

C A N A D A  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT

Nº: 500-11-063053-231

Commercial Division  
(Sitting as a court designated pursuant to the  
*Companies' Creditors Arrangement Act*,  
R.S.C., c. C-36, as amended)

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

**STORNOWAY DIAMONDS (CANADA) INC.**

-and-

**11272420 CANADA INC.**

Debtors

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

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**APPLICATION FOR THE ISSUANCE OF  
A WAGE EARNER PROTECTION PROGRAM ORDER AND A KEY EMPLOYEE  
RETENTION PLAN TRUST ORDER**

(*Companies' Creditors Arrangement Act*, R.S.C. (1985), ch. C-36, Sections 9, 10, 11  
(hereinafter the **CCAA**); *Wage Earner Protection Program Act*, R.S.C. (2005), ch. 47,  
Section 5(5) (hereinafter the **WEPPA**); *Wage Earner Protection Program Regulations*,  
SOR/2008-222, Section 3.2 (hereinafter the **WEPP Regulations**))

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**TO THE HONOURABLE KAREN M. ROGERS, J.S.C., OR ONE OF THE  
HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE  
COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE DEBTORS  
RESPECTFULLY SUBMIT:**

**I. INTRODUCTION**

1. On October 26, 2023, Stornoway Diamonds (Canada) Inc. (**SDCI**) and 11272420 Canada Inc. (**1127**, collectively with SDCI the **Debtors**) filed an *Application for the Issuance of an Initial Order, an Amended Restated Initial Order and Ancillary Relief* (the **Initial Application**), thereby initiating these CCAA proceedings.

2. On October 27, 2023, the Court granted the Debtors' Initial Application, and issued an Initial Order under the CCAA (as amended and restated, the **Initial Order**), as well as a Sale and Investment Solicitation Process Approval Order with respect to the implementation of a solicitation process (the **SISP**).
3. Pursuant to the Initial Order, Deloitte Restructuring Inc. (the **Monitor**) was appointed as Monitor to the Debtors.
4. On April 4, 2024, the Court issued an Approval Order approving a Call Option Agreement entered into between Winsome Resources Ltd. (**Winsome**) and the Debtors (the **Call Option Agreement**).
5. Pursuant to the Call Option Agreement, Winsome acquired an exclusive option (the **Call Option**) to acquire, either (i) all the issued capital of Stornoway from 1127 pursuant to a Court approved reverse vesting order (an **RVO Share Transaction**); or (ii) all or substantially all of the assets of Stornoway other than the Excluded Assets and the Non-Core Assets (as such terms are defined in the Call Option Agreement), pursuant to a Court approved approval and vesting order (an **AVO Asset Transaction**) (each of an RVO Share Transaction and an AVO Asset Transaction are a **Transaction**).
6. The Transaction contemplated thereunder does not provide for the continuation of the Debtors' business as a going concern as Winsome does not intend to carry on the Debtors' diamond mining operations.
7. For the reasons set out below, the Debtors hereby seek the issuance of an order substantially in the form of the draft order communicated herewith as **Exhibit R-1** (the **Draft Order**) providing for, *inter alia*, the following relief:
  - a) WEPP: An order pursuant to section 5(5) of the WEPPA declaring that SDCl is a former employer that meets the criteria established by section 3.2 of the WEPP Regulations (the **WEPP Relief**);
  - b) KERP: An authorization to increase the maximum amount currently held in trust by the Monitor in lieu of the KERP Charge<sup>1</sup> previously granted by this Honorable Court to an amount equivalent to the aggregate amount of outstanding payments under the KERP Agreements (as defined in the Initial Order) and the retention bonuses payable by the Debtors to certain key

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<sup>1</sup> As defined in paragraph 37 of the First ARIO and summarized in paragraph 17 below.

officers of the Debtors, as amended (the **Retention Amount**), as described in the relevant updated executive retention letters (the **Retention Letters**), communicated under seal, *en liasse*, as **Exhibit R-2** (collectively, the **KERP Trust**);

c) Sealing Order: A sealing order with regard to Exhibit R-2 filed in support of this Application.

8. It is respectfully submitted that the issuance of the orders sought is necessary and appropriate in the circumstances of this case.

## II. THE WEPP RELIEF

9. In the context of proceedings under the CCAA, section 5(5) of the WEPPA and the section 3.2 of the WEPP Regulations give this Court discretion to order that a former employer meets the criteria prescribed by regulation for former employees to be eligible to receive payment under the WEPPA.
10. In essence, the Court has to determine whether SDCI is a *“former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.”*
11. At the outset of these CCAA proceedings, SDCI employed an aggregate of approximately 530 employees. Of those, [433] employees have been terminated.
12. SDCI has therefore terminated or is in the process of terminating the employment of substantially all of its employees, with the only employees remaining being those who are either crucially necessary to wind-down the affairs of the Debtors or necessary to maintain ongoing diamond mining campaigns, for the benefit of the Debtors’ stakeholders, it being understood that (i) the Transaction does not provide for continuity of diamond mining operations, and that (ii) should Winsome elect not to exercise its Call Option, an orderly liquidation and wind-down of the assets and operations of the Debtors will ensue.
13. As such, whether Winsome exercises its Call Option or not, the status of terminated employees remains unchanged, as there is no possibility that the Debtors’ business will continue as a going concern. This thus entails that, in due course, the remaining employees which are not retained by Winsome, if any, will also be terminated.
14. Waiting for Winsome to exercise its Call Option before issuing the WEPP Relief sought hereunder would be highly prejudicial to the employees who have already been terminated, given they are owed eligible wages (i.e. termination pay and

severance pay) by SDCI and, in this regard, would be eligible to receive up to approximately \$8,500 pursuant to the WEPP.

