

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 PROPOSED PLAN
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO
LI-CYCLE HOLDINGS CORP., LI-CYCLE CORP., LI-CYCLE AMERICAS CORP.,
LI-CYCLE U.S. INC., LI-CYCLE INC., LI-CYCLE NORTH AMERICA HUB, INC.,

Applicants

FACTUM OF THE APPLICANTS
(CCAA Application)

May 13, 2025

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PART I. INTRODUCTION

1. Li-Cycle¹ operates a global lithium-ion battery resource recovery company with patent-protected Spoke & Hub Technologies™, headquartered in Toronto, Ontario. Each Applicant is insolvent and seeking protection under the *Companies' Creditors Arrangement Act* (Canada).²
2. Li-Cycle has faced numerous challenges since the Fall of 2023, including substantial cost overruns in completing construction at its planned "Hub" in Rochester, New York (the "**Rochester Hub**"). This led to the commencement of class action claims in New York and Ontario and the filing of various mechanics' liens against the Rochester Hub property.

¹ For ease of reference, the Applicants and their subsidiaries will be collectively referred to herein as "**Li-Cycle**". Any capitalized terms used but not otherwise defined herein have the meanings given to them in the Affidavit of Ajay Kochhar, sworn May 12, 2025 ("**Kochhar Affidavit**"), Application Record dated May 12, 2025 ("**Application Record**"), Tab 2. All dollar references are in USD unless otherwise noted.

² *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36 [CCAA].

3. Li-Cycle secured financing from the United States Department of Energy (“**DOE**”) – with \$475 million now committed. However, no amounts have been advanced under the DOE Loan Facility to date as Li-Cycle must secure additional investment of \$262.7 million as a condition precedent for any advances.

4. Despite conducting a lengthy pre-filing sale process over approximately 1.5 years, Li-Cycle has been unable to execute a viable transaction or obtain sufficient additional investment. Among other things, potential investors expressed concern regarding whether the DOE Loan Facility would still be available notwithstanding the current political environment in the United States. Moreover, the share price for Holdings – a public company that until recently was listed on the New York Stock Exchange – has dropped more than 99%.

5. As a result of these challenging circumstances, Li-Cycle has paused operations at its operating “Spokes”, paused construction on the Rochester Hub and reduced headcount by over 75%. Li-Cycle has limited remaining cash, which is expected to be exhausted in the very near term unless additional financing is obtained.

6. Moreover, as of 11:59 p.m. on May 13, 2025, Li-Cycle will be in default under secured notes issued to its most significant contractual counterparty and lender, Glencore, as well as unsecured convertible notes issued to Glencore and Koch.

7. While Li-Cycle has considerable potential to become an industry leader in the growth of the electric vehicle (“**EV**”) battery recycling and supply chain, its current challenges have strained its liquidity and impacted its ability to operate. It is facing a liquidity crisis and is balance sheet insolvent.

8. In the circumstances, Li-Cycle determined that it was necessary and appropriate to seek to commence these proceedings to allow Li-Cycle breathing space to seek to maximize value for all of its stakeholders.

9. On this initial application, Li-Cycle seeks an order (the “**Initial Order**”) granting relief that is reasonably necessary for its continued operation in the ordinary course of business during the initial 10-day stay period.

10. If CCAA protection is granted, Li-Cycle intends to run a court-supervised sale and investment solicitation process and is currently in discussions to obtain debtor-in-possession financing and a stalking horse bid. If obtained, Li-Cycle will seek approval of such agreements at the comeback hearing.

11. If it can overcome its immediate challenges, Li-Cycle is poised to play a key role in a clean energy future by recycling and re-inserting critical materials back into the electric vehicle battery supply chain.

PART II. THE FACTS

12. The affidavit sworn by the Chief Executive Officer of Li-Cycle Holdings Corp., Ajay Kochhar, on May 12, 2025 in support of this application sets out in detail the facts concerning Li-Cycle, its business and property and the relief requested on this application.³

PART III. ISSUES AND THE LAW

13. The issues before this Court and the position of Li-Cycle on each are as follows:

³ Kochhar Affidavit, Application Record, Tab 2.

- (a) Do the Applicants meet the criteria for protection under the CCAA? *Yes. The Applicants are insolvent companies with total claims against them of more than \$5 million.*
- (b) Should the Court grant an initial order staying all proceedings in respect of the Applicants? *Yes. It is appropriate to grant a stay of proceedings with respect to the Applicants to provide the necessary breathing space to maximize value for all Li-Cycle stakeholders and try to overcome these immediate challenges.*
- (c) Should the Court approve the Intercompany Advances? *Yes, this relief will preserve the status quo between the Applicants.*
- (d) Should Alvarez and Marsal Canada Inc. (“A&M”) be appointed as Monitor? *Yes. A&M meets all of the statutory requirements and is very experienced in similar matters.*
- (e) Should the engagement of the CRO, William E. Aziz of BlueTree Advisors Inc. (“BlueTree”) and the CFO, Michelle T. Faysal be approved? *Yes. The experience and expertise of the CRO and CFO will be beneficial to Li-Cycle and its stakeholders in achieving a positive outcome in these proceedings.*
- (f) Should the engagements of Alvarez & Marsal Canada Securities ULC (the “Financial Advisor”) and Maplebriar Holdings Inc. (“Maplebriar”) be approved? *Yes. The experience and expertise of the Financial Advisor and Mr. Kochhar through Maplebriar are necessary to execute the proposed sale process.*

