

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

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

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

REPLY MOTION RECORD

(For Appointment of Representative Counsel for Terminated Canadian Employees)

May 22, 2024

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TO: THE SERVICE LIST

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TAB 1

**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**

**REPLY AFFIDAVIT OF STEPHANIE HOOD
(sworn May 22, 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, along with 220 other Canadian employees were terminated in March 2024 (collectively, the "**Terminated Canadian Employees**" and individually, each a "**Terminated Canadian Employee**") without severance pay nor the ability to apply for a payment under the Wage Earner Protection Program ("**WEPPA**").
2. This Affidavit is sworn further to my Affidavit sworn on April 12, 2024 ("**Initial Affidavit**") and my Supplementary Affidavit sworn on April 23, 2024 ("**Supplementary Affidavit**") in support of this motion appoint me as Representative, and Koskie Minsky LLP ("**KM**") as Representative Counsel, to the Terminated Canadian Employees.

3. I, along with five other terminated employees, have formed an ad hoc Employee Committee to assist the Terminated Canadian Employees in the TBS Canada proceedings. Collectively, we are a major creditor group with claims over \$2 million. We are mostly female retail workers, and we need advice and advocacy in this insolvency proceeding with which we have no familiarity or expertise. The other members of the Employee Committee are Brittany Ford, Natalie Fortuna, Sarah Lam and Lauri Spagnuolo.

4. I have reviewed the Affidavit of Jordan Searle sworn May 10, 2024 ("**Searle Affidavit**") and the Third Report of the Proposal Trustee Alvarez & Marsal Canada Inc., dated May 15, 2024 ("**Third Report**"). The Searle Affidavit is included in the Responding Motion Record of The Body Shop Canada Limited, dated May 10, 2024.

5. In the Searle Affidavit, Mr. Searle states TBS Canada will oppose the appointment of Representative Counsel because he says:

- (i) The proceeding and stakeholder claims involved are "not complex";
- (ii) Lawyers for TBS Canada and the Proposal Trustee can complete the tasks of Representative Counsel, which he focuses on as the calculation and filing of an omnibus claim on behalf of the Terminated Canadian Employees and seeking access to payments under the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1;
- (iii) TBS Canada and the Proposal Trustee will keep the Terminated Canadian Employees "apprised of any updates"; and

- (iv) The payment of the Terminated Canadian Employees' costs for Representative Counsel will prejudice other stakeholders, especially landlords, because it will reduce overall funds available for a future distribution.
6. The Proposal Trustee reproduced the above arguments in paragraphs 8.1-8.8 of its Third Report to argue that the appointment of Representative Counsel is not necessary.
7. I, and the rest of the Employee Committee, disagree with Mr. Searle's statements.
8. I believe TBS Canada and the Proposal Trustee are downplaying the complexity of this proceeding for the Terminated Canadian Employees and are asserting an oversimplified opinion of the activities of Representative Counsel.
9. As stated in my Initial Affidavit, the Terminated Canadian Employees are a vulnerable group who require legal representation in this proceeding given:
- (i) The lawyers for TBS Canada and the Proposal Trustee are not advocates for Terminated Canadian Employees, they will not negotiate or take adverse positions with other stakeholders on our behalf, and will not maximize nor advance our claims in this proceeding; and
 - (ii) The intricacies involved in the restructuring of TBS Canada or a liquidation, particularly the impact of multijurisdictional operations and multijurisdictional insolvencies of other Body Shop entities and dealing with other sophisticated creditors who all have their own legal representation.

The lawyers for TBS Canada and the Proposal Trustee do not advocate on behalf of Terminated Canadian Employees

10. In the Searle Affidavit and the Third Report, TBS Canada and the Proposal Trustee state they can determine the claims of the Terminated Canadian Employees and as such, the appointment of Representative Counsel is not required.

11. More specifically, in paragraph 8.4 of the Third Report, the Proposal Trustee states it has been "involved in similar retail mandates" and as such, Representative Counsel is not required.

12. While I understand that the Proposal Trustee says it has "been involved" in other retail insolvencies, what is not explained is what was achieved for the terminated employees in those cases, what amounts they recovered on their claims, nor what was the role the trustee took, if any, to negotiate a better outcome for the employees in those proceedings. I am advised by Abir Shamim of KM and believe that none of the cases cited by the Proposal Trustee involved a contested motion brought forward by terminated employees to appoint Representative Counsel.

