

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
NOYA HOLDINGS INC. AND NOYA CANNABIS INC.

Applicants

FACTUM OF THE APPLICANTS

October 29, 2024

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PART I – INTRODUCTION

1. Boom and bust periods are not uncommon in business cycles. Cannabis has also experienced its highs and lows. Noya Holdings Inc. (formerly, Radicle Cannabis Holdings Inc.) (“**NHI**”) and Noya Cannabis Inc. (formerly, Radicle Medical Marijuana Inc. and Radicle Remedy Inc.) (“**NCI**”, together the “**Applicants**” or the “**Company**”) have experienced similar challenges. They seek this Court's protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”).
2. This factum is filed in support of an application by the Company under the CCAA for an order substantially in the form attached as Tab 3 to the Application Record (“**Initial Order**”). Among other things, the Company is requesting that the Court grant the following relief under the Initial Order:
 - (a) declare that the Applicants are companies to which the CCAA applies;
 - (b) provide a stay of proceedings in favour of the Applicants and a Non-Applicant Stay Party (as defined below) for an initial period of not more than ten days to allow the Company to stabilize its business operations and develop a sale and investment solicitation process for its business and property (“**Sale Process**”);
 - (c) appoint BDO Canada Limited (“**BDO**”) as monitor of the Company in these proceedings (“**Monitor**”);
 - (d) grant an Administration Charge and Directors' Charge (each as defined below) over the Company's assets;

- (e) schedule a comeback hearing (“**Comeback Hearing**”) for November 15, 2024;
and
 - (f) such further and other relief as counsel may request and this Court may deem just.
3. NCI is a licenced producer of cannabis with operations located in Hamilton, Ontario. In the past year, the Applicants have suffered losses due to, among other things, the following trends in the industry:
- (a) rising costs including the costs of regulatory compliance and litigation;
 - (b) the loss of revenues as a result of certain customers filing under the CCAA;
 - (c) a steep decline in the value of most publicly-traded cannabis companies in Canada, which forms part of the Company's client base;
 - (d) intense competition and an over-supply of cannabis products leading to significant price reduction; and
 - (e) low market demand for cannabis products, partially as a result of the illicit market for cannabis, causing the withdrawal of orders.
4. The Company's management team has made determined efforts to address these financial challenges, including, among other things, reducing staff; increasing the efficiency of full-time production staff; making efforts to reduce services to save costs and to reduce professional costs related to litigation; transitioning away from retail sales to wholesale business-to-business sales; and identifying opportunities to improve liquidity. These

efforts, while helpful, have been insufficient to completely address the financial challenges facing the Applicants.

5. The Applicants are each insolvent, each indebted over \$5 million and are facing payment demands and contingent claims. Also, given their reliance on key customers or accounts receivables, any delay or problem in collections could easily tip the Company into a liquidity crisis or “cash crunch”. Given these challenges, the CCAA provides the Company with many advantages, including: “breathing space” (i.e., stay of proceedings); a single forum (i.e., for the contingent claims); the opportunity to stabilize its operations for the benefit of all of its stakeholders; and the most appropriate forum for the Company to restructure its affairs in the circumstances.
6. The Applicants will also ask the Court to schedule a Comeback Hearing. At that Comeback Hearing, if scheduled, the Company will request, among other things, approval of the following: DIP financing, to address the above risk of a “cash crunch”; a Sale Process (including a stalking horse bid); an increase in the amount of some of the Charges (administration and directors); and an extension of the stay of proceedings.

PART II – FACTS

7. The facts underlying this Application are more fully set out in the affidavit of Ziad Reda sworn October 28, 2024 (the “**Reda Affidavit**”). Mr. Reda is the Chief Executive Officer

of NHI as well as a member of the board of directors. He is also the CEO and a member of the board of directors of NCI, the wholly-owned subsidiary of NHI.¹

A. Corporate Overview and the business

8. NHI is the ultimate parent company of NCI and 2675383 Ontario Limited (“**267**” or the “**Non-Applicant Stay Party**”).² NCI holds the grow and sales cannabis licence, and 267 holds the micro-cultivation cannabis licence.³
9. NHI, through its wholly-owned subsidiary, NCI, operates a cannabis production business.⁴ NCI is the Company's operating entity.⁵ It holds the necessary cannabis licenses and operates the production business out of a licensed facility located at the property municipally known as 90 Beach Road, Hamilton, Ontario (the “**Hamilton Facility**”).⁶
10. NCI is a licensed producer of premium cannabis products under the *Cannabis Act*, S.C. 2018, c. 16. As a licensed producer, NCI has entered into a series of contractual relationships with different cannabis brands, suppliers or distributors, including sales and distribution agreements and production, supply and revenue sharing agreements. NCI's production process involves growing its plants in a tightly controlled indoor environment,

¹ Affidavit of Ziad Reda sworn October 28, 2024 (“Reda Affidavit”) at para 1, Tab 2 to the Application Record of the Applicants dated October 29, 2024 (“Application Record”). Capitalized terms in this Factum that are not defined have the meanings ascribed or defined to them in the Reda Affidavit.

² Reda Affidavit at para 8, Tab 2 to the Application Record.

³ Reda Affidavit at para 34, Tab 2 to the Application Record.

⁴ Reda Affidavit at para 25, Tab 2 to the Application Record.

⁵ Reda Affidavit at para 23, Tab 2 to the Application Record.

