Court File No. _____

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.

(Applicant)

FACTUM OF THE APPLICANT
(Re: CCAA Initial Application)
(Returnable: December 7, 2021)

December 6, 2021

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PART I - OVERVIEW

1. Over the course of the past few years and, most recently, over the past several months, Harte Gold has attempted to restructure or refinance its debt obligations to address its liquidity challenges. In May 2021, Harte Gold commenced a strategic review process to explore, review and evaluate a broad range of strategic alternatives focused on ensuring its financial liquidity and to fund accelerated life-of-mine capital, including the potential restructuring of its long-term debt. As part of these initiatives, Harte Gold established a Strategic Committee and, subsequently, a Special Committee (formed of independent directors) to support management in evaluating all strategic alternatives, and in navigating through the strategic review process. Harte Gold also initiated a sale and investment solicitation process as part of which Harte Gold solicited offers from potentially interested parties (the "**Pre-Filing Strategic Process**") with the assistance of FTI.

2. On December 6, 2021, after having engaged with certain interested parties, including in the context of the Pre-Filing Strategic Process, and evaluating the various alternatives available to the Company with the assistance of financial and legal advisors, Harte Gold determined that the best path to maximize value for stakeholders and preserve the Company as a going-concern was to enter into the Stalking Horse Bid with 833 Ontario, as the Stalking Horse Bidder. The Stalking Horse Bid provides significant certainty for Harte Gold and its stakeholders when entering these CCAA Proceedings while also allowing Harte Gold to conduct the SISP in accordance with the

SISP Procedures in order to, ultimately, implement the highest value or otherwise best available transaction in respect of its business and/or assets. The Stalking Horse Bid or any other higher or better transaction will facilitate a restructuring of the Company's capital structure and allow for much needed capital investment in the Company's primary mining project – the Sugar Zone Property (as defined below). In connection with these CCAA Proceedings, the Company has also secured a DIP Facility with 833 Ontario, as DIP Lender, that will allow the Company to maintain its operations while it conducts the SISP under the supervision of the proposed Monitor and this Court.

3. This factum is filed in support of the first day initial order (the "**Initial Order**") sought by Harte Gold in connection with its initial application (the "**Application**") under the CCAA. The Applicant will file a separate factum on the comeback motion (the "**Comeback Motion**") addressing the relief sought in the proposed Amended and Restated Initial Order and an order approving the proposed SISP.

PART II - THE FACTS

4. The facts with respect to this motion are more fully set out in the affidavit of Frazer Bourchier sworn December 6, 2021 (the "**Bourchier Affidavit**"). Capitalized terms used within this Factum but not otherwise defined have the meanings ascribed to them in the Bourchier Affidavit.

A. Overview of Business and Operations

5. Harte Gold is a public company incorporated under the *Business Corporations Act* (Ontario), which has its head office in Toronto, Ontario and has its shares publicly traded on the Toronto Stock Exchange and Frankfurt Stock Exchange along with being traded over-the-counter. Harte Gold's sole operation is a gold mining operation (the "**Sugar Zone Mining Operation**") located in northern Ontario, within the Sault Ste. Marie Mining Division and approximately 30 km north of the town of White River (the "**Sugar Zone Property**"), which Sugar Zone Mining Operation produces gold bullion. Harte Gold has no subsidiaries.

Bourchier Affidavit at paras. 8-9, 17-18, Application Record, Tab 7.

6. Harte Gold sells approximately 15% its gold production into the market at spot related prices, and approximately 51% of its gold production is sold pursuant to certain offtake Agreements further described in the Bourchier Affidavit (collectively, the "**Offtake Agreements**"), which each provide for a pricing formula that allows the purchasers thereunder to select between certain specific prices quoted by the London Bullion Market Association (the "**LMBA**") within a period commencing three business days before and ending three business days after a given delivery date. In addition, There are three (3) net smelter royalties ("**NSR**") associated with the Sugar Zone Property, as described in the Bourchier Affidavit.

Bourchier Affidavit at paras. 19-20, 22, 30, Application Record, Tab 7.

B. Employees

7. In order to conduct the Sugar Zone Mining Operations, as at the date of the Bourchier Affidavit, Harte Gold had a total of 260 employees on payroll, as well as 19 employees retained through various agencies. None of these employees are unionized or subject to a collective bargaining agreement

Bourchier Affidavit at paras. 34-35, Application Record, Tab 7.

8. At the time of the Bourchier Affidavit, Harte Gold is current in the payment of the wages of its employees and intends to remain current until the closing of any transaction resulting from the SISP, which represents a total disbursement of approximately $1,320,000 bi-monthly, based on the average over the last three (3) months. Accrued vacation pay as at November 30, 2021 (inclusive of accruals carried over from 2020) is approximately $835,000. Harte Gold intends to pay out all accrued vacation pay on December 15, 2021, in accordance with the existing Company policy.

Bourchier Affidavit at para. 36, Application Record, Tab 7.

