

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES CORPORATION,
AND 12334992 CANADA INC.**

Applicants

**FACTUM OF THE AD HOC COMMITTEE OF SENIOR SECURED NOTEHOLDERS
(DIP Financing)
(Returnable June 5, 2026)**

June 4, 2026

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TO: **THE SERVICE LIST**

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PART I - OVERVIEW: THERE IS NO BASIS OR NEED FOR PRIMING DIP FINANCING¹

1. The Debtors ask this Court to approve a \$475 million² priming DIP financing from an external party on 24 hours' notice. This makes a mockery of the explicit statutory notice obligation for DIP financing in the CCAA.³ Proceeding on this basis almost a month into these cases, on an incomplete record, and after the Court already instructed that an orderly process for DIP approval be undertaken, is astounding. It cannot be explicitly or implicitly sanctioned by this Court. Remarkably, the Debtors have admitted in their own evidence that they are attempting to overfund to the prejudice of their secured creditors.⁴ The proposed DIP financing exceeds the Court's statutory authority under the CCAA and cannot be approved on this basis alone.⁵

2. The immediate procedural prejudice is compounded by the identity of the proposed DIP lender and extraordinary priming structure being sought. The financing comes from the Government of Canada, as represented by Export Development Canada. Despite the pretence of leveraging off of EDC's existing small security, this is in substance a third party loan.

3. The Government seeks to immediately leapfrog the existing security of prior-ranking and *pari passu* creditors holding over \$750 million (over 90%) of the Debtors' secured debt. The Senior Secured Lenders (as defined below) have jointly committed binding and actionable DIP financing in the *exact amount* that was requested by the Debtors in the DIP Solicitation Process (\$300 million, with \$110 million initially).⁶ The fact that the Debtors are now proffering an amount

¹ Capitalized terms used but not otherwise defined in this Part I have the meaning given to them in the Part II below.

² Unless otherwise stated, all dollar amounts referenced herein are in United States Dollars.

³ *Companies' Creditors Arrangement Act*, [R.S.C. 1985, c. C-36](#), s. [11.2\(1\)](#) [CCAA].

⁴ Affidavit of Celeste van Tonder sworn June 3, 2026 at paras. 81-81 [*van Tonder Affidavit June 3*].

⁵ CCAA, ss. 11.2(1); see *Industrial Properties Regina Limited v Copper Sands Land Corp.*, [2018 SKCA 36](#) at paras. [46-48](#) [*Copper Sands Land*]; *Tepper Holdings Inc., Re*, 2011 NBQB 211 at paras. 65-70 [*Tepper Holdings*].

⁶ Affidavit of Joshua Gordon sworn June 4, 2026 at para. 10 & Exhibit "I" [*Gordon Affidavit*].

substantially different from what it instructed bidders to provide raises serious red flags over the DIP Solicitation Process and the notice given of this motion.

4. The Debtors' steamroller tactics on timing and process are as unprecedented as they are unsupportable and unnecessary. This Court should adjourn the hearing of this motion to permit a fair and proper process to take place before the Court is asked to make a decision on the Debtors' motion.

5. This is not a case where the Debtors will not have immediate access to necessary liquidity if their motion is adjourned. The Debtors can and should obtain the necessary liquidity now, from the Senior Secured Lenders without priming the overwhelming majority of their secured creditors and on terms that will preserve the status quo. The Debtors will suffer no prejudice if their motion is deferred because the \$103 million needed to fund their business through the four-week period ending July 3, 2026 in accordance with the cash flow forecast is available now through fully committed and binding financing provided to the Company and the Monitor by the Senior Secured Lenders.

6. Consistent with the requirement to only fund as much as necessary and the balancing of prejudices, CCAA courts have noted that non-consensual priming DIP financing should be a matter of last resort.⁷ Priming DIP financing is appropriate in circumstances where the senior secured lenders fail to commit DIP financing or fail to commit the DIP financing on realistic terms.⁸ This is **not** one of those cases.

⁷ *Re Crystallex International Corporation*, [2012 ONSC 2125](#) at para. [91](#) [*Crystallex (ONSC)*].

⁸ See for e.g., *Quest University Canada (Re)*, [2020 BCSC 318](#) at paras. [97-100](#) [*Quest University*]; *Inca One Gold Corp. (Re)*, [2024 BCSC 1478](#) at paras. [55-56](#), [60](#) & [64](#) [*Inca One Gold*]; *In the matter of Canacol Energy Ltd. et al.* (December 11, 2025), King's Bench of Alberta (Action No. 2501-18462), [Decision of Mah, J.](#) at p. 7 [*Canacol (ABKB)*], upheld on appeal *Canacol Energy Ltd (Re)*, [2026 ABCA 57](#) at paras. [3-4](#) & [15](#) [*Canacol (ABCA)*].

