

**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 A PLAN OF COMPROMISE OR
ARRANGEMENT OF AYURCANN HOLDINGS CORP. and
AYURCANN INC.**

Applicants

**FACTUM OF THE APPLICANTS
(Returnable February 9, 2026)**

February 6, 2026

BENNETT JONES LLP

One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Sean Zweig (LSO# 573071)
Email: ZweigS@bennettjones.com

Jesse Mighton (LSO# 62291J)
Email: MightonJ@bennettjones.com

Jamie Ernst (LSO# 88724A)
Email: ErnstJ@bennettjones.com

Shawn Kirkman (LSO# 92214U)
Email: KirkmanS@bennettjones.com

Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for the Applicants

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PART I: OVERVIEW

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. Following the granting of the Initial Order, the Applicants have continued operations in the ordinary course of business, while focusing efforts on securing debtor-in-possession financing and developing a stalking horse sale process with the assistance of the Monitor (as defined below) designed to achieve a value-maximizing transaction for the Company’s business in these CCAA proceedings (the “**CCAA Proceedings**”). The Applicants continue to work to finalize debtor-in-possession financing and a stalking horse sale process, and therefore no relief is being sought in those regards at this motion.
4. However, 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) (each capitalized term as defined below);

- (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 (as defined below); and
- (g) granting certain customary ancillary relief to support the Applicants’ restructuring activities.

5. 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.

6. In each case, the requested relief is supported by the Monitor.

PART II: FACTS

7. The facts underlying this motion are more fully set out in the affidavits of Igal Sudman, sworn January 29, 2026, and February 3, 2026 (together, the “**Sudman Affidavits**”). All capitalized terms used but not defined herein have the meanings ascribed to them in the Sudman Affidavits or the Initial Order.

A. The Need for these CCAA Proceedings and the Initial Order

8. Ayurcann Parent is a reporting issuer in the provinces of Ontario, British Columbia and Alberta, listed on the Canadian National Stock Exchange under the symbol “AYUR”, and cross-listed on the Frankfurt Stock Exchange under the symbol “3ZQ0”. Ayurcann, a wholly-owned subsidiary of Ayurcann Parent is a licensed producer of cannabis serving recreational markets across Canada.¹

9. Despite historically strong revenues and stable cash flow, the Company has accumulated material excise tax liabilities payable to the Canada Revenue Agency (the “**CRA**”). On December 5, 2025, the CRA unilaterally imposed a mandatory payment plan on the Applicants, requiring monthly excise tax “catch-up” payments in the amount of approximately \$1.056 million, which were to be paid in addition to the Applicants’ ongoing monthly remittance obligations. The Applicants lacked sufficient liquidity to comply with the new payment plan and, once it came into effect, could no longer fund their operations in the ordinary course.²

10. Having regard to the best interests of the Applicants and their stakeholders, and after extensive review and careful consideration of the strategic options and alternatives available, each

¹ Affidavit of Igal Sudman sworn February 3, 2026 at para 5 [*Sudman Affidavit*], Motion Record dated February 3, 2026 at Tab 2 [*Motion Record*].

² *Sudman Affidavit*, *ibid* at para 7, *Motion Record* at Tab 2.

of the Applicants' board of directors resolved to seek urgent relief under the CCAA. Accordingly, the Applicants sought, and on January 30, 2026, obtained the Initial Order.

11. Among other things, the Initial Order:

- (a) declared that the Applicants are parties to which the CCAA applies;
- (b) appointed A&M as the Monitor;
- (c) granted an initial Stay of Proceedings in favour of the Applicants and the Non-Applicant Stay Parties until and including February 9, 2026;
- (d) granted the Administration Charge and the Directors' Charge; and
- (e) relieved Ayurcann Parent from any obligation to incur further expenses in relation to its securities reporting obligations.³

12. The relief sought pursuant to the Initial Order was limited to relief reasonably necessary to provide the stability and breathing room required to stabilize and maintain the Applicants' ordinary course operations during the Initial Stay Period.

B. The Applicants' Activities Since the Granting of the Initial Order

13. Since the Initial Order was granted, the Applicants have continued negotiations with an arm's length, third-party potential purchaser (the "**Potential Stalking Horse Bidder**") to advance negotiations of debtor-in-possession financing ("**DIP Financing**") and an agreement of purchase and sale (the "**Stalking Horse Purchase Agreement**"). Once finalized, the Stalking Horse

³ *Sudman Affidavit, ibid* at para 8, *Motion Record* at Tab 2.

Purchase Agreement is intended to serve as the “stalking horse bid” in a Court-approved sale process in respect of the Applicants’ assets and business (the “**Sale Process**”).⁴

14. The Monitor, with the assistance of the Applicants, has populated a virtual data room to enable the Potential Stalking Horse Bidder to complete its due diligence in order to finalize a binding agreement that is not conditional on further diligence. The data room will serve as the data room for other potentially interested parties in the forthcoming Sale Process. All parties have been working diligently to finalize the terms of the DIP Financing and the Stalking Horse Purchase Agreement in order to return to Court for their approval as soon as possible.⁵

15. 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, develop the terms of the KERP, and with the assistance of the Monitor, deploy a communications plan notifying key stakeholders of the CCAA Proceedings.⁶

C. The Stay of Proceedings

16. The Stay of Proceedings under the Initial Order will expire at the end of the Initial Stay Period, being February 9, 2026.⁷ Pursuant to the proposed ARIO, the Applicants are seeking to extend the Initial Stay Period to and including February 27, 2026 (the “**Stay Period**”).⁸

⁴ *Sudman Affidavit, ibid* at para 10, *Motion Record* at Tab 2.

