

**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 HARTE GOLD CORP., 13699404 CANADA INC.
AND 13699447 CANADA INC.**

Applicants

FACTUM OF THE MONITOR

Motion for CCAA Distribution and Termination Order
(Returnable February 15, 2022)

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Joseph Pasquariello LSO#: 38390C
jpasquariello@goodmans.ca

Christopher G. Armstrong LSO# 55148B
carmstrong@goodmans.ca

Andrew Harmes LSO#: 73221A
aharmes@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for the Monitor

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PART I – INTRODUCTION

1. Harte Gold Corp. (“**Harte**” or the “**Company**”) is a gold mining company which has a single operational mine located in Northern Ontario within the Sault Ste. Marie Mining Division, approximately 30 km north of the town of White River (the “**Sugar Zone Property**”).¹
2. On December 7, 2021, Harte sought and obtained an Initial Order (as amended and restated pursuant to an order of the Court dated December 20, 2021, the “**ARIO**”) under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”), among other things, (i) granting a stay of proceedings (the “**Stay of Proceedings**”) in favour of Harte, (ii) appointing FTI Consulting Canada Inc.

¹ Capitalized terms not defined herein have the meanings given to them in the Third Report of the Monitor dated February 8, 2022 (the “**Third Report**”). Unless otherwise stated, all monetary amounts are expressed in Canadian dollars.

(“**FTI**”) as the monitor of the Company (the “**Monitor**”), and (iii) authorizing Harte to enter into the DIP Facility Loan Agreement (the “**DIP Financing Agreement**”) dated December 6, 2021 between Harte, as borrower, and 1000025833 Ontario Inc. (“**833 Ontario**”), as lender. 13699404 Canada Inc. (“**ResidualCo. 1**”) and 13699447 Canada Inc. (“**ResidualCo. 2**” and, collectively with ResidualCo. 1 and Harte, the “**Applicants**”) were added as applicants in these CCAA proceedings pursuant to the ARVO (as defined below).

3. Prior to commencing these CCAA proceedings, Harte, with the assistance of FTI, conducted an extensive strategic review process to explore a broad range of potential options and alternatives that could improve its liquidity. As a result of such efforts, on the day prior to its CCAA application, the Company entered into a subscription agreement with 833 Ontario, its primary first-ranking secured creditor, pursuant to which 833 Ontario agreed to act as a “stalking horse bidder” in a sale and investment solicitation process (the “**SISP**”) to be undertaken within the CCAA proceedings. On December 20, 2021, this Court granted a SISP Approval Order, among other things, approving the SISP and Harte’s execution of an Amended and Restated Subscription Agreement dated December 15, 2021 (the “**Subscription Agreement**”) with 833 Ontario to be used as the “stalking horse bid” in the SISP.

4. On January 28, 2022, following the conclusion of the SISP, this Court granted an Approval and Reverse Vesting Order (the “**ARVO**”), among other things, approving the Second Amended and Restated Subscription Agreement dated January 19, 2022 (the “**SARSA**”) between (i) 833 Ontario, as investor, and 833 Ontario’s sole shareholder, Silver Lake Resources Limited, as guarantor, and (ii) Harte (the transactions contemplated therein being the “**Transaction**”), which amended and restated the Subscription Agreement to incorporate certain improved terms.

5. The Transaction is in part a “credit bid” of in excess of US\$65 million of priority indebtedness that is structured as a “reverse vesting” transaction pursuant to which 833 Ontario will become the sole shareholder of Harte, and all excluded contracts, excluded assets and excluded liabilities will be transferred and “vested out” to ResidualCo. 1 and ResidualCo. 2 (collectively, the “**ResidualCos**”), who will subsequently be amalgamated as part of the steps for completing the Transaction and thereafter assigned into bankruptcy. Pursuant to or in connection with the SARSA, Harte’s second-lien debt of approximately US\$34 million (i.e., the “Appian Indebtedness”, as defined below) will be paid in full and the vast majority of Harte’s employees and contracts will be retained. In addition, all trade claims and “Cure Costs” in relation to retained contracts will be assumed or paid in full (subject to the \$10 million cap on pre-filing trade claims set forth in the SARSA) and Harte will also retain its existing offtake and royalty agreements. The value of the Transaction pursuant to the SARSA is estimated to be approximately \$200 million.

