

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF THE BODY SHOP CANADA LIMITED IN THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO**

**FACTUM
(Motion Returnable March 4, 2024)**

March 3, 2024

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PART I – OVERVIEW

1. The Body Shop Canada Limited (the “**Company**” or “**TBS Canada**”), a retailer that sells cosmetics, skin care and perfume across Canada, finds itself in a liquidity crisis due to the actions of its parent company in the United Kingdom. Despite previously being on track to being profitable this year, the Company is now unable to meet its obligations as they become due. Absent this Court’s continued protection, the business will fail and its many stakeholders will be prejudiced.

2. On February 13, 2024, less than three months after it was bought by the private equity firm Aurelius Group, The Body Shop International Limited (“**TBS International**” or the “**UK Parent**”) filed for administration in the United Kingdom (the “**UK Administration**”).¹ Tony Wright, Geoff Rowley and Alastair Massey of FRP Advisory were appointed joint administrators of the UK Parent (collectively, the “**UK Administrator**”).² The UK Parent had historically controlled several accounting and cash management functions for the Company, whereby all of TBS Canada’s cash collections were swept from the Company by the UK parent then the UK Parent would remit payment on behalf of the Company for its trade payables, including its rent and payroll.³

3. However, in the weeks before the UK Administration, the UK Parent swept cash from TBS Canada’s accounts but failed to remit payment for amounts owing to the Company’s vendors/suppliers and landlords.⁴ This created an immediate liquidity crisis

¹ The Affidavit of Jordan Searle sworn on March 1, 2024 (“**Searle Affidavit**”) at para. 5, Motion Record of the Applicant (“**MR**”), Tab 2, p. 13-39.

² Searle Affidavit at para. 31, MR, Tab 2, p. 25.

³ Searle Affidavit at para. 5, MR, Tab 2, pp. 15-16.

⁴ Searle Affidavit at para. 6, MR, Tab 2, p. 16.

for TBS Canada, as all funding, other than payroll, for the Company were cut off, with no advance notice.⁵ TBS Canada had significant overdue payables that it could not pay. The Company reached out to the UK Parent, the UK Administrator and the Aurelius Group and asked them to either return the funds that they had withdrawn or provide more funds, but, in each case, they refused to do so.⁶

4. The Company urgently required a stay of proceedings to give it the breathing room necessary organize its financial affairs and develop a plan for the continuation, or orderly wind-down, of the Canadian business. As a result, on March 1, 2024 (the “**Filing Date**”), the Company filed a notice of intention to make a proposal (the “**NOI**”) under subsection 50.4(1) of the *Bankruptcy and Insolvency Act* (“**BIA**”).⁷ Alvarez & Marsal Canada Inc. was appointed to act as the proposal trustee (the “**Proposal Trustee**”).⁸

5. This factum is filed in support of the Company’s motion for an Order, among other things:

- (a) expanding the BIA stay of proceedings by ordering the continuation of services and certain other protections to the Company;
- (b) approving the Administration Charge (defined below) in the amount of \$700,000;

⁵ Searle Affidavit at para. 6, MR, Tab 2, p. 16.

⁶ Searle Affidavit at para. 6, MR, Tab 2, p. 16.

⁷ Searle Affidavit at para. 2, MR, Tab 2, p. 14; NOI Certificate, Exhibit A to the Searle Affidavit, MR, Tab 2(A), pp. 40-41.

⁸ Searle Affidavit at para. 2, MR, Tab 2, p. 16.

- (c) approving the D&O Charge (as defined below) in the amount of \$2,100,000;
- (d) directing all persons who have in their possession or power, any property of the Company, or any book, document or paper of any kind relating to the Company, to produce the book, document or paper to TBS Canada, or to deliver to TBS Canada any property of the Company in their possession promptly upon request of the Company or the Proposal Trustee; and
- (e) extending the time for the Company to file a proposal under the BIA to April 16, 2024 (being 19 days from its current expiry of March 28, 2024).

6. The relief sought on this motion will allow the Company to continue its business operations and protect the value of its assets while it explores and pursues its restructuring or liquidation options.⁹ The charges requested are vital to secure the services of the professionals and directors and officers who are needed to facilitate a successful restructuring or liquidation of TBS Canada.¹⁰

PART II – FACTS

7. The facts are more fully set out in the Affidavit of Jordan Searle dated March 1, 2024.¹¹ A high level summary of the facts are set out below.

⁹ Searle Affidavit at para. 8, MR, Tab 2, p. 17.

¹⁰ Searle Affidavit at para. 8, MR, Tab 2, p. 17.

¹¹ Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Affidavit of Jordan Searle dated March 1, 2024.

A. Corporate Structure

8. TBS Canada is a federally incorporated corporation that is extra-provincially registered to operate throughout Canada (other than Quebec and the Territories).¹² The Company and TBS US are wholly-owned subsidiaries of TBS International. TBS International is owned by Natura (Brasil) International B.V. (“**Natura**”), which is owned by Aurelius IV UK Acquico Eight Ltd. (“**Aurelius Purchaser**”). As described below, the shares of Natura were acquired by Aurelius Purchaser on or about December 2023. TBS International and all of its foreign subsidiaries are ultimately owned by Aurelius Investment Lux One SARL (together with Aurelius Purchaser and Aurelius Seven (defined below) “**Aurelius**”).¹³

B. Business and Operations

9. The Company is a retailer, offering cosmetics, perfume and skin care products through 105 stores across Canada (other than Quebec and the Territories), an e-commerce platform and a wholesale business.¹⁴ The Company’s iconic, global brand has historically set itself apart in the cosmetic and skin-care industry by following a clear vision: to sell products with natural, ethically sourced and cruelty-free ingredients.¹⁵

(i) Merchandising, Supply & Distribution

10. The Company is licenced to trade merchandise under the “The Body Shop” brand pursuant to a Selective Master Distribution & Franchise Agreement between the

¹² Searle Affidavit at para. 10, MR, Tab 2, pp. 17-18.

