

CITATION: Hudson's Bay Company, Re, 2025 ONSC 2724
COURT FILE NO.: CV-25-00738613-00CL
DATE: 20250501

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE ***COMPANIES' CREDITORS ARRANGEMENT ACT***, R.S.C. 1985,
c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI, HBC
CANADA PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2 INC., HBC
BAY HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY HOLDINGS ULC, HBC
CENTERPOINT GP INC., HBC YSS 1 LP INC., HBC YSS 2 LP INC., HBC HOLDINGS GP
INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., and 2472598 ONTARIO INC.,
Applicants

BEFORE: Peter J. Osborne J.

COUNSEL: *Ashley Taylor, Elizabeth Pillon, Maria Konyukhova, Britnney Ketwaroo, Philip Yang and Nick Avis*, for the Hudson's Bay Company, the Applicants
Davis Bish, for Cadillac Fairview
Evan Cobb, for Bank of America
Linc Rogers and Caitlin McIntyre for Restore Capital LLC
Chad Kopach, for EY in the Receivership of Woodbine Mall Holdings Inc.
Alexandra Teodorescu and Nadav Amar, for Schindler Elevator Corporation and TK Elevator (Canada) Ltd.
Haddon Murray and Heather Fisher, for Cominar Real Estate Investment Trust & Chanel ULC
Andrew Winton, Annecy Pang, Matthew Gottlieb and Philip Underwood, for KingSett Capital Inc.
Trevor Courtis and Heather Meredith, for Bank of Montreal and Desjardins Financial Security Life Assurance Company
Gilles Benchaya, Mandy Wu, Andrew Adessky and Jared Sandow, for Restore Capital LLC and Bank of America
James D. Bunting, for Ivanhoe Cambridge Inc.
Robert J. Chadwick, Joseph Pasquariello and Andrew Harmes, for RioCan Real Estate Investment Trust
Tushara Weerasooriya, Jeffrey Levine and Guneev Bhinder, for B.H. Multi Com Corporation, B.H. Multi Color Corporation & Richline Group Canada Inc.
Isaac Belland, for LVMH Moët Hennessy Louis Vuitton SA
Linc Rogers, Caitlin MacIntyre and Jake Harris, for the DIP Lenders
Matthew Cressatti, for the Trustees of the Congregation of Knox's Church, Toronto

D.J. Miller and Andrew Nesbitt, for Oxford Properties Group, OMERS Realty Management Corporation, Yorkdale Shopping Centre Holdings Inc., Scarborough Town Centre Holdings Inc., Montez Hillcrest Inc., Hillcrest Holdings Inc., Kingsway Garden Holdings Inc. Oxford Properties Retail Holdings Inc., Oxford Properties Retail Holdings II Inc., OMERS Realty Corporation, Oxford Properties Retail Limited Partnership, CPPIB Upper Canada Mall Inc., CPP Investment Board Read Estate Holdings Inc.

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Steven Weisz and Dilina Lallani, for Ferragamo Canada Inc.

David Ullman and Brendan Jones, for Bentall Green Oak, Primaris REIT, Quadreal Property Group

David Preger and Stephen Posen, for 100 Metropolitan Portfolio, Mantella & Sons

Andrew J. Hatnay, Robert Drake and Abir Shamim, for certain HBC Employees and Retirees

Howard Manis for Villeroy & Boch Tableware Ltd.

Mitch Kocerginski, for Cherry Lane Shopping Centre Holdings Inc. and TBC Nominee Inc.