6. Harte, with the assistance of the Monitor, is working diligently with 833 Ontario towards an anticipated closing of the Transaction on or about February 18, 2022.

7. In light of the current circumstances, this motion is brought by the Monitor seeking an Order (the “**CCAA Distribution and Termination Order**”) that, among other things:

- (a) authorizes the Monitor to make certain distributions from the Cash Consideration (as defined below) to be received and held by the Monitor in connection with the Transaction;

- (b) approves the activities and reports of the Monitor, and the fees and disbursements of the Monitor and its counsel, including the estimate of fees to be incurred through the completion of these CCAA proceedings;
- (c) provides for the termination of these CCAA proceedings and the discharge of FTI as the Monitor as at the CCAA Termination Time (as defined below); and
- (d) in the event that the CCAA Termination Time has not occurred on or before the expiry of the Stay of Proceedings on March 29, 2022 (the “**Stay Period**”), extends the Stay Period until the earlier of (i) the CCAA Termination Time; and (ii) such other date as this Court may order.

8. For the reasons set out herein, the Monitor respectfully submits that the relief requested is in the best interests of the Company and its stakeholders and that it is fair, reasonable and appropriate for the Court to grant the requested CCAA Distribution and Termination Order.

PART II – SUMMARY OF THE FACTS

9. The facts underlying this motion are described in detail in the Third Report and in the various affidavits filed by the Company in these proceedings.

A. APPROVAL OF CERTAIN DISTRIBUTIONS

10. The SARSA provides for, among other things, a cash payment (the “**Cash Consideration**”) to be received and held by the Monitor in an amount required to pay: (i) all claims ranking in priority to, or *pari passu* with, the amounts owing to the lenders under the BNPP Credit Agreement (including, for greater certainty, all professional fees, costs and expenses secured by

the Administration Charge (as defined in the ARIO), but excluding the amounts owing under the DIP Financing Agreement), plus (ii) all properly perfected and secured amounts and obligations owing by Harte under the Appian Facility Agreement (as defined in the SARSA) (the “**Appian Indebtedness**”), plus (iii) the amounts necessary to fund the completion of the CCAA proceedings and the bankruptcy of the ResidualCos upon completion of the Transaction.

Third Report at para 14; Motion Record, Tab 2 [[CL p. E691;E16](#)].

11. Based on discussions with Harte and its counsel and its review of the Ontario personal property security registry and title searches of Harte’s leasehold and freehold property in Ontario, the Monitor is aware of three potential claims that rank in priority to, or *pari passu* with, the amounts owing to the lenders under the BNPP Credit Agreement (excluding, for the avoidance of doubt, those claims that are secured by the Charges (as defined in the ARIO)). Those claims relate to three mortgages in respect of real property owned by Harte. Based on discussions with Harte, the Monitor understands that two of those mortgages were repaid in full by Harte prior to the commencement of the CCAA proceedings, although discharges have yet to be registered. With respect to the third mortgage (the “**White River Mortgage**”), the Monitor is informed by Harte that \$105,000 of principal remains owing.

Third Report at para 15; Motion Record, Tab 2 [[CL p. E692;E17](#)].

12. AHG Jersey Limited (collectively, with its affiliates, “**Appian**”) is the Company’s second-ranking pre-filing secured creditor in respect of the Appian Indebtedness. The Appian Indebtedness is currently estimated to be approximately US\$34 million.

Third Report at para 16; Motion Record, Tab 2 [[CL p. E692;E17](#)].

13. The Monitor's counsel has reviewed the loan and security documentation relating to the White River Mortgage and the Appian Indebtedness and, subject to standard assumptions and qualifications, has concluded that the security documentation is valid and enforceable.

Third Report at para 17; Motion Record, Tab 2 [[CL, p. E692:E17](#)].

14. Accordingly, the Monitor is seeking authorization in the CCAA Distribution and Termination Order, from and after the closing of the Transaction, to make distributions from the Cash Consideration in payment of (i) the White River Mortgage, and (ii) the Appian Indebtedness (the "**CCAA Distributions**").

