Docket: 2023-1741(IT)G

BETWEEN:

ONNI DEVELOPMENT (RMG-1) LTD.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Motion heard on December 16, 2025 at Vancouver, British Columbia

Before: The Honourable Justice J. Scott Bodie

Appearances:

Counsel for the Appellant:	Natasha Kisilevsky Alexei Paish Tyler Berg
Counsel for the Respondent:	Ron D. F. Wilhelm Eric Brown Shannon Fenrich Jia Ling

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AMENDED ORDER

WHEREAS the Respondent brought a motion seeking an order:

a. requiring the Appellant to answer questions and requests made at the examination for discovery of the Appellant's nominee, which are set out in Appendix A to this Order;

b. requiring the Appellant's nominee reattend at the expense of the Appellant; and

c. costs of the motion to the Respondent in any event of the cause;

AND UPON hearing from the parties;

AND UPON review of all material relevant to the within motion;

AND IN ACCORDANCE with the attached Reasons for Order;

IT IS ORDERED that:

Questions and Requests Arising from Examinations for Discovery

1. The Appellant will serve full written answers to Questions 971, 972, 1452 and 1461 and full responses to Requests 18, 29, 71, 72, 54, 131 and 132, all as set out in Appendix A to this Order, on the Respondent on or before May 5, 2026.

2. The Respondent may serve on the Appellant written follow-up questions to any of the answers and responses it receives pursuant to paragraph 1 or to any of Requests which this Court has determined to be sufficiently answered pursuant to the within reasons on or before June 5, 2026.

3. Any dispute between the parties with respect to the propriety of such follow-up questions may be brought by either party before the undersigned for determination prior to the deadline for answering such follow-up questions as set out in paragraph 4 hereof.

4. Written answers to any follow-up questions served by the Respondent pursuant to paragraph 2 shall be served by the Appellant on the Respondent on or before July 20, 2026.

Reporting to the Court

5. On or before November 2, 2026, the parties shall file one of the following with the Court:

   (a) a joint application to fix a time and place for the hearing using Form 123;

   (b) a letter requesting a settlement conference (refer to Practice Note 21); or

(c) a letter confirming that the appeal will settle and the anticipated date of settlement.

Costs

6. Each party shall bear its own costs with respect to this motion.

This Amended Order is issued in substitution of the Order dated March 20, 2026. The correction is limited to the spelling of counsel's name.

Signed this **7**th day of April 2026.

"J. Scott Bodie"

Bodie J.

Citation: 2026 TCC 56
Date: 2026 03 20
Docket: 2023-1741(IT)G

BETWEEN:

ONNI DEVELOPMENT (RMG-1) LTD.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Bodie J.

I. INTRODUCTION

[1] This is a motion brought by the Respondent, for:

a. an order requiring Onni Development (RMG-1) Ltd. ("Onni") to answer the Respondent's questions and requests made at the examination for discovery of Onni's nominee, which are set out in Appendix A to the within Order (the "Disputed Inquiries");

b. an order requiring Onni's nominee to reattend at the expense of Onni; and

c. costs of the motion to the Respondent in any event of the cause.

[2] Generally, it is the Respondent's position that the questions and requests which comprise the Disputed Inquiries are relevant to the issues pled in the appeal as they relate to:

a. the reasons for and ordering of the individual transactions at issue;

b. the primary purpose of such individual transactions;

c. the primary purpose of the series of transactions at issue;

d. whether a transaction resulted in a misuse or abuse of the debt forgiveness and debt parking scheme under the *Income Tax Act* (the “Act”); and

e. being able to ascertain Onni’s position on the object, spirit and purpose of the provisions of the Act at issue.

[3] All statutory references herein are to the Act unless stated otherwise.

[4] On the other hand, it is Onni’s position that the motion should be dismissed with costs to Onni, payable forthwith and in any event of the cause because the Disputed Inquiries:

a. are not relevant to the issue under appeal;

b. are unanswerable or constitute an overbroad fishing expedition; and/or

c. have already been answered by Onni.

II. **CONTEXT**

[5] The underlying appeal relates to non-capital losses totalling over $160 million which Onni carried forward and utilized in its 2018, 2019, 2020 and 2021 taxation years. The losses arose in connection with a series of transactions entered into by Onni and certain other corporations in 2014.

[6] The series of transactions at issue involves the acquisition of a real estate development project (the “Colwood Project”) by way of the purchase of the shares of Onni by a real estate development group (the “Onni Group”) from another real estate development group (the “League Group”) pursuant to a plan proposed by Pricewaterhousecooper’s insolvency arm (“PwC Insolvency”), as monitor for the League Group.

[7] At the time that Onni was acquired by the Onni Group, it was the general partner and the limited partner of Colwood City Centre Limited Partnership (the “Colwood LP”), which was the developer of the Colwood Project. By October 2013, this development had run into financial difficulty, as it had significant debts owing to various arm’s length secured and unsecured creditors. On October 3, 2014, a restructuring agreement (the “Restructuring Agreement”) was entered into by,

among others, the Onni Group, the League Group and PwC Insolvency which contemplated a restructuring of the Colwood Project, including its liabilities. In accordance with the Restructuring Agreement, Onni and the Colwood LP were assigned into bankruptcy on November 17, 2014, and two days later a consolidated proposal was filed by PwC Insolvency under the *Bankruptcy and Insolvency Act*.

[8] On November 26, 2014, 1019250 BC Ltd., a newly incorporated corporation owned by Mr. Marty Dohm, purchased certain of the outstanding loans owing by Colwood LP to one of its major creditors.

[9] The consolidated proposal filed by PwC Insolvency was then presented to a creditor's meeting on December 1, 2014, and was approved on that date. The British Columbia Supreme Court then approved such proposal on December 5, 2014, under which further liabilities of the Colwood LP were acquired by 1019250 BC Ltd. The Onni Group then acquired all the shares of Onni (previously called Colwood City Centre GP Inc.) on December 19, 2014.

[10] The Canada Revenue Agency denied Onni's carry forwards of the non-capital losses incurred in connection with the development of the Colwood Project (almost entirely due to an inventory write-down under subsection 10(1)) on the basis that the assignment of liabilities to 1019250 BC Ltd. constitutes debt parking, which under the debt forgiveness rules contained in the Act, would lead to an offsetting income inclusion under subsection 80(13), if not for the assignment of Onni and the Colwood LP into bankruptcy. The debt forgiveness regime in section 80 has an exception available for bankrupt debtors.

[11] It is the Respondent's position in the appeal that even if the transactions described above, encompassing the restructuring of the Colwood Project, including its liabilities, in accordance with the Restructuring Agreement (the "Colwood Project Restructuring") avoided the debt forgiveness rules, they resulted in an abuse of the section 80 bankruptcy exception. Accordingly, in the Respondent's view, the general anti-avoidance rule contained in section 245 (the "GAAR") should be applied to ensure that the debt parking rules result in an income inclusion commensurate with what would have happened had Onni not been assigned into bankruptcy.

[12] It is Onni's position that the GAAR should not be applied to the Colwood Project Restructuring primarily on the basis that the transactions comprising such

Restructuring do not constitute an avoidance transaction, as the primary purpose for such transactions was the acquisition of a real estate project as opposed to the acquisition of the tax attributes associated with the real estate project's legal structure.

[13] Although, there are other grounds upon which the Respondent challenges Onni's ability to utilize its non-capital losses, it is the challenge under the GAAR that is primarily at the heart of the parties' disagreement with respect to the Disputed Inquiries.

