



**ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ENDORSEMENT

COURT FILE NO.: CV-25-00738613-00CL

DATE: May 5, 2025

NO. ON LIST: 2

TITLE OF PROCEEDING: Hudson's Bay Company, (Re)

BEFORE: JUSTICE OSBORNE

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ENDORSEMENT OF JUSTICE OSBORNE:

1. On April 24, 2025, and for oral reasons delivered on that date and additional reasons delivered on May 1, 2025, I appointed The Hon. Herman Wilton-Siegel as Independent Third Party to evaluate the Representative Counsel proposals and make a recommendation to the Court.
2. Today, May 5, 2025, Mr. Wilton-Siegel submitted his Report in which he recommended that the firm of Ursel Phillips Fellows Hopkinson LLP be appointed as Representative Counsel.
3. Mr. Wilton-Siegel's Report (without Appendix "B") is attached as Schedule "A" to this Endorsement.
4. I have reviewed Mr. Wilton-Siegel's Report and accept his recommendation.
5. Ursel Phillips Fellows Hopkinson LLP is appointed as Representative Counsel.


Osborne J.

WILTON-SIEGEL RESOLUTIONS INC.

Report

To: The Honourable Peter J. Osborne, the Superior Court of Justice of Ontario

From: Hon. Herman J. Wilton-Siegel

Date: May 5, 2025

RE: Review of Applications for Representative Counsel for the active and former non-unionized employees of Hudson's Bay Company and its affiliates (collectively "HBC"): Court File: CV-25-00738613-00CL

Dear Mr. Justice Osborne:

Thank you for the appointment as the independent third party ("ITP") to assess the proposals of the five law firms who have applied to be representative counsel for the active and former non-unionized employees of Hudson's Bay Company and certain of its affiliates (the "Employees"). In accordance with the Court's endorsement of April 24, 2025, the scope of the representative counsel mandate (the "Scope") is set out in a letter of HBC's counsel to certain prospective candidates dated April 7, 2025 in the circumstances described below.

The proposed scope will allow the Employees to meaningfully and affordably participate on a collective basis in the proceedings regarding HBC under the *Companies Creditors Arrangement Act* before the Superior Court of Justice (the "CCAA Proceedings"). It contemplates that the representative counsel will:

- (a) advise and support the Employees in respect of employment or other workplace matters arising within the CCAA Proceedings;
- (b) file claims in any claims process approved within the CCAA Proceedings;
- (c) represent the Employees in meetings and Court hearings;
- (d) communicate with HBC and the Monitor on behalf of the Employees in respect of potential future motions and orders to be sought in the CCAA Proceedings; and
- (e) resolve and prevent conflicts and disputes.

In carrying out its responsibilities, it is anticipated that the representative counsel will, among other

things, address pre-CCAA claims of former employees, claims for severance pay for active employees as of March 7, 2025, claims for post-retirement benefits (“PRBs”) and long-term disability, as well as claims under the *Wage Earner Protection Program Act*. Representative counsel will also represent the Employees on issues related to the termination of three supplementary executive retirement plans (“SERPs”) and on any termination of the HBC pension plan. There is currently little information available regarding the pension plan, including membership in the plan, but the plan appears to have a significant surplus relative to the accrued pension liabilities under the plan.

A. BACKGROUND: CERTAIN ACTIONS OF HBC GIVING RISE TO POTENTIAL CLAIMS OF THE EMPLOYEES

The Second Report of Alvarez & Marsal Canada Inc. (the “Monitor”) dated April 22, 2025 (the “Second Report”) states that, as of February 28, 2025, HBC had approximately 9,634 employees, of which 647 were subject to collective agreements, as well as approximately 3,000 retirees receiving payments under the HBC pension plan.

In addition, the Second Report indicates that HBC has sponsored three SERPs in which a total of 304 employees and former employees participated. Of these three SERP's, one is partially funded through a trust and the balance were funded from general revenues of HBC.