- (g) Should the Court grant the priority charges sought? *Yes. The quantum and priority of the Administration Charge, Directors' Charge, and Intercompany Charge is appropriate and necessary during the initial 10-day stay period.*
- (h) Should the Court grant the relief related to securities reporting? *Yes. In the circumstances (and in light of the transparent reporting provided in these proceedings) it is appropriate to authorize Li-Cycle to incur no further expenses related to securities reporting.*
- (i) Should the Court grant the other relief sought in the proposed Initial Order? *Yes. The relief sought is reasonably necessary for the continued operation of Li-Cycle during the initial 10-day stay period.*

A. The Applicants Meet the Criteria for Protection Under the CCAA

(i) Each Applicant is a Debtor Company and Meets the CCAA Technical Requirements

14. The CCAA applies to a debtor company or affiliated debtor companies where the total of claims against the debtor or its affiliates exceeds \$5 million.⁴

15. A “debtor company” includes a company that is insolvent.⁵ A “company” includes a corporation incorporated in Canada and those that have assets in Canada.⁶

16. Each Applicant qualifies as a “company” because:

⁴ CCAA, s. 3.

⁵ CCAA, s. 2 “debtor company”; s. 3.

⁶ CCAA, s. 2, “company”.

- (a) three of the Applicants (Holdings, Global HQ and Canada SpokeCo) are incorporated pursuant to the *Business Corporations Act* (Ontario); and
- (b) the other three Applicants (North America OpCo, US SpokeCo, US HubCo) – which are part of this integrated global enterprise operated from Toronto, Ontario, as described further herein – are incorporated in the United States but funds are being held on retainer on their behalf by counsel. A number of courts have held that funds held on retainer by counsel in any amount are sufficient to satisfy the requirement of having assets in Canada.⁷

17. The Applicants are affiliated debtor companies with total liabilities against them of more than \$5 million.⁸

18. As outlined below, each Applicant is insolvent.

19. The Applicants have also met the technical requirements in section 10(2) of the CCAA.⁹ A cash flow forecast will be appended to the Pre-Filing Report of the Monitor and the Applicants have filed copies of all financial statements prepared during the year before the application.¹⁰

(ii) *The Tests for Insolvency*

20. The CCAA does not define “insolvent”, so CCAA courts have taken guidance from the *Bankruptcy and Insolvency Act* (the “BIA”).¹¹ The BIA defines an “insolvent person” as a person who:

⁷ In the *Matter of a Plan of Compromise or Arrangement of Sandvine Corporation et al.*, [2024 ONSC 6199](#) at para. 19 [Sandvine]; *Syncreon Group B.V. (Re)*, [2019 ONSC 5774](#) at para. 27; and *LTL Management LLC (Re)*, [2021 ONSC 8357](#) at para. 13.

⁸ Kochhar Affidavit at para. 178, Application Record, Tab 2.

⁹ CCAA, s. 10(2).

¹⁰ See Exhibits “G”, “K”, “L” and “M” to the Kochhar Affidavit, Application Record, Tabs 2G, 2K, 2L, 2M.

- (a) is for any reason unable to meet his obligations as they generally become due (the “**liquidity test**”);
- (b) has ceased paying his current obligations in the ordinary course of business as they generally become due; or
- (c) has property that in aggregate is not, at 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 (the “**balance sheet test**”).¹²

21. The tests for insolvency are disjunctive. A company satisfying any one of these tests at the time of its application for an initial order is considered insolvent for purposes of the CCAA.¹³

22. A company is also insolvent for the purposes of the CCAA if, at the time of filing, there is a “looming liquidity crisis” in the sense that it is reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonably required to implement a restructuring (the “**looming liquidity crisis test**”).¹⁴

23. For the purposes of the balance sheet test, all obligations due and accruing due must be considered. In valuing liabilities due and accruing due, this Court held in *Stelco* that the Court should consider all obligations of “whatever nature or kind”, leaving “nothing in limbo,” and taking into account all liabilities, whether contingent or unliquidated.¹⁵ Contingent liabilities in

¹¹ *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“**BIA**”). See e.g. *Sandvine* at para. [25](#); *Target Canada Co., Re*, [2015 ONSC 303](#) at para. [26](#) [*Target*]; *Re Just Energy Corp.*, [2021 ONSC 1793](#) at paras. [49-50](#).

¹² BIA, s. 2, “insolvent person”.

¹³ *Cinram International Inc., Re*, [2012 ONSC 3767](#) at para. [51](#).

¹⁴ *Stelco Inc., Re*, [2004 CanLII 24933](#) (ON SC) at paras. [26](#), [40](#) [*Stelco*]; *Sandvine* at para. [25](#); *Target* at para. [26](#).

¹⁵ *Stelco* at paras. [50](#) and [56](#); *Union of Canada Life Insurance, Re*, [2012 ONSC 957](#) at para. [16](#).

the form of litigation claims cannot be ignored “just because [the debtor] has entered defences in all of them.”¹⁶

(iii) *The Applicants are Insolvent*

24. The Applicants are insolvent under the looming liquidity crisis test and the balance sheet test.

25. With respect to the looming liquidity crisis test, on a consolidated basis the Applicants had approximately \$10.519 million in cash as of the week ended May 9, 2025.¹⁷ The cash flow forecast of the Applicants demonstrates that, if the Applicants are unable to commence CCAA proceedings, then the Applicants will run out of cash by the week ended June 6, 2025.¹⁸

26. The Applicants expect that a longer time period will be required in order to complete their sale and realization process, and they are currently in discussions to obtain debtor-in-possession financing in order to fund that process.¹⁹ It would only be possible for the Applicants to obtain that financing in a CCAA proceeding.

