

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

B E T W E E N :

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
INSCAPE CORPORATION, INSCAPE (NEW YORK) INC., AND INSCAPE INC.

Applicants

**FACTUM OF THE MOVING APPLICANTS**  
**(returnable JANUARY 20, 2023)**

**MILLER THOMSON LLP**  
Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, ON Canada M5H 3S1

**Larry Ellis LSO#:49313K**  
lellis@millerthomson.com  
Tel: 416.595.8639

**David Ward LSO#: 33541W**  
dward@millerthomson.com  
Tel: 416.595.8625

**Stephanie De Caria LSO#68055L**  
sdecaria@millerthomson.com  
Tel: 416.597.2652

**Monica Faheim LSO #:82213R**  
mfaheim@millerthomson.com  
Tel: 416.595.6087

Lawyers for the Applicants

TO: THE SERVICE LIST

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

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
(the "CCAA")

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF INSCAPE CORPORATION, INSCAPE  
(NEW YORK) INC., AND INSCAPE INC. (the "**Applicants**")

---

**SERVICE LIST**  
(as of January 19, 2023)

---

<p><b>AIRD &amp; BERLIS LLP</b> Brookfield Place 181 Bay St., Suite 1800 Toronto, ON M5J 2T9</p> <p><b>Steven L. Graff</b> (LSO # 31871V) <a href="mailto:sgraff@airdberlis.com">sgraff@airdberlis.com</a> Tel: 416-865-7726</p> <p><b>Kyle Plunkett</b> (LSO # 61044N) <a href="mailto:kplunkett@airdberlis.com">kplunkett@airdberlis.com</a> Tel: 416-865-3406</p> <p><b>Matilda Lici</b> (LSO # 79621D) <a href="mailto:mlici@airdberlis.com">mlici@airdberlis.com</a> Tel: 416-865-3428</p> <p>Lawyers for the Monitor</p>	<p><b>ALVAREZ &amp; MARSAL CANADA INC.</b> 200 Bay St. Toronto, ON M5J 2J1</p> <p><b>Stephen Moore</b> <a href="mailto:smoore@alvarezandmarsal.com">smoore@alvarezandmarsal.com</a></p> <p><b>Joshua Nevsky</b> <a href="mailto:jnevsky@alvarezandmarsal.com">jnevsky@alvarezandmarsal.com</a></p> <p><b>Esther Mann</b> <a href="mailto:esther.mann@alvarezandmarsal.com">esther.mann@alvarezandmarsal.com</a></p> <p><b>Mitchell Binder</b> <a href="mailto:mbinder@alvarezandmarsal.com">mbinder@alvarezandmarsal.com</a></p> <p>Monitor</p>
--	---

<p><b>MILLER THOMSON LLP</b>  Scotia Plaza  40 King Street West, Suite 5800  P.O. Box 1011  Toronto, ON M5H 3S1</p> <p><b>Larry Ellis</b> (LSO # 49313K)  <a href="mailto:lellis@millerthomson.com">lellis@millerthomson.com</a>  Tel: 416-595-8639</p> <p><b>David Ward</b> (LSO # 33541W)  <a href="mailto:dward@millerthomson.com">dward@millerthomson.com</a>  Tel: 416-595-8625</p> <p><b>Stephanie De Caria</b> (LSO # 68055L)  <a href="mailto:sdecaria@millerthomson.com">sdecaria@millerthomson.com</a>  Tel: 416-597-2652</p> <p><b>Monica Faheim</b> (LSO # 82213R)  <a href="mailto:mfaheim@millerthomson.com">mfaheim@millerthomson.com</a>  Tel: 416-595-6087</p> <p>Lawyers for the Applicants</p>	<p><b>THE INSCAPE GROUP</b></p> <p><b>Eric Ehgoetz</b>  <a href="mailto:eehgoetz@myinscape.com">eehgoetz@myinscape.com</a></p> <p><b>Jon Szczur</b>  <a href="mailto:jszczur@myinscape.com">jszczur@myinscape.com</a></p> <p>Applicants</p>
<p><b>HICKS MORLEY HAMILTON  STEWART STORIE LLP</b>  77 King St. West, 39th Floor  Toronto, ON M5K 1K8</p> <p><b>Craig Rix</b> (LSO # 37285K)  <a href="mailto:craig-rix@hicksmorley.com">craig-rix@hicksmorley.com</a>  Tel: 416-362-1011</p> <p>Employment Law Counsel to the Inscope Group</p>	<p><b>HILCO CAPITAL LIMITED</b>  84 Grosvenor Street  London, England W1K 3JZ</p> <p><b>Chris Emmott</b>  <a href="mailto:chris.emmott@hilcocapital.com">chris.emmott@hilcocapital.com</a></p> <p><b>Matthew Holt</b>  <a href="mailto:matthew.holt@hilcocapital.com">matthew.holt@hilcocapital.com</a></p> <p><b>Tom Jones</b>  <a href="mailto:tom.jones@hilcocapital.com">tom.jones@hilcocapital.com</a></p> <p>Secured Creditor</p>

