

Court File No.: \_\_\_\_\_

**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 THE COMPROMISE OR ARRANGEMENT OF ALEAFIA  
HEALTH INC., EMBLEM CORP., EMBLEM CANNABIS CORPORATION, EMBLEM  
REALTY LTD., GROWWISE HEALTH LIMITED, CANABO MEDICAL  
CORPORATION, ALEAFIA INC., ALEAFIA FARMS INC., ALEAFIA BRANDS INC.,  
ALEAFIA RETAIL INC., 2672533 ONTARIO INC., and 2676063 ONTARIO INC.**

Applicants

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**FACTUM OF THE APPLICANTS  
(CCAA Application)**

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July 25, 2023

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## **PART I: INTRODUCTION<sup>1</sup>**

1. Emblem Corp. (“**Emblem**”), Emblem Cannabis Corporation (“**Emblem Cannabis**”), Emblem Realty Ltd. (“**Emblem Realty**”), Growwise Health Limited (“**Growwise**”), Canabo Medical Corporation (“**Canabo**”), Aleafia Inc. (“**Aleafia Sub**”), Aleafia Farms Inc. (“**Aleafia Farms**”), Aleafia Brands Inc. (“**Aleafia Brands**”), Aleafia Retail Inc. (“**Aleafia Retail**”), 2672533 Ontario Inc. (“**2672**”) and 2676063 Ontario Inc. (“**2676**”) are various subsidiaries (individually, a “**Subsidiary**” and collectively, the “**Subsidiaries**”) of Aleafia Health Inc. (“**Aleafia Parent**” and with the Subsidiaries, the “**Applicants**” or the “**Aleafia Group**”). Aleafia Parent also has an interest in a certain other non-Applicant affiliate.<sup>2</sup>

2. The Applicants seek protection from their creditors and certain other ancillary relief pursuant to an urgent Order (the “**Initial Order**”), made on short notice to only the Applicants’ senior secured lenders, pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The Initial Order is substantially in the form of the draft order attached to the Application Record.

3. The Applicants are in a dire liquidity crisis and are not able to meet their obligations as they become due. As of March 31, 2023, the Applicants have a cumulative deficit of \$527.8 million with a net working capital deficit of \$5.4 million. The net liabilities for Aleafia Parent alone are \$31.3 million as of the same date.<sup>3</sup>

4. Absent the approval of the additional financing proposed to be made available under the DIP Loan (as defined below), Aleafia Parent will not be in a position to fund its next payroll (which is paid in arrears) scheduled to be paid on or around July 28, 2023 for hourly employees and July 31, 2023 for salaried employees.

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<sup>1</sup> Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the affidavit of Patricia Symmes-Rizakos sworn July 24, 2023 (the “**Initial Affidavit**”), Application Record at Tab 4. All references to currency in this factum are to Canadian dollars, unless otherwise noted.

<sup>2</sup> The non-Applicant party is One Plant (Retail) Corp. (“**One Plant**”).

<sup>3</sup> Initial Affidavit, *supra* note 1 at para 8.

5. Based on the Cash Flow Forecast (as defined in the Initial Affidavit), Aleafia Group will have sufficient cash to sustain operations for the week ending July 21, 2023, but will have insufficient funds thereafter. There is thus significant urgency to this CCAA application and the relief sought pursuant to the Initial Order.<sup>4</sup>

6. While the Applicants' financial difficulties were driven by a variety of factors, the significant net losses suffered by the Applicants have largely stemmed from a cash flow crisis and general issues facing the cannabis sector. If the Applicants are not granted protection under the CCAA, the Applicants would be forced to immediately shut down operations, which would be extremely detrimental to the Applicants' landlords, suppliers, lenders, customers, and employees.

7. If granted the Stay of Proceedings (as defined below) and the protections of the CCAA, the Applicants intend to, among other things:

- (a) maintain operations, for the benefit of employees and other stakeholders;
- (b) streamline their remaining operations with a view to generating a profit; and
- (c) conduct a court-approved sales and investment solicitation process ("**SISP**") to obtain a going concern solution to maximize value for their stakeholders.

8. The relief sought in the Initial Order is limited to what is reasonably necessary to allow the Applicants to maintain the *status quo* and continue operations in the ordinary course during the initial 10-day stay of proceedings (the "**Stay of Proceedings**"). The Applicants intend to return to this Court for additional relief necessary to advance these CCAA proceedings (the "**CCAA Proceedings**") at a hearing to be scheduled prior to the expiration of the initial Stay of Proceedings (the "**Comeback Hearing**"). On an expedited basis after the Comeback Hearing, court approval of a SISP will be sought.

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<sup>4</sup> *Ibid* at para 9.

## **PART II:           FACTS**

9.       The facts underlying this application are more fully set out in the affidavit of Patricia Symmes-Rizakos, sworn July 24, 2023 (the “**Initial Affidavit**”).<sup>5</sup>

### **A.       The Applicants**

10.      All of the Applicants are Canadian companies. Aleafia Parent is the ultimate parent of the Aleafia Group, and all of the other Applicants are Subsidiaries. Beyond their relevant extra-provincial registrations, each of the Applicants was incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B.16 (Ontario) (the “**OBCA**”) or the *Canada Business Corporations Act*, RSC 1985, c C-44 (the “**CBCA**”), as follows:

- (a)      Aleafia Parent (OBCA);<sup>6</sup>
- (b)      Emblem (CBCA);<sup>7</sup>
- (c)      Emblem Cannabis (CBCA);<sup>8</sup>
- (d)      Emblem Realty (OBCA);<sup>9</sup>
- (e)      Growwise (OBCA);<sup>10</sup>
- (f)      Canabo Medical (OBCA);<sup>11</sup>
- (g)      Aleafia Sub (OBCA);<sup>12</sup>
- (h)      Aleafia Farms (OBCA);<sup>13</sup>
- (i)      Aleafia Brands (OBCA);<sup>14</sup>
- (j)      Aleafia Retail (OBCA);<sup>15</sup>
- (k)      2672 (OBCA);<sup>16</sup> and

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<sup>5</sup> Initial Affidavit, *supra* note 1.

