

**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

NOTICE OF CROSS-MOTION

**(For the appointment of an Independent Third Party (Douglas Cunningham, Q.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)**

Evan Marshall, Steven Karo, and James Common will make a cross-motion before The
Honourable Mr. Justice Osborne of the Ontario Superior Court of Justice (Commercial List) on
April 24, 2025, at 11:00 a.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard in person at 330 University
Avenue, Toronto, Ontario or via Zoom video conferencing, as directed by the Court.

THE MOTION IS FOR:

1. **AN ORDER**, if necessary, that the time for service of the Notice of Cross-Motion and the
Motion Record is hereby abridged and validated so that this motion is properly returnable today
and that further service is hereby dispensed with.

2. **AN ORDER** dismissing the motion of the Applicants ("**HBC**") to appoint Ursel Phillips Fellows Hopkinson LLP as the Employee Representative Counsel.
3. **AN ORDER** appointing Hon. Douglas Cunningham, K.C. an Independent Third Party ("**TTP**") to make a recommendation to the Court to determine which law firm(s) should be appointed representative counsel for the terminated and active employees and retirees of HBC (the "**Non-Union Employees and Retirees**").
4. **AN ORDER** that the essential terms of the appointment process are:
 - (a) law firms or groups of one or more law firms that seek to be appointed as representative counsel for the Non-Union Employees and Retirees must submit written proposals to the court-appointed Monitor by a certain specified date (the "**Proposal Deadline**");
 - (b) each written proposal is to contain:
 - (i) the scope of the proposed representation;
 - (ii) the qualifications of the candidates;
 - (iii) the non-union employee/retiree support for the appointment of the candidates, including the number of Non-Union Employees and Retirees that have retained each candidate;
 - (iv) a budget providing an estimate of fees and disbursements; and
 - (v) identification of any business or ethical conflicts of interest that the candidate(s) may have or which may arise, including all current or past relationships with HBC and its stakeholders;

(c) immediately following the Proposal Deadline, the Monitor shall deliver the proposals to the ITP, who will evaluate the proposals; and

(d) The ITP will recommend to the Court the candidate(s) to be appointed as representative counsel for the Non-Unionized Employees and Retirees.

5. **AN ORDER**, in the alternative, setting a schedule for a contested motion appointing Evan Marshall, Steven Karo and James Common as the Representatives of all Non-Union Employees and Retirees and Koskie Minsky LLP ("**KM**") as Representative Counsel.

6. Such further and other relief as counsel may advise and that to this Honourable Court may seem just.

THE GROUNDS FOR THE CROSS-MOTION ARE:

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

2. HBC is reportedly controlled by NRDC Equity Partners, a private equity firm based in New York City.

3. HBC is liquidating while under CCAA protection.

4. 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.

5. HBC is terminating employees while under CCAA protection without paying severance pay. It is also terminating other sources of compensation owing to the employees and retirees,

(described below), causing widespread and significant hardships for employees and retirees and their families.

6. The moving parties Messrs. Marshall, Karo, and Common (the "**HBC Employee and Retiree Representatives**") are, respectively, a recently terminated employee from HBC's content engineering team, a terminated Division Vice President, and a retired sales associate. They are the proposed HBC Employee and Retiree Representatives in this proceeding, and they are representative of the range of Non-Union Employees and Retirees of HBC: Mr. Marshall was terminated on April 4, 2025 without severance pay and has statutory and common law employment claims against HBC; Mr. Karo is a former executive for whom HBC terminated payments for his salary continuance package, and (ii) terminated his benefits under SERP; and Mr. Common is a retiree who has had his retiree benefits terminated.

7. KM has been retained to date by 404 Non-Union Employees and Retirees of HBC to represent them in HBC's proceedings (the "**KM Clients**").

8. KM has been advocating for the Non-Union 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.

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

10. KM organized and meets with employee and retiree client committees, whose members speak with large numbers of other HBC employees and retirees across Canada. HBC employees

and retirees contact KM on a daily basis asking for KM for assistance and advice to represent them. KM has set up a dedicated website, a telephone hotline, and email path for HBC employees and retirees. KM lawyers also speak with employees and retirees directly each day.

11. In sum, since HBC's CCAA proceeding commenced on March 7, 2025, KM has been acting as a *de facto* representative counsel for the HBC employees and retirees.

12. At the last court attendance on March 27, 2025, KM informed the Court that it is bringing a motion to be appointed as representative counsel for the Non-Union Employees and Retirees. There was no objection or adverse comment made by HBC nor any stakeholder. KM has been finalizing the motion materials for that motion.

13. On Thursday night, April 17, 2025, HBC served a motion stating that it had "selected" another firm to be representative counsel to the Non-Union Employees and Retirees out of apparently six firms HBC says expressed an interest in the role. HBC scheduled its motion for Thursday April 24, 2025 for two hours. KM was not consulted on the motion date, nor the duration of time booked. There is no schedule for HBC's motion for the service of responding materials, cross-examinations, exchange of facts, etc.

14. The KM Clients oppose HBC's motion.

15. The KM Clients are very satisfied and grateful for KM's advice and assistance and want to continue to be represented by KM. They do not trust HBC to select another law firm, and do not want to have that HBC's selection imposed on them against their wishes.