⁶ Reda Affidavit at para 29, Tab 2 to the Application Record.

and then hand-drying and hand-curing the trimmings before they are used to produce various cannabis products.⁷

11. The Company currently employs 18 employees, 18 with NCI (none are temporary workers) and zero with NHI.⁸

B. Debts and Obligations

i. Lending Stream

12. Lending Stream Inc. (“**Lending Stream**”) is the Company's senior secured creditor.⁹
13. As of August 31, 2024, NHI was indebted to Lending Stream pursuant to a Convertible Debenture in the approximate amount of \$1,850,000.00; and NCI was indebted to Lending Stream pursuant to a Royalty Agreement in the approximate amount of \$3,360,000.00.¹⁰ Lending Stream holds various security, including the Lending Stream Security, regarding these obligations.¹¹ On or about September 23, 2024, Lending Stream demanded payment and issued BIA notices regarding these debts.¹²
14. The owner of Lending Stream is the brother of the owner of the Company.¹³

ii. 195

15. 1955185 Ontario Inc., as amalgamated or changed to 1000593616 Ontario Inc. (“**195**”) is another secured creditor, in that it provided two loans to NHI under two sets of loan and

⁷ Reda Affidavit at para 25, Tab 2 to the Application Record.

⁸ Reda Affidavit at para 40, Tab 2 to the Application Record.

⁹ Reda Affidavit at para 54, Tab 2 to the Application Record.

¹⁰ Reda Affidavit at paras 63, Tab 2 to the Application Record.

¹¹ Reda Affidavit at paras 55-61, Tab 2 to the Application Record.

¹² Reda Affidavit at paras 62-63, Tab 2 to the Application Record.

¹³ Reda Affidavit at para 13, Tab 2 to the Application Record.

security documents.¹⁴ As of September 30, 2024, 195 had loaned the approximate amount of \$3.8 million to NHI pursuant to the First Loan and Security and the Second Loan and Security.¹⁵

16. 195 is owned or controlled by the parents or relatives of the owner of the Company.¹⁶

iii. Gage or Terrascend

17. Another secured creditor is Gage Growth Corp. (formerly, Wolverine Partners Corp.) or TerrAscend Corp. (which acquired shares of Gage Growth Corp.) (“**Gage or TerrAscend**”).¹⁷ As of September 30, 2024, NHI was indebted to TerrAscend or Gage under a Secured Grid Convertible Debenture in the approximate amount of \$1.3 million and NCI was indebted to TerraAscend or Gage under a Limited Guarantee, supported by a GSA, in the approximate amount of \$1.3 million.¹⁸

18. There are intercreditor agreements, namely a Pari Passu Agreement and a Subordination and Postponement Agreement, that govern the relationship of Lending Stream and TerrAscend or Gage regarding the Company.¹⁹

iv. Contingent Claims

19. The Company is also facing various contingent claims, including from Pure Sunfarms Corp., Ignite International Brands (Canada) Ltd., and 10805696 Canada Inc., o/a Mauve

¹⁴ Reda Affidavit at paras 68-69, Tab 2 to the Application Record.

¹⁵ Reda Affidavit at para 70, Tab 2 to the Application Record.

¹⁶ Reda Affidavit at para 14, Tab 2 to the Application Record.

¹⁷ Reda Affidavit at paras 14, 64 Tab 2 to the Application Record.

¹⁸ Reda Affidavit at paras 64-67, Tab 2 to the Application Record.

¹⁹ Reda Affidavit at paras 60, 61 and 66, Tab 2 to the Application Record.

& Herbes (the “**Contingent Claims**”).²⁰ These claims arise primarily from contractual disputes and are unsecured claims.²¹

20. The Contingent Claims are at different stages of litigation, mediation or arbitration, and have looming deadlines in the respective proceeding, which will require the Company to expend further time, money and resources to meet those deadlines.²²

21. The Contingent Claims are in excess of \$5 million.²³

C. PPSA and Other Creditors

22. The secured creditors identified above, namely Lending Stream, TerrAscend or Gage and 195, including their predecessor, successor or assignor, if applicable, have registered security interests against NHI and/or NCI, including their predecessor, under the Ontario *Personal Property Security Act* (“**PPSA**”). The only other PPSA registrant appears to be against the predecessor company of NCI, Radicle Medical Marijuana Inc., by Alterna Savings and Credit Union Limited on May 11, 2023 in the amount of \$34,500 regarding a secured corporate Visa.²⁴

23. The Company is up to date with payments to the Canada Revenue Agency (“**CRA**”) in respect of Employment Insurance and Canada Pension Plan deductions but is owing excise tax remittances and HST remittances.²⁵

24. The Company owes various amounts to trade creditors.²⁶

²⁰ Reda Affidavit at paras 15, Tab 2 to the Application Record.

²¹ Reda Affidavit at paras 25, 85-88 Tab 2 to the Application Record.

²² Reda Affidavit at paras 16, 85-88, Tab 2 to the Application Record.

²³ Reda Affidavit at paras 85-88, Tab 2 to the Application Record.

²⁴ Reda Affidavit at paras 72-73, Tab 2 to the Application Record.

²⁵ Reda Affidavit at paras 76-77, Tab 2 to the Application Record.

