

Court File No. BK-24-03050418-0031  
Estate / Court File No. BK-31-3050418

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

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

**SUPPLEMENTAL RESPONDING MOTION RECORD OF  
THE BODY SHOP CANADA LIMITED  
(MOTION RETURNABLE JULY 4, 2024)**

June 24, 2024

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Limited

-2-

**TO: THE SERVICE LIST**

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**INDEX**

<b>Tab</b>	<b>Description</b>	<b>Page No.</b>
1.	Affidavit of Sandy Prosa sworn June 24, 2024	5-8
A.	Affidavit of Jordan Searle dated May 23, 2024 (without Exhibits)	10-38
B.	Order of Justice Cavanagh dated May 30, 2024	40-42
C.	Request for Continuing Matter re July 5, 2024 Motion	44-46
D.	Letter from Davies to Koskie Minsky dated May 15, 2024	48-51
E.	Letter from Koskie Minsky to Davies dated June 13, 2024	53-59
F.	Letter from Davies to Koskie Minsky dated June 19, 2024	61-65
G.	Third of the Proposal Trustee dated May 15 ,2024	67-92
H.	Supplement to the Third Report of the Proposal Trustee dated June 5, 2024	94-110
I.	Excerpt of Prefiling Report of the Monitor dated January 7, 2010	112-118

-4-

<b>Tab</b>	<b>Description</b>	<b>Page No.</b>
J.	Excerpt of Prefiling Report of the Monitor dated October 5, 2009	120-122
K.	Excerpt of Motion Record of Koskie Minsky in Foodora Inc. Proceeding dated July 6, 2020	124-130
L.	Letter from Koskie Minsky in U.S. Steel Proceeding dated December 23, 2014	132-135
M.	Notice of Application re Hollinger dated December 9, 2009	137-141
N.	Excerpt of Factum of the Retirees in CW Media Proceeding	143-145
O.	Excerpt of Factum of the Union in CW Publishing Proceeding	147-150

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**AFFIDAVIT OF SANDY PROSA  
(SWORN JUNE 24, 2024)**

I, Sandy Prosa, of the Town of Aurora, in the Regional Municipality of York, MAKE  
OATH AND SAY:

1. I am a legal assistant with the law firm of Davies Ward Phillips & Vineberg LLP (“**Davies**”), lawyers for the Applicant, The Body Shop Canada Limited, and as such, have knowledge of the matters contained in this Affidavit except where such knowledge is based on information and belief from others, which I verily believe to be true.
2. Attached hereto as “**Exhibit A**” is a copy of the Affidavit of Jordan Searle dated May 23, 2024 (without Exhibits). I am advised by Chenyang Li, counsel for The Body Shop Canada Limited that this affidavit was previously filed in this proceeding.
3. Attached hereto as “**Exhibit B**” is a copy of the Order of Justice Cavanagh dated May 30, 2024 in respect of this proceeding.
4. Attached hereto as “**Exhibit C**” is a copy of the Request for Continuing Matter in respect of a motion in this proceeding scheduled for July 5, 2024.

5. Attached hereto as “**Exhibit D**” is a copy of the Letter from Chenyang Li at Davies to Andrew Hatnay at Koskie Minsky LLP dated May 15, 2024.
6. Attached hereto as “**Exhibit E**” is a copy of the letter from Andrew Hatnay at Koskie Minsky LLP to Chenyang Li at Davies dated June 13, 2024.
7. Attached hereto as “**Exhibit F**” is a copy of the letter from Chenyang Li at Davies to Andrew Hatnay at Koskie Minsky LLP dated June 19, 2024.
8. Attached hereto as “**Exhibit G**” is a copy of the Third Report of the Proposal Trustee, Alvarez & Marsal Canada Inc., dated May 15, 2024 in respect of this proceeding.
9. Attached hereto as “**Exhibit H**” is a copy of the Supplement to the Third Report of the Proposal Trustee, Alvarez & Marsal Canada Inc., dated June 5, 2024 in respect of this proceeding.
10. Attached hereto as “**Exhibit I**” is a copy of an excerpt of the Prefiling Report of the Monitor, FTI Consulting Canada Inc., in its capacity as Proposed Monitor of certain entities, including Canwest Publishing Inc., dated January 7, 2010. I am advised by Chenyang Li that this document was retrieved from FTI Consulting Canada Inc.’s website.
11. Attached hereto as “**Exhibit J**” is a copy of an excerpt of the Prefiling Report of the Monitor, FTI Consulting Canada Inc., in its capacity as Proposed Monitor of certain entities, including Canwest Global Communications Corp., dated October 5, 2009. I am advised by Chenyang Li that this document was retrieved from FTI Consulting Canada Inc.’s website.

12. Attached hereto as “**Exhibit K**” is a copy of an excerpt of the Motion Record of Koskie Minsky LLP in a proceeding involving Foodora Inc. dated July 6, 2020. I am advised by Chenyang Li that this document was retrieved from Grant Thornton LLP’s website.

13. Attached hereto as “**Exhibit L**” is a copy of a letter from Andrew Hatnay at Koskie Minsky LLP in a proceeding involving U.S. Steel Canada Inc. dated December 23, 2014. I am advised by Chenyang Li that this document was retrieved from Koskie Minsky LLP’s website.

14. Attached hereto as “**Exhibit M**” is a copy of the Notice of Application in a proceeding concerning Hollinger Canadian Publishing Holdings Co. dated December 9, 2009. I am advised by Chenyang Li that this document was retrieved from Ernst & Young LLP’s website.

15. Attached hereto as “**Exhibit N**” is a copy of an excerpt of a Factum prepared by Cavalluzzo Hayes Shilton McIntyre & Cornish LLP in a proceeding involving Canwest Global Communications Corp. I am advised by Chenyang Li that this document was retrieved from FTI Consulting Canada Inc.’s website.

16. Attached hereto as “**Exhibit O**” is a copy of an excerpt of a Factum prepared by CaleyWray in a proceeding involving Canwest Publishing Inc. I am advised by Chenyang Li that this document was retrieved from FTI Consulting Canada Inc.’s website.

**SWORN BEFORE ME** at the City of  
Toronto, in the Province of Ontario this  
24<sup>th</sup> day of June, 2024



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Commissioner for Taking Affidavits  
(or as may be)

**CHENYANG LI**



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**SANDY PROSA**



This is Exhibit "A" to the Affidavit of Sandy Prosa  
sworn the 24th day of June, 2024.

A handwritten signature in black ink, appearing to read 'Chenyang Li', is positioned above a horizontal line.

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Chenyang Li

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**AFFIDAVIT #4 OF JORDAN SEARLE  
Sworn May 23, 2024**

I, Jordan Searle, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am the General Manager, North America and the sole director of The Body Shop Canada Limited ("**TBS Canada**" or the "**Company**"). I have been the General Manager since February 10, 2023. I am also an officer and director of TBS Canada's U.S. affiliate, Buth-Na-Bodhaige Inc. ("**TBS US**"). I have been actively engaged in the discussions and negotiations surrounding the financial circumstances of TBS Canada since prior to the commencement of these proceedings. As such I have personal knowledge of the matters referred to in this Affidavit. Where I have relied upon other sources of information, I have stated the source of that information and verily believe such information to be true.

2. On March 1, 2024 (the "**Filing Date**"), TBS Canada filed a notice of intention to make a proposal (the "**NOI**") under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c.

B-3. Alvarez & Marsal Canada Inc. was appointed to act as the proposal trustee (the **“Proposal Trustee”**).

3. This Affidavit is sworn in support of the motion brought by TBS Canada for an order:

- (a) extending the time for TBS Canada to file a proposal under the BIA to July 12, 2024; and
- (b) approving the activities and conduct of the Proposal Trustee as set out in its third report dated May 15, 2024 (the **“Third Report”**) and fourth report, filed in connection with this motion (the **“Fourth Report”**).

4. In connection with this NOI proceeding, I swore an affidavit dated March 1, 2024 (the **“First Affidavit”**), a copy of which is attached to this Affidavit as **Exhibit “A”**, without the exhibits referred to therein. I also swore an affidavit dated April 8, 2024 (the **“Second Affidavit”**) and together with the First Affidavit, the **“Prior Affidavits”**), a copy of which is attached to my Affidavit as **Exhibit “B”**, without the exhibits referred to therein. Where relevant, I have repeated certain portions of the Prior Affidavits in this Affidavit.

## A. Background and Overview

### (i) Events Leading up to the Filing of the NOI

5. TBS Canada is a retailer specializing in the sale of skincare, haircare, bath and body products with 72 stores across Canada.<sup>1</sup> TBS Canada and TBS US are indirect wholly owned subsidiaries of The Body Shop International Limited (“**TBS International**” or the “**UK Parent**”), which is indirectly owned by Aurelius IV UK Acquico Eight Limited (“**Aurelius Purchaser**” and together with its affiliates, “**Aurelius**”).

6. On or about December 2023, Aurelius Purchaser indirectly acquired all of the shares of TBS International.

7. On February 13, 2024, three months after the completion of the share acquisition, the UK Parent filed for administration (the “**UK Administration**”) in the United Kingdom, which I understand is the dominant legal procedure for restructuring insolvent companies in England and Wales. Tony Wright, Geoff Rowley and Alastair Massey of FRP Advisory were appointed as joint administrators of the UK Parent (collectively, the “**UK Administrators**”).

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<sup>1</sup> On the Filing Date, the Company operated 105 stores but has closed 33 of its stores as part of its restructuring efforts.

(ii) The Filing of the NOI

8. TBS Canada and TBS US historically relied on the UK Parent for a variety of shared services, including legal, accounting/finance, treasury, tax, human resources, payroll, information technology, real estate, inventory, distribution and logistics services. TBS Canada and TBS US also license the right to market and sell “The Body Shop” branded products from the UK Parent.<sup>2</sup>

9. As described in my Prior Affidavits, the UK Parent managed the shared services through a cash management and pooling system. In Canada, TBS Canada’s funds were deposited into TBS Canada’s bank accounts held at Royal Bank of Canada (formerly HSBC Bank Canada) (the “**Bank Accounts**”) and then transferred to TBS International in the UK, and used to pay TBS Canada’s payables at the direction of the Company and intercompany expenses, including for inventory and other shared services.

10. In the weeks leading up to the UK Administration, the UK Parent swept cash from the Bank Accounts but failed to remit payment for amounts owing to TBS Canada’s vendors, suppliers and landlords. This caused an immediate liquidity crisis for TBS

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<sup>2</sup> As disclosed in my Second Affidavit, certain intellectual property assets were placed into a separate entity affiliated with TBS International prior to the UK Administration. The UK Administrators have since confirmed that the UK Parent has been reinstated as the sole legal and beneficial owner of all relevant intellectual property, including intellectual property licensed to TBS Canada.

Canada, as all funding for the Company and its Canadian operations were cut off with no advance notice.

11. TBS Canada urgently required a stay of proceedings to give it the breathing room needed to review and advance its restructuring options. As a result, the Company filed the NOI on March 1, 2024.

**(iii) Activities Since the Filing Date**

12. On March 4, 2024, this Court made an order (the “**March 4 Order**”), among other things, extending the time for TBS Canada to file a proposal to April 16, 2024 and granting certain other relief that the Company required to allow it to continue its business operations and protect the value of its assets. A copy of the March 4 Order and endorsement are attached to my Affidavit as **Exhibit “C”**.

13. The March 4 Order, among other things, (a) granted charges in favour of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company in the amount of \$700,000 and the director and officers of TBS Canada in the amount of \$2,100,000, (b) directed all persons who have in their possession or power, any property of TBS Canada, or any book, document or paper of any kind relating to the Company, to produce the book, document or paper for TBS Canada, or to deliver to the Company any property of TBS Canada in their possession, and (c) prohibited any person, specifically Royal Bank of Canada, from disbursing any funds in the Bank Accounts without the prior consent of TBS Canada or the Proposal Trustee.

14. On April 15, 2024, this Court made an order (the “**April 15 Order**”), among other things, extending the time for TBS Canada to file a proposal to May 31, 2024 and approving a key employee retention plan and related charge for certain employees and independent contractors of TBS Canada (the “**KERP**” and “**KERP Charge**”). A copy of the April 15 Order and endorsement are attached to my Affidavit as **Exhibit “D”**.

15. Since the Filing Date, TBS Canada has acted in good faith and made diligent efforts to improve its liquidity position, stabilize its operations and pursue a going-concern solution for the continuation of the “The Body Shop” business in Canada.

16. These efforts have included:

- (a) closing and liquidating 33 underperforming stores (the “**Closing Stores**”);
- (b) terminating the employment of 197 store-level employees whose employment related to the Closing Stores and approximately 20 head office employees (together with the terminated store-level employees, the “**Former Employees**”);
- (c) operating the remaining 72 stores in the ordinary course (the “**Going Concern Stores**”);

- (d) engaging with the UK Administrators, the UK Parent and the Chapter 7 Trustee (defined below) on operational matters, including efforts to replenish inventory at the Going Concern Stores;
- (e) establishing relationships with shipping, brokerage, warehousing and logistics suppliers to facilitate inventory deliveries to TBS Canada;
- (f) engaging with the UK Administrators, the UK Parent and the Royal Bank of Canada to understand the shared services, the cash management system and to ensure the necessary measures are in place to prevent the UK Parent from sweeping any of TBS Canada's funds in the Bank Accounts from or after the Filing Date; and
- (g) engaging with the UK Parent, the UK Administrators, Aurelius and potential purchasers on developments in the UK Administration and the terms of a BIA proposal for TBS Canada.

17. As noted above, I am swearing this Affidavit in support of the Company's request for an extension of the time to file a proposal to July 12, 2024 (the "**Extension**"). The Extension will provide TBS Canada with the ongoing benefit of the stay of proceedings while the UK Parent seeks a buyer for its assets or business within the UK Administration, with the ultimate goal of TBS Canada implementing a proposal, which will also see a going concern solution for its business in Canada.



18. I also swear this Affidavit to provide the Court with updates on:

- (a) the Company's engagement with stakeholders since April 15, 2024, the date of the last hearing;
- (b) TBS International and the UK Administration;
- (c) the Chapter 7 Proceedings (defined below) in respect of TBS US;
- (d) TBS Canada's inventory replenishment transactions;
- (e) Canadian employee matters; and
- (f) TBS Canada's ongoing efforts to pursue a going concern solution.

**B. Engagement with Stakeholders**

19. As described in my Prior Affidavits, TBS Canada does not have any significant secured creditors. TBS Canada has three key primary stakeholder groups: (a) employees, including the Former Employees; (b) landlords; and (c) trade creditors. The Company, with the assistance of the Proposal Trustee, has continued to engage with its stakeholders, including with counsel for its landlords and counsel for certain of the Former Employees, on numerous matters, including providing updates on developments in the UK Administration, payment of rent, updates regarding the Company's operations and calculations of claims of TBS Canada's stakeholders.

20. TBS Canada served the service list with a copy of the April 15 Order, including counsel for its landlords and counsel for certain Former Employees.

21. To date, none of the Company's stakeholders, Aurelius, the UK Parent nor the UK Administrators has raised any issues or concerns with the relief obtained in the April 15 Order.

**C. TBS International and the UK Administration**

**(i) The UK Meeting of Creditors**

22. As described in my Second Affidavit, on April 4, 2024, the UK Administrators released an Administrator's Statement of Proposals (the "**UK Report**"), which is attached as **Exhibit "E"** to my Affidavit.

23. The UK Report served as a detailed briefing for the creditors of TBS International and provided information about the circumstances giving rise to the appointment of the UK Administrators. Furthermore, it outlined the strategic direction and UK Administrators' intended plans for TBS International. In the UK Report, the UK Administrators stated that at that time the primary objective of the UK Administration is a rescue of TBS International through a company voluntary arrangement ("**CVA**"), which I describe below, failing which, the UK Administrators would seek a sale of the business and assets of TBS International.

24. TBS Canada has engaged Macfarlanes LLP ("**Macfarlanes**") as its legal advisors in the UK to assist it in navigating the UK Administration. I understand from Macfarlanes

that a CVA is a debtor-led statutory insolvency procedure in England and Wales that can be used for a company to reach an arrangement with its creditors.

25. On May 2, 2024, the UK Administrators convened<sup>3</sup> an in-person meeting of creditors of the UK Parent (the “**UK Meeting of Creditors**”). The purpose of the UK Meeting of Creditors was to approve certain remuneration of the UK Administrators and approve certain other related matters. I understand from Macfarlanes that the outcome of the vote at the UK Meeting of Creditors ultimately determines whether the UK Parent would be permitted to pursue the CVA or would be required to pursue an alternative process, which may include the sale of its assets as a going concern or potentially in a liquidation.

26. The Company appointed Macfarlanes as its proxy in order to attend the UK Meeting of Creditors on the Company’s behalf. The proxy is attached to my Affidavit as **Exhibit “F”**.

27. I am advised by Macfarlanes that they attended the UK Meeting of Creditors and that all necessary approvals were obtained to allow the UK Administrators to continue with the CVA process.

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<sup>3</sup> The UK Meeting of Creditors was originally scheduled for April 23, 2024 and rescheduled for May 2, 2024.

**(ii) The Sale Process**

28. On May 17, 2024, I became aware that there were reports in the UK press that the UK Administrators had determined that it would not be possible to reach the necessary agreements with existing stakeholders for a CVA to proceed, notwithstanding that the requisite approvals had been obtained at the UK Meeting of Creditors.

29. I am advised by Macfarlanes that they discussed the substance of these reports with the UK Administrators and the UK Administrators confirmed that due to stakeholder negotiations breaking down, a CVA was no longer viable, and the UK Administrators were instead seeking a sale of the business and assets of TBS International.

30. On May 21, 2024, the UK Administrators issued a creditor update letter confirming their determination to commence a sale process in respect of the UK Parent. The creditor update letter is attached to my Affidavit as **Exhibit “G”**.

31. Attached to my Affidavit as **Exhibit “H”** is an email from the UK Administrators to Macfarlanes dated May 20, 2024 regarding the sale process. In the email, the UK Administrators advise that at this time, they are inviting initial bids by June 10, 2024, with a target completion date of June 27, 2024. In the May 20 email, the UK Administrators expressed their hope that they will secure a transaction that will allow for the majority of the current business of TBS International to continue.

32. It is not clear however, at this time whether any sale will preserve the current organizational structure with TBS Canada as a subsidiary of the UK Parent. I am advised the UK Administrators have a duty to creditors of TBS International to seek the best price reasonably obtainable for the business and assets of the UK Parent and as such will consider whether the sale should be the business and assets of TBS International as a whole or on a piecemeal basis.

**(iii) Secured Creditors of the UK Parent**

33. As described above, Aurelius Purchaser indirectly acquired all of the shares of TBS International in December 2023. In connection with that acquisition, Aurelius IV UK Acquico Seven Limited ("**Aurelius Seven**"), the immediate parent company of the Aurelius Purchaser, entered into a loan agreement (the "**Aurelius Loan Agreement**") with TBS International, pursuant to which GBP £2,720,741.98 was made available to TBS International on a secured basis to assist with the funding of the acquisition of the UK Parent.

34. As disclosed in my Prior Affidavits, the obligations of the UK Parent under the Aurelius Loan Agreement are guaranteed by TBS Canada on a secured basis. The obligations are payable on demand. To date, TBS Canada has not received any such demand from Aurelius Seven or any of its affiliates.

35. I understand that prior to the UK Administration, Aurelius Seven registered a security interest against the UK Parent in connection with the Aurelius Loan Agreement

at Companies House, which I understand is the executive agency of the British Government that maintains the registry for publicly available documents in respect of companies, including where security is registered against companies. I also understand that the only other party with a registered security interest at Companies House against TBS International is a company named ALMA24 Limited (“**ALMA24**”).

36. The UK Administrators have advised that they have conducted a review of the security of both Aurelius Seven and ALMA24 and have reached the conclusion that both transactions would be susceptible to challenge under the applicable regimes within the *Insolvency Act 1986* and that these findings have been communicated to Aurelius Seven and ALMA24.

37. The UK Administrators further advised that Aurelius Seven has expressly acknowledged that should a rescue of the business of TBS International not be achieved, the security granted in favour of Aurelius Seven would be subject to challenge. I understand that now that the UK Administrators have pivoted towards a sale of the business and assets of the UK Parent, the UK Administrators expect that Aurelius Seven will agree to release its security to permit a sale to take place.

38. The UK Administrators have also advised that they are seeking a similar consensual release from ALMA24.

**(iv) Proof of Debt**

39. On May 17, 2024, the Company submitted a proof of debt (the “**Proof of Debt**”) in connection with the UK Meeting of Creditors setting out the Company’s claim against the UK Parent in the minimum amount of \$44,015,347.21 (£25,770,985.79). The Proof of Debt includes the Company’s claim against the UK Parent, comprised of: (a) the net intercompany receivable position of TBS Canada as of the date the UK Administration commenced<sup>4</sup>, and (b) claims by TBS Canada for the financial, legal and other professional fees and costs associated with this NOI proceeding. The Proof of Debt is attached to my Affidavit as **Exhibit “I”**.

