

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

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

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

MOTION RECORD

(For Appointment of Representative Counsel for Terminated Canadian Employees)

April 12, 2024

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Counsel to Stephanie Hood and other employees
and Proposed Representative Counsel for
Terminated Canadian Employees

TO: THE SERVICE LIST

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TAB 1

Court File No.: BK-31-3050418

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

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

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

NOTICE OF MOTION

(For Appointment of Representative Counsel for Terminated Canadian Employees)

STEPHANIE HOOD will make a Motion to a Judge of the Ontario Superior Court of Justice (Commercial List) on a date to be established by the Commercial List Office.

PROPOSED METHOD OF HEARING: The motion is to be heard either in person or *via* Zoom video conferencing.

THE MOTION IS FOR:

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

2. **AN ORDER** appointing Stephanie Hood as the Representative of all terminated employees of The Body Shop Canada Limited ("**TBS Canada**" or the "**Company**") in accordance with Rule 10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and section 126(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**") in these proceedings, or in any other insolvency proceeding in relation to TBS Canada (the "**Proceedings**") who were employed by TBS Canada and terminated on or about March 1, 2024 and afterward (collectively, the "**Terminated Canadian Employees**" or individually, "**Terminated Canadian Employee**"), and who are owed and have claims in respect of termination and severance pay, health benefits, GRRSP contributions, and other amounts (the "**Claims**").

3. **AN ORDER** appointing Koskie Minsky LLP ("**KM**") as Representative Counsel to the Terminated Canadian Employees in accordance with Rule 10 of the *Rules of Civil Procedure* and section 126(2) of the BIA in relation to the Proceedings.

4. **AN ORDER** that the mandate of Representative Counsel for the Terminated Canadian Employees in respect of the Proceedings shall include:

- (a) Pursuing the application of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 ("**WEPPA**") to the Proceedings so that the Terminated Canadian Employees can apply for a WEPPA payment;
- (b) Preparing and filing the Claims on behalf of the Terminated Canadian Employees in an omnibus Proof of Claim with Alvarez & Marsal Canada Inc. (the "**Proposal Trustee**") or with a trustee in bankruptcy, as applicable;

- (c) Advancing the Terminated Canadian Employees' Claims in respect of a Proposal that may be put forward by TBS Canada and in respect of a vote on a Proposal at a creditors meeting, or for a bankruptcy, as applicable; and
- (d) Representing the Terminated Canadian Employees in the Proceedings including in respect of any motion that is relevant to their claims and rights.

5. **AN ORDER** that (a) the Representative and Representative Counsel shall represent all Terminated Canadian Employees on a collective basis and not individually in the Proceedings; and (b) the Terminated Canadian Employees shall be bound by the actions of the Representative and Representative Counsel in the Proceedings.

6. **AN ORDER** that a Claim is defined as any amount owing to a Terminated Canadian Employee which has now arisen or may arise under: (a) law or equity; and/or, (b) federal or provincial legislation or regulations thereunder, including but not limited to, employment standards legislation or any other provincial or federal legislation, or regulation applicable to the Terminated Canadian Employees (collectively, "**Applicable Laws**"), including vacation pay; and/or qualify as a secured claim under sections 81.3 and/or 81.4 of the BIA, as applicable.

7. **AN ORDER** that Representative Counsel shall have access to and be provided with copies of all relevant records and data with respect to the Terminated Canadian Employees kept by TBS Canada under Applicable Laws, whether on paper, electronic or any other form.

8. **AN ORDER** that pursuant to section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Proposal Trustee and TBS Canada are authorized and permitted to disclose personal information of individuals who are believed to be Terminated

Canadian Employees to Representative Counsel, and Representative Counsel shall maintain and protect the privacy of such information and shall limit the use of such information to its role as Representative Counsel in the Proceedings.

9. **A DECLARATION** that any individual Terminated Canadian Employee who does not wish to be represented by KM in the Proceedings may, within 7 business days of the issuance of this Order, notify KM and the Proposal Trustee that they are opting out of representation by KM.

10. **AN ORDER** that KM shall forthwith after the date of issuance of this Order, send a notice ("**Notice**") substantially in the form attached hereto as **Schedule "A"** by email to all of the Terminated Canadian Employees for which contact information is available and post the Notice on KM's website in respect of the Proceedings.

11. **AN ORDER** that Representative Counsel is authorized to take all steps and do all necessary or desirable acts in carrying out the terms of this Order, including dealing with any regulatory body and any other government or ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

12. **AN ORDER** that KM, as Representative Counsel, shall be at liberty to retain a professional or expert advisor (an "**Agent**") as Representative Counsel may consider necessary or desirable to carry out the provisions of the Order.

13. **AN ORDER** that the reasonable professional costs incurred by Representative Counsel on behalf of the Terminated Canadian Employees in respect of the Proceedings, before and after the date of this Order, shall be paid by TBS Canada, and are subject to further order of the Court.

14. **AN ORDER** that KM and any Agent retained by KM shall have no liability in relation to KM's appointment as Representative Counsel or the fulfilment of its duties in carrying out the provisions of this Order, except for claims based on gross negligence or wilful misconduct on their part.

15. **AN ORDER** that KM is authorized at any time to apply to this Court for advice and directions in the discharge or variation of its powers and duties as Representative Counsel in the Proceedings.

THE GROUNDS FOR THE MOTION ARE:

16. On March 1, 2024, TBS Canada filed a Notice of Intention to make a Proposal ("**NOI**") for protection from its creditors. It immediately announced it would cease online operations, close 33 stores and terminate approximately 220 Canadian employees without any prior notice of termination.

The Terminated Canadian Employees suffered immediate prejudice, which is continuing

17. TBS Canada did not pay severance pay, it terminated health benefits and GRRSP contributions did not pay and other amounts owing when it terminated the employees.

18. The Terminated Canadian Employees have claims in respect of:

- (a) Severance pay;
- (b) Health benefits;
- (c) Group RRSP contributions;

(d) Vacation pay; and

(e) Other amounts owing during our notice periods.

19. The amount currently owing to the Terminated Canadian Employees is estimated to be in excess of \$2M. This amount will be higher if there are additional Canadian employee terminations.

20. To make matters worse for the employees, since TBS Canada elected the NOI process, the Terminated Canadian Employees cannot currently obtain a WEPPA payment, which would quickly pay each of them up to \$8507.66 toward their unpaid severance pay and benefits claims.

21. Five of the Terminated Canadian Employees have formed an Employee Committee to liaise with the proposed Representative Counsel for this proceeding.

The CanWest factors for the appointment of Representative Counsel are met in this case

22. In *Canwest Publishing Inc.*, 2010 ONSC 1328 ("*CanWest*"), Justice Pepall, as she then was, as the Team Leader for the Ontario Superior Court of Justice (Commercial List) set out the factors to consider when appointing a Representative Counsel for employees, which are readily met in this case:

a) The Canadian employees are a highly vulnerable group

23. The majority of the Terminated Canadian Employees are retail workers who were paid in the range of \$15-17 per hour. Some of them were part-time employees who earned only minimum wage.

24. The vast majority of the Terminated Canadian Employees are female, many are single mothers, and four of the head office employees were on their maternity leaves when they were terminated by TBS Canada.

25. TBS Canada also terminated employees with physical and mental disabilities who were hired through TBS Canada's "Open Hiring" accessibility practice. These employees are in an especially precarious situation and face additional barriers to re-employment.

26. The Terminated Canadian Employees cannot afford the legal costs required to retain a lawyer to protect their rights and claims involved in this complicated and uncertain proceeding against other major creditors who have retained Bay Street law firms.

27. The employees are a very vulnerable group and need legal representation.

b) Representative Counsel would benefit the company

28. Having one legal representative counsel for the Terminated Canadian Employees would eliminate a multiplicity of legal retainers, eliminate inconsistent submissions and claims, streamline and facilitate the filing of one consistent claim on behalf of all the Terminated Canadian Employees using consistent and accurate severance methodology which is required for both a Proposal or a bankruptcy for a vote by the Terminated Canadian Employees on a Proposal if one is brought forward by TBS Canada.

c) Representative Counsel provides a social benefit to the Terminated Canadian Employees

29. The Terminated Canadian Employees are retail employees who have become involuntary creditors in the insolvency proceeding of their employer, competing against major landlords and

other stakeholders represented by major law firms. In addition, the private equity firm, Aurelius IV Acquico Seven Limited ("**Aurelius Seven**") is a recent secured creditor with significant influence over the process and recoveries for creditors. The Proposal Trustee has specific statutory duties and is not a representative for and cannot advocate for the Terminated Canadian Employees. It is currently a completely unfair legal playing field for the Terminated Canadian Employees who are unable to protect their legal rights and claims in such an environment. It would be a significant social benefit for the Terminated Canadian Employees to have a Representative Counsel appointed by the Court.

d) Representative Counsel facilitates the administration of the proceedings and efficiency

30. It is of considerable benefit to both the companies and the Terminated Canadian Employees to have Representatives and Representative Counsel who can engage with the company and represent the interests of the Terminated Canadian Employees. Without Representative Counsel, the Terminated Canadian Employees will have no voice in the proceedings, be without legal advice, and their rights and claims will be prejudiced and undermined.

e) Representative Counsel avoids a multiplicity of retainers

31. A multiplicity of legal employee retainers can generate inconsistent positions and submissions, which would also prejudice the Terminated Canadian Employees and the other stakeholders through inefficiencies throughout the proceedings and generate increased costs.

f) The Terminated Canadian Employees are a significant creditor group, both in numbers and amount owing

32. The Terminated Canadian Employees are a significant creditor group with over 220 individual creditors and claims of approximately \$2M. They need representation and advice in respect of the terms of a Proposal, if one is brought forward, and voting on a Proposal well ahead of a creditors meeting.

g) It is just and fair to appoint Representatives and Representative Counsel at this time

33. It is just and fair that they have a Representative Counsel appointed by the Court.

34. For the Terminated Canadian Employees, the proceedings of TBS Canada are complicated, confusing and with an uncertain outcome in an unknown time frame. They need advice on the terms of a Proposal and whether it is better than a bankruptcy for their recoveries.

TBS Canada has sufficient liquidity to pay the costs of the Terminated Canadian Employees

- The company Cashflow to the end of May 24, 2024, provides for \$1.5M in professional fees;
- Cash balance as of May 24, 2024 was projected to be \$560,000;
- Sales have been stronger than projected. For the period February 24, 2024 to March 20, 2024, actual sales were approx. \$11.1M compared to projected sales of \$5.7M;
- The cash flow projections have been updated to June 28, 2024, taking into account the improved sales and the ending cash balance now projected to be \$4.2M; and

- TBS Canada has ample funds to commence a KERP for \$470,000 for five continuing employees.

The Court has held that delaying the appointment of Representative Counsel is not appropriate.

35. Justice Pepall as she then was as the Team Leader of the Commercial List, held in *CanWest* that delaying the appointment of Representative Counsel in a proceeding is "unhelpful" and that it is a "false economy to watch and wait":

[23] The primary objection to the relief requested is prematurity. This is reflected in correspondence sent to counsel for the LP Entities to counsel for the Senior Lenders' Administrative Agent. Those opposing the relief requested submit that the moving parties can keep an eye on the Monitor's website and depend on notice to be given by the Monitor in the event that unsecured creditors have any entitlement. Counsel for the LP Entities submitted that counsel for the proposed representatives should reapply to court at the appropriate time and that I should dismiss the motion without prejudice to the moving parties to bring it back on.

[24] *In my view, this watch and wait suggestion is unhelpful to the needs of the Salaried Employees and Retirees and to the interests of the Applicants. I accept that the individuals in issue may be unsecured creditors whose recovery expectation may prove to be non-existent and that ultimately there may be no claims process for them.* I also accept that some of them were in the executive ranks of the LP Entities and continue to benefit from payment of some pension benefits. *That said, these are all individuals who find themselves in uncertain times facing legal proceedings of significant complexity. The evidence is also to the effect that members of the group have little means to pursue representation and are unable to afford proper legal representation at this time. ...In my view, it is a false economy to watch and wait. Indeed the time taken by counsel preparing for and arguing this motion is just one example. The appointment of the Representatives and representative counsel would facilitate the administration of the proceedings and information flow and provide for efficiency.* [emphasis added]

The Proposal Trustee is not an appropriate substitute for a Representative Counsel

36. Justice Pepall also rejected the notion that a Monitor, or in this case a Proposal Trustee, (who has even narrower statutory mandate than a monitor and a trustee in bankruptcy) can provide adequate "assistance" to the Canadian Terminated Employees. The court stated:

[24] The Monitor already has very extensive responsibilities as reflected in paragraph 30 and following the Initial Order and the CCAA itself and it is unrealistic to expect that it can be fully responsive to the needs and demands of all of these many individuals and do so in an efficient and timely manner. Desirably in my view, Canadian courts have not typically appointed an Unsecured Creditors Committee to address the needs of unsecured creditors in large restructurings. It would be a considerable benefit to both the Applicants and the Salaried Employees and Retirees to have Representatives and representative counsel who could interact with the Applicants and represent the interests of the Salaried Employees and Retirees. In that regard, I accept their evidence that they are a vulnerable group and there is no other counsel available to represent their interests. Furthermore, a multiplicity of legal retainers is to be discouraged. [emphasis added]

37. Representative Counsel's mandate would include the following:
- (a) pursuing the application of WEPPA to the Proceedings so that the Terminated Canadian Employees can apply for a WEPPA payment as soon as possible;
 - (b) section 126(2) of the BIA expressly contemplates the appointment of a "court-appointed representative" for "workers and others employed by the bankrupt" with respect to preparing the group proof of claim for all employees. Representative Counsel would prepare and file the Terminated Canadian Employees claims for severance pay, terminated benefits, Group RRSP contributions and other amounts using a consistent methodology with the Proposal Trustee or with a trustee in bankruptcy, as applicable, and acting as a single point of contact for employee claims and thereby generating cost savings;
 - (c) representing for the Terminated Canadian Employees' interests with respect to a Proposal that may be brought forward by TBS Canada, reviewing the recommendations of the Proposal Trustee, and advising the Terminated Canadian Employees in respect of a vote on a Proposal before a creditors' meeting;

- (d) reviewing and responding to any motions and developments as necessary brought by the Company, the Proposal Trustee or other creditors to ensure that the Terminated Canadian Employees have appropriate representation and their rights are protected and not undermined;
 - (e) communicating with the Terminated Canadian Employees by:
 - (i) establishing a toll-free telephone number and email address dedicated to the Terminated Canadian Employees for any questions they have. KM has a bilingual Communications Department that has extensive experience in communicating with large numbers of individuals and responding promptly to all routine inquiries, tracking such inquiries in a database, and maintaining individual files for each Terminated Canadian Employee;
 - (ii) establishing a page on KM's website to provide information to Terminated Canadian Employees regarding the insolvency proceeding, responses to commonly asked questions, access to relevant correspondence and documents, and posting correspondence and relevant court documents; and
 - (iii) providing additional Zoom calls to provide information to the Terminated Canadian Employees regarding their Claims, the insolvency proceeding, and developments relevant to the Terminated Canadian Employees.
38. Rules 10 and 12.07 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
39. Section 131(1) of the *Courts of Justice Act (Ontario)*, R.S.O. 1990, c. C. 43.

