

**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

**FACTUM**

**(For the appointment of an Independent Third Party (Douglas Cunningham, K.C) to  
recommend representative counsel to the Court, or in the alternative, set a schedule for a  
contested motion to appoint representative counsel, returnable April 24, 2025)**

April 23, 2025

**KOSKIE MINSKY LLP**

20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3

**Andrew J. Hatnay (LSO# 31885W)**

(T) 416-595-2083 / (E) ahatnay@kmlaw.ca

**Robert Drake (LSO# 57083G)**

(T) 416-595-2095 / (E) rdrake@kmlaw.ca

**Abir Shamim (LSO# 88251V)**

(T) 416-354-7758 / (E) ashamim@kmlaw.ca

Lawyers for Evan Marshall, Steven Karo,  
and James Common and 415 other HBC  
Employees and Retirees

**TO: THE SERVICE LIST**

## TABLE OF CONTENTS

	PAGE
PART I - OVERVIEW .....	1
PART II - THE FACTS .....	4
PART III - ISSUES.....	12
PART IV - THE LAW & ARGUMENT .....	12
PART V - ORDER REQUESTED .....	17
SCHEDULE "A"	
LIST OF AUTHORITIES.....	19
SCHEDULE "B"	
RELEVANT STATUTES .....	20

## **PART I - OVERVIEW**

1. On March 7, 2025, the Applicants ("**HBC**") obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**"). HBC is liquidating while under CCAA protection.

2. Koskie Minsky LLP ("**KM**") has HBC clients that pre-date the CCAA filing. When rumours swirled in the media that HBC would be filing for CCAA protection, KM wrote to HBC to inquire. After obtaining CCAA protection, many more new HBC employees and retirees contacted KM for advice and assistance. The non-union HBC employees and retirees (the "**Non-Union Employees and Retirees**") had no pre-arranged representative counsel to turn to. KM currently has been retained by over 415 Non-Union Employees and Retirees.

3. KM responded to calls and emails and provided legal advice and assistance that they urgently required. Over the next intensive four weeks after the initial filing, KM appeared in Court five times as the advocate for the Non-Union Employees and Retirees, filed two Aide Memoires, and negotiated with the lenders on a key term in an agreement that was put before the Court. To communicate with the large employee and retiree group, KM set up a website, telephone hotline and email path for the HBC employees that are being extensively used and responded to by both lawyers and KM's established communications department. KM is acting as a *de facto* representative counsel. At its last court attendance, KM informed the Court it would be bringing forward a motion to be appointed representative counsel. There was no adverse comment or objection to that submission.

4. About a week after that, KM was informed that HBC embarked on its own process to select a representative counsel. HBC says that other firms expressed interest in the role and that HBC

would "select" the representative counsel. There are two major legal and process flaws with HBC's process: First, HBC does not follow either of the two customary, Court-approved processes for selecting a representative counsel where there are multiple law firms.

5. The first process is the one Morawetz, C.J.O recently approved in the case of *Bridging Finance*<sup>1</sup> by appointing an Independent Third Party ("**ITP**") to assess the candidates in accordance with transparent and uniform criteria and make a recommendation to the Court. The second is where the Court schedules a contested carriage motion, hears submissions of all interested candidates, and then decides the representative counsel.

6. In both processes, both the *process* and the *appointment* are Court-approved.

7. HBC's arbitrary process only asked interested firms to submit a proposal to HBC lawyers, who would then "select" the "successful candidate". In stark contrast to the fair and transparent roadmap laid out by The Hon. Todd Archibald, as approved by Morawetz, C.J.O, in *Bridging Finance*, HBC's process has been conducted not by an independent court-approved official, but instead by HBC itself who is an adverse litigant to the Non-Union Employees and Retirees in a litigation context. In addition, HBC's process had no interviews, no transparency and no disclosure of other candidates. HBC has simply picked the law firm it wants and has now put its selection before the Court to rubber stamp it. All the other candidates, including KM, were simply rejected by HBC.