27. Additionally, each Applicant is a debtor or guarantor under \$205.6 million in secured convertible notes owing to Glencore, which are in default and due and payable as of 12:00 a.m. on May 14, 2025.²⁰

¹⁶ *Re 4519922 Canada Inc.*, [2015 ONSC 124](#) at paras. [31-32](#).

¹⁷ Kochhar Affidavit at para. 184, Application Record, Tab 2.

¹⁸ Kochhar Affidavit at para. 184, Application Record, Tab 2.

¹⁹ Kochhar Affidavit at paras. 184, 225, Application Record, Tab 2.

²⁰ Kochhar Affidavit at para. 172, Application Record, Tab 2.

28. Accordingly, each Applicant is facing a liquidity crisis. The situation facing the Applicants is similar to that faced by the debtor companies in *Sandvine*, where Justice Osborne held:

I am satisfied that the Applicants here face a liquidity crisis consistent with the Stelco test. If they do not commence restructuring proceedings by November 15, 2024, the Applicants would be unable to fulfil their obligations under the First Lien Credit Agreement and the DDTL Credit Agreement. Each of the Applicants is either a borrower or guarantor under those agreements or is the general partner of a guarantor.²¹

29. The Applicants are insolvent on the balance sheet test as well. While on a consolidated basis, the financial statements show a net book value of \$861.2 million and total liabilities of \$598.1 million,²² of that, the net book value attributable to the Rochester Hub is \$601.1 million.²³ This represents nearly 70% of the net book value of the entire global enterprise; however, this does not reasonably represent the realizable value of this asset.

30. Construction on the Rochester Hub has been paused since November 2023 and numerous mechanics' liens have been filed against the property in the aggregate amount of approximately \$60.0 million (contractors) and \$28.7 million (subcontractors).²⁴

31. Li-Cycle would need to raise additional financing of \$262.7 million in order to obtain advances under the DOE Loan Facility and restart construction.²⁵ Li-Cycle conducted a broad canvass of the market to identify additional funding or other strategic alternatives with the

²¹ *Sandvine* at para. 26.

²² Kochhar Affidavit at paras. 176, 178, 185, Application Record, Tab 2.

²³ Kochhar Affidavit at paras. 177, 186, Application Record, Tab 2.

²⁴ Kochhar Affidavit at paras. 148, 186, Application Record, Tab 2.

²⁵ Kochhar Affidavit at para. 126, Application Record, Tab 2.

assistance of the investment banking firm Moelis, but was not able to execute a viable transaction or obtain sufficient additional investment.²⁶

32. As a result, it is reasonable to expect that the realizable value of the Rochester Hub in its current state of semi-construction may be materially less than the book value.²⁷ The total net book value of the CCAA Debtors' assets excluding the Rochester Hub (\$260.1 million) is considerably less than its total liabilities (\$598.1 million), and less than the even just the convertible debt owing to Glencore and Koch (being an aggregate of \$363.1 million).²⁸

33. Additionally, the total liabilities reported on Li-Cycle's financial statements do not include Holdings' contingent liability for the securities class actions commenced against it in New York and Ontario and a shareholder derivative action commenced against it in New York.²⁹

34. Finally, the other Applicants rely on continued equity contributions or intercompany advances from Holdings as they are not independent profitable at this time. As a result of the insolvency of Holdings and its inability to continue to make these advances, all of the other Applicants will be unable to meet their respective obligations as they generally become due.³⁰

²⁶ Kochhar Affidavit at paras. 15, 151-163, Application Record, Tab 2.

²⁷ Kochhar Affidavit at para. 186, Application Record, Tab 2.

²⁸ Kochhar Affidavit at para. 187, Application Record, Tab 2.

²⁹ Kochhar Affidavit at paras. 137-142, 187, Application Record, Tab 2.

³⁰ For clarity, this statement does not include Europe Parent and Germany SpokeCo for which an independent solution is being negotiated.

B. The Court Should Grant an Initial Order Staying Proceedings

(i) Jurisdiction

35. A CCAA application may be made to a court in the province in which the Applicants' head office or chief place of business in Canada is situated.³¹ Holdings' registered head office is in Toronto, Ontario which also functions as the global headquarters for Li-Cycle.³²

36. Each of the Applicants is part of the highly-integrated business of Li-Cycle that has its centre of main interests in Ontario as, among other things:

- (a) all material financial, strategic, management, marketing and personnel decisions are made from the corporate headquarters at the Head Office in Toronto;
- (b) the key management personnel of Li-Cycle are employed by Global HQ which is incorporated and domiciled in Ontario;
- (c) the operations of all of the Li-Cycle entities are generally funded from equity contributions or intercompany advances from Holdings;
- (d) all intellectual property used in the Li-Cycle business – which is a key asset in this highly-specialized, cutting-edge business – is owned by Global HQ;
- (e) all research and development for the business is undertaken by Global HQ; and
- (f) the books and records of Li-Cycle are kept in Ontario at Global HQ.³³

³¹ CCAA, s. 9(1).

³² Kochhar Affidavit at paras. 5, 235, Application Record, Tab 2.

³³ Kochhar Affidavit at para. 235, Application Record, Tab 2.

