

Court File No. T-6-24

FEDERAL COURT

BETWEEN:

(Court Seal)

MANITOBA MÉTIS FEDERATION and  
MANITOBA MÉTIS FEDERATION INC.

F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
01/02/2024		
Emily Estevez		
Ott	1	

Applicants

and

OTTAWA MACDONALD-CARTIER INTERNATIONAL  
AIRPORT AUTHORITY

Respondent

APPLICATION UNDER section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7  
and Rule 300 of the *Federal Courts Rules*, SOR/98-106

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicants. The relief claimed by the Applicants appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicants. The Applicants request that this application be heard at Ottawa, Ontario.

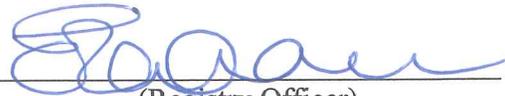
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicants' solicitor or, if the Applicants are self-represented, on the Applicants, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date 02-01-2021

Issued by



(Registry Officer)

Address of

local office:

*E. Robouin.*  
Thomas D'Arcy McGee Building  
90 Sparks Street, 5th floor  
Ottawa ON K1A 0H9

TO:

Ottawa MacDonald-Cartier International Airport Authority  
1000 Airport Parkway Private  
Ottawa ON K1V 9B4

## APPLICATION

This is an Application for judicial review in respect of a decision of the Ottawa MacDonald-Cartier International Airport Authority (the “**Airport Authority**”) to remove the Applicants’ Signage (as defined below) from the Ottawa Macdonald-Cartier International Airport (the “**Removal Decision**”). The Removal Decision was purportedly made by the Airport Authority on November 30, 2023 and communicated to the Applicants on December 1, 2023 by the Airport Authority’s agent, Astral Media Affichage S.E.C (“**Astral**”).

1. The Applicants make Application for:
  - (a) a declaration that the Removal Decision lacked procedural fairness;
  - (b) a declaration that the Removal Decision is unreasonable;
  - (c) an order quashing and setting aside the Removal Decision and reinstating the Applicants’ Signage;
  - (d) in the alternative, an order quashing and setting aside the Removal Decision and referring the matter back to the Airport Authority for reconsideration in accordance with this Honourable Court’s direction;
  - (e) a stay of the Removal Decision;
  - (f) a declaration that the Airport Authority has breached the Applicants’ rights under section 2(b) and 15(1) of the *Charter of Rights and Freedoms* and an order requiring the Airport Authority to pay damages under section 24(1) of the *Charter of Rights and Freedoms*;
  - (g) a declaration that the Airport Authority has breached the honour of the Crown;

- (h) a declaration that the Airport Authority has breached Article 16 of the *United Nations Declaration on the Rights of Indigenous Peoples* (“**UNDRIP**”);
- (i) their costs of this Application on a substantial indemnity basis; and
- (j) such further and other relief as counsel may advise and this Honourable Court permit;

The grounds for the Application are:

### **The parties**

#### ***The Manitoba Métis Federation***

1. The Red River Métis are an “aboriginal people of Canada” within the meaning of section 35 of the *Constitution Act*, 1982.
2. The Red River Métis refers to the historic and modern-day collective which emerged from and lived in the historic Northwest. Its territory is commonly referred to as the Red River Métis Homeland.
3. The Red River Métis, also known as the Manitoba Métis, are a distinct Indigenous people. The Red River Métis have a long history of asserting and protecting their rights and identity as a self-governed people. On June 19, 1816, the Red River Métis flew the infinity flag and declared a new nation after their victory at the battle of Frog Plain. In 1870, the Red River Métis founded the province of Manitoba. Shortly thereafter, and in response to government military action, many Red River Métis dispersed beyond Manitoba’s borders within the Homeland in search of peace and security.
4. The claims, rights, and interests of the Red River Métis are represented by a democratically elected Indigenous self-government, the Manitoba Métis Federation (the “**MMF**”). The MMF engages with third parties, including governments at all levels, on behalf of the Red River Métis, many of whom reside outside of Manitoba

and beyond Canada's national borders. The MMF provides community and support programs to Red River Métis Citizens.