40. Sections 126(2), 183(1) and 197(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

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

1. The Affidavit of Stephanie Hood sworn April 12, 2024 and the exhibits thereto;
2. Such further and other material as counsel may advise and this Honourable Court Permit.

April 12, 2024

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Counsel to Stephanie Hood and other employees
and the Proposed Representative Counsel for
Terminated Canadian Employees

SCHEDULE "A"

Court File No.: BK-31-3050418

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)****IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED****AND 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****NOTICE OF APPOINTMENT OF REPRESENTATIVE COUNSEL TO TERMINATED
CANADIAN EMPLOYEES**

On March 1, 2024, The Body Shop Canada Limited ("**TBS Canada**") 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 and terminated its employees without paying severance pay and other amounts owing to the employees. The firm of Alvarez and Marsal Canada Inc. ("**A&M**") is the proposal trustee in TBS Canada's NOI proceedings.

TAKE NOTICE THAT, pursuant to the Order of the Ontario Superior Court dated April X, 2024, the law firm of Koskie Minsky LLP ("**KM**") was appointed as Representative Counsel to all terminated employees who were terminated by TBS Canada or who are owed other amounts as of March 31, 2024. A copy of the Order is enclosed for your reference. Contact Information for Representative Counsel is below:

Website:**Email:****Toll-free Hotline:**

IF YOU DO NOT WISH TO BE REPRESENTED in the proceeding by KM as Representative Counsel and wish to represent yourself or be represented by another lawyer at your own cost, you must, before ●, 2024, provide notice in writing (by letter or email) to both KM and A&M indicating that you wish to opt-out of such representation:

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

Attention: The Body Shop Canada
Limited Representative Counsel

E-mail:
Hotline:

Alvarez & Marsal Canada Inc.
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2900, P.O. Box 22
Toronto ON M5J 2J1

Attention: Josh Nevsky

E-mail: TheBodyShop@alvarezandmarsal.com
Hotline: 1-833-591-1287

**IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED
AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF THE BODY SHOP CANADA LIMITED, IN THE
CITY OF TORONTO, OF THE PROVINCE OF ONTARIO**

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

NOTICE OF MOTION

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Counsel to Stephanie Hood and other employees
and Proposed Representative Counsel for
Terminated Canadian Employees

TAB 2

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

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

**AND 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**

**AFFIDAVIT OF STEPHANIE HOOD
(sworn April 12, 2024)**

I, **STEPHANIE HOOD**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the former Store Manager of The Body Shop Canada Limited ("**TBS Canada**" or the "**Company**"), located at 1952 Queen Street East in Toronto. I managed a staff of four full-time and part-time employees.

2. I began working with TBS Canada on August 14, 2001 and have over 22 years of employment service. At the time I was terminated on March 7, 2024, I was paid a salary of approximately \$47,609.72 per annum.

220 Canadian Employees terminated without severance pay

3. On March 7, 2024, I received an email from Jennifer Wale, People Director, TBS North America, telling me that as a result of the Proposal in Bankruptcy (the "**Proposal**") filed by TBS

Canada on March 1, 2024, my store is closing and all employees including myself are being terminated without severance pay and other amounts owing to us. A copy of this email dated March 7, 2024 is attached hereto as **Exhibit "A"**.

4. I understand that TBS Canada has so far terminated 220 Canadian employees (collectively, the "**Terminated Canadian Employees**" and individually, "**Terminated Canadian Employee**") and closed 33 stores across Canada.

5. The majority of the Terminated Canadian Employees are female retail workers who are paid in the range of \$15-17 per hour. Some of them were part-time employees who earned only minimum wage. Many are single mothers, and four of the terminated head office employees were on their maternity leaves.

6. The Terminated Canadian Employees also comprise of employees with physical and mental disabilities who were hired through TBS Canada's "Open Hiring" accessibility practice. These employees are in an especially precarious situation and face additional barriers to re-employment.

7. The Terminated Canadian Employees have claims in respect of:

- (i) Severance pay;
- (ii) Health benefits;
- (iii) Group RRSP contributions;
- (iv) Vacation pay; and
- (v) Other amounts owing during our notice periods.

8. In the Affidavit of Jordan Searle, the General Manager, North America and the current sole director of TBS Canada, sworn April 8, 2024, he states "[m]ost of the terminated individuals did not hold claims for accrued vacation pay or other benefits." I believe Mr. Searle is understating the claims of the Terminated Canadian Employees. As noted above, many employees have claims in respect of severance pay, health benefits, GRRSP contributions, and vacation pay and other amounts owing during our notice periods.

No WEPPA for the Terminated Canadian Employees

9. To make matters worse for the Terminated Canadian Employees, since TBS Canada elected a Proposal proceeding, we cannot currently apply for a payment under the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 ("**WEPPA**") which would pay us up to \$8,507.66 in respect of our claims for severance pay, benefits, and GRRSP contributions.

10. Soon after being terminated, I contacted the law firm of Koskie Minsky LLP ("**KM**") and requested their advice and assistance. I am advised and believe that over the past few weeks, approximately 40 Terminated Canadian Employees contacted KM asking for advice and assistance. KM subsequently set up Zoom calls with the Terminated Canadian Employees to answer questions and provide us with advice on our claims and rights, the TBS Proposal proceeding, the Endorsement of this Court dated March 4, 2024, and other issues pertaining to the Proposal proceeding, which I and the other employees found very helpful and informative.

11. I and four other terminated employees have formed an *ad hoc* Employee Committee of TBS Canada store managers and head office employees to liaise with KM and assist and represent us in TBS Proposal proceedings.

12. This Affidavit is sworn in support of a motion for the court to appoint me as the Representative of the Terminated Canadian Employees and KM as the Representative Counsel.

The Terminated Canadian Employees are owed at least \$2M by TBS Canada and are a significant creditor group

13. I am advised by KM and believe that based on my employment arrangement with TBS Canada, I am owed severance in the approximate amount of \$45,656.50, and \$439.47 for vacation pay owing during my notice period for a total claim of approximately \$46,095.97. TBS Canada also provided health benefits and a GRRSP to employees. Under the latter, the company paid a percentage contribution to each employee's RRSP account. While I personally opted out of the health benefits plan, I expect that most of the Terminated Canadian Employees have claims in respect of the terminated health benefits and the terminated GRRSP, as well as for other amounts owing.

14. I am advised and believe that KM estimates the amount owing to the Terminated Canadian Employees is approximately \$2M, but could possibly be more once full employee data and applicable law are applied (the "**Employee Claims**").

15. The 220 Terminated Canadian Employees with our claims comprise a key stakeholder group in TBS Canada's proceedings.

a) **The Terminated Canadian Employees are highly vulnerable**

16. Given the demographic of the Terminated Canadian Employees that I describe above, the non-payment of severance pay and other amounts, and no ability for us to access WEPPA, we cannot afford the legal costs required to retain a lawyer to protect our rights and claims

involved in this complicated and uncertain case involving other major creditors who have retained Bay Street law firms. The employees are a very vulnerable group, and we need legal representation.

b) Employee Representative Counsel would benefit the company

17. I believe that having one legal representative counsel for the Terminated Canadian Employees would eliminate a multiplicity of employee legal retainers, eliminate inconsistent submissions and claims, and facilitate the preparation and filing of one claim on behalf of all the Terminated Canadian Employees using consistent and accurate methodology (which is required for both a Proposal or a bankruptcy liquidation), and would overall streamline and facilitate a vote by the Terminated Canadian Employees on a Proposal, if one is brought forward by TBS Canada.

c) Employee Representative Counsel provides a social benefit to the Terminated Canadian Employees

18. The Terminated Canadian Employees are retail employees who have become involuntary creditors in the insolvency proceeding of their employer, competing against major landlords and other stakeholders represented by major law firms. The private equity firm, Aurelius IV Acquico Seven Limited ("**Aurelius Seven**") is a secured creditor with significant influence over the process and recoveries for creditors. I am advised by KM and believe that the Proposal Trustee has specific duties and is not a representative for and cannot represent the Terminated Canadian Employees This is a completely unfair playing field for the Terminated Canadian Employees and we are powerless to protect our rights and claims in such a legal

environment. It would be a significant social benefit for the Terminated Canadian Employees to have a Representative Counsel.

d) Employee Representative Counsel facilitate the administration of the proceedings and provide efficiency

19. The Terminated Canadian Employees are a key creditor group. I also believe that it is of considerable benefit to both the company and the Terminated Canadian Employees to have Representatives and Representative Counsel who can interact with the Company and represent our interests with one voice, thereby facilitating the administration of TBS Canada's proceeding. Without Representative Counsel, the Terminated Canadian Employees will effectively have no voice in the proceedings, be without legal advice, and our rights and claims will be prejudiced and undermined.

e) Employee Representative Counsel avoids a multiplicity of retainers

20. Without a Representative Counsel, there can be a multiplicity of legal employee retainers that generate inconsistent claim calculations and submissions, which would prejudice both the Terminated Canadian Employees, the Company and all other stakeholders through inefficiencies and increased costs.

f) The Terminated Canadian Employees are a significant creditor group, both in numbers and amounts owing

21. The Terminated Canadian Employees are a key creditor group with over 220 individual creditors and claims of approximately \$2M. We need representation and advice on the formulation and voting on a Proposal well ahead of a creditors meeting, or for a bankruptcy if a Proposal is not achieved.

22. The Terminated Canadian Employees hope to see a successful restructuring that preserves as many of the existing jobs as possible, but we also need to maximize recoveries for us given our significant losses in respect of our Employee Claims and the resulting hardships for us and our families.

g) It is just and fair to appoint Representatives and an Employee Representative Counsel

23. The proceedings of TBS Canada are complicated, confusing to us and with an uncertain outcome in an unknown time frame.

24. We have consulted with Andrew J. Hatnay of KM and instructed him to bring forward a motion to the court for a representation order for all Terminated Canadian Employees. I spoke with many other Terminated Canadian Employees who also contacted Mr. Hatnay and also sought KM's legal representation. I am advised and believe that at this stage approximately 40 Terminated Canadian Employees across the 32 closed stores have contacted KM requesting legal advice and representation.

25. I believe KM is appropriate to represent the Terminated Canadian Employees. I have read that the Ontario Superior Court of Justice has recognized KM as a firm "with extensive experience representing employees and retirees in insolvency and bankruptcy matters", and that KM has been appointed Representative Counsel by the courts in Ontario and other provinces in many insolvency cases, including *Metroland Media Group Ltd.*, *Sears Canada Inc.*, *U.S. Steel Canada Inc. (Stelco)*, *Nortel Networks Inc.*, *Target Canada Inc.*, *Wabush Mines (Quebec)*, *Eaton's*, *Shaw Group*, *Hollinger Canadian Publishing Co.*, *Catalyst Paper (B.C.)*, *Saan Stores*, and *Dylex*, among others. A copy of the Endorsement of Justice Osborne in the Matter of the Proposal of Metroland Media

Group Ltd., in which His Honour describes the extensive experience of KM in respect to representing employees and retirees in insolvency and bankruptcy matters, dated October 13, 2023, is attached hereto as **Exhibit "B"**.

TBS Canada has sufficient liquidity to pay the costs of a Representative Counsel

26. I am advised by KM and believe that:

- The Company's cashflow to the end of May 24, 2024, provides for \$1.5M in professional fees to its lawyers, the Proposal Trustee and its lawyers;
- The cash balance as of May 24, 2024 was projected to be \$560,000;
- Store sales have been stronger than projected for the period from February 24, 2024 to March 20, 2024, actual sales were approximately \$11.1M, compared to projected sales of \$5.7M;
- The cash flow projections have been updated to June 28, 2024, and taking into account the improved sales, the ending cash balance is now projected to be \$4.2M; and
- TBS Canada has ample funds to commence a KERP for \$470,000 for five continuing employees.

Facts leading up to TBS Canada's insolvency

27. Based on my 22 year employment service with TBS Canada, my review of recent financial media articles regarding The Body Shop, TBS Canada's court materials, and information received

from KM, I believe the facts surrounding TBS Canada's insolvency proceedings are complicated and adversarial and that without our own lawyer, the Terminated Canadian will continue to be prejudiced and our rights and claims undermined:

- (a) The Body Shop International Limited ("**TBS U.K.**"), trading as the Body Shop, is a British cosmetics, skin care, and perfume company founded in 1976. TBS U.K. is the parent company of TBS Canada.
- (b) In 2017, TBS U.K. reported its products were sold in about 3,000 stores, some company-owned and others franchised, in 66 countries.
- (c) In March 2006, TBS U.K. agreed to a £652.3M takeover by the French cosmetics company, L'Oréal S.A.
- (d) In 2017, L'Oréal sold TBS U.K. to the Brazilian cosmetics company, Natura (Brasil) International B.V. ("**Natura**") for £887M.
- (e) In November 2023, Natura sold the company to the subsidiary of Aurelius Seven, a German private equity firm, Aurelius IV UK Acquico Eight Limited ("**Aurelius**"), for £207M.

Following the acquisition by Aurelius, The Body Shop subsidiaries in Canada, United States, U.K., Belgium and Denmark are rendered insolvent

28. On November 14, 2023, Aurelius announced the acquisition of TBS U.K. from Natura, and that the transaction was expected to close in December 2023 as an all share purchase. Following the acquisition, Aurelius released a statement, dated November 14, 2023, in which it stated its

intention to "drive operational improvements and re-energise the business". A copy of the Statement of Aurelius, dated November 14, 2023, is attached hereto as **Exhibit "C"**.