13. KM has extensive experience in representing employees in insolvency proceedings. In terms of recoveries for terminated employees, KM has been involved in several proceedings in which they negotiated better outcomes as well as prepared the employees' claims that materially exceeded the amounts that had been initially calculated by the debtor company or the court-appointed officer. Some examples are below:

- (i) *Metroland Media Group Ltd. (Re)* (Court File No. BK-23-029886-0031): The proposal trustee determined the non-union terminated employees had an omnibus claim for approximately \$14.7 million. KM revised this claim to approximately \$22.5 million;

- (ii) *Target Canada Co., et al. (Re)* (Court File No. CV-15-10832-00CL): The applicant established an employee trust fund in the amount of approximately \$70 million. KM negotiated with the applicant and the monitor to increase this amount to approximately \$90 million;
- (iii) *Danier Leather Inc., (Re)* (Court File No. BK-31-2084381): The trustee determined terminated employees had an omnibus claim for approximately \$7.5 million. KM revised this claim to approximately \$10 million; and
- (iv) *North American Fur Auctions Inc. et al., (Re)* (Court File No. CV-19-00630241099CL): The monitor determined certain terminated employees have a claim for approximately \$2.5 million. KM revised this claim to ensure claims for unpaid pension contributions were included.

14. Furthermore, I believe that as a result of the concern voiced by KM at the outset of this proceeding that Terminated Canadian Employees could not access WEPPA payments, TBS Canada and the Proposal Trustee were motivated to consider options under which the Terminated Canadian Employees could access those payments, including the appointment of the Proposal Trustee as a receiver over certain assets of the Company, which is an approach that KM has achieved for terminated employees in other cases.

An Employment Standards Officer is not equivalent to Representative Counsel

15. In the Searle Affidavit, Mr. Searle suggests the appointment of Representative Counsel is not required because the Terminated Canadian Employees can seek independent support in filing their claim from a government Employment Standards Officer ("**ESO**"). This statement is misleading.

16. First, an ESO is not a lawyer for terminated employees. In fact, these programs encourage individuals to contact a lawyer if they have questions about the amount they are owed.

17. For instance, as per the Ontario Ministry of Labour, Immigration, Training and Skills Development (the "**Ontario Ministry of Labour**") website, individuals may be able to file a claim provincially with respect to a bankruptcy and insolvency proceeding, however the "employment standards officer will be limited in the action they can take". A printout of the webpage, "Bankruptcy, insolvency and unpaid wages: Learn what do if your employer is bankrupt or insolvent, and owes you unpaid wages or other payments" is attached hereto as **Exhibit "A"**.

18. Additionally, the Ontario Ministry of Labour website lists the tasks of an ESO as: "investigate complaints and make decisions about employee rights and entitlements; conduct workplace inspections; deliver presentations to stakeholders, including employers and employees; enforce legislation; and make complex decisions and write reports." A printout of the webpage, "Work as an employment standards officer" is attached hereto as **Exhibit "B"**. Based on that description, it is clear that an ESO, unlike a lawyer, does not engage in negotiations or discussions with a debtor company and other stakeholders to formulate a proposal or restructuring.

19. Second, I am advised by Abir Shamim of KM and believe that filing a claim through a government ESO involves a lengthy process and can take several months to resolve. This is not practical in fast moving insolvency proceedings where events occur quickly, and employee rights can be compromised without rapid responses.

The Proceeding is Complex and is Affected by Multijurisdictional Company Operations

20. As stated in my Initial Affidavit, I was surprised by the decision of TBS Canada to file a Notice of Intention to Make a Proposal ("**NOI**") under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and to close 33 of their 105 locations and online stores. Prior to their NOI filing, TBS Canada generated a positive income of approximately \$12 million.

21. In the Searle Affidavit, Mr. Searle confirms the NOI proceeding is a direct result of the actions of the UK parent of TBS Canada, The Body Shop International Limited ("**TBS UK**"):

6. As I have explained in my Prior Affidavits, historically, the UK Parent provided several accounting and cash management functions for TBS Canada whereby all of TBS Canada's cash collections were swept from TBS Canada by the UK Parent and then the UK Parent would remit payment on behalf of TBS Canada for its trade payables, including its rent and payroll. In the weeks leading up to the UK Administration, the UK Parent swept cash from TBS Canada's bank accounts but failed to remit payment for amounts owing to TBS Canada's vendors, suppliers and landlords. This caused an immediate liquidity crisis for TBS Canada because all funding for the Company and its Canadian operations were cut off with no advance notice. As a result, TBS Canada has significantly overdue payables that it could not satisfy— the key fact that led to these proceedings.

