

Court File No.: BK-24-03063478-0031

Estate No.: 31-3063478

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

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL  
OF CANNMART LABS INC., OF THE CITY OF TORONTO IN THE PROVINCE OF  
ONTARIO**

**FACTUM OF CANNMART LABS INC.**

April 30, 2024

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**TO: SERVICE LIST**

## PART I - OVERVIEW

1. CannMart Labs Inc. (“**CannMart Labs**” or the “**Applicant**”) is a licensed producer of cannabis in accordance with the *Cannabis Act*, S.C. 2018, c. 16 (the “**Act**”)<sup>1</sup> and the *Cannabis Regulations*, SOR/2018-144 (the “**Regulations**”)<sup>2</sup> that operates from a facility in Etobicoke, Ontario. CannMart Labs is insolvent, faces a liquidity crisis, and requires immediate interim financing and the protections afforded by the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”)<sup>3</sup> in order to maintain the *status quo* and obtain the breathing room required to develop and implement its restructuring strategy.
2. On April 3, 2024, CannMart Labs filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”)<sup>4</sup>. Msi Spergel Inc., (“**Spergel**”) was appointed as the proposal trustee in the NOI proceeding (the “**NOI Proceeding**”).
3. CannMart Labs seeks an order substantially in the form of the draft Order (the “**Initial Order**”) at Tab 4 of the Motion Record of the Applicant dated April 26, 2024 (the “**Motion Record**”), *inter alia*:
  - (a) converting the NOI Proceeding to a proceeding under the CCAA (the “**CCAA Proceeding**”);

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<sup>1</sup> *Cannabis Act*, S.C. 2018, c. 16.

<sup>2</sup> *Cannabis Regulations*, SOR/2018-144.

<sup>3</sup> *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 [CCAA].

<sup>4</sup> *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [BIA].

- (b) appointing Spergel as the monitor of the Applicant in the CCAA Proceeding (in such capacity, the “**Proposed Monitor**”);
  - (c) staying all proceedings taken or that may be taken in respect of the Applicant, its directors and officers, and the Proposed Monitor, up to and including until July 17, 2024, subject to further Order of the Court (the “**Proposed Stay Extension**”);
  - (d) approving a DIP financing (the “**DIP Facility**”) with Lifeist Wellness Inc. (“**Lifeist**”) as the lender contemplated by the DIP Term Sheet (the “**DIP Term Sheet**”) between CannMart Labs and Lifeist dated April 26, 2024; and
  - (e) granting the Administration Charge, the Directors’ Charge, and the DIP Charge (each as defined below).
4. CannMart Labs also seeks an Order (the “**SISP Order**”) substantially in the form attached at Tab 6 of the Motion Record, *inter alia*, approving a sale and investment solicitation process (the “**SISP**”) to identify one or more financiers, purchasers of and/or investors in the Company, the Business and/or Assets (each as defined in the SISP).

## **PART II - FACTS**

5. All capitalized terms not expressly defined herein are otherwise defined in the Affidavit of Daniel Stern sworn April 26, 2024 (the “**Stern Affidavit**”).

### **A. THE APPLICANT’S BUSINESS, OPERATIONS & CORPORATE STRUCTURE**

6. CannMart Labs is a corporation incorporated under the *Business Corporations Act* (Ontario) (the “**OBCA**”).<sup>5</sup> The principal activities of CannMart Labs are the production

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<sup>5</sup> Stern Affidavit, at para 13.

and distribution of butane hash oil (“**BHO**”) extracts.<sup>6</sup> CannMart Labs primarily sells the BHO extracts it produces to its indirect affiliate, CannMart Inc.<sup>7</sup> Due to CannMart Labs’ liquidity issues, it has temporarily ceased operations to reduce its expenses during this restructuring.

7. CannMart Labs holds a cannabis license (the “**License**”) from Health Canada that is valid until February 12, 2026.<sup>8</sup> Maintaining the License is important to maximizing the value for the benefit of the Applicant and its stakeholders. Without the License, CannMart Labs could not carry on its business of extracting BHO.<sup>9</sup>
8. Aside from its two officers, CannMart Labs currently has no other employees.<sup>10</sup> At its operational peak, CannMart Labs employed 40 individuals, however these employees have been transferred to CannMart Inc., an indirect affiliate (not a party to these proceedings), after CannMart Labs temporarily suspended its operations.<sup>11</sup>

## **B. LIQUIDITY CRISIS**

9. Prior to the NOI Proceeding, and while it was still operating, CannMart Labs’ disbursements exceeded its receipts by approximately \$600,000 per month.<sup>12</sup> Despite reducing costs by suspending operations, CannMart Labs continues to lack the liquidity required to implement its restructuring strategy.<sup>13</sup> These liquidity issues are exacerbated because Lifeist, its direct parent, will no longer continue to fund CannMart Labs absent

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<sup>6</sup> Stern Affidavit, at para 8.