8. HBC's process was not approved by the Court, yet HBC now comes to Court asking the Court to approve its selection even though the Court has had no say or oversight into the deficient

---

<sup>1</sup> *Ontario Securities Commission v Bridging Finance Inc.* (CV-21-00661458-00CL; "*Bridging Finance*").

process HBC applied. This means that HBC is effectively asking the Court to retroactively approve its flawed process, which is not consistent with existing applicable caselaw. The Court should not do so. HBC's motion should be dismissed.

9. Moreover, there is no urgency to HBC's motion. KM has been acting as *de facto* rep counsel since March 17, 2025 and can continue to do so. KM receives calls, inquiries and new retainers on a daily basis. KM's role assisting HBC employees and retirees is well known to the Non-Union Employee and Retiree population.

10. There is no justification for HBC to make the Court to rush to approve of its unfair process for the immediate appointment of a new law firm in these circumstances. HBC's focus is on liquidating all of the company's assets. No prejudice will result if a contested motion is scheduled two weeks from now with proper notice. There is also no urgency to justify not having an independent and fair process to appoint representative counsel.

11. The status quo with KM will continue in an orderly manner until an independent and fair process is completed.

12. The feedback from Non-Union Employees and Retirees to KM is consistently positive. The Non-Union Employees and Retirees are grateful and appreciative for KM's services. They want KM to continue to represent them and be appointed as representative counsel to all Non-Union Employees and Retirees.

13. HBC's process is contrary to established caselaw and is not court-approved. It is a disguised attempt to displace KM, a firm that HBC does not like. KM has had adversarial litigation against HBC in the past.

14. In the seventh week of this real-time litigation, while HBC injures employees and retirees continually with firings, no severance pay and benefits cuts, HBC now wants to substitute KM with a new firm that has had no prior involvement with the proceeding. To accomplish its objective of displacing KM, HBC is not following the established court-approved processes for the selection by the Court of a representative counsel where multiple law firms are apparently interested.

15. Instead, HBC has contrived its own secretive process, unfair to the candidates and the Non-Union Employees and Retirees, and seeks to foist its selection on the Court for fast approval under the pretense of urgency.

16. HBC's tactics and motion have injected unnecessary confusion into the representation of the Non-Union Employees and Retirees and are running up costs. If the Court grants their motion, a change in firms at this juncture will create more disruption and confusion for the Non-Union Employees and Retirees which is both unnecessary and unjust.

## **PART II - THE FACTS**

17. At the time of the commencement of the CCAA proceedings, HBC employed approximately 9,364 employees in Canada, of which 8,717 employees are non-unionized. The HBC Pension Plan has approximately 4,000 members according to the public website of the Financial Services Regulatory Authority of Ontario ("**FSRA**").

18. No representative counsel was arranged by HBC to assist the Non-Union Employees and Retirees from the outset of the proceeding, as was done in other cases such as *Stelco*, *Sears Canada*, *Nordstrom* and others. These employees and retirees were left on their own while the CCAA proceeding barrelled forward.

19. Following news of the CCAA filing, on March 7, 2025, KM was contacted by many Non-Union Employees and Retirees from across Canada urgently asking for advice and assistance. Given the fast pace and adversity in this proceeding, they required immediate assistance, which KM provided. The Non-Union Employees and Retirees were confused about the CCAA filing, distraught by the collapse of an iconic Canadian company, and stressed at the prospect of job losses without severance pay, the losses of their other benefits and the impact on their families.

20. While under CCAA protection, HBC has terminated and continues to terminate employees without paying severance pay. It is also terminating other sources of income and compensation owing to the Non-Union Employees and Retirees (described below).

21. These proceedings are highly adversarial, real-time litigation. Voluminous materials have been filed. KM has been advocating for the Non-Union Employees and Retirees since the outset of the CCAA proceeding, without fees, and has had to take adversarial positions to HBC.

22. No other law firm has appeared in Court advocating for the Non-Union Employees and Retirees.

23. KM is now retained by approximately 415 Non-Union Employees and Retirees of HBC to represent them in the CCAA proceedings.

24. At the last court attendance on March 27, 2025, KM informed the Court that it is bringing forward a motion for the Court to appoint KM as representative counsel. There was no objection or adverse comment made by any stakeholder in response.

