

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
(CCAA Application)**

January 29, 2026

BENNETT JONES LLP
3400 One First Canadian Place
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

FACTUM OF THE APPLICANTS

PART I: INTRODUCTION

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**”).
2. Ayurcann Parent is a reporting issuer in the provinces of Ontario, British Columbia and Alberta, listed on the Canadian National Stock Exchange (the “**CSE**”) under the symbol “AYUR”, and cross-listed on the Frankfurt Stock Exchange (the “**FRA**”) under the symbol “3ZQ0”.¹ Ayurcann, a wholly-owned subsidiary of Ayurcann Parent, is a licensed producer of cannabis serving recreational markets across Canada.
3. Absent the relief sought pursuant to the Initial Order, the Applicants can no longer satisfy their obligations as they become due and require a broad stay of proceedings (the “**Stay of Proceedings**”) and related relief to prevent the commencement or continuation of enforcement actions against their property, including by the Canada Revenue Agency (the “**CRA**”). Together, these CCAA proceedings (the “**CCAA Proceedings**”) and the relief sought in the proposed Initial Order will provide the breathing room and stability required to continue going concern operations while the Applicants consider potential restructuring alternatives, including a Court-supervised sale process, with a view to maximizing the value of its assets for the benefit of its creditors and other stakeholders.

¹ Affidavit of Igal Sudman sworn on January 29, 2026 at para 7, 24 [*Sudman Affidavit*], Application Record dated January 29, 2026 at Tab 2 [*Application Record*].

4. 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 the CCAA Proceedings (including an expanded Amended and Restated Initial Order) at a hearing scheduled for February 9, 2026.

PART II: FACTS

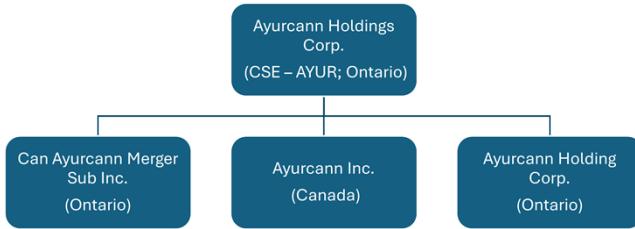
5. The facts underlying this Application are more fully set out in the affidavit of Igal Sudman, sworn January 29, 2026 (the “**Sudman Affidavit**”).² All capitalized terms used but not defined herein have the meanings ascribed to them in the Sudman Affidavit.

A. The Applicants’ Corporate Structure

6. Each of the Applicants is a Canadian company that maintains its registered office at 1080 Brock Road, Pickering, Ontario L1W 3H3. The Applicants’ corporate group also includes two other entities, Ayurcann Holding Corp. and Can Ayurcann Merger Sub Inc. (collectively, the “**Non-Applicant Stay Parties**” and together with the Applicants, the “**Ayurcann Entities**”). A copy of the Applicants’ corporate structure is reproduced below for ease of reference.³

² *Ibid*, Application Record at Tab 2.

³ *Ibid*, at paras 19-21, 30, Application Record at Tab 2.



7. Ayurcann Parent is incorporated pursuant to the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended (the “**OBCA**”) and is a reporting issuer in the provinces of Ontario, British Columbia and Alberta. It is listed under the symbols “AYUR” on the CSE and “3ZQ0” on the FRA. As of November 28, 2025, Ayurcann Parent had 194,703,863 Common Shares, 700,000 stock options, and no warrants or restricted share units outstanding.⁴

8. Ayurcann is incorporated under the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44, as amended (the “**CBCA**”), pursuant to a Certificate of Amalgamation dated March 26, 2021. Most of the Company’s business operations are conducted through Ayurcann, including all cannabis extraction, manufacturing, processing, sales and other commercial and regulatory activities. 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

⁴ *Ibid*, at paras 22-24, Application Record at Tab 2.

accordance with the *Excise Act*, 2001, SC 2002, c 22 (the “**Excise Act**”) and leases the Pickering Facility (as defined below), where all production activities are conducted, as tenant.⁵

9. The Non-Applicant Stay Parties were both incorporated under the OBCA to facilitate a potential business combination transaction that was not completed. As such, the Non-Applicant Stay Parties are shell companies with no known material assets, liabilities or active business operations, but are integrated parts of the Applicants’ corporate group, as wholly-owned subsidiaries of Ayurcann Parent.⁶