[14] Mr. Salvatore Parrotta, the chief financial officer of the Onni Group, was examined for discovery as the representative of Onni for three full days on November 7, 8 and 12, 2024. Several of the Disputed Inquiries were either refused, mainly on the basis of relevancy during these examinations, or were taken under advisement. Onni provided its responses to undertakings given at Mr. Parrotta's examination for discovery on May 2, 2025. The Respondent filed this motion on September 12, 2025.

III. <u>**LEGAL FRAMEWORK**</u>

(a) <u>General Principles</u>

[15] The legal framework for determining the scope of discovery in the context of a motion to compel further or better answers was explained by Justice Bocock in *Stack v. The King*, 2024 TCC 164.

[16] In that decision, Justice Bocock explained that the scope of discovery should be wide. As set out in subsection 95(1) of the *Tax Court of Canada Rules (General Procedure)* (the "Rules"), the main consideration in testing the propriety of a question or request at an examination for discovery is relevancy. Relevancy should be interpreted liberally and broadly. Courts, however, must ensure that the exercise does not become a "fishing expedition". Accordingly, in making a determination in a motion to compel, Courts should keep in mind the purposes of the discovery process, which were described by Justice Campbell in *Burlington Resources Finance Co. v. R*, 2015 TCC 71 at paragraph 11 as being to enable parties to know the case they have to meet at trial, know the facts that the opposing party relies on, narrow or eliminate issues, obtain admissions, and avoid surprises at trial.

[17] Further, on a motion to compel, the threshold for relevance is low. When in doubt, the motions judge should err on the side of allowing the question or request. As Justice Bowie noted in *Teelucksingh v. R*, 2010 TCC 94 at paragraph 15, the examining party is entitled to "any information, and production of any documents that may fairly lead to a train of inquiry that may directly or indirectly advance his case, or damage that of the opposing party." I note that Rule 90 of the Rules expressly provides that the disclosure or production of a document for inspection is not an admission of its relevancy or admissibility.

[18] While the threshold is low, that principle must be tempered with the principle that the discovery process is not intended to be a "fishing expedition". In considering the meaning of this term, Justice Bocock looked to the holding of the Federal Court of Appeal in *Grand River Enterprises Six Nations Ltd v. Canada*, 2011 FCA 121 at paragraph 3. Justice Bocock wrote at paragraph 41:

> In finding the request to be a fishing expedition the Federal Court of Appeal explained that "[t]he basis for Grand River's request is that it "suspects but does not know" that there are First Nation tobacco manufacturers who are licensed under the ITA but who do not pay excise duty on all their tobacco products". Thus, a party cannot ask for facts that would lead to the creation of a new argument, they can only discover information that sustains an already pleaded argument.

(b) <u>In the Context of GAAR</u>

[19] As mentioned above, the Disputed Inquiries arise mainly in the context of the Respondent's challenge of the Colwood Project Restructuring under the GAAR. Therefore, to understand the relevancy of the Disputed Inquiries in the context of this motion, it is necessary to understand the elements of the GAAR, and the burden of proof which each party must carry to ultimately be successful in the face of a challenge under the GAAR.

[20] To start with, the transactions which have been challenged by the Respondent under the GAAR occurred in 2014 and perhaps earlier or later, depending upon which transactions should properly be included in the applicable "series of transactions", which I understand is an area of dispute between the parties.

[21] In any event, the version of the GAAR that will be applicable before the trial judge will be the version of section 245 that was in effect prior to a series of amendments which have recently been made to the GAAR, commencing in 2022.

[22] In *Deans Knight Income Corporation v. The King*, 2023 SCC 16 at paragraph 51, Justice Rowe, writing for the majority of the Supreme Court of Canada (SCC) wrote the following with respect to the methodology that must be followed in applying the GAAR:

> As Rothstein J. wrote in *Copthorne*, "[i]t is relatively straightforward to set out the GAAR scheme. It is much more difficult to apply it" (para. 32). This is because the GAAR confers upon the courts the "unusual duty of going behind the words of the legislation" (para. 66). While the duty imposed by the GAAR is unusual, the analysis involves a structured, three-step test that has been the subject of thorough guidance by this Court. In order for the GAAR to apply, the following questions must be asked (para. 33 citing Trustco at paras 18, 21 and 36):
>
> 1. Was there a tax benefit?
>
> 2. Was the transaction giving rise to the tax benefit an avoidance transaction?
>
> 3. Was the avoidance transaction giving rise to the tax benefit abusive?
>
> The taxpayer bears the burden of refuting the Minister's assumption of the existence of a tax benefit (*Copthorne*, at para. 34; *Trustco*, at para. 63) and the burden of proving the existence of a *bona fide* non-tax purpose (*Copthorne*, at para. 63; *Trustco*, at para. 66). In contrast, at the third step, the Minister bears the burden of proving that the avoidance transaction results in an abuse (*Lipson*, at para. 21).

[23] In terms of what needs to be proven to refute the existence of a tax benefit, a taxpayer, facing a GAAR challenge, must show that there was no "reduction, avoidance or deferral of tax" and/or no "increase in a refund of tax or other amount" paid under the Act (subsection 245(1)). Whether or not a tax benefit exists is often the clearest of the three steps to determine. As Justice Rowe notes at paragraph 53, "[t]he existence of a tax benefit may be clear on the face of the transactions".

[24] The other two steps are not as clear because they require some understanding of the mental processes or rationale behind a taxpayer entering into transactions, in the case of the second step, and behind Parliament's enactment of a particular provision, in the case of the third step.

[25] At paragraph 54, Justice Rowe notes that in determining whether a transaction or series of transactions giving rise to a tax benefit is abusive, it is necessary to determine whether the applicable transaction(s) was made primarily for the purpose

of obtaining a tax benefit. Justice Rowe observed that a transaction may have both a tax and a non-tax purpose. It therefore falls upon the taxpayer to show that it is reasonable to conclude that the non-tax purpose is primary.

[26] The third step requires two inquiries. First, it is necessary to determine the object, spirit and purpose of the particular provision. At paragraph 73, Justice Rowe wrote that this involves determining the applicable provision's underlying rationale, or stated another way, the "why" of the provision.

[27] Secondly, once the object, spirit and purpose of a provision have been ascertained, the abuse analysis goes beyond the legal form and technical compliance of the transactions to determine whether the result of the transactions frustrates the provision's rationale.

[28] In *Stack*, Justice Bocock wrote at paragraph 49, that with respect to a GAAR appeal, the general principles to be considered in determining a motion to compel, as set out above, should be applied more broadly. This statement was based on the recognition by the Federal Court of Appeal in *Madison Pacific Properties Inc. v. Canada*, 2019 FCA 19 at paragraph 12 that the third step in the GAAR analysis requires consideration of the Minister's mental process leading up to an assessment and an understanding of the policy at issue. The Federal Court of Appeal noted that as a result, documents which are not normally producible in a non-GAAR case, would be producible in a GAAR case if they inform an understanding of such mental processes.

[29] The same principle should apply with respect to whether documents are producible by a taxpayer when considering the second step of the GAAR analysis. A determination at this step requires consideration of the taxpayer's mental processes to determine the primary purpose of a transaction.

[30] In *Deans Knight* the SCC noted at paragraph 55 that in a series of transactions, if at least one transaction in the series was made primarily for the purpose of obtaining a tax benefit (and thereby constitutes an avoidance transaction for purposes of the GAAR), then the second step of the GAAR analysis is satisfied.