7. The prejudice that would be created by the relief sought by the Debtors extends well beyond the denial of natural justice to the Senior Secured Lenders. If the proposed Government DIP Facility is approved on June 5, it is the decisive step to entrench the Government (a third party to these proceedings) as DIP lender, with authority to make critical decisions on spending and budgets before the motion can be properly litigated on a full record, to the detriment of the Senior Secured Lenders. Any argument that approval of the Government DIP Facility now is without prejudice to the Senior Secured Lenders because they will have a right to continue litigating the issues is entirely illusory. A right to later litigate issues is not a substitute for a complete record and does not absolve the unnecessary prejudice.

8. Capital market participants are watching this motion very closely. The Senior Secured Lenders are some of the largest money managers in the world, who deploy billions of dollars into Canadian infrastructure projects and investments that employ tens of thousands of Canadians. They will be severely prejudiced by this motion proceeding in the manner and timeframe proposed. These same capital market players have participated in countless other CCAA restructurings and provided DIP financing to other distressed debtors. Approval of a massive priming DIP financing by the Government on effectively no notice will be seen for what it is – the complete compromise of due process in Canada. It is no answer to say “finance now, litigate later” – that is not the rule of law. The decision on this motion is bigger than Baffinland. The negative implications to the Canadian capital markets from the approval of this financing in these circumstances could not be more serious.

9. The Debtors cannot justify the extraordinary relief sought by invoking urgency. Any urgency is self-created and arises from the Debtors running a compressed DIP Solicitation Process and seeking approval of the priming Government DIP Facility on 24 hours’ notice.⁹

⁹ Gordon Affidavit at paras. 4-10.

Affected creditors rely on this Court to serve as a gatekeeper.¹⁰ This is especially true where priming relief is sought on short notice and opposed, the debtor seeks a financing “bridge” and less prejudicial and actionable options that preserve the status quo are plainly available.

10. If the Court is satisfied that DIP financing must be approved now, before the disposition of the Debtors’ motion, the Court should adjourn the Debtors’ motion and approve the joint cross-motion of the Senior Secured Lenders that authorizes the Debtors to borrow under the Senior Secured Lenders’ DIP until the Debtors’ DIP Motion can be heard. This joint funding commitment by the Senior Secured Lenders provides the exact amount of financing that the Debtors have requested and can be used to fund the business and preserve the status quo while any further litigation on the appropriate DIP lender and terms can be scheduled and heard on a complete record.

11. If there is a dispute with respect to the appropriate interim lender pending disposition of the DIP Motion, this Court should schedule a case conference or hearing the week of June 8, 2026 at the Court’s earliest convenience to determine this issue.

PART II - SUMMARY OF FACTS

12. Nunavut Iron Ore, Inc., Baffinland Iron Mines Corporation (“**BIM Corp**”), 12334992 Canada Inc. and Baffinland Iron Mines LP (together with BIM Corp, “**Baffinland**” and collectively, the “**Debtors**”) are a group of affiliated entities engaged in iron ore mining operations on Baffin Island, Nunavut.¹¹

13. The Debtors’ secured creditors are: (i) Oaktree Capital Management, L.P. and Hartree Partners, LP (together, the “**First Secured Lenders**”) with a claim in the asserted amount of \$183

¹⁰ *Quest University* at para. 97; citing *Great Basin Gold Ltd. (Re)*, [2012 BCSC 1459](#) at para. 181 [*Great Basin Gold*]; CCAA s. [11.2\(4\)](#).

¹¹ van Tonder Affidavit June 3 at para. 6.

million under a Credit Agreement dated May 26, 2017 (as amended from time to time, the “**Credit Facility**”); (ii) the holders (the “**Senior Secured Noteholders**”) of \$575 million in principal amount of 8.750% senior secured notes issued by Baffinland (the “**Senior Secured Notes**”); and (iii) the Government of Canada’s export credit agency, Export Development Canada (“**EDC**”) in the approximate principal amount of \$75 million.¹² Together, the First Secured Lenders and the Senior Secured Noteholders hold in excess of 90% of the outstanding secured debt of the Debtors.

14. The ad hoc committee (the “**Ad Hoc Committee**”) is comprised of Senior Secured Noteholders representing over 70% of the Senior Secured Notes.¹³

15. Pursuant to an Intercreditor Agreement dated as of June 27, 2018 (the “**Intercreditor Agreement**”): (i) the First Secured Lenders hold first-ranking security over all of the Debtors’ assets under the Credit Facility; and (ii) the Senior Secured Noteholders and EDC hold *pari passu* security over the Shared Collateral (as defined in the Intercreditor Agreement).¹⁴ The Intercreditor Agreement also provides, among other things, that EDC will not object to debtor in possession (“**DIP**”) financing advanced by the First Secured Lenders up to the amount of \$40 million.¹⁵

A. Commencement of CCAA Proceedings and the DIP Solicitation Process

16. On May 15, 2026 at 5:06 a.m., the Debtors initiated restructuring proceedings under the CCAA via service of Application Materials returnable before the Court at 10:00 a.m. The First Secured Lenders and Ad Hoc Committee were not provided advance notice of this filing.¹⁶ At the initial hearing, the Ad Hoc Committee took the position that the CCAA filing was unnecessary in

¹² Affidavit of Celeste van Tonder sworn May 14, 2026 at paras. 89, 91-92, 96, 104 & 109 [*van Tonder Affidavit May 14*].

