

**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 1242939  
B.C. UNLIMITED LIABILITY COMPANY, 1241423 B.C. LTD., 1330096 B.C. LTD., 1330094  
B.C. LTD., 1330092 B.C. UNLIMITED LIABILITY COMPANY, 1329608 B.C. UNLIMITED  
LIABILITY COMPANY, 2745263 ONTARIO INC., 2745270 ONTARIO INC., SNOSPMIS  
LIMITED, 2472596 ONTARIO INC., and 2472598 ONTARIO INC.**

Applicants

**FACTUM OF THE APPLICANTS  
(Returnable June 26, 2026)**

June 24, 2026

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**TO: THE SERVICE LIST**

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**PART I – OVERVIEW<sup>1</sup>**

1. This factum is filed in support of the Applicants' motion seeking:
  - (a) A Pension Plan Representative Counsel Order appointing representative counsel to represent the interests of each person included in the Hudson's Bay Company Pension Plan (the "**Pension Plan**") wind-up effective September 1, 2025, including
    - (i) Pension Plan members whose employment was terminated between March 7, 2025 and August 31, 2025; (ii) any person claiming (or who may hereafter claim or purport to claim) an interest under or on behalf of such person; and (iii) any individual who had been a member of the Pension Plan or predecessor plans, claiming an entitlement to the Pension Surplus (collectively, the "**Represented Pension Plan Members**").
  - (b) The Pension Plan Representative Counsel Order, among other things appoints:
    - i. Koskie Minsky LLP on behalf of Persons who, as of December 31, 2001, had an entitlement under the defined benefit provision of the Dumai Plan, and who may also have an entitlement to defined benefits determined in accordance with Part "E" of the Pension Plan (in their capacity as such, the "**Dumai Group**");
    - ii. appoints Ursel Phillips Fellows Hopkinson LLP on behalf of persons with entitlements under either or both of the defined benefit provision and defined contribution provision under the Pension Plan (other than the Dumai Group); (the "**Non Dumai Members**")

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<sup>1</sup> Capitalized terms used in this factum that are not otherwise defined have the meanings given to them in the Affidavit of Thomas Obersteiner sworn June 18, 2026 in respect of the Appointment of Pension Plan Representative Counsel and Mediator (the "**Pension Rep Counsel Affidavit**") and the Affidavit of Thomas Obersteiner sworn June 18, 2026 in respect of the Stay Extension and Second KERP (the "**Stay Extension Affidavit**", and together with the Pension Rep Counsel Affidavit, the "**Obersteiner Affidavits**").

- (c) A Mediation Order appointing the Retired Chief Justice Geoffrey B. Morawetz of Morawetz Chambers Inc. as mediator in respect of the Pension Surplus matters; and
- (d) A Stay Extension and Second KERP Order:
  - i. extending the Stay Period from June 30, 2026, until and including October 31, 2026;
  - ii. approving the Second KERP, granting a Second KERP Charge in the maximum amount of \$527,500 as security for payment under the Second KERP, and sealing the unredacted Second KERP pending further order of this Court.

2. The Company has consulted with the Monitor, Independent Pension Administrator, FILO Agent, Pathlight, and the proposed Pension Plan Representative Counsel regarding the proposed process to address the Pension Surplus. This process includes the use of Pension Plan Representative Counsel and a Pre-Mediation Negotiation period, followed by a mediated negotiation with a Court-appointed Mediator, all aimed at reaching a resolution and Pension Surplus Sharing Agreement for Court approval. The Orders sought support all steps in this process and will assist in resolving the final material step in the CCAA Proceedings and potentially facilitate additional recovery to the Applicants' secured creditors.

3. The Applicants and the Monitor are completing the remaining wind-up steps in the CCAA Proceedings with the assistance of a small number of Key Employees. These Key Employees possess institutional knowledge critical to addressing remaining unresolved issues, including SERP and Pension-related matters. To ensure their continued involvement, the Company and the Monitor have designed and support the Second KERP.

## PART II – THE FACTS

4. The facts with respect to this motion are more fully set out in the Obersteiner Affidavits and the Sixteenth Report of the Monitor dated June 24, 2026 (the "**Sixteenth Report**").

### **A. Appointment of Pension Plan Representative Counsel**

5. The Company established and sponsors a registered pension plan, the Hudson's Bay Company Pension Plan, which includes both defined benefit and defined contribution components. The Pension Plan is registered with FSRA, pursuant to the *Pension Benefits Act* (Ontario) (the "**PBA**").<sup>2</sup>

6. The Pension Plan's liabilities include benefits accrued under the Pension Plan itself as well as several Predecessor Plans, including the Dumai Pension Plan (known as the Simpsons, Limited Supplementary Pension Plan prior to January 1, 1994; the "**Dumai Plan**"), which: (i) transferred certain assets/liabilities relating to service prior to January 31, 1979, to the Pension Plan and (ii) later merged with the Pension Plan on January 1, 2002.<sup>3</sup>

7. The Pension Plan and Predecessor Plans have a lengthy and complex history, first established in 1961, involving numerous amendments, restatements, corporate acquisitions, plan mergers, and divestitures.<sup>4</sup>

8. Prior to April 3, 2025, the Company was the administrator of the Pension Plan.<sup>5</sup> On April 3, 2025, FSRA appointed TELUS Health (Canada) Ltd. as the Independent Pension Administrator in respect of the Pension Plan. On September 8, 2025, FSRA issued a notice of intended decision to wind up the Pension Plan effective September 1, 2025, and subsequently issued a wind-up order on October 20, 2025. The Wind-Up Order includes members who terminated employment

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<sup>2</sup> Pension Rep Counsel Affidavit at para 23, in the Motion Record of the Applicants dated June 18, 2026, ("**AMR**") at Tab 2.