<sup>6</sup> *Ibid* at paras 29–32 and Exhibit “E”.

<sup>7</sup> *Ibid* at paras 33–36 and Exhibit “F”.

<sup>8</sup> *Ibid* at paras 37–43 and Exhibit “G”.

<sup>9</sup> *Ibid* at paras 44–46 and Exhibit “I”.

<sup>10</sup> *Ibid* at paras 47–49 and Exhibit “J”.

<sup>11</sup> *Ibid* at paras 55–57 and Exhibit “M”.

<sup>12</sup> *Ibid* at para 70–72 and Exhibit “R”.

<sup>13</sup> *Ibid* at paras 50–54 and Exhibit “K”.

<sup>14</sup> *Ibid* at paras 58–60 and Exhibit “N”.

<sup>15</sup> *Ibid* at paras 61–63 and Exhibit “O”.

<sup>16</sup> *Ibid* at paras 64–66 and Exhibit “P”.

(l) 2676 (CBCA).<sup>17</sup>

11. The most active Subsidiaries of the Aleafia Group are Emblem Cannabis and Aleafia Farms.

12. The primary operations of the Aleafia Group are conducted through Emblem Cannabis. Emblem Cannabis owns certain of the Real Property (as defined in the Initial Affidavit), is party to the lease at which the Aleafia Group operates a distribution centre (the “**Distribution Centre**”), and holds certain Health Canada cannabis licenses. All medical, adult-use, international and wholesale sales flow through the Emblem Cannabis entity.<sup>18</sup>

13. Aleafia Farms, per its name, produces and grows the primary flower supply for pre-roll and product formats of cannabis. It also holds certain Health Canada cannabis licenses and is the registered owner of certain of the Real Property.<sup>19</sup>

14. The remaining entities are subject to various business relationships and contracts for the Aleafia Group conglomerate. Of the remaining Applicants, Aleafia Brands, Emblem Realty, 2672 and 2676 are operationally inactive and hold no material assets.<sup>20</sup>

## **B. The Non-Applicant Party**

15. Aside from the Applicants, Aleafia Parent also has an interest in One Plant (Retail) Corp., as it holds a minority interest in the entity through its Subsidiary, Aleafia Retail, who holds approximately 9% of the issued and outstanding shares.<sup>21</sup>

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<sup>17</sup> *Ibid* at paras 67–69 and Exhibit “Q”.

<sup>18</sup> *Ibid* at para 37.

<sup>19</sup> *Ibid* at paras 54.

<sup>20</sup> *Ibid* at paras 46, 60, 66, 69.

<sup>21</sup> *Ibid* at para 73.

## C. Business of the Aleafia Group

### 1. The Applicants

16. The Aleafia Group is a federally licensed Canadian cannabis company providing cannabis products to five of Canada's largest provinces (Ontario, Alberta, British Columbia, Saskatchewan and Manitoba) and destined for select international medical cannabis markets. The Aleafia Group also operates a virtual cannabis clinic named "Canabo Medical Clinic", staffed by various physicians and nurse practitioners, which also provides health and wellness services across Canada; medical cannabis is largely produced through Aleafia Group's Subsidiary Emblem Cannabis. A separate physical clinic also operates in St. John's, Newfoundland (the "**Newfoundland Site**").

17. The Aleafia Group sells its products primarily through three core sales channels: adult-use, medical, and international. To produce these products, the Aleafia Group historically operated from three licensed cannabis production facilities in the province of Ontario, one of which is Canada's largest outdoor cannabis cultivation facility.<sup>22</sup> A fourth distribution centre located in Ontario, which is licensed as a processor by Health Canada, enables same-day delivery service and direct-to-retailer cannabis distribution services.

18. As mentioned above, the Aleafia Group also operates, through one of its Subsidiaries, a physical medical clinic located in St. John's, Newfoundland. Certain of these locations are also subject to exit plans.<sup>23</sup> The Aleafia Group also employs 147 full-time employees across its various locations.<sup>24</sup>

19. As discussed above, Emblem Cannabis and Aleafia Farms hold certain Health Canada cannabis licences.<sup>25</sup> In addition to these key cannabis licences, certain of the Aleafia Group have accordingly entered

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<sup>22</sup> In November of 2022, a winddown of the Grimsby Site (as defined in the Initial Affidavit) was initiated and is now closed. The Grimsby Site historically produced usable flower for the dried flower category in the "Divvy" brand offered by the Aleafia Group.

<sup>23</sup> Initial Affidavit, *supra* note 1 at para 11.

<sup>24</sup> *Ibid* at para 117.

<sup>25</sup> Standard Cultivation licence LIC-0CNIN0V9QK with an expiry date of January 28, 2028; Standard Processing licence LIC-CTHF6SVA0C with an expiry date of February 12, 2024; Research licence LIC-28X6T94W2Y with

into various supply agreements constituting licences with three provincial regulators for the purpose of selling cannabis products in three major Canadian provinces (Ontario, Alberta and British Columbia).<sup>26</sup>

20. In the province of Manitoba, licensed cannabis retailers buy their product exclusively through Manitoba Liquor & Lotteries (“**MBLL**”) from Health Canada licensed suppliers. In order to be considered a supplier of non-medical cannabis, MBLL requires a completed application form and that certain criteria are met. Emblem Cannabis has completed this material and also operates as a supplier to MBLL.<sup>27</sup>

21. In the province of Saskatchewan, Emblem Cannabis is listed publicly by the Saskatchewan Liquor and Gaming Authority (“**SLGA**”) as a registered supplier and wholesale permittee. SLGA is responsible for regulating the distribution and sale of recreational cannabis in Saskatchewan.<sup>28</sup>

22. Through Aleafia Farms and Emblem Cannabis, the Aleafia Group also owns the Scugog Property, the Grimsby Property and the Paris Property (terms as defined below), which are summarized below:

- (a) **Scugog Property:** The Scugog Property is an outdoor cultivation site owned by Aleafia Farms that was the first operational large-scale outdoor grow-site in Canada since June of 2019. The facility consists of an 86 acre cultivation area (67 acres planted) with underground irrigation and nutrient feeds, and contains 35,000 in square feet of federally licensed drying and storage facilities;<sup>29</sup>
- (b) **Grimsby Property:** The Grimsby Property functions as a “Dutch hybrid” greenhouse containing moving container benches, irrigation and quality analysis tools, with a size of 160,000 square feet. The Grimsby Property is also EU GACP compliant and contains seven drying chambers that are individually climate controlled;<sup>30</sup>
- (c) **Paris Property:** The Paris Property constitutes the hub of Aleafia Group’s cannabis product development, and is over 56,000 square feet in size. The Paris Property’s capacity

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an expiry date of April 7, 2026; Standard Cultivation licence LIC-VTQAQTTMOL with an expiry date of June 13, 2024; and Standard Processing licence LIC-GYAJNCME6L with an expiry date of October 9, 2023.

<sup>26</sup> Initial Affidavit, *supra* note 1 at para 103.

<sup>27</sup> *Ibid* at para 104.

<sup>28</sup> *Ibid* at para 105.

<sup>29</sup> *Ibid* at para 79.

<sup>30</sup> *Ibid* at para 82.

is over 40,000 kg of annual product in oils, capsules, sublinguals and vape cartridge formats. The Paris Property also contains analytical and quality testing labs, and supercritical CO2 extraction and cannabis winterization machinery to convert dried flower into cannabis extracts.<sup>31</sup>

23. The Grimsby Property has also been subject to a number of unsuccessful sale attempts, none of which have materialized.<sup>32</sup> As noted above, the Aleafia Group is also a party to two commercial leases over the Distribution Centre and the Newfoundland Site.<sup>33</sup>

#### **D. Assets and Liabilities**

24. As at March 31, 2023, the Aleafia Group had total approximate current and non-current assets of \$59,925,000 and total approximate current and non-current liabilities of \$68,838,000.<sup>34</sup> The Applicants expect to have almost eliminated their cash on hand at the close of business today, and are facing an urgent liquidity crisis.

25. There are also significant excise duty, property tax and HST obligations of the Aleafia Group.

26. As at June 30, 2023, it is estimated that the Aleafia Group had approximately \$9.3 million in excise tax arrears (net of deposits) and approximately \$2.5 million in sales tax arrears, inclusive of an existing \$800,000 approximate excise deposit by Emblem Cannabis. Payments in July of 2023 of approximately \$225,000/week were made during the weeks of July 3, 10 and 17.<sup>35</sup> Property taxes on all Real Property are also outstanding as of June 25, 2023 in the following amounts:<sup>36</sup>

- (a) Grimsby Property: \$27,454.08;
- (b) Paris Property: \$299,351.54; and

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<sup>31</sup> *Ibid* at para 86.

<sup>32</sup> *Ibid* at para 12.

<sup>33</sup> *Ibid* at paras 92, 95.

<sup>34</sup> *Ibid* at paras 132–133.

<sup>35</sup> *Ibid* at para 170.

<sup>36</sup> *Ibid* at para 157.



(c) Scugog Property: \$41,677.23.

27. The majority of outstanding HST obligations to the CRA are held by Emblem Cannabis for approximately \$2.5 million as of May 31, 2023, although Aleafia Farms, Aleafia Parent and Emblem hold receivables in the following amounts:<sup>37</sup>

(a) Aleafia Farms: \$591,425.00;

(b) Emblem: \$924,777.00; and

(c) Aleafia Parent: \$596,749.00.

### **1. Secured Obligations**

28. Beyond the specific secured party listings against the Applicants relating to certain personal property, there are three senior secured lenders of the Aleafia Group:<sup>38</sup>

(a) Red White & Bloom Brands Inc. (“**RWB**”);

(b) 1260356 Ontario Limited (“**126**”); and

(c) Computershare Trust Company of Canada (“**Computershare**”).

### Senior Loan Agreement

29. On or about December 24, 2021, NE SPC II LP, as lender (“**NE SPC**”), Aleafia Parent, Emblem Cannabis, and Aleafia Farms, as borrowers, and each of Emblem, Canabo and Aleafia Sub, as guarantors entered into a loan agreement, as amended, and subject to an assignment of indebtedness and security dated June 6, 2023 to RWB (collectively, the “**Senior Loan Agreement**”, as may have been later amended, altered or varied).<sup>39</sup>

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<sup>37</sup> *Ibid* at paras 173–174.

<sup>38</sup> *Ibid* at para 138.

<sup>39</sup> *Ibid* at para 140.

30. Under the terms of the Senior Loan Agreement, NE SPC (now RWB) extended to Aleafia a revolving facility of \$7,000,000 and a non-revolving term loan facility of \$12,000,000.<sup>40</sup> As of July 14, 2023, the outstanding indebtedness owed to RWB is for a collective approximate amount of \$15,191,480.43.<sup>41</sup>

126 Loan Agreement

31. On or about August 20, 2021, 126, as lender, and Aleafia Parent, as borrower, entered into a credit agreement, as later amended by an agreement dated December 24, 2021, and as later amended by a second amending agreement dated August 26, 2022 (collectively, the “**126 Loan Agreement**”, as may have been later amended, altered or varied).<sup>42</sup>

32. Pursuant to the terms of the 126 Loan Agreement, 126 originally extended a loan of \$10,000,000. As of July 14, 2023, the total approximate indebtedness owed to 126 is \$5,552,575.34.<sup>43</sup>

Debentures Through Computershare

33. On June 27, 2019, Aleafia Parent completed a public offering of 40,250 convertible debenture units at a price of \$1,000 per unit, with each unit consisting of \$1,000 principal amount of convertible debentures (the “**2019 Debentures**”) and 680 common share purchase warrants. The 2019 Debentures bore interest at a rate of 8.5% per annum from the date of issue, payable semi-annually in arrears on the last day of June and December in each year (each, an “**Interest Payment**”) and were to mature on June 27, 2022.<sup>44</sup>

34. An Interest Payment of \$1,587,375 required on December 31, 2021 was missed, along with the 30-day cure period thereafter.<sup>45</sup> Aleafia Parent entered into a forbearance agreement shortly thereafter,<sup>46</sup> and

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<sup>40</sup> *Ibid* at para 141.

