

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

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3 AS AMENDED**

**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**

**REPLY FACTUM
(For Appointment of Representative Counsel for Terminated Canadian Employees,
returnable July 4, 2024)**

June 28, 2024

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Terminated Canadian Employees

REPLY

1. This is the Reply Factum of Stephanie Hood, the proposed Representative of all terminated employees (collectively, the "**Terminated Canadian Employees**" and individually, each a "**Terminated Canadian Employee**") of the Body Shop Canada Ltd. ("**TBS Canada**").
2. Koskie Minsky LLP ("**KM**") has been retained by 38 Terminated Canadian Employees out of 220 to date. This means that approximately 180 individuals who are creditors with claims have no legal representation at this time in this proceeding and are impacted by events and orders of the Court. KM has received urgent requests from the 38 Terminated Canadian Employees, which collectively comprise a significant creditor group, for legal advice and representation in this proceeding. The Representation Order would remedy this situation.
3. The request that TBS Canada pay costs of the Terminated Canadian Employees had been the main objection by TBS Canada to the motion to appoint a Representative and Representative Counsel.
4. Given the intense and prolonged opposition from TBS Canada to a Representation Order while this proceeding continues and in an effort to end this dispute, on June 13, 2024, KM, as counsel to 38 Terminated Canadian Employees, sent a letter to counsel to TBS Canada stating that it would not request for the costs of the Employees to be paid by TBS Canada at the motion returnable on July 4, 2024.
5. KM has not sought fees from the Terminated Canadian Employees as part of its obligation to provide access to justice for this vulnerable group who have lost their jobs, have no severance

pay, no payment under the Wage Earner Protection Program ("**WEPP**"), and whose future distributions from TBS Canada are unknown.

6. The *ad hoc* Employee Committee has instructed KM to instead seek payment of their costs from a possible future distribution payable to them, if any, subject to the approval of the Court.

7. In its factum dated June 24, 2024, at paras. 4 and 78, TBS Canada says that if the Terminated Canadian Employees drop their request for costs, which already occurred on June 13, 2024, then TBS Canada will "not take a position on whether or not KM is appointed as representative counsel."

8. TBS Canada's position should be sufficient to dispose of their objection to the appointment of Representative Counsel. This motion should be able to proceed unopposed.

9. However, TBS Canada now objects to two aspects of the requested Representation Order arguing that:

a) the Representation Order should not have an opt-out process for the approximately 180 Terminated Canadian Employees who are not currently represented by KM, but instead have an "opt-in" procedure; and

b) the Representation Order should not contain the standard Commercial List provision protecting Representative Counsel from liability, except claims based on gross negligence or wilful misconduct.

10. TBS Canada's remaining objections are without merit and should be rejected. Both features are central parts of representation orders and their inclusion in the Order sought herein reflects both the state of the law and sound policy.

a) *The Representation Order should have the usual "opt-out" process, not a novel "opt-in"*

11. A Representation Order is a type of group representation that emanates from Rule 10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, rather than its own specific statute. One of the purposes of a Rule 10 Representation Order, similar to a class proceeding, is that it provides a means of binding certain classes of persons to certain types of proceedings.

Paul M Perell & John W Morden, *The Law of Civil Procedure in Ontario*, 5th ed (Toronto: LexisNexis Canada, 2024), Reply Book of Authorities ("Reply BOA"), Tab 14 at 4.242-4.254.

12. In Ontario, a class proceeding is regulated by the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, which contains detailed provisions for the functioning of a class proceeding. The Legislature expressly chose an ***opt-out*** mechanism for class proceedings to allow an individual to disengage from a class proceeding if they wish. The opt-out mechanism has been appropriately imported by the courts into representation orders in insolvency cases. As explained by Justice Perell in *Crider v. Nguyen*, 2016 ONSC 4400:

[48] *Undoubtedly, the right to opt out is a fundamental procedural right under the Class Proceedings Act, 1992.* Indeed, as revealed by s. 27(2), the operative principle of a class proceeding that a class member will be bound by the judgment or be bound to the settlement of an action that he or she did not initiate and indeed may not even know about until long after commencement depends upon the putative class member having the right to opt out of the action

[49] In the civil procedure theory that underlines how it is that an action can be brought on behalf of defined but unnamed persons, the meaningful right to opt out plays a crucial role. In *Parson v. McDonald's Restaurants of Canada Ltd.*, *supra*, Justice Sharpe stated at para. 28:

28. The right to opt out is an important procedural protection afforded to unnamed class action plaintiffs. Taking appropriate steps to opt out and remove themselves from the action allows un-named class action plaintiffs to preserve legal rights that would otherwise be determined or compromised in the class proceeding.

