

**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
TREES CORPORATION, ONTARIO CANNABIS HOLDINGS CORP., MIRACULO
INC., 2707461 ONTARIO LTD., OCH ONTARIO CONSULTING CORP., AND 11819496
CANADA INC.**

Applicants

**FACTUM OF THE APPLICANTS
(returnable on January 2, 2024)**

December 29, 2023

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TO: THE SERVICE LIST

PART I - OVERVIEW¹

1. The Applicants are in the business of selling cannabis through retail channels and operate 13 cannabis retail stores in Ontario and British Columbia. Over the last few years, the Applicants have suffered significant losses in the tens of millions of dollars.

2. As a result of the Applicants' financial difficulties, the Applicants sought and obtained relief under the *Companies' Creditors Arrangement Act*² pursuant to the Initial Order dated December 22, 2023. The Initial Order, among other things:
 - (a) appointed E&Y as Monitor of the Applicants;
 - (b) granted an initial Stay in favour of the Applicants and their D&Os up to and including January 2, 2024;
 - (c) authorized the borrowing by the Applicants of up to \$60,000 from the DIP Lender at the interest rate of 15% per annum; and
 - (d) granted the Administration Charge in the amount of \$450,000 and the D&O Charge in the amount of \$251,000, with \$100,000 of the Administration Charge being given super-priority status and the balance of the Administration Charge and the D&O Charge being ranked subsequent to the security interests of 606093 Saskatchewan Ltd., Minerva Investments Ltd., Echo Capital Growth Corporation,

¹ Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the affidavit of Jeffrey Holmgren sworn December 21, 2023 (the "**Initial Affidavit**") and the affidavit of Jeffrey Holmgren sworn December 29, 2023 (the "**Second Holmgren Affidavit**"); Motion Record at Tab 2.

² R.S.C. 1985, c. C-36, as Amended [[CCAA](#)].

PMH Investco Ltd., Tweed Inc. (“**Tweed**”), CJ Marketing Ltd. and Arthur Minh Tri Nguyen-Cao (collectively, the “**Secured Creditors**”).

3. The Applicants are now seeking an Amended and Restated Initial Order (the “**ARIO**”) granting, among other things:
 - (a) An extension of the Stay Period until and including February 29, 2024;
 - (b) approving the execution by the Applicants of a debtor-in-possession term sheet (the “**DIP Term Sheet**”) dated December 21, 2023, with One Plant Retail Corp. (the “**DIP Lender**” or “**One Plant**”), pursuant to which the DIP Lender has agreed to advance to the Applicants a total amount of up to \$800,000 (the “**DIP Facility**”) on the terms of the Revised DIP (as defined below), which will be made available to the Applicants during these CCAA Proceedings;
 - (c) authorizing the Applicants to take no further steps or incur further expenses in relation to the Securities Filings (as defined below), and declare that none of the D&Os, employees, and other representatives of the Applicants or the Monitor shall have any personal liability for any failure by the Applicants to make the Securities Filings;
 - (d) postponing the requirement for any future annual general meeting (“**AGM**”) of the shareholders of Trees during the CCAA Proceedings, and extending the time limit to call and hold such annual general meeting of shareholders until after the conclusion of the CCAA Proceedings; and

- (e) granting and increasing the amounts of the following Court-ordered priority charges (collectively, the “**Charges**”) against the Property (ordered in priority):
- (i) the Administration Charge in the amount of \$100,000, with a Subsequent Administration Charge that ranks behind the Secured Creditors in the amount of \$400,000;
 - (ii) the DIP Lender’s Charge in the amount of \$1,100,000; and
 - (iii) the D&O Charge in the amount of \$100,000, with a subsequent D&O Charge (the “**Subsequent D&O Charge**”) that ranks behind the Secured Creditors and Subsequent Administration Charge respectively, in the amount of \$383,000.
4. The relief, including the increase in the DIP Facility and DIP Lender’s Charge, is necessary to finance the ongoing operations of the Applicants and their restructuring activities, during the CCAA Proceedings, including the development and implementation of a sale and investment solicitation process (“**SISP**”). The Applicants intend to return to Court to seek approval of a SISP as soon as possible if the ARIO is granted.
5. The relief being sought is supported by the Monitor and the DIP Lender and would allow the Applicants to remain as a going concern until the value of its business and assets can be determined through a SISP that is open and fair to all parties.
6. For these and additional reasons set out in greater detail below, the Applicants submit that the relief sought at the Comeback Motion is fair, reasonable, and will help advance these CCAA Proceedings for the benefit of all the Applicants’ stakeholders.