5. The MMF is the democratic representative body of the Red River Métis. The MMF is mandated to provide responsible and accountable self-government through its governance systems and institutions as set out in the MMF Constitution, applicable laws, policies, procedures, practices, customs, and traditions, as amended from time to time.

6. The MMF represents the collective rights, claims, and interests of the Red River Métis and has legal standing to bring and prosecute claims for harms to the Red River Métis collectivity.

7. On July 6, 2021, the MMF and the Government of Canada executed the Manitoba Métis Self-Government Recognition and Implementation Agreement (the "**Self-Government Agreement**"), which immediately recognized the MMF as the democratic representative government of the Red River Métis. It also recognized that Red River Métis Citizens and those that are entitled to become Citizens are "today located within what is now Manitoba as well as elsewhere inside and outside Canada".

8. The Self-Government Agreement provides for the continued negotiation and conclusion of a Red River Métis Treaty and the passage by Parliament of Implementation Legislation to give the Treaty Constitutional protection.

9. Manitoba Métis Federation Inc. ("**MMF Inc.**") is a body corporate formed out of necessity. It was incorporated in 1967 pursuant to the *Manitoba Corporations Act*, RSM 1987 c C225 as a company without share capital and subsequently continued in 2023 under the *Canada Not-for-Profit Corporations Act*, SC 2009 c.23. The MMF was required to form and incorporate MMF Inc. because, at the time, the federal government and other institutions refused to deal with the MMF unless it was incorporated. The MMF currently includes MMF Inc. Unless otherwise stated, all references to the MMF include reference to MMF Inc.

### *The Airport Authority*

10. Ottawa Macdonald-Cartier International Airport Authority was formed in 1995 as a corporation under the laws of Canada. Pursuant to a transfer agreement between the Airport Authority and the Canadian government, the Canadian government leased the underlying property and transferred responsibility for the Ottawa International Airport's operations to the Airport Authority. To this day, Canada retains ownership of the land where the Airport resides.

11. Under the Airport Authority's current by-laws, there are 14 directors consisting of nominees appointed by the Government of Canada, the Government of Ontario, the City of Ottawa and the City of Gatineau, as well as community and business organizations.

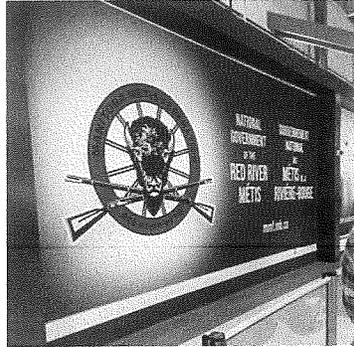
12. Pursuant to an In-Terminal Advertising Concession Licence, the Airport Authority gives responsibility for operating the advertising network in the Ottawa International Airport to Astral. Astral is owned and controlled by Bell Media Inc. ("**Bell Media**").

### **The MMF contracts with Astral to display its Signage**

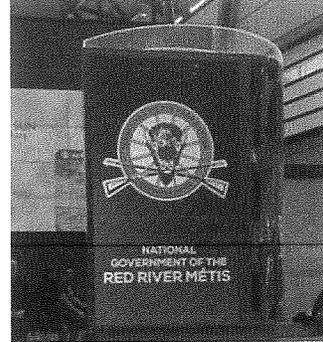
13. The MMF has deep ties to Ottawa as the nation's capital. There are over 100 Red River Métis Citizens who reside in Ottawa and surrounding regions. The MMF owns property in downtown Ottawa and employs staff and consultants in Ottawa. It brings many employees and delegates to Ottawa to work with federal officials and attend conferences.

14. On September 22, 2022, the MMF and Astral entered into a contract to display MMF signage in the Ottawa Airport in two separate locations. The MMF signage was very simple: it displayed the MMF's logo and the words "National Government of the Red River Métis" (the "**Signage**").

15. The contract stipulated that the Signage was to be displayed in one location as a static poster (Figure 1), and as well in the “AeroColumn network” via digital screens in the arrivals section of the airport (Figure 2).