29. Despite the Press Release, within three months of the acquisition, the financial media reported that Aurelius' stated plans for the TBS U.K. were "unravelling":

Yet just three months after the deal was announced and six weeks after it was completed, [Ian Bickley, the CEO of the Body Shop] is gone, The Body Shop's international network has been dismantled and its crown jewel, the UK business, has collapsed into administration – putting more than 2,000 jobs in more than 200 stores at risk.

A copy of the article, "How The Body Shop unravelled in 3 months", dated February 16, 2024, is attached hereto as **Exhibit "D"**.

30. On February 13, 2024, Aurelius placed the U.K. subsidiary of the Company into administration. Approximately 75 stores – half of its locations – would close over the next two months.

31. On February 13, 2024, The Body Shop Germany also became subject to administration and announced that its 60-plus stores and head office, employing approximately 400 individuals, would close within the coming months.

32. Over the next few weeks, administrators were hired for the Ireland, Austria, Luxembourg, and France divisions, all of which were expected to be put into administration.

33. On February 29, 2024, the Belgian and Danish branches of the Body Shop were declared bankrupt, and it was announced that all stores in both countries would close.

34. On March 1, 2024, TBS Canada filed a NOI under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**") and announced that it would cease online operations and close 33 locations out of 105. The subsequent NOI filing in Canada were a complete surprise, especially since TBS Canada had generated positive income of approximately \$12M.

35. That same day, the Body Shop USA closed all of its stores and ceased operations online. By March 9, 2024, the Body Shop USA filed for Chapter 7 bankruptcy liquidation.

TBS U.K. sweeps cash out of TBS Canada, rendering it insolvent, and Aurelius Seven becomes a secured creditor

36. The Terminated Canadian Employees, who are now significant creditors and vulnerable individuals, with no severance pay and no access to WEPPA, are now caught in a complicated insolvency proceeding with an uncertain outcome and unknown time frame with a foreign private equity firm as a secured creditor.

37. Between November 1, 2023 and February 2024, the UK Parent swept in excess of \$21M from TBS Canada's bank accounts (on a net basis), leaving TBS Canada with the inability to fund its operations and forcing TBS Canada to seek protection under the BIA.

38. The Ontario Superior Court of Justice in its Endorsement dated March 4, 2024, wrote that:

[16.] Historically, the UK Parent has been in full control of much of the business functions of TBS Canada including inventory, human resources, accounts payable and cash management. Effectively, the UK Parent has regularly completed a cash sweep of accounts of TBS Canada with the result that all funds and liquidity of TBS Canada were remitted to the UK Parent, in return for it paying the payables, including rent and payroll obligations, of TBS Canada.

[17.] Specifically from November 1, 2023 until February 12, 2024 (the day prior to the UK Parent being placed into Administration), the UK Parent

continued to sweep receivables from the bank accounts of the Company held at HSBC Bank Canada. However, during the same period, the UK Parent failed to remit payments in full to the vendors and landlords of the Company as it had done previously in exchange for sweeping the cash accounts.

A copy of the Endorsement of Justice Osborne, dated March 4, 2024, is attached hereto as **Exhibit "E"**.

39. Aurelius appears to be able to exert significant control over TBS Canada.

40. In addition to sweeping cash out of TBS Canada as discussed above, immediately after its acquisition by Aurelius in December 2023, Aurelius Seven – the immediate parent of Aurelius – entered into a loan agreement with TBS U.K. making £2.7M available to TBS U.K (the "**Loan Agreement**"). Section 4.2 of the Loan Agreement states the purpose of the loan is "to assist the Purchaser [Aurelius] with funding the Acquisition". Section 6.4 of the Loan Agreement further states as a condition precedent to the loan, TBS Canada (who is not a party to the Loan Agreement) must provide both a Guarantee and a General Security Agreement ("**GSA**") to TBS U.K.

41. TBS Canada guaranteed the loan made by Aurelius Seven to TBS U.K., and TBS Canada secured that loan with a GSA. In his Affidavit sworn March 1, 2024, Mr. Searle states that despite TBS Canada issuing a secured Guarantee to Aurelius Seven, TBS Canada is "unaware of the current status of the loan facility". Mr. Searle also states that TBS Canada "was never provided with an executed copy of the GSA [that secures the Guarantee]". In his subsequent Affidavit sworn April 8, 2024, Mr. Searle stated that at the request of TBS Canada, the administrator of TBS U.K. recently provided the Company with an executed copy of the GSA.

42. In the Endorsement of Justice Osborne dated March 4, 2024, His Honour questioned the Guarantee given by TBS Canada to Aurelius Seven:

14. I pause to observe that it is not clear to me from the motion materials, nor as counsel confirmed at the hearing of this motion is it clear to TBS Canada, what if any consideration was received by TBS Canada in exchange for the guarantee obligations. That is for another day.

43. In the media article attached hereto as **Exhibit "D"**, the financial media commented on the Aurelius loan and security arrangements:

The Body Shop took out a series of loans from Aurelius around the time it took over the business, according to corporate filings. These pledged some of the company's most valuable assets including reams of its intellectual property and valuable real estate to its new owner, the filings show, meaning Aurelius would have a claim over them in case of a collapse.

44. I am advised by KM and believe that the complicating components of this proceeding include and can be summarized as follows:

- (a) Multijurisdictional company operations that complicate the restructuring of TBS Canada;
- (b) Security interests over TBS Canada, that were put in place immediately after the acquisition of TBS U.K. by Aurelius;
- (c) Conduct of TBS U.K. "sweeping" TBS Canada's cash;
- (d) Competing and unquantified unsecured claims by landlords and other major creditors, who all have legal representation; and
- (e) Significant claims of the Terminated Canadian Employees, no payment of severance pay, and no access to WEPPA.

45. KM's proposed mandate as Representative Counsel to the Terminated Canadian Employees which I and the Employee Committee support includes:

- (a) pursuing the application of WEPPA to the Proceedings so that the Terminated Canadian Employees can apply for a WEPPA payment as soon as possible;
- (b) representing the Terminated Canadian Employees with respect to formulating a Proposal that may be brought forward by TBS Canada, reviewing the recommendations of the Proposal Trustee, and advising in respect of a vote on a Proposal ahead of a creditors meeting;
- (c) preparing and filing our claims using a consistent methodology with the Proposal Trustee or a trustee in bankruptcy, as applicable;
- (d) reviewing and responding to motions and other court proceedings brought by the company, the Proposal Trustee or other creditors to ensure that the Terminated Canadian Employees' rights and claims are protected;
- (e) acting as a single point of contact for our claims to prevent a multiplicity of different employees claims calculated using different legal methodologies, thereby generating overall cost-saving for the company, its estate and other creditors; and
- (f) communicating with the Terminated Canadian Employees by:
 - (i) establishing a toll-free telephone number and email address dedicated to the Terminated Canadian Employees for their questions, staffed by KM's bilingual Communications Department who have experience in communicating with large client groups and responding promptly, recording such inquiries in a database, and maintaining individual files for each employee;

- (ii) establishing a page on KM's website to provide information to Terminated Canadian Employees regarding the TBS Canada insolvency proceeding, responses to commonly asked questions, access to relevant documents, and posting correspondence and relevant court documents; and
- (iii) hosting additional Zoom calls to provide further and new information and advice to the Terminated Canadian Employees as the proceeding moves forward.

46. I am advised that on March 11, 2024, Andrew J. Hatnay of KM had a telephone call with counsel to the Company and counsel to the Proposal Trustee informing them that KM has been contacted by Terminated Canadian Employees requesting KM's advice and assistance. KM proposed a consensual appointment of an employee Representative and Representative Counsel, which counsel to the Company and Proposal Trustee rejected. I am further advised that counsel to TBS Canada sent a letter to KM dated March 14, 2024, which is attached hereto as **Exhibit "F"**. KM responded by letter on April 10, 2024, a copy of which is attached hereto as **Exhibit "G"**.

47. In the letter from TBS Canada's counsel dated March 14, 2024, Ms. MacParland says, among other things, that the appointment of Representative Counsel was not necessary because the "Proposal Trustee is well positioned to assist the employees with their claims". This position was echoed by Mr. Searle in his Affidavit sworn April 8, 2024. I completely disagree with those statements.

48. The terminated employees who contacted KM, including myself, are of the view that the Proposal Trustee cannot appropriately assist and represent the Terminated Canadian

Employees nor act in our best interests with respect to our own claims, nor provide independent advice and representation to us in the TBS Canada proceedings, whether in a Proposal or a bankruptcy.

49. Given our significant claims, lack of financial resources, vulnerability, and the complexity of these proceedings, I, along with the other Terminated Canadian Employees, require our own legal representation with respect to all the issues I have identified in this Affidavit.

50. I am advised by Andrew J. Hatnay of KM and believe that if the court appoints KM as Representative Counsel, KM will send a notice to all Terminated Canadian Employees explaining the terms of the appointment, including a process for opting out of representation by KM should an individual wish to do so.

51. I swear this Affidavit in good faith and in support of this motion to appoint me as Representative, and KM as Representative Counsel to the Terminated Canadian Employees and for no improper purpose.

SWORN REMOTELY by Stephanie Hood of the City of Toronto, in the Province of Ontario, before me in the City of Mississauga, in the Province of Ontario, on April 12, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Abir Shamim (LSO# 88251V)

Abir Shamim (LSO# 88251V) (Apr 12, 2024 16:49 EDT)

A Commissioner for Taking Affidavits, etc.

Steph

Stephanie Hood (Apr 12, 2024 16:46 EDT)

STEPHANIE HOOD

This is **Exhibit "A"**

referred to in the Affidavit of Service of Stephanie Hood

sworn before me this 12th day of April, 2024.

Abir Shamim (LSO# 88251V)

Abir Shamim (LSO# 88251V) (Apr 12, 2024 16:49 EDT)

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

From: Jennifer Wale <Jennifer.Wale@thebodyshop.com>
Sent: Thursday, March 7, 2024 8:37:10 PM
To: stephanie_tec@yahoo.ca <stephanie_tec@yahoo.ca>; Stephanie Hood <stephanie.hood@thebodyshop.com>
Subject: Employment Termination Letter

March 7, 2024

STRICTLY PRIVATE AND CONFIDENTIAL

Stephanie Hood
231 King Edward Avenue
East York, Ontario M4C 5J9
stephanie_tec@yahoo.ca
stephanie.hood@thebodyshop.com

Dear Stephanie:

Re: Termination of Employment

This is to confirm that The Body Shop Canada Limited (the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI Proceedings**”) pursuant to the *Bankruptcy and Insolvency Act* (Canada). Alvarez & Marsal Canada Inc. was appointed as the Proposal Trustee to assist the Company through this restructuring process.

In connection with the NOI Proceedings, your employment will be terminated effective March 11, 2024 (the “**Termination Date**”). Unfortunately, this decision was forced upon us by circumstances beyond our control as a result of actions taken by our corporate parent, The Body Shop International Limited, with immediate financial consequences. You are expected to continue to report to work and perform your regular duties, as well as assist with the transition of your work if required, up to and including the Termination Date. Your unwavering commitment to the Company has not gone unnoticed, and your professionalism and resilience have been remarkable. Your hard work and dedication have been exemplary, and we wish to express our deepest gratitude for your continued service during this difficult time.

Upon the termination of your employment, you are entitled to the balance of any outstanding wages and vacation pay, statutory notice remaining in the form of termination pay, severance pay as applicable, together with continued benefit eligibility over the remaining statutory notice period, all as and if required pursuant to applicable provincial employment standards legislation, as amended or replaced from time to time (the “**Applicable Employment Standards Legislation**”). Your outstanding wages and accrued vacation pay will be remitted after the Termination Date in the ordinary payroll cycle.

Your benefit coverage, if any, will continue until March 8, 2024, however, we are unfortunately not able to provide you with the other entitlements at this time.

You can obtain further information on the NOI Proceedings by consulting the following:

www.alvarezandmarsal.com/thebodyshop

You may also be eligible to make claims for any remaining Applicable Employment Standards Legislation entitlements under the Federal Government’s Wage Earner Protection Program.

If these claims processes are available to you, you will receive further information under separate cover about how to apply.

Please note that once your Company benefits cease, it is your responsibility to obtain alternative coverage.

After the Termination Date, your Record of Employment (ROE) will be issued and made available to facilitate your access to employment insurance and related benefits. Please consult the Service Canada site at:

www.servicecanada.gc.ca/eng/online/mysca.shtml.

Please be mindful that you remain subject to confidentiality obligations to protect the Company’s confidential information together with the continuing duties as may be applicable under any non-disclosure, intellectual property assignment, non-solicit and non-interference covenants arising from your employment, all of which continue to apply following the Termination Date.

Please ensure that the Company’s devices, equipment, records, confidential information and all other Company property, acquired in the course of your employment, are returned to your store location on or before the Termination Date. We appreciate that you may have many questions during this time. You will find attached a General Frequently Asked Questions document, which will likely answer many of your questions.

If you still have any questions, please email na.peopleoperations@thebodyshop.com with your full name and contact information and someone from the team will contact you.

Sincerely,



THE BODY SHOP CANADA LIMITED

By: _____

Jennifer Wale

Name: Jennifer Wale
Title: People Director,
North America

This is **Exhibit "B"**

referred to in the Affidavit of Service of Stephanie Hood

sworn before me this 12th day of April, 2024.

Abir Shamim (LSO# 88251V)
Abir Shamim (LSO# 88251V) (Apr 12, 2024 16:49 EDT)

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: BK-23-02986886-0031 DATE: 13 October 2023

NO. ON LIST: 5

TITLE OF PROCEEDING: In the Matter of the Proposal of Metroland Media Group Ltd.