D. Financial Challenges

25. The Canadian cannabis industry operates in an extremely challenging and volatile market. The industry is also fairly novice given its recent legalization. With legalization, the industry is highly regulated, highly taxed, and subject to ever-changing legislation and delays at all levels of government.²⁷ The Company has faced pressures similar to many other cannabis industry participants due to the over-supply in the market for cannabis products, the impact of the illegal market on the demand for legal cannabis products, inflation, and high interest rates.²⁸
26. As a result of the challenges to the cannabis industry and in particular the over-supply of cannabis products, the Company has seen a number of customers withdraw or discontinue their orders. Some of these customers have also filed under the CCAA, and this too has had a negative impact on the Company's revenues.²⁹
27. The Company is facing payment demands from its main secured creditor, Lending Stream, and Contingent Claims at different stages of litigation or arbitration, and is indebted to other secured creditors, in respect of claims totalling over \$10 million.³⁰

E. Need for CCAA Protection

28. As a result of their continuing financial difficulty and challenges, the Applicants are insolvent and cannot meet their liabilities as they become due. The Applicants have

²⁶ Reda Affidavit at para 78, Tab 2 to the Application Record.

²⁷ Reda Affidavit at para 80, Tab 2 to the Application Record.

²⁸ Reda Affidavit at para 81, Tab 2 to the Application Record.

²⁹ Reda Affidavit at para 82, Tab 2 to the Application Record.

³⁰ Reda Affidavit at paras 54-72, 85-88, Tab 2 to the Application Record.

determined that a CCAA proceeding is required to complete a sale process and otherwise address their current challenges by restructuring their operations.³¹

F. Proposed Monitor

29. The Applicants are proposing that BDO Canada Limited (“**BDO**”) act as monitor of the Company in these CCAA proceedings. BDO has developed critical knowledge about the Applicants, their business operations, challenges, strategic initiatives, and restructuring efforts to date. BDO has also reviewed and assisted in the preparation of the Cash Flow Forecast, and has provided guidance and assistance in the commencement of these CCAA proceedings.³²

PART III – ISSUES

30. The issues to be addressed before this Honourable Court are whether:
- (a) the Applicants meet the definition of “company” and “debtor company” under the CCAA;
 - (b) the stay of proceedings should be granted in favour of the Applicants including their directors and a regulatory stay over NCI's licences;
 - (c) the stay of proceedings should be extended to the Non-Applicant Stay Party including its directors and a regulatory stay over 267's licences;
 - (d) the Administration Charge (as defined below) should be granted;
 - (e) the Directors' Charge (as defined below) should be granted; and

³¹ Reda Affidavit at paras 93-94, Tab 2 to the Application Record.

³² Reda Affidavit at paras 95-97, Tab 2 to the Application Record.

- (f) BDO should be appointed as monitor.

PART IV – LAW AND ARGUMENT

A. Applicants are Debtor Companies

31. The CCAA applies to a “debtor company” or “affiliated company” whose liabilities exceed \$5 million.³³ The term “company” is defined as “any company, corporation or legal person incorporated by or under an Act of Parliament or the legislature of a province...”.³⁴ “Debtor company” is defined as “any company that: (a) is bankrupt or insolvent...”.³⁵
32. The insolvency of a debtor is determined at the time the debtor files its CCAA application.³⁶
33. While the CCAA does not define “insolvent”, courts have held that a company is insolvent under the CCAA if:³⁷
- (a) the company meets the definition of “insolvent person” under the BIA, which includes a person “...who is for any reason unable to meet [its] obligations as they generally become due...”;³⁸ or
 - (b) the company faces a looming liquidity crisis.³⁹

³³ s. 3(1), Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 as amended (“CCAA”).

³⁴ s. 2(1), CCAA.

³⁵ s. 2(1), CCAA.

³⁶ *Stelco Inc., Re*, 2004 CanLII 24933 (ONSC) at para 4.

³⁷ *Stelco Inc., Re*, 2004 CanLII 24933 (ONSC) at paras 21-22, and 26.

³⁸ s. 2, Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (“BIA”).

³⁹ *Stelco Inc., Re*, 2004 CanLII 24933 (ONSC) at para 40.

34. In *Re Stelco Inc.*, Justice Farley held that the definition of “insolvent” should be interpreted liberally and expanded to give effect to the objectives of the CCAA of allowing the debtor company to obtain breathing room in order to restructure.⁴⁰
35. Each of the Applicants are incorporated pursuant to the laws of Ontario and have their registered head offices in Ontario. The Applicants are unable to meet their obligations as they generally become due and they face the risk of a liquidity challenge or “cash crunch” in the near future.⁴¹
36. The Applicants have total debts in excess of \$10,000,000, well over the \$5,000,000 threshold.⁴²
37. The Company has filed the required financial information, including an interim cash flow projection, and accordingly meets the technical requirements of the CCAA.⁴³
38. Accordingly, the Applicants submit that they are debtor companies to whom the CCAA applies.

B. Stay of Proceedings in favour of the Applicants including their directors and a regulatory stay over NCI's licences

39. Under section 11.02 of the CCAA, a court may grant a stay of proceedings upon an initial application under the CCAA for a period of no more than ten days, provided that the court is satisfied that circumstances exist that make the order appropriate.⁴⁴

⁴⁰ *Stelco Inc., Re*, 2004 CanLII 24933 (ONSC) at para 26.

⁴¹ Reda Affidavit at para 119, Tab 2 to the Application Record.

⁴² Reda Affidavit at paras 54-72, 85-88, Tab 2 to the Application Record.

⁴³ Reda Affidavit at paras 48-53; Interim Cash Flow Forecast at Exhibit “G” to the Reda Affidavit; Financial Statements at Exhibit “F” to the Reda Affidavit.

