
ENDORSEMENT OF MADAM JUSTICE STEELE:

1. This is an application by the Applicants for an initial order under the CCAA. The proposed monitor is FTI Consulting Canada Inc. (“FTI” or the “Proposed Monitor”).
2. Defined terms used herein are as defined in the Applicants’ factum.
3. The evidence before the Court is set out in an affidavit of Stephane Trudel, the CEO of the Applicants and a member of the Board of Directors, sworn June 5, 2023 (the “Trudel Affidavit”), and the Pre-Filing Report of the Proposed Monitor, dated June 5, 2023.
4. Fire & Flower Holdings Corp. (“FFHC”) is a non-operating holding company. It was incorporated under the OBCA in 2017 and continued as a CBCA company in 2019. FFHC’s registered and head office is in Toronto. Each of the other Companies are wholly owned, directly or indirectly, by FFHC. FFHC’s common shares are publicly traded on the TSX.
5. FFHC, through its wholly-owned subsidiaries, is an independent cannabis retail chain with four segments: (a) the “Retail Segment” which sells cannabis products and accessories; (b) the “Wholesale Segment” which operates as a wholesale cannabis business; (c) the “Delivery Segment”, which delivers cannabis products across the country; and (d) the “Digital Platform Segment”, which develops digital experiences among other things.
6. Fire & Flower Inc. (“FFI”) is the main operating entity with respect to the Companies. It operates in the Retail Segment. FFI is a CBCA company. FFI owns and operates 80 licensed cannabis retail stores throughout Canada.
7. 13318184 Canada Inc. (“133 Canada”) is a non-operating subsidiary of FFI. 133 Canada is a CBCA company. It is a signatory for certain licensing agreements but otherwise does not have any employees or operations.
8. 11180703 Canada Inc. (“Hi-Line Ventures”) is a non-operating subsidiary of FFI and licenses the majority of the Applicants’ intellectual property and sub-licenses same to an unrelated US company. Hi-Line Ventures is a CBCA company.
9. 10926671 Canada Ltd. (“Open Fields Distribution”) operates a wholesale distribution business under the “Wholesale Segment” of the Applicants. Open Fields Distribution is a CBCA company. Open Fields Distribution purchases cannabis products from licensed producers and distributes the products to the Retailers’ stores and to third-party retailers in Saskatchewan and Manitoba.
10. Friendly Stranger Holdings Corp. (“Friendly Stranger”) is the other entity operating under the Applicants’ Retail Segment. It owns and operates 11 licensed cannabis retail stores in Ontario. Friendly Stranger is an OBCA company.

11. Pineapple Express Delivery Inc. (“Pineapple Express Delivery”) was acquired by FFHC and Hifyre in January 2022 to operate the delivery aspect of the Retailers’ business. Pineapple Express Delivery is a CBCA company.
12. Hifyre Inc. (“Hifyre”) operates under the “Digital Platform Segment” of the Companies. Hifyre is an OBCA company. Hifyre has developed and deployed a proprietary, omni-channel digital platform to drive the Retailers’ operations among other things. It licenses its digital platform to third parties and operates a virtual marketplace among other things. Hifyre also has two US subsidiaries, which are not applicants in these proceedings.
13. FFHC, FFI, 113 Canada, Hi-Line Ventures, Open Fields Distribution, Friendly Stranger, Pineapple Express Delivery and Hifyre are collectively, the “Applicants”. The term “Companies” includes the 2 US subsidiaries. The corporate structure of the Companies is set out in Exhibit A to the Trudel Affidavit.
14. The Companies operate in a highly regulated environment, as set out in detail in the Trudel Affidavit.
15. The Applicants are insolvent. The Companies have been operating at a loss since they began operating in 2018. For the fiscal year end December 2022, the Companies suffered an operating loss of \$83.4 million. From December 31, 2022 to March 31, 2023, the Companies suffered a net loss of approx. \$10.1 million, with losses continuing.
16. The Companies lack working capital. As at March 31, 2023, the Companies had \$8.2 million in cash and over \$50.8 million in current liabilities. The evidence is that even assuming that the Companies were able to realize on the full book value of their current assets (receivables, inventories, etc.), the Companies are still unable to satisfy their current liabilities in the immediate term.
17. The Applicants employ 774 employees, none of whom are unionized.
18. The Companies are tenants under 146 leases. Of those, 45 are non-operating and 20 are being subleased to third parties. The Companies’ monthly lease obligations are in excess of \$1.3 million.
19. The Applicants have worked with the Proposed Monitor to prepare a 13-week Cash Flow Forecast for the period ending September 1, 2023.
20. The Cash Flow Forecast Statement demonstrates that the Applicants expect to need interim financing to fund their ongoing operations during the CCAA proceedings, including during the initial 10-day Stay Period requested. Accordingly, as discussed below, the requested relief includes interim financing under the proposed DIP Facility.
21. The Companies’ only secured financing has come through the ACT Investors’ Loan Agreement and ACT Facility. ACT Investor also holds approximately 35.7% of the issued and outstanding common shares of FFHC, in addition to certain warrants. In addition to ACT Investor, certain entities hold registered secured interests against certain person property of some of the Companies (some of which should be discharged as the relevant debt has been repaid).