B. The Applicants’ Business

10. The Company, through Ayurcann, is a licensed cannabis producer and extraction company that specializes in the formulation, packaging, distribution, and product development of high-quality cannabis products in the Canadian market. It focuses exclusively on the development and commercialization of its own cannabis brands, with a strong emphasis on high-growth processed and derivative products such as vapes, pre-rolls and extracts.⁷

11. 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 across Ontario, New Brunswick, Manitoba, Saskatchewan, Alberta, British Columbia, Newfoundland and Labrador, and Yukon. Its core proprietary brands include Fuego, Xplor, and Happy & Stoned.⁸

12. Its business and administrative operations are conducted primarily out of the Company’s fully licensed 13,585 square foot extraction and manufacturing facility located at 1080 Brock

⁵ *Ibid*, at paras 26-28, Application Record at Tab 2.

⁶ *Ibid*, at paras 30, 88, Application Record at Tab 2.

⁷ *Ibid*, at para 31, Application Record at Tab 2.

⁸ *Ibid*, at para 32, Application Record at Tab 2.

Road, Pickering, Ontario L1W 3H3 (the “**Pickering Facility**”).⁹ The Company, through Ayurcann, leases the Pickering Facility pursuant to three lease agreements between Com '53 Ltd., as landlord, and Ayurcann, as tenant. Ayurcann is current with its rent obligations under these leases. The Pickering Facility serves as a manufacturing, processing and storage facility for the Company’s cannabis extraction, formulation and manufacturing operations, as well as an office and workspace for the Company’s administrative functions. The Company’s cannabis operations at the Pickering Facility are conducted by Ayurcann in accordance with its various licenses with Health Canada and the CRA.¹⁰

C. Assets and Liabilities

13. As at December 31, 2025, the Company had total consolidated assets with an estimated book value of approximately \$11,041,051¹¹ and total consolidated liabilities with an estimated book value owing of approximately \$15,479,863.¹²

D. Secured Obligations

14. The Company’s assets include two vehicles financed by The Bank of Nova Scotia. The Bank of Nova Scotia has registered its security interest in the aforementioned vehicles pursuant to the *Personal Property Security Act*, R.S.O. 1990, c. P.10. Both vehicles are operated by the Company’s co-founders (who are co-borrowers under their respective financing agreements).¹³

⁹ *Ibid*, at para 33, Application Record at Tab 2.

¹⁰ *Ibid*, at paras 33-38, Application Record at Tab 2.

¹¹ *Ibid*, at para 65, Application Record at Tab 2.

¹² *Ibid*, at para 66, Application Record at Tab 2.

¹³ *Ibid*, at para 68, Exhibits “F” & “G”, Application Record at Tab 2.

15. The Company also has entered into banking agreements with Alterna Savings & Credit Union Limited (“**Alterna**”) where all of the Company’s operating and corporate accounts are maintained. Alterna has two security interests registered against certain of the Applicants’ bank accounts, with each registration secured up to a maximum amount of \$250,000.¹⁴

E. Unsecured Obligations

1. Tax and Excise Duty

16. Cannabis producers in Canada are required to post security pursuant to the Excise Act. The security provides the CRA with financial assurance for any outstanding excise duty payable. The security can be posted in the form of a surety bond or a deposit with the CRA.¹⁵

17. Ayurcann has a surety bond in place for \$500,000 with Amynta Surety Solutions.¹⁶

18. As of January 26, 2026, Ayurcann owed the CRA approximately \$10,556,517, comprised of unpaid excise taxes, statutory remittances, interest and penalties (collectively, the “**Tax Arrears**”).¹⁷

19. Since February 25, 2025, the Company had been operating in good standing under a verbal arrangement with the CRA, where it was required to pay approximately \$165,000 per month in respect of the Tax Arrears.¹⁸

¹⁴ *Ibid*, at para 70, Exhibits “F” & “G”, Application Record at Tab 2.

¹⁵ *Ibid*, at para 72, Application Record at Tab 2.

¹⁶ *Ibid*, at para 73, Application Record at Tab 2.

¹⁷ This amount includes the Company’s excise tax liabilities for the months of December 2025 and January 2026, which have accrued but will not become due until January 31, 2026 and February 28, 2026, respectively. *Ibid*, at para 74, Application Record at Tab 2.

¹⁸ *Ibid*, at para 76, Exhibit “H”, Application Record at Tab 2.

