

**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

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 APPLICANTS**

**(returnable January 12, 2023)**

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**PART I - INTRODUCTION**

1. This factum is filed in support of an application by Inscape Corporation (“**Inscape**”), Inscape (New York) Inc. (“**Inscape New York**”) and Inscape Inc. (“**Inscape Delaware**”) (collectively, the “**Inscape Group**” or the “**Applicants**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”).
2. The Inscape Group is in the business of manufacturing and selling office furniture equipment and architectural walls. The Inscape Group operates within the contract office furniture market such that it only produces products for customers based on firm purchase orders. Over the last decade, the Inscape Group’s business has experienced declining financial performance and the Inscape Group no longer has access to sufficient working capital. The Inscape Group’s challenges continue to persist despite good faith efforts on the part of the Inscape Group and its advisors to revitalize the business. These challenges were intensified by the impact of the Covid-19 pandemic and its detrimental effects to the entire contract office furniture industry.

3. As a result, the Inscape Group is insolvent, unable to meet its obligations as they become due and is in need of protection from its creditors. Without access to capital, the significant losses incurred by the Inscape Group can no longer be sustained. The Inscape Group, in consultation with its advisors, has determined that the best path forward to maximize value for its stakeholders is through a court-supervised process under the CCAA.
4. Accordingly, the Inscape Group brings this application to the Court for creditor protection under the CCAA and an Order for an order substantially in the form attached as Tab 3 to the Application Record (“**Initial Order**”), among other things:
  - (a) abridging the time for and validating services of this notice of application and the application record and dispensing with service on any person other than those served;
  - (b) declaring that the Applicants are companies to which the CCAA applies;
  - (c) granting a stay of proceedings in favour of the Inscape Group and its directors and officers for an initial period eight (8) days up to and including January 20, 2023;
  - (d) appointing Alvarez & Marsal Canada Inc. as the court-appointed monitor of the Inscape Group (in such capacity, the “**Proposed Monitor**”);
  - (e) granting an administration charge in the amount of \$250,000 over the assets, undertakings and properties of the Applicants (the “**Property**”) in favour of counsel for the Applicants, the Monitor and the Monitor’s counsel (the “**Administration Charge**”)

- (f) granting a directors and officers charge over the Property (the “**Directors’ Charge**”, together with the Administration Charge, the “**Priority Charges**”);
  - (g) authorizing the Inscape Group to continue utilizing its cash management system (the “**Cash Management System**”);
  - (h) Authorizing the Applicants to incur no further expenses in relation to the Securities Filings (as defined below) and declare that none of the directors, officers, employees, and other representatives of the Applicants, or the Monitor (and its directors, officers, employees and representatives) shall have any personal liability for any failure by the Applicants to make Securities Filings; and
  - (i) scheduling a comeback hearing (“**Comeback Hearing**”) for January 20, 2023.
5. At this time, the Inscape Group believes that it is in the best interest of its creditors to liquidate its assets and effect an orderly wind-up of the affairs of the business. The Applicants require the breathing room and stability offered by the CCAA in order to strategize and execute a path forward that will maximize the proceeds available for distribution to creditors on a more timely and cost-effective basis than alternative processes that may further erode the value of the Inscape Group and the value of its assets.

## PART II - THE FACTS

6. The facts underlying this Application are more fully set out in the affidavit of Eric Ehgoetz sworn January 11, 2023 (“**Ehgoetz Affidavit**”).<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning prescribed to them in the Ehgoetz Affidavit.

7. For the purposes of this factum, the following key facts are summarized from the Ehgoetz Affidavit in respect of the Inscape Group’s business:

(a) Corporate Structure: Inscape Group’s corporate structure comprises three legal entities:

(i) Inscape is the parent (and 100% owner) of Inscape Delaware.<sup>2</sup>

(ii) Inscape Delaware is the 100% owner of Inscape New York.<sup>3</sup>

(iii) Inscape is a publicly traded entity regulated by the Ontario Securities Commission. Its shares are traded on the Toronto Stock Exchange.<sup>4</sup>

(b) Board of Directors: Each of the Applicants has the same Board of Directors. Eric Ehgoetz is the Chief Executive Officer and Jon Szczur is the Chief Financial Officer of each of the Applicants.<sup>5</sup>

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<sup>1</sup> Affidavit of Eric Ehgoetz sworn January 11, 2023 (the “**Ehgoetz Affidavit**”).

<sup>2</sup> Ehgoetz Affidavit, at para. 16.

<sup>3</sup> Ehgoetz Affidavit, at para. 16.

<sup>4</sup> Ehgoetz Affidavit, at para. 14.

<sup>5</sup> Ehgoetz Affidavit, at para. 17.

(c) Employees: The Inscape Group has a total of 218 employees in Canada and the United States, which are comprised of hourly and salaried employees, and 92 of which are unionized.<sup>6</sup>

(d) Pension Plans: The Inscape Group administers a total of four pension plans (two of which are in respect of Canadian beneficiaries and two of which are in respect of U.S. beneficiaries).<sup>7</sup> The Inscape Group is current on its contributions to each of the defined contribution plans, and there are no special payments or other contributions required to the defined benefit components of the plans.<sup>8</sup> Further details of the pension plans are set out in the Proposed Monitor's Report.