<sup>3</sup> Pension Rep Counsel Affidavit at para 25, AMR at Tab 2.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid* at para 30.

with the Company between March 7, 2025, and August 31, 2025.<sup>6</sup>

9. For illustrative purposes, the demographic data according to whether benefits have been accrued under the DC component or DB component of the Pension Plan and/or under any Predecessor Plans as of September 1, 2025, is generally as follows:<sup>7</sup>

Plan	Retirees	Actives	Suspended	Deferred	Total
<b>Pension Plan (DB)</b>	1,843			56	1,899
<b>Dumai Plan (DB)</b>	379			19	398
<b>Zellers Plan (DB)</b>	679			24	703
<b>Towers Plan (DB)</b>	46		2	84	132
<b>Executive Plan (DB)</b>	14				14
<b>Woodward's Plan (DB)</b>				16	16
<b>DC</b>		60		12,996	13,057
<b>TOTAL</b>	2,961	60	2	13,195	16,219

10. In many cases, benefits have been accrued under both the DC and DB components of the Pension Plan and/or a Predecessor Plan, and in some cases, benefits have been accrued under more than one DB component. As such, there is overlap in the demographic data.<sup>8</sup>

11. Based on the most recent actuarial valuation report, the Pension Plan's assets substantially exceed the amounts required to pay all accrued pension benefits on both a going concern and wind-up basis. A significant Pension Surplus is expected following the wind-up.<sup>9</sup>

12. On July 7, 2025, the Company advised the Independent Pension Administrator of its intention to seek a claim over the Pension Surplus, which would form a significant source of

<sup>6</sup> *Ibid* at paras 31-33.

<sup>7</sup> *Ibid* at para 28.

<sup>8</sup> *Ibid* at para 29.

<sup>9</sup> *Ibid* at para 36.

recovery for the Company's secured creditors. The Company has engaged in discussions with the Monitor, Independent Pension Administrator, FILO Agent, Pathlight, Ursel Phillips (in its capacity as Employee Representative Counsel), and the proposed Pension Representative Counsel regarding the resolution of Pension Surplus entitlement issues.<sup>10</sup>

13. In light of the existing mandate of Employee Representative Counsel, Ursel Phillips was approached and has expressed a willingness to expand its existing mandate to include issues relating to the Pension Surplus; specifically, to act on behalf of all members of the Pension Plan with entitlements under either or both of the DB and DC provision under the Pension Plan (other than the Dumai Group).<sup>11</sup>

14. Koskie Minsky had a historical and an existing retainer with the members of the Dumai Plan in the initial Class Action addressed in *Sutherland (2007)* and affirmed in *Sutherland (2011)*(the "**Dumai Decision**"), as well as the proposed Uncertified Class Action Application which was commenced on June 6, 2025. The Dumai Members are in a unique position as the Dumai Decision is relevant to their potential entitlement to the Pension Surplus. Accordingly, the Company believes it is appropriate that separate representative counsel be appointed for the Dumai Members.<sup>12</sup>

15. The proposed scope of the Pension Plan Representative Counsel role will include:<sup>13</sup>

- (a) representing their respective Represented Pension Plan Members in the Pension Surplus Proceedings regarding claims or matters relating to the Pension Surplus;
- (b) communicating with the Applicants, the Monitor, the Independent Pension Administrator, FSRA, other Pension Plan Representative Counsel or other

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<sup>10</sup> *Ibid* at para 38.

<sup>11</sup> *Ibid* at para 43.

<sup>12</sup> *Ibid* at para 46.

<sup>13</sup> *Ibid* at para 55.

stakeholders in respect of future motions and orders to be sought in the Pension Surplus Proceedings;

- (c) identifying any sub-group(s) of the Represented Plan Members that Pension Plan Representative Counsel may deem appropriate or necessary having regard to the interests of any such sub-group;
- (d) participating on behalf of their respective Represented Pension Plan Member, including any subgroup of the Represented Pension Plan Members, with the negotiation, mediation, settlement or compromise of any of their rights, entitlements or claims to the Pension Surplus and taking any necessary related steps in connection therewith;
- (e) entering into a settlement agreement on behalf of the Represented Pension Plan Members including any sub-group of the Represented Pension Plan Members regarding the settlement or compromise of any of their rights, entitlements or claims to Pension Surplus, and taking any other steps required to give effect to such settlement agreement; and
- (f) advising Represented Pension Plan Members in relation to the Pension Surplus Proceedings and in respect of any rights in relation to the Pension Surplus.

## **B. Appointment of a Mediator**

16. In tandem with the Pension Plan Representative Counsel Order, the Company is seeking an order (the “**Mediation Order**”) appointing the Retired Chief Justice Geoffrey B. Morawetz of Morawetz Chambers Inc. as mediator in respect of the Pension Surplus matters.<sup>14</sup>

17. If Pension Plan Representative Counsel are appointed, the Company intends to engage with the Monitor, the Independent Pension Administrator, Pension Plan Representative Counsel,

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<sup>14</sup> *Ibid* at para 13.

the FILO Agent and Pathlight (the “**Surplus Mediation Parties**”) to attempt to resolve entitlement to the Pension Surplus consensually.<sup>15</sup> The parties propose an initial 60-day period, with a possible 45-day extension (if consented to by the Monitor), to negotiate directly (the “**Pre-Mediation Negotiation**”).<sup>16</sup>

18. If a consensual resolution cannot be reached without the assistance of a third party, the mediator will facilitate a formal mediation process. The Company’s goal is to reach a consensual, cost-efficient, and expedient resolution of the competing interests of the Represented Pension Plan Members and the Company.<sup>17</sup>

19. The Surplus Mediation Parties have consulted and agree on seeking the appointment of Retired Chief Justice Morawetz as the proposed mediator.<sup>18</sup>

### **C. Second KERP and KERP Charge**

20. The Applicants continue to employ Key Employees whose services are essential to completing remaining wind-down matters. These Key Employees possess specialized institutional knowledge critical to administering the Term Sheet and potential Hardship Program, addressing the SERP-related matters before the Court, and resolving the Pension Surplus proceedings.<sup>19</sup>

21. On March 21, 2025, the Court approved the First KERP and the First KERP Charge in the amount of \$3,000,000 to secure payments to the Key Employees. The First KERP has been implemented in accordance with its terms and all amounts secured by the First KERP Charge have been paid. The Applicants now seek approval of a Second KERP and a corresponding Second KERP Charge to secure such payments in the amount of \$527,500. This Second KERP

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<sup>15</sup> *Ibid* at para 51.