20. Then, on December 5, 2025, the CRA sent a letter imposing a new payment plan in respect of the Tax Arrears (the “**CRA Correspondence**”). Under the new arrangement, monthly “catch-up” payments in the amount of \$1,055,830.91 for six months (the “**CRA Payment Plan**”), would be required to be paid in addition to the Company’s ongoing monthly excise obligations of approximately \$1,930,075 – a total monthly amount of \$2,985,905 (meaning the new unilaterally imposed payment plan created an additional monthly expense of approximately \$890,830.91).¹⁹

21. Until receipt of the CRA Correspondence and the unilateral imposition of revised payment terms, the Company had been in compliance with the agreed CRA payment plan, and is not aware of any circumstances that caused the CRA to change this arrangement on the terms set out in the CRA Correspondence.²⁰

2. Health Canada

22. As of January 23, 2026, the Company owed Health Canada approximately \$285,649, which largely relates to unpaid regulatory and licensing fees. Amounts owing to Health Canada are subject to a consensual payment plan, pursuant to which the Company is making agreed regular monthly payments of approximately \$47,000. The Company intends to continue making those payments during the CCAA Proceedings.²¹

3. Third Party Suppliers

23. Given the nature of its business, the Company relies on a number of vendors and third-party service providers and, as such, is party to a number of agreements for the provision of certain

¹⁹ *Ibid*, at para 75-76, Exhibit “H”, Application Record at Tab 2.

²⁰ *Ibid*, at para 76, Application Record at Tab 2.

²¹ *Ibid*, at para 80, Application Record at Tab 2.

essential services including, among other things, insurance, phone and internet, security, utilities, professional costs and other services provided in connection with operating a business in the cannabis industry. The Company has accrued a significant amount of invoices owing to third party suppliers.²²

24. As of January 23, 2026, approximately \$1,613,566 was owing to third-party suppliers, excluding certain insurance and licensing fees. The Applicants are not aware of any enforcement actions commenced against the Company and there have been no instances of creditor forbearance.²³

4. Employee Liabilities

25. The Company is current with respect to its payroll obligations and source deduction remittances. Notwithstanding the foregoing, an amount of approximately \$30,000 relating to the source deductions for the 2024 taxation year is currently under dispute with the CRA.²⁴

F. Proposed Monitor

26. It is proposed that Alvarez & Marsal Canada Inc. (“**A&M**”) will act as Monitor in these CCAA Proceedings (in such capacity, the “**Proposed Monitor**”).²⁵

PART III: ISSUES

²² *Ibid*, at para 81, Application Record at Tab 2.

²³ *Ibid*, at para 82, Application Record at Tab 2.

²⁴ *Ibid*, at para 83, Application Record at Tab 2.

²⁵ *Ibid*, at para 94, Exhibit “I”, Application Record at Tab 2.

27. The issue to be considered on this application is whether to grant the proposed form of the Initial Order. The issues addressed in this factum are whether:

- (a) each of the Applicants is a “debtor company” to which the CCAA applies;
- (b) Ontario is the appropriate venue for these CCAA Proceedings;
- (c) A&M should be appointed as Monitor;
- (d) the Stay of Proceedings should be granted in favour of the Applicants;
- (e) the Stay of Proceedings should apply to set-off;
- (f) the Stay of Proceedings should be extended to the Non-Applicant Stay Parties;
- (g) the Administration Charge (as defined below) should be granted;
- (h) the Directors’ Charge (as defined below) should be granted; and
- (i) Ayurcann Parent should be relieved from its securities reporting and filing obligations.

A. The Applicants are “Debtor Companies” to which the CCAA Applies

28. The CCAA applies in respect of a “debtor company or affiliated debtor companies” whose liabilities exceed \$5 million.²⁶ The term “debtor company” is defined as “any company that: (a) is bankrupt or insolvent [...]”, and the term “company” is defined as “any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province [...].”²⁷ The CCAA also specifies companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company.²⁸ A company is a subsidiary of another under the CCAA “[...] if (a) it is controlled by: (i) that other company, (ii) that other

²⁶ [Companies’ Creditors Arrangement Act](#), RSC 1985, c. C-36, s [3\(1\)](#) [CCAA].

²⁷ *Ibid*, at s [2\(1\)](#).

²⁸ *Ibid*, at s [3\(2\)\(a\)](#).

company and one or more companies each of which is controlled by that other company, or (iii) two or more companies each of which is controlled by that other company".²⁹

29. Each Applicant is a "company" within the meaning of the CCAA as each was incorporated under either the OBCA or the CBCA.³⁰ Ayurcann is a subsidiary of Ayurcann Parent as defined in the CCAA.³¹ Accordingly, the Applicants are affiliated companies and fulfill the criteria of having liabilities that are in excess of \$5 million.