37. In *Sandvine*, which also involved a global enterprise with US operating subsidiaries that were managed from global headquarters in Ontario, Justice Osborne held:

Canadian courts have accepted that a multinational enterprise such as the Applicants' business must be restructured as a global unit, even where operating units are located in foreign jurisdictions: See, e.g., *Ted Baker Canada Inc. et al (Re)*, (April 26, 2024), Ont S.C.J. [Commercial List], Court File No. CV-24-718993-00CL at para. 28, in which the court held that the requirements of s. 9(1) of the CCAA were satisfied on the basis that the applicants, which included both Canadian and U.S. entities, maintained their head office and much of their business activities in Ontario. See also *Ghana Gold Corp (Re)*, 2013 ONSC 3284 at para. 56, in which the court included foreign applicants within a CCAA proceedings on the grounds that doing so was “critical to a restructuring.”³⁴

38. If the proposed Initial Order and related relief is granted, the Applicants intend to commence a recognition proceeding under Chapter 15 of the US Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. This will ensure that actions taken in relation to U.S. entities and U.S. property will be overseen by the U.S. courts.

39. Accordingly, this court has jurisdiction to grant the Initial Order sought by the Applicants.

(ii) Scope of Initial Order

40. On an initial application, the Court may stay proceedings “on any terms that it may impose.”³⁵ The initial stay period may not be more than 10 days and the other relief granted during that period must 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.”³⁶ First day orders should allow debtor companies to stabilize their operations and maintain the *status*

³⁴ *Sandvine* at para. 21 [emphasis added], citing [*Ted Baker Canada Inc. et al, Re.* \(Court File No. CV-24-718993-00CL\)](#), endorsement issued April 26, 2024 at para. 28, and *Re Ghana Gold Corporation*, [2013 ONSC 3284](#) at para. 56.

³⁵ CCAA, s. 11.02.

³⁶ CCAA, s. 11.001.

quo during the initial 10-day stay period.³⁷ Whether particular relief is necessary to stabilize a debtor company's operations during the initial stay period is an inherently factual determination, based on all of the circumstances of the particular debtor.³⁸

41. All of the relief requested in the proposed Initial Order meets this criteria. The relief sought by the Applicants is critical to allow the Applicants to properly respond to their current circumstances.

(iii) Appropriate to Stay Proceedings Against the Applicants

42. The CCAA stay of proceedings has been described as “the engine that drives a broad and flexible statutory scheme.”³⁹ The purpose of stay orders is to maintain the *status quo* and provide the debtor company with an essential respite from the burden of dealing with litigation and other claims against it while it attempts to carry on as a going concern, restructure its financial affairs and negotiate an acceptable restructuring arrangement.⁴⁰

43. The stay maintains a level playing field among the creditors of a company so that no creditor will have an advantage over other creditors, and prevents aggressive creditors from taking actions that would undermine the company's financial position, prejudice other creditors and impair the prospects of a viable restructuring.⁴¹

44. It is necessary and appropriate to grant a stay of proceedings against the Applicants to allow it the breathing space so that it can focus its efforts on conducting a sale and realization

³⁷ *Lydian International Limited (Re)*, [2019 ONSC 7473](#) at paras. [26-30](#) [*Lydian*]

³⁸ *Boreal Capital Partners Ltd et al. (Re)*, [2021 ONSC 7802](#) at para. [16](#).

³⁹ *Nortel Networks Corp., Re*, [2010 ONSC 1304](#) at para. [34](#).

⁴⁰ *Comstock Canada Ltd. (Re)*, [2013 ONSC 6043](#) at para. [17](#) [*Comstock*]; *Redstone Investment Corporation (Re)*, [2014 ONSC 2004](#) at para. [50](#) [*Redstone*].

⁴¹ *Comstock* at para. [17](#); *Redstone* at para. [50](#).

process in a court-supervised process with the ability to obtain relief from the CCAA court that will allow it to achieve the most beneficial outcome for its stakeholders in the circumstances.⁴²

C. Intercompany Advances Should be Approved

45. Where the operations and expenses of debtor companies are funded in the ordinary course through intercompany advances, it is appropriate for the CCAA court to approve the continuation of those arrangements during the CCAA proceedings and to grant an intercompany charge over the assets of the borrowers.⁴³

46. The other Applicants are funded in the ordinary course through equity contributions and non-interest-bearing advances from Holdings.⁴⁴ The Initial Order will facilitate the continuation of this practice by permitting each of the Applicants (each, an “**Intercompany Lender**”) to make Intercompany Advances to each of the other Applicants (each, an “**Intercompany Borrower**”) to fund their ongoing expenditures and other amounts permitted by the Initial Orders. Any Intercompany Advances will be subject to Monitor review and approval.⁴⁵ The Intercompany Advances will be secured by an Intercompany Charge, as set out further below.

47. In the Initial Order, Intercompany Advances will be limited to \$1 million, which is the amount that is reasonably necessary for the continued operations of the Applicants in the ordinary course of business during the initial 10-day stay period.⁴⁶

⁴² Kochhar Affidavit at para. 191, Application Record, Tab 2.

⁴³ [*Performance Sports Group Ltd., Re*, 2016 ONSC 6800](#) at paras. 33-35 [*Performance Sports Group*]; [*CannTrust Holdings Inc. et al., Re* \(Court File No. CV-20-00638930-00CL\)](#) initial order dated March 31, 2020 at para. 38 (“*CannTrust Initial Order*”); [*Carillion Canada Holdings Inc. et al., Re* \(Court File No. CV-18-590812-00CL\)](#), initial order dated January 25, 2018 at para. 13 (“*Carillion Initial Order*”).