¹³ Gordon Affidavit at para. 1.

¹⁴ van Tonder Affidavit May 14 at para. 109.

¹⁵ van Tonder Affidavit May 14 at Exhibit “Y”.

¹⁶ van Tonder Affidavit June 3 at para. 52.

light of a refinancing offer delivered to the Debtors and that the matter should be adjourned over the following long weekend to allow the parties to engage and potentially avoid the disruption and cost of a CCAA proceeding.¹⁷ The Debtors' opposed this proposal and insisted that relief under the CCAA was necessary. Accordingly, the Court granted the Initial Order and appointed FTI Consulting Canada Inc. as monitor (the "**Monitor**"). Unbeknownst to the Ad Hoc Committee, but as now confirmed by the van Tonder affidavit of June 3, 2026, the Debtors were already seeking separate DIP funding, well before the filing.¹⁸

17. At Court on May 15, 2026, without acknowledging that the Debtors had already begun soliciting DIP financing to the exclusion of the Ad Hoc Committee, the Monitor advised the Court that a process to solicit DIP funding would commence immediately (the "**DIP Solicitation Process**") and that any proposals would be due on May 20, 2026 (the "**DIP Solicitation Deadline**"), 5 days after the Initial Order, with the Debtors intending to seek approval of the selected DIP proposal at a hearing returnable on May 25, 2026.¹⁹

18. The DIP Solicitation Deadline was subsequently extended to May 25, 2026, and the hearing for approval of the proposed DIP financing scheduled for that date was rescheduled to June 3, 2026.²⁰

19. The First Secured Lenders and the Ad Hoc Committee (together, the "**Senior Secured Lenders**") responded to the DIP Solicitation Process by delivering a binding and actionable signed joint commitment to provide DIP financing in the exact amount the Debtors requested. That initial commitment was subsequently revised to respond to the Debtors' comments provided on May 28 and was submitted on the deadline of May 30 as the "final set of terms that will be

¹⁷ Gordon Affidavit at para. 3.

¹⁸ van Tonder Affidavit June 3 at para. 52.

¹⁹ Gordon Affidavit at para. 4 & Exhibit "C".

²⁰ Gordon Affidavit at para. 5 & Exhibit "D".

considered by the Debtors.”²¹ The Senior Secured Lenders’ joint DIP commitment provides for total DIP availability of up to \$300 million. It also includes initial advances of up to \$110 million over the first four weeks with an initial advance of \$70 million available immediately, each of which form part of the \$300 million total commitment (together the “**Senior Secured Lenders’ DIP**”).²² The Senior Secured Lenders’ DIP does not include an upfront fee like the Government DIP Facility.²³

20. The Senior Secured Lenders’ DIP provides sufficient financing during any period required to adjudicate the Debtors’ DIP Motion and allows the Debtors to continue operations based on the cash flow.²⁴ If the advances made under the Senior Secured Lenders’ DIP are repaid from a replacement DIP facility, no commitment/funding fee is payable. The Senior Secured Lenders previously advised the Debtors that they are also prepared to fund interim advances as a completely separate and standalone “bridge” facility if necessary.²⁵

21. Alarming, the Debtors appear to have been playing a game of bait and switch with the Senior Secured Lenders. They negotiated a much larger DIP with the Government than the Debtors advised other bidders would be sought and now tout that disparity as an advantage of the Government DIP Facility. Concomitantly, the Debtors, through the Monitor, provided a variety of cryptic comments on the non-financial terms of the Senior Secured Lenders’ DIP, and failed to respond to any requests for clarification:

- (a) the Debtors stated that “some” of the representations and warranties and covenants were restrictive. The Senior Secured Lenders responded that they were

²¹ van Tonder Affidavit at para. 66; Gordon Affidavit at paras. 9-10 & Exhibits “H” & “I”.

²² Gordon Affidavit at Exhibit “I”; Second Report of the Monitor dated June 4, 2026 at Appendix “C” [*Second Report*].

²³ Gordon Affidavit at Exhibit “I”; van Tonder Affidavit June 3 at Exhibit “H”.

²⁴ Second Report at Appendix “C”.