<sup>41</sup> *Ibid* at para 145.

<sup>42</sup> *Ibid* at para 146.

<sup>43</sup> *Ibid* at para 149.

<sup>44</sup> *Ibid* at para 150.

<sup>45</sup> *Ibid* at para 151.

<sup>46</sup> *Ibid*.

by June of 2022, Aleafia Parent entered into an amended and restated debenture indenture with Computershare as supplemented by: (a) the first supplemental indenture providing for the issuance of the 8.50% Series A Secured Convertible Debentures due June 30, 2024, (b) the second supplemental indenture providing for the issuance of the 8.50% Series B Secured Debentures due June 30, 2026 and (c) the third supplemental indenture providing for the issuance of the 8.50% Series C Secured Convertible Debentures due June 30, 2028.<sup>47</sup>

35. As of July 14, 2023, the approximate indebtedness owed to the Debentureholders was as follows:<sup>48</sup>

- (a) \$13,435,211 in principal amount of Series A;
- (b) \$13,435,211 in principal amount of Series B; and
- (c) \$16,031,609 in principal amount of Series C.

## **2. Unsecured Obligations and Claims**

36. As of March 31, 2023, the total notes payable outstanding of the Aleafia Group were approximately \$4,765,000.<sup>49</sup>

37. During the fiscal year ended March 31, 2023, Aleafia Parent entered into three promissory notes, totaling \$4.5 million. The first note of \$1.0 million was issued on December 16, 2022, the second note of \$1.5 million was issued on January 24, 2023, and the third note of \$2.0 million was issued on February 28, 2023 with the lender Royal Group Resources Ltd.

38. In addition, total intercompany receivables were valued at approximately \$85,737,095.45 and total intercompany payables were valued at \$85,737,095.45 as of June 30, 2023.<sup>50</sup>

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<sup>47</sup> *Ibid* at para 154.

<sup>48</sup> *Ibid* at para 156.

<sup>49</sup> *Ibid* at para 161.

<sup>50</sup> *Ibid* at para 166.

39. The approximate aggregate accounts payable for accounts over 90 days are approximately \$4,187,809.66, as of the date hereof.<sup>51</sup> In addition, the Aleafia Group is subject to a number of contingent liabilities including ongoing litigation, valued collectively at claims of over \$520,000,000.<sup>52</sup>

**E. Issues Leading to the CCAA Filing**

40. During the last year, the Applicants have struggled with cash flow, and their cash position is currently not sufficient to meet their obligations as they come due. The urgency of this application stems from the need for the Applicants to access financing to meet their ongoing and future payroll obligations and maintain business operations in order to preserve and maximize value while preventing enforcement action by certain contractual counterparties.

**F. Proposed DIP Financing**

41. Pursuant to a term sheet executed July 24, 2023 (the “**DIP Term Sheet**”), to facilitate the need for interim financing during the 10-day Stay of Proceedings prior to the return to Court, RWB (in such capacity, the “**DIP Lender**”) has agreed to provide an initial advance of \$2,400,000, to the Aleafia Group by way of DIP loan (the “**DIP Loan**”).<sup>53</sup>

42. The DIP Loan is conditional, among other things, upon the granting of a priority charge in the amount of the initial advance over the Property (as defined in the Initial Order) in favour of the DIP Lender to secure the amounts borrowed under the DIP Loan.<sup>54</sup> In accordance with the DIP Term Sheet, the DIP Loan is to be used to fund the Applicants’ working capital needs during these CCAA Proceedings.<sup>55</sup> The

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<sup>51</sup> *Ibid* at para 25.

<sup>52</sup> *Ibid* at Exhibit “AAA”.

<sup>53</sup> *Ibid* at para 236.

<sup>54</sup> *Ibid*.

<sup>55</sup> *Ibid*.

Applicants intend to return to this Honourable Court at the Comeback Hearing for the purpose of priming all Charges (as defined in the Initial Affidavit) with notice to all secured parties.<sup>56</sup>

43. The amount of the DIP Loan to be funded during the Stay of Proceedings is only that portion that is necessary to ensure the continued operation of the Applicants' business in the ordinary course for the next 10 days.<sup>57</sup>

44. The DIP Loan is subject to other customary covenants, conditions precedent, and representations and warranties made by the Applicants.<sup>58</sup>

### **G. Proposed Monitor**

45. It is proposed that KSV Restructuring Inc. will act as Monitor in these CCAA Proceedings (in such capacity, the "**Proposed Monitor**").

### **PART III: ISSUES**

46. The issue to be considered on this application is whether to grant the proposed form of Initial Order. The issues addressed in this factum are whether:

- (a) each of the Applicants is a "debtor company" to which the CCAA applies;
- (b) the initial Stay of Proceedings should be granted in favour of the Applicants;
- (c) the Court should approve the proposed DIP Loan and grant the DIP Lender's Charge (as defined in the Initial Order);
- (d) the Administration Charge (as defined below) should be granted;
- (e) the Directors' Charge (as defined below) should be granted;

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<sup>56</sup> *Ibid* at paras 262, 266.

<sup>57</sup> *Ibid* at para 236.

<sup>58</sup> *Ibid*.

- (f) the Applicants should be entitled to make certain pre-filing payments with the consent of the Monitor and the DIP Lender; and
- (g) the Cash Management System (as defined below) should be approved.