<sup>7</sup> Stern Affidavit, at para 8.

<sup>8</sup> Stern Affidavit, at para 18.

<sup>9</sup> Stern Affidavit, at para 13 and 18.

<sup>10</sup> Stern Affidavit, at para 14 and 26.

<sup>11</sup> Stern Affidavit, at para 26.

<sup>12</sup> Stern Affidavit, at para 45.

<sup>13</sup> Stern Affidavit, at para 45.

this restructuring. This has necessitated the initiation of the NOI Proceeding and its ongoing continuation under the CCAA.

10. As at April 3, 2024, CannMart Labs has \$38,000 in its bank account.<sup>14</sup> As indicated in its Cash Flow Forecast, CannMart Labs' ordinary course monthly disbursements exceeds its monthly receipts by approximately \$25,000, before payment of the professional fees associated with the restructuring.<sup>15</sup> Accordingly, CannMart Labs requires additional financing to fund the restructuring.
11. Without the DIP Facility, and the protections afforded under the CCAA, CannMart Labs would be required to immediately liquidate, causing a loss in value associated with its cannabis licenses and the institutional knowledge associated with the BHO extraction process.<sup>16</sup>

### **C. RESTRUCTURING STRATEGY**

12. The Applicant requires the protections afforded under the CCAA in order to maintain the *status quo*, obtain the breathing room required to pursue and implement its restructuring strategy.<sup>17</sup>
13. As part of its restructuring strategy, CannMart Labs intends to, among other things:<sup>18</sup>
  - (a) initiate the SISP to sell CannMart Labs for the maximum achievable value for the benefit of all stakeholders; and

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<sup>14</sup> Stern Affidavit, at para 45.

<sup>15</sup> Stern Affidavit, at para 10, and Exhibit "L".

<sup>16</sup> First Report of the Monitor dated April 30, 2024 at para 21 [First Report].

<sup>17</sup> Stern Affidavit, at para 47.

<sup>18</sup> Stern Affidavit, at para 48.

- (b) if there remains value for unsecured creditors, to conduct a claims procedure to identify all potential unsecured claims against CannMart Labs in order to develop and submit a plan of compromise or arrangement.

**D. DIP FINANCING**

- 14. CannMart Labs, with the assistance of its counsel and the Proposed Monitor, has engaged in discussions with Lifeist regarding the DIP Facility.<sup>19</sup> The primary purpose of the DIP Facility is to fund the working capital requirements of CannMart Labs, including the payment of professional fees incurred during the CCAA proceeding.<sup>20</sup>
- 15. Lifeist is prepared to provide the DIP Facility to CannMart Labs provided that the Court grants a super-priority charge over all of the Applicant's assets (the "**DIP Charge**") in favour of Lifeist, securing all amounts advanced and obligations incurred pursuant to the DIP Term Sheet that ranks in priority to all other encumbrances save and except for the Administration Charge.<sup>21</sup>
- 16. The DIP Term Sheet provides for a DIP Facility of up to \$400,000 with the following key terms:
  - (a) minimum advances of \$100,000;
  - (b) a 10% per annum interest rate on the advanced amounts;
  - (c) CannMart Labs must pay the expenses of Lifeist, related to the DIP Term Sheet;and

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<sup>19</sup> Stern Affidavit, at para 53.

<sup>20</sup> Stern Affidavit, at para 57.

<sup>21</sup> Stern Affidavit, at para 55.

- (d) CannMart Labs is required to pay a non-refundable, two percent commitment fee (\$8,000).<sup>22</sup>

**E. SISP**

17. CannMart Labs started to market itself to potential purchasers beginning in January 2023. To assist with the pre-filing marketing process, Lifeist engaged Kronos Capital Partners, an M&A advisory firm to identify potential purchasers. On February 1, 2024, these efforts culminated in a binding share purchase agreement for the purchase of all the outstanding shares owned by Lifeist of CannMart Labs and certain of its affiliates. This transaction required approval by the shareholders of Lifeist and ultimately was not approved by the shareholders.<sup>23</sup>
18. The proposed SISP takes into account the 12 months of pre-filing marketing efforts of the Applicant canvassing the market for potential bidders. In these circumstances, the proposed SISP contemplates a one phase bidding process over a 45-day period. CannMart Labs has worked with the Proposed Monitor to develop the SISP timelines. The timelines were determined by taking into consideration the amount of the DIP Facility, estimated cash burn during the proposed SISP and the Applicant's liquidity runway. In consultation with the Proposed Monitor, CannMart Labs will attempt to identify as many strategic and financial parties to adequately canvass the market for bids of all or substantially all of the assets of the Applicant.<sup>24</sup>

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<sup>22</sup> Stern Affidavit, at para 56 and 57.