**HBC is an adverse litigant to the employees and retirees**

25. Since the onset of the CCAA proceedings, HBC has stopped or detrimentally changed numerous forms of compensation and benefits for the Non-Union Employees and Retirees, including:

- **Termination of Salary Continuance Payments:** In the years prior to the CCAA proceeding, HBC terminated approximately 100 employees who were given only severance pay as salary continuance. On March 17, 2025, after the commencement of the CCAA proceeding, HBC stopped paying the balance of salary continuance payments it owed to those employees.
- **No Severance Pay:** In March 2025, HBC published answers to frequently asked questions for new associates. In an Associate FAQ document, dated March 18, 2025, HBC wrote that associates "will not be paid any severance at termination" and may "file a claim against the Company's estate for any amounts which may be owing".

On April 4, 2025, approximately 200 corporate HBC employees were notified that their employment would be terminated effective April 4, 2025. These employees were given five days working notice and told that they would not receive any additional pay in lieu of notice or severance pay from HBC. Throughout April 2025, HBC continued to provide notices of termination to its employees in various store locations.

- **Maternity Leave Top-Up Terminated:** Pursuant to the terms of the Maternity and Parental Leave Policy dated March 1, 2022, HBC is to provide employees who were on parental leave weekly supplemental payments equivalent to 85% of their normal weekly



wage earnings for a period of up to 30 weeks. On March 20, 2025, HBC sent a letter to all employees on parental leave stating that the company will not provide "any further maternity or paternity leave top-up payments" leaving new mothers and fathers without this important income source while they are on parental leave.

- **Commission Pay Terminated:** Throughout April 2025, HBC sent a notice to active employees that they will "not be eligible to earn any commission, even if [they] are working in a commissionable department/role" and the titles of their positions will revert to "sales associate". For many employees, this resulted in a decrease in their hourly pay from \$29/hour to minimum wage. This notice was sent to all sales associates, including those employed at the six HBC stores that were not initially subject to liquidation sales.
- **LTD Benefits at High Risk:** As of April 30, 2025, all long-term disability ("LTD") benefits will be terminated by HBC. The long-term disability benefits provided by HBC are not insured and are only administered by Manulife Financial pursuant to an "Administrative Services Only" agreement between Manulife and HBC. Accordingly, HBC itself funds the benefit plan, but Manulife administers it through their website and back-end processes. There is no independent insurance policy or fund behind these benefits.
- **Employees cannot access WEPP for a payment toward unpaid wages and severance:** Since HBC obtained protection under the CCAA, it is not at this time in bankruptcy or under receivership. Accordingly, pursuant to section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222, the terminated employees are not eligible to obtain a payment from the Wage Earner Protection Program ("WEPP") unless a court first

declares that they are eligible for such on a motion brought before the court and for that order to be made, all of the HBC employees have to be terminated, which has not yet occurred. WEPP will pay the terminated employees up to \$8,844.22 in respect of their unpaid severance claims. For many employees, this amount is expected to be lower than the pay in lieu of notice and severance and other amounts owing by HBC.

- **Supplemental Pension Benefits Terminated:** On March 28, 2025, HBC sent a letter to all retirees who earned entitlements in their Supplementary Executive Retirement Plan ("**SERP**") stating that it was terminating SERP payments from its general revenue and that retirees "will not receive any further payments or benefits under the part of the SERP that was not pre-funded."

Further to that letter, on April 2, 2025, the Royal Trust Corporation of Canada wrote to HBC retirees who were SERP participants to advise that it was "proceeding with the necessary steps to wind up these SERPs as required by the Trust Agreements between HBC and Royal Trust." The letter informed SERP participants that KM was representing retirees of HBC and Zellers Inc. and that retirees "may wish to contact this law firm for further information".

- **Retiree Health Benefits Terminated:** On April 11, 2025, HBC sent a letter to its retirees stating that it made the "decision to terminate the retiree life, health, and/or welfare benefits currently provided". These important benefits are terminated effective April 30, 2025.