<p><b>WILLKIE FARR &amp; GALLAGHER LLP</b>  787 Seventh Avenue  New York, NY 10019-6099</p> <p><b>Weston Eguchi</b>  <a href="mailto:weguchi@willkie.com">weguchi@willkie.com</a>  Tel: 212.728.8881</p> <p><b>Jeffrey Pawlitz</b>  <a href="mailto:JPawlitz@willkie.com">JPawlitz@willkie.com</a>  Tel: 212.728.8223</p> <p><b>Jamie Eisen</b>  <a href="mailto:jeisen@willkie.com">jeisen@willkie.com</a>  Tel: 212.728.8697</p> <p><b>Courtenay Cullen</b>  <a href="mailto:ccullen@willkie.com">ccullen@willkie.com</a>  Tel: 212.728.3928</p> <p>U.S. Counsel to the Applicants</p>	<p><b>GOWLING WLG</b>  100 King St. West, #1600  Toronto, ON M5X 1G5</p> <p><b>Clifton Prophet</b> (LSO # 34845K)  <a href="mailto:Clifton.Prophet@gowlingwlg.com">Clifton.Prophet@gowlingwlg.com</a>  Tel: 416-862-3509</p> <p>Special Counsel to the Applicants</p>
<p><b>DELL FINANCIAL SERVICES CANADA LIMITED</b>  155 Gordon Baker Rd., Suite 501  North York, ON M2H 3N5</p> <p><b>Kathryn Miner</b>  <a href="mailto:Kathryn_Miner@dell.com">Kathryn_Miner@dell.com</a></p>	<p><b>ATTORNEY GENERAL OF CANADA</b>  Department of Justice Canada  Ontario Regional Office, Tax Law Section  120 Adelaide Street West, Suite 400  Toronto, ON M5H 1T1</p> <p><b>Diane Winters</b>  <a href="mailto:Diane.winters@justice.gc.ca">Diane.winters@justice.gc.ca</a>  Tel: 647-256-7459</p> <p>Lawyers for the Minister of National Revenue</p>
<p><b>MINISTRY OF FINANCE (ONTARIO)</b>  Legal Services Branch  777 Bay Street, 11th Floor  Toronto, ON M5G 2C8</p> <p><a href="mailto:Insolvency.unit@ontario.ca">Insolvency.unit@ontario.ca</a></p>	<p><b>OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY CANADA</b>  151 Yonge Street, 4th Floor  Toronto, ON M5C 2W7</p> <p><a href="mailto:osbservice-bsfservice@ised-isde.gc.ca">osbservice-bsfservice@ised-isde.gc.ca</a></p>

<p><b>FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO</b>  25 Sheppard Ave W, Suite 100,  North York, ON M2N 6S6</p> <p><b>Swati Das</b>  <a href="mailto:swati.das@fsrao.ca">swati.das@fsrao.ca</a>  Tel: 416-226-7807</p>	<p><b>ONTARIO SECURITIES COMMISSION</b>  20 Queen street West, Suite 1900  Toronto, ON M5H 3S8</p> <p><a href="mailto:NKanji@osc.gov.on.ca">NKanji@osc.gov.on.ca</a></p> <p><a href="mailto:inquiries@osc.gov.on.ca">inquiries@osc.gov.on.ca</a></p> <p><b>Cullen Price</b>  <a href="mailto:cprice@osc.gov.on.ca">cprice@osc.gov.on.ca</a></p> <p><b>Paloma Ellard</b>  <a href="mailto:PELLARD@osc.gov.on.ca">PELLARD@osc.gov.on.ca</a></p> <p><b>Katrina Janke</b>  <a href="mailto:KJANKE@osc.gov.on.ca">KJANKE@osc.gov.on.ca</a></p>
<p><b>UNITED STEELWORKERS LOCAL 1-500</b>  1100 Clarence Street South  Suite 104  Brantford, ON N3S 7N8</p> <p><b>Don Guest</b>  <a href="mailto:president@uswlocal1-500.com">president@uswlocal1-500.com</a></p>	<p><b>UNITED STEELWORKERS/SYNDICAT DES MÉTALLOS</b>  800-234 Eglinton Ave East  Toronto, ON M4P 1K7</p> <p><b>Daniel Daigle</b>  <a href="mailto:ddaigle@usw.ca">ddaigle@usw.ca</a>  Tel: (416)544-5983</p> <p>Counsel to United Steelworkers Local 1-500</p>
<p><b>OSLER, HOSKIN &amp; HARCOURT LLP</b>  100 King Street West  1 First Canadian Place  Suite 6200, PO Box 50  Toronto, ON M5X 1B8</p> <p><b>Marc Wasserman</b> (LSO # 44066M)  <a href="mailto:mwasserman@osler.com">mwasserman@osler.com</a>  Tel: 416-862-4908</p> <p><b>Matthew Cressatti</b> (LSO # 77944T)  <a href="mailto:mcressatti@osler.com">mcressatti@osler.com</a>  Tel: 416-862-4230</p> <p>Lawyers for Cedar City Paradise Toll Rd. Inc.</p>	<p><b>CHAITONS LLP</b>  5000 Yonge St, 10th Floor  Toronto, ON M2N 7E9</p> <p><b>Maya Poliak</b> (LSO # 54100A)  <a href="mailto:Maya@chaitons.com">Maya@chaitons.com</a>  Tel: 416-218-1161</p> <p>Counsel to Ontario Securities Commission</p>

