

COURT FILE NUMBER 24-2806171
COURT COURT OF QUEEN'S BENCH OF ALBERTA
**IN THE MATTER OF THE BANKRUPTCY OF ECO-
INDUSTRIAL BUSINESS PARK INC.**



JUDICIAL CENTRE EDMONTON

APPLICANT MNP LTD., in its capacity as the TRUSTEE IN BANKRUPTCY OF
ECO-INDUSTRIAL BUSINESS PARK INC., and not in its personal
capacity.

RESPONDENT SYMMETRY ASSET MANAGEMENT INC.

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE **OSLER, HOSKIN & HARCOURT LLP**
AND CONTACT Suite 2700, Brookfield Place
INFORMATION OF 225 – 6th Avenue SW
PARTY FILING THIS Calgary, AB T2P 1N2
DOCUMENT

Attention: Emily Paplawski
Telephone: 403.260.7071
Facsimile: 403.260.7024
Email: epaplawski@osler.com
File Number: 1231987

NOTICE TO RESPONDENT: SYMMETRY ASSET MANAGEMENT INC.

This application is made against you. You are a respondent. You have the right to state your side of the matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date: November 23, 2023
Time: 9:00 a.m.
Where: Edmonton Law Courts – Court of King's Bench of Alberta (By Webex)
Before Whom: Honourable Justice Feth

Go to the end of this document to see what else you can do and when you must do it.

Remedy Claimed or Sought

1. The Applicant, MNP Ltd., in its capacity as Trustee in Bankruptcy of Eco-Industrial Business Park Inc. (“**Eco**”), and not in its personal capacity (the “**Trustee**”) brings this application for an Order substantially in the form attached hereto as **Schedule “A”** to:
 - (a) settle the terms of the Order arising from the Reasons for Decision of the Honourable Justice Feth dated July 18, 2023 granting the Application of the Trustee filed in the within bankruptcy proceedings on August 4, 2022 (the “**Application**”); and
 - (b) determine and order costs of the Application.

Grounds for making this application:

2. On August 24, 2022, the Trustee filed the Application seeking, among other things, a declaration that two Assignment and Assumption Agreements, dated December 1, 2019 (the “**Assignment Agreements**”) between Eco and a related company, Symmetry Asset Management Inc. (“**Symmetry**”), were void as against the Trustee as a transfer at undervalue pursuant to section 96(1)(b)(ii) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “**BIA**”).
3. The Application was heard by the Honourable Justice Feth on June 23, 2023.
4. On July 18, 2023, the Honourable Justice Feth released his Reasons for Decision (*MNP Ltd (Eco-Industrial Business Park Inc) v Symmetry Asset Management Inc*, 2023 ABKB 429) granting the Application and declaring the Assignments Agreements void under section 96 of the BIA as transfers at undervalue.
5. As the result of various circumstances, the parties have been unable to settle the terms of a form of Order arising from the Reasons for Decision or agree on costs payable by Symmetry with respect to same.
6. The Trustee accordingly files this application seeking:
 - (a) the form of Order attached hereto as **Schedule “A”**; and

- (b) costs and disbursements of the Application against Symmetry in the aggregate amount of \$42,456.45, comprised of:
 - (i) \$16,875 for costs of the Application under Column 5 of Schedule C of the *Alberta Rules of Court* and \$2,277.00 for reasonable disbursements incurred by the Trustee; and
 - (ii) \$21,282.75 for costs incurred by the Trustee and calculated on a solicitor and client basis to address inadmissible evidence contained in the Affidavit of Haven Eboni Edwards, affirmed December 2, 2022 (the “**Edwards Affidavit**”).
- 7. In the alternative to solicitor and client costs, the Trustee is seeking thrown away costs of \$16,200 incurred to address the Edwards Affidavit, calculated as triple Column 5 of Schedule C to the Alberta Rules of Court (Items No. 5(1), 5(2) and 8(2)).
- 8. All costs and disbursements claimed by the Trustee are more fully particularized in the Bill of Costs and supporting documentation attached hereto as **Schedule “B”**.

Material or evidence to be relied on:

- 9. Reasons for Decision (*MNP Ltd (Eco-Industrial Business Park Inc) v Symmetry Asset Management Inc*, 2023 ABKB 429).
- 10. Affidavit of Haven Eboni Edwards, affirmed December 2, 2022.
- 11. Pleadings, affidavits, transcripts and other documents previously filed in the within proceedings.