47. Canada's insolvency statutes pursue an array of overarching remedial objectives that reflect Parliament's intention that those statutes minimize the wide-ranging and potentially catastrophic impacts insolvency can have on the stakeholders of insolvent debtors. As part of this framework, the CCAA generally prioritizes avoiding the social and economic losses resulting from liquidation of an insolvent corporation by allowing it to restructure its business and financial affairs. The CCAA also has the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by a debtor's financial distress and enhancement of the credit system generally.<sup>59</sup> The CCAA has been and remains the engine of this evolution and adaptation that is required to restructure debtors nowadays.<sup>60</sup>

48. A restructuring under the CCAA may take any number of forms, limited only by the creativity of those proposing the restructuring. Ordinarily, if orders are made under the CCAA, they should be granted in the framework and spirit of the overarching CCAA legislation.<sup>61</sup>

#### **A. THE APPLICANTS MEET THE CRITERIA TO OBTAIN RELIEF UNDER THE CCAA**

49. The CCAA applies to a "debtor company" or affiliated debtor companies where the total claims against the debtor or its affiliates exceed five million dollars.<sup>62</sup> The total claims against the Applicants exceed this amount.

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<sup>59</sup> *9354-9186 Québec inc v Callidus Capital Corp*, [2020 SCC 10](#) at paras 40–42.

<sup>60</sup> *Century Services Inc v Canada (AG)*, [2010 SCC 60](#) at para 21 [*Century Services*].

<sup>61</sup> *ATB Financial et al v Apollo Trust et al*, [2008 CanLII 21724 \(ON SC\)](#) at para 43; *Re Canadian Red Cross Society*, [1998 CanLII 14907 \(ON SC\)](#) at para 45.

<sup>62</sup> *Companies' Creditors Arrangement Act*, [RSC 1985, c C-36](#), ss [2\(1\)](#), [3\(1\)](#) [CCAA].

50. Pursuant to section 2 of the CCAA, a “debtor company” means, *inter alia*, a company that is insolvent. Whether a company is insolvent for the purposes of the definition of “debtor company” is evaluated by reference to the definition of “insolvent person” in the *Bankruptcy and Insolvency Act* (the “BIA”) and to the expanded concept of insolvency accepted by this Court in *Stelco*.<sup>63</sup>

51. In order to give effect to the CCAA objectives of allowing the debtor company breathing room to restructure, a debtor is insolvent under the *Stelco* approach if there is a looming liquidity crisis such that it is reasonably foreseeable that the debtor will run out of cash unless its business is restructured. The insolvency of a debtor company is determined as of the time of filing the CCAA application.<sup>64</sup>

52. The CCAA also specifies companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same parent company.<sup>65</sup> Each of the Applicants is a “compan[y]” within the meaning of the CCAA as each was incorporated under Canadian provincial or federal laws. All of the Subsidiaries are also subsidiaries of Aleafia Parent. Furthermore, this Honourable Court has regularly granted creditor protection under the CCAA to inactive subsidiaries of parent companies with significant, urgent, and pressing liabilities.<sup>66</sup>

53. Courts have also taken guidance from the definition of “insolvent person” in subsection 2(1) of the BIA, which, in relevant part, provides that an “insolvent person” is a person:

- (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

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<sup>63</sup> *Re Stelco Inc*, [2004 CanLII 24933 \(ON SC\)](#) at para 25 [*Stelco*].

<sup>64</sup> *Ibid* at para 4.

<sup>65</sup> CCAA, *supra* note 62, s [3\(2\)\(a\)](#).

<sup>66</sup> *MPX International Corp*, [2022 ONSC 4348](#) at para 18.

- (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.<sup>67</sup>

54. A company is also insolvent for the purposes of the CCAA “if it is reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonably required to implement a restructuring.”<sup>68</sup>

55. The Aleafia Group has incurred net losses for the past three fiscal years. As indicated in the MD&A, Aleafia Parent has incurred approximate net losses of \$34,604,000 for the 12 months ended on March 31, 2023, \$150,764,000 for the 12 months ended on March 31, 2022 and \$257,022,000 for the 12 months ended on March 31, 2021.<sup>69</sup>

56. In addition, as of March 31, 2023, the Applicants had a cumulative deficit of \$527.8 million with a net working capital deficit of \$5.4 million. In light of the dire liquidity crisis facing the Aleafia Group, the Aleafia Group meets the above test. Absent the Stay of Proceedings and the approval of the DIP Loan, the Applicants will be unable to meet their obligations as they come due. As such, the Applicants are affiliated debtor Applicants to which the CCAA applies.

57. As reflected in the Applicants’ draft consolidated balance sheet as of June 30, 2023, the total liabilities of \$74,432,000 exceed the total assets.<sup>70</sup> Without access to funding, the Applicants have no liquidity and no ability to pay their obligations as they become due and are insolvent.

## **B. THE INITIAL STAY SHOULD BE GRANTED**

58. Section 11.02 of the CCAA provides the Court with the power to impose a stay of proceedings if it is satisfied that circumstances exist that make the order appropriate.<sup>71</sup> This Honourable Court has the

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<sup>67</sup> *Bankruptcy and Insolvency Act*, [RSC 1985, c B-3](#), s 2 [BIA].

<sup>68</sup> *Stelco*, *supra* note 63 at paras 26, 40.

<sup>69</sup> Initial Affidavit, *supra* note 1 at para 24.

<sup>70</sup> *Ibid* at paras 129, 132 and 133.

<sup>71</sup> CCAA, *supra* note 62, s [11.02](#).



discretion to grant the Stay of Proceedings being sought by the Aleafia Group at the initial application for a period of no more than 10 days, provided that the Court is satisfied that circumstances exist to make the order appropriate.<sup>72</sup>

59. The flexibility of the CCAA is thus particularly well-suited to complex restructurings involving more than one entity, and a stay of proceedings is appropriate to provide the debtor with breathing room while it seeks to restore solvency and emerge from the CCAA on a going concern basis.<sup>73</sup> The purpose of the CCAA is to, amongst other things, maintain the *status quo* for the debtor company for a period while it consults with its stakeholders with a view to continuing operations for the benefit of both the debtor company and its stakeholders. The Supreme Court of Canada has held that when exercising judicial discretion under the CCAA, the Court must often be cognizant of the various interests at stake in the reorganization, which can extend beyond those of the debtor and creditors to include employees, directors, and even other parties doing business with the insolvent company.<sup>74</sup>

60. Absent exceptional circumstances, the relief sought shall be limited to relief reasonably necessary for the ordinary course of continued operations and, whenever possible, the *status quo* should be maintained during the initial 10-day period.<sup>75</sup> This 10-day period “allows for a stabilization of operations and a negotiating window”.<sup>76</sup> The Initial Order is in accordance with the above requirements.