PART II - FACTS

A. Background

7. The facts with respect to this motion are briefly summarized below and are more fully set out in the Initial Affidavit and the Second Holmgren Affidavit.
8. Trees is a public corporation with its registered office located in Toronto, Ontario. Trees is the direct or indirect parent company of each of the Subsidiaries (as defined in the Initial Affidavit). Trees operates four licensed cannabis stores in British Columbia,³ and either Ontario Consulting, Camp Cannabis or 118 operate the nine licensed cannabis stores in Ontario. Each of their registered head offices are located in Toronto, Ontario.⁴
9. The Applicants have been operating at a loss for several years. Pursuant to the 2022-23 Annual Statements, the Applicants reported a net loss of approximately \$12.4 million.⁵ Further, in the Applicants' 2023 Q2 Statements, the Applicants reported a net loss of approximately \$1.2 million.⁶
10. In the 2022-23 Annual Statements, the Applicants reported total liabilities of approximately \$11.6 million and total assets of approximately \$11.4 million. In the 2023 Q2 Statements, the Applicants reported total liabilities of approximately \$13.4 million and total assets of approximately \$12.3 million. A significant component of the Applicants'

³ Initial Affidavit at paras 24-25.

⁴ *Ibid* at para 32-37.

⁵ *Ibid* at para 66.

⁶ *Ibid*.

assets includes intangibles and the Applicants' right to use leases which cannot be easily monetized.⁷

11. The Applicants made efforts to raise additional liquidity and pursue strategic alternatives to address the liquidity concerns. These efforts were not successful.⁸ The Applicants are insolvent and do not have the liquidity necessary to sustain their operations going forward or pay their obligations as they become due.
12. Further, the Secured Creditors have already taken steps to begin enforcement proceedings against the Applicants.⁹
13. In light of the Applicants' liquidity challenges, the Applicants commenced these CCAA Proceedings and obtained the Initial Order.
14. During the initial CCAA hearing, the Secured Creditors (except Tweed) objected to certain of the relief sought by the Applicants. In response to this opposition, the Applicants reserved approval of the DIP Term Sheet to the Comeback Hearing and agreed to have the D&O Charge and the Subsequent Administration Charge (as defined in the Initial Order) rank subsequent to the security interests of the Secured Creditors. Additionally, the DIP Lender's Charge was limited to a maximum of \$60,000.¹⁰

⁷ *Ibid* at para 67.

⁸ *Ibid* at para 15.

⁹ *Ibid* at paras 8, 79, and 97-98; Pre-Filing Report of the Proposed Monitor dated December 21, 2023 (the "**Pre-Filing Report**") at paras 28 and 30.

¹⁰ Second Holmgren Affidavit at paras 45 and 56.

B. Secured Creditors

15. The Applicants' financial difficulties have been exacerbated by their existing secured loan obligations, which have resulted in the Applicants incurring significant liabilities that they cannot repay.¹¹
16. The *prima facie* first-ranking secured debt of Trees, as well as the *prima facie* second-ranking secured debt of OCH, is in respect of loans made by former insiders of these companies, including a previous observer of the board of directors of Trees and two founders of OCH. These loans are significant contributing factors to the non-viability of the Applicants moving forward without the relief offered by the CCAA.¹²
17. Historically, there has been considerable tension between the Applicants and these creditors because of these loans.¹³
18. In the case of Trees, the holders of the Trees Secured Debentures (606093 Saskatchewan Ltd., Minerva Investments Ltd., Echo Capital Growth Corporation, PMH Investco Ltd.) are connected to Matt Hill, who was an observer on the board of directors of Trees and exercised significant influence over decisions made by the board.¹⁴
19. The Trees Secured Debentures contained an option to convert the debt into equity at a discounted rate once the company became public. The Trees Secured Debentures were

¹¹ *Ibid* at para 23.

¹² *Ibid* at para 24.

¹³ *Ibid* at para 25.