(e) Leased Premises/Places of Business: The Inscape Group leases a total of five premises. The Inscape Group operates its business out of manufacturing and warehouse facilities in Ontario and in New York (where the office equipment and walls are designed and manufactured) as well as through showrooms in Chicago, Washington and New York (where the completed pieces of office furniture and walls are showcased for viewing in support of contract orders).<sup>9</sup>

(f) Cash Management System: In the ordinary course of business, the Inscape Group uses a centralized banking and cash management system ("**Cash Management System**") to, among other things, collect funds and pay expenses associated with its operations.<sup>10</sup> The Inscape Group utilizes eight (8) bank accounts, of which, three (3) are held at Royal Bank of Canada ("**RBC**") in Canada, four (4) are held at KeyBank in the US and one (1)

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<sup>6</sup> Ehgoetz Affidavit, at paras. 18 and 20.

<sup>7</sup> Ehgoetz Affidavit, at para. 22.

<sup>8</sup> Ehgoetz Affidavit, at para. 22.

<sup>9</sup> Ehgoetz Affidavit, at para. 23.

is held at Platinum Bank in the U.S.<sup>11</sup> The Cash Management System has several functions, including: (a) collection of accounts receivable from third parties; (b) disbursements to fund payroll and benefits, capital expenditures, maintenance costs, payments to inventory vendors and other service providers; and (c) intercompany cash transfers amongst Inscape, Inscape Delaware and Inscape New York.<sup>12</sup>

(g) D&O Policies: Inscape currently carries a run-off directors' and officers' liability insurance policy in the total amount of \$10 million and for a period of six (6) years expiring December 23, 2028.<sup>13</sup>

(h) Assets and Liabilities: As at November 30, 2022, the Inscape Group (on a consolidated basis) has cash in the amount of \$1,672,000, receivables in the amount of \$10,041,000 and inventory in the amount of \$5,445,000.<sup>14</sup> The Inscape Group has unpaid trade and other unsecured debt accrued in the normal course of business. As of January 9, 2023, accounts payable balances totalled approximately \$6,307,198.00.<sup>15</sup>

(i) Secured Obligations: Pursuant to the Hilco Loan Agreement, Hilco UK made available to Inscape a revolving demand facility in the principal amount of \$5 million on a secured basis.<sup>16</sup> As at January 10, 2023, the total indebtedness outstanding under the Hilco Loan is \$1,323,698, inclusive of interest, management fees and expenses.<sup>17</sup>

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<sup>10</sup> Ehgoetz Affidavit, at para. 37.

<sup>11</sup> Ehgoetz Affidavit, at para. 41.

<sup>12</sup> Ehgoetz Affidavit, at para. 38.

<sup>13</sup> Ehgoetz Affidavit, at para. 48.

<sup>14</sup> Ehgoetz Affidavit, at para. 52.

<sup>15</sup> Ehgoetz Affidavit, at para. 62.

<sup>16</sup> Ehgoetz Affidavit, at paras. 55.

<sup>17</sup> Ehgoetz Affidavit, at para. 57.

- (j) Declining Financial Performance: The Inscape Group has been operating at a net loss for the past five (5) years, which net losses were at \$15,337,000 as at November 2022.<sup>18</sup>
8. Several factors have contributed to the Inscape Group's continued financial decline over the years, including supply chain issues and increased operating costs. In the last few years, the Inscape Group has faced a number of challenges as a result of extended impact of the Covid-19 pandemic, which directly affected the entire contract office furniture industry, and which industry was heavily impacted given the work from home mandates in Canada and the U.S.<sup>19</sup>
9. Ultimately, the Inscape Group has made various attempts to improve its financial situation, to no avail. Given the current state of the market for office furniture, the Inscape Group believes that it is in the best interest of its creditors to liquidate its assets and effect an orderly wind-up of the affairs of the business. Accordingly, the Inscape Group is seeking the breathing room and protection afforded by the CCAA in order to strategize and execute a path forward, with a view to maximizing value for all of its stakeholders.<sup>20</sup>

### **PART III - ISSUES**

10. The issues to be addressed before this Honourable Court are whether:
- (a) the Applicants are companies to which the CCAA applies;

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<sup>18</sup> Ehgoetz Affidavit, at para. 66.

<sup>19</sup> Ehgoetz Affidavit, at para. 67.

<sup>20</sup> Ehgoetz Affidavit, at para. 86.

- (b) the stay of proceedings should be granted in favour of the Applicants and its directors and officers;
- (c) the Court should authorize the Applicants to continue to utilize its Cash Management System during the CCAA proceedings;
- (d) the Administration Charge should be granted;
- (e) the Directors' Charge should be granted; and
- (f) the Applicants should be authorized to incur no further costs in connection with its Securities Filing obligations (as defined below).