Lindsay Miller, for West Edmonton Mall Property

Yiwei Jin, for United Food & Commercial Workers, Int'l Union Local 1006A

Jeremy Dacks, for Pathlight

Pavle Masic, for Samsonite Canada

Matilda Lici, for The Manufacturers Life

Clifton P. Prophet and Patryk Sawicki, for certain HBC Retirees and Pensioners

Emily Fan and Patrick Denroche, for Telus Health Canada, as Administrator of the Hudson's Bay Company Pension Plan

Susan Ursel, Karen Enssien and Shauna Hayes, the Proposed Employee Representative counsel

Methura Sinnadurai and Tamie Dolny, for Toronto Hydro

Ken Rosenberg, Max Starnino, Emily Lawrence and Evan Snyder, for The Financial Services Regulatory Authority of Ontario

Sam Rogers, for Investment Management Corporation of Ontario

Asad Moten and Walter Kravchuk, for Department of Justice (Canada)

Jodi Nesbitt and Farah Baloo, for UNIFOR LOXAL 240 and 40

Charlie Sinclair, for USW Local 1-417

Carly Fox, for The Assembly of Manitoba Chiefs

Wayne Drummond, Employee of Hudson's Bay Company

Ashley Campbell, for United Food and Commercial Workers Local 1518

Sean Zweig, Michael Shakra and Thomas Gray, for the Court-Appointed Monitor

Shayne Kukulowicz and Monique Sassi, for the Liquidator

HEARD: April 24, 2025

REASONS FOR DECISION

1. On April 24, 2025, I heard various motions in this matter and granted certain relief with reasons to follow. These are those reasons.
2. The Applicants, (collectively referred to as ‘Hudson’s Bay’, ‘HBC’ or the “Company”), brought a motion seeking two orders:
 - a. an order appointing the law firm of Ursel Philips Fellows Hopkinson LLP as Employee Representative Counsel and amending the Administrative Charge accordingly; and
 - b. an order amending the Sale and Investment Solicitation Process (“SISP”) and related order I granted earlier in this *CCAA* proceeding to remove the Company’s art and artifact collection (the “Art Collection”) from the property available for sale pursuant to the SISP, and approving the engagement of Heffel Gallery Limited to conduct a separate auction for the sale of the Art Collection.
3. Three retired HBC employees brought a cross-motion seeking the dismissal of the motion of the Applicants for an order appointing the firm referred to above, and instead appointing Koskie Minsky LLP as Representative Counsel, or in the alternative, appointing The Hon. Douglas Cunningham to conduct an evaluation process and select Representative Counsel.
4. Six former employees of HBC (not including the three retirees referred to above) appeared, through counsel, to request that Gowling WLG be appointed as separate Representative Counsel for beneficiaries of the Supplemental Executive Retirement Plan (“SERP”).
5. The Department of Justice and the Assembly of Manitoba Chiefs appeared to make submissions with respect to the disposition of the Art Collection.
6. At the conclusion of the hearing:
 - a. I dismissed the motion of HBC and the cross-motion of the three retired HBC employees with respect to the competing requests to appoint Representative Counsel. I appointed The Hon. Herman Wilton-Siegel as Independent Third Party to evaluate the Representative Counsel proposals and make a recommendation to the Court; and
 - b. I granted the motion of HBC amending the SISP to remove the Art Collection, appointing Heffel Gallery Limited as Auctioneer in respect of the Art Collection, but on terms that reflected the unique nature of certain Artifacts, as further discussed below.

7. Defined terms in this Endorsement have the meaning given to them in the motion materials unless otherwise stated.

Motion to Appoint Representative Counsel

8. As of February 28, 2025, the Applicants employed approximately 9,364 people who worked at the corporate offices, the retail stores and the Distribution Centres. Approximately 647 of those employees are subject to collective bargaining agreements.

9. Approximately 3,000 retirees are receiving payments under the Pension Plan. The Company sponsors three SERPs under which a total of 304 employees and former employees participated. Some of the accrued SERP benefits are intended to be pre-funded through a trust, while other SERP benefits are paid from general revenue. The Monitor reports that some of the pre-funded components are under-funded and the trust funds are insufficient to pay accrued benefits. For those SERPs (or portions thereof) that have a trust, Royal Trust Corporation of Canada in its capacity as Trustee will determine the distribution of the assets with advice from an actuary.

10. The Company also offered post-retirement health and dental benefits, paid for by the Company from general revenue and administered by an insurer on both an administrative services only and a refund accounting basis. The Company offered life insurance policies to approximately 2,000 retirees. In addition, the Company offered long-term disability benefits, also paid for by the Company from general revenue and administered by an insurer on an administrative services only basis, to approximately 183 employees, 93 of whom are still employed by the Company.