Third Report at para 16; Motion Record, Tab 2 [[CL, p. E692:E17](#)].

15. Notice of this motion seeking the proposed CCAA Distribution and Termination Order has been provided to the service list in these CCAA proceedings, which includes the Ontario and federal taxation authorities, and all parties with real and personal property registrations against Harte or its property.

Affidavit of Service of Andrew Harmes sworn February 9, 2022.

B. TERMINATION OF THE CCAA PROCEEDINGS AND DISCHARGE OF THE MONITOR

16. The proposed CCAA Distribution and Termination Order provides that the CCAA proceedings will be terminated and FTI discharged as Monitor upon the service by the Monitor of a certificate (the "**Termination Certificate**") upon the service list in these CCAA proceedings (the "**CCAA Termination Time**") certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with these CCAA proceedings have been completed.

Third Report at para 28; Motion Record, Tab 2 [[CL, p. E695:E20](#)].

C. EXTENSION OF THE STAY PERIOD

17. The Stay Period currently expires on March 29, 2022. Pursuant to the proposed CCAA Distribution and Termination Order, the Monitor is seeking an extension of the Stay Period, in the event that the Termination Certificate is not served by the Monitor on or before March 29, 2022, to and including the earlier of (i) the CCAA Termination Time, and (ii) such other date as the Court may order.

Third Report at para. 29; Motion Record, Tab 2 [[CL, p. E695:E20](#)].

18. The Applicants have been acting and continue to act in good faith and with due diligence in these CCAA proceedings, including to work towards completing the Transaction.

Third Report at para. 32; Motion Record, Tab 2 [[CL, p. E695:E20](#)].

D. APPROVAL OF THE ACCOUNTS OF THE MONITOR AND ITS COUNSEL

19. The proposed CCAA Distribution and Termination Order provides for the approval of the fees and disbursements of the Monitor and its counsel incurred during the period December 7, 2021, through to and including February 6, 2022 (the “**Period**”), and the fees and disbursements of the Monitor and its counsel to be incurred in completing the remaining activities in connection with these CCAA proceedings, in an amount not to exceed \$400,000 in the aggregate (excluding HST).

Draft CCAA Distribution and Termination Order, paras. 9-11; Motion Record, Tab 3 [[CL, p. E:796:E121](#)].

20. In support of this motion, the Monitor delivered its Third Report, which attaches affidavits from representatives of the Monitor and its counsel that provide a comprehensive listing of the accounts sought to be passed, including each account (redacted for matters of privilege) and

summary tables identifying the individuals professionals who have worked on this matters, their hourly billing rates and total number of hours worked, among other information.

Affidavit of Nigel Meakin sworn February 8, 2022 (the “**Meakin Affidavit**”); Motion Record, Tab 2A [[CL, p. E698;E23](#)].

Affidavit of Joseph Pasquariello sworn February 8, 2022 (the “**Pasquariello Affidavit**”); Motion Record, Tab 2B [[CL, p. E729;E54](#)].

21. In addition, the activities of the Monitor and its counsel in these CCAA proceedings have been described in the two other reports of the Monitor filed in these proceedings.

First Report of the Monitor dated December 15, 2021 [[CL, p. E1](#)].

Second Report of the Monitor dated January 24, 2022 (the “**Second Report**”) [[CL, p. E227;E1](#)].

22. The accounts of the Monitor and its counsel for the Period total approximately \$1.25 million, exclusive of applicable taxes.

Third Report at paras. 21-22; Motion Record, Tab 2 [[CL, p. E693;E18](#)].

23. Although approval of the fees of the professionals are for the Court, the evidence is that the Monitor and its counsel billed amounts at hourly rates consistent with the relevant market and that they, in their professional judgment, considered fair and reasonable in the circumstances of these proceedings.

Meakin Affidavit, at paras. 13-14; Motion Record, Tab 2A [[CL, p. E700;E25](#)].

Pasquariello Affidavit, at para. 8; Motion Record, Tab 2B [[CL, p. E731;E56](#)].