[31] The parties in this case are not *ad idem* on the full range of transactions which may be included in a series of transactions which includes the Restructuring Agreement and the events contemplated therein. The SCC wrote the following with

respect to the nature of a series of transactions for purposes of the GAAR analysis at paragraph 55:

> As explained in *Trustco*, a series of transactions involves transactions that are "pre-ordained in order to produce a given result" with "no practical likelihood that the pre-planned events would not take place in the order ordained" (para. 25, citing *Craven v. White*, [1989] A.C. 398 (H.L.), at p. 514, per Lord Oliver). A series of transactions also includes "related transactions or events…in contemplation of the series" (s. 248(10), which refers to transactions or events before or after the series which were undertaken "in relation to' or 'because of' the series" (*Copthorne*, at para. 46, citing *Trustco*, at para. 26).

[32] Having set out the legal framework applicable to this matter I now turn to specific consideration of the Disputed Inquiries.

IV. **<u>THE DISPUTED INQUIRIES</u>**

[33] Each of the Disputed Inquiries are set out in Appendix A. By this motion the Respondent seeks to require Onni to answer 17 questions and to more fully, or in some cases, to simply fulfill 29 requests for undertakings given at Mr. Parrotta's examination for discovery. Below I consider each of the Disputed Inquires against the legal framework outlined above.

(1) Request 6 – Advise what the understanding is of Mr. Dulley on what "RPMG Group of Companies" refers to in the year ending December 31, 2018 tax return and provide details of the same.

[34] Onni stated in its 2018 income tax return that it was affiliated with the "RPMG Group of Companies". When asked about this term at his examination for discovery, Mr. Parrotta said that he did not know what companies were meant to be included in that term but offered that Mr. David Dulley may know. Based on this response, the Respondent asked Mr. Parrotta to make inquiries and advise of what Mr. Dulley's understanding is of this term and to provide supporting details and documentation. After some discussion between counsel about the relevancy of the request, Mr. Parrotta, through Onni's counsel, undertook to provide an explanation of what the RPMG Group of Companies refers to in the tax return only. Counsel for the Respondent responded that he would accept that undertaking but noted his broader request for supporting details and documentation.

[35] Onni's undertaking response to this request was as follows:

> The phrase "RPMG Group of Companies" refers to the Onni Group. There is no reason for the use of the phrase to refer to the Onni Group beyond historical custom that has carried on.

[36] The Respondent did not specify how the response was, in its view, insufficient. Based upon the wording of the request and the response, it appears that the Respondent is looking for documentation in support of Mr. Dulley's understanding of the use of the phrase, "RPMG Group of Companies".

[37] It is Onni's position that the undertaking request was fulfilled. Onni provided an explanation of what the term means within the Onni Group. Onni further said that it does not know what documentation could be produced to support the use of the phrase as a historical custom but noted that the use of the term in Onni's 2018 tax return, together Onni's clarifying explanation in its undertaking response, serves as an example of the use of the term within the Onni Group, which is consistent with that historical custom. It says that it is unclear how other examples of the use of that term could be helpful.

[38] I agree with Onni. Onni's response explains Mr. Dulley's understanding of how the term is used within the Onni Group. It is not clear what kinds of documentation might qualify as sufficient to support a person's understanding of a custom. I do however agree that Mr. Dulley's stated understanding is consistent with the use of that term in the 2018 tax return and therefore serves as an example of the use of the custom as explained by Mr. Dulley.

[39] Accordingly, the undertaking request has been sufficiently answered.

(2) Request 7 – Provide any other instances where assets under a firm offer were assigned by Onni Capital to a party that was not a newly incorporated entity (other than RPMG Holdings), and if any exists, advise as to the reasons for doing so.

[40] The Respondent noted in its submissions that in his examination for discovery, Mr. Parrotta said that in the ordinary course, the Onni Group would incorporate a new beneficial owner for an acquired project that was considered to have "entitlement potential" or "development rights". However, he acknowledged

that the Colwood Project was not assigned to a newly incorporated entity, even though the Colwood Project was said to have entitlement potential.

[41] In the Respondent's view, a request for examples of other instances where other assets under a firm offer were assigned to a party that was not a newly incorporated entity, is a proper request because how the Onni Group has historically structured its acquisitions and the entities that hold them relates to the purpose of the Colwood Project Restructuring and the nature of the applicable series. For example, according to the Respondent, if the Colwood Project was the only acquisition where Onni did not assign a new asset to a newly incorporated entity, or if it were shown that the only acquisitions where such an assignment had not occurred, is where the target has significant tax attributes, it would support a contention that a departure from the ordinary course was motivated by the prospect of acquiring tax attributes.

[42] On the other hand, Onni objects to the request on two bases:

1. elements of the question are vague. In its view, it is not clear what constitutes a "firm offer" or an entity that is "not a newly incorporated entity"; and

2. whether or not assets were, in past instances, transferred to a party that was not a newly incorporated entity is not material to the issues in this appeal, where according to Onni, the transactions at issue are well-defined and were presented to Onni by PwC Insolvency as a package deal.

[43] Accordingly, in Onni's view the request is a fishing expedition for any superficially similar transactions which may have been entered into in the past, without regard to the relevance of those transactions or the burden placed on Onni in responding to a request which contains elements which are vague and therefore difficult to apply consistently.

[44] I agree with Onni's position that Request 7 constitutes a fishing expedition and accordingly even in the context of the GAAR is not a proper request on discovery. The Respondent has clearly put Onni's motivation in entering into the Colwood Project Restructuring at issue in its pleadings. In its Reply, the Respondent writes as follows at paragraph 68:

> None of the transactions or events in the Series, on their own or as part of the Series, can reasonably be considered to have been undertaken or arranged primarily for

> *bona fide* purposes other than to obtain a Tax Benefit. Thus, they are avoidance transactions within the meaning of subsection 245(3).

[45] Therefore, the Respondent should have wide berth on discovery to ask questions regarding the transactions or series of transactions at issue. However, the Respondent has not pled anything that would bring a past pattern of dealings or transactions by the Onni Group into issue. The Respondent may suspect that past dealings of the Onni Group may reveal something about its motivation in entering into the transactions which the pleadings put in issue, but has not raised any evidence in support of that suspicion. As Justice Bocock wrote in *Stack* at paragraph 41, "[thus] a party cannot ask for facts that would lead to the creation of a new argument, they can only discover information that sustains an already pleaded argument."

[46] The scope of inquiries at an examination for discovery is more expansive than it is at trial. However, it is not unlimited. The scope must be informed by the purposes of the discovery process, which were summarized by Justice Campbell in *Burlington Resources* at paragraph 11: the purpose of discovery is to enable the parties to know the case they need to meet, know the facts that the opposing party relies on, narrow or eliminate issues, obtain omissions and avoid surprises.

[47] It is not a purpose of the discovery process to mine for information to support or rule out a suspicion or an unpled theory of one's case.

[48] Accordingly, Request 7 is not a relevant request to the issue at hand and need not be answered by Onni.

(3) Request 10 - Advise whether PricewaterhouseCoopers did any other tax due diligence work on behalf of the Onni Group for the period 2010 through 2014.

Request 11 – Provide the engagement letter for each of the transactions that PwC was working on on behalf of the Onni Group during the 2014 period and provide the related tax compliance engagement letter.

[49] In each of their submissions the parties grouped these two requests together. I will do the same.