11. Historically, the Company was the legal administrator for the Pension Plan, which includes both defined benefit and defined contribution pension plan components registered under the *Pension Benefits Act* (Ontario). The Pension Plan continues, and no steps have been taken to commence a wind-up. The Monitor reports that the Pension Plan is currently more than fully funded relative to the accrued pension benefit liabilities thereunder, and that required contributions are being made when due.

12. On April 3, 2025, the Financial Services Regulatory Authority of Ontario (“FSRA”) advised the Company that pursuant to its authority under the *Pension Benefits Act*, it was appointing Telus Health (Canada) Ltd. to act as the independent third-party Pension Administrator effective April 3, 2025.

13. As the liquidation process has continued, the Company has been planning for potential employee reductions. To date, approximately 272 corporate employees have been terminated. For all 304 SERP beneficiaries, as applicable, the Company terminated those SERP benefit payments funded from general revenue, and notified the trustee that any SERP trust was automatically terminated in accordance with the terms of the trust agreement and that Hudson’s Bay would not make any further contributions to, or payments in respect of, any trust. For employees terminated prior to the commencement of CCAA Proceedings, the Company terminated salary continuation

arrangements. Finally, the Company provided notice of termination to post-retirement benefit recipients effective April 30, 2025.

14. Current and former employees of the Applicants are a key stakeholder group in these *CCAA* Proceedings. They have faced and will continue to face significant uncertainty and challenges. Among the potential measures considered by the Company with the involvement of the Monitor to assist current and former employees with respect to the potential impact of this *CCAA* Proceeding is the appointment of Representative Counsel.

15. The Company, supported by the Monitor, submit that it is appropriate at this time for Representative Counsel to be appointed to represent the interests of current and former employees who have continuing entitlements from the Applicants, including retirees, who were not represented by a union (or were not represented by a union at the time of their separation from employment), or any person claiming an interest under or on behalf of a current or former employee, including beneficiaries and surviving spouses (but excluding directors and officers of the Applicants).

16. The proposed mandate for Representative Counsel does not extend to assisting with any entitlements of current and former employees under the Pension Plan, since it is currently not in wind-up and given the recent appointment of the independent third-party Pension Administrator by FSRA.

17. On April 7, 2025, HBC, through its counsel, issued requests for written proposals for the role of Employee Representative Counsel to six law firms. Any Represented Employees that did not wish to be represented by Representative Counsel would have the ability to opt-out.

18. The Company received five proposals by the Deadline, in addition to which it received one unsolicited proposal. Based on its review of all proposals and the clarification of certain information received from the candidate law firms, the Company recommended to the Court that Ursel Philips Fellows Hopkinson LLP be appointed as Employee Representative Counsel, with reasonable fees and expenses to be paid by the Applicants and protected by the Administrative Charge to a maximum of \$100,000.

19. As noted above, three retired HBC employees who have already retained Koskie Minsky LLP on an individual basis requested by way of cross-motion that that firm be appointed as Employee Representative Counsel instead, or in the alternative, that The Hon. Douglas Cunningham, whom they had already contacted, be appointed to evaluate the proposals and select Representative Counsel.

20. Also as noted above, three SERP beneficiaries submitted that that group required separate Representative Counsel from other employees and former employees, and requested that Gowling WLG be appointed to fulfil that role. Both the Company and the employees represented by Koskie Minsky opposed this relief and submitted that, at least today, there was no conflict or divergence of interests such that separate counsel for SERP beneficiaries was required.

21. Section 11 of the *CCAA* as well as the *Rules of Civil Procedure* give this Court broad jurisdiction to appoint Representative Counsel for vulnerable stakeholder groups such as employees. In addition, Rule 10.01 provides for the appointment of Representative Counsel for people who have a present, future, contingent or unascertained interest in, or may be affected by, the proceeding.

