

Court File No.:

**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 THE FLOWR CORPORATION, THE FLOWR  
CANADA HOLDINGS ULC, THE FLOWR GROUP (OKANAGAN) INC.,  
AND TERRACE GLOBAL INC. (collectively, the "**Applicants**")

**FACTUM OF THE APPLICANTS**

October 20, 2022

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TO: Attached Service List

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**PART I - INTRODUCTION**

1. This is an application by The Flowr Corporation ("**Flowr**"), The Flowr Canada Holdings ULC ("**Flowr Holdings**"), The Flowr Group (Okanagan) Inc. ("**Flowr Okanagan**"), and Terrace Global Inc. ("**Terrace**") (collectively, the "**Applicants**" or the "**Flowr Group**") for, among other things, an initial order and protection from their creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c-C. 36, as amended (the "**CCAA**").
2. In particular, the Applicants seek an Order (the "**Initial Order**") for the following relief:
  - (a) Declaring that the Applicants are parties to which the CCAA applies;
  - (b) Appointing Ernst & Young Inc. ("**EY**") as Monitor of the Applicants in these proceedings (the "**Proposed Monitor**");
  - (c) Granting an Administration Charge in the amount of \$350,000 (the "**Administration Charge**") in favour of counsel for the Applicants, the Monitor and its counsel, and counsel, if any, for the board of directors of Flowr, to secure payment of their

professional fees and disbursements, whether incurred before or after the date of the Initial Order;

(d) Approving the DIP Commitment Letter dated October 20, 2022 between the Applicants and 1000343100 Ontario Inc. (the “**DIP Lender**”) for committed terms for DIP financing (the “**DIP Loan**”), authorizing borrowings under the DIP Loan in an amount up to \$500,000 (plus interest, fees and expenses), and granting a charge in favour of the DIP Lender (the “**DIP Lender’s Charge**”);

(e) Granting a directors’ charge in favour of the directors and officers of the Applicants in the amount of \$600,000 (“**Directors’ Charge**” and together with the DIP Lender’s Charge and the Administration Charge, the “**Priority Charges**”);

(f) Granting an initial stay of proceedings (the “**Stay of Proceedings**”) to October 30, 2022 (the “**Stay Period**”); and

(g) authorizing Flowr to incur no further expenses in relation to the Securities Filings (as defined below) and declaring that none of the directors, officers, employees, and other representatives of the Applicants, or the Monitor (and its directors, officers, employees and representatives) shall have any personal liability for any failure by the Applicants to make Securities Filings.

3. The Flowr Group is a licenced producer and distributor of cannabis with its head office being located in Toronto, Ontario and its operations being located in Kelowna, British Columbia. The Flowr Group, through Flowr Okanagan, is licensed by Health Canada to

sell the following cannabis products: cannabis plants; cannabis plant seeds; dried cannabis; fresh cannabis; cannabis topicals; cannabis extracts; and edible cannabis.

4. Over the past 9 nine months, Flowr has undertaken a complete transformation of its business operations aimed at right sizing the organization with a view to reaching profitability, which has included the divestiture of non-core assets, repaying its bank debt in full (which once stood at \$23.77 million) and implementing certain cost savings measures including a significant headcount reduction.
5. However, notwithstanding all of the efforts to undertake phase 1 of its transformation plan, currently, the Applicants' ordinary course monthly cash expenditures exceed its cash receipts. Moreover, absent interim financing being authorized, the Applicants will run out of liquidity in the next 10 days.
6. As a result, Flowr Group is insolvent, faces a liquidity crisis absent interim financing being obtained and, therefore, it is in urgent need of relief and creditor protection under the CCAA.

## **PART II - SUMMARY OF FACTS**

7. The full facts in support of this application are set out in the Affidavit of Darren Karasiuk sworn October 20, 2022 (the "**Karasiuk Affidavit**"), filed. All capitalized terms not otherwise defined herein shall have the same meanings prescribed to them in the Karasiuk Affidavit.