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

17. In the circumstances, the Court should:

- a) appoint The Hon. Douglas Cunningham K.C. as the ITP 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 ITP; or
- b) schedule a contested motion for the Court to decide who to appoint as representative counsel on a future date for a full day so that the motion can proceed on an orderly basis.

18. In *Bridging Finance*, Mr. Archibald's report to Morawetz, C.J.O. recommending the representative counsel 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

19. The Court accepted the ITP's recommendation based on the above criteria.

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.

20. HBC's selection of a law firm of its own choosing is not consistent with the above criteria. HBC is adverse to the Non-Union Employees and Retirees and is in a conflict of interest with them. HBC's "selection" of a law firm to impose on the Non-Union Employees and Retirees is not an independent.

21. Mr. Cunningham is the retired Associate Chief Justice of Ontario and a highly respected mediator/arbitrator. He is amply qualified to perform the role of ITP in this proceeding.

KM Representation of HBC employees and retirees to date

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

23. Following news of the CCAA filing on March 7, 2025, KM was contacted by many employees and retirees from across Canada urgently asking for legal advice and assistance. Given the fast pace and adversity in this proceeding, they required and requested immediate legal assistance, which KM provided. Many of the Non-Union Employees and Retirees are distraught by the collapse of HBC, and are stressed at their job losses without severance pay, the losses of other compensation entitlements, and the losses of their benefits.

24. 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-Employees and Retirees at five hearings making submissions on their behalf.

25. To date, KM has corresponded with hundreds of HBC employees about the CCAA proceeding which is on-going each day. KM organized employee and retiree committees, set up a

webpage on its firm's website to provide information for them, which for the period from March 19, 2025 - April 20, 2025 has had over 2,400 visits. KM set up an email and telephone hotline for employee and retirees to call staffed by KM'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

26. HBC has taken a series of highly prejudicially actions impacting the Non-Union Employees and Retirees including:

- (a) terminating of current employees without severance pay;
- (b) stopping salary continuation payments to previously terminated employees;
- (c) terminating payment of maternity leave top-up benefits to mothers on maternity leave;
- (d) not providing adequate prior notice of termination of employment;
- (e) terminating supplementary executive retirement plan (the "**SERP**") benefits;
- (f) terminating retiree health benefits; and
- (g) terminating commission payments for sales associates;

27. KM estimates 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.

28. KM is 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. KM raised this looming problem for these highly vulnerable individuals with the company over the past weeks and sent two emails asking for its intentions for the disabled employees and to provide as much notice as possible to them of the termination of these payments. There was no response to the emails.

29. KM also advocated for the employees and retirees by opposing (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, KM 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 and retirees. The Court subsequently issued a decision dismissing the motion to approve the RSA.

30. On April 3, 2025, the Financial Services Regulatory Authority of Ontario appointed Telus Health (actuaries) to take over as the administrator of the HBC Pension Plan, a combined defined benefit/defined contribution plan. It is expected 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 significant legal work to ensure pension plan members' entitlements and rights are protected. KM has full expertise and experience to advocate for the employees and retirees in respect of their pension entitlements and rights.

31. The representation that KM provided to the Non-Union Employees and Retirees to date includes:

- (a) commencing on the CCAA comeback hearing on March 17, 2025, KM attended Court and filed an Aide Memoire and made submissions to the Court on behalf of the Non-Union Employees and Retirees informing the Court and all other stakeholders of the issues impacting the Non-Union Employees and Retirees, including their claims, statutory priorities, and potential claims under the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 ("**WEPPA**");
- (b) organized well-attended Zoom information sessions for HBC Non-Union Employees and Retirees;
- (c) calculated severance claims (for WEPPA and distribution purposes) for past and recently terminated HBC Non-Union Employees, including defined contribution pension amount owing by HBC during the severance period to each employee in order to prepare a claim based on section 6(6)(a)(ii)(B) of the CCAA, which as set out in previously filed Aide Memoires in this proceeding, is a priority claim to be paid ahead of all other creditors;
- (d) organized Non-Union Employee and Retiree committees and held Zoom meetings and telephone calls with the committees;
- (e) set up a webpage and toll-free hotline on their website providing information for Non-Union Employees and Retirees. To date, the KM webpage has received approximately 2,400 external visits;

- (f) had over 400 calls and emails with HBC Non-Union Employees and Retirees across Canada to provide advise and assistance in the CCAA proceeding; and
- (g) reviewed and analyzed the benefit plans applicable to HBC Non-Union Employees and Retirees, including a review of the Administrative Services Only long-term disability benefits.

32. Rule 10 of the *Rules of Civil Procedure*.

33. Section 11 of the CCAA.

34. Such further and other grounds as counsel may advise and of which this Honourable Court will permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1. The Affidavit of Evan Marshall, to be sworn, and the exhibits thereto;
- 2. The Affidavit of Steven Karo, to be sworn, and the exhibits thereto;
- 3. The Affidavit of James Common, to be sworn, and the exhibits thereto;
- 4. The Affidavit of James Harnum, to be sworn, and the exhibits thereto; and
- 5. Such further and other material as counsel may advise and this Honourable Court permit.

April 22, 2025

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TO: THE SERVICE LIST

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Proceeding commenced at **TORONTO**

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