#### **PART IV - LAW AND ARGUMENT**

##### **A. Applicants are Debtor Companies**

- 11. The CCAA applies in respect of a “debtor company” or “affiliated company” where the total claims against the debtor or affiliate exceeds \$5,000,000.<sup>21</sup> The term “company” is defined as “any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, [...]”.<sup>22</sup>
- 12. The term “debtor company” is defined in the CCAA as “any company that: (a) is bankrupt or insolvent [...]”.<sup>23</sup>

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<sup>21</sup> s. 3(1), CCAA.

<sup>22</sup> s. 2(1), CCAA.

<sup>23</sup> s. 2(1), CCAA.



13. The insolvency of a debtor company is determined as of the time the debtor files its application under the CCAA.<sup>24</sup> Courts have held that a debtor company is insolvent under the CCAA if:<sup>25</sup>
- (a) the company meets the definition of “insolvent person” under the BIA, which includes a person “...who is for any reason unable to meet [its] obligations as they generally become due...”;<sup>26</sup>
  - (b) the company faces a looming liquidity crisis.<sup>27</sup>
14. Protection under the CCAA may be extended not only to a debtor company, but also to entities that are “necessary parties” to ensure that a stay of proceedings is effective. A court should “take into account the relationship between any particular company and the larger group of which it is a member, as well as the need to place that company within the protection of the Initial Order so that the order will work effectively.”<sup>28</sup>
15. The test for “having assets or doing business in Canada” is disjunctive, such that either “having assets” in Canada or “doing business in Canada” is sufficient to qualify an incorporated company as a “company” within the meaning of the CCAA.<sup>29</sup> In order to meet the threshold statutory requirements of the CCAA, an applicant need only be in technical compliance with the plain words of the CCAA.<sup>30</sup>

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<sup>24</sup> *Re Stelco Inc. (2004)*, 48 CBR (4<sup>th</sup>) 299 (Ont Sup Ct J [Commercial List]) at para. 4 [*Stelco*].

<sup>25</sup> *Stelco* at paras. 21-22, and 26.

<sup>26</sup> s. 2, *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“BIA”).

<sup>27</sup> *Stelco* at para. 40.

<sup>28</sup> *First Leaside Wealth Management Inc., Re*, 2012 ONSC 1299 at paras. 29-30 [*First Leaside*].

<sup>29</sup> *Cinram International Inc. (Re)*, 2012 ONSC 3767 at para 46 [*Cinram*].

<sup>30</sup> *Cinram* at para 46.

16. Each of the Applicants are “debtor companies” within the meaning of the CCAA, because, among other things:

(a) Inscape is incorporated pursuant to the laws of the Province of Ontario;<sup>31</sup>

(b) Inscape New York is “doing business in Canada”. The office furniture manufactured by Inscape New York in the Jamestown Facility (in New York State) are produced to fulfill Canadian purchase orders and are shipped to customers in Canada;<sup>32</sup>

(c) Inscape Delaware has “assets in Canada”, being an operating bank account at the Royal Bank of Canada;<sup>33</sup>

(d) The Applicants have debt in excess of \$5 million dollars;<sup>34</sup>

(e) The Applicants are insolvent in that they are unable to meet their liabilities as they become due and they are facing a looming liquidity crisis;<sup>35</sup> and

(f) Each of the Applicants are necessary parties to the business and operations of the Inscape Group, such that a stay of proceedings ought to be granted in favour of each of the Applicants in order to ensure that the Initial Order and stay of proceedings will work effectively.

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<sup>31</sup> Ehgoetz Affidavit, at para. 14.

<sup>32</sup> Ehgoetz Affidavit, at para. 26.

<sup>33</sup> Ehgoetz Affidavit, at para. 40(c).

<sup>34</sup> Ehgoetz Affidavit, at paras. 57 and 62.

<sup>35</sup> Ehgoetz Affidavit, at para. 6.

## **B. Stay of Proceedings**

17. Pursuant to section 11.02 of the CCAA, a court may grant a stay of proceedings upon an initial application under the CCAA for a period of no more than ten days, provided that the court is satisfied that circumstances exist that make the order appropriate.<sup>36</sup>

18. Section 11.001 of the CCAA further provides:<sup>37</sup>

An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

19. While in most circumstances the CCAA is used to permit a debtor to carry on business, the Courts have held that the purpose of the CCAA is also “to protect the interests of creditors and to enable an orderly distribution of the debtor company's affairs.”<sup>38</sup> The Court has held that the CCAA is “not restricted in its application to companies which are to be kept in business”.<sup>39</sup>

20. The Supreme Court of Canada (“SCC”) has recently confirmed that CCAA proceedings have “evolved to permit outcomes that do not result in the emergence of the pre-filing debtor company in a restructured state, but rather involve some form of liquidation of the debtor’s assets [...] Such scenarios are referred to as “liquidating CCAAs” and they are now common place in the CCAA landscape.”<sup>40</sup>

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<sup>36</sup> s. 11.02, CCAA; [Re Lydian International Limited](#), 2019 ONSC 7473 at para 22.

<sup>37</sup> s. 11.001, CCAA.

<sup>38</sup> *First Leaside* at para. 32.

