



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

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

DATE: June 01, 2026

NO. ON LIST: 3

**TITLE OF PROCEEDING:**

**In the Matter of the Companies' Creditors Arrangement Act,  
R.S.C. 1985, c. C-36, As Amended**

**And 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	Ayurcann Holdings Corp. and Ayurcann Inc.	<a href="mailto:mightonj@bennettjones.com">mightonj@bennettjones.com</a>
Jamie Ernst		<a href="mailto:ernstj@bennettjones.com">ernstj@bennettjones.com</a>

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
Natasha Rambaran	The Monitor	<a href="mailto:nrambaran@reconllp.com">nrambaran@reconllp.com</a>
Miranda Spence	The Proposed DIP Lender	<a href="mailto:mspence@airdberlis.com">mspence@airdberlis.com</a>
Virginie Gauthier	Emblem Cannabis Corporation	<a href="mailto:virginie.gauthier@gowlingwlg.com">virginie.gauthier@gowlingwlg.com</a>
Kiera Stevenson	The Creditor, Bridget Virolainen	<a href="mailto:kstevenson@walkerhead.com">kstevenson@walkerhead.com</a>
Tyler Alviano	Canada Revenue Agency	<a href="mailto:Tyler.Alviano@justice.gc.ca">Tyler.Alviano@justice.gc.ca</a>
Edward Park		<a href="mailto:edward.park@justice.gc.ca">edward.park@justice.gc.ca</a>

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
Josh Nevsky	CCAA Monitor	<a href="mailto:jnevsky@alvarezandmarsal.com">jnevsky@alvarezandmarsal.com</a>

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**ENDORSEMENT OF JUSTICE KIMMEL:**

**The Motion**

[1] The Applicants bring this motion for two orders.

First, a Third Amended and Restated Initial Order (the "Third ARIO"), among other things:

- (a) Approves a proposed Amended and Restated DIP Facility and related relief; and
- (b) Extends the Stay Period (as defined below) to and including August 31, 2026 (the "Stay Extension").

Second, a Claims Procedure Order that:

- (c) Establishes a procedure for the identification and quantification of certain claims against the Applicants (the "Claims Process"); and
- (d) authorizes, directs and empowers the Applicants and the Monitor to take such actions as are contemplated by the Claims Procedure Order.

[2] The evidentiary support for this relief can be found in the Affidavit of Igal Sudman sworn May 28, 2026 (the "Sudman Affidavit"). The Monitor supports the applicants' motion and recommends that the court grant the proposed orders, for the reasons detailed in its Fourth Report dated May 29, 2026 filed in support of this motion (the "Fourth Report"). No other stakeholder opposes these orders. Canada Revenue Agency ("CRA") has actively engaged in negotiating the wording of the Claims Procedure Order and certain endorsement language that the court has been asked to include (below).

[3] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the applicants' factum filed in support of this motion.

**Background and Justification for Requested Relief**

[4] On April 28, 2026, the Court granted an Order (the "Approval and Reverse Vesting Order"), among other things approving the agreement of purchase and sale between the Applicants and Emblem Cannabis Corporation ("Emblem" and in such capacity, the "Purchaser") dated March 31, 2026 (as amended, the "Purchase Agreement"), and authorizing the Applicants and Monitor to take such steps and actions necessary to complete the transactions contemplated by the Purchase Agreement (the "Transactions").

