Court File No. BK-24-03050418-0031
Estate / Court File No. BK-31-3050418

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

FACTUM OF
THE BODY SHOP CANADA LIMITED

(*CCAA* CONVERSION MOTION RETURNABLE JULY 5, 2024)

July 3, 2024

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TO: THE SERVICE LIST

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PART I - OVERVIEW

1. The Body Shop Canada Limited ("**TBS Canada**" or the "**Company**") is a retailer of bath and body products in Canada. On March 1, 2024 (the "**NOI Filing Date**"), TBS Canada filed a notice of intention (the "**NOI**") to make a proposal under section 50.4 of the *Bankruptcy and Insolvency Act*[1] (the "**BIA**"). Alvarez & Marsal Canada Inc. ("**A&M**") was appointed to act as the proposal trustee (the "**Proposal Trustee**"). This Court granted the Company extensions of time to file a proposal on March 4, 2024, April 15, 2024 and May 30, 2024. The order of this Court extending time to the Company to file a proposal, and continuing the stay of proceedings under section 69(1) of the BIA,[2] will expire on July 12, 2024.[3]

2. TBS Canada remains insolvent as of the date of this factum. Moreover, for reasons described in more detail below, it is unlikely that the Company can file a proposal in this "**NOI Proceeding**" before the expiration of the six month period prescribed by the BIA (*i.e.*, September 1, 2024). However, the Company remains optimistic that it will be able to consummate an agreement or plan that will allow it to continue as a going-concern, albeit later than originally anticipated.

3. As a result, TBS Canada requires the protections afforded under the *Companies' Creditors Arrangement Act*[4] ("**CCAA**") to maintain the status quo of its business operations as a going-concern, and to provide the breathing room required to solicit and implement a going-concern solution, past September 1, 2024. Consequently, on this motion, the Company requests that this Court continue the NOI Proceeding as a

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1 *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, s. 50.4 [*BIA*].
2 *BIA*, *supra* note 1 at s. 69(1).
3 Order of Cavanagh J. dated May 30, 2024, at para. 2 [E2004].
4 *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 [*CCAA*].

proceeding under the CCAA (the "**CCAA Proceeding**") so that the adverse consequences associated with a bankruptcy that would otherwise be triggered automatically on September 1, 2024 can be avoided.

4. TBS Canada also requests the following ancillary relief from this Court on this motion: (i) a stay of proceedings against the Company until October 8, 2024; (ii) the appointment of A&M as monitor (the "**Monitor**"); (iii) the continuation of certain charges (as described below) granted by this Court from the NOI Proceeding into the CCAA Proceeding; (iv) the approval of a sale process to identify purchasers of and/or investors in the Company or its business or assets within the CCAA Proceeding; (v) the approval of the activities, fees, and disbursements of the Proposal Trustee and its counsel; (vi) the discharge of the Proposal Trustee and the termination of the NOI Proceeding; and (vii) the release of the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company from claims relating to the NOI Proceeding.

5. All of the relief sought by TBS Canada on this motion is embodied in three draft orders that the Company requests be issued by this Court: (i) an Initial Order; (ii) a Sales Process Order; and (iii) a NOI Discharge and Termination Order.[5]

6. If this Court does not continue this NOI Proceeding under the CCAA, TBS Canada requests in the alternative that this Court extend the deadline for filing a proposal in the NOI Proceeding to August 26, 2024 pursuant to section 50.4(9) of the BIA.[6]

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5 Initial Order [MR, Tab 3, E1938-E1957]; Sales Process Order [MR, Tab 5, E1983-E1993]; and NOI Discharge and Termination Order [MR, Tab 6, E1994-E1999].

6 *BIA*, *supra* note 1 at s. 50.4(9).

PART II - SUMMARY OF FACTS

7. The facts in support of this motion are more fully set out in the Affidavit of Jordan Searle sworn June 24, 2024 (the "**Fifth Searle Affidavit**") and the Fifth Report of the Proposal Trustee and Pre-Filing Report of the Proposed Monitor dated June 28, 2024 (the "**Fifth Report**").[7]

A. OVERVIEW OF THE COMPANY

8. TBS Canada is a federally incorporated corporation specializing in the sale of skincare, haircare, bath and body products with 71 leased stores across Canada.[8] The Company and its U.S. affiliate, Buth-Na-Bodhaige Inc. ("**TBS US**"), are wholly owned subsidiaries of its United Kingdom parent company, The Body Shop International Limited ("**TBS International**" or the "**UK Parent**"), which is indirectly owned by Aurelius IV UK Acquico Eight Limited (the "**Aurelius Purchaser**").[9]

9. TSB Canada does not own any real property. Its head office and the majority of its stores (35) are located in Ontario. The Company also operates a wholesale business.[10]

10. TBS Canada currently employs approximately 570 individuals in Canada and approximately 30 independent contractors in the United States. The Company is not party to a collective agreement and none of its employees are represented by a union or employee association.[11]

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7 Affidavit of Jordan Searle sworn on June 24, 2024 ("**Fifth Searle Affidavit**") [MR, Tab 3, E1644-E1684]; and Fifth Report of the Proposal Trustee dated June 28, 2024 ("**Fifth Report**") [A31-A65].

8 Fifth Searle Affidavit, at paras. 18-19 [MR, Tab 2, pp. E1651-E1652].[9] Fifth Searle Affidavit, at paras. 4-5 and 16-17 [MR, Tab 2, pp. E1647 and E1651].