⁵ *Sudman Affidavit, ibid* at para 11, *Motion Record* at Tab 2.

⁶ *Sudman Affidavit, ibid* at para 16, *Motion Record* at Tab 2.

⁷ *Sudman Affidavit, ibid* at para 14, *Motion Record* at Tab 2.

⁸ *Sudman Affidavit, ibid* at para 14, *Motion Record* at Tab 2.

17. 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 Stay Period without the need for additional financing.⁹

D. The Administration Charge

18. The Initial Order granted an Administration Charge in favour of the Monitor, counsel to the Monitor and counsel to the Applicants over the Property up to a maximum of \$250,000, which took into account their limited retainers and outstanding fees (the "**Administration Charge**"). The ARIO contemplates increasing the quantum of the Administration Charge to a maximum of \$800,000.¹⁰

19. As was the case for the Initial Order, the Applicants still require the expertise, knowledge, and continued participation of the proposed beneficiaries of the Administration Charge during the CCAA Proceedings to complete a successful restructuring. Each of the beneficiaries of the Administration Charge will have distinct roles in the CCAA Proceedings. The Monitor also supports the proposed increase to the quantum of the Administration Charge.¹¹

E. The Directors' Charge

20. The Initial Order granted a Directors' Charge in favour of the Directors and Officers up to a maximum of \$625,000, which reflected an estimate of potential liabilities the Directors and Officers could incur up to the date of the comeback hearing (the "**Directors' Charge**"). The ARIO contemplates increasing the quantum of the Directors' Charge to a maximum of \$3,020,000.¹² The

⁹ *Sudman Affidavit, ibid* at paras 17-18, *Motion Record* at Tab 2.

¹⁰ *Sudman Affidavit, ibid* at para 23, *Motion Record* at Tab 2.

¹¹ *Sudman Affidavit, ibid* at para 26, *Motion Record* at Tab 2.

¹² *Sudman Affidavit, ibid* at para 27, *Motion Record* at Tab 2.

proposed Directors' Charge was calculated based on an estimate of the maximum potential liability the Directors and Officers could incur during the CCAA Proceedings, and only serves as security to the extent there are any exceptions or exclusions in the Company's liability insurance policy.¹³

21. The Directors' and Officers' ongoing involvement in the CCAA Proceedings is critical to the Applicants' restructuring objectives. The Directors' and Officers' have already played a critical role in identifying and negotiating the Stalking Horse Purchase Agreement and DIP Financing, and stabilizing operations through their valuable relationships with customers, suppliers and employees. They are also expected to play an integral role in administering and soliciting interest in the Sale Process.¹⁴

22. The Monitor supports the proposed increase to the quantum of the Directors' Charge.

F. The KERP

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.¹⁵

24. In the aggregate, the KERP provides for a maximum of \$66,250 in aggregate payments (the "**KERP Payment Amount**") to be made to the Key Employees. The proposed KERP

¹³ *Sudman Affidavit, ibid* at para 30, *Motion Record* at Tab 2.

¹⁴ *Sudman Affidavit, ibid* at para 28, *Motion Record* at Tab 2.

¹⁵ *Sudman Affidavit, ibid* at para 31, *Motion Record* at Tab 2.

payments were calculated as a percentage of each Key Employee's annual salary (or annual contractual entitlement).¹⁶

25. 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.

26. The Applicants, with the assistance of the Monitor, have prepared agreements for each Key Employee (the "**KERP Agreements**"), which provide that each Key Employee will be entitled to its allocation of the KERP Payment Amount upon the Eligibility Date,¹⁷ subject to the satisfaction of the following conditions:

- (a) the ARIO has been granted;
- (b) the Key Employee remains employed by the Company (other than if terminated without cause) and continues to perform its duties to the best of its abilities in accordance with the terms of the KERP Agreement; and
- (c) the Key Employee has not disclosed the terms of the KERP or its KERP Agreement, subject to certain limited exceptions.¹⁸

27. 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

¹⁶ *Sudman Affidavit, ibid* at para 32, *Motion Record* at Tab 2.

¹⁷ The definition of "Eligibility Date" in the KERP Agreements is "the earliest of: (a) the closing date of a sale of all or substantially all of the assets of the Company to an acquiring entity; (b) the date specified in the Company's notice of termination upon which your employment with the Company comes to an end without cause; and (c) the date of termination or conversion of the CCAA Proceedings where a sale transaction has not been completed."

