

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

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

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

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

JUNE 5, 2024

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

1.0 INTRODUCTION

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

2.0 ADDITIONAL INFORMATION REGARDING THE REPRESENTATION MOTION

Company’s Efforts Towards Former Employees

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

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

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

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

The Company and the Proposal Trustee's Communication to Stakeholders

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

Ongoing Discussions with the proposed Representative Counsel

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

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

2.11 The Proposal Trustee understands that, as of the date herein, the proposed Representative Counsel has still not advised the Company of its position on any of the requests made in the May 15 Letter.

2.12 In the Proposal Trustee's view, the information requested by the Company in the May 15 Letter is reasonable in the circumstances and the proposed Representative Counsel, at a minimum, should inform the Company of its position on the issues set out therein.

Calculation of the Former Employees' Claims

2.13 The Representative Plaintiff served motion materials in connection with the Representation Motion on April 12, April 23 and May 22, 2024, each of which contain an affidavit of the Representative Plaintiff (together, the "**Hood Affidavits**").

2.14 The Hood Affidavits, among other things, state that: (i) the Representative Plaintiff holds a claim for approximately \$46,095.97; and (ii) based on the calculations of the accountant retained by the proposed Representative Counsel, the claim of the 30 Former Employees that have provided their information to the proposed Representative Counsel totals approximately \$862,000 (the "**30 Former Employees' Claim**"). At this time, the Proposal Trustee does not have sufficient information to comment on the 30 Former Employees' Claim.

2.15 However, the Proposal Trustee and the Company calculate the Representative Plaintiff's claim to be approximately double to the amount suggested in the Hood Affidavit.

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

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

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

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

Per: _____


Josh Nevsky

Senior Vice-President

APPENDIX A
LETTER DATED MAY 15, 2024

May 15, 2024

BY EMAIL

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

Dear Andrew:

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

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

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

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

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

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

DAVIES

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

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

Yours very truly,



Chenyang Li

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

APPENDIX B
EMAIL CORRESPONDENCE DATED MAY 22, 2024

Hoy, Alec

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

Hi Andrew,

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

Thanks,
Chenyang

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

Hi Andrew,

Please find attached correspondence of today's date.

Thanks,
Chenyang

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

Court No.: BK-31-3050418

Estate No.: BK-24-03050418-0031

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

Proceeding commenced at Toronto

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

Cassels Brock & Blackwell LLP

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

Jane Dietrich LSO#: 49302U

Tel: 416.860.5223
jdietrich@cassels.com

Alec Hoy LSO#: 85489K

Tel: 416.860.2976
ahoy@cassels.com

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