26. In sum, HBC's terminations of payments and benefits has caused widespread hardships to the Non-Union Employees and Retirees and their families and generated multiple and different claims and liabilities against HBC.

27. KM has also been retained by several disabled HBC employees who rely on LTD monthly benefits and are at high risk of losing those payments in HBC's liquidation, as occurred in the insolvency cases of *Eaton's* and *Nortel*, among others, as those benefits are paid from the company's general revenues. This looming problem for these highly vulnerable individuals were raised by KM with the company. Two emails were also sent over the past weeks asking for the intentions of the company with respect to the disabled employees and to provide as much notice as possible to them regarding the termination of these payments. To date, KM has not received a response.

28. Based on other large insolvencies with mass employee terminations KM has worked on as representative counsel, the population of HBC employees (approximately 9,400 employees) will be owed severance well in excess of \$100M, making the HBC employees a significant creditor group.

29. Further, KM, along with several landlords, opposed the motion brought by lenders for the Court to approve a "Restructuring Support Agreement" ("**RSA**") which *inter alia*, would have severely restricted HBC's use of its funds, including restricting the funding of an employee representative counsel. At the hearing, KM negotiated with the lender to add agreement language to that document so that the Court would have retained the authority to decide on such funding. However, the company supported the RSA which, if approved in its original form, would have operated to prevent HBC from funding *any* representative counsel. The position of the company was adverse to the interests of the employees. The Court issued a decision dismissing the motion to approve the RSA.

30. On April 3, 2025, FSRA appointed TELUS Health (Canada) Ltd. (actuaries) to take over as the administrator of the HBC Pension Plan, a combined defined benefit/defined contribution plan. It is expected that the pension plan will be ordered to be wound up and all its assets will have to be distributed. A pension plan wind up is a complex process which will involve legal work to ensure pension plan members' entitlements and rights are protected, which KM can also assist employees and retirees with.

**KM Representation of HBC employees and retirees to date**

31. From the CCAA comeback date on March 17, 2025, KM filed two Aide Memoires and appeared before the Court as the advocate for the Non-Union Employees and Retirees at five hearings making submissions on their behalf.

32. To date, KM has corresponded with hundreds of HBC employees about the CCAA proceeding which is continuing each day. KM has organized employee and retiree committees, and set up a webpage on its firm's website to provide employee and retiree information, which for the period from March 19 – April 20, 2025 has had over 2,400 external visits. KM also set up an email and telephone hotline for employee and retirees to call, staffed by the firm's client communications department who have received 400 contacts to date. That number is in addition to the many calls from HBC employees and retirees to KM lawyers directly.

33. On April 7, 2025, the HBC lawyers sent a letter that it was soliciting proposals from law firms for the role of representative counsel and that HBC would "select" the firm to be the employee representative counsel. HBC would then impose its selection on the Non-Union Employees and Retirees.

34. KM responded to that letter and raised concerns about HBC's selection process, pointing out that: (i) it is the Court's role to appoint a representative counsel; and (ii) HBC was an adverse litigant to the Non-Union Employees and Retirees and was taking prejudicial steps against them, and was in a conflict of interest. As such, HBC's selection process cannot be seen to be independent by the very people the company and Monitor admit are in a vulnerable position.

35. Yet, on Thursday night, April 17, 2025, HBC served a motion that it had selected another firm to be the employee representative counsel out of apparently six firms. HBC scheduled its motion one week later on April 24, 2025 for two hours. KM was not consulted on the date, nor the duration of time booked.

36. The members of KM's employee and retiree committees, who speak with large numbers of other HBC employees and retirees across Canada, oppose HBC's motion to stick them with a lawyer they don't know, a lawyer who hasn't represented them to date, and a lawyer that over 415 of them expressly do not want.

37. The committees, as well as many other HBC employees across Canada, have told KM they are very satisfied and grateful for KM's advice and advocacy on their behalf where they otherwise would feel abandoned by HBC and in a complicated legal proceeding with other stakeholders who are represented by major law firms. The KM clients want to continue to be represented by KM. They do not trust the company to select another firm and have HBC impose its selection on them against their wishes.