BEFORE JUSTICE: Justice Osborne

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Andrew Hatnay	John Willems, Proposed	ahatnay@kmlaw.ca
Martin Ejidra	Representative of non-unionized	mejidra@kmlaw.ca
Abir Shamim	Metroland Employees	ashamim@kmlaw.ca

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Steven Graff	Metroland Media Group Ltd.	sgraff@airdberlis.com
Samantha Hans		shans@airdberlis.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Jonathan Krieger	Proposal Trustee (Grant Thornton)	Jonathan.krieger@ca.gt.com

ENDORSEMENT OF JUSTICE OSBORNE:

1. Following the hearing of this motion on October 13, 2023, I granted the motion with reasons to follow. These are those reasons.
2. Mr. John Willems brings this motion for an order appointing Koskie Minsky LLP as Representative Counsel, and an order that he be appointed as Non-Union Employee Representative, pursuant to section 126(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3 (the “*BIA*”).
3. If appointed, Representative Counsel would represent all non-unionized individuals who were employed by Metroland Media Group Ltd. (“Metroland”) on or about September 15, 2023 and who are owed deferred salary payments under the Metroland Voluntary Departure Program or any other arrangements as of September 15, 2023, and who are not represented by Unifor, Local 87-M (the “Non-Union Employees”) in this proceeding, including for the purpose of administering a settlement in respect of the claims of the Non-Union Employees.
4. Corollary relief is also sought in the form of an order:
 - a. permitting the appointment of three to five additional Non-Union Employees to form an ad hoc committee to represent, fairly and diligently, the interests of Non-Union Employees;
 - b. establishing the terms of the mandate of Representative Counsel;
 - c. confirming that Representative Counsel may rely upon instructions and directions from the Committee and/or the Non-Union Employee Representative;
 - d. confirming that the Non-Union Employee Representative and Representative Counsel shall represent Non-Union Employees on a collective basis and not individually and that all Non-Union Employees shall be bound by the actions of the Non-Union Employee Representative and Representative Counsel;
 - e. declaring that any Claim, being any amount owing to a Non-Union Employee which has now arisen or which may arise, including but not limited to employment claims (inclusive of vacation pay and payments under the *Wage Earner Protection Program Act*, S.C. 2005, c.47 (“*WEPPA*”), and/or qualify as a secured claim under sections 81.3 and/or 81.4 of the *BIA*, as applicable);
 - f. that pursuant to section 7(3)(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, the Proposal Trustee and Metroland are authorized and permitted to disclose personal information of Non-Union Employees to Representative Counsel;
 - g. declaring that any individual Non-Union Employee who does not wish to be represented by Representative Counsel shall give notice that he or she is opting out and thereafter shall not be bound by the actions of Representative Counsel and authorizing Representative Counsel to send the appropriate notice; and
 - h. related relief as set out in the Notice of Motion.
5. Defined terms in this Endorsement have the meaning given to them in the motion materials unless stated otherwise. The Moving Party relies on the Affidavit of John Willems sworn October 12, 2023 together with Exhibits thereto.
6. The relief sought today is unopposed and is supported by Metroland and the Proposal Trustee.

7. Metroland is the entity resulting from the amalgamation of Metrospan Community Newspapers and the Inland Publishing Company. It employed approximately 1000 individuals. As part of previous attempts to reduce operating costs, it offered employees a Voluntary Departure Program which provided for a voluntary termination of their employment in exchange for deferred salary payments.
8. Employees of Metroland received a letter from the Director of Metroland on September 15, 2023 advising that it would file a Notice of Intention to Make a Proposal under the *BIA*. The latter advised that coincident with this filing, the employment of 605 Metroland employees would be terminated, and that due to the financial circumstances of Metroland, it was and is unable to provide payment of termination pay in lieu of notice.
9. Of those employees, 104 were union members with Unifor and the balance are non-unionized.
10. Although employees would receive payment for wages up to the termination date, health benefits would terminate on September 30, 2023, and employees also have amounts owing to them in respect of pension benefits, the above-noted Voluntary Departure Program and other individual employment arrangements.
11. Accordingly, the Non-Union Employees are significant creditor group that requires representation in this proceeding to prepare and advance Claims which may include applications for payments under *WEPPA*.
12. The NOI estimates that the amount owing to all terminated employees (both union and non-union) is approximately \$16 million.
13. This Court has the authority to appoint representatives and representative counsel to terminated employees in insolvency proceedings: section 183(1) of the *BIA*. Section 126(2) of the *BIA* expressly contemplates the appointment of a “court-appointed representative” for “workers and others employed by the bankrupt” with respect to preparing a group Proof of Claim for all employees.
14. Justice (now Chief Justice) Morawetz of this Court has held that Representative Counsel should be appointed to enable vulnerable stakeholders (in that case, employees and retirees) to meaningfully participate in CCAA proceedings that directly affect them: *Nortel Networks Corporation (Re)*, [2009] O.J. No. 2166 at paras. 13 -16.
15. That approach was followed by this Court in *CanWest Publishing Inc. (Re)*, [2010] O.J. No. 943 at paras. 23-24 (“*CanWest*”) (and this approach has been followed in subsequent CCAA cases¹).
16. It is preferable that a representation order be issued early in the proceedings for the benefit not only of the directly affected employees and retirees, but indeed for all stakeholders. Such orders are appropriate even where there is a possibility that the individuals in issue may be unsecured creditors whose recovery expectation may prove to be nonexistent and that ultimately, there may be no claims process for them: *CanWest* at paras. 23 – 24.
17. Similar representation orders have been made under the *BIA*: see *Foodora Inc.*, (July 8, 2020) No. BK-31-2641224 (Ont SCJ); *The RedPin.com Realty Inc.*, (September 11, 2008), No. CV-18-59964400CL (Ont SCJ); and *Roman Catholic Episcopal Corporation of St. John’s*, (February 21, 2022) No. 24092 (NLSC).
18. Justice Pepall (as she then was) summarized in *CanWest* the appropriate factors to be considered in a determination of whether a representation order is appropriate:
 - a. the vulnerability and resources of the group sought to be represented;

¹ See, for example, *Target Canada Co.*, [2015] O.J. No. 247 at paras. 60-61; *U.S. Steel Canada Inc.*, [2014] O.J. No. 5547 at paras. 34-42; *Nortel Networks Corp.* [2009] O.J. No. 2166 at paras. 13-16; *Catalyst Paper Corp.*, [2012] B.C.J. No. 615; *Fraser Papers Inc.*, [2009] O.J. No. 4278; and *Hollinger Canadian Publishing Holdings Co.*, [2010] O.J. No. 3494 at para. 5.

- b. any benefit of the representation to the debtor company;
 - c. any social benefit to the companies under protection;
 - d. the avoidance of multiplicity of legal retainers;
 - e. the facilitating and administration of the proceeding and efficiencies;
 - f. the balance of convenience and whether it is fair and just, including to creditors of the estate;
 - g. whether representative counsel has already been appointed for those who have similar interests to the group seeking the order; and
 - h. the position of other stakeholders and the [monitor].²
19. I am satisfied that the *CanWest* factors apply here and indeed that they have been met in this case.
20. The Non-Union Employees are located across Ontario. Individually, they have limited means to calculate and advance their rights and entitlements as may relate to their rights including as to severance, benefit and pension entitlements. They are not in the same position as commercial creditors. I am satisfied that they are a vulnerable group of individuals who require group representation.
21. The scope of the order sought in this case will achieve that. It will provide for, among other things:
- a. the appointment of Representative Counsel to determine amounts owing;
 - b. the organization of the ad hoc committee;
 - c. coordination with the company and the Proposal Trustee to develop a consistent methodology for the calculation of the claims of all Non-Union Employees;
 - d. the preparation of a single Proof of Claim to be filed on behalf of Non-Union Employees (except those who may opt out);
 - e. the streamlining of Non-Union Employees and the administration thereof;
 - f. assistance with the preparation and filing of *WEPPA* claims;
 - g. responding to steps in, and participating in, this proceeding to ensure that the Non-Union Employees' rights are represented;
 - h. communicating with the Non-Union Employees; and
 - i. otherwise representing their interests in this matter.
22. I am also satisfied that the Debtor, Metroland, and other stakeholders will benefit from the appointment of Representative Counsel as such will contribute to overall cost savings and the streamlining of the Proposal process through the provision of a single point of contact for active and retired Non-Union Employees and consistent representation for employee and retiree claims and issues in this proceeding.
23. This also furthers the overarching objectives of maximizing access to justice and avoiding a multiplicity of legal retainers, while recognizing the ability of those who wish to opt out, and providing for the mechanism for them to do so.
24. The balance of convenience clearly favours the granting of the relief sought for the above reasons.

² *CanWest*, at para 21. See also *Nortel* at paras. 7, 13-15.

25. Proposed Representative Counsel has extensive experience representing employees and retirees in insolvency and bankruptcy matters and I am satisfied that the firm is an appropriate Representative Counsel here. No other Representative Counsel already been appointed, in the appointment sought here is supported by the Proposal Trustee as well as the Debtor .
26. The proposed Non-Union Employee Representative, Mr. Willems, is also appropriate. He resides in the jurisdiction, is a former employee and was an employee for a significant period of time of approximately 32 years from January 11, 1991 until his termination on September 15, 2023.
27. I am satisfied that the reasonable legal costs of Representative Counsel should be borne by Metroland. Again, and while not determinative, I observe that both Metroland and the Proposal Trustee support this term.
28. In sum, I am satisfied that the *CanWest* factors are satisfied here and that there will be significant benefit to the Non-Union Employees as well as the Debtor and all stakeholders if the relief being sought is granted.
29. Order to go in the form signed by me, which is effective immediately and without the necessity of issuing and entering.

Olson, J.

This is **Exhibit "C"**

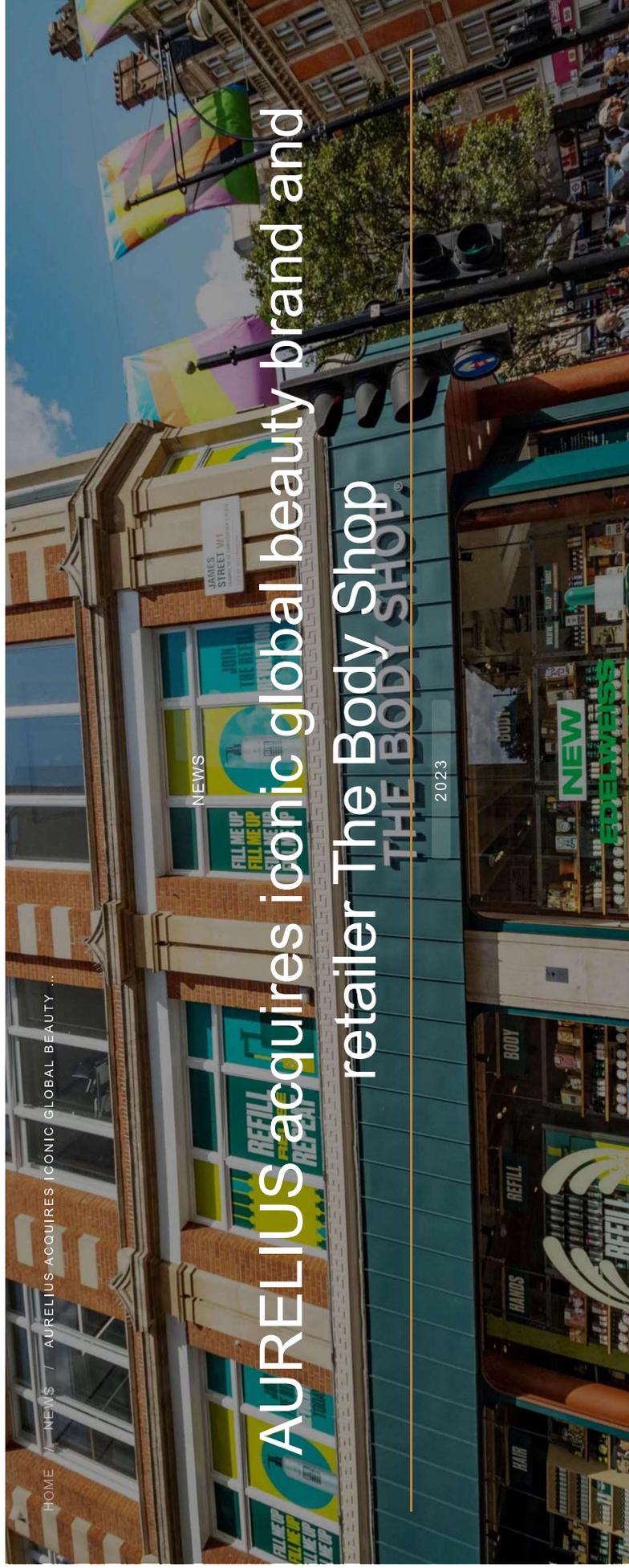
referred to in the Affidavit of Service of Stephanie Hood

sworn before me this 12th day of April, 2024.

Abir Shamim (LSO# 88251V)

Abir Shamim (LSO# 88251V) (Apr 12, 2024 16:49 EDT)

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

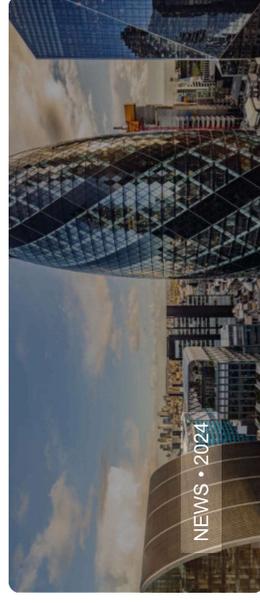


AURELIUS acquires iconic global beauty brand and retailer The Body Shop

2023

- Opportunity to re-energise an iconic global beauty and personal care brand with impressive consumer recognition
- Trailblazer which has set the standard for beauty brands in minimising environmental impact, maximising social benefits and ensuring animal welfare
- AURELIUS' operational taskforce to partner with the highly experienced management team to optimise operations and develop the offering across channels

Recent News



Luxembourg/Munich, November 14, 2023 – AURELIUS announces the acquisition of The Body Shop International Limited (The Body Shop) from Natura & Co S.A (NYSE – NTCO);

B3 – NTC03). The iconic global beauty brand is renowned for its heritage in cruelty-free and ethical beauty products. It is an omni-channel retailer with its own stores, e-commerce sites, international franchises and wholesale customers. The transaction is expected to close in December 2023, subject to approval by the relevant competition and regulatory authorities. The purchase agreement values The Body Shop at £207m, including an earn-out of £90m, subject to certain conditions.