22. Mr. Searle says that TBS Canada was unable to take any action against its parent for sweeping cash from its bank account without remitting payments for amounts owing to TBS Canada's creditors. As such, TBS Canada had no option but to enter insolvency proceedings.

23. Likewise, the operations of TBS Canada post-NOI filing have been complicated by the actions of its US affiliate, the Body Shop USA ("**TBS US**"), which also filed for Chapter 7 bankruptcy liquidation on March 9, 2024. As stated in the Affidavit of Mr. Searle, sworn March 1, 2024, TBS Canada relied on TBS US for distribution and logistics services:

14. Historically, TBS Canada has relied heavily on its working relationship with the UK Parent and TBS US, for inventory, distribution, and logistics services, among other things. The UK Parent ships products designated for TBS Canada to TBS US, who then holds them at its distribution centre located in the United States (the "US Distribution Centre"). At the US Distribution Centre, TBS US either mixes inventory or virtually designates items for TBS Canada. TBS US transports the inventory to the US-Canadian border, where it gets picked up by third-party couriers on TBS Canada's behalf.

15. Pursuant to the Franchise Agreement and the Company's working arrangement with the UK Parent, title to inventory only passes from TBS International [TBS UK] to TBS Canada once it leaves the US Distribution Centre. As long as inventory is housed at the US Distribution Centre, TBS

International holds title. I understand that approximately \$85 million (book value) in inventory currently resides at the US Distribution Centre.

24. The non-arms length agreements between TBS Canada, TBS UK and TBS US suggest the operations of TBS Canada were and continue to be complicated by multijurisdictional business operations.

25. More recently, the TBS Canada proceeding was further complicated by the fact that the administrators of TBS UK announced that the UK company cannot restructure by entering a Company Voluntary Arrangement ("CVA") and is therefore required to commence a sale process for its underlying business and assets:

In a statement issued to Sky News, an FRP spokesman said that after engaging with stakeholders about a company voluntary arrangement (CVA), it had "not been possible to reach the necessary agreements for a CVA to be launched".

"The joint administrators have therefore decided to commence a sale process for the underlying business and assets of TBSI [The Body Shop International]."

A copy of the article, "Body Shop administrator to launch auction of stricken chain", dated May 17, 2024, is attached hereto as **Exhibit "C"**.

26. From the perspective of the Terminated Canadian Employees, the above circumstances of this case demonstrate that this proceeding is not straightforward. The Terminated Canadian Employees require representation to understand the impact that multijurisdictional companies have on this proceeding and what avenues, if any, can be pursued to protect our rights and obtain maximum recovery in respect of our claims.

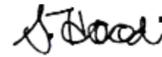
27. I swear this Affidavit in good faith and in support of this motion to appoint me as Representative, and KM as Representative Counsel to the Terminated Canadian Employees and for no improper purpose.

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 May 22, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



A Commissioner for Taking Affidavits, etc.

Abir Shamim
LSO No. 88251V



STEPHANIE HOOD

This is **Exhibit "A"**

referred to in the Affidavit of Stephanie Hood
sworn before me this 22nd day of May, 2024.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

Abir Shamim
LSO No. 88251V

Bankruptcy, insolvency and unpaid wages

Learn what to do if your employer is bankrupt or insolvent, and owes you unpaid wages or other payments.

Overview

This page is for employees of companies that are bankrupt and insolvent.

Bankruptcy law falls under federal jurisdiction and the following federal laws may be relevant to you if you have not been paid your wages due to bankruptcy and insolvency:

- *Bankruptcy and Insolvency Act* (<https://laws-lois.justice.gc.ca/eng/acts/b-3/>) (BIA)
- *Companies' Creditor Arrangement Act* (<https://www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/br02284.html>) (CCAA)
- *Wage Earner Protection Program Act* (<https://laws-lois.justice.gc.ca/eng/acts/W-0.8/index.html>) (WEPPA)

You must follow the claim processes found in federal laws to attempt to recover money you believe your employer owes you. As a first step, you will need to file a "proof of claim" form with either:

- your company's trustee in bankruptcy
- your company's receiver

For more information about federal bankruptcy and insolvency laws, please visit Service Canada (<https://www.canada.ca/en/employment-social-development/corporate/contact.html>) or contact a lawyer.