22. The Applicants seek protection from their creditors, and certain ancillary relief, while they continue as a going concern. This will allow them time to restructure their operations and conduct a Court-approved SISP to obtain a going concern solution to maximize value for their stakeholders.
23. The relief sought by the Applicants is fully supported and recommended by the Proposed Monitor.
24. The draft Order proposed is based on the Model Order, with certain changes that the Applicants brought to the Court's attention, including insertions regarding compliance with the bi-weekly budget as required under the DIP Facility.

Initial Order

Application of the CCAA

25. Section 2 of the CCAA defines a "company" to mean any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, among other entities. The Applicants are each a "company" as defined in the CCAA. As noted above they have each been incorporated under the CBCA or the OBCA.
26. Section 2 of the CCAA defines a "debtor company" to include a "company" that is bankrupt or insolvent. The CCAA applies to a "debtor company" where the total claims against it exceed \$5 million: s. 3(1) CCAA.
27. The evidence is that the Applicants are unable to meet their obligations as they become imminently due.
28. The Applicants are also "affiliated companies" for the purposes of section 3(2) of the CCAA. As noted above, all of the Companies are owned, directly or indirectly, by FFHC.
29. I am satisfied that each of the Applicants is a "debtor company" under the CCAA. Each of the Applicants is incorporated in Canada or Ontario. The Applicants are insolvent under both the BIA test for solvency and the expanded concept of insolvency accepted by the *Stelco* test (*Stelco Inc. (Re)*, 2004 CarswellOnt 1211, at paras 25-26).
30. I am also satisfied that the Court in Ontario is the appropriate venue for these CCAA proceedings (see paras. 84 to 87 of the Applicants' factum).

Stay of Proceedings

31. On an initial application in respect of a debtor company, this court may grant a stay of proceedings of up to 10 days, provided that the Court is satisfied that circumstances exist that make the order appropriate and the Applicant has acted in good faith and with due diligence: CCAA, 11.02(1), (3).
32. I am satisfied that the requested initial stay of proceedings is necessary for the Applicants to provide them with the breathing room necessary to, among other things: (i) maintain operations for the benefit of most of their employees and other stakeholders; (ii) streamline their remaining operations with a view to generating a profit; and (iii) provide the Applicants with time to prepare a SISP for a going concern solution to maximize value for their stakeholders.

Appointment of Proposed Monitor

33. FTI is the proposed monitor. The Applicants engaged FTI on May 26, 2023 to assist them in understanding their strategic options and prepare for the possibility of acting as monitor. Jeffrey Rosenberg, a trustee within the meaning of s. 2(1) of the BIA, leads the FTI team. Accordingly, the Proposed Monitor is qualified under section 11.7 of the CCAA.
34. FTI has consented to act as Monitor.
35. I appoint FTI as Monitor in these CCAA Proceedings.

DIP Financing

36. The Applicants are seeking the Court's authorization to enter into a DIP Facility on the terms set out in the term sheet with the ACT Investor, in its capacity as the DIP Lender. As noted above, the ACT Investor is the major secured creditor of the Applicants. It also holds significant shares and warrants of FFHC.
37. Section 11.2(4) sets out a non-exhaustive list of factors the court is to consider in deciding whether to make an order for interim financing, including:
 - 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, if any.
38. Under s. 11.2(6) of the CCAA there is an additional consideration when the interim financing request is made at the same time as the initial application. Specifically, no order shall be made for interim financing "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."
39. I am satisfied that the Applicants are facing a liquidity crisis and the Cash Flow Forecast Statement shows that financing even on an interim basis is required to fund these proceedings. The particulars of the DIP Facility are set out in the DIP Facility Term Sheet with FFHC as the Borrower, and 2707031 Ontario Inc. ("ACT Investor") as Lender. ACT investor is a wholly-owned subsidiary of Alimentation Couche-Tard.
40. As noted in the Trudel Affidavit, ACT Investor already benefits from a first-ranking security interest over the Applicants' property.
41. The proposed DIP Facility is the result of negotiations between the DIP Lender, the Applicants and their counsel, with input from the Proposed Monitor.