- [5] Since that time, the parties have been working diligently to complete the Transactions. However, delays in regulatory approval have caused the closing timeline for the Transactions to be extended. Accordingly, the Applicants require the relief sought to maintain the *status quo* during the pre-closing period, and to ensure that they are ready to proceed efficiently with their Claims Process and eventual distributions after closing in the interests of efficiency and maximization of creditor recoveries.
- [6] The Applicants are of the view that the Third ARIO is necessary in the circumstances to facilitate the closing of the Transactions by preserving the enterprise value of the business during the pre-closing period. Because the Transactions will result in an amount for distribution to the Applicants' unsecured creditors, the Claims Procedure Order represents the logical next step in these proceedings to facilitate distributions to the Applicants' creditors from the proceeds of the Transactions. Obtaining this relief now will obviate the need to return to court on a one-off basis at a later date.
- [7] The only material closing condition outstanding at the time this motion was finalized was for Health Canada to complete its change of control compliance assessment (the "Health Canada Assessment"), as required under the *Cannabis Act*, S.C. 2018, c. 16 and its Regulations. It is a closing condition under the Purchase Agreement that the proposed Transactions pass the Health Canada Assessment.
- [8] The outside date of the Transactions was originally May 15, 2026 (as extended from time to time, the "Outside Date"), being the same date as the maturity date under the Original DIP Facility (as extended from time to time, the "Maturity Date"). Due to the aforementioned delays, the Applicants, the Purchaser and the Original DIP Lender (as applicable) agreed to extend the Outside Date and the Maturity Date to May 29, 2026 and May 31, 2026, respectively.
- [9] Pursuant to the terms of the Sale Process and the Approval and Reverse Vesting Order, the Back-Up Bid became non-binding on May 15, 2026. As such, the only remaining binding transaction available in the circumstances is the Transactions.
- [10] Because Emblem will own the Business on completion of the Transactions, they are willing to advance the additional funding necessary to maintain the Business in good standing during the pre-closing period. Also, as the Original DIP Lender will have no interest in the Business going forward, it is willing to receive repayment of the Original DIP Facility. Although the Original DIP Lender has facilitated the Transactions to date by extending repayment milestones under the Original DIP Facility from time to time, it has now expressed its preference for the Original DIP Facility to be repaid, rather than further extended.
- [11] The applicants and the Purchaser have also agreed to further amend the Purchase Agreement, with the consent of the Monitor, to, among other things, (i) further extend the Outside Date to June 30, 2026, and (ii) allow Emblem to credit bid any indebtedness owing under the Amended and Restated DIP Facility at Closing. In accordance with Section 7.8 of the Purchase Agreement, the purchase price will be adjusted upwards, dollar-for-dollar, to the extent of any additional interim funding requirements in excess of the Original DIP Facility Limit (the "Purchase Price Mechanics"). The Purchase Price Mechanics ensure that the funds available for distribution to the Applicants' creditors remain the same as under the original Purchase Agreement, while ensuring the Amended and Restated DIP Facility is fully satisfied at Closing time through the credit bid. In this way, it is the Purchaser that bears the cost of the closing delay, rather than creditors.
- [12] The Amended and Restated DIP Facility, if approved, will provide the Applicants with sufficient liquidity to repay the Original DIP Facility and fund their ordinary course obligations until Closing. Other than the increase of the maximum principal facility limit of \$2,000,000 to \$3,000,000, the terms of the Amended and Restated DIP Facility are materially identical to the Original DIP Facility (subject to certain clean up changes). In accordance with the proposed Third ARIO, advances made under the Amended and Restated DIP Facility will continue to be secured by the DIP Lender's Charge (now in favour of the

Replacement DIP Lender, should the requested relief be granted). Once the Amended and Restated DIP Facility has been repaid in full, the DIP Lender's Charge will be terminated, released and discharged.

[13] As reflected in the Revised Cash Flow Forecast, the Applicants will require the Amended and Restated DIP Facility to satisfy working capital needs and maintain ordinary course operations, including their monthly excise tax payments due on June 1, 2026. The Amended and Restated DIP Facility is only intended to act as a temporary solution to ensure the Applicants have sufficient liquidity to satisfy their ordinary course obligations until the Health Canada Assessment is complete and the Transactions close, after which the Amended and Restated DIP Facility will be satisfied in full through a partial credit bid under the Purchase Price Mechanics.

[14] The Applicants seek an extension of the Stay Period to and including August 31, 2026, to, among other things, close the Transactions and implement and complete the Claims Process. The Revised Cash Flow Forecast demonstrates how the cash flow needs of the business will be met during the extended Stay Period. It assumes that the Transactions will have closed by June 30, 2026. If for some reason they have not closed by then, the parties will need to come back to court. However, there is reason for cautious optimism that they will close well before the extended Outside Date of June 30, 2026.

[15] After the material was served and filed for this motion, the applicants received late breaking confirmation from Health Canada on Friday May 29, 2026 that the regulatory reviews had been successfully completed. The parties are currently targeting for a June 5, 2026 closing but that does not obviate the need for the requested orders.

[16] Following the closing of the Transactions, all Claims against Ayurcann shall continue against Residual Co. The Claims Process will be conducted by the Monitor, in consultation with the Applicants, in accordance with the terms of the proposed Claims Procedure Order. The Claims Process is intended to provide a comprehensive, fair, flexible and efficient means of identifying, quantifying and resolving Claims against the Applicants. The identification, quantification and resolution of Claims that exist against the Applicants is necessary to facilitate the distribution of the net proceeds from the Transactions to the stakeholders of the Applicants. Court approval will be sought in advance of any proposed distributions being made arising out of the Claims Process.

## **Orders Sought**

### The Third ARIO

[17] The main features of the Third ARIO are the approval of the Amended and Restated DIP Facility and related relief and approval of the extension of the Stay to August 31, 2026.

[18] Subsection 11.2(1) of the CCAA authorizes this Court to approve DIP financing and grant a corresponding charge in an amount it considers appropriate - having regard to the debtor company's cash flow statement - where the secured creditors likely to be affected by the charge are given notice thereof: see *Boreal Capital Partners Ltd. (Re)*, 2021 ONSC 1802, at para. 23; *Re Just Energy Corp.*, 2021 ONSC 1793, at para. 52.

[19] Each of the statutory prerequisites to approving the Amended and Restated DIP Facility and granting the proposed DIP Lender's Charge have been satisfied in this case, for the reasons outlined in the Sudman Affidavit, the Monitor's Fourth Report and summarized in paragraph 33 of the applicants' factum filed on this motion.

