

# MOORE BARRISTERS

PROFESSIONAL CORPORATION

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August 27, 2018

Supreme Court of Canada  
301 Wellington St.  
Ottawa, ON K1A 0J1

Attention: Registry Office

Dear Sir or Madam:

**Re: The Catalyst Capital Group v. Moyses et al. SCC File No. 38232**

This letter is filed in reply to the responses of Brandon Moyses and of West Face Capital Inc. In addition to this reply, we are also filing the affidavit of David C. Moore, sworn August 27, 2018 which has to be filed to correct materials errors and misrepresentations contained in the affidavits of Brandon Moyses and Andrew Carlson filed by the respondents.

As was set out in the applicant's motion for extension of time and the supporting affidavit of Nicholas P. Reinkeluers, the applicant formed the intention to appeal within the requisite time for filing an application for leave to appeal under the Act, advised counsel for West Face of that and engaged with counsel on that issue and on the issue of security for costs of the proceedings in the courts below. A letter of credit in the amount of \$2,000,000 has been obtained upon terms agreed with respondents' counsel.

The response filed by West Face Capital and, specifically, the affidavit of Andrew Carlson, details the difficulties the parties faced in settling the terms of the final Order from the Court of Appeal for Ontario, which was not finally obtained until August 2, 2018. The applicant's application for leave to appeal was served and filed three business days after the final Order from the Court of Appeal for Ontario was issued. The application for leave to appeal focusses on an issue that the applicant submits is an issue of public importance, spoliation of evidence, that warrants consideration by this Court.

At all material times, it was my understanding and belief that in order to file the Leave Application, it was necessary to also file the issued and entered orders of the Ontario Court of Appeal ("OCA Orders") in relation to the decisions in respect of which leave to appeal was sought. I communicated this to opposing counsel and believe that they shared that understanding. We worked cooperatively to get the OCA Orders finalized and the letter of credit put in place on terms which reflect this belief. While I now recognize that obtaining the final issued order from the court appealed from is not a prerequisite for filing an application for leave to appeal, I

understand that the practice of this Court is not to refer the application for leave to appeal (and responses thereto) to a panel for decision until the formal order from the court appealed from has been obtained. As such, we submit that there is no material prejudice to the respondents by the fact that the application was filed on the 8<sup>th</sup> of August, rather than the 23<sup>rd</sup> of April, as the application would have been “stalled” until such time as the final order was obtained in any event. Moreover, given that the letter of credit is now in place, the respondents are protected with respect to the costs which have been awarded to them by the courts below.

The affidavit filed herewith corrects the allegations contained in the Response that counsel did not cooperate regarding the issuance of the OCA orders and rectifies omissions in the Responses about the circumstances which resulted in the issuance of the orders in early August, 2018.

In the circumstances, the applicant submits that the Court should not depart from its usual practice of having the motion for an extension of time considered by the panel reviewing the application for leave to appeal, so that the important issue raised by the proposed appeal can be considered on its merits.

Yours very truly,

**MOORE BARRISTERS**

A handwritten signature in black ink that reads "David Moore". The signature is written in a cursive, flowing style.

David C. Moore  
Counsel for the applicant, Catalyst Group Inc.