

**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 OLD TBS CANADA LIMITED**

**FACTUM OF THE MONITOR  
(DISTRIBUTION ORDER)**

March 24, 2026

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**TO: SERVICE LIST**

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**TABLE OF CONTENTS**

Page No.

PART I - NATURE OF THIS MOTION .....1

PART II - SUMMARY OF FACTS .....1

    A. Background .....1

    B. The WHT Obligations and the Proposed Distribution.....2

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES .....4

    A. The Proposed CRA Distribution Order Ought to be Granted.....5

PART IV - ORDER REQUESTED .....8

    SCHEDULE "A" ..... i

    SCHEDULE "B" ..... ii

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**PART I - NATURE OF THIS MOTION**

1. This factum is filed by Alvarez & Marsal Canada Inc. (“**A&M**”) in its capacity as court appointed monitor (the “**Monitor**”) of Old TBS Canada Limited (f/k/a The Body Shop Canada Limited) (the “**Company**”) in its proceeding under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), in support of the Monitor’s motion for an Order (the “**CRA Distribution Order**”), among other things, authorizing and directing the Monitor to make one or more distribution to Canada Revenue Agency (“**CRA**”), up to the amount of the Assessed WHT Payable Amount (as defined below).

**PART II - SUMMARY OF FACTS**

**A. Background**

2. On March 1, 2024, the Company filed a notice of intention (“**NOI**”) to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended, following the sudden and unexpected filing for administration by its parent company in the United Kingdom (the “**UK**”

**Parent**” and such proceeding, the **“UK Administration Proceeding”**). A&M was appointed as the proposal trustee in the NOI proceeding.<sup>1</sup>

3. On July 5, 2024, the Company obtained: (i) an Order (the **“Initial Order”**), among other things, continuing the NOI proceeding under the CCAA, appointing A&M as the Monitor and granting a stay of proceedings until October 8, 2024 (the **“Stay Period”**); and (ii) an Order, among other things, terminating the NOI proceeding and discharging and releasing A&M as proposal trustee.<sup>2</sup>

4. On December 13, 2024, following a Court-approved sale process conducted by the Monitor and the Company, the Company obtained, among other orders: (i) an Order approving a transaction in respect of substantially all of the property and business of the Company (the **“Transaction”**); and (ii) an Order (the **“Expansion of Powers Order”**) expanding the Monitor’s powers and granting certain protections in favour of the Monitor.<sup>3</sup>

5. The Transaction closed on December 16, 2024.<sup>4</sup>

6. The Stay Period has been extended by orders of the Court granted throughout the course of this proceeding, including most recently on November 20, 2025, extending the Stay Period to October 31, 2026.<sup>5</sup>

## **B. The WHT Obligations and the Proposed Distribution**

7. Throughout the course of this proceeding, the Monitor, with the assistance of the Company’s tax advisors, has been taking steps to determine the tax obligations of the Company,

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<sup>1</sup> Fifth Report of the Monitor dated March 19, 2026 at [1.1 \[Fifth Report\]](#).

<sup>2</sup> Fifth Report at [1.3](#).

<sup>3</sup> Fifth Report at [1.5](#).

<sup>4</sup> Fifth Report at [1.5](#).

<sup>5</sup> Fifth Report at [1.7](#).

including withholding tax obligations of the Company in respect of pre-filing intercompany transfers made to a related non-resident party (the UK Parent) (the “**WHT Obligations**”) and the potential for substantial tax refunds.<sup>6</sup> The WHT Obligations came to light in connection with the work performed by the Company’s tax advisors in connection with the preparation of the Company’s 2024 annual tax filings.<sup>7</sup>

8. On February 3, 2026, CRA issued a non-resident tax Notice of Assessment to the Company, assessing the final WHT Obligations to be \$2,440,569 (exclusive of interest and penalties) (the “**Assessed WHT Payable Amount**”).<sup>8</sup>