40. In light of the fact that the security registered against the UK Parent is subject to challenge, I am advised that there is a likelihood that the Company will receive a distribution from the proceeds of any sale of TBS International’s assets or business – although at this time, the amount and timing of such distribution is unknown.

41. I am advised that once the UK Administrators are in a position to declare a first dividend or distribution to the creditors of the UK Parent following the completion of the sale process, the UK Administrators must notify creditors of this intention and establish the final date for proofs of debt to be delivered (the “**UK Bar Date**”). Within 14 days of the

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<sup>4</sup> An overview of the intercompany receivable position between TBS Canada and the UK Parent is provided in the Proposal Trustee’s Second Report dated April 9, 2024.

UK Bar Date, the UK Administrators will either admit or reject (in whole or in part), the proofs of debt filed.

42. While the Company has already filed the Proof of Debt in connection with the UK Meeting of Creditors, they will be required to submit a further proof of debt by the UK Bar Date or resubmit the Proof of Debt previously filed.

**D. TBS US and the Chapter 7 Proceedings**

43. TBS US is a wholly-owned subsidiary of the UK Parent and previously operated the “The Body Shop” business in the United States.

44. On March 8, 2024, TBS US filed a voluntary petition and commenced proceedings under chapter 7 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the “**Chapter 7 Proceedings**”). Mr. Kenneth Silverman from Rimon P.C. has been appointed as the trustee for TBS US under the Chapter 7 Proceedings (the “**Chapter 7 Trustee**”).

45. The first meeting of creditors of TBS US was held on April 9, 2024. I attended this meeting in my capacity as a director and officer of TBS US. At this meeting, the appointment of the Chapter 7 Trustee was affirmed and creditors were permitted to ask questions of me.

46. As explained in my Prior Affidavits, TBS Canada's operations are highly integrated with TBS US and TBS International. Historically, TBS Canada has depended on TBS



US—as well as the UK Parent—for the management and execution of its inventory orders. The UK Parent would ship products designated for TBS Canada to TBS US and TBS US would hold the inventory at a distribution centre located in the United States that it owned and operated (the “**US Distribution Centre**”). TBS US would then arrange for transport from the US Distribution Centre to TBS Canada’s stores. The UK Parent retains title of the inventory located at the US Distribution Centre until it receives payment from TBS Canada.<sup>5</sup> Consequently, the commencement of the UK Administration and the Chapter 7 Proceedings, and cessation of operations by TBS US has posed challenges for the Company in its efforts to purchase inventory.

47. As more particularly described below, TBS Canada and the Proposal Trustee have worked closely with the Chapter 7 Trustee to facilitate the Company’s inventory replenishment efforts since the commencement of the Chapter 7 Proceedings.

#### **E. Inventory Replenishment Efforts**

48. As at the date of my Second Affidavit, TBS Canada was in need of additional inventory, primarily due to: (a) recent sales exceeding projections across the Company’s store network, and (b) the fact that TBS Canada stopped receiving normal course inventory shipments following the commencement of the UK Administration on February

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<sup>5</sup> The Company received all of its inventory from TBS International pursuant to a Selective Master Distribution & Franchise Agreement and the general terms and conditions that supplement such agreement, which are attached to my Second Affidavit as Exhibits “G” and “H” respectively. These agreements, which remain in place, reflect that the UK Parent holds title to the inventory until it receives payment for same.

13, 2024, notwithstanding that approximately US\$85 million (retail value) of inventory was being stored at the US Distribution Centre at such time.

49. Over the past several weeks, TBS Canada, the Proposal Trustee, the Chapter 7 Trustee and the UK Administrators engaged in numerous discussions to settle arrangements for the Company to meet its immediate inventory needs, while concurrently pursuing longer-term solutions for TBS Canada.

50. To fulfill its near-term inventory needs, TBS Canada, with the assistance of the Proposal Trustee, coordinated the delivery of inventory from three sources:

- (a) approximately \$1.3 million (retail value) of inventory that was en-route to TBS Canada but was stopped at the border and turned back to the US Distribution Centre prior to the Filing Date (“**Returned Inventory**”). TBS Canada paid for the Returned Inventory in full prior to the Filing Date. In order to facilitate the delivery of the Returned Inventory, TBS Canada was required to access the US Distribution Centre at its own cost. As part of these efforts, TBS Canada has, through a US-based staffing agency, engaged 13 former TBS US employees as independent contractors to work in the US Distribution Centre (the “**US DC Contractors**”).<sup>6</sup> The Returned

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<sup>6</sup> The 13 US DC Contractors are in addition to the seven former US employees that the Company engaged as independent contractors (collectively, the “**Contractors**”) and I reported on in my

Inventory was received by the Company on April 12, 2024 and allocated to the Company's stores shortly thereafter;

- (b) approximately \$3.5 million (retail value) of inventory that was in-transit to the United States (the **"In-Transit Inventory"**) at the Filing Date that was owned by the UK Parent and would have been delivered to the US Distribution Centre in the ordinary course but was held by a brokerage company who was owed unpaid freight and storage costs. TBS Canada entered into a Sale and Lien Release Agreement pursuant to which it purchased this inventory from the UK Parent and agreed to pay the outstanding freight and storage costs in exchange for receiving a credit towards the purchase of inventory from the UK Parent. The In-Transit Inventory was received by the Company on April 24, 2024 and allocated to the Going Concern Stores; and
- (c) approximately \$6.7 million (retail value) of inventory owned by the UK Parent and located at the US Distribution Centre (the **"Inventory Replenishment Order"**). TBS Canada made arrangements: (i) to purchase this inventory from the UK Parent at a price consistent with past practice;

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Second Affidavit. As described in my Second Affidavit, the Contractors provided shared services to TBS Canada and their ongoing employment was critical to the Company's continued operations.

and (ii) with the Chapter 7 Trustee, to allow TBS Canada and the US DC Contractors to access the US Distribution Centre to “pick and pack” the merchandise and arrange for it to be shipped to the Going Concern Stores.

51. The Returned Inventory, In-Transit Inventory and Inventory Replenishment Order, taken together, are projected to provide TBS Canada with sufficient merchandise levels into August 2024, at which point additional replenishment would be required. TBS Canada and the UK Parent, with the assistance of the Proposal Trustee, are currently discussing additional inventory replenishment orders, which would be sourced from the inventory currently located at the US Distribution Centre.

52. To facilitate the Inventory Replenishment Order (and any future orders), TBS Canada and the Chapter 7 Trustee entered into a real estate license arrangement that would allow TBS Canada to access the inventory stored in the US Distribution Centre (the “**License Arrangement**”).

53. The License Arrangement is attached to my Affidavit as **Exhibit “J”**. The key terms and conditions of the License Arrangement are as follows:

- (a) TBS Canada, and its employees, agents, contractors and temporary workers are granted a license to use and occupy a portion of the US Distribution Centre for the purpose of picking, packing and arranging for the delivery of inventory, including the Inventory Replenishment Order;

- (b) The license period commenced as of April 1, 2024 and expires on June 30, 2024 (the “**License Period**”), subject to the ability of TBS Canada to extend the License Period. The License Period commenced April 1, 2024 to reflect that TBS Canada was required to access the US Distribution Centre in April to coordinate the delivery of the Returned Inventory;
- (c) The Chapter 7 Trustee will provide basic utilities and pay for all operating costs, including water, gas, electricity, telephone or other utilities and taxes, repair and maintenance costs;
- (d) TBS Canada shall pay the US Trustee a license fee in the amount of US\$100,000 per month (the “**License Fee**”) through the license period plus a US\$50,000 security deposit. The License Fee is calculated to compensate the Chapter 7 Trustee for the operating costs associated with the US Distribution Centre that would have historically been charged through the group’s intercompany accounts. TBS Canada is projected to have sufficient liquidity to pay the License Fee for the term of the License Period. TBS Canada also negotiated an arrangement with the UK Parent that a portion of the License Fee will be set-off against the purchase price of the Inventory Replenishment Order;
- (e) The Chapter 7 Trustee has provided TBS Canada with an offsetting credit of US\$79,000. This credit reflects amounts paid by TBS Canada for the

benefit of the Chapter 7 Trustee, including an allocation of time for the US Contractors engaged by TBS Canada, and certain expenses required to operate the US Distribution Centre. This credit was applied to the License Fee due and owing for the month of April;

- (f) The License Arrangement remains subject to the approval of the US Bankruptcy Court. I understand that that a hearing is scheduled for June 13, 2024 in the Chapter 7 Proceedings to seek approval of the License Arrangement. The Chapter 7 Trustee has allowed the parties to perform their respective obligations under the License Arrangement pending subsequent approval by the US Bankruptcy Court.

54. Shipping of the Inventory Replenishment Order to Canada is underway. It is anticipated that all of the Inventory Replenishment Order will be delivered to the Going Concern Stores by early June.

## **F. Canadian Employee Matters**

### **(i) Incentive Bonus**

55. On April 15, 2024, this Court approved the KERP, which was designed to retain and incentivize five individuals who are either Canadian employees or Contractors<sup>7</sup> and

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<sup>7</sup> As noted in footnote 6 above, TBS Canada engaged seven Contractors who provided shared services to the Company and were critical to its ongoing operations.

were identified by TBS Canada as crucial to the Company's restructuring efforts. This Court also approved the KERP Charge over TBS Canada's property in the amount of \$470,000 to secure the amounts payable under the KERP.

56. Since April 15, 2024, TBS Canada has identified an additional employee who is critical to TBS Canada's operations and restructuring efforts that it wishes to incentivize to continue their employment with TBS Canada. The employee will receive an incentive bonus, calculated as a percentage of their salary that is payable on the closing of a going concern transaction in respect of the Company's business or the implementation date of any proposal filed by TBS Canada.

57. I believe that absent the incentive bonus, this key employee may seek employment elsewhere. TBS Canada is not seeking to secure the incentive bonus with the KERP Charge that was previously approved by this Court.

**(ii) Representation Motion**

58. On April 12, 2024, TBS Canada was served with a motion (the "**Representation Motion**") brought by Stephanie Hood, a Former Employee, seeking an order, among other things:

- (a) appointing Koskie Minsky LLP ("**Koskie Minsky**") as representative counsel to the Former Employees (such counsel, "**Representative Counsel**"); and

- (b) that the costs incurred by Representative Counsel before and after the date of the order shall be paid by TBS Canada.

59. In the April 15 Endorsement attached as **Exhibit “D”**, Justice Osborne scheduled a scheduling case conference for April 24, 2024 for the scheduling of the Representation Motion.

60. On April 23, 2024, Koskie Minsky served a Supplementary Motion Record, introducing additional evidence in support of the Representation Motion.

61. The scheduling case conference was held on April 24, 2024 and the Representation Motion has been scheduled to be heard on July 4, 2024. A copy of the endorsement from the April 24, 2024 case conference (the “**April 24 Endorsement**”) is attached to my Affidavit as **Exhibit “K”**. The April 24 Endorsement reflects an undertaking by TBS Canada to continue to keep all stakeholders, including the Former Employees, aware of significant events or matters.

62. In compliance with the April 24 Endorsement, I understand that our counsel Davies Ward Phillips & Vineberg LLP (“**Davies**”) advised Koskie Minsky on May 17, 2024, shortly after TBS Canada became aware itself, that the UK Administrators had determined not to proceed with the CVA process.

63. Following the case conference, I understand that counsel for TBS Canada on May 2, 2024 proposed the following timetable for the delivery of materials in connection



with the Representation Motion. As of the date hereof, counsel for TBS Canada have not received any objection to this schedule from Koskie Minsky.

Event	Date
Moving Party Motion Record served	April 12, 2024
Moving Party Supplemental Motion Record	April 23, 2024
Scheduling Case Conference	April 24, 2024
Responding/ Company Motion Record due	May 10, 2024
Proposal Trustee's Report due	May 15, 2024
Reply Motion Record due (if any)	May 22, 2024
Company Stay Extension Motion	May 30 or 31, 2024
Cross Examinations on filed affidavits	May 27-31, 2024
Proposal Trustee's Supplemental Report due	June 5, 2024
Moving Party Factum due	June 14, 2024
Responding Factum due	June 24, 2024
Reply Factum due (if any)	June 28, 2024
Motion Hearing	July 4, 2024

64. TBS Canada has determined to oppose the Representation Motion. Accordingly, TBS Canada served its responding motion record on the service list on May 10, 2024 in accordance with the above timetable. I swore an Affidavit on May 10, 2024 (the “**Third Affidavit**”) in support of the Company’s position, which is attached to this Affidavit, without the exhibits thereto, as **Exhibit “L”**.

65. The rationale behind TBS Canada's decision to oppose the Representation Motion is set out in detail in my Third Affidavit but includes the view of the Company that appointment of Representative Counsel would duplicate efforts, increase costs and undermine efficiency.

66. On May 15, 2024, the Proposal Trustee served the Third Report per the above timetable. In the Third Report, the Proposal Trustee concluded that based on the information available, it is of the view that the appointment of Representative Counsel is currently unnecessary. The Third Report is attached to my Affidavit as **Exhibit "M"**.

67. On May 22, 2024, Koskie Minsky served the Company with a reply motion record.

(i) ***Wage Earner Protection Program Act***

68. On May 3, 2024, TBS Canada, through its counsel Davies, engaged with Service Canada and the Department of Justice to explore the possibility of allowing the Former Employees to access the *Wage Earner Protection Program Act* ("**WEPPA**"). One of the options that the Company explored was the appointment of the Proposal Trustee to act as the receiver for specific assets belonging to TBS Canada.

69. On May 22, 2024, Davies received an email from Ayesha Laldin, a lawyer at the Department of Justice. In the email, Ms. Laldin advised that "ESDC" [Employment and Social Development Canada] takes the position that receiverships created for the purpose of triggering the WEPPA are inconsistent with both the legislative intent of the BIA and

WEPPA and that would appear to be the case with the proposed receivership in respect of TBS Canada.

70. The email correspondence between Davies, Service Canada and the Department of Justice between May 3, 2024 and May 22, 2024 is attached to my Affidavit as **Exhibit “N”**.

**G. TBS Canada’s Efforts to Pursue a Going Concern Solution**

71. As discussed in my Prior Affidavits, TBS Canada has engaged in numerous discussions with the UK Parent, Aurelius, the UK Administrators and interested parties with respect to settling the terms of a proposal and going-concern solution for the business in Canada.

72. Given that TBS International owns the right to the “The Body Shop” brand and all of the Company’s inventory is sourced from the UK Parent, TBS Canada requires the UK Parent and the UK Administrators to be amenable to the structure of any such transaction. Further, the ability of TBS Canada to emerge from these restructuring proceedings and continue as a going concern is directly contingent on the outcome of the UK Administration.

73. The Company has continued to advance discussions with the UK Parent and the UK Administrators in connection with implementing a transaction that would allow TBS Canada to implement a proposal and continue as a going concern. In this regard, TBS

Canada recently provided these parties with a confidential term sheet that would provide for a going concern solution for the Canadian business.

74. In light of the recent decision by the UK Administrators to abandon the CVA process and pursue a sale process for the UK Parent, TBS Canada is re-evaluating its options. TBS Canada, the Proposal Trustee and the UK Administrators are hopeful that they can continue to advance the term sheet in connection with the sale process currently underway for the UK Parent's business and assets.

75. The Company remains optimistic that a going concern solution may be possible for the Canadian business, however as described above, such a solution will be dependent on the outcome of the UK Administration.

#### **H. Relief Sought:**

##### **(i) Extension of Time to File a Proposal**

76. TBS Canada is seeking an extension of the time to file a proposal from its current expiration date of May 31, 2024 to July 12, 2024 (the "**Extension**").

77. The Extension will provide TBS Canada with the time to continue to engage with the UK Parent, the UK Administrator, Aurelius, and any potential buyers, all with the goal of facilitating a going concern solution for the business. The Extension will also allow for the implementation of the sale process in respect of the UK Parent. The Company will continue to keep its stakeholders apprised of significant events or matters affecting TBS

Canada and this NOI proceeding. TBS Canada has, and will continue to, work in good faith and with due diligence in the period prior to and during this NOI proceeding.

78. The Company has prepared an updated cash flow forecast with the assistance of the Proposal Trustee, which sets out the projected cash flows for the 13-week period ending August 16, 2024 (the “**Updated Cash Flow**”). I understand that the Proposal Trustee will file the Updated Cash Flow with the Court in connection with this motion. The Updated Cash Flow shows that TBS Canada has sufficient liquidity to operate to the end of the requested Extension.

**Conclusion**

79. For the reasons expressed herein, I am of the view that TBS Canada is acting in good faith and with due diligence in seeking the relief sought on this motion and that if granted, the relief will not prejudice any of the Company's creditors.

SWORN remotely by Jordan Searle at the City of Toronto, in the Province of Ontario, before me on the 23rd day of May, 2024 in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.

*Rushnan Anusha*

**RUSHNAN ANUSHA,  
A COMMISSIONER, ETC.,  
PROVINCE OF ONTARIO,  
WHILE A STUDENT-AT-LAW.**

**EXPIRES APRIL 21, 2026**

  
Jordan Searle

This is Exhibit "B" to the Affidavit of Sandy Prosa  
sworn the 24th day of June, 2024.

A handwritten signature in dark ink, appearing to read 'Chenyang Li', is positioned above a horizontal line.

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Chenyang Li

Court File No: BK-24-03050418-0031  
Estate /Court File No. BK -31-3050418

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

THE HONOURABLE	)	THURSDAY, THE 30 <sup>th</sup> DAY
	)	
JUSTICE CAVANAGH	)	OF MAY, 2024.



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

**ORDER**

**THIS MOTION**, made by The Body Shop Canada Limited (the “**Company**”) for an order, *inter alia*, granting an extension of time for the Company to file a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (the “**BIA**”) to July 12, 2024, approving the Third Report of Alvarez & Marsal Canada Inc., in its capacity as Proposal Trustee of the Company (the “**Proposal Trustee**”) dated May 15, 2024 (the “**Third Report**”) and the Fourth Report (the “**Fourth Report**”) of the Proposal Trustee dated May 27, 2024 and the activities described therein, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Jordan Searle sworn on May 23, 2024, the Third Report and the Fourth Report filed, and on hearing the submissions of respective counsel for the Company, the Proposal Trustee and such other counsel as were present as shown on the Participant Information Form, no one else appearing although duly served:

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, Motion Record and Fourth Report are hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

**EXTENSION OF TIME TO FILE A PROPOSAL**

2. **THIS COURT ORDERS** that pursuant to section 50.4(9) of the BIA, the Company be and is hereby granted an extension of time to file a proposal to July 12, 2024.



## APPROVAL OF ACTIVITIES

3. **THIS COURT ORDERS** that the Third Report and the Fourth Report are each hereby approved, and the activities and conduct of the Proposal Trustee described therein are hereby approved; provided, however, that only the Proposal Trustee, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

## GENERAL

4. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, agency or regulatory or administrative bodies, having jurisdiction in Canada, the United States of America or any other jurisdiction, to give effect to this Order and to assist the Company, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, agencies and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Company and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Company and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

6. **THIS COURT ORDERS** that each of the Company and the Proposal Trustee be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date of this Order without the need for entry or filing.

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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

Court File No: BK-24-03050418-0031  
Estate/Court File No.: BK-31-3050418

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**  
Proceeding commenced at Toronto

**ORDER**

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
155 Wellington Street West  
Toronto ON M5V 3J7

**Natasha MacParland** (LSO# 42383G)  
Tel: 416.863.5567  
nmacparland@dwpv.com

**Natalie Renner** (LSO #55954A)  
Tel: 416.863.5502  
nrenner@dwpv.com

Counsel for The Body Shop Canada Limited

This is Exhibit "C" to the Affidavit of Sandy Prosa  
sworn the 24th day of June, 2024.

A handwritten signature in black ink, appearing to read 'Chenyang Li', is positioned above a horizontal line.

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Chenyang Li

Commercial List File Number:	BK—24-03050418-0031
Civil File Number:	

Date filed: May 31, 2024

**SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**  
REQUEST FORM CONTINUING MATTER

A	Short Title of Proceeding: <b>The Body Shop Canada Limited</b>		
B	The estimated time for the hearing of this matter is:		
	Minute(s)	1 Hour(s)	Day(s)
C	If hearing is to be 1 day or more in duration, please provide an estimate of reading time required for judge to prepare for hearing		
	Minute(s)	Hour(s)	Day(s)
D	The nature of this hearing in this continuing matter is:  Stay extension or application for initial order.		
E	State the date(s) and time(s) for hearing the matter that has (have) been arranged with other counsel:		
	(1) July 5, 2024	(2)	(3)
F	Specify if this matter is already being dealt with in the court system (giving particulars as court number and office, when and by what judge or other judicial official). Advise of any known judicial conflicts.  Justice Osborne		
G	The following materials will be necessary for the matter to be considered. (It is the responsibility of counsel to confirm that the proper materials are available for the Court.)		
	The motion record of The Body Shop Canada; Report of Proposal Trustee.		