The Second Report also states that HBC offered PRBs in the form of health and dental benefits that were paid from general revenues of HBC and life insurance policies to approximately 2,000 retirees and that HBC paid long-term disability benefits from general revenues of HBC to approximately 183 employees, 93 of whom are still currently employed by HBC.

The Second Report further reports that, since the commencement of the CCAA Proceedings, HBC has:

- (a) terminated the employment of approximately 272 corporate employees;
- (b) for all 304 SERP beneficiaries, as applicable, (i) terminated the SERP benefit payments from general revenue; and (ii) notified the trustee in respect of the partially funded SERP trust that the trust has been automatically terminated and that HBC will not make any further contributions to, or payments in respect of, the trust;
- (c) terminated salary continuation arrangements for employees terminated prior to the CCAA Proceedings; and
- (d) provided notice of termination to PRB recipients notifying them that their PRBs will be terminated effective April 30, 2025.

It is important to note that, on a preliminary basis, it appears that distributions in satisfaction of unsecured claims against HBC, including the unsecured claims of the Employees, are expected to be limited at best.

B. BACKGROUND TO THE APPOINTMENT OF THE ITP:

Prior to my appointment as the ITP, it is understood from the Monitor's Second Report that counsel for

HBC, in consultation with the Monitor, issued a request for proposals to five law firms soliciting proposals from those firms to act as representative counsel for the Employees. The request for proposals was contained in the letter of HBC's counsel dated April 7, 2025 referred to above. In response to an inquiry received by HBC from a sixth law firm, after consultation with its counsel and the Monitor, a similar request for proposals was issued to that law firm. In total five proposals were received by HBC (the "Proposals").

After a review of the Proposals, and in certain cases of a requested clarification, HBC in consultation with the Monitor determined to seek the appointment of Ursel Phillips Fellows Hopkinson LLP ("Ursel Phillips"), as representative counsel. The motion of HBC seeking a Court order confirming such appointment was opposed by Koskie Minsky LLP who had also provided a Proposal. In a cross-motion, Koskie Minsky LLP sought the appointment of an independent third party to review the Proposals and to make a recommendation to the Court regarding the appropriate representative counsel. The ITP was appointed by the Court's endorsement dated April 24, 2025.

To assess the quality of the applications, the ITP reviewed the Proposals on April 27, 2025. The ITP then conducted oral interviews with representatives from all of the candidates on April 29, 2025.

In each interview, the ITP asked the same series of questions. The questions explored potential issues which could arise from the representative counsel mandate. To be transparent and fair in the process, the candidates were told the identities of the other candidates in advance and were questioned about the advantages which they could bring over the competing firms. The questions are attached to this memorandum as Appendix "A".

As authorized by the Court's endorsement of April 24, 2025, the ITP also questioned the Monitor and its counsel regarding the Proposals as well as the background to the appointment of the ITP. The ITP did not, however, separately consult with HBC or its counsel.

C. RECOMMENDATION:

All five applicants were well qualified and had significant commercial and insolvency expertise and experience. Every candidate submitted detailed Proposals and provided thoughtful answers during the interviews. The decision to select one Proposal out of five was difficult.

However, following extensive deliberations, the ITP recommends to the Superior Court of Justice that Ursel Phillips Fellows Hopkinson LLP be appointed the Representative Counsel. Their written proposal is attached as "Appendix B" to this memorandum. The key factors involved in the assessment are as follows:

1. Independence

The successful representative counsel must be a fearless advocate for the Employees. The Employees must have confidence that they will be independently advised and represented with an absence of any real or perceived conflicts. The ITP very much appreciated the candour of each of the firms in discussing actual and potential conflicts and independence.

Several firms had a prior involvement or a current mandate that could raise potentially problematic

conflicts. While it may be possible to address potential conflicts arising from such matters, it is preferable that representative counsel be perceived to be altogether free of any potential conflict in order that all Employees can have the necessary confidence in their counsel. In addition, several firms had relationships with sub-groups of Employees who have claims in respect of any pension plan surplus. In the absence of a more complete understanding of the pension plan arrangements, it is unclear whether the Employees as a whole will have any claim in respect of the surplus. Given its significance for any recovery by the Employees, any assessment of the potential claims of the Employees in respect of any surplus should be conducted by representative counsel who have had no prior association with any sub-group of employees or former employees who assert claims on their own behalf. The ITP is satisfied that Ursel Phillips has no such mandate or relationship and is therefore completely independent in the present circumstances.