In some cases, you may also be able to file a claim

(<https://www.ontario.ca/document/your-guide-employment-standards-act-0/filing-claim>) provincially under the *Employment Standards Act, 2000*

(<https://www.ontario.ca/laws/statute/00e41>) (ESA). Generally, when individuals or corporations are in bankruptcy and insolvency, an employment standards officer will be limited in the action they can take.

If your employer is bankrupt or in receivership

If your employer filed for bankruptcy or is in receivership

(<https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/changes-your-business/receivership-bankruptcy/receivership.html>) and they owe you wages, contact either:

- your company's trustee
- your company's receiver
- Service Canada

You will likely receive a package of information from a trustee or court-appointed receiver.

The package will guide you on how to file a proof of claim in a bankruptcy and insolvency proceeding. A proof of claim is a form you fill out that helps establish your claim. The trustee or receiver may be able to help you complete it.

If you do not receive a package, contact Service Canada at 1-800-622-6232. If you are in a union, contact your union for assistance.

In some circumstances, if you have filed a proof of claim for unpaid wages in a bankruptcy or receivership, and the claim has not been paid, you can also file a claim (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/filing-claim>) under the *Employment Standards Act*.

When your employer is bankrupt or in receivership, an employment standards officer may have the power to investigate:

- if your employer is a corporation. Directors (<https://www.ontario.ca/document/employment-standard-act-policy-and-interpretation-manual/part-xx-liability-directors#section-2>) of a corporation may be found liable for certain unpaid wages (with the exception of unpaid termination or severance pay) if a proof of claim was filed in a bankruptcy/receivership and it has not been paid
- if, under the [ESA](#), a separate employer is a “related employer (<https://www.ontario.ca/document/employment-standard-act-policy-and-interpretation-manual/part-iii-how-act-applies#section-2>)” to an insolvent business. The related employer may have liability for unpaid wages

Bankruptcy and insolvency are complicated areas of law and the specific actions that an officer can take will depend on each case.

If your employer is insolvent

If your employer owes creditors more than \$5 million, they can try to rearrange their debts to avoid bankruptcy. Under the federal *Companies' Creditors Arrangement Act* (CCAA) (<https://www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/br02284.html>), the courts will appoint a monitor to supervise the company's restructuring.

You should contact the [CCAA](#) monitor for information and help in recovering the money you are owed. Contact information for monitors is available on the Public Registry (https://www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/h_br02281.html). If you are part of a union, you can also contact your union for more information.

If an employer is involved in [CCAA](#) proceedings, an employment standards officer may be prevented from taking action against the employer and/or its directors.

Wage protection program

If your employer has filed for bankruptcy, is subject to a receivership, or another insolvency proceeding, and you have lost your job and are owed wages, you may be eligible to receive payment under the federal Wage Earner Protection Program (<https://www.canada.ca/en/employment-social-development/services/wage-earner-protection.html>) (WEPP).

All inquiries regarding the WEPP, including how much you could receive and eligibility requirements, should be made to Service Canada. Visit the [WEPP](https://www.canada.ca/en/employment-social-development/services/wage-earner-protection/employee.html) webpage (<https://www.canada.ca/en/employment-social-development/services/wage-earner-protection/employee.html>) or call the WEPP information line at 1-866-683-6516 for the most up-to-date information on the eligibility period.

Updated: August 03, 2022

Published: August 03, 2022

This is **Exhibit "B"**

referred to in the Affidavit of Stephanie Hood
sworn before me this 22nd day of May, 2024.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

Abir Shamim
LSO No. 88251V

Work as an employment standards officer

Learn how to become an employment standards officer for the Ministry of Labour, Immigration, Training and Skills Development, and what to expect on the job.

Overview

The information on this page should give you a better understanding of the employment standards officer position (<https://www.ontario.ca/page/apply-be-employment-standards-officer>). This should help you make an informed decision about applying for the position. We are looking to hire qualified employees who understand, accept and are motivated to perform all aspects of this job.

Job description

As an employment standards officer, you would:

- investigate complaints and make decisions about employee rights and entitlements
- conduct workplace inspections
- deliver presentations to stakeholders, including employers and employees
- enforce legislation (<https://www.ontario.ca/document/your-guide-employment-standards-act-0>)
- make complex decisions and write reports

Job requirements

Officers need to visit many different kinds of work environments, ranging from professional business offices to factory floors or construction sites. When you are conducting investigations or resolving disputes you will often have to deal with irate, distraught or hostile people. You will always have the option to withdraw from any situation with the potential for physical violence.