[50] It should be noted that in its response to Request 11, Onni advised the Respondent that no engagement letter for the work done by PwC in relation to the Colwood Project Restructuring could be located. The remainder of Requests 10 and 11 were refused as being irrelevant.

[51] It is the Respondent's position that the advice and services that PwC provided to the Onni Group, as well as PwC's relationship with the Onni Group is probative not only to the structuring of the transactions at issue but also to their purposes. Further, in the Respondent's view, PwC's mandates may provide facts that more accurately identify what the Onni Group's motivations and purposes were with respect to the Colwood Project and other services it acquired from PwC, such as the verification of tax attributes.

[52] Onni's position on the other hand, is that apart from the request for the 2014 engagement letter with respect to the Colwood Project Restructuring, which was answered, these requests are irrelevant and constitute a fishing expedition. Due diligence and tax compliance work (which Mr. Parrotta said, in his examination, was conducted by PwC across a broad range of entities), performed in respect of separate transactions does not inform either the purpose of the transactions at issue, or which transactions formed a part of a series that is central to this appeal.

[53] In my view, the request for a copy of the PwC engagement letter with respect to the Colwood Project Restructuring from 2014 has clear relevance. That request seems to have been answered as well as it can be.

[54] For reasons similar to my reasons given with respect to Request 7 above, the remainder of Requests 10 and 11 constitute a fishing expedition, in my view. The Respondent has not, either in its argument nor in its Reply, adequately explained how a general request for information with respect to services provided for the benefit of transactions outside of the Colwood Project Restructuring between 2010 and 2014 might inform the purposes of Onni entering into the Colwood Project Restructuring in 2014. It may be that the Respondent would like to discover whether a connection between past transactions undertaken by the Onni Group and its purposes in entering into the Colwood Project Restructuring in 2014 exists. However, the confirmation or elimination of a suspicion or an unpled theory is not within the purposes of the discovery process.

[55] Requests 10 and 11 are not relevant to the issue appealed and need not be answered by Onni.

> (4) Request 18 – Advise as to the existence of any general practices or policies applicable in 2014 that relate to the acquisition of real estate assets or entities that own real estate assets, including how they would be held within the wider Onni Group, and to the extent such policies or general practices existed, provide any records memorializing those practices.

[56] Onni has refused this request on the basis that it is irrelevant, ambiguous, overbroad and vague. It is Onni's position that the request is irrelevant because the transactions which comprised the Colwood Project Restructuring were presented to Onni by PwC Insolvency, already structured. Consequently, any general policies or practices as to how the Onni Group has structured other real estate projects is not relevant to the transactions at issue.

[57] Further it is Onni's position that what constitutes a general policy or practice is subjective and views as to what constitutes a general policy or practice can reasonably differ within an organization. Given such uncertainties, it is not clear how Onni could meaningfully respond.

[58] I disagree that the request is improper because it is irrelevant to the issue at hand. The request is for general practices and policies with respect to real estate transactions of the Onni Group in 2014. Onni's position is that the Colwood Project Restructuring is primarily a real estate transaction which occurred in 2014.

[59] Given what is recognized at law to be a low threshold for determining relevancy on a motion to compel, in my view there is a sufficient connection between the information request and the transaction that is clearly at issue between the parties, to determine that the request does not constitute a mere fishing expedition.

[60] I acknowledge that the term "general practices or policies" may not have a standard definition across all industries and businesses. However, in my view, it has sufficient precision to enable Onni to determine whether it had anything in place internally, during the period in question, which would qualify to be included in such term.

[61] In my view, Request 18 is a proper request at the discovery stage and must be answered.

> (5) Request 29 – Advise on specific details as to prior business interactions or dealings between the Onni Group or Rossano De Cotiis and Mr. Dohm or Coal Harbour Realty Advisors.

[62] From the submissions of Onni, Mr. Dohm was a friend of one of the principals of the Onni Group, Rossano De Cotiis and a real estate professional. Coal Harbour Realty is a company Mr. Dohm works for and/or owns. A numbered company, incorporated and controlled by Mr. Dohm, 1019250 BC Ltd. purchased the unsecured debt of Colwood LP for the purpose of having the debt owned by an unrelated party that would be eligible to vote on the consolidated proposal at the creditor's meetings in the bankruptcy proceedings.

[63] At the examination for discovery, the Respondent asked questions with respect to Mr. Dohm's and 1019250 BC Ltd.'s role in relation to the Colwood Project Restructuring. These questions confirmed the discrete role of Mr. Dohm and his numbered company, as set out in the Respondent's assumptions in its Reply. The Respondent also requested by way of undertaking, for confirmation that there were no other reasons for Mr. Dohm's participation in the Colwood Project Restructuring beyond that he was an unrelated party that might be willing to assist. This undertaking was given.

[64] The Respondent then asked about the relationship between Mr. Dohm and the Onni Group. Onni took the view that these questions were not objectionable as they provided general background information. In the course of answering these questions, Mr. Parotta noted that at one time Mr. Dohm had informed one of the principals of the Onni Group about another real estate acquisition opportunity, known as the Evelyn Project, in which the Onni Group participated in 2010 and 2011 (the "Evelyn Project").

[65] It is Onni's position that the evidence of Mr. Dohm's prior dealings with the Onni Group does not raise a reasonable possibility that prior business dealings with Mr. Dohm are relevant to the issues under appeal and was only asked as an attempt to gather additional information about the Evelyn Project, which in Onni's view is an unrelated transaction. Accordingly, in the view of Onni, Request 29 constitutes a fishing expedition.

[66] On the other hand, it is the Respondent's position that the Evelyn Project appears to have similarities to the Colwood Project Restructuring and Mr. Dohm appears to be involved in both. According to the Respondent, to the extent that Mr. Dohm had similar roles in both projects, understanding those roles would inform the Respondent of the prior experience and knowledge of the Onni Group and thereby shed light on Onni's purposes in entering into the Colwood Project Restructuring.

[67] In my view, Mr. Dohm clearly played a role in the Colwood Project Restructuring, as admitted by Onni in its submissions for this motion and in the testimony of its nominee on discovery, and as assumed by the Respondent in its pleadings. As described above, at law there is a low threshold for relevancy on motions to compel. Questions regarding the background of an individual whom both parties have acknowledged playing a role in the transactions at issue, in my view, clears that threshold.

[68] In light of my comments below, it should be noted that, in my view, Request 29 asks for information regarding the nature of the relationship and past dealings between Mr. Dohm, Mr. DeCotiis and their respective companies. It is not seeking details or specifics of any particular past transaction.

[69] Accordingly, with that caveat, Request 29 is a proper request on discovery and must be answered.

(6) Question 518 – At the time that you were looking at Taylor Way, you understood that the existing owner of Taylor Way was insolvent and in CCAA protection?

Question 537-538 – At this point in time, September of 2014, to go back to the prior transaction with Mr. Dohm, you had previously undertaken a similar process of purchasing shares of an operating entity subject to a financial restructuring of that entity's debt obligations facilitated through a proposal under the *Bankruptcy and Insolvency Act*?

Question 737 – Was there ever any discussion within the Onni Group about approaching someone else other than Mr. Dohm to act in that capacity?

> Question 1452 – How did the Onni Group's participation previously in that structure and the acquisition of the Evelyn properties inform your understanding of what PwC is bringing to you in September of 2014?
>
> Question 1453 – Did you have any understanding as to whether Mr. Dohm had information relating to the reasons behind the Restructuring Agreement based on his prior experience with Taylor Way?
>
> Question 1454 – Are you aware of what Mr. Dohm' role was in respect of the Evelyn transactions?