38. In addition, HBC's motion has injected confusion and fragmentation among the employees and retirees in an already stressful environment for them.

39. HBC's motion to install another law firm is especially objectionable since KM has been acting as *de facto* representative counsel for the Non-Union Employees and Retirees due to the lack of a formal representative counsel from the inception of the proceeding and the urgent need to provide legal advice and assistance to the employees and retirees. HBC's materials state that the law firm it selected plans to do what KM has already done: create a forum where the complex and fast-paced flow of information can be distilled and transmitted to the Non-Union Employees and Retirees. There is no need to duplicate this work as that has already been done on their behalf.

### **PART III - ISSUES**

a) Should the Court approve of HBC's selection of a new law firm for the role of representative counsel? **Answer: No.**

b) Given there are multiple law firms interested in the role, should the Court appoint an ITP to make a recommendation to the Court? **Answer: Yes.**

c) If the Court is not inclined to appoint an ITP, should the Court schedule a contested motion hearing for the appointment of representative counsel? **Answer: Yes.**

### **PART IV - THE LAW & ARGUMENT**

#### **Issue #1 - The process pursued by HBC to "select" representative counsel is wrong and contrary to caselaw**

40. The appointment of a representative counsel derives from two legal sources: Rule 10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and section 11 of the CCAA. Under both of those provisions, it is the Court that appoints a representative counsel, not a company. As held by Justice Morawetz (as he then was) in *Nortel Networks Corporation (Re)*:

[10] *The court* has authority under Rule 10.01 of the *Rules of Civil Procedure* to appoint representative counsel where persons with an interest in an estate cannot be readily ascertained, found or served.

[11] Alternatively, Rule 12.07 provides *the court* with the authority to appoint a representative defendant where numerous persons have the same interests.

[12] In addition, *the court* has wide discretion pursuant to s. 11 of the CCAA to appoint representatives on behalf of a group of employees in CCAA proceedings and to order legal and other professional expenses of such representatives to be paid from the estate of the debtor applicant.<sup>2</sup> [emphasis added]

41. Although no other law firm has appeared in Court advocating for the Non-Union Employees and Retirees, HBC says that there are six firms (including KM) who expressed interest in the role.

42. Where there are multiple law firms expressing an interest in the role of representative counsel, the Courts have applied one of two processes. The common factor is that the Court not only appoints the representative counsel, but also oversees and approves the process prior to making the appointment:

- a) the recent approach of Morawetz, C.J.O. in the *Bridging Finance*<sup>3</sup> case where he appointed an ITP to assess and make a recommendation to the Court as to which law firm to appoint; or
- b) where the Court schedules a contested carriage motion hearing, on notice to all the interested law firms, hear all the submission, and then the Court decides which law

---

<sup>2</sup> *Nortel Networks Corporation (Re)*, [2009] OJ No 3280 at [paras. 10-12](#).

<sup>3</sup> *Ontario Securities Commission v Bridging Finance Inc.*, [2021 ONSC 5700](#).

firm to appoint, such as in the Nova Scotia case of *Quadriga Fintech Solutions Corp. (Re)*.<sup>4</sup>

43. It is submitted that the first approach is more appropriate for this case. Hon. Douglas Cunningham K.C. is available to be appointed the ITP.

44. If the Court is not inclined to appoint an ITP, then a schedule should be set for a contested motion to appoint KM as representative counsel. Notice should be given to all interested candidates. Given that other parties are expected to participate, it is estimated a full day is required. As noted, there will be no vacuum advising and assisting the employees while either the Court appoints a ITP or schedules a carriage motion. KM will continue to represent the employees and retirees during this process. HBC's claims of urgency or haste are not tenable. Indeed, HBC could have dealt with the consensual appointment of a representative counsel prior to the filing in an orderly manner, as other cases have done.

**Issue #2 - The Court should appoint an ITP**

45. In *Bridging Finance*<sup>5</sup> Morawetz, C.J.O. had to deal with multiple firms expressing interest in the role. To resolve that, Morawetz, C.J.O. appointed the Hon. Todd Archibald K.C. as the ITP. Morawetz, C.J.O. noted that it was not appropriate for the receiver (even though it is a court-appointed entity) to do the assessment:

[8]...As currently proposed, counsel submits that the Receiver's Appointment Process does not provide the retail investors with any transparency or insight into their representative committees and does not offer the retail investors a clear vision of how their opinions will be presented to the court.

