



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CL-26-00000039-0000

DATE: February 09, 2026

NO. ON LIST: 4

TITLE OF PROCEEDING:

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF AYURCANN HOLDINGS CORP. and AYURCANN INC.

BEFORE: JUSTICE JESSICA KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Jesse Mighton	Counsels for the Applicants, Ayurcann Holdings Corp. and Ayurcann Inc.	mightonj@bennettjones.com
Shawn Kirkman		kirkmans@bennettjones.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Randy Ramoodit	Counsel for Attorney General of Canada	randy.ramoodit@justice.gc.ca
Natasha Rambaran	Counsel for the Monitor	nrambaran@reconllp.com

K. Plunkett	Counsel to Proposed DIP Lender/Proposed Stalking Horse Purchaser	kplunkett@airdberlis.com
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ENDORSEMENT OF JUSTICE KIMMEL:

- [1] On January 30, 2026, Ayurcann Holdings Corp. and Ayurcann Inc. (together, the "Applicants" or the "Company") sought and obtained an order (the "Initial Order") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA").
- [2] In accordance with section 11.02(1) of the CCAA, the Initial Order was tailored to provide the Applicants with the relief reasonably necessary to maintain the *status quo* and continue their ordinary course operations during an initial 10-day period (the "Initial Stay Period").
- [3] The Applicants now seek an amended and restated Initial Order (the "ARIO") pursuant to the CCAA, among other things:
- (a) extending the Stay of Proceedings to and including February 27, 2026;
 - (b) increasing the quantum of each of the Administration Charge (to a maximum amount of \$800,000), and the Directors' Charge (to a maximum amount of \$3,020,000);
 - (c) approving a key employee retention plan (the "KERP") and granting a related super-priority charge (the "KERP Charge), ranking subordinate to the Administration Charge and the Directors' Charge but in priority to all other encumbrances;
 - (d) sealing Confidential Appendix "B" (the "KERP Summary") to the First Report of Alvarez & Marsal Canada Inc. ("A&M"), dated February 6, 2026 (the "First Report"), in its capacity as monitor of the Applicants (in such capacity, the "Monitor");
 - (e) authorizing, but not obligating, the Applicants to pay up to \$300,000 in the aggregate, with the consent of the Monitor, for amounts owing for goods and services supplied to the Applicants prior to the commencement of the CCAA Proceedings;
 - (f) preserving the *status quo* of the Regulatory Licences; and
 - (g) granting certain customary ancillary relief to support the Applicants' restructuring activities.
- [4] The relief being sought on this motion is the logical next step in these CCAA Proceedings. The proposed ARIO will enable the Applicants to continue their ordinary course operations while pursuing their restructuring objectives for the benefit of their stakeholders.
- [5] The requested relief is supported by the Monitor for reasons detailed in its First Report and is not opposed by any stakeholder on the service list. The further evidentiary support for the relief requested is contained in the affidavits of Igal Sudman, sworn January 29, 2026, and February 3, 2026 (together, the "Sudman Affidavits").
- [6] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Company's factum filed in support of this motion.
- [7] This endorsement should be read in conjunction with the court's endorsement dated January 30, 2026 rendered at the time the Initial Order was granted. That endorsement sets out the background to these proceedings and the basis for granting the Initial Order and specific provisions contained in it, many of which are being continued today under the ARIO.

- [8] As described in the Monitor's First Report and Sudman Affidavits, since the granting of the Initial Order, the Applicants have acted in good faith and with due diligence to, among other things, stabilize their business and continue operations in the ordinary course, advance negotiations with the Potential Stalking Horse Bidder, and with the assistance of the Monitor, deploy a communications plan to notify key stakeholders of the CCAA Proceedings.
- [9] Many of the terms being added to the Initial Order under the ARIO are terms consistent with the Commercial List Model Order that are supported by the evidence in the record and by the Monitor, but that were not required for the duration of the initial Stay Period until this comeback hearing, but are now appropriate to include. This endorsement does not deal with each of those changes, but rather focusses on relief specific to the circumstances of this case that is extending or expanding on terms already contained in the Initial Order, or adding new terms that are not commonplace in all cases and that the court considers to be deserving of some commentary.
- [10] The Applicants updated the court that they have now served a motion returnable later this week for approval of a Sale Process, DIP and Stalking Horse Purchase Agreement with an arm's length third party who will also be the proposed DIP Lender.