¹⁴ *Ibid* at para 26.

issued at a time when Trees was implementing a strategy to go public (which Matt Hill initially supported). The high interest rate attributed to the Trees Secured Debentures was intended to be a short-term incentive to investors to make such investment and it was understood that the Trees Secured Debentures would be converted into equity once the option had crystallized.¹⁵

20. All holders of the Trees Secured Debentures exercised their conversion option except 606093 Saskatchewan Ltd., Minerva Investments Ltd., Echo Capital Growth Corporation, and PMH Investco Ltd.¹⁶
21. The high interest rate on the Trees Secured Debentures has created an untenable situation as the accrued interest on these loans greatly exceeds the underlying principal amount and continues to grow at a significantly beyond-market and near-usurious rate.¹⁷
22. Similarly, in the case of OCH, the two promissory notes in respect of CJ Marketing and Nguyen-Cao were made as shareholder loans from Jon Conquergood (representing CJ Marketing Ltd.) and Vu Tran (representing Arthur Minh Tri Nguyen-Cao). Jon Conquergood and Vu Tran were founders of OCH.¹⁸
23. This funding was intended to be short-term bridge financing arrangements and were secured by a general security agreement. However, shareholders of OCH have expressed

¹⁵ *Ibid* at para 27.

¹⁶ *Ibid* at para 28.

¹⁷ *Ibid* at para 29.

¹⁸ *Ibid* at para 31.

frustration that their equity position in OCH has been eroded while the founders of OCH protected nearly all of their invested capital on preferential terms (via secured debt) to those of their investors.¹⁹

24. On December 29, 2023, the secured debt of Tweed was assigned to the current DIP Lender, One Plant (the “**Tweed Assignment**”). Furthermore, Tweed was party to subordination agreements with CJ Marketing Ltd. and Arthur Minh Tri Nguyen-Cao (the “**Subordination Agreements**”). Pursuant to the Tweed Assignment and the Subordination Agreements, CJ Marketing Ltd. and Arthur Minh Tri Nguyen-Cao are subordinated to One Plant until the complete repayment of all indebtedness to One Plant.²⁰
25. Further, the Subordination Agreements require CJ Marketing Ltd. and Arthur Minh Tri Nguyen-Cao to consent to any debtor-in-possession (“**DIP**”) financing provided or approved by One Plant, as the assignee of Tweed, in the event of any bankruptcy or insolvency proceeding of OCH.²¹ The Subordination Agreements allow Tweed to assign the debt to a third party – in this case One Plant – without notice and the third party may rely on the Subordination Agreement as if it were initially a party thereto.²²

¹⁹ *Ibid* at para 32.

²⁰ *Ibid* at paras 33-34.

²¹ Exhibit W to Initial Affidavit: Subordination Agreements, ss 2.01(g); Application Record at Tab 2W.

²² *Ibid* at s 3.06.

C. Proposed ARIO

(i) Extension of the Stay Period

26. The Stay Period currently expires on January 2, 2024. The Applicants are requesting an extension of the Stay Period to February 29, 2024. The extension of the Stay Period is necessary to maintain stability while the Applicants attempt to develop and implement a SISP through the CCAA Proceedings, in order to maximize value for the benefit of their stakeholders.²³

27. Since the granting of the Initial Order, the Applicants have acted, and are continuing to act in good faith and with due diligence in these CCAA Proceedings to stabilize the Applicants' business and operations.²⁴

(ii) Approval of the DIP Term Sheet and Increase to the DIP Lender's Charge

28. In order to fund the operations of the Applicants during these CCAA proceedings, the Applicants seek to utilize DIP financing.

29. On December 28, 2023, the Applicants received an offer from the Secured Creditors (except for Tweed) for 1181798 B.C. Ltd. ("**118 BC**") to provide a DIP Facility on substantively the same terms as the existing DIP Lender, minus the \$50,000 commitment fee and decreasing the interest rate from 15% to 14% (the "**118 BC DIP**").²⁵

²³ Second Holmgren Affidavit at para 41.

²⁴ *Ibid* at para 43.

²⁵ *Ibid* at para 17.

