

COURT FILE NUMBER

COURT
JUDICIAL CENTRE

COURT OF KING'S BENCH OF ALBERTA
CALGARY

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, RSC 1985, c
C-36, as amended

AND IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF
MONETTE FARMS LTD., MONETTE FARMS
ONTARIO CORP., NEXGEN SEEDS LTD.,
MONETTE PRODUCE LTD., MONETTE SEEDS
LTD., MONETTE LAND CORP., DMO HOLDINGS
LTD., DMO HOLDINGS USA, INC., MONETTE
SEEDS USA, LLC, MONETTE FARMS ARIZONA,
LLC, MONETTE FARMS USA, INC., 1012595 DE
INC., MONETTE PRODUCE, LLC, GOAT'S PEAK
WINERY LTD., MONETTE FARMS BC LTD.,
MONETTE FARMS LAND GP LTD., MONETTE
FARMS LAND II GP LTD., AND MONETTE
FARMS BC GP LTD.

APPLICANTS

MONETTE FARMS LTD., MONETTE FARMS
ONTARIO CORP., NEXGEN SEEDS LTD.,
MONETTE PRODUCE LTD., MONETTE SEEDS
LTD., MONETTE LAND CORP., DMO HOLDINGS
LTD., DMO HOLDINGS USA, INC., MONETTE
SEEDS USA, LLC, MONETTE FARMS ARIZONA,
LLC, MONETTE FARMS USA, INC., 1012595 DE
INC., MONETTE PRODUCE, LLC, GOAT'S PEAK
WINERY LTD., MONETTE FARMS BC LTD.,
MONETTE FARMS LAND GP LTD., MONETTE
FARMS LAND II GP LTD., AND MONETTE
FARMS BC GP LTD.

DOCUMENT

BENCH BRIEF OF THE APPLICANTS

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Clerk's Stamp

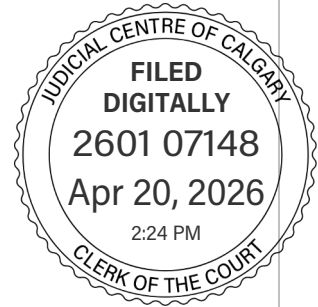


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I. INTRODUCTION

1. This bench brief is filed on behalf of Monette Farms Ltd. ("**Monette Farms**"), Monette Land Corp. ("**Monette Land**"), DMO Holdings Ltd. ("**DMO Holdings**"), Goat's Peak Winery Ltd. ("**Goat's Peak Winery**"), Monette Farms BC Ltd. ("**Monette Farms BC**"), Monette Farms Ontario Corp. ("**MFO**"), Nexgen Seeds Ltd. ("**NexGen**"), Monette Produce Ltd. ("**Produce**"), Monette Seeds Ltd. ("**Seeds**"), Monette Farms Land GP Ltd. ("**MFL GP**"), Monette Farms Land II GP Ltd. ("**MFL II GP**"), DMO Holdings USA, Inc. ("**DMO USA**"), Monette Seeds USA LLC ("**Seeds USA**"), Monette Farms Arizona, LLC ("**MF Arizona**"), Monette Farms USA, Inc. ("**Monette USA**"), 1012595 DE INC. ("**1012 DE**"), Monette Produce, LLC ("**Produce USA**"), and Monette Farms BC GP Ltd. ("**MF BC GP**"), and collectively the "**Applicants**") in support of an originating application (the "**Application**") for an initial order (the "**Initial Order**"), and related relief under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**").¹
2. The Group (as defined below) forms one of the largest private farming businesses in North America, with operations across the provinces of Alberta, Saskatchewan, Manitoba, British Columbia, and the states of Montana, Colorado and Arizona.
3. The Group urgently requires both liquidity to continue operations and protection under the CCAA to stabilize the *status quo* as they implement an orderly sale of all or substantially all of the Group's assets, seek investment in the Group, and refinancing opportunities to repay all obligations owing pursuant to the Senior Facilities Agreement (as defined herein) in accordance with the milestones set out in the Term Sheet (as defined herein).
4. The Applicants seek:
 - (a) certain relief in the Initial Order, limited to what is necessary for a 10-day stay period, which includes:
 - (i) abridging the time for serving and deeming service of the Application and supporting materials of the Initial Order to be good and sufficient;
 - (ii) declaring that the Applicants are companies to which the CCAA applies;
 - (iii) appointing FTI Consulting Canada Inc. ("**FTI**") as the court-appointed monitor (in such capacity, the "**Monitor**") of the Group's respective assets, undertakings, and properties (collectively, the "**Property**"), their business (the "**Business**") and financial affairs in these CCAA proceedings;

¹ *Companies' Creditors Arrangement Act*, [RSC 1985, c C-36](#) [**CCAA**].

- (iv) declaring that Monette Farms Land LP, Monette Farms Land II LP, and Monette Farms BC LP (the "**LPs**" or the "**Non-Applicant Stay Parties**", and together with the Applicants, the "**Group**") shall have the same benefit and the same protections and authorizations provided to the Applicants in the Initial Order, notwithstanding that the Non-Applicant Stay Parties are not "companies" within the meaning of the CCAA;
- (v) staying all claims, proceedings and remedies taken or that might be taken in respect of the Group, Property, Business, the Monitor, and each of the Group's and Monitor's respective directors and officers, except with leave of the Court (the "**Stay of Proceedings**");
- (vi) ordering that the *status quo* be maintained in respect of the proprietary and regulatory licenses issued to the Group, including those issued by the British Columbia Ministry of Forests, Land, Natural Resource Operations, and Rural Development, and any other regulator issuing a licence related to the Real Property (as defined herein) or issued to the Group, which shall be preserved and maintained during the pendency of the Stay of Proceedings, other than that of the grain licence issued by the Canadian Grain Commission;
- (vii) authorizing the Group to carry on business in a manner consistent with the preservation of the Business and Property;
- (viii) authorizing the Group to continue to use their existing cash management system on the terms set out in the Initial Order;
- (ix) approving a debtor-in-possession ("**DIP**") financing facility (the "**DIP Facility**") to be provided by The Bank of Nova Scotia in its capacity as DIP agent (in such capacity, the "**DIP Agent**") and certain members of the Syndicate (as defined below) (in such capacity, the "**DIP Lenders**") and to borrow from the Syndicate the initial principal amount of \$40 million (the "**Initial Advance**") which initial principal amount may be advanced to the Group in accordance with the terms of the Term Sheet during the initial 10 day stay period, with the ability to thereafter borrow up to an aggregate amount of \$90 million and create a related charge on the Property up to \$95 million to secure the DIP Facility (the "**DIP Lenders' Charge**") in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or other lien of whatever nature against the Property except for the Administration Charge (as defined herein);

- (x) granting the following charges, together with the DIP Lenders' Charge, which shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or other lien of whatever nature against the Property and shall rank in the following order (collectively, the "**Charges**"):
 - (A) an administration charge in the initial amount of \$1,500,000 to secure the Group's obligations toward their legal counsel, the Monitor, the Monitor's counsel, and the Syndicate's financial advisor, PricewaterhouseCoopers Inc. (the "**Syndicate's Financial Advisor**") for work performed and to be performed in connection with these CCAA proceedings (the "**Administration Charge**");
 - (B) the DIP Lenders' Charge in the amount of \$95 million to ensure recognition of the full amount in the United States of America ("**USA**") and ensure the Group does not need to return to the US Bankruptcy Court (as defined herein) to seek amendment of that court's provisional recognition order of the Initial Order; and
 - (C) a directors' charge in the initial amount of \$1,500,000 to secure the indemnity of the Applicants' respective directors and officers (the "**D&Os**") for liabilities they may incur in these CCAA proceedings (the "**Directors' Charge**");
 - (xi) entitling the Group to make payment of all obligations owing in respect of employee wages and benefits and applicable source deductions, whether incurred prior to or after the commencement of the CCAA proceedings; and
 - (xii) entitling the Group to pay reasonable expenses incurred by them in operating the business in the ordinary course, including making payment of obligations owing in respect of goods and services supplied to the Group prior to the date of the Initial Order by critical vendors to the extent required to ensure ongoing supply of critical goods and services, as permitted by the Initial Order, subject to approval by the Monitor and the Syndicate's Financial Advisor, up to a maximum aggregated amount of \$3 million, and subject to approval of the Monitor, the Syndicate's Financial Advisor, and additional consultation with the DIP Agent for any payments in excess of \$100,000;
- (b) an order (the "**Sealing Order**") sealing the confidential affidavit of Darrel Monette, sworn April 17, 2026 (the "**Confidential Affidavit**"), until one year from the termination of these CCAA proceedings, should the Initial Order be granted, or further order of this Court; and

- (c) such further and other relief as the Court deems just.
5. The Applicants intend to seek additional relief necessary to advance the CCAA proceedings at the comeback hearing (the "**Comeback Hearing**") in the form of an amended and restated initial order (the "**ARIO**") that will, among other things:
- (a) further extend the Stay of Proceedings;
- (b) approve an increase to the maximum amount available under the DIP Facility to \$90 million; and
- (c) approve increases to the amount of the Administration Charge and the Director's Charge.
6. The Applicants will additionally seek recognition of these CCAA proceedings under chapter 15 of Title 11 of the United States Bankruptcy Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court of Delaware (the "**US Bankruptcy Court**", and such proceedings, the "**USA Recognition Proceedings**").
7. Within 45 days of the ARIO, the Applicants intend to seek approval of a sale and investment solicitation process consistent with the Senior Facilities Agreement and the milestones set by the DIP term sheet (the "**Term Sheet**") substantially in the form attached as Exhibit "X" to the Affidavit of Darrel Noel Monette ("**Mr. Monette**") sworn April 17, 2026 (the "**Monette Affidavit**").