<sup>16</sup> *Ibid* at para 13.

<sup>17</sup> *Ibid* at para 51.

<sup>18</sup> *Ibid* at para 52.

<sup>19</sup> Stay Extension Affidavit at para 58, AMR at Tab 3.

Charge would replace and stand in the same priority as the First KERP Charge.<sup>20</sup>

22. The Second KERP has been designed in consultation with the Monitor to incentivize the remaining Key Employees to continue their employment with the Company in order to facilitate an orderly conclusion of the remaining wind-down matters, maximize recoveries for stakeholders, and assist with the resolution of the Term Sheet and Hardship Program matters, the SERP matters, and the Pension Surplus.<sup>21</sup> On June 15, 2026, the Board of Directors of the Company approved the proposed Second KERP.<sup>22</sup> The Monitor is supportive of the proposed Second KERP and the Second KERP Charge. The FILO Agent and Pathlight were advised of the proposed Second KERP. The FILO Agent has approved the Second KERP and no opposition was raised by Pathlight.<sup>23</sup>

#### **D. Stay Extension**

23. As the current Stay Period expires on June 30, 2026, the Applicants are seeking to extend the Stay Period to and including October 31, 2026.

24. Since the last Stay Period extension on March 19, 2026, the Applicants, in consultation with the Monitor and their respective advisors, have diligently pursued efforts within the CCAA Proceedings to maximize value for stakeholders. The Applicants have, among other things:

- (a) completed FF&E removal and demolition activities at all former store locations and signage removal at all former store locations, except for one location which is being completed by the landlord pending receipt of appropriate city permits;<sup>24</sup>

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<sup>20</sup> *Ibid* at para 57.

<sup>21</sup> *Ibid* at para 64.

<sup>22</sup> *Ibid* at para 60.

<sup>23</sup> *Ibid* at para 69.

<sup>24</sup> *Ibid* at paras 18-20.

- (b) continued to conduct online auctions of the Art Collection, with a total of 6 online auctions completed and two final online auctions scheduled to close in June and July 2026, generating aggregate Auction Proceeds of approximately \$9.3 million;<sup>25</sup>
- (c) continued to implement the Hardship Programs Term Sheet, including receiving the Company Reserve Fund totalling approximately \$1,692,000, reimbursement of Post-Filing LTD Payments, initiating communications in respect of the Tax Comfort required to facilitate the LTD Termination Payment, and filing of Clearance Certificate requests;<sup>26</sup>
- (d) continued to work with the SERP Trustee, the Monitor and Employee Representative Counsel to address the SERP Trustee Motion for advice and directions regarding the HBC RCAs, with significant progress in narrowing the issues requiring Court determination;<sup>27</sup>
- (e) worked with the Receiver of the RioCan JV to complete sales of the Vancouver Real Property, the Devonshire Real Property, and the Calgary Real Property, with the Devonshire Real Property transaction completed on June 5, 2026, and the remaining transactions anticipated to close in the coming weeks;<sup>28</sup>
- (f) addressed matters arising from the Saks Global Chapter 11 Proceedings, including cost allocations for Shared Services and data retention matters in connection with the wind-up of the CCAA Proceedings;<sup>29</sup>
- (g) addressed Mr. Turpin's motions regarding his asserted proprietary claims to the Charter and HBC art and artifacts, pursuant to a Court-established timetable for written submissions;<sup>30</sup> and

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<sup>25</sup> *Ibid* at paras 22-23.

<sup>26</sup> *Ibid* at paras 25-30.

<sup>27</sup> *Ibid* at paras 35-39.

<sup>28</sup> *Ibid* at paras 49-55.

<sup>29</sup> *Ibid* at paras 41-42.

<sup>30</sup> *Ibid* at paras 43-48.

- (h) engaged in extensive discussions with the Independent Pension Administrator, the FILO Agent and Pathlight, the Monitor, and proposed Representative Counsel with respect to the proposed process to address the Pension Surplus, leading to the current motion for the appointment of Pension Plan Representative Counsel and a Mediator.<sup>31</sup>

25. The Stay Period extension is necessary to allow the Applicants to complete implementation of the Term Sheet, address the SERP Trustee Motion, pursue Pension Surplus matters, attend to RioCan JV Receivership matters, address administrative matters, and continue maximizing value for stakeholders.

### **PART III – ISSUES**

26. The issues to be determined on this motion are whether this Court should:
- (a) appoint Ursel Phillips and Koskie Minsky as Pension Plan Representative Counsel to represent the Represented Pension Plan Members;
  - (b) appoint the Retired Chief Justice Geoffrey B. Morawetz of Morawetz Chambers Inc., as mediator in respect of the Pension Surplus matters;
  - (c) approve the Second KERP and the Second KERP Charge;
  - (d) seal the Second KERP; and
  - (e) extend the Stay Period from June 30, 2026, until and including October 31, 2026.

### **PART IV – LAW & ARGUMENT**

#### **A. Overview of Applicable Law on CCAA Representative Counsel Orders**

27. The Applicants seek the appointment of Ursel Phillips and Koskie Minsky as Pension Plan Representative Counsel. Both firms are well known to this Court, having acted as representative

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<sup>31</sup> Pension Rep Counsel Affidavit, AMR at Tab 2.

counsel in numerous CCAA proceedings, including major retail restructurings such as Nordstrom, Sears Canada, Stelco, and Nortel Networks. Ursel Phillips was approved as Employee Representative Counsel in the current CCAA Proceedings for matters other than the Pension Plan.

