



No. S-229292  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**113 ROYAL INVESTMENTS LTD.**

**PETITIONER**

**AND:**

**GEYSER BRANDS INC.**

**RESPONDENT**

**NOTICE OF APPLICATION**

Name of applicant: BDO Canada Limited in its capacity as court-appointed receiver of Geysler Brands Inc. and not in its personal or corporate capacity (the "Receiver").

To: The Service List

And to: Canada Revenue Agency  
c/o Deputy Attorney General of Canada

Office of the Deputy Attorney General of Canada  
284 Wellington Street  
Ottawa, Ontario K1A 0H8

British Columbia Regional Office  
Department of Justice Canada  
900 - 840 Howe Street  
Vancouver, British Columbia V6Z 2S9

And to: Royal Bank of Canada  
36 York Mills Road, 4<sup>th</sup> floor  
Toronto, Ontario M2P 0A4

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at 800 Smithe St, Vancouver, BC on April 11, 2023 at 9:45 a.m. for the orders set out in Part 1 below.

**Part 1: ORDER SOUGHT**

1. An order (the “**Approval and Vesting Order**”) substantially in the form attached hereto as **Schedule “A”**.

**Part 2: FACTUAL BASIS**

Background & Orders Made

1. Geysler Brands Inc. (“**Geysler**”) is a corporation existing under the laws of British Columbia, with an address at 1100 – 1111 Melville Street, Vancouver, B.C., V6E 3V6.
2. 113 Royal Investments Ltd. (the “**Purchaser**”) is a corporation existing under the laws of British Columbia with an address for service at c/o Owen Bird Law Corporation, PO Box 1, Vancouver Centre II, 2900–733 Seymour Street, Vancouver, B.C., V6B 0S6.
3. On November 22, 2022, the petitioner, the Purchaser as secured creditor of Geysler, filed an application seeking to appoint a receiver.
4. On December 16, 2022, the Court made an order (the “**Receivership Order**”) appointing the Receiver as the receiver without security, of all of the assets, undertakings and property of Geysler.
5. The Receivership Order was made pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and Section 39 of the *Law and Equity Act*.
6. The Receivership Order granted the Receiver the authority to, *inter alia*:
  - (a) market any or all of the Property (as defined in the Receivership Order);
  - (b) sell the Property out of the ordinary course of business:
    - (i) without the approval of this Court in respect of a single transaction for consideration up to \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$100,000.00; and
    - (ii) with the approval of the Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above; and

- (c) apply for any vesting order or other orders as necessary to convey the Property to a purchaser or purchasers, free and clear of any liens or encumbrances.
7. By way of the Receivership Order, the Court also:
- (a) granted a charge in favour of the Receiver and its legal counsel (the “**Receiver’s Charge**”) on the property of the Vendor in priority to all security interests, trusts, liens charges, and encumbrances, statutory or otherwise, in favour of any person but subject to certain provisions of the *BIA*, as amended; and
  - (b) authorized and empowered the Receiver to borrow such monies as it may consider necessary or desirable, up to a maximum principal amount of \$150,000.00, repayment of which is secured by a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) on the property of the Vendor, 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 set out in certain provisions of the *BIA*.
8. As authorized pursuant to the Appointment Order, the Receiver borrowed \$150,000.00 from the Purchaser (the “**Receiver’s Borrowings**”);
9. Also on December 16, 2022, this Court made an order (the “**SISP Order**”) authorizing the Receiver to undertake a sale and investment solicitation process in respect of the Property (the “**SISP**”).

#### Sales Process

10. The SISP provided for the sale of the Company Property and/or the Company Business (as defined in Schedule “B” of the SISP Order) on an “as is, where is” basis.
11. In accordance with the SISP, the Receiver:
- (a) prepared a teaser letter that was sent to 46 parties;
  - (b) corresponded with a further six prospective purchasers which contacted the Receiver directly;
  - (c) prepared a virtual data room with due diligence materials;
  - (d) advertised the opportunity in the national edition of the Globe and Mail on January 11, 2023;
  - (e) advertised the opportunity in the Insolvency Insider publication from January 30, 2023 to February 13, 2023;

- (f) posted publicly available materials, including the teaser, Receivership Order, Sales Process Order, appointment materials and notice to creditors on the Receiver's website;
  - (g) provided data room access for five prospective purchasers who signed a non-disclosure agreement ("NDA"); and,
  - (h) extended the deadline for bids from February 16, 2023, to February 28, 2023, to allow for additional due diligence time for prospective purchasers.
12. On February 27, 2023, the Purchaser made an offer to purchase the Purchased Assets (as defined in that certain purchase and sale agreement dated March 8, 2023 (the "Sale Agreement") attached as **Appendix "C"** to the Receiver's First Report to Court dated March 22, 2023 (the "**Receiver's Report**").
13. The Receiver selected the Purchaser as the Successful Bidder (as defined in the SISP), and, pursuant to paragraph 26 of the SISP, now seeks authorization to enter into the Sale Agreement and approval of the transaction contemplated therein.
14. The Sale Agreement provides that the Purchase Price (as defined therein) is to be paid by way of a credit bid, setting off the purchase price from the amount owing from Geysler to the Purchaser.
15. The Sale Agreement also provides for the Receiver's Borrowings to stand in place and in stead of a deposit, and to be forgiven by the Purchaser and set off against the Purchase Price.