[70] The above series of questions relate to the previous acquisition of the Evelyn Project by certain members of the Onni Group in 2010 and 2011. This project is also known as Taylor Way. It is the Respondent's belief that the Evelyn Project had a number of similarities to the Colwood Project Restructuring, including the assignment into bankruptcy of the developer of the Evelyn Project and the involvement of Mr. Dohm.

[71] It is the Respondent's position that the prior business relationship between Mr. Dohm and the Onni Group is relevant to ascertaining whether Mr. Dohm and the entities he controlled acted at arm's length with the Onni Group in effecting the Colwood Project Restructuring. According to the Respondent, to the extent that Mr. Dohm was similarly involved in the Evelyn Project, this also helps to inform the Respondent of the prior experience and knowledge of the parties, especially within the Onni Group and why the Colwood Project was structured as it was. In the Respondent's view, these questions are relevant to the existence of avoidance transactions, the nature of an applicable series and other comparative transactions that can help illuminate the potential tax benefit, avoidance transaction and abuse issues.

[72] In the Respondent's view, determining the primary purpose of a transaction requires a detailed factual investigation, especially where there is a suggestion of more than one purpose for a transaction or series of transactions. The purpose test requires an examination of the objectives, including the surrounding facts for each of the transactions like their historical context, relationship to other transactions, timing and ordering, and the reasons behind them. It also incorporates the subjective intentions of those participating in the transactions, which includes a consideration of their experience, state of knowledge and level of understanding.

[73] Onni, on the other hand refused to answer these questions on the ground that they were irrelevant as the Respondent did not establish any connection between the Evelyn Project and the Colwood Project Restructuring, apart from the fact that they both involved members of the Onni Group and Mr. Dohm, and both apparently involved projects experiencing some form of financial distress. It is Onni's position that the Evelyn Project and the Colwood Project Restructuring are unrelated transactions.

[74] Onni argued that this series of questions is improper as the questions are based on the Respondent's presumption that the Evelyn Project is similar to the Colwood Project Restructuring without any evidence in support of that presumption. In fact, in Onni's view Mr. Parrotta's evidence directly contradicts that presumption. Onni further notes that the pleadings do not contain any reference to the Evelyn transactions. Consequently, it is Onni's position that this line of questions amounts to little more than fishing expedition.

[75] For reasons similar to those I gave with respect to Requests 10 and 11 above, I agree with Onni's position that this line of questioning amounts to a fishing expedition and therefore is not a proper a proper line of questioning on discovery, except for Question 1452.

[76] While the Respondent has not put the Evelyn Project generally at issue in its pleadings, it has clearly put the GAAR in issue. Therefore, as discussed above the taxpayer's mental processes in entering into the challenged transactions are relevant in determining the taxpayer's primary purpose in entering into such transactions, which is necessary to answer the second question in the GAAR analysis. However, the mere pleading of the GAAR cannot be a license to use the discovery process to delve into every historical experience of a company and its employees in an attempt to discern a certain mindset. The low threshold of relevancy must still be cleared. A question must inform the established purposes of the discovery process. The testing of suspicions or theories is not one of those purposes.

[77] Question 1452, however, does draw a sufficient connection between the Evelyn Project and the Onni's mental processes in entering into the Colwood Project Restructuring. It is therefore relevant, based upon the low threshold for relevancy at discovery, particularly where the GAAR is at issue and should therefore be answered on discovery. It is the essential question for purposes of the GAAR analysis with respect to the Evelyn Project.

[78] Question 1452 is therefore a proper question on discovery and must be answered. Question 1454 was essentially already asked by virtue of Request 29 and will therefore presumably be answered when that request is fulfilled. The remaining questions are not relevant to the issue at hand and therefore are not proper questions on discovery. The Respondent has not included anything in its Reply relating to the role of Onni's past transactions, including the Evelyn Project, in the decision to enter into the Colwood Project Restructuring. Further, the Respondent has not demonstrated how, given the issues in dispute between the parties in the appeal, these remaining questions with respect to the Evelyn Project advance the purposes of the discovery process.

(7) Question 1455 – There's another transaction going on at this time in 2014 relating to the expansion on Vancouver Island and specifically in the Ucluelet region. Are you familiar with that transaction?

Question 1456-1457 – Was the acquisition in Ucluelet, I believe I said, related to the acquisition in the Colwood region of Vancouver Island at all, or were these completely separate decisions with no underlying motivation or logic behind them.

Question 1458-1459 – When you were talking about the Pacific Northwest region on our first day of discovery, is the only transaction relating to the move into the Pacific Northwest?

Question 1460 – When you were referring to the Pacific Northwest region, your only answers were in respect of the transactions relating to expansion into Colwood? That was the only thing you were referring to that was going on?

Question 1461 – Was it your understanding that there were any other transactions happening over the same time as the Colwood development was being proposed to you and the Onni restructuring agreement was being negotiated that would have helped inform your understanding of the underlying objectives of this series of transactions?

Question 1462 – Were there any other transactions relating to expanding into the Vancouver Island region or the Gulf Islands that would have

> embodied a similar structure to what we were talking about with respect to the Onni restructuring agreement?

[79] The above line of questioning relates acquisitions of properties on Vancouver Island, referred to as the Marine Drive Entities by the Onni Group which occurred in 2014.

[80] As in the case of the Evelyn Project, the Respondent's position is that these questions are proper as the transactions are similar to the Colwood Project Restructuring. Accordingly, this line of questioning is necessary to illuminate the potential tax benefits, avoidance transaction and abuse issues.

[81] Like its arguments with respect to the Evelyn Project, Onni takes the position that this line of questioning is irrelevant as it involves a set of transactions that are unrelated to the issues at hand. Onni says that that Respondent has failed to draw a sufficient connection between the transactions involving the Marine Drive Entities and the Colwood Project Restructuring. There is nothing in the Reply that establishes such a connection. The line of questioning therefore amounts to a fishing expedition.

[82] In my view, the only difference between this line of questioning and the line of questioning regarding the Evelyn Project, is that the transactions involving the Marine Drive Entities occurred in the same year as the Colwood Project Restructuring rather than before it. Accordingly, my reasoning with respect to the propriety of these two lines of questioning is the same. Question 1461 is proper as it draws a sufficient connection to the mental processes of Onni in entering into the Colwood Project Restructuring, which is germane to the issue of whether the Colwood Project Restructuring is an avoidance transaction for purposes of the GAAR. There is no such connection with respect to the remaining questions. Therefore, apart from Question 1461, which must be answered, the above questions are not proper questions on discovery and need not be answered by Onni.

(8) Request 71 – Advise how the document entitled "Colwood City Centre Limited Partnership Restructuring Agreement Closing Agenda" "Closing Index" was prepared, on what date and what documents or information was provided to Farris to assemble all documents.

> Question 971 – How did the closing index produced in Onni’s book of documents come about? Why are certain documents included in this closing index?
>
> Question 972 – Is it your understanding that Onni has no information, knowledge or belief as to why these documents are included in this closing index?
>
> Request 72 – Make inquiries, review records as necessary both within the Onni Group and elsewhere to determine whether previous indexes were prepared and the selection process that went into putting those documents in a closing index.