*Figure 1: Static Poster*



*Figure 2: Digital Screen*

16. The static poster is very large – it is 21 feet long and 10 feet high– and accordingly one of the most sought after and expensive advertising locations in the Ottawa Airport. It is visible to all passengers as they pass through security to go to the departures area.

17. The MMF rented the spaces for its Signage in the spirit of reconciliation and renewal. The purpose of the Signage was to celebrate Red River Métis Citizens and their government, and to introduce the MMF and its Citizens to the travelers, government officials, diplomats and businesspeople that frequent the Airport.

18. The message displayed by the Signage is non-controversial and incontrovertible. It is indisputable that the MMF is the national government of the Red River Métis.

19. The Signage was first displayed at the Airport on October 3, 2022. Before the Signage was displayed, it was approved by the Airport Authority which confirmed that it complied with its advertising standards.

20. The first contract with Astral expired on December 25, 2022, and a second contract was executed to continue to display the Signage in the same locations until June 11, 2023.

21. The MMF received very positive feedback on its Signage. It subsequently decided to enter into a third contract with Astral for a full year until June 23, 2024 (the “Astral Contract”). Under the Astral Contract, the MMF was provided with the same advertising space for a cost of \$224,088.90 for the year. The MMF paid for the entire year in full upon signing the Astral Contract.

**The Airport Authority receives a complaint about the MMF’s Signage**

22. Unbeknownst to the MMF, in late 2023 the MMF and its Signage became the subject of a campaign of complaints made by Chief Dylan Whiteduck of the Kitigan Zibi Anishinabeg First Nation.

23. On October 31, 2023, the Airport Authority received a complaint from Chief Whiteduck via voicemail expressing his concern over the Signage and requesting that the Signage be taken down.

24. Over the next month, Chief Whiteduck made numerous additional complaints to the CEO of the Airport Authority, members of the Airport Authority’s board of directors and others with ties to the Airport Authority.

25. On November 30, 2023, the Airport Authority had a call with Chief Whiteduck to discuss his complaints. Chief Whiteduck expressed “extreme irritation and offense” towards the MMF’s Signage.

26. Immediately after the phone call, the Airport Authority decided that the Signage would be removed. The Airport Authority provided a written directive to Astral ordering the immediate and permanent removal of the MMF’s Signage. Astral offered alternatives to a full and lasting removal, but the Airport Authority maintained its decision that the MMF Signage should be removed and not reinstated in the future.

27. The MMF was not notified or consulted at any point before the Airport Authority made its unilateral decision to remove the Signage. From receiving the complaint, to engaging with Chief Whiteduck and ultimately directing Astral to remove the Signage, neither the Airport Authority, Astral nor its parent, Bell Media, contacted

the MMF to tell it about the complaint or discuss the complaint or any concerns with the Signage.

28. In a press release made after the Signage was removed, Kitigan Zibi Anishinabeg asserted that the Signage created “confusion regarding the territory’s ownership” and that they intend to replace the Signage “with one that warmly welcomes individuals to the unceded Algonquin territory.”

29. The assertion made by Kitigan Zibi Anishinabeg has no basis in reality. The Signage made no mention of land and the MMF has never made any claim to any of the lands in the Ottawa area.

30. The Airport Authority, however, did not question Chief Whiteduck’s complaint and did not conduct any due diligence about his complaint. Had the Airport Authority consulted with the MMF or done any due diligence, it would have learned that there could be no possible confusion over the territory’s ownership.

31. It is apparent that Chief Whiteduck made his meritless complaint with a view to securing the MMF’s highly attractive advertising space for the Kitigan Zibi Anishinabeg.

#### **MMF’s Signage is removed without notice**

32. On December 1, 2023, Astral removed all of the MMF’s Signage from the Ottawa Airport. Again, no notice or explanation was given to the MMF. The MMF learned of the removal of its signage from a representative of Astral’s parent company, Bell Media, who called after the Signage was removed to inform the MMF of the removal. There was no explanation given for the removal of the Signage.