<sup>23</sup> Stern Affidavit, at para 60.

<sup>24</sup> Stern Affidavit, at para 64 and Exhibit "S".

19. The SISP is designed to be broad, flexible, and solicit interest in, and opportunities for, for some or all of CannMart Labs' assets, to make an investment in CannMart Labs, or acquire the business as a going concern.<sup>25</sup>
20. The single-phase bidding process aims to attract binding bids for CannMart Labs' assets and business by encouraging potential purchasers or investors to immediately submit offers at the bid deadline. The SISP also allows sufficient time for potential purchasers to begin and complete their due diligence before finalizing their binding offers.<sup>26</sup>

### **PART III – LAW & ANALYSIS**

21. The issues on this Motion are as follows:
  - (a) whether this Court should permit the Applicant to continue its NOI Proceeding under the CCAA?
  - (b) whether this Court should grant the requested stay of proceedings?
  - (c) whether this Court should approve the Proposed Monitor as Monitor of the Applicant in this CCAA proceeding?
  - (d) whether the DIP Term Sheet and DIP Charge should be approved?
  - (e) whether this Court should approve the Administration Charge? and
  - (f) whether this Court should approve the Directors' Charge?
  - (g) whether the SISP should be approved?

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<sup>25</sup> Stern Affidavit, at para 70.

<sup>26</sup> Stern Affidavit, at para 65.



**A. THE APPLICANT SHOULD BE PERMITTED TO CONTINUE UNDER THE CCAA**

***i. Applicable Legal Principles and Jurisdiction***

22. Section 11.6(a) of the CCAA provides the Court with the jurisdiction to permit the Applicant to continue the NOI Proceeding under the CCAA.<sup>27</sup>
23. In *Re Clothing for Modern Times Ltd.*, the Court held that, on a motion to continue under the CCAA, a debtor company should demonstrate that:<sup>28</sup>
- (a) it has not filed a proposal under the BIA;
  - (b) the proposed continuation is consistent with the purposes of the CCAA; and
  - (c) it has provided the Court with the information that would otherwise form part of an initial CCAA application pursuant to section 10(2) of the CCAA.
24. In addition, the applicant must demonstrate that it is a “debtor company” with liabilities that exceed \$5 million.
25. This framework has been applied by Justice Morawetz (as he then was) in *Re Comstock Canada Ltd.*,<sup>29</sup> Justice Newbould in *Re Urbancorp Toronto Management Inc.*,<sup>30</sup> and Justice Penny in *Re Stantive Technologies Group*.<sup>31</sup>

***The Applicant Meets the Test to Continue under the CCAA Proceeding***

***i. CannMart Labs has not file a proposal***

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<sup>27</sup> CCAA, s [11.6\(a\)](#).

<sup>28</sup> *Clothing for Modern Times Ltd., Re*, 2011 ONSC 7522 at para [9](#) [*Clothing*].

<sup>29</sup> *Comstock Canada Ltd., Re*, 2013 ONSC 4756 at paras [36-45](#).

<sup>30</sup> *Urbancorp Toronto Management Inc., Re*, 2016 ONSC 3288 at paras [36-48](#).

<sup>31</sup> Endorsement of Penny J dated February 25, 2019 in *In The Matter of Proposal of Stantive Technologies Group Inc.*, Court File No 31-2443835.

26. CannMart Labs has not filed a proposal under the BIA in the NOI Proceeding.<sup>32</sup>

*ii. CannMart's proposed continuation is consistent with the purposes of the CCAA*

27. In *Century Services*, the Supreme Court of Canada articulated the following purposes of the CCAA:

- (a) to permit a company to carry on business and, where possible, avoid the social and economic costs of liquidation;<sup>33</sup>
- (b) to provide a means whereby the devastating social and economic effects of bankruptcy or creditor initiated termination of ongoing business operations can be avoided while a court-supervised attempt to reorganize the financial affairs of the debtor company is made;<sup>34</sup>
- (c) to avoid the social and economic losses resulting from liquidation of an insolvent company;<sup>35</sup> and
- (d) to create conditions for preserving the *status quo* while attempts are made to find common ground amongst stakeholders for a reorganization that is fair to all.<sup>36</sup>

28. Further, the jurisprudence under the CCAA accepts that, in appropriate circumstances, the purposes of the CCAA will be met even though the re-organization involves the sale of the company as a going concern, with the consequence that the debtor no longer continues to carry on business.<sup>37</sup>

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<sup>32</sup> First Report, at para 36.

<sup>33</sup> *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para 15 [*Century Services*].

<sup>34</sup> *Ibid*, at para 59.

<sup>35</sup> *Ibid*, at para 70.

<sup>36</sup> *Ibid*, at para 77.

<sup>37</sup> *Clothing*, *supra* note 28, at para 12.