<sup>39</sup> *First Leaside* 9at para. 33.

<sup>40</sup> [9354-9186 Québec inc. v. Callidus Capital Corp.](#), 2020 SCC 10 at para. 42 [*Callidus Capital*].

21. The SCC has further confirmed that liquidating CCAAs may take diverse forms, and the ultimate commercial outcomes facilitated by the liquidations are similarly diverse, and can result in a sale of assets and inventory with no restructured entity emerging.<sup>41</sup>
22. Given the Inscape Group's continued declining financial performance and the overall negative impacts on the contract office furniture market, the Inscape Group, in consultation with its advisors and the Proposed Monitor, believes it is in the best interests of all of its stakeholders to pursue a strategy that focuses on liquidating the Inscape Group's assets and ultimately effecting an orderly wind up of the affairs of the business.<sup>42</sup>
23. The Applicants submit that given their current financial condition, a stay of proceedings at this time is in the best interest of the Company and its stakeholders and is both necessary and appropriate. The Applicants have limited the relief sought on this application to relief that is reasonably necessary in the circumstances to give the Applicants the breathing room necessary to develop a plan for the liquidation of its assets and property.
24. The Applicants submit that the stay should be extended to the Company's directors and officers so that they may focus on facilitating the progress of these CCAA proceedings.

**C. Cash Management System**

25. The Applicants seek the Court's authority to continue to utilize its existing Cash Management System.

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<sup>41</sup> *Callidus Capital* at para. 43.

<sup>42</sup> Ehgoetz Affidavit, at para. 86.

26. This Court has the jurisdiction to approve the continued utilization of the Cash Management System pursuant to section 11 of the CCAA, which provides that “the court ... 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”.<sup>43</sup>
27. The Applicants submit that the approval of the Cash Management System is reasonable and necessary in the circumstances. Given the scale and nature of the Inscope Group’s operations and the volume of transactions that are processed daily within the Cash Management System, the Applicants and the Proposed Monitor are of the view that the continued use of the existing Cash Management System is required and appropriate during these CCAA Proceedings.<sup>44</sup>
28. The Cash Management System will be monitored by the Proposed Monitor throughout the CCAA proceedings. As part of its monitoring procedures, if appointed, the Proposed Monitor will, among other things:<sup>45</sup>
- (a) review receipts and disbursements processed through the Applicants’ bank accounts;
  - (b) review weekly receipts and disbursements summaries, compare the summaries to the corresponding 13-week cash flow forecasts and review variances with management; and
  - (c) review disbursements, as reasonably appropriate, for compliance with provisions of the proposed Initial Order.

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<sup>43</sup> s. 11, CCAA.

<sup>44</sup> Ehgoetz Affidavit, at para. 45.

<sup>45</sup> Ehgoetz Affidavit, at para. 46.

29. For the foregoing reasons, it is respectfully submitted that the Cash Management System should be approved by this Court.

**D. Administration Charge**

30. The Applicants seek a first-ranking court-ordered charge over the Property in the amount of \$250,000 in favour of the Monitor, counsel to the Monitor, and counsel to the Applicants to secure payment of their professional fees and disbursements, whether incurred before or after the date of the Initial Order (“**Administration Charge**”).
31. Section 11.52 of the CCAA expressly provides that courts have jurisdiction to grant a priority administration charge.<sup>46</sup> In deciding whether to grant an administration charge, courts have considered a number of factors including:<sup>47</sup>
- 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.
32. The Applicants submit that it is appropriate for this Court to exercise its discretion to grant the Administration Charge. The nature of the Applicants’ business requires the expertise, knowledge and continuing participation of the beneficiaries of the Administration Charge. These parties will play a critical role in assisting the Applicants

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<sup>46</sup> s. 11.52, CCAA.

<sup>47</sup> [Canwest Publishing Inc. Re](#), 2010 ONSC 222 at para 54; see also, [Re Lydian International Limited](#), 2019 ONSC 7473 at para. 46.

with the development and implementation of an orderly liquidation of the Applicants' assets and the efficient progression of the CCAA proceedings. Each proposed beneficiary of the Administration Charge is performing distinct functions and there is no duplication of roles. The quantum of the proposed Administration Charge is in line with the nature and size of the Applicants' business and the involvement required by the professional advisors.

33. The proposed Monitor is also supportive of the granting and quantum of the Administration Charge.

**E. Appointment of Monitor**

34. A court is required to appoint a person to monitor the business and financial affairs of a debtor company at the time that an initial CCAA order is made pursuant to section 11.7 of the CCAA.<sup>48</sup> Section 11.7(2) of the CCAA also sets out certain requirements for and restrictions on who may act as a monitor, including that the monitor be a trustee within the meaning of subsection 2 of the BIA.<sup>49</sup>
35. A&M is a trustee within the meaning of subsection 2(1) of the BIA and is not disqualified under any of the restrictions pursuant to section 11.7(2) of the CCAA. A&M has also consented to its appointment as Monitor.<sup>50</sup>
36. The Applicants request that A&M be appointed monitor of the Applicants during these CCAA proceedings.