PART III - ISSUES AND THE LAW

24. The issues to be considered on this motion are whether the Court should:

- (a) approve the CCAA Distributions;

- (b) authorize the termination of the CCAA proceedings and the discharge of the Monitor as at the CCAA Termination Time;
- (c) in the event that the Termination Certificate is not served by the Monitor on or before March 29, 2022, extend the Stay Period to the earlier of (i) the CCAA Termination Time, and (ii) such other date as this Court may order; and
- (d) approve the reports and activities of the Monitor, and the fees and disbursements of the Monitor and its counsel, including the estimate of the fees to be incurred through the completion of these CCAA proceedings.

A. AUTHORIZATION TO MAKE THE CCAA DISTRIBUTIONS IS APPROPRIATE

25. As described above, the proposed CCAA Distribution and Termination Order would authorize the Monitor, from and after the closing of the Transaction, to make the CCAA Distributions from the Cash Consideration.

Draft CCAA Distribution and Termination Order at para. 3; Motion Record, Tab 3 [\[CL, p. E794;E119\]](#).

26. It is well established that the Court has the authority to approve distributions to creditors in the course of a CCAA process. This Court has noted that courts often order payments to creditors outside of a CCAA plan.

[Nortel Networks Corp., Re](#), 2014 ONSC 4777 at paras. [53-55](#).

27. In this case, the Monitor submits that it is reasonable and appropriate for the Court to exercise its discretion and approve the CCAA Distributions. The Monitor's counsel has reviewed the loan and security documentation relating to the Appian Indebtedness and the White River

Mortgage, and subject to standard assumptions and qualifications, confirmed that such security documentation is valid and enforceable.

Third Report at para. 17; Motion Record, Tab 2 [[CL, p. E692;E17](#)].

28. The Monitor believes that the distribution framework set forth in the CCAA Distribution and Termination Order is appropriate in the circumstances, and provides an efficient means for the Monitor to distribute Cash Consideration from the Transaction in respect of the White River Mortgage and the Appian Indebtedness in each case in full and final satisfaction of the Applicants' liability in respect of such obligations. Accordingly, the Monitor requests that the CCAA Distributions be approved.

B. TERMINATION OF THE CCAA PROCEEDINGS

29. Once closing of the Transaction has occurred, the only known remaining activities that will be required to be undertaken in the CCAA proceedings are: (i) completion of the CCAA Distributions; (ii) the assignment in bankruptcy of the ResidualCos, as amalgamated, or each of ResidualCo. 1 and ResidualCo. 2 if their amalgamation is not completed; and (iii) the completion of the necessary statutory and administrative steps for the termination of the CCAA proceedings and the discharge of the Monitor. Accordingly, the Monitor believes it is appropriate at this time to seek authorization pursuant to the proposed CCAA Distribution and Termination Order to terminate these CCAA proceedings as at the CCAA Termination Time.

Third Report at para. 26; Motion Record, Tab 2 [[CL, p. E694;E19](#)].

30. The proposed CCAA Distribution and Termination Order also provides that FTI shall be discharged as Monitor upon the CCAA Termination Time, provided that, notwithstanding such

discharge, FTI shall have the authority to address any matters in its role as Monitor that are ancillary or incidental to these CCAA proceedings.

Draft CCAA Distribution and Termination Order at paras. 12-17; Motion Record, Tab 3 [[CL, p. E797:E122](#)].

31. It is well established that the Court may grant an Order terminating proceedings under the CCAA and discharging the Monitor appointed in the proceedings on terms similar to those sought in the proposed CCAA Distribution and Termination Order.

[9366016 Canada Inc.](#), Distribution and CCAA Termination Order granted October 28, 2016, Court File No. CV-15-10869-00CL (Ont. Sup. Ct. J. [Commercial List]).

[GolfTown Canada Holdings Inc. et al.](#), CCAA Termination Order granted March 29, 2018, Court File No. CV-16-11527-00CL (Ont. Sup. Ct. J. [Commercial List]).