II. **FACTS**

8. Further factual background supporting the relief sought may be found in the Monette Affidavit. Capitalized terms used herein that are not otherwise defined shall have the meaning given to them in the Monette Affidavit. All references to currency herein are references to Canadian dollars, unless otherwise indicated.

A The Companies

9. Each member of the Group is directly or indirectly owned by Mr. Monette (except for Monette Farms whose common shares are held by the Monette Farm Family Trust).² The corporate Applicants are incorporated or amalgamated in the provinces of Saskatchewan, British Columbia and Ontario, or the states of Montana, Delaware and Arizona. The LPs form a critical part of the Applicants' business, holding beneficial title for substantially all of the Group's Real Property located in Canada.³

² Affidavit of Darrel Noel Monette [**Monette Affidavit**] at para 29.

³ Monette Affidavit at para 88.

10. Several of the Applicants, namely DMO USA, Seeds USA, MF Arizona, Monette USA, 1012 DE, and Produce USA (collectively, the "**USA Entities**") are corporations formed or operating in the USA, namely Arizona and Montana.⁴
11. Mr. Monette is the directing mind, ultimate shareholder, and CEO of the Group and runs the Business from Alberta.⁵ Mr. Monette is the director of all but one non-material subsidiary.⁶ The Group's senior management team is situated across British Columbia, Alberta, and Saskatchewan but meet mainly in Alberta to make decisions under the leadership of Mr. Monette.⁷ Accordingly, the majority of the management and operational decisions for the Group are made from Alberta. A significant portion of the Group's bank accounts and the governing law of its key financial contracts are based in Alberta.⁸

B The Group's Business

12. The Group is in the agriculture business and operates one of North America's largest private farming operations, owning or leasing over 400,000 acres of farmland.⁹ The Group's operations are divided into four business segments (collectively, the "**Farm Operations**"): grain farming (over 50% of 2025 revenue), produce farming (approximately 15% of 2025 revenue), cattle ranching (approximately 17% of 2025 revenue), and seed processing (approximately 16% of 2025 revenue).¹⁰ The Farm Operations are highly cyclical and capital intensive.¹¹
13. The Group owns approximately 274,000 acres of land, including seed processing facilities and produce storage facilities, and additionally lease approximately 218,000 acres of land across Western Canada and the USA (collectively, the "**Real Property**").¹² The Real Property is subject to numerous livestock, environmental, water use, pesticide, and waste & nutrient management regulations. Certain Real Property is subject to water licences that entitle the Group to source water for irrigation from neighbouring land (the "**Water Licences**").¹³
14. In addition to the Real Property, the Group holds grazing licences with the British Columbia Ministry of Forests, Lands, Natural Resource Operations and Rural Development under the British Columbia's *Range Act*, SBC 2007, c 71,¹⁴ (the "**Grazing Licences**", and together with the Water

⁴ Monette Affidavit at paras 36 – 38.

⁵ Monette Affidavit at para 42 & 79.

⁶ Monette Affidavit at para 29.

⁷ Monette Affidavit at para 71.

⁸ Monette Affidavit at para 37.

⁹ Monette Affidavit at para 11.

¹⁰ Monette Affidavit at para 11.

¹¹ Monette Affidavit at para 48.

¹² Monette Affidavit at para 80.

¹³ Monette Affidavit at para 92.

¹⁴ *Range Act*, [SBC 2004, c 71](#).

Licences and all other proprietary and regulatory licences granted to the Group, the "**Licences**") in respect of 1.2 million acres of land, provided that Monette Farms BC retains a certain number of cattle on the applicable land.¹⁵

C Financial Position of the Group

15. The Applicants are insolvent. Absent the protections of the Initial Order, the Group expects to suffer serious financial harm and will not have adequate liquidity to continue Farm Operations in the ordinary course.
16. The Group's historical growth strategy relied heavily on debt-driven land acquisitions.¹⁶ However, the Group's consolidated EBITDA fell significantly in 2024 and 2025.¹⁷ In both years, free cash flow was insufficient to meet obligations without additional lender support.¹⁸
17. The value of the Group's assets, based on financial year statements for 2025, exceeds the value of their consolidated liabilities. As of April 12, 2026, the Group's consolidated liabilities are approximately \$1 billion.¹⁹ This is comprised primarily of secured debt owing under a Senior Facilities Agreement dated December 5, 2018 (as amended from time to time, the "**Senior Facilities Agreement**") between the Group and The Bank of Nova Scotia as agent for a syndicate of lenders (the "**Syndicate**").²⁰ The Senior Facilities Agreement matured on April 15, 2026.²¹ Members of the Syndicate will be DIP Lenders. The Group has also borrowed money under a \$30 million cattle facility with Farm Credit Canada (the "**FCC Loan Agreement**") (under which approximately \$11.8 million is outstanding),²² \$18 million under a vendor take-back mortgage,²³ and numerous equipment financings.²⁴
18. Notwithstanding the occurrence of multiple events of default, the Syndicate has continued to support the Group's operations and restructuring efforts.²⁵ Since October 2024, the Syndicate entered into two waiver and covenant agreements and eight subsequent amending agreements,²⁶ ultimately culminating in a forbearance agreement in November 2025 (the "**Forbearance Agreement**").²⁷ The Group has unfortunately been unable to meet the deleveraging milestones as

¹⁵ Monette Affidavit at para 81.

¹⁶ Monette Affidavit at para 107.

¹⁷ Monette Affidavit at paras 107 – 109.

¹⁸ Monette Affidavit at paras 164 – 168.

¹⁹ Monette Affidavit at para 111.

²⁰ Monette Affidavit at para 116.

²¹ Monette Affidavit at para 14.

²² Monette Affidavit at para 112 & 125 – 129.

²³ Monette Affidavit at para 112 & 132.

²⁴ Monette Affidavit at para 112 & 143.

²⁵ Monette Affidavit at para 13.

²⁶ Monette Affidavit at para 13.

²⁷ Monette Affidavit at paras 13 and 151.

set out in the Forbearance Agreement.²⁸ Throughout this period, the Syndicate continued to engage constructively with the Group's efforts to right-size the Business and pursue asset dispositions while providing liquidity.

19. The Group is experiencing significant liquidity constraints. Without immediate DIP financing, the Group has insufficient liquidity to seed or harvest their farmland.²⁹

D Efforts to Raise Capital

20. Since 2024, and as a result of the operational difficulties, the Group has made significant efforts to obtain additional liquidity from both current and outside lenders and equity investors.³⁰ Despite multiple of those efforts advancing to the term sheet phase, the Group has been unsuccessful in securing new financing or investment.³¹

E Financial Distress and Deleveraging Plan

21. As part of the Forbearance Agreement, the Group developed and initiated a comprehensive two-phase sale programme to dispose of all of their assets except for the farm located in Airdrie, Alberta (the "**Sale Programme**").³² The Group commenced the Sale Programme in December 2025 as follows:

- (a) Phase 1 occurred between January 16, 2026, and February 2, 2026, and was focused on private, bi-lateral conversations with select potential buyers. As part of phase 1, the Group sold 12,932 acres of farmland in Stewart Valley, Saskatchewan for \$54,080,000 which reflected approximately 158% of the 2025 appraised value and 164% of the 2024 appraised value. The Stewart Valley Farm sale closed in March 2026.³³
- (b) Phase 2 began in February 2026 and was designed to broaden market exposure. Phase 2 involved marketing the Group's farms through a dedicated webpage that provided detailed descriptions of the Group's Real Property.³⁴ Phase 2 of the Sale Programme resulted in two sales of Real Property, totalling \$30.78 million for approximately 2,553 acres.³⁵

²⁸ Monette Affidavit at para 152.