22. In *Nortel Networks Corporation (Re)*, 2009 CanLII 26603, Justice Morawetz (as he then was) held that representative counsel should be appointed to allow vulnerable stakeholders (in that case, employees and retirees) to participate in the *CCAA* proceedings:

[I]t is submitted that employees and retirees are a vulnerable group of creditors in an insolvency because they have little means to pursue a claim in complex *CCAA* proceedings or other related insolvency proceedings. It was further submitted that the former employees of Nortel have little means to pursue their claims in respect of pension, termination, severance, and retirement payments and other benefit claims and that the former employees would benefit from an order appointing representative counsel. In addition, the granting of a representation order would provide a social benefit by assisting by assisting former employees and that representative counsel would provide a reliable resource for former employees for information about the process. The appointment of representative counsel would also have the benefit of streamlining and introducing efficiency to the process for all parties involved in Nortel's insolvency. I am in agreement with these submissions.

23. In *CanWest Publishing Inc. (Re)*, 2010 ONSC 1328, Pepall, J. (as she then was) summarized the appropriate factors to be considered in a determination of whether a representative counsel order is appropriate:

- (a) the vulnerability and resources of the group sought to be represented;
- (b) any benefit to the companies under *CCAA* protection;
- (c) any social benefit to be derived from representation of the group;
- (d) the facilitation of the administration of the proceeding and efficiency;
- (e) the avoidance of multiplicity of legal retainers;
- (f) the balance of convenience and whether it is fair and just including to the creditors of the estate;

(g) whether representative counsel has already been appointed for those who have similar interests to the group seeking representation and who is also prepared to act for the group seeking the order; and

(h) the position of other stakeholders and the Monitor.

24. The factors listed above are neither exhaustive nor mandatory. Factors not enumerated in *CanWest* may be relevant to the analysis in a particular case, and each one of the *CanWest* factors need not be satisfied before the Court can conclude that the appointment of representative counsel may be appropriate. Rather, as Pepall, J. stated, the factors enumerated are considerations in what is to be a holistic analysis informed by the particular circumstances of each case.

25. The ability for representative counsel to provide for effective communication and efficiency within the proceedings have been highlighted as particularly important factors: *Quadriga Fintech Solutions Corp (Re)*, 2019 NSSC 65 at para 9.

26. In addition, this Court has held that it is preferable to grant a representation order early in a CCAA Proceeding, both for the parties to be represented and for the CCAA Applicants, and despite the possibility “that the individuals in issue may be unsecured creditors whose recovery expectation may prove to be non-existent and that ultimately there may be no claims process for them”. See *CanWest*, at para. 24.

27. Exercising its broad jurisdiction, this Court has previously appointed representative counsel in CCAA proceedings. For example, courts have granted such orders in the following CCAA proceedings:

(a) *Target Canada Co.*: representative counsel was appointed for all employees other than officers and directors;

(b) *Nordstrom Canada*: representative counsel was appointed for all store-level employees, all non-store level employees, other than non-store level employees eligible for a KERP Payment, directors and officers of the Nordstrom Canada Entities, and the Senior Vice President, Regional Manager for Canada;

(c) *Sears Canada*: representative counsel was appointed for non-unionized active and former employees;

(d) *Nortel Networks Corp.*: representative counsel was appointed for all former employees and pensioners;

(e) *Fraser Papers Inc.*: representative counsel was appointed for former unionized members and non-unionized active and retired members; and

(f) *CanWest*: representative counsel was appointed for non-unionized salaried employees and retirees.

28. After hearing from all parties on the issues, I stood down the hearing for a brief recess and upon resumption delivered oral reasons, a transcript of which is attached hereto as Appendix “A”.

29. In summary, and for the reasons delivered orally, I determined that Representative Counsel should be appointed at this time, but that it was not necessary to appoint separate Representative Counsel for any affected sub-group at this time. I was not prepared to appoint any of the nominated firms as Representative Counsel, and I appointed a retired Justice of the Commercial List, The Hon. Herman Wilton-Siegel, as Independent Third Party to evaluate the proposals and make a recommendation to the Court as to who should be appointed as Representative Counsel, following the approach endorsed by Chief Justice Morawetz of this Court in *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 5700.