9 Fifth Searle Affidavit, at paras. 4-5 and 16-17 [MR, Tab 2, pp. E1647 and E1651].

10 Fifth Searle Affidavit, at paras. 21-22 [MR, Tab 2, p. E1653].

11 Fifth Searle Affidavit, at paras. 23-24 [MR, Tab 2, p. E1653].

B. INSOLVENCY OF TBS CANADA

11. The UK Parent historically provided several accounting and cash management services for the Company. These services were provided pursuant to a cash management system and cash pooling arrangement.[12] TBS Canada also licenses use of the "The Body Shop" brand in Canada from the UK Parent and sources all of its inventory from the UK Parent.[13]

12. TBS Canada found itself in a liquidity crisis when, within a matter of weeks after sweeping cash from TBS Canada's bank accounts, TBS International unexpectedly filed for administration in the United Kingdom (the "**UK Administration**")[14] on February 13, 2024 and failed to remit payment for amounts owing to certain of the Company's creditors. TBS Canada was not given notice of the UK Parent's intention to commence the UK Administration. This left the Company with significant overdue payables that it could not pay.[15]

13. Accordingly, TBS Canada filed the NOI to provide it with the breathing room and expanded protections necessary to organize its financial affairs and develop a plan for the continuation of the business as a going concern.[16]

14. Since the Filing Date, TBS Canada has acted in good faith and made diligent efforts to improve its liquidity position, stabilize its operations and pursue a going-concern solution for the continuation of "The Body Shop" business in Canada.[17] These efforts have included, among others: (a) closing and liquidating 33 underperforming stores (the

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12 Fifth Searle Affidavit, at paras. 31-39 [MR, Tab 2, pp. E1656-E1659].
13 Fifth Searle Affidavit, at paras. 27-28 [MR, Tab 2, pp. E1654-E1655]].
14 The joint administrators of the UK Administration are Tony Wright, Geoff Rawley, and Alastair Massey (the "**UK Administrators**"). See Fifth Searle Affidavit, at para. 4 [MR, Tab 2, p. E1647].
15 Fifth Searle Affidavit, at paras. 4-8 and 58-59 [MR, Tab 2, pp. E1647-E1648 and E1665].
16 Fifth Searle Affidavit, at para. 8 [MR, Tab 2, p. E1648].
17 Fifth Searle Affidavit, at paras. 10-13 [MR, Tab 2, pp. E1648-E1649].

"**Closing Stores**") and closing one additional store due to lease expiry; (b) terminating the employment of 197 store-level employees related to the Closing Stores and approximately 20 head-office employees (together with the terminated store-level employees, the "**Former Employees**");[18] (c) operating its remaining 71 stores on a going-concern basis (the "**Going-Concern Stores**");[19] (d) entering into arrangements to replenish inventory at the Going-Concern Stores;[20] and (e) engaging with its key stakeholders.[21]

15. Despite these efforts, TBS Canada had liabilities with a book value of approximately $25 million as of May 31, 2024, including approximately $5.9 million in trade payables.[22] TBS Canada cannot meet its obligations generally as they come due and is insolvent.[23]

C. STAKEHOLDERS

16. The following parties hold security registrations against TBS Canada:

(a) Aurelius IV UK Acquico Seven Limited ("**Aurelius Seven**") holds a security registration over funds advanced to the UK Parent including from TBS Canada (the "**Aurelius Security**"). However, Aurelius Seven has agreed to release its security over assets of TBS Canada and the relevant documents are currently being settled;[24]

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18 Fifth Searle Affidavit, at para. 53 [MR, Tab 2, p. E1663].
19 Fifth Searle Affidavit, at para. 19 [MR, Tab 2, p. E1652].
20 Fifth Searle Affidavit, at para. 29 [MR, Tab 2, p. E1655].
21 Fifth Searle Affidavit, at paras. 23, 29 and 69 [MR, Tab 2, pp. E1653, E1655, and E1667]; and Fifth Report, at para. 13.1 [A62].
22 Fifth Searle Affidavit, at Exhibit I, p. 1 [MR. Tab 2(I), p. E1809].
23 Fifth Searle Affidavit, at para. 61 [MR, Tab 2, p. E1665].
24 Fifth Searle Affidavit, at paras. 50-52 [MR, Tab 2, E1662-E1663].

(b) the Royal Bank of Canada ("**RBC**") holds security over assets of TBS Canada as successor to HSBC Bank Canada (the "**RBC Registrations**"). However, there is no money owing to RBC that would give rise to a claim under the RBC Registrations;[25] and

(c) Enterprise Fleet Management Canada, Inc. ("**Enterprise**") holds limited security registrations over corporate vehicles that are leased by the Company for certain of its employees (the "**Enterprise Security**").[26]

17. The Company's key stakeholders are its employees, including the Former Employees, landlords and trade creditors.

D. COURT-ORDERED CHARGES

18. As part of the NOI Proceeding, this Court granted the following charges over the assets, property and undertaking of TBS Canada, in the following order of priority:

(a) a charge in favour of the Proposal Trustee, counsel to the Proposal Trustee and counsel to TBS Canada up to $700,000 as security for payment of their respective fees and disbursements (the "**Administration Charge**");[27]

(b) a charge in favour of TBS Canada's director and officers of up to $2.1 million (the "**D&O Charge**"). The D&O Charge provides assurance to TBS Canada's director and officers that there will be amounts available to the Company to indemnify the director and officers for potential claims (other than those based on gross negligence or wilful misconduct) against them in the NOI Proceeding;[28] and

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25 Fifth Searle Affidavit, at para .49 [MR, Tab 2, p. E1662].
26 Fifth Searle Affidavit, at para .49 [MR, Tab 2, p. E1662].
27 Fifth Searle Affidavit, at para. 96 [MR, Tab 2, p. E1675].
28 Fifth Searle Affidavit, at paras. 100-102 [MR, Tab 2, p. E1676].