²⁹ Monette Affidavit at para 17.

³⁰ Monette Affidavit at paras 153 & 160.

³¹ Monette Affidavit at para 148.

³² Monette Affidavit at para 153.

³³ Monette Affidavit at paras 155 – 156.

³⁴ Monette Affidavit at para 157.

³⁵ Monette Affidavit at paras 158.

22. The Group could not achieve the milestones agreed to in the Forbearance Agreement, which depended on the prompt sale and closure of large, complex farmland portfolios in markets with limited buyer depth and elongated due-diligence periods.³⁶
23. As a result of the existing defaults and the maturity of the Senior Facilities Agreement, the Group requires additional time to implement a controlled deleveraging and refinancing of their indebtedness, with the support of the Syndicate. The repayment of the obligations owing to the Syndicate under the Senior Facilities Agreement is an integral and necessary component of the Group's overall restructuring strategy. That strategy includes the right-sizing of the Business and balance sheet through an orderly disposition of assets, with the proceeds of those dispositions being applied toward satisfaction of the Senior Facilities. Such deleveraging will hopefully facilitate a refinancing of the Senior Facilities.³⁷
24. The Group requires creditor protection pursuant to the CCAA and the associated Stay of Proceedings to ensure that the Group, under the supervision of the proposed Monitor, may manage an orderly sale and investment solicitation process that will ensure that the interests of the Group's stakeholders are respected, value is maximized, and the critical spring seeding season is not disrupted.
25. Absent the granting of the Initial Order and the approval of the DIP Facility provided by the DIP Lenders, the Group will be unable to undertake the necessary preparation and seeding of their fields for the 2026 growing season. The spring seeding window is narrow and time sensitive. For a farming enterprise of this scale, a failure to seed within that brief window would materially reduce crop yields, or in some cases, prevent planting altogether.³⁸
26. Absent the DIP Facility, the Group would not have sufficient funds to continue to operate. This would have material effects on the Group's stakeholders and the Group's revenue. A disorderly liquidation would also have significant effects on both employees, whose entire livelihoods depend on the growing season, and the rural communities in which the Group operates.
27. Without DIP financing the Group would be unable to complete seeding within the applicable spring window and the consequences would be immediate and irreversible. The Group would lose the opportunity to generate any revenue from the affected lands for the entirety of the 2026 growing season. In addition, fields that are left unseeded or inadequately maintained for a full growing season suffer a loss of productivity and are vulnerable to soil degradation and erosion, materially impairing their long-term agricultural value.³⁹ As the value of farmland is intrinsically tied to its

³⁶ Monette Affidavit at para 159.

³⁷ Monette Affidavit at para 15.

³⁸ Monette Affidavit at para 17.

³⁹ Monette Affidavit at para 18.

production and demonstrated operating performance, lands left idle for the 2026 season would command materially reduced prices in any realization process.

28. Additionally, the consequences of not seeding would be catastrophic for the Group's workforce, particularly the approximately 600 employees engaged during the peak seeding and growing seasons, many of whom are located in rural communities with limited alternative employment opportunities.⁴⁰ As a result of a failure to seed in 2026 there would be widespread job loss.
29. While the Senior Facilities Agreement has matured, the Syndicate is willing to support the Group to complete spring seeding and this proceeding generally, provided subsequent funding on a super-priority basis pursuant to the CCAA. The Group has no alternative source of liquidity available to preserve the value of the Business and Property outside of the CCAA proceedings.

III. ISSUES

30. The principal issues to be determined by this Honourable Court upon this Application are whether:
- (a) the CCAA applies to the Applicants;
 - (b) the CCAA protections should be extended to the LPs;
 - (c) Alberta is the appropriate provincial jurisdiction for these CCAA proceedings;
 - (d) the Stay of Proceedings should be granted;
 - (e) FTI should be appointed as Monitor;
 - (f) the regulatory *status quo* stay of the Licences should be granted
 - (g) the DIP Facility and DIP Lenders' Charge should be approved;
 - (h) the Administration Charge and Directors' Charge should be approved;
 - (i) FTI should be appointed as Foreign Representative;
 - (j) the Group should be authorized to pay certain pre-filing amounts; and
 - (k) the Sealing Order should be granted.

IV. LAW & ANALYSIS

A The CCAA Applies to the Applicants

31. The CCAA applies to a "debtor company or affiliated debtor companies" where the total claims against the debtor or its affiliates exceeds five million dollars.⁴¹ The Applicants, who seek relief in

⁴⁰ Monette Affidavit at paras 73, 78 – 79.

⁴¹ [CCAA](#), ss 2(1) at "debtor company", 3(1).

these proceedings that advances the remedial objectives of the CCAA, satisfy these statutory requirements.

(i) The Applicants are each a "debtor company" under the CCAA

32. The CCAA defines "company" as, among other things, "a company, corporation, or legal person incorporated by or under any Act of Parliament" or as "having assets or doing business in Canada."⁴²
33. Each of the Applicants are either incorporated pursuant to Canadian provincial laws, or if not, such as in the case with the USA Entities, do business in Canada. The USA Entities form an essential part of the Applicants' integrated and cross-border business.⁴³ The USA Entities cannot operate independently without the financial support of the other Applicants.⁴⁴ They are parties to the Senior Facilities Agreement and without the Stay of Proceedings could be the subject of ricochet claims or enforcement steps that may circumvent the CCAA proceedings and would have a material impact on the Group's operations in Canada. A coordinated process managed in Canada is necessary to ensure a controlled and orderly wind-down. Accordingly, the Applicants each meet the definition of a "company" under the CCAA.⁴⁵
34. Pursuant to section 2 of the CCAA, a "debtor company" means, *inter alia*, a company that is insolvent.⁴⁶ The insolvency of a debtor company is determined as of the time the debtor files its application under the CCAA.⁴⁷ "Insolvent" is not defined under the CCAA. Accordingly, "insolvent" for the purpose of the CCAA is informed, but not dictated, by the definition of "insolvent person" under section 2 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**").⁴⁸
35. However, "insolvency" under the CCAA is broader than under the BIA to give effect to the CCAA's objectives. As such, a financially troubled company is insolvent for the purpose of the CCAA if it is "reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring."⁴⁹
36. The Applicants are currently insolvent. Without access to the DIP Facility, the Applicants do not have adequate liquidity to continue the Farm Operations in the ordinary course. They are unable to satisfy the obligations under the Senior Facilities Agreement and the FCC Loan Agreement as

⁴² [CCAA](#), s 2(1) at "company".

⁴³ Monette Affidavit at paras 102 – 103, 177.

⁴⁴ Monette Affidavit at paras 102 – 103, 177.

⁴⁵ *Lydian International Limited (Re)*, [2019 ONSC 7473](#) at paras 35-36 [**Re Lydian**].

⁴⁶ [CCAA](#), s 2(1) at "debtor company".

⁴⁷ *Stelco Inc, Re*, [2004 CanLII 24933 \(ONSC\)](#) at para 4 [**Stelco**].

⁴⁸ Stelco at [para 22](#); *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 2 at "insolvent person" [**BIA**].

⁴⁹ Stelco at [para 26](#).

they become due.⁵⁰ Accordingly, each of the Applicants are properly characterized as a "debtor company" under the CCAA.

(ii) The Applicants are subject to claims in excess of \$5 million

37. The Court has jurisdiction to grant protection under the CCAA to a "debtor company" where the total claims against such debtors collectively exceed \$5 million.⁵¹ The Supreme Court of Canada (the "SCC") in *Callidus* reaffirmed that the threshold for liabilities is cumulative, stating that "access to the CCAA is restricted to debtor companies facing total claims in excess of \$5 million".⁵²
38. The Group has combined total liabilities/claims of approximately \$1 billion, far in excess of the statutory threshold of \$5 million.⁵³ The Senior Facilities Agreement alone has an outstanding indebtedness of nearly \$830 million.
39. Accordingly, the Group's joint liabilities exceed the statutory minimum under the CCAA.