¹⁸ *Sudman Affidavit, ibid* at para 34, *Motion Record* at Tab 2.

approved in CCAA Proceedings undertaken by other cannabis companies and believe they are reasonable in the circumstances.¹⁹

28. The Applicants are also seeking the KERP Charge which will be subordinate only to the Administration Charge and the Directors' Charge.²⁰

G. Regulatory Licences

29. 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,²¹ 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**").²²

30. The Health Canada Licence, the CRA Cannabis Licence and the Excise Duty Licence expire on January 18, 2028, January 18, 2028, and February 23, 2026, respectively. The Company has requested a renewal from the CRA in respect of the Excise Duty Licence, but such renewal has not yet been granted.²³

31. Pursuant to the proposed ARIO, the Applicants are seeking to maintain the *status quo* of the Regulatory Licences throughout the Stay Period by deeming that any Regulatory Licence

¹⁹ *Sudman Affidavit, ibid* at para 35, *Motion Record* at Tab 2; First Report of Alvarez & Marsal Canada Inc. in its capacity as the Court-appointed Monitor dated February 6, 2026 at para 5.7 [*First Report*].

²⁰ *Sudman Affidavit, ibid* at paras 36-37, *Motion Record* at Tab 2.

²¹ Ayurcann uses ethanol as part of its extraction process.

²² *Sudman Affidavit, supra* note 1 at para 46, *Motion Record* at Tab 2.

²³ *Sudman Affidavit, ibid* at para 47, *Motion Record* at Tab 2.

which expires during the Stay Period will automatically be extended for a period equal to the Stay Period.²⁴

PART III: ISSUES

32. The issues to be considered on this motion are whether this Court should:
- (a) extend the Stay of Proceedings to and including February 27, 2026;
 - (b) increase the amount of the Administration Charge and the Directors' Charge;
 - (c) approve the KERP and the KERP Charge;
 - (d) grant a sealing order with respect to the KERP Summary;
 - (e) approve the Applicants' ability, with the consent of the Monitor, to make certain limited pre-filing payments, if necessary; and
 - (f) grant a regulatory stay over Ayurcann's licenses.

PART IV: LAW AND ANALYSIS

A. The Stay of Proceedings Should be Extended

33. The Stay of Proceedings is currently set to expire on February 9, 2026.²⁵ 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".²⁶ To grant such an extension, this

²⁴ *Sudman Affidavit*, *ibid* at para 45, *Motion Record* at Tab 2.

²⁵ *Sudman Affidavit*, *ibid* at para 14, *Motion Record* at Tab 2.

²⁶ [Companies' Creditors Arrangement Act, RSC 1985, c. C-36 s 11.02\(2\)](#) [CCAA]; [Laurentian University of Sudbury, 2021 ONSC 1098](#) at para 56.

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.²⁷

34. The jurisdiction vested in Courts to stay proceedings under section 11.02 “should be construed broadly to accomplish the legislative purposes of the *CCAA*”.²⁸ These purposes include, among others, enabling the continuation of the applicants’ business, avoiding the social and economic costs of a liquidation and facilitating a value-maximizing restructuring.²⁹ Accordingly, an extension of a stay of proceedings will be appropriate where it maintains the *status quo* and provides applicants with the breathing room to seek to restore solvency and arrange a “sale of assets in order to maximize recovery for stakeholders.”³⁰

35. Here, the proposed extension of the Stay of Proceedings is appropriate given that:

- (a) 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;
- (b) the Stay of Proceedings is necessary to prevent (i) enforcement action particularly 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

²⁷ *CCAA*, *ibid*, s 11.02(2) and s 11.02(3).

²⁸ *Canwest Global Communications Corp*, 2011 ONSC 2215 at para 24 [*Canwest*].

²⁹ *Canwest*, *ibid*; *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60 at para 15 [*Century Services*]; *Target Canada Co*, 2015 ONSC 303 at para 8 [*Target*]; *Re Timminco Limited*, 2012 ONSC 2515 at para 15 [*Timminco*].

³⁰ *Century Services*, *ibid* at para 14; *Target*, *ibid* at para 8; *Canwest*, *supra* note 28 at paras 24-25; *Timminco*, *ibid*; *Re Clover Leaf Holdings Company*, 2019 ONSC 6966 at para 19.

and through the *Cannabis Regulations*, SOR/2018-144 (the “**Cannabis Regulations**”), and (ii) disruption to the Applicants’ business operations;

- (c) the proposed extension of the Stay of Proceedings will enable the Applicants to finalize the terms of the Sale Process and the Stalking Horse Purchase Agreement;
- (d) provided that the proposed ARIO is granted, the Applicants are forecasted to have sufficient liquidity to support the Applicants’ ordinary course operations and the costs of these CCAA Proceedings throughout the Stay Period;
- (e) all secured creditors who are likely to be affected by the KERP Charge were provided notice thereof; and
- (f) 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.³¹

36. For the foregoing reasons the Applicants submit that the proposed extension of the Stay of Proceedings is in the best interests of the Applicants and their stakeholders, consistent with the purposes of the CCAA, and appropriate in the circumstances.