Although she was not referring to inter-jurisdictional issues, in *Western Canadian Shopping Centres Inc. v. Dutton*, [2001] 2 S.C.R. 534 at para. 49, McLachlin C.J.C. identified the importance of notice as it relates to the right to opt out: "A judgment is binding on a class member only if the class member is notified of the suit and given an opportunity to exclude himself or herself from the proceeding." The right afforded to plaintiff class members to opt out has been found to provide some protection to out-of-province claimants who would prefer to litigate their claims elsewhere: *Webb v. K-Mart Canada Ltd.* (1999), 45 O.R. (3d) 389 at 404 (S.C.J.). It is obvious, however, that if the right to opt out is to be meaningful, the unnamed plaintiff must know about it and that, in turn, implicates the adequacy of the notice afforded to the unnamed plaintiff.

[50] However, in protecting the right to opt out, a court need not ensure that the person with the right to opt out has actual notice of the right to opt out. Practically speaking, the only way to ensure that a person has notice that his or her legal rights could be affected is by some form of personal service on the person or his or her lawyer or agent. *Short of requiring personal delivery, the chosen notification process may not be effective in every case. Moreover, depending on class size and the ability to identify and locate class members, personal service is not practical and may not even be feasible.* [emphasis added]

[Crider v. Nguyen, 2016 ONSC 4400](#), Reply BOA, Tab 1 at paras. 48-50.

13. The Representation Orders issued in *Metroland Media Group Ltd., Re, Foodora Inc., Sears Canada Inc., Re, U.S. Steel Canada Inc., Re, Canwest Publishing Inc., Re, Imperial Tobacco Canada Ltd., Re, Nordstrom Canada Retail Inc., Re, Nortel Networks Corp., Re, and Bloom Lakes General Partner Ltd., Re*, listed in the attached Appendix, all have opt-out provisions, not "opt-in".

14. The adoption of this provision in representation orders has been noted by insolvency practitioners who state, "[a]n opt-out mechanism is *typically* included to allow members to opt out of being represented by the appointed representatives."

Allan Nackan & George Benchetrit, "Representation Orders in Insolvency Cases: Current and Future Practice" (2018) 7 IIC 67, Book of Authorities for Factum, dated June 14, 2024, Tab 19 at 71. [emphasis added]

15. TBS Canada cites one decision for its argument for an "opt-in" the case of *Urbancorp Toronto Management Inc. (Re)*, 2016 ONSC 5426. *Urbancorp* is readily distinguishable. *Urbancorp* involved a failed condominium project where a representation order was sought on behalf of frustrated purchasers of condo units.

Urbancorp Toronto Management Inc. (Re), 2016 ONSC 5426, Responding Book of Authorities of The Body Shop Canada Limited, Tab 14 at paras. 12, 21, 27-28.

16. Justice Newbould recognized that representative counsel should be appointed, but an opt-in procedure was more fitting in the specific circumstances of that case because the interests of the purchasers seeking representation were "not all similar":

[20] I have considerable doubt that appointing a representative counsel by whom all 185 purchasers are to be represented unless they opt out is warranted. **It is likely that their interests are not all similar. Some may be prepared to simply walk from the situation if they get back their deposit, which appears in all likelihood will be the case. Some are investors whose interests might be quite different. Some want to negotiate with a purchaser of the raw land.** Already there have been two other lawyers retained by some purchasers, albeit a small number.

...

[22] I recognize that purchasers are better off if they have legal advice and be represented by counsel....[emphasis added]

Urbancorp Toronto Management Inc. (Re), 2016 ONSC 5426, Responding Book of Authorities of The Body Shop Canada Limited, Tab 14 at paras. 20 & 22.

17. In TBS Canada's real-time insolvency proceeding, the vulnerable Terminated Canadian Employees all have similar, if not identical interests, and their inclusion in the Representation

Order should be automatic to ensure their rights and interests are protected and can be collectively advanced, subject to their ability to opt-out if they wish.