COUNSEL FOR APPLICANT/MOVING PARTY		COUNSEL FOR APPLICANT/MOVING PARTY	
<b>Party</b>	The Body Shop Canada Limited	<b>Party</b>	Proposal Trustee
<b>Counsel</b>	 Natalie Renner PRINT AND SIGN OR INITIAL	<b>Counsel</b>	Jane Dietrich PRINT AND SIGN OR INITIAL
<b>Date</b>	May 31, 2024	<b>Date</b>	May 31, 2024
<b>Address</b>	Davies Ward Phillips & Vineberg LLP 155 Wellington Street West Toronto ON M5V 3J7	<b>Address</b>	Cassels Brock & Blackwell LLP Suite 3200, Bay Adelaide Centre - North Tower 40 Temperance Street Toronto, ON M5H 0B4
<b>Phone</b>	416.367.7489	<b>Phone</b>	416.860.5223
<b>E-Mail</b>	nrenner@dwpv.com	<b>E-Mail</b>	jdietrich@cassels.com

(IF MORE THAN 2 PARTIES INVOLVED, ADD ADDITIONAL SIGNATURES AND PARTICULARS ON REVERSE OR SEPARATE PAGE)

To be submitted to: Commercial List Office, 330 University Avenue, 7th Floor, Toronto, Ontario **Fax to: (416) 327-6228**

**You may also convert to PDF and email to [Toronto.Commerciallist@jus.gov.on.ca](mailto:Toronto.Commerciallist@jus.gov.on.ca)**

**Endorsement/Disposition** ☐ **See attached Yellow Endorsement Form**

Commercial Form B

ADDITIONAL PARTIES

COUNSEL FOR APPLICANT/MOVING PARTY			
Party		Party	
Counsel		Counsel	
Date		Date	
Address		Address	
Phone		Phone	
Fax		Fax	
E-Mail		E-Mail	

This is Exhibit "D" to the Affidavit of Sandy Prosa  
sworn the 24th day of June, 2024.

A handwritten signature in black ink, appearing to read 'Chenyang Li', is positioned above a horizontal line.

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Chenyang Li

DAVIES

155 Wellington Street West  
Toronto, ON M5V 3J7 Canada

dwpv.com

Chenyang Li  
T 416.367.7623  
F 416.863.0871  
cli@dwpv.com

File 289456

May 15, 2024

**BY EMAIL**Andrew Hatney  
Koskie Minsky LLP  
20 Queen Street West  
Suite 900, Box 52  
Toronto, ON M5H 3R3

Dear Andrew:

**BK-31-3050418 – The Body Shop Limited Canada – NOI Proceedings**

We write in respect of two issues connected with your motion to appoint Representative Counsel for Terminated Canadian Employees in the above-noted proceeding.

First, given that the deadline for the delivery of factums is fast approaching, we request that you confirm whether you intend to cross-examine Jordan Searle on his affidavit dated May 10, 2024 in connection with your motion. As previously discussed, Mr. Searle has certain windows of availability to be cross-examined for a reasonable period of time between May 27, 2024 and May 31, 2024. Please advise us if you intend to conduct such a cross-examination, and if so, the proposed date, time, and location of the cross-examination so that we may confirm Mr. Searle's availability.

Second, portions of Stephanie Hood's affidavit dated April 12, 2024 and supplementary affidavit dated April 23, 2024 relate to information conveyed to her by your firm, as Ms. Hood acknowledges at various points. We have set out our questions and requests pertaining to such portions of her affidavits – the answers and responses to which are obviously within your firm's knowledge, possession, or control – below.



## DAVIES

	Portion of Ms. Hood's Affidavits	Question/Request
1.	<p>Ms. Hood asserts that 40 former employees of The Body Shop Limited Canada ("<b>TBS</b>") have retained Koskie Minsky LLP ("<b>KM</b>") as their counsel.</p> <p>See: Main Affidavit, paras. 10 and 24 and Supp. Affidavit, para. 5</p>	<p>Please provide the full names of the former employees of TBS who have retained KM as counsel in respect of this proceeding. The information is required to facilitate the collection of employment information requested by KM in respect of its clients.</p> <p>The information is also required to audit the information contained in Exhibit D to Ms. Hood's supplementary affidavit.</p>
2.	<p>Ms. Hood asserts that she, along with four other individuals, is part of an <i>ad hoc</i> Employee Committee of former TBS employees.</p> <p>See: Main Affidavit, para. 11.</p>	<p>Please confirm whether all five individuals that comprise the <i>ad hoc</i> Employee Committee of former TBS employees are clients of KM as of the date of this letter.</p>
3.	<p>Ms. Hood asserts that she is advised by KM that she is owed severance in the approximate amount of \$46,095.97.</p> <p>See: Main Affidavit, para. 13</p>	<p>Please provide full particulars of the calculation used to arrive at the claimed total severance entitlement of \$46,095.97. Ms. Hood's claimed severance amount does not appear to exist in Exhibit D of her supplementary affidavit.</p>
4.	<p>Ms. Hood asserts that she, along with other former employees of TBS, cannot afford to retain counsel in this proceeding.</p> <p>See: Main Affidavit, para. 16.</p> <p>Yet in paragraph 5 of her supplemental affidavit, she deposes that "30 of the employees [have] retained KM (out of the total of 40 individuals) in this proceeding".</p>	<p>Please provide particulars as to the fee arrangement between KM and the former employees of TBS that resulted in those individuals retaining KM.</p>

## DAVIES

	Portion of Ms. Hood's Affidavits	Question/Request
5.	<p>Ms. Hood lists a series of cases in which she asserts KM has been appointed Representative Counsel in insolvency proceedings, including: (i) <i>Metroland Media Group Ltd.</i>; (ii) <i>Sears Canada Inc.</i>; (iii) <i>U.S. Steel Canada Inc. (Stelco)</i>; (iv) <i>Nortel Networks Inc.</i>; (v) <i>Target Canada Inc., Wabush Mines (Quebec)</i>; (vi) <i>Eaton's</i>; (vii) <i>Shaw Group</i>; (viii) <i>Hollinger Canadian Publishing Co.</i>; (ix) <i>Catalyst Paper (B.C.)</i>, (x) <i>Saan Stores</i>, and (xi) <i>Dylex</i>.</p> <p>See: Main Affidavit, para. 25.</p>	<p>Please confirm whether the individual lawyers at KM involved in this action were the lawyers retained in each of the 11 cases described by Ms. Hood in her main affidavit, or whether it was other lawyers at KM who were retained in those 11 cases.</p> <p>Please also confirm whether there are any other cases apart from these 11 cases where KM has been – or sought to be – appointed as Representative Counsel in insolvency proceedings.</p> <p>Finally, please produce the motion materials filed, reasons for decision rendered, and orders issued in connection with any and all cases where a request has been made that KM be appointed as Representative Counsel in insolvency proceedings, regardless of the outcome of such request.</p>
6.	<p>Ms. Hood deposes that KM retained an accountant to calculate termination entitlements of former TBS employees that are described in Exhibit D to her supplementary affidavit.</p> <p>See: Supp. Affidavit, para. 6.</p>	<p>Please provide the name of the accountant retained by KM as well as the working papers of the accountant that were used to calculate the claimed termination entitlements in Exhibit D to Ms. Hood's supplementary affidavit.</p> <p>Please provide particulars as to the fees and disbursements charged by the accountant referred to by Ms. Hood for the work the accountant performed in connection with this matter.</p>

DAVIES

	Portion of Ms. Hood's Affidavits	Question/Request
7.	<p>Ms. Hood deposes that KM and the accountant it retained calculate that the claims of all terminated employees of TBS amount to approximately \$2 million to \$2.5 million.</p> <p>See: Supp. Affidavit, para. 7.</p>	<p>Please confirm whether the accountant that produced the calculation referred to in paragraph 7 of Ms. Hood's supplementary affidavit is the same accountant referred to in paragraph 6 of Ms. Hood's supplementary affidavit.</p> <p>In addition, please produce the working papers of the accountant that were used to calculate the claimed termination entitlements referred to in paragraph 7 of Ms. Hood's supplementary affidavit.</p>

We would prefer to avoid the need to inconvenience Ms. Hood with cross-examination in respect of the questions and requests listed above. As such, we require your firm's answers and responses to the above questions and requests by no later than Tuesday, May 21, 2024. If we do not receive comprehensive responses from your firm by that date, please be advised that we reserve our right to cross-examine Ms. Hood on the evidence she has sworn in connection with this motion.

Yours very truly,



Chenyang Li

cc Natasha J. MacParland, Natalie Renner, and Chanakya A. Sethi (*Davies Ward Phillips & Vineberg LLP*)  
Jane Dietrich and Alec Hoy (*Cassels Brock & Blackwell LLP*)  
Josh Nevsky and Mitchell Binder (*Alvarez & Marsal Canada Inc.*)  
Jordan Searle (*The Body Shop Canada Ltd.*)  
James Harnum and Abir Shamim (*Koskie Minsky LLP*)

This is Exhibit "E" to the Affidavit of Sandy Prosa  
sworn the 24th day of June, 2024.

A handwritten signature in black ink, appearing to read 'Chenyang Li', is positioned above a horizontal line.

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Chenyang Li

June 13, 2024

**Andrew J. Hatnay**  
Direct Dial: 416-595-2083  
Direct Fax: 416-204-2872  
ahatnay@kmlaw.ca

**Via E-mail**

Chenyang Li  
Davies Ward Phillips & Vineberg LLP  
155 Wellington Street West  
Toronto, ON M5V 3J7

Dear Mr. Li:

**Re: *In the Matter of the Notice of Intention to Make a Proposal of The Body Shop Canada Limited*  
Terminated Employees' Claims  
Court File No. BK-31-3050418**

We are writing further to your letter dated May 15, 2024.

In connection with the motion to appoint Representative Counsel for all the terminated employees of The Body Shop Canada Ltd. ("TBS Canada") returnable July 4, 2024, we do not plan at this time to cross-examine Jordan Searle on his affidavit sworn May 10, 2024.

Responses to your questions and requests pertaining to portions of Stephanie Hood's Affidavit sworn April 12, 2024, and her Supplementary Affidavit sworn April 23, 2024, are as follows:

- Question/Request 1: Attached is a preliminary Proof of Claim prepared on behalf of 38 terminated employees of TBS Canada who have retained our firm. These are substantially the same claim calculations that were already included in the Supplementary Affidavit of Stephanie Hood sworn April 23, 2024. Schedule A of the Proof of Claim lists the names of the employees and the amount of their claims. The claims have been calculated based on information provided to us by the terminated employees. As has been done in other insolvency proceedings and approved by courts and/or accepted by trustees, we applied a reasonable and comprehensive group severance methodology to calculate the terminated employees' claims. This approach to claim calculations in an insolvency proceeding with a mass termination of employees, such as this case (in comparison to individual fact-specific employee assessments of wrongful dismissal entitlements), can be completed both accurately and quickly to ensure the employees will receive their full entitlements from WEPPA in a short time frame, as well as for future distributions in respect of their claims.

As indicated, the enclosed Proof of Claim is preliminary and subject to change as additional employee-related information becomes available, including additional employment data

from the company and a review of the company's employment and termination policies, as those are applicable.

- Question/Request 2: All five members of the ad hoc Employee Committee are terminated employees of TBS Canada and they retained our firm as of the date of your letter, May 15, 2024.
- Question/Request 3: Given that there was no mention of the amount of the terminated employees' severance claims in the company's creditor list that accompanied its NOI in March 2024, our firm calculated each employee's claim on a preliminary basis using information provided to us from the employees in order to provide an estimate of the amount of pay in lieu of notice and other amounts owing to them by TBS Canada.

In the Affidavit of Stephanie Hood sworn April 12, 2024, her entitlement under common law notice of termination was calculated based on 2.2 weeks' pay in lieu of notice per year of employment service. As noted in the Supplementary Affidavit of Stephanie Hood sworn April 23, 2024, we revised each of the terminated employees' notice entitlement under common law to 3 weeks' pay per year of employment service to more closely align with applicable wrongful dismissal law. As such, the total preliminary claim of Stephanie Hood has been revised to \$62,698.33.

We note that the Supplement to the Third Report of the Proposal Trustee, dated June 5, 2024, at para. 2.15 states "the Proposal Trustee and the Company calculate the Representative Plaintiff's claim to be approximately double to the amount suggested in the Hood Affidavit." Please provide us with the methodology that was applied to determine the amount of Ms. Hood's claim so we can revise her claim as warranted as well as the claims of the other employees, as applicable.

As explained in the Supplementary Affidavit of Stephanie Hood sworn April 23, 2024, paras. 8-14, the employees' claims were determined by reviewing: their employment agreements (as applicable), calculating the amounts owed under statutory minimum standards (i.e., termination pay, severance pay, and mass termination provisions), amounts owing by TBS for health benefit contributions, group RRSP contributions, vacation pay and bonuses owing during the employees' notice period, and then comparing those amounts to the employees' entitlements under common law notice of termination using a uniform three weeks' pay in lieu of notice per year of employment service and then advancing, the greater of their claim under statutory minimum standards or the common law notice.

- Question/Request 4: As stated in Ms. Hood's Affidavit sworn April 12, 2023, she and the other terminated employees of TBS Canada who retained our firm cannot afford to pay legal fees to retain counsel in this proceeding. Our firm has accepted the retainers of the terminated Canadian employees given their circumstances of being terminated by TBS Canada without severance pay nor the ability to apply for WEPPA, having limited financial means, facing hardships and being vulnerable individuals. They have significant unpaid

amounts owing to them by TBS and have told us they need legal advice in the complicated insolvency proceeding of TBS Canada, which is on-going with an uncertain outcome

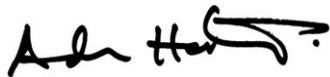
As a matter of access of justice and to ensure the terminated employees have appropriate legal representation despite their limited financial means, our firm has not sought nor received any retainer amount from them. As you know, we have requested that the company pay their legal costs in our motion materials.

- Question/Request 5: Our firm has been retained by terminated employees in many other insolvency proceedings. The insolvency firms in those proceedings typically post all motion materials, orders, and reasons for decisions on their websites which are publicly available. A recent case, which we understand you are aware of, is the proposal proceedings of Metroland Media Group Ltd.
- Questions/Requests 6 & 7: To assist us in calculating each employee's claim, our firm retained James Merryweather, CPA of Schonfeld Inc., an insolvency firm. Mr. Merryweather who has been involved in many insolvency proceedings and has administered employee claims from both the trustee/receiver perspectives as well as calculating employee claims that have been accepted in insolvency claims processes. Mr. Merryweather applied the methodology referred to in Question/Request 3 above to prepare the spreadsheet which was attached to the Supplementary Affidavit of Stephanie Hood sworn April 23, 2024, as well as the enclosed Preliminary Proof of Claim. Mr. Merryweather's regular hourly rate is \$425. His work is on-going and further adjustments to the employee claims may be warranted once we are provided with the methodology used by the Proposal Trustee and company to calculate Stephanie Hood's claim amount, as requested above.

We look forward to receiving the methodology used to calculate Ms. Hood's claim.

Yours truly,

**KOSKIE MINSKY LLP**



Andrew J. Hatnay  
AJH/vdl

cc. Client Committee  
Jane Dietrich, *Cassels Brock & Blackwell LLP* (counsel to the Proposal Trustee)  
Josh Nevsky, *Alvarez & Marsal Canada Inc.*  
Natalie Renner & Chanakya Sethi, *Davies Ward Phillips & Vineberg LLP*  
James Harnum, Abir Shamim, *Koskie Minsky LLP*

## FORM 31

**PRELIMINARY**

## Proof of Claim

(Section 50.1, subsections 65.2(4), 81.2(1), 81.3(8), 81.4(8), 102(2), 124(2), 128(1),  
and paragraphs 51(1)(e) and 66.14(b) of the Act)

*All notices or correspondence regarding this claim must be forwarded to the following address:*  
c/o Koskie Minsky LLP, Attn: Andrew Hatnav, 20 Queen St. West, Suite 900, Toronto, ON M5H 3R3

In the matter of the bankruptcy (or the proposal, or the receivership) of The Body Shop Canada Ltd. (name of debtor) of  
Toronto, ON (city and province) and the claim of 38 Terminated Employees, creditor.

I, Andrew Hatnav (name of creditor or representative of the creditor), of  
Toronto, ON (city and province), do hereby certify:

1. That I am a creditor of the above-named debtor (or that I am Counsel to (state position or title) of 38 Terminated Employees (name of creditor or representative of the creditor)).

2. That I have knowledge of all the circumstances connected with the claim referred to below.

3. That the debtor was, at the date of bankruptcy (or the date of the receivership, or in the case of a proposal, the date of the notice of intention or of the proposal, if no notice of intention was filed), namely the 1st day of March, 2024, and still is, indebted to the creditor in the sum of \$ 940,069.84, as specified in the statement of account (or affidavit) attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.)

4. (Check and complete appropriate category.)

☒ A. UNSECURED CLAIM OF \$ 940,069.84.

(other than as a customer contemplated by Section 262 of the Act)

That in respect of this debt, I do not hold any assets of the debtor as security and

(Check appropriate description)

☐ Regarding the amount of \$ \_\_\_\_\_, I claim a right to a priority under section 136 of the Act.

☒ Regarding the amount of \$ 940,069.84, I do not claim a right to a priority.

(Set out on an attached sheet details to support priority claim.)

☐ B. CLAIM OF LESSOR FOR DISCLAIMER OF A LEASE \$ \_\_\_\_\_

That I hereby make a claim under subsection 65.2(4) of the Act, particulars of which are as follows:

(Give full particulars of the claim, including the calculations upon which the claim is based.)



## FORM 31 -- Continued

☐ C. SECURED CLAIM OF \$ \_\_\_\_\_

That in respect of this debt, I hold assets of the debtor valued at \$ \_\_\_\_\_ as security, particulars of which are as follows:

*(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)*

☐ D. CLAIM BY FARMER, FISHERMAN OR AQUACULTURIST OF \$ \_\_\_\_\_

That I hereby make a claim under subsection 81.2(1) of the Act for the unpaid amount of \$ \_\_\_\_\_

*(Attach a copy of sales agreement and delivery receipts.)*

☐ E. CLAIM BY WAGE EARNER OF \$ \_\_\_\_\_

☐ That I hereby make a claim under subsection 81.3(8) of the Act in the amount of \$ \_\_\_\_\_,

☐ That I hereby make a claim under subsection 81.4(8) of the Act in the amount of \$ \_\_\_\_\_,

☐ F. CLAIM AGAINST DIRECTOR \$ \_\_\_\_\_

*(To be completed when a proposal provides for the compromise of claims against directors.)*

That I hereby make a claim under subsection 50(13) of the Act, particulars of which are as follows:

*(Give full particulars of the claim, including the calculations upon which the claim is based.)*

☐ G. CLAIM OF A CUSTOMER OF A BANKRUPT SECURITIES FIRM \$ \_\_\_\_\_

That I hereby make a claim as a customer for net equity as contemplated by section 262 of the Act, particulars of which are as follows:

*(Give full particulars of the claim, including the calculations upon which the claim is based.)*

5. That, to the best of my knowledge, I am (*or* the above-named creditor is) (*or* am not *or* is not) related to the debtor within the meaning of section 4 of the Act, and have (*or* has) (*or* have not *or* has not) dealt with the debtor in a non-arm's-length manner.

FORM 31 -- *Concluded*

6. That the following are the payments that I have received from, the credits that I have allowed to, and the transfers at undervalue within the meaning of subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (*or, if the creditor and the debtor are related within the meaning of section 4 of the Act or were not dealing with each other at arm's length, within the 12 months*) immediately before the date of the initial bankruptcy event within the meaning of subsection 2(1) of the Act: (*Provide details of payments, credits and transfers at undervalue.*)

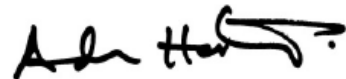
(*Applicable only in the case of the bankruptcy of an individual.*)

☒ I request that a copy of the report filed by the trustee regarding the bankrupt's application for discharge pursuant to subsection 170(1) of the Act be sent to the above address.

Dated at Toronto, this 12th day of June 2024.



Witness



Creditor

Phone Number: 416-557-3633  
 Fax Number: 416-204-2872  
 Email Address: ahatnay@kmlaw.ca

NOTE: If an affidavit is attached, it must have been made before a person qualified to take affidavits.

WARNINGS: A trustee may, pursuant to subsection 128(3) of the Act, redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in a proof of security, by the secured creditor.

Subsection 201(1) of the Act provides severe penalties for making any false claim, proof, declaration or statement of account.