## **PART III - STATEMENT OF ISSUES**

8. The issues to be determined by this Honourable Court on this application are whether:

- (a) the Applicants are a “debtor company” or “debtor companies” to which the CCAA applies?
- (b) the Stay of Proceedings should be granted?
- (c) the Administration Charge should be granted?
- (d) the DIP Loan should be approved and the DIP Lender’s Charge should be granted?
- (e) the Directors’ Charge should be granted?
- (f) EY should be appointed as Monitor in these CCAA proceedings? and
- (g) the Applicants should be authorized to incur no further costs in connection with its Securities Filing Obligations (as defined below)?

#### **PART IV - LAW AND ARGUMENT**

##### **A. The Applicants are Debtor Companies**

- 9. The CCAA applies in respect of a “debtor company” or “affiliated company” where the total claims against the debtor or affiliate exceeds \$5,000,000.<sup>1</sup>
- 10. The term “company” is defined in the CCAA as “any company, corporation or legal person incorporated by or under an Act of Parliament or the legislature of a province...”.<sup>2</sup>

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<sup>1</sup> s. 3(1), CCAA.

<sup>2</sup> s. 2(1), CCAA.

11. The term “debtor company” is defined in the CCAA as “any company that: (a) is bankrupt or insolvent...”.<sup>3</sup>
12. The insolvency of a debtor is determined as of the time the debtor files its CCAA application.<sup>4</sup> The Courts have held that a company is insolvent under the CCAA if:<sup>5</sup>
  - (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...”;<sup>6</sup>
  - (b) the company faces a looming liquidity crisis.<sup>7</sup>
13. Protection under the CCAA may be extended not only to a debtor company, but also to entities that are “necessary parties” to ensure that a stay of proceedings is effective. A court should “take into account the relationship between any particular company and the larger group of which it is a member, as well as the need to place that company within the protection of the Initial Order so that the order will work effectively.”<sup>8</sup>
14. The Applicants are “debtor companies” within the meaning of the CCAA:

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<sup>3</sup> s. 2(1), CCAA.

<sup>4</sup> [Re Stelco Inc. \(2004\)](#), 48 CBR (4<sup>th</sup>) 299 at para. 4 (Ont Sup Ct J [Commercial List]).

<sup>5</sup> [Re Stelco Inc. \(2004\)](#), 48 CBR (4<sup>th</sup>) 299 at paras. 21-22, and 26 (Ont Sup Ct J [Commercial List]).

<sup>6</sup> s. 2, *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“**BIA**”).

<sup>7</sup> [Re Stelco Inc. \(2004\)](#), 48 CBR (4<sup>th</sup>) 299 at para. 40 (Ont Sup Ct J [Commercial List]).

<sup>8</sup> [First Leaside Wealth Management Inc., Re](#), 2012 ONSC 1299 at paras 29-30.

- (a) Each of the Applicants were incorporated under the legislature of a province in Canada, and are each a “company” within the meaning of the CCAA;<sup>9</sup>
- (b) The Applicants have debt in excess of \$5 million dollars;<sup>10</sup>
- (c) The Applicants are insolvent in that they are unable to meet their liabilities as they become due and they are facing a looming liquidity crisis;<sup>11</sup> and
- (d) Each of the Applicants are necessary parties to the business and operations of the Flowr Group, such that a Stay of Proceedings ought to be granted in favour of each of the Applicants in order to ensure that the Initial Order and Stay of Proceedings will work effectively.<sup>12</sup>

## **B. STAY OF PROCEEDINGS SHOULD BE GRANTED**

15. Pursuant to 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 (10) days, provided that the court is satisfied that circumstances exist that make the order appropriate.<sup>13</sup> A stay of proceedings is appropriate where it provides a debtor with breathing room while the debtor seeks to restore solvency and emerge from the CCAA on a going concern basis.<sup>14</sup>

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<sup>9</sup> Karasiuk Affidavit, at paras. 17, 20 and 21; Exhibits “A”, “C” and “D” to the Karasiuk Affidavit.