(c) a charge of up to $470,000 to secure amounts owing to certain employees and independent contractors of TBS Canada who are the beneficiaries of a key employee retention plan (the "**KERP Charge**").[29]

19. The Administration Charge, D&O Charge and KERP Charge (collectively, the "**Charges**") rank ahead of the Aurelius Security and RBC Registrations, but behind the Enterprise Security.[30]

E. EFFORTS TO PURSUE A GOING CONCERN SOLUTION

20. TBS Canada is pursuing alternatives to keep the business in Canada operating as a going concern. To that end, the Company is in active discussions with the UK Parent and UK Administrator since the structure of any transaction is inextricably tied to the outcome of the UK Administration.[31] That is because TBS Canada does not own "The Body Shop" brand and would not be able to operate a business associated with that trademark without approval from the UK Parent.

21. On May 17, 2024, TBS Canada learned that a voluntary reorganization of the UK Parent was no longer viable. On or about that same day, the UK Administrator advised that they would be seeking to sell the business and assets of the UK Parent instead of pursuing a voluntary reorganization of TBS International (the "**UK Sale Process**").[32]

22. Presently, it is not clear whether the sale of the business and assets of the UK Parent will involve a change to the organizational structure that would affect TBS Canada's position as a subsidiary of the UK Parent. However, multiple parties have

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29 Fifth Searle Affidavit, at para. 108 [MR, Tab 2, p. E1678].
30 Fifth Searle Affidavit, at para. 117 [MR, Tab 2, p. E1680].
31 Fifth Searle Affidavit, at para. 66 [MR, Tab 2, pp. E1666-E1667].
32 Fifth Searle Affidavit, at para. 67 [MR, Tab 2, p. E1667].

expressed an interest in preserving the Canadian business as a going concern, pending the result of the UK Sale Process.[33]

23. As a result, the Proposal Trustee has engaged with a number of Canadian retail focused investors and commenced a Sale Process (as defined below) in respect of TBS Canada.[34] However, because a going-concern solution in Canada is necessarily contingent upon the UK Sale Process, it will also invariably be concluded after the UK Sale Process is completed. TBS Canada does not believe that there will be enough time to await the completion of the UK Sale Process and conclude a going-concern solution in Canada within the statutory timeframe imposed on the NOI Proceeding.

24. Consequently, on this motion, TBS Canada seeks the approval of this Court to continue the Sale Process within the CCAA Proceeding so that it may run in tandem with the UK Sale Process.[35] This will permit the Company to continue to operate in the interim with minimal interruption while it waits for the outcome of the UK Sale Process and position the Company to act quickly to attempt to secure a going-concern solution for the Company or its assets in Canada if the UK Sale Process is successful.

25. Given the timelines in the UK Administration, TBS Canada submits that a going-concern solution is achievable only if the Company is permitted to operate the business as a debtor-in-possession within a CCAA Proceeding.

PART III - ISSUES

26. The issues on this motion are as follows:

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33 Fifth Searle Affidavit, at para. 68 [MR, Tab 2, p. E1667].
34 Fifth Searle Affidavit, at para .73 [MR, Tab 2, p. E1668].
35 Fifth Searle Affidavit, at para. 69 [MR, Tab 2, p. E1667].

(a) whether this Court should permit TBS Canada to continue the NOI Proceeding under the CCAA;

(b) whether this Court should appoint A&M as the Monitor in the CCAA Proceeding;

(c) whether this Court should grant the requested stay of proceedings;

(d) whether this Court should continue the Administration Charge and the D&O Charge, and amend and continue the KERP Charge, in the CCAA Proceeding;

(e) whether this Court should approve the Sale Process in the CCAA Proceeding; and

(f) whether this Court should issue the NOI Discharge and Termination Order.

27. TBS Canada submits that the answer to all of the issues should be "yes".

PART IV - LAW & ARGUMENT

A. THE COMPANY SHOULD BE PERMITTED TO CONTINUE UNDER THE CCAA

28. This Court has the jurisdiction to permit the Company to continue the NOI Proceeding under the CCAA pursuant to section 11.6(a) of the CCAA.

29. This Court held in *Re Clothing for Modern Times Ltd.* that a debtor company seeking to convert a proceeding from the BIA to the CCAA should demonstrate that:

(a) it has not filed a proposal under the BIA;

(b) the proposed continuation is consistent with the purposes of the CCAA; and

(c) it has provided the Court with the information that would otherwise form part of an initial CCAA application under section 10(2) of the CCAA.[36]

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[36] *Re Clothing for Modern Times Ltd.*, 2011 ONSC 7522, at para. 9 [*Clothing*] [Moving Party's Book of Authorities ("**MBOA**"), at Tab 6].

30. In addition, the debtor must be a company with liabilities that exceed $5 million as required under the CCAA.[37]

31. These factors were adopted by Chief Justice Morawetz in *Re Comstock Canada Ltd.*, Justice Newbould in *Re Urbancorp Toronto Management Inc.*, and Justice Penny in *Re Stantive Technologies Group*.[38] All of these factors are satisfied in this case.

(a) TBS Canada Has Not Filed a Proposal Under the BIA

32. The Company has not filed a proposal under the BIA in this NOI Proceeding.

(b) The Continuation is Consistent with the Purposes of the CCAA

33. The Supreme Court of Canada has identified the following purposes of the CCAA:

(a) to permit a company to carry on business and, where possible, avoid the adverse effects of bankruptcy or liquidation while a court supervised attempt to reorganize the financial affairs of the debtor is made;[39] and

(b) to preserve the status quo while attempts are made to find a reorganization solution that is fair to all stakeholders.[40]

34. Moreover, this Court has held that a sale of the debtor's business as a going-concern to new owners satisfies the purposes of the CCAA.[41]

35. TBS Canada submits that the proposed continuation of the NOI Proceeding to the CCAA Proceeding in this case is consistent with the underlying purposes of the CCAA.