TBS Canada conflates the role of Representative Counsel and the calculation of employee claims

18. In its factum, TBS Canada argues that:

- a) If the costs of the employees for a Representative Counsel may be paid out of a possible future distribution, and given that TBS Canada's "provisional" calculation of some of the Employees' claims is higher than that of KM to date, the Terminated Canadian Employees should have the option to opt-in, not opt-out of a Representation Order;
- b) The proposed 7 day opt-out period is too short and does not provide all of the Terminated Canadian Employees enough opportunity to make an informed decision about whether to opt-out with respect to the above objection. KM is amenable to extending the opt-out period to 14 days or other period as the Court directs.

19. The flaw with TBS Canada's argument for an "opt-in" is that it is based on a conflation of the role of Employee Representative Counsel with the task of calculating employees' claims. From that flawed premise, TBS Canada then argues that the Proposal Trustee has already "provisionally" calculated those claims, so there is nothing for Representative Counsel to do and so, employees should only be able to "opt in".

20. First, the purposes of an Employee Representation Order is explained in paras. 21-30 in Ms. Hood's Factum, dated June 14, 2024, and extends beyond simply calculating employees' claims.

21. Second, the employee claims that TBS Canada has "provisionally" calculated are not finalized, there is no claims process, no distributions, and no WEPP payment available. That task alone still requires further work and analysis.

22. In the Supplement to the Third Report of the Proposal Trustee, dated June 5, 2024, the Proposal Trustee stated that "the Company calculated the Representative Plaintiff's claim to be approximately double to the amount suggested in the [Affidavit of Stephanie Hood, sworn April 12, 2024]." In response to that statement, on June 13, 2024, KM wrote to counsel for TBS Canada requesting the methodology applied. Given no reply, KM repeated this request in correspondence to counsel for TBS Canada, dated June 24, 2024. To date, TBS Canada has not provided an explanation of the methodology it applied to calculate the claims of the Terminated Canadian Employees.

23. In their factum, TBS Canada briefly mentions their methodology by stating, "TBS Canada, with the assistance of counsel and the Proposal Trustee, applied uniformly the rules and principles established for retail employment claims arising from the recent *Nordstrom* insolvency matter to assess Employee Claims." *Nordstrom* involved a solvent parent company that was exiting Canada and provided specific funds to pay its terminated employees' claims. In this proceeding where there is no distribution in sight, TBS Canada's statement provides little assistance into the methodology applied to "provisionally" calculate the employees' claims.

b) The Representation Order should contain the standard Commercial List protection from liability

24. The requested Representation Order contains the following provision:

AN ORDER that KM and any Agent retained by KM shall have no liability in relation to KM's appointment as Representative Counsel or the

fulfilment of its duties in carrying out the provisions of this Order, except for claims based on gross negligence or wilful misconduct on their part.

25. The role of a Representative in a Representation Order is similar to that of an amicus – a person assists the court by providing a means of binding certain classes of persons to the proceeding, which aids the court both in its adjudication of issues and by adding efficiency to the proceeding. In insolvency proceedings, this is beneficial for all creditors, as well as the debtor and the court.

26. As a form of amicus, it is just and fair that such individuals have the standard Commercial List protection from liability. They voluntarily step forward to facilitate representation of a large group of similarly situated individuals under Rule 10 and thus provide significant benefits for the court's process and the insolvency proceeding.

27. Secondly, protection from liability for court-appointed individuals and professionals is a long accepted standard term in insolvency court orders, including Representation Orders. As noted by insolvency experts, protection from liability is typically provided to court-appointed representatives and representative counsel:

(h) Protection Against Liability

Protection is typically provided to court-appointed representative counsel and representatives, shielding them from personal liability or obligations as a result of the exercise of their duties, except for gross negligence or willful misconduct. The protection also extends the benefit of the court-ordered stays of proceedings to them.

Allan Nackan & George Benchetrit, "Representation Orders in Insolvency Cases: Current and Future Practice" (2018) 7 IIC 67, Book of Authorities for Factum, dated June 14, 2024, Tab 19 at 72.