42. The DIP Facility provides for an initial advance of \$2.7 million, which would be made available to the Applicants during the initial 10-day Stay Period. Paragraph 41 of the proposed Order provides that the proposed DIP Lender Charge (as well as the proposed Administration Charge and proposed D&O Charge) “shall rank behind Encumbrances in favour of any Persons that have not been served with notice of this application.” The draft order further provides that “[t]he Applicants and beneficiaries of the Charges shall be entitled to seek priority ahead of such Encumbrances on notice to those parties.” Accordingly, the claims of any parties who did not have notice of the proceedings will not be primed in the initial order. However, the Applicants may request priority at the comeback hearing on full notice to these parties.
43. The total DIP Facility is \$9.8 million (the balance of which – above the initial \$2.7 million - would be available in tranches after the comeback motion). The interest rate is 12% per annum. There is \$400,000 exit fee which is payable by the Applicants on the earlier of the maturity date and the date that the DIP Facility is repaid in full. The Proposed Monitor’s Pre-Filing Report includes a chart of the observed interest rates of DIP loans ranging in size from approx. \$2.5 million to \$20 million for the period between January 2022 and May 2023. The interest rate on the proposed DIP Facility is slightly lower than the average and the DIP fee is higher than the average but lower than the maximum.
44. Importantly, the DIP Facility is the only financing option available to the Applicants. The Proposed Monitor did canvass the market to see if there were other options. Due to timing and market conditions, the proposed DIP Facility is the best and only option.
45. The Proposed Monitor is supportive of the DIP Facility and corresponding charges.
46. I am satisfied that the proposed DIP Facility is appropriate and approve the DIP Facility.

The Administration Charge

47. The Applicants seek an Administration Charge of \$600,000 to secure the professionals’ fees and disbursements in respect of the Stay Period.
48. The Court has the jurisdiction to grant the Administration Charge pursuant to section 11.52 of the CCAA. In *Canwest Publishing*, the Court identified six non-exhaustive factors that the Court may consider when determining whether to grant an administration charge:
- a. The size and complexity of the business being restructured;
 - b. The proposed role of the beneficiaries of the charge;
 - c. Whether there is unwanted 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.
49. The Applicants submit that the proposed Administration Charge is warranted, necessary and appropriate in the circumstances given that, among other things, they operate in a highly regulated environment and there are numerous complex issues to address, the Applicants employ 774 people and are parties to approximately 146 leases some of which are subleased, and the Proposed Monitor is supportive of the proposed Administration Charge including the quantum.

50. I grant the Administration Charge pursuant to s. 11.52 of the CCAA.

D&O Charge

51. The Applicants seek a priority D&O charge in favour of the Applicants' current and future directors and officers in the amount of \$2.8 million. This charge protects the current and future directors and officers against obligations and liabilities they may incur as directors and officers of the Applicants after the commencement of the CCAA proceedings, except to the extent that any such claims are incurred as a result of gross negligence or wilful misconduct.

52. Section 11.51 of the CCAA provides the Court with the express statutory jurisdiction to grant the D&O charge in an amount the Court considers appropriate, provided that notice is given to the secured creditors who are likely to be affected by it. As noted above, to the extent that there are secured creditors who have not had notice, the initial order contemplates that their claims will not be primed.

53. To ensure the stability of the business during the restructuring period, the Applicants need the ongoing assistance of their directors and officers. The Applicants also state that they cannot be certain whether the existing insurance will be applicable or respond to any claims made and the Applicants do not have sufficient funds available to satisfy any given indemnity should its directors and officers need to call upon such indemnities.

54. The Proposed Monitor is of the view that the D&O Charge is reasonable and appropriate in the circumstances.

55. The D&O charge is approved.

Comeback Hearing

56. Order to go as signed by me and sent to counsel for the Applicants and the Proposed Monitor for distribution to the Service List. The order is effective from today's date and is enforceable without the need for entry and filing.

57. I am satisfied that the relief granted in the order for the 10-day period is limited to relief that is "reasonably necessary for the continued operations of the debtor company in the course of business during that period", as required by a. 11.001 of the CCAA.

58. The comeback hearing is scheduled for June 15, 2023 at 10 am.