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37 *CCAA*, *supra* note 4 at s. 3.1.

38 *Re Comstock Canada Ltd.*, 2013 ONSC 4756, at paras. 36-45 [MBOA, Tab 7]; *Re Urbancorp Toronto Management Inc.*, 2016 ONSC 3288, at paras. 36-48 [MBOA, Tab 20]; Endorsement of Penny J. dated February 25, 2019 in *Re Stantive Technologies Group Inc.*, Court File No. 31-244835 [MBOA, Tab 16].

39 *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, at paras. 15, 59, and 70 [*Century Services*] [MBOA, Tab 5].

40 *Century Services*, *supra* note 39 at para. 77 [MBOA, Tab 5].

41 *Clothing*, *supra* note 36 at para. 12 [MBOA, Tab 6]

36. TBS Canada and the Proposal Trustee share the view that there is a prospect that a going-concern solution may be negotiated that would allow the Company to carry on business in Canada.[42] However, because of independent developments in the UK Administration, TBS Canada requires more time to develop, negotiate, finalize, and implement such a going-concern solution.

37. It is unlikely that TBS Canada will be able to complete a sale of its business within the strict deadlines imposed on the NOI Proceeding under the BIA. In this regard, the BIA requires TBS Canada to file a proposal by September 1, 2024, otherwise the Company will automatically be deemed bankrupt.

38. The conversion of the NOI Proceeding to a CCAA Proceeding will also have the additional benefit of reducing the administrative and legal costs of this insolvency proceeding. Under the NOI Proceeding, the Proposal Trustee and the Company are required to report to this Court every 45 days to seek an extension of time to file a proposal. The costs associated with preparing for these attendance would be eliminated if the NOI Proceeding were to be converted to a CCAA Proceeding, in which the Monitor and TBS Canada would only be required to report to this Court as prescribed under the CCAA or when Court involvement is required in the reorganization process.

39. Finally, the conversion to a CCAA Proceeding will preserve the status quo by allowing TBS Canada to continue operations, maintain the employment of 570 individuals, and pay its obligations in the ordinary course while it pursues the Sale Process for the benefit of all of its stakeholders.

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[42] Fifth Searle Affidavit, at para. 68 [MR, Tab 2, p. E1667]; and Fifth Report, at para. 9.8 [A56].

(c) TBS Canada Has Provided All of the Information That Would Otherwise Be Filed on a CCAA Initial Order Application

40. In support of this motion, TBS Canada and the Proposal Trustee have included the information required by section 10(2) of the CCAA, specifically:

(a) a cash flow forecast for the period ending October 11, 2024;[43]

(b) a report that demonstrates that the Proposal Trustee and proposed Monitor believes the cash flow analysis for the Company is reasonable;[44]

(c) a report that demonstrates the Proposal Trustee and proposed Monitor supports the Company's request to convert the NOI Proceeding to a CCAA Proceeding;[45] and

(d) TBS Canada's most recent financial information.[46]

41. Consequently, the test set out by this Court for the continuation of proceedings under the CCAA is met in this case.

(d) TBS Canada is a "Debtor Company" that has Liabilities that Exceed $5 Million

42. TBS Canada qualifies for protection under the CCAA, which applies to a "debtor company" whose liabilities exceed $5 million:[47]

(a) TBS Canada is a federally incorporated company that is unable to meet its obligations as they generally become due;[48] and

(b) the Company's balance sheet as at May 31, 2024 discloses that TBS Canada has liabilities of approximately $25 million.[49]

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43 Fifth Searle Affidavit, at para. 95 [MR, Tab 2, p. E1675]; and Fifth Report, at s. 11.0 [A58-A60].
44 Fifth Report, at para. 3.1(i) [A38-A39].
45 Fifth Report, at para. 8.3 [A51-A52].
46 Fifth Searle Affidavit, at Exhibit I [MR, Tab 2(I), pp. E1809-E1810].
47 *CCAA*, *supra* note 4 at s. 3(1).
48 Fifth Searle Affidavit, at para .61 [MR. Tab 2, p. E1665].
49 Fifth Searle Affidavit, at Exhibit I [MR, Tab 2(I), pp. E1809-E1810].

B. A&M SHOULD BE APPOINTED AS THE MONITOR

43. Section 11.7 of the CCAA requires that a trustee be appointed to monitor the debtor company's business and financial affairs. The Proposal Trustee has consented to act as Monitor in the CCAA Proceeding and is a trustee within the meaning of section 2(1) of the BIA. The Proposal Trustee is also not affected by any of the restrictions on entities that may act as Monitor in section 11.7(2) of the CCAA. A&M has extensive experience acting as a Court-appointed monitor in CCAA proceedings, including in respect of retail companies.[50] As such, the Proposal Trustee should be appointed as Monitor in the CCAA Proceeding.

C. THE PROPOSED STAY OF PROCEEDINGS SHOULD BE GRANTED

44. As part of the Initial Order sought on this motion, TBS Canada requests a stay of proceedings up to and including October 8, 2024.

45. Although section 11.02(1) of the CCAA contemplates that a stay on an initial application may only be for a 10-day period, this Court has exercised its discretion to issue stays that exceed the 10-day period of time on an Initial Order where the relief is being sought in connection with a CCAA continuation/conversion motion, as in this case.[51]

46. The rationale for the 10-day stay period in an Initial Order issued under section 11.02(1) of the CCAA stems from concerns of procedural fairness arising from the *ex parte* nature of most applications for an initial order under the CCAA.

