

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF SPROUTLY INC. AND TORONTO HERBAL REMEDIES INC.**

**(each an “Applicant” and collectively, the “Applicants”)**

**REPORT OF THE PROPOSED MONITOR**

**JUNE 22, 2022**

**INTRODUCTION**

1. BDO Canada Limited (“**BDO**” or the “**Proposed Monitor**”) understands that the Applicants have brought an application (the “**CCAA Application**”) before this Court returnable on June 24, 2022, seeking an initial order (the “**Proposed Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”) to, among other things, obtain a stay of proceedings to allow them an opportunity to restructure their business by conducting a sales process transaction. The Applicants propose that BDO be appointed as Monitor in these CCAA proceedings (in such capacity, the “**Monitor**”).
2. This report (the “**Report**”) has been prepared by the Proposed Monitor prior to its appointment as Monitor, should this Court grant the Proposed Initial Order, to provide information to this Court for its consideration in respect of the Applicants’ CCAA Application.

## **PURPOSE**

3. The purpose of this report is to provide information to the Court on:
  - a. BDO's qualifications to act as Monitor;
  - b. an overview of the Applicants;
  - c. background on the circumstances leading to the Applicants' decision to commence CCAA proceedings;
  - d. an overview of the Applicants' 14-week cash flow forecast on a consolidated basis for the Applicants (the "**Cash Flow Forecast**") and the Proposed Monitor's comments regarding the reasonableness thereof; and
  - e. certain relevant matters about the relief sought in the Proposed Initial Order.

## **TERMS OF REFERENCE**

4. In preparing this Report and making the comments herein, the Proposed Monitor has been provided with, and has relied upon, unaudited financial information, books and records prepared by the Applicants, discussions with management of the Applicants ("**Management**"), and information from other third-party sources (collectively, the "**Information**"). Except as described in this Report in respect of the Cash Flow Forecast:
  - a. the Proposed Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposed Monitor has not audited or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Proposed Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information; and
  - b. some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecast and projections,

as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.

5. Future oriented financial information referred to in this Report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variation could be significant.
6. Unless otherwise indicated, the Proposed Monitor's understanding of the factual matters expressed in this Report concerning the Applicants and their business is based on the Information, and not independent factual determinations made by the Proposed Monitor.
7. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

#### **BDO'S QUALIFICATIONS TO ACT AS MONITOR**

8. BDO is a licensed insolvency trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act* (Canada). BDO is not subject to any of the restrictions set out in section 11.7(2) of the CCAA on who may be appointed as Monitor.
9. BDO acted as Consultant to the Applicants and has a detailed understanding of the Applicants' operations and cash flow and will be in a position to quickly and seamlessly perform its responsibilities as Monitor, if appointed.
10. The Proposed Monitor will retain Affleck Greene McMurtry LLP to act as its independent legal counsel.

#### **OVERVIEW OF THE APPLICANTS**

11. This Report should be read in conjunction with the Affidavit of Craig Loverock, the Applicants' Chief Financial Officer and President, sworn June 22, 2022 (the

“**Loverock Affidavit**”) for additional background and financial information with respect to the Applicants. Any terms not expressly defined herein are otherwise defined in the Loverock Affidavit.

12. Sproutly Canada Inc. (“**Sproutly Canada**”) is a publicly traded corporation on the Canadian National Stock Exchange under the symbol ‘SPR’ and maintains its registered head office at 300-1008 Howe Street, Vancouver, British Columbia, V6B 2X1. Sproutly Canada is not an applicant in these proceedings.
13. Sproutly Canada, through its subsidiaries, cultivates, produces, and sells dried cannabis, cannabis oil and related products, which are sold to provincial distributors and other authorized Canadian retail supply channels. None of the Applicants engage in any cannabis-related activities outside of Canada.
14. Sproutly Inc., a wholly owned subsidiary of Sproutly Canada, does not directly hold any tangible assets, however, wholly owns Toronto Herbal Remedies Inc. (“**THR**”), the other Applicant in these proceedings.
15. THR was the operating entity and holds the Applicants’ primary assets which include the Health Canada license permitting Sproutly Canada to process, cultivate, and sell cannabis in accordance with the *Cannabis Act* and the *Cannabis Regulations*. THR received its flower sales license from Health Canada effective October 16, 2019, and its extracts sales license effective October 15, 2020. As a result, the Company began to generate revenue from the sale of flower through authorized distributors and retailers near the end of the fiscal year ended February 29, 2020.
16. THR owns the Applicants’ approximately 16,000 square foot production facility located at 64-70 Raleigh Avenue, Toronto, Ontario, M1K 1A3 (the “**Real Property**”).
17. The other assets consist of cannabis flower, cannabis extract, packaging material, furniture, and machines and equipment.