<sup>10</sup> Karasiuk Affidavit, at paras. 54, 59, 72-74, 116, and 117.

<sup>11</sup> Karasiuk Affidavit, at paras. 72-74, 114 and 118, Exhibit “S” to the Karasiuk Affidavit

<sup>12</sup> Karasiuk Affidavit, at paras. 17-21.

<sup>13</sup> s. 11.02, CCAA; [Re Lydian International Limited](#), 2019 ONSC 7473 at para. 22.

<sup>14</sup> [Target Canada Co.](#), 2015 ONSC 303 at para. 8.

16. Section 11.001 of the CCAA further provides:<sup>15</sup>

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.

17. The purpose of section 11.001 “is to make the insolvency process fairer, more transparent and more accessible by limiting the decisions made at the outset of the proceedings to measures that are reasonably necessary to avoid the immediate liquidation of an insolvent company and to allow for broader participation in the restructuring process.”<sup>16</sup> This section ensures that the relief granted upon an initial application is limited to the relief reasonably necessary for the debtor to continue to operate in the ordinary course.<sup>17</sup>
18. The Applicants submit that given their current financial condition and the looming liquidity that they face, the Stay of Proceedings at this time is in the best interests of the Flowr Group and their stakeholders, and is both necessary and appropriate.
19. The Applicants have limited the relief sought on this application to what is reasonably necessary to maintain the *status quo* and to give the Applicants the breathing space they require to develop a restructuring plan in consultation with their advisors and the Monitor, including undertaking a SISP.<sup>18</sup>

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<sup>15</sup> s. 11.001, CCAA.

<sup>16</sup> [Re Clover Leaf Holdings Company](#), 2019 ONSC 6966 at para. 13.

<sup>17</sup> [Re Lydian International Limited](#), 2019 ONSC 7473 at paras. 30, 32.

<sup>18</sup> Karasiuk Affidavit, at para. 139.



20. The Applicants also request that the Stay of Proceedings extend to their directors and officers. Section 11.03 of the CCAA provides that an order made under section 11.02 of the CCAA may provide that no person may commence or continue any action against a director of the company or any claim against directors that arose before the commencement of proceedings under the CCAA and that relates to the obligations of the company.<sup>19</sup>
21. The Applicants submit that the Stay of Proceedings should be extended to the Flowr Group's directors and officers so that they may focus on the CCAA proceedings and developing and implementing the SISF, with a view to implementing a going concern transaction.

**C. THE ADMINISTRATION CHARGE SHOULD BE GRANTED**

22. The Applicants seek a first-ranking priority Administration Charge over the Applicants' Property (as defined in the Initial Order) in the maximum amount of \$350,000 in favour of the Monitor, counsel to the Monitor, counsel to the Applicants and counsel to the Board, if any (collectively, the "**Professionals Group**"), to secure payment of their professional fees and disbursements, whether incurred before or after the date of the Initial Order.
23. The Court may grant an administration charge pursuant to section 11.52 of the CCAA.<sup>20</sup> In deciding whether to grant an administration charge, the courts have considered a number of factors including:<sup>21</sup>

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<sup>19</sup> s. 11.03, CCAA.

<sup>20</sup> s. 11.52, CCAA.

<sup>21</sup> *Canwest Publishing Inc, Re*, 2010 ONSC 222 at para. 54; see also, *Re Lydian International Limited*, 2019 ONSC 7473 at para. 46.

- (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.
24. The Applicants submit that it is appropriate for this Court to exercise its discretion to grant the Administration Charge. The Professionals Group will have extensive involvement during the CCAA proceedings and will play a critical role in assisting the Applicants with their restructuring efforts. The Professionals Group have contributed and will continue to contribute to the Applicants' restructuring efforts, each have and will continue to perform a distinct function, and in any event, will ensure that there is no unnecessary duplication of roles among them.<sup>22</sup>
25. The quantum of the proposed Administration Charge is reasonable and necessary, and is in line with the nature and size of the Applicants' business and the involvement required by the Professionals Group.<sup>23</sup>

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<sup>22</sup> Karasiuk Affidavit, at para. 124.