47. As Chief Justice Morawetz explained in *Re Lydian International Limited*:

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50 Fifth Searle Report, at paras. 89-90 [MR, Tab 2, pp. E1673-E1674].

51 Endorsement of Penny J dated May 2, 2024 in *Re Cannmart Labs Inc.*, CV-24-00719639-00CL [MBOA, Tab 2]; Endorsement of Cavanagh J dated October 7, 2021 in *Re Medifocus Inc.*, Court File No CV-20-00669781-00CL [*Medifocus*] [MBOA, Tab 13]; Order of Justice Gilmore dated July 31, 2020 in *Re Tribalscale Inc.*, Court File No. CV-20-00645116-00CL [*Tribalscale*] [MBOA, Tab 18].

> The practice of granting wide-sweeping relief at the initial hearing must be altered in light of the recent amendments. The intent of the amendments is to limit the relief granted on the first day. The ensuing 10 day period allows for a stabilization of the operations and a negotiating window, ***followed by a comeback motion where the request for expanded relief can be considered on proper notice to all affected parties.***
>
> In my view, this is consistent with the objectives of the amendments, which include the requirement for "participants in an insolvency proceeding to act in good faith" and "improving participation of all players". It may also result in more meaningful comeback hearings.
>
> It is against this backdrop that the requested relief at the initial hearing should be scrutinized so as to ensure that it is restricted to what is reasonably necessary for the continued operations of the debtor company during the initial [10 day] stay period.[52]
>
> [Emphasis added]

48. This motion, of course, is not brought on an *ex parte* basis. The service list for this matter was served with this motion on June 24, 2024. Consequently, any stakeholder with a concern about the scope of relief sought has had the opportunity to appear before this Court and make their concerns known. Moreover, none of the relief sought is novel in any substantive manner. Instead, the relief sought is a continuation of the relief previously granted by this Court in the NOI Proceedings under the BIA.

49. In similar circumstances, this Court has held that it would be appropriate to issue a stay for a period of longer than 10 days on a BIA to CCAA conversion motion.[53] For example, in *Re Tribalscale Inc.*, Justice Gilmore issued an initial order following a BIA to CCAA conversion motion that contained a stay period that lasted from July 31, 2020 to October 31, 2020.[54] The circumstances of the instant case are analogous.

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52 *Re Lydian International Limited*, 2019 ONSC 7473, at paras. 30-32 [MBOA, Tab 12].
53 *Medifocus*, *supra* note 51.
54 *Tribalscale*, *supra* note 51.

50. This motion to continue the NOI Proceeding under the CCAA is in substance more akin to the relief sought under section 11.02(2) rather than section 11.02(1) of the CCAA. The Court may grant an extension of the stay of proceedings under section 11.02(2) for any period the Court thinks necessary if the Court is satisfied that (a) circumstances exist that make the order appropriate, and (b) the applicant has acted, and is acting, in good faith and with due diligence. Each of these criteria is clearly met in this case.

51. With respect to the first prong of the test, the requested stay is appropriate in the circumstances, including because:

(a) the proposed stay will provide the stability and certainty required to enable TBS Canada to continue the Sale Process (if approved) and implement a going concern transaction, which benefits all of its stakeholders;

(b) the proposed stay will allow time for a purchaser to be identified in the UK Sale Process, which impacts the ultimate outcome of TBS Canada's Sale Process;

(c) TBS Canada has prepared a 13-week cash flow forecast that demonstrates the Company will have sufficient liquidity to meet its obligations during the requested stay; and

(d) the extension of the stay period would preserve liquidity as it will eliminate the need for the Company and the proposed Monitor to prepare for multiple court appearances.

52. With respect to the second prong of the test, TBS Canada has acted, and continues to act, in good faith and with due diligence.

53. Indeed, the proposed Monitor also supports a stay of proceedings until October 8, 2024 for the above reasons, and because the proposed Monitor does not believe any creditor will be prejudiced if the stay extension is granted.[55]

D. THE CHARGES SHOULD BE CONTINUED IN THE CCAA PROCEEDING AND THE KERP SHOULD BE AMENDED

54. TBS Canada requests that the Charges granted in the NOI Proceedings be continued in the CCAA Proceeding in the same order of priority established in the NOI Proceedings.

(a) The Administration Charge Should be Continued in the CCAA Proceeding

55. Section 11.52 of the CCAA provides the Court with the authority to grant the Administration Charge. The beneficiaries of the Administration Charge will be the proposed Monitor, counsel to the proposed Monitor and counsel to TBS Canada.

56. In *Re Canwest Publishing*, Justice Pepall set out a list of non-exhaustive factors that may be analyzed by a Court in determining whether an administration charge should be granted:

(a) the size and complexity of the business being restructured;

(b) the proposed role of the beneficiaries of the charge;

(c) whether there is an unwarranted duplication of roles;

(d) whether the quantum of the proposed charge appears to be fair and reasonable;

(e) the position of the secured creditors likely to be affected by the charge; and

(f) the position of the monitor.[56]

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55 Fifth Report, at para. 8.3(vii) [A52].

56 *Re Canwest Publishing Inc.*, 2010 ONSC 222, at para .54 [MBOA, Tab 3].