30. The Court will consider the recommendation of Mr. Wilton-Siegel upon receipt.

The Art Collection and Artifacts

31. I granted the SISP Order in this CCAA Proceeding on March 21, 2025. The SISP provides, in relevant part, that Qualified Bidders may submit bids for some or all of the property and assets of the Applicants and the Non-Applicant Stay Parties.

32. Those assets include the Art Collection, comprised of many individual pieces of art and certain artifacts collected by the Company over its long history. Certainly, one artifact that has been the subject of significant interest and attention is the Royal Charter signed by King Charles II in 1670.

33. While a number of parties have expressed interest in the Art Collection during the course of the SISP, several parties have expressed to the Court-appointed Monitor and/or the Applicants a level of interest and also concern respecting the disposition of the Art Collection, including but not limited to ensuring that all laws and regulations in respect of Canadian heritage and cultural property are respected and complied with.

34. That concern is shared by this Court.

35. The Applicants, the Monitor and Reflect Advisors, LLC in its capacity as Court-appointed Financial Advisor to the Applicants, all submit that the Art Collection should be addressed separately from the sale of other assets of the Applicants in the SISP, and I agree. This will provide the most transparent, fair and efficient approach to the disposition of the Art Collection while recognizing and protecting its potential cultural and historical significance and ensuring compliance with relevant laws.

36. To that end, the Applicants and Monitor submit, and I agree, that a specialized art advisor will be required to assist in developing an optimal process for the disposition of the Art Collection while balancing various interests of stakeholder groups. Reflect, LLC, in consultation with the

Monitor, undertook a process to obtain proposals from parties capable of preparing the Art Collection for sale by way of separate auction.

37. They contacted three leading art auction houses in North America, considered proposals, and had extensive discussions with each, having provided them with information in respect of the Art Collection upon the execution of a non-disclosure agreement. They considered the relative experience of each auction house in dealing with collections such as the Art Collection, conducting auctions of this nature in Canada, and facilitating the safekeeping, transport, handling and insurance matters in respect of the Art Collection, as well as the proposed economic terms of any arrangement.

38. Each of the three parties contacted expressed a strong interest in conducting the auction. However, the Applicants, Reflect, LLC and the Monitor ultimately selected Heffel Gallery Limited as the candidate that demonstrated the necessary experience, capabilities and infrastructure necessary to properly approach a disposition of the Art Collection in Canada.

39. It was and is important, given the historical significance of the Art Collection, to ensure that the auction takes place in Canada.

40. No party opposes the relief sought in respect of the Art Collection.

41. I agree with the submissions and approve the engagement of Heffel. I accept the submissions of the Applicants and the recommendations of Reflect, LLC and the Monitor with respect to the financial terms of the proposed engagement as reflected in the Heffel Engagement Letter, and am satisfied that they are reasonable and appropriate in the circumstances of this case.

42. In approving the engagement of Heffel, it is important to be clear as to a number of points.

43. The first order of business is for the Applicants, with the assistance of Reflect, LLC, the Monitor and now Heffel utilizing its expertise, to determine with accuracy what art and artifacts comprise the Art Collection. That is not yet known with certainty, and the items in the Company's possession are in the process of being catalogued and identified.

44. It is the intention of the Applicants to return to Court at a later date to seek approval of specific auction procedures and other matters related to the disposition of the Art Collection once the expertise of Heffel has been brought to bear and there has been an opportunity to consider, among other things, the perspective of those parties who have expressed an interest or possible interest in the Art Collection (beyond simply an opportunity to bid, for example).

45. In approving the engagement of Heffel today, the Court is not approving any specific procedures for the auction or other disposition of the Art Collection. Nor is the Court determining whether any specific artifact is included within the Art Collection and whether it will be sold at auction. That is for another day. The Applicants and the Monitor have confirmed (with the

agreement of Heffel) that if an artifact is not deemed to be part of the Art Collection, the compensation payable pursuant to the engagement would not apply.

46. In addition, and as noted above, the Department of Justice and the Assembly of Manitoba Chiefs both attended at the hearing of these motions. While neither opposed the relief sought, they did wish to provide notice to the Court that each is considering its respective position with respect to particular artifacts and may have submissions when these matters return to Court.