61. The Applicants require the Stay of Proceedings. This relief should be granted as it is reasonably necessary in these circumstances to maintain the *status quo* and to give the Applicants the breathing space they require. It would be significantly detrimental to the Applicants’ business and ongoing operations if proceedings were commenced or continued, or rights and remedies were executed against them. Therefore, without the Stay of Proceedings, the Applicants are unable to continue operations in the ordinary course of

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<sup>72</sup> *Ibid*; *Lydian International Limited (Re)*, [2019 ONSC 7473](#) at para 22 [*Lydian*].

<sup>73</sup> *Target Canada Co (Re)*, [2015 ONSC 303](#) at para 8 [*Target*].

<sup>74</sup> *Century Services*, *supra* note 60 at para 60.

<sup>75</sup> *Lydian*, *supra* note 72 at para 26.

<sup>76</sup> *Ibid* at para 30.

business. The Stay of Proceedings will stabilize and preserve the value of the Applicants' business and provide the Applicants with breathing space to develop and oversee an orderly sale and investor solicitation process, while maintaining business operations in the ordinary course and in compliance with the cannabis regulatory regime.<sup>77</sup>

62. The Applicants submit that granting the Stay of Proceedings is in the best interests of the Applicants and their stakeholders, meets the statutory requirements, and is appropriate in the circumstances.

**C. THE DIP LOAN SHOULD BE APPROVED AND THE DIP LENDER'S CHARGE SHOULD BE APPROVED AND GRANTED, RESPECTIVELY**

63. The Applicants are facing a liquidity crisis. The Cash Flow Forecast demonstrates that the Applicants expect the need for interim financing to fund these CCAA Proceedings, including during the 10-day stay period prior to the Comeback Hearing (as defined in the Initial Affidavit).<sup>78</sup>

64. Section 11.2 of the CCAA provides the Court with the express statutory authority to approve the DIP Loan, the DIP Lender's Charge, and that the DIP Lender's Charge ranks in priority over the claim of any secured creditor of the Applicants.<sup>79</sup> The Applicants will return to this Honourable Court upon the Comeback Hearing to seek priority and priming of the Charges with notice to secured creditors.

65. Subsection 11.2(5) requires that this Court be satisfied, after considering all of the facts and circumstances in the case before it, that the interim financing sought to be approved is "reasonably necessary" for continued operations in such circumstances. What is "reasonably necessary" in each case is a question of fact based on the circumstances before the Court.<sup>80</sup>

66. In line with the prior case law holding that DIP financing should be restricted to what is "reasonably necessary" to meet the debtor's needs, courts have approved DIP financing where it would provide stability

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<sup>77</sup> Initial Affidavit, *supra* note 1 at paras 28, 243.

<sup>78</sup> *Ibid* at paras 186, 233, 249.

<sup>79</sup> CCAA, *supra* note 62, s [11.2](#).

<sup>80</sup> *Re Mobilicity Group*, [2013 ONSC 6167](#) at para 30.

to the debtor's business, ensure liquidity, prevent customers from going elsewhere, and ensure the day-to-day operations of the debtor's business.<sup>81</sup> The British Columbia Supreme Court has found that subsection 11.2(5) was satisfied as the interim financing was necessary to permit the applicants to maintain the value of the enterprise while they pursued a restructuring.<sup>82</sup>

67. Absent the proposed DIP Loan, the Applicants would be unable to maintain continued business operations in the ordinary course for the next 10 days. The DIP Loan is limited to what is strictly necessary for the continued operations of the Applicants until the Comeback Hearing, and these amounts have been carefully scrutinized by the Proposed Monitor, which agrees that these amounts are required.

68. Regarding the DIP Lender's Charge, subsection 11.2(1) of the CCAA expressly provides the Court with the statutory jurisdiction to grant a DIP financing charge. Section 11.2(4) sets out the following factors to be considered by the Court in deciding whether to grant a super-priority charge in respect of a DIP facility:

- (a) the period during which the company is expected to be subject to proceedings under the CCAA;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and

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<sup>81</sup> *Ibid* at paras 30–31.

<sup>82</sup> *Miniso International Hong Kong Limited v Migu Investments Inc*, [2019 BCSC 1234](#) at paras 86, 88.

(g) the monitor's report.<sup>83</sup>

69. In *Canwest Publishing*, the criteria above were also expanded to include:<sup>84</sup>

- (a) whether notice has been given to secured creditors likely to be affected by the security or charge;
- (b) whether the amount to be granted under a DIP facility is appropriate and required having regard to the debtors' cash-flow statement; and
- (c) whether the DIP charge secures an obligation that existed before the order approving the DIP facility was made.

70. If full notice to secured creditors is not readily available, Chief Justice Morawetz of this Honourable Court has previously commented that the priority charges may be granted but the issues are to be revisited upon the comeback hearing.<sup>85</sup> This statement is applicable to any of the Charges discussed in this factum. While the senior secured lenders of the Aleafia Group have been given short notice of this application, the issue will be revisited upon the return of the Comeback Hearing, should the Charges, including the DIP Lender's Charge, be opposed. As stated above, the Applicants intend to return to this Honourable Court for the purpose of priming the Charges.

71. The criteria from subsections 11.2(1) and 11.2(4) of the CCAA support approving the DIP Loan and granting the DIP Lender's Charge on the terms sought in the Initial Order, as:

- (a) issues can be revisited at the Comeback Hearing;
- (b) given the Applicants' circumstances, they cannot obtain alternative financing outside of these CCAA proceedings;

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<sup>83</sup> CCAA, *supra* note 62, s [11.2\(4\)](#).