40. A stay of proceedings is appropriate where it provides a debtor with breathing space as the debtor seeks to restore solvency and emerge from the CCAA on a going concern basis.⁴⁵ During that breathing space, the purpose of the CCAA stay of proceedings is to maintain the status quo to provide a structured environment in which an insolvent company can continue to carry on business and develop a restructuring plan for the benefit of the company and all of its stakeholders.⁴⁶

41. As some commentators have noted:

The primary purpose of a stay is to benefit a qualified debtor company by giving it a breathing space to negotiate with its creditors, to provide creditor protection by prohibiting a race for the debtor's assets and to protect the jurisdiction of the court over the debtor, its creditors and the reorganization process. The breathing space to restructure is good not only for the enterprise and the creditors, but also for the public, which includes among its members, the employers, employees, suppliers, shareholders, landlords and customers of the enterprise.⁴⁷

42. Section 11.001 of the CCAA further provides:⁴⁸

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.

⁴⁴ s. 11.02, CCAA; *Re Lydian International Limited*, 2019 ONSC 7473 at para 22.

⁴⁵ *Target Canada Co.*, 2015 ONSC 303 at para 8.

⁴⁶ *Century Services v Canada (Attorney General)*, 2010 SCC 60 (CanLII) at para 60.

⁴⁷ John D. Honsberger & Vern W. DaRe, *Debt Restructuring: Principles and Practice* (Aurora, Ont.: Thomson Reuters, 1990-) (Loose-leaf, Release No. 3, June 2024) at p. 9-94.

⁴⁸ s. 11.001, CCAA.

43. Absent exceptional circumstances, the relief to be granted at the initial hearing should be limited, and whenever possible, the *status quo* should be maintained during the initial 10-day period.⁴⁹ This 10-day period allows for, *inter alia*, as Chief Justice Morawetz observed, “a negotiating window, followed by a comeback hearing where the request for expanded relief can be considered, **on proper notice to all affected parties.**”⁵⁰
44. On the latter point, given the limited relief normally sought at the initial hearing, the subsequent “negotiating window” of 10 days and the requirement of proper notice to all affected parties for the comeback hearing, the practice has developed of providing limited notice, and sometimes no notice (i.e., *ex parte*) especially on urgent matters, of the initial hearing. As some commentators have noted:

The initial application often will be *ex parte* and accompanied by an initial application for a stay of proceedings. As the court cannot make an order to stay proceedings on a first application for more than 10 days, more often on an *ex parte* initial application courts will grant only a short stay of proceedings and direct that any application to continue the stay be on notice to the creditors.⁵¹

45. It also bears noting that under the court's general power under section 11 of the CCAA, the court may make any order it may see fit that it considers appropriate in the circumstances, on notice or without notice. The Service List on this initial application has provided limited notice, namely to the proposed monitor, its counsel, the known secured creditors of the Company or their counsel and the applicable government and health authorities but not to any unsecured creditors or alleged unsecured creditors

⁴⁹ [Re Lydian International Limited](#), 2019 ONSC 7473 at para 26.

⁵⁰ [Re Lydian International Limited](#), 2019 ONSC 7473 at para 30. (our emphasis)

⁵¹ John D. Honsberger & Vern W. DaRe, *Debt Restructuring: Principles and Practice* (Aurora, Ont.: Thomson Reuters, 1990-) (Loose-leaf, Release No. 3, June 2024) at p. 9-85.

including the Contingent Claims or claimants. The latter will be served or provided notice before the Comeback Hearing.

46. The Applicants submit that given their current financial condition, the payment demand from Lending Stream and the Contingent Claims, a stay of proceedings at this time is in the best interests of the Company and its stakeholders and is both necessary and appropriate.
47. The Applicants have limited the relief sought on this application under section 11.001 of the CCAA to relief that is reasonably necessary in the circumstances to maintain the status quo and to give the Applicants the breathing room necessary to stabilize their operations, seek and finalize DIP financing and develop a sale process for the benefit of their stakeholders.
48. The Applicants submit that the stay of proceedings should be extended to the Company's directors and officers so that they may focus on the CCAA proceedings, including developing and implementing the Sale Process. Section 11.03 of the CCAA allows for the extension of the stay to a debtor's directors.⁵²
49. The Applicants submit that the stay of proceedings should also cover NCI's cannabis licences. CCAA courts have granted regulatory stays over licences where, absent such a stay, the applicable regulators were likely to suspend or cancel the licences because of the commencement of the CCAA proceeding. Other courts have observed that permitting the immediate termination of the licences of a debtor company would not avoid social and

⁵² S. 11.03, CCAA.

economic losses but rather would amplify them in the circumstances. Finally, Canadian courts have also granted stays to prevent the Canada Revenue Agency from seeking to enforce its rights through regulatory actions related to an excise licence for a cannabis company during the period in which it was under protection in an insolvency regime.⁵³ The cannabis licences of NCI are valuable assets and they are required to permit the Applicants to continue operating their underlying business. The cancellation of the licences would suspend or terminate the operation and delivery of products by the Applicants with the result that the ability of the Applicants to restructure, sell or continue as a going concern business would likely be eliminated or materially prejudiced.

C. Stay of Proceedings in favour of the Non-Applicant Stay Party including its directors and a regulatory stay over 267's licences

50. The Applicants are also seeking to extend the stay of proceedings to the Non-Applicant Stay Party or 267 because it holds a cannabis micro-cultivation licence and an excise cannabis licence, it is integrated with the business and/or operations of the Company and 267's licences may be a part of or impacted by the anticipated Sale Process.⁵⁴ The extension of the stay of proceedings to this Non-Applicant Stay Party is partly intended to prevent any regulatory actions related to 267's licences, including the suspension or cancellation of the licences, due to the commencement of this CCAA proceeding by its ultimate parent (NHI) and NCI. 267 has no or few creditors and a recent Ontario PPSA search on or about October 23, 2024 against 267 reveals no PPSA registrants.⁵⁵

⁵³ [BZAM Ltd. Plan of Arrangement](#), 2024 ONSC 1645 at paras. 46-49.