Applicable rules:

- 12. *Rules of Court*, Alta Reg 124/2010, rr. 10.29, 10.30, 10.31, 10.33, 10.35 and Schedule C.
- 13. Such further and other rules as counsel for the Trustee may advise and this Honourable Court may allow.

Applicable Acts and regulations:

- 14. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
- 15. *Judicature Act*, RSA 2000, c J-2.

16. Such further and other Acts and Regulations as counsel for the Applicant may advise and this Honourable Court may allow.

Any irregularity complained of or objection relied on:

17. None.

How the application is proposed to be heard or considered:

18. Before the Honourable Justice Feth at 9:00 a.m. on November 23, 2023.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

Clerk's Stamp

COURT FILE NUMBER: 24-2806171

COURT COURT OF QUEEN'S BENCH OF ALBERTA

**IN THE MATTER OF THE BANKRUPTCY OF ECO-INDUSTRIAL
BUSINESS PARK INC.**

JUDICIAL CENTRE EDMONTON

APPLICANT MNP LTD., in its capacity as the TRUSTEE IN BANKRUPTCY OF ECO-INDUSTRIAL BUSINESS PARK INC., and not in its personal capacity.

RESPONDENT SYMMETRY ASSET MANAGEMENT INC.

DOCUMENT: **ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **OSLER, HOSKIN & HARCOURT LLP**
Barristers & Solicitors
Suite 2700, Brookfield Place
225 – 6th Avenue S.W.
Calgary AB, T2P 1N2

Attention: Emily Paplawski
Telephone: 403.260.7071
Facsimile: 403.260.7024
Email: epaplawski@osler.com
File Number: 1231987

DATE ON WHICH ORDER WAS PRONOUNCED: July 18, 2023

NAME OF JUSTICE WHO MADE THIS ORDER: Honourable Justice K. Feth

LOCATION AT WHICH ORDER WAS MADE: Edmonton, Alberta

UPON THE APPLICATION of MNP Ltd., in its capacity as the TRUSTEE IN BANKRUPTCY OF ECO-INDUSTRIAL BUSINESS PARK INC. (the "**Bankrupt**"), and not in its personal capacity (the "**Trustee**"); **AND UPON** reviewing the Affidavit of Victor P. Kroeger, sworn August 4, 2022 (the "**Kroeger Affidavit**"), the Affidavit of Daniel White, sworn September 15, 2022, the Affidavit of David Gamage, sworn November 11, 2022, and the Affidavit of Haven Eboni Edwards, sworn December 2, 2022 (the "**Edwards Affidavit**") other than paragraphs 6 and 8 thereof; **AND UPON** reviewing the transcript from the examination of David Gamage, held November 15, 2022, the transcript from the examination of Victor P. Kroeger, held November 4, 2022, and the transcript from the examination of Haven Eboni

Edwards, held December 19, 2022; **AND UPON** reviewing the Bench Brief of the Trustee, filed November 18, 2022, the Bench Brief of Symmetry, dated December 1, 2022, and the Bench Brief (Inadmissibility of the Edwards Affidavit) of the Trustee, filed January 3, 2023; **AND UPON** hearing from counsel for the Trustee and counsel for the Respondent, Symmetry Asset Management Inc. (“**Symmetry**”); **IT IS HEREBY ORDERED AND DECLARED THAT:**

1. The Assignment and Assumption Agreements, dated December 1, 2019 between the Bankrupt and Symmetry (attached as Exhibit “S” to the Kroeger Affidavit) are void as against the Trustee as a transfer at undervalue pursuant to section 96 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3.
2. The solicitor’s file(s) (both electronic and paper) for the action/claims subject to the Assignment and Assumption Agreements, or the applicable portion thereof, shall be transferred to Trustee’s counsel, Osler Hoskin & Harcourt LLP (“**Osler**”), within a reasonable period of time following a written request by Osler for same.
3. The Trustee is awarded full indemnity costs against Symmetry for all steps the Trustee undertook to address the Edwards Affidavit, including its cross examination of Ms. Edwards on December 19, 2022 and its preparation of the Trustee’s Bench Brief, filed January 3, 2023, in the amount of \$21,282.75, plus GST.
4. Symmetry shall pay costs and disbursements to the Trustee for the remainder of the Application not addressed in paragraph 3 above in accordance with Column 5 of Schedule C to the Alberta *Rules of Court* in the amount of \$19,152, plus GST.
5. The Clerk of the Court is directed to enter this Order notwithstanding that more than 3 months have elapsed since pronouncement.