<p><b>THOR 816 W FULTON OWNER LLC</b>  25 West 39th Street, 11th Floor  New York, NY 10018</p> <p><b>Ashley Phelps</b>  <a href="mailto:ashley.Phelps@am.jll.com">ashley.Phelps@am.jll.com</a>  Tel: 872-275-3003</p> <p>Landlord</p>	<p><b>LYNN DEVELOPMENT, INC.</b>  310 E 3rd Street. Suite 308  PO Box 3090  Jamestown, NY 14702</p> <p><b>Helen Lynn</b>  <a href="mailto:Hlynn@lynndevelopment.net">Hlynn@lynndevelopment.net</a>  <a href="mailto:alynn@lynndevelopment.net">alynn@lynndevelopment.net</a>  Tel: 716-665-6620</p> <p>Landlord</p>
<p><b>PONTE GADEA NEW YORK, LLC</b>  370 Biscayne Blvd. Way, Suite 201  Miami, Florida 33131</p> <p><b>Sinthujan Kanghatharan</b>  <a href="mailto:sinthujank@pontegadea.com">sinthujank@pontegadea.com</a>  Tel: 305-373-9559</p> <p>Landlord</p>	<p><b>CEDAR CITY PARADISE TOLL RD. INC</b>  124 Merton St. Suite 502  Toronto, ON M4S 2Z2</p> <p><b>Steven Silverberg</b>  <a href="mailto:steven@cedarcitydev.com">steven@cedarcitydev.com</a>  Tel: 416-306-9900</p> <p><b>Harrison Demone</b>  <a href="mailto:harrison@cedarcitydev.com">harrison@cedarcitydev.com</a>  Tel: 416-306-9900</p> <p>Landlord</p>
<p><b>PREVOLV, INC.</b>  2635 University Ave. West, Suite 120  St. Paul, MN 55114</p> <p>800 W Fulton Market, Suite 800  Chicago IL 60607</p> <p><b>John Ewine</b>  <a href="mailto:jewine@prevolv.com">jewine@prevolv.com</a>  Tel: 651-331-1561</p>	<p><b>WINTHROP &amp; WEINSTINE, P.A.</b>  225 South Sixth Street  Capella Tower, Ste 3500  Minneapolis, MN 55402</p> <p><b>David M. Tanabe</b>  <a href="mailto:dtanabe@winthrop.com">dtanabe@winthrop.com</a>  Tel: 612-604-6529</p> <p>Counsel to Prevolve, Inc.</p>
<p><b>LABOUR PROGRAM EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA</b>  165 rue de l'Hotel-de-Ville Street  Gatineau, Québec K1A 0J2</p> <p><b>Adam Seddon</b>  Email: <a href="mailto:adam.seddon@labour-travail.gc.ca">adam.seddon@labour-travail.gc.ca</a>  <b>Adrian Raddatz</b>  Email: <a href="mailto:adrian.raddatz@labour-travail.gc.ca">adrian.raddatz@labour-travail.gc.ca</a></p>	<p><b>ALEXANDER HOLBURN BEAUDIN + LANG LLP</b>  2740 -22 Adelaide Street West,  Toronto, ON, M5H 4E3  Tel: 416 639 9060</p> <p><b>Ian Breneman</b>  <b>ibreneman@AHBL.CA</b></p> <p><b>David Garner</b></p>

<b>Johannar Howes</b> Email: <a href="mailto:johannar.howes@labour-travail.gc.ca">johannar.howes@labour-travail.gc.ca</a> <b>Julie Matte</b> Email: <a href="mailto:julie.l.matte@servicecanada.gc.ca">julie.l.matte@servicecanada.gc.ca</a>	dgarner@AHBL.CA  Lawyers for Empire Office, Inc.
<b>FAEGRE DRINKER BIDDLE &amp; REATH LLP</b> 1177 Avenue of the Americas, 41st Floor New York, New York 10036  <b>Richard J. Bernard</b> <a href="mailto:richard.bernard@faegredrinker.com">richard.bernard@faegredrinker.com</a> Tel: 212-248-3263  US Counsel to the Monitor	

1. [sgraff@airdberlis.com](mailto:sgraff@airdberlis.com)
2. [kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com)
3. [mlici@airdberlis.com](mailto:mlici@airdberlis.com)
4. [smoore@alvarezandmarsal.com](mailto:smoore@alvarezandmarsal.com)
5. [jnevsky@alvarezandmarsal.com](mailto:jnevsky@alvarezandmarsal.com)
6. [esther.mann@alvarezandmarsal.com](mailto:esther.mann@alvarezandmarsal.com)
7. [mbinder@alvarezandmarsal.com](mailto:mbinder@alvarezandmarsal.com)
8. [lellis@millerthomson.com](mailto:lellis@millerthomson.com)
9. [dward@millerthomson.com](mailto:dward@millerthomson.com)
10. [sdecaria@millerthomson.com](mailto:sdecaria@millerthomson.com)
11. [mfaheim@millerthomson.com](mailto:mfaheim@millerthomson.com)
12. [eehgoetz@myinscape.com](mailto:eehgoetz@myinscape.com)
13. [jszczur@myinscape.com](mailto:jszczur@myinscape.com)
14. [craig-rix@hicksmorley.com](mailto:craig-rix@hicksmorley.com)
15. [chris.emmott@hilcocapital.com](mailto:chris.emmott@hilcocapital.com)
16. [matthew.holt@hilcocapital.com](mailto:matthew.holt@hilcocapital.com)
17. [tom.jones@hilcocapital.com](mailto:tom.jones@hilcocapital.com)
18. [weguchi@willkie.com](mailto:weguchi@willkie.com)
19. [JPawlitz@willkie.com](mailto:JPawlitz@willkie.com)
20. [jeisen@willkie.com](mailto:jeisen@willkie.com)
21. [ccullen@willkie.com](mailto:ccullen@willkie.com)
22. [clifton.prophet@gowlingwlg.com](mailto:clifton.prophet@gowlingwlg.com)
23. [Kathryn\\_Miner@dell.com](mailto:Kathryn_Miner@dell.com)
24. [diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca)
25. [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca)
26. [osbservice-bsfservice@ised-isde.gc.ca](mailto:osbservice-bsfservice@ised-isde.gc.ca)
27. [swati.das@fsrao.ca](mailto:swati.das@fsrao.ca)
28. [NKanji@osc.gov.on.ca](mailto:NKanji@osc.gov.on.ca)
29. [inquiries@osc.gov.on.ca](mailto:inquiries@osc.gov.on.ca)
30. [cprice@osc.gov.on.ca](mailto:cprice@osc.gov.on.ca)