32. The Monitor submits that it is appropriate for this Court to order that the CCAA proceedings shall be terminated and that FTI be discharged as Monitor as at the CCAA Termination Time because:

- (a) pursuant to the ARVO, once closing of the Transaction has occurred, Harte will cease to be a party to these CCAA proceedings and only wind-down or administrative matters will remain to be completed;
- (b) it is anticipated that the ResidualCos (either as amalgamated or individually) will file an assignment into bankruptcy shortly after the closing of the Transaction;
- (c) FTI has duly complied with its obligations and carried out its responsibilities in these CCAA proceedings;

- (d) there are no amounts owing either by Harte or the ResidualCos of the types described in subsections 6(4) through 6(6) of the CCAA; and
- (e) the proposed CCAA Distribution and Termination Order provides for an effective and appropriate process for the termination of these CCAA proceedings that will avoid the cost and time of a further motion to seek termination of these CCAA proceedings once the Transaction has closed and remaining administrative matters have been completed.

Third Report at paras. 26-28; Motion Record, Tab 2 [[CL, p. E695;E20](#)].

C. EXTENSION OF THE STAY PERIOD

33. The Stay Period currently expires on March 29, 2022. While it is expected that the Termination Certificate will be served and filed by that date, thereby triggering the CCAA Termination Time, the Monitor is requesting that the Stay Period be extended pursuant to the proposed CCAA Distribution and Termination Order in the event that the CCAA Termination Time does not occur by March 29, 2022, to and including the earlier of (i) the CCAA Termination Time, and (ii) such other date as this Court may order.

Third Report at para. 29; Motion Record, Tab 2 [[CL, p. E695;E20](#)].

34. Section 11.02(2) of the CCAA provides the Court the discretion to make an Order extending the stay granted in an initial order. Specifically, Section 11.02(2) states:

11.02(2) *Stays, etc.* – 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.

[CCAA](#), Section [11.02\(2\)](#).

35. In order to make an order pursuant to Section 11.02(2), the Court must be satisfied that:

(i) circumstances exist that make the order appropriate; and (ii) the applicant has acted, and is acting, in good faith and with due diligence.

[CCAA](#), Section [11.02\(3\)](#).

36. The Monitor submits that the extension of the Stay Period pursuant to the proposed CCAA Distribution and Termination Order is appropriate in the circumstances because, among other things:

(a) the Applicants have acted, and continue to act, in good faith and with due diligence in respect of all matters relating to these CCAA proceedings to carry out the terms of the ARIO and advance these proceedings;

(b) to the extent necessary, the extension of the Stay Period will provide the Applicants and the Monitor with the time needed to complete any post-Transaction matters that may remain to be completed after the current Stay Period expires on March 29, 2022;

- (c) if the Transaction closes on the anticipated timeline, there will be sufficient funds to complete any remaining matters in these CCAA proceedings, and if the Transaction does not close by March 29, 2022, the Applicants or the Monitor will return to the Court to address the status of the case; and
- (d) the Monitor does not believe that creditors of the Applicants will suffer any material prejudice if the Stay Period is extended on the terms proposed in the CCAA Distribution and Termination Order.

Third Report at paras 29-33; Motion Record, Tab 2 [[CL, p. E695;E20](#)].

37. Accordingly, the Monitor submits that this Court ought to extend the Stay Period in the event that the Termination Certificate has not been served by the Monitor by March 29, 2022 to and including the earlier of (i) the CCAA Termination Time, and (ii) such other date as this Court may order, as set out in the proposed CCAA Distribution and Termination Order.

D. APPROVAL OF THE ACCOUNTS OF THE MONITOR AND ITS COUNSEL

(i) Jurisdiction and Test

38. The jurisdiction of this Court to pass the accounts of the Monitor and its counsel is confirmed in the ARIO, which directs that: “the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.”

ARIO at para 30 [[CL, p. G64](#)]

39. The overarching test for assessing the fees and disbursements of the Monitor and its counsel in a CCAA proceeding is whether they are “fair and reasonable” in all of the circumstances, and are appropriate.

[*Triton Tubular Components Corp., Re* \(2006\)](#), 20 C.B.R. (5th) 278 at para. [85](#) (Ont. S.C.J. [Comm. List]) [*Triton Tubular*], quoting [*Boucher v. Public Accountants Council \(Ontario\)* \(2004\)](#), 71 O.R. (3d) 291 (C.A.).