[83] Each of these requests and questions goes to the preparation of the closing index for the Colwood Project Restructuring. Onni says that from these requests it appears that the Respondent is of the view that a closing index is representative of what transactions constitute a series of transactions. It is Onni’s position that even if that view is correct these questions and requests are not proper because:

1. Even if the closing index expresses a legal opinion by the preparer of the index, Farris LLP, as to what constitutes a series, Farris’s metal processes and/or views on what constitutes a series would be an inadmissible opinion of domestic law.

2. Farris’ views on what to include or exclude from the closing index is irrelevant because such views do not inform what constitutes a series.

3. The date on which the closing index was prepared and what documents were provided to Farris is irrelevant to the issue of what constitutes a series.

4. A closing index does not inform any planning associated with the transactions or impact the ordering of transactions.

5. The questions posed are vague and imprecise.

[84] In my view, these questions and requests are relevant to the matters at issue. As discussed above the threshold for relevancy on a motion to compel is low.

Questions regarding the documentation by which the Colwood Project Restructuring is memorialized and the process by which it was created, clears that threshold.

[85] Issues regarding the import of, or the admissibility of the closing index in determining what transactions constitute a series of transactions is for the trial judge to decide and not the motions judge. The role of the motions judge is to determine whether the challenged questions and requests clear the low threshold for relevancy at discovery. I have determined that these questions and requests clear that threshold and therefore must be answered by Onni.

(9) Request 54 – Make inquires and see if conversations and discussions relating to the change of control rules under the *Income Tax Act* did take place and advise of the same, subject to any claim of privilege. Provide a privilege log if so.

[86] The source of the Respondent's concern is what it views to be an unacceptable limitation imposed by Onni in accepting this request at the discovery. Upon this request being made, Onni only agreed to the following:

> We can ask the named members of the Onni management team if there were any such discussions unrelated to seeking or obtaining any sort of legal advice and if there were any such unrelated discussions and anyone has any recollection of that, then we will advise you.

[87] Onni did not explain in its submissions whether its use of the words, "unrelated to seeking or obtaining any sort of legal advice" in its undertaking was meant to be a limitation on the request made by the Respondent and if so, the basis for such a limitation.

[88] It simply said that the request was fully answered. However, on the basis of its submissions, it is not clear to me whether this is so. The request may well have been fully answered.

[89] Alternatively, it may be that only the modified undertaking, the scope and basis for which was not explained, was fully answered. Onni said the following in its submissions with respect to Request 54:

> The Appellant has fully answered this request. Its response was that there was no recollection of any such discussions. For greater certainty, the Appellant is not

> aware of any documents related to such discussions, and there [is] no basis to believe that any such documents exist. The Appellant cannot provide a privilege log for unidentified documents over which it (a) has no basis and (b) is not currently claiming privilege over.

[90] In my view, the request, as asked by the Respondent, is relevant to the issue at hand. Further, the request does not seek for Onni to disclose any information that would be privileged. It only asks Onni to provide a privilege log if privileged discussions regarding the change of control rules took place. Accordingly, I direct that Onni either confirm that the request, as made by the Respondent, has been fully answered, or if not, I direct that Onni fully answer such request in accordance with the terms of the Order issued in this matter.

(10) Request 64 – Review records and produce copies of correspondence or documents that relate to paragraph 3.11 of the Monitor's 23rd report and the events noted therein. If privilege is claimed, to provide a privilege log.

[91] In making this request the Respondent seeks information relating to the negotiation of the Restructuring Agreement in response to the Initial Draft Agreement first circulated by PwC Insolvency.

[92] Included in Onni's answer to this request, is the following:

> The Onni Group corresponded with legal counsel – Farris LLP and Thorsteinssons LLP- and legal counsel corresponded with each other in respect of these communications from PwC Insolvency, between September 29 and October 2 for the purpose of seeking/providing legal advice. None of these communications included or were shared with any persons beyond Onni, Farris and Thorsteinssons. This correspondence with and between counsel is privileged.

[93] The Respondent recognizes that Onni's response invoked privilege. It is not asking Onni to produce privileged documents. Rather, it is requesting that Onni produce a privilege log.

[94] It is Onni's position that in the answer above, it has provided the Respondent with all information required to determine whether the documents over which it claims solicitor-client privilege were in fact privileged. Specifically, it noted that its answer provides the dates of the privileged correspondence, the parties to the

correspondence, the nature of the correspondence and confirmation that the correspondence over which privilege is claimed was not shared with other parties.

[95] Onni expressed the view that this information it provided meets the criteria set out by the Alberta Court of Appeal in *Canadian Natural Resources Ltd. v ShawCor Ltd.*, 2014 ABCA 289 at paragraph 8, where the Court wrote that the information provided must be a "sufficient description of each record for which privilege is claimed to assist other parties in assessing the validity of the claimed privilege."

[96] I agree. Onni's answer does not itemize each piece of correspondence. However, it does describe the parties to the correspondence over which privilege is claimed, the purpose of such correspondence (to provide or to seek legal advice) and the fact that such correspondence was exchanged over a defined and tight timeframe (four days). In my view this is sufficient information to enable the Respondent to evaluate Onni's claims to privilege. Accordingly, Onni has sufficiently answered Request 64.

(11) Request 78 – Review records and advise who drafted the Debtor-in-Possession Loan Agreement, what the purpose of the loan and its terms was, and what level of input was provided by Onni in the drafting of this agreement.

[97] Onni answered this request as follows:

> Farris LLP drafted the DIP Loan Agreement. At this time, it cannot be determined which lawyers were involved in the drafting.
>
> The making of a DIP loan by the buyer (or its nominee) was included by PwC Insolvency in the draft Restructuring Agreement circulated to potential bidders on September 29, 2014, and October 1, 2014 (see emails enclosed in response to request #64). The making of a DIP Loan by the buyer (or its nominee) continued to be included in the final Restructuring Agreement as executed (see ABOD 434/RBOD 41). The DIP loan and the Restructuring Agreement, including the making of the DIP loan, were approved by the BC Supreme Court by Orders dated October 9, 2014 (see RBOD 48 and RBOD 49/ABOD 435).
>
> In short, the buyer was effectively directed by PwC Insolvency's process and draft Restructuring Agreements to proceed by way of DIP Loan and ordered by the Court to proceed with the DIP Loan as per the Restructuring Agreement. Entering into

> the DIP Loan Agreement served these purposes, i.e., to carry out obligations under the Restructuring Agreement as ordered by the Court. These purposes are addressed by the recitals within the DIP Loan Agreement, i.e., within the context of CCAA proceedings, and subject to Court approval of the Restructuring Agreement, the DIP loan would be a transaction agreed to under the Restructuring Agreement, as court-approved, that would enable the Colwood LP, by its general partner, to use the loan proceeds to pay certain debts of the Colwood LP (as set out in section 4, Use of Proceeds) while providing security to the DIP lender (as set out in section 5, Security).
>
> The Appellant's position is that the Restructuring Agreement, transaction approval Orders of October 9, 2014, and recitals within the DIP Loan Agreement speak for themselves as to the purpose of the DIP Loan Agreement [Underlining added].

[98] It is the Respondent's position that the above represents a "thin answer" and a refusal to answer as to the level of inputs of the Onni Group in the drafting of the DIP Loan Agreement. Accordingly, in the Respondent's view, the response is inadequate and constitutes a partial refusal of a proper request on discovery.

[99] Onni, on the other hand, is of the view that it provided a comprehensive response to Request 78. It also notes that in its view, the request for Onni's "level of input" is materially imprecise.