30. Each of the Applicants is a "debtor company" as defined in the CCAA. The insolvency of a debtor company is assessed as of the time of filing the CCAA application.³² Courts have taken guidance from the definition of "insolvent person" in subsection 2(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 2 (the "BIA") which, in relevant part, provides that an "insolvent person" is a person:

- (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.³³

31. Courts have also recognized the expanded definition of insolvency provided in *Re Stelco*, in which the Court held that a company is also insolvent for the purposes of the CCAA "if it is

²⁹ *Ibid*, at s 3(4)(a).

³⁰ *Sudman Affidavit*, *supra* note 1 at paras 23, 26, Application Record at Tab 2.

³¹ *Ibid*, at para 19, Application Record at Tab 2.

³² [*Re Stelco Inc \(2004\), 48 C.B.R. \(4th\) 299 \(Ont. Sup. Ct. J.\) \[Commercial List\]*](#) at para 4 [*Stelco*].

³³ [*Bankruptcy and Insolvency Act*](#), RSC 1985, c. B-3, s 2 [BIA].

reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonably required to implement a restructuring".³⁴

32. 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.³⁵ The Applicants are also experiencing an acute liquidity crisis and are not able to meet their obligations as they become due.³⁶ The Applicants already have significant amounts owing to the CRA (including an additional payment of approximately \$2,582,868 due on January 31, 2026)³⁷, and are unable to meet their obligations as they come due.

33. As such, the Applicants are affiliated debtor companies to which the CCAA applies.

B. Ontario is the Appropriate Venue for these CCAA Proceedings

34. An application under the CCAA may be "made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated".³⁸ Given that the Company's head office is located in Ontario, both the Applicants' registered offices are located in Ontario and all of the Company's production, processing, distribution and packaging takes place in Ontario, the appropriate venue for these proceedings is Ontario and this court has jurisdiction to hear this application.³⁹

³⁴ *Stelco*, *supra* note 32 at paras 26, 40.

³⁵ *Sudman Affidavit*, *supra* note 1 at paras 65-66, Application Record at Tab 2.

³⁶ *Ibid*, at paras 10-11, 16, 84, Application Record at Tab 2.

³⁷ *Ibid*, at paras 66, 85, Application Record at Tab 2.

³⁸ *CCAA*, *supra* note 26, s 9(1); *Target Canada Co. 2015 ONSC 303*, at para 29 [Target]; *BZAM Ltd. Plan of Arrangement, 2024 ONSC 1645*, at para 36 [BZAM].

³⁹ *Sudman Affidavit*, *supra* note 1 at para 9, Application Record at Tab 2.

C. A&M Should be Appointed as Monitor

35. Section 11.7 of the CCAA provides that when an order is made on the initial application the Court shall at the same time appoint a person to monitor the business and financial affairs of the company, and that the person so appointed must be a trustee within the meaning of section 2 of the BIA.⁴⁰

36. A&M has consented to act as the Court-appointed Monitor of the Applicants, subject to Court approval. A&M is a trustee within the meaning of section 2 of the BIA, and is not subject to any of the restrictions as to who may be appointed as Monitor set out in section 11.7(2) of the CCAA.⁴¹

37. A&M has extensive experience acting in similar mandates in other CCAA proceedings.⁴²

D. The Stay of Proceedings Should be Granted in Favour of the Applicants

38. Section 11.02 of the CCAA provides the Court with the power to impose a stay of proceedings if it is satisfied that circumstances exist that make the order appropriate.⁴³ A stay of proceedings is appropriate to provide the debtor with breathing room while it seeks to restore solvency and maximize recoveries.⁴⁴ Absent exceptional circumstances, the relief sought shall be limited to relief reasonably necessary for ordinary course continued operations and, whenever

⁴⁰ [CCAA](#), *supra* note 26, s 11.7; [BIA](#), *supra* note 33, s 2.

⁴¹ *Sudman Affidavit*, *supra* note 1 at para 94, Application Record at Tab 2.

⁴² [In the Matter of the Companies' Creditors Arrangement Act and in the Matter of a Plan of Compromise or Arrangement of Delta 9 Cannabis Inc. et al.](#), CCAA Initial Order dated July 15, 2024, Court File No. 2401-09688 (Court of King's Bench of Alberta) at paras 23-24 [*Delta 9*]; [In the Matter of the Companies' Creditors Arrangement Act and in the Matter of a Plan of Compromise or Arrangement of 2675970 Ontario Inc. et al.](#), Initial Order dated August 28, 2024, Court File No. CV-24-00726584-00CL (Ontario Superior Court of Justice - Commercial List) at paras 24-25.