---

<sup>4</sup> [2019 NSSC 65](#).

<sup>5</sup> *Supra* note 3.



[9] *In my view, the concerns raised by counsel for the Ad Hoc Committee are legitimate and need to be addressed...*<sup>6</sup> [emphasis added]

46. In his assessment, Mr. Archibald applied a multistep and transparent process for all the candidates:

- a) He asked for written proposals;
- b) He conducted oral interviews of all candidates;
- c) He asked each candidate the same series of questions which explored potential issues that could arise from the Representative Counsel mandate; and
- d) To be "transparent and fair" he told all candidates were told in advance of the identities of the other interviewees and were questions about the advantages which they could bring over the competing firms.<sup>7</sup>

47. Mr. Archibald then applied the following factors in the assessment: (i) independence; (ii) targeted expertise; (iii) expertise in the relevant issues; and (iv) demonstrated interest in working with the court-appointed officer (collectively with his process, the "**Archibald Factors**").<sup>8</sup> With respect to Independence, Mr. Archibald explained that:

The successful representative counsel must be a fearless advocate for the investors. Unitholders must have confidence that they will be independently represented and fearlessly represented with an absence of any real or perceived conflicts...

---

<sup>6</sup> *Ibid* at [paras. 8-9](#).

<sup>7</sup> *Ontario Securities Commission v Bridging Finance Inc.* (27 September 2021), Toronto CV-21-00661458-00CL (ONSC), Schedule A at 2.

<sup>8</sup> Chief Justice Morawetz ordered that the process by Mr. Archibald to be repeated in *Bridging Finance* when he was re-appointed to assess and recommend to the Court the law firm to be representative counsel for another group of unitholders with priority claims.

The unitholders' faith in the process requires that potential Representative Counsel be seen to be independent of Bridging.<sup>9</sup>

48. The Court accepted the ITP's recommendation based on the Archibald Factors.
49. In the case at bar, HBC did not follow either of the established Court-approved processes. Instead, HBC embarked on its own process, for which it did not even obtain the prior approval of the Court.
50. In its process, HBC only did a) above – it asked for a written proposal.
51. HBC did not apply criteria b), c) or d). HBC then made its own selection of who should be the representative counsel.
52. In *Bridging Finance*, both the court and the ITP focused on the need that the process for selecting representative counsel be seen by the class as fair and transparent. It is, after all, the process for selecting their zealous advocate. Mr. Archibald stated that "[t]he unitholders' faith in this process requires that potential Representative Counsel be seen to be independent of Bridging."<sup>10</sup>
53. HBC's is an adverse litigant who has caused injury to the employees and retirees. Its hand-picking of another law firm as the Non-Union Employees and Retirees' advocate cannot be not seen as independent of HBC in these circumstances.
54. HBC is adverse to them. It has terminated their jobs. When it fires them, it tells them they won't get statutory severance pay. For those still working, HBC seems to daily change their pay

---

<sup>9</sup> *Supra* note 7, Schedule A at 2-4.

<sup>10</sup> *Ibid.*

and benefits – always for the worse. It reneges on promises to pay salary continuation payments to fired employees who relied on the good word of the company. It tells new parents they aren't getting maternity top-up. And after all these indignities and damages, which only the CCAA stay prevents swift justice, it now comes to this Court with a hand-picked law firm it proposes to act for the very people it has injured. Can the Non-Union Employees and Retirees not have a reasonable apprehension that HBC may not have their best interests at heart?

55. The Non-Union Employees and Retirees already have retained an independent firm who has demonstrably stood up in court on their behalf in this proceeding. It has already set up modes of communication to disseminate the flood of information resulting from this proceeding. They *already have* a lawyer they like and want to keep, and which HBC now wants to displace to install its own selection.