⁴⁴ Kochhar Affidavit at para. 197, Application Record, Tab 2.

⁴⁵ Kochhar Affidavit at para. 197(b), Application Record, Tab 2.

⁴⁶ Kochhar Affidavit at para. 198, Application Record, Tab 2.

D. A&M Should be Appointed as Monitor

48. Upon the granting of an initial order, section 11.7 of the CCAA requires that a trustee be appointed to monitor the debtor company's business and financial affairs.⁴⁷ Alvarez & Marsal Canada Inc. ("A&M") has consented to act as monitor in these CCAA proceedings and is a trustee within the meaning of subsection 2(1) of the BIA.⁴⁸ A&M is very experienced in similar matters, 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. Accordingly, A&M should be appointed as monitor of the Applicants (in such capacity, the "**Monitor**").

E. The Engagements of the CRO and CFO Should be Approved

49. Prior to the commencement of these proceedings, Li-Cycle engaged BlueTree to provide the services of William E. Aziz act as chief restructuring officer (the "**CRO**") and provide financial, advisory and consulting services to Li-Cycle pursuant to an engagement letter between Holdings and BlueTree dated April 28, 2025 (the "**CRO Engagement Letter**").⁴⁹

50. Li-Cycle is not seeking the appointment of the CRO as a court officer, only for the Court to approve the CRO Engagement Letter and the appointment of Mr. Aziz as CRO pursuant thereto.⁵⁰ Similar relief has been granted in initial orders in other CCAA proceedings, including during the initial 10-day stay period.⁵¹ This relief is appropriate in the circumstances as:

- (a) the CRO is very experienced in restructuring proceedings of this nature;

⁴⁷ CCAA, s. 11.7.

⁴⁸ Consent of Monitor, Tab 3 of AR.

⁴⁹ Exhibit "N" to the Kochhar Affidavit, Application Record, Tab 2N.

⁵⁰ Kochhar Affidavit at para. 202, Application Record, Tab 2.

⁵¹ [*SFP Canada Ltd., Re, Court File No. CV-20-634980-00CL*](#), initial order issued January 23, 2020 at para. 29 [*SFP Canada Initial Order*]. See also [*U. S. Steel Canada Inc., Re, Court File No. CV-14-10695-00CL*](#), initial order issued September 16, 2014 at para. 28, and [*Payless Shoesource Canada Inc., Re, Court File No. CV-19-00614629-00CL*](#), initial order issued February 19, 2019 at paras. 29-35.

- (b) the experience and expertise of the CRO will be beneficial to Li-Cycle and its stakeholders in achieving a positive outcome in these proceedings; and
- (c) the proposed Monitor has reviewed the proposed fees and disbursements set out in the CRO Engagement Letter and believe them to be fair and reasonable in the circumstances.⁵²

51. Following the resignation of its Chief Financial Officer, Li-Cycle retained Michelle T. Faysal to act as the interim Chief Financial Officer of Li-Cycle (“**CFO**”) pursuant to an engagement letter between Holdings and the CFO dated April 28, 2025 (the “**CFO Engagement Letter**”).⁵³ It is appropriate for this Court to approve the engagement of the CFO pursuant to the CFO Engagement Letter as the experience and expertise of the CFO will be beneficial to Li-Cycle and its stakeholders in seeking a positive outcome in these proceedings following the resignation of its previous chief financial officer. The proposed Monitor has reviewed the proposed fees and disbursements set out in the CFO Engagement Letter and believe them to be fair and reasonable in the circumstances.

F. The Engagements of the Financial Advisor and Maplebriar Should be Approved

52. Pursuant to an engagement letter between Holdings and Alvarez & Marsal Canada Securities ULC (the “**Financial Advisor**”) dated May 8, 2025 (the “**Financial Advisor Engagement Letter**”), Holdings retained the Financial Advisor to assist the Applicants in conducting their contemplated court-supervised sale and investment solicitation process (the “**SISP**”) to supplement the broad canvassing of the market that was undertaken by Moelis over

⁵² Kochhar Affidavit at para. 203, Application Record, Tab 2.

⁵³ Exhibit “O” to the Kochhar Affidavit, , Application Record, Tab 2O.

the course of approximately 1.5 years.⁵⁴ To ensure the broadest canvassing of the market, the Financial Advisor has already commenced this marketing process and Li-Cycle intends to seek approval of the SISP at the comeback hearing.

53. Li-Cycle solicited expressions of interest from numerous investment banking firms to assist Li-Cycle in conducting the SISP and the Realization Process. The Special Committee selected the Financial Advisor due to its expertise, its reach in Canada and the United States, and its proposed fees.⁵⁵ Li-Cycle believes that retaining the Financial Advisor will allow it to pursue a value-maximizing outcome for its business and property for the benefit of its stakeholders by conducting a further market canvass for parties interested in acquiring or investing in the Applicants.