9. Penalties and interest associated with the Assessed WHT Payable Amount are also owing in the amounts of \$244,056.90 and \$724,504.78, respectively, and continue to accrue.<sup>9</sup> The Monitor remains engaged with CRA and intends to submit a request for a waiver or cancellation of the interest and penalties on the basis of the financial hardship of the Company and the delay in repayment being outside the control of the Company.<sup>10</sup>

10. The WHT Obligations are subject to a deemed trust pursuant to the *Income Tax Act* (Canada) (the “**ITA**”), which provides CRA a priority claim for the Assessed WHT Payable Amount (exclusive of interest and penalties) prior to any distributions being available to the general creditors of the Company.<sup>11</sup> Subject to any resolution that may be reached with CRA, the

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<sup>6</sup> Fifth Report at [4.1](#) & [4.5](#).

<sup>7</sup> Although CRA filed a proof of claim with the Monitor for certain other tax-related claims, the claims related to the WHT Obligations came to light after that proof of claim was filed.

<sup>8</sup> Fifth Report at [4.4](#).

<sup>9</sup> Fifth Report at [4.4](#).

<sup>10</sup> Fifth Report at [4.6](#).

<sup>11</sup> Fifth Report at [5.2](#).

Monitor intends to treat the penalties and interest on the Assessed WHT Payable Amount as unsecured claims, not subject to the deemed trust.<sup>12</sup>

11. The proposed CRA Distribution Order, among other things, authorizes the Monitor to make one or more distributions to CRA, subject to such holdbacks and reserves as the Monitor determines appropriate and necessary, from the cash balance on hand up to the amount of the Assessed WHT Payable Amount.<sup>13</sup> The Monitor remains in discussions with CRA regarding its ability to set off certain tax refunds due to the Company against the Assessed WHT Payable Amount.

12. While the Initial Order authorizes the Monitor to make payments to CRA for priority amounts, the Monitor is seeking the CRA Distribution Order out of an abundance of caution and to ensure the Company's creditors have notice of the proposed distribution.<sup>14</sup>

13. The Monitor anticipates that it will have sufficient funds to satisfy the WHT Obligations in full and fund the ongoing administration of the Company.<sup>15</sup>

### **PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

14. The only question for the Court on this motion is whether the Monitor should be authorized and empowered to make one or more distribution to CRA up to the amount of the Assessed WHT Payable Amount.

15. For the reasons that follow, the answer to that question is "yes".

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<sup>12</sup> Fifth Report at [5.5](#).

<sup>13</sup> Fifth Report at [5.4](#).

<sup>14</sup> Fifth Report at [5.3](#).

<sup>15</sup> Fifth Report [5.4](#).

**A. The Proposed CRA Distribution Order Ought to be Granted**

16. Pursuant to paragraph 10(c) of the Initial Order, the Company is authorized to pay any amounts payable to CRA in respect of taxes which are entitled at law to be paid in priority to the Company's creditors.<sup>16</sup> Pursuant to the Expansion of Powers Order, the Monitor was authorized to act on behalf of, and in the name of, the Company.<sup>17</sup> While the Monitor may already have authority to make the payments to CRA on account of the WHT Obligations, out of an abundance of caution, and to ensure that the Company's creditors have prior notice of the proposed distributions, the Monitor is seeking the CRA Distribution Order.

17. This Court has jurisdiction to approve the proposed distribution to CRA pursuant to section 11 of the CCAA, which authorizes the Court to "make any order that it considers appropriate in the circumstances." This expansive language grants the Court a wide-ranging discretion, subject to the baseline considerations of appropriateness, good faith and due diligence.<sup>18</sup>

18. There is nothing in the CCAA that precludes the Court from approving a distribution of monies to creditors of the debtor during the pendency of the proceeding and outside the parameters of a plan of arrangement.<sup>19</sup> Rather, this Court frequently grants such relief.<sup>20</sup>

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<sup>16</sup> *In the Matter of Old TBS Canada Limited*, ONSC (Commercial List) (Court File No. CV-24-00723586-00CL), [Initial Order](#) (July 5, 2024) at para. 10(c).

<sup>17</sup> *In the Matter of Old TBS Canada Limited*, ONSC (Commercial List) (Court File No. CV-24-00723586-00CL), [Ancillary Order](#) (December 13, 2024) at para. 3(a).