28. A sample of Representation Orders including this provision is listed in the Appendix.

29. A similar argument to TBS Canada's in this motion was rejected by the Commercial List Judge in *Collins & Aikman Automotive Canada Inc. (Re)*, 2007 CanLII 45908 (ONSC), where the union argued that an order providing the monitor with protection from liability, except for gross negligence and wilful misconduct, "provides the Monitor with blanket immunity on a prospective basis, and that the court has no jurisdiction to provide this immunity".

[*Collins & Aikman Automotive Canada Inc. \(Re\)*, 2007 CanLII 45908 \(ONSC\)](#), Reply BOA, Tab 2 at para. 20.

30. The Court held that it does have jurisdiction to make such an order. Importantly, the Court also held that the provision was granted in several cases and could be understood to receive "serious favourable consideration from members of the bar":

[128] The specific wording in paragraph 29 of the Initial Order is consistent with the standard limitation of liability protections granted to monitors under the standard-form model CCAA Initial Order, which was authorized and approved by the Commercial List Users' Committee on September 12, 2006.

[129] That is, of course, not determinative but it suggest that the clause has received serious favourable consideration from members of the bar in a context unrelated to particular party interests.

[130] The monitor submitted in its factum a list of twelve recent CCAA proceedings in which orders have been granted with similar provisions to the limitation of liability in this case. This would seem to suggest that in those cases the clause limiting liability was not disputed or, if it was, the Court found the clause to be acceptable.

[131] For these reasons, paragraph 29 is acceptable.

[*Collins & Aikman Automotive Canada Inc. \(Re\)*, 2007 CanLII 45908 \(ONSC\)](#), Reply BOA, Tab 2 at paras. 128-130.

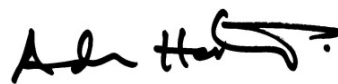
31. The prospective term limiting the liability of Representative Counsel requested in this motion reflects the standard-form model authorized and approved by the Commercial List for CCAA Initial Orders:

28. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or carrying out the provisions of this Order, save and except for any gross negligence and wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

Initial Order Model of the Ontario Superior Court of Justice (Commercial List), Reply BOA, Tab 14 at para. 28.

32. The standard Commercial List provision limiting the liability of Stephanie Hood as Representative and KM as Representative Counsel, except for claims based on gross negligence and wilful misconduct, should be included.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of June, 2024.



ANDREW J. HATNAY



JAMES HARNUM



ABIR SHAMIM

APPENDIX

Proceeding and Order where Representative Counsel was Appointed	Inclusion of Opt-Out Provision	Time Period for Opt-Out Provision	Protection from Liability Granted to Representative Counsel
<i>Bloom Lake General Partner Ltd.,</i> (Court File No. 500-11-048114-157; June 22, 2015)	YES: [10] ORDERS that any individual Salaried Member who does not wish to be represented by the Representatives and Representative Counsel and thereby bound by their subsequent actions and decisions shall, within the later of 90 days of publication of the newspaper notice, so notify the Monitor, in writing...	90 Days	YES: [14] DECLARES that the Representatives and Representative Counsel shall have no liability as a result of their appointment or the fulfilment of their duties in carrying out the provisions of this Order save and except for claims based on any gross negligence or wilful misconduct on their part;
<i>Canwest Publishing Inc.,</i> (Court File No. CV-10-8533-00CL; March 5, 2010)	YES: Schedule "A" of Order: <i>"If you do not wish to be bound by this order, you must notify the court-appointed Monitor, FTI Consulting Canada Inc., in writing, by mail, e-mail or delivery on or before April 16, 2020. Your notice that you do not wish to be bound by this order must be in the form of a full completed "Opt-Out Letter" substantially in the form attached to this Notice."</i>	40 Days	YES: [12] THIS COURT ORDERS that the Representatives and Representative Counsel shall have no liability as a result of their respective appointment or fulfilment of their duties in carrying out the provision of this Order save and except for any gross negligence or wilful misconduct on their part...