¹³ Searle Affidavit at para. 10, MR, Tab 2, pp. 17-18; Aurelius Organizational Chart, Exhibit B to the Searle Affidavit, MR, Tab 2(B), pp. 42-46.

¹⁴ Searle Affidavit at para. 9, MR, Tab 2, p. 17.

¹⁵ Searle Affidavit at para. 9, MR, Tab 2, p. 17.

Company and TBS International (the “**Franchise Agreement**”).¹⁶ Under the Franchise Agreement, the Company receives all of its inventory from the UK Parent for sale exclusively in its designated retail stores.¹⁷ However, as a franchisee under the Franchise Agreement, TBS Canada does not enjoy exclusivity or ownership over “The Body Shop” brand or related intellectual property.¹⁸

11. Historically, the Company has relied on its US counterpart, Buth-Na-Bodhaige, Inc. (“**TBS US**”), for distribution and logistic services.¹⁹ In the ordinary course, TBS US receives inventory from TBS International on behalf of the Company and holds it at its distribution centre located in the United States (the “**US Distribution Centre**”).²⁰ TBS then transports the inventory to the US-Canadian border, where it gets picked up by third-party couriers on TBS Canada’s behalf.²¹ TBS US also provides e-commerce services to the Company and fulfills online orders.²²

12. Pursuant to the Franchise Agreement and its working arrangement with the UK Parent, title to inventory only passes from TBS International to TBS Canada once it leaves the US Distribution Centre.²³ As long as inventory is housed at the US Distribution Centre, TBS International holds title.

¹⁶ Searle Affidavit at para. 13, MR, Tab 2, p. 19; Franchise Agreement, Exhibit C to the Searle Affidavit, MR, Tab 2(C), pp. 47-102.

¹⁷ Searle Affidavit at para. 13, MR, Tab 2, p. 19.

¹⁸ Searle Affidavit at para. 13, MR, Tab 2, p. 19.

¹⁹ Searle Affidavit at para. 14, MR, Tab 2, p. 19.

²⁰ Searle Affidavit at para. 14, MR, Tab 2, p. 19.

²¹ Searle Affidavit at para. 14, MR, Tab 2, p. 19.

²² Searle Affidavit at para. 16, MR, Tab 2, p. 20.

²³ Searle Affidavit at para. 15, MR, Tab 2, p. 20.

13. As described in more detail below, historically, accounting and cash management functions for TBS US and the Company were controlled by the UK Parent whereby TBS International would sweep all the cash collections from TBS US and TBS Canada and use it to pay TBS US and TBS Canada's payables. Like the Company, the UK Parent also swept TBS US' bank accounts prior to the UK Administration, which caused a severe liquidity crisis for TBS US. On March 1, 2024, TBS US began shutting down its operations and executing mass employee terminations in the United States.²⁴ Accordingly, TBS Canada no longer has access to its e-commerce platform, the ability to ship to its wholesale partners (Shoppers Drug Mart & Amazon.ca) or its only means of receiving new inventory.²⁵

(ii) Employee and Employee Benefits

14. As of March 1, 2024, the Company employed 784 individuals across Canada.²⁶ None of the employees are unionized.²⁷ However, as outlined below, the Company terminated 20 head office employees on the Filing Date and intends to make further headcount reductions as part of its restructuring efforts.

(iii) Leases and Retail Stores

15. The Company conducts its business through 105 leased retail stores across Canada.²⁸ The total rent for all 105 locations is currently in arrears of around \$900,000, which primarily represents February rent.²⁹ Additionally, the Company's headquarters

²⁴ Searle Affidavit at para. 16, MR, Tab 2, p. 20.

²⁵ Searle Affidavit at para. 16, MR, Tab 2, p. 20.

²⁶ Searle Affidavit at para. 11, MR, Tab 2, p. 18.

²⁷ Searle Affidavit at para. 11, MR, Tab 2, p. 18.

²⁸ Searle Affidavit at para. 9, MR, Tab 2, p. 17.

²⁹ Searle Affidavit at para. 23, MR, Tab 2, p. 23.

operate out of a leased premises located at 1 Yorkdale Road, Suite 510, Toronto, Ontario.³⁰

C. Financial Situation of the Company

16. Historically, TBS International has been in full control of several functions of TBS Canada and TBS US, including human resources and employee benefits, accounts payables, accounts receivables and cash management and information technology.³¹ In Canada, TBS International achieved this through a cash pooling arrangement between the entities, under which all of TBS Canada's funds were deposited into seven separate accounts at HSBC Bank Canada in the Company's name (the "**HSBC Accounts**") and then swept by TBS International in the UK (the "**Cash Pooling Arrangement**").³² In exchange, TBS International would then pay TBS Canada's payables upon direction by the Company. This centralized structure and cash management system has been in place since at least 2007.³³ A similar cash pooling arrangement is in place in respect of TBS US.

17. Commencing December 2023, while continuing to sweep the HSBC Accounts, TBS International failed to remit payments in full to the Company's vendors.³⁴ This created a backlog of overdue debt that has since ballooned to approximately \$3.3 million.³⁵ This debt is owing to a wide variety of vendors, including landlords, logistics

³⁰ Searle Affidavit at para. 10, MR, Tab 2, pp. 17-18.

³¹ Searle Affidavit at para. 24, MR, Tab 2, p. 23.

³² Searle Affidavit at para. 24, MR, Tab 2, p. 23.