C. Capital Structure

9. Based on the unaudited interim financial statements for the three (3) and nine (9) month period ending on September 30, 2021 (the "**2021 Interim Financial Statements**"), Harte Gold's assets had a net book value of approximately $163,852,000 and its liabilities had a net book value of approximately $166,107,000. As detailed below, Harte Gold's primary creditors and who hold significant portions of Harte Gold's debt are 833 Ontario, as assignee of BNPP, and Appian.

Bourchier Affidavit at paras. 41-44, Application Record, Tab 7.

(i) The BNPP Debt Facilities

10. On June 10, 2019, Harte Gold and BNPP entered into a credit agreement (as amended, the "**Original BNPP Credit Agreement**"), pursuant to which a revolving and a non-revolving term credit facility (the "**Original BNPP Debt Facilities**") were made available to Harte Gold. On August 28, 2020, Harte Gold, as borrower, and BNPP, as lender, entered into an amended and restated credit agreement (as amended, the "**Amended and Restated BNPP Credit Agreement**" and collectively with the Original BNPP Credit Agreement, the "**BNPP Credit Agreement**"), in order to amend and restate the provisions of the Original BNPP Agreement and establish credit facilities in favour of Harte Gold (the "**Amended and Restated BNPP Debt Facilities**" and collectively with the Original BNPP Debt Facilities, the "**BNPP Debt Facilities**").

Bourchier Affidavit at paras. 47-48, Application Record, Tab 7.

11. Harte Gold's obligations under the BNPP Credit Agreement are secured by a first ranking security interest granted on all of Harte Gold's present and future assets, property and undertaking.

Bourchier Affidavit at paras. 51, 56, Application Record, Tab 7.

12. The BNPP Credit Agreement has been amended several times, including to provide for a deferral of some of Harte Gold's debt repayment obligations. In addition, on July 30, 2021, Harte Gold and BNPP entered into a forbearance agreement (the "**BNPP Forbearance Agreement**")

pursuant to which BNPP agreed to forbear from exercising its rights and remedies under the BNPP Credit Agreement as a result of certain Defaults or Events of Default that were expected to occur under the BNPP Credit Agreement. The BNPP Forbearance Agreement has been amended on several occasions, including, most recently, on November 30, 2021 to extend the forbearance period to December 6, 2021.

Bourchier Affidavit at paras. 52-54, Application Record, Tab 7.

13. On November 19, 2021, BNPP, as assignor, entered into an Assignment Agreement (the "**BNPP Assignment Agreement**") with Cue Minerals Pty Ltd. ("**Cue Minerals**"), a wholly owned subsidiary of Silver Lake, on behalf of 833 Ontario, pursuant to which BNPP sold and assigned to Cue Minerals a 100% interest in and to all of BNPP's rights and obligations under the BNPP Credit Agreement as it relates to the BNPP Debt Facilities, as well as all of BNPP's rights and obligations as lender under all of the Credit Documents (as defined in the BNPP Credit agreement) as they relate to the BNPP Debt Facilities. However, As set forth further below, the gold hedging agreements as between Harte Gold and BNPP were *not* assigned to Cue Minerals and BNPP remains party to those agreements as the administrative and technical agent thereunder. Subsequently, Cue Minerals transferred its rights and obligations under the BNPP Assignment Agreement to 833 Ontario (in its capacity as lender under the BNPP Debt Facilities and related agreements, the "**Pre-Filing First Secured Lender**").

Bourchier Affidavit at para. 55, Application Record, Tab 7.

14. As at the date of Harte Gold's Initial Application, the BNPP Debt Facilities are fully drawn and an aggregate amount of US$63,000,000, in principal, remains outstanding under the BNPP Credit Agreement.

(ii) The Appian Financing

15. On July 14, 2020, Harte Gold entered into a financing agreement (as amended by an amending agreement dated August 28, 2020, the "**Appian Financing Agreement**") with ANR

Investments 2 B.V. ("**ANR 2**"), an affiliate of Appian. On August 28, 2020, Harte Gold entered into a facility agreement (the "**Appian Facility Agreement**") with another affiliate of Appian, AHG Jersey Limited ("**AHG**" and collectively with Appian and ANR 2, the "**Appian Parties**").

Bourchier Affidavit at paras. 57-58, Application Record, Tab 7.

16. Pursuant to the Appian Financing Agreement and the Appian Facility Agreement, the Appian Parties agreed to provide Harte Gold with, financing up to US$30 million (the "**Appian Financing**"), including, *inter alia*, a US$18.5 million non-revolving credit facility (the "**Appian Facility**"), to facilitate a restart of the Sugar Zone Mining Operation.

Bourchier Affidavit at para. 59, Application Record, Tab 7.

17. Harte Gold's obligations under the Appian Facility Agreement are secured by a second ranking security interest granted in favour of Appian on all of Harte Gold's present and future assets, property and undertaking.

Bourchier Affidavit at paras. 65-66, Application Record, Tab 7.

18. As at the date of Harte Gold's Initial Application, the Appian Facility was fully drawn and an aggregate amount of US$28 million, in principal, remains outstanding in respect thereof.

Bourchier Affidavit at paras. 63, 67, Application Record, Tab 7.

