

## THE CANADIAN CANNABIS SECTOR: FINANCING IN DIFFICULT TIMES

By Vern DaRe and Rick Moscone

Dire predictions in the media about the "bubble bursting" or the floodgates opening for insolvencies in the Canadian cannabis sector has certainly not been helpful to those cannabis producers seeking financing. Whether these predictions are exaggerated or not, to date there have only been a handful of Canadian cannabis producers that have actually commenced insolvency proceedings. One of the first filings under the *Companies' Creditors Arrangement Act* (the "**CCAA**") by a Canadian cannabis producer was by AgMedica Bioscience Inc. and certain of its related entities ("**AgMedica**") on December 2, 2019. Although this is only a single case and CCAA filings have been far and few to date in the Canadian cannabis sector, AgMedica offers some real insight to the challenges currently faced by cannabis producers in raising capital or obtaining financing in the present market.

### Overview

AgMedica is a licensed producer of cannabis products. The Chatham, Ontario — based company generates revenues primarily by the cultivation, processing and distribution of these products. AgMedica has operations across Canada and holds two cannabis licenses. By 2019, it was clear that AgMedica was running out of cash. It tried to raise money several times throughout 2019. A planned initial public offering ("**IPO**") over the summer failed after the withdrawal of the underwriters. The company then attempted to raise approximately \$60-million in debt but that too failed in October, 2019. On December 2, 2019, AgMedica was granted protection under the CCAA. The relief included a debtor in possession ("**DIP**") loan in the principal amount of \$1 million from the initial DIP lender to cover the first 10-days of the CCAA proceedings. On its return to court on December 12, 2019, AgMedica obtained further relief including the approval of the DIP loan in the principal amount of \$7.5 million from the subsequent DIP lender.

### Some Lessons

The challenges faced by AgMedica in raising money may be instructive to other cannabis producers seeking financing during these difficult times. If these negative market conditions continue to persist, the availability of financing for the cannabis sector may become increasingly limited and expensive.

If a commercial funding solution is not available for a licensed cannabis producer, a CCAA filing and possible DIP loan may be an option. The CCAA option for the cannabis industry raises its own issues including the costs of DIP financing and the "priming" of existing security under DIP charges. In addition, although it was not necessary to address the issue in the AgMedica matter at this time, the uncertainty as to whether cannabis licences can be



[Vern DaRe](#)  
Partner

t: 416.941.8842  
[vdare@foglers.com](mailto:vdare@foglers.com)



[Rick Moscone](#)  
Partner

t: 416.941.8858  
[moscone@foglers.com](mailto:moscone@foglers.com)

Fogler, Rubinoff LLP  
Lawyers  
77 King Street West  
Suite 3000, PO Box 95  
TD Centre North Tower  
Toronto, ON M5K 1G8

t: 416.864.9700  
f: 416.941.8852  
[foglers.com](http://foglers.com)

sold or assigned in CCAA proceedings is a potential significant hurdle.

Fogler, Rubinoff LLP provides a full range of legal services to participants in the cannabis industry. We represented the initial DIP lender in the AgMedica CCAA proceedings.