



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: TBD

DATE: January 30, 2026

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TITLE OF PROCEEDING: RE: In the matter of Ayurcann Holdings Corp. and Ayurcann Inc.

BEFORE: JUSTICE J. KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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ENDORSEMENT OF JUSTICE KIMMEL:

The Applicants the Motion

- [1] Ayurcann Holdings Corp. (“Ayurcann Parent”) and Ayurcann Inc. (“Ayurcann”) (each individually, an “Applicant”, and collectively, the “Applicants” or the “Company”) seek urgent relief pursuant to an order (the “Initial Order”) *under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”)*. The urgent relief includes a stay of proceedings, the appointment of Alvarez & Marsal Canada Inc. (“A&M”) as the Monitor, approval of an Administration Charge and a Directors’ Charge and relief from securities and reporting filing obligations, among other things.
- [2] Ayurcann Parent is a reporting issuer in Canada and Germany. Ayurcann, a wholly-owned subsidiary of Ayurcann Parent, is a licensed producer of cannabis serving recreational markets across Canada.
- [3] This motion proceeded effectively without notice, although a few creditors, including the tax authorities (that are the Company’s most significant creditors), were served yesterday evening after the close of business. The motion was heard prior to the markets opening today. Parties in attendance today were advised at the conclusion of the hearing that the order would be signed today so that a press release could be issued before the markets opened at 9:30 a.m.
- [4] I have signed the CCAA Initial Order, for the reasons outlined in this endorsement, the support for which can be found in the materials filed by the Company for this motion, including the affidavit of Igal Sudman sworn January 29, 2026, and the Company’s factum and the Monitor’s Pre-filing report of the same date. Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Company’s Factum.

Background

- [5] Ayurcann is incorporated under the *Canada Business Corporations Act, R.S.C., 1985, c. C-44, as amended (the “CBCA”)*. Most of the Company’s business operations are conducted through Ayurcann, including all cannabis extraction, manufacturing, processing, sales and other commercial and regulatory activities.
- [6] Ayurcann is also the contracting party for the majority of the Company’s operating and employment contracts. Ayurcann holds a standard processing license with Health Canada, and a license 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”)*. Ayurcann leases the Pickering Facility where all production activities are conducted, as tenant.
- [7] There are two Non-Applicant Stay Parties that, together with the Company, are referred to as the Ayurcann Entities. They are wholly owned subsidiaries of the Ayurcann Parent, incorporated under the OBCA to facilitate a potential business combination transaction that was not completed. The Non-Applicant Stay Parties have no known material assets, liabilities or active business operations, but, as wholly-owned subsidiaries of Ayurcann Parent, are integrated parts of the Applicants’ corporate group.
- [8] The Company sells the majority of its cannabis products to consumers in the Canadian recreational use markets and has more than 37,315 product listings. The Company has over 55 full-time employees and over 60 contractors who work in the business.
- [9] As at December 31, 2025, the Company had total consolidated assets with an estimated book value of approximately \$11,041,051 and total consolidated liabilities with an estimated book value owing of

approximately \$15,479,863. There are two creditors with security over particular assets but no creditors with general security over all of the assets. The Canada Revenue Agency (“CRA”) is by far the most significant creditor. As of January 26, 2026, Ayurcann owed the CRA approximately \$10,556,517, comprise of unpaid excise taxes, statutory remittances, interest and penalties (collectively, the “Tax Arrears”).

- [10] The Company had been operating under a verbal “catch-up” plan with CRA to pay down the Tax Arrears, but that was unilaterally changed by CRA in a letter dated December 5, 2025. The Company is not able to meet the demands of the CRA under this letter. That is what precipitated the need for this application for protection under the *CCAA*.
- [11] As of January 23, 2026, the Company also owed Health Canada approximately \$285,649, which largely relates to unpaid regulatory and licensing fees.

Analysis

Jurisdiction and Requirements for the Granting the Initial Order

- [12] Subsection 9(1) of the *CCAA* provides that an application for a stay of proceedings under the *CCAA* may be made to the court that has jurisdiction in the province in which the head office or chief place of business of the company in Canada is situated. The Company’s head office and chief place of business is in Ontario, accordingly this Court has jurisdiction to grant the relief sought.
- [13] While this Court has broad discretion pursuant to section 11 of the *CCAA* to make any order it considers appropriate in the circumstances, section 11.001 requires that the relief sought on an initial application be limited to what is “reasonably necessary for the continued operations of the debtor company in the ordinary course of business” during the initial 10-day period.
- [14] This provision is intended to “limit the decisions that can be taken at the outset of a *CCAA* proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players”. See: *Lydian International Limited (Re)*, 2019 ONSC 7473 (“*Lydian*”), at para. 25. Whether any particular relief is necessary to stabilize a debtor company’s operations during the initial stay period is inherently a factual determination, based on all of the circumstances of a particular debtor: *Boreal Capital Partners Ltd et al. (Re)*, 2021 ONSC 7802, at para. 16.
- [15] Here, 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 Applicants intend to return to this Court for additional relief necessary to advance this *CCAA* Proceedings (including an expanded Amended and Restated Initial Order) at a hearing scheduled for February 9, 2026.
- [16] The *CCAA* applies to a “debtor company” or affiliated debtor companies where the total amount of claims against the debtor or its affiliates exceeds \$5 million. The Applicants are each a “company” for the purposes of s. 2 of the *CCAA* as they do business in or have assets in Canada: *Lydian* at para. 35-36.
- [17] A “debtor company” means, *inter alia*, a company that is insolvent: *CCAA*, ss. 2 and 3(1). The *CCAA* defines a “debtor company” as, among other things, any company that is insolvent or has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (“*BIA*”).