54. Prior to the commencement of the CCAA Proceedings, Mr. Ajay Kochhar, the President and CEO of Li-Cycle and one of its co-founders, expressed his intention to resign effective May 15, 2025.⁵⁶ The Special Committee asked Mr. Kochhar to stay on as a consultant to Li-Cycle to support the orderly conduct of the CCAA Proceedings, in particular the SISP. Mr. Kochhar's in-depth knowledge of the business and the prior marketing efforts conducted by Moelis will be essential in achieving a value-maximizing outcome in the SISP.⁵⁷ Mr. Kochhar's holding company, Maplebriar Holdings Inc., entered into an engagement letter with Holdings dated May 1, 2025 to provide his services during the course of the CCAA Proceedings (the "**Maplebriar Engagement Letter**").⁵⁸

⁵⁴ Exhibit "Q" to the Kochhar Affidavit, Application Record, Tab 2M; Kochhar Affidavit at para. 210.

⁵⁵ Kochhar Affidavit at para. 212, Application Record, Tab 2.

⁵⁶ Kochhar Affidavit at para. 206, Application Record, Tab 2.

⁵⁷ Kochhar Affidavit at para. 206, Application Record, Tab 2.

⁵⁸ Exhibit "P" to the Kochhar Affidavit, Application Record, Tab 2P.

55. It is appropriate for this Court to approve the engagement of the Financial Advisor and Maplebriar pursuant to the Financial Advisor Engagement Letter and the Maplebriar Engagement Letter, respectively. Similar relief has been granted in initial orders in other CCAA proceedings, including during the initial 10-day stay period.⁵⁹

G. The Priority Charges Should be Approved

56. The Applicants are seeking approval of certain priority court-ordered charges on its assets, property and undertaking in connection with the administrative costs of the CCAA proceedings, the indemnification of its directors and officers and to secure the Intercompany Advances. Granting the Charges with the priority sought is appropriate and important to the restructuring. CCAA Courts have acknowledged the importance of priority charges to ensure the willingness of professionals and directors and officers to participate in the CCAA proceedings.⁶⁰

(i) Administration Charge

57. The Applicants are seeking an Administration Charge of \$2 million to secure the professional fees and disbursements of the Monitor, the CRO, the CFO, legal counsel to the Monitor and legal counsel to Li-Cycle. The Administration Charge is to rank in priority to the D&O Charge and the Intercompany Charge.⁶¹ The Applicants will request that the maximum amount of the Administration Charge be increased to \$2.5 million in the Amended and Restated Initial Order.

⁵⁹ [Target Canada Co., Re, \(Court File No. CV-15-10832-00CL\)](#), initial order issued January 15, 2025 at paras. 42-45; [Quality Rugs of Canada Limited, Re \(Court File No. CV-23-00703933-00CL\)](#), initial order issued August 25, 2023 at para. 29 [[Quality Rugs Initial Order](#)].

⁶⁰ [Timminco Ltd., Re, 2012 ONSC 506](#) at para. 66.

⁶¹ Draft Initial Order at para. 47, Application Record, Tab 4.

58. Section 11.52 of the CCAA expressly provides this Court with the jurisdiction to grant an administration charge in respect of the fees and expenses of the monitor and any financial, legal or other experts engaged by the company for the CCAA proceeding.⁶² It is appropriate for the Administration Charge to encompass the monthly fees and expenses of the CRO, the CFO and the Financial Advisor.⁶³

59. The requested Administration Charge in the Initial Order is limited to what is reasonably necessary to cover the fees and disbursements of the professionals for the initial stay period. Administration Charges in the range of \$2 million have been granted during the initial 10-day stay period in the following recent CCAA proceedings which, like this case, involved foreign recognition proceedings in the United States:

CCAA Proceedings	Administration Charge (Initial Order)
<i>Sandvine Corporation et al.</i> ⁶⁴	USD \$2,500,000
<i>Chesswood Group Limited et al.</i> ⁶⁵	USD \$2,000,000
<i>Pride Group Holdings Inc et al.</i> ⁶⁶	\$2,000,000

60. The Applicants submit that the Administration Charge is warranted and necessary⁶⁷ and that it is appropriate to grant the Administration Charge in the amount of \$2 million given that the CCAA will require the extensive involvement of the professional advisors from the very outset; there is no unwarranted duplication of roles; and the proposed Monitor is supportive of the Administration Charge.⁶⁸

⁶² CCAA, s. 11.52(1).

⁶³ See e.g. [SFP Canada Initial Order](#) at para. 28; [Mizrahi Development Group \(The One\) Inc., Re \(Court File No. CV-25-00740512-00CL\)](#), initial order issued April 22, 2025 at para. 30; [Quality Rugs Initial Order](#) at para. 38.

⁶⁴ *Sandvine* at para. 49.

⁶⁵ [Chesswood Group Limited et al., Re \(Court File No. CV-24-00730212-00CL\)](#), initial order issued October 29, 2024 at para. 37 (“*Chesswood Initial Order*”).

⁶⁶ [Pride Group Holdings Inc et al., Re, \(Court File No. CV-24-00717340-00CL\)](#), initial order dated March 27, 2024 at para. 47.

⁶⁷ See the non-exhaustive list of factors in *Lydian* at paras. 46-48.

⁶⁸ Kochhar Affidavit at para. 216, Application Record, Tab 2.

(ii) Directors' Charge

61. The Applicants are seeking a Directors' Charge in a reasonable amount of \$450,000 to indemnify former, current or future directors and officers of Li-Cycle, the CRO and the CFO. The Directors' Charge is to rank subordinate to the Administration Charge.⁶⁹ The Directors' Charge will remain \$450,000 in the Amended and Restated Initial Order.