The Body Shop, which is headquartered in London and employs c. 7,000 staff, has operations in 89 markets with over 900 company-owned stores in 20 countries and partnerships with head franchisees who operate c. 1,600 franchised stores in a further 69 geographies. The brand's product portfolio comprises natural ingredient-based bath & body, skin care, fragrance, hair care, make-up and gifting. The Body Shop has been B-Corp certified since 2019, further demonstrating its leadership in ethical sourcing, sustainability, and social consciousness.

As experts in complex transactions, with a strong focus on driving operational improvements, AURELIUS will work with the management team to drive operational excellence across the group, leveraging its expertise and experience in the omni-channel retail and wholesale markets. This, combined with The Body Shop's iconic brand and heritage in socially responsible products, means that despite the challenging retail market there is an opportunity to re-energise the business to enable it to take advantage of positive trends in the high-growth beauty market.

In recent years, AURELIUS has completed many complex corporate carve-outs across Europe, including the acquisitions of renowned brands such as Footasylum from JD Sports and LSG Sky Chefs (LSG Group) from Deutsche Lufthansa AG.

"We are delighted to be undertaking this acquisition of an iconic British brand, which pioneered the cruelty-free and natural ingredient movement in the health and beauty market. We look forward to working with CEO Ian Bickley and his team to drive operational improvements and re-energise the business, and help to deliver the next chapter of success", comments Tristan Nagler, Partner at AURELIUS Investment Advisory.

Ian Bickley, CEO of The Body Shop, added, "Today, we celebrate a truly historic moment for The Body Shop as we join forces with Aurelius to begin a new chapter, allowing us to continue building the relevancy of this global brand for future generations. With a presence in over 80 countries, The Body Shop is not only a beauty brand, but also an iconic social business that

AURELIUS Finance Company provides GBP 18.5m Refinancing Facility to Trutex Limited

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AURELIUS Equity Opportunities extends the acceptance period of the Public Share...

Grünwald, 13 February 2024 – The general partner of AURELIUS Equity Opportunities SE & Co. KGaA (ISIN DE000A0JKZ8, "Company") has...



AURELIUS Equity Opportunities announces public share purchase offer

Grünwald, January 15, 2024 –AURELIUS Equity Opportunities SE & Co. KGaA (ISIN

has captured hearts in nearly every corner of the world. We are deeply grateful to Natura &Co for their unwavering support and I'm looking forward to working hand in hand with AURELIUS as we adapt and flourish in new global retail environments, always with an eye on sustainable and profitable growth."

The Body Shop was founded in 1976 by Anita Roddick, with a small shop in Brighton/UK. At the heart of her vision stood an ethical approach to business, a purpose that was trail-blazing at the time and remains highly relevant today. The Body Shop does not test its products on animals and strives to work fairly with farmers and suppliers. By following this approach to business, The Body Shop has been a pioneer in corporate social responsibility.

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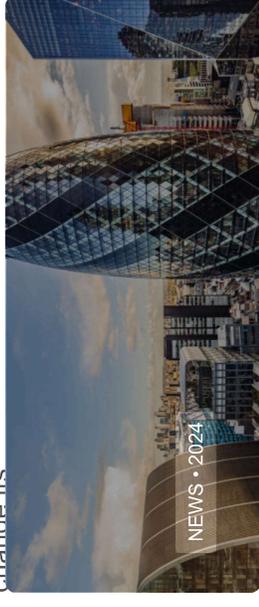
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DE000A0JK2A8, the "company") had resolved to change its



AURELIUS Finance Company – 2023 Recap, New Funding Line in 2024

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This is **Exhibit "D"**

referred to in the Affidavit of Service of Stephanie Hood

sworn before me this 12th day of April, 2024.

Abir Shamim (LSO# 88251V)

Abir Shamim (LSO# 88251V) (Apr 12, 2024 16:49 EDT)

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

Body Shop International PLC

How The Body Shop unravelled in 3 months

Private equity firm Aurelius stunned the high street by placing UK retailer into administration soon after buying it

Will Louch and Laura Onita FEBRUARY 16 2024



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As shoppers were hitting the high street in the weeks leading up to Christmas last year, private equity firm Aurelius was eyeing a bargain of its own.

The London-based fund manager announced in mid-November that it had scooped up British ethical beauty brand [The Body Shop](#), buying it from Brazilian cosmetics conglomerate Natura in a £207mn deal, of which £90mn would be payable in five years.

To do this it had invested less than £20mn of equity, according to a person familiar with the firm.

Despite the buyout industry's chequered record of investing in the UK high street, the chain's then-chief executive Ian Bickley had warm words for its new owner, saying he was "looking forward to working hand in hand with Aurelius . . . always with an eye on sustainable and profitable growth".

Aurelius partner Tristan Nagler added that the firm wanted to "[work with Bickley] and his team to drive operational improvements and re-energise the business".

Yet just three months after the deal was announced and six weeks after it was completed, Bickley is gone, The Body Shop's international network has been dismantled and its crown jewel, the UK business, has [collapsed into administration](#) – putting more than 2,000 jobs in more than 200 stores at risk.

Left behind is a labyrinthine web of corporate entities, complex financing arrangements and angry former The Body Shop employees, some of whom say they are owed money.



The potential collapse of the chain would put more than 2,000 jobs in the UK at risk © Daniel Leal/AFP via Getty Images

The turn of events also threatens to further tarnish private equity's already complicated relationship with the high street, after investors presided over the failure of UK retailers such as Phones4U and Debenhams.

The Body Shop's problems predate Aurelius's ownership with competition increasing from brands such as Lush and L'Occitane, as well as other beauty lines that developed their own products marked as ethical or sustainable.

Founded in 1976 by the late Anita Roddick and her husband Gordon, the company became famous for advocating a form of ethical capitalism in which businesses could make money and do good at the same time. It was bought by French cosmetics giant L'Oréal in 2006 and later acquired for £880mn by Natura in 2017. Last year it appointed bankers to sell The Body Shop, later admitting that it did not have the “retail expertise” to revive the retailer across the globe.

[Aurelius](#), which acquired sportswear retail chain Footasylum and the owner of LloydsPharmacy in 2022, was confident in its ability to run companies in tricky situations and that it would be able to lavish more time on the business than Natura had done. But its vision for The Body Shop was hardly groundbreaking: to build out the company’s digital presence and restore the brand’s status as a champion of ethical capitalism.

The cracks were quick to emerge, with trading far worse than expected over the critical festive period when Natura remained in charge, according to the person close to Aurelius. “Performance was worse than our worst-case assumptions,” they insisted. The Body Shop also discounted heavily during the festive period, hurting its profit margins.

This has subsequently led to finger-pointing over whether Aurelius had sufficient time to conduct proper due diligence on how the asset was performing between when the deal was announced in November and completion on December 31, the person added.



Anita Roddick set up The Body Shop in 1976. It was bought by L'Oréal in 2006 and then acquired by Natura in 2017 © Jacques M. Chenet/Corbis via Getty Images

A handful of private equity and hedge funds evaluated bids, but the process revealed in more detail the problems the retailer was facing. “We thought it was a mess,” one person who looked at the asset said.

Part of the problem was that the chain, which had 2,500 shops in more than 70 countries when Aurelius agreed its deal, was present in too many markets, some of which didn't make money.

The UK business — along with the Canadian and Australian operations — was the most attractive, people familiar with the matter said. Even so, the UK entity lost £71mn in 2022, down from a £10mn profit the previous year, according to its most recent UK filings.

Following the shock of poor Christmas trading, Aurelius was quick to protect its investment in the struggling company.

The Body Shop took out a series of loans from Aurelius around the time it took over the business, according to corporate filings. These pledged some of the company's most valuable assets including reams of its intellectual property and valuable real estate to its new owner, the filings show, meaning Aurelius would have a claim over them in case of a collapse.

The retailer also offered shares in its Canadian subsidiary — a comparatively strong performing unit — as collateral to borrow an unspecified amount from its new backer.

Aurelius was now the company's owner and a significant creditor.

The firm considers the arrangement standard practice and protection in high-risk investments, according to the person close to Aurelius. But it meant that Aurelius now ranked ahead of other creditors if the company ran into trouble. If the company went bankrupt, then Aurelius would have claims over The Body Shop assets which were worth similar amounts to the equity the firm invested, they added.

In late January, the firm agreed a deal to sell a chunk of its lossmaking international business, including France and Germany, to a family office. The person close to Aurelius said the family office was not a connected party but it had collaborated with and sold businesses to the family office before. It had not profited from the divestments, they added.

The move was hailed by its owner as “another decisive step towards delivering a strong turnaround strategy for The Body Shop”.

The Body Shop has since also filed for bankruptcy in Germany, where it employed 350 staff in 2021.

Behind the scenes, more problems were appearing. A group of senior executives including Bickley and its general counsel left the business, while details of a dispute with a separate group of former senior employees emerged after they did not receive any payment of non-vested shares they owned in former owner Natura.

Their fight is now with Aurelius as that agreement transferred with the sale, according to one person with knowledge of the matter. The former employees were told payment would be made in January, according to people familiar with the matter. By February, they were still waiting — prompting some of the claimants to hire lawyers, one of the people said.

On Tuesday Aurelius appointed FRP Advisory as administrators for The Body Shop's UK business. This means outstanding management bonuses will be treated like all other financial obligations by the administrator, the person close to Aurelius said.

FRP is expected to market The Body Shop to potential buyers once it stabilises the business.

As a creditor, Aurelius is in pole position to buy back a slimmed-down business, shorn of its liabilities, with other interested parties likely to have to pay more than what Aurelius is owed for it, one restructuring expert said.

"This was not plan A," the person close to Aurelius said. "This was not the intention."

Natura did not respond to requests for comment over the claim that the sales process had been rushed, how heavily The Body Shop had discounted over the festive period and the ultimate shape of the deal.

If Aurelius is to achieve what it said it would do and restore The Body Shop to its former glory, the path to doing so is even more complex, although the firm is unlikely to lose money.

Russell Pointon, director of consumer at investment research company Edison Group, said: "Now will come a painful cost-cutting exercise that will surely extend the brand's shelf life but likely come at the expense of a sizeable number of the company's UK workforce."

Additional reporting by Olaf Storbeck

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This is **Exhibit "E"**

referred to in the Affidavit of Service of Stephanie Hood

sworn before me this 12th day of April, 2024.

Abir Shamim (LSO# 88251V)

Abir Shamim (LSO# 88251V) (Apr 12, 2024 16:49 EDT)

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



**ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: BK-31-3050418

DATE: March 4, 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: **In the Matter of the Notice of Intention to Make a
Proposal of
The Body Shop Canada Limited**

BEFORE JUSTICE: **Justice Osborne**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT of OSBORNE, J.:

1. The Body Shop Canada Limited (“TBS Canada” or the “Company”) seeks an order:
 - a. expanding the scope of the stay of proceedings under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c.B-3 (the “*BIA*”) by way of an order directing the continuation of services and certain other protections in respect of the Company;
 - b. granting an administration charge;
 - c. approving an indemnity and granting a priority charge with respect thereto to indemnify the director and officers of the Company;
 - d. directing 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 same to the Company; and
 - e. extending the time for the Company to file a proposal under the *BIA* (or seek a further extension) by 19 days from the current expiry date, through to April 16, 2024.
2. I granted the requested order at the conclusion of the hearing of this motion earlier today, with reasons to follow. These are those reasons.
3. Defined terms in this Endorsement have the meaning given to them in the motion materials and/or the First Report of the Proposal Trustee, unless otherwise stated.
4. TBS Canada relies on the Affidavit of Mr. Jordan Searle sworn March 1, 2024, together with exhibits thereto, and the First Report. Mr. Searle is the General Manager, North America and the sole director of TBS Canada. He is also an officer and director of the Company’s US affiliate.
5. The Service List, including for greater certainty The Body Shop International Limited (the “UK Parent”), Aurelius Group, the entity that recently acquired the UK Parent (“Aurelius”), and the Administrator who was appointed effective on February 13, 2024 (the date on which the UK Parent filed for administration in the United Kingdom), has been served. I pause to observe that none of the UK Parent, Aurelius or the Administrator has elected to be present in Court today. The hearing proceeded remotely via Zoom specifically to facilitate the convenient appearance of those located in other jurisdictions if they wished to attend.
6. As a result of discussions that occurred over the last few days and up until the hearing today between and among TBS Canada, the Proposal Trustee and key stakeholders including the landlords referred to below and represented in Court today as stated above, the relief sought today was unopposed and proceeded on the consent of all parties present and with the strong support and recommendation of the Proposal Trustee.

7. The circumstances giving rise to both this proceeding generally, and the specific relief sought today, are somewhat unusual. It is my expectation that such circumstances will remain relatively unusual.
8. TBS Canada is a retailer that sells cosmetics, skincare and perfume products through 105 retail stores located across Canada and via an e-commerce platform, branded as “The Body Shop”. It filed a Notice of Intention under the *BIA* last week on March 1, 2024.
9. The circumstances leading to the filing of that NOI were both unfortunate and necessarily rushed. They are explained further below.
10. TBS Canada is incorporated under the *Canada Business Corporations Act*. It is owned by the UK Parent, and its head office is located at Toronto. The majority of its 105 stores are located in Ontario as are the majority of its 704 employees. None of the employees is unionized.
11. The Company’s secured creditor is Aurelius IV UK AcquiCo Seven Limited (“Aurelius Seven”). It has a security interest over all of the assets and property of the Company pursuant to a general security agreement registered under the personal property security regimes in each province and territory across Canada. It also owns, indirectly, all of the outstanding shares of the parent company of the Company, the UK Parent.
12. Aurelius, indirectly through related entities, acquired the Company only a few months ago in December, 2023. Aurelius Seven entered into a loan agreement with the UK Parent pursuant to which it made funds available to the UK Parent for the purpose of assisting the purchaser and the acquisition (the “Aurelius Purchaser”) to fund the acquisition. The acquisition, the loan agreement and the terms and circumstances of each are more fully set out in the Searle Affidavit and the First Report.
13. The obligations under that loan agreement were guaranteed by TBS Canada, and TBS Canada granted Aurelius Seven security over all of its assets. The guaranteed obligations are payable on demand.
14. I pause to observe that it is not clear to me from the motion materials, nor as counsel confirmed at the hearing of this motion is it clear to TBS Canada, what if any consideration was received by TBS Canada in exchange for the guarantee obligations. That is for another day.
15. On February 13, 2024, FRP Advisory were appointed jointed administrators of the UK Parent in the United Kingdom.
16. Historically, the UK Parent has been in full control of much of the business functions of TBS Canada including inventory, human resources, accounts payable and cash management. Effectively, the UK Parent has regularly completed a cash sweep of the accounts of TBS Canada with the result that all funds and liquidity of TBS Canada were remitted to the UK Parent, in return for it paying the payables, including rent and payroll obligations, of TBS Canada.
17. Specifically from November 1, 2023 until February 12, 2024 (the day prior to the UK Parent being placed into Administration), the UK Parent continued to sweep receivables from the bank accounts of the Company held at HSBC Bank Canada. However, during the same period, the UK Parent failed to remit payments in full to the vendors and landlords of the Company as it had done previously in exchange for sweeping the cash accounts.
18. Nor did the UK Parent give any notice whatsoever, formal or informal, to TBS Canada of its intention to file for insolvency protection.
19. As a result, and as more fully set out in the First Report of the Proposal Trustee, this caused the Company to incur debts in excess of \$3.3 million that it is unable to satisfy.