[100] In my view, at least on the face of the request made and the response given, Onni's response is adequate. It addresses both the purpose of the applicable agreement, and the underlined part of the response is indicative of its input into the drafting of the agreement.

[101] In its submissions the Respondent did not specify what further questions may have been raised in its mind by Onni's response. It simply said that in its view, the response was not responsive and inadequate. I have no evidence before me by which to make a determination of whether the response, which on its face appears responsive, is not. Therefore, I am not prepared to direct Onni to provide a further response to this request. In my view, Request 78 has been sufficiently answered.

(12) Request 85 – Advise what the reasons were for incorporating the entity 1019074 BC Limited and why it features on the Schedule B document at tab 200, advise whether there was ever any proposed plan to have the entity be assigned debts from IGW in fulfillment of the restructuring agreement, and produce documents relating thereto.

[102] In response to this request, Onni said the following:

> The reference to this company in draft Schedule B was a clerical error. The company has no relation to the Colwood transaction.

[103] It is the position of the Respondent that Onni failed to fulfill its undertaking which it accepted at the examination for discovery. It is of the view that the reason why the company was incorporated, its potential role in the series that includes the Colwood Project Restructuring, whether there was any plan to have it fulfill that role and what happened to such role all relate to the determining the purpose of the challenged transactions. In the Respondent's estimation, saying that 1019074 BC Ltd. did not end up having a role is not fully responsive to Onni's accepted undertaking.

[104] In my view that is not what Onni's response indicates. My reading of the response is that the reference to the numbered company in the schedule presented at the examination for discovery was a mistake and that the numbered company that is the subject of the request had no relationship with the Colwood Project Restructuring. It is Onni's position that it is implicit in this answer that there was never an intention to use the numbered company as part of the transaction at issue. I agree. In my view, Request 85 has been sufficiently answered.

(13) Request 97 – Provide documentation from PwC Insolvency relating to the purpose for assigning the Colwood LP and the appellant into bankruptcy on November 17, 2014, including any records relating to the assignment occurring on November 17, 2014 as a matter of happenstance and not for any particular reason beyond that being the date it got done.

[105] Onni responded as follows:

> Inquiries were made of PwC Insolvency as to whether there was a reason for the assignment into bankruptcy occurring on November 17, 2014, and if so, advise of the reason and produce any records relating to the reason.
>
> PwC Insolvency did not directly address whether there was a reason for the assignment occurring on November 17, 2014. PwC Insolvency advises that the reason for the assignment into bankruptcy was to facilitate a compromise of the debts of the Colwood LP through a subsequent proposal, and that PwC Insolvency has been unable to produce any documents related specifically to this reason.

> We note PwC Insolvency's response to Request #86 that, to the best of recollection, agreement as to dates was as set out in the Restructuring Agreement and there was no side agreement or the like as to specific dates.

[106] The issue between the parties with respect to this request seems to be a partial refusal of the request that was made by Onni. However, there is a disagreement between the parties as to the nature of that partial refusal. The Respondent says that Onni agreed only to seek records if there was a reason for specifically selecting November 17, 2014, but otherwise refused the undertaking based on relevance. On the other hand, Onni says that records relating to a transaction occurring on a date "as a matter of happenstance and not for any particular reason beyond that being the date it gone done" is unintelligible.

[107] I must admit that I do not understand what the Respondent is seeking by the request beyond an understanding from PwC Insolvency as to the reasons for the assignment into bankruptcy occurring on November 17, 2014, and records relating to such reasons. From Onni's response, this is exactly the inquiry it made of PwC Insolvency and Onni provided the full answer given by PwC Insolvency to this inquiry. Nothing more could be expected of Onni in these circumstances.

[108] In my view Request 97 has been adequately answered.

(14) Request 109 – Review Onni's records and make inquiries as necessary to determine what was the reason or reasons for the incorporation of Onni Development (RMG) Ltd and provide documents relating to the reasons for incorporation.

[109] Onni responded to this request as follows:

> No records in this regard could be located. There are no recollections of the reasons for doing so beyond following the advice of counsel in respect of implementing the Restructuring Agreement. The use of a newly incorporated company for a specific purpose/transaction is common commercial practice.

[110] The Respondent's concern is that Onni partially refused this request. It says that Onni agreed to make inquiries on the reasons for incorporation but refused to look for documentation. On this point, the parties agree, although Onni is not clear on its reason for the refusal to look for documents. In any event, it is Onni's position that despite its refusal, it nevertheless searched its records and made inquiries within

the Onni Group, and no documents could be located, as indicated by its response, as set out above. Therefore, it is Onni's position that the request has been answered.

[111] I agree Request 109 has been sufficiently answered.

(15) Request 131 – Provide documentation with respect to why there was a decision to have the payment made to the unsecured creditors go out on December 22, 2014, as opposed to an earlier date or a later date and provide any documents memorializing the reason for December 22, 2014, being the date on which this transfer was to take place and the reason for selecting that date.

Request 132 – Advise as to the reasons for incorporating a term or terms in the structuring documents that lead to the payment to the unsecured creditors being due on December 22, 2014.

[112] Onni agreed at the examination for discovery to provide documents speaking directly to the reason for the payment on December 22, 2014, but refused the remainder of these requests. However, Onni did not include any answer to these requests in its responses.

[113] It is Onni's position that these requests are improper because they are based on an assumption that there was a positive decision to make these payments on a particular date in the absence of any statements or evidence given at the examination that a positive decision as to a particular date was made. It also specifically objects to Request 132 on the basis that it is overbroad. In its view, if the Respondent wishes to know the reason for a particular term, it should specifically identify the term at issue and put it to the nominee.

[114] On the other hand, it is the Respondent's view that the questions are formulated properly. It further notes that the date of the issuance of the Certificate of Full Performance which occurred on the date of payment to the unsecured creditors on December 22, 2014, after the share sale, which occurred on December 19, 2014, is key to Onni's claim that the applicable tax losses were not reduced by the application of the debt-parking rules. In its view, the reasoning for setting up the transactions of any series in the order contemplated is relevant to the appeal.

[115] I agree. Requests 131 and 132 must be fully answered by Onni.

V. CONCLUSION AND ORDER

[116] The parties have each had mixed success in this motion. Of the 17 questions and 29 requests that are at issue, I have determined that 4 questions and 6 requests that were challenged are proper and should be fully answered by Onni. Further, I direct that Onni should clarify the request to which it responded in its response to Request 54, and if it was other than the Request as originally formulated by the Respondent at the examination for discovery, I direct Onni to answer such originally formulated request. I have also held that 6 requests which were not challenged by Onni on the basis of relevancy but rather were said by the Respondent to be incomplete were, in my view, sufficiently answered.

[117] Of course, now that such requests have been determined to be sufficiently answered, the Respondent is entitled under general principles of the discovery process to ask follow-up questions arising from those answers. That may have been the more efficient path for the Respondent to follow in the first place, although I understand that the Respondent felt it needed to bring this motion in respect of other matters in any event.

[118] Given that Onni's nominee has already been extensively examined for three days, the relatively few questions that are now left to be answered, the specific nature of those questions, the fact that the parties now have the benefit of the Court's determinations and comments and the procedure ingrained in general principles of the discovery process which allows for follow-up questions, Mr. Parrotta's reattendance is neither necessary nor appropriate.