### **Part 3:LEGAL BASIS**

1. The Receiver relies upon:
- (a) the Receivership Order;
  - (b) the SISP Order;
  - (c) the *Law and Equity Act*, R.S.B.C. 1996, c. 250;
  - (d) the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, particularly Part XI and sections 243, 246, 247, and 249 (the "**BLA**");
  - (e) the *Supreme Court Civil Rules*, B.C. Reg. 168/2009; and
  - (f) the inherent jurisdiction of this Court.

#### General Powers and Obligations of the Receiver

2. The court may appoint a receiver to take possession of an insolvent person's property, exercise any control that the court considers advisable over that property, and to take any other action that the court considers advisable.

*BIA*, s. 243.

3. A receiver has the obligation to act honestly and in good faith, and to deal with the property of an insolvent person in a commercially reasonable manner.

*BIA*, s. 247.

#### Approval of Sale Transaction

4. In considering a proposed sale transaction regarding the property of an insolvent person, the court considers:
  - (a) whether the receiver has made sufficient efforts to obtain the best price and has not acted improvidently;
  - (b) whether the interests of all parties have been considered;
  - (c) the efficacy and integrity of the process by which offers have been obtained; and
  - (d) whether there has been unfairness in the working out of the process(the "*Soundair Test*").

*PricewaterhouseCoopers Inc v. 1905393 Alberta Ltd*, 2019 ABCA 433 at para. 10 [*PwC v. 190*]; *Royal Bank v. Soundair Corp.*, (1991), 7 C.B.R. (3d) I (Ont C.A.) at para. 16.  
See also *Quest University Canada (Re)*, 2020 BCSC 1883 at para. 176.

5. In applying the *Soundair Test*, the court assesses whether the receiver acted in a commercially reasonable manner in the circumstances with a view to obtaining the best price having regard to the competing interests of the interested parties. The court's function is not to consider whether a receiver has failed to get the best price.

*PwC v. 190* at paras. 13–14.

6. In this case, the Receiver has met the requirements of the *Soundair Test*:
  - (a) The Receiver has made sufficient efforts to obtain the best purchase price for Geyser and has not acted improvidently, in particular by:

- (i) preparing a teaser letter and sending it to 46 parties and corresponding with other prospective purchasers;
  - (ii) advertising the opportunity in two publications and posting publicly available materials on its website;
  - (iii) preparing a virtual data room with due diligence materials and providing access to five prospective purchasers who signed NDAs; and
  - (iv) extending the deadline for bids from February 16, 2023, to February 28, 2023.
- (b) The Receiver has considered the interests of all parties, in particular by:
- (i) corresponding with all prospective bidders and providing data room access to each party that signed an NDA;
  - (ii) extending the deadline for bids in order to allow for additional due diligence time for prospective bidders; and
  - (iii) communicating with creditors and stakeholders, including Royal Bank of Canada and Canada Revenue Agency, to investigate any potential claims in priority to the Purchaser.
- (c) the efficacy and integrity of the process by which the Receiver obtained offers supports approval, for instance:
- (i) the opportunity was advertised publicly, and multiple arms-length potential bidders were informed of the opportunity via teaser letter;
  - (ii) materials were available on the Receiver's website; and
  - (iii) the Receiver ensured fair and equal information was provided to potential and actual bidders at each stage of the SISP.
- (d) There has been no unfairness in the working out of the sales process. At each stage of the process, the Receiver ensured that potential purchasers had equal opportunity to information from the Receiver. Although only one bid was received, the Receiver made efforts to ensure that all potential bidders had the opportunity to make a bid.
7. More generally, in analyzing whether a transaction should be approved, a court is to consider the transaction as a whole and decide whether or not the sale is appropriate, fair and reasonable.

*Veris Gold Corp. (Re)*, 2015 BCSC 1204 at para. 23.

8. The fact that the majority of the Purchase Price is to be paid via credit bid does not preclude approval. It is well established in Canadian insolvency law, including in receivership cases, that a secured creditor is permitted to credit bid its debt in lieu of providing cash consideration.