30. In response to the 118 BC DIP, the Monitor requested both 118 BC and the existing DIP Lender to make their best offer to provide the DIP Facility by 11:00 A.M. on December 29, 2023.²⁶
31. On December 29, 2023, the Applicants received a DIP proposal from the existing DIP Lender that provided the DIP Facility on the same terms as the DIP Term Sheet except: (i) the commitment fee of \$50,000 was no longer required, and (ii) there would be no interest assessed on the DIP Facility (the “**Revised DIP**”).²⁷
32. No final or improved offer was delivered by 118 BC.²⁸
33. The DIP Lender also made an offer to acquire the debt and security of PMH Investco Ltd., 606093 Saskatchewan Ltd., Minerva Investments Ltd., and Echo Capital Growth at 100% of the amount owing to those parties as of December 15, 2023, but that offer was not accepted.²⁹
34. Accordingly, the Applicants accepted the Revised DIP from the existing DIP Lender, subject to approval by the Court. In the Applicants’ view, the Revised DIP is in the best interests of the Applicants because it is economically superior to the 118 BC DIP, supports

²⁶ *Ibid* at para 18.

²⁷ *Ibid* at para 19.

²⁸ *Ibid* at para 20.

²⁹ *Ibid* at para 21.

the form of the ARIO put forth by the Applicants and allows for the Applicants to continue operations with a view to proceeding with the SISP.³⁰

35. Among other things, the DIP Term Sheet, with the revisions, includes the following material terms³¹:
- (a) **DIP Facility**: Non-revolving loan up to the maximum amount of \$800,000;
 - (b) **Interest Rate**: Accrues at zero percent (0%) per annum on the outstanding indebtedness.
 - (c) **No Fees**: The Applicants will not have to pay any commitment fee in connection with the DIP Facility.
36. Pursuant to the DIP Term Sheet, the DIP Facility must be repaid in full by the date that is the earliest of: (a) the Maturity Date of February 29, 2024; (b) the closing of a transaction; (c) any Order made by the Court replacing Ernst & Young Inc. as Monitor; (d) the date on which the CCAA proceedings are terminated for any reason, including if one or more of the Applicants become bankrupt, whether voluntarily or involuntarily; and (e) the occurrence of an Event of Default (as defined in the DIP Term Sheet).³²

³⁰ *Ibid* at para 22.

³¹ Exhibit G to Second Holmgren Affidavit; Motion Record at Tab 2G.

³² Initial Affidavit at para 149.

37. The Initial Order authorized the Applicants to borrow \$60,000 from the DIP Lender and granted a DIP Lender's Charge of \$60,000 to secure the obligations of the Applicants to the DIP Lender.³³
38. Pursuant to the ARIIO, the Applicants seek to approve the execution of the DIP Term Sheet and increase the maximum amount that they can borrow under the DIP Term Sheet to \$800,000 and increase the amount of the DIP Lender's Charge to 1.1 million.
39. The updated cash flow forecast ("**Cash Flow Forecast**") indicates that the Applicants will not have sufficient liquidity to continue to fund its operations through the requested Stay Extension without the use of the DIP Facility pursuant to the DIP Term Sheet.³⁴

(iii) Authority to Incur No Further Costs in Connection with Securities Filings and Extension of Time Limit to Hold AGM

40. The Applicants seek (a) to incur no further expenses in relation to the Securities Filings; (b) a declaration that none of the directors, officers, employees and other representatives of the Applicants or the Monitor shall have any personal liability for failure by the Applicants to make any Securities Filings that may be required by the Securities Provisions; and (c) to extend the time limit to call and hold the AGM.
41. In the circumstances, the Applicants have determined that incurring further expenses to maintain the currency of Trees' securities reporting going forward and holding the AGM

³³ Second Holmgren Affidavit at paras 6(c) and 45.

³⁴ *Ibid* at para 44.

is not appropriate at this juncture. The Applicants' resources and time are better directed towards its restructuring efforts.

PART III - ISSUES

42. The issues in respect of the relief being sought under the ARIO are whether:
- (a) the Stay Period should be extended to and including February 29, 2024;
 - (b) the DIP Term Sheet should be approved, pursuant to which the Applicants should be permitted to draw the increased principal amount of up to \$800,000, and this Court should grant an increase to the DIP Lender's Charge up to \$1,100,000;
 - (c) this Court should grant authority to the Applicants to incur no further expenses in relation to the Securities Filings and extend the time limit to hold the AGM; and
 - (d) this Court should grant and increase the priorities and amounts, as applicable, of the Charges against the Property.