28. Section 11 of the CCAA<sup>32</sup> and the Ontario *Rules of Civil Procedure* (the "**Rules**") confer broad jurisdiction on the Court to appoint representative counsel for vulnerable stakeholder groups such as the Represented Pension Plan Members.<sup>33</sup>

29. In addition, Rule 10.01(f) of the Rules explicitly provides that "in a proceeding concerning any other matter where it appears necessary or desirable to make an order under this subrule, a judge may by order appoint one or more persons to represent any person or class of persons who... have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served."<sup>34</sup>

30. In *Nortel Networks Corporation (Re)*,<sup>35</sup> Justice Morawetz (as he then was) held that representative counsel should be appointed to allow vulnerable stakeholders (in that case, employees and retirees) to participate in the CCAA proceedings:

"[I]t is submitted that employees and retirees are a vulnerable group of creditors in an insolvency because they have little means to pursue a claim in complex CCAA proceedings or other related insolvency proceedings. It was further submitted that the former employees of Nortel have little means to pursue their claims in respect of pension, termination, severance, and retirement payments and other benefit claims and that the former employees would benefit from an order appointing representative counsel. In addition, the granting of a representation order would provide a social benefit by assisting former employees and that representative counsel would provide a reliable resource for former employees for information about the process. The appointment of representative counsel would also have the benefit of streamlining and introducing efficiency to the process for all parties involved in Nortel's insolvency. I am in agreement with these submissions."<sup>36</sup>

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<sup>32</sup> CCAA, s. 11.

<sup>33</sup> *Target Canada Co (Re)* 2015 ONSC 303 at para 61, citing *Nortel Networks Corp. (Re)*, 2009 CanLII 26603 (ONSC) ("**Nortel**") at paras 10-12.

<sup>34</sup> *Rules of Civil Procedure*, RRO 1990, Reg. 194, Rule 10.01.

<sup>35</sup> 2009 CanLII 26603 (ONSC).

<sup>36</sup> *Nortel* at paras 13-14.

31. In *Canwest*, Justice Pepall (as she then was) summarized the appropriate factors to be considered in a determination of whether a representative counsel order is appropriate:

- (a) the vulnerability and resources of the group sought to be represented;
- (b) any benefit to the companies under CCAA protection;
- (c) any social benefit to be derived from representation of the group;
- (d) the facilitation of the administration of the proceeding and efficiency;
- (e) the avoidance of multiplicity of legal retainers;
- (f) the balance of convenience and whether it is fair and just including to the creditors of the estate;
- (g) whether representative counsel has already been appointed for those who have similar interests to the group seeking representation and who is also prepared to act for the group seeking the order; and
- (h) the position of other stakeholders and the Monitor.<sup>37</sup>

32. The ability for representative counsel to provide effective communication and efficiency within the proceedings have been highlighted as particularly important factors.<sup>38</sup>

33. This Court's jurisdiction to appoint representative counsel in CCAA proceedings is well established. In the current CCAA Proceedings, Justice Osborne determined that the appointment of representative counsel was appropriate and, following the recommendations of Justice Wilton-Siegel, appointed Ursel Phillips as ERC Counsel on May 5, 2025.<sup>39</sup>

34. For example, courts have granted such orders in the following CCAA proceedings:

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<sup>37</sup> *CanWest Publishing Inc. (Re)*, 2010 ONSC 1328 (“**Canwest**”) at para 21.

<sup>38</sup> *Quadriga Fintech Solutions Corp (Re)*, 2019 NSSC 65 at para 9.

<sup>39</sup> *Hudson's Bay Company ULC et al., Re*, 2025 ONSC 2724 (Endorsement and Oral Endorsement) at para. 90; see also *Hudson's Bay Company, (Re)* (May 5, 2025) Ont SCJ [Commercial List] Court File No. CV-25-00738613-00CL (Endorsement re: Appointment of ERC).

- (a) *Sears Canada*: representative counsel was appointed for active employees and retirees with respect to pension matters<sup>40</sup>
- (b) *Nortel Networks Corp.*: representative counsel was appointed for all former employees and pensioners;<sup>41</sup>
- (c) *U.S. Steel Canada Inc. (formerly Stelco)*: representative counsel was appointed for all matters pertaining to any recovery, compromise of rights or entitlements of said individuals under the pension plans and other benefit plans.<sup>42</sup>
- (d) *Fraser Papers Inc.*: representative counsel was appointed for former unionized members and non-unionized active and retired members;<sup>43</sup>
- (e) *Canwest*: representative counsel was appointed for non-unionized salaried employees and retirees;<sup>44</sup> and
- (f) *DCL – Ursel Phillips* was appointed as pension representative counsel representing the interests of all members of the hourly and salaried pension plans with respect to the question of entitlement to and distribution of surplus funds.<sup>45</sup>

35. As set out below, the applicable factors from the relevant caselaw support the appointment of both Ursel Phillips and Koskie Minsky as the Pension Plan Representative Counsel in this case.

## **B. Pension Plan Representative Counsel Should be Appointed**

### **(i) Vulnerable Group**

36. Courts have recognized that employees and retirees are a vulnerable group in insolvency proceedings. The Represented Pension Plan Members comprise approximately 16,219

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<sup>40</sup> *Sears Canada* (June 22, 2017) Ont SCJ [Commercial List] Court File No. CV-17-11846-00CL ([Endorsement](#)).

<sup>41</sup> *Nortel Networks Corp. (Re)*, (July 22, 2009) Ont SCJ [Commercial List] Court File No. 09-CL-7950 ([Order](#)).

<sup>42</sup> *U.S. Steel Canada Inc.* (October 8, 2014) Ont SCJ [Commercial List] Court File No. CV-14-10695-00CL ([Representative Counsel Appointment Order](#))

<sup>43</sup> *Fraser Papers Inc. (Re)*, (September 17, 2009) Ont SCJ [Commercial List] Court File No. CV-09-8241-00CL ([Order appointing Davies Ward Phillips & Vineberg as certain employees' representative](#)).

<sup>44</sup> *Canwest, Publishing Inc. (Re)*, (March 5, 2010) Ont SCJ [Commercial List] Court File No. CV-10-8533-00CL ([Representative Counsel Order](#)).