(iii) The Purposes of the CCAA Aligns with the Relief being Sought

40. The CCAA emerged from Depression-era federal policy under former Alberta lawyer and then Prime Minister R.B. Bennett at a time when widespread agricultural insolvency — particularly on the prairies — posed an acute threat to economic stability and productive capacity. It was enacted just a year before the *Farmers' Creditors Arrangement Act, 1934*, SC 1934, c 53. (the "FCAA").⁵⁴ Enacted in 1933 and 1934 respectively, both statutes sought to mitigate widespread economic disruption from the Great Depression by favouring restructuring and compromise over liquidation.⁵⁵ While the CCAA was initially directed toward the preservation of large commercial enterprises, the FCAA was expressly grounded in public-interest objectives; most notably, by keeping farmers on their land and ensuring those farmers could continue to grow.⁵⁶
41. Although the FCAA has since been repealed, its public-interest rationale significantly influenced the evolution of the CCAA, whose remedial purpose has come to reflect a broader concern for economic and social stability beyond the immediate interests of debtors and creditors.⁵⁷ The SCC has recently confirmed that the purpose of the CCAA "is to permit the debtor to continue to carry on business, and where possible, avoid the social and economic costs of liquidating its assets."⁵⁸

⁵⁰ Monette Affidavit at paras 170 and 176.

⁵¹ [CCAA](#), s 3(1).

⁵² [9354-9186 Québec inc v Callidus Capital Corp](#), [2020 SCC 10](#) at para 39 [**Callidus**].

⁵³ Monette Affidavit at para 111.

⁵⁴ *Farmers' Creditors Arrangement Act, 1934*, SC 1934, c 53 [**FCAA**].

⁵⁵ Virginia Torrie, *Reinventing Bankruptcy Law: A History of the Companies' Creditors Arrangement Act* ([Toronto: University of Toronto Press, 2020](#)) at 25, 45 – 46, and 56 – 59 [**Torrie**].

⁵⁶ Torrie at 45 – 46.

⁵⁷ Torrie at 45 – 46.

⁵⁸ *Century Services Inc. v Canada (Attorney General)*, [2010 SCC 60](#) at para 15 [**Century Services**].

42. The relief sought by the Applicants not only satisfies the statutory requirements of the CCAA but clearly advances the statute's underlying objective. Granting protection under the CCAA to the Group, a family-owned farming enterprise, preserves ongoing operations and safeguards livelihoods of rural communities. This is precisely the outcome the CCAA was designed to achieve.

B The CCAA Protection Should Be Extended to the LPs

43. This Court has the broad discretion to make any order that it considers appropriate in the circumstances, subject only to the restrictions contained in the CCAA.⁵⁹ Accordingly, the Applicants are seeking an order declaring that the LPs shall have the same benefit, protections, and authorizations provided to the Applicants in the Initial Order, and that all the property and business of the LPs shall be deemed to be the Property and Business of the Applicants.

44. Notwithstanding that the definition of an eligible "company" under section 2 of the CCAA does not include partnerships, CCAA courts have exercised jurisdiction to extend benefits, protections and authorizations provided pursuant to the CCAA where it is just and convenient to do so.⁶⁰ In particular, this Court has found it just and reasonable to extend the protections of the CCAA to non-applicant limited partnerships where such parties are integrally and closely interrelated to the debtor companies' business, to ensure that the purposes of the CCAA can be achieved.⁶¹

45. It is just and reasonable in the circumstances to extend the protections of the Initial Order to the LPs. The business and operations of the Applicants and the LPs are heavily intertwined. The general partners of the LPs are Applicants subject to the protections of the CCAA and the LPs form a critical part of the Group as they hold the beneficial title to the Real Property located in Canada.⁶² The protections and benefits of the Initial Order need to be extended to the LPs to maintain the overall stability of the Group, preserve value for its stakeholders, and prevent enforcement as against the Applicants' primary assets securing its obligations.

46. Without the extension of the relief granted herein to the LPs, the Applicants will suffer irreparable harm and their ability to complete a successful restructuring through these CCAA proceedings faces a serious risk of being frustrated.

⁵⁹ [CCAA](#), s 11; *Re 4519922 Canada*, [2015 ONSC 124](#), at para 37 [**Re 451**].

⁶⁰ *Canwest Global Communications Corp (Re)*, [2009 CanLII 55114 \(ON SC\)](#) at para 29 [**Canwest**]; *Re Angus A2A GP Inc*, [2025 ABKB 51](#) at para 77 [**Angus A2A**], leave to appeal to ABCA granted, *Angus A2A GP Inc v Alvarez & Marsal Canada Inc*, [2025 ABCA 147](#).

⁶¹ *Canwest Publishing Inc*, [2010 ONSC 222](#) at paras 33-34 [**Canwest Publishing**]; *Target Canada Co (Re)*, [2015 ONSC 303](#) at paras 42-43 [**Target Canada**]; *Re Just Energy Corp*, [2021 ONSC 1793](#), at paras 116-117 [**Just Energy**]; *Re 451* at [para 37](#); Court File No. 2401-15969: *Re Angus A2A GP Inc*, [Initial Order](#) granted November 14, 2024 at para 3; Court File No. 2501-03316: *OKR Governance Co Inc et al*, [Initial Order](#) granted March 7, 2025.

⁶² Monette Affidavit at paras 88 & 180.

C Alberta is the Appropriate Filing Jurisdiction

47. Subsection 9(1) of the CCAA provides that a debtor company may bring an application under the CCAA to the court that has jurisdiction in, *inter alia*, the province within which its “head office or chief place of business is located”.⁶³ Determination of where the debtor’s chief place of business is located is a question of fact in consideration of the whole of the circumstances.⁶⁴
48. In determining a debtor’s chief place of business, Canadian courts have considered the following factors, among others:
- (a) the locations of distribution and/or manufacturing centres;⁶⁵
 - (b) the length of time each aspect of the business has been carried on and the location where that has been done;⁶⁶
 - (c) the location of the directors' residence;⁶⁷
 - (d) the location of the debtor's bank accounts and shareholdings;⁶⁸
 - (e) the proportionate location of the debtor’s employees;⁶⁹
 - (f) the goods being sold;⁷⁰
 - (g) the income and expenses of the company and its allocation between different aspects of the company;⁷¹
 - (h) the jurisdiction governing the debtor’s loan agreements;⁷² and
 - (i) the location of the debtor’s professional advisors.⁷³
49. The factors relevant under section 9(1) of the CCAA focus on central managerial, decision-making centres, financial control, and governance. While the court may consider the physical location of primary production assets or place of incorporation, these are not determinative of a debtor's "chief

⁶³ [CCAA](#), s 9(1).

⁶⁴ *Oblats de Marie Immaculee du Manitoba, Re*, [2002 SKQB 161](#), at paras 10-14, citing *Royal Bank v Perfection Foods Ltd*, [1991 CanLII 13003](#) (PE SCTD) [**Perfection Foods**].

⁶⁵ *Target Canada*, at [para 30](#).

⁶⁶ *Perfection Foods*, at [para 44](#).

⁶⁷ *BZAM Ltd Plan of Arrangement*, [2024 ONSC 1645](#) at para 39 [**BZAM**].

⁶⁸ *Re Chalice Brands Ltd*, [2023 ONSC 3174](#) at paras 26-27 [**Chalice**].

⁶⁹ *Target Canada*, at [para 30](#).

⁷⁰ *Perfection Foods*, at [para 44](#).

⁷¹ *Perfection Foods*, at [para 44](#).

⁷² *Re Lydian* at [paras 17 and 41](#).

⁷³ *Lydian Factum* at [para 58](#), jurisdiction accepted on the arguments therein at *Re Lydian* at [para 41](#).

place of business." Courts have previously accepted jurisdiction over CCAA proceedings for debtors who were incorporated and had significant business operations in a different province.⁷⁴

50. Similarly, Alberta is the appropriate jurisdiction to hear this Application, notwithstanding that for many of the Applicants the primary production acreage, labour, and province of incorporation is Saskatchewan. Saskatchewan is not where the Group's core financial arrangements are governed, nor is it properly characterized as the Group's chief place of business. Instead, this occurs in Alberta.
51. Alberta is the appropriate filing jurisdiction for the following reasons, among others:
- (a) the Applicants' chief place of business is in Alberta;⁷⁵
 - (b) Mr. Monette, the directing mind of the Group, resides in Alberta.⁷⁶
 - (c) the Group owns a large ranch in Airdrie, Alberta;⁷⁷
 - (d) the Group's cattle farming operations occur in Alberta;⁷⁸
 - (e) the Group's bank accounts are located in Alberta;⁷⁹
 - (f) Senior management decisions occur in Alberta;⁸⁰
 - (g) the Group's restructuring professional advisors and the professional advisors of the Group's primary creditors are based in Calgary;⁸¹ and
 - (h) the Group's debt documentation is governed by Alberta law and subject to the jurisdiction of the Alberta court, including that of the Senior Facilities Agreement.⁸²
52. The Applicants are not aware of any stakeholder which would suffer significant prejudice by way of these CCAA proceedings being commenced in Alberta. There is currently no indication that any creditor, counterparty, or stakeholder intends to dispute Alberta as the venue for this proceeding, and the Applicants understand that its largest creditors, being the Syndicate, are in support of Alberta as the proper forum.