It is also critical that the Employees perceive the representative counsel to be free from any association with HBC, the Monitor or their respective counsel. As mentioned above, Ursel Phillips was previously selected by HBC and the Monitor in the process that was superceded by the Court's endorsement of April 24, 2025. I am satisfied however that any criticism that may be raised regarding that process does not attach to Ursel Phillips and that there is no basis for concluding that the ability of that firm to provide objective and independent advice was compromised in any manner by its prior selection by HBC and the Monitor.

2. *The Requisite Expertise*

Each of the firms demonstrated an expertise in the areas of insolvency, employment and pension law required to fulfil the role of representative counsel. However, certain firms had more extensive experience with, and therefore a deeper understanding of, some of the complexities involved in the particular circumstances of these CCAA Proceedings.

In its application and interview, counsel from Ursel Phillips demonstrated a thoughtful and sophisticated understanding of the present issues and an appreciation of the need for a balanced approach to the pursuit of claims on behalf of the Employees as well as possible alternative sources of support for the Employees.

3. *Communications with the Employees*

Each of the candidates had slightly different capabilities and approaches to the manner of communicating with the Employees depending upon the location of their offices, the availability of staff, and prior experience with large groups of clients.

As representative counsel of employees and pension beneficiaries, Ursel Phillips demonstrated recent experience in establishing communications channels with large groups of clients in the insolvency context. They also appreciated the need for the communication of realistic assessments of the position of the Employees in the CCAA Proceedings in the interests of fairness to the Employees and of maintenance of the integrity of the judicial system.

4. *Cost Issues*

The costs of representative counsel, to the extent that costs are not granted a priority claim, are also an

important consideration in the present context. While it is not possible at the present time to forecast the work involved on behalf of the Employees and therefore to develop a budget, the rates charged by Ursel Phillips were no more than the next most competitive firm in this process.

5. *Demonstrated Interest in Working with the Monitor*

While Employees require and are entitled to zealous and independent representation, their interests will best be served by being represented by counsel who recognize the importance of cooperation with the Monitor. In my interview with the representatives of Ursel Phillips, they recognized the importance of and expressed a willingness to work co-operatively with the Monitor.

D. CONCLUSION:

All of the applications from the five firms were responsive. Each candidate addressed why it was best suited for the role in a thoughtful manner. It was a difficult decision to select one Proposal. However, based on the considerations outlined above, the ITP respectfully recommends the appointment of Ursel Phillips Fellows Hopkinson LLP as representative counsel for the active and retired non-unionized employees of HBC.

Yours truly,



Hon. Herman J. Wilton-Siegel

SCHEDULE A

QUESTIONS FOR DISCUSSION WITH THE PROPOSERS

1. What involvement have they had with similar engagements?
2. What understanding and/or involvement have they regarding these CCAA proceedings?
5. How do they propose to address
3. What do they understand the scope of the engagement to entail?
4. What specific issues do they foresee addressing on behalf of the employees collectively?
5. How do they propose to address province-specific issues in respect of employees outside of Ontario?
6. What specific issues, if any, do they foresee addressing on behalf of particular sub-groups of employees?
7. What current mandates do they have in respect of the CCAA proceedings?
8. What conflicts, if any, do they perceive regarding any of these mandates?
9. Do any of the specific issues foreseen in respect of the engagement, in particular any of the issues that might be raised by particular sub-groups, give rise to the potential for any conflicts?
10. How would they propose to address any of the potential conflicts raised in the circumstances contemplated by questions 7 and 8 above?
11. How do they propose to communicate with the employees and retirees? To what extent do they have a bilingual capability?

12. How do they propose to obtain instructions from the employees and retirees?

13. What rates are proposed in respect of their proposed staffing and how do they propose to contain aggregate fees within a reasonable range?