D. The CCAA Entities' Financial Difficulties

19. As previously discussed, as a result of the COVID-19 pandemic, in March 30, 2020 Harte Gold temporarily suspended its mining operations for four months to preserve the health and safety of its workforce and the surrounding communities. Harte Gold's suspension of its mining operations negatively impacted Harte Gold's liquidity position as it was required to additional unexpected financing to restart its operations and continue as a going concern.

Bourchier Affidavit at paras. 85-86, Application Record, Tab 7.

20. Harte Gold has also experienced numerous operational difficulties, including workforce shortfalls, poor condition of mobile equipment, longer lead times in the delivery of critical components and required changes to the mining plan. All of these difficulties have negatively impacted Harte Gold's ability to produce gold at its desired rate, resulting in a revenue shortfall from its projections of about $22 million for 2021.

Bourchier Affidavit at para. 87, Application Record, Tab 7.

21. Harte Gold maintains a mostly fixed operating cost base and therefore has been unable to reduce its expenses to match its shortfall in revenue. In addition, to only keep its mine operational, Harte Gold is required to expend significant ongoing capital. All the while Harte Gold faces significant debt repayment obligations. Harte Gold's decline in revenue and its inability to flexibly reduce its costs accordingly has caused Harte Gold to face severe liquidity issues.

Bourchier Affidavit at paras. 88-89, Application Record, Tab 7.

E. The Pre-Filing Strategic Process

22. In response to the above challenges and after undertaking various efforts in an attempt to improve the Applicant's liquidity situation as described in the Bourchier Affidavit, Harte Gold engaged in a strategic review of its alternatives with the advice and guidance of its legal and financial advisors.

Bourchier Affidavit at para. 90, Application Record, Tab 7.

23. In May of 2021, Harte Gold engaged Scotiabank to assist in generating and evaluating various financing and strategic alternatives with potential investors as well as a U.S. based debt advisor to evaluate potential debt financing solutions. On June 8, 2021, Harte Gold's board of directors established a strategic committee (the "**Strategic Committee**") to oversee, evaluate and review possible transactions and to bring forward its recommendations to Harte Gold's board of directors.

Bourchier Affidavit at paras. 91-92, Application Record, Tab 7.

24. In late June 2021, Harte Gold, with the assistance of FTI Consulting Inc. ("**FTI**" or the "**Proposed Monitor"**), commenced a formal sale and investment solicitation process and in this context, on July 19, 2021, Harte Gold's board of directors also established a special committee (the "**Special Committee**") composed of independent directors, to assist management in navigating through the Pre-Filing Strategic Process.

Bourchier Affidavit at para. 93, Application Record, Tab 7.

25. Harte Gold and financial advisor, FTI, assembled a list of approximately 241 potential buyers and investors (the "**Prospective Bidders**") who were sent a its solicitation package along with 5 other parties that contacted either Harte Gold or FTI. Twenty-eight (28) Prospective Bidders were granted access to a data room; four parties submitted non-binding indicative bids by August 13, 2021, which was the deadline to submit non-binding bids (the "**NBIO Bid Deadline**"). Following the NBIO Bid Deadline, Harte Gold and FTI engaged in discussions with interested parties with the objective of securing a final value-maximizing bid for Harte Gold's assets. However, no binding offers were submitted. The timeline and details of the Pre-Filing Strategic Process are further outlined in the Bourchier Affidavit.

Bourchier Affidavit at paras. 94-95, Application Record, Tab 7.

26. On November 19, 2021, Cue Minerals (now 833 Ontario), who had been assigned the BNPP Credit Agreement, advised Harte Gold and FTI of its interest in acquiring Harte Gold's business and operations by way of a credit-bid. On November 22, 2021, after the issuance of a press release by Harte Gold announcing the assignment of BNPP's rights and obligations under the BNPP Credit Agreement and related Credit Documents (as defined thereunder) to Cue Minerals, Harte Gold received an offer from the Appian Parties to acquire its business and operations, as well as an offer to provide it with interim financing.

Bourchier Affidavit at paras. 96-97, Application Record, Tab 7.

As such, Harte Gold and FTI informed both Cue Minerals (now 833 Ontario) and the Appian Parties (and their respective advisors) that: (a) Given the circumstances, and in order to maximize the value of its business and assets, Harte Gold believed that, notwithstanding the Pre-Filing Strategic Process, it would be appropriate to undertake a further brief sale and investment solicitation process (i.e. the SISP) under the supervision of this Court with the benefit of a "stalking horse bid" to establish a baseline consideration for Harte Gold's business and assets; (b) Interim financing would be required to fund, *inter alia*, continued operations, the SISP and the CCAA Proceedings; and (c) Given Harte Gold's liquidity issues, time was of the essence.

27. As both Cue Minerals (now 833 Ontario) and Appian expressed a desire to become the stalking horse bidder and DIP lender in these CCAA Proceedings, Harte Gold, with assistance of its financial and legal advisors, engaged in parallel negotiations with 833 Ontario and Appian on both a proposed stalking horse bid and DIP facility. The competitive nature of the negotiations led to both 833 Ontario and Appian improving on their initial proposals. Throughout the arm's length negotiations Harte Gold attempted to secure the best terms possible from each of the parties in respect of both their stalking horse bid and DIP financing proposal.

