

April 22, 2025

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Via E-Mail

The Honourable Justice Peter J. Osborne
Ontario Superior Court of Justice
330 University Ave.,
Toronto, Ontario M5G 1R7

Your Honour:

**Re: *In Re Hudson's Bay Company* (CV-25-00738613-00CL)
Motion to Appoint Representative Counsel for Non-Unionized Employees
and Retirees of the Hudson's Bay Company ULC ("HBC")**

We are counsel to over 400 non-union employees and retirees of HBC who have retained us to represent them in HBC's proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA").

Our firm has been advocating for the HBC employees and retirees since the outset of the CCAA proceeding, without fees. The proceedings are highly adversarial and fast paced. Voluminous materials have been filed. HBC has taken numerous prejudicial steps against the employees, as described below.

No other law firm has appeared in Court advocating for the employees and retirees.

At the last court attendance on March 27, 2025, we informed the Court that we are bringing forward a motion for the Court to appoint our firm as representative counsel to all employees and retirees in the proceeding. There was no objection or adverse comment made by any stakeholder in response. We have been finalizing our motion materials, the affidavits, and obtaining documents from the employees and retirees.

On Thursday night, April 17, 2025, we were served with a motion by HBC that it had "selected" another firm to be the employee representative counsel out of apparently six firms it says expressed an interest in the role. HBC scheduled its motion for two hours this Thursday. We were not consulted on the date, nor the duration of time booked.

HBC's motion is especially objectionable since our firm has been acting as *de facto* representative counsel from the inception of the proceeding.

Our clients oppose HBC's motion. Our employee client committee, who in turn speaks with large numbers of other HBC employees across Canada, have told us they are very satisfied and grateful

for our advice and assistance. They want to continue to be represented by our firm. They do not trust the company to select another firm and have HBC's selection imposed on them against their wishes.

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

In the circumstances, we will be filing a cross-motion to appoint The Hon. Douglas Cunningham, K.C. as an Independent Third Party with the mandate to provide the Court with its recommendation on the appointment of representative counsel, as Morawetz, C.J.O. did in the *Bridging Finance*¹ case where multiple firms expressed interest in the role. In that case, Morawetz, C.J.O. appointed the Hon. Todd Archibald K.C. as the Independent Third Party. We enclose the Endorsement of Morawetz, C.J.O. for your ease of reference.

In his report to Morawetz, C.J.O. (copy enclosed), Mr. Archibald referred to the criteria of: (i) independence; (ii) targeted expertise; (iii) expertise in the relevant issues; and (iv) demonstrated interest in working with the court-appointed officer.² 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...

The unitholders' faith in the process requires that potential Representative Counsel be seen to be independent of Bridging.³

The Court accepted the Independent Third Party's recommendation based on the above criteria.

HBC's selection of a law firm of its own choosing is not consistent with the above criteria.

In the alternative, if the Court is not inclined to appoint The Hon. Douglas Cunningham K.C. as an Independent Third Party, we are requesting the Court to set a schedule for a contested motion for the appointment of our firm as representative counsel, as we previously informed the Court and stakeholders. Given that other parties are expected to participate, we estimate a full day is required.

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

² 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.

³ *Ontario Securities Commission v Bridging Finance Inc.* (27 September 2021), Toronto CV-21-00661458-00CL (ONSC), Schedule A at 2-3.

KM Representation of HBC employees and retirees to date

We first wrote to the company and Stikeman on March 5, 2025, prior to their CCAA application, inquiring on behalf of our existing HBC clients about the widespread rumours of an imminent CCAA filing by the company.

Following news of the CCAA filing on March 7, 2025, our firm was contacted by many employees and retirees from across Canada urgently asking for our legal advice. Given the fast pace and adversity in this proceeding, they required immediate legal assistance, which our firm provided. Many of the employees and retirees with whom we speak are distraught by the collapse of HBC and are stressed at their job loss without severance pay and the losses of other benefits.

From the CCAA comeback date on March 17, 2025, we filed two Aide Memoires and appeared before the Court as the advocate for the employees at five hearings making submissions on their behalf.

