

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

THE VANCOR GROUP INC.

Applicant

- and -

2744364 ONTARIO LIMITED (O/A TRUE NORTH CANNABIS CO.),  
2668905 ONTARIO INC. (O/A BAMBOO BLAZE), AND 2767888 ONTARIO  
INC.

Respondents (Debtors)

**FACTUM OF THE APPLICANT  
(Returnable February 3, 2025)**

January 31, 2025

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**TO: SERVICE LIST**

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## FACTUM OF THE APPLICANT

### PART I - OVERVIEW

1. On January 24, 2025, Vancor sought and obtained an Initial Order<sup>1</sup> under the CCAA in respect of 2744364 Ontario Limited, 2668905 Ontario Inc., and 2767888 Ontario Inc. (together, the “**Debtors**”).

2. The Initial Order was tailored to provide the Debtors with the relief reasonably necessary to maintain the *status quo* and continue their ordinary course operations during the Initial Stay Period.

3. Following the grant of the Initial Order, the Debtors have continued operations in the ordinary course of business, while also focusing efforts on communicating with stakeholders, integrating the CRO, and developing – with the assistance of the Monitor – a sale and investment solicitation process that would support the Debtors’ emergence from CCAA protection as a viable enterprise.

4. To this end, Vancor now seeks an amended and restated Initial Order (“**ARIO**”) under the CCAA, among other things:

- (a) abridging the time for service of the notice of motion and motion record and dispensing with service on any person other than those served;
- (b) extending the Stay Period up to and including May 2, 2025;

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<sup>1</sup> All capitalized terms not otherwise defined herein have the meaning given to them in: (a) the initial order of the Honourable Mr. Justice Penny dated January 24, 2025 (“**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”); and (b) the affidavit of Corry Van Iersel affirmed January 23, 2025 in support of the Initial Order (“**First Van Iersel Affidavit**”).

- (c) approving an increase to the Administration Charge, to the maximum amount of \$600,000 (from \$350,000);
- (d) approving the Debtors' borrowing under the DIP Term Sheet up to a maximum principal amount \$2,000,000 (from \$900,000); and
- (e) approving a corresponding increase to the DIP Lender's Charge to the maximum principal amount of \$2,000,000 (plus interest, fees, and expenses).

**A. Background**

5. This is a creditor-initiated CCAA reorganization proceeding of a vertically integrated retail cannabis business conducting retail operations under the brand name "True North Cannabis Co.".

6. The Applicant, Vancor, is the largest creditor of the Debtors, having invested over \$23,000,000 in principal through Shareholder Loans.

7. Each Debtor's role in the business is as follows:

- (a) TNCC operates 48 retail cannabis dispensaries in Ontario, as well as an online storefront for direct-to-consumer cannabis sales in Ontario;
- (b) Bamboo Blaze is a supplier of (a) personal protective equipment (such as masks, medical gowns, and gloves) to cannabis producers, and (b) cannabis accessories (such as cannabis grinders, rolling papers, and bongs) to cannabis retailers (including TNCC); and
- (c) 888 is a real-estate holding company that owns 41 properties. 888 is TNCC's landlord under the majority of TNCC's commercial leases.

8. The facts underlying the Debtors' financial circumstances and need for CCAA protection are set out in the First Van Iersel Affidavit.
9. On the application of Vancor, the Debtors obtained protection under the CCAA pursuant to the terms of an Initial Order made by the Honourable Mr. Justice Penny on January 24, 2025.
10. The Initial Order, among other things:
  - (a) declared that the Debtors are companies to which the CCAA applies;
  - (b) appointed Deloitte as Monitor;
  - (c) granted an Initial Stay of Proceedings in favor of the Debtors, and their respective directors and officers, until and including February 3, 2025;
  - (d) approved the Debtors' ability to borrow up to a principal amount of \$900,000 under a DIP Term Sheet from Vancor (in that capacity, referred to herein as the DIP Lender) to finance, among other things, the Debtors' working capital requirements, debt service costs, and post-filing expenses;
  - (e) granted the Administration Charge and the DIP Lender's Charge (collectively referred to herein as the Charges);
  - (f) approved the appointment of Shawn Dym as Chief Restructuring Officer of the Debtors pursuant to the CRO Engagement; and
  - (g) sealed, until the earlier of (i) the termination of this CCAA proceeding or (ii) further order of the court, the unredacted copy of the CRO Engagement.

11. The relief sought pursuant to the Initial Order was limited to that reasonably necessary to provide the stability, breathing room, and financing required to sustain operations during the Initial Stay Period.