[20] 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". To grant such an extension, this Court must be

satisfied that circumstances exist that make the order appropriate and that the Applicants have are acting, in good faith and with due diligence.

[21] The Revised Cash Flow Forecast reviewed by the Monitor and set out in the Fourth Report reflects that, subject to Court approval of the Amended and Restated DIP Facility, there is sufficient funding to fund operations and the costs of these proceedings during the proposed Stay extension period. The Monitor believes that no creditor will be prejudiced if the extension is granted. The requested extension is supported by the Monitor who is of the view that the Applicants are acting with good faith and due diligence. There is no evidence to suggest otherwise. Accordingly, the requested stay extension is approved.

### The Claims Process Order

[22] Based on the Company's books and records, the Monitor believes that the pool of third- party creditors is relatively small in this case and well-defined, with approximately 35 known creditors, plus additional anticipated claims for terminated employees and certain contractual agreements not included in the Emblem transaction which may trigger certain damages claims.

[23] Under the proposed Claims Process, it will be up to the Monitor, in consultation with the applicants, to accept, revise, or disallow, in whole or in part, the Classification, Nature, and amount of each Claim for voting and distribution purposes. Claimants will have the ability to dispute the Monitor's determination. If the Monitor, in consultation with the applicants, is unable to resolve a Disputed Claim with a Claimant satisfactorily, the Monitor will notify the applicants and the Claimant and refer the Disputed Claim to a Claims Officer in accordance with the Claims Procedure Order, the Court, or such alternative dispute resolution forum as may be ordered by the Court or agreed to by the Monitor, the applicants and the applicable Claimant.

[24] The Claims Process is intended to provide a comprehensive, fair, flexible and efficient means of identifying, quantifying and resolving Claims against the applicants. The identification, quantification and resolution of Claims that exist against the applicants is necessary to facilitate the distribution of the net proceeds from the Transactions to the stakeholders of the applicants.

[25] In the Monitor's view, the proposed Claims Process is fair and appropriate in light of the purpose of the process and the nature of the CCAA Proceedings. The Claims Process Order is efficient and will facilitate the identification of Claims against the Applicants and/or their Directors and Officers in a fair and expeditious manner. The proposed Bar Dates are reasonable. The direct notification and publication of notice to potential Claimants will make the Claims Process widely distributed and publicized. These are among the reasons that the Monitor supports the requested Claims Process Order, all as set out in more detail in the Monitor's Fourth Report.

[26] Sections 11 and 12 of the CCAA authorize this Court to make "any order it considers appropriate in the circumstances", and "fix deadlines for the purposes of voting and for the purposes of distributions", vest this Court with jurisdiction to make an order approving a process for the solicitation and determination of claims against a debtor company: see, for example, *Re Toys "R" Us (Canada) Ltd.*, 2018 ONSC 60, at paras. 8 and 11-14. The applicants have provided a number of other examples of cases in which these types of orders have been granted as practical means of streamlining and resolving claims against an insolvent debtor in a timely and cost-effective manner. They did not identify any provisions included in this order that were out of the ordinary or unusual. To the contrary, the provisions of the Claims Procedure Order are consistent with other claims procedure orders that have been granted. The applicants have set out in detail in paragraphs 39-43 of their factum the factors that exist here that satisfy me that proposed Claims Process is fair, reasonable and appropriate in the circumstances and that it is appropriate for the court to exercise its discretion to grant the requested Claims Procedure Order.

[27] The known creditors of the applicants were served with notice of the proposed Claims Procedure Order and there has been an opportunity for consultation. The CRA is one of the potential creditors of the applicants. It requested certain changes to the proposed draft orders. Furthermore, the CRA requested, with the concurrence of the applicants and the Monitor, the following endorsement language which the court adopts:

The CRA reserves all rights to argue, if necessary, that the objection and appeal process provided under the Income Tax Act (Canada), Excise Act (Canada), Excise Tax Act (Canada), Tax Court of Canada Act (Canada) and any other applicable Act must be followed in the event that a Notice of Assessment is disputed. The Monitor and the Applicant reserve all rights to respond accordingly.

[28] This endorsement language does not determine this court's jurisdiction, one way or the other, with respect to any appeal from a disputed Notice of Assessment.

[29] Ultimately, there will not be any distributions without a further court order so, if there are disputes about disputed Notices of Assessment or any other Disputed Claims, there will be an opportunity to consider practical ways of dealing with them, including through the use of holdbacks if necessary.

[30] Released and insured claims that were addressed under the previously granted Approval and Reverse Vesting Order are appropriately carved out of the Claims Process. There is a clear definition of the "Excluded Claims" that will not be affected by the Claims Process.

[31] The two requested orders were signed by me and sent to counsel on June 1, 2026, with the expectation that this endorsement would follow. Since the court advised at the conclusion of the hearing that the orders would be signed counsel expressed a preference for receiving the signed orders sooner or later so that the Original DIP Facility can be paid out.



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Jessica Kimmel

Date: Jun 01, 2026