18. THR is a privately held company incorporated under the laws of Ontario which was incorporated on January 17, 2013. Sproutly Inc. is a privately held company incorporated under the laws of Canada and was incorporated on January 17, 2017.
19. Sproutly Inc. presently has 2 employees and 1 consultant and THR presently has 2 employees. The employees are not unionized and do not maintain a pension plan. Although there are no ongoing operations of the Applicants' business, three (3) employees are required to maintain the Health Canada license(s) and the other two (2) employees are management responsible for the Applicants' governance/oversight and the books and records.
20. Infusion Biosciences Canada Inc. ("**Infusion Canada**") is also a wholly owned subsidiary of Sproutly Canada and licences certain proprietary technology to the Applicants. Infusion Canada was granted the Canada, Australia, Israel, Jamaica, European Union and United Kingdom licensing rights for this technology from Infusion Biosciences Inc. ("**Infusion**").

#### **CIRCUMSTANCES LEADING TO THE APPLICANTS' CCAA FILING**

21. For the year ended February 28, 2022, Sproutly Inc. reported a net loss of \$310,000 and THR reported a loss of \$1.6 million.
22. The Applicants have incurred significant losses to date and had a reduction of sales in 2021 and nominal sales in 2022 which is attributed to Sproutly Canada exiting the flower cultivation business and shifting its resources to research and development associated with Infusion's 2.0 technology.
23. Sproutly Inc. and Sproutly Canada do not have any secured creditors. THR has three (3) secured creditors, including 0982244 B.C. Ltd. o/a The Isle of Mann Property Group (the "**Mann Mortgage**"), Infusion Biosciences Inc., and the Ministry of Finance (related to Employer Health Tax ("**EHT**") and registered on title of the Real Property).
24. Based on the searches performed under the *Personal Property Securities Act* (PPSA), and the Applicants' books and records, THR's secured obligations total

approximately \$4 million, including the following:

- a. The Mann Mortgage is a secured lender to THR through a loan agreement dated June 18, 2015 in the amount of \$3.25 million. This loan was registered on title to the Real Property on August 1, 2018 and the charge was increased to \$4.5 million on January 28, 2020. We understand that as at June 21, 2022 the outstanding amount was over \$3.6 million.
  - b. Infusion is a secured lender to THR through loan agreement and general security agreement dated January 21, 2020 in the amount of \$1.0 million. This loan was registered on title to the Real Property on March 6, 2020.
  - c. Ministry of Finance is secured for the registered amount of \$8,782.32 (EHT).
  - d. We note that although Jane Bailey appears on the PPSA as having security, pursuant to a settlement agreement and return of the secured asset, this registration should be discharged.
25. Based on the Applicants' accounts payable listing dated June 9, 2022 (THR) June 12, 2022, the Applicants unsecured obligations total approximately \$1.56 million, including \$355,810 of amounts owed for excise taxes associated with THR's Health Canada licence.
  26. On August 25, 2020 THR entered into an Advisory and Success Fee Agreement ("**First Hyde Engagement**") with Hyde Advisory & Investments Inc. ("**Hyde**") to among other things, source qualified leads in order to sell or merge with THR. The First Hyde Engagement was for a term of six months ending in February 2021.
  27. On October 28, 2021 THR entered into a new Advisory and Success Fee Agreement ("**Second Hyde Engagement**").
  28. The Second Hyde Engagement resulted in the sourcing of a potential purchaser for the shares of THR. The potential purchaser issued a signed Letter of Intent dated May 5, 2022 but subsequently did not pursue the transaction.
  29. As a result of the above factors, the Company faces a critical cash shortage and cannot meet its financial obligations. The proposed CCAA proceedings will allow the Applicants time to conduct a bilateral sales process for either the shares of THR or

the sale of the Real Property. This will allow for a Court-supervised sale transaction within the CCAA Proceedings.