<sup>18</sup> *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#) at para. [18](#).

<sup>19</sup> *AbitibiBowater Inc.*, [2009 QCCS 6461](#) at para. [71](#) [*AbitibiBowater*]; *Nortel Networks Corp., Re*, [2014 ONSC 4777](#) at para. [58](#); *Hudson's Bay Company, Re*, [2025 ONSC 2903](#) at para. [22](#).

<sup>20</sup> *In the Matter of 1000156489 Ontario Inc.*, ONSC (Commercial List) (Court File No. CV-22-00691990-00CL), [Distribution Order](#) (January 30, 2026) at para. 4; *In the Matter of Hudson's Bay Company ULC et al.*, ONSC (Commercial List) (Court File No. CV-25-00738613), [Order \(Stay Extension & Distributions\)](#) (May 13, 2025) at paras. 4 & 5.

19. In determining whether to approve an interim distribution, the Court ought to consider: (i) whether the distributions would be made in accordance with a valid and enforceable security interest; (ii) whether the proposed distributions would leave the debtor with sufficient liquidity; and (iii) whether the proposed distribution would result in interest savings.<sup>21</sup>

20. Each of those criteria are satisfied here. In accordance with the Notice of Assessment received from CRA, the amounts owing relate to withholding obligations owed by the Company to CRA in connection with pre-filing payments made by the Company to non-residents, including the UK Parent.<sup>22</sup> As a withholding obligation under part XIII of the *ITA*,<sup>23</sup> the Assessed WHT Payable Amount is subject to a deemed trust in favour of CRA pursuant to section 227(4.1) of the *ITA* and ranks in priority to the Company's general creditors.<sup>24</sup> The Monitor intends to only pay the Assessed WHT Payable Amount, being the principal, which is subject to the deemed trust; the deemed trust does not extend to the interest and penalties.<sup>25</sup>

21. The Monitor is holding approximately \$2.9 million in cash.<sup>26</sup> Based on the Monitor's forecasted cash flow, the Monitor will have sufficient funds remaining on hand following payment of the Assessed WHT Payable Amount to satisfy any anticipated costs remaining to be incurred in the administration of the Company.<sup>27</sup> As noted in the Fifth Report, the Monitor continues to work

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<sup>21</sup> *AbitibiBowater* at para. 75; *First Source Financial Management v. Chacon Strawberry Fields Inc.*, [2024 ONSC 7229](#) at para. 45.

<sup>22</sup> Fifth Report at [4.5-4.6](#) & [5.2](#).

<sup>23</sup> Pursuant to section [214\(3\)](#) of the *ITA* the non-repayment of the loans between the Company and the UK Parent gives rise to a deemed dividend. Section [212\(2\)](#) of the *ITA* requires the payment of a withholding tax on dividends to non-residents. Section [215\(1\)](#) of the *ITA* deems such payment to be a withholding tax.

<sup>24</sup> *Income Tax Act*, [R.S.C. 1985 c. 1](#), s. [227\(4.1\)](#); Fifth Report at [5.2](#).

<sup>25</sup> *Canadian Asbestos Services Ltd. v. Bank of Montreal*, 1993 CarswellOnt 226 (Ont Ct J (Gen Div) at para. 12; cited by *San Diego Catering Ltd. (Bankruptcy of)*, [1995 CanLII 2621](#) (BCSC) at paras. 6-7 & 17; Fifth Report at [5.5](#).

<sup>26</sup> Fifth Report at [4.17](#).

<sup>27</sup> Fifth Report at [5.4](#).

with CRA to obtain a refund of certain taxes owing and to meet with the UK Administrator to advance the payment of the Company's claim against the UK Parent.

22. The Assessed WHT Payable Amount continues to accrue penalties and interest. While such penalties and interest are not subject to the deemed trust established pursuant to section 227(4.1) of the *ITA*, if CRA does not grant relief under the applicable taxpayer relief provisions, CRA's claim for such amounts will rank on a *pari passu* basis with the other unsecured creditors' claim against the Company.<sup>28</sup> The Monitor's proposed payment of the WHT Obligations will minimize the accrual of interest and penalties on the balance due and therefore reduce the ultimate amounts that may share in distributions with other unsecured creditors.