1. Non-Applicant Stay Parties

37. This Court’s jurisdiction to extend a stay of proceedings to non-applicants, including a non-applicant affiliate, is derived from section 11 and subsection 11.02(2) of the CCAA.³² In

³¹ *Sudman Affidavit*, *ibid* at paras 16-19, *Motion Record* at Tab 2.

³² *CCAA*, *supra* note 26, s 11, s 11.02(1); *BZAM Ltd. Plan of Arrangement*, 2024 ONSC 1645 at para 42 [BZAM]; *Re Chalice Brands Ltd.*, 2023 ONSC 3174 at para 35 [Chalice]; *Lydian International Limited (Re)*, 2019 ONSC 7473, at para 39; *MPX International Corporation*, 2022 ONSC 4348, at para 52 [MPX]; *Target*, *supra* note 29 at paras 44-50; *Laurentian University of Sudbury*, 2021 ONSC 659 at para 39 [Laurentian].

determining whether it is appropriate to exercise such jurisdiction, this Court has considered, among other things, whether:

- (a) the debtor company's non-applicant affiliate is integrated within the debtor company's business operations;
- (b) extending the stay to the non-applicant affiliate would help maintain stability and value during the CCAA process;
- (c) the claims against the debtor company's non-applicant affiliate are derivative of the debtor company's primary liabilities;
- (d) extending the stay of proceedings to the debtor company's non-applicant affiliate would further the debtor company's restructuring;
- (e) failing to extend the stay of proceedings to the debtor company's non-applicant affiliate would undermine the purposes of the stay or jeopardize the debtor company's restructuring;
- (f) failure of the restructuring would be more detrimental than extending the stay to the non-applicant affiliate; and
- (g) the proposed monitor supports extending the stay to the non-applicant affiliate.³³

38. Each of the Non-Applicant Stay Parties is an integrated member of the Ayurcann corporate group. As was the case for the Initial Order, any proceedings commenced against the Non-Applicant Stay Parties will act as a distraction to the Applicants' good faith restructuring

³³ [BZAM](#), *ibid* at paras [42-45](#); [Chalice](#), *ibid* at paras [37-39](#); [MPX](#), *ibid* at paras [52-54](#); [Laurentian](#), *ibid* at paras [39-42](#); [Re Earth Boring Co. Ltd.](#), 2025 ONSC 2422 at paras [34-35](#); [JTI-Macdonald Corp., Re](#), 2019 ONSC 1625 at para [15](#).

objectives, and would severely strain the Applicants' limited financial and human resources and potentially jeopardize the Company's restructuring efforts.³⁴

39. Accordingly, the Applicants submit that the Stay of Proceedings should continue to apply to the Non-Applicant Stay Parties.

B. Increase to Charges

40. 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 \$625,000.³⁵ These amounts were obtained in consideration of 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.

1. Administration Charge

41. The Applicants are seeking to increase the Administration Charge from \$250,000 to \$800,000.³⁶ The jurisdiction to grant a charge for professional fees is found in section 11.52 of the CCAA:

11.52(1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

...

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act;...

³⁴ *Sudman Affidavit, supra* note 1 at paras 20-22, *Motion Record* at Tab 2.

³⁵ *Sudman Affidavit, ibid* at paras 23 & 27, *Motion Record* at Tab 2.

³⁶ *Sudman Affidavit, ibid* at para 23, *Motion Record* at Tab 2.

42. Such a charge has been recognized as necessary to ensure the involvement of such professionals and achieve the best possible outcome for stakeholders.³⁷ In *Canwest Publishing*, Justice Pepall (as she then was) set out a non-exhaustive list of factors to be considered:

- (a) the size and complexity of the businesses being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the monitor.³⁸

43. In these circumstances, the Applicants' business operates in a highly regulated and complex industry, there is no unwarranted duplication of roles, and all secured creditors have been provided notice. The Applicants also submit that the quantum of the proposed charge is fair and reasonable and the Monitor is also supportive of the increase to the Administration Charge.³⁹

2. Directors' Charge

44. In the Initial Order, the Applicants obtained a Directors' Charge in the amount of \$625,000 to secure the indemnity of the Directors and Officers for liabilities they may incur during the

³⁷ [Walter Energy \(Re\)](#), 2016 BCSC 107, at para 41 [Walter]; [U.S. Steel Canada Inc](#), 2014 ONSC 6145 at para 22 [U.S. Steel].

³⁸ [Canwest Publishing Inc](#), 2010 ONSC 222 at para 54.

³⁹ *Sudman Affidavit*, *ibid* at para 26, *Motion Record* at Tab 2; First Report, *supra* note 19 at para 6.3.