⁷⁴ *BZAM* at paras [36-39](#), citing *Nordstrom Canada Retail, Inc.*, [2023 ONSC 1422](#) at para 27 [**Nordstrom**].

⁷⁵ Monette Affidavit at para 47.

⁷⁶ Monette Affidavit at para 42.

⁷⁷ Monette Affidavit at paras 47 & 89.

⁷⁸ Monette Affidavit at para 47.

⁷⁹ Monette Affidavit at para 47.

⁸⁰ Monette Affidavit at para 71.

⁸¹ Monette Affidavit at para 47.

⁸² Monette Affidavit at paras 47 & 118.

D The Stay of Proceedings Should Be Granted

53. This Court may grant a stay of proceedings of up to 10 days on an initial application, provided it is satisfied that: (i) such a stay is appropriate in the circumstances; and (ii) the Applicants have acted in good faith and with due diligence.⁸³ The threshold for a stay is low and a debtor company only has to satisfy this Court that a stay of proceedings would “usefully further” its efforts to reorganize.⁸⁴ A stay of proceedings may be extended, where appropriate, on subsequent applications.⁸⁵
54. The Stay of Proceedings should be extended to the Non-Applicant Stay Parties for the same reasons the other relief should be extended to them, as summarised in Part B above.
55. The purpose of a stay of proceedings is to maintain the *status quo* for a period of time and provide the debtor company the required ‘breathing room’ to concentrate its efforts on putting forward a viable plan of arrangement, compromise, or other restructuring alternative.⁸⁶
56. A stay of proceedings may also be extended to the directors and officers of a debtor company.⁸⁷ Extending a stay of proceedings to directors and officers prevents a debtor company from having to devote significant time and resources to potentially defending actions against such individuals, at a time when the focus needs to be on pursuing a successful restructuring.⁸⁸
57. The Applicants are seeking the Stay of Proceedings in respect of the Group and the D&Os up to and including May 1, 2026.
58. The requested Stay of Proceedings will provide the Group with the breathing room to stabilize and preserve the value of the Business and to implement its restructuring through a sale and investment solicitation process.⁸⁹
59. In the absence of the Stay of Proceedings, there is material risk that creditors of the Group will avail themselves of remedies that will deprive the Group of the ability to operate.⁹⁰ If this were to occur, it is likely that there would be a substantial dissipation of value, to the prejudice of the general body of the creditors and stakeholders of the Group, including the Group’s primary secured creditors under the Senior Facilities Agreement.

⁸³ [CCAA](#), ss 11.02(1), (3); *Callidus* at [paras 48-49](#).

⁸⁴ *Century Services* at [para 70](#); *Industrial Properties Regina Limited v Copper Sands Land Corp*, [2018 SKCA 36](#) at para 21.

⁸⁵ [CCAA](#), s 11.02(2).

⁸⁶ *Canada v Canada North Group Inc*, [2021 SCC 30](#) at para 19 [**Canada North**]; *Re Canadian Airlines Corp*, [\[2000\] AJ No 1693](#) at paras 17-18.

⁸⁷ [CCAA](#), s 11.03; *Re Nortel Networks Corp*, [2009 CanLII 43427 \(ONSC\)](#) at paras 25-37 [**Nortel**].

⁸⁸ *Nortel* at [para 36](#).

⁸⁹ Monette Affidavit at para 179.

⁹⁰ Monette Affidavit at para 178.

60. The order requested is limited to the minimum reasonably necessary to continue the Group's operations during the initial stay period, it is therefore appropriate.
61. The Stay of Proceedings is critical to the Group's ability to undergo a successful restructuring and/or sale and maximize the value of any transaction(s) in these CCAA proceedings for the benefit of all stakeholders and is not overly burdensome to any creditor. The Group has acted in good faith and with due diligence in commencing these CCAA proceedings.

E FTI Should be Appointed as Monitor

62. Pursuant to section 11.7 of the CCAA, the Court is required to appoint a person to monitor the business and financial affairs of a debtor company upon granting an initial order.⁹¹ The monitor must be a trustee within the meaning of section 2 of the BIA and not fall within any category of 'restrictions on who may be a monitor' as set out in subsection 11.7(2) of the CCAA.⁹²
63. FTI is a licensed trustee within the meaning of section 2 of the BIA and has signed a consent to act as the Monitor of the Applicants in these CCAA proceedings. FTI is qualified to act as Monitor under section 11.7 of the CCAA, is not subject to any of the restrictions as set out in therein and has extensive prior experience acting as monitor in similar matters of this magnitude.⁹³
64. Additionally, FTI has been involved with the Group since April 18, 2025, acting in the capacity of a financial advisor.⁹⁴ In this capacity, FTI has assisted in preparing the Cash Flow Projection (as defined in the Monette Affidavit) and in strategic decisions regarding the Group's financial and liquidity position, available options and the relief requested by the Applicants in connection with these CCAA proceedings. FTI therefore understands the Applicants' operations and the factors and events that have precipitated the commencement of these CCAA proceedings.⁹⁵

F The Regulatory Status Quo Stay of the Licences Should be Granted

65. Section 11.1(2) of the CCAA provides that a stay pursuant to section 11.02 of the CCAA does not apply to the actions of a regulatory body, except if the action is for the enforcement of payment ordered by the regulatory body or the Court.⁹⁶ However, the Court has discretionary authority under section 11.1(3) to grant a stay of regulatory proceedings if it is satisfied that (a) a viable compromise or arrangement could not be made unless the stay of regulatory proceedings is granted; and (b)

⁹¹ [CCAA](#), s 11.7(1).

⁹² BIA, [s 2](#) at "trustee"; [CCAA](#), s 11.7(2).

⁹³ [CCAA](#), s 11.7; Monette Affidavit at para 186.

⁹⁴ Monette Affidavit at para 187.

⁹⁵ Monette Affidavit at para 187.

⁹⁶ [CCAA](#), s 11.1.

the stay of regulatory proceedings is not contrary to the public interest.⁹⁷ The statutory framework under section 11.1(3) was summarized in *Just Energy Corp.*⁹⁸

More plainly put, the CCAA automatically stays enforcement of any payments of money ordered by the regulator. It does not, however, automatically stay other steps that a regulator may take against a regulated entity. The court may nevertheless stay such other steps if it is of the view that the failure to stay those other steps means that a viable compromise or arrangement could not be made, provided that the additional stay is not contrary to the public interest.

66. CCAA courts have granted specific regulatory stays over licences where, without regulatory stays, the applicable regulators were likely to suspend or cancel licences due to the commencement of CCAA proceedings.⁹⁹ The possibility that a regulator may suspend or terminate a license is not remote.
67. Courts have commented that a "stay against regulatory conduct is consistent with the remedial purpose of the CCAA which is to avoid social and economic losses resulting from the liquidation of an insolvent company."¹⁰⁰ Accordingly, courts have on many occasions granted a regulatory stay to maintain the status quo of an insolvent company.¹⁰¹
68. For example, in *Bzam*, the applicants were granted a regulatory stay, in part because the licences were among the applicant's most valuable assets.¹⁰² If those licences lapsed or were cancelled, the applicant's operations would have to be halted.
69. The Business requires a range of provincial and federal Licences to operate. The lapse, expiry, suspension, or revocation of the Licences without the consent of the Applicants or this Court would effectively terminate the Farm Operations. In this case, the loss of the Grazing Licences would require the Group to seek alternative sources for feeding their cattle, furthering costs and uncertainty with respect to the Group's cattle business on a go-forward basis.
70. The Applicants do not seek a stay with respect to their grain licence with the Canadian Grain Commission, which will expire in April.

⁹⁷ [CCAA](#), s 11.1(3); *AlphaBow Energy Ltd (Re)*, [2025 ABKB 622](#) at paras 19 – 20.

⁹⁸ *Just Energy* at [para 79](#).

⁹⁹ *BZAM* at [para 46](#).

¹⁰⁰ *Just Energy*, at [para 87](#).

¹⁰¹ Court File No. CV-23-00693758-00CL: *Original Traders Energy Ltd et al*, [Initial Order](#) granted January 30, 2023 at para 19, regulatory stay as it pertains to licences extended at [Amended and Restated Initial Order](#) granted February 9, 2023 at para 19; Court File No. 2403 15089: *Freedom Cannabis Inc et al*, [Initial Order](#) granted August 8, 2024 at para 43; Court File No. CV-23-00703350-00CL: *Aleafia Health Inc et al*, [SISP approval order](#) granted August 22, 2023 at para 13; *Aleafia Health Inc et al*, [Endorsement of the Honourable Justice Conway](#) issued August 22, 2023 at para 5.