57. In this case, the continuation of the Administration Charge is warranted, including because:

(a) the Sale Process being undertaken by the Company will require the extensive involvement of the proposed Monitor, counsel to the proposed Monitor and counsel to the Company;

(b) there is no unwarranted duplication of roles of the professional advisors whose fees are secured by the Administration Charge;

(c) no secured creditor will be affected by the Administration Charge (as explained above, TBS Canada has been advised that the Aurelius Security will be released and there are no amounts owing to RBC that would be secured by the RBC Registrations); and

(d) the proposed Monitor believes the quantum of the Administration Charge is reasonable and appropriate in the circumstances.[57]

(b) The D&O Charge Should Be Continued in the CCAA Proceeding

58. The D&O Charge was granted in the NOI Proceeding to secure the continued participation and assistance of TBS Canada's director and officers. The rationale for the granting of the D&O Charge in the NOI Proceeding remains unchanged in the CCAA Proceeding. The continued assistance of the Company's director and officers is still required to secure a successful going-concern solution in the CCAA Proceeding.

59. This Court has the jurisdiction to grant the D&O Charge under section 11.51 of the CCAA. In *Re Jaguar Mining Inc*., Chief Justice Morawetz set out a list of factors to be considered in granting a D&O Charge:

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[57] Fifth Report, at para. 7.5 [A49].

(a) whether notice has been given to the secured creditors likely to be affected by the charge;

(b) whether the amount is appropriate;

(c) whether the applicant could not obtain adequate indemnification for the directors and officers at a reasonable cost; and

(d) whether the charge purports to cover a director's or officer's gross negligence or wilful misconduct.[58]

60. Here, all of these factors are satisfied, including because:

(a) this motion was served on notice to Aurelius Seven, RBC and Enterprise;

(b) the proposed Monitor assisted in the calculation of the quantum of the D&O Charge and believes that the amount of the D&O Charge is reasonable and appropriate in the circumstances;[59]

(c) the directors and officer's insurance for TBS Canada is maintained by the UK Parent and there is no certainty that a purchaser of the UK Parent would continue directors' and officers' liability coverage for TBS Canada following the sale of the UK Parent or its assets;[60]

(d) the director and officers of TBS Canada are not prepared to remain in their positions absent the protection afforded to them under the D&O Charge;[61] and

(e) the D&O Charge will not apply in respect of any gross negligence or wilful misconduct.

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58 *Re Jaguar Mining Inc.*, 2014 ONSC 494, at para. 45 [MBOA, Tab 10].
59 Fifth Report, at para. 7.5 [A49].
60 Fifth Searle Report, at paras. 102-103 [MR, Tab 2, pp. E1676-E1677].
61 Fifth Searle Report, at para. 104 [MR, Tab 2, p. E1677].

(c) The KERP Should be Amended and the KERP Charge Should Be Continued in the CCAA Proceeding

61. TBS Canada requests that this Court continue the KERP Charge in the CCAA Proceeding, with an amendment to reduce the amount of the KERP Charge.

62. In *Re Grant Forest Products Inc.*, this Court set out a non-exhaustive list of factors to be considered in determining whether to approve a key employee retention plan ("**KERP**") and KERP Charge, including:

(a) whether the monitor supports the KERP Charge and whether the quantum of the proposed retention payments is reasonable;

(b) whether the employees covered by the KERP are truly "key";

(c) whether the key employees would not be retained absent the KERP; and

(d) the business judgment of the board of directors regarding the necessity of the retention payments.[62]

63. TBS Canada submits that the KERP Charge should be continued in the CCAA Proceeding, including because:

(a) the proposed Monitor believes that the requested KERP Charge, as amended, is reasonable and appropriate in the circumstances;[63]

(b) the KERP Charge was designed to retain and incentivize certain employees and contractors (the "**KERP Participants**") that have institutional knowledge and important skills that have been identified as crucial to value preservation and the success of the Sale Process;[64] and

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62 *Re Grant Forest Products Inc.*, 2009 CanLII 42046 (Ont. S.C.), at paras. 8-12 [MBOA, Tab 9].
63 Fifth Report, at paras. 7.12-7.13 [A50].
64 Fifth Searle Affidavit, at paras. 108 and 113 [MR, Tab 2, pp. E1678-E1679].

(c) TBS Canada's sole director believes that the KERP Charge is necessary to retain the KERP Participants, particularly in light of the delays in the UK Administration.[65]

64. TBS Canada further requests that the KERP Charge be amended.

65. At the time the KERP Charge was negotiated and granted, TBS Canada believed that a going-concern solution could be negotiated quickly within the tight timelines prescribed under the NOI Proceeding. Consequently, the original KERP Charge provided for a total of $470,000 payable to the KERP Participants in three equal instalments of approximately $156,000, the last of which was to paid out on implementation of a sale or proposal in the NOI Proceeding.[66]

66. However, as described above, on May 17, 2024 the Company learned that a voluntary restructuring of the UK Parent was no longer viable. Therefore, a going-concern solution in respect of the Company is unlikely to materialize in the immediate term. Yet the KERP Participants are needed to advance negotiations and maintain the operations of the business in the interim.

67. In order to retain the KERP Participants, TBS Canada requests that the KERP be amended to provide for an additional $156,000 installment payable to the KERP Participants on or about July 19, 2024 (the "**KERP Amendment**").[67] If the KERP Amendment is approved, the KERP will provide an aggregate retention payment for all of the KERP Participants in the amount of $626,000.

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65 Fifth Searle Affidavit, at para. 114 [MR, Tab 2, p. E1679].
66 Fifth Searle Affidavit, at para. 110 [MR, Tab 2, p. E1678].
67 Fifth Searle Affidavit, at para. 111 [MR, Tab 2, p. E1678].

68. Because two retention payments under the original KERP have already been made to the KERP Participants, the total remaining amount to be paid under the KERP as amended is therefore $312,000. As a result, the Company is requesting continuation of the KERP Charge in the CCAA Proceeding for a reduced amount of $315,000.