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<sup>48</sup> s. 11.7, CCAA.

<sup>49</sup> s 11.7(2), CCAA.

<sup>50</sup> Monitor's Consent, Exhibit "W" to the Ehgoetz Affidavit.

**F. Directors' Charge**

37. The Applicants seek a Directors' Charge on the Applicants' Property in favour of the Applicants' current officers and directors in priority to all other charges other than the Administration Charge, in the amount proposed in the pre-filing report of the Monitor, to be filed.

38. Pursuant to section 11.51 of the CCAA, a court may grant a Directors' Charge on a super-priority basis.<sup>51</sup>

39. The purpose of a Directors' Charge was described in *Canwest Global Communications Corp. (Re)*:<sup>52</sup>

The purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protection against liabilities they incur during the restructuring [...]. Retaining the current directors and officers of the applicants would avoid destabilization and would assist in the restructuring. The proposed charge would enable the applicants to keep the experienced board of directors supported by the experienced senior management.

40. In *Jaguar Mining Inc. (Re)*, the court set out the following factors to be considered with respect to the approval of a directors' charge:<sup>53</sup>

- (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 insurance for the director or officer at a reasonable cost; and

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<sup>51</sup> s. 11.51, CCAA.

<sup>52</sup> [\*Canwest Global Communications Corp. \(Re\)\*, \[2009\] OJ No 4286](#) at para. 48.

<sup>53</sup> [\*Jaguar Mining Inc. \(Re\)\*, 2014 ONSC 494](#) at para. 45.



(d) whether the charge does not apply in respect of any obligation incurred by a director or officer as a result of the director's or officer's gross negligence or wilful misconduct.

41. Notwithstanding the existence of the Run-Off D&O Policies,<sup>54</sup> the Inscape Group's ordinary course operations may give rise to potential director or officer liability. The current policy contains certain exclusions and exceptions to coverage as provided.<sup>55</sup> The Inscape Group's ordinary course operations give rise to potential director or officer liability, including payroll and sales tax.<sup>56</sup> To address legitimate concerns expressed with respect to their potential exposure if they continue to act, the directors and officers have requested reasonable protection against personal liability that might arise during the post-filing period.<sup>57</sup>

42. The quantum of the Directors' Charge was developed with the assistance and support of the Proposed Monitor. The Inscape Group is of the view that the charge is necessary at this time to address circumstances that could lead to potential directors' liability prior to the Comeback Hearing.<sup>58</sup>

#### **G. Dispensing with Securities Filing Obligations**

43. The Applicants seek authorization to dispense with certain securities filing requirements. In particular, the Applicants seek authorization for Inscape to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other

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<sup>54</sup> Ehgoetz Affidavit, at para. 49.

<sup>55</sup> Ehgoetz Affidavit, at para. 97.

<sup>56</sup> Ehgoetz Affidavit, at para. 97.

<sup>57</sup> Ehgoetz Affidavit, at para. 98.

actions (collectively, the “**Securities Filings**”) that may be required by any federal, provincial, or other law respecting securities or capital markets in Canada, or by the rules and regulations of the Toronto Stock Exchange, including without limitation, the *Securities Act* (Ontario), RSO 1990 c S. 5 and comparable statutes enacted by other provinces of Canada, the CSE Policies 1-10 and other rules, regulations and policies of the Toronto Stock Exchange.

44. The Applicants are also seeking a declaration that none of the directors, officers, employees and other representatives of the Applicants, and the Monitor (and its directors, officers, employees and representatives) shall have any personal liability for any failure by Inscape to make Securities Filings.
45. This Court has granted similar relief in favour of reporting issuers commencing proceedings under the CCAA.<sup>59</sup>
46. Incurring the time and costs associated with preparing the Securities Filings would detract from the Applicants successful restructuring. Further, there is no prejudice to stakeholders given that detailed financial information and other information regarding the Applicants will continue to be made publicly available through the materials filed in these CCAA proceedings.
47. For all of these reasons, the Applicants request that the Court grant the requested authorization and declaration in respect of the Securities Filings.

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<sup>58</sup> Ehgoetz Affidavit, at para. 50.

<sup>59</sup> *CannTrust Holdings Inc., Re*, Initial Order issued March 31, 2020 [Court File No. CV-20-00638930-00CL] at paras. 46-47; *Pure Global Cannabis, Inc., Re*, Initial Order issued March 19, 2020 [Court File No. CV-20-

**PART V - RELIEF REQUESTED**

48. The Applicants respectfully request that this Honourable Court grant the relief provided for in the proposed Initial Order in accordance with the terms of the CCAA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of January, 2023.