**Issue #3 - In the alternative, the Court should schedule a carriage motion for the Court to decide on representative counsel**

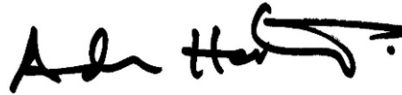
56. If the Court is not inclined to follow the Archibald Factors from *Bridging Finance*, then the KM clients request the Court to schedule a contested carriage motion hearing, on notice to all the interested law firms, and hear all the submissions, and then pick the law firm to appoint a representative counsel.

**PART V - ORDER REQUESTED**

57. The KM clients respectfully request an order dismissing HBC's motion to appoint Ursel Phillips Fellows Hopkinson as representative counsel to the Non-Union Employees and Retirees. Instead, the Court should either (a) appoint an ITP to make a recommendation to the Court on the

appointment of representative counsel; or (b) schedule a contested motion hearing for the appointment of representative counsel.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 23<sup>rd</sup> day of April, 2025.



---

**ANDREW HATNAY**



---

**ROBERT DRAKE**



---

**ABIR SHAMIM**

Lawyers Evan Marshall, Steven Karo,  
and James Common, and 415 other HBC  
employees and retirees

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *Ontario Securities Commission v Bridging Finance Inc.* (27 September 2021), Toronto CV-21-00661458-00CL (ONSC).
2. *Ontario Securities Commission v Bridging Finance Inc.*, [2021 ONSC 5700](#).
3. *Nortel Networks Corporation (Re)*, [\[2009\] OJ No 3280 \(ONSC\)](#).
4. *Qudriga Fintech Solutions Ltd.*, [2019 NSSC 65](#).

**SCHEDULE “B”  
RELEVANT STATUTES**

***Rules of Civil Procedure, R.R.O. 1990, Reg. 194***

Representation of an Interested Person Who Cannot be Ascertained

*Proceedings in which Order may be Made*

10.01 (1) In a proceeding concerning,

- (a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
- (b) the determination of a question arising in the administration of an estate or trust;
- (c) the approval of a sale, purchase, settlement or other transaction;
- (d) the approval of an arrangement under the *Variation of Trusts Act*;
- (e) the administration of the estate of a deceased person; or
- (f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served. R.R.O. 1990, Reg. 194, r. 10.01 (1).

***Order Binds Represented Persons***

(2) Where an appointment is made under subrule (1), an order in the proceeding is binding on a person or class so represented, subject to rule 10.03. R.R.O. 1990, Reg. 194, r. 10.01 (2).

***Settlement Affecting Persons who are not Parties***

(3) Where in a proceeding referred to in subrule (1) a settlement is proposed and some of the persons interested in the settlement are not parties to the proceeding, but,

- (a) those persons are represented by a person appointed under subrule (1) who assents to the settlement; or

(b) there are other persons having the same interest who are parties to the proceeding and assent to the settlement,

the judge, if satisfied that the settlement will be for the benefit of the interested persons who are not parties and that to require service on them would cause undue expense or delay, may approve the settlement on behalf of those persons. R.R.O. 1990, Reg. 194, r. 10.01 (3).

(4) A settlement approved under subrule (3) binds the interested persons who are not parties, subject to rule 10.03. R.R.O. 1990, Reg. 194, r. 10.01 (4).

***Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36***

General power of court

11. Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

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 et. al.**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at **TORONTO**

**FACTUM**

**KOSKIE MINSKY LLP**

20 Queen Street West  
Suite 900, Box 52  
Toronto, ON M5H 3R3

**Andrew J. Hatnay** (LSO# 31885W)

(T) 416-595-2083 / (E) [ahatnay@kmlaw.ca](mailto:ahatnay@kmlaw.ca)

**Robert Drake** (LSO# 57083G)

(T) 416-595-2095 / (E) [rdrake@kmlaw.ca](mailto:rdrake@kmlaw.ca)

**Abir Shamim** (LSO# 88251V)

(T) 416-354-7758 / (E) [ashamim@kmlaw.ca](mailto:ashamim@kmlaw.ca)

Lawyers for Evan Marshall, Steven Karo,  
and James Common and 415 other HBC employees  
and retirees