PART IV - LAW & ARGUMENT

A. The Stay Period Should be Extended

43. The Initial Order provided for a Stay Period up to and including January 2, 2024. The proposed ARIO seeks to extend the Stay Period to February 29, 2024.

44. Section 11.02(2) of the CCAA gives this Court the authority to grant an extension of the Stay Period for any period “it considers necessary.”³⁵ To do so, this Court must be satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence.³⁶ A stay of proceedings is appropriate to provide a debtor with breathing room while it seeks to emerge from the CCAA.³⁷
45. The Applicants have acted and are continuing to act in good faith and with due diligence. Since the granting of the Initial Order, the Applicants have communicated with each store manager and requested that they update the Applicants’ retail employees regarding the CCAA Proceedings. The Applicants have also delivered disclaimer notices to the landlords of all the unprofitable leases in respect of which one or more of the Applicants are a party, all with a view to preserving the Applicants’ liquidity.³⁸
46. The Applicants have been working diligently to stabilize and continue operations. In particular, the Applicants have worked to ensure sufficient inventory during the holidays, which is typically the busiest time of the year for cannabis sales.³⁹
47. The Applicants believe the extension of the Stay Period to and including February 29, 2024, is necessary and appropriate in the circumstances. The requested extension of the Stay Period will provide the Applicants with the breathing space and operational stability

³⁵ [CCAA, s 11.02\(2\)\(a\).](#)

³⁶ [CCAA, s 11.02\(3\).](#)

³⁷ [Ted Leroy Trucking \[Century Services\] Ltd. \(Re\)](#), 2010 SCC 60, at para 14.

³⁸ Second Holmgren Affidavit at paras 11-15.

³⁹ *Ibid* at para 42.

to continue operations while working towards entering into a stalking horse purchase agreement and developing a SISP needed for maximizing value for the benefit of stakeholders through the CCAA Proceedings.⁴⁰

48. The Monitor and the DIP Lender are both supportive of the proposed extension of the Stay Period.

B. The DIP Term Sheet and DIP Lender's Charge Should be Approved and Granted, Respectively

49. Pursuant to the Initial Order, this Court authorized the Applicants to borrow up to \$60,000 from the DIP Lender during the Initial Stay Period and granted a corresponding DIP Lender's Charge in the same amount.

50. The Applicants are now seeking authority to approve the DIP Term Sheet, allowing the Applicants a maximum principal amount of \$800,000 to be drawn, and increasing the DIP Lender's Charge to 1.1 million.

51. As demonstrated by the 2022-23 Annual Statements and the 2023 Q2 Statements, the Applicants are currently facing a liquidity crisis. In particular, the Cash Flow Forecast indicates that the Applicants should have sufficient liquidity to operate through the proposed extension of the Stay Period if the DIP Facility is approved to the maximum amount of \$800,000, otherwise the Applicants will be unable to fund its operations.⁴¹

⁴⁰ *Ibid* at para 41.

⁴¹ *Ibid* at paras 44 and 46.

52. The Applicants entered into the DIP Term Sheet to provide the necessary liquidity to continue their operations.⁴²
53. The purpose of the DIP financing is to provide the Applicants with the funds they need to operate their business as a going concern and develop and implement a SISP.⁴³
54. It is a condition of the DIP Term Sheet that it be approved by the Court and that the DIP Lender be granted a priority court-ordered charge on all the assets, rights, undertakings and properties of the Applicants as security for amounts advanced under the DIP Facility (the “**DIP Lender’s Charge**”), ranking ahead of all other charges other than the Administration Charge.⁴⁴
55. The DIP Lender’s Charge will secure all of the obligations of the DIP Facility. The DIP Lender’s Charge will not secure any obligations incurred prior to these CCAA Proceedings.
56. Section 11.2 of the CCAA provides the Court with the express statutory authority to approve the DIP Term Sheet, the DIP Lender’s Charge, and that the DIP Lender’s Charge rank in priority over the claim of any secured creditor of the company.⁴⁵ Section 11.2(4) sets out the following factors to be considered by the Court in deciding whether to grant a super-priority charge in respect of the DIP Charge:

⁴² Initial Affidavit at para 14; *Ibid*.