²⁵ Gordon Affidavit at Exhibit “E”.

willing to discuss and requested that the Debtors identify the applicable representations and warranties and covenants to be revised;

- (b) the Debtors stated that the added events of default were onerous and duplicative, and the related cure periods were not reasonable. The Senior Secured Lenders requested that the Debtors specify which defaults were overly onerous and which cure periods were insufficient;
- (c) the Debtors expressed concern with condition precedents to the provision of the initial advance amounts. The Senior Secured Lenders requested clarity on which conditions were unacceptable; and
- (d) the Senior Secured Lenders requested the Debtors provide a proposal for a key employee retention plan, to ensure the DIP was structured to contemplate the funding of those amounts.

Similar to the hypocritical reliance on the DIP size, the Debtors now self-servingly rely on alleged restrictions they refused to clarify or negotiate.

22. These are not matters that can be resolved by the Court on the incomplete record created by 24 hours' notice. They are, however, facts that should seriously engage the Court's concerns and its supervisory function over the Debtors and Monitor.

B. The Government DIP Proposal

23. On June 4, 2026, at 12:10 a.m., the Debtors served motion materials for a motion (the "**DIP Motion**"), returnable on Friday, June 5, 2026, seeking a Second Amended and Restated Initial Order: (i) approving a DIP facility offered by His Majesty in Right of Canada (the "**Government**"), as represented by EDC (the "**Government DIP Facility**") for an available

principal amount of \$475 million; and (ii) granting a charge in favour of the Government, securing the Debtors' obligations under the Government DIP Facility (the "**Government DIP Charge**").

24. According to the Debtors' own evidence, the Government DIP Facility far exceeds the Debtors' own cash flow requirements:

...the Debtors believe that there is significant additional stability and predictability associated with accepting the larger loan facility in the EDC Proposal. A larger facility provides a critical **cushion**,,, that could materially increase operating expenditures beyond current projections. Without this additional headroom, the Debtors **could** be exposed to the **risk** of a liquidity shortfall...

...the additional capacity serves as a **buffer** for the Debtors' ongoing operations...[**emphasis added**].²⁶

25. The Ad Hoc Committee opposes the relief sought on the Debtors' motion because it seeks to prime the Senior Secured Lenders on almost no notice, without providing opportunity to test the Debtors' evidence or put forward their own evidentiary record, even though an actionable alternative DIP commitment exists that provides the same immediate liquidity while also preserving the status quo. Once the Government DIP Charge is granted and the Government is installed as DIP lender, the prejudice is immediate and the strategic advantage to the Government is real.

26. The Senior Secured Lenders ask that the Debtors' motion be adjourned.

27. To ensure the Debtors have continuing access to the requisite liquidity while the parties have a full and fair hearing with respect to the appropriate DIP provider and terms, the Senior Secured Lenders request that the Court approve their joint cross-motion for an Order: (i) authorizing the Debtors to enter into the Senior Secured Lenders' DIP and to borrow thereunder

²⁶ van Tonder Affidavit June 3 at paras. 81-82.

until the disposition of the adjourned motion, and (ii) approving the proposed litigation schedule for the Debtors' adjourned motion attached hereto as **Schedule "C"** (the "**Litigation Schedule**").

28. Because the Senior Secured Lenders are the incumbent – and because the Senior Secured Lenders were shut out of what appears to be a backroom DIP negotiation – no similar prejudice attaches to their DIP; it simply maintains the status quo.

PART III - ISSUES PRESENTED

29. The issues for this Court to address on June 5, 2026 are whether the Court should:

- (a) adjourn the Debtors' motion; and
- (b) authorize the Debtors' to enter into the Senior Secured Lenders' DIP and to borrow thereunder until the disposition of the adjourned motion.

PART IV - LAW & ARGUMENT

30. The Debtors seek Court approval, on no substantive notice, of a \$475 million financing facility and a priming charge that would subordinate the claims of the Debtors' existing secured creditors.

31. Putting the Government in the driver's seat – even arguably temporarily – upends the status quo. It gives the Government a leg up on gaining rights it never bargained or paid for, while eviscerating rights the Senior Secured Lenders did pay for – all without any restructuring justification or rationale.²⁷ The argument of the Debtors is that this is all without prejudice to the Senior Secured Lenders who can litigate these issues later. In the face of fully committed financing

²⁷ See *Fire & Flower Holdings Corp., Re*, [2023 ONSC 4048](#) at para. 40 [*Fire & Flower Holdings*]; citing *Great Basin Gold Ltd* at para. 179.

from the Senior Secured Lenders on the terms requested by the Debtors, in accordance with the status quo, that argument finds no purchase.

32. A DIP facility that primes the debtor company's secured creditors should be an option of last resort in CCAA proceedings, to be approved only where existing secured creditors have failed to either come forward with a binding financing offer of their own or otherwise failed to offer realistic terms.²⁸ Neither of those circumstances apply here. The Senior Secured Lenders' DIP was delivered in line with the timelines set by the Debtors and satisfied the financing terms that the Debtors requested.²⁹ The Senior Secured Lenders' DIP provides the Debtors with the liquidity they claim is required to continue operations, and an extended period to conduct a sales process, all without upending with the existing capital structure.