## **OVERVIEW OF APPLICANTS' 14-WEEK CASH FLOW FORECAST**

30. The Applicants have prepared a Cash Flow Forecast for the 14-week period from June 26, 2022, to the week ending September 25, 2022 (the “**Cash Flow Period**”) for the purpose of projecting the Applicants’ estimated liquidity needs during the Cash Flow Period. A copy of the Cash Flow Forecast is attached as **Appendix “A”** to this Report.
31. The Cash Flow Forecast is presented on a weekly basis during the Cash Flow Period and represents Management’s estimates of the projected cash flow during the Cash Flow Period. The Cash Flow Forecast has been prepared by the Applicants using probable and hypothetical assumptions (the “**Assumptions**”) set out in the notes to the Cash Flow Forecast.
32. The Proposed Monitor has read the Cash Flow Forecast and conducted inquiries, performed analytical procedures, held discussions, and read documents related to the Information supplied to it by certain key members of Management and employees of the Applicants. Based on the Proposed Monitor's review, nothing has come to its attention that causes it to believe, in all material respects, that:
  - a. the Assumptions are not consistent with the purpose of the Cash Flow Forecast;
  - b. as at the date of this Report, the Assumptions are not suitably supported and consistent with the plans of the Applicants or do not provide a reasonable basis for the Cash Flow Forecast, given the probable and hypothetical assumptions; or
  - c. the Cash Flow Forecast does not reflect the Assumptions.
33. Sproutly Inc. and THR maintain bank accounts with Bank of Montreal and Royal Bank of Canada respectively.
34. The Cash Flow Forecast shows that during the Cash Flow Period, the Applicants project estimated disbursements of \$748,898. The Cash Flow Forecast projects that

during the Cash Flow Period the Applicants should have sufficient liquidity, via the DIP Facility (defined below) which is , subject to Court approval of the financing agreement (the “**DIP Facility Agreement**”) and the related DIP Lender’s Charge (discussed herein).

35. The Proposed Initial Order allows for the DIP Lender’s Charge at \$750,000.

### **RELEVANT MATTERS ADDRESSED IN THE PROPOSED INITIAL ORDER**

36. The Proposed Initial Order provides for three priority charges (collectively, the “**Charges**”) on all of the current and future assets, undertakings, and properties of the Applicants, wherever located, including all proceeds thereof that rank in the following order:
  - i. first, the Administration Charge;
  - ii. second, the DIP Lender’s Charge; and
  - iii. third, the Director’s Charge.
37. The Proposed Monitor understands that the Applicants have provided their secured creditors with notice prior to commencing these CCAA proceedings. Such secured creditors will be included on the Service List in connection with these CCAA proceedings moving forward and, as such, will be provided with motion materials in connection with the comeback motion, upon which the Applicants will seek, among other things, a stay extension.

### **THE ADMINISTRATION CHARGE**

38. The Proposed Initial Order provides for a charge up to a maximum amount of \$150,000 (the “**Administration Charge**”) in favour of counsel to the Applicants, the Proposed Monitor and the Proposed Monitor’s independent counsel, as security for the professional fees and disbursements incurred prior to and after the commencement of the CCAA proceedings. Professional fee obligations secured by the Administration Charge will be paid in the ordinary course from funding provided by the DIP Facility.

39. The Proposed Monitor is of the view that given the current liquidity constraints of the Applicants, the proposed Administration Charge is required and reasonable in the circumstances. The Proposed Monitor believes the quantum of the Administration Charge is reasonable in the circumstances based upon a review and assessment of the anticipated professional costs to be incurred during this matter.

### **DIP LENDER'S CHARGE**

40. In order to provide the required liquidity needed to fund the proposed two stream sale process during the CCAA proceedings, the Applicants are seeking approval of the DIP Facility Agreement, pursuant to which 0982244 B.C. Ltd. (the “**DIP Lender**”) has agreed to provide the DIP financing (“**DIP Facility**”) to Sproutly Inc. and THR (collectively, the “**Borrowers**”) required for the Cash Flow Forecast, subject to the terms of the DIP Facility Agreement. In addition to the approval of this proposed DIP Facility Agreement, the Proposed Initial Order also provides for the creation of a related charge of \$750,000 (the “**DIP Lender's Charge**”) to match the maximum allowable borrowing amount as proposed in Proposed Initial Order.
41. The following is a summary of the conditions and terms and fees included of the DIP Facility Agreement:
- a. first ranking charge in favour of the DIP Lender after the Administration Charge;
  - b. granting the DIP Lender the right, upon the occurrence of an Event of Default under the DIP Facility, to terminate the DIP Facility;
  - c. declaring the DIP Charge, documents related to the DIP Facility, and payments made to the DIP Lender do not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law;
  - d. declaring the DIP Financing Order, including the DIP Charge, be binding upon a trustee in bankruptcy of the Applicants, the Monitor, any receiver, interim-receiver,

receiver-manager or any other officer of the Court appointed in respect of the Applicants; and

- e. declaring the DIP Lender to be an “unaffected creditor” under any restructuring plan that may be made by the Applicants and that the indebtedness to the DIP Lender under the DIP Facility shall not be compromised under any such restructuring plan.