28. On December 6, 2021, after arm's length negotiations between the parties, and consideration of the proposals from the parties with the assistance of financial and legal advisors, Harte Gold decided the Stalking Horse Bid and interim financing proposals from 833 Ontario represented the best bid and financing in the circumstances.

Bourchier Affidavit at para. 113, Application Record, Tab 7.

PART III - ISSUES

29. The issues before this Court, as addressed below, are whether:

(a) Harte Gold meets the criteria for, and should be granted, protection under the CCAA, namely by way of a stay of proceedings;

(b) FTI should be appointed Monitor in these CCAA Proceedings;

(c) the requested Administration Charge and Directors' Charge should be granted;

(d) the DIP Financing Agreement should be approved and the requested DIP Lender's Charge should be granted; and

(e) the requested sealing order should be issued.

PART IV - THE LAW

A. This Court Should Grant Protection to the Applicants under the CCAA

30. The CCAA applies to a "*debtor company*" with liabilities exceeding $5 million. A "*debtor company*" is defined as, among other things, a "*company*" that is *"insolvent*" or that has committed an act of bankruptcy within the meaning of the BIA.

(i) The Applicant is a "*company*" under the CCAA whose liabilities exceed $5 million

31. A "*company*" is defined under the CCAA to include a company incorporated by or under an Act of the legislature of a province. As Harte Gold is incorporated pursuant to the OBCA, it qualifies as a "*company*" for purposes of the CCAA. Further, based on the Applicant's 2021 Interim Financial Statements, its total liabilities amount to $166,107,000, which greatly exceeds the $5 million threshold. The amounts owed under the BNPP Debt Facilities and the Appian Facility alone exceed $5 million.

Bourchier Affidavit at paras. 8, 44, 56, 67, Application Record, Tab 7.

(ii) The Applicant is insolvent

32. The insolvency of a debtor is assessed at the time of the filing of the CCAA application. The CCAA does not define "*insolvent*", but the definition of "*insolvent person*" under the BIA is commonly referenced by Courts in assessing whether an applicant is a debtor company in the context of the CCAA.

Stelco Inc. (Re), 48 C.B.R. (4th) 299 (S.C. [Commercial List]) at paras. 21-22 (CanLII) [***Stelco***].

33. In addition to the test under the BIA, it has consistently been held that a corporation is insolvent if there is a reasonably foreseeable expectation at the time of filing that there is a looming liquidity crisis that will result in the debtor company not being able to pay its debts as they become due without the benefit of a stay of proceedings.

Stelco at para. 26, cited with approval in Target Canada Co., 2015 ONSC 303 at paras. 26-27 (CanLII).

34. Harte Gold is insolvent due to the following:

(a) As demonstrated by the Cash Flow Statement, Harte Gold is unable or is expected to soon become unable to meet its obligations generally as they become due without the additional financing provided by the DIP Facility (as defined below);

(b) Harte Gold's current and long-term liabilities both exceed its current and long term assets; and

(c) Unless protection under the CCAA is granted and Harte Gold obtains interim financing, Harte Gold will likely be required to cease its operations.

Bourchier Affidavit at paras. 44, 124, Application Record, Tab 7.

35. Harte Gold is clearly facing a liquidity crisis and meets the requirements for protection under the CCAA.

(iii) The Court has jurisdiction over the Applicant

36. Section 9(1) provides that an application under the CCAA may be made to the court that has jurisdiction in the province where the debtor company has its "*head office or chief place of business*". As the Applicant is incorporated under the OBCA, its head office is located in Ontario. Additionally, the Applicant's chief place of business—the Sugar Zone Property—is located in Ontario. Accordingly, this Court has jurisdiction to hear this application for relief under the CCAA.

CCAA, s. 9(1).

Bourchier Affidavit at paras. 8, 16, Application Record, Tab 7.

B. The Relief Sought is Reasonably Necessary

37. Pursuant to s. 11.001, the relief sought on an initial application is to be limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during the initial stay period. The stated purpose of s. 11.001 is to "*limit the decisions that can be taken at the outset of a CCAA proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players*."

CCAA, s. 11.001, 11.02(1) and (3).

Lydian International Limited (Re), 2019 ONSC 7473 at paras. 22-26 (CanLII).

38. As specifically detailed below, the Applicant has worked with its advisors and the Proposed Monitor to limit the relief sought on this initial application to only the relief that is reasonably necessary in the circumstances for the continued operation of its business. In each case, the Applicant considered whether the requested relief is necessary for the immediate stabilization of their business to protect it and the interests of its various stakeholders. In cases where immediate relief is necessary, the Applicant has attempted to limit any authorizations from the Court to what is required within the proposed initial stay period and will only seek additional authorization upon a Comeback Motion to be scheduled by the Court.

39. In particular, both the Administration Charge (as defined below) and Directors' Charge (as defined below) have been limited, based upon analysis performed by the Applicant, in consultation with the Proposed Monitor, to liabilities that could arise during the initial stay period. Additionally, the authorized borrowings under the DIP Financing Agreement are limited to the amount projected to be required under the Cash Flow Statement during the initial stay period.