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MILLER THOMSON LLP

Lawyer for the Applicants

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. Re Stelco Inc. (2004), 48 CBR (4<sup>th</sup>) 299 (Ont Sup Ct J [Commercial List])
2. First Leaside Wealth Management Inc., Re, 2012 ONSC 1299.
3. Cinram International Inc. (Re), 2012 ONSC 3767.
4. 9354-9186 Québec inc. v. Callidus Capital Corp., 2020 SCC 10.
5. Canwest Publishing Inc, Re, 2010 ONSC 222
6. Re Lydian International Limited, 2019 ONSC 7473
7. Canwest Global Communications Corp. (Re), [2009] OJ No 4286
8. Jaguar Mining Inc. (Re), 2014 ONSC 494
9. CannTrust Holdings Inc., Re, Initial Order issued March 31, 2020 [Court File No. CV-20-00638930-00CL]
10. Pure Global Cannabis, Inc., Re, Initial Order issued March 19, 2020 [Court File No. CV-20-00638503-00CL]
11. Old PSG Wind-down Ltd., Re, Order issued December 20, 2017 [Court File No. CV-16-11582-00CL]

## SCHEDULE RELEVANT STATUTES

“B”

### Companies' Creditors Arrangement Act (R.S.C., 1985, c. C-36)

s. 2(1), CCAA.

#### Interpretation

##### Definitions

**2 (1)** In this Act,

**bargaining agent** means any trade union that has entered into a collective agreement on behalf of the employees of a company;

**bond** includes a debenture, debenture stock or other evidences of indebtedness

**cash-flow statement**, in respect of a company, means the statement referred to in paragraph 10(2)(a) indicating the company's projected cash flow

**claim** means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the Bankruptcy and Insolvency Act;

**collective agreement**, in relation to a debtor company, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the debtor company and a bargaining agent; (*convention collective*)

**company** means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, telegraph companies, insurance companies and companies to which the Trust and Loan Companies Act applies;

**court** means

- (a) in Nova Scotia, British Columbia and Prince Edward Island, the Supreme Court,
- (a.1) in Ontario, the Superior Court of Justice,
- (b) in Quebec, the Superior Court,
- (c) in New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench,
- (c.1) in Newfoundland and Labrador, the Trial Division of the Supreme Court, and
- (d) in Yukon and the Northwest Territories, the Supreme Court, and in Nunavut, the Nunavut Court of Justice; (*tribunal*)

**debtor company** means any company that

- (a) is bankrupt or insolvent,
- (b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,
- (c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or
- (d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent;

**director** means, in the case of a company other than an income trust, a person occupying the position of director by whatever name called and, in the case of an income trust, a person occupying the position of trustee by whatever name called;

**eligible financial contract** means an agreement of a prescribed kind;

**equity claim** means a claim that is in respect of an equity interest, including a claim for, among others,

- (a) a dividend or similar payment,
- (b) a return of capital,
- (c) a redemption or retraction obligation,
- (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
- (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d)

**equity interest** means

- (a) in the case of a company other than an income trust, a share in the company — or a warrant or option or another right to acquire a share in the company — other than one that is derived from a convertible debt, and
- (b) in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt;

**financial collateral** means any of the following that is subject to an interest, or in the Province of Quebec a right, that secures payment or performance of an obligation in respect of an eligible financial contract or that is subject to a title transfer credit support agreement:

- (a) cash or cash equivalents, including negotiable instruments and demand deposits,
- (b) securities, a securities account, a securities entitlement or a right to acquire securities, or
- (c) a futures agreement or a futures account; (*garantie financière*)

**income trust** means a trust that has assets in Canada if

- (a) its units are listed on a prescribed stock exchange on the day on which proceedings commence under this Act, or
- (b) the majority of its units are held by a trust whose units are listed on a prescribed stock exchange on the day on which proceedings commence under this Act;

**initial application** means the first application made under this Act in respect of a company

**monitor**, in respect of a company, means the person appointed under section 11.7 to monitor the business and financial affairs of the company

**net termination value** means the net amount obtained after netting or setting off or compensating the mutual obligations between the parties to an eligible financial contract in accordance with its provisions;

**prescribed** means prescribed by regulation;

**secured creditor** means a holder of a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, all or any property of a debtor company as security for indebtedness of the debtor company, or a holder of any bond of a debtor company secured by a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, or a trust in respect of, all or any property of the debtor company, whether the holder or beneficiary is resident or domiciled within or outside Canada, and a trustee under any trust deed or other instrument securing any of those bonds shall be deemed to be a secured creditor for all purposes of this Act except for the purpose of voting at a creditors' meeting in respect of any of those bonds;

**shareholder** includes a member of a company — and, in the case of an income trust, a holder of a unit in an income trust — to which this Act applies;

**Superintendent of Bankruptcy** means the Superintendent of Bankruptcy appointed under subsection 5(1) of the [Bankruptcy and Insolvency Act](#);

**Superintendent of Financial Institutions** means the Superintendent of Financial Institutions appointed under subsection 5(1) of the [Office of the Superintendent of Financial Institutions Act](#);

**title transfer credit support agreement** means an agreement under which a debtor company has provided title to property for the purpose of securing the payment or performance of an obligation of the debtor company in respect of an eligible financial contract;

**unsecured creditor** means any creditor of a company who is not a secured creditor, whether resident or domiciled within or outside Canada, and a trustee for the holders of any unsecured bonds issued under a trust deed or other instrument running in favour of the trustee shall be deemed to be an unsecured creditor for all purposes of this Act except for the purpose of voting at a creditors' meeting in respect of any of those bonds.