⁵⁴ Reda Affidavit at para 109, Tab 2 to the Application Record.

⁵⁵ Reda Affidavit at para 109, Tab 2 to the Application Record.

51. This Court has authority to extend the stay of proceedings to the Non-Applicant Stay Party pursuant to section 11 and 11.02(1) of the CCAA, which allows it to make an initial order on any terms that the court may impose. In determining whether a stay should be extended to non-parties, courts have considered numerous factors, including whether the subsidiaries of the applicants had guaranteed secured loans of the applicants, whether the non-applicants were deeply integrated into the business operations of the applicants, and whether the claims against the non-applicants were derivative of the primary liability of the applicants.⁵⁶ Applying these factors in the cited decision, Justice Osborne held that the non-applicant stay parties were highly integrated into the business as wholly-owned subsidiaries (direct or indirect) of the parent applicant. His Honour also extended the stay to these parties to prevent uncoordinated realization and enforcement attempts. Finally, he acknowledged that the applicants intend to seek court approval of a sale process at the upcoming comeback hearing that would include the non-applicant stay parties and therefore the initial stay should apply to them to give comfort to potential bidders that enforcement actions against those parties would be stayed while a sales process was being conducted.⁵⁷
52. For similar reasons as noted above, the stay of proceedings should apply to the Non-Applicant Stay Party including its directors and a regulatory stay over the 267 licences: 267 is integrated with the business and/or operations of the Company; 267's licences may be a part of or impacted by the anticipated Sale Process; the stay will prevent uncoordinated realization and enforcement attempts; and the directors and officers of 267

⁵⁶ [*BZAM Ltd. Plan of Arrangement*](#), 2024 ONSC 1645 at paras. 42-45.

⁵⁷ [*BZAM Ltd. Plan of Arrangement*](#), 2024 ONSC 1645 at paras. 42-45.

should be permitted to focus on the CCAA proceedings, including developing and implementing the Sale Process.

D. Administration Charge

53. The Applicants seek a first-ranking court-ordered charge in the amount of \$200,000 over the Applicants' Property (as defined in the Initial Order) in favour of the Monitor, counsel to the Monitor, and counsel to the Applicants to secure payment of their professional fees and disbursements, whether incurred before or after the date of the Initial Order (“**Administration Charge**”).⁵⁸

54. Under section 11.52 of the CCAA, courts have jurisdiction to grant a priority administration charge.⁵⁹ In deciding whether to grant an administration charge, courts have considered several factors including:⁶⁰

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

⁵⁸ Reda Affidavit at paras 98-102, Tab 2 to the Application Record.

⁵⁹ s. 11.52, CCAA.

⁶⁰ [Canwest Publishing Inc. Re.](#), 2010 ONSC 222 at para 54; see also, [Re Lydian International Limited](#), 2019 ONSC 7473 at para 46.

55. The Applicants submit that it is appropriate for this Court to exercise its discretion to grant the Administration Charge. The nature of the Applicants' business requires the expertise, knowledge and continuing participation of the beneficiaries of the Administration Charge. These parties will play a critical role in assisting the Applicants with the Sale Process and the progression of the CCAA proceedings. Each proposed beneficiary of the Administration Charge is performing distinct functions and there is no duplication of roles. The quantum of the proposed Administration Charge is in line with the nature and size of the Applicants' business and the involvement required by the professional advisors.⁶¹

56. The proposed Monitor is also supportive of the granting and quantum of the Administration Charge.⁶²

E. Directors' Charge

57. The Applicants seek a Directors' Charge on the Applicants' Property in favour of the Applicants' current officers and directors in priority to all other charges other than the Administration Charge, up to a maximum of \$100,000.⁶³

58. Pursuant to section 11.51 of the CCAA, a court may grant a Directors' Charge on a super-priority basis.⁶⁴

59. The purpose of a Directors' Charge was described in *Canwest Global Communications Corp. (Re)*.⁶⁵

⁶¹ Reda Affidavit at paras 98-102, Tab 2 to the Application Record.

⁶² Pre-Filing Report of the Monitor, to be filed.

⁶³ Reda Affidavit at para. 103, Tab 2 to the Application Record.

⁶⁴ S. 11.51, CCAA.

The purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protection against liabilities they could incur during the restructuring...Retaining the current directors and officers of the applicants would avoid destabilization and would assist in the restructuring. The proposed charge would enable the applicants to keep the experienced board of directors supported by experienced senior management.

60. In *Jaguar Mining Inc. (Re)*, the court set out the following factors to be considered with respect to the approval of a directors' charge:⁶⁶
- (a) Whether notice has been given to the secured creditors likely to be affected by the charge;
 - (b) Whether the amount is appropriate;
 - (c) Whether the applicant could not obtain adequate indemnification insurance for the director or officer at a reasonable cost; and
 - (d) Whether the charge does not apply in respect of any obligation incurred by a director or officer as a result of the director's or officer's gross negligence or wilful misconduct.
61. To ensure the ongoing stability of the Company's business during the CCAA proceedings, the continued participation of its officers and directors is necessary. The officers and directors have skills, knowledge and expertise, as well as established relationships with various stakeholders that will contribute to a successful restructuring.