31. [PELLARD@osc.gov.on.ca](mailto:PELLARD@osc.gov.on.ca)
32. [KJANKE@osc.gov.on.ca](mailto:KJANKE@osc.gov.on.ca)
33. [president@uswlocal1-500.com](mailto:president@uswlocal1-500.com)
34. [ddaigle@usw.ca](mailto:ddaigle@usw.ca)
35. [mwasserman@osler.com](mailto:mwasserman@osler.com)
36. [mcressatti@osler.com](mailto:mcressatti@osler.com)
37. [Maya@chaitons.com](mailto:Maya@chaitons.com)
38. [ashley.Phelps@am.jll.com](mailto:ashley.Phelps@am.jll.com)
39. [Hlynn@lynndevelopment.net](mailto:Hlynn@lynndevelopment.net)
40. [alynn@lynndevelopment.net](mailto:alynn@lynndevelopment.net)
41. [sinthujank@pontegadea.com](mailto:sinthujank@pontegadea.com)
42. [steven@cedarcitydev.com](mailto:steven@cedarcitydev.com)
43. [harrison@cedarcitydev.com](mailto:harrison@cedarcitydev.com)
44. [jewine@prevolv.com](mailto:jewine@prevolv.com)
45. [dtanabe@winthrop.com](mailto:dtanabe@winthrop.com)
46. [adam.seddon@labour-travail.gc.ca](mailto:adam.seddon@labour-travail.gc.ca)
47. [adrian.raddatz@labour-travail.gc.ca](mailto:adrian.raddatz@labour-travail.gc.ca)
48. [johannar.howes@labour-travail.gc.ca](mailto:johannar.howes@labour-travail.gc.ca)
49. [julie.l.matte@servicecanada.gc.ca](mailto:julie.l.matte@servicecanada.gc.ca)
50. [ibreneman@AHBL.CA](mailto:ibreneman@AHBL.CA)
51. [dgarner@AHBL.CA](mailto:dgarner@AHBL.CA)
52. [richard.bernard@faegredrinker.com](mailto:richard.bernard@faegredrinker.com)



**ONTARIO**  
**SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

B E T W E E N :

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
INSCAPE CORPORATION, INSCAPE (NEW YORK) INC., AND INSCAPE INC.

Applicants

**FACTUM OF THE MOVING APPLICANTS**  
**(returnable JANUARY 20, 2023)**

**TABLE OF CONTENTS**

	PAGE
PART I - INTRODUCTION .....	2
PART II - THE FACTS .....	5
PART III - ISSUES.....	7
PART IV - THE LAW .....	7
A.    The Extended Stay Period Should be Granted .....	7
B.    The KERP and KERP Charge Should be Approved.....	9
C.    The Foreign Representative Ought to be Approved .....	11
D.    The Administration Charge Should be Increased .....	12
E.    The WEPPA Declaration Ought to be Granted.....	13
PART V - ORDER REQUESTED .....	14
SCHEDULE "A"	
LIST OF AUTHORITIES.....	16
SCHEDULE "B"	
RELEVANT STATUTES .....	17

Court File No.: CV-23-00692784-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

B E T W E E N :

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
INSCAPE CORPORATION, INSCAPE (NEW YORK) INC., AND INSCAPE INC.

Applicants

**FACTUM OF THE MOVING APPLICANTS**  
**(returnable JANUARY 20, 2023)**

**PART I - INTRODUCTION**

1. On January 12, 2023, the Applicants, Inscap Corporation (**"Inscap"**), Inscap (New York) Inc. (**"Inscap New York"**) and Inscap Inc. (**"Inscap Delaware"**, together with Inscap and Inscap New York, the **"Applicants"** or the **"Inscap Group"**) brought an application to the Court for, among other things, protection from its creditors under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, (the **"CCAA"**).
2. The Honourable Madam Justice Conway granted an Order dated January 12, 2023 pursuant to the CCAA (the **"Initial Order"**) in favour of the Applicants. Pursuant to the Initial Order, among other things, the Court:
  - (a) granted a stay of proceedings in favour of the Applicants and its director and officers up to and including January 20, 2023 (**"Initial Stay Period"**);

- (b) appointed Alvarez & Marsal Canada Inc. as the monitor of the Applicants (in such capacity, the “**Monitor**”);
  - (c) granted the following charges against the Property, in the following priority (the “**Priority Charges**”):
    - (i) First, an administration charge in the amount of \$250,000 in favour of counsel for the Applicants, the Monitor and its counsel (the “**Administration Charge**”); and
    - (ii) Second, a directors’ and officers’ charge in the amount of \$750,000 (the “**Directors’ Charge**”);
  - (d) authorized the Applicants to incur no further expenses in relation to the Securities Filings (as defined in the Initial Order);
  - (e) authorized the Applicants to continue utilizing their cash management system (the “**Cash Management System**”); and
  - (f) scheduled a comeback hearing returnable January 20, 2023 (the “**Comeback Hearing**”).
3. As the Initial Stay Period expires on January 20, 2023, the Applicants bring this motion in accordance with the Initial Order for an Amended and Restated Initial Order substantially in the form attached as Tab 3 to the Applicants’ Motion Record, for the following relief:

- (a) extending the stay of proceedings granted pursuant to the Initial Order to March 9, 2023 (the “**Extended Stay Period**”);
- (b) approving a Key Employee Retention Plan (the “**KERP**”) and authorizing the Applicants to make payments in accordance with the terms of the KERP;
- (c) granting a charge over the Property (as defined in the Initial Order) of the Applicants in favour of the proposed KERP beneficiaries (the “**KERP Charge**”) in the aggregate amount of \$350,000;
- (d) authorizing either one of Inscape Corporation, or in the alternative to Inscape Corporation, Eric Ehgoetz, to act as the foreign representative (the “**Foreign Representative**”) in respect of these CCAA proceedings, for the purpose of having these CCAA proceedings recognized in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. § 101-1532 (the “**Bankruptcy Code**”);
- (e) declaring that, pursuant to section 5(5) of the *Wage Earner Protection Program Act* (“**WEPPA**”) Inscape is a “former employer” in accordance with the criteria established by section 3.2 of the Wage Earner Protection Program Regulations (“**WEPP Regulations**”);
- (f) increasing the amount of the Administration Charge to \$800,000; and
- (g) amending the Priority Charges in the Initial Order as follows:
  - (i) First, the Administration Charge in the amount of \$800,000;
  - (ii) Second, the Directors’ Charge in the amount of \$750,000; and

- (iii) Third, the KERP Charge in the amount of \$350,000.

## PART II - THE FACTS<sup>1</sup>

4. The primary objective of these CCAA proceedings is to effect an orderly liquidation and wind-down of the Inscope Group's business and affairs, with a view to maximizing realizations for the benefit of all creditors (the "**Orderly Wind-Down**").<sup>2</sup> In accordance with the CCAA, the relief granted in the Initial Order was limited to that which was reasonably necessary during an initial ten day period.
5. In support of the relief sought on this Comeback Hearing, the following facts are relevant and set out the activity of the Inscope Group since the granting of the Initial Order:
- (a) The Initial Stay Period is set to expire on January 20, 2023.<sup>3</sup> The Applicants seek to extend the Initial Stay Period to March 9, 2023, in order to develop and implement a successful Orderly Wind-Down plan.<sup>4</sup>
- (b) Following the granting of the Initial Order, the Inscope Group initiated the layoff and termination of 138 employees in Canada and 28 employees in the United States. Following these terminations, the Inscope Group continues to employ 29 employees (26

---

<sup>1</sup> The full facts in respect of this motion are set out in the Affidavit of Eric Ehgoetz sworn January 17, 2023 (the "**Ehgoetz Affidavit**") and the First Report of the Monitor dated January 18, 2023 (the "**First Report**"), filed. <sup>1</sup> All capitalized terms not otherwise defined herein shall have the meaning prescribed to them in the Initial Order, the Ehgoetz Affidavit or the First Report.

<sup>2</sup> First Report, at para. 1.5.

<sup>3</sup> First Report, at para. 9.1.

<sup>4</sup> Ehgoetz Affidavit, at para. 10.

in Canada and 3 in the United States) to assist with the Orderly Wind-Down of its business.<sup>5</sup>

(c) The Applicants, in consultation with the Monitor, have determined that the retention of certain employees of the Inscape Group is critically important in order to guide the business through these CCAA proceedings and the Orderly Wind-Down.<sup>6</sup> The proposed beneficiaries of the KERP include the Inscape Group's senior management team, as well certain other key employees (including human resource professionals, among others).<sup>7</sup> The KERP will provide participants with additional payments as an incentive to continue their employment throughout the CCAA proceedings.<sup>8</sup>

(d) The Inscape Group has assets and business operations in the United States. This includes a leased manufacturing facility in Jamestown New York, as well as showrooms in Chicago, Washington and New York City.<sup>9</sup> In light of the cross-border nature of the Inscape Group's business, the Inscape Group has retained U.S. counsel to provide legal advice as it relates to the American side of the business.

(e) The Applicants intend to seek recognition of these proceedings in the United States pursuant to Chapter 15 of the Bankruptcy Code, and accordingly seek the appointment of the Foreign Representative for the purpose of pursuing such recognition.<sup>10</sup> Recognition of these proceedings in the U.S. will result in a companion

---

<sup>5</sup> First Report, at paras. 4.1 and 4.2.

<sup>6</sup> Ehgoetz Affidavit, at para. 14.

<sup>7</sup> Appendix "B" to the First Report.

<sup>8</sup> Ehgoetz Affidavit, at para. 14; First Report at para. 6.2 and 6.3.

<sup>9</sup> Ehgoetz Affidavit, at para. 17 and 18.

<sup>10</sup> First Report, at paras. 4.4 to 4.6.

stay of proceedings in favour of the Applicants, and should otherwise facilitate an orderly and equitable cross-border wind-down of the Inscope Group.<sup>11</sup>

### **PART III - ISSUES**

6. The issues for the Court to determine on this motion are whether:
- (a) the Extended Stay Period should be granted;
  - (b) the KERP and the KERP Charge should be approved;
  - (c) the Foreign Representative should be appointed for the purposes of having these proceedings recognized outside of Canada, and in particular, in the United States;
  - (d) the Administration Charge should be increased; and
  - (e) a declaration pursuant to WEPPA should be made in respect of Inscope.