[*Winalta Inc., Re*](#), 2011 ABQB 399 at para. [30](#) (Q.B.).

40. As noted above, the ARIO provides that the Monitor and counsel to the Monitor “shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings.” The evidence is that the Monitor and its counsel charged standard (or less than standard) hourly rates that were consistent with relevant market rates. Although this does not oust the need for the court to consider whether the fees claimed are fair and reasonable, it has been held that where standard rates have been charged under an order so directing, this is a relevant consideration supporting approval.

ARIO at para 29 [[CL, p. G63](#)]

[*Bank of Nova Scotia v. Diemer*](#), 2014 ONCA 851 at para [48](#) [*Diemer*].

[*Confectionately Yours Inc., Re* \(2002\)](#), 36 C.B.R. (4th) 200 at paras. [52-54](#) (Ont. C.A.) [*Bakemates*].

(ii) *Factors to be Considered*

41. Ontario courts have accepted the factors set out in *Belyea v. Federal Business Development Bank* as a non-exhaustive but “useful guide” to assess the fairness and reasonableness of fees and disbursements of court appointed officers. The *Belyea* factors have been endorsed by the Ontario Court of Appeal in *Bakemates* and *Diemer* and by this Court in *Nortel*.

[*Belyea v. Federal Business Development Bank* \(1983\)](#), 44 N.B.R. (2d) 248 at para. 9 (C.A.) [*Belyea*].

[Bakemates](#), supra at para. [51](#).

[Diemer](#), supra at para. [33](#).

[Re Nortel Networks Corporation et al](#), 2017 ONSC 673 at para. [14](#).

42. The *Belyea* factors relevant to the present case include the: (a) nature, extent and value of the assets being handled; (b) complications and difficulties encountered; (c) time spent; (d) court officer's knowledge, experience and skill (e) diligence and thoroughness displayed; (f) responsibilities assumed; and (g) results of the court officer's efforts.

[Belyea](#), supra at para. 9.

43. The *Belyea* factors must be considered in the context of the facts at hand. Applying the *Belyea* factors above to this case, it is clear the accounts should be approved:

- (a) The extent and value of assets in this case are significant, including in excess of \$100 million of secured debt, millions of dollars of unsecured obligations and significant royalty and offtake obligations, virtually all of which will be satisfied or retained as part of the Transaction. In addition, the Company has approximately 260 employees and operates a gold mine on the Sugar Zone Property, for which it must maintain various material permits and licenses as well as various work permits and licenses required for exploration work. The Monitor and its counsel have assisted Harte in efforts to maintain normal course operations during these CCAA proceedings while the Company (with the assistance of the Monitor and its counsel) carried out the SISF that has culminated in approval of a transaction that represents a very positive outcome for stakeholders;

- (b) These CCAA proceedings, although relatively brief, have been complex and intensive. As described in the Monitor's reports to the Court, the Transaction is the culmination of an extensive pre-filing strategic review process and Court-approved SISP, over which Harte's two main secured lenders, 833 Ontario and Appian, submitted competing offers at various stages to acquire the Company's business and assets, which competition led to material improvements in transaction terms on a number of occasions. In particular, before entering into the SARSA and obtaining the ARVO, Harte entered into a subscription agreement with 833 Ontario in the period immediately prior to the CCAA application and, following submission of a competing stalking-horse bid from Appian, the improved and amended Subscription Agreement on the eve of the "comeback" hearing. Harte also received a "Superior Bid" from Appian in the SISP, which ultimately led to 833 Ontario making certain improvements to its stalking horse bid and the parties entering into and obtaining Court-approval of the SARSA. The Monitor and its counsel played critical roles throughout the Company's negotiations with 833 Ontario and Appian, and in carrying out the SISP, all of which have contributed to maximize value of Harte and its business for the benefit of the Company and its stakeholders;
- (c) The Monitor and its counsel are experienced restructuring professionals who have been integral in these CCAA proceedings and the carrying out of the SISP and other restructuring activities, and have at all times demonstrated diligence and thoroughness;