47. Other interested parties, including the Canadian Commission for UNESCO Canada Memory of the World Advisory Committee (an international commemorative designation guided by UNESCO), have contacted the Applicants regarding items such as the Royal Charter and certain commemorative plaques recognizing and memorializing those employees of Hudson's Bay who gave their lives in service of their country.

48. The Department of Justice noted potential concerns, which are also shared by the Court, about ensuring that any and all required cultural property export approvals are obtained. There are various Heritage Canada requirements relating to the export of cultural property from Canada as defined in the Canadian Cultural Property Export Control List. Other requirements and considerations may well apply even if cultural or property is not proposed to be removed from Canada.

49. The Assembly of Manitoba Chiefs highlighted the potential cultural, spiritual, and historical significance of certain artifacts to First Nations people.

50. The Applicants, Reflect, LLC and the Monitor advised the Court of their intention to share, on a confidential basis, with the Department of Justice and the Assembly of Manitoba Chiefs additional information regarding the artifacts and to engage with them as to an appropriate path forward, all of which will be subject to approval of the Court.

51. All of these issues and potential concerns need to be balanced as against the rights of other stakeholders.

52. I am satisfied that the amendment to the SISP to separate the Art Collection from other assets of the Applicants is appropriate at this time, and that the engagement of Heffel on the terms described above and in the materials is also appropriate in order that its expertise can be brought to bear in identifying and cataloguing the art and artifacts and making recommendations as to appropriate procedures for their disposition.

53. Put simply, it is important to all stakeholders that the process begin, and it begins with identifying and cataloguing the Art Collection to determine what is and is not there. That itself may well determine or at least affect the interests of various stakeholders in the appropriate path forward.

Result and Disposition

54. For all of the above reasons, I made the orders I did appointing the Independent Third Party to make a recommendation to the Court with respect to Representative Counsel, approving the amendments to the SISP, and appointing Heffel with respect to the Art Collection.

55. The orders have immediate effect without the necessity of issuing and entering.

A handwritten signature in green ink, reading "O'Brien J.", is located on the right side of the page. The signature is written in a cursive style with a large initial "O" and a distinct "J" at the end.

APPENDIX A

Court File No.
CV-25-00738613-00CL

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
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R U L I N G

BEFORE THE HONOURABLE JUSTICE P. OSBORNE
ON APRIL 24, 2025, AT TORONTO, ONTARIO

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	Tushara Weerasooriya, Jeffrey Levine and Guneev Bhinder, for B.
25	H. Multi Com Corporation, B.H. Multi Colour Corporation & Richline Group Canada Inc.
	Gregg Galardi, US Counsel for File Agent (Restore Capital LLC) as DIP Lender
	Isaac Belland, for LVMH Moet Hennessy Louis Vuitton SA
30	Jake Harris, for the DIP Lenders
	Matthew Cressatti, for the Trustees of the Congregation of Knox's Church, Toronto

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David Rosenblat for Pathlight

Pavle Masic, for Samsonite Canada

Sarah Pinsonnault, for Quebec Revenue Agency

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Legend

[sic] -Indicates preceding word has been reproduced verbatim and is not a transcription error.

15

[indiscernible] - Indicates where a word or phrase is impossible to discern and all avenues to ascertain what was said have been exhausted

(ph)-Indicates preceding word has been spelled phonetically.

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25 Transcript Ordered: April 25, 2025

Transcript Completed: April 25, 2025

Notified Ordering Party: April 25, 2025

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SUPERIOR COURT OF JUSTICE

T A B L E O F C O N T E N T S

W I T N E S S E S

<u>WITNESSES</u>	<u>Examination in-Chief</u>	<u>Cross- Examination</u>	<u>Re- Examination</u>

E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>ENTERED ON PAGE</u>

THURSDAY, APRIL 24, 2025

R U L I N G

Osborne, J. (Orally):

