

TARGET CANADA CO. EMPLOYEE WEBCAST

JANUARY 2015

KOSKIE
MINSKY_{LLP}
BARRISTERS & SOLICITORS





INTRODUCTIONS

Your Team at Koskie Minsky LLP

Counsel:

- **Susan Philpott– Senior Counsel**
- **Simon Archer**
- **Clio Godkewitsch**
- **James Harnum**

Communications:

- **Natercia McLellan**



INTRODUCTIONS

Your Team at Koskie Minsky LLP (cont'd)

Bilingual Counsel:

- Mireille Giroux
- Adrian Scotchmer

Bilingual Communications:

- Lee Caragiale
- Raphaelle Bres



OVERVIEW

A. CCAA Proceeding

**B. Role of Representative Counsel
and Representatives**

**C. Impact on Employment and
Employee Trust**



A. CCAA Proceeding

- Target Canada Co. (“Target Canada”) filed for creditor protection under the *Companies’ Creditors Arrangement Act* (“CCAA”) on January 15, 2015
- CCAA Proceedings =
 - protection from creditors
 - stay of proceedings/actions against Target
 - Monitor (Alvarez & Marsal) appointed by the Court to oversee liquidation, administer the Trust and report regularly to the Court



A. CCAA Proceeding

- Target Canada experienced significant losses from the outset; lost \$1 billion in 2014.
- Target Canada was largely funded by Target US, which has decided to stop funding.
- Without Target US funding, Target Canada is insolvent as it can no longer meet its debts as they become due.



B. Representative Counsel

- Koskie Minsky LLP has been appointed by the Court as Representative Counsel to all current employees of Target Canada (the “Employees”)
- Koskie Minsky LLP has acted as Representative Counsel to employee and pensioner groups in many insolvencies:
 - Nortel, Hollinger, Stelco, Eaton’s, US Steel and others



B. Representative Counsel

- Representative Counsel's mandate is to represent all Employees' rights and interests in the CCAA Proceedings.
- Employees' primary interests relate to termination of their employment and related entitlements.
- Representation covers Employees on leaves of absence for disability, maternity, and other kinds of leaves.



B. Representative Counsel

- Koskie Minsky has also been asked to identify up to seven (7) individuals from among Target Canada Employees to act as Representatives.
- The Representatives will be appointed by the Court, and anyone interested should contact us.
- See www.kmlaw.ca for a full description of the role of Representatives.



B. Representative Counsel

- Key roles of Representatives
 - Liaise with, speak for and act in best interests of all Target Employees
 - Instruct counsel
 - Authority to settle and advance claims on behalf of Target Employees
- Representatives will not be paid for their time
 - However, reasonable expenses incurred in the course of tasks associated with the role will be reimbursed



B. Representative Counsel

- Representative Counsel's job is to assist Employees throughout the CCAA period with all employment-related claims
 - Many Employees will be asked to continue to work for Target Canada for at least some period of time as it winds down its business



B. Representative Counsel

- Target Canada will pay Representative Counsel's fees, but Koskie Minsky **does not** report to the company.
- Our clients are Target Canada Employees.
- **Koskie Minsky legal fees will not be charged to the Employees.**



C. Impact on Employees

- All stores across Canada will ultimately be closed and inventory liquidated
 - Employees will be asked to continue to work; how long will depend on each Employee's current role and location
- Notices of Termination of Employment
 - Sent January 16, 2015
 - **Deemed received and effective January 24, 2015** (ie. the Notice Period starts to run on January 25)



C. Impact on Employees

On termination of employment – two potential sources of entitlement:

1. **Statute** – minimum employment standards legislation creates a “floor” of rights in each province.
2. **Contract** – a written employment agreement may exceed the minimum statutory standards.



C. Impact on Employees

- In most insolvencies employees are only paid a portion of their entitlements - that is, they lose their jobs and do not even receive their full minimum entitlements.
- Here, Target Canada's US parent – Target Corporation - has set up a trust to fund **Eligible Employees'** entitlements to wages and benefits coverage on termination (the "Trust").
 - The Monitor is the administrator of the Trust and the Honourable John D. Ground is the Trustee.