C. The Court Should Appoint FTI as Monitor

40. Upon the granting of a Initial Order, s. 11.7 of the CCAA requires that at the same time the Court appoint a person to monitor the business and financial affairs of the company.

CCAA at s. 11.7(1) and (2).

41. FTI is a trustee within the meaning of s. 2(1) of the BIA and is not subject to any of the restrictions as to who may be appointed as monitor per s. 11.7(2) of the CCAA. FTI has a significant amount of experience acting as a court-appointed monitor in CCAA proceedings. FTI also has significant amount of knowledge regarding Harte Gold's business and potential bidders in the SISP which will assist make these CCAA Proceedings more efficient and assist the Applicant in obtaining the best bid possible for the Applicant as part of the SISP. FTI has consented to acting as the Monitor in these CCAA Proceedings. As such, FTI should be appointed as Monitor of the Applicant.

CCAA at s. 11.7(1) and (2).

BIA at s. 2, "trustee".

Bourchier Affidavit at paras. 93-95, 119-122, Application Record, Tab 7.

D. The Administrative Charge and Directors' Charge Should be Granted

(i) The Administrative Charge

42. The Applicant requests that this Court grant a super-priority charge on the Applicant's assets, property and undertaking (the "**Property**") to secure the fees and disbursements incurred in connection with services rendered to the Applicant both before and after the commencement of the CCAA Proceedings by FTI, FTI's counsel, counsel to Harte Gold and independent counsel to the directors of Harte Gold (the "**Administration Charge**").

43. As a super-priority charge, the Administration Charge is contemplated to rank in priority to the DIP Lender's Charge and the Directors' Charge and to all other security interests, claims of secured creditors, trusts, liens, charges and encumbrances, statutory or otherwise in favour of any

person (the "**Encumbrances**") other than secured creditors with properly perfected security interests that did not receive notice of this Application.

44. At the initial hearing Harte Gold will request the Administration Charge be in the amount of $500,000. This Court has the jurisdiction to grant the Administration Charge pursuant to section 11.52 of the CCAA. In *Canwest Publishing*, Pepall J. identified six non-exhaustive factors that the Court may consider when determining whether to grant an administration charge:

(a) The size and complexity of the business being restructured;

(b) The proposed role of the beneficiaries of the charge;

(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.

> *Canwest Publishing Inc, Re*, 2010 ONSC 222 [***Canwest Publishing***] at para. 54 (CanLII).

45. Justice Pepall also indicated that the quantum of an administration charge is dependent on the facts, such as the magnitude and complexity of the restructuring.

> *Canwest Publishing* at para. 55 (CanLII).

46. In the present matter, the following factors support the granting of the Administration Charge as requested:

(a) The beneficiaries of the Administration Charge will provide essential legal and financial advice throughout the CCAA Proceedings;

(b) There is no anticipated unwarranted duplication of roles;

(c) The Applicant's first ranking secured creditor, 833 Ontario, supports the granting of the Administration Charge; and

(d) The Applicant's advisors have engaged in a significant amount of work on a pre-filing basis in exploring strategic alternatives, conducting the Pre-Filing Strategic Process, negotiating the Subscription Agreement, securing the Stalking Horse Bid, and obtaining the DIP Facility for the benefit Applicant's stakeholders.

47. The Applicant has limited the quantum of the Administration Charge of which it seeks approval in the Initial Order to what is reasonably necessary for the first ten (10) days of the CCAA Proceedings. As set forth in the Bourchier Affidavit, the Applicant, in consultation with the Proposed Monitor, determined the initial amount of the Administration Charge by evaluating the unpaid fees incurred by the beneficiaries of the Administration Charge prior to this Application and the fees expected to be incurred within the initial ten (10) day stay period. The Applicant intends to seek an increase to the Administration Charge at the Comeback Motion. Accordingly, the Proposed Monitor has reviewed the quantum of the Administration Charge sought in the Initial Order and has advised that it believes that the proposed Administration Charge is reasonable and appropriate in the circumstances.

Bourchier Affidavit at paras.123-124, Applicants' Motion Record, Tab 7.

(ii) The Directors' Charge

48. The Applicant requests from this Court a priority charge in favour of the Applicant's current directors and officers (the "**D&Os**") in the amount of $2,400,000 (the "**Directors' Charge**"), which will rank subordinate to both the Administration Charge and the DIP Charge but in priority to all other Encumbrances. The Directors' Charge protects the D&Os against obligations and liabilities they may incur as directors and officers of the Applicant after the filing of the CCAA Proceedings, including amounts which may have accrued prior to the filing but which may be crystallized after

the filing, except in relation to obligations or liabilities incurred as a result of the D&Os' gross negligence or wilful misconduct.

49. While the Applicant previously maintained directors and officers' liability insurance (the "**D&O Insurance**"), it was unable to renew its D&O Insurance policy due to its financial circumstances and the policy expired on November 3, 2021. Therefore, there is currently no D&O Insurance in place.