#### **Meaning of related and dealing at arm's length**

(2) For the purpose of this Act, section 4 of the [Bankruptcy and Insolvency Act](#) applies for the purpose of determining whether a person is related to or dealing at arm's length with a debtor company

#### **Application**

- **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.

### Affiliated companies

(2) For the purposes of this Act,

- (a) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and
- (b) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

### Company controlled

(3) For the purposes of this Act, a company is controlled by a person or by two or more companies if

- (a) securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those companies; and
- (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.

### Subsidiary

(4) For the purposes of this Act, a company is a subsidiary of another company if

- (a) it is controlled by
  - (i) that other company,
  - (ii) that other company and one or more companies each of which is controlled by that other company, or
  - (iii) two or more companies each of which is controlled by that other company;or
- (b) it is a subsidiary of a company that is a subsidiary of that other company.

### Relief reasonably necessary

**11.001** An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

### 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.

### **Burden of proof on application**

(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.

### **Restriction**

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

### **Meaning of *regulatory body***

11.1 (1) In this section, *regulatory body* means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

Regulatory bodies — order under section 11.02

(2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

### **Exception**

(3) On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court's opinion

- (a) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and
- (b) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

### **Declaration — enforcement of a payment**

(4) If there is a dispute as to whether a regulatory body is seeking to enforce its rights as a creditor, the court may, on application by the company and on notice to the regulatory body, make an order declaring both that the regulatory body is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

### **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).

### Court may replace monitor

(3) On application by a creditor of the company, the court may, if it considers it appropriate in the circumstances, replace the monitor by appointing another trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, to monitor the business and financial affairs of the company.

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

### Interpretation

#### Definitions

2 In this Act,

*affidavit* includes statutory declaration and solemn affirmation; (*affidavit*)

*aircraft objects* [Repealed, 2012, c. 31, s. 414]

*application*, with respect to a bankruptcy application filed in a court in the Province of Quebec, means a motion; (*Version anglaise seulement*)

*assignment* means an assignment filed with the official receiver; (*cession*)

*bank* means

- (a) every bank and every authorized foreign bank within the meaning of section 2 of the *Bank Act*,
- (b) every other member of the Canadian Payments Association established by the *Canadian Payments Act*, and
- (c) every local cooperative credit society, as defined in subsection 2(1) of the Act referred to in paragraph (b), that is a member of a central cooperative credit society, as defined in that subsection, that is a member of that Association;

*bankrupt* means a person who has made an assignment or against whom a bankruptcy order has been made or the legal status of that person;

*bankruptcy* means the state of being bankrupt or the fact of becoming bankrupt;

*bargaining agent* means any trade union that has entered into a collective agreement on behalf of the employees of a person; )

*claim provable in bankruptcy, provable claim* or *claim provable* includes any claim or liability provable in proceedings under this Act by a creditor;

*collective agreement*, in relation to an insolvent person, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the insolvent person and a bargaining agent; (*convention collective*)

**common-law partner**, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year

**common-law partnership** means the relationship between two persons who are common-law partners of each other;

**corporation** means a company or legal person that is incorporated by or under an Act of Parliament or of the legislature of a province, an incorporated company, wherever incorporated, that is authorized to carry on business in Canada or has an office or property in Canada or an income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, insurance companies, trust companies or loan companies; (

**court**, except in paragraphs 178(1)(a) and (a.1) and sections 204.1 to 204.3, means a court referred to in subsection 183(1) or (1.1) or a judge of that court, and includes a registrar when exercising the powers of the court conferred on a registrar under this Act;

**creditor** means a person having a claim provable as a claim under this Act;

**current assets** means cash, cash equivalents — including negotiable instruments and demand deposits — inventory or accounts receivable, or the proceeds from any dealing with those assets;

**date of the bankruptcy**, in respect of a person, means the date of

- (a) the granting of a bankruptcy order against the person,
- (b) the filing of an assignment in respect of the person, or
- (c) the event that causes an assignment by the person to be deemed;

**date of the initial bankruptcy event**, in respect of a person, means the earliest of the day on which any one of the following is made, filed or commenced, as the case may be:

- (a) an assignment by or in respect of the person,
- (b) a proposal by or in respect of the person,
- (c) a notice of intention by the person,
- (d) the first application for a bankruptcy order against the person, in any case
  - (i) referred to in paragraph 50.4(8)(a) or 57(a) or subsection 61(2), or
  - (ii) in which a notice of intention to make a proposal has been filed under section 50.4 or a proposal has been filed under section 62 in respect of the person and the person files an assignment before the court has approved the proposal,
- (e) the application in respect of which a bankruptcy order is made, in the case of an application other than one referred to in paragraph (d), or
- (f) proceedings under the Companies' Creditors Arrangement Act; (*ouverture de la faillite*)

**debtor** includes an insolvent person and any person who, at the time an act of bankruptcy was committed by him, resided or carried on business in Canada and, where the context requires, includes a bankrupt;