³³ Searle Affidavit at para. 25, MR, Tab 2, pp. 23-24.

³⁴ Searle Affidavit at para. 27, MR, Tab 2, p. 24.

³⁵ Searle Affidavit at para. 29, MR, Tab 2, p. 25.

providers, marketing agencies, insurers, utilities and freight service providers.³⁶ Payroll and HST obligations, however, have continued to be paid in the ordinary course.³⁷

18. TBS International also swept TBS US' accounts during this time and failed to remit payments in full to TBS US' creditors, leaving it with significant overdue payables.

19. Despite failing to remit payments in full, TBS International continued to sweep the HSBC Accounts until the day immediately before the UK Parent commenced the UK Administration on February 13, 2024.³⁸ TBS International did not warn the Company of its intention to file and has since provided little to no guidance.³⁹ Instead, the UK Parent, the UK Administrators and Aurelius informed the Company that the Cash Pooling Arrangement was no longer in place and TBS Canada must now use its own cash or to finance all market activities.⁴⁰ This left the Company with depleted bank accounts, significant outstanding payables and severed shared services.

(i) Secured Creditors

20. On or about December 2023, the Aurelius Purchaser acquired all of the shares of Natura (and indirectly TBS International) (the "**Acquisition**").⁴¹ In connection with the Acquisition, Aurelius IV UK Acquico Seven Limited ("**Aurelius Seven**"), the immediate parent company of the Aurelius Purchaser, entered into a Loan Agreement with TBS International, pursuant to which GBP £2,720,741.98 was made available to TBS

³⁶ Searle Affidavit at para. 29, MR, Tab 2, p. 25.

³⁷ Searle Affidavit at para. 6, MR, Tab 2, p. 16.

³⁸ Searle Affidavit at para. 29, MR, Tab 2, p. 25.

³⁹ Searle Affidavit at para. 30, MR, Tab 2, p. 25.

⁴⁰ Searle Affidavit at para. 31, MR, Tab 2, pp. 25-26.

⁴¹ Searle Affidavit at para. 12 & 17, MR, Tab 2, pp. 18-19 & 20-21.

International (the “**Loan Agreement**”).⁴² The Loan Agreement provides in section 4.2 that the purpose of the loan is to “assist the [Aurelius] Purchaser with funding the Acquisition. For this purpose, the Borrower [the UK Parent] may on-lend the proceeds of any [L]oan to the [Aurelius] Purchaser”.⁴³

21. The obligations of the UK Parent under the Loan Agreement are guaranteed by TBS Canada pursuant to a Guarantee and Indemnity Agreement (the “**Guarantee**”).⁴⁴ The obligations of the Company under the Guarantee are only operative after Aurelius Seven issues a demand to TBS Canada.⁴⁵ To date, TBS Canada has not received any such demand and is unaware of the current status of the loan facility.⁴⁶

22. To secure its obligations under the Guarantee, TBS Canada executed a General Security Agreement (“**GSA**”) and a Hypothec granting Aurelius Seven a security interest over all of its present and after-acquired property.⁴⁷ Aurelius Seven registered its security under the personal property regimes in each Canadian provincial and territorial jurisdiction (collectively, “**Aurelius Security**”) against TBS Canada.⁴⁸

23. Personal property searches also reveal registrations against the Company in favour of Enterprise Fleet Management Canada, Inc. (“**Enterprise**”) in the Provinces of

⁴² Loan Agreement, Exhibit D to the Searle Affidavit, MR, Tab 2(D), pp. 103-116; Searle Affidavit at para. 17, MR, Tab 2, pp. 20-21.

⁴³ Loan Agreement, Exhibit D to the Searle Affidavit, MR, Tab 2(D), pp. 103-116.

⁴⁴ Guarantee and Indemnity Agreement, Exhibit E to the Searle Affidavit, MR, Tab 2(E), pp. 117-136.

⁴⁵ Searle Affidavit at para. 19, MR, Tab 2, p. 21.

⁴⁶ Searle Affidavit at para. 19, MR, Tab 2, p. 21.

⁴⁷ General Security Agreement & Hypothèque Mobilière, Exhibit F to the Searle Affidavit, MR, Tab 2(E), pp. 117-136.

⁴⁸ PPSA searches dated February 21-26, 2024, Exhibit G to the Searle Affidavit, MR, Tab 2(G), pp. 147-196; Searle Affidavit at para. 21, MR, Tab 2, p. 22.

British Columbia, Alberta, Nova Scotia and Ontario (the “**Enterprise Security**”), and registrations in favour of HSBC Bank Canada and HongKong Bank of Canada (together, “**HSBC**”) in Saskatchewan (collectively, the “**HSBC Registrations**”).⁴⁹ The Enterprise Security relates to corporate vehicles that are leased by the Company for certain of its employees.⁵⁰ TBS Canada is unaware of what the HSBC Registrations relate to nor does it believe that any amounts are owing to HSBC in connection with the HSBC Registrations.⁵¹

(i) Unsecured Debt

24. The Company also has various unsecured creditors, including trade creditors, to which it owes approximately \$2.5 million and landlords, to which it owes \$900,000.⁵²

D. The NOI Proceedings

25. TBS Canada commenced the NOI proceedings on March 1, 2024 to obtain the benefit of a stay of proceedings under the BIA and to provide stability while the Company reviews and advances its restructuring options.⁵³ As part of these ongoing efforts, the Company has identified 33 underperforming stores (the “**Closing Stores**”) that it will wind-down during these NOI proceedings.⁵⁴ In an effort to improve its liquidity position, on March 1, 2024, TBS Canada sent disclaimers of the leases to the landlords of the Closing Stores.⁵⁵ Moreover, the Company intends to make certain headcount reductions

⁴⁹ PPSA searches dated February 21-26, 2024, Exhibit G to the Searle Affidavit, MR, Tab 2(G), pp. 147-196.