33. The Government DIP Facility is prejudicial and in breach of the CCAA DIP restrictions. It cannot be approved under section 11.2 of the CCAA at all, much less on 24 hours' notice and without the opportunity to lead evidence and to test the evidence.³⁰ Approving even a limited advance from the Government DIP Facility does not mitigate the prejudice since it inherently requires approval of the entire facility and then seeks to thereby entrench itself.

A. The Standard for DIP Financing Approval

34. Section 11.2 of the CCAA permits the Court to grant a priming charge "on notice to the secured creditors who are likely to be affected by the security or charge" and considering, among others, the factors set out in the statute.³¹ The function of notice is to ensure those creditors are

²⁸ *Crystallex (ONSC)* at para. [91](#); see for e.g., *Canacol (ABKB)* at p. [7](#), upheld on appeal *Canacol (ABCA)* at paras. [3-4](#) & [15](#).

²⁹ van Tonder Affidavit at paras. 55, 61 & 63-67.

³⁰ CCAA s. [11.2](#).

³¹ CCAA s. [11.2](#).

provided the opportunity to bring forward opposition or evidence that may otherwise be unavailable to the Court.³²

35. Section 11.2 also mandates that any DIP be an amount “required by the company, having regard to its cash-flow statement”.³³

36. The Court assumes the role of “gatekeeper” in dealing with DIP financing approval, tasked with ensuring that the terms of the financing are reasonable and appropriate in the circumstances, taking into consideration, among other things, input from stakeholders, the negotiations that took place and the alternatives available.³⁴ The Court must scrutinize the proposed financing proposals to ensure they “do not inappropriately advantage one party over another to the detriment of that party and the stakeholders generally.”³⁵ The Court must be “constantly vigilant against such strategies”, particularly given that, once approved by court order, this advantage cannot be revisited.³⁶

37. In dealing with competing DIP financing proposals, courts examine whether the proposal will best serve the interests of the Debtors’ stakeholders as a whole by enhancing the prospects of a successful restructuring.³⁷ This analysis takes into account practical factors, such as the certainty and stability of funding and the debtor company’s immediate liquidity needs.³⁸

38. Where a proposed DIP financing is opposed by a secured creditor, there must be cogent evidence that the benefits of the proposed financing outweigh the prejudice to the existing secured

³² *Port Capital Development (EV) Inc. (Re)*, [2021 BCSC 1272](#) at para. [71](#), overturned on other grounds [2021 BCCA 382](#); see also *Canwest Global Communications Corp., Re*, [2009 CanLII 55114](#) (ONSC) at paras. [31-32](#).

³³ CCAA, s. [11.2\(1\)](#); see also *Copper Sands Land* at paras. [46-48](#); *Tepper Holdings* at paras. 65-70.

³⁴ *Quest University* at para. [97](#); citing *Great Basin Gold* at para. [181](#); CCAA s. [11.2\(4\)](#).

³⁵ *Fire & Flower Holdings* at para. [40](#); citing *Great Basin Gold Ltd* at para. [179](#).

³⁶ *Great Basin Gold Ltd* at para. [179](#).

³⁷ *Tacora Resources Inc., Re*, [2024 ONSC 2454](#) at para. [30](#) [*Tacora (2024)*]; citing *Great Basin Gold* at para. [15](#).

³⁸ *Tacora (2024)* at para. [12](#).

creditors whose security is being subordinated and “the Court should be cautious in exercising its inherent jurisdiction to order priority for a DIP Charge over the objection of a secured creditor.”³⁹

39. In determining whether to approve a DIP charge, the Court should also have regard to the factors set out in Section 11.2(4) of the CCAA, including, whether any creditor would be materially prejudiced as a result of the security or charge.⁴⁰ Those considerations are a direct corollary to the limit in Section 11.2(1) – that the DIP itself be no more than is required by the company having regard to its cashflows.⁴¹ The CCAA does not provide for “cushion”, “headroom” or other blank cheques to the debtor at the expense of its creditors.

40. The assessment of “material prejudice” requires consideration of the extent to which existing creditors are being subordinated by a DIP charge.⁴² To that end, courts have expressed a preference for financing from within the existing capital structure so long as it is on substantially similar terms.⁴³ While the Court may consider the monitor’s or the debtor company’s recommendation, it still must make an “independent determination” as to which interim financing facility is most appropriate, having regard to the statutory factors and the interests of stakeholders as a whole.⁴⁴

41. The relevant issue before this Court is not whether the Debtors should be permitted to accept an interim financing proposal, but rather whether the Court has been presented with sufficient evidence to meet the extraordinary threshold required to approve the Government DIP

³⁹ *Great Basin Gold* at para. [194](#); *AbitibiBowater Inc., Re*, [2009 QCCS 6453](#) at para. [16](#); *Simpson’s Island Salmon Ltd. (Re)*, [2006 NBQB 6](#) at para. [16](#); *Temple City Housing Inc., Re*, [2007 ABQB 786](#) at para. [14](#).

