

IN THE MATTER OF THE BANKRUPTCY OF  
Ayanda Cannabis Corporation  
of the County of Norfolk, in the Province of Ontario

**TRUSTEE'S REPORT TO THE FIRST MEETING OF CREDITORS  
ON PRELIMINARY ADMINISTRATION**

**BACKGROUND AND CAUSES OF BANKRUPTCY**

Ayanda Cannabis Corporation (“**Ayanda**” or the “**Company**”) was a privately held licenced producer of cannabis. It was incorporated in April 2016 under the *Canada Business Corporations Act* as Ayanda Medical Marijuana Corporation and changed its name to Ayanda Cannabis Corporation in November 2018.

The Company operated from leased premises in a 55,000 square foot single-story cultivation and processing facility (the “**Facility**”) located at 324-372 Burford-Delhi Townline Road, Norfolk County, Ontario. Approximately 15,000 square feet of the Facility is fully constructed and operational for cannabis cultivation, production, and processing. The remaining 40,000 square feet of the Facility is not finished and is unused.

The Company experienced financial difficulties due to several factors, including (i) licencing delays, (ii) pandemic related setbacks and cost overruns, (iii) an inability to attract sufficient capital required to commercialize operations, and (iv) protracted disagreement and dissension (coupled with threats of litigation) among Ayanda’s co-founders, investors, and senior management personnel. From fiscal 2018 to 2021, Ayanda incurred aggregate losses of approximately \$1.7 million.

For a variety of reasons, including the Company’s limited cultivation activities and the fact that Ayanda’s cannabis licences (the “**Licences**”) only permitted the Company to sell business-to-business, Ayanda never earned any significant revenue. As such, since its inception, Ayanda was solely dependent on equity financing from investors and shareholder loans to finance both the construction of the Facility and Ayanda’s ongoing operating costs.

By the summer of 2021, Ayanda had nearly exhausted the equity capital raised from family and friends, and significant additional capital was required to both expand the Company’s cultivation activities and commercialize operations. In August 2021, Ayanda retained Hyde Advisory & Investments Inc. (“**Hyde Advisory**”) to assist in soliciting potential investment in the Company’s business.

With a looming liquidity crisis, in or about October 2021, Ayanda and Hyde Advisory shifted focus on its marketing efforts to consider potential sale opportunities for the Company’s business. In November 2021, Ayanda formally retained Hyde Advisory to run a sale process (the “**Sale Process**”) for the Company’s business.

The Sale Process ultimately resulted in a transaction (the “**Transaction**”) for the sale of all of Ayanda’s issued and outstanding shares pursuant to a share purchase agreement dated February 2, 2022 (the “**SPA**”) between Ayanda, as vendor, and 12830353 Canada Inc., or its assignee (the “**Purchaser**”), as purchaser.

Faced with an imminent liquidity crisis and the threat of various litigation claims (the “**Contingent Claims**”) against the Company, the board of directors of Ayanda determined it appropriate to commence voluntary insolvency proceedings to, among other things, create a stabilized environment to allow the Company to complete the Transaction and provide a forum to address the Contingent Claims in the context of a court-supervised insolvency process. This was ratified by the shareholders of Ayanda at a special meeting of shareholders held on February 2, 2022.

On February 4, 2022 (the “**NOI Filing Date**”), Ayanda filed a Notice of Intention to Make a Proposal (“**NOI**”), pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (the “**BIA**”), and Richter Inc. (“**Richter**”) agreed to act as trustee under the Company’s NOI (in such capacity, the “**Proposal Trustee**”).

On March 1, 2022, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted two Orders that, among other things, approved the Transaction and extended the deadline by which Ayanda was required to file a proposal up to and including April 20, 2022.

On April 19, 2022, the Company filed a proposal pursuant to Part III of the BIA, which was amended at the meeting of creditors held on May 9, 2022 (as amended, the “**Proposal**”). Subject to closing the Transaction, it was expected that the Proposal would provide full recoveries (less any levies payable to the Office of the Superintendent of Bankruptcy) to unsecured creditors with proven claims against the Company and provide a meaningful recovery to the Company’s Class B shareholders. The Proposal was unanimously approved by the Company’s creditors who voted at the creditors' meeting.

On June 3, 2022, the Court granted an Order approving, among other things, the Proposal.

The SPA provided that the Transaction would close on or before June 30, 2022, or such later date as Ayanda and the Purchaser agreed in writing (the “**Closing/Outside Date**”). As the Closing/Outside Date approached, the Proposal Trustee understood that the only remaining condition to be satisfied prior to closing the Transaction was Health Canada’s approval of the change in control of Ayanda as a result of the contemplated Transaction. The Purchaser did not indicate that it did not have the funds available to close the Transaction.

Following receipt of Health Canada’s approval of the change in control of Ayanda contemplated by the Transaction, the Company moved to close the Transaction as soon as possible. Notwithstanding that all conditions to closing under the SPA were satisfied, the Purchaser, for the first time, requested further time as the Purchaser did not have the funds necessary to close the Transaction.