15. It is therefore in the best interest of the Debtors and, most importantly, the terminated employees, for this Court to determine that, pursuant to section 5(5) of the WEPPA, the Debtors meet the criteria prescribed by section 3.2 of the WEPP Regulations, and to render an order substantially in the form of Exhibit R-1.
16. The Monitor is also of the view that the WEPP relief is necessary and reasonable in the circumstances.

### III. THE KERP TRUST

#### A. Procedural Overview

17. On November 13, 2023, the Court issued an Amended and Restated Initial Order (the **First ARIO**) which notably approved the KERP, authorized the Debtors to implement the KERP and make the payments in accordance with the terms of the KERP Agreements, and granted to the beneficiaries of the KERP a charge, hypothec and security affecting the General Encumbered Property to the extent of the aggregate amount of \$480,000 (the **KERP Charge**).
18. On January 19, 2024, considering the potential end-of-life environmental obligations that could be incumbent on the Debtors and in an effort to definitively secure the payment of the KERP Amount and the initial Retention Amount, the Debtors sought the issuance of an order substituting the KERP Charge with the KERP Trust.
19. On January 24, 2024, the Court, granted the Debtors' Application and namely ordered the deposit in trust with the Monitor or a third party trust agent of the KERP Amount and the initial Retention Amount, thereby authorizing the creation of the KERP Trust as a substitute for the KERP Charge.

#### B. The KERP Trust Relief

20. Since the Initial Order, the continued active implication of the Debtors' key officers has remained essential to the restructuring efforts of the Debtors, notably in the context of the ongoing discussions with Winsome following the signature of the Call Option Agreement, as well as other stakeholders.
21. To secure these officers' continued loyal services, it has become necessary for the Debtors to increase the Retention Amount as a financial incentive.

22. Considering the necessity to retain the Debtors' officers to contribute to the restructuring efforts, the Debtors seek the authorization of the Court to increase the value of the KERP Trust to account for the necessary increase of the Retention Amount.
23. The Debtors respectfully submit that doing so is appropriate and reasonable in the circumstances.
24. The Streamers and Diaquem, being the main secured creditors of the Debtors and unaffected creditors in the CCAA proceedings, support the requested relief.

#### **IV. SEALING OF CONFIDENTIAL DOCUMENTS**

25. Exhibit R-2 filed in support of this Application contain commercially sensitive information related to the remuneration of the Debtors' officers. Disclosure of such information would be prejudicial to the Debtors, as their key employees would be susceptible to be hired away by competitors in the present day highly competitive labour market.
26. It is respectfully submitted that the confidentiality of such information should be preserved and that it should be ordered that **Exhibit R-2** to the Application be kept confidential and filed under seal until further order of this Court.

#### **FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** the present *Application for the Issuance of a Wage Earner Protection Program Order and a Key Employee Retention Plan Trust Order*;

**RENDER** a Wage Earner Protection Program Order and a Key Employee Retention Plan Trust Order substantially in the form of the draft order communicated herewith as Exhibit R-1;

**THE WHOLE** without costs, save and except in case of contestation.

Montréal, May 24, 2024

*Norton Rose Fulbright Canada*

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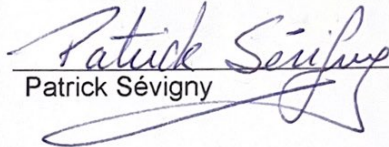
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**AFFIDAVIT**

I, the undersigned, Patrick Sévigny, President and Chief Executive Officer, duly authorized director of the Debtors, having my professional domicile at 1111 Blvd. Saint-Charles W., Suite 400, Longueuil, province of Québec, J4K 5G4, solemnly declare that all the facts alleged in the present *Application for the Issuance of a Wage Earner Protection Program Order and a KERP Trust Order* are true.

AND I HAVE SIGNED

  
Patrick Sévigny

SOLEMNLY DECLARED before me by technological means, this May 24, 2024. The Affiant is in the city of Longueuil and the Commissioner of Oaths is in the city of Varennes.





Commissioner of Oaths for the Province of Québec

## **NOTICE OF PRESENTATION**

**TO: The Service List**

**TAKE NOTICE** that the present *Application for a the Issuance of a Wage Earner Protection Program Order and a Key Employee Retention Plan Trust Order* will be presented for adjudication before the Honourable Justice Karen M. Rogers of the Superior Court of Québec in the Montréal Courthouse located at 1, Notre-Dame Street East, Montréal, Québec, on **May 28, 2024, at 9:30 a.m., in room 16.05.**

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**DO GOVERN YOURSELF ACCORDINGLY.**

Montréal, May 24, 2024

*Norton Rose Fulbright Canada*

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

**STORNOWAY DIAMONDS (CANADA) INC.**

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**Debtors / Applicants**

**-&-**

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**APPLICATION FOR THE ISSUANCE OF**  
**A WAGE EARNER PROTECTION PROGRAM ORDER AND A KEY**  
**EMPLOYEE RETENTION PLAN TRUST ORDER**

**ORIGINAL**

BO-0042

# 1001271938

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