⁵⁰ Searle Affidavit at para. 22, MR, Tab 2, p. 22.

⁵¹ Searle Affidavit at para. 22, MR, Tab 2, p. 22.

⁵² Searle Affidavit at para. 23, MR, Tab 2, p. 23.

⁵³ Searle Affidavit at para. 2, MR, Tab 2, p. 14.

⁵⁴ Searle Affidavit at para. 41, MR, Tab 2, p. 30.

⁵⁵ Searle Affidavit at para. 42, MR, Tab 2, p. 30.

and terminated the employment of 20 of its head-office employees effective March 1, 2024 and will terminate a further 200+ employees at the Closing Stores.⁵⁶

PART III – ISSUES

26. The principal issues before this Court are whether:

- (a) this Court should expand the BIA statutory stay of proceedings by ordering the continuation of services and certain other protections to the Company;
- (b) this Court should grant the Administration Charge;
- (c) this Court should grant the D&O Charge;
- (d) this Court should direct all persons who have in their possession or power, any property of the Company, or any book, document or paper of any kind relating to the Company, to produce the book, document or paper for the Company, or to deliver to the Company any property of the Company in their possession promptly upon request of the Company or the Proposal Trustee; and
- (e) this Court should extend the time for the Company to file a proposal under the BIA to April 16, 2024 (being 19 days from its current expiry of March 28, 2024).

⁵⁶ Searle Affidavit at para. 43, MR, Tab 2, p. 31.

A. This Court Should Expand the BIA Stay of Proceedings and Grant the Related Relief

27. TBS Canada seeks an expansion of the statutory stay of proceedings under subsection 69(1) of the BIA and related relief, (i) providing for the continuation of goods and services to the Company, (ii) prohibiting any disbursement of funds from the HSBC Accounts without the prior consent of the Company or the Proposal Trustee, and (iii) providing for the payment of rent on a weekly basis for the month of March, and bi-weekly thereafter.⁵⁷

28. As more particularly described below, the expanded stay and related relief are intended to preserve the value of the Company and are consistent with the object of proposals under the BIA “to permit the debtor to restructure its business, and, where possible, avoid the social and economic costs of liquidating its assets.”⁵⁸ Each request for relief is addressed in turn below.

(i) Continuation of Goods and Services

29. The Order sought by TBS Canada will prohibit any person from discontinuing, altering or interfering with or terminating the supply or license of goods or services to the Company, provided that no person shall be required to extend credit to the Company or be prohibited from requiring immediate payment for goods and services provided after the Filing Date.

30. While this relief is customarily granted to debtors under the *Companies’ Creditors Arrangement Act* (“**CCAA**”), the Supreme Court of Canada has recognized that proposals

⁵⁷ *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 at s. 69(1) [**“BIA”**].

⁵⁸ *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 15, Book of Authorities of the Applicant (“**BOA**”), Tab 3 [**“Century Services”**].

under the BIA “serve the same remedial purpose” as the CCAA.⁵⁹ Accordingly, this relief has also been granted in the context of NOI proceedings where the expanded stay is necessary for the debtor to continue operations in the ordinary course while it reviews and advances restructuring options.⁶⁰ In this case, the Company’s ability to continue in the ordinary course is reliant on its ability to continue receive goods and services from TBS Canada’s suppliers, including continued use of the license under the Franchise Agreement, without disruption.⁶¹

(ii) Prohibiting Disbursements from the HSBC Accounts

31. The expanded stay requested by the Company will prohibit HSBC Bank Canada, or any other person, from disbursing any funds in the HSBC Accounts without the prior consent of the Company or the Proposal Trustee.

32. This relief is necessary to ensure that the Company can access and administer the HSBC Accounts without interference from the UK Parent. Although TBS International has assured the Company that it will not sweep the HSBC Accounts, it has not provided these assurances in writing.⁶² Further, TBS Canada is not aware of any documentation evidencing the Cash Pooling Arrangement, or its purported termination.⁶³ In the circumstances, this relief is necessary to provide the Company and its stakeholders with

⁵⁹ *Century Services* at para. 15, BOA, Tab 3.

⁶⁰ *Scotch & Soda Canada Inc. (Re)*, Endorsement of Justice Steele dated May 16, 2023 (Court File No. BK-23-02941767-0031) (Ont. S.C.J. [Commercial List]) at para. 10, BOA, Tab 12 [**“Scotch & Soda”**]; *Bad Boy Furniture Warehouse Limited et al. (Re)*, Endorsement of Justice Penny dated November 10, 2023 (Court File No. BK-23-03008133-0031) (Ont. S.C.J. [Commercial List]) at para. 8, BOA, Tab 2.

⁶¹ Searle Affidavit at para. 13, MR, Tab 2, p. 19.

⁶² Searle Affidavit at para. 48, MR, Tab 2, p. 32.

⁶³ Searle Affidavit at para. 24, MR, Tab 2, p. 23.

comfort that TBS Canada has control over its cash and thus, can continue to operate as a going concern. The Proposal Trustee supports the requested relief.⁶⁴

(iii) Weekly Rent Relief

33. TBS Canada is requesting this Court's approval to pay rent for the period commencing from the Filing Date, on a weekly basis for the month of March and on a bi-weekly basis thereafter (the "**Rent Relief**").