⁴³ [CCAA](#), *supra* note 26, s 11.02.

⁴⁴ [Century Services Inc v Attorney General \(Canada\)](#), 2010 SCC 60 at para 14; [Target](#), *supra* note 38 at para 8.

possible, the *status quo* should be maintained during the initial 10-day period.⁴⁵ This 10-day period “allows for a stabilization of operations and a negotiating window”.⁴⁶ The proposed Initial Order is in accordance with the above requirement.

39. As a result of the unilaterally imposed CRA Payment Plan, the Applicants are required to pay approximately \$1.056 million per month in respect of “catch-up payments” (opposed to their former mutually agreed-to payment plan which required monthly payments of \$165,000).⁴⁷ The next “catch-up payment” is due January 31, 2026.⁴⁸ 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.

40. 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/2018-144.⁴⁹ It would be significantly detrimental to the Applicants’ business and ongoing operations, and would impair enterprise value to the detriment of creditors, if proceedings were commenced or continued, or rights and remedies were executed against them or the Property. The requested Stay of Proceedings will provide the Applicants with breathing space to develop and oversee their restructuring objectives (including a potential Court-approved sale process), while continuing business

⁴⁵ [CCAA](#), *supra* note 26, s [11.001](#); [Lydian International Limited \(Re\)](#), 2019 ONSC 7473 at para [26](#) [*Lydian*].

⁴⁶ [Lydian](#), *ibid* at para [30](#).

⁴⁷ *Sudman Affidavit*, *supra* note 1 at paras 11, 75-76, Application Record at Tab 2.

⁴⁸ *Ibid* at para 85, Application Record at Tab 2.

⁴⁹ *Ibid* at para 85, Application Record at Tab 2.

operations in the ordinary course and in compliance with the cannabis regulatory regime to preserve and maintain enterprise value.

41. The Applicants submit that granting the Stay of Proceedings is in the best interests of the Applicants and their stakeholders, meets the statutory requirements, and is appropriate in the circumstances.

E. The Stay Should Apply to Set-Off

42. The Initial Order includes a provision prohibiting any Person from setting off pre-filing obligations against post-filing obligations.

43. While section 21 of the CCAA contemplates the possibility of set-off within the CCAA, it does not explicitly address pre-post set-off. However, this issue was specifically addressed by the Supreme Court of Canada in *Montréal (City) v Deloitte Restructuring Inc.*, which confirmed that sections 11 and 11.02 of the CCAA authorize the Court to stay pre-post set-off.⁵⁰

F. The Stay of Proceedings Should be Extended to the Non-Applicant Stay Parties

44. 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(1) of the CCAA.⁵¹ In determining whether it is appropriate to exercise such jurisdiction, this Court has considered, among other things, whether:

⁵⁰ *Montréal (City) v Deloitte Restructuring Inc.*, 2021 SCC 53 at para 62.

⁵¹ CCAA, *supra* note 26, s 11, s 11.02(1); *BZAM*, *supra* note 38 at para 42; *Re Chalice Brands Ltd.*, 2023 ONSC 3174 at para 35 [Chalice]; *Lydian*, *supra* note 45 at para 39; *MPX International Corporation*, 2022 ONSC 4348, at para 52 [MPX]; *Target*, *supra* note 38 at paras 44-50; *Laurentian University of Sudbury*, 2021 ONSC 659 at para 39 [Laurentian].

- (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.⁵²

⁵² *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.

45. The Non-Applicant Stay Parties are integrated members of the Company's corporate group:

- (a) they are directly and wholly-owned subsidiaries of Ayurcann Parent (and accordingly, their shares will be assets that will fall under the purview, and may be acquired, as part of a potential sale process);
- (b) their registered office is located at the Pickering Facility; and
- (c) they share the same directors and officers as Ayurcann.⁵³

46. Any proceeding commenced against the Non-Applicant Stay Parties will distract from the Applicants' good faith restructuring efforts and would undermine the purposes of the Stay of Proceedings. Among other things, having to defend claims against the Non-Applicant Stay Parties would: (i) severely strain the Applicants' limited financial and human resources, (ii) divert the attention of the Applicants' directors and officers away from the CCAA Proceedings, and (iii) jeopardize the Applicants' restructuring efforts, including the timely administration of any sale process.⁵⁴

47. The Proposed Monitor also believes that the proposed Stay of Proceedings, including in favour of the Non-Applicant Stay Parties, is appropriate in the circumstances.⁵⁵

G. The Administration Charge Should be Granted

⁵³ *Sudman Affidavit*, *supra* note 1 at para 90, Application Record at Tab 2.