29. The proposed continuation under the CCAA is consistent with the underlying purposes of the CCAA. Due to the highly codified nature of the BIA, it is possible that the Applicant is deemed bankrupt. In the cannabis industry, the Act and Regulations restrict who can legally hold and manage cannabis. In the event the Applicant is deemed bankrupt, Spergel is not permitted to take possession of cannabis as the bankruptcy trustee. This would result in an untenable situation where no person has the authority to liquidate cannabis as all assets are supposed to vest in the trustee.<sup>38</sup>
30. However, the CCAA provides additional flexibility where the Applicant can maintain possession of its cannabis operations under the oversight of a court-appointed Monitor without a looming threat of bankruptcy. This ensures there is sufficient time to conduct the SISF and allows the restructuring to proceed for the benefit of all stakeholders.<sup>39</sup>
31. With the benefit of the protection and the flexibility afforded by the CCAA, CannMart Labs will be best positioned to avoid the social and economic costs of liquidation while restructuring its affairs and maximizing going-concern value for the benefit of all stakeholders. In addition, a continuation under the CCAA preserves the status quo while the Applicant implements its restructuring strategy.
- iii. CannMart Labs has disclosed the requisite information that would otherwise form part of an Initial CCAA Application*
32. CannMart Labs has disclosed the requisite information under section 10(2) of the CCAA.<sup>40</sup>
33. In its Motion Record, CannMart Labs has included:

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<sup>38</sup> Stern Affidavit, at para 15.

<sup>39</sup> First Report, at para 32.

<sup>40</sup> *Clothing*, *supra* note 28, at paras [15-17](#).

- (a) a Cash Flow Forecast that shows CannMart Labs has sufficient resources liquidity during the Proposed Stay Extension, subject to the approval of the DIP Facility;<sup>41</sup>
- (b) the Proposed Monitor has commented favourably on the reasonableness of the Cash Flow Forecast in the First Report;<sup>42</sup> and
- (c) CannMart Labs has provided the most recent financial statements available.<sup>43</sup>

**iv. *CannMart Labs is a “debtor company” whose liabilities exceed \$5 million***

34. A “debtor company” is defined under section 2(1) of the CCAA as, *inter alia*, a “company” that is “insolvent” or that has committed an act of bankruptcy within the meaning of the BIA.<sup>44</sup> A corporation incorporated by or under an Act of Parliament or of the legislature of any province falls under the definition of “company” in the CCAA.<sup>45</sup>
35. Furthermore, CannMart Labs is “debtor company” whose liabilities exceed \$5 million and should therefore be permitted to continue the NOI Proceeding under the CCAA for the following reasons::
- (a) CannMart Labs is a corporation incorporated under the laws of Ontario;
  - (b) CannMart Labs is unable to meet its obligations generally as they become due; and
  - (c) CannMart Labs’ liabilities are approximately \$46 million.
36. In light of the foregoing, CannMart Labs is a debtor company to which the CCAA applies and the Court should permit CannMart Labs to continue under the CCAA.

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<sup>41</sup> Stern Affidavit, at Exhibit “L”.

<sup>42</sup> First Report, at para 31.

<sup>43</sup> Stern Affidavit, at paras 28-32.

<sup>44</sup> CCAA, s [2\(1\)](#), and s [3\(1\)](#); BIA, s [2\(1\)](#).

<sup>45</sup> CCAA, s [2\(1\)](#).

**B. THE PROPOSED STAY EXTENSION SHOULD BE GRANTED**

*i. Applicable Legal Principles and Jurisdiction*

37. In connection with the granting of the Initial Order, the Applicant is seeking an extension of the stay period until July 17, 2024. This Proposed Stay Extension exceeds the 10-day initial stay period permitted under section 11.02(1) of the CCAA. In cases where an initial order is sought through a motion to continue proceedings under the CCAA, courts have used their discretion to deviate from the strict application of section 11.02(1).<sup>46</sup>
38. The threshold question that the Court should consider in determining the length of a stay of proceedings granted under the CCAA is whether the stay of proceedings is sought pursuant to an initial application (a “**Initial Application**”) or an application other than an initial application (a “**Non-Initial Application**”).
39. Pursuant to section 11.02(1), on an Initial Application, a debtor company may obtain a stay of proceedings for no longer than 10 days.
40. Pursuant to section 11.02(2) of the CCAA, on a Non-Initial Application, a debtor company may obtain a stay of proceedings for a period that is longer than 10 days.<sup>47</sup> The length of a stay extension granted under section 11.02(2) is discretionary and provides the parties with relative flexibility.<sup>48</sup>

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<sup>46</sup> CCAA, *supra*, s [11.02\(1\)](#); Endorsement of Conway J dated December 1, 2022 in *iS5 Communications Inc*, BK-22-02853708-0032; [Endorsement of Cavanagh J dated October 7, 2021 in \*Medifocus Inc \(Re\)\*, Court File No CV-20-00669781-00CL](#).