33. Shortly after the removal of the Signage, the MMF received a voicemail from another individual at Bell Media who apologized for the removal of the MMF’s signage but offered no reason as to why the Signage was removed. They stated that the removal was out of “their” control and that it was something that the “Airport Authority had put forward”.

34. The MMF's counsel wrote to Bell Media and the Airport Authority to express the MMF's deep concern with the removal of its Signage.

35. The Airport Authority responded to the MMF's counsel and disclosed, for the first time, that they had received a complaint from Chief Whiteduck about the Signage. Despite having already approved the Signage and the Signage being displayed for over a year, as a result of the complaint the Signage was deemed "political" and "offensive" by the Airport Authority and thus in violation of its advertising standards.

36. Bell Media wrote to the MMF's counsel explaining that they had received a directive from the Airport Authority to remove the Signage, and despite Astral's offer of alternatives, the Airport Authority insisted on the permanent removal of the Signage.

#### **The harm to the MMF and the Red River Métis**

37. The removal of the Signage – the way it was done, and the purported reasons – is offensive, insulting, and disrespectful to the MMF and the Red River Métis.

38. The Airport Authority's unilateral and ignorant removal of the Signage demonstrates that it does not recognize the MMF as a legitimate government and does not consider the Red River Métis to be worthy of recognition. The Airport Authority through Astral displays a variety of advertisements from other governments. For example, the Airport Authority has taken no issue with signage provided by the Saskatchewan Government:



39. On December 14, 2023, President David Chartrand of the MMF wrote to the Airport Authority to express the MMF's "disapproval in the strongest possible terms" of the removal of the Signage. President Chartrand wrote:

- (a) "As the name of our government makes clear, our homeland is in Manitoba and western Canada. Any suggestion that our signage created confusion with regard to Indigenous ownership of the lands in the Ottawa area is clearly nonsensical. Yet that appears to be the complaint that your Authority acted upon."
- (b) "Your unilateral action has the real potential to adversely affect the relationship between our government and governments in the National Capital region in our quest for reconciliation. As the National Government of the Red River Métis, the MMF has a special relationship with the federal government that involves considerable interaction in the National Capital."
- (c) "You have now deemed our signage as 'political' and 'offensive' on the basis of an uninformed complaint. The signage was removed because we are Métis. Your action stirs up the painful past when our leader Louis Riel was three times elected to Parliament and three times denied his seat in the House of Commons by a racist Ontario government that had put a price on his head."
- (d) "As our counsel has noted, this is not simply a commercial matter."

40. As part of President Chartrand's letter, he inquired further into how such a deeply offensive decision was made. He requested that the Airport Authority disclose any correspondence related to the complaint or the decision to remove the MMF's signage.

41. President Chartrand demanded that the Signage be reinstated and that the Airport Authority give him a letter of apology, and also advised that the MMF was in the process of preparing for legal proceedings but that he remained hopeful “that a satisfactory resolution can be reached outside of court”.

42. The Airport Authority did not respond, at all, to President Chartrand’s letter.

#### **The Removal Decision is reviewable**

43. The Airport Authority is a “federal board, commission or other tribunal” as defined in the *Federal Courts Act*, RSC 1985, c F-7. It exercises its jurisdiction and powers to operate the Ottawa Airport pursuant to an Act of Parliament, namely the *Airport Transfer (Miscellaneous Matters) Act*, SC 1992, c 5, and an Order in Council, namely an *Order Designating the Ottawa Macdonald-Cartier International Airport Authority as a Designated Airport Authority and Designating the Date for the Transfer of the Ottawa Macdonald-Cartier International Airport to the Ottawa Macdonald-Cartier International Airport Authority*, SI/96-85. The Removal Decision was made by the Airport Authority in exercise of the jurisdiction and powers granted to it by Parliament.

44. The Removal Decision is of a public character, and in making the Removal Decision the Airport Authority was acting in its capacity as a federal board, commission or tribunal.