⁴³ Second Holmgren Affidavit at para 47.

⁴⁴ *Ibid* at para 51.

⁴⁵ [CCAA, s 11.2](#).

- (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.⁴⁶

57. In *Canwest Publishing Inc.*,⁴⁷ Justice Pepall highlighted the importance of meeting the criteria set out in section 11.2(1) of the CCAA in addition to those found in section 11.2(4), namely:

- (a) whether notice has been given to secured creditors likely to be affected by the security or charge;
- (b) whether the amount to be granted under a DIP charge is appropriate and required having regard to the debtors' cash-flow statement; and
- (c) whether the DIP charge secures an obligation that existed before the order approving the DIP was made.⁴⁸

⁴⁶ [CCAA, s 11.2\(4\)](#).

⁴⁷ [2010 ONSC 222](#).

⁴⁸ [CCAA, s 11.2\(1\)](#); *Ibid* at [paras 42-44](#).

58. The criteria from sections 11.2(1) and 11.2(4) of the CCAA support approving the DIP Term Sheet and granting the DIP Lender's Charge, which are fair and reasonable, for the following reasons:

- (a) the notice requirements under section 11.2(1) of the CCAA have been met;
- (b) given the Applicants' circumstances, they cannot obtain alternative financing outside of these CCAA proceedings;
- (c) the quantum to be advanced to the Applicants as contemplated in the DIP Term Sheet is necessary, reasonable, and appropriate having regard to the 2022-23 Annual Statements and the updated Cash Flow Forecast. In particular, the updated Cash Flow Forecast demonstrates that the Applicants require access to the full amount of the DIP Facility to provide the Applicants with necessary funding to continue their business and operations, and to advance their restructuring efforts, including the implementation of a SISP;⁴⁹
- (d) there is no longer opposition from most of the Applicants' major creditors. The DIP Lender is now an existing secured creditor of both OCH and Ontario Consulting, having been assigned these positions by Tweed. Furthermore, OCH's other secured creditors, CJ Marketing Ltd. and Arthur Minh Tri Nguyen-Cao, should also no longer be opposing the DIP Lender and the DIP Facility because of the Subordination Agreements, which require them to consent to One Plant, as assignee of Tweed, providing DIP financing;⁵⁰
- (e) the DIP Facility is on commercially better terms than the DIP Facility proposed by the objecting secured creditors;

⁴⁹ Second Holmgren Affidavit, at para 46. Similar reasoning has been approved in the following cases: [Just Energy Group Inc et al](#), 2021 ONSC 7630 at para 37; and [Target Canada Co. Re](#), 2015 ONSC 303 at paras 67-68.

⁵⁰ Exhibit W to Initial Affidavit: Subordination Agreements, ss 2.01(g) and s 3.06; Application Record at Tab 2W.

- (f) the value of the Applicants will be preserved as a result of the DIP Facility. In the absence of the interim financing sought at this motion, there is a substantial risk that the D&Os would resign, and the Applicants would have to liquidate;⁵¹
- (g) the DIP Lender has indicated that it is only prepared to advance the proposed DIP financing if the DIP Lender's Charge is granted;⁵² and
- (h) the Monitor is supportive of the approval of the DIP Term Sheet and corresponding DIP Lender's Charge.⁵³

59. The Revised DIP is on economically superior terms to the 118 BC DIP, as there is no interest rate assessed on the DIP Facility versus 14% on the 118 BC DIP. The Revised DIP is in the best interests of the Applicants because it supports the form of the ARIO put forth by the Applicants and allows for the Applicants to continue operations with a view to proceeding with the SISF.
60. Further, the 118 BC DIP is being offered by the holders of the Trees Secured Debentures. As discussed above, the historical tension and distrust between these parties and Trees explains why these creditors were not initially invited to provide interim financing to the Applicants. There has been a breakdown in trust between Trees and these creditors over the last several years and the relationship between the parties makes it difficult for the Applicants to choose 118 BC as a DIP lender or think that they will act in a commercially reasonable manner as a DIP lender.

⁵¹ Initial Affidavit at paras 127, 145-146, and 158.

⁵² Second Holmgren Affidavit at paras 51 and 52.

⁵³ Initial Affidavit at paras 20, 145-153; Pre-Filing Report at paras 51-56.