**The Body Shop Canada Limited**  
**Employee Entitlements Claim**  
**Optimal of Employment Standards or Common-Law**

Prov	First Name	Last Name	3.0 Weeks per Year of Service							Eligible for WEPP \$ <b>8,507.66</b>
			Basis	Termination Pay	Vac Pay on Termination	Severance	RSP	Health Benefits	Total	
AB	Natalie	Roy	Common-Law	0.00	726.92	55,528.85	2,221.15	1,869.23	60,346.15	8,507.66
Total Alberta				0.00	726.92	55,528.85	2,221.15	1,869.23	60,346.15	8,507.66
MB	Kenia	Amaya	Common-Law	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MB	Shayla	Holland	Common-Law	0.00	540.21	16,656.48	666.26	1,246.15	19,109.10	8,507.66
MB	Abby	Johnson	ESA	4,875.00	195.00	0.00	0.00	0.00	5,070.00	5,070.00
Total Manitoba				4,875.00	735.21	16,656.48	666.26	1,246.15	24,179.10	13,577.66
NB	Elizabeth	Landry	Common-Law	0.00	374.40	33,800.00	1,352.00	2,215.38	37,741.78	8,507.66
Total New Brunswick				0.00	374.40	33,800.00	1,352.00	2,215.38	37,741.78	8,507.66
NS	Rebekah	Fielding	Common-Law	0.00	268.50	15,312.84	612.51	1,246.15	17,440.00	8,507.66
Total Nova Scotia				0.00	268.50	15,312.84	612.51	1,246.15	17,440.00	8,507.66
ON	Sarah	Adjepong-Duodu	Common-Law	0.00	1,615.89	68,801.53	2,752.06	1,869.23	75,038.71	8,507.66
ON	Gabrielle	Berube	ESA	6,769.23	0.00	0.00	270.77	553.85	7,593.85	7,593.85
ON	Zorica	Bosev	ESA	25,846.15	1,033.85	0.00	0.00	553.85	27,433.85	8,507.66
ON	Hannah	Clarke	Common-Law	0.00	1,058.46	43,000.00	1,720.00	1,800.00	47,578.46	8,507.66
ON	Sandra (Besty)	Gelliseau	Common-Law	0.00	253.70	27,550.74	0.00	2,353.85	30,158.29	8,507.66
ON	Harika	Good	Common-Law	0.00	674.46	24,238.46	969.54	761.54	26,644.00	8,507.66
ON	Catherine	Griffone	ESA	3,452.00	138.08	0.00	0.00	0.00	3,590.08	3,590.08
ON	Joanne	Henderson	Common-Law	0.00	1,299.60	93,408.75	3,736.35	2,353.85	100,798.55	8,507.66
ON	Stephanie	Hood	Common-Law	0.00	439.47	62,258.86	0.00	0.00	62,698.33	8,507.66
ON	Inna	Kakoian	Common-Law	0.00	925.98	24,596.35	0.00	1,176.92	26,699.25	8,507.66
ON	Mikhael	Klassen-Kay	ESA	2,714.20	108.57	0.00	0.00	0.00	2,822.77	2,822.77
ON	Prudence	Lalgie	Common-Law	0.00	464.58	58,798.99	2,351.96	4,153.85	65,769.38	8,507.66
ON	Sarah	Lam	Common-Law	0.00	1,132.38	34,059.91	0.00	1,315.38	36,507.67	8,507.66
ON	Katrina	Saripa	Common-Law	0.00	714.54	27,167.23	0.00	1,246.15	29,127.92	8,507.66
ON	Ryan	Sequeira	Common-Law	0.00	1,661.54	25,312.50	1,012.50	623.08	28,609.62	8,507.66
ON	Anjali	Soman	ESA	4,080.00	163.20	0.00	0.00	0.00	4,243.20	4,243.20
ON	Lauri	Spagnuolo	Common-Law	0.00	1,111.38	32,125.96	1,285.04	1,246.15	35,768.53	8,507.66
ON	Heather	Stephens	Common-Law	0.00	387.69	12,519.23	0.00	1,038.46	13,945.38	8,507.66
ON	Kelli	Warder	Common-Law	0.00	265.85	17,723.08	0.00	2,215.38	20,204.31	8,507.66
ON	Jennifer	Wihbey	Common-Law	0.00	836.92	14,384.62	575.38	761.54	16,558.46	8,507.66
Total Ontario				42,861.58	14,286.14	565,946.21	14,673.60	24,023.07	661,790.60	154,372.46
SK	Mark	Baker	ESA	3,120.00	187.20	0.00	0.00	276.92	3,584.12	3,584.12
SK	Ravyn	Braun	ESA	1,624.00	97.44	0.00	0.00	0.00	1,721.44	1,721.44
SK	Alexander	Buglass	ESA	1,200.00	72.00	0.00	0.00	0.00	1,272.00	1,272.00
SK	Ashley	Campbell	Common-Law	0.00	82.62	3,729.38	0.00	0.00	3,812.00	3,812.00
SK	Danielle	Caplette	Common-Law	0.00	267.25	15,403.76	0.00	1,384.62	17,055.63	8,507.66
SK	Cathi	Crook	Common-Law	0.00	343.91	24,360.35	0.00	1,730.77	26,435.03	8,507.66
SK	Brittany	Ford	Common-Law	0.00	441.60	26,220.00	1,048.80	1,938.46	29,648.86	8,507.66
SK	Alyshia	Forsyth	ESA	1,914.00	114.84	0.00	0.00	0.00	2,028.84	2,028.84
SK	Rebecca	Lloyd	Common-Law	0.00	264.47	21,672.03	0.00	2,007.69	23,944.19	8,507.66
SK	Jacqueline	McIntyre	Common-Law	0.00	126.00	5,381.25	0.00	692.31	6,199.56	6,199.56
SK	Beth	Palacios	Common-Law	0.00	158.40	2,640.00	0.00	0.00	2,798.40	2,798.40
SK	Dagmar	Sanjenko	Common-Law	0.00	242.64	18,029.50	0.00	1,800.00	20,072.14	8,507.66
Total Saskatchewan				7,858.00	2,398.37	117,436.27	1,048.80	9,830.77	138,572.21	63,954.66
GRAND TOTAL				55,594.58	18,789.54	804,680.65	20,574.32	40,430.76	940,069.84	257,427.76

This is Exhibit "F" to the Affidavit of Sandy Prosa  
sworn the 24th day of June, 2024.

A handwritten signature in black ink, appearing to be 'Chenyang Li', written over a horizontal line.

Chenyang Li

DAVIES

155 Wellington Street West  
Toronto, ON M5V 3J7 Canada

dwpv.com

Chenyang Li  
T 416.367.7623  
F 416.863.0871  
cli@dwpv.com

File 289456

June 19, 2024

**BY EMAIL**Andrew Hatnay  
Koskie Minsky LLP  
20 Queen Street West  
Suite 900, Box 52  
Toronto, ON M5H 3R3

Dear Andrew:

**BK-31-3050418 – The Body Shop Limited Canada (“TBS Canada” or the “Company”) – NOI Proceedings**

We write in respect of: (i) your letter dated June 13, 2024 concerning my letter of May 15, 2024; as well as, (ii) your letter of June 13, 2024 concerning your proposed resolution of the pending representative counsel motion (the “**Motion**”) for terminated TBS Canada employees (the “**Former Employees**”).

Thank you for your confirmation that you do not plan to cross-examine Jordan Searle in respect of his affidavit, although I note that the dates for cross-examination of May 27 to 31, 2024 set out in the timetable for the Motion have expired. Having regard to the responses you provided to the questions set out in my letter of May 15, 2024, I confirm that we also do not plan to cross-examine Stephanie Hood.

In respect of your letter proposing a resolution of the Motion, TBS Canada would be pleased to consider a mutually agreeable solution to the Motion. As you are well aware and as we have already advised the Court, TBS Canada does not take, and has never taken, the position that the Former Employees cannot be represented by counsel in this proceeding. TBS Canada’s concern has been ensuring that a proper evaluation take place to ascertain whether Former Employees, who have not engaged your services as legal counsel, would benefit more from any potential distribution in this proceeding without being involuntarily grouped into a quasi-class action led by your firm. In that regard, we ask that you provide us with clarification on the issues raised below.

**Payment of Legal Fees and Disbursements**

You have stated in your letter that you “have instructions to offer to settle the [Motion] on the basis that the employees’ costs will not be sought from the company. They would make other arrangements for their legal costs”. We ask that you confirm your firm, your clients, and any experts or third party

## DAVIES

consultants retained by your firm or your clients will not seek to have any fees, costs, professional costs, or disbursements incurred or to be incurred in the future paid for by TBS Canada, or any purchaser of TBS Canada or its assets.

In the Company's view, it would be unreasonable for your firm to seek compensation from the Company, or any purchaser of TBS Canada or its assets, for duplicative work in quantifying and preparing claims for the Former Employees.

### Immunity from Liability

In the Motion, you have asked the Court to order that your firm “shall have no liability in relation to [its] appointment as Representative Counsel or the fulfilment of its duties in carrying out the provisions of [the] Order [sought]”. It is the Company's view that this provision is unnecessary and inequitable. No other stakeholder in this proceeding is represented by counsel that is judicially immunized from liability. It would be unfair to permit one firm to be immunized from liability as this may encourage the relevant stakeholder group to engage in unreasonable conduct in this proceeding.

TBS Canada's position is that any immunity sought by your firm must be limited to claims that Former Employees represented by your firm may commence against your firm. TBS Canada is not prepared to agree to provide your firm with immunity from costs that it may claim in the future, if any. Moreover, any immunity should be raised with Former Employees as part of an opt-in procedure, as discussed below.

### Opt-Out Procedure

In your Motion, you have asked the Court to order that all Former Employees be made a client of your firm unless the Former Employee opts out of representation by your firm within seven business days of the issuance of the Order you seek. TBS Canada does not agree that this is the appropriate procedure in these circumstances.

This proceeding is not a class action. In the Company's view, it is inappropriate for your firm to attempt to convert an insolvency proceeding into a *de facto* class action. TBS Canada agrees that all Former Employees are entitled to retain counsel if they so choose. But they should not be forced into being represented by counsel in circumstances where your firm has not disclosed sufficient information to the Court to allow it to assess whether a Former Employee would receive more from a distribution in this proceeding (if any) without being represented by your firm.

In this regard, I attach as **Appendix “A”** TBS Canada's provisional assessment of the employment claims of the 38 terminated TBS Canada employees that you advised in your June 13, 2024 letter your firm represents (“**Current Clients**”). The Company's provisional assessment was arrived at using the formula and principles applied in the recent *Nordstrom* insolvency proceedings, and remains subject to currently unknown variables such as each employee's mitigation efforts which much be assessed on an

## DAVIES

individual basis. As is clear from the Appendix, however, the Company's provisional assessment exceeds your firm's calculation of claims for 26 of your Current Clients.<sup>1</sup>

In many cases, TBS Canada's provisional assessment of your Current Clients' claims exceeded your firm's calculations significantly. For example – and in response to the question in your letter response to my May 15, 2024 letter concerning Ms. Hood's claim – TBS Canada calculated Ms. Hood's total claim on a provisional basis to be approximately \$98,668.00. By contrast, your firm calculated her claim to be \$46,095.97 on April 12, 2024. On June 13, 2024, your firm revised its calculation of her claim to \$62,698.33, but it remains materially lower than the Company's provisional assessment arrived at months prior.

TBS acknowledges that it is your Current Clients' decision as to whether they wish to retain your firm to represent them in this insolvency proceeding, even though TBS Canada has provisionally assessed that most of them will likely have claims for quantum that exceed your firm's calculation without your firm's involvement. But TBS Canada does not agree that Former Employees who have not retained your firm should have their claims reduced to pay for fees and disbursements that may be charged by your firm that they never agreed to pay. The Company believes that it is of utmost importance that your firm be transparent with the Court about what fees and costs it intends to collect from Former Employees if your firm is appointed representative counsel.

Consequently, TBS takes the position that any Order resulting from the Motion should provide for an opt-in rather than an opt-out procedure for Former Employees who are not your Current Clients. In this way, those Former Employees can make an informed decision and assess whether they believe they will receive practical benefits from a retainer of your firm. The Company also believes that your firm should disclose its proposed representative counsel fee arrangements to the Court so that the Court may assess properly whether the benefits of issuing the Order sought outweighs the costs.

We look forward to your response to the issues described above in short order as the Motion is scheduled to be heard on July 4, 2024.

---

<sup>1</sup> The Company was unable to exactly match the names of three of your Current Clients. Those names that could not be exactly matched have been identified in Appendix "A". To the extent that the names of the individuals identified are misrecorded in the data belonging to your firm or the data belonging to the Company, the relevant provisional assessments will change.

DAVIES

Yours very truly,



Chenyang Li

cc     Natasha MacParland and Natalie Renner (*Davies Ward Phillips & Vineberg LLP*)  
        Jane Dietrich and Alec Hoy (*Cassels Brock & Blackwell LLP*)  
        Josh Nevsky and Mitchell Binder (*Alvarez & Marsal Canada Inc.*)  
        Jordan Searle (*The Body Shop Canada Limited*)  
        James Harnum and Abir Shamim (*Koskie Minsky LLP*)



## APPENDIX A

Prov		Claim Totals		
	Full Name	KM Calculation	TBS Provisional Assessment	Difference (KM Less TBS)
<b>ALBERTA</b>				
AB	Natalie Roy	\$60,346.15	\$124,139.00	-\$63,792.85
<b>MANITOBA</b>				
MB	Kenia Amaya (Miranda?)	\$0.00	\$20,337.00	-\$20,337.00
MB	Shayla Holland	\$19,109.10	\$30,095.00	-\$10,985.90
MB	Abby Johnson	\$5,070.00	\$497.00	\$4,573.00
<b>NEW BRUNSWICK</b>				
NB	Elizabeth Landry	\$37,741.78	\$61,144.00	-\$23,402.22
<b>NOVA SCOTIA</b>				
NS	Rebekah Fielding	\$17,440.00	\$28,095.00	-\$10,655.00
<b>ONTARIO</b>				
ON	Sarah Adjepong-Duodu	\$75,038.71	\$135,891.00	-\$60,852.29
ON	Gabrielle Berube	\$7,593.85	\$2,076.00	\$5,517.85
ON	Zorica Bosev	\$27,433.85	\$7,408.00	\$20,025.85
ON	Hannah Clarke	\$47,578.46	\$60,281.00	-\$12,702.54
ON	Sandra (Besty) Gelliseau	\$30,158.29	\$40,946.00	-\$10,787.71
ON	Harika Good (Katamoni?)	\$26,644.00	\$4,785.00	\$21,859.00
ON	Catherine Griffone	\$3,590.08	\$785.00	\$2,805.08
ON	Joanne Henderson	\$100,798.55	\$188,848.00	-\$88,049.45
ON	Stephanie Hood	\$62,698.33	\$98,668.00	-\$35,969.67
ON	Inna Kakoian	\$26,699.25	\$46,660.00	-\$19,960.75
ON	Mikhael Klassen-Kay	\$2,822.77	\$543.00	\$2,279.77
ON	Prudence Lalgie	\$65,769.38	\$91,335.00	-\$25,565.62
ON	Sarah Lam	\$36,507.67	\$71,172.00	-\$34,664.33
ON	Katrina Saripa	\$29,127.92	\$50,948.00	-\$21,820.08
ON	Ryan Sequeira	\$28,609.62	\$8,879.00	\$19,730.62
ON	Anjali Soman	\$4,243.20	\$573.00	\$3,670.20
ON	Lauri Spagnuolo	\$35,768.53	\$57,671.00	-\$21,902.47
ON	Heather Stephens (Albert?)	\$13,945.38	\$338.00	\$13,607.38
ON	Kelli Warder	\$20,204.31	\$39,726.00	-\$19,521.69
ON	Jennifer Wihbey	\$16,558.46	\$30,020.00	-\$13,461.54
<b>SASKATCHEWAN</b>				
SK	Mark Baker	\$3,584.12	\$4,125.00	-\$540.88
SK	Rawyn Braun	\$1,721.44	\$2,133.00	-\$411.56
SK	Alexander Buglass	\$1,272.00	\$1,058.00	\$214.00
SK	Ashley Campbell	\$3,812.00	\$2,859.00	\$953.00
SK	Danielle Caplette	\$17,055.63	\$24,426.00	-\$7,370.37
SK	Cathi Crook	\$26,435.03	\$52,119.00	-\$25,683.97
SK	Brittany Ford	\$29,648.86	\$45,693.00	-\$16,044.14
SK	Alyshia Forsyth	\$2,028.84	\$2,238.00	-\$209.16
SK	Rebecca Lloyd	\$23,944.19	\$32,889.00	-\$8,944.81
SK	Jacqueline McIntyre	\$6,199.56	\$4,221.00	\$1,978.56
SK	Beth Palacios	\$2,798.40	\$3,503.00	-\$704.60
SK	Dagmar Sanjenko	\$20,072.14	25277	-\$5,204.86
		<b>\$940,069.85</b>	<b>\$1,402,401.00</b>	<b>-\$462,331.15</b>

This is Exhibit "G" to the Affidavit of Sandy Prosa  
sworn the 24th day of June, 2024.

A handwritten signature in dark ink, appearing to read 'Chenyang Li', is positioned above a horizontal line.

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Chenyang Li

District of: Ontario  
Division No.: 09 – Toronto  
Court No.: BK-31-3050418  
Estate No.: BK-24-03050418-0031

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

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

**THIRD REPORT OF THE PROPOSAL TRUSTEE  
ALVAREZ & MARSAL CANADA INC.**

**MAY 15, 2024**

## TABLE OF CONTENTS

<b>1.0</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>2.0</b>	<b>PURPOSE OF THIS REPORT .....</b>	<b>3</b>
<b>3.0</b>	<b>TERMS OF REFERENCE AND DISCLAIMER .....</b>	<b>4</b>
<b>4.0</b>	<b>OVERVIEW OF TBS CANADA &amp; STATUS OF THE NOI PROCEEDING.....</b>	<b>5</b>
<b>5.0</b>	<b>THE REPRESENTATION MOTION.....</b>	<b>8</b>
<b>6.0</b>	<b>THE FORMER EMPLOYEES .....</b>	<b>11</b>
<b>7.0</b>	<b>ADDITIONAL STAKEHOLDERS .....</b>	<b>15</b>
<b>8.0</b>	<b>PROPOSAL TRUSTEE’S COMMENTS ON THE NEED FOR REPRESENTATIVE COUNSEL.....</b>	<b>16</b>
<b>9.0</b>	<b>CONCLUSIONS AND RECOMMENDATIONS.....</b>	<b>19</b>

## APPENDICES

**Appendix A – Endorsement of Justice Osborne dated April 24, 2024**

## 1.0 INTRODUCTION

- 1.1 On March 1, 2024 (the “**Filing Date**”), The Body Shop Canada Limited (“**TBS Canada**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act (Canada)*, R.S.C. 1985, c. B-3 (the “**BIA**”) and Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed as Proposal Trustee of the Company (the “**Proposal Trustee**”).
- 1.2 TBS Canada is a subsidiary of The Body Shop International Limited (the “**UK Parent**”). Prior to the Company filing the NOI, on February 13, 2024, the UK Parent commenced administration proceedings in the United Kingdom (the “**UK Administration Proceeding**”) and individuals of the firm FRP Advisory Trading Limited were appointed as the joint administrators (the “**Joint Administrators**”).
- 1.3 Facing a liquidity crisis and other challenges caused by commencement of the UK Administration Proceeding, TBS Canada filed the NOI, commencing a proceeding (the “**NOI Proceeding**”) to provide the stability and flexibility necessary to evaluate its strategic alternatives and explore various going concern alternatives, while also commencing a closure of a subset of underperforming store locations.
- 1.4 On March 4, 2024, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**March 4 Order**”) which, among other things:
- (i) extended the time to file a proposal, and expanded and extended the stay of proceedings triggered under the BIA by the NOI filing, until and including April 16, 2024 (the “**Stay Period**”); and

- (ii) approved an Administration Charge, D&O Charge and Landlord Charge over the Property (each as defined in the March 4 Order).
- 1.5 As set out in further detail in the Second Report of the Proposal Trustee dated April 9, 2024 (the “**Second Report**”), upon commencement of the NOI Proceeding, the Company delivered disclaimer notices for lease agreements relating to 33 of its store locations and commenced inventory sales to exit those stores within 30 days. In connection with the closure of those locations and the Company’s general cost reduction efforts, the Company has terminated approximately 220 employees (the “**Former Employees**”).
- 1.6 On March 8, 2024, Buth-Na-Bodhaige Inc. (“**TBS US**”), a United States-based affiliate of TBS Canada, commenced a proceeding under chapter 7 of title 11 of the United States Code (the “**Chapter 7 Proceeding**”) and Rimón, P.C. was appointed as trustee (the “**Chapter 7 Trustee**”).
- 1.7 As discussed in greater detail below, on April 12, 2024, Stephanie Hood, as the proposed representative of the Former Employees, brought a motion (the “**Representation Motion**”) seeking an order, among other things: (i) appointing Stephanie Hood as the representative of the Former Employees (in such capacity, the “**Representative Plaintiff**”); and (ii) appointing Koskie Minsky LLP as counsel to the Former Employees (the “**Representative Counsel**”).
- 1.8 On April 15, 2024, Justice Osborne: (i) granted an Order which, among other things, further extended the time for TBS Canada to file a proposal under the BIA to May 31, 2024 (the “**April 15 Order**”); and (ii) issued an endorsement (the “**April 15 Endorsement**”), among other things, directing the parties to reappear before the Court at a case conference on April

24, 2024 to address the scheduling for the Representation Motion (the “**Scheduling Case Conference**”).