**B. Activities following the Initial Order**

12. Since the granting of the Initial Order, the Debtors have acted in good faith and with due diligence to stabilize and continue their ordinary course operations and advance their restructuring objectives.<sup>2</sup> The Debtors have, with the assistance and oversight of the Monitor, among other things:

- (a) communicated with key stakeholders, including employees and Secured Creditors;
- (b) met with the CRO to provide a detailed background on the Debtors' businesses and their immediate challenges;
- (c) met with the Ontario Cannabis Store to discuss post-filing payment terms;
- (d) coordinated an advance under the DIP Facility with the DIP Lender in accordance with the DIP Term Sheet; and
- (e) commenced work on a SISP.

13. Vancor has also had discussions with Firm Capital and Garas Holdings regarding aspects of their respective security packages, some of which issues were raised during the course of the

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<sup>2</sup> Affidavit of Corry Van Iersel sworn January 30, 2025 ("**Second Van Iersel Affidavit**") at paras 13-15, Tab 2 to the motion record of The Vancor Group Inc. dated January 30, 2025 ("**Motion Record**").

initial court hearing. As at the time this factum is filed such discussions are ongoing. The objective is to resolve all issues of concern to both lenders.<sup>3</sup>

## **PART II - ISSUES**

14. The material legal issues to be addressed at the within motion are whether:
- (a) the Stay Period should be extended;
  - (b) additional borrowing under the DIP Term Sheet and a corresponding increase to the quantum of the DIP Lender's Charge should be approved; and
  - (c) the quantum of the Administration Charge should be increased.

## **PART III - LAW & ARGUMENT**

### **A. The Stay Period should be extended**

15. The Initial Order granted an initial 10-day stay of proceedings ending on February 3, 2025.
16. Vancor seeks an order extending the stay of proceedings to and including May 2, 2025.
17. The court may grant an extension of the stay of proceedings where the court is satisfied that (a) circumstances exist that make the order appropriate; and (b) the Debtors have acted, and are acting, in good faith and with due diligence.<sup>4</sup> A stay of proceedings is appropriate to provide a

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<sup>3</sup> Second Van Iersel Affidavit at para 15, Tab 2 to the Motion Record.

<sup>4</sup> CCAA, [s 11.02\(2\)-\(3\)](#).

debtor with breathing room while it seeks to restore solvency and emerge from the CCAA on a going concern basis.<sup>5</sup>

18. It is respectfully submitted that the following factors weigh in favor of granting the extension of the stay:

- (a) since the granting of the Initial Order, the Debtors have acted and continue to act in good faith and with due diligence to advance a restructuring;<sup>6</sup>
- (b) the Cash Flow Forecast shows sufficient liquidity during the proposed extended stay period to fund obligations and the costs of the CCAA proceedings;<sup>7</sup>
- (c) an extension of the Stay Period through May 2, 2025 will accommodate the anticipated timeline of a prospective SISP and otherwise allow the parties an opportunity to pursue a successful process;<sup>8</sup>
- (d) the Monitor supports the requested extension of the stay of proceedings; and
- (e) no creditor will suffer material prejudice as a result of the extension of the stay.

**B. The additional borrowing under the DIP Term Sheet should be approved and the DIP Lender's Charge should be increased**

19. Pursuant to the Initial Order, the court approved the DIP Term Sheet and granted a DIP Lender's Charge in the amount of \$900,000 (plus interest, fees, and expenses).

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<sup>5</sup> [\*Target Canada Co. Re\*, 2015 ONSC 303](#) at para 8.

<sup>6</sup> Second Van Iersel Affidavit at para 13; Tab 2 to the Motion Record.

<sup>7</sup> Second Van Iersel Affidavit at para 16, Tab 2 to the Motion Record; Appendix "B" to the Pre-Filing Report of the Monitor dated January 23, 2025 ("**Pre-Filing Report**").

<sup>8</sup> Second Van Iersel Affidavit at para 12, Tab 2 to the Motion Record.



20. Approval is now sought for the Debtors to borrow up to the maximum amount available under the DIP Term Sheet. A corresponding increase to the amount of the DIP Lender's Charge from \$900,000 to \$2,000,000 (plus interest, fees, and expenses) is also requested.

21. Section 11.2 of the CCAA provides the court with the jurisdiction to approve interim financing and a related charge.<sup>9</sup> Section 11.2(4) lists the following non-exhaustive factors that the court is required to consider:

(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.<sup>10</sup>

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<sup>9</sup> CCAA, [s 11.2](#).

<sup>10</sup> CCAA, [s 11.2\(4\)](#).