<sup>45</sup> In the Matter of a Plan of Compromise or Arrangement of 1000156489 Ontario Inc. (January 28, 2026) Ont SCJ [Commercial List] Court File No. CV-22-00691990-00CL ([Representative Counsel Order](#))

individuals with entitlements under the Pension Plan and Predecessor Plans, including approximately 3,000 members with DB entitlements and 13,000 members with DC entitlements.

This group includes:

- (a) Pension Plan members who may have minimal and disparate means to pursue claims in complex CCAA proceedings, and unlike other creditors, the consequences of actions taken by debtor companies affect them personally; and
- (b) retirees and deferred vested members who may face challenges in understanding and protecting their interests during restructuring without professional and legal resources, particularly given the complexity of the Pension Plan's structure, which includes benefits accrued under multiple Predecessor Plans.<sup>46</sup>

**(ii) Benefit to the Applicants**

37. The appointment of Pension Plan Representative Counsel provides substantial benefits to the Applicants and these CCAA Proceedings. The Company's goal is to reach a consensual, negotiated resolution of the competing interests of the Represented Pension Plan Members and the Company on a cost-efficient and expedient basis.<sup>47</sup> The appointment of Pension Plan Representative Counsel will facilitate those negotiations.

38. The appointment of Pension Plan Representative Counsel will streamline the CCAA Proceedings by establishing single points of contact for the thousands of Pension Plan members, the Applicants, the Monitor, the Independent Pension Administrator, and the Court. Given the significant overlap among Pension Plan members—many of whom have accrued benefits under both DC and DB components, and in some cases under multiple DB components or Predecessor Plans—experienced representative counsel with pension-specific knowledge will facilitate a smoother process and contribute to overall cost savings.

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<sup>46</sup> Pension Rep Counsel Affidavit at para 28, AMR at Tab 2.

<sup>47</sup> *Ibid* at para 50.

**(iii) Social Benefit**

39. The appointment of Pension Plan Representative Counsel will provide a social benefit by offering a reliable resource for information about the CCAA Proceedings to Represented Pension Plan Members who might otherwise be unable to afford representation. Pension Plan Representative Counsel will advocate on behalf of these members in discussions concerning the Pension Surplus and address issues affecting their interests before the Court.

40. The Independent Pension Administrator can respond to inquiries for general information requests. However, the Independent Pension Administrator does not act as advocate for any particular member or group.<sup>48</sup>

**(iv) Streamlined Process and Avoidance of a Multiplicity of Retainers**

41. The Applicants submit that it is appropriate to appoint two Pension Plan Representative Counsel—Koskie Minsky as Pension Plan Representative Counsel for the Dumai Group, and Ursel Phillips as Pension Plan Representative Counsel for the Non-Dumai Members—for the following reasons:

- (a) Koskie Minsky has a historical and existing retainer with the members of the Dumai Plan in connection with the initial class action addressed in the Dumai Decision, as well as the Dumai Uncertified Class Action Application.<sup>49</sup> Accordingly, it is both efficient and appropriate to continue this existing relationship and the current retainer rather than require the Dumai Members to establish a new retainer with separate counsel.
- (b) The Dumai Members are in a unique position as compared to other Represented Pension Plan Members, as the Dumai Decision is relevant to their potential

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<sup>48</sup> *Ibid* at paras 55-56.

<sup>49</sup> *Ibid* at para 46.

entitlement to the Pension Surplus.<sup>50</sup> This distinct legal position warrants separate representation, preferably by counsel already familiar with the Dumai Members' interests and the historical proceedings concerning the Dumai Plan.

- (c) Ursel Phillips, as Employee Representative Counsel, has expressed a willingness to expand its existing mandate to include issues relating to the Pension Surplus. On May 5, 2025, following a recommendation by the Honourable Justice Wilton-Siegel as an independent third-party evaluator, this Honourable Court appointed Ursel Phillips as Employee Representative Counsel, having regard to factors including independence, the requisite experience, communications with employees, cost-effectiveness, and demonstrated interest in working with the Monitor.<sup>51</sup>
- (d) In its current role, Ursel Phillips has established an infrastructure to communicate with large groups of current and former employees with continuing entitlements from the Applicants or any of them as at the date of the Initial Order, and retirees of the Applicants, who are not represented by a union, or were not represented by a union at the time of their separation from employment, or any person claiming an interest under or on behalf of a current or former employee of the Applicants including beneficiaries and surviving spouses but excluding directors and officers of the Applicants.<sup>52</sup> Ursel Phillips has acted as touch point for the large group of HBC stakeholders, explaining the CCAA proceedings and relevant issues affecting the represented group. This existing relationship, and earlier Court approval supports the expansion of Ursel Phillips' mandate to represent the Non-Dumai Members.

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<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid* at paras 43-44

<sup>52</sup> *Ibid* at para 14.

42. Appointing two Pension Plan Representative Counsel, rather than a multiplicity of individual retainers, creates unified voices for distinct stakeholder groups while avoiding inefficiency and excessive cost.

43. Should a conflict arise amongst Non-Dumai Members, Ursel Phillips will contact the Monitor, and the parties will revisit potential next steps to address the potential conflict. Similarly, if any other unanticipated conflicts arise, the Applicants, the Monitor, Pension Plan Representative Counsel, and the Court can revisit the need for additional representative counsel at that time.<sup>53</sup>

**(v) Balance of Convenience**

44. The benefits of appointing Pension Plan Representative Counsel outweigh any potential prejudice. The appointment will contribute to cost savings and streamline the CCAA Proceedings by providing a single point of contact between thousands of members, the Applicants, the Monitor, and the Court.

**C. It is Appropriate to Appoint Ursel Phillips and Koskie Minsky as Pension Plan Representative Counsel**

45. The Applicants respectfully submit that the Court should approve Ursel Phillips as Pension Plan Representative Counsel for the Non-Dumai Members. Ursel Phillips has already been identified by this Court as having the requisite independence, experience, ability to communicate with current and former employees, and retirees, and demonstrated interest in working with the Monitor.<sup>54</sup> Ursel Phillips satisfies the relevant factors for appointment:

- (a) Ursel Phillips has extensive experience representing and advising large groups of pension beneficiaries, including in negotiations relating to pension surpluses;

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<sup>53</sup> *Ibid* at para 49.