45. The Removal Decision directly affected the legal rights of the MMF and the Red River Métis and caused them prejudicial effects.

46. The Removal Decision is therefore reviewable under section 18 of the *Federal Courts Act*.

#### **The Removal Decision lacked procedural fairness**

47. The MMF was denied procedural fairness in connection with the Removal Decision. Among other things:

- (a) the Airport Authority did not provide any notice to the MMF that it was engaged in a decision-making process regarding the removal of the MMF's Signage, and thus denied the MMF any opportunity to participate in the decision-making process which directly affected the legal rights and interests of the MMF and the Red River Métis;
- (b) the Airport Authority failed to conduct sufficient, or any, due diligence with respect to Chief Whiteduck's complaint;
- (c) the Airport Authority did not notify the MMF after the Removal Decision was made. It instead directed its agent, Astral, to notify the MMF that the Signage had been removed, and Astral did not disclose that the Removal Decision had been made by the Airport Authority – and not Astral – until after the MMF questioned the decision; and
- (d) the only reasons that were offered to the MMF for the Removal Decision were in letters provided by the Airport Authority in response to correspondence from the MMF's counsel. The reasons provided are insufficient in the circumstances.

**The Removal Decision is unreasonable and should be reversed**

48. There is no reason why the MMF's Signage should be removed from the Ottawa Airport. The message displayed by the Signage is non-controversial and incontrovertible. It is indisputable that the MMF is the national government of the Red River Métis. The Airport Authority failed to properly investigate the merits of Chief Whiteduck's complaint and instead accepted it at face value. In doing so the Airport Authority acted unreasonably.

49. The only reasoning provided by the Airport Authority for the Removal Decision states that the Signage was deemed "political" and "offensive" pursuant to the Airport Authority's advertising standards. This determination is unreasonable given the contents of the Signage, and that the Airport Authority continues to display advertisements from other governments. The necessary conclusion is that the MMF's

Signage was removed because of the identity of the MMF and the Red River Métis it represents.

### **The Airport Authority violated the *Charter***

50. The Airport Authority is an agent of the federal government. The property on which the Airport Authority operates is federally owned land and leased to the Airport Authority.

51. The removal of the MMF's Signage was out of the Airport Authority's scope as a private commercial entity and constituted government action.

52. The Airport Authority removed the Signage in response to a complaint from Chief Whiteduck and "pressure" to remove the Signage was applied to the Airport Authority's stakeholders and Board members – many of which were appointed by the federal and provincial governments.

53. The removal of the MMF's Signage was a delegated government action by the Airport Authority. The Airport Authority was not acting under a commercial mandate when it chose to direct the removal of the MMF's Signage. Instead, based on pressure applied to its government appointed board, the Airport Authority removed the Signage not for any commercial reason, but for a political one.

54. The MMF itself and the rights and interests of the Red River Métis it represents are entitled to protection under the *Charter*. The MMF is entitled to and has standing to claim the protections of the *Charter* on its own behalf and on behalf of the Red River Métis.

55. Section 2(b) of the *Charter* protects expression both from government action and on government property. The Signage is expressive content and therefore protected by section 2(b), and the Airport Authority's decision to remove the Signage directly infringes that protection. Accordingly, the MMF's and Red River Métis' section 2(b) rights to freedom of expression have been breached by the Airport Authority.

56. The Red River Métis are entitled to equal treatment in accordance with section 15(1) of the *Charter*.

57. The Airport Authority deemed the MMF's Signage as "political" and "offensive". This assertion is puzzling given the contents of the Signage which simply displays the MMF's logo and states the incontrovertible fact that the MMF is the "National Government of the Red River Métis".

58. There is nothing political or offensive about the MMF's logo or the Signage as those terms are defined in the Airport Authority's policy.

59. The only conclusions that can be drawn are that the MMF and the Red River Métis were, and continue to be, treated differently because they are an Indigenous people and government.