Bourchier Affidavit at para. 132, Applicants' Motion Record, Tab 7.

50. The D&Os have significant concerns about their potential personal liability if they continue in their roles. However, Harte Gold requires the continued participation of its D&Os to ensure the continuation of the Applicant's business during the CCAA Proceedings. With the current personal exposure associated with the Applicant's liabilities, including liabilities relating to employee vacations accrued prior to these CCAA Proceedings, the D&Os have indicated they will not continue their service with the Applicant unless the Initial Order grants the Directors' Charge. The resignation of the D&Os would likely render these CCAA Proceedings and the SISP must more challenging, and possibly costly, to the detriment of Harte Gold's creditors and other stakeholders.

Bourchier Affidavit at para. 136, Application Record, Tab 7.

51. Section 11.51 of the CCAA provides the Court with the express statutory jurisdiction to grant the Directors' Charge in an amount the Court considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it. In *Canwest Publishing*, Pepall J. applied s. 11.51 of the CCAA at the debtor company's request for a directors and officers' charge, noting that the Court must be satisfied that the amount of the charge is appropriate in light of obligations and liabilities that may be incurred after the commencement of proceedings.

Canwest Publishing at para. 48 (CanLII).

52. In *Jaguar Mining Inc*, Morawetz R.S.J. (as he then was) stated that, in order to grant a directors and officers' charge, the Court must be satisfied of the following factors:

(a) Notice has been given to the secured creditors likely to be affected by the charge;

(b) The amount is appropriate;

(c) The applicant could not obtain adequate indemnification insurance for the director at a reasonable cost; and

(d) The charge does not apply in respect of any obligation incurred by a director as a result of the director's gross negligence or willful misconduct.

Jaguar Mining Inc, (Re), 2014 ONSC 494 at para. 45 (CanLII) [***Jaguar Mining Inc***].

53. Courts have also granted a directors and officers' charge which secures an indemnity in respect of employee vacation liabilities accrued prior to CCAA proceedings, but which may be crystalized after the commencement of such proceedings.

In the matter of TGF Acquisition Parent Ltd. (Re), Court file no. CV-21-00657098-00CL (ONSC), Initial Order rendered on February 17, 2021 at para. 17 (Monitor's Website).

54. The Directors' Charge is reasonable in the circumstances because:

(a) The Applicant will benefit from the continued involvement of the D&Os. If the D&Os are not protected by the Directors' Charge, there is a significant risk that they will resign which will create additional obstacles and costs for the Applicant;

(b) There is not D&O Insurance that will be applicable or respond to any claims made against the D&Os during the CCAA Proceedings for liability that could arise from the D&Os continued involvement, and the Applicant does not have sufficient funds available to satisfy an indemnity, which, would rank as an unsecured claim; and

(c) The Directors' Charge does not secure obligations incurred by D&Os as a result of the D&Os' gross negligence or willful misconduct.

Bourchier Affidavit at paras. 4, 132, 136, Application Record, Tab 7.

55. Similar to the Administration Charge, the Directors' Charge was specifically sized by Harte Gold, in consultation with the Proposed Monitor, based upon the potential director liabilities, particularly liabilities related to employee source deductions and vacation pay, which is expected to accrue during the initial ten (10) days of these CCAA Proceedings or accrued prior to the CCAA Proceedings but could crystallize within the first ten (10) days. Accordingly, the Proposed Monitor is of the view that the Directors' Charge is reasonable and appropriate in the circumstances.

E. The DIP Financing Agreement Should be Approved and the DIP Lenders' Charge Should be Granted

56. As referenced above and demonstrated by the Cash Flow Statement, the Applicant urgently requires additional financing to continue operations in the ordinary course. Additional financing is also required to facilitate to the contemplated SISP during these CCAA Proceedings, which is being pursued to achieve the highest or otherwise best transaction for Harte Gold in order to maximize value for all stakeholders.

57. In furtherance of the above, the Applicant is requesting this Court:

(a) Approve the DIP Financing Agreement as between Harte Gold and the DIP Lender;

(b) Authorize the Applicant to borrow under the DIP Financing Agreement up to $400,000 during the initial 10-day period, which funding shall be made directly to the Company upon granting of the Initial Order; and

(c) Grant in favour of the DIP Lender a priority charge to secure its obligations under the DIP Financing Agreement (the "**DIP Lender's Charge**"). The DIP Lender's Charge will rank subordinate to the Administration Charge but in priority to the D&O Charge and to all other Encumbrances (other than those secured creditors who did not receive notice of this Application).

58. Section 11.2 of the CCAA provides the Court with the express jurisdiction to approve the DIP Financing Agreement and the DIP Lender's Charge. Section 11.2(4) lists the factors Courts must consider in deciding whether to approve a priming charge in connection with interim financing:

> **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.
>
> CCAA, s. 11.2(4).

59. In *Canwest Publishing*, Justice Pepall highlighted the importance of meeting the criteria set out in section 11.2(1) in addition to those found in section 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 to be granted under a DIP facility is appropriate and required 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 was made.

Canwest Publishing, paras. 31-34 (CanLII).