20. The Company has made requests to the UK Parent, the Administrator and Aurelius to return the funds that were swept, or in the alternative, to provide funding to enable TBS Canada to satisfy its outstanding obligations. The Company expressly advised those three entities that absent this assistance, the Company would be forced to seek insolvency protection. Those entities advised nonetheless that no funding support would be provided to TBS Canada and they refused to return the cash swept and retained by them.
21. The inevitable result was the filing of the Notice of Intention by TBS Canada on March 1, 2024 to obtain the benefit of a stay pursuant to the *BIA* and to provide the stability urgently required by the Company while it reviews and advances its options going forward.
22. The relief sought today follows on the unfortunate circumstances which have just unfolded, as described above.
23. As set out in the Searle Affidavit, the company has relied on its US counterpart, Buth-Na-Bodhaige Inc. (“TBS US”) for distribution and logistics services. Prior to the somewhat extraordinary events set out above, TBS US would receive inventory from TBS International on behalf of TBS Canada and hold it at its US Distribution Centre. It would then arrange for the distribution to customers for TBS Canada. TBS US also provides e-commerce services to TBS Canada and until recently fulfilled online orders also through its US Distribution Centre.
24. Also as more particularly set out in the Searle Affidavit, accounting and cash management functions for TBS US were, like those for TBS Canada, controlled by the UK Parent. The UK Parent acted in essentially the same manner with respect to TBS US as TBS Canada through continued cash sweeps but failed or refused to make cash available to TBS US or pay suppliers on its behalf, as had historically been done. The result was that on March 1, 2024, TBS US began shutting down its operations and implementing very significant employee terminations in the United States.
25. That is relevant to this motion because it has resulted in TBS Canada no longer having access to its e-commerce platform, the ability to ship to its wholesale partners (including Shoppers Drug Mart and amazon.ca) or its only means of receiving new inventory.
26. The total rent for all 105 retail stores across Canada is currently in arrears to the extent of approximately \$900,000, representing rent due for the month of February.
27. In addition to the secured debt owed to Aurelius as discussed above, there are also registrations against the Company in favour of Enterprise Fleet Management Canada in respect of company vehicles leased for certain employees, and HSBC. I pause to further observe that, at least today, it is unclear to TBS Canada and to the Proposal Trustee what the HSBC registrations relate to, and TBS Canada does not believe that any amounts are owing to HSBC with respect thereto.
28. The Company has numerous unsecured creditors, including trade creditors to which it owes approximately \$2.5 million, and the landlords, to which it owes, as noted above, approximately \$900,000 in the aggregate at present.
29. Since the filing of the NOI last week, the Company has identified 33 underperforming stores that it will wind down during these proceedings. In an effort to improve its liquidity, on March 1, 2024 TBS Canada sent disclaimers of the leases to landlords of the stores scheduled to be closed. Employee headcount reductions will likely be necessary in addition to the 20 head office employees terminated on March 1, 2024 and additional employee terminations related to the stores being closed.
30. Accordingly, the situation is dire and was entirely unexpected. Not only did the UK Parent fail to give TBS Canada any notice of its intention to file for insolvency protection, it has not been cooperative or responsive to requests for information and documentation since the filing of the NOI here in Canada.
31. As a result of all of the above, TBS Canada seeks the relief on this motion today.

32. The issue is therefore whether and the extent to which that relief should be granted. For the reasons set out below, I am satisfied that the relief as requested in the Notice of Motion should be granted.

Expansion of the BIA Stay of Proceedings and Related Relief: Continuation of Goods and Services; Prohibiting Disbursements from the HSBC Accounts; and Weekly Rent Relief

33. The Company seeks an expansion of the stay under section 69(1) of the *BIA* and related relief providing for the continuation of goods and services; prohibiting any disbursement of funds from the HSBC Accounts without the prior consent of the Company or the Proposal Trustee; and providing for the payment of rent on a weekly basis for the month of March, 2024, and bi-weekly thereafter.

34. I am satisfied that I have the discretion to grant relief of this nature in the circumstances. As stated by the Supreme Court of Canada in *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 (“*Century Services*”) at para. 15:

As I will discuss at greater length below, the purpose of the *CCAA* - Canada’s first reorganization statute - is to permit the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets. Proposals to creditors under the *BIA* serve the same remedial purpose, though this is achieved through a rules-based mechanism that offers less flexibility. Where reorganization is impossible, the *BIA* may be employed to provide an orderly mechanism for the distribution of a debtor’s assets to satisfy creditor claims according to predetermined priority rules.

35. The relief sought on this motion would prohibit any person from discontinuing or interfering with or terminating the supply of goods or services to TBS Canada, provided however that no person shall be required to extend credit to the Company or be prohibited from requiring immediate payment for goods and services provided after the Filing Date.

36. Without question, this relief is more typically granted to debtors under the *CCAA*. However, and as contemplated in *Century Services*, Canadian courts have granted such relief in the context of NOI proceedings where the expanded stay and related relief is necessary for the debtor to continue operations in the ordinary course while it reviews and advances restructuring options: *Scotch & Soda Canada Inc. (Re)*, Endorsement of Justice Steele dated May 16, 2023 (Court File No. BK-23-02941767-0031) (Ont. S.C.J. [Commercial List]) at para. 10, BOA, Tab 12 (“*Scotch & Soda*”); and *Bad Boy Furniture Warehouse Limited et al. (Re)*, Endorsement of Justice Penny dated November 10, 2023 (Court File No. BK-23-03008133-0031) (Ont. S.C.J. [Commercial List]) at para. 8, BOA, Tab 2.

37. I am satisfied that the ability of the Company today to continue to operate in the ordinary course is contingent on its ability to continue to receive goods and services from its suppliers, without disruption. The practical alternative, if this relief is not granted (and the same is true with respect to the heads of relief discussed below), is that TBS Canada will have to shut down all operations effective immediately, close all 105 stores and terminate all employees, thereby materially impairing, if not foreclosing altogether, any possibility of a maximization of possible outcomes for employees and other stakeholders.

38. Accordingly, I am satisfied that an order for the continuation of goods and services is appropriate here.

39. Similarly, the relief in the form of an order prohibiting HSBC (or any other person) from dispersing any funds in the HSBC accounts without the prior consent of the Company or the Proposal Trustee will ensure that the Company can access and administer the HSBC Accounts without interference from the UK Parent.

40. I am satisfied that today that such relief is appropriate here. HSBC has not filed any materials nor made submissions to the Court today, although served with the motion materials. Moreover, and more fundamentally, although TBS International has assured TBS Canada that it will not sweep the HSBC

Accounts, it has not provided those assurances in writing. I observe that it was those very same cash sweeps that caused the liquidity crisis forcing the filing of the NOI in the first place.

41. Finally, TBS Canada is not aware of any documentation evidencing the Cash Pooling Arrangement, or its purported termination. To be clear, as of today TBS Canada has been unable to locate (indeed, if such exists), any written agreement permitting and authorizing the UK Parent to conduct the cash sweeps referred to above, or to unilaterally terminate the payment of suppliers on behalf of TBS Canada while purporting, at least for the period referred to above, to continue to transfer cash pursuant to the sweeps.
42. In these circumstances, which are odd and unusual (to put it mildly), and particularly in the absence of any opposition from any of the UK Parent, Aurelius or HSBC but with the support of the Proposal Trustee, I am satisfied that this relief is appropriate.
43. Similarly again, TBS Canada is requesting approval to pay rent for the period commencing from the Filing Date on a weekly basis for March, 2024 and on a bi-weekly basis thereafter. Again, this request enjoys the support of the Proposal Trustee.
44. The Cash Flow Forecast for the period ending May 24, 2024 demonstrates that the requested rent relief is consistent with the purpose of proposals under the *BIA* in that it preserves required liquidity and ensures that the Company can satisfy its priority obligations for payroll and sales taxes while having the flexibility required to explore a going concern solution.
45. More specifically, and as observed by the Proposal Trustee in its First Report, the relief with respect to the frequency of rent payments and the period to which they relate are critical to maintaining liquidity absent interim financing. The company would be unable to fund an entire month of rent in advance.
46. As observed by Morawetz, J. (now the Chief Justice of this Court) in *Kitchener Frame Limited (Re)*, 2012 ONSC 234 at para. 70:

The object of proposals under the *BIA* is to permit the debtor to restructure its business and, where possible, avoid the social and economic costs of liquidating its assets, which is precisely the same purpose as the *CCAA*. Although there are some differences between the two regimes and the *BIA* can generally be characterized as more “rules-based”, the thrust of the case law and the legislative reform has been towards harmonizing aspects of insolvency Law, and to the two statutory schemes to the extent possible, encouraging reorganization over liquidation.
47. Simply put, the requested rent relief does exactly what the Court in that case contemplated, and such relief is required if the Company is to be able to maintain the requisite liquidity to fund ongoing operations without obtaining interim financing.
48. The draft order provides, with the consent of the landlords, that the rent will be paid by the Company on a weekly basis (in advance). The typical language in orders made in proceedings under the *CCAA* provides for bi-weekly payments of rent. The Proposal Trustee is satisfied that an order authorizing weekly payments is necessary to appropriately preserve the liquidity of the Company.
49. Without question, this relief is unusual, and will in all likelihood remain so. However, I am satisfied that such unusual relief is appropriate in the equally unusual circumstances of this case where the NOI filing was so unanticipated only a short period of time ago. Moreover, and as noted above, declining to grant this relief would have immediate and negative effects on the Company and all of its stakeholders including employees.
50. I am satisfied that the granting of this relief does not represent a preference in the circumstances of this case. Absent any relief, the contractual provisions of the leases with the landlords require a full month’s

rent to be paid, and paid in advance. The Cash Flow Forecast is clear that the Company lacks the liquidity to fulfil those existing contractual obligations.

51. Moreover, the proposed charge in favour of the landlords (the “Landlord Charge”) secures only 50% of the amounts outstanding at any time (i.e., one half of the one month’s rent payable pursuant to the leases). It is temporally limited and has effect only until the earlier of April 16, 2024 (the day following the extended date upon which the Company must file a Proposal), or the effective date of any disclaimer of each lease pursuant to section 65.2 of the *BIA* (i.e., 30 days after the *BIA* notices were sent). The Landlord Charge shall have a priority but rank behind the Administration Charge and the D&O Charge.
52. Finally, it is important to note that this relief is made with the express consent of the landlords referred to at the outset of this Endorsement. Accordingly, and to be clear, my decision to recognize this agreement and the compromise underlying it (as reflected in paragraphs 9 and 16 of the draft order) should not be taken as any finding or statement that such relief would be granted if it were contested, or indeed in any circumstances that were not so unusual and unforeseen as are those before me today.
53. Counsel for the Landlords present or represented today (Oxford Properties Group Inc. and its affiliates, Crombie Property Holdings Limited, The Cadillac Fairview Corporation Limited and its affiliates, and RioCan Real Estate Investment Trust and Cushman & Wakefield Asset Services ULC, have been clear in their submissions today that their consent to this agreement represents the unique facts and urgent circumstances facing TBS Canada and its approximately 800 employees, and reflects the spirit of cooperation while all parties assess the situation, and would not be given in usual circumstances.
54. On this basis, but recognizing that the rent relief preserves the liquidity of the Company here, I am satisfied that the relief is appropriate.

The Administration Charge and the Director’s and Officers’ Charge

55. The Company requests an Administration Charge in favour of the Proposal Trustee, its counsel and counsel to the Company in the amount of \$700,000. The authority for this Court to grant such a charge is found in section 64.2 of the *BIA*. Administration charges have been approved in other proposal proceedings where, as I am satisfied is the case here, the participation of the parties whose fees are to be secured is necessary to maximize the chances of a successful proceeding under the *BIA*. I observe that none of the proposed beneficiaries have retainers. See: *Scotch & Soda* at para. 13-18; *Mustang GP Ltd., (Re)*, 2015 ONSC 6562 at para. 33; and *Colossus Minerals Inc., (Re)*, Endorsement dated February 7, 2014 (Court File No. CV-14-10401-00CL) (“*Colossus*”) at para. 11-15.
56. The quantum of the proposed Administration Charge was calculated in consultation with the Proposal Trustee who is of the view that the amount is reasonable and appropriate. It will rank ahead of the D&O Charge, the Aurelius Security and HSBC Registrations but behind the Enterprise Security. Again, each of Aurelius, Enterprise and HSBC received notice of this motion. I further observe that the Aurelius Security is not enforceable today according to its terms and no demand has been sent to the Company, and as noted above the Company is of the view that there is no indebtedness secured by the HSBC Registrations in any event.
57. I am also satisfied that the Director’s and Officers’ Charge should be granted up to a maximum of \$2,100,000. It would rank behind the Administration Charge and Enterprise Security but ahead of the Aurelius Security and the HSBC Registrations.
58. The quantum reflects the statutory obligations for which the one director (the affiant on this motion) and officers are liable in the event the Company does not pay them, such as unpaid vacation pay, payroll and sales taxes.