34. In consultation with the Proposal Trustee, the Company has prepared a weekly cash flow forecast (the "**Cash Flow Forecast**") for the period ending May 24, 2024.⁶⁵ The Cash Flow Forecast demonstrates that the Rent Relief is consistent with the purpose of proposals under the BIA in that it preserves the Company's liquidity, ensures TBS Canada can satisfy its priority obligations for payroll and sales taxes⁶⁶ and provides the Company with the flexibility needed to explore a going concern solution for the business.⁶⁷

35. The Proposal Trustee believes that the Rent Relief is a necessary response to the uniquely challenging circumstances of this case.⁶⁸ In their First Report, the Proposal Trustee notes that "[i]f required to pay an entire month of rent in advance, the Company would exhaust its available liquidity, compromising the ability of TBS Canada to reorganize its affairs."⁶⁹

⁶⁴ Searle Affidavit at para. 61, MR, Tab 2, pp. 36-37; The report of the Proposal Trustee at para. 8.3 [the "**First Report**"].

⁶⁵ First Report at para. 5.1.

⁶⁶ First Report at para. 5.7.

⁶⁷ First Report at para. 5.8.

⁶⁸ First Report at para. 5.8.

⁶⁹ First Report at para. 5.8.

36. As this Court and the Supreme Court of Canada have made clear, this Court should be “encouraging reorganization over liquidation”⁷⁰ and avoiding the social and economic cost of a liquidation.

B. This Court Should Approve the Administration Charge and the Directors’ and Officers’ Charge

(i) The Administration Charge Should Be Granted

37. The Company requests that this Court grant a charge (the “**Administration Charge**”) on all of the Company’s present and future assets, property and undertakings in favour of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company. The Company seeks an Administration Charge in the amount of \$700,000.

38. Section 64.2 of the BIA confers on this Court the authority to grant a charge in favour of financial, legal or other professionals involved in proposal proceedings under the BIA. Section 64.2 provides in part as follows:

Court may order security or charge to cover certain costs

64.2 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee’s duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or

⁷⁰ *Kitchener Frame Limited (Re)*, 2012 ONSC 234 (Ont. S.C.J. [Commercial List]) at para 70, BOA, Tab 8.

charge is necessary for the effective participation of that person in proceedings under this Division.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.⁷¹

39. Administration and financial advisor charges have been previously approved in proposal proceedings, where, as in the present case, the participation of the parties whose fees are secured by the charge is necessary to ensure a successful proceeding under the BIA.⁷²

40. The Company submits that this is an appropriate circumstance for the Court to grant the Administration Charge. Each of the parties whose fees are to be secured by the Administration Charge has played—and will continue to play—a critical role in these proceedings. None of the proposed beneficiaries of the Administration Charge have retainers and the Administration Charge is necessary to secure the full and complete payment of their fees.

41. The quantum of the proposed Administration Charge was calculated in consultation with the Proposal Trustee, who is of the view that the amount is reasonable and appropriate in the circumstances. The Proposal Trustee supports the Administration Charge, having regard to the nature of the NOI proceedings, the anticipated professional

⁷¹ BIA at s. 64.2.

⁷² *Scotch & Soda* at paras. 13-18, BOA, Tab 12; *Mustang GP Ltd. (Re)*, 2015 ONSC 6562 at para. 33, BOA, Tab 9 [*“Mustang”*]; *Colossus Minerals Inc. (Re)*, Endorsement of Justice H.J. Wilton-Siegel dated February 7, 2014 (Court File No. CV-14-10401-00CL) at paras. 11-15, BOA, Tab 4 [*“Colossus”*].

costs to be incurred and the fact that the proposed beneficiaries of the Administration Charge do not have retainers.⁷³

42. Finally, the Administration Charge will rank ahead of the D&O Charge (as defined below), the Aurelius Security and HSBC Registrations but behind the Enterprise Security. Aurelius, Enterprise and HSBC have all been given notice of this motion. As discussed above, the Aurelius Security is not enforceable given its terms and that no demand has been sent to the Company.⁷⁴ Similarly, the Company believes there is nothing owing to HSBC in respect of the HSBC Registrations.⁷⁵ Accordingly, neither Aurelius nor HSBC will be prejudiced by the proposed priority ranking.

(ii) The D&O Charge Should Be Granted

43. The Company also seeks a charge on its assets in favour of the director and officers of the Company in an amount not exceeding \$2,100,000 (the “**D&O Charge**”). The D&O Charge is to secure the indemnity of the Company’s directors and officers for liabilities they may incur during these NOI proceedings after the Filing Date. The D&O Charge would rank behind the Administration Charge and Enterprise Security but ahead of the Aurelius Security and HSBC Registration. As noted above, Aurelius, Enterprise and HSBC have all been given notice of this motion.

44. The amount of the D&O Charge was determined in consultation with the Proposal Trustee and takes into account a number of statutory obligations for which the director

⁷³ First Report at para. 7.3.

⁷⁴ Searle Affidavit at para. 19, MR, Tab 2, p. 21.

⁷⁵ Searle Affidavit at para. 22, MR, Tab 2, p. 22.

and officers are liable where the Company fails to meet these obligations, such as unpaid vacation pay, payroll and sales taxes.⁷⁶

45. This Court has the authority to grant the D&O Charge under section 64.1 of the BIA, which provides:

Security or charge relating to director's indemnification

64.1 (1) On application by a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the property of the person is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the person to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

Restriction — indemnification insurance

(3) The court may not make the order if in its opinion the person could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.⁷⁷

46. TBS Canada purportedly has coverage under TBS International's global Directors' and Officers' insurance policy (the "**UK Policy**").⁷⁸ However, the Company does not have

⁷⁶ First Report at para. 7.6.

⁷⁷ BIA at s. 64.1.