<sup>23</sup> Karasiuk Affidavit, at para. 126.

26. Further, in preparation of the Cash Flow Forecast, the Applicants, in consultation with the Proposed Monitor, considered the professional fees forecasted to be incurred on a weekly basis during the cash flow period. The Applicants have forecast to incur significant professional fees in connection with the CCAA proceedings to the end of the week of the Comeback Hearing including, without limitation, preparing for the Comeback Hearing, communicating with employees and stakeholders following the initial filing, and complying with statutory notices, mailings and communications.<sup>24</sup>

**D. THE DIP LOAN SHOULD BE APPROVED AND THE DIP LENDER'S CHARGE SHOULD BE GRANTED**

27. The Applicants are seeking approval of the DIP Loan and the second-ranking DIP Lender's Charge over the Applicants' Property (as defined in the Initial Order) in favour of the DIP Lender, to secure amounts borrowed by the Applicants under the terms of the DIP Loan.<sup>25</sup>

28. Section 11.2 of the CCAA allows this Honourable Court to grant the DIP Loan and the DIP Lender's Charge that ranks in priority to the Applicants' secured creditors, on notice to those secured creditors that would be affected and in an amount that the Court considers appropriate having regard to the Applicants' Cash Flow Forecast.<sup>26</sup>

29. Section 11.2(5) provides that a court shall not grant an order for interim financing at the same time as granting an initial order under section 11.2 unless it is satisfied that the terms of the loan are limited to those terms that are reasonably necessary for the Applicants'

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<sup>24</sup> Karasiuk Affidavit, at para. 129.

<sup>25</sup> Karasiuk Affidavit, at para. 167; Exhibit "T" to the Karasiuk Affidavit.

<sup>26</sup> s. 11.2(1), CCAA.

continued operations in the ordinary course of business during the initial stay of proceedings.<sup>27</sup> What is considered “reasonably necessary” depends on the facts of each case.<sup>28</sup>

30. In determining whether the DIP Lender’s Charge is appropriate, a court is required to consider the following factors under section 11.2(4) of the CCAA:<sup>29</sup>
- (a) the period during which the company is expected to be subject to proceedings under the CCAA;
  - (b) how the company’s business and financial affairs are to be managed during the proceedings;
  - (c) whether the company’s management has the confidence of its major creditors;
  - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
  - (e) the nature and value of the company’s property;
  - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
  - (g) the monitor’s report referred to in paragraph 23(1)(b), if any.

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<sup>27</sup> s. 11.2(5), CCAA.

<sup>28</sup> [8440522 Canada Inc., Re](#), 2013 ONSC 6167 at para. 30.

<sup>29</sup> s. 11.2(4), CCAA

31. Pursuant to the Cash Flow Forecast, the Applicants will have sufficient liquidity to sustain operations for about a week, including payroll, but will have insufficient funds to get through the 10 day initial Stay Period without a draw under the DIP Loan and the DIP Lender's Charge being granted by the Court.<sup>30</sup>
32. The DIP Loan is critical to the Flowr Group because it provides the Applicants with the financing needed to continue to operate in the ordinary course and undertake the SISP. The following additional factors support the approval of the DIP Commitment Letter and the granting of the DIP Lender's Charge:
- (a) the availability of the DIP Loan is contingent on an order of this Court approving same and the DIP Lender's Charge;
  - (b) the necessity of the DIP Loan is demonstrated and supported by the Cash Flow Forecast;
  - (c) if the Initial Order is granted, the Applicants intend to return to court for the Comeback Hearing to request an extension of the Stay of Proceedings;
  - (d) the Applicants' business will be managed by its directors and senior management, in consultation with the Proposed Monitor;
  - (e) in the absence of the DIP Loan, the Applicants will be unable to continue to carry on business. In particular and as indicated in the Cash Flow Forecast, without interim