<sup>54</sup> *Ibid* at para 44.

- (b) the Monitor supports the appointment of Ursel Phillips as Pension Plan Representative Counsel for the Non-Dumai Members, and both the Company and the Monitor support the expansion of Employee Representative Counsel's current mandate;
- (c) Ursel Phillips has cooperated with the Company, counsel for the Applicants, and the Monitor to expand the scope of its role as Employee Representative Counsel to ensure adequate and efficient representation of the Non-Dumai Members;
- (d) courts have previously appointed Ursel Phillips as representative counsel in other CCAA proceedings and restructurings, including *DCL Corporation* (1000156489 Ontario Inc.), *Essar Steel Algoma* (2015-2018) and *Air Canada* (2003-2004).<sup>55</sup>

46. The Applicants respectfully submit that the Court should also approve Koskie Minsky as Pension Plan Representative Counsel for the Dumai Group. Koskie Minsky has extensive experience with pension plan issues in both insolvency and non-insolvency proceedings, involving both underfunded plans and plans with surplus assets.<sup>56</sup> Koskie Minsky satisfies the relevant factors for appointment:

- (a) Koskie Minsky has extensive experience representing and advising large groups of pension beneficiaries and, given its prior role as counsel to the Dumai Members in the Dumai Decision, is well-qualified to represent the Dumai Group in respect of the Pension Surplus;
- (b) the Monitor supports the appointment of Koskie Minsky as Pension Plan Representative Counsel for the Dumai Group, and the Company believes it is appropriate that separate representative counsel be appointed for the Dumai Members given their unique position;

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<sup>55</sup> Exhibit F attached within the Pension Rep Counsel Affidavit, AMR at Tab 2F.

<sup>56</sup> Pension Rep Counsel Affidavit at para 48, AMR at Tab 2.

- (c) Koskie Minsky has cooperated with the Company, counsel for the Applicants, and the Monitor to develop the scope of the Pension Plan Representative Counsel role to ensure adequate and efficient representation of the Dumai Group;
- (d) courts have previously appointed Koskie Minsky as representative counsel for employees and retirees in CCAA proceedings, including Sears Canada, Stelco (involving several plans, both in deficit and with surplus), Nortel Networks, Hollinger Canadian Publishing Holdings, Bloom Lake/Wabush Mines (Quebec), Eaton's, and Confederation Life.<sup>57</sup>

47. Furthermore, any individual Represented Pension Plan Member who does not wish to be represented by their respective Pension Plan Representative Counsel in the Pension Surplus Proceedings may, within thirty (30) days of receiving notice of the appointment, deliver an Opt-Out Notice to the Monitor and shall thereafter not be bound by the actions of such Pension Plan Representative Counsel.<sup>58</sup>

#### **D. Appointment of Mediator**

48. Pursuant to section 11 of the CCAA, this Court has broad discretionary power to “make any order that it considers appropriate in the circumstances.”<sup>59</sup> This jurisdiction extends to appointing a mediator to facilitate resolution of complex matters in CCAA proceedings. CCAA Courts have appointed mediators in numerous proceedings to assist with complicated negotiations.<sup>60</sup>

49. In tandem with the Pension Plan Representative Counsel Order, the Company seeks a Mediation Order appointing Retired Chief Justice Geoffrey B. Morawetz of Morawetz Chambers

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<sup>57</sup> Exhibit G attached within the Pension Rep Counsel Affidavit, AMR at Tab 2G.

<sup>58</sup> Pension Rep Counsel Affidavit at para 58, AMR at Tab 2.

<sup>59</sup> CCAA s. 11

<sup>60</sup> *In the Matter of a Plan of Compromise or Arrangement of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited* (March 12, 2019), Ont. SCJ [Commercial List] Court File No. CV-19-616077-00CL, (ARIO) at paras 39-44; *Laurentian University of Sudbury*, 2021 ONSC 659 at para 72-79

Inc. as mediator for the Pension Surplus matters. The Surplus Mediation Parties support the appointment.<sup>61</sup>

50. The Mediation Order envisions an initial 60-day Pre-Mediation Negotiation period, with a potential 45-day extension (if the Monitor consents), before proceeding to formal mediation if necessary. To avoid delay and permit the mediator to commence preparation, the Applicants and Surplus Mediation Parties seek the mediator's appointment now.<sup>62</sup>

51. The draft Mediation Order ensures the mediator has an opportunity to commence preparation work while the Surplus Mediation Parties pursue the Pre-Mediation Negotiation. If the parties are not able to resolve the matter in the Initial Period (or the Extension Period), the Monitor will advise the mediator, and the formal mediation will begin.<sup>63</sup>

52. Either directly, or with the assistance of the mediator, the Pension Surplus Mediation Parties, will seek to negotiate an arrangement governing the Pension Surplus consistent with the PBA and other applicable law. If the parties are able to reach a settlement, the Applicants will return to this Court, as the supervising judge of the CCAA Proceedings, to seek approval of the settlement.<sup>64</sup>

**E. The Second KERP Should be Approved and the Second KERP Charge should be Granted**

53. The jurisdiction to approve a KERP and grant a KERP charge is grounded in the Court's general power under section 11 of the CCAA to make any order it sees fit in a CCAA proceeding.<sup>65</sup> This Court has approved employee retention plans and charges in numerous proceedings. In the current CCAA Proceedings, Justice Osborne approved the First KERP, finding it necessary and

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<sup>61</sup> Pension Rep Counsel Affidavit at para 13, AMR at Tab 2.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid* at para 53.

<sup>64</sup> *Ibid* at para 54.