⁷⁸ Searle Affidavit at para. 54, MR, Tab 2, p. 34.

access to the wording of the UK Policy, nor has it received any proof that premiums have been paid, despite numerous requests to TBS International for this information.⁷⁹ Consequently, the D&O Charge is necessary because it is unclear whether the Company has adequate insurance for its director and officers.

47. In *Colossus Minerals* and *Mustang*, the Ontario Superior Court approved a directors' and officers' charge in circumstances similar to the present case where there was uncertainty that the existing insurance was sufficient to cover all potential claims, the directors and officers were unlikely continue to provide their services without the protection of the charge, and the continued involvement of the directors and officers was critical to a successful sales process under the BIA.⁸⁰

48. The Company submits that this Court should approve the D&O Charge for the following reasons:

- (a) it is unclear whether the Company currently has any directors' and officers' insurance or, if it does, what its terms are⁸¹;
- (b) the D&O Charge will only apply to the extent that the director and officers do not have sufficient coverage under the UK Policy or the Company is unable to satisfy its indemnity obligations⁸²;

⁷⁹ Searle Affidavit at para. 54, MR, Tab 2, p. 34.

⁸⁰ *Colossus* at paras. 16-21, BOA, Tab 4; *Mustang* at para. 34-35, BOA, Tab 9.

⁸¹ Searle Affidavit at para. 54-55, MR, Tab 2, pp. 34-35.

⁸² Searle Affidavit at para. 56, MR, Tab 2, p. 35.

- (c) the Company's sole director, Jordan Searle, and officers of the Company have indicated that they will not continue their involvement with TBS Canada without the protection of the D&O Charge,⁸³ but their continued involvement is critical to the success of these proceedings;
- (d) the D&O Charge applies only to claims or liabilities that the director and officers may incur after Filing Date and does not cover misconduct or gross negligence; and
- (e) the Proposal Trustee has indicated that the D&O Charge is required and reasonable given the circumstances.⁸⁴

C. This Court Should Grant the Order Directing the Return of Books, Records and Any Other Property to TBS Canada

49. The Company seeks an order directing all persons in possession of the books, records and any other property belonging to TBS Canada to produce or deliver such property promptly to the Company upon the request of either the Company or the Proposal Trustee (the "**Production Order**").

50. Section 164(1) of the BIA provides:

164(1) Trustee may require books and property of bankrupt to be produced

Where a person has, or is believed or suspected to have, in his possession or power any of the property of the bankrupt, or any book, document or paper of any kind relating in whole or in part to the bankrupt, his dealings or property, or showing that he is indebted to the bankrupt, he may be required by the trustee to produce the book,

⁸³ Searle Affidavit at para. 56, MR, Tab 2, p. 35.

⁸⁴ First Report at para. 7.7.

document or paper for the information of the trustee, or to deliver to him any property of the bankrupt in his possession.⁸⁵

51. Section 164(1) does not, by default, apply to Division I Proposals under Part III of the BIA. However, per section 66(1) of the BIA:

66(1) Act to apply

All the provisions of this Act, except Division II of this Part, in so far as they are applicable, apply, with such modifications as the circumstances require, to proposals made under this Division.⁸⁶

52. As the Federal Court of Appeal found in *Hancor*,⁸⁷ section 66(1) “invit[es] the courts to participate in a process of intelligent harmonization and adaptation.”⁸⁸ Section 66(1) of the BIA allows this Court, on a case-by-case basis, to adapt and apply sections of the BIA to this NOI proceeding.⁸⁹

53. Sections 66(1) and 164(1) must be read together.⁹⁰ As the Ontario Court of Appeal held in *Osztrovics*,⁹¹ section “164 of the BIA is directed towards ensuring that the trustee can fulfill its responsibilities to investigate and value, or otherwise establish, the assets and the liabilities of the bankrupt.”⁹² In other words, to enable the trustee to “discharge its duty to the bankrupt’s creditors to value and realize” the value of the estate.⁹³

⁸⁵ *BIA* at s. 164(1).

⁸⁶ *BIA* at 66(1).

⁸⁷ *Hancor Inc. v. Systèmes de drainage modernes Inc.*, 1995 CarswellNat 1275, [1996] 1 F.C. 725 (FCA), BOA, Tab 7 [*“Hancor”*].

⁸⁸ *Hancor* at para. 72, BOA, Tab 7.

⁸⁹ *Hancor* at para. 72, BOA, Tab 7.

⁹⁰ *728835 Ontario Ltd. (Re)*, 1998 CarswellOnt 2576, [1998] O.J. No. 2272 (ON CA) at para. 5, BOA, Tab 1.

⁹¹ *Osztrovics (Trustee of) v. Osztrovics Farms Ltd.*, 2015 ONCA 463, BOA, Tab 10 [*“Osztrovics”*].

⁹² *Osztrovics* at para. 14, BOA, Tab 10.

⁹³ *Osztrovics* at para. 15, BOA, Tab 10.

54. While a Proposal Trustee and a Trustee in Bankruptcy “wear different hats”⁹⁴, both have firm duties to creditors to protect the debtor’s assets and realize their value.⁹⁵ As the New Brunswick Supreme Court held, it is “just as essential that a trustee have recourse to the books and other documents of the company in the administration of a proposal as it would in the case of ... bankruptcy.”⁹⁶

55. Here, because of the Cash Pooling Arrangement historically performed by TBS International, the UK Parent, Aurelius and the UK Administrator are in possession of certain of the Company’s accounting and other records.⁹⁷ Without this information, the Company cannot perform many of the human resource, accounts payable and accounts receivable functions previously performed by TBS International.⁹⁸ Consequently, the circumstances of this case warrant the “intelligent harmonization” of sections 66(1) and 164(1) to authorize the Production Order.