***Conditions***

- i. the DIP Facility is a non revolving demand credit facility up to the maximum amount of \$750,000;
- ii. advances to be issued by weekly request to the DIP Lender by the Debtors;
- iii. Funding requests must be supported by the Cash Flow with a maximum variance of 20% for any advance;
- iv. Administration charge shall not exceed \$150,000;
- v. D&O charge (defined below) shall not exceed \$50,000;
- vi. Marketing plan/sales process, satisfactory to the Lender including Court approval of a sales process by no later than July 4, 2022.
- vii. No event of default under the DIP Facility;
- viii. All conditions in the DIP Term Sheet continue to be satisfied including:
  - a) THR to maintain adequate insurance;
  - b) The Applicants’ do not incur any expenses other than those appearing on the Cash Flow Forecast or as reasonably required for the business to a maximum of \$10,000 without prior written consent of the DIP Lender; and
  - c) The payment of Priority Claims, as defined in the DIP Facility and includes, but not limited to wages, vacation pay, source

deductions, harmonized sales tax, workers' compensation, and suppliers' claims which rank prior to the DIP Facility.

***Terms and fees***

- i. Interest rate of 14% per annum, calculated monthly on a daily balance outstanding under the DIP Facility.
  - ii. All fees and expenses of the DIP Lender incurred in relation to the CCAA proceedings are added to the DIP and form part of the DIP Charge.
  - iii. Monthly interest only payments with the balance of principal and all obligations owing under the DIP Facility on the Maturity Date, which is defined to be earlier of:
    - a) An event of default under the DIP Facility;
    - b) Termination of the CCAA proceedings;
    - c) The sale of the Real Property; and
    - d) September 30, 2022 (or such other date as the DIP Lender may agree).
  - iv. A facility fee of 2% of the amount of each Advance applied with all fees to be accrued and repaid on the Maturity Date.
42. A copy of the DIP Term Sheet is attached as Exhibit KK to the Loverock Affidavit.
43. As described in the Cash Flow Forecast, the Applicants have a critical and immediate need for interim financing. Without access to the DIP Facility, the Applicants will be unable to conduct the proposed sale process as:
- a) Toronto Hydro has sent a Notice of Termination which contemplates cutting off services between June 21 and July 4, 2022. Loss of electricity would result in loss of all security requirements to maintain the Health Canada licence.
  - b) The employees who have remained loyal to the Applicants have not been paid since March 2022. Without these employees who serve specific positions relating to the

licence, the Health Canada license would be terminated.

44. The Proposed Monitor is satisfied that the amounts set out in the Cash Flow Forecast to be paid prior to the comeback hearing are necessary in the circumstances.
45. The Proposed Monitor is of the view that the Applicants' request for approval of the DIP Facility Agreement and the DIP Lender Charge is required and reasonable in the circumstances prior to the comeback hearing.

### **DIRECTORS' CHARGE**

46. The Proposed Initial Order provides for a charge in an amount not to exceed \$50,000 (the "**Directors' Charge**") to secure an indemnity in favour of the current director and officers of the Applicants (the "**Director and Officers**") against obligations and liabilities that they may incur as Director or Officers of the Applicants after the commencement of these CCAA proceedings, except to the extent that the obligation or liability is incurred as a result of such Director's or Officer's gross negligence or willful misconduct.
47. The Director and Officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, to the extent such coverage is insufficient to pay an indemnified amount as described above, or to the extent that such coverage is denied by the insurance provider.
48. The Proposed Monitor reviewed the calculation of the Directors' Charge taking into consideration the estimated payroll-related costs, the timing of such payroll related costs, and the estimated peak vacation accrual.
49. The Proposed Monitor is of the view that the Directors' Charge is required and is reasonable under the circumstances.

## **CONCLUSIONS AND RECOMMENDATIONS**

50. The Proposed Monitor has reviewed the Applicants' CCAA application materials and has consented to act as the Monitor of the Applicants, should this Court grant the Proposed Initial Order.
51. For the reasons stated herein, the Proposed Monitor believes it is appropriate for the Applicants to be granted protection under the CCAA and respectfully request that the Court grants the Proposed Initial Order.

All of which is respectfully submitted this 22<sup>nd</sup> day of June 2022.

**BDO CANADA LIMITED, in its capacity  
as Proposed Monitor of the Applicants, and  
not in its corporate or personal capacity.**

Per:

A handwritten signature in black ink, appearing to read "Clark Lonergan". The signature is written in a cursive, flowing style.