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<sup>30</sup> Karasiuk Affidavit, at paras. 10 and 76; Exhibit "S" to the Karasiuk Affidavit.

financing, the Applicants will be unable to operate in the ordinary course and payroll obligations will not be met, to the detriment of their stakeholders;<sup>31</sup>

(f) No creditor should be materially prejudiced as a result of the DIP Loan and the DIP Lender's Charge; and

(g) Based on discussions with the Applicants' counsel and the Proposed Monitor, the terms of the DIP Loan are reasonable and competitive.<sup>32</sup>

33. Based on the Cash Flow Forecast, and the above-noted factors, the Applicants believe that the DIP Loan are both reasonable and necessary for the Flowr Group to continue as a going concern and complete the contemplated restructuring under the CCAA.<sup>33</sup>

#### **E. THE DIRECTORS' CHARGE SHOULD BE GRANTED**

34. 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 and the DIP Lender's Charge, up to a maximum amount of \$600,000.

35. Pursuant to section 11.51 of the CCAA, a court may grant a Directors' Charge on a super-priority basis.<sup>34</sup>

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<sup>31</sup> Karasiuk Affidavit, at para. 114.

<sup>32</sup> Karasiuk Affidavit, at para. 129.

<sup>33</sup> Karasiuk Affidavit, at para. 131.

<sup>34</sup> s. 11.51, CCAA.

36. The purpose of a Directors' Charge was described in *Canwest Global Communications Corp. (Re)*:<sup>35</sup>

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 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 the experienced senior management.

37. In *Jaguar Mining Inc. (Re)*, the court set out the following factors to be considered with respect to the approval of a directors' charge:<sup>36</sup>

- (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.

38. To ensure the ongoing stability of the Flowr Group's business during the CCAA proceedings, it requires the continued participation of its officers and directors. The officers and directors have skills, knowledge and expertise, as well as established relationships with various stakeholders that will contribute to a successful restructuring.

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<sup>35</sup> [\[2009\] OJ No 4286](#) at para. 48 (Ont Sup Ct J [Commercial List]).

<sup>36</sup> [2014 ONSC 494](#) at para. 45.

As a practical but critical matter, Health Canada requires that at least one director of a licenced cannabis company to have security clearance at all times in order to maintain its license, which the CEO of Flowr presently has.<sup>37</sup>

39. While the Flowr Group's directors and officers have the benefit of the D&O Policies that provide them with coverage for certain claims and liabilities that may arise, these policies contain exclusions and exceptions to such coverage.<sup>38</sup>
40. The Flowr Group's ordinary course operations 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.<sup>39</sup>
41. The quantum of the Directors' Charge was developed with the assistance and support of the Proposed Monitor. The Flowr Group is 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.<sup>40</sup>

**F. EY SHOULD BE APPOINTED AS MONITOR OF THE APPLICANTS**

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<sup>37</sup> Karasiuk Affidavit, at para. 133.

<sup>38</sup> Karasiuk Affidavit, at para. 136.

<sup>39</sup> Karasiuk Affidavit, at para. 137.

<sup>40</sup> Karasiuk Affidavit, at para. 138.



42. Pursuant to section 11.7 of the CCAA, 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.<sup>41</sup>
43. 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.<sup>42</sup>
44. EY 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. EY has consented to act as Monitor of the Applicants in these proceedings.<sup>43</sup>
45. For all of the reasons noted above and further set out in the Karasiuk Affidavit, the Applicants submit that EY ought to be appointed by the Court as Monitor of the Applicants in these CCAA proceedings.

**G. THE APPLICANTS SHOULD BE AUTHORIZED TO INCUR NO FURTHER COSTS IN CONNECTION WITH ITS SECURITIES FILING OBLIGATIONS**

46. The Applicants seek authorization to dispense with certain securities filing requirements. In particular, the Applicants seek authorization for Flowr to incur no further expenses in relation to any filings (including financial statements), disclosures, core or non-core documents, restatements, amendments to existing filings, press releases or any other actions (collectively, the “**Securities Filings**”) that may be required by any federal,

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<sup>41</sup> s. 11.7, CCAA.