56. The Proposal Trustee supports the Production Order and believes that it will assist in stabilizing the Company’s operations, allowing it the greatest opportunity to preserve normal course operations while it considers its restructuring and other options.⁹⁹ In particular, the Proposal Trustee believes that, without the information subject to the Production Order, the Company will face substantial difficulties disentangling its

⁹⁴ *Saran (Re)*, 2018 ONSC 2998 at para. 39, BOA, Tab 11.

⁹⁵ *EnerNorth Industries Inc. (Re)*, 2007 CarswellOnt 7322, [2007] O.J. No. 4391 (Ont. S.C.J. [Commercial List]) at para. 19, BOA, Tab 5; *Osztrovics* at para. 15, BOA, Tab 10.

⁹⁶ *Fundy Forest Industries Ltd. (Re)*, 1972 CarswellNB 14, 21 C.B.R. (N.S.) 170 (NB SC) at para. 8, BOA, Tab 6.

⁹⁷ Searle Affidavit at para. 58, MR, Tab 2, p. 36.

⁹⁸ Searle Affidavit at para. 59, MR, Tab 2, p. 36.

⁹⁹ First Report at para. 8.6.

accounting services and will be unable to perform many essential functions previously performed by TBS International.¹⁰⁰

D. This Court Should Extend the Time to File a Proposal Under the BIA to April 16, 2024

57. Pursuant to section 50.4(8) of the BIA, the Company must file its proposal within 30 days unless it otherwise obtains an extension of time from the Court.¹⁰¹ The Company seeks an extension of the time required to file a proposal of 19 days, moving the deadline from March 28, 2024, to April 16, 2024.

58. Section 50.4(9) of the BIA allows a debtor in a proposal proceeding to apply to the Court for an order extending the time to file a proposal by a maximum of 45 days. This Court may grant an extension if satisfied that:

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.¹⁰²

59. In this case, each of these factors have been met.

¹⁰⁰ First Report at para. 8.5.

¹⁰¹ *BIA* at 50.4(8).

¹⁰² *BIA* at s. 50.4(9); *Colossus* at para. 37-41, BOA, Tab 4.

60. First, the Proposal Trustee agrees that the Company has acted and continues to act in good faith and with due diligence in the NOI proceedings.¹⁰³ The Company has worked cooperatively with the Proposal Trustee in preparing projected cash flows, which show that TBS Canada has sufficient liquidity to operate to the end of the requested extension.¹⁰⁴

61. The Company has provided a list of its creditors and is working on reducing redundant stores and implementing headcount reductions to improve its liquidity position. The Company has given notice of these proceedings to its stakeholders and is committed to continue engaging in discussions with all stakeholders as these proceedings progress.

62. Second, the extension is necessary in the circumstances to give the Company breathing room while it organizes its affairs and stabilizes operations.¹⁰⁵ The Company was forced to commence these NOI proceedings due to the sudden, unexpected actions of its UK Parent. As such, TBS Canada has not had the benefit of time to determine the best course of action to maximize value for its stakeholders. Consequently, the extension of time will increase the likelihood of a viable proposal by providing TBS Canada with the breathing room critically needed.¹⁰⁶

63. Finally, no creditors will be prejudiced by the requested extension.¹⁰⁷ TBS Canada is only seeking an extension of 19 days—less than half of the maximum under section 50.4(9)—to minimize the impact on its stakeholders. The extension is designed to be

¹⁰³ *Colossus* at para. 39, BOA, Tab 4; First Report at para. 6.2(v).

¹⁰⁴ *Colossus* at para. 42, BOA, Tab 4.

¹⁰⁵ First Report at para. 6.2(i).

¹⁰⁶ First Report at para. 6.2(i).

¹⁰⁷ First Report at para. 6.2(iv).

minimally impactful on the Company's creditors while providing TBS Canada the time it needs to establish and execute a clear plan for the benefit of its many stakeholders.

64. The Proposal Trustee supports the Company's request for an extension of the time to file a proposal.¹⁰⁸

PART IV – ORDER SOUGHT

65. For all of the foregoing reasons, the Company requests that this Court grant the proposed relief by making an order substantially in the form of the proposed Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of March, 2024.

A handwritten signature in blue ink, appearing to read 'Davies Ward Phillips & Vineberg', is written over a horizontal line.

DAVIES WARD PHILLIPS & VINEBERG LLP
Counsel for The Body Shop

¹⁰⁸ First Report at para. 6.2.

SCHEDULE “A” LIST OF AUTHORITIES

CASE LAW

1. *728835 Ontario Ltd. (Re)*, 1998 CarswellOnt 2576, [1998] O.J. No. 2272 (ON CA)
2. *Bad Boy Furniture Warehouse Limited et al. (Re)*, Endorsement of Justice Penny dated November 10, 2023 (Court File No. BK-23-03008133-0031) (Ont. S.C.J. [Commercial List])
3. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60
4. *Colossus Minerals Inc. (Re)*, Endorsement of Justice H.J. Wilton-Siegel dated February 7, 2014 (Court File No. CV-14-10401-00CL)
5. *EnerNorth Industries Inc. (Re)*, 2007 CarswellOnt 7322, [2007] O.J. No. 4391 (Ont. S.C.J. [Commercial List])
6. *Fundy Forest Industries Ltd. (Re)*, 1972 CarswellNB 14, 21 C.B.R. (N.S.) 170 (NB SC)
7. *Hancor Inc. v. Systèmes de drainage modernes Inc.*, 1995 CarswellNat 1275, [1996] 1 F.C. 725 (FCA)
8. *Kitchener Frammer Limited (Re)*, 2012 ONSC 234 (Ont. S.C.J. [Commercial List])
9. *Mustang GP Ltd. (Re)*, 2015 ONSC 6562
10. *Osztrovics (Trustee of) v. Osztrovics Farms Ltd.*, 2015 ONCA 463
11. *Saran (Re)*, 2018 ONSC 2998
12. *Scotch & Soda Canada Inc. (Re)*, Endorsement of Justice Steele dated May 16, 2023 (Court File No. BK-23-02941767-0031) (Ont. S.C.J. [Commercial List])

LEGISLATION

13. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

50.4

50.4(8) Where assignment deemed to have been made

Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

(a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;

(b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;

(b.1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and

(c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

50.4(9) Extension of time for filing proposal

The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.

