



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-24-00726584-00CL DATE: September 6 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: **IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF 2675970 ONTARIO INC., et al**

BEFORE JUSTICE: **CAVANAGH**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Josh Nevsky	Monitor	jnevsky@alvarezandmarsal.com
Maria Konyukhova	Counsel to the Monitor	mkonyukhova@stikeman.com
Martino Calvaruso	Counsel to the DIP Lender	mcalvaruso@osler.com
Colin Pendrith	Canopy Growth Corporation	cpendrith@cassels.com

ENDORSEMENT OF JUSTICE CAVANAGH:

1. The Applicants own, operate, and franchise retail dispensaries in Canada selling cannabis products and accessories directly to consumers under the brand name “Tokyo Smoke”; they also maintain an online platform for direct-to-consumer cannabis sales and deliveries.
2. On August 20, 2024, the Applicants sought and obtained an initial order (the “Initial Order”) under the *CCAA*.
3. At this comeback hearing, the Applicants seek an amended and restated initial order which, among other things:
 - a. extends the Stay Period up to and including December 6, 2024;
 - b. permits the Applicants to pay pre-filing amounts to certain key suppliers, with the consent of the Monitor and in accordance with the terms of the DIP Term Sheet and Cash Flow Projection (as defined in the motion materials);
 - c. authorizes the Applicants to increase the amounts which may be borrowed by the Applicants pursuant to the DIP Term Sheet from \$3.3 million to \$8 million and expand the DIP Lender’s Charge to the maximum principal amount of \$8 million plus interest, fees, and costs;
 - d. increases the Administration Charge from \$400,000 to \$850,000;
 - e. increases the Directors’ Charge from \$2.25 million to \$3 million;
 - f. approves the key employee retention plan (the “KERP”) and grants a Court-ordered priority charge against the Property (as defined in the materials) for security for payments under the KERP in the maximum amount of \$218,500 (the “KERP Charge”); and
 - g. seals Schedule “A” of the KERP attached as Confidential Appendix “1” thereto.
4. The relief sought of this motion is supported by the Monitor, the DIP Lender, and the Applicants’ primary secured creditor, Bank of Montreal.
5. The factual background to this motion is set out in the affidavit of Andrew Williams sworn August 28, 2024 delivered in support of the application for the Initial Order and the affidavit of Andrew Williams sworn September 3, 2024 delivered in support of the relief sought on this motion. This information is summarized in the Applicants’ factum at paragraphs 8-31.
6. The Monitor delivered its First Report dated September 4, 2024.
7. I have reviewed the motion materials and heard submissions from counsel for the Applicants and counsel for the Monitor.
8. Section 11.02 (2) of the *CCAA* gives this Court the authority to grant an extension of a stay period for any period “it considers necessary”. To do so, this Court must be satisfied that circumstances exist that make the order appropriate and that the applicants have acted, and are acting, in good faith and with due diligence. A stay of proceedings is appropriate to provide a debtor breathing room while it seeks to emerge from the *CCAA*.
9. I am satisfied that the requested extension of the Stay Period should be granted. In this respect, I accept the submissions made on behalf of the Applicants at paragraphs 35-39 of their factum.

10. I am satisfied that the Applicants' request to make pre-filing payments to key suppliers with the consent of the Monitor should be granted. In this respect, I accept the submissions made on behalf of the Applicants at paragraphs 40-41 of their factum.
11. I am satisfied that the increase of the Applicants' borrowings under the DIP Term Sheet and an expanded DIP Lender's Charge should be approved. In this respect, I accept the submissions made on behalf of the Applicants at paragraphs 43-48 of their factum.
12. I am satisfied that the requested increase in the Administration Charge from \$400,000 to \$850,000 should be approved. In this respect, I accept the submissions made on behalf of the Applicants at paragraphs 49-52 of their factum.
13. I am satisfied that the requested increase in the Directors' Charge from \$2.25 million to \$3 million should be approved. In this respect, I accept the submissions made on behalf of the Applicants at paragraphs 53-55 of their factum.
14. This Court has approved employee retention plans and charges in other proceedings. Factors generally considered by the Court include whether: (a) the Monitor approves of the KERP; (b) the beneficiaries of the KERP would consider other employment opportunities if the charge was not approved; (c) the beneficiaries of the KERP are crucial to the successful restructuring of the debtor company; (d) a replacement could be found in a timely manner; (e) the board of directors exercise their business judgment in developing the KERP; and (f) the KERP is supported or consented to by secured creditors of the debtors.
15. I am satisfied that the KERP and the KERP Charge should be approved. In this respect, I accept the submissions made on behalf of the Applicants at paragraph 58 of their factum.
16. The Applicants request that this Court seal the confidential exhibit to the second Williams affidavit which contains a list of employees who are beneficiaries of the KERP along with their names and amounts payable under the KERP to those employees. I am satisfied that protecting the sensitive personal and compensation information of employees is an important public interest to be protected. I accept that the benefits of sealing the requested information outweigh any negative effects as the aggregate amount of the KERP has been disclosed to stakeholders and the retention of the key employees benefits all stakeholders by allowing the Applicants to maximize any potential value in a SISF.
17. Regarding the issues raised by certain landlords, the parties have reached an agreement regarding the rent to be paid during the disclaimer period. With regard to the Danforth location which was operated by a franchisee (which franchisee continues to occupy the leased premises), the landlord's agreement not to dispute the Notice of Disclaimer is without prejudice to the landlord's right to seek an order requiring the tenant to deliver vacant possession.
18. Order to issue in form of Order signed by me today.