[18] The term “insolvent” is not defined in the *CCAA* and therefore a determination of whether a company is insolvent requires consideration of the definition of “insolvent person” in the *BIA*, as:

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.

[19] Each of the above factors is disjunctive.

[20] Courts have also considered the expanded concept of insolvency adopted in *Stelco Inc., Re*, 2004 CarswellOnt 1211 at para. 26 (“*Stelco*”), in which this court held that a debtor is insolvent where 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. This approach to the insolvency criteria has been applied in other cases, including *Target Canada Co. (Re)*, 2015 ONSC 303 (“*Target*”) at para. 26; *Just Energy Corp. (Re)*, 2021 ONSC 1793 (“*Just Energy*”) at paras. 48 to 51; and *Nordstrom* at para. 26.

[21] The Applicants meet both the traditional definition of insolvency under the *BIA* as well as the expanded test based on a looming liquidity crisis. As demonstrated by the Applicants’ most recent financial statements, the Applicants are “balance sheet insolvent” – their property is not, as currently valued, sufficient to repay their obligations. The Applicants are also experiencing an acute liquidity crisis and are not able to meet their obligations as they become due. The Applicants already have significant amounts owing to the CRA (including an additional payment of approximately \$2,582,868 due on January 31, 2026), and are unable to meet their obligations as they come due. The Applicants are insolvent.

[22] I am satisfied that the Applicants are corporations that collectively owe over \$5 million in outstanding liabilities.

Stay of Proceedings

[23] Section 11.02(1) of the *CCAA* provides that the Court may order a stay of proceedings on an initial *CCAA* application for a period of not more than 10 days. Section 11.001 of the *CCAA* provides that relief granted on an initial *CCAA* application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that initial 10-day period.

[24] In *Lydian*, the Chief Justice observed that the Initial Stay Period preserves the *status quo* and allows for operations to be stabilized and negotiations to occur, followed by requests for expanded relief on proper notice to affected parties at the full comeback hearing.

[25] 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.

- [26] The next “catch-up payment” is due to CRA on January 31, 2026. If the Stay of Proceedings is granted, the Applicants will obtain temporary relief from these “catch-up payments” (which relate to pre-filing obligations), enabling them to stabilize their business and focus on assessing their restructuring alternatives with a view to maximizing value for their creditors and other stakeholders.
- [27] The Applicants also require the Stay of Proceedings to prevent potential enforcement actions against their Property – especially in connection with or related to any of Ayurcann’s cannabis or excise licenses, which are required to operate the business under the *Cannabis Act*, S.C. 2018, c. 16, the Excise Act and through the *Cannabis Regulations*, SOR/2018-144.
- [28] I am also satisfied that the stay and the protections and authorizations proposed in the draft Initial Order should be extended to the defined Non-Applicant Stay Parties. The authority of the Court to extend a stay to non-filing affiliates is derived from the broad jurisdiction given to the Court under ss. 11 and 11.01(2) of the *CCAA*. The Supreme Court of Canada has described this judicial discretion - which plays a prominent role in *CCAA* restructurings - as the “true ‘engine’” driving the statutory scheme of the *CCAA*: *Montreal (City) v. Deloitte Restructuring Inc.*, (“*Montreal v. Deloitte*”), 2021 SCC 53 at para. 48.
- [29] In *JTI-Macdonald Corp.*, this Court outlined the factors determining when it is appropriate to extend a *CCAA* stay over non-filing affiliates, including where the business of the non-filing affiliate is significantly intertwined with that of the debtors and extending the stay would help maintain stability during the *CCAA* process: *JTI-Macdonald Corp. (Re)*, 2019 ONSC 1625 at para. 15 (“*JTI-Macdonald*”).
- [30] While the Non-Applicant Stay Parties in this case are not active and have no known assets or liabilities, they are fully integrated, and one has the Ayurcann name. They have common directors and officers and the same registered office. Any proceedings commenced (even if in error or in an abundance of caution by a creditor of Ayurcann or Ayurcann Parent against the Non-Applicant Stay Parties would necessarily involve the Applicants’ key personnel and consume the Applicants’ limited resources. Extending the stay to the Non-Applicant Stay Parties prevents this distraction which could arise from this. Accordingly, the Applicants submit that it is appropriate to extend the stay of proceedings to the Non-Applicant Stay Parties. I agree with that submission.
- [31] The proposed stay of proceedings also prohibits any person from setting off pre-filing obligations against post-filing obligations. While section 21 of the *CCAA* contemplates set-off within a *CCAA* proceeding, it does not specifically address the issue of pre-/post set-off. However, the Supreme Court of Canada has confirmed that this Court can stay pre-/post set-off pursuant to its broad jurisdiction that flows from ss. 11 and 11.02 of the *CCAA*: *Montreal v. Deloitte* at para 62. This Court has in fact done so in other cases. See, for example, *Re Tacora Resources Inc.* (October 2023), Toronto CV-23-00707394-00CL (Initial Order) at para. 13.
- [32] I am satisfied that such an element of the proposed stay is appropriate here.

