Process Order including paragraph 22 of the Sale Process Order which prohibits OAI from making any payments on account of shareholder loans or advance loans to any of the shareholders, any corporation or entity associated with any of the shareholders, or any related third parties until such time as the indebtedness of OAI to TD Bank and to ECN Financial Inc. ("ECN") have been paid in full. The only payments made to shareholders since the date of the First Report relate to fees payable to the shareholders for professional services rendered in accordance with the usual and customary rates and terms which is specifically provided for in paragraph 22 of the Sale Process Order.
26. Pursuant to paragraph 3(i) of the Sale Process Order, the Sales Officer has been providing weekly written updates to TD Bank and ECN in respect of the status of the Sale Process and the Transaction and the Sales Officer's monitoring of the receipts and disbursements of OAI. The Sales Officer has also provided periodic updates to OAI's counsel on the status of the Transaction and the related pre-closing matters.

APPROVAL OF PROFESSIONAL FEES

27. The Sales Officer and its counsel have maintained detailed records of their professional fees and costs since the Sales Officer's appointment up to and including January 31, 2019 (the "**Fee Period**"), as detailed in the Fee Affidavit of Anamika Gadia of KPMG sworn April 24, 2019 and the Fee Affidavit of Robert Kennedy of Dentons sworn April 26, 2019 (collectively, the "**Fee Affidavits**"). Copies of the Fee Affidavits are attached as **Appendix "E"**, and **Appendix "F"**, respectively.
28. Pursuant to paragraph 26 of the Sale Process Order, the Sales Officer and its counsel, shall be paid their reasonable fees and disbursements and shall pass their accounts before this Court.
29. The total fees and disbursements (including Harmonized Sales Tax) of the Sales Officer during the Fee Period amount to \$516,439.57. The details of the time spent and the services provided by the Sales Officer are more particularly described in the Fee Affidavit of Anamika Gadia.
30. The total fees and disbursements (including Harmonized Sales Tax) of Dentons during the Fee Period amount to \$234,547.60. The details of the time spent and the services provided by Dentons are more particularly described in the Fee Affidavit of Robert Kennedy.
31. The Sales Officer has reviewed the accounts of its counsel and believes that the accounts of the Sales Officer and Dentons are reasonable in the circumstances and respectfully requests that the Court approve the Sales Officer's fees and disbursements and those of its counsel.

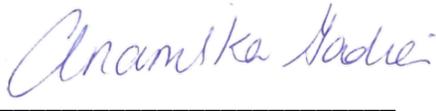
CONCLUSION

32. The Sales Officer submits this Second Report to the Court in support of the Sales Officer's Motion for the relief as set out in the Motion Record and recommends that the Court grant the Order substantially in the form contained at Tab 3 of the Motion Record approving: (a) the Second Amendment; (b) the fees and disbursements of the Sales Officer and its counsel

for the period up to January 31, 2019; and (c) the activities of the Sales Officer from the date of the First Report.

All of which is respectfully submitted at Toronto, Ontario this 26th day of April, 2019.

**KPMG Inc., in its capacity as Court Appointed Sales Officer of
Oxford Advanced Imaging Inc. and not in its personal capacity**

Per: 

Anamika Gadia
Senior Vice President