⁵⁴ *Ibid*, at paras 91-92, Application Record at Tab 2.

⁵⁵ *Ibid*, at para 93, Application Record at Tab 2; Monitor's Pre-Filing Report dated January 29, 2026 at para 6.2 [*Pre-Filing Report*].

48. The Applicants are seeking an Administration Charge in the initial amount of \$250,000 (the “**Administration Charge**”) to secure the professional fees and disbursements of the Proposed Monitor, along with its counsel and the Applicants’ counsel, incurred prior to, on, or subsequent to the date of the Initial Order, at their standard rates and charges.⁵⁶

49. Section 11.52 of the CCAA expressly provides the Court with the jurisdiction to grant an administration charge. The list of non-exhaustive factors to be considered when granting an administration charge includes: (i) the size and complexity of the business being restructured; (ii) the proposed role of the beneficiaries of the charge; (iii) whether there is unwarranted duplication of roles; (iv) whether the quantum of the proposed charge appears to be fair and reasonable; (v) the position of the secured creditors likely to be affected by the charge; and (vi) the position of the monitor.⁵⁷

50. The Applicants submit that it is appropriate for this Court to exercise its jurisdiction and grant the Administration Charge, given that:

- (a) the Applicants’ business is highly regulated and subject to numerous statutory and regulatory restrictions and requirements;
- (b) the beneficiaries of the Administration Charge have the requisite knowledge with respect to those statutory and regulatory restrictions and have, and will continue to, contribute to these CCAA Proceedings and assist the Applicants with their business and their restructuring;
- (c) each of the proposed beneficiaries of the Administration Charge is performing distinct functions and there is no duplication of roles;

⁵⁶ *Ibid*, at para 96, Application Record at Tab 2.

⁵⁷ CCAA, *supra* note 26, s 11.52; Canwest Publishing Inc, 2010 ONSC 222 at para 54.

- (d) the quantum of the proposed Administration Charge was calculated with the assistance of the Proposed Monitor and is fair and reasonable; and
- (e) the Proposed Monitor supports the Administration Charge and is of the view that the amount of the Administration Charge for the initial 10-day period is reasonable and appropriate in the circumstances.⁵⁸

H. The Directors' Charge Should be Granted

51. The Applicants are seeking a Directors' Charge in the initial amount of \$625,000 (the "Directors' Charge") to secure the indemnity of their directors and officers for liabilities they may incur during the CCAA Proceedings.⁵⁹

52. Section 11.51 of the CCAA affords the Court the jurisdiction to grant the Directors' Charge. This Court has held that 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 during the restructuring.⁶⁰ A court may not make the order if "the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost", and the court shall make an order declaring 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 willful misconduct".⁶¹

53. The Applicants submit it is appropriate in these circumstances for this Court to exercise its jurisdiction and grant the Directors' Charge, given that:

⁵⁸ *Sudman Affidavit*, *supra* note 1 at paras 44-47, 97-98, Application Record at Tab 2; *Pre-Filing Report*, *supra* note 55 at para 9.4.

⁵⁹ *Ibid*, at para 100, Application Record at Tab 2; *Pre-Filing Report*, *ibid* at para 9.5.

⁶⁰ [*Canwest Global Communications Corp. \(Re\)*, 2009 CanLII 55114 \(ON SC\)](#) at paras [46-48](#) [*Canwest Global*].

⁶¹ [CCAA](#), *supra* note 26 at s [11.51\(3\)-\(4\)](#).

- (a) the directors and officers have indicated their continued service and involvement in these CCAA Proceedings is conditional upon the granting of the Directors' Charge;
- (b) the Directors' Charge applies only to the extent that the directors and officers do not have coverage under another directors and officers' insurance policy;
- (c) the Applicants require the active and committed involvement of certain directors and officers in order to continue business operations in the ordinary course;
- (d) the amount of the Directors' Charge was calculated with the assistance of the Proposed Monitor, is reasonable in the circumstances and is limited to the directors' and officers' potential exposure during the initial 10-day period; and
- (e) the Proposed Monitor is supportive of the Directors' Charge and is of the view that it is required and reasonable in the circumstances.⁶²

I. Ayurcann Parent Should be Authorized to Incur No Further Costs in Connection with its Securities Filing Obligations

54. Pursuant to the Initial Order, the Applicants are seeking relief to dispense with certain securities filing requirements. Specifically, 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.⁶³

⁶² *Sudman Affidavit*, *supra* note 1 at paras 100-103, Application Record at Tab 2; *Pre-Filing Report*, *supra* note 55 at para 9.9.