60. The Airport Authority's actions thus give rise to breach of section 15(1):

- (a) the removal of the MMF's Signage amounts to differential treatment;
- (b) the differential treatment is based on multiple enumerated grounds, namely race, national and ethnic origin, and colour, given that the Signage was removed for the sole reason that the MMF is an Indigenous government and the Red River Métis are an Indigenous people; and
- (c) the differential treatment is discriminatory: the removal of the Signage reinforces, perpetuates, and exacerbates historical disadvantages Red River Métis people have faced by endorsing the belief that Red River Métis people are less worthy of recognition and participation in Canadian society.

61. The infringements of section 2(b) and section 15(1) cannot be justified under section 1 of the *Charter*.

### **The Airport Authority breached the honour of the Crown**

62. The Airport Authority, as a government actor and an agent of the Crown, is obligated to comply with and give full meaning and effect to the honour of the Crown. The Airport Authority breached the honour of the Crown by failing to meaningfully engage and consult with the MMF about Chief Whiteduck's complaints, denying the right of the Red River Métis to publicize its national self-government in the Ottawa Airport, and acting unilaterally without first consulting with the MMF.

63. The MMF relies upon section 35 of the *Constitution Act*, 1982 which: (i) recognizes and affirms the collective Aboriginal rights of the Red River Métis, including the right to self-determination and inherent right of self-government; and (ii) engages the honour of the Crown and requires the Crown to act respectfully and honourably with regard to the Red River Métis and its democratically-elected government.

### **The Airport Authority breached UNDRIP**

64. The Airport Authority has breached Article 16 of UNDRIP.

65. On June 21, 2021, National Indigenous Peoples Day, the United Nations Declaration on the Rights of Indigenous Peoples Act, S.C. 2021, c. 14 (the "Act") received royal assent making UNDRIP law in Canada.

66. Section 4(a) of the Act states that one of its purposes is to "affirm the Declaration as a universal international human rights instrument with application in Canadian law".

67. Article 16 of UNDRIP states:

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to

ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

68. By unilaterally removing the MMF's signage, the Airport Authority has failed to provide access to non-indigenous media and breached Article 16(1) of UNDRIP. As explained above, the Signage was removed because the MMF is an Indigenous government and the Red River Métis are an Indigenous people.

69. The Airport Authority has also breached Article 16(2) of UNDRIP by restricting the freedom of expression of the MMF and the Red River Métis.

#### **Other Grounds**

70. Section 18 of the *Federal Courts Act*, RSC 1985, c F-7.

71. Part 5 of the *Federal Court Rules*, SOR/98-106.

#### **This Application will be supported by the following material:**

1. The affidavit of David Chartrand, to be sworn.
2. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

**The Applicants request the Airport Authority send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Airport Authority to the Applicant and to the Registry:**

1. all correspondence, emails and text messages between Chief Whiteduck and the Airport Authority;
2. all minutes, notes, or internal briefings regarding communications with Chief Whiteduck;
3. all correspondence, emails and text messages between Bell Media/Astral and the Airport Authority with respect to the Removal Decision, including the

written direction from the Airport Authority to immediately remove the MMF's Signage;

4. all correspondence, emails and text messages between the Airport Authority's stakeholders and Board members with respect to the Removal Decision;
5. the Airport Authority's internal correspondence, emails and text messages with respect to the Removal Decision;
6. any Board resolutions, Board minutes, notes of Board members, and other similar documents regarding or related to the Removal Decision;
7. any correspondence, emails and text messages and/or documents that address the Airport Authority's reasoning for the Removal Decision;
8. any other documents regarding or related to the Removal Decision;
9. the lease agreement between Canada and the Airport Authority, and any other agreements, contracts, instruments, orders or documents governing the operation of the Ottawa Airport; and
10. the In-Terminal Advertising Concession Licence granted by the Airport Authority to Astral.



January 2, 2024

---

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
Suite 2750, 145 King Street West  
Toronto ON M5H 1J8

**Rahool P. Agarwal LSO#: 54528I**

ragarwal@lolg.ca

Tel: 416 645 1787

**Tyler Morrison LSO#: 80119E**

tmorrison@lolg.ca

Tel: 416 956 5100

Lawyers for the Applicants