<i>Foodora Inc.,</i> (Court File No. 31-2641224; July 8, 2020)	<p>YES:</p> <p>[7] THIS COURT ORDERS that any individual Non-CUPW Courier who does not wish to be represented by KM in the Proceedings shall, within 15 business days of the issuance of this Order, notify the Proposal Trustee and KM in writing that he or she is opting out of representation by KM and shall thereafter not be bound by the actions of KM and is free to represent himself or herself or be represented by any other counsel that he or she may retain at his or her own expense.</p>	<p>15 Business Days</p>	<p>YES:</p> <p>[11] THIS COURT ORDERS that KM, KM's agents and the Proposal Trustee shall not have any liability as a result of Representative Counsel's appointment or the fulfilment of its duties in carrying out the provisions of this Order, except for claims based on gross negligence or wilful misconduct on their part.</p>
<i>Imperial Tobacco Canada Ltd.,</i> (Court File No. CV-19- 616077-00CL; April 25, 2019)	<p>YES:</p> <p>[7] THIS COURT ORDERS that any individual Represented Party who does not wish to be represented by the Representatives and Representative Counsel in these CCAA proceedings, shall, within 30 days of the date of the Representation Notice pursuant to paragraph 6, notify the Monitor in writing...</p>	<p>30 Days</p>	<p>YES:</p> <p>[11] THIS COURT ORDERS that the Representative Counsel, the Representatives and the members of the Committee, or their delegates or agents, shall have no personal liability or obligations as a result of the performance of their duties in carrying out the provisions of this Order or any subsequent Orders in these CCAA proceedings, save and except for liability arising out of gross negligence or wilful misconduct.</p>
<i>Metroland Media Group Ltd.,</i> (Court	<p>YES:</p>	<p>7 Business Days</p>	<p>YES:</p>

File No. BK-23-02986886-0031; October 13, 2023)	<p>[11] THIS COURT DECLARES that any individual Non-Union Employee who does not wish to be represented by KM in the Proceedings shall, within seven business days of the issuance of this Order, notify KM and the Proposal Trustee in writing that he or she is opting out of representation by KM and shall thereafter not be bound by the actions of KM and is free to represent himself or herself, or be represented by any other counsel that he or she may retain at his or her own expense.</p>		<p>[15] THIS COURT ORDERS that KM, and any Agent retained by KM shall not have any liability as a result of KM's appointment as Representative Counsel or the fulfilment of its duties in carrying out the provisions of this Order, except for claims based on gross negligence or wilful misconduct on their part.</p>
<i>Nordstrom Canada Retail Inc., (Court File No. CV-23-00695619-00CL; March 2, 2023)</i>	<p>YES:</p> <p>[32] THIS COURT ORDERS that any individual Represented Employee who does not wish to be represented by the Employee Representatives and Employee Representative Counsel shall, within thirty (30) days of the date of the letter pursuant to paragraph 31 above, notify the Monitor, in writing...</p>	<p>30 Days</p>	<p>YES:</p> <p>[35]...Employee Representative Counsel and Employee Representatives shall have no liability as a result of their appointment or the fulfilment of their duties in carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on their part.</p>
<i>Nortel Networks Corp., (Court File No. 09-CL-7950; May 27, 2009)</i>	<p>YES:</p> <p>[8] THIS COURT ORDERS that, subject to paragraph 9 hereof, any individual Former Employee who does not wish to be bound by this Order and all other related</p>	<p>30 Days</p>	<p>YES:</p> <p>[11] THIS COURT ORDERS that the Representatives and Koskie Minsky LLP shall have no liability as a result of their respective appointment or the fulfilment of their duties</p>

	Orders which may subsequently be made in these proceedings shall, within 30 days of publication of notice of this Order, notify the Monitor, in writing, by facsimile, mail or delivery, and in the form attached as Schedule "A" hereto and shall thereafter not be bound and shall be represented themselves as an independent individual party to the extent they wish to appear in these Proceedings.		in carrying out the provisions of this Order from and after January 14, 2009 save and except for any gross negligence or unlawful misconduct on their part.
Sears Canada Inc., (Court File No. CV-17-11846-00CL; July 13, 2017)	YES: [6] THIS COURT ORDERS that any individual Represented Party who does not wish to be represented by the Representatives and the Representative Counsel in these CCAA proceedings shall, within 30 days of the date of the letter pursuant to paragraph 5 above, notify the Monitor, in writing, that he or she is opting out of representation by the Representatives and the Representative Counsel...	30 Days	YES: [14] THIS COURT ORDERS that the Representative Counsel and the Representatives shall have no personal liability or obligations as a result of the performance of their duties in carrying out the provisions of this Order or any subsequent Orders in the CCAA proceedings, save and except for liability arising out of gross negligence or wilful misconduct.
Target Canada Co., (Court File No. CV-15-10832-00CL; January 15, 2015)	YES: Notice to All Target Canada Employees, pursuant to Order of January 15, 2015: "IF YOU DO NOT WISH TO BE REPRESENTED in the Proceedings by the	60 Days	YES: [37] THIS COURT ORDERS that Employee Representative Counsel shall have no liability as a result of its appointment or the fulfilment of its duties in carrying out the provisions