**Clark Lonergan, CA, CPA, CIRP, LIT  
Senior Vice President**

## Appendix “A”

WEEK ENDING		1	2	3	4	5	6	7	8	9	10	11	12	13	14	TOTAL
		06/26/2022	07/03/2022	07/10/2022	07/17/2022	07/24/2022	07/31/2022	08/07/2022	08/14/2022	08/21/2022	08/28/2022	09/04/2022	09/11/2022	09/18/2022	09/25/2022	
Beginning cash (deficit)		-	(79,186)	(141,129)	(205,942)	(264,795)	(349,145)	(416,088)	(430,901)	(431,093)	(556,034)	(562,976)	(577,789)	(612,982)	(627,795)	
<b>Receipts</b>	<b>Notes</b>															
Other receipts		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total receipts</b>		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Disbursements from operations</b>																
Salaries and wages (incl taxes)	1	44,813	-	14,813	-	18,813	-	14,813	-	18,813	-	14,813	-	14,813	4,000	145,693
Employee benefits		-	-	-	1,260	-	-	-	-	1,260	-	-	-	-	1,260	3,780
Utilities	2	-	6,750	-	-	-	-	6,750	-	-	6,750	-	-	-	-	20,250
Communications and admin	3	-	-	-	-	7,000	-	-	-	7,000	-	-	-	-	7,000	21,000
Insurance		1,015	-	-	-	900	-	-	-	900	-	-	-	-	900	3,715
Waste removal & cleaning	4	-	-	-	2,400	-	-	-	-	500	-	-	-	-	500	3,400
Supplies	5	-	-	-	-	1,000	-	-	-	1,000	-	-	-	-	1,000	3,000
Repairs and maintenance	6	-	5,000	-	5,000	-	-	-	-	1,717	-	-	-	-	2,500	14,217
Destruction/shipping cost of flower inventory		-	-	-	-	5,000	-	-	-	-	-	-	-	-	-	5,000
Source deductions and related fees	7	33,358	193	-	193	-	193	-	193	-	193	-	193	-	193	34,706
Monitor & counsel fees		-	25,000	25,000	25,000	-	30,000	-	-	35,000	-	-	25,000	-	25,000	190,000
Mortgage interest	8	-	-	-	-	32,500	-	-	-	32,500	-	-	-	-	32,500	97,500
DIP fees and interest		-	-	-	-	8,750	-	-	-	8,750	-	-	-	-	23,750	41,250
Restructuring costs	9	-	25,000	25,000	25,000	-	30,000	-	-	15,000	-	-	10,000	-	5,000	135,000
Phase II (Try Environmental Services)	10	-	-	-	-	7,887	-	-	-	-	-	-	-	-	-	7,887
KEIP	11	-	-	-	-	-	-	-	-	-	-	-	-	-	15,000	15,000
Contingency		-	-	-	-	2,500	-	-	-	2,500	-	-	-	-	2,500	7,500
<b>Total disbursements</b>		79,186	61,943	64,813	58,853	84,351	66,943	14,813	193	124,940	6,943	14,813	35,193	14,813	121,103	748,898
<b>Net Cash Flow</b>		(79,186)	(61,943)	(64,813)	(58,853)	(84,351)	(66,943)	(14,813)	(193)	(124,940)	(6,943)	(14,813)	(35,193)	(14,813)	(121,103)	(748,898)
<b>Closing cash (deficit)</b>		\$ (79,186)	\$ (141,129)	\$ (205,942)	\$ (264,795)	\$ (349,145)	\$ (416,088)	\$ (430,901)	\$ (431,093)	\$ (556,034)	\$ (562,976)	\$ (577,789)	\$ (612,982)	\$ (627,795)	\$ (748,898)	\$ (748,898)

Notes:

- Week 1 payment includes \$30,000 which represent a portion of back wages .
- Utilities presented for payment do not include arrears only monthly charges estimated by current rates.
- This amount reflect all security and communication costs associated with the cannabis licence and facility.
- This includes amounts for delivery of bins which were removed for non payment.
- Personal protective equipment and cleaning supplies required as a condition of licence.
- Repairs and maintenance include amounts for minor repairs that are necessary to maintain the building.
- These are amount required for payment pursuant to the DIP Agreement and ongoing payroll to close.
- Associated interest costs for current Mann Mortgage.
- This reflects estimated cost for Company's legal counsel.
- A Phase II environmental assessment was completed and invoiced in August 2021 by Try Environmental Services Inc. ("Try"). As a potential purchaser will most probably request a reliance letter from Try, therefore, this payment is considered critical.
- Amounts allocated for Key Employee Incentive are to assist with the sales process and keep the CFO/President as a security cleared Director for the transition of licence if required.