- 1.9 As discussed further below, since the issuance of the April 15 Order and the April 15 Endorsement, the Company, the Proposal Trustee, counsel to certain of the Company’s landlords and the Representative Counsel have engaged in a series of correspondence, filed materials with the Court and attended at the Scheduling Case Conference to establish a litigation schedule for the Representation Motion (the “**Litigation Schedule**”).
- 1.10 Copies of the prior reports of the Proposal Trustee (the “**Prior Reports**”) and other documents filed with the Court in the NOI Proceeding are available on the Proposal Trustee’s case website at: [www.alvarezandmarsal.com/TheBodyShop](http://www.alvarezandmarsal.com/TheBodyShop) (the “**Case Website**”).

## **2.0 PURPOSE OF THIS REPORT**

- 2.1 The purpose of this third report (the “**Third Report**”) is to provide information to this Court with respect to the Representation Motion, and the Proposal Trustee’s recommendation thereon as contemplated by the Litigation Schedule.
- 2.2 The Third Report also provides a brief update on the status of the NOI Proceeding, however, a more substantive update is anticipated to be included in a further report of the Proposal Trustee to be filed in connection with the next motion by the Company to further extend the Stay Period, currently scheduled for May 31, 2024.

### 3.0 TERMS OF REFERENCE AND DISCLAIMER

3.1 In preparing this Third Report, A&M, in its capacity as the Proposal Trustee, has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by the Company and has held discussions with management of the Company and its legal counsel (collectively, the “**Information**”). Except as otherwise described in this Third Report:

- (i) the Proposal Trustee has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposal Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants Canada Handbook* (the “**CPA Handbook**”) and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
- (ii) some of the information referred to in this Third Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed.

3.2 Future oriented financial information referred to in this Second Report was prepared based on the Company’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.



3.3 This Third Report should be read in conjunction with the Affidavit of Jordan Searle, General Manager, North America of the Company, sworn May 10, 2024 (the “**Third Searle Affidavit**”). Capitalized terms used and not defined in this Third Report have the meanings given to them in the Third Searle Affidavit.

3.4 Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

#### **4.0 OVERVIEW OF TBS CANADA & STATUS OF THE NOI PROCEEDING**

##### Background

4.1 TBS Canada is a cosmetics, perfume and skin care retailer with 72 active store locations across Canada, an e-commerce platform and a wholesale business. The Company sells merchandise under the “The Body Shop” brand, a global brand recognized for its natural and ethically sourced beauty products.

4.2 As set out in greater detail in the Prior Reports, since the commencement of the NOI Proceeding, the Company has, among other things: (i) taken certain cost reduction measures in an effort to improve its overall liquidity position; and (ii) engaged with its stakeholders, the Joint Administrators, the Chapter 7 Trustee, and certain other key parties to the NOI Proceeding, in furtherance of identifying a means for the Company to preserve its operations during the NOI Proceeding and emerge therefrom as a going concern.

##### Cost Reduction Measures

4.3 As noted above, contemporaneously with the Company commencing the NOI Proceeding, the Company delivered notices of termination and disclaimer in respect of 33

underperforming store locations. The inventory at those locations has been sold and those locations have since been closed. As was intended and necessary at the time, these store closure sales allowed the Company to improve its cash reserves and stabilize its liquidity position.

- 4.4 In connection with the store closures and as part of its cost reduction efforts, the Company terminated the employment of the Former Employees, which were comprised of: (i) approximately 200 employees whose employment directly related to the underperforming locations; and (ii) approximately 20 additional employees that worked in TBS Canada's head office.

Stakeholder Engagement & Status of NOI Proceeding

- 4.5 As part of the Company's efforts to continue business at the remaining 72 locations (the "**Going Concern Locations**"), and identify a going concern transaction, the Company, in consultation with the Proposal Trustee, among other things, continues to:

- (i) advance various inventory replenishment transactions for the Going Concern Locations. As at the date of the Second Report (April 9, 2024), and as described therein, TBS Canada was actively working on a number of initiatives to bring merchandise into Canada. Since that time, TBS Canada has successfully secured replenishment inventory totalling approximately \$12 million (retail value), which is projected to provide the Company with sufficient inventory to continue to operate in the ordinary course. The source of this inventory is as follows:
  - (a) merchandise that was in-transit to North America and destined for the U.S. based distribution centre maintained by TBS US (the "**US Distribution**

**Centre**”). TBS Canada acquired this in-transit inventory from the UK Parent and re-routed it to a third-party logistics provider in Canada. As of the date of this Third Report, this merchandise has now been received at the Going Concern Locations; and

- (b) merchandise that has been purchased from the UK Parent located at the US Distribution Centre. In order to prepare this inventory for transport to Canada, TBS Canada engaged 13 third-party contractors to “pick and pack” the merchandise and arrange for delivery to the Going Concern Locations. As of the date of this Third Report, this merchandise is currently being picked and packed, and is expected to arrive at the Going Concern Locations during late-May and early-June<sup>1</sup>;
- (ii) engage with the Joint Administrators in respect of their progress on a proposed Company Voluntary Arrangement and TBS Canada’s involvement in same as a creditor in the UK Administration Proceeding;
- (iii) engage with the Joint Administrators and representatives of the UK Parent in connection with their support of TBS Canada’s efforts to prepare a proposal to be put forward to its creditors that would see substantial recoveries for the Company’s creditors and provide for the Company’s restructured business to emerge from these NOI Proceedings and continue to operate as a going concern;

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<sup>1</sup> At this time, TBS Canada has sufficient inventory levels. On a go forward basis and as required, TBS Canada will continue to work with the Joint Administrators to arrange for future inventory replenishment orders from the US Distribution Centre.

- (iv) engage with the landlords of the Company's store locations;
- (v) engage with the Chapter 7 Trustee with respect to the Chapter 7 Proceeding and its potential impact on TBS Canada and the NOI Proceeding, including the Company entering into a license agreement with the Chapter 7 Trustee to obtain access to the US Distribution Centre and the inventory located therein, as described above; and
- (vi) retain seven US-based employees, identified as being critical to the Company's operations, through independent contractor agreements.

## 5.0 THE REPRESENTATION MOTION

### Background

- 5.1 On April 12, 2024, the Representative Plaintiff served its Motion Record in connection with the Representation Motion. The Representation Motion seeks an order, among other things: (i) appointing the Representative Plaintiff on behalf of the Former Employees with respect to their claims for termination and severance pay, health benefits, group RRSP contributions, vacation pay and other amounts owing during their termination notice periods (collectively, the **"Former Employee Claims"**)<sup>2</sup>; (ii) appointing the Representative Counsel; and (iii) granting related relief, including ordering the Company to pay the fees of the Representative Counsel (if appointed).
- 5.2 The Motion Record of the Representative Plaintiff asserts, among other things, that: (i) the Former Employees have suffered prejudice as a result of the termination of their

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<sup>2</sup> The Proposal Trustee notes that the Former Employees were paid all of their wages and accrued vacation as part of their final pay cheque.

employment and TBS Canada's failure to pay the Former Employee Claims, which are estimated by the Representative Plaintiff to be in excess of \$2 million; and (ii) the appointment of the Representative Plaintiff would benefit each of the Former Employees and the Company by facilitating the administration of the NOI Proceeding and the efficiency thereof. The Representative Plaintiff also asserts that their appointment and the appointment of the Representative Counsel is necessary and appropriate at this time.

- 5.3 The proposed Representative Counsel appeared at the hearing scheduled on April 15, 2024 before Justice Osborne, at which time they made submissions consistent with the positions set forth in the Motion Record of the Representative Plaintiff and advised the Court that they intended to bring the Representation Motion.
- 5.4 Following the hearing on April 15, 2024, Justice Osborne issued the April 15 Order and the April 15 Endorsement, among other things, scheduling the Scheduling Case Conference for April 24, 2024.
- 5.5 On April 23, 2024, the Representative Plaintiff filed a Supplementary Motion Record, introducing additional evidence in support of the claim of the Former Employees and the relief sought in the Representation Motion. Among other things, the Supplementary Motion Record asserted that, based on the information available to the Representative Counsel, the claims of 30 of the Former Employees (out of the 40 that had retained the Representative Counsel) totaled approximately \$862,000.
- 5.6 The Scheduling Case Conference was held on April 24, 2024, and at that hearing the Representation Motion was scheduled to be heard on July 4, 2024. A copy of the

endorsement of Justice Osborne dated April 24, 2024 (the “**April 24 Endorsement**”) is attached hereto as **Appendix “A”**.

5.7 Following the Scheduling Case Conference, the parties agreed on the following Litigation Schedule:

Event	Ordered Date
Moving Party Motion Record served	April 12, 2024
Moving Party Supplemental Motion Record	April 23, 2024
Scheduling Case Conference	April 24, 2024
Responding/ Company Motion Record due	May 10, 2024
Proposal Trustee’s Report due	May 15, 2024
Reply Motion Record due (if any)	May 22, 2024
Company Stay Extension Motion	May 30 or 31, 2024
Cross Examinations on filed affidavits	May 27-31, 2024
Proposal Trustee’s Supplemental Report due	June 5, 2024
Moving Party Factum due	June 14, 2024
Responding Factum due	June 24, 2024
Reply Factum due (if any)	June 28, 2024
Motion Hearing	July 4, 2024

5.8 The Proposal Trustee has prepared and provided this Third Report in accordance with the Litigation Schedule.

5.9 The April 24 Endorsement also instructed the Company to keep stakeholders, including its current employees and the Former Employees, apprised of significant events or matters directly affecting them in the ordinary course. The Proposal Trustee intends to continue to work with the Company to ensure this obligation is met.

## 6.0 THE FORMER EMPLOYEES

### Overview

- 6.1 The Former Employees are comprised of: (i) approximately 200 employees whose employment was related to the 33 underperforming locations; and (ii) approximately 20 employees that previously worked in TBS Canada's head office.
- 6.2 Approximately 150 of the store-level Former Employees were paid on an hourly basis, with the remaining approximately 50 being salaried employees. Each of the Former Employees working in TBS Canada's head office were salaried employees.

### Calculation of Former Employee Claims

- 6.3 Commencing prior to the Filing Date, and in anticipation of the store closures and cost reduction measures to be taken by the Company, and the related termination of the employment of the Former Employees, the Proposal Trustee and the Company took steps to calculate and evaluate the quantum of the Former Employee Claims.
- 6.4 Pursuant to those efforts, the Proposal Trustee and the Company have worked collaboratively to gather all of the documentation and information necessary to perform those calculations. Among other things, such documentation/information includes but is not limited to the following:
- (i) forms of employment agreements for the Former Employees, and an analysis of their enforceability, including the termination provisions which limit recovery to the statutory minimums in each province;
  - (ii) term of employment, seniority date and termination date;

- (iii) the province and municipality where each Former Employee worked;
- (iv) character of employment (e.g., job responsibilities, title and full-or-part-time);
- (v) scope of any group benefit coverage and group RRSP information;
- (vi) salary or hourly pay structure;
- (vii) statutory vacation pay entitlements;
- (viii) calculations of statutory termination pay, benefit continuation, and severance pay (which is only applicable in Ontario) entitlements for the Former Employees;
- (ix) bonus entitlements, including spreadsheets tracking historical bonus payments in the months preceding termination; and
- (x) estimates of common law reasonable notice for the Former Employees based on a review of the applicable factors including age, length of service and position.

6.5 Due to the relatively simple nature of the Former Employee's employment, the calculation of their respective entitlements was in many respects straightforward; the Former Employees are not unionized, were not parties to a retirement, pension or defined benefits plan, and did not participate in any form of stock option or similar type of long-term incentive plan.

6.6 The following methodology is being used to calculate the claims of the Former Employees:

- (i) the Former Employees' severance and benefit claims were calculated by comparing the amount required to be paid to the Former Employee under minimum standards



employment legislation, and the amount required to be paid under common law in lieu of notice and then reflecting the higher of those amounts as the Former Employee's claim;

- (ii) the Proposal Trustee used a formulaic approach that was applied to each of the Former Employees using their individual employee data;
- (iii) the common law notice period was calculated based on the duration of service, age and job position of each of the Former Employees. Accordingly, the average reasonable notice period among all Former Employees was approximately three months; and
- (iv) the calculations of the group RRSP were calculated as 4% of the Former Employee's earnings, being the maximum entitlement.

#### Update on Company's Efforts Towards Former Employees

- 6.7 The Company, with the assistance of the Proposal Trustee and for the benefit of the Former Employees, has been simultaneously exploring: (i) options for the Former Employees' to access the *Wage Earner Protection Program Act* ("WEPPA"); and (ii) a going concern transaction that may provide substantial recovery to the Former Employees.
- 6.8 As part of the Company's ongoing efforts to assist the Former Employees with exploring their ability to obtain protection through WEPPA, both the Proposal Trustee and counsel to the Company has reached out to Service Canada. The Company has also discussed and explored the possibility of appointing the Proposal Trustee to act as the receiver for specific

assets belonging to the Company so as to trigger WEPPA entitlement for the Former Employees.

- 6.9 Contemporaneously with those efforts, as noted above, the Company is currently working with certain stakeholders to develop a proposal to be put forward to its creditors that would see substantial recoveries for the Company's creditors and allow for a restructured business to emerge from these NOI Proceedings and continue to operate as a going concern.
- 6.10 In addition to the foregoing, the Company has taken steps towards preparing and filing a global proof of claim on behalf of the Former Employees in accordance with section 126(2) of the BIA. In doing so, it will remove the burden from the Former Employees to file an individualized proof of claim (although they retain the ability to do so if they should choose), ensure that the claim of each of the Former Employees is contemplated, and provide the necessary information to each of the Former Employees to amend their claim if they so choose.
- 6.11 The Proposal Trustee understands that, in connection with a global proof of claim form, correspondence would be provided to each of the Former Employees explaining that a global proof of claim has been filed by the Company on behalf of the Former Employees, outlining how the specific Former Employee's claim was calculated for purposes of the global proof of claim and explaining to each Former Employee that should they choose, they may file an individual proof of claim that would, if filed, supersede the global proof of claim for such Former Employee.

Status of Proposal Trustee's Actions Regarding Former Employees

- 6.12 As part of the Proposal Trustee's discharge of its duties in this NOI Proceeding, the Proposal Trustee has made various efforts to ensure the Former Employees are kept apprised of the status of the NOI Proceeding. Amongst these efforts, the Proposal Trustee has established the Case Website which, among other things: (i) provides access to the documents and orders in this NOI Proceeding; and (ii) contains a separate "Employee Information" page, which includes an FAQ page and additional information for the Former Employees on the efforts of the Company and the Proposal Trustee in assessing the Former Employee Claims. The Employee Information page is accessible here: <https://www.alvarezandmarsal.com/content/body-shop-employee-information>.
- 6.13 The Proposal Trustee has promptly responded to all inquiries from the Former Employees to date, however, it notes that only a very small group of Former Employees have contacted the Proposal Trustee.

**7.0 ADDITIONAL STAKEHOLDERS**Landlords

- 7.1 In addition to the Former Employees, the Company's landlords and trade creditors are key stakeholders of the Company whose interests must be considered.
- 7.2 Counsel to certain of the landlords have expressed concerns to the Company and the Proposal Trustee that, if the Representative Counsel is appointed, the additional costs related thereto, including the costs for the fees of the Representative Counsel, may directly reduce recoveries available for the Company's other stakeholders.

Creditors with Security Registrations

7.3 The Company does not have any meaningful secured creditors. While there are three parties with security registrations against the Company, namely Aurelius IV UK Acquico Seven Limited (“**Aurelius Seven**”), HSBC Bank Canada and HongKong Bank of Canada and Enterprise Fleet Management Canada, Inc. (“**Enterprise**”), the Company does not anticipate that those parties will be owed significant amounts, if they are owed anything. Details of the registrations in favour of each of the parties, and the provision of notice of the commencement of this NOI Proceeding thereto, is set out in the Prior Reports.

7.4 In brief, the security granted to Aurelius Seven appears to be in relation to a guarantee provided by the Company related to the acquisition of the UK Parent by a party related to Aurelius Seven, which is payable on demand. No demand has been made by Aurelius Seven, and the Company is not aware of any amounts owing to HSBC Canada and HongKong Bank of Canada. The registrations held by Enterprise are in relation to a series of corporate vehicles, all of which are paid current with no outstanding arrears. In brief, neither the Proposal Trustee nor the Company have received any communications from the secured creditors to date that suggest they will have any significant claims that would affect the NOI Proceeding.

**8.0 PROPOSAL TRUSTEE’S COMMENTS ON THE NEED FOR REPRESENTATIVE COUNSEL**

8.1 Based on the Proposal Trustee’s review of the background and information available thereto, the Proposal Trustee is of the opinion that the minimal added benefit from the appointment of the Representative Counsel is significantly outweighed by the additional costs that would arise therefrom.

- 8.2 Each of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company are: (i) highly qualified and reputable firms; (ii) have extensive experience dealing with their applicable mandates, acting in their respective capacity and performing the respective actions described in this Third Report; and (iii) are well equipped to deal with the issues in this NOI Proceeding, including ensuring the interests of Former Employees are appropriately protected and the Former Employee Claims are properly addressed.
- 8.3 The NOI Proceeding, by comparison to other engagements in which the Proposal Trustee has acted in this role, is not overly complex with respect to stakeholder claims. The key stakeholder groups include the Former Employees, trade creditors and the landlords, each of which hold relatively straightforward and quantifiable claims. The Proposal Trustee is of the view that, together with the assistance of its counsel and counsel to the Company, it is well suited to handle a proceeding of this complexity without need for assistance from additional parties, including the Representative Counsel.
- 8.4 The Proposal Trustee has been involved in similar retail mandates, all of which included addressing the claims of former employees, including, among other mandates: (i) *Old MM GP Inc. (Re)* (formerly known as Mastermind Toys) (Court File No. CV-23-00710259-00CL); (ii) *BBB Canada Ltd. (Re)* (formerly known as Bed, Bath and Beyond) (Court File No. CV-23-00694493-00CL); (iii) *Nordstrom Canada Retail, Inc., Nordstrom Canada Holdings, LLC and Nordstrom Canada Holdings II, LLC (Re)* (Court File No. CV-23-00695619-00CL) (“**Nordstrom**”); (iv) *DCL Corporation (Re)* (Court File No. CV-22-00691990-00CL); (v) *Inscape Corporation, Inscape (New York) Inc. and Inscape Inc. (Re)* (Court File No. CV-23-00692784-00CL); *Corner Flag LLC v Erwin Hymer Group North America, Inc.* (Court File No. CV-19-614593-00CL); and (vi) *Royal Bank of Canada v*

*DME Limited Partnership, DME General Partner Inc., Atlantic systems Manufacturing (2016) Ltd., DME Canada Acquisitions Inc. and DME US Holdco Inc.* (Court File No. S1 GS 28446). The only proceeding where representative counsel was appointed was in Nordstrom. That proceeding is clearly distinguishable from the present circumstances as, among other things, the debtor sought to liquidate/ wind down its operations, the vast majority of the debtor's employees were immediately terminated or retained solely for a short period to assist with the liquidation/wind down efforts, there was no prospect of the Canadian business continuing and the debtors sought and supported the appointment of representative counsel for the employees.

8.5 As set out herein, the Company and the Proposal Trustee are each well apprised of the conduct required in the circumstances and have taken appropriate steps, including by calculating the Former Employee Claims and simultaneously exploring potential opportunities by which the Former Employees can obtain a recovery through WEPPA or a going concern transaction. These efforts commenced prior to the Filing Date and remain ongoing as of the date herein, all in furtherance of identifying a scenario that provides the greatest outcome for the Company's stakeholders.

8.6 Similarly, as set out above, the Proposal Trustee and the Company have already taken steps towards calculating the value of the Former Employee Claims, which calculations resulted in a highly similar valuation as the Representative Counsel's calculations. Appointment of the Representative Counsel would likely result in duplication of efforts and fees in various additional regards.

8.7 Accordingly, the Proposal Trustee is of the view that appointment of the Representative Counsel is currently unnecessary, would result in duplicative costs and efforts, and is unlikely to add any substantial benefit to the NOI Proceeding.

8.8 The Proposal Trustee further understands that the Company remains in a vulnerable position due to its ongoing liquidity constraints, and is concerned that appointment of the Representative Counsel, and the associated costs the Company would be required to bear in connection therewith, would have a detrimental effect on the Company's ability to make substantive distributions to its creditors in a proposal.