E. THE SALE PROCESS SHOULD BE APPROVED

69. In June 2024, the Proposal Trustee engaged with a select group of approximately 20 Canadian private equity and retail focused investors to explore interest in acquiring the Company or the business or assets of TBS Canada as a going-concern (the "**Sale Process**").[68] The Company requests that this Court issue the Sale Process Order to allow the Company and the proposed Monitor to continue the Sale Process in the CCAA Proceeding.

70. In *Re Nortel Networks Corporation*, this Court identified certain factors to be considered in determining whether a sale process should be approved:

(a) whether a sale is warranted at the time;

(b) whether a sale will benefit the whole of the "economic community";

(c) whether any creditors have a *bona fide* reason to object to a sale of the business; and

(d) whether there is a better viable alternative.[69]

71. In addition, subsequent cases have identified the following additional factors for consideration in approving a sale process:

(a) the fairness, transparency and integrity of the proposed process;

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68 Fifth Searle Affidavit, at para .73 [MR, Tab 2, p. E1668].

69 *Re Nortel Networks Corporation*, 2009 CanLII 39492 (Ont. S.C.), at para. 49 [MBOA, Tab 15].

(b) the commercial efficacy of the proposed process in light of the specific circumstances; and

(c) whether the sale process will optimize the chances of securing the best possible price for the assets up for sale.[70]

72. In this case, the Sale Process should be approved, including because:

(a) a sale is warranted at this time given the UK Sale Process that is underway and the level of interest the Company has received in the business and there is no viable alternative to secure a going-concern solution;

(b) the Sale Process will maximize value for stakeholders because it provides for the preservation of the business as a going-concern rather than the liquidation of TBS Canada's assets;

(c) no stakeholders have raised any concerns with the fairness or transparency of the proposed Sale Process;

(d) the Sale Process is fair and transparent, including because prospective bidders and the service list for this matter will be given a process letter setting out the key dates for the Sale Process;

(e) the duration of the Sale Process is reasonable and appropriate and tailored having regard to the UK Sale Process and the marketing efforts undertaken by the Company to date;

(f) the Company will consult with the proposed Monitor in the implementation of the Sale Process, which will ensure the integrity of the proposed process; and

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70 *CCM Master Qualified Fund v. blutip Power Technologies Inc.*, 2012 ONSC 1750, at para. 6 [MBOA, Tab 4].

(g) the proposed Monitor is supportive of the Sale Process.

F. THIS COURT SHOULD ISSUE THE NOI DISCHARGE AND TERMINATION ORDER

73. If the NOI Proceeding is converted into the CCAA Proceeding, the NOI Proceeding will be terminated. The NOI Discharge and Termination Order sought on this motion contains the following three key features:

(a) it approves the conduct and fees of the Proposal Trustee and counsel to the Proposal Trustee, including costs to terminate the NOI Proceeding;

(b) it releases the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company from all claims relating to the NOI Proceeding, other than claims arising from gross negligence or wilful misconduct; and

(c) it discharges the Proposal Trustee.

74. As Chief Justice Morawetz held in *Re Target Canada Co.*, "there are good policy and practical reasons for the court to approve of [a] Monitor's activities and providing a level of protection for [a] Monitor during the CCAA process".[71] This policy rationale applies equally to trustees, including proposal trustees, and receivers discharging their functions under the BIA.[72]

75. Having regard to the policy described in *Target*, TBS Canada requests that this Court approve the conduct of the Proposal Trustee and its counsel because they have acted with diligence and in good faith in respect of their obligations and duties in the NOI

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71 *Re Target Canada Co.*, 2015 ONSC 7574, at para. 22 [MBOA, Tab 17].

72 See, *e.g.*, *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400, at para. 66 [MBOA, Tab 19]; and *KEB Hana as Trustee v. Mizrahi Commercial (THE ONE) LP et al.*, 2024 ONSC 1678, at para. 40 [MBOA, Tab 11].

Proceeding, and have made substantial contributions in the NOI Proceeding, including assisting the Company in its efforts to stabilize its operations.

76. TBS Canada also requests that this Court approve the fees of the Proposal Trustee and its counsel. As the Court of Appeal for Ontario held in *Bank of Nova Scotia v. Diemer*, this Court is not supposed to undertake a line-by-line analysis of their invoices. Rather the guiding principle on fee approvals of this nature is whether the fees are fair, reasonable, and proportionate given the value of the Company's assets and liabilities, as well as the complexity of the Company's business and the NOI Proceedings.[73] The Company submits that they are.

77. Finally, with regard to the releases sought by the Proposal Trustee, counsel to the Proposal Trustee, and counsel to TBS Canada, this Court held in *Re Nordstrom Canada Retail, Inc.* that courts consider the following non-exhaustive factors in assessing whether a release would be appropriate:

(a) whether the proposed released parties were necessary and essential and whether the claims to be released are rationally connected;

(b) whether the release benefits the debtors as well as the creditors generally;

(c) whether the creditors who voted on the plan had knowledge of the nature and effect of the releases; and

(d) whether the releases are fair and reasonable and not overly broad or offensive to public policy.[74]

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73 *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras. 33 and 45 [MBOA, Tab 1]; and *Re Fresh City Farms and Mama Earth Organics*, 2024 ONSC 2016, at para. 47 [MBOA, Tab 8].

74 *Re Nordstrom Canada Retail, Inc.*, 2024 ONSC 1622, at para. 29 [MBOA, Tab 14].

78. Here, the participation of the Proposal Trustee, counsel to the Proposal Trustee, and counsel to the Company were necessary to facilitate the NOI Proceeding. Moreover, the releases sought are fair and reasonable and not overly broad because they do not purport to release gross negligence or wilful misconduct and concern only the conduct of the released parties in respect of the NOI Proceeding rather than at large. Consequently, this Court should grant the releases sought in the NOI Discharge and Termination Order.