To date, we have corresponded with hundreds of HBC employees about the CCAA proceeding which is continuing each day. We organized employee and retiree committees, set up a webpage on our firm's website to provide information for them, which for the period from March 19 – April 20, 2025 has had over 2,400 external visits. We set up an email and telephone hotline for employee and retirees to call staffed by our 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 our firm's lawyers directly.

HBC has terminated multiple income sources - it is adverse to the employees and retirees

HBC has announced it is not paying severance pay to terminated employees, has terminated health benefits coverage, and ceased defined contribution pension payments during employees' severance periods and terminated retiree health benefits. It has terminated salary continuance payments to pre-CCAA terminated employees, terminated supplementary executive retiree benefits, and terminated commission pay to sales associates, all which causes widespread hardships to employees and their families.

We are also 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. We raised this looming problem for these highly vulnerable individuals with the company and sent two emails over the past weeks asking for its intentions for the disabled employees and to provide as much notice as possible to them of the termination of these payments. We did not receive a response.

Based on other large insolvencies with mass employee terminations that we have worked on as representative counsel, we estimate that 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.

We opposed (along with landlords) the motion brought by lenders for the Court to approve a "Restructuring Support Agreement" 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, we negotiated language with the lender to be added to that document that would have retained the authority of the Court 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.

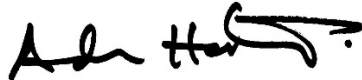
On April 3, 2025, the Financial Services Regulatory Authority of Ontario appointed TELUS Health (Canada) Ltd. (actuaries) to take over as the administrator of the HBC Pension Plan, a combined defined benefit/defined contribution plan. It is expected that the pension plan will be ordered to be wound up 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 our firm can also assist with.

We attach a copy of our Notice of Cross-Motion. The Cross-Motion Record will be served shortly.

Thank you for your consideration of this matter.

Yours truly,

KOSKIE MINSKY LLP



Andrew Hatnay

AJH/vdl: encl.

c. Clients
The Service List
James Harnum, Robert Drake, Abir Shamim, *Koskie Minsky LLP*

CITATION: Ontario Securities Commission v. Bridging Finance Inc., 2021 ONSC 5700
COURT FILE NO.: Court File No. CV-21-00661458-00CL
DATE: 2021-08-26

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: ONTARIO SECURITIES COMMISSION, Applicant

AND:

BRIDGING FINANCE INC., BRIDGING INCOME FUND LP, BRIDGING MID-MARKET DEBT FUND LP, SB FUND GP INC., BRIDGING FINANCE GP INC., BRIDGING INCOME RSP FUND, BRIDGING MID-MARKET DEBT RSP FUND, BRIDGING PRIVATE DEBT INSTITUTIONAL LP, BRIDGING REAL ESTATE LENDING FUND LP, BRIDGING SMA 1 LP, BRIDGING INFRASTRUCTURE FUND LP, BRIDGING MJ GP INC., BRIDGING INDIGENOUS IMPACT FUND, BRIDGING FERN ALTERNATIVE CREDIT FUND, BRIDGING SMA 2 LP, BRIDGING SMA 2 GP INC., and BRIDGING PRIVATE DEBT INSTITUTIONAL RSP FUND, Respondents

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *John Finnigan, Adam Driedger and Erin Pleet,* for the Receiver

Adam Gotfried and Carlo Rossi, for the Ontario Securities Commission

David Bish, for The Coco Group, 2693600 Ontario Inc., Rocky Coco and Jenny Coco

Jeremy Dacks, for BlackRock Financial Management, Inc.

Steven Weisz, for the University of Minnesota Foundation

Steve Graff, for Investors in Various Bridging Funds

Sharon Kour, Pat Corney, Andrew Kent, for the Ad-Hoc Group of Retail Investors

David T. Ullmann, for the Respondents, Thomas Canning (Maidstone) Limited, William Thomas, Robert Thomas, and 2190330 Ontario Ltd.