⁶³ *Ibid* at para 107, Application Record at Tab 2.

55. The Initial Order also provides that none of the directors and officers, the Applicants, or the Monitor (and their respective directors, officers, employees and representatives (as applicable)), shall have any personal liability for any failure by Ayurcann Parent to make Securities Filings, and that Ayurcann Parent is relieved from any obligation to call and hold an annual meeting of its shareholders until further Order of this Court.⁶⁴

56. Similar relief has been granted for reporting issuers in recent CCAA proceedings.⁶⁵

57. The Applicants believe that incurring the time and costs associated with the Securities Filings, and holding an annual meeting of shareholders would detract from their successful restructuring. Further, stakeholders will not be prejudiced given that detailed financial and other information on the Applicants will continue to be publicly available through materials filed in these CCAA Proceedings.⁶⁶

58. Finally, 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

⁶⁴ *Ibid*, at paras 107, Application Record at Tab 2.

⁶⁵ *In the Matter of the Companies' Creditors Arrangement Act and in the Matter of a Plan of Compromise or Arrangement of BZAM Ltd. et al.*, initial order issued February 28, 2024, Court File No. CV-24-00715773-00CL (Ontario Superior Court of Justice - Commercial List) at paras 42-43; *In the Matter of the Companies' Creditors Arrangement Act and in the Matter of a Plan of Compromise or Arrangement of Aleafia Health Inc. et al.*, amended and restated initial order issued August 4, 2023, Court File No. CV-23-00703350-00CL (Ontario Superior Court of Justice - Commercial List) at paras 45-46; *In the Matter of the Companies' Creditors Arrangement Act and in the Matter of a Plan of Compromise or Arrangement of MPX International Corporation et al.*, amended and restated initial order issued July 25, 2022, Court File No. CV-22-00684542-00CL (Ontario Superior Court of Justice - Commercial List) at para 46-47; *In the Matter of the Companies' Creditors Arrangement Act and in the Matter of a Plan of Compromise or Arrangement of CannTrust Holdings Inc. et al. Re*, initial order issued March 31, 2021 Court File No. CV-20-00638930 (Ontario Superior Court of Justice - Commercial List) at paras 46-47; *In the Matter of the Companies' Creditors Arrangement Act and in the Matter of a Plan of Compromise or Arrangement of Pure Global Cannabis, Inc. et al. Re*, initial order issued March 19, 2020 Court File No. CV-20-00638503-00CL (Ontario Superior Court of Justice - Commercial List) at para 49; *In the Matter of the Companies' Creditors Arrangement Act and in the Matter of a Plan of Compromise or Arrangement of Group Colabor Inc. et al. Initial Order dated January 8, 2026*, Court File No. 500-11-066652-260 (Superior Court of Quebec - Commercial Division) at paras 69-70; *Delta 9*, supra note 43 at paras 38-39.

⁶⁶ Sudman Affidavit, supra note 1 at para 108-109, Application Record at Tab 2.

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. Accordingly, the Applicants believe that this relief is necessary and appropriate in the circumstances.

PART IV: RELIEF REQUESTED

59. The Applicants submit that they meet all of the qualifications required to obtain the requested relief and respectfully request that this Court grant the proposed form of Initial Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 29TH DAY OF JANUARY,
2026.**

Bennett Jones LLP
BENNETT JONES LLP

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. [Re Stelco Inc \(2004\), 48 C.B.R. \(4th\) 299 \(Ont. Sup. Ct. J.\) \[Commercial List\]](#)
2. [Target Canada Co, 2015 ONSC 303](#)
3. [BZAM Ltd. Plan of Arrangement, 2024 ONSC 1645](#)
4. [Century Services Inc v Attorney General \(Canada\), 2010 SCC 60](#)
5. [Lydian International Limited \(Re\), 2019 ONSC 7473](#)
6. [Montréal \(City\) v Deloitte Restructuring Inc, 2021 SCC 53](#)
7. [Re Chalice Brands Ltd., 2023 ONSC 3174](#)
8. [MPX International Corporation, 2022 ONSC 4348](#)
9. [Laurentian University of Sudbury, 2021 ONSC 659](#)
10. [Re Earth Boring Co. Ltd., 2025 ONSC 2422](#)
11. [JTI-Macdonald Corp., Re, 2019 ONSC 1625](#)
12. [Canwest Publishing Inc, 2010 ONSC 222](#)
13. [Canwest Global Communications Corp. \(Re\), 2009 CanLII 55114 \(ON SC\)](#)