### **PART IV - THE LAW**

#### **A. The Extended Stay Period Should be Granted**

7. The Applicants seek an extension of the Initial Stay Period to March 9, 2023.
8. The Court may grant an extension of the stay of proceedings where the Court is satisfied that (a) circumstances exist that make the order appropriate; and (b) the Applicants have acted, and are acting, in good faith and with due diligence.<sup>12</sup> A stay of proceedings is

---

<sup>11</sup> Ehgoetz Affidavit, at para.18.

<sup>12</sup> CCAA, s 11.02(2)-(3).

appropriate to provide a debtor with breathing room while it seeks to restore solvency and emerge from the CCAA on a going concern basis.<sup>13</sup>

9. The Applicants submit that an extension to the Initial Stay of Proceedings is appropriate in this case. The Applicants have acted, and continue to act, in good faith and with due diligence to communicate with stakeholders and work with the Monitor to develop a process for the orderly wind-down and liquidation of their assets. The requested extension will afford time for the Applicants to, among other things:<sup>14</sup>
  - (a) continue to work with their Canadian and U.S. advisors to develop and implement an orderly and commercially reasonable wind-down plan that will protect and maximize the interests of creditors;
  - (b) permit Inscope, as the proposed Foreign Representative, to apply to the U.S. Bankruptcy Court pursuant to Chapter 15 of the Bankruptcy Code and seek recognition of the within proceedings, together with such other relief as may be appropriate; and
  - (c) develop a claims process, to be administered by the Monitor, for the timely and efficient determination of claims against the Applicants, and bring such claims process forward to court on motion for consideration and approval.
10. The Monitor supports the Extended Stay Period for the following reasons: (i) it will provide the Inscope Group with the stability necessary to execute the Orderly Wind-Down; (ii) the Applicants are projected to have sufficient liquidity to fund their operations to the end of the proposed Extended Stay Period; (iii) the Monitor does not

---

<sup>13</sup> *Target Canada Co, Re*, 2015 ONSC 303 at para 8.



believe any creditor will be prejudiced by the extension; (iv) neither the Applicants nor the Monitor are aware of any party opposed to such extension; and (v) the Applicants continue to act in good faith and with due diligence.<sup>15</sup>

**B. The KERP and KERP Charge Should be Approved**

11. Section 11 of the CCAA provides that “the Court.... may make any order that it considers appropriate in the circumstances.” This Court has jurisdiction to approve a KERP pursuant to its general powers granted under section 11 of the CCAA.<sup>16</sup>
12. The purpose of a KERP is to retain employees that are important to the management or operations of the debtor company in order to keep their skills within the company at a time when they are likely to look for other employment because of the company's financial distress.<sup>17</sup> KERPs have been approved in numerous insolvency proceedings, particularly where the retention of certain employees was deemed critical to a successful restructuring.<sup>18</sup>
13. The Courts have held that the factors to be considered by the court in approving a KERP will vary from case to case, but some factors will generally be present, including:<sup>19</sup>
  - (a) Is this employee important to the restructuring process?
  - (b) Does the employee have specialized knowledge that cannot easily be replaced?

---

<sup>14</sup> Ehgoetz Affidavit, at para. 10.

<sup>15</sup> First Report, at para. 9.2.

<sup>16</sup> CCAA, s. 11; *Re Cinram International*, 2012 ONSC 3767 at para 91.

<sup>17</sup> *Re Grant Forest Products Inc.* 57 CBR (5th) 128, at para 8.

<sup>18</sup> *Walter Energy Canada Holdings, Inc, Re*, 2016 BCSC 107 at para 57.

<sup>19</sup> *Walter Energy Canada Holdings, Inc, Re*, 2016 BCSC 107 at para 58.

- (c) Will the employee consider other employment options if the KERP is not approved?
  - (d) Was the KERP developed through a consultative process involving the monitor and other professionals?
  - (e) Does the monitor support the KERP and a charge?
14. The Inscope Group submits that the KERP and the KERP Charge are appropriate in this case, and ought to be granted for the following reasons:
- (a) The KERP beneficiaries are critical to the successful completion of these CCAA proceedings, and in particular, critical to the success of the Orderly Wind-Down.<sup>20</sup>
  - (b) The KERP beneficiaries have historical, specialized knowledge and familiarity with the Inscope Group's business and operations, and significant experience and expertise that cannot be easily replaced during the CCAA proceedings.<sup>21</sup>
  - (c) Absent the approval of the KERP and the security provided by the KERP Charge, the KERP beneficiaries are likely to consider other employment options.<sup>22</sup>
  - (d) The KERP (including the timing of the retention payments thereunder) was developed by the Inscope Group in consultation with the Monitor.<sup>23</sup>
  - (e) The Monitor supports the approval of the KERP, for the following reasons: (i) the KERP will provide stability to the business and facilitate the successful completion of the

---

<sup>20</sup> Eggoetz Affidavit at paras. 13 to 16; First Report at para. 6.1.

<sup>21</sup> Eggoetz Affidavit at para. 14.

<sup>22</sup> Eggoetz Affidavit at para. 14.