Stay Extension

- [11] The current Stay Period under the Initial Order expires today. The Company is requesting an extension of the Stay Period to February 27, 2026. The Company is expecting to ask for a further extension of the Stay Period when it attends later this week for approval of the Sale Process and Stalking Horse Agreement, but since those had not been finalized when this motion was served and the current requested extension of the Stay Period is short (just to the end of this month) and tied to some of the other requested relief today. The short requested extension today is being granted and the longer request will be considered when the matter next comes before the court.
- [12] As was noted in the court's January 30, 2026 endorsement when the Initial Order was granted, a stay of proceedings is necessary here if any form of restructuring process is to be successful. It will provide the Applicants with the breathing space necessary to develop an orderly restructuring process while maintaining business operations in the ordinary course: see *Century Services Inc v. Attorney General (Canada)*, 2010 SCC 60, at para. 14; *Target Canada Co.* 2015 ONSC 303, at para. 8; *Re Timminco Limited*, 2012 ONSC. 2515 at para 15; *Canwest Global Communications Corp*, 2011 ONSC 2215, at paras. 24-25; *Re Clover Leaf Holdings Company*, 2019 ONSC 6966, at para. 19.
- [13] The Applicants' cash flow forecast demonstrates that the Applicants will have sufficient cash to support the Applicants' ordinary course operations and the costs of these CCAA Proceedings throughout the proposed extended Stay Period without the need for additional financing. The Monitor is supportive of the proposed extension of the Stay of Proceedings and does not believe that any creditor will be prejudiced by such extension.
- [14] Subsection 11.02(2) of the CCAA expressly authorizes the Court to grant an extension of the Stay of Proceedings for "any period the court considers necessary". The same rationale that was considered when the Stay was granted under the Initial Order applies to the request to extend the Stay Period, and I am satisfied that the Applicants have acted, and are acting, in good faith and with due diligence and that it is appropriate to grant the requested extension of the Stay Period, and it is granted.

[15] For the same reasons indicated in the court's endorsement of January 30, 2026 for the extension of the Stay to the Non-Applicant Stay Parties, and as summarized in paragraphs 37 and 38 of the Applicants' factum for today's motion, the Stay of Proceedings should continue to apply to the Non-Applicant Stay Parties.

Increases to Directors' and Administration Charges

[16] Pursuant to the Initial Order, the Applicants obtained an Administration Charge in the amount of \$250,000 and a Directors' Charge in the amount of \$625,000. These amounts were obtained having regard to section 11.001 of the CCAA, as the limited amounts reasonably necessary for the continued operations of the Applicants in the ordinary course of business for the initial 10-day period. The Applicants are now seeking to increase these charges for the amounts reasonably required during balance of these CCAA Proceedings.

[17] The same justification and rationale for having granted these (smaller) charges in the Initial Order under ss. 11.51 and 11.52 of the CCAA continue to apply, and the criterion for granting these charges have been satisfied.

[18] The Applicants are seeking to increase the Administration Charge from \$250,000 to \$800,000. The estimated increase takes into account that the Applicants' business operates in a highly regulated and complex industry, there will be no unwarranted duplication of roles, and all secured creditors have been provided notice. The Monitor considers the quantum of the proposed charge to be fair and reasonable.

[19] The ARIO contemplates increasing the Directors' Charge to \$3,020,000, which is an estimate of the maximum potential liability of the Directors and Officers during these CCAA Proceedings, as set out in the First Report. The Directors and Officers will only be entitled to the benefit of the Directors' Charge to the extent insurance coverage is unavailable or insufficient.

[20] The Monitor sets out in detail in its First Report the basis upon which the amounts of the increased charges have been calculated. In the case of the Directors' Charge, the increased amount represents the maximum amount of projected personal exposure that they could face going forward in these proceedings, based on the current state of affairs and barring some unforeseen circumstance.

[21] As part of the ARIO, the Applicants request that the Charges take priority over all Encumbrances (as such term is defined in the proposed ARIO). The ability to seek this relief was expressly provided for in paragraph 32 of the Initial Order. Any Persons with Encumbrances in favour of them have now been served with notice of the within motion and the proposed form of the ARIO and there have been no objections or concerns raised.

[22] There is a comeback provision in the ARIO for anyone who wishes to raise concerns about this, or anything else in the ARIO, in the future. Such relief is appropriate and reasonable in the circumstances.

Approval of KERP and KERP Charge and Related Sealing Order

[23] The Applicants, in consultation with the Monitor, have developed the proposed KERP to maintain operational stability and minimize disruptions to the business during the CCAA Proceedings. Pursuant to the terms of the KERP, the Applicants propose to make modest but important retention payments to four employees and one contractor (each a "Key Employee" and collectively, the "Key Employees"). No Key Employees serve as a Director or Officer of either Applicant. The proposed payments were calculated as a percentage of each Key Employee's annual salary (or annual contractual entitlement). The Applicants maintain that the Key Employees are essential to the continued operation of the business during the CCAA

Proceedings and will be needed to assist in any potential Sale Process and the successful completion of a transaction thereunder.