J.C.K.B.A.

Schedule "B"

COURT FILE NUMBER: 24-2806171

COURT COURT OF KING'S BENCH OF ALBERTA

IN THE MATTER OF THE BANKRUPTCY OF ECO-INDUSTRIAL BUSINESS PARK INC.

JUDICIAL CENTRE EDMONTON

APPLICANT MNP LTD., in its capacity as the TRUSTEE IN BANKRUPTCY OF ECO-INDUSTRIAL BUSINESS PARK INC., and not in its personal capacity.

RESPONDENT SYMMETRY ASSET MANAGEMENT INC.

DOCUMENT: **BILL OF COSTS**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **OSLER, HOSKIN & HARCOURT LLP**
Barristers & Solicitors
Suite 2700, Brookfield Place
225 – 6th Avenue S.W.
Calgary AB, T2P 1N2

Attention: Emily Paplawski
Telephone: 403.260.7071
Facsimile: 403.260.7024
Email: epaplawski@osler.com
File Number: 1231987

BILL OF COSTS OF THE APPLICANT:

Fees Claimed – Costs of the Application:

ITEM NO.	DESCRIPTION	AMOUNT (Column 5)
1(1)	Commencement Documents	\$4,725.00
5(1)	Cross Examination Preparation	\$2,025.00
5(2)	Cross Examination x 2 (Gamage, Kroeger)	\$4,050.00
5(4)	Preparation of Undertaking Responses (Kroeger)	\$2,025.00
8(1)	Applications Requiring Written Brief (Full Day)	\$4,050.00
TOTAL FEES (excluding GST):		\$16,875.00

Fees Claimed – Trustee Costs of Addressing the Improperly Filed Edwards Affidavit (see redacted invoices attached at Schedule “1” hereto):

Name	Position	Hours	AMOUNT
Randal Van de Mosselaer	Partner	6.5 HRS	\$5,687.50
Emily Paplawski	Partner	18.45 HRS	\$13,007.25
Andrew Schnell	Student	8.2 HRS	\$2,132.00
Joey Chan	Student	1.6 HRS	\$456.00
TOTAL FEES (excluding GST):			\$21,282.75

Disbursements:

DESCRIPTION	AMOUNT
Corporate Search Charges	\$14.00
Courier Expenses	\$31.00
Filing Fees	\$438.00
On-line Database Services	\$70.00
Printing Costs	\$483.00
Transcript Services	\$1,241.00
Total Disbursements	\$2,277.00

GST:

DESCRIPTION	AMOUNT
Amount claimed on fees	\$1,907.88
Amount claimed on disbursements	\$113.82

Total GST	\$2,021.70
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Total Amount Claimed:	AMOUNT
Fees:	\$38,157.75
Disbursements:	\$2,277.00
GST:	\$2,021.70
TOTAL:	\$42,456.45

Amount allowed by assessment officer:

Fees: \$
Disbursements: \$
Other Charges: \$
GST: \$
TOTAL: \$

Person responsible for preparation of this Bill of Costs:



Signature

Emily Paplawski

Print Name

OSLER, HOSKIN & HARCOURT LLP
Suite 2700, Brookfield Place
225 - 6th Avenue S.W.
Calgary AB T2P 1N2
CANADA
403.260.7000 main
403.260.7024 FACSIMILE

OSLER

Invoice Issued in Canadian Dollars

MNP LLP
Suite 1500, 640 - 5th Avenue SW
Calgary, AB T2P3G4
CANADA

Invoice No.: 12724325
Date: January 20, 2023
Client No.: 221174
GST/HST No.: 121983217 RT0001

Attention: Victor Kroeger
Director of Corporate Recovery Western
Canada MNP Ltd

Contact: Randal Van de Mosselaer
Direct Dial: (403) 260-7060
E-mail: rvandemosselaer@osler.com

For professional services rendered for Bankruptcy of Eco-Industrial Business Park Inc. (F#1231987).