¹⁰² *BZAM* at [para 49](#).

71. The status quo relief, if granted, will mitigate the significant risk that the lapsing, expiry, or cancellation of the Licences would significantly harm the Business and the value generated from any potential sales process. As such, the Applicants submit that it is reasonably necessary and appropriate in the circumstances for this Court to order that the status quo be maintained with respect to the Licences.

G The DIP Facility and DIP Lenders' Charge Should Be Approved

72. The Group requires urgent financing to enable it to seed its farmland. Without funding, the Group would need to halt operations. The DIP Lenders have agreed to provide the DIP Facility on the terms specified in the Term Sheet. These include:¹⁰³
- (a) Maximum Amount: A revolving, super-priority credit facility in the maximum amount of \$90 million.
 - (b) Term: For a term ending the at the earliest of, among other things: (a) the termination or expiry of the Stay of Proceedings in these CCAA proceedings; (b) the dismissal or conversion of these proceedings; (c) the repayment or refinancing in full of the existing Senior Facilities Agreement; (d) the outside date specified in the Term Sheet; and (e) the acceleration of the DIP obligations following an event of default.
 - (c) Interest: Compounded monthly and payable monthly in arrears on the last Business Day of each month at either the Canadian Prime Rate plus 4% per annum or USA Base Rate plus 4% per annum (as applicable).
 - (d) Default rate: 2% per annum.
 - (e) Fees: (a) an arranger fee payable to the DIP Agent upon the granting of the Initial Order; (b) an ongoing monthly DIP Agent fee payable in arrears; and (c) a commitment fee payable in connection with the DIP commitments, in each case in the amounts and at the times specified in the Term Sheet and the DIP Commitment Letter. Such fees are secured by the DIP Lenders' Charge.
73. Section 11.2(1) of the CCAA gives the Court the statutory authority and discretion to grant interim financing and a DIP financing charge securing that funding.¹⁰⁴ Section 11.2(4) of the CCAA sets out the following factors to be considered by the Court in deciding whether to grant a DIP financing charge:

¹⁰³ Monette Affidavit at para 210.

¹⁰⁴ [CCAA](#), s 11.2(1).

- (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.¹⁰⁵
74. Pursuant to s. 11.2(5) of the CCAA, interim financing on an initial application is to be limited to what is "reasonably necessary" to meet the debtor's needs.¹⁰⁶ Courts approve DIP financings where it provides stability to the debtor's business. In *MJardin Group Inc. (re)*, the Court granted DIP financing as part of the initial order on the basis that the debtor had urgent liquidity needs and without DIP financing, the debtor company would have been unable to continue its business and make payroll in the near term.¹⁰⁷
75. When considering the foregoing factors, the Court "must determine which proposal is most appropriate and most importantly, which will best serve the interests of the stakeholders of the Group as a whole by enhancing the prospects of a successful restructuring."¹⁰⁸
76. The Applicants are seeking a DIP Lenders' Charge in the principal amount of \$95 million, which charge will rank subordinate to the Administration Charge. The Applicants are seeking the DIP Lenders' Charge in an amount slightly above the total amount available under the DIP Facility to account for interest and fees. However, the amount that can be drawn under the DIP pursuant to the Initial Order is limited to the Initial Advance. The Initial Advance has been determined by discussions with the DIP Lenders and the proposed Monitor to an amount that is strictly necessary for the 10-day period and the Group's operations during that time.

¹⁰⁵ [CCAA](#), s 11.2(4).

¹⁰⁶ [CCAA](#), s 11.2(5).

¹⁰⁷ *MJardin Group, Inc (Re)*, [2022 ONSC 3338](#) at para 31.

¹⁰⁸ *Great Basin Gold Ltd (Re)*, [2012 BCSC 1459](#) at para 15.

77. The quantum of the DIP Lenders' Charge has been determined in discussions with the DIP Lenders to ensure that any provisional recognition order granted by the US Bankruptcy Court recognising these proceedings allows the Group to draw the full DIP Facility (upon approval of the ARIO) without having to seek amendment of the US provisional recognition order. USA Recognition Proceedings require first a provisional recognition order, followed by a 21-day notice period before granting full recognition. Without the larger day-one charge granted by this Court, the Applicants would require amendment of the US Bankruptcy Court's provisional recognition order to account for the increase to the Dip Lenders' Charge in the ARIO. The Initial Order and ARIO will be subsequently recognised by the US Bankruptcy Court when it issues its full recognition order in May. The parties believe this arrangement balances the Group's immediate need for liquidity and the requirement that any initial order DIP financing is limited to what is strictly necessary.
78. Approval of the DIP Facility and DIP Lenders' Charge is necessary and appropriate in the circumstances for the following reasons, among others:
- (a) the Group is facing an immediate liquidity crisis. The sensitive and highly cyclical nature of the Farm Operations and assets make access to financing critically time sensitive. To preserve going concern value, the Group must promptly seed their fields during the current window for the 2026 growing seasons. Failure to obtain DIP financing in the amount required to complete seeding will prevent the Group from purchasing essential supplies and results in immediate and irreparable harm, including:¹⁰⁹
 - (i) loss of anticipated 2026 crop revenues and cash flow, which revenues cannot be recaptured once the 2026 seeding window closes in May;
 - (ii) loss of funds paid to crop insured for the 2026 season;
 - (iii) deterioration and damage to the Real Property, including soil degradation and loss of productive capacity;
 - (iv) a corresponding and material decrease in the value of the Real Property and related assets; and
 - (v) significant hardship to rural communities, including job losses and downward pressure on local land values arising from forced or distressed sales of Real Property;

¹⁰⁹ Monette Affidavit at paras 17 – 19, 55 – 57.

- (b) the Cash Flow Projection establishes that the DIP Facility is required to fund critical operating costs. In particular, the DIP Facility in the initial amount of \$40 million is the amount required to fund the immediate seeding of the Real Property;¹¹⁰
 - (c) the DIP Lenders will only provide the DIP Facility if the DIP Lenders' Charge is granted. The DIP Facility is the only financing reasonably available to the Group in the circumstance, and no alternative source of financing on less onerous terms exist;¹¹¹
 - (d) the DIP Lenders are the existing pre-filing secured creditors and are therefore familiar with the Business and Property. The proposed DIP Lenders' Charge does not secure any pre-filing indebtedness, only securing post-filing advances;¹¹²
 - (e) no creditor will be materially prejudiced as a result of the DIP Lenders' Charge. Instead, the preservation of the going concern value of the Group will benefit stakeholders overall; and
 - (f) the proposed Monitor believes the economic terms of the DIP Facility are reasonable in the circumstances and is supportive of the proposed DIP Facility and DIP Lenders' Charge.¹¹³
79. In accordance with subsection 11.2(1) of the CCAA, notice has been given to the secured creditors that are proposed to be primed by the DIP Lenders' Charge.¹¹⁴ The Initial Order expressly states that the proposed DIP Lenders' Charge does not secure any pre-filing obligations of the Group.¹¹⁵
80. Approval of the proposed DIP Facility and the DIP Lenders' Charge is appropriate in the circumstances, is limited strictly to the amount required during the Stay of Proceedings, consistent with the terms of the CCAA, and in the best interests of the Group and their stakeholders.

H The Administration Charge and Directors' Charge Should be Approved

81. The Applicants are seeking charges that are usual and customary for a proceeding of this nature.
- (i) **Administration Charge**
82. Pursuant to section 11.52 of the CCAA, the Court has authority to grant a charge for the fees and expenses of the monitor, and financial, legal and other advisors or experts acting in a proceeding,

¹¹⁰ Monette Affidavit at paras 166 – 168.

¹¹¹ Monette Affidavit at paras 200 - 208.

¹¹² Proposed form of Initial Order attached as Schedule "B" to the Originating Application [**Proposed Initial Order**] at para 37.

¹¹³ Pre-Filing Report at paras 48 – 49.

¹¹⁴ [CCAA](#), s 11.2(1).

¹¹⁵ Proposed Initial Order at para 37.

in an amount the Court considers appropriate.¹¹⁶ When considering whether to grant such a charge, the Court may consider the following non-exhaustive list of factors:¹¹⁷

- (a) the size and complexity of the business 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.

83. In the present case, the relevant factors weigh in favour of the Administration Charge requested. The Business is substantial in size and is financially, operationally and geographically complex. The professionals benefiting from the charge will have significant workloads during the initial stay period, as the Applicants prepare for the required Comeback Hearing.