⁶⁵ [*Canwest Global Communications Corp. \(Re\)*](#), 2009 CanLII 55114 (ONSC) at para. 48.

⁶⁶ [*Jaguar Mining Inc. \(Re\)*](#), 2014 ONSC 494 at para. 45.

Also critical, Health Canada requires that there at least be one director of a licenced cannabis company in order to maintain its licence.⁶⁷

62. While the Company's directors and officers have the benefit of a D&O insurance policy that provides them with coverage for certain claims and liabilities that may arise, the policy coverage is generally limited to the amount of \$1 million and may contain exclusions and exceptions to such coverage.⁶⁸
63. The Company's ordinary course operations during the CCAA proceedings will give rise to potential director or officer liability, including for employee source deductions and sales tax. To address legitimate concerns expressed with respect to their potential exposure if they continue to act (rather than resign), the directors and officers have requested reasonable protection against personal liability that might arise during the post-filing period. The Directors' Charge is intended to address potential claims that may be brought against directors and officers.⁶⁹
64. The quantum of the Directors' Charge was developed with the assistance and support of the proposed Monitor. The Applicants and the Monitor are of the view that the quantum of the Directors' Charge is reasonably necessary at this time to address circumstances that could lead to potential directors' liability prior to the comeback hearing.⁷⁰

F. Appointment of Monitor

⁶⁷ Reda Affidavit at paras 103-107, Tab 2 to the Application Record.

⁶⁸ Reda Affidavit at paras 103-107, Tab 2 to the Application Record.

⁶⁹ Reda Affidavit at paras 103-107, Tab 2 to the Application Record.

⁷⁰ Reda Affidavit at paras 103-107, Tab 2 to the Application Record.

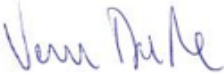
65. A court is required to appoint a person to monitor the business and financial affairs of a debtor company at the time that an initial CCAA order is made pursuant to section 11.7 of the CCAA.⁷¹
66. Section 11.7(2) of the CCAA also sets out certain requirements for and restrictions on who may act as a monitor, including that the monitor be a trustee within the meaning of subsection 2 of the BIA.⁷²
67. BDO is a trustee within the meaning of subsection 2(1) of the BIA and is not disqualified under any of the restrictions pursuant to section 11.7(2) of the CCAA. BDO has also consented to its appointment as Monitor.⁷³
68. The Applicants request that BDO be appointed monitor of the Applicants during these CCAA proceedings.

PART V - RELIEF REQUESTED

69. The Applicants respectfully request that this Honourable Court grant the relief provided for in the proposed Initial Order in accordance with the terms of the CCAA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of October, 2024.

Per: _____


Name: Vern W. DaRe
FOGLER, RUBINOFF LLP
Lawyer for the Applicants

⁷¹ s. 11.7, CCAA.

⁷² s 11.7(2)

⁷³ Reda Affidavit at paras 95-97, Tab 2 to the Application Record.

**SCHEDULE “A”
LIST OF AUTHORITIES**

Cases Cited

1. [Stelco Inc., Re](#), 2004 CanLII 24933 (ONSC)
2. [Re Lydian International Limited](#), 2019 ONSC 7473
3. [Target Canada Co.](#), 2015 ONSC 303
4. [Century Services v Canada \(Attorney General\)](#), 2010 SCC 60 (CanLII)
5. [BZAM Ltd. Plan of Arrangement](#), 2024 ONSC 1645
6. [Canwest Publishing Inc., Re](#), 2010 ONSC 222
7. [Canwest Global Communications Corp. \(Re\)](#), 2009 CanLII 55114 (ONSC)
8. [Jaguar Mining Inc. \(Re\)](#), 2014 ONSC 494

Secondary Sources

1. John D. Honsberger & Vern W. DaRe, *Debt Restructuring: Principles and Practice* (Aurora, Ont.: Thomson Reuters, 1990-) (Loose-leaf, Release No. 3, June 2024) (attached)

Honsberger + Duke, Debt Restructuring

audited or unaudited, prepared during the year prior to the application, or where no such statements were prepared in the prior year, a copy of the most recent statement.³

The affidavit should say that the application is made in good faith and should make full disclosure and place candidly and frankly before the court all the facts and circumstances which bear on the jurisdiction of the court, the provisions of the order requested and upon which the court is asked to exercise its discretion.⁴

The initial application often will be *ex parte* and accompanied by an initial application for a stay of proceedings. As the court cannot make an order to stay proceedings on a first application for more than 10 days, more often on an *ex parte* initial application courts will grant only a short stay of proceedings and direct that any application to continue the stay be on notice to the creditors.

Initial orders usually are dealt with on an immediate basis. If an interested person on reflection feels that there should be some amendment to the order, he should make use of the comeback clause on a timely basis to seek an amendment.⁵ Some courts, relying on the general or statutory authority of the

³CCAA, s. 11(2).