- [24] The Monitor was consulted during the development of the KERP and supports its implementation. The KERP's terms are comparable to other key employee retention plans approved in CCAA Proceedings undertaken by other cannabis companies and believe they are reasonable in the circumstances.
- [25] This Court's jurisdiction to approve the KERP is grounded in the Court's general power under section 11 of the CCAA to make any order it sees fit in a CCAA proceeding. Courts have frequently exercised their discretion to approve KERPs where the retention of certain key employees has been deemed critical to a successful restructuring.
- [26] Each case is fact specific, however, in the insolvency context courts have commonly considered certain factors, including: (i) the importance of an employee to the restructuring process; (ii) whether the employee has specialized knowledge that cannot be easily replaced; (iii) whether the employee will consider other employment; (iv) whether the KERP was developed in consultation with the monitor or other professionals; and (v) whether the monitor supports the KERP: see *Walter Energy (Re)*, 2016 BCSC 107, at para. 37; *U.S. Steel Canada Inc.* 2014 ONSC 6145, at para. 27-33; *Nordstrom Canada Retail, Inc.* 2023 ONSC 1631, at para. 9; *Tacora Resources Inc. (Re)*, 2023 ONSC 6126, at para. 167; see also *Just Energy Group Inc et al*, 2021 ONSC 7630, 95 C.B.R. (6th) 264 and *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347, 90 C.B.R. (6th) 102, at paras. 23–28.
- [27] Three additional considerations are also used to evaluate the business judgement underlying a KERP: (i) the existence of arm's length input of the monitor into the scope and design of the KERP; (ii) the necessity of the retention program on a case-by-case basis; and (iii) whether the KERP's design reasonably relates to the goals pursued, which goals must be of demonstrable benefit to the objectives of the restructuring process: see *Avalez Pharmaceuticals inc. (Re)*, 2018 ONSC 6980 at para 30.
- [28] The justifications for granting the KERP and KERP Charge in this case are summarized in paragraph 53 of the Applicants' factum, and supported in both the Monitor's First Report and the Sudman Affidavits. The KERP was designed to incentivize Key Employees to continue their employment with the Company in order to continue the business as a going concern and maximize value for all stakeholders through the proposed Sale Process (that the court will be asked to consider later this week). The justification for the KERP aligns with the factors to be considered in the approval of such plans, and it is approved on that basis.
- [29] An essential component of the KERP is the Applicants' ability to pay the Key Employees their retention payments in accordance with the terms of the KERP Agreements. Accordingly, the Applicants also seek approval of the KERP Charge in favour of the Key Employees in an amount not exceeding \$66,250. This request is reasonable and appropriate in the circumstances.
- [30] Under the ARIO, the Applicants seek to seal the KERP Summary. The KERP Summary contains identifiable individual information and compensation information for each of the Key Employees, that if made public may cause harm to the Key Employees and disruption to the Company. The employees have not consented to the disclosure of this private information.
- [31] This court recently had occasion to review and consider the requirements for a KERP and also for a sealing order in respect of the associated Confidential Exhibit setting out the specific payments to individual employees in *Xiwang Iovate Holdings Company Limited et al*, 2026 ONSC 676. A sealing order made subject to further order of the court was determined to be appropriate in that case, and is equally so here (for the particular reasons detailed in the Monitor's First Report), for reasons consistent with those articulated in *Just Energy Group Inc. et al.*, 2021 ONSC 7630, at paras. 26-29.

[32] To grant this relief, the court must be satisfied of the test in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522, at para. 53, as modified by *Sherman Estate v. Donovan*, 2021 SCC 25, 72 C.R. (7th) 223, at paras. 38 and 43, having regard to:

- (a) The important public interest in the openness of courts and whether it poses a serious risk to some other important public interest;
- (b) Whether the order sought is necessary to prevent the risk to the other identified public interest because alternative measures are not available; and
- (c) As a matter of proportionality, the benefits of the sealing order outweigh its negative effects.

[33] All three factors delineated in the *Sherman Estate v. Donovan*, 2021 SCC 25, at para 38, are satisfied here.

- (a) As in *Just Energy*, the documents the applicants seek to seal contain the names of the KERP recipients and the amounts each will receive. Publicly disclosing employee compensation violates the privacy interest of those employees. The employees themselves have not initiated any court proceeding that would require production of that information and have not consented to its release. Broad publication of confidential income data could create risks for employee retention in this and other CCAA proceedings. This is an important public interest.
- (b) There is no reasonable alternative to granting the sealing relief requested in the ARIO. If such relief is not granted, it would lead to the disclosure of personally sensitive information for which the Key Employees have a reasonable expectation of privacy.
- (c) The benefits of the sealing request outlined above outweigh any deleterious effects. The information contained in the KERP Summary is limited to the amounts that each employee is to receive in accordance with the KERP. Furthermore, there are no deleterious effects - the aggregate amount to be paid to the Key Employees has been disclosed within this motion, allowing stakeholders to assess the aggregate impact the KERP would have on the Applicants' financial position. There is no benefit to the stakeholders of the Applicants of having the KERP Summary made public when the disclosure of the KERP Summary would harm the Key Employees and breach their privacy interests.