CCAA Proceedings, which may include unpaid accrued wages and unpaid accrued vacation pay, together with unremitted excise, sales, goods and services, and harmonized sales taxes.⁴⁰

45. The amount of the Directors' Charge was limited to the Directors' and Officers' estimated exposure during the Initial Stay Period. The ARIO contemplates increasing the Directors' Charge to \$3,020,000, which is an estimation of the maximum potential liability of the Directors and Officers during these CCAA Proceedings, as set out in the First Report.⁴¹ The Directors and Officers will only be entitled to the benefit of the Directors' Charge to the extent insurance coverage is unavailable or insufficient.⁴²

46. Section 11.51 of the CCAA authorizes this Court to grant a charge and increases thereto, in favour of a debtor company's directors and officers in an amount it considers appropriate where the secured creditors likely to be affected by the charge are given notice thereof. In granting the Initial Order, this Court found that the requirements for the Directors' Charge were satisfied, and the amount sought was appropriate and reasonably necessary for continued business operations during the initial 10-day period.⁴³

47. The criteria which satisfied the Directors' Charge in the Initial Order remain the same; the Applicants are merely seeking an increase to an amount that reflects an estimation of the maximum potential liability the Directors and Officers could have during the entirety of the CCAA Proceedings.⁴⁴ The Monitor supports the increase of the Directors' Charge.⁴⁵

⁴⁰ *Sudman Affidavit, ibid* at para 27, *Motion Record* at Tab 2.

⁴¹ *Sudman Affidavit, ibid* at para 30, *Motion Record* at Tab 2.

⁴² *Sudman Affidavit, ibid* at para 29, *Motion Record* at Tab 2.

⁴³ *Sudman Affidavit, ibid* at Exhibit "C", Endorsement of the Honourable Justice Kimmel dated January 30, 2026 at paras 45-46, *Motion Record* at Tab 2.

⁴⁴ *Sudman Affidavit, ibid* at para 29, *Motion Record* at Tab 2.

⁴⁵ *Sudman Affidavit, ibid* at para 30, *Motion Record* at Tab 2; First Report, *supra* note 19 at para 6.8.

C. The Charges Should Rank in Priority to the Encumbrances

48. As part of the ARIIO, the Applicants request that the Charges take priority over all Encumbrances (as such term is defined in the proposed ARIIO), including over those that were not served with the notice of application for the Initial Order. The ability to seek this relief was expressly provided for in paragraph 32 of the Initial Order.⁴⁶ Any Persons with Encumbrances in favour of them have now been served with notice of the within motion and the proposed form of the ARIIO. As a result, the Applicants submit that such relief is appropriate and reasonable in the circumstances.

D. The KERP and the KERP Charge Should Be Granted

49. 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.⁴⁷ Courts have frequently exercised their discretion to approve KERPs where the retention of certain key employees has been deemed critical to a successful restructuring.⁴⁸

50. The factors considered by courts when granting KERPs and related charges have varied from case to case.⁴⁹ However, 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

⁴⁶ *Sudman Affidavit*, *ibid* at Exhibit "B", Initial Order of the Honourable Justice Kimmel dated January 30, 2026 at para 32, *Motion Record* at Tab 2.

⁴⁷ *CCAA*, *supra* note 26 at s 11; *Cinram International Inc., Re*, 2012 ONSC 3767 at 37 & para 91 of Schedule "C" [*Cinram*].

⁴⁸ *Timminco Limited (Re)*, 2012 ONSC 506 at para 72; *Walter*, *supra* note 37 at para 57; *In The Matter Of a Plan of Compromise or Arrangement of Mastermind GP Inc. (November 30, 2023) Toronto, ONSC [Commercial List] CV-23-00710259-00CL* (Endorsement) at para 24 [*Mastermind*].

⁴⁹ *Walter*, *supra* note 37 at para 58.

employment; (iv) whether the KERP was developed in consultation with the monitor or other professionals; and (v) whether the monitor supports the KERP.⁵⁰

51. In *Aralez Pharmaceuticals Inc. (Re)*, this Court enumerated three additional considerations courts will use 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.⁵¹

52. 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.

53. The following factors support the approval of the KERP and KERP Charge in this case:

- (a) the Key Employees possess essential management and leadership expertise necessary for the continued operation of the Applicants' business in the ordinary course. In certain instances, the Key Employees also hold security clearances as required under the Cannabis Regulations which are necessary for Ayurcann's cannabis licences to stay in good standing throughout the CCAA Proceedings;

⁵⁰ *Walter*, *supra* note 37 at paras 57-59; *U.S. Steel*, *supra* note 37 at paras 27-33; *Nordstrom Canada Retail, Inc.*, 2023 ONSC 1631 at para 9; *Tacora Resources Inc. (Re)*, 2023 ONSC 6126 at para 167.

⁵¹ *Aralez Pharmaceuticals Inc. (Re)*, 2018 ONSC 6980 at para 30; *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 1586 at para 69.

- (b) the KERP will provide stability to the Applicants' business by limiting disruptions to operations, preserving value for creditors and other stakeholders;
- (c) none of the Key Employees could be easily replaced internally and the process to find appropriately qualified replacements externally would be lengthy, difficult, and costly at a time when the Applicants should be focused on their operations and achieving a value-maximizing transaction pursuant to the Sale Process;
- (d) the Key Employees have extensive knowledge of, and familiarity with, the business;
- (e) without the KERP, the Key Employees would likely consider other employment options. The KERP payments will encourage the continued participation of the Key Employees throughout the CCAA Proceedings;
- (f) the amounts payable under the KERP are modest, but are expected to be meaningful to the Key Employees; and
- (g) the Monitor was consulted during the development of the KERP and is supportive of the KERP and the KERP Charge.⁵²

54. For the foregoing reasons, the Applicants submit that the KERP and the KERP Charge are fair and reasonable in the circumstances and will provide the necessary incentive for the Key Employees to continue to perform their critical roles throughout the restructuring process. Accordingly, it is appropriate for the Court to approve the KERP, the KERP Charge and the payments to the Key Employees contemplated thereby.