	Representatives and Representative Counsel, you must, <u>before March 19, 2015</u> , provide notice <u>in writing</u> to all the following persons, indicating that your wish to opt-out of such representation:..."		of this Order save and except for any gross negligence or wilful misconduct on its part.
<i>U.S. Steel Canada Inc., (Court File No. CV-14-10695-00CL; October 8, 2014)</i>	YES: [10] THIS COURT ORDERS that any individual Salaried Active or Retiree Beneficiary who does not wish to be represented by the Representatives and Representative Counsel in these CCAA Proceedings shall, within 30 days of publication of the notice of the appointment of Representatives and Representative Counsel, in writing, that he or she is opting out of representation by the Representatives and Representative Counsel (an "Opt-Out Notice")...	30 Days	YES: [11] THIS COURT ORDERS that the Representatives and Representative Counsel shall have no liability as a result of their appointment or the fulfilment of their duties in carrying out the provisions of this Order and any subsequent Orders in these CCAA Proceedings, save and except for any gross negligence or wilful misconduct on their part.

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Crider v Nguyen*, 2016 ONSC 4400
2. *Collins & Aikman Automotive Canada Inc. (Re)*, 2007 CanLII 45908 (ONSC)
3. Order of Justice Hamilton, *Bloom Lake General Partner Ltd., Re*, dated June 22, 2015 (Court File No. 500-11-048114-157; Order Appointing Representatives and Representative Counsel)
4. Order of Justice Pepall, *Canwest Publishing Inc., Re*, dated March 5, 2010 (Court File No. CV-10-8533-000L; Order Appointing Representatives and Representative Counsel)
5. Order of Justice McEwen, *Foodora Inc.*, dated July 8, 2020 (Court File No. 31-2641224; Order Appointing Representative Counsel)
6. Order of Justice McEwen, *Imperial Tobacco Canada Limited, Re*, dated April 25, 2019 (Court File No. CV-19-616077-00CL; Order Appointing Representatives and Representative Counsel)
7. Order of Justice Osborne, *Metroland Media Group Ltd. Re*, dated October 13, 2023 (Court File No. BK-23-02986886-0031; Order Appointing Representative and Representative Counsel)
8. Order of Chief Justice Morawetz, *Nordstrom Canada Retail Inc., Re*, dated March 2, 2023 (Court File No. CV-23-00695619-00CL; Initial CCAA Order)
9. Order of Chief Justice Morawetz, *Nortel Networks Corp., Re*, dated May 27, 2009 (Court File No. 09-CL-7950; Order Appointing Representatives and Representative Counsel)
10. Order of Justice Hainey, *Sears Canada Inc., Re*, dated July 13, 2017 (Court File No. CV-17-11846-00CL; Order Appointing Representatives and Representative Counsel)
11. Order of Chief Justice Morawetz, *Target Canada Co., Re*, dated January 15, 2015 (Court File No. CV-15-10832-00CL; Initial CCAA Order)
12. Order of Justice Wilton-Siegel, *U.S. Steel Canada Inc., Re*, dated October 8, 2014 (Court File No. CV-14-10695-00CL; Order Appointing Representatives and Representative Counsel)

Secondary Source

13. Initial Order Model of the Ontario Superior Court of Justice (Commercial List)
14. Paul M Perell & John W Morden, *The Law of Civil Procedure in Ontario*, 5th ed (Toronto: LexisNexis Canada, 2024) at 4.242-4.254.

**SCHEDULE “B”
RELEVANT STATUTES**

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

RULE 10 Representation Order

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).

Proceeding against Representative Defendant

12.07 Where numerous persons have the same interest, one or more of them may defend a proceeding on behalf or for the benefit of all, or may be authorized by the court to do so. O. Reg. 465/93, s. 2 (3).

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Proceeding commenced at Toronto

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