PART V - ORDER REQUESTED

79. TBS Canada requests the issuance of the Initial Order, Sale Process Order, and NOI Discharge and Termination Order in the forms included in Tabs 3, 5 and 6, respectively, in the Company's motion record. The Company submits that all parties should bear their own costs of this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of July, 2024.

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Lawyers for the
The Body Shop Canada Limited

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851.
2. *Cannmart Labs Inc. (Re)*, Endorsement of Penny J dated May 2, 2024, CV-24-00719639-00CL.
3. *Canwest Publishing Inc.*, 2010 ONSC 222.
4. *CCM Master Qualified Fund v. blutip Power Technologies Inc.*, 2012 ONSC 1750.
5. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60.
6. *(Re) Clothing for Modern Times Ltd.*, 2011 ONSC 7522.
7. *Comstock Canada Ltd. (Re)*, 2013 ONSC 4756.
8. *Fresh City Farms and Mama Earth Organics*, 2024 ONSC 2016.
9. *Grant Forest Products Inc. (Re)*, 2009 CanLII 42046 (Ont. S.C.).
10. *Jaguar Mining Inc. (Re)*, 2014 ONSC 494.
11. *KEB Hana as Trustee v. Mizrahi Commercial (THE ONE) LP et al.*, 2024 ONSC 1678.
12. *Lydian International Limited (Re)*, 2019 ONSC 7473.
13. *Medifocus Inc. (Re)*, Endorsement of Cavanagh J dated October 7, 2021, Court File No CV-20-00669781-00CL.
14. *Nordstrom Canada Retail, Inc. (Re)*, 2024 ONSC 1622.
15. *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (Ont. S.C.).
16. *Stantive Technologies Group Inc. (Re)*, Endorsement of Penny J. dated February 25, 2019, Court File No. 31-244835.
17. *Target Canada Co. (Re)*, 2015 ONSC 7574.
18. *Tribalscale Inc. (Re)*, Order of Justice Gilmore dated July 31, 2020, Court File No. CV-20-00645116-00CL.
19. *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400.
20. *Urbancorp Toronto Management Inc. (Re)*, 2016 ONSC 3288.

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Notice of intention
50.4 (1) Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating

(a) the insolvent person's intention to make a proposal,
(b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
(c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books,

and attaching thereto a copy of the consent referred to in paragraph (b).

[…]

Extension of time for filing proposal
(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application 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 for were granted; and
(c) no creditor would be materially prejudiced if the extension being applied for were granted.

[…]

Stay of proceedings — notice of intention
69 (1) Subject to subsections (2) and (3) and sections 69.4, 69.5 and 69.6, on the filing of a notice of intention under section 50.4 by an insolvent person,

(a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy,
(b) no provision of a security agreement between the insolvent person and a secured creditor that provides, in substance, that on
(i) the insolvent person's insolvency,

(ii) the default by the insolvent person of an obligation under the security agreement, or

(iii) the filing by the insolvent person of a notice of intention under section 50.4,

the insolvent person ceases to have such rights to use or deal with assets secured under the agreement as he would otherwise have, has any force or effect,

(c) Her Majesty in right of Canada may not exercise Her rights under

(i) subsection 224(1.2) of the *Income Tax Act*, or

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that

(A) refers to subsection 224(1.2) of the *Income Tax Act*, and

(B) provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts,

in respect of the insolvent person where the insolvent person is a tax debtor under that subsection or provision, and

(d) Her Majesty in right of a province may not exercise her rights under any provision of provincial legislation in respect of the insolvent person where the insolvent person is a debtor under the provincial legislation and the provision has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a ***province providing a comprehensive pension plan*** as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a ***provincial pension plan*** as defined in that subsection,

until the filing of a proposal under subsection 62(1) in respect of the insolvent person or the bankruptcy of the insolvent person.

Companies' Creditors Arrangements Act, R.S.C. 1985, c. C-36

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than $5,000,000 or any other amount that is prescribed.

[…]

Form of applications

10 (1) Applications under this Act shall be made by petition or by way of originating summons or notice of motion in accordance with the practice of the court in which the application is made.

Documents that must accompany initial application
(2) An initial application must be accompanied by

(a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;

(b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and

(c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

[…]

Stays, etc. — initial application
11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

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

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

[…]

Court may order security or charge to cover certain costs
11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority
(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

***Bankruptcy and Insolvency Act* matters**
11.6 Notwithstanding the *Bankruptcy and Insolvency Act*,
(a) proceedings commenced under Part III of the *Bankruptcy and Insolvency Act* may be taken up and continued under this Act only if a proposal within the meaning of the *Bankruptcy and Insolvency Act* has not been filed under that Part; and
(b) an application under this Act by a bankrupt may only be made with the consent of inspectors referred to in section 116 of the *Bankruptcy and Insolvency Act* but no application may be made under this Act by a bankrupt whose bankruptcy has resulted from
(i) the operation of subsection 50.4(8) of the *Bankruptcy and Insolvency Act*, or
(ii) the refusal or deemed refusal by the creditors or the court, or the annulment, of a proposal under the *Bankruptcy and Insolvency Act*.

Court to appoint monitor
11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*.

Restrictions on who may be monitor
(2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company
(a) if the trustee is or, at any time during the two preceding years, was
(i) a director, an officer or an employee of the company,
(ii) related to the company or to any director or officer of the company, or
(iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or
(b) if the trustee is

(i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the *Civil Code of Quebec* that is granted by the company or any person related to the company, or

(ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

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
Estate / Court File No. BK-31-3050418

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

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE BODY SHOP CANADA LIMITED (CCAA CONVERSION MOTION RETURNABLE JULY 5, 2024)

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