HEARD: August 23, 2021

ENDORSEMENT

[1] PricewaterhouseCoopers Inc. (the “Receiver”) brings this motion for an order, among other things:

- (a) continuing the appointment of the limited partner advisory committee representing the Bridging Funds generally (the “LPAC”) and the limited partner

advisory committee representing the Bridging Indigenous Impact Fund (the “BIIF LPAC” and together with the LPAC, the “Committees”) pending further order of the court;

- (b) approving the process for the appointment of representative counsel for the Unitholders (“Representative Counsel”) as set out in the Sixth Report of the Receiver dated August 16, 2021 (the “Sixth Report”); and
- (c) approving the Sixth Report and the activities, decisions and conduct of the Receiver set out therein.

[2] Subject to certain modifications with respect to the process for the appointment of Representative Counsel, the requested relief was not opposed.

[3] Having reviewed the Sixth Report as well as the submissions of counsel for the Receiver and for the Ad Hoc Committee of Retail Investors (the “Ad Hoc Committee”), I am satisfied that it is appropriate to extend the appointment of the Committees until further order of the court.

[4] I am also satisfied that it is appropriate to approve the activities, decisions and conduct of the Receiver as set out in the Sixth Report.

[5] The Receiver is of the view that the conduct of the receivership will be aided by the appointment of Representative Counsel. The proposed scope of the Representative Counsel mandate will be to advise Unitholders on:

- (a) assessing sale, investment, and/or hybrid proposals received during Phase 2 of the SISP and providing feedback to the Receiver;
- (b) assessing interfund allocation issues which may arise as a result of the Receiver’s report on these transfers, including the identification of conflicts which may arise between the Bridging Funds and the merits of any interfund claims which may arise; and
- (c) analyzing claims that Unitholders may have against Bridging, its officers and directors and third parties arising out of the operation of the Bridging’s business.

[6] A number of law firms have expressed interest in the Representative Counsel mandate. The Receiver proposes that the law firms provide written proposals to the Receiver within 10 business days (the “Proposal Deadline”) and that the written proposal include details, among other things, of the qualifications of the candidate as well as any Unitholder support for the appointment of the candidate. The Receiver then proposes to interview each candidate and after consultation with the Committees, the Receiver will select one or more candidates to recommend to the court to be approved as Representative Counsel.

[7] Counsel for the Ad Hoc Committee submits that the Receiver’s appointment process should be approved with certain modifications to ensure the independence of Representative Counsel. In addition, counsel submits that the process should also avoid parties involved in the

marketing and sale of Bridging units (who, in certain respects material to the appointment of Representative Counsel, may be adverse in interest to the retail investors) exercising or appearing to exercise undue influence over the appointment process. Counsel proposes the following modifications:

- (a) instead of the Receiver soliciting written proposals from interested law firms and interviewing each candidate, interested law firms who meet certain baseline criteria shall apply to the court for consideration;
- (b) instead of having the Committees and Receiver select candidates to recommend to the court, the court will consider the applications of interested law firms and will make a judicial determination having regard to the varied competing interests of stakeholders, creditors, and retail investors; and
- (c) following its appointment, Representative Counsel will call for applications from retail investors to form a five to seven member committee to instruct Representative Counsel (the “RIC” or “Retail Investors Committee”).

[8] Counsel for the Ad Hoc Committee submits that the Retail Investors Committee’s primary goal is recovery of their investments. As such, they require counsel who can provide frank advice on their rights and entitlements without concern about business or ethical conflicts that may arise *vis-à-vis* financial institutions and brokers. They submit that the Representative Counsel appointment process must take this reality into account. 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.

[9] In my view, the concerns raised by counsel for the Ad Hoc Committee are legitimate and need to be addressed. However, I also have to take into account that, given the ongoing SISF, time is of the essence in these proceedings. It is necessary that the selection of Representative Counsel be conducted on an expedited basis. In order to ensure that there are no delays in the selection process, the Receiver is to immediately commence the Appointment Process to obtain Written Proposals (both terms as defined in the Sixth Report).