84. The proposed Administration Charge and its quantum have been discussed with the proposed Monitor and with the parties whom it will benefit. As indicated in the Pre-Filing Report of the proposed Monitor dated April 17, 2025 (the "**Pre-Filing Report**"), it is the view of the proposed Monitor that, in the circumstances of this complex and urgent multi-jurisdictional case, the amount of the proposed charge is reasonable and proportionate in the circumstances.¹¹⁸

85. As further set out in the Pre-Filing Report, the proposed Monitor is similarly of the view that the proposed charge is appropriate to secure the fees of the professionals who are necessary and integral to these proceedings.¹¹⁹ The roles of these professionals is not duplicative and they are unlikely to participate in these proceedings without the protection of the Administration Charge.

(ii) Directors' Charge

86. Section 11.51 of the CCAA authorizes this Court to grant a priority charge to indemnify a debtor company's directors and officers on notice to its secured creditors.¹²⁰ Directors' charges encourage directors and officers to remain in place, often providing a stabilizing force for the company.¹²¹ In deciding whether to grant a directors' charge, Courts must be satisfied that:

¹¹⁶ [CCAA](#), s 11.52.

¹¹⁷ *Canwest Publishing* at [para 54](#); *Springer Aerospace Holdings Limited*, [2022 ONSC 6581](#) at paras 18-19.

¹¹⁸ Pre-Filing Report at para 52.

¹¹⁹ Pre-Filing Report at 53.

¹²⁰ [CCAA](#) at s 11.51.

¹²¹ *Canwest* at [para 48](#); *Re Northstar Aerospace Inc*, [2013 ONSC 1780](#) at para 29.

- (a) notice has been given to the likely affected secured creditors;
 - (b) the amount is appropriate;
 - (c) the Applicant could not obtain adequate indemnification insurance for the directors and officers at a reasonable cost; and
 - (d) the charge does not apply to obligations incurred by a director or officer as a result of their gross negligence or wilful misconduct.¹²²
87. Courts have recognized that directors and officers usually cannot continue in the restructuring effort unless appropriate protections are granted, or they run the risk of personal liability incurred during the company's restructuring.¹²³ It is also accepted that it would be unreasonable to expect directors and officers to remain if placed in a compromised position without adequate protection.¹²⁴ The participation of directors and officers is necessary from the outset of a debtor's CCAA proceeding, such that Courts often grant such charges on an initial application.¹²⁵
88. The Applicants are seeking to charge the Property of the Group with the Directors' Charge to secure the indemnity in favour of the D&Os. During the initial stay period, the Applicants request that Directors' Charge be granted up to a maximum of \$1,500,000, subject to further order of the Court.
89. Section 11.51 of the CCAA also provides that the Directors' Charge should not be granted to the extent that adequate insurance coverage is available or could be obtained at a reasonable cost. In the present instance, the D&Os do not have the benefit of any insurance policies in respect of their potential liability. The D&Os have expressed their need for certainty with respect to potential liability if they continue in their current capacities in the context of these CCAA proceedings.¹²⁶
90. The proposed Directors' Charge and its quantum have been discussed with the proposed Monitor and with the parties benefitting from it. As indicated in the Pre-Filing Report, it is the view of the proposed Monitor that, in the circumstances of this case, the amount of the proposed charge is reasonable and proportionate in the circumstances.¹²⁷
91. As further set out in the Pre-Filing Report, the proposed Monitor is similarly of the view that the proposed Directors' Charge is limited to the amount which is applicable during the initial stay

¹²² *Jaguar Mining Inc (Re)*, [2014 ONSC 494](#) at para 45.

¹²³ *Canwest* at [paras 47-48](#).

¹²⁴ *Canada North* at [para 28](#), citing *Timminco Limited (Re)*, [2012 ONSC 506](#) at para 66.

¹²⁵ *Re Lydian* at [para 54](#); *Re Clover Leaf Holdings Company*, [2019 ONSC 6966](#), at para 33 [**Clover Leaf**].

¹²⁶ Monette Affidavit at para 192.

¹²⁷ Pre-Filing Report at para 61.

period.¹²⁸ A successful restructuring of the Group will only be possible with the continued participation of its directors and officers.

92. The Directors' Charge being proposed does not extend to any liability incurred as a result of any D&O's gross negligence or wilful misconduct, consistent with section 11.51(4) of the CCAA.¹²⁹
93. The Directors' Charge sought is to rank behind the DIP Lenders' Charge and the Administration Charge. The Directors' Charge will, however, rank in priority to all other claims against the Group.

Pursuant to the foregoing, the Charges are necessary, the amounts are appropriate, and accordingly, the Charges should be granted.

I FTI Should be appointed as Foreign Representative

94. Should this Court appoint FTI as Monitor, the Group request that the Court also appoint the proposed Monitor as the foreign representative of the Group for the purposes of having these proceedings recognised under chapter 15 of Title 11 of the Bankruptcy Code. Subject to this Court's decision, the proposed Monitor intends to immediately seek recognition of these proceedings and the Initial Order in the US Bankruptcy Court sitting in a competent jurisdiction.
95. Pursuant to section 56 of the CCAA,¹³⁰ the Court may authorize any person or body to act as a representative for the purposes of having a proceeding under the CCAA recognized in jurisdictions outside Canada. Consistent with the principles of comity and the coordination of insolvency proceedings involving businesses like the Group, with activities in a number of jurisdictions, Courts have frequently appointed monitors as foreign representatives.¹³¹
96. By way of example, in *Canacol Energy et. al.*, the Alberta Court of King's Bench approved the appointment of the monitor in that proceeding as a foreign representative for the purposes of seeking recognition under chapter 15 of the Bankruptcy Code.¹³²
97. Similarly, in *Re PT Holdco Inc.*, the Ontario Superior Court of Justice specifically appointed the monitor in that proceeding as the foreign representative for the purposes of seeking recognition under chapter 15 of the Bankruptcy Code and held as follows:¹³³

Courts have consistently encouraged comity and cooperation between courts in cross-border insolvencies to enable enterprises to restructure on a cross-border basis. To

¹²⁸ Pre-Filing Report at para 59.

¹²⁹ [CCAA](#) at s 11.51(4).

¹³⁰ [CCAA](#) at s 56.

¹³¹ For example, *PT Holdco Inc (Re)*, [2016 ONSC 495](#) at paras 45-47 [*PT Holdco*].

¹³² Court File No. 2501-18462: *Canacol Energy Ltd et al*, [Initial Order](#) granted November 18, 2025 at para 40.

¹³³ *PT Holdco* at [paras 45-47](#).

authorize FTI to act as foreign representative and seek recognition of these proceedings in the United States is consistent with and gives full effect to these principles.

The commencement of proceedings in the United States is necessary and appropriate under the circumstances because, among other things, [the debtor] operates a cross-border business that is operationally and functionally integrated in several significant respects. Among other things, [the debtor] has assets and employees in the United States and many affected creditors are located in the United States. As a result, it is possible that one or more parties in the United States will seek to commence proceedings against one or more of the U.S. [debtor] entities.

The appointment of FTI as foreign representative is granted.

98. In the present case, the appointment of the proposed Monitor as foreign representative will be equally necessary and appropriate, as it will allow the enforcement of the Stay of Proceedings in the USA Recognition Proceedings, thereby enabling a restructuring. Funding under the DIP Facility requires recognition in the USA as a condition precedent. The Group's restructuring efforts will be further assisted by the appointment of the proposed Monitor as foreign representative, as US authorities are likely to more readily recognize and give effect to the measures taken on behalf of the Group if they are led by a Court-officer.

J The Group Should be Authorized to Make Certain Pre-Filing Payments

99. In the proposed Initial Order, the Applicants also seek authorization for the Group to make certain payments, including pre-filing amounts owing in arrears, to certain third parties (the "**Critical Suppliers**") that provide goods and/or services that are essential to preserve the stability of the Group's operations.¹³⁴ This is a further measure designed to protect the Group's essential supplies and services during the post-filing period.¹³⁵
100. Such authorization is typically granted on the basis of this Court's jurisdiction to make orders that it finds appropriate under section 11 of the CCAA.¹³⁶
101. Case law demonstrates that a supplier is viewed as "critical" to the debtor company's post-filing operations where the particular goods or services are sufficiently integrated into the debtor company's operations such that it would be materially disruptive to the debtor's operations and restructuring for the particular supplier to cease providing such services and/or it would be difficult or impossible to secure an alternate supplier.¹³⁷
102. In order to pursue a successful restructuring, the Group must preserve relationships with the Critical Suppliers and the continued supply of goods and services thereunder. Any disruption to the supply

¹³⁴ Proposed Initial Order at para 8; Monette Affidavit at para 184.

¹³⁵ *Canwest Publishing* at [para 51](#).