⁴⁰ CCAA, s. [11.2\(4\)](#). Section 11.2(4) of the CCAA directs the court to consider, among other things, whether management has the confidence of its major creditors, whether the proposed financing enhances the prospects of a viable restructuring, whether any creditor would be materially prejudiced by the requested charge, and the position of the Monitor.

⁴¹ CCAA, s. [11.2\(1\)](#); see also *Copper Sands Land* at paras. [46-48](#); *Tepper Holdings* at paras. 65-70.

⁴² *Tacora Resources Inc. (Re)*, [2023 ONSC 6126](#) at para. [108](#) [*Tacora (2023)*].

⁴³ *Crystallex (ONSC)* at para [91](#).

⁴⁴ *Crystallex International Corp. (Re)*, [2012 ONCA 404](#) at para. [85](#) [*Crystallex (ONCA)*]; *Tacora (2023)* at para. [157](#).

Facility in the face of opposition from the majority of secured creditors and a competing DIP proposal on terms requested by the Debtors themselves. Considering that the Senior Secured Lenders were denied the opportunity to test or present any evidence, the answer must be no. In the circumstances, if the Debtors require financing to support the business, the appropriate source of financing to preserve the status quo until the Debtors' motion is properly adjudicated is the Senior Secured Lenders' DIP.

B. Approval of the Government DIP Facility Will Entrench the Government as the Preferred Lender

42. The Debtors severely understate the significance of the prejudice that will be suffered by the Senior Secured Lenders if the relief sought is approved here. Approval of the Government DIP Facility means approval of the Government as the Court-sanctioned DIP lender, and approval of a priming charge ranking ahead of the existing secured creditors. In reality, irrespective of any repayment provision in the Government DIP Facility, the Debtors are asking the Court to select the DIP lender on 24 hours' notice.

43. Once installed, the Government gains the practical benefits that matter most in a restructuring right out of the gate: priming priority, superior access to information, control over budgets and milestones, control over payments, influence over how the restructuring unfolds, and the incumbency advantage that comes from being the lender already approved by the Court. The Court should therefore acknowledge the relief sought by the Debtors for what it truly is: an attempt by the Debtors to entrench the Government in a position of control in these CCAA proceedings, without providing the Debtors' secured creditors proper notice and forcing the Senior Secured Lenders to try to later undo this decision. Respectfully, this approach is completely backwards.

44. By comparison, the Senior Secured Lenders DIP maintains the status quo while the parties are able to litigate the DIP issues on a fair schedule.

C. The Debtors Lack Statutory Authority and the Support of their Major Secured Creditors

Section 11.2(1) of the CCAA mandates that a DIP financing be for no more than is reasonably required by a debtor:⁴⁵

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 [emphasis added].

45. By their own admission, the Debtors seek the Government DIP as a “nice to have” because it provides alleged cushion or headroom.⁴⁶ The statute authorizes no such luxuries because they effectively come at the risk and expense of the subordinated creditors. Among the balancing acts undertaken by Section 11.2 is that the funding can be no more than is reasonably required, having regard to the cash-flows – not some nebulous or speculative operational risks.⁴⁷ As upheld by the Saskatchewan Court of Appeal in *Copper Sands Land*:⁴⁸

[...] something more concrete and justifiable is needed in order to grant interim financing for something that is beyond what is needed to preserve the debtor corporation's status quo.

We note that this is not a situation where there was unanimous creditor support for the interim financing [...] The creditors strongly opposed the funds being sought to facilitate the construction of a project they viewed as an inevitable failure. This fact further detracts from the appropriateness of granting the interim financing, with a priority charge, at this preliminary stage of the proceedings.”

46. This is a long-standing principle and restriction on DIP funding arising from the special privileges and harms it gives rise to.⁴⁹

⁴⁵ CCAA, s. [11.2\(1\)](#).

⁴⁶ van Tonder Affidavit June 3 at para. 81.

⁴⁷ CCAA, s. [11.2\(1\)](#).

⁴⁸ *Copper Sands Land* at paras. [46-48](#).

⁴⁹ *Tepper Holdings* at paras. 65-70.

47. The Debtors are not entitled, and the Court is not permitted, to authorize this blank cheque DIP.

48. Beyond the threshold issue, Section 11.2(4)(c) of the CCAA directs the Court to consider whether management has the confidence of its major creditors.⁵⁰ That factor weighs decisively against the Debtors' motion.