[10] However, modifications are to be made to the Appointment Process. I will appoint an independent third party, immediately after the deadline for submissions of Written Proposals, to evaluate the Written Proposals and to recommend to the court the party to be approved as Representative Counsel. In formulating the process to evaluate the Written Proposals, the independent third party, in her or his sole discretion, can consult with the Receiver and counsel to the Ad Hoc Committee. The recommendation to the court is to be made within 10 business days of the Written Proposal deadline. I note that, during the hearing, counsel to the Ad Hoc Committee did not express any objection to my suggestion of this possible modified process.

[11] The independent third party is to be compensated at a reasonable hourly rate to be determined by the Receiver, after consultation with the independent third party, and is to be paid as a disbursement by the Receiver.

[12] With respect to the submissions by counsel to the Ad Hoc Committee concerning the Retail Investor Committee, it seems to me that this matter can be deferred until such time as Representative Counsel has been appointed and has had the opportunity to review the issue with the Receiver. If necessary, further directions may be sought on this point.

[13] An order shall issue to reflect the foregoing.



Chief Justice G.B. Morawetz

Date: August 26, 2021

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ONTARIO SECURITIES COMMISSION, Applicant

AND:

BRIDGING FINANCE INC., BRIDGING INCOME FUND LP, BRIDGING MID-MARKET DEBT FUND LP, SB FUND GP INC., BRIDGING FINANCE GP INC., BRIDGING INCOME RSP FUND, BRIDGING MID-MARKET DEBT RSP FUND, BRIDGING PRIVATE DEBT INSTITUTIONAL LP, BRIDGING REAL ESTATE LENDING FUND LP, BRIDGING SMA 1 LP, BRIDGING INFRASTRUCTURE FUND LP, BRIDGING MJ GP INC., BRIDGING INDIGENOUS IMPACT FUND, BRIDGING FERN ALTERNATIVE CREDIT FUND, BRIDGING SMA 2 LP, BRIDGING SMA 2 GP INC., and BRIDGING PRIVATE DEBT INSTITUTIONAL RSP FUND, Respondents

DIRECTION

[1] Following the endorsement of August 23, 2021, I appointed The Honourable Todd L. Archibald as the Independent Third Party with a mandate to provide the Court with a recommendation for the appointment of Representative Counsel in these proceedings. Mr. Archibald submitted his report on September 24, 2021 in which he recommended that Bennett Jones LLP be appointed as Representative Counsel.

[2] Mr. Archibald's report (without appendices) is attached as Schedule "A".

[3] I have reviewed Mr. Archibald's report and accept his recommendation.

[4] Bennett Jones LLP is appointed as Representative Counsel.



Chief Justice G.B. Morawetz

Date: September 27, 2021



Memorandum

To: The Honourable Geoffrey B. Morawetz, Chief Justice of the Superior Court of Justice of Ontario

From: The Honourable Todd L. Archibald

Date: September 24, 2021

RE: Review of Applications for Representative Counsel for the Unitholders of Funds managed by Bridging Finance Inc. and Certain of its Affiliates: Court File: CV-21-00661458-00CL

Dear Chief Justice Morawetz,

Thank you for the appointment as the independent third party ("ITP") to assess the proposals of the five law firms (two of which are consortiums), who have applied to be representative counsel for the unitholders of funds managed by Bridging Finance Inc. ("Bridging") and certain of its affiliates (CV-21-00661458-00CL). The scope of the Representative Counsel mandate is set out in the Sixth Report of PricewaterhouseCoopers Inc ("the Receiver") dated August 16, 2021, and is captured in the Court's endorsement of August 23, 2021, in paragraph five as follows:

The proposed scope of the Representative Counsel mandate will be to advise Unitholders on:

- (a) assessing sale, investment, and/or hybrid proposals received during Phase 2 of the SISP and providing feedback to the Receiver;
- (b) assessing interfund allocation issues which may arise as a result of the Receiver's report on these transfers, including the identification of conflicts which may arise between the Bridging Funds and the merits of any interfund claims which may arise; and
- (c) analyzing claims that Unitholders may have against Bridging, its officers and directors and third parties arising out of the operation of the Bridging's business. ¹

1. OSC v. Bridging Finance Inc et al., 2021 ONSC 5700 at paragraph 5.

A. PROCESS:

The Court has asked the ITP to make a recommendation on the appointment of Representative Counsel to act for the approximately 26,000 investors in Bridging. To assess the quality of the applications, the ITP carefully reviewed the written proposals on September 21, 2021. The ITP then conducted oral interviews with representatives from all of the candidates on September 22, 2021.