23. The proposed CRA Distribution Order is appropriate and necessary and ought to be approved.

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<sup>28</sup> Fifth Report at [4.6](#) & [5.5](#).

**PART IV - ORDER REQUESTED**

24. For all of the reasons above, the Monitor respectfully requests that the Court grant the CRA Distribution Order, approving the relief set out herein.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 24<sup>th</sup> day of March, 2026.

*Cassels Brock & Blackwell LLP*

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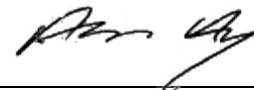
## SCHEDULE "A"

### LIST OF AUTHORITIES

1. *AbitibiBowater Inc.*, [2009 QCCS 6461](#)
2. *Canadian Asbestos Services Ltd. v. Bank of Montreal*, 1993 CarswellOnt 226 (Ont Ct J (Gen Div))
3. *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#)
4. *First Source Financial Management v. Chacon Strawberry Fields Inc.*, [2024 ONSC 7229](#)
5. *Hudson's Bay Company, Re*, [2025 ONSC 2903](#)
6. *In the Matter of 1000156489 Ontario Inc.*, ONSC (Commercial List) (Court File No. CV-22-00691990-00CL), [Distribution Order](#) (January 30, 2026)
7. *In the Matter of Hudson's Bay Company ULC et al.*, ONSC (Commercial List) (Court File No. CV-25-00738613), [Order \(Stay Extension & Distributions\)](#) (May 13, 2025)
8. *In the Matter of Old TBS Canada Limited*, ONSC (Commercial List) (Court File No. CV-24-00723586-00CL), [Ancillary Order](#) (December 13, 2024)
9. *In the Matter of Old TBS Canada Limited*, ONSC (Commercial List) (Court File No. CV-24-00723586-00CL), [Initial Order](#) (July 5, 2024)
10. *Nortel Networks Corp., Re*, [2014 ONSC 4777](#)
11. *San Diego Catering Ltd. (Bankruptcy of)*, [1995 CanLII 2621](#) (BCSC)

I, Alec Hoy, am satisfied as to the authenticity of every authority cited in this factum, in accordance with Rule 4.06.1(2.1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

Dated as of March 24, 2026



Alec Hoy

## SCHEDULE “B”

### TEXT OF STATUTES, REGULATIONS & BY - LAWS

*Companies’ Creditors Arrangement Act*, [R.S.C., 1985, c. C-36](#), as amended

#### **General power of court**

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

***Income Tax Act, [R.S.C., 1985, c 1](#), as amended***

**Tax on dividends**

212(2) Every non-resident person shall pay an income tax of 25% on every amount that a corporation resident in Canada pays or credits, or is deemed by Part I or Part XIV to pay or credit, to the non-resident person as, on account or in lieu of payment of, or in satisfaction of,

(a) a taxable dividend (other than a capital gains dividend within the meaning assigned by subsection 130.1(4), 131(1) or 133(7.1)); or

(b) a capital dividend.

[...]

**Deemed Payments**

214(3) For the purposes of this Part,

(a) where section 15 or subsection 56(2) would, if Part I were applicable, require an amount to be included in computing a taxpayer's income, that amount shall be deemed to have been paid to the taxpayer as a dividend from a corporation resident in Canada;

[...]

**Withholding and remittance of tax**

215 (1) When a person pays, credits or provides, or is deemed to have paid, credited or provided, an amount on which an income tax is payable under this Part, or would be so payable if this Act were read without reference to subparagraph 94(3)(a)(viii) and to subsection 216.1(1), the person shall, notwithstanding any agreement or law to the contrary, deduct or withhold from it the amount of the tax and forthwith remit that amount to the Receiver General on behalf of the non-resident person on account of the tax and shall submit with the remittance a statement in prescribed form.

[...]

**Trust for moneys deducted**

227(4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but

for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

### **Extension of Trust**

(4.1) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

[...]

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