⁵² *Sudman Affidavit, ibid* at para 33, *Motion Record* at Tab 2.

E. Sealing

55. The *Courts of Justice Act*, R.S.O. 1990, c. C. 43 provides that a court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.⁵³ Pursuant to the ARIO, the Applicants seek to seal the KERP Summary.⁵⁴

56. In *Sherman Estate v Donovan*, the Supreme Court of Canada recast the test to be used by a court in considering whether a sealing order should be granted.⁵⁵ The Supreme Court held that the party asking a court to exercise its discretion to grant a sealing order must establish that: (i) court openness poses a serious risk to an important public interest; (ii) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (iii) as a matter of proportionality, the benefits of the order outweigh its negative effects.⁵⁶ All factors favour the sealing request in this case.

57. Courts have found that it is in the public interest to seal KERPs on the basis that KERPs involve “matters of a private, personal nature”, as is the case here.⁵⁷ Courts have also sealed KERPs that could reveal individually identifiable information and compensation information on the basis that the disclosure of this information would cause harm to the individuals and to the debtor company, and therefore the protection of that information is an important commercial interest that must be preserved.⁵⁸ The KERP Summary contains identifiable individual information and compensation information for each of the Key Employees, that if made public may cause harm

⁵³ [Courts of Justice Act, RSO 1990, c C 43, s 137\(2\)](#).

⁵⁴ *Sudman Affidavit*, *supra* note 1 at para 38, *Motion Record* at Tab 2.

⁵⁵ [Sherman Estate v Donovan, 2021 SCC 25](#), at para 38 [*Sherman Estate*].

⁵⁶ [Sherman Estate](#), *ibid* at para 38.

⁵⁷ [Danier Leather Inc. \(Re\)](#), 2016 ONSC 1044 at para 83;

⁵⁸ [Canwest Global Communications Corp. \(Re\)](#), 2009 CanLII 55114 (ON SC) at para 52 [*Canwest Global*].

to the Key Employees and disruption to the Company.⁵⁹ The employees have not consented to the disclosure of this private information.

58. 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.

59. Finally, the benefits of the sealing request outlined above outweigh any deleterious effects. Courts have sealed KERPs on the basis that the sealing was limited in scope to the KERP itself, the information contained therein would not assist stakeholders, and the disclosure of information would harm employees and breach their privacy interests.⁶⁰ 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.

60. The Applicants are of the view that the sealing request is therefore necessary and appropriate in the circumstances, and does not prejudice any of the Applicants' stakeholders.

⁵⁹ *Sudman Affidavit*, *supra* note 1 at para 38, *Motion Record* at Tab 2.

⁶⁰ *Mastermind*, *supra* note 48 at para [37](#).

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

61. Pursuant to the proposed ARIO, 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), with the Monitor considering, among other factors, whether:

- (a) the supplier or service provider is essential to the business and ongoing operations of the Applicants and the payment is required to ensure ongoing supply;
- (b) making such payment will preserve, protect or enhance the value of the Property or the business;
- (c) making such payment is required to address regulatory concerns; and
- (d) the supplier or service provider is required to continue to provide goods or services to the Applicants after the date of the Initial Order, including pursuant to the terms of the Initial Order.⁶¹

62. 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.⁶² This Court has frequently authorized an applicant to pay pre-filing suppliers where continued supply is integral to the business of the applicants⁶³, even in the case of non-critical suppliers.⁶⁴

⁶¹ *Sudman Affidavit*, supra note 1 at para 42, *Motion Record* at Tab 2.

⁶² *CCAA*, supra note 26, s 11; *BZAM*, supra note 32 at paras at paras 73-74; *McEwan Enterprises Inc.*, 2021 ONSC 6453 at para 32; *MPX*, supra note 32 at paras 69-70; *Target*, supra note 29 at paras 62-65.

⁶³ *Index Energy Mills Road Corporation (Re)*, 2017 ONSC 4944 at paras. 26-32; *Canwest Global*, supra note 58 at para 41; *Cinram*, supra note 47 at para 37 & 66-71 of Schedule "C".

⁶⁴ *Futura Loyalty Group Inc., Re.*, 2012 ONSC 6403, at para 10.

63. The Court's jurisdiction is not impaired by section 11.4 of the CCAA, which codifies the Court's authority to declare a person to be a critical supplier and to grant a charge on the debtor's property in favor of such critical supplier.