60. The criteria from section 11.2(1) and 11.2(4) support approving the DIP Lender's Charge on the terms sought in the Initial Order:

(a) The DIP Lender's Charge does not prime any secured party with a perfected security interest who has not received notice of this Application;

(b) The Applicant has immediate liquidity needs, and given its current financial circumstances, the Applicant faces great obstacles in obtaining alternative financing outside of these CCAA Proceedings;

(c) The DIP Facility is necessary in order for the Applicant to implement its restructuring strategy, which will preserve the employment of many individuals and maximize value for the Applicant's stakeholders;

(d) Without the DIP Facility, the Applicant will not be able to continue operating;

(e) The quantum of the DIP Facility is reasonable and appropriate having regard to the Cash Flow Statement; and

(f) The Proposed Monitor is of the view that the DIP Financing Agreement and the DIP Lender's Charge are appropriate and limited to what is reasonably necessary in the circumstances.

Bourchier Affidavit at paras. 125-128, Application Record, Tab 7.

61. The DIP Facility is also the product of a competitive process conducted by Harte Gold prior to the commencement of the CCAA Proceedings to achieve the best proposal in the circumstances. After deciding that a further sale and investment solicitation process was necessary, Harte Gold and its financial advisors advised the Applicant's secured creditors that they required additional financing and both parties could submit proposals to Harte Gold and its Special

Committee for consideration. Ultimately, both 833 Ontario and Appian were interested in being the proposed DIP lender and Harte Gold pursued parallel and competitive negotiations to achieve the best financing alternative available in the circumstances.

62. Harte Gold, in consultation with its financial and legal advisors, carefully considered the different proposals received in respect of DIP financing and after these deliberations, the Applicant determined in its business judgment that the DIP Facility was the superior offer in the circumstances and the proposal that was in the best interest of the company. A summary key differences between the DIP proposals received by the Applicant is set forth in Confidential Exhibit “AA” to the Bourchier Affidavit . The primary advantage of the DIP Facility offered by 833 Ontario was that it was economically superior by proposing a superior DIP financing amount, having a lower interest rate and no structuring fee. Additionally, 833 Ontario has confirmed having advanced funds committed under the DIP Facility to its counsel which reduces any risk of funding or risk of delays in funding and therefore provides greater certainty for Harte Gold, which was of critical importance given the Applicant’s liquidity situation.

Bourchier Affidavit at paras. 99-100, 102, Application Record, Tab 7.

63. With these advantages, the Applicants submit that the DIP Financing Agreement with the DIP Lender should be approved. In *Great Basin*, the Court considered pricing and fees, milestones and other covenants of the DIP proposals in deciding which DIP proposal should be approved. The Court acknowledged that "*the financial terms of each proposal, [and] factors such as timing, prejudice, risk and uncertainty play a central role in assessing each proposal.*" The Applicant and the Special Committee have determined that the proposed DIP Facility represents the best proposal in the circumstances based on similar factors and this Court should take that into account in considering its approval.

Great Basin Gold Ltd. (Re), 2012 BCSC 1459 **[*Great Basin*]** at paras. 10, 14 (CanLII).

64. Section 11.2(5) relates to interim financing and provides that no order under section 11.2 "*shall be made …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*." The Applicant submits that this criteria is satisfied as the Initial Order specifies that the amount of the DIP Facility available to the Applicant is limited to $400,000 during the initial stay period. The amount was determined in consultation with the Proposed Monitor and is consistent with the Applicant's required borrowings as shown in the Cash Flow Statement. Providing the ability for Harte Gold to borrow under the DIP Financing Agreement during the initial stay period will protect Canadian stakeholders and allow the business to continue operating while the Applicant works to complete the SISP. Accordingly, the requested DIP Lender's Charge is consistent with section 11.001 and section 11.2(5) of the CCAA.

Bourchier Affidavit at para. 4, 113, 125, Application Record, Tab 7.

F. A SEALING ORDER IS APPROPRIATE

65. The Applicant requests a sealing order in relation to a chart that summarizes the interim financing proposals provided by 833 Ontario and Appian, which is attached as Confidential Exhibit "AA" to the Bourchier Affidavit.

66. The *Courts of Justice Act* (Ontario) grants this Court the discretion to order that any document filed in a civil proceeding be treated as confidential and sealed and not form part of the public record.

Courts of Justice Act, R.S.O., 1990 c. C. 43, s. 137(2).

67. The test to determine if a sealing order should be grated is set out in *Sierra Club* as recast in *Sherman Estate*:

(a) court openness poses a serious risk to an important public interest;

(b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

(c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

> *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para. 53 (CanLII) [***Sierra Club***].
>
> *Sherman Estate v. Donovan*, 2021 SCC 25 at paras. 38, 43 (CanLII) [***Sherman Estate***].

68. The Courts in *Sierra Club* and *Sherman Estate* explicitly recognized that commercial interests such as preserving confidential information or avoiding a breach of a confidentiality agreement are an "important public interest" for purposes of this test.

> *Sierra Club* at para. 55 (CanLII).
>
> *Sherman Estate* at paras. 41-43 (CanLII).