## **9.0 CONCLUSIONS AND RECOMMENDATIONS**


9.1 The Proposal Trustee delivers this Third Report in compliance with the Litigation Schedule to provide its initial views and recommendations on the issues raised in the Representation Motion.

9.2 At this time, and based on current information available to the Proposal Trustee and for the reasons discussed above, the Proposal Trustee is of the view that the appointment of the Representative Counsel is currently unnecessary and respectfully recommends that the Court dismiss the relief sought in the Representation Motion.

9.3 As contemplated by the Litigation Schedule, the Proposal Trustee may provide a supplemental report to this Report following delivery of further materials and the conduct of cross-examinations in connection with the Litigation Schedule, if it determines it is necessary.

All of which is respectfully submitted to the Court this 15<sup>th</sup> day of May, 2024.

**Alvarez & Marsal Canada Inc.,  
solely in its capacity as Proposal Trustee of The Body Shop Canada Limited,  
and not in its personal or corporate capacity**

Per:   
Josh Nevsky  
Senior Vice-President



**APPENDIX A**  
**ENDORSEMENT OF JUSTICE OSBORNE DATED APRIL 24, 2024**



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**COUNSEL SLIP/ENDORSEMENT**

**COURT FILE  
NO.:**

**BK-24-03050418-0031**

**DATE: April 24, 2024**

**NO. ON LIST: 1**

**TITLE OF**

**In the Matter of The Body Shop Canada Limited**

**PROCEEDING:**

**BEFORE: Justice Osborne**

**PARTICIPANT INFORMATION**

**For Moving Party:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Contact Info</b>
Andrew Hatnay	Counsel for Stephanie Hood and Other Terminated Employees, and the Proposed Representative Counsel for Terminated Canadian Employees	<a href="mailto:ahatnay@kmlaw.ca">ahatnay@kmlaw.ca</a>
Abir Shamim		<a href="mailto:ashamim@kmlaw.ca">ashamim@kmlaw.ca</a>
James Harnum		<a href="mailto:jharnum@kmlaw.ca">jharnum@kmlaw.ca</a>

**For Other:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Contact Info</b>
Natalie Renner	Counsel for The Body Shop Canada Limited	<a href="mailto:nrenner@dwpv.com">nrenner@dwpv.com</a>
Chanakya Sethi		<a href="mailto:csethi@dwpv.com">csethi@dwpv.com</a>
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Jane Dietrich	Counsel for the Proposal Trustee	<a href="mailto:jdietrich@cassels.com">jdietrich@cassels.com</a>
Linda Galessiere	Counsel for RioCan Real Estate Investment Trust and Cushman & Wakefield Asset Services ULC	<a href="mailto:lgalessiere@cglegal.ca">lgalessiere@cglegal.ca</a>

**ENDORSEMENT OF JUSTICE OSBORNE:**

1. Koskie Minsky LLP, ("KM") as counsel to Stephanie Hood and other terminated employees of The Body Shop ("TBS") seek to schedule a motion to seek an order appointing them as Representative Counsel for Terminated Canadian Employees.
2. TBS seeks to schedule a stay extension motion.
3. The KM Representative Counsel motion will be heard on **July 4, 2024 commencing at 10 AM and continuing as necessary for one half day before me via Zoom.** All counsel have confirmed their availability for that date, and have worked out a timetable for the delivery and exchange of materials to ensure that the matter is fully briefed and can proceed on the merits on that date.
4. The hearing date is further out than I would have preferred as a result of counsel schedules. TBS will continue to keep stakeholders, including employees and terminated employees, aware of significant events or matters directly affecting them in the usual course.
5. The stay of proceedings currently expires on May 31. The stay extension motion will be heard on **May 30, commencing at 10 AM via Zoom before Justice Cavanagh.**

Osborne, J.

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF THE  
BODY SHOP CANADA LIMITED**

Court No.: BK-31-3050418

Estate No.: BK-24-03050418-0031

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**THIRD REPORT OF THE  
PROPOSAL TRUSTEE**

**Cassels Brock & Blackwell LLP**

Suite 3200, Bay Adelaide Centre – North Tower  
40 Temperance Street  
Toronto, ON M5H 0B4

**Jane Dietrich LSO#: 49302U**

Tel: 416.860.5223  
jdietrich@cassels.com

**Alec Hoy LSO#: 85489K**

Tel: 416.860.2976  
ahoy@cassels.com

Counsel for Alvarez & Marsal Canada Inc., solely  
in its capacity as Proposal Trustee and not in its  
personal or corporate capacity.

This is Exhibit "H" to the Affidavit of Sandy Prosa  
sworn the 24th day of June, 2024.

A handwritten signature in black ink, appearing to be 'Chenyang Li', written over a horizontal line.

Chenyang Li

District of: Ontario  
Division No.: 09 – Toronto  
Court No.: BK-31-3050418  
Estate No.: BK-24-03050418-0031

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

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

**SUPPLEMENT TO THE THIRD REPORT OF THE PROPOSAL TRUSTEE  
ALVAREZ & MARSAL CANADA INC.**

**JUNE 5, 2024**

**TABLE OF CONTENTS**

<b>1.0</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>2.0</b>	<b>ADDITIONAL INFORMATION REGARDING THE REPRESENTATION MOTION .....</b>	<b>1</b>
<b>3.0</b>	<b>UPDATE ON THE PROPOSAL TRUSTEE’S POSITION ON THE NEED FOR REPRESENTATIVE COUNSEL.....</b>	<b>6</b>

**APPENDICES**

**Appendix A – Letter from Counsel to the Company to the proposed Representative Counsel dated May 15, 2024**

**Appendix B – Email Correspondence between Counsel to the Company and the proposed Representative Counsel dated May 22, 2024**

## 1.0 INTRODUCTION

- 1.1 This report is a supplement (the “**Supplemental Report**”) to the Third Report dated May 15, 2024 (the “**Third Report**”) of Alvarez & Marsal Canada Inc., in its capacity as Proposal Trustee of The Body Shop Canada Limited (“**TBS Canada**” or the “**Company**”) in respect of the proceeding commenced by the Company’s filing of a Notice of Intention to Make a Proposal (“**NOI**”, and such proceeding, the “**NOI Proceeding**”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act (Canada)*, R.S.C. 1985, c. B-3 (the “**BIA**”).
- 1.2 This Supplemental Report should be read in conjunction with: (i) the Third Report; and (ii) the Affidavit of Jordan Searle, General Manager, North America of the Company, sworn May 10, 2024 (the “**Third Searle Affidavit**”). Capitalized terms used and not defined in this Supplemental Report have the meanings given to them in the Third Report. This Supplemental Report is also subject to the same terms and conditions as the Third Report.
- 1.3 The purpose of this Supplemental Report is to provide additional information to this Court with respect to the Representation Motion and the Proposal Trustee’s recommendation thereon as contemplated by the Litigation Schedule.

## 2.0 ADDITIONAL INFORMATION REGARDING THE REPRESENTATION MOTION

### Company’s Efforts Towards Former Employees

- 2.1 As noted in the Third Report, the Company, with the assistance of the Proposal Trustee, among other things, has been exploring options for the Former Employees to access WEPPA. In connection with those efforts, the Company and the Proposal Trustee reached



out to Service Canada and discussed the possibility of appointing the Proposal Trustee to act as the receiver for specific assets belonging to the Company so as to trigger WEPPA entitlement for the Former Employees.

2.2 On May 22, 2024, the Company received an email response from a representative of Service Canada's internal counsel, advising that Service Canada takes the position that receiverships created for the purpose of triggering entitlement to WEPPA are inconsistent with the legislative intent of the BIA and WEPPA, and accordingly that the receivership contemplated by the Company would appear to be inconsistent with the legislation. A copy of the email correspondence is attached to the Affidavit of Jordan Searle sworn May 23, 2024 as Exhibit "N" thereto.

2.3 In any event, the Proposal Trustee is not aware of any pre-filing secured creditor of the Company that would be in a position to commence a receivership application. As noted in the Third Report, there are three parties with security registrations against the Company: (i) Aurelius Seven, (ii) HSBC Canada and HongKong Bank of Canada (together, now "**RBC**"), and (iii) Enterprise. The Proposal Trustee understands through correspondence between Macfarlanes, UK counsel to the Company, and the Joint Administrators that Aurelius Seven had advised it is releasing its security against the Company. Additionally, the Company is not aware of any amounts owing to RBC and the registrations held by Enterprise are in relation to a series of corporate vehicles, all of which are paid current with no outstanding arrears.

The Company and the Proposal Trustee's Communication to Stakeholders

- 2.4 As noted in the Third Report, the April 24 Endorsement instructed the Company to keep stakeholders apprised of significant matters in the ordinary course.
- 2.5 Consistent with the efforts described in the Third Report, the Company has continued to work with the Proposal Trustee to ensure stakeholders are kept up to date on the NOI Proceeding, including by: (i) uploading documents to the Case Website; (ii) uploading employee-specific information to the Employee Information page; (iii) responding to inquiries of the Former Employees as they are received; and (iv) corresponding directly with the proposed Representative Counsel and counsel for other stakeholders, including the landlords.
- 2.6 Additionally, the Proposal Trustee understands that, on May 21, 2024, the proposed Representative Counsel entered into a non-disclosure agreement ("NDA"), for the purposes of being able to receive certain confidential information from the Company. As of the date herein, five of the Former Employees that have retained the proposed Representative Counsel have executed a joinder to the NDA.

Ongoing Discussions with the proposed Representative Counsel

- 2.7 The Proposal Trustee understands from the Company that their efforts to engage in discussions with the proposed Representative Counsel have not been as productive as the Company had hoped, and that the proposed Representative Counsel has been generally nonresponsive to certain inquiries made by the Company in respect of the materials filed by the proposed Representative Counsel.

- 2.8 As set out in the Third Report, shortly after the Scheduling Case Conference held on April 24, 2024 in connection with the Representation Motion, a Litigation Schedule was established. The Litigation Schedule is set out in the Third Report. In accordance with the Litigation Schedule, among other things, the parties were expected to complete any cross-examinations on filed affidavits, if applicable, between May 27 and May 31, 2024.
- 2.9 On May 15, 2024, counsel for the Company sent a letter by email to the proposed Representative Counsel (the “**May 15 Letter**”), requesting that they: (i) confirm whether they intend to cross-examine Mr. Searle in respect of his affidavit filed May 10, 2024; and (ii) respond to seven inquiries pertaining to the Hood Affidavits (as defined below), including two inquiries requesting particulars with respect to statements made in the Hood Affidavits that the proposed Representative Counsel retained “an accountant” in connection with the Representation Motion. On May 22, 2024, the Company followed up on the May 15 Letter, requesting that the proposed Representative Counsel provide its position on the issues set out therein. The Proposal Trustee understands that, on May 23, 2024, counsel for the Company made a further request to the proposed Representative Counsel by videoconference with respect to the requested information. Copies of the May 15 Letter, and the email correspondence of May 22, 2024 are attached hereto as **Appendices “A” and “B”**.
- 2.10 In accordance with the Litigation Schedule, the proposed Representative Counsel served reply motion materials in respect of the Representation Motion on May 22, 2024 (the “**May 22 Motion Materials**”). The Proposal Trustee has reviewed the May 22 Motion Materials and is of the view that they do not respond to the inquiries set out in the May 15 Letter.

- 2.11 The Proposal Trustee understands that, as of the date herein, the proposed Representative Counsel has still not advised the Company of its position on any of the requests made in the May 15 Letter.
- 2.12 In the Proposal Trustee's view, the information requested by the Company in the May 15 Letter is reasonable in the circumstances and the proposed Representative Counsel, at a minimum, should inform the Company of its position on the issues set out therein.

Calculation of the Former Employees' Claims

- 2.13 The Representative Plaintiff served motion materials in connection with the Representation Motion on April 12, April 23 and May 22, 2024, each of which contain an affidavit of the Representative Plaintiff (together, the "**Hood Affidavits**").
- 2.14 The Hood Affidavits, among other things, state that: (i) the Representative Plaintiff holds a claim for approximately \$46,095.97; and (ii) based on the calculations of the accountant retained by the proposed Representative Counsel, the claim of the 30 Former Employees that have provided their information to the proposed Representative Counsel totals approximately \$862,000 (the "**30 Former Employees' Claim**"). At this time, the Proposal Trustee does not have sufficient information to comment on the 30 Former Employees' Claim.
- 2.15 However, the Proposal Trustee and the Company calculate the Representative Plaintiff's claim to be approximately double to the amount suggested in the Hood Affidavit.

**3.0 UPDATE ON THE PROPOSAL TRUSTEE'S POSITION ON THE NEED FOR REPRESENTATIVE COUNSEL**

- 3.1 Taking into consideration the additional information available to the Proposal Trustee since the Third Report, the Proposal Trustee remains of the view that the benefit from the appointment of Representative Counsel, if any, is outweighed by the additional costs that would arise as a result thereof and continues to recommend that the Court dismiss the relief sought in the Representation Motion.
- 3.2 Further, due to the specific fact pattern of this case, including the ongoing UK Sale Process, that WEPPA entitlements are not currently accessible for terminated employees, and that a claims process has not yet commenced, in the Proposal Trustee's view, there is little for Representative Counsel to contribute or assist with in the NOI Proceeding that is not already being addressed by the Company or the Proposal Trustee, as applicable.

All of which is respectfully submitted to the Court this 5<sup>th</sup> day of June, 2024.

**Alvarez & Marsal Canada Inc.,  
solely in its capacity as Proposal Trustee of The Body Shop Canada Limited,  
and not in its personal or corporate capacity**

Per: \_\_\_\_\_

  
Josh Nevsky

Senior Vice-President

**APPENDIX A**  
**LETTER DATED MAY 15, 2024**

DAVIES

155 Wellington Street West  
Toronto, ON M5V 3J7 Canada

dwpv.com

Chenyang Li  
T 416.367.7623  
F 416.863.0871  
cli@dwpv.com

File 289456

May 15, 2024

**BY EMAIL**Andrew Hatney  
Koskie Minsky LLP  
20 Queen Street West  
Suite 900, Box 52  
Toronto, ON M5H 3R3

Dear Andrew:

**BK-31-3050418 – The Body Shop Limited Canada – NOI Proceedings**

We write in respect of two issues connected with your motion to appoint Representative Counsel for Terminated Canadian Employees in the above-noted proceeding.

First, given that the deadline for the delivery of factums is fast approaching, we request that you confirm whether you intend to cross-examine Jordan Searle on his affidavit dated May 10, 2024 in connection with your motion. As previously discussed, Mr. Searle has certain windows of availability to be cross-examined for a reasonable period of time between May 27, 2024 and May 31, 2024. Please advise us if you intend to conduct such a cross-examination, and if so, the proposed date, time, and location of the cross-examination so that we may confirm Mr. Searle's availability.

Second, portions of Stephanie Hood's affidavit dated April 12, 2024 and supplementary affidavit dated April 23, 2024 relate to information conveyed to her by your firm, as Ms. Hood acknowledges at various points. We have set out our questions and requests pertaining to such portions of her affidavits – the answers and responses to which are obviously within your firm's knowledge, possession, or control – below.



## DAVIES

	Portion of Ms. Hood's Affidavits	Question/Request
1.	<p>Ms. Hood asserts that 40 former employees of The Body Shop Limited Canada ("<b>TBS</b>") have retained Koskie Minsky LLP ("<b>KM</b>") as their counsel.</p> <p>See: Main Affidavit, paras. 10 and 24 and Supp. Affidavit, para. 5</p>	<p>Please provide the full names of the former employees of TBS who have retained KM as counsel in respect of this proceeding. The information is required to facilitate the collection of employment information requested by KM in respect of its clients.</p> <p>The information is also required to audit the information contained in Exhibit D to Ms. Hood's supplementary affidavit.</p>
2.	<p>Ms. Hood asserts that she, along with four other individuals, is part of an <i>ad hoc</i> Employee Committee of former TBS employees.</p> <p>See: Main Affidavit, para. 11.</p>	<p>Please confirm whether all five individuals that comprise the <i>ad hoc</i> Employee Committee of former TBS employees are clients of KM as of the date of this letter.</p>
3.	<p>Ms. Hood asserts that she is advised by KM that she is owed severance in the approximate amount of \$46,095.97.</p> <p>See: Main Affidavit, para. 13</p>	<p>Please provide full particulars of the calculation used to arrive at the claimed total severance entitlement of \$46,095.97. Ms. Hood's claimed severance amount does not appear to exist in Exhibit D of her supplementary affidavit.</p>
4.	<p>Ms. Hood asserts that she, along with other former employees of TBS, cannot afford to retain counsel in this proceeding.</p> <p>See: Main Affidavit, para. 16.</p> <p>Yet in paragraph 5 of her supplemental affidavit, she deposes that "30 of the employees [have] retained KM (out of the total of 40 individuals) in this proceeding".</p>	<p>Please provide particulars as to the fee arrangement between KM and the former employees of TBS that resulted in those individuals retaining KM.</p>

DAVIES

	Portion of Ms. Hood's Affidavits	Question/Request
5.	<p>Ms. Hood lists a series of cases in which she asserts KM has been appointed Representative Counsel in insolvency proceedings, including: (i) <i>Metroland Media Group Ltd.</i>; (ii) <i>Sears Canada Inc.</i>; (iii) <i>U.S. Steel Canada Inc. (Stelco)</i>; (iv) <i>Nortel Networks Inc.</i>; (v) <i>Target Canada Inc., Wabush Mines (Quebec)</i>; (vi) <i>Eaton's</i>; (vii) <i>Shaw Group</i>; (viii) <i>Hollinger Canadian Publishing Co.</i>; (ix) <i>Catalyst Paper (B.C.)</i>, (x) <i>Saan Stores</i>, and (xi) <i>Dylex</i>.</p> <p>See: Main Affidavit, para. 25.</p>	<p>Please confirm whether the individual lawyers at KM involved in this action were the lawyers retained in each of the 11 cases described by Ms. Hood in her main affidavit, or whether it was other lawyers at KM who were retained in those 11 cases.</p> <p>Please also confirm whether there are any other cases apart from these 11 cases where KM has been – or sought to be – appointed as Representative Counsel in insolvency proceedings.</p> <p>Finally, please produce the motion materials filed, reasons for decision rendered, and orders issued in connection with any and all cases where a request has been made that KM be appointed as Representative Counsel in insolvency proceedings, regardless of the outcome of such request.</p>
6.	<p>Ms. Hood deposes that KM retained an accountant to calculate termination entitlements of former TBS employees that are described in Exhibit D to her supplementary affidavit.</p> <p>See: Supp. Affidavit, para. 6.</p>	<p>Please provide the name of the accountant retained by KM as well as the working papers of the accountant that were used to calculate the claimed termination entitlements in Exhibit D to Ms. Hood's supplementary affidavit.</p> <p>Please provide particulars as to the fees and disbursements charged by the accountant referred to by Ms. Hood for the work the accountant performed in connection with this matter.</p>

DAVIES

	Portion of Ms. Hood's Affidavits	Question/Request
7.	<p>Ms. Hood deposes that KM and the accountant it retained calculate that the claims of all terminated employees of TBS amount to approximately \$2 million to \$2.5 million.</p> <p>See: Supp. Affidavit, para. 7.</p>	<p>Please confirm whether the accountant that produced the calculation referred to in paragraph 7 of Ms. Hood's supplementary affidavit is the same accountant referred to in paragraph 6 of Ms. Hood's supplementary affidavit.</p> <p>In addition, please produce the working papers of the accountant that were used to calculate the claimed termination entitlements referred to in paragraph 7 of Ms. Hood's supplementary affidavit.</p>

We would prefer to avoid the need to inconvenience Ms. Hood with cross-examination in respect of the questions and requests listed above. As such, we require your firm's answers and responses to the above questions and requests by no later than Tuesday, May 21, 2024. If we do not receive comprehensive responses from your firm by that date, please be advised that we reserve our right to cross-examine Ms. Hood on the evidence she has sworn in connection with this motion.

Yours very truly,



Chenyang Li

cc Natasha J. MacParland, Natalie Renner, and Chanakya A. Sethi (*Davies Ward Phillips & Vineberg LLP*)  
Jane Dietrich and Alec Hoy (*Cassels Brock & Blackwell LLP*)  
Josh Nevsky and Mitchell Binder (*Alvarez & Marsal Canada Inc.*)  
Jordan Searle (*The Body Shop Canada Ltd.*)  
James Harnum and Abir Shamim (*Koskie Minsky LLP*)

**APPENDIX B**  
**EMAIL CORRESPONDENCE DATED MAY 22, 2024**

**Hoy, Alec**

---

**From:** Li, Chenyang <CLi@dwpv.com>  
**Sent:** Wednesday, May 22, 2024 8:20 AM  
**To:** ahatnay@kmlaw.ca  
**Cc:** jharnum@kmlaw.ca; ashamim@kmlaw.ca; MacParland, Natasha; Renner, Natalie; Sethi, Chanakya; Dietrich, Jane; Hoy, Alec; jnevsky@alvarezandmarsal.com; mbinder@alvarezandmarsal.com; Jordan Searle  
**Subject:** RE: BK-31-3050418 – The Body Shop Limited Canada – Cross-Examination and Motion re Representative Counsel  
**Attachments:** Letter dated May 15, 2024.pdf

Hi Andrew,

Would you please let us know your position concerning the two issues raised in my letter of May 15?