⁴*Langley's Ltd. (Re)*, [1938] 3 D.L.R. 230, [1938] O.R. 123 at p. 132 (C.A.); *229531 B.C. Ltd. (Re)* (1989), 72 C.B.R. (N.S.) 310 (B.C.S.C.). If the application is made *ex parte*, full disclosure of all material facts is essential: *229531 B.C. Ltd. (Re)* (1989), 72 C.B.R. (N.S.) 310 (B.C.S.C.). In *Re Hester Creek Estate Winery Ltd.* (2004), 50 C.B.R. (4th) 73 (B.C.S.C.), the court held that full disclosure of material facts had not been provided and that it had been misled. In the circumstances, the *ex parte* order was not extended. In *Re Encore Developments Ltd.* (2009), 52 C.B.R. (5th) 30, 2009 BCSC 13, the court set aside from the outset the *ex parte* initial order where the applicant failed to fully disclose, with good faith, all relevant or material information as to the urgency and the reason why notice should not be given in the circumstances. See also *Re Marine Drive Properties Ltd.* (2009), 56 C.B.R. (5th) 65, 2009 BCSC 1083. Similarly, see *CanSea Petrogas Group Holdings Ltd., Re*, 2014 CarswellOnt 14845, 2014 ONSC 6116, at para. 36, where the Court held, on a comeback motion, that the original evidence presented on the *ex parte* application and relied upon by the Court to grant the initial CCAA order was not accurate; that the actual evidence does not support the conclusion that the Canadian debtors qualified as applicants under the CCAA; and that as a result, the initial order was declared to be void *ab initio*; leave to appeal to Ont. C.A. refused 2014 CarswellOnt 17259, 2014 ONCA 824 (Sharpe J.A.). The Court of Appeal also found, at paragraph 3, that the moving parties were unable to offer an acceptable explanation for having moved *ex parte* in the circumstances.

⁵*Cineplex Odeon Corp. (Re)* (2001), 26 C.B.R. (4th) 21 (Ont. S.C.J.). An interested person should not feel constrained about relying on the comeback

Hansberger + Dale, Debt Restructuring

§ 9:24

DEBT RESTRUCTURING: PRINCIPLES AND PRACTICE

lating to CCAA proceedings and allow public access to that information;

- (b) to review the appointment or conduct of a monitor;
- (c) to keep a record of all complaints regarding the conduct of monitors;
- (d) to investigate the conduct of monitors;
- (e) to cancel or suspend the monitor's licence as a trustee under the BIA; and
- (f) to issue a subpoena or summons with respect to the investigation of the conduct of the monitor.

IV. STAY OF PROCEEDINGS

§ 9:25 Generally

A stay of proceedings under the CCAA is not an automatic stay as in a proposal under the *Bankruptcy and Insolvency Act*. An application must be made. The Act provides that where an application is made under this Act in respect of a company the court may make an order staying proceedings against the company for such period as the court considers necessary, subject to the provisions of the Act.¹ Proceedings are not restricted to court proceedings but encompass regulatory proceedings.² A stay of proceedings will not stay a defendant's equitable right of set-off in an action brought by the debtor.³

The primary purpose of a stay is to benefit a qualified debtor company by giving it a breathing space to negotiate with its creditors, to provide creditor protection by prohibiting a race for the debtor's assets and to protect the jurisdiction of the court over the debtor, its creditors and the reorganization process. The breathing space to restructure is good not only for the enterprise and the creditors, but also for the public, which includes among its members, the employers, employees, suppliers, shareholders, landlords and customers of the enterprise. It is also beneficial to the public as a whole to enable enterprises to regain the opportunity to contribute to the country's eco-

[Section 9:25]

¹CCAA, ss. 11 and 11.02.

²*Anvil Range Mining Corp. (Re)* (1998), 3 C.B.R. (4th) 93 (Ont. Ct. (Gen. Div.)), and see §§ 8:41 to 8:51, "Stay of Proceedings". See also *Re Just Energy Corp.*, 2021 CarswellOnt 3724, 2021 ONSC 1793 (Ont. S.C.J. [Commercial List]), at para. 77.

³*Cam-Net Communications v. Vancouver Telephone Co.* (1999), 17 C.B.R. (4th) 26, 182 D.L.R. (4th) 436 (B.C.C.A.).

SCHEDULE “B” RELEVANT STATUTES

Companies' Creditors Arrangement Act (R.S.C., 1985, c. C-36)
s. 2(1), CCAA.

Interpretation

Definitions

2 (1) In this Act,

cash-flow statement, in respect of a company, means the statement referred to in paragraph 10(2)(a) indicating the company's projected cash flow;

claim means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the [Bankruptcy and Insolvency Act](#);

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;

court means

- (a) in Nova Scotia, British Columbia and Prince Edward Island, the Supreme Court,
- (a.1) in Ontario, the Superior Court of Justice,
- (b) in Quebec, the Superior Court,
- (c) in New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench,
- (c.1) in Newfoundland and Labrador, the Trial Division of the Supreme Court, and
- (d) in Yukon and the Northwest Territories, the Supreme Court, and in Nunavut, the Nunavut Court of Justice; (*tribunal*)

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;

director means, in the case of a company other than an income trust, a person occupying the position of director by whatever name called and, in the case of an income trust, a person occupying the position of trustee by whatever named called;

initial application means the first application made under this Act in respect of a company;

monitor, in respect of a company, means the person appointed under section 11.7 to monitor the business and financial affairs of the company;

secured creditor means a holder of a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, all or any property of a debtor company as security for indebtedness of the debtor company, or a holder of any bond of a debtor company secured by a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, or a trust in respect of, all or any property of the debtor company, whether the holder or beneficiary is resident or domiciled within or outside Canada, and a trustee under any trust deed or other instrument securing any of those bonds shall be deemed to be a secured creditor for all purposes of this Act except for the purpose of voting at a creditors' meeting in respect of any of those bonds;

shareholder includes a member of a company — and, in the case of an income trust, a holder of a unit in an income trust — to which this Act applies;

Superintendent of Bankruptcy means the Superintendent of Bankruptcy appointed under subsection 5(1) of the [Bankruptcy and Insolvency Act](#);

unsecured creditor means any creditor of a company who is not a secured creditor, whether resident or domiciled within or outside Canada, and a trustee for the holders of any unsecured bonds issued under a trust deed or other instrument running in favour of the trustee shall be deemed to be an unsecured creditor for all purposes of this Act except for the purpose of voting at a creditors' meeting in respect of any of those bonds.