Endorsements and Orders

1. [In the Matter of the Companies' Creditors Arrangement Act and in the Matter of a Plan of Compromise or Arrangement of Delta 9 Cannabis Inc. et al., CCAA Initial Order dated July 15, 2024, Court File No. 2401-09688 \(Court of King's Bench of Alberta\)](#)
2. [In the Matter of the Companies' Creditors Arrangement Act and in the Matter of a Plan of Compromise or Arrangement of 2675970 Ontario Inc. et al., Initial Order dated August 28, 2024, Court File No. CV-24-00726584-00CL \(Ontario Superior Court of Justice - Commercial List\)](#)
3. [In the Matter of the Companies' Creditors Arrangement Act and in the Matter of a Plan of Compromise or Arrangement of BZAM Ltd. et al., initial order issued February 28, 2024, Court File No. CV-24-00715773-00CL \(Ontario Superior Court of Justice - Commercial List\)](#)
4. [In the Matter of the Companies' Creditors Arrangement Act and in the Matter of a Plan of Compromise or Arrangement of Aleafia Health Inc. et al., amended and restated initial order issued August 4, 2023, Court File No. CV-23-00703350-00CL \(Ontario Superior Court of Justice - Commercial List\)](#)
5. [In the Matter of the Companies' Creditors Arrangement Act and in the Matter of a Plan of Compromise or Arrangement of MPX International Corporation et al., amended and restated initial order issued July 25, 2022, Court File No. CV-22-00684542-00CL \(Ontario Superior Court of Justice - Commercial List\)](#)
6. [In the Matter of the Companies' Creditors Arrangement Act and in the Matter of a Plan of Compromise or Arrangement of CannTrust Holdings Inc. et al., Re, initial order issued March 31, 2021 Court File No. CV-20-00638930 \(Ontario Superior Court of Justice - Commercial List\)](#)
7. [In the Matter of the Companies' Creditors Arrangement Act and in the Matter of a Plan of Compromise or Arrangement of Pure Global Cannabis, Inc. et al., Re, initial order issued March 19, 2020 Court File No. CV-20-00638503-00CL \(Ontario Superior Court of Justice - Commercial List\)](#)

8. *In the Matter of the Companies' Creditors Arrangement Act and in the Matter of a Plan of Compromise or Arrangement of Group Colabor Inc. et al., Initial Order dated January 8, 2026, Court File No. 500-11-066652-260 (Superior Court of Quebec - Commercial Division)*

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

Dated: January 29, 2026

Shawn Kirkman

Signature

SCHEDULE B – STATUTES RELIED ON

Bankruptcy and Insolvency Act, RSC 1985, c. B-3

Section 2, “Insolvent Person”

insolvent person means 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

Companies’ Creditors Arrangement Act, RSC 1985, c C-36

Section 2(1), “Company”

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies

Section 2(1), “Debtor Company”

debtor company means any company that

- (a) is bankrupt or insolvent,
- (b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,
- (c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or
- (d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent;

Section 3

Application

(1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

Affiliated companies

(2) For the purposes of this Act,

- (a) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and
- (b) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

Company controlled

(3) For the purposes of this Act, a company is controlled by a person or by two or more companies if

- (a) securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those companies; and
- (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.

Subsidiary

(4) For the purposes of this Act, a company is a subsidiary of another company if

- (a) it is controlled by
 - (i) that other company,
 - (ii) that other company and one or more companies each of which is controlled by that other company, or
 - (iii) two or more companies each of which is controlled by that other company; or
- (b) it is a subsidiary of a company that is a subsidiary of that other company.

Section 9

Jurisdiction of court to receive applications

(1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if

the company has no place of business in Canada, in any province within which any assets of the company are situated.

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.

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.

Section 21

Law of set-off or compensation to apply

21 The law of set-off or compensation applies to all claims made against a debtor company and to all actions instituted by it for the recovery of debts due to the company in the same manner and to the same extent as if the company were plaintiff or defendant, as the case may be.

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.: _____

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