THE COURT: The applicants seek the appointment of Ursel Phillips Fellows Hopkinson and as employee representative counsel to represent the interests of all current and former employees with continuing entitlements from the applicants or any of them as of the date of this order, and retirees of the applicants who are not represented by any union or were not represented by union at the time of their separation from employment, in other words, current and former employees or any person claiming an interest on behalf of the current or former employees, including beneficiaries, and surviving spouses, but excluding officers and directors of the applicants. Messrs. Marshall, Karo and Common seek by way of cross motion an order dismissing the applicants motion to appoint Ursel Phillips, an order appointing the Honourable Douglas Cunningham to make a recommendation to the Court as to representative counsel and fixing certain terms of the appointment process, or in the alternative, setting a schedule for a contested motion to appoint those three individuals, Mr. Marshall, Mr. Karo and Mr. Common as the representatives of non-

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union employees and retirees and appointing the
Koskie Minsky firm as their representative counsel.
In addition, six former employees of Hudson's Bay
who have entitlements under the supplemental
executive retirement plan or SERP and request,
apparently with the support of 35 other SERP
retirees, that a second representative counsel be
appointed for that group only, and that the firm of
Gowling WLG be appointed to fulfill that role. This
Court has the authority under Rule 10.01 of the
Rules of Civil Procedure to appoint representative
counsel. Rule 12.07 provides the Court with the
authority to appoint a representative defendant
where numerous persons have the same interests and
section 11 of the CCAA gives this Court a wide
discretion to appoint representatives on behalf of
a group of employees in a CCAA proceeding and to
order legal and other professional expenses of such
representatives to be paid from the estate of the
debtor applicants it is brought agreement here
today between and among the applicants, those
employees and former employees apparently
represented by Koskie Minsky, those SERP
beneficiaries apparently represented by Gowling
that representative counsel is appropriate here,
and that's certainly supported by the Court
appointed monitor. I agree with those general
submissions that representative counsel should be
appointed here, and I am satisfied that this case
is one where given that among other things, the
very significant number of employees and former

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employees and retirees who are affected by the
insolvency of Hudson's Bay, the complexity of the
issues and the pace at which this proceeding is
developing, I should exercise my discretion under
section 11 to make a Rule 10 representation order,
and I do so. The principal issue is who should be
appointed to fulfill that role and whether should
be multiple representative counsel. The applicant,
supported by the monitor, requests the appointment
of Ursel Phillips to fulfill the role of
representative counsel and submit that that firm
can represent the interests of all affected
stakeholders and that no subgroup requires separate
counsel. The existing clients of Koskie Minsky wish
for that firm to be appointed as representative
counsel. They agree with the applicants and the
monitor that one representative counsel firm can
adequately represent the interests of all and
indeed current clients of that firm already
include, for example, SERP beneficiaries. Certain
other SERP beneficiaries represented by the Gowling
firm are of the view, as I noted a moment ago, that
they require independent representation from other
employees and former employees. So first, with
respect to the issue of whether multiple
representative counsel are necessary, the Ontario
Court of Appeal observed In *Re Stelco Inc.* that the
classification of creditors in a CCAA proceeding is
to be determined based on the commonality of
interest test. In that case, the Court of Appeal
upheld the reasoning of Justice Paperny as she then

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was of the Alberta Court of Kings Bench in the

Canadian Airlines case and articulated the factors

to be considered in assessing commonality of

interest. I have considered all of those factors

and in my view all of the employees and former

employees in respect of whom representative counsel

are sought to be appointed have a commonality of

interest and that this process can be best served

today by the appointment of one representative

counsel firm. Clearly, many individual employees or

former employees may have specific and unique

aspects to their own entitlements, but in my view

at this time, one representative counsel can

adequately, fairly and appropriately represent all

of them. To the extent that real and present issues

arise in the future that are not hypothetical, such

as could require independent or separate

representation, that can and should be addressed at

the time. Accordingly, in balancing the rights of

those groups of stakeholders sought to be

represented as against the rights of other

stakeholders, including, for example, other

unsecured creditors such as landlords and the

secured lenders represented through the FILO Agent

here, who are rightly conscious of the costs of

proceedings that may erode ultimate recoveries for

all stakeholders. In my view representative counsel

is required but only one is required.