OUR FEE HEREIN
REIMBURSABLE EXPENSES
GST @ 5%
TOTAL (CAD):

██████████
██████████
██████████
██████████

PAYMENT DUE UPON RECEIPT



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751 3rd Street S.W.
Calgary, Alberta T2P 4K8
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Account No: ██████████
SWIFT Code: ██████████

Cheque Payments:

Osler, Hoskin & Harcourt LLP
FINANCE & ACCOUNTING
(RECEIPTS)
1 First Canadian Place
PO BOX 50
Toronto, Ontario M5X 1B8
Canada

Invoice No.: 12724325
Client No.: 221174
Amount: ██████████ CAD

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FEE SUMMARY

NAME	HRS	RATE	FEES
<u>PARTNER</u>			
Emily Paplawski	█	705	█
Randal Van de Mosselaer	█	875	█
<u>STUDENT</u>			
Andrew Schnell	█	260	█
TOTAL FEES (CAD):	█		█

FEE DETAIL

DATE	NAME	DESCRIPTION	HRS
█	█	█	█
Dec-02-22	Emily Paplawski	█	0.20
Dec-04-22	Emily Paplawski	█	50% 1.10
Dec-05-22	Emily Paplawski	█	0.90
Dec-05-22	Andrew Schnell	█	0.20
Dec-05-22	Andrew Schnell	█	1.00
Dec-05-22	Randal Van de Mosselaer	█	50% 4.00
Dec-06-22	Andrew Schnell	█	7.00
█	█	█	█

Dec-07-22	Emily Paplawski	[REDACTED]	0.80
Dec-07-22	Randal Van de Mosselaer	[REDACTED]	1.00
Dec-12-22	Randal Van de Mosselaer	[REDACTED]	0.10
Dec-13-22	Emily Paplawski	[REDACTED]	0.20
Dec-18-22	Emily Paplawski	[REDACTED]	2.20
Dec-19-22	Emily Paplawski	[REDACTED]	3.20
Dec-19-22	Randal Van de Mosselaer	[REDACTED]	0.50
Dec-20-22	Randal Van de Mosselaer	[REDACTED]	0.60
Dec-21-22	Emily Paplawski	[REDACTED]	0.20
Dec-21-22	Randal Van de Mosselaer	[REDACTED]	0.20
Dec-22-22	Emily Paplawski	[REDACTED]	5.90
Dec-23-22	Emily Paplawski	[REDACTED]	2.50
Dec-27-22	Emily Paplawski	[REDACTED]	0.30
Dec-28-22	Emily Paplawski	[REDACTED]	1.70
Dec-28-22	Randal Van de Mosselaer	[REDACTED]	0.90

TOTAL HOURS:

[REDACTED]

EXPENSE SUMMARY

DESCRIPTION	AMOUNT
<u>EXPENSES - TAXABLE</u>	
Printing Costs	█
Agent's Fees & Expenses	█
TOTAL (CAD):	█

OSLER, HOSKIN & HARCOURT LLP
Suite 2700, Brookfield Place
225 - 6th Avenue S.W.
Calgary AB T2P 1N2
CANADA
403.260.7000 main
403.260.7024 FACSIMILE

OSLER

Invoice Issued in Canadian Dollars

MNP LLP
Suite 1500, 640 - 5th Avenue SW
Calgary, AB T2P3G4
CANADA

Invoice No.: 12736481
Date: February 28, 2023
Client No.: 221174

GST/HST No.: 121983217 RT0001

Attention: Victor Kroeger
Director of Corporate Recovery Western
Canada MNP Ltd

Contact: Randal Van de Mosselaer
Direct Dial: (403) 260-7060
E-mail: rvandemosselaer@osler.com

For professional services rendered for Bankruptcy of Eco-Industrial Business Park Inc. (F#1231987).

OUR FEE HEREIN
REIMBURSABLE EXPENSES *
GST @ 5%
TOTAL (CAD):

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

* Includes non-taxable expenses of [REDACTED]

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Calgary, Alberta T2P 4K8
Transit No: [REDACTED]
Account No: [REDACTED]
SWIFT Code: [REDACTED]

Cheque Payments:

Osler, Hoskin & Harcourt LLP
FINANCE & ACCOUNTING
(RECEIPTS)
1 First Canadian Place
PO BOX 50
Toronto, Ontario M5X 1B8
Canada