59. Jurisdiction to approve such a charge flows from section 64.1 of the *BIA*, although there is a restriction on that jurisdiction found in section 64.1(3) in that the court may not make the order if in its opinion the person could obtain adequate indemnification insurance for the director or officer at a reasonable cost.
60. TBS Canada purportedly has coverage under a global director's and officers' insurance policy held by TBS International in the UK, which is said to apply to the officers and directors of its subsidiaries. However, the Company does not have access to the wording of the UK Policy, despite repeated requests for same from the UK Parent. Nor has it received any proof that premiums have been paid and that the policy is in force.
61. In the circumstances, and unless and until it is clear that adequate insurance is available, the charge is appropriate. I observe that in *Colossus*, such a charge was approved in circumstances that were similar, in that there was uncertainty as to whether the existing insurance in that case was sufficient to cover all potential claims.
62. In this case, it is unclear whether there is any applicable insurance, and if there is, what the terms or limits are. Moreover, the proposed charge will apply only to the extent that the director and officers lack sufficient coverage under the UK Policy or the company is unable to satisfy its indemnity obligations. The Company's sole director, the affiant on this motion Mr. Searle, and the officers, have advised that they will not continue their involvement with TBS Canada absent the protection. On the other hand, I am satisfied that their continued involvement is, as submitted by the Company and supported by the Proposal Trustee, critical to the success of these proceedings.
63. I further observe that the proposed charge applies only to claims or liabilities incurred after the Filing Date and does not apply to misconduct or gross negligence.
64. The Proposal Trustee has confirmed the proposed quantum is reasonable.
65. Both charges are approved.

Relief Directing the Return of Books and Records and other Property

66. The Company seeks an order directing all persons in possession of books, records and other property belonging to it, to produce or deliver same promptly to the Company upon the request of either the Company or the Proposal Trustee.
67. Jurisdiction to make such an order is found in section 164(1) of the *BIA*. It should be noted that s. 164 does not according to the language of that subsection apply to Division I Proposals under Part III of the *BIA*. However, section 66(1) provides that "All the provisions of this Act, except Division II of this Part, insofar as they are applicable, apply, with such modifications as the circumstances require, to proposals made under this Division."
68. As observed by the Federal Court of Appeal in *Hancor Inc. v. Systèmes de drainage modernes Inc.*, 1995 CarswellNat 1275, [1996] 1 F.C. 725 (FCA), section 66(1) "invit[es] the courts to participate in a process of intelligent harmonization and adaptation" and permits the court, on a case-by-case basis, to adapt and apply sections of the *BIA* to an NOI proceeding where appropriate.
69. I am satisfied that, when read together (as they should be), sections 66(1) and 164(1) permit such an order in an NOI proceeding in order that the objective of section 164 can be achieved. That objective includes ensuring that the trustee can fulfil its responsibilities to investigate and value, or otherwise establish, the assets and the liabilities of the bankrupt; and to otherwise discharge its duty to the creditors of the bankrupt to value and realize the value of the estate, can be achieved. See: *Osztrovics (Trustee of) v. Osztrovics Farms Ltd.*, 2015 ONCA 463.

70. While certainly, a Proposal Trustee as here, and a Trustee in Bankruptcy, are different officers of the Court, each has duties to creditors to protect the assets of the debtor and to realize on their value. It is “just as essential that a trustee have recourse to the books and other documents of the company in the administration of a proposal as it would in the case of ... a bankruptcy”: *Fundy Forest Industries Ltd. (Re)*, 1972 CarswellNB 14, 21 C.B.R. (N.S.) 170 (NB SC) at para. 8.
71. In this particular case, one effect of the Cash Pooling Arrangement historically performed by TBS International, and the cash sweeping arrangements discussed above, is that the UK Parent, Aurelius and the UK Administrator are in possession of certain of the Company’s accounting and other records.
72. Without those, the Company cannot perform many of the human resource, accounts payable and accounts receivable functions previously performed by TBS International and integral to the ongoing business of the Company. I am satisfied that this is a case that warrants the “intelligent harmonization of sections 164(1) and 66(1), and moreover that the order requiring production of the books and records achieves that harmonization. In short, it is obvious to me that the Company requires access to documentation that is clearly relevant.

Extension of Time to File a Proposal

73. Section 50.4(8) of the *BIA* requires the Company to file its proposal within 30 days unless extended. The extension requested here is of 19 days, well within the maximum of 45 days permitted by section 50.4(9). The Court must be satisfied that:
- a. the insolvent person has acted, and is acting, in good faith and with due diligence;
 - b. the insolvent person would likely be able to make a viable proposal if the extension being applied forward were granted; and
 - c. no creditor would be materially prejudiced if the extension being applied for were granted.
74. I am satisfied that each of the factors has been met here. This conclusion is fully supported by the Proposal Trustee. The First Report sets out the particulars justifying this conclusion, the highlights of which are summarized above.
75. I am satisfied that the company is working in good faith and in extremely challenging and unforeseen circumstances. The extension is clearly necessary to give the Company breathing room while it attempts to organize its affairs and stabilize operations. I am further satisfied that the extension will increase the likelihood of a viable proposal and that no creditors are prejudiced by the extension of just over two weeks. I am further satisfied that this temporally limited extension minimally impacts creditors while at the same time provides the Company with the time it needs.

Relief, Disposition and Comeback Hearing

76. For all of the above reasons, the motion is granted. Order to go in the form signed by me today which has immediate effect without the necessity of issuing and entering.
77. Given the stay extension until April 16, 2024, this matter will return before me on April 15, 2024 commencing at 10 AM.
78. In conclusion, I echo the observations I noted above, and in particular three things. First, the filing of the NOI was unanticipated, there having been no notice to TBS Canada of such an intention on the part of the UK Parent or Aurelius. Second, the filing of the NOI was brought about by the unilateral action of those same parties in continuing to sweep the cash accounts of TBS Canada, yet failing or refusing to pay the accounts of suppliers to TBS Canada. Third, there has to date been a lack of transparency and cooperation with the Company and the Proposal Trustee.

79. While there may be many substantive issues between and among the parties to be determined or resolved in the course of this proceeding, as a reflection of the principles of comity and the coordination of proceedings in different jurisdictions for the benefit of stakeholders, this Court would expect, and in fact does expect, the cooperation of the UK Parent, Aurelius and the Administrator with matters including but not limited to the production of books and records of the Company. Things like production of basic yet fundamental agreements and policies, let alone even clear and unequivocal confirmations regarding the existence of same, should not require the intervention of the Court in circumstances such as are present here.

A handwritten signature in black ink, appearing to read "Osborne, J.". The signature is written in a cursive style with a large, looped initial "O" and a distinct "J" at the end.

Osborne, J.

This is **Exhibit "F"**

referred to in the Affidavit of Service of Stephanie Hood

sworn before me this 12th day of April, 2024.

Abir Shamim (LSO# 88251V)

Abir Shamim (LSO# 88251V) (Apr 12, 2024 16:49 EDT)

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

March 14, 2024

BY EMAIL

Koskie Minsky LLP
20 Queen Street West
Suite 900, Box 52
Toronto, ON M5H 3R3
ahatnay@kmlaw.ca

Attention: Andrew Hatnay

Dear Andrew,

The Body Shop Limited Canada (the “Company”) - NOI Proceedings

I am following up on our recent call of March 11, 2024.

As I advised in that conversation, my client is of the view that the appointment of Representative Counsel for terminated employees is not necessary and would not be beneficial to the restructuring proceedings. In fact, we are of the strong view that it would impede the case, impact the Company's liquidity position and reduce overall recovery to creditors.

As we advised both you on the call, and the Court on our March 4, 2024 attendance, the Company is still in the process of analyzing next steps to determine whether the business can be salvaged in Canada. In his endorsement, Justice Osborne described the Company's situation as “dire” and “entirely unexpected”. He further noted that but for the relief granted in his endorsement, the Company would “have to shut down all operations effective immediately, close all 105 stores and terminate all employees, thereby materially impairing, if not foreclosing altogether, any possibility of a maximization of possible outcomes for employees and other stakeholders”. The Company's circumstances are indeed, dire. Unlike the Metroland precedent that you referred, there is currently nothing to administer in respect of the terminated employees.

Since there has been no decision to wind-up, terminated employees are not currently entitled to benefits under the *Wage Earner Protection Program Act*. If the terminated employees do become eligible for the Wage Earner Protection Program (“**WEPP**”), Alvarez & Marsal Canada Inc. (“**A&M**”) as Proposal Trustee is well positioned to assist the employees with their claims as they have done in the restructuring proceedings set out in the chart below. In fact, it is precisely A&M's extensive experience in dealing with employee matters in retail restructurings that led the Company to retain them as financial adviser and ask the Court to appoint A&M as Proposal Trustee.

DAVIES

The following chart sets out a short summary of select recent cases A&M has administered WEPP claims on behalf of employees:

Proceeding	Employee Assistance Provided
<i>Old MM GP Inc. (Re)</i> (formerly known as Mastermind Toys) Court File No. CV-23-00710259-00CL	WEPP application process for 80+ terminated employees.
<i>BBB Canada Ltd. (Re)</i> (formerly known as Bed, Bath and Beyond) Court File No. CV-23-00694493-00CL	WEPP application process for 180+ terminated employees.
<i>Nordstrom Canada Retail, Inc., Nordstrom Canada Holdings, LLC and Nordstrom Canada Holdings II, LLC (Re)</i> Court File No. CV-23-00695619-00CL	Administrator of an Employee Trust established by ParentCo. for approximately 2,200 terminated employees.
<i>DCL Corporation (Re)</i> Court File No. CV-22-00691990-00CL	WEPP application process for 50+ terminated employees.
<i>Inscap Corporation; Inscap (New York) Inc.; and Inscap Inc. (Re)</i> Court File No. CV-23-00692784-00CL	WEPP application process for 150+ terminated employees.
<i>Corner Flag LLC v. Erwin Hymer Group North America, Inc.</i> Court File No. CV-19-614593-00CL	WEPP application process for 700+ terminated employees.
<i>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.</i> Court File No. S1 GS 28446	WEPP application process for 200+ terminated employees.

Our current situation can be distinguished further from Metroland. In that case more than 600 employees were terminated from a workforce of approximately 1,000, leaving a large group of former employees with significant claims for severance, termination pay, and other amounts. In contrast, the Company has retained the majority of its workforce, and has terminated less than one-third of its employees, most of whom were hourly workers with minimal claims for accrued vacation pay and other benefits. For context, only approximately 70 of the terminated employees were salaried compared to approximately 150 terminated hourly employees out of a total workforce of more than 780 individuals as of March 1, 2024. The Company has also continued to pay the wages and benefits of its current

DAVIES

employees in the ordinary course. Additionally, in Metroland there was the added complexity of claims from both unionized and non-unionized employees, the administration of Metroland's Voluntary Departure Program and retired employees that had been owed amounts in respect of post-retirement benefits. None of these additional complicating factors are present in this case.

Considering the decision in *CanWest*, it is evident that appointing Representative Counsel for the terminated employees is not only unnecessary but will also add additional costs to an already cash-strapped business for the following reasons:

1. The terminated employees do not require Representative Counsel. The terminated employees already have the benefit of the protection and assistance of the Proposal Trustee, A&M, who is mandated by the court to monitor and report on the Company's affairs, and to communicate with and advise the creditors, including the terminated employees, of their rights and obligations in these proceedings. A&M has established a website for the creditors to access information and updates on the proceedings, and to submit inquiries and concerns. A&M also has experience and expertise in dealing with employee claims and WEPP applications, and can assist the terminated employees in filing and verifying their claims, if and when a claims process is ordered by the Court. Therefore, the terminated employees as a whole are not in need of additional representation by separate counsel, who would duplicate the role and functions of A&M and its counsel. Obviously if specific employees wish to retain counsel, they are free to do so.
2. It is premature and unnecessary to appoint Representative Counsel for the terminated employees as no claims process has been established. Therefore, there is no basis to determine the quantum or validity of the claims of the terminated employees, or their relative priority or ranking among the other creditors. Even if there was, as discussed above, A&M as Proposal Trustee is well positioned to manage that process. The appointment of Representative Counsel for the terminated employees at this stage would be hasty and unwarranted, as there is no evidence of any disputes or issues arising from the terminated employees' claims. In *CanWest*, the Court noted that prematurely appointing Representative Counsel was appropriate because the alternative was for the proposed Representative Counsel to adopt a "wait and see" approach wherein they would follow the Monitor's website and rely on notice to be given by the Monitor in the event that unsecured creditors have any entitlement. That is not the proposed approach in this case. As noted above, A&M has extensive experience in dealing with employee matters in restructurings, including in retail restructurings, and as such it is realistic to expect that it can be fully responsive to the needs and demands of all terminated employees and do so in an efficient and timely manner without the appointment of Representative Counsel.
3. The representation of the terminated employees by Representative Counsel would not benefit the Company or the other stakeholders, but rather would create additional costs and complications. The Company is already paying A&M and its counsel to look after the interests of all parties in these proceedings, and to facilitate a fair and efficient resolution of the Company's restructuring. The appointment of Representative Counsel for the terminated employees would increase the costs of the proceedings. The Company has limited cash and resources, and

DAVIES

cannot afford to incur unnecessary expenses or delays in these proceedings, which would jeopardize its ability to maximize value for all stakeholders.

4. There is no social benefit to the appointment of Representative Counsel for the terminated employees. The Company has not proposed or implemented any changes to the terms and conditions of employment of its current employees, and has not sought to compromise or reduce the claims of its former employees. The Company has complied with its obligations under the Bankruptcy and Insolvency Act (“**BIA**”) and the order dated March 4, 2024, and has acted in good faith and in the best interests of all parties. Therefore, there is no need for a Representative Counsel to advocate for the terminated employees’ interests or to protect their rights, as they are not currently at risk of being prejudiced or disadvantaged by the Company’s actions or proposals.
5. There would not be any efficiencies in facilitating and administering the proceedings by appointing Representative Counsel for the terminated employees. As noted above, the Company has not yet filed its proposal pursuant to section 50(1) of the BIA, and has not yet sought an order for a claims process in these proceedings. Therefore, there are no claims to streamline or adjudicate at this stage, and the terminated employees can contact (and have been contacting) A&M as a single point of contact for any information or assistance they may require. The appointment of Representative Counsel for the terminated employees would not simplify or expedite the proceedings, but rather would introduce another layer of communication and consultation, which could potentially create confusion or conflict among the parties.
6. The costs of the representation and the availability of funding are uncertain. We would object to both a proposal that the Company should pay for your fees and disbursements, or alternatively, that a charge should be granted in your favour over the Company’s assets, as both would unfairly burden the Company and the other creditors, and would reduce the funds available for distribution. Either option would unfairly deplete the Company’s limited cash and resources, and harm the other creditors by reducing the funds available for distribution. The Company has limited cash and resources, and cannot afford to pay for an additional counsel, who is not necessary or beneficial to the proceedings. The granting of a charge in favour of Representative Counsel is a discretionary and exceptional remedy, which should only be ordered when there is a clear and compelling need for the representation, and when there is sufficient equity or value in the assets to support the charge, without prejudicing the rights and interests of the other creditors. Neither of these conditions are met in this case.
7. The Company and the Proposal Trustee both oppose the appointment of Representative Counsel for the terminated employees. Additionally, we have consulted with other stakeholders who have also advised that they also do not support such an appointment.