The second issue then is who that representative

counsel should be. The applicant selected six well

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qualified firms and asked them to submit proposals.

Five did so and a sixth proposal was received on an unsolicited basis. I pause to observe, as is clear from the record today, that the six firms who were requested to put in proposals specifically included Koskie Minsky and Gowlings, as well as Ursel

Phillips. Both the employees represented by Koskie Minsky and the SERP beneficiaries represented by Gowling object strenuously to the applicant

selecting counsel for the parties who are or may well be "adverse in interest" to the applicants. I just pause to observe there that adverse in

interest doesn't mean that the process has to be adversarial and confrontational. In fact, I am

hoping that to the maximum extent possible, it will be the opposite. Their robust representation of stakeholders with different interests and perspectives does not require and nor should it

tolerated departure from civility and the maximization of cooperation wherever possible. The applicants supported by the monitor submit that the firms that the applicants selected to submit

proposals are all well qualified and the monitor echoes to the Court that it reached its own independent conclusion as to the best candidate

firm to fulfill that role here, Ursel Phillips. I accept those submissions, and I accept both the qualifications of Ursel Phillips and I accept the process was undertaken in good faith. However, in the circumstances of this case, I think it is

appropriate to ensure the independence of

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representative counsel and ensure the visibility of that independence of the process by which representative counsel are appointed. Accordingly, I am not prepared today to appoint a specific firm as representative counsel. I don't think I am in a position to do so on the basis of the record before me and this is a very significant and important issue for the stakeholders involved affected by this restructuring. For those reasons, I am appointing an independent third party.

While I recognize obviously the qualifications of Mr. Cunningham, I am reluctant to appoint anyone that has already been selected by one of the parties who has an issue in this role. Accordingly, I am appointing the Honorable Herman Wilton Siegel recently retired from the Commercial List of this Court as an independent third party to evaluate the proposals and make a recommendation to the Court as to who the party to be approved as representative counsel should be. The Honourable Mr. Wilton Siegel is available to commence this process immediately and he will do so and evaluate the written proposals and submit his recommendation to the Court with respect to who the representative counsel should be. In his sole discretion, he may consult with the applicants, the monitor and their respective counsel, as well as with any or all of the firms whose proposals are being considered. The court appointed monitor will be the interface between the stakeholders, counsel firms and the

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independent third party. The monitor will immediately advise Mr. Wilton Siegel of the six proposals it received, provided that the monitor will first confirm whether each of those firms wishes to continue to be considered for that engagement. If a firm wishes to withdraw from the process, obviously its proposal need not be provided to Mr. Wilton Siegel. Otherwise, those proposals will be provided right away and by right away, I mean today to him by the court appointed monitor. Mr. Wilton Siegel is free to accept and consider other proposals that may be received on an unsolicited basis as he sees fit. As I say, those that the monitor has already received, the company has received and were provided to the monitor will be provided to him promptly. The scope of the role of representative counsel and the requirements for each proposal received, if not already done and reflected in those proposals, will be as set out in the correspondence from counsel to the applicants to the candidate firms dated April 7, 2025 and attached as Exhibit B to Ms. Bewley's affidavit in the applicant's record.

There will be an introductory meeting tomorrow morning with Mr. Wilton Siegel to include the monitor and its counsel, and that will not include the applicants or any other parties. Mr. Wilton Siegel will make his recommendation to the Court as soon as possible, but no later than within 15 days of today's date. He will be compensated at a

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reasonably hourly rate to be determined by the monitor after consultation with him. Those fees will be paid as a monitor's disbursement. If the independent third party requires any variation or clarification with respect to these directions, he will advise the court appointed monitor who in turn can advise the Court. To be very clear, the six proposals already received include the proposals, as I noted, from all three firms present today and I am hopeful that all of those firms will express their continued preparedness to act in the engagement if so selected. At the risk of stating the obvious, each of them is very well qualified and known to the Court to have very significant experience in this area. In my view, however, the protocol I have just outlined will best serve all of the parties, balancing the interests and ensure the appointment of representative counsel is done on a basis that is fair and independent and that it is seen to be such. Those are my directions with respect to that matter. Thank you all.

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