62. Jurisdiction to grant a charge relating to directors' and officers' indemnification on a priority basis is provided in section 11.51 of the CCAA.⁷⁰ An insolvency creates new risks and potential liabilities for directors and officers. A directors' charge is intended to keep them in place during a restructuring to avoid disruption and to retain experienced management at a critical time.⁷¹

63. Li-Cycle maintains directors' and officers' liability insurance (the "**D&O Insurance**") for the directors and officers. However, it is uncertain whether all claims for which the directors, officers and CRO may be personally liable will be covered by the D&O Insurance given the exclusions provided for under the D&O Insurance and potential coverage positions that may be taken by the insurer.

⁶⁹ Draft Initial Order at para. 47, Application Record, Tab 4.

⁷⁰ CCAA, s. 11.51.

⁷¹ [Lydian](#) at paras. [52-53](#).

64. The size of the Directors' Charge has been reviewed with the proposed Monitor who is supportive of it. Directors' Charges of USD \$450,000 or more have been granted during the initial 10-day stay period in the following other recent CCAA proceedings:

CCAA Proceedings	Employees	Directors' Charge (Initial Order)
<i>Synaptive Medical Inc.</i> ⁷²	40	\$1,100,000
<i>Accuride Canada Inc.</i> ⁷³	218	\$610,000
<i>Re Aleafia Health Inc.</i> ⁷⁴	151	\$835,000

(iii) Intercompany Charge

65. The Applicants are seeking an Intercompany Charge on all of the Property of each of the Intercompany Borrowers as security for the intercompany advances made by any Applicant that is an Intercompany Lender to such Intercompany Borrower.⁷⁵ Intercompany charges to protect intercompany advances have been approved before in CCAA proceedings under the general power in section 11 of the CCAA to make such orders as the court considers appropriate.⁷⁶

66. The Intercompany Charge will not secure any Intercompany Advances made before the Initial Filing Date. In the Initial Order, Intercompany Advances (and thus the Intercompany Charge) will be limited to \$1 million, which is the amount that is reasonably necessary for the continued operations of the Intercompany Borrowers in the ordinary course of business during the initial 10-day stay period.⁷⁷

⁷² [*Synaptive Medical Inc., Re* \(Court File No. CV-25-00739279-00CL\)](#), initial order dated March 19, 2025 at para. 19.

⁷³ [*Accuride Canada Inc., Re* \(Court File No. CV-24-00729147-00CL\)](#), initial order dated October 10, 2024 at para. 19 (“*Accuride Initial Order*”).

⁷⁴ [*Re Aleafia Health Inc* \(Court File No. CV-23-00703350-00CL\)](#), initial order dated July 25, 2023 at para. 18.

⁷⁵ Kochhar Affidavit at para. 197, Application Record, Tab 2.

⁷⁶ [*Performance Sports Group*](#) at para. 34; [*CannTrust Initial Order*](#) at para. 38; [*Carillion Initial Order*](#) at para. 13.

⁷⁷ Kochhar Affidavit at para. 198, Application Record, Tab 2.

H. Securities Reporting Relief Should be Granted

67. In the Initial Order, Li-Cycle is seeking the authorization of this Court to incur no further expenses in relation to any Securities Filings that may be required by the Securities Provisions (as each term is defined in the Initial Order). Li-Cycle is also seeking protection for certain individuals against any personal liability that may arise as a result of such decision.⁷⁸ Similar relief has been granted in other CCAA proceedings, including during the initial 10-day stay period.⁷⁹

68. Li-Cycle is not asking the Court to exempt it from its continuous disclosure obligations, or bar any securities regulators or stock exchanges from taking steps within their discretion as a result of the continued non-reporting by Li-Cycle. Accordingly, this relief is appropriate in the circumstances.

69. The time and resources of Li-Cycle are better directed towards conducting its sale and realization process. Equity holders will receive regular reporting on the business and financial situation of Li-Cycle through the court materials, monitor's reports and cash flows that will be filed with the Court during the course of these proceedings.⁸⁰ As Justice Osborne held in *Indiva Limited* in the course of approving similar relief:

Finally, I am satisfied that the proposed relief from calling an annual shareholders meeting and other reporting and filing obligations is appropriate in the circumstances, and compliance with those obligations would create and incur unnecessary expenses in circumstances where the Applicants are insolvent. I observe that stakeholders will have the benefit of a significant amount of financial

⁷⁸ Kochhar Affidavit at paras. 195-196, Application Record, Tab 2.

⁷⁹ See e.g. *BZAM Ltd. Plan of Arrangement*, [2024 ONSC 1645](#) at paras. 70-71; *Indiva Limited et al.*, [2024 ONSC 3426](#) at para. 29; [CannTrust Initial Order](#) at paras. 46-47 [*Indiva*].

⁸⁰ Kochhar Affidavit at paras. 195-196, Application Record, Tab 2.

and other information through this proceeding, and will have the benefit of oversight through the Court-appointed Monitor.⁸¹

I. The Other Relief Sought Should be Granted

70. The other relief sought in the proposed Initial Order is appropriate and is reasonably necessary for the continued operations of the Applicants in the ordinary course of business during the initial 10-day stay period, including relief related to (i) cash management, (ii) continued payment of employee, professional and operating expenses in the ordinary course of business, (iii) certain restructuring steps such as terminating employees and pursuing refinancing and asset sale opportunities, subject to the approval of the Court, and (iv) service and notice. Similar relief has been granted during the initial 10-day stay period in other recent CCAA proceedings.⁸²

PART IV. ORDER REQUESTED

71. For the reasons set out above, the Applicants request that this Court grant the proposed Initial Order. The Applicants meet all of the qualifications required to obtain the requested relief under the CCAA, and the relief is appropriate and reasonably necessary for the continued operations of the Applicants in the ordinary course of business during the initial 10-day stay period.