Furthermore, you have also proposed that a financial advisor, Ernst & Young Inc. (“**EY**”), should be retained to assist you, without an explanation for how their fees would be paid. We object to this proposal as well, as it would further increase the costs and complications of the proceedings, and because EY is conflicted, as they were the former auditor of the Company.

DAVIES

In light of the foregoing, we intend to oppose your efforts to be appointed as Representative Counsel for the terminated employees in these proceedings, and we urge you not to proceed with your motion. There is no need or justification for such an appointment. It would be contrary to the principles and objectives of the BIA as well as detrimental to the interests of the Company and the other stakeholders.

If you proceed with a motion to be appointed, we will oppose your motion and seek costs.

Sincerely,

Natasha MacParland

Natasha MacParland

cc: Jane Dietrich, *Cassels Brock & Blackwell LLP*
Josh Nevsky, *Alvarez & Marsal Canada Inc.*
Natalie Renner, *Davies Ward Phillips & Vineberg LLP*
Jordan Searle, *The Body Shop Canada Ltd.*

This is **Exhibit "G"**

referred to in the Affidavit of Service of Stephanie Hood

sworn before me this 12th day of April, 2024.

Abir Shamim (LSO# 88251V)

Abir Shamim (LSO# 88251V) (Apr 12, 2024 16:49 EDT)

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



April 10, 2024

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

Via E-mail

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

Attention: Natasha MacParland

Dear Ms. MacParland:

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

Employee Claims

**Appointment of Representative Counsel for Canadian Terminated Employees
Our File No. 16425-240299**

We write in response to your letter of March 14, 2024.

Since our call with you on March 11, 2024, we have been retained and consulted by 40 terminated employees who are requesting our advice and representation in the insolvency proceedings of The Body Shop Canada Limited ("**TBS Canada**" or the "**Company**").

The employees who have retained our firm comprise of head office employees, store managers and retail staff who in turn, report back to many other employees who report to them. The employees have formed an ad hoc Employee Committee for the TBS Canada proceedings.

The employees who retained us, as well as all the other Canadian terminated employees, have claims against TBS Canada in respect of severance pay (under minimum standards legislation including mass termination notice, and the common law), terminated health benefits, unpaid group RRSP contributions, and other unpaid amounts (the "**Employee Claims**").

We estimate that the Employee Claims for all 220 Canadian terminated employees exceeds \$2 million.

The Canadian terminated employees are highly vulnerable in the TBS proceedings

The Canadian terminated employees are retail workers who had modest incomes and have limited financial means. The vast majority of the Canadian workforce is female, many are single mothers and we are told that at least three of the head office employees terminated by the Company were on maternity leave. TBS Canada also terminated the employment of individuals with physical and mental disabilities, many of whom were hired through the Company's Open Hiring accessibility practice. These employees are in a precarious financial situation and face several barriers to re-employment. Altogether, the terminated Canadian employees are a significant and vulnerable creditor group.

To add to the terminated employees' predicament and stress caused by the termination of their employment, and as we pointed out on our call with you on March 11, 2024, since TBS Canada elected the NOI Proposal process, the Wage Earner Protection Program ("WEPP") does not automatically apply and the terminated employees cannot obtain a WEPP payment which would pay each of them up to \$8507.66 and provide an immediate payment while the company's NOI proceeding continues indefinitely. In the Company's most recent motion record, served on April 8, 2024, we see that TBS Canada seeks an order of the Court to further extend the time for it to file a Proposal to May 31, 2024.

The employees are facing issues of significant legal and financial complexity in the proceedings of TBS Canada and are requesting our representation to assist them with respect to a number of issues, including:

- a) No payment of severance pay and other amounts, giving rise to claims that need to be calculated and determined accurately by their own representative;
- b) Developing a strategy so that they can obtain a WEPP payment;
- c) Each of the terminated employees is entitled to vote on a Proposal that TBS Canada brings forward in the future. While the terminated employees are willing to work with the Company and other stakeholders to formulate a viable Proposal, they need independent advice on the formulation of the terms of a Proposal, and how to vote well ahead of a creditors meeting;
- d) In the event that a Proposal fails and TBS Canada becomes bankrupt, the employees will need advice on advancing their claims in the bankruptcy process and the WEPP process, which would apply to the bankruptcy automatically; and,
- e) The purchaser of the TBS companies, Aurelius IV UK Acquico Eight Ltd. ("**Aurelius**"), a major private equity firm and claiming as a secured creditor, may assert a controlling role in the proceedings of TBS Canada, which further exposes the employees to prejudice and may have a negative impact on recoveries on their claims. We also note that after its acquisition, Aurelius immediately arranged to become a secured creditor by TBS Canada providing a secured guarantee to Aurelius for apparently no consideration, a transaction

Justice Osborne questioned at the first Court appearance and identified as an issue "for another day."

All the factors supporting the appointment of Representatives and Representative Counsel as set out by Justice Pepall, as she then was, sitting as the Team Leader for the Ontario Superior Court of Justice (Commercial List) in *Canwest Publishing Inc.*, 2010 ONSC 1328 ("**CanWest**"), and which has been approved in subsequent cases, are readily met in this case:

- a) The terminated employees are a vulnerable group who have limited means to individually calculate and advance their Employee Claims. Many are incurring financial hardship caused by the sudden loss of their jobs with TBS Canada without severance pay and without WEPP. They are not in the same position as the other sophisticated commercial creditors in this proceeding who can afford their own counsel with major law firms. They require the advice of their own counsel;
- b) If the Company intends to negotiate the terms of a Proposal with its creditors, Representative Counsel will streamline that process and promote efficiency by being the single point of contact for the terminated employees and provide consistent representation for the negotiation of the Proposal, as well as for the voting process;
- c) The appointment of Representative Counsel provides access to justice for the terminated employees and provides a social benefit to the Company who will have its terminated employees properly represented in its proceeding. We strongly disagree with your statement that the interests of the employees are not at risk of being prejudiced or disadvantaged by the Company's actions;
- d) Representative Counsel avoids a multiplicity of individual legal retainers that can lead to inconsistent positions and inefficient processes which can delay the Company's reorganization efforts and increase costs. Representative Counsel will also provide reliable information to the terminated employees with regards to the Employee Claims and their rights. We do not agree with your statement that the appointment of Representative Counsel will "potentially create confusion or conflict among the parties". On the contrary, leaving the employees unrepresented will not only cause more confusion and conflict within this proceeding by preventing a major creditor from properly participating in the proceeding, it would prejudice their right to full recovery on their claims, and undermine their collective voting rights;
- e) Representative Counsel would promote the Company's reorganization effort in an efficient manner and thereby contain the overall costs of the proceeding; and
- f) No stakeholder in these proceedings would be prejudiced by the appointment of Representatives and Representative Counsel. On the other hand, if no counsel is appointed, substantial prejudice will result to the terminated employees, the vast majority of whom will not have representation in the proceeding and whose claims will not be properly advanced and their rights will be prejudiced.

The Proposal Trustee is not a representative for the terminated employees

You say in your letter that the Proposal Trustee can assist the employees instead of a Representative Counsel.

First, a version of your argument was rejected by Justice Pepall in the above-noted CanWest CCAA proceeding, where the company and the monitor unsuccessfully opposed the appointment of representative counsel for 45 non-union terminated employees. The reasons of Justice Pepall are applicable in this case:

[23] The primary objection to the relief requested is prematurity. This is reflected in correspondence sent to counsel for the LP Entities to counsel for the Senior Lenders' Administrative Agent. Those opposing the relief requested submit that the moving parties can keep an eye on the Monitor's website and depend on notice to be given by the Monitor in the event that unsecured creditors have any entitlement. Counsel for the LP Entities submitted that counsel for the proposed representatives should reapply to court at the appropriate time and that I should dismiss the motion without prejudice to the moving parties to bring it back on.

[24] *In my view, this watch and wait suggestion is unhelpful to the needs of the Salaried Employees and Retirees and to the interests of the Applicants. I accept that the individuals in issue may be unsecured creditors whose recovery expectation may prove to be non-existent and that ultimately there may be no claims process for them.* I also accept that some of them were in the executive ranks of the LP Entities and continue to benefit from payment of some pension benefits. *That said, these are all individuals who find themselves in uncertain times facing legal proceedings of significant complexity. The evidence is also to the effect that members of the group have little means to pursue representation and are unable to afford proper legal representation at this time. The Monitor already has very extensive responsibilities as reflected in paragraph 30 and following the Initial Order and the CCAA itself and it is unrealistic to expect that it can be fully responsive to the needs and demands of all of these many individuals and do so in an efficient and timely manner.* Desirably in my view, Canadian courts have not typically appointed an Unsecured Creditors Committee to address the needs of unsecured creditors in large restructurings. It would be a considerable benefit to both the Applicants and the Salaried Employees and Retirees to have Representatives and representative counsel who could interact with the Applicants and represent the interests of the Salaried Employees and Retirees. In that regard, I accept their evidence that they are a vulnerable group and there is no other counsel available to represent their interests. Furthermore, a multiplicity of legal retainers is to be discouraged. *In my view, it is a false economy to watch and wait. Indeed the time taken by counsel preparing for and arguing this motion is just one example. The appointment of the Representatives and representative counsel would*

facilitate the administration of the proceedings and information flow and provide for efficiency. [emphasis added]

Second, it is not the statutory role of a Proposal Trustee, who is not a law firm, to be a representative for employees, nor for any other individual creditor for that matter.

The Courts have repeatedly held that "[a] trustee's duty is to provide a neutral voice in all BIA proceedings."¹

We expect you are aware that the role of a Proposal Trustee is even narrower than a Trustee in Bankruptcy under section 50(5) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and is "very different" from the role of a Trustee in Bankruptcy:

[36] The Court has analyzed ss. 16-38 and 50 of the BIA and finds that *the duties of a Trustee in a Proposal are very different than the duties of a Trustee in a Bankruptcy.*

[37] The duties of a Trustee under a Proposal are set out in s. 50(5), which reads as follows:

The trustee shall make or cause to be made such an appraisal and investigation of the affairs and property of the Debtor as to enable the trustee to estimate with reasonable accuracy the financial situation of the Debtor and the cause of the Debtor's financial difficulties or insolvency and report the result thereof to the meeting of the creditors.

[38] The duties of a Trustee in a Bankruptcy are set out in ss. 16 to 38 of the BIA.

[39] *There is a clear distinction between the duties of a Trustee in a Proposal as compared to a Trustee in a Bankruptcy.* Proposal Trustees and Bankruptcy Trustees effectively wear different hats. The BIA often distinguishes between the rights and powers of a Trustee under a Proposal as compared to a Trustee in a Bankruptcy. Furthermore, the Act expressly establishes instances where the term "trustee" extends equally to Bankruptcy or Proposal Trustees (ss. 50(1), 4.06(1.1)).²

¹ *Garrity, Re*, 2006 ABQB 545.

² *Saran (Re)*, 2018 ONSC 2998.

In your letter, you state, "there is currently nothing to administer in respect of the terminated employees" and that if employees were eligible to apply for a payment under WEPP, the Proposal Trustee is well positioned to assist. We do not agree.

First, WEPP is not available to the Canadian terminated employees which needs to be addressed immediately so that those payments can start to flow to the employees.

Second, even when WEPP becomes applicable to the proceeding, the Employee Claims need to be calculated accurately and fully. These calculations need to be prepared and reviewed by Representative Counsel to ensure the employees are paid the maximum amount of WEPP under the law, as well as for any distribution from a future Proposal or a bankruptcy claims process.

Third, as noted by Justice Pepall in CanWest, even if the employees' "recovery expectation may prove to be non-existent" that does not bar the appointment of Representative Counsel. The point the courts make is that a vulnerable employee group requires representation, regardless of whether they may not recover anything in the proceeding.

We have heard your statements about containing professional costs in this proceeding. We note that the Company's cash flow projections for the fifteen-week period ending May 24, 2024, provide for the payment of \$1.5 million in professional fees to counsel to TBS Canada, the Proposal Trustee and counsel to the Proposal Trustee.

Even with the \$1.5 million payment, the Company will have an ending cash balance of approximately \$560,000 and will continue to generate positive cash flow through its 72 remaining operating store locations.

We also note that the Company intends to put a KERP on place for certain employees to pay amounts in addition to their regular compensation.

The costs of the terminated employees as represented by our firm would be substantially less than the costs of other professionals who are being paid in this proceeding.

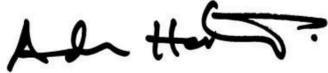
In CanWest, Justice Pepall rejected an argument that there were no funds available for Representative Counsel and directed "[s]tagged payments commencing with the sum of \$25,000".

In light of the foregoing, it will be disappointing if you cannot see the benefits of reaching a consensual arrangement with respect to the appointment of an employee Representative and a Representative Counsel for the Canadian terminated employees.

Our instructions are to proceed with a motion for the appointment of Representatives and Representative Counsel.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH/vdl

cc. Client Committee
Jane Dietrich, *Cassels Brock & Blackwell LLP* (counsel to the Proposal Trustee)
Abir Shamim, *Koskie Minsky LLP*

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

Proceeding commenced at Toronto

AFFIDAVIT OF STEPHANIE HOOD

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Counsel to Stephanie Hood and other employees and
Proposed Representative Counsel to Terminated
Canadian Employees

**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

ONTARIO
SUPERIOR COURT OF JUSTICE
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MOTION RECORD

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