Invoice No.: 12736481
Client No.: 221174
Amount: [REDACTED] CAD

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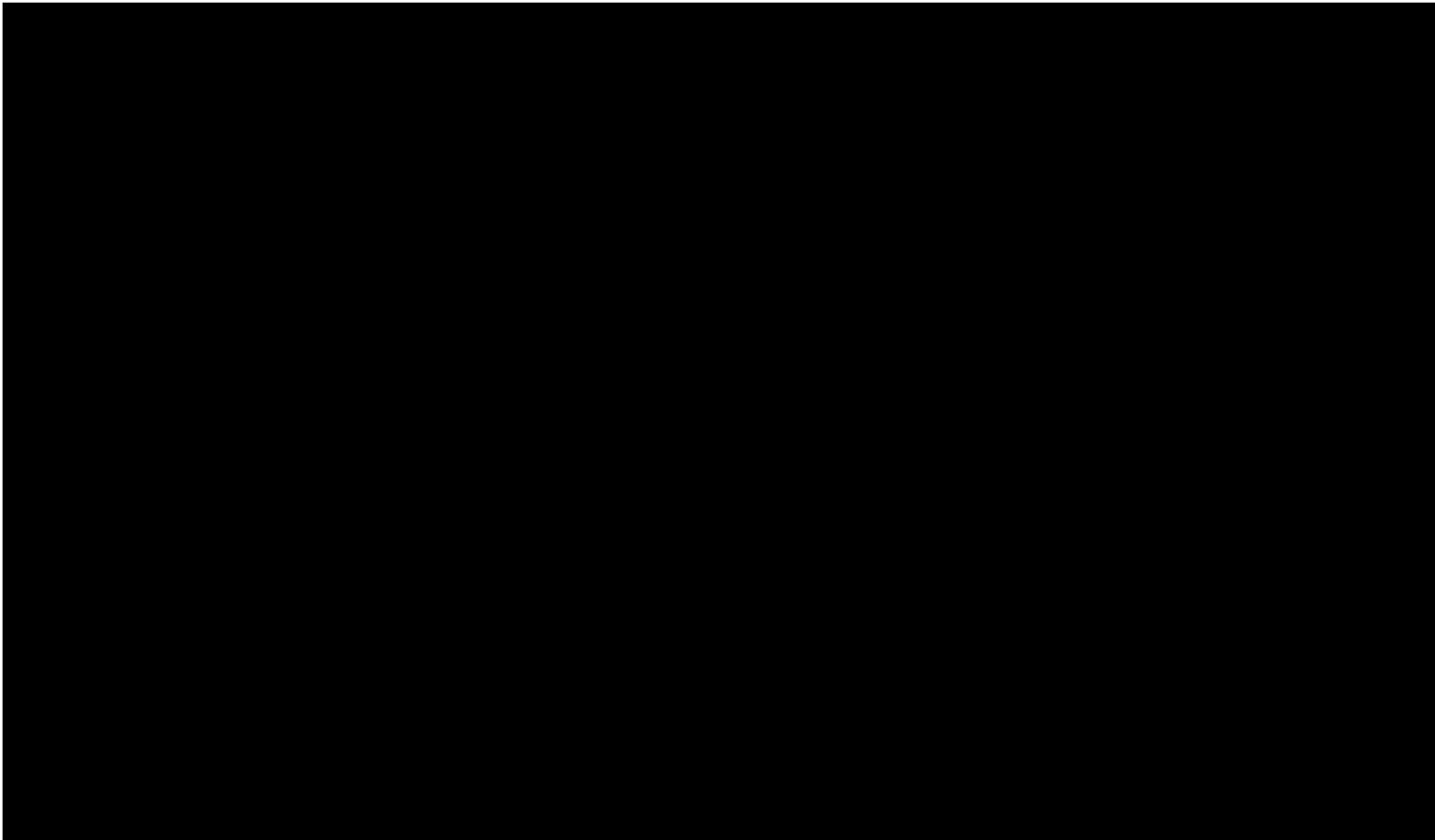
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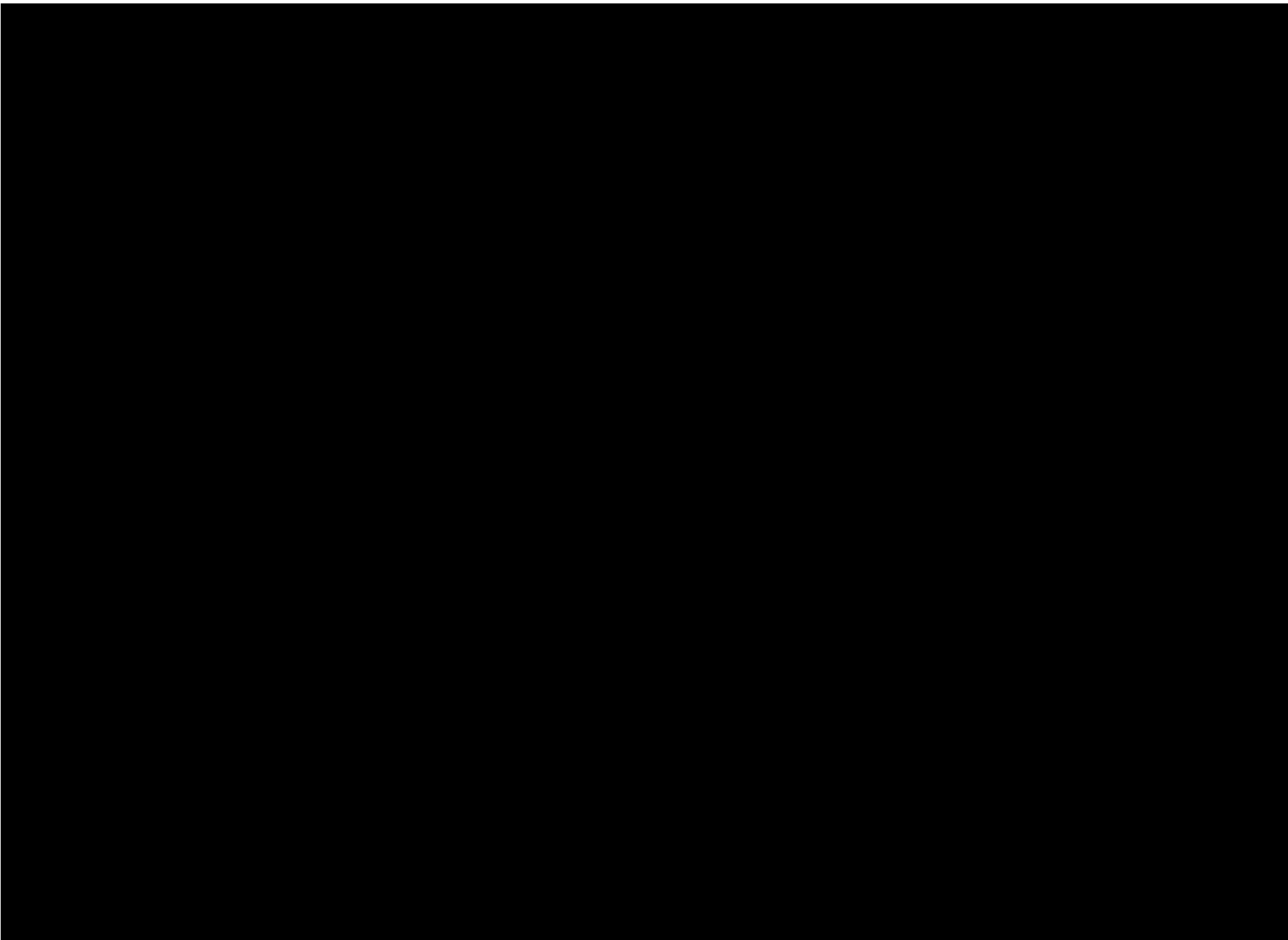
FEE SUMMARY

NAME	HRS	RATE	FEES
<u>PARTNER</u>			
Emily Paplawski	█	775	█
Randal Van de Mosselaer	█	965	█
<u>STUDENT</u>			
Joey Chan	█	285	█
TOTAL FEES (CAD):	█		█

FEE DETAIL

DATE	NAME	DESCRIPTION	HRS
Jan-03-23	Joey Chan	█	1.60
Jan-03-23	Randal Van de Mosselaer	█	0.60
Jan-04-23	Randal Van de Mosselaer	█	0.40





EXPENSE SUMMARY

DESCRIPTION	AMOUNT
<u>EXPENSES - TAXABLE</u>	
Courier Expenses	█
Printing Costs	█
Special Supplies Costs	█
<u>EXPENSES - NON-TAXABLE</u>	
Filing Fees	█
TOTAL (CAD):	<u>█</u>