Thanks,  
 Chenyang

---

**From:** Li, Chenyang  
**Sent:** May 15, 2024 10:53 AM  
**To:** ahatnay@kmlaw.ca  
**Cc:** jharnum@kmlaw.ca; ashamim@kmlaw.ca; MacParland, Natasha <NMacParland@dwpv.com>; Renner, Natalie <nrenner@dwpv.com>; Sethi, Chanakya <CSethi@dwpv.com>; jdietrich@cassels.com; ahoy@cassels.com; jnevsky@alvarezandmarsal.com; mbinder@alvarezandmarsal.com; Jordan Searle <jordan.searle@thebodyshop.com>  
**Subject:** BK-31-3050418 – The Body Shop Limited Canada – Cross-Examination and Motion re Representative Counsel

Hi Andrew,

Please find attached correspondence of today's date.

Thanks,  
 Chenyang

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF THE  
BODY SHOP CANADA LIMITED**

Court No.: BK-31-3050418

Estate No.: BK-24-03050418-0031

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**SUPPLEMENT TO THE THIRD REPORT  
OF THE PROPOSAL TRUSTEE**

**Cassels Brock & Blackwell LLP**

Suite 3200, Bay Adelaide Centre – North Tower  
40 Temperance Street  
Toronto, ON M5H 0B4

**Jane Dietrich LSO#: 49302U**

Tel: 416.860.5223  
jdietrich@cassels.com

**Alec Hoy LSO#: 85489K**

Tel: 416.860.2976  
ahoy@cassels.com

Counsel for Alvarez & Marsal Canada Inc., solely  
in its capacity as Proposal Trustee and not in its  
personal or corporate capacity.

This is Exhibit "I" to the Affidavit of Sandy Prosa  
sworn the 24th day of June, 2024.

A handwritten signature in black ink, appearing to read 'Chenyang Li', is positioned above a horizontal line.

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Chenyang Li



**CANWEST PUBLISHING INC. / PUBLICATIONS CANWEST INC.,  
CANWEST BOOKS INC. AND CANWEST (CANADA) INC.**

**PRE-FILING REPORT OF FTI CONSULTING CANADA INC.  
IN ITS CAPACITY AS PROPOSED MONITOR OF THE  
APPLICANTS**

**January 7, 2010**



Court File No.

*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 CANWEST PUBLISHING INC./  
PUBLICATIONS CANWEST INC., CANWEST BOOKS  
INC., AND CANWEST (CANADA) INC.

PRE-FILING REPORT OF FTI CONSULTING CANADA INC.,  
in its capacity as Proposed Monitor of the Applicants

January 7, 2010

INTRODUCTION

1. FTI Consulting Canada Inc. (“**FTI**” or “**Proposed Monitor**”) understands that Canwest Publishing Inc. / Publications Canwest Inc. (“**CPI**”), Canwest Books Inc. (“**CBI**”), and Canwest (Canada) Inc. (“**CCI**”, and together with CPI and CBI, the “**Applicants**”) intend to bring an application before this Honourable Court seeking certain relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) granting a stay of proceedings until February 5, 2010 and appointing FTI as Monitor (the “**Monitor**”). The proceedings to be commenced by the Applicants under the CCAA will be referred to herein as the “**CCAA Proceedings**”.
2. The Applicants are also seeking to have the stay of proceedings and other relief provided under the CCAA extended to Canwest Limited Partnership / Canwest Societe en

- i. the auditor of any of the LP Entities;
  - ii. a director, an officer or an employee of any of the LP Entities;
  - iii. related to the LP Entities or to any director or officer of the LP Entities; or
  - iv. trustee (or related to any such trustee) under a trust indenture issued by any of the LP Entities or any person related to the LP Entities, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the *Civil Code of Quebec* that is granted by the LP Entities or any person related to the LP Entities.
9. On October 6, 2009, FTI was appointed as Monitor of the CMI Entities (as defined and described in greater detail below). In addition, as part of the restructuring initiatives of the CMI Entities in their CCAA proceedings, on November 26, 2009, four wholly-owned subsidiaries (which did not file for CCAA protection on October 6, 2009) of Canwest Media Inc. (“CMI”) made assignments in bankruptcy under the BIA<sup>2</sup> and FTI was appointed trustee in bankruptcy of those entities.
10. FTI has consented to act as Monitor should this Honourable Court grant the Applicants’ request to commence the CCAA Proceedings in respect of the LP Entities.

## BACKGROUND

11. As described in the Strike Affidavit, Canwest carries on business through a number of subsidiaries. Through its ownership of the LP Entities, Canwest is Canada’s largest

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<sup>2</sup> The four CMI subsidiaries, Fireworks Entertainment Inc., Canwest Entertainment Inc., CEIDI (Canada) I Inc. and CEIDI (Canada) II Inc, are holding companies that have been inactive since late 2005.

publisher of English-language daily and non-daily newspapers and owns and operates substantial digital media and online businesses. Canwest also directly or indirectly owns, operates and/or holds substantial interests in free-to-air television stations, subscription-based specialty television channels, and websites in Canada.

12. Starting in the second half of 2008, the LP Entities began to experience declines in advertising revenues which had a negative impact on their cash flows, resulting in the LP Entities breaching certain covenants, missing certain principal and interest payments, and defaulting under their various credit facilities, including the LP Secured Credit Agreement, the LP Senior Subordinated Credit Agreement and the LP Note Indenture (as these terms are defined below) and related guarantee obligations in May 2009. As a result of these events of default, amounts under the LP Entities' various credit facilities became immediately due and payable, which has led the LP Entities to conclude that a restructuring of their balance sheets is required and must be pursued in order to preserve the enterprise values of their businesses.
13. Following extensive negotiations, on August 31, 2009, the LP Entities and the LP Administrative Agent (with the consent of LP Secured Lenders holding in the aggregate a minimum of 50.1% of the advances outstanding under the LP Credit Agreement (the "**Majority Lenders**")) entered into the Forbearance Agreement under which the LP Administrative Agent agreed, subject to certain terms and conditions, to forbear from enforcing the LP Secured Lenders' security in order to allow the LP Entities and the LP Secured Lenders the opportunity to negotiate a pre-packaged restructuring or reorganization of the business and affairs of the LP Entities (as these terms are defined and described in greater detail below). The Forbearance Agreement expressly

contemplated that the LP Entities and the LP Secured Lenders would negotiate the terms of a pre-packaged credit acquisition, restructuring or recapitalization to be implemented under CCAA protection. The Forbearance Agreement has been extended by letters dated September 29, 2009, October 7, 2009, October 14, 2009 and October 30, 2009 (collectively, the “**Extension Letters**”). The most recent Extension Letter extended the Forbearance Agreement to November 9, 2009 (which was also identified as the deadline for having finalized a pre-prepackaged transaction in the Forbearance Agreement). Although the Forbearance Agreement has not been extended beyond that date, the discussions and negotiations between LP Entities and the LP Administrative Agent continued.

14. The LP Entities and the LP Administrative Agent have negotiated a pre-arranged support transaction pursuant to which (subject to a successful bid as a result of and in accordance with the terms of the SISP (as defined below) and approval by this Honourable Court) an entity to be initially capitalized as described in the Acquireco Capitalization Term Sheet (as this term is defined in the Senior Lenders’ Plan (as defined below)) (“**AcquireCo**”) will acquire substantially all of the assets of the LP Entities, assume the liabilities of the LP Entities (other than certain specified liabilities and subject to AcquireCo’s right to exclude certain additional liabilities) and offer employment to all or substantially all of the employees of the LP Entities on terms and conditions consistent with their current employment (the “**Support Transaction**”).
15. The financial advisor to the LP Entities will conduct a sale and investor solicitation process under the supervision of the Monitor (if appointed) (the “**SISP**”) in an effort to

attract an alternative offer to the one contained in the Acquisition Agreement (as defined and described in greater detail below).

16. The LP Entities are seeking a stay of proceedings under the CCAA in order to allow them to implement the Support Transaction and allow their financial advisor (under the supervision of the Monitor) to conduct the SISP in order to restructure and reorganize their businesses and preserve their enterprise values.
17. Relief in the CCAA Proceedings is being sought by the Canwest entities which carry on, *inter alia*, newspaper and online publishing and digital media businesses. Not included in this application is NPI, a wholly-owned subsidiary of the LP Entities which acquired the business and certain assets that comprised the *National Post* newspaper from The National Post Company / La Publication National Post in October 2009 (as described in greater detail below).
18. Other divisions and/or subsidiaries of Canwest, including:
  - i. Canwest Global, its principal operating subsidiary CMI, and certain subsidiary corporations and partnerships of CMI that own and operate Canwest's free-to-air television broadcast business and certain subscription-based specialty television channels in Canada<sup>3</sup> (collectively, the "**CMI Entities**"); and
  - ii. Canadian subscription-based specialty television channels acquired from Alliance Atlantis Communications Inc. in August 2007, which are held jointly with

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<sup>3</sup> Except for the following Canwest specialty television channels: *TVtropolis*, *MenTV*, and *MysteryTV*.

Goldman Sachs Capital Partners and operated by CW Investments Co. and its subsidiaries,

are not Applicants in the CCAA Proceedings nor is a stay of proceedings sought in respect of any of these entities in these CCAA Proceedings.

19. As stated above, the CMI Entities applied for and obtained protection under the CCAA on October 6, 2009.

#### **LP ENTITIES' CORPORATE AND REPORTING STRUCTURE**

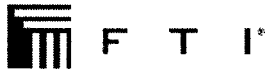
20. Information regarding the organizational structure of Canwest and the LP Entities is set forth in detail in the Strike Affidavit and is therefore described only in summary form in this report.
21. Canwest is a public company continued under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended. Canwest's principal subsidiary is CMI which holds a 100% indirect ownership interest in 4501071 Canada Inc., which in turn holds 100% direct or indirect interests in the LP Entities and NPI.
22. A copy of Canwest's complete corporate organization chart is attached as Exhibit "D" to the Strike Affidavit. A simplified corporate structure showing all of the LP Entities, including the designation of LP Entities seeking protection under the CCAA, is attached hereto as **Appendix "A"** and is further summarized below:

This is Exhibit "J" to the Affidavit of Sandy Prosa  
sworn the 24th day of June, 2024.

A handwritten signature in black ink, appearing to read 'Chenyang Li', is positioned above a horizontal line.

---

Chenyang Li



**CANWEST GLOBAL  
COMMUNICATIONS CORP.  
AND THE OTHER APPLICANTS  
LISTED ON SCHEDULE "A"**

**PRE-FILING REPORT OF THE PROPOSED MONITOR**  
**October 5, 2009**



Court File No.

**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  
CANWEST GLOBAL COMMUNICATIONS CORP.  
AND THE OTHER APPLICANTS LISTED ON  
SCHEDULE "A"**

**PRE-FILING REPORT OF FTI CONSULTING CANADA INC.,  
in its capacity as proposed Monitor of the Applicants**

**October 5, 2009**

**INTRODUCTION**

1. FTI Consulting Canada Inc. ("FTI" or "**Proposed Monitor**") understands that Canwest Global Communications Corp. ("**Canwest Global**") and those of its subsidiaries listed in **Schedule "A"** attached to this report (together with Canwest Global, the "**Applicants**") intend to bring an application before this Honourable Court seeking certain relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") granting, *inter alia*, a stay of proceedings until November 5, 2009 and appointing FTI as Monitor (the "**Monitor**"). The proceedings to be commenced by the Applicants under the CCAA will be referred to herein as the "**CCAA Proceedings**".

2. The Applicants are also seeking to have the stay of proceedings and other relief provided under the CCAA extended to certain partnerships listed in **Schedule “B”** attached to this report, which partnerships carry on operations that are integral to the Applicants’ businesses (collectively, the **“Partnerships”**, and together with the Applicants, the **“CCAA Entities”**).
3. This is the pre-filing report of the Proposed Monitor in the CCAA Proceedings. The purpose of this report is to provide this Honourable Court with information on the following:
  - FTI’s qualification to act as Monitor (if appointed);
  - general information about the CCAA Entities and their businesses;
  - the CCAA Entities’ corporate structure and decision making;
  - the relevant historic and current debt structure and current financial position of the CCAA Entities;
  - the reasons for including the Partnerships and the Foreign Subsidiary Applicants (as defined below) in the request for protection under the Initial Order;
  - the CCAA Entities’ inter-company services;
  - the CCAA Entities’ cash management system;
  - the CCAA Entities’ pension plans and other employee obligations;

This is Exhibit "K" to the Affidavit of Sandy Prosa  
sworn the 24th day of June, 2024.

A handwritten signature in black ink, appearing to read 'Chenyang Li', positioned above a horizontal line.

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Chenyang Li

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**B E T W E E N:**

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

**- and -**

**AND IN THE MATTER OF THE PROPOSAL OF FOODORA INC.  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**MOTION RECORD**

(Motion for Appointment of Representative Counsel for Non-CUPW Couriers,  
returnable July 8, 2020)

July 6, 2020

**KOSKIE MINSKY LLP**

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

**Andrew J. Hatnay – LSUC No. 31885W**

Tel: 416-595-2083 / Fax: 416-204-2872  
Email: [ahatnay@kmlaw.ca](mailto:ahatnay@kmlaw.ca)

**James Harnum – LSUC No. 60459F**

Tel: 416-542-6285 / Fax: 416-204-2819  
Email: [jharnum@kmlaw.ca](mailto:jharnum@kmlaw.ca)

Proposed Representative Counsel to the  
Non-CUPW Couriers of Foodora Inc.

Court File No.: 31-2641224

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**B E T W E E N :**

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

- and -

**AND IN THE MATTER OF THE PROPOSAL OF FOODORA INC.  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**AFFIDAVIT OF JAMES HARNUM  
(Sworn July \_\_\_, 2020)**

**I, JAMES HARNUM**, of the City of Toronto, in the Province of Ontario,  
**MAKE OATH AND SAY**

1. I am a lawyer with Koskie Minsky LLP ("**KM**"). Where the facts set out in this Affidavit are based on information provided to me by others, I have set out the source of the information and verily believe it to be true.

2. I swear this affidavit in support of a motion for an order appointing KM as Representative Counsel to all individuals who were contracted with Foodora Inc. to provide food courier services, who were actively providing those services as of February 3, 2020, and who are not represented by the Canadian Union of Postal Workers ("**CUPW**"; collectively, the "**Non-CUPW Couriers**" or individually, "**Non-CUPW Courier**").

## **Background**

1. Foodora is an Ontario corporation and a subsidiary of Delivery Hero SE, a multi-national food delivery service based in Berlin, Germany. Foodora delivers food to its customers by individual couriers (the "**Couriers**"). Foodora operates across Canada. At the time of the filing of its Proposal in bankruptcy (discussed below), there were approximately 2,400 Couriers actively providing delivery services to Foodora's customers in Canada.
2. On February 25, 2020, on an application brought by CUPW, the Ontario Labour Relations Board ("**OLRB**") released a decision holding that the Couriers geographically located in Toronto and Mississauga qualify as "dependent contractors" under the definition of "employee" in section 1(1) of the *Labour Relations Act*, 1995, S.O. 1995, c. 1, Sched. A, and as such, could be certified as a bargaining unit under labour laws.
3. On April 27, 2020, Foodora filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3 (the "**BIA**") Grant Thornton LLP ("**GT**") was appointed proposal trustee in the NOI proceedings.
4. Foodora continued to operate for two weeks after its NOI was filed, with May 11, 2020 being the last day of its operations in Canada.
5. Prior to the filing of the Proposal, KM had been investigating the possibility of asserting claims against Foodora with respect to individuals in respect of confirming employee protections in employment standards legislation, and had been in contact with

This is **Exhibit "A"**  
referred to in the Affidavit of James Harnum  
sworn before me this \_\_\_\_\_ day of July, 2020.

---

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

## CAVALLUZZO

**Please refer to:**

Direct Line:

Email:

Assistant:

Assistant's Email:

File No.

**Ryan D. White**

416-964-5533

rdwhite@cavalluzzo.com

Fernanda Da Silva

fdasilva@cavalluzzo.com

190570

May 29, 2020

**VIA EMAIL - ROB.STELZER@CA.GT.COM**

Rob Stelzer  
 Grant Thornton LLP  
 20th Floor, 200 King St West  
 Toronto ON M5H 3T4

Dear Mr. Stelzer:

**RE Proposal to Creditors – Foodora Inc.**

We represent the Canadian Union of Postal Workers ("CUPW") in respect of various proceedings against Foodora Inc ("Foodora"). CUPW, as you know, filed an application for certification under the *Labour Relations Act, 1995* seeking to be the exclusive bargaining agent for a group of approximately 1,200 to 1,500 couriers working in Toronto and Mississauga for Foodora. We note that numerous of these couriers have sought our assistance following Foodora's filing of a Notice of Intention of Make a Proposal under the *Bankruptcy and Insolvency Act*.

We have reviewed Foodora's Amended Proposal and the letter from your office to "Contractor Riders" sent May 25, 2020. We strongly object to the position that Riders, with limited exceptions, are not owed anything further beyond the 2 weeks of working notice that they received, and that they are not creditors as of the date of the Proposal.

To the contrary, all Riders, including those mislabeled as "independent contractors" are employees and creditors with potential claims caused by Foodora's closure. While the purpose of this letter is not to comprehensively address this issue, we highlight several factual and legal findings made by the Ontario Labour Relations Board in its February 25, 2020 decision ("Decision"), which support our position that all Riders are properly characterized as "employees" as defined by section 1 of the *Employment Standards Act, 2000* ("ESA"):

1. The Board determined that all Riders were employees for the purposes of the *Labour Relations Act, 1995*.

**CAVALLUZZO LLP** BARRISTERS & SOLICITORS

474 Bathurst Street, Suite 300, Toronto, Ontario M5T 2S6 T. 416.964.1115 F. 416.964.5895 [cavalluzzo.com](http://cavalluzzo.com)





- 2 -

2. The Board held that "the restrictions on the use of [substitute couriers] strongly resembles an employment relationship rather than an independent contractor relationship. Unlike a plumber or electrician, for example, who might use a helper or a substitute to lighten the workload or increase profitability, the courier is limited by Foodora to his own skill and labour, much like an employee is limited in a traditional employment relationship." [emphasis added] (Decision, paragraph 91)
3. The Board held that the dispatch of work by a centralized dispatch system and propriety software application (the "App") was suggestive of an employment relationship: "as the evidence made clear, the App is exclusively owned and developed by Foodora. In this respect, the courier more closely resembles an employee who is permitted to use the company's software than an independent contractor." (Decision, paragraph 99).
4. The Board held that couriers bore little risk of loss and had no meaningful ability to increase their profits. An analysis of the risk of loss/chance of profit has long been a relevant consideration of employment under the *ESA*. On this issue, the Board determined that "the courier is a mere cog in the wheel that is powered by Foodora." (Decision, paragraphs 105 - 107).
5. The Board determined that the "complex system of incentives and restrictions" that Foodora applied to couriers had "the hallmarks of the type of employment relationship the Board often sees in the form of an on-call employee or elect-to-work employee." (Decision, paragraph 137).
6. The Board determined that the provision of a standard rate for services by Foodora "makes the courier more like an employee who receives a standard wage rate (or piece rate) rather than an independent contractor who has the ability to vary his fees to suit his needs or the environment." (Decision, paragraph 142).
7. The Board determined that couriers were "heavily, if not entirely, integrated "into Foodora's business and that: "[i]n every practical sense, Foodora ensures the relationship is between itself, the customer and the restaurant. The courier is a cog in the economic wheel – an integrated component to the financial transaction. This is a relationship that is more often seen with employees rather than independent contractors." [emphasis added] (Decision, paragraph 144 and 147).
8. The Board held that Foodora monitored and disciplined couriers as an employer would: "This level of monitoring and supervision is what is commonly seen in an employment relationship whereby supervisors are told about the types of behaviour that warrant employee discipline." (Decision, paragraphs 161 – 162).

We understand that a meeting of creditors has been scheduled on June 11, 2020. This meeting should be postponed. The exclusion of thousands of creditors is deeply concerning and unlawful. All creditors – including all Riders – must be provided with a copy of the Amended Proposal and given the option of voting at the meeting. More to the point, the Amended Proposal requires revision and must include all Riders as creditors with potential claims.