69. Courts have applied the *Sierra Club* and *Sherman Estate* tests in the insolvency context and authorized sealing orders over confidential or commercially sensitive documents, including certain DIP schedules.

> *Re Danier Leather Inc.*, 2016 ONSC 1044 at para. 82 (CanLII).
>
> *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347 at paras. 23-28 (CanLII).
>
> *Re Just Energy Corp.*, 2021 ONSC 1793 at paras. 123-124 (CanLII)
>
> *Re Cinram International Inc.*, 2012 ONSC 3767 at para. 38 (CanLII).

70. The interim financing proposals contain commercially sensitive competitive information that, if disclosed publicly and made available to competitors, could impact future refinancing and sales efforts both inside and outside of these CCAA Proceedings. The limitation on the open court principle is minimal and the order is proportional. No party will be prejudiced from the sealing order. It is therefore submitted that the test for such an order, as established by the Supreme Court of Canada, has been satisfied. The Applicant proposes that the Confidential exhibit to the Bourchier Affidavit not form part of the court record pending further order of this Court.

PART V - ORDER SOUGHT

71. In light of the foregoing, the Applicant respectfully submits that the Court should grant the Initial Order attached at Tab 2 of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of December, 2021.

Stikeman Elliott LLP
Lawyers for the Applicant

SCHEDULE "A"
LIST OF AUTHORITIES

Cases

1. *Canwest Global Communications Corp., (Re)*, (2009), 59 C.B.R. (5th) 72 (CanLII)
2. *Canwest Publishing Inc, Re*, 2010 ONSC 222 (CanLII)
3. *In the matter of TGF Acquisition Parent Ltd. (Re)*, Court file no. CV-21-00657098-00CL (ONSC), Initial Order rendered on February 17, 2021 (Monitor's Website).
4. *Jaguar Mining Inc, (Re)*, 2014 ONSC 494 (CanLII)
5. *Lydian International Limited (Re)*, 2019 ONSC 7473 (CanLII)
6. *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347 (CanLII)
7. *Re Cinram International Inc.*, 2012 ONSC 3767 (CanLII)
8. *Re Danier Leather Inc.*, 2016 ONSC 1044 (CanLII)
9. *Re Just Energy Corp.*, 2021 ONSC 1793 (CanLII)
10. *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII)
11. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 (CanLII)
12. *Stelco Inc. (Re)*, 48 C.B.R. (4th) 299 (S.C. [Commercial List]) (CanLII)
13. *Target Canada Co.*, 2015 ONSC 303 (CanLII)
14. *Great Basin Gold Ltd. (Re)*, 2012 BCSC 1459 (CanLII)

SCHEDULE "B"
RELEVANT STATUTES

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

Definitions

2 (1) In this Act, […]

> **company** means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, telegraph companies, insurance companies and companies to which the Trust and Loan Companies Act applies; (compagnie) […]
>
> **debtor** company means any company that
>
> > (a) is bankrupt or insolvent,
> >
> > (b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,
> >
> > (c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or
> >
> > (d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent; (compagnie débitrice)

[…]

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than $5,000,000 or any other amount that is prescribed.

[…]

Jurisdiction of court to receive applications

9 (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

[…]

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.

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

[…]

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 — directors

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

Exception

11.03 (2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company’s obligations or an action seeking injunctive relief against a director in relation to the company.

[...]

Meaning of *regulatory body*

11.1 (1) In this section, ***regulatory body*** means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

Regulatory bodies — order under section 11.02

(2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

Exception

(3) On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court's opinion

> **(a)** a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and
>
> **(b)** it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

Declaration — enforcement of a payment

(4) If there is a dispute as to whether a regulatory body is seeking to enforce its rights as a creditor, the court may, on application by the company and on notice to the regulatory body, make an order declaring both that the regulatory body is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

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.

[...]

Security or charge relating to director's indemnification

11.51 (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, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of 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.

Restriction — indemnification insurance

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

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.

Court to appoint monitor

11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the Bankruptcy and Insolvency Act.

Restrictions on who may be monitor

11.7 (2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

(a) if the trustee is or, at any time during the two preceding years, was

(i) a director, an officer or an employee of the company,

(ii) related to the company or to any director or officer of the company, or

(iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or

(b) if the trustee is

(i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the Civil Code of Quebec that is granted by the company or any person related to the company, or

(ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3**

Definitions

2 (1) In this Act, […]

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*) […]

[…]

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

(a) the insolvent person consents to an earlier enforcement under subsection 244(2); or

(b) the court considers it appropriate to appoint a receiver before then.

Definition of *receiver*

(2) Subject to subsections (3) and (4), in this Part, ***receiver*** means a person who

(a) is appointed under subsection (1); or

(b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a "security agreement"), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of *receiver* — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition ***receiver*** in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of *disbursements*

(7) In subsection (6), ***disbursements*** does not include payments made in the operation of a business of the insolvent person or bankrupt.

***Courts of Justice Act*, R.S.O. 1990, c. C.43**

Sealing documents

137(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

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.

Court File No.: _____

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

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(RETURNABLE DECEMBER 7, 2021)

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