<sup>47</sup> CCAA, s [11.02\(2\)](#).

<sup>48</sup> *Sunrise/Saskatoon Apartments Limited Partnership (Re)*, 2017 BCSC 808 at para [21](#).

41. The policy concerns seek to limit the *ex parte* relief granted to a debtor company on the Initial Application. As Justice Morawetz held in *Lydian*:<sup>49</sup>

The practice of granting wide-sweeping relief at the initial hearing must be altered in light of the recent amendments. The intent of the amendments is to limit the relief granted on the first day. The ensuing 10 day period allows for a stabilization of the operations and a negotiating window, *followed by a comeback motion where the request for expanded relief can be considered on proper notice to all affected parties* (emphasis added).

In my view, this is consistent with the objectives of the amendments, which include the requirement for “participants in an insolvency proceeding to act in good faith” and “improving participation of all players”. It may also result in more meaningful comeback hearings.

It is against this backdrop that the requested relief at the initial hearing should be scrutinized so as to ensure that it is restricted to what is reasonably necessary for the continued operations of the debtor company during the initial [10 day] stay period.

42. CannMart Labs’ Motion to continue the NOI Proceeding under the CCAA is not an *ex parte* motion. It is analogous to a comeback motion and is a Non-Initial Application. In this case, following the NOI on April 3, 2024, all creditors were provided with notice of the NOI Proceeding by the Proposal Trustee and creditors have had an opportunity to participate in the NOI Proceeding for the last 30 days.
43. Further, CannMart Labs served its Motion Record on all secured creditors and known unsecured creditors appearing on the Service List. Service was initially made on April 26, 2024. Service was made on additional unsecured creditors on April 30, 2024 for emails that bounced back or additional emails were located. It is pertinent to note that Lifeist is CannMart Labs’ senior secured creditor and supports this restructuring.

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<sup>49</sup> *Lydian International Limited (Re)*, 2019 ONSC 7473 at paras [30-32](#).

44. In light of the foregoing, the Applicant’s present motion should be considered a Non-Initial Application. As such, the Proposed Stay Extension should: (i) be considered in the context of section 11.02(2) of the CCAA, not section 11.02(1); and (ii) be permitted notwithstanding that it is for a period of longer than 10 days.

45. The Proposed Monitor supports the Proposed Stay Extension and believes it is required in order to provide the time necessary to fully and formally pursue the SISP.<sup>50</sup>

*ii. The Stay Should Apply to Actions of the CRA*

46. The Applicant also seeks to clarify that the Canada Revenue Agency (“CRA”) is stayed from taking any actions against CannMart Labs with respect to the cannabis stamps and cannabis inventory including the destruction of such inventory.

47. CannMart Labs faces an impending audit by the CRA at their facility in early May 2024, following the expiration of their Excise License on May 17, 2024. The CRA has informed representatives of CannMart Labs that the audit may require the destruction of cannabis inventory. This potential action poses a significant risk to the value of CannMart Labs’ inventory and could jeopardize the effectiveness of the ongoing restructuring and SISP.<sup>51</sup>

48. This Court has the jurisdiction to grant this relief pursuant to section 11 of the CCAA.<sup>52</sup> Similar orders have been issued in the past under section 183 of the BIA.<sup>53</sup>

49. All involved parties, including the CRA, will benefit more from selling the inventory through the proposed SISP than from its destruction which will reduce the assets available

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<sup>50</sup> First Report, at para 38.

<sup>51</sup> Stern Affidavit, at para 25.

<sup>52</sup> CCAA, s. 11.

<sup>53</sup> *Tantalus Labs Ltd. (Re)*, 2023 BCSC 1450 at para 39.

for sale in the SISP.<sup>54</sup> Therefore, the Applicant seeks to stay any actions contemplated by the CRA.

**C. THE PROPOSED MONITOR SHOULD BE APPOINTED AS MONITOR**

50. Section 11.7 of the CCAA requires that a trustee be appointed to monitor the debtor company's business and financial affairs. The Proposed Monitor has consented to act as monitor in these CCAA proceedings and is a trustee within the meaning of section 2(1) of the BIA.<sup>55</sup>

51. Further, the Proposed Monitor is not subject to any of the restrictions as to who may be appointed as monitor set out in section 11.7(2) of the CCAA. As such, the Proposed Monitor should be appointed as Monitor of the Applicant in the CCAA proceeding.

**D. THE ADMINISTRATION CHARGE SHOULD BE APPROVED**

*i. Jurisdiction and Applicable Legal Principles*

52. The Applicant requests that this Court grant a super-priority Administration Charge on the Property (as defined in the proposed form of the Initial Order) in favour of the Applicant's counsel, the Proposed Monitor, and the Proposed Monitor's independent legal counsel in the amount of \$300,000 (the "**Administration Charge**").