Officers are also involved with prosecutions, and are required to spend time in courtrooms or formal hearing room environments. You would work autonomously, under general supervision. The work is fast paced in an ever-changing work environment. You would often experience competing demands for your time, so it is important to balance the need to focus on the job at hand, with the need to keep your manager and senior management informed about high-profile issues

Working conditions

Your hours of work are decided by a collective agreement. The normal hours of work for this position are 36.25 hours per week with a need to be available for 7.25 hours per work period. The position of employment standards officer requires you to work non-traditional hours as part of your regular schedule. This can include some evenings and weekends.

Compensation is provided in line with the employer's policies and entitlements under the OPSEU collective agreement. Overtime is only needed when it is pre-authorized by management. Officers can be exposed to seasonal weather conditions and often need to travel.

Training and preparation

If you are hired for this job, you would go through the following steps:

1. Receive an orientation.
2. Go through a mandatory and intensive 4 to 5 month training program that includes virtual and in person training sessions. This may require travel.
3. As a new officer, you will be tested and assessed on your knowledge and newly acquired skill sets during the training program.

Related

Employment standards officer position details (<https://www.ontario.ca/page/apply-be-employment-standards-officer>)

Updated: January 26, 2024

Published: January 26, 2024

This is **Exhibit "C"**

referred to in the Affidavit of Stephanie Hood
sworn before me this 22nd day of May, 2024.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

Abir Shamim
LSO No. 88251V

Body Shop administrator to launch auction of stricken chain

FRP Advisory is to begin engaging with potential buyers of The Body Shop after concluding that a CVA to restructure the business was not viable, Sky News learns.

By Mark Kleinman, City editor @MarkKleinmanSky

🕒 Friday 17 May 2024 09:18, UK

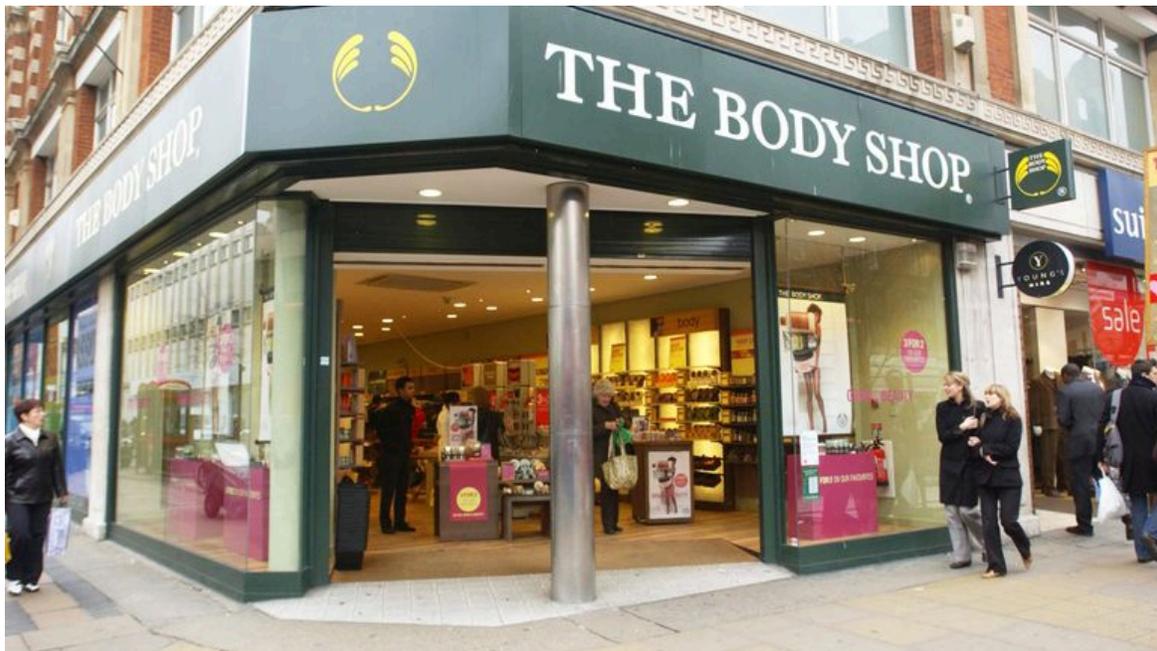


Image:
Pic: PA



The Body Shop's administrators are to launch an auction of the chain after concluding that an alternative restructuring of one of Britain's best-known high street retailers was not viable.

Sky News has learnt that FRP Advisory, which has been overseeing the collapsed business since January, is to begin formally sounding out potential buyers in the coming weeks.