**director** in respect of a corporation other than an income trust, means a person occupying the position of director by whatever name called and, in the case of an income trust, a person occupying the position of trustee by whatever name called;

**eligible financial contract** means an agreement of a prescribed kind;

**equity claim** means a claim that is in respect of an equity interest, including a claim for, among others,

- (a) a dividend or similar payment,
- (b) a return of capital,
- (c) a redemption or retraction obligation,
- (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
- (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d);

**equity interest** means

- (a) in the case of a corporation other than an income trust, a share in the corporation — or a warrant or option or another right to acquire a share in the corporation — other than one that is derived from a convertible debt, and
- (b) in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt;

**executing officer** includes a sheriff, a bailiff and any officer charged with the execution of a writ or other process under this Act or any other Act or proceeding with respect to any property of a debtor;

**financial collateral** means any of the following that is subject to an interest, or in the Province of Quebec a right, that secures payment or performance of an obligation in respect of an eligible financial contract or that is subject to a title transfer credit support agreement:

- (a) cash or cash equivalents, including negotiable instruments and demand deposits,
- (b) securities, a securities account, a securities entitlement or a right to acquire securities, or
- (c) a futures agreement or a futures account;

**General Rules** means the General Rules referred to in section 209;

**income trust** means a trust that has assets in Canada if

- (a) its units are listed on a prescribed stock exchange on the date of the initial bankruptcy event, or
- (b) the majority of its units are held by a trust whose units are listed on a prescribed stock exchange on the date of the initial bankruptcy event;

**insolvent person** means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

**legal counsel** means any person qualified, in accordance with the laws of a province, to give legal advice;

**locality of a debtor** means the principal place

- (a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,
- (b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or
- (c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated;

**Minister** means the Minister of Industry;

**net termination value** means the net amount obtained after netting or setting off or compensating the mutual obligations between the parties to an eligible financial contract in accordance with its provisions;

**official receiver** means an officer appointed under subsection 12(2);

**person** includes a partnership, an unincorporated association, a corporation, a cooperative society or a cooperative organization, the successors of a partnership, of an association, of a corporation, of a society or of an organization and the heirs, executors, liquidators of the succession, administrators or other legal representatives of a person;

**prescribed**

- (a) in the case of the form of a document that is by this Act to be prescribed and the information to be given therein, means prescribed by directive issued by the Superintendent under paragraph 5(4)(c), and
- (b) in any other case, means prescribed by the General Rules;

**property** means any type of property, whether situated in Canada or elsewhere, and includes money, goods, things in action, land and every description of property, whether real or personal, legal or equitable, as well as obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, in, arising out of or incident to property;

**proposal** means

- (a) in any provision of Division I of Part III, a proposal made under that Division, and
- (b) in any other provision, a proposal made under Division I of Part III or a consumer proposal made under Division II of Part III

and includes a proposal or consumer proposal, as the case may be, for a composition, for an extension of time or for a scheme or arrangement;

**public utility** includes a person or body who supplies fuel, water or electricity, or supplies telecommunications, garbage collection, pollution control or postal services;

**resolution** or **ordinary resolution** means a resolution carried in the manner provided by section 115;

**secured creditor** means a person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor, or a person whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable, and includes

- (a) a person who has a right of retention or a prior claim constituting a real right, within the meaning of the *Civil Code of Québec* or any other statute of the Province of Quebec, on or against the property of the debtor or any part of that property, or
- (b) any of
  - (i) the vendor of any property sold to the debtor under a conditional or instalment sale,
  - (ii) the purchaser of any property from the debtor subject to a right of redemption, or
  - (iii) the trustee of a trust constituted by the debtor to secure the performance of an obligation,

if the exercise of the person's rights is subject to the provisions of Book Six of the *Civil Code of Québec* entitled *Prior Claims and Hypothecs* that deal with the exercise of hypothecary rights;

**shareholder** includes a member of a corporation — and, in the case of an income trust, a holder of a unit in an income trust — to which this Act applies;

**special resolution** means a resolution decided by a majority in number and three-fourths in value of the creditors with proven claims present, personally or by proxy, at a meeting of creditors and voting on the resolution;

**Superintendent** means the Superintendent of Bankruptcy appointed under subsection 5(1);

**Superintendent of Financial Institutions** means the Superintendent of Financial Institutions appointed under subsection 5(1) of the *Office of the Superintendent of Financial Institutions Act*;

**time of the bankruptcy**, in respect of a person, means the time of

- (a) the granting of a bankruptcy order against the person,
- (b) the filing of an assignment by or in respect of the person, or
- (c) the event that causes an assignment by the person to be deemed;

**title transfer credit support agreement** means an agreement under which an insolvent person or a bankrupt has provided title to property for the purpose of securing the payment or performance of an obligation of the insolvent person or bankrupt in respect of an eligible financial contract;

**transfer at undervalue** means a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor;

**trustee** or **licensed trustee** means a person who is licensed or appointed under this Act.

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.

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

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

Proceeding commenced at TORONTO

**FACTUM OF THE APPLICANTS**  
**(returnable January 12, 2023)**

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