- (d) There is no question that the Monitor, with the assistance of counsel, carried out extensive activities during the Period. The combined billings of the Monitor and its counsel over the Period comprise a total of 1,513.7 professional hours. This scope of work involved, among other things, assisting the Company in obtaining DIP financing and developing the SISP, addressing the competing stalking-horse bids received, dealing with suppliers, creditors and other stakeholders to maintain normal course operations following the filing, the conduct of the SISP and, ultimately, the negotiation of the improved SARSA which the parties are working to close on or about February 18, 2022. In addition to the foregoing, the Monitor's powers have been enhanced to be able to cause the ResidualCos to take steps necessary to complete the Transaction and otherwise conclude these proceedings; and
- (e) The activities of the Monitor and its counsel in carrying out the SISP were integral in leading to the Transaction, which is valued at approximately \$200 million – an amount which greatly exceeds the approximately \$1.25 million of accounts (exclusive of applicable taxes) for the Monitor and its counsel for the Period – and will result in Harte continuing as a going-concern, almost all of Harte's creditors having their obligations assumed or paid in full, almost all of Harte's employees continuing their employment, and ongoing business opportunities for suppliers of goods and services to Harte's mine. The Monitor concluded in its Second Report that the Transaction provides for a vastly superior recovery for creditors as a whole as compared to a liquidation. Accordingly, the efforts of the Monitor and its counsel over the Period achieved very positive results for stakeholders.

See Second Report at paras. 24-50, 90, 99 [CL, p. [E235;E9](#) to [E244;E18](#), [E258;E32](#), [E260;E34](#)].

44. Accordingly, for the reasons set out above, a consideration of the applicable *Belyea* factors supports the approval of the remuneration of the Monitor and its counsel as being fair and reasonable.

PART IV– CONCLUSION

45. For the reasons set out above, the Monitor respectfully requests that this Court grant the CCAA Distribution and Termination Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

February 11, 2022

GOODMANS LLP

Goodmans LLP

SCHEDULE A

LIST OF AUTHORITIES

1. *Nortel Networks Corp., Re*, 2014 ONSC 4777.
2. *9366016 Canada Inc.*, Distribution and CCAA Termination Order granted October 28, 2016, Court File No. CV-15-10869-00CL (Ont. Sup. Ct. J. [Commercial List]).
3. *Golf Town Canada Holdings Inc. et al.*, CCAA Termination Order granted March 29, 2018, Court File No. CV-16-11527-00CL (Ont. Sup. Ct. J. [Commercial List]).
4. *Triton Tubular Components Corp., Re (2006)*, 20 C.B.R. (5th) 278 (Ont. S.C.J. [Comm. List]), quoting *Boucher v. Public Accountants Council (Ontario) (2004)*, 71 O.R. (3d) 291 (C.A.).
5. *Winalta Inc., Re*, 2011 ABQB 399.
6. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851.
7. *Confectionately Yours Inc., Re (2002)*, 36 C.B.R. (4th) 200 (Ont. C.A.).
8. *Belyea v. Federal Business Development Bank (1983)*, 44 N.B.R. (2d) 248 (C.A.).
9. *Re Nortel Networks Corporation et al.*, 2017 ONSC 673.

SCHEDULE B

STATUTORY REFERENCES

[COMPANIES' CREDITORS ARRANGEMENT ACT](#)
[RSC 1985, c C-36, as amended](#)

s. 11

General power of court. – 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.

s. 11.02(2)

Stays, etc. — other than initial application. – 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.

s. 11.02(3)

Burden of proof on application – 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.

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 HARTE GOLD CORP., 13699404 CANADA INC. AND 13699447 CANADA INC.

Court File No.: CV-21-00673304-00CL

Applicants

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

Proceeding commenced at Toronto

**FACTUM OF THE MONITOR
(Returnable February 15, 2022)**

GOODMANS LLP

Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Joseph Pasquariello LSO#: 38390C
jpasquariello@goodmans.ca

Christopher G. Armstrong LSO# 55148B
carmstrong@goodmans.ca

Andrew Harmes LSO# 73221A
aharmes@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for the Monitor