Other Miscellaneous Relief in the ARIO

Permission to Pay pre-filing Amounts Owing

[34] The Applicants are seeking authorization (but not the obligation) to pay, with the consent of the Monitor, amounts owing for goods and services actually supplied to the Applicants prior to the Filing Date (i.e., January 30, 2026). The Company requires the continued supply of goods and services from its key vendors and service providers during these CCAA Proceedings. The Company's ability to operate its business in the normal course is dependent on its ability to obtain an uninterrupted supply of goods and services on commercially reasonable terms. This would be to allow the Applicants to pay-pre filing amounts that they consider (with the concurrence of the Monitor) to be necessary for the preservation of enterprise value.

[35] The ARIO delineates the criteria to be considered when making such payments, which are capped at a specified amount, and there is the added protection of a requirement of Monitor consent. It is well established that this Court has the jurisdiction under section 11 of the CCAA to permit payment of pre-filing obligations where such payments are essential to a debtor company's ongoing business operations.

OSC Filing Exemptions

- [36] The Initial Order contained an exemption from public company filing obligations. The ARIO now contains the requested limiting language from the regulator (the Ontario Securities Commission) that has become standard in these types of orders.
- [37] As was noted in paragraph 38 of the January 30, 2026 endorsement, I was under the impression that the Initial Order contained language consistent with the language that the Ontario Securities Commission has approved in previous cases. It apparently did not, but has now been added to the ARIO. The exemption is limited to what is necessary for the Applicants to focus on their restructuring and does not overreach by purporting to prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have as described in section 11.1(2) of the CCAA.

Regulatory Stay Regarding Operating Licences

- [38] Ayurcann holds: (i) a standard processing licence with Health Canada (the "Health Canada Licence"); (ii) a licence with the CRA requiring it to apply cannabis excise stamps to its cannabis products in accordance with the Excise Act, 2001, SC 2002, c 22 (the "Excise Act" and the "CRA Cannabis Licence"); and (iii) an excise duty licence authorizing Ayurcann, in accordance with the Excise Act, to use bulk-alcohol, non-duty paid package alcohol and/or a restricted formulation, on a duty-free basis (the "Excise Duty Licence", and collectively with the Health Canada Licence and the CRA Cannabis Licence, the "Regulatory Licences").
- [39] The CCAA automatically stays enforcement of any payments of money ordered by the regulator. It does not, however, automatically stay other steps that a regulator may take against a regulated entity. The court may nevertheless stay such other steps if it is of the view that the failure to stay those other steps means that a viable compromise or arrangement could not be made, provided that the additional stay is not contrary to the public interest: see *Just Energy*, at para. 79.
- [40] Stays of this nature have been granted in other CCAA proceedings involving cannabis companies: see *In the Matter of a Plan or Compromise or Arrangement of Aleafia Health Inc.* (22 August 2023) Toronto, ONSC [Commercial List], CV-23-00703350-00CL (SISP Approval Order), at para. 13, Endorsement at para. 5; *BZAM Ltd.*, 2024 ONSC 1645, at paras 46-49; *In the Matter of a Plan Of Compromise or Arrangement of Indiva Limited et al.* (June 21, 2024) Toronto, ONSC [Commercial List] CV-24-0722044-00CL (Amended and Restated Initial Order), at para 51.
- [41] The Applicants are seeking to maintain the status quo of the Regulatory Licences throughout the Stay Period by deeming that any Regulatory Licence which expires during the Stay Period will automatically be extended for a period equal to the Stay Period.
- [42] This *status quo* relief is necessary in this case to mitigate the significant harm the lapsing or cancellation of the Regulatory Licences would have on the Applicant's restructuring efforts and on the value obtained in the potential Sale Process. One such licence is expiring this month. The renewal application has been filed but the licence has not yet been renewed.
- [43] The Department of Justice had counsel in attendance at the hearing today and advised that he took no position on the relief sought and was not instructed to oppose the order.

Order Granted

[44] The ARIO may issue in the form signed by me today.

A handwritten signature in cursive script, appearing to read "Kimmel J.", enclosed within a thin black rectangular border.

Date: Feb 09, 2026

JUSTICE JESSICA KIMMEL