<sup>84</sup> *Canwest Publishing Inc*, [2010 ONSC 222](#) at paras 42–44 [*Canwest Publishing*].

<sup>85</sup> *Comstock Canada Ltd (Re)*, [2013 ONSC 4756](#) at para 58.

- (c) the DIP Loan is necessary in order for the Applicants to pursue their restructuring efforts, which will preserve their maintenance as a going-concern for the benefit of all its stakeholders;
- (d) without the DIP Loan, the Applicants may not be able to continue operating;
- (e) the quantum of the DIP Facility is reasonable and appropriate having regard to the Cash Flow Forecast; and
- (f) The Proposed Monitor is supportive of the DIP Loan and the DIP Lender's Charge.

72. The Applicants submit that approval of the proposed DIP Loan and the DIP Lender's Charge is appropriate in the circumstances, consistent with the terms of the CCAA, reasonably necessary in order to enable the continued operation of the Applicants' business in the ordinary course, and in the best interests of the Applicants and their stakeholders—including the employees of the Applicants who are intended to be paid in the ordinary course from the proposed DIP Loan.

#### **D. THE ADMINISTRATION CHARGE SHOULD BE GRANTED**

73. The Applicants are seeking an Administration Charge in the amount of \$500,000 (the "**Administration Charge**") to secure the professional fees and disbursements of the Proposed Monitor, along with its counsel and the Applicants' counsel, incurred prior to, on, or subsequent to the date of the Initial Order, incurred at their standard rates and charges.<sup>86</sup>

74. Section 11.52 of the CCAA expressly provides the Court with the jurisdiction to grant an administration charge. The list of non-exhaustive factors to be considered when granting an administration charge includes: the size and complexity of the business being restructured; the proposed role of the beneficiaries of the charge; whether there is unwarranted duplication of roles; whether the quantum of the

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<sup>86</sup> Initial Affidavit, *supra* note 1 at paras 247–248.

proposed charge appears to be fair and reasonable; the position of the secured creditors likely to be affected by the charge; and the position of the Monitor.<sup>87</sup>

75. The Administration Charge is warranted, necessary and appropriate, as:

- (a) the Applicants' business is highly regulated and subject to numerous statutory and regulatory restrictions and requirements;
- (b) the beneficiaries of the Administration Charge have the requisite knowledge with respect to those regulations and have, and will continue to, contribute to these CCAA Proceedings and assist the Applicants with their business;
- (c) each proposed beneficiary of the Administration Charge is performing distinct functions and there is no duplication of roles;
- (d) no amounts from the initial advance under the DIP Loan will be used to pay the proposed beneficiaries of the Administration Charge;
- (e) the quantum of the proposed Administration Charge is fair and reasonable;
- (f) the proposed DIP Lender supports the Administration Charge; and
- (g) the Proposed Monitor is supportive of the Administration Charge.<sup>88</sup>

**E. THE DIRECTORS' CHARGE SHOULD BE GRANTED**

76. The Applicants are seeking a Directors' Charge in the amount of \$835,000 (the "**Directors' Charge**") to secure the indemnity of their directors and officers for liabilities they may incur during the CCAA Proceedings.<sup>89</sup>

77. Section 11.51 of the CCAA affords the Court the jurisdiction to grant the Directors' Charge. This Court has held that the purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protections against liabilities that could be incurred during the

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<sup>87</sup> *Canwest Publishing*, *supra* note 84 at para 54.

<sup>88</sup> Initial Affidavit, *supra* note 1 at para 260.

<sup>89</sup> Initial Affidavit, *supra* note 1 at para 253–254.

restructuring.<sup>90</sup> A court may not make the order if “the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost”, and the court shall make an order declaring that the charge does not apply in respect of a specific obligation or liability incurred by a director or officer “if in its opinion the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct”.<sup>91</sup>

78. The Applicants submit it is appropriate in these circumstances for this Court to exercise its jurisdiction and grant the Directors’ Charge, given that:

- (a) the Applicants cannot be certain whether the existing insurance will be applicable or respond to any claims made;
- (b) the Applicants will benefit from the active and committed involvement of the directors and officers, who have considerable institutional knowledge and valuable experience and whose continued participation will help facilitate an effective restructuring;
- (c) the Directors’ Charge applies only to the extent that the directors and officers do not have coverage under another directors and officers’ insurance policy;
- (d) the Directors’ Charge would only cover obligations and liabilities that the directors and officers may incur after the commencement of the CCAA Proceedings and does not cover wilful misconduct or gross negligence;
- (e) the amount of the Directors’ Charge is reasonable in the circumstances and is limited to the potential exposure during the initial 10-day period; and
- (f) the Proposed Monitor is supportive of the Directors’ Charge.<sup>92</sup>

**F. The Court Should Allow the Applicants to Make Certain Pre-Filing Payments**

79. To preserve normal course business operations, the Applicants are seeking authorization in the Initial Order to make certain pre-filing payments up to the maximum aggregate amount of \$500,000.00,

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<sup>90</sup> *Canwest Global Communications Corp (Re)*, [2009 CanLII 55114 \(ON SC\)](#) at paras 46–48.

<sup>91</sup> CCAA, *supra* note 62, s [11.51\(3\)–\(4\)](#).

<sup>92</sup> Initial Affidavit, *supra* note 1 at para 257–258.

including payments for pre-filing goods or services supplied to the Applicants if, with the consent of the Proposed Monitor and the DIP Lender, such expenses were incurred in the ordinary course of business and consistent with existing policies and procedures.<sup>93</sup> This will ensure that the Applicants' business continues uninterrupted throughout these proceedings to preserve maximum value for the benefit of the Applicants' stakeholders.