We would ask that you respond to our letter by no later than June 1, 2020. In the event that we do not hear from you, or if you advise that the Amended Proposal will not be revised and the

- 3 -

June 11<sup>th</sup> meeting will proceed as scheduled, our instructions are to immediately bring a motion to challenge your decision to exclude thousands of Riders from the list of creditors.

Yours very truly,

**CAVALLUZZO LLP**



Ryan D. White and Elichai Shaffir  
RDW/fd

c: Jean-Phillipe Grenier, Aaron Spires, Liisa Schofield, CUPW  
James Harnum and Andrew Hatnay LLP

This is Exhibit "L" to the Affidavit of Sandy Prosa  
sworn the 24th day of June, 2024.

A handwritten signature in black ink, appearing to read 'Chenyang Li', is positioned above a horizontal line.

---

Chenyang Li

December 23, 2014

**Andrew J. Hatnay**  
ahatnay@kmlaw.ca

**Via Regular Mail**

**PRIVILEGED & CONFIDENTIAL**

Dear Sir/Madam:

**Re: U.S. Steel Canada Inc. – CCAA Proceeding  
Representation of Non-Union and Active and Retired Employees  
Our File No. 14/1751**

We are the court-appointed representative counsel to George Hanson, Gary Dallin, Paul Wendling, Ron McClure, Pat Mousseau, and Frank Dalimonte, who were appointed by the Ontario Superior Court of Justice (Commercial List) as the representatives of all non-union active and salaried employees of U.S. Steel Canada Inc. (“USSC”), in its proceedings under the *Companies’ Creditors Arrangement Act* (“CCAA”).

We have been provided with your name by legal counsel to USSC. We are writing to make contact with you and provide a status update of this matter.

As you are likely aware, USSC obtained court protection from its creditors under the CCAA on September 16, 2014. Regional Senior Justice Morawetz issued the initial CCAA Order on the basis of USSC’s application materials that it filed with the court that claimed that USSC is insolvent. The main purpose of the CCAA is to give an insolvent company “breathing room” from the claims of its creditors so it can restructure and continue as a viable business, thus avoiding a formal bankruptcy. The court also appointed the firm of Ernst & Young Inc. (“E&Y”) as the Monitor. Generally, the Monitor’s role is to monitor and regularly report on the company’s activities while it is under CCAA protection and interact with the creditors and other stakeholders of USSC.

As you are probably also aware, this is the second time that the company has undergone CCAA proceedings. Previously, while operating as Stelco Inc., the company obtained CCAA protection from the court in 2004, restructured and emerged from CCAA protection in 2006 following which it was acquired by United States Steel Corporation, headquartered in Pittsburgh, Pennsylvania.

### **Expansion of our previous CCAA mandate**

In the 2004-2006 CCAA proceedings of Stelco, our firm was appointed as representative counsel to certain retirees (George Hanson, Paul Wendling, Gary Dallin, and the late John Hanson) who are on the board of your retiree association, the Stel-Salaried Pensioners Organization (“SSPO”). Our focus in the 2004-2006 CCAA proceedings were the Stelco salaried registered pension plans and benefit plans. We will refer to the USSC benefit plans as “Other Post-Employment Benefits” or “OPEBs”.

In this CCAA, our mandate has been expanded to also include all non-union active employees of USSC, as well as all retirees who earned an entitlement to supplementary pension benefits pursuant to a retirement benefit contract with USSC (both funded and unfunded). We understand that our current mandate is comprised of approximately 5,200 active employees and retirees.

In order to ensure that we have regular and effective communications with all the employees and retirees who are subject to our representation order, we have set up three sub-committees in addition to the original core SSPO Committee, to dialogue with the members of the various sub-groups, respond to their questions and concerns, and relay any issues to us so that we can respond efficiently and effectively. We enclose a copy of a chart depicting the client committee structure for your reference. In addition to you contacting our firm, you may also contact the individuals listed on this chart with any questions or concerns using the e-mail addresses in the chart.

### **Status**

There have been a number of developments over the past few months, however, it is our view that the major restructuring of USSC is still in its early stages. The company has, however, done the following with the involvement of major stakeholders, including our firm:

- a) obtained additional financing from U.S. Steel in Pittsburgh called “Debtor-in-Possession” Financing (“DIP”). The latest Monitor’s Report (the 5<sup>th</sup> Report) states that USSC has not yet drawn any funds on the DIP loan;
- b) established a Claims Process to solicit claims of creditors who claim to be owed amounts from USSC, with the exception of any claims based on the USSC pension plans or OPEBs, which may be subject to a future claims process;
- c) established a protocol for quantifying with greater precision the liabilities of USSC with respect to the pension plans and OPEBs. This process has recently started and will continue into 2015;



- d) obtained approval from the court for a Key Employee Retention Plan (“KERP”) in the maximum amount of \$2,570,378. The KERP operates as a stay bonus to incentivize certain key USSC employees to continue employment with the company during the CCAA proceeding, as those employees are considered critical to the restructuring process;
- e) restarted the coke ovens at Hamilton Works and entered into a coke supply contract with U.S. Steel; and
- f) began to formulate a sales process for the company to solicit bids from potential purchasers of all or parts of USSC.

The most recent filed actuarial valuation reports indicate that the USSC registered pension plans are currently underfunded to varying degrees on a wind up basis. This means that if the plans are terminated (i.e., wound up) in such a state, there will be insufficient assets to pay pension benefits at full amounts and monthly benefits may be reduced. USSC has not given any indication at this time of its intention to wind up the plans, however, we are monitoring the situation closely, analyzing legal remedies and working closely with the Client Committee.

Secondly, USSC takes the position that its OPEB liability to retirees is contractual, raising the possibility that USSC may seek to reduce or terminate OPEBs in the CCAA proceeding. Again, USSC has not given us an indication of an intention to do so, however, we are also monitoring the situation closely and analyzing legal remedies.

### **Request for documentation**

We have been provided with documentation from counsel to USSC relating to the USSC registered pension plans, retirement benefit contracts, and other pension and benefit arrangements. Nevertheless, we ask that you send to us copies of any documentation you have that pertains to your pension and benefits entitlements or other amounts owing to you from USSC. These can include, for example, employment contracts, correspondence, and employee and retiree booklets. Please send copies of any such documents to us as soon as possible to the coordinates:

#### **Via post:**

U.S. Steel Canada Inc. – CCAA Proceeding  
Representation of Non-Union and Active and Retired Employees  
c/o Communications Department  
Koskie Minsky LLP  
20 Queen Street West, Suite 900  
Toronto, ON M5H 3R3

**Via e-mail:** [usscrepcounsel@kmlaw.ca](mailto:usscrepcounsel@kmlaw.ca)

**Via facsimile:** 416-977-3316

### Next Steps

As noted above, the company has advised that it will be proceeding with a sales process to market itself for sale in early 2015. We have been provided with draft documents relating to the proposed sales process protocol and have sent comments on the protocol back to USSC. USSC has advised that they plan to have meetings with certain stakeholders, including us, prior to returning to court in 2015 to request an order for approval of the sales process protocol. We will keep you apprised of developments.

We will continue to provide regular updates to you as the CCAA proceeding moves forward, as well as posting updates on our firm website for USSC non-union retirees and active employees. You can access our firm website at [www.kmlaw.ca/usscrepcounsel](http://www.kmlaw.ca/usscrepcounsel) for information, call our toll-free hotline at **1-866-777-6341**, or e-mail us at [usscrepcounsel@kmlaw.ca](mailto:usscrepcounsel@kmlaw.ca) if you have any questions or concerns.

We wish you the best for the holiday season.

Yours truly,

**KOSKIE MINSKY LLP**



Andrew J. Hatnay

AJH:vdI/encl.

cc. Client Committee  
Murray Gold, James Harnum, Barbara Walancik, Adrian Scotchmer, Natercia McLellan (Communications Manager), *Koskie Minsky LLP*

1380156v3

This is Exhibit "M" to the Affidavit of Sandy Prosa sworn the 24th day of June, 2024.

A handwritten signature in black ink, appearing to read 'Chenyang Li', is positioned above a horizontal line.

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Chenyang Li

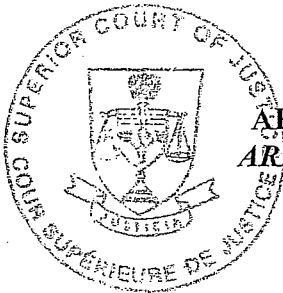


ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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 IN THE MATTER OF HOLLINGER  
CANADIAN PUBLISHING HOLDINGS CO.

Applicant



APPLICATION UNDER THE *COMPANIES CREDITORS'*  
*ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

NOTICE OF APPLICATION

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following page.

THIS APPLICATION will come on for a hearing before the Honourable Mr. Justice Campbell on December 10, 2009 at 330 University Avenue, Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: December 9, 2009

Issued by: \_\_\_\_\_  
Local Registrar

Address of court office: 393 University Avenue  
10<sup>th</sup> Floor  
Toronto, Ontario M5H 1Y8

TO: **THE HONOURABLE COURT**

## NOTICE OF APPLICATION

### RELIEF SOUGHT

1. The Applicant, Hollinger Canadian Publishing Holdings Co. ("HCPH") makes application for:

- (a) abridging the time for or dispensing with service on all interested parties of HCPH;
- (b) declaring that HCPH is a debtor company within the meaning of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C. C-36, as amended (the "CCAA") and that the CCAA applies to HCPH;
- (c) staying all proceedings and remedies taken or that might be taken in respect of HCPH, its current or former directors and officers, and any of HCPH's property, without leave of the Court;
- (d) authorizing HCPH to carry on its business in a manner consistent with the preservation of its property and to make certain payments in connection with its businesses and the proceedings herein without prejudice to the ability of HCPH to seek further protections from the Court;
- (e) appointing Ernst & Young Inc. ("EYI") as monitor of HCPH;
- (f) appointing Dennis M. Byrd as chief restructuring officer ("CRO") of HCPH to oversee these proceedings in the manner contemplated by the draft order filed herewith;
- (g) appointing Koskie Minsky LLP (Mr. Andrew Hatnay) as representative counsel in respect of the OPEBs (as defined below); and
- (h) authorizing HCPH to, in conjunction with the Monitor and CRO, develop a plan of arrangement and compromise for consideration by the creditors of HCPH

- (i) permitting HCPH to call, and directions with respect to the giving of notice and the conduct of, a meeting or meetings of HCPH's creditors to consider and approve the plan of arrangement or compromise;
- (j) such further and other relief as particularized in the draft order attached as Schedule "A"; and
- (k) such further and other relief as this Honourable Court deems just.

#### GROUNDS

2. The grounds for the application are:

- (a) the CCAA and the equitable jurisdiction of this Honourable Court;
- (b) HCPH is a debtor company within the meaning of the CCAA;
- (c) HCPH is a corporation organized under the laws of the Province of Nova Scotia;
- (d) HCPH's sole "business" is to administer post-retirement benefits, post-employment benefits and pension plans for in excess of 3,000 former employees of the Southam Inc. ("Southam") newspaper chain. The pension and benefits plans include two unfunded retirement plans and certain other post-employment benefit plans (collectively referred to as "OPEBs") in addition to six registered pension plans (the "Pension Plans", and together with the OPEBs, the "Plans");
- (e) circumstances exist which make the order sought by HCPH appropriate;
- (f) HCPH intends to propose a plan of arrangement or compromise between itself and its creditors;
- (g) the order sought by HCPH will facilitate the development and submission of a plan of arrangement or compromise between HCPH and its creditors;
- (h) due to the urgency of this application and the number of potentially interested parties, it has not been possible to provide all interested parties with notice;

- (i) Rule 2.03 and 14.05 of the *Rules of Civil Procedure*;
- (j) the provisions of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended; and
- (k) such further and other grounds as counsel may advise and this Honourable Court may permit.

**EVIDENCE**

3. The following documentary evidence will be used at the hearing of the application:
- (a) the Affidavit of Thomas L. Kram, sworn on December 8, 2009, together with exhibits thereto;
  - (b) the consent of Ernst & Young Inc. to act as monitor; and
  - (c) such further and other materials as counsel may advise and this Honourable Court allow.

December 9, 2009

**BENNETT JONES LLP**  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

Raj Sahni (LSUC #42942U)  
Derek Bell (LSUC #43420J)  
Mark Smyth (LSUC #47278L)  
Tel: 416-863-1200  
Fax: 416-863-1716

Lawyers for the Applicant

This is Exhibit "N" to the Affidavit of Sandy Prosa  
sworn the 24th day of June, 2024.

A handwritten signature in black ink, appearing to read 'Chenyang Li', is positioned above a horizontal line.

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Chenyang Li

Court File No. CV-09-8396-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN:**

**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 CANWEST GLOBAL COMMUNICATIONS CORP.  
AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A" TO THE INITIAL  
ORDER (the "Applicants")**

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**FACTUM OF THE RESPONDING PARTY**

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**CAVALLUZZO HAYES SHILTON  
MCINTYRE & CORNISH LLP**  
Barristers & Solicitors  
474 Bathurst Street, Suite 300  
Toronto, ON M5T 2S6

**Hugh O'Reilly, LSUC #36271V  
Amanda Darrach, LSUC #512570**

Tel: (416) 964-1115  
Fax: (416) 964-5895

Lawyers for the Retirees

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN:**

**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 CANWEST GLOBAL COMMUNICATIONS CORP.  
AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A" TO THE INITIAL  
ORDER (the "Applicants")**

**FACTUM OF THE RESPONDING PARTY  
(Returnable October 27, 2009)**

**Part I – Overview**

1. The Applicants have brought this motion to appoint Rose Stricker, David Cremasco and Lawrence Schnurr (the "Representatives") as representatives on behalf of:
  - (a) all former employees of the CMI Entities (as defined in the Maguire affidavit) (or their predecessors, as applicable), or the surviving spouses of such former employees if applicable, who are in receipt of a pension from a registered or unregistered pension plan sponsored by a CMI Entity,
  - (b) all former employees of the CMI Entities (or their predecessors, as applicable), or the surviving spouses of such former employees if applicable, who are entitled to receive a deferred vested pension from a registered or unregistered pension plan sponsored by a CMI Entity, and



8. On October 6, 2009, the CMI Entities obtained an order pursuant to the CCAA staying all proceedings and claims against them (the "Initial Order").<sup>1</sup>
9. At the date of the Initial Order, the CMI Entities had approximately 1,700 active employees. There were approximately 280 retirees and surviving spouses who were receiving a pension benefit from a CMI Entity sponsored pension plan and 180 former employees who were receiving post retirement benefits, such as extended health benefits ("PRB"). Approximately 80 of the former employees in receipt of the PRB had not been members of a union while employed with the CMI Entities.<sup>2</sup>
10. The CMI Entities, at this time, intend to honour obligations to active employees, and make current service and special payments to all but one of the CMI Entity sponsored defined benefit pension plans, as further discussed below, as well as make payments to post-employment and post-retirement benefit plans for formerly unionized employees.<sup>3</sup>
11. However, the CMI Entities intend to cease making payments for post-employment and post-retirement benefit plans for former non-unionized employees, effective November 13, 2009.<sup>4</sup>
12. Additionally, one of the defined benefit plans sponsored by the CMI Entities, the Global Communications Limited Retirement Plan for CH Employees (the "CH Plan") has been purported to be wound-up as of August 31, 2009. The federal regulator, the Office of the Superintendent of Financial Institutions ("OSFI"), has required that a more recent actuarial valuation, to December 31, 2008, be filed before the termination is

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<sup>1</sup> Affidavit of John E. Maguire, Sworn October 22, 2009, ("Maguire Affidavit"), Motion Record of the Applicants, Tab. 2, p. 3, para. 3.

<sup>2</sup> *Ibid.* at p. 4, para. 9.

<sup>3</sup> *Ibid.* at p. 4, para. 10.

<sup>4</sup> *Ibid.* at p. 5, para. 11.

This is Exhibit "O" to the Affidavit of Sandy Prosa  
sworn the 24th day of June, 2024.

A handwritten signature in black ink, appearing to read 'Chenyang Li', is positioned above a horizontal line.

Chenyang Li

Court File No. CV-10-8533-00CL

**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 Canwest Publishing Inc./Publications Canwest Inc., Canwest Books Inc. and Canwest (Canada) Inc.**

**APPLICANTS**

**FACTUM  
OF THE COMMUNICATIONS, ENERGY AND  
PAPERWORKERS UNION OF CANADA  
(Motion Returnable February 2, 2010)**

January 29, 2010

**CaleyWray**

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Lawyers for the Communications, Energy  
and Paperworkers Union of Canada

**TO: SEE ATTACHED SERVICE LIST**

Court File No. CV-10-8533-00CL

**ONTARIO  
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**IN THE MATTER OF the *Companies' Creditors Arrangement Act*,  
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Canwest Books Inc. and Canwest (Canada) Inc.**

**APPLICANTS**

**FACTUM OF THE MOVING PARTY  
(Returnable February 2, 2010)**

**PART I – OVERVIEW**

1. This is a motion made by the Communications, Energy and Paperworkers Union of Canada (the "Union") requesting an Order appointing the Union to represent current and former members of the Union, including pensioners and their beneficiaries, employed or formerly employed by the Applicants ("Current and Former Members") in the proceedings under the *Companies' Creditors Arrangement Act* ("CCAA"), the *Bankruptcy and Insolvency Act* (the "BIA") or in any other proceeding which has been or may be brought before this Honourable Court (the "Proceedings").
2. No party, other than the Union, is seeking to represent the Current and Former Members in the Proceedings.

**PART II - FACTS**

3. The Union is the bargaining agent for employees working at the Applicants' facilities in bargaining units at the Ottawa Citizen, the Windsor Star, the Montreal Gazette, the Edmonton Journal, the Calgary Herald, the Alberni Valley Times, the Nanaimo Daily News, College Printers, the Sun and Province in B.C., the Burnaby/Coquitlam Now-Royal City Record, Surrey Now, the Abbotsford Times, the Victoria Times Colonist, and the Campbell River Courier-Islander. A principal function of the Union as exclusive bargaining agent of employees employed by the Applicants is the negotiation and administration of collective agreements.

Reference: Affidavit of Peter Murdoch sworn January 28, 2010, Motion Record of the Moving Party, Tab A, paragraph 6 ("Murdoch Affidavit").

4. The Union represents twenty five (25) bargaining units with the Applicants and has collective agreements with respect to these bargaining units ("Collective Agreements").

Reference: Murdoch Affidavit, paragraph 7.

5. The terms and conditions of the collective agreements negotiated by the Union have a direct impact on the benefit entitlements payable to the Union's Former Members. The pension and post-retirement/post-employment benefits currently enjoyed by the Union's Former Members are the product of benefits negotiated by the Union with the Applicant and form part of the collective agreements. Given the foregoing, the Union has extensive knowledge of the issues that may arise in respect to the interests of its Former Members during the Applicants' CCAA proceedings.

Reference: Murdoch Affidavit, paragraph 9.

6. The Applicants maintain two (2) defined benefit plans ("DB Plans") in Ontario and one DB Plan in British Columbia. They also maintain and contribute to three (3) defined contribution plans ("DC Plans") and several multi-employer pension plans. As described in the Strike Affidavit, the DB Plans have a combined windup deficiency of \$106,349,581 as of the last valuation date which was on December 31, 2008. The estimated annual current service cost in respect of the DB Plans is \$8,264,473. The total of the annual special payments made by the Applicants in respect of the deficiencies in the DB Plans is \$18,566,666. As a result of the recent economic decline it is expected that the next valuation of the DB Plans will reflect a significantly deteriorated financial position.

Reference: Murdoch Affidavit, paragraph 10.  
Affidavit of Thomas C. Strike, sworn January 7, 2010,  
Applicants' Application Record, TAB 2, paragraphs 127 to  
132 (the "Strike Affidavit").

7. The Applicants' DB Plans have, in aggregate, approximately 2,210 active members, and approximately 685 pensioners, survivors and other non-active DB Plan members. The Union has Current and Former Members in one of the Ontario DB Plans and in the British Columbia DB Plan. It also has members in a number of the Applicants' multi-employer pension plans.

Reference: Murdoch Affidavit, paragraphs 11 and 12.  
Strike Affidavit, paragraph 129.

8. The Applicants also provide post-retirement/post-employment benefits to some former employees, which include some of the Union's Former Members. Those benefits include health, dental and term life insurance benefits. The aggregate annual cash contribution in the year ended August 31, 2009 to provide such post-retirement/post-employment benefits for all former employees of the Applicants was approximately \$3 million. The aggregate accrued benefit

**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

151

Court File No. BK-24-03050418-0031  
Estate / Court File No. BK-31-3050418

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

PROCEEDING COMMENCED AT  
TORONTO

**AFFIDAVIT OF SANDY PROSA  
SWORN JUNE 24, 2024**

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**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

Court File No. BK-24-03050418-0031  
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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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IN BANKRUPTCY AND INSOLVENCY**

PROCEEDING COMMENCED AT TORONTO

**SUPPLEMENTAL RESPONDING MOTION RECORD  
OF THE BODY SHOP CANADA LIMITED**

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