53. Section 11.52 of the CCAA provides the Court with express statutory jurisdiction to grant the Administration Charge.<sup>56</sup>

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<sup>54</sup> Stern Affidavit, at para 25.

<sup>55</sup> CCAA, s [11.7](#).

<sup>56</sup> CCAA, s [11.52](#).



54. In *Canwest Publishing*, Justice Pepall identified the following non-exhaustive list of factors the Court may consider when granting an administration charge:<sup>57</sup>

- (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.

*ii. The Administration Charge should be approved in the circumstances*

55. The Administration Charge is warranted, necessary, and appropriate in the circumstances, given that:

- (a) Lifeist, the senior secured creditor, supports the proposed relief, and the Bank of Montreal (“**BMO**”) will not be adversely affected by the Administration Charge because they are fully cash collateralized. Both parties were served with the Motion Record;
- (b) the proposed restructuring will require the extensive involvement of the professional advisors receiving the benefit of the Administration Charge;<sup>58</sup>
- (c) the professionals receiving the benefit of the Administration Charge have contributed, and will continue to contribute, to the restructuring of the Applicant;<sup>59</sup>

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<sup>57</sup> *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222 at para 54.

<sup>58</sup> Stern Affidavit, at para 74.

<sup>59</sup> Stern Affidavit, at para 74.

- (d) there is no unwarranted duplication of roles so the professional fees associated with these proceedings will be minimized;<sup>60</sup> and
- (e) the Proposed Monitor believes that the proposed quantum of the Administration Charge is reasonable and appropriate in the circumstances.<sup>61</sup>

**E. THE DIRECTORS' CHARGE SHOULD BE APPROVED**

- 56. To ensure the ongoing stability of the Applicant's business during the CCAA proceedings, the Applicant requires the continued participation of certain of its directors and officers who manage the business and commercial activities of CannMart Labs. The directors and officers who will be the beneficiaries of the charge (the "**Directors' Charge**") are Daniel Stern and Meni Morim (the "**D&Os**"). The Applicant requests that this Court grant a super-priority Directors' Charge in favour of the D&Os in the amount of \$75,000.
- 57. The D&Os have considerable institutional knowledge, valuable experience and expertise, and are required for the ongoing restructuring, including being available to respond to diligence requests during the SISP.
- 58. CannMart Labs' director and officer liability insurance policy with Berkley Canada (the "**D&O Policy**") expired on April 26, 2024. The D&O Policy provided up to \$7,500,000 for insured claims. CannMart Labs is currently in the processing of renewing the D&O Policy on substantially similar terms, other than reducing the coverage to \$5,000,000 in an effort to save approximately \$250,000 in annual premiums.<sup>62</sup>

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<sup>60</sup> Stern Affidavit, at para 74.

<sup>61</sup> First Report, at para 54.

<sup>62</sup> Stern Affidavit, at para 77.

59. Section 11.51 of the CCAA provides the Court with the express statutory jurisdiction to grant the Directors' Charge in an amount the Court considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it.<sup>63</sup>
60. The proposed Initial Order contemplates that the Directors' Charge rank behind the Administration Charge and the DIP Charge.
61. In *Jaguar Mining Inc., Re*, Justice Morawetz (as he then was) held that, in order to grant a Directors' Charge, the Court must be satisfied of the following factors:<sup>64</sup>
- (a) notice has been given to the secured creditors likely to be affected by the charge;
  - (b) the amount is appropriate;
  - (c) the applicant could not obtain adequate indemnification insurance for the director at a reasonable cost; and
  - (d) the charge does not apply in respect of any obligation incurred by a director as a result of the director's gross negligence or wilful misconduct.
62. All of the foregoing factors are satisfied for the following reasons:
- (a) notice has been provided to Lifeist and BMO;
  - (b) Lifeist, the most senior secured creditor supports the relief;
  - (c) the Proposed Monitor supports the amount of \$75,000 and believes it is reasonable in the circumstances;<sup>65</sup>

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<sup>63</sup> CCAA, s [11.51](#).

<sup>64</sup> *Jaguar Mining Inc., Re*, 2014 ONSC 494 at para [45](#).

<sup>65</sup> First Report, at para 57.

- (d) the Applicant has had to decrease its D&O Policy coverage in order to save \$250,000 in annual premiums, and therefore the D&Os do not have the same level of insurance; and
- (e) the Directors' Charge does not apply to any liabilities that arise from a director's or officer's gross negligence or willful misconduct.

**F. THE DIP TERM SHEET & DIP CHARGE SHOULD BE APPROVED**

*i. Overview of DIP Term Sheet*

63. The Applicant's access to the DIP Facility is conditional upon the provision of an order of this Court, among other things, approving the DIP Term Sheet and granting the DIP Charge on the Property in the amount of \$400,000.