Orderly Wind-Down; (ii) the KERP participants are considered to be key to maximizing realization for the benefit of the stakeholders; (iii) the KERP is supported by the Inscape Group's Lender; (iv) the terms of the KERP and the quantum of the payouts are reasonable in the circumstances, particularly when compared to other key employee retention and incentive plans approved by the Court in similar proceedings.<sup>24</sup>

15. Accordingly, the Applicants submit that the KERP and KERP Charge are reasonable and appropriate in the circumstances and request that this Court approve same.

**C. The Foreign Representative Ought to be Approved**

16. The Applicants seek the Court's authorization for Inscape Corporation to act as the Foreign Representative for the purposes of having these proceedings recognized pursuant to Chapter 15 of the Bankruptcy Code.
17. Part IV of the CCAA sets out the applicable process for the administration of cross-border insolvencies. The Court has held that this section of the CCAA is intended to promote cooperation and coordination with foreign courts.<sup>25</sup>
18. Pursuant to section 45(1) of the CCAA, a "foreign representative means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding of a debtor company, to: (a) monitor the debtor company's business and financial affairs for

---

<sup>23</sup> First Report, at paras. 6.2 to 6.4; Appendix "B" to the First Report.

<sup>24</sup> First Report, at para. 6.5.; Appendix "C" to the First Report.

<sup>25</sup> *In The Matter of Voyager Digital Ltd.*, [2022 ONSC 4553](#), at para. 10.

the purpose of reorganization; *or* (b) act as a representative in respect of the foreign proceeding” [emphasis added].<sup>26</sup>

19. For the purpose of seeking recognition of CCAA proceedings in other jurisdictions outside of Canada, the Canadian Courts have authorized an applicant debtor company to act as the foreign representative of itself.<sup>27</sup>

**D. The Administration Charge Should be Increased**

20. The amount of the Administration Charge in the Initial Order was limited to the estimated professional fees and disbursements of the Monitor, counsel to the Monitor and counsel to the Applicants (“**Professional Group**”) during the Initial Stay Period.
21. The Applicants seek to increase the Administration Charge from \$250,000 to \$800,000 in order to better align with and secure the projected fees and disbursements of the Professional Group, including U.S. counsel, during the Extended Stay Period.
22. The Court may grant an administration charge pursuant to section 11.52 of the CCAA. In deciding whether to grant an administration charge, Courts have considered a number of factors, including: (a) the size and complexity of the businesses 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.

---

<sup>26</sup> s. 45(1), CCAA.

<sup>27</sup> Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al., [2022 ONSC 2697](#). Payless Holdings LLC (Re), 2017 ONSC 2242; [Initial Order of Justice Penny dated September 11, 2018](#) in *Kraus Brands Inc.* Court File No. CV-18-604759-00CL.

23. The Applicants submit that it is appropriate for this Court to exercise its discretion to grant the Administration Charge for the following reasons:

(a) a successful restructuring will require the extensive input of the Professional Group;

(b) the beneficiaries of the Administration Charge, including U.S. restructuring counsel, have and will continue to contribute to these CCAA proceedings and assist the Applicants with achieving their objectives in connection with the recognition of these CCAA proceedings in the United States pursuant to Chapter 15 of the Bankruptcy Code;

(c) each of the proposed beneficiaries of the Administration Charge is performing unique functions without duplication of roles;

(d) the quantum of the proposed increase to the Administration Charge is fair and reasonable, and is in line with the nature and size of the Applicants' business and the involvement required by the Professional Group;<sup>28</sup>

(e) the Monitor is supportive of the increase to the Administration Charge.<sup>29</sup>

**E. The WEPPA Declaration Ought to be Granted**

24. The Applicants seek a declaration that Inscape meets the criteria set out in section 5(5) of WEPPA. Section 5(5) of WEPPA provides that on application of any person, the Court

---

<sup>28</sup> First Report, at para. 10.3.

<sup>29</sup> First Report, at para. 10.3.

may, in proceedings under the CCAA, determine that a former employer meets the criteria prescribed by regulation.<sup>30</sup>

25. Section 3.2 of WEPP Regulations provides that “for the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.”<sup>31</sup>
26. Within the meaning of section 5(5) of WEPPA and section 3.2 of WEPP Regulations, the Inscope Group is the former employer of 138 employees in Canada who have been terminated following the commencement of these CCAA proceedings.
27. Accordingly, the Applicants’ request a declaration that Inscope is a former employer within the meaning of section 5(5) of WEPPA. The Monitor is supportive of this declaration, and intends to work with the Applicants to identify all employees that may be eligible for payments under WEPPA and assist those eligible employees in their claim submissions.<sup>32</sup>

## **PART V - ORDER REQUESTED**

28. In light of the foregoing, the Applicants seek the approval of the Amended and Restated Initial Order, substantially in the form attached as Tab 3 to the Motion Record of the Applicants.

---

<sup>30</sup> Section 5(5), Wage Earner Protection Program Act, S.C. 2005, c. 47, s. 1.

<sup>31</sup> Section 3.2, Wage Earner Protection Program Regulations, SOR/2008-222.

<sup>32</sup> First Report, at paras. 8.1 to 8.4.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of January, 2023.