[119] Accordingly, the Court orders as follows:

1. Onni will serve full written answers to Questions 971, 972, 1452 and 1461 and full responses to Requests 18, 29, 71, 72, 54, 131 and 132 on the Respondent on or before May 5, 2026.

2. The Respondent may serve on Onni written follow-up questions to any of the answers and responses it receives pursuant to paragraph 1 or to any of Requests which this Court has determined to be sufficiently answered pursuant to the within reasons on or before June 5, 2026.

3. Any dispute between the parties with respect to the propriety of such follow-up questions may be brought by either party before the undersigned by either party for determination prior to the deadline for answering such follow-up questions as set out in paragraph 4 hereof.

4. Written answers to any follow-up questions served by the Respondent pursuant to paragraph 2 shall be served by Onni on the Respondent on or before July 20, 2026.

5. On or before November 2, 2026, the parties shall file one of the following with the Court:

   a. A joint application to fix a time and place for the hearing using Form 123;

   b. A letter requesting a settlement conference (refer to Practice Note 21); or

   c. A letter confirming that the appeal will settle and the anticipated date of settlement.

[120] As each of the parties have had mixed success in this motion, each party should bear its own costs.

Signed this 20th day of March 2026.

"J. Scott Bodie"

Bodie J.

Appendix A

Disputed Inquiry Number	Question/Request
Request 6	Advise what the understanding is of Mr. Dulley on what "RPMG Group of Companies" refers to in the year ending December 31, 2018 tax return and provide supporting details for the same.
Request 7	Provide any other instances where assets under a firm offer were assigned by Onni Capital to a party that was not a newly incorporated entity (other than RPMG Holdings), and if any exists, advise as to the reasons for doing so.
Request 10	Advise whether PricewaterhouseCoopers did any other tax due diligence work on behalf of the Onni Group for the period 2010 through 2014.
Request 11	Provide the engagement letter for each of the transactions that PwC was working on on behalf of the Onni Group during the 2014 period and provide the related tax compliance engagement letter.
Request 18	Advise as to the existence of any general practices or policies applicable in 2014 that relate to the acquisition of real estate assets or entities that own real estate assets, including how they would be held within the wider Onni Group, and to the extent such policies or general practices existed, provide any records memorializing those practices.
Request 29	Advise on specific details as to prior business interactions or dealing between the Onni Group or Rossano De Cotiis, and Mr. Dohm or Coal Harbour Realty Advisors.

Q. 518	At the time that you were looking at Taylor Way, you understood that the existing owner of Taylor Way was insolvent and in CCAA protection?
Q. 537-538	At this point in time, September of 2014, to go backto the prior transaction with Mr. Dohm, you had previously undertaken a similar process of purchasing shares of an operating entity subject to a financial restructuring of that entity's debt obligations facilitated through a proposal under the *Bankruptcy and Insolvency Act?*
Q. 737	Was there ever any discussion within the Onni Group about approaching someone else other than Mr. Dohm to act in that capacity?
Request 54	Make inquiries and see if conversations and discussions relating to the change of control rules under the Income Tax Act did take place and advise of the same, subject to any claim of privilege. Provide a privilege log if so.
Request 64	Review records and produce copies of correspondence or documents that relate to paragraph 3.11 of the Monitor's 23rd report and the events noted therein. If privilege is claimed, to provide a privilege log.
Request 71	Advise how the document entitled "Colwood City Centre Limited Partnership Restructuring Agreement Closing Agenda" "Closing Index" was prepared, on what date and what documents or information was provided to Farris to assemble all of the documents.
Q. 971	How did the closing index produced in the appellant's book of documents come about? Why

	are certain documents are included in this closing index?
Q. 972	Is it your understanding that Onni has no information, knowledge or belief as to why these documents are included in this closing index?
Request 72	Make inquiries, review records as necessary both within the Onni Group and elsewhere to determine whether previous indexes were prepared and the selection process that went into putting those documents in a closing index.
Request 78	Review records and advise who drafted the Debtor-in- Possession Loan Agreement, what the purpose of the loan and its terms was, and what level of input was provided by Onni into the drafting of this agreement.
Request 85	Advise what the reasons were for incorporating the entity 1019074 BC Limited and why it features on the schedule B document at tab 200, advise whether there was ever any proposed plan to have that entity be assigned the debts from IGW in fulfillment of the restructuring agreement, and produce documents relating thereto.
Request 97	Provide documentation from PwC insolvency relating to the purpose for assigning the Colwood LP and the appellant into bankruptcy on November 17, 2014, including any records relating to the assignment occurring on November 17, 2014 as a matter of happenstance and not for any particular reason beyond that being the date it got done.
Request 109	Review Onni's records and make inquiries as necessary to determine what was the reason or

	reasons for the incorporation of Onni Development (RMG) Ltd. and provide documents relating to the reasons for incorporation.
Request 131	Provide documentation with respect to why there was a decision to have the payment made to the unsecured creditors go out on December 22, 2014, as opposed to an earlier date or a later date and provide any documents memorializing the reason for December 22, 2014, being the date on which this transfer was to take place and the reason for selecting that date.
Request 132	Advise as to the reasons for incorporating a term or the terms in the structuring documents that lead to the payment to the unsecured creditors being due on December 22, 2014.
Request 138	Provide documentation from PwC insolvency relating to creation of the initial restructuring agreement provided to Onni in late September 2014.
Request 139	Advise of the response given by PwC insolvency relating backto the prior undertaking.
Q. 1452	How did the Onni group's participation previously in that structure and the acquisition of the Evelyn properties inform your understanding of what PwC is bringing to you in September of 2014?
Q. 1453	Did you have any understanding as to whether Mr. Dohm had information relatingto the reasons behind the Restructuring Agreement based on his prior experience with Taylor Way?
Q. 1454	Are you aware of what Mr. Dohm's role was in respect of the Evelyn transactions?

	Would any other questions relating to Evelyn Properties and the prior transactions be refused on the same basis?
Q. 1455	There's another transaction going on at this time in 2014 relatingto the expansion on Vancouver Island and specifically in the Ucluelet region. Are you familiar with that transaction?
Q. 1456-1457	Was the acquisition of in Ucluelet, I believe I said, related to the acquisition in the Colwood region of Vancouver Island at all, or were these completely separate decisions with no underlying motivation or logic behind them?
Q. 1458-1459	When you were talking about the Pacific Northwest region on our first day of discovery, is the only transaction relating to the move into the Pacific Northwest-
Q. 1460	When you were referring to the Pacific Northwest region, your only answers were in respect of the transactions relating to expansion into Colwood?That was the only thing you were referring to that was going on-
Q. 1461	Was it your understanding that there were any other transactions happening over the same time as the Colwood development was being proposed to you and the Onni restructuring agreement was being negotiated that would have helped inform your understanding of the underlying objectives of this series of transactions?
Q. 1462	Were there any other transactions relating to expanding into the Vancouver Island region or the Gulf Islands that would have embodied a similar structure to what we were talking about with respect to the Onni restructuring agreement?

CITATION:	2026 TCC 56
COURT FILE NO.:	2023-1741(IT)G
STYLE OF CAUSE:	ONNI DEVELOPMENT (RMG-1) LTD. AND HIS MAJESTY THE KING
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	December 16, 2025
REASONS FOR ORDER BY:	The Honourable Justice J. Scott Bodie
DATE OF **AMENDED** ORDER AND REASONS FOR ORDER:	**April 7, 2026** March 20, 2026

APPEARANCES:

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