64. The DIP Charge is proposed to rank behind the Administration Charge and ahead of the Directors' Charge.

*ii. Jurisdiction to Approve the DIP Term Sheet & DIP Charge*

65. Section 11.2(1) of the CCAA provides the Court with the express statutory authority to approve the DIP Term Sheet and the DIP Charge.<sup>66</sup>

66. Section 11.2(2) further provides the Court with the express statutory authority to order that the DIP Charge rank in priority over the claim of any secured creditor of the company.<sup>67</sup>

67. Section 11.2(4) sets out the following factors to be considered by the Court in deciding whether to grant a DIP charge: (i) the period during which the company is expected to be subject to proceedings under this Act; (ii) how the company's business and financial affairs

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<sup>66</sup> CCAA, s. [11.2](#).

<sup>67</sup> CCAA, s. [11.2\(2\)](#).

are to be managed during the proceedings; (iii) whether the company's management has the confidence of its major creditors; (iv) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company; (v) the nature and value of the company's property; (vi) whether any creditor would be materially prejudiced as a result of the security or charge; and (vii) the monitor's report.<sup>68</sup>

*iii. The Criteria in Sections 11.2(1) and 11.2(4) are satisfied*

68. Based on the following factors, the DIP Facility and the DIP Charge should be approved:

- (a) the notice requirements under section 11.2(1) of the CCAA have been met;
- (b) Without the DIP Facility, the Applicant would not have sufficient liquidity for the restructuring and would be forced to liquidate its inventory;
- (c) the terms of the DIP Facility are more favourable than ones that have been recently approved by courts in CCAA proceedings;<sup>69</sup>
- (d) the Applicant, with the assistance of the Proposed Monitor, is implementing procedures for monitoring the Company's cash flows and for ongoing reporting of variances to the Cash Flow Forecast;<sup>70</sup>
- (e) the Applicant's liquidity is conditional upon the DIP Facility;<sup>71</sup>
- (f) without the DIP Facility, the Applicant would be required to liquidate, causing a loss in value associated with its cannabis license;<sup>72</sup>

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<sup>68</sup> CCAA, s 11.2(4).

<sup>69</sup> First Report, at para 49(c)

<sup>70</sup> First Report, at para 67(c).

<sup>71</sup> Stern Affidavit, at para 32.

<sup>72</sup> First Report, at para 21.

- (g) the quantum of the DIP Facility is reasonable and appropriate having regard to the Cash Flow Forecast;<sup>73</sup> and
- (h) the Proposed Monitor is of the view that the DIP Facility and the DIP Charge are reasonable, appropriate and necessary in the circumstances.<sup>74</sup>

**G. THE SISP SHOULD BE APPROVED**

- 69. The SISP proposed by the Proposed Monitor and the procedures attached at Schedule “A” to the draft SISP Order should be approved.
- 70. The remedial nature of the CCAA confers broad powers to facilitate restructurings, including the power to approve a sale and investment solicitation process in relation to a CCAA debtor and its business and assets, prior to or in the absence of a plan of compromise and arrangement.
- 71. In *Nortel*, the Court identified several factors to be considered in determining whether to approve a sale process, which have since been consistently applied:
  - (a) Is a sale warranted at this time?
  - (b) Will the sale be of benefit to the whole “economic community”?
  - (c) Do any of the debtors’ creditors have a *bona fide* reason to object to a sale of the business?
  - (d) Is there a better viable alternative?<sup>75</sup>

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<sup>73</sup> First Report, at para 30.

<sup>74</sup> First Report, at para 50.

<sup>75</sup> *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ON SC), at para [49](#).

72. Courts have also considered the following additional factors:
- (a) the fairness, transparency and integrity of the proposed process;
  - (b) the commercial efficacy of the proposed process in light of the specific circumstances; and
  - (c) whether the sale process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.<sup>76</sup>
73. Although the decision to approve a particular form of sale process is distinct from the approval of a proposed sale, the reasonableness and adequacy of any sale process must be assessed in light of the factors that a court will consider when considering the approval of a proposed sale.<sup>77</sup>
74. In consideration of the above criteria and factors, the SISP should be approved for the following reasons:
- (a) The timelines in the SISP take into account the pre-filing marketing efforts;<sup>78</sup>
  - (b) there is no viable alternative outside of a court-supervised sale process;
  - (c) a sale within the CCAA will maximize value for the Applicant's stakeholders because it provides for the preservation of the License and a "turn key" facility;<sup>79</sup>
  - (d) the Applicant does not believe that any creditor has a reasonable basis to object to the SISP;

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<sup>76</sup> *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750 at para 6 [CCM Master].

<sup>77</sup> *Ibid.*

<sup>78</sup> First Report, at para 60.