22. In *Canwest Global*, Justice Pepall highlighted the importance of meeting the criteria set out in section 11.2(1) in addition to those found in s. 11.2(4), namely:

- (a) whether notice has been given to secured creditors likely to be affected by the security or charge;
- (b) whether the amount granted under a DIP facility is appropriate having regard to the debtors' cash-flow statement; and
- (c) whether the DIP charge secures an obligation that existed before the order approving the DIP financing was made.<sup>11</sup>

23. The section 11.2(1) and 11.2(4) criteria support the approval of increased borrowing under the DIP Term Sheet and a related increase to the DIP Lender's Charge:

- (a) Secured Creditors were given notice of Vancor's application for the Initial Order and motion for the proposed ARIO;
- (b) the DIP Lender's Charge does not prime any Secured Creditor;
- (c) the Cash Flow Forecast indicates that the Debtors require the DIP Facility to continue to operate as a going concern;<sup>12</sup>
- (d) the ability to borrow funds under the DIP Facility is critical to the Debtors' restructuring. The proposed borrowings provide required liquidity and permit operating receipts to be used to fund post-filing debt service to the Debtors' major

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<sup>11</sup> [\*Canwest Global Communications Corp. \(Re\)\*](#), [2009] OJ No 4286 at paras 31-34.

<sup>12</sup> Second Van Iersel Affidavit at para 16, Tab 2 to the Motion Record; Appendix "B" to the Pre-Filing Report.

creditors, an accommodation that is essential to retaining their support for the process;

- (e) the Pre-Filing Report illustrates that the terms of the DIP Term Sheet are within the bounds of reasonable interim financing terms;<sup>13</sup>
- (f) the DIP Lender is intimately familiar with the business and operations of the Debtors, substantially reducing the administrative costs that would otherwise arise in connection with an interim financing facility;
- (g) the Debtors will be managed throughout the CCAA process by the CRO, with the oversight of the Monitor – each of whom will review and supervise spending under the DIP Facility;
- (h) in the absence of the DIP Facility, the Debtors will be unable to continue to carry on business or carry out a sales process and will be forced to shut down operations to the detriment of stakeholders, including 285 employees;
- (i) the Monitor is supportive of the increased borrowing under the DIP Term Sheet and the corresponding charge.

24. Of note, the availability of additional financing under the DIP Term Sheet is conditional upon this Court's approval of the increased DIP Lender's Charge.<sup>14</sup>

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<sup>13</sup> Pre-Filing Report at para 20.

<sup>14</sup> DIP Term Sheet at section 13.

25. Section 11.2 of the CCAA permits interim financing facilities to be structured to allow debtors to use their post-filing operating receipts to service debt, if such payments are made in a manner consistent with the pre-filing *status quo*.<sup>15</sup>

26. In the case at hand, the DIP Facility will support expenses other than debt service. The Debtors' debt service obligations will be paid from operating receipts in accordance with past practice, also respecting the pre-filing *status quo*.<sup>16</sup>

27. The Cash Flow Forecast and the Monitor's reporting contemplate that Secured Creditor debt will be serviced in accordance with contractual obligations; Vancor's Shareholder Loans will be serviced on an interest-only basis.<sup>17</sup>

28. The proposed ARIO confirms, at paragraph 31, that "[t]he DIP Lender's Charge shall not secure an obligation that exists before this Order is made."

### **C. The Administration Charge should be increased**

29. The Administration Charge in the Initial Order was limited to the amount of professional fees and disbursements of the Monitor, counsel to the Monitor, the CRO, counsel to the Debtors and counsel to Vancor ("**Professionals Group**") incurred and estimated to be incurred to the end of the Initial Stay Period.<sup>18</sup>

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<sup>15</sup> *Comark Inc., Re*, 2015 ONSC 2010 at paras 40-41; *Performance Sports Group Ltd., Re*, 2016 ONSC 6800 at para 22; *BZAM Ltd. Plan of Arrangement*, 2024 ONSC 1645 at para 56.

<sup>16</sup> Second Van Iersel Affidavit at para 21, Tab 2 to the Motion Record.

<sup>17</sup> Second Van Iersel Affidavit at paras 21-22, Tab 2 to the Motion Record.

<sup>18</sup> Second Van Iersel Affidavit at paras 24-25.

30. Vancor asks to increase the Administration Charge from \$350,000 to \$600,000 in order to appropriately protect the services to be provided by the Professionals Group during the proposed extended Stay Period.<sup>19</sup>

31. Section 11.52 of the CCAA expressly provides the court with jurisdiction to grant and amend the Administration Charge.<sup>20</sup>

32. Section 11.52(2) of the CCAA permits the court to order that the Administration Charge “rank in priority over the claim of any secured creditor of the company”.<sup>21</sup> In *Canada North Group*, the Supreme Court of Canada stated that “[s]uper-priority charges in favour of the monitor, financiers and other professionals are required to derive the most value for the stakeholders. They are beneficial to all creditors...”.<sup>22</sup>

33. The appropriate quantum of an administration charge is a question of fact to be assessed in the totality of the circumstances.<sup>23</sup>

34. In *Canwest Publishing*, Justice Pepall considered several factors when deciding whether to grant an administration charge, including:

- (a) the size and complexity of the businesses being restructured;
- (b) the proposed role of the beneficiaries of the charge;

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<sup>19</sup> Second Van Iersel Affidavit at paras 26-29, Tab 2 to the Motion Record.