In each interview, the ITP asked the same series of questions. The questions explored potential issues which could arise from the Representative Counsel mandate. To be transparent and fair in the process, the candidates were all told in advance the identities of the other interviewees and were questioned about the advantages which they could bring over the competing firms. The questions are attached to this memorandum in Appendix "A".

As per Chief Justice Morawetz's August 23, 2021 endorsement, the ITP also consulted with the Receiver concerning the breadth and substance of the applications. The ITP did not, however, separately consult with counsel to the Ad Hoc Committee of Retail Investors since their counsel also participated as one of the applicants in this interview process. The ITP was apprised of their perspectives during the interview.

All five applicants were extremely well qualified and had significant commercial and insolvency expertise and experience. Every candidate submitted impressive and detailed proposals and provided thoughtful answers during the interviews. The decision to select one proposal out of five was difficult.

B. RECOMMENDATION:

Following extensive deliberations, the ITP recommends to the Superior Court of Justice that **Bennett Jones LLP** should receive the appointment as Representative Counsel. Their written proposal is attached as "Appendix B" to this memorandum. The key factors involved in the assessment are as follows:

I. Independence:

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

Each of the firms were qualified; however, certain of the firms were burdened with problematic conflicts or have relationships with other entities such as investment advisor firms that could be the subject of the advice that Representative Counsel will be expected to give to the unitholders.

The unitholders' faith in this process requires that potential Representative Counsel be seen to be independent of Bridging. The ITP is satisfied that Bennett Jones LLP has sufficient independence, and that any conflicts that might be identified will be managed without compromising its independence.

The ITP very much appreciated each of the firm's candour in discussing actual and potential conflicts and independence.

2. Targeted Expertise:

As set out in the Court's August 23, 2021 endorsement, a key aspect of this mandate is to represent the interests of the investors with respect to the sale and investor solicitation process (the "SISP"). This is a critical component of the mandate since the successful conclusion of that process will be crucial in maximizing value for the Bridging unitholders.

To discharge this function, counsel will require sophisticated financial and corporate law acumen, including a deep M&A capability in complex commercial transactions. It is important to underline that the SISP is already underway. The recommended firm must have existing knowledge to meaningfully participate and advocate in the unfolding process.

In its application and interview, counsel from Bennett Jones LLP demonstrated a thoughtful and sophisticated understanding of the present issues and raised possible avenues to address other issues which are expected to arise, with a view to maximizing recovery. The firm immediately provided "added value" and demonstrated a deep understanding and expertise with respect to the specific mandate. Their approach stood out in the interview process.

3 Expertise in Indigenous Issues:

There are pervasive and important Indigenous issues relating to Bridging. For example, Bridging has significant Indigenous borrowers, and it managed the Bridging Indigenous Impact Fund.

Bennett Jones LLP has given serious consideration to the Indigenous aspects of the file and have proposed to include the co-head of their aboriginal law group as a key member of this team. That is an important element in the ITP's assessment.

4 Demonstrated Interest in Working with the Receiver:

While Bridging's unitholders require and are entitled to zealous and independent representation, it is recognized that their interests will also be served by being represented by counsel who recognize the importance of cooperation with the Receiver to maximize value for the unitholders.

While they were certainly not the only firm to highlight this approach, Bennett Jones LLP emphasized their willingness and the importance of working with the Receiver.

C. CONCLUSION:

All of the applications from the five firms were excellent. Each candidate articulated a thoughtful case as to why it was best suited for the role, and it was a challenging decision to select one proposal; however, the ITP was tasked with recommending one firm to be appointed as Representative Counsel, and based upon the above considerations, the ITP respectfully recommends to the Superior Court of Justice the appointment of ***Bennett Jones LLP***.

Yours sincerely,

A handwritten signature in black ink that reads "Todd L. Archibald". The signature is written in a cursive, flowing style.

The Honourable Todd L. Archibald