C. This Court Should Grant Relief Relating to the Securities Filings and AGM

61. The Applicants seek (a) to incur no further expenses in relation to the Securities Filings; (b) a declaration that none of the directors, officers, employees and other representatives of the Applicants or the Monitor shall have any personal liability for failure by the Applicants to make any Securities Filings that may be required by the Securities Provisions; and (c) to extend the time limit to call and hold the AGM.
62. As at December 22, 2023, CBOE Canada suspended trading in the securities of Trees. The securities of Trees will also likely be delisted as a result of the commencement of these CCAA Proceedings.
63. Subsection 133(1)(b) of the *Canada Business Corporations Act* provides that a corporation must call an annual shareholders' meeting no later than six months after the end of its preceding financial year. Where a corporation incorporated under the CBCA initiates proceedings under the CCAA, it is common for the Court to extend the delay to call and hold the annual shareholders' meeting until after the CCAA Proceedings have concluded – the CBCA expressly provides that the Court can render an order extending the delay to do so.⁵⁴
64. In light of the present CCAA Proceedings, it is in the best interest of the Applicants and their stakeholders to incur no further expenses to maintain the currency of Trees' securities reporting going forward and holding the AGM is not appropriate at this juncture. The

⁵⁴ [*Re Canwest Global Communications Corp*](#), 2009 CanLII 55114 (ONSC) at paras [53-54](#) [*Canwest Global*].

Applicants' resources and time are better directed towards its restructuring efforts. 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 and published on the Monitor's website.

65. Similar relief with respect to reporting obligations has been granted in other CCAA proceedings and the language in the proposed ARIO is the same as the language previously approved on these occasions.⁵⁵

D. Priority and Increase to Court-Ordered Charges

66. The Initial Order granted the Administration Charge in the amount of \$450,000 and the D&O Charge in the amount of \$251,000, with \$100,000 of the Administration Charge given first-priority status, and the balance of the Administration Charge and the D&O Charge being ranked subsequent to the security interests of the Secured Creditors.

67. The Applicants now seek the Court's approval to increase the Charges in amounts and priorities as follows:

- (a) the Administration Charge to \$500,000 (with \$100,000 being given first priority and \$400,000 ranking behind the Secured Creditors);

⁵⁵ *Acerus Pharmaceuticals Corporation et al (Re)*, Amended and Restated Initial Order issued February 3, 2023 at paras 61 and 62 [Court File No. CV-23- 00693595-00CL]; *Inscape Corporation, Re*, Amended and Restated Initial Order issued January 20, 2023 at paras 42 and 43 [Court File No. CV-23- 00692784-00CL]; *CannTrust Holdings Inc, Re*, Initial Order issued March 31, 2020 at paras. 46-47 [Court File No. CV-20-00638930-00CL]; *Magna Gold Corp Re*, Amended and Restated Initial Order issued May 29, 2023 at paras 40-42 [Court File No. CV-23-00696874-00CL]; *Fire & Flower, Re*, Amended and Restated Initial Order issued June 15, 2023 at paras 53-55 [Court File No. CV-23-00700581-00CL].

- (b) the DIP Lender's Charge to \$1.1 million; and
- (c) the D&O Charge to \$483,000 (with \$100,000 being given third priority and \$383,000 ranking behind the Secured Creditors and Subsequent Administration Charge, respectively).

68. Section 11.52 of the CCAA gives this Court the jurisdiction to grant an administration charge.⁵⁶ Professional advisors are essential for restructuring to occur in a responsible, controlled, and orderly manner. The Administration Charge of \$500,000, with \$100,000 being given first priority and \$400,000 ranking behind the Secured Creditors, is commensurate with the nature of the Applicants' business and the tasks required to effect a responsible and controlled going concern, while maintaining the least amount of prejudice to the Secured Creditors. The Monitor supports the Administration Charge sought by the Applicants.⁵⁷

69. In the Initial Order, the entire D&O Charge ranked subsequent to the security interests of the Secured Creditors for the Initial Stay Period. However, restructuring of the Applicants would only be possible with the continued participation of the Applicants' directors, officers, management and employees who are essential to the viability of the Applicants' business.⁵⁸

⁵⁶ CCAA, s 11.52; *Canwest Global*, at paras [37-40](#).