*Re White Birch Paper Holding Co.*, 2010 QCCS 4915, leave to appeal ref'd 2010 QCCA 1950; *Elleway Acquisitions Limited v. 4358376 Canada Inc.*, 2013 ONSC 7009

9. Based on the above considerations, the Receiver seeks the Approval and Vesting Order approving: (i) the Sale Agreement, (ii) the acceptance, execution and entering into of the Sale Agreement by the Receiver, and (iii) the vesting of all right, title and interest in and to the Purchased Assets in the Purchaser in accordance with the terms of the Sale Agreement.

#### **Part 4: MATERIAL TO BE RELIED ON**

1. Receiver's First Report to Court, dated March 22, 2023
2. The Receivership Order, made December 16, 2022.
3. The SISP Order, made December 16, 2022.
4. Affidavit #1 of Helen Ai, made November 19, 2022.
5. Such other materials as counsel may advise and this Honourable Court permit.

The applicant estimates that the application will take 10 minutes if unopposed.

This matter is within the jurisdiction of a master.


This matter is not within the jurisdiction of a master.

**TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION:** If you wish to respond to the application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

- (i) a copy of the filed application response;
- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: March 27, 2023

  
\_\_\_\_\_  
Signature  
 Applicant     Lawyer for applicant  
**Tevia R.M. Jeffries**

THIS NOTICE OF APPLICATION is prepared and delivered by Tevia R.M. Jeffries of the firm Farris LLP, Barristers & Solicitors, whose place of business and address for service is 2500 – 700 West Georgia Street, Vancouver, British Columbia, V7Y 1B3. Telephone: (604) 684-9151. Facsimile: (604) 661-9349. **Attention: Tevia R.M. Jeffries.**

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|---|--|
| <b>To be completed by the court only:</b>   |  |
| <b>Order made</b>   |  |
| <input type="checkbox"/> in the terms requested in paragraphs of Part 1 of this notice of application |  |
| <input type="checkbox"/> with the following variations and additional terms:                          |  |
| _____<br>_____<br>_____<br>_____  |  |
| <b>Dated:</b>   | <b>Signature of</b>  |
|   | <input type="checkbox"/> Judge <input type="checkbox"/> Master |



**Appendix**

*[The following information is provided for data collection purposes only and is of no legal effect.]*

**THIS APPLICATION INVOLVES THE FOLLOWING:**

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- other

**Schedule "A"**  
**Approval and Vesting Order**

See attached.

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**113 ROYAL INVESTMENTS LTD.**

PETITIONER

AND:

**GEYSER BRANDS INC.**

RESPONDENT

**ORDER MADE AFTER APPLICATION**

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|        | ) |                        | ) |
| BEFORE | ) | THE HONOURABLE JUSTICE | ) |
|        | ) |                        | ) |
|        | ) | _____                  | ) |
|        | ) |                        | ) |

11/APR/2023

ON THE APPLICATION of BDO Canada Limited, in its capacity as Court-appointed receiver (the “**Receiver**”) of the assets, undertakings and properties of Geysler Brands Inc. coming on for hearing at Vancouver, British Columbia, on the 11<sup>th</sup> day of April, 2023; AND ON HEARING Tevia Jeffries, counsel for the Receiver, and Jonathan Williams, counsel for the Purchaser, and those other counsel listed on Schedule “A” hereto, and no one else appearing, although duly served; AND UPON READING the material filed, including the Report of the Receiver dated March 22, 2023 (the “**Report**”);

THIS COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the “**Transaction**”) contemplated by the Purchase and Sale Agreement dated March 8, 2023 (the “**Sale Agreement**”) between the Receiver and 113 Royal Investments Ltd. (the “**Purchaser**”), a copy of which is attached as Appendix “C” to the Report is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion

of the Transaction and for the conveyance to the Purchaser of the assets described in the Sale Agreement (the “**Purchased Assets**”).

2. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as Schedule “B” hereto (the “**Receiver’s Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated December 16, 2022; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on Schedule “C” hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule “D” hereto), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
6. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver’s Certificate all Claims shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.
7. The Receiver is to file with the Court a copy of the Receiver’s Certificate forthwith after delivery thereof.
8. Pursuant to Section 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the *Personal Information Protection Act* of British Columbia, the Receiver is hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the company’s records pertaining to the Debtor’s past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.
9. Subject to the terms of the Sale Agreement, vacant possession of the Purchased Assets, including any real property, shall be delivered by the Receiver to the Purchaser at 12:00

noon on the Closing Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the Sale Agreement and listed on Schedule "D".

10. The Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.
11. Notwithstanding:
  - (a) these proceedings;
  - (b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made by or in respect of the Debtor,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

12. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, 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.
13. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.
14. Endorsement of this Order by counsel appearing on this application, other than counsel for the Receiver and counsel for the Purchaser, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of

Party

Lawyer for BDO Canada Limited in its capacity as court-appointed receiver of Geysler Brands Inc.

**Tevia R.M. Jeffries**

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Signature of

Party

Lawyer for 113 Royal Investments Ltd.