<sup>42</sup> s. 11.7(2)

<sup>43</sup> Monitor’s Consent to Act dated October 18, 2022, Application Record of the Applicants at Tab 3.

provincial, or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including without limitation, the *Securities Act* (Ontario), RSO 1990 c S. 5 and comparable statutes enacted by other provinces of Canada, the CSE Policies 1-10 and other rules, regulations and policies of the CSE.

47. The Applicants are also seeking a declaration that none of the directors, officers, employees and other representatives of the Applicants, and the Monitor (and its directors, officers, employees and representatives) shall have any personal liability for any failure by Flowr to make Securities Filings.
48. The Ontario Superior Court of Justice, Commercial List, has granted similar relief in favour of reporting issuers commencing proceedings under the CCAA.<sup>44</sup>
49. Incurring the time and costs associated with preparing the Security Filings would detract from the Applicants successful restructuring. Further, there is no prejudice to stakeholders given that detailed financial information and other information regarding the Applicants will continue to be made publicly available through the materials filed in these CCAA proceedings.
50. For all of the reasons, the Applicants request that the Court grant the requested authorization and declaration in respect of the Securities Filings.

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<sup>44</sup> *CannTrust Holdings Inc., Re*, Initial Order issued March 31, 2020 [Court File No. CV-20-00638930-00CL] at paras. 46-47; *Pure Global Cannabis, Inc., Re*, Initial Order issued March 19, 2020 [Court File No. CV-20-00638503-00CL] at para. 49; *Old PSG Wind-down Ltd., Re*, Order issued December 20, 2017 [Court File No. CV-16-11582-00CL] at para. 12.

**PART V - ORDER REQUESTED**

51. The Applicants request that this Honourable Court grant an Initial Order and provide the Applicants creditor protection under the CCAA.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 20<sup>th</sup> day of October, 2022.



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**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *Re Stelco Inc.* (2004), 48 CBR (4<sup>th</sup>) 299 (Ont Sup Ct J [Commercial List])
2. *First Leaside Wealth Management Inc., Re*, 2012 ONSC 1299
3. *Re Lydian International Limited*, 2019 ONSC 7473
4. *Target Canada Co.*, 2015 ONSC 303
5. *Re Clover Leaf Holdings Company*, 2019 ONSC 6966
6. *8440522 Canada Inc., Re*, 2013 ONSC 6167
7. *Canwest Publishing Inc., Re*, 2010 ONSC 222
8. *Canwest Global Communications Corp. (Re)*, [2009] OJ No 4286 (Ont Sup Ct J [Commercial List])
9. *Jaguar Mining Inc. (Re)*, 2014 ONSC 494
10. *CannTrust Holdings Inc., Re*, Initial Order issued March 31, 2020 [Court File No. CV-20-00638930-00CL]
11. *Pure Global Cannabis, Inc., Re*, Initial Order issued March 19, 2020 [Court File No. CV-20-00638503-00CL]
12. *Old PSG Wind-down Ltd., Re*, Order issued December 20, 2017 [Court File No. CV-16-11582-00CL]

**SCHEDULE “B”  
RELEVANT STATUTES**

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

**Definitions**

**2(1)** In this 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;

...

**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;

**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)** 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.

### **Exception**

(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.

### **Persons deemed to be directors**

(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

### **Interim financing**

**11.2 (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, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court

considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

**Priority — secured creditors**

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

**Priority — other orders**

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

**Factors to be considered**

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

**Additional factor — initial application**

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

**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, as amended***

##### **Interpretation**

##### **Definitions**

2 In this Act...

***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;

...

***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 THE FLOWR CORPORATION *et al.*

Court File No.: •

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

Proceedings commenced at Toronto

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(CCAA INITIAL APPLICATION)**

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