<sup>65</sup> CCAA, s. 11; *Cinram International Inc., Re*, 2012 ONSC 3767 at para 91.

appropriate. The Court noted that the First KERP was developed in consultation with the Monitor and designed to authorize retention payments to individuals identified as key employees essential to implementing the restructuring processes.<sup>66</sup>

54. The First KERP was approved by this Court and implemented in accordance with its terms. It ranked behind the Administrative Charge but in priority to all other charges. All amounts secured by the First KERP Charge have been paid.<sup>67</sup>

55. Factors generally considered by the Court include whether: (a) the Monitor approves of the KERP; (b) the beneficiaries of the KERP would consider other employment opportunities if the charge was not approved; (c) the beneficiaries of the KERP are crucial to the successful restructuring of the debtor company; (d) a replacement could be found in a timely manner; (e) the board of directors exercised their business judgment in developing the KERP; and (f) whether the KERP is supported or consented to by secured creditors of the debtor.<sup>68</sup>

56. The Court in *Aralez* reflected on the existing factors established by caselaw and set out three considerations which provide a framework for courts to consider the objective business judgment underlining a proposed KERP:

- (a) the arm's length input, including from the Monitor, into the design, scope and implementation;
- (b) the necessity on a case-by-case basis of the retention program; and
- (c) whether the program's design reasonably relates to the goals pursued, which goals must be of demonstrable benefit to the objectives of the restructuring process.<sup>69</sup>

57. The Second KERP complies with these factors and is consistent with KERP arrangements

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<sup>66</sup> *Hudson's Bay Company ULC et al., Re*, (March 26, 2025) Ont SCJ [Commercial List] Court File No. CV-25-00738613-00CL ([Endorsement of ARIQ](#)) at para. 90.

<sup>67</sup> *Hudson's Bay Company ULC et al., Re*, (March 7, 2025) Ont SCJ [Commercial List] Court File No. CV-25-00738613-00CL ([Initial Order](#)) at para. 40.

<sup>68</sup> *Aralez Pharmaceuticals Inc. (Re)*, 2018 ONSC 6980 ("**Aralez**") at para. 29.

<sup>69</sup> *Aralez*, at para. 30.

approved by CCAA courts:

- (a) **Monitor Approval:** The Monitor was involved in the design of and supports the approval of the Second KERP and is of the view that the Second KERP will provide stability to, and facilitate, an orderly wind-down. The Monitor has reviewed the Key Employees list and is satisfied that the list is appropriate. The Court traditionally places “a great deal of confidence” in the Monitor’s support for a KERP;<sup>70</sup>
- (b) **The beneficiaries are likely to consider other opportunities:** Key Employees are likely to consider other employment opportunities if the KERP is not approved;<sup>71</sup>
- (c) **The beneficiaries are crucial to the wind-down success:** the Second KERP has been designed to incentivize the remaining Key Employees to continue their employment with the Company in order to facilitate the orderly conclusion of the remaining wind-down matters, maximize recoveries for stakeholders, and assist with the resolution of the Pension Surplus, SERP, and Hardship Program matters.<sup>72</sup>
- (d) **There are no alternative Replacements:** finding alternative, qualified individuals would be challenging, disruptive, costly, and time-consuming for the Applicants, particularly given the Key Employees’ specialized knowledge of the Pension Surplus, the SERPs, and the Hardship Program, as well as their significant institutional knowledge of the Applicants’ businesses.<sup>73</sup>

58. The Applicants propose that payments under the Second KERP be secured by a charge up to \$527,500. The Second KERP Charge will replace the First KERP Charge and rank behind

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<sup>70</sup> Sixteenth Report of the Monitor Alvarez & Marsal Canada Inc. dated June 24, 2026 (“**Sixteenth Report**”) at s. 6.7.

<sup>71</sup> Stay Extension Affidavit at para 66, AMR at Tab 3.

<sup>72</sup> *Ibid* at para 64.

<sup>73</sup> *Ibid* at paras 65-66. See also Sixteenth Report at s. 6.7(a).

the Administration Charge but in priority to all other charges.<sup>74</sup>

59. As indicated in the Sixteenth Report, the Monitor supports the granting of the Second KERP Charge.<sup>75</sup>

**F. The Second KERP Should be Sealed**

60. The Applicants seek a sealing order for the Second KERP, attached as a confidential exhibit to the Sixteenth Report. The Second KERP contains confidential and sensitive information about the identity and compensation of Key Employees.

61. Pursuant to section 137(2) of the *Courts of Justice Act*<sup>76</sup> and its inherent jurisdiction, this Court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record.

62. In *Sherman Estate v. Donovan*, the Supreme Court of Canada held that the person asking a court to exercise discretion in a way that limits the open court presumption must establish that: (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>77</sup>

63. The *Sherman Estate* test is satisfied. The Confidential Appendix contains employee names, individual compensation information, and Second KERP payments for each eligible employee. Protecting sensitive personal and compensation information is an important public interest. Employees have a reasonable expectation that their names and compensation will remain confidential. As a matter of proportionality, the benefits of sealing outweigh its negative effects, particularly since the overall cost of the Second KERP has been disclosed to

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<sup>74</sup> Stay Extension Affidavit at para 67.

<sup>75</sup> Sixteenth Report at s. 6.7.

<sup>76</sup> R.S.O. 1990, c. C.43, s. 137(2).

<sup>77</sup> *Sherman Estate v. Donovan*, 2021 SCC 25 at paras. 37-38.

stakeholders.

64. In these CCAA Proceedings, Justice Osborne granted a sealing order in respect of the First KERP, finding that the information to be sealed—being the names of individual employees and their compensation—was discrete, proportional and limited, and that there was a public interest in protecting the integrity of the Court-ordered processes.<sup>78</sup>

65. The Monitor is supportive of having the unredacted Second KERP sealed and not form part of the public record and believes the sealing relief is proportional in the circumstances and will not materially prejudice any stakeholder.<sup>79</sup>

### **G. The Stay Extension Should be Granted**

66. The current Stay Period expires on June 30, 2026. Pursuant to section 11.02(2) of the CCAA,<sup>80</sup> the Court may extend a stay of proceedings where: (a) circumstances make the order appropriate; and (b) the debtor company has acted, and is acting, in good faith and with due diligence.