...

64.1

64.1(1) Security or charge relating to director's indemnification

On application by a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the property of the person is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the person to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.

64.1(2) Priority

The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

64.1(3) Restriction — indemnification insurance

The court may not make the order if in its opinion the person could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

64.1(4) Negligence, misconduct or fault

The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

...

64.2

64.2(1) Court may order security or charge to cover certain costs

On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

64.2(2) Priority

The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

64.2(3) Individual

In the case of an individual,

(a) the court may not make the order unless the individual is carrying on a business; and

(b) only property acquired for or used in relation to the business may be subject to a security or charge.

...

66.

66(1) Act to apply

All the provisions of this Act, except Division II of this Part, in so far as they are applicable, apply, with such modifications as the circumstances require, to proposals made under this Division.

...

69.

69(1) Stay of proceedings — notice of intention

Subject to subsections (2) and (3) and sections 69.4, 69.5 and 69.6, on the filing of a notice of intention under section 50.4 by an insolvent person,

(a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy,

(b) no provision of a security agreement between the insolvent person and a secured creditor that provides, in substance, that on

(i) the insolvent person's insolvency,

(ii) the default by the insolvent person of an obligation under the security agreement, or

(iii) the filing by the insolvent person of a notice of intention under section 50.4,
the insolvent person ceases to have such rights to use or deal with assets secured under the agreement as he would otherwise have, has any force or effect,

(c) Her Majesty in right of Canada may not exercise Her rights under

(i) subsection 224(1.2) of the Income Tax Act, or

(ii) any provision of the Canada Pension Plan or of the Employment Insurance Act that

(A) refers to subsection 224(1.2) of the Income Tax Act, and

(B) provides for the collection of a contribution, as defined in the Canada Pension Plan, an employee's premium or employer's premium, as defined in the Employment Insurance Act, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts,

in respect of the insolvent person where the insolvent person is a tax debtor under that subsection or provision, and

(d) Her Majesty in right of a province may not exercise her rights under any provision of provincial legislation in respect of the insolvent person where the insolvent person is a debtor under the provincial legislation and the provision has a similar purpose to subsection 224(1.2) of the Income Tax Act, or refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Income Tax Act, or

(ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

until the filing of a proposal under subsection 62(1) in respect of the insolvent person or the bankruptcy of the insolvent person.

69(2) Limitation

The stays provided by subsection (1) do not apply

(a) to prevent a secured creditor who took possession of secured assets of the insolvent person for the purpose of realization before the notice of intention under section 50.4 was filed from dealing with those assets;

(b) to prevent a secured creditor who gave notice of intention under subsection 244(1) to enforce that creditor's security against the insolvent person more than ten days before the notice of intention under section 50.4 was filed, from enforcing that security, unless the secured creditor consents to the stay;

(c) to prevent a secured creditor who gave notice of intention under subsection 244(1) to enforce that creditor's security from enforcing the security if the insolvent person has, under subsection 244(2), consented to the enforcement action; or

(d) [Repealed 2012, c. 31, s. 416.]

69(3) Limitation

A stay provided by paragraph (1)(c) or (d) does not apply, or terminates, in respect of Her Majesty in right of Canada and every province if

(a) the insolvent person defaults on payment of any amount that becomes due to Her Majesty after the filing of the notice of intention and could be subject to a demand under

(i) subsection 224(1.2) of the Income Tax Act,

(ii) any provision of the Canada Pension Plan or of the Employment Insurance Act that refers to subsection 224(1.2) of the Income Tax Act and provides for the collection of a contribution, as defined in the Canada Pension Plan, an employee's premium, or employer's premium, as defined in the Employment Insurance Act, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the Income Tax Act, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Income Tax Act, or

(B) is of the same nature as a contribution under the Canada Pension Plan if the province is a "province providing a

comprehensive pension plan" as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a "provincial pension plan" as defined in that subsection; or

(b) any other creditor is or becomes entitled to realize a security on any property that could be claimed by Her Majesty in exercising Her rights under

(i) subsection 224(1.2) of the Income Tax Act,

(ii) any provision of the Canada Pension Plan or of the Employment Insurance Act that refers to subsection 224(1.2) of the Income Tax Act and provides for the collection of a contribution, as defined in the Canada Pension Plan, an employee's premium, or employer's premium, as defined in the Employment Insurance Act, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the Income Tax Act, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Income Tax Act, or

(B) is of the same nature as a contribution under the Canada Pension Plan if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

...

164.

164(1) Trustee may require books and property of bankrupt to be produced

Where a person has, or is believed or suspected to have, in his possession or power any of the property of the bankrupt, or any book, document or paper of any kind relating in whole or in part to the bankrupt, his dealings or property, or showing that he is indebted to the bankrupt, he may be required by the trustee to produce the book, document or paper for the information of the trustee, or to deliver to him any property of the bankrupt in his possession.

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF THE BODY SHOP CANADA LIMITED
IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

Estate/Court File No.: 31-3050418

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

Proceeding commenced at Toronto

**FACTUM
(Motion Returnable March 4, 2024)**

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