---

David Ward



---

Stephanie De Caria  
MILLER THOMSON LLP

Lawyer for the Applicants

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *Target Canada Co, Re, 2015 ONSC 303* at para 8.
2. *Re Cinram International, 2012 ONSC 3767* at para 91.
3. *Re Grant Forest Products Inc. 57 CBR (5th) 128*
4. *Walter Energy Canada Holdings, Inc, Re, 2016 BCSC 107*
5. *In The Matter of Voyager Digital Ltd., 2022 ONSC 4553,*
6. *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al., 2022 ONSC 2697*
7. *Payless Holdings LLC (Re), 2017 ONSC 2242*
8. *Initial Order of Justice Penny dated September 11, 2018 in *Kraus Brands Inc.* Court File No. CV-18-604759-00CL.*



## **SCHEDULE “B” RELEVANT STATUTES**

### ***COMPANIES’ CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED (“CCAA”)***

#### **Section 11**

**11** Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

#### **Section 11.02**

**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.

**(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.

**(3)** The court shall not make the order unless

**(a)** the applicant satisfies the court that circumstances exist that make the order appropriate; and

**(b)** in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

**(4)** Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

### Section 11.03

**11.03 (1)** An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

**(2)** Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.

**(3)** If all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the company is deemed to be a director for the purposes of this section.

### Section 11.2

**11.2 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

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

**(3)** The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

**(4)** In deciding whether to make an order, the court is to consider, among other things,

**(a)** the period during which the company is expected to be subject to proceedings under this Act;

**(b)** how the company's business and financial affairs are to be managed during the proceedings;

**(c)** whether the company's management has the confidence of its major creditors;

**(d)** whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

**(e)** the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

## Section 11.52

**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.

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

## Section 45

Interpretation

Definitions

**45 (1)** The following definitions apply in this Part.

**foreign court** means a judicial or other authority competent to control or supervise a foreign proceeding.

**foreign main proceeding** means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests.

**foreign non-main proceeding** means a foreign proceeding, other than a foreign main proceeding.

**foreign proceeding** means a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company's business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization

foreign representative means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to

- (a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or
- (b) act as a representative in respect of the foreign proceeding.

#### **Centre of debtor company's main interests**

(2) For the purposes of this Part, in the absence of proof to the contrary, a debtor company's registered office is deemed to be the centre of its main interests.

### **Wage Earner Protection Program Act (S.C. 2005, c. 47, s. 1)**

**5 (1)** An individual is eligible to receive a payment if

- (a) the individual's employment ended for a reason prescribed by regulation;
- (b) one of the following applies:
  - (i) the former employer is bankrupt,
  - (ii) the former employer is subject to a receivership,
  - (iii) the former employer is the subject of a foreign proceeding that is recognized by a court under subsection 270(1) of the [Bankruptcy and Insolvency Act](#) and
    - (A) the court determines under subsection (2) that the foreign proceeding meets the criteria prescribed by regulation, and
    - (B) a trustee is appointed, or
  - (iv) the former employer is the subject of proceedings under Division I of Part III of the [Bankruptcy and Insolvency Act](#) or under the [Companies' Creditors Arrangement Act](#) and a court determines under subsection (5) that the criteria prescribed by regulation are met; and
- (c) the individual is owed eligible wages by the former employer.

#### **Prescribed criteria — foreign proceeding**

(2) On application by any person, a court may, in a proceeding under Part XIII of the [Bankruptcy and Insolvency Act](#), determine that the foreign proceeding meets the criteria prescribed by regulation. If the court determines that the foreign proceeding meets the prescribed criteria, the court may appoint a trustee for the purposes of this Act.

#### **Exceptions**

**6** An individual is not eligible to receive a payment in respect of any wages earned during, or that otherwise relate to, a period in which the individual

- (a) was an officer or director of the former employer;
- (b) had a controlling interest within the meaning of the regulations in the business of the former employer;
- (c) occupied a managerial position within the meaning of the regulations with the former employer; or
- (d) was not dealing at arm's length with
  - (i) an officer or director of the former employer,
  - (ii) a person who had a controlling interest within the meaning of the regulations in the business of the former employer, or
  - (iii) an individual who occupied a managerial position within the meaning of the regulations with the former employer.

#### **Employment in Canada**

- (3) An individual who is eligible to receive a payment because of subparagraph (1)(b)(iii) is only eligible to receive a payment in respect of eligible wages earned for employment in Canada and termination pay and severance pay that relate to that employment.

#### **Deemed bankruptcy**

- (4) For the purposes of this Act, if all of the conditions set out in subparagraph (1)(b)(iii) are met, the former employer is deemed to be bankrupt and the date of the bankruptcy is deemed to be the day on which all of those conditions are met.

#### **Prescribed criteria — other proceedings**

- (5) On application by any person, a court may, in proceedings under Division I of Part III of the [Bankruptcy and Insolvency Act](#) or under the [Companies' Creditors Arrangement Act](#), determine that the former employer meets the criteria prescribed by regulation.

### **Wage Earner Protection Program Regulations (SOR/2008-222)**

#### **Proceedings Under Bankruptcy and Insolvency Act or Companies' Creditors Arrangement Act**

- 3.2 For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
INSCAPE CORPORATION, INSCAPE (NEW YORK) INC., AND INSCAPE INC.

Court File No.: CV-23-00692784-00CL

Applicants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**FACTUM OF THE APPLICANTS  
(returnable JANUARY 20, 2023 )**

**MILLER THOMSON LLP**

Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, ON Canada M5H 3S1  
**Larry Ellis LSO#:49313K**  
lellis@millerthomson.com  
Tel: 416.595. 8639

**David Ward LSO#: 33541W**

dward@millerthomson.com  
Tel: 416.595.8625

**Stephanie De Caria LSO#68055L**

sdecaria@millerthomson.com  
Tel: 416.597.2652

**Monica Faheim LSO #:82213R**

mfaheim@millerthomson.com  
Tel: 416.595.6087

Lawyers for the Applicants