49. The Government DIP Facility is opposed by the Ad Hoc Committee and the First Secured Lenders. Together, those creditors represent the overwhelming majority of the Debtors' secured debt obligations. The Senior Secured Lenders do not have confidence in management's decision-making process with respect to the DIP and continue to be denied information about the chosen path forward in these proceedings.

50. This is not a dispute with a holdout of minority of creditors; it is opposition from creditors holding an overwhelming majority of the Debtors' secured debt that bear virtually all of the economic risk in these CCAA proceedings. This fact alone should carry substantial weight.

51. The Court should instead endorse DIP financing that preserves the status quo and will minimize the prejudice to creditors, even if it is marginally more expensive.

D. The Government Is Not a Neutral Lender; The DIP Must Be Scrutinized as a Position-Enhancing DIP

52. The Government of Canada, whose participation is required to fund and assume the risk under the Government DIP Facility, is a third party to these proceedings. The approval of the Government as DIP lender would elevate a third party (non-creditor) ahead of the parties holding the overwhelming majority of the Debtors' secured debt; namely, the First Secured Lenders and the Senior Secured Noteholders.

⁵⁰ CCAA, s. [11.2\(4\)](#).

53. The Court is being asked to approve DIP financing that would cause an immediate and irreversible reordering of priorities. In doing so, the Government DIP Facility will secure an advantage for the Government, at the expense of the Senior Secured Lenders.⁵¹ This prejudice will result irrespective of whether the Government DIP Facility is capable of being repaid at a later date following the full litigation; regardless, the Senior Secured Lenders will have been primed by the amounts advanced under the Government DIP Facility, without their consent and on an incomplete record.

E. The Record Is Incapable of Supporting the Relief Sought

54. The defect in the Debtors' record is not merely that it is incomplete. It is that it is incapable, in its present form, of supporting relief of this magnitude.

55. The Debtors have failed to establish, on a tested record:

- (a) why their preferred DIP is not impermissible overfunding;
- (b) why the Senior Secured Lenders' DIP is inadequate;
- (c) why the priming of the Senior Secured Lenders is appropriate or necessary at this juncture;
- (d) why the prejudice to the Senior Secured Lenders is justified; or
- (e) why the Court should approve the Government DIP Facility at this time, and the parties litigate the consequences later.

56. The Court should be slow to approve relief that materially prejudices the overwhelming majority of the secured creditor constituency where a viable alternative exists. The Debtors can

⁵¹ *Fire & Flower Holdings* at para. [40](#); citing *Great Basin Gold Ltd* at para. [179](#).

obtain the liquidity they require without priming the creditors who have funded the business for a substantial period of time and remain committed to fund it today.

F. No Urgency Exists; The Senior Secured Lenders Cross-Motion Solves Any Immediate Liquidity Issues

57. There has been a failure of notice and natural justice in this case. The Senior Secured Lenders have been deprived of an opportunity to cross-examine, file responding evidence, or develop the evidentiary record on the DIP selection process, comparative economics, procedural fairness, entrenchment effects, or the Debtors' asserted urgency. That is fatal on a motion of this kind.

58. The Debtors' central rhetorical argument is urgency. Once the alternative financing offered by the Senior Secured Lenders is kept firmly in view, that argument disintegrates.

59. The severely compressed timeline applied to the DIP Solicitation Process and this motion for DIP financing might be understandable if no alternative financing existed.⁵² That is clearly not the case. The Ad Hoc Committee offered re-financing options before the commencement of these CCAA proceedings, and the Senior Secured Lenders now offer committed financing in the amount and on the basis sought by the Debtors (including in a separate facility if required).⁵³

60. There will be no immediate liquidity crisis that cannot be met, nor is there any operational necessity requiring the Court to determine the future financing structure on an emergency basis. The Court has a path to preserving the value of the Debtors' operations without priming the Senior Secured Lenders.

61. In the circumstances, any asserted urgency is either fabricated or a self-imposed product of the Debtors' chosen process. It arises not from a lack of available liquidity, but from the Debtors'

⁵² See for e.g., *Canacol (ABKB)* at pp. [4](#) & [7](#), upheld on appeal *Canacol (ABCA)* at paras. [3](#), [5](#) & [15](#).

⁵³ Gordon Affidavit at Exhibits "B" & "I".

choice to seek approval of the Government DIP Facility first and entertain objections later. The Court should not permit this manufactured urgency to deprive the Senior Secured Lenders of due process and also deprive the Court of being able to meaningfully exercise its gatekeeping and supervisory functions under the CCAA.⁵⁴

G. The DIP Facility Proposed by the Senior Secured Lenders Preserves the Status Quo

62. The Senior Secured Lenders' DIP does not give rise to the prejudice that arises from the Government DIP Facility.

63. The Senior Secured Lenders' DIP reflects the Senior Secured Lenders advancing additional liquidity while bearing the economic risk of their own position, without imposing new third-party priming during the interim period. The Senior Secured Lenders' DIP comes from within the capital structure and is less than the amount of the First Secured Lenders' first priority position. Indeed, the Intercreditor Agreement specifically prohibits EDC from objecting to the First Secured Lender's advance of the first \$40 million of such priming.