80. In exercising its jurisdiction to authorize the payment of pre-filing obligations, courts have considered factors including whether the goods and services were integral to the business of the applicants; the debtors' need for the uninterrupted supply of the goods or services; the monitor's support and willingness to work with the applicants to ensure that payments to suppliers in respect of pre-filing liabilities were appropriate; and the effect on the debtors' ongoing operations and ability to restructure if they were unable to make pre-filing payments to their critical suppliers.<sup>94</sup>

81. Case law demonstrates that a supplier is viewed as critical to a debtor company's post-filing operations where the particular goods or services are sufficiently integrated into the debtor company's operations that it would be materially disruptive to the debtor's operations and restructuring for the particular supplier to cease providing such services and/or it would be difficult or impossible to secure an alternate supplier.<sup>95</sup> This Honourable Court has readily approved critical supplier relief in initial orders under the CCAA with maximum aggregate language.<sup>96</sup>

82. In consideration of the above, the Applicants require the continued supply of integral goods and services from their key vendors and service providers during these CCAA proceedings to maintain ordinary course operations. The Applicants' ability to operate their business in the normal course is dependent on their ability to obtain an uninterrupted supply of goods and services. As noted, the Applicants will require

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<sup>93</sup> Initial Affidavit, *supra* note 1 at para 260.

<sup>94</sup> *Cinram International Inc (Re)*, [2012 ONSC 3767](#) at para 68 of Schedule C.

<sup>95</sup> See e.g. *Target*, *supra* note 73 at paras 62–65; *Re Clover Leaf Holdings Company*, [2019 ONSC 6966](#) at paras 24–27.

<sup>96</sup> *Original Traders Energy Ltd and 2496750 Ontario Inc* (January 31, 2023) Toronto, Ont Sup Ct [Commercial List] CV-23-00693758-00CL ([Initial Order](#)) at para 7(c).



the consent of the Proposed Monitor and the DIP Lender in connection with any payments on account of pre-filing obligations. Both the Proposed Monitor and the DIP Lender are supportive of the relief. In these circumstances, the Applicants believe the authority to make pre-filing payments under the Initial Order is appropriate and reasonable. This flexibility to pay pre-filing obligations is particularly important in a regulated industry, such as the cannabis industry, where continued access to critical services must be maintained.

**G. The Court Should Authorize the Continued Use of the Cash Management System**

83. As described in the Initial Affidavit, in the ordinary course of business, the Aleafia Group uses a centralized banking and cash management system (the “**Cash Management System**”) to collect funds and pay expenses associated with its operations.<sup>97</sup> The Cash Management System contains 24 bank accounts across three different institutions.<sup>98</sup>

84. 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>99</sup>

85. The approval of the Cash Management System is reasonable and necessary in these circumstances. Both the Applicants and the Proposed Monitor are of the view that the continued use of the Cash Management System is required and appropriate.

**PART IV: RELIEF REQUESTED**

86. The Applicants submit that they meet all of the qualifications required to obtain the requested relief and request that this Court grant the proposed form of Initial Order.

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<sup>97</sup> Initial Affidavit, *supra* note 1 at para 124.

<sup>98</sup> *Ibid* at para 125.

<sup>99</sup> CCAA, *supra* note 62, s [11](#).

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** as of the date first written above.

*Tamie Dolny on behalf of K. Plunkett*

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**K. Plunkett / R. English / T. Dolny / S. Hans**

## SCHEDULE A – LIST OF AUTHORITIES

1.	<i>9354-9186 Québec inc v Callidus Capital Corp</i> , <a href="#">2020 SCC 10</a>
2.	<i>Century Services Inc v Canada (AG)</i> , <a href="#">2010 SCC 60</a>
3.	<i>ATB Financial et al v Apollo Trust et al</i> , <a href="#">2008 CanLII 21724 (ON SC)</a>
4.	<i>Re Canadian Red Cross Society</i> , <a href="#">1998 CanLII 14907 (ON SC)</a>
5.	<i>Re Stelco Inc</i> , <a href="#">2004 CanLII 24933 (ON SC)</a>
6.	<i>MPX International Corp</i> , <a href="#">2022 ONSC 4348</a>
7.	<i>Lydian International Limited (Re)</i> , <a href="#">2019 ONSC 7473</a>
8.	<i>Target Canada Co (Re)</i> , <a href="#">2015 ONSC 303</a>
9.	<i>Re Mobilicity Group</i> , <a href="#">2013 ONSC 6167</a>
10.	<i>Miniso International Hong Kong Limited v Migu Investments Inc</i> , <a href="#">2019 BCSC 1234</a>
11.	<i>Canwest Publishing Inc</i> , <a href="#">2010 ONSC 222</a>
12.	<i>Comstock Canada Ltd (Re)</i> , <a href="#">2013 ONSC 4756</a>
13.	<i>Canwest Global Communications Corp (Re)</i> , <a href="#">2009 CanLII 55114 (ON SC)</a>
14.	<i>Cinram International Inc (Re)</i> , <a href="#">2012 ONSC 3767</a>
15.	<i>Re Clover Leaf Holdings Company</i> , <a href="#">2019 ONSC 6966</a>
16.	<i>Original Traders Energy Ltd and 2496750 Ontario Inc</i> (January 31, 2023) Toronto, Ont Sup Ct [Commercial List] CV-23-00693758-00CL ( <a href="#">Initial Order</a> ).

## SCHEDULE B – STATUTES RELIED ON

### *Bankruptcy And Insolvency Act, RSC 1985, c. B-3*

#### **Definitions**

**2** In this Act,  
[...]

**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; (*personne insolvable*)

### *Companies' Creditors Arrangement Act, RSC 1985, c C-36*

#### **Definitions**

**2 (1)** In this Act,  
[...]

**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; (*compagnie débitrice*)

#### **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**

**3 (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

### **General power of court**

**11** Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, 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.

### **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**

**11.02 (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**

**11.02 (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.

### **Interim financing**

**11.2 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

### **Priority — secured creditors**

**11.2 (2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

**Priority — other orders**

**11.2 (3)** The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

**Factors to be considered**

**11.2 (4)** In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

**Additional factor — initial application**

**11.2 (5)** When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

**Restriction — indemnification insurance**

**11.51 (3)** The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

**Negligence, misconduct or fault**

**11.51 (4)** The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED  
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ALEAFIA HEALTH INC. et al.**

Court File No.:

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceedings Commenced in Toronto

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