64. Courts will consider the following factors to determine if payment of pre-filing obligations should be authorized:

- (a) whether the goods and services were integral to the business of the applicants;
- (b) the debtors' need for the uninterrupted supply of the goods and services;
- (c) 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
- (d) the effect on the debtors' ongoing operations and ability to restructure if they were unable to make pre-filing payments to their critical suppliers.⁶⁵

65. The relief here is necessary to maintain ordinary course operations. The Company believes that the authority to make certain pre-filing payments pursuant to the proposed ARIO is appropriate in the circumstances, as it requires the continued supply of goods and services from its key vendors and service providers during these CCAA Proceedings.⁶⁶

66. 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.⁶⁷ As noted the Applicants will require the consent of the Monitor in connection with any payments on account of pre-filing obligations, and the Monitor is supportive of this relief.⁶⁸

⁶⁵ *Sudman Affidavit, supra* note 1 at para 42, *Motion Record* at Tab 2.

⁶⁶ *Sudman Affidavit, supra* note 1 at para 43, *Motion Record* at Tab 2.

⁶⁷ *Sudman Affidavit, supra* note 1 at para 43, *Motion Record* at Tab 2.

⁶⁸ *Sudman Affidavit, supra* note 1 at para 44, *Motion Record* at Tab 2.

G. The *Status Quo* of the Regulatory Licences Should be Preserved

67. CCAA courts have granted regulatory stays over licences where, without such stays, the applicable regulators were likely to suspend or cancel licences during the CCAA proceedings.⁶⁹

Courts have commented that to “permit the immediate termination of [a debtor company’s] licenses would not avoid social and economic losses but amplify them”.⁷⁰

68. Further, in *Just Energy Corp*, the Honourable J. McLeod stated:

“More plainly put, 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.”⁷¹

69. Canadian courts have previously stayed the CRA from seeking to enforce its rights through regulatory actions and estopped the CRA from rescinding or destroying products related to an excise licence for the duration of a cannabis company’s protection under an insolvency regime.⁷²

70. This Court has granted regulatory stays of cannabis licences in CCAA Proceedings.⁷³ The Regulatory Licences are among the Company’s most valuable assets and are necessary for the Applicants’ operations to continue in the ordinary course. Among other things, the Regulatory

⁶⁹ [Re Just Energy Corp.](#), 2021 ONSC 1793 at para 87; [Original Traders Energy Ltd. et al.](#), (30 January 2023) Toronto, ONSC [Commercial List] CV-23-00693758-00CL (Initial Order) at para 19; [BZAM Ltd. Plan of Arrangement \(February, 2024\) Toronto](#), ONSC [CV-24-00715773-00CL] (Initial Order) at para 44.

⁷⁰ *Just Energy*, *ibid* at para 87.

⁷¹ *Just Energy*, *supra* note 69 at para 79.

⁷² [Tantalus Labs Ltd. \(Re\)](#), 2023 BCSC 1450 at para 39; [In the Matter of a Plan or Compromise of Arrangement of Aleafia Health Inc.](#), (22 August 2023) Toronto, ONSC [Commercial List], CV-23-00703350-00CL (SISP Approval Order) at para 13. [*Aleafia*].

⁷³ [Aleafia](#), *ibid* at para 13; [In the Matter of a Plan of Compromise or Arrangement of Aleafia Health Inc.](#), (August 22, 2023) Toronto, ONSC [Commercial List], CV-23-00703350-00CL (Endorsement) at para 5; [BZAM](#), *supra* note 32 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 [*Indiva*].

Licences are required under the Cannabis Regulations to operate the Applicants' business (including Ayurcann's processing and extraction activities) and, as applicable, they preserve enterprise value by reducing excise-related costs.⁷⁴ This status quo relief is necessary 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.

PART V: RELIEF REQUESTED

71. The Applicants submit that the relief sought on the within motion is appropriate in the circumstances and consistent with prior orders of this Court,⁷⁵ and respectfully request that the proposed form of ARIO be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 6TH DAY OF FEBRUARY 2026

Bennett Jones LLP

Bennett Jones LLP

⁷⁴ *Sudman Affidavit*, *supra* note 1 at para 48, *Motion Record* at Tab 2.

⁷⁵ *In the Matter of a Plan of Compromise or Arrangement of Bzam Ltd. et al* (March 8, 2024) Toronto, ONSC [Commercial List] cv-24-00715773-00CL (Amended and Restated Initial Order); *Indiva, ibid*; *In the Matter of a Plan of Compromise or Arrangement of Figr Brands Inc. et al.* (January 29, 2021) Toronto, ONSC [Commercial List] CV-21-00655373-00CL (Amended and Restated Initial Order).