¹³⁶ *Pride Group Holdings Inc et al*, [2024 ONSC 2026](#) at para 45.

¹³⁷ For example, *Target Canada Co* at [paras 62-65](#); *Clover Leaf* at [paras 24-27](#).

of goods or services by the Critical Suppliers could have substantial effects on the Group's ability to continue operations in the interim and to successfully restructure, including those listed at paragraphs 25 to 28 herein.

103. The Applicants are seeking permission to pay certain pre-filing creditors deemed critical to its operations. This authorization will be subject to (i) the Term Sheet, or (ii) the prior approval by the Monitor, the Syndicate's Financial Advisor, and the DIP Agent (as defined below), up to a maximum amount of \$100,000 in any one transaction and \$3,000,000 in the aggregate.¹³⁸

K The Sealing Order Should Be Granted

104. The Applicants are seeking to seal the Confidential Affidavit until the earlier of one year from the termination of these CCAA proceedings, or further order of this Court.¹³⁹ The Confidential Affidavit contains the following exhibits (collectively, the "**Confidential Exhibits**"): (i) appraisals which include information on the value of the Real Property; (ii) unredacted copy of the form of Term Sheet, which includes sensitive pricing information that could allow a party to deduce the value of the Real Property; and (iii) unredacted copy of a Forbearance Agreement which includes the same sensitive pricing information that could allow a party to deduce the value of the Real Property and impair any sale process.
105. This Court has the authority to seal materials on the court record pursuant to rule 6.28(b) of the *Alberta Rules of Court*, Alta Reg 124/2010.¹⁴⁰
106. The SCC decision in *Sierra Club of Canada v Canada (Minister of Finance)* provides that sealing orders could be granted when (i) the order is necessary to prevent a serious risk to an important interest; and (ii) the salutary effects of the order outweigh its deleterious effects.¹⁴¹
107. The Supreme Court of Canada further confirmed in *Sherman Estate v Donovan* that an applicant requesting a sealing order must demonstrate that:
- (a) court openness poses a serious risk to an important public interest;
 - (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
 - (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.¹⁴²

¹³⁸ Monette Affidavit at para 184.

¹³⁹ Monette Affidavit at paras 6(b), 82, 151, and 213.

¹⁴⁰ *Alberta Rules of Court*, [Alta Reg 124/2010](#), r 6.28(b).

¹⁴¹ *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41](#) at para 53.

¹⁴² *Sherman Estate v Donovan*, [2021 SCC 25](#) at para 38.

108. The Sealing Order is being sought to prevent the disclosure of the Confidential Exhibits. Disclosure of the Confidential Exhibits could negatively influence any sale and solicitation process undertaken in these proceedings, affecting potential recoveries to creditors.¹⁴³ In the circumstances, there are no reasonable alternative measures which could be taken to protect the confidential information contained in the Confidential Affidavit. Such relief is routinely granted in similar proceedings.¹⁴⁴
109. The Group is not aware of any stakeholders who would be materially prejudiced by the temporary sealing of the Confidential Affidavit.¹⁴⁵ Notwithstanding, any party affected by the Sealing Order will be entitled to apply to the Court to vacate, substitute, modify, or vary the terms of the Sealing Order on five days' notice.¹⁴⁶ Accordingly, the salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so under the circumstances.
110. The Applicants respectfully submit that the Sealing Order is appropriate in the circumstances and should be granted.

V. CONCLUSION

111. Based on the foregoing, the Applicants request that this Honourable Court grant the Initial Order and the Sealing Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of April, 2026.

Cassels Brock & Blackwell LLP

Per: 

Jeffrey Oliver
Counsel for the Applicants

¹⁴³ Monette Affidavit at para 82, 151, and 213.

¹⁴⁴ For example in *Rompsen Investment Corp v Hargate Properties Inc*, [2012 ABQB 412](#) at paras 10–13.

¹⁴⁵ Monette Affidavit at para 82.

¹⁴⁶ Proposed form of Sealing Order attached as Schedule "C" to the Originating Application at para 3.

LIST OF AUTHORITIES

REGULATIONS / LEGISLATION

Tab	Authority
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1. [Companies' Creditors Arrangement Act, RSC 1985, c C-36](#)
2. [Range Act, SBC 2004, c 71](#)
3. [Bankruptcy and Insolvency Act, RSC 1985, c B-3](#)
4. [Farmers' Creditors Arrangement Act, 1934, SC 1934, c 53](#)
5. [Alberta Rules of Court, Alta Reg 124/2010](#)

JURISPRUDENCE

Tab	Authority
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6. [Lydian International Limited \(Re\), 2019 ONSC 7473](#)
7. [Stelco Inc, Re, 2004 CanLII 24933 \(ONSC\)](#)
8. [9354-9186 Québec inc v Callidus Capital Corp, 2020 SCC 10](#)
9. [Century Services Inc v Canada \(Attorney General\), 2010 SCC 60](#)
10. [Re 4519922 Canada, 2015 ONSC 124](#)
11. [Canwest Global Communications Corp \(Re\), 2009 CanLII 55114 \(ON SC\)](#)
12. [Re Angus A2A GP Inc, 2025 ABKB 51](#)
13. [Angus A2A GP Inc v Alvarez & Marsal Canada Inc, 2025 ABCA 147](#)
14. [Canwest Publishing Inc, 2010 ONSC 222](#)
15. [Target Canada Co \(Re\), 2015 ONSC 303](#)
16. [Re Just Energy Corp, 2021 ONSC 1793](#)
17. [Oblats de Marie Immaculee du Manitoba, Re, 2002 SKQB 161](#)
18. [Royal Bank v Perfection Foods Ltd, 1991 CanLII 13003 \(PE SCTD\)](#)
19. [BZAM Ltd Plan of Arrangement, 2024 ONSC 1645](#)
20. [Re Chalice Brands Ltd, 2023 ONSC 3174](#)
21. [Nordstrom Canada Retail, Inc, 2023 ONSC 1422](#)
22. [Industrial Properties Regina Limited v Copper Sands Land Corp, 2018 SKCA 36](#)

23. [Canada v Canada North Group Inc, 2021 SCC 30](#)
24. [Re Canadian Airlines Corp, \[2000\] AJ No 1693](#)
25. [Re Nortel Networks Corp, 2009 CanLII 43427 \(ONSC\)](#)
26. [AlphaBow Energy Ltd \(Re\), 2025 ABKB 622](#)
27. [MJardin Group, Inc \(Re\), 2022 ONSC 3338](#)
28. [Great Basin Gold Ltd \(Re\), 2012 BCSC 1459](#)
29. [Springer Aerospace Holdings Limited, 2022 ONSC 6581](#)
30. [Re Northstar Aerospace Inc, 2013 ONSC 1780](#)
31. [Jaguar Mining Inc \(Re\), 2014 ONSC 494](#)
32. [Timminco Limited \(Re\), 2012 ONSC 506](#)
33. [Re Clover Leaf Holdings Company, 2019 ONSC 6966](#)
34. [PT Holdco Inc \(Re\), 2016 ONSC 495](#)
35. [Pride Group Holdings Inc et al, 2024 ONSC 2026](#)
36. [Sierra Club of Canada v Canada \(Minister of Finance\), 2002 SCC 41](#)
37. [Sherman Estate v Donovan, 2021 SCC 25](#)
38. [Rompsen Investment Corp v Hargate Properties Inc, 2012 ABQB 412](#)

ORDERS AND ENDORSEMENTS

39. [Court File No. 2401-15969: Re Angus A2A GP Inc, Initial Order granted November 14, 2024](#)
40. [Court File No. 2501-03316: OKR Governance Co Inc et al, Initial Order granted March 7, 2025](#)
41. [Court File No. CV-23-00693758-00CL: Original Traders Energy Ltd et al, Initial Order granted January 30, 2023](#)
42. [Court File No. CV-23-00693758-00CL: Original Traders Energy Ltd et al, Amended and Restated Initial Order granted February 9, 2023](#)
43. [Court File No. 2403 15089: Freedom Cannabis Inc et al, Initial Order granted August 8, 2024](#)
44. [Court File No. CV-23-00703350-00CL: Aleafia Health Inc et al, SISP approval order granted August 22, 2023](#)
45. [Court File No. 2501-18462: Canacol Energy Ltd et al, Initial Order granted November 18, 2025](#)
46. [Aleafia Health Inc et al, Endorsement of the Honourable Justice Conway issued August 22, 2023](#)

TEXTS

47. [Virginia Torrie, Reinventing Bankruptcy Law: A History of the Companies' Creditors Arrangement Act \(Toronto: University of Toronto Press, 2020\)](#)