Meaning of *related and dealing at arm's length*

(2) For the purpose of this Act, section 4 of the [Bankruptcy and Insolvency Act](#) applies for the purpose of determining whether a person is related to or dealing at arm's length with a debtor company.

Application

- **3 (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.

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.

Stays, etc. — initial application

11.02 (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.

Stays -directors-

11.03 (1) Stays — directors

- 11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.

(3) If all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the company is deemed to be a director for the purposes of this section.

Security or charge relating to director's indemnification

- 11.51 (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.

Court may order security or charge to cover certain costs

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

- (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.

Court to appoint monitor

11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the [*Bankruptcy and Insolvency Act*](#).

Restrictions on who may be monitor

(2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

- (a) if the trustee is or, at any time during the two preceding years, was
 - (i) a director, an officer or an employee of the company,
 - (ii) related to the company or to any director or officer of the company, or
 - (iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or

- (b) if the trustee is
 - (i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the Civil Code of Quebec that is granted by the company or any person related to the company, or
 - (ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

Court may replace monitor

(3) On application by a creditor of the company, the court may, if it considers it appropriate in the circumstances, replace the monitor by appointing another trustee, within the meaning of subsection 2(1) of the [Bankruptcy and Insolvency Act](#), to monitor the business and financial affairs of the company.

Bankruptcy and Insolvency Act (R.S.C., 1985, c. B-3)

Interpretation

Definitions

2 In this Act,

bankrupt means a person who has made an assignment or against whom a bankruptcy order has been made or the legal status of that person;

bankruptcy means the state of being bankrupt or the fact of becoming bankrupt;

claim provable in bankruptcy, provable claim or claim provable includes any claim or liability provable in proceedings under this Act by a creditor;

creditor means a person having a claim provable as a claim under this Act;

date of the bankruptcy, in respect of a person, means the date of

- (a) the granting of a bankruptcy order against the person,
- (b) the filing of an assignment in respect of the person, or
- (c) the event that causes an assignment by the person to be deemed;

date of the initial bankruptcy event, in respect of a person, means the earliest of the day on which any one of the following is made, filed or commenced, as the case may be:

- (a) an assignment by or in respect of the person,
- (b) a proposal by or in respect of the person,

- (c) a notice of intention by the person,
- (d) the first application for a bankruptcy order against the person, in any case
 - (i) referred to in paragraph 50.4(8)(a) or 57(a) or subsection 61(2), or
 - (ii) in which a notice of intention to make a proposal has been filed under section 50.4 or a proposal has been filed under section 62 in respect of the person and the person files an assignment before the court has approved the proposal,
- (e) the application in respect of which a bankruptcy order is made, in the case of an application other than one referred to in paragraph (d), or
- (f) proceedings under the [*Companies' Creditors Arrangement Act*](#); (*ouverture de la faillite*)

debtor includes an insolvent person and any person who, at the time an act of bankruptcy was committed by him, resided or carried on business in Canada and, where the context requires, includes a bankrupt;

director in respect of a corporation other than an income trust, means a person occupying the position of director by whatever name called and, in the case of an income trust, a person occupying the position of trustee by whatever name called;

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;

locality of a debtor means the principal place

- (a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,
- (b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

- (c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated;

person includes a partnership, an unincorporated association, a corporation, a cooperative society or a cooperative organization, the successors of a partnership, of an association, of a corporation, of a society or of an organization and the heirs, executors, liquidators of the succession, administrators or other legal representatives of a person;

property means any type of property, whether situated in Canada or elsewhere, and includes money, goods, things in action, land and every description of property, whether real or personal, legal or equitable, as well as obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, in, arising out of or incident to property;

proposal means

- (a) in any provision of Division I of Part III, a proposal made under that Division, and
- (b) in any other provision, a proposal made under Division I of Part III or a consumer proposal made under Division II of Part III

and includes a proposal or consumer proposal, as the case may be, for a composition, for an extension of time or for a scheme or arrangement;

secured creditor means a person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor, or a person whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable, and includes

- (a) a person who has a right of retention or a prior claim constituting a real right, within the meaning of the Civil Code of Québec or any other statute of the Province of Quebec, on or against the property of the debtor or any part of that property, or
- (b) any of
 - (i) the vendor of any property sold to the debtor under a conditional or instalment sale,
 - (ii) the purchaser of any property from the debtor subject to a right of redemption, or
 - (iii) the trustee of a trust constituted by the debtor to secure the performance of an obligation,

if the exercise of the person's rights is subject to the provisions of Book Six of the *Civil Code of Québec* entitled *Prior Claims and Hypothecs* that deal with the exercise of hypothecary rights;

shareholder includes a member of a corporation — and, in the case of an income trust, a holder of a unit in an income trust — to which this Act applies;

Superintendent means the Superintendent of Bankruptcy appointed under subsection 5(1);

time of the bankruptcy, in respect of a person, means the time of

- (a) the granting of a bankruptcy order against the person,
- (b) the filing of an assignment by or in respect of the person, or
- (c) the event that causes an assignment by the person to be deemed;

trustee or licensed trustee means a person who is licensed or appointed under this Act.

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 NOYA HOLDINGS INC. AND NOYA CANNABIS INC.
Applicants

Court File No. CV-24-00730120-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE APPLICANTS

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