67. As described above and in the Stay Extension Affidavit, the Applicants have acted in good faith and with due diligence since the last Stay Period extension. The Applicants seek to extend the Stay Period to October 31, 2026. The extension is appropriate to allow the Applicants to:

- (a) assist in the sale of the remaining Art Collection and reconciliation and distribution of proceeds;
- (b) complete implementation of the Term Sheet and, if financial conditions are met, seek to commence the application process for the Employee Hardship Program;
- (c) address the SERP Trustee Motion for directions, together with related HBC SERP matters;

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<sup>78</sup> *Hudson's Bay Company ULC et al., Re*, (March 26, 2025) Ont SCJ [Commercial List] Court File No. CV-25-00738613-00CL ([Endorsement of ARIQ](#)) at paras. 99, 102-104.

<sup>79</sup> Sixteenth Report at s. 6.6

<sup>80</sup> CCAA, [s. 11.02](#).

- (d) pursue Pension Surplus matters in consultation with the Monitor, the Secured Lenders, the Independent Pension Administrator and Pension Plan Representative Counsel;
- (e) attend to matters involving the RioCan JV Receivership Proceedings with respect to certain remaining locations; and
- (f) continue to advance the maximization of the value of the Applicants' estate for the benefit of their stakeholders and winding up the Applicants.<sup>81</sup>

68. The proposed Stay Period extension will not materially prejudice any stakeholder. The Monitor supports the extension and has filed an updated cash flow forecast with the Sixteenth Report demonstrating sufficient liquidity through the proposed period.<sup>82</sup>

#### **PART V – ORDER SOUGHT**

69. The Applicants request that the Court grant:
- (a) the Pension Plan Representative Counsel Order substantially in the form included at Tab 4 of the Motion Record;
  - (b) the Mediation Order substantially in the form included at Tab 5 of the Motion Record; and
  - (c) the Stay Extension and Second KERP Order substantially in the form included at Tab 6 of the Motion Record.

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

*Stikeman Elliott LLP*  
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**Stikeman Elliott LLP**  
 Lawyers for the Applicants

<sup>81</sup> Stay Extension Affidavit at para 70.

<sup>82</sup> Sixteenth Report at s. 7.5.

**SCHEDULE A”  
List of Authorities**

1. *Aralez Pharmaceuticals Inc. (Re)*, [2018 ONSC 6980](#)
2. *CanWest Publishing Inc. (Re)*, [2010 ONSC 1328](#)
3. *Canwest, Publishing Inc. (Re)*, (March 5, 2010) Ont SCJ [Commercial List] Court File No. CV-10-8533-00CL ([Representative Counsel Order](#))
4. *Cinram International Inc., Re*, [2012 ONSC 3767](#)
5. *Fraser Papers Inc. (Re)*, (September 17, 2009) Ont SCJ [Commercial List] Court File No. CV-09-8241-00CL ([Order appointing Davies Ward Phillips & Vineberg as certain employees’ representative](#)).
6. *Hudson’s Bay Company ULC et al., Re*, 2025 ONSC 2724 ([Endorsement and Oral Endorsement](#))
7. *Hudson’s Bay Company ULC et al., Re* (March 7, 2025), Ont SCJ [Commercial List] Court File No. CV-25-00738613-00CL (([Initial Order](#)))
8. *Hudson’s Bay Company ULC et al., Re* (March 26, 2025), Ont SCJ [Commercial List] Court File No. CV-25-00738613-00CL ([Endorsement of ARIQ](#))
9. *Hudson’s Bay Company, (Re)* (May 5, 2025) Ont SCJ [Commercial List] Court File No. CV-25-00738613-00CL ([Endorsement re: Appointment of ERC](#))
10. In the Matter of a Plan of Compromise or Arrangement of 1000156489 Ontario Inc. (January 28, 2026) Ont SCJ [Commercial List] Court File No. CV-22-00691990-00CL ([Representative Counsel Order](#))
11. *In the Matter of a Plan of Compromise or Arrangement of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited* (March 12, 2019), Ont. SCJ [Commercial List] Court File No. CV-19-616077-00CL, ([ARIQ](#))
12. *Laurentian University of Sudbury*, [2021 ONSC 659](#)
13. *Nortel Networks Corp. (Re)*, [2009 CanLII 26603](#) (ONSC)
14. *Nortel Networks Corp. (Re)*, (July 22, 2009) Ont SCJ [Commercial List] Court File No. 09-CL-7950 ([Order](#))
15. *Quadriga Fintech Solutions Corp (Re)*, [2019 NSSC 65](#)
16. *Sears Canada* (June 22, 2017), Ont SCJ [Commercial List] Court File No. CV-17-11846-00CL ([Endorsement](#)).
17. *Sherman Estate v. Donovan*, [2021 SCC 25](#)
18. *Target Canada Co (Re)* [2015 ONSC 303](#)

19. *U.S. Steel Canada Inc.* (October 8, 2014) Ont SCJ [Commercial List] Court File No. CV-14-10695-00CL (Representative Counsel Appointment Order)

I certify that I am satisfied as to the authenticity of every authority.

Date June 24, 2026

*B. Ketwaroo*  
Signature

**SCHEDULE “B”  
Statutes**

**Companies’ Creditors Arrangement Act, RSC 1985, c C-36**

**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.

**Stays, etc. — other than initial application**

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

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

**Representation of an Interested Person Who Cannot Be Ascertained**

***Proceedings in which Order may be Made***

10.01 (1) In a proceeding concerning,

- a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
- b) the determination of a question arising in the administration of an estate or trust;
- c) the approval of a sale, purchase, settlement or other transaction;
- d) the approval of an arrangement under the *Variation of Trusts Act*;
- e) the administration of the estate of a deceased person; or

f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served. R.R.O. 1990, Reg. 194, r. 10.01 (1).

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

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**FACTUM OF THE APPLICANTS**  
**(RE: STAY EXTENSION, APPOINTMENT OF PENSION**  
**PLAN REPRESENTATIVE COUNSEL, APPOINTMENT**  
**OF MEDIATOR, AND APPROVAL OF SECOND KERP)**

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