⁵⁷ Second Holmgren Affidavit at para 59.

⁵⁸ Initial Affidavit at para 155.

70. Pursuant to section 11.51 of the CCAA, the Court has specific authority to grant a “super priority” charge to the directors and officers of a company as security for the indemnity provided by the company in respect of certain statutory obligations.⁵⁹ Directors of Canadian companies can be held liable for certain obligations of a company owing to employees and government entities. The Applicants, with the assistance of EY in its capacity as Monitor, estimate that these obligations may amount to as much as \$483,000.
71. The Applicants propose a super priority D&O Charge of \$100,000 which would rank behind the Administrative Charge and DIP Lender’s Charge, and a Subsequent D&O Charge of \$383,000 which would continue to rank behind the Secured Creditors. Thus, apart from the increase, the principal variance from the Initial Order that would take precedence over the Secured Creditors is the imposition of the D&O Charge of \$100,000.
72. The higher ranking portion of the D&O Charge was calculated with the assistance of the Monitor and represents the amount of liabilities accruing with respect to vacation pay.⁶⁰
73. It should also be noted that the Applicants directors’ and officers’ liability insurance (the “**D&O Insurance**”) for the D&Os expired on December 23, 2023. The D&O Insurance was not made available for renewal and the Applicants do not have the funds to renew the D&O Insurance. Thus, the Applicants’ D&Os have no adequate protection from liability or incentive to continue their service with the Applicants.⁶¹

⁵⁹ CCAA, s 11.51; Canwest Global, at para [48](#).

⁶⁰ Second Holmgren Affidavit at para 58.

⁶¹ Initial Affidavit at para 157.

74. If the Applicants' D&Os resign, this would, in all likelihood, render the CCAA Proceedings much more challenging, and possibly much more costly if the Applicants need to appoint a Chief Restructuring Officer or an independent director, to the detriment of the Applicants' creditors and other stakeholders.⁶²
75. It is therefore appropriate for the Applicants to increase the D&O Charge overall and have a third-priority D&O Charge over the Property in the amount of \$100,000 to secure the indemnity granted by the Applicants in favour of the D&Os.

⁶² *Ibid* at para 158.

PART V - ORDER SOUGHT

76. For all of the foregoing reasons, the Applicants respectfully submit that this Court grant the ARIO in the form requested.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of December 2023.

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**SCHEDULE “A”
LIST OF AUTHORITIES**

1. [*Ted Leroy Trucking \[Century Services\] Ltd. \(Re\)*](#), 2010 SCC 60.
2. [*Canwest Publishing Inc.*](#), 2010 ONSC 222.
3. [*Just Energy Group Inc et al.*](#), 2021 ONSC 7630.
4. [*Target Canada Co, Re.*](#), 2015 ONSC 303.
5. [*Re Canwest Global Communications Corp.*](#), 2009 CanLII 55114 (ONSC).
6. [*Acerus Pharmaceuticals Corporation et al \(Re\)*](#), Amended and Restated Initial Order issued February 3, 2023 [Court File No. CV-23- 00693595-00CL].
7. [*Inscape Corporation, Re.*](#), Amended and Restated Initial Order issued January 20, 2023 [Court File No. CV-23- 00692784-00CL].
8. [*CannTrust Holdings Inc, Re.*](#), Initial Order issued March 31, 2020 [Court File No. CV-20-00638930-00CL].
9. [*Magna Gold Corp Re.*](#), Amended and Restated Initial Order issued May 29, 2023 [Court File No. CV-23-00696874-00CL].
10. [*Fire & Flower, Re.*](#), Amended and Restated Initial Order issued June 15, 2023 [Court File No. CV-23-00700581-00CL].

**SCHEDULE “B”
RELEVANT STATUTES**

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

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; (*personne insolvable*)

[Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36.](#)

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; (*compagnie*)

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.

Jurisdiction of court to receive applications

9 (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

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.

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.

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.

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.

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.

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 TREES CORPORATION, ONTARIO CANNABIS HOLDINGS CORP., MIRACULO INC., 2707461 ONTARIO LTD., OCH ONTARIO CONSULTING CORP., AND 11819496 CANADA INC.

Court File No. CV-23-00711935-00CL

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

Proceedings commenced at Toronto, Ontario

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