In an effort to preserve the Transaction that, if completed, was advantageous to Ayanda’s stakeholders, following correspondence between Ayanda and the Purchaser (and their respective counsel), at the request of the Purchaser, the parties entered into successive extension agreements such that the Closing/Outside Date for the Transaction was extended to May 19, 2023 in exchange for, among other things, an increase to the non-refundable deposit paid by the Purchaser.

The Closing/Outside Date under the SPA (as amended) lapsed and it became clear that the Purchaser did not have, and could not obtain, the required funding to close the Transaction. In addition, following the expiration of the SPA (as amended), the Purchaser ceased making payments pursuant to an agreement dated March 1, 2022 (the “**Services Agreement**”) setting out the terms upon which Ayanda would continue business operations for the interim period pending closing of the Transaction, for the benefit of and at the sole expense of the Purchaser. Without the funds necessary for continued operations, the last remaining employee of the Company (the master grower) resigned.

In the Proposal Trustee's view, the failure to close the Transaction (and the effective termination of the Services Agreement) represented a material adverse change in the Company's financial circumstances and its ability to implement the Proposal. Given the Company's limited liquidity, the Proposal Trustee had concerns that Ayanda did not have the means to continue operations or present a viable alternative proposal to its creditors.

On July 18, 2023, the Proposal Trustee issued a material adverse change report pursuant to section 50(1) of the BIA (the “**MAC Report**”). Among other things, the MAC Report stated the Proposal Trustee's intention to make an application to the Court for an Order annulling the Proposal and deeming the Company bankrupt.

In addition to the above, the Company's insurance policy expired on June 5, 2023 and the Company was unable to secure replacement coverage given the operational status of the Company and the uncertainty with respect to the Transaction. Moreover, as the Company was non-compliant with the *Cannabis Act*, Ayanda took steps to destroy all cannabis-related product located at the Facility and surrender its cannabis licenses. Accordingly, the business was no longer operating as a going concern.

In consideration of the above, on July 20, 2023, Ayanda's legal counsel (Aird & Berlis LLP) wrote to the Purchaser to, among other things, advise that Ayanda was unable to fund continuing operations and that the Company was non-compliant with the Licences. In the circumstances, and with the Company's understanding that the Licences held limited, if any value, Ayanda also notified the Purchaser that the Company will be taking immediate steps to destroy all cannabis product located at the Facility and surrender the Licences.

On August 25, 2023 (the “**Date of Bankruptcy**”), the Court issued an Order that, among other things, annulled the Proposal, deemed Ayanda bankrupt and appointed Richter as trustee (the “**Bankruptcy Trustee**”) of Ayanda's bankrupt estate, subject to affirmation by creditors at the first meeting of creditors.

The activities of the Bankruptcy Trustee since the Date of Bankruptcy have primarily consisted of statutory duties in accordance with the provisions of the BIA.

## **FINANCIAL POSITION/ASSETS**

As detailed in Ayanda's Statement of Affairs, the estimated realizable value of the Company's assets is unknown as of today's date.

As at the Date of Bankruptcy, Ayanda's only realizable assets are the Company's lease for the Facility (the “**Ground Lease**”), the Facility itself and the Company's equipment. The Facility, and the approximately

two acres of land upon which the Facility is situated, is leased from Luke & Blanche Sioen Farms Ltd. (the “**Land Owner**”), a company controlled by the former Chief Executive Officer (and a director) of Ayanda. The Ground Lease dated June 1, 2022, has a ten-year term with an option to extend for two additional five-year terms. Annual rent payable is \$400 (plus HST). Pursuant to the Ground Lease, the tenant is also responsible for payment of utilities and property taxes, and all other costs and expenses associated with the Facility. When the term of the Ground Lease expires, the Building and Improvements (each as defined in the Ground Lease) become the property of the tenant.

## **SECURED CREDITORS**

According to the Company's Statement of Affairs, the Company's only secured creditor is Michael Sioen Farms Ltd. (“**MSFL**”), which is owed approximately \$500,000 as at the Date of Bankruptcy.

As the Proposal provided for the MSFL secured claim to be paid by the Purchaser pursuant to a direction from the Company to the Purchaser, the Proposal Trustee did not solicit a security opinion from its legal counsel. The Proposal Trustee (with the assistance of its legal counsel) did, however, review the underlying loan and security documents provided by Ayanda evidencing the MSFL secured loan. Based on this review, the Proposal Trustee was satisfied that the loan and security documents were valid, and the Company received the cash amounts referred to in the loan agreements.

The Bankruptcy Trustee intends to discuss the MSFL secured claim with the Inspectors, if any, appointed at the first meeting of creditors.

## **SECURITY FOR UNPAID WAGES – S.81.3 CLAIMS**

The Bankruptcy Trustee is in the process of reviewing the Company's records to determine what, if any, amounts are owed to the Company's former employees for wages and vacation pay that would qualify as preferred claims pursuant to section 81.3 of the BIA.