**Jonathan L. Williams**

By the Court

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Registrar

**Schedule "A"**  
**Service List**

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| <p>Farris LLP<br/>2500-700 West Georgia Street<br/>Vancouver, BC V7Y 1B3</p> <p><b>Attention: Tevia Jeffries</b><br/>Email: tjeffries@farris.com;<br/>lferguson@farris.com</p> <p><b>Counsel for the Receiver: BDO Canada Limited</b></p>  | <p><b>BDO Canada Limited, Receiver</b><br/>1100-1055 West Georgia Street<br/>Vancouver, BC V6E 3P3</p> <p><b>Attention: Chris Bowra, Troy Chelsea</b><br/>E-mail: cbowra@bdo.ca; tchesley@bdo.ca</p> |
| <p>Owen Bird Law Corporation<br/>2900-733 Seymour Street<br/>Vancouver, BC V6B 0S6</p> <p><b>Attention: Jonathan L. Williams, Heather A. Frydenlund</b><br/>Email: jwilliams@owenbird.com;<br/>hfrydenlund@owenbird.com</p> <p><b>Counsel for the Petitioner, 113 Royal Investments Ltd.</b></p> | <p><b>TSX Trust Company</b><br/>301-100 Adelaide St. W<br/>Toronto, ON M5H 4H1</p> <p><b>Attention: Jodi Fraser</b><br/>Email: jodi.fraser@tmx.com</p>   |
| <p><b>Cassidy Erin Kersch</b><br/>1/4 Ann Terrace<br/>Edinburgh, Scotland UK EH8 8HN</p> <p>Email: cassidykersch@gmail.com</p>   | <p><b>Brad Kersch</b><br/>1223 Fletcher Way<br/>Port Coquitlam, BC V3C 6B5</p> <p>Email: bdk@bradkersch.com</p>  |
| <p><b>Tammy (Tami) Kersch</b><br/>1223 Fletcher Way<br/>Port Coquitlam, BC V3C 6B5</p> <p>Email: tamilkersch@gmail.com</p>   | <p><b>Sheila A. Smith</b><br/>1138 Roxbury Place<br/>Thousand Oaks, CA 91360 USA</p> <p>Email: Sheila_a_smith@hotmail.com</p>  |

|  |   |
|--|---|
| <p><b>Barbara Kersch</b><br/>c/o 1223 Fletcher Way<br/>Port Coquitlam, BC V3C 6B5<br/><br/>Email: tamilkersch@gmail.com</p>  | <p><b>Ernie Bobyn</b><br/>Peace Arch RV Park<br/>14601 40 Ave<br/>Surrey, BC<br/><br/>Email: tamilkersch@gmail.com</p>  |
| <p><b>Ernest S. Zornizer</b><br/>1138 Roxbury Place<br/>Thousand Oaks, CA 91360 USA<br/><br/>Email: ezornizer@hotmail.com</p>  | <p><b>Michael Price &amp; CWS CleanWater Sol.</b><br/>Unit 39-2729 158<sup>th</sup> Street<br/>Surrey, BC V3Z 1P4<br/><br/>Email: mgprice9@gmail.com</p>  |
| <p><b>Rod Keleny, Wendy Keleny, Brenna Keleny</b><br/>21475 89<sup>th</sup> Avenue<br/>Langley, BC V1A 1Y3<br/><br/>Email: kelenyfamily@gmail.com</p>  | <p>Allen/McMillan Litigation Counsel<br/>1625-1185 West Georgia Street<br/>Vancouver, BC V6E 4E6<br/><br/><b>Attention: Thea Hoogstraten &amp; Victoria Baylis</b><br/>Email: thea@amlc.ca; victoria@amlc.ca<br/><br/><b>Counsel for Glen Wilson &amp; Derek Taylor</b></p> |
| <p><b>Director of Employment Standards</b><br/>Justice, Health and Revenue Group<br/>Legal Services Branch, Ministry of Attorney General<br/><br/><b>Attention: Aaron Welch</b><br/><br/>Email: Aaron.Welch@gov.bc.ca;<br/>AGLSBRevTaxInsolvency@gov.bc.ca</p> |   |

**Email list:** tjeffries@farris.com; lferguson@farris.com; cbowra@bdo.ca; tchesley@bdo.ca; jwilliams@owenbird.com; hfrydenlund@owenbird.com; jodi.fraser@tmx.com; cassidykersch@gmail.com; bdk@bradkersch.com; tamilkersch@gmail.com; Sheila\_a\_smith@hotmail.com; ezornizer@hotmail.com; mgprice9@gmail.com; kelenyfamily@gmail.com; thea@amlc.ca; victoria@amlc.ca; Aaron.Welch@gov.bc.ca; AGLSBRevTaxInsolvency@gov.bc.ca