<sup>79</sup> First Report, at para 64.

- (e) the SISP is the best option in the circumstances, particularly in consideration of the Applicant's significant liquidity constraints;
- (f) the duration of the SISP is reasonable and appropriate in the circumstances to ensure a robust and fair process;<sup>80</sup> and
- (g) the Proposed Monitor is supportive of the proposed SISP.<sup>81</sup>

#### **PART IV – RELIEF REQUESTED**

75. For all of the foregoing reasons, the Applicant requests that this Honourable Court grant an Order substantially in the form of the draft Initial Order located at Tab 5 of the Applicant's Motion Record and an Order substantially in form of the draft SISP Order located at Tab 6 of the Applicant's Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 30<sup>th</sup> day of April, 2024.

Thornton Grout Finnigan LLP

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April 30, 2024

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<sup>80</sup> First Report, at para 63.

<sup>81</sup> First Report, at para 64.



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**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *Canwest Publishing Inc./Publications Canwest Inc., Re*, [2010 ONSC 222](#).
2. *CCM Master Qualified Fund v blutip Power Technologies*, [2012 ONSC 1750](#).
3. *Comstock Canada Ltd., Re*, [2013 ONSC 4756](#).
4. *Green Growth Brands*, [2020 ONSC 3565](#).
5. *Jaguar Mining Inc., Re*, [2014 ONSC 494](#).
6. *Lydian International Limited (Re)*, [2019 ONSC 7473](#).
7. *Nortel Networks Corporation (Re)*, [2009 CanLII 39492 \(ON SC\)](#).
8. *Re Clothing for Modern Times Ltd.*, [2011 ONSC 7522](#).
9. *Sino-Forest Corporation (Re)*, [2012 ONSC 2063](#).
10. *Stelco Inc. (Re)*, [2004 CanLII 24933 \(ON SC\)](#).
11. *Sunrise/Saskatoon Apartments Limited Partnership (Re)*, [2017 BCSC 808](#).
12. *Ted Leroy Trucking [Century Services] Ltd., Re*, [2010 SCC 60](#).
13. *Tantalus Labs Ltd. (Re)*, [2023 BCSC 1450](#).
14. *Urbancorp Toronto Management Inc., Re*, [2016 ONSC 3288](#).

**SCHEDULE “B”  
RELEVANT STATUTES**

**Bankruptcy and Insolvency Act, R.S.C. 1985, c. B.3**

**Section 2**

**Definitions**

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;

**Section 50**

**Notice of intention**

**50.4(9) Extension of time for filing proposal**

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

**Cannabis Act, S.C. 2018, c. 16**

**Cannabis Regulations, SOR/2018-144**

**Companies' Creditors Arrangement Act, R.S.C., 1985 c. C-36**

**Section 2**

**Definitions**

*company* means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, telegraph companies, insurance companies and companies to which the Trust and Loan Companies Act applies;

*debtor company* means any company that

- (a) is bankrupt or insolvent,
- (b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,
- (c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or
- (d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent.

**Section 3**

**Application**

(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.

**Section 10**

**Documents that must accompany initial application**

(2) An initial application must be accompanied by

- (a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;
- (b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and

(c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

## **Section 11**

### **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**

**11.02(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**

**11.02(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.

### **Priority — secured creditors**

**11.2(2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

### **Priority — other orders**

**11.2(3)** The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

### **Factors to be considered**

**11.2(4)** In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

### **Additional factor — initial application**

**11.2(5)** When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

### **Security or charge relating to director's indemnification**

**11.51(1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

### **Priority**

**11.51(2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

### **Restriction — indemnification insurance**

**11.51(3)** The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

### **Negligence, misconduct or fault**

**11.51(4)** The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

### **Court may order security or charge to cover certain costs**

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

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

### **Priority**

**11.52(2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

### **11.6 *Bankruptcy and Insolvency Act* matters**

(a) proceedings commenced under Part III of the Bankruptcy and Insolvency Act may be taken up and continued under this Act only if a proposal within the meaning of the Bankruptcy and Insolvency Act has not been filed under that Part;

### **Court to appoint monitor**

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

### **Restrictions on who may be monitor**

**11.7(2)** Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

(a) if the trustee is or, at any time during the two preceding years, was

(i) a director, an officer or an employee of the company,

(ii) related to the company or to any director or officer of the company, or

(iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or

(b) if the trustee is

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



(ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

**Court may replace monitor**

**11.7(3)** On application by a creditor of the company, the court may, if it considers it appropriate in the circumstances, replace the monitor by appointing another trustee, within the meaning of subsection 2(1) of the Bankruptcy and Insolvency Act, to monitor the business and financial affairs of the company.

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF CANNMART LABS INC., OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

Court File No.: BK-24-03063478-0031  
Estate File No. 31-3063478

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

Proceedings commenced at Toronto

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