⁸¹ *Indiva* at para. 29.

⁸² See e.g. [Accuride Initial Order](#), [Chesswood Initial Order](#).

72. The balance of the relief sought by the Applicants in the Notice of Application should be reserved to be heard by the Court at the comeback hearing. The Applicants intend to file a separate factum with respect to that relief prior to the comeback hearing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of May, 2025.

A handwritten signature in black ink, appearing to be 'Z. T.' or similar, written in a cursive style.

McCarthy Tétrault LLP

Lawyers for the Applicants

**SCHEDULE “A”
LIST OF AUTHORITIES**

Jurisprudence

1. *In the Matter of a Plan of Compromise or Arrangement of Sandvine Corporation et al.*, [2024 ONSC 6199](#)
2. *Syncreon Group B.V. (Re)*, [2019 ONSC 5774](#)
3. *LTL Management LLC (Re)*, [2021 ONSC 8357](#)
4. *Target Canada Co., Re*, [2015 ONSC 303](#)
5. *Re Just Energy Corp.*, [2021 ONSC 1793](#)
6. *Cinram International Inc., Re*, [2012 ONSC 3767](#)
7. *Stelco Inc., Re*, [2004 CanLII 24933](#) (ON SC)
8. *Union of Canada Life Insurance, Re*, [2012 ONSC 957](#)
9. *Re 4519922 Canada Inc.*, [2015 ONSC 124](#)
10. *Ted Baker Canada Inc. et al., Re*, (Court File No. CV-24-718993-00CL), endorsement issued April 26, 2024
11. *Re Ghana Gold Corporation*, [2013 ONSC 3284](#)
12. *Lydian International Limited (Re)*, [2019 ONSC 7473](#)
13. *Boreal Capital Partners Ltd et al. (Re)*, [2021 ONSC 7802](#)
14. *Comstock Canada Ltd. (Re)*, [2013 ONSC 6043](#)
15. *Redstone Investment Corporation (Re)*, [2014 ONSC 2004](#)
16. *Performance Sports Group Ltd., Re*, [2016 ONSC 6800](#)
17. *CannTrust Holdings Inc. et al., Re* (Court File No. CV-20-00638930-00CL) initial order dated March 31, 2020
18. *Carillion Canada Holdings Inc. et al., Re* (Court File No. CV-18-590812-00CL), initial order dated January 25, 2018
19. *SFP Canada Ltd., Re*, Court File No. CV-20-634980-00CL, initial order issued January 23, 2020

20. [U. S. Steel Canada Inc., Re](#), Court File No. CV-14-10695-00CL, initial order issued September 16, 2014
21. [Payless Shoesource Canada Inc., Re](#), Court File No. CV-19-00614629-00CL, initial order issued February 19, 2019
22. [Target Canada Co., Re](#), (Court File No. CV-15-10832-00CL), initial order issued January 15, 2025
23. [Quality Rugs of Canada Limited, Re](#) (Court File No. CV-23-00703933-00CL)
24. [Timminco Ltd., Re](#), 2012 ONSC 506
25. [Mizrahi Development Group \(The One\) Inc., Re](#) (Court File No. CV-25-00740512-00CL), initial order issued April 22, 2025
26. [Chesswood Group Limited et al., Re](#) (Court File No. CV-24-00730212-00CL), initial order issued October 29, 2024
27. [Pride Group Holdings Inc et al., Re](#), (Court File No. CV-24-00717340-00CL), initial order dated March 27, 2024
28. [Synaptive Medical Inc., Re](#) (Court File No. CV-25-00739279-00CL), initial order dated March 19, 2025
29. [Accuride Canada Inc., Re](#) (Court File No. CV-24-00729147-00CL), initial order dated October 10, 2024
30. [Re Aleafia Health Inc](#) (Court File No. CV-23-00703350-00CL), initial order dated July 25, 2023
31. *BZAM Ltd. Plan of Arrangement*, [2024 ONSC 1645](#)
32. *Indiva Limited et al.*, [2024 ONSC 3426](#)

**SCHEDULE “B”
RELEVANT STATUTES**

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

s. 2 (“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, railway or telegraph companies, insurance companies and companies to which the Trust and Loan Companies Act applies.

s. 2 (“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.

s. 3(1)

s. 3(1)

Application. – 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.

s. 9(1)

Jurisdiction of court to receive applications – 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.

s. 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.

s. 11.001

Relief reasonably necessary – 11.001 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.

s. 11.51(1)

Security or charge relating to director's indemnification. – 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.

s. 11.51(2)

Priority. – The court may order that the security or charge rank in priority over the claim of any secured creditors of the company

s. 11.51(3)

Restriction. – indemnification insurance – 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.

s. 11.51(4)

Negligence, misconduct or fault. – 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.

s. 11.52(1)

Court may order security or charge to cover certain costs. – 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 proceeding 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.

s. 11.52(2)

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

Bankruptcy and Insolvency Act, R.S.C. 1985, c B-3, as amended

s. 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.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO LI-CYCLE HOLDINGS CORP. ET AL.

Court File No.

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

Proceeding Commenced at Toronto

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