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. [Laurentian University of Sudbury, 2021 ONSC 1098](#)
2. [Canwest Global Communications Corp, 2011 ONSC 2215](#)
3. [Century Services Inc v Attorney General \(Canada\), 2010 SCC 60](#)
4. [Target Canada Co, 2015 ONSC 303](#)
5. [Re Timminco Limited, 2012 ONSC 2515](#)
6. [Re Clover Leaf Holdings Company, 2019 ONSC 6966](#)
7. [BZAM Ltd. Plan of Arrangement, 2024 ONSC 1645](#)
8. [Re Chalice Brands Ltd., 2023 ONSC 3174](#)
9. [Lydian International Limited \(Re\), 2019 ONSC 7473](#)
10. [MPX International Corporation, 2022 ONSC 4348](#)
11. [Laurentian University of Sudbury, 2021 ONSC 659](#)
12. [Re Earth Boring Co. Ltd., 2025 ONSC 2422](#)
13. [JTI-Macdonald Corp., Re, 2019 ONSC 1625](#)
14. [Walter Energy \(Re\), 2016 BCSC 107](#)
15. [U.S. Steel Canada Inc, 2014 ONSC 6145](#)
16. [Canwest Publishing Inc, 2010 ONSC 222](#)
17. [Cinram International Inc., Re, 2012 ONSC 3767](#)
18. [Timminco Limited \(Re\), 2012 ONSC 506](#)
19. [Nordstrom Canada Retail, Inc, 2023 ONSC 1631](#)
20. [Tacora Resources Inc. \(Re\), 2023 ONSC 6126](#)
21. [Aralez Pharmaceuticals Inc. \(Re\), 2018 ONSC 6980](#)
22. [Mountain Equipment Co-Operative \(Re\), 2020 BCSC 1586](#)
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24. [Danier Leather Inc. \(Re\), 2016 ONSC 1044](#)
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27. [McEwan Enterprises Inc., 2021 ONSC 6453](#)
28. [Futura Loyalty Group Inc., Re., 2012 ONSC 6403](#)
29. [Re Just Energy Corp., 2021 ONSC 1793](#)
30. [Tantalus Labs Ltd. \(Re\), 2023 BCSC 1450](#)

Endorsements and Orders

1. [Plan Of Compromise Or Arrangement Of Mastermind GP Inc. \(November 30, 2023\), Toronto, ONSC \[Commercial List\] CV-23-00710259-00CL \(Endorsement\)](#)
2. [Original Traders Energy Ltd. et al., \(30 January 2023\) Toronto, ONSC \[Commercial List\] CV-23-00693758-00CL \(Initial Order\)](#)
3. [BZAM Ltd. Plan of Arrangement \(February, 2024\) Toronto, ONSC \[CV-24-00715773-00CL\] \(Initial Order\)](#)
4. [In the Matter of a Plan or Compromise of Arrangement of Aleafia Health Inc., \(August 22, 2023\) Toronto, ONSC \[Commercial List\], CV-23-00703350-00CL \(SISP Approval Order\)](#)

5. [*In the Matter of a Plan of Compromise or Arrangement of Aleafia Health Inc., \(August 22, 2023\) Toronto, ONSC \[Commercial List\], CV-23-00703350-00CL \(Endorsement\)*](#)
6. [*In the Matter of a Plan of Compromise or Arrangement of Bzam Ltd. et al \(March 8, 2024\) Toronto, ONSC \[Commercial List\] cv-24-00715773-00CL \(Amended and Restated Initial Order\)*](#)
7. [*In the Matter of a Plan of Compromise or Arrangement of Figr Brands Inc. et al. \(January 29, 2021\) Toronto, ONSC \[Commercial List\] CV-21-00655373-00CL \(Amended and Restated Initial Order\)*](#)

I certify that I am satisfied as to the authenticity of every authority.

Shawn Kirkman

Signature

SCHEDULE B – STATUTES AND REGULATIONS RELIED ON

Companies' Creditors Arrangement Act, R.S.C. 1985, c C-36

Section 11

General power of court

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.

Section 11.001

Relief reasonably necessary

An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial 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 period.

Section 11.02

Stays, etc. – initial application

(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

(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

(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.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

2005, c. 47, s. 128, 2007, c. 36, s. 62(F)2019, c. 29, s. 137.

Section 11.4

Critical supplier

(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, the court may make an order declaring a person to be a critical supplier to the company if the court is satisfied that the person is a supplier of goods or services to the company and that the goods or services that are supplied are critical to the company's continued operation.

Obligation to supply

(2) If the court declares a person to be a critical supplier, the court may make an order requiring the person to supply any goods or services specified by the court to the company on any terms and conditions that are consistent with the supply relationship or that the court considers appropriate.

Security or charge in favour of critical supplier

(3) If the court makes an order under subsection (2), the court shall, in the order, declare that all or part of the property of the company is subject to a security or charge in favour of the person declared to be a critical supplier, in an amount equal to the value of the goods or services supplied under the terms of the order.

Priority

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

Section 11.51

Security or charge relating to director's indemnification

(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, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority

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

Restriction — indemnification insurance

(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

(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.

Section 11.52

Court may order security or charge to cover certain costs

(1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

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

Courts of Justice Act, RSO 1990, c C.43

Section 137

Documents public

(1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Court lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see.

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.

Court File No.: CL-26-00000039-0000

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

Proceedings Commenced in Toronto

FACTUM OF THE APPLICANTS

BENNETT JONES LLP

One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Sean Zweig (LSO# 573071)

Email: ZweigS@bennettjones.com

Jesse Mighton (LSO# 62291J)

Email: MightonJ@bennettjones.com

Jamie Ernst (LSO# 88724A)

Email: ErnstJ@bennettjones.com

Shawn Kirkman (LSO# 92214U)

Email: KirkmanS@bennettjones.com

Lawyers for the Applicants