<sup>20</sup> CCAA, [s. 11.52](#).

<sup>21</sup> CCAA, [s. 11.52\(2\)](#).

<sup>22</sup> *Canada v Canada North Group Inc.*, 2021 SCC 30 at para 30.

<sup>23</sup> *Canwest Publishing Inc., Re*, 2010 ONSC 222 at para 54.

- (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.<sup>24</sup>

35. Vancor submits that it is appropriate for this court to exercise its jurisdiction to increase the Administration Charge:

- (a) The businesses of the Debtors are distinct, but factually intertwined. The cannabis industry highly regulated and subject to many statutory and regulatory restrictions and requirements.<sup>25</sup> The interpersonal dynamics of the Debtors shareholder group is fractious.<sup>26</sup> A successful restructuring will likely require the strong support of the Professionals Group;<sup>27</sup>
- (b) the beneficiaries of the Administration Charge have and will contribute essential legal and financial advice, and general oversight, throughout this CCAA proceeding, without which it is unlikely the Debtors will achieve a successful restructuring;<sup>28</sup>

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<sup>24</sup> *Ibid.*

<sup>25</sup> First Van Iersel Affidavit at para 27-31, Tab 3 to the Motion Record.

<sup>26</sup> First Van Iersel Affidavit at para 106-124, Tab 3 to the Motion Record.

<sup>27</sup> Second Van Iersel Affidavit at para 24, Tab 2 to the Motion Record.

<sup>28</sup> Second Van Iersel Affidavit at para 29, Tab 2 to the Motion Record.

- (c) each of the proposed beneficiaries of the Administration Charge is performing unique functions without the unwarranted duplication of roles;<sup>29</sup>
- (d) the quantum of the proposed increase to the Administration Charge was determined in consultation with the Monitor and is based on the estimated fees of the Professionals Group from the date of the Comeback Hearing through to the end of the proposed extended Stay Period;<sup>30</sup>
- (e) all secured creditors have been given notice of this CCAA proceeding and the Administration Charge; and
- (f) The Monitor and the DIP Lender are supportive of the increase in the Administration Charge.

36. Furthermore, it is unlikely that the Professionals Group will continue to participate in the CCAA proceedings without the increased Administration Charge.<sup>31</sup>

#### **PART IV - RELIEF REQUESTED**

37. Vancor respectfully requests that this honourable court grant the relief provided for in the proposed ARIO.

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<sup>29</sup> Second Van Iersel Affidavit at para 29, Tab 2 to the Motion Record.

<sup>30</sup> Second Van Iersel Affidavit at para 27, Tab 2 to the Motion Record.

<sup>31</sup> Second Van Iersel Affidavit at para 29, Tab 2 to the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of January 2025.

A handwritten signature in blue ink that reads "patrick corney". The signature is written in a cursive, lowercase style.

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MILLER THOMSON LLP

Lawyers for the Applicant, The Vancor Group Inc.



## **SCHEDULE “A”**

### **LIST OF AUTHORITIES**

1. [BZAM Ltd. Plan of Arrangement](#), 2024 ONSC 1645.
2. [Canada v Canada North Group Inc.](#), 2021 SCC 30.
3. [Canwest Global Communications Corp. \(Re\)](#), [2009] OJ No 4286.
4. [Canwest Publishing Inc., Re](#), 2010 ONSC 222.
5. *Comark Inc., Re*, 2015 ONSC 2010. [Not available on CanLII.]
6. [Performance Sports Group Ltd., Re](#), 2016 ONSC 6800.
7. [Target Canada Co, Re](#), 2015 ONSC 303.

## **SCHEDULE “B”**

### **TEXT OF STATUTES, REGULATIONS & BY-LAWS**

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

##### **General power of court**

**11** Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

##### **Stays, etc. – initial application**

**11.02 (1)** A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

##### **Stays, etc. – other than initial application**

**(2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Burden of proof on application**

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

**Restriction**

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

**Interim financing**

**11.2 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

**Priority – secured creditors**

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

**Priority — other orders**

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

**Factors to be considered**

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

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

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

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

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

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

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

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

**Additional factor — initial application**

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

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

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

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

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

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

**Priority**

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

THE VANCOR GROUP INC.  
Applicant

and 2744364 ONTARIO LIMITED, et al.  
Respondents (Debtors)

Court File No. CV-25-00735482-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding Commenced at  
Toronto

**FACTUM OF THE APPLICANT  
(Returnable February 3, 2025)**

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