The Monitor and Cash Management

- [33] Pursuant to section 11.7 of the *CCAA*, the Court shall appoint a person to monitor the business and financial affairs of the company when an order is made on the initial application. The person appointed must be a trustee within the meaning of subsection 2 (1) of the *BIA*. The Applicants propose to have Alvarez & Marsal Canada Inc. (“A&M”) appointed as the Monitor.

[34] A&M is a “trustee” within the meaning of subsection 2(1) of the *BIA*, is established and qualified, and has consented to act as Monitor. The involvement of A&M as the court-appointed Monitor will lend stability and assurance to the Applicants’ stakeholders. A&M is not subject to any of the restrictions set out in s. 11.7(2) of the *CCAA*.

[35] I am satisfied that A&M should be appointed as Monitor in these *CCAA* Proceedings.

[36] I am satisfied that the existing Cash Management System should be maintained in order that the Company can continue to efficiently collect, manage and disperse cash. The Proposed Monitor has familiarized itself with the Cash Management System, is supportive of its maintenance, and opines that the appropriate processes, controls, and reporting are in place to enable the Applicants, with the oversight of the Proposed Monitor, to continue to use the Cash Management System during this *CCAA* Proceeding.

Administration and Directors’ Charges

[37] The Applicants are seeking an Administration Charge to secure the professional fees and disbursements of the Proposed Monitor, its counsel, and counsel to the Applicants up to a maximum of \$250,000 for the duration of the Initial Stay Period.

[38] The Administration Charge was developed in consultation with the Proposed Monitor and is proposed to be secured by the Property with first priority over all other charges and security interests.

[39] The Court has jurisdiction to grant an administration charge under s. 11.52 of the *CCAA*. It is to consider: the size and complexity of the business being restructured, the proposed role of the beneficiaries of the charge, whether there is an unwarranted duplication of roles, whether the quantum of the 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. See *CanWest Publishing Inc.*, 2010 ONSC 222 at para. 54.

[40] The proposed Administration Charge sought for the initial 10-day period meets this test and is appropriate. It is supported by the Proposed Monitor.

[41] The Court has jurisdiction to grant a directors’ charge under section 11.51 of the *CCAA*, provided notice is given to the secured creditors who are likely to be affected by it.

[42] 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.

[43] Such a charge may not be made if “the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost” and the court shall declare 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”: *CCAA*, s 11.51; see also *Laurentian University of Sudbury*, 2021 ONSC 1098, supra at para 81; and *Jaguar Mining Inc, Re*, 2014 ONSC 494 at para 45.

[44] The Applicants here seek a Directors’ Charge in the amount of \$625,000 to secure the indemnity of their directors and officers for liabilities they may incur during the *CCAA* proceedings.

[45] I am satisfied that the proposed Directors' Charge is appropriate here. The directors and officers have advised that they are prepared to continue to serve, conditional upon the granting of the Directors' Charge. It will apply only to the extent that the directors' and officers' respective insurance is insufficient or ineffective, and only in respect of obligations and liabilities incurred after the commencement of the CCAA Proceedings excluding wilful misconduct or gross negligence.

[46] The Proposed Monitor supports the Applicants' request for the Directors' Charge. I am satisfied it is appropriate here. I am satisfied that the proposed amount is reasonable in the circumstances, and limited to the potential exposure during the initial 10-day period (having regard to the timing of payroll and tax remittances). For all of these reasons, the Directors' Charge is approved.

Relief from Securities Filing Obligations

[47] The Applicants seek authorization for Ayurcann Parent to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the "Securities Filings") that may be required by any federal, provincial or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the *Securities Act* (Ontario), R.S.O. 1990, c. S.5 and comparable statutes enacted by other provinces of Canada, and the rules, regulations and policies of the CSE and/or the FRA.

[48] Similar relief has been granted for reporting issuers in recent CCAA proceedings and the language contained in the Initial Order is consistent with the language that the Ontario Securities Commission has approved in previous cases. The language in the proposed Initial Order 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.

Initial Order and Comeback Hearing

[49] For all of these reasons, the Initial Order was granted with immediate effect according to its terms and without the necessity of issuing and entering.

[50] The comeback hearing shall take place on February 9, 2026 at the Courthouse. Any stakeholders that have concerns with the relief granted in the Initial Order signed today, or with respect to any additional relief sought in the proposed Amended and Restated Initial Order that the court will be asked to consider on February 9, 2026 will have the opportunity to raise those concerns and they will be considered *de novo*.



Kimmel J.

Date: Jan 30, 2026