C. Impact on Employees

“Eligible Employees” are those Employees of Target Canada who, as of January 15, 2015 (filing date) are:

- Active Employees; or
- Inactive Employees on an approved disability, statutory or personal and educational leave of absence

who have not received or given notice of termination, and who, after January 15, 2015 are terminated without cause.



C. Impact on Employees

Effect of the Trust

- Provides a measure of financial security and certainty to Employees during the wind down process.
- Protects Employees from disputes with creditors of Target Canada over entitlements.
- Avoids Employees having to share in the proceeds of the estate with other creditors for their termination and severance claims, and don't have to wait for a distribution



C. Impact on Employees

- It is anticipated that an Employee's entitlements on termination will be met through a combination of
 - payments from the Trust; and
 - wages earned for work over your Notice Period ("working notice")
- **Working Notice** - You will likely be required to report to work for a number of weeks (and in some cases all) of your Notice Period; your wages and benefits will be paid to you by Target Canada in the normal course.



C. Impact on Employees

Employees will be paid in the usual manner for the hours they work, but if an Employee works fewer than their normal hours (determined by reference to “Regular Wages” and “Regular Work Week”) their earnings will be **“topped up”** by the Trust.

- **“Regular Wages”** means an Eligible Employee`s regular wages as determined under applicable ESA
- **“Regular Work Week”** means an Eligible Employee`s regular work week as determined under applicable ESA



C. Impact on Employees

Calculations of Trust entitlements

Under the terms of the Trust, all Eligible Employees will receive a distribution equal to **A – B** where:

A is the greater of:

- your minimum statutory entitlement; or
- your contractual entitlement; or
- 16 weeks; and

B is all amounts you earn while working over the Notice Period.



C. Impact on Employees

- In other words:
 - All amounts earned while working during the notice period will be paid by Target Canada;
 - Every Employee will receive at least 16 weeks of pay following notice of termination;
 - The difference between the amount earned while working and the amount to which you are entitled will be paid out of the Trust, funded by Target US



C. Impact on Employees

IMPORTANT: Conditions to Entitlement under the Trust:

- You will only be paid your distribution under the Trust if you **continue to work as scheduled** until Target Canada informs you that you no longer need to report to work.
- If you voluntarily leave your employment, or are fired for cause, you will not be eligible for payment from the Trust or Company beyond your earned wages.



C. Impact on Employees

Example:

“John” – a part time, hourly worker

- John’s Notice of Termination is (deemed) received on January 24, 2015
- John is entitled to 16 weeks’ **notice** or **pay in lieu of notice** under Ontario’s ESA starting January 25, 2015
- John’s Regular Work Week is 24 hours per week



C. Impact on Employees

Example (cont'd):

- John is scheduled and works for the 8 weeks following January 24, but only for 14 hours per week;
- For those 8 weeks, John will receive:
 - pay from Target Canada for the 14 hours he works each week; and
 - a “top up” payment from the Trust of 10 hours’ pay per week



C. Impact on Employees

Example (cont'd):

- For the remaining 8 weeks of his 16 week notice period, John will receive payment from the Trust for his 24 hour Regular Work Week
 - 24 hours x 8 weeks x \$[Regular Wage]



C. Impact on Employees

Recap:

- Notice of Termination is given on **January 24, 2015** and your termination date will be a minimum of 16 weeks later.
- Your manager will continue to schedule you after January 24 as long as you are needed.
- You will be advised when you are no longer required to report to work.
- Target Canada will pay you for any hours that you actually work.



C. Impact on Employees

Recap (cont'd):

- Your termination entitlements will be satisfied through a combination of:
 - “working notice” during which you will be paid for the services you provide
 - “top up” of amounts earned during the working notice period, if applicable (if less than your regular work) from the Trust
 - payment from the Trust of the balance of your notice period for which you have not been paid



C. Impact on Employees

Disputes?

There will be a process for Employees to challenge the amount of any Trust payment, which Representative Counsel can assist with:

- Within 60 days from the date of payment, you must notify the Monitor and Representative Counsel if you disagree with the amount of a payment from the Trust (dispute notice form will be available on www.kmlaw.ca)
- After 60 days, if you have not disputed the amounts, they will become final and binding.



Contacting Koskie Minsky LLP

Hotline: 1.866.860.9364

Email: targetemployees@kmlaw.ca

Web: www.kmlaw.ca/targetemployees