The move raises the prospect of new owners taking control of **The Body Shop**, which was founded nearly half a century ago.

The chain now trades from roughly 100 stores following a shop closure and redundancy programme undertaken in recent months.

Money latest: 'Seismic shift' for UK banks as branch milestone is reached

Next expressed an interest in a deal earlier in the insolvency process, while Aurelius, the investment firm which took control of it only weeks before administrators were called in, is also among the possible bidders.

In a statement issued to Sky News, an FRP spokesman said that after engaging with stakeholders about a company voluntary arrangement (CVA), it had "not been possible to reach the necessary agreements for a CVA to be launched".

MORE FROM BUSINESS



IMF upgrades UK growth forecast but issues fresh warning on national insurance cuts and debt



Ukraine war: Yellen sees 'possibility' of \$50bn loan from frozen Russian assets

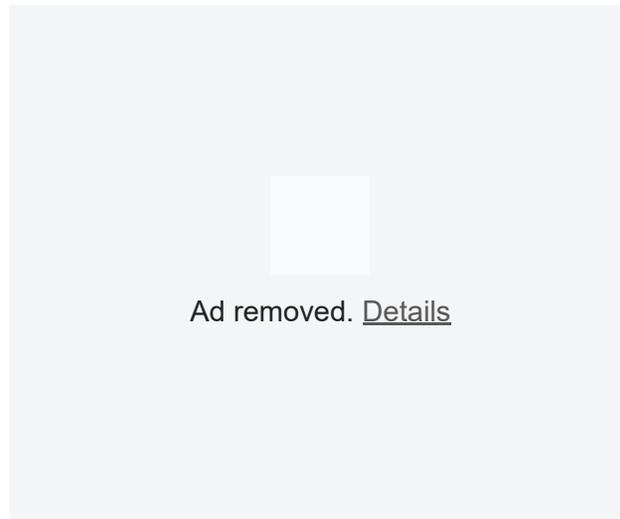


The major questions for Post Office boss Paula Vennells to answer as three days of questioning to begin

"The joint administrators have therefore decided to commence a sale process for the underlying business and assets of TBSI [The Body Shop International].

FRP added that it had been "encouraged by the level of interest received to date from interested parties".

Advertisement



"The Body Shop remains an iconic brand and following the structural changes we have made to the business since our appointment we consider it has a viable future.

"This will be showcased to potential acquirors during the sale process."



Image:

The late Dame Anita Roddick, founder of The Body Shop, is shown after receiving her honour in 2003. Pic: Reuters

Sources suggested that FRP expected to clinch a sale of the business during the summer.

The insolvency practitioner had informed creditors of the potential auction in a progress report issued several weeks ago.

"In the event that a CVA cannot be agreed, the joint administrators will proceed with a sale of the business and assets," FRP said in March.

The Body Shop's collapse into administration in February underlined the decline of a high street stalwart founded by the late Dame Anita Roddick and her husband Gordon almost half a century ago.



Feb: Body Shop UK enters administration

Aurelius bought the chain from Natura & Co, a Brazilian company which was reported to have paid more than \$1bn to buy it in 2017.

According to the administrators' report, Aurelius was confronted immediately after taking ownership of the chain with a "short-term cash position [which] was adverse to that that had been forecast, driven by poor results in the 2023 financial year and the unwinding of the company's working capital".

"Prior to the sale to the Aurelius Group, stock levels were depleted over the peak Christmas trading period."

Aurelius is understood to have continued financing the business during the administration process.

The Body Shop's businesses across most of Europe and parts of Asia had already been offloaded to a family office prior to the insolvency of the UK arm.

Read more:

The Body Shop UK in administration. What went wrong?



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At the time of the sale to Aurelius, The Body Shop employed about 10,000 people, and operates roughly 3,000 stores in 70 countries.

Although it has struggled for profitable growth for years, it has retained a prominent presence on British high streets.

The Roddicks were prominent champions of environmental causes, a positioning which helped it gain an edge over rival retailers during the 1980s and '90s.

Its opposition to the animal testing of cosmetics was also unusual in the decades immediately after it was founded.

Its distinctiveness has, however, been diminished in recent years by the emergence of competitors which also put sustainability at the heart of their businesses.

The Body Shop was owned by L'Oreal, the cosmetics giant, prior to its sale to Natura.

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Court File No.: BK-31-3050418

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AFFIDAVIT OF STEPHANIE HOOD

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