The Bankruptcy Trustee, where applicable, will comply with the requirements of the *Wage Earner Protection Program Act*.

## **PREFERRED CREDITORS**

The Company's Statement of Affairs indicates that, as at the Date of Bankruptcy, there is one known preferred creditor in respect of unpaid wages due to a former employee in the amount of \$2,000.

## **UNSECURED CREDITORS**

The Company's Statement of Affairs indicates that there are three unsecured creditors with claims totalling \$16,948.50 (excluding any amounts potentially owing to the Company's former employees in respect of termination and severance pay).

## COTINGENT LIABILITIES

The Company's Statement of Affairs indicates that there is one contingent liability totalling \$1,148,618.20 filed by Shaun Ramdhany, one of the founders of Ayanda (the "**Ramdhany Contingent Claim**"). The Ramdhany Contingent Claim, which was filed in Ayanda's proposal proceedings, claims that Mr. Ramdhany is owed approximately \$1,150,000, including approximately \$180,000 on account of an alleged share redemption and a further \$965,000 for alleged services provided to the Company pursuant to an oral contract.

Following a comprehensive review of the Ramdhany Contingent Claim, the Proposal Trustee issued a notice disallowing most of the Ramdhany Contingent Claim. Based on its review, the Proposal Trustee was of the view that Mr. Ramdhany was entitled to a portion of his share redemption claim (\$646.14). The remaining portion of his share redemption claim and his entire claim for services provided to the Company was disallowed by the Proposal Trustee (the "**Disallowance**").

Mr. Ramdhany has appealed the Disallowance by filing a Notice of Motion within the time period prescribed by the BIA (the "**Appeal**") but has otherwise not filed any additional information/documentation in support of the Appeal.

The Bankruptcy Trustee intends to discuss the Ramdhany Contingent Claim, the Disallowance, and the Appeal with the Inspectors, if any, appointed at the first meeting of creditors.

## CLAIMS FILED

As at 10:00 a.m. on the date of this report, the Trustee has recorded Proof of Claims filed, as follows:

	Claims Filed (#)	Amount (CAD)	Proxies in Favour of Trustee (#)	Amount (CAD)
Secured	-	-	Nil	Nil
Preferred	1	2,000.00	Nil	Nil
Unsecured	3	41,237.14	Nil	Nil
Other	1	1,148,618.20	Nil	Nil
<b>TOTAL</b>	<b>5</b>	<b>\$ 1,191,855.34</b>	<b>Nil</b>	<b>\$ Nil</b>

Note: The above schedule includes claims filed with the Proposal Trustee in Ayanda's Proposal proceedings.

## PREFERENCE PAYMENTS AND TRANSFERS UNDER VALUE

During the Company's Proposal proceedings, the Proposal Trustee performed a preliminary review of the Company's financial records, including bank statements for the 12-month period immediately preceding the NOI Filing Date (the "**Review Period**") to identify: (i) any disbursements greater than \$25,000 that may be considered preferences pursuant to the BIA, and (ii) any transactions that may be considered transfers at undervalue pursuant to the BIA. In addition, the Proposal Trustee made inquiries with certain

members of Ayanda's management, including individuals with knowledge of the Company's day-to-day financial transactions, to discuss the potential existence of any such transactions.

Based on its review of the Company's financial records and discussions with Ayanda's management, the Proposal Trustee did not identify any transactions during the Review Period that appeared to be at undervalue or that would otherwise be reviewable in accordance with sections 95 to 101 of the BIA.

The Bankruptcy Trustee intends to discuss the scope of any further review of the Company's financial records with the Inspectors, if any, appointed at the first meeting of creditors.

## **OTHER**

As noted above, following the destruction of the cannabis products and plant material at the Facility and the surrender of the Licences, it appears that Ayanda's only remaining realizable assets are the Ground Lease, including the building, capital improvements, and the equipment.

Notwithstanding any standalone value to the Ground Lease, the Bankruptcy Trustee (and other interested parties) are of the view that the value of the Ground Lease, including the Building and Improvements, would be maximized by the inclusion of the approximately two acres of land upon which the Facility is situated as part of any sale process undertaken in respect of the Ground Lease.

In connection with the foregoing, prior to the Date of Bankruptcy, the Land Owner provided its consent and authorization to market the real property underlying the Ground Lease as available for sale to a *bona fide* third party interested in purchasing the Facility.

The Bankruptcy Trustee intends to discuss any potential process to market/sell the Ground Lease (including the Facility and underlying real property) with the Inspectors, if any, appointed at the first meeting of creditors.

Further information relating to the Company's bankruptcy proceedings may be obtained from Richter's website at: <https://www.richter.ca/insolvencycase/ayanda-cannabis-corporation/>.

Dated at Toronto, Ontario, this 14<sup>th</sup> day of September, 2023.

## **RICHTER INC.**

in its capacity as Trustee of the estate of  
Ayanda Cannabis Corporation  
and not in its personal or corporate capacity



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Adam Sherman, MBA, CIRP, LIT