64. Further, the Senior Secured Lenders' DIP is deliberately structured to preserve the status quo pending a full adjudication of the competing DIP proposals thereby minimizing any prejudice. That structure includes: (i) providing the financing required to fund and maintain the Debtors' operations, (ii) a commercially reasonable interest rate, (iii) the exclusion of any make-whole provision and (iv) the waiver of any commitment/funding fee if the Senior Secured Lenders' DIP is repaid from a replacement DIP facility. The Senior Secured Lenders have worked in good faith and there is no suggestion that they have any ulterior motivation in proposing their DIP financing; they are simply seeking to preserve their collateral.

⁵⁴ *Great Basin Gold* at paras. [181-182](#).

65. The Senior Secured Lenders' DIP accomplishes precisely what DIP financing is intended to accomplish in CCAA proceedings: it preserves stability, avoids immediate operational disruption, and minimizes irreversible prejudice while stakeholders' rights and competing proposals are properly adjudicated.

PART V - ORDER REQUESTED: DISMISS THE DEBTORS' MOTION AND GRANT THE CROSS-MOTION

66. The Ad Hoc Committee respectfully requests an Order that:

- (a) the Debtors' motion for approval of the Government DIP Facility and the Government DIP Charge be adjourned to be litigated on the timetable set out in Schedule "C", attached;
- (b) if the Debtors require interim financing before the disposition of the DIP Motion, authorizes the Debtors to enter into the Senior Secured Lenders' DIP and borrow the amounts actually required and provided for in the cash flow forecast filed by the Monitor, until the disposition of the DIP Motion and granting a charge in favour of the Senior Secured Lenders, securing the Debtors' obligations under the Senior Secured Lenders' DIP; and
- (c) if there is a dispute with respect to the appropriate interim lender pending disposition of the DIP Motion, scheduling a case conference or hearing the week of June 8, 2026 at the Court's earliest convenience to determine this issue.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of June, 2026.

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *AbitibiBowater Inc., Re*, [2009 QCCS 6453](#)
2. *Canacol Energy Ltd (Re)*, [2026 ABCA 57](#)
3. *Canwest Global Communications Corp., Re*, [2009 CanLII 55114](#)
4. *Crystallex International Corp. (Re)*, [2012 ONCA 404](#)
5. *Fire & Flower Holdings Corp., Re*, [2023 ONSC 4048](#)
6. *Great Basin Gold Ltd. (Re)*, [2012 BCSC 1459](#)
7. *In the matter of Canacol Energy Ltd. et al.* (December 11, 2025), King's Bench of Alberta (Action No. 2501-18462), [Decision of Mah, J.](#)
8. *Inca One Gold Corp. (Re)*, [2024 BCSC 1478](#)
9. *Industrial Properties Regina Limited v Copper Sands Land Corp.*, [2018 SKCA 36](#)
10. *Port Capital Development (EV) Inc. (Re)*, [2021 BCSC 1272](#)
11. *Quest University Canada (Re)*, [2020 BCSC 318](#)
12. *Re Crystallex International Corporation*, [2012 ONSC 2125](#)
13. *Simpson's Island Salmon Ltd. (Re)*, [2006 NBQB 6](#)
14. *Tacora Resources Inc. (Re)*, [2023 ONSC 6126](#)
15. *Tacora Resources Inc., Re*, [2024 ONSC 2454](#)
16. *Temple City Housing Inc., Re*, [2007 ABQB 786](#)
17. *Tepper Holdings Inc., Re*, 2011 NBQB 211

I, Alec Hoy, am satisfied as to the authenticity of every authority cited in this factum, in accordance with Rule 4.06.1(2.1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

Date June 4, 2026



Signature

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

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

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.

[...]

SCHEDULE "C"
LITIGATION SCHEDULE

CCAA – DIP Financing Litigation Schedule

Step	Date
Responding and Cross Motion Record and Production Requests	June 11
Debtors' Reply Record and Production Requests Responses	June 17
Interrogatories to Monitor	June 22
Examination, Cross-Examinations	Week of June 22
Monitor Responses to Interrogatories	June 26
Monitor's Report	June 29
Debtors' and supporting parties' facta	June 30
Responding and Cross-Motion parties' facta	July 3
Debtors' Reply factum	July 6
Hearing (half day)	July 7 or after

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NUNAVUT IRON ORE, INC.,
BAFFINLAND IRON MINES CORPORATION, and 12334992 CANADA INC.

Court File No. CL-26-00000219-0000

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

PROCEEDING COMMENCED AT
TORONTO

**FACTUM OF THE AD HOC COMMITTEE OF SENIOR
SECURED NOTEHOLDERS**

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